UNITED STATES OF AMERICA

Congressional Record

PROCEEDINGS AND DEBATES OF THE 99th CONGRESS

SECOND SESSION

VOLUME 132—PART 23

OCTOBER 17, 1986 TO OCTOBER 18, 1986

(PAGES 32707 TO 33952)

GENERAL SERVICES ADMINISTRATION
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UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 1986

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United States
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Congressional Record

PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, SECOND SESSION

HOUSE OF REPRESENTATIVES—*Friday, October 17, 1986*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

O God, Your majesty is greater than the heavens and Your brightness illumines every dark place. We pray, gracious God, that Your spirit will illumine our hearts and minds that we may walk the path of life that leads to fulfillment and joy for us and justice to people of every land. Give us, we pray, that peace of mind that comes when we have done what is just, what is good, what is noble and kind. May Your word of purpose and comfort be with each person who labors here that Your will may be done on Earth as it is in Heaven. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. BROWN of Colorado. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER. The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. BROWN of Colorado. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 226, nays 113, not voting 93, as follows:

[Roll No. 484]

YEAS—226

Abercrombie
Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Atkins
AuCoin
Barnard
Bateman
Bates
Bedell
Beilenson
Bennett
Berman
Bevill
Boland
Bonior (MI)
Bonker
Borski
Bosco
Boucher
Bruce
Bustamante
Byron
Carper
Carr
Chappell
Clinger
Coelho
Coleman (TX)
Collins
Conyers
Cooper
Coyne
Crockett
Daniel
Darden
Daschle
Dellums
Dicks
DioGuardi
Donnelly
Dorgan (ND)
Dowdy
Downey
Duncan
Durbin
Dwyer
Dymally
Early
Eckart (OH)
Eckert (NY)
Edgar
Edwards (CA)
English
Erdreich
Evans (IL)
Fascell
Fazio
Feighan
Fish
Flippo
Florio
Foglietta
Foley
Fowler
Frank
Fuqua
Garcia
Gaydos
Gejdenson
Gibbons
Gilman
Glickman
Gonzalez
Gradison
Gray (PA)
Green
Guarini
Hall (OH)
Hall, Ralph
Hamilton
Hammerschmidt
Hatcher
Hawkins
Hayes
Hertel
Hopkins
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Hyde
Jeffords
Jenkins
Johnson
Jones (NC)
Kastenmeier
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lantos
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lipinski
Livingston
Lloyd
Long
Lowry (WA)
Lujan
Luken
MacKay
Manton
Markey
Matsui
Mazzoli
McCloskey
McCollum
McDade
McEwen
McKinney
Mica
Michel
Miller (CA)
Miller (WA)
Mineta
Moakley
Mollohan
Montgomery
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Myers
Natcher
Nelson
Nowak
Oakar
Obey
Olin
Ortiz
Panetta
Pease
Pepper
Perkins
Petri
Price
Quillen
Rahall
Rangel
Ray
Regula
Reid
Richardson
Robinson
Rodino
Roe
Rostenkowski
Roth
Rowland (GA)
Roybal
Russo
Sabo
Scheuer
Schulze
Schumer
Sharp
Shelby
Shumway
Sisisky
Skelton
Slattery
Slaughter
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Snyder
Solarz
Spence
Spratt
Staggers
Stallings
Stark
Stenholm
Stokes
Stratton
Studds
Swift
Synar
Tauzin
Taylor
Thomas (GA)
Torricelli
Towns
Traficant
Valentine
Visclosky
Volkmer
Watkins
Waxman
Wheat
Whitehurst
Whitley
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Wolpe
Wortley
Wright
Wyden
Wylie
Yates
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Armey
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Bilirakis
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Burton (IN)
Callahan
Carney
Chandler
Chappie
Cheney
Cobey
Coble
Coleman (MO)
Combest
Conte
Coughlin
Courter
Craig
Dannemeyer
Daub
DeLay
DeWine
Dickinson
Dornan (CA)
Dreier
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Fawell
Fiedler
Fields
Franklin
Frenzel
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Ireland
Jacobs
Kindness
Kolbe
Kramer
Lagomarsino
Latta
Leach (IA)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Lungren
Mack
Madigan
Marlenee
Martin (IL)
Martin (NY)
McCandless
McKernan
McMillan
Meyers
Miller (OH)
Molinari
Monson
Moorhead
Nielson
Oxley
Packard
Parris
Pashayan
Penny
Porter
Pursell
Ridge
Roberts
Roemer
Rogers
Roukema
Rowland (CT)
Saxton
Schroeder
Schuette
Sensenbrenner
Shaw
Shuster
Sikorski
Skeen
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solomon
Strang
Stump
Sundquist
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Vander Jagt
Walker
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Young (FL)
Zschau

NOT VOTING—93

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Breaux
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Broomfield
Brown (CA)
Bryant
Burton (CA)
Campbell
Chapman
Clay
Coats
Crane
Davis
de la Garza
Derrick
Dingell
Dixon
Edwards (OK)
Ford (MI)
Ford (TN)
Frost
Gephardt
Gingrich
Goodling
Gordon
Gray (IL)
Grotberg
Hansen
Hartnett
Hefner
Hillis
Hunter
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kasich
Kemp
Leath (TX)
Loeffler
Lott
Lowery (CA)
Lundine
Martinez
Mavroules
McCain
McCurdy
McGrath
McHugh
Mikulski
Mitchell
Moody
Moore
Murtha
Neal
Nichols
Oberstar
Owens
Pickle
Rinaldo
Ritter
Rose
Rudd
Savage
Schaefer
Schneider
Seiberling
Siljander
St Germain
Stangeland
Sweeney
Tallon
Torres
Traxler
Udall
Vento

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Vucanovich	Weaver	Williams
Waldon	Weiss	Wilson
Walgren	Whitten	Wirth

□ 1020

So the Journal was approved.

The result of the vote was announced as above recorded.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate has passed without amendment a bill and concurrent resolution of the House of the following titles:

H.R. 5459. An act to direct the release, on behalf of the United States, of certain conditions and reservations contained in a conveyance of land to the State of Utah, and for other purposes; and

H. Con. Res. 404. Concurrent resolution expressing the sense of the Congress that the Soviet Union should immediately provide for the emigration of Naum Meiman and Inna Kitrosskaya-Meiman and for the resolution of all divided family and emigration cases.

The message also announced that the Senate has passed with amendments in which the concurrence of the House is requested, bills and joint resolutions of the House of the following titles:

H.R. 1010. An act for the relief of Audrey O. Lewis and Emerson B. Vereen;

H.R. 4037. An act relating to the Indiana Dunes National Lakeshore, and for other purposes;

H.R. 4154. An act to amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such act, and for other purposes;

H.R. 4685. An act to adjust the boundaries of areas of the National Wilderness Preservation System in the State of Texas;

H.R. 5363. An act to amend the interest provisions of the Declaration of Taking Act;

H.J. Res. 36. Joint resolution authorizing establishment of a memorial to honor women who have served in or with the Armed Forces of the United States; and

H.J. Res. 142. Joint resolution authorizing establishment of a memorial to honor the estimated five thousand courageous slaves and free black persons who served as soldiers and sailors or provided civilian assistance during the American Revolution and to honor the countless black men, women, and children who ran away from slavery or filed petitions with courts and legislatures seeking their freedom.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1128) entitled "An Act to amend the Clean Water Act, and for other purposes."

The message also announced that the Senate recedes from its disagreement to the amendment of the House to the title.

The message also announced that the Senate agrees to the amendments of the House to the amendments of the Senate to the bill (H.R. 4378) "An Act to provide standards for placement of commemorative works on lands administered by the National Park Service in the District of Columbia, and for other purposes."

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 1230. An act to amend the patent laws implementing the Patent Cooperation Treaty;

S. 2260. An act to settle certain claims arising out of activities on the Pine Ridge Indian Reservation; and

S. 2921. An act to amend the Public Law 99-396 exception to the Balanced Budget and Emergency Deficit Control Act of 1985, and for other purposes.

FINANCIAL REFORM

(Mr. BARNARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARNARD. Mr. Speaker, as the 99th Congress draws to an end, I must rise to again express my disappointment that we have been unable to make significant progress toward adapting our laws to today's financial marketplace. Change is epidemic at both the domestic and international levels. Yet, the Federal laws remain hopelessly outmoded. They discourage competition, efficient financial markets, and better service to the average consumer as well as the corporate world.

A number of partial steps have been taken during this Congress to move toward modernization. The Banking Committee of the other body has conducted extensive hearings on how to restructure the system. I have held a series of hearings in the Subcommittee on Commerce, Consumer and Monetary Affairs of the Committee on Government Operations.

Additionally, numerous bills have been introduced. Some have looked primarily toward improving the corporate side of financial services such as my H.R. 5220, the Financial Services Competitive Enhancement Act of 1986. That bill would have expanded the powers of commercial banking organizations to reflect a variety of economic changes, such as the substitution in the marketplace of commercial paper—now possibly forbidden to banking organizations—for their more traditional commercial loans. Other bills have addressed the consumer side, such as H.R. 3876, introduced by Mr. LUNDINE, which would have allowed the establishment of a new kind of bank, known in the business as a "consumer bank."

Consumer banks would be targeted toward the average consumer since they would make no commercial loans and their service structures could be tailored toward bringing the full range of financial services to those who have traditionally not been able to afford them. Although I have never cosponsored legislation for consumer banks and have my reservations about them, I have come to believe that the idea deserves to be fully explored during the next session of Congress.

Indeed, we are going to have to work very hard to bring our financial structure up to date on both the corporate and consumer side if America is not going to fall even further behind in the near future. For instance, only 1 U.S. banking organization belongs in the world's top 10 any longer, whereas 5 years ago, this country dominated global finance. If we are worried about our national position regarding steel and textiles today, we will be equally worried about our global place in finance tomorrow.

Part of the reason for this and other shortcomings are the financial straitjackets our ancient laws impose on financial services firms and their consequent inability to diversify into more lines of business. Basically, we have pigeonholed banks, brokers, savings and loans, insurance companies, real estate brokers, and other financial lines of business into arbitrarily separate business entities. We have denied them the ability to find strength through diversification. We have also denied nonfinancial firms the right to participate in many financial businesses and often bring additional capital strength to the financial sector.

On the consumer banking side, this has meant a rise in the public showing interest in doing more business with diversified, not pigeonholed, institutions.

Recently, the "American Banker" reported that its survey of consumer responses to banking in 1984 and 1985 showed that an increasing number of Americans have come to believe that diversified financial services firms and nationwide banking companies can meet their needs better than the traditional, fractionalized system. Organizations ranging from the American Association of Retired Persons to the Consumers Union have urged Congress specifically to enact legislation allowing consumer banks owned by diversified financial firms, such as Merrill Lynch, Prudential Bache, and Sears Roebuck, when coupled with consumer safeguards.

Some piecemeal modernization has occurred due to decisions by the courts, by State governments and even regulators but it can only be finally molded and sanctified by Congress. I fully intend to press forward during the next Congress by introducing new legislation that will certify broader powers to those who want to participate in the American financial services sector.

I hope between now and then that a wide variety of groups and businesses

share with me their suggestions on how to ensure the Federal laws can be reformed to obtain both the benefits of new technology and market efficiencies while retaining a safe and sound financial system. I am open to suggestions from all quarters, whether they be the advocates of "consumer banks" or those seeking very broad holding company structures in which almost any kind of financial activity could be conducted. Such would be permissible as long as deposit-taking activities are insulated from abuses due to conflicts of interests, tie-ins, or the misuse of deposits which are federally insured.

As I survey American finance, I know we are falling behind on front after front due to a love affair with Depression era concepts that long ago should have been jettisoned. We had better get started on modernization. If we do not, then there will not be any American financial organizations at the top of the global structure. They will all be Japanese—not just the majority, as is the case today.

INTRODUCTION OF LEGISLATION TO IMPROVE THE LICENSING PROCESS IN HORSE RACING

(Mr. HOPKINS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HOPKINS. Mr. Speaker, I want to inform my colleagues that I have introduced a bill which will allow the National Association of State Racing Commissioners and State racing commissions access to Federal criminal identification records.

This legislation would improve the licensing procedures in the sport of horse racing by facilitating the exchange of information among the State racing commissions.

It is being introduced at this time in order to generate discussion among members from States with racing within their borders and the Federal regulatory bodies with jurisdiction over such matters.

The national association is composed of 40 State racing commissions. Its primary goal is to maintain a consistent flow of information among these agencies.

Currently, each State annually issues a license to each owner, trainer, and others who race in that State.

Separate licenses, including fingerprinting, must be secured by these individuals for each and every State, a duplication which suggests a large and unnecessary administrative burden and expense.

More importantly, serious questions are raised about the effectiveness of preventing the licensing of undesirables with criminal histories.

This bill would help centralize and improve the licensing process. It allows the National Association of State Racing Commissions to access and disseminate necessary information regarding the criminal backgrounds of license applicants to the States.

Allowing these agencies to pool and exchange information is a logical, efficient, and vital way to protect the integrity of the sport.

THE MENACE OF DISINFORMATION

(Mr. EDWARDS of California asked and was given permission to address the House for 1 minute.)

Mr. EDWARDS of California. Mr. Speaker, we recently learned that Presidential Assistant John M. Poindexter initiated a program of disinformation against the country of Libya.

Another definition of "disinformation" is falsehood. There is a much uglier word.

Mr. Speaker, the issue of disinformation is too important to be buried at the end of a session. In the 1960's and 1970's wholesale disinformation programs did great damage to our country.

Mr. Speaker, the American people are entitled to know all the facts about this latest allegation. We must not return to the bad old days.

To that end I have today introduced a resolution of inquiry requiring the President to produce all the documents and information regarding this disinformation program, and I trust that the President will cooperate.

Mr. Speaker, in the past this administration has condemned the Soviet Union's attempts through the publication of falsehoods, half-truths, and forgeries to manipulate public opinion. These efforts are known as disinformation and the administration has called them a threat to freedom. In 1984, then Attorney General Smith said, "Disinformation strikes at the ability to communicate the truth, which is the raw material of democratic and peaceful decisionmaking." In 1983 then Under Secretary of State Lawrence Eagleburger wrote that:

> Active measures [which include disinformation] have a corrosive effect on open political systems. * * * [C]ommon sense requires that we counter these intrusions * * * by keeping our citizens as fully informed as possible of the deceptive practices to which they are exposed.

Well, Mr. Speaker, the administration must have had a change of heart in recent weeks. It seems a recent memo from the White House National Security Council discusses a "disinformation program" against Libyan leader Mu'ammar Qadhafi as if disinformation were a standard part of American foreign policy. And as a result—intentional or unintentional—of the campaign, stories were printed in the American press exaggerating the threat of Libyan terrorism.

There is a strong sense of deja vu about this. The Church committee report of 1976 documented the extent to which the FBI in particular engaged in "distorting data to influence Government policy and public perceptions." One of the examples studied by the committee was "the program to destroy Dr. Martin Luther King," which included "efforts to discredit him with executive branch officials, congressional leaders, foreign heads of state, American ambassadors, churches, universities, and the press." In addition to the King campaign, the FBI planted false and derogatory information in the media to discredit other black activists and new left leaders and organizations, including the Nation of Islam, the Poor People's Campaign, and the Institute for Policy Studies.

The CIA was deeply involved in similar efforts, including the publication of the spurious book, "The Penkovsky Papers," designed to influence American opinion of the Soviet Union. Prior to 1967, the Church committee found, the CIA published hundreds of books, journals and newsletters in the United States. After domestic publication activities were officially ended in 1967, the CIA continued its propaganda efforts abroad, and stories planted in the foreign press were reprinted here.

We seem to have forgotten how revelations of these activities damaged the credibility and effectiveness of our intelligence agencies. We also seem to have forgotten the Church committee's warning that:

> Mere exposure of what has occurred in the past will [not] prevent its recurrence. Clear legal standards and effective oversight and controls are necessary to ensure that [improper activity] does not itself undermine the democratic system it is intended to protect.

Perhaps, Mr. Speaker, it is time to revisit the Church committee's recommendations for clear legal standards and effective oversight and controls.

The administration has not denied that it planned an anti-Qadhafi disinformation campaign. Indeed, it has defended its actions, and has suggested that the end justifies the means, as if there were no problem with the United States adopting the ethical standards of the Soviet Union.

The most shocking thing about this effort is the callous disregard for the consequences of a disinformation program in this country. The administration says that the publication of stories in this country was not the intended goal of the plan, but was some kind of accident. That is small comfort. Over the past months, the American people have come to fear the threat of Libyan and other foreign terrorism in this country. Congress has been asked to pass legislation limiting our civil liberties and increasing Government surveillance capabilities in order to combat terrorism. Some of that legislation passed. Now we learn that the threat of Libyan terrorism was exaggerated—unintentionally, we are told—by administration officials seeking to destabilize the Qadhafi regime.

The full story of the administration's disinformation campaign remains hidden. Most of us have learned of the campaign by the same means the disinformation itself was circulated—through unattributed leaks to the press. I believe the administration has an obligation to come forward with a full explanation of its ac-

tions, on the record. To that end, I am introducing today a resolution of inquiry requiring the President to produce all documents and information in his possession or under his control relating to what his administration has called a program of real and illusionary events against Qadhafi.

Mr. Speaker, we all know Congress is going to adjourn in a matter of days or hours and that it will be virtually impossible for this inquiry to be acted on in that time. Nonetheless, I feel this is far too important a matter to be lost in the end-of-the-session rush. Therefore, I call on the administration to respond to this resolution by coming out for honesty and rejecting deception as a national policy. As chairman of the subcommittee with jurisdiction over the first amendment, I will be watching and waiting for the administration to make its position clear: Does it reject disinformation or doesn't it? Does it oppose lying to the press and the American people or doesn't it? If the administration does not unequivocally reject the use of the media to spread deception, I propose to introduce legislation in the next Congress to prohibit Government officials from knowingly disclosing false information to the American public.

A REPORT ON THE DEVASTATING EARTHQUAKE IN EL SALVADOR

(Ms. FIEDLER asked and was given permission to address the House for 1 minute.)

Ms. FIEDLER. Mr. Speaker, I ask for the indulgence of the Speaker for just a few moments in order that I may report on the trip which I had the privilege of taking yesterday to El Salvador. With the Speaker's indulgence, I would like to report on my trip just very briefly.

I was invited to join Secretary Shultz yesterday to go down to El Salvador and view the damage that took place during the course of the earthquake. I would like my colleagues to know that along with the gentleman from Pennsylvania [Mr. MURTHA] and other representatives from throughout the world, we were able to bring to the people of El Salvador a sense of hope that there would indeed be some additional assistance from this country in order to help them get over what is a very serious situation for their country.

We found thousands of people whose housing had been destroyed or was so damaged that they could not actually use it for shelter. We found many women waiting for food, waiting in line for tortillas and for water. They are in the process of trying to reestablish the basic essential utilities in the country, but it will be a while before that will take place, and many, many people throughout the country are without the basic necessities and just simple shelter. They are going through what is still the very rainy season down there. It is a very, very sad situation.

A number of the hospitals, one in particular, have been seriously damaged. There was a children's hospital we found that was totally destroyed; they were taking care of the children out in the field. Mrs. Shultz went over and took a look at that area and reported back to us on the situation there.

I just wanted to let my colleagues know that while the emergency is being dealt with in a very effective way, the country of El Salvador has been under siege for a number of years now and does not have a lot of the necessities to provide to its citizens. They are going to need continued support and assistance from this Government which I know my colleagues will be willing and able to provide, along with technical assistance which they do not have in place at this time.

Mr. Speaker, I thank the Chair very much for providing me these few moments. I would like to say that these will probably be my last comments on the floor as a Member of the House. It has been a privilege to serve with my colleagues, and I look forward to working with them as a private citizen.

LATEST DEVELOPMENT IN THE OWENS' CORNING RESTRUCTURING

(Mr. FLORIO asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. FLORIO. Mr. Speaker, the latest installment in the Owens' Corning fiasco is reported in today's New York Times. This is the matter in which the company was successful in fighting a hostile takeover and in doing so, had to borrow $2.6 billion, and the reorganization which has been announced to satisfy that obligation entails liquidating half of the work force, the work force going from 29,000 to 15,000. The reduction involved 800 workers in my district, in the Barrington facility.

Mr. Speaker, this very much reminds me of the Vietnam war policy of liquidating a village in order to save it. That policy does not work militarily, and it does not work economically.

A TRIBUTE TO NOBEL PRIZE WINNER JAMES M. BUCHANAN

(Mr. ARMEY asked and was given permission to address the House for 1 minute.)

Mr. ARMEY. Mr. Speaker, I would like to share in the pride that must be felt this morning by President Johnson and the faculty, students and alumni of George Mason University in having James M. Buchanan of their faculty recognized by the Nobel Committee for the Nobel Prize in Economics.

□ 1030

I have long been familiar with Mr. Buchanan's work. I am an admirer of Mr. Buchanan's work. He, and colleagues such as George Tullock, are specialists in choice theory, who understands that choices must be made within constraints and clearly defined objectives. It is on that basis that we can make discriminating tradeoff decisions.

They are great and effective analysts of the behavior of government decisionmakers and they recognize the absence of these constraints as a cause of some of our folly that has made both these gentlemen extremely good advocates of the balanced-budget amendment, and has made it possible for me, by way of reviewing and summarizing their work to formulate ARMEY's Axiom No. 1: The market is rational; the Government is dumb.

STATUS OF WATER RESOURCES BILL, H.R. 6

(Mr. ROE asked and was given permission to address the House for 1 minute.)

Mr. ROE. Mr. Speaker, I wanted to make a report at this time to the Members of the House on the status of the water resources bill, H.R. 6.

We have been waiting for 14 years to get that bill passed. We have been working on the bill for that last 5 years. We have been ready to file a report for the last 2 weeks, and we are being delayed by the Committee on Ways and Means, who have not taken up the vessel charge yet so we can process that bill and present it to the House. No. 1.

No. 2, there are ravaging floods taking place in Illinois, Oklahoma, other States across the Nation where people are saying, "Let's get something done."

In 1978, the water resources bill was lost because we did not have enough time and there was not a quorum to act on the bill. I would urge the chairman of the Committee on Ways and Means to move with dispatch on the vessel part of this bill so that the House can work its will and pass that legislation, which is extremely important to this country.

I will also urge the Members of the House to call upon their friends on both sides of the aisle on the Committee on Ways and Means to urge them to take action and take it as quickly as possible so we can bring this bill to the floor so the Members of the House can opt to vote on whether or not they support water supply, flood control, hydropower, and building of the ports in America.

It would be a tragedy to lose this bill while game-playing is going on.

□ 1045

PUT AN END TO CONTINUING RESOLUTION MADNESS

(Mr. PORTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PORTER. Mr. Speaker, is the continuing resolution—and the absurd brinksmanship which accompanies it—just a routine way of doing business? My constituents no longer think so.

My district, like many, suffered extensive flooding this month. Last Saturday, SBA representatives were supposed to be in my district to receive applications for Federal disaster loans. But stopgap funding had stopped at that point, and the people of my district were caught in the gap when the SBA was put out of business. While the latest mini-CR was flying to Reykjavik, my flooded constituents were hung out to dry by a Government that refuses to do its work on time.

It is too late to salvage our pride for this year, but not too soon to think about fiscal year 1988. I urge my colleagues to cosign a letter I am sending to the President asking him to announce, in his State of the Union address early next year, that he will sign no CR's for fiscal year 1988; that he will absolutely insist that Congress pass all 13 appropriations bills, separately and on time. If he won't sign one, we can't send him one. We will have to finish our work on time and go home, and some good just might come out of that.

URGING SUPPORT FOR DISINFORMATION INQUIRY

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, I want to congratulate the gentleman from California [Mr. EDWARDS] on his very courageous resolution of inquiry, and I hope that everyone in this body gets behind him on this. He has never been one to run away from a fight, and he has never been one to do anything but what is right for this country.

As a distinguished member of the FBI, as a distinguished Member of this House, and one who cares about civil liberties and free speech, he understands why this disinformation campaign is so serious.

Bernard Kalb also understood why this disinformation campaign was so serious, and did something that I wonder if any of us could do, and that is, rose to the level of deciding to resign over it.

We must find out what happened. The excuse that other countries do it is not adequate, because this is not "another country," this is the United States of America, where we operate on a higher plane and have really been very proud of that in our tradition.

So I certainly hope that the President of the United States cooperates, that we find out what really happened, and that we make sure that this never occurs again. We cannot be accused of disinformation or we will never know who to believe.

Again, I salute the gentleman from California [Mr. EDWARDS] for having the courage to do this.

THE AMERICAN HERITAGE OF AN HONEST MONEY

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, today I would like to salute those Members of Congress who are no longer with us and who introduced gold standard bills, following the suspension of redemption, March 6, 1933. First and foremost among them was Representative Howard Buffett of Nebraska, who introduced a gold standard bill probably in each Congress in which he served. Said he:

> The American heritage of an honest money redeemable in gold was not given to this generation to squander. It was entrusted to our hands as custodians. Unless restored, we shall be recorded by history as faithless both to our ancestors and our posterity. For the blessings of this land of liberty, and its unparalleled achievements, are intimately connected with the right of the individual freely to obtain gold in exchange for the fruits of his labors.—(Human Events, Washington, DC, July 28, 1948.)

Other Members of Congress who are no longer with us and who introduced gold standard bills were:

Representative Daniel Reed, New York, 1949–1955;

Representative Robert Hale, Maine, 1949–1953, 1955;

Representative J. Edgar Hiestand, California, 1953, 1955;

Representative Carroll Reece, Kentucky, 1953;

Senator H. Styles Bridges, New Hampshire, 1953, 1955.

The authors of gold standard bills listed above should be remembered and honored as monetary statesmen in the history of our country.

INVOLVEMENT OF AMERICANS IN NICARAGUA

(Mr. RANGEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RANGEL. Mr. Speaker, there is a lot of concern in the United States and certainly throughout the world about the failure of Nicaragua to set up a democratic government according to the standards which we would like to see in this country.

Unfortunately, instead of taking our case to the United Nations, we have opted to illegally support a group of people who are attempting to overthrow the government notwithstanding the fact that we still maintain a diplomatic relationship with this government.

More recently, a plane was shot down, and an American citizen is being held and probably will be tried under the laws of Nicaragua. We insist that we have no connection with this expedition, the plane that was flown, or the people who were killed or captured, and that they were indeed volunteers.

The reason that I have taken this opportunity to address the House is to let the Members know that we are really playing a very dangerous game when we encourage American citizens, perhaps in violation of the U.S. law, to involve themselves in the foreign policy of another country, and then for us to attempt to walk away by calling them volunteers.

For those of us who served in Korea during the end of 1950, when we thought that the Korean war was over, we were met with tens of thousands of so-called volunteers from the People's Republic of China. I would want to assure my colleagues that to those of us who have been in combat it is no different looking down the muzzle of a gun when it comes from a citizen of that nation that has declared war upon you than when that government has encouraged its citizens to pick up arms and to attack you.

WASTEFUL SPENDING IN SUPERFUND

(Mrs. COLLINS asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. COLLINS. Mr. Speaker, fraud, waste, and abuse are three of the words that we hear most often around here in our political vocabulary, and three of the most elusive things that we look for when we want to disparage any Federal Government program.

A rare opportunity arose recently where we honestly had the chance to eliminate wasteful spending in an important Government program, Superfund, but when push came to shove, House conferees backed down.

The Environmental Protection Agency auditors found last month that contractors hired by EPA to do emergency toxic waste cleanup charged more than double for their labor costs, and more than 100 times the purchase price of the equipment that they use.

More seriously, they also found that one contractor billed EPA for $35,298 in labor costs when he only paid out

$17,900. Another contractor charged $244,794 for 22 pieces of equipment, when estimated actual costs were only about $97,000, and EPA was charged $4,700 for a pump that should have cost a little more than $300.

During the Energy and Commerce Committee's debate on Superfund, I offered a proposal that would have addressed this issue, an amendment on value engineering. Value engineering is a systematic multidisciplinary functional method of analyzing a project's design and determining how it can be performed in the most cost-effective way without sacrificing health or environmental concerns.

Such studies done by EPA for a number of water pollution projects, for example, saved about $658,000, which is a 6.1-percent reduction in total costs. It is a concept that I think this Congress needs to become familiar with, and I am going to offer it frequently.

T-46 TRAINER—A PAROCHIAL ISSUE

(Mr. DICKINSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DICKINSON. Mr. Speaker, one of the things that is holding up the passage of the continuing resolution in the Senate, as reported in this morning's paper, is the issue of the T-46 trainer.

Those Members who were on the floor might recall that the T-46 trainer was a very highly contested item when the defense bill was brought to the floor, and I pointed out at the time that the Air Force did not want it. It was a parochial issue; the New York delegation was doing everything that it could to see that it was done. The Air Force did not want it. The majority of the House I thought did not want it. The Senate did not want it. Really it is just a question of whether we are going to force the Air Force to do something that they do not want to do.

It passed in the conference with the Senate. This was one of the big sticking points between the House and the Senate, and it was resolved that they would have a new competition. The Air Force would let the T-46, the T-45, the T-37, whatever, compete for a new trainer, and that was how the issue was resolved.

But, following that, the Appropriations Committee in the continuing resolution just ripped this out of the agreement, and plugged in the agreement that the Air Force must buy the T-46 regardless of competition.

As I pointed out on the floor, they could not perform under the existing contract, and if they defaulted, they would have to pay substantial damages. The continuing resolution by the Appropriations Committee says that they must negotiate a new contract, tear up the existing contract, must buy the T-46, and Senator GOLDWATER and Senate Members are saying, "We are not going to have it."

So it is a parochial issue, New York against the world. We see who wants to save money.

DRUG BILL DESERVES SUPPORT

(Mr. HUGHES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HUGHES. Mr. Speaker, with your leadership and that of the majority and minority leader, we were able yesterday to meet with our legislative counterparts in the other body to reach agreements that we all believe insure the enactment of this very important package of antidrug abuse measures. It will be before the House shortly. The package is an important first step in developing a concerted, coordinated, and comprehensive strategy and commitment to fight drug abuse on all fronts. It is, however, only a first step. As you know, my primary area of specialty and responsibility is law enforcement. I believe that the two bodies of Congress are on the eve of agreeing to the toughest drug law enforcement package in history.

It includes—

Tougher penalties, including mandatory penalties in a number of instances;

A new money laundering offense;

A designer drug offense to prosecute underground chemists;

Expanding the armed career criminal penalties to drug offenses;

A White House conference to develop a national drug abuse prevention and enforcement strategy.

Substantial new resources for drug enforcement efforts, at the Federal, State, and local levels.

Mr. Speaker, we must step up our fight against drugs on the demand side. Those of us who have battled drug abuse on the law enforcement side for many years, including the top drug enforcement officials of our Government, recognize that the battle can only be won by reducing demand. We must do a better job there in the future. It's a good bill and deserves our support.

PERSONAL EXPLANATION

(Mr. OXLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OXLEY. Mr. Speaker, Wednesday, October 15, I was unavoidably absent from the floor and missed four recorded votes. I would have voted on those four votes as follows:

Rollcall No. 470, conference report on S. 1128, the Clean Water Act, "aye."

Rollcall No. 471, rule for consideration of the continuing resolution, "aye."

Rollcall No. 472, passage of House Joint Resolution 738, the continuing resolution, "no."

Rollcall No. 473, motion to R&C with an amendment, amendment No. 59, "aye."

Mr. Speaker, I ask that this statement appear in the RECORD following those rollcall votes.

The SPEAKER pro tempore (Mr. KILDEE). Is there objection to the request of the gentleman from Ohio?

There was no objection.

□ 1055

TRIBUTE TO EVELYN SISCO, RECIPIENT OF 1986 PRESIDENTIAL AWARD FOR EXCELLENCE FOR SCIENCE AND MATHEMATICS

(Mrs. LONG asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. LONG. Mr. Speaker, I would like to commend a schoolteacher in my district, Evelyn Sisco, who is one of 186 teachers who will receive the 1986 Presidential Award for Excellence for Science and Mathematics. Ms. Sisco is in Washington this week to receive the award for outstanding math teacher of Louisiana.

Ms. Sisco taught math in Rapides Parish for 16 years, our time. According to superintendent of schools, Allen Nichols, she is the first teacher in Pineville or perhaps in Rapides Parish to receive a national honor. In junior high school she tutored my son, George, so I know firsthand that she is a dedicated and caring educator.

The Presidential Awards Program began in 1983 to identify outstanding math and science teachers to serve as models for their colleagues. The program, administered by the National Science Foundation, bases its selection on the teacher's classroom performance, professional activities, and performance of their students.

Under the program, Pineville will receive a $5,000 grant from the National Science Foundation in Evelyn's honor. In addition, schools of the winners receive private business gifts that sometimes total $20,000 in equipment and materials.

The education of our children should be a top priority and I commend Evelyn Sisco for this prestigious award. I join with Ms. Sisco's students, colleagues, and friends in saluting her.

On a personal note, as I leave this body, I express my deep appreciation to my colleagues for their help. Together GILLIS and I have served 16

years in the House. I have the utmost respect for this great legislative body, as did he, and I wish you all well in the 100th Congress. I shall miss you very much.

FREE THE 99TH CONGRESS

(Mr. HENRY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HENRY. Mr. Speaker, I would like to call your attention and the attention of others to the fact that there are over 400 new American hostages, hostages being held captive right here in Washington by the parliamentary terrorism of the other body, the first time, Mr. Speaker, since the War of 1812 that we have had political hostages in the Nation's Capital.

We must not allow these terrorists to continue in their infamy, not allow them to claim civil immunity for their ungoverned conduct.

Mr. Speaker, these innocent hostages represent every State in the Union. One of the hostages comes from your own congressional district.

Mr. Speaker, help free the hostages. It will be the finest hour in your long and distinguished political career.

MANDATORY ASSIGNMENT FOR PHYSICIANS WILL BE MAJOR NATIONAL HEALTH POLICY ISSUE OF 100TH CONGRESS

(Mr. DONNELLY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DONNELLY. Mr. Speaker, I am today introducing legislation, along with Mr. STARK, my chairman on the Ways and Means Health Subcommittee, to require that all physicians accept assignment as payment in full as a condition of participation in the Medicare Program.

Mandatory assignment has already been successfully implemented in my own State of Massachusetts. Massachusetts could not wait for national mandatory assignment: Medicare beneficiaries there saw their Medicare deductible rise 62 percent in 4 years and their premiums for supplemental coverage increase 55 percent over the same period. In 1985, Massachusetts passed legislation requiring that physicians accept Medicare-approved charges as payment in full as a condition of licensure. There was strong opposition from physicians, who challenged the law in State court and threatened to drop out of the Medicare Program. Thus far, though, the law has been a resounding success: It has survived court challenge, and the threatened avalanche of physician dropouts has failed to materialize. Only one physician has refused to treat Medicare patients.

Medicare beneficiaries across the Nation face the same pressures of rising health costs that Massachusetts confronted, and they have the same need for protection. Despite recent legislative incentives Congress has offered physicians to become "participating" physicians, and accept assignment, only a dismal 67 percent do so. The American Medical Association encourages its members to accept assignment voluntarily: This legislation is the next logical step.

SUPERFUND WASTE, FRAUD, AND ABUSE

(Mr. WALKER asked and was given permission to address the House for 1 minute.)

Mr. WALKER. Mr. Speaker, I hope the House was listening a few moments ago to the gentlewoman from Illinois [Mrs. COLLINS] when she talked about the waste, fraud, and abuse that is taking place in the Superfund. She was absolutely right.

The inspector general at EPA has indicated that the waste, fraud, and abuse in that program has reached absolutely appalling conditions. There is a spike that they use to drive into contaminated barrels of toxic waste that cost $18 in the hardware store. The Federal Government in the EPA paid $1,200 for that spike. A trailer that costs $535 on the market cost the Federal Government $8,500.

That is the kind of abuse that is going on in the program. We just expanded that program fourfold and we raised taxes in order to do it, and we did not deal at all with the waste, fraud, and abuse in the program.

It seems to me that it is time to come back and deal with that waste, fraud, and abuse. It is important in defense to deal with it and it is also important in some of these domestic programs such as the Superfund.

SDI—POLITICAL OFFENSIVE WEAPON AGAINST DEMOCRATS

(Mr. WILLIAMS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILLIAMS. Mr. Speaker, just previous to the President leaving for that important summit conference in Iceland he insisted that the House Democrats not shackle him with certain arms control requirements that we were considering putting in the legislation. The President said that perhaps understandably this was not the time and we should not politicize the arms control negotiations and debate.

So we acceded to the President's wishes and we removed our requirements. Then the first week, the very first week that the President returned from his Iceland summit, he went out on the campaign trail and said the campaign theme for the remaining 3 months of this political year will be star wars, SDI, and he has thereby politicized something he asked us not to do and we acceded not to do it. We thought in this House that SDI, the star wars, was to be a defensive system to protect us against the Soviets. We now find out that it is a first-strike weapon against the Democrats.

CONGRATULATIONS TO DR. JAMES M. BUCHANAN AND GEORGE MASON UNIVERSITY

(Mr. PARRIS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PARRIS. Mr. Speaker, I take the floor of the House this morning to congratulate George Mason University and particularly Dr. James M. Buchanan, the director of the Center for the Study of Public Choice, who this week received the Nobel Prize in economics.

For some time now George Mason University has engaged in an intensive campaign to attract economic superstars, and Dr. Buchanan is, of course, the captain of that team.

Almost 20 years ago it was my privilege to serve as a member of the board of trustees, then a branch of the University of Virginia when George Mason College was formed. I was present at its ground-breaking in 1957 when the campus was obtained. It started with 17 students in a warehouse, and now it is an institution of 17,000 students in a magnificent and expanding facility.

George Mason University, under the leadership of Dr. George Johnson, has truly matured into an institution of higher learning that is the envy of many older institutions around the Nation. Its future and its potential is enormous and unlimited. We wish it well as it goes forth into the 21st century with the kind of quality representation on the faculty and dedicated student body that it so richly deserves.

THE VIABILITY OF STAR WARS

(Mr. DURBIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DURBIN. Mr. Speaker, as the dust settles from the Reykjavik summit, it is apparent that one's feelings about the President's performance are directly linked to one's opinion about the viability of SDI or star wars, as it is commonly known. If you share the President's view that SDI is our salvation, then the disarmament proposals of Reykjavik are easily cast aside. If you believe SDI is at best an unproven theory of dubious worth,

then it is difficult to rationalize the President's refusal to accept the most sweeping nuclear arms reductions ever seriously proffered.

We all hope negotiations toward arms control will resume. But in the meantime, the national debate on star wars will be focused here on Capitol Hill, and that should give everyone some pause.

With our track record on molding our Nation's defense policy to meet the image cast by defense contractors, how can we promise any objectivity about SDI, the most expensive military project in the history of the world? One can only hope that President Eisenhower's parting advice to this Nation about the growth and influence of the military industrial complex will guide us during this political debate.

CONGRESS' FAILURE TO COMPLETE ITS WORK

(Mr. WRIGHT asked and was given permission to address the House for 1 minute.)

Mr. WRIGHT. Mr. Speaker, I am advised that the President has given an order to close down the Government as of noon today while the other body debates the continuing resolution. Perhaps we will be able to get an agreement, and I earnestly hope we shall, to avoid that contingency, at least to permit the workers to come back to work throughout the country and continue the Government.

The game of blame is a fruitless game. Therefore, let me simply point out that throughout this entire process the House has behaved responsibly. We had the overwhelming preponderance of appropriation bills passed through the House and on the desk in the Senate long before Labor Day.

On four occasions we have sent continuing resolutions to the other body to avoid the necessity which now appears ready to fall upon the country, with the President's order to close down the Government. I think that is a shame.

□ 1105

I think that is most unfortunate that the President would find it necessary on this occasion, while the Senate debates arcane and important issues in an effort to resolve the contretemps between various factions and groups and bring a continuing resolution through that Chamber in order that we might have final action.

The House, 2 weeks ago, on the eve of the President's visit to Iceland, swallowed hard, ignored campaign rhetoric against us, and give to the President of the United States a convincing demonstration of unity in order that he might negotiate in behalf of our country.

It seems to me that rather than close down the Government, it would behoove the President to stay here in Washington and to call off his trip to North Dakota and call in Senator DOLE and the leaders of the other body, and see if he could not work out an arrangement where the Government of the United States might continue.

This is sad. We must do whatever is necessary to avoid it; we have behaved responsibly. The House stands ready to continue to behave responsibly in the ongoing operation of the Government of the United States.

GEORGE MASON UNIVERSITY PROFESSOR WINS NOBEL PRIZE IN ECONOMICS

(Mr. WOLF asked and was given permission to address the House for 1 minute and to revise and exend his remarks and include extraneous matter.)

Mr. WOLF. Mr. Speaker, I would like to bring to the attention of my colleagues the announcement made yesterday that the Nobel Prize in Economics has been awarded to James M. Buchanan, a professor at George Mason University in Fairfax County.

This award has been made for Mr. Buchanan's lifelong work in applying economic analysis to the processes by which governments raise and spend money.

On behalf of all northern Virginians, I offer my congratulations to Mr. Buchanan and would like to share with my colleagues a number of articles that appeared in the paper.

This is also a tribute to President George Johnson, the president of the university, who has done such a great job of bringing good people to George Mason; and lastly, there was a member of the house of delegates who has since died; a gentleman named Hank Mann, who years ago was one of the founders of this university. This is a tribute to all of these people.

Mr. Speaker, I am including at this point several newspaper articles on the award:

[From the Washington Post, Oct. 17, 1986]

A NOBEL FOR JAMES BUCHANAN

The Swedes sometimes use the Nobel Prize in Economics to bring attention and influence to certain ideas, rather than to reward work that has already attained it. This year's award seems to fall into that category. While James McGill Buchanan has for many years been regarded with respect by American economists, his work has never become part of the central structure of the discipline. Mr. Buchanan has spent the past several decades applying economic analysis to the processes by which governments raise and spend money. That has led him to a view of politics as a market among interest groups, in which people in public life follow much the same logic as those in private businesses to aggrandize their own positions. That, he argues, gives all government a strong inherent tendency to keep expanding—and he deplores it. Mr. Buchanan is a vigorous supporter of a constitutional amendment to force the federal government to balance its budget.

The amendment, like the bleak and pessimistic view of government that it reflects, has always seemed to us an altogether dubious proposition. But there's one crucial sense in which Mr. Buchanan is surely right. Economics at its best is a moral science. Modern economics often strays far out into the mists of abstract mathematics but, while math is tidier than morality, in economics it is on the whole less illuminating. Over the years the Nobel awards have jumped uncertainly back and forth across that line, reflecting the ambivalence among economists themselves. This year the prize is particularly welcome because it rewards a scholar who has devoted himself explicitly to the social and moral implications of public choices.

And the prize is doubly welcome in this city, for Mr. Buchanan teaches at George Mason University in Fairfax. The newest of this region's universities and already an invaluable asset, George Mason is doing fine work in many fields. Mr. Buchanan's Nobel is a dramatic indication of its resources and will encourage the state of Virginia to continue to expand and strengthen it.

To strengthen George Mason's economics program will require careful thought. There is a tendency at most of the Virginia state universities to look to the right when recruiting economists. Most of the economics department at George Mason is, in political terms, extremely conservative. That creates comfortable relationships within the department, with the state legislature and with the businesses to which universities look for support. But as George Mason's stature increases it will need to broaden its faculty and expose its students to other perspectives. Mr. Buchanan is a man who relishes debates. It would be a pity if his own eminence resulted in an economics department at George Mason in which there was no one to give him an argument.

[From the Washington Post, Oct. 17, 1986]

GMU TEACHER WINS NOBEL IN ECONOMICS

(By Jane Seaberry)

James M. Buchanan, a professor at George Mason University in Fairfax County, yesterday was awarded the Nobel prize in economics for his lifelong work in developing Public Choice, an unorthodox area of political economics that was influential in the development of the Gramm-Rudman-Hollings budget reduction law.

Buchanan, 67, said he received a call informing him of the $290,000 prize at "about 6:32 this morning. I just finished shaving and was almost out the door to come to work. My feeling was one of total shock, surprise."

Buchanan, who grew up in rural poverty in Tennessee and now lives in Fairfax City with his wife, Ann, became the first Nobel laureate at George Mason, which has become the headquarters of the Public Choice movement.

Public Choice supporters include many influential and conservative members of the Reagan administration, Congress and the Federal Reserve system who have used its arguments to combat what they perceive as "big government" policies. But Public Choice has been opposed by many mainstream economists who consider it extreme and its adherents a fringe element.

Buchanan, who calls himself a libertarian, said he has grown his food for the past 12

years and begins his 11-hour working days before dawn. He shuns the eastern economic establishment and prefers to be called "part of the great unwashed."

"I hope to avoid being an instant expert on everything," he said at a news conference yesterday. "I'm not an instant expert on anything."

Public Choice followers support a balanced-budget amendment and other steps to limit government, a flat tax and elimination of the Federal Reserve's power to determine monetary policy. The movement provided Sen. Phil Gramm (R-Tex.), an enthusiastic supporter, with the philosophical underpinning for the Gramm-Rudman-Hollings deficit reduction law.

Among its adherents in key policy positions in Washington are James C. Miller III, director of the Office of Management and Budget, who was one of Buchanan's students at the University of Virginia, and Federal Reserve Vice Chairman Manuel H. Johnson, who taught at George Mason University before joining the government.

Public Choice is not so much an economic theory as it is a way of looking at how policy makers and bureaucrats behave in ways that determine economic policies. Players in the political arena are seen as following policies in their self-interest, allowing big governments to have almost a will of their own despite the wishes of voters.

For example, Buchanan said yesterday that one way of determining how the government has run up record budget deficits is to look at how members of Congress make their decisions. They boast to their constituents about the great programs they have passed but which increase government spending, he said. At the same time, they don't want to raise taxes because it will cost them votes.

Public Choice economists say Congress needs to be reined in either by Gramm-Rudman-Hollings or a constitutional amendment requiring a balanced budget.

The Royal Swedish Academy of Sciences, which announced the award—the 14th economic one to go to an American since the prize was established in 1969—said that while traditional economic theory explained how consumers and business people made decisions regarding the purchase of goods, choice of work, production and investments, "Buchanan has developed a corresponding theory of decision-making in the public sector.

"Buchanan's foremost achievement is that he has consistently and tenaciously emphasized the significance of fundamental rules and applied the concept of the political system as an exchange process for the achievement of mutual advantages," the academy said. "He has used this method with great success in the analysis of many specific problems and issues. Long before large budget deficits arose, for example, he showed how debt financing dissolves the relation between expenditures and taxes in the decision-making process."

The academy added that developments over the last few decades "have confirmed Buchanan's realistic views of the scope of economic policy."

Some mainstream economists have insisted that Congress has not been irresponsible in handling the budget and that it has checks and balances to restrain spending, making constitutional mandates unnecessary and sometimes harmful.

Princeton University professor Alan S. Blinder said in a recent interview, "It's mainly the extremism that leads a lot of people, including myself, to believe that they go overboard" assigning selfish motives to the actions of all bureaucrats.

Buchanan works at a gray manual typewriter in an office surrounded with gray metal shelves filled with books. A calendar with a picture of Swedish economist Knut Wicksell is tacked to a wall, and a framed photograph of University of Chicago professor Frank Knight leans prominently on a shelf. (Buchanan has said that Wicksell and Knight were influential in his development.) His chair is worn gold velour with some of the stuffing sticking out.

Buchanan attended Middle Tennessee State College and the University of Tennessee, where "I learned no economics during that year, but what I did learn [was] about women and whiskey, which after all are important parts of an education," he wrote in an autobiography.

He received a doctorate in 1948 from the University of Chicago. After teaching at the University of Virginia in Charlottesville and Virginia Polytechnic Institute, Buchanan was persuaded to join George Mason in 1983, where he teaches graduate courses and is paid $114,130 a year.

"In large part, my colleagues and I sensed that George Mason University was a dynamic, growing university," Buchanan said. "This seemed to me where the action was."

[From the Washington Post, Oct. 17, 1986]

NOBEL SEEN AS MILESTONE OF MASON'S GROWING STATURE

(By Leah Y. Latimer)

Lydia Ortega was a student at Virginia Polytechnic Institute three years ago when economics scholar James M. Buchanan decided to leave the school for the less prestigious and little-known George Mason University. Ortega, a Los Angeles resident who had never heard of George Mason, decided to follow him.

When he left, I came to George Mason, too," Ortega said yesterday. "I knew I wouldn't be able to get the same thing if I'd stayed."

Since then, other schools and students have followed Buchanan's and Ortega's move to the Fairfax County school, the result of a well-planned strategy to transform the struggling state-supported college into a prominent institution.

Yesterday's announcement that Buchanan will receive the Nobel Prize in economics is a significant indicator of just how well the strategy has worked. It also distinguishes George Mason as the only university in the Washington area with a Nobel laureate on its faculty.

"This documents the progress that they've made," said J. Michael Mullen, associate director of Virginia's Council on Higher Education. "What they've been able to accomplish in a few years has taken other colleges decades."

University officials hope the prize will be a boon to George Mason's continuing growth.

"There's no question about it. It's a major drawing card," said W. Mark Crain, one of Buchanan's colleagues in the university economics department. "It's immediately put us on the map."

"The opportunity to work with a Nobel laureate is going to be a powerful attraction to very good students," said university President George Johnson. "And very good faculty go where very good students are. It's very great in terms of PR."

Gov. Gerald L. Baliles also celebrated the award, telling reporters in Lynchburg yesterday that Buchanan's honor will "draw attention to all of Virginia."

George Mason brought Buchanan to Northern Virginia in 1983, at the start of an intensive campaign to attract academic superstars with salaries similar to the $114,000 Buchanan will receive this year.

Part of the plan has been to stay at the fore of education by offering programs in high technology and information processing, taking advantage of its location in a fast-growing high-technology corridor near the nation's capital. The idea has been highly successful and has atracted students who say they otherwise might not have attended.

Enrollment has increased up to 9 percent annually in recent years and conservative columnist Walter Williams and Manuel Johnson, vice chairman of the Federal Reserve Board, are now counted among the school's more distinguished faculty members.

In the meantime, the university's Center for Study of Public Choice, the economics think tank headed by Buchanan, has gained a philosophical following of politicians and policymakers scattered throughout the Reagan administration and Congress.

Since its start in 1957 with 17 students in a converted elementary school building at Baileys Crossroads, George Mason has grown into a 583-acre campus with 17,700 students. A 10-acre campus in Arlington houses the university's law school.

With a state endowment that has grown from $800,000 in 1981 to reportedly more than $22 million this year, it is able to provide a full-time education to Virginia residents for $1,680 a year.

The campus itself, with its new brick buildings, miles of fresh, black asphalt and continuing construction, is more a tribute to modern scholarship than centuries-old tradition.

But if a lack of national recognition has been something school officials have sought to change, in some cases it has been a strong selling point.

Created as a two-year branch of the prestigious University of Virginia, George Mason also has been seen by many scholars as the opportunity to have an impact in developing research programs.

"That was one of my sales pitches. You don't have to worry about reputation, import your own," recalled Karne Vaughan, the economics department chairman who helped recruit Buchanan and seven other economics professors from the VPI in Blacksburg. "And it worked," she noted yesterday.

The university's four-year-old graudate program in economics has grown dramatically to include about 220 students this year.

Larry McQuillin, a 25-year-old doctoral candidate in economics, said George Mason was his first choice for graduate study, over the larger University of Maryland and University of North Carolina.

McQuillin, from Minneapolis, said the impact of the school's Nobel recognition may increase the value of his diploma—something university officials are hoping more potential students will come to believe. "I guess it legitimizes it," McQuillin said.

Besides the growing reputation for academic excellence, the school's attractions inlcude a $16.75 million sports arena called the Patriot Center, a championship wrestling team and a women's soccer team that captured the NCAA championship last year.

At yesterday's Board of Visitors meeting, school officials poured champagne and applauded Buchanan as he entered the room. Johnson, whose remarks reflected officials' hopes for continued growth, offered a toast.

"To our first laureate," he said.

RISING GEORGE MASON BASKS IN GLORY

(By Frank Perley)

In April, Time magazine touted George Mason University as one of nine "fast-rising and ambitious institutions"—one that is "challenging the nation's elite schools."

Now, in addition to its reputation for offering top-notch academics at an affordable price, the school can boast its own resident Nobel laureate.

George Mason professor James M. Buchanan yesterday was named winner of the Nobel Prize in economics for his work on the impact of economics on public policy. "Surely there will be some attention paid to the source of this work, George Mason University. There's no doubt about it," said Mr. Buchanan at a campus press conference yesterday after the award was announced.

George Mason University, named after a Fairfax County man who helped frame the Declaration of Independence and the Bill of Rights, began 29 years ago as a branch of the University of Virginia. At that time the school offered a two-year program to 17 students in a converted school building in Baileys Crossroads. It became an independent university in 1972.

In 1964, the university moved to a new campus on 583 wooded acres near Fairfax. In the last 10 years, its enrollment has doubled to 17,600 students and is growing at about 1,000 new students a year. During the same period, the number of degree programs has risen to 93, including seven doctoral programs.

Having a Nobel Prize winner on campus brought more esteem to George Mason's energetic president, George W. Johnson, who has been credited with a large part of the school's recent success.

Mr. Johnson left his post as liberal arts dean at Temple University to come to George Mason in 1978. He began by targeting three academic areas for which the university—by merit of its proximity to Washington—is well-suited for success: public policy, high-technology science and engineering, and arts and humanities.

"We're trying to utilize the fact that we're near the epicenter of change for the nation and maybe the entire world," Mr. Johnson said.

In 1983, Mr. Johnson came up with a salary offer of more than $100,000 to lure Mr. Buchanan and his prestigious Center for Public Choice from Virginia Polytechnic Institute in Blacksburg to George Mason. With him came the center's six professors.

Mr. Johnson has pushed the university into a central role in creating the ambitious Center for Innovative Technology, a private, non-profit corporation designed to attract high-technology industry to Virginia. Specifically, the university is working with the Software Productivity Consortium, a division of CIT that is seeking software breakthroughs that will benefit area businesses. Ground was broken for the center last month near Washington Dulles International Airport.

As its student enrollment has jumped, George Mason has undertaken an ambitious construction program that has brought the number of campus buildings from four to 53.

A $26 million performing arts center to become the center of a revamped humanities and arts program is to be completed in two years.

Patriot Center, a 10,000-seat sports and entertainment arena, has hosted professional basketball exhibition games and a nationally televised gymnastics tournament since opening last year.

Tuition at George Mason is far less than at many traditional bigname schools. Residents of Virginia pay $1,680 a year; for out-of-state students, tuition is $3,336.

Smiling faculty members, students and administrators gave Mr. Buchanan a cheering welcome when he arrived yesterday at George's Hall, which houses the Center for Public Choice but yesterday hosted an interview with Mr. Buchanan by the national news media.

"Now that Professor Buchanan has received the Nobel Prize, we'll be attracting graduate students from other states. It will really strengthen the graduate program," said Samuel H. Phillips, a professor of economics.

He predicted that an influx of out-of-state students would worsen the shortage of dormitory space. About eight dormitories now provide rooms for 1,770 students.

Andrew Marsh, a 20-year-old senior from Bermuda, said he heard about George Mason's economics department from an economist who was a friend of his father. The award will further enhance the department's reputation, he said.

"There's already a lot of people who come because they offer a lot of courses here. It will help to focus national attention here," he said.

Mr. Johnson agreed: "It certainly calls attention to the university. For the moment, we're all going to bask in his glory."

THE TRADE DEFICIT IS RUINING AMERICA'S INDUSTRIAL INFRASTRUCTURE

(Mr. TRAFICANT asked and was given permission to address the House for for 1 minute.)

Mr. TRAFICANT. Mr. Speaker, the trade deficit is approaching $200 billion, and yet we have no trade bill because very simply, the President of the United States does not want it.

The President continues to allow unfair foreign partners to rape American industry. Where is it going to end? It is not just steel anymore; it is your industries: electronics, textiles, leather goods and yes, even agriculture.

What is really dangerous about it, no one even seems to really care or notice in this House. We keep defending, on this side of the aisle, free enterprise. This is not free enterprise anymore; this is freeloading. This is absolute freeloading and American interests including the President right now are giving birth to a new dinosaur called the American Industrial Infrastructure.

The greatest sin of this administration will be, in the 99th Congress, the President did not address trade and the President failed to look at the future consequences of a Nation approaching a $200 billion trade deficit. You cannot separate that from the economic problems of this country.

STATEMENTS FOR THE RECORD ON THE RETIREMENT OF DR. FREEMAN CARY

(Mr. GAYDOS asked and was given permission to address the House for 1 minute.)

Mr. GAYDOS. Mr. Speaker, having had 3 hours of special orders, 2 of which were used to discuss in detail trade problems and health and safety problems, last night I had the honor and the privilege of holding a 60-minute special order for our former House physician, Admiral Cary.

We have substantial participation by the Members; and on coming in today, many Members asked whether or not they could put in prepared statements, and I want to notify my colleagues today that they have 5 legislative days as of yesterday to insert these into the RECORD depending on how long we are going to be in session.

Mr. Speaker, I urge Members to submit those remarks.

IMMIGRATION BILL HAS STRONG ANTIDISCRIMINATION FEATURES

(Mr. FRANK asked and was given permission to address the House for 1 minute.)

Mr. FRANK. Mr. Speaker, parenthetically, I hope we do not have 5 legislative days left to do anything.

I want to talk a little bit about the language that has come forward about a key provision in the immigration bill. One section of that bill which remained law was originally drafted by the Committee on Education and Labor under the guidance of Chairman HAWKINS.

It provides a very tough antidiscrimination mechanism, in case sanctions cause discrimination—we hope they do not, but they might—and it allows private organization to bring suits if the administration official charged with protecting people declines to do so in some cases.

I think that is very important, Mr. Speaker, and I look forward to its working well. Some people in the administration had a great fear that this was going to lead to abuse; so some statements were made by the chairman of the Committee on the Judiciary here and the chairman of the Subcommittee of the Judiciary on Immigration in the other body, stressing that this was not intended to be used to harass people.

I have no problem with those statements being made; except some of the language, particularly in the other body, suggested that there would be reason to fear that some of these

groups would be engaged in harassment.

Today I want to repudiate any suggestion that the organizations that I was pleased to work with in drafting and getting this legislation enacted, have in mind harassing anyone. The organizations that I am familiar with are diligent, hard-working groups of people who are opposed to discrimination. A particular reference quoted in the Washington Post today refers to them as "slavering organizations" I found very offensive.

I think it is a mistake for people to direct their hostility against those organizations of well-meaning citizens who are out there, making a lot less money than they could make in private practice trying to protect people against discrimination.

So yes, I have no objection to a statement that says, "We do not intend for people to be harassed," but there was never any indication that they would be, and I salute these organizations.

ELIE WIESEL: "SPEAK TRUTH TO POWER"

(Mr. ROEMER asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. ROEMER. Mr. Speaker, earlier this week a U.S. citizen, Mr. Elie Wiesel, was given the Nobel Peace Prize.

I rise to congratulate Mr. Wiesel. I have never met the man; but I thought he gave the most powerful speech given in our country since Martin Luther King spoke here in Washington more than 20 years ago, when he spoke to the President of the United States right before the President's trip to Bitburg, West Germany.

I want to remind my colleagues again of what Mr. Wiesel had to say.

Forty years ago, a young man awoke and found himself an orphan in an orphaned world. What have I learned in the last 40 years, Mr. President? Small things. I learned the perils of language and those of silence. I learned that in extreme situations, when human lives and dignities are at stake, neutrality is a sin. It helps the killers, not the victims. I learned the meaning of solitude, Mr. President. We were alone, desperately alone.

Mr. Wiesel concluded by telling the President that his Jewish tradition and his belief in America caused him to speak truth to power.

I thank Mr. Wiesel; I congratulate him on his Nobel Peace Prize and remind my colleagues of the lesson he taught us: To speak truth to power.

PROVIDING FOR CONCURRING IN THE SENATE AMENDMENT TO THE HOUSE AMENDMENT TO THE SENATE AMENDMENT TO THE BILL H.R. 5484, DRUG ENFORCEMENT, EDUCATION, AND CONTROL ACT OF 1986, WITH AN AMENDMENT

Mr. PEPPER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 597 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 597

Resolved, That upon the adoption of this resolution the House shall be considered to have: (1) taken from the Speaker's table the bill (H.R. 5484), with the Senate amendment to the House amendment to the Senate amendment thereto, and concurred in the Senate amendment with an amendment inserting in lieu thereof the text of a bill introduced by Representative Wright of Texas on October 16 or 17, 1986; and (2) adopted a concurrent resolution introduced by Representative Wright on October 16 or 17, 1986, directing the Clerk of the House to make a correction in the enrollment of the bill H.R. 5484.

The SPEAKER pro tempore. The gentleman from Florida [Mr. PEPPER] is recognized for 1 hour.

Mr. PEPPER. Mr. Speaker, for purposes of debate only, I yield 30 minutes to my able friend, the gentleman from Tennessee [Mr. QUILLEN], pending which I yield myself such time as I may consume.

□ 1115

Mr. PEPPER. Mr. Speaker, House Resolution 597 provides that upon its adoption, the House shall be considered to have taken H.R. 5484. The Drug Enforcement, Education, and Control Act of 1986, from the Speaker's table with the Senate amendment to the House amendment to the Senate amendment, and to have concurred in the Senate amendment with an amendment. The amendment consists of the text of the bill, H.R. 5729, which was introduced by Representative WRIGHT this morning. The resolution further provides that the House is considered to have adopted the concurrent resolution, House Concurrent Resolution 415, which was also introduced by Representative WRIGHT this morning. This concurrent resolution directs the Clerk of the House to make a correction in the enrollment of the bill, H.R. 5484. The vote which will occur on the rule will be a vote to return the bill with a House amendment to the Senate. The concurrent resolution will also be cleared for consideration in the Senate.

H.R. 5729, as introduced by the majority leader, Mr. WRIGHT, is a bipartisan leadership agreement which has, I might add, also been agreed to by the leadership of the other body. The agreement proposes an acceptable drug abuse prevention and education bill which incorporates important narcotics control provisions included in both the House and Senate versions of the bill.

Mr. Speaker, this resolution provides procedures which are unusual in nature. The membership has not had the opportunity to examine the proposed amendment. But as we are all aware time is very short. We are much too close to success to let this opportunity slip away.

The amendment by Mr. WRIGHT includes many of the provisions which have been passed by this House and promises to greatly expand the war on drugs. The House should be aware that the amendment does not include the death penalty language which overwhelmingly passed the House. Due to the delay which has occurred in the other body relative to the death penalty provision. The leadership decided that the language should be stricken. Members should be aware however, that the concurrent resolution which is addressed in the rule contains the amendment by Mr. WRIGHT along with the death penalty language. After passage of the rule. The House bill along with the concurrent resolution will be sent to the Senate. Thereby allowing those Members a choice of whether or not to include the death penalty.

Mr. Speaker, the Members of this House and the citizens of our great Nation owe their well-founded appreciation to the leadership on both sides of the aisle and of the other body for their relentless and untiring efforts to bring this bill forward.

I urge my colleagues to adopt this rule, send this compromise to the Senate and provide our Government with the necessary resources and authority to address this most serious problem.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. PEPPER. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding, because I want to clarify because we are dealing with an unusual procedure here, and I am somewhat concerned about the procedure but I want to make sure I understand it.

In adopting the rule, we will adopt the drug conference report and in addition will adopt a separate resolution that will contain the death penalty language that this House has supported in the past, and both of those will be sent as a package then to the body upon the adoption of this rule. Is that correct?

Mr. PEPPER. That is right.

Mr. WALKER. I thank the gentleman.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this the last action on the part of the House necessary to enact the drug bill into law. On adoption of this rule, we are sending the final text of the bill to the other body. Testimony received at the Rules Committee last night stated that all the items in dispute between the House and the other body have been resolved. So, success has crowned our efforts to begin the counteroffensive against the drug traffickers.

I would like to say at this time that the House and the entire country owe a debt of gratitude to all the Members who have worked so hard to put this tough drug bill together. Let me just mention the gentlemen from New York, the chairman of the Select Committee on Narcotics, Mr. RANGEL, and the ranking Republican Member, Mr. GILMAN. They are fine Members and they have worked in a diligent and bipartisan fashion on this bill, as have so many other Members of the many committees involved.

Especially do I want to commend the gentleman from Texas, Mr. WRIGHT, and the gentleman from Illinois, Mr. MICHEL. These two outstanding party leaders have worked together and have provided a splendid example of what true bipartisan leadership can achieve for the country. My hat is off to both of you. And to the distinguished majority leader, let me say, we, on this side of the aisle, appreciate the way this bill has been handled under your leadership with Mr. MICHEL. We have been treated fairly from start to finish. The lesson is, we should conduct our business in this manner more often. It is good for the country.

Finally, Mr. Speaker, I say, let the word go forth from this Congress to the drug traffickers and kingpins of the drug underworld: Beware. The counteroffensive has begun. The American people, backed with tough new penalties and powerful new tools provided by a united Congress, are coming after you. We intend to thwart you at every turn and put you to flight. We intend to defeat you and we will see this war against drugs through to the finish. And we will win.

Mr. Speaker, I ask for a "yes" vote on this rule.

Mr. PEPPER. Mr. Speaker, I want to join my distinguished colleague from Tennessee [Mr. QUILLEN] in the accolade that he rendered to the distinguished gentleman from New York [Mr. RANGEL].

Mr. Speaker, I was working 15 years ago on the Crime Committee of this House, of which I had the honor to be the chairman, with Mr. RANGEL, and I knew then his diligent and determined struggle to try to curb drug abuse in this country. He has carried that fight on in the most distinguished way as chairman of the Select Committee on Narcotics Abuse and Control.

Mr. Speaker, I am proud to yield 4 minutes to the distinguished gentleman from New York [Mr. RANGEL] for purposes of debate only.

Mr. RANGEL. Mr. Speaker, I thank the gentleman from Tennessee [Mr. QUILLEN] for the remarks that he made, and I support them for all of the Members who have worked so diligently to make this opportunity become a reality. And with all of the tributes that we like to pay to the gentleman from Florida [Mr. PEPPER] for all the work he has done not only for the Congress but for our great Nation, I cannot think of anything that we could give that he would appreciate more than the package which we are about to pass that for the first time would say that our Nation is not just dealing with political rhetoric but we have come up with a strategy that may not win but at least we can go back home to our constituents and say that we have tried.

The rule has attempted to balance the interests of everybody on both sides of the aisle.

The Committee on Rules, the chairman and the minority members have certainly given us an opportunity for the House to work its will. Again, I agree with Mr. QUILLEN that this is one of the finest moments that we have had in the House of Representatives to see the leadership of JIM WRIGHT working so closely with BOB MICHEL not only to do what the House would want done but to concern themselves with the special interests that Members had.

I think that Mr. GEKAS is a classic example as a Member who has worked hard to make sure that the issue of the death penalty be brought before the House. And even though the House has passed those provisions and the Senate rejected it, it could have been a situation where the House would be bogged down, but because of the creativity of the rule, because the staffs have come together to make certain that those of us who are for or against the death penalty do not walk away from this Congress in saying that we have deserted the American people and not given local and State governments, indeed, direction to the administration to be able to move forward and to do something about this crisis that we are all facing.

I think that when we pass this rule we will be passing the bill. It will be the conference report. It is something that really gives us the opportunity to deal with foreign governments that have ignored our plea in the eradication and control; we can give them assistance for those who want to cooperate; we can remove most-favored-nation treatment, economic and other types of assistance, for those that ignore our plea; we can bring in the Coast Guard and Customs to protect our borders; we can reach out to local and State governments to shore up what they are doing in law enforcement and rehabilitation; and most important, we can beef up the Justice Department to make certain that these criminal elements know that when they do get caught that they will have to pay the penalty.

I think all of us have parts of the bill that perhaps we are not satisfied with, but I ask my colleagues to support the rule and support the bill because of the historic nature, that we are taking this one gigantic step in outlining what could have been done in the past, what should be done in the future, and we will be able next year and in the years that follows to test what we are doing with oversight, not only with the Select Committee on Narcotics Abuse and Control—which, of course, it is the will of the House whether or not they are reconstituted—but with each and every committee which has worked over the years legislatively.

I would just like to conclude by saying that whatever we have been able to do in the Select Committee on Narcotics Abuse and Control, it has been because the standing committee chairmen and subcommittee chairmen have worked together as a team with no one seeking to gain publicity but only to bring back to the House the best reports that are possible. I could not have done this without the support of the Republicans and Democrats on the Select Committee on Narcotics Abuse and Control, and I certainly could not have done it without the partnership of "BEN" GILMAN of New York.

Mr. QUILLEN. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio [Mr. WYLIE].

Mr. WYLIE. Mr. Speaker, I urge approval of this rule providing for the passage of the Omnibus Drug Enforcement Education and Control Act. I am not familiar with subtitle H of the bill that deals with the prevention of money laundering through our Nation's financial institutions, and I feel this is an excellent provision. I have said previously during House consideration of this bill that the Banking Committee's provisions will assist immeasurably in the war against drugs. The bottom line is simple: by curbing the drug dealer's ability to launder through our Nation's financial institutions the phenomenal profits generated from drug sales, profits estimated to exceed $80 billion annually, we will hit drug dealers where it hurts the most, in their pocketbooks.

While I believe the language adopted by the House is superior in several respects to the amendment of the other body to this title, I continue to support the omnibus measure as a giant step forward in the war against drugs.

As I say, I preferred the House-passed language clarifying the state-of-mind standard for criminal and civil money penalties. The House language, "knowingly or with reckless disregard," is consistent with the "state-of-mind" standard in other laws enforced by the Treasury Department and is familiar to them. "Willfully" has an interpretive history but requires a higher standard of proof.

The other body did retain some other important provisions of the House bill. The other body recognized the need to improve Federal bank regulatory agency supervision over financial institutions in the area of Bank Secrecy Act compliance. I am also pleased the House provisions regarding the change in the Bank Control Act and the change in the Savings and Loan Control Act have been retained. The purpose of these provisions was to prevent dishonest persons, especially those who may have a criminal background from gaining control of financial institutions in this country. In addition, the other body also recognizes, as did the House, that the problems associated with money laundering are not just confined to our Nation. I am pleased to note that the House provision which requires the Secretary of the Treasury in consultation with the Federal Reserve Board, to initiate international discussions to establish an information exchange system with respect to eliminating the international flow of money derived from illicit drug operations and other criminal activities remains. All in all, this is a good bill and testifies to our ability to deal in a nonpartisan way with a national crisis problem. The bill deserves our support.

□ 1130

Mr. PEPPER. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. ANDERSON].

Mr. ANDERSON. Mr. Speaker, contained in H.R. 5484, the Anti-Drug Abuse Act of 1986 is a provision that is intended, in only a few, very limited circumstances, to clarify the standards to be used by the Interstate Commerce Commission [ICC] in certain cases in which a rail carrier requests authority to acquire a motor carrier. This provision would require the ICC, and any court reviewing the ICC's action, to follow the standards set forth in ex parte 438 in just the following three categories of cases: (1) Cases where a rail carrier filed an application with the ICC between July 20, 1984, and September 30, 1986, to acquire a motor carrier; (2) cases where a rail carrier entered into a contract or signed a letter of intent during that period to acquire a motor carrier; and, (3) cases where a rail carrier made a public tender offer, during that period, to acquire a motor carrier. A rail carrier, for these purposes, includes any person controlled by or affiliated with a rail carrier.

By following ex parte 438, the controlling standard for review of the acquisition would be whether the acquisition will enable the rail carrier to improve its "overall transportation operations" rather than just its rail operations.

This is necessary because several days ago the U.S. Court of Appeals for the District of Columbia ruled in the Norfolk Southern/North American Van Lines acquisition case that the ICC must limit its consideration to whether the rail carrier's acquisition of the motor carrier will improve its rail service.

With only the exceptions here specified, the ICC must restrict its deliberations to the "rail service" test. However, under this provision, the ICC would be required to apply the broader "overall transportation operations" standard during any consideration of cases falling into the aforementioned categories.

Mr. Speaker, I urge my colleagues to join with me in support of this provision.

Mr. PEPPER. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Oklahoma [Mr. ENGLISH].

Mr. ENGLISH. Mr. Speaker, I rise in support of this rule, and certainly of this legislation. I think that this is indeed a day to celebrate. The impasse that has existed between the House and the other body has been broken, I think, and I believe that this gives us an opportunity to move forward.

But I say that we should also keep in mind what this legislation does is to provide an opportunity, an opportunity for those who are in the trenches fighting the war on drugs. It provides them with a great deal of new equipment. It provides them with a great deal of additional resources in the way of money. It provides them with new people. In fact, it gives them a real chance, but they have to be able to execute. They have to be able to carry out, to take advantage of that particular opportunity.

Mr. Speaker, over the past few days, as this drug bill was being debated here in the House and the other body, I have to say that I have become concerned, because we have seen the turf battle that has existed previously on the war on drugs to grow to lengths and to spill over here into the Congress itself. I even heard of one case in which one department of the executive branch was ordering people from another branch off the Hill telling them not even to talk to Members of Congress as the struggle existed.

Now this kind of turf battle in the past has, quite frankly, cost us in the way of resources and has cost us in the way of effectiveness. I think that only half of the job is being done here today; namely, the passage of this legislation and giving those agencies the opportunity. It is going to be equally important, though, for the Congress to follow up, to look over the shoulder of these agencies making sure that they cooperate, that they work together, and in fact we have a truly coordinated war on drugs. Only then, Mr. Speaker, can we see that the resources and the opportunities that are being provided by this piece of legislation are really going to do the job, that the American people can truly be assured that they are going to see a decrease in the amount of drugs on the streets of America.

I think this is a real chance, Mr. Speaker, and I certainly want to commend the Majority Leader for bringing this to us, as well as the minority leader.

Mr. PEPPER. Mr. Speaker, I yield 5 minutes to the distinguished majority leader, the gentleman from Texas [Mr. WRIGHT] to whom we all owe so much for the magnificent leadership the gentleman has given to this cause.

Mr. WRIGHT. Mr. Speaker, may I express my earnest appreciation to our colleagues on 12 different House committees, majority and minority members alike. I have never seen a greater example of cooperation on any piece of domestic legislation.

Occasionally we have been able to bury our partisan differences and come together in a transcendent recognition of an overriding national concern where it involves the defense of our country or the international relations of our country. Rarely, if ever, have we been able to forge the kind of bipartisan consensus that we have been able to achieve on this particular legislation in anything involving the domestic affairs of the United States.

So I want to express my sincere gratitude to all those who have worked so diligently and so effectively to create an effective piece of legislation. This extends particularly to my colleagues on the Republican side of the aisle, to the minority leader who has worked fairly and freely with me and who has accurately reflected the wishes of those on his side of the aisle, as well as those among the Democrats, the chairman on the special committee, the gentleman from New York [Mr. RANGEL], the chairman of the Judiciary Committee, the gentleman from New Jersey [Mr. RODINO], the chairman of the Foreign Affairs Committee, the gentleman from Florida [Mr. FASCELL], and their opposite numbers on the Republican side of the aisle.

This bill represents a bipartisan and bicameral approach to the most serious social problem that confronts our country. Obviously there is no other concern which outranks the fear in the minds of our American people of

the menace of deadly drugs that has invaded our streets, our homes, and our school grounds. For the first time, we will have a coordinated approach. We provide in this bill the tools by which those agencies charged with the responsibility of maintaining the law will be better able to do so.

It is not a perfect vehicle. It is not the end of the road. But it surely is the beginning of our assuming the initiative in this war against drugs. And to that end, I want to express my sincere thanks to all those in the House who have yielded when yielding was necessary, who have insisted when insisting was desirable and, in the process, have created a legislative tool which surely will serve the interests and will serve the wishes of the American people.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the distinguished minority leader, the gentleman from Illinois [Mr. MICHEL].

Mr. MICHEL. Mr. Speaker and my colleagues, I thank the gentleman for yielding this time to me, and particularly following the remarks of the distinguished majority leader.

Mr. Speaker, this Congress began, as you all recall, January 3, I guess it was, last year, and on a very partisan note. If we were to conclude this Congress with the passage of this measure, I could truly say we have concluded it on a very conciliatory note and in a very bipartisan fashion.

I would not intend to address myself to the merits of the legislation, because there are others who will and have, and have done that very well, but I would join in the accolades that have been paid here to those Members primarily responsible for helping us craft this omnibus piece of drug legislation, the distinguished chairman of the Select Committee on Narcotics, where frankly we did not normally conceive of it being a legislation committee, but one of investigating and finding of information and developing it. But it all has worked out as kind of an underpinning for then the legislation committees, 13 or more, I guess, in number, to take bits and pieces and bring them all together in one fashion.

I must say the distinguished majority leader has been eminently fair in his treatment of the minority throughout the entire proceedings here from the very word "go" until the time that we wrapped this up.

If there is one maybe word of caution, that would only be that in that final room when we get together, men of good will ironing out our differences—and yes we have left some work to staff—but the word that takes place between Members is our bond, and that cannot be violated sub rosa by differences of opinion of staff people, as can happen in some extreme cases. Just a word of caution, because those of us who have to deal on this floor with one another from time to time, as I made mention the other night in our tribute to the Speaker, that word between Members is something extra special. And when we can trust one another of what we have agreed to on a handshake or a verbal commitment across that table that is going to be bound in cement or gold or whatever, that is what really counts. To find, if we do, that that has been violated unbeknownst to us, then there is the tendency to shake that confidence between the Members.

So I just wanted to rise in joining with the distinguished majority leader in making these comments, because I think it has shown that when we put out hearts and minds together on both sides of the aisle and on both sides of the Capitol, what wonders we can behold.

□ 1140

Mr. QUILLEN. Mr. Speaker, I yield 4 minutes to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in strong support of the rule, H.R. 5484, pertaining to the Omnibus Drug Enforcement, Education, and Control Act of 1986.

I want to commend our distinguished leadership: Speaker O'NEILL, Majority Leader WRIGHT, our Republican Leader Mr. MICHEL, the chairman of the rules committee, Mr. PEPPER, the chairman of our Narcotics Select Committee, with whom I have had the pleasure of serving as the ranking minority member, the gentleman from New York Mr. RANGEL, the chairman of the Republican Research Committee Mr. LEWIS, the chairman and ranking minority members of our 12 standing committees, and all my colleagues who have worked so diligently in helping to craft this omnibus drug measure and who have helped bring this measure to the floor.

Mr. Speaker, the House has a historic opportunity to enact one of the most comprehensive drug prevention and control measures crafted by the Congress, and we should not forget that this measure is truly a congressional initiative representing the best efforts by this Chamber and the other body in formulating a strong drug measure that provides significant funding, approximately $1.7 billion in law enforcement, in narcotics treatment, rehabilitation, prevention, education, and international narcotics control efforts. Some $200 million will be devoted to drug abuse education, $241 million will be authorized for drug treatment programs, $225 million in State and local drug enforcement assistance, $63 million in international narcotics control efforts, along with additional funding for Coast Guard and assistance from our Department of Defense.

Mr. Speaker, we can recognize that this is not a perfect bill, few measures of such complexity are ever enacted that receive unanimous approval. Some Members have found elements of this bill to their disagreement, but I must say to my colleagues that on balance, this is a sound bill, and it is one that will enable our Federal Government to more effectively combat the complex problem of drug trafficking and drug abuse both here in our Nation and throughout the world.

If we truly mean what we say about waging war on drugs, then let us support this rule. Let us provide the troops in our front line of law enforcement, of prevention, treatment, and rehabilitation agencies with the resources, manpower and equipment they so sorely need to do the job.

Accordingly, Mr. Speaker, I urge my colleagues to give the wholehearted support that this rule deserves.

Mr. PEPPER. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. TORRES].

Mr. TORRES. I thank the gentleman for yielding me this time.

Mr. Speaker, indeed this House and its bipartisan leadership has done a creditable job. It is said that this antidrug bill is the best we can have at this late hour in the session. Late hour or not, the plain truth is that this bill is deficient. The other body has deleted from the bill an entire section, section 508, which would put an end to the way drug traffickers launder huge cash profits through our banks.

Our banks are the unwitting partners in criminal activity. Every day, in hundreds of banks and savings institutions across this country, drug traffickers take their cash profits to unsuspecting tellers in amounts of less than $10,000. They exchange the cash for cashier's checks, which they then take to other banks or send out of the country. This is called money laundering which is used to pay off the producers of drugs. Why less than $10,000? Because the drug traffickers know that at $10,000 they have to fill out a report on a cash transaction.

The money laundering provision passed by this House as a part of H.R. 5484 was very carefully written to put a stop to this practice. It merely said that if someone walked into a bank off the street, that person would have to positively identify themselves, and fill out a simple form if they wanted to exchange $3,000 or more for a cashier's check. And further, the House passed money laundering provision said that this requirement would not be a nationwide requirement, but would only apply at those banks, or in those areas of the country, where the Secretary of the Treasury believed there was a problem.

When this simple money laundering provision was sent to the other body

as part of H.R. 5484, the banking industry lobbyists went into high gear. Arguing that it would be an administrative burden, they succeeded in getting it deleted from the Dole substitute. They did so by working the back rooms. The other body never voted to delete the money laundering section, it was already deleted by the banking lobby through stealth.

I do not want to believe that the bankers of this country wish to be a part of the drug trafficking industry. I do not want to believe that the bankers of this country want to keep their teller windows open to criminal activities. Almost every part of our society has pledged to do its part to fight the drug war. Educators, network executives, employers, public officials, sports figures—they have all joined the fight. Have bankers opted out? Are they not with us? Are they going to look the other way?

I challenge the bankers to come to me with an effective proposal we can write into law to put a stop to money laundering. I am not going to vote against this bill today, even though it does not have the money laundering provision in it. But I am not going to give up either. I am going to continue pressing for a money laundering law. The bankers can fight against me if they wish, but I would rather have the bankers with me, and, together, we can fight drug trafficking.

Mr. QUILLEN. Mr. Speaker, I yield 4 minutes to the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of the proposed rule.

My fellow colleagues, twice this body has sent to the other body tough legislation to deal with the drug crisis facing our country and destroying our youth. The first time we passed overwhelmingly a bill with a full set of law enforcement teeth that every drug dealer in America felt the bite of. The second time we passed a bill by an even more overwhelming margin with undeniably fewer teeth, but certainly with its most important one—the death penalty—still intact. We were presented on its return to this body an alternative that lacks even that—it had become a bill with no teeth—only gums.

The latest version of the bill passed by the Senate not only lacks the death penalty provision this body enacted so decisively, its place has been taken by a tragically comic provision claiming to provide a death penalty without parole for drug dealer kingpins who murder. Inexplicably, the procedures we enacted to govern application of the death penalty were retained to guide the imposition of life without parole. This wrong-headed amendment ignores the fact that sentencing guidelines will go into effect within 2 years and parole will no longer exist meaning that all life sentences will be without parole. More over, first degree murder under current Federal law requires imposition of life imprisonment without the extensive procedural requirements appropriate only to a capital offense.

The Senate amendment would require a bifucated sentencing hearing before a jury, consideration of aggravating and mitigating factors, extensive appellate procedures—none of which are required for even the most heinous of homicides under the law that exists either now or will exist when sentencing guidelines go into effect. It will actually be harder to sentence a murdering drug kingpin to life imprisonment than for any other category of homicide—and for no explainable reason. This is a result over which the public and law enforcement could justifiably be chagrined—particularly considering the focus the death penalty has gained in the public mind.

Americans beset by a drug problem at its door demand the swiftest and sternest measures to drive that threat away for good. Ever Member here knows that citizens can distinguish between a drug solution that papers over the problem and one that addresses it squarely. The American people know the message that its Congress sends by either enacting the death penalty for drug kingpins who murder or by failing to do so. This is now the central issue in their minds in determining whether their legislators are serious about their problem. Ladies and gentlemen, I am serious about their problem. We sit here today as a representative assembly—not as workers devoted to our own concerns but as servants of the public. The people cannot be mocked by superficial solutions to real problems. The people will not be misled by a fancy package called drug control when they find inside only paper.

The rule that we adopt today sends back to the Senate the drug bill and the death penalty as separate elements. The Senate may adopt either or both, that is a matter it must decide. I can only say now, as this House has said emphatically twice before, drug kingpins who murder deserve the death penalty. When this matter is deliberated further, and a choice must be made whether to accept one or both elements, I can only hope the best interests of the American people are considered more important than the doctrinaire entrenchment of a wilful few.

Mr. Speaker, I reiterate that the reason I support this rule is that it contains the death penalty; if it did not, I would not. The American people want and deserve a solution to the drug problem that contains both features of this proposed rule.

□ 1150

Mr. RANGEL. Mr. Speaker, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from New York.

Mr. RANGEL. Mr. Speaker, while I certainly disagree with the gentleman and do not believe that it is necessary to have the death penalty as a part of this drug package, I do want to thank the gentleman in the well for the cooperative spirit with which he worked out the differences between the House and the other body, and as you said, those that agree with you will have that opportunity, but you can vote for this bill and still be against the death penalty.

Mr. GEKAS. Mr. Speaker, I thank the gentleman.

I urge a "yes" vote and hope that that door will open wide and allow the American will to be spoken in the other body.

The SPEAKER pro tempore (Mr. KILDEE). The gentleman from Tennessee [Mr. QUILLEN] has 14 minutes remaining, and the gentleman from Florida [Mr. PEPPER] has 11 minutes remaining.

Mr. PEPPER. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the able gentleman from New Jersey [Mr. HUGHES], one of the gallant fighters in this battle.

Mr. HUGHES. Mr. Speaker, with your leadership and that of the majority and minority leaders, we were able yesterday to meet with our counterparts in the other body to reach agreements that we all believe ensures the enactment of this very important package of antidrug abuse measures.

First the leadership of the two bodies worked out the framework for ending the Ping-Pong match which saw this bill cross from one side of the Capitol to the other, four times. That framework is embodied in the rule before us.

Following this overall agreement, Members representing committees which contributed legislation to the package sat down with their counterparts from the other body and quickly worked out their differences. I have been in many conferences in my dozen years here. In none have I seen a better atmosphere and determination to reach agreement on a final product. I believe this was a result of a recognition by Members of both bodies of the critical need to get this legislation passed.

I am proud to have been a part of that process and to have joined Chairman RODINO, BILL MCCOLLUM, and DAN LUNGREN in working with the chairman and ranking minority member of the Judiciary Committee of the other body to resolve differences in title I, which contains important new tools and resources for law enforcement in the battle against drugs.

Let me list the highlights of title I, which I believe parallels, in the area of drug abuse, what we did for the fight against crime generally in the Comprehensive Crime Control Act of 1984.

This legislation, like its counterpart in the last Congress, is unprecedented in scope and importance. These highlights are:

Stiff penalties that will seriously hurt the organizers of drug trafficking syndicates.

The Designer Drug Enforcement Act which will close the loopholes that have permitted criminal chemists to manufacture and distribute deadly designer drugs.

A new crime of money laundering, that will enable us to prosecute the henchmen of drug traffickers who specialize in laundering their enormous criminal profits.

We have strengthened the Armed Career Criminal Act by expanding its coverage to drug crimes and violent crimes other than just robbery and burglary.

Mandatory sentences for those who sell drugs to juveniles or sell drugs at or near schools.

We have authorized calling a White House conference on drug abuse and control to develop an effective national strategy to combat drug abuse in the 1980's.

We have provided vitally needed assistance to State and local drug enforcement activities.

Authorization for almost 400 more drug enforcement agents to investigate drug traffickers.

Two hundred additional assistant U.S. attorneys to take them to trial.

For the construction and operation of new prisons, $125.5 million.

A sensible expansion of the role of the military in the enforcement of drug laws.

It is a good package and deserves your support.

Mr. QUILLEN. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. Mr. Speaker, I rise in strong support of this legislation.

Mr. QUILLEN. Mr. Speaker, I yield 4 minutes to the gentleman from Florida [Mr. SHAW].

Mr. SHAW. Mr. Speaker, obviously, on this floor today, no one has to convince anybody of the wisdom of this particular bill. But I think it is very important to note, as other speakers have, the moment that we have seized upon in a bipartisan way to set aside partisan bickering, and to do that only weeks before an election and come up with a bill that the American people deserve and the American people have demanded.

This will truly go down as one of the House's finest moments, and hopefully, when this bill, or this pair of bills gets to the deep pit at the other end of the hall, that it will be passed and signed into law within the next week.

I think, as we rejoice and celebrate what will shortly be the passage of this bill, that it is necessary for us to reflect on the work that yet remains ahead of us.

There are provisions in this particular bill that were in our bill that were left out of this bill, ones that I think had extreme importance to all of us.

The gentleman from Pennsylvania [Mr. GEKAS] spoke of one and that was the one providing for capital punishment. I am sorry to say that I do not think that because of the time left to us, that the other body will seize upon the opportunity to adopt capital punishment as part of the bill that will ultimately be signed into law.

I also regret that this bill did not include the provisions of the Bennett-Shaw amendment, which would have allowed the Armed Forces of the United States to become more deeply involved in the important work of law enforcement and the important work of ridding our hemisphere of drugs.

But there are important provisions as to the military because of the chase provisions that are in the bill so that we will see the military coming along further as time goes on.

Yesterday I asked the administration to instruct the Department of Defense to look at the optimum work that they can do in this war against drugs. I know that the arguments have been made, and they have been made very strongly, as to the military personnel not being trained. We certainly can train them.

We have a vast reservoir of military service men and women who can be trained in law enforcement. They can be most helpful in this particular matter.

Mr. HUNTER. Mr. Speaker, will the gentleman yield?

Mr. SHAW. I yield to the gentleman from California, who has been a leader in this particular area.

Mr. HUNTER. Mr. Speaker, I just want to remind my colleagues, as I know the gentleman has, that the southern borders of the United States are still essentially undefended in that they do not have low-level radar. According to our authorities, next year, in the next 12 months, 300,000 pounds of cocaine will cross primarily by aircraft for our children.

Although we passed an amendment in this House that would have addressed that problem, it is not in the final bill. We have a lot of unfinished work and I know the gentleman is going to work to see that we establish that radar coverage and establish a program for interdicting those aircraft that are coming across with that deadly cargo.

Mr. SHAW. Mr. Speaker, as my friend from California knows, we have the ear of the administration. They are looking closer at what they can do, particularly along the southwest border of the United States.

This bill does address the problems of the southwest border and also my own area in the Caribbean coming into the State of Florida. This is a most important bill. This is a most important moment.

I would like to compliment the leadership on both sides of the aisle once more, as they certainly deserve the credit for bringing together a very important issue and doing it without concern for political turf.

Hopefully, the agencies of the Federal Government, Customs, Coast Guard, and all the other agencies that are going to have to work together will quit worrying about their turf and work together for the betterment of the future of this country.

Mr. QUILLEN. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Mr. Speaker, this, indeed, is a red-letter day for the House of Representatives. I would have to say that it is the political system working at its best and most effective.

What we saw was an uprising of concern by the American people over a good period of time about the threat and the real seriousness of the drug problem. We saw Congress start to address that.

Unfortunately, I guess, it took the very widely publicized death of basketball star, Len Bias, and football star, Don Rogers, to bring the issue to where it is now, that is, the No. 1 domestic concern of the American people.

The Congress felt that when we went back home to our districts and talked to people about what their problems were, the drug issue continued to come up time after time. We came back here and we met with the gentleman from Texas [Mr. WRIGHT], the majority leader, the gentleman from Illinois [Mr. MICHEL], and other members of our committee and talked about how we could best deal with this in an omnibus way.

□ 1200

What we have before us today is the product of that work and that concern expressed by the American people, a strong eradication effort, pressure on noncooperating countries, interdiction, more resources for the Coast Guard, for Customs, for the Border Patrol; indeed to allow the military posse comitatus to be more helpful in strengthening our criminal laws and dealing with increased efforts at confiscation, increased penalties, increased penalties for money laundering.

Yes, I want the death penalty. The House expressed its concern more than once that they want the death penalty, but I do not think we should allow this bill to go as far as it has and not become law, to be hung up on that one issue.

I think the rule was carefully crafted to guarantee the passage of this bill with or without the death penalty provision. I congratulate those who drafted it in that regard.

Yes, I would have liked to have had the exclusionary rule exception that my friend from California talked about. I think that is going to be dealt with and I think we are going to continue to deal with those matters in the next Congress.

The education efforts in the bill, the rehabilitation efforts, again I think are noteworthy and demand our constant attention and certainly demand our vote for this very important provision.

Again I want to congratulate particularly Chairman RANGEL, the ranking member, the gentleman from New York, Mr. BEN GILMAN, for really keeping the feet of the Congress to the fire on this very important issue.

I can remember some hearings and some discussions we had when nobody seemed to be paying any attention to the drug problem in this country, but when the time came and the political process was working at its best, we were there to meet that challenge; so all those who worked very hard on this deserve I think a real pat on the back for what we have accomplished.

There is still some more to do and we will do it. We will address it in the next Congress.

Mr. Speaker, I ask for a very strong vote of support for the omnibus drug bill.

Mr. QUILLEN. Mr. Speaker, I yield 3 minutes to the gentleman form California [Mr. LEWIS].

Mr. LEWIS of California. Mr. Speaker, I thank my colleague for yielding.

Mr. Speaker, I have never been more proud of the bipartisan potential of this legislative body than I am today. There were moments when I was very concerned with the fact that this gargantuan effort was about to fall apart because there were differences between the two bodies that seemed to be unresolvable. We had a meeting quickly called among Members of the House, first the Republican side and then the Democrat side and then with a bipartisan group from the other body to arrive at an agreement which we have before us today.

Mr. Speaker, over the past 2 months, the leader, the gentleman from Texas, Mr. JIM WRIGHT, took the Democrat side of this issue in the House.

While my leader, the gentleman from Illinois, Mr. BOB MICHEL, was kind enough to allow me to be chairman of the task force dealing with the drug problem.

As we have gone forward time and time again with differences, Members have been willing to come together to discuss differences and find solutions.

On this side of the aisle, the gentleman from New York, Mr. CHARLIE RANGEL, and my good friend, the gentleman from New Jersey, Mr. BILL HUGHES, have made great contributions to this effort.

On our side, the gentleman from Florida, Mr. CLAY SHAW, and the gentleman from Florida, Mr. BILL MCCOLLUM, and the gentleman from Pennsylvania, Mr. GEORGE GEKAS, have all worked together.

I must say that my very respected colleague, the gentleman from California, Mr. DAN LUNGREN, has been very, very helpful in the process.

Mr. Speaker, critical to our success was not just all of these individuals, but yesterday afternoon the Speaker, TIP O'NEILL, became involved and helped crystalize this bill.

It is critical for us to recognize that this effort may be the beginning of a new experience in bicameral, bipartisan efforts.

This drug bill addresses drug-related questions of our problems with foreign countries, problems of those people who sell and traffic in drugs. We begin to get seriously tough with those people. It addresses problems of educating those who would become victims of drug peddlers. It also gets tough on those who use drugs.

This package in a bipartisan way takes a giant step forward in our war on drugs.

The House should be commended for this almost unbelievable and successful effort to fight drug abuse.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from Florida [Mr. MCCOLLUM].

Mr. MCCOLLUM. Mr. Speaker, I thank the gentleman for yielding this time.

We should be proud of this legislation. I am especially proud of title I which was worked on largely by those members of my Subcommittee on Crime and worked out in an informal conference yesterday with the other body.

In this bill in title I we have new tough laws for money-laundering, new forfeiture, designer drug, and mandatory sentence provisions. But I think the most significant thing that was accomplished in the informal conference yesterday was modifying and making sure that we have in the money-laundering crime that we are creating not only a crime of engaging in a financial transaction involving any amount of proceeds known to have come from drug sales or other specified unlawful activities when that transaction is designed to conceal the unlawful source, but also we have a separate crime for knowingly depositing or receiving for deposit or engaging in any monetary transaction in criminally derived property of a value greater than $10,000 from a specified unlawful activity.

In simple English, this means that from now on when someone sells a plane or a house or a boat to a drug kingpin and he knows that the money that is used to buy that plane or that house or that boat came from a drug sale, he is going to have to think twice because he himself will be committing a crime when he simply deposits that money in his own bank account. We need to stop the movement of money in this country from drug sources. It is vital to winning this war on drugs to stop drug kingpins from finding any place to put their money or to spend it.

But all the things we are doing today in this bill are not good enough. The bottom line is that the American people have to step in and take a part in this war. There would not be any sellers of drugs out there if there were not any buyers.

The bottom line is that all Americans have to emphatically say no to drugs.

Mr. PEPPER. Mr. Speaker, for purposes of debate only, I yield 4 minutes to the able gentleman from New York [Mr. SCHEUER].

Mr. SCHEUER. Mr. Speaker, I thank the gentleman from Florida, the distinguished chairman of the Rules Committee, for yielding this time.

Mr. Speaker, this is a glorious day for the Congress. In a bipartisan fashion, the Congress is meeting the drug problem in a thoughtful, credible way.

Now, that does not mean that I would not have changed some elements in this bill. It is not a perfect bill from my point of view. It is not a perfect bill from anybody's point of view, but it is a damn good bill. It is a massive step forward.

I want to thank Congressman GILMAN, who has done such distinguished and yeoman work over the decade and a half that I have served with him on this committee and, of course, I want to thank the chairman of the Select Committee on Narcotics, Congressman RANGEL, for the outstanding leadership and thoughtful insight that he has provided this committee.

I want to thank Members of Congress across the whole spectrum of political ideology, from the liberal Members of Congress to the more conservative Members of Congress, for their joining in and achieving a consensus behind this bill. It is a great bill; whatever its flaws, they are minor compared to the great leap forward and the great consensus we have achieved.

I am glad we are providing money for eradication of crops in the fields in

the source countries. I am glad we are providing money for interdiction at the borders; but the thing that pleases me the most is that one of the great breakthroughs in this bill is the commitment of significant resources to drug education, because there we have a window of opportunity.

When Congressman RANGEL led our committee on a trip along our Nation's southwest border, we stopped in city after city, met with State and local law enforcement authorities and Governors such as Governor Anaya of New Mexico, and Governor White of Texas.

These law enforcement professionals told us that trying to attack the drug problem strictly from the supply end can never really do the job until we turn off the demand for drugs at any price among Americans.

This bill constitutes finally a significant step toward educating our American youth, about the dangers of drugs, and toward instituting a basic change in their behavior. We know we can do it. We have changed behavior before in America.

Americans are very smart people. They get the message. When they get a message that their health is at stake, that their well-being is at stake, that their very lives may be at stake, they change their behavior. We have seen instance after instance of that in the last half a decade.

Ask the tobacco growers. They'll tell you that most middle class and educated people are radically reducing their smoking. Smoking remains popular among the less educated segments of our society. Unfortunately, we have not done sufficient education there.

Ask the liquor manufacturers. They are reacting to the decline in liquor consumption and the appearance all over the place of drunk driving campaigns. We see the teenage discos that are alcohol free. They are reacting to that by producing nonalcoholic beer.

Ask the dairy interests and the meat industry if they have not been affected by the radical turnaround in American diet in the last decade by people who were wondering about the effect on their health of high cholesterol food, fatty food. Yes, they are listening to their doctors and they are enhancing their health and extending their life expectancy. These examples show again how people can change their behavior with regard to alcohol, drugs, and tobacco and sexual mores.

Mr. Speaker, in the last 5 years we have had two horrifying threats to the health of young people involved in sexual relations: herpes and AIDS. The impact of these diseases has produced a counterrevolution from a practice of multiple sexual relations to a return to monogamous sexual practices in this country.

The thread that ties together each of these examples of successful behavior modification is the desire to extend, enhance, or protect life.

This very same concept should be applied to any drug education program.

Mr. PEPPER. Mr. Speaker, at the request of the gentleman from Tennessee, I am pleased to yield 2 minutes, for purposes of debate only to the able gentleman from Virginia [Mr. PARRIS].

Mr. PARRIS. Mr. Speaker, I thank the chairman of the Rules Committee [Mr. PEPPER], for yielding me this time.

Mr. Speaker, I rise in support of this measure. As a member of the Select Committee on Narcotics and Drug Abuse, as a member of the Republican Task Force on Drug Abuse, and as the parent of three children, I want to express my appreciation to the chairman of the Select Committee, the gentleman from New York [Mr. RANGEL], and my friend from New York [Mr. GILMAN], the ranking minority member of that committee, and to so many other of my colleagues who have contributed so much to this legislation.

It was my privilege this morning at 9 a.m., in the Mayflower Hotel here in Washington, to address the International Board of Directors of the Lions Club who are here meeting on the question of education for young people of the world on the question of drug abuse. In those remarks I predicted for those gentlemen and ladies that today the Congress of the United States would adopt a compromise version of the drug legislation that will go far to rid us of this menace—not only in this Nation but around the world.

I would hope that my colleagues would not disappoint me in that prediction. I hope and I believe that events will prove that it is an accurate one.

The only question that I have is in our two-track process here this morning, which is legislatively unique and desirable. I would hope that the other body would opt for the option which includes capital punishment and hope they will adopt the version containing the death penalty, which is the preferable of the two versions. I would sincerely hope they would choose that course. But, even if they do not, this still on the whole is a good bill. It deserves our support.

Mr. Speaker, I thank my colleagues for their bipartisan cooperation in its adoption.

Mr. PEPPER. Mr. Speaker, for purposes of debate only, I yield 1 minute to the able gentleman from Tennessee [Mr. FORD].

□ 1215

Mr. FORD of Tennessee. Mr. Speaker, I rise in support of this rule, but there is a subtitle under title XI, subtitle C, the entitlement eligibility for AFDC and SSI, which gives me some concern.

Mr. Speaker, I would like to ask a question of the gentleman from New York [Mr. RANGEL], who is the chairman of the Select Committee on Narcotics Abuse and Control, about his understanding of the provisions in the bill related to the homeless.

These provisions added by the Senate are well intended, but they might be misinterpreted by the administration. I want to clarify that the intent of these provisions is to assure that the homeless receive help through the various public assistance programs, since many of the recipients will fall within the jurisdiction of AFDC.

Mr. Speaker, I do not want this to be misinterpreted by the administration, that these programs will fall within the public assistance programs and not be misinterpreted by the administration.

Mr. RANGEL. Mr. Speaker, will the gentleman yield?

Mr. FORD of Tennessee. I yield to the gentleman from New York.

Mr. RANGEL. Mr. Speaker, the gentleman is correct in his observations, and there is no question that the framers of this legislation should have worked more closely with him to make certain that they reached those common goals.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. LUNGREN].

Mr. LUNGREN. Mr. Speaker, this is a good day. A lot of people around the country are asking whether we can win the war on drugs. There are some cynics out there who say that we cannot. This is a statement that the Congress of the United States believes that we can.

We cannot do it alone; we should not try to pretend that we can. We need a full effort, all the way from the folks back home to Capitol Hill and back again.

We have made a good start. There are some things that are not in this bill that I wish were in this bill; for example, the exclusionary-rule change. We have adopted, or will adopt by this rule, a very unique way of getting across the question of the death penalty; I support our doing as the only way to work out of the impasse in which we find ourselves at the present time.

I hope that we will revisit those issues next year. I hope that we will look squarely at the questions of the exclusionary rule and the death penalty. I think that we have made a start on them because Members have indicated how they feel about it.

Having said that, I would like to congratulate all the Members who were involved in this whole process. This has been an extraordinary proceeding. We have managed to work on a bipar-

tisan effort to show the American people that Congress does know that there is a drug problem out there, but, more importantly, that we believe that there are parts of a solution to the drug problem out there.

I would hope that we would underscore the law enforcement element of this package. It is extemely important. Without it, everything else falls. Let us make sure that we vote this overwhelmingly. Let us make sure that we show ourselves that we are ready to start the fight. And let us show the American people that we believe that the fight can be won.

Mr. PEPPER. Mr. Speaker, I yield my remaining time to the gentleman from New York [Mr. GARCIA].

Mr. GARCIA. I thank the gentleman for yielding time to me.

Mr. Speaker, all I can say is, "Hallelujah." Finally the time has come, and it has come at a critical moment in the history of this country. The epidemic has been with us for several decades, but the Congress of the United States has finally said that we are going to do something about it.

I congratulate my colleagues, the gentleman from New York [Mr. RANGEL], and the gentleman from New York [Mr. GILMAN], who are the chairman of the select committee and the ranking minority member. We go back to the days in the late sixties as State legislators when we were fighting this problem. I am glad that the three of us could be here today at this moment at the national level, speaking to the Nation and making it very clear that Congress has declared war on drugs, and that we will do everything humanly possible to fight what we determine to be one of the biggest epidemics that this country has.

I thank all of my colleagues, because I think that this has no political label, this has the label of the U.S. Congress working as a whole.

Mr. MOORHEAD. Mr. Speaker, today I join my colleagues in support of the omnibus drug bill. The bill we are adopting today is the culmination of many hundreds of hours of work by this body against drugs. It includes funding for drug abuse education, treatment and prevention, and funding for State and local drug enforcement efforts. Two additional Federal prisons will be constructed with funding authorized in this bill.

This bill makes money laundering and designer drugs illegal. Mandatory penalties are established for serious drug traffickers. These penalties are doubled and tripled when children are used to commit drug trafficking offenses and when drugs are manufactured or sold within 1,000 feet of any schoolyard. A mandatory life sentence is established whenever someone is seriously injured or killed as a result of drug trafficking.

Mr. Speaker, this bill goes a long way in attacking the drug problem. But the real battle will be won or lost by the people of this country. There are drug sellers because there are drug buyers. We will win the war against drugs only when each American citizen just says no.

I urge the adoption of the omnibus drug bill, H.R. 5484.

Mr. KILDEE. Mr. Speaker, I rise in strong support of the ominbus drug bill and in opposition to the separate resolution which authorizes a death penalty. I deeply regret the parliamentary procedure under which these two separate bills must be approved by the House by a single vote, a procedure which constrains me to vote against the rule. If I had been allowed the opportunity to vote on the two bills separately, I would have voted for the omnibus drug bill and against the death penalty.

Mr. Speaker, I am an original cosponsor of the original bill, and in particular, the section of the omnibus drug bill drafted by the House Education and Labor Committee. The bill authorizes $700 million over the next 3 fiscal years for drug abuse education and prevention programs to be operated by State governments. Moreover, I helped to draft the provisions relating to drug and substance abuse among native Americans, a crisis which has reached epidemic proportions.

I have never advocated the use of the death penalty as a means of deterring either violent crime or drug dealing. I strongly believe in the sanctity of human life, and I do not feel that we, individually or collectively as a society, should engage in the taking of human life. This is my position on the issue of abortion and it is my position on the issue of the death penalty. I have many friends who disagree with my position. While I respect their right to hold a differing view, I must follow my conscience.

Mr. Speaker, it is well known that people of wealth are not executed in States which have the death penalty. I do not recall anyone making over $40,000 a year ever being executed by the Federal or State governments. The death penalty discriminates in the most profound and final manner against those who cannot afford the expensive legal counsel necessary to avoid such terrible punishment.

Mr. Speaker, my State of Michigan was the first government in the English-speaking world to abolish the death penalty. It would be a great tragedy if, by adopting this death penalty provision, this Congress would have the Federal Government of the United States join the repressive Government of South Africa as the only industrialized nations in the West that use the death penalty.

I hope the Senate will reject the death penalty section of this rule, but I cannot depend on that happening. All my life I have been opposed to the death penalty in any instance and therefore I am forced to vote against this otherwise balanced and important bill.

Mr. PANETTA. Mr. Speaker, I rise to support the food stamp provisions which are included in the bill before us. These provisions will provide needed nutrition assistance to the homeless. Many of those who would be assisted are victims of drug abuse. In 1984, the Department of Health and Human Services estimated that from one-half to two-thirds of the homeless population suffered from a combination of drug or alcohol abuse and mental illness.

This provision will allow homeless persons to give, on a voluntary, noncompulsory basis, some of their food stamps to emergency shelters and soup kitchens that provide them with meals. In addition, private food establishments would be allowed to contract with the States to provide food to the homeless at reduced prices.

To ensure that homeless persons are not requested to contribute excessive amounts of food stamps, the voluntary payment may not exceed the average cost of the food contained in the meal provided by the shelter.

In this case, we propose to accept the language which was developed in the Senate. It was first included in the drug bill which passed the Senate on September 27, 1986. Then with significant technical corrections and changes to ensure program integrity, this provision was included in the Senate amendment to the House-passed version of the Federal Insecticide, Fungicide and Rodenticide Act Amendments of 1986 (H.R. 2482). Last night, when we sent FIFRA back over to the Senate, we approved the same food stamp language that is in the bill before us today. Frankly, considering the difficulty we have getting needed nutrition program improvements enacted, this redundancy does not trouble me at all.

This homeless provision is an important addition to our arsenal in the fight against drug abuse and hunger. In these days of budgetary constraints, it is a particularly welcome addition because the Congressional Budget Office estimates "no cost" to the provision.

By approving the homeless provision, we will build on an important reform which we obtained last year in the Food Security Act of 1985 (Public Law 99-198). That law required homeless persons to be allowed to apply for food stamps. Since by definition a homeless person does not have a kitchen in which to prepare meals, this provision gives the homeless the option to pay for their meals at homeless centers.

This provision also shows how we can get public and private agencies to work together to develop ways to address the problem of substance abuse and hunger. Neither of these difficult social problems can be solved simply through Government or private efforts.

Mr. SHAW. Mr. Speaker, on July 29, 1986, I introduced H.R. 5281 which was referred to the Public Works and Transportation Committee, Subcommittee on Aviation. My intent in drafting and introducing that legislation was to address a problem that was prevalent in my home district in Ft. Lauderdale, FL, as well as other coastal States; namely, California, Texas, and Arizona. The intent was to amend the Federal Aviation Act of 1958 to preclude the application of the preemption doctrine to certain local law enforcement practices, by delegating to the several States and local governments the right to enforce Federal Aviation Administration (FAA) aircraft registration violations under the authority of their own State criminal procedure laws.

The language of H.R. 5281 was incorporated into the omnibus drug bill, HR. 5485 which passed this House for the third time this morning. The language of H.R. 5281 exists in title III, subtitle G, section 3401 (a) of H.R. 5484 as passed. The language in this section of the bill is very clear as regards the preemption issue; it states: "Nothing in this subsection or

in this act shall preclude a State from establishing criminal penalties, including providing for forfeiture or seizure of aircraft ***." The intent of this language is to free the hand of the States in order to allow them to legislate as they deem necessary to address local criminal enforcement needs, especially in regard to the drug smuggling problems facing certain States. Consequently, if a State deems it necessary to create a criminal procedure whereby a violation of FAA registration regulations shall become a first-degree misdemeanor or a felony or a violation of another State law, according to this legislation, it may so legislate without violating the preemption doctrine.

The passage of this bill, will in effect indicate to the States that in the area of aircraft registration violations, the Federal Government is no longer the only legislative body with jurisdiction over laws regarding criminal enforcement. This bill does not give the different States the right to create their own regulations regarding the registration of aircraft; those procedures for proper registration currently exist as published by the FAA. If the many different States were allowed the right to create their own different registration scheme, that may certainly create a burden on interstate commerce and consequently be a violation of the commerce clause. This bill, however, leaves the registration regulation authority to the Federal Government but delegates to the States the right to create their own criminal enforcement scheme to enforce violations of the Federal registration requirements.

It is my hope Mr. Speaker, that the language of this bill referred to herein will allow local governments pursuant to State law to enforce criminal laws against the drug smuggler especially as regards the smugglers use of fraudently registered aircraft. If that enforcement includes an enforcement mechanism to allow the local government to forfeit or seize aircraft in order to further enforce the violation of such regulations; this legislation endorses that practice.

Mr. DINGELL. Mr. Speaker, I rise to express my support for this legislation and to note my special interest in section 3451 which authorizes the Federal Communications Commission, an agency within the jurisdiction of the Committee on Energy and Commerce, to assist in the enforcement of Federal drug laws.

Section 3451 would authorize the FCC to assist in drug law enforcement in two ways. First, the Commission would be authorized to revoke any private operator's license issued to any person under the Communications Act of 1934 if the person is found by a court of law to have willfully used the license for the purpose of distributing, or assisting in the distribution of, any controlled substance in violation of any provision of Federal law. The intent of this section is to penalize only those persons who are using an FCC license for an illegal purpose. For instance, a licensed radio operator soliciting a sale of a controlled substance in violation of Federal law would be subject to this section. This provision is not intended, however, to penalize those persons who hold an operator license which, without their knowledge, is being used by others in the ordinary course of business for an illegal purpose such as dealing in controlled substances in violation of Federal law.

Second, this section would authorize the Commission to assist appropriate Federal law enforcement agencies in the enforcement of Federal law prohibiting the use or distribution of any controlled substance where communications equipment within the Commission's jurisdiction is willfully being used for purposes of distributing, or assisting in the distribution of, any such substance. This provision is not intended to require the Commission to use its own limited resources to assist other agencies in such drug law enforcement. Rather, it is contemplated that the Commission will enter into interagency, reimburseable agreements with the appropriate law enforcement agencies.

Mr. DAUB. Mr. Speaker, the menace that illegal drugs poses to our Nation and to our families has become acutely highlighted. The deaths of prominent athletes due to drug use, the destruction of lives by new and more dangerous drugs such as "crack" and the ever growing threat to our children from drug abuse, have all raised this issue to the national spot light.

The Omnibus Drug Package, H.R. 5484, that the House is considering today is a bipartisan effort to deal with the grave drug problem confronting this Nation. I am pleased to have contributed to this effort with three provisions of H.R. 5484 during consideration of the drug package in the Ways and Means Committee. These provisions will prohibit the importation of drug paraphernalia; authorize a low altitude detection system to combat the problem of low flying aircraft at our borders; and increase fines and penalties associated with the importation of heroin, cocaine, PCP, and LSD.

In a further effort to strengthen the "war on drugs," I offered a successful amendment to the original House version of H.R. 5484 to ensure that an aviation pilot who participates in the transportation by aircraft of controlled substances will never legally fly again. Current law mandates that a pilot violating a State or Federal narcotic law can have his license revoked by the Federal Aviation Administration for a maximum of 5 years. My amendment would have amended the Aviation Drug-Trafficking Control Act of 1984 to require that the FAA Administrator shall not issue an airman certificate to any pilot who has violated a State or Federal narcotic law associated with aviation.

I regret that the leadership did not include this amendment—which has already been considered and accepted by the House—in the version of H.R. 5484 we are considering today. A large portion of the illegal drugs entering this country do so by air, and this amendment would have went a long way toward reducing this problem by sending a strong signal to pilots participating in aviation-related drug trafficking.

Mr. FRENZEL. Mr. Speaker, the Omnibus Drug Bill, H.R. 5484, will be passed with a huge majority. Every Member wants to volunteer for service in the War Against Drugs.

Notwithstanding this congressional urge to be numbered among the Angels, nor the fact that the bill is a forward step, the bill itself is some-what of a monstrosity. It will undoubtedly do some good, so that a positive vote is merited, as well as self-serving.

H.R. 5484, however, is clumsy. It was put together in the style of a Great Society Program. Its hallmarks are lack of coordination, incomplete consideration, misunderstood compromises.

It was assembled in the same slapdash fashion that marked much of our legislating in the mid-1960's. The major Great Society Programs proved to be an embarrassment at least partly because they were an operational nightmare.

H.R. 5484 is more of the same. It's a huge, complicated bill replete with both pious hopes and money tossed as the problem without much direction or coordination.

H.R. 5484 is not a bad bill. It is a good bill assembled in many diverse parts without coordination of the parts. It's a good bill that needed more time and more consideration.

Because there was a solid bipartisan, bicameral consensus in Congress to rush to judgment, I believe the bill, while helpful, will be less effective than it could be, or should be. When both Houses sacrifice the care and scrutiny called for under regular procedures, they invariably sacrifice some effectiveness, too. A good rule is that any bill prepared in haste, or one that has the word emergency in its title or anywhere in its report, is going to give us trouble when we try to make it operational.

A comment is needed on title IX. It deals with Presidential authority to reduce trade privileges accorded to countries he deems uncooperative in the war on drugs. The title was intended to be an amendment to trade law exclusively.

In drafting, however, references to laws covering foreign assistance, were left in there because the Senate version merged foreign assistance and trade sanctions. Title draftees merely missed the references which remain.

One of those references refers only to timing. The other refers to criteria. Neither was intended to mix, share, or blur current jurisdiction on trade. The references should have been deleted, but because of the haste to complete work, they remain.

It is my hope that these references can be deleted later, and it is my intention to introduce legislation to do so.

Title IX, like the whole bill, is an improvement, but it could have been done better. The President should have been given more discretion, and the provision providing for a resolution of disapproval is an invitation for confrontation.

Again, I regret that Congress could not have seized the opportunity by providing a more effective product. Nevertheless, the bill is a step forward.

Mr. LELAND. Mr. Speaker, I rise in support of the provisions relating to services for the homeless in the amended bill before us today. These no-cost sections of the bill amend Government assistance programs to increase their accessibility to the homeless, prevent hunger, and thereby promote self-sufficiency among this poor and disenfranchised American population. These provisions could protect hundreds of thousands of adults and children

from a future of exposure to drug abuse on the streets and in emergency homeless shelters.

The changes proposed in this amendment are based on sections of H.R. 5140, "The Homeless Persons Survival Act of 1986," legislation I introduced earlier this year as a result of investigations conducted by the Select Committee on Hunger. The Select Committee on Hunger has conducted a series of hearings which clearly identify the need to improve the accessibility and effectiveness of Government cash and in-kind benefit programs, particularly the Food Stamp Program, for the large proportion of homeless persons who are eligible but not participating.

The provisions of H.R. 5140 included in this amendment aim to assist homeless persons gain access to the Supplemental Security Income, Veterans' Pension, Job Training Partnership Act, and Food Stamp Programs in three major ways.

First, homeless persons would no longer be denied access to veterans' pension benefits because they do not have a fixed address and they would be designated a targeted group for employment training under the Job Training Partnership Act.

Second, the utility of the Food Stamp Program for homeless persons would be greatly improved by permitting nonprofit homeless shelters and soup kitchens to accept food stamps from homeless persons for low cost meals, on a noncompulsory basis. These minor changes to the Food Stamp Act recognize the limited ability of the homeless to store and prepare food and result in the prevention of the hunger and health problems prevalent among the homeless today.

Finally, these provisions would require the Secretary of Health and Human Services to establish procedures to assist individuals who are about to be released from mental health and penal institutions from becoming homeless. They would specifically ensure that individuals eligible for supplemental security income and food stamps could have their applications processed before their release, receive benefits immediately after release, and, thus, not be forced into immediate homelessness due to lack of resources.

I would like to thank Congressman LEON PANETTA, chairman of the Agriculture Subcommittee with jurisdiction over the Food Stamp Program, for his leadership in the crafting of the food stamp sections of this bill. I also thank the Committees of Ways and Means, Education and Labor, and Veterans' Affairs who have worked out an excellent compromise with the Senate on the other sections of this bill pertaining to the homeless.

SImilar provisions authored by Senator DOMENICI and supported by a strong bipartisan coalition passed in both versions of the Senate amended versions of H.R. 5484. I urge my colleagues to adopt the language incorporated in the bill before us today. These no-cost changes in existing programs may seem of little importance. However, they are of critical importance to each adult and child who daily face the harsh conditions of homelessness.

Mr. UDALL. Mr. Speaker, the Senate made no amendment to subtitle A of title V of this legislation, the U.S. Insular Areas Drug Abuse Act of 1986. These provisions to authorize assistance to improve drug law enforcement and for drug abuse prevention and treatment in the U.S. territories and commonwealths, which originated in the Committee on Interior and Insular Affairs, are the same as those which passed the House October 8.

As I indicated at the time, these provisions are essential to enable insular governments to respond to drug trafficking and use problems which are very serious, particularly in the Caribbean U.S. insular areas. I urge their adoption and note that the substantial resources that they would provide are largely due to the work of our colleagues representing the insular areas.

The other body did propose changes regarding alcohol and drug abuse prevention and treatment program assistance that would adversely affect the smaller insular areas, however. Our colleague, HENRY WAXMAN, who chairs the Subcommittee on Health and the Environment Subcommittee, shares my concern that these changes would not provide adequate funding for these islands. I am grateful for his efforts to rectify this problem and urge approval of the improved allocation formula proposed in the amendment, and the Environmental Subcommittee, shares my concern that these changes would not have provided adequate funding for these islands. I am grateful for his efforts to rectify this problem and urge approval of the improved allocation formula proposed in the amendment.

The SPEAKER pro tempore (Mr. KILDEE). All time has expired.

Mr. PEPPER. Mr. Speaker, that this House may approach what Churchill called one of its finest hours, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. GILMAN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 378, nays 16, not voting 38, as follows:

[Roll No. 485]

YEAS—378

Ackerman	Bateman	Bonker	Chapman	Henry	Neal
Akaka	Bates	Borski	Chappell	Hertel	Nelson
Anderson	Bedell	Bosco	Chappie	Hiler	Nielson
Andrews	Beilenson	Boucher	Cheney	Holt	Nowak
Annunzio	Bennett	Boulter	Clinger	Hopkins	Oakar
Anthony	Bentley	Brown (CO)	Cobey	Horton	Oberstar
Applegate	Bereuter	Bruce	Coble	Howard	Obey
Armey	Berman	Bryant	Coelho	Hubbard	Olin
Aspin	Bevill	Burton (IN)	Coleman (MO)	Huckaby	Ortiz
Atkins	Bilirakis	Bustamante	Coleman (TX)	Hughes	Oxley
AuCoin	Bliley	Byron	Collins	Hunter	Packard
Badham	Boehlert	Callahan	Combest	Hutto	Panetta
Barnard	Boggs	Carney	Conte	Hyde	Parris
Barnes	Boland	Carper	Cooper	Ireland	Pashayan
Bartlett	Boner (TN)	Carr	Coughlin	Jacobs	Pease
Barton	Bonior (MI)	Chandler	Courter	Jeffords	Penny
			Coyne	Jenkins	Pepper
			Craig	Johnson	Perkins
			Daniel	Jones (NC)	Petri
			Dannemeyer	Jones (TN)	Porter
			Darden	Kanjorski	Price
			Daschle	Kasich	Pursell
			Daub	Kastenmeier	Quillen
			Davis	Kemp	Rahall
			DeLay	Kennelly	Rangel
			Derrick	Kindness	Ray
			DeWine	Kleczka	Regula
			Dickinson	Kolbe	Reid
			Dicks	Kolter	Richardson
			Dingell	Kostmayer	Ridge
			DioGuardi	Kramer	Rinaldo
			Dixon	LaFalce	Ritter
			Donnelly	Lagomarsino	Roberts
			Dorgan (ND)	Lantos	Robinson
			Dornan (CA)	Latta	Rodino
			Dowdy	Leach (IA)	Roe
			Downey	Lehman (CA)	Roemer
			Dreier	Lehman (FL)	Rogers
			Duncan	Leland	Rostenkowski
			Durbin	Lent	Roth
			Dwyer	Levin (MI)	Roukema
			Dymally	Levine (CA)	Rowland (CT)
			Dyson	Lewis (CA)	Rowland (GA)
			Early	Lewis (FL)	Roybal
			Eckart (OH)	Lightfoot	Russo
			Eckert (NY)	Lipinski	Savage
			Edgar	Livingston	Saxton
			Edwards (OK)	Lloyd	Scheuer
			Emerson	Long	Schneider
			English	Lowery (CA)	Schroeder
			Erdreich	Lujan	Schuette
			Evans (IA)	Luken	Schulze
			Evans (IL)	Lungren	Schumer
			Fascell	Mack	Seiberling
			Fawell	MacKay	Sensenbrenner
			Fazio	Madigan	Sharp
			Feighan	Manton	Shaw
			Fiedler	Marlenee	Shelby
			Fields	Martin (IL)	Shumway
			Fish	Martin (NY)	Shuster
			Flippo	Martinez	Sikorski
			Florio	Matsui	Siljander
			Foglietta	Mavroules	Sisisky
			Foley	Mazzoli	Skeen
			Ford (MI)	McCandless	Skelton
			Ford (TN)	McCloskey	Slattery
			Fowler	McCollum	Slaughter
			Franklin	McCurdy	Smith (FL)
			Frenzel	McDade	Smith (IA)
			Frost	McEwen	Smith (NE)
			Fuqua	McHugh	Smith (NJ)
			Gallo	McKernan	Smith, Denny (OR)
			Garcia	McKinney	
			Gaydos	McMillan	Smith, Robert (NH)
			Gejdenson	Meyers	
			Gekas	Mica	Smith, Robert (OR)
			Gibbons	Michel	
			Gilman	Mikulski	Snowe
			Gingrich	Miller (CA)	Snyder
			Glickman	Miller (OH)	Solarz
			Goodling	Miller (WA)	Solomon
			Gordon	Mitchell	Spence
			Gradison	Moakley	Spratt
			Gray (IL)	Molinari	St Germain
			Gray (PA)	Mollohan	Staggers
			Green	Monson	Stallings
			Gregg	Montgomery	Stangeland
			Guarini	Moody	Stark
			Gunderson	Moorhead	Stenholm
			Hall (OH)	Morrison (CT)	Strang
			Hall, Ralph	Morrison (WA)	Stratton
			Hamilton	Mrazek	Studds
			Hammerschmidt	Murphy	Stump
			Hatcher	Murtha	Sundquist
			Hawkins	Myers	Sweeney
			Hendon	Natcher	Swift

Swindall	Vento	Wilson
Synar	Visclosky	Wirth
Tallon	Volkmer	Wise
Tauke	Vucanovich	Wolf
Tauzin	Waldon	Wolpe
Taylor	Walgren	Wortley
Thomas (CA)	Walker	Wright
Thomas (GA)	Watkins	Wyden
Torres	Waxman	Wylie
Torricelli	Weber	Yates
Traficant	Whitehurst	Yatron
Traxler	Whitley	Young (AK)
Udall	Whittaker	Young (FL)
Valentine	Whitten	Young (MO)
Vander Jagt	Williams	Zschau

NAYS—16

Abercrombie	Frank	Markey
Clay	Gonzalez	Sabo
Conyers	Hayes	Stokes
Crockett	Hoyer	Wheat
Dellums	Kildee	
Edwards (CA)	Lowry (WA)	

NOT VOTING—38

Alexander	Gephardt	McGrath
Archer	Grotberg	Mineta
Biaggi	Hansen	Moore
Boxer	Hartnett	Nichols
Breaux	Hefner	Owens
Brooks	Hillis	Pickle
Broomfield	Jones (OK)	Rose
Brown (CA)	Kaptur	Rudd
Burton (CA)	Leath (TX)	Schaefer
Campbell	Loeffler	Towns
Coats	Lott	Weaver
Crane	Lundine	Weiss
de la Garza	McCain	

□ 1235

Messrs. CROCKETT, ABERCROMBIE, and HAYES changed their votes from "yea" to "nay."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. KILDEE). Pursuant to House Resolution 597, the House is considered to have concurred in the Senate amendment to the House amendment to the Senate amendment with an amendment. Consisting of the text of H.R. 5729 introduced by Representative WRIGHT to H.R. 5484; and, House Concurrent Resolution 415 is considered as having been adopted.

The text of the House amendment to the Senate amendment to the House amendment to the Senate amendment provided for by the text of House Resolution 597 is as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anti-Drug Abuse Act of 1986".

SEC. 2. ORGANIZATION OF ACT.

This Act is organized as follows:

TITLE I—ANTI-DRUG ENFORCEMENT

Subtitle A—Narcotics Penalties and Enforcement Act of 1986

Subtitle B—Drug Possession Penalty Act of 1986

Subtitle C—Juvenile Drug Trafficking Act of 1986

Subtitle D—Assets Forfeiture Amendments Act of 1986

Subtitle E—Controlled Substance Analogue Enforcement Act of 1986

Subtitle F—Continuing Drug Enterprise Act of 1986

Subtitle G—Controlled Substances Import and Export Act Penalties Enhancement Act of 1986

Subtitle H—Money Laundering Control Act of 1986

Subtitle I—Armed Career Criminals

Subtitle J—Authorization of Appropriations for Drug Law Enforcement

Subtitle K—State and Local Narcotics Control Assistance

Subtitle L—Study on the Use of Existing Federal Buildings as Prisons

Subtitle M—Narcotics Traffickers Deportation Act

Subtitle N—Freedom of Information Act

Subtitle O—Prohibition on the Interstate Sale and Transportation of Drug Paraphernalia

Subtitle P—Manufacturing Operations

Subtitle Q—Controlled Substances Technical Amendments

Subtitle R—Precursor and essential chemical review

Subtitle S—White House Conference for A Drug Free America

Subtitle T—Common carrier operation under the influence of alcohol or drugs

Subtitle U—Federal Drug Law Enforcement Agent Protection Act of 1986

TITLE II—INTERNATIONAL NARCOTICS CONTROL

TITLE III—INTERDICTION

Subtitle A—Department of Defense Drug Interdiction Assistance

Subtitle B—Customs Enforcement

Subtitle C—Maritime Drug Law Enforcement Prosecution Improvements Act of 1986

Subtitle D—Coast Guard

Subtitle E—United States Bahamas Drug Interdiction Task Force

Subtitle F—Command, Control, Communications, and Intelligence Centers

Subtitle G—Transportation Safety

Subtitle H—Department of Justice funds for drug interdiction operation in Hawaii

Subtitle I—Federal Communications Commission

TITLE IV—DEMAND REDUCTION

Subtitle A—Treatment and rehabilitation

Subtitle B—Drug-Free Schools and Communities Act of 1986

Subtitle C—Indians and Alaska Natives

Subtitle D—Miscellaneous Provisions

TITLE V—UNITED STATES INSULAR AREAS AND NATIONAL PARKS

Subtitle A—Programs in United States Insular Areas.

Subtitle B—National Park Service Program

TITLE VI—FEDERAL EMPLOYEE SUBSTANCE ABUSE EDUCATION AND TREATMENT

TITLE VII—NATIONAL ANTIDRUG REORGANIZATION AND COORDINATION

TITLE VIII—PRESIDENT'S MEDIA COMMISSION ON ALCOHOL AND DRUG ABUSE PREVENTION

TITLE IX—DENIAL OF TRADE BENEFITS TO UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES

TITLE X—BALLISTIC KNIFE PROHIBITION

TITLE XI—HOMELESS ELIGIBILITY CLARIFICATION ACT

Subtitle A—Emergency Food for the Homeless

Subtitle B—Job Training for the Homeless

Subtitle C—Entitlements Eligibility

TITLE XII—COMMERCIAL MOTOR VEHICLE SAFETY ACT OF 1986

TITLE XIII—CYANIDE WRONGFUL USE

SEC. 3. COMPLIANCE WITH BUDGET ACT.

Notwithstanding any other provision of this Act, any spending authority and any credit authority provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts. For purposes of this Act, the term "spending authority" has the meaning provided in section 401(c)(2) of the Congresional Budget Act of 1974 and the term "credit authority" has the meaning provided in section 3(10) of the Congressional Budget Act of 1974.

TITLE I—ANTI-DRUG ENFORCEMENT

Subtitle A—Narcotics Penalties and Enforcement Act of 1986

SEC. 1001. SHORT TITLE.

This subtitle may be cited as the "Narcotics Penalties and Enforcement Act of 1986".

SEC. 1002. CONTROLLED SUBSTANCES ACT PENALTIES.

Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by striking out subparagraphs (A) and (B) and inserting the following in lieu thereof:

"(1)(A) In the case of a violation of subsection (a) of this section involving—

"(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

"(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of—

"(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(IV) any compound, mixture, or preparation which contains any quantity of any of the substance referred to in subclauses (I) through (III);";

"(iii) 50 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

"(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

"(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. Any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

"(B) In the case of a violation of subsection (a) of this section involving—

"(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

"(ii) 500 grams or more of a mixture or substance containing a detectable amount of—

"(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(IV) any compound, mixture, or preparation which contains any quantity of any of the substance referred to in subclauses (I) through (III);";

"(iii) 5 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

"(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

"(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

"(C) In the case of a controlled substance in schedule I or II except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.".

SEC. 1003. OTHER AMENDMENTS TO THE CONTROLLED SUBSTANCES ACT.

(a) Section 401 of the Controlled Substances Act (21 U.S.C. 841) is further amended as follows:

(1) In subsection (b), paragraph (1)(D), as redesignated, is amended by—

(A) striking out "a fine of not more than $50,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual";

(B) striking out "a fine of not more than $100,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual"; and

(C) inserting "except in the case of 100 or more marihuana plants regardless of weight," after "marihuana," the first place it appears.

(2) In subsection (b), paragraph (2) is amended by striking out "a fine of not more than $25,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual", and by striking out "a fine of not more than $50,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual".

(3) In subsection (b), paragraph (3) is amended by striking out "a fine of not more than $10,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $100,000 if the defendant is an individual or $250,000 if the defendant is other than an individual", and by striking out "a fine of not more than $20,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $200,000 if the defendant is an individual or $500,000 if the defendant is other than an individual".

(4) In subsection (b), paragraph (4) is amended by striking out "1(C)" and inserting "1(D)" in lieu thereof.

(5) In subsection (b), paragraph (5) is amended to read as follows:

"(5) Any person who violates subsection (a) of this section by cultivating a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed—

"(A) the amount authorized in accordance with this section;

"(B) the amount authorized in accordance with the provisions of title 18, United States Code;

"(C) $500,000 if the defendant is an individual; or

"(D) $1,000,000 if the defendant is other than an individual;

or both.".

(6) Subsection (d) is amended by striking out "a fine of not more than $15,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual".

(b) Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) by inserting the following new paragraph after paragraph (24):

"(25) The term 'serious bodily injury' means bodily injury which involves—

"(A) a substantial risk of death;

"(B) protracted and obvious disfigurement; or

"(C) protracted loss or impairment of the function of a bodily member, organ, or mental faculty."; and

(2) by renumbering the following paragraphs accordingly.

SEC. 1004. ELIMINATION OF SPECIAL PAROLE TERMS.

(a) The Controlled Substances Act and the Controlled Substances Import and Export Act are amended by striking out "special parole term" each space it appears and inserting "term of supervised release" in lieu thereof.

(b) The amendments made by this section shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

SEC. 1005. AMENDMENT TO THE COMPREHENSIVE CRIME CONTROL ACT OF 1984.

(a) Subsection (a) of section 224 of the Comprehensive Crime Control Act of 1984 is amended—

(1) by inserting "and" after the semicolon in paragraph (4); and

(2) by striking out paragraphs (1), (2), (3), and (5) and redesignating the other paragraphs accordingly.

(b) Section 224 of the Comprehensive Crime Control Act of 1984 is amended—

(1) by striking out subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

(c) Section 225 of the Comprehensive Crime Control Act of 1984 is amended to read as follows:

"SEC. 225. Section 1515 of the Controlled Substances Import and Export Act (21 U.S.C. 960) is amended by repealing subsection (c).".

SEC. 1006. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a)(1) Subsection (a) of section 3583 of title 18, United States Code, is amended by inserting ", except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute" after "imprisonment" the second place it appears.

(2) Subsection (b) of section 3583 of title 18, United States Code, is amended by striking out "The" and inserting in lieu thereof "Except as otherwise provided, the".

(3) Subsection (e) of section 3583 of title 18, United States Code, is amended—

(A) so that the catchline reads as follows: "Modification of conditions or revocation.";

(B) in paragraph (2) by striking out "or" after the semicolon;

(C) in paragraph (3) by striking out "title." and inserting "title; or" in lieu thereof; and

(D) by inserting the following new paragraph after paragraph (3):

"(4) revoke a term of supervised release, and require the person to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision, if it finds by a preponderance of the evidence that the person violated a condition of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure that are applicable to probation revocation and to the provisions of applicable policy statements issued by the Sentencing Commission.".

(4) The amendments made by this subsection shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

(b) Paragraph (3) of section 994(a) of title 28, United States Code, is amended by inserting "and revocation of supervised release" after "supervised release".

(c) Section 511 of title II of the Comprehensive Drug Abuse Prevention Act of 1978 (21 U.S.C. 881) is amended—

(1) in subsection (f) by inserting "or II" after "I" each place it appears;

(2) by redesignating subsection (f) as subsection (f)(1); and

(3) by inserting the following new paragraph after subsection (f)(1) as so redesignated:

"(2) The Attorney General may direct the destruction of all controlled substances in schedule I or II seized for violation of this title under such circumstances as the Attorney General may deem necessary.".

SEC. 1007. AMENDMENT TO TITLE 18 OF THE UNITED STATES CODE.

(a) Section 3553 of title 18, United States Code, is amended by adding the following at the end thereof:

"(e) LIMITED AUTHORITY TO IMPOSE A SENTENCE BELOW A STATUTORY MINIMUM.—Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.".

(b) The amendment made by this section shall take effect on the date of the taking effect of section 3553 of title 18, United States Code.

SEC. 1008. AMENDMENT TO TITLE 28 OF THE UNITED STATES CODE.

Section 994 of title 28 of the United States Code is amended by—

(1) inserting the following after subsection (m):

"(n) The Commission shall assure that the guidelines reflect the general appropriateness of imposing a lower sentence than would otherwise be imposed, including a sentence that is lower than that established by statute as minimum sentence, to take into account a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense."; and

(2) redesignating subsections (n), (o), (p), (q), (r), (s), (t), (u), (v), and (w) as subsections (o), (p), (q), (r), (s), (t), (u), (v), (w), and (x), respectively.

SEC. 1009. AMENDMENT TO THE FEDERAL RULES OF CRIMINAL PROCEDURE.

(a) Rule 35(b) of the Federal Rules of Criminal Procedure is amended by striking out "to the extent" and all that follows through the end and inserting in lieu thereof the following: "in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code. The court's authority to lower a sentence under this subdivision includes the authority to lower such sentence to a level below that established by statute as a minimum sentence.

(b) The amendment made by this section shall take effect on the date of the taking effect of rule 35(b) of the Federal Rules of Criminal Procedure, as amended by section 215(b) of the Comprehensive Crime Control Act of 1984.

Subtitle B—Drug Possession Penalty Act of 1986

SEC. 1051. SHORT TITLE.

This subtitle may be cited as the "Drug Possession Penalty Act of 1986".

SEC. 1052. PENALTY FOR SIMPLE POSSESSION.

Section 404 of the Controlled Substances Act (21 U.S.C. 844) is amended to read as follows:

"PENALTY FOR SIMPLE POSSESSION

"SEC. 404. (a) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this title or title III. Any person who violates this subsection may be sentenced to a term of imprisonment of not more than 1 year, and shall be fined a minimum of $1,000 but not more than $5,000, or both, except that if he commits such offense after a prior conviction under this title or title III, or a prior conviction for any drug or narcotic offense chargeable under the law of any State, has become final, he shall be sentenced to a term of imprisonment for not less than 15 days but not more than 2 years, and shall be fined a minimum of $2,500 but not more than $10,000, except, further, that if he commits such offense after two or more prior convictions under this title or title III, or two or more prior convictions for any drug or narcotic offense chargeable under the law of any State, or a combination of two or more such offenses have become final, he shall be sentenced to a term of imprisonment for not less than 90 days but not more

than 3 years, and shall be fined a minimum of $5,000 but not more than $25,000. The imposition or execution of a minimum sentence required to be imposed under this subsection shall not be suspended or deferred. Further, upon conviction, a person who violates this subsection shall be fined the reasonable costs of the investigation and prosecution of the offense, including the costs of prosecution of an offense as defined in sections 1918 and 1920 of title 28, United States Code, except that this sentence shall not apply and a fine under this section need not be imposed if the court determines under the provision of title 18 that the defendant lacks the ability to pay.

"(b)(1) If any person who has not previously been convicted of violating subsection (a) of this section, any other provision of this subchapter or subchapter II of this chapter, or any other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, is found guilty of a violation of subsection (a) of this section after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the Department of Justice solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under this part for second or subsequent convictions) or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person.

"(2) Upon the discharge of such person and dismissal of the proceedings against him under paragraph (1) of this subsection, such person, if he was not over twenty-one years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained by the Department of Justice under paragraph (1)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over twenty-one years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

"(c) As used in this section, the term 'drug or narcotic offense' means any offense which proscribes the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under this title.".

Subtitle C—Juvenile Drug Trafficking Act of 1986

SEC. 1101. SHORT TITLE.

This subtitle may be cited as the "Juvenile Drug Trafficking Act of 1986".

SEC. 1102. OFFENSE.

Part D of the Controlled Substances Act is amended by adding after section 405A a new section as follows:

"EMPLOYMENT OR USE OF PERSONS UNDER 18 YEARS OF AGE IN DRUG OPERATIONS

"SEC. 405B. (a) It shall be unlawful for any person at least eighteen years of age to knowingly and intentionally—

"(1) employ, hire, use, persuade, induce, entice, or coerce, a person under eighteen years of age to violate any provision of this title or title III; or

"(2) employ, hire, use, persuade, induce, entice, or coerce, a person under eighteen years of age to assist in avoiding detection or apprehension for any offense of this title or title III by any Federal, State, or local law enforcement official.

"(b) Any person who violates subsection (a) is punishable by a term of imprisonment up to twice that otherwise authorized, or up to twice the fine otherwise authorized, or both, and at least twice any term of supervised release otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year.

"(c) Any person who violates subsection (a) after a prior conviction or convictions under subsection (a) of this section have become final, is punishable by a term of imprisonment up to three times that otherwise authorized, or up to three times the fine otherwise authorized, or both, and at least three times any term of supervised release otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year.

"(d) Any person who violates section 405B(a) (1) or (2)

"(1) by knowingly providing or distributing a controlled substance or a controlled substance analogue to any person under eighteen years of age; or

"(2) if the person employed, hired, or used is fourteen years of age or younger,

shall be subject to a term of imprisonment for not more than five years or a fine of not more than $50,000, or both, in addition to any other punishment authorized by this section.

"(e) In any case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section of an offense for which a mandatory minimum term of imprisonment is applicable shall not be eligible for parole under section 4202 of title 18, United States Code, until the individual has served the mandatory term of imprisonment required by section 401(b) as enhanced by this section.

"(f) Except as authorized by this title, it shall be unlawful for any person to knowingly or intentionally provide or distribute any controlled substance to a pregnant individual in violation of any provision of this title. Any person who violates this subsection shall be subject to the provisions of subsections (b), (c), and (e).".

SEC. 1103. TECHNICAL AMENDMENTS.

(a) Section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b)) is amended by striking out "or 405A" and inserting in lieu thereof ", 405A, or 405B".

(b) Section 401(c) of the Controlled Substances Act (21 U.S.C. 841(c)) is amended by striking out "405A" each place it appears and inserting in lieu thereof ", 405A, or 405B".

SEC. 1104. MANUFACTURING A CONTROLLED SUBSTANCE WITHIN 1,000 FEET OF A COLLEGE.

(a) Section 405A of the Controlled Substances Act (21 U.S.C. 845a) is amended by inserting "or manufacturing" after "distributing" wherever it appears and by striking out "a public or private elementary or secondary school" wherever it appears and inserting in lieu thereof "a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university".

(b) Section 405A(a) of the Controlled Substances Act (21 U.S.C. 845a(a)) is amended by striking out "involving the same controlled substance and schedule".

(c) Section 405A(b) of the Controlled Substance Act (21 U.S.C. 845a(b)) is amended by striking out "(1) by" and all that follows through the end and inserting the following in lieu thereof:

"(1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) a term of imprisonment of up to three times that authorized by section 401(b) of this title for a first offense, or a fine up to three times that authorized by section 401(b) of this title for a first offense, or both, and (2) at least three times any term of supervised release authorized by section 401(b) of this title for a first offense.".

SEC. 1105. IMPRISONMENTS.

(a) Section 405(a) of the Controlled Substances Act (21 U.S.C. 845(a)) is amended by adding the following at the end thereof: "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year.".

(b) Section 405(b) of the Controlled Substances Act (21 U.S.C. 845(b)) is amended by adding the following at the end thereof: "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.".

(c) Section 405A(a) of the Controlled Substances Act (21 U.S.C. 845a(a)) is amended by adding the following at the end thereof: "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.".

Subtitle D—Assets Forfeiture Amendments Act of 1986

SEC. 1151. SHORT TITLE.

This subtitle may be cited as the "Department of Justice Assets Forfeiture Fund Amendments Act of 1986".

SEC. 1152. ASSET FORFEITURE FUNDS.

(a)(1) DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND.—Subsection (c) of section 524 of title 28, United States Code, is amended—

(2) by inserting at the end of subparagraph (A) of paragraph (1) the following: "Such payments may also include those, made pursuant to regulations promulgated by the Attorney General, that are necessary and direct program-related expenses for the purchase or lease of automatic data processing equipment (not less than 90 percent of which use will be program related), training, printing, contracting for services directly related to the processing of and accounting for forfeitures, and the storage, protection, and destruction of controlled substances;";

(3) by inserting after subparagraph (A) of paragraph (1) the following new subparagraph and renumbering the subsequent subparagraphs appropriately:

"(B) the payment of awards for information or assistance directly relating to violations of the criminal drug laws of the United States;";

(4) by amending newly designated subparagraph (F) of paragraph (1) to read as follows:

"(F) for equipping for drug law enforcement functions any government-owned or leased vessels, vehicles, and aircraft available for official use by the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, or the United States Marshals Service; and";

(5) by striking out in paragraph (4) "remaining after payment of expenses for forfeiture and sale authorized by law" and inserting in lieu thereof", except all proceeds of forfeitures available for use by the Secretary of the Treasury or the Secretary of the Interior pursuant to section 11(d)) of the Endangered Species Act (16 U.S.C 1540(d)) or section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d))"; and

(6) by striking out paragraph (8) and renumbering paragraph (9) as paragraph (8).

(b) CUSTOMS FORFEITURE FUND.—

(1) Section 613a of the Tariff Act of 1930 (19 U.S.C. 1613a) as added by Public Law 98-473, is amended—

(B) by amending paragraph (3) of subsection (a) to read as follows:

"(3) for equipping for law enforcement functions any government-owned or leased vessels, vehicles, and aircraft available for official use by the United States Customs Service; and"; and

(C) by striking out subsection (h).

(2) Section 613a of the Tariff Act of 1930 (19 U.S.C. 1613b) as added by Public Law 98-573, is repealed.

SEC. 1153. SUBSTITUTE ASSETS.

(a) Section 1963 of title 18 is amended by adding at the end thereof a new subsection, as follows:

"(n) If any of the property described in subsection (a), as a result of any act of omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).".

(b) Section 413 of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1975 is amended—

(1) by redesignating subsection "(p)" as subsection "(q)"; and

(2) by adding a new subsection (p) as follows:

"(p) If any of the property described in subsection (a), as a result of any act or omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).".

Subtitle E—Controlled Substance Analogue Enforcement Act of 1986

SEC. 1201. SHORT TITLE.

This subtitle may be cited as the "Controlled Substance Analogue Enforcement Act of 1986".

SEC. 1202. TREATMENT OF CONTROLLED SUBSTANCE ANALOGUES.

Part B of the Controlled Substances Act is amended by adding at the end the following new section:

"TREATMENT OF CONTROLLED SUBSTANCE ANALOGUES

"SEC. 203. A controlled substance analogue all or part of which is intended for human consumption shall be treated, for the purposes of this title and title III as a controlled substance in schedule I.".

SEC. 1203. DEFINITION.

Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended by adding at the end thereof the following:

"(32)(A) Except as provided in subparagraph (B), the term 'controlled substance analogue' means a substance—

"(i) the chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II;

"(ii) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulent, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II;

"(iii) with respect to a particular person, which such person represents or intends to have a stimulent, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.

"(B) Such term does not include—

"(i) a controlled substance;

"(ii) any substance for which there is an approved new drug application;

"(iii) with respect to a particular person any substance, if an exemption is in effect for investigational use, for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) to the extent conduct with respect to such substance is pursuant to such exemption; or

"(iv) any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.".

SEC. 1204. CLERICAL AMENDMENT.

The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting after the item relating to section 202 the following new item:

"Sec. 203. Treatment of controlled substance analogues.".

Subtitle F—Continuing Drug Enterprise Act of 1986

SEC. 1251. SHORT TITLE.

This subtitle may be cited as the "Continuing Drug Enterprises Act of 1986".

SEC. 1252. INCREASED PENALTIES.

Section 408(a) of the Controlled Substances Act (21 U.S.C. 848(a)) is amended—

(1) by striking out "to a fine of not more than $100,000," and inserting in lieu thereof "to a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual,"; and

(2) by striking out "to a fine of not more than $200,000," and inserting in lieu thereof "to a fine not to exceed the greater of twice the amount authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual,".

SEC. 1253. CONTINUING CRIMINAL ENTERPRISE ENHANCED PENALTIES.

Section 408 of the Controlled Substances Act (21 U.S.C. 848) is further amended—

(1) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively; and

(2) by inserting the following new subsection after subsection (a);

"(b) Any person who engages in a continuing criminal enterprise shall be imprisoned for life and fined in accordance with subsection (a), if—

"(1) such person is the principal administrator, organizer, or leader of the enterprise or is one of several such principal administrators, organizers, or leaders; and

"(2)(A) the violation referred to in subsection (d)(1) involved at least 300 times the quantity of a substance described in subsection 401(b)(1)(B) of this Act, or

"(B) the enterprise, or any other enterprise in which the defendant was the principal or one of several principal administrators, organizers, or leaders, received $10 million dollars in gross receipts during any twelve-month period of its existence for the manufacture, importation, or distribution of a substance described in section 401(b)(1)(B) of this Act."

Subtitle G—Controlled Substances Import and Export Act Penalties Enhancement Act of 1986

SEC. 1301. SHORT TITLE.

This subtitle may be cited as the "Controlled Substances Import and Export Penalties Enhancement Act of 1986.".

SEC. 1302. ENHANCED PENALTIES.

(a) Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by striking out paragraphs (1) and (2) and inserting the following in lieu thereof:

"(1) In the case of a violation of subsection (a) of this section involving—

"(A) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

"(B) 5 kilograms or more of a mixture or substance containing a detectable amount of—

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

"(C) 50 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

"(D) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(E) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(F) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

"(G) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

the person committing such violation shall be sentenced to a term of imprisonment of not less than 10 years and not more than life and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than 20 years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. Any sentence under this paragraph shall, in the absence of such a prior conviction, impose a special term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein.

"(2) In the case of a violation of subsection (a) of this section involving—

"(A) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

"(B) 500 grams or more of a mixture or substance containing a detectable amount of—

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

"(C) 5 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

"(D) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(E) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(F) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

"(G) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

the person committing such violation shall be sentenced to a term of imprisonment of not less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this paragraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein.

"(3) In the case of a violation under subsection (a) of this section involving a controlled substance in schedule I or II, the person committing such violation shall, except as provided in paragraphs (1), (2), and (4), be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of suspervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of suspervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding the prior sentence, and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this paragraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.".

(b) Section 1010(b)(4) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(4)), as redesignated, is amended—

(1) by striking out ", except as provided in paragraph (4)";

(2) by striking out "fined not more than $50,000" and inserting in lieu thereof "fined not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual"; and

(3) by inserting "except in the case of 100 or more marihuana plants regardless of weight," after "marihuana,".

Subtitle H—Money Laundering Control Act of 1986

SEC. 1351. SHORT TITLE.

This subtitle may be cited as the "Money Laundering Control Act of 1986".

SEC. 1352. NEW OFFENSE FOR LAUNDERING OF MONETARY INSTRUMENTS.

(a) Chapter 95 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 1956. Laundering of monetary instruments

"(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

"(A) with the intent to promote the carrying on of specified unlawful activity; or

"(B) knowing that the transaction is designed in whole or in part—

"(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

"(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

"(2) Whoever transports or attempts to transport a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

"(A) with the intent to promote the carrying on of specified unlawful activity; or

"(B) knowing that the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation is designed in whole or in part—

"(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

"(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of $500,000 or twice the value of the monetary instrument or funds involved in the transportation, whichever is greater, or imprisonment for not more than twenty years, or both.

"(b) Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or a transportation described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

"(1) the value of the property, funds, or monetary instruments involved in the transaction; or

"(2) $10,000.

"(c) As used in this section—

"(1) the term 'knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity' means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State or Federal law, regardless of whether or not such activity is specified in paragraph (7);

"(2) the term 'conducts' includes initiating, concluding, or participating in initiating, or concluding a transaction;

"(3) the term 'transaction' includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

"(4) the term 'financial transaction' means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

"(5) the term 'monetary instruments' means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery;

"(6) the term 'financial institution' has the definition given that term in section 5312(a)(2) of title 31, United States Code, and the regulations promulgated thereunder;

"(7) the term 'specified unlawful activity' means—

"(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under the Currency and Foreign Transactions Reporting Act;

"(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

"(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848); or

"(D) an offense under section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 511 (relating to securities of States and private entities), section 543 (relating to smuggling goods into the United States), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 875 (relating to interstate communications), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1344 (relating to bank fraud), or section 2113 or 2114 (relating to bank and postal robbery and theft) of this title, section 38 of the Arms Export Control Act (22 U.S.C. 2778), section 2 (relating to criminal penalties) of the Export Administration Act of 1979 (50 U.S.C. App. 2401), section 203 (relating to criminal sanctions) of the International Emergency Economic Powers Act (50 U.S.C. 1702), or section 3 (relating to criminal violations) of the Trading with the Enemy Act (50 U.S.C. App. 3).

"(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

"(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate. Such authority of the Secretary of the Treasury shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

"(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

"(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

"(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.

"§ 1957. Engaging in monetary transactions in property derived from specified unlawful activity

"(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

"(b)(1) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18, United States Code, or imprisonment for not more than ten years or both.

"(2) The court may impose an alternate fine to that imposable under paragraph (1) of not more than twice the amount of the criminally derived property involved in the transaction.

"(c) In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity.

"(d) The circumstances referred to in subsection (a) are—

"(1) that the offense under this section takes place in the United States or in the special maritime and territorial jurisdiction of the United States; or

"(2) that the offense under this section takes place outside the United States and such special jurisdiction, but the defendant is a United States person (as defined in section 3077 of this title, but excluding the class described in paragraph (2)(D) of such section).

"(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate. Such authority of the Secretary of the Treasury shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

"(f) As used in this section—

"(1) the term 'monetary transaction' means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined for the purposes of subchapter II of chapter 53 of title 31) by, through, or to a financial institution (as defined in section 5312 of title 31);

"(2) the term 'criminally derived property' means any property constituting, or derived from, proceeds obtained from a criminal offense; and

"(3) the term 'specified unlawful activity' has the meaning given that term in section 1956 of this title.".

(b) The table of sections at the beginning of chapter 95 of title 18 is amended by adding at the end the following new items:

"1956. Laundering of monetary instruments".

"1957. Engaging in monetary transactions in property derived from specified unlawful activity".

SEC. 1353 AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT.

(a) CLARIFICATION OF RIGHT OF FINANCIAL INSTITUTIONS TO REPORT SUSPECTED VIOLATIONS.—Section 1103(c) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3403(c)) is amended by adding at the end thereof the following new sentences: "Such information may include only the name or other identifying information concerning any individual or account involved in and the nature of any suspected illegal activity. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure.".

(b) Section 1113(i) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(i)) is amended by inserting immediately before the period at the end thereof a comma and the following: "except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances and for the period specified and pursuant to the procedures established in section 1109 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3409)".

SEC. 1354. STRUCTURING TRANSACTIONS TO EVADE REPORTING REQUIREMENTS PROHIBITED.

(a) IN GENERAL.—Subchapter II of chapter 53 of title 31, United States Code (relating to records and reports on monetary instruments transactions) is amended by adding at the end thereof the following new section:

"§ 5324. Structuring transactions to evade reporting requirement prohibited

"No person shall for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction—

"(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a);

"(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) that contains a material omission or misstatement of fact; or

"(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by adding at the end thereof the following new item:

"5324. Structuring transactions to evade reporting requirement prohibited.".

SEC. 1355. SEIZURE AND CIVIL FORFEITURE OF MONETARY INSTRUMENTS AND RELATED PROVISIONS.

(a) CUSTOMS AUTHORITY TO CONDUCT SEARCHES AT BORDER.—Section 5317(b) of title 31, United States Code, is amended to read as follows:

"(b) SEARCHES AT BORDER.—For purposes of ensuring compliance with the requirements of section 5316, a customs officer may stop and search, at the border and without a search warrant, any vehicle, vessel, aircraft, or other conveyance, any envelope or other container, and any person entering or departing from the United States.".

(b) FAILURE TO REPORT EXPORT OR IMPORT OF MONETARY INSTRUMENT.—The first sentence of section 5317(c) of title 31, United States Code (relating to seizure and forfeiture of monetary instruments in foreign commerce) is amended to read as follows: "If a report required under section 5316 with respect to any monetary instrument is not filed (or if filed, contains a material omission or misstatement of fact), the instrument and any interest in property, including a deposit in a financial institution, traceable to such instrument may be seized and forfeited to the United States Government.".

SEC. 1356. COMPLIANCE AUTHORITY FOR SECRETARY OF THE TREASURY AND RELATED MATTERS.

(a) SUMMONS POWER.—Section 5318 of title 31, United States Code, is amended—

(1) by inserting "(a) GENERAL POWERS OF SECRETARY.—" before "The Secretary of the Treasury";

(2) in paragraph (1), by inserting "except as provided in subsection (b)(2)," before "delegate";

(3) by striking out "and" at the end of paragraph (2);

(4) by inserting after paragraph (2) the following new paragraphs:

"(3) examine any books, papers, records, or other data of domestic financial institutions relevant to the recordkeeping or reporting requirements of this subchapter;

"(4) summon a financial institution, an officer or employee of a financial institution (including a former officer or employee), or any person having possession, custody, or care of the reports and records required under this subchapter, to appear before the Secretary of the Treasury or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (b); and";

(5) by redesignating paragraph (3) as paragraph (5); and

(6) by adding at the end the following new subsections:

"(b) LIMITATIONS ON SUMMONS POWER.—

"(1) SCOPE OF POWER.—The Secretary of the Treasury may take any action described in paragraph (3) or (4) of subsection (a) only in connection with investigations for the purpose of civil enforcement of violations of this subchapter, section 21 of the Federal Deposit Insurance Act, section 411 of the National Housing Act, or chapter 2 of Public Law 91-508 (12 U.S.C. 1951 et seq.) or any regulation under any such provision.

"(2) AUTHORITY TO ISSUE.—A summons may be issued under subsection (a)(4) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury.

"(c) ADMINISTRATIVE ASPECTS OF SUMMONS.—

"(1) PRODUCTION AT DESIGNATED SITE.—A summons issued pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than 500 miles distant from any place where the financial institution operates or conducts business in the United States.

"(2) FEES AND TRAVEL EXPENSES.—Persons summoned under this section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States.

"(3) NO LIABILITY FOR EXPENSES.—The United States shall not be liable for any expense, other than an expense described in paragraph (2), incurred in connection with the production of books, papers, records, or other data under this section.

"(d) SERVICE OF SUMMONS.—Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may prescribe by regulation.

"(e) CONTUMACY OR REFUSAL.—

"(1) REFERRAL TO ATTORNEY GENERAL.—In case of contumacy by a person issued a summons under paragraph (3) or (4) of subsection (a) or a refusal by such person to obey such summons, the Secretary of the Treasury shall refer the matter to the Attorney General.

"(2) JURISDICTION OF COURT.—The Attorney General may invoke the aid of any court of the United States within the jurisdiction of which—

"(A) the investigation which gave rise to the summons is being or has been carried on;

"(B) the person summoned is an inhabitant; or

"(C) the person summoned carries on business or may be found,

to compel compliance with the summons.

"(3) COURT ORDER.—The court may issue an order requiring the person summoned to appear before the Secretary or his delegate to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, and to pay the costs of the proceeding.

"(4) FAILURE TO COMPLY WITH ORDER.—Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(5) SERVICE OF PROCESS.—All process in any case under this subsection may be served in any judicial district in which such person may be found.".

(b) AMENDMENT RELATING TO EXEMPTIONS GRANTED FOR MONETARY TRANSACTION REPORTING REQUIREMENTS.—Section 5318 of title 31, United States Code, is amended by adding after subsection (e) (as added by subsection (a) of this section) the following new subsection:

"(f) WRITTEN AND SIGNED STATEMENT REQUIRED.—No person shall qualify for an exemption under subsection (a)(5) unless the relevant financial institution prepares and maintains a statement which—

"(1) describes in detail the reasons why such person is qualified for such exemption; and

"(2) contains the signature of such person.".

(c) CONFORMING AMENDMENTS.—

(1) Sections 5321 and 5322 of title 31, United States Code, are each amended by striking out "5318(2)" each place such term appears and inserting in lieu thereof "5318(a)(2)".

(2) The heading of section 5318 of title 31, United States Code, is amended to read as follows:

"§ 5318. Compliance, exemptions, and summons authority".

(d) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by striking out the item relating to section 5318 and inserting in lieu thereof the following:

"5318. Compliance, exemptions, and summons authority.".

SEC. 1357. PENALTY PROVISIONS.

(a) CIVIL MONEY PENALTY FOR STRUCTURED TRANSACTION VIOLATION.—Section 5321(a) of title 31, United States Code, is amended by adding at the end thereof the following new paragraph:

"(4) STRUCTURED TRANSACTION VIOLATION.—

"(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who willfully violates any provision of section 5324.

"(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed the amount of the coins and currency (or such other monetary instruments as the Secretary may prescribe) involved in the transaction with respect to which such penalty is imposed.

"(C) COORDINATION WITH FORFEITURE PROVISION.—The amount of any civil money penalty imposed by the Secretary under subparagraph (A) shall be reduced by the amount of any forfeiture to the United States under section 5317(d) in connection with the transaction with respect to which such penalty is imposed.".

(b) INCREASE IN AMOUNT OF PENALTY FOR FINANCIAL INSTITUTIONS.—Section 5321(a)(1) of title 31, United States Code, is amended—

(1) by striking out "$10,000" and inserting in lieu thereof "the greater of the amount (not to exceed $100,000) involved in the transaction or $25,000"; and

(2) by striking out "section 5315" each place such term appears and inserting in lieu thereof "sections 5314 and 5315'.

(c) SEPARATE CIVIL MONEY PENALTY FOR VIOLATION OF SECTION 5314.—Section 5321(a) of title 31, United States Code, is amended by inserting after paragraph (4) (as added by subsection (a) of this section) the following new paragraph:

"(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

"(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who willfully violates any provision of section 5314.

"(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed—

"(i) in the case of violation of such section involving a transaction, the greater of—

"(I) the amount (not to exceed $100,000) of the transaction; or

"(II) $25,000; and

(ii) in the case of violation of such section involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, the greater of—

"(I) an amount (not to exceed $100,000) equal to the balance in the account at the time of the violation; or

"(II) $25,000.".

(d) SEPARATE CIVIL MONEY PENALTY FOR NEGLIGENT VIOLATION OF SUBCHAPTER.—Section 5321(a) of title 31, United States Code, is amended by inserting after paragraph (5) (as added by subsection (d) of this section) the following new paragraph:

"(6) NEGLIGENCE.—The Secretary of the Treasury may impose a civil money penalty of not more than $500 on any financial institution which negligently violates any provision of this subchapter or any regulation prescribed under this subchapter.".

(e) EXTENSION OF TIME LIMITATIONS FOR ASSESSMENT OF CIVIL PENALTY.—Section 5321(b) of title 31, United States Code, is amended to read as follows:

"(b) TIME LIMITATIONS FOR ASSESSMENTS AND COMMENCEMENT OF CIVIL ACTIONS.—

"(1) ASSESSMENTS.—The Secretary of the Treasury may assess a civil penalty under subsection (a) at any time before the end of the 6-year period beginning on the date of the transaction with respect to which the penalty is assessed.

"(2) CIVIL ACTIONS.—The Secretary may commence a civil action to recover a civil penalty assessed under subsection (a) at any time before the end of the 2-year period beginning on the later of—

"(A) the date the penalty was assessed; or

"(B) the date any judgment becomes final in any criminal action under section 5322 in connection with the same transaction with respect to which the penalty is assessed.".

(f) CLARIFICATION OF RELATIONSHIP BETWEEN CIVIL PENALTY AND CRIMINAL PENALTY.—Section 5321 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) CRIMINAL PENALTY NOT EXCLUSIVE OF CIVIL PENALTY.—A civil money penalty may be imposed under subsection (a) with respect to any violation of this subchapter notwithstanding the fact that a criminal penalty is imposed with respect to the same violation.".

(g) AMENDMENTS TO CRIMINAL PENALTY FOR CERTAIN OFFENSES.—Section 5322(b) of title 31, United States Code, is amended—

(1) by striking out "illegal activity involving transactions of" and inserting in lieu thereof "any illegal activity involving";

(2) by striking out "5 years" and inserting in lieu thereof "10 years".

(h) CONFORMING AMENDMENT.—Section 5321(c) of title 31, United States Code, is amended by striking out "section 5317(b)" and inserting in lieu thereof "subsection (c) or (d) of section 5317".

SEC. 1358. MONETARY TRANSACTION REPORTING AMENDMENTS.

(a) CLOSELY RELATED EVENTS.—Section 5316 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(d) CUMULATION OF CLOSELY RELATED EVENTS.—The Secretary of the Treasury may prescribe regulations under this section defining the term 'at one time' for purposes of subsection (a). Such regulations may permit the cumulation of closely related events in order that such events may collectively be considered to occur at one time for the purposes of subsection (a).".

(b) INCHOATE OFFENSE.—Section 5316(a)(1) of title 31, United States Code, is amended—

(1) by striking out "or attempts to transport or have transported,", and

(2) by inserting ", is about to transport," after "transports".

(c) TECHNICAL AND CONFORMING AMENDMENT.—Section 5316(a)(2) of title 31, United States Code, is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

SEC. 1359. BANKING REGULATORY AGENCY SUPERVISION OF RECORDKEEPING SYSTEMS.

(a) INSURED BANKS.—

(1) IN GENERAL.—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by adding at the end thereof the following new subsection:

"(s) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(1) COMPLIANCE PROCEDURES REQUIRED.—Each appropriate Federal banking agency shall prescribe regulations requiring insured banks to establish and maintain procedures reasonably designed to assure and monitor the compliance of such banks with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(2) EXAMINATIONS OF BANK TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(A) IN GENERAL.—Each examination of an insured bank by the appropriate Federal banking agency shall include a review of the procedures required to be established and maintained under paragraph (1).

"(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the insured bank.

"(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the appropriate Federal banking agency determines that an insured bank—

"(A) has failed to establish and maintain the procedures described in paragraph (1); or

"(B) has failed to correct any problem with the procedures maintained by such bank which was previously reported to the bank by such agency,

the agency shall issue an order in the manner prescribed in subsection (b) or (c) requiring such bank to cease and desist from its violation of this subsection or regulations prescribed under this subsection.".

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 8(i)(2)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)(2)(i)) is amended by striking out "subsection (b) or (c)" and inserting in lieu thereof "subsection (b), (c), or (s)".

(b) INSTITUTIONS REGULATED BY THE BANK BOARD.—

(1) IN GENERAL.—Section 5(d) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)) is amended by adding at the end thereof the following new paragraph:

"(16) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(A) COMPLIANCE PROCEDURES REQUIRED.—The Board shall prescribe regulations requiring associations to establish and maintain procedures reasonably designed to assure and monitor the compliance of such associations with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(B) EXAMINATIONS OF ASSOCIATIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(i) IN GENERAL.—Each examination of an association by the Board shall include a review of the procedures required to be established and maintained under subparagraph (A).

"(ii) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the association.

"(C) ORDER TO COMPLY WITH REQUIREMENTS.—If the Board determines that an association—

"(i) has failed to establish and maintain the procedures described in subparagraph (A); or

"(ii) has failed to correct any problem with the procedures maintained by such as-

sociation which was previously reported to the association by the Board,

the Board shall issue an order in the manner prescribed in paragraph (2) or (3) requiring such association to cease and desist from its violation of this paragraph or regulations prescribed under this paragraph.".

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 5(d)(8)(B)(i) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)(8)(B)(i)) is amended by striking out "paragraph (2) or (3)" and inserting in lieu thereof "paragraph (2), (3), or (16)".

(c) INSURED THRIFT INSTITUTIONS.—

(1) IN GENERAL.—Section 407 of the National Housing Act (12 U.S.C. 1730) is amended by adding at the end thereof the following new subsection:

"(s) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(1) COMPLIANCE PROCEDURES REQUIRED.—The Corporation shall prescribe regulations requiring insured institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such institutions with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(2) EXAMINATIONS OF INSTITUTIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(A) IN GENERAL.—Each examination of an insured institution by the Corporation shall include a review of the procedures required to be established and maintained under paragraph (1).

"(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the insured institution.

"(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the Corporation determines that an insured institution—

"(A) has failed to establish and maintain the procedures described in paragraph (1); or

"(B) has failed to correct any problem with the procedures maintained by such institution which was previously reported to the institution by the Corporation,

the Corporation shall issue an order in the manner prescribed in subsection (e) or (f) requiring such institution to cease and desist from its violation of this subsection or regulations prescribed under this subsection.".

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 407(k)(3)(A) of the National Housing Act (12 U.S.C. 1730(k)(3)(A)) is amended by striking out "subsection (e) or (f) of this section shall forefit" and inserting in lieu thereof "subsection (e), (f), or (s) of this section shall forfeit".

(d) INSURED CREDIT UNIONS.—

(1) IN GENERAL.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding at the end thereof the following new subsection:

"(q) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(1) COMPLIANCE PROCEDURES REQUIRED.—The Board shall prescribe regulations requiring insured credit unions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such credit unions with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(2) EXAMINATIONS OF CREDIT UNIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(A) IN GENERAL.—Each examination of an insured credit union by the Board shall include a review of the procedures required to be established and maintained under paragraph (1).

"(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the credit union.

"(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the Board determines that an insured credit union—

"(A) has failed to establish and maintain the procedures described in paragraph (1); or

"(B) has failed to correct any problem with the procedures maintained by such credit union which was previously reported to the credit union by the Board,

the Board shall issue an order in the manner prescribed in subsection (e) or (f) requiring such credit union to cease and desist from its violation of this subsection or regulations prescribed under this subsection.".

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 206(k)(2)(A) of the Federal Credit Union Act (12 U.S.C. 1786(k)(2)(A)) (as in effect on September 1, 1986) is amended by striking out "subsection (e) or (f)" and inserting in lieu thereof "subsection (e), (f), or (q)".

SEC. 1360. CHANGE IN BANK CONTROL ACT AMENDMENTS.

(a) ADDITIONAL REVIEW TIME.—

(1) INITIAL EXTENSION AT DISCRETION OF AGENCY.—The first sentence of section 7(j)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(1)) is amended by striking out "or extending up to another thirty days" and inserting in lieu thereof "or, in the discretion of the agency, extending for an additional 30 days".

(2) ADDITIONAL EXTENSIONS IN CASE OF INCOMPLETE OR INACCURATE NOTICE OR TO CONTINUE INVESTIGATION.—The second sentence of section 7(j)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(1)) is amended to read as follows: "The period for disapproval under the preceding sentence may be extended not to exceed 2 additional times for not more than 45 days each time if—

"(A) the agency determines that any acquiring party has not furnished all the information required under paragraph (6);

"(B) in the agency's judgment, any material information submitted is substantially inaccurate;

"(C) the agency has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

"(D) the agency determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31, United States Code.".

(b) DUTY TO INVESTIGATE APPLICANTS FOR CHANGE IN CONTROL APPROVAL.—Section 7(j)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(2)) is amended—

(1) by striking out "(2)" and inserting in lieu thereof "(2)(A) NOTICE TO STATE AGENCY.—"; and

(2) by adding at the end thereof the following new subparagraphs:

"(B) INVESTIGATION OF PRINCIPALS REQUIRED.—Upon receiving any notice under this subsection, the appropriate Federal banking agency shall—

"(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

"(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

"(C) REPORT.—The appropriate Federal banking agency shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such investigation. The agency shall retain such written report as a record of the agency.".

(c) PUBLIC COMMENT ON CHANGE OF CONTROL NOTICES.—Section 7(j)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(2)) is amended by adding after subparagraph (C) (as added by subsection (b) of this section) the following new subparagraph:

"(D) PUBLIC COMMENT.—Upon receiving notice of a proposed acquisition, the appropriate Federal banking agency shall, within a reasonable period of time—

"(i) publish the name of the insured bank proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

"(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the bank proposed to be acquired is located, before final consideration of such notice by the agency,

unless the agency determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such bank.".

(d) INVESTIGATIONS AND ENFORCEMENT.—Section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) is amended—

(1) by redesignating paragraphs (15) and (16) as paragraphs (16) and (17), respectively; and

(2) by inserting after paragraph (14) the following new paragraph:

"(15) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—

"(A) INVESTIGATIONS.—The appropriate Federal banking agency may exercise any authority vested in such agency under section 8(n) in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the agency, in its discretion, determines is necessary to determine whether any person has filed inaccurate, incomplete, or misleading information under this subsection or otherwise is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

"(B) ENFORCEMENT.—Whenever it appears to the appropriate Federal banking agency that any person is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for—

"(i) a temporary or permanent injunction or restraining order enjoining such person from violating this subsection or any regulation prescribed under this subsection; or

"(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture).

"(C) JURISDICTION.—

"(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the appropriate Federal

banking agency under subparagraph (A) as such courts have under section 8(n).

"(ii) The district courts of the United States and the United States courts of any territory shall have jurisdiction and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief granted under this paragraph shall be granted without requiring the posting of any bond.".

SEC. 1361. CHANGE IN SAVINGS AND LOAN CONTROL ACT AMENDMENTS.

(a) ADDITIONAL REVIEW TIME.—

(1) INITIAL EXTENSION AT DISCRETION OF AGENCY.—The first sentence of section 407(q)(1) of the National Housing Act (12 U.S.C. 1730(q)(1)) is amended by striking out "or extending up to another thirty days" and inserting in lieu thereof "or, in the discretion of the Corporation, extending for an additional 30 days".

(2) ADDITIONAL EXTENSIONS IN CASE OF INCOMPLETE OR INACCURATE NOTICE OR TO CONTINUE INVESTIGATION.—The second sentence of section 407(q)(1) of the National Housing Act (12 U.S.C. 1730(q)(1)) is amended to read as follows: "The period for disapproval under the preceding sentence may be extended not to exceed 2 additional times for not more than 45 days each time if—

"(A) the Corporation determines that any acquiring party has not furnished all the information required under paragraph (6);

"(B) in the Corporation's judgment, any material information submitted is substantially inaccurate;

"(C) the Corporation has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

"(D) the Corporation determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31, United States Code.".

(b) DUTY TO INVESTIGATE APPLICANTS FOR CHANGE IN CONTROL APPROVAL.—Section 407(q)(2) of the National Housing Act (12 U.S.C. 1730(q)(2)) is amended—

(1) by striking out "(2)" and inserting in lieu thereof "(2)(A) NOTICE TO STATE AGENCY.—"; and

(2) by adding at the end thereof the following new subparagraphs:

"(B) INVESTIGATION OF PRINCIPALS REQUIRED.—Upon receiving any notice under this subsection, the Corporation shall—

"(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

"(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

"(C) REPORT.—The Corporation shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such investigation. The Corporation shall retain such written report as a record of the Corporation.".

(c) PUBLIC COMMENT ON CHANGE OF CONTROL NOTICES.—Section 407(q)(2) of the National Housing Act (12 U.S.C. 1730(q)(2)) is amended by adding after subparagraph (C) (as added by subsection (b) of this section) the following new subparagraph:

"(D) PUBLIC COMMENT.—Upon receiving notice of a proposed acquisition, the Corporation shall, within a reasonable period of time—

"(i) publish the name of the insured institution proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

"(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the institution proposed to be acquired is located, before final consideration of such notice by the Corporation,

unless the Corporation determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such institution.".

(d) INVESTIGATIONS AND ENFORCEMENT.—Section 407(q) of the National Housing Act (12 U.S.C. 1730(q)) is amended—

(1) by redesignating paragraphs (16) and (17) as paragraphs (17) and (18), respectively; and

(2) by inserting after paragraph (15) the following new paragraph:

"(16) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—

"(A) INVESTIGATIONS.—The Corporation may exercise any authority vested in the Corporation under paragraph (2) or (3) of subsection (m) in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the Corporation, in its discretion, determines is necessary to determine whether any person has filed inaccurate, incomplete, or misleading information under this subsection or otherwise is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

"(B) ENFORCEMENT.—Whenever it appears to the Corporation that any person is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for—

"(i) a temporary or permanent injunction or restraining order enjoining such person from violating this subsection or any regulation prescribed under this subsection; or

"(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture).

"(C) JURISDICTION.—

"(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the Corporation under subparagraph (A) as such courts have under paragraph (2) or (3) of subsection (m).

"(ii) The district courts of the United States and the United States courts of any territory shall have jurisdiction and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief under this paragraph shall be granted without requiring the posting of any bond.".

SEC. 1362. AMENDMENTS TO DEFINITIONS.

(a) UNITED STATES AGENCIES INCLUDES THE POSTAL SERVICE.—Section 5312(a)(2)(U) of title 31, United States Code (defining financial institutions) (as redesignated by subsection (a)) is amended by inserting before the semicolon at the end the following: ", including the United States Postal Service".

(b) UNITED STATES INCLUDES CERTAIN TERRITORIES AND POSSESSIONS.—Section 5312(a)(5) of title 31, United States Code, is amended by inserting "the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands," after "Puerto Rico".

SEC. 1363. INTERNATIONAL INFORMATION EXCHANGE SYSTEM; STUDY OF FOREIGN BRANCHES OF DOMESTIC INSTITUTIONS.

(a) DISCUSSIONS ON INTERNATIONAL INFORMATION EXCHANGE SYSTEM.—The Secretary of the Treasury, in consultation with the Board of Governors of the Federal Reserve System, shall initiate discussions with the central banks or other appropriate governmental authorities of other countries and propose that an information exchange system be established to assist the efforts of each participating country to eliminate the international flow of money derived from illicit drug operations and other criminal activities.

(b) REPORT ON DISCUSSIONS REQUIRED.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall prepare and transmit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the results of discussions initiated pursuant to subsection (a).

(c) STUDY OF MONEY LAUNDERING THROUGH FOREIGN BRANCHES OF DOMESTIC FINANCIAL INSTITUTIONS REQUIRED.—The Secretary of the Treasury, in consultation with the Attorney General and the Board of Governors of the Federal Reserve System, shall conduct a study of—

(1) the extent to which foreign branches of domestic institutions are used—

(A) to facilitate illicit transfers of coins, currency, and other monetary instruments (as such term is defined in section 5312(a)(3)) of title 31, United States Code) into and out of the United States; and

(B) to evade reporting requirements with respect to any transfer of coins, currency, and other monetary instruments (as so defined) into and out of the United States;

(2) the extent to which the law of the United States is applicable to the activities of such foreign branches; and

(3) methods for obtaining the cooperation of the country in which any such foreign branch is located for purposes of enforcing the law of the United States with respect to transfers, and reports on transfers, of such monetary instruments into and out of the United States.

(d) REPORT ON STUDY OF FOREIGN BRANCHES REQUIRED.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall prepare and transmit a report to the Committee on Banking, Finance and Urban Affairs and the Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate on the results of the study conducted pursuant to subsection (c).

SEC. 1364. EFFECTIVE DATES.

(a) The amendment made by section 1354 shall apply with respect to transactions for the payment, receipt, or transfer of United States coins or currency or other monetary instruments completed after the end of the 3-month period beginning on the date of the enactment of this Act.

(b) The amendments made by sections 1355(b) and 1357(a) shall apply with respect to violations committed after the end of the 3-month period beginning on the date of the enactment of this Act.

(c) The amendments made by section 1357 (other than subsection (a) of such section) shall apply with respect to violations committed after the date of the enactment of this Act.

(d) Any regulation prescribed under the amendments made by section 1358 shall apply with respect to transactions completed after the effective date of such regulation.

(e) The regulations required to be prescribed under the amendments made by section 1359 shall take effect at the end of the 3-month period beginning on the date of the enactment of this Act.

(f) The amendments made by sections 1360 and 1361 shall apply with respect to notices of proposed acquisitions filed after the date of the enactment of this Act.

SEC. 1365. PREDICATE OFFENSES.

(a) Subsection (b) of section 1952 of title 18, United States Code, is amended by striking out "or" before "(2)", and by striking out the period at the end thereof and inserting in lieu thereof the following: ", or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title.".

(b) Subsection (1) of section 1961 of title 18, United States Code, is amended by inserting "section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity)," after "section 1955 (relating to the prohibition of illegal gambling businesses),".

(c) Subsection (1) of section 2516 of title 18, United States Code, is amended in paragraph (c) by inserting "section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity)," after "section 1955 (prohibition of relating to business enterprises of gambling),".

SEC. 1366. FORFEITURE.

(a) Title 18 of the United States Code is amended by adding after chapter 45 a new chapter 46 as follows:

"CHAPTER 46—FORFEITURE

"Sec.
"981. Civil Forfeiture.
"982. Criminal Forfeiture.

"§ 981. Civil forfeiture

"(a)(1) Except as provided in paragraph (2), the following property is subject to forfeiture to the United States:

"(A) Any property, real or personal, which represents the gross receipts a person obtains, directly or indirectly, as a result of a violation of section 1956 or 1957 of this title, or which is traceable to such gross receipts.

"(B) Any property within the jurisdiction of the United States, which represents the proceeds of an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act), within whose jurisdiction such offense or activity would be punishable by death or imprisonment for a term exceeding one year and which would be punishable by imprisonment for a term exceeding one year if such act or activity had occurred within the jurisdiction of the United States.

"(C) Any coin and currency (or other monetary instrument as the Secretary of the Treasury may prescribe) or any interest in other property, including any deposit in a financial institution, traceable to such coin or currency involved in a transaction or attempted transaction in violation of section 5313(a) or 5324 of title 31 may be seized and forfeited to the United States Government. No property or interest in property shall be seized or forfeited if the violation is by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, officer or employee thereof."

"(2) No property shall be forfeited under this section to the extent of the interest of an owner or lienholder by reason of any act or emission established by that owner or lienholder to have been committed without the knowledge of that owner or lienholder.

"(b) Any property subject to forfeiture to the United States under subsection (a)(1)(A) or (a)(1)(B) of this section may be seized by the Attorney General or, with respect to property involved in a violation of section 1956 or 1957 of this title investigated by the Secretary of the Treasury, may be seized by the Secretary of the Treasury, and any property subject to forfeiture under subsection (a)(1)(C) of this section may be seized by the Secretary of the Treasury, in each case upon process issued pursuant to the Supplemental Rules for certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

"(1) the seizure is pursuant to a lawful arrest or search; or

"(2) the Attorney General or the Secretary of the Treasury, as the case may be, has obtained a warrant for such seizure pursuant to the Federal Rules of Criminal Procedure, in which event proceedings under subsection (d) of this section shall be instituted promptly.

"(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General or the Secretary of the Treasury, as the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under this subsection, the Attorney General or the Secretary of the Treasury, as the case may be, may—

"(1) place the property under seal;

"(2) remove the property to a place designated by him; or

"(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

"(d) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of this section, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C. 1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General or the Secretary of the Treasury, as the case may be.

"(e) Notwithstanding any other provision of the law, except section 3 of the Anti Drug Abuse Act of 1986, the Attorney General or the Secretary of the Treasury, as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine to—

"(1) any other Federal agency; or

"(2) any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property.

The Attorney General or the Secretary of the Treasury, as the case may be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General or the Secretary of the Treasury pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General or the Secretary of the Treasury may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this section, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials.

"(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(g) The filing of an indictment or information alleging a violation of law which is also related to a forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the forfeiture proceeding.

"(h) In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

"(i) In the case of property subject to forfeiture under subsection (a)(1)(B), the fol-

lowing additional provisions shall, to the extent provided by treaty, apply:

"(1) Notwithstanding any other provision of law, except section 3 of the Anti Drug Abuse Act of 1986, whenever property is civilly or criminally forfeited under the Controlled Substances Act, the Attorney General may, with the concurrence of the Secretary of State, equitably transfer any conveyance, currency, and any other type of personal property which the Attorney General may designate by regulation for equitable transfer, or any amounts realized by the United States from the sale of any real or personal property forfeited under the Controlled Substances Act to an appropriate foreign country to reflect generally the contribution of any such foreign country participating directly or indirectly in any acts which led to the seizure or forfeiture of such property. Such property when forfeited pursuant to subsection (a)(1)(B) of this section may also be transferred to a foreign country pursuant to a treaty providing for the transfer of forfeited property to such foreign country. A decision by the Attorney General pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subchapter, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General may, in his discretion, set. Transfers may be made under this subsection during a fiscal year to a country that is subject to paragraph (1)(A) of section 481(h) of the Foreign Assistance Act of 1961 (relating to restrictions on United States assistance) only if there is a certification in effect with respect to that country for that fiscal year under paragraph (2) of that section.

"(2) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including property which is sought as evidence of a crime committed in the foreign country.

"(3) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

"(4) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

"(5) The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

"(j) For purposes of this section—

"(1) the term 'Attorney General' means the Attorney General or his delegate; and

"(2) the term 'Secretary of the Treasury' means the Secretary of the Treasury or his delegate.

"§ 982. Criminal forfeiture

"(a) The court, in imposing sentence on a person convicted of an offense under section 1956 or 1957 of this title shall order that the person forfeit to the United States any property, real or personal, which represents the gross receipts the person obtained, directly or indirectly, as a result of such offense, or which is traceable to such gross receipts.

"(b) The provisions of subsections 413 (c) and (e) through (o) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853 (c) and (e)—(o)) shall apply to property subject to forfeiture under this section, to any seizure or disposition thereof, and to any administrative or judicial proceeding in relation thereto, if not inconsistent with this section.".

(b) The chapter analysis of part I of title 18, United States Code, is amended by inserting after the item for chapter 45 the following:

"46. Forfeiture ..... 981".

SEC. 1367. SEVERABILITY CLAUSE.

If any provision of this subtitle or any amendment made by this Act, or the application thereof to any person or circumstances is held invalid, the provisions of every other part, and their application, shall not be affected thereby.

Subtitle I—Armed Career Criminals

SEC. 1401. SHORT TITLE.

This subtitle may be cited as the "Career Criminals Amendment Act of 1986".

SEC. 1402. EXPANSION OF PREDICATE OFFENSES FOR ARMED CAREER CRIMINAL PENALTIES.

(a) IN GENERAL.—Section 924(e)(1) of title 18, United States Code, is amended by striking out "for robbery or burglary, or both," and inserting in lieu thereof "for a violent felony or a serious drug offense, or both.".

(b) DEFINITIONS.—Section 924(e)(2) of title 18, United States Code, is amended by striking out subparagraph (A) and all that follows through subparagraph (B) and inserting in lieu thereof the following:

"(A) the term 'serious drug offense' means—

"(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the first section or section 3 of Public Law 96-350 (21 U.S.C. 955a et seq.), for which a maximum term of imprisonment of ten years or more is prescribed by law; or

"(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law; and

"(B) the term 'violent felony' means any crime punishable by imprisonment for a term exceeding one year that—

"(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

"(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.".

Subtitle J—Authorization of Appropriation for Drug Law Enforcement

SEC. 1451. AUTHORIZATION OF APPROPRIATIONS.

(a) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Drug Enforcement Administration, $60,000,000; except, that notwithstanding section 1345 of title 31, United States Code, funds made available to the Department of Justice for the Drug Enforcement Administration in any fiscal year may be used for travel, transportation, and subsistence expenses of State, county, and local officers attending conferences, meetings, and training courses at the FBI Academy, Quantico, Virginia.

(b) The Drug Enforcement Administration of the Department of Justice is hereby authorized to plan, construct, renovate, maintain, remodel and repair buildings and purchase equipment incident thereto for an All Source Intelligence Center: "Provided, That the existing El Paso Intelligence Center shall remain in Texas.".

(c) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Federal Prison System, $124,500,000, of which $96,500,000 shall be for the construction of Federal penal and correctional institutions and $28,000,000 shall be for salaries and expenses.

(d) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Defender Services, $18,000,000.

(e) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Fees and Expenses of Jurors and Commissioners, $7,500,000.

(f) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Office of Justice Assistance, $5,000,000 to carry out a pilot prison capacity program.

(g) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for support of United States prisoners in non-Federal Institutions, $5,000,000.

(h) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Offices of the United States Attorneys, $31,000,000.

(i) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the United States Marshals Service, $17,000,000.

"(j) Authorizations of appropriations for fiscal year 1987 contained in this section are in addition to those amounts agreed to in the conference agreement reached on Title I of H.J. Res. 738."

(k) In addition to any other amounts that may be authorized to be appropriated for fiscal year 1987, the following sums are authorized to be appropriated to procure secure voice radios:

Federal Bureau of Investigation	$2,000,000
Secret Service	$5,000,000.

(l) This section may be cited as the "Drug Enforcement Enhancement Act of 1986".

Subtitle K—State and Local Narcotics Control Assistance

SEC. 1551. SHORT TITLE.

This subtitle may be cited as the "State and Local Law Enforcement Assistance Act of 1986".

SEC. 1552. BUREAU OF JUSTICE ASSISTANCE DRUG GRANT PROGRAMS.

(a) Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3712 et seq.) is amended—

(1) by redesignating part M as part N,

(2) by redesignating section 1301 as section 1401, and

(3) by inserting after part L the following new part:

"PART M—GRANTS FOR DRUG LAW ENFORCEMENT PROGRAMS

"FUNCTION OF THE DIRECTOR

"SEC. 1301. The Director shall provide funds to eligible States and units of local government pursuant to this part.

"DESCRIPTION OF DRUG LAW ENFORCEMENT GRANT PROGRAM

"SEC. 1302. The Director is authorized to make grants to States, for the use of States and units of local government in the States, for the purpose of enforcing State and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. 801 et seq.), and to—

"(1) provide additional personnel, equipment, facilities, personnel training, and supplies for more widespread apprehension of persons who violate State and local laws relating to the production, possession, and transfer of controlled substances and to pay operating expenses (including the purchase of evidence and information) incurred as a result of apprehending such persons;

"(2) provide additional personnel, equipment, facilities (including upgraded and additional law enforcement crime laboratories), personnel training, and supplies for more widespread prosecution of persons accused of violating such State and local laws and to pay operating expenses in connection with such prosecution;

"(3) provide additional personnel (including judges), equipment, personnel training, and supplies for more widespread adjudication of cases involving persons accused of violating such State and local laws, to pay operating expenses in connection with such adjudication, and to provide quickly temporary facilities in which to conduct adjudications of such cases;

"(4) provide additional public correctional resources for the detention of persons convicted of violating State and local laws relating to the production, possession, or transfer of controlled substances, and to establish and improve treatment and rehabilitative counseling provided to drug dependent persons convicted of violating State and local laws;

"(5) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted;

"(6) provide programs which identify and meet the needs of drug-dependent offenders; and

"(7) conduct demonstration programs, in conjunction with local law enforcement officials, in areas in which there is a high incidence of drug abuse and drug trafficking to expedite the prosecution of major drug offenders by providing additional resources, such as investigators and prosecutors, to identify major drug offenders and move these offenders expeditiously through the judicial system.

"APPLICATIONS TO RECEIVE GRANTS

"SEC. 1303. To request a grant under section 1302, the chief executive officer of a State shall submit to the Director an application at such time and in such form as the Director may require. Such application shall include—

"(1) a statewide strategy for the enforcement of State and local laws relating to the production, possession, and transfer of controlled substances;

"(2) a certification that Federal funds made available under section 1302 of this title will not be used to supplant State or local funds, but will be used to increase the amounts of such funds that would, in the absence of Federal funds, be made available for drug law enforcement activities;

"(3) a certification that funds required to pay the non-Federal portion of the cost of each program and project for which such grant is made shall be in addition to funds that would otherwise be made available for drug law enforcement by the recipients of grant funds;

"(4) an assurance that the State application described in this section, and any amendment to such application, has been submitted for review to the State legislature or its designated body (for purposes of this section, such application or amendment shall be deemed to be reviewed if the State legislature or such body does not review such application or amendment within the 60-day period beginning on the date such application or amendment is so submitted); and

"(5) an assurance that the State application and any amendment thereto was made public before submission to the Bureau and, to the extent provided under State law or established procedure, an opportunity to comment thereon was provided to citizens and to neighborhood and community groups.

Such strategy shall be prepared after consultation with State and local officials whose duty it is to enforce such laws. Such strategy shall include an assurance that following the first fiscal year covered by an application and each fiscal year thereafter, the applicant shall submit to the Director or to the State, as the case may be, a performance report concerning the activities carried out pursuant to section 1302 of this title.

"REVIEW OF APPLICATIONS

"SEC. 1304. (a) The Bureau shall provide financial assistance to each State applicant under section 1302 of this title to carry out the programs or projects submitted by such applicant upon determining that—

"(1) the application or amendment thereto is consistent with the requirements of this title; and

"(2) before the approval of the application and any amendment thereto the Bureau has made an affirmative finding in writing that the program or project has been reviewed in accordance with section 1303 of this title.

Each application or amendment made and submitted for approval to the Bureau pursuant to section 1303 shall be deemed approved, in whole or in part, by the Bureau not later than sixty days after first received unless the Bureau informs the applicant of specific reasons for disapproval.

"(b) Grant funds awarded under section 1302 of this title shall not be used for land acquisition or construction projects, other than penal and correctional institutions.

"(c) The Bureau shall not finally disapprove any application, or any amendment thereto, submitted to the Director under this section without first affording the applicant reasonable notice and opportunity for reconsideration.

"ALLOCATION AND DISTRIBUTION OF FUNDS UNDER FORMULA GRANTS

"SEC. 1305. (a) Of the total amount appropriated for this part in any fiscal year, 80 per centum shall be set aside for section 1302 and allocated to States as follows:

"(1) $500,000 shall be allocated to each of the participating States.

"(2) Of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States.

"(b)(1) Each State which receives funds under subsection (a) in a fiscal year shall distribute among units of local government, or combinations of units of local government, in such State for the purposes specified in section 1302 of this title that portion of such funds which bears the same ratio to the aggregate amount of such funds as the amount of funds expended by all units of local government for criminal justice in the preceding fiscal year bears to the aggregate amount of funds expended by the State and all units of local government in such State for criminal justice in such preceding fiscal year.

"(2) Any funds not distributed to units of local government under paragraph (1) shall be available for expenditure by the State involved.

"(3) For purposes of determining the distribution of funds under paragraph (1), the most accurate and complete data available for the fiscal year involved shall be used. If data for such fiscal year are not available, then the most accurate and complete data available for the most recent fiscal year preceding such fiscal year shall be used.

"(c) No funds allocated to a State under subsection (a) or received by a State for distribution under subsection (b) may be distributed by the Director or by the State involved for any program other than a program contained in an approved application.

"(d) If the Director determines, on the basis of information available to it during any fiscal year, that a portion of the funds allocated to a State for that fiscal year will not be required or that a State will be unable to qualify or receive funds under section 1302 of this title, or that a State chooses not to participate in the program established under such section, then such portion shall be awarded by the Director to urban, rural, and suburban units of local government or combinations thereof within such State giving priority to those jurisdictions with greatest need.

"(e) Any funds allocated under subsection (a) that are not distributed under this section shall be available for obligation under section 1309 of this title.

"REPORTS

"SEC. 1306. (a) Each State which receives a grant under section 1302 of this title shall submit to the Director, for each year in which any part of such grant is expended by a State or unit of local government, a report which contains—

"(1) a summary of the activities carried out with such grant and an assessment of the impact of such activities on meeting the needs identified in the State strategy submitted under section 1303 of this title;

"(2) a summary of the activities carried out in such year with any grant received

under section 1309 of this title by such State; and

"(3) such other information as the Director may require by rule.

Such report shall be submitted in such form and by such time as the Director may require by rule.

"(b) Not later than ninety days after the end of each fiscal year for which grants are made under section 1302 of this title, the Director shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report that includes with respect to each State—

"(1) the aggregate amount of grants made under sections 1302 and 1309 of this title to such State for such fiscal year;

"(2) the amount of such grants expended for each of the purposes specified in section 1302; and

"(3) a summary of the information provided in compliance with paragraphs (1) and (2) of subsection (a).

"EXPENDITURE OF GRANTS; RECORDS

"SEC. 1307. (a) A grant made under section 1302 of this title may not be expended for more than 75 per centum of the cost of the identified uses, in the aggregate, for which such grant is received to carry out any purpose specified in section 1302, except that in the case of funds distributed to an Indian tribe which performs law enforcement functions (as determined by the Secretary of the Interior) for any such program or project, the amount of such grant shall be equal to 100 per centum of such cost. The non-Federal portion of the expenditures for such uses shall be paid in cash.

"(b) Not more than 10 per centum of a grant made under section 1302 of this title may be used for costs incurred to administer such grant.

"(c)(1) Each State which receives a grant under section 1302 of this title shall keep, and shall require units of local government which receive any part of such grant to keep, such records as the Director may require by rule to facilitate an effective audit.

"(2) The Director and the Comptroller General of the United States shall have access, for the purpose of audit and examination, to any books, documents, and records of States which receive grants, and of units of local government which receive any part of a grant made under section 1302, if in the opinion of the Director or the Comptroller General, such books, documents, and records are related to the receipt or use of any such grant.

"STATE OFFICE

"SEC. 1308. (a) The chief executive of each participating State shall designate a State office for purposes of—

"(1) preparing an application to obtain funds under section 1302 of this title; and

"(2) administering funds received under such section from the Director, including receipt, review, processing, monitoring, progress and financial report review, technical assistance, grant adjustments, accounting, auditing, and fund disbursements.

"(b) An office or agency performing other functions within the executive branch of a State may be designated to carry out the functions specified in subsection (a).

"DISCRETIONARY GRANTS

"SEC. 1309. The Director is authorized to make grants to public agencies and private nonprofit organizations for any purpose specified in section 1302 of this title. The Director shall have final authority over all grants awarded under this section.

"APPLICATION REQUIREMENTS

"SEC. 1310. (a) No grant may be made under section 1309 of this title unless an application has been submitted to the Director in which the applicant—

"(1) sets forth a program or project which is eligible for funding pursuant to section 1309 of this title; and

"(2) describes the services to be provided, performance goals, and the manner in which the program is to be carried out.

"(b) Each applicant for funds under section 1309 of this title shall certify that its program or project meets all the requirements of this section, that all the information contained in the application is correct, and that the applicant will comply with all the provisions of this title and all other applicable Federal laws. Such certification shall be made in a form acceptable to the Director.

"ALLOCATION OF FUNDS FOR DISCRETIONARY GRANTS

"SEC. 1311. Of the total amount appropriated for this part in any fiscal year, 20 per centum shall be reserved and set aside for section 1309 of this title in a special discretionary fund for use by the Director in carrying out the purposes specified in section 1302 of this title. Grants under section 1309 may be made for amounts up to 100 per centum of the costs of the programs or projects contained in the approved application.

"LIMITATION ON USE OF DISCRETIONARY GRANT FUNDS

"SEC. 1312. Grant funds awarded under section 1309 of this title shall not be used for land acquisition or construction projects.".

(b)(1) Subsections (a) and (b) of section 401 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3741) are each amended by striking out "part E" and inserting in lieu thereof "parts E and M".

(2) Section 801(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3782(b)) is amended by striking out "parts D and E" and inserting in lieu thereof "parts D, E, and M".

(3) Section 802(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3783(b)) is amended by inserting "or M" after "part D".

(4) Section 808 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789) is amended by inserting "or 1308, as the case may be," after "section 408".

(5) The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by striking out the items relating to part M and section 1301, and inserting in lieu thereof the following new items:

"PART M—GRANTS FOR DRUG LAW ENFORCEMENT PROGRAMS

"Sec. 1301. Function of the Director.
"Sec. 1302. Description of drug law enforcement grant program.
"Sec. 1303. Applications to receive grants.
"Sec. 1304. Review of applications.
"Sec. 1305. Allocation and distribution of funds under formula grants.
"Sec. 1306. Reports.
"Sec. 1307. Expenditure of grants; records.
"Sec. 1308. State office.
"Sec. 1309. Discretionary grants.
"Sec. 1310. Application requirements.
"Sec. 1311. Allocation of funds for discretionary grants.
"Sec. 1312. Limitation on use of discretionary grant funds.
"PART N—TRANSITION—EFFECTIVE DATE—REPEALER
"Sec. 1401. Continuation of rules, authorities, and proceedings.".

(c) Section 1001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended—

(1) in subsection (a)—

(A) in paragraph (3) by striking out "and L" and inserting in lieu thereof "L, and M",

(B) by redesignating paragraph (6) as paragraph (7), and

(C) by inserting after paragraph (5) the following new paragraph:

"(6) There are authorized to be appropriated $230,000,000 for fiscal year 1987, $230,000,000 for fiscal year 1988, and $230,000,000 for fiscal year 1989, to carry out the programs under part M of this title." . . .; and

(2) in subsection (b) by striking out "and E" and inserting in lieu thereof ", E, and M".

Subtitle L—Study on the Use of Existing Federal Buildings as Prisons

SEC. 1601. STUDY REQUIRED.

(a) Within 90 days of the date of enactment of this Act, the Secretary of Defense shall provide to the Attorney General—

(1) a list of all sites under the jurisdiction of the Department of Defense including facilities beyond the excess and surplus property inventories whose facilities or a portion thereof could be used, or are being used, as detention facilities for felons, especially those who are a Federal responsibility such as illegal alien felons and major narcotics traffickers;

(2) a statement of fact on how such facilities could be used as detention facilities with detailed descriptions on their actual daily percentage of use; their capacities or rated capacities; the time periods they could be utilized as detention facilities; the cost of converting such facilities to detention facilities; and, the cost of maintaining them as such; and

(3) in consultation with the Attorney General, a statement showing how the Department of Defense and the Department of Justice would administer and provide staffing responsibilities to convert and maintain such detention facilities.

(b) Copies of the report and analysis required by subsection (a) shall be provided to the Congress.

Subtitle M—Narcotics Traffickers Deportation Act

SEC. 1751. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) Section 212(a)(23) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(23)) is amended—

(1) by striking out "any law or regulation relating to" and all that follows through "addiction-sustaining opiate" and inserting in lieu thereof "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))"; and

(2) by striking out "any of the aforementioned drugs" and inserting in lieu thereof "any such controlled substance".

(b) Section 241(a)(11) of such Act (8 U.S.C. 1251(a)(11)) is amended by striking out "any law or regulation relating to" and all that follows through "addiction-sustaining opiate" and inserting in lieu thereof "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section

102 of the Controlled Substances Act (21 U.S.C. 802))".

(c) The amendments made by this subsections (a) and (b) of this section shall apply to convictions occurring before, on, or after the date of the enactment of this section, and the amendments made by subsection (a) shall apply to aliens entering the United States after the date of the enactment of this section.

(d) Section 287 of the Immigration and Nationality Act (8 U.S.C. 1357) is amended by adding at the end the following new subsection:

"(d) In the case of an alien who is arrested by a Federal, State, or local law enforcement official for a violation of any law relating to controlled substances, if the official (or another official)—

"(1) has reason to believe that the alien may not have been lawfully admitted to the United States or otherwise is not lawfully present in the United States,

"(2) expeditiously informs an appropriate officer or employee of the Service authorized and designated by the Attorney General of the arrest and of facts concerning the status of the alien, and

"(3) requests the Service to determine promptly whether or not to issue a detainer to detain the alien, the officer or employee of the Service shall promptly determine whether or not to issue such a detainer. If such a detainer is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General shall effectively and expeditiously take custody of the alien.".

(e)(1) From the sums appropriated to carry out this Act, the Attorney General, through the Investigative Division of the Immigration and Naturalization Service, shall provide a pilot program in 4 cities to establish or improve the computer capabilities of the local offices of the Service and of local law enforcement agencies to respond to inquiries concerning aliens who have been arrested or convicted for, or are the subject to criminal investigation relating to, a violation of any law relating to controlled substances. The Attorney General shall select cities in a manner that provides special consideration for cities located near the land borders of the United States and for large cities which have major concentrations of aliens. Some of the sums made available under the pilot program shall be used to increase the personnel level of the Investigative Division.

(2) At the end of the first year of the pilot program, the Attorney General shall provide for an evaluation of the effectiveness of the program and shall report to Congress on such evaluation and on whether the pilot program should be extended or expanded.

Subtitle N—Freedom of Information Act

SEC. 1801. SHORT TITLE.

This subtitle may be cited as the "Freedom of Information Reform Act of 1986".

SEC. 1802. LAW ENFORCEMENT.

(a) EXEMPTION.—Section 552(b)(7) of title 5, United States Code, is amended to read as follows:

"(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;".

(b) EXCLUSIONS.—Section 552 of title 5, United States Code, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f) respectively, and by inserting after subsection (b) the following new subsection:

"(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

"(A) the investigation or proceeding involves a possible violation of criminal law; and

"(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

"(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

"(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.".

SEC. 1803. FEES AND FEE WAIVERS.

Paragraph (4)(A) of section 552(a) of title 5, United States Code, is amended to read as follows:

"(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

"(ii) Such agency regulations shall provide that—

"(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

"(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

"(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

"(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

"(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

"(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

"(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

"(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

"(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

"(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, That the court's review of the matter shall be limited to the record before the agency.".

SEC. 1804. EFFECTIVE DATES.

(a) The amendments made by section 1802 shall be effective on the date of enactment of this Act, and shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date.

(b)(1) The amendments made by section 1803 shall be effective 180 days after the date of enactment of this Act, except that regulations to implement such amendments shall be promulgated by such 180th day.

(2) The amendments made by section 1803 shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date, except that review charges applicable to records requested for commercial use shall not be applied by an agency to requests made before the effective date specified in

paragraph (1) of this subsection or before the agency has finally issued its regulations.

Subtitle O—Prohibition on the Interstate Sale and Transportation of Drug Paraphernalia

SEC. 1821. SHORT TITLE.

This subtitle may be cited as the "Mail Order Drug Paraphernalia Control Act".

SEC. 1822. OFFENSE.

(a) It is unlawful for any person—

(1) to make use of the services of the Postal Service or other interstate conveyance as part of a scheme to sell drug paraphernalia;

(2) to offer for sale and transportation in interstate or foreign commerce drug paraphernalia; or

(3) to import or export drug paraphernalia.

(b) Anyone convicted of an offense under subsection (a) of this section shall be imprisoned for not more than three years and fined not more than $100,000.

(c) Any drug paraphernalia involved in any violation of subsection (a) of this section shall be subject to seizure and forfeiture upon the conviction of a person for such violation. Any such paraphernalia shall be delivered to the Administrator of General Services, General Services Administration, who may order such paraphernalia destroyed or may authorize its use for law enforcement or educational purposes by Federal, State, or local authorities.

(d) The term "drug paraphernalia" means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act (title II of Public Law 91-513). It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, or amphetamines into the human body, such as—

(1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(2) water pipes;

(3) carburetion tubes and devices;

(4) smoking and carburetion masks;

(5) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

(6) miniature spoons with level capacities of one-tenth cubic centimeter or less;

(7) chamber pipes;

(8) carburetor pipes;

(9) electric pipes;

(10) air-driven pipes;

(11) chillums;

(12) bongs;

(13) ice pipes or chillers;

(14) wired cigarette papers; or

(15) cocaine freebase kits.

(e) In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the following may be considered:

(1) instructions, oral or written, provided with the item concerning its use;

(2) descriptive materials accompanying the item which explain or depict its use;

(3) national and local advertising concerning its use;

(4) the manner in which the item is displayed for sale;

(5) whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(6) direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;

(7) the existence and scope of legitimate uses of the item in the community; and

(8) expert testimony concerning its use.

(f) This subtitle shall not apply to—

(1) any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items; or

(2) any item that, in the normal lawful course of business, is imported, exported, transported, or sold through the mail or by any other means, and primarily intended for use with tobacco products, including any pipe, paper, or accessory.

SEC. 1823. EFFECTIVE DATE.

This subtitle shall become effective 90 days after the date of enactment of this Act.

Subtitle P—Manufacturing Operations

SEC. 1841. MANUFACTURING OPERATION.

(a) Part D of the Controlled Substances Act is amended by adding at the end thereof the following new section:

"ESTABLISHMENT OF MANUFACTURING OPERATIONS

"SEC. 416. (a) Except as authorized by this title, it shall be unlawful to—

"(1) knowingly open or maintain any place for the purpose of manufacturing, distributing, or using any controlled substance;

"(2) manage or control any building, room, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, and knowingly and intentionally rent, lease, or make available for use, with or without compensation, the building, room, or enclosure for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

"(b) Any person who violates subsection (a) of this section shall be sentenced to a term of imprisonment of not more than 20 years or a fine of not more than $500,000, or both, or a fine of $2,000,000 for a person other than an individual.".

(b) Section 405A of the Controlled Substances Act is amended—

(1) in subsection (a) by inserting after "section 401(a)(1)" the following: "or section 416"; and

(2) in subsection (b) by inserting after "section 401(a)(1)" the following: "or section 416".

Subtitle Q—Controlled Substances Technical Amendments

SEC. 1861. DUTIES OF DIRECTOR OF ADMINISTRATIVE OFFICE AND AUTHORIZATIONS.

(a) SHORT TITLE.—This section may be cited as the "Drug and Alcohol Dependent Offenders Treatment Act of 1986".

(b) PERMANENT AMENDMENT RELATING TO DUTIES OF DIRECTOR OF ADMINISTRATIVE OFFICE.—(1) The section of title 18, United States Code, that is redesignated section 3672 by section 212(a) of the Comprehensive Crime Control Act of 1984 is amended by adding at the end thereof:

"He shall have the authority to contract with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an alcohol-dependent person, or an addict or a drug-dependent person within the meaning of section 2 of the Public Health Service Act (42 U.S.C. 201). This authority shall include the authority to provide equipment and supplies; testing; medical, educational, social, psychological, and vocational services; corrective and preventive guidance and training; and other rehabilitative services designed to protect the public and benefit the alcohol dependent person, addict, or drug dependent person by eliminating his dependence on alcohol or addicting drugs, or by controlling his dependence and his susceptibility to addiction. He may negotiate and award such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

"He shall pay for presentence studies and reports by qualified consultants and presentence examinations and reports by psychiatric or psychological examiners ordered by the court under subsection (b) or (c) of section 3552, except for studies conducted by the Bureau of Prisons.".

(2) The amendment made by this section shall take effect on the date of the taking effect of such redesignation.

(c) INTERIM AMENDMENT RELATING TO DUTIES OF DIRECTOR OF ADMINISTRATIVE OFFICE.—The second paragraph of section 4255 of title 18, United States Code, is amended to read as follows:

"The Director of the Administrative Office of the United States Courts shall have the authority to contract with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an alcohol-dependent person, or an addict or a drug-dependent person within the meaning of section 2 of the Public Health Service Act (42 U.S.C. 201). Such authority includes the authority to provide equipment and supplies; testing; medical, educational, social, psychological, and vocational services; corrective and preventive guidance and training; and other rehabilitative services designed to protect the public and benefit the alcohol dependent person, addict, or drug dependent person by eliminating that person's or addict's dependence on alcohol or addicting drugs, or by controlling that person's or addict's dependence and susceptibility to addiction. Such Director may negotiate and award such contracts without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5).".

(d) REAUTHORIZATION OF CONTRACT SERVICES.—Section 4(a) of the Contract Services for Drug Dependent Federal Offenders Act of 1978 is amended—

(1) by striking out "and $6,000,000" and inserting "$6,500,000" in lieu thereof; and

(2) by striking out the two periods at the end and inserting in lieu thereof "; $12,000,000 for the fiscal year ending September 30, 1987; $14,000,000 for the fiscal year ending September 30, 1988; and $16,000,000 for the fiscal year ending September 30, 1989.".

SEC. 1862. AMENDMENT TO SECTION 608 OF THE TARIFF ACT.

(a) Section 608 of the Tariff Act of 1930 (19 U.S.C. 1608) is amended by striking out "$2,500" and inserting in lieu thereof "$5,000".

(b) Section 608 of such Act, as enacted by Public Law 98-473, is repealed.

SEC. 1863. AMENDMENTS TO SECTION 616 OF THE TARIFF ACT.

(a) Subsection (c) of section 616 of the Tariff Act of 1930 (19 U.S.C. 1616a(c)) as enacted by Pub. L. 98-573 is amended by inserting "any other Federal agency or to" after "property forfeited under this Act to".

(b) Section 616 of such Act, as enacted by Pub. L. 98-473, is repealed.

SEC. 1864. CROSS REFERENCE CORRECTIONS.

Section 413 of the Controlled Substances Act (21 U.S.C. 853) is amended—

(1) in subsection (c) and in the second subsection (h), by striking out "subsection (o)" and inserting "subsection (n)" in lieu thereof;

(2) in subsection (f) by striking out "subsection (f)" and inserting "subsection (e)" in lieu thereof;

(3) in subsection (i)(1), by striking out "this chapter" and inserting "this title" in lieu thereof; and

(4) by redesignating the second subsection (h) as subsection (k).

SEC. 1865. WARRANTS RELATING TO SEIZURE.

Subsection (b) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(b)) is amended—

(1) by striking out "or criminal" after "Any property subject to civil";

(2) in paragraph (4), by striking out "or criminal" after "is subject to civil"; and

(3) by adding the following at the end thereof:

"The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.".

(b) Subsection (i) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(i)) is amended by inserting ", or a violation of State or local law that could have been charged under this title or title III," after "title III".

SEC. 1866. MINOR TECHNICAL AMENDMENTS.

(a) Section 403(a)(2) of the Controlled Substances Act (21 U.S.C. 843(a)(2)) is amended by striking out the period at the end and inserting a semicolon in lieu thereof.

(b) Section 405A(b) of the Controlled Substances Act (21 U.S.C. 845a(b)) is amended by striking out "special term" and inserting "term of supervised release" in lieu thereof.

(c) Section 405A(c) of the Controlled Substances Act (21 U.S.C. 845a(c)) is amended by striking out "section 4202" and inserting "chapter 311" in lieu thereof.

(d) Section 1008(e) of the Controlled Substances Import and Export Act (21 U.S.C. 958(e)) is amended by striking out "section" the first place it appears and inserting "sections" in lieu thereof.

(e) Section 1010(b)(3) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(3)) is amended by striking out ", except as provided in paragraph (4)".

(f) The table of contents for the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended—

(1) by inserting after the item relating to section 405 the following:

"Sec. 405A. Manufacture or distribution in or near schools.

"Sec. 405B. Employment of minors in controlled substance trafficking.";

and

(2) by inserting after the item relating to section 414, the following:

"Sec. 415. Alternative fine.".

SEC. 1867. MODIFICATION OF COCAINE DEFINITION FOR PURPOSES OF SCHEDULE II.

Subsection (a)(4) of schedule II of section 202(c) the Controlled Substances Act (21 U.S.C. 812) is amended to read as follows:

"(4) Coca leaves (except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed); cocaine, its salts, optical and geometric isomers, and salts of isomers; and ecgonine, its derivatives, their salts, isomers, and salts of isomers.".

SEC. 1868. AUTHORITY OF ATTORNEY GENERAL TO ENTER INTO CONTRACTS WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

Section 503(a) of the Controlled Substances Act (21 U.S.C. 873(a)) is amended—

(1) by striking out "and" at the end of paragraph (5);

(2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(7) notwithstanding any other provision of law, enter into contractual agreements with State and local law enforcement agencies to provide for cooperative enforcement and regulatory activities under this title.".

SEC. 1869. AUTHORITY OF ATTORNEY GENERAL TO DEPUTIZE STATE AND LOCAL LAW ENFORCEMENT OFFICERS FOR CONTROLLED SUBSTANCES ENFORCEMENT.

Section 508 of the Controlled Substances Act (21 U.S.C. 878) is amended—

(1) by inserting "(a)" before "Any officer or employee";

(2) by inserting after "Drug Enforcement Administration" the following: "or (with respect to offenses under this title or title III) any State or local law enforcement officer"; and

(3) by adding at the end thereof the following new subsection:

"(b) State and local law enforcement officers performing functions under this section shall not be deemed Federal employees and shall not be subject to provisions of law relating to Federal employees, except that such officers shall be subject to section 3374(c) of title 5, United States Code.".

SEC. 1870. CLARIFICATION OF ISOMER DEFINITION.

The second and third sentences of section 102(14) of the Controlled Substances Act (21 U.S.C. 802(14)) are each amended by striking out "the" after "the term 'isomer' means" and inserting in lieu thereof "any".

Subtitle R—Precursor and Essential Chemical Review

SEC. 1901. PRECURSOR AND ESSENTIAL CHEMICAL REVIEW.

(a) STUDY AND REPORT.—The Attorney General shall—

(1) conduct a study of the need for legislation, regulation, or alternative methods to control the diversion of legitimate precursor and essential chemicals to the illegal production of drugs of abuse; and

(2) report all findings of such study to Congress not later than the end of the 90th day after the date of enactment of this subtitle.

(b) CONSIDERATIONS.—In conducting such study the Attorney General shall take into consideration that—

(1) clandestine manufacture continues to be a major source of narcotic and dangerous drugs on the illegal drug market;

(2) these drugs are produced using a variety of chemicals which are found in commercial channels and which are diverted to illegal uses;

(3) steps have been taken to deny drug traffickers access to key precursor chemicals, including that—

(A) P2P, a precursor chemical used in the production of amphetamines and methamphetamines was administratively controlled in schedule II of the Controlled Substances by the Drug Enforcement Administration;

(B) a variety of controls were placed on piperidine, the precursor for phencyclidine, by the Psychotropic Substance Act of 1978; and

(C) the Drug Enforcement Administration has maintained a voluntary system in cooperation with chemical industry to report suspicious purchases of precursors and essential chemicals; and

(4) despite the formal and voluntary systems that currently exist, clandestine production of synthetic narcotics and dangerous drugs continue to contribute to drug trafficking and abuse problems in the United States.

Subtitle S—White House Conference for a Drug Free America

SEC. 1931. SHORT TITLE.

This subtitle may be cited as the "White House Conference for a Drug Free America".

SEC. 1932. ESTABLISHMENT OF THE CONFERENCE.

There is established a conference to be known as "The White House Conference for a Drug Free America". The members of the Conference shall be appointed by the President.

SEC. 1933. PURPOSE.

The purposes of the Conference are—

(1) to share information and experiences in order to vigorously and directly attack drug abuse at all levels, local, State, Federal, and international;

(2) to bring public attention to those approaches to drug abuse education and prevention which have been successful in curbing drug abuse and those methods of treatment which have enabled drug abusers to become drug free;

(3) to highlight the dimensions of the drug abuse crisis, to examine the progress made in dealing with such crisis, and to assist in formulating a national strategy to thwart sale and solicitation of illicit drugs and to prevent and treat drug abuse; and

(4) to examine the essential role of parents and family members in preventing the basic causes of drug abuse and in successful treatment efforts.

SEC. 1934. RESPONSIBILITIES OF THE CONFERENCE.

The Conference shall specifically review—

(1) the effectiveness of law enforcement at the local, State, and Federal levels to prevent the sale and solicitation of illicit drugs and the need to provide greater coordination among such programs;

(2) the impact of drug abuse upon American education, examining in particular—

(A) the effectiveness of drug education programs in our schools with particular attention to those schools, both public and private, which have maintained a drug free learning environment;

(B) the role of colleges and universities in discouraging the illegal use of drugs by student-athletes; and

(C) the relationship between drug abuse by student-athletes and college athletic policies, including eligibility and academic requirements, recruiting policies, athletic department financing policies, the establishment of separate campus facilities for athletes, and the demands of practice and lengthy playing seasons;

(3) the extent to which Federal, State, and local programs of drug abuse education, prevention, and treatment require reorganization or reform in order to better use available resources and to ensure greater coordination among such programs;

(4) the impact of current laws on efforts to control international and domestic trafficking of illicit drugs;

(5) the extent to which the sanctions in section 481 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291) have been, or should be, used in encouraging foreign states to

comply with their international responsibilities respecting controlling substances; and

(6) the circumstances contributing to the initiation of illicit drug usage, with particular emphasis on the onset of drug use by youth.

SEC. 1935. CONFERENCE PARTICIPANTS.

In order to carry out the purposes and responsibilities specified in sections 1933 and 1934, the Conference shall bring together individuals concerned with issues relating to drug abuse education, prevention, and treatment, and the production, trafficking, and distribution of illicit drugs. The President shall—

(1) ensure the active participation in the Conference of the heads of appropriate executive and military departments, and agencies, including the Attorney General, the Secretary of Education, the Secretary of Health and Human Services, Secretary of Transportation, and the Director of ACTION;

(2) provide for the involvement in the Conference of other appropriate public officials, including Members of Congress, Governors of States, and Mayors of Cities;

(3) provide for the involvement in the Conference of private entities, especially parents' organizations, which have been active in the fight against drug abuse; and

(4) provide for the involvement in the Conference of individuals distinguished in medicine, law, drug abuse treatment and prevention, primary, secondary, and post-secondary education, and law enforcement.

SEC. 1936. ADMINISTRATIVE PROVISIONS.

(a) All Federal departments, agencies, and instrumentalities shall provide such support and assistance as may be necessary to facilitate the planning and administration of the Conference.

(b) The President is authorized to appoint and compensate an executive director and such other directors and personnel for the Conference as the President may consider advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 52 of such title relating to classification and General Schedule pay rates.

(c) Upon request by the executive director, the heads of the executive and military departments are authorized to detail employees to work with the executive director in planning and administering the Conference without regard to the provisions of section 3341 of title 5, United States Code.

(d) Each participant in the Conference shall be responsible for the expenses of such participant in attending the Conference, and shall not be reimbursed for such expenses from amounts appropriated to carry out this subtitle.

SEC. 1937. FINAL REPORT AND FOLLOW-UP ACTIONS.

(a) FINAL REPORT.—No later than six months after the effective date of this Act, the Conference shall prepare and transmit a final report to the President and to Congress, pursuant to sections 1933 and 1934. The report shall include the findings and recommendations of the Conference as well as proposals for any legislative action necessary to implement such recommendations.

(b) FOLLOW-UP ACTIONS.—The President shall report to the Congress annually, during the 3-year period following the submission of the final report of the Conference, on the status and implementation of the findings and recommendations of the Conference.

SEC. 1938. AUTHORIZATION.

There are hereby authorized to be appropriated $2,000,000 for fiscal year 1988 for purposes of this subtitle.

Subtitle I.—Common Carrier Operation Under the Influence of Alcohol or Drugs

SEC. 1971. OFFENSE.

(a) Part I of title 18, United States Code, is amended by inserting after chapter 17, the following:

"CHAPTER 17A—COMMON CARRIER OPERATION UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

"Sec.
"341. Definitions.
"342. Operation of a common carrier under the influence of alcohol or drugs.
"343. Presumptions.

"§ 341. Definitions

"As used in this chapter, the term 'common carrier' means a rail carrier, a sleeping car carrier, a bus transporting passengers in interstate commerce, a water common carrier, and an air common carrier.

"§ 342. Operation of a common carrier under the influence of alcohol or drugs

"Whoever operates or directs the operation of a common carrier while under the influence of alcohol or drugs, shall be imprisoned not more than five years or fined not more than $10,000, or both.

"§ 343. Presumptions

"For purposes of this chapter—

"(1) an individual with a blood alcohol content of .10 or more shall be conclusively presumed to be under the influence of alcohol; and

"(2) an individual shall be conclusively presumed to be under the influence of drugs if the quantity of the drug in the system of the individual would be sufficient to impair the perception, mental processes, or motor functions of the average individual.".

(b) The table of chapters for part I of title 18, United States Code, is amended by adding after the item for chapter 17 the following:

"17A. Common Carrier Operation Under the Influence of Alcohol or Drugs"

Subtitle U.—Federal Drug Law Enforcement Agent Protection Act of 1986

SEC. 1991. SHORT TITLE.

This subtitle may be cited as the "Federdl Drug Law Enforcement Agent Protection Act of 1986".

SEC. 1992. AMENDMENT TO THE CONTROLLED SUBSTANCES ACT.

Subsection (e) of section 511 of the Controlled Substances Act (21 U.S.C. 881(e)) is amended by—

(1) inserting after "(e)" the following: "(1)";

(2) redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively, and

(3) striking out the matter of following subparagraph (D), as redesignated, and inserting in lieu thereof the following:

"(2)(A) The proceeds from any sale under subparagraph (B) of paragraph (1) and any moneys forfeited under this title shall be used to pay—

"(i) all property expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs; and

"(ii) awards of up to $100,000 to any individual who provides original information which leads to the arrest and conviction of a person who kills or kidnaps a Federal drug law enforcement agent.

Any award paid for information concerning the killing or kidnapping of a Federal drug law enforcement agent, as provided in clause (ii), shall be paid at the discretion of the Attorney General.

"(B) The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28, United States Code, any amounts of such moneys and proceeds remaining after payment of the expenses provided in subparagraph (A).".

Strike out title II of the House amendment and insert in lieu thereof the following:

TITLE II—INTERNATIONAL NARCOTICS CONTROL

SEC. 2001. SHORT TITLE.

This title may be cited as the "International Narcotics Control Act of 1986".

SEC. 2002. ADDITIONAL FUNDING FOR INTERNATIONAL NARCOTICS CONTROL ASSISTANCE AND REGIONAL COOPERATION.

Section 482(a)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291a(a)(1); authorizing appropriations for assistance for international narcotics control) is amended—

(1) by striking out "$57,529,000 for the fiscal year 1987" and inserting in lieu thereof "$75,445,000 for the fiscal year 1987"; and

(2) by adding at the end the following: "In addition to the amounts authorized by the preceding sentence, there are authorized to be appropriated to the President $45,000,000 for the fiscal year 1987 to carry out the purposes of section 481, except that funds may be appropriated pursuant to this additional authorization only if the President has submitted to the Congress a detailed plan for the expenditure of those funds, including a description of how regional cooperation on narcotics control matters would be promoted by the use of those funds. Of the funds authorized to be appropriated by the preceding sentence, not less than $10,000,000 shall be available only to provide helicopters or other aircraft to countries receiving assistance for fiscal year 1987 under this chapter. These funds shall be used primarily for aircraft which will be based in Latin America for use for narcotics control, eradication and interdiction efforts throughout the region. These aircraft shall be used solely for narcotics control, eradication, and interdiction efforts and shall be available primarily for use in Latin America.".

SEC. 2003. AIRCRAFT PROVIDED TO FOREIGN COUNTRIES FOR NARCOTICS CONTROL PURPOSES: RETENTION OF TITLE AND RECORDS OF USE.

Chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; (relating to the international narcotics control assistance program) is amended by adding at the end the following new sections:

"SEC. 484. RETENTION OF TITLE TO AIRCRAFT.

"Any aircraft which, at any time after the enactment of this section, are made available to a foreign country under this chapter, or are made available to a foreign country primarily for narcotics-related purposes under any other provision of law, shall be provided only on a lease or loan basis.

"SEC. 485. RECORDS OF AIRCRAFT USE.

"(a) REQUIREMENT TO MAINTAIN RECORDS.—The Secretary of State shall maintain detailed records on the use of any aircraft made available to a foreign country under this chapter, including aircraft made available before the enactment of this section.

"(b) CONGRESSIONAL ACCESS TO RECORDS.—The Secretary of State shall make the records maintained pursuant to subsection (a) available to the Congress upon a request of the Chairman of the Committee on Foreign Affairs of the House of Representatives or the Chairman of the Committee on Foreign Relations of the Senate.

SEC. 2004. PILOT AND AIRCRAFT MAINTENANCE TRAINING FOR NARCOTICS CONTROL ACTIVITIES.

(a) EARMARKING OF FUNDS.—Not less than $2,000,000 of the funds made available for fiscal year 1987 to carry out chapter 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2347 et seq.; relating to international military education and training) shall be available only for education and training in the operation and maintenance of aircraft used in narcotics control, interdiction and eradication efforts.

(b) RELATIONSHIP TO INTERNATIONAL NARCOTICS CONTROL ASSISTANCE PROGRAM.—Assistance under this section shall be coordinated with assistance provided under chapter 8 of part I of the Act (22 U.S.C. 2291 et seq.; relating to international narcotics control).

(c) WAIVER OF SECTION 660.—Assistance may be provided pursuant to this section notwithstanding the prohibition contained in section 660 of the Foreign Assistance Act of 1961 (22 U.S.C. 2420; relating to police training).

SEC. 2005. RESTRICTIONS OF THE PROVISION OF UNITED STATES ASSISTANCE.

(a) RESTRICTIONS.—Section 481(h) of the Foreign Assistance Act of 1961 is amended to read as follows:

"(h)(1) Subject to paragraph (2), for every major illicit drug producing country or major drug-transit country—

"(A) 50 percent of United States assistance allocated for such country notified to Congress in the report required under section 653(a) of this Act shall be withheld from obligation and expenditure; and

"(B) on or after March 1, 1987, and on March 1 of each succeeding year, the Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development, the United States Executive Director of the International Development Association, the United States Executive Director of the Inter-American Development Bank, and the United States Executive Director of the Asian Development Bank to vote against any loan or other utilization of the funds of their respective institution to or for such country.

"(2)(A) The assistance withheld by paragraph (1)(A) may be obligated and expended and the provisions of paragraph (1)(B) shall not apply if the President determines, and so certifies to the Congress, at the time of the submission of the report required by subsection (e), that—

"(i) during the previous year the country has cooperated fully with the United States, or has taken adequate steps on its own, in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States and in preventing and punishing the laundering in that country of drug-related profits or drug-related monies; or

"(ii) for a country that would not otherwise qualify for certification under subclause (i), the vital national interests of the United States require the provision of such assistance, or

"(B) If the President makes a certification pursuant to clause (A)(ii), he shall include in such certification—

"(i) a full and complete description of the vital national interests placed at risk should assistance, or financing not be provided such country; and

"(ii) a statement weighing the risk described in subclause (i) against the risks posed to the vital national interests of the United States by the failure of such country to cooperate fully with the United States in combatting narcotics or to take adequate steps to combat narcotics on its own.

"(3) In making the certification required by paragraph (2) of this subsection, the President shall give foremost consideration to whether the actions of the government of the country have resulted in the maximum reductions in illicit drug production which were determined to be achievable pursuant to subsection (e)(4). The President shall also consider whether such government—

"(A) has taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of illicit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States; and

"(B) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related monies, as evidence by—

"(i) the enactment and enforcement of laws prohibiting such conduct, and

"(ii) the willingness of such government to enter into mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

"(iii) the degree to which such government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts.

"(4)(A) The provisions of paragraph (1) shall apply without regard to paragraph (2) if the Congress enacts, within 30 days of continuous session after receipt of a certification under paragraph (2), joint resolution disapproving the determination of the President contained in such certification.

"(B)(i) Any such joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

"(ii) For the purpose of expediting the consideration and enactment of joint resolution under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

"(5) Any country for which the President has not made a certification under paragraph (2) or with respect to which the Congress has enacted a joint resolution disapproving such certification may not receive United States assistance as defined by subsection (i)(4) of this section or the financing described in paragraph (1)(B) of this subsection unless—

"(A) the President makes a certification under paragraph (2) and the Congress does not enact a joint resolution of disapproval; or

"(B) the President submits at any other time a certification of the matters described in paragraph (2) with respect to such country and the Congress enacts, in accordance with the procedures of paragraph (4), a joint resolution approving such certification.".

(b) REPORTING DATE.—Section 481(e) of such Act is amended by striking out "February" and inserting in lieu thereof "March".

(c) DEFINITION.—Section 481(i) of such Act is amended—

"(1) by striking out "and" at the end of paragraph (3);

"(2) by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and"; and

"(3) by adding at the end thereof the following new paragraph:

"(5) the term 'major drug-transit country' means a country—

"(A) that is a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States;

"(B) through which are transported such drugs or substances; or

"(C) through which significant sums of drug-related profits or monies are laundered with the knowledge or complicity of the government.".

(d) CHILD SURVIVAL FUND.—Section 481(i)(4) of such Act is amended by striking out "or (vi)" and inserting in lieu thereof "(vi) assistance from the Child Survival Fund under section 1049(c)(2) of this Act, or (vii)".

SEC. 2006. DEVELOPMENT OF HERBICIDES FOR AERIAL COCA ERADICATION.

The Secretary of State shall use not less than $1,000,000 of the funds made available for fiscal year 1987 to carry out chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to international narcotics control) to finance research on and the development and testing of safe and effective herbicides for use in the aerial eradication of coca.

SEC. 2007. REVIEW OF EFFECTIVENESS OF INTERNATIONAL NARCOTICS CONTROL ASSISTANCE PROGRAM.

(a) REQUIREMENT FOR INVESTIGATION.—The Comptroller General shall conduct a thorough and complete investigation to determine the effectiveness of the assistance provided pursuant to chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to international narcotics control).

(b) REPORTS TO CONGRESS.—

(1) PERIODIC REPORTS.—The Comptroller General shall report to the Congress periodically as the various portions of the investigation conducted pursuant to subsection (a) are completed.

(2) FINAL REPORT.—Not later than March 1, 1988, the Comptroller General shall submit a final report to the Congress on the results of the investigation. This report shall include such recommendations for administrative or legislative action as the Comptroller General finds appropriate based on the investigation.

SEC. 2008. EXTRADITION TO THE UNITED STATES FOR NARCOTICS-RELATED OFFENSES.

Section 481(e)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e)(3); relating to the annual international narcotics control report) is amended by inserting after subparagraph (C) the following new subparagraph:

"(D) A discussion of the extent to which such country has cooperated with the United States narcotics control efforts through the extradition or prosecution of drug traffickers, and, where appropriate, a description of the status of negotiations with such country to negotiate a new or updated extradition treaty relating to narcotics offenses."

SEC. 2009. FOREIGN POLICE ARREST ACTIONS.

Section 481(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(c); commonly known as the Mansfield amendment) is amended to read as follows:

"(c)(1) No officer or employee of the United States may directly effect an arrest in any foreign country as part of any foreign police action with respect to narcotics control efforts, notwithstanding any other provision of law. This paragraph does not prohibit an officer or employee from assisting foreign officers who are effecting an arrest.

"(2) Unless the Secretary of State, in consultation with the Attorney General, has determined that the application of this paragraph with respect to that foreign country would be harmful to the national interests of the United States, no officer or employee of the United States may engage or participate in any direct police arrest action in a foreign country with respect to narcotics control efforts, notwithstanding any other provision of law. Nothing in paragraph (1) shall be construed to allow United States officers or employees to engage or participate in activities prohibited by this paragraph in a country with respect to which this paragraph applies.

"(3) Paragraphs (1) and (2) do not prohibit an officer or employee from taking direct action to protect life or safety if exigent circumstances arise which are unanticipated and which pose an immediate threat to United States officers or employees, officers or employees of a foreign government, or members of the public.

"(4) With the agreement of a foreign country, paragraphs (1) and (2) shall not apply with respect to maritime law enforcement operations in the territorial sea of that country.

"(5) No officer or employee of the United States may interrogate or be present during the interrogation of any United States person arrested in any foreign country with respect to narcotics control efforts without the written consent of such person.

"(6) This subsection shall not apply to the activities of the United States Armed Forces in carrying out their responsibilities under applicable Status of Forces arrangements.".

SEC. 2010. ISSUANCE OF DIPLOMATIC PASSPORTS FOR DRUG ENFORCEMENT ADMINISTRATION AGENTS ABROAD.

The Congress commends the decision of the Secretary of State to issue diplomatic passports, rather than official passports, to officials and employees of the Drug Enforcement Administration who are assigned abroad. The Secretary shall report to the Congress before making any change in this policy.

SEC. 2011. INFORMATION-SHARING SO THAT VISAS ARE DENIED TO DRUG TRAFFICKERS.

(a) NEED FOR COMPREHENSIVE INFORMATION SYSTEM.—The Congress is concerned that the executive branch has not established a comprehensive information system on all drug arrests of foreign nationals in the United States so that information may be communicated to the appropriate United States embassies, even though the establishment of such a system is required by section 132 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987.

(b) ESTABLISHMENT OF SYSTEM.—The executive branch shall act expeditiously to establish the comprehensive information system required by section 132 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, and submit to the Congress a report that the system has been established.

SEC. 2012. CONDITIONS ON ASSISTANCE FOR BOLIVIA.

(a) OPERATION BLAST FURNACE.—(1) It is the sense of the Congress that—

(A) the Government of Bolivia's recent drug interdiction operations in cooperation with the United States (Operation Blast Furnace) evinced a determination to combat the growing power of the narcotics trade and narcotics traffickers;

(B) the operation has had a dramatic effect on the coca trade in that country by dropping the price of coca below the cost of production;

(C) as a result of this operation the coca trade has in the short term been sharply constricted;

(D) the restoration of non-coca dependent economic growth in Bolivia is crucial to the achievement of long-term progress in controlling illicit narcotics production; and

(E) control of illicit drug production is crucial to the survival of democratic institutions and democratic government in Bolivia.

(2) The Congress, therefore, applauds the demonstrated willingness of the Paz Estenssoro government, despite the risks of severe domestic criticism and disruptive economic consequences, to cooperate with the United States in Operation Blast Furnace.

(b) CONDITIONS ON ASSISTANCE.—Paragraph (2) of section 611 of the International Security and Development Cooperation Act of 1985 is amended by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

"(A) up to 50 percent of the aggregate amount of such assistance allocated for Bolivia may be provided at any time after the President certifies to the Congress that Bolivia has engaged in narcotics interdiction operations which have significantly disrupted the illicit coca industry in Bolivia or has cooperated with the United States in such operations; and

"(B) the remaining amount of such assistance may be provided at any time after the President certifies to the Congress that Bolivia has either met in calendar year 1986 the eradication targets for the calendar year 1985 contained in its 1983 narcotics agreements with the United States or has entered into an agreement of cooperation with the United States for implementing that plan for 1987 and beyond (including numerical eradication targets) and is making substantial progress toward the plan's objectives, including substantial eradication of illicit coca crops and effective use of United States assistance.

"In the certification required by suparagraph (B), the President shall explain why the terms of the 1983 agreement proved unattainable and the reasons why a new agreement was necessary.".

(c) RELATION TO OTHER PROVISIONS.—Nothing in the amendment made by subsection (b) shall be construed as superseding any provision of section 481 of the Foreign Assistance Act of 1961.

SEC. 2013. REPORTS AND RESTRICTIONS CONCERNING CERTAIN COUNTRIES.

(a) REPORTS.—Not later than 6 months after the date of enactment of this Act and every 6 months thereafter, the President shall prepare and transmit to the Congress a report—

(1) listing each major illicit drug producing country and each major drug-transit country—

(A) which, as a matter of government policy, encourages or facilitates the production or distribution of illegal drugs;

(B) in which any senior official of the government of such country engages in, encourages, or facilitates the production or distribution of illegal drugs;

(C) in which any member of an agency of the United States Government engaged in drug enforcement activities since January 1, 1985, has suffered or been threatened with violence, inflicted by or with the complicity of any law enforcement or other officer of such country or any political subdivision thereof; or

(D) which, having been requested to do so by the United States Government, fails to provide reasonable cooperation to lawful activities of United States drug enforcement agents, including the refusal of permission to such agents engaged in interdiction of aerial smuggling into the United States to pursue suspected aerial smugglers a reasonable distance into the airspace of the requested country; and

(2) describing for each country listed under paragraph (1) the activities and identities of officials whose activities caused such country to be so listed.

(b) RESTRICTIONS.—No United States assistance may be furnished to any country listed under subsection (a)(1), and the United States representative to any multilateral development bank shall vote to oppose any loan or other use of the funds of such bank for the benefit of any country listed under subsection (a)(1), unless the President certifies to the Congress that—

(1) overriding vital national interests require that provision of such assistance;

(2) such assistance would improve the prospects for cooperation with such country in halting the flow of illegal drugs; and

(3) the government of such country had made bona fide efforts to investigate and prosecute appropriate charges for any crime described in subsection (a)(1)(C) which may have been committed in such country.

(c) RELATION TO OTHER PROVISIONS.—The restrictions contained in subsection (b) are in addition to the restrictions contained in section 481(h) of the Foreign Assistance Act of 1961 or any other provision of law.

(d) DEFINITIONS.—For purposes of this section, the terms "major illicit drug producing country", "major drug-transit country", and "United States assistance" have the same meaning as is given to those terms by section 481(i) of the Foreign Assistance Act of 1961.

SEC. 2014. COMBATING NARCOTERRORISM.

(a) FINDING.—The Congress finds that the increased cooperation and collaboration between narcotics traffickers and terrorist groups constitutes a serious threat to United States national security interests and to the political stability of numerous other countries, particularly in Latin America.

(b) IMPROVED CAPABILITY FOR RESPONDING TO NARCOTERRORISM.—The President shall take concrete steps to improve the capability of the executive branch—

(1) to collect information concerning the links between narcotics traffickers and the act of terrorism abroad, and

(2) to develop an effective and coordinated means for responding to the threat which those links pose.

Not later than 90 days after the date of enactment of this Act, the President shall report to the Congress on the steps taken pursuant to this subsection.

(c) ADMINISTRATION OF JUSTICE PROGRAM.—Of the amounts made available for fiscal year 1987 to carry out section 534 of the Foreign Assistance Act of 1961 (22 U.S.C. 2346c; relating to the administration of justice program), funds may be used to provide to Colombia or other countries in the region such assistance as they may request for protection of judicial or other officials who are targets of narcoterrorist attacks.

(d) REWARD CONCERNING JORGE LUIS OCHOA VASQUEZ.—It is the sense of the Congress that the authority of section 36(b) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708)b)), as amended by section 502(a) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99-399; enacted August 27, 1986), should be used expeditiously to establish a reward of up to $500,000 for information leading to the arrest or conviction of Jorge Luis Ochoa Vasquez for narcotics-related offenses.

SEC. 2015. INTERDICTION PROCEDURES FOR VESSELS OF FOREIGN REGISTRY.

(a) FINDING.—The Congress finds that—

(1) the interdiction by the United States Coast Guard of vessels suspected for carrying illicit narcotics can be a difficult procedure when the vessel is of foreign registry and is located beyond the customs waters of the United States;

(2) before boarding and inspecting such a vessel, the Coast Guard must obtain consent from either the master of the vessel or the country of registry; and

(3) this process, and obtaining the consent of the country of registry to further law enforcement action, may delay the interdiction of the vessel by 3 or 4 days.

(b) NEGOTIATIONS CONCERNING INTERDICTION PROCEDURES.—

(1) The Congress urges the Secretary of State, in consultation with the Secretary of the department in which the Coast Guard is operating, to increase effects to negotiate with relevant countries procedure which will facilitate interdiction of vessels suspected of carrying illicit narcotics.

(2) If a country refuses to negotiate with respect to interdiction procedures, the President shall take appropriate actions directed against that country, which may include the denial of access to United States ports to vessels registered in that country.

(3) The Secretary of State shall submit reports to the Congress semiannually identifying those countries which have failed to negotiate with respect to interdiction procedures.

SEC. 2017. ASSESSMENT OF NARCOTICS TRAFFICKING FROM AFRICA.

The President shall direct that an updated threat assessment of narcotics trafficking from Africa be prepared. If it is determined that an increased threat exists, the assessment shall examine the need for the United States to provide increased narcotics control training for African countries.

SEC. 2018. POLICY TOWARD MULTILATERAL DEVELOPMENT BANKS.

Section 481(a) of the Foreign Assistance Act of 1961 is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

"(3) In order to promote international cooperation in combatting international trafficking in illicit narcotics, it shall be the policy of the United States to use its voice and vote in multilateral development banks to promote the development and implementation in the major illicit drug producing countries of programs for the reduction and eventual eradication of narcotic drugs and other controlled substances, including appropriate assistance in conjunction with effective programs of illicit crop eradication.".

SEC. 2018. MULTILATERAL DEVELOPMENT BANK ASSISTANCE FOR DRUG ERADICATION AND CROP SUBSTITUTION PROGRAMS.

(a) MDB ASSISTANCE FOR DEVELOPMENT AND IMPLEMENTATION OF DRUG ERADICATION PROGRAM.—The Secretary of the Treasury shall instruct the United States Executive Directors of the multilateral development banks to initiate discussions with other Directors of their respective banks and to propose that all possible assistance be provided to each major illicit drug producing country for the development and implementation of a drug eradication program, including technical assistance, assistance in conducting feasibility studies and economic analyses, and assistance for alternate economic activities.

(b) INCREASES IN MULTILATERAL DEVELOPMENT BANK LENDING FOR CROP SUBSTITUTION PROJECTS.—The Secretary of the Treasury shall instruct the United States Executive Directors of the multilateral development banks to initiate discussions with other Directors of their respective banks and to propose that each such bank increase the amount of lending by such bank for crop substitution programs which will provide an economic alternative for the cultivation of production of illicit narcotic drugs or other controlled substances in major illicit drug producing countries, to the extent such countries develop and maintain adequate drug eradication programs.

(c) NATIONAL ADVISORY COUNCIL REPORT.—The Secretary of the Treasury shall include in the annual report to the Congress by the National Advisory Council on International Monetary and Financial Policies a detailed accounting of the manner in which and the extent to which the provisions of this section have been carried out.

(d) DEFINITIONS.—For purposes of this section—

(1) MULTILATERAL DEVELOPMENT BANK.—The term "multilateral development bank" means the International Bank for Reconstruction and Development, the International Development Association, the Inter-American Development Bank, the African Development Bank, and the Asian Development Bank.

(2) MAJOR ILLICIT DRUG PRODUCING COUNTRY.—The term "major illicit drug producing country" has the meaning provided in section 481(i)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(i)(2)).

(3) NARCOTIC DRUG AND CONTROLLED SUBSTANCE.—The terms "narcotic drug" and "controlled substance" have the meanings given to such terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).

SEC. 2019. DRUGS AS A NATIONAL SECURITY PROBLEM.

The Congress hereby declares that drugs are a national security problem and urges the President to explore the possibility of engaging such essentially security-oriented organizations as the North Atlantic Treaty Organization in cooperative drug programs.

SEC. 2020. FINDINGS CONCERNING GREATER INTERNATIONAL EFFORT TO ADDRESS DRUG THREAT.

The Congress finds that—

(1) in response to the growing narcotics threat to the international community—

(A) the Single Convention on Narcotic Drugs, 1961, the 1972 Protocol amending that Convention, and the Convention on Psychotropic Substances were adopted under United Nations asupices, and

(B) the United Nations has created various entities to deal with drug abuse control and prevention; and

(2) a greater international effort is required to address this threat, such as additional or increased contributions by other countries to the United Nations Fund for Drug Abuse and Control and greater coordination of enforcement and eradication efforts.

SEC. 2021. INTERNATIONAL CONFERENCE ON DRUG ABUSE AND ILLICIT TRAFFICKING.

(a) CONGRESSIONAL SUPPORT.—The Congress hereby declares its support for United Nations General Assembly Resolution 40/122 adopted on December 13, 1985, in which the General Assembly decided to convene in 1987, an International Conference on Drug Abuse and Illicit Trafficking in order to generate universal action to combat the drug problem in all its forms at the national, regional, and international levels, and to adopt a comprehensive outline of future activities.

(b) UNITED STATES PARTICIPATION.—With respect to United States participation in the International Conference on Drug Abuse and Illicit Trafficking, the Congress calls on the President—

(1) to appoint the head of the United States delegation well in advance of the conference; and

(2) to ensure that necessary resources are available for United States preparation and participation.

(c) REPORT TO CONGRESS.—Not later than April 30, 1987, the President shall report to the Congress on the status of United States preparations for the International Conference on Drug Abuse and Illicit Trafficking, including the status of naming the delegation, the issues expected to arise, and United States policy initiatives to be taken at the conference.

SEC. 2022. EFFECTIVENESS OF INTERNATIONAL DRUG PREVENTION AND CONTROL SYSTEM.

(a) STUDY.—The United States should seek to improve the program and budget effectiveness of United Nations entities related to narcotics prevention and control by studying the capability of existing United Nations drug-related declarations, conventions, and entities to heighten international awareness and promote the necessary strategies for international action, to strengthen international cooperation, and to make effective use of available United Nations funds.

(b) REPORT TO CONGRESS.—Not later than April 30, 1987, the President shall report to the Congress any recommendations that may result from this study.

SEC. 2223. NARCOTICS CONTROL CONVENTIONS.

The Congress—

(1) urges that the United Nations Commission on Narcotic Drugs complete work as quickly as possible, consistent with the objective of obtaining an effective agreement, on a new draft convention against illicit traffic in narcotic drugs and psychotropic substances, in accordance with the mandate given the Commission by United Nations General Assembly Resolution 39/141; and

(2) calls for more effective implementation of existing conventions relating to narcotics.

SEC. 2024. MEXICO-UNITED STATES INTERGOVERNMENTAL COMMISSION.

(a) NEGOTIATIONS TO ESTABLISH.—In accordance with the resolution adopted by the 26th Mexico-United Interparliamentay Conference which recommended that the Government of Mexico and the Government of the United States establish a Mexico-United States Intergovernmental Commission on Narcotics and Psychotropic Drug Abuse and Control, the President should direct the Secretary of State, in conjunction with the National Drug Enforcement Policy Board, to enter into negotiations with the Government of Mexico to create such a joint intergovernmental commission.

(b) MEMBERSHIP.—The commission, which should meet semiannually, should include members of the Mexican Senate and Chamber of Deputies and the United States House of Representatives and Senate, together with members of the Executive departments of each Government responsible for drug abuse, education, prevention, treatment, and law enforcement.

(c) REPORT TO CONGRESS.—Not later than 90 days after the date of enactment of this Act, the Secretary of State shall report to the Congress on the progress being made in establishing a commission in accordance with subsection (a).

SEC. 2025. OPIUM PRODUCTION IN PAKISTAN.

(a) FINDINGS.—The Congress finds that—

(1) the production of opium in Pakistan is expected to more than double in the 1985-1986 growing season, posing an increased threat to the health and welfare of the people of Pakistan and the people of the United States; and

(2) despite past achievements, the current eradication program in Pakistan, which employs manual eradication of opium poppies, has proven inadequate to meet this new challenge.

(b) NEED FOR MORE EFFECTIVE DRUG CONTROL PROGRAM.—The Congress urges that the Government of Pakistan adopt and implement a comprehensive narcotics control program which would provide for more effective prosecution of drug traffickers, increased interdiction, and aerial eradication of opium poppies.

(c) REPORT TO CONGRESS.—The Secretary of State shall report to the Congress not later than 67 days after the date of enactment of this Act with Respect to the adoption and implementation by the Government of Pakistan of a comprehensive narcotics control program in accordance with subsection (b).

SEC. 2026. OPIUM PRODUCTION IN IRAN, AFGHANISTAN, AND LAOS.

The Congress calls on the President to instruct the United States Ambassador to the United Nations to request that the United Nations Secretary General raise with delegations to the International Conference on Drug Abuse and Illicit Trafficking the problem of illicit drug production in Iran, Afghanistan, and Laos, the largest opium poppy producing countries which do not have narcotics control programs.

SEC. 2027. INCREASED FUNDING FOR USIA DRUG EDUCATION PROGRAMS.

In addition to amounts otherwise authorized to be appropriated, there is authorized to be appropriated for the United States Information Agency for fiscal year 1987 $2,000,000 which shall be available only for increasing drug education programs abroad. These programs may include—

(1) the distribution of films and publications which demonstrate the impact of drugs on crime and health; and

(2) exchange of persons programs and international visitor programs involving students, educators, and scientists.

SEC. 2028. INCREASED FUNDING FOR AID DRUG EDUCATION PROGRAMS.

In addition to amounts otherwise authorized to be appropriated, there are authorized to be appropriated to the President for fiscal year 1987 $3,000,000 to carry out chapter 1 of part I of the Foreign Assistance Act of 1961, which amount shall be pursuant to section 126(b)(2) of that Act for additional activities aimed at increasing awareness of the effects of production and trafficking of illicit narcotics on source and transit countries.

SEC. 2029. REPORTS TO CONGRESS ON DRUG EDUCATION PROGRAMS ABROAD.

The Director of the United States Information Agency and the Administrator of the Agency for International Development shall include in their annual reports to the Congress a description of the drug education programs carried out by their respective agencies.

SEC. 2030. NARCOTICS CONTROL EFFORTS IN MEXICO.

(a) CONGRESSIONAL FINDINGS.—The Congress finds—

(1) in their meeting in August 1986, President de la Madrid Hurtado and President Reagan recognized the unique relationship between our two countries and the importance and the desire to respect the sovereignty of each nation;

(2) further, the United States government has actively worked to support the Mexican government in easing its international debt burden;

(3) Both presidents pledged their cooperation in drug eradication, enforcement and education;

(4) This pledge of cooperation has not been realized fully because of the inadequate response of the Mexican government in:

(A) fully investigating the 1985 murders of U.S. Drug Enforcement Administration agent Enrique Camarena Salazar and his pilot, Alfedo Zavala Avelar;

(B) fully investigating the 1986 detention and torture of U.S. Drug Enforcement Administration agent Victor Cortez, Junior;

(C) bringing to trial and effectively prosecuting those responsible for the Camarena and Zavala murders and those responsible for the detention and torture of Cortez;

(D) using effectively and efficiently the fleet of aircraft provided by the United States government for drug eradication and interdiction; and

(E) preventing drug trafficking and drug-related violence on the U.S.-Mexican border.

(b) Therefore, it is the sense of Congress that unless substantial progress is demonstrated in the near future on the issues described in subparagraph (A)(4), the President should consider taking one or more of the following measures:

(1) imposition of a mandatory travel advisory for all of Mexico;

(2) restrictions on foreign assistance (including further disbursements from the Exchange Stabilization Fund and Federal Reserve Bank);

(3) denial of favorable tariff treatment for Mexican products;

(4) denial of favorable U.S. votes in multilateral development banks.

(c) PROSECUTION OF THOSE RESPONSIBLE FOR THE TORTURE AND MURDER OF DEA AGENTS.—Of the funds allocated for assistance for Mexico for fiscal year 1987 under chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to international narcotics control), $1,000,000 shall be withheld from expenditure until the President reports to the Congress that the Government of Mexico—

(1) has fully investigated the 1985 murders of Drug Enforcement Administration agent Enrique Camarena Salazar and his pilot Alfredo Zavala Avelar;

(2) has fully investigated the 1986 detention and torture of Drug Enforcement Administration agent Victor Cortez, Junior; and

(3) has brought to trial and is effectively prosecuting those responsible for those murders and those responsible for that detention and torture.

TITLE III—INTERDICTION

SEC. 3001. SHORT TITLE.

This title may be cited as the "National Drug Interdiction Improvement act of 1986".

SEC. 3002. FINDINGS.

The Congress hereby finds that—

(1) a balanced, coordinated, multifaceted strategy for combating the growing drug abuse and drug trafficking problem in the United States is essential in order to stop the flow and abuse of drugs within our borders;

(2) a balanced, coordinated, multifaceted strategy for combating the narcotics drug abuse and trafficking in the United States should include—

(A) increased investigations of large networks of drug smuggler organizations;

(B) source country drug eradication;

(C) increased emphasis on stopping narcotics traffickers in countries through which drugs are transshipped;

(D) increased emphasis on drug education programs in the schools and workplaces;

(E) increased Federal Government assistance to State and local agencies, civic groups, school systems, and officials in their efforts to combat the drug abuse and trafficking problem at the local level; and

(F) increased emphasis on the interdiction of drugs and drug smugglers at the borders of the United States, in the air, at sea, and on the land;

(3) funds to support the interdiction of narcotics smugglers who threaten the transport of drugs through the air, on the sea, and across the land borders of the United States should be emphasized in the Federal Government budget process to the same extent as the other elements of a comprehensive antidrug effort are emphasized;

(4) the Department of Defense and the use of its resources should be an integral part of a comprehensive, national drug interdiction program;

(5) the Federal Government civilian agencies engaged in drug interdiction, particularly the United States Customs Service and the Coast Guard, currently lack the aircraft, ships, radar, command, control, communications, and intelligence (C3I) system, and manpower resources necessary to mount a comprehensive attack on the narcotics traffickers who threaten the United States;

(6) the civilian drug interdiction agencies of the United States are currently interdicting only a small percentage of the illegal, drug smuggler penetrations in the United States every year;

(7) the budgets for our civilian drug interdiction agencies, primarily the United States Customs Service and the Coast Guard, have not kept pace with those of the traditional investigative law enforcement agencies of the Department of Justice; and

(8) since the amendment of the Posse Comitatus Act (18 U.S.C. 1385) in 1981, the De-

partment of Defense has assisted in the effort to interdict drugs, but they can do more.

SEC. 3003. PURPOSES.

It is the purpose of this title—

(1) to increase the level of funding and resources available to civilian drug interdiction agencies of the Federal Government;

(2) to increase the level of support from the Department of Defense as consistent with the Posse Comitatus Act, for interdiction of the narcotics traffickers before such traffickers penetrate the borders of the United States and

(3) to improve other drug interdiction programs of the Federal Government.

Subtitle A—Department of Defense Drug Interdiction Assistance

SEC. 3051. SHORT TITLE.

This subtitle may be cited as the "Defense Drug Interdiction Assistance Act".

SEC. 3052. AUTHORIZATION.

(a) AUTHORIZATION OF APPROPRIATIONS FOR ENHANCED DRUG INTERDICTION ACTIVITIES.—Funds are hereby authorized to be appropriated to the Department of Defense for fiscal year 1987 for enhancement of drug interdiction assistance activities of the Department as follows:

(1) For procurement of aircraft for the Navy, $138,000,000, to be available for (A) the refurbishment and upgrading, for drug interdiction purposes, of four existing E-2C Hawkeye surveillance aircraft or any other aircraft of the Navy which the Secretary considers better suited than E-2C Hawkeye surveillance aircraft to perform the drug interdiction mission, and (B) the procurement of four replacement aircraft (of the same type of aircraft refurbished and upgraded under the authorization in this paragraph) and related spares for the Navy.

(2) For procurement of seven radar aerostats, $99,500,000.

(3) For procurement of eight Blackhawk helicopters, $40,000,000.

(b) LOAN OF EQUIPMENT TO LAW ENFORCEMENT AGENCIES.—(1)(A) The Secretary of Defense shall make two of the existing aircraft refurbished and upgraded under subsection (a)(1) available to the Customs Service and the other two of such existing aircraft available to the Coast Guard.

(B) The Customs Service and the Coast Guard shall each have the responsibility for operation and maintenance costs attributable to the aircraft made available to the Customs Service and the Coast Guard, respectively, under subparagraph (A).

(2) The Secretary of Defense shall make the radar aerostats acquired under subsection (a)(2) and the helicopters acquired under subsection (a)(3) available to agencies of the United States designated by the Chairman of the National Drug Enforcement Policy Board established by the National Narcotics Act of 1984.

(3) Aircraft and radar aerostats shall be made available to agencies under this subsection subject to the provisions of chapter 18 of title 10, United States Code.

(c) LIMITATION ON PROCUREMENT.—Amounts appropriated or otherwise made available to the Department of Defense for procurement for fiscal year 1987 or any prior fiscal year may be obligated for equipment for enhancement of authorized drug enforcement activities of the Department of Defense under subsection (a) or any other provision of law only if the equipment—

(1) is fully supportable within the existing service support system of the Department of Defense; and

(2) reasonably relates to an existing military, war reserve, or mobilization requirement.

SEC. 3053. COAST GUARD ACTIVITIES.

(a) FUNDING FOR PERSONNEL ON NAVAL VESSELS.—(1) Of the funds appropriated for operation and maintenance for the Navy for fiscal year 1987, the sum of $15,000,000 shall be transferred to the Secretary of Transportation and shall be available only for members of the Coast Guard assigned to duty as provided in section 379 of title 10, United States Code (as added by subsection (b)).

(2) The active duty military strength level for the Coast Guard for fiscal year 1987 is hereby increased by 500 above any number otherwise provided by law.

(b) ENHANCED DRUG INTERDICTION ASSISTANCE.—(1) Chapter 18 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 379. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes

"(a) The Secretary of Defense and the Secretary of Transportation shall provide that there be assigned on board appropriate surface naval vessels at sea in a drug-interdiction area members of the Coast Guard who are trained in law enforcement and have powers of the Coast Guard under title 14, including the power to make arrests and to carry out searches and seizures.

"(b) Members of the Coast Guard assigned to duty on board naval vessels under this section shall perform such law enforcement functions (including drug-interdiction functions)—

"(1) as may be agreed upon by the Secretary of Defense and the Secretary of Transportation; and

"(2) as are otherwise within the jurisdiction of the Coast Guard.

"(c) No fewer than 500 active duty personnel of the Coast Guard shall be assigned each fiscal year to duty under this section. However, if at any time the Secretary of Transportation, after consultation with the Secretary of Defense, determines that there are insufficient naval vessels available for purposes of this section, such personnel may be assigned other duty involving enforcement of laws listed in section 374(a)(1) of this title.

"(d) In this section, the term 'drug-interdiction area' means an area outside the land area of the United States in which the Secretary of Defense (in consultation with the Attorney General) determines that activities involving smuggling of drugs into the United States are ongoing.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"379. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes.".

(3) Effective on the date of the enactment of this Act, section 1421 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 750), is repealed.

(c) USE OF DEPARTMENT OF DEFENSE FUNDS FOR THE COAST GUARD.—In addition to any other amounts authorized to be appropriated to the Department of Defense in fiscal year 1987, $45,000,000 shall be authorized to be appropriated for the installation of 360-degree radar systems on Coast Guard long-range surveillance aircraft. Any modifications of existing aircraft pursuant to this subsection shall comply with validated requirements and specifications developed by the Coast Guard. The limitations contained in paragraphs (1) and (2) of section 3052(c) shall apply with respect to activities carried out under this subsection.

(d) INSTALLATION OF 360-DEGREE RADAR ON COAST GUARD SURVEILLANCE AIRCRAFT.—The Secretary of Defense is authorized to use $45,000,000 for the installation of 360-degree radar systems on Coast Guard long-range surveillance aircraft. Funds to carry out this subsection shall be derived as described in section 3052(b). Any modifications of existing aircraft pursuant to this subsection shall comply with validated requirements and specifications developed by the Coast Guard.

SEC. 3054. REPORT ON DEFENSE DRUG EDUCATION ACTIVITIES.

Not later than December 1, 1986, the Secretary of Defense, in consultation with the National Drug Enforcement Policy Board and the Department of Education, shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing a discussion of—

(1) the extent to which youth enrolled in schools operated by the Department of Defense for dependent members of the Armed Forces are receiving education on drug and substance abuse,

(2) the types of drug education programs that are currently being provided in such schools,

(3) whether additional drug education programs are needed in such schools, and

(4) the extent to which drug education for youth in grades kindergarten through 12 include or should include preventive peer counseling classes.

SEC. 3055. DRIVING WHILE IMPAIRED.

Section 911 of title 10, United States Code, is amended by inserting "or while impaired by a substance described in section 912a(b) of this title (article 112a(b))," after "manner,".

SEC. 3056. ASSISTANCE TO CIVILIAN LAW ENFORCEMENT AND EMERGENCY ASSISTANCE BY DEPARTMENT OF DEFENSE PERSONNEL

(a) ASSISTANCE TO CIVILIAN LAW ENFORCEMENT.—Section 374(a) of title 10, United States Code, is amended by striking out the period at the end and inserting in lieu thereof "or with respect to assistance that such agency is authorized to furnish to any foreign government which is involved in the enforcement of similar laws".

(b) EMERGENCY ASSISTANCE.—Section 374(c) of such title is amended to read as follows:

"(c)(1) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used as a base of operations outside the land area of the United States (or any territory, commonwealth, or possession of the United States) by Federal law enforcement officials—

"(A) to facilitate the enforcement of a law listed in subsection (a); and

"(B) to transport such law enforcement officials in connection with such operations;

if the Secretary of Defense, the Attorney General, and the Secretary of State jointly determine that an emergency circumstance exists.

"(2)(A) Subject to subparagraph (B), equipment operated by or with the assistance of personnel assigned under subsection (a) may not be used to interdict or interrupt the passage of vessels and aircraft.

"(B) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used to intercept vessels and aircraft outside the land area of the United States (or any territory, commonwealth, or possession of the United States) for the pur-

poses of communicating with such vessels and aircraft to direct such vessels and aircraft to go to a location designated by appropriate civilian officials if the Secretary of Defense, the Attorney General, and the Secretary of State jointly determine that an emergency circumstance exists and that enforcement of a law listed in subsection (a) would be seriously impaired if such use of equipment were not permitted. Such use of equipment may continue into the land area of the United States (or any territory or possession of the United States) in cases involving the hot pursuit of vessels or aircraft where such pursuit began outside such land area.

"(3) For purposes of this subsection, an emergency circumstance exists when—

"(A) the size or scope of the suspected criminal activity in a given situation poses a serious threat to the interest of the United States; and

"(B) the assistance described in this subsection would significantly enhance the enforcement of a law listed in subsection (a).".

SEC. 3057. ADDITIONAL DEPARTMENT OF DEFENSE DRUG LAW ENFORCEMENT ASSISTANCE.

(a) GENERAL REQUIREMENT.—(1) Within 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Congress the following:

(A) A detailed list of all forms of assistance that shall be made available by the Department of Defense to civilian drug law enforcement and drug interdiction agencies, including the United States Customs Service, the Coast Guard, the Drug Enforcement Administration, and the Immigration and Naturalization Service.

(B) A detailed plan for promptly lending equipment and rendering drug interdiction-related assistance included on such list.

(2) The list required by paragraph (1)(A) shall include, but not be limited to, a description of the following matters:

(A) Surveillance equipment suitable for detecting air, land, and marine drug transportation activities.

(B) Communications equipment, including secure communications.

(C) Support available from the reserve components of the Armed Forces for drug interdiction operations of civilian drug law enforcement agencies.

(D) Intelligence on the growing, processing, and transshipment of drugs in drug source countries and the transshipment of drugs between such countries and the United States.

(E) Support from the Southern Command and other unified and specified commands that is available to assist in drug interdiction.

(F) Aircraft suitable for use in air-to-air detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(G) Marine vessels suitable for use in maritime detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(H) Such land vehicles as may be appropriate for support activities relating to drug interdiction operations by civilian drug law enforcement agencies, including the Customs Service, the Immigration and Naturalization Service, and other Federal agencies having drug interdiction or drug eradication responsibilities.

(b) COMMITTEE APPROVAL AND FINAL IMPLEMENTATION.—Within 30 days after the date on which the Congress receives the list and plan submitted under such subsection, the Committees on Armed Services of the Senate and the House of Representatives shall submit their approval or disapproval of such list and plan to the Secretary of Defense. Upon receipt of such approval or disapproval, the Secretary shall immediately convene a conference of the heads of the Federal Government agencies with jurisdiction over drug law enforcement, including the Customs Service, the Coast Guard, and the Drug Enforcement Administration, to determine the appropriate distribution of the assets, items of support, or other assistance to be made available by the Department of Defense to such agencies. Not later than 60 days after the date on which such conference convenes, the Secretary of Defense and the heads of such agencies shall enter into appropriate memoranda of agreement specifying the distribution of such assistance.

(c) EQUIPMENT SUBJECT TO SECTION 3052(c).—Equipment identified in this section is subject to the provisions of section 3052(c).

(d) APPLICABILITY.—Subsections (a) and (b) shall not apply to any assets, equipment, items of support, or other assistance provided or authorized in any other provision of this title.

(e) REVIEW BY GENERAL ACCOUNTING OFFICE.—The Comptroller General of the United States shall monitor the compliance of the Department of Defense with subsections (a) and (b). Not later than 90 days after the date on which the conference is convened under subsection (b), the Comptroller General shall transmit to the Congress a written report containing the Comptroller General's findings regarding the compliance of the Department of Defense with such subsections. The report shall include a review of the memoranda of agreement entered into under subsection (b).

SEC. 3058. GRADE OF DIRECTOR OF DEPARTMENT OF DEFENSE TASK FORCE ON DRUG ENFORCEMENT.

During fiscal year 1987, the number of officers of the Marine Corps authorized under section 525(b) of title 10, United States Codes, to be on active duty in grades above major general is increased by one during any period that an officer of the Marine Corps is serving as the Director of the Department of Defense Task Force on Drug Enforcement. An additional officer in a grade above major general by reason of this section may not be in the grade of general.

SEC. 3059. CIVIL AIR PATROL.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Civil Air Patrol, the all-volunteer civilian auxiliary of the Air force, can increase its participation in and make significant contributions to the drug interdiction efforts of the Federal Government, and

(2) the Secretary of the Air Force should fully support that participation.

(b) AUTHORIZATION.—In addition to any other amounts appropriated for the Civil Air Patrol for fiscal year 1987, there are authorized to be appropriated for the Civil Air Patrol, out of any unobligated and uncommitted balances of appropriations for the Department of Defense for fiscal year 1986 which are carried forward into fiscal year 1987, $7,000,000 for the acquisition of the major items of equipment needed by the Civil Air Patrol for drug interdiction surveillance and reporting missions.

(c) REPORTS.—(1) The Secretary of the Air Force shall submit to the Committees on Appropriations and on Armed Services of the Senate and the House of Representatives quarterly reports which contain the following information:

(A) A description of the manner in which any funds are used under subsection (b).

(B) A detailed description of the activities of the Civil Air Patrol in support of the Federal Government's drug interdiction program.

(2) The first report under paragraph (1) shall be submitted on the last day of the first quarter ending not less than 90 days after the date of the enactment of this Act.

Subtitle B—Customs Enforcement

SEC. 3101. SHORT TITLE.

This subtitle may be cited as the "Customs Enforcement Act of 1986".

PART 1—AMENDMENTS TO THE TARIFF ACT OF 1930

SEC. 3111. DEFINITIONS.

Section 401 of the Tariff Act of 1930 (19 U.S.C. 1401) is amended—

(1) by inserting ", and monetary instruments as defined in section 5312 of title 31, United States Code" before the period in subsection (c);

(2) by striking out "The term" in subsection (k) and inserting in lieu thereof "(1) The term";

(3) by adding at the end of subsection (k) the following new paragraph:

"(2) For the purposes of sections 432, 433, 434, 448, 585, and 586, any vessel which—

"(A) has visited any hovering vessel;

"(B) has received merchandise while in the customs waters beyond the territorial sea; or

"(C) has received merchandise while on the high seas;

shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place."; and

(4) by adding at the end thereof the following:

"(m) CONTROLLED SUBSTANCE.—The term 'controlled substance' has the meaning given that term in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)). For purposes of this Act, a controlled substance shall be treated as merchandise the importation of which into the United States is prohibited, unless the importation is authorized under—

"(1) an appropriate license or permit; or

"(2) the Controlled Substances Import and Export Act.".

SEC. 3112. REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.

Section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) is amended to read as follows:

"SEC. 433. REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.

"(a) VESSEL ARRIVAL.—(1) Immediately upon the arrival at any port or place within the United States or the Virgin Islands of—

"(A) any vessel from a foreign port or place;

"(B) any foreign vessel from a domestic port; or

"(C) any vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made;

the master of the vessel shall report the arrival at the nearest customs facility or such other place as the Secretary may prescribe by regulations.

"(2) The Secretary may by regulation—

"(A) prescribe the manner in which arrivals are to be reported under paragraph (1); and

"(B) extend the time in which reports of arrival must be made, but not later than 24 hours after arrival.

"(b) VEHICLE ARRIVAL.—(1) Vehicles may arrive in the United States only at border crossing points designated by the Secretary.

"(2) Except as otherwise authorized by the Secretary, immediately upon the arrival of any vehicle in the United States at a border crossing point, the person in charge of the vehicle shall—

"(A) report the arrival; and

"(B) present the vehicle, and all persons and merchandise (including baggage) on board, for inspection;

to the customs officer at the customs facility designated for that crossing point.

"(c) AIRCRAFT ARRIVAL.—The pilot of any aircraft arriving in the United States or the Virgin Islands from any foreign airport or place shall comply with such advance notification, arrival reporting, and landing requirements as the Secretary may by regulation prescribe.

"(d) PRESENTATION OF DOCUMENTATION.—The master, person in charge of a vehicle, or aircraft pilot shall present to customs officers such documents, papers, or manifests as the Secretary may by regulation prescribe.

"(e) PROHIBITION ON DEPARTURES AND DISCHARGE.—Unless otherwise authorized by law, a vessel, aircraft, or vehicle may, after arriving in the United States or the Virgin Islands—

"(1) depart from the port, place, or airport of arrival; or

"(2) discharge any passenger or merchandise (including baggage);

only in accordance with regulations prescribed by the Secretary.".

SEC. 3113. PENALTIES FOR ARRIVAL, REPORTING, ENTRY, AND DEPARTURE VIOLATIONS.

(a) FOR VIOLATIONS OF ARRIVAL, REPORTING, AND ENTRY REQUIREMENTS.—Section 436 of the Tariff Act of 1930 (19 U.S.C. 1436) is amended to read as follows:

"SEC. 436. PENALTIES FOR VIOLATIONS OF THE ARRIVAL, REPORTING, AND ENTRY REQUIREMENTS.

"(a) UNLAWFUL ACTS.—It is unlawful—

"(1) to fail to comply with section 433;

"(2) to present any forged, altered, or false document, paper, or manifest to a customs officer under section 433(d) without revealing the facts;

"(3) to fail to make entry as required by section 434, 435, or 644 of this Act or section 1109 of the Federal Aviation Act (49 U.S.C. App. 1509); or

"(4) to fail to comply with, or violate, any regulation prescribed under any section referred to in any of paragraphs (1) through (3).

"(b) CIVIL PENALTY.—Any master, person in charge of a vehicle, or aircraft pilot who commits any violation listed in subsection (a) is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation, and any conveyance used in connection with any such violation is subject to seizure and forfeiture.

"(c) CRIMINAL PENALTY.—In addition to being liable for a civil penalty under subsection (b), any master, person in charge of a vehicle, or aircraft pilot who intentionally commits any violation listed in subsection (a) is, upon conviction, liable for a fine of not more than $2,000 or imprisonment for 1 year, or both; except that if the conveyance has, or is discovered to have had, on board any merchandise (other than sea stores or the equivalent for conveyances other than vessels) the importation of which into the United States is prohibited, such individual is liable for an additional fine of not more than $10,000 or imprisonment for not more than 5 years, or both.

"(d) ADDITIONAL CIVIL PENALTY.—If any merchandise (other than sea stores or the equivalent for conveyances other than a vessel) is imported or brought into the United States in or aboard a conveyance which was not properly reported or entered, the master, person in charge of a vehicle, or aircraft pilot shall be liable for a civil penalty equal to the value of the merchandise and the merchandise may be seized and forfeited unless properly entered by the importer or consignee. If the merchandise consists of any controlled substance listed in section 584, the master, individual in charge of a vehicle, or pilot shall be liable to the penalties prescribed in that section.".

(b) INCREASE IN PENALTIES FOR DEPARTURE BEFORE REPORT OR ENTRY.—Section 585 of the Tariff Act of 1930 (19 U.S.C. 1585) is amended—

(1) by striking out "shall be liable to a penalty of $5,000," after "vessel"; and

(2) by striking out "$500" and inserting "$5,000 for the first violation, and $10,000 for each subsequent violation,".

SEC. 3114. PENALTIES FOR UNAUTHORIZED UNLOADING OF PASSENGERS.

Section 454 (19 U.S.C. 1454), is amended by striking out "$500 for each" and inserting "$1,000 for the first passenger and $500 for each additional".

SEC. 3115. REPORTING REQUIREMENTS FOR INDIVIDUALS.

(a) AMENDMENT.—Section 459 of the Tariff Act of 1930 (19 U.S.C. 1459) is amended to read as follows:

"SEC. 459. REPORTING REQUIREMENTS FOR INDIVIDUALS.

"(a) INDIVIDUALS ARRIVING OTHER THAN BY CONVEYANCE.—Except as otherwise authorized by the Secretary, individuals arriving in the United States other than by vessel, vehicle, or aircraft shall—

"(1) enter the United States only at a border crossing point designated by the Secretary; and

"(2) immediately—

"(A) report the arrival, and

"(B) present themselves, and all articles accompanying them for inspection;

to the customs officer at the customs facility designated for that crossing point.

"(b) INDIVIDUALS ARRIVING BY REPORTED CONVEYANCE.—Except as otherwise authorized by the Secretary, passengers and crew members aboard a conveyance the arrival in the United States of which was made or reported in accordance with section 433 or 644 of this Act or section 1109 of the Federal Aviation Act of 1958, or in accordance with applicable regulations, shall remain aboard the conveyance until authorized to depart the conveyance by the appropriate customs officer. Upon departing the conveyance, the passengers and crew members shall immediately report to the designated customs facility with all articles accompanying them.

"(c) INDIVIDUALS ARRIVING BY UNREPORTED CONVEYANCE.—Except as otherwise authorized by the Secretary, individuals aboard a conveyance the arrival in the United States of which was not made or reported in accordance with the laws or regulations referred to in subsection (b) shall immediately notify a customs officer and report their arrival, together with appropriate information concerning the conveyance on or in which they arrived, and present their property for customs examination and inspection.

"(d) DEPARTURE FROM DESIGNATED CUSTOMS FACILITIES.—Except as otherwise authorized by the Secretary, any person required to report to a designated customs facility under subsection (a), (b), or (c) may not depart that facility until authorized to do so by the appropriate customs officer.

"(e) UNLAWFUL ACTS.—It is unlawful—

"(1) to fail to comply with subsection (a), (b), or (c);

"(2) to present any forged, altered, or false document or paper to a customs officer under subsection (a), (b), or (c) without revealing the facts;

"(3) to violate subsection (d); or

"(4) to fail to comply with, or violate, any regulation prescribed to carry out subsection (a), (b), (c), or (d).

"(f) CIVIL PENALTY.—Any individual who violates any provision of subsection (e) is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation.

"(g) CRIMINAL PENALTY.—In addition to being liable for a civil penalty under subsection (f), any individual who intentionally violates any provision of subsection (e) is, upon conviction, liable for a fine of not more than $5,000, or imprisonment for not more than 1 year, or both.".

(b) REPEAL.—Section 460 is repealed.

SEC. 3116. PENALTIES FOR FAILURE TO DECLARE.

Section 497 of the Tariff Act of 1930 (19 U.S.C. 1497) is amended to read as follows:

"SEC. 497. PENALTIES FOR FAILURE TO DECLARE.

"(a) IN GENERAL.—(1) Any article which—

"(A) is not included in the declaration and entry as made; and

"(B) is not mentioned before examination of the baggage begins—

"(i) in writing by such person, if written declaration and entry was required, or

"(ii) orally, if written declaration and entry was not required;

shall be subject to forfeiture and such person shall be liable for a penalty determined under paragraph (2) with respect to such article.

"(2) The amount of the penalty imposed under paragraph (1) with respect to any article is equal to—

"(A) if the article is a controlled substance, 200 percent of the value of the article; and

"(B) if the article is not a controlled substance, the value of the article.

"(b) VALUE OF CONTROLLED SUBSTANCES.—(1) Notwithstanding any other provision of this Act, the value of any controlled substance shall, for purposes of this section, be equal to the amount determined by the Secretary in consultation with the Attorney General of the United States, to be equal to the price at which such controlled substance is likely to be illegally sold to the consumer of such controlled substance.

"(2) The Secretary and the Attorney General of the United States shall establish a method of determining the price at which each controlled substance is likely to be illegally sold to the consumer of such controlled substance.".

SEC. 3117. EXAMINATION OF BOOKS AND WITNESSES.

Section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) is amended—

(1) by striking out ", required to be kept under section 508 of this Act," in subsection (a)(2) and inserting ", as defined in subsection (c)(1)(A),"; and

(2) by amending subsection (c)(1)(A) to read as follows:

"(A) The term 'records' includes statements, declarations, or documents—

"(i) required to be kept under section 508; or

"(ii) regarding which there is probable cause to believe that they pertain to merchandise the importation of which into the United States is prohibited.".

SEC. 3118. FALSE MANIFESTS; LACK OF MANIFEST.

Section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is amended—

(1) by striking out "$500" each place it appears and inserting in lieu thereof "$1,000";

(2) by striking out "$50" in subsection (a)(2) and inserting in lieu thereof "$1,000";

(3) by striking out "$25" in subsection (a)(2) and inserting in lieu thereof "$500"; and

(4) by striking out "$10" in subsection (a)(2) and inserting in lieu thereof "$200".

SEC. 3119. UNLAWFUL UNLOADING OF MERCHANDISE.

Section 586 of the Tariff Act of 1930 (19 U.S.C. 1586) is amended—

(1) by striking out "$1,000" wherever it appears and inserting "$10,000"; and

(2) by amending subsection (e)—

(A) by striking out "one league of the coast of the United States" and inserting "customs waters"; and

(B) by striking out "2 years" and inserting "15 years".

SEC. 3120. AVIATION SMUGGLING.

Part V of title IV of the Tariff Act of 1930 is amended by adding after section 589 the following new section:

"SEC. 590. AVIATION SMUGGLING.

"(a) IN GENERAL.—It is unlawful for the pilot of any aircraft to transport, or for any individual on board any aircraft to possess, merchandise knowing, or intending, that the merchandise will be introduced into the United States contrary to law.

"(b) SEA TRANSFERS.—It is unlawful for any person to transfer merchandise between an aircraft and a vessel on the high seas or in the customs waters of the United States if such person has not been authorized by the Secretary to make such transfer and—

"(1) either—

"(A) the aircraft is owned by a citizen of the United States or is registered in the United States, or

"(B) the vessel is a vessel of the United States (within the meaning of section 3(b) of the Anti-Smuggling Act (19 U.S.C. 1703(b)), or

"(2) regardless of the nationality of the vessel or aircraft, such transfer is made under circumstances indicating the intent to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully.

"(c) CIVIL PENALTIES.—Any person who violates any provision of this section is liable for a civil penalty equal to twice the value of the merchandise involved in the violation, but not less than $10,000. The value of any controlled substance included in the merchandise shall be determined in accordance with section 497(b).

"(d) CRIMINAL PENALTIES.—In addition to being liable for a civil penalty under subsection (c), any person who intentionally commits a violation of any provision of this section is, upon conviction—

"(1) liable for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, if none of the merchandise involved was a controlled substance; or

"(2) liable for a fine of not more than $250,000 or imprisonment for not more than 20 years, or both, if any of the merchandise involved was a controlled substance.

"(e) SEIZURE AND FORFEITURE.—

"(1) Except as provided in paragraph (2), a vessel or aircraft used in connection with, or in aiding or facilitating, any violation of this section, whether or not any person is charged in connection with such violation, may be seized and forfeited in accordance with the customs laws.

"(2) Paragraph (1) does not apply to a vessel or aircraft operated as a common carrier."

"(f) DEFINITION OF MERCHANDISE.—As used in this section, the term 'merchandise' means only merchandise the importation of which into the United States is prohibited or restricted.

"(g) INTENT OF TRANSFER OF MERCHANDISE.—For purposes of imposing civil penalties under this section, any of the following acts, when performed within 250 miles of the territorial sea of the United States, shall be prima facie evidence that the transportation or possession of merchandise was unlawful and shall be presumed to constitute circumstances indicating that the purpose of the transfer is to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully, and for purposes of subsection (e) or section 596, shall be prima facie evidence that an aircraft or vessel was used in connection with, or to aid or facilitate, a violation of this section:

"(1) The operation of an aircraft or a vessel without lights during such times as lights are required to be displayed under applicable law.

"(2) The presence on an aircraft of an auxiliary fuel tank which is not installed in accordance with applicable law.

"(3) The failure to identify correctly—

"(A) the vessel by name or country of registration, or

"(B) the aircraft by registration number and country of registration,

when requested to do so by a customs officer or other government authority.

"(4) The external display of false registration numbers, false country of registration, or, in the case of a vessel, false vessel name.

"(5) The presence on board of unmanifested merchandise, the importation of which is prohibited or restricted.

"(6) The presence on board of controlled substances which are not manifested or which are not accompanied by the permits or licenses required under Single Convention on Narcotic Drugs or other international treaty.

"(7) The presence of any compartment or equipment which is built or fitted out for smuggling.

"(8) The failure of a vessel to stop when hailed by a customs officer or other government authority.".

SEC. 3121. SEIZURES.

Section 594 of the Tariff Act of 1930 (19 U.S.C. 1594) is amended to read as follows:

"SEC. 594. SEIZURE OF CONVEYANCES.

"(a) IN GENERAL.—Whenever—

"(1) any vessel, vehicle, or aircraft; or

"(2) the owner or operator, or the master, pilot, conductor, driver, or other person in charge of a vessel, vehicle, or aircraft;

is subject to a penalty for violation of the customs laws, the conveyance involved shall be held for the payment of such penalty and may be seized and forfeited and sold in accordance with the customs laws. The proceeds of sale, if any, in excess of the assessed penalty and expenses of seizing, maintaining, and selling the property shall be held for the account of any interested party.

"(b) EXCEPTIONS.—No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to seizure and forfeiture under the customs laws for violations relating to merchandise contained—

"(1) on the person;

"(2) in baggage belonging to and accompanying a passenger being lawfully transported on such conveyance; or

"(3) in the cargo of the conveyance if the cargo is listed on the manifest and marks, numbers, weights and quantities of the outer packages or containers agree with the manifest;

unless the owner or operator, or the master, pilot, conductor, driver or other person in charge participated in, or had knowledge of, the violation, or was grossly negligent in preventing or discovering the violation.

"(c) PROHIBITED MERCHANDISE ON CONVEYANCE.—If any merchandise the importation of which is prohibited is found to be, or to have been—

"(1) on board a conveyance used as a common carrier in the transaction of business as a common carrier in one or more packages or containers—

"(A) that are not manifested (or not shown on bills of lading or airway bills); or

"(B) whose marks, numbers, weight or quantities disagree with the manifest (or with the bills of lading or airway bills); or

"(2) concealed in or on such a conveyance, but not in the cargo;

the conveyance may be seized, and after investigation, forfeited unless it is established that neither the owner or operator, master, pilot, nor any other employee responsible for maintaining and insuring the accuracy of the cargo manifest knew, or by the exercise of the highest degree of care and diligence could have known, that such merchandise was on board.

"(d) DEFINITIONS.—For purposes of this section—

"(1) The term 'owner or operator' includes—

"(A) a lessee or person operating a conveyance under a rental agreement or charter party; and

"(B) the officers and directors of a corporation;

"(C) station managers and similar supervisory ground personnel employed by airlines;

"(D) one or more partners of a partnership;

"(E) representatives of the owner or operator in charge of the passenger or cargo operations at a particular location; and

"(F) and other persons with similar responsibilities.

"(2) The term 'master' and similar terms relating to the person in charge of a conveyance includes the purser or other person on the conveyance who is responsible for maintaining records relating to the cargo transported in the conveyance.

"(e) COSTS AND EXPENSES OF SEIZURE.—When a common carrier has been seized in accordance with the provisions of subsection (c) and it is subsequently determined that a violation of such subsection occurred but that the vessel will be released, the conveyance is liable for the costs and expenses of the seizure and detention.".

SEC. 3122. SEARCHES AND SEIZURES.

Section 595(a) of the Tariff Act of 1930 (19 U.S.C. 1595(a)) is amended to read as follows:

"(a) WARRANT.—(1) If any officer or person authorized to make searches and seizures has probable cause to believe that—

"(A) any merchandise upon which the duties have not been paid, or which has been

otherwise brought into the United States unlawfully;

"(B) any property which is subject to forfeiture under any provision of law enforced or administered by the United States Customs Service; or

"(C) any document, container, wrapping, or other article which is evidence of a violation of section 592 involving fraud or of any other law enforced or administered by the United States Customs Service,

is in any dwelling house, store, or other building or place, he may make application, under oath, to any justice of the peace, to any municipal, county, State, or Federal judge, or to any Federal magistrate, and shall thereupon be entitled to a warrant to enter such dwelling house in the daytime only, or such store or other place at night or by day, and to search for and seize such merchandise or other article described in the warrant.

"(2) If any house, store, or other building or place, in which any merchandise or other article subject to forfeiture is found, is upon or within 10 feet of the boundary line between the United States and a foreign country, such portion thereof that is within the United States may be taken down or removed.".

SEC. 3123. FORFEITURES.

Section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a) is amended—

(1) by striking out "the proviso to" in subsection (a) and inserting "subsection (b) or (c) of";

(2) by striking out "shall" in subsection (a) and inserting "may"; and

(3) by adding at the end thereof the following new subsection:

"(c) Any merchandise that is introduced or attempted to be introduced into the United States contrary to law (other than in violation of section 592) may be seized and forfeited.".

SEC. 3124. PROCEEDS OF FORFEITED PROPERTY.

Section 613 of the Tariff Act of 1930 (19 U.S.C. 1613) is amended by adding at the end thereof the following new subsections:

"(c) TREATMENT OF DEPOSITS.—If property is seized by the Secretary under law enforced or administered by the Customs Service, or otherwise acquired under section 605, and relief from the forfeiture is granted by the Secretary, or his designee, upon terms requiring the deposit or retention of a monetary amount in lieu of the forfeiture, the amount recovered shall be treated in the same manner as the proceeds of sale of a forfeited item.

"(d) EXPENSES.—In any judicial or administrative proceeding to forfeit property under any law enforced or administered by the Customs Service or the Coast Guard, the seizure, storage, and other expenses related to the forfeiture that are incurred by the Customs Service or the Coast Guard after the seizure, but before the institution of, or during, the proceedings, shall be a priority claim in the same manner as the court costs and the expenses of the Federal marshal.".

SEC. 3125. COMPENSATION TO INFORMERS.

Section 619 of the Tariff Act of 1930 (19 U.S.C. 1619) is amended to read as follows:

"(a) IN GENERAL.—If—

"(1) any person who is not an employee or officer of the United States—

"(A) detects and seizes any vessel, vehicle, aircraft, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws and reports such detection and seizure to a customs officer, or

"(B) furnishes to a United States attorney, the Secretary of the Treasury, or any customs officer original information concerning—

"(i) any fraud upon the customs revenue, or

"(ii) any violation of the customs laws or the navigation laws which is being, or has been, perpetrated or contemplated by any other person; and

"(2) such detection and seizure or such information leads to a recovery of—

"(A) any duties withheld, or

"(B) any fine, penalty, or forfeiture of property incurred;

the Secretary may award and pay such person an amount that does not exceed 25 percent of the net amount so recovered.

"(b) FORFEITED PROPERTY NOT SOLD.—If—

"(1) any vessel, vehicle, aircraft, merchandise, or baggage is forfeited to the United States and is thereafter, in lieu of sale—

"(A) destroyed under the customs or navigation laws, or

"(B) delivered to any governmental agency for official use, and

"(2) any person would be eligible to receive an award under subsection (a) but for the lack of sale of such forfeited property,

the Secretary may award and pay such person an amount that does not exceed 25 percent of the appraised value of such forfeited property.

"(c) DOLLAR LIMITATION.—The amount awarded and paid to any person under this section may not exceed $250,000 for any case.

"(d) SOURCE OF PAYMENT.—Unless otherwise provided by law, any amount paid under this section shall be paid out of appropriations available for the collection of the customs revenue.

"(e) RECOVERY OF BAIL BOND.—For purposes of this section, an amount recovered under a bail bond shall be deemed a recovery of a fine incurred.".

SEC. 3126. FOREIGN LANDING CERTIFICATES.

Section 622 of the Tariff Act of 1930 (19 U.S.C. 1622) is amended by inserting before the period at the end thereof the following: ", or to comply with international obligations".

SEC. 3127. EXCHANGE OF INFORMATION WITH FOREIGN AGENCIES.

Part V of title IV of the Tariff Act of 1930 is amended by adding at the end thereof the following new section:

"SEC. 628. EXCHANGE OF INFORMATION.

"(a) IN GENERAL.—The Secretary may by regulation authorize customs officers to exchange information or documents with foreign customs and law enforcement agencies if the Secretary reasonably believes the exchange of information is necessary to—

"(1) insure compliance with any law or regulation enforced or administered by the Customs Service;

"(2) administer or enforce multilateral or bilateral agreements to which the United States is a party;

"(3) assist in investigative, judicial and quasi-judicial proceedings in the United States; and

"(4) an action comparable to any of those described in paragraphs (1) through (4) undertaken by a foreign customs or law enforcement agency, or in relation to a proceeding in a foreign country.".

"(b) NONDISCLOSURE AND USES OF INFORMATION PROVIDED.—

"(1) Information may be provided to foreign customs and law enforcement agencies under subsection (a) only if the Secretary obtains assurances from such agencies that such information will be held in confidence and used only for the law enforcement purposes for which such information is provided to such agencies by the Secretary.

"(2) No information may be provided under subsection (a) to any foreign customs or law enforcement agency that has violated any assurances described in paragraph (1).".

SEC. 3128. INSPECTIONS AND PRECLEARANCE IN FOREIGN COUNTRIES.

Part V of title IV of the Tariff Act of 1930 is further amended by adding at the end thereof the following new section:

"SEC. 629. INSPECTIONS AND PRECLEARANCE IN FOREIGN COUNTRIES.

"(a) IN GENERAL.—When authorized by treaty or executive agreement, the Secretary may station customs officers in foreign countries for the purpose of examining persons and merchandise prior to their arrival in the United States.

"(b) FUNCTIONS AND DUTIES.—Customs officers stationed in a foreign country under subsection (a) may exercise such functions and perform such duties (including inspections, searches, seizures and arrests) as may be permitted by the treaty, agreement or law of the country in which they are stationed.

"(c) COMPLIANCE.—The Secretary may by regulation require compliance with the customs laws of the United States in a foreign country and, in such a case the customs laws and other civil and criminal laws of the United States relating to the importation of merchandise, filing of false statements, and the unlawful removal of merchandise from customs custody shall apply in the same manner as if the foreign station is a port of entry within the customs territory of the United States.

"(d) SEIZURES.—When authorized by treaty, agreement or foreign law, merchandise which is subject to seizure or forfeiture under United States law may be seized in a foreign country and transported under customs custody to the customs territory to the United States to be proceeded against under the customs law.

"(e) STATIONING OF FOREIGN CUSTOMS OFFICERS IN THE UNITED STATES.—The Secretary of State, in coordination with the Secretary, may enter into agreements with any foreign country authorizing the stationing in the United States of customs officials of that country (if similar privileges are extended by that country to United States officials) for the purpose of insuring that persons and merchandise going directly to that country from the United States comply with the customs and other laws of that country governing the importation of merchandise. Any foreign customs official stationed in the United States under this subsection may exercise such functions and perform such duties as United States officials may be authorized to perform in that foreign country under reciprocal agreement.

"(f) APPLICATION OF CERTAIN LAWS.—When customs officials of a foreign country are stationed in the United States in accordance with subsection (e), and if similar provisions are applied to United States officials stationed in that country—

"(1) sections 111 and 1114 of title 18, United States Code, shall apply as if the officials were designated in those sections; and

"(2) any person who in any matter before a foreign customs official stationed in the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent state-

ments or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, is liable for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both.".

PART 2—UNDERCOVER CUSTOMS OPERATIONS

SEC. 3131. UNDERCOVER INVESTIGATIVE OPERATIONS OF THE CUSTOMS SERVICE.

(a) CERTIFICATION REQUIRED FOR EXEMPTION OF UNDERCOVER OPERATIONS FROM CERTAIN LAWS.—With respect to any undercover investigative operation of the United States Customs Service (hereinafter in this section referred to as the "Service") which is necessary for the detection and prosecution of offenses against the United States which are within the jurisdiction of the Secretary of the Treasury—

(1) sums authorized to be appropriated for the Service may be used—

(A) to purchase property, buildings, and other facilities, and to lease space, within the United States, the District of Columbia, and the territories and possessions of the United States without regard to—

(i) sections 1341 and 3324 of title 31, United States Code,

(ii) sections 3732(a) and 3741 of the Revised Statutes of the United States (41 U.S.C. 11(a) and 22),

(iii) section 305 of the Act of June 30, 1949 (63 Stat. 396; 41 U.S.C. 255),

(iv) the third undesignated paragraph under the heading "Miscellaneous" of the Act of March 3, 1877 (19 Stat. 370; 40 U.S.C. 34), and

(v) section 304(a) and (c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(a) and (c)), and

(B) to establish or to acquire proprietary corporations or business entities as part of the undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to sections 9102 and 9103 of title 31, United States Code;

(2) sums authorized to be appropriated for the Service and the proceeds from the undercover operation, may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18, United States Code, and section 3302 of title 31, United States Code; and

(3) the proceeds from the undercover operation may be used to offset necessary and reasonable expenses incurred in such operation without regard to the provisions of section 3302 of title 31, United States Code;

only upon the written certification of the Commissioner of Customs (or, if designated by the Commissioner the Deputy or an Assistant Commissioner of Customs) that any action authorized by paragraph (1), (2), or (3) of this subsection is necessary for the conduct of such undercover operation.

(b) LIQUIDATION OF CORPORATIONS AND BUSINESS ENTITIES.—If a corporation or business entity established or acquired as part of an undercover operation under paragraph (1)(B) of subsection (a) with a net value over $50,000 is to be liquidated, sold, or otherwise disposed of, the Service, as much in advance as the Commissioner or his designee determines is practicable, shall report the circumstances to the Secretary of the Treasury and the Comptroller General. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

(c) DEPOSIT OF PROCEEDS.—As soon as the proceeds from an undercover investigative operation with respect to which an action is authorized and carried out under paragraphs (2) and (3) of subsection (a) are no longer necessary for the conduct of such operation, such proceeds or the balance of such proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(d) AUDITS.—(1) The Service shall conduct a detailed financial audit of each undercover investigative operation which is closed in each fiscal year, and

(A) submit the results of the audit in writing to the Secretary of the Treasury; and

(B) not later than 180 days after such undercover operation is closed, submit a report to the Congress concerning such audit.

(2) The Service shall also submit a report annually to the Congress specifying as to its undercover investigative operations—

(A) the number, by programs, of undercover investigative operations pending as of the end of the 1-year period for which such report is submitted;

(B) the number, by programs, of undercover investigative operations commenced in the 1-year period preceding the period for which such report is submitted; and

(C) the number, by programs, of undercover investigative operations closed in the 1-year period preceding the period for which such report is submitted and, with respect to each such closed undercover operation, the results obtained and any civil claims made with respect thereto.

(e) DEFINITIONS.—For purposes of subsection (d)—

(1) The term "closed" refers to the earliest point in time at which—

(A) all criminal proceedings (other than appeals) are concluded, or

(B) covert activities are concluded, whichever occurs later.

(2) The term "employees" means employees, as defined in section 2105 of title 5 of the United States Code, of the Service.

(3) The terms "undercover investigative operation" and "undercover operation" mean any undercover investigative operation of the Service—

(A) in which—

(i) the gross receipts (excluding interest earned) exceed $50,000, or

(ii) expenditures (other than expenditures for salaries of employees) exceed $150,000; and

(B) which is exempt from section 3302 or 9102 of title 31, United States Code;

except that subparagraphs (A) and (B) shall not apply with respect to the report required under paragraph (2) of subsection (d).

PART 3—CUSTOMS SERVICE AUTHORIZATIONS AND FORFEITURE FUND

SEC. 3141. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1987 FOR THE UNITED STATES CUSTOMS SERVICE.

(a) AUTHORIZATIONS.—Section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)) is amended as follows:

"(b)(1) There are authorized to be appropriated to the Department of the Treasury not to exceed $1,001,180,000 for the salaries and expenses of the United States Customs Service for fiscal year 1987; of which—

"(A) $749,131,000 is for salaries and expenses to maintain current operating levels, and includes such sums as may be necessary to complete the testing of the prototype of the automatic license plate reader program and to implement that program;

"(B) $80,999,000 is for the salaries and expenses of additional personnel to be used in carrying out drug enforcement activities; and

"(C) $171,050,000 is for the operation and maintenance of the air interdiction program of the Service, of which—

"(i) $93,500,000 is for additional aircraft, communications enhancements, and command, control, communications, and intelligence centers, and

"(ii) $350,000 is for a feasibility and application study for a low-level radar detection system in collaboration with the Los Alamos National Laboratory.

"(2) No part of any sum that is appropriated under the authority of paragraph (1) may be used to close any port of entry at which, during fiscal year 1986—

"(A) not less than 2,500 merchandise entries (including informal entries) were made; and

"(B) not less than $1,500,000 in customs revenues were assessed.".

(b) SPECIAL EFFECTIVE DATE RULE.—If the bill H.R. 5300 (providing for reconciliation of the budget for fiscal year 1987) is enacted and includes an amendment to section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 which is identical to the amendment made by subsection (a) of this section, then the amendment made by subsection (a) shall have no effect.

SEC. 3142. CUSTOMS FORFEITURE FUND.

(a) AMENDMENT.—Section 613a of the Tariff Act of 1930 (19 U.S.C. 1613b) is amended—

(1) by amending subsection (a)—

(A) by striking out "1987" in the first sentence and inserting "1991";

(B) by inserting "(including investigative costs leading to seizures)" after "seizure" in paragraph (1);

(C) by inserting "and" after the semicolon at the end of paragraph (4);

(D) by striking out paragraph (5);

(E) by redesignating paragraph (6) as paragraph (5); and

(F) by amending the last sentence to read as follows:

"In addition to the purposes described in paragraphs (1) through (5), the fund is available for—

"(i) purchases by the Customs Service of evidence of—

"(I) smuggling of controlled substances, and

"(II) violations of the currency and foreign transaction reporting requirements of chapter 51 of title 31, United States Code, if there is a substantial probability that the violations of these requirements are related to the smuggling of controlled substances;

"(ii) the equipping for law enforcement functions of any vessel, vehicle, or aircraft available for official use by the Customs Service;

"(iii) the reimbursement, at the discretion of the Secretary, of private citizens for expenses incurred by them in cooperating with the Customs Service in investigations and undercover law enforcement operations; and

"(iv) the publicizing of the availability of rewards under section 619."; and

(2) by amending subsection (f) to read as follows:

"(f)(1) There are authorized to be appropriated from the fund for each of the fiscal years beginning with fiscal year 1987 not more than $20,000,000.

"(2) At the end of each of fiscal years 1987, 1988, 1989, and 1990, any amount in the fund in excess of $20,000,000 shall be deposited in the general fund of the Treasury. At the end of fiscal year 1991, any amount remaining in the fund shall be deposited in the general fund of the Treasury, and the fund shall cease to exist.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect October 1, 1986.

PART 4—MISCELLANEOUS CUSTOMS AMENDMENTS

SEC. 3151. RECREATIONAL VESSELS.

Section 12109(b) of title 46, United States Code, is amended by adding at the end the following: "Such vessel must, however, comply with all customs requirements for reporting arrival under section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) and all persons aboard such a pleasure vessel shall be subject to all applicable customs regulations.".

SEC. 3152. ASSISTANCE FOR CUSTOMS OFFICERS.

Section 3071 of the Revised Statutes of the United States (19 U.S.C. 507) is amended to read as follows:

"SEC. 3071. (a) Every customs officer shall—

"(1) upon being questioned at the time of executing any of the powers conferred upon him, make known his character as an officer of the Federal Government; and

"(2) have the authority to demand the assistance of any person in making any arrest, search, or seizure authorized by any law enforced or administered by customs officers, if such assistance may be necessary.

If a person, without reasonable excuse, neglects or refuses to assist a customs officer upon proper demand under paragraph (2), such person is guilty of a misdemeanor and subject to a fine of not more than $1,000.

"(b) Any person other than an officer or employee of the United States who renders assistance in good faith upon the request of a customs officer shall not be held liable for any civil damages as a result of the rendering of such assistance if the assisting person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances.".

SEC. 3153. REPORTS ON EXPORTS AND IMPORTS OF MONETARY INSTRUMENTS.

Section 5316(a)(2) of title 31, United States Code, is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

PART 5—AMENDMENTS TO THE CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT

SEC. 3161. POSSESSION, MANUFACTURE, OR DISTRIBUTION FOR PURPOSES OF UNLAWFUL IMPORTATION.

(a) AMENDMENT TO ACT.—Section 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 959) is amended—

(1) by inserting "POSSESSION," in the heading;

(2) by striking out "It shall" and inserting in lieu thereof "(a) It shall";

(3) by striking out "This section" and inserting in lieu thereof "(c) This section";

(4) by inserting "or into waters within a distance of 12 miles of the coast of the United States" after "United States" each place it appears in subsection (a); and

(5) by inserting after subsection (a) the following new subsection:

"(b) It shall be unlawful for any United States citizen on board any aircraft, or any person on board an aircraft owned by a United States citizen or registered in the United States, to—

"(1) manufacture or distribute a controlled substance; or

"(2) possess a controlled substance with intent to distribute.".

(b) CONFORMING AMENDMENT.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by striking out "Manufacture" in the item relating to section 1009 and inserting in lieu thereof "Possession, manufacture".

Subtitle C—Maritime Drug Law Enforcement Prosecution Improvements Act of 1986

SEC. 3201. SHORT TITLE.

This subtitle may be cited as the "Maritime Drug Law Enforcement Prosecution Improvements Act of 1986".

SEC. 3202. IMPROVEMENT OF PUBLIC LAW 96-350.

The Act entitled "An Act to facilitate increased enforcement by the Coast Guard of laws relating to the importation of controlled substances, and for other purposes", approved September 15, 1980 (Public Law 96-350; 94 Stat. 1159) is amended by striking all after the enacting clause and inserting in lieu thereof the following: "That this Act may be cited as the 'Maritime Drug Law Enforcement Act'.

"SEC. 2. The Congress finds and declares that trafficking in controlled substances aboard vessels is a serious international problem and is universally condemned. Moreover, such trafficking presents a specific threat to the security and societal well-being of the United States.

"SEC. 3. (a) It is unlawful for any person on board a vessel of the United States, or on board a vessel subject to the jurisdiction of the United States, to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance.

"(b) For purposes of this section, a 'vessel of the United States' means—

"(1) a vessel documented under chapter 121 of title 46, United States Code, or a vessel numbered as provided in chapter 123 of that title;

"(2) a vessel owned in whole or part by—

"(A) the United States or a territory, commonwealth, or possession of the United States;

"(B) a State or political subdivision thereof;

"(C) a citizen or national of the United States; or

"(D) a corporation created under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States;

unless the vessel has been granted the nationality of a foreign nation in accordance with article 5 of the 1958 Convention on the High Seas; and

"(3) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation.

"(c)(1) For purposes of this section, a 'vessel subject to the jurisdiction of the United States' includes—

"(A) a vessel without nationality;

"(B) a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of article 6 of the 1958 Convention on the High Seas;

"(C) a vessel registered in a foreign nation where the flag nation has consented or waived objection to the enforcement of United States law by the United States;

"(D) a vessel located within the customs waters of the United States; and

"(E) a vessel located in the territorial waters of another nation, where the nation consents to the enforcement of United States law by the United States.

Consent or waiver of objection by a foreign nation to the enforcement of United States law by the United States under paragraph (C) or (E) of this paragraph may be obtained by radio, telephone, or similar oral or electronic means, and may be proved by certification of the Secretary of State or the Secretary's designee.

"(2) For purposes of this section, a 'vessel without nationality' includes—

"(A) a vessel aboard which the master or person in charge makes a claim of registry, which claim is denied by the flag nation whose registry is claimed; and

"(B) any vessel aboard which the master or person in charge fails, upon request of an officer of the United States empowered to enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel.

A claim of registry under subparagraph (A) may be verified or denied by radio, telephone, or similar oral or electronic means. The denial of such claim of registry by the claimed flag nation may be proved by certification of the Secretary of State or the Secretary's designee.

"(3) For purposes of this section, a claim of nationality or registry only includes:

"(A) possession on board the vessel and production of documents evidencing the vessel's nationality in accordance with article 5 of the 1958 Convention on the High Seas;

"(B) flying its flag nation's ensign or flag; or

"(C) a verbal claim of nationality or registry by the master or person in charge of the vessel.

"(d) A claim of failure to comply with international law in the enforcement of this Act may be invoked solely by a foreign state, and a failure to comply with international law shall not divest a court of jurisdiction or otherwise constitute a defense to any proceeding under this Act.

"(e) This section does not apply to a common or contract carrier, or an employee thereof, who possesses or distributes a controlled substance in the lawful and usual course of the carrier's business or to a public vessel of the United States, or any person on board such a vessel who possesses or distributes a controlled substance in the lawful course of such person's duties, if the controlled substance is a part of the cargo entered in the vessel's manifest and is intended to be lawfully imported into the country of destination for scientific, medical, or other legitimate purposes. It shall not be necessary for the United States to negative the exception set forth in this subsection in any complaint, information, indictment, or other pleading or in any trial or other proceeding. The burden of going forward with the evidence with respect to this exception is upon the person claiming its benefit.

"(f) Any person who violates this section shall be tried in the United States district court at the point of entry where that person enters the United States, or in the United States District Court of the District of Columbia.

"(g)(1) Any person who commits an offense defined in this section shall be punished in accordance with the penalties set forth in section 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 960).

"(2) Notwithstanding paragraph (1) of this subsection, any person convicted of an offense under this Act shall be punished in accordance with the penalties set forth in section 1012 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 962) if such offense is a second or

subsequent offense as defined in section 1012(b) of that Act.

"(h) This section is intended to reach acts of possession, manufacture, or distribution committed outside the territorial jurisdiction of the United States.

"(i) The definitions in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) apply to terms used in this Act.

"(j) Any person who attempts or conspires to commit any offense defined in this Act is punishable by imprisonment or fine, or both, which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

"SEC. 3. Any property described in section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(a)) that is used or intended for use to commit, or to facilitate the commission of, an offense under this Act shall be subject to seizure and forfeiture in the same manner as similar property seized or forfeited under section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881).".

Subtitle D—Coast Guard

SEC. 3251. COAST GUARD DRUG INTERDICTION ENHANCEMENT.

(a) ADDITIONAL AUTHORIZATIONS FOR THE COAST GUARD.—

(1) There are authorized to be appropriated for Acquisition, Construction, and Improvements of the Coast Guard, $89,000,000.

(2) There are hereby authorized to be appropriated for Operating Expenses of the Coast Guard, $39,000,000. This amount shall be used to increase the full-time equivalent strength level for the Coast Guard for active duty personnel for fiscal year 1987 to 39,220, and to increase the utilization rate of Coast Guard equipment.

(b) AMOUNTS IN ADDITION TO OTHER AMOUNTS.—The amounts authorized to be appropriated for the Coast Guard by this section are in addition to any amounts otherwise authorized by law.

(c) AUTHORIZATION ENHANCEMENT.—Nothing in this Act shall require the Coast Guard to recruit, compensate, train, purchase, or deploy any personnel or equipment except to the extent that—

(1) additional appropriations are made available in appropriations Acts for that purpose; or

(2) funds are transferred to the Secretary of Transportation for that purpose pursuant to this Act.

Subtitle E—United States-Bahamas Drug Interdiction Task Force

SEC. 3301. ESTABLISHMENT OF A UNITED STATES-BAHAMAS DRUG INTERDICTION TASK FORCE.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) ESTABLISHMENT OF A UNITED STATES-BAHAMAS DRUG INTERDICTION TASK FORCE.—(A) There is authorized to be established a United States-Bahamas Drug Interdiction Task Force to be operated jointly by the United States Government and the Government of the Bahamas.

(B) The Secretary of State, the Commandant of the Coast Guard, the Commissioner of Customs, the Attorney General, and the head of the National Narcotics Border Interdiction System (NNBIS), shall upon enactment of this Act, immediately commence negotiations with the Government of the Bahamas to enter into a detailed agreement for the establishment and operation of a new drug interdiction task force, including plans for (i) the joint operation and maintenance of any drug interdiction assets authorized for the task force in this section and section 3141, and (ii) any training and personnel enhancements authorized in this section and section 3141.

(C) The Attorney General shall report to the appropriate committees of Congress on a quarterly basis regarding the progress of the United States-Bahamas Drug Interdiction Task Force.

(2) AMOUNTS AUTHORIZED.—There are authorized to be appropriated, in addition to any other amounts authorized to be appropriated in this title, $10,000,000 for the following:

(A) $9,000,000 for 3 drug interdiction pursuit helicopters for use primarily for operations of the United States-Bahamas Drug Interdiction Task Force established under this section; and

(B) $1,000,000 to enhance communications capabilities for the operation of a United States-Bahamas Drug Interdiction Task Force established under this section.

(3) COAST GUARD-BAHAMAS DRUG INTERDICTION DOCKING FACILITY.—(A) There is authorized to be appropriated for acquisition, construction, and improvements for the Coast Guard for fiscal year 1987, $5,000,000, to be used for initial design engineering, and other activities for construction of a drug interdiction docking facility in the Bahamas to facilitate Coast Guard and Bahamian drug interdiction operations in and through the Bahama Islands. Of the amounts authorized to be appropriated in this subsection, such sums as may be necessary shall be available for necessary communication and air support.

(B) The Commandant of the Coast Guard shall use such amounts appropriated pursuant to the authorization in this paragraph as may be necessary to establish a repair, maintenance, and boat lift facility to provide repair and maintenance services for both Coast Guard and Bahamian marine drug interdiction equipment, vessels, and related assets.

(b) CONCURRENCE BY SECRETARY OF STATE.—Programs authorized by this section may be carried out only with the concurrence of the Secretary of State.

Subtitle F—Command, Control, Communications, and Intelligence Centers

SEC. 3351. ESTABLISHMENT OF COMMAND, CONTROL, COMMUNICATIONS, AND INTELLIGENCE CENTERS (C-3I).

There are authorized to be appropriated $25,000,000 to the United States Customs Service for the establishment of command, control, communications, and intelligence (C-3I) centers, including sector operations centers and a national command, control, communications, and intelligence (C-3I) center, in locations within the United States. The coordination of the establishment and location of such C-3I centers shall be conducted by the Commissioner of Customs; to gether with the Commandant of the Coast Guard; the Attorney General of the United States; and the National Narcotics Border Interdiction System (NNBIS).

Subtitle G—Transportation Safety

SEC. 3401. AIR SAFETY.

(a)(1) Section 902(b) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472(b)) is amended by adding at the end the following:

"(3) Nothing in this subsection or in any other provision of this Act shall preclude a State from establishing criminal penalties, including providing for forfeiture or seizure of aircraft, for a person who—

"(A) knowingly and willfully forges, counterfeits, alters, or falsely makes an aircraft registration certificate;

"(B) knowingly sells, uses, attempts to use, or possesses with intent to use a fraudulent aircraft registration certificate;

"(C) knowingly and willfully displays or causes to be displayed on any aircraft any marks that are false or misleading as to the nationality or registration of the aircraft; or

"(D) obtains an aircraft registration certificate from the administrator by knowingly and willfully falsifying, concealing or covering up a material fact, or making a false, fictitious, or fraudulent statement or representation, or making or using any false writing or document knowing the writing or document to contain any false, fictitious, or fraudulent statement or entry.".

(2) Section 501 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1401) is amended by adding at the end the following new subsection:

"INSPECTION BY LAW ENFORCEMENT OFFICERS

"(g) The operator of an aircraft shall make available for inspection an aircraft's certificate of registration upon request by a Federal, State, or local law enforcement officer.".

(3) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 501. Registration of aircraft nationality."

is amended by adding at the end the following:

"(g) Inspection by law enforcement officers.".

(b)(1) Subsection (q) of section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472(q)) is amended to read as follows:

"VIOLATIONS IN CONNECTION WITH TRANSPORTATION OF CONTROLLED SUBSTANCES

"(q)(1) It shall be unlawful, in connection with an act described in paragraph (2) and with knowledge of such act, for any person—

"(A) who is the owner of an aircraft eligible for registration under section 501, to knowingly and willfully operate, attempt to operate, or permit any other person to operate such aircraft if the aircraft is not registered under section 501 or the certificate of registration of the aircraft is suspended or revoked, or if such person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

"(B) to operate or attempt to operate an aircraft eligible for registration under section 501 knowing that such aircraft is not registered under section 501, that the certificate of registration is suspended or revoked, or that such person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

"(C) to knowingly and willfully serve, or attempt to serve, in any capacity as an airman without a valid airman certificate authorizing such person to serve in such a capacity;

"(D) to knowingly and willfully employ for service or utilize any airman who does not possess a valid airman certificate authorizing such person to serve in such capacity;

"(E) to knowingly and willfully operate an aircraft in violation of any rule, regulation, or requirement issued by the Administrator of the Federal Aviation Administration with respect to the display of navigation or anticollision lights; and

"(F) to knowingly operate an aircraft with a fuel tank or fuel system that has been installed or modified on the aircraft, unless such tank or system and the installation or modification of such tank or system is in accordance with all applicable rules, regulations, and requirements of the Administrator.

"(2) The act referred to in paragraph (1) is the transportation by aircraft of any controlled substance or the aiding or facilitating of a controlled substance offense where such act is punishable by death or imprisonment for a term exceeding one year under a State or Federal law or is provided in connection with any act that is punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance).

"(3) A person violating this subsection shall be subject to a fine not exceeding $25,000, or imprisonment not exceeding 5 years, or both.

"(4) A person who, in connection with transportation described in paragraph (2), operates an aircraft on which a fuel tank or fuel system has been installed or modified and does not carry aboard the aircraft any certificate required to be issued by the Administrator for such installation or modification shall be presumed to have violated subparagraph (F) of paragraph (1).

"(5) In the case of a violation of subparagraph (F) of paragraph (1), the fuel tank or fuel system and the aircraft involved shall be subject to seizure and forfeiture. The provisions of law relating to—

"(A) the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws;

"(B) the disposition of such property or the proceeds from the sale thereof;

"(C) the remission or mitigation of such forfeitures; and

"(D) the compromise of claims and the award of compensation to informers in respect of such forfeitures;

shall apply to seizures and forfeitures under this paragraph. The Secretary may authorize such officers and agents as are necessary to carry out seizures and forfeitures under this paragraph and such officers and agents shall have the powers and duties given to customs officers with respect to the seizure and forfeiture of property under the customs laws.

"(6) For purposes of this subsection, the term 'controlled substance' has the meaning given to such term by section 102 of the Controlled Substances Act (21 U.S.C. 802).".

(2) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 902. Criminal penalties."

is amended by striking the item relating to subsection (q) and inserting the following:

"(q) Violations in connection with transportation of controlled substances.".

(c) Section 904(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1474(a)) is amended—

(1) by striking "$500" each place it appears and inserting in lieu thereof "$5,000";

(2) by inserting after the second sentence the following: "In addition to any other penalty, if any controlled substance described in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is found on board of, or to have been unladen from, an aircraft subject to section 1109 (b) and (c) of this Act, the owner or person in charge of such aircraft shall be subject to the penalties provided for in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584), unless such owner or person is able to demonstrate, by a preponderance of the evidence, that such owner or person did not know, and could not, by the exercise of the highest degree of care and diligence, have known, that any such controlled substance was on board."; and

(3) by amending the third sentence to read as follows: "In the case the violation is by the owner, operator, or person in command of the aircraft, any penalty imposed by this section shall be a lien against the aircraft.".

(d)(1) Section 1109 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1509) is amended by adding at the end thereof the following:

"REPORTING TRANSFER OF OWNERSHIP

"(f) Any person having an ownership interest in any aircraft for which a certificate of registration has been issued under this Act shall, upon the sale, conditional sale, transfer, or conveyance of such ownership interest, file with the Secretary of the Treasury within 15 days after such sale, conditional sale, transfer or conveyance such notice as the Secretary of the Treasury may by regulation require. The filing of a notice under this subsection shall not relieve any person from the filing requirements under section 501 or 503 of this Act.".

(2) Within 30 days after the date of enactment of subsection (f) of section 1109 of the Federal Aviation Act of 1958 as added by this subsection, the Secretary of the Treasury shall promulgate regulations establishing guidelines by which persons or classes of persons may apply for exemptions from the filing requirements of subsection (f) of section 1109. The Secretary of the Treasury may exempt such persons or classes of persons pursuant to such regulations.

(3) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 1109. Application of existing laws relating to foreign commerce."

Is amended by adding at the end thereof the following:

"(f) Reporting transfer of ownership.".

SEC. 3402. DRUG AND HIGHWAY SAFETY.

(a) STUDY.—The Secretary of Transportation shall conduct a study to determine the relationship between the usage of controlled substances and highway safety. Such study shall include a simulation of driving conditions, emergency situations, and driver performance under various drug and dosage conditions. Such study shall determine the incidence of controlled substance usage in highway accidents resulting in fatalities and the dosage levels for controlled substances which are most likely to result in impairment of driver performance.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Transportation shall submit to Congress a report on the results of the study conducted under subsection (a).

SEC. 3403. SAVINGS PROVISION.

In any proceeding under section 11344 of title 49, United States Code, involving an application by a rail carrier (or a person controlled by or affiliated with a rail carrier) to acquire a motor carrier, the Interstate Commerce Commission, and any Federal court reviewing action of the Commission, shall follow the standards set forth in the Commission decision in Ex Parte No. 438 if the applicant rail carrier, between July 20, 1984, and September 30, 1986 (1) filed an application with the Commission to acquire a motor carrier, (2) entered into a contract or signed a letter of intent to acquire a motor carrier, or (3) made a public tender offer to acquire a motor carrier.

Subtitle H—Department of Justice Funds for Drug Interdiction Operations in Hawaii

SEC. 3421. ADDITIONAL FUNDS FOR THE DEPARTMENT OF JUSTICE.

There are authorized to be appropriated to the Department of Justice for fiscal year 1987, in addition to any other amounts authorized to be appropriated to the Department for such fiscal year, $7,000,000 for helicopters with forward looking infrared radiation detection devices for drug interdiction operations in Hawaii.

Subtitle I—Federal Communications Commission

SEC. 3451. COMMUNICATIONS.

The Federal Communications Commission may revoke any private operator's license issued to any person under the Communications Act of 1934 (47 U.S.C. 151 et seq.) who is found to have willfully used said license for the purpose of distributing, or assisting in the distribution of any controlled substance in violation of any provision of Federal law. In addition, the Federal Communications Commission may, upon the request of an appropriate Federal law enforcement agency, assist in the enforcement of Federal law prohibiting the use or distribution of any controlled substance where communications equipment within the jurisdiction of the Federal Communications Commission under the Communications Act of 1934 is willfully being used for purposes of distributing, or assisting in the distribution of any such substance.

TITLE IV—DEMAND REDUCTION

Subtitle A—Treatment and Rehabilitation

SEC. 4001. SHORT TITLE; REFERENCE.

(a) This subtitle may be cited as the "Alcohol and Drug Abuse Amendments of 1986".

(b) Except as otherwise specifically provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be a reference to a section or other provision of the Public Health Service Act.

SEC. 4002. SPECIAL ALCOHOL ABUSE AND DRUG ABUSE PROGRAMS.

Title XIX is amended by inserting after section 1920A the following new sections:

PART C—EMERGENCY SUBSTANCE ABUSE TREATMENT AND REHABILITATION

"SPECIAL ALLOTMENTS TO STATES FOR ALCOHOL ABUSE AND DRUG ABUSE TREATMENT AND REHABILITATION PROGRAMS

"SEC. 1921. (a) To carry out this section and sections 1922, 1923, 508, and 509A there are authorized to be appropriated $241,000,000 for fiscal year 1987. Of the total amount appropriated under the preceding sentence for fiscal year 1987, 6 percent shall be added to and included with the amounts otherwise available under this part for allotments to States under section 1913 for such fiscal year, 70.5 percent shall be available for allotments to States under this section for such fiscal year, 4.5 percent shall be available for transfer to the Administrator of Veterans' Affairs under section 1922 for such fiscal year, 1 percent shall be available to carry out section 1923 for such fiscal year, and 18 percent shall be available to carry out sections 508 and 509A for such fiscal year.

"(b)(1) The allotment of a State under this section for a fiscal year shall be the sum of the amounts allotted to such State under paragraphs (2) and (3).

"(2) Forty-five percent of the amount available for allotment under this section for a fiscal year shall be allotted in accordance with this paragraph. The allotment of a State under this paragraph for a fiscal year shall be an amount which bears the same ratio to the total amount required pursuant to the preceding sentence to be allotted under this paragraph for such fiscal year as the population of such State bears to the population of all States, except that no such allotment shall be less than $50,000.

"(3) Fifty-five percent of the amount available for allotment under this section for a fiscal year shall be allotted by the Secretary to States on the basis of the need of each State for amounts for programs and activities for the treatment and rehabilitation of the alcohol abuse and drug abuse. In determining such need for each State under this paragraph, the Secretary shall consider—

"(A) the nature and extent, in the State and in particular areas of the State, of the demand for effective programs and activities for the treatment and rehabilitation of alcohol abuse and drug abuse;

"(B) the number of individuals in the State who abuse alcohol or drugs and the capacity of the State to provide treatment and rehabilitation for such individuals (as determined by the Secretary on the basis of the number of individuals who requested treatment for alcohol abuse and drug abuse in the State during the most recent calendar year ending prior to the date on which a statement is submitted by the State under subsection (d);

"(C) the ability of the State to provide additional services for the treatment and rehabilitation of alcohol abuse and drug abuse.

"(4) The Secretary shall make allotments to States under paragraph (2) for fiscal year 1987, and shall make payments to States under subsection (c) from such allotments, at the same time that the Secretary makes allotments and payments under sections 1913 and 1914, respectively, for such fiscal year.

"(c)(1) For each fiscal year, the Secretary shall make payments, as provided by section 6503 of title 31, United States Code, to each State from its allotment under paragraphs (2) and (3) of subsection (b) from amounts which are appropriated for that fiscal year and available for such allotments.

"(2) Any amount paid to a State under paragraph (1) for a fiscal year and remaining unobligated at the end of such fiscal year shall remain available to such State for the purposes for which it was made for the next fiscal year.

"(3) A State may not use amounts paid to it under its allotment under this section to—

"(A) provide inpatient hospital services,

"(B) make cash payments to intended recipients of health services,

"(C) purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment,

"(D) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds, or

"(E) provide financial assistance to any entity other than a public or nonprofit private entity.

"(4) The provisions of part B which are not inconsistent with this part shall apply with respect to allotments made under this section.

"(d) In order to receive an allotment for a fiscal year under subsection (b), each State shall include with the application submitted to the Secretary under section 1916 a separate statement requesting an allotment under this section. Each such statement shall contain—

"(1) such information as the Secretary may prescribe, including information necessary for the Secretary to consider the matters specified in subparagraphs (A) through (D) of subsection (b)(3);

"(2) a description of the manner in which programs and activities conducted with payments under subsection (c) will be coordinated with other public and private programs and activities directed toward individuals who abuse alcohol and drugs;

"(3) assurances that, in the preparation of any statement under this section, the State will consult with local governments and public and private entities, including community based organizations, involved in the provision of services for the treatment and rehabilitation of alcohol abuse and drug abuse;

"(4) a description of the manner in which the State will evaluate programs and activities conducted with payments made to the State under subsection (c) and assurances that the State will report periodically to the Secretary on the results of such evaluations; and

"(5) assurances that payments made to the State under subsection (c) will supplement and not supplant any State or local expenditures for the treatment and rehabilitation of alcohol abuse and drug abuse that would have been made in the absence of such payments.

"(e) Except as provided in subsections (f) and (i), amounts paid to a State under subsection (c) may be used by the State for alcohol abuse and drug abuse treatment and rehabilitation programs and activities, including—

"(1) activities to increase the availability and outreach of programs provided by major treatment centers and regional branches of such centers which provide services in a State in order to reach the greatest number of people;

"(2) activities to expand the capacity of alcohol abuse and drug abuse treatment and rehabilitation programs and facilities to provide treatment and rehabilitation services for alcohol abusers and drug abusers who have been refused treatment due to lack of facilities or personnel; and

"(3) activities to provide access to vocational training, job counseling, and education equivalency programs to alcohol abusers and drug abusers in need of such services in order to enable such abusers to become productive members of society.

"(f) Of the total amount paid to any State under subsection (c) for a fiscal year, not more than 2 percent may be used for administering the funds made available under such subsection. The State will pay from non-Federal sources the remaining costs of administering such funds.

"(g) The Secretary may provide training and technical assistance to States in planning and operating activities to be carried out under this section.

"(h) The Secretary may conduct data collection activities to enable the Secretary to carry out this section.

"TRANSFER TO THE ADMINISTRATOR OF VETERANS' AFFAIRS

"SEC. 1922. The Secretary shall transfer to the Administrator of Veterans' Affairs the amount which, under the second sentence of section 1921(a), is available for such transfer. The amount transferred pursuant to the preceding sentence shall be used for outpatient treatment, rehabilitation, and counseling under section 612 of title 38, United States Code, of veterans for their alcohol or drug abuse dependence or abuse disabilities and for contract care and services under section 620A of such title for veterans for such disabilities.

"TREATMENT PROGRAM EVALUATIONS

"SEC. 1923. One percent of the total amount appropriated under section 1921(a) for any fiscal year shall be used by the Secretary, acting through the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, to develop and evaluate alcohol and drug abuse treatment programs to determine the most effective forms of treatment. Such programs may be developed and evaluated through grants, contracts, and cooperative agreements provided to nonprofit private entities. In carrying out this section, the Secretary shall assess the comparative effectiveness of various treatment forms for specific patient groups.".

SEC. 4003. TECHNICAL REVISION OF ADAMHA.

Section 501 (42 U.C.S. 290aa) is amended to read as follows:

"ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION

SEC. 501. (a) The Alcohol, Drug Abuse, and Mental Health Administration is an agency of the Service.

"(b) The following entities are agencies of the Alcohol, Drug Abuse, and Mental Health Administration:

"(1) The National Institute on Alcohol Abuse and Alcoholism.

"(2) The National Institute on Drug Abuse.

"(3) The National Institute of Mental Health.

"(c)(1) The Alcohol, Drug Abuse, and Mental Health Administration shall be headed by an Administrator (hereinafter in this title referred to as the 'Administrator') who shall be appointed by the President by and with the advice and consent of the Senate.

(2) The Administrator with the approval of the Secretary, may appoint a Deputy Administrator and may employ and prescribe the functions of such officers and employees, including attorneys, as are necessary to administer the activities to be carried out through the Administration.

"(d) The Secretary, acting through the Administrator—

"(1) shall supervise the functions of the agencies of the Administration in order to assure that the programs carried out through each such agency recieve appropriate and equitable support and that there is cooperation among the agencies in the implementation of such programs;

"(2) shall assure that research at or supported by the Administration and each of its agencies is subject to review in accordance with section 507 and is in compliance with section 509A; and

"(3) shall assure that research on neuronal receptors and their role in mental health and substance abuse is provided adequate support.

"(e)(1) There shall be in the Administration an Associate Administrator for Prevention to whom the Administrator shall delegate the function of promoting the prevention research programs of the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse and coordinating such programs between the Institutes and between the Institutes and other public and private entities.

"(2) The Administrator, acting through the Associate Administrator for Prevention, shall annually submit to the Congress a report describing the prevention activities (including preventive medicine and health promotion) undertaken by the Administration and its agencies. The report shall include a detailed statement of the expenditures made for the activities reported on and the personnel used in connection with such activities.

"(f) The Administrator shall establish a process for the prompt and appropriate response to information provided the Administrator respecting (1) scientific fraud in connection with projects for which funds have been made available under this title, and (2) incidences of violations of the rights of human subjects of research for which funds have been made available under this title. The process shall include procedures for the receiving of reports of such information from recipients of funds under this title and taking appropriate action with respect to such fraud and violations.

"(g) The Secretary, acting through the Administrator, shall make grants to schools of the health professions and schools of social work to support the training of students in such schools in the identification and treatment of alcohol and drug abuse. Grants under this subsection shall be made from funds available under this title and section 303.

"(h) To educate the public with respect to the health hazards of alcoholism, alcohol abuse, and drug abuse, the Administrator shall use the clearinghouse established under section 508(c) to take such actions as may be necessary to ensure the widespread dissemination of current publications of the National Institute on Alcohol Abuse and Alcoholism and the National Institute on Drug Abuse relating to the most recent research findings with respect to such health hazards.

"(i)(1) The Administrator may obtain (in accordance with section 3109 of title 5, United States Code, but without regard to the limitation in such section on the number of days or the period of service) the services of not more than 20 experts or consultants who have scientific or professional qualifications. Such experts and consultants shall be obtained for the Administration and for each of its agencies.

"(2)(A) Experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed for their expenses associated with traveling to and from their assignment location in accordance with sections 5724, 5724a(a)(1), 5724a(a)(3), and 5726(c) of title 5, United States Code.

"(B) Expenses specified in subparagraph (A) may not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1), unless and until the expert or consultant agrees in writing to complete the entire period of assignment or one year, whichever is shorter, unless separated or reassigned for reasons beyond the control of the expert or consultant that are acceptable to the Secretary. If the expert or consultant violates the agreement, the money spent by the United States for the expenses specified in subparagraph (A) is recoverable from the expert or consultant as a debt of the United States. The Secretary may waive in whole or in part a right of recovery under this subparagraph.

"(j) The Administrator shall, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates, establish such technical and scientific peer review groups as are needed to carry out the requirements of section 507 and appoint and pay members of such groups, except that officers and employees of the United States shall not receive additional compensation for services as members of such groups. The Federal Advisory Committee Act shall not apply to the duration of a peer review group appointed under this subsection.

"(k)(1) The Alcohol, Drug Abuse, and Mental Health Advisory Board (hereinafter in this subsection referred to as the 'Board') shall—

"(A) periodically assess the national needs for alcoholism, alcohol abuse, drug abuse, and mental health services and the extent to which those needs are being met by State, local, and private programs and programs receiving funds under this title and parts B and C of title XIX, and

"(B) provide advice to the Secretary and the Administrator respecting activities carried out under this title and parts B and C of title XIX.

"(2)(A) The Board shall consist of 15 members appointed by the Secretary and such ex officio members from the National Institute on Alcohol and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health as the Secretary may designate. Of the members appointed to the Board, at least 6 members shall represent State and private, nonprofit providers of prevention and treatment services for alcoholism, alcohol abuse, drug abuse, and mental illness, at least 6 members shall be individuals with expertise in public education and prevention services for alcoholism, alcohol abuse, drug abuse, and mental illness, and at least 3 members shall be appointed from members of the general public who are knowledgeable about alcoholism, alcohol abuse, drug abuse, and mental illness.

"(B) The term of office of a member appointed to the Board is 4 years, except that of the members first appointed to the Board—

"(i) 5 shall serve for terms of 1 year,

"(ii) 5 shall serve for terms of 2 years,

"(iii) 5 shall serve for terms of 3 years,

as designated by the Secretary at the time of appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of such member was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of the member's term until the successor of the member has taken office.

"(3)(A) Except as provided in subparagraph (B), members of the Board shall (i) be paid not more than the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Board, and (ii) while away from their homes or regular places of business and while serving in the business of the Board, be entitled to receive transportation expenses as prescribed by section 5703 of title 5, United States Code.

"(B) Members of the Board who are full-time officers or employees of the United States shall receive no additional pay, allowances, or benefits by reason of their service on the Board.

"(4) The Board may appoint such staff personnel as the Board considers appropriate.

"(5) The Secretary shall designate the chairman of the Board.

"(6) The Board shall meet at least 3 times each calendar year.

"(7) The Board shall report annually to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on its activities during the prior year and shall include in such report such recommendations for legislation and administrative action as it deems appropriate.".

SEC. 4004. ADVISORY COUNCILS.

(a) Part A of title V is amended by redesignating sections 505 and 506 as sections 506 and 507, respectively, and by inserting after section 504 the following new section:

"ADVISORY COUNCILS

"SEC. 505. (a)(1) The Secretary shall appoint an advisory council for the National Institute on Alcohol Abuse and Alcoholism, for the National Institute on Drug Abuse, and for the National Institute of Mental Health. Each such advisory council shall advise, consult with, and make recommendations to the Secretary and the Director of the Institute for which it was appointed on matters relating to the activities carried out by and through the Institute and the policies respecting such activities.

"(2) Each advisory council for an Institute may recommend to the Secretary acceptance, in accordance with section 2101, of conditional gifts for—

"(A) study, investigation, or research respecting the diseases, disorders, or other aspect of human health with respect to which the Institute was established;

"(B) the acquisition of grounds for the Institute; or

"(C) the construction, equipping, or maintenance of facilities for the Institute.

"(3) Each advisory council for an Institute—

"(A)(i) may on the basis of the materials provided under section 507(d)(2) respecting research conducted at the Institute, make recommendations to the Director of the Institute respecting such research;

"(ii) shall review applications for grants and cooperative agreements for research or training and for which advisory council approval is required under section 507(e)(2), and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge; and

"(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the Institute;

"(B) may collect, by correspondence or by personal investigation, information as to studies which are being carried on in the United States or any other country as to the diseases, disorders, or other aspect of human health with respect to which the Institute was established and with the approval of the Director of the Institute make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public; and

"(C) may appoint subcommittees and convene workshops and conferences.

"(b)(1) Each advisory council shall consist of nonvoting ex officio members and not more than 12 members appointed by the Secretary.

"(2) The ex officio members of an advisory council shall consist of—

"(A) the Secretary, the Administrator, the Director of the Institute for which the advisory council is established, the Chief Medical Director of the Veterans' Administration, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and

"(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

"(3) The members of an advisory council who are not ex officio members shall be appointed as follows:

"(A) Nine of the members shall be appointed by the Secretary from among the leading representatives of the health and scientific disciplines (including public health and the behavioral or social sciences) relevant to the activities of the Institute for which the advisory council is established.

"(B) Three of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, public relations, law, health policy, economics, and management.

"(4) Members of an advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of an advisory council shall receive, for each day (including travel time) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule.

"(c) The term of office of an appointed member of an advisory council is 4 years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such manner as to ensure that the terms of the members do not all expire in the same year. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of 4 years may not be reappointed to an advisory council before 2 years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within 90 days from the date the vacancy occurs.

"(d) The chairman of an advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the Institute for which the advisory council is established to be the chairman of the advisory council. The term of office of chairman shall be 2 years.

"(e) The advisory council shall meet at the call of the chairman or upon the request of the Director of the Institute for which it was established, but at least 3 times each fiscal year. The location of the meetings of each advisory council is subject to the approval of the Director of the Institute for which the advisory council was established.

"(f) The Director of the Institute for which an advisory council is established shall designate a member of the staff of the Institute to serve as the executive secretary of the advisory council. The Director of the Institute shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Director of the Institute shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.".

(b) The amendment made by subsection (a) does not terminate the membership of any advisory council for the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, or the National Institute of Mental Health which was in existence on the date of enactment of this Act. After such date—

(1) the Secretary of Health and Human Services shall make appointments to each such advisory council in such a manner as to bring about as soon as practicable the composition for such council prescribed by section 505 of the Public Health Service Act;

(2) each advisory council shall organize itself in accordance with such section and exercise the functions prescribed by such section; and

(3) the Director of each such institute shall perform for such advisory council the functions prescribed by such section.

(c) Section 217 is amended—

(1) by striking out subsections (a), (b), (c), and (d);

(2) by striking out "(e)(1)" and inserting in lieu thereof "(a)";

(3) by striking out "(2)" and inserting in lieu thereof "(b)";

(4) by striking out "(3)" and inserting in lieu thereof "(c)";

(5) by striking out "(4)" and inserting in lieu thereof "(d)"; and

(6) by redesignating clauses (A) and (B) of subsection (c) (as redesignated by the amendment made by paragraph (4) of this subsection) as clauses (1) and (2), respectively.

SEC. 4005. OFFICE FOR SUBSTANCE ABUSE PREVENTION.

(a) Part A of title V (as amended by section 4004 of this Act) is further amended by adding at the end thereof the following new sections:

"OFFICE FOR SUBSTANCE ABUSE PREVENTION

"SEC. 508. (a) There is established in the Administration an Office for Substance Abuse Prevention (hereafter in this part referred to as the 'Office'). The Office shall be headed by a Director appointed by the Secretary from individuals with extensive experience or academic qualifications in the prevention of drug or alcohol abuse.

"(b) The Director of the Office shall—

"(1) sponsor regional workshops on the prevention of drug and alcohol abuse;

"(2) coordinate the findings of research sponsored by agencies of the Service on the prevention of drug and alcohol abuse;

"(3) develop effective drug and alcohol abuse prevention literature (including literature on the adverse effects of cocaine free base (known as 'crack'));

"(4) in cooperation with the Secretary of Education, assure the widespread dissemination of prevention materials among States, political subdivisions, and school systems;

"(5) support programs of clinical training of substance abuse counselors and other health professionals;

"(6) in cooperation with the Director of the Centers for Disease Control, develop educational materials to reduce the risks of acquired immune deficiency syndrome among intravenous drug abusers;

"(7) conduct training, technical assistance, data collection, and evaluation activities of programs supported under the Drug Free Schools and Communities Act of 1986;

"(8) support the development of model, innovative, community-based programs to discourage alcohol and drug abuse among young people; and

"(9) prepare for distribution documentary films and public service announcements for television and radio to educate the public concerning the dangers to health resulting from the consumption of alcohol and drugs and, to the extent feasible, use appropriate private organizations and business concerns in the preparation of such announcements.

"(c) The Director may make grants and enter into contracts and cooperative agreements in carrying out subsection (b).

"(d) Of the amounts available under the second sentence of section 1921(a) to carry out this section and section 509A, $20,000,000 shall be available to carry out section 509A.

"ALCOHOL AND DRUG ABUSE INFORMATION CLEARINGHOUSE

"SEC. 509. The Secretary, through the Director of the Office, shall establish a clearinghouse for alcohol and drug abuse information to assure the widespread dissemination of such information to States, political subdivisions, educational agencies and institutions, health and drug treatment and rehabilitation networks, and the general public. The clearinghouse shall—

"(1) disseminate publications by the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the Department of Education concerning alcohol abuse and drug abuse;

"(2) disseminate accurate information concerning the health effects of alcohol abuse and drug abuse;

"(3) collect and disseminate information concerning successful alcohol abuse and drug abuse education and prevention curricula; and

"(4) collect and disseminate information on effective and ineffective school-based alcohol abuse and drug abuse education and prevention programs, particularly effective programs which stress that the use of illegal drugs and the abuse of alcohol is wrong and harmful.

"PREVENTION, TREATMENT, AND REHABILITATION MODEL PROJECTS FOR HIGH RISK YOUTH

"SEC. 509A. (a) The Secretary, through the Director of the Office, shall make grants to public and nonprofit private entities for projects to demonstrate effective models for the prevention, treatment, and rehabilitation of drug abuse and alcohol abuse among high risk youth.

"(b)(1) In making grants for drug abuse and alcohol abuse prevention projects under this section, the Secretary shall give priority to applications for projects directed at children of substance abusers, latchkey children, children at risk of abuse or neglect, preschool children eligible for services under the Head Start Act, children at risk of dropping out of school, children at risk of becoming adolescent parents, and children who do not attend school and who are at risk of being unemployed.

"(2) In making grants for drug abuse and alcohol abuse treatment and rehabilitation projects under this section, the Secretary shall give priority to projects which address the relationship between drug abuse or alcohol abuse and physical child abuse, sexual child abuse, emotional child abuse, dropping out of school, unemployment, delinquency, pregnancy, violence, suicide, or mental health problems.

"(3) In making grants under this section, the Secretary shall give priority to applica-

tions from community based organizations for projects to develop innovative models with multiple, coordinated services for the prevention or for the treatment and rehabilitation of drug abuse or alcohol abuse by high risk youth.

"(4) In making grants under this section, the Secretary shall give priority to applications for projects to demonstrate effective models with multiple, coordinated services which may be replicated and which are for the prevention or for the treatment and rehabilitation of drug abuse or alcohol abuse by high risk youth.

"(c) To the extent feasible, the Secretary shall make grants under this section in all regions of the United States, and shall ensure the distribution of grants under this section among urban and rural areas.

"(d) In order to receive a grant for a project under this section for a fiscal year, a public or nonprofit private entity shall submit an application to the Secretary, acting through the Office. The Secretary may provide to the Governor of the State the opportunity to review and comment on such application. Such application shall be in such form, shall contain such information, and shall be submitted at such time as the Secretary may by regulation prescribe.

"(e) The Director of the Office shall evaluate projects conducted with grants under this section.

"(f) For purposes of this section, the term 'high risk youth' means an individual who has not attained the age of 21 years, who is at high risk of becoming, or who has become, a drug abuser or an alcohol abuser, and who—

"(1) is identified as a child of a substance abuser;

"(2) is a victim of physical, sexual, or psychological abuse;

"(3) has dropped out of school;

"(4) has become pregnant;

"(5) is economically disadvantaged;

"(6) has committed a violent or delinquent act;

"(7) has experienced mental health problems;

"(8) has attempted suicide; or

"(9) is disabled by injuries.".

(b)(1) Section 502(e) is repealed.

(2) Section 503(d) is amended—

(A) by inserting "and" at the end of paragraph (2);

(B) by striking out "; and" at the end of paragraph (3) and inserting in lieu thereof a period; and

(C) by striking out paragraph (4).

SEC. 4006. PUBLIC HEALTH EMERGENCIES.

Part A of title V (as amended by sections 4004 and 4005 of this Act) is further amended by adding at the end thereof the following:

"RESEARCH ON PUBLIC HEALTH EMERGENCIES

"SEC. 509B. (a) If the Secretary determines, after consultation with the Administrator, the Commissioner of Food and Drugs, or the Director of the Centers for Disease Control, that a disease or disorder within the jurisdiction of an Institute of the Administration constitutes a public health emergency, the Secretary, acting through the Administrator—

"(1) shall expedite the review by advisory councils and by peer review groups of applications for grants for research on such disease or disorder or proposals for contracts for such research;

"(2) shall exercise the authority in section 3709 of the Revised Statutes (41 U.S.C. 5) respecting public exigencies to waive the advertising requirements of such section in the case of proposals for contracts for such research;

"(3) may provide administrative supplemental increases in existing grants and contracts to support new research relevant to such disease or disorder; and

"(4) shall disseminate, to health professionals and the public, information on the cause, prevention, and treatment of such disease or disorder that has been developed in research assisted under this section.

The amount of an increase in a grant or contract provided under paragraph (3) may not exceed one-half the original amount of the grant or contract.

"(b) Not later than 90 days after the end of a fiscal year, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on actions taken under subsection (a) in such fiscal year if any actions were taken under such subsection in such fiscal year.".

SEC. 4007. PEER REVIEW.

Subsection (b) of section 507 (as redesignated by section 4004(a) of this Act) is amended by inserting "applications made for" after "review of" in the matter preceding paragraph (1).

SEC. 4008. NATIONAL ALCOHOL RESEARCH CENTERS.

Section 511(b) is amended—

(1) by striking out "or rental" before "any land"; and

(2) by striking out "rental," before "purchase".

SEC. 4009. EXPANSION OF DRUG ABUSE RESEARCH.

Section 515(a) is amended—

(1) by striking out "and" after the semicolon in paragraph (4);

(2) by striking out paragraph (5) and inserting in lieu thereof the following:

"(5) effective methods of drug abuse prevention, treatment, and rehabilitation, particularly methods of intervention to treat abuse of specific drugs; and"; and

(3) by adding at the end thereof the following:

"(6) the development of chemical antidotes and narcotic antagonists for use in the treatment of cocaine and heroin addiction.".

SEC. 4010. RESEARCH AUTHORIZATION.

(a) Section 513 is amended to read as follows:

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 513. There are authorized to be appropriated to carry out this subpart $69,000,000 for fiscal year 1987.".

(b) Section 517 is amended to read as follows:

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 517. There are authorized to be appropriated to carry out this subpart $129,000,000 for fiscal year 1987.".

SEC. 4011. SUICIDE.

(a) Section 504 is amended by adding at the end thereof the following new subsection:

"(h) The Director shall—

"(1) develop and publish information respecting the causes of suicide and the means of preventing suicide; and

"(2) make such information generally available to the public and health professionals.

Information developed, published, and distributed under this subsection shall especially relate to suicide among individuals under the age of 21.".

(b) Not later than one year after the date of enactment of this Act, the Director of the National Institute of Mental Health shall report to Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives on the activities undertaken under section 504(h) of the Public Health Service Act and shall include in such report an assessment of the effectiveness of such activities.

SEC. 4012. MENTAL HEALTH NEEDS OF THE ELDERLY.

Section 504(c) is amended by adding at the end thereof the following: "Special consideration shall be given to programs for training and research on the mental health needs of the elderly.".

SEC. 4013. TECHNICAL AMENDMENT.

Section 504(e) is amended by striking out the period at the end of paragraph (2)(A) and inserting in lieu thereof a semicolon.

SEC. 4014. INFANT FORMULAS.

(a) Section 412 of the Federal Food, Drug, and Cosmetic Act is amended—

(1) by redesignating subsections (e), (f), and (g) as subsections (g), (h), and (i), respectively,

(2) by amending the last sentence of paragraph (1) of subsection (g) (as so redesignated) to read as follows: "Such records shall be retained for at least one year after the expiration of the shelf life of the infant formula.",

(3) by striking out "(a) and (b)" in the first sentence of subsection (h)(1) (as so redesignated) and inserting in lieu thereof "(a), (b), and (c)",

(4) by striking out "(c)(1)" in the second sentence of such subsection and inserting in lieu thereof "(e)(1)",

(5) by striking out "(e)(1)(B)" in such sentence and inserting in lieu thereof "(d)(1)(B)",

(6) by striking out "(a) and (b)" in subsection (h)(2) (as so redesignated) and inserting in lieu thereof "(a), (b), and (c)", and

(7) by striking out subsections (a) through (d) and inserting in lieu thereof the following:

"(a) An infant formula, including an infant formula powder, shall be deemed to be adulterated if—

"(1) such infant formula does not provide nutrients as required by subsection (i),

"(2) such infant formula does not meet the quality factor requirements prescribed by the Secretary under subsection (b)(1), or

"(3) the processing of such infant formula is not in compliance with the good manufacturing practices and the quality control procedures prescribed by the Secretary under subsection (b)(2).

"(b)(1) The Secretary shall by regulation establish requirements for quality factors for infant formulas to the extent possible consistent with current scientific knowledge, including quality factor requirements for the nutrients required by subsection (i).

"(2)(A) The Secretary shall by regulation establish good manufacturing practices for infant formulas, including quality control procedures that the Secretary determines are necessary to assure that an infant formula provides nutrients in accordance with this subsection and subsection (i) and is manufactured in a manner designed to prevent adulteration of the infant formula.

"(B) The good manufacturing practices and quality control procedures prescribed by the Secretary under subparagraph (A) shall include requirements for—

"(i) the testing, in accordance with paragraph (3) and by the manufacturer of an infant formula or an agent of such manufacturer, of each batch of infant formula for

each nutrient required by subsection (i) before the distribution of such batch,

"(ii) regularly scheduled testing, by the manufacturer of an infant formula or an agent of such manufacturer, of samples of infant formulas during the shelf life of such formulas to ensure that such formulas are in compliance with this section,

"(iii) in-process controls including, where necessary, testing required by good manufacturing practices designed to prevent adulteration of each batch of infant formula, and

"(iv) the conduct by the manufacturer of an infant formula or an agent of such manufacturer of regularly scheduled audits to determine that such manufacturer has complied with the regulations prescribed under subparagraph (A).

In prescribing requirements for audits under clause (iv), the Secretary shall provide that such audits be conducted by appropriately trained individuals who do not have any direct responsibility for the manufacture or production of infant formula.

"(3)(A) At the final product stage, each batch of infant formula shall be tested for vitamin A, vitamin B1, vitamin C, and vitamin E to ensure that such infant formula is in compliance with the requirements of this subsection and subsection (i) relating to such vitamins.

"(B) Each nutrient premix used in the manufacture of an infant formula shall be tested for each relied upon nutrient required by subsection (i) which is contained in such premix to ensure that such premix is in compliance with its specifications or certifications by a premix supplier.

"(C) During the manufacturing process or at the final product stage and before distribution of an infant formula, an infant formula shall be tested for all nutrients required to be included in such formula by subsection (i) for which testing has not been conducted pursuant to subparagraph (A) or (B). Testing under this subparagraph shall be conducted to—

"(i) ensure that each batch of such infant formula is in compliance with the requirements of subsection (i) relating to such nutrients, and

"(ii) confirm that nutrients contained in any nutrient premix used in such infant formula are present in each batch of such infant formula in the proper concentration.

"(D) If the Secretary adds a nutrient to the list of nutrients in the table in subsection (i), the Secretary shall by regulation require that the manufacturer of an infant formula test each batch of such formula for such new nutrient in accordance with subparagraph (A), (B), or (C).

"(E) For purposes of this paragraph, the term 'final product stage' means the point in the manufacturing process, before distribution of an infant formula, at which an infant formula is homogenous and is not subject to further degradation.

"(4)(A) The Secretary shall by regulation establish requirements respecting the retention of records. Such requirements shall provide for—

"(i) the retention of all records necessary to demonstrate compliance with the good manufacturing practices and quality control procedures prescribed by the Secretary under paragraph (2), including records containing the results of all testing required under paragraph (2)(B),

"(ii) the retention of all certifications or guarantees of analysis by premix suppliers,

"(iii) the retention by a premix supplier of all records necessary to confirm the accuracy of all premix certifications and guarantees of analysis,

"(iv) the retention of—

"(I) all records pertaining to the microbiological quality and purity of raw materials used in infant formula powder and in finished infant formula, and

"(II) all records pertaining to food packaging materials which show that such materials do not cause an infant formula to be adulterated within the meaning of section 402(a)(2)(C),

"(v) the retention of all records of the results of regularly scheduled audits conducted pursuant to the requirements prescribed by the Secretary under paragraph (2)(B)(iv), and

"(vi) the retention of all complaints and the maintenance of files with respect to, and the review of, complaints concerning infant formulas which may reveal the possible existence of a hazard to health.

"(B)(i) Records required under subparagraph (A) with respect to an infant formula shall be retained for at least one year after the expiration of the shelf life of such infant formula. Except as provided in clause (ii), such records shall be made available to the Secretary for review and duplication upon request of the Secretary.

"(ii) A manufacturer need only provide written assurances to the Secretary that the regularly scheduled audits required by paragraph (2)(B)(iv) are being conducted by the manufacturer, and need not make available to the Secretary the actual written reports of such audits.

"(c)(1) No person shall introduce or deliver for introduction into interstate commerce any new infant formula unless—

"(A) such person has, before introducing such new infant formula, or delivering such new infant formula for introduction, into interstate commerce, registered with the Secretary the name of such person, the place of business of such person, and all establishments at which such person intends to manufacture such new infant formula, and

"(B) such person has at least 90 days before marketing such new infant formula, made the submission to the Secretary required by subsection (c)(1).

"(2) For purposes of paragraph (1), the term 'new infant formula' includes—

"(A) an infant formula manufactured by a person which has not previously manufactured an infant formula, and

"(B) an infant formula manufactured by a person which has previously manufactured infant formula and in which there is a major change, in processing or formulation, from a current or any previous formulation produced by such manufacturer.

For purposes of this paragraph, the term 'major change' has the meaning given to such term in section 106.30(c)(2) of title 21, Code of Federal Regulations (as in effect on August 1, 1986), and guidelines issued thereunder.

"(d)(1) A person shall, with respect to any infant formula subject to subsection (c), make a submission to the Secretary which shall include—

"(A) the quantitative formulation of the infant formula,

"(B) a description of any reformulation of the formula or change in processing of the infant formula,

"(C) assurances that the infant formula will not be marketed unless it meets the requirements of subsections (b)(1) and (i), as demonstrated by the testing required under subsection (b)(3), and

"(D) assurances that the processing of the infant formula complies with subsection (b)(2).

"(2) After the first production of an infant formula subject to subsection (c), and before the introduction into interstate commerce of such formula, the manufacturer of such formula shall submit to the Secretary, in such form as may be prescribed by the Secretary, a written verification which summarizes test results and records demonstrating that such formula complies with the requirements of subsections (b)(1), (b)(2)(A), (b)(2)(B)(i), (b)(2)(B)(iii), (b)(3)(A), (b)(3)(C), and (i).

"(3) If the manufacturer of an infant formula for commercial or charitable distribution for human consumption determines that a change in the formulation of the formula or a change in the processing of the formula may affect whether the formula is adulterated under subsection (a), the manufacturer shall, before the first processing of such formula, make the submission to the Secretary required by paragraph (1).

"(e)(1) If the manufacturer of an infant formula has knowledge which reasonably supports the conclusion that an infant formula which has been processed by the manufacturer and which has left an establishment subject to the control of the manufacturer—

"(A) may not provide the nutrients required by subsection (i), or

"(B) may be otherwise adulterated or misbranded,

the manufacturer shall promptly notify the Secretary of such knowledge. If the Secretary determines that the infant formula presents a risk to human health, the manufacturer shall immediately take all actions necessary to recall shipments of such infant formula from all wholesale and retail establishments, consistent with recall regulations and guidelines issued by the Secretary.

"(2) For purposes of paragraph (1), the term 'knowledge' as applied to a manufacturer means (A) the actual knowledge that the manufacturer had, or (B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

"(f)(1) If a recall of infant formula is begun by a manufacturer, the recall shall be carried out in accordance with such requirements as the Secretary shall prescribe under paragraph (2) and—

"(A) the Secretary shall, not later than the 15th day after the beginning of such recall and at least once every 15 days thereafter until the recall is terminated, review the actions taken under the recall to determine whether the recall meets the requirements prescribed under paragraph (2), and

"(B) the manufacturer shall, not later than the 14th day after the beginning of such recall and at least once every 14 days thereafter until the recall is terminated, report to the Secretary the actions taken to implement the recall.

"(2) The Secretary shall by regulation prescribe the scope and extent of recalls of infant formulas necessary and appropriate for the degree of risks to human health presented by the formula subject to the recall.

"(3) The Secretary shall by regulation require each manufacturer of an infant formula who begins a recall of such formula because of a risk to human health to request each retail establishment at which such formula is sold or available for sale to post at the point of purchase of such formula a notice of such recall at such establishment

for such time that the Secretary determines necessary to inform the public of such recall.".

(b)(1) Subsection (i) of such section (as so redesignated) is amended—

(A) by inserting "(1)" after "(i)",

(B) by striking out "subsection (a)" and inserting in lieu thereof "paragraph",

(C) by striking out the colon and inserting in lieu thereof a period, and

(D) by adding at the end the following:

"(2) The Secretary may by regulation—

"(A) revise the list of nutrients in the table in this subsection, and

"(B) revise the required level for any nutrient required by the table.".

(2) Section 301(s) of the Federal Food, Drug, and Cosmetic Act is amended to read as follows:

"(s) The failure to provide the notice required by section 412(c) or 412(d), the failure to make the reports required by section 412(f)(1)(B), the failure to retain the records required by section 412(b)(4), or the failure to meet the requirements prescribed under section 412(f)(3).".

SEC. 4015. STUDY ON ALKYL NITRITES.

The Secretary of Health and Human Services, through the Commissioner of Food and Drugs and the Director of the National Institute on Drug Abuse, shall, within 180 days of the date of the enactment of this Act, conduct a study on alkyl nitrites to determine—

(1) the extent and nature of the use of alkyl nitrites products by the public,

(2) the extent to which the use of such products conform to the advertised uses of the products, and

(3) the extent to which the sale of such products to the public presents a health risk and the nature of such risk.

The Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on such study and shall include in the report recommendations concerning whether alkyl nitrites should be treated as a drug under the Federal Food, Drug, and Cosmetic Act.

SEC. 4016. SENSE OF THE SENATE WITH RESPECT TO POSSESSION OR DISTRIBUTION OF DRUGS UNDER STATE LAW.

It is the sense of the Senate that, if the possession or distribution of a drug is an offense under the Controlled Substances Act, the laws of the States should not be amended or revised to provide that the possession or distribution, respectively, of such drug is not a criminal offense.

SEC. 4017. STUDIES ON HEALTH WARNING LABELS FOR ALCOHOLIC BEVERAGES.

(a) The Senate finds that—

(1) the most abused drug in America alcohol;

(2) alcohol abuse costs the American economy nearly $120,000,000,000 per year, including increased medical expenses and decreased productivity;

(3) in 1984, 53 percent of the traffic fatalities in the United States, accounting for more than 23,500 deaths, were related to the consumption of alcohol;

(4) over 12,000,000 American adults have one or more symptoms of alcoholism, and this represents an 8.2 percent increase in problem drinking since 1980;

(5) in 1984, almost 3,300,000 individuals between the ages of 14 and 17 experienced serious problems at home, in school, or with the law because of alcohol consumption;

(6) fetal alcohol syndrome is the third leading cause of birth defects, and is the only preventable cause of birth defects among the top three causes;

(7) nearly 5,000 babies per year are born with birth defects related to fetal alcohol syndrome;

(8) the statistics cited in the preceding paragraphs of this subsection indicate that many Americans are not aware of the adverse effects that the abuse of alcoholic beverages may have on health;

(9) it is necessary to undertake a serious national effort to educate the American people of the serious consequences of alcohol abuse; and

(10) carefully drafted warning labels on the containers of alcoholic beverages concerning serious health consequences resulting from the abuse of alcohol may assist in providing such education.

(b) Therefore, it is the sense of the Senate that—

(1) the Public Health Service should focus attention on the problem of educating the American people on the serious health consequences of alcohol abuse;

(2) the Public Health Service should review available knowledge and conduct studies to assess the most effective means of providing such education, including an assessment of the potential educational impact of health warning labels on the containers of alcoholic beverages; and

(3) the Public Health Service should transmit a report to the Congress within 6 months after the date of enactment of this Act concerning any activities described in paragraph (2) which have been undertaken, and should include in such report any findings respecting the impact and potential benefits of displaying health warnings on the containers of alcoholic beverages and recommendations for specific language for such labels.

SEC. 4018. EFFORTS OF THE ENTERTAINMENT AND WRITTEN MEDIA INDUSTRY.

It is the sense of Congress that—

(1) whereas illegal drug and alcohol consumption and the trafficking in those illegal drugs and alcohol is a major problem in the United States,

(2) whereas the problem of alcohol abuse is particularly prevalent among and harmful to the Nation's young people, and

(3) whereas the values and mores portrayed in various forms of commercially produced entertainment have a profound effect on the attitudes of young people in this country,

the entertainment and written media industry should refrain from producing material meant for general entertainment which in any way glamorizes or encourages the use of illegal drugs and alcohol and the entertainment and written media industry should develop films, television programs, records, videos, and advertising which discourage the use of illegal drugs and alcohol.

SEC. 4019. SENSE OF THE CONGRESS URGING THE CATEGORIZATION OF FILMS WHICH PROMOTE ALCOHOL ABUSE AND DRUG USE.

(a) The Congress finds that—

(1) the abuse of alcohol and the use of drugs has become a societal problem of epidemic proportions,

(2) it is in the interest of all citizens to contribute to the reduction of alcohol abuse and drug use, particularly among youth,

(3) the entertainment industry, particularly the motion picture industry's production of youth-oriented films, often depicts alcohol abuse and drug use in a benign, even glamorous way,

(4) the motion picture industry has a profound impact on societal norms and is a powerful medium which exerts great influence on the values of youth, and

(5) the motion picture industry has recognized the need to inform parents about the contents of movies regarding violence, sex, language, and nudity and therefore currently employs a voluntary rating system.

(b) It is the sense of the Congress that the Motion Picture Association of America should incorporate a new rating in its voluntary movie rating system to clearly identify films which depict alcohol abuse and drug use.

SEC. 420. ANIMALS IN RESEARCH.

Part A of title V, as amended by sections 4004 and 4005 is amended by adding at the end the following:

"ANIMALS IN RESEARCH

"SEC. 509C. (a) The Secretary, acting through the Administrator, shall establish guidelines for the following:

"(1) The proper care of animals to be used in research conducted by and through agencies of the Administration.

"(2) The proper treatment of animals while being used in such research. Guidelines under this paragraph shall require—

"(A) The appropriate use of tranquilizers, analgesics, anesthetics, paralytics, and euthanasia for animals in such research; and

"(B) appropriate pre-surgical and post-surgical veterinary medical and nursing care for animals in such research.

Such guidelines shall not be construed to prescribe methods of research.

"(3) The organization and operation of animal care committee in accordance with subsection (b).

"(b)(1) Guidelines of the Secretary under subsection (a)(3) shall require animal care committees at each entity which conducts research with funds provided under this title to assure compliance with the guidelines established under subsection (a).

"(2) Each animal care committee shall be appointed by the chief executive officer of the entity for which the committee is established, shall be composed of not fewer than three members, and shall include at least one individual who has no association with such entity and at least one doctor of veterinary medicine.

"(c) Each animal care committee of a research entity shall—

"(1) review the care and treatment of animals in all animal study areas and facilities of the research entity at least semiannually to evaluate compliance with applicable guidelines established under subsection (a) for appropriate animal care and treatment;

"(2) keep appropriate records of reviews conducted under paragraph (1); and

"(3) for each review conducted under paragraph (1), file with the Administrator at least annually (A) a certification that the review has been conducted, and (B) report of any violations of guidelines established under subsection (a) or of assurances required under subsection (d) which were observed in such review and which have continued after notice by the committee to the research entity involved of the violations.

Reports filed under paragraph (3) shall include any minority views filed by members of the committee.

"(d) The Administrator shall require each applicant for a grant, contract, or cooperative agreement involving research on animals which is administered by the Administrator or any agency of the Administration to include in its application or contract proposal, submitted after the expiration of the 12-month period beginning on the date of enactment of this section—

"(1) assurances satisfactory to the Administrator that—

"(A) the applicant meets the requirements of the guidelines established under paragraph (1) and (2) of subsection (a) and has an animal care committee which meets the requirements of subsection (b); and

"(B) scientists, animal technicians, and other personnel involved with animal care, treatment, and use by the applicant have available to them instruction or training in the humane practice of animal maintenance and experimentation, and the concept, availability, and use of research or testing methods that limit the use of animals or limit animal distress; and

"(2) a statement of the reasons for the use of animals in the research to be conducted with funds provided under such grant or contract.

Notwithstanding subsection (a)(2) of section 553 of title 5, United States Code, regulations under this subsection shall be promulgated in accordance with the notice and comment requirements of such section.

"(e) If the Administrator determines that—

"(1) the conditions of animal care, treatment, or use in an entity which is receiving a grant, contract, or cooperative agreement involving research on animals under this title do not meet applicable guidelines established under subsection (a);

"(2) the entity has been notified by the Administrator of such determination and has been given a reasonable opportunity to take corrective action; and

"(3) no action has been taken by the entity to correct such conditions;

the Administrator shall suspend or revoke such grant or contract under such conditions as the Administrator determines appropriate.

"(f) No guideline or regulation promulgated under subsection (a) or (c) may require a research entity to disclose publicly trade secrets or commercial or financial information which is privileged or confidential.

SEC. 4021. TECHNICAL AMENDMENTS.

(a) SECTION 504(e).—Subsection (e) of section 504 (42 U.S.C. 290aa-3) is amended by striking out the period at the end of paragraph (2)(A) and inserting in lieu thereof a semicolon.

(b) GENERAL AUTHORITY.—

(1) Section 504 (as amended by section 4019) is amended by adding at the end the following:

"(i) The Secretary, acting through the Director, may make grants to and enter into cooperative agreements and contracts with public and nonprofit private entities for research on mental illness.".

(2) Section 301(a)(3) (42 U.S.C. 241(a)(3)) is amended by striking out "or, in the case of mental health" and all that follows through "Council;" and by striking out "or the National Advisory Mental Health Council".

SEC. 4022. ALCOHOLISM AND ALCOHOL ABUSE TREATMENT STUDY.

(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the National Institute on Alcohol Abuse and Alcoholism and in accordance with subsection (b), shall arrange for the conduct of a study to—

(1) critically review available research knowledge and experience in the United States and other countries regarding alternative approaches and mechanisms (including statutory and voluntary mechanisms) for the provision of alcoholism and alcohol abuse treatment and rehabilitative services,

(2) assess available evidence concerning comparative costs, quality, effectiveness, and appropriateness of alcoholism and alcohol abuse treatment and rehabilitative service alternatives.

(3) review the state of financing alternatives available to the public, including an analysis of policies and experiences of third party insurers and State and municipal governments, and

(4) consider and make recommendations for policies and programs of research, planning, administration, and reimbursement for the treatment and rehabilitation of individuals suffering from alcoholism and aclohol abuse.

(b) ARRANGEMENTS.—

(1) The Secretary shall request the National Academy of Sciences to conduct the study described in subsection (a) under an arrangement under which the actual expenses incurred by the Academy in conducting the study will be paid by the Secretary and with the consent of the Academy the Secretary shall enter into such arrangement.

(2) Under the arrangement entered into under paragraph (1), the National Academy of Sciences shall agree to

(A) conduct the study in consultation with the Director of the National Institute on Alcohol Abuse and Alcoholism, and

(B) submit to the Secretary not later than 24 months after the date the arrangement is entered into a final report on the study.

The Secretary shall transmit the final report of the Academy to Congress not later than 30 days after the date the Secretary receives the report.

Subtitle B—Drug-Free Schools and Communities Act of 1986

SEC. 4101. SHORT TITLE.

This subtitle may be cited as the "Drug-Free Schools and Communities Act of 1986".

SEC. 4102. FINDINGS.

The Congress finds that:

(1) Drug abuse education and prevention programs are essential components of a comprehensive strategy to reduce the demand for and use of drugs throughout the Nation.

(2) Drug use and alcohol abuse are widespread among the Nation's students, not only in secondary schools, but increasingly in elementary schools as well.

(3) The use of drugs and the abuse of alcohol by students constitute a grave threat to their physical and mental well-being and significantly impede the learning process.

(4) The tragic consequences of drug use and alcohol abuse by students are felt not only by students and their families, but also by their communities and the Nation, which can ill afford to lose their skills, talents, and vitality.

(5) Schools and local organizations in communities throughout the Nation have special responsibilities to work together to combat the scourge of drug use and alcohol abuse.

(6) Prompt action by our Nation's schools, families, and communities can bring significantly closer the goal of a drug-free generation and a drug free society.

SEC. 4103. PURPOSE.

It is the purpose of this subtitle to establish programs of drug abuse education and prevention (coordinated with related community efforts and resources) through the provision of Federal financial assistance—

(1) to States for grants to local and intermediate educational agencies and consortia to establish, operate, and improve local programs of drug abuse prevention, early intervention, rehabilitation referral, and education in elementary and secondary schools (including intermediate and junior high schools);

(2) to States for grants to and contracts with community-based organizations for programs of drug abuse prevention, early intervention, rehabilitation referral, and education for school dropouts and other high-risk youth;

(3) to States for development, training, technical assistance, and coordination activities;

(4) to institutions of higher education to establish, implement, and expand programs of drug abuse education and prevention (including rehabilitation referral) for students enrolled in colleges and universities; and

(5) to institutions of higher education in cooperation with State and local educational agencies for teacher training programs in drug abuse education and prevention.

PART 1—FINANCIAL ASSISTANCE FOR DRUG ABUSE EDUCATION AND PREVENTION PROGRAMS

SEC. 4111. AUTHORIZATION OF APPROPRIATIONS.

(a) For the purpose of carrying out this subtitle, there are authorized to be appropriated $200,000,000 for fiscal year 1987 and $250,000,000 for each of the fiscal years 1988 and 1989.

(b) Appropriations for any fiscal year for payments made under this subtitle in accordance with regulations of the Secretary may be made available for obligation or expenditure by the agency or institution concerned on the basis of an academic or school year differing from such fiscal year.

(c) Funds appropriated for any fiscal year under this subtitle shall remain available for obligation and expenditure until the end of the fiscal year succeeding the fiscal year for which such funds were appropriated.

(d) Notwithstanding any other provision of this subtitle, no authority to enter into contracts or financial assistance agreements under this subtitle shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

SEC. 4112. RESERVATIONS AND STATE ALLOTMENTS.

(a) From the sums appropriated or otherwise made available to carry out this subtitle for any fiscal year, the Secretary shall reserve—

(1) 1 percent for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, to be allotted in accordance with their respective needs;

(2) 1 percent for programs for Indian youth under section 4133;

(3) 0.2 percent for programs for Hawiian natives under section 4134;

(4) 8 percent for programs with institutions of higher education under section 4131;

(5) 3.5 percent for Federal activities under section 4132; and

(6) 4.5 percent for regional centers under section 4135.

(b)(1) From the remainder of the sums not reserved under subsection (a), the Secretary shall allot to each State and amount which bears the same ratio to the amount of such remainder as the school-age populations of the State bears to the school-age population of all States, except that no State shall be alloted less than an amount equal to 0.5 percent of such remainder.

(2) The Secretary may reallot any amount of any allotment to a State to the extent that the Secretary determines that the State will not be able to obligate such amount within two years of allotment. Any such reallotment

shall be made on the same basis as an allotment under paragraph (1).

(3) For purposes of this subsection, the term "State" means any of the fifty States, the District of Columbia, and Puerto Rico.

(4) For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, United States Code, to each State from its allotment under this subsection from amounts appropriated for that fiscal year.

PART 2—STATE AND LOCAL PROGRAMS

SEC. 4121. USE OF ALLOTMENTS BY STATES.

(a) An amount equal to 30 percent of the total amount paid to a State from its allotment under section 4112 for any fiscal year shall be used by the chief executive officer of such State for program is accordance with section 4122.

(b) An amount equal to 70 percent of the total amount paid to a State from its allotment under section 4112 for any fiscal year shall be used by the State educationl agency to carry out its responsibilities in accordance with section 4124 and for grants to local and intermediate educational agencies and consortia for programs and activities in accordance with section 4125.

SEC. 4122. STATE PROGRAMS.

(a) Not more than 50 percent of the funds available for each fiscal year under section 4121(a) to the chief executive officer of a State shall be used for grants to and contracts with local governments and other public or private nonprofit entities (including parent groups, community action agencies, and other community-based organizations) for the development and implementation of programs and activities such as—

(1) local broadly-based programs for drug and alcohol abuse prevention, early intervention, rehabilitation referral, and education for all age groups;

(2) training programs concerning drug abuse education and prevention for teachers, counselors, other educational personnel, parents, local law enforcement officials, judicial officials, other public service personnel, and community leaders;

(3) the development and distribution of educational and informational materials to provide public information (through the media and otherwise) for the purpose of achieving a drug-free society;

(4) technical assistance to help community-based organizations and local and intermediate educational agencies and consortia in the planning and implementation of drug abuse prevention, early intervention, rehabilitation referral, and education programs;

(5) activities to encourage the coordination of drug abuse education and prevention program with related community efforts and resources, which may involve the use of a broadly representative State advisory council including members of the State board of education, members of local boards of education, parents, teachers, counselors, health and social service professionals, and others having special interest or expertise; and

(6) other drug abuse education and prevention activities, consistent with the purposes of this subtitle.

(b)(1) Not less than 50 percent of the funds available for each fiscal year under section 4121(a) to the chief executive officer of a State shall be used for innovative community-based programs of coordinated services for high-risk youth. The chief executive officer of such State shall make grants to or contracts with local governments and other public and private nonprofit entites (including parent groups community action agencies, and other community-based organizations) to carry out such services.

(2) For purposes of this subsection, the term "high risk youth" means an individual who has not attained the age of 21 years, who is at high risk of becoming or who has been a drug or alcohol abuser, and who—

(A) is a school dropout;

(B) has become pregnant;

(C) is economically disadvantaged;

(D) is the child of a drug or alcohol abuser;

(E) is a victim of physical, sexual, or psychological abuse;

(F) has committed a violent or delinquent act;

(G) has experienced mental health problems;

(H) has attempted suicide; or

(I) has experienced long-term physical pain due to injury.

SEC. 4123. STATE APPLICATIONS.

(a) In order to receive an allotment under section 4112(b), a State shall submit an application to the Secretary. As part of such application, the chief executive officer of the State shall agree to use the funds made available under section 4121(a) in accordance with the requirements of this part. As part of such application, the State educational agency of the State shall agree to use the funds made available under section 4121(b) in accordance with the requirements of this part.

(b) The application submitted by each State under subsection (a) shall—

(1) cover a period of three fiscal years;

(2) be submitted at such time and in such manner, and contain such information, as the Secretary may require;

(3) contain assurances that the Federal funds made available under this part for any period will be so used as to supplement and increase the level of State, local, and non-Federal funds that would in the absence of such Federal funds be made available for the programs and activities for which funds are provided under this part and will in no event supplant such State, local, and other non-Federal funds;

(4) provide that the State will keep such records and provide such information as may be required by the Secretary for fiscal audit and program evaluation;

(5) contain assurances that there is compliance with the specific requirements of this part;

(6) describe the manner in which the State educational agency will coordinate its efforts with appropriate State health, law enforcement, and drug abuse prevention agencies, including the State agency which administers the Alcohol, Drug Abuse, and Mental Health block grant under part B of title XIX of the Public Health Service Act;

(7) provide assurances that the State educational agency will provide financial assistance under this part only to local and intermediate educational agencies and consortia which establish and implement drug abuse education and prevention programs in elementary and secondary schools; and

(8) provide for an annual evaluation of the effectiveness of programs assisted under this part.

SEC. 4124. RESPONSIBILITIES OF STATE EDUCATIONAL AGENCIES.

(a) Each State educational agency shall use a sum which shall be not less than 90 percent of the amounts available under section 4121(b) for each fiscal year for grants to local and intermediate educational agencies and consortia in the State, in accordance with applications approved under section 4126. From such sum, the State educational agency shall distribute funds for use among areas served by local or intermediate educational agencies or consortia on the basis of the relative numbers of children in the school-age population within such areas. Any amount of the funds made available for use in any area remaining unobligated for more than one year after the funds were made available may be provided by the State educational agency to local or intermediate educational agencies or consortia having plans for programs or activities capable of using such amount on a timely basis.

(b) Each State educational agency shall use not more than 10 percent of the amounts available under section 4121(b) for each fiscal year for such activities as—

(1) training and technical assistance programs concerning drug abuse education and prevention for local and intermediate educational agencies, including teachers, administrators, athletic directors, other educational personnel, parents, local law enforcement officials, and judicial officials.

(2) the development, dissemination, implementation, and evaluation of drug abuse education curricular and teaching materials for elementary and secondary schools throughout the State;

(3) demonstration projects in drug abuse education and prevention;

(4) special financial assistance to enhance resources available for drug abuse education and prevention in areas serving large numbers of economically disadvantaged children or sparsely populated areas, or to meet special needs; and

(5) administrative costs of the State educational agency in carrying out its responsibilities under this part, not in excess of 2.5 percent of the amount available under section 4121(b).

SEC. 4125. LOCAL DRUG ABUSE EDUCATION AND PREVENTION PROGRAMS.

(a) Any amounts made available to local or intermediate educational agencies or consortia under section 4124(a) shall be used for drug and alcohol abuse prevention and education programs and activities, including—

(1) the development, acquisition, and implementation of elementary and secondary school drug abuse education and prevention curricula which clearly and consistently teach that illicit drug use is wrong and harmful;

(2) school-based programs of drug abuse prevention and early intervention (other than treatment);

(3) family drug abuse prevention programs, including education for parents to increase awareness about the symptoms and effects of drug use through the development and dissemination of appropriate educational materials;

(4) drug abuse prevention counseling programs (which counsel that illicit drug use is wrong and harmful) for students and parents, including professional and peer counselors and involving the particpation (where appropriate) of parent or other adult counselors and reformed abusers;

(5) programs of drug abuse treatment and rehabilitation referral;

(6) programs of inservice and preservice training in drug and alcohol abuse prevention for teachers, counselors, other educational personnel, athletic directors, public service personnel, law enforcement officials, judicial officials, and community leaders;

(7) programs in primary prevention and early intervention, such as the interdisciplinary school-team approach;

(8) community education programs and other activities to involve parents and communities in the fight against drug and alcohol abuse;

(9) public education programs on drug and alcohol abuse, including programs utilizing professionals and former drug and alcohol abusers;

(10) on-site efforts in schools to enhance identificaiton and discipline of drug and alcohol abusers, and to enable law enforcement officials to take necessary action in cases of drug possession and supplying of drugs and alcohol to the student population;

(11) special programs and activities to prevent drug and alcohol abuse among student athletes, involving their parents and family in such drug and alcohol abuse prevention efforts and using athletic programs and personnel in preventing drug and alcohol abuse among all students; and

(12) other programs of drug and alcohol abuse education and prevention, consistent with the purposes of this part.

(b) A local or intermediate educational agency or consortium may receive funds under this part for any fiscal year covered by an application under section 4126 approved by the State educational agency.

SEC. 4126. LOCAL APPLICATIONS.

(a)(1) In order to be eligible to receive a grant under this part for any fiscal year, a local or intermediate educational agency or consortium shall submit an application to the State educational agency for approval.

(2) An application under this section shall be for a period not to exceed 3 fiscal years and may be amended annually as may be necessary to reflect changes without filing a new application. Such application shall—

(A) set forth a comprehensive plan for programs to be carried out by the applicant under this part;

(B) contain an estimate of the cost for the establishment and operation of such programs;

(C) establish or designate a local or substate regional advisory council on drug abuse education and prevention composed of individuals who are parents, teachers, officers of State and local government, medical professionals, representatives of the law enforcement community, community-based organizations, and other groups with interest and expertise in the field of drug abuse education and prevention;

(D) describe the manner in which the applicant will establish, implement, or augment mandatory age-appropriate, developmentally-based, drug abuse education and prevention programs for students throughout all grades of the schools operated or served by the applicant (from the early childhood level through grade 12), and provide assurances that the applicant enforces related rules and regulations of student conduct;

(E) describe the manner in which the applicant will coordinate its efforts under this part with other programs in the community related to drug abuse education, prevention, treatment, and rehabilitation;

(F) provides assurances that the applicant will coordinate its efforts with appropriate State and local drug and alcohol abuse, health, and law enforcement agencies, in order to effectively conduct drug and alcohol abuse education, intervention, and referral for treatment and rehabilitation for the student population;

(G) provide assurances that the Federal funds made available under this part shall be used to supplement and, to the extent practical, to increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the purposes described in this part, and in no case supplant such funds;

(H) provide assurances of compliance with the provisions of this part;

(I) agree to keep such records and provide such information to the State educational agency as reasonably may be required for fiscal audit and program evaluation, consistent with the responsibilities of the State agency under this part; and

(J) include such other information and assurances as the State educational agency reasonably determines to be necessary.

PART 3—NATIONAL PROGRAMS

SEC. 4131. GRANTS TO INSTITUTIONS OF HIGHER EDUCATION.

(a)(1) From sums reserved by the Secretary under section 4112(a)(4) for the purposes of this section, the Secretary shall make grants to or enter into contracts with institutions of higher education or consortia of such institutions for drug abuse education and prevention programs under this section.

(2) The Secretary shall make financial assistance available on a competitive basis under this section. An institution of higher education or consortium of such institutions which desires to receive a grant or enter into a contract under this section shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require in accordance with regulations.

(3) The Secretary shall make every effort to ensure the equitable participation of private and public institutions of higher education (including community and junior colleges) and to ensure the equitable geographic participation of such institutions. In the award of grants and contracts under this section, the Secretary shall give appropriate consideration to colleges and universities of limited enrollment.

(4) Not less than 50 percent of sums available for the purposes of this section shall be used to make grants under subsection (d).

(b) Training grants shall be available for—

(1) preservice and inservice training and instruction of teachers and other personnel in the field of drug abuse education and prevention in elementary and secondary schools;

(2) summer institutes and workshops in instruction in the field of drug abuse education and prevention;

(3) research and demonstration programs for teacher training and retraining in drug abuse education and prevention;

(4) training programs for law enforcement officials, judicial officials, community leaders, parents, and government officials.

(c) Grants shall be available for model demonstration programs to be coordinated with local elementary and secondary schools for the development and implementation of quality drug abuse education curricula. In the award of grants under this subsection, the Secretary shall give priority consideration to joint projects involving faculty of institutions of higher education and teachers in elementary and secondary schools in the practical application of the findings of educational research and evaluation and the integration of such research into drug abuse education and prevention programs.

(d) Grants shall be available under this subsection to develop, implement, operate, and improve programs of drug abuse education and prevention (including rehabilitation referral) for students enrolled in institutions of higher education.

(e) In making grants under paragraphs (1) and (2) of subsection (b), the Secretary shall encourage projects which provide for coordinated and collaborative efforts between State educational agencies, local educational agencies, and regional centers established under section 4135.

SEC. 4132. FEDERAL ACTIVITIES.

(a) From sums reserved by the Secretary under section 4112(a)(5), the Secretary shall carry out the purposes of this section.

(b) The Secretary of Education in conjunction with the Secretary of Health and Human Services shall carry out Federal education and prevention activities on drug abuse.

The Secretary shall coordinate such drug abuse education and prevention activities with other appropriate Federal activities related to drug abuse. The Secretary shall—

(1) provide information on drug abuse education and prevention to the Secretary of Health and Human Services for dissemination by the clearinghouse for alcohol and drug abuse information established under section 509 of the Public Health Service Act (as amended by this Act);

(2) facilitate the utilization of appropriate means of communicating to students at all educational levels about the dangers of drug use and alcohol abuse, especially involving the participating of entertainment personalities and athletes who are recognizable role models for many young people;

(3) develop, publicize the availability of, and widely disseminate audio-visual and other curricular materials for drug abuse education and prevention programs in elementary and secondary schools throughout the Nation;

(4) provide technical assistance to State, local, and intermediate education agencies and consortia in the selection and implementation of drug abuse education and prevention curricula, approaches, and programs to address most effectively the needs of the elementary and secondary schools served by such agencies; and

(5) identify research and development priorities with regard to school-based drug abuse education and prevention, particularly age-appropriate programs focusing on kindergarten through grade 4.

(c) From the funds available to carry out this section, the Secretary shall make available $500,000 to the Secretary of Health and Human Services for the clearinghouse established under section 509 of the Public Health Service Act (as amended by this Act).

(d) The Secretary of Education in conjunction with the Secretary of Health and Human Services shall conduct, directly or by contract, a study of the nature and effectiveness of existing Federal, State, and local programs of drug abuse education and prevention and shall submit a report of the findings of such study to the President and to the appropriate committees of the Congress not later than one year after the date of the enactment of this Act.

SEC. 4133. PROGRAMS FOR INDIAN YOUTH.

(a)(1) From the funds reserved pursuant to section 4112(a)(2), the Secretary shall make payments and grants and enter into other financial arrangements for Indian programs in accordance with this subsection.

(2) The Secretary of Education shall enter into such financial arrangements as the Secretary determines will best carry out the purposes of this title to meet the needs of Indian children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the

Interior. Such arrangements shall be made pursuant to an agreement between the Secretary of Education and the Secretary of the Interior containing such assurances and terms as they determine will best achieve the purposes of this title.

(3) The Secretary of Education may, upon request of any Indian tribe which is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination Act or under the Act of April 16, 1934, enter into grants or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs which are authorized and consistent with the purposes of this title (particularly programs for Indian children who are school dropouts), except that such grants or contracts shall be subject to the terms and conditions of section 102 of the Indian Self-Determination Act and shall be conducted in accordance with sections 4, 5, and 6 of the Act of April 16, 1934, which are relevant to the programs administered under this paragraph.

(4) Programs funded under this subsection shall be in addition to such other programs, services, and activities as are made available to eligible Indians under other provisions of this subtitle.

(b)(1) Section 304 of the Indian Elementary and Secondary School Assistance Act (20 U.S.C. 241cc) is amended by—

(A) striking out "and" at the end of paragraph (1);

(B) striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(C) adding at the end the following new paragraph:

"(3) the training of counselors at schools eligible for funding under this title in counseling techniques relevant to the treatment of alcohol and substance abuse.".

(2) Section 423 of the Indian Education Act (20 U.S.C. 3385b) is amended—

(A) in subsection (a), by inserting "clinical psychology," after "medicine,"; and

(B) by adding at the end of the section the following new subsection:

"(e) Not more than 10 percent of the fellowships awarded under subsection (a) shall be awarded, on a priority basis, to persons receiving training in guidance counseling with a specialty in the area of alcohol and substance abuse counseling and education.".

(3) Section 1121 of the Education Amendments of 1978 is amended by adding at the end the following new subsection:

"(i)(1) All schools funded by the Bureau of Indian Affairs shall include within their curriculum a program of instruction relating to alcohol and substance abuse prevention and treatment. The Assistant Secretary shall provide the technical assistance necessary to develop and implement such a program for students in kindergarten and grades 1 through 12, at the request of—

"(A) any Bureau of Indian Affairs school (subject to the approval of the school board of such school); or

"(B) any school board of a school operating under a contract entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

"(2) In schools operated directly by the Bureau of Indian Affairs, the Secretary shall, not later than 120 days after the date of the enactment of this subsection, provide for—

"(A) accurate reporting of all incidents relating to alcohol and substance abuse; and

"(B) individual student crisis intervention.

"(3) The programs requested under paragraph (1) shall be developed in consultation with the Indian tribe that is to be served by such program and health personnel in the local community of such tribe.

"(4) Schools requesting program assistance under this subsection are encouraged to involve family units and, where appropriate, tribal elders and Native healers in such instructions."

(4) Section 1129 of the Educational Amendments of 1978 is amended by adding at the end the following new subsection:

"(e)(1) A financial plan under subsection (b) for a school may include, at the discretion of the local administrator and the school board of such school, a provision for a summer program of academic and support services for students of the school. Any such program may include activities related to the prevention of alcohol and substance abuse. The Assistant Secretary of Indian Affairs shall provide for the utilization of any such school facility during any summer in which such utilization is requested.

"(2) Notwithstanding any other provision of law, funds authorized under the Act of April 16, 1934 (25 U.S.C. 452 et seq.) and the Indian Education Act may be used to augment the services provided in each summer program at the option, and under the control, of the tribe or Indian controlled school receiving such funds.

"(3) The Assistant Secretary of Indian Affairs, acting through the Director of the Office of Indian Eduation Programs, shall provide technical assistance and coordination for any program described in paragraph (1) and shall, to the extent possible, encourage the coordination of such programs with any other summer programs that might benefit Indian youth, regardless of the funding source or administrative entity of any such program.".

SEC. 4134. PROGRAMS FOR HAWAIIAN NATIVES.

(a) From the funds reserved pursuant to section 4112(a)(3), the Secretary shall enter into contracts with organizations primarily serving and representing Hawaiian natives which are recognized by the Governor of the State of Hawaii to plan, conduct, and administer programs, or portions thereof, which are authorized by and consistent with the provisions of this subtitle for the benefit of Hawaiian natives.

(b) For the purposes of this section, the term "Hawaiian native" means any individual any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

SEC. 4135. REGIONAL CENTERS.

The Secretary shall use the amounts made available to carry out this section for each fiscal year to maintain 5 regional centers to—

(1) train school teams to assess the scope and nature of their drug abuse and alcohol abuse problems, mobilize the community to address such problems, design appropriate curricula, identify students at highest risk and refer them to appropriate treatment, and institutionalize long term effective drug and alcohol abuse programs, including long range technical assistance, evaluation, and followup on such training;

(2) assist State educational agencies in coordinating and strengthening drug abuse and alcohol abuse education and prevention programs;

(3) assist local educational agencies and institutions of higher education in developing appropriate pre-service and in-service training programs for educational personnel; and

(4) evaluate and disseminate information on effective drug abuse and alcohol abuse education and prevention programs and strategies.

PART 4—GENERAL PROVISIONS

SEC. 4141. DEFINITIONS.

(a) Except as otherwise provided, the terms used in this subtitle shall have the meaning provided under section 595 of the Education Consolidation and Improvement Act of 1981.

(b) For the purposes of this subtitle, the following terms have the following meanings:

(1) The term "drug abuse education and prevention" means prevention, early intervention, rehabilitation referral, and education related to the abuse of alcohol and the use and abuse of controlled, illegal, addictive, or harmful substances.

(2) The term "illicit drug use" means the use of illegal drugs and the abuse of other drugs and alcohol.

(3) The term "Secretary" means the Secretary of Education.

(4) The term "school-age population" means the population aged five through seventeen (inclusive), as determined by the Secretary on the basis of the most recent satisfactory data available from the Department of Commerce.

(5) The term "school dropout" means an individual aged five through eighteen who is not attending any school and who has not received a secondary school diploma or a certificate from a program of equivalency for such a diploma.

(6) The term "State" means a State, the District of Columbia, Puerto Rico, Guam, American Samoa, the Northern Marina Islands, the Trust Territory of the Pacific Islands, or the Virgin Islands.

(7) The terms "institution of higher education", "secondary school", and "nonprofit" have the meanings provided in section 1001 of the Elementary and Secondary Education Act of 1965 in effect prior to October 1, 1981.

(8) The term "consortium" (except in section 4131) means a consortium of local educational agencies or of one or more intermediate educational agencies and one or more local educational agencies.

SEC. 4142. FUNCTIONS OF THE SECRETARY OF EDUCATION.

(a) The Secretary shall be responsible for the administration of the programs authorized by this subtitle.

(b) Except as otherwise provided, the General Education Provisions Act shall apply to programs authorized by this subtitle.

SEC. 4143. PARTICIPATION OF CHILDREN AND TEACHERS FROM PRIVATE NONPROFIT SCHOOLS.

(a) To the extent consistent with the number of school-age children in the State or in the school attendance area of a local or intermediate educational agency or consortium receiving financial assistance under part 2 who are enrolled in private nonprofit elementary and secondary schools, such State, agency, or consortium shall, after consultation with appropriate private school representatives, make provision for including services and arrangements for the benefit of such children as will assure the equitable participation of such children in the purposes and benefits of this subtitle.

(b) To the extent consistent with the number of school-age children in the State or in the school attendance area of a local or intermediate educational agency or consortium receiving financial assistance under part 2 who are enrolled in private nonprofit

elementary and secondary schools, such State, State educational agency, or State agency for higher education shall, after consultation with appropriate private school representatives, make provision, for the benefit of such teachers in such schools, for such teacher training as will assure equitable participation of such teachers in the purposes and benefits of this subtitle.

(c) If by reason of any provision of law a State, local, or intermediate educational agency or consortium is prohibited from providing for the participation of children or teachers from private nonprofit schools as required by subsections (a) and (b) or, if the Secretary determines that a State, local, or intermediate educational agency or consortium has substantially failed or is unwilling to provide for such participation on an equitable basis, the Secretary shall waive such requirements and shall arrange for the provision of services to such children or teachers which shall be subject to the requirements of this section. Such waivers shall be subject to consultation, withholding, notice, and judicial review requirements in accordance with paragraphs (3) and (4) of section 557(b) of the Education Consolidation and Improvement Act of 1981.

SEC. 4144. MATERIALS.

Any materials produced or distributed with funds made available under this subtitle shall reflect the message that illicit drug use is wrong and harmful. The Secretary shall not review curricula and shall not promulgate regulations to carry out this subsection or subparagraph (1) or (4) of section 4125(a).

Subtitle C—Indians and Alaska Natives

SEC. 4201. SHORT TITLE.

This subtitle may be cited as the "Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986".

PART I—GENERAL PROVISIONS

SEC. 4202. FINDINGS.

The Congress finds and declares that—

(1) the Federal Government has a historical relationship and unique legal and moral responsibility to Indian tribes and their members,

(2) included in this responsibility is the treaty, statutory, and historical obligation to assist the Indian tribes in meeting the health and social needs of their members,

(3) alcoholism and alcohol and substance abuse is the most severe health and social problem facing Indian tribes and people today and nothing is more costly to Indian people than the consequences of alcohol and substance abuse measured in physical, mental, social, and economic terms,

(4) alcohol and substance abuse is the leading generic risk factor among Indians, and Indians die from alcoholism at over 4 times the age-adjusted rates for the United States population and alcohol and substance misuse results in a rate of years of potential life lost nearly 5 times that of the United States,

(5) 4 of the top 10 causes of death among Indians are alcohol and drug related injuries (18 percent of all deaths), chronic liver disease and cirrhosis (5 percent), suicide (3 percent), and homicide (3 percent),

(6) primarily because deaths from unintentional injuries and violence occur disproportionately among young people, the age-specific death rate for Indians is approximately double the United States rate for the 15 to 45 age group,

(7) Indians between the ages of 15 and 24 years of age are more than 2 times as likely to commit suicide as the general population and approximately 80 percent of those suicides are alcohol-related,

(8) Indians between the ages of 15 and 24 years of age are twice as likely as the general population to die in automobile accidents, 75 percent of which are alcohol-related,

(9) the Indian Health Service, which is charged with treatment and rehabilitation efforts, has directed only 1 percent of its budget for alcohol and substance abuse problems,

(10) the Bureau of Indian Affairs, which has responsibility for programs in education, social services, law enforcement, and other areas, has assumed little responsibility for coordinating its various efforts to focus on the epidemic of alcohol and substance abuse among Indian people,

(11) this lack of emphasis and priority continues despite the fact that Bureau of Indian Affairs and Indian Health Service officials publicly acknowledge that alcohol and substance abuse among Indians is the most serious health and social problem facing the Indian people, and

(12) the Indian tribes have the primary responsibility for protecting and ensuring the well-being of their members and the resources made available under this subtitle will assist Indian tribes in meeting that responsibility.

SEC. 4203. PURPOSE.

It is the purpose of this subtitle to—

(1) authorize and develop a comprehensive, coordinated attack upon the illegal narcotics traffic in Indian country and the deleterious impact of alcohol and substance abuse upon Indian tribes and their members,

(2) provide needed direction and guidance to those Federal agencies responsible for Indian programs to identify and focus existing programs and resources, including those made available by this subtitle, upon this problem,

(3) provide authority and opportunities for Indian tribes to develop and implement a coordinated program for the prevention and treatment of alcohol and substance abuse at the local level, and

(4) to modify or supplement existing programs and authorities in the areas of education, family and social services, law enforcement and judicial services, and health services to further the purposes of this subtitle.

SEC. 4204. DEFINITIONS.

For purposes of this subtitle—

(1) The term "agency" means the local administrative entity of the Bureau of Indian Affairs serving one or more Indian tribes within a defined geographic area.

(2) The term "youth" shall have the meaning given it in any particular Tribal Action Plan adopted pursuant to section 4205, except that, for purposes of statistical reporting under this subtitle, it shall mean a person who is 19 years or younger or who is in attendance at a secondary school.

(3) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)) which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(4) The term "prevention and treatment" includes, as appropriate—

(A) efforts to identify, and the identification of, Indians who are at risk with respect to, or who are abusers of, alcohol or controlled substances,

(B) intervention into cases of on-going alcohol and substance abuse to halt a further progression of such abuse,

(C) prevention through education and the provision of alternative activities,

(D) treatment for alcohol and substance abusers to help abstain from, and alleviate the effects of, abuse,

(E) rehabilitation to provide on-going assistance, either on an inpatient or outpatient basis, to help Indians reform or abstain from alcohol or substance abuse,

(F) follow-up or after-care to provide the appropriate counseling and assistance on an outpatient basis, and

(G) referral to other sources of assistance or resources.

(5) The term "service unit" means an administrative entity within the Indian Health Service or a tribe or tribal organization operating health care programs or facilities with funds from the Indian Health Service under the Indian Self-Determination Act through which the services are provided, directly or by contract, to the eligible Indian population within a defined geographic area.

PART II—COORDINATION OF RESOURCES AND PROGRAMS

SEC. 4205. INTER-DEPARTMENTAL MEMORANDUM OF AGREEMENT.

(a) IN GENERAL.—Not later than 120 days after the date of enactment of this subtitle, the Secretary of the Interior and the Secretary of Health and Human Services shall develop and enter into a Memorandum of Agreement which shall, among other things—

(1) determine and define the scope of the problem of alcohol and substance abuse for Indian tribes and their members and its financial and human costs, and specifically identify such problems affecting Indian youth,

(2) identify—

(A) the resources and programs of the Bureau of Indian Affairs and Indian Health Service, and

(B) other Federal, tribal, State and local, and private resources and programs,

which would be relevant to a coordinated effort to combat alcohol and substance abuse among Indian people, including those programs and resources made available by this subtitle,

(3) develop and establish appropriate minimum standards for each agency's program responsibilities under the Memorandum of Agreement which may be—

(A) the existing Federal or State standards in effect, or

(B) in the absence of such standards, new standards which will be developed and established in consultation with Indian tribes,

(4) coordinate the Bureau of Indian Affairs and Indian Health Service alcohol and substance abuse programs existing on the date of the enactment of this subtitle with programs or efforts established by this subtitle,

(5) delineate the responsibilities of the Bureau of Indian Affairs and the Indian Health Service to coordinate alcohol and substance abuse-related services at the central, area, agency, and service unit levels,

(6) direct Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit directors to cooperate fully with tribal requests made pursuant to section 4206, and

(7) provide for an annual review of such agreements by the Secretary of the Interior and the Secretary of Health and Human Services.

(b) CHARACTER OF ACTIVITIES.—To the extent that there are new activities undertaken pursuant to this subtitle, those activities shall supplement, not supplant, activities, programs, and local actions that are ongoing on the date of the enactment of this subtitle. Such activities shall be undertaken in the manner least disruptive to tribal control, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), and local control, in accordance with section 1130 of the Education Amendments of 1978 (25 U.S.C. 2010).

(c) CONSULTATION.—The Secretary of the Interior and the Secretary of Health and Human Services shall, in developing the Memorandum of Agreement under subsection (a), consult with and solicit the comments of—

(1) interested Indian tribes,

(2) Indian individuals,

(3) Indian organizations, and

(4) professionals in the treatment of alcohol and substance abuse.

(d) PUBLICATION.—The Memorandum of Agreement under subsection (a) shall be submitted to Congress and published in the Federal Register not later than 130 days after the date of enactment of this subtitle. At the same time as publication in the Federal Register, the Secretary of the Interior shall provide a copy of this subtitle and the Memorandum of Agreement under subsection (a) to each Indian tribe.

SEC. 4206. TRIBAL ACTION PLANS.

(a) IN GENERAL.—The governing body of any Indian tribe may, at its discretion, adopt a resolution for the establishment of a Tribal Action Plan to coordinate available resources and programs, including programs and resources made available by this subtitle, in an effort to combat alcohol and substance abuse among its members. Such resolution shall be the basis for the implementation of this subtitle and of the Memorandum of Agreement under section 4205.

(b) COOPERATION.—At the request of any Indian tribe pursuant to a resolution adopted under subsection (a), the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director providing services to such tribe shall cooperate with the tribe in the development of a Tribal Action Plan to coordinate resources and programs relevant to alcohol and substance abuse prevention and treatment. Upon the development of such a plan, such superintendents and director, as directed by the Memorandum of Agreement established under section 4205, shall enter into an agreement with the tribe for the implementation of the Tribal Action Plan under subsection (a).

(c) PROVISIONS.—

(1) Any Tribal Action Plan entered into under subsection (b) shall provide for—

(A) the establishment of a Tribal Coordinating Committee which shall—

(i) at a minimum, have as members a tribal representative who shall serve as Chairman and the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director, or their representatives,

(ii) have primary responsibility for the implementation of the Tribal Action Plan,

(iii) have the responsibility for on-going review and evaluation of, and the making of recommendations to the tribe relating to, the Tribal Action Plan, and

(iv) have the responsibility for scheduling Federal, tribal or other personnel for training in the prevention and treatment of alcohol and substance abuse among Indians as provided under section 4228, and

(B) the incorporation of the minimum standards for those programs and services which it encompasses which shall be—

(i) the Federal or State standards as provided in section 4205(a)(3), or

(ii) applicable tribal standards, if such standards are no less stringent than the Federal or State standards.

(2) Any Tribal Action Plan may, among other things, provide for—

(A) an assessment of the scope of the problem of alcohol and substance abuse for the Indian tribe which adopted the resolution for the Plan,

(2) the identification and coordination of available resources and programs relevant to a program of alcohol and substance abuse prevention and treatment,

(3) the establishment and prioritization of goals and the efforts needed to meet those goals, and

(4) the identification of the community and family roles in any of the efforts undertaken as part of the Tribal Action Plan.

(d) GRANTS.—(1) The Secretary of the Interior may make grants to Indian tribes adopting a resolution pursuant to subsection (a) to provide technical assistance in the development of a Tribal Action Plan. The Secretary shall allocate funds based on need.

(2) There is authorized to be appropriated not to exceed $1,000,000 for each of the fiscal year 1987, 1988, and 1989 for grants under this subsection.

(e) FEDERAL ACTION.—If any Indian tribe does not adopt a resolution as provided in subsection (a) within 90 days after the publication of the Memorandum of Agreement in the Federal Register as provided in section 4205, the Secretary of the Interior and the Secretary of Health and Human Services shall require the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director serving such tribe to enter into an agreement to identify and coordinate available programs and resources to carry out the purposes of this subtitle for such tribe. After such an agreement has been entered into for a tribe such tribe may adopt a resolution under subsection (a).

SEC. 4207. DEPARTMENTAL RESPONSIBILITY.

(a) IMPLEMENTATION.—The Secretary of the Interior, acting through the Bureau of Indian Affairs, and the Secretary of Health and Human Services, acting through the Indian Health Service, shall bear equal responsibility for the implementation of this subtitle in cooperation with Indian tribes.

(b) OFFICE OF ALCOHOL AND SUBSTANCE ABUSE.—

(1) In order to better coordinate the various programs of the Bureau of Indian Affairs in carrying out this subtitle, there is established within the Office of the Assistant Secretary of Indian Affairs an Office of Alcohol and Substance Abuse. The director of such office shall be appointed by the Assistant Secretary on a permanent basis at no less than a grade GS-15 of the General Schedule.

(2) In addition to other responsibilities which may be assigned to such Office, it shall be responsible for—

(A) monitoring the performance and compliance of programs of the Bureau of Indian Affairs in meeting the goals and purposes of this subtitle and the Memorandum of Agreement entered into under section 4205, and

(B) serving as a point of contact within the Bureau of Indian Affairs for Indian tribes and the Tribal Coordinating Committees regarding the implementation of this subtitle, the Memorandum of Agreement, and any Tribal Action Plan established under section 4206.

(c) INDIAN YOUTH PROGRAMS OFFICER.—

(1) There is established in the Office of Alcohol and Substance Abuse the position to be known as the Indian Youth Programs Officer.

(2) The position of Indian Youth Programs Officer shall be established on a permanent basis at no less than the grade of GS-14 of the General Schedule.

(3) In addition to other responsibilities which may be assigned to the Indian Youth Programs Officer relating to Indian Youth, such Officer shall be responsible for—

(A) monitoring the performance and compliance of programs of the Bureau of Indian Affairs in meeting the goals and purposes of this subtitle and the Memorandum of Agreement entered into under section 4205 as they relate to Indian youth efforts, and

(B) providing advice and recommendations, including recommendations submitted by Indian tribes and Tribal Coordinating Committees, to the Director of the Office of Alcohol and Substance Abuse as they relate to Indian youth.

SEC. 4208. CONGRESSIONAL INTENT.

It is the intent of Congress that—

(1) specific Federal laws, and administrative regulations promulgated thereunder, establishing programs of the Bureau of Indian Affairs, the Indian Health Service, and other Federal agencies, and

(2) general Federal laws, including laws limiting augmentation of Federal appropriations or encouraging joint or cooperative funding,

shall be liberally construed and administered to achieve the purposes of this subtitle.

SEC. 4209. FEDERAL FACILITIES, PROPERTY, AND EQUIPMENT.

(a) FACILITY AVAILABILITY.—In the furtherance of the purposes and goals of this subtitle, the Secretary of the Interior and the Secretary of Health and Human Services shall make available for community use, to the extent permitted by law and as may be provided in a Tribal Action Plan, local Federal facilities, property, and equipment, including school facilities. Such facility availability shall include school facilities under the Secretary of the Interior's jurisdiction: Provided, That the use of any school facilities shall be conditioned upon approval of the local school board with jurisdiction over such school.

(b) COSTS.—Any additional cost associated with the use of Federal facilities, property, or equipment under subsection (a) may be borne by the Secretary of the Interior and the Secretary of Health and Human Services out of available Federal, tribal, State, local, or private funds, if not otherwise prohibited by law. This subsection does not require the Secretary of the Interior nor the Secretary of Health and Human Services to expend additional funds to meet the additional costs which may be associated with the provision of such facilities, property, or equipment for community use. Where the use of Federal facilities, property, or equipment under subsection (a) furthers the purposes and goals of this subtitle, the use of funds other than those funds appropriated to the Department

of the Interior or the Department of Health and Human Services to meet the additional costs associated with such use shall not constitute an augmentation of Federal appropriations.

SEC. 4210. NEWSLETTER.

The Secretary of the Interior shall, not later than 120 days after the date of the enactment of this subtitle, publish an alcohol and substance abuse newsletter in cooperation with the Secretary of Health and Human Services and the Secretary of Education to report on Indian alcohol and substance abuse projects and programs. The newsletter shall—

(1) be published once in each calendar quarter,

(2) include reviews of programs determined by the Secretary of the Interior to be exemplary and provide sufficient information to enable interested persons to obtain further information about such programs, and

(3) be circulated without charge to—

(A) schools,

(B) tribal offices,

(C) Bureau of Indian Affairs' agency and area offices,

(D) Indian Health Service area and service unit offices,

(E) Indian Health Service alcohol programs, and

(F) other entities providing alcohol and substance abuse related services or resources to Indian people.

PART III—INDIAN YOUTH PROGRAMS

SEC. 4211. REVIEW OF PROGRAMS.

(a) REVIEW.—In the development of the Memorandum of Agreement required by section 4205, the Secretary of the Interior and the Secretary of Health and Human Services, in cooperation with the Secretary of Education shall review and consider—

(1) Federal programs providing education services or benefits to Indian children,

(2) tribal, State, local, and private educational resources and programs,

(3) Federal programs providing family and social services and benefits for Indian families and children,

(4) Federal programs relating to youth employment, recreation, cultural, and community activities, and

(5) tribal, State, local, and private resources for programs similar to those cited in paragraphs (3) and (4),

to determine their applicability and relevance in carrying out the purposes of this subtitle.

(b) PUBLICATION.—The results of the review conducted under subsection (a) shall be provided to each Indian tribe as soon as possible for their consideration and use in the development or modification of a Tribal Action Plan under section 4206.

SEC. 4212. INDIAN EDUCATION PROGRAMS.

(a) PILOT PROGRAMS.—The Assistant Secretary of Indian Affairs shall develop and implement pilot programs in selected schools funded by the Bureau of Indian Affairs (subject to the approval of the local school board or contract school board) to determine the effectiveness of summer youth programs in furthering the purposes and goals of the Indian Alcohol and Substance Abuse Prevention Act of 1986. The Assistant Secretary shall defray all costs associated with the actual operation and support of the pilot programs in the school from funds appropriated for this section. For the pilot programs there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, and 1989.

(b) USE OF FUNDS.—Federal financial assistance made available to public or private schools because of the enrollment of Indian children pursuant to—

(1) the Act of April 16, 1934, as amended by the Indian Education Assistance Act (25 U.S.C. 452 et seq.),

(2) the Indian Elementary and Secondary School Assistance Act (20 U.S.C. 241aa et seq.), and

(3) the Indian Education Act (20 U.S.C. 3385),

may be used to support a program of instruction relating to alcohol and substance abuse prevention and treatment.

SEC. 4213. EMERGENCY SHELTERS.

(a) IN GENERAL.—A Tribal Action Plan adopted pursuant to section 4206 may make such provisions as may be necessary and practical for the establishment, funding, licensing, and operation of emergency shelters or half-way houses for Indian youth who are alcohol or substance abusers, including youth who have been arrested for offenses directly or indirectly related to alcohol or substance abuse.

(b) REFERRALS.—

(1) In any case where an Indian youth is arrested or detained by the Bureau of Indian Affairs or tribal law enforcement personnel for an offense relating to alcohol or substance abuse, other than for a status offense as defined by the Juvenile Justice and Delinquency Prevention Act of 1974, under circumstances where such youth may not be immediately restored to the custody of his parents or guardians and where there is space available in an appropriately licensed and supervised emergency shelter or half-way house, such youth shall be referred to such facility in lieu of incarceration in a secured facility unless such youth is deemed a danger to himself or to other persons.

(2) In any case where there is a space available in an appropriately licensed and supervised emergency shelter or half-way house, the Bureau of Indian Affairs and tribal courts are encouraged to refer Indian youth convicted of offenses directly or indirectly related to alcohol and substance abuse to such facilities in lieu of sentencing to incarceration in a secured juvenile facility.

(c) DIRECTION TO STATES.—In the case of any State that exercises criminal jurisdiction over any part of Indian country under section 1162 of title 18 of the United States Code or section 401 of the Act of April 11, 1968 (25 U.S.C. 1321), such State is urged to require its law enforcement officers to—

(1) place any Indian youth arrested for any offense related to alcohol or substance abuse in a temporary emergency shelter described in subsection (d) or a community-based alcohol or substance abuse treatment facility in lieu of incarceration to the extent such facilities are available, and

(2) observe the standards promulgated under subsection (d).

(d) STANDARDS.—The Assistant Secretary of Indian Affairs shall, as part of the development of the Memorandum of Agreement set out in section 4205, promulgate standards by which the emergency shelters established under a program pursuant to subsection (a) shall be established and operated.

(e) AUTHORIZATION.—For the planning and design, construction, and renovation of emergency shelters or half-way houses to provide emergency care for Indian youth, there is authorized to be appropriated $5,000,000 for each of the fiscal years 1987, 1988, and 1989. For the operation of emergency shelters or half-way houses there is authorized to be appropriated $3,000,000 for each of the fiscal years 1987, 1988, and 1989. The Secretary of the Interior shall allocate funds appropriated pursuant to this subsection on the basis of priority of need of the various Indian tribes and such funds, when allocated, shall be subject to contracting pursuant to the Indian Self-Determination Act.

SEC. 4214. SOCIAL SERVICES REPORTS.

(a) DATA.—The Secretary of the Interior, with respect to the administration of any family or social services program by the Bureau of Indian Affairs directly or through contracts under the Indian Self-Determination Act, shall require the compilation of data relating to the number and types of child abuse and neglect cases seen and the type of assistance provided. Additionally, such data should also be categorized to reflect those cases that involve, or appear to involve, alcohol and substance abuse, those cases which are recurring, and those cases which involve other minor siblings.

(b) REFERRAL OF DATA.—The data compiled pursuant to subsection (a) shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan and shall also be submitted to the Indian Health Service service unit director who will have responsibility for compiling a tribal comprehensive report as provided in section 4230.

(c) CONFIDENTIALITY.—In carrying out the requirements of subsections (a) and (b), the Secretary shall insure that the data is compiled and reported in a manner which will preserve the confidentiality of the families and individuals.

PART IV—LAW ENFORCEMENT AND JUDICIAL SERVICES

SEC. 4215. REVIEW OF PROGRAMS.

(a) LAW ENFORCEMENT AND JUDICIAL SERVICES.—In the development of the Memorandum of Agreement required by section 4205, the Secretary of the Interior and the Secretary of Health and Human Services, in cooperation with the Attorney General of the United States, shall review and consider—

(1) the various programs established by Federal law providing law enforcement or judicial services for Indian tribes, and

(2) tribal and State and local law enforcement and judicial programs and systems

to determine their applicability and relevance in carrying out the purposes of this subtitle.

(b) DISSEMINATION OF REVIEW.—The results of the review conducted pursuant to subsection (a) shall be made available to every Indian tribe as soon as possible for their consideration and use in the development and modification of a Tribal Action Plan.

SEC. 4216. ILLEGAL NARCOTICS TRAFFIC ON THE PAPAGO RESERVATION: SOURCE ERADICATION.

(a)(1) INVESTIGATION AND CONTROL.—The Secretary of the Interior shall provide assistance to the Papago Indian Tribe (Tohono O'odham) of Arizona for the investigation and control of illegal narcotics traffic on the Papago Reservation along the border with Mexico. The Secretary shall ensure that tribal efforts are coordinated with appropriate Federal Law enforcement agencies, including the United States Customs Service.

(2) AUTHORIZATIONS.—For the purpose of providing the assistance required by subsection (a), there is authorized to be appropriated $500,000 for each of the fiscal years 1987, 1988, and 1989.

(b)(1) MARIJUANA ERADICATION.—The Secretary of the Interior, in cooperation with ap-

propriate Federal, tribal, and State and local law enforcement agencies, shall establish and implement a program for the eradication of marijuana cultivation within Indian country as defined in section 1152 of title 18, United States Code. The Secretary shall establish a priority for the use of funds appropriated under subsection (b) for those Indian reservations where the scope of the problem is most critical, and such funds shall be available for contracting by Indian tribes pursuant to the Indian Self-Determination Act.

(2) AUTHORIZATIONS.—To carry out subsection (a), there is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, and 1989.

PART V—BUREAU OF INDIAN AFFAIRS LAW ENFORCEMENT

SEC. 4217. TRIBAL COURTS, SENTENCING AND FINES.

To enhance the ability of tribal governments to prevent and penalize the traffic of illegal narcotics on Indian reservations, paragraph (7) of section 202 of the Act of April 11, 1969 (25 U.S.C. 1302) is amended by striking out "for a term of six months and a fine of $500, or both" and inserting in lieu thereof "for a term of one year and a fine of $5,000, or both".

SEC. 4218. BUREAU OF INDIAN AFFAIRS LAW ENFORCEMENT AND JUDICIAL TRAINING.

(a) IN GENERAL.—The Secretary of the Interior shall ensure, through the establishment of a new training program or through the supplement of existing training programs, that all Bureau of Indian Affairs and tribal law enforcement and judicial personnel shall have available training in the investigation and prosecution of offenses relating to illegal narcotics and in alcohol and substance abuse prevention and treatment. Any training provided to Bureau of Indian Affairs and tribal law enforcement and judicial personnel as provided in subsection (a) shall specifically include training in the problems of youth alcohol and substance abuse prevention and treatment. Such training shall be coordinated with the Indian Health Service in the carrying out of its responsibilities under section 4228.

(b) AUTHORIZATION.—For the purpose of providing the training required by subsection (a), there are authorized to be appropriated $1,500,000 for each of the fiscal years 1987, 1988, and 1989.

SEC. 4219. MEDICAL ASSESSMENT AND TREATMENT OF JUVENILE OFFENDERS.

The Memorandum of Agreement entered into pursuant to section 4205 shall include a specific provision for the development and implementation at each Bureau of Indian Affairs agency and Indian Health Service unit of a procedure for the emergency medical assessment and treatment of every Indian youth arrested or detained by Bureau of Indian Affairs or tribal law enforcement personnel for an offense relating to or involving alcohol or substance abuse. The medical assessment required by this subsection—

(1) shall be conducted to determine the mental or physical state of the individual assessed so that appropriate steps can be taken to protect the individual's health and well-being,

(2) shall occur as soon as possible after the arrest or detention of an Indian youth, and

(3) shall be provided by the Indian Health Service, either through its direct or contract health service.

SEC. 4220. JUVENILE DETENTION CENTERS.

(a) PLAN.—The Secretary of the Interior shall construct or renovate and staff new or existing juvenile detention centers. The Secretary shall ensure that the construction and operation of the centers is consistent with the Juvenile Justice and Delinquency Prevention Act of 1974.

(b) AUTHORIZATION.—For the purpose of subsection (a), there is authorized to be appropriated $10,000,000 for construction and renovation for each of the fiscal years 1987, 1988, and 1989, and $5,000,000 for staffing and operation for each of the fiscal years 1987, 1988, and 1989.

SEC. 4221. MODEL INDIAN JUVENILE CODE.

The Secretary of the Interior, either directly or by contract, shall provide for the development of a Model Indian Juvenile Code which shall be consistent with the Juvenile Justice and Delinquency Prevention Act of 1974 and which shall include provisions relating to the disposition of cases involving Indian youth arrested or detained by Bureau of Indian Affairs or tribal law enforcement personnel for alcohol or drug related offenses. The development of such model code shall be accomplished in cooperation with Indian organizations having an expertise or knowledge in the field of law enforcement and judicial procedure and in consultation with Indian tribes. Upon completion of the Model Code, the Secretary shall make copies available to each Indian tribe.

SEC. 4222. LAW ENFORCEMENT AND JUDICIAL REPORT.

(a) COMPILATION OF LAW ENFORCEMENT DATA.—The Secretary of the Interior, with respect to the administration of any law enforcement or judicial services program by the Bureau of Indian Affairs, either directly or through contracts under the Indian Self-Determination Act, shall require the compilation of data relating to calls and encounters, arrests and detentions, and disposition of cases by Bureau of Indian Affairs or tribal law enforcement or judicial personnel involving Indians where it is determined that alcohol or substance abuse is a contributing factor.

(b) REFERRAL OF DATA.—The data compiled pursuant to subsection (a) shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan and shall also be submitted to the Indian Health Service unit director who will have the responsibility for compiling a tribal comprehensive report as provided in section 4230.

(c) CONFIDENTIALITY.—In carrying out this section, the Secretary shall insure that the data is compiled and reported in a manner which will preserve the confidentiality of the families and individuals involved.

PART VI—INDIAN ALCOHOL AND SUBSTANCE ABUSE TREATMENT AND REHABILITATION

SEC. 4224. REVIEW OF PROGRAMS.

(a) IN GENERAL.—In the development of the Memorandum of Agreement required by section 4205, the Secretary of the Interior and the Secretary of Health and Human Services shall review and consider—

(1) the various programs established by Federal law providing health services and benefits to Indian tribes, including those relating to mental health and alcohol and substance abuse prevention and treatment, and

(2) tribal, State and local, and private health resources and programs,

(3) where facilities to provide such treatment are or should be located, and

(4) the effectiveness of public and private alcohol and substance abuse treatment programs in operation on the date of the enactment of this subtitle,

to determine their applicability and relevance in carrying out the purposes of this subtitle.

(b) DISSEMINATION.—The results of the review conducted under subsection (a) shall be provided to every Indian tribe as soon as possible for their consideration and use in the development or modification of a Tribal Action Plan.

SEC. 4225. INDIAN HEALTH SERVICE RESPONSIBILITIES.

The Memorandum of Agreement entered into pursuant to section 4205 shall include specific provisions pursuant to which the Indian Health Service shall assume responsibility for—

(1) the determination of the scope of the problem of alcohol and substance abuse among Indian people, including the number of Indians within the jurisdiction of the Indian Health Service who are directly or indirectly affected by alcohol and substance abuse and the financial and human cost,

(2) an assessment of the existing and needed resources necessary for the prevention of alcohol and substance abuse and the treatment of Indians affected by alcohol and substance abuse, and

(3) an estimate of the funding necessary to adequately support a program of prevention of alcohol and substance abuse and treatment of Indians affected by alcohol and substance abuse.

SEC. 4226. INDIAN HEALTH SERVICE PROGRAM.

The Secretary of Health and Human Services, acting through the Indian Health Service, shall provide a program of comprehensive alcohol and substance abuse prevention and treatment which shall include—

(1) prevention, through educational intervention, in Indian communities,

(2) acute detoxification and treatment,

(3) community-based rehabilitation, and

(4) community education and involvement, including extensive training of health care, educational, and community-based personnel.

The target population of such a program shall be the members of Indian tribes. Additionally, efforts to train and educate key members of the Indian community shall target employees of health, education, judicial, law enforcement, legal, and social service programs.

SEC. 4227. INDIAN HEALTH SERVICE YOUTH PROGRAM.

(a) DETOXIFICATION AND REHABILITATION.—The Secretary shall develop and implement a program for acute detoxification and treatment for Indian youth who are alcohol and substance abusers. The program shall include regional treatment centers designed to include detoxification and rehabilitation for both sexes on a referral basis. These regional centers shall be integrated with the intake and rehabilitation programs based in the referring Indian community.

(b) CENTERS.—The Secretary shall construct or renovate a youth regional treatment center in each area under the jurisdiction of an Indian Health Service area office. For purposes of the preceding sentence, the area offices of the Indian Health Service in Tucson and Phoenix, Arizona, shall be considered one area office. The regional treatment centers shall be appropriately staffed with health professionals. There are authorized to be appropriated $6,000,000 for the construction and renovation of the regional youth treatment centers, and $3,000,000 for the staffing of such centers, for each of the fiscal years 1987, 1988, and 1989.

(c) FEDERALLY OWNED STRUCTURES.—

(1) The Secretary of Health and Human Services, acting through the Indian Health Service, shall, in consultation with Indian tribes—

(A) identify and use, where appropriate, federally owned structures, suitable as local residential or regional alcohol and substance abuse treatment centers for Indian youth, and

(B) establish guidelines for determining the suitability of any such federally owned structure to be used as a local residential or regional alcohol and substance abuse treatment center for Indian youth.

(2) Any structure described in paragraph (1) may be used under such terms and conditions as may be agreed upon by the Secretary of Health and Human Services and the agency having responsibility for the structure.

(3) There are authorized to be appropriated $3,000,000 for each of the fiscal years 1987, 1988, and 1989.

(d) REHABILITATION AND FOLLOW-UP SERVICES.—

(1) The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement within each Indian Health Service service unit community-based rehabilitation and follow-up services for Indian youth who are alcohol or substance abusers which are designed to integrate long-term treatment and to monitor and support the Indian youth after their return to their home community.

(2) Services under paragraph (1) shall be administered within each service unit by trained staff within the community who can assist the Indian youth in continuing development of self-image, positive problem-solving skills, and nonalcohol or substance abusing behaviors. Such staff shall include alcohol and substance abuse counselors, mental health professionals, and other health professionals and paraprofessionals, including community health representatives.

(3) For the purpose of providing the services authorized by paragraph (1), there are authorized to be appropriated $9,000,000 for each of the fiscal years 1987, 1988, and 1989.

SEC. 4228. TRAINING AND COMMUNITY EDUCATION.

(a) COMMUNITY EDUCATION.—The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement within each service unit a program of community education and involvement which shall be designed to provide concise and timely information to the community leadership of each tribal community. Such program shall include education in alcohol and substance abuse to the critical core of each tribal community, including political leaders, tribal judges, law enforcement personnel, members of tribal health and education boards, and other critical parties.

(b) TRAINING.—The Secretary of Health and Human Services shall, either directly or through contract, provide instruction in the area of alcohol and substance abuse, including instruction in crisis intervention and family relations in the context of alcohol and substance abuse, youth alcohol and substance abuse, and the causes and effects of fetal alcohol syndrome to appropriate employees of the Bureau of Indian Affairs and the Indian Health Service, and personnel in schools or programs operated under any contract with the Bureau of Indian Affairs or the Indian Health Services, including supervisors of emergency shelters and half-way houses described in section 4213.

"(c)(1) DEMONSTRATION PROGRAM.—The Secretary of Health and Human Services shall establish at least one demonstration project to determine the most effective and cost-efficient means of—

"(A) providing health promotion and disease prevention services,

"(B) encouraging Indians to adopt good health habits,

"(C) reducing health risks to Indians, particularly the risks of heart disease, cancer, stroke, diabetes, * * * depression, and lifestyle-related accidents,

"(D) reducing medical expenses of Indians through health promotion and disease prevention activities,

"(E) establishing a program—

"(i) which trains Indians in the provision of health promotion and disease prevention services to members of their tribe, and

"(ii) under which such Indians are available on a contract basis to provide such services to other tribes, and

"(F) providing training and continuing education to employees of the service, and to paraprofessionals participating in the Community Health Representative Program, in the delivery of health promotion and disease prevention services.

"(2) The demonstration project described in paragraph (1) shall include an analysis of the cost effectiveness of organizational structures and of social and educational programs that may be useful in achieving the objectives described in paragraph (1).

"(3)(A) The demonstration project described in paragraph (1) shall be conducted in association with at least one—

"(i) health profession school,

"(ii) allied health profession or nurse training institution, or

"(iii) public or private entity that provides health care.

"(B) The Secretary is authorized to enter into contracts with, or make grants to, any school of medicine or school of osteopathy for the purpose of carrying out the demonstration project described in paragraph (1).

"(C) For purposes of this paragraph, the term 'school of medicine' and 'school of osteopathy' have the respective meaning given to such terms by section 701(4) of the Public Health Service Act (42 U.S.C. 292a(4)).

"(4) The Secretary shall submit to Congress a final report on the demonstration project described in paragraph (1) within 60 days after the termination of such project.

"(5) For purposes of this paragraph, the term 'health promotion' shall include:

"(A) reduction in the misuse of alcohol and drugs,

"(B) cessation of tobacco smoking.

"(C) improvement of nutrition.

"(D) improvement in physical fitness.

"(E) family planning, and

"(F) control of stress.

"(6) For purposes of this paragraph, the term 'disease prevention' shall include:

"(1) immunizations,

"(2) control of high blood pressure,

"(3) control of sexually transmittable diseases,

"(4) prevention and control of diabetes,

"(5) pregnancy and infant care (including prevention of fetal alcohol syndrome),

"(6) control of toxic agents,

"(7) occupational safety and health,

"(8) accident prevention,

"(9) fluoridation of water, and

"(10) control of infectious agents.

"(7) Sec. 4228 is amended by adding at the end the following 'provided that $500,000 shall be made available for activities described under section 4228(c)(1).

(d) AUTHORIZATION.—There are authorized to be appropriated $4,000,000 for the fiscal year 1987 and such sums as are necessary to carry out the purposes of this section for the fiscal years 1988 and 1989.

SEC. 4229. NAVAJO ALCOHOL REHABILITATION DEMONSTRATION PROGRAM.

(a) DEMONSTRATION PROGRAM.—The Secretary of Health and Human Services shall make grants to the Navajo tribe to establish a demonstration program in the city of Gallup, New Mexico, to rehabilitate adult Navajo Indians suffering from alcoholism or alcohol abuse.

(b) EVALUATION AND REPORT.—The Secretary, acting through the National Institute on Alcohol Abuse and Alcoholism, shall evaluate the program established under subsection (a) and submit a report on such evaluation to the appropriate Committees of Congress by January 1, 1990.

(c) AUTHORIZATION.—There are authorized to be appropriated for the purposes of grants under subsection (a) $300,000 for each of the fiscal years 1988, 1989, and 1990. Not more than 10 percent of the funds appropriated for any fiscal year may be used for administrative purposes.

SEC. 4230. INDIAN HEALTH SERVICE REPORTS.

(a) COMPILATION OF DATA.—The Secretary of Health and Human Services, with respect to the administration of any health program by an Indian Health Service service unit, directly or through contract, including a contract under the Indian Self-Determination Act, shall require the compilation of data relating to the number of cases or incidents which any of the Indian Health Service personnel or services were involved and which were related, either directly or indirectly, to alcohol or substance abuse. Such report shall include the type of assistance provided and the disposition of these cases.

(b) REFERRAL OF DATA.—The data compiled under subsection (a) shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan.

(c) COMPREHENSIVE REPORT.—Each Indian Health Service service unit director shall be responsible for assembling the data compiled under this section and section 4204 into an annual tribal comprehensive report which shall be provided to the affected tribe and to the Director of the Indian Health Service who shall develop and publish a biennial national report on such tribal comprehensive reports.

Subtitle D—Miscellaneous Provisions

SEC. 4301. ACTION GRANTS.

The Domestic Volunteer Service Act of 1973 (as amended by the Domestic Volunteer Service Act Amendments of 1986) is amended—

(1) in title I by adding after section 123 the following new section:

"SPECIAL INITIATIVES

"SEC. 124. The Director is authorized to engage in activities that mobilize and initiate private sector efforts to increase voluntarism in preventing drug abuse through public awareness and education (including grants, contracts, conferences, public service announcements, speakers bureau, public-private partnerships and technical assistance to nonprofit and for-profit organizations).";

(2) by amending subsection (c) of section 501 by adding at the end thereof the following new sentence: "In addition to the amounts authorized to be appropriated by the preceding sentence, there is authorized to be appropriated the aggregate sum of

$5,500,000 for fiscal years 1987 and 1988 to be made available for drug abuse prevention."; and

(3) by amending section 504 by adding at the end thereof the following new sentence: "In addition to the amounts authorized to be appropriated for the administration of this Act by the preceding sentence, there is authorized to be appropriated the aggregate sum of $500,000 for fiscal years 1987 and 1988 to be available for support of drug abuse prevention.".

SEC. 4302. ESTABLISHMENT OF NATIONAL TRUST FOR DRUG-FREE YOUTH.

(a) In order to encourage private gifts of real and personal property to assist the Secretary of Education in carrying out the national programs of drug abuse research, education, and prevention under subtitle B, there is hereby established a charitable, nonprofit, and nonpartisan corporation to be known as the National Trust for Drug Free Youth.

(b) The National Trust for Drug-Free Youth (hereinafter in this section referred to as the "National Trust") shall be under the general direction of a Board of Directors. The overall priorities, policies, and goals of the National Trust shall be determined by the Board in consultation with the Secretary. The Board shall coordinate the activities of the National Trust for Drug-Free Youth with the Secretary. The Board shall be composed of three members appointed as follows:

(1) one member shall be appointed by the President;

(2) one member shall be appointed by the Speaker of the House of Representatives; and

(3) one member shall be appointed by the Majority Leader of the Senate.

(c) The National Trust shall have its principal office in the District of Columbia and for the purpose of venue in civil actions shall be considered an inhabitant and resident of the District.

(d) The National Trust shall have the following general powers:

(1) to have succession until dissolved by Act of Congress, in which event title to the properties of the National Trust, both real and personal shall, insofar as consistent with existing contractual obligations and subject to all other legally enforceable claims or demands by or against the National Trust, pass to and become vested in the United States of America;

(2) to adopt, alter, and use a corporate seal which shall be judicially noticed;

(3) to sue and be sued, complain and defend in any court of competent jurisdiction;

(4) to adopt and establish such bylaws, rules, and regulations, not inconsistent with the laws of the United States or of any State, as the Board considers necessary for the administration of its functions, including among other matter, bylaws, rules, and regulations governing administration of corporate funds;

(5) to accept, hold, and administer gifts and bequests of money, securities, or other personal property of whatsoever character, absolutely or on trust, for the purposes for which the National Trust is created;

(6) to sell, exchange, or otherwise dispose of as it may determine from time to time the moneys, securities, or other gifts given or bequeathed to it;

(7) to appoint and perscribe the duties of such officers, agents, and employees as may be necessary to carry out its functions, and to fix and pay such compensation to them for their services as the National Trust is created; and

(8) to audit the financial records of the corporation.

(e) The National Trust shall not have authority—

(1) to issue shares or stock or declare or pay dividends; or

(2) to loan funds to its officers or directors.

(f) The Board shall submit an annual report and independent audit to the Congress and the President concerning the expenditure of funds under the National Trust.

SEC. 4303. INFORMATION ON DRUG ABUSE AT THE WORKPLACE.

(a) The Secretary of Labor shall collect such information as is available on the incidence of drug abuse in the workplace such efforts to assist workers, including counseling, rehabilitation and employee assistance programs. The Secretary shall conduct such additional research as is necessary to assess the impact and extent of drug abuse and remediation efforts. The Secretary shall submit the findings of such collection and research to the House Committee on Education and Labor and the Senate Committee on Labor and Human Services no later than two years from the date of enactment of this Act.

(b) There is authorized to be appropriated the aggregate sum of $3,000,000 for fiscal years 1987 and 1988, to remain available until expended, to enable the Secretary of Labor to carry out the purposes of this section.

SEC. 4304. INTERAGENCY COORDINATION.

(a) The Secretary of Education, the Secretary of Health and Human Services, and the Secretary of Labor shall each designate an officer or employee of the Departments of Education, Health and Human Services, and Labor, respectively, to coordinate interagency drug abuse prevention activities to prevent duplication of effort.

(b) Within one year after enactment of this Act, a report shall be jointly submitted to the Congress by such Secretaries concerning the extent to which States and localities have been able to implement non-duplicative drug abuse prevention activities.

TITLE V—UNITED STATES INSULAR AREAS AND NATIONAL PARKS

Subtitle A—Programs in United States Insular Areas

SEC. 5001. SHORT TITLE.

This subtitle may be cited as the "United States Insular Areas Drug Abuse Act of 1986".

SEC. 5002. PURPOSES.

The purposes of this subtitle are to improve enforcement of drug laws and enhance interdiction of illicit drug shipments in the Caribbean and Pacific territories and commonwealths of the United States and to assist public and private sector drug abuse prevention and treatment programs in United States insular areas.

SEC. 5003. ANNUAL REPORTS TO CONGRESS.

The President shall report annually to the Congress as to—

(1) the efforts and success of Federal agencies in preventing the illegal entry into the United States of controlled substances from the insular areas of the United States outside the customs territory of the United States and states freely associated with the United States and the nature and extent of such illegal entry, and

(2) the efforts and success of Federal agencies in preventing the illegal entry from other nations, including states freely associated with the United States, of controlled substances into the United States territories and the commonwealths for use in the territories and commonwealths or for transshipment to the United States and the nature and extent of such illegal entry and use.

SEC. 5004. ENFORCEMENT AND ADMINISTRATION IN INSULAR AREAS.

(a) AMERICAN SAMOA.—(1) With the approval of the Attorney General of the United States or his designee, law enforcement officers of the Government of American Samoa are authorized to—

(A) execute and serve warrants, subpoenas, and summons issued under the authority of the United States;

(B) make arrests without warrant; and

(C) make seizures of property to carry out the purposes of this subtitle, the Controlled Substances Import and Export Act (21 U.S.C. 951-970), and any other applicable narcotics laws of the United States.

(2) The Attorney General and the Secretary of Health and Human Services of the United States are authorized to—

(A) train law enforcement officers of the Government of American Samoa, and

(B) provide by purchase or lease law enforcement equipment and technical assistance to the Government of American Samoa to carry out the purposes of this subtitle and any other Federal or territorial drug abuse laws.

(3) There are authorized to be appropriated $700,000 to carry out the purposes of this subsection, to remain available until expended.

(b) GUAM.—(1) The Attorney General and the Secretary of Health and Human Services of the United States may provide technical assistance and equipment to the Government of Guam to carry out the purposes of this subtitle and any other Federal or territorial drug abuse law.

(2) There are authorized to be appropriated $1,000,000 to carry out paragraph (1). Funds appropriated under this paragraph shall remain available until expended.

(c) THE NORTHERN MARIANA ISLANDS.—(1) With the approval of the Attorney General of the United States or his designee, law enforcement officers of the Government of the Northern Mariana Islands are authorized to—

(A) execute and serve warrants, subpoenas, and summons issued under the authority of the United States;

(B) make arrests without warrant; and

(C) make seizures of property to carry out the purposes of this subtitle, the Controlled Substances Import and Export Act (21 U.S.C. 951-970), and any other applicable narcotics laws of the United States.

(2) The Attorney General of the United States and the Secretary of Health and Human Services, as appropriate, are authorized to—

(A) train law enforcement officers of the Government of the Northern Mariana Islands, and

(B) provide, by purchase or lease, law enforcement equipment and technical assistance to the Government of the Northern Mariana Islands to carry out the purposes of this subtitle and any other Federal or commonwealth drug abuse law.

(3) There are authorized to be appropriated $250,000 to carry out the purposes of this subsection, to remain available until expended.

(4) Federal personnel and equipment assigned to Guam pursuant to subsection (b)

of this section shall also be available to carry out the purposes of this subtitle in the Northern Mariana Islands.

(d) PUERTO RICO.—(1) There are authorized to be appropriated for grants to the Government of Puerto Rico—

(A) $3,300,000 for the purchase of 2 helicopters;

(B) $3,500,000 for the purchase of an aircraft; and

(C) $1,000,000 for the purchase and maintenance of 5 high-speed vessels.

Sums appropriated under this paragraph shall remain available until expended.

(2) The United States Customs Service should station an aerostat in Puerto Rico.

(3) Equipment provided to the Government of Puerto Rico pursuant to paragraph (1) of this subsection shall be made available upon request to the Federal agencies involved in drug interdiction in Puerto Rico.

(4)(A) The Attorney General and the Secretary of Health and Human Services of the United States may provide technical assistance and equipment to the Government of Puerto Rico to carry out the purposes of this subtitle and any other Federal or commonwealth drug abuse law.

(B) There are authorized to be appropriated such sums as may be necessary to carry out subparagraph (A). Funds appropriated under this subparagraph shall remain available until expended.

(e) THE VIRGIN ISLANDS.—(1) There are authorized to be appropriated for grants to the Government of the Virgin Islands—

(A) $3,000,000 for 2 patrol vessels, tracking equipment, supplies, and agents, and

(B) $1,000,000 for programs to prevent and treat narcotics abuse, such sums to remain available until expended.

(2) The United States Coast Guard should station a patrol vessel in St. Croix, Virgin Islands.

(3)(A) The Attorney General and the Secretary of Health and Human Services of the United States may provide technical assistance and equipment to the Government of the United States Virgin Islands to carry out the purposes of this subtitle and any other Federal or territorial drug abuse law.

(B) There are authorized to be appropriated such sums as may be necessary to carry out subparagraph (A). Funds appropriated under this subparagraph shall remain available until expended.

Subtitle B—National Park Service Program

SEC. 5051. SHORT TITLE.

This subtitle may be cited as the "National Park Police Drug Enforcement Supplemental Authority Act".

SEC. 5052. NATIONAL PARK POLICE AUTHORIZATION.

In order to improve Federal law enforcement activities relating to the use of narcotics and prohibited substances in national park system units there are made available to the Secretary of the Interior, in addition to sums made available under other authority of law, $1,000,000 for the fiscal year 1987, and for each fiscal year thereafter, to be used for the employment and training of additional Park Police, for equipment and facilities to be used by Park Police, and for expenses related to such employment, training, equipment, and facilities.

TITLE VI—FEDERAL EMPLOYEE SUBSTANCE ABUSE EDUCATION AND TREATMENT

SEC. 6001. SHORT TITLE.

This title may be cited as the "Federal Employee Substance Abuse Education and Treatment Act of 1986".

SEC. 6002. PROGRAMS TO PROVIDE PREVENTION, TREATMENT, AND REHABILITATION SERVICES TO FEDERAL EMPLOYEES WITH RESPECT TO DRUG AND ALCOHOL ABUSE.

(a) IN GENERAL.—(1) Chapter 73 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VI—DRUG ABUSE, ALCOHOL ABUSE, AND ALCOHOLISM

"§ 7361. Drug abuse

"(a) The Office of Personnel Management shall be responsible for developing, in cooperation with the President, with the Secretary of Health and Human Services (acting through the National Institute on Drug Abuse), and with other agencies, and in accordance with applicable provisions of this subchapter, appropriate prevention, treatment, and rehabilitation programs and services for drug abuse among employees. Such agencies are encouraged to extend, to the extent feasible, such programs and services to the families of employees and to employees who have family members who are drug abusers. Such programs and services shall make optimal use of existing governmental facilities, services, and skills.

"(b) Section 527 of the Public Health Service Act (42 U.S.C. 290ee-3), relating to confidentiality of records, and any regulations prescribed thereunder, shall apply with respect to records maintained for the purpose of carrying out this section.

"(c) Each agency shall, with respect to any programs or services provided by such agency, submit such written reports as the Office may require in connection with any report required under section 7363 of this title.

"(d) For the purpose of this section, the term 'agency' means an Executive agency.

"§ 7362. Alcohol abuse and alcoholism

"(a) The Office of Personnel Management shall be responsible for developing, in cooperation with the Secretary of Health and Human Services and with other agencies, and in accordance with applicable provisions of this subpart, appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse and alcoholism among employees. Such agencies are encouraged to extend, to the extent feasible, such programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics. Such programs and services shall make optimal use of existing governmental facilities, services, and skills.

"(b) Section 523 of the Public Health Service Act (42 U.S.C. 290dd-3), relating to confidentiality of records, and any regulations prescribed thereunder, shall apply with respect to records maintained for the purpose of carrying out this section.

"(c) Each agency shall, with respect to any programs or services provided by such agency, submit such written reports as the Office may require in connection with any report required under section 7363 of this title.

"(d) For the purpose of this section, the term 'agency' means an Executive agency.

"§ 7363. Reports to Congress

"(a) The Office of Personnel Management shall, within 6 months after the date of the enactment of the Federal Employee Substance Abuse Education and Treatment Act of 1986 and annually thereafter, submit to each House of Congress a report containing the matters described in subsection (b).

"(b) Each report under this section shall include—

"(1) a description of any programs or services provided under section 7361 or 7362 of this title, including the costs associated with each such program or service and the source and adequacy of any funding such program or service;

"(2) a description of the levels of participation in each program and service provided under section 7361 or 7362 of this title, and the effectiveness of such programs and services;

"(3) a description of the training and qualifications required of the personnel providing any program or service under section 7361 or 7362 of this title;

"(4) a description of the training given to supervisory personnel in connection with recognizing the symptoms of drug or alcohol abuse and the procedures (including those relating to confidentiality) under which individuals are referred for treatment, rehabilitation, or other assistance;

"(5) any recommendations for legislation considered appropriate by the Office and any proposed administrative actions; and

"(6) information describing any other related activities under section 7904 of this title, and any other matter which the Office considers appropriate.".

(2) The analysis for chapter 73 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VI—DRUG ABUSE, ALCOHOL ABUSE, AND ALCOHOLISM

"Sec.
"7361. Drug abuse.
"7362. Alcohol abuse and alcoholism.
"7363. Reports to Congress.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.— The Public Health Service Act is amended—

(1) in section 521 (42 U.S.C. 290dd-1)—

(A) by striking out subsection (a);

(B) by striking out "similar" in subsection (b)(1); and

(C) by redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively; and

(2) in section 525 (42 U.S.C. 290ee-1)—

(A) by striking out subsection (a);

(B) by striking out "similar" in subsection (b)(1); and

(C) by redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively.

SEC. 6003. EDUCATIONAL PROGRAM FOR FEDERAL EMPLOYEES RELATING TO DRUG AND ALCOHOL ABUSE.

(a) ESTABLISHMENT.—The Director of the Office of Personnel Management shall, in consultation with the Secretary of Health and Human Services, establish a Government-wide education program, using seminars and such other methods as the Director considers appropriate, to carry out the purposes prescribed in subsection (b).

(b) PURPOSES.—The program established under this section shall be designed to provide information to Federal Government employees with respect to—

(1) the short- and long-term health hazards associated with alcohol abuse and drug abuse;

(2) the symptoms of alcohol abuse and drug abuse;

(3) the availability of any prevention, treatment, or rehabilitation programs or services relating to alcohol abuse or drug abuse, whether provided by the Federal Government or otherwise;

(4) confidentiality protections afforded in connection with any prevention, treatment, or rehabilitation programs or services;

(5) any penalties provided under law or regulation, and any administrative action (permissive or mandatory), relating to the use of alcohol or drugs by a Federal Government employee or the failure to seek or receive appropriate treatment or rehabilitation services; and

(6) any other matter which the Director considers appropriate.

SEC. 6004. EMPLOYEE ASSISTANCE PROGRAMS RELATING TO DRUG ABUSE AND ALCOHOL ABUSE.

(a) IN GENERAL.—Chapter 79 of title 5, United States Code, is amended by adding at the end the following:

"§ 7904. Employee assistance programs relating to drug abuse and alcohol abuse

"(a) The head of each Executive agency shall, in a manner consistent with guidelines prescribed under subsection (b) of this section and applicable provisions of law, establish appropriate prevention, treatment, and rehabilitation programs and services for drug abuse and alcohol abuse for employees in or under such agency.

"(b) The Office of Personnel Management shall, after such consultations as the Office considers appropriate, prescribe guidelines for programs and services under this section.

"(c) The Secretary of Health and Human Services, on request of the head of an Executive agency, shall review any program or service provided under this section and shall submit comments and recommendations to the head of the agency concerned.".

(b) CONFORMING AMENDMENT.—The analysis for chapter 79 of title 5, United States Code, is amended by adding at the end the following:

"7904. Employee assistance programs relating to drug abuse and alcohol abuse.".

SEC. 6005. SUBSTANCE ABUSE COVERAGE STUDY.

(a) STUDY.—The Secretary of Health and Human Services shall contract with the Institute of Medicine of the National Academy of Sciences to conduct a study of (1) the extent to which the cost of drug abuse treatment is covered by private insurance, public programs, and other sources of payment, and (2) the adequacy of such coverage for the rehabilitation of drug abusers.

(b) REPORT.—Not later than one year after the date of the enactment of this Act the Secretary of Health and Human Services shall transmit to the Congress a report of the results of the study conducted under subsection (a). The report shall include recommendations of means to meet the needs identified in such study.

SEC. 6006. HEALTH INSURANCE COVERAGE FOR DRUG AND ALCOHOL TREATMENT.

(a) FINDINGS.—The Congress finds that—

(1) drug and alcohol abuse are problems of grave concern and consequence in American society;

(2) over 500,000 individuals are known heroin addicts; 5 million individuals use cocaine; and at least 7 million individuals regularly use prescription drugs, mostly addictive ones, without medical supervision;

(3) 10 million adults and 3 million children and adolescents abuse alcohol, and an additional 30 to 40 million people are adversely affected because of close family ties to alcoholics;

(4) the total cost of drug abuse to the nation in 1983 was over $60,000,000,000; and

(5) the vast majority of health benefits plans provide only limited coverage for treatment of drug and alcohol addiction, which is a fact that can discourage the abuser from seeking treatment or, if the abuser does seek treatment, can cause the abuser to face significant out of pocket expenses for the treatment.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) all employers providing health insurance policies should ensure that the policies provide adequate coverage for treatment of drug and alcohol addiction in recognition that the health consequences and costs for individuals and society can be as formidable as those resulting from other diseases and illnesses for which insurance coverage is much more adequate; and

(2) State insurance commissioners should encourage employers providing health benefits plans to ensure that the policies provide more adequate coverage for treatment of drug and alcohol addiction.

TITLE VII—NATIONAL ANTIDRUG REORGANIZATION AND COORDINATION

SEC. 7001. SHORT TITLE.

This title may be cited as the "National Antidrug Reorganization and Coordination Act".

SEC. 7002. FINDINGS.

The Congress finds that—

(1) the Federal Government's response to drug trafficking and drug abuse is divided among several dozen agencies and bureaus of the Government, ranging from the Department of Defense to the Department of Health and Human Services;

(2) numerous recent congressional hearings and reports, reports by the Comptroller General, and studies by Executive branch agencies have documented the waste and inefficiency caused by this division of responsibilities;

(3) interagency competition for credit and budget dollars imposes critical obstacles to efficient application of national resources in combating drug trafficking and drug abuse; and

(4) successfully combating such trafficking and drug abuse requires coherent planning that includes intelligent organization and operations of Executive branch agencies.

SEC. 7003. SUBMISSION OF LEGISLATION.

Not later than 6 months after the date of enactment of this title, the President shall submit to each House of Congress recommendations for legislation to reorganize the Executive branch of the Government to more effectively combat drug traffic and drug abuse. In the preparation of such recommendations, the President shall consult with the Comptroller General, State and local law enforcement authorities, relevant committees of the Congress, and the Attorney General and the Secretaries of State, the Treasury, Transportation, Health and Human Services, Defense, and Education.

TITLE VIII—PRESIDENT'S MEDIA COMMISSION ON ALCOHOL AND DRUG ABUSE PREVENTION

SEC. 8001. SHORT TITLE.

This title may be cited as the "President's Media Commission on Alcohol and Drug Abuse Prevention Act".

SEC. 8002. ESTABLISHMENT.

There is established a commission to be known as the President's Media Commission on Alcohol and Drug Abuse Prevention (hereinafter in this title referred to as the "Commission").

SEC. 8003. DUTIES OF COMMISSION.

The Commission shall—

(1) examine public education programs in effect on the date of the enactment of this title which are—

(A) implemented through various segments of mass media; and

(B) intended to prevent alcohol and drug abuse;

(2) act as an administrative and coordinating body for the voluntary donation of resources from—

(A) television, radio, motion picture, cable communications, and print media;

(B) the recording industry;

(C) the advertising industry;

(D) the business sector of the United States; and

(E) professional sports organizations and associations;

to assist the implementation of new programs and national strategies for dissemination of information intended to prevent alcohol and drug abuse;

(3) encourage media outlets throughout the country to provide information aimed at preventing alcohol and drug abuse, including public service announcements, documentary films, and advertisements; and

(4) evaluate the effectiveness and assist in the update of programs and national strategies formulated with the assistance of the Commission.

SEC. 8004. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 12 members appointed by the President within 30 days after the date of the enactment of this title, and should include representatives of—

(1) advertising agencies;

(2) motion picture, television, radio, cable communications, and print media;

(3) the recording industry;

(4) other segments of the business sector of the United States;

(5) experts in the prevention of alcohol and drug abuse;

(6) professional sports organizations and associations; and

(7) other Federal agencies, as designated by the President, including the Director of the Agency for Substance Abuse Prevention of the Department of Health and Human Services.

(b) TERMS.—(1) Except as provided in paragraphs (2) and (3), members shall be appointed for terms of 3 years.

(2) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

(3) A member may serve after the expiration of his term until his successor has taken office.

(c) BASIC PAY AND EXPENSES.—(1) Except as provided in paragraph (2), members of the Commission shall serve without pay.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons serving intermittently in the Government service are allowed travel expenses under section 5703 of title 5, United States Code.

SEC. 8005. MEETINGS.

(a) IN GENERAL.—(1) The Commission shall meet at the call of the Moderator.

(2) The Moderator shall convene the 1st meeting of the Commission within 30 days after the date of the completion of appointments under section 4(a).

(b) MODERATOR.—One member of the Commission shall be designated by the President to serve as Moderator of the Commission.

(c) QUORUM AND PROCEDURE.—The Commission shall adopt rules regarding quorum requirements and meeting procedures as the Commission deems appropriate at the 1st meeting of the Commission.

(d) VOTING.—Decisions and official acts of the Commission shall be according to the vote of a majority of members at a properly called meeting.

SEC. 8006. DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.

(a) DIRECTOR AND STAFF.—(1) Subject to paragraph (2), the Moderator, with the approval of the Commission, may employ and set the rate of pay for a Director and such staff as the Moderator deems necessary.

(2) Rates of pay set under paragraph (1) shall be less than the rate of basic pay payable under section 5316 of title 5, United States Code.

(b) EXPERTS AND CONSULTANTS.—The Moderator, with the approval of the Commission, may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(c) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this title.

SEC. 8007. POWERS OF COMMISSION.

(a) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this title, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(b) OBTAINING OFFICIAL DATA.—Upon the request of the Moderator of the Commission, the Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this title.

(c) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

SEC. 8008. REPORT.

The Commission shall transmit to the President and to each House of Congress a report not later than July 31 of each year which contains a detailed statement of the activities of the Commission during the preceding year, including a summary of the number of public service announcements produced by the Commission and published or broadcast.

SEC. 8009. TERMINATION.

The Commission shall terminate on a date which is three years after the date on which members of the Commission are first appointed, unless the President, by Executive order, extends the authority of the Commission.

TITLE IX—DENIAL OF TRADE BENEFITS TO UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES

SEC. 9001. TARIFF TREATMENT OF PRODUCTS OF UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES.

The Trade Act of 1974 is amended by adding at the end thereof the following:

"TITLE VIII—TARIFF TREATMENT OF PRODUCTS OF UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES

"SEC. 801. SHORT TITLE.

"This title may be cited as the 'Narcotics Control Trade Act'.

"SEC. 802. TARIFF TREATMENT OF PRODUCTS OF UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES.

"(a) REQUIRED ACTION BY PRESIDENT.—Subject to subsection (b), for every major drug producing country and every major drug-transit country, the President shall, on or after March 1, 1987, and March 1 of each succeeding year, to the extent considered necessary by the President to achieve the purposes of this title—

"(1) deny to any or all of the products of that country tariff treatment under the Generalized System of Preferences, the Caribbean Basin Economic Recovery Act, or any other law providing preferential tariff treatment;

"(2) apply to any or all of the dutiable products of that country an additional duty at a rate not to exceed 50 percent ad valorem or the specific rate equivalent;

"(3) apply to one or more duty-free products of the country a duty at a rate not to exceed 50 percent ad valorem; or

"(4) take any combination of the actions described in paragraphs (1), (2), and (3).

"(b) CERTIFICATIONS; CONGRESSIONAL ACTION.—(1) Subsection (a) shall not apply with respect to a country if the President determines and so certifies to the Congress, at the time of the submission of the report required by section 481(e) of the Foreign Assistance Act of 1961, that during the previous year that country has cooperated fully with the United States, or has taken adequate steps on its own, in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States and in preventing and punishing the laundering in that country of drug-related profits or drug-related monies.

"(2) In making the certification required by paragraph (1), the President shall give foremost consideration to whether the actions of the government of the country have resulted in the maximum reductions in illicit drug production which were determined to be achievable pursuant to section 481(e)(4) of the Foreign Assistance Act of 1961. The President shall also consider whether such government—

"(A) has taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of illicit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States; and

"(B) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related monies, as evidenced by—

"(i) the enactment and enforcement of laws prohibiting such conduct,

"(ii) the willingness of such government to enter into mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

"(iii) the degree to which such government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts.

"(3) Subsection (a) shall apply to a country without regard to paragraph (1) of this subsection if the Congress enacts, within 30 days of continuous session after receipt of a certification under paragraph (1), a joint resolution disapproving the determination of the President contained in that certification.

"(4) If the President takes action under subsection (a), that action shall remain in effect until—

"(A) the President makes the certification under paragraph (1), a period of 30 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproval; or

"(B) the President submits at any other time a certification of the matters described in paragraph (1) with respect to that country, a period of 30 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproving the determination contained in that certification.

"(5) For the purpose of expediting the consideration and enactment of joint resolutions under paragraphs (3) and (4)—

"(A) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Ways and Means shall be treated as highly privileged in the House of Representatives; and

"(B) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Finance shall be treated as privileged in the Senate.

"(c) DURATION OF ACTION.—The action taken by the President under subsection (a) shall apply to the products of a foreign country that are entered, or withdrawn from warehouse for consumption, during the period that such action is in effect.

"SEC. 803. SUGAR QUOTA.

"Notwithstanding any other provision of law, the President may not allocate any limitation imposed on the quantity of sugar to any country which has a Government involved in the trade of illicit narcotics or is failing to cooperate with the United States in narcotics enforcement activities as defined in section 802(b) as determined by the President.

"SEC. 804. PROGRESS REPORTS.

"The President shall include as a part of the annual report required under section 481(e)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(E)(1)) an evaluation of progress that each major drug producing country and each major drug-transit country has made during the reporting period in achieving the objectives set forth in section 802(b).

"SEC. 805. DEFINITIONS.

"For purposes of this title—

"(1) continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated;

"(2) the term 'major drug producing country' means a country producing five metric tons or more of opium or opium derivative during a fiscal year or producing five hun-

dred metric tons or more of coca or marijuana (as the case may be) during a fiscal year; and

"(3) the term 'major drug-transit country' means a country—

"(A) that is a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States;

"(B) through which are transported such drugs or substances; or

"(C) through which significant sums of drug-related profits or monies are laundered with the knowledge or complicity of the government; and

"(4) the term 'narcotic and psychotropic drugs and other controlled substances' has the same meaning as is given by any applicable international narcotics control agreement or domestic law of the country or countries concerned.".

SEC. 9002. CONFORMING AMENDMENTS.

(a) GENERALIZED SYSTEM OF PREFERENCES.—Section 502(b) of the Trade Act of 1974 (19 U.S.C. 2462(b)) is amended—

(1) by striking out paragraph (5);

(2) by redesignating paragraphs (6), (7), and (8) as paragraphs (5), (6), and (7); and

(3) by striking out "(5)," in the last sentence.

(b) CARIBBEAN BASIN ECONOMIC RECOVERY.—Section 212(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(b)) is amended—

(1) by inserting "and" after the semicolon at the end of paragraph (5);

(2) by striking out paragraph (6); and

(3) by redesignating paragraph (7) as paragraph (6).

TITLE IX—BALLISTIC KNIFE PROHIBITION

SEC. 9001. SHORT TITLE.

This title may be cited as the "Ballistic Knife Prohibition Act of 1986".

SEC. 9002. PROHIBITION OF POSSESSION, MANUFACTURE, SALE, AND IMPORTATION OF BALLISTIC KNIVES.

The Act entitled "An Act to prohibit the introduction, or manufacture for introduction, into interstate commerce of switchblade knives, and for other purposes" (15 U.S.C. 1232 et seq.) is amended by adding at the end the following:

"SEC. 7. (a) Whoever knowingly possesses, manufactures, sells, or imports a ballistic knife shall be fined as provided in title 18, United States Code, or imprisoned not more than ten years, or both.

"(b) Whoever possesses or uses a ballistic knife in the commission of a Federal or State crime of violence shall be fined as provided in title 18, United States Code, or imprisoned not less than five years and not more than ten years, or both.

"(c) The exceptions provided in paragraphs (1), (2), and (3) of section 4 with respect to switchblade knives shall apply to ballistic knives under subsection (a) of this section.

"(d) As used in this section, the term 'ballistic knife' means a knife with a detachable blade that is propelled by a spring-operated mechanism.".

SEC. 9003. NONMAILABILITY OF BALLISTIC KNIVES.

Section 1716 of title 18, United States Code, is amended by inserting after subsection (h) and before the first undesignated paragraph after such subsection the following:

"(i)(1) Any ballistic knife shall be subject to the same restrictions and penalties provided under subsection (g) for knives described in the first sentence of that subsection.

"(2) As used in this subsection, the term 'ballistic knife' means a knife with a detachable blade that is propelled by a spring-operated mechanism.".

The amendments made by this title shall take effect 30 days after the date of enactment of this title.

TITLE XI—HOMELESS ELIGIBILITY CLARIFICATION ACT

SEC. 11001. SHORT TITLE.

This title may be cited as the "Homeless Eligibility Clarification Act".

Subtitle A—Emergency Food for the Homeless

SEC. 11002. MEALS SERVED TO HOMELESS INDIVIDUALS.

(a) DEFINITION OF FOOD.—Section 3(g) of the Food Stamp Act of 1977 (7 U.S.C. 2012(g)) is amended—

(1) in clause (1), by striking out "and (8)" and inserting in lieu thereof "(8), and (9)";

(2) by striking out "and" at the end of clause (7); and

(3) by inserting before the period at the end thereof the following: ", and (9) in the case of households that do not reside in permanent dwellings and households that have no fixed mailing addresses, meals prepared for and served by a public or private nonprofit establishment (approved by an appropriate State or local agency) that feeds such individuals and by a public or private nonprofit shelter (approved by an appropriate State or local agency) in which such households temporarily reside (except that such establishments and shelters may only request voluntary use of food stamps by such individuals and may not request such households to pay more than the average cost of the food contained in a meal served by the establishment or shelter)".

(b) DEFINITION OF HOUSEHOLD.—The last sentence of section 3(i) of such Act (7 U.S.C. 2012(i)) is amended by inserting after "battered women and children," the following: "residents of public or private nonprofit shelters for individuals who do not reside in permanent dwellings or have no fixed mailing addresses, who are otherwise eligible for coupons,".

(c) DEFINITION OF RETAIL FOOD STORE.—Section 3(k)(2) of such Act (7 U.S.C. 2012(k)(2)) is amended by striking "and (8)" and inserting in lieu thereof "(8), and (9)".

(d) PARTICIPATION OF ESTABLISHMENTS AND SHELTERS.—Section 9 of such Act (7 U.S.C. 2018) is amended by adding at the end thereof the following new subsection:

"(g) In an area in which the Secretary, in consultation with the Inspector General of the Department of Agriculture, finds evidence that the participation of an establishment or shelter described in section 3(g)(9) damages the program's integrity, the Secretary shall limit the participation of such establishment or shelter in the food stamp program, unless the establishment or shelter is the only establishment or shelter serving the area.".

(e) REDEMPTION OF COUPONS.—The first sentence of section 10 of such Act (7 U.S.C. 2019) is amended—

(1) by striking out "and" after "battered women and children,"; and

(2) by inserting after "blind residents" the following: ", and public or private nonprofit establishments, or public or private nonprofit shelters that feed individuals who do not reside in permanent dwellings and individuals who have no fixed mailing addresses".

(f)(1) The amendments made by this section shall become effective, and be implemented by issuance of final regulations, not later than April 1, 1987.

(2) Not later than September 30, 1988, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that evaluates the program established by the amendments made by this section, including any proposed legislative recommendations.

(3) The amendments made by this section shall cease to be effective after September 30, 1990.

Subtitle B—Job Training for the Homeless

SEC. 11004. JOB TRAINING FOR THE HOMELESS.

(a) GOVERNOR'S COORDINATION AND SPECIAL SERVICES PLAN TO INCLUDE HOMELESS.—(1) Section 121(b)(1) of the Job Training Partnership Act (20 U.S.C. 1531(b)(1)) is amended by inserting after "rehabilitation agencies" a comma and the following: "programs for the homeless".

(2) Section 121(c)(3) of the Job Training Partnership Act is amended by inserting after "offenders" a comma and the following: "homeless individuals".

(b) BARRIERS TO EMPLOYMENT RULE.—Section 203(a)(2) of the Job Training Partnership Act (29 U.S.C. 1603(a)(2)) is amended by striking out "or addicts" and inserting in lieu thereof "addicts, or homeless".

Subtitle C—Entitlements Eligibility

SEC. 11005. TREATMENT OF HOMELESS INDIVIDUALS ELIGIBLE UNDER SSI AND MEDICAID PROGRAMS.

(a) SSI PROGRAM.—Section 1631(e) of the Social Security Act (42 U.S.C. 1383(e)) is amended by adding at the end the following new paragraph:

"(3) The Secretary shall provide a method of making payments under this title to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(b) MEDICAID PROGRAM.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (45),

(2) by striking the period at the end of paragraph (46) and inserting in lieu thereof "; and", and

(3) by adding at the end the following new paragraph:

"(47) provide a method of making cards evidencing eligibility for medical assistance available to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(c) EFFECTIVE DATE.—(1) The amendment made by subsection (a) shall become effective on the date of the enactment of this Act.

(2) The amendments made by subsection (b) shall become effective on January 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(d) AFDC.—No later than six months after the date of enactment of this Act and after consultation with the States administering plans under Title IV of the Social Security Act, the Secretary of Health and Human Services shall issue guidelines to the States for providing benefits under Title IV to a dependent child who does not reside in a permanent dwelling or does not have a fixed home or mailing address.

SEC. 11006. APPLICATION FOR SSI AND FOOD STAMP BENEFITS BY SSI PRE-RELEASE INDIVIDUALS.

Section 1631 of the Social Security Act (42 U.S.C. 1383) is amended by adding at the end thereof the following new subsection:

"PRE-RELEASE PROCEDURES FOR INSTITUTIONALIZED PERSONS

"(j) The Secretary shall develop a system under which an individual can apply for supplemental security income benefits under this title prior to the discharge or release of the individual from a public institution. The Secretary and the Secretary of Agriculture shall develop a procedure under which an individual who applies for supplemental security income benefits under this title shall also be permitted to apply for participation in the food stamp program by executing a single application.".

SEC. 11007. DELIVERY OF VETERANS' BENEFITS PAYMENTS.

(a) IN GENERAL.—(1) Section 3003 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) Benefits under laws administered by the Veterans' Administration may not be denied an applicant on the basis that the applicant does not have a mailing address.".

(2) Section 3020 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(f)(1) In the case of a payee who does not have a mailing address, payments of monetary benefits under laws administered by the Veterans' Administration shall be delivered under an appropriate method prescribed pursuant to paragraph (2) of this subsection.

"(2) The Administrator shall prescribe an appropriate method or methods for the delivery of payments of monetary benefits under laws administered by the Veterans' Administration in cases described in paragraph (1) of this subsection. To the maximum extent practicable, such method or methods shall be designed to ensure the delivery of payments in such cases.".

(b) EFFECTIVE DATE.—(1) The amendment made by subsection (a)(1) shall take effect on the date of enactment of this Act.

(2) The amendment made by subsection (a)(2) shall take effect with respect to payments made on or after October 1, 1986.

Strike out title XII and insert in lieu thereof the following:

TITLE XII—COMMERCIAL MOTOR VEHICLE SAFETY ACT OF 1986

SECTION 12001. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Commercial Motor Vehicle Safety Act of 1986".

(b) TABLE OF CONTENTS.—

Sec. 12001. Short title.
Sec. 12002. Limitation on number of driver's licenses.
Sec. 12003. Notification requirements.
Sec. 12004. Employer responsibilities.
Sec. 12005. Testing of operators.
Sec. 12006. Commercial driver's license.
Sec. 12007. Commercial driver's license information system.
Sec. 12008. Federal disqualifications.
Sec. 12009. Requirements for State participation.
Sec. 12010. Grant program.
Sec. 12011. Withholding of highway funds for State noncompliance.
Sec. 12012. Penalties.
Sec. 12013. Waiver authority.
Sec. 12014. Commercial motor vehicle safety grants.
Sec. 12015. Truck brake regulations.
Sec. 12016. Radar demonstration project.
Sec. 12017. Limitation on statutory construction.
Sec. 12018. Regulations.
Sec. 12019. Definitions.

SEC. 12002. LIMITATION ON NUMBER OF DRIVER'S LICENSES.

Effective July 1, 1987, no person who operates a commercial motor vehicle shall at any time have more than one driver's license, except during the 10-day period beginning on the date such person is issued a driver's license and except whenever a State law enacted on or before June 1, 1986, requires such person to have more than one driver's license. The second exception in the preceding sentence shall not be effective after December 31, 1989.

SEC. 12003. NOTIFICATION REQUIREMENTS.

(a) NOTIFICATION OF VIOLATIONS.—

(1) TO STATES.—Effective July 1, 1987, each person who operates a commercial vehicle, who has a driver's license issued by a State, and who violates a State or local law relating to motor vehicle traffic control (other than a parking violation) in any other State shall notify a State official designated by the State which issued such license of such violation, within 30 days after the date such person is found to have committed such violation.

(2) TO EMPLOYERS.—Effective July 1, 1987, each person who operates a commercial vehicle, who has a driver's license issued by a State, and who violates a State or local law relating to motor vehicle traffic control (other than a parking violation) shall notify his or her employer of such violation, within 30 days after the date such person is found to have committed such violation.

(b) NOTIFICATION OF SUSPENSIONS.—Effective July 1, 1987, each employee who has a driver's license suspended, revoked, or cancelled by a State, who loses the right to operate a commercial motor vehicle in a State for any period, or who is disqualified from operating a commercial motor vehicle for any period shall notify his or her employer of such suspension, revocation, cancellation, lost right, or disqualification, within 30 days after the date of such suspension, revocation, cancellation, lost right, or disqualification.

(c) NOTIFICATION OF PREVIOUS EMPLOYMENT.—

(1) GENERAL RULE.—Effective July 1, 1987, subject to paragraph (2) of this subsection, each person who operates a commercial motor vehicle and applies for employment as an operator of a commercial motor vehicle with an employer shall notify at the time of such application the employer of his or her previous employment as an operator of a commercial motor vehicle.

(2) PERIOD OF PREVIOUS EMPLOYMENT.—The Secretary shall establish by regulation the period for which previous employment must be notified under paragraph (1), except that such period shall not be less than a 10-year period ending on the date of application for employment.

SEC. 12004. EMPLOYER RESPONSIBILITIES.

Effective July 1, 1987, no employer shall knowingly allow, permit, or authorize an employee to operate a commercial motor vehicle in the United States during any period—

(1) in which such employee has a driver's license suspended, revoked, or cancelled by a State, has lost the right to operate a commercial motor vehicle in a State, or has been disqualified from operating a commercial motor vehicle; or

(2) in which such employee has more than 1 driver's license, except during the 10-day period beginning on the date such employee is issued a driver's license and except whenever a State law enacted on or before June 1, 1986, requires such employee to have more than one driver's license.

The second exception in paragraph (2) shall not be effective after December 31, 1989.

SEC. 12005. TESTING OF OPERATORS.

(a) ESTABLISHMENT OF MINIMUM FEDERAL STANDARDS.—Not later than July 15, 1988, the Secretary shall issue regulations to establish minimum Federal standards for testing and ensuring the fitness of persons who operate commercial motor vehicles. Such regulations—

(1) shall establish minimum Federal standards for written tests and driving tests of persons who operate such vehicles;

(2) shall require a driving test of each person who operates or will operate a commercial motor vehicle in a vehicle which is representative of the type of vehicle such person operates or will operate;

(3) shall establish minimum Federal testing standards for operation of commercial motor vehicles and, if the Secretary considers appropriate to carry out the objectives of this title, may establish different minimum testing standards for different classes of commercial motor vehicles;

(4) shall ensure that each person taking such tests has a working knowledge of (A) regulations pertaining to safe operation of a commercial motor vehicle issued by the Secretary and contained in title 49 of the Code of Federal Regulations, and (B) any safety system of such vehicle;

(5) in the case of a person who operates or will operate a commercial motor vehicle carrying a hazardous material, shall ensure—

(A) that such person is qualified to operate a commercial motor vehicle in accordance with all regulations pertaining to motor vehicle transportation of such material issued by the Secretary under the Hazardous Materials Transportation Act; and

(B) that such person has a working knowledge of—

(i) such regulations,

(ii) handling of such material,

(iii) the operation of emergency equipment used in response to emergencies arising out of the transportation of such material, and

(iv) appropriate response procedures to be followed in such emergencies;

(6) shall establish minimum scores for passing such tests;

(7) shall ensure that each person taking such tests is qualified to operate a commercial motor vehicle under the regulations issued by the Secretary and contained in title 49 of the Code of Federal Regulations to the extent such regulations are applicable to such person; and

(8) may require—

(A) issuance of a certification of fitness to operate a commercial motor vehicle to each person who passes such tests; and

(B) such person to have a copy of such certification in his or her possession whenever such person is operating a commercial motor vehicle.

(b) REQUIREMENT FOR OPERATION OF CMV.—

(1) GENERAL RULE.—Except as provided under paragraph (2), no person may operate a commercial motor vehicle unless such person has taken and passed a written and driving test to operate such vehicle which meets the minimum Federal standards established by the Secretary under subsection (a).

(2) EXCEPTION.—The Secretary may issue regulations which provide that a person—

(A) who passes a driving test for operation of a commercial motor vehicle in accordance with the minimum standards established under subsection (a), and

(B) who has a driver's license which is not suspended, revoked, or cancelled,
may operate such a vehicle for a period not to exceed 90 days.

(3) EFFECTIVE DATE.—Paragraph (1) shall take effect on such date as the Secretary shall establish by regulation. Such date shall be as soon as practicable after the date of the enactment of this title but not later than April 1, 1992.

(c) BASIC GRANT PROGRAM.—

(1) ELIGIBILITY FOR FISCAL YEARS 1987, 1988, AND 1989.—The Secretary may make a grant to a State in any of fiscal years 1987, 1988, and 1989—

(A) if the State enters into an agreement with the Secretary to develop a program for testing and ensuring the fitness of persons who operate commercial motor vehicles; and

(B) if the State has in effect and enforces in such fiscal year a law which provides that any person with a blood alcohol concentration of 0.10 percent or greater when operating a commercial motor vehicle is deemed to be driving while under the influence of alcohol.

(2) ELIGIBILITY AFTER FISCAL YEAR 1989.—The Secretary may make a grant to a State in a fiscal year beginning after September 30, 1989—

(A) if the State enters into an agreement with the Secretary—

(i) to adopt and administer in such fiscal year a program for testing and ensuring the fitness of persons who operate commercial motor vehicles in accordance with all of the minimum Federal standards established by the Secretary under subsection (a); and

(ii) to require that operators of commercial motor vehicles have passed written and driving tests which comply with such minimum standards; and

(B) if the State has in effect and enforces in such fiscal year a law which provides that any person with a blood alcohol concentration of 0.10 percent or greater when operating a commercial motor vehicle is deemed to be driving while under the influence of alcohol.

(3) ADMINISTRATION OF DRIVING TEST.—A State—

(A) may administer driving tests referred to in paragraph (2) and section 12009(a); or

(B) may enter into an agreement, approved by the Secretary, to administer such tests with a person (including a department, agency or instrumentality of a local government) which meets such minimum standards as the Secretary shall establish by regulation—

(i) if the agreement allows the Secretary and the State each to conduct random examinations, inspections, and audits of such testing without prior notification; and

(ii) if the State conducts at least annually one onsite inspection of such testing.

(4) MINIMUM AMOUNT OF GRANT.—The Secretary shall determine the amount of grants in a fiscal year to be made under this subsection to a State eligible to receive such grants in the fiscal year; except that—

(A) such State shall not be granted less than $100,000 under this subsection in the fiscal year; and

(B) to the extent that any States are granted more than $100,000 per State in the fiscal year under this subsection, the Secretary shall ensure that such States are treated equitably.

(5) LIMITATION ON USE OF FUNDS.—

(A) IN FISCAL YEARS 1987, 1988, AND 1989.—A State receiving a grant under this subsection in fiscal year 1987, 1988, or 1989 may only use the funds provided under such grant for developing a program for testing and ensuring the fitness of persons who operate commercial motor vehicles.

(B) THEREAFTER.—A State receiving a grant under this subsection in any fiscal year beginning after September 30, 1989, may only use the funds provided under such grant for developing a program for testing operators of commercial motor vehicles.

(6) DEVELOPMENT OF TESTING PROGRAM DESCRIBED.—For purposes of this subsection and subsection (d), development of a program for testing and ensuring the fitness of persons who operate commercial motor vehicles includes but is not limited to studies of the number of vehicles which will need to be tested under such program in a calendar year, studies of facilities at which testing of such persons could be conducted, and studies of additional resources (including personnel) which will be necessary to conduct such testing.

(7) FUNDING.—There shall be available to the Secretary to carry out this subsection $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 for each of fiscal years 1987, 1988, 1989, 1990, and 1991.

(d) SUPPLEMENTAL GRANT PROGRAM.—

(1) ELIGIBILITY AND PURPOSES.—The Secretary may make in a fiscal year grants to States eligible to receive grants under subsection (c) in such fiscal year. A grant made under this subsection in fiscal year 1987, 1988, or 1989 shall be used for developing a program for testing and ensuring the fitness of persons who operate commercial motor vehicles. A grant made under this subsection in any fiscal year beginning after September 30, 1989, shall be used for testing operators of commercial motor vehicles.

(2) DISTRIBUTION.—Funds granted under this subsection in a fiscal year beginning after September 30, 1989, shall be distributed among the States eligible to receive grants under subsection (c) in such fiscal year on the basis of the number of written and driving tests administered, and the number of drivers' licenses for operation of commercial motor vehicles, issued in the preceding fiscal year.

(3) FUNDING.—There shall be available to the Secretary to carry out this subsection—

(A) $3,000,000 from funds made available to carry out section 402 of title 23, United States Code, by the National Highway Traffic Safety Administration for each of fiscal years 1987, and 1988;

(B) $3,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 for each of fiscal years 1989, 1990, and 1991.

(e) LIMITATIONS ON GRANT PROGRAMS.—

(1) MAINTENANCE OF EFFORT.—The Secretary may not make a grant to any State under this section unless such State agrees that the aggregate expenditure of funds of the State and political subdivisions thereof, exclusive of Federal funds, for testing of operators of commercial motor vehicles will be maintained at a level which does not fall below the average level of such expenditure for its last two fiscal years preceding the date of the enactment of this title.

(2) PERIOD OF AVAILABILITY.—Funds made available to carry out this subsection shall remain available for obligation by the State for the fiscal year for which such funds are made available. Any of such funds not obligated before the last day of such period shall no longer be available for obligation by such State and shall be available to the Secretary for carrying out the purposes of this title. Funds made available pursuant to this section shall remain available until expended.

(3) CONTRACT AUTHORITY.—Notwithstanding any other provision of law, approval by the Secretary of a grant to a State under this section shall be deemed to be a contractual obligation of the United States for payment of the amount of the grant.

SEC. 12006. COMMERCIAL DRIVER'S LICENSE.

Not later than July 15, 1988, the Secretary, after consultation with the States, shall issue regulations establishing minimum uniform standards for the issuance of commercial drivers' licenses by the States and for information to be contained on such licenses. Such standards shall, at a minimum, require that—

(1) each person who is issued a commercial driver's license passes a written and driving test for the operation of a commercial motor vehicle which complies with the minimum Federal standards established by the Secretary under section 12005(a);

(2) the commercial drivers' licenses are, to the maximum extent practicable, tamper proof; and

(3) each commercial driver's license contain the following information:

(A) the name and address of the person to whom such license is issued and a physical description of such person;

(B) the social security number or such other number or information as the Secretary determines appropriate to identify such person;

(C) the class or type of commercial motor vehicle or vehicles which such person is authorized to operate under such license;

(D) the name of the State which issued such license; and

(E) the dates between which such license is valid.

SEC. 12007. COMMERCIAL DRIVER'S LICENSE INFORMATION SYSTEM.

(a) DEADLINE.—Not later than January 1, 1989, the Secretary shall either enter into an agreement under subsection (b) for operation of, or establish under subsection (c), an information system which will serve as a clearinghouse and depository of information pertaining to the licensing and identification of operators of commercial motor vehicles and the disqualification of such operators from operating commercial motor vehicles. In carrying out this section, the Secretary consult the States.

(b) AGREEMENT FOR USE OF NON-FEDERAL SYSTEM.—

(1) REVIEW.—Not later than January 1, 1988, the Secretary shall conduct a review of information systems utilized by 1 or more States pertaining to the driving status of operators of motor vehicles and other State-operated information systems for the purpose of determining whether or not any of such systems could be utilized to carry out this section.

(2) AGREEMENT.—If the Secretary determines that one of the information systems reviewed under paragraph (1) could be utilized to carry out this section and the State or States utilizing such system agree to the use of such system for carrying out this section, the Secretary may enter into an agreement with such State or States for the use of such system in accordance with the provisions of this section and section 12009(c).

(3) TERMS OF AGREEMENT.—Any agreement entered into under this subsection shall contain such terms and conditions as the Secretary considers necessary to carry out the objectives of this title.

(c) ESTABLISHMENT.—If the Secretary does not enter into an agreement under subsection (b), the Secretary shall establish an in-

formation system pertaining to the driving status and licensing of operators of commercial motor vehicles in accordance with the provisions of this section.

(d) MINIMUM INFORMATION.—The information system under this section shall, at a minimum, include the following information concerning each operator of a commercial motor vehicle:

(1) Such information as the Secretary considers appropriate to ensure identification of such operator.

(2) The name and address of such operator and a physical description of such operator.

(3) The social security number of such operator or such other number or information as the Secretary determines appropriate to identify such operator.

(4) The name of the State which issued the driver's license to such operator.

(5) The dates between which such license is valid.

(6) Whether or not such operator has or has had a driver's license which authorized such person to operate a commercial motor vehicle suspended, revoked, or cancelled by a State, has lost the right to operate a commercial motor vehicle in a State for any period, or has been disqualified from operating a commercial motor vehicle.

(e) AVAILABILITY OF INFORMATION.—

(1) TO STATE.—Upon request of a State, the Secretary or the operator of the information system, as the case may be, may make available to such State information in the information system under this section.

(2) TO THE EMPLOYEE.—Upon request of an employee, the Secretary or the operator of the information system, as the case may be, may make available to such employee information in the information system relating to such employee.

(3) TO EMPLOYER.—Upon request of an employer or prospective employer of an employee and after notification of such employee, the Secretary or the operator of the information system, as the case may be, may make available to such employer or prospective employer information in the information system relating to such employee.

(4) TO THE SECRETARY.—Upon the request of the Secretary, the operator of the information system shall make available to the Secretary such information pertaining to the driving status and licensing of operators of commercial motor vehicles (including the information required by subsection (d)) as the Secretary may request.

(f) COLLECTION OF FEES.—If the Secretary establishes an information system under this section, the Secretary shall establish a fee system for utilization of the information system. The amount of fees collected pursuant to this subsection in any fiscal year shall as nearly as possible equal the costs of operating the information system in such fiscal year. The Secretary shall deposit fees collected under this subsection in the Highway Trust Fund (other than the Mass Transit Account).

(g) FUNDING.—There shall be available to the Secretary to carry out this section not to exceed $2,000,000 from funds made available to carry out section 402 of title 23, United States Code, by the National Highway Safety Traffic Administration for each of fiscal years 1987, 1988, and 1989. Such funds shall remain available until expended.

SEC. 12008. FEDERAL DISQUALIFICATIONS.

(a) DRUNK DRIVING; LEAVING THE SCENE OF AN ACCIDENT; FELONIES.—

(1) FIRST OFFENSE.—

(A) GENERAL RULE.—Except as provided in subparagraph (B) and paragraph (2), the Secretary shall disqualify from operating a commercial motor vehicle for a period of not less than 1 year each person—

(i) who is found to have committed a first violation—

(I) of driving a commercial motor vehicle while under the influence of alcohol or a controlled substance, or

(II) of leaving the scene of an accident involving a commercial motor vehicle operated by such person; or

(ii) who uses a commercial motor vehicle in the commission of a felony (other than a felony described in subsection (b)).

(B) SPECIAL RULE.—If the vehicle operated or used in connection with the violation or the commission of the felony referred to in subparagraph (A) is transporting a hazardous material required by the Secretary to be placarded under section 105 of the Hazardous Materials Transportation Act (49 U.S.C. App. 1804), the Secretary shall disqualify the person for a period of not less than 3 years.

(2) SECOND OFFENSE.—

(A) GENERAL RULE.—Subject to subparagraph (B), the Secretary shall disqualify from operating a commercial motor vehicle for life each person—

(i) who is found to have committed more than one violation of driving a commercial motor vehicle while under the influence of alcohol or a controlled substance;

(ii) who is found to have committed more than one violation of leaving the scene of an accident involving a commercial motor vehicle operated by such person;

(iii) who uses a commercial motor vehicle in the commission of more than one felony arising out of different criminal episodes; or

(iv)(I) who is found to have committed a violation described in clause (i) or (ii), and

(II) who is found to have committed a violation described in the other of such clauses or uses a commercial motor vehicle in the commission of a felony.

(B) SPECIAL RULE.—The Secretary may issue regulations which establish guidelines (including conditions) under which a disqualification for life under subparagraph (A) may be reduced to a period of not less than 10 years.

(b) CONTROLLED SUBSTANCE FELONIES.—The Secretary shall disqualify from operating a commercial motor vehicle for life each person who uses a commercial motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(c) SERIOUS TRAFFIC VIOLATIONS.—

(1) SECOND VIOLATION.—The Secretary shall disqualify from operating a commercial motor vehicle for a period of not less than 60 days each person who, in a 3-year period, is found to have committed 2 serious traffic violations involving a commercial motor vehicle operated by such person.

(2) THIRD VIOLATION.—The Secretary shall disqualify from operating a commercial motor vehicle for a period of not less than 120 days each person who, in a 3-year period, is found to have committed 3 serious traffic violations involving a commercial motor vehicle operated by such person.

(d) ENFORCEMENT OF DRINKING AND DRIVING REGULATIONS.—

(1) OUT OF SERVICE.—Not later than 1 year after the date of enactment of this title, the Secretary, for purposes of enforcing section 392.5 of the Code of Federal Regulations, shall issue regulations which establish and enforce an out of service period of 24 hours for any person who violates such section.

(2) VIOLATIONS OF OUT-OF-SERVICE ORDERS.—No person shall violate an out-of-service order issued under paragraph (1) of this subsection.

(3) REPORTING REQUIREMENTS.—Not later than 1 year after the date of the enactment of this title, the Secretary shall issue regulations establishing and enforcing requirements for reporting of out-of-service orders issued pursuant to regulations issued under paragraph (1). Regulations issued under this paragraph shall, at a minimum, require an operator of a commercial motor vehicle who is issued such an order to report such issuance to his or her employer and to the State which issued such operator his or her driver's license.

(e) LIMITATION ON APPLICABILITY.—

(1) GENERAL RULE.—Notwithstanding any requirement of subsections (a), (b), and (c) of this section, the Secretary does not have to disqualify from operating a commercial motor vehicle any person who has been disqualified from operating a commercial motor vehicle in accordance with such requirement by the State which issued the driver's license which authorized such person to operate such vehicle.

(2) SATISFACTION OF STATE DISQUALIFICATION.—For purposes of paragraph (1), suspension, revocation, or cancellation of a driver's license which authorizes a person to operate a commercial motor vehicle by a State shall be treated as disqualification of such person from operating such vehicle.

(f) BLOOD ALCOHOL CONCENTRATION LEVEL.—

(1) STUDY.—

(A) NATIONAL ACADEMY OF SCIENCES.—Not later than 30 days after the date of the enactment of this title, the Secretary shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a study of the appropriateness of reducing the blood alcohol concentration level at or above which a person when operating a commercial motor vehicle is deemed to be driving while under the influence of alcohol from 0.10 to 0.04 percent.

(B) REPORT.—In entering into any arrangements with the National Academy of Sciences for conducting the study under this subsection, the Secretary shall request the National Academy of Sciences to submit, not later than 1 year after the date of the enactment of this title, to the Secretary a report on the results of such study.

(2) RULEMAKING.—Not later than 1 year after the date of the enactment of this title, the Secretary shall commence a rulemaking to determine whether or not, for purposes of this section and section 12009 of this Act, the blood alcohol concentration level at or above which a person when operating a commercial motor vehicle is deemed to be driving while under the influence of alcohol should be reduced from 0.10 to 0.04 percent (or some other percentage less than 0.10).

(3) ISSUANCE OF RULE.—Not later than 2 years after the date of the enactment of this title, the Secretary shall issue a rule which establishes, for purposes of this section and section 12009 of this Act, the blood alcohol concentration level at or above which a person when operating a commercial motor vehicle shall be deemed to be driving while under the influence of alcohol at 0.10 percent or such lesser percentage as the Secretary determines appropriate.

(4) FAILURE OF THE SECRETARY TO ISSUE RULE.—If the Secretary does not issue a rule described in paragraph (3) in the 2-year period beginning on the date of the enactment of this title, for purposes of this sec-

tion and section 12009 of this Act, the blood alcohol concentration level at or above which a person operating a commercial motor vehicle shall be deemed to be driving while under the influence of alcohol shall be 0.04 percent.

SEC. 12009. REQUIREMENTS FOR STATE PARTICIPATION.

(a) IN GENERAL.—In order not to have funds withheld under section 12011 from apportionment, each State shall comply with the following requirements:

(1) TESTING PROGRAM.—The State shall adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles in accordance with all of the minimum Federal standards established by the Secretary under section 12005(a).

(2) TEST STANDARDS.—The State shall not issue a commercial driver's license to a person unless such person passes a written and driving test for the operation of a commercial motor vehicle which complies with such minimum standards.

(3) DRIVING WHILE UNDER THE INFLUENCE—The State shall have in effect and enforce a law which provides that any person with a blood alcohol concentration level at or above the level established by or under section 12008(f) when operating a commercial motor vehicle is deemed to be driving while under the influence of alcohol.

(4) CDL ISSUANCE AND INFORMATION.—The State shall authorize a person to operate a commercial motor vehicle only by issuance of a commercial driver's license which contains the information described in section 12006(a)(3).

(5) ADVANCE NOTIFICATION OF LICENSING.—At least 60 days before issuance of a commercial driver's license or such shorter period as the Secretary may establish by regulation, the State shall notify the Secretary or the operator of the information system under section 12007, as the case may be, of the proposed issuance of such license and such other information as the Secretary may require to ensure identification of the person applying for such license.

(6) INFORMATION REQUEST.—Before issuance of a commercial driver's license to a person, the State shall request from any other State which has issued a commercial driver's license to such person all information pertaining to the driving record of such person.

(7) NOTIFICATION OF LICENSING.—Within 30 days after issuance of a commercial driver's license, the State shall notify the Secretary or the operator of the information system under section 12007, as the case may be, of the issuance.

(8) NOTIFICATION OF DISQUALIFICATIONS.—Within 10 days after disqualification of the holder of a commercial driver's license from operating a commercial motor vehicle (or after suspension, revocation, or cancellation of such license) for a period of 60 days or more, the State shall notify—

(A) the Secretary or the operator of the information system under section 12007, as the case may be, and

(B) the State which issued the license,

of such disqualification, suspension, revocation, or cancellation.

(9) NOTIFICATION OF TRAFFIC VIOLATIONS.—Within 10 days after a person who operates a commercial motor vehicle, who has a driver's license issued by any other State, and who violates a State or local law relating to motor vehicle traffic control (other than a parking violation) in the State, shall notify a State official designated by the State which issued such license of such violation, within 10 days after the date such person is found to have committed such violation.

(10) LIMITATION ON LICENSING.—The State shall not issue a commercial driver's license to a person during a period in which such person is disqualified from operating a commercial motor vehicle or the driver's license of such person is suspended, revoked, or cancelled.

(11) RETURN OF OLD LICENSES.—The State shall not issue a commercial driver's license to a person who has a commercial driver's license issued by any other State unless such person first returns the driver's license issued by such other State.

(12) DOMICILE REQUIREMENT.—The State shall issue commercial drivers' licenses only to those persons who operate or will operate commercial motor vehicles and are domiciled in the State; except that the State, in accordance with such regulations as the Secretary shall issue, may issue a commercial driver's license to a person who operates or will operate a commercial motor vehicle and who is not domiciled in a State which does issue commercial drivers' licenses.

(13) PENALTY APPROVAL.—The State shall impose such penalties as the State determines appropriate and the Secretary approves for operating a commercial motor vehicle while not having a commercial driver's license, while having a driver's license suspended, revoked, or cancelled, or while being disqualified from operating a commercial motor vehicle.

(14) RECIPROCITY.—The States shall allow any person—

(A) who has a commercial driver's license—

(i) which is issued by any other State in accordance with the minimum Federal standards for the issuance of such licenses, and

(ii) which is not suspended, revoked, or cancelled; and

(B) who is not disqualified from operating a commercial motor vehicle;

to operate a commercial motor vehicle in the State.

(15) FIRST OFFENSES.—The State shall disqualify from operating a commercial motor vehicle for a period of not less than 1 year each person—

(A) who is found to have committed a first violation—

(i) of driving a commercial motor vehicle while under the influence of alcohol or a controlled substance, or

(ii) of leaving the scene of an accident involving a commercial motor vehicle operated by such person; or

(B) who uses a commercial motor vehicle in the commission of a felony (other than a felony described in paragraph (17));

except that if the vehicle being operated or used in connection with such violation or the commission of such felony is transporting a hazardous material required by the Secretary to be placarded under section 105 of the Hazardous Materials Transportation Act (49 U.S.C. App. 1804), the State shall disqualify such person from operating a commercial motor vehicle for a period of not less than 3 years.

(16) SECOND OFFENSES.—

(A) GENERAL RULE.—Subject to subparagraph (B), the State shall disqualify from operating a commercial motor vehicle for life each person—

(i) who is found to have committed more than one violation of driving a commercial motor vehicle while under the influence of alcohol or a controlled substance;

(ii) who is found to have committed more than one violation of leaving the scene of an accident involving a commercial motor vehicle operated by such person;

(iii) who uses a commercial motor vehicle in the commission of more than one felony arising out of different criminal episodes; or

(iv)(I) who is found to have committed a violation described in clause (i) or (ii), and

(II) who is found to have committed a violation described in the other of such clauses or uses a commercial motor vehicle in the commission of a felony.

(B) SPECIAL RULE.—The State, in accordance with such guidelines (including conditions) as the Secretary may establish by regulation, may reduce a disqualification for life in accordance with subparagraph (A) to a period of not less than 10 years.

(17) DRUG OFFENSES.—The State shall disqualify from operating a commercial motor vehicle for life each person who uses a commercial motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(18) SECOND SERIOUS TRAFFIC VIOLATION.—The State shall disqualify from operating a commercial motor vehicle for a period of not less than 60 days each person who, in a 3-year period, is found to have committed 2 serious traffic violations involving a commercial motor vehicle operated by such person.

(19) THIRD SERIOUS TRAFFIC VIOLATION.—The State shall disqualify from operating a commercial motor vehicle for a period of not less than 120 days each person who, in a 3-year period, is found to have committed 3 serious traffic violations involving a commercial motor vehicle operated by such person.

(20) NATIONAL DRIVER REGISTER INFORMATION.—Before issuing a commercial driver's license to operate a commercial motor vehicle to any person, the State shall request the Secretary for information from the National Driver Register established pursuant to the National Driver Register Act of 1982 (23 U.S.C. 401 note) (after such Register is determined by the Secretary to be operational)—

(A) on whether such person has been disqualified from operating a motor vehicle (other than a commercial motor vehicle);

(B) on whether such person has had a license (other than a license authorizing such person to operate a commercial motor vehicle) suspended, revoked, or cancelled for cause in the 3-year period ending on the date of application for such commercial driver's license; and

(C) on whether such person has been convicted of any of the offenses specified in section 205(a)(3) of such Act.

The State shall give full weight and consideration to such information in deciding whether to issue a commercial driver's license to such person.

(21) OUT OF SERVICE REGULATIONS.—The State shall adopt and enforce any regulations issued by the Secretary under section 12008(d)(1).

(b) SATISFACTION OF STATE DISQUALIFICATION REQUIREMENT.—A State may satisfy the requirements of subsection (a) that the State disqualify a person who operates a commercial motor vehicle if the State suspends, revokes, or cancels the driver's license issued to such person in accordance with the requirements of such subsection.

(c) NOTIFICATION.—Not later than 30 days after being notified by a State of the proposed issuance of a commercial driver's license to any person, the Secretary or the operator of the information system under section 12007, as the case may be, shall notify

such State of whether or not such person has a commercial driver's license issued by any other State or has been disqualified from operating a commercial motor vehicle by any other State or the Secretary.

SEC. 12010. GRANT PROGRAM.

(a) ESTABLISHMENT.—The Secretary may make a grant to a State in a fiscal year if the State enters into an agreement with the Secretary to participate in such fiscal year in the commercial driver's license program established by this title and the information system required by this title and to comply with the requirements of section 12009.

(b) MINIMUM AMOUNT OF GRANT.—The Secretary shall determine the amount of grants in a fiscal year to be made under this section to a State eligible to receive such grants in the fiscal year; except that—

(1) such State shall not be granted less than $100,000 under this section in the fiscal year; and

(2) to the extent that any States are granted more than $100,000 per State in the fiscal year under this section, the Secretary shall ensure that such States are treated equitably.

(c) LIMITATION ON USE OF FUNDS.—A State receiving a grant under this section may only use the funds provided under such grant for issuing commercial driver's licenses and complying with the requirements of section 12009.

(d) CONTRACT AUTHORITY.—Notwithstanding any other provision of law, approval by the Secretary of a grant to a State under this section shall be deemed to be a contractual obligation of the United States for payment of the amount of the grant.

(e) PERIOD OF AVAILABILITY.—Funds made available to carry out this section shall remain available for obligation by the State for the fiscal year for which such funds are made available. Any of such funds not obligated before the last day of such period shall no longer be available to such State and shall be available to the Secretary for carrying out the purposes of this title. Funds made available pursuant to this section shall remain available until expended.

(f) FUNDING.—There shall be available to the Secretary to carry out this section $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 for each of fiscal years 1989, 1990, and 1991.

SEC. 12011. WITHHOLDING OF HIGHWAY FUNDS FOR STATE NONCOMPLIANCE.

(a) FIRST YEAR.—The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of title 23, United States Code, on the first day of the fiscal year succeeding the first fiscal year beginning after September 30, 1992, throughout which the State does not substantially comply with any requirement of section 12009(a) of this Act.

(b) AFTER THE FIRST YEAR.—The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of each fiscal year after the second fiscal year beginning after September 30, 1992, throughout which the State does not substantially comply with any requirement of section 12009(a) of this Act.

(c) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE.—

(1) FUNDS WITHHELD ON OR BEFORE SEPTEMBER 30, 1995.—

(A) PERIOD OF AVAILABILITY.—Any funds withheld under this section from apportionment to any State on or before September 30, 1995, shall remain available for apportionment to such State as follows:

(i) If such funds would have been apportioned under section 104(b)(5)(B) of such title but for this section, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(ii) If such funds would have been apportioned under section 104(b)(1), 104(b)(2), or 104(b)(6) of such title but for this section, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(B) FUNDS WITHHELD AFTER SEPTEMBER 30, 1995.—No funds withheld under this subsection from apportionment to any State after September 30, 1995, shall be available for apportionment to such State.

(2) APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.—If, before the last day of the period for which funds withheld under this section from apportionment are to remain available for apportionment to a State under paragraph (1), the State substantially complies with all of the requirements of section 12009(a) of this Act for a period of 365 days, the Secretary shall on the day following the last day of such period apportion to such State the withheld funds remaining available for apportionment to such State.

(3) PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.—Any funds apportioned pursuant to paragraph (2) shall remain available for expenditure until the end of the third fiscal year succeeding the fiscal year in which such funds are apportioned. Sums not obligated at the end of such period shall lapse or, in the case of funds apportioned under section 104(b)(5) of such title, shall lapse and be made available by the Secretary for projects in accordance with section 118(b) of such title.

(4) EFFECT OF NONCOMPLIANCE.—If, at the end of the period for which funds withheld under this section from apportionment are available for apportionment to a State under paragraph (1), the State has not substantially complied with all of the requirements of section 12009(a) of this Act for a 365-day period, such funds shall lapse or, in the case of funds withheld from apportionment under section 104(b)(5) of such title, such funds shall lapse and be made available by the Secretary for projects in accordance with section 118(b) of such title.

SEC. 12012. PENALTIES.

(a) NOTICE OF VIOLATION.—Paragraph (1) of section 521(b) of title 49, United States Code, is amended by inserting "or section 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986" after "the Motor Carrier Safety Act of 1984" and by striking out "section" the second place it appears and inserting in lieu thereof "sections".

(b) CIVIL PENALTIES.—Paragraph (2) of such section is amended, by inserting "(A) IN GENERAL.—" before "Except as", by inserting "(other than subparagraph (B))" before ", except for recordkeeping violations", and by striking out the last two sentences and inserting in lieu thereof the following:

"(B) VIOLATIONS PERTAINING TO CDLS.—Any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act which is a violation of section 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986 shall be liable to the United States for a civil penalty not to exceed $2,500 for each offense.

"(C) DETERMINATION OF AMOUNT.—The amount of any civil penalty, and a reasonable time for abatement of the violation, shall by written order be determined by the Secretary, taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance.".

(c) POSTING OF NOTICE.—Paragraph (3) of such section is amended by inserting "or section 12002, 12003, 12004, or 12005(b) of the Commercial Motor Vehicle Safety Act of 1986" after "the Motor Carrier Safety Act of 1984".

(d) OUT OF SERVICE ORDERS.—Paragraph (5)(A) of such section is amended by inserting "or section 12002, 12003, 12004, or 12005(b) of the Commercial Motor Vehicle Safety Act of 1986" after "the Motor Carrier Safety Act of 1984" and by striking out "section" the second place it appears and inserting in lieu thereof "sections".

(e) CRIMINAL PENALTIES.—Paragraph (6) of such section is amended by inserting "(A) IN GENERAL.—" before "Any person" and by adding at the end thereof the following:

"(B) VIOLATIONS PERTAINING TO CDLS.—Any person who knowingly and willfully violates—

"(i) any provision of section 12002, 12003(b), 12003(c), 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986 or a regulation issued under such section, or

"(ii) with respect to notification of a serious traffic violation as defined under section 12019 of such Act, any provision of section 12003(a) of such Act or a regulation issued under such section 12003(a),

shall, upon conviction, be subject for each offense to a fine not to exceed $5,000 or imprisonment for a term not to exceed 90 days, or both.".

(f) CONFORMING AMENDMENTS.—(1) Paragraph (2) of such section is amended by inserting "CIVIL PENALTY.—" after "(2)", by indenting subparagraph (A), as designated by subsection (b) of this section, and aligning such subparagraph with subparagraph (B), as added by such subsection (b).

(2) Paragraph (6) of such section is amended by inserting "CRIMINAL PENALTIES.—" after "(6)" and by indenting subparagraph (A), as designated by subsection (e) of this section, and aligning such subparagraph with subparagraph (B), as added by such subsection (e).

(g) TECHNICAL AMENDMENTS.—(1) Paragraph (6) of such section is further amended by striking out "for a fine" and inserting in lieu thereof "to a fine".

(2) Paragraph (13) of such section is amended by striking out "section 4" and inserting in lieu thereof "section 204".

SEC. 12013. WAIVER AUTHORITY.

Notwithstanding any other provision of this title, after notice and an opportunity for comment, the Secretary may waive, in whole or in part, application of any provision of this title or any regulation issued under this title with respect to class of persons or class of commercial motor vehicles if the Secretary determines that such waiver is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles. Any waiver under this

section shall be published in the Federal Register, together with reasons for such waiver.

SEC. 12014. COMMERCIAL MOTOR VEHICLE SAFETY GRANTS.

Section 404 of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 2304) is amended to read as follows:

"AUTHORIZATIONS

"SEC. 404. (a)(1) To carry out the purposes of section 402 of this title, there is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) $10,000,000 for fiscal year 1984, $20,000,000 for fiscal year 1985, and $30,000,000 for fiscal year 1986.

"(2) Subject to section 9503(c)(1) of the Internal Revenue Code of 1986, there shall be available to the Secretary to incur obligations to carry out section 402 of this title, out of the Highway Trust Fund (other than the Mass Transit Account), $50,000,000 per fiscal year for each of fiscal years 1987 and 1988 and $60,000,000 per fiscal year for each of fiscal years 1989, 1990, and 1991.

"(b) Funds authorized to be appropriated, and funds made available, by this section shall be used to reimburse States pro rata for the Federal share of the costs incurred.

"(c) Grants made pursuant to the authority of this part shall be for periods not to exceed one year.

"(d) Notwithstanding any other provision of law, beginning after September 30, 1986, approval by the Secretary of a grant to a State under section 402 shall be deemed a contractual obligation of the United States for payment of the Federal share of the costs incurred by such State in development or implementation or both of programs to enforce commercial motor vehicle rules, regulations, standards, and orders.

"(e) Funds authorized to be appropriated, and funds made available, to carry out this section shall remain available for obligation by the Secretary for the fiscal year for which such funds are authorized or made available, as the case may be, and the three succeeding fiscal years.

"(f) On October 1 of each fiscal year beginning after September 30, 1986, the Secretary may deduct, from funds made available for such fiscal year by subsection (a)(2), an amount not to exceed one-half of one percent of the amount of such funds for administering section 402 of this title in such fiscal year.".

SEC. 12015. TRUCK BRAKE REGULATIONS.

Not late than the 90th day after the date of the enactment of this title, the Secretary shall revise the regulations of the Administrator of the Federal Highway Administration contained in section 393.42(c) of title 49 of the Code of Federal Regulations to require trucks and truck tractors manufactured after July 24, 1980, to have brakes operating on all wheels. The Secretary may provide for a delayed effective date (not exceeding 1 year) for trucks and truck tractors manufactured after July 24, 1980, and before such date of enactment.

SEC. 12016. RADAR DEMONSTRATION PROJECT.

(a) PROJECT DESCRIPTION.—Notwithstanding any other provision of law, the Secretary, in cooperation with State and local law enforcement officials, shall conduct a demonstration project to assess the benefits of continuous use of unmanned radar equipment on highway safety on a section of highway with a high rate of motor vehicle accidents. Such project shall be conducted in northern Kentucky on a hilly section of Interstate Route I-75 between Fort Mitchell and the Brent Spence Bridge over the Ohio River during the 24-month period beginning on the date of the enactment of this title.

(b) REPORTS.—

(1) INTERIM REPORT.—Not later than 18 months after the date of the enactment of this title, the Secretary shall transmit to Congress an interim report on the results of the demonstration project conducted under subsection (a), together with any recommendations on whether or not to extend the duration of such demonstration project and whether or not to expand the scope of such project.

(2) FINAL REPORT.—Not later than 60 days after completion of the demonstration project conducted under subsection (a), the Secretary shall transmit to Congress a final report on the results of such project, together with any such recommendations.

SEC. 12017. LIMITATION ON STATUTORY CONSTRUCTION.

Nothing in this title shall be construed to diminish, limit, or otherwise affect the authority of the Secretary to regulate commercial motor vehicle safety involving motor vehicles with a gross vehicle weight rating of less than 26,001 pounds or such lesser gross vehicle weight rating as determined appropriate by the Secretary under section 12019(6)(A) of this Act.

SEC. 12018. REGULATIONS.

(a) AUTHORITY TO ISSUE.—The Secretary may issue such regulations as may be necessary to carry out this title.

(b) COMPLIANCE WITH TITLE 5.—All regulations under this title shall be issued in accordance with section 553 of title 5, United States Code (without regard to sections 556 and 557 of such title).

SEC. 12019. DEFINITIONS.

For purposes of this title—

(1) ALCOHOL.—The term "alcohol" has the meaning the term alcoholic beverage has under section 158(c) of title 23, United States Code.

(2) DRIVER'S LICENSE.—The term "driver's license" means a license issued by a State to an individual which authorizes the individual to operate a motor vehicle on highways.

(3) COMMERCE.—The term "commerce" means—

(A) trade, traffic, and transportation within the jurisdiction of the United States between a place in a State and a place outside of such State (including a place outside the United States); and

(B) trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in subparagraph (A).

(4) COMMERCIAL DRIVER'S LICENSE.—The term "commercial driver's license" means a license issued by a State to an individual which authorizes the individual to operate a class of commercial motor vehicle.

(5) MOTOR VEHICLE.—The term "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used and on highways, except that such term does not include a vehicle, machine, tractor, trailer, semitrailer operated exclusively on a rail.

(6) COMMERCIAL MOTOR VEHICLE.—The term "commercial motor vehicle" means a motor vehicle used in commerce to transport passengers or property—

(A) if the vehicle has a gross vehicle weight rating of 26,001 or more pounds or such a lesser gross vehicle weight rating as the Secretary determines appropriate by regulation but not less than a gross vehicle weight rating of 10,001 pounds;

(B) if the vehicle is designed to transport more than 15 passengers, including the driver; or

(C) if such vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act.

A motor vehicle which is used in the transportation of hazardous materials and which has a gross vehicle weight rating of less than 26,001 pounds (or such gross vehicle weight rating as determined appropriate by the Secretary under subparagraph (A)) shall not be included as a commercial motor vehicle pursuant to subparagraph (C) if such hazardous material is listed as hazardous pursuant to section 306(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9656(a)) and is not otherwise regulated by the Department of Transportation or if such hazardous material is a consumer commodity or limited quantity hazardous material as defined under section 171.8 of title 49 of the Code of Federal Regulations. The Secretary may waive the application of the preceding sentence to any motor vehicle or class of motor vehicles if the Secretary determines that such waiver is in the interest of safety.

(7) CONTROLLED SUBSTANCE.—The term "controlled substance" has the meaning such term has under section 102 of the Controlled Substances Act (21 U.S.C. 802).

(8) EMPLOYEE.—The term "employee" means an operator of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle) who is employed by an employer.

(9) EMPLOYER.—The term "employer" means any person (including the United States, a State, or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns employees to operate such a vehicle.

(10) FELONY.—The term "felony" means an offense under State or Federal law that is punishable by death or imprisonment for a term exceeding 1 year.

(11) HAZARDOUS MATERIAL.—The term "hazardous material" has the meaning such term has under section 103 of the Hazardous Materials Transportation Act.

(12) SERIOUS TRAFFIC VIOLATION.—The term "serious traffic violation" means—

(A) excessive speeding, as defined by the Secretary by regulation;

(B) reckless driving, as defined under State or local law;

(C) a violation of a State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal traffic accident; and

(D) any other similar violation of a State or local law relating to motor vehicle traffic control (other than a parking violation) which the Secretary determines by regulation is serious.

(13) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

(14) STATE.—The term "State" means a State of the United States and the District of Columbia.

(15) UNITED STATES.—The term "United States" means the 50 States and the District of Columbia.

TITLE XIII—CYANIDE WRONGFUL USE

SEC. 13001. STUDY AND REPORT.

(a) STUDY.—The Administrator of the Environmental Protection Agency shall conduct a study of the manufacturing and distribution process of cyanide with a view to determining methods, procedures, or other

actions which might be taken, employed, or otherwise carried out in connection with such manufacturing and distribution in order to safeguard the public from the wrongful use of cyanide.

(b) MATTERS TO BE INCLUDED.—Such study shall include, among other matters, the following:

(1) a determination of the sources of cyanide, including the name and location of each manufacturer thereof;

(2) an evaluation of the means and methods utilized by the manufacturer and others in the distribution of cyanide, including the name and location of each such distributor;

(3) an evaluation of the procedures employed in connection with the selling, at the wholesale and retail level, of cyanide, including a determination as to whether or not persons selling cyanide require the intended purchaser to identify himself or herself;

(4) a determination as to the extent to which recordkeeping requirements are imposed on, or carried out by, manufacturers of cyanide with respect to the specifications of each lot of cyanide produced by such manufacturer;

(5) a determination as to the feasibility and desirability of establishing a central registry of all lot specifications of cyanide for the purpose of providing quick access to investigative and law enforcement agencies;

(6) a consideration and review of all aspects of the matter of interstate versus intrastate to the extent that it involves the manufacturing, distribution, or use of cyanide;

(7) a determination as to the feasibility and desirability of requiring manufacturers of cyanide to color all such cyanide with a distinctive color so that the consuming public can more readily identify products laced with cyanide;

(8) a determination as to the feasibility and desirability of requiring limited-access storage for cyanide at universities, laboratories, and other institutions that use cyanide for research or other purposes; and

(9) a determination as to the feasibility and desirability of issuing regulations to require any person who sells or otherwise transfers, at a retail level, any cyanide to record such sale or transfer, including the identity of the person purchasing or otherwise receiving such cyanide, the address of such person, and the intended use of such cyanide. Such records shall be available for such use, and retained for such period, as the aforementioned Administrator shall by regulation require.

(c) REPORT.—On or before the expiration of the 180-day period following the date of the enactment of this section, the Administrator of the Environmental Protection Agency shall report the results of such study to the Congress, together with his or her recommendations with respect thereto.

(d) DEFINITIONS.—As used in this section, the term—

(1) "person" means any individual, corporation, partnership, or other entity; and

(2) "cyanide" means sodium cyanide, potassium cyanide or any other toxic cyanide compound.

(e) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

TITLE XIV—SENATE POLICY REGARDING FUNDING

SEC. 14001. STATEMENT OF POLICY.

(a) The Senate finds that—

(1) there is an urgent critical need for funds to carry out the programs and activities authorized by the preceding provisions of this Act in order to ensure a drug free America;

(2) this Act is the result of a bipartisan effort to combat our national drug abuse problem; and

(3) only the exceptional nature of the drug abuse problem warrants the expenditure of funds in excess of otherwise applicable budget limitations.

(b) Therefore, it is the sense of the Senate that—

(1) amounts authorized to carry out the preceding provisions of this Act should be provided as new budget authority for fiscal year 1987 in H.J. Res. 738 (99th Congress, 2d Session); and

(2) such amounts should not be provided through transfers from, or reductions in, any amount appropriated by such joint resolution for any other program, project, or activity for such fiscal year.

TITLE XV—NATIONAL FOREST SYSTEM DRUG CONTROL

SEC. 15001. SHORT TITLE.

This title may be cited as the "National Forest System Drug Control Act of 1986".

SEC. 15002. PURPOSE.

(a) The purpose of this title is to authorize the Secretary of Agriculture (hereinafter in this title referred to as the "Secretary") to take actions necessary, in connection with the administration and use of the National Forest System, to prevent the manufacture, distribution, or dispensing of marijuana and other controlled substances.

(b) Nothing in this title shall diminish in any way the law enforcement authority of the Forest Service.

(c) As used in this title, the terms "manufacture", "dispense", and "distribute" shall have the same meaning given such terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).

SEC. 15003. POWERS.

For the purposes of this title, if specifically designated by the Secretary and specially trained, not to exceed 500 officers and employees of the Forest Service when in the performance of their duties shall have authority within the boundaries of the National Forest System to—

(1) carry firearms;

(2) conduct investigations of violations of and enforce section 401 of Controlled Substances Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest System lands;

(3) make arrests with a warrant or process for misdemeanor violations, or without a warrant or process for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in his presence or view, or for a felony with a warrant or without a warrant if he has probable cause to believe that the person to be arrested has committed or is committing such felony;

(4) serve warrants and other process issued by a court or officer of competent jurisdiction;

(5) search with or without warrant or process any person, place, or conveyance according to Federal law or rule of law; and

(6) seize with or without warrant or process any evidentiary item according to Federal law or rule of law.

SEC. 15004. COOPERATION.

For the purposes of this title, in exercising the authority provided by section 15003—

(1) the Forest Service shall cooperate with any other Federal law enforcement agency having primary investigative jurisdiction over the offense committed; and

(2) the Secretary may authorize the Forest Service to cooperate with the law enforcement officials of any Federal agency, State, or political subdivision in the investigation of violations of and enforcement of section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

SEC. 15005. PENALTY.

Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended by adding at the end thereof the following subsection:

"(e)(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years and shall be fined not more than $10,000.

"(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years and shall be fined not more than $20,000.

"(3) For the purposes of this subsection, the term 'boobytrap' means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.".

SEC. 15006. AUTHORIZATION OF APPROPRIATIONS

There is authorized to be appropriated $10,000,000 for each fiscal year to carry out this title.

SEC. 15007. APPROVAL OF SECRETARY OF AGRICULTURE AND ATTORNEY GENERAL.

The authorities conferred herein shall be exercised pursuant to an agreement approved by the Secretary of Agriculture and the Attorney General.

The text of House Concurrent Resolution 415, considered as having been adopted pursuant to the text of House Resolution 597, is as follows:

H. CON RES. 415

Resolved by the House of Representatives (the Senate concurring), That, in the enrollment of the bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes, the Clerk of the House of Representatives shall make the following modifications:

At the end of title I, insert the following (and insert the appropriate item in the organization table contained in section 2):

Subtitle V—Death Penalty for Certain Offenses

SEC. 1995. DEATH PENALTY FOR CERTAIN CONTINUING CRIMINAL ENTERPRISE DRUG OFFENSES.

(a) ELEMENTS OF OFFENSE.—Section 408(a) of the Controlled Substances Act (21 U.S.C. 848(a)) is amended—

(1) by striking out "(a) Any" and inserting "(a)(1) Except as otherwise provided in this section, any" in lieu thereof;

(2) by striking out "; except that if" and inserting ". If" in lieu thereof; and

(3) by adding at the end the following:

"(2) If an individual intentionally engages in conduct during the course of a continuing criminal enterprise and thereby knowingly causes the death of any other individual, the individual so engaging shall be subject to the death penalty in accordance with this section.".

(b) PROCEDURE APPLICABLE WITH RESPECT TO THE DEATH PENALTY.—Section 408 of the Controlled Substances Act is amended by adding at the end the following:

"HEARING REQUIRED WITH RESPECT TO THE DEATH PENALTY

"(f) A person shall be subjected to the penalty of death for any offense under this section only if a hearing is held in accordance with this section.

"NOTICE BY THE GOVERNMENT IN DEATH PENALTY CASES

"(g)(1) Whenever the Government intends to seek the death penalty for an offense under this section for which one of the sentences provided is death, the attorney for the Government, a reasonable time before trial or acceptance by the court of a plea of guilty, shall sign and file with the court, and serve upon the defendant, a notice—

"(A) that the Government in the event of conviction will seek the sentence of death; and

"(B) setting forth the aggravating factors which the Government will seek to prove as the basis for the death penalty.

"(2) The court may permit the attorney for the Government to amend this notice for good cause shown.

"HEARING BEFORE COURT OR JURY

"(h)(1) When the attorney for the Government has filed a notice as required under subsection (f) and the defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), the judge who presided at the trial or before whom the guilty plea was entered, or any other judge if the judge who presided at the trial or before whom the guilty plea was entered is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted—

"(A) before the jury which determined the defendant's guilt;

"(B) before a jury impaneled for the purpose of the hearing if—

"(i) the defendant was convicted upon a plea of guilty;

"(ii) the defendant was convicted after a trial before the court sitting without a jury;

"(iii) the jury which determined the defendant's guilt has been discharged for good cause; or

"(iv) after initial imposition of a sentence under this section, redetermination of the sentence under this section is necessary; or

"(C) before the court alone, upon the motion of the defendant and with the approval of the Government.

"(2) A jury impaneled pursuant to paragraph (1)(B) shall consist of 12 members, unless, at any time before the conclusion of the hearing, the parties stipulate with the approval of the court that it shall consist of any number less than 12.

"PROOF OF AGGRAVATING AND MITIGATING FACTORS

"(i) Notwithstanding rule 32(c) of the Federal Rules of Criminal Procedure, when a defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), no presentence report shall be prepared. In the sentencing hearing, information may be presented as to any matter relevant to the sentence and shall include matters relating to any of the aggravating or mitigating factors set forth in subsections (l) and (m), or any other mitigating factor. Where information is presented relating to any of the aggravating factors set forth in subsection (m), information may be presented relating to any other aggravating factor. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The Government and the defendant shall be permitted to rebut any information received at the hearing and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the aggravating or mitigating factors, and as to appropriateness in that case of imposing a sentence of death. The Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the Government, and is not satisfied unless established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless established by a preponderance of the information.

"RETURN OF FINDINGS

"(j) The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any mitigating factors, and any aggravating factors set forth in subsection (m), found to exist. If one of the aggravating factors set forth in subsection (m)(1) and another of the aggravating factors set forth in subsection (m) is found to exist, a special finding identifying any other aggravating factor may be returned. A finding of any aggravating or mitigating factor by a jury shall be made by unanimous vote. If an aggravating factor set forth in subsection (m)(1) is not found to exist or an aggravating factor set forth in subsection (m)(1) is found to exist but no other aggravating factor set forth in subsection (m) is found to exist, the court shall impose a sentence, other than death, authorized by law. If an aggravating factor set forth in subparagraph (m)(1) and one or more of the other aggravating factors set forth in subsection (m) are found to exist, the jury, or if there is no jury, the court, shall consider whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return a finding as to whether a sentence of death is justified.

"IMPOSITION OF SENTENCE

"(k) Upon a finding that a sentence of death is justified, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law.

"MITIGATING FACTORS

"(l) In determining whether a sentence of death is to be imposed on a defendant, the following mitigating factors shall be considered but are not exclusive:

"(1) The defendant was less than 18 years of age at the time of the crime.

"(2) The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to the charge.

"(3) The defendant was under unusual and substantial duress, although not such duress as constitutes a defense to the charge.

"(4) The defendant is punishable as a principal (as defined in section 2(a) of title 18 of the United States Code) in the offense, which was committed by another, but the defendant's participaton was relatively minor, although not so minor as to constitute a defense to the charge.

"(5) The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of the offense resulting in death for which the defendant was convicted, would cause, or would create a grave risk of causing, death to any person.

"AGGRAVATING FACTORS

"(m) If the defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), the following aggravating factors shall be considered but are not exclusive:

"(1) The defendant—

"(A) Intentionally killed the victim;

"(B) intentionally inflicted serious bodily injury which resulted in the death of the victim; or

"(C) intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim.

"(2) The defendant has been convicted of another Federal offense, or a State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute.

"(3) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person.

"(4) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance.

"(5) In the commission of the offense or in escaping apprehension for a violation of subsection (1)(1), the defendant knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

"(6) The violation of this chapter in relation to which the conduct described in sub-

section (a)(2) occurred was a violation of section 405.

"(7) The defendant committed the offense in an especially heinous, cruel, or depraved manner.

"(8) The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(9) The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

"(10) The defendant committed the offense against a judge, a law-enforcement officer, or an employer of a penal or correctional institution, while the victim was performing official duties or because of that victim's status as a public servant of the United States, or a State or political subdivision of the United States. For purposes of this paragraph the term 'law-enforcement officer' means a public servant authorized by law to conduct or engage in the prevention, investigation, or prosecution of an offense.

"INSTRUCTION TO JURY ON RIGHT OF THE DEFENDANT TO JUSTICE WITHOUT DISCRIMINATION

"(n) In any hearing held before a jury under this section, the court shall instruct the jury that in its consideration of whether the sentence of death is justified it shall not consider the race, color, national origin, creed, or sex of the defendant. The jury shall return to the court a certificate signed by each juror that consideration of race, color, national origin, creed, or sex of the defendant was not involved in reaching his or her individual decision.

"SENTENCING IN CAPITAL CASES IN WHICH DEATH PENALTY IS NOT SOUGHT OR IMPOSED

"(o) If a person is convicted for an offense under subsection (a)(2) and the court does not impose the penalty of death, the court may impose a sentence of life imprisonment without the possibility of parole.".

"APPEAL IN CAPITAL CASES

"(p)(1) In any case in which the sentence of death is imposed under this section, the sentence of death shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time prescribed for appeal of judgment in section 2107 of title 28 of the United States Code. An appeal under this section may be consolidated with an appeal of the judgment of conviction. Such review shall have priority over all other cases.

"(2) On review of the sentence, the court of appeals shall consider the record, the evidence submitted during the trial, the information submitted during the sentencing hearing, the procedures employed in the sentencing hearing, and the special findings returned under this section.

"(3) The court shall affirm the sentence if it determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

"(B) the information supports the special finding of the existence of every aggravating factor upon which the sentence was based, together with the failure to find sufficient mitigating factors as set forth or allowed in this section.

In all other cases the court shall remand the case for reconsideration under this section. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence.".

GENERAL LEAVE

Mr. PEPPER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks during the debate on Houe Resolution 597, the resolution agreed to earlier today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

AUTHORIZING MEMORIAL TO HONOR COURAGEOUS SLAVES AND FREE BLACK PERSONS OF PAST HISTORY

Ms. OAKAR. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the House joint resolution (H.J. Res. 142) authorizing establishment of a memorial to honor the estimated 5,000 courageous slaves and free black persons who served as soldiers and sailors or provided civilian assistance during the American Revolution and to honor the countless black men, women, and children who ran away from slavery or filed petitions with courts and legislatures seeking their freedom with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the Senate amendments, as follows:

Strike out all after the resoving clause and insert:

AUTHORIZATION OF MEMORIAL

SECTION 1. The Black Revolutionary War Patriots Foundation is authorized to establish a memorial on Federal land in the District of Columbia and its environs to honor the estimated five thousand courageous slaves and free black persons who served as soldiers and sailors or provided civilian assistance during the American Revolution and to honor the countless black men, women, and children who ran away from slavery or filed petitions with courts and legislatures seeking their freedom. Such memorial shall be established in accordance with the provisions of H.R. 4378, as approved by the House of Representatives on September 29, 1986.

FUNDING

SEC. 2. The Black Revolutionary War Patriots Foundation shall establish the memorial with non-Federal funds.

Amend the title so as to read: "Joint resolution to authorize the erection of a memorial on Federal land in the District of Columbia and its environs to honor the estimated 5,000 courageous slaves and free black persons who served as soldiers and sailors or provided civilian assistance during the American Revolution and to honor the countless black men, women, and children who ran away from slavery or filed petitions with courts and legislatures seeking their freedom."

Ms. OAKAR (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentlewoman from Ohio?

Mr. FRENZEL. Reserving the right to object, Mr. Speaker, I yield to the distinguished gentlewoman from Ohio [Ms. OAKAR] to explain the joint resolution.

Ms. OAKAR. Mr. Speaker, House Joint Resolution 142 originally passed unanimously (408-0) in the House on November 6, 1985. On October 17, 1986, House Joint Resolution 142, passed in the other body, as amended.

Mr. Speaker, as early as 1652, blacks were fighting as members of the militia in colonial America; thus, beginning their history of achievement and heroism. Yet history books in American schools have for the most part omitted the contributions of black soldiers. This memorial to these black patriots is but a small tribute to their bravery and valor.

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Mr. Speaker, I would like to thank my colleagues, Congresswoman NANCY JOHNSON and Congressman CHARLIE RANGEL, for introducing this important legislation. I would also like to thank my distinguished colleague from Tennessee, Senator ALBERT GORE, who introduced the Senate version of the bill, Senate Joint Resolution 143.

Mr. Speaker, the reason we are taking this up again is we want a clear bill, we do not want it attached to any continuing resolution, and so forth.

So, Mr. Speaker, I urge adoption of this legislation, as amended by the other body.

Mr. FRENZEL. Mr. Speaker, further reserving the right to object, I yield to the distinguished gentlewoman from Connecticut [Mrs. JOHNSON], who is the original chief and effective author of this resolution.

Mrs. JOHNSON. I thank the gentleman for yielding.

Mr. Speaker, I rise in strong support of this resolution. I want to thank the distinguished gentlewoman from Ohio, Representative OAKAR, and the distinguished gentleman from Minnesota, Mr. FRENZEL, for their perseverance in bringing this resolution to us, in this clean and independent form. Their help and assistance throughout the months that we have worked to bring this to the House floor have been admirable and invaluable, as has the assistance of Congressman RANGEL and our colleague, Senator GORE, in the other body.

I do want to say that today's action has the effect of bringing to completion a vision on the part of an individ-

ual citizen in our democracy. It thereby affirms the fundamental and most important aspect of democracy, the representative relationship between visionary citizen and elected representative. Ours is truly government by the people and for the people.

So I want to acknowledge the hard work of Maurice Barboza, one of my constituents, who originally envisioned this monument. Maurice understands from his own experience the price that we are paying as a nation for our lack of understanding that our freedom originated through the valor, the courage, the side-by-side commitment of black Americans and white Americans. Together they fought in the Revolutionary War to found a free nation, a nation in which each is equal to the other and in which there is equal justice and equal opportunity for all. This monument will recognize the context of black Americans and so our multiracial founding.

Mr. Speaker, I thank the chairman and I thank the committee for its fine leadership.

Mr. FRENZEL. Mr. Speaker, further reserving the right to object, I yield to the distinguished author of the bill, the gentleman from New York [Mr. RANGEL].

Mr. RANGEL. I thank the gentleman for yielding and thank the chairwoman and also Mrs. JOHNSON and all who have made this dream come true.

Most of us in this great Nation of ours are restricted as to what we know based on what has been in certain history books and excluded from others. But black Americans have always taken pride that there has not been a battle that they have not participated in, there has not been a war that they have not volunteered for, and certainly when we talk about the struggle that made this Nation great, unfortunately history has not recorded it. In my opinion, what this great Congress is doing is trying to correct that wrong by having a monument so that all of our children, black or white, Jew or gentile, will recognize that it took people from all parts of the world to come here to make this Nation free, great, and what is is today.

Mr. FRENZEL. Further reserving the right to object, I yield to the distinguished gentleman from Missouri.

Mr. SKELTON. I thank the gentleman for yielding.

Mr. Speaker, I wholeheartedly support this effort. I support this foundation and the memorial to which you are referring today. It is not just the black American in the Revolutionary War that this will reflect upon. People, regardless of race, creed or color down through the years have made great contributions to our military.

Being on the Committee on Armed Services today and seeing that of our Nation in the various military posts that I do visit from time to time reflects the same patriotic fervor that will be recognized here in this memorial.

I compliment the authors on this legislation.

Mr. FRENZEL. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. KILDEE). Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Ms. OAKAR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just adopted.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

AUTHORIZING ESTABLISHMENT OF MEMORIAL TO HONOR WOMEN WHO HAVE SERVED IN OR WITH THE ARMED FORCES

Ms. OAKAR. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the joint resolution (H.J. Res. 36) authorizing establishing of a memorial to honor women who have served in or with the Armed Forces of the United States, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the joint resolution.

The Clerk read the Senate amendments as follows:

Strike out all after the resolving clause and insert:

AUTHORIZATION OF MEMORIAL

SECTION 1. The Women in Military Service for America Memorial Foundation is authorized to establish a memorial on Federal land in the District of Columbia and its environs to honor women who have served in the Armed Forces of the United States. Such memorial shall be established in accordance with the provisions of H.R. 4378, as approved by the House of Representatives on September 29, 1986.

FUNDING

SEC. 2. The Women in Military Service for America Memorial Foundation shall establish the memorial with non-Federal funds.

Amend the title so as to read: "Joint resolution to authorize the establishment of a memorial on Federal land in the District of Columbia and its environs to honor women who have served in the Armed Forces of the United States.".

Ms. OAKAR (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments, be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

Mr. FRENZEL. Reserving the right to object, I yield to the gentlewoman from Ohio [Ms. OAKAR], chairwoman of the Task Force on Libraries and Memorials of the Committee on House Administration for an explanation.

Ms. OAKAR. I thank the gentleman for yielding.

Mr. Speaker, this bill originally passed the House unanimously about a year ago as well. Just yesterday it finally passed the other body as a clean bill.

Mr. Speaker, since the American Revolution women have served with distinction and honor. The official history of women in the U.S. Armed Forces began with the formation of the Army Nurse Corps in 1901. Thousands of women have served in the armed services in World War II, for example about 340,000 served. We have had many women who were prisoners of war as well. Yet, when you look at the memorials in this town and throughout the country, very seldom if ever do you see a woman portrayed as having served her country in the Armed Forces.

We could go into the problems women have had in terms of discrimination, and so on, at times in the military, although I must say much of that has been improved. But the fact is this is a way of showing that women have meant an awful lot to preserve the freedom of this country by their great service to this country.

Currently there are approximately 1.4 million women veterans, and these women have fulfilled the same wonderful responsibilities with the same competence displayed by military men.

So this resolution will specifically provide a memorial to honor all women who have served in the military. I want to thank my distinguished colleague on the Senate side, Senator MURKOWSKI, for introducting the companion bill in the other body. I really want to thank all the veterans organizations. It was very, very interesting to me and really a lovely tribute to the women that all the veterans organizations, the major veterans organizations came and not only testified but endorsed this bill. They realized the importance that women have always played in the military and will continue to play.

So, Mr. Speaker, I do urge adoption of this resolution as amended by the other body.

I want to again thank my friend and colleague from Minnesota, the gentleman from Minnesota [Mr. FRENZEL] the minority leader of our committee for his tenacity in bringing this bill to this point as well.

I truly appreciate the gentleman's cooperation and the cooperation of our staffs as well.

Mr. FRENZEL. Further reserving the right to object, Mr. Speaker, I

concur in the statement of the distinguished gentlewoman from Ohio, but I would like to remind all Members that she was more modest than she should have been, for she failed to note that in addition to bringing the other memorials to the floor, she is the chief sponsor of this particular resolution, House Joint Resolution 36. The reason that it is before us is due largely to her vigor and effectiveness.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentlewoman from Ohio?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Ms. OAKAR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Joint Resolution 36, the joint resolution just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

CHRISTOPHER ENEY

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2574) for the relief of the survivors of Christopher Eney, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 1, line 7 strike out all after "officer" down to and including "on" in line 8, and insert: "covered by the Act as of".

Mr. GLICKMAN (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Kansas?

Mr. KINDNESS. Mr. Speaker, reserving the right to object, I will not object, but I yield to the gentleman from Kansas [Mr. GLICKMAN] to explain the amendment that is before us.

Mr. GLICKMAN. I thank the gentleman for yielding.

Mr. Speaker, H.R. 2574 is a private relief bill for the survivors of Sgt. Christopher Eney. The purpose of the bill is to allow his survivors to apply for death benefits under the Omnibus Crime Control and Safe Streets Act of 1968, as amended on October 1, 1984, to include U.S. public safety officers. The House passed this bill on September 16, 1986, and the Senate has amended it.

The Senate amendment simply removes the wording that states that Sergeant Eney died as the result of an injury sustained in the line of duty, but deems him to have been covered by the act on October 1, 1984. The effect of the amendment is to allow Sergeant Eney's survivors to apply for death benefits under the Omnibus Crime Control and Safe Streets Act, but will require them to prove to the Bureau of Justice Assistance that Sergeant Eney died in the line of duty.

I urge my colleagues to accept the Senate amendment.

Mr. KINDNESS. Mr. Speaker, further reserving the right to object, I would note that the amendment from the other body displays rare intellectual acuity and improves the bill beyond measure.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Kansas?

There was no objection.

A motion to reconsider was laid on the table.

AUDREY O. LEWIS AND EMERSON B. VEREEN

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1010) for the relief of Audrey O. Lewis and Emerson B. Vereen with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows: Page 1, line 6, strike out "$140,500" and insert: "$70,250".

Page 1, line 8, strike out "$43,750" and insert: "$18,275".

Page 2, line 23, strike out "$9,100" and insert: "$4,550".

Mr. GLICKMAN (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Kansas?

Mr. KINDNESS. Mr. Speaker, reserving the right to object, and I will not object, I yield to the gentleman from Kansas [Mr. GLICKMAN] to explain the nature of the amendments.

Mr. GLICKMAN. I thank the gentleman for yielding.

Mr. Speaker, H.R. 1010 is a private bill for the relief of Audrey Lewis and Emerson B. Vereen. These two individuals were set up by a U.S. Drug Enforcement agent and a Baltimore City police officer and charged with possession of cocaine. The two officers involved admitted that they had set up these individuals. On May 21, 1985, the House passed H.R. 1010 awarding $140,500 to Audrey Lewis and $43,750 to Emerson Vereen.

Last night, the other body passed H.R. 1010 with an amendment to reduce the awards to Ms. Lewis and Mr. Vereen and the attorneys' fees. The Senate set the amounts at $70,250 for Ms. Lewis and $18,275 for Mr. Vereen and $4,550 for the attorneys fees. While I feel that these individuals are entitled to the full amount as in the House language, I also think it is important that these individuals get some relief.

Therefore, I urge my colleagues to accept the Senate amendment.

Mr. KINDNESS. Further reserving the right to object, Mr. Speaker, the amendment from the other body as described by the gentleman from Kansas is Solomon-like in its judgment; it cuts the baby in half. I see no reason for objection to that. But under my reservation, Mr. Speaker, if I might take just a moment to compliment the gentleman from Kansas with whom I have worked during this Congress and the preceding one, particularly in this Congress with the Subcommittee on Administrative Law and Government Relations of the Committee on the Judiciary, out of which these measures were produced originally. And I have done so with a great deal of satisfaction and pleasure because of the fine work of the gentleman from Kansas as chairman of that subcommittee, as well as our other colleagues on that subcommittee.

The gentleman from Kansas was very kind in his remarks a few weeks ago when I was not able to be present because of other urgent business in the State of Ohio, but on this occasion today I certainly want to compliment the gentleman from Kansas [Mr. GLICKMAN] for his fine work as chairman of the subcommittee. It has been a pleasure to work with him over the years in the House of Representatives.

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I look forward to doing it in a different capacity in the 100th Congress.

Mr. Speaker, under my reservation of objection, I yield to the gentleman from Kansas.

Mr. GLICKMAN. Mr. Speaker, our colleague, the gentleman from Ohio [Mr. KINDNESS], is leaving this body, and the gentleman has a bumper sticker that I have seen in his office and on his car that says "Kindness Works." In the gentleman's case, I think that is true both ways.

I just want my colleagues of the House to pay tribute to an outstanding lawyer, as well as an outstanding human being. The gentleman is very instrumentally involved in Ethics Act legislation, the Federal Tort Claims Act, the Lobbying Act, the Regulatory Reform Act, and his own baby, so to speak, was the Contract Disputes Act which we passed last year.

Whatever happens to the gentleman, whether he is in the other body next year, or whether he is a private citizen promoting issues of interest to him, he has been an outstanding addition to this body, and I think this House ought to recognize what TOM KINDNESS has done for this institution.

Mr. KINDNESS. Mr. Speaker, I thank the gentleman.

Mr. Speaker, further reserving the right to object, I yield to the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. Mr. Speaker, I want to join the gentleman in paying tribute to a distinguished colleague. The gentleman is in a race, and we do not want to get into that, that is another issue. But in terms of the gentleman's outstanding service to this body, those of us from Ohio have always been very, very proud of the gentleman. I want to join the chairman in acknowledging our friend and colleague, TOM KINDNESS.

Mr. KINDNESS. Mr. Speaker, further reserving the right to object, I want to thank the gentlewoman from Ohio and the gentleman from Kansas.

Mr. Speaker, I want to compliment the majority counsel on the Administrative Law Subcommittee, Jan Ihlo and Janet Potts, who have worked so well with counsel on our side, Kevin Richardson, and with all of the members of the subcommittee to further the work of the subcommittee so graciously and so well.

Mr. Speaker, I thank all of them for the work that has been accomplished in the subcommittee and the full committee in this Congress. I shall miss them and shall miss closely with them.

Mr. MITCHELL. Mr. Speaker, I rise today in support of H.R. 1010, a bill to provide relief for Audrey O. Lewis and Emerson B. Vereen.

Mr. Speaker, Mr. Vereen and Mrs. Lewis are my constitutents who were victimized by an illegal drug arrest and subsequently criminally prosecuted during the years 1972 and 1973. The family has since been involved in constant court battles seeking compensation for their losses. Except for a piece of paper granting a default judgment against the two arresting officers, former Drug Enforcement Administration Agent Wayne Ambrose, Jr., and Baltimore City Detective Larry L. Clark, my constituents have been unable to obtain relief and have exhausted all judicial avenues. They can only resume a normal life if they are aided through the private relief bill recently approved by the other body with amendment.

The facts in the case speak for themselves. Larry Clark and Wayne Ambrose fabricated a search warrant to search the premises where plaintiffs Vereen and Lewis lived in August 1972; planted heroin in the residence; and subsequently testified that they "found" the drugs while executing the search warrant. The court has declared clearly that the arresting officers acted illegally, and, if I may quote U.S. District Judge Joseph Young's opinion in the default judgement, ". . . it is obvious this was a black day in the history of drug enforcement activities." Moreover, Larry Clark has confessed on several occasions, that he conspired with Wayne Ambrose to illegally plant heroin in the home of claimants Lewis and Vereen, and did in fact, commit perjury in swearing to an application for a search and seizure warrant for the home of the plaintiffs. Larry Clark also confessed to perjuring his testimony in the litigation of criminal charges against Mrs. Lewis and Mr. Vereen.

Since the other body, in their infinite wisdom, has decided to amend this bill and arbitrarily lower the amounts claimed to one-half, I wish there remained enough time for me to convince them to read the report drafted by the House Judiciary Committe and be convinced by the Justice Department views in a report to the House, and I quote, "the enormous wrong suffered by Mrs. Lewis and Mr. Vereen and a realization that absent private relief these innocent victims possess no viable remedy under the law."

Mr. Speaker, this is an extraordinary case of the Federal Government conspiring with local government in a malicious deprivation of civil and constitutional rights of its citizens. The significant financial loss which this legislation attempts to recover can never compensate for the mental anguish and tainted images imposed upon Mr. Vereen and Mrs. Lewis throughout the last 12 years. But, on this day, this body can accept the moral obligation on behalf of the Federal Government and extend relief, albeit meager relief, to these innocent individuals.

Mr. KINDNESS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. KILDEE). Is there objection to the request of the gentleman from Kansas?

There was no objection.

A motion to reconsider was laid on the table.

AGE DISCRIMINATION IN EMPLOYMENT AMENDMENTS OF 1986

Mr. HAWKINS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4154) to amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such act, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Age Discrimination in Employment Amendments of 1986".

SEC. 2. AMENDMENTS RELATING TO MAXIMUM AGE.

(a) COVERAGE UNDER GROUP HEALTH PLANS.—Subsection (g)(1) of section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(g)(1)), as added by section 116(a) of the Tax Equity and Fiscal Responsibility Act of 1982, is amended by striking out "through 69" each place it appears and inserting in lieu thereof "or older".

(b) TECHNICAL AMENDMENT.—Subsection (g) of section 4 of the Age Discrimination in Employment Act of 1967, as added by section 802(b)(2) of the Older Americans Act Amendments of 1984, is amended by striking out "(g)(1)" in inserting in lieu thereof "(h)(1)".

(c) REMOVAL OF MAXIMUM AGE LIMITATION.—Section 12 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631) is amended—

(1) in subsection (a) by striking out "but less than seventy years of age", and

(2) in subsection (c)(1) by striking out "but not seventy years of age,".

SEC. 3. EMPLOYMENT AS FIREFIGHTING OR LAW ENFORCEMENT OFFICER.

(a) GENERAL RULE.—Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended by adding at the end thereof the following new subsection:

"(i) It shall not be unlawful for an employer which is a State, a political subdivision of a State, an agency or instrumentality of a State or a political subdivision of a State, or an interstate agency to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken—

"(1) with respect to the employment of an individual as a firefighter or as a law enforcement officer and the individual has attained the age of hiring or retirement in effect under applicable State or local law on March 3, 1983, and

"(2) pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purposes of this Act.".

(b) TERMINATION PROVISION.—The amendment made by subsection (a) of this section is repealed December 31, 1993.

SEC. 4. DEFINITIONS.

Section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630) is amended by adding at the end thereof the following new subsections:

"(j) The term 'firefighter' means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position.

"(k) The term 'law enforcement officer' means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of a State, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purpose of this subsection, 'detention' includes the duties of employees assigned to guard individuals incarcerated in any penal institution.".

SEC. 5. STUDY AND PROPOSED GUIDELINES RELATING TO POLICE OFFICERS AND FIREFIGHTERS.

(a) STUDY.—Not later than 4 years after the date of enactment of this Act, the Secretary of Labor and the Equal Employment Opportunity Commission, jointly, shall—

(1) conduct a study—

(A) to determine whether physical and mental fitness tests are valid measurements of the ability and competency of police officers and firefighters to perfom the requirements of their jobs,

(B) if such tests are found to be valid measurements of such ability and competency, to determine which particular types of tests most effectively measure such ability and competency, and

(C) to develop recommendations with respect to specific standards that such tests, and the administration of such tests should satisfy, and

(2) submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate that includes—

(A) a description of the results of such study and

(B) a statement of the recommendations developed under paragraph (1)(C).

(b) CONSULTATION REQUIREMENT.—The Secretary of Labor and the Equal Employment Opportunity Commission shall, during the conduct of the study required under subsection (a) and prior to the development of recommendations under paragraph (1)(C), consult with the United States Fire Administration, the Federal Emergency Management Agency, organizations representing law enforcement officers, firefighters, and their employers, and organizations representing older Americans.

(c) PROPOSED GUIDELINES.—Not later than 5 years after the date of the enactment of this Act, the Equal Employment Opportunity Commission shall propose, in accordance with subchapter II of chapter 5 of title 5 of the United States Code, guidelines for the administration and use of Physical and mental fitness tests to measure the ability and competency of police officers and firefighters to perform the requirements of their jobs.

SEC. 6. SPECIAL RULE FOR TENURE FACULTY.

(a) SPECIAL RULE.—Section 12 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631) is amended by adding at the end thereof the following new subsection:

"(d) Nothing in this Act shall be construed to prohibit compulsory retirement of any employee who has attained 70 years of age, and who is serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) at any institution of higher education (as defined by section 1201(a) of the Higher Education Act of 1965).".

(b) TERMINATION PROVISION.—The amendment made by subsection (a) of this section is repealed December 31, 1993.

(c) STUDY REQUIRED.—(1) The Equal Employment Opportunity Commission shall, not later than 12 months after the date of enactment of this Act, enter into an agreement with the National Academy of Sciences for the conduct of a study to analyze the potential consequences of the elimination of mandatory retirement on institutions of higher education.

(2) The study required by paragraph (1) of this subsection shall be conducted under the general supervision of the National Academy of Sciences by a study panel composed of 9 members. The study panel shall consist of—

(A) 4 members who shall be administrators at institutions of higher education selected by the National Academy of Sciences after consultation with the American Council of Education, the Association of American Universities, and the National Association of State Universities and Land Grant Colleges;

(B) 4 members who shall be teachers or retired teachers at institutions of higher education (who do not serve in an administrative capacity at such institutions), selected by the National Academy of Sciences after consultation with the American Federation of Teachers, the National Education Association, the American Association of University Professors, and the American Association of Retired Persons; and

(C) one member selected by the National Academy of Sciences.

(3) The results of the study shall be reported, with recommendations, to the President and to the Congress not later than 5 years after the date of enactment of this Act.

(4) The expenses of the study required by this subsection shall be paid from funds available to the Equal Employment Opportunity Commission.

SEC. 7. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) IN GENERAL.—Except as provided in subsection (b), this act and the amendments made by this Act shall take effect on January 1, 1987, except that with respect to any employee who is subject to a collective-bargaining agreement—

(1) which is in effect on June 30, 1986,

(2) which terminates after January 1, 1987,

(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)), and

(4) which contains any provision that would be superseded by such amendments, but for the operation of this section,

such amendments shall not apply until the termination of such collective bargaining agreement or January 1, 1990, whichever occurs first.

(b) EFFECT ON EXISTING CAUSES OF ACTION.—The amendments made by sections 3 and 4 of this Act shall not apply with respect to any cause of action arising under the Age Discrimination in Employment Act of 1967 as in effect before January 1, 1987.

Mr. HAWKINS (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from California?

Mr. JEFFORDS. Mr. Speaker, reserving the right to object, I do so solely for the purpose of allowing the chairman of the committee to explain the contents of the Senate amendment.

Mr. Speaker, I yield to the gentleman from California.

Mr. HAWKINS. Mr. Speaker, today we take a historic step in our effort to ensure both equal employment opportunity for older Americans and a skilled, experienced, and sufficient work force. In doing so, we have sought to accommodate in reasonable and appropriate ways the several concerns which various sectors of our society have expressed regarding the action which we take this morning.

More than two decades ago, we took an important first step in the process which we advance almost to completion today when we enacted the Age Discrimination in Employment Act. Our purpose then, as now, was to require that employment decisions affecting older persons be based on their ability to perform a given job rather than on the irrelevant factor of age. In other words, we sought to eradicate irrational and arbitrary employment discrimination based on age much as we have sought the end of other unacceptable forms of employment discrimination.

In 1978, I was pleased to join with my distinguised colleague [Mr. PEPPER], to amend the act by raising the upper age limit from 65 to 70 for most private sector employees and eliminating the age 70 cap for most Federal civilian workers. During the 8 years which have passed since the 1978 amendments, we were able to evaluate the appropriateness of eliminating the upper age limit entirely and do so today with great confidence that our action is both necessary and correct.

The law which we enact today, again as a result of the tireless efforts of Mr. PEPPER, prohibits arbitrary mandatory retirement based on age and ensures that those Americans age 40 and older who desire to continue working and are able to continue performing in a competent fashion the requirements of their jobs are not denied the basic human right to earn a living. We have provided 7-year transition periods to allow tenured faculty and police and firefighters time to adjust to the requirements of this new law. During this time, studies are to be completed with will assess the impact of eliminating mandatory retirement of universities and law enforcement institutions. We are confident that these institutions will ultimately benefit from the requirement that they begin basing hiring and retirement decisions on an individual's qualifications and job performance.

I wish to commend Chairman MARTINEZ of our Subcommittee on Employment Opportunities and all of those who have worked so diligently to enact this legislation, as well as the Congress for its foresight in enacting it. A special word of gratitude must be extended to Senator PEPPER for his leadership, perseverance, and foresight. But for his considerable efforts, this long overdue legislation could not have been enacted.

Mr. JEFFORDS. Mr. Speaker, further reserving the right to object, I would be most happy to yield to the chairman of the Rules Committee, Mr. PEPPER, who has been the moving force behind this legislation, and I commend the gentleman for all his efforts.

Mr. PEPPER. Mr. Speaker, I am profoundly grateful to the distinguished chairman of the Education and Labor Committee and the distinguished gentleman from Vermont, the ranking minority member of that committee, for their very kind words.

Mr. Speaker, this is a very meaningful day in our country, if it goes according to our expectations. We were dealing a few moments ago on this floor with the drug bill, primarily designed to protect and help the younger people of our country. Now we are dealing with a bill that respects and protects the rights of the older people, the rights of the older people to keep on working, to keep on helping to build the country to which they have contributed so much. I think this will be a red-letter day in the history of our country that we shall have done on this day so much for those two great groups of our citizens.

I want to pay particular tribute to the distinguished chairman of the Education and Labor Committee, Mr. HAWKINS, and to his counterpart, the ranking minority member, Mr. JEFFORDS. Only yesterday, the distinguished gentleman from Vermont, along with Mr. HAWKINS and their staff were negotiating with Members of the other body who had been holding up the clearance of this measure over there. They have contributed greatly, therefore, to the passage of this legislation by removing those obstacles in the other body.

I also want to commend the staffs of the Education and Labor Committee and also the staff of the Subcommittee on Health and Long-Term Care, which I have the honor to chair, which is part of the Select Committee on Aging in the House of Representatives.

I also want to commend the distinguished gentleman, the chairman of the subcommittee that brought this bill out, the gentleman from California [Mr. MARTINEZ], for the great contribution that he has made. I am very proud to have been associated with these distinguished colleagues in the enactment of this legislation, because it will give new hope, it will give new courage and a new feeling of meaningfulness to the elderly people of this country when the word goes out from this House at the end of this day that civil rights, as it were, have been assured for the elderly people, the right to keep on living and supporting themselves and helping to build America and keep it the greatest country in the world.

I am very proud of what we have done and I am sure grateful to all my colleagues for this great achievement which they have attained.

I rise in support of H.R. 4154 as amended by the Senate. I would like to commend my colleagues in the Senate for their leadership in securing passage on this historical measure that will mean so much to so many of our older Americans and future older Americans for years to come. My distinguished colleague from Pennsylvania and chairman of the Senate Special Committee on Aging, Senator JOHN HEINZ, and the distinguished Senator from Ohio, HOWARD METZENBAUM, joined me as principal cosponsors of this bill in the Senate, and worked closely together in shaping the compromise between aging organizations, public safety workers, and tenured professors which this bill before us today represents. Senator WENDELL FORD of Kentucky a key role in forging this necessary compromise and his efforts were crucial in bringing this bill to fruition. I also want to commend Senators BILL BRADLEY of New Jersey, and DON NICKLES of Oklahoma, for their respective roles in bringing this measure to the Senate floor.

The distinguished chairman of the Education and Labor Committee, the Honorable GUS HAWKINS, of California, who joined me in sponsoring this legislation must be commended for his leadership in sheparding this bill through his committee and through the House. Education and Labor Committee members, JAMES JEFFORDS of Vermont, the ranking minority member of the committee, MATTHEW MARTINEZ of California, chairman of the Subcommittee on Employment Opportunities, the ranking minority member of that subcommittee, STEVEN GUNDERSON of Wisconsin all lent their support to the passage of this bill. Special commendations go to the Honorable MARIO BIAGGI of New York, who as a ranking member of both the Education and Labor Committee and the House Select Committee on Aging, was crucial throughout House negotiation on the bill. My colleague and chairman of the House Select Committee on Aging, EDWARD ROYBAL, committed his support in ending mandatory retirement from the bill's beginning. While these House Members played key roles, every Member of the House deserves recognition in passing this historic measure—for there was not one descenting vote in this body.

The staff who labored through the negotiations on this bill should also be recognized. Ed Cooke, Carole Schanzer, Mark Powden, Jeff Fox, and Eric Jensen of the House Education and Labor Committee should be given special mention. My staff on the Subcommittee of Health and Long-Term Care of the Select Committee on Aging, including Kathleen Gardner Cravedi, Peter Reinecke and Melanie Modlin played key roles in bringing this bill to the floor today. Steve McConnnell and Terry Parker with the Senate Special Committee on Aging, Jim Brudney with Senator HOWARD METZENBAUM, and Kenny Gil with Senator WENDELL FORD are to be commended for their efforts to successfully negotiate the compromise before us today. Roger and Brian Lutz of the House Select Committee on Aging were helpful throughout negotiations. Obviously, many others, including aging organizations, youth groups, women's groups, State and local community representatives played key roles in assisting in the movement of this bill successfully through the House and the Senate without whom this bill would not be possible.

This legislation is an important step in guaranteeing the elderly of this Nation a fundamental civil right—the right to work as long as they are willing and able.

Under current law, private sector employees may be mandatorily retired at age 70. Legislation before us today will prohibit age discrimination in employment altogether by eliminating the age 70 cap. In addition, the Senate bill exempts public safety officers—police, firemen, and prison guards—and professors from protection under the bill for 7 years during which time studies will be conducted to determine whether the retention of a mandatory retirement age for these two occupations is justified. Upon completion of these two studies, I will urge my colleagues to hold hearings immediately so we might act appropriately on the findings.

With respect to Senate action exempting public safety officers and professors from the immediate effect of this legislation, while I believe any arbitrary age discrimination is wrong, I am supporting the bill as approved by the Senate because I am confident that the studies required by this bill will resolve questions which will otherwise linger and prevent the passage and the progress this bill will bring the American people. As a whole, this bill is substantively and symbolically significant not only to the Nation's 28 million elderly but also to every citizen who plans one day to reach 65 or 70 and would prefer, at that point, not to be arbitrarily exiled from the labor force.

The speed with which this bill has moved through the House and the Senate testifies to congressional awareness that by delay we become accomplices in discrimination. I urge the President to sign this historic bill into law as soon as it reaches his desk.

The goal of this legislation is simple. It abolishes the anomolous form of discrimination which punishes its victims for the most unavoidable of human experiences—simply growing older.

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Mr. JEFFORDS. Mr. Speaker, under my reservation I yield to the gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. I thank the gentleman for yielding.

Mr. Speaker, I would like to say that the gentleman from Florida [Mr. PEPPER] likened this bill in some re-

spects to the drug bill. We are helping elderly people with this bill; we helped, hopefully, young people with the other one.

There is another thing that is very similar between these two pieces of legislation and that is that they are bipartisan. There is no end to what we can do if we can agree among ourselves. We can really accomplish a lot. These two bills today show that.

Also, I must say that when the gentleman from Florida stands up in his usual eloquent and effective way, does what he does so well, that alone shows why we should not be requiring people to retire at an age younger than the gentleman is.

Mr. JEFFORDS. Mr. Speaker, further reserving the right to object, I yield to the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. I thank the gentleman for yielding to me.

Mr. Speaker, I wish to thank all the Members who are responsible for this legislation brought by the distinguished chairman from California and the minority leader.

I really was going to say about the same thing. I think that Senator PEPPER is living proof concerning why we should not have mandatory retirement and I think this bill symbolizes something even beyond those individuals who are past the age of 70 or so.

There are many unemployed workers who are over 50 years, particular men in many ways, who cannot find a job because of age discrimination. So if we think that age discrimination is not a difficulty for so many individuals, male and female, it really is. I think this bill symbolizes the whole area of civil rights related to age discrimination that we really have not forthrightly addressed.

Of course, the chairman of the Subcommittee on Health and the Committee on Rules, the former chairman of the Aging Committee, has really been the champion in this area. I remember going to a birthday party a couple of years ago for Senator PEPPER and all of the people at the head table were over 70 years of age. The MC was Bob Hope from my home of Cleveland, who now I think is about 82 years old or so. So all the kids were up there celebrating Senator PEPPER's birthday and they are all living proof of why we should abandon that form of discrimination.

I want to compliment you, Senator, in particular.

Mr. JEFFORDS. Mr. Speaker, further reserving the right to object, I would say that in my mind this bill is improved by the changes that have been made. My feelings are very strong that through the utilization of BFOQ's we do not need to have exemptions, we only need transition periods. We have provided the necessary transition periods for the respective groups that are included in this.

So I would urge that the bill be adopted.

The Senate has made two major changes to the bill. First, the exemption for law enforcement officers and firefighters will be limited to 7 years. This is an issue of concern to law enforcement officers in my State as well as many others. The 7-year exemption will give the Secretary of Labor and the Equal Employment Opportunity Commission the opportunity to complete the studies mandated by the bill on the use of fitness tests as appropriate measures of the competency of police officers and firefighters to perform the requirements of their jobs. While I do not favor permanent exemptions from civil rights laws, I do recognize the special problems that may arise for firefighters and law enforcement officers and can support a transition period. The studies should help determine whether individual testing for these jobs is a feasible alternative to a blanket exemption.

Second, the Senate amendment provides for a 7-year exemption for tenured faculty members at colleges and universities. This temporary exemption recognizes the special demographic problems of institutions of higher education, who took on additional faculty during the years when "baby boomers" were of college age. Most faculty openings occur only upon death or retirement of faculty members. Therefore, if mandatory retirement were immediately eliminated for college faculty, the continued employment of these faculty members hired during a time of expanding enrollments might result in a shortage of openings for new college faculty members. Opportunities for new professors and researchers with new ideas and new ways of thinking, and skilled in emerging disciplines, might be scarce. Continuation of present mandatory policies for a temporary period of time will help alleviate these pressures. In addition, the 7-year exemption will give institutions of higher learning the opportunity to reexamine the tenure system and to determine, in light of the elimination of mandatory retirement, whether structural changes might be appropriate or whether incentives should be offered for early retirement.

Mr. Speaker, this bill guarantees for senior citizens a fundamental right that many of us take for granted: The right to work and earn a living. I commend the gentleman from Florida for his invaluable leadership and tireless efforts on this measure.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. KILDEE). Is there objection to the initial request of the gentleman from California?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HAWKINS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

INDIANA DUNES NATIONAL LAKESHORE

Mr. VENTO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4037) relating to the Indiana Dunes National Lakeshore, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause and insert:

SECTION 1. INDIANA DUNES NATIONAL LAKESHORE.

(a) BOUNDARY CHANGES.—The first section of the Act entitled "An Act to provide for the establishment of the Indiana Dunes National Lakeshore, and for other purposes", approved November 6, 1966 (16 U.S.C. 460u), is amended by striking out "December 1980, and bearing the number 626-91014" and inserting in lieu thereof "October 1986, and numbered 626-80,033-B".

(b) DEFINITION OF IMPROVED PROPERTY.—Section 4 of such Act is amended by striking out the first sentence and substituting "As used in this Act, the term 'improved property' means a detached, one-family dwelling which meets each of the following criteria:

"(1) The construction of the dwelling began before the date (shown in the table contained in this section) corresponding to the appropriate map.

"(2) The property is located within the boundaries delineated on the map described in such table which corresponds to such date.

"(3) The property is not located within the boundaries of any other map referred to in such table which bears an earlier date.

The term 'appropriate map', means a map identified as 'Boundary Map—Indiana Dunes National Lakeshore' (or 'A Proposed Indiana Dunes National Lakeshore' in the case of a dwelling the construction of which was begun before January 4, 1965) which is dated and numbered as provided in the following table.

Property within boundaries of map	Construction began before
Dated October 1986, #626-80,033-B.	February 1, 1986
Dated December 1980, \$626-91014.	January 1, 1981
Dated September 1976, \$626-91007.	February 1, 1973
Dated September 1966, #LNPNE-1008-ID.	January 4, 1965

The term 'improved property' also includes the lands on which the dwelling is situated which meets both of the following criteria:

"(A) The land is in the same ownership as the dwelling.

"(B) The Secretary has designated the lands as reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use.

Such term also includes any structures accessory to the dwelling which are situated on the lands so designated. The maps referred to in this section shall be on file and available for public inspection in the Office of the Director of the National Park Serv-

ice, Department of the Interior. The Secretary shall designate the land referred to in subparagraph (B).".

(c) RETAINED RIGHTS.—Section 5(a) of such Act (16 U.S.C. 460u-5a) is amended as follows:

(1) Strike out "the first section" and insert in lieu thereof "section 4, dated December 1980, and numbered 626-91014."

(2) Strike out ": *Provided*, That" and substitute a period followed by "In the case of improved property within the boundaries of the map dated December 1980 and numbered 626-91014".

(3) After "(a)" strike "Except for" and insert "(1) Except for owners described in paragraph (2) and".

(4) Strike "(1)" in each place it appears and substitute "(A)" and strike "(2)" and substitute "(B)".

(5) Add the following at the end thereof:

"(2)(A) In the case of property included within the boundaries of the lakeshore after 1980, any owner or owners of record of improved property may retain a right of use and occupancy for noncommercial residential purposes for a term ending at either of the following:

"(i) A fixed term not to extend beyond September 30, 2010, or such lesser fixed term as the owner or owners may elect at the time of acquisition.

"(ii) A term ending at the death of any owner or of a spouse of any owner, whichever occurs last.

The owner shall elect the term to be reserved.

"(B) The retention of rights under subparagraph (A) shall be available only to individuals who are homeowners of record as of July 1, 1986, who have attained the age of majority as of that date and who make a bona fide written offer not later than July 1, 1991, to sell to the Secretary.".

(d) AUTHORIZATION.—Section 9 of such Act (16 U.S.C. 460u-9) is amended as follows:

(1) In the first sentence strike "$11,000,000" and inset in lieu thereof "$20,000,000".

(2) Add after the last paragraph "In addition to any other sums authorized for the acquisition of lands and interests in lands pursuant to the provisions of this Act there are authorized to be appropriated an additional $3,500,000 to be used for such purposes. The Secretary shall conduct a feasibility study of establishing United States Highway 12 as the 'Indiana Dunes Parkway' under the jurisdiction of the National Park Service. The Secretary shall submit the results of such study to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate within two years after the enactment of this sentence. Effective October 1, 1986, there is authorized to be appropriated such sums as may be necessary for the purposes of conducting the feasibility study.".

(e) EXISTING PROPERTY RIGHTS.—Section 10 of such Act (16 U.S.C. 460u-16) is amended by inserting at the end thereof: "Nothing in this Act shall be construed to diminish the existing property rights of Northern Indiana Public Service Company (as of October 1, 1986) with respect to—

"(1) a parcel of land owned in fee by the Northern Indiana Public Service Company and used for high voltage electrical transmission lines, pipelines, and utility purposes, beginning at said Company's Dune Acres substation and extending east to said Company's Michigan City Generating Station, which parcel by this Act is included within the boundaries of the Indiana Dunes National Lakeshore and herein designated as area II-I on National Park Service Boundary Map No. 626-80,033-B, dated October 1986, excluding that certain parcel of approximately 6.0 acres adjacent Mineral Springs Road in areas II-I, and

"(2) land owned in fee by the Northern Indiana Public Service Company and used for high voltage electrical transmission lines, pipelines, and utility purposes as has by this Act been included within the boundaries of the Indiana Dunes National Lakeshore and herein designated as area II-H on said National Park Service Boundary Map No. 626-80,033-B."

(f) OWNER CONSENT REQUIRED.—Section 13 of such Act (16 U.S.C. 460u-13) is amended by changing "SEC. 13." to "SEC. 13. (a)", by striking out "the first section" and inserting in lieu thereof "section 4, dated December 1980 and numbered 626-91014", and by adding a new subsection (b) as follows:

"(b) The Secretary may acquire that portion of area IV-B in private ownership on the map referred to in section 1 of this Act only with the consent of the owner: *Provided*, That the Secretary may acquire an agricultural easement should the owner change the use in existence as of September 19, 1986, through eminent domain.".

(g) MAP REFERENCE.—Section 16 of such Act (16 U.S.C. 460u-16) is amended by inserting at the end of the first sentence "on the map referred to in section 4, dated October 1976, and numbered 626-9100".

(h) RIGHTS-OF-WAY.—Section 15 of such Act is amended by adding the following at the end thereof: "The Secretary may acquire only such interest in the rights-of-way designated 'Crossing B' and 'Crossing C' on the map dated October 1986 and numbered 626-80,033-B as he determines to be necessary to assure public access to the banks of the Little Calumet River and the banks of Salt Creek within fifty feet on either side of the centerline of said river and creek.".

(i) COOPERATIVE AGREEMENT AND STUDY.—Add the following new section at the end of such Act:

"SEC. 24. LITTLE CALUMET RIVER AND BURNS/PORTAGE WATERWAY.

"(a) COOPERATIVE AGREEMENT.—The Secretary may enter into a cooperative agreement with the Little Calumet River Basin Development Commission, the State of Indiana or any political subdivision thereof for the planning, management, and interpretation of recreational facilities on the tract within the boundaries of Indiana Dunes National Lakeshore identified as tract numbered 09-117 or on lands under the jurisdiction of the State of Indiana or political subdivision thereof along the Little Calumet River and Burns Waterway. The cooperative agreement may include provision for the planning of public facilities for boating, canoeing, fishing, hiking, bicycling, and other compatible recreational activities. Any recreational developments on lands under the jurisdiction of the National Park Service planned pursuant to this cooperative agreement shall be in a manner consistent with the purposes of this Act, including section 6(b).

"(b) STUDY.—The Secretary shall conduct a study regarding the options available for linking the portions of the lakeshore which are divided by the Little Calumet River and Burns/Portage Waterway so as to coordinate the management and recreational use of the lakeshore. The Secretary shall submit the results of the study to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate within two years after the enactment of this section. Effective October 1, 1986, there is authorized to be appropriated such sums as may be necessary for the purposes of conducting this study.".

Mr. VENTO (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

Mr. LAGOMARSINO (during the reading). Mr. Speaker, reserving the right to object, I shall not object, but I wish to yield to the gentleman from Minnesota [Mr. VENTO] to explain the Senate amendment.

Mr. VENTO. I thank the gentleman for yielding to me.

Mr. Speaker, the legislation before the House today has been slightly modified from the form in which it passed the House on August 11, 1986.

The Senate amendment to H.R. 4037 adds approximately 33 acres in the Salt Creek portion of the lakeshore and provide for a $9 million increase in the development authorization, rather than the $14 million increase initially provided for by the House. In addition, the Senate amendment corrects a mapping error that omitted a small strip of previously acquired Federal property on the park's eastern boundary. Further, the amendment contains language delineating the interests that can be acquired on three parcels being added to the national lakeshore by this legislation.

The Senate language involving the two northern Indiana Public Service Co., parcels is added with the understanding that this legislation will not alter the property rights to the parcels involved unless they are sold or cease to be used for high voltage electrical transmission lines, pipelines, or utility purposes. The language on the third parcel stipulates that the land will not be acquired without the consent of the owner thereof, unless there is a change in the existing agricultural use of the property.

H.R. 4037, as amended, has the support of the interested parties. Through the hard work of the Members of the Indiana delegation, especially our colleague PETER VISCLOSKY, a legislative package has been put together that will further enhance the use and management of this important urban national park unit.

Mr. Speaker, I am pleased to be able to assist in moving forward with this meritorious measure, and I support adoption of H.R. 4037, as amended.

Mr. LAGOMARSINO. Mr. Speaker, further reserving the right to object, I

yield to the gentleman from Indiana [Mr. VISCLOSKY].

Mr. VISCLOSKY. I thank the gentleman for yielding to me.

Mr. Speaker, first of all I would like to thank everyone involved. The cosponsors of this legislation as well as the Indiana Senators involved; Senator QUAYLE and Senator LUGAR, and especially I wish to thank the gentleman from California [Mr. LAGOMARSINO] for his diligent effort on my behalf, for his fairness and for his unfailing courtesy. Especially Chairman VENTO as well who has been wise and patient with me and also very diligent on my behalf.

Perhaps the most important people involved at those on the staff. Rick Heal as well as Dale Crane and Lori Stillman and those on my staff. Tamara Browne as well as Michael Hollenbeck. I really would appreciate the House's consideration of this legislation. It makes an improvement in the dunes as well as increasing the authorization ceiling. I believe the changes made by the Senate are an improvement in this bill although I am disappointed with the reduction in the authorization ceiling but I accept that given the fiscal times we are in. I do think it will help not only preserve a natural resource, but put people to work in the short term and enhance our ability to keep talented people in northwest Indiana so we can do steel best and do many other things well in the future.

Mr. LAGOMARSINO. Mr. Speaker, further reserving the right to object, I rise in support of the amended version of H.R. 4037 before us today.

This measure, which was originally passed by the House in August, would primarily expand the boundaries of the Indiana Dunes National Lakeshore and increase its authorized ceiling for appropriations. The bill was recently amended and passed by the other body. I believe the Senate amendments improve this legislation. These include provisions increasing the boundaries by an additional 33 acres, reducing the authorization ceiling increase from $14 to $9 million and making a minor technical correction in the map for this area.

Mr. Speaker, this is a good bill which will serve to improve the Indiana Dunes National Lakeshore. Therefore, I urge my colleagues to approve H.R. 4037.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Minnesota?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

TEXAS WILDERNESS ACT AMENDMENTS OF 1986

Mr. VENTO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4685) to adjust the boundaries of areas of the National Wilderness Preservation System in the State of Texas, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 1, line 10, strike out "June" and insert: "October".

Mr. VENTO (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

Mr. LAGOMARSINO. Mr. Speaker, reserving the right to object, I shall not object. I simply rise to inform the Members that the minority has no objections to the bill as amended by the Senate.

The Senate Agriculture Committee chairman, Senator HELMS, raised the same concerns we did when we considered the bill in the Interior Committee; namely, the amount of private land being added to the existing wilderness areas.

We also felt that these additions were unwise and we support their deletion which is what the Senate amendment does.

As my colleagues may know, private land inside the boundaries of a wilderness area cannot be acquired by condemnation but there is a strong interest in purchasing the lands if they are used for purposes of incompatible with the adjacent wilderness. The owners of the land are pressured to restrict their activities or to sell out. I believe we can and should avoid these problems by simply not adding any more private land to wilderness than is absolutely necessary. The Texas delegation has recognized this concern and responded in a responsible way. I commend my colleagues from Texas. Particularly the gentleman who serves on our committee, [Mr. BARTON] and the gentleman from Texas [Mr. BARTLETT] for working out a bipartisan solution.

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Mr. LAGOMARSINO. Mr. Speaker, under my reservation I yield to the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Speaker, the other body amended this bill, which passed the House without opposition, to respond to objections raised by the Department of Agriculture. Representative CHARLES WILSON, the author of the House bill, has advised me that he would like us to concur in these amendments so that we will make at least some of the boundary modifications the House had proposed, which will help in the management of the wilderness areas in the National Forests in Texas. I ask our colleagues to support the bill and concur in the Senate amendments.

Mr. LAGOMARSINO. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Texas [Mr. BARTLETT].

Mr. BARTLETT. Mr. Speaker, I rise simply to thank the gentleman in both bodies on both sides of the aisles who have made this bill possible.

This bill is a commonsense piece of legislation that straightens the boundaries of the wilderness areas in east Texas to make those wilderness areas much more succinct and much more concise and much more manageable by the Forest Service.

I think it is a good piece of legislation and I commend all of those involved.

Mr. BARTON of Texas. Mr. Speaker, today we have a unique opportunity to approve a wilderness bill that is dedicated toward improving the management of wilderness areas rather than simply expanding their boundaries. H.R. 4685, the Texas Wilderness Amendments Act of 1986, is a balanced approach to wilderness legislation that emphasizes improved management of existing wilderness areas rather than merely expanding wilderness areas for the mere sake of expansion. All too often, the wilderness legislation approved by the House embodies the principle, "More Is Better." H.R. 4685 embodies a different principle of "Better Is Better."

H.R. 4685 will improve the manageability of Texas wilderness areas through the establishment of more workable boundaries. At present time, many of these boundaries end 100 feet from a natural boundary such as rivers and streams and manmade boundaries such as roads or pipelines. H.R. 4685 moves the boundaries closer to these natural and manmade boundaries and improves public access.

H.R. 4685 would round out the boundaries of the five Texas wilderness areas: the Big Slough Wilderness Area, the Turkey Hill Wilderness Area, the Indian Mound Wilderness Area, the Upland Island Wilderness Area, and the Little Lake Creek Wilderness Area. One of these areas, the Little Lake Creek Wilderness Area is located wholly in my congressional district. My discussions with the U.S. Forest Service, landowners, and environmentalists indicates that the changes made to the Little

Lake Creek Wilderness Area are noncontroversial.

I know at least one of my constituents will be delighted with the passage of this legislation today. The Texas Wilderness Act inadvertently included the driveway of Mr. Leonard Singleton within the boundaries of the Little Lake Creek Wilderness Area. Due to restrictions on vehicle use within wilderness areas, Mr. Singleton broke the law every time he drove up his driveway. One improvement in H.R. 4685 is the deletion of a 3-acre tract in the southeast corner of Little Lake Creek Wilderness Area that will allow Mr. Singleton to use his driveway without fear of being encircled by a posse of Forest Rangers.

I want to commend the persistent efforts of my good friend and colleague, CHARLIE WILSON, for his initiative in sponsoring H.R. 4685. CHARLIE respected the views of myself and other affected Members when he crafted the bill. As a result, H.R. 4685 has broad support among both Republicans and Democrats in the Texas delegation and I encourage my colleagues on both sides of the aisle from other States to give their support to the Texas Wilderness Amendments Act.

Mr. LAGOMARSINO. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. KILDEE). Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Minnesota.

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

COMMENDING MEMBER AND STAFF FOR WORK OF THE SUBCOMMITTEE ON NATIONAL PARKS AND RECREATION

(Mr. VENTO asked and was given permission to address the House for 1 minute.)

Mr. VENTO. Mr. Speaker, I just wanted to note that this probably will be one of the final actions of the Subcommittee on National Parks and Recreation for this session and I wanted to commend and thank publicly the gentleman from California [Mr. LAGOMARSINO], my ranking member, and the staff of the committee for their cooperation. They have unfailingly been on the House floor waiting and cooperating, as we have dealt and processed a significant number of bills this year.

I wanted to thank the gentleman for that cooperation. I have not heard one complaint from him during all the waiting and all the problems that we have had. I think the end product is something that reflects well on both the House and on this country.

CONGRATULATING ELIE WIESEL AS RECIPIENT OF NOBEL PEACE PRIZE

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the resolution (H. Res. 599) congratulating human rights activist Elie Wiesel on being chosen the 1986 recipient of the Nobel Peace Prize, and ask for its immediate consideration.

The Clerk read the title of the resolution.

Mr. SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. GILMAN. Mr. Speaker, reserving the right to object, I do not object, but would simply like to inform the House that the minority has no objections to the legislation now being considered.

Mr. Speaker, under my reservation, I yield to the gentleman from New York [Mr. GARCIA] who is the chief sponsor of House Resolution 599, congratulating human rights activist Elie Wiesel on being chosen that 1986 recipient of the Nobel Peace Prize.

Mr. GARCIA. Mr. Speaker, as a member of the Holocaust Memorial Council, I have had the opportunity to hear Elie Wiesel speak about his experiences during the Holocaust. I cannot remember being more moved by this man who personifies the triumph of the spirit over evil. What makes him so special is that not only has he not forgotten that horror, that tragedy, but he will not let the world forget.

In his most famous book, "Night", Mr. Wiesel writes about his time at Buchenwald. I would like to share with my colleagues a most memorable quote, both moving and frightening. He is writing about the immediate aftermath of his liberation from the death camp:

One day I was able to get up, after gathering all my strength. I wanted to see myself in the mirror hanging on the wall. I had not seen myself since the ghetto.

From the depths of the mirror, a corpse gazed back at me.

The look in his eyes, as they stared into mine, has never left me.

By honoring him, we too show that we will not forget.

Mr. GILMAN. Mr. Speaker, further reserving the right to object, I yield to another initial cosponsor of this measure, the gentleman from New York [Mr. GREEN].

Mr. GREEN. Mr. Speaker, like my other colleague from New York [Mr. GARCIA], I have the privilege of representing the House of Representatives on the U.S. Holocaust Memorial Council. Again, like the gentleman from New York [Mr. GARCIA], I have had the privilege of——

Mr. GARCIA. Mr. Speaker, will the gentleman yield?

Mr. GILMAN. I yield to the gentleman from New York.

Mr. GARCIA. Mr. Speaker, I just want to let the Chamber know, those Members who are with us, that the gentleman from New York [Mr. GREEN] was the one who was very instrumental in getting this resolution. He was the one who came to us on very short notice and asked to have this done.

I could not agree with the gentleman more. I think it is something that is deserving, and I would also like to take this moment to thank my colleague, the gentleman from New York [Mr. GREEN].

Mr. GREEN. Mr. Speaker, if the gentleman will yield further to me, I thank my colleague from New York [Mr. GARCIA].

As I was saying, like the gentleman from New York [Mr. GARCIA], I have had occasion to work as one of the House representatives on the U.S. Holocaust Memorial Council and I have gotten to know Elie Wiesel very closely through that moving experience.

If there is any way to prevent another such experience as the Holocaust, then certainly it must come by reminding the world that this kind of horror can happen.

To that, Elie Wiesel has very much dedicated his life in many ways, and he has done so very successfully. So I can think of no one who is more deserving of the Nobel Peace Prize than is my good friend and my constituent, Elie Wiesel.

Let me conclude by thanking my colleagues from New York for bringing this resolution to the floor so expeditiously, and I urge its adoption.

Mr. GILMAN. Mr. Speaker, further reserving the right to object, I am pleased to yield to the gentleman from Florida [Mr. PEPPER].

Mr. PEPPER. Mr. Speaker, the Nobel Prize has rewarded many most-deserving men and women among the people of the world, but I do not know of a single instance where that great recognition and award has come more fittingly than upon Elie Wiesel.

If ever there was the recognition of the anguished voice of the misery of humanity, crying out in its eloquence for recognition and for assurance that the unspeakable Holocaust shall not reoccur in human history, it is represented by this award to Mr. Elie Wiesel.

I want to commend, in the warmest way, all of those who have had a part in this worthy recognition of this immeasurably noble and deserving man.

Mr. GILMAN. Mr. Speaker, further reserving the right to object, and I am not going to object, but as a cosponsor of this resolution, I would like to offer my strong support for the measure, a sense-of-the-House resolution congratulating human rights activist Elie Wiesel, for having been awarded the 1986 Nobel Peace Prize.

I want to commend my colleagues, the gentlemen from New York Mr. GREEN and Mr. GARCIA for their timely introduction of this measure. This resolution appropriately takes note of the work to which Elie Wiesel has dedicated himself for so many years. As a survivor and as a witness to the Holocaust, he has become the world's conscience in reminding all of us of the unspeakable horrors inflicted upon human kind only a few short decades ago and reminding us that they must never happen again.

Elie Wiesel's many writings have taught us what the essence of humanity really is, and his activism on behalf of the human rights of all individuals is known throughout the world.

Elie Wiesel has emerged over the years to become one of the world's most important leaders on ethical questions that perplex modern civilization. He has never hesitated to speak from the heart, yet his gentle voice often carries a searing message that bespeaks only the sterling truth. House Resolution 599 expresses our sincerest approval of the Nobel committee's choice in awarding Elie Wiesel the Nobel Peace Prize, and further requires the transmittal to Professor Wiesel the congratulations of the House of Representatives for this historic and much deserved achievement.

Mr. Speaker, those of us in the House who have for a number of years sent supporting letters to the Nobel committee in support of Elie Wiesel's nomination for this award, are personally pleased and gratified that those efforts have borne fruit. As Elie Wiesel himself has said, this acclaim not only acknowledges his personal efforts, but also honors the survivors of Hitler's Final Solution. The triumph of the human spirit is what we acknowledge today through our consideration of this legislation. Accordingly, I strongly urge our colleague's wholehearted support and adoption of House Resolution 599.

Mr. YATES. Mr. Speaker, I join my colleagues in their acclaim of the award by the Nobel Peace Committee to my friend, Elie Wiesel. As a member of the Holocaust Council, I have worked with Elie Wiesel. His words are an inspiration to all of us on the council. He stands above all others in bringing the awesome truth of man's inhumanity to man in devising and carrying out the viciously brutal extermination program known as the Holocaust.

Elie Wiesel's books, his lectures, his life have brought to the cognizance and conscience of men and women everywhere the truth of the Nazis' depravity and brutality in killing innocent men, women, and children for no other reason than their faith. He asks:

How could it happen? Why did it happen? Where were the good people—why did they let it happen?

Nobody has given any good answers yet to those searching questions.

And Elie is determined to keep the faith—determined in the name of those who died as victims of Nazi slaughter that such a blot upon the name of civilization shall not happen again. We follow his leadership. We say "Amen" to his message.

My wife, Addie, and I congratulate Elie and his wonderful family upon having received this signal, well-deserved honor.

Mr. GILMAN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the resolution, as follows;

H. RES. 599

Whereas, Elie Wiesel, lived through the horrors of the Nazi Holocaust, witnessing the persecution and death of family and friends; and

Whereas, having survived this despicable manifestation of man's inhumanity against man, he dedicated his life to insuring that no such travesty ever occur again by calling on men and women the world over "to never forget"; and

Whereas, through his writing, teaching, and activism, Elie Wiesel has fought relentlessly for the human rights of all individuals—regardless of their heritage or their beliefs; and

Whereas, Elie Wiesel, an American citizen, has been recognized for his work in advancing human rights, his contribution to literature and his leadership of the Holocaust Memorial Council by this country with the Congressional Medal of Achievement; and

Whereas, the Nobel Committee has selected Mr. Wiesel as its 1986 peace prize winner, noting that he "has emerged as one of the most important spiritual leaders and guides in an age when violence, repression and racism continue to characterize the world": Now, therefore, be it

Resolved, That the House of Representatives offer sincerest approval of the Nobel Committee's choice which will allow the entire world to know of Elie Wiesel's contributions to an enduring peace and transmit to Mr. Wiesel its heartfelt congratulations for this historic and much deserved achievement.

The resolution was agreed to.

A motion to reconsider was laid on the table.

□ 1330

GENERAL LEAVE

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution just agreed to.

The SPEAKER pro tempore (Mr. KILDEE). Is there objection to the request of the gentleman from New York?

There was no objection.

SPECIAL ACHIEVEMENTS OF THE CONGRESS IN ENVIRONMENTAL PROTECTION

(Mr. BOLAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BOLAND. Mr. Speaker, as the 99th Congress draws to a close. I want to call attention to the special achievements made in the area of environmental protection. The House and Senate have passed the conference report on the Clean Water Act Amendments and sent that legslation to the President. That most important program has been waiting for reauthorization for almost 3 years. This Congress also passed broad new legislation amending the Safe Drinking Water Act. And great strides have been made in settling the major policy differences on the Federal Insecticide Fungicide and Rodenticide Act [FIFRA].

But without a doubt, the crowning environmental achievement of the 99th Congress is Superfund. A comprehensive, 5-year package of Superfund Program and tax amendments was passed by both bodies last week—and is now on the President's desk awaiting signature. No program is more important—and no program has needed reauthorization more than the Superfund Program. Because for the past 13 months. The Superfund has been without legislative authority and without taxes. All supporters of this program realized that we had to have a long-term reauthorization and a reliable source of taxes. And no one has been a stronger supporter of that goal than myself. Unfortunately, though, important agreements only seem to emerge in the face of crisis. And the Superfund Program has certainly seen more than its share of crisis over the past year.

Last April, when the program had run out of cash. The Appropriations Committee provided a $150 million short-term extension to avert disaster. Again in August, we provided $48 million to keep the program running through the end of the fiscal year. The Appropriations Committee has done everything possible to support the reauthorization process—and at the same time we have kept the Superfund Program alive over the past year. We had to gamble—we had to take a calculated risk—but it has paid off. Because we soon will have a solid 5-year

Superfund Program—with a guaranteed source of revenue.

I hope the President will sign the Superfund bill—it's a good bill. A balanced bill, and the taxes are fair. And I think, in the final analysis, the President will sign this bill. And as soon as Superfund becomes law, the program can take off and site cleanups can resume, because we have provided over $1.4 billion in the HUD-Independent Agencies appropriations bill for 1987.

In addition to congratulating the authorizing committees on both sides of the aisle and both sides of the Capitol, I would like to acknowledge the tireless efforts and excellent work of EPA Administrator Lee Thomas. He is a talented Administrator and a man of rare patience and perserverance.

Finally, I think congratulations are in order to the environmental groups and organizations that have worked so hard to see Superfund reauthorized. These include: the Sierra Club, the National Audubon Society, the Environmental Defense Fund, the National Campaign Against Toxic Waste, the National Wildlife Federation, and the National Resource Defense Council.

Mr. LENT. Mr. Speaker, will the gentleman yield?

Mr. BOLAND. I am delighted to yield to the gentleman from New York.

Mr. LENT. Mr. Speaker, I am pleased to announce that I have just received a phone call from Air Force One. The President has just signed the Superfund bill into law. I want to congratulate and praise the action of the President of the United States in signing the Superfund amendments and reauthorization act of 1986. The President has once again shown great judgment and leadership in overriding the recommendations of some of his senior Cabinet officials and making the only acceptable decision—the decision to sign this legislation.

Mr. Speaker, this legislation is by no means perfect. All of us involved in this process have had to compromise and yield over and over again in order to move this legislation forward. Every Member who has worked on this legislation has had to leave the negotiating table at one time or another empty-handed. Despite this, all of us have been able to recognize that the final goal, the passage of the Superfund Amendments and Reauthorization Act of 1986, is more important than any one specific provision. I am glad to see the President had the great judgment to see this himself.

If we had failed to enact the legislation, Mr. Speaker, the consequences would have been disastrous. The cleanup of toxic waste dumps across the country would stop altogether. The contamination of our Nation's drinking water supplies by toxic pollutants would continue and the cost of finally cleaning up these sites in the future would rise substantially. All of us would lose, including the communities near these sites, the private companies responsible, and the taxpayers who must contribute to the fund. No one would gain from a Presidential veto of this legislation.

Less obvious, Mr. Speaker, would be the crippling effect of a veto on the Environmental Protection Agency. Almost immediately, the process of dismissing 1,500 employees throughout the Agency would have begun. Whole programs in water and air pollution control would be disrupted as higher level officials "bump" lower level officials in other programs. The end result would have been the disarray of the entire Agency. The implementation of many of our most important environmental statutes, including the Clean Air Act, the Toxic Substances Control Act, the Solid Waste Disposal Act and others, would have ended.

The enactment of this legislation has been a long and difficult process. In this regard, we are all indebted to the infinite patience and efforts of Mr. Lee Thomas, who was key to making this compromise legislation possible. Mr. Thomas can now finally turn his full attention to the running of the Superfund Program.

Mr. Speaker, the President has shown great wisdom in signing this legislation today, It is what the citizens of this country expect and deserve. This Congress can now adjourn with the assurance that the Superfund Program has been left intact and the process of cleaning up hazardous waste sites across the country will go forward.

Mr. BOLAND. Mr. Speaker, I thank the gentleman for his information. This is the good news so many Members have been waiting to hear.

I want to congratulate the President on his decision. And, I want to congratulate all those in the authorization committees, the Ways and Means Committee and the Appropriations Committee, for their part in making this piece of legislation a reality. Without a doubt, this is the most important piece of environmental legislation that we face today.

I want to extend my thanks to each member of the HUD-Independent Agencies Appropriations Subcommittee, for their steadfast support in keeping the Superfund Program alive over the past year. And, especially, I want to recognize the efforts of the ranking minority member, the gentleman from New York [Mr. GREEN]. I should also thank the gentlewoman from Louisiana [Mrs. BOGGS] for her efforts, because this legislation is so important to her State.

Mrs. BOGGS. Mr. Speaker, will the gentleman yield?

Mr. BOLAND. I am delighted to yield to the gentlewoman from Louisiana.

Mrs. BOGGS. Mr. Speaker, I would like to compliment the gentleman in the well because consistently he has been the leader of the appropriations aspect of the Superfund legislation and has pushed it consistently, and without his leadership, we would not have been brought to this day.

Mr. BOLAND. Mr. Speaker, I thank the gentlewoman from Louisiana.

THE DAILY COST OF SHUTTING DOWN THE GOVERNMENT

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute, to revise and extend her remarks, and to include extraneous material.)

Mrs. SCHROEDER. Mr. Speaker, I am putting a graph in the RECORD at this point and I want to tell the Members what this graph shows.

My Subcommittee on Civil Service has just pointed out that it will cost $62 million today to close down the Government. As we know, over half a million employees were sent home at noon, declared non-essential.

The cost of cutting the paper, putting them back on, doing all the craziness, will cost $62 million; so no one is getting a bargain. We are going to get less service and pay more. I think it is very expensive theater and I certainly hope the other body can hurry up, because it really is outrageous to allow this to happen.

Mr. Speaker, the chart follows:

DAILY COST OF SHUTTING DOWN GOVERNMENT OCT. 17, 1986

Agency	Total employees[1]	Nonessential employees[2]	Percentage	Cost-nonessential employees[3]	Administrative cost[4]	Total cost
State	25,482	5,500	21.58	$588,177	$97,621	$685,797
Treasury	140,669	103,177	73.35	9,188,367	858,995	10,047,362
Defense	1,087,893	0	0.00	0	571,973	571,973
Justice	65,285	18,000	27.57	2,016,595	201,321	2,217,916
Interior	76,232	71,532	93.83	7,326,362	605,548	7,931,910
Agriculture	111,927	65,000	58.07	5,604,874	565,482	6,170,356
Commerce	35,408	11,526	32.55	1,393,502	145,297	1,538,799

DAILY COST OF SHUTTING DOWN GOVERNMENT OCT. 17, 1986—Continued

Agency	Total employees[1]	Nonessential employees[2]	Percentage	Cost-nonessential employees[3]	Administrative cost[4]	Total cost
Labor	17,841	13,827	77.50	1,643,600	158,163	1,801,763
Health, Human Services	136,318	90,500	66.39	8,656,403	762,830	9,419,233
Housing, Urban Development	11,545	10,968	95.00	1,267,739	135,146	1,402,886
Transportation	61,348	18,000	29.34	2,645,582	200,337	2,845,919
Energy	16,674	750	4.50	96,151	59,794	155,944
Education	4,680	4,600	98.29	615,255	85,670	700,925
Environmental Protection Agency	14,081	11,500	81.67	1,271,550	139,770	1,411,320
General Services Administration	24,842	24,000	96.61	2,216,398	236,211	2,452,608
NASA	21,911	21,861	99.77	3,324,842	219,435	3,544,277
U.S. Information Agency[5]	9,113	1,490	16.35	171,072	63,453	234,525
VA	243,833	35,000	14.35	3,206,292	373,458	3,579,750
All other agencies[5]	75,266	48,720	64.73	5,590,906	584,219	6,175,125
Total-Executive[6]	2,180,348	555,951	25.50	56,823,666	4,764,720	61,588,386

[1] May 1986 figures. (Source: "Federal Civilian Workforce Statistics Monthly Release," OPM)
[2] Supplied by agency officials.
[3] Based on average daily pay per employee. (Source: "Federal Civilian Workforce Statistics Monthly Release," OPM)
[4] Administrative cost estimated from data supplied to subcommittee for Nov. 1981 shutdown report.
[5] Number of nonessential employees estimated from 1981 data.
[6] Excludes Postal Service, TVA, and CIA.

WAIVING CERTAIN POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 6, WATER RESOURCES CONSERVATION, DEVELOPMENT, AND INFRASTRUCTURE IMPROVEMENT AND REHABILITATION ACT OF 1985, AND AGAINST CONSIDERATION OF SUCH CONFERENCE REPORT

Mr. PEPPER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 587 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 587

Resolved, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 6) to provide for the conservation and development of water and related resources and the improvement and rehabilitation of the Nation's water resources infrastructure, the conference report shall be considered as having been read when called up for consideration, and all points of order against the conference report and against its consideration are hereby waived, except under clause 3 of rule XXVIII against any matter in the conference report originally contained in, or as modification to matter in, title XV of the House bill or title VII of the Senate amendment, or against any other matter within the jurisdiction of the Committee on Ways and Means.

The SPEAKER pro tempore. The gentleman from Florida [Mr. PEPPER] is recognized for 1 hour.

Mr. PEPPER. Mr. Speaker, for the purposes of debate only, I yield the customary 30 minutes to the gentleman from Missouri [Mr. TAYLOR], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 587 provides for the consideration of the conference report on H.R. 6, the Water Resources Conservation, Development, and Infrastructure Improvement and Rehabilitation Act.

The rule waives all points of order against the conference report and against its consideration. It reserves a point of order against inclusion in the conference report of any new material relating to tax provisions or affecting the jurisdiction of the Ways and Means Committee in title 15 of the House bill or title 8 of the Senate amendment. The rule further provides that the conference report shall be considered as having been read when called up for consideration.

Mr. Speaker, it is important that the House move to consideration of the conference report on H.R. 6. There has not been a comprehensive water resources authorization bill since 1970, and our country now faces a 15-year backlog of vitally needed water resources projects.

H.R. 6 authorizes the construction of 262 new water projects including port facilities, inland waterways, flood control structures, shore protection, and fish and wildlife mitigation. To facilitate work on these projects, the bill provides a new cost-sharing system which will require local interests to bear more of the financing burden. Projects which do not receive approval and funding within 5 years will be automatically deauthorized. Moreover 293 current, unfunded Corps of Engineers projects will be deauthorized.

Mr. Speaker, this is an extremely complicated bill which has taken years of diligent, bipartisan work on the part of four House committees to complete. I want to express my appreciation to the members of these committees for the excellent job they have done in crafting a bill which is both budget-conscious and environmentally sound. By adopting the rule, we can make sure that vital water resources legislation will move through the legislative process as expeditiously as possible. I urge my colleagues to support the rule and passage of the conference report on H.R. 6.

Mr. TAYLOR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 587 waives points of order against the conference report on H.R. 6, and against consideration of the report. The report, which will be filed today, is a landmark measure that fundamentally changes the way Federal river and harbor projects are to be financed in the future.

The rule makes the conference report on H.R. 6, the Omnibus Water Resources Development Act, in order and waives all points of order that would otherwise lie against the report and against its consideration.

Mr. Speaker, the rule also provides that the conference report shall be considered as having been read when called up for consideration.

As the distinguished gentleman from Florida, the chairman of the Committee on Rules, Mr. PEPPER, mentioned, the rule reserves a point of order against inclusion in the conference report of any new matter relating to the tax provisions within the jurisdiction of the Committee on Ways and Means.

This rule was written and filed by the Rules Committee before the conference was concluded, and the reservation of a point of order guards against scope and germaneness problems that could have arisen in the conference relating to title 15 of the House-passed bill, the portion which authorizes a port use tax and creates a new Port Infrastructure Development and Improvement Trust Fund.

Mr. Speaker, the Committee on Rules has been assured by the House managers that they did not exceed the scope of the tax provisions of H.R. 6 and the modification commited to conference.

When the Rules Committee granted this rule, we were told that the House and Senate ad valorem fees for ports were nearly identical, and that the

inland waterway revenue provisions were not controversial.

Mr. Speaker, for 7 years I served as a member of the Committee on Public Works, and I think it appropriate for the House to pause for a moment and recognize the significance of this conference report.

The legislation made in order by this rule authorizes 262 new Corps of Engineers water projects; authorizes a total of $16.3 billion in spending, of which $12 billion will be paid by the Federal Government and $4.3 billion by non-Federal interests.

The conference agreement does not appropriate any money for these projects, it merely makes projects eligible for funds. The report limits how much the Corps of Engineers can spend on construction in each of the next 5 fiscal years, by imposing ceilings on total construction obligations that range from $1.4 billion in fiscal 1987 to $1.8 billion in fiscal 1991.

The 262 Corps of Engineers projects authorized in the report for construction or study include 41 ports, 7 inland waterways, 113 flood control projects, 24 shoreline protection and 77 water resources conservation and development projects.

The bill also authorizes 31 studies, 73 project modifications, and 63 other miscellaneous projects and programs. Some of the projects receive only conditional authorization, because they have not been all the way through the Corps of Engineers' review process. The report makes their authorization contingent upon completion of the reviews and favorable recommendations to the Congress by the Secretary of the Army.

Mr. Speaker, projects in the conference report that do not receive construction funding within 5 years would be automatically deauthorized. The report deauthorizes outright 293 old, unfunded Corps of Engineers projects that would have had an estimated total cost of $11.3 billion.

The House passed H.R. 6 last November, authorizing 316 projects and a number of major new programs at a total cost of $20.8 billion. The Senate's version contained 191 project authorizations and had a total cost of $12.9 billion.

The conferees dropped House provisions that would have established a new National Water Resources Policy Board and a new Federal loan program for rehabilitation of older municipal water supply systems.

Mr. Speaker, the report makes major changes in the way Federal river and harbor projects will be financed. It requires non-Federal interests to pay a much greater share of the costs.

Those who benefit from new flood control projects will, in most cases, be required to pay at least 25 percent of construction costs. The local share will consist of cash payments and necessary project lands.

Mr. Speaker, the conference report applies the new cost-sharing rules to most water projects that were not under construction as on May 1, 1986.

The report made in order by this rule is the result of a long and difficult conference. The House managers agreed to Senate language regarding cost-sharing formulas that is somewhat higher than those in the House bill, in return for almost all of the project authorizations in the House bill.

At least 5 percent of the total cost of flood control projects would have to be paid in cash during construction, but the bill's cost-sharing requirements can be relaxed or waived for communities that cannot afford them.

In addition, local authorities are going to be required to pay half of the Corps of Engineers' cost of preparing feasibility studies for future projects.

The non-Federal share of the costs of several other types of projects are also increased by the conference report. Local port authorities, for example, will have to pay between 10 and 50 percent of channel deepening costs in cash during construction. The exact amount will depend on the depth of the project.

The conference agreement requires new financing for the cost of operating and maintaining harbors by imposing an ad valorem tax on the cargo moving through American ports.

In addition, the report requires that half the cost of building seven major inland waterway lock-and-dam projects, which are authorized by the bill, be funded with revenues from the barge fuel tax paid by waterway users.

Mr. Speaker, the House managers, the members of the Committee on Public Works and Transportation deserve our congratulations for finishing this momumental work. The bipartisan leadership of the Committee on Public Works has been working to enact a comprehensive water resources authorization into law for over a dozen years.

The House managers are prepared to take the long-awaited final step, and I urge adoption of the rule so the House may proceed to the conference report.

Mr. Speaker, I yield such time as he may consume to the gentleman from Minnesota [Mr. STANGELAND] the ranking member of the Subcommittee on Water Resources.

Mr. STANGELAND. Mr. Speaker, I strongly urge support of this rule. I want to thank the Rules Committee for bringing this to the floor at this time. This is legislation that is much needed. It has been worked on for 4 years. This House has passed a water resources bill in the past, only to have it fail on the other side.

We finally have a water resources conference report after a great deal of work, a great deal of major changes in how we approach projects, a great deal of support in this legislation for our inland waterway system, for renovation of our locks and dams system and a strong addressing in this bill of our deep port needs in the Nation; so I would urge my colleagues to vote for the rule so that we can bring up this much needed legislation. We have not had major water resources legislation for 14 years. It is time that we move ahead in this field.

I thank the Rules Committee again and thank the gentleman for yielding this time.

Mr. PEPPER. Mr. Speaker, I yield 5 minutes to the very able chairman of the Subcommittee on Water Resources of the Public Works and Transportation Committee, the honorable gentleman from New Jersey [Mr. ROE], who has done so much for this great program of building America.

Mr. ROE. Mr. Speaker, I thank the distinguished chairman for yielding me this time.

Mr. Speaker, I yield to the gentleman from New Jersey [Mr. HOWARD], the chairman of the Public Works Committee.

Mr. HOWARD. Mr. Speaker, I thank the gentleman for yielding.

I just want to express my great appreciation and I am sure the appreciation of people who are concerned about our environment all across the country, to the gentleman from New Jersey [Mr. ROE], to the gentleman from Minnesota [Mr. STANGELAND], and to my colleague, the gentleman from Kentucky [Mr. GENE SNYDER], all members of the Subcommittee on Water Resources of the Public Works and Transportation Committee, and also to the staff on both sides of that committee who worked tirelessly for weeks, months, and years, so that we can be assured of this great environmental advance in the coming years.

Mr. ROE. Mr. Speaker, I thank the distinguished chairman.

Mr. Speaker, I want to add my high commendation, if I may, to the chairman of our Rules Committee, Senator CLAUDE PEPPER, and to the ranking member of our Rules Committee, the Honorable GENE TAYLOR of Missouri.

I have had occasion in the last few weeks to listen to some not-so-nice encomiums spread to the Rules Committee, but I would suggest to these gentleman and to the Members of the House that I think that the Rules Committee has done an extraordinary job over the years and over the last month particularly, and particularly on this piece of legislation.

□ 1345

I wanted to say that to begin with I am not going to go into a long dissertation as to the contents of this legislation, but as has been reported by the

chairman and ranking minority member of the Committee on Rules, it is a landmark piece of legislation. It took us 5 years of constant work with every Member of this House, across party lines, to solve the basic problems of reestablishing a whole new system of handling water resources throughout our country based on an equitable, fair, even basis to each region of the Nation.

We have not been able to get a water resources bill passed in 14 years, and now I think that today will be the day when we will be able to achieve that goal.

I will save, if I may, Mr. Speaker, my full remarks and an explanation of the details of the bill for the time that the bill is called up formally, but again I want to compliment the members of the Committee on Rules for the splendid job which they have done.

Mr. TAYLOR. Mr. Speaker, I yield 3 minutes to the gentleman from Arkansas [Mr. HAMMERSCHMIDT], who will be the ranking minority member on the Committee on Public Works and Transportation in the next Congress.

Mr. HAMMERSCHMIDT. Mr. Speaker, I want to just very briefly add my words of thanks and appreciation to the distinguished chairman of the Committee on Rules, the gentleman from Florida [Mr. PEPPER] and my distinguished colleague, the gentleman from Missouri [Mr. TAYLOR] a member of the Committee on Rules who formerly served on the Committee on Public Works and Transportation. I would like to particularly commend the great work of the gentleman from New Jersey, Mr. BOB ROE, the gentleman from Minnesota, Mr. ARLAN STANGELAND, and certainly of the gentleman from New Jersey, Mr. JIM HOWARD, and the gentleman from Kentucky, Mr. GENE SNYDER, for the work that they have done.

Mr. Speaker, this effort goes back to the time that I was privileged to serve as ranking minority member of the Water Resources Subcommittee with my good friend, Mr. ROE. I am just delighted that we now have this rule before us and that we are going to consider H.R. 6, and we are going to pass it.

Mr. TAYLOR. Mr. Speaker, I have no further requests for time, and I urge the adoption of this rule.

Mr. PEPPER. Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. HERTEL of Michigan). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HOWARD. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 375, nays 5, not voting 52, as follows:

[Roll No. 486]

YEAS—375

Abercrombie	Dorgan (ND)	Jones (NC)
Akaka	Dornan (CA)	Jones (TN)
Anderson	Dowdy	Kanjorski
Andrews	Downey	Kasich
Annunzio	Dreier	Kastenmeier
Anthony	Duncan	Kemp
Applegate	Durbin	Kennelly
Armey	Dwyer	Kildee
Aspin	Dymally	Kindness
Atkins	Dyson	Kleczka
AuCoin	Early	Kolbe
Badham	Eckart (OH)	Kolter
Barnard	Eckert (NY)	Kostmayer
Barnes	Edgar	Kramer
Bartlett	Edwards (CA)	LaFalce
Barton	Emerson	Lagomarsino
Bateman	English	Lantos
Bates	Erdreich	Latta
Bedell	Evans (IA)	Leach (IA)
Beilenson	Evans (IL)	Lehman (CA)
Bennett	Fascell	Lehman (FL)
Bentley	Fazio	Lent
Bereuter	Feighan	Levin (MI)
Berman	Fiedler	Levine (CA)
Bevill	Fields	Lewis (CA)
Bilirakis	Fish	Lewis (FL)
Bliley	Flippo	Lightfoot
Boehlert	Florio	Lipinski
Boggs	Foley	Livingston
Boland	Ford (MI)	Lloyd
Boner (TN)	Ford (TN)	Long
Bonker	Fowler	Lowery (CA)
Borski	Frenzel	Lowry (WA)
Boulter	Frost	Lujan
Brown (CO)	Fuqua	Luken
Bruce	Gallo	Lungren
Bryant	Garcia	Mack
Burton (IN)	Gaydos	MacKay
Bustamante	Gejdenson	Madigan
Byron	Gekas	Manton
Callahan	Gibbons	Markey
Carney	Gilman	Marlenee
Carper	Gingrich	Martin (IL)
Carr	Glickman	Martin (NY)
Chandler	Gonzalez	Martinez
Chapman	Goodling	Matsui
Chappell	Gordon	Mavroules
Chappie	Gradison	Mazzoli
Cheney	Gray (IL)	McCandless
Clay	Gray (PA)	McCloskey
Clinger	Green	McCollum
Cobey	Gregg	McCurdy
Coble	Guarini	McDade
Coelho	Gunderson	McEwen
Coleman (MO)	Hall (OH)	McHugh
Coleman (TX)	Hall, Ralph	McKernan
Collins	Hamilton	McKinney
Combest	Hammerschmidt	McMillan
Conte	Hatcher	Meyers
Conyers	Hawkins	Mikulski
Cooper	Hayes	Miller (CA)
Coughlin	Hendon	Miller (OH)
Courter	Henry	Miller (WA)
Coyne	Hertel	Moakley
Craig	Hiler	Mollohan
Crockett	Holt	Monson
Daniel	Hopkins	Montgomery
Dannemeyer	Horton	Moody
Darden	Howard	Moorhead
Daschle	Hoyer	Morrison (CT)
Davis	Hubbard	Morrison (WA)
DeLay	Huckaby	Mrazek
Dellums	Hughes	Murphy
Derrick	Hunter	Murtha
DeWine	Hutto	Myers
Dickinson	Hyde	Natcher
Dicks	Ireland	Neal
Dingell	Jacobs	Nelson
DioGuardi	Jeffords	Nielson
Dixon	Jenkins	Nowak
Donnelly	Johnson	Oakar
Oberstar	Schulze	Synar
Obey	Schumer	Tallon
Olin	Seiberling	Tauke
Ortiz	Sensenbrenner	Tauzin
Oxley	Sharp	Taylor
Packard	Shaw	Thomas (CA)
Panetta	Shelby	Thomas (GA)
Parris	Shumway	Torres
Pashayan	Shuster	Torricelli
Pease	Sikorski	Towns
Penny	Sisisky	Traficant
Pepper	Skeen	Traxler
Perkins	Skelton	Udall
Petri	Slattery	Valentine
Porter	Slaughter	Vander Jagt
Price	Smith (FL)	Vento
Pursell	Smith (IA)	Visclosky
Quillen	Smith (NE)	Volkmer
Rahall	Smith (NJ)	Vucanovich
Rangel	Smith, Denny (OR)	Waldon
Ray		Walgren
Reid	Smith, Robert (NH)	Watkins
Ridge		Waxman
Rinaldo	Smith, Robert (OR)	Weber
Ritter		Wheat
Roberts	Snowe	Whitehurst
Robinson	Snyder	Whitley
Rodino	Solarz	Whittaker
Roe	Spence	Whitten
Roemer	Spratt	Williams
Rogers	St Germain	Wilson
Rostenkowski	Staggers	Wirth
Roth	Stallings	Wise
Roukema	Stangeland	Wolf
Rowland (CT)	Stark	Wolpe
Rowland (GA)	Stenholm	Wortley
Roybal	Stokes	Wright
Russo	Strang	Wyden
Sabo	Stratton	Wylie
Savage	Studds	Yates
Saxton	Stump	Yatron
Scheuer	Sundquist	Young (AK)
Schneider	Sweeney	Young (FL)
Schroeder	Swift	Young (MO)
Schuette	Swindall	Zschau

NAYS—5

Crane	Franklin	Walker
Fawell	Solomon	

NOT VOTING—52

Ackerman	Foglietta	Michel
Alexander	Frank	Mineta
Archer	Gephardt	Mitchell
Biaggi	Grotberg	Molinari
Bonior (MI)	Hansen	Moore
Bosco	Hartnett	Nichols
Boucher	Hefner	Owens
Boxer	Hillis	Pickle
Breaux	Jones (OK)	Regula
Brooks	Kaptur	Richardson
Broomfield	Leath (TX)	Rose
Brown (CA)	Leland	Rudd
Burton (CA)	Loeffler	Schaefer
Campbell	Lott	Siljander
Coats	Lundine	Weaver
Daub	McCain	Weiss
de la Garza	McGrath	
Edwards (OK)	Mica	

□ 1405

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MAKING MINOR OR TECHNICAL AMENDMENTS TO THE COMPREHENSIVE CRIME CONTROL ACT OF 1984

Mr. BERMAN. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 1236) to amend title 18 of the United States Code and other laws to make minor or technical amendments to provisions enacted by

the Comprehensive Crime Control Act of 1984, and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. (Mr. HERTEL of Michigan). Is there objection to the request of the gentleman from California?

Mr. GEKAS. Mr. Speaker, reserving the right to object, I want to assert that this is a matter which has already brought about agreement between both the minority and the majority; but for purposes of the RECORD, we would ask the gentleman from California [Mr. BERMAN] to explain the volume and nature of the technical amendments which we are offering.

Mr. Speaker, I yield to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Speaker, S. 1236, as amended, is a noncontroversial bill that makes a number of technical and other minor corrections in numerous provisions of Federal law related to criminal justice matters.

The amendment is derived from a bill that the Committee on the Judiciary unanimously reported favorably.

Mr. Speaker, the amendment is derived from a bill reported unanimously by the Committee on the Judiciary, and from three other bills passed by this House—H.R. 2713, the Restitution Amendments Act of 1985, H.R. 2998, the Victims of Crime Technical Amendments Act of 1986, and H.R. 4745, the Sexual Abuse Act of 1986.

Most of the provisions amended by the bill before us were part of the Comprehensive Crime Control Act of 1984. The Comprehensive Crime Control Act was enacted during the final weeks of the 98th Congress, and the circumstances surrounding its enactment resulted in a number of typographical, grammatical, printing, and other technical errors. The legislation before us seeks to correct many of these, as well as similar errors in provisions not enacted by the Comprehensive Crime Control Act. In addition, the legislation makes minor substantive changes to provisions enacted by the Comprehensive Crime Control Act and to other criminal justice provisions, primarily in title 18, United States Code. Finally, the legislation also modernizes and reforms Federal laws concerning sexual abuse crimes.

Until now, the Committee on the Judiciary has been making technical and minor substantive amendments seriatim. Thus, the committee recommended, and last October the House passed, the Restitution Amendments Act of 1985 (H.R. 2713), a bill making technical corrections and minor substantive changes in restitution-related provisions of title 18, United States Code. Last March, the House passed a committee-recommended bill, the Victims of Crime Technical Amendments Act of 1986 (H.R. 2998), which makes technical corrections in provisions of the Victims of Crime Act of 1984, a part of the Comprehensive Crime Control Act. Both of those bills are pending action by the other body.

In response to requests from the Justice Department and Members of the other body, the Subcommittee on Criminal Justice began work early this summer on a larger package of technical and minor substantive amendments. The subcommittee worked with interested organizations and groups in order to fashion a noncontroversial bill, including the Justice Department, the National Association of Criminal Defense Lawyers, the U.S. Sentencing Commission, the American Bar Association, the U.S. Parole Commission, the Administrative Office of the U.S. Courts, the Federal Public and Community Defenders, the National Organization for Victim Assistance, and the Network for Victims of Sexual Assault. In addition, our distinguished colleague from California, Mr. MATSUI, plays a very significant role in developing provisions of the bill that ensure that a local law enforcement agency can gain access to important data about a Federal prisoner who is released into the community served by the law enforcement agency.

The subcommittee's began with a package of amendments sent up by the Justice Department and introduced by the chairman of the Judiciary Committee, Mr. RODINO, and the Committee's Ranking Republican Member, Mr. FISH. The subcommittee did not limit itself solely to the provisions in the Justice Department package, but also considered other proposals as well. However, if any interested group objected to a particular provision, that provision was not included in the bill.

These efforts resulted in H.R. 5241, which was reported unanimously by the subcommittee and by the Committee on the Judiciary.

Shortly after the committee reported the bill, the Subcommittee on Criminal Justice began working with interested Members of the other body to iron out the differences between H.R. 5241 as reported and S. 1236, a similar bill that the other body passed last April. All the provisions of each bill were considered, as were the provisions of the Restitution Amendments Act of 1986 and the Victims of Crime Technical Amendments Act of 1986. We sought to fashion a compromise that would be noncontroversial.

As a result, a number of provisions were not included in the final compromise. For example, section 16A of S. 1236 substantively amends 18 U.S.C. 3742 concerning the standard of review when a sentence is appealed. That provision was controversial in this body, and so was not included in the compromise. Section 3742 does not take effect until November 1, 1987, however, and the subcommittee will be able to review it next Congress, before the section takes effect.

The drafting of this compromise would not have been possible without the assistance of several individuals, and, on behalf of the subcommittee, I want to thank them for their efforts. First, I want to acknowledge the valuable assistance of Roger Pauley and Vicky Portney of the Justice Department's Criminal Division; David Tevelin of the U.S. Sentencing Commission; Alan Chasset of the U.S. Parole Commission; Scott Wallace of the National Association of Criminal Defense Lawyers; Tom Smith of the American Bar Association; and Edward Marek, Federal Public Defender for the northern District of Ohio. I also want to acknowledge the significant contribution of the subcommittee's intern from Stanford University, B.G. Porter, who was responsible for much of the committee's report on H.R. 5241. Mr. Porter is the third Stanford intern that the subcommittee has had, and he has lived up to the high standards set by his predecessors, Darieck Scott and Brad Cohen.

Mr. Speaker, the compromise worked out on the technical and minor substantive amendments has been cast as an amendment to S. 1236. The compromise has bipartisan support, and is supported by the Justice Department and the others who were consulted in its drafting.

In addition to the compromise on the technical and minor substantive amendments, the amendment to S. 1236 also includes the provisions of H.R. 4745, the Sexual Abuse Act of 1986. The Justice Department strongly supports the bill, and this House passed it unanimously.

Mr. Speaker, S. 1236 as amended not only makes desirable technical and minor substantive changes in various criminal justice-related provisions of Federal law, it also modernizes and reforms Federal rape laws. I urge my colleagues to support the measure before us.

SECTION-BY-SECTION ANALYSIS OF AMENDMENT TO H.R. 5241

SECTION 1

Section 1 of the amendment is identical to Section 1 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 17 (1986). There is no comparable provision in S. 1236 as passed by the Senate.

SECTION 2

Section 2 of the amendment is identical to Section 2 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 17 (1986). There is no comparable provision in S. 1236 as passed by the Senate.

SECTION 3

Section 3 of the amendment is identical to Section 3 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 17 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 2.

SECTION 4

Section 4 of the amendment is identical to Section 4 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 17 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 3(1).

SECTION 5

Section 5 of the amendment is identical to Section 5 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 18 (1986). There is no comparable provision in S. 1236 as passed by the Senate.

SECTION 6

Section 6 of the amendment is identical to Section 6 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 18-18 (1986). Section 3(2) of S. 1236 as passed by the Senate is comparable to Section 6(1) of the amendment. Section 4(4) and 4(5) of S. 1236 as passed by the Senate are comparable to section 6(b)(1) and (b)(3), respectively, of the amendment.

SECTION 7

Section 7 of the amendment is identical to Section 7 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 19 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 5.

SECTION 8

Section 8 of the amendment is derived from Section 4 of H.R. 2713 as passed by the House, see H.R. Rep. No. 334, 99th Cong., 1st Sess. 5-6 (1985), and Section 7 of S. 1236

as passed by the Senate. There is no comparable provision in S. 5241 as reported.

SECTION 9

Section 9 of the amendment is identical to Section 8 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 19 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 6(2).

SECTION 10

Section 10 of the amendment is identical to Section 9 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 19-20 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 8.

SECTION 11

Section 11 of the amendment is identical to Section 10 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 20 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 9.

SECTION 12

Section 12 of the amendment is derived from Section 10 of S. 1236 as passed by the Senate. There is no comparable provision in H.R. 5241 as reported.

SECTION 13

Section 13 of the amendment is identical to Section 11 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 20 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 11.

SECTION 14

Section 14 of the amendment is identical to Section 12 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 20 (1986). There is no comparable provision in S. 1236 as passed by the Senate.

SECTION 15

Section 15 of the amendment is identical to Section 13 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 20 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 12.

SECTION 16

Section 16 of the amendment is identical to Section 14 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 21 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 13.

SECTION 17

Section 17 of the amendment is identical to Section 15 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 21 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 14.

SECTION 18

Section 18 of the amendment is derived from Section 16 of S. 1236 as passed by the Senate. There is no comparable provision in H.R. 5241 as reported. The amendment made by Section 18 takes effect on November 1, 1987 (the date the provision amended by Section 18 takes effect).

SECTION 19

Section 19 of the amendment is changes present law to conform to the change that Section 18 of the amendment makes effective November 1, 1987. There is no comparable provision in H.R. 5241 as reported. The amendment made by Section 19 takes effect immediately.

SECTION 20

Section 20 of the amendment is derived from Section 2 of H.R. 2713 as passed by the House. See H.R. Rep. No. 334, 99th Cong., 1st Sess. 4 (1985). The comparable provision in S. 1236 as passed by the Senate is Section 15(l).

Present federal law. (18 U.S.C. 3579(a)(1)) authorizes federal courts to order restitution "in addition to or in lieu of" any other criminal penalty. Section 15(l) of S. 1236 as passed would strike the "in lieu of" language, so that restitution could only be an additional criminal penalty. Section 20 of H.R. 5241 as reported permits restitution to be ordered in lieu of other criminal penalties if the offense is a misdemeanor or a felony punishable by imprisonment for no longer than 3 years. Section 20(a) of the amendment compromises the difference between the bills by authorizing restitution to be ordered in lieu of any other criminal penalty if the offense is a misdemeanor.

SECTION 21

Section 21 of the amendment is identical to Section 16 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 21 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 17.

SECTION 22

Section 22 of the amendment is derived from Section 22 of S. 1236 as passed by the Senate. There is no comparable provision in H.R. 5241 as reported.

SECTION 23

Section 23 of the amendment is derived from to Section 24 of S. 1236 as passed by the Senate. There is no comparable provision in H.R. 5241 as reported.

SECTION 24

Section 24 of the amendment is identical to Section 17 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 22 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 30.

SECTION 25

Section 25 of the amendment is derived from Section 18 of S. 1236 as passed by the Senate. There is no comparable provision H.R. 5241 as reported.

SECTION 26

Section 26 of the amendment is derived from Section 40 of S. 1236 as passed by the Senate. There is no comparable provision in H.R. 5241 as reported.

SECTION 27

Section 27 of the amendment is derived from Section 29 of S. 1236 as passed by the Senate. There is no comparable provision H.R. 5241 as reported.

SECTION 28

Section 28 of the amendment is derived from Section 34 of S. 1236 as passed by the Senate. There is no comparable provision H.R. 5241 as reported.

SECTION 29

Section 29 of the amendment is identical to Section 18 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 22 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 44.

SECTION 30

Section 30 of the amendment is identical to Section 19 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 22 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 46.

SECTION 31

Section 31 of the amendment is identical to Section 20 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 22-23 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 47.

SECTION 32

Section 32 of the amendment is identical to Section 21 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 22 (1986). There is no comparable provision in S. 1236 as passed by the Senate.

SECTION 33

Section 33 of the amendment is derived from Section 22 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 23 (1986). There is no comparable provision in S. 1236 as passed by the Senate.

SECTION 34

Section 34 of the amendment is identical to Section 23 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 23 (1986). There is no comparable provision in S. 1236 as passed by the Senate.

SECTION 35

Section 35 of the amendment is identical to Section 24 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 23-24 (1986). There is no comparable provision in S. 1236 as passed by the Senate.

SECTION 36

Section 36 of the amendment is derived from Section 25 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 24 (1986). Section 25(4) is new and simply eliminates a personal pronoun. No change in meaning is intended. There is no comparable provision in S. 1236 as passed by the Senate.

SECTION 37

Section 37 of the amendment is identical to Section 26 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 24 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 43.

SECTION 38

Section 38 of the amendment is identical to Section 27 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 24 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 64.

SECTION 39

Section 39 of the amendment is identical to Section 28 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 24-25 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 53.

SECTION 40

Section 40 of the amendment derived from Section 2 of H.R. 2998 as passed by the House, see H.R. Rep. No. 527, 99th Cong., 2d Sess. 2 (1985), and Section 55 of S. 1236 as passed by the Senate. There is no comparable provision in H.R. 5241 as reported.

SECTION 41

Section 41 of the amendment is identical to Section 3 of H.R. 2998 as passed by the House. See H.R. Rep. No. 527, 99th Cong., 1st Sess. 2 (1985). The comparable provision in S. 1236 as passed by the Senate is Section 56. There is no comparable provision in H.R. 5241 as reported.

SECTION 42

Section 42 of the amendment is identical to Section 29 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 25 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 61.

SECTION 43

Section 43 of the amendment is derived from Section 63 of S. 1236 as passed by the Senate. There is no comparable provision in H.R. 5241 as reported.

SECTION 44

Section 44 of the amendment is derived from Section 30 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess.

25 (1986). The comparable provision in S. 1236 as passed by the Senate are Sections 49 and 50.

SECTION 45

Section 45 of the amendment is derived from Section 51 of S. 1236 as passed by the Senate. There is no comparable provision in H.R. 5241 as reported.

SECTION 46

Section 46 of the amendment is identical to Section 31 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 25-26 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 65.

SECTION 47

Section 47 of the amendment is identical to Section 32 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 26 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 66.

SECTION 48

Section 48 of the amendment is identical to Section 4 of H.R. 2998 as passed by the House, see H.R. Rep. No. 527, 99th Cong., 2d Sess. 2-3 (1985). The comparable provision of S. 1236 as passed by the Senate is Section 59. There is no comparable provision in H.R. 5241 as reported.

SECTION 49

Section 49 of the amendment is identical to Section 5 of H.R. 2998 as passed by the House, see H.R. Rep. No. 527, 99th Cong., 2d Sess. 2-3 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 60. There is no comparable provision in H.R. 5241 as reported.

SECTION 50

Section 50 of the amendment is derived from Section 68 of S. 1236 as passed by the Senate. There is no comparable provision H.R. 5241 as reported.

The Victim and Witness Protection Act of 1982, Pub. L. No. 97-291, § 3, 96 Stat. 1249-50, enacted 18 U.S.C. 1512 (tampering with a witness, victim, or an informant) and 1513 (retaliating against a witness, victim or an informant). They were to enacted to address specifically the problem of witness tampering and retaliation, which had previously been addressed more generally though 18 U.S.C. 1503 and 1510 when court proceedings were involved. See 128 Cong. Rec. H8203, H8204 (daily ed. Sept 30, 1982) (remarks of Rep. Rodino).

Both 18 U.S.C. 1503 and 1510 are predicate acts for 18 U.S.C. ch. 96 proposes (i.e., are listed in 18 U.S.C. 1961(1)). Since 18 U.S.C. 1512 and 1513 are derived from 18 U.S.C. 1503 and 1510, there is no reason why they, too, should not be predicate acts. Section 50(1) of the amendment adds 18 U.S.C. 1512 and 1513 to the list of predicate acts in 18 U.S.C. 1961(1).

The Subcommittee on Criminal Justice has received complaints of prosecutor's harassing members of the defense bar. Vigorously and zealously representing a client, however, is not a basis for charging an offense under the obstruction of justice chapter. Section 50(2) therefore amends 18 U.S.C. 1515 to provide specifically that the lawful, bona fide provision of legal representation services does not constitute an offense under any of the obstruction of justice offenses in 18 U.S.C. ch. 73.

SECTION 51

Section 51 of the amendment is identical to Section 34 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 26-27 (1986). There is no comparable provision in S. 1236 as passed by the Senate.

SECTION 52

Section 52 of the amendment is identical to Section 35 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 27 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 48.

SECTION 53

Section 53 of the amendment is identical to Section 36 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 28 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 48.

SECTION 54

Section 54 of the amendment is identical to Section 37 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 28 (1986). The comparable provision in S. 1236 as passed by the Senate.

SECTION 55

Section 55 of the amendment is identical to Section 38 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 28 (1986). There is no comparable provision in S. 1236 as passed by the Senate.

SECTION 56

Section 56 of the amendment is identical to Section 39 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 28 (1986). There is no comparable provision in S. 1236 as passed by the Senate.

SECTION 57

Section 57 of the amendment is derived from Section 40 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 28-29 (1986). Section 57 of the amendment restores provisions that due to a clerical error were not included in H.R. 5241 as reported. Those provisions (subsection (a) and (b) of Section 40 of the amendment) were, however, discussed and explained in the Committee's Report. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 28-29 (1986). There is no comparable provision in S. 1236 as passed by the Senate.

SECTION 58

Section 58 of the amendment is derived from Section 41 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 29 (1986). There is no comparable provision in S. 1236 as passed by the Senate.

Current law (18 U.S.C. 4203(c)(2)) requires that two hearing examiners concur in a parole recommendation. This recommendation must follow a hearing. Current law is silent about whether both examiners must be present at the hearing, but the United States Parole Commission's practice is to require, as a general rule, that both examiners attend the hearing. This is consistent with Congressional intent at the time current law was enacted. See H.R. Rep. No. 838, 94th Cong., 2d Sess. 23 (1976) ("Parole determination proceedings . . . are to be conducted . . . by panels of two examiners. However, other situations will from time to time arise . . . where it is appropriate for one examiner to conduct the examination . . . ."). Current law (18 U.S.C. 4208(g)) is clear that both examiners involved in the recommendation must hold a "personal conference" with the prisoner if parole is denied.

Section 58 seeks to enable the Parole Commission to utilize its resources most efficiently. It is therefore intended that the Parole Commission no longer adhere to the general rule that two hearing examiners conduct a hearing. Instead, one examiner should conduct the hearing, with the second examiner reviewing the case on the record. Further, Section 41(b) of the amendment, strikes from 18 U.S.C. 4208(g) the requirement that both examiners also hold the "personal conference" with the prisoner, and authorizes the Parole Commission to use one person to hold the "personal conference."

SECTION 59

Section 59 of the amendment is identical to Section 42 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 30 (1986). There is no comparable provision in S. 1236 as passed by the Senate.

SECTION 60

Section 60 of the amendment is identical to Section 43 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 30 (1986). There is no comparable provision in S. 1236 as passed by the Senate.

SECTION 61

Section 61 of the amendment is derived from Section 44 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 30 (1986). There is no comparable provision in S. 1236 as passed.

Section 44 of H.R. 5241 as reported sought to overturn a decision of the First Circuit that killing of a witness to prevent that witness from testifying did not constitute the use of physical force with intent to "influence" that witness' testimony within the meaning of 18 U.S.C. 1512(a)(1). United States v. Dawlett, 787 F.2d 771 (1st Cir. 1986). Section 44 of H.R. 5241 as reported added to 18 U.S.C. 1512 a specific provision making it an offense to kill a person with intent to prevent the attendance of that person at an official proceeding, to prevent that person from producing records at an official proceeding, or to prevent that person from communicating information about a federal crime to a federal law enforcement officer or judge. Section 44 of H.R. 5241 as reported, however, did not necessarily completely solve the problem raised by the *Dawlett* case. Conduct, other than killing a witness, that delays or prevents the witness from testifying would not be proscribed by 18 U.S.C. 1512(a)(1) in the First Circuit and in other circuits that decided to follow *Dawlett*. Section 61(1) of the amendment therefore amends 18 U.S.C. 1512(a)(1) to cover such a situation.

SECTION 62

Section 62 of the amendment is identical to Section 45 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 30 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 74.

SECTION 63

Section 63 of the amendment is identical to Section 46 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 30 (1986). The comparable provision in S. 1236 as passed by the Senate is Section 73.

SECTION 64

Section 64 of the amendment is identical to Section 47 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 31 (1986). There is no comparable provision in S. 1236 as passed by the Senate.

SECTION 65

Section 65 of the amendment is identical to Section 48 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 31 (1986). There is no comparable provision in S. 1236 as passed by the Senate.

SECTION 66

Section 66 of the amendment is identical to Section 49 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 31-

32 (1986). There is no comparable provision in S. 1236 as passed by the Senate.

SECTION 67

Section 67 of the amendment is identical to Section 50 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 32 (1986). There is no comparable provision in S. 1236 as passed by the Senate.

SECTION 68

Section 68 of the amendment is identical to Section 51 of H.R. 5241 as reported. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 32-33 (1986). There is no comparable provision in S. 1236 as passed by the Senate.

SECTION 69

Section 69 of the amendment is new to the legislation. There is no comparable provision in H.R. 5241 as reported or in S. 1236 as passed by the Senate.

If there is a vacancy in the office of the United States Attorney, 28 U.S.C. 546 authorizes the district court for the district where the vacancy exists to appoint a person to serve as United States Attorney until a Presidentially-appointed United States Attorney has qualified. Section 69 amends 28 U.S.C. 546 to authorize the Attorney General to appoint an interim United States Attorney when there is a vacancy. The Attorney General's power to appoint is circumscribed, however. The Attorney General cannot appoint a person whose appointment as the United States Attorney by the President was not advised and consented to by the Senate. Moreover, a person appointed by the Attorney General serves only for 120 days, or until a person appointed to the office by the President has qualified, if that is earlier. Once the appointment of an interim United States Attorney expires, the district court appoints a United States Attorney to serve until a presidentially appointed United States Attorney is qualified.

SECTION 70

Section 70 of the amendment is new to the legislation.

There is no comparable provision in H.R. 5241 as reported or S. 1236 as passed by the Senate.

Section 70 amends 18 U.S.C. 209 which makes it an offense for a federal employee to receive, as compensation for services as an employee of the United States, any contribution to or supplementation of the employee's federal salary. This prohibition, however, does not apply to federal employees who participate in an executive exchange or fellowship program in an executive agency, if the program offers appointments for no more than one year, which can be extended for no more than 90 days. 18 U.S.C. 209(e). Section 70 enlarges from 90 to 365 days the period by which the appointment can be extended, if the federal employee is participating in an overseas assignment.

Section 70 stems from a request by the Office of Personnel Management and is intended to facilitate the participation of federal employees in exchange programs with foreign governments.

SECTION 71

Section 71 of the amendment is new to the legislation. There is no comparable provision in H.R. 5241 as reported or S. 1236 as passed by the Senate.

Congress, in the Children's Justice and Assistance Act of 1986, Pub. L. No. 99-401, § 102(a)(4), 100 Stat. 905, altered the formula for distributing money in the Crime Victims Fund established by the Victims of Crime Act of 1984, Pub. L. No. 98-473, § 1402, 98 Stat. 2170-71. The Children's Justice and Assistance Act provides that, of the money in the Fund allocated for the federal government to use to help victims of crimes, not less than half must be used for training and technical assistance, and not more than half may be used for services to victims of federal crimes.

Section 71 reverses the priority, and requires that at least half the money allocated for federal use be used to provide services to victims of federal crimes. It is hoped that the Attorney General will act expeditiously to use this money to provide services for persons victimized by crimes on federal enclaves, particularly on Indian reservations over which there is federal jurisdiction.

SECTION 72

Section 72 of the amendment is derived from Section 1 of S. 1236 as passed by the Senate. There is no comparable provision in H.R. 5141 as reported.

SECTION 73

Section 73 of the amendment is derived from Section 16A(2) of S. 1236 as passed by the Senate. There is no comparable provision in H.R. 5241 as reported.

Section 16A of S. 1236 as passed made 2 changes in 18 U.S.C. 3742, which deals with appellate review of sentences. Section 16A(1) changed the standard of review applicable to an appeal on the basis that the wrong guideline was used from "incorrect" to "clearly erroneous." Section 16A(2) removed the authority of the court of appeals directly to impose sentence if that court determined that the district court had erred.

Section 73 of the amendment does not address the standard of review. That part of Section 16A proved controversial in this body, and was therefore not included in Section 73 of the amendment. Section 73 of the amendment does, however, address the question whether the court of appeals should be able to impose sentence if the appeals court determines that the district court has erred. Section 73 provides that the court of appeals, if it reverses a sentencing decision, must remand the case for further sentencing proceedings. Section 73 is premised upon a belief that it is more appropriate for the district court to impose final sentence. If the court of appeals wants to give additional guidance to the district court, the appeals courts is authorized to remand the case with whatever instructions the appeals court considers appropriate.

SECTION 74

Section 74 of the amendment is identical to Section 28 of S. 1236 as passed by the Senate. There is no comparable provision in H.R. 5241 as reported.

SECTION 75

Section 75 of the amendment is derived from Section 52(a) of S. 1236 as passed by the Senate. There is no comparable provision in H.R. 5241 as reported.

SECTION 76

Section 76 of the amendment is derived from Section 69 of S. 1236 as passed by the Senate. There is no comparable provision in H.R. 5241 as reported.

Section 76 amends 18 U.S.C. 2315, which makes it a federal offense to receive stolen property if that property has moved in, is part of, or constitutes interstate or foreign commerce. Section 76(2) of the amendment changes the latter requirement to be that goods have crossed a state of United States boundary after having been stolen. This change does not, and is not intended to, alter the prosecution's burden of proof concerning this requirement of the offense.

SECTION 77

Section 77 of the amendment is identical to Section 3 of H.R. 2713, which was passed by the House on October 29, 1985. See H.R. Rep. 334, 99th Cong., 1st Sess. 4 (1985). There are no comparable provisions in H.R. 5241 as reported or S. 1236 as passed.

SECTION 78

Section 78 of the amendment is identical to Section 5 of H.R. 2713, which was passed by the House on October 29, 1985. See H.R. Rep. No. 334, 99th Cong., 1 Sess. 6 (1985). There are no comparable provisions in H.R. 5241 as reported or S. 1236 as passed.

SECTION 79

Section 79 of the amendment is identical to Section 6 of H.R. 2713, which was passed by the House on October 29, 1985. See H.R. Rep. No. 334, 99th Cong., 1st Sess. 7 (1985). There are no comparable provisions in H.R. 5241 as reported or S. 1236 as passed.

SECTION 80

Section 80 of the amendment is identical to Section 7 of H.R. 2713, which was passed by the House on October 29, 1985. See H.R. Rep. No. 334, 99th Cong., 1st Sess. 7 (1985). There are no comparable provisions in H.R. 5241 as reported or S. 1236 as passed.

SECTION 81

Section 81 of the amendment is identical to Section 8 of H.R. 2713, which was passed by the House on October 29, 1985. See H.R. Rep. No. 334, 99th Cong., 1st Sess. 7 (1985). There are no comparable provisions in H.R. 5241 as reported or S. 1236 as passed.

SECTION 82

Section 82 of the amendment is derived from Section 33 of H.R. 5241 as reported, see H.R. Rep. No. 797, 99th Cong., 2d Sess. 26 (1986), and Section 58 of S. 1236 as passed by the Senate. Sections 33 and 58 amend the Victims of Crime Act of 1984 to permit a recipient of a crime victim assistance grant under the Act to obligate the money it receives in the grant at any time within the fiscal year when the grant was received or the next 2 succeeding fiscal years. Current law (Section 1402(e) of the Victims of Crime Act of 1984) requires that the money be obligated in the fiscal year received or in the next succeeding fiscal year.

The purpose behind providing the States with additional time to determine how to expend its grant was to avoid States having to return unspent funds or making rash expenditures. See H.R. Rep. No. 797, 99th Cong., 2d Sess. 26 (1986). The Subcommittee on Criminal Justice has heard criticisms, however, that enlarging the time would only result in delaying the distribution of money to victim services programs. Section 82 of the amendment therefore modifies the approach taken in Section 33 of H.R. 5241 as reported and Section 58 of S. 1236 has passed. Section 82 of the amendment changes the Victims of Crime Act to allow the longer period of time (fiscal year of a grant plus 2 fiscal years) to apply to grants made from money deposited in the Crime Victims Fund during fiscal year 1985. The shorter period of current law (fiscal year of grant plus one fiscal year) will apply to all other grants from that fund.

SECTION 83

Section 83 of the amendment is derived from Section 31 of S. 1236 as passed by the Senate. There is no comparable provision H.R. 5241 as reported.

SECTION 84

Section 84 of the amendment is identical to Section 32 of S. 1236 as passed by the Senate. There is no comparable provision H.R. 5241 as reported.

SECTION 85

Section 85 of the amendment is derived from Section 35 of S. 1236 as passed by the Senate. There is no comparable provision H.R. 5241 as reported.

SECTION 86

Section 86 of the amendment is derived from Section 36 of S. 1236 as passed by the Senate. There is no comparable provision H.R. 5241 as reported.

SECTION 87

Section 87 of the amendment is identical to H.R. 4745 as passed by the House. See H.R. Rep. No. 594, 99th Cong., 2d Sess. (1986). There are no comparable provisions in H.R. 5241 as reported or S. 1236 as passed.

Mr. GEKAS. Mr. Speaker, further reserving the right to object, I repeat that we are satisfied that these amendments are technical only in nature and, therefore, we ask for speedy passage.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1236

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

BAIL (CHAPTER I)

SECTION 1. (a) Subparagraph (D) of section 3142(f)(1) of title 18 of the United States Code is amended by—

(1) striking out the words "any felony committed after the person had been convicted of two or more prior offenses" and inserting in lieu thereof "any felony if theU5 person has been convicted of two or more offenses"; and

(2) inserting before the semicolon ", or a combination of such offenses".

(b) Subparagraph (A) of section 3142(f)(2) of title 18 of the United States Code is amended by inserting the word "or" after the semicolon.

(c) Subsection (f) of section 3142 of title 18 of the United States Code is amended by adding at the end thereof the following: "The hearing may be reopened, before or after a determination by the judicial officer, at any time prior to trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing onU5 the issue whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.".

OTHER SENTENCING AMENDMENTS

SEC. 2. (a) Section 4216 of title 18 of the United States Code is repealed.

(b) The item relating to section 4216 in the sectional analysis of chapter 311 of title 18 of the United States Code is amended to read as follows:

"4216. Repealed.".

SEC. 3. Section 992 of title 28 of the United States Code is amended—

(1) in subsection (c) by striking out "section 225(a)(1)(B)(ii) of the Sentencing Reform Act of 1983" and inserting in lieu thereof "section 235(a)(1)(B)(ii) of the Sentencing Reform Act of 1984"; and

(2) by adding at the end thereof the following new subsection:

"(d) The provisions of sections 44(c) and 134(b) of this title, regarding the residence of judges, shall not apply to any judge holding a full-time position on the Commission pursuant to subsection (c) of this section.".

SEC. 4. Section 994 of title 28 of the United States Code is amended—

(1) in subsection (a)(2) by—

(A) redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively;

(B) amending subparagraph (C) to read as follows:

"(C) the sentence modification provisions set forth in sections 3563(c), 3564, 3573, 3582(c), and 3583(e) of title 18;"; and

(C) adding after subparagraph (C) the following new subparagraph:

"(D) the fine imposition provision set forth in section 3572 of title 18;";

(2) in subsection (a)(3) by making it read as follows:

"(3) guidelines or general policy statements regarding the appropriate use of the provisions for revocation of probation and supervised release set forth in sections 3565 and 3583(e) of title 18, and the provisions for modification of the term or conditions of probation and supervised release set forth in sections 3563(c), 3564, and 3583(e) of title 18.";

(3) in subsection (b) by—

(A) inserting "(1)" after "(b)"; and

(B) designating the second sentence as paragraph (2) and inserting before the period in such paragraph (2) the following: "except that—

"(A) if the maximum term of the range is life imprisonment, the minimum shall not be less than 25-years imprisonment; or

"(B) if the maximum term of the range is one year or less, the maximum shall not exceed the minimum of that range by more than 50 per centum or 60 days, whichever is greater.";

(4) in subsection (h) by striking out "by section 3581(b) of title 18, United States Code,"; and

(5) in subsection (t) by inserting the words "in what circumstances and" after the word "specify" and by deleting the words "that are outside the applicable guideline ranges".

SEC. 5. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended—

(1) in subsection (b) of section 3552 of title 18 of the United States Code by striking out the word "take" in the third sentence and inserting in lieu thereof the word "be";

(2) in subsection (b) of section 3552 of title 18 of the United States Code by inserting the words ", if the defendant is in custody," after the words "the United States Marshal shall" in the eighth sentence; and

(3) in subsection (c) of section 3552 of title 18 of the United States Code by striking out "4247" and inserting in lieu thereof "4244".

SEC. 6. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended—

(1) in subsection (a) section 3553 of title 18 of the United States Code by striking out the words "of this subsection" in the first sentence; and

(2) in subsection (b) of section 3553 of title 18 of the United States Code by adding the following sentence at the end thereof: "In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for its relationship to sentences prescribed by guidelines applicable to similar offenses and offenders and the purposes of sentencing set forth in subsection (a)(2).".

SEC. 7. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in subsection (c) of section 3553 of title 18 of the United States Code by inserting "or if it includes an order of only partial restitution," after "If the sentence does not include an order of restitution,".

SEC. 8. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in subsection (a) of section 3561 of title 18 of the United States Code by striking out the second sentence.

SEC. 9. Subsection (a) section 212 of the Comprehensive Crime Control Act of 1984 is amended in paragraph (11) of section 3563(b) of title 18 of the United States Code by striking out "in section 3581(b)".

SEC. 10. (a) Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in subsection (c) of section 3563 of title 18 of the United States Code by—

(1) striking out the phrase ", after a hearing,"; and

(2) inserting the phrase "the provisions of Rule 32.1 of the Federal Rules of Criminal Procedure and" after the words "pursuant to".

(b) Subdivision (b) of Rule 32.1 of the Federal Rules of Criminal Procedure is amended by—

(1) inserting the words "to be" after the word "relief"; and

(2) striking out the period at the end and inserting in lieu thereof ", and the attorney for the government, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected.".

SEC. 11. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in subsection (b) of section 3564 of title 18 of the United States Code by striking out the second sentence and inserting in lieu thereof the following: "A term of probation runs concurrently with any Federal, State, or local term of probation, supervised release, or parole for another offense to which the defendant is subject or becomes subject during the term of probation. A term of probation does not run while the defendant is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than thirty consecutive days.".

SEC. 12. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in subsection (f) of section 3603 of title 18 of the United States Code by striking out the word "supervise" and inserting in lieu thereof "assist in the supervision of," and by inserting a comma after the word "about".

SEC. 13. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in subsection (b) of section 3624 of title 18 of the United States Code by striking out "beginning after the first year of the term" in the first sentence and inserting in lieu thereof "beginning at the end of the first year of the term".

SEC. 14. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in subsection (e) of section 3624 of title 18 of the United States Code by striking out the third sentence and inserting

in lieu thereof the following: "The term runs concurrently with any Federal, State, or local term of probation, supervised release, or parole for another offense to which the person is subject or becomes subject during the term of supervised release. A term of supervised release does not run while the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than thirty consecutive days.".

SEC. 15. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in section 3663 (formerly section 3579) of title 18 of the United States Code by—

(1) striking out "or in lieu of" in subsection (a)(1); and

(2) striking out "sections 3812 and 3813" in subsection (h) and inserting in lieu thereof "sections 3612 and 3613".

SEC. 16. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in section 3672 (formerly section 3656) of title 18 of the United States Code by adding at the end thereof:

"He shall have the authority to contract, subject to appropriations, with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an addict or a drug-dependent person within the meaning of section 2 of the Public Health Service Act (42 U.S.C. 201). This authority shall include, but not be limited to, providing equipment and supplies; testing; medical, educational, social, psychological, and vocational services; corrective and preventive guidance and training; and other rehabilitative services designed to protect the public and benefit the addict by eliminating his dependence on addicting drugs, or by controlling his dependence and his susceptibility to addiction. He may negotiate and award such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

"He shall pay for presentence studies and reports by qualified consultants and presentence examinations and reports by psychiatric or psychological examiners ordered by the court under section 3552 (b) or (c) except for studies conducted by the Bureau of Prisons.".

SEC. 16A. Section 213 of the Comprehensive Crime Control Act of 1984 is amended in section 3742 of title 18, United States Code—

(1) in subsections (a)(2), (b)(2), (d)(2), and (e)(1) by striking out "an incorrect" and inserting in lieu thereof "a clearly erroneous construction or"; and

(2) in subsection (e) by—

(A) striking out subparagraph (B) of paragraph (1) and inserting in lieu thereof the following:

"(B) designate the appropriate guideline category and remand the case for imposition of a sentence consistent with its decision;"; and

(B) striking out subparagraphs (A) and (B) of paragraph (2) and inserting in lieu thereof the following:

"(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), it shall set aside the sentence and remand the case for imposition of a sentence consistent with its decision;

"(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), it shall set aside the sentence and remand the case for imposition of a sentence consistent with its decision; or".

SEC. 17. Section 214 of the Comprehensive Crime Control Act of 1984 is amended—

(1) in subsection (a) of section 5037 of title 18 of the United States Code by striking out "(e)" and inserting in lieu thereof "(d)";

(2) in subparagraph (B) of section 5037(c)(1) of title 18 of the United States Code by striking out "by section 3581(b)";

(3) in subparagraph (B) of section 5037(c)(2) of title 18 of the United States Code by striking out "by section 3581(b)"; and

(4) in subsection (c) of section 5037 of title 18 of the United States Code by adding the following new paragraph at the end thereof:

"The provisions of section 3624 are applicable to an order placing a juvenile under detention.".

SEC. 18. Section 215(a)(5) of the Comprehensive Crime Control Act of 1984 is amended in subdivision (c)(2)(B) of Rule 32 of the Federal Rules of Criminal Procedure by striking out the word "than" and inserting in lieu thereof the word "from".

SEC. 19. Section 215(f) of the Comprehensive Crime Control Act of 1984 is amended in Rule 6 of the Federal Rules of Criminal Procedure by—

(1) striking out the word "or" in subdivision (e)(3)(C)(ii); and

(2) striking out the period at the end of subdivision (e)(3)(C)(iii) and inserting in lieu thereof "; or".

SEC. 20. (a) Subsection (a) of section 224 of the Comprehensive Crime Control Act of 1984 is amended—

(1) in paragraph (1) to read, "in subsection (b)(1)(A), by deleting the sentence which begins 'Any sentence imposing a term of imprisonment under this paragraph';";

(2) in paragraph (2) to read, "in subsection (b)(1)(B), by deleting the sentence which begins 'Any sentence imposing a term of imprisonment under this paragraph';";

(3) by inserting the following new paragraph after paragraph (2):

"(3) in subsection (b)(1)(C), by deleting the sentence which begins 'Any sentence imposing a term of imprisonment under this paragraph';";

(4) by adding the word "and" at the end of paragraph (4);

(5) by deleting paragraph (5); and

(6) by redesignating paragraphs (3) and (4) as (4) and (5), respectively.

(b) Section 224 of the Comprehensive Crime Control Act of 1984 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following:

"(c) Section 405A (21 U.S.C. 845A) is amended—

"(1) in subsection (a) by deleting '(1)' after the word 'punishable', and by deleting the semicolon and all that follows and inserting in lieu thereof a period;

"(2) in subsection (b) by deleting '(1)' after the word 'punishable', and by deleting 'and (2) at least three times any special parole term' and all that follows and by inserting in lieu thereof a period; and

"(3) in subsection (c) by deleting the second sentence.".

SEC. 21. Subsection (a) of section 225 of the Comprehensive Crime Control Act of 1984 is amended—

(1) in paragraph (1) to read, "in subsection (b)(1), by deleting the sentence which begins 'If a sentence under this paragraph provides for imprisonment';";

(2) in paragraph (2) to read, "in subsection (b)(2), by deleting the sentence which begins 'If a sentence under this paragraph provides for imprisonment';";

(3) by redesignating paragraph (3) as (4); and

(4) by inserting the following new paragraph after paragraph (2):

"(3) in subsection (b)(3), by deleting the sentence which begins 'If a sentence under this paragraph provides for imprisonment'; and".

SEC. 22. Subsection (a) of section 232 of the Comprehensive Crime Control Act of 1984 is amended by—

(1) striking out the word "and" the second time it appears and inserting in lieu thereof a comma; and

(2) inserting before the period ", and 'and who are not sentenced to treatment under the Narcotic Addict Rehabilitation Act of 1966' ".

SEC. 23. (a) Section 235(a)(1)(B)(i) of the Comprehensive Crime Control Act of 1984 is amended by striking out "eighteen" and inserting "thirty" in lieu thereof.

(b) TECHNICAL AMENDMENT.—Section 235(a)(1)(B)(i) of the Comprehensive Crime Control Act of 1984 is amended by striking out "to section" and inserting "under section" in lieu thereof.

(c) Section 994(q) of title 28, United States Code, is amended by striking out "within three years" and all that follows through "Act of 1983" and inserting in lieu thereof "not later than one year after the initial set of sentencing guidelines promulgated under subsection (a) goes into effect.".

(d) Section 235(a)(1) of the Comprehensive Crime Control Act of 1984 is amended by striking out "twenty-four" and inserting "thirty-six" in lieu thereof.

FORFEITURE (CHAPTERS III AND XXIII)

SEC. 24. Section 1963 of title 18 of the United States Code is amended—

(1) in subsection (c) by striking out "(m)" and inserting in lieu thereof "(l)";

(2) in subsection (j) by striking out "(m)" and inserting in lieu thereof "(l)"; and

(3) by redesignating subsections (e), (f), (g), (h), (i), (j), (k), (l), and (m), as subsections (d), (e), (f), (g), (h), (i), (j), (k), and (l), respectively.

SEC. 25. Section 608 of the Tariff Act of 1930 (19 U.S.C. 1608) is amended in the sentence beginning "Upon the filing", by striking out "$2,500" and inserting in lieu thereof "$5,000".

SEC. 26. (a) Subsection (c) of section 616 of the Tariff Act of 1930 (19 U.S.C. 1616(c)) as enacted by Public Law 98-573 is amended by inserting "any other Federal agency or to" after "property forfeited under this Act to".

(b) Section 616 of the Tariff Act of 1930 (19 U.S.C. 1616) as enacted by Public Law 98-473 is repealed.

SEC. 27. Section 413 of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853) is amended—

(1) in subsection (c) by striking out "(o)" and inserting in lieu thereof "(n)";

(2) in subsection (f) by striking out "subsection (f)" and inserting in lieu thereof "subsection (e)"; and

(3) in subsection (k) by striking out "(o)" and inserting in lieu thereof "(n)".

SEC. 28. (a) Subsection (b) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(b)) is amended—

(1) by striking out "or criminal" after "Any property subject to civil";

(2) in paragraph (4) by striking out "or criminal" after "is subject to civil"; and

(3) by adding the following at the end thereof:

"The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.".

(b) Subsection (i) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(i)) is amended by inserting ", or a violation of State or local law that could have been charged under this title or title III," after "title III".

SEC. 29. (a) Subparagraph (E) of section 524(c)(1) of title 28 of the United States Code is amended by inserting "the Federal Bureau of Investigation, the United States Marshals Service," after the words "for official use by", and by inserting a comma before the word "or".

(b) Paragraph (4) of section 524(c) of title 28 of the United States Code is amended by striking out "remaining after the payment of expenses for forfeiture and sale authorized by law" and inserting in lieu thereof ", except all proceeds of forfeitures available for use by the Secretary of the Treasury or the Secretary of the Interior pursuant to section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)) or section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d))".

OFFENDERS WITH MENTAL DISEASE OR DEFECT (CHAPTER IV)

SEC. 30. Subdivision (c) of Rule 12.2 of the Federal Rules of Criminal Procedure is amended by inserting "4241 or" before "4242".

DRUG ENFORCEMENT AMENDMENTS (CHAPTER V)

SEC. 31. Paragraph (14) of section 102 of the Controlled Substances Act (21 U.S.C. 802(14)) is amended in the second and third sentences by striking out the word "the" after the words "the term 'isomer' means" and inserting in lieu thereof "any".

SEC. 32. Paragraph (4) of subsection (a) of schedule II of the Controlled Substances Act (21 U.S.C. 812) is amended to read as follows:

"(4) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.".

SEC. 33. (a) Subparagraph (A) of section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) is amended—

(1) in clause (i) to read as follows:

"(i) 100 grams or more of a mixture or substance containing a detectable amount of a narcotic drug in schedule I or II other than a narcotic drug consisting of—

"(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);";

(2) in clause (ii) by adding "a mixture or substance containing a detectable amount of" after "a kilogram or more of";

(3) in clause (iii) by adding "a mixture or substance containing a detectable amount of" after "500 grams or more of";

(4) in clause (iv) by adding "a mixture or substance containing a detectable amount of" after "5 grams or more of"; and

(5) by adding at the end thereof, "Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 8 years in addition to such term of imprisonment.".

(b) Paragraph (5) of section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b)(5)) is amended by adding the words "the fines provided in" after the word "Notwithstanding".

SEC. 34. Subsection (b) of section 405A of the Controlled Substances Act (21 U.S.C. 845a(b)) is amended by inserting "parole" after "(2) at least three times any special".

SEC. 35. Section 503(a) of the Controlled Substances Act (21 U.S.C. 873(a)) is amended by—

(1) striking out "and" at the end of paragraph (5);

(2) striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(3) adding at the end thereof the following:

"(7) notwithstanding any other provision of law, enter into contractual agreements with State and local law enforcement agencies to provide for cooperative enforcement and regulatory activities under this Act.".

SEC. 36. Section 508 of the Controlled Substances Act (21 U.S.C. 878) is amended by—

(1) inserting "(a)" before "Any officer or employee";

(2) inserting after "Drug Enforcement Administration" the following: "or any State or local law enforcement officer"; and

(3) adding at the end thereof the following new subsection:

"(b) State and local law enforcement officers performing functions under this section shall not be deemed Federal employees and shall not be subject to provisions of law relating to Federal employees, except that such officers shall be subject to section 3374(c) of title 5, United States Code.".

SEC. 37. (a) Paragraph (1) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)) is amended—

(1) in subparagraph (A) by striking out clauses (i), (ii), and (iii) and inserting in lieu thereof the following:

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);";

(2) in subparagraph (B) by inserting "a mixture or substance containing a detectable amount of" after "a kilogram or more of";

(3) in subparagraph (C) by inserting "a mixture or substance containing a detectable amount of" after "500 grams or more of";

(4) in subparagraph (D) by inserting "a mixture or substance containing a detectable amount of" after "5 grams or more of"; and

(5) by adding at the end thereof, "If a sentence under this paragraph provides for imprisonment, the sentence shall include a special parole term of not less than four years in addition to such term of imprisonment.".

(b) Paragraph (3) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(3)) is amended by striking out ", except as provided in paragraph (4)".

LABOR RACKETEERING AMENDMENT (CHAPTER VIII)

SEC. 38. Paragraph (2) of section 411(a) of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1111(a)(2)) is amended by striking out "entity" and inserting in lieu thereof "person".

CURRENCY AND FOREIGN TRANSACTIONS REPORTING ACT AMENDMENTS (CHAPTER IX)

SEC. 39. Paragraph (2) of section 5316(a) of title 31 of the United States Code is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

MISCELLANEOUS VIOLENT CRIME AMENDMENTS (CHAPTER X)

SEC. 40. Subsection (a) of section 373 of title 18 of the United States Code is amended by—

(1) inserting after the words "the person or property of another" the words ", or against such person's own property,"; and

(2) inserting before the word "death" the words "life imprisonment or".

SEC. 41. Subsection (c) of section 924 of title 18 of the United States Code is amended by—

(1) adding after the words "during and in relation to any" the words "felony described in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (21 U.S.C. 955a) or any";

(2) adding after the words "in addition to the punishment provided for such" the words "felony or"; and

(3) adding after the words "term of imprisonment including that imposed for the" the words "felony or".

SEC. 42. Subsection (a) of section 929 of title 18 of the United States Code is amended by—

(1) adding after the words "during and in relation to the commission of a" the words "felony described in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (21 U.S.C. 855a), or a";

(2) adding after the words "in addition to the punishment provided for the commission of such" the words "felony or"; and

(3) adding after the words "term of imprisonment including that imposed for the felony" the words "or crime of violence".

SEC. 43. (a) Subsection (d) of section 1201 of title 18 of the United States Code is amended by adding the words "or (a)(5)" after the words "subsection (a)(4)".

(b) Paragraph (2) of section 115(b) of title 18 of the United States Code is amended to read as follows:

"(2) A kidnaping or attempted kidnaping in violation of this section shall be punished as provided in section 1201 of this title for the kidnaping or attempted kidnaping of a person described in section 1201(a)(5) of this title.".

SEC. 44. (a) Chapter 65 of title 18 of the United States Code is amended by redesignating section 1365 as enacted by Public Law 98-473 as section 1366.

(b) The analysis at the beginning of chapter 65 of title 18 of the United States Code is amended by striking out "1365" the second time it appears and inserting in lieu thereof "1366".

SERIOUS NONVIOLENT OFFENSES (CHAPTER XI)

SEC. 45. Section 215 of title 18 of the United States Code is amended—

(1) in subsections (a) and (b) by inserting the words ", bank holding company, or savings and loan holding company" after the words "financial institution" the second and third place in which they appear;

(2) in subsection (c)(1)(D) by striking out "Administrator of the"; and

(3) in subsection (d) by inserting the words ", bank holding company, or savings and loan holding company" after the words "financial institution" each place in which they appear.

SEC. 46. Section 219 of title 18 of the United States Code is amended—

(1) in the first paragraph to read:

"Whoever, being a public official, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938, as amended, shall be fined not more than $10,000 or imprisoned for not more than two years, or both."; and

(2) in the last paragraph by striking out "the Delegate from the District of Columbia" and inserting in lieu thereof "Delegate", and by striking out ", or a juror".

SEC. 47. (a) Chapter 25 of title 18 of the United States Code is amended by redesignating section 510 as enacted by Public Law 98-473 as section 513.

(b) The analysis at the beginning of chapter 25 of title 18 of the United States Code is amended by striking out

"510. Securities of the State and private entities.",

and by adding at the end thereof

"513. Securities of the States and private entities.".

SEC. 48. (a) Sections 1791 and 1792 of title 18 of the United States Code are amended by striking out the phrase "Federal penal or correctional facility" each time it appears and inserting in lieu thereof "Federal penal, detention, or correctional facility".

(b) Section 1791 of title 18 of the United States Code is further amended—

(1) in subparagraph (a)(1)(B) by adding the words "ammunition or" before "any other weapon";

(2) in subparagraph (a)(1)(C) by adding before the semicolon the words ", lysergic acid diethylamide, or phencyclidine";

(3) in subparagraph (a)(1)(D) by striking out "other than a narcotic drug, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)" and inserting in lieu thereof "other than a controlled substance described in subparagraph (C)"; and

(4) by making subsection (c) read as follows:

"(c) DEFINITIONS.—As used in this section, 'ammunition', 'firearm', and 'destructive device' have the meaning given those terms, respectively, in section 921 of title 18 of the United States Code.".

PROCEDURAL AMENDMENTS (CHAPTER XII)

SEC. 49. Subsection (e) of section 1028 of title 18 of the United States Code is amended by striking out "title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481)" and inserting in lieu thereof "chapter 224 of this title".

SEC. 50. Subsection (f) of section 1029 of title 18 of the United States Code is amended by striking out "title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481)" and inserting in lieu thereof "chapter 224 of this title".

SEC. 51. Section 3076 of title 18 of the United States Code is amended by striking out "title V of the Organized Crime Control Act of 1970" and inserting in lieu thereof "chapter 224 of this title".

SEC. 52. Section 3522 of title 18 of the United States Code is amended—

(1) in subsection (a) by striking out the word "parolees" in the second sentence and inserting in lieu thereof "probationers or parolees, as the case may be";

(2) in subsection (b)—

(A) by striking out "subsection (a)" and inserting in lieu thereof "probation or parole"; and

(B) by striking out the word "shall" and inserting in lieu thereof "may";

(3) by striking out subsection (c); and

(4) by redesignating subsection (d) as subsection (c).

SEC. 53. Section 1921 of title 28 of the United States Code is amended by adding the following new paragraph at the end thereof:

"Notwithstanding the provisions of section 3302 of title 31, the United States Marshals Service is authorized, to the extent provided in appropriations Acts, to credit to its appropriation account all fees, commissions, and expenses collected for—

"(1) the service of civil process, including complaints, summonses, subpenas, and similar process; and

"(2) seizures, levies, and sales associated with judicial orders of execution,

by the United States Marshals Service and to use such credited amounts for the purpose of carrying out such activities.".

VICTIM COMPENSATION AND ASSISTANCE (CHAPTER XIV)

SEC. 54. Section 3013 of title 18 of the United States Code is amended by adding the following new subsection at the end thereof:

"(c) No assessment shall be imposed on any person convicted of an offense for which local rules of the district court, or other Federal law, establishes that collateral may be posted in lieu of appearance in court.".

SEC. 55. Subsection (a) of section 3671 of title 18 of the United States Code, as enacted by section 1406(a) of the Comprehensive Crime Control Act of 1984, is amended by striking out "chapter 227 or 231 of" after the words "an order of restitution under".

SEC. 56. (a) Sections 3671 and 3672 of title 18 of the United States Code, as enacted by section 1406(a) of the Comprehensive Crime Control Act of 1984, are redesignated as sections 3681 and 3682, respectively.

(b) The sectional analysis of chapter 232 of title 18 of the United States Code, as added by section 1406(a) of the Comprehensive Crime Control Act of 1984, is amended by striking out "3671" and "3672" and inserting in lieu thereof "3681" and "3682", respectively.

SEC. 57. (a) Chapter 232 of title 18 of the United States Code, as enacted by section 1406(a) of the Comprehensive Crime Control Act of 1984, is redesignated as chapter 232A.

(b) The chapter analysis of part II of title 18 of the United States Code is amended by striking out the item relating to chapter 232, as added by section 1406(b) of the Comprehensive Crime Control Act of 1984, and inserting in lieu thereof the following:

"232A. Special forfeiture of collateral profits of crime..... 3681".

SEC. 58. Subsection (e) of section 1402 of the Comprehensive Crime Control Act of 1984 is amended by—

(1) striking out "the next succeeding fiscal year" and inserting in lieu thereof "the next two succeeding fiscal years"; and

(2) striking out "year" after "at the end of which".

SEC. 59. Section 1407 of the Comprehensive Crime Control Act of 1984 is amended—

(1) in subsection (h) by striking out "1302" and inserting in lieu thereof "1402"; and

(2) by redesignating subsection (h) as subsection (g).

SEC. 60. Chapter XIV of the Comprehensive Crime Control Act of 1984 is amended by striking out section 1410.

TRADEMARK COUNTERFEITING (CHAPTER XV)

SEC. 61. (a) Chapter 113 of the title 18 of the United States Code is amended by redesignating section 2320 as enacted by Public Law 98-473 as section 2321.

(b) The analysis at the beginning of chapter 113 of title 18 of the United States Code is amended by striking out

"2320. Trafficking in counterfeit goods or services."

and by adding at the end thereof

"2321. Trafficking in counterfeit goods or services.".

ACCESS DEVICES AND COMPUTER (CHAPTER XXI)

SEC. 62. (a) Section 1030 of title 18 of the United States Code is amended by adding the following new paragraph at the end thereof:

"(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.".

(b) Delete paragraph (3) of subsection (a) of section 1030 of title 18 of the United States Code.

(c) Delete "or" after the semicolon at the end of paragraph (2) of subsection (a) of section 1030 of title 18 of the United States Code, and insert "or" after the semicolon at the end of paragraph (1) of subsection (a) of section 1030 of title 18 of the United States Code.

MISCELLANEOUS AMENDMENTS

SEC. 63. Section 3 of title 18 of the United States Code is amended by inserting before the word "death" the words "life imprisonment or".

SEC. 64. (a) Chapter 1 of title 18 of the United States Code is amended by adding a new section 17 as follows:

"§ 17. Organization defined

"For purposes of this title, the term 'organization' means a person other than an individual.".

(b) The sectional analysis for chapter 1 of title 18 of the United States Code is amended by adding after the item relating to section 16 the following:

"17. Organization defined.".

SEC. 65. Subsection (a) of section 201 of title 18 of the United States Code is amended by striking out "the Delegate from the

District of Columbia" and inserting in lieu thereof "Delegate".

SEC. 66. Paragraph (1) of section 203(a) of title 18 of the United States Code is amended by striking out "Delegate from the District of Columbia, Delegate Elect from the District of Columbia" and inserting in lieu thereof "Delegate, Delegate Elect".

SEC. 67. Subsection (h) of section 844 of title 18 of the United States Code is amended to read as follows:

"(h) Whoever uses fire or an explosive to commit, or carries an explosive during the commission of, any felony which may be prosecuted in a court of the United States, including a felony which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device, shall, in addition to the punishment provided for such felony, be sentenced to imprisonment for five years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for ten years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the felony in which the fire or explosive was used or the explosive was carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.".

SEC. 68. Section 1961(a) of title 18 of the United States Code is amended by adding, after the words "section 1511 (relating to the obstruction of State or local law enforcement)," the words "section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant),".

SEC. 69. The first and second paragraphs of section 2315 of title 18 of the United States Code are amended by—

(1) inserting "possesses," after "receives,"; and

(2) striking out "moving as, or which are a part of, or which constitute interstate or foreign commerce," and inserting in lieu thereof "which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken,".

SEC. 70. Subsection (m) of section 223 of the Comprehensive Crime Control Act of 1984 is amended in paragraph (3)(B) to read as follows:

"(B) by amending subsection (b) to read as follows:

"'(b) An offender transferred to the United States to serve a sentence of imprisonment that is longer than the maximum period of time specified in the applicable sentencing guideline promulgated pursuant to section 994(a)(1) of title 28, United States Code, as determined by the Bureau of Prisons, shall serve in an official detention facility the maximum period of time specified in the applicable sentencing guideline and shall serve the remainder of the term imposed as a term of supervised release. To the extent permitted by the applicable treaty, a determination by the Bureau of Prisons as to whether the transferred offender shall serve a term of supervised release and the length of such term to be served may be appealed to the United States court of appeals for the district in which the offender is imprisoned after transfer to the United States, and the court of appeals shall decide and dispose of the appeal in accordance with section 3742 as though the determination appealed had been imposed by the United States district court. A determination by the Bureau of Prisons shall be made only after affording the transferred offender an opportunity (1) to submit evidence or information as the applicable sentencing guideline, and (2) for an appeal within the Bureau of Prisons of such detemination by a reviewing authority established by the Director pursuant to regulations.'; and".

SEC. 71. Section 3142(c)(2)(J) of title 18 of the United States Code is amended by inserting ", psychological," after "medical".

SEC. 72. Paragraphs (3) of subsections (d), (g), and (h) of section 922 of title 18 of the United States Code are amended by deleting the words "marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954)" and inserting in lieu thereof the words "marihuana or any depressant or stimulant substance or narcotic drug (as those terms are defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802)".

SEC. 73. Section 875 of title 18 of the United States Code is amended by striking the phrase "transmits in interstate commerce" each place where it appears and inserting in lieu thereof the words, "transmits in interstate or foreign commerce".

SEC. 74. Section 351 of title 18 of the United States Code is amended—

(a) in subsection (a) by adding after "Deputy Director of Central Intelligence," the words "a major candidate for the office of President or Vice-President, as defined in subsection (a)(7) of section 3056 of this title", and

(b) in subsection (h) by deleting the words "an official" and inserting in lieu thereof "a person".

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. BERMAN

Mr. BERMAN. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. BERMAN:

Strike all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Criminal Law and Procedure Technical Amendments Act of 1986".

SEC. 2. STYLISTIC CORRECTION.

(a) IN GENERAL.—Section 3673 of title 18, United States Code, is amended—

(1) by redesignating paragraphs (a) through (c) as paragraphs (1) through (3), respectively; and

(2) by inserting "the term" before each open quotation mark.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the taking effect of section 3673 of title 18, United States Code.

SEC. 3. CONFORMING REPEAL.

(a) IN GENERAL.—Section 4216 of title 18, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 311 of title 18, United States Code, is amended by striking out the item related to section 4216.

SEC. 4. CROSS REFERENCE CORRECTION.

Section 992(c) of title 28, United States Code, is amended by striking out "section 225(a)(1)(B)(ii) of the Sentencing Reform Act of 1983" and inserting in lieu thereof "section 235(a)(1)(B)(ii) of the Sentencing Reform Act of 1984".

SEC. 5. REPEAL OF OBSOLETE PROVISION.

Section 993(b)(2) of title 28, United States Code, is amended by striking out the sentence beginning "Before the appointment".

SEC. 6. SENTENCING COMMISSION.

(a) RESIDENCE REQUIREMENT WAIVED FOR MEMBERS.—Section 992 of title 28, United States Code, is amended by adding at the end the following:

"(d) Sections 44(c) and 134(b) of this title (relating to the residence of judges) do not apply to any judge holding a full-time position on the Commission under subsection (c) of this section.".

(b) DUTIES.—Section 994 of title 28, United States Code, is amended—

(1) in subsection (h), by striking out "by section 3581(b) of title 18, United States Code,";

(2) in each of subsections (h) and (i), by striking out "will"; and

(3) in subsection (t)—

(A) by inserting "in what circumstances and" after "specify"; and

(B) by striking out "that are outside the applicable guideline ranges".

SEC. 7. PRESENTENCE REPORTS.

(a) IN GENERAL.—Section 3552 of title 18, United States Code, is amended—

(1) in the third sentence of subsection (b), by striking out "take" and inserting "be" in lieu thereof;

(2) in the eighth sentence of subsection (b), by inserting ", if the defendant is in custody," after "the United States marshal shall"; and

(3) in subsection (c), by striking out "it may" and all that follows through "4247." and inserting in lieu thereof "the court may order the same psychiatric or psychological examination and report thereon as may be ordered under section 4244(b) of this title.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the taking effect of section 3552 of title 18, United States Code.

SEC. 8. RESTITUTION ORDERS.

(a) IN GENERAL.—Section 3553(c) of title 18, United States Code, is amended by striking out "If the sentence does not include an order of restitution" and inserting in lieu thereof "If the court does not order restitution, or orders only partial restitution".

(b) CONFORMING AMENDMENT.—Section 3579(a) of title 18, United States Code, is amended—

(1) by striking out "(1)" where it appears after "(a)"; and

(2) by striking out paragraph (2).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the taking effect of section 3553 of title 18, United States Code.

SEC. 9. SENTENCING IN ABSENCE OF APPLICABLE GUIDELINE.

(a) IN GENERAL.—Section 3553(b) of title 18, United States Code, is amended by adding at the end thereof "In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, the applicable policy statements of the Sentencing Commission, and the purposes of sentencing set forth in subsection (a)(2).".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the

date of the taking effect of section 3553 of title 18, United States Code.

SEC. 10. ELIMINATION OF DISCHARGE OF LIABILITY FOR UNEXECUTED FINE OR OTHER PUNISHMENT IMPOSED BY FULFILLMENT OF PROBATION TERMS AND CONDITIONS.

(a) IN GENERAL.—Section 3561(a) of title 18, United States Code, as added by section 212(a) of the Comprehensive Crime Control Act of 1984, is amended by striking out the second sentence.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the taking effect of such section 3561(a).

SEC. 11. ELIMINATION OF SECTION CROSS REFERENCE RELATING TO AUTHORIZED IMPRISONMENT AS A CONDITION OF PROBATION.

(a) IN GENERAL.—Section 3563(b)(11) of title 18, United States Code, as added by section 212(a) of the Comprehensive Crime Control Act of 1984, is amended by striking out "in section 3581(b)".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the taking effect of such section 3563(b)(11).

SEC. 12. MODIFICATION OF CONDITIONS OF PROBATION.

(a) TITLE 18 AMENDMENT.—Section 3563(c) of title 18, United States Code, is amended—

(1) by striking out ", after a hearing";

(2) by inserting "the provisions of the Federal Rules of Criminal Procedure relating to revocation or modification of probation" after "pursuant to".

(b) RULES AMENDMENT.—Rule 32.1(b) of the Federal Rules of Criminal Procedure is amended—

(1) by inserting "to be" after "relief";

(2) by striking out the period at the end and inserting in lieu thereof ", and the attorney for the government, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the probationer for the purposes of this rule.".

(c) EFFECTIVE DATES.—(1) The amendments made by subsection (a) shall take effect on the date of the taking effect of such section 3563(c).

(2) The amendments made by subsection (b) shall take effect 30 days after the date of enactment of this Act.

SEC. 13. CONCURRENCE OF SENTENCE OF PROBATION.

(a) IN GENERAL.—Section 3564(b) of title 18, United States Code, as added by section 212(a) of the Comprehensive Crime Control Act of 1984, is amended by striking out the second sentence and inserting in lieu thereof the following: "A term of probation runs concurrently with any Federal, State, or local term of probation, supervised release, or parole for another offense to which the defendant is subject or becomes subject during the term of probation. A term of probation does not run while the defendant is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than thirty consecutive days.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the taking effect of such section 3564.

SEC. 14. AMENDMENTS RELATING TO SUPERVISED RELEASE.

(a) IN GENERAL.—Section 3583(e) of title 18, United States Code, is amended—

(1) by striking out "**Modification of term or conditions.**" and inserting "**Modification of conditions or revocation.**" in lieu thereof; and

(2) in paragraph (1), by striking out "previously ordered".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

SEC. 15. DUTIES OF PROBATION OFFICER.

(a) IN GENERAL.—Section 3603 of title 18, United States Code, is amended—

(1) by redesignating paragraphs (a) through (h) as paragraphs (1) through (8), respectively;

(2) in paragraph (6) as so redesignated—

(A) by striking out "supervise" and inserting "assist in the supervision of" in lieu thereof; and

(B) by inserting a comma after "about".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the taking effect of section 3603 of title 18, United States Code.

SEC. 16. CREDIT TOWARD SERVICE OF TERM OF IMPRISONMENT.

(a) IN GENERAL.—Subsection (b) of the section 3624 of title 18, United States Code, as added by section 212(a) of the Comprehensive Crime Control Act of 1984, is amended by striking out "after" the first place it appears and inserting "at the end of" in lieu thereof.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the taking effect of such section 3624.

SEC. 17. CONCURRENCE OF RUNNING OF TERM OF SUPERVISED RELEASE.

(a) IN GENERAL.—Subsection (e) of section 3624 of title 18, United States Code, as added by section 212(a) of the Comprehensive Crime Control Act of 1984, is amended—

(1) by striking out ". The term" the second place it appears and inserting "and" in lieu thereof;

(2) by striking out ", except that it" and inserting ". A term of supervised release" in lieu thereof;

(3) by striking out ", other than during limited intervals as a condition of probation or supervised release,"; and

(4) by inserting before the period at the end of the third sentence the following: "unless the imprisonment is for a period of less than 30 consecutive days".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the taking effect of such section 3624.

SEC. 18. PERMANENT AMENDMENT RELATING TO DUTIES OF DIRECTOR OF ADMINISTRATIVE OFFICE.

(a) IN GENERAL.—The section of title 18, United States Code, that is redesignated section 3672 by section 212(a) of the Comprehensive Crime Control Act of 1984 is amended by adding at the end thereof:

"He shall have the authority to contract with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an alcohol-dependent person, or an addict or a drug-dependent person within the meaning of section 2 of the Public Health Service Act (42 U.S.C. 201). This authority shall include the authority to provide equipment and supplies; testing; medical, educational, social, psychological, and vocational services; corrective and preventive guidance and training; and other rehabilitative services designed to protect the public and benefit the alcohol dependent person, addict, or drug dependent person by eliminating his dependence on alcohol or addicting drugs, or by controlling his dependence and his susceptibility to addiction. He may negotiate and award such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

"He shall pay for presentence studies and reports by qualified consultants and presentence examinations and reports by psychiatric or psychological examiners ordered by the court under subsection (b) or (c) of section 3552, except for studies conducted by the Bureau of Prisons.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the taking effect of such redesignation.

SEC. 19. INTERIM AMENDMENT RELATING TO DUTIES OF DIRECTOR OF ADMINISTRATIVE OFFICE.

The second paragraph of section 4255 of title 18, United States Code, is amended to read as follows:

"The Director of the Administrative Office of the United States Courts shall have the authority to contract with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an alcohol-dependent person, or an addict or a drug-dependent person within the meaning of section 2 of the Public Health Service Act (42 U.S.C. 201). Such authority includes the authority to provide equipment and supplies; testing; medical, educational, social, psychological, and vocational services; corrective and preventive guidance and training; and other rehabilitative services designed to protect the public and benefit the alcohol dependent person, addict, or drug dependent person by eliminating that person's or addict's dependence on alcohol or addicting drugs, or by controlling that person's or addict's dependence and susceptibility to addiction. Such Director may negotiate and award such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).".

SEC. 20. POWER TO ORDER RESTITUTION IN LIEU OF OTHER SENTENCES.

(a) SECTION 3579 AMENDMENT.—Section 3579(a)(1) of title 18, United States Code, is amended by inserting ", in the case of a misdemeanor," after "in addition to or"

(b) SECTION 3556 AMENDMENT.—Section 3556 of title 18, United States Code, as amended by the Sentencing Reform Act of 1984, is amended by striking out "under this title" and all that follows through the end of such section and inserting in lieu thereof "may order restitution in accordance with sections 3663 and 3664.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the taking effect of section 212(a)(2) of the Sentencing Reform Act of 1984.

SEC. 21. JUVENILE DISPOSITIONAL HEARING.

(a) IN GENERAL.—Section 5037 of title 18, United States Code, as amended by section 214 of the Comprehensive Crime Control Act of 1984, is amended—

(1) in subsection (a), by striking out "(e)" and inserting "(d)" in lieu thereof;

(2) in subsection (c)(1)(B), by striking out "by section 3581(b)";

(3) in subsection (c)(2)(B), by striking out "by section 3581(b)"; and

(4) in subsection (c), by adding the following at the end thereof:

"Section 3624 is applicable to an order placing a juvenile under detention.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date the amendments made by such section 214 take effect.

SEC. 22. ELIMINATION OF CROSS REFERENCE.

(a) IN GENERAL.—Section 341 of the Public Health Service Act (42 U.S.C. 257(a)) is amended by striking out "and who are not

sentenced to treatment under the Narcotic Addict Rehabilitation Act of 1966".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date the amendments made by section 232(a) of the Comprehensive Crime Control Act of 1984 take effect.

SEC. 23. REDESIGNATION OF SUBSECTIONS.

Section 1963 of title 18, United States Code, is amended—

(1) in subsection (c) by striking out "(m)" and inserting in lieu thereof "(1)";

(2) in subsection (j) by striking out "(m)" and inserting in lieu thereof "(1)"; and

(3) by redesignating subsections (e), (f), (g), (h), (i), (j), (k), (l), and (m), as subsections (d), (e), (f), (g), (h), (i), (j), (k), and (l), respectively.

SEC. 24. OFFENDERS WITH MENTAL DISEASE OR DEFECT.

Subdivision (c) of Rule 12.2 of the Federal Rules of Criminal Procedure is amended by inserting "4241 or" before "4242".

SEC. 25. CORRECTION OF WRONG WORD USE.

(a) IN GENERAL.—Rule 32(c)(2)(B) of the Federal Rules of Criminal Procedure is amended by striking out "than" and inserting "from" in lieu thereof.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the taking effect of the amendment made by section 215(a)(5) of the Comprehensive Crime Control Act of 1984.

SEC. 26. SOLICITATION OFFENSE.

Section 373 of title 18, United States Code, is amended—

(1) by striking out "the person or property of another" and inserting in lieu thereof "property or against the person of another"; and

(2) by inserting "life imprisonment or" before "death".

SEC. 27. FORFEITURE FUND

(a) Section 524(c)(1)(E) of title 28, United States Code, is amended—

(1) by inserting "the Federal Bureau of Invesitgation, the United States Marshals Service," after "for official use by"; and

(2) by inserting a comma before "or".

(b) Paragraph (4) of section 524(c) of title 28 of the United States Code is amended by striking out "remaining after the payment of expenses for forfeiture and sale authorized by law" and inserting in lieu thereof ", except all proceeds of forfeitures available for use by the Secretary of the Treasury or the Secretary of the Interior pursuant to section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)) or section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d))".

SEC. 28. INSERTION OF MISSING WORD.

Section 405A(b) of the Controlled Substances Act (21 U.S.C. 845a(b)) is amended by inserting "parole" after "(2) at least three times any special".

SEC. 29. RENUMBERING OF SECTION IN CHAPTER 65.

(a) IN GENERAL.—Chapter 65 of title 18 of the United States Code is amended by redesignating the section 1365 relating to destruction of an energy facility as section 1366.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 65 of title 18, United States Code, is amended by striking out "1365" the second place it appears and inserting in lieu thereof "1366".

SEC. 30. REGISTRATION OF FOREIGN AGENTS.

Section 219 of title 18, United States Code, is amended—

(1) so that the first paragraph reads as follows:

"(a) Whoever, being a public official, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938, as amended, shall be fined under this title or imprisoned for not more than two years, or both.";

(2) by redesignating the second and third paragraphs as subsection (b) and (c), respectively; and

(3) in the last paragraph by striking out "the Delegate from the District of Columbia" and inserting in lieu thereof "Delegate", and by striking out ", or a juror".

SEC. 31. RENUMBERING OF SECTION IN CHAPTER 25.

(a) IN GENERAL.—Chapter 25 of title 18 of the United States Code is amended—

(1) by redesignating the section 511 relating to securities of States and private entities as section 513; and

(2) transferring the section so redesignated so that such section appears after section 512 (relating to forfeiture of certain motor vehicles and motor vehicle parts).

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 25 of title 18 of the United States Code is amended—

(1) by striking out "510. Securities of the State private entities."; and

(2) by adding at the end the following:

"513. Securities of the States and private entities.".

SEC. 32. ELIMINATION OF SUPERFLUOUS CROSS-REFERENCE.

Section 3731 of title 18, United States Code, is amended by striking out the fifth paragraph.

SEC. 33. CORRECTION OF CLERICAL ERROR AND DESIGNATION OF SUBSECTIONS.

(a) CORRECTION OF CLERICAL ERROR.—The first paragraph of section 2232 of title 18, United States Code, is amended by inserting "not" after "imprisoned".

(b) DESIGNATION OF SUBSECTIONS.—Section 2232 of title 18, United States Code, is amended—

(1) by designating the first paragraph as subsection (a); and

(2) by designating the second paragraph as subsection (b).

SEC. 34. RENUMBERING OF SECTION IN CHAPTER 1.

(a) IN GENERAL.—Section 20 of title 18, United States Code, is redesignated as section 17.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1 of title 18, United States Code, is amended by striking out "20" and inserting "17" in lieu thereof.

SEC. 35. COORDINATING EFFECTIVE DATES FOR INITIAL SET OF SENTENCING GUIDELINES AND THE NEW SENTENCING CHAPTERS OF TITLE 18.

Section 235(a)(1)(B) of the Comprehensive Crime Control Act of 1984 is amended—

(1) in clause (i), by striking out "the chapter" and inserting "such chapter 58" in lieu thereof; and

(2) in clause (ii)—

(A) by striking out ", and the provisions of sections 3581, 3583, and 3624 of title 18, United States Code,";

(B) by striking out "the day after";

(C) in subclause (III), by inserting "the day after" before "the Congress"; and

(D) so that subclause (IV) reads as follows:

"(IV) section 212(a)(2) takes effect, in the case of the initial sentencing guidelines so promulgated.".

SEC. 36. CLERICAL CORRECTIONS TO SECTION 1201 OF TITLE 18.

Section 1201(a) of title 18, United States Code, is amended—

(1) by striking out "when:" and inserting "when—" in lieu thereof;

(2) so that the margin of paragraph (5) is aligned with the margin of paragraphs (1) through (4);

(3) by striking out "The" in paragraph (5) and inserting "the" in lieu thereof; and

(4) by striking out "his official duties," and inserting "official duties;" in lieu thereof.

SEC. 37. CROSS REFERENCE DETAIL.

(a) PENALTY CROSS REFERENCE.—Paragraph (2) of section 115(b) of title 18, United States Code, is amended by inserting "for the kidnapping or attempted kidnapping of a person described in section 1201(a)(5) of this title" after "section 1201 of this title".

(b) INCLUSION OF CERTAIN ATTEMPTS IN 1201 CROSS REFERENCE.—Section 1201(d) of title 18, United States Code, is amended by inserting "or (a)(5)" after "subsection (a)(4)".

SEC. 38. GENERAL DEFINITION OF ORGANIZATION.

(a) IN GENERAL.—Chapter 1 of title 18, United States Code, is amended by adding after the section redesignated by section 23 the following:

"§ 18. Organization defined

"As used in this title, the term 'organization' means a person other than an individual.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1 of title 18, United States Code, is amended by adding at the end the following:

"18. Organization defined.".

SEC. 39. CREDITING OF MARSHAL'S FEES.

(a) IN GENERAL.—Section 1921 of title 28, United States Code, is amended—

(1) by striking out "Only" and inserting in lieu thereof "(a) Except as otherwise provided by law, only";

(2) by striking out ", except as otherwise provided";

(3) by inserting "(1)" before "For" the first place it appears;

(4) by inserting "(2)" before "For" the second place it appears;

(5) by inserting "(3)" before "For" the third place it appears;

(6) by inserting "(4)" before "For" the fourth place it appears;

(7) by inserting "(5)" before "For" the fifth place it appears;

(8) by inserting "(6)" before "For" the sixth place it appears;

(9) by inserting "(7)" before "For" the seventh place it appears;

(10) by inserting "(8)" before "For" the eighth place it appears;

(11) by inserting "(9)" before "For" the ninth place it appears;

(12) by inserting "(b)(1)" before "No mileage fees";

(13) by inserting "(2)" before "The marshal may require a deposit to cover";

(14) by striking out each semicolon that appears at the end of a paragraph and inserting in lieu thereof a period; and

(15) by adding at the end the following:

"(c) Notwithstanding section 3302 of title 31, the United States Marshals Service is authorized, to the extent provided in advance in appropriations Acts—

"(1) to credit to such Service's appropriation all fees, commissions, and expenses collected by such Service for—

"(A) the service of civil process, including complaints, summonses, subpoenas, and similar process; and

"(B) seizures, levies, and sales associated with judicial orders of execution; and

"(2) to use such credited amounts for the purpose of carrying out such activities.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect 30 days after the date of enactment of this Act.

SEC. 40. CROSS REFERENCE ELIMINATION.

Section 3671(a) in the chapter 232 of title 18, United States Code, that relates to special forfeiture of collateral profits of crime is amended by striking out "chapter 227 or 231 of".

SEC. 41. REDESIGNATION OF DUPLICATE SECTIONS AND CHAPTER.

(a) SECTION REDESIGNATION.—Sections 3671 and 3672 in the chapter 232 of title 18, United States Code, that relates to special forfeiture of collateral profits of crime are redesignated as sections 3681 and 3682, respectively.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of the chapter 232 of title 18, United States Code, that relates to special forfeiture of collateral profits of crime is amended by striking out "3671" and "3672" and inserting in lieu thereof "3681" and "3682", respectively.

(c) CHAPTER DESIGNATION.—The chapter 232 of title 18, United States Code, that relates to special forfeiture of collateral profits of crime is redesignated as chapter 232A.

(d) TABLE OF CHAPTERS.—The table of chapters at the beginning of part II of title 18, United States Code, is amended by striking out the item relating to the chapter 232 which relates to special forfeiture of collateral profits of crime and inserting in lieu thereof the following:

"232A. Special forfeiture of collateral profits of crime..... 3681".

SEC. 42. REDESIGNATION OF SECTION.

(a) IN GENERAL.—Chapter 113 of title 18, United States Code, is amended by redesignating the section 2320 that was enacted by Public Law 98-547 as section 2321.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113 of title 18, United States Code, is amended by striking out "2320" the second place it appears and inserting in lieu thereof "2321".

SEC. 43. ACCESSORY AFTER THE FACT.

Section 3 of title 18, United States Code, is amended by inserting "life imprisonment or" after "or if the principal is punishable by".

SEC. 44. CORRECTION OF ERRONEOUS CROSS REFERENCES.

(a) SECTION 1028 AMENDMENT.—Section 1028(e) of title 18, United States Code, is amended by striking out "title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481)" and inserting in lieu thereof "chapter 224 of this title".

(b) SECTION 1029 AMENDMENT.—Section 1029(f) of title 18, United States Code, is amended by striking out "title V of the Organized Crime Control Act of 1970)18 U.S.C. note prec. 3481)" and inserting in lieu thereof "chapter 224 of this title".

SEC. 45. CROSS REFERENCE CORRECTION.

Section 3076 of title 18, United States Code, is amended by striking out "title V of the Organized Crime Control Act of 1970" and inserting in lieu thereof "chapter 224 of this title".

SEC. 46. INCLUSION OF CERTAIN DELEGATES TO CONGRESS IN BRIBERY PROHIBITION.

(a) SUBSECTION (a) AMENDMENTS.—Section 201(a) of title 18, United States Code, is amended—

(1) by striking out "section:" and inserting "section—" in lieu thereof;

(2) in the first undesignated paragraph—

(A) by inserting "(1) the term" before " 'public official' ";

(B) by striking out "the Delegate from the District of Columbia," and inserting "Delegate," in lieu thereof;

(C) by striking out "after he has qualified," and inserting "after such official has qualified," in lieu thereof; and

(D) by striking out "juror; and" and inserting "juror;" in lieu thereof;

(3) in the second undesignated paragraph—

(A) by inserting "(2) the term" before " 'person"; and

(B) by striking out "he will be" and inserting "such person will be" in lieu thereof; and

(4) in the third undesignated paragraph—

(A) by inserting "(3) the term" before " 'official act' "; and

(B) by striking out "in his official capacity, or in his" and inserting "in such official's official capacity, or in such official's" in lieu thereof;

(b) SUBSECTION (b) AMENDMENTS.—Section 201(b) of title 18, United States Code, is amended—

(1) by striking out

"(b) Whoever directly"

and inserting in lieu thereof the following:

"(b) Whoever—

"(1) directly";

(2) in paragraph (3), by striking out "his lawful duty; or" and inserting "the lawful duty of such official or person;" in lieu thereof; and

(3) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively, and adjusting the margins so that such subparagraphs are indented 6 ems.

(c) SUBSECTION (c) AMENDMENTS.—Section 201(c) of title 18, United States Code, is amended—

(1) by striking out "(c) Whoever, being" and inserting "(2) being" in lieu thereof;

(2) by striking out "corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself" and inserting in lieu thereof "corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally";

(3) in paragraph (1), by striking out "his performance of any official act; or" and inserting in lieu thereof "the performance of any official act;"

(4) in paragraph (3), by striking out "his official duty; or" and inserting in lieu thereof "the official duty of such official or person;"; and

(5) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively, and adjusting the margins so that such subparagraphs are indented 4 ems.

(d) SUBSECTION (d) AMENDMENTS.—Section 201(d) of title 18, United States Code, is amended—

(1) by striking out "(d) Whoever, directly" and inserting "(3) directly" in lieu thereof; and

(2) by striking out "therefrom; or" and inserting "therefrom;" in lieu thereof;

(e) SUBSECTION (e) AMENDMENTS.—Section 201(e) of title 18, United States Code, is amended—

(1) by striking out "(e) Whoever, directly" and inserting "(4) directly";

(2) by striking out "asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself" and inserting in lieu thereof "demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally";

(3) by striking out "in his testimony" and inserting "in testimony" in lieu thereof;

(4) by striking out "therefrom—" and inserting "therefrom;" in lieu thereof; and

(5) in the undesignated paragraph—

(A) by striking out "Shall" and inserting "shall" in lieu thereof;

(B) by striking out "$20,000 or";

(C) by striking out "whichever is greater,";

(f) SUBSECTION (f) AMENDMENTS.—Section 201(f) of title 18, United States Code, is amended—

(1) by striking out

"(f) Whoever, otherwise"

and inserting in lieu thereof the following:

"(c) Whoever—

"(1) otherwise";

(2) by striking out "official duty, directly" and inserting in lieu thereof the following: "official duty—

"(A) directly";

(g) SUBSECTION (g) AMENDMENTS.—Section 201(g) of title 18, United States Code, is amended—

(1) by striking out

"(g) Whoever, being"

and inserting in lieu thereof

"(B) being";

(2) by striking out "indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself" and inserting in lieu thereof "indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally"; and

(3) by striking out "by him; or" and inserting in lieu thereof "by such official or person;";

(h) SUBSECTION (h) AMENDMENTS.—Section 201(h) of title 18, United States Code, is amended—

(1) by striking out

"(h) Whoever, directly"

and inserting in lieu thereof the following:

"(2) directly"; and

(2) by striking out "because of his absence therefrom; or" and inserting in lieu thereof "because of such person's absence therefrom;";

(i) SUBSECTION (i) AMENDMENTS.—Section 201(i) of title 18, United States Code, is amended—

(1) by striking out

"(i) Whoever, directly"

and inserting in lieu thereof the following:

"(3) directly";

(2) by striking out "asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive" and inserting in lieu thereof "demands, seeks, receives, accepts, or agrees to receive or accept";

(3) by striking out "for himself" and inserting "personally" in lieu thereof;

(4) by striking out "given by him" and inserting "given by such person" in lieu thereof;

(5) by striking out "his absence therefrom—" and inserting "such person's absence therefrom;" in lieu thereof; and

(6) in the undesignated paragraph—

(A) by striking out "Shall" and inserting "shall"; and

(B) by striking out "not more than $10,000" and inserting "under this title" in lieu thereof.

(j) SUBSECTION (j) AMENDMENTS.—Section 201(j) of title 18, United States Code, is amended—

(1) by striking out

"(j) Subsections (d), (e), (h), and (i)"

and inserting in lieu thereof the following:

"(d) Paragraphs (3) and (4) of subsection (b) and paragraphs (2) and (3) of subsection (c)"; and

(2) by striking out "involving a technical or professional opinion,".

(k) SUBSECTION (k) AMENDMENT.—Section 201(k) of title 18, United States Code, is amended by striking out

"(k) The"

and inserting in lieu thereof the following:

"(e) The".

(l) REALIGNMENT AMENDMENT.—Section 201 of title 18, United States Code, as amended by this section is further amended so that the margins of each subsection, and of the paragraphs and subparagraphs of each subsection, are flush, indented 2 ems, and indented 4 ems, respectively.

(m) EFFECTIVE DATE.—The amendments made by this section shall take effect 30 days after the date of enactment of this Act.

SEC. 47. INCLUSION OF CERTAIN DELEGATES TO CONGRESS IN PROHIBITION AGAINST RECEIVING COMPENSATION FOR SERVICES RENDERED IN CONNECTION WITH A PROCEEDING IN WHICH THE UNITED STATES IS A PARTY.

(a) IN GENERAL.—Section 203 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking out "indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any" and inserting in lieu thereof the following:

"indirectly—

"(1) demands, seeks, receives, accepts, or agrees to receive or accept any";

(B) by striking out "by himself or another—" and inserting in lieu thereof "personally or by another—";

(C) by striking out

"(1) at a time when he"

and inserting in lieu thereof the following:

"(A) at a time when such person";

(D) by striking out "Delegate from the District of Columbia, Delegate Elect from the District of Columbia," and inserting in lieu thereof "Delegate, Delegate Elect,";

(E) by striking out

"(2) at a time when he"

and inserting in lieu thereof the following:

"(B) at a time when such person"; and

(F) by striking out "commission, or" and inserting "commission; or" in lieu thereof;

(2) in subsection (b)—

(A) by striking out

"(b) Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives,"

and inserting in lieu thereof the following:

"(2) knowingly gives,"; and

(B) by striking out "employee—" and inserting "employee;" in lieu thereof; and

(C) in the undesignated paragraph, by striking out "Shall be fined not more than $10,000" and inserting in lieu thereof "shall be fined under this title";

(3) in subsection (c)—

(A) by striking out "parties (1) in which he" and inserting in lieu thereof the following:

"parties—

"(1) in which such employee";

(B) by striking out "otherwise, or (2) which is pending" and inserting in lieu thereof the following:

"otherwise; or

"(2) which is pending";

(C) by striking out "in which he is serving: Provided, That clause (2)" and inserting "in which such employee is serving except that paragraph (2) of this subsection"; and

(D) section 203 of title 18, United States Code, as amended by this section is further amended so that the margins of each subsection, and of the paragraphs and subparagraphs of each subsection, are flush, indented 2 ems, and indented 4 ems, respectively; and

(4) by redesignating subsection (c) as subsection (b).

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect 30 days after the date of enactment of this Act.

SEC. 48. CROSS REFERENCE AND INTERNAL SUBSECTION REDESIGNATION.

Section 1407 of the Victims of Crime Act of 1984 is amended—

(1) in subsection (h) by striking out "1302" and inserting in lieu thereof "1402"; and

(2) by redesignating subsection (h) as subsection (g).

SEC. 49. REPEAL OF SECTION 1410 OF THE VICTIMS OF CRIME ACT OF 1984.

The Victims of Crime Act of 1984 is amended by striking out section 1410.

SEC. 50. VICTIM AND WITNESS RELATED AMENDMENTS.

(a) NEW PREDICATE OFFENSES.—Section 1961(a) of title 18, United States Code, is amended by inserting "section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant)," after "section 1511 (relating to the obstruction of State or local law enforcement),".

(b) RULE OF CONSTRUCTION AS TO LEGAL REPRESENTATION.—Section 1515 of title 18, United States Code, is amended—

(1) in the heading of such section, by inserting "; general provision" after "provisions";

(2) by inserting "(a)" before "As"; and

(3) by adding at the end the following:

"(b) This chapter does not prohibit or punish the providing of lawful, bona fide, legal representation services in connection with or anticipation of an official proceeding.".

SEC. 51. RELEASE PENDING SENTENCE.

(a) IN GENERAL.—Section 3143 of title 18 of the United States Code is amended—

(1) in subsection (b)(2)—

(A) by striking out "reversal or" and inserting in lieu thereof, "reversal,"; and

(B) by inserting after "trial" the following: ", or a sentence that does not include a term of imprisonment"; and

(2) by adding at the end of subsection (c) the following:

"Except as provided in subsection (b) of this section, the judicial officer, in a case in which an appeal has been taken by the United States under section 3742, shall—

"(1) if the person has been sentenced to a term of imprisonment, order that person detained; and

"(2) in any other circumstance, release or detain the person under section 3142.".

(b) CONFORMING REPEAL.—The amendment made by section 223(f)(2) of the Comprehensive Crime Control Act of 1984 shall not take effect.

(c) EFFECTIVE DATE FOR SUBSECTION (a)(2).—The amendment made by subsection (a)(2) shall take effect on the date of the taking of effect of section 3742 of title 18, United States Code.

SEC. 52. REVISION OF PRISON CONTRABAND PROHIBITION.

(a) IN GENERAL.—Section 1791 of title 18 of the United States Code is amended to read as follows:

"§ 1791. Providing or possessing contraband in prison

"(a) OFFENSE.—Whoever—

"(1) in violation of a statute or a rule or order issued under a statute, provides to an inmate of a prison a prohibited object, or attempts to do so; or

"(2) being an inmate of a prison, makes, possesses, or obtains, or attempts to make or obtain, a prohibited object;

shall be punished as provided in subsection (b) of this section.

"(b) PUNISHMENT.—The punishment for an offense under this section is a fine under this title or—

"(1) imprisonment for not more than 10 years, or both, if the object is specified in subsection (c)(1)(A) of this section;

"(2) imprisonment for not more than 5 years, or both, if the object is specified in subsection (c)(1)(B) or (c)(1)(C) of this section;

"(3) imprisonment for not more than one year, or both, if the object is specified in subsection (c)(1)(D) or (c)(1)(E) of this section; and

"(4) imprisonment for not more than 6 months, or both, if the object is specified in subsection (c)(1)(F) of this section.

"(c) DEFINITIONS.—As used in this section—

"(1) the term 'prohibited object' means—

"(A) a firearm or destructive device;

"(B) ammunition, a weapon (other than a firearm or destructive device), or an object that is designed or intended to be used as a weapon or to facilitate escape from a prison;

"(C) a narcotic drug, lysergic acid diethylamide, or phencyclidine;

"(D) a controlled substance (other than a controlled substance referred to in subparagraph (C) of this subsection) or an alcoholic beverage;

"(E) any United States or foreign currency; and

"(F) any other object that threatens the order, discipline, or security of a prison, or the life, health, or safety of an individual;

"(2) the terms 'ammunition', 'firearm', and 'destructive device' have, respectively, the meanings given those terms in section 921 of this title;

"(3) the terms 'controlled substance' and 'narcotic drug' have, respectively, the meanings given those terms in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

"(4) the term 'prison' means a Federal correctional, detention, or penal facility.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect 30 days after the date of the enactment of this Act.

SEC. 53. ADDITIONAL CLASS OF INSTITUTIONS ADDED TO MUTINY AND RIOT PROHIBITION.

(a) IN GENERAL.—Section 1792 of title 18 of the United States Code is amended by inserting ", detention," after "penal".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect 30 days after the enactment of this Act.

SEC. 54. AMENDMENTS TO THE FEDERAL RULES OF CRIMINAL PROCEDURE RELATING TO CONDITIONAL RULING ON MOTION FOR NEW TRIAL AND SENTENCING.

(a) CONDITIONAL RULING.—Rule 29 of the Federal Rules of Criminal Procedure is amended by adding at the end the following:

"(d) SAME: CONDITIONAL RULING ON GRANT OF MOTION. If a motion for judgment of acquittal after verdict of guilty under this Rule is granted, the court shall also determine whether any motion for a new trial should be granted if the judgment of acquittal is thereafter vacated or reversed, specifying the grounds for such determination. If the motion for a new trial is granted conditionally, the order thereon does not affect the finality of the judgment. If the motion for a new trial has been granted conditionally and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. If such motion has been denied conditionally, the

appellee on appeal may assert error in that denial, and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect 30 days after the date of the enactment of this Act.

SEC. 55. STYLE CORRECTIONS TO CHAPTER 207 OF TITLE 18 AND ADDITION OF PSYCHOLOGICAL TREATMENT TO LIST OF TREATMENTS WHICH MAY BE REQUIRED AS CONDITION OF RELEASE UNDER THAT CHAPTER.

(a) CHAPTER AMENDMENT.—Chapter 207 of title 18, United States Code, is amended by striking out "pursuant to the provisions of" each place it appears and inserting "under" in lieu thereof.

(b) SECTION 3141 AMENDMENTS.—Section 3141(a) of title 18, United States Code, is amended—

(1) by striking out "who is";

(2) by striking out "pursuant to section" and inserting "under section" in lieu thereof;

(3) by inserting "before whom an arrested person is brought" after "of this title";

(4) by striking out "an arrested" and inserting "such" in lieu thereof; and

(5) by striking out "who is brought before him".

(c) SECTION 3142 AMENDMENTS.—Section 3142 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking out "his"; and

(ii) by inserting "of this section" after "subsection (b)";

(B) in paragraph (2), by inserting "of this section" after "subsection (c)";

(C) in paragraph (3), by inserting "of this section" after "subsection (d)";

(D) in paragraph (4), by inserting "of this section" after "subsection (e)";

(2) in subsection (b), by striking out "his" each place it appears;

(3) in subsection (c)—

(A) by inserting "(1)" before "If the judicial officer";

(B) by inserting "of this section" after "subsection (b)";

(C) by striking out "he" each place it appears and inserting "such judicial officer" in lieu thereof;

(D) by striking out "his" each place it appears;

(E) in paragraph (2)(A), by striking out "supervise him" and insert in lieu thereof "assume supervision";

(F) in paragraph (2)(J), by inserting ", psychological," after "medical";

(G) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B) respectively;

(H) by redesignating subparagraphs (A) through (N) as clauses (i) through (xiv) respectively;

(I) by designating the next to last sentence as paragraph (2); and

(J) by designating the last sentence as paragraph (3);

(4) in subsection (d)—

(A) by striking out "he" the first place it appears and inserting "such judicial officer" in lieu thereof; and

(B) by striking out "the person" and inserting "such person" in lieu thereof;

(C) by inserting "of this subsection" after "paragraph (1)(B); and

(D) by striking out "that he is" and all that follows through "lawfully admitted" and inserting "such person's United States citizenship or lawful admission";

(5) in subsection (e)—

(A) by inserting "of this section" after "subsection (f)";

(B) by striking out "described in (f)(1)" and inserting "described in subsection (f)(1) of this section" in lieu thereof;

(C) by inserting "of this section" after "subsection (f)(1)" each place it appears;

(D) by inserting "of this subsection" after "paragraph (1)" each place it appears;

(E) by striking out "prior to" and inserting "before" in lieu thereof;

(F) by striking out "he" and inserting "such judicial officer" in lieu thereof; and

(G) by striking out "the judge" and inserting "such judicial officer" in lieu thereof;

(6) in subsection (f)—

(A) by inserting "of this section" after "subsection (c)";

(B) by striking out "in a case";

(C) in paragraph (1), by inserting "in a case" after "Government,";

(D) in paragraph (1)(D), by inserting "of this paragraph" after "(C)" each place it appears;

(E) in paragraph (2)—

(i) by striking out "Upon" and inserting "upon" in lieu thereof; and

(ii) by inserting "in a case" after "own motion,";

(F) by striking out "on his own motion" and inserting "sua sponte" in lieu thereof;

(G) by striking out "whether he is an addict" and inserting "whether such person is an addict" in lieu thereof;

(H) by striking out "the person" and inserting "such person" in lieu thereof;

(I) by striking out "he is financially" and inserting "financially" in lieu thereof;

(J) by striking out "for him"; and

(K) by striking out "on his own behalf";

(7) in subsection (g)—

(A) in paragraph (3)—

(i) in subparagraph (A), by striking out "his" and inserting "the person's" in lieu thereof; and

(ii) in subparagraph (B), by striking out "he" and inserting "the person" in lieu thereof; and

(B) in paragraph (4), by inserting "of this section" after "(c)(2)(L)";

(8) in subsection (h)—

(A) by inserting "of this section" after "(c)"; and

(B) in paragraph (2)(C), by striking out "the provisions of"; and

(9) in subsection (i)—

(A) by inserting "of this section" after "(e)"; and

(B) by striking out "his".

(d) SECTION 3143 AMENDMENTS.—Section 3143 of title 18, United States Code, is amended—

(1) in subsections (a) and (b)(1), by striking out "pursuant to" each place it appears and inserting "under" in lieu thereof;

(2) in subsections (a), (b), and (c), by striking out "the provisions of" each place it appears;

(3) in subsection (b), by inserting "of this title" after "(c)" each place it appears;

(4) by striking out "he" each place it appears and inserting "such judicial officer" in lieu thereof; and

(5) in subsection (c), by inserting "of this title" after "3142".

(e) SECTION 3144 AMENDMENTS.—Section 3144 of title 18, United States Code, is amended—

(1) by striking out "subpena" and inserting "subpoena" in lieu thereof; and

(2) by inserting "of this title" after "3142".

(f) SECTION 3146 AMENDMENTS.—Section 3146 of title 18, United States Code, is amended—

(1) by striking out subsection (a) and all that follows through subsection (b) and inserting in lieu thereof the following:

"(a) OFFENSE.—Whoever, having been released under this chapter knowingly—

"(1) fails to appear before a court as required by the conditions of release; or

"(2) fails to surrender for service of sentence pursuant to a court order;

shall be punished as provided in subsection (b) of this section.

"(b) PUNISHMENT.—(1) The punishment for an offense under this section is—

"(A) if the person was released in connection with a charge of, or while awaiting sentence, surrender for service of sentence, or appeal or certiorari after conviction for—

"(i) an offense punishable by death, life imprisonment, or imprisonment for a term of 15 years or more, a fine under this title or imprisonment for not more than ten years, or both;

"(ii) an offense punishable by imprisonment for a term of five years or more, a fine under this title or imprisonment for not more than five years, or both;

"(iii) any other felony, a fine under this title or imprisonment for not more than two years, or both; or

"(iv) a misdemeanor, a fine under this chapter or imprisonment for not more than one year, or both; and

"(B) if the person was released for appearance as a material witness, a fine under this chapter or imprisonment for not more than one year, or both.

"(2) A term of imprisonment imposed under this section shall be consecutive to the sentence of imprisonment for any other offense.";

(2) in subsection (c)—

(A) by striking out "that he" the first place it appears and inserting in lieu thereof "to"; and

(B) by striking out "he appeared" and inserting in lieu thereof "the person appeared"; and

(3) in subsection (d)—

(A) by inserting "of this title" after "3142(b)";

(B) by striking out "section 3142 (c)(2)(K) or (c)(2)(L)" and inserting "clause (xi) or (xii) of section 3142(c)(1)(B) of this title" in lieu thereof.

(g) SECTION 3147 AMENDMENTS.—Section 3147 of title 18, United States Code, is amended—

(1) by striking out "pursuant to" each place it appears and inserting "under" in lieu thereof; and

(2) by inserting a comma after "for the offense".

(h) SECTION 3148 AMENDMENTS.—Section 3148 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting "of this title" after "3142";

(2) in subsection (b)—

(A) by striking out "his" the first place it appears and inserting "such person's" in lieu thereof;

(B) by striking out "his" each other place it appears;

(C) by striking out "he" the first place it appears and inserting "such person" in lieu thereof;

(D) by inserting a comma after "period of release";

(E) by inserting "of this title" after "3142(g)"

(F) by striking out "he" the second place it appears and inserting "the judicial officer" in lieu thereof; and

(G) by inserting "of this title" after "3142"; and

(3) in subsection (c)—

(A) by striking out "judge" and inserting "judicial officer" in lieu thereof;

(B) by inserting "of this title" after "401"; and

(C) by striking out "his".

(i) SECTION 3156 AMENDMENTS.—Section 3156(a) of title 18, United States Code, is amended—

(1) by striking out "The term" each place it appears and inserting "the term" in lieu thereof; and

(2) by striking out "and" at the end of paragraph (2).

(j) EFFECTIVE DATE.—The amendments made by this section shall take effect 30 days after the date of enactment of this Act.

SEC. 56. CORRECTION OF PRINTING ERROR IN SENTENCING GUIDELINES ACT OF 1986.

Section 994(b)(2) of title 28, United States Code, is amended by striking out "that, if the maximum" and inserting "that, if the minimum" in lieu thereof.

SEC. 57. DISCLOSURES WITH RESPECT TO CERTAIN CONVICTS AND AMENDMENT RELATING TO PAROLE REGIONS.

(a) DISCLOSURE BY ATTORNEY GENERAL.—Section 4082 of title 18, United States Code, is amended—

(1) by redesignating subsection (f) as subsection (g), and

(2) by inserting after subsection (e) the following new subsection:

"(f)(1) The Attorney General shall, upon the request of the head of any law enforcement agency of a State or of a unit of local government in a State, make available as expeditiously as possible to such agency, with respect to prisoners who have been convicted of felony offenses against the United States and who are confined at a facility which is a residential community treatment center located in the geographical area in which such agency has jurisdiction, the following information maintained by the Bureau of Prisons (to the extent that the Bureau of Prisons maintains such information)—

"(A) the names of such prisoners;

"(B) the community treatment center addresses of such prisoners;

"(C) the dates of birth of such prisoners;

"(D) the Federal Bureau of Investigation numbers assigned to such prisoners;

"(E) photographs and fingerprints of such prisoners; and

"(F) the nature of the offenses against the United States of which each such prisoner has been convicted and the factual circumstances relating to such offenses.

"(2) Any law enforcement agency which receives information under this subsection shall not disseminate such information outside of such agency.".

(b) DISCLOSURE BY COMMISSION.—Section 4203 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(e)(1) The Commission shall, upon the request of the head of any law enforcement agency of a State or of a unit of local government in a State, make available as expeditiously as possible to such agency, with respect to individuals who are under the jurisdiction of the Commission, who have been convicted of felony offenses against the United States, and who reside, are employed, or are supervised in the geographical area in which such agency has jurisdiction, the following information maintained by the Commission (to the extent that the Commission maintains such information)—

"(A) the names of such individuals;

"(B) the addresses of such individuals;

"(C) the dates of birth of such individuals;

"(D) the Federal Bureau of Investigation numbers assigned to such individuals;

"(E) photographs and fingerprints of such individuals; and

"(F) the nature of the offenses against the United States of which each such individual has been convicted and the factual circumstances relating to such offense.

"(2) Any law enforcement agency which receives information under this subsection shall not disseminate such information outside of such agency.".

(c) PAROLE REGIONS.—Section 4203(a)(2) of title 18, United States Code, is amended by striking out ", but in no event less than five".

SEC. 58. PAROLE-RELATED CORRECTIONS.

(a) NATIONAL APPEALS BOARD.—Section 4204(a)(5) of title 18, United States Code, is amended by striking out "three" and inserting in lieu thereof "not fewer than three".

(b) PERSONAL CONFERENCE WITH REPRESENTATIVE OF COMMISSION.—Section 4208(g) of title 18, United States Code, is amended by striking out "the Commissioners or examiners conducting the proceeding" and inserting "a representative of the Commission" in lieu thereof.

(c) CONDITIONS OF PAROLE.—Section 4209(d)(1) of title 18, United States Code, is amended by adding at the end thereof the following: "Notwithstanding any other provision of this paragraph, the Commission may modify conditions of parole, without regard to such ten-day period, on any such motion if the Commission determines that the immediate modification of conditions of parole is required to prevent harm to the parolee or to the public.".

(d) RUNNING OF TERMS.—Section 4210(b)(2) of title 18, United States Code, is amended—

(1) by striking out "a Federal, State, or local crime" and inserting "any criminal offense" in lieu thereof; and

(2) by striking out "crime" the second place it appears and inserting "offense" in lieu thereof.

(e) ELIMINATION OF OBSOLETE PROVISION.—Section 4210 of title 18, United States Code, is amended—

(1) by striking out subsection (e); and

(2) by redesignating subsection (f) as subsection (e).

(f) REVOCATION OF PAROLE.—Section 4214(b)(1) of title 18, United States Code, is amended—

(1) by striking out "a Federal, State, or local crime" and inserting in lieu thereof "any criminal offense"; and

(2) by striking out "a crime" and inserting "an offense" in lieu thereof.

(g) ELIMINATION OF OBSOLETE SECTION.—(1) Title 18, United States Code, is amended by striking out section 4217.

(2) The table of sections at the beginning of chapter 311 of title 18, United States Code, is amended by striking out the item relating to section 4217.

SEC. 59. PROGRAM THEFT AND BRIBERY.

(a) IN GENERAL.—Section 666 of title 18, United States Code, is amended to read as follows:

"§ 666. Theft or bribery concerning programs receiving Federal funds

"(a) Whoever, if the circumstance described in subsection (b) of this section exists—

"(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof—

"(A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that—

"(i) is valued at $5,000 or more, and

"(ii) is owned by, or is under the care, custody, or control of such organization, government, or agency; or

"(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of $5,000 or more; or

"(2) corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more;

shall be fined under this title, imprisoned not more than 10 years, or both.

"(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

"(c) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

"(d) As used in this section—

"(1) the term 'agent' means a person authorized to act on behalf of another person or a government and, in the case of an organization or government, includes a servant or employee, and a partner, director, officer, manager, and representative;

"(2) the term 'government agency' means a subdivision of the executive, legislative, judicial, or other branch of government, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established, and subject to control, by a government or governments for the execution of a governmental or intergovernmental program; and

"(3) the term 'local' means of or pertaining to a political subdivision within a State.".

SEC. 60. EXTENSION OF CERTAIN PROTECTIONS FOR FAMILY MEMBERS OF CERTAIN OFFICIALS TO THOSE OFFICIALS.

Section 115(a) of title 18, United States Code, is amended—

(1) by striking out "18 U.S.C. 1114, as amended," and inserting "section 1114 of this title, or threatens to assault, kidnap, or murder, a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under such section" in lieu thereof;

(2) by striking out "he is"; and

(3) by striking out "his".

SEC. 61. KILLING WITNESSES.

Section 1512 of title 18, United States Code, is amended—

(1) in subsection (a)(1), by inserting ", delay, or prevent" after "influence";

(2) by inserting after the catchline the following:

"(a)(1) Whoever kills or attempts to kill another person, with intent to—

"(A) prevent the attendance or testimony of any person in an official proceeding;

"(B) prevent the production of a record, document, or other object, in an official proceeding; or

"(C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under this subsection is—

"(A) in the case of a killing, the punishment provided in sections 1111 and 1112 of this title; and

"(B) in the case of an attempt, imprisonment for not more than twenty years."; and

(3) by redesignating subsections (a) through (f) as subsections (b) through (g) respectively.

SEC. 62. PROTECTION FOR MAJOR PRESIDENTIAL AND VICE PRESIDENTIAL CANDIDATES.

Section 351 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting "a major Presidential or Vice Presidential candidate (as defined in section 3056 of this title)" after "Central Intelligence,"; and

(2) in subsection (h), by striking out "official" and inserting "individual" in lieu thereof.

SEC. 63. ADDITION OF FOREIGN COMMERCE TO COMMUNICATION OF THREAT OFFENSES.

Section 875 of title 18, United States Code, is amended by inserting "or foreign" after "interstate" each place it appears.

SEC. 64. TRESPASS ON BUREAU OF PRISONS RESERVATIONS AND LAND.

(a) IN GENERAL.—Chapter 87 of title 18, United States Code, is amended by inserting after section 1792 the following new section:

"§ 1793. Trespass on Bureau of Prisons reservations and land

"Whoever, without lawful authority or permission, goes upon a reservation, land, or a facility of the Bureau of Prisons shall be fined not more than $500 or imprisoned not more than six months, or both."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 87 of title 18, United States Code, is amended by adding at the end the following new item:

"1793. Trespass on Bureau of Prisons reservations and land."

SEC. 65. ARREST AUTHORITY.

(a) IN GENERAL.—The first sentence of section 3050 of title 18, United States Code, is amended to read as follows:

"An officer or employee of the Bureau of Prisons may—

"(1) make arrests on or off of Bureau of Prisons property without warrant for violations of the following provisions regardless of where the violation may occur: sections 111 (assaulting officers), 751 (escape), and 752 (assisting escape) of title 18, United States Code, and section 1826(c) (escape) of title 28, United States Code;

"(2) make arrests on Bureau of Prisons premises or reservation land of a penal, detention, or correctional facility without warrant for violations occurring thereon of the following provisions: sections 661 (theft), 1361 (depredation of property), 1363 (destruction of property), 1791 (contraband), 1792 (mutiny and riot), and 1793 (trespass) of title 18, United States Code; and

"(3) arrest without warrant for any other offense described in title 18 or 21 of the United States Code, if committed on the premises or reservation of a penal or correctional facility of the Bureau of Prisons if necessary to safeguard security, good order, or government property;

if such officer or employee has reasonable grounds to believe that the arrested person is guilty of such offense, and if there is likelihood of such person's escaping before an arrest warrant can be obtained.".

(b) STYLE CORRECTION.—The second sentence of section 3050 of title 18, United States Code, is amended by striking out "he" and inserting "such prisoner".

SEC. 66. AUTHORITY TO EXCHANGE INMATES WITH STATES.

Subsection (a) of section 5003 of title 18, United States Code, is amended to read as follows:

"(a)(1) The Director of the Bureau of Prisons when proper and adequate facilities and personnel are available may contract with proper officials of a State or territory, for the custody, care, subsistence, education, treatment, and training of persons convicted of criminal offenses in the courts of such State or territory.

"(2) Any such contract shall provide—

"(A) for reimbursing the United States in full for all costs or expenses involved;

"(B) for receiving in exchange persons convicted of criminal offenses in the courts of the United States, to serve their sentence in appropriate institutions or facilities of the State or territory by designation as provided in section 4082(b) of this title, this exchange to be made according to formulas or conditions which may be negotiated in the contract; or

"(C) for compensating the United States by means of a combination of monetary payment and of receipt of persons convicted of criminal offenses in the courts of the United States, according to formulas or conditions which may be negotiated in the contract.

"(3) No such contract shall provide for the receipt of more State or territory prisoners by the United States than are transferred to that State or territory by such contract.".

SEC. 67. AUTHORITY TO ACCEPT DONATIONS AND CONDUCT AUTOPSIES.

(a) IN GENERAL.—Chapter 303 of title 18, United States Code, is amended by adding at the end the following:

"§ 4044. Donations on behalf of the Bureau of Prisons

"The Attorney General may, in accordance with rules prescribed by the Attorney General, accept in the name of the Department of Justice any form of devise, bequest, gift or donation of money or property for use by the Bureau of Prisons or Federal Prison Industries. The Attorney General may take all appropriate steps to secure possession of such property and may sell, assign, transfer, or convey such property other than money.

"§ 4045. Authority to conduct autopsies

"A chief executive officer of a Federal penal or correctional facility may, pursuant to rules prescribed by the Director, order an autopsy and related scientific or medical tests to be performed on the body of a deceased inmate of the facility in the event of homicide, suicide, fatal illness or accident, or unexplained death, when it is determined that such autopsy or test is necessary to detect a crime, maintain discipline, protect the health or safety of other inmates, remedy official misconduct, or defend the United States or its employees from civil liability arising from the administration of the facility. To the extent consistent with the needs of the autopsy or of specific scientific or medical tests, provisions of State and local law protecting religious beliefs with respect to such autopsies shall be observed. Such officer may also order an autopsy or post-mortem operation, including removal of tissue for transplanting, to be performed on the body of a deceased inmate of the facility, with the written consent of a person authorized to permit such an autopsy or post-mortem operation under the law of the State in which the facility is located.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 303 of title 18, United States Code, is amended by adding after the item relating to 4043 the following new items:

"4044. Donations on behalf of the Bureau of Prisons."

"4045. Authority to conduct autopsies.".

SEC. 68. ADDITION OF EXTORTION TO BANK ROBBERY OFFENSE.

Section 2113(a) of title 18, United States Code, is amended by inserting ", or obtains or attempts to obtain by extortion" after "from the person or presence of another".

SEC. 69. INTERIM APPOINTMENT OF UNITED STATES ATTORNEYS.

Section 546 of title 28, United States Code, is amended to read as follows:

"§ 546. Vacancies

"(a) Except as provided in subsection (b), the Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant.

"(b) The Attorney General shall not appoint as United States attorney a person to whose appointment by the President to that office the Senate refused to give advice and consent.

"(c) A person appointed as United States attorney under this section may serve until the earlier of—

"(1) the qualification of a United States attorney for such district appointed by the President under section 541 of this title; or

"(2) the expiration of 120 days after appointment by the Attorney General under this section.

"(d) If an appointment expires under subsection (c)(2), the district court for such district may appoint a United States attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court."

SEC. 70. RELOCATION EXPENSES FOR EXCHANGE PARTICIPANTS.

Section 209(e) of title 18, United States Code, is amended by striking out the period at the end and inserting in lieu thereof "or, in the case of participants in overseas assignments, in excess of three hundred and sixty-five days.".

SEC. 71. VICTIMS OF CRIME ACT.

Section 1404(c)(2) of the Victims of Crime Act of 1984 (42 U.S.C. 10603) is amended—

(1) in subparagraph (A), by striking out "not less than" and inserting in lieu thereof "not more than"; and

(2) in subparagraph (B), by striking out "not more than" and inserting in lieu thereof "not less than".

SEC. 72. BAIL.

(a) SUBPARAGRAPH (D) AMENDMENTS.—Subparagraph (D) of section 3142(f)(1) of title 18, United States Code, is amended—

(1) by striking out "any felony committed after the person had been convicted of two or more prior offenses" and inserting in lieu

thereof "any felony if the person has been convicted of two or more offenses"; and

(2) by inserting before the semicolon ", or a combination of such offenses".

(b) SUBPARAGRAPH (A) AMENDMENTS.—Subparagraph (A) of section 3142(f)(2) of title 18, United States Code, is amended by inserting "or" after the semicolon.

(c) SUBSECTION (F) AMENDMENT.—Subsection (f) of section 3142 of title 18, United States Code, is amended by adding at the end thereof the following: "The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.".

SEC. 73. APPELLATE REVIEW.

(a) IN GENERAL.—Section 3742(e) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking out "it shall" and all that follows through the end of such paragraph, and inserting in lieu thereof "the court shall remand the case for further sentencing proceedings with such instructions as the court considers appropriate;" and

(2) in each of subparagraphs (A) and (B) of paragraph (2), by striking out "and—" and all that follows through the end of the subparagraph and inserting in lieu thereof "the court shall remand the case for further sentencing proceedings with such instructions as the court considers appropriate;".

SEC. 74. WARRANTS RELATING TO SEIZURE.

Subsection (b) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(b)) is amended—

(1) by striking out "or criminal" after "Any property subject to civil";

(2) in paragraph (4), by striking out "or criminal" after "is subject to civil"; and

(3) by adding the following at the end thereof:

"The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.".

(b) Subsection (i) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(i)) is amended by inserting ", or a violation of State or local law that could have been charged under this title or title III," after "title III".

SEC. 75. PROBATIONERS AND PAROLEES.

Section 3522(a) of title 18, United States Code, is amended by striking out "parolees" in the second sentence and inserting in lieu thereof "probationers or parolees, as the case may be".

SEC. 76. STOLEN GOODS.

The first and second paragraphs of section 2315 of title 18 of the United States Code are each amended—

(1) by inserting "possesses," after "receives,"; and

(2) by striking out "moving as, or which are a part of, or which constitute interstate or foreign commerce," and inserting in lieu thereof "which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken,".

SEC. 77. STANDARDS FOR IMPOSITION OF RESTITUTION.

(a) IN GENERAL.—Subsection (d) of section 3579 of title 18, United States Code, is amended to read as follows:

"(d) To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to provide restitution to any victims, the court may decline to make such an order.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the 30th day after the date of the enactment of this Act.

SEC. 78. ENFORCEMENT OF RESTITUTION ORDER.

(a) IN GENERAL.—Subsection (h) of section 3579 of title 18, United States Code, is amended by striking out "or" and inserting in lieu thereof "in the manner provided for the collection of fines and penalties by section 3565 or by".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the 30th day after the date of the enactment of this Act.

SEC. 79. CLARIFYING AMENDMENT.

(a) IN GENERAL.—Section 3579(a)(1) of title 18, United States Code, is amended by striking out "the offense" and inserting in lieu thereof "such offense".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 80. PRESENTENCE PROCEDURE RELATING TO RESTITUTION.

(a) IN GENERAL.—Section 3553(d) of title 18, United States Code, is amended—

(1) by striking out "OR RESTITUTION" in the subsection heading; and

(2) by striking out "or an order of restitution pursuant to section 3556,".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the taking effect of section 212(a)(2) of the Sentencing Reform Act of 1984.

SEC. 81. NEED FOR RESTITUTION TO BE CONSIDERED AS FACTOR IN SENTENCING.

(a) IN GENERAL.—Section 3553(a) of title 18, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (5);

(2) by striking out the period at the end of paragraph (6) and inserting "; and" in lieu thereof; and

(3) by adding at the end the following new paragraph:

"(7) the need to provide restitution to any victims of the offense.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the taking effect of section 212(a)(2) of the Sentencing Reform Act of 1984.

SEC. 82. AVAILABILITY OF SECTION 1402 AMOUNTS.

Section 1402(e) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(e)) is amended—

(1) by inserting "(1)" after "(e)";

(2) by striking out "Any" and inserting "Except as provided in paragraph (2), any"; and

(3) by adding at the end the following:

"(2) For the purposes of the application of paragraph (1) to any grant under this chapter with respect to fiscal year 1985, there shall be substituted in such paragraph 'two succeeding fiscal years' for 'succeeding fiscal year' and 'which period' for 'which year'.".

SEC. 83. DEFINITION OF ISOMER.

Section 102(14) of the Controlled Substances Act (21 U.S.C. 802(14)) is amended in the second and third sentences by striking out "the optical" and inserting in lieu thereof "any optical".

SEC. 84. AMENDMENT TO SCHEDULE.

Paragraph (4) of subsection (a) of schedule II of the Controlled Substances Act (21 U.S.C. 812) is amended to read as follows:

"(4) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.".

SEC. 85. ENFORCEMENT COOPERATION.

Section 503(a) of the Controlled Substances Act (21 U.S.C. 873(a)) is amended—

(1) by striking out "and" at the end of paragraph (5);

(2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(7) notwithstanding any other provision of law, enter into contractual agreements with State and local law enforcement agencies to provide for cooperative enforcement and regulatory activities under this Act.".

SEC. 86. POWERS OF ENFORCEMENT PERSONNEL.

Section 508 of the Controlled Substances Act (21 U.S.C. 878) is amended—

(1) by inserting "(a)" before "Any officer or employee";

(2) by inserting after "Drug Enforcement Administration" the following: "or any State or local law enforcement officer"; and

(3) by adding at the end thereof the following new subsection:

"(b) State and local law enforcement officers performing functions under this section shall not be deemed Federal employees and shall not be subject to provisions of law relating to Federal employees, except that such officers shall be subject to section 3374(c) of title 5, United States Code.".

SEC. 87. AMENDMENTS RELATING TO SEXUAL ABUSE.

(a) SHORT TITLE.—This section may be cited as the "Sexual Abuse Act of 1986".

(b) DEFINITION OF SEXUAL ABUSE OFFENSES.—Title 18, United States Code, is amended by inserting after chapter 109 the following new chapter:

"CHAPTER 109A—SEXUAL ABUSE

"Sec.
"2241. Aggravated sexual abuse.
"2242. Sexual abuse.
"2243. Sexual abuse of a minor or ward.
"2244. Abusive sexual contact.
"2245. Definitions for chapter.

"§ 2241. Aggravated sexual abuse

"(a) BY FORCE OR THREAT.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly causes another person to engage in a sexual act—

"(1) by using force against that other person; or

"(2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnaping;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

"(b) BY OTHER MEANS.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly—

"(1) renders another person unconscious and thereby engages in a sexual act with that other person; or

"(2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby—

"(A) substantially impairs the ability of that other person to appraise or control conduct; and

"(B) engages in a sexual act with that other person;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

"(c) WITH CHILDREN.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who has not attained the age of 12 years, or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

"(d) STATE OF MIND PROOF REQUIREMENT.—In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years.

"§ 2242. Sexual abuse

"Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly—

"(1) causes another person to engage in a sexual act by threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnaping); or

"(2) engages in a sexual act with another person if that other person is—

"(A) incapable of appraising the nature of the conduct; or

"(B) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act;

or attempts to do so, shall be fined under this title, imprisoned not more than 20 years, or both.

"§ 2243. Sexual abuse of a minor or ward

"(a) OF A MINOR.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who—

"(1) has attained the age of 12 years but has not attained the age of 16 years; and

"(2) is at least four years younger than the person so engaging;

or attempts to do so, shall be fined under this title, imprisoned not more than five years, or both.

"(b) OF A WARD.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who is—

"(1) in official detention; and

"(2) under the custodial, supervisory, or disciplinary authority of the person so engaging;

or attempts to do so, shall be fined under this title, imprisoned not more than one year, or both.

"(c) DEFENSES.—(1) In a prosecution under subsection (a) of this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the other person had attained the age of 16 years.

"(2) In a prosecution under this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the persons engaging in the sexual act were at that time married to each other.

"(d) STATE OF MIND PROOF REQUIREMENT.—In a prosecution under subsection (a) of this section, the Government need not prove that the defendant knew—

"(1) the age of the other person engaging in the sexual act; or

"(2) that the requisite age difference existed between the persons so engaging.

"§ 2244. Abusive sexual contact

"(a) SEXUAL CONDUCT IN CIRCUMSTANCES WHERE SEXUAL ACTS ARE PUNISHED BY THIS CHAPTER.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in or causes sexual contact with or by another person, if so to do would violate—

"(1) section 2241 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than five years, or both;

"(2) section 2242 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than three years, or both;

"(3) subsection (a) of section 2243 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than one year, or both; or

"(4) subsection (b) of section 2243 of this title had the sexual contact been a sexual act, shall be fined not more than $5,000, imprisoned not more than six months, or both.

"(b) IN OTHER CIRCUMSTANCES.—Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in sexual contact with another person without that other person's permission shall be fined not more than $5,000, imprisoned not more than six months, or both.

"§ 2245. Definitions for chapter

"As used in this chapter—

"(1) the term 'prison' means a correctional, detention, or penal facility;

"(2) the term 'sexual act' means—

"(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;

"(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or

"(C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; and

"(3) the term 'sexual contact' means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

"(4) the term 'serious bodily injury' means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

"(5) the term 'official detention' means—

"(A) detention by a Federal officer or employee, or under the direction of a Federal officer or employee, following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following civil commitment in lieu of criminal proceedings or pending resumption of criminal proceedings that are being held in abeyance, or pending extradition, deportation, or exclusion; or

"(B) custody by a Federal officer or employee, or under the direction of a Federal officer or employee, for purposes incident to any detention described in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearance, work, and recreation;

but does not include supervision or other control (other than custody during specified hours or days) after release on bail, probation, or parole, or after release following a finding of juvenile delinquency.".

(c) OTHER TITLE 18 AMENDMENTS.—Title 18, United States Code, is amended—

(1) by striking out chapter 99;

(2) in subsection (a) of section 113 by striking out "or rape";

(3) in subsection (b) of section 113 by striking out "rape" and inserting in lieu thereof "a felony under chapter 109A";

(4) in subsection (a) of section 1111 by striking out ", rape" and inserting in lieu thereof "aggravated sexual abuse or sexual abuse";

(5) in section 1153—

(A) in the first paragraph, by striking out "rape, involuntary sodomy, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape," and inserting in lieu thereof "a felony under chapter 109A,"; and

(B) in each of the second and third paragraphs, by striking out ", involuntary sodomy,";

(6) in paragraph (12) of section 3185 by striking out "Rape;" and inserting in lieu thereof "A felony under chapter 109A of this title;"; and

(7) in the table of chapters at the beginning of part I—

(A) by striking out the item relating to chapter 99; and

(B) by inserting after the item relating to chapter 109 the following new item:

"109A. Sexual Abuse ..... 2241".

(d) NON-TITLE 18 PROVISIONS.—(1) The Public Health Service Act is amended—

(A) in section 1904(a)(1)(G) (42 U.S.C. 300w-3(a)(1)(G)) by striking out "rape victims and for rape prevention" and inserting in lieu thereof "victims of sex offenses and for prevention of sex offenses"; and

(B) in section 1905(c)(6) (42 U.S.C. 300w-4(c)(6)) by striking out "rape" and inserting "sex offense" in lieu thereof.

(2) The heading of title VI of the Mental Health Systems Act is amended by striking out "RAPE" and inserting "SEX OFFENSE" in lieu thereof.

(3) The heading for section 601 of the Mental Health Systems Act (42 U.S.C. 9511) is amended by striking out "RAPE" and inserting "SEX OFFENSE" in lieu thereof.

(4) Section 601(a) of the Mental Health Systems Act (42 U.S.C. 9511(a)) is amended by striking out "Rape" and inserting "Sex Offenses" in lieu thereof.

(5) Section 601(a)(1) of the Mental Health Systems Act (42 U.S.C. 9511(a)(1)) is amended—

(A) in subparagraph (B), by striking out "the act of rape" and inserting "sex offenses" in lieu thereof;

(B) in subparagraph (E), by striking out "rape" and inserting "a sex offense" in lieu thereof; and

(C) by striking out "rape" each place it appears other than in subparagraphs (B) and (E) and inserting "sex offenses" in lieu thereof.

(6) Section 601(a)(3) of the Mental Health Systems Act (42 U.S.C. 9511(a)(3)) is amended by striking out "rape" each place it appears and inserting "sex offenses" in lieu thereof.

(7) Section 601(e) of the Mental Health Systems Act (42 U.S.C. 9511(e)) is amended by striking out "rape" the first place it appears and inserting "sex offense" in lieu thereof.

(8) Section 902(k)(1) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1472(k)(1)), is amended by striking out "2031, 2032" and inserting in lieu thereof "chapter 109A".

(e) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect 30 days after the date of the enactment of this Act.

Mr. BERMAN (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. The question is on the amendment in the nature of a substitute offered by the gentleman from California [Mr. BERMAN].

The amendment in the nature of a substitute was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

REMOVAL OF NAME AS COSPONSOR OF H.R. 236

Mr. DIXON. Mr. Speaker, I ask unanimous consent that my name be withdrawn as a cosponsor of H.R. 236.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

□ 1415

AUTHORIZING RELEASE OF RESTRICTIONS ON USE OF CERTAIN AIRPORT PROPERTY IN VIRGINIA

Mr. YOUNG of Missouri. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2852) to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the Peninsula Airport Commisison, Virginia, for airport purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore (Mr. HERTEL). Is there objection to the request of the gentleman from Missouri?

Mr. HAMMERSCHMIDT. Mr. Speaker, reserving the right to object, I yield to the gentleman from Missouri [Mr. YOUNG] to explain the purpose of his request.

Mr. YOUNG of Missouri. Mr. Speaker, S. 2852 is very similar to H.R. 5379, which passed the House by unanimous consent 3 weeks ago. The Senate bill would release the Newport News, VA airport from a restriction in the deed of airport property from the Federal Government, which requires that the land be used exclusively for airport purposes.

The release in the bill from the restriction is needed so that a road can be constructed linking a residential and commercial development, adjacent to the airport, to the main highway in the area.

The Senate amendment to the House-passed bill is minor, and acceptable. The Senate amendment would limit the released land to 7.5 acres and would stipulate that the Airport Commission could not release or convey any airport property to anyone other than the city of Newport News.

Mr. Speaker, I urge my colleages to act favorably on this legislation.

Mr. HAMMERSCHMIDT. Mr. Speaker, further reserving the right to object, I concur with the statement of the gentleman and thank him for it.

Mr. Speaker, last month, we passed H.R. 5379, a bill to release the airport in Newport News, VA, from certain deed restrictions. The bill before us today is the companion bill recently passed by the other body—S. 2852.

S. 2852 differs from the House-passed bill in two respects. It limits the release of restrictions to no more than 7.5 acres. And it provides that any interest in the property involved be conveyed only to the city of Newport News, VA.

I supported H.R. 5379 when it passed the House. However, I do not believe the House should insist on its version because of these two differences in S. 2852.

Therefore, I support S. 2852 and urge its immediate adoption. 34

Mr. HOWARD. Mr. Speaker, I rise in support of S. 2852, to release the Newport News, VA airport from a land use restriction imposed by the airport property deed from the Federal Government. A very similar measure, H.R. 5379, passed the House under unanimous consent 3 weeks ago.

The Senate amendment to the House-passed bill merely specifies that the amount of land being released would be limited to 7.5 acres and that the city of Newport News must be the recipient of any land leased or conveyed. We have examined these amendments, and I believe the House should accept them.

Again, Mr. Speaker, I urge passage of this legislation.

Mr. HAMMERSCHMIDT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2852

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) notwithstanding section 16 of the Federal Airport Act (as in effect on May 14, 1947), the Secretary of Transportation is authorized, subject to section 4 of the Act of October 1, 1949 (50 U.S.C. App. 1622c) and subsection (b) of this section, to grant releases from any of the terms, conditions, reservations, and restrictions contained in the deed of conveyance dated May 14, 1947, under which the United States conveyed certain property in Newport News, and York County, Virginia, to the Peninsula Airport Commission for airport purposes.

(b) Any release granted by the Secretary of Transportation under subsection (a) of this section shall be subject to the following conditions—

(1) The Peninsula Airport Commission shall agree that in leasing or conveying any interest in the property which the United States conveyed to such Commission by the deed described in subsection (a), the Commission will receive an amount for such interest which is equal to the fair lease value or the fair market value, as the case may be (as determined pursuant to regulations issued by the Secretary).

(2) Any amount so received by the Peninsula Airport Commission shall be used by the Commission for the development, improvement, operation, or maintenance of a public airport.

(3) Any release granted by the Secretary of Transportation under subsection (a) of this section may not apply to more than 7.5 acres of real property.

(4) The Peninsula Airport Commission may not lease or convey any interest in any of the property which the United States conveyed to such Commission by the deed described in subsection (a), to any person or business concern other than the City of Newport News, Virginia.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. YOUNG of Missouri. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 2852, the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain 1-minute speeches pending the filing of conference reports.

THE SITUATION IN EL SALVADOR

(Mr. MURTHA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MURTHA. Mr. Speaker, let me report to the House on my trip to El Salvador with the Secretary of State, Secretary George Shultz.

I have to say how impressed I was by what has happened down there since the earthquake. They had an earthquake 6 or 7 days ago, and they had rubble in the streets.

The center of the earthquake ran right through San Salvador itself, and all of the major buildings were completely destroyed.

The U.S. Embassy had to be evacuated. Rubble was in all the streets on the day of the earthquake. A thousand people were killed; 100,000 to 150,000 people were left outside their homes; the water supply was shut down; electricity was shut down; the whole situation was in disarray.

Now, yesterday when we flew in, we were amazed to see that the streets had all been cleared, that plastic had been sent down by the United States in C-130's and C-5's, and even if they did not have a shovel, they were working with sticks to try to remove the rubble from the various places in the city itself. The people were working to rehabilitate themselves.

Electricity is 65 to 70 percent back on; half the water supply is back; people are orderly, lined up getting food supplies.

The United States responded very quickly in this regard in this situation, and even the tarpaulins which were sent down, the people have their bedding, and so forth, arranged very neatly underneath. It is so impressive to talk to and see those folks standing around complimenting the United States for the little bit of aid that we have been able to get in so far.

I talked to two teams of people who had brought four dogs in, and they were from all over the United States and had gone in there trying to find bodies in these buildings which had collapsed. They have been working 20 hours a day. The people and the dogs are exhausted from the ordeal of working through the rubble. But they have brought out hundreds of people that they have found alive in those buildings. If it had not been for the fast action of the United States, more people would have died.

One other thing that was so impressive to me, when you went into an airport in a disaster area, usually you see all kinds of supplies piled up in the airport. In this case the United States and other countries who were involved in this were smart enough to understand and realize that you do not ship a lot of nonessential material down there. You get the medical supplies in, you get the water and food that they might need in, the essential supplies, tarpaulins, plastics to take care of the housing. But you do not send in things that are not absolutely essential.

So anything that was delivered to the airport was sent out immediately.

Now, I remember getting a complaint down there, and I knew this would happen. Some of the reporters complained there was material that had been collected by volunteers which was sitting in airports in Miami. Well, the reason it was sitting in the airports is that it was bulky, it was material that did not need to be shipped down there, and we had a limit to the amount of airplanes available and a limit to the capacity to deliver things from the airport to the people out in the field.

The other thing that has happened that has been impressive is the fact that the people from outside San Salvador itself have come into the city and are trying to help. The people are working continually. They look up, they said to the Secretary of State how much they appreciate the help but they did not take much time because they were busy.

As a matter of fact, we felt like we were intruding when we were going around in our motorcade because the people were so busy trying to rehabilitate the country. So I think the United States can be proud of its achievement. Other countries were involved.

The Ambassador from Japan came with us, the Ambassador to the United States from Japan, and the British Ambassador was along on the trip. Also, one of the World Bank leaders was along on the trip with the Secretary of State.

Mrs. Shultz visited the hospitals. Now, that is another thing; almost all the hospitals were devastated by this earthquake. They had fallen down, a lot of children had been killed in the children's hospital.

The stores downtown had completely collapsed. It reminded me of the disaster in Beirut the way the buildings had fallen down one floor right on top of the other. Six- and seven-story buildings fell down to about one story high. And of course, there is very little possibility of anybody else coming out of that disaster alive.

So far as I can see, in the initial stages the Salvadoran people themselves did an excellent job in trying to rehabilitate themselves. They have gotten the water supply back, they have gotten the electricity back, they have gotten the food which is being distributed and things are orderly.

Now, they are going to need a massive amount of help from all over the world, and certainly the United States—we announced yesterday that the Congress had already put $50 million as a down payment to any help we might provide, into the continuing resolution.

We met with President Duarte. President Duarte was out with the people. Having known him for years, I knew how he would react to something like this. Of course, people swarmed all over him when he went out shaking hands. But he had been out the whole time working throughout San Salvador during the whole disaster.

I took my personal regard from the Congress to the President of El Salvador and to the people of El Salvador from the Congress. I said to them that there will be a lot of promises made, and I hope the Congress will be able to come up with the money to pay for the promises that are going to be made. But all of us expressed our sympathy for the people of El Salvador and our compliments to President Duarte and all the other people who are working so hard, all the American volunteers and other volunteers from throughout the world who are doing so much to help these people get back on their feet in this major disaster in Central America.

OHIO MOCK TRIAL PROGRAM A SUCCESS

(Mr. WYLIE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WYLIE. Mr. Speaker, the U.S. Department of Education recently awarded an $84,121 grant to support the Ohio Mock Trial Program, which will enable the program to expand services provided and to add some valuable new components.

This highly successful program involves a simulation of a court case involving a constitutional liberties issue, with students playing each of the principals in the cast of courtroom characters. The mock trial is designed to demystify the workings of our legal institutions for young people.

Objectives of the progam include:

To develop a practical understanding of the way in which the American legal system functions.

To encourage cooperation among educators, students, legal professionals, and the general community.

To increase understanding of our constitutional rights and responsibilities.

To improve basic skills such as listening, speaking, reading, and reasoning.

To recognize students' academic and intellectual achievements.

Prior to the advent of this program, Franklin County did not have an active law-related education program at the high school level. Students who now have an opportunity to participate in this invaluable program are

fortunate and consequently much better equipped to enter adult life with a good working knowledge of our judicial system.

Understanding and appreciating our legal system is of utmost importance in assuring we continue to encourage our democratic traditions as a society which is governed by law not men.

I am absolutely delighted with the continued funding of this program, particularly in concert with the 200th anniversary of our great Nation's Constitution. What better way to celebrate the constitutional bicentennial than by providing a forum that focuses upon instructional techniques and resources for bringing constitutional law to the classroom.

I wholeheartedly support this program and congratulate its directors, Sue McNaghten and Debra Phillips; and the financial supporters of the program which include: the Ohio Humanities Council; the Columbus Bar Association; the Ohio Bureau of Drug Abuse; the Leo Yassenoff Foundation; the Medina County Court of Common Pleas; the Martha Holden Jennings Foundation; the Ohio Department of Youth Services; Bricker and Eckler, attorneys at law; the Columbus Foundation; the Governor's Office of Criminal Justice Services; Jones, Day, Reavis & Pogue, attorneys at law; Porter, Wright, Morris & Arthur, attorneys at law; the Medina County Juvenile and Probate Court; and Vorys, Sater, Seymour & Pease, attorneys at law.

A CLASSIC EXAMPLE OF HISTORIC PRESERVATION

(Mrs. BOGGS asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BOGGS. Mr. Speaker, in officiating at the grand opening of a restored historic building in New Orleans not long ago, I was once again impressed with the importance of retaining the concept of a reasonable tax credit for historic preservation. I am so heartened by the inclusion of such a tax credit in the major tax reform measure produced during this Congress. This provision will produce immeasurable benefits for our citizenry by fostering the preservation of our rich architectural heritage and of the charm and distinctive character of so many communities.

The building being reopened in New Orleans was at 601 Julia Street in a historic neighborhood that had deteriorated over the years. The reemergence of Julia Street is a heart-warming and delightful development in which Sam, Elaine, and John Menszer have played a major part through their efforts in bringing 601 Julia Street back to life.

This kind of historic preservation is an example of how our Federal Government and civic minded, foresighted developers join forces to recapture and perpetuate the character and charm of our Nation's heritage. I would like to congratulate my colleagues in this Congress for their wisdom and vision in making certain that our Tax Code would continue to offer an important incentive for historic preservation.

CONGRESSMAN SEIBERLING'S MOTHER INSTRUMENTAL IN FOUNDING ALCOHOLICS ANONYMOUS

(Mr. BENNETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BENNETT. Mr. Speaker, all of us are pleased with the efforts that have been successful with regard to fighting drugs, particularly the things which have occurred today. I wanted to pay a compliment to Mr. RANGEL, Mr. GILMAN and the others who have done so much in this field. But it brought to my mind something else that I have not said but I would like to say with regard to somebody else here in Congress, namely Mr. SEIBERLING, who is retiring from Congress.

The reason why these two things are connected in my mind is that I am familiar with the fact that the Seiberling family not only are famous for the fact that they were great industrialists, but also particularly because of our Congressman's mother, who was very influential in fighting the scourge of alcoholism in this country. Really the Alcoholics Anonymous organization was born in the heart and the mind of Mrs. Seiberling, the mother of Congressman SEIBERLING.

The 12 steps in Alcoholics Anonymous for the restoration of life to the alcoholic also can help the drug addict of our times to find a restoration of normal life.

□ 1430

Congressman SEIBERLING brought into this House a strain from his mother that had to do with idealistic things and a strain from his father's family that had to do with great industry.

Many times we have a tendency to think in terms of our colleagues with great names, such as the very outstanding name that he has; and perhaps because they have achieved a lot in financial matters or industrial matters we think that they may not have a concern for more humane matters. Just exactly the contrary is oftentimes true. And it is particularly true in that family, because the mother of our Congressman was extremely influential in establishing Alcoholics Anonymous and did so through the aegis or the general input from the Moral Rearmament, another great movement in our country which has meant so much to the development of fine spiritual standards, not only in our country, but throughout the world.

When I look at JOHN SEIBERLING's service here in Congress, I think about him not only as being a man who is interested in cleaning up antitrust laws and things of that type to bring about a better industrial situation for our country, but who is also interested in cleaning up our environment and taking care of environmental laws.

I must say since I am a member of the House Armed Services Committee, and have often talked with him with regard to the terrible pollution of our time in warlike things, his input has been toward idealistic achievements, though practical achievements, in trying to see if we could have a peaceful world and a country which is devoted not only to being strong militarily, but also devoted to the idea of fighting for the cause of peace. All these things run through my mind when I think about this fine Member of Congress.

I am glad that I had this opportunity to appear before Congress to pay tribute to such a fine man as he, and I wish him all the happiness when he retires from this body.

THE PLO EQUALS TERRORISM AND MILITARISM IN MIDDLE EAST

(Mr. SMITH of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Florida. Mr. Speaker, unfortunately I must share with the House some of the frustration and deep sadness that many of us feel at the recent incident of the hand grenade attack in Jerusalem by the PLO.

Here we are at the end of the term of Mr. Peres, the Prime Minister of Israel, who has made the cornerstone of his administration the search for peace in the Middle East. And at the very time when he is turning over the reins to the incoming Prime Minister, Mr. Shamir, an incident such as the one that occurred just 2 days ago in Jerusalem should mar the transition.

The United States has been the most firm supporter, the most ardent country, consistently helping all those in the Middle East who wish to seek peace. By our deeds, by our words, by our economic and financial support, we have attempted to bring the parties to a condition where there could be face-to-face talks between the parties who are the most intransigent, between the parties who are necessary to forge a compromise, and the parties who will be absolutely essential to making peace and maintaining that peace.

So over the years, the United States has had the ability to bring Israel and Egypt together, to get Jordan, slowly but perceptably, closer to entertaining the idea of discussions of peace, and has been responsible for helping to get Israel to be able to sit down with the King of Morroco and other Middle East nations, other Arab nations, to at least talk about the first steps in the peace process.

But all through this process, all through this long, difficult search for the right answers, all through it there has been one thorny, difficult, intransigent and hurtful group, and that has been the PLO. They have yet to recognize Israel's right to exist as almost every other Middle East nation has in one way or another. They have failed to ever abandon their hope that they could, by military or other forms, take control of Israel. They have, in fact, pronounced over and over again that they will use all means at their disposal, militaristic and terroristic, to divide and conquer Israel, in fact to bring about the nonexistence of the State of Israel.

And finally, they have in fact engaged in terrorist attacks all over the world, not only in Israel, as is evidenced by the latest atrocity, but have directed attacks against Americans as well as others in many places.

We only have to think back to last summer and the Achille Lauro hijacking which was laid directly at the doorstep of the PLO and one of Arafat's leading henchmen, leading lieutenants, Abu Abas, who I might add was unfortunately not turned over to us by any number of countries who had him at one time or another after he was found to be directly linked to the hijacking.

But yesterday's incident should once and for all remove any doubt from the minds of Americans and the minds of all of our allies that you cannot deal with Arafat and the PLO in any other fashion than by attempting to freeze them, than by cutting them out of the process, because they have been, to some degree, invited in.

King Hussein sat down with them. He talked to them. He came to an agreement with Arafat, which agreement Arafat refused to implement.

The Saudis have attempted to talk to Arafat. The President of Egypt, Mr. Mubarak, who himself has attempted on many occasions, has entertained Arafat in Egypt, and yet has not been able to move him any closer.

Today we are standing again watching peace slip away rather than be brought closer, because we still fail to acknowledge that terrorism is a weapon which the PLO will not abandon. How many more incidents must we tolerate. One dead, sixty-nine wounded, all innocent, all having nothing to do with anything, all in front of one of the holiest shrines in the world for Jews and for many others.

We must come to grips with the political reality of the PLO. We must attempt with all means at our disposal to seek the good offices of the truly moderate Arab nations in this world, to bring them together to sit down at a table and bargain with Israel under the auspices of the United States, and perhaps even other nations who want peace in the Middle East, to sit down and once and for all bring the turmoil in that region of the world to an end.

Finally, Mr. Speaker, let me, as many of my colleagues do day to day, deplore two other things in the Middle East. One is the continuing tragedy of Lebanon, where brother against brother and family against family has created a nation in chaos, a nation which is now almost an anarchy, governed by no one, controllable by no one but small groups of militant arms of otherwise religious or cultural sects.

□ 1440

We are watching a once-flourishing, pro-Western country slowly sink into the mire of anarchy. A terrible, terrible tragedy and one which will not help bring peace to the Middle East.

Finally, the continuing tragedy of the hostages in Lebanon. Those American and French and others who are being held are being held by the very groups that prevent peace from occurring in this world. Those people are innocent of anything. Their only crime is that they were Americans or of other nationalities of the NATO allies.

Once again, I call upon those groups that are holding our hostages in Lebanon to let them go. We will not deal with you. We will not give you the ability to hold us hostage as a nation each time you see fit to kidnap someone.

Mr. Speaker, I hope that this Government, this administration will once and for all take a firm stand against terrorism around the world. This Congress has given them every tool that they need and all the financial assets that they need to combat terrorism. It is now time to implement a worldwide policy to combat this murder and this butchery against Americans, against Israelis, against all people of good will in this world.

If we do that, perhaps we can start again to take another small step on the road to peace in the Middle East.

AN INTERESTING INTERVIEW WITH ROBERT S. McNAMARA

(Mr. LAGOMARSINO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAGOMARSINO. Mr. Speaker, in this morning's Los Angeles Times, there is an account of an interview between the Times and former Defense Secretary Robert S. McNamara. It is entitled "A Rethought SDI Can End Our Morally Horrifying Reliance on the Bomb."

Former Defense Secretary Bob McNamara has not been exactly one of the strongest supporters of the Reagan administration. In fact, he has been one of the Nation's most consistent and ascerbic critics of the administration. So I find that this interview is rather interesting.

One of the questions they ask, speaking about the Reykjavik Summit was, "Was that result a step forward or a step back?"

Answer: "President Reagan's final proposal was a gigantic step forward philosophically and strategically. As far reaching and courageous as Anwat Sadat's Middle East initiative. It should be recognized as such. What the President proposed in principle was to move as far as practical back toward a nonnuclear world."

Question: "So you see us at the beginning of a new period of arms control thinking and negotiation?"

Answer: "Yes. The intellectual foundations of NATO and the Warsaw Pact strategy have been broken open completely for examination and debate. I understand the difficulty in coming to agreement on a new strategy and an arms control regime to support it. But for the moment, the important thing is that the first steps have been taken toward that goal. I guarantee you that 5 years from now we will be on our way to achieving that objective."

Mr. KEMP. Mr. Speaker, will the gentleman yield?

Mr. LAGOMARSINO. I yield to the gentleman from New York.

Mr. KEMP. I thank the gentleman for yielding.

Mr. Speaker, I was listening to the gentleman's remarks with regard to that very interesting observation by Robert McNamara. The gentleman correctly points out that that is a significant, if not shift, at least alteration of a previous position, and it really is remarkable, as the gentleman from California pointed out, that he would recognize that Reykjavik, Iceland was not a step away from arms control, it was ultimately going to redound to the benefit of those who believe that the very best arms control is a sharp reduction in offensive, first-strike nuclear capability.

Second, as the gentleman has pointed out so many times here in the chamber of the House, moving the world away from the doctrine of mutual assured destruction toward a doctrine of mutual assured strategic survivability.

Mr. McNamara is to be complimented, I think, for coming to that opinion. That is the similar opinion of Zbigniew Brzezinski, former National Secu-

rity Adviser to President Carter. With all due respect to previous administrations, it seems to me that the Soviets, one, would not even be at the negotiating table with our country had it not been for the President's vision of a nuclear free world, or at least a world in which nuclear arms are obsolete. Second, we would not have had the Soviets offer a 50-percent reduction in offensive nuclear capability plus a negotiation over the removal of all but 100 missiles of a theater nuclear variety.

I want to thank the gentleman for coming to the floor and bringing to the attention of his colleagues this remarkable interview in the Los Angeles Times. I compliment the gentleman for his long-time support of the President's vision of a Strategic Defense Initiative that can move toward making nuclear weapons, and even war itself, obsolete.

I am a strong supporter, not only of researching as the gentleman knows, but researching, testing, developing and deploying a Strategic Defense Initiative not only for ourselves but for our allies in Europe. Europe is faced with a very serious theater nuclear ballistic missiles threat. Israel is faced with a surface-to-surface, Soviet-inspired Syrian missile threat. The technology from the Strategic Defense Initiative can be used in the theater of NATO on the southern flank of NATO for Israel, for our allies. It is a technology that is here. It is developable and deployable. It is something that I think this country should move as swiftly toward as possible and I want to compliment the gentleman for his outstanding leadership and vision of supporting this President in the Strategic Defense Initiative.

Mr. LAGOMARSINO. I thank the gentleman.

Mr. Speaker, I should point out in the article, which I will, of course, put in the RECORD, Mr. McNamara does say that we need a slightly different approach on SDI so as to assure the Soviets that it is not in fact an offensive weapon.

As the gentleman knows, because he was there as I was, at the meeting in the White House on Tuesday with the President and the leadership and many members of the Cabinet, that the President proposed exactly that to Mr. Gorbachev in Reykjavik.

Mr. KEMP. Mr. Speaker, will the gentleman yield?

Mr. LAGOMARSINO. I yield to the gentleman from New York.

Mr. KEMP. I thank the gentleman.

Mr. Speaker, I was asking the other night on television if this would not be turned into an offensive weapon. The technology from SDI could not be turned into an offensive weapon. I thought about that because that is the ploy that Mr. Gorbachev is using to walk away from this very positive proposal that our President has made on behalf of ourselves and our allies.

The answer is, to me, that this country is not offensive oriented. Our whole deterrent is predicated upon retaliation, A, and B, when the United States of America had the nuclear monopoly in the 1940's and 1950's, we did not use that monopoly to gain access to or to gain the approach toward or to gain any territory anywhere in the world.

If anything, the United States walked away from many parts of the world when there are probably few countries on the face of this earth, particularly the Soviets, who would have walked away and allowed countries to be liberated, to become democracies and to become free.

I think we as Americans need to recall that when we had the nuclear monopoly we did not use it for territorial gain, for conquest, for imperialism, for colonialism. It has really been the Soviet Union that has marched into Afghanistan, into Africa, into our own continent in Central America as well as into Asia. I am just glad Ronald Reagan is President of the United States and not a few of the folks who have been his constant critics who say no defense is the best defense. Can you imagine telling the American people that no defense is the defense?

I think the gentleman from California shares my belief and I share his: The very best defense is to allow our Nation to move toward a nonnuclear defensive system such as the strategic defense initiative and then share it with our allies and ultimately, if there is ever going to be a race, competitively in the world, it ought to be for peaceful defensive purposes, not for offensive, first-strike capability.

I thank the gentleman from California for his perspicacity and wisdom.

Mr. LAGOMARSINO. I thank the gentleman for his comments.

Mr. Speaker, I wish to include the article I referred to earlier in the Los Angeles Times for the edification of the Members.

A RETHOUGHT SDI CAN END OUR MORALLY HORRIFYING RELIANCE ON THE BOMB

Former Defense Secretary Robert S. McNamara has been among the nation's most consistent and acerbic critics of the Reagan Administration's nuclear weapons policies. But in an interview with The Times this week, McNamara, who has just published a new book on arms control, "Blundering Into Disaster," (Pantheon) praised President Reagan's summit proposals to reduce offensive nuclear forces. Excerpts from the interview:

McNamara: We are now entering the second half of the first century of the nuclear age. It has been nearly 50 years since Albert Einstein wrote to Franklin D. Roosevelt warning him that it was essential that the United States develop the atomic bomb.

In the years since then, a series of ad hoc decisions by responsible officials, of which I was one, have brought us to a totally unacceptable situation. There are 50,000 warheads in the world. But no one has ever put on paper a plan for initiating their use without the destruction of our civilization. This leaves us in a situation which is politically, militarily and morally unacceptable.

Question. At the Reykjavik summit meeting, President Reagan proposed the total elimination of strategic nuclar weapons over a 10-year period if the Soviets accepted testing and deployment of his Strategic Defense Initiative, a "Star Wars" nuclear defense system. Soviet leader Mikhail S. Gorbachev insisted that SDI testing and deployment be banned, and the meeting broke up in disagreement. Was that result a step forward or a step back?

Answer. President Reagan's final proposal was a gigantic step forward philosophically and strategically, as far-reaching and courageous as Anwar Sadat's Middle East initiative. It should be recognized as such. What the President proposed, in principle, was to move as far as practical back toward a nonnuclear world. In his speech to the nation on Oct. 13, reporting on the Reykjavik meeting, he said: "We discussed ways to reduce and in fact eliminate nuclear weapons entirely." It is a totally different strategic concept from what the Administration has enunciated in the past.

Gorbachev and Reagan both come to the problem with the same gut feeling, that a nuclear war cannot be won and must never be fought. The attempt to express that feeling in the form of an arms control agreement.

Reagan is saying that the United States and its NATO allies can be secure against Soviet and Warsaw Pact conventional aggression without a nuclear deterrent. He is prepared to give up the nuclear deterrent. He is prepared to give up the nuclear deterrent against conventional aggression. That proposition destroys the foundation of NATO's present strategy. The strategy is that we deter Soviet conventional force aggression with the threat of the use of nuclear weapons.

Current NATO doctrine holds that we should initiate the use of nuclear weapons in response to Soviet conventional aggression. But experts recognize that the initiation of the use of nuclear weapons will lead to the destruction of our civilization. That is morally horrifying.

Reagan has broken that issue open. His proposals draw questions and criticisms from some experts. But he has made the discussion of a basic change in strategy, a debate some of us have been participating in for years, respectable.

Question. Doesn't NATO need the U.S. nuclear deterrent because of the larger Soviet-bloc conventional forces in Europe?

Answer. We already are hearing that argument. I'm sure that the idea of giving up the nuclear deterrent has some NATO military leaders expressing grave doubts. But the conventional balance is not as unfavorable as those arguments imply and to the extent that the conventional forces need to be strengthened, this can be done within existing political and financial constraints.

Question. But the two sides still appear deadlocked over the issue of SDI, which Reagan insists on keeping and Gorbachev insists on blocking. How do we get around that problem?

Answer. The Reagan Administration has already put forward two very different ideas of what SDI might be. The first was President Reagan's initial proposal for a leakproof defense (let's call that Star Wars I)

that would shield our population from nuclear attack. That turned out to be technologically unattainable in the foreseeable future.

The second idea, which we can call "Star Wars II," is the one the Defense Department is working on now. It would provide for a defense of hardened targets, like missile silos, and perhaps partial protection of the population. Star Wars II will prove very costly—former Secretaries of Defense James R. Schlesinger and Harold Brown estimate it would require an expenditure of $1 trillion.

It is essential to understand that these two versions of SDI have diametrically opposite objectives. Reagan's idea of Star Wars I was that a defensive shield could lead to the elimination of offensive nuclear weapons. In contrast, Star War II would require that we continue to maintain offensive forces but add the defensive systems to them.

What was put forward at Reykjavik was Star Wars III. With the deployment of the SDI to be deferred for 10 years until all offensive missiles were eliminated, the defense required to prevent cheating would be a much smaller, simpler system than either Star Wars I or Star Wars II. What they are talking about is a defense that no one has really outlined yet. It is a new starting point for discussion.

Question. Why do the Soviets fear SDI?

Answer. We must understand that today the Soviets are guided by our actions, not our words. They hear us say that SDI is only a research program, but they see us acting in ways that they believe are consistent only with a decision, in principle, that we will unilaterally abrogate the anti-ballistic missile treaty at a time of our own choosing and in a way that will place them at a strategic disadvantage. So long as they hold that belief they will never sign another agreement limiting strategic offensive nuclear weapons.

The Soviets know we are ahead of them in the development of a strategic missile defense. What they fear is that we will deploy SDI say five or six years from now when we are even farther ahead. They would face a period of years until they caught up to us. During that period they would fear that we had a first-strike capability. They have every reason to be afraid of that. However, I am certain that is not the President's objective.

Therefore, the solution is that we must carry out the SDI program in ways that convince the Soviets that it does not threaten them with a U.S. first-strike capability. That means there must be some limitation on the development and testing of SDI, but I am confident we could achieve the President's objective of probing the potential of ballistic missile defense within those limitations.

Question. Is it realistic to talk about the total elimination of offensive nuclear weapons? Wouldn't we, and the Soviets, still need a deterrent against the possibility of a smaller country acquiring nuclear weaponry?

Answer. Of course. In fact, we would both need a small number of nuclear weapons against the possibility that the other side might cheat. As I have said, nuclear warheads are not weapons in any military sense. If we ever initiate their use, we destroy society. Therefore, they have only one use, and that is to deter one's opponent from initiating the use of his nuclear weapons.

Because we can't erase from men's minds how to build nuclear weapons, and because we fear that any agreement to eliminate the weapons will be broken, we must protect against cheating.

No defensive system now under consideration could defend against all forms of potential cheating. So each side would have to retain a small number of weapons for deterrence. But that number would be very small indeed—a few tens or a few hundreds—compared to the present total of 50,000.

Question. So you see us at the beginning of a new period of arms controls thinking and negotiation?

Answer. Yes. The intellectual foundations of NATO and the Warsaw Pact strategy have been broken open completely for examination and debate. I understand the difficulty in coming to agreement on a new strategy and an arms control regime to support it. But for the moment the important thing is that the first steps have been taken toward that goal. I guarantee you that five years from now we will be well on our way to achieving that objective.

I've lived through three potential nuclear crises. Berlin, Cuba and the Middle East. Believe me, in a crisis situation, military and civilian leaders are neither well informed nor coolly rational. We will face crises in the future. We must ensure that those crises will not lead to nuclear war. Reykjavik was a step in that direction.

A $62 MILLION A DAY CLOSEDOWN

(Without objection, Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, I want to illuminate a little more the chart that I put in the RECORD.

The chart does not mean a lot; the chart that I put in the RECORD shows how we are spending today $62 million to close down the Federal Government.

□ 1450

A lot of people say yea, rah-rah, that is wonderful, let us close it down.

Let me tell you about some stories that have happened. If you were a taxpayer, as some people are, and showed up with 300 Girl Scouts to tour the Statue of Liberty and found out it was closed, you may not be real happy about that. But those are some of the people who were sent home as nonessential.

However, those Girl Scouts may not get back to the Statue of Liberty for a long time, and what are they going to think about their Government?

I do not think that there is any reason in the world that this had to happen. All the President had to do was sign a short-term continuing resolution, which he did not do, I am sorry to say.

If you will look at last week, when the President went on the trip to Iceland, he had no problem calling the House of Representatives and saying, "Please, let us not have a two-front war. You back off your arms control provisions; let us negotiate them right now so that I can go to Iceland without any restrictions."

We did that in good faith, and it seems to me that this time before he left, he could have signed a short-term continuing resolution or called the leadership of the other body and asked them to finally release the continuing resolution they have been playing with for weeks so that we would not have to go through this folly.

Why do we go through this folly? Why is it considered OK to let Federal employees go? There must be some reason because the taxpayers certainly would not enjoy spending $62 million and getting nothing, and by close of business on Monday, it will be $92 million, and it will keep running.

I think it is because we have built this incredible mindset that the bureaucracy and bureaucrats are bad and so shutting them all down and sending them all home kind of is fun to do in even-numbered years, even-numbered years being elections.

Of course, what is causing all of this? The other body is over there fighting over an aircraft that nobody wants. Nobody is quarreling about whether it is a good plane or not; the issue is that the Air Force does not want it. So if we do buy that aircraft, I do not know what we are going to do with it. I suppose we could plant geraniums in them or something, but they do not want them.

Nevertheless, they are over there, a certain group, insisting that we have to buy the airplane, even if we shut down the Federal Government. They can get by with it. They can get by with it because lots of politicians have used people who work for the Federal Government as scapegoats.

I must say that I am very tired of it. I think if you go back and look at the history of the Federal Government and the people who have worked for the Federal Government, we have had a very high class of people. We have been very proud of them because they have not had the scandals that we have seen in other countries; there has not been the bribetaking; we finally did away with politics in a lot of different areas about 100 years ago and decided to professionalize it, to make it go forward on the merit system.

Yet people still persist in making them into scapegoats, and that is why it is OK for the other body to let these people go home.

Who are the half million people being sent home, beyond the ones who are at the Statue of Liberty: People in the parks, people in agriculture; people who help service our home loans. These are the people who really help service American people.

You know what will happen? They will finally pass the continuing resolu-

tion; they will give these people their back pay, and meanwhile, the taxpayer will have lost those services, even though they have paid for them.

People in the Federal Government do not like this. All you have to do is look at the TV spots of people being sent out of their buildings. They do not like being made scapegoats. They do not like being sent home. They know that this is just one more way for taxpayers to be mad at them, but they have no option.

It also costs an incredible amount of money to cut all the papers to fire over half a million people and then bring them back onto the payroll when we finally get it up and going.

I must say, I am very tired of this kind of threatrics. I have seen all over the world different kinds of bureaucracies. I must say that I am very proud that ours followed the English system, the merit system. When you see countries like England, or Singapore, many countries have been following that system, you have seen countries that worked. Why did it work? Because you have the best and the brightest in there doing it. I think we have to say to America, we assume you want Social Security; we assume that you want some agricultural programs; we assume you want drug enforcement programs; you want FBI; we assume you want the borders protected. Then do you not want the best people? Do you really want to beat up on people?

When I say to people in my district, "Who is it in the Federal Government that you want to get rid of?" they say, well, when you go through this whole list, the only ones they want to get rid of are the Internal Revenue Service.

They are not going to be sent home, because collecting taxes is essential. So they are not going to be sent home. Before you celebrate the fact that the Federal Government shut down, remember that the tax collector is still there so you are going to get your taxes collected for even more expenses and there are going to be fewer people there.

Mr. PARRIS. Mr. Speaker, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Virginia.

Mr. PARRIS. Mr. Speaker, I agree with much of what the gentlewoman from Colorado [Mrs. SCHROEDER] has indicated. She is an important member of the Committee on Post Office and Civil Service and does yeoman work in this area.

I would suggest to some of my colleagues that in the even-numbered years, as the gentlewoman from Colorado has suggested, it may be politically expedient to be in favor of these kinds of things, but that is not universally true in every congressional district around the Nation, mine being an exception to that.

I take this opportunity to address to the gentlewoman from Colorado [Mrs. SCHROEDER] in response to the large number of inquiries that have been made to my office, and I am sure to others of my colleagues. There has been, in times past, a similar legislative situation, much to the regret of the gentlewoman from Colorado and yours truly and others, but we have always managed, in one way or another, to accomplish the payment of compensation in consideration, even for the lost time, so that the taxpayers of the Nation, unfortunately, have to pay the bill. The Federal employees get their just compensation; the expense applies to the Government, but we do not, in fact, have a penalty in the lives and the fortunes and compensation of people in the real world.

So that really all the taxpayers are doing is losing the services, if you will, of the Federal employees who are, in fact, furloughed because of the failure of the Congress to adopt this measure.

My question to the gentlewoman is that in times past it has not resulted, as a practical matter, in the loss of revenue to Federal employees.

There is a process by which that can be accomplished and the gentlewoman is familiar with that. I am reasonably confident and hopeful that that process will be applied again in this instance and that ultimately as we untangle this morass that we find ourselves in, and I assume that we will in some due time, whenever that may be, that the compensation arrangements for Federal employees who have been furloughed will, in fact, be reinstated and the process will apply so that they cannot be terribly concerned about the receipt of their honest compensation rates.

Would the gentlewoman agree with that?

Mrs. SCHROEDER. Mr. Speaker, I thank the gentleman from Virginia for asking that question.

That was precisely the point that I was making. The fact is that in the past, we have always paid retroactively their wages because I think we felt guilty about making them scapegoats for political theater in the even-numbered years. I am sure that we will do the same thing this time.

I am sure that the gentleman hears the same things that I hear from Federal employees. They do not like that. They feel very uncomfortable with that. Of course they need their pay. They are like every other American. They have not had adequate cost-of-living, and we know that surveys show that they are really below where other people are.

They have also not gotten a lot of applause from, really, the last two administrations. It has been easy to go and beat up on the bureaucracy.

But I am sure, once again, the guilt will come back and we will pay, and we should pay because they really are scapegoats for this political theater.

When I think back on it, President Carter fought the energy crisis with Federal employees. He decided they should not have hot water and they should not have warm buildings in the winter and they should not have cooler buildings in the summer. He fought the whole energy crisis with them. He even tried to take away the parking. I guess he thought they would not—I do not know how he thought they were going to get there without a car.

We see President Reagan using them also. I think there is a bipartisanship in the last two administrations.

I guess what I think is so hard, and the gentleman from Virginia has been very good about speaking up for Federal employees, and people tend to say that is because he has a lot of them in his district.

The problem is that the ones in his district serve everyone in America. I think what we have to start saying to Americans in every district is, "What kind of people do you want running drug enforcement? Do you want a drug enforcement agency like other governments where there are bribes and all sorts of things going on, or do you want a high-quality one? How high-quality is it going to be when you keep playing these kinds of games with them?"

□ 1500

What kind of people do you want running your FBI? Do you want to do away with the FBI or do you want to have the FBI, and if you have the FBI, do you not want a high-quality one?

What kind of people do you want running Immigration? Who do they think these people are?

The people running the agencies are very important to the future of this country.

What kind of people do we went in the Pentagon? We want the best people there.

What kind of people do we want in the military?

I think all of us are human enough to know that we do respond when everybody is out beating up on us. I think Federal employees are tired of being the punching bag of whoever happens to be in power.

Mr. Speaker, I thank the gentleman from Virginia [Mr. PARRIS] for constantly speaking up on that. I think it is important to point out that it is not just because the gentleman has people in his district or I have people in my district, those people in those districts are serving everyone in America.

You get what you pay for, and morale is very important, too. So we have not been paying them and morale is going down.

We know about many other countries that have gotten into really deep trouble by ignoring their bureaucracy, only to find out that it has been corrupt, filled with bribery, filled with all sorts of things. We have not had that happen yet, but I find this a very sad day for people like the gentleman from Virginia and myself to see this happening again.

I think it is a very sad day for the taxpayers, too. On television you get that first 30 seconds, "We shut down the Federal Government." It is like high noon at the O.K. corral and everybody goes "yea", without thinking about how we should feel if you were at the Statue of Liberty with 300 children that you brought across the country and found out it was shut down.

All I am saying to the people out there is please think beyond the 30 seconds. Please think. Do you really want this? Do you really want to think about that? I think when people think beyond the 30 seconds and beyond the cheering, they realize that this is just the wrong thing to do.

Mr. PARRIS. Mr. Speaker, if the gentlewoman will yield further, I thank the gentlewoman for her kind words. I think the point the gentlewoman makes is extremely important in all this, and that is that it is not just the perception of the mindless, faceless bureaucrat who is filing papers in some back office somewhere who serves the Federal Government. As the gentlewoman has indicated, it is the person at the immigration border trying to stop illegal aliens at some risk to his own security. It is the Drug Enforcement Administration that right now is trying to help rid us of the menace of drugs. It is the FBI with all the spies in the United Nations and the involvement that we know about in those areas. There are so many military people under the ice cap in a submarine somewhere. These are Federal employees. Many of these employees will not, obviously, be furloughed because of the sensitive nature of what they do; but the point is they are not mindless, faceless bureaucrats somewhere filing papers in some ridiculous exercise.

That perception has done more harm to the morale, if you will, of the average dedicated hard-working Federal employee than anything else I know.

Mrs. SCHROEDER. Mr. Speaker, the gentleman is right. They are all tainted by this.

I think people also want the best persons running the Statue of Liberty that we are so proud of and running the different monuments that we are so proud of, and the fact that we show them by sending them home is very embarrassing and that people who have come out from my district, which is 2,000 miles away, for a nice weekend in the capital are not going to be pleased.

Mr. MARKEY. Mr. Speaker, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Massachusetts.

Mr. MARKEY. Mr. Speaker, I thank the gentlewoman very much for yielding and I thank her for discussing this subject, because the two major issues that are going to be played on the evening news tonight and in tomorrow's newspapers will be the issue of the Strategic Defense Initiative and the shutting down of the Government because we do not have enough money.

Well, those two stories might seem to be unrelated in the minds of people who are looking at them as separate compartmentalized issues in the newspapers or on TV and radio; but in fact the Strategic Defense Initiative Program, although it only costs $3 or $4 billion a year right now is going to wind up costing a trillion dollars; so by the beginning or middle of the 1990's we are going to be talking about spending $50 or $75 or $100 billion a year for 10 or 15 years in order to construct a shield to protect the United States against nuclear war. Well, that is bigger than the entire Medicare Program is right now; so we have these kinds of contradictory messages that come from the President.

On the one hand he says no new taxes; on the other hand he says, "I want to balance the budget." At the same time he says, "I want this new program that is going to cost $100 billion a year."

Well, if you want the program, you have also got to come in with a program that insures that the revenues are there, that we can be sure that we can fund it, because what is going to happen as a consequence is that something will have to be cut. We will have to look at Social Security. We will have to look at Medicare. We will have to look at Medicaid. We will have to look at loans for kids to be able to go to college and we will not have the revenues, we will not have the moneys available.

So this administration really cannot have it both ways. They cannot argue on the one hand, "Let's fund this bold new program with no compromise on it, under no circumstances will we give it up, even though the Soviets will reduce 50 percent of all their weapons which are aimed at our country," and at the same time they are arguing that they want to see a balanced budget, there should be no new taxes, and we are going to shut the Government down. It is that level of total contradiction, I think, which is the most exasperating part of serving here in the Congress.

So to the gentlewoman, I thank her for engaging in this discussion, because there is no question that these inherent contradictions to have a nonnegotiable bargaining chip, an oxymoron, a contradiction in terms that will cost a trillion dollars, while at the same time crying crocodile tears that somehow or other we have not been able to squeeze another billion or $2 billion out of some poor Federal workers, the recipients of Federal benefits, when he is talking about adding another trillion or $2 trillion to the Federal budget in the 1990's. I think that is just a sad day and people ought to be angry that this type of manipulation of public opinion is even attempted.

Mrs. SCHROEDER. Mr. Speaker, I thank the gentleman from Massachusetts. The gentleman from Massachusetts really does make my point of how to tie this together, because the gentleman from Massachusetts was with me last week when we all got marched in and asked to surrender on arms control which we worked so hard for before the summit, and here we are this weekend and the first thing we know the President signs Superfund, and we are very pleased about that. He did that on the airplane and it was flown back.

I just wish that he had signed the continuting resolution and prevented this kind of political theater going on, because I am sure that could have been done, too.

PROPOSED SWITCH TO A BIENNIAL BUDGET

(Without objection, Mr. RINALDO was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. RINALDO. Mr. Speaker, once again the failure of the House and Senate to reach timely agreement on an annual budget has necessitated the temporary cessation of nonessential Government services. Today's shutdown of various Federal offices, marks the third time in the last 5 years workers have been sent home due to the failure of Congress to reach agreement on a spending plan.

To put it succinctly, the budget process has been a catastrophe in recent years and cries out for reform to avoid the costly and inexcusable disruption of Government operations. As you are aware, we have failed in 8 out of the last 9 years to meet our budget deadlines, and I am not encouraged by today's performance that the situation will improve in the future in the absence of major changes in the system.

I think one of the modifications that the leadership should seriously consider is the proposed switch from an annual to a biennial budget. Many States already are on a 2-year spending cycle, and the Congressional Budget Office and the nonpartisan Committee for Economic Development

have proposed that the Federal Government do likewise.

The Budget Act of 1974 provides a procedural framework for advanced targeting of spending. All that is required to put this idea into practice is a decision to use the Budget Act for that purpose. I'm all for it, and that is why I have sponsored legislation in this and the last Congress to achieve that goal.

A TRIBUTE TO THE HONORABLE BERKLEY BEDELL

(Without objection, Mr. BENNETT was allowed to address the House for 1 minute and to revise and extend his remarks.)

Mr. BENNETT. Mr. Speaker, at this particular juncture in the House of Representatives we are awaiting material that is going to come to us later for action, so we are a little more relaxed than we usually are.

I want to call attention of the public and of the House itself that there are relaxed aspects about the House of Representatives, and I want to tie it to one particular individual later on.

First of all, I would like to say that one of the finest things that the Congress does in the House of Representatives is that every Thursday morning there is a prayer breakfast at which Members of Congress go without any fanfare, without any publicity, without any visitors, without any exterior thing involved in it at all, except meeting in brotherhood. That is a very valuable thing to Members of Congress.

The reason I am bringing it up at this point is because I want to pay tribute to one of the very active Members of that group who is leaving Congress and pay a specific tribute to him with regard to his leadership there, and that is the gentleman from Iowa, Mr. BERKLEY BEDELL.

Congressman BEDELL is a person who is more concerned I think about the problems of other people in Congress than he is about his own problems. He has never had any serious problem here, of course, but he has had a health problem which has now been conquered.

I also want to call attention to the man who is now in the chair of the House of Representatives as these proceedings are going on, General MONTGOMERY, who has been the able chairman of the prayer group, a very constructive group in Congress. It is a place where Members have met together, meet together every Thursday. It is a brotherhood, a fellowship, worshipping and at the same time thinking about each other's problems and the problems of the country.

The reason I am injecting that into this discussion here this afternoon is because if you listen to all the things that came just before this, a lot of them are matters of tension about whether we should have SDI, what kind of weapons we should have, whether we can balance the budget, whether we can do all of these things.

I am reminded of one time when I was practicing law the senior member of the firm talked with me. It was a good firm and represented a lot of the most wealthy people of this country: Alfred I. Dupont, Edward Bok, Charles Deering and others. This gentleman called me into his office and said, "I see in you an interest of perhaps going into politics."

I said, "That is correct."

He said, "Why would you possibly want to take that on? This is a very stressful sort of life to live and it is not really very rewarding actually in your life."

I felt myself thinking, well, I see it differently from how he sees it. I think actually if we can solve some of these problems in the country, that is a very rewarding thing indeed.

I will conclude my remarks by saying that I just want to pay special tribute to the gentleman from Iowa, Mr. BERKLEY BEDELL, who has been such a fine Congressman here and has thought so much of other people and their problems and has been such a constructive Member in legislation and in his own personal life. We are very much blessed by the fact he has been here. We are sorry he is going back, but we are delighted he has served us as he has.

CONFERENCE REPORT ON H.R. 5300, OMNIBUS BUDGET RECONCILIATION ACT OF 1986

Mr. GRAY of Pennsylvania submitted the following conference report and statement on the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987.

CONFERENCE REPORT (H. REPT. 99-1012)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Omnibus Budget Reconciliation Act of 1986".

(b) TABLE OF CONTENTS.—

Title I. Agriculture programs.
Title II. Banking and housing programs.
Title III. Energy and environmental programs.
Title IV. Transportation and related programs.
Title V. Maritime programs.
Title VI. Civil service, Postal Service, and governmental affairs generally.
Title VII. Fiscal procedures.
Title VIII. Revenues, trade, and related programs.
Title IX. Income security, medicare, medicaid, and maternal and child health programs.

TITLE I—AGRICULTURAL PROGRAMS

Subtitle A—Sale of Notes

SEC. 1001. SALE OF RURAL DEVELOPMENT NOTES.

(a) SALES REQUIRED.—The Secretary of Agriculture, under such terms as the Secretary may prescribe, shall sell notes and other obligations held in the Rural Development Insurance Fund established under section 309A of the Consolidated Farm and Rural Development Act in such amounts as to realize net proceeds to the Government of not less than—

(1) $1,000,000,000 from such sales during fiscal year 1987,

(2) $552,000,000 from such sales during fiscal year 1988, and

(3) $547,000,000 from such sales during fiscal year 1989.

(b) NONRECOURSE SALES.—The second sentence of section 309A(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a(e)) is amended by—

(1) inserting "and other obligations" after "Notes"; and

(2) striking out the period at the end thereof and inserting in lieu thereof the following: ", including sale on a nonrecourse basis. The Secretary and any subsequent purchaser of such notes or other obligations sold by the Secretary on a nonrecourse basis shall be relieved of any responsibilities that might have been imposed had the borrower remained indebted to the Secretary.".

(c) CONTRACT PROVISIONS.—Consistent with section 309A(e) of the Consolidated Farm and Rural Development Act, as amended by subsection (b), any sale of notes or other obligations, as described in subsection (a), shall not alter the terms specified in the note or other obligation, except that, on sale, a note or other obligation shall not be subject to the provisions of section 333(c) of the Consolidated Farm and Rural Development Act.

(d) ELIGIBILITY TO PURCHASE NOTES.—Notwithstanding any other provision of law, each institution of the Farm Credit System shall be eligible to purchase notes and other obligations held in the Rural Development Insurance Fund and to service (including the extension of additional credit and all other actions necessary to preserve, conserve, or protect the institution's interest in the purchased notes or other obligations), collect, and dispose of such notes and other obligations, subject only to such terms and conditions as may be agreed to by the Secretary of Agriculture and the purchasing institution and as may be approved by the Farm Credit Administration.

(e) LOAN SERVICING.—Prior to selling any note or other obligation, as described in subsection (a), the Secretary of Agriculture shall require persons offering to purchase the note or other obligation to demonstrate—

(1) an ability or resources to provide such servicing, with respect to the loans represented by the note or other obligation, that the Secretary deems necessary to ensure the continued performance on the loan; and

(2) the ability to generate capital to provide the borrowers of the loans such additional credit as may be necessary in proper servicing of the loans.

SEC. 1002. LIMITATION ON SALES FROM THE AGRICULTURAL CREDIT INSURANCE FUND.

During fiscal years 1987 through 1989, no note shall be sold out of the Agricultural Credit Insurance Fund, except in connection with transactions with the Secretary of the Treasury, without prior approval by Congress.

Subtitle B—Prepayment of Loans

SEC. 1011. PREPAYMENT OF REA GUARANTEED LOANS.

(a) AMENDMENT TO RURAL ELECTRIFICATION ACT OF 1936.—The Rural Electrification Act of 1936 is amended by inserting after section 306 (7 U.S.C. 936) the following new sections:

"SEC. 306A. PREPAYMENT OF LOANS.

"(a) Except as provided in subsection (c), a borrower of a loan made by the Federal Financing Bank and guaranteed under section 306 of this Act may prepay such loan (or any loan advance thereunder) by paying the outstanding principal balance due on the loan (or advance), if—

"(1) the loan is outstanding on July 2, 1986;

"(2) private capital, with the existing loan guarantee, is used to replace the loan; and

"(3) the borrower certifies that any savings from such prepayment will be passed on to its customers or used to improve the financial strength of the borrower in cases of financial hardship.

"(b) No sums in addition to the payment of the outstanding principal balance due on the loan may be charged as the result of such prepayment against the borrower, the fund, or the Rural Electrification Administration.

"(c)(1) A borrower will not qualify for prepayment under this section if, in the opinion of the Secretary of the Treasury, to prepay in such borrower's case would adversely affect the operation of the Federal Financing Bank.

"(2) Paragraph (1) shall be effective in fiscal year 1987 only for any loan the prepayment of the principal amount of which will cause the cumulative amount of net proceeds from all such prepayments made during such year to exceed $2,017,500,000.

"(d)(1) The Administrator shall permit, subject to subsection (a), prepayments of principal on loans in fiscal year 1987 under this section or Public Law 99-349 in such amounts as to realize net proceeds from all such prepayments in fiscal year 1987 in an amount not less than $2,017,500,000.

"(2) The Administrator shall establish—

"(A) eligibility criteria to ensure that any loan prepayment activity required to be carried out under this subsection will be directed to those cooperative borrowers in greatest need of the benefits associated with prepayment, as determined by the Administrator; and

"(B) such other eligibility criteria as the Administrator determines are necessary to carry out this subsection.

"(e) Any guarantee of a loan prepaid under this section shall be fully assignable under the provisions of section 306 of this Act and transferrable. However, the Administrator may require that any such guarantee, if transferred or assigned, be transferred or assigned to a loan or security that, if sold, will be grouped with nonguaranteed loans or securities and sold in a manner to ensure that such sale will not unreasonably compete with the marketing of obligations of the United States.

"SEC. 306B. SALE OR PREPAYMENT OF DIRECT OR INSURED LOANS.

"A direct or insured loan made under this Act shall not be sold or prepaid at a value less than the face value of any outstanding principal balance on such loan, except when sold to or prepaid by the borrower at the lesser of the outstanding principal balance due on the loan or the loan's present value discounted from the face value at maturity at the rate set by the Administrator. The exception contained in the preceding sentence shall be effective for the period ending September 30, 1987.".

(b) CONFORMING AMENDMENT.—Chapter I of the Act entitled "An Act making urgent supplemental appropriations for the fiscal year ending September 30, 1986, and for other purposes" (Public Law 99-349), approved July 2, 1986, is amended by striking out the undesignated paragraph relating to the prepayment of loans by Rural Electrification and Telephone Systems.

(c) REGULATIONS.—The Secretary of Agriculture shall issue regulations to implement this section within 60 days after the date of enactment of this Act. Such regulations—

(1) shall facilitate prepayment of loans under section 306A of the Rural Electrification Act of 1936, as added by subsection (a); and

(2) may not require any rural utility that is a borrower of loans subject to section 306A to make unreasonable reductions in rates to its customers as a condition of such prepayment.

Subtitle C—Advance Deficiency Payments

SEC. 1021. ADVANCE DEFICIENCY PAYMENTS.

Notwithstanding any other provision of law, the Secretary of Agriculture, in accordance with the criteria in section 107C of the Agricultural Act of 1949, shall make advance deficiency payments available for the 1987 crops of wheat, feed grains, upland cotton, and rice. The percentage of the projected payment rate used in computing such payments shall not be less than (1) 40 percent in the case of wheat and feed grains, and (2) 30 percent in the case of rice and upland cotton.

Subtitle D—Farm Credit Institutions

SEC. 1031. SHORT TITLE.

This subtitle may be cited as the "Farm Credit Act Amendments of 1986".

SEC. 1032. POLICY.

Section 1.1 of the Farm Credit Act of 1971 (12 U.S.C. 2001) is amended by adding at the end thereof the following new subsection:

"(c) It is declared to be the policy of Congress that the credit needs of farmers, ranchers, and their cooperatives are best served if the institutions of the Farm Credit System provide equitable and competitive interest rates to eligible borrowers, taking into consideration the creditworthiness and access to alternative sources of credit for borrowers, the cost of funds, including any costs of defeasance under section 4.8(b), the operating costs of the institution, including the costs of any loan loss amortization under section 5.19(b), the cost of servicing loans, the need to retain earnings to protect borrowers' stock, and the volume of net new borrowing. Further, it is declared to be the policy of Congress that Farm Credit System institutions take action in accordance with the Farm Credit Act Amendments of 1986 in such manner that borrowers from the institutions derive the greatest benefit practicable from that Act: Provided, That in no case is any borrower to be charged a rate of interest that is below competitive market rates for similar loans made by private lenders to borrowers of equivalent creditworthiness and access to alternative credit.".

SEC. 1033. TERMINATION OF FARM CREDIT ADMINISTRATION APPROVAL OF INTEREST RATES CHARGED BY SYSTEM INSTITUTIONS.

(a) FEDERAL LAND BANKS.—The first sentence of section 1.7 of the Farm Credit Act of 1971 (12 U.S.C. 2015) is amended by striking out ", with the approval of the Farm Credit Administration as provided in section 4.17 of this Act".

(b) FEDERAL INTERMEDIATE CREDIT BANKS.—The second sentence of section 2.4 of the Farm Credit Act of 1971 (12 U.S.C. 2075) is amended by striking out "with the approval of the Farm Credit Administration as provided in section 4.17 of this Act".

(c) BANKS FOR COOPERATIVES.—The first sentence of section 3.10(a) of the Farm Credit Act of 1971 (12 U.S.C. 2131(a)) is amended by striking out ", with the approval of the Farm Credit Administration as provided in section 4.17 of this Act".

SEC. 1034. CERTAIN TRANSACTIONS WITH RESPECT TO SYSTEM OBLIGATIONS.

Section 4.8 of the Farm Credit Act of 1971 (12 U.S.C. 2159) is amended by—

(1) inserting the designation "(a)" after the heading; and

(2) adding at the end thereof the following:

"(b) Through December 31, 1988, each bank of the System, in addition to purchasing obligations as authorized by this Act, may, with the prior approval of the Farm Credit Administration and subject to such conditions as it may establish, (1) reduce the cost of its borrowings by doing one or more of the following: (A) contracting with a third party, or an entity that is established as a limited purpose System institution under section 4.25 and that is not to be included in the combined financial statements of other System institutions, with respect to the payment of interest on the bank's obligations and the obligations of other banks incurred before January 1, 1985, in consideration of the payment of market interest rates on such obligations, plus a premium, or (B) for the period July 1, 1986, through December 31, 1988, capitalizing interest costs on obligations incurred before January 1, 1985, in excess of the estimated interest costs on an equivalent amount of Farm Credit System obligations at prevailing market rates on such obligations of similar maturities as of the date of the enactment of this subsection, or (C) taking other similar action; and (2) amortize, over a period of not to exceed 20 years, the capitalization of the premium, capitalization of interest expense, or like costs of any action taken under clause (1).".

SEC. 1035. DETERMINATION OF INTEREST RATES.

Section 4.17 of the Farm Credit Act of 1971 (12 U.S.C. 2205) is amended by striking out the first sentence and inserting in lieu thereof the following: "Interest rates on loans from institutions of the Farm Credit System shall not be subject to any interest rate limitation imposed by any State constitution or statute or other laws. Such limitation is preempted for purposes of this Act.".

SEC. 1036. TERMINATION OF FARM CREDIT ADMINISTRATION APPROVAL OF INTEREST RATES CHARGED ON DIRECT AND DISCOUNTED LOANS.

Section 5.17(a)(5)(A) of the Farm Credit Act of 1971 (12 U.S.C. 2252(a)(5)(A)) is amended by striking out "and on loans made or discounted by such institutions".

SEC. 1037. ACCOUNTING.

Section 5.19(b) of the Farm Credit Act of 1971 (12 U.S.C. 2254(b)) is amended by striking out the second sentence and inserting in

lieu thereof the following: "Each such report shall contain financial statements prepared in accordance with generally accepted accounting principles, except with respect to any actions taken by any banks of the System under section 4.8(b), and contain such additional information as the Farm Credit Administration by regulation may require. Notwithstanding the provisions of the preceding sentence and any other provision of this Act, for the period July 1, 1986, through December 31, 1988, the institutions of the Farm Credit System may, on the prior approval of the Farm Credit Administration and subject to such conditions as it may establish, capitalize annually their provision for losses that is in excess of one-half of 1 percent of loans outstanding and amortize such capitalized amounts over a period not to exceed 20 years.".

TITLE II—BANKING AND HOUSING PROGRAMS

SEC. 2001. SALE OF RURAL HOUSING LOANS.

(a) REQUIRED SALES TO PUBLIC.—The Secretary of Agriculture shall take such actions as may be necessary to ensure that loans made under title V of the Housing Act of 1949 are sold to the public in amounts sufficient to provide a net reduction in outlays of not less than $1,715,000,000 in fiscal year 1987 from the proceeds of such sales.

(b) PROCEDURES AND TERMS OF SALES.—

(1) ESTABLISHMENT OF GUIDELINES.—The Secretary of Agriculture shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and terms applicable to the sale of the loans, including the kind of protections that should be provided to borrowers and terms that will ensure that the sale of the loans will be made at the lowest practicable cost to the Federal Government.

(2) ASSISTANCE BY FEDERAL FINANCING BANK.—In selling loans to the public under subsection (a), the Secretary of Agriculture shall use the Federal Financing Bank as an agent to sell the loans, unless the Secretary determines that the sale of loans directly by the Secretary will result in a higher rate of return to the Federal Government. If the Secretary determines to sell loans directly under this paragraph, the Secretary shall notify the Federal Financing Bank of such determination and the loans involved and, to the extent practicable, shall implement any reasonable recommendations that may be made by the Federal Financing Bank with respect to the procedures and terms applicable to the sale.

(c) REPORTS TO CONGRESS.—

(1) NOTIFICATION OF INITIAL LOAN SALE.—Not less than 20 days before the initial sale of loans under subsection (a), the Secretary of Agriculture shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives containing an estimate of the amount of the discount at which loans will be sold at such initial sale and an estimate of the discount at which loans will be sold at each subsequent sale during fiscal year 1987.

(2) REPORTS BY SECRETARY.—The Secretary of Agriculture shall submit periodic reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Secretary under this section. Each report shall include the guidelines established under subsection (b)(1), a description of the loans sold under subsection (a), and an analysis of the net reduction in outlays provided by the sale of the loans. The Secretary shall submit the first report under this paragraph not later than 60 days after the date of the enactment of this Act, and shall submit subsequent reports each 60 days thereafter through the end of fiscal year 1987.

(3) REPORTS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall conduct an audit and evaluation of the activities of the Secretary of Agriculture described in each report submitted under paragraph (1) or (2), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Secretary as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

(d) RELATION TO OTHER LAW.—The sale of loans under this section shall not be subject to paragraph (2) or (3) of section 517(d) of the Housing Act of 1949.

SEC. 2002. SALE OF EXPORT-IMPORT BANK LOANS.

The Export-Import Bank Act of 1945 (12 U.S.C. 635 et seq.) is amended by adding at the end the following new section:

"SEC. 16. SALE OF BANK LOANS.

"(a) REQUIRED SALES TO PUBLIC.—The Board of Directors shall take such actions as may be necessary to ensure that loans made by the Bank under this Act are sold to the public in amounts sufficient to provide a net reduction in outlays of not less than $1,500,000,000 in fiscal year 1987 from the proceeds of such sales.

"(b) PROCEDURES AND TERMS OF SALES.—

"(1) ESTABLISHMENT OF GUIDELINES.—The Board of Directors shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and terms applicable to the sale of the loans, including terms that will ensure that the sale of the loans will bring the highest possible return to the Federal Government.

"(2) ASSISTANCE BY FEDERAL FINANCING BANK.—In selling loans to the public under subsection (a), the Board of Directors shall use the Federal Financing Bank as an agent to sell the loans, unless the Board of Directors determines that the sale of loans directly by the Export-Import Bank will result in a higher rate of return to the Federal Government. If the Board of Directors determines to sell loans directly under this paragraph, the Board shall notify the Federal Financing Bank of such determination and the loans involved and, to the extent practicable, shall implement any reasonable recommendations that may be made by the Federal Financing Bank with respect to the procedures and terms applicable to the sale.

"(c) REPORTS TO CONGRESS.—

"(1) NOTIFICATION OF INITIAL LOAN SALE.—Not less than 20 days before the initial sale of loans under subsection (a), the Board of Directors shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives containing an estimate of the amount of the discount at which loans will be sold at such initial sale and an estimate of the discount at which loans will be sold at each subsequent sale during fiscal year 1987.

"(2) REPORTS BY BANK.—The Board of Directors shall submit periodic reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Board of Directors under this section. Each such report shall include the guidelines established under subsection (b)(1), a description of the loans sold under subsection (a), and an analysis of the net reduction in outlays provided by the sale of such loans. The Board of Directors shall submit the first report under this paragraph not later than 60 days after the date of the enactment of this Act, and shall submit subsequent reports each 60 days thereafter through the end of fiscal year 1987.

"(3) REPORTS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall conduct an audit and evaluation of the activities of the Board of Directors described in each report submitted under paragraph (1) or (2), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Board of Directors as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

"(d) SECURITIES LAWS NOT APPLICABLE TO SALES.—The sale of any loan under this section shall be deemed to be a sale of exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) and section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)). The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations as may be necessary in the public interest or for the protection of investors.".

TITLE III—ENERGY AND ENVIRONMENTAL PROGRAMS

Subtitle A—Distribution of Petroleum Overcharge Funds

SEC. 3001. SHORT TITLE.

This subtitle may be cited as the "Petroleum Overcharge Distribution and Restitution Act of 1986".

SEC. 3002. RESTITUTIONARY AMOUNTS COVERED.

(a) IN GENERAL.—This subtitle (other than section 3005)—

(1) specifies the procedure for the disbursement of funds collected, including interest thereon, by the Secretary or the courts pursuant to the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1970 (and the regulations issued thereunder) as restitution for actual or alleged violations of such Acts or regulations; and

(2) subject to subsection (c), applies to—

(A) any amount of such funds held in escrow by the Secretary through accounts administered by the Secretary of the Treasury on or after the date of enactment of this Act; and

(B) any amount of such funds determined at any time, pursuant to judicial or administrative proceedings (including any settlement agreement or declaratory judgment)

instituted by the Secretary to enforce such Acts and regulations, to be amounts paid for such actual or alleged violations, including any such amounts held in escrow by any court.

(b) SPECIAL RULE.—Amounts described in subsection (a)(2) and held in an escrow account by a court before the date of enactment of this Act may continue to be held by such court but shall be disbursed, together with any interest thereon, by the Secretary or, as appropriate, by the court only in accordance with the provisions of this subtitle.

(c) EXCLUSIONS.—Subsection (a)(2) does not apply to—

(1) any amount actually disbursed before the date of enactment of this Act to any person or class of persons pursuant to section 155 of Public Law 97-377 or any final judicial or administrative order or judgment (including any settlement agreement or declaratory judgment);

(2) any amount to which any person or class of persons has an enforceable right, created or vested, or governed by the terms and conditions of the settlement approved on July 7, 1986, in In Re: the Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378, in the United States District Court for the District of Kansas; and

(3) any amount designated by judicial or administrative order or judgment (including any settlement agreement or declaratory judgment) for disbursement at any time to any specific person or class of persons—

(A) identified in such order or judgment as injured by the violation or alleged violation of the Acts described in subsection (a)(1) (including the regulations thereunder); or

(B) identified in such order or judgment issued before the date of enactment of this Act for indirect restitution.

(d) ESCROW ACCOUNTS.—Subject to subsections (b) and (c), the amounts covered by subsection (a) shall be held in appropriate escrow accounts administered for the Secretary by the Secretary of the Treasury.

(e) INTEREST.—Consistent with the disbursement requirements of this subtitle, the Secretary of the Treasury shall provide that amounts described in subsection (a) shall earn interest at the maximum rate earned on investments of Federal trust funds by the Secretary of the Treasury in short-term and long-term securities issued by the Federal Government (including minority bank investments).

SEC. 3003. IDENTIFICATION AND DISBURSEMENT OF RESTITUTIONARY AMOUNTS.

(a) IN GENERAL.—(1) Subject to paragraph (2)—

(A) all rulings, policies, or other statements (including any administrative order or settlement agreement) issued after the date of the enactment of this Act by any office, official, or employee of the Department of Energy; and

(B) all orders, including declaratory judgments, issued by any court after the date of the enactment of this Act,

shall be consistent with the provisions of this subtitle.

(2) Nothing in this section shall affect the settlement approved on July 7, 1986, in In Re: the Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378, in the United States District Court for the District of Kansas.

(b) DISBURSEMENT OF RESTITUTIONARY AMOUNTS AS DIRECT RESTITUTION TO INJURED PERSONS.—(1) The Secretary shall, through the Office of Hearings and Appeals of the Department of Energy, conduct proceedings expeditiously in accordance with subpart V regulations for the purpose of, to the maximum extent possible—

(A) identifying persons or classes of persons injured by any actual or alleged violation of the petroleum pricing and allocation regulations issued pursuant to the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1970;

(B) establishing the amount of any injury incurred by such persons; and

(C) making restitution, through the disbursement of amounts in the escrow accounts described in subsections (b) and (d) of section 3002, to such persons.

(2) In conducting such proceedings, the Secretary shall take into consideration the reports released pursuant to several orders of the applicable Federal district court in In Re: the Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378, in the United States District Court for the District of Kansas.

(c) DETERMINATION OF EXCESS AMOUNT TO BE USED FOR INDIRECT RESTITUTION.—(1) Within 45 days after the date of the enactment of this Act in the case of fiscal year 1987, and within 45 days after the beginning of each fiscal year after fiscal year 1987, the Secretary shall, using the best information available to the Secretary, determine and publish (along with a justification thereof) in the Federal Register the amount held in the escrow accounts described in subsections (b) and (d) of section 3002 that is in excess of the amount that will be needed to make restitution to persons or classes of persons in accordance with subsection (b)(1) of this section and to meet other commitments of such accounts (including the requirements of section 155 of Public Law 97-377). In making such determination, the Secretary shall give primary consideration to assuring that at all times sufficient funds (including a reasonable reserve) are set aside for making such restitution and meeting such other commitments.

(2) The Secretary shall make public the information referred to in the first sentence of paragraph (1).

(d) DISBURSEMENT OF EXCESS AMOUNT AS INDIRECT RESTITUTION FOR ENERGY CONSERVATION PROGRAMS.—(1) After the publication of the determination of an excess amount under subsection (c) for a fiscal year, the Secretary shall promptly provide for the disbursement of a portion or all of such excess amount for use in energy conservation programs. The amount so disbursed for a fiscal year shall be the smaller of—

(A) $200,000,000 minus the amount of Federal funds appropriated for energy conservation programs for such fiscal year; or

(B) the amount determined under subsection (c) to be the excess amount for such fiscal year.

(2) After determining the amount to be made available under paragraph (1), the Secretary shall apportion such amount among each of the energy conservation programs in a manner that will provide funding under this subtitle for the fiscal year concerned for each of such programs in the same proportionate amount that was provided for each of the programs by the Congress for fiscal year 1986. The Secretary shall then make available each amount apportioned for use under an energy conservation program in the same manner, to the same extent, under the same rulings and regulations, and for the same uses that Federal appropriated funds are made available and used under such program.

(3) The Secretary shall require that amounts made available under this subsection are used to supplement, and not supplant, funds otherwise available for energy conservation activities under Federal or State law.

SEC. 3004. DEPOSIT OF REMAINDER OF EXCESS AMOUNT INTO THE TREASURY AS INDIRECT RESTITUTION.

The amount that remains from the excess amount described in section 3003(c) after all disbursements have been made for a fiscal year under section 3003(d) shall be deposited by the Secretary of the Treasury into the general fund of the Treasury.

SEC. 3005. STATUTE OF LIMITATION.

(a) IN GENERAL.—(1) Except as provided in subsection (b), the commencement of a civil enforcement action shall be barred unless such action is commenced before the later of—

(A) September 30, 1988; or

(B) six years after the date of the violation upon which the action is based.

(2) For purposes of paragraph (1), the term "commencement of a civil enforcement action" means—

(A) the signing and issuance of a proposed remedial order against any person for filing with the Office of Hearings and Appeals of the Department of Energy; or

(B) the filing of a complaint with the appropriate district court of the United States.

(3) For purposes of this section, the term "civil enforcement action" means an administrative or judicial civil action by the Secretary under the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1970 (or the regulations issued thereunder) for the enforcement of any violation of such Acts or regulations.

(b) EXCEPTIONS.—(1) In computing the periods established in subparagraphs (A) and (B) of subsection (a)(1), there shall be excluded any period—

(A) during which any person who is or may become the subject of a civil enforcement action is outside the United States, has absconded or concealed himself, or is not subject to legal process;

(B) during which facts material to the establishment and maintenance of a civil enforcement action could not be known;

(C) occurring before full compliance with any subpoena or special report order issued to any person under section 13 of the Federal Energy Administration Act of 1974, and such additional period (not to exceed 12 calendar months) after such compliance for the Secretary to consider the results thereof and commence a civil enforcement action;

(D) during the pendency of any relevant criminal action under the Acts or regulations described in subsection (a)(1) during which a civil enforcement action is held in abeyance as a result of prosecutorial discretion and with or without a stay, and such additional period (not to exceed 12 calendar months) after a final judicial order or dismissal of such criminal action to commence a civil enforcement action;

(E) before the issuance of an order that constitutes final agency action on a request for adjustment from any rule, regulation, or order under section 504 of the Department of Energy Organization Act, and such additional period (not to exceed 12 calendar months) to commence a civil enforcement action; or

(F) of extension, to which the Secretary and the defendant have consented in writing, before the expiration of the time periods prescribed in subsection (a)(1).

(2) The provisions of subsection (a) shall not affect or apply to any civil enforcement

action commenced before, on, or after the date of enactment of this Act and remanded by the Office of Hearings and Appeals, the Federal Energy Regulatory Commission, or the court for further action of any kind.

(3) The provisions of subsection (a) shall not apply to any agency orders issued under the Acts or regulations described in subsection (a)(1) or to regulations issued under this Act, other than a proposed remedial order subject to this section.

(c) EXPRESSION OF INTENT.—(1) It is the intent of the Congress that—

(A) the Secretary and the Administrator of the Economic Regulatory Administration shall, to the greatest extent possible and within the time frames specified on September 12, 1986, by such Administrator to the Committee on Energy and Commerce of the House of Representatives, commence civil enforcement actions with respect to all cases known by such Administrator as of the date of the enactment of this Act and designated by such Administrator as "prelitigation cases", unless such an action is found not to be warranted;

(B) the Secretary and such Administrator not delay civil enforcement actions so as to cause the limitation in subsection (a)(1) to apply to any such case;

(C) any negotiations for the purpose of settlement of alleged violations not delay the commencement of a civil enforcement action; and

(D) the Department of Justice cooperate in ensuring that activities necessary, including the enforcement of subpoenas, to commence civil enforcement actions are carried out in a timely manner.

(2) Any failure to comply with the time frames described in paragraph (1)(A) shall not be considered for any purpose in any administrative or judicial proceeding subsequently commenced.

(d) END OF INVESTIGATIONS AND AUDITS.—Notwithstanding any other provision of law, the Secretary shall not initiate, after January 1, 1987, any audit or investigation of alleged civil violations of the Acts or regulations described in subsection (a)(1) for the purpose of commencement of any civil enforcement action. Nothing in this subsection shall affect or apply to any audit or investigation conducted with respect to any civil enforcement action commenced (within the limitation established by subsection (a)(1)) before, on, or after the date of the enactment of this Act. Nothing in this subsection shall limit the authority of the Secretary to continue any audit or investigation initiated before January 1, 1987.

(e) LIMITATION ON REVIEW.—Any review of a final agency action determined under section 503 or 504 of the Department of Energy Organization Act may not be initiated in any court by any person subject to such action after—

(1) 60 days after the effective date of that action; or

(2) 90 days after the date of the enactment of this Act,

whichever occurs later.

(f) OVERSIGHT.—(1) In order to ensure the expeditious, effective, and efficient resolution of all civil enforcement actions (whether or not in administrative or judicial litigation) and all cases pending at the Office of Hearings and Appeals under subpart V regulations, the Secretary shall—

(A) maintain a personnel level for the compliance program of the Economic Regulatory Administration of 170 full-time equivalents for fiscal year 1987, subject to normal attrition and subject to the provisions of any appropriation Act enacted for such fiscal year concerning such program; and

(B) maintain for the remainder of the program an adequate mix of lawyers, auditors, technical, clerical, and administrative personnel.

(2) By July 1, 1987, and by July 1 of each year thereafter, the Administrator of the Economic Regulatory Administration shall provide to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate the full-time equivalent level necessary for such compliance program for the next fiscal year and the basis for that level.

(3) The Secretary shall, in any fiscal year, provide a notice of at least 30 days to such Committees before initiating any reduction of force at the Economic Regulatory Administration. Such notice shall provide at least—

(A) the reasons for such reduction;

(B) the impact on the mix of personnel and on all cases, whether or not in litigation, including the subpart V regulation proceedings; and

(C) the expected costs and savings for the applicable fiscal year.

(4) The Administrator of the Economic Regulatory Administration shall keep such Committees fully and currently informed about the status (including delays, settlement negotiations, and other pertinent matters) of all enforcement cases (whether or not in litigation) and subpart V regulation proceedings.

SEC. 3006. REPORTS.

(a) REPORT ON RECEIPTS AND DISBURSEMENTS.—The Secretary shall transmit, not later than 60 days after the date of the enactment of this Act, a report to the committees referred to in subsection (d) containing a clear and complete statement of all receipts, disbursements, and commitments of restitutionary amounts, as of such date of enactment, by the Secretary pursuant to—

(1) any judicial or administrative proceeding (including any settlement agreement or declaratory judgment) instituted at any time by the Secretary to enforce the crude oil and petroleum product pricing and allocation regulations issued under the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1970; or

(2) section 155 of Public Law 97-377.

(b) REPORT ON COLLECTION OF CERTAIN DEFICIENCY FUNDS.—The Secretary shall transmit a report each fiscal year, beginning in fiscal year 1987, to such committees on the status of collections by the Secretary of deficiency funds to be deposited into the M.D.L. No. 378 escrow account established by the United States District Court for the District of Kansas until all such deficiency funds have been paid. The Secretary shall, in a manner substantially similar to that required by section 155 of Public Law 97-377 with respect to amounts disbursed under such section, monitor the disposition by the States of any funds disbursed to the States by the court pursuant to the opinion and order of such District Court, dated July 7, 1986, with respect to In Re: the Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378, including the use of such funds for administrative costs and attorneys fees.

(c) REPORT ON AMOUNT ESTIMATED TO BE AVAILABLE FOR INDIRECT RESTITUTION.—The Secretary shall transmit, on March 1 of each year beginning with 1987 and continuing until all the restitutionary amounts to which section 3002(a) applies have been collected and disbursed as provided in this subtitle, a report to such committees containing an estimate of the amount that will be determined under section 3003(c) to be the excess amount for purposes of section 3003(d)(1)(B) for the fiscal year beginning the next October 1.

(d) RECEIPT BY COMMITTEES.—The reports required by this subtitle shall be transmitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

SEC. 3007. TERMINATION.

(a) IN GENERAL.—(1) Except as provided in subsection (b), the provisions of this subtitle (other than section 3005) shall terminate 90 days after the Secretary—

(A) determines that all of the restitutionary amounts to which section 3002(a) applies have been collected and disbursed as provided in this subtitle; and

(B) submits to Congress the final report required by section 3006.

(2) Such final report shall include the determination (and the justification thereof) described in paragraph (1)(A). Such report shall also be published in the Federal Register.

(b) EXCEPTION.—The requirements of section 3003(d) shall continue to be applicable to the use of restitutionary amounts received under this subtitle as long as such funds remain available.

SEC. 3008. DEFINITIONS.

For purposes of this subtitle:

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "subpart V regulations" means the provisions of Subpart V—Special Procedures for Distribution of Refunds (10 CFR 205.280-205.288) and any amendment made after the date of the enactment of this Act, and all precedents and decisions under such regulations, but only to the extent that such provisions, precedents, decisions, and amendments are consistent with the provisions of this subtitle.

(3) The term "energy conservation programs" means—

(A) the program under part A of the Energy Conservation and Existing Buildings Act of 1976 (42 U.S.C. 6861 and following);

(B) the programs under part D of title III of the Energy Policy and Conservation Act (relating to primary and supplemental State energy conservation programs; 42 U.S.C. 6321 and following);

(C) the program under part G of title III of the Energy Policy and Conservation Act (relating to energy conservation for schools and hospitals; 42 U.S.C. 6371 and following); and

(D) the program under the National Energy Extension Service Act (42 U.S.C. 7001 and following).

(4) The term "person" includes refiners, retailers, resellers, farmer cooperatives, transportation entities, public and private utilities, school districts, Federal, State, and local governmental entities, farmers, and other individuals and their successors.

(5) The term "State" means each of the several States, the District of Columbia, the commonwealth of Puerto Rico, and any territory or possession of the United States.

Subtitle B—Information and Study Requirements

SEC. 3101. MANUFACTURERS ENERGY CONSUMPTION SURVEY.

(a) IN GENERAL.—Section 205 of the Department of Energy Organization Act (42 U.S.C. 7135) is amended by adding at the end the following new subsection:

"(i)(1) The Administrator shall conduct and publish the results of a survey of energy consumption in the manufacturing industries in the United States on at least a triennial basis and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information, including—

"(A) quantity of fuels consumed;

"(B) energy expenditures;

"(C) fuel switching capabilities; and

"(D) use of nonpurchased sources of energy, such as cogeneration and waste by-products.

"(2) This subsection does not affect the authority of the Administrator to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).".

(b) REPEAL.—Part E of title III of the Energy Policy and Conservation Act (42 U.S.C. 6341–6346) is hereby repealed.

SEC. 3102. CRUDE OIL PRODUCTION AND REFINING CAPACITY IN THE UNITED STATES.

(a) IN GENERAL.—(1) The Secretary of Energy, acting with the Energy Information Administration, shall conduct a study of domestic crude oil production and petroleum refining capacity and the effects of imports thereon in order to assist the Congress and the President in determining whether such production and capacity are adequate to protect the national security.

(2) The study provided for by this section shall be carried out within available appropriations.

(b) PUBLIC COMMENT.—The Secretary shall provide notice and reasonable opportunity for public comment with respect to conducting the study carried out under this section.

(c) REPORTING DATE.—The Secretary shall, within 120 days of the date of the enactment of this Act, transmit to the Congress and the President a copy of the findings and conclusions of the study carried out under this section. Such findings and conclusions shall be referred to the Committee on Energy and Natural Resources of the Senate and appropriate authorization committees of the House of Representatives.

(d) ACTION BY THE PRESIDENT.—The President shall, within 45 days after the date on which such report is transmitted to him, report his views concerning the levels at which imports of crude oil and refined petroleum products become a threat to the national security and advise the Congress concerning his views of the legislative or administrative action, or both, that will be required to prevent imports of crude oil and refined petroleum products from exceeding those import levels that threaten our national security.

Subtitle C—Strategic Petroleum Reserve

SEC. 3201. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1987, 1988, AND 1989.

(a) IN GENERAL.—The following amounts are hereby authorized to be appropriated in accordance with section 660 of the Department of Energy Organization Act for operating expenses for the Strategic Petroleum Reserve to carry out part B of title I of the Energy Policy and Conservation Act for the acquisition, transportation, and injection of petroleum products, as defined for purposes of such part B, for the Reserve and for any drawdown and distribution

(1) For fiscal year 1987, $200,000,000.

(2) For fiscal year 1988, $291,000,000.

(3) For fiscal year 1989, $479,000,000.

(b) EFFECT ON OTHER AUTHORIZATIONS.—The authorization made by subsection (a) is in lieu of any other authorization of appropriation for fiscal years 1987, 1988, and 1989 for the expenses described in such subsection.

SEC. 3202. FILL RATE OF THE RESERVE; LIMITATION ON UNITED STATES SHARE OF THE NAVAL PETROLEUM RESERVE.

(a) FILL RATE OF THE RESERVE.—Section 160(c)(3) of the Energy Policy and Conservation Act (42 U.S.C. 6240(c)(3)) is amended—

(1) by striking out "fiscal year 1986 and continuing through fiscal years 1987 and 1988" and inserting in lieu thereof "fiscal year 1987 and continuing through fiscal years 1988 and 1989";

(2) by striking out "527,000,000 barrels" and inserting in lieu thereof "750,000,000 barrels"; and

(3) by striking out "at a level" and all that follows through the period and inserting in lieu thereof "at the highest practicable fill rate achievable, subject to the availability of appropriated funds."

(b) LIMITATION ON UNITED STATES SHARE OF THE NAVAL PETROLEUM RESERVE.—Section 160(d)(1) of such Act (42 U.S.C. 6240(d)(1)) is amended—

(1) in subparagraph (A), by striking out "527,000,000 barrels" and inserting in lieu thereof "750,000,000 barrels";

(2) in subparagraph (B)—

(A) by striking out "100,000 barrels" and inserting in lieu thereof "75,000 barrels"; and

(B) by striking out "; or" and inserting in lieu thereof a period; and

(3) by striking out subparagraph (C).

SEC. 3203. INFORMATION TO BE CONTAINED IN ANNUAL REPORT ON SPR.

Section 165(a) of the Energy Policy and Conservation Act (42 U.S.C. 6245(a)) is amended by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) a detailed statement of the status of the Strategic Petroleum Reserve, including—

"(A) an estimate of the final capacity of the Reserve and the scheduled annual fill rate for achieving such capacity;

"(B) the scheduled quarterly fill rate for the 12-month period beginning on the date on which such report is transmitted;

"(C) the type and quality of crude oil to be acquired for the Reserve pursuant to the schedule described in subparagraph (A);

"(D) the schedule of construction of any facilities needed to achieve the final capacity of the Reserve, including a description of the type and location of such facilities and of enhancements and improvements to existing facilities;

"(E) an estimate of the cost of acquiring crude oil and constructing facilities necessary to complete the Reserve;

"(F) a description of the current distribution plan for using the Reserve, including the method of drawdown and distribution to be utilized; and

"(G) an explanation of any changes made in the matters described in subparagraphs (A) through (F) since the transmittal of the previous report under this subsection;".

Subtitle D—Federal Energy Management

SEC. 3301. FEDERAL ENERGY MANAGEMENT.

Section 545(a)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8255(a)(2)) is amended by striking out "marginal" and inserting in lieu thereof "average".

Subtitle E—Fees and Charges

SEC. 3401. FEDERAL ENERGY REGULATORY COMMISSION FEES AND ANNUAL CHARGES.

(a) IN GENERAL.—(1) Except as provided in paragraph (2) and beginning in fiscal year 1987 and in each fiscal year thereafter, the Federal Energy Regulatory Commission shall, using the provisions of this subtitle and authority provided by other laws, assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.

(2) The provisions of this subtitle shall not affect the authority, requirements, exceptions, or limitations in sections 10(e) and 30(e) of the Federal Power Act.

(b) BASIS FOR ASSESSMENTS.—The fees or annual charges assessed shall be computed on the basis of methods that the Commission determines, by rule, to be fair and equitable.

(c) ESTIMATES.—The Commission may assess fees and charges under this section by making estimates based on data available to the Commission at the time of assessment.

(d) TIME OF PAYMENT.—The Commission shall provide that the fees and charges assessed under this section shall be paid by the end of the fiscal year for which they were assessed.

(e) ADJUSTMENTS.—The Commission shall, after the completion of a fiscal year, make such adjustments in the assessments for such fiscal year as may be necessary to eliminate any overrecovery or underrecovery of its total costs, and any overcharging or undercharging of any person.

(f) USE OF FUNDS.—All moneys received under this section shall be credited to the general fund of the Treasury.

(g) WAIVER.—The Commission may waive all or part of any fee or annual charge assessed under this section for good cause shown.

Subtitle F—Environmental Programs

SEC. 3501. ABANDONED MINE RECLAMATION RESEARCH AND DEVELOPMENT.

After the enactment of this Act, the research and demonstration authorities of the Department of the Interior under the provisions of section 401(c)(6) of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95–87) shall be transferred to, and carried out by, the Director of the Bureau of Mines. Research and demonstration projects under such provision shall be selected by a panel appointed by the Director of the Bureau of Mines to be comprised of 9 persons, including 4 representatives of State abandoned mine reclamation programs, 4 representatives of the Bureau of Mines, and one representative of the Office of Surface Mining Reclamation and Enforcement.

SEC. 3502. GREAT SWAMP NATIONAL WILDLIFE REFUGE.

(a) No later than 60 days after the enactment of this section, the United States Environmental Protection Agency shall provide the House Committee on Merchant Marine and Fisheries and the Senate Committees on Environment and Public Works and Energy and Natural Resources with an interim status report on the implementation of agency responsibilities for conducting or approving preliminary assessments, site investigations and, if necessary, Remedial Investigation/Feasibility Studies for contaminant problems on the Great Swamp Nation-

al Wildlife Refuge, as set forth in the July 9, 1985, Interagency Memorandum of Agreement between the United States Environmental Protection Agency, the United States Fish and Wildlife Service, and the National Park Service. This report shall describe in a systematic and comprehensive way the clean-up plan developed to date and the progress made thereunder, including the identification of responsible parties where possible, for the Rolling Knoll landfill, the Harding landfill, and all asbestos dumpsites identified within the Great Swamp National Wildlife Refuge. The report shall also discuss the appointment of appropriate field personnel to direct the clean-up effort; an assessment and ranking of the contaminant threats to the Refuge based upon information available to date; and a detailed work plan and schedule for completing site investigation work, including the analysis of samples collected during site investigations, and initiating Remedial Investigation/Feasibility Studies where necessary.

(b) Not later than 240 days after the enactment of this section, the United States Environmental Protection Agency shall provide the committees of Congress set forth in subsection (a) of this section with an update of its interim status report. This update shall address the same factors included in the original interim report and shall identify what progress has been made in implementing the site investigation, data analysis, and remedial clean-up responsibilities set forth in the interim report.

(c) The development of the interim and updated reports required in subsections (a) and (b) of this section shall be carried out with unobligated funds available to the United States Environmental Protection Agency.

TITLE IV—TRANSPORTATION AND RELATED PROGRAMS

Subtitle A—Rail Related Issues

PART 1—GENERAL PROVISIONS

SEC. 4001. SHORT TITLE; TABLE OF CONTENTS OF SUBTITLE.

(a) SHORT TITLE.—This subtitle may be cited as the "Conrail Privatization Act".

(b) TABLE OF CONTENTS OF SUBTITLE.—

PART 1—GENERAL PROVISIONS
Sec. 4001. Short title; table of contents of subtitle.
Sec. 4002. Findings.
Sec. 4003. Purposes.
Sec. 4004. Definitions.
PART 2—CONRAIL
SUBPART A—SALE OF CONRAIL
Sec. 4011. Preparation for public offering.
Sec. 4012. Public offering.
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SUBPART B—OTHER MATTERS RELATING TO THE SALE
Sec. 4021. Rail service obligations.
Sec. 4022. Ownership limitations.
Sec. 4023. Board of Directors.
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SUBPART C—MISCELLANEOUS TECHNICAL AND CONFORMING AMENDMENTS AND REPEALS
Sec. 4031. Abolition of United States Railway Association.
Sec. 4032. Applicability of Regional Rail Reorganization Act of 1973 to Conrail after sale.
Sec. 4033. Miscellaneous amendments and repeals.
Sec. 4034. Exemption from liability.
Sec. 4035. Charter amendment.
Sec. 4036. Status of Conrail after sale.
Sec. 4037. Effect on contracts.
Sec. 4038. Resolution of certain issues.
PART 3—PROMOTION OF RAIL COMPETITION
Sec. 4051. Agriculture contract disclosure.
Sec. 4052. Boxcar provision.

SEC. 4002. FINDINGS.

The Congress finds that—

(1) the bankruptcy of the Penn Central and other railroads in the Northeast and Midwest resulted in a transportation emergency which required the intervention of the Federal Government;

(2) the United States Government created the Consolidated Rail Corporation, which provides essential rail service to the Northeast and Midwest;

(3) the future of rail service in the Northeast and Midwest is essential and must be protected through rail service obligations, consistent with the transfer of the Corporation to the private sector;

(4) the Northeast Rail Service Act of 1981 has achieved its purpose in allowing the Corporation to become financially self-sustaining;

(5) the Federal Government has invested over $7,000,000,000 in providing rail service to the Northeast and Midwest;

(6) the Government, as a result of its ownership and investment of taxpayer dollars in the Corporation, controls substantial assets, including cash of approximately $1,000,000,000;

(7) the Corporation's viability and sound performance allow it to be sold to the American public for a substantial sum through a public offering;

(8) a public offering of the Corporation's stock will preserve competitive rail service in the region, provide a reasonable return to the Government, and protect employment;

(9) the Corporation's employees contributed significantly to the turnaround in the Corporation's financial performance and they should share in the Corporation's success through a settlement of their claims for reimbursement for wages below industry standard, and a share in the common equity of the Corporation;

(10) the requirements of section 401(e) of the Regional Rail Reorganization Act of 1973 are met by this subtitle; and

(11) the Secretary of Transportation has discharged the responsibilities of the Department of Transportation under the Northeast Rail Service Act of 1981 with respect to the sale of the Corporation as a single entity.

SEC. 4003. PURPOSES.

The purposes of this subtitle are to transfer the interest of the United States in the common stock of the Corporation to the private sector in a manner that provides for the long-term viability of the Corporation, provides for the continuation by the Corporation of its rail service in the Northeast and Midwest, provides for the protection of the public interest in a sound rail transportation system, and, to the extent not inconsistent with such purposes, secures the maximum proceeds to the United States.

SEC. 4004. DEFINITIONS.

For the purposes of this subtitle—

(1) the term "capital expenditures" means amounts expended by the Corporation and its subsidiaries for replacement or rehabilitation of, or enhancements to, the railroad plant, property, trackage, and equipment of the Corporation and its subsidiaries, as determined in accordance with generally accepted accounting principles, and in interpreting generally accepted accounting principles, no amount spent on normal repair, maintenance, and upkeep of such railroad plant, property, trackage, and equipment in the ordinary course of business shall constitute capital expenditures;

(2) the term "Commission" means the Interstate Commerce Commission;

(3) the term "consolidated funded debt" means the aggregate, after eliminating intercompany items, of all funded debt of the Corporation and its consolidated subsidiaries, consolidated in accordance with generally accepted accounting principles;

(4) the term "consolidated tangible net worth" means the market value of the common equity of the Corporation as of the sale date, plus or minus the change from the sale date to the date of measurement in the excess, after making appropriate deductions for any minority interest in the net worth of subsidiaries, of—

(A) the assets of the Corporation and its subsidiaries (excluding intercompany items) which, in accordance with generally accepted accounting principles, are tangible assets, after deducting adequate reserves in each case where, in accordance with generally accepted accounting principles, a reserve is proper, over

(B) all liabilities of the Corporation and its subsidiaries (excluding intercompany items),

taking into account inventory and securities on the basis of the cost or current market value, whichever is lower, and not taking into account patents, trademarks, trade names, copyrights, licenses, goodwill, treasury stock, or any write-up in the book value of any assets;

(5) the term "Corporation" means the Consolidated Rail Corporation;

(6) the term "cumulative net income" means, for any period, the net income of the Corporation and its consolidated subsidiaries as determined in accordance with generally accepted accounting principles, before provision for expenses (net of income tax effect) related to—

(A) amounts paid by the Corporation under section 4024(e), and comparable payments made to present and former employees of the Corporation not covered by such section; and

(B) the aggregate value of any shares and cash distributed by the Corporation under section 4024(f);

(7) the term "debt" means (A) indebtedness, whether or not represented by bonds, debentures, notes, or other securities, for the repayment of money borrowed, (B) deferred indebtedness for the payment of the purchase price of property or assets purchased, (C) guarantees, endorsements, assumptions, and other contingent obligations in respect of, or to purchase or to otherwise acquire, indebtedness of others, and (D) indebtedness secured by any mortgage, pledge, or lien existing on property owned, subject to such mortgage, pledge, or lien, whether or not indebtedness secured thereby shall have been assumed;

(8) the term "funded debt" means all debt created, assumed, or guaranteed, directly or indirectly, by the Corporation and its subsidiaries which matures by its terms, or is renewable at the option of the Corporation or any such subsidiary to a date, more than 1 year after the date of the original creation, assumption, or guarantee of such debt by the Corporation or such subsidiary;

(9) the term "liabilities" means all items of indebtedness or liability which, in accordance with generally accepted accounting principles, would be included in determin-

ing total liabilities as shown on the liabilities side of a balance sheet as at the date as of which liabilities are to be determined;

(10) the term "person" means an individual, corporation, partnership, association, trust, or other entity or organization, including a government or political subdivision thereof or a governmental body;

(11) the term "preferred stock" means any class or series of preferred stock, and any class or series of common stock having liquidation and dividend rights and preferences superior to the common stock of the Corporation offered for sale under section 4012;

(12) the term "public offering" means an underwritten offering to the public of such common stock of the Corporation as the Secretary of Transportation determines to sell under section 4012;

(13) the term "sale date" means the date on which the initial public offering is closed;

(14) the term "subsidiary" means any corporation more than 50 percent of whose outstanding voting securities are directly or indirectly owned by the Corporation; and

(15) the term "United States share" means a share of common stock of the Corporation held by the United States Government on the date of the enactment of this Act or as a result of any split required pursuant to section 4012(d).

PART 2—CONRAIL

SUBPART A—SALE OF CONRAIL

SEC. 4011. PREPARATION FOR PUBLIC OFFERING.

(a) PUBLIC OFFERING MANAGERS.—(1) Not later than 30 days after the date of the enactment of this Act, the Secretary of Transportation, in consultation with the Secretary of the Treasury and the Chairman of the Board of Directors of the Corporation, shall retain the services of investment banking firms to serve jointly and be compensated equally as co-lead managers of the public offering (hereafter in this subpart referred to as the "co-lead managers") and to establish a syndicate to underwrite the public offering. The total number of co-lead managers shall be no fewer than 4 nor greater than 6. The Secretary shall designate one co-lead manager to coordinate and administer the public offering.

(2) In selecting the investment banking firms to serve as co-lead managers of the public offering under paragraph (1), consideration shall be given to the firm's institutional and retail distribution capabilities, financial strength, knowledge of the railroad industry, experience in large scale public offerings, research capability, and reputation. In addition, recognition shall also be given to contributions made by particular investment banking firms before the date of the enactment of this Act in demonstrating and promoting the long-term financial viability of the Corporation.

(b) PAYMENT TO THE UNITED STATES.—(1) Not later than 30 days after the date of the enactment of this Act, the Corporation shall transfer to the Secretary of the Treasury $200,000,000.

(2) On or before February 1, 1987, or 30 days before the sale date, whichever occurs first, the Secretary of Transportation shall determine whether to require the Corporation to transfer to the Secretary of the Treasury, in addition to amounts transferred under paragraph (1), not to exceed $100,000,000, taking into account the viability of the Corporation. The Corporation shall transfer such funds as are required to be transferred under this paragraph.

(c) REGISTRATION STATEMENT.—The Corporation shall prepare and cause to be filed with the Securities and Exchange Commission a registration statement with respect to the securities to be offered and sold in accordance with the securities laws and the rules and regulations thereunder in connection with the initial and any subsequent public offering.

(d) LIMIT ON AUTHORITY TO PURCHASE STOCK.—Section 216(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(b)) is amended by adding at the end thereof the following new paragraph:

"(5) The authority of the Association to purchase debentures or series A preferred stock of the Corporation shall terminate upon the date of the enactment of the Conrail Privatization Act.".

SEC. 4012. PUBLIC OFFERING.

(a) STRUCTURE OF PUBLIC OFFERING.—(1) After the registration statement referred to in section 4011(c) is declared effective by the Securities and Exchange Commission, the Secretary of Transportation, in consultation with the Secretary of the Treasury, the Chairman of the Board of Directors of the Corporation, and the co-lead managers, shall offer the United States shares for sale in a public offering, except as provided in paragraphs (2) and (3).

(2) The Secretary of Transportation, after such consultation, may elect to offer less than all of the United States shares for sale at the time of the initial sale.

(3) Under no circumstances shall the Secretary of Transportation offer any of the United States shares for sale unless, before the sale date, the Secretary determines, after such consultation, that the estimated sum of the gross proceeds from the sale of all the United States shares will be an adequate amount. A determination by the Secretary under this paragraph shall not be reviewable.

(4) In making a determination under paragraph (3), the Secretary shall have the goal of obtaining at least $2,000,000,000 in aggregate gross proceeds for the United States from the public offering and any payments made under section 4011(b).

(b) SUBSEQUENT SALES.—If the Secretary of Transportation elects to offer for sale less than all the United States shares, the Secretary shall sell the remaining United States shares in subsequent public offerings.

(c) CONSENT OF THE CORPORATION NOT REQUIRED.—Any public offering under this section may be made without the consent of the Corporation.

(d) AUTHORITY TO REQUIRE STOCK SPLITS.—(1) The Secretary of Transportation, in consultation with the co-lead managers and the Chairman of the Board of Directors of the Corporation, may, in connection with the initial public offering described in subsection (a), before the filing of the registration statement referred to in section 4011(c), require the Corporation to declare a stock split or reverse stock split.

(2) The Corporation shall take such action as may be necessary to comply with the Secretary's requirements under this subsection.

(e) CANCELLATION OF OTHER SECURITIES HELD BY THE UNITED STATES.—(1) In consideration for amounts transferred to the United States under section 4011(b), the Secretary of Transportation shall, concurrent with the initial public offering described in subsection (a), deliver to the Corporation all preferred stock, 7.5 percent debentures, and contingent interest notes of the Corporation. The Corporation shall immediately cancel such debentures, preferred stock, and contingent interest notes, and any interest of the United States in such debentures, preferred stock, and contingent interest notes shall be thereby extinguished.

(2) For purposes of regulation by the Commission and State public utility regulation, the actions authorized by this subsection, the public offering, and the value of the consideration received therefor shall not change the value of the Corporation's assets net of depreciation and shall not be used to alter the calculation of the Corporation's stock or asset values, rate base, expenses, costs, returns, profits, or revenues, or otherwise affect or be the basis for a change in the regulation of any railroad service, rate, or practice provided or established by the Corporation, or any change in the financial reporting practice of the Corporation.

(f) MINORITY INVESTMENT BANKING FIRMS.—The Secretary of Transportation shall ensure that minority owned or controlled investment banking firms shall have an opportunity to participate to a significant degree in any public offering under this part.

(g) INVESTMENT BANKING FIRM REQUIREMENTS.—(1) The level of any investment banking firm's participation in the public offering shall be consistent with that firm's financial capabilities.

(2) No investment banking firm which was not in existence on September 1, 1986, shall participate in the public offering.

(h) GENERAL ACCOUNTING OFFICE AUTHORITY TO CONDUCT AUDITS.—The General Accounting Office may make such audits as may be deemed appropriate by the Comptroller General of the United States of all accounts, books, records, memoranda, correspondence, and other documents and transactions of the Corporation and the co-lead managers associated with the public offering. The co-lead managers shall agree, in writing, to allow the General Accounting Office to make such audits. The General Accounting Office shall report the results of all such audits to the Congress.

SEC. 4013. FEES.

(a) INVESTMENT BANKING FIRM FEES.—The Secretary of Transportation, in consultation with the Secretary of the Treasury, shall agree to pay to investment banking firms and other persons participating with such firms in the public offering the absolute minimum amount in fees necessary to carry out the public offering.

(b) COSTS OF THE PUBLIC OFFERING.—All costs of the public offering payable by the Secretary of Transportation shall be paid from the proceeds of the public offering.

SUBPART B—OTHER MATTERS RELATING TO THE SALE

SEC. 4021. RAIL SERVICE OBLIGATIONS.

(a) OBLIGATIONS OF THE CORPORATION.—During a period of 5 years beginning on the date of the enactment of this Act, the following obligations shall apply to the Corporation:

(1) The Corporation shall spend in each fiscal year the greater of (A) an amount equal to the Corporation's depreciation for financial reporting purposes for such year or (B) $500,000,000, in capital expenditures. With respect to any fiscal year, the Corporation's Board of Directors may reduce the required capital expenditures for such year to an amount which the Board determines is justified by prudent business and engineering practices, except that the Corporation's capital expenditures shall not be less than $350,000,000 for its first fiscal year beginning after the sale date, a total of $700,000,000 for its first two fiscal years beginning after the sale date, a total of $1,050,000,000 for its first three fiscal years

beginning after the sale date, a total of $1,400,000,000 for its first four fiscal years beginning after the sale date, and a total of $1,750,000,000 for its first five fiscal years beginning after the sale date.

(2)(A) Unless the Corporation is in compliance with the requirements of subparagraph (B), no common stock dividend or preferred stock dividend may be declared or paid by the Corporation.

(B)(i) The Corporation shall have been in compliance with the requirements of paragraph (1) as of the end of the fiscal year immediately preceding the fiscal year in which such dividend payment is made.

(ii) After payment of any common stock dividend, the Corporation shall have on hand cash or cash equivalents of $400,000,000. Such amount may include amounts borrowed by the Corporation only to the extent that the consolidated funded debt of the Corporation does not exceed 175 percent of the consolidated tangible net worth of the Corporation.

(iii) After payment of any common stock dividend, the cumulative amount of all common stock dividends paid between the sale date and the date of payment of such dividend shall not exceed 45 percent of—

(I) the cumulative net income of the Corporation as reflected in the quarterly financial statements of the Corporation, for the period beginning after the end of the last fiscal quarter of the Corporation ending before the sale date, and ending at the end of the last fiscal quarter of the Corporation ending before the date of the declaration of such dividend, less

(II) the cumulative amount of any preferred stock dividends declared and paid between the sale date and the date of payment of such common stock dividend.

(C) For purposes of this paragraph—

(i) the term "common stock dividend" means—

(I) the declaration or payment by the Corporation of any dividends in cash, property, or other assets with respect to any shares of the common stock of the Corporation (other than dividends payable solely in shares of the common stock of the Corporation);

(II) the application of any of the property or assets of the Corporation to the purchase, redemption, or other acquisition or retirement of any shares of the common stock of the Corporation;

(III) the setting apart of any sum for the purchase, redemption, or other acquisition or retirement of any shares of the common stock of the Corporation; and

(IV) the making of any other distribution, by reduction of capital or otherwise, with respect to any shares of the common stock of the Corporation,

except that the merger of ConRail Equity Corporation into the Corporation shall not constitute a common stock dividend; and

(ii) the term "preferred stock dividend" means—

(I) the declaration or payment by the Corporation of any dividends in cash, property, or other assets with respect to any shares of the preferred stock of the Corporation;

(II) the application of any of the property or assets of the Corporation to the purchase, redemption, or other acquisition or retirement of any shares of the preferred stock of the Corporation;

(III) the setting apart of any sum for the purchase, redemption, or other acquisition or retirement of any shares of the preferred stock of the Corporation; and

(IV) the making of any other distribution, by reduction of capital or otherwise, with respect to any shares of the preferred stock of the Corporation.

(3) The Corporation shall continue its affirmative action program and its minority vendor program, substantially as such programs were being conducted by the Corporation as of February 8, 1985, subject to any provisions of applicable law.

(4) The Corporation shall not permit to occur any transaction or series of transactions (other than in the ordinary course of business of the Corporation and its subsidiaries) whereby all or any substantial part of the railroad assets and business of the Corporation and its subsidiaries taken as a whole are sold, leased, transferred, or otherwise disposed of to any corporation or entity other than to a wholly owned subsidiary of the Corporation.

(5) The Corporation shall offer any line for which an abandonment certificate is issued by the Commission to a purchaser who agrees to provide interconnecting rail service. Such offer shall last for the 120-day period following the date of issuance of the abandonment certificate and the price for such abandoned line shall be equal to 75 percent of net liquidation value as determined by the Commission, pursuant to regulations that had been issued under section 308 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 748).

(6) The Corporation and its subsidiaries shall maintain, preserve, protect, and keep their respective properties in good repair, working order, and condition, and shall not permit deferral of normal and prudent maintenance necessary to provide and maintain rail service.

(b) COMPLIANCE CERTIFICATES.—(1) Within 90 days after the close of each of its fiscal years, or at the time its financial statements have been audited, whichever occurs later, the Corporation shall deliver to the Secretary of Transportation a certificate executed by an executive officer of the Corporation. Such certificate shall certify that, as of such date, the Corporation is in compliance with all requirements (other than the requirement regarding a common stock dividend or a preferred stock dividend) set forth in this section. Such certificate shall include audited consolidated financial statements.

(2) Within 5 days after the declaration of any common stock dividend or preferred stock dividend, the Corporation shall deliver to the Secretary of Transportation a certificate executed by an executive officer of the Corporation. Such certificate shall certify that, after giving effect to any such dividend, the Corporation shall be in compliance with any requirement regarding a common stock dividend or a preferred stock dividend set forth in this section. Such certificate shall include—

(A) quarterly financial statements; and

(B) a report of the Corporation's total capital expenditures,

for the period with respect to which the dividend has been declared, and the fiscal year to date, and shall compare such capital expenditures to the budgeted capital expenditures and to the capital expenditures during the comparable periods of the previous fiscal year.

SEC. 4022. OWNERSHIP LIMITATIONS.

(a) GENERAL.—(1) During a period of 3 years beginning on the sale date, no person, directly or indirectly, may acquire or hold securities representing more than 10 percent of the total votes of all outstanding voting securities of the Corporation.

(2) This subsection shall not apply—

(A) to the employee stock ownership plan (or successor plans) of the Corporation,

(B) to the Secretary of Transportation,

(C) to a railroad as described under subsection (b),

(D) to underwriting syndicates holding shares for resale, or

(E) in the case of shares beneficially held for others, to commercial banks, broker-dealers, clearing corporations, or other nominees.

(b) RAILROADS.—(1) During a period of 1 year beginning on the sale date, no railroad may purchase or hold, directly or indirectly, more than 10 percent of any class of stock of the Corporation. During such period, no railroad may file an application with the Commission for a merger or consolidation with the Corporation or the acquisition of control of the Corporation under section 11344 of title 49, United States Code.

(2) During a period of 3 years beginning on the sale date, any railroad which purchases or holds any stock of the Corporation shall vote such stock in the same proportion as all other common stock of the Corporation is voted. After the expiration of 1 year after the sale date, the preceding sentence shall not apply to any railroad with respect to which the Commission has approved an application for a merger or consolidation with the Corporation or the acquisition of control of the Corporation under section 11344 of title 49, United States Code.

(3) As used in this subsection, the term "railroad" means a class I railroad as determined by the Commission under the definition in effect on the date of the enactment of this Act, and includes any entity controlling, controlled by, or under common control with any railroad (other than the Corporation or its subsidiaries).

SEC. 4023. BOARD OF DIRECTORS.

The Board of Directors of the Corporation shall be comprised as follows:

(1) Except as provided in paragraph (3), with respect to the period ending June 30, 1987, the board shall remain as it exists on the date of the enactment of this Act, with any vacancies being filled by directors nominated and elected by the remainder of the members of the board.

(2)(A) Except as provided in paragraph (3), with respect to the period beginning July 1, 1987, the board shall consist of—

(i) 3 directors appointed by the Secretary of Transportation;

(ii) the Chief Executive Officer and the Chief Operating Officer of the Corporation; and

(iii) 8 directors appointed from among persons knowledgeable in business affairs by the special court trustees named under subparagraph (C), in consultation with the Secretary of Transportation and the Chairman of the Board of Directors of the Corporation, and recognizing the need for and importance of—

(I) continuity in the direction of the Corporation's business and affairs;

(II) preserving the value of the investment of the United States in the Corporation;

(III) preserving essential rail service provided by the Corporation; and

(IV) providing for the sale of the United States shares.

(B) The Secretary of Transportation and the special court trustees may appoint directors under subparagraph (A) from among existing directors of the Corporation.

(C)(i) If more than 50 percent of the interest of the United States in the Corporation has not been sold before June 1, 1987, the special court established under section 209 of the Regional Rail Reorganization Act of

1973 (45 U.S.C. 719) shall, on that date, name 3 trustees from among persons knowledgeable in business affairs to make the appointments required by subparagraph (A)(iii). The Corporation shall compensate the special court trustees in an amount to be specified by the special court, not to exceed the amount paid by the Corporation to its directors for comparable services.

(ii) No person shall be eligible to be appointed as a special court trustee under this subparagraph who, at any time during the 30 months immediately preceding such appointment, was an officer, employee, or director of the United States Railway Association, the Corporation, or the Department of Transportation.

(3)(A) After the sale date, one director shall be elected by the public shareholders of the Corporation for each increment of 12.5 percent of the interest of the United States in the Corporation that has been sold through public offering.

(B) With respect to the period ending June 30, 1987—

(i) the first director elected under this paragraph shall replace the member of the board who became a director most recently from among—

(I) directors appointed by the United States Railway Association, or elected under paragraph (1) to replace such a director, and

(II) directors appointed by the Secretary of Transportation, or elected under paragraph (1) to replace such a director;

(ii) the second director elected under this paragraph shall replace the member of the Board who became a director most recently from among directors described in clause (i) (I) or (II), whichever group the first director replaced under this subparagraph was not a member of; and

(iii) subsequent directors elected under this paragraph shall replace members alternately from the groups described in clause (i) (I) and (II).

(C) With respect to the period beginning July 1, 1987, directors elected under this paragraph shall replace directors appointed by the special court trustees under paragraph (2)(A)(iii), in the order designated by the special court trustees in a list to be issued at the time of such original appointments.

(D) With respect to the period beginning on the first date more than 50 percent of the interest of the United States in the Corporation has been sold through public offering and ending when 100 percent of such interest has been sold—

(i) all remaining members of the board referred to in paragraph (2)(A)(iii), and

(ii) with respect to the period ending June 30, 1987, all remaining members of the board, except 3 members appointed by the Secretary of Transportation and the Chief Executive Officer and the Chief Operating Officer of the Corporation,

shall be replaced by directors elected by the public shareholders of the Corporation.

(E) After 100 percent of the interest of the United States in the Corporation has been sold, any remaining directors appointed by the Secretary of Transportation, the United States Railway Association, or the special court trustees referred to under paragraph (2)(A)(iii), shall be replaced by directors elected by the public shareholders of the Corporation.

(F) Nothing in this paragraph shall be construed to prohibit any director referred to in this section from being elected as a director by the public shareholders of the Corporation.

(4)(A) No director appointed or elected under this section shall be a special court trustee or an employee of the United States, except as elected by the public shareholders of the Corporation.

(B) No director appointed or elected under this section shall be an employee of the Corporation, except as provided in paragraph (2)(A)(ii) or as elected by the public shareholders of the Corporation.

SEC. 4024. PROVISIONS FOR EMPLOYEES.

(a) TRANSITIONAL EMPLOYEE PROTECTION.—Section 701(d)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 797(d)(2)) is amended to read as follows:

"(2) Notwithstanding any other provision of law—

"(A) upon exhaustion of appropriated funds available for payment of benefits or expenses of administration of the Railroad Retirement Board (hereafter in this section referred to as the 'Board') under this section, or on the expiration of 60 days after the date of enactment of the Conrail Privatization Act, whichever first occurs, the United States shall have no further liability under this section, but the Corporation shall—

"(i) as agent for the Board, pay benefits under this section, without reimbursement, in such amounts and to such eligible employees as the Board shall designate, subject to the limitations prescribed in the benefit schedules issued under subsection (a); and

"(ii) on a periodic basis determined by the Board, advance to the Board its necessary expenses of administration, including expenses reasonably required for close-out of the program of labor protection under this section and for technical transition to the program of labor protection required by the Conrail Privatization Act, which advances shall be made without reimbursement.

"(B) The Corporation shall promptly honor the Board's requests for advances under this paragraph as due and payable liquidated debts, subject to later adjustment after audit by the Inspector General of the Board. The Board is authorized to receive and apply Corporation funds advanced under this paragraph for administration of this section and to refund to the Corporation any excess administrative funds advanced by the Corporation.

"(C) The Corporation shall be deemed subrogated to the right of the Board to recover any benefit paid by the Corporation as agent for the Board that was improvidently paid under this paragraph, and the Board shall cooperate with the Corporation in its effort to recover any such payment; but the Corporation shall have no claim against the Board for such payment, and the Board shall not be made a real party in interest to any lawsuit or to any proceeding with respect to recovery of such payment.

"(D) Benefits provided by the Corporation, as agent for the Board, shall, for purposes of this title, be deemed to have been made available under section 713 of this title.".

(b) DISPUTE RESOLUTION.—Section 701 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 797) is further amended by adding at the end thereof a new subsection as follows:

"(e) DISPUTE RESOLUTION.—Any dispute or controversy regarding eligibility for benefits under this section shall be determined under such procedures as the Board may by regulation prescribe. Subject to administrative reconsideration by the Board under its own procedures, findings of fact and conclusions of law of the Board in determination of any claim for such benefits shall, in the absence of fraud or an action exceeding the Board's jurisdiction, be binding and conclusive for all purposes and shall not be subject to review in any manner. For purposes of administration of this section, the administrative powers and penalties set forth in sections 9 and 12 of the Railroad Unemployment Insurance Act shall apply as if incorporated herein.".

(c) REPEAL OF SECTION 701.—Section 701 of the Regional Rail Reorganization Act of 1973 is repealed effective on the sale date. Notwithstanding this repeal—

(1) any dispute or controversy regarding benefits under section 701 shall be determined under the terms of the law in effect prior to such repeal; and

(2) the Railroad Retirement Board shall take such actions as may be necessary to complete administration and closeout of the section 701 program and the Board is authorized to receive and apply Corporation funds for this purpose.

(d) CONTINUING RESPONSIBILITIES.—(1) On and after the sale date, the Corporation shall provide the protection for its employees described in "Part III, Article III, Employee Protection", of the "Definitive Agreement of September 17, 1985, By and Between Conrail and the Undersigned Representatives of Conrail's Agreement Employees" and Appendix 3 thereto, together with any amendments thereto, or under any other terms and conditions as shall be agreed between the Corporation and the representatives of its employees.

(2) The Corporation shall pay, as designated by the Railroad Retirement Board, any remaining benefits under section 701 of the Regional Rail Reorganization Act of 1973 that accrued, but were not disbursed, prior to the sale date.

(3) The Railroad Retirement Board shall transfer to the Corporation such information regarding administration of the labor protection program under such section 701 as may be reasonably necessary for the Corporation to discharge its responsibilities under this subsection, including copies of the individual claim records of employees of the Corporation.

(4) The United States shall have no liability for benefits under this subsection.

(e) COMPENSATION FOR WAGES BELOW INDUSTRY STANDARD.—The Corporation shall pay $200,000,000 to present and former employees subject to collective bargaining agreements, in accordance with the terms and conditions in the Definitive Agreement referred to in subsection (d)(1), or as otherwise agreed between the parties.

(f) ESOP TRANSACTIONS.—(1) As soon as practicable after the date of the enactment of this Act, the employee stock ownership plan of the Corporation (hereafter in this subsection referred to as the "ESOP") shall be amended to provide that—

(A) the shares of the ConRail Equity Corporation preferred stock held by the ESOP shall be surrendered by the ESOP in exchange for an equal number of shares of the common stock of the Corporation, and such common stock of the Corporation shall be allocated by the ESOP to the same persons in the same amounts as the shares of ConRail Equity Corporation preferred stock had been allocated; and

(B) the remaining shares of the ConRail Equity Corporation preferred stock held by the Corporation shall be cancelled, and an equal number of shares of the common stock of the Corporation shall be contributed by the Corporation to the ESOP, which shares shall be allocated by the ESOP to persons who are or were ESOP participants in ac-

cordance with the formula set forth in section 2 of Article II of Part III of the Definitive Agreement referred to in subsection (d)(1), and in accordance with a comparable formula for present and former employees of the Corporation not covered by such section of the Definitive Agreement, except that no contribution by the Corporation to the ESOP shall be made which would affect the tax-qualified status of the ESOP, or of any of the employee benefit plans maintained by the Corporation or any affiliate of the Corporation, under the Internal Revenue Code of 1954.

(2)(A)(i) As soon as practicable after the expiration of 180 days after 100 percent of the United States shares are sold, the ESOP shall distribute all of the stock in the accounts of its participants and beneficiaries, except as provided in clause (ii).

(ii) Fractional shares shall not be distributed under clause (i). Shares equal to the aggregate amount of fractional shares shall be surrendered by the ESOP and redeemed by the Corporation for cash at the average closing price for the common stock of the Corporation on a national securities exchange for the 10 business days immediately preceding the date of distribution under clause (i), or, if the common stock of the Corporation is not listed on a national securities exchange, at the average closing price for such stock for such 10 business days as appearing in any regularly published reporting or quotation service, and the proceeds of such redemption shall be distributed by the ESOP to the same participants and beneficiaries and in the same amounts as the fractional shares had been allocated.

(B) After completing the distribution under subparagraph (A), the ESOP shall terminate.

(3) The Corporation shall distribute any full shares of its common stock which, because of the exception under paragraph (1)(B), could not be contributed to the ESOP to those persons to whom the ESOP would have allocated such shares pursuant to paragraph (1)(B) had such shares been contributed to the ESOP. The Corporation shall pay cash pursuant to the formula set forth in paragraph (2)(A)(ii) in lieu of fractional shares.

(4) For purposes of Rule 144 promulgated under the Securities Act of 1933, each share of the common stock of the Corporation distributed under this subsection shall be deemed to have been beneficially owned by the recipient, as of the date of such distribution, for a period of 3 years.

SEC. 4025. CERTAIN ENFORCEMENT RELIEF.

(a) ENFORCEMENT ACTIONS.—The Secretary of Transportation, with respect to any provision of section 4021 or 4022, and any person who suffers direct and substantial economic injury as a result of an alleged violation by the Corporation, with respect to the provisions of section 4021(a)(1) and (2), and section 4022, may bring an action to require compliance with such provision.

(b) SPECIAL COURT.—Any action brought under this part shall be brought before the special court established under section 209 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719). Such special court may limit the enforcement of a restriction under section 4021, if the effect of such restriction would be to substantially impair the continued viability of the Corporation.

SUBPART C—MISCELLANEOUS TECHNICAL AND CONFORMING AMENDMENTS AND REPEALS

SEC. 4031. ABOLITION OF UNITED STATES RAILWAY ASSOCIATION.

(a) ABOLITION AND TERMINATION.—(1) Effective April 1, 1987, the United States Railway Association is abolished.

(2) On January 1, 1987, all powers, duties, rights, and obligations of such association relating to the Corporation under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) shall be transferred to the Secretary of Transportation.

(3) The sole function of the United States Railway Association after January 1, 1987, shall be the termination of its affairs and the liquidation of its assets.

(b) TRANSFER OF SECURITIES AND RESPONSIBILITIES.—(1) Any securities of the Corporation held by the United States Railway Association shall, upon the date of the enactment of this Act, be transferred to the Secretary of Transportation.

(2) If, on the date the United States Railway Association is abolished under subsection (a), such association shall not have completed the termination of its affairs and the liquidation of its assets, the duty of completing such winding up of its affairs and liquidation shall be transferred to the Secretary of Transportation, who for such purposes shall succeed to all remaining powers, duties, rights, and obligations of such association.

(c) FINANCING AGREEMENT.—(1) On January 1, 1987, the Amended and Restated Financing Agreement, dated May 10, 1979, between the United States Railway Association and the Corporation, together with any and all rights and obligations of or on behalf of any person with respect to such agreement, shall terminate and be of no further force or effect, except for those provisions specifying terms and conditions for payments made to the United States with respect to debentures, preferred stock, and contingent interest notes.

(2) Effective as of the sale date, those provisions of the Financing Agreement referred to in paragraph (1) shall terminate.

SEC. 4032. APPLICABILITY OF REGIONAL RAIL REORGANIZATION ACT OF 1973 TO CONRAIL AFTER SALE.

Section 301 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 741) is amended by adding at the end thereof the following new subsection:

"(k) GOVERNING PROVISIONS AFTER SALE.—The provisions of this Act shall not apply to the Corporation and to activities and other actions and responsibilities of the Corporation and its directors and employees after the sale date, other than with regard to—

"(1) section 102;

"(2) section 201(d);

"(3) section 203, but only with respect to information relating to proceedings before the special court established under section 209(b);

"(4) section 209, other than subsection (f) thereof;

"(5) section 216(f)(8), but only as such authority applies to activities related to the ESOP and related trust before the sale date;

"(6) section 216(f)(9), but only as such indemnification applies to activities relating to the ESOP and related trust before the sale date;

"(7) section 216(f)(10) with respect to all securities of the Corporation issued or transferred in connection with the public offering under the Conrail Privatization Act and all securities of ConRail Equity Corporation and all interests in the ESOP;

"(8) section 217(c) and (e);

"(9) subsection (b) of this section, but only with respect to matters covered by the last sentence of such subsection;

"(10) subsection (i) of this section, but only as such authority applies to service as a director of the Corporation before the sale of the interest of the United States in the common stock of the Corporation;

"(11) section 302, but only to the extent of (A) the creation and maintenance of the power and authority of the Corporation to operate rail service and to rehabilitate, improve, and modernize rail properties, and (B) the creation and maintenance of the powers of the Corporation as a railroad in any State in which it operates as of the sale date;

"(12) section 303(b)(1) and (2), but only to the extent of establishing the legal effect of the conveyance of property ordered and of the deeds and other instruments executed, acknowledged, delivered, or recorded in connection therewith and the quality of title acquired in such property;

"(13) section 303(b)(3)(B) with respect to the effect of an assignment, conveyance, or assumption as set forth in the last sentence of such subparagraph (B);

"(14) section 303(b)(5);

"(15) section 303(b)(6), but only with respect to establishing and maintaining the rights of the Corporation with respect to, limiting its obligations with respect to, and establishing the status of, the employee pension and welfare benefit plans transferred to the Corporation thereunder and with respect to the exclusivity of the jurisdiction of the special court and the limitation of jurisdiction of other courts;

"(16) section 303(e);

"(17) section 304, but only with respect to the finality of abandonments completed before the sale date pursuant to the authority thereof;

"(18) section 305, but only as to the effect, and continuing administration, of supplemental transactions consummated before the sale date;

"(19) section 308, but only (A) as to the finality of abandonments completed before the sale date and (B) as to abandonments of lines where a notice or notices of insufficient revenues with respect to such lines have been filed before November 1, 1985;

"(20) section 601(a)(2), but only with respect to activities before the sale date;

"(21) section 601(b)(2) and (b)(3), but only with respect to issuance of and transactions in any security of the Corporation before the sale date;

"(22) section 702(e);

"(23) section 703;

"(24) section 704;

"(25) sections 706(a), 707, and 708(a), but only insofar as they establish part of the prevailing status quo for the Corporation's employees' rates of pay, rules, and working conditions, such provisions to continue to apply unless changed pursuant to section 6 of the Railway Labor Act (45 U.S.C. 156);

"(26) section 709;

"(27) section 710(b)(1);

"(28) section 711; and

"(29) section 714, but only with regard to disputes or controversies specified in such section that arose before the sale date.".

SEC. 4033. MISCELLANEOUS AMENDMENTS AND REPEALS.

(a) REGIONAL RAIL REORGANIZATION ACT OF 1973 REPEALS.—The following provisions of the Regional Rail Reorganization Act of 1973 (together with any items relating to

such provisions contained in the table of contents of such Act) are repealed:

(1) Title IV (45 U.S.C. 761 through 769c).

(2) Section 713 (45 U.S.C. 797l).

(b) REGIONAL RAIL REORGANIZATION ACT OF 1973 AMENDMENTS.—(1) Section 102 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702) is amended by inserting after paragraph (17) a new paragraph as follows:

"(17A) 'sale date' means the date on which the initial public offering of the securities of the Corporation is closed under the Conrail Privatization Act;".

(2) Section 217(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 727(c)) is amended by striking ", until the property" and all that follows, and inserting in lieu thereof "applicable to any taxable period commencing before January 1, 1987.".

(3) Section 217(e) of such Act (45 U.S.C. 727(e)) is amended by striking "and shall collect".

(c) AMENDMENTS AND REPEALS OF OTHER RAIL LAWS.—(1)(A) Section 1152 of the Northeast Rail Service Act of 1981 (45 U.S.C. 1105) is amended—

(i) by inserting "or part 2 of the Conrail Privatization Act" after "subtitle" each place it appears; and

(ii) in the second sentence of subsection (c), by inserting ", as the case may be," after the insertion made by clause (i) of this subparagraph.

(B) Section 1168(a) of the Northeast Rail Service Act of 1981 (45 U.S.C. 1116(a)) is amended by inserting before the period at the end the following: "and to the implementation of the sale of the interest of the United States in Conrail under the Conrail Privatization Act".

(C)(i) The following provisions of the Northeast Rail Service Act of 1981 are repealed:

(I) Section 1154 (45 U.S.C. 1107).

(II) Section 1161 (45 U.S.C. 1110).

(III) Section 1166 (45 U.S.C. 1114).

(IV) Subsection (c) of section 1167 (45 U.S.C. 1115).

(ii) The items relating to such sections 1154, 1161, and 1166 in the table of contents of such Act are repealed.

(2) Section 501(8) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821(8)) is amended by striking out "(A)" and by striking out all that follows "improved asset utilization;".

(3) Section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825) is amended—

(A) in subsection (a)(1), by striking out all after "railroad" through "1981)"; and

(B) in subsection (b)(2)(C), by striking out all after "costs" the second time it appears through "subsidy".

(4) Subsection (b)(1) of section 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 829) is repealed.

(5) Section 511(e) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831(e)) is amended—

(A) by striking out "(1)" in the first paragraph;

(B) by striking all that follows "time" in the first paragraph and inserting in lieu thereof a period; and

(C) by striking out paragraph (2).

(6) Section 402 of the Rail Safety and Service Improvement Act of 1982 (45 U.S.C. 825a) is repealed.

(7) Section 10362(b)(7)(A) of title 49, United States Code, is amended by striking out "by the Consolidated Rail Corporation or".

SEC. 4034. EXEMPTION FROM LIABILITY.

(a) IN GENERAL.—No person referred to in section 216(f)(8)(C)(i), (ii), or (iii) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(f)(8)(C)(i), (ii), or (iii)) shall be liable, for money damages or otherwise, to any party if, with respect to the subject matter of the action, suit, or proceeding, such person was fulfilling a duty, in connection with any action taken under this part, which such person in good faith reasonably believed to be required by law or vested in such person.

(b) EXCEPTION.—This section shall not apply to claims arising out of the Securities Act of 1933, the Securities Exchange Act of 1934, or the Constitution or laws of any State, territory, or possession of the United States relating to transactions in securities, which claims are in connection with a public offering under section 4012 of this Act.

SEC. 4035. CHARTER AMENDMENT.

Within 60 days after the date of the enactment of this Act, the Corporation shall amend its Articles of Incorporation to contain the following provision, which provision shall not be subject to amendment or repeal:

"It shall be a fundamental purpose of the Corporation to maintain continued rail service in its service area.".

SEC. 4036. STATUS OF CONRAIL AFTER SALE.

The Corporation shall be a rail carrier as defined in section 10102(19) of title 49, United States Code, notwithstanding this part.

SEC. 4037. EFFECT ON CONTRACTS.

Nothing in this part shall affect any obligation of the Corporation to carry out its transportation contracts and equipment leases, equipment trusts, and conditional sales agreements, in accordance with their terms.

SEC. 4038. RESOLUTION OF CERTAIN ISSUES.

(a) EMPLOYEE ISSUES.—Section 4024 completely and finally—

(1) extinguishes all employee rights, and any obligation of the United States, under section 401(e) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 761(e)) as in effect immediately before the date of the enactment of this Act;

(2) resolves any and all claims against the Corporation or any other person arising under the Definitive Agreement referred to in section 4024(d)(1) or any other agreement containing similar terms and conditions;

(3) resolves all claims to pay entitlements arising out of the pay increase deferrals by present and former employees of the Corporation under the Agreement of May 5, 1981, between Conrail and Certain Labor Organizations for Labor Contributions to Self-Sufficiency for Conrail;

(4) resolves all issues raised by notices served by representatives of such employees under section 6 of the Railway Labor Act proposing repayment of or compensation for such deferrals; and

(5) resolves all claims against the Railway Labor Executives' Association or the Corporation by any adviser, consultant, or other person who has provided services to such association in connection with any matter referred to in this part.

(b) CORPORATION ACTIONS.—The Corporation shall not be considered to be in breach, default, or violation of any agreement to which it is a party, notwithstanding any provision of such agreement, because of any provision of this part or any action the Corporation is required to take under this part.

(c) RIGHT TO SUE WITHDRAWN.—The United States hereby withdraws any stated or implied consent for the United States, or any agent or officer of the United States, to be sued by any person for any legal, equitable, or other relief with respect to any claim arising out of, or resulting from, acts or omissions under this part, except actions brought to require the Secretary of Transportation to perform duties or acts required under subpart A.

PART 3—PROMOTION OF RAIL COMPETITION

SEC. 4051. AGRICULTURE CONTRACT DISCLOSURE.

Section 10713(b) of title 49, United States Code, is amended by inserting "(1)" after "(b)"; and by adding at the end a new paragraph as follows:

"(2)(A) The essential terms of any contract for the transportation of agricultural commodities to be made available to the general public in tariff format under this subsection shall include, but shall not be limited to (i) the identity of the shipper party to the contract; (ii) the specific origins, transit points and other shipper facilities subject to the contract, and destinations served under such contract; (iii) the duration of the contract, including provisions for optional extension; (iv) the actual volume requirements, if any; (v) whether any transportation service has begun under a contract before the date such contract is filed with or approved by the Commission, and (vi) the date on which the contract became applicable to the transportation services provided under the contract. The Commission shall interpret this subsection to provide for liberal discovery to shippers seeking remedies under subsection (d)(2)(B) of this section.

"(B) Any amendment, supplement, or change to any term or provision of any contract described in subparagraph (A), including extensions of such contract, changes of origin, transit points, affected shipper facilities, destination points, or negotiated economic terms, shall be deemed to be a separate and new contract for the purposes of this subsection. Such amendments, supplements, or changes shall be filed separately with the Commission as provided in paragraph (1).

"(C) Within 60 days after the date of the enactment of the Conrail Privatization Act, the Commission shall issue regulations which require that essential terms of contracts described in subparagraph (A) shall be made available to the general public in tariff format as provided in this paragraph.

"(D) The railroad contract rate advisory service established pursuant to subsection (m) of this section shall assess the impact on competition among agricultural shippers of variations between contract rates for various shipments and the published single car rates, and shall submit a report to the Congress not later than 120 days after the date of the enactment of the Conrail Privatization Act.".

SEC. 4052. BOXCAR PROVISION.

The authority of the Commission to promulgate that portion of the rule adopted by the Commission in Ex Parte No. 346 (Sub. No. 19) served September 12, 1986, consisting of small railroad protections, is hereby confirmed.

Subtitle B—Economic Development Administration

SEC. 4101. SALE OF NOTES.

Notwithstanding any other provision of law, the Secretary of Commerce shall, under such terms as the Secretary may provide, sell defaulted notes held by the Economic Devel-

opment Administration in such amounts as to realize net proceeds of not less than $50,000,000 from such sales during fiscal year 1987.

TITLE V—MARITIME PROGRAMS

Subtitle A—Maritime Loan Guarantees

SEC. 5001. LOAN GUARANTEES.

(a) Section 362(b) of title 11, United States Code, is amended—

(1) by striking the period in paragraph (11) and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following:

"(12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 et seq.) (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under section 207 or title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1117 and 1271 et seq., respectively), or under applicable State law; or

"(13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 et seq.) (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under section 207 or title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1117 and 1271 et seq., respectively).

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989.".

Before July 1, 1989, the Secretary of Transportation and the Secretary of Commerce each shall submit a report to the Committees on Merchant Marine and Fisheries, and the Judiciary of the House of Representatives and the Committees on Commerce, Science, and Transportation, and the Judiciary of the Senate on the effects of this subsection together with any recommendations for legislation.

(b) The amendments made by subsection (a) of this section shall apply only to petitions filed under section 362 of title 11, United States Code, which are made after August 1, 1986.

(c) Subsection L of section 30 of the Merchant Marine Act of 1920 (46 App. U.S.C. 952) is amended by adding at the end the following: "When the Secretary of Commerce or Transportation is a mortgagee under this Act, the Secretary may foreclose on liens arising from rights attendant to the creation of mortgages under title XI of the Merchant Marine Act, 1936, subject to section 362(b) of title 11, United States Code.".

SEC. 5002. AMOUNT OF GUARANTEE FOR OBLIGATIONS.

Section 1103(a) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1273(a)) is amended by adding at the end thereof the following: "A guarantee, or commitment to guarantee, made by the Secretary under this title shall cover 100 percent of the amount of the principal and interest of the obligation.".

SEC. 5003. AMOUNT OF GUARANTEE FOR OBLIGATIONS RELATING TO FISHING VESSELS OR FISHERY FACILITIES.

Section 1104(b)(2) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1274(b)(2)) is amended by striking "Provided, further, That in the case of any vessel to be used in the fishing trade or industry, such obligations may be in an aggregate principal amount which does not exceed 87 1/2 per centum of the actual cost or depreciated actual cost of the vessel:" and inserting in lieu thereof "Provided further, That in the case of a fishing vessel or fishery facility, the obligation shall be in an aggregate principal amount equal to 80 percent of the actual cost or depreciated actual cost of the fishing vessel or fishery facility, except that no debt may be placed under this proviso through the Federal Financing Bank:".

SEC. 5004. FOREIGN FISH PROCESSING IN NORTON SOUND.

For purposes of processing pink salmon within the internal waters of the State of Alaska, the geographic area bounded on the north by a parallel of latitude of 64 degrees, 23 minutes, on the south by a parallel of latitude of 63 degrees, 51 minutes, on the east by the baseline from which the territorial sea is measured, and on the west by the outer limit of the territorial sea, shall be considered to be internal waters of the State of Alaska for the purposes of section 306(c)(4)(B) of the Fishery Conservation and Management Act (16 U.S.C. 1856(c)(4)(B)) until September 30, 1993.

Subtitle B—Load Line and Tonnage Measurement User Fees

SEC. 5101. AMENDMENTS TO TITLE 46.

Subtitle II of title 46, United States Code, is amended as follows:

(1) The table of chapters at the beginning of the subtitle is amended by—

(A) striking "[PART C—RESERVED FOR LOAD LINES OF VESSELS]" and inserting—

"PART C—LOAD LINES OF VESSELS

"51. Load lines..... 5101";

and

(B) striking "[PART J—RESERVED FOR MEASUREMENT OF VESSELS]" and inserting—

"PART J—MEASUREMENT OF VESSELS

"141. General..... 14101
"143. Convention measurement..... 14301
"145. Regulatory measurement..... 14501
"147. Penalties..... 14701".

(2) Immediately after part B, strike "[PART C—RESERVED FOR LOAD LINES OF VESSELS]" and insert the following new part C:

"PART C—LOAD LINES OF VESSELS

"CHAPTER 15—LOAD LINES

"Sec.
"5101. Definitions.
"5102. Application.
"5103. Load line requirements.
"5104. Assignment of load lines.
"5105. Load line surveys.
"5106. Load line certificate.
"5107. Delegation of authority.
"5108. Special exemptions.
"5109. Reciprocity for foreign vessels.
"5110. Submersible vessels.
"5111. Providing loading information.
"5112. Loading restrictions.
"5113. Detention of vessels.
"5114. Use of Customs Service officers and employees for enforcement.
"5115. Regulations.
"5116. Penalties.

"§ 5101. Definitions

"In this chapter—

"(1) 'domestic voyage' means movement of a vessel between places in, or subject to the jurisdiction of, the United States, except movement between—

"(A) a place in a territory or possession of the United States or the Trust Territory of the Pacific Islands; and

"(B) a place outside that territory, possession, or Trust Territory.

"(2) 'economic benefit of the overloading' means the amount obtained by multiplying the weight of the overload (in tons) by the lesser of—

"(A) the average freight rate value of a ton of the vessel's cargo for the voyage; or

"(B) $50.

"(3) 'existing vessel' means—

"(A) a vessel on a domestic voyage, the keel of which was laid, or that was at a similar stage of construction, before January 1, 1986; and

"(B) a vessel on a foreign voyage, the keel of which was laid, or that was at a similar stage of construction, before July 21, 1968.

"(4) 'freeboard' means the distance from the mark of the load line assigned under this chapter to the freeboard deck.

"(5) 'freeboard deck' means the deck or other structure the Secretary prescribes by regulation.

"(6) 'minimum safe freeboard' means the freeboard that the Secretary decides cannot be reduced safely without limiting the operation of the vessel.

"(7) 'weight of the overload' means the amount obtained by multiplying the number of inches that the vessel is submerged below the applicable assigned freeboard by the tons-an-inch immersion factor for the vessel at the assigned minimum safe freeboard.

"§ 5102. Application

"(a) Except as provided in subsection (b) of this section, this chapter applies to the following:

"(1) a vessel of the United States.

"(2) a vessel on the navigable waters of the United States.

"(3) a vessel—

"(A) owned by a citizen of the United States or a corporation established by or under the laws of the United States or a State; and

"(B) not registered in a foreign country.

"(4) a public vessel of the United States.

"(5) a vessel otherwise subject to the jurisdiction of the United States.

"(b) This chapter does not apply to the following:

"(1) a vessel of war.

"(2) a recreational vessel when operated only for pleasure.

"(3) a fishing vessel.

"(4) a fish processing vessel of not more than 5,000 gross tons that—

"(A)(i) was constructed as a fish processing vessel before August 16, 1974; or

"(ii) was converted for use as a fish processing vessel before January 1, 1983; and

"(B) is not on a foreign voyage.

"(5) a fish tender vessel of not more than 500 gross tons that—

"(A)(i) was constructed, under construction, or under contract to be constructed as

a fish tender vessel before January 1, 1980; or

"(ii) was converted for use as a fish tender vessel before January 1, 1983; and

"(B) is not on a foreign voyage.

"(6) a vessel of the United States on a domestic voyage that does not cross the Boundary Line, except a voyage on the Great Lakes.

"(7) a vessel of less than 24 meters (79 feet) overall in length.

"(8) a public vessel of the United States on a domestic voyage.

"(9) a vessel excluded from the application of this chapter by an international agreement to which the United States Government is a party.

"(10) an existing vessel of not more than 150 gross tons that is on a domestic voyage.

"(11) a small passenger vessel on a domestic voyage.

"(12) a vessel of the working fleet of the Panama Canal Commission not on a foreign voyage.

"(c) On application by the owner and after a survey under section 5105 of this title, the Secretary may assign load lines for a vessel excluded from the application of this chapter under subsection (b) of this section. A vessel assigned load lines under this subsection is subject to this chapter until the surrender of its load line certificate and the removal of its load line marks.

"(d) This chapter does not affect an international agreement to which the Government is a party that is not in conflict with the International Convention on Load Lines currently in force for the United States.

"§ 5103. Load line requirements

"(a) A vessel may be operated only if the vessel has been assigned load lines.

"(b) The owner, charterer, managing operator, agent, master, and individual in charge of a vessel shall mark and maintain the load lines permanently and conspicuously in the way prescribed by the Secretary.

"§ 5104. Assignment of load lines

"(a) The Secretary shall assign load lines for a vessel so that they indicate the minimum safe freeboard to which the vessel may be loaded. However, if the owner requests, the Secretary may assign load lines that result in greater freeboard than the minimum safe freeboard.

"(b) In assigning load lines for a vessel, the Secretary shall consider—

"(1) the service, type, and character of the vessel;

"(2) the geographic area in which the vessel will operate; and

"(3) applicable international agreements to which the United States Government is a party.

"(c) An existing vessel may retain its load lines assigned before January 1, 1986, unless the Secretary decides that a substantial change in the vessel after those load lines were assigned requires that new load lines be assigned under this chapter.

"(d) The minimum freeboard of an existing vessel may be reduced only if the vessel complies with every applicable provision of this chapter.

"(e) The Secretary may designate by regulation specific geographic areas that have less severe weather or sea conditions and from which there is adequate time to return to available safe harbors. The Secretary may reduce the minimum freeboard of a vessel operating in these areas.

"§ 5105. Load line surveys

"(a) The Secretary may provide for annual, renewal, and other load line surveys.

"(b) In conducting a load line survey, the Secretary shall consider whether—

"(1) the hull and fittings of the vessel—

"(A) are adequate to protect the vessel from the sea; and

"(B) meet other requirements the Secretary may prescribe by regulation;

"(2) the strength of the hull is adequate for all loading conditions;

"(3) the stability of the vessel is adequate for all loading conditions;

"(4) the topsides of the vessel are arranged and constructed to allow rapid overboard drainage of deck water in heavy weather; and

"(5) the topsides of the vessel are adequate in design, arrangement, and equipment to protect crewmembers performing outside tasks necessary for safe operation of the vessel.

"§ 5106. Load line certificate

"(a) On finding that a load line survey of a vessel under this chapter is satisfactory and that the vessel's load lines are marked correctly, the Secretary shall issue the vessel a load line certificate and deliver it to the owner, master, or individual in charge of the vessel.

"(b) The certificate shall be maintained as required by the Secretary.

"§ 5107. Delegation of authority

"(a) The Secretary shall delegate to the American Bureau of Shipping or other similarly qualified organizations the authority to assign load lines, survey vessels, determine that load lines are marked correctly, and issue load line certificates under this chapter.

"(b) Under regulations prescribed by the Secretary, a decision of an organization delegated authority under subsection (a) of this section related to the assignment of a load line may be appealed to the Secretary.

"(c) For a vessel intended to be engaged on a foreign voyage, the Secretary may delegate to another country that is a party to the International Convention on Load Lines, 1966, the authority to assign load lines, survey vessels, determine that the load lines are marked correctly, and issue an International Load Line Certificate (1966).

"(d) The Secretary may terminate a delegation made under this section after giving written notice to the organization.

"§ 5108. Special exemptions

"(a) The Secretary may exempt a vessel from any part of this chapter when—

"(1) the vessel is entitled to an exemption under an international agreement to which the United States Government is a party; or

"(2) under regulations (including regulations on special operations conditions) prescribed by the Secretary, the Secretary finds that good cause exists for granting an exemption.

"(b) When the Secretary grants an exemption under this section, the Secretary may issue a certificate of exemption stating the extent of the exemption.

"(c) A certificate of exemption issued under subsection (b) of this section shall be maintained as required by the Secretary.

"§ 5109. Reciprocity for foreign vessels

"(a) When the Secretary finds that the laws and regulations of a foreign country related to load lines are similar to those of this chapter and the regulations prescribed under this chapter, or when a foreign country is a party to an international load line agreement to which the United States Government is a party, the Secretary shall accept the load line marks and certificate of a vessel of that foreign country as complying with this chapter and the regulations prescribed under this chapter. The Secretary may control the vessel as provided for in the applicable international agreement.

"(b) Subsection (a) of this section does not apply to a vessel of a foreign country that does not recognize load lines assigned under this chapter.

"§ 5110. Submersible vessels

"Notwithstanding sections 5103–5105 of this title, the Secretary may prescribe regulations for submersible vessels to provide a minimum level of safety. In developing the regulations, the Secretary shall consider factors relevant to submersible vessels, including the structure, stability, and watertight integrity of those vessels.

"§ 5111. Providing loading information

"The Secretary may prescribe regulations requiring the owner, charterer, managing operator, and agent of a vessel to provide loading information (including information on loading distribution, stability, and margin of strength) to the master or individual in charge of the vessel in a language the master or individual understands.

"§ 5112. Loading restrictions

"(a) A vessel may not be loaded in a way that submerges the assigned load line or the place at which the load line is required to be marked on the vessel.

"(b) If the loading or stability conditions of a vessel change, the master or individual in charge of the vessel, before moving the vessel, shall record in the official logbook or other permanent record of the vessel—

"(1) the position of the assigned load line relative to the water surface; and

"(2) the draft of the vessel fore and aft.

"(c) A vessel may be operated only if the loading distribution, stability, and margin of strength are adequate for the voyage or movement intended.

"(d) Subsections (a) and (b) of this section do not apply to a submersible vessel.

"§ 5113. Detention of vessels

"(a) When the Secretary believes that a vessel is about to leave a place in the United States in violation of this chapter or a regulation prescribed under this chapter, the Secretary may detain the vessel by giving notice to the owner, charterer, managing operator, agent, master, or individual in charge of the vessel.

"(b) A detained vessel may be cleared under section 4197 of the Revised Statutes (46 App. U.S.C. 91) only after the violation has been corrected. If the vessel was cleared before being detained, the clearance shall be withdrawn.

"(c) Under regulations prescribed by the Secretary, the owner, charterer, managing operator, agent, master, or individual in charge of a detained vessel may petition the Secretary to review the detention order.

"(d) After reviewing a petition, the Secretary may affirm, withdraw, or change the detention order. Before acting on the petition, the Secretary may require any independent survey that may be necessary to determine the condition of the vessel.

"(e) The owner of a vessel is liable for the cost incident to a petition for review and any required survey if the vessel is found to be in violation of this chapter or a regulation prescribed under this chapter.

"§ 5114. Use of Customs Service officers and employees for enforcement

"(a) With the approval of the Secretary of the Treasury, the Secretary may use an officer or employee of the United States Customs Service to enforce this chapter and the regulations prescribed under this chapter.

"(b) The Secretary shall consult with the Secretary of the Treasury before prescribing a regulation that affects the enforcement responsibilities of an officer or employee of the Customs Service.

"§ 5115. Regulations

"(a) The Secretary may prescribe regulations to carry out this part.

"§ 5116. Penalties

"(a) Except as otherwise provided in this section, the owner, charterer, managing operator, agent, master, and individual in charge of a vessel violating this chapter or a regulation prescribed under this chapter are each liable to the United States Government for a civil penalty of not more than $5,000. Each day of a continuing violation is a separate violation. The vessel also is liable in rem for the penalty.

"(b) The owner, charterer, managing operator, agent, master, and individual in charge of a vessel allowing, causing, attempting to cause, or failing to take reasonable care to prevent a violation of section 5112(a) of this title are each liable to the Government for a civil penalty of not more than $10,000 plus an additional amount equal to twice the economic benefit of the overloading. The vessel also is liable in rem for the penalty.

"(c) The master or individual in charge of a vessel violating section 5112(b) of this title is liable to the Government for a civil penalty of not more than $5,000. The vessel also is liable in rem for the penalty.

"(d) A person causing or allowing the departure of a vessel from a place within the jurisdiction of the United States in violation of a detention order issued under section 5113 of this title shall be fined not more than $10,000, imprisoned for not more than one year, or both.

"(e) A person causing or allowing the alteration, concealment, or removal of a mark placed on a vessel under section 5103(b) of this title and the regulations prescribed under this chapter, except to make a lawful change or to escape enemy capture in time of war, shall be fined not more than $10,000, imprisoned for not more than 2 years, or both.".

(3) Immediately after part I, strike "[PART J—RESERVED FOR MEASUREMENT OF VESSELS]" and insert the following new part J:

"PART J—MEASUREMENT OF VESSELS

"CHAPTER 141—GENERAL

"Sec.
"14101. Definitions.
"14102. Regulations.
"14103. Delegation of authority.
"14104. Measurement to determine application of a law.

"§ 14101. Definitions

"In this part—

"(1) 'Convention' means the International Convention on Tonnage Measurement of Ships, 1969.

"(2) 'existing vessel' means a vessel the keel of which was laid or that was at a similar stage of construction before July 18, 1982.

"(3) 'Great Lakes' means—

"(A) the Great Lakes; and

"(B) the St. Lawrence River west of—

"(i) a rhumb line drawn from Cap des Rosiers to West Point, Anticosti Island; and

"(ii) on the north side of Anticosti Island, the meridian of longitude 63 degrees west.

"(4) 'vessel engaged on a foreign voyage' means a vessel—

"(A) arriving at a place under the jurisdiction of the United States from a place in a foreign country;

"(B) making a voyage between places outside the United States (except a foreign vessel engaged on that voyage);

"(C) departing from a place under the jurisdiction of the United States for a place in a foreign country; or

"(D) making a voyage between a place within a territory or possession of the United States and another place under the jurisdiction of the United States not within that territory or possession.

"§ 14102. Regulations

The Secretary may prescribe regulations to carry out this part.

"§ 14103. Delegation of authority

"(a) The Secretary may delegate to a qualified person the authority to measure a vessel and issue an International Tonnage Certificate (1969) or other appropriate certificate of measurement under this part.

"(b) Under regulations prescribed by the Secretary, a decision of the person delegated authority under subsection (a) of this section related to measuring a vessel or issuing a certificate may be appealed to the Secretary.

"(c) For a vessel intended to be engaged on a foreign voyage, the Secretary may delegate to another country that is a party to the Convention the authority to measure the vessel and issue an International Tonnage Certificate (1969) under chapter 143 of this title.

"(d) The Secretary may terminate a delegation made under this section after giving written notice to the person.

"§ 14104. Measurement to determine application of a law

"When the application of a law of the United States to a vessel depends on the vessel's tonnage, the vessel shall be measured under this part.

"CHAPTER 143—CONVENTION MEASUREMENT

"Sec.
"14301. Application.
"14302. Measurement.
"14303. International Tonnage Certificate (1969).
"14304. Remeasurement.
"14305. Optional regulatory measurement.
"14306. Reciprocity for foreign vessels.
"14307. Inspection of foreign vessels.

"§ 14301. Application

"(a) Except as otherwise provided in this section, this chapter applies to the following:

"(1) a documented vessel.

"(2) a vessel that is to be documented under chapter 121 of this title.

"(3) a vessel engaged on a foreign voyage.

"(b) This chapter does not apply to the following:

"(1) a vessel of war.

"(2) a vessel of less than 24 meters (79 feet) overall in length.

"(3) a vessel operating only on the Great Lakes, unless the owner requests.

"(4) a vessel (except a vessel engaged on a foreign voyage) the keel of which was laid or that was at a similar stage of construction before January 1, 1986, unless—

"(A) the owner requests; or

"(B) the vessel undergoes a change that the Secretary finds substantially affects the vessel's gross tonnage.

"(5) before July 19, 1994, an existing vessel unless—

"(A) the owner requests; or

"(B) the vessel undergoes a change that the Secretary finds substantially affects the vessel's gross tonnage.

"(c) A vessel made subject to this chapter at the request of the owner may be remeasured only as provided by this chapter.

"(d) After July 18, 1994, an existing vessel (except an existing vessel referred to in subsection (b)(5) (A) or (B) of this section) may retain its tonnages existing on July 18, 1994, for the application of relevant requirements under international agreements (except the Convention) and other laws of the United States. However, if the vessel undergoes a change substantially affecting its tonnage after July 18, 1994, the vessel shall be remeasured under this chapter.

"(e) This chapter does not affect an international agreement to which the United States Government is a party that is not in conflict with the Convention or the application of IMO Resolutions A.494 (XII) of November 19, 1981, A.540 (XIII) of November 17, 1983, and A.541 (XIII) of November 17, 1983.

"§ 14302. Measurement

"(a) The Secretary shall measure a vessel to which this chapter applies in the way provided by this chapter and the Convention.

"(b) Except as provided in section 1602(a) of the Panama Canal Act of 1979 (22 U.S.C. 3792(a)), a vessel measured under this chapter may not be required to be measured under another law.

"(c) Unless otherwise provided by law, the measurement of a vessel under this chapter applies to a law of the United States whose applicability depends on a vessel's tonnage, if that law—

"(1) becomes effective after July 18, 1994; or

"(2) is in effect before July 19, 1994, is not enumerated in section 14305 of this title, and is identified by the Secretary by regulation as a law to which this chapter applies.

"§ 14303. International Tonnage Certificate (1969)

"(a) After measuring a vessel under this chapter, the Secretary shall issue, on request of the owner, an International Tonnage Certificate (1969) and deliver it to the owner or master of the vessel.

"(b) The certificate shall be maintained as required by the Secretary.

"§ 14304. Remeasurement

"(a) To the extent necessary, the Secretary shall remeasure a vessel to which this chapter applies if—

"(1) the Secretary or the owner alleges an error in its measurement; or

"(2) the vessel or the use of its space is changed in a way that substantially affects its tonnage.

"(b) Except as provided in this chapter or section 14504 of this title, a vessel that has been measured does not have to be remeasured to obtain another document or endorsement under chapter 121 of this title.

"§ 14305. Optional regulatory measurement

"(a) On request of the owner of a documented vessel measured under this chapter, the Secretary also shall measure the vessel under chapter 145 of this title. The tonnages determined under that chapter shall be used in applying—

"(1) parts A, B, C, E, F, and G and sections 12106(c) and 12108(c) of this title;

"(2) section 3(d)(3) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 903(d)(3));

"(3) section 4 of the Bridge to Bridge Radiotelephone Act (33 U.S.C. 1203(a));

"(4) section 4(a)(3) of the Ports and Waterways Safety Act (33 U.S.C. 1223(a)(3));

"(5) section 4283 of the Revised Statutes of the United States (46 App. U.S.C. 183);

"(6) sections 27 and 27A of the Act of June 5, 1920 (46 App. U.S.C. 883 and 883-1);

"(7) Act of July 14, 1956 (46 App. U.S.C. 883a);

"(8) sections 351, 352, 355, and 356 of the Ship Radio Act (47 U.S.C. 351, 352, 354, and 354a);

"(9) section 403 of the Commercial Fishing Industry Vessel Act (46 U.S.C. 3302 note);

"(10) the Officers' Competency Certificates Convention, 1936, and sections 8303 and 8304 of this title;

"(11) the International Convention for the Safety of Life at Sea as provided by IMCO Resolution A.494 (XII) of November 19, 1981;

"(12) the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978, as provided by IMO Resolution A.540 (XIII) of November 17, 1983;

"(13) the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, as provided by IMO Resolution A.541 (XIII) of November 17, 1983;

"(14) provisions of law establishing the threshold tonnage levels at which evidence of financial responsibility must be demonstrated; or

"(15) unless otherwise provided by law, any other law of the United States in effect before July 19, 1994, and not listed by the Secretary under section 14302(c) of this title.

"(b) As long as the owner of a vessel has a request in effect under subsection (a) of this section, the tonnages determined under that request shall be used in applying the other provisions of law described in subsection (a) to that vessel.

"§ 14306. Reciprocity for foreign vessels

"(a) When the Secretary finds that the laws and regulations of a foreign country related to measurement of vessels are similar to those of this chapter and the regulations prescribed under this chapter, or when a foreign country is a party to the Convention, the Secretary shall accept the measurement and certificate of a vessel of that foreign country as complying with this chapter and the regulations prescribed under this chapter.

"(b) Subsection (a) of this section does not apply to a vessel of a foreign country that does not recognize measurements under this chapter. The Secretary may apply measurement standards the Secretary considers appropriate to the vessel, subject to applicable international agreements to which the United States Government is a party.

"§ 14307. Inspection of foreign vessels

"(a) The Secretary may inspect a vessel of a foreign country to verify that—

"(1) the vessel has an International Tonnage Certificate (1969) and the main characteristics of the vessel correspond to the information in the certificate; or

"(2) if the vessel is from a country not a party to the Convention, the vessel has been measured under laws and regulations similar to those of this chapter and the regulations prescribed under this chapter.

"(b) For a vessel of a country that is a party to the Convention, if the inspection reveals that the vessel does not have an International Tonnage Certificate (1969) or that the main characteristics of the vessel differ from those stated on the certificate or other records in a way that increases the gross or net tonnage of the vessel, the Secretary promptly shall inform the country whose flag the vessel is flying.

"(c) For a vessel of a country not a party to the Convention—

"(1) if the vessel has been measured under laws and regulations that the Secretary finds are similar to those of this chapter and the regulations prescribed under this chapter, the vessel shall be deemed to have been issued an International Tonnage Certificate (1969); and

"(2) if the vessel has not been measured as described in clause (1) of this subsection, the Secretary may measure the vessel.

"(d) An inspection under this section shall be conducted in a way that does not delay a vessel of a country that is a party to the Convention.

"CHAPTER 145—REGULATORY MEASUREMENT

"SUBCHAPTER I—GENERAL

"Sec.
"14501. Application.
"14502. Measurement.
"14503. Certificate of measurement.
"14504. Remeasurement.

"SUBCHAPTER II—FORMAL SYSTEMS

"14511. Application.
"14512. Standard tonnage measurement.
"14513. Dual tonnage measurement.

"SUBCHAPTER III—SIMPLIFIED SYSTEM

"14521. Application.
"14522. Measurement.

"SUBCHAPTER I—GENERAL

"§ 14501. Application

"This chapter applies to the following:

"(1) a vessel not measured under chapter 143 of this title if—

"(A) the vessel is to be documented under chapter 121 of this title; or

"(B) the application of a law of the United States to the vessel depends on the vessel's tonnage.

"(2) a vessel measured under chapter 143 of this title if the owner requests that the vessel also be measured under this chapter as provided in section 14305 of this title.

"§ 14502. Measurement

"The Secretary shall measure a vessel to which this chapter applies in the way provided by this chapter.

"§ 14503. Certificate of measurement

"The Secretary shall prescribe the certificate to be issued as evidence of a vessel's measurement under this chapter.

"§ 14504. Remeasurement

"(a) To the extent necessary, the Secretary shall remeasure a vessel to which this chapter applies if—

"(1) the Secretary or the owner alleges an error in its measurement;

"(2) the vessel or the use of its space is changed in a way that substantially affects its tonnage;

"(3) after being measured under subchapter III of this chapter, the vessel becomes subject to subchapter II of this chapter because the vessel or its use is changed; or

"(4) although not required to be measured under subchapter II of this chapter, the vessel was measured under subchapter II and the owner requests that the vessel be measured under subchapter III of this chapter.

"(b) Except as provided in this section and chapter 143 of this title, a vessel that has been measured does not have to be remeasured to obtain another document or endorsement under chapter 121 of this title.

"SUBCHAPTER II—FORMAL SYSTEMS

"§ 14511. Application

"This subchapter applies to a vessel described in section 14501 of this title if—

"(1) the owner requests; or

"(2) the vessel is—

"(A) self-propelled;

"(B) at least 24 meters (79 feet) overall in length; and

"(C) not operated only for pleasure.

"§ 14512. Standard tonnage measurement

"(a) The Secretary shall prescribe regulations for measuring the gross and net tonnages of a vessel under this subchapter. The regulations shall provide for tonnages comparable to the tonnages that could have been assigned under sections 4151 and 4153 of the Revised Statutes of the United States, as sections 4151 and 4153 existed immediately before the enactment of this section.

"(b) On application of the owner or master of a vessel of the United States used in foreign trade, the Secretary may attach an appendix to the vessel's register stating the measurement of spaces that may be deducted from gross tonnage under laws and regulations of other countries but not under those of the United States.

"§ 14513. Dual tonnage measurement

"(a) On application by the owner and approval by the Secretary, the tonnage of spaces prescribed by the Secretary may be excluded in measuring under this section the gross tonnage of a vessel measured under section 14512 of this title. The spaces prescribed by the Secretary shall be comparable to the spaces that could have been excluded under section 2 of the Act of September 29, 1965 (Public Law 89-219, 79 Stat. 891), as section 2 existed immediately before the enactment of this section.

"(b) The Secretary shall prescribe the design, location, and dimensions of the tonnage mark to be placed on a vessel measured under this section.

"(c)(1) If a vessel's tonnage mark is below the uppermost part of the load line marks, each certificate stating the vessel's tonnages shall state the gross and net tonnages when the mark is submerged and when it is not submerged.

"(2) Except as provided in paragraph (1) of this subsection, a certificate stating a vessel's tonnages may state only one set of gross and net tonnages.

"SUBCHAPTER III—SIMPLIFIED SYSTEM

"§ 14521. Application

"This subchapter applies to a vessel described in section 14501 of this title that is not measured under subchapter II of this chapter.

"§ 14522. Measurement

"(a) In this section, "length" means the horizontal distance of the hull between the foremost part of the stem and the aftermost part of the stern, excluding fittings and attachments.

"(b)(1) The Secretary shall assign gross and net tonnages to a vessel based on its length, breadth, depth, other dimensions, and appropriate coefficients.

"(2) The Secretary shall prescribe the way dimensions (except length) are measured and which coefficients are appropriate.

"(c) The resulting gross tonnages, taken as a group, reasonably shall reflect the relative internal volumes of the vessels measured under this subchapter. The resulting net ton-

nages shall be in approximately the same ratios to corresponding gross tonnages as are the net and gross tonnages of comparable vessels measured under subchapter II of this chapter.

"(d) Under regulations prescribed by the Secretary, the Secretary may determine the gross and net tonnages of a vessel representative of a designated class, model, or type, and then assign those gross and net tonnages to other vessels of the same class, model, or type.

"CHAPTER 147—PENALTIES

"Sec.
"14701. General violation.
"14702. False statements.

"§ 14701. General violation

"The owner, charterer, managing operator, agent, master, and individual in charge of a vessel violating this part or a regulation prescribed under this part are each liable to the United States Government for a civil penalty of not more than $20,000. Each day of a continuing violation is a separate violation. The vessel also is liable in rem for the penalty.

"§ 14702. False statements

"A person knowingly making a false statement or representation in a matter in which a statement or representation is required by this part or a regulation prescribed under this part is liable to the United States Government for a civil penalty of not more than $20,000 for each false statement or representation. The vessel also is liable in rem for the penalty.".

SEC. 5102. CONFORMING AND MISCELLANEOUS AMENDMENTS.

(a) Title 14, United States Code, is amended as follows:

(1) In the analysis of chapter 17, add the following after item 663:

"664. User fees.".;

(2) In section 651, strike "preceding fiscal year." and substitute "preceding fiscal year, including amounts collected as provided under section 664 of this title.".

(3) After section 663, add the following new section:

"§ 664. User fees

"(a) A fee or charge for a service or thing of value provided by the Coast Guard shall be prescribed as provided in section 9701 of title 31.

"(b) Amounts collected by the Secretary for a service or thing of value provided by the Coast Guard shall be deposited in the general fund of the Treasury as proprietary receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities.

"(c) Before January 1 of each year, the Secretary shall submit a report to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate that includes—

"(1) a verification of each activity for which a fee or charge is collected stating—

"(A) the amount collected in the prior fiscal year; and

"(B) that the amount spent on that activity in that fiscal year is not less than the amount collected; and

"(2) the amount expected to be collected in the current fiscal year for each activity for which a fee or charge is expected to be collected.".

(b) Title 46, United States Code, is amended as follows:

(1) In section 2101—

(A) between clauses (20) and (21), insert the following new clause:

"(20a) 'overall in length' means—

"(A) for a foreign vessel or a vessel engaged on a foreign voyage, the greater of—

"(i) 96 percent of the length on a waterline at 85 percent of the least molded depth measured from the top of the keel (or on a vessel designed with a rake of keel, on a waterline parallel to the designed waterline); or

"(ii) the length from the fore side of the stem to the axis of the rudder stock on that waterline; and

"(B) for any other vessel, the horizontal distance of the hull between the foremost part of the stem and the aftermost part of the stern, excluding fittings and attachments."; and

(B) add at the end the following new clause:

"(47) 'vessel of war' means a vessel—

"(A) belonging to the armed forces of a country;

"(B) bearing the external marks distinguishing vessels of war of that country;

"(C) under the command of an officer commissioned by the government of that country and whose name appears in the appropriate service list or its equivalent; and

"(D) staffed by a crew under regular armed forces discipline.".

(2) Section 2102 is amended by striking "chapters 43" and substituting "chapters 37, 43, 51,".

(3) In section 2109, strike "This" and substitute "Except as otherwise provided, this".

(4) In section 2110—

(A) strike "examination of vessels" and substitute "examination of vessels under part B of this subtitle"; and

(B) strike "measurement or".

(5) Section 3701 (5) and (6) is repealed.

(6) In section 12102—

(A) insert the subsection designation "(a)" at the beginning of the text of the section; and

(B) add at the end of the section the following new subsection:

"(b) A vessel is eligible for documentation only if it has been measured under part J of this subtitle. However, the Secretary may issue a temporary certificate of documentation for a vessel before it is measured.".

SEC. 5103. MISCELLANEOUS PROVISIONS.

(a) Laws effective after January 1, 1986, that are inconsistent with this subtitle supersede this subtitle to the extent of the inconsistency.

(b) A reference to a law replaced by this subtitle, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision of this subtitle.

(c) An order, rule, or regulation in effect under a law replaced by this subtitle continues in effect under the corresponding provision of this subtitle until repealed, amended, or superseded.

(d) An action taken or an offense committed under a law replaced by this subtitle is deemed to have been taken or committed under the corresponding provision of this subtitle.

(e) An inference of legislative construction is not to be drawn by reason of the caption or catch line of a provision enacted by this subtitle.

(f) If a provision enacted by this subtitle is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this subtitle is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications.

(g) The Secretary of Transportation shall—

(1) before July 19, 1990, submit to Congress—

(A) a study of—

(i) the impact of applying vessel tonnage determined under chapter 143 of title 46 (as enacted by section 5101 of this subtitle), United States Code, in laws of the United States that contain provisions based on tonnage, including an analysis of the number and types of vessels that would become subject to additional laws or more stringent requirements because of that application; and

(ii) the extent to which the tonnage thresholds in laws of the United States whose application is based on tonnage would have to be raised so that additional vessels would not become subject to those laws if their application is based on tonnage determined under chapter 143; and

(B) a recommendation of the levels to which the tonnage thresholds in laws of the United States whose application is based on tonnage should be raised if a complete conversion to the International Convention measurement system under chapter 143 is made;

(2) in conducting the study under clause (1) of this subsection, consult with representatives of the private sector having experience with the operation of vessels likely to be affected by laws of the United States whose application is based on tonnage; and

(3) before July 19, 1988, submit to Congress an interim progress report on the study conducted under clause (1) of this subsection.

SEC. 5104. REPEALS.

(a) The repeal of a law by this subtitle may not be construed as a legislative implication that the provision was or was not in effect before its repeal.

(b) The laws specified in the following schedule are repealed, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before the date of enactment of this subtitle:

Revised Statutes

Revised Statutes Section	United States Code	Title Section
4148	46 App.	71
4149	46 App.	72
4151	46 App.	75
4153	46 App.	77

Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		United States Code	
			Volume	Page	Title	Section
1882						
Aug. 5	398	2	22	300	46 App.	81
1935						
Aug. 27	747		49	888	46 App.	88-88i
1965						
Sept. 29	89-219		79	891	46 App.	72, 74, 77, 83-83k
1973						
Oct. 1	93-115		87	418	46 App.	86-86i
1976						
Sept. 10	94-406	8	90	1236	46 App.	420

Subtitle C—Establishment of a Timetable for Completion of Coast Guard Offshore Safety Studies

SEC. 5201. REGULATIONS.

(a) DEADLINE FOR EFFECTIVENESS.—The Secretary of the department in which the Coast Guard is operating (hereafter in this subtitle referred to as the "Secretary") shall issue final regulations, to become effective before September 1, 1987, relating to the evacuation of personnel as provided for in the advance notice of proposed rulemaking regarding the revision of the regulations on outer Continental Shelf activities (50 Fed. Reg. 9290 (1985)), published March 7, 1985.

(b) CONSIDERATION OF STANDBY VESSELS FOR EVACUATION.—In preparing regulations referred to in subsection (a), the Secretary shall consider requiring standby vessels for the evacuation of personnel from manned installations on the outer Continental Shelf.

SEC. 5202. REPORTS TO CONGRESS.

(a) PRELIMINARY REPORT.—The Secretary shall, before December 31, 1986, submit to the Congress a report setting forth the progress made in preparing the regulations referred to in section 5201(a).

(b) FINAL REPORT.—The Secretary shall, before September 1, 1987, submit to the Congress a report setting forth the justification for the manned installation evacuation procedures contained in the final regulations referred to in section 5201(a).

TITLE VI—CIVIL SERVICE, POSTAL SERVICE, AND GOVERNMENTAL AFFAIRS GENERALLY

Subtitle A—Civil Service and Postal Service

SEC. 6001. ELECTIONS TO CONTRIBUTE TO THE THRIFT SAVINGS FUND.

(a) PARTICIPANTS IN THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—(1) Paragraph (4) of section 8432(b) of title 5, United States Code (as added by Public Law 99-335), is amended—

(A) by inserting "(A)" after "(4)";

(B) by inserting "continues as an employee or Member without a break in service through April 1, 1987," in the first sentence after "January 1, 1987,";

(C) by striking out "January 1, 1987." in the second sentence and inserting in lieu thereof "April 1, 1987.";

(D) by striking out "the last day of that election period." in the third sentence and inserting in lieu thereof "the date on which the employee or Member makes that election."; and

(E) by adding at the end thereof the following new subparagraph:

"(B) Notwithstanding subsection (a), the maximum amount that an employee or Member may contribute during any pay period which begins on or after April 1, 1987, and before October 1, 1987, pursuant to an election made during the election period provided under subparagraph (A) is the amount equal to 15 percent of such individual's basic pay for such pay period.".

(2) Section 8432(c) of title 5, United States Code, is amended—

(A) in paragraph (1)—

(i) by inserting "(A)" after "(c)(1)"; and

(ii) by adding at the end thereof the following new subparagraphs:

"(B) In the case of each employee or Member who is an employee or Member on January 1, 1987, and continues as an employee or Member without a break in service through April 1, 1987, the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the total basic pay paid to such employee or Member for that period of service.

"(C) If an employee or Member—

"(i) is an employee or Member on January 1, 1987;

"(ii) separates from Government employment before April 1, 1987; and

"(iii) before separation, completes the number of years of civilian service applicable to such employee or Member under subparagraph (A) or (B) of subsection (g)(2),

the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the total basic pay paid to such employee or Member for service performed on or after January 1, 1987, and before the date of the separation."; and

(B) in paragraph (2), by inserting after subparagraph (B) the following:

"(C) Notwithstanding subparagraph (B), the amount contributed under subparagraph (A) by an employing agency with respect to any contribution made by an employee or Member during any pay period which begins after the date on which such employee or Member makes an election under subsection (b)(4) and before July 1, 1987, shall be the amount equal to the sum of—

"(i) two times such portion of the total amount of the employee's or Member's contribution as does not exceed 3 percent of such employee's or Member's basic pay for such pay period; and

"(ii) such portion of the total amount of the employee's or Member's contributions as exceeds 3 percent, but does not exceed 5 percent, of such employee's or Member's basic pay for such pay period.".

(3) The contributions required to be made to the Thrift Savings Fund under paragraphs (1)(B), (1)(C), and (3) of section 8432(c) of title 5, United States Code, shall be made as soon as practicable during the 15-day period which begins on April 1, 1987.

(b) PARTICIPANTS IN THE CIVIL SERVICE RETIREMENT AND DISABILITY SYSTEM.—Section 206(b) of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335) is amended to read as follows:

"(b)(1) An election may first be made by an employee of the Federal Government or a Member of Congress under subsection (a)(2) of section 8351 of title 5, United States Code (as added by subsection (a)(1)), during an election period prescribed for the purposes of this subsection by the Executive Director of the Federal Retirement Thrift Investment Board. Such period shall begin on April 1, 1987.

"(2) An election made by an employee or Member as provided in paragraph (1) shall take effect on the first day of the employee's or Member's first pay period which begins on or after the date of such election.

"(3) Notwithstanding section 8351(b)(2) of title 5, United States Code (as added by subsection (a)(1)), the maximum amount that an employee or Member may contribute during any pay period which begins on or after April 1, 1987, and before October 1, 1987, pursuant to an election made during the election period provided under paragraph (1) is the amount equal to 7.5 percent of such individual's basic pay for such pay period.".

(c) INAPPLICABILITY OF LIMITATION ON NUMBER OF ELECTIONS WITHIN A SIX-MONTH PERIOD.—(1) The requirement to make contributions for a 6-month period after an election, as provided in subsection (a) of section 8432 of title 5, United States Code, shall not apply to contributions made pursuant to an election made during the period provided in subsection (b)(4) of such section or 206(b) of the Federal Employees' Retirement System Act of 1986.

(2) The first election period prescribed under section 8432(b)(1) of title 5, United States Code, shall commence on July 1, 1987.

(3) Each employee or Member who makes an election referred to in paragraph (1) may make an election under section 8432(b)(1) of title 5, United States Code, during the election period that begins on July 1, 1987.

(d) REGULATIONS.—The Executive Director of the Federal Retirement Thrift Investment Board may prescribe regulations to carry out subsections (a), (b), and (c) and the amendments made by subsections (a) and (b).

(e) BUDGET OF THE FEDERAL EMPLOYEES' THRIFT INVESTMENT BOARD.—Section 8472 of title 5, United States Code, is amended by adding at the end thereof the following:

"(i) The Board shall prepare and submit to the President, and, at the same time, to the appropriate committees of Congress, an annual budget of the expenses and other items relating to the Board which shall be included as a separate item in the budget required to be transmitted to the Congress under section 1105 of title 31.

"(j) The Board may submit to the President, and, at the same time, shall submit to each House of the Congress, any legislative recommendations of the Board relating to any of its functions under this title or any other provision of law.".

(f) EFFECTIVE DATE.—This section, other than subsection (d), and the amendments made by this section shall take effect on January 1, 1987.

SEC. 6002. CIVIL SERVICE RETIREMENT AND DISABILITY FUND.

(a) INVESTMENT AND RESTORATION OF THE FUND.—Section 8348 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(j)(1) Notwithstanding subsection (c) of this section, the Secretary of the Treasury may suspend additional investment of amounts in the Fund if such additional investment could not be made without causing the public debt of the United States to exceed the public debt limit.

"(2) Any amounts in the Fund which, solely by reason of the public debt limit, are not invested shall be invested by the Secretary of the Treasury as soon as such investments can be made without exceeding the public debt limit.

"(3) Upon expiration of the debt issuance suspension period, the Secretary of the Treasury shall immediately issue to the Fund obligations under chapter 31 of title 31 that (notwithstanding subsection (d) of this section) bear such interest rates and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of the Fund will replicate to the maximum extent practicable the obligations that would then be held by the Fund if the suspension of investment under paragraph (1) of this subsection, and any redemption or disinvestment under subsection (k) of this section for the purpose described in such paragraph, during such period had not occurred.

"(4) On the first normal interest payment date after the expiration of any debt issuance suspension period, the Secretary of the Treasury shall pay to the Fund, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount determined by the Secretary to be equal to the excess of—

"(A) the net amount of interest that would have been earned by the Fund during such debt issuance suspension period if—

"(i) amounts in the Fund that were not invested during such debt issuance suspension period solely by reason of the public debt limit had been invested, and

"(ii) redemptions and disinvestments with respect to the Fund which occurred during such debt issuance suspension period solely by reason of the public debt limit had not occurred, over

"(B) the net amount of interest actually earned by the Fund during such debt issuance suspension period.

"(5) For purposes of this subsection and subsections (k) and (l) of this section—

"(A) the term 'public debt limit' means the limitation imposed by section 3101(b) of title 31; and

"(B) the term 'debt issuance suspension period' means any period for which the Secretary of the Treasury determines for purposes of this subsection that the issuance of obligations of the United States may not be made without exceeding the public debt limit.".

(b) SALES AND REDEMPTIONS BY THE FUND.—Section 8348 of title 5, United States Code, as amended by subsection (a), is further amended by adding at the end the following new subsection:

"(k)(1) Subject to paragraph (2) of this subsection, the Secretary of the Treasury may sell or redeem securities, obligations, or other invested assets of the Fund before maturity in order to prevent the public debt of the United States from exceeding the public debt limit.

"(2) The Secretary may sell or redeem securities, obligations, or other invested assets of the Fund under paragraph (1) of this subsection only during a debt issuance suspension period, and only to the extent necessary to obtain any amount of funds not exceeding the amount equal to the total amount of the payments authorized to be made from the Fund under the provisions of this subchapter or chapter 84 of this title or related provisions of law during such period. A sale or redemption may be made under this subsection even if, before the sale or redemption, there is a sufficient amount in the Fund to ensure that such payments are made in a timely manner.".

(c) REPORTS REGARDING THE OPERATION AND STATUS OF THE FUND.—Section 8348 of title 5, United States Code, as amended by subsections (a) and (b), is further amended by adding at the end the following new subsection:

"(l)(1) The Secretary of the Treasury shall report to Congress on the operation and status of the Fund during each debt issuance suspension period for which the Secretary is required to take action under paragraph (3) or (4) of subsection (j) of this section. The report shall be submitted as soon as possible after the expiration of such period, but not later than the date that is 30 days after the first normal interest payment date occurring after the expiration of such period. The Secretary shall concurrently transmit a copy of such report to the Comptroller General of the United States.

"(2) Whenever the Secretary of the Treasury determines that, by reason of the public debt limit, the Secretary will be unable to fully comply with the requirements of subsection (c) of this section, the Secretary shall immediately notify Congress of the determination. The notification shall be made in writing.".

SEC. 6003. CHANGE IN METHOD BY WHICH REVENUE FOREGONE IS COMPUTED FOR CERTAIN CATEGORIES OF MAIL.

(a) IN GENERAL.—Section 3626 of title 39, United States Code, is amended by adding at the end the following:

"(i)(1) As used in this subsection—

"(A) 'reduced-rate category' means any class of mail or kind of mailer for which a rate schedule is established under subsection (a) of this section; and

"(B) 'regular-rate category' means any class or kind of mail other than a class or kind referred to in section 2401(c) of this title.

"(2) This subsection shall be used in determining the costs recovered by revenues plus appropriations for the reduced-rate categories, for the purpose of distinguishing costs to be recovered from rates and fees for regular-rate categories under this chapter, and for the purpose of determining the appropriation requests under section 2401(c) of this title relating to the reduced-rate categories. It shall be assumed that the combination of postage and appropriations to be received for each of the reduced-rate categories will bear the same ratio to the costs attributed as required by section 3622(b)(3) of this title to such respective categories, as the revenues to be received from the most closely corresponding regular-rate category, as estimated in determining the rates for such category, bear to the costs attributed to that regular-rate category as required by section 3622(b)(3) of this title.".

(b) CONFORMING AMENDMENT.—Section 2401(c) of title 39, United States Code, is amended by striking "3626" and inserting "3626(a)-(h)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1989, or on the effective date of the next general change in rates and fees under sections 3622 and 3625 of title 39, United States Code, whichever is sooner.

SEC. 6004. APPLICABILITY OF CERTAIN LIMITATIONS.

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) shall not apply with respect to any transfer of funds from the principal campaign committee of the incumbent candidate for the office of Representative who died in January 1985 to the principal campaign committee of his surviving spouse, who was a candidate for such office.

Subtitle B—Program Fraud Civil Remedies

SEC. 6101. SHORT TITLE.

This subtitle may be cited as the "Program Fraud Civil Remedies Act of 1986".

SEC. 6102. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) false, fictitious, and fraudulent claims and statements in Government programs are a serious problem;

(2) false, fictitious, and fraudulent claims and statements in Government programs result in the loss of millions of dollars annually by allowing persons to receive Federal funds to which they are not entitled;

(3) false, fictitious, and fraudulent claims and statements in Government programs undermine the integrity of such programs by allowing ineligible persons to participate in such programs; and

(4) present civil and criminal remedies for such claims and statements are not sufficiently responsive.

(b) PURPOSES.—The purposes of this subtitle are—

(1) to provide Federal agencies which are the victims of false, fictitious, and fraudulent claims and statements with an administrative remedy to recompense such agencies for losses resulting from such claims and statements, to permit administrative proceedings to be brought against persons who make, present, or submit such claims and statements, and to deter the making, presenting, and submitting of such claims and statements in the future; and

(2) to provide due process protections to all persons who are subject to the administrative adjudication of false, fictitious, or fraudulent claims or statements.

SEC. 6103. PROVISION OF ADMINISTRATIVE REMEDIES FOR FALSE CLAIMS AND STATEMENTS.

(a) ESTABLISHMENT OF REMEDIES.—Subtitle III of title 31, United States Code, is amended by inserting after chapter 37 the following new chapter:

"CHAPTER 38—ADMINISTRATIVE REMEDIES FOR FALSE CLAIMS AND STATEMENTS

"Sec.
"3801. Definitions.
"3802. False claims and statements; liability.
"3803. Hearing and determinations.
"3804. Subpoena authority.
"3805. Judicial review.
"3806. Collection of civil penalties and assessments.
"3807. Right to administrative offset.
"3808. Limitations.
"3809. Regulations.
"3810. Reports.
"3811. Effect on other law.
"3812. Prohibition against delegation.

"§ 3801. Definitions

"(a) For purposes of this chapter—

"(1) 'authority' means—

"(A) an executive department;

"(B) a military department;

"(C) an establishment (as such term is defined in section 11(2) of the Inspector General Act of 1978) which is not an executive department; and

"(D) the United States Postal Service;

"(2) 'authority head' means—

"(A) the head of an authority; or

"(B) an official or employee of the authority designated, in regulations promulgated by the head of the authority, to act on behalf of the head of the authority;

"(3) 'claim' means any request, demand, or submission—

"(A) made to an authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

"(B) made to a recipient of property, services, or money from an authority or to a party to a contract with an authority—

"(i) for property or services if the United States—

"(I) provided such property or services;

"(II) provided any portion of the funds for the purchase of such property or services; or

"(III) will reimburse such recipient or party for the purchase of such property or services; or

"(ii) for the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

"(I) provided any portion of the money requested or demanded; or

"(II) will reimburse such recipient or party for any portion of the money paid on such request or demand; or

"(C) made to an authority which has the effect of decreasing an obligation to pay or account for property, services, or money,

except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1954;

"(4) 'investigating official' means an individual who—

"(A)(i) in the case of an authority in which an Office of Inspector General is established by the Inspector General Act of 1978 or by any other Federal law, is the Inspector General of that authority or an officer or employee of such Office designated by the Inspector General;

"(ii) in the case of an authority in which an Office of Inspector General is not established by the Inspector General Act of 1978 or by any other Federal law, is an officer or employee of the authority designated by the authority head to conduct investigations under section 3803(a)(1) of this title; or

"(iii) in the case of a military department, is the Inspector General of the Department of Defense or an officer or employee of the Office of Inspector General of the Department of Defense who is designated by the Inspector General; and

"(B) who, if a member of the Armed Forces of the United States on active duty, is serving in grade O–7 or above or, if a civilian employee, is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule;

"(5) 'knows or has reason to know', for purposes of establishing liability under section 3802, means that a person, with respect to a claim or statement—

"(A) has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

"(B) acts in deliberate ignorance of the truth or falsity of the claim or statement; or

"(C) acts in reckless disregard of the truth or falsity of the claim or statement,

and no proof of specific intent to defraud is required;

"(6) 'person' means any individual, partnership, corporation, association, or private organization;

"(7) 'presiding officer' means—

"(A) in the case of an authority to which the provisions of subchapter II of chapter 5 of title 5 apply, an administrative law judge appointed in the authority pursuant to section 3105 of such title or detailed to the authority pursuant to section 3344 of such title; or

"(B) in the case of an authority to which the provisions of such subchapter do not apply, an officer or employee of the authority who—

"(i) is selected under chapter 33 of title 5 pursuant to the competitive examination process applicable to administrative law judges;

"(ii) is appointed by the authority head to conduct hearings under section 3803 of such title;

"(iii) is assigned to cases in rotation so far as practicable;

"(iv) may not perform duties inconsistent with the duties and responsibilities of a presiding officer;

"(v) is entitled to pay prescribed by the Office of Personnel Management independently of ratings and recommendations made by the authority and in accordance with chapter 51 of such title and subchapter III of chapter 53 of such title;

"(vi) is not subject to performance appraisal pursuant to chapter 43 of such title; and

"(vii) may be removed, suspended, furloughed, or reduced in grade or pay only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing by such Board;

"(8) 'reviewing official' means any officer or employee of an authority—

"(A) who is designated by the authority head to make the determination required under section 3803(a)(2) of this title;

"(B) who, if a member of the Armed Forces of the United States on active duty, is serving in grade O–7 or above or, if a civilian employee, is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule; and

"(C) who is—

"(i) not subject to supervision by, or required to report to, the investigating official; and

"(ii) not employed in the organizational unit of the authority in which the investigating official is employed; and

"(9) 'statement' means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

"(A) with respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

"(B) with respect to (including relating to eligibility for)—

"(i) a contract with, or a bid or proposal for a contract with; or

"(ii) a grant, loan, or benefit from,

an authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit,

except that such term does not include any statement made in any return of tax imposed by the Internal Revenue Code of 1954.

"(b) For purposes of paragraph (3) of subsection (a)—

"(1) each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim;

"(2) each claim for property, services, or money is subject to this chapter regardless of whether such property, services, or money is actually delivered or paid; and

"(3) a claim shall be considered made, presented, or submitted to an authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority, recipient, or party.

"(c) For purposes of paragraph (9) of subsection (a)—

"(1) each written representation, certification, or affirmation constitutes a separate statement; and

"(2) a statement shall be considered made, presented, or submitted to an authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority.

"§ 3802. False claims and statements; liability

"(a)(1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know—

"(A) is false, fictitious, or fraudulent;

"(B) includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

"(C) includes or is supported by any written statement that—

"(i) omits a material fact;

"(ii) is false, fictitious, or fraudulent as a result of such omission; and

"(iii) is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or

"(D) is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such claim. Except as provided in paragraph (3) of this subsection, such person shall also be subject to an assessment, in lieu of damages sustained by the United States because of such claim, of not

more than twice the amount of such claim, or the portion of such claim, which is determined under this chapter to be in violation of the preceding sentence.

"(2) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that—

"(A) the person knows or has reason to know—

"(i) asserts a material fact which is false, fictitious, or fraudulent; or

"(ii)(I) omits a material fact; and

"(II) is false, fictitious, or fraudulent as a result of such omission;

"(B) in the case of a statement described in clause (ii) of subparagraph (A), is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; and

"(C) contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such statement.

"(3) An assessment shall not be made under the second sentence of paragraph (1) with respect to a claim if payment by the Government has not been made on such claim.

"(b)(1) Except as provided in paragraphs (2) and (3) of this subsection—

"(A) a determination under section 3803(a)(2) of this title that there is adequate evidence to believe that a person is liable under subsection (a) of this section; or

"(B) a determination under section 3803 of this title that a person is liable under subsection (a) of this section,

may provide the authority with grounds for commencing any administrative or contractual action against such person which is authorized by law and which is in addition to any action against such person under this chapter.

"(2) A determination referred to in paragraph (1) of this subsection may be used by the authority, but shall not require such authority, to commence any administrative or contractual action which is authorized by law.

"(3) In the case of an administrative or contractual action to suspend or debar any person who is eligible to enter into contracts with the Federal Government, a determination referred to in paragraph (1) of this subsection shall not be considered as a conclusive determination of such person's responsibility pursuant to Federal procurement laws and regulations.

"§ 3803. Hearing and determinations

"(a)(1) The investigating official of an authority may investigate allegations that a person is liable under section 3802 of this title and shall report the findings and conclusions of such investigation to the reviewing official of the authority. The preceding sentence does not modify any responsibility of an investigating official to report violations of criminal law to the Attorney General.

"(2) If the reviewing official of an authority determines, based upon the report of the investigating official under paragraph (1) of this subsection, that there is adequate evidence to believe that a person is liable under section 3802 of this title, the reviewing official shall transmit to the Attorney General a written notice of the intention of such official to refer the allegations of such liability to a presiding officer of such authority. Such notice shall include—

"(A) a statement of the reasons of the reviewing official for the referral of such allegations;

"(B) a statement specifying the evidence which supports such allegations;

"(C) a description of the claims or statements for which liability under section 3802 of this title is alleged;

"(D) an estimate of the amount of money or the value of property or services requested or demanded in violation of section 3802 of this title; and

"(E) a statement of any exculpatory or mitigating circumstances which may relate to such claims or statements.

"(b)(1) Within 90 days after receipt of a notice from a reviewing official under paragraph (2) of subsection (a), the Attorney General or an Assistant Attorney General designated by the Attorney General shall transmit a written statement to the reviewing official which specifies—

"(A) that the Attorney General or such Assistant Attorney General approves or disapproves the referral to a presiding officer of the allegations of liability stated in such notice;

"(B) in any case in which the referral of allegations is approved, that the initiation of a proceeding under this section with respect to such allegations is appropriate; and

"(C) in any case in which the referral of allegations is disapproved, the reasons for such disapproval.

"(2) A reviewing official may refer allegations of liability to a presiding officer only if the Attorney General or an Assistant Attorney General designated by the Attorney General approves the referral of such allegations in a written statement described in paragraph (1) of this subsection.

"(3) If the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to an authority head a written finding that the continuation of any hearing under this section with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, such hearing shall be immediately stayed and may be resumed only upon written authorization of the Attorney General.

"(c)(1) No allegations of liability under section 3802 of this title with respect to any claim made, presented, or submitted by any person shall be referred to a presiding officer under paragraph (2) of subsection (b) if the reviewing official determines that—

"(A) an amount of money in excess of $150,000; or

"(B) property or services with a value in excess of $150,000,

is requested or demanded in violation of section 3802 of this title in such claim or in a group of related claims which are submitted at the time such claim is submitted.

"(2)(A) Except as provided in subparagraph (B) of this paragraph, no allegations of liability against an individual under section 3802 of this title with respect to any claim or statement made, presented, or submitted, or caused to be made, presented, or submitted, by such individual relating to any benefits received by such individual shall be referred to a presiding officer under paragraph (2) of subsection (b).

"(B) Allegations of liability against an individual under section 3802 of this title with respect to any claim or statement made, presented, or submitted, or caused to be made, presented, or submitted, by such individual relating to any benefits received by such individual may be referred to a presiding officer under paragraph (2) of subsection (b) if—

"(i) such claim or statement is made by such individual in making application for such benefits;

"(ii) such allegations relate to the eligibility of such individual to receive such benefits; and

"(iii) with respect to such claim or statement, the individual—

"(I) has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

"(II) acts in deliberate ignorance of the truth or falsity of the claim or statement; or

"(III) acts in reckless disregard of the truth or falsity of the claim or statement.

"(C) For purposes of this subsection, the term 'benefits' means—

"(i) benefits under the supplemental security income program under title XVI of the Social Security Act;

"(ii) old age, survivors, and disability insurance benefits under title II of the Social Security Act;

"(iii) benefits under title XVIII of the Social Security Act;

"(iv) aid to families with dependent children under a State plan approved under section 402(a) of the Social Security Act;

"(v) medical assistance under a State plan approved under section 1902(a) of the Social Security Act;

"(vi) benefits under title XX of the Social Security Act;

"(vii) benefits under the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977);

"(viii) benefits under chapters 11, 13, 15, 17, and 21 of title 38;

"(ix) benefits under the Black Lung Benefits Act;

"(x) benefits under the special supplemental food program for women, infants, and children established under section 17 of the Child Nutrition Act of 1966;

"(xi) benefits under section 336 of the Older Americans Act;

"(xii) any annuity or other benefit under the Railroad Retirement Act of 1974;

"(xiii) benefits under the National School Lunch Act;

"(xiv) benefits under any housing assistance program for lower income families or elderly or handicapped persons which is administered by the Secretary of Housing and Urban Development or the Secretary of Agriculture;

"(xv) benefits under the Low-Income Home Energy Assistance Act of 1981; and

"(xvi) benefits under part A of the Energy Conservation in Existing Buildings Act of 1976,

which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

"(d)(1) On or after the date on which a reviewing official is permitted to refer allegations of liability to a presiding officer under subsection (b) of this section, the reviewing official shall mail, by registered or certified mail, or shall deliver, a notice to the person alleged to be liable under section 3802 of this title. Such notice shall specify the allegations of liability against such person and shall state the right of such person to request a hearing with respect to such allegations.

"(2) If, within 30 days after receiving a notice under paragraph (1) of this subsection, the person receiving such notice requests a hearing with respect to the allegations contained in such notice—

"(A) the reviewing official shall refer such allegations to a presiding officer for the commencement of such hearing; and

"(B) the presiding officer shall commence such hearing by mailing by registered or certified mail, or by delivery of, a notice which complies with paragraphs (2)(A) and (3)(B)(i) of subsection (g) to such person.

"(e)(1)(A) Except as provided in subparagraph (B) of this paragraph, at any time after receiving a notice under paragraph (2)(B) of subsection (d), the person receiving such notice shall be entitled to review, and upon payment of a reasonable fee for duplication, shall be entitled to obtain a copy of, all relevant and material documents, transcripts, records, and other materials, which relate to such allegations and upon which the findings and conclusions of the investigating official under paragraph (1) of subsection (a) are based.

"(B) A person is not entitled under subparagraph (A) to review and obtain a copy of any document, transcript, record, or material which is privileged under Federal law.

"(2) At any time after receiving a notice under paragraph (2)(B) of subsection (d), the person receiving such notice shall be entitled to obtain all exculpatory information in the possession of the investigating official or the reviewing official relating to the allegations contained in such notice. The provisions of subparagraph (B) of paragraph (1) do not apply to any document, transcript, record, or other material, or any portion thereof, in which such exculpatory information is contained.

"(f) Any hearing commenced under paragraph (2) of subsection (d) shall be conducted by the presiding officer on the record in order to determine—

"(1) the liability of a person under section 3802 of this title; and

"(2) if a person is determined to be liable under such section, the amount of any civil penalty or assessment to be imposed on such person.

Any such determination shall be based on the preponderance of the evidence.

"(g)(1) Each hearing under subsection (f) of this section shall be conducted—

"(A) in the case of an authority to which the provisions of subchapter II of chapter 5 of title 5 apply, in accordance with—

"(i) the provisions of such subchapter to the extent that such provisions are not inconsistent with the provisions of this chapter; and

"(ii) procedures promulgated by the authority head under paragraph (3) of this subsection; or

"(B) in the case of an authority to which the provisions of such subchapter do not apply, in accordance with procedures promulgated by the authority head under paragraphs (2) and (3) of this subsection.

"(2) An authority head of an authority described in subparagraph (B) of paragraph (1) shall by regulation promulgate procedures for the conduct of hearings under this chapter. Such procedures shall include:

"(A) The provision of written notice of the hearing to any person alleged to be liable under section 3802 of this title, including written notice of—

"(i) the time, place, and nature of the hearing;

"(ii) the legal authority and jurisdiction under which the hearing is to be held; and

"(iii) the matters of facts and law to be asserted.

"(B) The provision to any person alleged to be liable under section 3802 of this title of opportunities for the submission of facts, arguments, offers of settlement, or proposals of adjustment.

"(C) Procedures to ensure that the presiding officer shall not, except to the extent required for the disposition of ex parte matters as authorized by law—

"(i) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to the hearing to participate; or

"(ii) be responsible to or subject to the supervision or direction of the investigating official or the reviewing official.

"(D) Procedures to ensure that the investigating official and the reviewing official do not participate or advise in the decision required under subsection (h) of this section or the review of the decision by the authority head under subsection (i) of this section, except as provided in subsection (j) of this section.

"(E) The provision to any person alleged to be liable under section 3802 of this title of opportunities to present such person's case through oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

"(F) Procedures to permit any person alleged to be liable under section 3802 of this title to be accompanied, represented, and advised by counsel or such other qualified representative as the authority head may specify in such regulations.

"(G) Procedures to ensure that the hearing is conducted in an impartial manner, including procedures to—

"(i) permit the presiding officer to at any time disqualify himself; and

"(ii) permit the filing, in good faith, of a timely and sufficient affidavit alleging personal bias or another reason for disqualification of a presiding officer or a reviewing official.

"(3)(A) Each authority head shall promulgate by regulation procedures described in subparagraph (B) of this paragraph for the conduct of hearings under this chapter. Such procedures shall be in addition to the procedures described in paragraph (1) or paragraph (2) of this subsection, as the case may be.

"(B) The procedures referred to in subparagraph (A) of this paragraph are:

"(i) Procedures for the inclusion, in any written notice of a hearing under this section to any person alleged to be liable under section 3802 of this title, of a description of the procedures for the conduct of the hearing.

"(ii) Procedures to permit discovery by any person alleged to be liable under section 3802 of this title only to the extent that the presiding officer determines that such discovery is necessary for the expeditious, fair, and reasonable consideration of the issues, except that such procedures shall not apply to documents, transcripts, records, or other material which a person is entitled to review under paragraph (1) of subsection (e) or to information to which a person is entitled under paragraph (2) of such subsection. Procedures promulgated under this clause shall prohibit the discovery of the notice required under subsection (a)(2) of this section.

"(4) Each hearing under subsection (f) of this section shall be held—

"(A) in the judicial district of the United States in which the person alleged to be liable under section 3802 of this title resides or transacts business;

"(B) in the judicial district of the United States in which the claim or statement upon which the allegation of liability under such section was made, presented, or submitted; or

"(C) in such other place as may be agreed upon by such person and the presiding officer who will conduct such hearing.

"(h) The presiding officer shall issue a written decision, including findings and determinations, after the conclusion of the hearing. Such decision shall include the findings of fact and conclusions of law which the presiding officer relied upon in determining whether a person is liable under this chapter. The presiding officer shall promptly send to each party to the hearing a copy of such decision and a statement describing the right of any person determined to be liable under section 3802 of this title to appeal the decision of the presiding officer to the authority head under paragraph (2) of subsection (i).

"(i)(1) Except as provided in paragraph (2) of this subsection and section 3805 of this title, the decision, including the findings and determinations, of the presiding officer issued under subsection (h) of this section are final.

"(2)(A)(i) Except as provided in clause (ii) of this subparagraph, within 30 days after the presiding officer issues a decision under subsection (h) of this section, any person determined in such decision to be liable under section 3802 of this title may appeal such decision to the authority head.

"(ii) If, within the 30-day period described in clause (i) of this subparagraph, a person determined to be liable under this chapter requests the authority head for an extension of such 30-day period to file an appeal of a decision issued by the presiding officer under subsection (h) of this section, the authority head may extend such period if such person demonstrates good cause for such extension.

"(B) Any authority head reviewing under this section the decision, findings, and determinations of a presiding officer shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (f) of this section unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the presiding officer for consideration of such additional evidence.

"(C) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the presiding officer pursuant to this section. The authority head shall promptly send to each party to the appeal a copy of the decision of the authority head and a statement describing the right of any person determined to be liable under section 3802 of this title to judicial review under section 3805 of this title.

"(j) The reviewing official has the exclusive authority to compromise or settle any allegations of liability under section 3802 of this title against a person without the consent of the presiding officer at any time after the date on which the reviewing official is permitted to refer allegations of liability to a presiding officer under subsection (b) of this section and prior to the date on which the presiding officer issues a decision under subsection (h) of this section. Any such compromise or settlement shall be in writing.

"§ 3804. Subpoena authority

"(a) For the purposes of an investigation under section 3803(a)(1) of this title, an investigating official is authorized to require

by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and data not otherwise reasonably available to the authority.

"(b) For the purposes of conducting a hearing under section 3803(f) of this title, a presiding officer is authorized—

"(1) to administer oaths or affirmations; and

"(2) to require by subpoena the attendance and testimony of witnesses and the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the presiding officer considers relevant and material to the hearing.

"(c) In the case of contumacy or refusal to obey a subpoena issued pursuant to subsection (a) or (b) of this section, the district courts of the United States shall have jurisdiction to issue an appropriate order for the enforcement of any such subpoena. Any failure to obey such order of the court is punishable by such court as contempt. In any case in which an authority seeks the enforcement of a subpoena issued pursuant to subsection (a) or (b) of this section, the authority shall request the Attorney General to petition any district court in which a hearing under this chapter is being conducted, or in which the person receiving the subpoena resides or conducts business, to issue such an order.

§ 3805. Judicial review

"(a)(1) A determination by a reviewing official under section 3803 of this title shall be final and shall not be subject to judicial review.

"(2) Unless a petition is filed under this section, a determination under section 3803 of this title that a person is liable under section 3802 of this title shall be final and shall not be subject to judicial review.

"(b)(1)(A) Any person who has been determined to be liable under section 3802 of this title pursuant to section 3803 of this title may obtain review of such determination in—

"(i) the United States district court for the district in which such person resides or transacts business;

"(ii) the United States district court for the district in which the claim or statement upon which the determination of liability is based was made, presented, or submitted; or

"(iii) the United States District Court for the District of Columbia.

"(B) Such review may be obtained by filing in any such court a written petition that such determination be modified or set aside. Such petition shall be filed—

"(i) only after such person has exhausted all administrative remedies under this chapter; and

"(ii) within 60 days after the date on which the authority head sends such person a copy of the decision of such authority head under section 3803(i)(2) of this title.

"(2) The clerk of the court shall transmit a copy of a petition filed under paragraph (1) of this subsection to the authority and to the Attorney General. Upon receipt of the copy of such petition, the authority shall transmit to the Attorney General the record in the proceeding resulting in the determination of liability under section 3802 of this title. Except as otherwise provided in this section, the district courts of the United States shall have jurisdiction to review the decision, findings, and determinations in issue and to affirm, modify, remand for further consideration, or set aside, in whole or in part, the decision, findings, and determinations of the authority, and to enforce such decision, findings, and determinations to the extent that such decision, findings, and determinations are affirmed or modified.

"(c) The decisions, findings, and determinations of the authority with respect to questions of fact shall be final and conclusive, and shall not be set aside unless such decisions, findings, and determinations are found by the court to be unsupported by substantial evidence. In concluding whether the decisions, findings, and determinations of an authority are unsupported by substantial evidence, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

"(d) Any district court reviewing under this section the decision, findings, and determinations of an authority shall not consider any objection that was not raised in the hearing conducted pursuant to section 3803(f) of this title unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the court shall remand the matter to the authority for consideration of such additional evidence.

"(e) Upon a final determination by the district court that a person is liable under section 3802 of this title, the court shall enter a final judgment for the appropriate amount in favor of the United States.

"§ 3806. Collection of civil penalties and assessments

"(a) The Attorney General shall be responsible for judicial enforcement of any civil penalty or assessment imposed pursuant to the provisions of this chapter.

"(b) Any penalty or assessment imposed in a determination which has become final pursuant to this chapter may be recovered in a civil action brought by the Attorney General. In any such action, no matter that was raised or that could have been raised in a hearing conducted under section 3803(f) of this title or pursuant to judicial review under section 3805 of this title may be raised as a defense, and the determination of liability and the determination of amounts of penalties and assessments shall not be subject to review.

"(c) The district courts of the United States shall have jurisdiction of any action commenced by the United States under subsection (b) of this section.

"(d) Any action under subsection (b) of this section may, without regard to venue requirements, be joined and consolidated with or asserted as a counterclaim, crossclaim, or setoff by the United States in any other civil action which includes as parties the United States and the person against whom such action may be brought.

"(e) The United States Claims Court shall have jurisdiction of any action under subsection (b) of this section to recover any penalty or assessment if the cause of action is asserted by the United States as a counterclaim in a matter pending in such court.

"(f) The Attorney General shall have exclusive authority to compromise or settle any penalty or assessment the determination of which is the subject of a pending petition pursuant to section 3805 of this title or a pending action to recover such penalty or assessment pursuant to this section.

"(g)(1) Except as provided in paragraph (2) of this subsection, any amount of penalty or assessment collected under this chapter shall be deposited as miscellaneous receipts in the Treasury of the United States.

"(2)(A) Any amount of a penalty or assessment imposed by the United States Postal Service under this chapter shall be deposited in the Postal Service Fund established by section 2003 of title 39.

"(B) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with old age and survivors benefits under title II of the Social Security Act shall be deposited in the Federal Old-Age and Survivors Insurance Trust Fund.

"(C) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with disability benefits under title II of the Social Security Act shall be deposited in the Federal Disability Insurance Trust Fund.

"(D) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with benefits under part A of title XVIII of the Social Security Act shall be deposited in the Federal Hospital Insurance Trust Fund.

"(E) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this chapter with respect to a claim or statement made in connection with benefits under part B of title XVIII of the Social Security Act shall be deposited in the Federal Supplementary Medical Insurance Trust Fund.

"§ 3807. Right to administrative offset

"(a) The amount of any penalty or assessment which has become final under section 3803 of this title, or for which a judgment has been entered under section 3805(e) or 3806 of this title, or any amount agreed upon in a settlement or compromise under section 3803(j) or 3806(f) of this title, may be collected by administrative offset under section 3716 of this title, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the person liable for such penalty or assessment.

"(b) All amounts collected pursuant to this section shall be remitted to the Secretary of the Treasury for deposit in accordance with section 3806(g) of this title.

"§ 3808. Limitations

"(a) A hearing under section 3803(d)(2) of this title with respect to a claim or statement shall be commenced within 6 years after the date on which such claim or statement is made, presented, or submitted.

"(b) A civil action to recover a penalty or assessment under section 3806 of this title shall be commenced within 3 years after the date on which the determination of liability for such penalty or assessment becomes final.

"(c) If at any time during the course of proceedings brought pursuant to this chapter the authority head receives or discovers any specific information regarding bribery, gratuities, conflict of interest, or other corruption or similar activity in relation to a false claim or statement, the authority head shall immediately report such information to the Attorney General, and in the case of an authority in which an Office of Inspector General is established by the Inspector General Act of 1978 or by any other Federal law, to the Inspector General of that authority.

"§ 3809. Regulations

"Within 180 days after the date of enactment of this chapter, each authority head shall promulgate rules and regulations necessary to implement the provisions of this chapter. Such rules and regulations shall—

"(1) ensure that investigating officials and reviewing officials are not responsible for conducting the hearing required in section 3803(f) of this title, making the determinations required by subsections (f) and (h) of section 3803 of this title, or making collections under section 3806 of this title; and

"(2) require a reviewing official to include in any notice required by section 3803(a)(2) of this title a statement which specifies that the reviewing official has determined that there is a reasonable prospect of collecting, from a person with respect to whom the reviewing official is referring allegations of liability in such notice, the amount for which such person may be liable.

"§ 3810. Reports

"Not later than October 31 of each year, each authority head shall prepare and transmit to the appropriate committees and subcommittees of the Congress an annual report summarizing actions taken under this chapter during the most recent 12-month period ending the previous September 30. Such report shall include—

"(1) a summary of matters referred by the investigating official of the authority to the reviewing official of the authority under section 3803(a)(1) of this title during such period;

"(2) a summary of matters transmitted to the Attorney General under section 3803(a)(2) of this title during such period;

"(3) a summary of all hearings conducted by presiding officers under section 3803(f) of this title, and the results of such hearings, during such period; and

"(4) a summary of the actions taken during such period to collect any civil penalty or assessment imposed under this chapter.

"§ 3811. Effect on other law

"(a) This chapter does not diminish the responsibility of any agency to comply with the provisions of chapter 35 of title 44.

"(b) This chapter does not supersede the provisions of section 3512 of title 44.

"(c) For purposes of this section, the term 'agency' has the same meaning as in section 3502(1) of title 44.

"§ 3812. Prohibition against delegation

"Any function, duty, or responsibility which this chapter specifies be carried out by the Attorney General or an Assistant Attorney General designated by the Attorney General, shall not be delegated to, or carried out by, any other officer or employee of the Department of Justice.".

(b) TECHNICAL AMENDMENT.—The table of chapters for subtitle III of title 31, United States Code, is amended by inserting after the item relating to chapter 37 the following new item:

"38. Administrative Remedies for False Claims and Statements.... 3801".

(c) CONFORMING AMENDMENTS.—Section 504(b)(1)(C) of title 5, United States Code, is amended—

(1) by striking out "and" before "(ii)"; and

(2) by inserting before the semicolon a comma and "and (iii) any hearing conducted under chapter 38 of title 31".

SEC. 6104. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect on the date of enactment of this Act, and shall apply to any claim or statement made, presented, or submitted on or after such date.

TITLE VII—FISCAL PROCEDURES

SEC. 7001. COST-OF-LIVING ADJUSTMENTS IN CERTAIN FEDERAL BENEFITS.

(a) IN GENERAL.—Benefits which are payable in calendar year 1987, 1988, 1989, 1990, or 1991, under programs listed in section 257(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), including any cost-of-living adjustment in such benefits, shall not be subject to modification, suspension, or reduction in such calendar year pursuant to a Presidential order issued under such Act.

(b) DEFINITION.—For purposes of this section, the term "cost-of-living adjustment" means any increase or change in the amount of a benefit or in standards relating to such benefit under any provision of Federal law which requires such increase or change as a result of any change in the Consumer Price Index (or any component thereof) or any other index which measures costs, prices, or wages.

SEC. 7002. EXEMPT PROGRAMS AND ACTIVITIES.

(a) IN GENERAL.—Section 255(g)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)) is amended by inserting after the item relating to Compensation of the President the following new item:

"Dual benefits payments account (60-0111-0-1-601);".

(b) APPLICATION.—The amendment made by subsection (a) shall apply to fiscal years beginning after September 30, 1986.

SEC. 7003. COMPUTATION OF RETIREMENT ANNUITY FOR PART-TIME EMPLOYMENT.

(a)(1) Subsection (b) of section 15204 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272; 100 Stat. 335) is repealed.

(2) The provision of title 38, United States Code, that was repealed by such subsection is revived.

(b) Subsection (c) of section 15204 of such Act is redesignated as subsection (b).

(c) This section is effective with respect to individuals who retire after September 19, 1986.

SEC. 7004. REVENUE SHARING PAYMENTS.

Notwithstanding section 6702(b) of title 31, United States Code, the Secretary of the Treasury shall make the installment payment of revenue sharing funds under chapter 67 of such title that is otherwise required to be paid on or before October 5, 1986, by no later than September 30, 1986.

SEC. 7005. HIGHER EDUCATION SAVINGS.

For the purpose of complying with the instructions set forth in the concurrent resolution on the budget for the fiscal year 1987 (S. Con. Res. 120, 99th Congress, agreed to June 27, 1986), the provisions of the bill, S. 1965, as passed by the House of Representatives on September 24, 1986, as passed by the Senate on September 25, 1986, and submitted to the President, shall be treated as if they were included in this Act.

SEC. 7006. MISCELLANEOUS.

(a) Section 20001(d) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended—

(1) by striking out "(1)(A) above if" in paragraph (2) and inserting in lieu thereof "paragraph (1)(A) if the Chairman and Ranking Minority Member of the Committee on the Budget and the Chairman and Ranking Minority Member of the Committee which reported the provision certify that";

(2) by striking out "it is designed to mitigate the" in clause (A) of such paragraph and inserting in lieu thereof "the provision mitigates";

(3) by striking out "it" in clause (B) of such paragraph and inserting in lieu thereof "the provision"; and

(4) by adding at the end thereof the following new paragraph:

"(3) A provision reported by a committee shall not be considered extraneous under paragraph (1)(C) if (A) the provision is an integral part of a provision or title, which if introduced as a bill or resolution would be referred to such committee, and the provision sets forth the procedure to carry out or implement the substantive provisions that were reported and which fall within the jurisdiction of such committee; or (B) the provision states an exception to, or a special application of, the general provision or title of which it is a part and such general provision or title if introduced as a bill or resolution would be referred to such committee.".

(b) Section 20001(c) of such Act is amended by striking out "January 2, 1987" and inserting in lieu thereof "January 2, 1988".

(c) Senate Resolution 286 (99th Congress, 2d Session) is amended by striking "section 1201" each place it appears and inserting in lieu thereof "section 20001".

SEC. 7007. MODIFICATION OF TITLE III, PART B, HIGHER EDUCATION ACT ALLOCATION FORMULA.

Section 324 of the Higher Education Act (as amended by the Higher Education Amendments of 1986) is amended—

(1) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively;

(2) by inserting after subsection (c) the following new subsection:

"(d) MINIMUM ALLOTMENT.—(1) Notwithstanding subsections (a), (b), and (c), the amount allotted to each part B institution under this section shall not be less than $350,000.

"(2) If the amount appropriated pursuant to section 360(a)(2)(A) for any fiscal year is not sufficient to pay the minimum allotment required by paragraph (1) of this subsection to all part B institutions, the amount of such minimum allotments shall be ratably reduced. If additional sums become available for such fiscal year, such reduced allocation shall be increased on the same basis as they were reduced (until the amount allotted equals the minimum allotment required by paragraph (1))."; and

(3) by striking out "subsection (a), (b), or (c)" in subsection (e) (as redesignated by paragraph (1) of this subsection) and inserting in lieu thereof "subsection (a), (b), (c), or (d)"; and

(4) by amending subsection (c) to read as follows:

"(c) ALLOTMENT; GRADUATE AND PROFESSIONAL STUDENT BASIS.—From the amounts appropriated to carry out this part for any fiscal year, the Secretary shall allot to each part B institution a sum which bears the same ratio to one-fourth of that amount as the percentage of graduates per institution, who are admitted to and in attendance at a graduate or professional school in a degree program in disciplines in which Blacks are underrepresented, bears to the percentage of such graduates per institution for all part B institutions.".

SEC. 7008. USE OF URBAN RENEWAL LAND DISPOSITION PROCEEDS.

Notwithstanding any other provision of law or other requirement, the City of Boston in the State of Massachusetts is authorized to retain any land disposition proceeds from

the financially closed-out Government Center Urban Renewal Project (NO. MASS. R-35) not paid to the Department of Housing and Urban Development, and to use such proceeds in accordance with the requirements of the community development block grant program specified in title I of the Housing and Community Development Act of 1974. The City of Boston shall retain such proceeds in a lump sum and shall be entitled to retain and use all past and future earnings from such proceeds, including any interest.

TITLE VIII—REVENUES, TRADE, AND RELATED PROGRAMS

Subtitle A—Revenue Provisions

PART I—INCREASES IN CERTAIN PENALTIES

SEC. 8001. INCREASE IN PENALTY FOR UNDERPAYMENTS OF TAX DEPOSITS.

(a) IN GENERAL.—Subsection (a) of section 6656 of the Internal Revenue Code of 1954 (relating to underpayment of deposits) is amended by striking out "5 percent" and inserting in lieu thereof "10 percent".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to penalties assessed after the date of the enactment of this Act.

SEC. 8002. INCREASE IN PENALTY FOR SUBSTANTIAL UNDERSTATEMENT OF LIABILITY.

(a) IN GENERAL.—Subsection (a) of section 6661 of the Internal Revenue Code of 1954 (relating to substantial understatement of liability) is amended to read as follows:

"(a) ADDITION TO TAX.—If there is a substantial understatement of income tax for any taxable year, there shall be added to the tax an amount equal to 25 percent of the amount of any underpayment attributable to such understatement."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to penalties assessed after the date of the enactment of this Act.

(c) REPEAL OF INCREASE IN PENALTY BY TAX REFORM ACT OF 1986.—Section 1504 of the Tax Reform Act of 1986 (relating to increase in penalty for substantial understatement of liability) is hereby repealed.

PART II—CERTAIN EXCISE TAX DEPOSITS ACCELERATED

SEC. 8011. CERTAIN EXCISE TAX DEPOSITS ACCELERATED.

(a) TOBACCO.—

(1) IN GENERAL.—Paragraph (2) of section 5703(b) of the Internal Revenue Code of 1954 (relating to method of payment of tax) is amended to read as follows:

"(2) TIME FOR PAYMENT OF TAXES.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, in the case of taxes on tobacco products and cigarette papers and tubes removed during any semimonthly period under bond for deferred payment of tax, the last day for payment of such taxes shall be the 14th day after the last day of such semimonthly period.

"(B) IMPORTED ARTICLES.—In the case of tobacco products and cigarette papers and tubes which are imported into the United States—

"(i) IN GENERAL.—The last day for payment of tax shall be the 14th day after the date on which the article is entered into the customs territory of the United States.

"(ii) SPECIAL RULE FOR ENTRY FOR WAREHOUSING.—Except as provided in clause (iv), in the case of an entry for warehousing, the last day for payment of tax shall not be later than the 14th day after the date on which the article is removed from the 1st such warehouse.

"(iii) FOREIGN TRADE ZONES.—Except as provided in clause (iv) and in regulations prescribed by the Secretary, articles brought into a foreign trade zone shall, notwithstanding any other provision of law, be treated for purposes of this subsection as if such zone were a single customs warehouse.

"(iv) EXCEPTION FOR ARTICLES DESTINED FOR EXPORT.—Clauses (ii) and (iii) shall not apply to any article which is shown to the satisfaction of the Secretary to be destined for export.

"(C) TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES BROUGHT INTO THE UNITED STATES FROM PUERTO RICO.—In the case of tobacco products and cigarette papers and tubes which are brought into the United States from Puerto Rico, the last day for payment of tax shall be the 14th day after the date on which the article is brought into the United States.

"(D) SPECIAL RULE WHERE 14TH DAY FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—Notwithstanding section 7503, if, but for this subparagraph, the due date under this paragraph would fall on a Saturday, Sunday, or a legal holiday (as defined in section 7503), such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday."

(2) TECHNICAL AMENDMENT.—Subsection (c) of section 5704 of such Code (relating to tobacco products and cigarette papers and tubes released in bond from customs custody) is amended by striking out "to a manufacturer of tobacco products or cigarette papers and tubes or".

(b) DISTILLED SPIRITS, WINES, AND BEER.—

(1) IN GENERAL.—Subsection (d) of section 5061 of such Code (relating to method of collecting tax) is amended to read as follows:

"(d) TIME FOR COLLECTING TAX ON DISTILLED SPIRITS, WINES, AND BEER.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, in the case of distilled spirits, wines, and beer to which this part applies (other than subsection (b) of this section) which are withdrawn under bond for deferred payment of tax, the last day for payment of such tax shall be the 14th day after the last day of the semimonthly period during which the withdrawal occurs.

"(2) IMPORTED ARTICLES.—In the case of distilled spirits, wines, and beer which are imported into the United States (other than in bulk containers)—

"(A) IN GENERAL.—The last day for payment of tax shall be the 14th day after the date on which the article is entered into the customs territory of the United States.

"(B) SPECIAL RULE FOR ENTRY FOR WAREHOUSING.—Except as provided in subparagraph (D), in the case of an entry for warehousing, the last day for payment of tax shall not be later than the 14th day after the date on which the article is removed from the 1st such warehouse.

"(C) FOREIGN TRADE ZONES.—Except as provided in subparagraph (D) and in regulations prescribed by the Secretary, articles brought into a foreign trade zone shall, notwithstanding any other provision of law, be treated for purposes of this subsection as if such zone were a single customs warehouse.

"(D) EXCEPTION FOR ARTICLES DESTINED FOR EXPORT.—Subparagraphs (B) and (C) shall not apply to any article which is shown to the satisfaction of the Secretary to be destined for export.

"(3) DISTILLED SPIRITS, WINES, AND BEER BROUGHT INTO THE UNITED STATES FROM PUERTO RICO.—In the case of distilled spirits, wines, and beer which are brought into the United States (other than in bulk containers) from Puerto Rico, the last day for payment of tax shall be the 14th day after the date on which the article is brought into the United States.

"(4) SPECIAL RULE WHERE 14TH DAY FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—Notwithstanding section 7503, if, but for this paragraph, the due date under this subsection for payment of tax would fall on a Saturday, Sunday, or a legal holiday (within the meaning of section 7503), such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday."

(2) TECHNICAL AMENDMENT.—Paragraph (2) of section 5054(a) of such Code (relating to determination and collection of tax on beer) is amended by striking out all that follows "or," and inserting in lieu thereof "if entered for warehousing, at the time of removal from the 1st such warehouse".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to removals during semimonthly periods ending on or after December 31, 1986.

(2) IMPORTED ARTICLES, ETC.—Subparagraphs (B) and (C) of section 5703(b)(2) of the Internal Revenue Code of 1954 (as added by this section), paragraphs (2) and (3) of section 5061(d) of such Code (as amended by this section), and the amendments made by subsections (a)(2) and (b)(2) shall apply to articles imported, entered for warehousing, or brought into the United States or a foreign trade zone after December 15, 1986.

(3) SPECIAL RULE FOR DISTILLED SPIRITS AND TOBACCO FOR SEMIMONTHLY PERIOD ENDING DECEMBER 15, 1986.—With respect to remittances of—

(A) taxes imposed on distilled spirits by section 5001 or 7652 of such Code, and

(B) taxes imposed on tobacco products and cigarette papers and tubes by section 5701 or 7652 of such Code,

for the semimonthly period ending December 15, 1986, the last day for payment of such remittances shall be January 14, 1987.

(4) TREATMENT OF SMOKELESS TOBACCO IN INVENTORY ON JUNE 30, 1986.—The tax imposed by section 5701(e) of the Internal Revenue Code of 1954 shall not apply to any smokeless tobacco which—

(A) on June 30, 1986, was in the inventory of the manufacturer or importer, and

(B) on such date was in a form ready for sale.

PART III—TAX TREATMENT OF CONRAIL PUBLIC SALE

SEC. 8021. TAX TREATMENT OF CONRAIL PUBLIC SALE.

(a) TREATMENT AS NEW CORPORATION.—

(1) IN GENERAL.—For periods after the public sale, for purposes of the Internal Revenue Code of 1954, Conrail shall be treated as a new corporation which purchased all of its assets as of the beginning of the day after the date of the public sale for an amount equal to the deemed purchase price.

(2) ALLOCATION AMONG ASSETS.—The deemed purchase price shall be allocated among the assets of Conrail in accordance with the temporary regulations prescribed under section 338 of the Internal Revenue Code of 1954 (as such regulations were in effect on the date of the enactment of this Act). The Secretary shall establish specific guidelines for carrying out the preceding sentence so that the basis of each asset will be clearly ascertainable. For purposes of applying the regulations referred to in the first sentence,

accounts receivable and materials and supplies shall be treated as cash equivalents.

(3) DEEMED PURCHASE PRICE.—For purposes of this subsection, the deemed purchase price is an amount equal to the gross amount received pursuant to the public sale, multiplied by a fraction—

(A) the numerator of which is 100 percent, and

(B) the denominator of which is the percentage (by value) of the stock of Conrail sold in the public sale.

The amount determined under the preceding sentence shall be adjusted under regulations prescribed by the Secretary for liabilities of Conrail and other relevant items.

(b) NO INCOME FROM CANCELLATION OF DEBT OR PREFERRED STOCK.—No amount shall be included in the gross income of any person by reason of any cancellation of any obligation (or preferred stock) of Conrail in connection with the public sale.

(c) DISALLOWANCE OF CERTAIN DEDUCTIONS.—No deduction shall be allowed to Conrail for any amount which is paid after the date of the public sale to employees of Conrail for services performed on or before the date of the public sale.

(d) WAIVER OF CERTAIN EMPLOYEE STOCK OWNERSHIP PLAN PROVISIONS.—For purposes of determining whether the employee stock ownership plans of Conrail meet the qualifications of sections 401 and 501 of the Internal Revenue Code of 1954—

(1) the limits of section 415 of such Code (relating to limitations on benefits and contributions under qualified plans) shall not apply with respect to interests in stock transferred pursuant to this Act or a law heretofore enacted, and

(2) the 2-year waiting period for withdrawals shall not apply to withdrawals of amounts (or shares) in participants accounts in connection with the public sale.

(e) DEFINITIONS.—For purposes of this section—

(1) CONRAIL.—The term "Conrail" means the Consolidated Rail Corporation. Such term includes any corporation which was a subsidiary of Conrail immediately before the public sale.

(2) PUBLIC SALE.—The term "public sale" means the sale of stock in Conrail pursuant to a public offering under the Conrail Privatization Act. If there is more than 1 public offering under such Act, such term means the sale pursuant to the initial public offering under such Act.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

PART IV—TAX ON PETROLEUM AND OIL SPILL LIABILITY TRUST FUND

Subpart A—Tax Provisions If Superfund Amendments Not Enacted

SEC. 8031. TAX ON PETROLEUM.

(a) IN GENERAL.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum) are each amended by striking out "of 0.79 cent a barrel" and inserting in lieu thereof "at the rate specified in subsection (c)".

(b) INCREASE IN TAX.—Section 4611 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the taxes imposed by this section is the sum of—

"(A) the Hazardous Substance Superfund financing rate, and

"(B) the Oil Spill Liability Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Hazardous Substance Superfund financing rate is 0.79 cent a barrel, and

"(B) the Oil Spill Liability Trust Fund financing rate is 1.3 cents a barrel."

(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—Section 4612 of such Code (relating to definitions and special rules) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—There shall be allowed as a credit against so much of the tax imposed by section 4611 as is attributable to the Oil Spill Liability Trust Fund financing rate for any period an amount equal to the excess of—

"(1) the sum of—

"(A) the aggregate amounts paid by the taxpayer before January 1, 1987, into the Deepwater Port Liability Trust Fund and the Offshore Oil Pollution Compensation Fund, and

"(B) the interest accrued on such amounts before such date, over

"(2) the amount of such payments taken into account under this subsection for all prior periods."

(d) CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 4611 of such Code (relating to application of taxes), as redesignated by subsection (b), is amended to read as follows:

"(e) APPLICATION OF TAXES.—

"(1) SUPERFUND RATE.—The Hazardous Substance Superfund financing rate under subsection (c) shall not apply after September 30, 1985.

"(2) OIL SPILL RATE.—

"(A) IN GENERAL.—Except as provided in subparagraph (C), the Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply on and after the commencement date and before January 1, 1992.

"(B) COMMENCEMENT DATE.—

"(i) IN GENERAL.—For purposes of this paragraph, the term 'commencement date' means the later of—

"(I) February 1, 1987, or

"(II) the 1st day of the 1st calendar month beginning more than 30 days after the date of the enactment of qualified authorizing legislation.

"(ii) QUALIFIED AUTHORIZING LEGISLATION.—For purposes of clause (i), the term 'qualified authorizing legislation' means any law enacted before September 1, 1987, which is substantially identical to subtitle E of title VI, or subtitle D of title VIII, of H.R. 5300 of the 99th Congress as passed the House of Representatives.

"(C) NO TAX IF AMOUNTS COLLECTED EXCEED $300,000,000.—

"(i) ESTIMATES BY SECRETARY.—The Secretary as of the close of each calendar quarter (and at such other times as the Secretary determines appropriate) shall make an estimate of the amount of taxes which will be collected under this section (to the extent attributable to the Oil Spill Liability Trust Fund financing rate) during the period beginning on the commencement date and ending on December 31, 1991.

"(ii) TERMINATION IF $300,000,000 CREDITED BEFORE JANUARY 1, 1992.—If the Secretary estimates under clause (i) that more than $300,000,000 will be credited to the Fund before January 1, 1992, the Oil Spill Liability Trust Fund financing rate shall not apply after the date on which (as estimated by the Secretary) $300,000,000 will be so credited to the Fund."

(2) Subsection (c) of section 4661 of such Code (relating to termination of tax on certain chemicals) is amended to read as follows:

"(c) TERMINATION.—The tax imposed by this section shall not apply after September 30, 1985."

(3) Paragraph (1) of section 221(b) of the Hazardous Substance Response Revenue Act of 1980 (relating to transfers to Response Trust Fund) is amended by adding at the end thereof the following:

"In the case of the tax imposed by section 4611, subparagraph (A) shall apply only to so much of such tax as is attributable to the Hazardous Substance Superfund financing rate under section 4611(c)."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the commencement date (as defined in section 4611(e)(2) of the Internal Revenue Code of 1954, as added by this section).

(2) COORDINATION WITH SUPERFUND REAUTHORIZATION.—The amendments made by this section shall not take effect if the Superfund Amendments and Reauthorization Act of 1986 is enacted.

Subpart B—Tax Provisions If Superfund Amendments Enacted

SEC. 8032. INCREASE IN ENVIRONMENTAL TAX ON PETROLEUM.

(a) IN GENERAL.—Subsection (c) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum), as amended by the Superfund Amendments and Reauthorization Act of 1986, is amended to read as follows:

"(c) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the taxes imposed by this section is the sum of—

"(A) the Hazardous Substance Superfund financing rate, and

"(B) the Oil Spill Liability Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Hazardous Substance Superfund financing rate is—

"(i) except as provided in clause (ii), 8.2 cents a barrel, and

"(ii) 11.7 cents a barrel in the case of the tax imposed by subsection (a)(2), and

"(B) the Oil Spill Liability Trust Fund financing rate is 1.3 cents a barrel."

(b) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—Section 4612 of such Code (relating to definitions and special rules), as so amended, is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—There shall be allowed as a credit against so much of the tax imposed by section 4611 as is attributable to the Oil Spill Liability Trust Fund financing rate for any period an amount equal to the excess of—

"(1) the sum of—

"(A) the aggregate amounts paid by the taxpayer before January 1, 1987, into the Deepwater Port Liability Trust Fund and the Offshore Oil Pollution Compensation Fund, and

"(B) the interest accrued on such amounts before such date, over

"(2) the amount of such payments taken into account under this subsection for all prior periods."

(c) CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 4611 of such Code (relating to application of taxes), as so amended, is amended—

(A) in the subsection heading by striking out "TAXES" and inserting in lieu thereof "HAZARDOUS SUBSTANCE SUPERFUND FINANCING RATE",

(B) in paragraph (1) by striking out "the taxes imposed by this section" and inserting in lieu thereof "the Hazardous Substance Superfund financing rate under this section",

(C) in paragraphs (2) and (3)(A) after "this section" by inserting "(to the extent attributable to the Hazardous Substance Superfund financing rate)", and

(D) in paragraph (3)(B) by striking out "no tax shall be imposed under this section" and inserting in lieu thereof "the Hazardous Substance Superfund financing rate under this section shall not apply".

(2) Section 4611 of such Code, as so amended, is amended by adding at the end thereof the following new subsection:

"(f) APPLICATION OF OIL SPILL LIABILITY TRUST FUND FINANCING RATE.—

"(1) IN GENERAL.—Except as provided in paragraph (3), the Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply on and after the commencement date and before January 1, 1992.

"(2) COMMENCEMENT DATE.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'commencement date' means the later of—

"(i) February 1, 1987, or

"(ii) the 1st day of the 1st calendar month beginning more than 30 days after the date of the enactment of qualified authorizing legislation.

"(B) QUALIFIED AUTHORIZING LEGISLATION.—For purposes of subparagraph (A), the term 'qualified authorizing legislation' means any law enacted before September 1, 1987, which is substantially identical to subtitle E of title VI, or subtitle D of title VIII, of H.R. 5300 of the 99th Congress as passed the House of Representatives.

"(3) NO TAX IF AMOUNTS COLLECTED EXCEED $300,000,000.—

"(A) ESTIMATES BY SECRETARY.—The Secretary as of the close of each calendar quarter (and at such other times as the Secretary determines appropriate) shall make an estimate of the amount of taxes which will be collected under this section (to the extent attributable to the Oil Spill Liability Trust Fund financing rate) during the period beginning on the commencement date and ending on December 31, 1991.

"(B) TERMINATION IF $300,000,000 CREDITED BEFORE JANUARY 1, 1992.—If the Secretary estimates under subparagraph (A) that more than $300,000,000 will be credited to the Fund before January 1, 1992, the Oil Spill Liability Trust Fund financing rate shall not apply after the date on which (as estimated by the Secretary) $300,000,000 will be so credited to the Fund."

(3) Sections 4661(c) and 4671(e) of such Code (relating to termination of environmental taxes) are each amended by striking out "no tax is imposed under section 4611(a)" and inserting in lieu thereof "the Hazardous Substance Superfund financing rate under section 4611 does not apply".

(4) Subsection (b) of section 9507 of such Code (relating to transfers to Superfund) is amended by adding at the end thereof the following:

"In the case of the tax imposed by section 4611, paragraph (1) shall apply only to so much of such tax as is attributable to the Hazardous Substance Superfund financing rate under section 4611(c)."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the commencement date (as defined in section 4611(f)(2) of the Internal Revenue Code of 1954, as added by this section).

(2) COORDINATION WITH SUPERFUND REAUTHORIZATION.—The amendments made by this section shall take effect only if the Superfund Amendments and Reauthorization Act of 1986 is enacted.

Subpart C—Oil Spill Liability Trust Fund

SEC. 8033. OIL SPILL LIABILITY TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9506 the following new section:

"SEC. 9507. OIL SPILL LIABILITY TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Oil Spill Liability Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Oil Spill Liability Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under section 4611 (relating to environmental tax on petroleum) to the extent attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c),

"(2) amounts recovered, collected, or received under subtitle A of the Comprehensive Oil Pollution Liability and Compensation Act,

"(3) amounts remaining (on the 1st day the Oil Spill Liability Trust Fund financing rate under section 4611(c) applies) in the Deep Water Port Liability Fund established by section 18(f) of the Deep Water Port Act of 1974,

"(4) amounts remaining (on such date) in the Offshore Oil Pollution Compensation Fund established under section 302 of the Outer Continental Shelf Lands Act Amendments of 1978, and

"(5) amounts credited to such trust fund under section 311(s) of the Federal Water Pollution Control Act.

"(c) EXPENDITURES.—

"(1) GENERAL EXPENDITURE PURPOSES.—

"(A) IN GENERAL.—Amounts in the Oil Spill Liability Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures for—

"(i) the payment of removal costs described in the Comprehensive Oil Pollution Liability and Compensation Act,

"(ii) the payment of claims under the Comprehensive Oil Pollution Liability and Compensation Act for damage which is not otherwise compensated,

"(iii) carrying out subsections (c), (d), (i), and (l) of section 311 of the Federal Water Pollution Control Act with respect to any discharge of oil (as defined in such section),

"(iv) carrying out section 5 of the Intervention on the High Seas Act relating to oil pollution or the substantial threat of oil pollution,

"(v) the payment of all expenses of administration incurred by the Federal Government under the Comprehensive Oil Pollution Liability and Compensation Act, and

"(vi) the payment of contributions to the International Fund under such Act.

For purposes of this subparagraph, references to the Comprehensive Oil Pollution Liability and Compensation Act shall be treated as references to qualified authorizing legislation (as defined in section 4611).

"(B) SPECIAL RULES.—

"(i) PAYMENTS TO GOVERNMENTS ONLY FOR REMOVAL COSTS AND NATURAL RESOURCE DAMAGE ASSESSMENTS AND CLAIMS.—Except in the case of payments described in subparagraph (A)(v), amounts shall be available under subparagraph (A) for payments to any government only for—

"(I) removal costs and natural resource damage assessments and claims, and

"(II) administrative expenses related to such costs, assessments, or claims.

"(ii) RESTRICTIONS ON CONTRIBUTIONS TO INTERNATIONAL FUND.—Under regulations prescribed by the Secretary, amounts shall be available under subparagraph (A) with respect to any contribution to the International Fund only in proportion to the portion of such fund used for a purpose for which amounts may be paid from the Oil Spill Liability Trust Fund.

"(2) LIMITATIONS ON EXPENDITURES.—

"(A) $500,000,000 PER INCIDENT, ETC.—The maximum amount which may be paid from the Oil Spill Liability Trust Fund with respect to—

"(i) any single incident shall not exceed $500,000,000, and

"(ii) natural resource damage assessments and claims in connection with any single incident shall not exceed $250,000,000.

"(B) $30,000,000 MINIMUM BALANCE.—Except in the case of payments described in paragraph (1)(A)(i), a payment may be made from such Trust Fund only if the amount in such Trust Fund after such payment will not be less than $30,000,000.

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Oil Spill Liability Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

"(2) LIMITATION ON AMOUNT OUTSTANDING.—The maximum aggregate amount of repayable advances to the Oil Spill Liability Trust Fund which is outstanding at any one time shall not exceed $500,000,000.

"(3) REPAYMENT OF ADVANCES.—

"(A) IN GENERAL.—Advances made to the Oil Spill Liability Trust Fund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in such Fund.

"(B) FINAL REPAYMENT.—No advance shall be made to the Oil Spill Liability Trust Fund after December 31, 1991, and all advances to such Fund shall be repaid on or before such date.

"(C) RATE OF INTEREST.—Interest on advances made pursuant to this subsection shall be—

"(i) at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding, and

"(ii) compounded annually.

"(e) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Oil Spill Liability Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Oil Pollution Liability and Compensation Act

(or in any amendment made by such Act) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Oil Spill Liability Trust Fund.

"(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Oil Spill Liability Trust Fund has insufficient funds (or is unable by reason of subsection (c)(2)) to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1) and such subsection, be paid in full in the order in which they were finally determined."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9506 the following new item:

"Sec. 9507. Oil Spill Liability Trust Fund."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the commencement date (as defined in section 4611 of the Internal Revenue Code of 1954, as amended by this part).

(2) COORDINATION WITH SUPERFUND REAUTHORIZATION.—If the Superfund Amendments and Reauthorization Act of 1986 is enacted—

(A) subsection (a) of this section shall be applied by substituting "section 9508" for "section 9506",

(B) section 9507 of the Internal Revenue Code of 1954, as added by this section, is hereby redesignated as section 9509 of such Code, and

(C) in lieu of the amendment made by subsection (b), the table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9508 the following new item:

"Sec. 9509. Oil Spill Liability Trust Fund."

PART V—DENIAL OF CERTAIN TAX BENEFITS WITH RESPECT TO ACTIVITIES IN CERTAIN FOREIGN COUNTRIES.

SEC. 8041. DENIAL OF CERTAIN TAX BENEFITS WITH RESPECT TO ACTIVITIES IN CERTAIN FOREIGN COUNTRIES

(a) DENIAL OF FOREIGN TAX CREDIT.—Section 901 of the Internal Revenue Code of 1954 (relating to taxes of foreign countries and of possessions of the United States), as amended by the Tax Reform Act of 1986, is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) DENIAL OF FOREIGN TAX CREDIT, ETC., WITH RESPECT TO CERTAIN FOREIGN COUNTRIES.—

"(1) IN GENERAL.—Notwithstanding any other provision of this part—

"(A) no credit shall be allowed under subsection (a) for any income, war profits, or excess profits taxes paid or accrued (or deemed paid under section 902 or 960) to any country if such taxes are with respect to income attributable to a period to which this subsection applies to such country, and

"(B) subsections (a), (b), and (c) of section 904 and sections 902 and 960 shall be applied separately with respect to income attributable to such a period from sources within any country so identified.

"(2) COUNTRIES TO WHICH SUBSECTION APPLIES.—

"(A) IN GENERAL.—This subsection shall apply to any foreign country—

"(i) the government of which the United States does not recognize, unless such government is otherwise eligible to purchase defense articles or services under the Arms Export Control Act,

"(ii) with respect to which the United States has severed diplomatic relations,

"(iii) with respect to which the United States has not severed diplomatic relations but does not conduct such relations, or

"(iv) which the Secretary of State has, pursuant to section 6(j) of the Export Administration Act of 1979, as amended, designated as a foreign country which repeatedly provides support for acts of international terrorisms.

"(B) PERIOD FOR WHICH SUBSECTION APPLIES.—This subsection shall apply to any foreign country described in subparagraph (A) during the period—

"(i) beginning on the later of—

"(I) January 1, 1987, or

"(II) 6 months after such country becomes a country described in subparagraph (A), and

"(ii) ending on the date the Secretary of State certifies to the Secretary of the Treasury that such country is no longer described in subparagraph (A).

"(3) TAXES ALLOWED AS A DEDUCTION.—Section 275 shall not apply to any tax which is not allowable as a credit under subsection (a) by reason of this subsection.

"(4) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations which treat income paid through 1 or more entities as derived from a foreign country to which this subsection applies if such income was, without regard to such entities, derived from such country."

(b) DENIAL OF DEFERRAL OF INCOME.—

(1) GENERAL RULE.—Section 952(a) of such Code (defining subpart F income) is amended—

(A) by striking out "and" at the end of paragraph (3), by striking out the period at the end of paragraph (4) and inserting in lieu thereof ", and", and by inserting immediately after paragraph (4) the following new paragraph:

"(5) the income of such corporation derived from any foreign country during any period during which section 901(j) applies to such foreign country.", and

(B) by adding at the end thereof the following sentence: "For purposes of paragraph (5), the income described therein shall be reduced, under regulations prescribed by the Secretary, so as to take into account deductions (including taxes) properly allocable to such income."

(2) INCOME DERIVED FROM FOREIGN COUNTRY.—Section 952 of such Code (defining subpart F income), as amended by the Tax Reform Act of 1986, is amended by adding at the end thereof the following new subsection:

"(d) INCOME DERIVED FROM FOREIGN COUNTRY.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subsection (a)(5), including regulations which treat income paid through 1 or more entities as derived from a foreign country to which section 901(j) applies if such income was, without regard to such entities, derived from such country."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

PART VI—APPROPRIATIONS FOR IRS ENFORCEMENT

SEC. 8051. APPROPRIATIONS FOR IRS ENFORCEMENT.

For purposes of reconciliation, in order to provide for an accurate estimate of revenue raised by increased appropriations for the Internal Revenue Service, the enacted appropriations measure providing funding for the Internal Revenue Service for the fiscal year ending September 30, 1987, will include the following funding levels: for "Salaries and Expenses", $95,147,000; for "Processing Tax Returns", $1,332,902,000; for "Examinations and Appeals", $1,623,162,000; and for "Investigation, Collection, and Taxpayer Service", $1,196,581,000: Provided, That the allocation to the Senate Committee on Appropriations pursuant to section 302(a) of the Budget Act, as amended, under Senate Concurrent Resolution 120, the concurrent resolution on the budget for fiscal year 1987, is increased by $300,000,000 in both new budget authority and outlays.

PART VII—STUDY OF COMMUNICATION SERVICES NOT SUBJECT TO FEDERAL EXCISE TAX

SEC. 8061. STUDY OF COMMUNICATION SERVICES NOT SUBJECT TO FEDERAL EXCISE TAX.

(a) IN GENERAL.—The Secretary of the Treasury or his delegate shall conduct a study of communication services which are exempt from the tax imposed by section 4251 of the Internal Revenue Code of 1954 by reason of being a private communication service (as defined in section 4252(d) of such Code) or by reason of a specific exemption from such tax under section 4253 of such Code. Such study shall include an estimate of the reduction in tax revenues by reason of each such exemption, shall describe the types of persons which benefit from each such exemption, and a method under which such tax could be extended to private communication services (as so defined). In conducting such study, the Secretary of the Treasury or his delegate shall consult with the Secretary of Commerce and the Chairman of the Federal Communications Commission.

(b) REPORT.—The report of the study under subsection (a) shall be submitted, not later than June 30, 1987, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

PART VIII—AMENDMENTS RELATED TO TAX REFORM ACT OF 1986

SEC. 8071. TREATMENT OF CERTAIN TRUCKS, ETC.

Subsection (a) of section 204 of the Tax Reform Act of 1986 (relating to additional transitional rules) is amended by adding at the end thereof the following new paragraph:

"(40) CERTAIN TRUCKS, ETC.—The amendments made by section 201 shall not apply to trucks, tractor units, and trailers which a privately held truck leasing company headquartered in Des Moines, Iowa, contracted to purchase in September 1985 but only to the extent the aggregate reduction in Federal tax liability by reason of the application of this paragraph does not exceed $8,500,000."

SEC. 8072. APPLICATION OF AT-RISK RULES TO LOW-INCOME HOUSING CREDIT.

(a) IN GENERAL.—Paragraph (1) of section 42(k) of the Internal Revenue Code of 1986 (relating to low-income housing credit), as added by the Tax Reform Act of 1986, is amended by striking out "subparagraph (D)(iv)(I)" and inserting in lieu thereof "subparagraphs (D)(ii)(II) and (D)(iv)(I)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendment made by section 252(a) of the Tax Reform Act of 1986.

SEC. 8073. TREATMENT OF CERTAIN RURAL HOUSING FOR PURPOSES OF TRANSITIONAL RULE FOR LOW-INCOME HOUSING.

(a) IN GENERAL.—Subsection (d) of section 502 of the Tax Reform Act of 1986 (defining qualified investor) is amended by adding at the end thereof the following new paragraph:

"(4) SPECIAL RULE FOR CERTAIN RURAL HOUSING.—In the case of any interest in a qualified low-income housing project which—

"(A) is assisted under section 515 of the Housing Act of 1949 (relating to the Farmers' Home Administration Program), and

"(B) is located in a town with a population of less than 10,000 and which is not part of a metropolitan statistical area,

paragraph (1)(B) shall be applied by substituting '35 percent' for '50 percent' and subsection (b)(1) shall be applied by substituting '5th taxable year' for '6th taxable year'. The preceding sentence shall not apply to any interest unless, on December 31, 1986, at least one-half of the number of payments required with respect to such interest remain to be paid."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in section 502 of the Tax Reform Act of 1986 on the date of its enactment.

PART IX—COORDINATION WITH OTHER PROVISIONS

SEC. 8081. COORDINATION WITH OTHER PROVISIONS.

Nothing in any provision of this Act (other than this title) shall be construed as—

(1) imposing any tax (or exempting any person or property from any tax),

(2) establishing any trust fund, or

(3) authorizing amounts to be expended from any trust fund.

Subtitle B—Customs Revenues

SEC. 8101. CUSTOMS USER FEES FOR THE PROCESSING OF MERCHANDISE ENTRIES.

(a) AMOUNT OF FEE.—Subsection (a) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)) is amended by adding at the end thereof the following new paragraphs:

"(9) For the processing of any merchandise (other than an article that is—

"(A) provided for in schedule 8 of the Tariff Schedules of the United States,

"(B) a product of an insular possession of the United States, or

"(C) a product of any county listed in General Headnote 3(e)(vi) or (vii) of such Schedules)

that is formally entered, or withdrawn from warehouse for consumption—

"(i) after November 30, 1986, and

"(ii) before October 1, 1987;

a fee in an amount equal to 0.22 percent ad valorem.

"(10) For the processing of any merchandise (other than an article described in subparagraph (A), (B), or (C) of paragraph (9)) that is formally entered, or withdrawn from warehouse for consumption, during any fiscal year occurring after September 30, 1987; a fee in an amount equal to the lesser of—

"(A) 0.17 percent ad valorem, or

"(B) an ad valorem rate which the Secretary of the Treasury estimates will provide a total amount of revenue during the fiscal year equal to—

"(i) the total amount authorized to be appropriated for such fiscal year to the United States Customs Service for salaries and expenses incurred in conducting commercial operations during such fiscal year, reduced by

"(ii) the excess, if any, of—

"(I) the total amount authorized to be appropriated for such salaries and expenses for such fiscal year, over

"(II) the total amount actually appropriated for such salaries and expenses for such fiscal year;

except that if appropriations are not authorized for a fiscal year, the fee imposed under this paragraph with respect to that year shall be in an amount equal to 0.17 percent ad valorem.".

(b) REDUCTION IN AMOUNT OF FEE.—Subsection (b) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by adding at the end thereof the following new paragraphs:

"(8)(A) The fee charged under subsection (a)(9) or (10) with respect to the processing of merchandise shall—

"(i) be paid by the importer of record of the merchandise; and

"(ii) be based on the value of the merchandise as determined under section 402 of the Tariff Act of 1930.

"(B)(i) By no later than the date that is 5 days after the date on which any funds are appropriated to the United States Customs Service for salaries or expenses incurred in conducting commercial operations, the Secretary of the Treasury shall determine the ad valorem rate of the fee charged under subsection (a)(10) and shall publish the determination in the Federal Register. Such ad valorem rate shall apply with respect to services provided for the processing of entries, and withdrawals from warehouse, for consumption made after the date that is 60 days after the date of such determination.

"(ii) No determination is required under clause (i) with respect to an appropriation to the United States Customs Service if the funds appropriated are available for less than 60 days.

"(9) The Secretary may reduce by an amount he considers equitable the fees charged under subsection (a) for the processing of merchandise entries at facilities at which users reimburse the United States Customs Service, pursuant to section 9701 of title 31, United States Code, or section 236 of the Trade and Tariff Act of 1984 (19 U.S.C. 58b), for the services that it provides at the facilities.".

(c) PROVISION OF CUSTOMS SERVICES.—(1) Subsection (e) of section 13031(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by adding at the end thereof the following new paragraph:

"(4) Notwithstanding any other provision of law, during any period when fees are authorized under subsection (a), no charges, other than such fees, may be collected for—

"(A) any cargo inspection, clearance, or other customs service performed (regardless whether performed outside of normal business hours on an overtime basis); or

"(B) any customs personnel provided;

in connection with the arrival or departure of any commercial vessel, vehicle or aircraft, or its passengers, crew, and cargo, in the United States.".

(2) Paragraph (2) of such subsection (e), as amended by section 1893 of the Tax Reform Act of 1986, is amended by striking out "Paragraph (1)" and inserting "This subsection".

(d) CUSTOMS USER FEE ACCOUNT.—Subsection (f) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended by adding at the end thereof the following new paragraphs:

"(3) Except as provided in paragraph (2), all funds in the Customs User Fee Account shall only be available, to the extent provided for in appropriation Acts, for the salaries and expenses of the United States Customs Service incurred in conducting commercial operations.

"(4) At the close of fiscal year 1988 and each even-numbered fiscal year occurring thereafter, the Secretary of the Treasury shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding how the fees imposed under subsection (a) should be adjusted in order that the balance of the Customs User Fee Account approximates a zero balance. Before making recommendations regarding any such adjustments, the Secretary of the Treasury shall provide adequate opportunity for public comment. The recommendations shall, as precisely as possible, propose fees which reflect the actual costs to the United States Government for the commercial services provided by the United States Customs Service.".

(e) TERMINATION OF FEES.—Subsection (j) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended—

(1) by striking out "provided in paragraph (2)" in paragraph (1) and inserting in lieu thereof "otherwise provided in this subsection"; and

(2) by adding at the end thereof the following new paragraph:

"(3) Fees may not be charged under subsection (a) after September 30, 1989.".

SEC. 8102. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1987 FOR THE UNITED STATES CUSTOMS SERVICE.

Section 301 of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075) is amended as follows:

(1) Subsection (a) is amended—

(A) by inserting "(1)" after "(a)"; and

(B) by adding at the end thereof the following new paragraph:

"(2) The authorization of the appropriations for the United States Customs Service for each fiscal year after fiscal year 1987 shall specify—

"(A) the amount authorized for the fiscal year for the salaries and expenses of the Service in conducting commercial operations; and

"(B) the amount authorized for the fiscal year for the salaries and expenses of the Service for other than commercial operations."; and

(2) Subsection (b) is amended to read as follows:

"(b)(1) There are authorized to be appropriated to the Department of the Treasury not to exceed $1,001,180,000 for the salaries and expenses of the United States Customs Service for fiscal year 1987; of which—

"(A) $749,131,000 is for salaries and expenses to maintain current operating levels, and includes such sums as may be necessary to complete the testing of the prototype of the automatic license plate reader program and to implement that program;

"(B) $80,999,000 is for the salaries and expenses of additional personnel to be used in carrying out drug enforcement activities; and

"(C) $171,050,000 is for the operation and maintenance of the air interdiction program of the Service, of which—

"(i) $93,500,000 is for additional aircraft, communications enhancements, and command, control, communications, and intelligence centers, and

"(ii) $350,000 is for a feasibility and application study for a low-level radar detection

system in collaboration with the Los Alamos National Laboratory.

"(2) No part of any sum that is appropriated under the authority of paragraph (1) may be used to close any port of entry at which, during fiscal year 1986—

"(A) not less than 2,500 merchandise entries (including informal entries) were made; and

"(B) not less than $1,500,000 in customs revenues were assessed.".

Subtitle C—Public Debt Limit and Related Provisions

SEC. 8201. TEMPORARY INCREASE IN PUBLIC DEBT LIMIT.

During the period beginning on the date of the enactment of this Act and ending on May 15, 1987, the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be temporarily increased by $189,000,000,000.

SEC. 8202. RESTORATION OF LOST INTEREST TO CERTAIN TRUST FUNDS.

(a) GENERAL RULE.—The Secretary of the Treasury shall pay, from amounts in the general fund of the Treasury not otherwise appropriated, to each qualified fund on the 1st normal interest payment date after the date of the enactment of this Act an amount equal to the interest payment shortfall for such fund.

(b) QUALIFIED FUND.—For purposes of this section, the term "qualified fund" means any fund which is listed in Table III of the Monthly Statement of Public Debt issued by the Department of the Treasury for September 30, 1986, and which has an interest payment shortfall. Such term shall not include the Department of Defense Military Retirement Fund.

(c) INTEREST PAYMENT SHORTFALL.—For purposes of this section, the term "interest payment shortfall" means, with respect to any fund, the reduction in the interest which would have been earned by such fund during the period beginning with September 30, 1986, and ending with the date of the enactment of this Act as the result of noninvestments, redemptions, and disinvestments with respect to such fund which occurred during such period and which would not have occurred if H.J. Res. 668 (99th Congress, 2d Session), as passed by the House of Representatives on June 26, 1986, had been enacted into law on September 30, 1986. Such amount shall be reduced by any payment to such fund under any other provision of law in respect of such lost interest.

SEC. 8203. RESTORATION OF DEPARTMENT OF DEFENSE MILITARY RETIREMENT FUND.

The Secretary of the Treasury shall immediately issue to the Department of Defense Military Retirement Fund obligations under chapter 31 of title 31, United States Code, which such Secretary, in consultation with the Secretary of Defense, determines would have been issued to such fund on October 1, 1986, if H.J. Res. 668 (99th Congress, 2d session), as passed by the House of Representatives on June 26, 1986, had been enacted into law on September 30, 1986. Such obligations shall be market-based special obligations issued at prices, including accrued interest, prevailing for such obligations on October 1, 1986. Such obligations shall be issued as of October 1, 1986, and the fund shall earn interest on such obligations beginning on October 1, 1986. Such obligations shall be substituted for obligations which are held by such fund on the date of the enactment of this Act (and any uninvested balance on such date in such fund shall be reduced) in a manner which will ensure that, after such substitution (and reduction), the holdings of such fund will replicate to the maximum extent practicable the holdings which would have been held by such fund on such date if such H.J. Res. 668 had been enacted into law on September 30, 1986.

TITLE IX—INCOME SECURITY, MEDICARE, MEDICAID, AND MATERNAL AND CHILD HEALTH PROGRAMS

Subtitle A—OASDI provisions

Subtitle B—Provisions relating to public assistance

Subtitle C—Older Americans pension benefits

Subtitle D—Provisions relating to medicare

Subtitle E—Medicaid and maternal and child health

Subtitle F—Provision relating to access to health care

Subtitle A—OASDI Provisions

SEC. 9001. ELIMINATION OF 3-PERCENT TRIGGER FOR COST-OF-LIVING INCREASES.

(a) ELIMINATION OF TRIGGER.—Section 215(i)(1)(B) of the Social Security Act is amended by striking out "with respect to which the applicable increase percentage is 3 percent or more" and inserting in lieu thereof "with respect to which the applicable increase percentage is greater than zero".

(b) CONFORMING AMENDMENTS.—

(1) IN CURRENT LAW.—Section 215(i) of such Act is further amended—

(A)(i) by striking out clause (i) in paragraph (2)(C) and redesignating clauses (ii) and (iii) of such paragraph as clauses (i) and (ii), respectively; and

(ii) by striking out "under clause (ii)" in clause (ii) of such paragraph as so redesignated and inserting in lieu thereof "under clause (i)";

(B) by inserting "and by section 9001 of the Omnibus Budget Reconciliation Act of 1986" after "Social Security Amendments of 1983" in paragraph (4); and

(C) by striking out "because the wage increase percentage was less than 3 percent" in paragraph (5)(A)(i) and inserting in lieu thereof "because there was no wage increase percentage greater than zero".

(2) IN APPLICABLE FORMER LAW.—Section 215(i) of such Act, as in effect in December 1978 and applied in certain cases under the provisions of such Act in effect after December 1978, is amended—

(A) by striking out ", by not less than 3 per centum," in paragraph (1)(B); and

(B) by striking out "(C)(i) Whenever" and all that follows down through "(ii) Whenever" in paragraph (2)(C) and inserting in lieu thereof "(C) Whenever".

(c) TECHNICAL AMENDMENT TO SMI PROGRAM.—Section 1839(f)(2)(A) of such Act is amended to read as follows:

"(A) the monthly premium amount determined under subsection (a)(2) for that January reduced by the amount (if any) by which the monthly benefit under section 202 or 223 for that November, after the deduction of the premium (disregarding subsection (b)) for that individual for that December and after rounding under section 215(g), would exceed the monthly benefit under section 202 or 223 for that December, after the deduction of the monthly premium amount determined under subsection (a)(2) (disregarding subsection (b)) for that individual for that January and after rounding under section 215(g), or".

(d) EFFECTIVE DATE.—(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply with respect to cost-of-living increases determined under section 215(i) of the Social Security Act (as currently in effect, and as in effect in December 1978 and applied in certain cases under the provisions of such Act in effect after December 1978) in 1986 and subsequent years.

(2) The amendments made by paragraphs (1)(A) and (2)(B) of subsection (b) shall apply with respect to months after September 1986.

(3) The amendment made by subsection (c) shall apply with respect to monthly premiums (under section 1839 of the Social Security Act) for months after December 1986.

SEC. 9002. DEPOSITS OF SOCIAL SECURITY CONTRIBUTIONS BY STATE AND LOCAL GOVERNMENT EMPLOYERS.

(a) RETURNS AND PAYMENTS.—(1) Subchapter C of chapter 21 of the Internal Revenue Code of 1954 is amended by redesignating section 3126 as section 3127, and by inserting after section 3125 the following new section:

"SEC. 3126. RETURN AND PAYMENT BY GOVERNMENTAL EMPLOYER.

"If the employer is a State or political subdivision thereof, or an agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages under section 3101 and the amount of the tax imposed by section 3111 may be made by any officer or employee of such State or political subdivision or such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.".

(2) The table of sections for subchapter C of chapter 21 of such Code is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 3126. Return and payment by governmental employer.

"Sec. 3127. Short title.".

(b) TREATMENT OF SERVICE UNDER SECTION 218 AGREEMENTS AS EMPLOYMENT PERFORMED BY EMPLOYEES.—

(1) SERVICE TREATED AS EMPLOYMENT.—(A) Section 3121(b)(7) of such Code is amended—

(i) by striking out "; or" at the end of subparagraph (C) and inserting in lieu thereof a comma;

(ii) by striking out the semicolon at the end of subparagraph (D) and inserting in lieu thereof ", or "; and

(iii) by adding after subparagraph (D) the following new subparagraph:

"(E) service included under an agreement entered into pursuant to section 218 of the Social Security Act;".

(B) Section 1402(b) of such Code is amended by striking out "under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or" in the flush sentence immediately following paragraph (2).

(2) INDIVIDUAL PERFORMING SERVICES TREATED AS EMPLOYEE.—(A) Section 3121(d) of such Code is amended by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) any individual who performs services that are included under an agreement entered into pursuant to section 218 of the Social Security Act; or".

(B) Section 3306(i) of such Code is amended by striking out "subparagraphs (B) and (C) of paragraph (3)" and inserting in lieu thereof "paragraph (3) and subparagraphs (B) and (C) of paragraph (4)".

(c) CONFORMING AMENDMENTS IN SOCIAL SECURITY ACT.—(1) Subsections (e), (h), (i), (j), (q), (r), (s), (t), and (w) of section 218 of the Social Security Act are repealed; and subsections (f), (g), (k), (l), (m), (n), (o), (p), and (u) of such section are redesignated as subsections (e), (f), (g), (h), (i), (j), (k), (l), and (m), respectively.

(2)(A) Section 205(c)(1)(D)(i) of such Act is amended by inserting "(as in effect prior to December 31, 1986)" after "section 218(e)".

(B) Section 205(c)(5)(F)(iii) of such Act is amended—

(i) by inserting "(as in effect prior to December 31, 1986)" after "section 218"; and

(ii) by inserting "(as so in effect)" after "subsection (q) of such section".

(C) Section 218(d)(6) of such Act is amended—

(i) by striking out "subsection (f)" in subparagraph (A) and inserting in lieu thereof "subsection (e)"; and

(ii) by striking out "subsection (f)(1)" in subparagraph (F) and inserting in lieu thereof "subsection (e)(1)".

(D) Section 218(d)(8)(D) of such Act is amended by striking out "subsection (p)" and inserting in lieu thereof "subsection (l)".

(E) Section 218(e)(1) of such Act (as redesignated by paragraph (1) of this subsection) is amended by striking out "Except as provided in subsection (e)(2), any agreement" and inserting in lieu thereof "Any agreement".

(F) Section 224(a)(2)(B) of such Act is amended by striking out "section 218(k)" and inserting in lieu thereof "section 218(g)".

(d) EFFECTIVE DATE.—The amendments made by this section are effective with respect to payments due with respect to wages paid after December 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to the provisions of section 218(e)(2) of the Social Security Act prior to the date of the enactment of this Act; except that in cases where, in accordance with the currently applicable schedule, deposits of taxes due under an agreement entered into pursuant to section 218 of the Social Security Act would be required within 3 days after the close of an eighth-monthly period, such 3-day requirement shall be changed to a 7-day requirement for wages paid prior to October 1, 1987, and to a 5-day requirement for wages paid after September 30, 1987, and prior to October 1, 1988. For wages paid prior to October 1, 1988, the deposit schedule for taxes imposed under sections 3101 and 3111 shall be determined separately from the deposit schedule for taxes withheld under section 3402 if the taxes imposed under sections 3101 and 3111 are due with respect to service included under an agreement entered into pursuant to section 218 of the Social Security Act.

Subtitle B—Provisions Relating to Public Assistance

SEC. 9101. TARGETING UNDER INCOME AND ELIGIBILITY VERIFICATION SYSTEM.

Section 1137(a)(4)(C) of the Social Security Act is amended by inserting after "payments" the following: ", and no State shall be required to use such information to verify the eligibility of all recipients".

SEC. 9102. ANNUAL CALCULATION OF FEDERAL PERCENTAGE FOR AFDC PURPOSES.

Section 9528(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (as added by section 9421(a) of this Act) is amended (effective as provided in section 9421(b))—

(1) by striking out "payment to a State under section 1903" and inserting in lieu thereof "payments to States under sections 403 and 1903"; and

(2) by inserting "with respect to either such section" after "shall not apply to a State".

SEC. 9103. REQUIREMENT OF STATUTORILY PRESCRIBED PROCEDURES TO PROHIBIT RETROACTIVE MODIFICATION OF CHILD SUPPORT ARREARAGES.

(a) IN GENERAL.—Section 466(a) of the Social Security Act is amended by inserting immediately after paragraph (8) the following new paragraph:

"(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due)—

"(A) a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced,

"(B) entitled as a judgment to full faith and credit in such State and in any other State, and

"(C) not subject to retroactive modification by such State or by any other State;

except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.".

(b) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendment made by subsection (a) shall become effective on the date of the enactment of this Act.

(2) In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act to the requirements imposed by the amendment made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after the date of the enactment of this Act. For purposes of the preceding sentence, the term "session" means a regular, special, budget, or other session of a State legislature.

Subtitle C—Older Americans Pension Benefits

SEC. 9201. PROHIBITION AGAINST DISCRIMINATION ON THE BASIS OF AGE IN EMPLOYEE PENSION BENEFIT PLANS.

Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C 623) is amended by adding at the end the following new subsection:

"(i)(1) Except as otherwise provided in this subsection, it shall be unlawful for an employer, an employment agency, a labor organization, or any combination thereof to establish or maintain an employee pension benefit plan which requires or permits—

"(A) in the case of a defined benefit plan, the cessation of an employee's benefit accrual, or the reduction of the rate of an employee's benefit accrual, because of age, or

"(B) in the case of a defined contribution plan, the cessation of allocations to an employee's account, or the reduction of the rate at which amounts are allocated to an employee's account, because of age.

"(2) Nothing in this section shall be construed to prohibit an employer, employment agency, or labor organization from observing any provision of an employee pension benefit plan to the extent that such provision imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

"(3) In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

"(A) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and

"(B) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 206(a)(3) of the Employee Retirement Income Security Act of 1974 and section 401(a)(14)(C) of the Internal Revenue Code of 1986, and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 or section 411(a)(3)(B) of the Internal Revenue Code of 1986, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The provisions of this paragraph shall apply in accordance with regulations of the Secretary of the Treasury. Such regulations shall provide for the application of the preceding provisions of this paragraph to all employee pension benefit plans subject to this subsection and may provide for the application of such provisions, in the case of any such employee, with respect to any period of time within a plan year.

"(4) Compliance with the requirements of this subsection with respect to an employee pension benefit plan shall constitute compliance with the requirements of this section relating to benefit accrual under such plan.

"(5) Paragraph (1) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of the Internal Revenue Code of 1986) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of the Internal Revenue Code of 1986.

"(6) A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

"(7) Any regulations prescribed by the Secretary of the Treasury pursuant to clause (v) of section 411(b)(1)(H) of the Internal Revenue Code of 1986 and subparagraphs (C)

and (D) of section 411(b)(2) of such Code shall apply with respect to the requirements of this subsection in the same manner and to the same extent as such regulations apply with respect to the requirements of such sections 411(b)(1)(H) and 411(b)(2).

"(8) A plan shall not be treated as failing to meet the requirements of this section solely because such plan provides a normal retirement age described in section 3(24)(B) of the Employee Retirement Income Security Act of 1974 and section 411(a)(8)(B) of the Internal Revenue Code of 1986.

"(9) For purposes of this subsection—

"(A) The terms 'employee pension benefit plan', 'defined benefit plan', 'defined contribution plan', and 'normal retirement age' have the meanings provided such terms in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002).

"(B) The term 'compensation' has the meaning provided by section 414(s) of the Internal Revenue Code of 1986.".

SEC. 9202. BENEFIT ACCRUAL BEYOND NORMAL RETIREMENT AGE.

(a) ERISA AMENDMENTS.—

(1) IN GENERAL.—Subsection (a) of section 204 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(a)) is amended to read as follows:

"(a) Each pension plan shall satisfy the requirements of subsection (b)(3), and—

"(1) in the case of a defined benefit plan, shall satisfy the requirements of subsection (b)(1); and

"(2) in the case of a defined contribution plan, shall satisfy the requirements of subsection (b)(2).".

(2) DEFINED BENEFIT PLANS.—Section 204(b)(1) of such Act is amended by adding at the end thereof the following new subparagraph:

"(H)(i) Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the plan, an employee's benefit accrual is ceased, or the rate of an employee's benefit accrual is reduced, because of the attainment of any age.

"(ii) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

"(iii) In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

"(I) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and

"(II) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 206(a)(3), and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to section 203(a)(3)(B), then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The preceding provisions of this clause shall apply in accordance with regulations of the Secretary of the Treasury. Such regulations may provide for the application of the preceding provisions of this clause, in the case of any such employee, with respect to any period of time within a plan year.

"(iv) Clause (i) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of the Internal Revenue Code of 1986) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of the Internal Revenue Code of 1986.

"(v) A plan shall not be treated as failing to meet the requirements of clause (i) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

"(vi) Any regulations prescribed by the Secretary of the Treasury pursuant to clause (v) of section 411(b)(1)(H) of the Internal Revenue Code of 1986 shall apply with respect to the requirements of this subparagraph in the same manner and to the same extent as such regulations apply with respect to the requirements of such section 411(b)(1)(H).".

(3) DEFINED CONTRIBUTION PLANS.—Section 204(b) of such Act is further amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(B) by inserting after paragraph (1) the following new paragraph:

"(2)(A) A defined contribution plan satisfies the requirements of this paragraph if, under the plan, allocations to the employee's account are not ceased, and the rate at which amounts are allocated to the employee's account is not reduced, because of the attainment of any age.

"(B) Subparagraph (A) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of the Internal Revenue Code of 1986) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of the Internal Revenue Code of 1986.

"(C) A plan shall not be treated as failing to meet the requirements of subparagraph (A) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

"(D) Any regulations prescribed by the Secretary of the Treasury pursuant to subparagraphs (C) and (D) of section 411(b)(2) of the Internal Revenue Code of 1986 shall apply with respect to the requirements of this paragraph in the same manner and to the same extent as such regulations apply with respect to the requirements of such section 411(b)(2).".

(b) IRC AMENDMENTS.—

(1) DEFINED BENEFIT PLANS.—Section 411(b)(1) of the Internal Revenue Code of 1986 (relating to accrued benefit requirements) is amended—

(A) by striking out "GENERAL RULES.—" and inserting in lieu thereof "DEFINED BENEFIT PLANS.—"; AND

(B) by adding at the end thereof the following new subparagraph:

"(H) CONTINUED ACCRUAL BEYOND NORMAL RETIREMENT AGE.—

"(i) IN GENERAL.—Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the plan, an employee's benefit accrual is ceased, or the rate of an employee's benefit accrual is reduced, because of the attainment of any age.

"(ii) CERTAIN LIMITATIONS PERMITTED.—A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

"(iii) ADJUSTMENTS UNDER PLAN FOR DELAYED RETIREMENT TAKEN INTO ACCOUNT.—In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

"(I) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and

"(II) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 401(a)(14)(C), and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to subsection (a)(3)(B), then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The preceding provisions of this clause shall apply in accordance with regulations of the Secretary. Such regulations may provide for the application of the preceding provisions of this clause, in the case of any such employee, with respect to any period of time within a plan year.

"(iv) DISREGARD OF SUBSIDIZED PORTION OF EARLY RETIREMENT BENEFIT.—A plan shall not be treated as failing to meet the requirements of clause (i) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

"(v) COORDINATION WITH OTHER REQUIREMENTS.—The Secretary shall provide by regulation for the coordination of the requirements of this subparagraph with the requirements of subsection (a), sections 404, 410, and 415, and the provisions of this subchapter precluding discrimination in favor of highly compensated employees.".

(2) DEFINED CONTRIBUTION PLANS.—Section 411(b) of such Code is further amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

"(B) by inserting after paragraph (1) the following new paragraph:

"(2) DEFINED CONTRIBUTION PLANS.—

"(A) IN GENERAL.—A defined contribution plan satisfies the requirements of this paragraph if, under the plan, allocations to the

employee's account are not ceased, and the rate at which amounts are allocated to the employee's account is not reduced, because of the attainment of any age.

"(B) DISREGARD OF SUBSIDIZED PORTION OF EARLY RETIREMENT BENEFIT.—A plan shall not be treated as failing to meet the requirements of subparagraph (A) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

"(C) APPLICATION TO TARGET BENEFIT PLANS.—The Secretary shall provide by regulation for the application of the requirements of this paragraph to target benefit plans.

"(D) COORDINATION WITH OTHER REQUIREMENTS.—The Secretary may provide by regulation for the coordination of the requirements of this subparagraph with the requirements of subsection (a), sections 404, 410, and 415, and the provisions of this subchapter precluding discrimination in favor of highly compensated employees.".

(3) CONFORMING AMENDMENT.—The first sentence of section 411(a) of such Code (relating to minimum vesting standards) is amended by striking out "paragraph (2) of subsection (b), and" and all that follows through the end thereof and inserting in lieu thereof "subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2).".

SEC. 9203. TREATMENT OF INDIVIDUALS HIRED AT AGES NEAR RETIREMENT AGE.

(a) REPEAL OF PROVISIONS PERMITTING CERTAIN PLANS TO EXCLUDE OLDER EMPLOYEES FROM PLAN PARTICIPATION ON THE BASIS OF AGE.—

(1) ERISA AMENDMENT.—Section 202(a)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1052(a)(2)) is amended by striking out "unless—" and all that follows and inserting in lieu thereof a period.

(2) IRC AMENDMENT.—Section 410(a)(2) of the Internal Revenue Code of 1986 (relating to maximum age conditions) is amended by striking out "unless—" and all that follows and inserting in lieu thereof a period.

(b) DELAYED NORMAL RETIREMENT AGE FOR INDIVIDUALS COMMENCING PLAN PARTICIPATION WITHIN 5 YEARS OF ATTAINING NORMAL RETIREMENT AGE UNDER THE PLAN.—

(1) ERISA AMENDMENT.—Subparagraph (B) of section 3(24) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(24)(B)) is amended to read as follows:

"(B) the latest of—

"(i) the time a plan participant attains age 65,

"(ii) in the case of a plan participant who commences participation in the plan within 5 years before attaining normal retirement age under the plan, the 5th anniversary of the time the plan participant commences participation in the plan, or

"(iii) in the case of a plan participant not described in clause (ii), the 10th anniversary of the time the plan participant commences participation in the plan.".

(2) IRC AMENDMENT.—Subparagraph (B) of section 411(a)(8) of the Internal Revenue Code of 1986 (relating to normal retirement age) is amended to read as follows:

"(B) the latest of—

"(i) the time a plan participant attains age 65,

"(ii) in the case of a plan participant who commences participation in the plan within 5 years before attaining normal retirement age under the plan, the 5th anniversary of the time the plan participant commences participation in the plan, or

"(iii) in the case of a plan participant not described in clause (ii), the 10th anniversary of the time the plan participant commences participation in the plan.".

SEC. 9204. EFFECTIVE DATE; REGULATIONS.

(a) APPLICABILITY TO EMPLOYEES WITH SERVICE AFTER 1988.—

(1) IN GENERAL.—The amendments made by sections 9201 and 9202 shall apply only with respect to plan years beginning on or after January 1, 1988, and only to employees who have 1 hour of service in any plan year to which such amendments apply.

(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for "January 1, 1988" the date of the commencement of the first plan year beginning on or after the earlier of—

(A) the later of—

(i) January 1, 1988, or

(ii) the date on which the last of such collective bargaining agreements terminate (determined without regard to any extension thereof after February 28, 1986), or

(B) January 1, 1990.

(b) APPLICABILITY OF AMENDMENTS RELATING TO NORMAL RETIREMENT AGE.—The amendments made by section 9203 shall apply only with respect to plan years beginning on or after January 1, 1988, and only with respect to service performed on or after such date.

(c) PLAN AMENDMENTS.—If any amendment made by this subtitle requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment, and

(2) such plan amendment applies retroactively to the period after such amendment takes effect and such first plan year.

A pension plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accordance with the provisions of the plan, merely because it operates in accordance with this subsection.

(d) INTERAGENCY COORDINATION.—The regulations and rulings issued by the Secretary of Labor, the regulations and rulings issued by the Secretary of the Treasury, and the regulations and rulings issued by the Equal Employment Opportunity Commission pursuant to the amendments made by this subtitle shall each be consistent with the others. The Secretary of Labor, the Secretary of the Treasury, and the Equal Employment Opportunity Commission shall each consult with the others to the extent necessary to meet the requirements of the preceding sentence.

(e) FINAL REGULATIONS.—The Secretary of Labor, the Secretary of the Treasury, and the Equal Employment Opportunity Commission shall each issue before February 1, 1988, such final regulations as may be necessary to carry out the amendments made by this subtitle.

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Sec. 9342. Alzheimer's disease demonstration projects.
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Sec. 9351. PRO review of hospital denial notices.
Sec. 9352. PRO review of inpatient hospital services and early readmission cases.
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Part 1—Provisions Relating to Medicare Part A Only
SEC. 9301. CHANGES IN INPATIENT HOSPITAL DEDUCTIBLE.

(a) IN GENERAL.—Section 1813(b) of the Social Security Act (42 U.S.C. 1395e(b)) is amended to read as follows:

"(b)(1) The inpatient hospital deductible for 1987 shall be $520. The inpatient hospital deductible for any succeeding year shall be an amount equal to the inpatient hospital deductible for the preceding calendar year, changed by the applicable percentage increase (as defined in section 1886(b)(3)(B)) which is applied under section 1886(d)(3)(A) for discharges in the fiscal year that begins on October 1 of such preceding calendar year, and adjusted to reflect changes in real case mix (determined on the basis of the most recent case mix data available). Any amount determined under the preceding sentence which is not a multiple of $4 shall be rounded to the nearest multiple of $4 (or, if it is midway between two multiples of $4, to the next higher multiple of $4).

"(2) The Secretary shall promulgate the inpatient hospital deductible and all coinsurance amounts under this section between September 1 and September 15 of the year preceding the year to which they will apply.

"(3) The inpatient hospital deductible for a year shall apply to—

"(A) the deduction under the first sentence of subsection (a)(1) for the year in which the first day of inpatient hospital services occurs in a spell of illness, and

"(B) to the coinsurance amounts under subsection (a) for inpatient hospital services and post-hospital extended care services furnished in that year.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to inpatient hospital services and post-hospital extended care services furnished on or after January 1, 1987, and to the monthly premium (under part A of title XVIII of the Social Security Act) for months beginning with January 1987.

(c) PROMULGATION OF NEW DEDUCTIBLE.—The Secretary of Health and Human Services shall provide, within 30 days after the date of the enactment of this Act, for the publication of the inpatient hospital deductible, the coinsurance amounts for inpatient hospital services and post-hospital extended care services and the monthly part A premiums for 1987, as modified under the amendment made by subsection (a).

SEC. 9302. APPLICABLE PERCENTAGE INCREASE IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES.

(a) APPLICABLE PERCENTAGE INCREASE.—

(1) IN GENERAL.—Subclause (II) of section 1886(b)(3)(B)(i) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(i)) is amended to read as follows:

"(II) for fiscal year 1987, 1.15 percent, and for fiscal year 1988, the market basket percentage increase (as defined in clause (ii)) minus 2.0 percentage points, and".

(2) CONFORMING AMENDMENTS.—(A) Section 1886(d)(3)(A) of such Act is amended by striking "and 1986" and inserting ", 1986, 1987, and 1988".

(B) Section 1886(e)(4) of such Act is amended by striking "determine for each fiscal year (beginning with fiscal year 1987)" and inserting "recommend for fiscal year 1988 an appropriate change factor for inpatient hospital services for discharges in that fiscal year and shall determine for each subsequent fiscal year".

(C) Section 1866(e)(5) of such Act is amended by inserting "recommendation or" before "determination" each place it appears.

(3) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to cost reporting periods beginning on or after October 1, 1986 and, for purposes of section 1886(d) of the Social Security Act, for cost reporting periods beginning and discharges occurring on or after October 1, 1986.

(b) SEPARATE OUTLIER OFFSETS FOR URBAN AND RURAL HOSPITALS.—

(1) IN GENERAL.—Section 1886(d)(3)(B) of such Act is amended—

(A) by inserting "for hospitals located in an urban area and for hospitals located in a rural area" after "subparagraph (A)", and

(B) by inserting before the period the following: "for hospitals located in such respective area".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to discharges occurring on or after October 1, 1986.

(3) MAINTAINING CURRENT OUTLIER POLICY IN FISCAL YEAR 1987.—For payments made under section 1886(d) of the Social Security Act for discharges occurring in fiscal year 1987—

(A) the proportions under paragraph (3)(B) for hospitals located in urban and rural areas shall be established at such levels as produce the same total dollar reduction under such paragraph as if this section had not been enacted; and

(B) the thresholds and standards used for making additional payments under paragraph (5) of such section shall be the same as those in effect as of October 1, 1986.

(c) COMPUTING URBAN AND RURAL AVERAGES.—Section 1886(d)(3)(A) of such Act is amended by adding at the end the following: "With respect to discharges occurring on or after October 1, 1987, the Secretary shall compute urban and rural averages on the basis of discharge weighting rather than hospital weighting, making appropriate adjustments to ensure that computation on such basis does not result in total payments under this section that are greater or less than the total payments that would have been made under this section but for this sentence, and making appropriate changes in the manner of determining the reductions under subparagraph (C)(ii).".

(d) REGIONAL REFERRAL CENTERS.—

(1) CRITERIA.—

(A) IN GENERAL.—Section 1886(d)(5)(C)(i) of such Act is amended—

(i) by inserting "(I)" after "(C)(i)", and

(ii) by adding at the end the following new subclause:

"(II) The Secretary shall provide, under subclause (I), for the classification of a rural hospital as a regional referral center if the hospital has a case mix equal to or greater than the median case mix for hospitals (other than hospitals with approved teaching programs) located in an urban area in the same region (as defined in paragraph (2)(D)), has at least 5,000 discharges a year or, if less, the median number of discharges in urban hospitals in the region in which the hospital is located (or, in the case of a rural osteopathic hospital, meets the criterion established by the Secretary under subclause (I) with respect to the annual number of discharges for such hospitals), and meets any other criteria established by the Secretary under subclause (I).".

(B) EFFECTIVE DATE.—(i) Subject to clause (ii), the amendments made by subparagraph (A) shall apply to payments for discharges occurring on or after October 1, 1986.

(ii) An appeal for classification of a rural hospital as a regional referral center, pursuant to the amendments made by subparagraph (A), which is filed before January 1, 1987, and which is approved shall be effective with respect to discharges occurring on or after October 1, 1986.

(2) EXTENSION OF REGIONAL REFERRAL CENTER CLASSIFICATION.—Any hospital that is classified as a regional referral center under section 1886(d)(5)(C)(i) of the Social Security Act on the date of the enactment of this Act shall continue to be classified as a regional referral center for cost reporting periods beginning on or after October 1, 1986, and before October 1, 1989.

(3) BUDGET-NEUTRAL IMPLEMENTATION.—Paragraph (2) and the amendment made by paragraph (1)(A) shall be implemented in a manner that ensures that total payments under section 1886 of the Social Security Act are not increased or decreased by reason of the classifications required by such paragraph or amendment.

(4) RURAL SECONDARY SPECIALTY DEMONSTRATION PROJECT.—

(A) ESTABLISHMENT.—The Secretary of Health and Human Services (in this paragraph referred to as the "Secretary") shall enter into an agreement with Lake Region Hospital and Nursing Home at Fergus Falls, Minnesota, for the purpose of conducting a rural secondary specialty center demonstration project (in this paragraph referred to as the "project") under title XVIII of the Social Security Act.

(B) PURPOSE.—The purpose of this project shall be to determine the effect that a modified system of making payments under part A of such title to rural secondary specialty centers would have on—

(i) total expenditures under such part, and

(ii) the access of medicare beneficiaries located in rural areas to quality health care.

(C) PAYMENTS.—During the period of the demonstration project, payments under part A of such title shall be made under the project on the basis of average standardized amounts computed for urban areas in the region in which the project is conducted, as adjusted by a rural wage index.

(D) DURATION.—The project shall be of a maximum duration of three years.

(E) REPORTS.—The Secretary shall submit a final report to the Congress on the project not later than six months after the completion of the project.

(e) MISCELLANEOUS PROVISIONS.—

(1) ANNUAL ADJUSTMENT.—Section 1886(d)(4)(C) of such Act is amended by striking "in fiscal year 1986 and at least every four fiscal years" and inserting "in fiscal year 1988 and at least annually".

(2) CLARIFYING AUTHORITY TO VARY RATES.—Section 1886(e)(4) of such Act is amended by adding at the end the following new sentence: "The percentage change shall be the same for all subsection (d) hospitals and subsection (d) Puerto Rico hospitals, but may be different from that for other hospitals (and units not included as such hospitals) and may vary among such other hospitals and units.".

(3) NOTICE OF EARLIER PROMULGATION OF PERCENTAGE INCREASE.—Section 1886(e)(3) of such Act is amended—

(A) by inserting "(A)" after "(3)", and

(B) by adding at the end the following new subparagraph:

"(B) The Secretary, not later than April 1, 1987, for fiscal year 1988 and not later than March 1 before the beginning of each fiscal year (beginning with fiscal year 1989), shall report to the Congress the Secretary's initial estimate of the the percentage change that the Secretary will recommend or determine under paragraph (4) with respect to that fiscal year.".

(4) EXTENSION OF SOLE COMMUNITY PROVIDER PROVISION.—Section 1886(d)(5)(C)(ii) of such Act is amended by striking "1986" and inserting "1988".

(f) PROMULGATION OF NEW RATE.—The Secretary of Health and Human Services shall provide, within 30 days after the date of the enactment of this Act, for the publication of the payments rates that will apply under section 1886 of the Social Security Act, for discharges occurring on or after October 1, 1986, taking into account the amendments made by this section, without regard to the provisions of chapter 5 of title 5, United States Code.

SEC. 9303. PAYMENTS FOR HOSPITAL CAPITAL-RELATED COSTS.

(a) IN GENERAL.—Section 1886(g) of the Social Security Act (42 U.S.C. 1395ww(g)) is amended by adding at the end the following new paragraph:

"(3)(A) Except as provided in subparagraph (B), in determining the amount of the payments that may be made under this title with respect to all the capital-related costs of inpatient hospital services of a subsection (d) hospital, the Secretary shall reduce the amounts of such payments otherwise established under this title by—

"(i) 3.5 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1987,

"(ii) 7 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1988, and

"(iii) 10 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1989.

"(B) Subparagraph (A) shall not apply to payments with respect to the capital-related costs of any hospital that is a sole community hospital (as defined in subsection (d)(5)(C)(ii)).

"(C) If the Secretary provides, under subsection (a)(4), for the inclusion of other capital-related costs in operating costs of inpatient hospital services, the Secretary shall provide—

"(i) notwithstanding any other provision of this title, for the continuation of payment under the reasonable cost methodology described in section 1861(v)(1) with respect to capital-related costs of any hospital that is such a sole community hospital for cost reporting periods beginning before October 1, 1990, and

"(ii) in the design of such payment system that the aggregate payment amounts under this title for such other capital-related costs for payments attributable to portions of cost reporting periods occurring during fiscal year 1988 and fiscal year 1989 shall approximate the aggregate payment amount under this title that would have been made (taking into account the provisions of subparagraphs (A) and (B)) during that fiscal year but for the inclusion of such costs by the Secretary.".

(b) ADDITION OF PUERTO RICO HOSPITALS.—Effective for cost reporting periods beginning and discharges occurring (as the case may be) on or after October 1, 1987, section 1886(g)(3)(A) of the Social Security Act (as amended by subsection (a)) is amended by inserting "and a subsection (d) Puerto Rico hospital" after "subsection (d) hospital".

(c) CLARIFICATION OF SECRETARIAL AUTHORITY TO INCORPORATE PAYMENT FOR OTHER CAPITAL-RELATED COSTS UNDER THE PROSPECTIVE PAYMENT SYSTEM.—Section 1886(a)(4) of such Act is amended by striking "October 1, 1987" and inserting "October 1 of 1987 (or of such later year as the Secretary may, in his discretion, select)".

SEC. 9304. COVERAGE OF HOSPITALS IN PUERTO RICO UNDER A DRG PROSPECTIVE PAYMENT SYSTEM.

(a) IN GENERAL.—Section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) is amended by adding at the end the following new paragraph:

"(9)(A) Notwithstanding section 1814(b) but subject to the provisions of section 1813, the amount of the payment with respect to the operating costs of inpatient hospital services of a subsection (d) Puerto Rico hospital for inpatient hospital discharges in a fiscal year beginning on or after October 1, 1987, is equal to the sum of—

"(i) 75 percent of the Puerto Rico adjusted DRG prospective payment rate (determined under subparagraph (B) or (C)) for such discharges, and

"(ii) 25 percent of the discharge-weighted average of—

"(I) the national adjusted DRG prospective payment rate (determined under paragraph (3)(D)) for hospitals located in an urban area, and

"(II) such rate for hospitals located in a rural area,

for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels. As used in this section, the term 'subsection (d) Puerto Rico hospital' means a hospital that is located in Puerto Rico and that would be a subsection (d) hospital (as defined in paragraph (1)(B)) if it were located in one of the fifty States.

"(B) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge in fiscal year 1988 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this title. Such rate shall be determined for such hospitals located in urban or rural areas within Puerto Rico, as follows:

"(i) The Secretary shall determine the target amount (as defined in subsection (b)(3)(A)) for the hospital for the cost reporting period beginning in fiscal year 1987 and increase such amount by prorating the applicable percentage increase (as defined in subsection (b)(3)(B)) to update the amount to the midpoint in fiscal year 1988.

"(ii) The Secretary shall standardize the amount determined under clause (i) for each hospital by—

"(I) excluding an estimate of indirect medical education costs,

"(II) adjusting for variations among hospitals by area in the average hospital wage level,

"(III) adjusting for variations in case mix among hospitals, and

"(IV) excluding an estimate of the additional payments to certain subsection (d) Puerto Rico hospitals to be made under subparagraph (D)(v) (relating to disproportionate share payments).

"(iii) The Secretary shall compute a discharge weighted average of the standardized amounts determined under clause (ii) for all hospitals located in an urban area and for all hospitals located in a rural area (as such terms are defined in paragraph (2)(D)).

"(iv) The Secretary shall reduce the average standardized amount by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments).

"(v) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

"(I) the average standardized amount (computed under clause (iii) and reduced under clause (iv)) for hospitals located in an urban or rural area, respectively, and

"(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

"(vi) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective payment rate computed under clause (v) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rican average hospital wage level.

"(C) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge after fiscal year 1988 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this title. Such rate shall be determined for hospitals located in urban or rural areas within Puerto Rico as follows:

"(i) The Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area equal to the respective average standardized amount computed for the previous fiscal year under subparagraph (B)(iii) or under this clause, increased for fiscal year 1989 by the applicable percentage increase under subsection (b)(3)(B), and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4), and adjusted to reflect the most recent case-mix data available.

"(ii) The Secretary shall reduce each of the average standardized amounts by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments).

"(iii) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

"(I) the average standardized amount (computed under clause (i) and reduced under clause (ii)) for hospitals located in an urban or rural area, respectively, and

"(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

"(iv) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related

costs, of the Puerto Rico DRG prospective payment rate computed under clause (iii) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rico average hospital wage level.

"(D) The following provisions of paragraph (5) shall apply to subsection (d) Puerto Rico hospitals receiving payment under this paragraph in the same manner and to the extent as they apply to subsection (d) hospitals receiving payment under this subsection:

"(i) Subparagraph (A) (relating to outlier payments).

"(ii) Subparagraph (B) (relating to payments for indirect medical education costs), except that for this purpose the sum of the amount determined under subparagraph (A) of this paragraph and the amount paid to the hospital under clause (i) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(B)(i)(I).

"(iii) Subparagraph (C)(iii) (relating to exceptions and adjustments).

"(iv) Subparagraph (E) (relating to payments for costs of certified registered nurse anesthetists).

"(v) Subparagraph (F) (relating to disproportionate share payments), except that for this purpose the sum described in clause (ii) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(F)(ii)(I).".

(b) CONFORMING AMENDMENTS.—(1) The first sentence of subclause (I) of section 1886(d)(5)(C)(i)(I) of such Act, as redesignated by section 9302(d), is amended by inserting "(other than under paragraph (9))" after "established under this subsection".

(2) The second and third sentences of section 1886(d)(5)(C)(ii) of such Act are each amended by inserting "(other than under paragraph (9))" after "payment amounts under this subsection".

(c) BUDGET NEUTRALITY.—Section 1886(e)(1) of the Social Security Act is amended by adding at the end the following new subparagraph:

"(C) For discharges occurring in fiscal year 1988, the Secretary shall provide for such equal proportional adjustment in each of the average standardized amounts otherwise computed under subsection (d)(3) for that fiscal year as may be necessary to assure that—

"(i) the aggregate payment amounts otherwise provided under subsections (d)(1)(A)(iii), (d)(5), and (d)(9) for that fiscal year for operating costs of inpatient hospital services of subsection (d) hospitals and subsection (d) Puerto Rico hospitals,

are not greater or less than—

"(ii) the payment amounts that would have been payable for such services for those same hospitals for that fiscal year but for the enactment of the amendments made by section 9304 of the Omnibus Budget Reconciliation Act of 1986.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges occurring on or after October 1, 1987.

SEC. 9305. IMPROVING QUALITY OF CARE WITH RESPECT TO PART A SERVICES.

(a) REFINEMENT OF PROSPECTIVE PAYMENT SYSTEM.—

(1) DEVELOPMENT OF LEGISLATIVE PROPOSAL.—The Secretary of Health and Human Services shall develop and submit to Congress a specific legislative proposal to improve the classification and payment system under section 1886(d) of the Social Security Act (and, as appropriate, the system for payment of outliers under section 1886(d)(5)(A) of such Act) in order to assure that the amount of payment per discharge approximates the cost of medically necessary care provided in an efficient manner for individual patients or classes of patients with similar conditions.

(2) ACCOUNTING FOR SEVERITY OF ILLNESS.—In developing the proposal, the Secretary shall account for variations in severity of illness and case complexity which are not adequately accounted for by the current classification and payment system.

(3) DEADLINE.—The proposal shall be submitted to Congress by not later than 2 years after the date of the enactment of this Act.

(b) REQUIRING NOTICE OF HOSPITAL DISCHARGE RIGHTS.—

(1) REQUIREMENT FOR HOSPITALS TO PROVIDE STATEMENT.—Section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)), as amended by section 1895(b) of the Tax Reform Act of 1986 and by section 233 of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, is amended—

(A) by striking "and" at the end of the subparagraph (K),

(B) by striking the period at the end of subparagraph (L) and inserting ", and", and

(C) by inserting after subparagraph (L) the following new subparagraph:

"(M) in the case of hospitals, to provide to each individual who is entitled to benefits under part A (or to a person acting on the individual's behalf), at or about the time of the individual's admission as an inpatient to the hospital, a written statement (containing such language as the Secretary prescribes consistent with this paragraph) which explains—

"(i) the individual's rights to benefits for inpatient hospital services and for post-hospital services under this title,

"(ii) the circumstances under which such an individual will and will not be liable for charges for continued stay in the hospital,

"(iii) the individual's right to appeal denials of benefits for continued inpatient hospital services, including the practical steps to initiate such an appeal, and

"(iv) the individual's liability for payment for services if such a denial of benefits is upheld on appeal,

and which provides such additional information as the Secretary may specify."

(2) EFFECTIVE DATE.—The Secretary of Health and Human Services shall first prescribe the language required under section 1866(a)(1)(M) of the Social Security Act not later than six months after the date of the enactment of this Act. The requirement of such section shall apply to admissions to hospitals occurring on such date (not later than 60 days after the date such language is first prescribed) as the Secretary shall provide.

(c) REQUIRING HOSPITALS TO PROVIDE DISCHARGE PLANNING PROCESS.—

(1) REQUIREMENT AS CONDITION OF PARTICIPATION.—Section 1861(e)(6) of the Social Security Act (42 U.S.C. 1395x(e)(6)) is amended—

(A) by inserting "(A)" after "(6)", and

(B) by inserting before the semicolon at the end the following: "and (B) has in place a discharge planning process that meets the requirements of subsection (ee)".

(2) DISCHARGE PLANNING PROCESS DEFINED.—Section 1861 of such Act is further amended by adding at the end the following new subsection:

"Discharge Planning Process

"(ee)(1) A discharge planning process of a hospital shall be considered sufficient if it is applicable to services furnished by the hospital to individuals entitled to benefits under this title and if it meets the guidelines and standards established by the Secretary under paragraph (2).

"(2) The Secretary shall develop guidelines and standards for the discharge planning process in order to ensure a timely and smooth transition to the most appropriate type of and setting for post-hospital or rehabilitative care. The guidelines and standards shall include the following:

"(A) The hospital must identify, at an early stage of hospitalization, those patients who are likely to suffer adverse health consequences upon discharge in the absence of adequate discharge planning.

"(B) Hospitals must provide a discharge planning evaluation for patients identified under subparagraph (A) and for other patients upon the request of the patient, patient's representative, or patient's physician.

"(C) Any discharge planning evaluation must be made on a timely basis to ensure that appropriate arrangements for post-hospital care will be made before discharge and to avoid unnecessary delays in discharge.

"(D) A discharge planning evaluation must include an evaluation of a patient's likely need for appropriate post-hospital services and the availability of those services.

"(E) The discharge planning evaluation must be included in the patient's medical record for use in establishing an appropriate discharge plan and the results of the evaluation must be discussed with the patient (or the patient's representative).

"(F) Upon the request of a patient's physician, the hospital must arrange for the development and initial implementation of a discharge plan for the patient.

"(G) Any discharge planning evaluation or discharge plan required under this paragraph must be developed by, or under the supervision of, a registered professional nurse, social worker, or other appropriately qualified personnel."

(3) EFFECT OF ACCREDITATION.—The second sentence of section 1865(a) of such Act (42 U.S.C. 1395bb(a)) is amended—

(A) by inserting ", requires a discharge planning process (or imposes another requirement which serves substantially the same purpose)," after "the same purpose)", and

(B) by inserting "clause (A) or (B) of" after "comply also with".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to hospitals as of one year after the date of the enactment of this Act.

(d) REVIEW OF STANDARDS FOR MEDICARE CONDITIONS OF PARTICIPATION FOR ASSURING QUALITY OF INPATIENT HOSPITAL SERVICES.—The Secretary of Health and Human Services shall arrange for a study of the adequacy of the standards used for hospitals, for purposes of meeting the conditions of participation under title XVIII of the Social Security Act, in assuring the quality of services furnished in hospitals. The Secretary shall report to Congress on the results of the study by not later than 2 years after the date of the enactment of this Act.

(e) STUDY OF PAYMENT FOR ADMINISTRATIVELY NECESSARY DAYS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study

to determine whether a payment should be made (in a budget-neutral manner under title XVIII of such Act to hospitals receiving payments under section 1886(d) of such Act) to a hospital for administratively necessary days, separate from the per-discharge and outlier payments made under such section.

(2) ADMINISTRATIVELY NECESSARY DAYS DEFINED.—In this subsection, an "administratively necessary day" is a day of continued inpatient hospital stay, for an individual entitled to benefits under part A of title XVIII of the Social Security Act, necessitated by a delay in obtaining placement for the individual in a skilled nursing facility.

(3) CONSIDERATIONS IN CONDUCTING STUDY.—In conducting the study, the Secretary shall consider—

(A) the need for such a payment in order to minimize—

(i) the disproportionate financial impact of current law on certain hospitals (or hospitals in certain locations) due to difficulties in arranging for appropriate post-hospital care, such as difficulties resulting from a shortage of beds in skilled nursing facilities where those hospitals are located and from the source of payment for such care, and

(ii) the risk of inappropriate discharge to a non-institutional or inappropriate institutional setting of individuals who need post-hospital services in a skilled nursing facility, and

(B) the administrative mechanisms that can be used to prevent inappropriate payments for administratively necessary days.

(4) REPORT ON STUDY.—The Secretary shall report to Congress on the results of the study not later than January 1, 1989.

(f) EXTENDING WAIVER OF LIABILITY PROVISIONS TO HOSPICE PROGRAMS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall, for purposes of determining whether payments to a hospice program should be denied pursuant to section 1862(a)(1)(C) of the Social Security Act, apply (under section 1879(a) of such Act) a presumption of compliance of 2.5 percent (based on the number of days of hospice care billed) in a manner substantially similar to that provided to home health agencies under policies in effect as of July 1, 1985.

(2) EFFECTIVE DATE.—Paragraph (1) shall apply to hospice care furnished on or after the first day of the first month that begins at least 6 months after the date of the enactment of this Act and before November 1, 1988.

(g) EXTENSION OF WAIVER OF LIABILITY PROVISIONS TO CERTAIN COVERAGE DENIALS FOR HOME HEALTH SERVICES.—

(1) IN GENERAL.—Section 1879 of the Social Security Act (42 U.S.C. 1395pp) is amended—

(A) in subsection (a)(1), by inserting "or by reason of a coverage denial described in subsection (g)" after "section 1862(a) (1) or (9)";

(B) in the first sentence of subsection (a), by inserting "and as though the coverage denial described in subsection (g) had not occurred" before the period at the end;

(C) in the third sentence of subsection (a), by inserting "or by reason of a coverage denial described in subsection (g)" after "section 1862(a) (1) or (9)";

(D) in subsection (c), by inserting "or by reason of a coverage denial described in subsection (g)" after "section 1862(a) (1) or (9)"; and

(E) by adding at the end the following new subsections:

"(f)(1) A home health agency which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) with respect to any coverage denial described in subsection (g).

"(2) The presumption of paragraph (1) with respect to specific services may be rebutted by actual or imputed knowledge of the facts described in subsection (a)(2), including any of the following:

"(A) Notice by the fiscal intermediary of the fact that payment may not be made under this title with respect to the services.

"(B) It is clear and obvious that the provider should have known at the time the services were furnished that they were excluded from coverage.

"(3) The requirements of this paragraph are as follows:

"(A) The agency complies with requirements of the Secretary under this title respecting timely submittal of bills for payment and medical documentation.

"(B) The agency program has reasonable procedures to notify promptly each patient (and the patient's physician) where it is determined that a patient is being or will be furnished items or services which are excluded from coverage under this title.

"(4) The requirement of this paragraph is that, on the basis of bills submitted by a home health agency during the previous quarter, the rate of denial of bills for the agency by reason of a coverage denial described in subsection (g) does not exceed 2.5 percent, computed based on visits for home health services billed.

"(5) In this subsection, the term 'fiscal intermediary' means, with respect to a home health agency, an agency or organization with an agreement under section 1816 with respect to the agency.

"(g) The coverage denial described in this subsection is, with respect to the provision of home health services to an individual, a failure to meet the requirements of section 1814(a)(2)(C) or section 1835(a)(2)(A) in that the individual—

"(1) is or was not confined to his home, or

"(2) does or did not need skilled nursing care on an intermittent basis."

(2) REPORTS.—The Secretary of Health and Human Services shall report to Congress annually in March of 1987 and 1988—

(A) information on the frequency and distribution (by type of provider) of denials of bills for payment under title XVIII of the Social Security Act for extended care services, home health services, and hospice care, by reason of section 1862(a)(1) or (9) of such Act and coverage denials described in section 1879(g) of such Act, including—

(i) the reasons for such denials,

(ii) the extent to which payments were nonetheless made because of section 1879 of such Act, and

(iii) the rate of reversals of such denials, and

(B) such other information as may be appropriate to evaluate the appropriateness of any percentage standards established for the granting of favorable presumptions with respect to such denials.

(3) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to coverage denials occurring on or after July 1, 1987, and before October 1, 1989.

(h) DEVELOPMENT OF UNIFORM NEEDS ASSESSMENT INSTRUMENT.—

(1) DEVELOPMENT.—The Secretary of Health and Human Services shall develop a uniform needs assessment instrument that—

(A) evaluates—

(i) the functional capacity of an individual,

(ii) the nursing and other care requirements of the individual to meet health care needs and to assist with functional incapacities, and

(iii) the social and familial resources available to the individual to meet those requirements; and

(B) can be used by discharge planners, hospitals, nursing facilities, other health care providers, and fiscal intermediaries in evaluating an individual's need for post-hospital extended care services, home health services, and long-term care services of a health-related or supportive nature.

The Secretary may develop more than one such instrument for use in different situations.

(2) ADVISORY PANEL.—The Secretary shall develop any instrument in consultation with an advisory panel, appointed by the Secretary, that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of physicians, of skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries.

(3) REPORT ON INSTRUMENT.—The Secretary shall report to Congress, not later than January 1, 1989, on the instrument or instruments developed under this section. The report shall make recommendations for the appropriate use of such instrument or instruments.

(i) INCLUDING IN ANNUAL REPORTS ON PROSPECTIVE PAYMENT SYSTEM INFORMATION ON QUALITY OF POST-HOSPITAL CARE.—

(1) IN GENERAL.—Section 603(a)(2) of the Social Security Amendments of 1983 is amended—

(A) by striking "1987" in subparagraph (A) and inserting "1989", and

(B) by adding at the end the following new subparagraph:

"(E) In each annual report to Congress under subparagraph (A), the Secretary shall include—

"(i) an evaluation of the adequacy of the procedures for assuring quality of post-hospital services furnished under title XVIII of the Social Security Act,

"(ii) an assessment of problems that have prevented groups of medicare beneficiaries (including those eligible for medical assistance under title XIX of such Act) from receiving appropriate post-hospital services covered under such title, and

"(iii) information on reconsiderations and appeals taken under title XVIII of such Act with respect to payment for post-hospital services.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1)(B) shall apply to reports for years beginning with 1986.

(k) PRIOR AND CONCURRENT AUTHORIZATION DEMONSTRATION PROJECT.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a demonstration program concerning prior and concurrent authorization for post-hospital extended care services and home health services furnished under part A or part B of title XVIII of the Social Security Act.

(2) SCOPE.—The program shall include at least four projects and shall be initiated by not later than January 1, 1987.

(3) CONSULTATION AND MONITORING.—The program shall be developed in consultation with an advisory panel that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of physicians, of

skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries. The Secretary shall monitor the acceptance of individuals entitled to benefits under title XVIII of the Social Security Act by providers to ensure that the placement of such individuals is not delayed until the results of prior and concurrent review are known.

(4) EVALUATION AND REPORT.—The Secretary shall evaluate the demonstration program conducted under this subsection and shall report to Congress on such evaluation no later than February 1, 1989. Such evaluation and report shall address—

(A) the administrative and program costs for prior and concurrent authorization across demonstration projects and in comparison to administrative and program costs under the current system of retroactive review, including costs for uncovered services paid under the waiver of liability which would not be incurred under prior or concurrent authorization;

(B) impact of prior or concurrent authorization on access to and availability of extended care services and home health services in comparison to the current system (including costs to providers) and on timely discharge of hospital inpatients; and

(C) accuracy and associated cost savings of payment determinations and rates of claim reversals under prior or concurrent authorization versus the current system.

(5) FUNDING.—Expenditures made for the demonstration program shall be made from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this subsection.

(6) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration program.

SEC. 9306. PAYMENTS TO LARGE RURAL HOSPITALS SERVING A DISPROPORTIONATE SHARE OF LOW-INCOME PATIENTS.

(a) QUALIFYING HOSPITALS.—Section 1886(d)(5)(F)(v) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)(v)) is amended by adding at the end the following new sentence: "A hospital located in a rural area and with 500 or more beds also 'serves a significantly disproportionate number of low income patients' for a cost reporting period if the hospital has a disproportionate patient percentage (as defined in clause (vi)) for that period which equals or exceeds a percentage specified by the Secretary.".

(b) PAYMENT AMOUNT.—Section 1886(d)(5)(F)(iv) of such Act is amended—

(1) in subclause (I), by inserting "or is described in the second sentence of subclause (III)" after "100 or more beds", and

(2) in subclause (III), by inserting " and is not described in the second sentence of clause (v)" after "rural area".

(c) EXTENSION OF DISPROPORTIONATE SHARE PROVISION.—Section 1886(d) of such Act is further amended, in paragraphs (2)(C)(iv), (3)(C)(ii), (5)(B)(ii), and (5)(F)(i), by striking "1988" each place it appears and inserting "1989".

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to discharges occurring on or after October 1, 1986.

SEC. 9307. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PART A.

(a) TEMPORARY WAIVER OF INPATIENT LIMITATIONS FOR THE CONNECTICUT HOSPICE, INC.—With respect to the Connecticut Hospice, Inc., for hospice care provided before October 1, 1988, the reference in section 1861(dd)(2)(A)(iii) of the Social Security Act (42 U.S.C. 1395x(dd)(2)(A)(iii)) to "20 percent" is deemed a reference to "50 percent".

(b) MASSACHUSETTS MEDICARE REPAYMENT.—The Secretary of Health and Human Services shall not, on or after the date of the enactment of this section and before January 1, 1988, recoup from, or otherwise reduce payments to, hospitals in the State of Massachusetts because of alleged overpayments to such hospitals under part A of title XVIII of the Social Security Act which occurred during the period of the State-wide hospital reimbursement demonstration project conducted in that State, between October 1, 1982, and June 30, 1986, under section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972.

(c) PART A COBRA TECHNICAL CORRECTIONS.—(1) Effective as if included in the enactment of the Tax Reform Act of 1986, if House Concurrent Resolution 395 (99th Congress, 2d Session) has not been adopted, section 1895(b) of the Tax Reform Act of 1986 is amended—

(A) by striking paragraph (1), and

(B) by striking subparagraphs (A) and (B) of paragraph (2).

(2) Effective as if included in the enactment of the Tax Reform Act of 1986—

(A) section 1895(b) of such Act is amended, in subparagraph (A)(ii) of the paragraph relating to "PHYSICIAN PAYMENT", by inserting before the period the following: "the first place it appears", and

(B) section 1895(d)(5)(A) of such Act is amended by striking "162(k)(2)" and inserting "162(k)(5)".

(3) If House Concurrent Resolution 395 (99th Congress, 2d Session) has been adopted, effective for discharges occurring on or after May 1, 1986, section 1886(d)(5)(F)(vi)(I) of the Social Security Act is amended—

(A) by striking "supplementary" and inserting "supplemental", and

(B) by striking "fiscal year" and inserting "period".

(4) Paragraphs (2) and (3) of section 1867(b) of the Social Security Act are amended by striking "legally responsible".

(d) MISCELLANEOUS ACCOUNTING PROVISION.—Effective on the date of the enactment of Public Law 99-107, in applying section 5(a) of such Act, a cost reporting period beginning on September 28, 29, or 30 is deemed to begin on October 1 and any reference to September 30 is deemed also to be a reference to September 27.

PART 2—PROVISIONS RELATING TO PARTS A AND B

SEC. 9311. PERIODIC INTERIM PAYMENT SYSTEM (PIP) FOR DRG HOSPITALS AND PROMPT PAYMENT FOR MEDICARE PROVIDERS.

(a) PERIODIC INTERIM PAYMENTS.—

(1) IN GENERAL.—Section 1815 of the Social Security Act (42 U.S.C. 1395g) is amended by adding at the end the following new subsection:

"(e)(1) The Secretary shall provide payment under this part for inpatient hospital services furnished by a subsection (d) hospital (as defined in section 1886(d)(1)(B), and including a distinct psychiatric or rehabilitation unit of such a hospital) and a subsection (d) Puerto Rico hospital (as defined in section 1886(d)(9)(A)) on a periodic interim payment basis (rather than on the basis of bills actually submitted) in the following cases:

"(A) Upon the request of a hospital which is paid through an agency or organization with an agreement with the Secretary under section 1816, if the agency or organization, for three consecutive calendar months, fails to meet the requirements of subsection (c)(2) of such section and if the hospital meets the requirements (in effect as of October 1, 1986) applicable to payment on such a basis, until such time as the agency or organization meets such requirements for three consecutive calendar months.

"(B) In the case of hospital that—

"(i) has a disproportionate share adjustment percentage (as established in clause (iv) of such section) of at least 5.1 percent (as computed for purposes of establishing the average standardized amounts for discharges occurring during fiscal year 1987), and

"(ii) requests payment on such basis,

but only if the hospital was being paid for inpatient hospital services on such a periodic interim payment basis as of June 30, 1987, and continues to meet the requirements (in effect as of October 1, 1986) applicable to payment on such a basis.

"(C) In the case of a hospital that—

"(i) is located in a rural area,

"(ii) has 100 or fewer beds, and

"(iii) requests payment on such basis,

but only if the hospital was being paid for inpatient hospital services on such a periodic interim payment basis as of June 30, 1987, and continues to meet the requirements (in effect as of October 1, 1986) applicable to payment on such a basis.

"(2) The Secretary shall provide (or continue to provide) for payment on a periodic interim payment basis (under the standards established under section 405.454(j) of title 42, Code of Federal Regulations, as in effect on October 1, 1986)) with respect to—

"(A) inpatient hospital services of a hospital that is not a subsection (d) hospital (as defined in section 1886(d)(1)(B));

"(B) a hospital which is receiving payment under a State hospital reimbursement system under section 1814(b)(3) or 1886(c), if payment on a periodic interim payment basis is an integral part of such reimbursement system;

"(C) extended care services;

"(D) home health services; and

"(E) hospice care;

if the provider of such services elects to receive, and qualifies for, such payments.

"(3) In the case of a subsection (d) hospital or a subsection (d) Puerto Rico hospital (as defined for purposes of section 1886) which has significant cash flow problems resulting from operations of its intermediary or from unusual circumstances of the hospital's operation, the Secretary may make available appropriate accelerated payments.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to claims received on or after July 1, 1987.

(3) TRANSITION.—Upon the request of a hospital which—

(A) as of June 30, 1987, is receiving payments under part A of title XVIII of such Act for inpatient hospital services on a periodic interim payment basis,

(B) requests continuation of payment on such basis, and

(C) is paid through an agency or organization with an agreement under section 1816 of such Act,

the Secretary of Health and Human Services shall continue payment on such a basis until not earlier than the end of the first period of three consecutive calendar months (beginning no earlier than April 1987) during all of which the agency or organization has met the requirements of section 1816(c)(2) of such Act (relating to prompt payment of claims).

(b) PROMPT PAYMENT OF CLAIMS UNDER PART A.—Section 1816(c) of the Social Security Act (42 U.S.C. 1395h(c)) is amended—

(1) by inserting "(1)" after "(c)", and

(2) by adding at the end the following new paragraph:

"(2)(A) Each agreement under this section shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to not less than 95 percent of all claims submitted under this title—

"(i) which are clean claims, and

"(ii) for which payment is not made on a periodic interim payment basis,

within the applicable number of calendar days after the date on which the claim is received.

"(B) In this paragraph:

"(i) The term 'clean claim' means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this title.

"(ii) The term 'applicable number of calendar days' means—

"(I) with respect to claims received in the 12-month period beginning October 1, 1986, 30 calendar days,

"(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days,

"(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days, and

"(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period, 24 calendar days.

"(C) If payment is not issued, mailed, or otherwise transmitted within the applicable number of calendar days (as defined in clause (ii) of subparagraph (B)) after a clean claim (as defined in clause (i) of such subparagraph) is received from a hospital, skilled nursing facility, home health agency, or hospice program that is not receiving payments on a periodic interim payment basis with respect to such services, interest shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made.".

(c) PROMPT PAYMENT OF CLAIMS UNDER PART B.—Section 1842(c) of the Social Security Act (42 U.S.C. 1395u(c)) is amended—

(1) by inserting "(1)" after "(c)", and

(2) by adding at the end the following new paragraph:

"(2)(A) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to not less than 95 percent of all claims submitted under this part—

"(i) which are clean claims, and

"(ii) for which payment is not made on a periodic interim payment basis,

within the applicable number of calendar days after the date on which the claim is received.

"(B) In this paragraph:

"(i) The term 'clean claim' means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this part.

"(ii) The term 'applicable number of calendar days' means—

"(I) with respect to claims received in the 12-month period beginning October 1, 1986, 30 calendar days,

"(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days (or 19 calendar days with respect to claims submitted by participating physicians),

"(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days (or 18 calendar days with respect to claims submitted by participating physicians), and

"(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period, 24 calendar days (or 17 calendar days with respect to claims submitted by participating physicians).

"(C) If payment is not issued, mailed, or otherwise transmitted within the applicable number of calendar days (as defined in clause (ii) of subparagraph (B)) after a clean claim (as defined in clause (i) of such subparagraph) is received, interest shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made.".

(d) EFFECTIVE DATES.—

(1) Except as provided in paragraph (2), the amendments made by subsections (b) and (c) shall apply to claims received on or after November 1, 1986.

(2) Sections 1816(c)(2)(C)) and 1842(c)(2)(C) of the Social Security Act, as added by such amendments, shall apply to claims received on or after April 1, 1987.

(3) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act and contracts under section 1842 of such Act, and regulations, to such extent as may be necessary to implement the provisions of this Act on a timely basis.

SEC. 9312. HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.

(a) REPEAL OF "2 FOR 1" CONVERSION REQUIREMENT FOR CERTAIN HEALTH MAINTENANCE ORGANIZATIONS.—Section 114(c)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 is amended by adding at the end the following new subparagraph:

"(E) The preceding provisions of this paragraph shall not to apply to payments made for current, nonrisk medicare enrollees for months beginning with April 1987.".

(b) REQUIRING THE PROVISION OF AN EXPLANATION OF ENROLLEE RIGHTS.—

(1) IN GENERAL.—Subsection (c)(3) of section 1876 of the Social Security Act (42 U.S.C. 1395mm) is amended by adding at the end the following new subparagraph:

"(E) Each eligible organization shall provide each enrollee, at the time of enrollment and not less frequently than annually thereafter, an explanation of the enrollee's rights under this section, including an explanation of—

"(i) the enrollee's rights to benefits from the organization,

"(ii) the restrictions on payments under this title for services furnished other than by or through the organization,

"(iii) out-of-area coverage provided by the organization,

"(iv) the organization's coverage of emergency services and urgently needed care, and

"(v) appeal rights of enrollees.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on January 1, 1987, and shall apply to enrollments effected on or after such date.

(c) RESTRICTING WAIVER OF REQUIREMENT OF 50 PERCENT NON-MEDICARE ENROLLMENT.—

(1) RESTRICTION ON NEW WAIVERS.—Paragraph (2) of subsection (f) of such section is amended by striking all that follows "only" and inserting a dash and the following:

"(A) to the extent that more than 50 percent of the population of the area served by the organization consists of individuals who are entitled to benefits under this title or under a State plan approved under title XIX, or

"(B) in the case of an eligible organization that is owned and operated by a governmental entity, only with respect to a period of three years beginning on the date the organization first enters into a contract under this section, and only if the organization has taken and is making reasonable efforts to enroll individuals who are not entitled to benefits under this title or under a State plan approved under title XIX.".

(2) SANCTIONS FOR NONCOMPLIANCE.—

(A) SUSPENSION OF ENROLLMENT OR PAYMENT FOR NEW ENROLLEES.—Such subsection is further amended by adding at the end the following new paragraph:

"(3) If the Secretary determines that an eligible organization has failed to comply with the requirements of this subsection, the Secretary may provide for the suspension of enrollment of individuals under this section or of payment to the organization under this section for individuals newly enrolled with the organization, after the date the Secretary notifies the organization of such noncompliance.".

(B) TERMINATION OF CONTRACT.—Subsection (i)(1)(C) of such section is amended by striking "and (e)" and insert "(e), and (f)".

(3) EFFECTIVE DATES.—

(A) NEW RESTRICTION.—The amendment made by paragraph (1) shall apply to modifications and waivers granted after the date of the enactment of this Act.

(B) SANCTIONS FOR NONCOMPLIANCE.—The amendments made by paragraph (2) shall take effect on the date of the enactment of this Act.

(C) TREATMENT OF CURRENT WAIVERS.—In the case of an eligible organization (or successor organization) that—

(i) as of the date of the enactment of this Act, has been granted, under paragraph (2) of section 1876(f) of the Social Security Act, a modification or waiver of the requirement imposed by paragraph (1) of that section, but

(ii) does not meet the requirement for such modification or waiver under the amendment made by paragraph (1) of this subsection,

the organization shall make, and continue to make, reasonable efforts to meet scheduled enrollment goals, consistent with a schedule of compliance approved by the Sec-

retary of Health and Human Services. If the Secretary determines that the organization has complied, or made significant progress towards compliance, with such schedule of compliance, the Secretary may extend such waiver. If the Secretary determines that the organization has not complied with such schedule, the Secretary may provide for a sanction described in section 1876(f)(3) of the Social Security Act (as amended by this section) effective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization of such noncompliance.

(d) REQUIRING PROMPT PAYMENT OF CLAIMS.—

(1) IN GENERAL.—Subsection (g) of such section is amended by adding at the end the following new paragraph:

"(6)(A) A risk-sharing contract under this section shall require the eligible organization to provide prompt payment (consistent with the provisions of sections 1816(c)(2) and 1842(c)(2)) of claims submitted for services and supplies furnished to individuals pursuant to such contract, if the services or supplies are not furnished under a contract between the organization and the provider or supplier.

"(B) In the case of an eligible organization which the Secretary determines, after notice and opportunity for a hearing, has failed to make payments of amounts in compliance with subparagraph (A), the Secretary may provide for direct payment of the amounts owed to providers and suppliers for such covered services furnished to individuals enrolled under this section under the contract. If the Secretary provides for such direct payments, the Secretary shall provide for an appropriate reduction in the amount of payments otherwise made to the organization under this section to reflect the amount of the Secretary's payments (and costs incurred by the Secretary in making such payments).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to risk-sharing contracts under section 1876 of the Social Security Act with respect to services furnished on or after January 1, 1987.

(e) REQUIRING ACCESS TO FINANCIAL RECORDS AND DISCLOSURE OF INTERNAL LOANS.—

(1) IN GENERAL.—Subsection (i)(3)(C) of such section is amended—

(A) by striking "and" at the end,

(B) by inserting "(i)" after "(C)", and

(C) by adding at the end the following new clauses:

"(ii) shall require the organization to provide and supply information (described in section 1866(b)(2)(C)(ii)) in the manner such information is required to be provided or supplied under that section;

"(iii) shall require the organization to notify the Secretary of loans and other special financial arrangements which are made between the organization and subcontractors, affiliates, and related parties; and".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to contracts as of January 1, 1987.

(f) AUTHORITY TO IMPOSE CIVIL MONEY PENALTIES.—Subsection (i) of such section is amended by adding at the end the following new paragraph:

"(6)(A) Any eligible organization with a risk-sharing contract under this section that fails substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under such contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals, is subject to a civil money penalty of not more than $10,000 for each such failure.

"(B) The provisions of section 1128A (other than subsection (a)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.".

(g) STUDY OF AAPCC AND ACR.—The Secretary of Health and Human Services shall provide, through contract with an appropriate organization, for a study of the methods by which—

(1) the adjusted average per capita cost ("AAPCC", as defined in section 1876(a)(4) of the Social Security Act) can be refined to more accurately reflect the average cost of providing care to different classes of patients, and

(2) the adjusted community rate ("ACR", as defined in section 1876(e)(3) of such Act) can be refined.

The Secretary shall submit to Congress, by not later than January 1, 1988, specific legislative recommendations concerning methods by which the calculation of the AAPCC and the ACR can be refined.

(h) ALLOWING MEDICARE BENEFICIARIES TO DISENROLL AT A LOCAL SOCIAL SECURITY OFFICE.—The Secretary of Health and Human Services shall provide that individuals enrolled with an eligible organization under section 1876 of the Social Security Act may disenroll, on and after June 1, 1987, at any local office of the Social Security Administration.

(i) USE OF RESERVE FUNDS.—Notwithstanding any provision of section 1876(g)(5) of the Social Security Act (42 U.S.C. 1395mm(g)(5)) to the contrary, funds reserved by an eligible organization under such section before the date of the enactment of this Act may be applied, at the organization's option, to offset the amount of any reduction in payment amounts to the organization effected under Public Law 99-177 during fiscal year 1986.

SEC. 9313. PROVISIONS RELATING TO IMPROVEMENT OF QUALITY OF CARE.

(a) PERMITTING PROVIDER REPRESENTATION OF BENEFICIARIES.—

(1) IN GENERAL.—Section 1869(b)(1) of the Social Security Act (42 U.S.C. 1395ff(b)(1)) is amended by adding at the end the following new sentence: "Sections 206(a), 1102, and 1871 shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this subsection by a person that furnishes or supplies the individual, directly or indirectly, with services or items solely on the basis that the person furnishes or supplies the individual with such a service or item. Any person that furnishes services or items to an individual may not represent an individual under this subsection with respect to the issue described in section 1879(a)(2) unless the person has waived any rights for payment from the beneficiary with respect to the services or items involved in the appeal. If a person furnishes services or items to an individual and represents the individual under this subsection, the person may not impose any financial liability on such individual in connection with such representation.".

(2) TREATMENT OF COSTS OF UNSUCCESSFUL APPEAL.—Section 1861(v)(1) of such Act (42 U.S.C. 1395x(v)(1)) is amended by adding at the end the following new subparagraph:

"(R) In determining such reasonable cost, costs incurred by a provider of services representing a beneficiary in an unsuccessful appeal of a determination described in section 1869(b) shall not be allowable as reasonable costs.".

(3) EFFECTIVE DATE.—The amendments made by this paragraph take effect on the date of the enactment of this Act.

(b) PERMITTING REVIEW OF TECHNICAL DENIALS.—

(1) IN GENERAL.—Section 1869 of such Act is further amended—

(A) in subsection (a), by inserting before "shall" the following: "and any other determination with respect to a claim for benefits under part A", and

(B) in subsection (b)(1)—

(i) by striking "or" at the end of subparagraph (B),

(ii) by inserting ", or" at the end of subparagraph (C), and

(iii) by inserting after subparagraph (C) the following new subparagraph:

"(D) any other denial (other than under part B of title XI) of a claim for benefits under part A or a claim for benefits with respect to home health services under part B,".

(2) EFFECTIVE DATE.—The amendments made by this subsection take effect on the date of the enactment of this Act.

(c) PROHIBITION OF CERTAIN PHYSICIAN INCENTIVE PLANS.—

(1) MAKING CERTAIN PLANS SUBJECT TO CIVIL MONETARY PENALTIES.—Section 1128A of the Social Security Act (42 U.S.C. 1320a-7a) is amended—

(A) by striking "subsection (a)" each place it appears and inserting "subsection (a) or (b)",

(B) in subsection (a)(1), by striking "(h)(1)" and "(h)(2)" and inserting "(i)(1)" and "(i)(2)", respectively,

(C) in subsection (f), by striking "subsection (d)" and inserting "subsection (e)",

(D) by redesignating subsections (b) through (h) as subsections (c) through (i), respectively, and

(E) by inserting after subsection (a) the following new subsection:

"(b)(1) If a hospital, an eligible organization with a risk-sharing contract under section 1876, or an entity with a contract under section 1903(m) knowingly makes a payment, directly or indirectly, to a physician as an inducement to reduce or limit services provided with respect to individuals who—

"(A) are entitled to benefits under part A or part B of title XVII or to medical assistance under a State plan approved under title XIX,

"(B) in the case of an eligible organization or an entity, are enrolled with the organization or entity, and

"(C) are under the direct care of the physician,

the hospital or organization shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each such individual with respect to whom the payment is made.

"(2) Any physician who knowingly accepts receipt of a payment described in paragraph (1) shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for individual described in such paragraph with respect to whom the payment is made.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to—

(A) payments by hospitals occurring more than 6 months after the date of the enactment of this Act, and

(B) payments by eligible organizations or entities occurring on or after April 1, 1989.

(3) STUDY.—The Secretary of Health and Human Services shall report to Congress, not later than January 1, 1988, concerning incentive arrangements offered by health maintenance organizations and competitive medical plans to physicians. The report shall—

(A) review the type of incentive arrangements in common use,

(B) evaluate their potential to pressure improperly physicians to reduce or limit services in a medically inappropriate manner, and

(C) make recommendations concerning providing for an exception, to the prohibition contained in section 1128A(b) of the Social Security Act, for incentive arrangements that may be used by such organizations and plans to encourage efficiency in the utilization of medical and other services but that do not have a substantial potential for adverse effect on quality.

(d) STUDY TO DEVELOP A STRATEGY FOR QUALITY REVIEW AND ASSURANCE.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall arrange for a study to design a strategy for reviewing and assuring the quality of care for which payment may be made under title XVIII of the Social Security Act.

(2) ITEMS INCLUDED IN STUDY.—Among other items, the study shall—

(A) identify the appropriate considerations which should be used in defining "quality of care";

(B) evaluate the relative roles of structure, process, and outcome standards in assuring quality of care;

(C) develop prototype criteria and standards for defining and measuring quality of care;

(D) evaluate the adequacy and focus of the current methods for measuring, reviewing, and assuring quality of care;

(E) evaluate the current research on methodologies for measuring quality of care, and suggest areas of research needed for further progress;

(F) evaluate the adequacy and range of methods available to correct or prevent identified problems with quality of care;

(G) review mechanisms available for promoting, coordinating, and supervising at the national level quality review and assurance activities; and

(H) develop general criteria which may be used in establishing priorities in the allocation of funds and personnel in reviewing and assuring quality of care.

(3) REPORT.—The Secretary shall submit to Congress, not later than 2 years after the date of the enactment of this Act, a report on the study. Such report shall address the items described in paragraph (2) and shall include recommendations with respect to strengthening quality assurance and review activities for services furnished under the medicare program.

(4) ARRANGEMENTS FOR STUDY.—(A) The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in this subsection. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(B) In developing plans for the conduct of the study, the Secretary shall assure that consumer and provider groups, peer review organizations, the Joint Commission on Accreditation of Hospitals, professional societies, and private purchasers of care with experience and expertise in the monitoring of the quality of care are consulted.

(5) COORDINATION.—The Secretary shall designate an office with responsibilities for coordinating studies, under this subsection and other authority, relating to the quality of services furnished to medicare and medicaid beneficiaries, in particular studies relating to the evaluation of the prospective payment system on the quality of health care provided to medicare beneficiaries. These responsibilities shall include assessing the feasibility and costs of alternative studies in relation to their importance, overseeing and coordinating access to needed data, and maintaining a clearinghouse for both public and private sector studies.

SEC. 9314. DIRECT COSTS OF GRADUATE MEDICAL EDUCATION.

(a) CLARIFYING COUNTING OF TIME SPENT IN OUTPATIENT SETTINGS.—Section 1886(h)(4) of such Act, as amended by section 1895(b) of the Tax Reform Act of 1986, is amended by adding at the end the following new subparagraph:

"(E) COUNTING TIME SPENT IN OUTPATIENT SETTINGS.—Such rules shall provide that only time spent in activities relating to patient care shall be counted and that all the time so spent by a resident under an approved medical residency training program shall be counted towards the determination of full-time equivalency, without regard to the setting in which the activities are performed, if the hospital incurs all, or substantially all, of the costs for the training program in that setting.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to payments for approved residency training programs as of July 1, 1987.

SEC. 9315. PAYMENTS FOR HOME HEALTH SERVICES.

(a) LIMITATIONS ON PAYMENT FOR HOME HEALTH SERVICES.—Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)) is amended—

(1) by inserting "(i)" after "(L)", and

(2) by striking "the 75th percentile" and all that follows through "as the Secretary may determine." and inserting in lieu thereof "for cost reporting periods beginning on or after—

"(I) July 1, 1985, and before July 1, 1986, 120 percent,

"(II) July 1, 1986, and before July 1, 1987, 115 percent, or

"(III) July 1, 1987, 112 percent,

of the mean of the labor-related and nonlabor per visit costs for free standing home health agencies.

"(ii) Effective for cost reporting periods beginning on or after July 1, 1986, such limitations shall be applied on an aggregate basis for the agency, rather than on a discipline specific basis, with appropriate adjustment for administrative and general costs of hospital-based agencies.".

(b) CONSIDERATIONS IN ESTABLISHING LIMITS.—In establishing limitations under section 1861(v)(1)(L) of the Social Security Act on payment for home health services for cost reporting periods beginning on or after July 1, 1986, the Secretary of Health and Human Services shall—

(1) base such limitations on the most recent data available, which data may be for cost reporting periods beginning no earlier than October 1, 1983; and

(2) take into account the changes in costs of home health agencies for billing and verification procedures that result from the Secretary's changing the requirements for such procedures, to the extent the changes in costs are not reflected in such data.

Paragraph (2) shall apply to changes in requirements effected before, on, or after July 1, 1986.

(c) GAO REPORT.—The Comptroller General shall study and report to Congress, not later than February 1, 1988, on—

(1) the appropriateness and impact on medicare beneficiaries of applying the per visit cost limits for home health services under section 1861(v)(1)(L) of the Social Security Act on a discipline-specific basis, rather than on an aggregate basis, for all home health services furnished by an agency, and

(2) the appropriateness of the percentage limits established under such section.

SEC. 9316. ESTABLISHMENT OF PATIENT OUTCOME ASSESSMENT RESEARCH PROGRAM.

(a) IN GENERAL.—Section 1875 of the Social Security Act (42 U.S.C. 1395ll) is amended by adding at the end the following new subsection:

"(c)(1) The Secretary shall establish a patient outcome assessment research program (in this subsection referred to as the 'research program') to promote research with respect to patient outcomes of selected medical treatments and surgical procedures for the purpose of assessing their appropriateness, necessity, and effectiveness. The research program shall include—

"(A) reorganization of data relating to claims under parts A and B of this title in a manner that facilitates research with respect to patient outcomes,

"(B) assessments of the appropriateness of admissions and discharges,

"(C) assessments of the extent of professional uncertainty regarding efficacy,

"(D) development of improved methods for measuring patient outcomes,

"(E) evaluations of patient outcomes, and

"(F) evaluation of the effects on physicians' practice patterns of the dissemination to physicians and peer review organizations with contracts under part B of title XI of the findings of the research conducted under subparagraphs (B), (C), (D), and (E).

"(2) In selecting treatments and procedures to be studied, the Secretary shall give priority to those medical and surgical treatments and procedures—

"(A) for which data indicate a highly (or potentially highly) variable pattern of utilization among beneficiaries under this title in different geographic areas, and

"(B) which are significant (or potentially significant) for purposes of this title in terms of utilization by beneficiaries, length of hospitalization associated with the treatment or procedure, costs to the research program, and risk involved to the beneficiary.

"(3) For purposes of carrying out the research program, there are authorized to be appropriated—

"(A) from the Federal Hospital Insurance Trust Fund $4,000,000 for fiscal year 1987 and $5,000,000 for each of fiscal years 1988 and 1989, and

"(B) from the Federal Supplementary Medical Insurance Trust Fund $2,000,000 for fiscal years 1987 and $2,500,000 for each of fiscal years 1988 and 1989.

"(4) Not less than 90 percent of the amount appropriated for any fiscal year to

carry out the research program shall be used to fund grants to, and cooperative agreements with, non-Federal entities to conduct research described in paragraph (1). The remainder may be used by the Secretary to provide such research by Federal entities and for administrative costs.

"(5) The research program shall be administered by the National Center for Health Services Research and Health Care Technology established under section 305 of the Public Health Service Act (in this subsection referred to as the 'Center'). The Center shall establish application procedures for grants and cooperative agreements, and shall establish peer review panels to review all such applications and all research findings. The Center shall consult with the council on health care technology (established under a grant under section 309 of the Public Health Service Act) in establishing the scope and priorities for the research program and shall report periodically to any such council on the status of the program.

"(6) The Secretary shall make available data derived from the programs under this title and other programs administered by the Secretary for use in the research program.

"(7) The Center shall report to the Committees on Finance and Appropriations of the Senate and the Committees on Ways and Means, Energy and Commerce, and Appropriations of the House of Representatives not later than 18 months after the date of the enactment of this Act, and annually thereafter, with respect to the findings under the research program. In cooperation with appropriate medical specialty groups, the Center shall disseminate such findings as widely as possible, including disseminating such findings to each peer review organization which has a contract under part B of title XI."

(b) PERMITTING SERVICES TO BE PROVIDED UNDER RESEARCH PROGRAM.—Section 1862(a)(1) of such Act (42 U.S.C. 1395y(a)(1)) is amended—

(1) by striking "and" at the end of subparagraph (C),

(2) by striking the semicolon at the end of subparagraph (D) and inserting ", and", and

(3) by adding at the end the following new subparagraph:

"(E) in the case of research conducted pursuant to section 1875(c), which is not reasonable and necessary to carry out the purposes of that section;".

SEC. 9317. IMPROVEMENTS IN CIVIL MONETARY PENALTY AND EXCLUSION PROVISIONS.

(a) COLLATERAL ESTOPPEL EFFECT OF PRIOR FEDERAL CRIMINAL CONVICTIONS.—Section 1128A(c) of the Social Security Act (42 U.S.C. 1320a-7a(c)), as redesignated by section 9313(c), is amended by adding at the end the following new paragraph:

"(3) In a proceeding under subsection (a) or (b) which—

"(A) is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal crime charging fraud or false statments, and

"(B) involves the same transaction as in the criminal action,

the person is estopped from denying the essential elements of the criminal offense.".

(b) AUTHORITY OF HEARING OFFICER TO SANCTION MISCONDUCT.—Such section is further amended by adding at the end the following new paragraph:

"(4) The official conducting a hearing under this section may sanction a person, including any party or attorney, for failing to comply with an order or procedure, failing to defend an action, or other misconduct as would interfere with the speedy, orderly, or fair conduct of the hearing. Such sanction shall reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

"(A) in the case of refusal to provide or permit discovery, drawing negative factual inferences or treating such refusal as an admission by deeming the matter, or certain facts, to be established,

"(B) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense,

"(C) striking pleadings, in whole or in part,

"(D) staying the proceedings,

"(E) dismissal of the action,

"(F) entering a default judgment,

"(G) ordering the party or attorney to pay attorneys' fees and other costs caused by the failure or misconduct, and

"(H) refusing to consider any motion or other action which is not filed in a timely manner.".

(c) CLARIFICATION OF EXCLUSION AUTHORITY FOR CERTAIN OFFENDERS.—Section 1128 of such Act (42 U.S.C. 1320a-7) is amended by adding at the end the following new subsection:

"(f) For purposes of subsection (a), a physician or other individual is considered to have been 'convicted' of a criminal offense—

"(1) when a judgment of conviction has been entered against the physician or individual by a Federal, State, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;

"(2) when there has been a finding of guilt against the physician or individual by a Federal, State, or local court;

"(3) when a plea of guilty or nolo contendere by the physician or individual has been accepted by a Federal, State, or local court; or

"(4) when the physician or individual has entered into participation in a first offender or other program where judgment of conviction has been withheld.".

(d) EFFECTIVE DATES.—(1) The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, without regard to when the criminal conviction was obtained, but shall only apply to a conviction upon a plea of nolo contendere tendered after the date of the enactment of this Act.

(2) The amendment made by subsection (b) shall apply to failures or misconduct occurring on or after the date of the enactment of this Act.

(3) The provisions—

(A) of paragraphs (1), (2), and (3) of section 1128(f) of the Social Security Act (as added by the amendment made by subsection (c)) shall apply to judgments entered, findings made, and pleas entered, before, on, or after the date of the enactment of this Act, and

(B) of paragraph (4) of such section shall apply to participation in a program entered into on or after the date of the enactment of this Act.

SEC. 9318. HOSPITAL PROTOCOLS FOR ORGAN PROCUREMENT AND STANDARDS FOR ORGAN PROCUREMENT AGENCIES.

(a) IN GENERAL.—Title XI of the Social Security Act is amended by inserting after section 1137 the following new section:

"HOSPITAL PROTOCOLS FOR ORGAN PROCUREMENT AND STANDARDS FOR ORGAN PROCUREMENT AGENCIES

"SEC. 1138. (a)(1) The Secretary shall provide that a hospital meeting the requirements of title XVIII or XIX may participate in the program established under such title only if—

"(A) the hospital establishes written protocols for the identification of potential organ donors that—

"(i) assure that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline,

"(ii) encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of such families, and

"(iii) require that an organ procurement agency designated by the Secretary pursuant to subsection (b)(1)(F) be notified of potential organ donors; and

"(B) In the case of a hospital in which organ transplants are performed, the hospital is a member of, and abides by the rules and requirements of, the Organ Procurement and Transplantation Network established pursuant to section 372 of the Public Health Service Act (in this section referred to as the 'Network').

"(2) For purposes of this subsection, the term 'organ' means a human kidney, liver, heart, lung, pancreas, and any other human organ or tissue specified by the Secretary for purposes of this subsection.

"(b)(1) The Secretary shall provide that payment may be made under title XVIII or XIX with respect to organ procurement costs attributable to payments made to an organ procurement agency only if the agency—

"(A)(i) is a qualified organ procurement organization (as described in section 371(b) of the Public Health Service Act) that is operating under a grant made under section 371(a) of such Act, or (ii) has been certified or recertified by the Secretary within the previous two years as meeting the standards to be a qualified organ procurement organization (as so described);

"(B) meets the requirements that are applicable under such title for organ procurement ce with medical criteria and the policies of the Network; and

"(F) is designated by the Secretary as an organ procurement organization payments to which may be treated as organ procurement costs for purposes of reimbursement under such title.

"(2) The Secretary may not designate more than one organ procurement organization for each service area (described in section 371(b)(1)(E) of the Public Health Service Act) under paragraph (1)(F).".

(b) EFFECTIVE DATES.—(1) Section 1138(a) of the Social Security Act shall apply to hospitals participating in the programs under titles XVIII and XIX of such Act as of October 1, 1987.

(2) Section 1138(b) of such Act shall apply to costs of organs procured on or after October 1, 1987.

SEC. 9319. MEDICARE AS SECONDARY PAYER; COVERAGE REQUIREMENTS FOR CERTAIN OTHER PAYERS.

(a) MEDICARE SECONDARY FOR DISABLED EMPLOYEES OF CERTAIN LARGE EMPLOYERS.—Section 1862(b) of the Social Security Act (42 U.S.C. 1395y(b)) is amended by adding at the end the following new paragraph:

"(4)(A)(i) A large group health plan may not take into account that an active individual is eligible for or receives benefits

under this title under section 226(b), other than an individual who is, or would upon application be, entitled to benefits under section 226A.

"(ii) Payment may not be made under this title, except as provided in clause (iii), with respect to any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to the item or service as required under clause (i).

"(iii) Any payment under this title with respect to any item or service to which clause (i) applies shall be conditioned on reimbursement to the appropriate Trust Fund established by this title. In order to recover payment made under this title for the item or service, the United States may bring an action against any entity which is required under this subsection (a) to pay with respect to the item or service (and may, in accordance with paragraph (5), collect double damages against that entity), or against any other entity that has received payment from that entity with respect to the item or service, and may join or intervene in any action related to the events that gave rise to the need for the item or service. The United States shall be subrogated (to the extent of payment made under this title for an item or service) to any right under clause (i) of an individual or any other entity to payment with respect to the item or service. The Secretary may waive (in whole or in part) the provisions of this clause in the case of an individual claim if the Secretary determines that the waiver is in the best interests of the program established under this title.

"(B) In this paragraph:

"(i) The term 'large group health plan' has the meaning given such term in section 5000(b) of the Internal Revenue Code of 1986.

"(ii) The term 'active individual' means an employee (as may be defined in regulations), the employer, an individual associated with the employer in a business relationship, or a member of the family of any of those persons.

"(C) The provisions of subparagraph (B) of paragraph (3) shall apply to coordination of payment under this paragraph in the case of large group health plans in the same manner as they apply to coordination of payment under paragraph (3) in the case of group health plans.

"(D) The preceding provisions of this paragraph shall only apply to items and services furnished on or after January 1, 1987, and before January 1, 1992.".

(b) ESTABLISHMENT OF PRIVATE CAUSE OF ACTION WHERE MEDICARE SECONDARY.—Such section is further amended by adding at the end the following new paragraph:

"(5) There is hereby created a private cause of action for damages (which shall be in an amount double the amount otherwise provided) in the case of a workmen's compensation law or plan, automobile or liability insurance policy or plan or no fault insurance plan, group health plan, or large group health plan which is made a primary payer under paragraph (1), (2), (3), or (4), respectively, and which fails to provide for primary payment (or appropriate reimbursement) in accordance with such respective paragraphs.".

(c) SPECIAL ENROLLMENT PERIODS.—

(1) Section 1837(i)(1) of such Act (42 U.S.C. 1395p(i)(1)) is amended by adding at the end the following: "In the case of an individual who has not attained the age of 65, at the time the individual first satisfies paragraph (1) of section 1836, is enrolled in a large group health plan as an active individual (as those terms are defined in section 1862(b)(4)(B)), and has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period, there shall be a special enrollment period described in paragraph (3)(B).".

(2) Section 1837(i)(2) of such Act (42 U.S.C. 1395p(i)(2)) is amended by adding at the end the following: "In the case of an individual who has not attained the age of 65, has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual's initial enrollment period, or is an individual described in the second sentence of paragraph (1), has enrolled in such program during any subsequent special enrollment period under this subsection during which the individual was not enrolled in a large group health plan as an active individual (as those terms are defined in section 1862(b)(4)(B)), and has not terminated enrollment under this section at any time at which the individual is not enrolled in such a large group health plan as an active individual, there shall be a special enrollment period described in paragraph (3)(B).".

(3) Section 1837(i)(3) of such Act (42 U.S.C. 1395p(i)(3)) is amended—

(A) by inserting "(A)" after "(3)",

(B) by inserting "the first sentences of" after "referred to in",

(C) by adding at the end the following new subparagraph:

"(B) The special enrollment period referred to in the second sentences of paragraphs (1) and (2) is the period beginning with the first day of the first month in which the individual is no longer enrolled as an active individual in a large group health plan (as such terms are defined in section 1862(b)(4)(B)) and ending seven months later.".

(4) The second sentence of section 1839(b) of such Act (42 U.S.C. 1395r(b)) is amended by inserting before the period the following: "or months during which the individual has not attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a large group health plan as an active individual (as those terms are defined in section 1862(b)(4)(B))".

(d) TAX IMPOSED ON NONCONFORMING PLANS.—

(1) Subtitle D of the Internal Revenue Code of 1954 (relating to miscellaneous excise taxes) is amended by adding at the end the following new chapter:

"CHAPTER 47—CERTAIN LARGE GROUP HEALTH PLANS

"Sec. 5000. Certain large group health plans.

"SEC. 5000. CERTAIN LARGE GROUP HEALTH PLANS.

"(a) IMPOSITION OF TAX.—There is hereby imposed on any employer or employee organization that contributes to a nonconforming large group health plan a tax equal to 25 percent of the employer's or employee organization's expenses incurred during the calendar year for each large group health plan to which the employer or employee organization contributes.

"(b) LARGE GROUP HEALTH PLAN.—For purposes of this section, the term 'large group health plan' means a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families, that covers employees of at least one employer that normally employed at least 100 employees on a typical business day during the previous calendar year.

"(c) NONCONFORMING LARGE GROUP HEALTH PLAN.—For purposes of this section, the term 'nonconforming large group health plan' means a large group health plan that at any time during a calendar year does not comply with the requirements of section 1862(b)(4)(A)(i) of the Social Security Act.

"(d) GOVERNMENT ENTITIES.—For purposes of this section, the term 'employer' does not include a Federal or other governmental entity.".

(2) The table of chapters of subtitle D of such Code is amended by adding at the end thereof the following:

"CHAPTER 47. Certain large group health plans.".

(e) STUDY OF IMPACT ON DISABLED BENEFICIARIES AND FAMILY.—The Comptroller General shall study and report to Congress, by not later than March 1, 1990, the impact of the amendments made by this section on access of disabled individuals and members of their family to employment and health insurance. The report shall include information relating to—

(1) the number of disabled medicare beneficiaries for whom medicare has become secondary, either through their employment or the employment of a family member;

(2) the amount of savings to the medicare program achieved annually through this provision; and

(3) the effect on employment, and employment-based health coverage, of disabled individuals and family members.

(f) EFFECTIVE DATES.—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply to items and services furnished on or after January 1, 1987.

(2) The amendments made by subsection (c) shall apply to enrollments occurring on or after January 1, 1987.

SEC. 9320. PAYMENT FOR SERVICES OF CERTIFIED REGISTERED NURSE ANESTHETISTS.

(a) EXTENSION OF PASS-THROUGH FOR COSTS OF CERTIFIED REGISTERED NURSE ANESTHETISTS.—Section 2312(c) of the Deficit Reduction Act of 1984 is amended by striking "October 1, 1987." and inserting "January 1, 1989. In the case of a cost reporting period that begins before January 1, 1989, but end after such date, additional payments under the amendment made by subsection (a) shall be proportionately reduced to reflect the portion of the period occurring after such date.".

(b) COVERAGE OF SERVICES OF A CERTIFIED REGISTERED NURSE ANESTHETIST UNDER PART B.—Section 1861(s) of the Social Security Act (42 U.S.C. 1395x(s)) is amended—

(1) by redesignating paragraphs (11) through (14) as paragraphs (12) through (15), respectively;

(2) by striking "and" at the end of paragraph (9);

(3) by striking the period at the end of paragraph (10) and inserting "; and"; and

(4) by inserting after paragraph (10) the following new paragraph:

"(11) services of a certified registered nurse anesthetist (as defined in subsection (bb)).".

(c) DEFINITION OF SERVICES OF A CERTIFIED REGISTERED NURSE ANESTHETIST.—Section 1861 of such Act is amended by inserting after subsection (aa) the following new subsection:

"SERVICES OF A CERTIFIED REGISTERED NURSE ANESTHETIST

"(bb)(1) The term 'services of a certified registered nurse anesthetist' means anesthesia services and related care furnished by a certified registered nurse anesthetist (as defined in paragraph (2)) which the nurse anesthetist is legally authorized to perform as such by the State in which the services are furnished.

"(2) The term 'certified registered nurse anesthetist' means a certified registered nurse anesthetist licensed by the State who meets such education, training, and other requirements relating to anesthesia services and related care as the Secretary may prescribe. In prescribing such requirements the Secretary may use the same requirements as those established by a national organization for the certification of nurse anesthetists.".

(d) DIRECT PAYMENT FOR SERVICES.—Section 1832(a)(2)(B) of such Act (42 U.S.C. 1395k(a)(2)(B)) is amended—

(1) by striking "and" at the end of clause (i),

(2) by striking "; and" at the end of clause (ii) and inserting ", and", and

(3) by adding at the end the following new clause:

"(iii) services of a certified registered nurse anesthetist; and".

(e) AMOUNT OF PAYMENT.—(1) Section 1833(a)(1) of such Act (42 U.S.C. 1395l(a)(1)) is amended by striking "and' at the end of subparagraph (E), and by adding at the end the following: "and (H) with respect to services of a certified registered nurse anesthetist under section 1861(s)(11), the amounts paid shall be 80 percent of the lesser of the actual charge or the fee schedule for such services established by the Secretary in accordance with subsection (l),".

(2) Section 1833 of such Act is further amended by adding at the end the following new subsection:

"(l)(1) The Secretary shall establish a fee schedule for services of certified registered nurse anesthetists under section 1861(s)(11).

"(2) Except as provided in paragraph (3), the fee schedule established under paragraph (1) shall be initially based on audited data from cost reporting periods ending in fiscal year 1985. The fee schedule shall be adjusted annually (to become effective on January 1 of each calendar year) by the percentage increase in the MEI (as defined in section 1842(b)(4)(E)(ii)) for that year.

"(3)(A) In establishing the initial fee schedule for those services, the Secretary shall adjust the fee schedule to the extent necessary to ensure that the estimated total amount which will be paid under this title for those services plus applicable coinsurance in 1989 will equal the estimated total amount which would be paid under this title for those services in 1989 if the services were included as inpatient hospital services and payment for such services was made under part A in the same manner as payment was made in fiscal year 1987, adjusted to take into account changes in prices and technology relating to the administration of anesthesia.

"(B) The Secretary shall also reduce the prevailing charge of physicians for medical direction of a certified registered nurse anesthetist, or the fee schedule for services of certified registered nurse anesthetists, or both, to the extent necessary to ensure that the estimated total amount which will be paid under this title plus applicable coinsurance for such medical direction and such services in 1989 and 1990 will not exceed the estimated total amount which would have been paid but for the enactment of the amendments made by section 9320 of the Omnibus Budget Reconciliation Act of 1986. A reduced prevailing charge under this subparagraph shall become the prevailing charge but for subsequent years for purposes of applying the economic index under the fourth sentence of section 1842(b)(3).

"(4) In establishing the fee schedule under paragraph (1), the Secretary may utilize a system of time units, a system of base and time units, or any appropriate methodology. The Secretary may establish a nationwide fee schedule or adjust the fee schedule for geographic areas (as the Secretary may determine to be appropriate).

"(5)(A) Payment for the services of a certified registered nurse anesthetist (for which payment may otherwise be made under this part) may be made on the basis of a claim or request for payment presented by the certified registered nurse anesthetist furnishing such services, or by a hospital, physician, or group practice with which the certified registered nurse anesthetist furnishing such services has an employment or contractual relationship that provides for payment to be made under this part for such services to such hospital, physician, or group practice.

"(B)(i) Payment for the services of a certified registered nurse anesthetist under this part may be made only on an assignment-related basis, and any such assignment agreed to by a certified registered nurse anesthetist shall be binding upon any other person presenting a claim or request for payment for such services.

"(ii) Except for deductible and coinsurance amounts applicable under this section, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services of a certified registered nurse anesthetist for which payment may be made under this part only on an assignment-related basis is subject to a civil monetary penalty of not to exceed $2,000 for each such bill or request. Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1128A with respect to actions described in subsection (a) of that section.

"(C) No hospital that presents a claim or request for payment for services of a certified nurse anesthetist under this part may treat any uncollected coinsurance amount imposed under this part with respect to such services as a bad debt of such hospital for purposes of this title.

"(6)(A) If an adjustment under paragraph (3)(B) results in a reduction in the reasonable charge for a physicians' service and a nonparticipating physician furnishes the service to an individual entitled to benefits under this part, (subject to subparagraph (D)), the physician may not charge the individual more than the limiting charge (as defined in subparagraph (B)) plus (for services furnished during the 12-month period beginning on the effective date of the reduction) 1/2 of the amount by which the physician's actual charges for the service for the previous 12-month period exceeds the limiting charge.

"(B) In subparagraph (A), the term 'limiting charge' means, with respect to a service, 125 percent of the prevailing charge for the service after the reduction referred to in subparagraph (A).

"(C) If a physician knowingly and willfully imposes charges in violation of subparagraph (A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

"(D) This paragraph shall not apply to services furnished after the earlier of (i) December 31, 1990, or (ii) one-year after the date the Secretary reports to Congress, under section 1845(e)(3), on the development of the relative value scale under section 1845.".

(3) Section 1842(j)(2) of such Act (42 U.S.C. 1395u(j)(2)) is amended by striking "paragraph (1) or subsection (k)" and inserting ", this paragraph".

(f) NOT TREATED AS PART OF INPATIENT HOSPITAL SERVICES.—Section 1861(b)(4) of such Act (42 U.S.C. 1395x(b)(4)) is amended by inserting before the semicolon the following: ", anesthesia services provided by a certified registered nurse anesthetist".

(g) CONFORMING AMENDMENTS TO HOSPITAL PAYMENTS.—(1) Section 1886(a)(4) of such Act (42 U.S.C. 1395ww(a)(4)) is amended by striking ", costs of anesthesia services provided by a certified registered nurse anesthetist,".

(2) Section 1886(d)(5) of such Act (42 U.S.C. 1395ww(d)(5)) is amended by striking subparagraph (E).

(h) OTHER CONFORMING AMENDMENTS.—(1) Section 1862(a)(14) of such Act (42 U.S.C. 1395y(a)(14)) is amended by inserting before the period the following: "or are services of a certified registered nurse anesthetist".

(2) Section 1866(a)(1)(H) of such Act (42 U.S.C. 1395cc(a)(1)(H)) is amended by inserting ", and other than services of a certified registered nurse anesthetist" after "1862(a)(14)".

(3) Sections 1864(a), 1865(a), 1902(a)(9)(C), and 1915(a)(1)(B)(ii)(I) of such Act (42 U.S.C. 1395aa(a), 1395bb(a), 1396a(a)(9)(C), 1396n(a)(1)(B)(ii)(I)) are each amended by striking "paragraphs (11) and (12)" and inserting "paragraphs (12) and (13)".

(i) EFFECTIVE DATE.—The amendments made by this section (other than subsection (a)) shall apply to services furnished on or after January 1, 1989.

(j) CONSTRUCTION.—Nothing in this section or the amendments made by this section shall contravene provisions of State law relating to the practice of medicine or nursing or State law requirements or institutional requirements regarding the administration of anesthesia and its medical direction or supervision.

SEC. 9321. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PARTS A AND B.

(a) TREATMENT OF GROUP PURCHASING VENDOR AGREEMENTS.—

(1) IN GENERAL.—Section 1877(b)(3) of the Social Security Act (42 U.S.C. 1395nn(b)(3)) is amended—

(A) by striking "and" at the end of subparagraph (A),

(B) by striking the period at the end of subparagraph (B) and inserting "; and", and

(C) by adding at the end the following:

"(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed under this title if—

"(i) the person has a written contract, with each such individual or entity which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage of the value of the purchases made by each such individual or entity under the contract, and

"(ii) in the case of an entity that is a provider of services, the person discloses (in such form and manner as the Secretary re-

quires) to the entity and, upon request, to the Secretary the amount received from each such vendor with respect to purchases made by or on behalf of the entity.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) apply to payments made before, on, or after the date of the enactment of this Act.

(b) EXTENSION AND CLARIFICATION OF COMPETITIVE CONTRACTING AUTHORITY.—Section 2326(a) of the Deficit Reduction Act of 1984 is amended—

(1) by striking "of the fiscal years" and all that follows through ", the Secretary" and inserting "fiscal year (beginning with fiscal year 1985 and ending with fiscal year 1989), the Secretary", and

(2) by inserting "or cost reimbursement provisions under sections 1816(c) or 1842(c) of such Act" after "such Act" the second place it appears.

(c) TREATMENT OF CAPITAL-RELATED REGULATIONS.—

(1) PROHIBITION OF ISSUANCE OF FINAL REGULATIONS ON CAPITAL-RELATED COSTS AS PART OF PAYMENT FOR OPERATING COSTS BEFORE SEPTEMBER 1, 1987.—Notwithstanding any other provision of law (except as provided in paragraph (3)), the Secretary of Health and Human Services may not issue, in final form, after September 1, 1986, and before September 1, 1987, any regulation that changes the methodology for computing the amount of payment for capital-related costs (as defined in paragraph (4)) for inpatient hospital services under part A of title XVIII of the Social Security Act. Any regulation published in violation of the previous sentence before the date of the enactment of this Act is void and of no effect.

(2) NOT INCLUDING CAPITAL-RELATED REGULATIONS IN BUDGET BASELINE.—Any reference in law to a regulation issued in final form or proposed by the Health Care Financing Administration pursuant to sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act shall not include any regulation issued or proposed with respect to capital-related costs (as defined in paragraph (4)).

(3) EXCEPTION.—Paragraph (1) shall not apply to any regulation issued for the sole purpose of implementing section 1886(g)(3)(A) and (B) of the Social Security Act (as amended by section 9303(a) of this Act).

(4) CAPITAL-RELATED COSTS DEFINED.—In this subsection, the term "capital-related costs" means those capital-related costs that are specifically excluded, under the second sentence of "operating costs of inpatient hospital services" (as defined in that section) for cost reporting periods beginning prior to October 1, 1987.

(d) LIMITATION ON AUTHORITY TO ISSUE CERTAIN FINAL REGULATIONS AND INSTRUCTIONS RELATING TO HOSPITALS OR PHYSICIANS.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute and except as provided under subsection (c) with respect to a regulation described in that subsection, the Secretary of Health and Human Services is not authorized to issue in final form after the date of the enactment of this Act and before September 1, 1987, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in fiscal year 1988 of more than $50,000,000, and which relates to hospitals or physicians.

(e) 60-DAY NOTICE FOR PROPOSED REGULATIONS.—

(1) IN GENERAL.—Section 1871 of the Social Security Act (42 U.S.C. 1395hh) is amended by inserting "(a)" after "1871." and by adding at the end the following new subsection:

"(b)(1) Except as provided in paragraph (2), before issuing in final form any regulation under subsection (a), the Secretary shall provide for notice of the proposed regulation in the Federal Register and a period of not less than 60 days for public comment thereon.

"(2) Paragraph (1) shall not apply where—

"(A) a statute specifically permits a regulation to be issued in interim final form or otherwise with a shorter period for public comment,

"(B) a statute establishes a specific deadline for the implementation of a provision and the deadline is less than 150 days after the date of the enactment of the statute in which the deadline is contained, or

"(C) subsection (b) of section 553 of title 5, United States Code, does not apply pursuant to subparagraph (B) of such subsection.".

(2) CONFORMING AMENDMENTS.—(A) Section 1886(e)(3)(A) of such Act (42 U.S.C. 1395ww(e)(3)(A)) is amended by striking "April" and inserting "March".

(B) Section 1886(e)(5)(A) of such Act is amended by striking "June" and inserting "May".

(3) EFFECTIVE DATES.—

(A) The amendments made by paragraph (1) shall apply to notices of proposed rulemaking issued after the date of the enactment of this Act.

(B) The amendments made by paragraph (2) shall take effect beginning with fiscal year 1989.

Part 3—Provisions Relating to Medicare Part B

SEC. 9331. PAYMENT FOR PHYSICIANS' SERVICES.

(a) DETERMINATION OF MAXIMUM ALLOWABLE PREVAILING CHARGES FOR PHYSICIANS' SERVICES.—

(1) IN GENERAL.—Section 1842(b)(4)(A) of the Social Security Act (42 U.S.C. 1395u(b)(4)(A)) is amended by striking clause (iii) and inserting the following:

"(iii) In determining the maximum allowable prevailing charges which may be recognized consistent with the index described in the fourth sentence of paragraph (3) for physicians' services furnished on or after January 1, 1987, by participating physicians, the Secretary shall treat the maximum allowable prevailing charges recognized as of December 31, 1986, under such sentence with respect to participating physicians as having been justified by economic changes.

"(iv) In determining the prevailing charge level under the third and fourth sentences of paragraph (3) for a physicians' service furnished on or after January 1, 1987, by a nonparticipating physician, the Secretary shall set the level at 96 percent of the prevailing charge levels established under such sentences with respect to such service furnished by participating physicians.

"(v) Beginning with 1987, the percentage increase in the MEI (as defined in subparagraph (E)(ii)) for each year shall be the same for nonparticipating physicians as for participating physicians.".

(2) CONFORMING AMENDMENT.—Section 1842(b)(4)(C) of such Act is amended—

(A) by striking "(i)" after "(C)", and

(B) by striking clause (ii).

(3) DEFINITIONS.—Section 1842(b)(4) of such Act is further amended by adding at the end the following new subparagraph:

"(E) In this section:

"(i) The term 'participating physician' refers, with respect to the furnishing of services, to a physician who at the time of furnishing the services is a participating physician (under subsection (h)(1)), and the term 'nonparticipating physician' refers, with respect to the furnishing of services, a physician who at the time of furnishing the services is not a participating physician.

"(ii) The term 'percentage increase in the MEI' means, with respect to physicians' services furnished in a year, the percentage increase in the medicare economic index (referred to in the fourth sentence of paragraph (3)) applicable to such services furnished as of the first day of that year.".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services furnished on or after January 1, 1987.

(b) GENERAL LIMIT ON ACTUAL CHARGES FOR NONPARTICIPATING PHYSICIANS.—

(1) IN GENERAL.—Section 1842(j)(1) of such Act is amended—

(A) by inserting "(A)" after "(j)(1)", and

(B) by adding at the end the following new subparagraph:

"(B)(i) During any period (on or after January 1, 1987, and before the date specified in clause (ii)), during which a physician is a nonparticipating physician, the Secretary shall monitor each such physician's actual charges for physicians' services furnished to individuals enrolled under this part. If such physician knowingly and willfully bills for such a service a physician's actual charge (as defined in supbaragraph (C)(vi) in excess of the maximum allowable actual charge determined under subparagraph (C) for that service, the Secretary may apply sanctions against such physician in accordance with paragraph (2).

"(ii) Clause (i) shall not apply to services furnished after the earlier of (I) December 31, 1990, or (II) one-year after the date the Secretary reports to Congress, under section 1845(e)(3), on the development of the relative value scale under section 1845.

"(C)(i) For a particular physicians' service furnished by a nonparticipating physician to individuals enrolled under this part during a year, for purposes of subparagraph (B), the maximum allowable actual charge is determined as follows: If the physician's actual charge for that service in the previous year was—

"(I) less than 115 percent of the prevailing charge for the year involved for such service furnished by nonparticipating physicians, the maximum allowable actual charge for the year involved is the greater of the maximum allowable actual charge described in subclause (II) or the charge described in clause (ii), or

"(II) equal to, or greater than, 115 percent of the prevailing charge for the year involved for such service furnished by nonparticipating physicians, the maximum allowable actual charge is 101 percent of the physician's maximum allowable actual charge for the service for the previous year.

"(ii) For purposes of clause (i)(I), the charge described in this clause for a particular physicians' service furnished in a year is the maximum allowable actual charge for the service of the physician for the previous year plus the product of (I) the applicable fraction (as defined in clause (iii)) and (II) the amount by which 115 percent of the prevailing charge for the year involved for such service furnished by nonparticipating physicians, exceeds the physician's maximum allowable actual charge for the service for the previous year.

"(iii) In clause (ii), the 'applicable fraction' is—

"(I) for 1987, ¼,

"(II) for 1988, ⅓,

"(III) for 1989, ½, and

"(IV) for any subsequent year, 1.

"(iv) For purposes of determining the maximum allowable actual charge under clauses (i) and (ii) for 1987, in the case of a physicians' service for which the physician has actual charges for the calendar quarter beginning on April 1, 1984, the 'maximum allowable actual charge' for 1986 is the physician's actual charge for such service furnished during such quarter.

"(v) For purposes of determining the maximum allowable actual charge under clauses (i) and (ii) for a year after 1987, in the case of a physicians' service for which the physician has no actual charges for the calendar quarter beginning on April 1, 1984, and for which a maximum allowable actual charge has not been previously established under this clause, the 'maximum allowable actual charge' for the previous year shall be the 50th percentile of the customary charges for the service (weighted by frequency of the service) performed by nonparticipating physicians in the locality during the 12-month period ending June 30 of that previous year.

"(vi) For purposes of this subparagraph and subparagraph (B), a 'physician's actual charge' for a physicians' service furnished in a year or other period is the weighted average (or, at the option of the Secretary for a service furnished in the calendar quarter beginning April 1, 1984, the median) of the physician's charges for such service furnished in the year or other period.".

(2) PROVISION OF ACTUAL CHARGE INFORMATION BY CARRIER TO NONPARTICIPATING PHYSICIANS.—Section 1842(b)(3) of such Act is amended—

(A) by striking "and" at the end of subparagraph (E),

(B) by inserting "and" at the end of subparagraph (F), and

(C) by inserting after subparagraph (F) the following new subparagraph:

"(G) will provide to each nonparticipating physician, at the beginning of each year, a list of the physician's maximum allowable actual charges (established under subsection (j)(1)(C)) for the year for the physicians' services mostly commonly furnished by that physician;".

(3) CONFORMING AMENDMENT.—Section 1842(b)(4)(D) of such Act is amended by adding at the end the following new clause:

"(iv) In determining the customary charges for a physicians' service furnished on or after January 1, 1988, if a physician was a nonparticipating physician in a previous year (beginning with 1987), the Secretary shall not recognize any amount of such actual charges (for that service furnished during such previous year) that exceeds the maximum allowable actual charge for such service established under subsection (j)(1)(C).".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services furnished on or after January 1, 1987.

(c) MEDICARE ECONOMIC INDEX.—

(1) FOR 1987—Notwithstanding any other provision of law, for purposes of part B of title XVIII of the Social Security Act for physicians' services furnished in 1987, the percentage increase in the MEI (as defined in section 1842(b)(4)(E)(ii) of the Social Security Act) shall be 3.2 percent.

(2) PROHIBITING RETROACTIVE ADJUSTMENT OF MEDICARE ECONOMIC INDEX.—The Secretary of Health and Human Services is not authorized to revise the MEI in a manner that provides, for any period before January 1, 1985, for the substitution of a rental equivalence or rental substitution factor for the housing component of the consumer price index.

(3) ANNUALIZATION OF MEI.—(A) The fourth sentence of section 1842(b)(3) of the Social Security Act (42 U.S.C. 1395u(b)(3)) is amended by inserting after "ending June 30, 1973," the following: "or (with respect to physicians services furnished in a year after 1987) the level determined under this sentence for the previous year", and inserting "year-to-year" before "economic changes".

(B) The amendments made by subparagraph (A) shall apply to physicians' services furnished on or after January 1, 1988.

(4) STUDY.—The Secretary shall conduct a study of the extent to which the MEI appropriately and equitably reflects economic changes in the provision of the physicians' services to medicare beneficiaries. In conducting such study the Secretary shall consult with appropriate experts.

(5) LIMITATION ON CHANGES IN MEI METHODOLOGY.—The Secretary shall not change the methodology (including the basis and elements) used in the MEI from that in effect as of October 1, 1985, until completion of the study under paragraph (4). After the completion of the study, the Secretary may not change such methodology except after providing notice in the Federal Register and opportunity for public comment.

(6) MEI DEFINED.—In this subsection, the term "MEI" means the economic index referred to in the fourth sentence of section 1842(b)(3) of the Social Security Act.

(d) DEVELOPMENT AND USE OF HCFA COMMON PROCEDURE CODING SYSTEM.—

(1) Not later than July 1, 1989, the Secretary of Health and Human Services (in this subsection referred to as the "Secretary"), after public notice and opportunity for public comment and after consulation with appropriate medical and other experts, shall group the procedure codes contained in any HCFA Common Procedure Coding System for payment purposes to minimize inappropriate increases in the intensity or volume of services provided as a result of coding distinctions which do not reflect substantial differences in the services rendered.

(2) Not later than January 1, 1990, each carrier with which the Secretary has entered into a contract under section 1842 of the Social Security Act shall make payments under part B of title XVIII of such Act based on the grouping of procedure codes effected under paragraph (1).

(e) RECOMMENDATIONS.—

(1) Section 1845(e) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(4)(A) In making recommendations with respect to the application of the relative value scale for purposes of establishing a fee schedule, the Secretary shall—

"(i) develop and assess an appropriate index to be used for making adjustments to reflect justifiable differences in the costs of practice based upon geographic location without exacerbating the geographic maldistribution of physicians, and

"(ii) assess the advisability and feasibility of developing an appropriate adjustment to assist in attracting and retaining physicians in medically underserved areas.

"(B) In carrying out the requirements of subparagraph (A), the Secretary shall take into consideration the recommendations made by the Physician Payment Review Commission.

"(C)(i) The Secretary shall develop an interim index under subparagraph (A)(i) prior to January 1, 1988, based upon the most accurate and recent data that are available with respect to the costs of practice.

"(ii) The Secretary shall collect data with respect to the costs of practice (including, but not limited to, data on nonphysician personnel costs, malpractice insurance costs, and commercial rents) for the purpose of refining the index under subparagraph (A)(i) prior to December 31, 1989, and periodically updating the index thereafter.

"(D) In conjunction with developing an index under subparagraph (A), the Secretary shall conduct a study of the advisability of redefining the localities designated by carriers for payment purposes.".

(2) Section 1845(b)(3) of such Act is amended by inserting "and respecting the index and the adjustment described in subsection (e)(4)(A)" after "subsection (e)".

(3) Section 1845(e)(3) of such Act is amended—

(A) by striking "July 1, 1987" and inserting in lieu thereof "July 1, 1989", and

(B) by striking "on or after January 1, 1988" and inserting in lieu thereof "after December 31, 1989".

SEC. 9332. INCENTIVES FOR PHYSICIAN PARTICIPATION.

(a) RECRUITING.—

(1) CARRIER RESPONSIBILITY.—Section 1842(b)(3) of the Social Security Act (42 U.S.C. 1395u(b)(3)), as amended by section 9331(b)(2), is further amended—

(A) by striking "and" at the end of subparagraph (F),

(B) by inserting "and" at the end of subparagraph (G), and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) if it makes determinations or payments with respect to physicians' services, will implement—

"(i) programs to recruit and retain physicians as participating physicians in the area served by the carrier, including educational and outreach activities and the use of professional relations personnel to handle billing and other problems relating to payment of claims of participating physicians; and

"(ii) programs to familiarize beneficiaries with the participating physician program and to assist such beneficiaries in locating participating physicians;".

(2) MEASURING CARRIER PERFORMANCE.—The Secretary of Health and Human Services shall provide, in the standards and criteria established under section 1842(b)(2) of the Social Security Act for contracts under that section, a system to measure a carrier's performance of the responsibilities described in sections 1842(b)(3)(H) and 1842(h) of such Act.

(3) CARRIER BONUSES FOR GOOD PERFORMANCE.—Of the amounts appropriated for administrative activities to carry out part B of title XVIII of the Social Security Act, the Secretary of Health and Human Services shall provide payments, totaling 1 percent of the total payments to carriers for claims processing in any fiscal year, to carriers under section 1842 of such Act, to reward such carriers for their success in increasing the proportion of physicians in the carrier's service area who are participating physicians.

(4) EFFECTIVE DATES.—

(A) CARRIER RESPONSIBILITY.—The amendment made by paragraph (1) shall be effec-

tive for contracts under section 1842 of the Social Security Act as of October 1, 1987.

(B) PERFORMANCE MEASURES.—The Secretary of Health and Human Services shall provide for the establishment of the standards and criteria required under paragraph (2) by not later than October 1, 1987, which shall apply to contracts as of October 1, 1987.

(C) CARRIER BONUSES.—From the amounts appropriated for each fiscal year (beginning with fiscal year 1988), the Secretary of Health and Human Services shall first provide for payments of bonuses to carriers under paragraph (3) not later than April 1, 1988, to reflect performance of carriers during the enrollment period at the end of 1987.

(b) DIRECTORIES OF PARTICIPATING PHYSICIANS.—

(1) REQUIRING DISTRIBUTION TO MEDICARE BENEFICIARIES, UPON REQUEST.—Section 1842(h) of the Social Security Act (42 U.S.C. 1395u(h)) is amended—

(A) in paragraph (2), by striking period and inserting the following: "and may request a copy of an appropriate directory published under paragraph (4). Each such carrier shall, without charge, mail a copy of such directory upon such a request.";

(B) in paragraph (5)—

(i) by striking "publication of the directories" and inserting "the participation program under this subsection and the publication and availability of the directories", and

(ii) by adding at the end the following: "The Secretary shall include such notice in the mailing of appropriate benefit checks provided under title II."; and

(C) in the second sentence of paragraph (6)—

(i) by inserting before the period the following: "and that an appropriate number of copies of each such directory is sent to hospitals located in the area", and

(ii) by adding at the end the following: "Such copies shall be sent free of charge.".

(2) ORGANIZATION OF DIRECTORIES.—Section 1842(h)(4) of such Act is amended by adding at the end the following: "Each participating physician directory for an area shall provide an alphabetical listing of all participating physicians practicing in the area and an alphabetical listing by locality and specialty of such physicians.".

(3) EFFECTIVE DATES.—The amendments made by this paragraph shall first apply to directories for 1987.

(c) PROHIBITING UNASSIGNED BILLING OF SERVICES DETERMINED TO BE MEDICALLY UNNECESSARY BY A CARRIER.—

(1) IN GENERAL.—Section 1842 of the Social Security Act is further amended by adding at the end the following new subsection:

"(l)(1)(A) Subject to subparagraph (C), if—

"(i) a nonparticipating physician furnishes services to an individual enrolled for benefits under this part,

"(ii) payment for such services is not accepted on an assignment-related basis,

"(iii) a carrier determines under this part or a peer review organization determines under part B of title XI that payment may not be made by reason of section 1862(a)(1) because a service otherwise covered under this title is not reasonable and necessary under the standards described in that section, and

"(iv) the physician has collected any amounts for such services,

the physician shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts so collected.

"(B) A refund under subparagraph (A) is considered to be on a timely basis only if—

"(i) in the case of a physician who does not request reconsideration or seek appeal on a timely basis, the refund is made within 30 days after the date the physician receives a denial notice under paragraph (2), or

"(ii) in the case in which such a reconsideration or appeal is taken, the refund is made within 15 days after the date the physician receives notice of an adverse determination on reconsideration or appeal.

"(C) Subparagraph (A) shall not apply to the furnishing of a service by a physician to an individual if—

"(i) the physician did not know and could not reasonably have been expected to know that payment may not be made for the service by reason of section 1862(a)(1), or

"(ii) before the service was provided, the individual was informed that payment under this part may not be made for the specific service and the individual has agreed to pay for that service.

"(2) Each carrier with a contract in effect under this section with respect to physicians and each peer review organization with a contract under part B of title XI shall send any notice of denial of payment for physicians' services based on section 1862(a)(1) and for which payment is not requested on an assignment-related basis to the physician and the individual involved.

"(3) If a physician knowingly and willfully fails to make refunds in violation of paragraph (1)(A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to services furnished on or after October 1, 1987.

(d) DISCLOSURE OF INFORMATION OF UNASSIGNED CLAIMS FOR CERTAIN PHYSICIANS' SERVICES.—

(1) IN GENERAL.—Section 1842 of the Social Security Act, as amended by subsection (c)(1), is further amended by adding at the end the following new subsection:

"(m)(1) In the case of a nonparticipating physician who—

"(A) performs an elective surgical procedure for an individual enrolled for benefits under this part and for which the physician's actual charge is at least $500, and

"(B) does not accept payment for such procedure on an assignment-related basis,

the physician must disclose to the individual, in writing and in a form approved by the Secretary, the physician's estimated actual charge for the procedure, the estimated approved charge under this part for the procedure, the excess of the physician's actual charge over the approved charge, and the coinsurance amount applicable to the procedure. The written estimate may not be used as the basis for, or evidence in, a civil suit.

"(2) A physician who fails to make a disclosure required under paragraph (1) with respect to a procedure shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected for the procedure in excess of the charges recognized and approved under this part.

"(3) If a physician knowingly and willfully fails to comply with paragraph (2), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

"(4) The Secretary shall provide for such monitoring of requests for payment for physicians' services to which paragraph (1) applies as is necessary to assure compliance with paragraph (2).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to surgical procedures performed on or after October 1, 1987.

(e) MAINTENANCE AND USE OF PARTICIPATING PHYSICIAN DIRECTORIES BY HOSPITALS.—

(1) REQUIREMENT OF PARTICIPATION.—Section 1866(a)(1) of the Social Security Act, as amended by section 9305(b)(1), is further amended—

(A) by striking "and" at the end of subparagraph (L),

(B) by striking the period at the end of subparagraph (M) and inserting ", and", and

(C) by inserting after subparagraph (M) the following new subparagraph:

"(N) in the case of hospitals—

"(i) to make available to its patients the directory or directories of participating physicians (published under section 1842(h)(4)) for the area served by the hospital, and

"(ii) if hospital personnel (including staff of any emergency or outpatient department) refer a patient to a nonparticipating physician for further medical care on an outpatient basis, the personnel must inform the patient that the physician is a nonparticipating physician and, whenever practicable, must identify at least one qualified participating physician who is listed in such a directory and from whom the patient may receive the necessary services.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to agreements under section 1866(a) of the Social Security Act as of October 1, 1987.

SEC. 9333. LIMITS ON REASONABLE CHARGES.

(a) PROCEDURES FOR ESTABLISHMENT OF SPECIAL LIMITS ON REASONABLE CHARGES FOR PART B SERVICES.—Section 1842(b)(8) of the Social Security Act (42 U.S.C. 1395u(b)(8)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(2) by inserting "(A)" after "(8)"; and

(3) by adding at the end the following new subparagraphs:

"(B)(i) The Secretary may provide for an increase or decrease in the reasonable charge otherwise recognized under this section with respect to a specific physicians' service only in accordance with the criteria set forth in subparagraph (A) and with the succeeding provisions of this paragraph.

"(ii) The factors described pursuant to subparagraph (A)(i) with respect to payment for physicians' services shall include, but need not be limited to, the following:

"(I) Prevailing charges for a service in a particular locality are significantly in excess of or below prevailing charges in other comparable localities, taking into account the relative costs of furnishing the services in the different localities.

"(II) The programs established under this title and title XIX are the sole or primary sources of payment for a service.

"(III) The marketplace for a service is not truly competitive because of a limited number of physicians who perform that service.

"(IV) There have been increases in charges for a service that cannot be explained by inflation or technology.

"(V) The charges do not reflect changing technology, increased facility with that technology, or reductions in acquisition or production costs.

"(VI) The prevailing charges for a service under this part are substantially higher or lower than the payments made for the service by other purchasers in the same locality.

"(iii) In applying subparagraph (A), the Secretary may compare—

"(I) the charges and resource costs for related procedures,

"(II) charges and resource costs for the procedure over a period of time,

"(III) charges for a procedure in different geographic areas, and

"(IV) the charges and allowed payments for a procedure under this part and by other payors.

"(iv) The factors considered under subparagraph (A)(ii) shall take into account regional differences in fees, unless there is substantial economic justification for a uniform fee or a uniform payment limit. Such substantial economic justification must be explained by the Secretary in the notice and final determination required by paragraph (9).

"(v) An adjustment under clause (i) on the basis of a comparison of the prevailing charges in different localities may be made only if the Secretary determines that the prevailing charge allowed in one locality is out of line with prevailing charges allowed in other localities after accounting for differences in practice costs.

"(vi) In this subparagraph, 'resource costs' include factors such as the time required to provide a procedure (including pre-procedure evaluation and post-procedure follow-up), the complexity of the procedure, the training required to perform the procedure, and the risk involved in the procedure.

"(C) In determining whether to adjust payment rates under subparagraph (B)(i), the Secretary shall consider the potential impacts on quality, access, and beneficiary liability of the adjustment, including the likely effects on assignment rates, reasonable charge reductions on unassigned claims, and participation rates of physicians.".

(b) INHERENT REASONABLENESS PROCEDURES.—Section 1842(b) of the Social Security Act (42 U.S.C. 1395u(b)) is amended by redesignating paragraph (9) as paragraph (11) and inserting after paragraph (8) the following new paragraphs:

"(9)(A) In the case of any physicians' service with respect to which the Secretary—

"(i) determines, after appropriate consultation with representatives of the physicians likely to be affected by any change in the reasonable charge, that the application of this subsection results in the determination of a reasonable charge that, by reason of its grossly excessive or grossly deficient amount, is not inherently reasonable, and

"(ii) proposes to establish a reasonable charge that is realistic and equitable or a methodology for arriving at such a charge,

the Secretary shall publish notice of such proposal in the Federal Register.

"(B) A notice required by subparagraph (A) shall—

"(i) specify the charge or methodology proposed to be established with respect to a service and shall explain the factors and data that the Secretary took into account in determining the charge or methodology so specified, and

"(ii) explain the potential impacts described in paragraph (8)(C).

"(C) After publication of the notice required by subparagraph (A), the Secretary shall allow not less than 60 days for public comment on the proposal.

"(D) In addition to carrying out its functions under section 1845, the Physician Payment Review Commission (in this paragraph referred to as the 'Commission') shall comment on any such proposal within the period of comment allowed by the Secretary pursuant to subparagraph (C).

"(E)(i) Taking into consideration the comments made by the Commission and the public, the Secretary shall publish in the Federal Register a final determination with respect to the reasonable charge or methodology to be established with respect to the service.

"(ii) A final determination published pursuant to clause (i) shall explain the factors and data that the Secretary took into consideration in making the final determination, and shall include and respond to the comments made by the Commission pursuant to subparagraph (D).

"(10)(A)(i) If an adjustment under paragraph (8)(B) results in a reduction in the reasonable charge for a physicians' service, and a nonparticipating physician furnishes the service to an individual entitled to benefits under this part after the effective date of such reduction and before the end of the period described in subparagraph (C), the physician may not charge the individual more than the limiting charge (as defined in clause (ii)) plus (for services furnished during the 12-month period beginning on the effective date of the reduction) ½ of the amount by which the physician's actual charge for the service for the previous 12-month period exceeds the limiting charge.

"(ii) In clause (i), the term 'limiting charge' means, with respect to a service, 125 percent of the inherently reasonable charge established under paragraph (8).

"(B) If a physician knowingly and willfully imposes charges in violation of subparagraph (A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

"(C) Subparagraph (A) shall not apply to services furnished after the earlier of (i) December 31, 1990, or (ii) one-year after the date the Secretary reports to Congress, under section 1845(e)(3), on the development of the relative value scale under section 1845.".

(c) REVIEW OF PROCEDURES.—Not later than October 1, 1987, the Secretary of Health and Human Services shall review the inherent reasonableness of the reasonable charges for at least 10 of the most costly procedures with respect to which payment is made under part B of title XVIII of the Social Security Act (determined on the basis of the aggregate annual payments under such part with respect to each such procedure).

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 9334. PAYMENT FOR CATARACT SURGICAL PROCEDURES.

(a) LIMITATIONS.—Section 1842(b)(11) of the Social Security Act (42 U.S.C. 1395u(b)(11)), as redesignated by section 9333(b), is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(2) by inserting "(A)" after "(11)", and

(3) by adding at the end the following new subparagraphs:

"(B)(i) In determining the reasonable charge under paragraph (3) for a cataract surgical procedure, subject to clause (ii), the prevailing charge for such procedure otherwise recognized for participating and nonparticipating physicians shall be reduced by 10 percent with respect to procedures performed in 1987 and shall be further reduced by 2 percent with respect to procedures performed in 1988. A reduced prevailing charge under this subparagraph shall become the prevailing charge level for subsequent years for purposes of applying the economic index under the fourth sentence of paragraph (3).

"(ii) In no case shall the reduction under clause (i) for a surgical procedure result in a prevailing charge in a locality for a year which is less than 75 percent of the weighted national average of such prevailing charges for such procedure for all the localities in the United States for 1986.

"(C)(i) In the case of a reduction in the reasonable charge for a physicians' service under subparagraph (B), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part after the effective date of such reduction (subject to clause (iv)), the physician may not charge the individual more than the limiting charge (as defined in clause (ii)) plus (for services furnished during the 12-month period beginning on the effective date of the reduction) 1/2 of the amount by which the physician's actual charges for the service for the previous 12-month period exceeds the limiting charge.

"(ii) In clause (i), the term 'limiting charge' means, with respect to a service, 125 percent of the prevailing charge for the service after the reduction referred to in clause (i).

"(iii) If a physician knowingly and willfully imposes charges in violation of clause (i), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

"(iv) This subparagraph shall not apply to services furnished after the earlier of (I) December 31, 1990, or (II) one-year after the date the Secretary reports to Congress, under section 1845(e)(3), on the development of the relative value scale under section 1845.".

(b) RATIFICATION OF REGULATIONS.—

(1) IN GENERAL.—The Congress hereby ratifies the final regulation of the Secretary of Health and Human Services published on page 35693 of volume 51 of the Federal Register on October 7, 1986, relating to reasonable charge payment limits for anesthesia services under the medicare program.

(2) PATIENT PROTECTIONS.—In the case of any reduction in the reasonable charge for physicians' services effected under the regulation described in paragraph (1), the provisions of section 1842(b)(10) of the Social Security Act (added by the amendment made by subsection (a)(3)) shall apply in the same manner and to the same extent as they apply to a reduction in the reasonable charge for a physicians' service effected under section 1842(b)(8) of such Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1987.

SEC. 9335. PAYMENT RATES FOR RENAL SERVICES AND IMPROVEMENTS IN ADMINISTRATION OF END STAGE RENAL DISEASE NETWORKS AND PROGRAM.

(a) COMPOSITE RATES FOR DIALYSIS SERVICES.—

(1) IN GENERAL.—Effective with respect to dialysis services provided on or after October 1, 1986, and before October 1, 1988, the Secretary of Health and Human Services shall establish the base rate for routine dialysis treatment in a free-standing facility and in a hospital-based facility under section 1881(b)(7) of the Social Security Act at a level equal to the respective rate in effect as of May 13, 1986, reduced by $2.00.

(2) ASSURING PROMPT CONSIDERATION OF EXCEPTION REQUESTS.—Section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)) is amended—

(A) in the third sentence, by inserting "and of pediatric facilities" after "isolated, rural areas", and

(B) by inserting after the third sentence the following new sentence: "Each application for such an exception shall be deemed to be approved unless the Secretary disap-

proves it by not later than 60 working days after the date the application is filed.".

(3) EFFECTIVE DATE.—The amendments made by paragraph (2) shall apply to applications filed on or after the date of the enactment of this Act.

(b) REPORT ON PAYMENT RATES.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall provide for—

(A) a study to evaluate the effects of reductions in the rates of payment for facility and physicians' services under the medicare program for patients with end stage renal disease on their access to care or on the quality of care, and

(B) a report to Congress on the results of the study by not later than January 1, 1988.

(2) ARRANGEMENTS WITH INSTITUTE OF MEDICINE.—The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in paragraph (1). If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(c) COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.—

(1) IN GENERAL.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(A) by striking "and" at the end of subparagraph (H)(ii),

(B) by inserting "and" at the end of subparagraph (I), and

(C) by inserting after subparagraph (I) the following new subparagraph:

"(J) immunosuppressive drugs furnished, to an individual who receives an organ transplant for which payment is made under this title, within 1 year after the date of the transplant procedure;".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to immunosuppressive drugs furnished on or after January 1, 1987.

(d) REORGANIZATION OF ESRD NETWORK AREAS AND ORGANIZATIONS.—

(1) IN GENERAL.—Subparagraph (A) of subsection (c)(1) of section 1881 of the Social Security Act (42 U.S.C. 1395rr) is amended to read as follows:

"(A)(i) For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall, in accordance with such criteria as he finds necessary to assure the performance of the responsibilities and functions specified in paragraph (2)—

"(I) establish at least 17 end stage renal disease network areas, and

"(II) for each such area, designate a network administrative organization which, in accordance with regulations of the Secretary, shall establish (aa) a network council of renal dialysis and transplant facilities located in the area and (bb) a medical review board, which has a membership including at least one patient representative and physicians, nurses, and social workers engaged in treatment relating to end stage renal disease.

The Secretary shall publish in the Federal Register a description of the geographic area that he determines, after consultation with appropriate professional and patient organizations, constitutes each network area and the criteria on the basis of which such determination is made.

"(ii)(I) In order to determine whether the Secretary should enter into, continue, or terminate an agreement with a network administrative organization designated for an area established under clause (i), the Secretary shall develop and publish in the Federal Register standards, criteria, and procedures to evaluate an applicant organization's capabilities to perform (and, in the case of an organization with which such an agreement is in effect, actual performance of) the responsibilities described in paragraph (2). The Secretary shall evaluate each applicant based on quality and scope of services and may not accord more than 20 percent of the weight of the evaluation to the element of price.

"(II) An agreement with a network administrative organization may be terminated by the Secretary only if he finds, after applying such standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If such an agreement is to be terminated, the Secretary shall select a successor to the agreement on the basis of competitive bidding and in a manner that provides an orderly transition.".

(2) DEADLINE FOR ESTABLISHING NEW AREAS.—The Secretary of Health and Human Services shall establish end stage renal disease network areas, pursuant to the amendment made by paragraph (1), not later than May 1, 1987. The Secretary shall establish network administrative organizations for such areas by not later than July 1, 1987.

(3) TRANSITION.—If, under the amendment made by paragraph (1), the Secretary designates a network administrative organization for an area which was not previously designated for that area, the Secretary shall offer to continue to fund the previously designated organization for that area for a period of 30 days after the first date the newly designated organization assumes the duties of a network administrative organization for that area.

(e) PATIENT REPRESENTATION ON COUNCILS AND MEDICAL REVIEW BOARDS.—Subparagraph (B) of subsection (c)(1) of section 1881 of the Social Security Act is amended to read as follows:

"(B) At least one patient representative shall serve as a member of each network council and each medical review board.".

(f) RESPONSIBILTIES OF NETWORK ORGANIZATIONS.—Subsection (c)(2) of section 1881 of such Act is amended—

(1) in subparagraph (A), by inserting before the semicolon the following: "and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs";

(2) in subparagraph (B), by inserting before the first semicolon the following: "and with respect to working with patients, facilities, and providers in encouraging participation in vocational rehabilitation programs";

(3) in subparagraph (D), by inserting before the semicolon the following: "and reporting to the Secretary on facilities and providers that are not providing appropriate medical care";

(4) in subparagraph (E), by inserting "and encouraging participation in vocational rehabilitation programs" after "self-care settings and transplantation"; and

(5) by redesignating subparagraphs (D) and (E) as subparagraphs (G) and (H), respectively, and inserting after subparagraph (C) the following new subparagraphs:

"(D) implementing a procedure for evaluating and resolving patient grievances;

"(E) conducting on-site reviews of facilities and providers as necessary (as determined by a medical review board or the Secretary), utilizing standards of care established by the network organization to assure proper medical care;

"(F) collecting, validating, and analyzing such data as are necessary to prepare the reports required by subparagraph (H) and subsection (g) and to assure the maintenance of the registry established under paragraph (7);".

(g) FACILITY COOPERATION WITH NETWORKS.—The first sentence of subsection (c)(3) of section 1881 of such Act is amended by inserting "or to follow the recommendations of the medical review board" after "consistently failed to cooperate with network plans and goals".

(h) INTENT OF CONGRESS RESPECTING MAXIMUM USE OF VOCATIONAL REHABILITATION SERVICES.—The first sentence of subsection (c)(6) of section 1881 of such Act is amended by inserting before the period the following: "and that the maximum practical number of patients who are suitable candidates for vocational rehabilitation services be given access to such services and encouraged to return to gainful employment".

(i) NATIONAL END STAGE RENAL DISEASE REGISTRY.—

(1) ESTABLISHMENT OF REGISTRY.—Subsection (c) of section 1881 of such Act is further amended by adding at the end the following new paragraph:

"(7) The Secretary shall establish a national end stage renal disease registry the purpose of which shall be to assemble and analyze the data reported by network organizations, transplant centers, and other sources on all end stage renal disease patients in a manner that will permit—

"(A) the preparation of the annual report to the Congress required under subsection (g);

"(B) an identification of the economic impact, cost-effectiveness, and medical efficacy of alternative modalities of treatment;

"(C) an evaluation with respect to the most appropriate allocation of resources for the treatment and research into the cause of end stage renal disease;

"(D) the determination of patient mortality and morbidity rates, and trends in such rates, and other indices of quality of care; and

"(E) such other analyses relating to the treatment and management of end stage renal disease as will assist the Congress in evaluating the end stage renal disease program under this section.

The Secretary shall provide for such coordination of data collection activities, and such consolidation of existing end stage renal disease data systems, as is necessary to achieve the purpose of such registry, shall determine the appropriate location of the registry, and shall provide for the appointment of a professional advisory group to assist the Secretary in the formulation of policies and procedures relevant to the management of such registry.".

(2) REPORT.—The Secretary of Health and Human Services shall submit to the Congress, no later than April 1, 1987, a full report on the progress made in establishing the national end stage renal disease registry under the amendment made by paragraph (1) and shall establish such registry by not later than January 1, 1988.

(j) FUNDING OF ESRD NETWORK ORGANIZATIONS.—

(1) IN GENERAL.—Subsection (b)(7) of section 1881 of the Social Security Act is amended by adding at the end the following new sentence: "The Secretary shall reduce the amount of each composite rate payment under this paragraph for each treatment by 50 cents (subject to such adjustments as may be required to reflect modes of dialysis other than hemodialysis) and provide for payment of such amount to the network administrative organization (designated under subsection (c)(1)(A) for the network area in which the treatment is provided) for its necessary and proper administrative costs incurred in carrying out its responsibilities under subsection (c)(2).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to treatment furnished on or after January 1, 1987.

(k) PROTOCOLS ON REUSE OF DIALYSIS FILTERS AND OTHER DIALYSIS SUPPLIES.—

(1) ESTABLISHMENT OF PROTOCOLS.—Paragraph (7) of subsection (f) of section 1881 of the Social Security Act is amended to read as follows:

"(7)(A) The Secretary shall establish protocols on standards and conditions for the reuse of dialyzer filters for those facilities and providers which voluntarily elect to reuse such filters.

"(B) With respect to dialysis services furnished on or after January 1, 1988, no dialysis facility may reuse dialysis supplies (other than dialyzer filters) unless the Secretary has established a protocol with respect to the reuse of such supplies and the facility follows the protocol so established.

"(C) The Secretary shall incorporate protocols established under this paragraph, and the requirement of subparagraph (B), into the requirements for facilities prescribed under subsection (b)(1)(A) and failure to follow such a protocol or requirement subjects such a facility to denial of participation in the program established under this section and to denial of payment for dialysis treatment not furnished in compliance with such a protocol or in violation of such requirement.".

(2) DEADLINE.—The Secretary of Health and Human Services shall establish the protocols described in section 1881(f)(7)(A) of the Social Security Act by not later than October 1, 1987.

(l) EFFECTIVE DATE FOR CERTAIN AMENDMENTS.—The amendments made by subsections (e), (f), and (g) shall apply to network administrative organizations designated for network areas established under the amendment made by subsection (d)(1).

SEC. 9336. VISION CARE.

(a) DEFINING SERVICES AN OPTOMETRIST CAN PROVIDE.—Clause (4) of section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)) is amended to read as follows: "(4) a doctor of optometry, but only with respect to the provision of items or services described in subsection (s) which he is legally authorized to perform as a doctor of optometry by the State in which he performs them, or".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after April 1, 1987.

SEC. 9337. OCCUPATIONAL THERAPY SERVICES.

(a) COVERAGE.—Subparagraph (C) of section 1832(a)(2) of the Social Security Act (42 U.S.C. 1395k(a)(2)) is amended to read as follows:

"(C) outpatient physical therapy services (other than services to which the second sentence of section 1861(p) applies) and outpatient occupational therapy services (other than services to which such sentence applies through the operation of section 1861(g));".

(b) LIMITATION ON PAYMENTS.—Section 1833(g) of such Act (42 U.S.C. 1395l(g)) is amended—

(1) by striking "next to last sentence" and inserting "second sentence", and

(2) by adding at the end thereof the following new sentence: "In the case of outpatient occupational therapy services which are described in the second sentence of section 1861(p) through the operation of section 1861(g), with respect to expenses incurred in any calendar year, no more than $500 shall be considered as incurred expenses for purposes of subsections (a) and (b).".

(c) CERTIFICATION STANDARD.—(1) Section 1835(a)(2)(C) of such Act (42 U.S.C. 1395n(a)(2)(C)) is amended—

(A) by inserting "or outpatient occupational therapy services" after "outpatient physical therapy services",

(B) in clause (i), by inserting "or occupational therapy services, respectively," after "physical therapy services", and

(C) in clause (ii), by inserting "or qualified occupational therapist, respectively," after "qualified physical therapist".

(2) The second sentence of section 1835(a) of such Act and section 1866(e) of such Act (42 U.S.C. 1395n(a), 1395cc(e)) are each amended—

(A) by inserting "(or meets the requirements of such section through the operation of section 1861(g))" after "1861(p)(4)(A)" and after "1861(p)(4)(B)", and

(B) by inserting "or (through the operation of section 1861(g)) with respect to the furnishing of outpatient occupational therapy services" after "(as therein defined)".

(d) DEFINITION AND INCLUSION WITH OTHER PART B SERVICES.—(1) Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by inserting after subsection (f) the following new subsection:

"OUTPATIENT OCCUPATIONAL THERAPY SERVICES

"(g) The term 'outpatient occupational therapy services' has the meaning given the term 'outpatient physical therapy services' in subsection (p), except that 'occupational' shall be substituted for 'physical' each place it appears therein.".

(2) Section 1861(s)(2)(D) of such Act (42 U.S.C. 1395x(s)(2)(D)) is amended by inserting "and outpatient occupational therapy services" after "outpatient physical therapy services".

(3) Section 1861(v)(5)(A) of such Act (42 U.S.C. 1395x(v)(5)(A)) is amended by inserting "(including through the operation of section 1861(g))" after "section 1861(p)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987.

SEC. 9338. SERVICES OF A PHYSICIAN ASSISTANT.

(a) SERVICES COVERED.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)), as amended by section 9335(c)(1) of this subtitle, is amended—

(1) by striking "and" at the end of subparagraph (I),

(2) by adding "and" at the end of subparagraph (J), and

(3) by adding at the end the following new subparagraph:

"(K)(i) services which would be physicians' services if furnished by a physician (as defined in subsection (r)(1)) and which are performed by a physician assistant (as defined in subsection (aa)(3)) under the supervision of a physician (as so defined) in a hospital, skilled nursing facility, or intermediate care facility (as defined in section 1905(c)) or as an assistant at surgery and which the physician assistant is legally authorized to perform by the State in which the services are performed, and

"(ii) such services and supplies furnished as an incident to such services as would be covered under subparagraph (A) if furnished as an incident to a physician's professional service;".

(b) DETERMINATION OF PAYMENT AMOUNT.—Section 1842(b) of such Act (42 U.S.C. 1395u(b)), as amended by section 9333(b), is amended by adding at the end the following new paragraph:

"(12)(A) With respect to services described in section 1861(s)(2)(K) (relating to a physician assistant acting under the supervision of a physician)—

"(i) payment under this part may only be made on an assignment-related basis; and

"(ii) the prevailing charges determined under paragraph (3) shall not exceed—

"(I) in the case of services performed as an assistant at surgery, 65 percent of the amount that would otherwise be recognized if performed by a physician who is serving as an assistant at surgery, or

"(II) in other cases, the applicable percentage (as defined in subparagraph (B)) of the prevailing charge rate determined for such services performed by physicians who are not specialists.

"(B) In subparagraph (A)(ii)(II), the term 'applicable percentage' means—

"(i) 75 percent in the case of services performed (other than as an assistant at surgery) in a hospital, and

"(ii) 85 percent in the case of other services.

"(C) Except for deductible and coinsurance amounts applicable under section 1833, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services described in section 1861(s)(2)(K) in violation of subparagraph (A)(i) is subject to a civil monetary penalty of not to exceed $2,000 for each such bill or request. Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1128A with respect to actions described in subsection (a) of that section.".

(c) PAYMENT TO EMPLOYER.—The first sentence of section 1842(b)(6) of such Act (42 U.S.C. 1395u(b)(6)) is amended—

(1) by striking "except that payment may be made (A)(i)" and inserting "except that (A) payment may be made (i)";

(2) by striking "or (B)" and by inserting "(B) payment may be made"; and

(3) by inserting before the period at the end the following: ", and (C) in the case of services described in section 1861(s)(2)(K) payment shall be made to the employer of the physician assistant involved".

(d) REDUCTION IN PAYMENT TO AVOID DUPLICATE PAYMENT.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may reduce the amount of payments otherwise made to hospitals and skilled nursing facilities under title XVIII of the Social Security Act, so as to eliminate estimated duplicate payments for historical or current costs attributable to services described in section 1861(s)(2)(K) of such Act (for which payment may be made under the amendments made by this section).

(e) STUDY OF PAYMENT RATES.—The Secretary shall report to Congress, by not later than April 1, 1988, concerning adjustments to the amount of payment made, under part

B of title XVIII of the Social Security Act, for services described in section 1861(s)(2)(K) of such Act, to ensure that the amount of such payments reflects the approximate cost of furnishing the services, taking into account compensation costs and overhead and supervision costs attributable to physician assistants.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1987.

SEC. 9339. PAYMENT FOR CLINICAL DIAGNOSTIC LABORATORY TESTS.

(a) TREATMENT OF HOSPITAL OUTPATIENT LABORATORIES.—

(1) IN GENERAL.—Section 1833(h) of the Social Security Act (42 U.S.C. 1395l(h)) is amended—

(A) in paragraph (1)(B), by striking "hospital laboratory" and inserting "qualified hospital laboratory (as defined in subparagraph (D))";

(B) in paragraph (1)(C)—

(i) in the first sentence, by striking "hospital laboratory" and inserting "qualified hospital laboratory (as defined in subparagraph (D))", and by striking ", and ending on December 31, 1987", and

(ii) by striking the second sentence;

(C) by adding at the end of paragraph (1) the following new subparagraph:

"(D) In this subsection, the term 'qualified hospital laboratory' means a hospital laboratory which provides some clinical diagnostic laboratory tests 24 hours a day in order to serve a hospital emergency room which is available to provide services 24 hours a day and 7 days a week."; and

(D) in paragraph (2), by striking "hospital laboratory" and inserting "qualified hospital laboratory (as defined in paragraph (1)(D))".

(2) EFFECTIVE DATE.—The amendments made by this subsection apply to clinical diagnostic laboratory tests performed on or after January 1, 1987.

(b) DELAYING FOR 2 YEARS REQUIREMENT OF NATIONAL FEE SCHEDULE.—

(1) IN GENERAL.—Section 1833(h)(1)(B) of such Act is amended by striking "1987" and "1988" and inserting "1989" and "1990", respectively.

(2) CONFORMING AMENDMENT.—Section 1833(h)(2) of such Act is amended by striking "(or, effective January 1, 1988, for the United States)".

(3) REPORT.—The Secretary of Health and Human Services shall report to Congress, by not later than April 1, 1988, on the advisability and feasibility of, and methodology for, establishing national fee schedules for payment for clinical diagnostic laboratory tests under section 1833(h) of the Social Security Act.

(c) PAYMENT FOR TIME AND TRAVEL COSTS TO COLLECT SAMPLES FROM CERTAIN IMMOBILE BENEFICIARIES.—

(1) IN GENERAL.—Section 1833(h)(3) of such Act is amended—

(A) by inserting "(A)" after "provide for and establish", and

(B) by inserting before the period at the end the following: ", and (B) a fee to cover the transportation and personnel expenses for trained personnel to travel to the location of an individual to collect the sample, except that such a fee may be provided only with respect to an individual who is homebound or an inpatient in an inpatient facility (other than a hospital)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to samples collected on or after January 1, 1987.

(d) STATE STANDARDS FOR DIRECTORS OF CLINICAL LABORATORIES.—

(1) IN GENERAL.—If a State (as defined for purposes of title XVIII of the Social Security Act) provides for the licensing or other standards with respect to the operation of clinical laboratories (including such laboratories in hospitals) in the State under which such a laboratory may be directed by an individual with certain qualifications, nothing in such title shall be construed as authorizing the Secretary of Health and Human Services to require such a laboratory, as a condition of payment or participation under such title, to be directed by an individual with other qualifications.

(2) EFFECTIVE DATE.—Paragraph (1) shall take effect on January 1, 1987.

(e) EXTENSION OF MORATORIUM ON LABORATORY PAYMENT DEMONSTRATION.—Section 9204(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking "January 1, 1987" and inserting "January 1, 1988".

SEC. 9340. PAYMENT FOR PARENTERAL AND ENTERAL NUTRITION SUPPLIES AND EQUIPMENT.

The Secretary of Health and Human Services shall apply the sixth sentence of section 1842(b)(3) of the Social Security Act to payment—

(1) for enteral nutrition nutrients, supplies, and equipment and parenteral nutrition supplies and equipment furnished on or after January 1, 1987, and

(2) for parenteral nutrition nutrients furnished on or after October 1, 1987.

SEC. 9341. CHANGING MEDICARE APPEAL RIGHTS.

(a) REVIEW OF PART B DETERMINATIONS.—(1) Section 1869 of the Social Security Act (42 U.S.C. 1395ff) is amended—

(A) by inserting "or part B" in subsection (a) after "amount of benefits under part A",

(B) by inserting "or part B" in subsection (b)(1)(C) after "part A",

(C) by amending paragraph (2) of subsection (b) to read as follows:

"(2) Notwithstanding paragraph (1)(C), in the case of a claim arising—

"(A) under part A, a hearing shall not be available to an individual under paragraph (1)(C) if the amount in controversy is less than $100 and judicial review shall not be available to the individual under that paragraph if the amount in controversy is less than $1,000; or

"(B) under part B, a hearing shall not be available to an individual under paragraph (1)(C) if the amount in controversy is less than $500 and judicial review shall not be available to the individual under that paragraph if the aggregate amount in controversy is less than $1,000.

In determining the amount in controversy, the Secretary, under regulations, shall allow two or more claims to be aggregated if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals.", and

(D) by adding at the end the following new paragraphs:

"(3) Review of any national coverage determination under section 1862(a)(1) respecting whether or not a particular type or class of items or services is covered under this title shall be subject to the following limitations:

"(A) Such a determination shall not be reviewed by any administrative law judge.

"(B) Such a determination shall not be held unlawful or set aside on the ground that a requirement of chapter 5 of title 5, United States Code, or section 1871(b), relating to publication in the Federal Register or opportunity for public comment, was not satisfied.

"(C) In any case in which a court determines that the record is incomplete or otherwise lacks adequate information to support the validity of the determination, it shall remand the matter to the Secretary for additional proceedings to supplement the record and the court may not determine that an item or service is covered except upon review of the supplemented record.

"(4) A regulation or instruction which relates to a method for determining the amount of payment under part B and which was initially issued before January 1, 1981, shall not be subject to judicial review.".

(2) Section 1842(b)(3)(C) of such Act (42 U.S.C. 1395u(b)(3)(C)) is amended by striking "$100 or more" and inserting "at least $100, but not more than $500".

(3) Section 1879(d) of such Act (42 U.S.C. 1395pp(d)) is amended by striking "section 1869(b)" and all that follows through "part B)" and inserting "sections 1869(b) and 1842(b)(3)(C) (as may be applicable)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to items and services furnished on or after January 1, 1987.

SEC. 9342. ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS.

(a) DEMONSTRATION PROJECTS.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct at least 5 (and not more than 10) demonstration projects to determine the effectiveness, cost, and impact on health status and functioning of providing comprehensive services for individuals entitled to benefits under title XVIII of the Social Security Act (in this section referred to as "medicare beneficiaries") who are victims of Alzheimer's disease or related disorders.

(b) SERVICES UNDER DEMONSTRATION PROJECTS.—The services provided under demonstration projects must be designed to meet the specific needs of Alzheimer's disease patients and may include—

(1) case management services,

(2) home and community-based services,

(3) mental health services,

(4) outpatient drug therapy,

(5) respite care and other supportive services and counseling for family,

(6) adult day care services, and

(7) other in-home services.

(c) CONDUCT OF PROJECTS.—The demonstration projects shall—

(1) each be conducted over a period of 3 years;

(2) provide each medicare beneficiary with a comprehensive medical and mental status evaluation upon entering the project and at discharge,

(3) be conducted by an entity which either directly or by contract is able to provide such comprehensive evaluations and the additional services (described in subsection (b)) covered by the project;

(4) be conducted in sites which are chosen so as to be geographically diverse and located in States with a high proportion of medicare beneficiaries and in areas readily accessible to a significant number of medicare beneficiaries; and

(5) involve community outreach efforts at each site to enroll the maximum number of medicare beneficiaries in each project.

(d) EVALUATION AND REPORTS.—The Secretary shall provide for an evaluation of the demonstration projects and shall submit to the Committees on Energy and Commerce and Ways and Means of the House of Repre-

sentatives and the Committee on Finance of the Senate—

(1) a preliminary report during the third year of the projects, which report shall include a description of the sites at which the projects are being conducted and the services being provided at the different sites, and

(2) a final report upon completion of the projects, which report shall include recommendations for appropriate legislative changes.

(f) FUNDING.—Expenditures (not to exceed $40,000,000 for the projects and $2,000,000 for the evaluation of the projects) made for the demonstration projects shall be made from the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section.

(g) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration projects.

SEC. 9343. PAYMENTS FOR AMBULATORY SURGERY.

(a) AMOUNTS PAYABLE; ANNUAL UPDATING.—

(1)(A) Section 1833(a)(4) of the Social Security Act (42 U.S.C. 1395l(a)(4)) is amended to read as follows:

"(4) in the case of facility services described in section 1832(a)(2)(F), and outpatient hospital facility services furnished in connection with surgical procedures specified by the Secretary pursuant to section 1833(i)(1)(A), the applicable amount as determined under paragraph (2) or (3) of subsection (i).".

(B) Section 1833(i) of such Act (42 U.S.C. 1395l(i)) is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and inserting after paragraph (2) the following new paragraph:

"(3)(A) The aggregate amount of the payments to be made under this part for outpatient hospital facility services furnished in connection with surgical procedures specified under paragraph (1)(A) in a cost reporting period shall be equal to the lesser of—

"(i) the amount determined with respect to such services under subsection (a)(2)(B); or

"(ii) the blend amount (described in subparagraph (B)).

"(B)(i) The blend amount for a cost reporting period is the sum of—

"(I) the cost proportion (as defined in clause (ii)(I)) of the amount described in subparagraph (A)(i), and

"(II) the ASC proportion (as defined in clause (ii)(II)) of 80 percent of the standard overhead amount payable with respect to the same surgical procedure as if it were provided in an ambulatory surgical center in the same area, as determined under paragraph (2)(A).

"(ii) In this paragraph:

"(I) The term 'cost proportion' means 75 percent for cost reporting periods beginning in fiscal year 1988, and 50 percent for other cost reporting periods.

"(II) The term 'ASC proportion' means 25 percent for cost reporting periods beginning in fiscal year 1988, and 50 percent for other cost reporting periods.".

(2) CONFORMING AMENDMENT.—Section 1833(b)(3) of such Act is amended by striking "or (i)(4)" and inserting in lieu thereof "or (i)(5)".

(b) UPDATING ASC RATES.—

(1) RATE UPDATE.—Subparagraphs (A) and (B) of section 1833(i)(2) of such Act are each amended by striking "shall be reviewed periodically" and inserting in lieu thereof "shall be reviewed and updated not later than July 1, 1987, and annually thereafter".

(2) ASC LIST UPDATE.—Section 1833(i)(1) of such Act is amended by adding at the end (after and below subparagraph (B)) the following:

"The lists of procedures established under subparagraphs (A) and (B) shall be reviewed and updated not less often than every 2 years.".

(c) PREVENTING UNBUNDLING OF HOSPITAL OUTPATIENT SERVICES.—

(1) Section 1862(a)(14) of such Act (42 U.S.C. 1395y(a)(14)) is amended by striking "inpatient" and inserting "patient".

(2) Section 1866(a)(1)(H) of such Act (42 U.S.C. 1395cc(a)(1)(H)) is amended—

(A) by striking "inpatient hospital", and

(B) by striking "an inpatient" and inserting "a patient".

(3) Section 1866 of such Act (42 U.S.C. 1395cc) is further amended by adding at the end the following new subsection:

"(g) Except as permitted under subsection (a)(2), any person who knowingly and willfully presents, or causes to be presented, a bill or request for payment for a hospital outpatient service for which payment may be made under part B and such bill or request violates an arrangement under subsection (a)(1)(H), is subject to a civil monetary penalty of not to exceed $2,000. Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1128A with respect to actions described in subsection (a) of that section.".

(d) PRO REVIEW.—

(1) Section 1154(a)(1) of the Social Security Act (42 U.S.C. 1320c-3(a)(1)) is amended by inserting "and subject to the requirements of subsection (d)" after "subject to the terms of the contract".

(2) Section 1154 of such Act is amended by adding at the end the following new subsection:

"(d) Each contract under this part shall require that the utilization and quality control peer review organization's review responsibility pursuant to subsection (a)(1) will include review of all ambulatory surgical procedures specified pursuant to section 1833(i)(1)(A) which are performed in the area, or, at the discretion of the Secretary (and except as provided in section 1164(b)(4)) a sample of such procedures.".

(e) COINSURANCE AND DEDUCTIBLE TO APPLY WITHOUT REGARD TO SETTING OF AMBULATORY SURGERY.—

(1) Clauses (i) and (ii) of section 1832(a)(2)(F) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F)) are each amended by inserting "standard overhead" before "amount".

(2)(A) Section 1833(b) of such Act (42 U.S.C. 1395l(b)) is amended by striking paragraph (3) and redesignating paragraphs (4) and (5) as paragraphs (3) and (4).

(B) Subparagraphs (A) and (B) of section 1833(i)(2) of such Act are each amended by inserting "80 percent of" before "a standard overhead amount".

(f) DEVELOPMENT OF PROSPECTIVE PAYMENT METHODOLOGY FOR OUTPATIENT HOSPITAL SERVICES.—Section 1135 of the Social Security Act (42 U.S.C. 1320b-5) is amended by adding at the end the following new subsection:

"(d)(1) The Secretary shall develop a fully prospective payment system for ambulatory surgical procedures performed on patients in hospitals on an outpatient basis.

"(2) The system shall, to the extent practicable, provide for an all-inclusive payment rate for ambulatory surgical procedures performed on patients in hospitals on an outpatient basis, which rate encompasses payment for facility services and all medical and other health services, other than physicians' services, commonly furnished in connection with such procedures.

"(3) The system shall provide for appropriate payment rates with respect to such procedures.

"(4) Such rates shall take into account at least the following considerations:

"(A) The costs of hospitals providing ambulatory surgical procedures.

"(B) The costs under this title of payment for such procedures performed in ambulatory surgical centers.

"(C) The extent to which any differences in such costs are justifiable.

"(5) The Secretary shall submit to Congress—

"(A) an interim report on the development of the system by April 1, 1988, and

"(B) a final report on such system by April 1, 1989.

The report under subparagraph (B) shall include recommendations concerning the implementation of the payment system for ambulatory surgical procedures performed on or after October 1, 1989.

"(6)(A) The Secretary shall develop a model system for the payment for outpatient hospital services other than ambulatory surgery.

"(B) The Secretary shall submit to Congress a report on the model payment system under subparagraph (A) by January 1, 1991.".

(g) REPORTING OF OPD SERVICES USING HCPCS.—Not later than July 1, 1987, each fiscal intermediary which processes claims under part B of title XVIII of the Social Security Act shall require hospitals, as a condition of payment for outpatient hospital services under that part, to report claims for payment for such services under such part using a HCFA Common Procedure Coding System.

(h) EFFECTIVE DATES.—

(1) The amendments made by subsection (a)(1) shall apply to cost reporting periods beginning on or after October 1, 1987.

(2) The amendments made by subsections (b)(1) and (d) shall apply to services furnished after June 30, 1987.

(3) The Secretary of Health and Human Services shall first provide, under the amendment made by subsection (b)(2), for the review and update of procedure lists within 6 months after the date of the enactment of this Act.

(4) The amendments made by subsection (c) shall apply to contracts entered into or renewed after January 1, 1987.

SEC. 9344. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PART B.

(a) ADDITIONAL MEMBERS FOR PHYSICIAN PAYMENT REVIEW COMMISSION.—

(1) 2 ADDITIONAL MEMBERS.—Section 1845(a)(2) of the Social Security Act (42 U.S.C. 1395w-1(a)(2)) is amended by striking "11 individuals" and inserting "13 individuals".

(2) APPOINTMENT OF ADDITIONAL MEMBERS.—The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Physician

Payment Review Commission, as required by the amendment made by paragraph (1), no later than 60 days after the date of the enactment of this Act, for terms of 3 years, except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than five members expire in any one year.

(b) EFFECTIVE DATE OF VOLUNTARY DISENROLLMENT FROM MEDICARE.—

(1) IN GENERAL.—The second and sixth sentences of section 1838(b) of the Social Security Act (42 U.S.C. 1395p(b)) are each amended by striking "calendar quarter following the calendar quarter" and inserting "month following the month".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to notices filed on or after July 1, 1987.

(c) STUDY ON PROSPECTIVE PAYMENT OF RADIOLOGY, ANESTHESIA, AND PATHOLOGY SERVICES TO HOSPITAL INPATIENTS.—The Secretary of Health and Human Services shall study and report to Congress by July 1, 1987, concerning the design and implementation of a prospective payment system for payment, under part B of title XVIII of the Social Security, for radiology, anesthesia, and pathology services furnished to hospital inpatients. Such report shall include data, from a representative sample, showing, for discharges classified within each diagnosis-related group, the distribution of total reasonable charges and costs for each inpatient discharge for such services.

(d) PREVENTIVE HEALTH SERVICES DEMONSTRATION PROGRAM.—Effective as if included in section 9314 of the Consolidated Omnibus Budget Reconciliation Act of 1985 when such section was enacted, such section is amended—

(1) in subsection (c)(2), by inserting "(at least one of which shall serve a rural area)" after "five sites", and

(2) by striking the last sentence of subsection (f) and inserting the following: "Funding for the administrative costs of the demonstration program shall not exceed $5,900,000 over the duration of the program.".

PART 4—IMPROVED REVIEW OF QUALITY BY PEER REVIEW ORGANIZATIONS

SEC. 9351. PRO REVIEW OF HOSPITAL DENIAL NOTICES.

(a) IN GENERAL.—Section 1154 of the Social Security Act (42 U.S.C. 1320c-3), as amended by section 9343(d)(2) of this subtitle, is amended by adding at the end the following new subsection:

"(e)(1) If—

"(A) a hospital has determined that a patient no longer requires inpatient hospital care, and

"(B) the attending physician has agreed with the hospital's determination,

the hospital may provide the patient (or the patient's representative) with a notice (meeting conditions prescribed by the Secretary under section 1879) of the determination.

"(2) If—

"(A) a hospital has determined that a patient no longer requires inpatient hospital care, but

"(B) the attending physician has not agreed with the hospital's determination,

the hospital may request the appropriate peer review organization to review under subsection (a) the validity of the hospital's determination.

"(3)(A) If a patient (or a patient's representative)—

"(i) has received a notice under paragraph (1), and

"(ii) requests the appropriate peer review organization to review the determination,

then, the organization shall conduct a review under subsection (a) of the validity of the hospital's determination and shall provide notice (by telephone and in writing) to the patient or representative and the hospital and attending physician involved of the results of the review. Such review shall be conducted regardless of whether or not the hospital will charge for continued hospital care or whether or not the patient will be liable for payment for such continued care.

"(B) If a patient (or a patient's representative) requests a review under subparagraph (A) while the patient is still an inpatient in the hospital and not later than noon of the first working day after the date the patient receives the notice under paragraph (1), then—

"(i) the hospital shall provide to the appropriate peer review organization the records required to review the determination by the close of business of such first working day, and

"(ii) the peer review organization must provide the notice under subparagraph (A) by not later than one full working day after the date the organization has received the request and such records.

"(4) If—

"(A) a request is made under paragraph (3)(A) not later than noon of the first working day after the date the patient (or patient's representative) receives the notice under paragraph (1), and

"(B) the conditions described in section 1879(a)(2) with respect to the patient or representative are met,

the hospital may not charge the patient for inpatient hospital services furnished before noon of the day after the date the patient or representative receives notice of the peer review organization's decision.

"(5) In any review conducted under paragraph (2) or (3), the organization shall solicit the views of the patient involved (or the patient's representative)."

(b) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to denial notices furnished by hospitals to individuals on or after the first day of the first month that begins more than 30 days after the date of the enactment of this Act.

(2) Section 1154(e)(4) of the Social Security Act (as added by the amendment made by subsection (a)) shall take effect on the date of the enactment of this Act.

SEC. 9352. PRO REVIEW OF INPATIENT HOSPITAL SERVICES AND EARLY READMISSION CASES.

(a) TIMELY PROVISION OF HOSPITAL INFORMATION.—(1) Section 1153 of the Social Security Act (42 U.S.C. 1320c-2) is amended by adding at the end the following new subsection:

"(g) The Secretary shall provide that fiscal intermediaries furnish to peer review organizations, each month on a timely basis, data necessary to initiate the review process under section 1154(a) on a timely basis. If the Secretary determines that a fiscal intermediary is unable to furnish such data on a timely basis, the Secretary shall require the hospital to do so.".

(2) Section 1816(a) of such Act (42 U.S.C. 1395h(a)) is amended by adding at the end the following: "As used in this title and part B of title XI, the term 'fiscal intermediary' means an agency or organization with a contract under this section.".

(b) REQUIRING REVIEW OF EARLY READMISSION CASES.—Section 1154(a) of such Act (42 U.S.C. 1320c-3(a)), as amended by section 9401(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by adding at the end the following new paragraph:

"(13) Notwithstanding paragraph (4), the organization shall perform the review described in paragraph (1) with respect to early readmission cases to determine if the previous inpatient hospital services and the post-hospital services met professionally recognized standards of health care. Such reviews may be performed on a sample basis if the organization and the Secretary determine it to be appropriate. In this paragraph, an 'early readmission case' is a case in which an individual, after discharge from a hospital, is readmitted to a hospital less than 31 days after the date of the most recent previous discharge."

(c) EFFECTIVE DATES.—(1) The Secretary of Health and Human Services shall implement the amendment made by subsection (a) not later than 6 months after the date of the enactment of this Act.

(2) The amendment made by subsection (b) shall apply to contracts entered into or renewed on or after January 1, 1987, except that in applying such amendment before January 1, 1989, the term "post-hospital services" does not include physicians' services, other than physicians' services furnished in a hospital, other inpatient facility, ambulatory surgical center, or rural health clinic.

SEC. 9353. PRO REVIEW OF QUALITY OF CARE.

(a) REQUIRING PRO REVIEW OF QUALITY OF CARE.—

(1) ALLOCATION OF FUNDS FOR QUALITY CARE REVIEW.—Section 1154(a)(4) of the Social Security Act (42 U.S.C. 1320c-3(a)(4)) is amended by adding at the end the following: "Each peer review organization shall provide that a reasonable proportion of its activities are involved with reviewing, under paragraph (1)(B), the quality of services and that a reasonable allocation of such activities is made among the different cases and settings (including post-acute-care settings, ambulatory settings, and health maintenance organizations). In establishing such allocation, the organization shall consider (i) whether there is reason to believe that there is a particular need for reviews of particular cases or settings because of previous problems regarding quality of care, (ii) the cost of such reviews and the likely yield of such reviews in terms of number and seriousness of quality of care problems likely to be discovered as a result of such reviews, and (iii) the availability and adequacy of alternative quality review and assurance mechanisms.".

(2) REQUIRING REVIEW OF HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.—Such section is further amended—

(A) by inserting "(A)" after "(4)";

(B) by adding at the end the following new subparagraph:

"(B) The contract of each organization shall provide for the review of services (including both inpatient and outpatient services) provided by eligible organizations pursuant to a contract under section 1876 for the purpose of determining whether the quality of such services meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings. The previous sentence shall not apply with respect to a contract year if another entity has been

awarded a contract under subparagraph (C).";

(C) by adding at the end of such subparagraph the following: "Under the contract the level of effort expended by the organization on reviews under this subparagraph shall be equivalent, on a per enrollee basis, to the level of effort expended by the organization on utilization and quality reviews performed with respect to individuals not enrolled with an eligible organization."; and

(D) by adding at the end the following additional new subparagraph:

"(C) The Secretary may provide, by contract under competitive procurement procedures on a State-by-State basis in up to 25 States, for the review described in subparagraph (B) by an appropriate entity (which may be a peer review organization described in that subparagraph). In selecting among States in which to conduct such competitive procurement procedures, the Secretary may not select States which, as a group, have more than 50 percent of the total number of individuals enrolled with eligible organizations under section 1876. Under a contract with an entity under this subparagraph—

"(i) the entity must be, or must meet all the requirements under section 1152 to be, a utilization and quality control peer review organization,

"(ii) the contract must meet the requirement of section 1153(b)(3), and

"(iii) the level of effort expended under the contract shall be, to the extent practicable, not less than the level of effort that would otherwise be required under the third sentence of subparagraph (B) if this subparagraph did not apply.".

(3) IDENTIFICATION OF METHODS FOR IDENTIFYING CASES OF SUBSTANDARD CARE.—Section 1154 of such Act (42 U.S.C. 1320c-3), as amended by sections 9343(d)(2) and 9351(a), is amended by adding at the end the following new subsection:

"(f) The Secretary, in consultation with appropriate experts, shall identify methods that would be available to assist peer review organizations (under subsection (a)(4)) in identifying those cases which are more likely than others to be associated with a quality of services which does not meet professionally recognized standards of health care."

(4) SMALL-AREA ANALYSIS.—The Secretary of Health and Human Services shall provide, to at least 12 utilization and quality control peer review organizations with contracts under part B of title XI of the Social Security Act, data and data processing assistance to allow each of these organizations to review and analyze small-area variations, in the service area of the organization, in the utilization of hospital and other health care services for which payment is made under title XVIII of such Act.

(5) CONFORMING AMENDMENT.—Section 9405 of the Consolidated Omnibus Budget Reconciliation Act of 1986 is amended by striking "January" and inserting "April".

(6) EFFECTIVE DATES.—(A)(i) Except as provided in clause (ii), the amendments made by paragraphs (1) and (2)(D) shall apply to contracts as of January 1, 1987.

(ii) The amendment made by paragraph (1) shall not be construed as requiring, before January 1, 1989, the review of physicians' services, other than physicians' services furnished in a hospital, other inpatient facility, ambulatory surgical center, or rural health clinic.

(B) The amendment made by paragraph (2)(B) shall apply to contracts as of April 1, 1987.

(C) The amendment made by paragraph (2)(C) shall apply to review activities conducted by organizations on or after January 1, 1988.

(D) The amendment made by the paragraph (3) becomes effective on the date of the enactment of this Act.

(b) REQUIRING CONSUMER REPRESENTATIVE ON PEER REVIEW BOARDS.—

(1) IN GENERAL.—Section 1152 of such Act (42 U.S.C. 1320c-1) is amended—

(A) by striking "and" at the end of paragraph (1),

(B) by striking the period at the end of paragraph (2) and inserting "; and", and

(C) by adding at the end the following new paragraph:

"(3) has at least one individual who is a representative of consumers on its governing body."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to contracts entered into or renewed on or after January 1, 1987.

(c) IMPROVING PEER REVIEW RESPONSIVENESS TO BENEFICIARY COMPLAINTS.—

(1) APPROPRIATE REVIEW OF COMPLAINTS REQUIRED.—Section 1154(a) of such Act (42 U.S.C. 1320c-3(a)), as amended by section 9352(b), is further amended by adding at the end the following new paragraph:

"(14) The organization shall conduct an appropriate review of all written complaints about the quality of services (for which payment may otherwise be made under title XVIII) not meeting professionally recognized standards of health care, if the complaint is filed with the organization by an individual entitled to benefits for such services under such title (or a person acting on the individual's behalf). The organization shall inform the individual (or representative) of the organization's final disposition of the complaint. Before the organization concludes that the quality of services does not meet professionally recognized standards of health care, the organization must provide the practitioner or person concerned with reasonable notice and opportunity for discussion.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to complaints received on or after the first day of the first month that begins more than 9 months after the date of the enactment of this Act.

(d) SHARING OF INFORMATION BY PEER REVIEW ORGANIZATIONS.—

(1) IN GENERAL.—Subparagraph (C) of section 1160(b)(1) of such Act (42 U.S.C. 1320c-9(b)(1)) is amended to read as follows:

"(C) to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners or to assist national accreditation bodies acting pursuant to section 1865 in accrediting providers for purposes of meeting the conditions described in title XVIII, which data and information shall be provided by the peer review organization to any such agency or body at the request of such agency or body relating to a specific case or to a possible pattern of substandard care, but only to the extent that such data and information are required by the agency or body in carry out its respective function which is within the jurisidiction of the agency or body under State law or under section 1865;".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to requests for data and information made on and after the end of the 6-month period beginning on the date of the enactment of this Act.

(e) FUNDING OF ADDITIONAL PRO ACTIVITIES.—

(1) THROUGH AGREEMENTS WITH HOSPITALS, SKILLED NURSING FACILITIES, AND HOME HEALTH AGENCIES.—Section 1866(a) of such Act (42 U.S.C. 1395cc(a)) is amended—

(A) in paragraph (1)(F)—

(i) by redesignating clauses (i), (ii), and (iii), as subclauses (I), (II), and (III), respectively,

(ii) by inserting "(i)" after "(F)", and

(iii) by adding at the end the following new clause:

"(ii) in the case of hospitals, skilled nursing facilities, and home health agencies, to maintain an agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of title XI for the area in which the hospital, facility, or agency is located) to perform the functions described in paragraph (4)(A);"; and

(B) by adding at the end the following new paragraph:

"(4)(A) Under the agreement required under paragraph (1)(F)(ii), the peer review organization must perform functions (other than those covered under an agreement under paragraph (1)(F)(i)) under the third sentence of section 1154(a)(4)(A) and under section 1154(a)(14) with respect to services, furnished by the hospital, facility, or agency involved, for which payment may be made under this title.

"(B) For purposes of payment under this title, the cost of such an agreement to the hospital, facility, or agency shall be considered a cost incurred by such hospital, facility, or agency in providing covered services under this title and shall be paid directly by the Secretary to the peer review organization on behalf of such hospital, facility, or agency in accordance with a schedule established by the Secretary.

"(C) Such payments—

"(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

"(ii) shall not be less in the aggregate for hospitals, facilities, and agencies for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting the activities described in subparagraph (A) with respect to such hospitals, facilities, or agencies under part B of title XI.".

(2) THROUGH AGREEMENTS WITH HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.—Section 1876(i) of such Act (42 U.S.C. 1395mm(i)), as amended by section 9312(f) of this subtitle, is amended by adding at the end the following new paragraph:

"(7)(A) Except as provided under section 1154(a)(4)(C), each risk-sharing contract with an eligible organization under this section shall provide that the organization will maintain an agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of title XI for the area in which the eligible organization is located) under which the peer review organization will perform functions under section 1154(a)(4)(B) and section 1154(a)(14) (other than those performed under contracts described in section 1866(a)(1)(F)) with respect to services, furnished by the eligible or-

ganization, for which payment may be made under this title.

"(B) For purposes of payment under this title, the cost of such agreement to the eligible organization shall be considered a cost incurred by a provider of services in providing covered services under this title and shall be paid directly by the Secretary to the peer review organization on behalf of such eligible organization in accordance with a schedule established by the Secretary.

"(C) Such payments—

"(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

"(ii) shall not be less in the aggregate for such organizations for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting activities described in subparagraph (A) with respect to such eligible organizations under part B of title XI.".

(3) EFFECTIVE DATE.—

(A) HOSPITALS, SKILLED NURSING FACILITIES, AND HOME HEALTH AGENCIES.—The amendments made by paragraph (1) shall apply to provider agreements as of October 1, 1987.

(B) HMO'S AND CMP'S.—The amendment made by paragraph (2) shall apply to risk-sharing contracts with eligible organizations, under section 1876 of the Social Security Act, as of April 1, 1987.

MEDICAID

Subtitle E—Medicaid and Maternal and Child Health

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PART 1—COVERAGE OF INDIVIDUALS

SEC. 9401. OPTIONAL COVERAGE OF POOR PREGNANT WOMEN, INFANTS, AND CHILDREN.

(a) CREATION OF NEW OPTIONAL CATEGORICALLY NEEDY GROUP.—Section 1002(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended—

(1) by striking ", or" at the end of subclause (VII) and inserting a semicolon,

(2) by inserting "or" at the end of subclause (VIII), and

(3) by adding at the end the following new subclause:

"(IX) subject to subsection (1)(4), who are described in subsection (1)(1);".

(b) DESCRIPTION OF GROUP.—Section 1902 of such Act is amended by inserting after subsection (k) the following new subsection:

"(l)(1) Individuals described in this paragraph are—

"(A) women during pregnancy (and during the 60-day period beginning on the last day of the pregnancy),

"(B) infants under one year of age,

"(C) children who have attained one year of age but have not attained two years of age,

"(D) children who have attained two years of age but have not attained three years of age,

"(E) children who have attained three years of age but have not attained four years of age, and

"(F) children who have attained four years of age but have not yet attained five years of age,

who are not described in subsection (a)(10)(A)(i), whose family income does not exceed the income level established by the State under paragraph (2) for a family size equal to the size of the family, including the woman, infant, or child.

"(2) For purposes of paragraph (1), the State shall establish an income level which is a percentage (not more than 100 percent) of the nonfarm income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(3) Notwithstanding subsection (a)(17), for individuals who are eligible for medical assistance because of subsection (a)(10)(A)(ii)(IX)—

"(A) application of a resource standard shall be at the option of the State;

"(B) any resource standard or methodolgy that is applied with respect to an individual described in subparagraph (A) of paragraph (1) may not be more restrictive than the resource standard or methodolgy that is applied under title XVI;

"(C) any resource standard or methodology that is applied with respect to an individual described in subparagraph (B), (C), (D), (E), or (F) of paragraph (1) may not be more restrictive than the corresponding methodology that is applied under the State plan under part A of title IV;

"(D) the income standard to be applied is the income standard established under paragraph (2); and

"(E) family income shall be determined in accordance with the methodology employed under the State plan under part A or E of title IV, and costs incurred for medical care or for any other type of remedial care shall not be taken into account.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.

"(4)(A) A State plan may not elect the option of furnishing medical assistance to individuals described in subsection (a)(10)(A)(ii)(IX) unless the State has in effect, under its plan established under part A of title IV, payment levels that are not less than the payment levels in effect under its plan on April 17, 1986.

"(B)(i) A State may not elect, under subsection (a)(10)(A)(ii)(IX), to cover only individuals described in paragraph (1)(A) or to cover only individuals described in paragraph (1)(B).

"(ii) A State may not elect, under subsection (a)(10)(A)(ii)(IX), to cover individuals described in subparagraph (C), (D), (E), or (F) of paragraph (1) unless the State has elected, under such subsection, to cover individuals described in the preceding subparagraphs of such paragraph.".

(c) LIMITED BENEFITS FOR NEWLY ELIGIBLE PREGNANT WOMEN.—Section 1902 (a)(10) of such Act (42 U.S.C. 1396a (a)(10)) is amended, in the matter after subparagraph (D)—

"(1) by striking "and" before "(VI)", and (2) by inserting before the semicolon at the end the following: ", and (VII) the medical assistance made available to an individual described in subsection (l)(1)(A) who is eligible for medical assistance only because of subparagraph (A)(ii)(IX) shall be limited to medical assistance for services related to pregnancy (including prenatal, delivery, and postpartum services) and to other conditions which may complicate pregnancy".

(d) CONTINUATION OF MEDICAL ASSISTANCE FOR CERTAIN PREGNANT WOMEN DURING PREGNANCY AND FOR CERTAIN INFANTS AND CHILDREN RECEIVING INPATIENT SERVICES.—Section 1902(e) of such Act (42 U.S.C. 1396(e)) is amended by adding at the end the following new paragraphs:

"(6) At the option of a State, if a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX), the plan may provide that any woman described in such subsection and subsection (10(1)(A) shall continue to be treated as an individual described in subsection (a)(10)(A)(ii)(IX) without regard to any change in income of the family of which she is a member until the end of the 60-day

period beginning on the last day of her pregnancy.

"(7) If a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX), in the case of an infant or child described in subparagraph (B), (C), (D), (E), or (F) of subsection (1)(l)—

"(A) who is receiving inpatient services for which medical assistance is provided on the date the infant or child attains the maximum age with respect to which coverage is provided under the State plan for such individuals, and

"(B) who, but for attaining such age, would remain eligible for medical assistance under such subsection, the infant or child shall continue to be treated as an individual described in subsection (a)(10)(A)(ii)(IX) and subsection (1)(l) until the end of the stay for which the inpatient services are furnished.".

(e) CONFORMING AMENDMENTS.—

(1) Section 1902(a)(17) of such Act (42 U.S.C. 1396(a)(17)) is amended by inserting "except as provided in subsection (1)(3)," after "(17)".

(2) Section 1903(f)(4) of such Act (42 U.S.C. 1396b(f)(4)) is amended by inserting "for any individual described in section 1902 (a)(10)(A)(ii)(IX) or" after "as medical assistance".

(f) EFFECTIVE DATES.—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply to medical assistance furnished in calendar quarters beginning on or after April 1, 1987.

(2)(A) Subparagraph (C) of section 1902(1)(l) of the Social Security Act, as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1987.

(B) Subparagraph (D) of section 1902(1)(l) of the Social Security Act, as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1988.

(C) Subparagraph (E) of section 1902(1)(l) of the Social Security Act, as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1989.

(D) Subparagraph (F) of section 1902(1)(l) of the Social Security Act, as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning or on after October 1, 1990.

(3) An amendment made by this section shall become effective as provided in paragraph (1) or (2) without regard to whether or not final regulations to carry out such amendment have been promulgated by the applicable date.

SEC. 9402. OPTIONAL COVERAGE OF ELDERLY AND DISABLED POOR FOR ALL MEDICAID BENEFITS.

(a) CREATION OF NEW OPTIONAL CATEGORICALLY NEEDY GROUPS.—

(1) IN GENERAL.—Subsection (a)(10)(A)(ii) of section 1902 of the Social Security Act (42 U.S.C. 1396a), as amended by section 9401(a) of this subtitle, is amended—

(A) by striking "or" at the end of subclause (VIII),

(B) by striking the semicolon at the end of subclause (IX) and inserting, ", or", and

(C) by adding at the end the following new subclause:

"(X) subject to subsection (m)(3), who are described in subsection (m)(1);".

(2) DESCRIPTION OF INDIVIDUALS.—Section 1902 of such Act is further amended by adding after subsection (1), as added by section 9401(b) of this subtitle, the following new subsection:

"(m)(1) Individuals described in this paragraph are individuals—

"(A) who are 65 years of age or older or are disabled individuals (as determined under section 1614(a)(3)),

"(B) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed an income level established by the State consistent with paragraph (2)(A), and

"(C) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum amount of resources that an individual may have and obtain benefits under that program.

"(2)(A) The income level established under paragraph (1)(B) may not exceed a percentage (not more than 100 percent) of the nonfarm official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(B) In the case of a State that provides medical assistance to individuals not described in subsection (a)(10)(A) and at the State's option, the State may use under paragraph (1)(C) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in subsection (a)(10)(A).".

(b) REQUIREMENT OF COVERAGE OF CERTAIN PREGNANT WOMEN AND CHILDREN AND OTHER SPECIAL RULES.—Section 1902(m) of such Act, as added by subsection (a)(2), is further amended by adding at the end the following new paragraphs:

"(3) A State plan may not provide coverage for individuals under subsection (a)(10)(A)(ii)(X), unless the plan provides coverage of some or all of the individuals described in subsection (1)(l).

"(4) Notwithstanding subsection (a)(17), for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(X)—

"(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

"(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this program for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments to States for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 9403. OPTIONAL COVERAGE OF POOR MEDICARE BENEFICIARIES FOR MEDICARE COST-SHARING EXPENSES.

(a) ELIGIBILITY OF QUALIFIED MEDICARE BENEFICIARY.—Section 1902(a)(10) of the Social Security Act (42 U.S.C. 1396a(a)(10)) is amended—

(1) by striking "and" at the end of subparagraph (C),

(2) by inserting "and" at the end of subparagraph (D), and

(3) by inserting after subparagraph (D) the following new subparagraph:

"(E) at the option of a State, but subject to subsection (m)(3), for making medical assistance available for medicare cost-sharing (as defined in section 1905(p)(3)) for qualified medicare beneficiaries described in section 1905(p)(1);".

(b) QUALIFIED MEDICARE BENEFICIARY DEFINED.—Section 1905 of such Act (42 U.S.C. 1396d) is amended by adding at the end the following new subsection:

"(p)(1) The term 'qualified medicare beneficiary' means an individual—

"(A) who is entitled to hospital insurance benefits under part A of title XVIII (including an individual entitled to such benefits pursuant to an enrollment under section 1818),

"(B) who, but for section 1902(a)(10(E) and the election of the State, is not eligible for medical assistance under the plan,

"(C) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed an income level established by the State consistent with paragraph (2)(A), and

"(D) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum amount of resources that an individual may have and obtain benefits under that program.

"(2)(A) The income level established under paragraph (1)(C) may not exceed a percentage (not more than 100 percent) of the nonfarm official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(B) In the case of a State that provides medical assistance to individuals not described in section 1902(a)(10)(A) and at the State's option, the State may use under paragraph (1)(D) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in section 1902(a)(10)(A).".

(c) LIMITED, MEDICARE GAP-FILLING BENEFITS.—Section 1902(a)(1) of such Act (42 U.S.C. 1395a(a)(10)), as amended by section 9401(c) of this subtitle and by subsection (a) of this section, is amended, in the matter after subparagraph (E)—

(1) by striking "and" before "(VII)", and

(2) by inserting before the semicolon at the end the following: ", and (VIII) the medical assistance made available to a qualified medicare beneficiary described in section 1905(p)(1) shall be limited to medical assistance for medicare cost-sharing (described in section 1905(p)(3)), subject to the provisions of subsection (n) and section 1916(b)".

(d) MEDICARE COST-SHARING DEFINED.—Section 1905(p) of such Act, as added by subsection (b), is amended by adding at the end the following:

"(3) The term 'medicare cost-sharing' means the following costs incurred with respect to a qualified medicare beneficiary:

"(A) Premiums under part B and (if applicable) under section 1818.

"(B) Deductibles and coinsurance described in section 1813.

"(C) The annual deductible described in section 1833(b).

"(D) The difference between the amount that is paid under section 1833(a) and the amount that would be paid under such section if any reference to '80 percent' therein were deemed a reference to '100 percent'.

Such term also may include, at the option of a State, premiums for enrollment of a qualified medicare beneficiary with an eligible organization under section 1876.".

(e) PAYMENT AMOUNTS.—Section 1902 of such Act, as amended by sections 9401(b) and 9402(a)(2) of this subtitle, is further amended by adding at the end the following new subsection:

"(n) In the case of medical assistance furnished under this title for medicare cost-sharing respecting the furnishing of a service or item to a qualified medicare beneficiary, the State plan may provide payment in an amount with respect to the service or item that results in the sum of such payment amount and any amount of payment made under title XVIII with respect to the service or item exceeding the amount that is otherwise payable under the State plan for the item or service for eligible individuals who are not qualified medicare beneficiaries.".

(f) REQUIREMENT OF COVERAGE OF CERTAIN PREGNANT WOMEN AND CHILDREN AND OTHER SPECIAL RULES.—

(1) REQUIRING COVERAGE OF CERTAIN PREGNANT WOMEN AND CHILDREN AND INCOME STANDARD TO BE USED.—Section 1902(m) of such Act, as added by section 9402(a)(2) of this subtitle, and as amended by section 9402(b) of this subtitle, is amended—

(A) in paragraph (3), by inserting "or coverge under subsection (a)(10)(E)" after "subsection (a)(10)(A)(ii)(IX)", and

(B) by adding at the end of the following new paragraph:

"(5) Notwithstanding subsection (a)(17), for qualified medicare beneficiaries described in section 1905(p)(1)—

"(A) the income standard to be applied is the income standard described in section 1905(p)(1)(C), and

"(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.".

EFFECTIVE DATE OF BENEFITS.—Section 1902(e) of such act, as amended by section 9401(d) of this subtitle, is amended by adding at the end the following new paragraph:

"(8) If an individual is determined to be a qualified medicare beneficiary (as defined in section 1905(p)(1)), such determination shall apply to services furnished after the end of the month in which the determination first occurs. For purposes of payment to a State under section 1903(a), such determination shall be considered to be valid for an individual for a period of 12 months, except that a State may provide for such determinations more frequently, but not more frequently than once every 6 months for an individual.".

(g) Conforming Amendments.—

(1) TREATMENT OF BENEFITS.—Section 1902(a)(10)(C) of such Act (42 U.S.C. 1396a(a)(C) is amended, in the matter before clause (i), by inserting "or (E) after subparagraph (A)".

(2) PAYMENT OF MEDICARE PREMIUMS AND PART A DEDUCTIBLE.—Section 1903(a)(1) of such Act (42 U.S.C. 1396b(a)(1)) is amended—

(A) by inserting "deductible amounts under part A and" after "(including expenditures for",

(B) by inserting "(and, in the case of qualified medicare beneficaries described in section 1905(p)(1), part A)" after "premiums under part B", and

(C) by striking "or (B)" and inserting "(B) are qualified medicare beneficiaries described in section 1905(p)(1), or (C)".

(3) TIMING OF BENEFITS.—Section 1905(a) of such Act (42 U.S.C. 1396d(a)) is amended, in the matter before subdivision (i), by inserting "or, in the case of a qualified medicare beneficiary described in subsection (p)(1), if provided after the month in which the individual becomes a such a beneficiary" after "makes application for assistance".

(4) COPAYMENTS.—

(A) Section 1902(a)(15) of such Act (42 U.S.C. 1396a(a)(15)) is amended by inserting "are not qualified medicare beneficiaries (as defined in section 1905(p)(1)) but" after "older who".

(B) Subsections (a) and (b) of section 1916 of such Act (42 U.S.C. 1396o) are each amended by striking "section 1902(a)(10)(A)" and inserting "subparagraph (A) or (E) of section 1902(a)(10)".

(h) EFFECTIVE DATE.—The amendments made by this section apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 9404. MEDICAID ELIGIBILITY FOR QUALIFIED SEVERELY IMPAIRED INDIVIDUALS

(a) AS CATEGORICALLY NEEDY.—Section 1902(a)(10)(A)(i)(II) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(i)(II)) is amended by inserting "or who are qualified severely impaired individuals (as defined in section 1905(q))" after "title XVI".

(b) DESCRIPTION OF QUALIFIED SEVERELY IMPAIRED INDIVIDUALS.—Section 1905 of such Act (42 U.S.C. 1396d), as amended by section 9403(b) of this subtitle, is amended by adding at the end the following new subsection:

"(q) The term 'qualified severely impaired individual' means an individual under age 65—

"(1) who for the month preceding the first month to which this subsection applies to such individual—

"(A) received (i) a payment of supplemental security income benefits under section 1611(b) on the basis of blindness or disability, (ii) a supplementary payment under section 1616 of this Act or under section 212 of Public Law 93-66 on such basis, (iii) a payment of monthly benefits under section 1619(a), or (iv) a supplementary payment under section 1616(c)(3), and

"(B) was eligible for medical assistance under the State plan approved under this title; and

"(2) with respect to whom the Secretary determines that—

"(A) the individual continues to be blind or continues to have the disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, continues to meet all non-disability-related requirements for eligibility for benefits under title XVI,

"(B) the income of such individual would not, except for his earnings, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1611(b) (if he were otherwise eligible for such payments),

"(C) the lack of eligibility for benefits under this title would seriously inhibit his ability to continue or obtain employment, and

"(D) the individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under title XVI (including any Federally administered State supplementary payments), this title, and publicly funded attendant care services (including personal care assistance) that would be available to him in the absence of such earnings.

In the case of an individual who is eligible for medical assistance pursuant to section 1619(b) in June, 1987, the individual shall be a qualified severely impaired individual for so long as such individual meets the requirements of paragraph (2).".

(c) EFFECTIVE DATE.—(1) The amendments made by this section apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1987, without regard to whether regulations to implement such amendments are promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

SEC. 9405. CLARIFICATION OF ELIGIBILITY OF HOMELESS INDIVIDUALS.

Section 1902(b)(2) of the Social Security Act (42 U.S.C. 1396a(b)(2)) is amended by inserting before the semicolon the following: ", regardless of whether or not the residence is maintained permanently or at a fixed address".

SEC. 9406. PAYMENT FOR ALIENS UNDER MEDICAID.

(a) IN GENERAL.—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended by adding at the end thereof the following new subsection:

"(v)(1) Notwithstanding the preceding provisions of this section, except as provided in paragraph (2), no payment may be made to a State under this section for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

"(2) Payment shall be made under this section for care and services that are furnished to an alien described in paragraph (1) only if—

"(A) such care and services are necessary for the treatment of an emergency medical condition of the alien, and

"(B) such alien otherwise meets the eligibility requirements for medical assistance under the State plan approved under this title (other than the requirement of the receipt of aid or assistance under title IV, supplemental security income benefits under title XVI, or a State supplementary payment).

"(3) For purposes of this subsection, the term emergency medical condition means a medical condition (including emergency labor and delivery) manifesting itself by

acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

"(A) placing the patient's health in serious jeopardy,

"(B) serious impairment to bodily functions, or

"(C) serious dysfunction of any bodily organ or part.".

(b) CONFORMING AMENDMENT.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended by adding at the end thereof the following new sentence: "Notwithstanding paragraph (10)(B) or any other provision of this subsection, a State plan shall provide medical assistance with respect to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law only in accordance with section 1903(v).".

(c) EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply to medical assistance furnished to aliens on or after January 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendment made in subsection (b), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet such additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

SEC. 9407. OPTIONAL PRESUMPTIVE ELIGIBILITY PERIOD FOR PREGNANT WOMEN.

(a) STATE OPTION.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (45),

(2) by striking the period at the end of paragraph (46) and inserting in lieu thereof "; and", and

(3) by adding at the end the following:

"(47) at the option of the State, provide for making ambulatory prenatal care available to pregnant women during a presumptive eligibility period in accordance with section 1920.".

(b) PRESUMPTIVE ELIGIBILITY.—Title XIX of the Social Security Act is amended by redesignating section 1920 as section 1921 and inserting after section 1919 the following new section:

"PRESUMPTIVE ELIGIBILITY FOR PREGNANT WOMEN

"SEC. 1920. (a) A State plan approved under section 1902 may provide for making ambulatory prenatal care available to a pregnant woman during a presumptive eligibility period.

"(b) For purposes of this section—

"(1) the term 'presumptive eligibility period' means, with respect to a pregnant woman, the period that—

"(A) begins with the date on which a qualified provider determines, on the basis of preliminary information, that the family income of the woman does not exceed the applicable income level of eligibility under the State plan, and

"(B) ends with (and includes) the earlier of—

"(i) the day on which a determination is made with respect to the eligibility of the woman for medical assistance under the State plan,

"(ii) the day that is 45 days after the date on which the provider makes the determination referred to in subparagraph (A), or

"(iii) in the case of a woman who does not file an application for medical assistance within 14 calendar days after the date on which the provider makes the determination referred to in subparagraph (A), the fourteenth calendar day after such determination is made; and

"(2) the term 'qualified provider' means any provider that—

"(A) is eligible for payments under a State plan approved under this title,

"(B) provides services of the type described in subparagraph (A) or (B) of section 1905(a)(2) or in section 1905(a)(9),

"(C) is determined by the State agency to be capable of making determinations of the type described in paragraph (1)(A), and

"(D)(i) receives funds under—

"(I) section 329 or section 330 of the Public Health Service Act, or

"(II) title V of this Act;

"(ii) participates in the program established under—

"(I) section 17 of the Child Nutrition Act of 1966, or

"(II) section 4(a) of the Agriculture and Consumer Protection Act of 1973; or

"(iii) participates in a State perinatal program.

"(c)(1) The State agency shall provide qualified providers with—

"(A) such forms as are necessary for a pregnant woman to make application for medical assistance under the State plan, and

"(B) information on how to assist such women in completing and filing such forms.

"(2) A qualified provider that determines under subsection (b)(1)(A) that a pregnant woman is presumptively eligible for medical assistance under a State plan shall—

"(A) notify the State agency of the determination within 5 working days after the date on which determination is made, and

"(B) inform the woman at the time the determination is made that she is required to make application for medical assistance under the State plan within 14 calendar days after the date on which the determination is made.

"(3) A pregnant woman who is determined by a qualified provider to be presumptively eligible for medical assistance under a State plan shall make application for medical assistance under such plan within 14 calendar days after the date on which the determination is made.

"(d) Notwithstanding any other provision of this title, ambulatory prenatal care that—

"(1) is furnished to a pregnant woman—

"(A) during a presumptive eligibility period,

"(B) by a qualified provider; and

"(2) is included in the care and services covered by a State plan;

shall be treated as medical assistance provided by such plan for purposes of section 1903.".

(c) CONFORMING CHANGE.—Section 1903(u)(1)(D) of such Act (42 U.S.C. 1396b(u)(1)(D)) is amended by adding at the end the following:

"(v) In determining the amount of erroneous excess payments, there shall not be included any erroneous payments made for ambulatory prenatal care provided during a presumptive eligibility period (as defined in section 1920(b)(1)).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to ambulatory prenatal care furnished in calendar quarters beginning on or after April 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 9408. RESPIRATORY CARE SERVICES FOR VENTILATOR-DEPENDENT INDIVIDUALS.

(a) REQUIRED SERVICES.—Section 1902(e) of the Social Security Act (42 U.S.C. 1396b(e)), as amended by sections 9401(d) and 9403(f) of this subtitle, is further amended by adding at the end the following new paragraph:

"(9)(A) At the option of the State, the plan may include as medical assistance respiratory care services for any individual who—

"(i) is medically dependent on a ventilator for life support at least six hours per day;

"(ii) has been so dependent for at least 30 consecutive days (or the maximum number of days authorized under the State plan, whichever is less) as an inpatient;

"(iii) but for the availability of respiratory care services, would require respiratory care as an inpatient in a hospital, skilled nursing facility, or intermediate care facility, and would be eligible to have payment made for such inpatient care under the State plan;

"(iv) has adequate social support services to be cared for at home; and

"(v) wishes to be cared for at home.

"(B) The requirements of subparagraph (A)(ii) may be satisfied by a continuous stay in one or more hospitals, skilled nursing facilities, or intermediate care facilities.

"(C) For purposes of this paragraph, respiratory care service means services provided on a part-time basis in the home of the individual by a respiratory therapist or other health care professional trained in respiratory therapy (as determined by the State), payment for which is not otherwise included within other items and services furnished to such individual as medical assistance under the plan.".

(b) WAIVER OF COMPARABILITY.—Section 1902(a)(10) of such Act (42 U.S.C. 1396(a)(10)), as amended by sections 9401(c), 9403(a), and 9403(c) of this subtitle, is further amended, in the matter following subparagraph (E)—

(1) by striking "and" before "(VIII)"; and

(2) by inserting before the semicolon at the end thereof the following: ", and (IX) the making available of respiratory care services in accordance with subsection (e)(9) shall not, by reason of this paragraph (10), require the making available of such services, or the making available of such services of the same amount, duration, and scope, to any individuals not included under subsection (e)(9)(A), provided such services are made available (in the same amount, duration, and scope) to all individuals described in such subsection".

(c) CONFORMING CHANGES.—

(1) Section 1905(a) of the Social Security Act (42 U.S.C. 1395d(a)), as amended by section 1895(c)(3) of the Tax Reform Act of 1986, is further amended—

(A) by striking "and" at the end of paragraph (19),

(B) by redesignating paragraph (20) as paragraph (21), and

(C) by inserting after paragraph (19) the following new paragraph:

"(20) respiratory care services (as defined in section 1902(e)(9)(C)); and".

(2) Section 1902(j) of the Social Security Act (42 U.S.C. 1396a(j)), as amended by sec-

tion 1895(c)(3) of the Tax Reform Act of 1986, is amended by striking "(20)" and inserting in lieu thereof "(21)".

(3) Section 1902(a)(10)(C)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(C)(iv)), as amended by section 1895(c)(3) of the Tax Reform Act of 1986, is amended by striking "through (19)" and inserting in lieu thereof "through (20)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after the date of the enactment of this Act.

PART 2—PROVISION OF SERVICES UNDER WAIVER AUTHORITY

SEC. 9411. PERMITTING STATES TO OFFER HOME AND COMMUNITY-BASED SERVICES TO CERTAIN LOW-INCOME INDIVIDUALS.

(a) WAIVER AUTHORITY.—

(1) Section 1915(c)(1) of the Social Security Act (42 U.S.C. 1396n(c)(1)) is amended—

(A) by inserting "a hospital or" after "level of care provided in", and

(B) by striking out all beginning with "or but for" through "State plan" the third place it appears.

(2) Section 1915(c)(2)(B) of such Act is amended—

(A) in clause (i) by striking "'skilled nursing facility or" and inserting in lieu thereof "inpatient hospital, skilled nursing facility, or", and

(B) in the matter following clause (iii) by inserting "inpatient hospital," after "need for".

(3) Section 1915(c)(7) of such Act is amended to read as follows:

"(7) In making estimates under paragraph (2)(D) in the case of a waiver that applies only to individuals with a particular illness or condition who are inpatients in hospitals or in skilled nursing or intermediate care facilities, the State may determine the average per capita expenditure that would have been made in a fiscal year for those individuals under the State plan separately from the expenditures for other individuals who are inpatients of those respective facilities.".

(b) PROVIDING CASE MANAGEMENT SERVICES TO PATIENTS WITH CERTAIN CONDITIONS.—Section 1915(g)(1) of such Act is amended by adding at the end the following: "A State may limit the provision of case management services under this subsection to individuals with acquired immune deficiency syndrome (AIDS), or with AIDS-related conditions, or with either, and a State may limit the provision of case management services under this subsection to individuals with chronic mental illness.".

(c) WAIVER OF COMPARABILITY REQUIREMENT.—The first sentence of section 1915(c)(3) of such Act is amended by striking all that follows "statewideness)" and inserting "and section 1902(a)(10)(B) (relating to comparability).".

(d) PROVIDING CERTAIN OTHER SERVICES TO PATIENTS WITH CHRONIC MENTAL ILLNESS.—Section 1915(c)(4)(B) of such Act is amended by inserting before the period at the end the following: "and for day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to applications for waivers (or renewals thereof) approved on or after the date of the enactment of this Act.

SEC. 9412. WAIVER AUTHORITY FOR CHRONICALLY MENTALLY ILL AND FRAIL ELDERLY.

(a) CHRONICALLY MENTALLY ILL DEMONSTRATION PROGRAM.—

(1) The Secretary of Health and Human Services may, in accordance with this subsection, waive certain provisions of title XIX of the Social Security Act in order to allow States to implement demonstration programs to improve the continuity, quality, and cost-effectiveness of mental health services available to chronically mentally ill medicaid beneficiaries.

(2) A waiver shall be granted under this subsection with respect to a demonstration program only if—

(A) the demonstration program has been awarded a grant from the Robert Wood Johnson Foundation and the Department of Housing and Urban Development under their "Program for the Chronically Mentally Ill",

(B) the State provides assurances satisfactory to the Secretary that under such waiver—

(i) the average per capita expenditure estimated by the State in any fiscal year for medical assistance for mental health services provided with respect to individuals covered under the program does not exceed 100 percent of the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expenditures under the State plan for such services for such individuals if the waiver had not been granted, and

(ii) there will be no reduction or limitation in benefits to a medicaid beneficiary under the program.

(3) The authority under this subsection extends only to the following, as they relate to the provision of mental health services:

(A) A waiver of the requirements of sections 1902(a)(1), 1920(a)(10)(B), 1902(a)(23), and 1902(a)(30) and clauses (i) and (ii) of section 1903(m)(2) of the Social Security Act.

(B) Including as "medical assistance" under the State plan case management services with respect to mentally ill patients, habilitation services (as defined in section 1915(c)(5) of such Act), day treatment or other partial hospitalization services, residential services (other than room and board), psychosocial rehabilitation services, clinic services (whether or not furnished in a facility), and such other services as the State may request and the Secretary may approve for individuals covered under the demonstration project.

(4)(A) A waiver under this subsection shall be for an initial term of three years which may be extended for an additional two-year term. The request of a State for extension of such a waiver shall be deemed granted unless the Secretary denies such request in writing within 90 days after the date of its submission to the Secretary.

(B) The authority to approve a waiver under this subsection extends only during the five-year period beginning on October 1, 1986.

(5) Subsections (c)(6) and (e)(1) of section 1915 of the Social Security Act shall apply to a waiver under this subsection in the same manner as they apply to a waiver under that section.

(6) The Secretary shall report, not later than January 1, 1993, to Congress on the cost, accessibility, utilization, and quality of service provided under waivers granted under this subsection.

(b) FRAIL ELDERLY DEMONSTRATION PROJECT WAIVERS.—

(1) The Secretary of Health and Human Services shall grant waivers of certain requirements of titles XVIII and XIX of the Social Security Act to not more than 10 public or nonprofit private community-based organizations to enable such organizations to provide comprehensive health care services on a capitated basis to frail elderly patients at risk of institutionalization.

(2)(A) Except as provided in subparagraph (B), the terms and conditions of a waiver granted pursuant to this subsection shall be substantially the same as the terms and conditions of the On Lok waiver (referred to in section 603(c) of the Social Security Amendments of 1983 and extended by section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985).

(B) In order to receive a waiver under this subsection, an organization must be awarded a grant from the Robert Wood Johnson Foundation.

(C) Subject to subparagraph (B), any waiver granted pursuant to this subsection shall be for an initial period of 3 years. The Secretary may extend such waiver beyond such initial period for so long as the Secretary finds that the organization complies with the terms and conditions described in subparagraphs (A) and (B).

SEC. 9413. CONTINUATION OF "CASE-MANAGED MEDICAL CARE FOR NURSING HOME PATIENTS" DEMONSTRATION PROJECT.

(a) APPROVAL OF APPLICATION.—The Secretary of Health and Human Services shall approve any application for a waiver of any requirement of title XVIII or XIX of the Social Security Act necessary to provide for continuation, from July 1, 1987, through June 30, 1989, of the "Case-Managed Medical Care for Nursing Home Patients" demonstration project (#95-P-98346/1-01) carried out pursuant to section 222 of the Social Security Amendments of 1972, section 402 of the Social Security Amendments of 1967, and section 1115 of the Social Security Act by the Department of Public Welfare, Commonwealth of Massachusetts.

(b) TERMS AND CONDITIONS.—The Secretary's approval of an application (or renewal of an application) under subsection (a) shall be on the same terms and conditions as applied to the demonstration project on July 1, 1986.

SEC. 9414. NEW JERSEY RESPITE CARE PILOT PROJECT.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into an agreement with the State of New Jersey (in this section referred to as the "State") for the purpose of conducting a pilot project (in this section referred to as the "project") under the XIX of the Social Security Act for providing respite care services for elderly and disabled individuals in order to determine the extent to which—

(1) the provision of necessary respite care services to individuals at risk of institutionalization will delay or avert the need for institutional care, and

(2) respite care services enhance and sustain the role of the family in providing long-term care services for elderly and disabled individuals at risk of institutionalization.

(b) CONDITIONS.—The agreement with the Secretary under this section shall—

(1) provide that the project shall be administered by a State health services agency designated for such purpose by the Governor (which may be the State agency administering or responsible for the administration of the State plan for medical assistance under title XIX of the Social Security Act);

(2) provide that if the project imposes any cost sharing requirements on participants

who are eligible for benefits under title XIX of the Social Security Act, such requirements shall be imposed only in accordance with the provisions of section 1916 of such Act.

(3) provide for a system of review to assure that respite care services are provided only to individuals reasonably determined to be in need of such services, and

(4) meet such other requirements as the Secretary may establish for the proper and efficient implementation of the project.

(c) DEFINITION.—For purposes of this section, the term "respite care services" shall include—

(1) short-term and intermittent—

(A) companion or sitter services (paid as well as volunteer),

(B) homemaker and personal-care services,

(C) adult day care, and

(D) inpatient care in a hospital, a skilled nursing facility, or an intermediate care facility (not to exceed a total of 14 days for any individual); and

(2) peer support and training for family caregivers (using informal support groups and organized counseling).

(d) PAYMENTS.—The agreement under this section shall be entered into between the Secretary and the State agency designated by the Governor. Under such agreement the Secretary shall pay to the State, as an additional payment under section 1903 of the Social Security Act for each quarter, an amount equal to 50 percent of the reasonable costs incurred by such State during such quarter in providing respite care services under the project for elderly and disabled individuals who are eligible for medical assistance under the State plan approved under title XIX of such Act (or who would be eligible if coverage under such plan was as broad as allowed under Federal law). The Federal payment shall not exceed $1,000,000 for fiscal year 1987, and $2,000,000 for each of the fiscal years 1988, 1989, and 1990. No payments shall be made pursuant to this section for any fiscal year beginning after September 30, 1990.

(e) DURATION.—The project under this section shall be of maximum duration of four years, plus an additional time period of up to six months for final evaluation and reporting.

(f) REPORTS.—The State shall arrange for an independent evaluation of the project and shall transmit the evaluation to the Secretary not more than six months after the conclusion of project.

(g) PROVISIONS SUBJECT TO WAIVER.—At the request of the State, the Secretary shall waive the following provisions of title XIX of the Social Security Act as they relate to the pilot project: section 1902(a)(1), section 1902(a)(10)(B), section 1902(a)(13), and section 1902(a)(30). The Secretary may not waive any other provision of such title with respect to the pilot project.

SEC. 9415. INAPPLICABILITY OF PAPERWORK REDUCTION ACT.

Notwithstanding any other provision of law, chapter 35 of title 44, United States Code, shall not apply to information required to carry out any provision of this part or the amendments made by this part.

PART 3—PAYMENTS

SEC. 9421. HOLDING STATES HARMLESS IN FISCAL YEAR 1987 AGAINST A DECREASE IN THE FEDERAL MEDICAL ASSISTANCE PERCENTAGE.

(a) IN GENERAL.—Section 9528 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by adding at the end the following new subsection:

(c) HOLD HARMLESS PROVISION.—Notwithstanding subsection (b), for calendar quarters occurring during fiscal year 1987 and only for purposes of making payment to a State under section 1903 of the Social Security Act, the amendments made by subsection (a) shall not apply to a State if the effect of applying the amendments would be to reduce the amount of payment made to the State under that section.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as though it had been included in the Consolidated Omnibus Budget Reconciliation Act of 1985 at the time of its enactment.

SEC. 9422. WAIVER OF CERTAIN REQUIREMENTS.

Notwithstanding the three-month limitation set forth in sections 1902(a)(34) and 1905(a) of the Social Security Act, payment may be made under title XIX of such Act with respect to care and services provided by the Medical University of South Carolina, after September 30, 1984, and before July 1, 1985, to individuals—

(1) who are not described in section 1902(a)(10)(A) of such Act,

(2) who, upon application, would have been eligible as individuals under the age of 18 or pregnant women, for medical assistance under the State plan approved under such title at the time such care and services were provided, and

(3) who, not later than six months after the date of the enactment of this Act, are determined by the State agency administering or supervising the administration of such plan to have been so eligible.

PART 4—OTHER QUALITY AND EFFICIENCY MEASURES

SEC. 9431. INDEPENDENT QUALITY REVIEW OF HMO SERVICES.

(a) IN GENERAL.—Section 1902(a)(30) of the Social Security Act (42 U.S.C. 1396a(a)(30)) is amended—

(1) by inserting "and" at the end of subparagraph (B), and

(2) by adding at the end the following new subparagraph:

(C) provide a utilization and quality control peer review organization (under part B of title XI) or a private accreditation body to conduct (on an annual basis) an independent, external review of the quality of services furnished under each contract under section 1903(m), with the results of such review made available to the State and, upon request, to the Secretary, the Inspector General in the Department of Health and Human Services, and the Comptroller General;".

(b) CONFORMING AMENDMENTS.—(1) Section 1902(d) of such Act (42 U.S.C. 1396a(d)) is amended by inserting "(including quality review functions described in subsection (a)(30)(C))" after "medical or utilization review functions".

(2) Section 1903(a)(3)(C) of such Act (42 U.S.C. 1396b(a)(3)(C)) is amended by inserting "or quality review" after "medical and utilization review".

(c) EFFECTIVE DATE.—The amendments made by this section apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 9432. STATE UTILIZATION REVIEW SYSTEMS.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") may not, during the period beginning with the date of the enactment of this Act and ending with the date that is 180 days after the day on whch the report required by subsection (b) is submitted to the Congress, publish final or interim final regulations requiring a State plan approved under title XIX of the Social Security Act to include a program requiring second surgical opinions or a program of inpatient hospital preadmission review.

(b) REPORT.—

(1) The Secretary shall report to Congress, by not later than October 1, 1988, for each State in a representative sample of States—

(A) the identity of those procedures which are high volume or high cost procedures among patients who are covered under the State medicaid plan,

(B) the payment rates under those plans for such procedures, and the aggregate annual payment amounts made under such plans for such procedures (including the Federal share of such payment amounts),

(C) the rate at which each such procedure is performed on medicaid patients and (to the extent that data are available) comparisons to the rate at which such procedure is performed on patients of comparable age who are not medicaid patients,

(D) with respect to each such procedure—

(i) the number of board certified or board eligible physicians in the State who provide care and services to medicaid patients and who perform the procedure, and

(ii) in the case of a State with a mandatory second surgical opinion program in operation, the number of physicians described in clause (i) who provide second opinions (of the type described in section 1164 of the Social Security Act) for the procedure at prevailing payment rates under the State medicaid plan, and

(E) in the case of a State with a mandatory second surgical opinion program or a program of inpatient hospital preadmission review in operation, a description of—

(i) the extent to which such program impedes access to necessary care and services, and

(ii) the measures that the State has taken to address such impediments, particularly in rural areas.

(2) Such report shall also include a list of those surgical procedures which the Secretary believes meet the following criteria and for which a mandatory second opinion program under medicaid plans may be appropriate:

(A) The procedure is one which generally can be postponed without undue risk to the patient.

(B) The procedure is a high volume procedure among patients who are covered under State medicaid plans or is a high cost procedure.

(C) The procedure has a comparatively high rate of nonconfirmation upon examination by another qualified physician, there is substantial geographic variation in the rates of performance of the procedure, or there are other reasons why requiring second opinions for 100 percent of such procedures would be cost effective.

(3) The representative sample of States required to be included in the report shall include States with mandatory second surgical opinion programs in operation, States with programs of inpatient hospital preadmission review in operation, and States with neither such program in operation.

(4) In this subsection, the term "medicaid plan" means a State plan approved under title XIX of the Social Security Act.

(c) STUDY.—

(1) The Secretary shall conduct a study of the utilization of selected medical treatments and surgical procedures by medicaid beneficiaries in order to assess the appropriateness, necessity, and effectiveness of such treatments and procedures.

(2) The study shall analyze the extent to which there is significant variation in the rate of utilization by medicaid beneficiaries of selected treatments and procedures for different geographic areas within States and among States.

(3) The study shall also identify underutilized, medically necessary treatments and procedures for which—

(A) a failure to furnish could have an adverse effect on health status, and

(B) the rate of utilization by medicaid beneficiaries is significantly less than the rate for comparable, age-adjusted populations.

(4) The study shall be coordinated, to the extent practicable, with the research program established pursuant to section 1875(c) of the Social Security Act, with particular regard to the relationship of the variations described in paragraph (2) to patient outcomes.

(5) The Secretary shall report the results of the study to the Congress not later than January 1, 1990.

SEC. 9433. CLARIFICATION OF FLEXIBILITY FOR STATE MEDICAID PAYMENT SYSTEMS FOR INPATIENT SERVICES.

(a) IN GENERAL.—Section 2173 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35, 95 Stat. 809) is amended by adding at the end the following new subsection:

"(d) Section 1902 of such Act is further amended by inserting before subsection (i) the following new subsection:

"'(h) Nothing in this title (inlcuding subsections (a)(13) and (a)(30) of this section) shall be construed as authorizing the Secretary to limit the amount of payment adjustments that may be made under a plan under this title with respect to hospitals that serve a disproportionate number of low-income patients with special needs.'.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply as though it was included in the enactment of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35).

SEC. 9434. FINANCIAL DISCLOSURE REQUIREMENTS FOR HMOS; CIVIL MONEY PENALTIES.

(a) DISCLOSURE OF INTERLOCKING RELATIONSHIPS.—

(1) Section 1903(m) of the Social Security Act (42 U.S.C. 1396b(m)) is amended—

(A) in paragraph (2)(A)—

(i) by striking "and" at the end of clause (vi),

(ii) by striking the period at the end of clause (vii) and inserting ", and", and

(iii) by adding after clause (vii) the following new clause:

"(viii) such contract provides for disclosure of information in accordance with section 1124 and paragraph (4) of this subsection."; and

(B) by adding at the end the following new paragraph:

"(4)(A) Each health maintenance organization which is not a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) must report to the State and, upon request, to the Secretary, the Inspector General of the Department of Health and Human Services, and the Comptroller General a description of transactions between the organization and a party in interest (as defined in section 1318(b) of such Act), including the following transactions:

"(i) Any sale or exchange, or leasing of any property between the organization and such a party.

"(ii) Any furnishing for consideration of goods, services (including management services), or facilities between the organization and such a party, but not including salaries paid to employees for services provided in the normal course of their employment.

"(iii) Any lending of money or other extension of credit between the organization and such a party.

The State or Secretary may require that information reported respecting an organization which controls, or is controlled by, or is under common control with, another entity by in the form of a consolidated financial statement for the organization and such entity.

"(B) Each organization shall make the information reported pursuant to subparagraph (A) available to its enrollees upon reasonable request.".

(2) Section 1903(m)(2)(A)(iii) of the Social Security Act (42 U.S.C. 1396b(m)(2)(A)(iii)) is amended by inserting before the semicolon the following: "and under which the Secretary must provide prior approval for contracts providing for expenditures in excess of $100,000".

(3)(A) The amendments made by paragraph (1) shall take effect 6 months after the date of the enactment of this Act.

(B) The amendment made by paragraph (2) shall take effect on the date of the enactment of this Act and shall apply to contracts entered into, renewed, or extended after the end of the 30-day period beginning on the date of the enactment of this Act.

(c) CIVIL MONEY PENALTIES.—Section 1903(m) of the Social Security Act, as amended by subsection (a), is further amended by adding at the end the following new paragraph:

"(5)(A) Any entity with a contract under this subsection that fails substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under such contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals, is subject to a civil money penalty of not more than $10,000 for each such failure.

"(B) The provisions of section 1128A (other than subsection (a)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.".

SEC. 9435. COBRA TECHNICAL CORRECTIONS AND CLARIFICATIONS RELATING TO THE MEDICAID PROGRAM.

(a) MAINTENANCE INCOME STANDARDS.—Section 9502(j)(4) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking out "on or after" and inserting in lieu thereof "before, on, or after".

(b) HOSPICE CARE FOR DUAL ELIGIBLES.—

(1) Section1902(a)(13)(D) of the Social Security Act, as amended by sections 9505(c)(01) and 9509(a)(4) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by inserting before the first semicolon the following: "and for payment of amounts under section 1905(o)(3)".

(2) Section 1905(o) of the Social Security Act, as amended by section 9505(a)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by adding at the end the following new paragraph:

"(3) In the case of a State which elects not to provide medical assistance for hospice care, but provides medical assistance for skilled nursing or intermediate care facility services with respect to an individual—

"(A) who is residing in a skilled nursing or intermediate care facility and is receiving medical assistance for services in such facility under the plan,

"(B) who is entitled to benefits under part A of title XVIII and has elected, under section 1812(d), to receive hospice care under such part, and

"(C) with respect to whom the hospice program under such title and the skilled nursing or intermediate care facility have entered into a written agreement under which the program takes full responsibility for the professional management of the individual's hospice care and the facility agrees to provide room and board to the individual,

instead of any payment otherwise made under the plan with respect to the facility's services, the State shall provide for payment to the hospice program of an amount equal to the amounts allocated under the plan for room and board in the facility, in accordance with the rates established under section 1902(a)(13), and, if the individual is an individual described in section 1902(a)(10)(A), shall provide for payment of any coinsurance amounts imposed under section 1813(a)(4). For purposes of this paragraph and section 1902(a)(13)(D), the term 'room and board' includes performance of personal care services, including assistance in activities of daily living, in socializing activities, administration of medication, maintaining the cleanliness of a resident's room, and supervising and assisting in the use of durable medical equipment and prescribed therapies.".

(c) MEDICAID QUALIFYING TRUSTS.—Section 9506 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by adding at the end the following new subsection:

"(c) EXCEPTION.—The amendment made by subsection (a) shall not apply to any trust or initial trust decree established prior to April 7, 1986, solely for the benefit of a mentally retarded individual who resides in an intermediate care facility for the mentally retarded.".

(d) EFFECTIVE DATES.—

(1) Sections 9505(e) and 9508(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 are each amended by inserting before the period at the end the following: ", without regard to whether or not regulations to carry out the amendments have been promulgated by that date".

(2) Sections 9510(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 are each amended by inserting before the period at the end the following: ", without regard to whether or not regulations to carry out the amendment have been promulgated by that date".

(e) HEALTH INSURING ORGANIZATIONS.—Section 9517(c)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 1895(c)(4) of the Tax Reform Act of 1986, is amended by adding at the end the following new subparagraph:

"(D) Nothing in section 1903(m)(1)(A) of the Social Security Act shall be construed as requiring a health-insuring organization to be organized under the health maintenance organization laws of a State.".

(f) EFFECTIVE DATE.—The amendments made by this section shall be effective as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 9436. PAYMENT FOR CERTAIN LONG-TERM CARE PATIENTS IN HOSPITALS

(a) IN GENERAL.—In the case of a State which received a waiver under the authority of section 402(b) of the Social Security Amendments of 1967 with respect to payment methodology for inpatient hospital services under title XVIII and XIX of the Social Security Act during the 3-year period beginning January 1, 1983, notwithstanding section 1902(a)(13) of such Act, the State may pay under title XIX of such Act for hospital patients receiving services at an inappropriate level of care at the rate for hospital patients receiving an appropriate level of care if the Secretary of Health and Human Services determines that a sufficient number of hospital beds have been decertified in the State to reduce the payments to hospitals under such title in the State by amount equal to or greater that the amount by which payments to hospitals under such title in such State will increase as a result of the payment of such higher rates for patients receiving inappropriate levels of care.

(b) EFFECTIVE PERIOD.—Subsection (a) shall apply to payments for services furnished during the 3-year period beginning January 1, 1986, after the date the Secretary makes the determination described in that subsection.

PART 5—MATERNAL AND CHILD HEALTH

SEC. 9441. AUTHORIZATION AND ALLOTMENT OF ADDITIONAL FUNDS.

(a) ADDITIONAL FUNDS.—Section 501(a) of the Social Security Act (42 U.S.C. 701(a)) is amended by striking "$478,000,000 for fiscal year 1984" and inserting "$553,000,000 for fiscal year 1987, $557,000,000 for fiscal year 1988, and $561,000,000 for fiscal year 1989".

(b) ALLOTMENT OF ADDITIONAL APPROPRIATIONS.—Section 502 of such Act (42 U.S.C. 701) is amended—

(1) in subsection (a)(1) by striking "amount appropriated under section 501(a)" and inserting in lieu thereof "amounts appropriated under section 501(a) for a fiscal year that are not in excess of $478,000,000";

(2) in subsection (b)—

(A) by inserting "that are not in excess of $478,000,000" after "fiscal year" the first place it appears, and

(B) by striking paragraph (3); and

(3) by adding at the end the following new subsections:

"(c)(1) Of the amounts appropriated for a fiscal year in excess of $478,000,000, an amount equal to 7 percent for fiscal year 1987, 8 percent for fiscal year 1988, and 9 percent for fiscal year 1989 shall be retained by the Secretary for the purpose of carrying out (through grants, contracts, or otherwise) projects for the screening of newborns for sickle-cell anemia and other genetic disorders. The provisions of paragraph (3) of subsection (a) shall apply to projects authorized by this paragraph to the same extent as such provisions apply to projects authorized under such subsection.

"(2)(A) Of the amounts appropriated for a fiscal year in excess of $478,000,000 that remain after the Secretary has retained the applicable amount (if any) for such fiscal year under paragraph (1), an amount equal to 33⅓ percent shall be retained and allotted in the same manner as the amounts retained and allotted under subsections (a) and (b).

"(B) The amounts retained by the Secretary under this paragraph shall be used for the purpose of carrying out (through grants, contracts, or otherwise) special projects of regional or national significance, training, and research to promote access to primary health services for children and community-based service networks and case management services for children with special health care needs.

"(C) The amounts allotted to the States under this paragraph shall be used to develop primary health services demonstration programs and projects for children and to promote the development of community-based service networks and case management services for children with special health care needs.

"(D) For purposes of this paragraph—

"(i) the term 'primary health services' includes—

"(I) any assessment, diagnosis, or treatment service provided on an outpatient basis that is designed to promote the health, to prevent the development of disease or disability, or to treat an illness or other health condition, of a child, and

"(II) any service designed to promote the access of children to high quality, continuous, and comprehensive primary health services, including case management;

"(ii) the term 'community-base service network for children with special health care needs' means a network of coordinated, high-quality services that is located in or near the home communities of children with special health care needs in order to improve the health status, functioning, and well being of such children;

"(iii) the term 'case management services' means services to promote the effective and efficient organization and utilization of resources to assure access to necessary comprehensive services for children and their families; and

"(iv) the term 'comprehensive services' includes early identification and intervention services, diagnostic and evaluation services, treatment services, rehabilitation services, family support services, and special education services.

"(3) Of the amounts appropriated for a fiscal year in excess of $478,000,000 that remain after the Secretary has retained the applicable amount (if any) for such fiscal year under paragraph (1), an amount equal to 66⅔ percent shall be retained and allotted in the same manner and for the same purposes as the amounts retained and allotted under subsections (a) and (b).

"(d)(1) To the extent that all the funds appropriated under this title for a fiscal year are not otherwise allotted to States either because all the States have not qualified for such allotments under section 505 for the fiscal year or because some States have indicated in their descriptions of activities under section 505 that they do not intend to use the full amount of such allotments, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.

"(2) To the extent that all the funds appropriated under this title for a fiscal year are not otherwise allotted to States because some State allotments are offset under section 506(b)(2), such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.".

SEC. 9442. MATERNAL AND CHILD HEALTH AND ADOPTION CLEARINGHOUSE.

The Secretary of Health and Human Services shall establish, either directly or by grant or contract, a National Adoption Information Clearinghouse. The Clearinghouse shall—

(1) collect, compile, and maintain information obtained from available research, studies, and reports by public and private agencies, institutions, or individuals concerning all aspects of infant adoption and adoption of children with special needs;

(2) compile, maintain, and periodically revise directories of information concerning—

(A) crisis pregnancy centers,

(B) shelters and residences for pregnant women,

(C) training programs on adoption,

(D) educational programs on adoption,

(E) licensed adoption agencies,

(F) State laws relating to adoption,

(G) intercountry adoption,

(H) any other information relating to adoption for pregnant women, infertile couples, adoptive parents, unmarried individuals who want to adopt children, individuals who have been adopted, birth parents who have placed a child for adoption, adoption agencies, social workers, counselors, or other individuals who work in the adoption field;

(3) disseminate the information compiled and maintained pursuant to paragraph (1) and the directories compiled and maintained pursuant to paragraph (2); and

(4) upon the establishment of an adoption and foster care data collection system pursuant to section 479 of the Social Security Act, disseminate the data and information made available through that system.

SEC. 9443. COLLECTION OF DATA RELATING TO ADOPTION AND FOSTER CARE.

Part E of title IV of the Social Security Act, as amended by section 1883(b)(10) of the Tax Reform Act of 1986, is further amended by adding at the end thereof the following new section:

"COLLECTION OF DATA RELATING TO ADOPTION AND FOSTER CARE

"SEC. 579. (a)(1) Not later than 90 days after the date of the enactment of this subsection, the Secretary shall establish an Advisory Committee on Adoption and Foster Care Information (in this section referred to as the 'Advisory Committee') to study the various methods of establishing, administering, and financing a system for the collection of data with respect to adoption and foster care in the United States.

"(2) The study required by paragraph (1) shall—

"(A) identify the types of data necessary to—

(i) assess (on a continuing basis) the incidence, characteristics, and status of adoption and foster care in the United States, and

"(ii) develop appropriate national policies with respect to adoption and foster care;

"(B) evaluate the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies;

"(C) assess the validity of various methods of collecting data with respect to adoption and foster care; and

"(D) evaluate the financial and administrative impact of implementing each such method.

"(3) Not later than October 1, 1987, the Advisory Committee shall submit to the Secretary and the Congress a report setting forth the results of the study required by paragraph (1) and evaluating and making recommendations with respect to the various methods of establishing, administering, and financing a system for the collection of data

with respect to adoption and foster care in the United States.

"(4)(A) Subject to subparagraph (B), the membership and organization of the Advisory Committee shall be determined by the Secretary.

"(B) The membership of the Advisory Committee shall include representatives of—

"(i) private, nonprofit organizations with an interest in child welfare (including organizations that provide foster care and adoption services),

"(ii) organizations representing State and local governmental agencies with responsibility for foster care and adoption services,

"(iii) organizations representing State and local governmental agencies with responsibility for the collection of health and social statistics,

"(iv) organizations representing State and local judicial bodies with jurisdiction over family law,

"(v) Federal agencies responsible for the collection of health and social statistics, and

"(vi) organizations and agencies involved with privately arranged or international adoptions.

"(5) After the date of the submission of the report required by paragraph (3), the Advisory Committee shall cease to exist.

"(b)(1)(A) Not later than July 1, 1988, the Secretary shall submit to the Congress a report that—

"(i) proposes a method of establishing, administering, and financing a system for the collection of data relating to adoption and foster care in the United States,

"(ii) evaluates the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies, and

"(iii) evaluates the impact of the system proposed under clause (i) on the agencies with responsibility for implementing it.

"(B) The report required by subparagraph (A) shall—

"(i) specify any changes in law that will be necessary to implement the system proposed under subparagraph (A)(i), and

"(ii) describe the type of system that will be implemented under paragraph (2) in the absence of such changes.

"(2) Not later than December 31, 1988, the Secretary shall promulgate final regulations providing for the implementation of—

"(A) the system proposed under paragraph (1)(A)(i), or

"(B) if the changes in law specified pursuant to paragraph (1)(B)(i) have not been enacted, the system described in paragraph (1)(B)(ii).

Such regulations shall provide for the full implementation of the system not later than October 1, 1991.

"(c) Any data collection system developed and implemented under this section shall—

"(1) avoid unnecessary diversion of resources from agencies responsible for adoption and foster care;

"(2) assure that any data that is collected is reliable and consistent over time and among jurisdictions through the use of uniform definitions and methodologies;

"(3) provide comprehensive national information with respect to—

"(A) the demographic characteristics of adoptive and foster children and their biological and adoptive or foster parents,

"(B) the status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care),

"(C) the number and characteristics of—

"(i) children placed in or removed from foster care, and

"(ii) children adopted or with respect to whom adoptions have been terminated, and

"(D) the extent and nature of assistance provided by Federal, State, and local adoption and foster care programs and the characteristics of the children with respect to whom such assistance is provided; and

"(4) utilize appropriate requirements and incentives to ensure that the system functions reliably throughout the United States.".

SUBTITLE F—PROVISION RELATING TO ACCESS TO HEALTH CARE

Sec. 9501. Continuation coverage for retirees in cases of bankruptcies.

SEC. 9501. CONTINUATION COVERAGE FOR RETIREES IN CASES OF BANKRUPTCIES.

(a) LOSS OF COVERAGE OF RETIREE THROUGH BANKRUPTCY AS QUALIFYING EVENT.—

(1) IRC AMENDMENT.—Paragraph (3) of section 162(k) of the Internal Revenue Code of 1986 (relating to qualifying event with respect to continuation coverage requirements under group health plans) is amended by adding at the end the following:

"(F) A proceeding in a case under title 11, United States Code, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in subparagraph (F), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in paragraph (7)(B)(iv) within one year before or after the date of commencement of the proceeding."

(2) ERISA AMENDMENT.—Section 603 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1163) is amended by adding at the end the following:

"(6) A proceeding in a case under title II, United States Code, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in paragraph (6), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in section 607(3)(C) within one year before or after the date of commencement of the proceeding."

(b) PERIOD OF CONTINUATION COVERAGE.—

(1) LIFE OF COVERED EMPLOYEE OR WIDOW AND ADDITIONAL 36 MONTHS FOR SURVIVING SPOUSE AND DEPENDENTS.—

(A) IRC AMENDMENTS.—Clause (i) of section 162(k)(2)(B) of the Internal Revenue Code of 1986 (relating to maximum period), as amended by section 1895(d)(2)(A) of the Tax Reform Act of 1986, is amended—

(i) in subclause (II), by inserting "other than a qualifying event described in paragraph (3)(F))" after "qualifying event" the first place it appears,

(ii) in subclause (III), by inserting "or (3)(F)" after "(3)(B)",

(iii) by redesignating subclause (III) as subclause (IV), and

(iv) by inserting after subclause (II) the following new subclause:

"(III) SPECIAL RULE FOR CERTAIN BANKRUPTCY PROCEEDINGS.—In the case of a qualifying event described in paragraph (3)(F) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in paragraph (7)(B)(iv)(III)), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee."

(B) ERISA AMENDMENTS.—Subparagraph (A) of section 602(2) of the Employee Retirement Income Security Act of 1974 (relating to maximum period), as amended by section 1895(d)(B) of the Tax Reform Act of 1986, is amended—

(i) in clause (ii), by inserting "(other than a qualifying event described in section 603(6))" after "qualifying event" the first place it appears,

(ii) in clause (iii), by inserting "or 603(6)" after "603(2)",

(iii) by redesignating clause (iii) as clause (iv), and

(iv) by inserting after clause (ii) the following new subclause:

"(iii) SPECIAL RULE FOR CERTAIN BANKRUPTCY PROCEEDINGS.—In the case of a qualifying event described in 603(6) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in section 607(3)(C)(iii)), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee."

(2) COVERAGE NOT LOST UPON ENTITLEMENT TO MEDICARE BENEFITS.—

(A) IRC AMENDMENT.—Subclause (II) of section 162(k)(2)(B)(iv) of the Internal Revenue Code of 1986 (relating to reemployment or medicare eligibility) is amended by inserting "in the case of a qualified beneficiary other than a qualified beneficiary described in paragraph (7)(B)(iv)," before "entitled".

(B) ERISA AMENDMENT.—Clause (ii) of section 602(2)(D) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1162(2)(D)) is amended by inserting "in the case of a qualified beneficiary other than a qualified beneficiary described in section 607(3)(C)," before "entitled".

(c) DEFINITION OF QUALIFIED BENEFICIARY MODIFIED IN REORGANIZATION CASES.—

(1) IRC AMENDMENT.—Section 162(k)(7)(B) of the Internal Revenue Code of 1986, as amended by section 1895(d)(7) of the Tax Reform Act of 1986, (relating to special rule for termination and reduced employment in definition of qualified beneficiary) is amended by adding at the end the following new clause:

"(iv) SPECIAL RULE FOR RETIREES AND WIDOWS.—In the case of a qualifying event described in paragraph (3)(F), the term 'qualified beneficiary' includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

"(I) as the spouse of the covered employee,

"(II) as the dependent child of the employee, or

"(III) as the surviving spouse of the covered employee.".

(2) ERISA AMENDMENT.—Section 607(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(3)) (relating to special rule for termination and reduced employment in definition of qualified beneficiary) is amended by adding at the end the following new subparagraph:

"(C) SPECIAL RULE FOR RETIREES AND WIDOWS.—In the case of a qualifying event described in section 603(6), the term 'qualified beneficiary' includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such

qualifying event, is a beneficiary under the plan—

"(i) as the spouse of the covered employee,

"(ii) as the dependent child of the employee, or

"(iii) as the surviving spouse of the covered employee.".

(d) NOTICE.—

(1) IRC AMENDMENT.—Subparagraphs (B) and (D)(i) of section 162(k)(6) of the Internal Revenue Code of 1986 (relating to notice requirements) are amended by striking "or (D)" each place it appears and inserting in lieu thereof "(D), or (F)".

(2) ERISA AMENDMENT.—Paragraphs (2) and (4)(A) of section 606 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1166) (relating to notice requirements) are amended by striking "or (4)" each place it appears and inserting in lieu thereof "(4), or (6)".

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect as if included in title X of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(2) TREATMENT OF CERTAIN BANKRUPTCY PROCEEDINGS.—Notwithstanding paragraph (1), section 10001(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985, and section 10002(d) of such Act, the amendments made by this section and by sections 10001 and 10002 of such Act shall apply in the case of plan years ending during the 12-month period beginning July 1, 1986, but only with respect to—

(A) a qualifying event described in section 162(k)(3)(F) of the Internal Revenue Code of 1986 or section 603(6) of the Employee Retirement Income Security Act of 1974, and

(B) a qualifying event described in section 162(k)(3)(A) of the Internal Revenue Code of 1986 or section 603(1) of the Employee Retirement Income Security Act of 1974 relating to the death of a retired employee occurring after the date of the qualifying event described in subparagraph (A).

(3) TREATMENT OF CURRENT RETIREES.—Section 162(k)(3)(F) of the Internal Revenue Code of 1986 and section 603(6) of the Employee Retirement Income Security Act of 1974 apply to covered employees who retired before, on, or after the date of the enactment of this Act.

(4) NOTICE.—In the case of a qualifying event described in section 603(6) of the Employee Retirement Income Security Act of 1974 that occurred before the date of the enactment of this Act, the notice required under section 606(2) of such Act (and under section 162(k)(6)(B) of the Internal Revenue Code of 1986) with respect to such event shall be provided no later than 30 days after the date of the enactment of this Act.

And the Senate agree to the same.

From the Committee on the Budget, for consideration of the entire House bill and Senate amendment, except for revenue measures on which conferees from the Committee on Ways and Means have been appointed:

WILLIAM H. GRAY III,
MIKE LOWRY,
BUTLER DERRICK,
ED JENKINS,
CHET ATKINS
(for purposes of short title/table of contents, title VII, and section 6004 only),
DELBERT L. LATTA,
LYNN MARTIN,

From the Committee on the Budget, solely for consideration of those portions of the House bill and Senate amendment containing revenue measures on which conferees from the Committee on Ways and Means have been appointed:

ED JENKINS,

From the Committee on Agriculture, solely for consideration of title II of the House bill and title I and section 501 of the Senate amendment:

E DE LA GARZA,
ED JONES,
CHARLIE STENHOLM
(except for consideration of section 501 of the Senate amendment),
BERKLEY BEDELL
(solely for consideration of section 501 of the Senate amendment),
SID MORRISON,
STEVE GUNDERSON,

From the Committee on Appropriations, solely for consideration of sections 11001 and 11002 of the House bill and sections 665 and 1106 of the Senate amendment:

JAMIE L. WHITTEN,
VIC FAZIO,
SILVIO O. CONTE,

From the Committee on Banking, Finance and Urban Affairs, solely for the consideration of title III of the House bill, and title II of the Senate amendment:

FERNAND J. ST GERMAIN,
FRANK ANNUNZIO,
MARY ROSE OAKAR,
CHALMERS P. WYLIE,
STEWART B. MCKINNEY,
JIM LEACH,

From the Committee on Education and Labor, solely for consideration of section 11005 of the House bill and title VIII and sections 1210-1212 of the Senate amendment:

AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
BILL CLAY,
JOSEPH M. GAYDOS,
MARIO BIAGGI,
JAMES M. JEFFORDS,
MARGE ROUKEMA,
TOM COLEMAN,

From the Committee on Energy and Commerce, solely for consideration of sections 4701-4753 of the House bill and section 303 of the Senate amendment:

JOHN D. DINGELL,
PHILIP R. SHARP,
JIM SLATTERY,
NORMAN F. LENT,
BOB WHITTAKER,

From the Committee on Energy and Commerce, solely for consideration of section 501 of the Senate amendment:

JOHN D. DINGELL,
RICHARD SHELBY,
JIM SLATTERY,
NORMAN F. LENT,
ED MADIGAN,
BOB WHITTAKER,

From the Committee on Energy and Commerce, solely for consideration of sections 4001, 4101, 4201-4206, 4301, 4302, 4401-4405, 5001, and 8101 of the House bill and sections 401-405, 411, and 502 of the Senate amendment:

JOHN D. DINGELL,
PHILIP R. SHARP,
ED MARKEY,
AL SWIFT,
JIM SLATTERY,
NORMAN F. LENT,
BILL DANNEMEYER,
CARLOS MOORHEAD,

From the Committee on Energy and Commerce, solely for consideration of subtitles F and G of title IV, parts 2-4 of subtitle C of title X, section 10001 (c) and (d)(3), section 10102, section 10205(f)-(k), and that portion of section 10206 amending section 710(b)(2) of the Social Security Act, of the House bill, and section 604(c), parts 2-4 of subtitle A of title VI, and subtitle B of title VI of the Senate amendment:

JOHN D. DINGELL,
HENRY A. WAXMAN,
JAMES H. SCHEUER,
DOUG WALGREN,
JIM SLATTERY,
BOB WHITTAKER,

From the Committee on Government Operations, solely for consideration of section 11003 of the House bill and section 653 of the Senate amendment:

JACK BROOKS,
CARDISS COLLINS,
GLENN ENGLISH,
HENRY A. WAXMAN,
TED WEISS,
FRANK HORTON,
BILL CLINGER,

From the Committee on Government Operations, solely for consideration of sections 10206 and 11004 of the House bill and sections 1103, 1104, 1203, and 1204 of the Senate amendment:

JACK BROOKS,
DON FUQUA,
CARDISS COLLINS,
GLENN ENGLISH,
BARBARA BOXER,
FRANK HORTON,
ROBERT S. WALKER,
(solely for purposes of Hospital Insurance Trust Fund treatment),
BILL CLINGER,

From the Committee on Interior and Insular Affairs, solely for consideration of title V and subtitle I of title VI of the House bill and section 502 of the Senate amendment:

MORRIS K. UDALL,
JOHN F. SEIBERLING,
JAMES WEAVER
(except for OCS/Buy American provisions),
GEO. MILLER,
PHIL SHARP,
DON YOUNG,
MANUEL LUJAN, JR.,
BOB LAGOMARSINO,

From the Committee on the Judiciary solely for consideration of part C of title VII of the Senate amendment:

PETER W. RODINO,
DAN GLICKMAN,
BARNEY FRANK,
HOWARD L. BERMAN,
HAMILTON FISH, JR.,

From the Committee on Merchant Marine and Fisheries, solely for consideration of title VI, except for part 5 of subtitle E thereof, subtitle C of title VII, and parts 1 through 4 of subtitle D of title VIII of the House bill, and sections 301, 302, and 501, and subtitle C of title IV of the Senate amendment:

WALTER B. JONES,
MARIO BIAGGI,
JOHN B. BREAUX,
GERRY E. STUDDS
(except for ocean dumping fees, comprehensive oil pollution liability and

compensation, and Trans-Alaska pipeline provisions),
MIKE LOWRY
(except for OCS/Buy American provisions),
BOB DAVIS,
GENE SNYDER
(except for consideration of subtitle D of title VI of the House bill) (for EPA fees, ocean dumping fees, comprehensive oil pollution liability and compensation, and Trans-Alaska pipeline provisions only),
DON YOUNG
(except for consideration of subtitle I of title VI of the House bill) (except for ocean dumping fees, comprehensive oil pollution liability and compensation, and Trans-Alaska pipeline provisions),
JACK FIELDS,
(solely for consideration of subtitles D and I of title VI of the House bill),

From the Committee on Post Office and Civil Service, solely for consideration of title VII of the House bill and sections 701, 711, and 1202 of the Senate amendment:

WILLIAM D. FORD,
MARY ROSE OAKAR,
MICKEY LELAND,
GENE TAYLOR
FRANK HORTON,

From the Committee on Public Works and Transportation, solely for consideration of subtitles A and E of title VIII of the House bill and sections 503 and 504 of the Senate amendment:

JAMES J. HOWARD,
GLENN M. ANDERSON,
HENRY J. NOWAK,
BOB EDGAR,
DOUGLAS APPLEGATE,
GENE SNYDER,
BUD SHUSTER,
BILL CLINGER,

From the Committee on Public Works and Transportation, solely for consideration of section 501 of the Senate amendment:

JAMES J. HOWARD,
ROBERT A. ROE,
DOUGLAS H. BOSCO,
EDOLPHUS TOWNS,
BOB WISE,
GENE SNYDER,
JOHN PAUL
HAMMERSCHMIDT,
ARLAN STANGELAND,

From the Committee on Public Works and Transportation, solely for consideration of subtitle B of title IV and subtitle B of title VIII of the House bill and section 411 of the Senate amendment:

JAMES J. HOWARD,
GLENN M. ANDERSON,
BOB EDGAR,
NICK JOE RAHALL,
GENE SNYDER,
JOHN PAUL
HAMMERSCHMIDT,
BUD SHUSTER,

From the Committee on Public Works and Transportation, solely for consideration of subtitle A of title VI, parts 1-4 of subtitle E of title VI, subtitle C of title VIII, and parts 1-4 of subtitle D of title VIII of the House bill:

ROBERT A. ROE,
DOUGLAS H. BOSCO,
EDOLPHUS TOWNS,
BOB WISE,
JOHN PAUL
HAMMERSCHMIDT,
BUD SHUSTER,
ARLAN STANGELAND,

From the Committee on Small Business, solely for the consideration of title IX of the House bill, and title IX of the Senate amendment:

PARREN J. MITCHELL,
NEAL SMITH,
JOSEPH M. MCDADE,

From the Committee on Ways and Means, solely for consideration of title X, subtitle F of title IV, part 5 of subtitle E of title VI, and part 5 of subtitle D of title VIII of the House bill and title VI, except for subtitle B thereof, title VI-A, except for section 665 thereof, title X, sections 1105, 1107, and 1201, subtitle B of title XII, and title XIII of the Senate amendment, and section 202 of the Senate amendment amending section 15(c) of the Export-Import Bank Act of 1945:

DAN ROSTENKOWSKI,
SAM GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,
PETE STARK,
ANDREW JACOBS, Jr.,
JOHN J. DUNCAN,
WILLIS D. GRADISON,

Managers on the Part of the House.

From the Committee on Agriculture, Nutrition, and Forestry:

JESSE HELMS,
BOB DOLE,
RICHARD G. LUGAR,
EDWARD ZORINSKY,
PATRICK LEAHY,

From the Committee on Appropriations:

MARK O. HATFIELD,
THAD COCHRAN,
JAMES ABDNOR,
DENNIS DECONCINI,
QUENTIN N. BURDICK,

From the Committee on Banking, Housing, and Urban Affairs:

JAKE GARN,
WILLIAM L. ARMSTRONG,
CHIC HECHT,
BILL PROXMIRE,
ALAN CRANSTON,
DON RIEGLE,

From the Committee on the Budget:

PETE DOMENICI,
WILLIAM L. ARMSTRONG,
NANCY LANDON
KASSEBAUM,
RUDY BOSCHWITZ,
LAWTON CHILES,
ERNEST F. HOLLINGS,
J. BENNETT JOHNSON,

From the Committee on Commerce, Science, and Transportation:
For Conrail, Subconference 9:

JOHN C. DANFORTH,
BOB PACKWOOD,
NANCY LANDON
KASSEBAUM,
RUSSELL B. LONG,

From the Committee on Commerce, Science, and Transportation:
For Maritime, Subconference 10:

JOHN C. DANFORTH,
BOB PACKWOOD,
ERNEST F. HOLLINGS,
DANIEL K. INOUYE,

From the Committee on Energy and Natural Resources:

JAMES A. MCCLURE,
MALCOLM WALLOP,
JOHN W. WARNER,
J. BENNETT JOHNSTON,
WENDELL FORD,

From the Committee on Environment and Public Works:

ROBERT T. STAFFORD,
JOHN H. CHAFEE,
ALAN K. SIMPSON,
DAVE DURENBERGER,
STEVE SYMMS,
LLOYD BENTSEN,
GEORGE, MITCHELL,
DANIEL PATRICK
MOYNIHAN,
QUENTIN N. BURDICK,

From the Committee on Finance:
General:

BOB DOLE,
JOHN C. DANFORTH,
JOHN H. CHAFEE,
RUSSELL LONG,
LLOYD BENTSEN,
SPARK M. MATSUNAGA,

For Medicare, Medicaid and Maternal and Child Health, Subconferences 19, 20, and 21:

JOHN HEINZ,
DAVE DURENBERGER,
DANIEL PATRICK
MOYNIHAN,
MAX BAUCUS,

From the Committee on Governmental Affairs:

WILLIAM V. ROTH, Jr.,
TED STEVENS,
WILLIAM S. COHEN,
DAVE DURENBERGER,
TOM EAGLETON,
CARL LEVIN,
ALBERT GORE, Jr.,

For Subconference 15:

WILLIAM V. ROTH, Jr.,
WILLIAM S. COHEN,
DAVE DURENBERGER,
TOM EAGLETON,
CARL LEVIN,

From the Committee on Labor and Human Resources:
For ERISA:

ORRIN G. HATCH,
DON NICKLES,
ROBERT T. STAFFORD,
EDWARD M. KENNEDY,
HOWARD M. METZENBAUM,

For GSL/Education Asset:

ORRIN G. HATCH,
ROBERT T. STAFFORD,
LOWELL P. WEICKER, Jr.,
EDWARD M. KENNEDY,
CLAIBORNE PELL,

From the Committee on Small Business:

LOWELL P. WEICKER, Jr.,
WARREN RUDMAN,
DALE BUMPERS,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987, submit the following joint statement to the House and the Senate in explanation of the effect of

the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—AGRICULTURE PROGRAMS

(1) SALE OF NOTED AND OTHER OBLIGATIONS FROM THE RURAL DEVELOPMENT INSURANCE FUND

(a) The House bill provides that the Secretary of Agriculture must sell notes from the Rural Development Insurance Fund in such amounts as to realize net proceeds to the Government not less than—

(i) $552,000,000 during fiscal year 1988, and

(ii) $547,000,000 during fiscal year 1989. (Sec. 2001(a).)

The Senate amendment has the same terms, except that (i) it does not contain the words "to the Government" and (ii) the net proceeds to be realized from such sales must be not less than—

(A) $549,000,000 during fiscal year 1988, and

(B) $543,000,000 during fiscal year 1989. (Sec. 101(a).)

The Conference substitute adopts the House provision. (Sec. 1001(a).)

(b) The House bill provides that the Secretary of Agriculture must sell notes from the Rural Development Insurance Fund to realize the required net proceeds. (Secs. 2001(a) and (b).)

The Senate amendment is the same, except that it provides that the Secretary must sell notes and other obligations from the fund to realize the required savings. (Secs. 101 (a) and (b).)

The Conference substitute adopts the Senate provision. (Secs. 1001 (a) and (b).)

(c) The House bill provides that any sale of notes from the Rural Development Insurance Fund, as described above, cannot alter the terms specified in the note, except that, on sale, a note cannot be subject to the graduation requirements under section 333(c) of the Consolidated Farm and Rural Development Act. (Sec. 2001(c).)

(NOTE: Section 333(c) of the Consolidated Farm and Rural Development Act provides that the Secretary of Agriculture can require a borrower to agree to obtain financing from private or cooperative sources and to pay off the loan from the Rural Development Insurance Fund if it appears to the Secretary that the borrower is able to obtain a loan from such sources. (7 U.S.C. 1983(c).))

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision. (Sec. 1001(c).)

(d) The House bill provides that private parties wishing to purchase notes from the Rural Development Insurance Fund must demonstrate an ability to service (or provide resources for servicing) the loans represented by the notes, including the ability to provide technical assistance, additional credit, and any other services that the Secretary of Agriculture deems are necessary to ensure continued performance on the loan. (Sec. 2001(f).)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision with an amendment specifying that any private party wishing to purchase notes from the Rural Development Insurance Fund must demonstrate the ability to service (or provide resources for servicing) loans represented by the notes, including the ability to provide services (or to obtain the resources to provide such services) that the Secretary deems are necessary to ensure continued performance on the loans, and the ability to generate capital for additional needed credit. (Sec. 1001(e).)

The conferees intend that loans that are sold from the Rural Development Insurance Fund continued to be adequately serviced. Moreover, purchasers of notes should be authorized to conduct loan servicing directly, or indirectly through other arrangements. At the same time, servicing requirements imposed by the Secretary should not unreasonably reduce the marketability or value of the notes to be sold.

Purchasers of notes from the Rural Development Insurance Fund must service such loans or provide for such servicing in a manner that will ensure the borrower's continued performance on the note. The statutory language is not intended, however, to force buyers to take unreasonable steps to guarantee performance or to otherwise preclude the possibility of foreclosure.

The conferees intend that the Secretary, acting through the Farmers Home Administration (FmHA), ensure that technical assistance as currently available to FmHA borrowers remain available to those Rural Development Insurance Fund borrowers whose loans have been sold from the Fund. The Farmers Home Administration must provide such technical assistance if it is not otherwise provided to the borrower.

The conferees also intend that any regulations issued to implement the servicing of notes not substantially reduce the pool of potential purchasers. An environment should be established in which competitive bidding among large numbers of potential buyers will result in the Government obtaining the highest possible price for the notes.

(2) LIMITATION ON THE SALE OF NOTES FROM THE AGRICULTURAL CREDIT INSURANCE FUND

The House bill prohibits the Secretary of Agriculture from selling notes from the Agricultural Credit Insurance Fund during fiscal years 1987, 1988, and 1989 without congressional approval, except sales of such notes to the U.S. Treasury. (Secs. 2001(e).)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision. (Sec. 1002.)

(3) PREPAYMENT OF RURAL ELECTRIFICATION ADMINISTRATION GUARANTEED LOANS

(A) AUTHORITY

The House bill will amend the Rural Electrification Act of 1936 to add a new section authorizing the prepayment of certain loans made by the Federal Financing Bank and guaranteed by the Rural Electrification Administration. Specifically, the House bill provides that a borrower could prepay the loan (or any loan advance thereunder) by paying the outstanding principal balance due on the loan (or advance) if—

(1) the loan is outstanding on July 2, 1986;

(2) private capital, with the existing loan guarantee (which would be fully transferable and assignable without condition), is used to replace the loan; and

(3) the borrower certifies that any savings from such prepayment will be passed on to its consumers or used to improve the financial strength of the borrower in cases of financial hardship.

No prepayment penalties could be charged against the borrower, the Rural Electrification and Telephone Revolving Fund, or the Rural Electrification Administration, as a result of paying the outstanding principal balance.

A borrower will not qualify for prepayment if, in the opinion of the Secretary of the Treasury, to prepay in such borrower's case would adversely affect the operation of the Federal Financing Bank.

(NOTE: The authority of the Secretary of the Treasury to make such decisions would be limited during fiscal year 1987. See paragraph (c) below.) (Sec. 2011(a).)

The Senate amendment requires the Secretary of the Treasury to issue final regulations implementing Public Law 99-349 (the fiscal year 1986 urgent supplemental appropriations Act, enacted on July 2, 1986) to permit the prepayment of loans made by the Federal Financing Bank and guaranteed by the Rural Electrification Administration. (Sec. 103.)

(NOTE: The provision in the fiscal year 1986 urgent supplemental appropriations Act contains the same provisions as in the House bill (as described above) except that—

(1) the appropriations Act does not amend the Rural Electrification Act of 1936;

(2) the House bill specifically permits prepayments of loan advances; and

(3) under the appropriations Act, the borrower must certify that prepayment will result in substantial savings to its customers or lessen the threat of bankruptcy of the borrower.)

The Conference substitute adopts the House provision with an amendment transferring all references to transferability and assignability of guarantees of Rural Electrification Administration loans to a different section of the bill. (See Sec. 1011(a).)

The House bill, as a conforming amendment, will strike out the comparable provision in the 1986 urgent supplemental appropriations Act relating to Rural Electrification Administration loan prepayments described above. (Sec. 2011(b).)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision. (Sec. 1011(b).)

(C) AUTHORITY OF THE SECRETARY OF THE TREASURY

The House bill will suspend, in fiscal year 1987, the general authority of the Secretary of the Treasury to disqualify a borrower from prepayment of a loan until the cumulative amount of principal on loans prepaid under the authority provided by section 2011 (and under the fiscal year 1986 urgent supplemental appropriations Act) exceeds $2,415,000,000. (Sec. 2011(a).)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision with an amendment providing that the general authority of the Secretary of the Treasury to disqualify a borrower from prepayment of a loan may not be exercised in fiscal year 1987 until such time as the net proceeds to the Government (realized from such prepayments in fiscal year 1987) exceed $2,017,500,000. (Sec. 1011(a).)

(D) FISCAL YEAR 1987 NET PROCEEDS

The House bill will require the Administrator of the Rural Electrification Administration to permit, subject to the provisions described in paragraph (a) above, prepayments of principal on loans in fiscal year 1987—under section 2011 and the fiscal year 1986 urgent supplemental appropriations Act—in a cumulative amount not less than the amount that, added to the cumulative amount of principal prepayments in fiscal year 1986, equals $2,415,000,000. (Sec. 2011(a).)

The Senate amendment will require the Secretary of the Treasury to issue final regulations implementing the prepayment provisions of the fiscal year 1986 urgent supplemental appropriations Act to permit the prepayment of loans in such amounts as to realize net proceeds of not less than $1,720,000,000 during fiscal year 1987. (Sec. 103.)

The Conference substitute adopts the House provision with an amendment specifying that the Administrator of the Rural Electrification Administration must permit the prepayment, without penalty, of loans made by the Federal Financing Bank and guaranteed under section 306 of the Rural Electrification Act of 1936 in such amounts as to realize net proceeds to the Government of $2,017,500,000 from such prepayments in fiscal year 1987.

The Administrator must also establish eligibility criteria to ensure that the loan prepayment activity can be utilized by those cooperative borrowers in greatest need of the benefits associated with prepayment and such other eligibility criteria as are necessary to carry out this provision. (Sec. 1011(a).)

(E) TRANSFERABILITY AND ASSIGNABILITY

The House bill provides that, for guaranteed loans prepaid under section 2011, the Rural Electrification Administration guarantee will be fully transferable and assignable without condition. (Sec. 2011(a).)

The Senate amendment provides that the regulations required to be issued under section 103 must not prohibit full transferability and assignability of such loans without condition. (Sec. 103.)

The Conference substitute adopts the House provision with an amendment providing that the provisions on transferability and assignability of loans guaranteed by the Rural Electrification Administration will not preclude the grouping of such guaranteed loans with nonguaranteed loans or securities (prior to their sale) in such a manner as to assure that such sales will not unreasonably compete with the marketing of Treasury securities. (Sec. 1011(a).)

(F) REGULATIONS

(1) The House bill provides that the Secretary of Agriculture must issue regulations to implement section 2011 within 15 days after the date of enactment of the bill. (Sec. 2011(c).)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision with an amendment changing the time period for the issuance of regulations from 15 to 60 days. (Sec. 1011(c).)

(2) The House provides that the regulations must facilitate prepayments of loans. (Sec. 2011(c).)

The Senate amendment provides that the regulations to be issued under section 103 must not require unreasonable reductions in rates to customers. (Sec. 103.)

The Conference substitute adopts the House provision with an amendment incorporating both the House and Senate provisions. (Sec. 1011(c).)

(4) SALE OR PREPAYMENTS OF DIRECT OR INSURED LOANS

The House bill will amend the Rural Electrification Act of 1936 to add a new section to provide that a direct or insured loan made under the Act cannot be sold or prepaid at a value less than the face value of any outstanding principal balance of the loan, except when sold to or prepaid by the borrower at the lesser of the outstanding principal balance due on the loan or the loan's present value discounted from the face value at maturity at the rate set by the Administrator. The exception contained in the preceding sentence will be effective for the period ending September 30, 1987. (Sec. 2011(a).)

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision. (Sec. 1011(a).)

(5) ADVANCE DEFICIENCY PAYMENTS

The Senate amendment requires the Secretary of Agriculture to make advance deficiency payments available for the 1987 crops of wheat, feed grains, upland cotton, and rice under the criteria in current law. The percentage of the projected payment rate used in computing the payments would not be less than 40 percent in the case of wheat and feed grains, and 30 percent in the case of rice and upland cotton. (Sec. 102.)

The House bill contains no comparable provision.

(NOTE: Current law authorizes the Secretary, when acreage limitation or set-aside programs are in effect for such crops, to make advance deficiency payments available for the 1987 crops of wheat, feed grains, upland cotton, and rice at a rate of up to 50 percent of the projected payment rate. (7 U.S.C. 1445b-2(a).))

The Conference substitute adopts the Senate provision. (Sec. 1021.)

(6) FARM CREDIT SYSTEM INTEREST RATES AND TECHNICAL AMENDMENTS

The House bill and the Senate amendment contain similar provisions to enable Rural Electrification Administration guaranteed loan borrowers to prepay their outstanding indebtedness, which will strengthen their operating condition while making a substantial contribution to reducing the deficits for fiscal years 1987, 1988, and 1989. (See item (3) above.) They likewise contain provisions (wich are the same in both bills) to enable institutions of the Farm Credit System to purchase, service, collect, and dispose of notes that will be sold out of the Rural Development Insurance Fund (RDIF) under the bill (see item (1) above), thus providing a market to ensure that projected savings under the bill will be achieved.

The Conference substitute, in addition to adopting the House provision, with amendments, regarding REA loan prepayments and including the provision relating to purchases of notes by institutions of the Farm Credit System, includes supplementary provisions to strengthen the operating condition of the institutions of the Farm Credit System that would purchase and service the RDIF notes, along with other FCS institutions. These provisions permit the moderation of interest rates FCS institutions charge and make technical changes in the Farm Credit Act of 1971 to clarify the scope of FCS institution financial authorities and accounting procedures.

Specifically, the Conference substitute provides that this provision may be cited as the "Farm Credit Act Amendments of 1986".

It will add to the "Policy and Objectives" statement of the Farm Credit Act of 1971 an expression of the policy of Congress (1) that the credit needs of farmers, ranchers, and their cooperatives are best served if the institutions of the Farm Credit System provide equitable and competitive interest rates to eligible borrowers, taking into consideration the creditworthiness and access to alternative sources of credit for borrowers, the cost of funds, including any costs of defeasance (described below), operating costs of the institutions, including the costs of any loan loss amortization (described below), the cost of servicing loans, the need to retain earnings to protect borrower stock, and the volume of net new borrowing, and (2) that Farm Credit System institutions take action in accordance with the Conference substitute in such manner that borrowers from the institutions derive the greatest benefit practicable from it (except that in no case would any borrower be charged a rate that is below competitive market rates for similar loans from private lenders to borrowers of equivalent creditworthiness and access to alternative credit).

The Conference substitute will delete from the Farm Credit Act of 1971 the provisions found in sections 1.7, 2.4, and 3.10(a) that subject, to Farm Credit Administration approval, the loan interest rates established by the Federal land banks, the Federal intermediate credit banks, and the banks for cooperatives.

It will add to section 4.8 of the Farm Credit Act of 1971 provisions that authorize each bank of the Farm Credit System, through December 31, 1988 (and with the approval of, and subject to conditions established by, the regulator—the Farm Credit Administration), to take measures that will permit the bank to reduce the costs of its borrowings. Each bank would be authorized, with the prior approval of the FCA and subject to such conditions as it may establish, to take one or more of the following actions—

(1) contracting with a third party, or with a System service organization that is established under the Farm Credit Act of 1971 for the limited purposes of this provision and that is not to be included in the combined financial statements of other System institutions, with respect to payment of interest on the obligations of the bank and other System banks incurred before January 1, 1985, in consideration of the payment of market interest rates on such obligations, plus a premium;

(2) for the period July 1, 1986 through December 31, 1988, capitalizing interest costs on obligations incurred before January 1, 1985, in excess of the estimated interest costs on an equivalent amount of Farm Credit System obligations at prevailing market rates on such obligations of similar maturities as of the date of the enactment of the bill; or

(3) other similar action.

Each bank also would be authorized, again with prior approval of and subject to conditions established by the Farm Credit Administration, to amortize, over a period of not to exceed 20 years, the capitalization of the premium, capitalization of interest expense, or like costs of any action taken under the provisions explained above.

While the Farm Credit Act of 1971 presently authorizes System banks to purchase

their own obligations and to make investments, the Conference substitute will make clear that System banks may use measures that will permit (1) the payment of interest on debt incurred before January 1, 1985 (debt bearing interest much higher than the market rate on System obligations now being issued), through the payment of market rates of interest on such debt, plus a premium, or (2) during the designated period of July 1, 1986, through December 31, 1988, capitalization of the interest cost on such debt that exceeds the prevailing market rates of interest on System obligations of similar maturities as of the date of enactment, or (3) taking other similar action. Also, it will permit the banks to amortize capitalization of the premium of the capitalized interest expense over a period not to exceed 20 years.

The Conference substitute contains amendments to the Farm Credit Act of 1971 that conform sections 4.17 and 5.17(a)(5)(A) of the Act with the other interest rate amendments made to the Act. References to FCA approval of interest rates would be removed from the Act while language preempting the application of State usury-type laws to loans of System institutions would be preserved. The amendment will have the result of making clear that interest rates on loans made by System institutions are not subject to FCA approval. The Conference substitute also will delete from section 5.17(a)(5) of the Act a reference to FCA approval of interest rates on loans made or discounted by System institutions.

The Conference substitute will revise the provision of section 5.19(b) of the Farm Credit Act of 1971 that requires that financial statements of System institutions be prepared in accordance with generally accepted accounting principles ("GAAP"). It will exampt from GAAP actions taken by System bank under section 4.8 of the Act, as amended by the Conference substitute. It also states that, notwithstanding any other provisions of the Act (including the GAAP accounting requirement), during the period of July 1, 1986, through December 31, 1988, System institutions may, with the prior approval of an subject to conditions established by the FCA, capitalize their provision for losses that is in excess of one-half of one percent of loans outstanding and amortize the capitalized amount over a period of not to exceed 20 years.

This would allow System institutions to capitalize the extraordinary portion of their losses. Those losses, therefore, would continue on the System Books, but they would be repayable from earnings in future years.

The conferees note that the Conference substitute does not revise or limit the intent of Congress in enacting the Farm Credit Amendments Act of 1985.

The conferees believe that the Farm Credit System, which provides credit for the most part in agriculture, has many resources to deal with the problems brought on it by the severe recession in U.S. agriculture. Confidence in the System has not changed since last year.

In 1985, it was necessary that Congress provide the System with tools to surmount the continuing difficulties in agricultural finance. It is necessary now that those tools be supplemented with additional tools.

Further, this provision is not intended to be a "bail-out" of failing institutions. The Farm Credit Administration is expected to use its regulatory powers to ensure that implementation of this provision is not used to circumvent the intent of Congress in enacting the 1985 legislation.

The conferees also intend that, with respect to any changes in System institution accounting procedures authorized and adopted under this provision, each System institution that makes such changes also will maintain its financial statements prepared in accordance with generally accepted accounting principles (including such additional information as the Farm Credit Administration by regulation may require), as well as maintain its financial statements prepared in accordance with its revised regulatory accounting procedures authorized and approved by the Farm Credit Administration with respect to capitalization of losses as permitted under this bill. Such statements should be made available to and reviewed by the Farm Credit Administration.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 3, 1986.

Hon. E DE LA GARZA,
Chairman, Committee on Agriculture,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached estimate of the budget impact of the reconciliation provisions within the jurisdiction of subconference 1.

If you wish further details on these estimates, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—SUBCONFERENCE [1]

[By fiscal year, in millions of dollars]

		Change from Gradison base	Change from adjusted reconciliation baseline		
		1987	1987	1988	1989
DIRECT SPENDING:					
RDIF loan asset sales:					
Function 450	BA	830	830	765	807
	O	−1,024	−1,024	−617	−581
Function 900	BA	24	24	65	34
	O	24	24	65	34
Prepayment of REA loans:					
Function 270	BA				
	O	−849	−849	8	11
Function 900	BA	52	52	102	99
	O	52	52	102	99
Advance deficiency payments: Function 350	BA				
	O				
Total—direct spending	BA	906	906	932	940
	O	−1,797	−1,797	−442	−437

TITLE II—BANKING AND HOUSING PROGRAMS

The Conferees for the House and Senate Banking Committees have complied with the reconciliation requirements of the FY 1987 Budget Resolution, but are nonetheless deeply concerned by the sale of government loan assets they were asked to approve. The sale of large amounts of government loan assets within one year is a seriously flawed method for raising budget revenues. In the case of Rural Housing and Export-Import Bank loans, more than $4 billion of loans will have to be sold in FY 1987 to raise $3.2 billion of net revenues in FY 1987. In the bargain, the U.S. Government will lose $1.5 billion of receipts due over the three year budget planning period, and additional billions in the budgets of the 1990's.

The conferees are particularly concerned about the impact of these asset sales on the Export-Import Bank. In making these sales and returning the proceeds to the government, the Bank will suffer a reduction of more than $400 million in its present limited amount of capital and reserves. Even though this drain on the Bank's capital results through no fault of Bank management, when a final accounting of the Bank's losses is made the Bank will likely be criticized for it.

At a time of record U.S. trade deficits, most conferees believe a strong Export-Import Bank is needed to support growth of U.S. exports. Instead the Bank's leading program is less than 20 percent of its level in 1981. As a result of this drain on the Bank's limited capital resources, support for the Bank may be further eroded. The conferees are deeply concerned by these developments, and both House and Senate Banking Committees are resolved to address the capital adequacy and budgetary treatment of the Export-Import Bank at an early opportunity in the next Congress.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 7, 1986.

Hon. FERNAND J. ST GERMAIN,
Chairman, Committee on Banking, Finance and Urban Affairs, United States House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached estimate of the budget impact of the reconciliation provisions within the jurisdiction of subconference 2.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—SUBCONFERENCE 2

[By fiscal year, in millions of dollars]

		Change from Gradison base	Change from adjusted reconciliation baseline		
		1987	1987	1988	1989
DIRECT SPENDING					
Sale of rural housing loans:					
Function 370	BA	809	809		221
	O	−1,411	−1,411	−30	−57
Function 900 (interest)	BA	−304	−304	263	290
Sale of Eximbank loans:					
Function 150	BA			−624	
	O	−1,500	−1,500	307	281
Function 900 (interest)	BA			117	117
	O			117	117
Total—direct spending	BA	505	505	−244	628
	O	−3,215	−3,215	657	631

TITLE III—ENERGY AND ENVIRONMENTAL PROGRAMS

SUBTITLE A—DISTRIBUTION OF PETROLEUM OVERCHARGE FUNDS

Subtitle A of title III of the conference agreement is entitled the Petroleum Overcharge Distribution and Restitution Act of 1986. The subtitle provides for the distribution and restitution of certain petroleum overcharge funds involving overcharges resulting from alleged crude oil or petroleum product pricing violations under the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1973.

The conference agreement adopts the House approach with changes reflecting Senate amendments concerning the distribution of oil overcharges. The agreement also adopts the Senate statute of limitations approach with changes.

DISTRIBUTION OF OIL OVERCHARGE FUNDS

The overriding principle of the legislation and that of the conferees is that individuals and entities, such as farmers, school districts, small businesses, utilities, governmental entities, transportation entities, and other consumers, receive, to the greatest extent possible, direct restitution. To this end, the conferees encourage and expect the Department of Energy (DOE), acting through its Economic Regulatory Administration (ERA), to identify injured customers and provide direct restitution to them in settlements and enforcement actions. The conference agreement covers all overcharge funds (whether crude oil funds or product funds), other than: (1) funds already disbursed or designated for disbursement, either as direct or indirect restitution; and (2) funds governed by the "Stripper Well" litigation settlement approved on July 7, 1986 by the United States District Court for the District of Kansas. By specifically excluding the funds covered by the court-approved "Stripper Well" settlement, the conferees leave it to the terms and conditions of the settlement and court approved order themselves to determine what funds, such as future uncollected funds, are covered by that settlement. Any such funds not covered by that settlement are subject to the conference agreement.

The conference agreement provides that the funds covered by the legislation are to be included in the Treasury Department escrow accounts for distribution as provided under the legislation, with priority to injured customers. The conference agreement provides that funds to which the Federal Government is entitled under this subtitle shall be deposited into the general fund of the Treasury as "miscellaneous receipts."

The conference agreement specifies that after enactment, all future DOE rules, policies, guidelines, etc., and all future court orders, etc., must be consistent with the agreement. The agreement includes a disclaimer that the legislation does not change the Stripper Well settlement as approved by the court on July 7, 1986 or affect orders issued by the court to implement that settlement in the form and substance approved on July 7. However, if the court or the parties change the settlement or the court's approval as of July 7, the changes must be consistent with this legislation.

STATUTE OF LIMITATIONS (SEC. 3005)

As long ago as 1982, the former Administrator of the ERA predicted to our Committees that all enforcement cases that had not reached the litigation stage would either be closed, settled, or in litigation in that year. A similar prediction was made in 1983. The prediction fell far short. Indeed, as of September 12, 1986, there still remains a number of cases in the prelitigation stage. Many of the audits were begun in the mid-1970's or early in this decade. The reasons for this delay are probably legion and include the lack of adequate resources (in part caused by reductions in force that appear to have contributed to more attrition than normal), subpoena delays, related criminal enforcement, prosecutorial discretion, and others. Whatever the reason, our Committees are concerned that long after termination of controls, there are many cases still in the prelitigation stage.

Accordingly, the conferees agreed to a statute of limitation provision modified from the Senate version. The conferees stress our expressed intent that all alleged violations of the applicable law and regulations be pursued fully, fairly, and expeditiously. We do not want, or intend, by adopting this provision, to allow those who have violated the laws and regulations to escape prosecution. We have been assured by the Administrator of the ERA and by the Secretary of Energy, in an October 2 letter, that all such cases can and will be pursued fully and appropriate litigation will be commenced even sooner than the time expressed in the conference agreement. Clearly, we expect those assurances to be fulfilled without exception.

The conference agreement defines, in section 3005(a)(2), the term "commencement of a civil enforcement action" to cover a proposed remedial order (PRO) for administrative enforcement and complaints for court enforcement. In the case of a PRO, the conference agreement states that the statute of limitation will toll when the PRO is signed and issued.

The House conferees are particularly aware of the ERA practice to sometimes sign a PRO and issue it by delivering it to the alleged violator and then waiting a period of time before issuing a Federal Register notice required by the Department's regulations and filing it with the Office of Hearings and Appeals (OHA). That occurred in the Anchor case which is one of those on the September 12, 1986 list of prelitigation cases ERA provided to the Committee on Energy and Commerce. In that case the first PRO was issued in September 1982 and delivered to Anchor officials, but no Federal Register notice was issued and it was not filed with OHA. Negotiations ensued for several months and then the case was ignored until January 1985 when a new PRO was issued. But once again, it was not filed with OHA. Last August a third PRO was issued for this case, but as of October 2 the notice still had not been issued. Under this agreement, the statute of limitations is tolled when a PRO is issued, regardless of when ERA publishes the Federal Register notice. At the same time, we expect ERA to quickly file with OHA and publish a Federal Register notice with respect to each PRO as issued. Negotiations and litigation can, if appropriate, proceed in tandem.

The conference agreement specifies that this new provision is prospective and does not apply to pending litigation.

Section 3005 uses the term "civil enforcement action" which is defined in section 3005(a)(3) to mean "an administrative or judicial civil action by the Secretary under the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1970." The conferees intend that the reference to the Secretary shall include his delegate. Moreover, the two Acts just cited authorize the President or his delegate to bring civil actions, as the Office of the Secretary of Energy was not created until 1977. Later this authority was transferred to the FEA Administrator and then in 1977 the DOE Reorganization Act transferred the authority to the Secretary of Energy. The conferees intend that the reference to the Secretary of Energy will include the President, the FEA Administrator, and their delegates as appropriate for the period preceding the creation of the Office of the Secretary of Energy.

The conference agreement includes a nonbinding statement of Congressional intent that ERA bring these cases to litigation this year as promised by ERA and the Secretary. The conferees applaud that promise and encourage ERA and the Secretary to fully exert themselves to bring these cases to litigation. While the conferees recognize that subpoena disputes and other factors may delay filings, the conferees agree that case filings should not be delayed, unless adequate case preparation has not been completed or has been delayed.

The conference agreement also directs that ERA not start audits or investigations after January 1, 1987. The conferees understand that this provision will not result in a premature cutoff of cases of alleged violations, because we have been assured by the ERA Administrator that all audits and investigations have or will be started before that date. In adopting this provision, we specifically preserve all ongoing audits and investigations, including those needed for litigation support and resulting from any remand.

Finally, in adopting this limitation, the conference agreement also includes provisions aimed at ensuring that there will continue to be sufficient personnel (and a proper mix of personnel) to pursue all cases fully and expeditiously, including those in litigation and those subject to Subpart V regulations. The Stripper Well agreement approved by the court provides for a 50-50 split of overcharge funds remaining after Subpart V between the States and the Federal Treasury. It created an obligation upon DOE and ERA to recover overcharges. That obligation cannot be fully met without the proper resources.

The conferees believe that no less than 170 full time employees for fiscal year 1987 are necessary to maintain an adequate recovery program. Further, the conferees believe that a further RIF this year and possibly next will not help to achieve the objectives set forth in the conference agreement.

In providing for a time limitation on the initiation of review of a final agency action under section 503 and 504 of the Department of Energy Organization Act, the conferees do not intend to imply any change or any preference for change in law or agency practice with respect to such review other than the specific time limitations established in the subsection.

STATE ENERGY CONSERVATION PROGRAMS

The conference agreement (section 3003(d)) provides for the disbursement of specified excess amounts of petroleum overcharge funds for the four energy conservation grant programs managed by the Department of Energy: the Low-Income Weatherization Program, the Institutional Conservation Program, the State Energy Conservation Program, and the Energy Extension Service Program. This disbursement is to be made promptly. In order to provide stability and continuity to these programs, the conferees intend that this disbursement occur as early in the fiscal year as is feasible.

Section 3006(c) provides for an annual report on anticipated excess amounts of petroleum overcharge funds available for disbursement to the Federal government and the States. The conferees expect that the Secretary will provide accurate estimates of such excess amounts and an explanation of assumptions underlying such estimates. The conferees urge the Secretary to inform appropriate authorization and appropriations committees of changes in such estimates and assumptions; such updates should be provided at least quarterly.

REPORTS (SEC. 3006)

Section 3006 requires the Secretary to submit certain reports to the Congress on receipts and disbursements of petroleum overcharge funds (Subsection (a)), collec-

tion of certain deficiency funds (subsection (b)), and amounts estimated to be available for indirect restitution (subsection (c)).

Section 3006(b) requires the Secretary of Energy to monitor the disposition by the States of any funds disbursed to the States by the court pursuant to the "Stripper Well" settlement. However, this requirement does not authorize the Secretary to require preapproval of State plans to utilize such funds.

SUBTITLE B—INFORMATION AND STUDY REQUIREMENTS

MANUFACTURERS ENERGY CONSUMPTION SURVEY

The conference agreement (section 3101) authorizes the collection of energy consumption data. Past industry data reporting requirements under 42 U.S.A. 6291 et seq. have been met by reporting aggregated industry sector energy consumption data annually on form CE 189. In repealing part E, Title III of the Energy Policy and Conservation Act, Congress intended to eliminate industry's reporting requirement on CE 189 and institute another data collection program as its replacement.

The conference agreement speaks to the protection of confidentiality of individual respondent's energy consumption, utilization, and economic data. In the past, this has been done by aggregation of industry sector data by trade associations and currently by collection and aggregation by the Census Bureau. Congress intends that continued protection of confidentiality would require as a minimum that the data be collected in a manner consistent with Section 9 of Title 13 of the United States Code but does not preclude aggregation by trade associations on agreement between respondents and the Administrator.

STUDY OF CRUDE OIL PRODUCTION AND REFINING CAPACITY IN THE UNITED STATES

The conference agreement (Sec. 3102) provides for the Secretary of Energy, acting with the Energy Information Administration (EIA) to conduct a study of domestic crude oil production and petroleum refining capacity and the effect of imports thereon. The provision is self explanatory.

SUBTITLE C—STRATEGIC PETROLEUM RESERVE

The conference agreement (section 3201) authorizes appropriations for acquisition of oil for the Strategic Petroleum Reserve (SPR) for fiscal years 1987, 1988, and 1989. The conference agreement (section 3202) also provides for a minimum fill-rate of 75,000 barrels per day until there are at least 750 million barrels stored in the Reserve. If this minimum fill-rate is not achieved, the conference agreement provides for a shut-in of the Naval Petroleum Reserve (NPR) production or transfer of NPR oil to the SPR.

The conference agreement (section 3202(a)(3)) mandates a SPR fill-rate of "the highest practicable fill-rate achievable subject to the availability of funds" during fiscal years 1987 through 1989. Because current law provides authority to the Reserve for interim storage of SPR oil, the conferees intend that insufficient availability of permanent SPR storage capacity would not render a particular fill-rate impracticable.

In addition, the conference agreement requires that the SPR annual report include certain information, which is self explanatory.

STRIPPER OIL

The House bill gave the Secretary of Energy discretion to purchase up to $200 million annually of stripper oil for injection into the Strategic Petroleum Reserve and to pay a premium of up to 10 percent for such oil, if the Secretary determined that this would prevent significant permanent loss of stripper oil production capacity. This purchase authority applied only when oil prices were below $15 per barrel.

No similar provision was included in the Senate bill.

The conference agreement deletes the House stripper oil purchase language. However the conferees wish to stress that the permanent loss of stripper oil reserves raises serious concerns that must be addressed. Accordingly, they urge the Secretary of Energy to provide Congress at the earliest practicable date with equitable and cost effective alternative proposals to prevent the loss of significant portions of these reserves.

SUBTITLE D—ENERGY CONSERVATION

FEDERAL ENERGY MANAGEMENT

The conference agreement (Sec. 3301) permits the use of "average market" energy costs in calculations of the energy costs savings of energy conservation investments in Federal buildings. This change would make such calculations simpler, more accurate, and less costly to make. This change also would result in a more cost effective program.

The conferees note that the Department of Energy has not yet implemented the mandatory building energy performance standards for Federal buildings required by the Energy Policy and Production Act of 1976, as amended. The Federal government uses approximately $4 billion annually in buildings to pay for energy. The Federal Energy Management Program can help ensure that all new Federal buildings are built to keep life cycle costs to a minimum by facilitating the rapid implementation of the law. The conferees strongly urge that DOE carry out its responsibility to implement interim standards for new residential and commercial Federal buildings without delay.

SUBTITLE E—FEES AND CHARGES

FEDERAL ENERGY REGULATORY COMMISSION FEES AND ANNUAL CHARGES

This subtitle provides the Federal Energy Regulatory Commission with additional authority to collect fees and annual charges. The Commission is required to assess and collect fees and annual charges in amounts equal to all of the costs incurred by the Commission, including any hearing costs and indirect personnel costs.

Section 10(e) of the Federal Power Act requires licensees to pay annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of administering Part I of the Act. Certain licenses are provided exemptions from the requirement to pay annual charges.

The Electric Consumers Protection Act of 1986 (See conference report on S. 426, H. Rept. 99-934) amends section 10(e) by redesignating previously existing section 10(e) as 10(e)(1), and by adding new sections 10(e)(2) and 30(e). The provisions of this subtitle shall not affect the authority, requirements, exceptions, or limitations in the aforementioned sections.

In defining the "fair and equitable" method of computing the fees and charges, the Commission shall endeavor to assess and collect amounts necessary to cover the cost of each of its program areas from those directly affected by the activities of the Commission in each area. For example, public utilities subject to the Federal Power Act should be required to pay for the Commission's activities under the Federal Power Act and related statutes, including a proportionate share of the Commission's overhead. They should not be expected to pay for the Commission's activities under the Natural Gas Act or the Natural Gas Policy Act.

The conferees expect the Commission to assess annual charges proportionately on the basis of annual sales or volumes transported. The conferees intend that annual charges assessed during a fiscal year on any person may be reasonably based on the following factors: (1) the type of Commission regulation which applies to such person such as gas pipeline or electric utility regulation; (2) the total direct and indirect costs of that type of Commission regulation incurred during such year; (3) the amount of energy—electricity, natural gas, or oil—transported or sold subject to Commission regulation by such person during such year; and (4) the total volume of all energy transported or sold subject to Commission regulation by all similarly situated persons during such year.

The Commission is given authority to waive all or part of any fee or annual charge for good cause shown. If it does so, the Commission should use its authority under subsection (f) to make adjustments as necessary to ensure that it meets the requirement in subsection (b) to assess fees and charges in amounts equal to all of the costs incurred by the Commission.

The House provision excluded the cost of regulating small power production and cogeneration, and exempted such power producers from annual charges. The Senate had no comparable provision. However, the Senate provision permitted the Commission to waive fees and charges. The Senate provision also did not specify the specific classes of entities subject to annual charges or fees, as the House provision did. The substitute follows the Senate provision in not specifying classes of entities subject to charges and fees and permitting the Commission to waive fees and charges. No specific exemption for cogenerators and small power producers is included. The conferees did not include the specific exemption, because the substitute provides sufficient authority for the Commission to achieve a similar result. The House included the specific exemption, and the Commission requested such language because of a concern that the imposition of fees could frustrate the purpose of encouraging small power production and cogeneration. The conferees expect the Commission to take into account this concern, as well as other appropriate concerns, in determining whether to assess fees or charges upon such power producers.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 8, 1986.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached estimate of the budget impact of the reconciliation provisions within the jurisdiction of subconference 4.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—SUBCONFERENCE 4

[By fiscal year, in millions of dollars]

		Change from Gradison base	Change from adjusted reconciliation baseline		
		1987	1987	1988	1989
DIRECT SPENDING					
FERC annual charges	BA	−60	−65	−66	−67
	O	−60	−65	−66	−67
Petroleum overcharge collections	BA	−400	−400	−200	0
	O	−400	−400	−200	0
Conservation	BA	0	200	200	0
	O	0	50	184	140
Strategic Petroleum Reserve	BA	0	0	0	0
	O	215	215	29	0
Total—direct spending	BA	−460	−265	−66	−67
	O	−245	−200	−53	73
AUTHORIZATIONS					
Strategic Petroleum Reserve	BA	200	200	291	357
	O	51	51	213	264
Conservation	BA	0	−200	−200	0
	O	0	−50	−184	−140
DOE programs	BA	(1)	(1)	(1)	(1)
	O	(1)	(1)	(1)	(1)
Total-authorizations	BA	200	0	91	357
	O	51	1	29	124

[1] Less than $500,000.

SUBTITLE F—WILDLIFE REFUGE, MINES, OCS

ABANDONED MINE RECLAMATION RESEARCH AND DEVELOPMENT

Section 5002 of the House bill contained a provision which transferred research and demonstration activities of the Department of the Interior's Office of Surface Mining, Reclamation, and Enforcement to the Bureau of Mines.

In agreeing to the transfer of these activities, the House and Senate conferees expect that the Bureau of Mines will give equal consideration to all research and demonstration activities within its jurisdiction, including these transferred responsibilities, in the planning of each year's program priorities, budget, and manpower needs.

GREAT SWAMP NATIONAL WILDLIFE REFUGE

Section 412 of the Senate bill contained a provision directing the Secretary of the Interior to establish an Interagency Task Force to resolve the various contaminant issues presently found on the Great Swamp National Wildlife Refuge in New Jersey. The House bill contained no equivalent provision.

The House and Senate Conferees have carefully reviewed the current contaminant situation at Great Swamp National Wildlife Refuge and have agreed upon alternative language in lieu of the provision in the Senate bill. The Conference substitute notes that an Interagency Memorandum of Understanding (MOU) was signed between the United States Environmental Protection Agency (EPA), the United States Fish and Wildlife Service, and the National Park Service on July 9, 1985, regarding the assignment of assessment, investigation and clean-up responsibilities for the various contaminant sites on and in the vicinity of the Refuge. Given the allocation of responsibilities under that Interagency MOU, the Conferees have concluded that it would be more appropriate to require that EPA, rather than the Secretary of the Interior, provide Congress with a periodic report on the progress of clean-up efforts at Great Swamp National Wildlife Refuge.

REQUIREMENT FOR THE USE OF AMERICAN BUILT RIGS FOR EXPLORATION AND DEVELOPMENT ON THE U.S. OUTER CONTINENTAL SHELF

Title VI, Subtitle I of the House bill contained a provision which would require that any structure used on the OCS be built in the United States. One-half (by cost) of the supplies, materials, or articles used in the building of the structure would have to be of U.S. origin. Existing structures and those under construction or contract would be excepted from the requirement. The Secretary of the Interior would be authorized to waive the building and supply requirements under certain circumstances. The Senate bill contained no comparable provision. The House receded to the Senate.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 7, 1986.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed the conference agreement on the reconciliation provisions within the jurisdiction of subconference 11. We do not expect these provisions to have any impact on the federal budget.

Section 3601 would transfer certain research and demonstration authorities from one Department of the Interior agency (Office of Surface Mining and Reclamation) to another (Bureau of Mines). Section 3602 would require the Environmental Protection Agency to submit an interim status report and update on the cleanup of the Great Swamp National Wildlife Refuge.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

FEES OF THE ENVIRONMENTAL PROTECTION AGENCY

(a) The Senate amendment authorizes the Administrator of the Environmental Protection Agency to, by regulation, assess and collect fees and charges for services and activities carried out pursuant to statutes administered by the Agency in the amount of $20 million annually for the fiscal years 1987, 1988, and 1989. Except as otherwise specifically provided by law with regard to fees and charges, and their deposit and retention, such fees and charges established and collected pursuant to this provision must be deposited in a special fund in the United States Treasury, to remain available until expended, to carry out the Agency's activities for which the fee or charge is made. (Sec. 501 (a) and (b).)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(b) The Senate amendment provides that not later than September 30, 1987 the Administrator must transmit to Congress a report on the implementation of this provision and on other fees and charges that might be assessed to defray the costs of administering the statutory authority assigned to the Agency. The report must be made available to organizations representing State and local officials who have been delegated authority to administer programs under these statutes for comment, and summaries of the comments must be included in the report. (Sec. 501(c).)

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

NUCLEAR REGULATORY COMMISSION USER FEES

Section 502 of the Senate bill authorizes the Nuclear Regulatory Commission to assess and collect annual charges from its licensees on a fiscal year basis for fiscal years 1987, 1988, and 1989, for costs incurred by the Commission with respect to such licensees, if the Commission can demonstrate that—(1) the fee to be assessed a given licensee is reasonably related to the regulatory service provided by the Commission to the licensee from whom the Commission proposes to collect the fee; and (2) the fee fairly reflects the actual cost to the Commission of providing such service to each such individual licenesee. The fees collected pursuant to this provision may not, when added to other amounts collected by the Commission pursuant to other provisions of law, exceed 38 percent of the funds appropriated to the Commission each such fiscal year.

The House bill contains two separate provisions. Section 4001 of the House bill, recommended by the Committee on Energy and Commerce, requires the Commission to collect 100 percent of its regulatory costs through fees and charges that, when combined with other fees levied by the Commission, would total about $270 million in fiscal year 1987, or about $135 million more than would be collected under current law. Section 5001 of the House bill, recommended by the Committee on Interior and Insular Affairs, requires the Commission to assess and collect annual charges from its licensees beginning with fiscal year 1987. Under this provision, the charges are to be assessed at the rate of $750 per million watts of the rated thermal capacity of nuclear facility with a rated thermal capacity in excess of 50 million watts.

The conferees were unable to reach agreement. Accordingly, the House and Senate have agreed to recede from their respective provisions, and include no provision in the legislation.

OIL POLLUTION/OCEAN DUMPING

The House bill contained provisions dealing with oil spill pollution, ocean dumping legislation, and ocean dumping fees. The provisions were reported by the Committees on Public Works and Transportation and Merchant Marine and Fisheries. The Senate bill contained no comparable provisions and the House receded to the Senate.

TITLE IV—TRANSPORTATION AND RELATED PROGRAMS

SUBTITLE A—RAIL RELATED ISSUES

1. SHORT TITLE, FINDINGS AND PURPOSES

House bill

The House bill, in sections 4701, 4702, and 4703, sets forth the short title of the bill ("Conrail Privatization Act"), the table of contents, and various findings and purposes.

Senate amendment

No provision.

Conference agreement

House provision with amendments, including ones to reflect that the preservation of Conrail's long-term viability is the paramount goal in privatization, and that maximization of return is secondary to that paramount goal.

2. DEFINITIONS

House bill

The House bill, in section 4704, sets forth the definitions used in the Act.

Senate amendment

No provision.

Conference agreement

House provision with an amendment to define new terms used in the conference agreement.

3. PREPARATION FOR PUBLIC OFFERING

House bill

The House bill, in section 4711, specifies actions required to prepare for a public offering of Conrail's stock.

Senate amendment

No provision.

Conference agreement

House provision with an amendment.

Subsection (a)(1) requires the Secretary of Transportation not later than 30 days after enactment, in consultation with the Secretary of the Treasury and the Chairman of Conrail, to retain the services of investment bankers to manage the public offering. The language provides that these firms will serve jointly as the "co-lead managers" of the public offering of Conrail stock, and will establish a syndicate to underwrite the public offering. All the co-lead managers will be compensated equally with respect to the management fee, underwriting fee and shares to be sold, and share equally in any losses associated with underwriting the public offering. The co-lead manager designated by the Secretary to coordinate and administer the public offering shall "run the books" as is customary in investment banking, but shall receive no additional compensation for that role. The total number of co-lead managers shall be no fewer than four nor greater than six.

Subsection (a)(2) provides that in selecting the investment bankers to serve as co-lead managers for the public offering under paragraph (1), consideration shall be given to the firm's institutional and retail distribution capabilities, financial strength, knowledge of the railroad industry, experience in large-scale public offerings, research capability, and reputation. In selecting co-lead managers, recognition shall also be given to contributions made by particular investment banking firms before the date of enactment of this Act in demonstrating and promoting the long-term financial viability of the Corporation.

Subsection (b) requires a transfer by Conrail of $200 million to the Secretary of the Treasury not later than 30 days after the date of enactment. In addition, the Secretary of Transportation is given discretion to require the transfer by Conrail of an additional $100 million to the Treasury, with consideration to be given to the effect on Conrail's viability.

4. PUBLIC OFFERING

House bill

The House bill, in section 4712, specifies the requirements for a public offering.

Senate amendment

The Senate amendment, in section 303, directs the Secretary to sell the interest of the United States in the common stock of Conrail in fiscal year 1987, consistent with certain specified goals and covenants.

Conference agreement

House provision with an amendment. The conference agreement deletes the minimum price provision of the House bill, but sets a goal of at least $2 billion in proceeds to be obtained from all sources. At this time, the conferees believe that at least $2 billion is a reasonable goal for the total proceeds of the sale, but this goal is not binding on the Secretary. The conference agreement requires the Secretary to make a finding that the proceeds of the public offering are adequate. That finding is non-reviewable by judicial or administrative action.

The conference agreement deletes the authority given to the Secretary in the House bill to require Conrail to issue warrants to the United States in conjunction with the public offering. It also provides that any investment banking firm must have been in existence on September 1, 1986 to participate in the public offering as either a co-lead manager or member of the syndicate, and that the level of any firm's participation must be consistent with that firm's financial capabilities.

The conference agreement deletes the provision in subsection (e)(2) of the House bill regarding reporting to the Securities and Exchange Commission. The conferees do not believe it is appropriate to specify any particular accounting treatment for this purpose. It is assumed that the Corporation will report under the provision of existing law using generally accepted accounting principles.

5. FEES

House bill

The House bill, in section 4713, limits the fees to be paid to investment bankers and other persons participating in the public offering to the absolute minimum amount necessary to carry out the public offering.

Senate amendment

No provision.

Conference agreement

House provision with an amendment. The amendment clarifies that the fees are to be paid out of the sale proceeds.

6. RAIL SERVICE OBLIGATIONS

House bill

The House bill, in section 4721, sets forth several rail service guarantees, ranging in duration from three to five years, to protect essential rail service in the Northeast and Midwest.

Senate amendment

The Senate amendment, in section 303, states that any sale should be consistent with the public interest covenants provided for in S. 638, the "Conrail Sale Amendments Act of 1985," as passed by the Senate on February 4, 1986.

Conference agreement

House provision with an amendment. The conference agreement adopts the House provisions on minimum capital expenditures, continuation of affirmative action and minority vendor programs, no break-up, and abandonments offered at 75 percent of net liquidation value. In addition, it adds a provision prohibiting deferral of maintenance and requires Conrail to maintain a minimum cash balance of $400 million after any payment of dividends, rather than $250 million at the end of each fiscal year as in the House bill.

Dividend payments may only be made if Conrail is in compliance with the capital expenditure and minimum cash balance requirements. Common stock dividends may not exceed 45 percent of cumulative net income less the cumulative amount of any preferred stock dividends. The company may borrow to meet the minimum cash balance requirement, but consolidated funded debt is not to exceed 175 percent of consolidated tangible net worth.

All obligations will have a five-year term. In addition, the conference agreement requires Conrail to provide reasonable compliance certificates to the Secretary of Transportation on a periodic basis with respect to all obligations relating to the payment of dividends, and on an annual basis with respect to all other obligations.

7. OWNERSHIP LIMITATIONS

House bill

The House bill, in section 4722, provides certain ownership limitations on non-rail and rail purchasers.

Senate amendment

No provision.

Conference agreement

House provision with an amendment. The conference agreement limits ownership of Conrail stock by any person for a three-year period to 10 percent, except for the Employee Stock Ownership Plan (ESOP), the Secretary, a railroad as described below, underwriting syndicates holding stock for resale and, in the case of shares beneficially held for others, commercial banks, broker-dealers, clearing corporations, and other nominees.

The conference agreement also limits ownership of Conrail stock by any Class I railroad to 10 percent for one year. No application for a merger, consolidation, or acquisition of control under 49 U.S.C. 11344 may be filed with respect to Conrail during that one-year period. Railroad stock would have to be voted during the first three years after the sale date in the same proportion as all other common stock is voted, unless the ICC, after the first year, approves an application for a merger, consolidation, or acquisition of control under 49 U.S.C. 11344.

Finally, the conference agreement deletes the House provision limiting total foreign ownership to 20 percent for five years.

8. BOARD OF DIRECTORS

House bill

The House bill, in section 4723, provides for a transition from Conrail's current Board of Directors to a Board elected by Conrail's public shareholders.

Senate amendment

No provision.

Conference agreement

House provision with an amendment. The conference agreement adopts the general framework of the House bill, but provides that the special court will name three trustees who will in turn name directors, rather than naming the Board members directly as provided in the House bill. The conference agreement also prohibits certain persons from serving as special court trustees or directors. The conferees intend that the special court trustees shall act by majority vote in the selection of any director.

9. PROVISIONS FOR EMPLOYEES

House bill

The House bill, in section 4724, establishes various provisions for Conrail's employees in recognition of the role they have played in Conrail's successful turnaround.

Senate amendment

No provision.

Conference agreement

House provision with an amendment. The amendment extends from 90 to 180 days the period in which ESOP shares may not be sold. In addition, the amendment provides that the 180-day period shall run from the

date on which 100 percent of the United States shares are sold.

10. CERTAIN ENFORCEMENT RELIEF

House bill

The House bill, in section 4726, provides for enforcement against Conrail of the rail service guarantees in section 4721 and the ownership limitations in section 4722, and provides for actions to enforce this part.

Senate amendment

No provision.

Conference agreement

House provision with an amendment. The conference agreement adopts the enforcement framework of the House bill but adds, as a prerequisite to third-party standing, that the economic injury suffered must be "substantial," as well as direct.

11. ABOLITION OF THE UNITED STATES RAILWAY ASSOCIATION (USRA)

House bill

The House bill, in section 4731, provides for the abolition of USRA on January 1, 1987, as well as for the transfer of certain securities and other responsibilities to the Secretary of Transportation. The House bill also provides for the termination, upon certain dates, of various provisions of the financing agreement between Conrail and USRA.

Senate amendment

No provision.

Conference agreement

House provision with an amendment. The conference agreement extends the date of USRA's abolition to April 1, 1987, in recognition of the difficulties an earlier date would pose for USRA's employees. All of the functions and responsibilities of the USRA would be transferred or terminated on January 1, 1987. The sole function of the USRA staff, officers, and directors after January 1, 1987 shall be to wind up the remaining affairs of the agency.

12. APPLICABILITY OF 3R ACT

House bill

The House bill, in section 4732, provides that the Regional Rail Reorganization Act of 1973 shall not apply to Conrail after the sale date, with certain specified exceptions.

Senate amendment

No provision.

Conference agreement

House provision with a technical amendment.

13. MISCELLANEOUS AMENDMENTS AND REPEALS

House bill

The House bill, in section 4733, provides for various amendments and repeals to the 3R Act, the Northeast Rail Service Act, and other laws. The section also provides that, in the event Conrail files for bankruptcy, the Secretary is required to develop and submit to the appropriate court a reorganization plan as described in the bill, to which the court must give substantial weight.

Senate amendment

No provision.

Conference agreement

House provision with an amendment. The conference agreement deletes the requirement in the House bill for the Secretary's plan in case of bankruptcy. In addition, the conference agreement includes a provision exempting from certain laws all actions taken to implement the sale.

14. EXEMPTION FROM LIABILITY

House bill

The House bill, in section 4734, exempts Conrail's directors and others from liability under certain specified terms, conditions, and circumstances.

Senate amendment

No provision.

Conference agreement

House provision with a technical amendment.

15. CHARTER AMENDMENT

House bill

The House bill, in section 4735, requires Conrail to amend its Articles of Incorporation in the manner and under the terms specified in that section.

Senate amendment

No provision.

Conference agreement

House provision.

16. STATUS OF CONRAIL AFTER SALE

House bill

The House bill, in section 4736, provides that after the sale Conrail remains a rail carrier, as defined in title 49, United States Code.

Senate amendment

No provision.

Conference agreement

House provision.

17. EFFECT ON CONTRACTS

House bill

The House bill, in section 4737, provides that nothing in this Act affects Conrail's obligation to carry our certain specified contracts in accordance with their terms.

Senate amendment

No provision.

Conference agreement

House provision. Conrail will continue to be bound after the sale by any contract, agreement, judicial decree or similar instrument to which the corporate entity was a party prior to the sale, whether or not referred to explicity in this section.

18. RESOLUTION OF CERTAIN ISSUES

House bill

The House bill, in section 4738, provides in subsection (a) that the employee provisions in section 4724 completely and finally resolve various rights and claims, including any rights under section 401(e) of the 3R Act. Subsection (b) protects Conrail from claims of breach or default as a result of any provision of this Act or any actions Conrail is required to take under this Act. Finally, subsection (c) withdraws the consent of the United States to be sued with respect to any claims for damages or other monetary compensation arising out of this Act.

Senate amendment

No provision.

Conference agreement

House provision with an amendment. The conference agreement withdraws the United States' consent to be sued by any person for any legal, equitable or other relief on claims arising out of, or resulting from, acts or omissions under this part, except for actions brought to require the Secretary of Transportation to perform duties or acts required under subpart A. The conferees intend that this provision protect the United States from any and all liabilities resulting from implementation of this Act, including but not limited to Tucker Act liabilities, except as specifically set forth in the provision.

19. PROMOTION OF RAIL COMPETITION

House bill

The House bill, in section 4751, amends title 49, United States Code, to make changes in provisions for employee protection in certain transactions and contains other rail labor provisions.

The bill, in section 4752, amends the contract rate provision of title 49, United States Code, to establish standards for the disclosure of terms of contracts for the transportation of agricultural commodities. This section does not apply to contracts involving forest products and paper.

The bill, in section 4753, confirms the legal authority of the ICC to promulgate that portion of the rule adopted in Ex Parte No. 346 (Sub-No. 19), served September 12, 1986, consisting of protections for small railroads.

Senate amendment

No provision.

Conference agreement

House provision with an amendment. The amendment deletes the language in section 4751 of the House bill. This deletion is not intended to prejudice the outcome of any pending litigation.

SUBTITLE B—EDA ASSET SALES

House bill

Prohibits the sale of any loan made under the Public Works and Economic Development Act or Section 254 of the Trade Act of 1974, except with the consent of the borrower. It also prohibits any contracts to private interests to sell or administer any such loan.

Senate amendment

Directs the Secretary of Commerce to sell defaulted notes held in the Economic Development Administration's Revolving Fund in such amounts as to realize net proceeds of not less than $50,000,000 during fiscal year 1987. It allows the Secretary to sell the notes on a nonrecourse basis. The Secretary and any purchaser of such note is relieved of any responsibilities that might have been imposed had the borrowen remained indebted to the Secretary.

Conference substitute

Same as the Senate Amendment except that reference to the Revolving Fund is deleted. Subsection (b) of this section authorizing the Secretary to sell notes on a nonrecourse basis and relieving the Secretary and any purchaser from responsibilities that might have been imposed had the borrower remained indebted to the Secretary, is also deleted. For the purposes of this section, the term "defaulted note" means any obligation that is delinquent more than 180 days.

HIGHWAY PROGRAM

House bill

The House bill imposes limits on the total amount of contract authority, to be provided for programs funded out of the Highway Trust Fund (with certain exclusions) of $13,527,000,000 in fiscal years 1987, 1988, and 1989. The bill further imposes obligation ceilings of $11,975,000,000 in each of the same fiscal years. The bill imposes further obligation constraints on certain programs for those fiscal years. The bill raises the amount available for emergency relief grants to $100 million for each disaster occurring in calendar year 1986.

Senate amendment

The Senate Amendment imposed an obligation ceiling on the programs funded by the Highway Trust Fund (with certain exceptions) of $12,350,000,000 for the fiscal years 1987, 1988, and 1989.

Conference substitute

Both provisions are deleted.

TITLE V—MARITIME PROGRAMS

OLD SUBTITLE B/NEW SUBTITLE A—AMENDMENTS TO THE MERCHANT MARINE ACT OF 1920

The House recedes from its position in Title VI, Subtitle B as passed by the House pursuant to the Rule, and agrees with the Senate amendment to H.R. 5300 (Senate section 302) with three amendments. The first amendment requires the Secretary of Transportation to submit a report to the appropriate Committees of Congress at least six months prior to the expiration of the provisions of the Act that waive the automatic stay provisions of the Bankruptcy Act, with an assessment of the operation of the provision and any need for further legislation. The second amendment amends the Ship Mortgage Act to reaffirm that when a mortgage secured by the Secretary of Commerce or the Secretary of Transportation under title XI of the Merchant Marine Act, 1936 is foreclosed against a debtor in bankruptcy, the foreclosure is subject to the provisions of the Bankruptcy Act, and the amendments to the Bankruptcy Act made by this section. The third amendment would:

(1) clarify that all title XI program financings, whether administered through the Secretary of Transportation or the Secretary of Commerce, should provide a 100 percent federal guarantee;

(2) reduce the overall limit on federal financing for fishing vessels or fishery facilities from 87½ percent to a maximum of 80 percent of the project cost;

(3) prohibit financing through the title XI program from being made through the Federal Financing Bank; and

(4) designate, for purposes of the so-called internal waters processing section of the Magnuson Fishery Conservation and Management Act, a designated part of Norton Sound off the coast of Alaska as the internal waters of that state for purposes of processing pink salmon.

OLD SUBTITLE C/NEW SUBTITLE B—LOAD LINE AND TONNAGE MEASUREMENT USER FEES

The House bill contained a provision that in large part consisted of the language of H.R. 1362. The Senate contained Coast Guard user fee provisions in section 301 that encompassed more than just fees for load line and measurement of vessels and authorized the sale of a voluntary stamp and fees to be charged to persons that did not purchase those stamps. The Senate recedes to the House position on Subtitle C as passed by the House, pertaining to load line and tonnage measurement of vessels, with 4 amendments:

(1) Section 5102(b) of the new sections to title 46, United States Code, is amended to exempt vessels of the working voyages from the requirement to have load lines. This amendment is made to restore the status of these vessels to the existing law.

(2) Section 14302(b) of the new sections to title 46, United States Code, is amended to provide an exception to the requirement that a vessel measured under this chapter may not be required to be measured under another law. The exception allows the Panama Canal Commission to continue to use the Canal measurement system for calculation of tolls.

(3) Section 14305(b) of the new sections to title 46, United States Code, is amended to correct two cross-reference errors.

(4) Section 664 of title 14, United States Code, is amended to require that any user fees imposed by the Coast Guard must be prescribed under the guidelines provided in section 9701 of title 31, United States Code. This section also provides for an accounting of the amounts raised through the fees, as well as an annual report to be submitted by the Secretary of the department in which the Coast Guard is operating on the implementation of user fees.

The conferees also intend that in section 14103 of the new sections to title 46, United States Code, the term "qualified person" includes not only organizations that the Secretary finds to be qualified to perform measurement duties, but any person as that term is defined in section 1 of title 1, United States Code, (including individuals), that the Secretary determines qualified to perform measurement duties. The House and Senate conferees also agree that, where authorized, in addition to information required by the Secretary, regulatory tonnage should be used on all certificates and documents related to a vessel unless the owner otherwise requests.

OLD SUBTITLE D—ADJUSTMENT OF THE U.S. INVESTMENT BASE IN THE PANAMA CANAL ON WHICH INTEREST PAYMENTS TO THE U.S. TREASURY ARE COMPUTED

The House bill contained a provision which consisted of the language of H.R. 4016, a bill which amended the Panama Canal Act of 1979 (22 U.S.C. 3793(b)) by increasing the base amount of the United States investment in the Panama Canal. The Senate bill contained no comparable provision. The House receded to the Senate.

OLD SUBTITLE F—ESTABLISHMENT OF A NATIONAL OFFSHORE VESSEL OPERATORS SAFETY ADVISORY COMMITTEE

The House bill contains a provision that would establish a National Offshore Vessel Operators Safety Advisory Committee to report to the Secretary of Transportation on matters related to Coast Guard responsibilities for the safety of exploration and development activities on the outer Continental Shelf. The Senate bill contained no comparable provision. The House receded to the Senate.

OLD SUBTITLE G—REPEAL OF THE ACT ESTABLISHING THE NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

The House bill contained provisions that would repeal the Act establishing the National Advisory Committee on Oceans and Atmosphere (33 U.S.C. 857-13 through 857-18). The Senate bill contained no comparable provision. The House receded to the Senate.

OLD SUBTITLE H/NEW SUBTITLE C—ESTABLISHMENT OF A TIMETABLE FOR COMPLETION OF COAST GUARD OFFSHORE SAFETY STUDIES

The House bill contained a provision requiring the Coast Guard to issue final regulations prior to September 1, 1987, pursuant to the Advanced Notice of Proposed Rulemaking (50 Fed. Reg. 9290 (1985)), published March 7, 1985. The rulemaking involves safety requirements on Outer Continental Shelf (OCS) installations.

The House provision also requires the Coast Guard to consider, in the rulemaking process, the use of standby vessels for evacuation of personnel from manned OCS installations. The Secretary of Transportation is required to submit a progress report on the status of the rulemaking process prior to December 31, 1986 and a report prior to September 1, 1987, setting forth the justification for evacuation procedures contained in the final regulations.

The Senate receded to the House with an amendment to require that only the portion of the Coast Guard's proposed rulemaking dealing with evacuation procedures that takes into account the availability of life saving equipment be completed by September 1, 1987. The amendment eliminates the statutorily mandated completion date requirement for other elements contained within the ANPR of March 7, 1985.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 7, 1986.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached estimate of the budget impact of the reconciliation provisions within the jurisdiction of subconference 10.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—SUBCONFERENCE 10

[By fiscal year, in millions of dollars]

		Change from Gradison base	Change from adjusted reconciliation baseline		
		1987	1987	1988	1989
DIRECT SPENDING					
Title XI loan guarantee defaults [1]	BA	−12	−12	−36	−6
	O	−12	−12	−36	−6
Coast Guard user fees	BA	−1	−1	−2	
	O	−1	−1	−2	
Total—direct spending	BA	−13	−13	−38	−6
	O	−13	−13	−38	−6

[1] Section 5001 would enable the Maritime Administration to take possession (and title) to a vessel that has defaulted on its loans to the agency and declares bankruptcy after August 1, 1986. The primary impact of this title is essentially one of timing: under current law, MARAD is able to recover its losses on court-protected vessels only after lengthy bankruptcy proceedings that can delay the transfer of title by several years. The CBO estimate assumes that the effect of this section would be to speed up recoveries on assets of bankrupt defaulters by about two years. In the first three years, this would result in savings, but in later years this provision would result in outlay increases, because defaults and (correspondingly) recoveries fall in later years, and recoveries that are moved forward become smaller. The net impact of Section 5001 over five years is a savings of $11 million.

Note.—Section 5002 would increase, relative to current rules and regulations, the maximum amount of a loan that can be federally guaranteed from 80 percent to 100 percent for guarantees provided by the federal ship financing fund of the Department of Commerce. The effect of this change would be to increase the federal liability for loan defaults in this program, which could ultimately result in an increase in outlays for loan defaults. CBO has no way to estimate with any precision the additional budget impact, it any, from this change.

Until 1986, the program issued guarantees for 100 percent of the loan amount. Circular A-70, issued by the Office of Management and Budget, reduced the guarantee loan ceiling to 80 percent of the loan. Since 1981, outlays for defaults have ranged between $3 million and $10 million annually.

Any estimate of savings from enactment of this section depends on assumptions regarding market conditions, MARAD policies, and other very uncertain factors. The result of this analysis depends heavily on the assumption that ships obtained by MARAD under this bill will be sold in a timely fashion. If the agency does not sell its assets for any reason (including further deterioration of market conditions or industrial policy considerations), the bill could result in costs rather than savings. This would occur because the government, by taking control of the asset, would forgo bankruptcy protection payments to which it would otherwise be entitled and, in addition, would incur maintenance and other custodial costs from a much earlier date than under current law.

TITLE VI—CIVIL SERVICE, POSTAL SERVICE, AND GOVERNMENTAL AFFAIRS GENERALLY

CIVIL SERVICE ISSUES

1. ELECTIONS TO PARTICIPATE IN FERS AND THRIFT SAVINGS PLAN

House provision

Section 7001 of the House bill permits employees covered by the Civil Service Retirement System (CSRS) to begin contributing to the Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986 in January 1987 rather than in July 1987.

Senate provision

Section 711 of the Senate amendment changes from July 1, 1987, to April 1, 1987, the date on which Federal employees who are subject to the CSRS may first elect to participate in the new Federal Employees' Retirement System (FERS) and the new Thrift Savings Plan.

Conference agreement

The Conference agreement adopts a compromise to afford more time for the establishment of the Thrift Savings Plan. P.L. 99-335, the "Federal Employees' Retirement System Act of 1986", among other things, established a new Federal Thrift Savings Plan effective January 1, 1987. The conferees were recently apprised of the fact that the Thrift Savings Plan could not be operative by January 1, 1987, due to delays in appointments to the Thrift Investment Board. Thus the Conference agreement delays employee and employer contributions to the Thrift Savings Plan to April 1, 1987. Because employees who are subject to the new FERS on January 1, 1987, otherwise, could have begun participation in the Thrift Savings Plan beginning in January, 1987, the conferees agreed that such employees should not be penalized as a result of the delay. Therefore, such employees will receive an increased Government match for contributions made from April through June, 1987 and be allowed a greater maximum contribution to the Thrift Savings Plan through September, 1987. This will compensate them for their inability to participate in the Thrift Savings Plan beginning January 1, 1987, as originally provided by P.L. 99-335.

The Conference agreement provides the following for employees subject to the FERS on January 1, 1987:

(1) Employees may contribute up to 15% of basic pay from April 1 through September 30, 1987.

(2) Employees' contributions made from April 1, 1987 through June 30, 1987 will be matched by the employing agency at a rate equal to $2 for each $1 contributed up to 3% of pay at a rate equal to $1 for each $1 for employee contributions that exceed three percent but do not exceed five percent of pay.

(3) Employees will continue to be entitled to a 1 percent agency contribution beginning January 1, 1987 but such contribution will not be paid to the Thrift Savings Fund until April.

(4) The Thrift Investment Board is required to establish an election period beginning on July 1, 1987 during which employees may adjust their contributions to the Thrift Savings Plan.

The Conference agreement also permits employees subject to the CSRS to begin contributing to the Thrift Savings Plan on April 1, 1987 rather than on July 1, 1987, as provided in P.L. 99-335. They may contribute an amount not to exceed 7.5% of basic pay from April 1, 1987 through September 30, 1987. Beginning on October 1, 1987, such employee contributions are limited to 5% of pay pursuant to the provisions of P.L. 99-335. These individuals may also alter their contribution amounts during the election period described in paragraph (4) above.

2. CIVIL SERVICE RETIREMENT AND DISABILITY FUND

Senate provision

Section 1202 of the Senate amendment modifies and clarifies the authority of the Secretary of the Treasury to suspend investment or to disinvest assets of the Civil Service Retirement and Disability Fund. The provision permits the Secretary temporarily to suspend investment of the Fund's assets when such investment would otherwise result in the public debt limit being exceeded. If the Secretary should suspend investment under these conditions, at the end of the suspension period the Secretary is required to make the Fund whole for any earnings lost as a result of the suspension or disinvestment by a combination of special investment and cash payment actions.

House provision

The House has no comparable provision.

Conference agreement

The Conference agreement contains the Senate language.

POSTAL SERVICE ISSUES

REVISED METHOD FOR COMPUTING REVENUE FORGONE APPROPRIATION

House provision

Section 7002 of the House bill implements one of the recommendations of the Postal Rate Commission from the June 18, 1986 report on its preferred rate study, which was required by the Consolidated Omnibus Budget Reconciliation Act of 1985. This recommendation revises the method for computing the amount of the revenue forgone appropriation for reduced-rate mail. Upon the effective date of this provision, through the annual revenue forgone appropriation, the Federal Treasury will bear the same percentage contribution to institutional costs as regular ratepayers are required to pay for the same general type of mail, resulting in a lower appropriation but with no adverse impact on preferred rates. The revised methodology will be introduced in conjunction with the next general rate adjustment, but for appropriation purposes will take effect not later than January 1, 1989.

Senate provision

Section 701 of the Senate amendment is, in substance, the same as the analogous House provision, with only technical drafting differences.

Conference agreement

The Conference agreement contains the House language.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 3, 1986.

Hon. WILLIAM D. FORD,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached estimate of the budget impact of the reconciliation provisions within the jurisdiction of subconference 12.

The estimates do not reflect provisions of the Tax Reform Act of 1985 (H.R. 3838), which was recently approved by the Congress but is not yet signed into law. Participation in the federal thrift savings plan is likely to be greater under H.R. 3838 than under current law, because of the limitations in the tax bill on individual retirement accounts. Larger thrift contributions would increase outlay savings from the reconciliation provisions.

If you wish further details on these estimates, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—SUBCONFERENCE 12

[By fiscal year, in millions of dollars]

		Change from Gradison base	Change from adjusted reconciliation baseline		
		1987	1987	1988	1989
Authorization:					
Postal Service [1]	BA				−210
	O				−210
Direct spending:					
Civil Service Retirement [2]	BA	5	5		
	O	−120	−120	36	26
Revenues: [2]		−24	−24	4	3

[1] The conference agreement would revise the basis for determining costs to be recovered by revenues plus appropriations for reduced-rate categories of mail. If this legislation is enacted, and if appropriations in future years are adjusted correspondingly relative to the reconciliation baseline, revenue forgone payments would be an estimated $594 million in 1989, $539 million in 1990, and $575 million in 1991. It is possible that these amounts would be insufficient to maintain current postal rates for preferred mailers.

[2] Under the conference agreement, federal employees would begin to participate in the government retirement program's thrift savings plan in April 1987. This represents a three-month delay for workers hired after December 1983 and a three-month acceleration for most workers. The agreement also would double agency matching-contribution rates for eligible employees until July 1987 and temporarily increase the amounts employees could contribute to the thrift plan. Larger employee contributions would result in a net 1987 increase in offsetting receipts (negative outlays), but would result in greater outlays in subsequent years as a result of increased withdrawals. In addition, because the contributions are tax-deductible and the withdrawals are taxable, the government's tax revenues would drop in 1987 and would increase in subsequent years.

Note.—Negative outlays represent a decrease in spending and in the deficit. Negative revenue figures represent a decrease in revenues, and an increase in the deficit.

PROGRAM CIVIL FRAUD REMEDIES

Senate provision

Part C of section 7 establishes an administrative remedy for false claim and false statement cases under $100,000 that the Department of Justice has declined to litigate. This remedy is based on legislation, S. 1134, the Program Fraud Civil Remedies Act of 1986, that was reported by the Senate Governmental Affairs Committee on November 19, 1985 (report 99-212).

While judicial remedies are available to penalize and deter fraud against the government, the cost of litigation often exceeds the amount recovered, thus making it economically impractical for the Justice Department to go to court. The government is frequently left without an adequate remedy for the small-dollar cases.

The consequence, according to the Justice Department, is that the federal government loses "tens, if not hundreds, of millions of dollars" to fraud each year. Beyond the actual monetary loss, fraud in federal programs also erodes public confidence in the administration of these programs by allowing ineligible persons to participate.

Under the administrative remedy set forth in this provision, a typical case would begin with an investigation conducted by the agency's investigating official, usually the Inspector General. The IG's findings would be transmitted to the agency's reviewing of-

ficial, who would independently evaluate the allegations to determine whether there is adequate evidence to believe that a false claim or statement has been submitted.

If so, the matter would be referred to the Justice Department for consideration. This procedure ensures that the Department will have an opportunity to review the charges and elect, if it so chooses, to litigate in federal court. An agency may only commence administrative proceedings against the person alleged to be liable if the Justice Department approves initiation of such proceedings. In those cases, the reviewing official would notify the person of the charges and of his or her right to a hearing.

An Administrative Law Judge—an independent, trained hearing examiner—would conduct the hearing to determine whether or not the person is liable and the amount of penalty and assessment, if any, to be imposed. The hearing itself would be conducted pursuant to the due process safeguards of the Administrative Procedure Act, which entitles the person to a written notice of the allegations, the right to be represented by counsel, and the right to present evidence on his or her own behalf. The provision even goes beyond these APA protections by providing the person discovery rights.

Finally, the person alleged to be liable has the right to appeal the hearing examiner's decision to the agency head and then, having exhausted all administrative remedies, the right to seek judicial review in a U.S. Court of Appeals.

In establishing liability under this administrative remedy, the government would not only have to prove that a claim or statement is false, but also that the person "knows or has reason to know" that the claim or statement is false. The provision defines this knowledge standard to cover those persons who either have actual knowledge that a claim or statement submitted is false, act in deliberate ignorance of the truth of falsity of the claim or statement, or act in reckless disregard of the truth or falsity of the claims or statement. The penalty and assessment, if the person is found liable, would be up to $10,000 for each false claim or statement, plus double the amount falsely claimed.

The "knows or has reason to know" standard for establishing liability under this section is intended to capture those persons who recklessly disregard facts which are known or readily discoverable upon reasonable inquiry, while excluding those persons who submit false claims or make false statements through mistake, momentary thoughtlessness, or inadvertence. The definition clarifies, therefore, that a person who makes a false claim or statement through mere negligence does not meet the requisite *scienter* requirement and would not be held liable under the Act. Only those individuals who are extremely reckless, who demonstrate an extreme departure from ordinary care, would be subject to liability.

House provision

No comparable provision.

Conference agreement

The conference agreement retains the major elements of the Senate provisions with a number of changes.

The conferees agreed to raise the jurisdictional cap from $100,000 to $150,000 under which an agency may initiate administrative action.

The conference agreement modifies the coverage of false statements that are unrelated to claims. Under the agreement, the administrative remedy will be available for such statements if they are submitted to establish eligibility for contracts or benefits, such as statements relating to eligibility to be considered a minority contractor for the purpose of bidding for contracts under minority set-aside programs. Coverage of statements related to claims is not affected by this modification.

Under the conference agreement, the maximum penalty that may be imposed under the administrative procedure is lowered from $10,000 to $5,000.

The conference agreement deletes the Senate provision which would have granted testimonial subpoena authority to the Inspectors General.

The conference agreement modifies the application of these provisions to the beneficiaries of certain federal programs. The administrative remedy established by these provisions would apply only to those beneficiaries who misrepresent their basic eligibility to participate in the enumerated programs. The exemption applies only to individuals who are receiving benefits and does not apply to providers who may receive or are assigned benefits by recipients.

The conference agreement clarifies the type of government materials available for discovery under this administrative procedure. The agreement states that all relevant and material documents which relate to the allegations and on which the government relies in bringing the case must be disclosed except those privileged under federal law. Thus, those materials that would not be available under the Federal Rules of Evidence or Civil Procedure are not subject to disclosure. The conferees deleted the specific reference to inter-agency and intra-agency materials only because such materials are considered privileged.

The conference agreement modifies the Senate provision by vesting judicial review in the district court rather the court of appeals. In addition, the agreement narrows the standard for judicial review to comport with the "substantial evidence" standard provided under the Administrative Procedure Act for administrative adjudications.

These modifications to the judicial review provision are not to be interpreted, under any circumstance, to allow for *de novo* judicial review. Providing such review would not only contradict, but totally undermine, the purpose of these provisions by requiring the Justice Department to relitigate the factual and legal issues which had already been adjudicated through the administrative process.

The conference agreement provides that the administrative remedy established by the Senate provision will be included in Title 31 as a new chapter 38.

Finally, the conference agreement also makes numerous technical, conforming, and clarifying changes to the Senate provisions.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 2, 1986.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed the reconciliation provisions within the jurisdiction of subconference 15, the Program Fraud Civil Remedies Act.

The Program Fraud Civil Remedies Act would establish procedures for certain federal departments or agencies to impose civil penalties on any person or organization that knowingly makes false claims or statements to that agency, or to intermediaries that disburse federal funds. The bill would apply to all cases of fraud not exceeding $150,000. A person accused of fraud would be entitled to a hearing before an administrative law judge. Judicial review could be obtained in the U.S. district courts.

We believe that this act would result in a net reduction in the deficit as a result of increased civil penalty collection or some decrease in fraudulent activity. We are not able to estimate the amount of the savings, however, because of uncertainty as to the amount of fraud the way agencies would make use of the new authority, and the deterrent effect of any agency actions.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM
(For Rudolph G. Penner, Director).

TITLE VII—FISCAL PROCEDURES

SALES OF LOAN ASSETS

Present law

There are currently no general provisions of law that govern the manner in which the sale of federal government loan assets shall be conducted. There are several statutes that address the sale of specific types of loan assets which are tailored to the individual needs of these programs.

There are currently no general statutes which specify the manner in which the proceeds of loan asset sales shall be scored for deficit reduction purposes.

House bill

Section 11004 would permit the sale of loan assets to be structured as determined by other laws or individual agencies as the case may be. This section requires, however, that regardless of whether loan assets are sold with or without recourse, the proceeds shall be counted by CBO and OMB as reductions in the federal deficit.

Senate bill

Section 1104 would require that all sales of loan assets be made without recourse to the federal government.

Conference agreement

Conferees agree to strike both sections.

Conferees take note that all sections of this Act dealing with sales of specific loan assets have been structured in such a way so as not to specify whether such sales shall be made with or without recourse. Consequently, the decisions on how to structure these particular sales will be determined by other laws or individual agencies as the case may be. Conferees intend that nothing in this Act requires that sales of loan assets be conducted in any specified manner. Various sales arrangements should be considered so as to ensure that the government realizes the best possible net return from the sale of these assets made in a fiscally responsible manner. Conferees further note that nothing in this Act is intended to dictate or endorse the manner in which the proceeds of such sales shall be scored for deficit reduction purposes.

MODIFICATION OF DATE FOR PRESIDENT'S SUBMISSION OF BUDGET

Present law

For many years, the President was required to submit his budget to Congress 15 days after the start of each session of Congress, which meant that budgets, were traditionally received in mid- to late January.

Last year, with the passage of Gramm-Rudman-Hollings (P.L. 99-177), this was changed to the first Monday after January 3, to enable Congress to get as early a start as possible on budgetary matters. While the actual contents of the President's official budget may not be all that critical to Congressional operations, his submission triggers the release of numerous other budgetary documents and information that are crucial to the work of Congressional committees, particularly the Appropriations Committees, and support offices such as the Congressional Budget Office.

Senate bill

Section 1103 would change the date on which the President must submit his budget to Congress to the first Tuesday in February.

House bill

No comparable provision.

Conference agreement

Senate recedes to House. However, the conferees note that, in the past, Presidents have sometimes been unable to meet the budget submission deadline, and consequently, a short extension was requested and agreed to by Congress. Nothing done herein shall be construed as limiting this option when extensions are justified.

In the Gramm-Rudman-Hollings law, all other dates regarding the budget process were accelerated. Therefore, pushing back the submission date for only the President's budget would make it difficult to meet the other budget deadlines. Among the deadlines that would be hard to meet are the February 15 budget report of CBO to the Congress and the February 25 report of the authorizing committees to the Budget Committees.

EXEMPTION OF CERTAIN COLA'S FROM GRAMM-RUDMAN-HOLLINGS

Present law

With the passage of Gramm-Rudman-Hollings (P.L. 99-177) in 1985, cost of living adjustment (COLA's) of all civilian and military disability and retirement programs became subject to sequester to reduce the federal deficit.

Senate bill

Section 1203 would exempt the COLA increases of all federal government civilian and military disability and retirement programs from Gramm-Rudman-Hollings sequestration cuts, thereby guaranteeing them the same treatment under this law that recipients of Social Security benefits presently enjoy.

House bill

No comparable provision.

Conference agreement

House recedes to the Senate.

EXEMPTION OF RAILROAD RETIREMENT BENEFITS FROM GRAMM-RUDMAN-HOLLINGS

Present law

Current provisions would subject the part of railroad retirees benefits that are funded through regular appropriations to Gramm-Rudman-Hollings (P.L. 99-177) sequestration cuts.

Senate bill

Section 1204 would exempt that part of railroad retirees benefits that are federally funded through regular appropriations from Gramm-Rudman-Hollings sequestration cuts. This assures that the basic benefits paid pursuant to this program are treated the same under this law as are the benefits paid under all other federal retirement programs.

House bill

No comparable provision.

Conference agreement

House recedes to Senate.

RETIREMENT BENEFITS FOR PART-TIME VA MEDICAL PERSONNEL

Senate provisions

The Senate amendment (Sec. 1101) clarifies the treatment of retirement benefits for part-time Veterans' Administration medical personnel. The amendment reinstates provisions in the law that were modified by the Consolidated Omnibus Budget Reconciliation Act of 1985. Last year's reconciliation act corrected a technical problem in the law that produced an unintended windfall for some part-time Federal employees who received full-time credit in the computation of their retirement annuity. In doing so, the Reconciliation Act of 1985 unintentionally provided this windfall benefit to certain part-time Veterans' Administration employees. This provision amends that situation, so all part-time service for all Federal workers is treated correctly.

House provision

The House has no comparable provision.

Conference agreement

House recedes to the Senate.

GENERAL REVENUE SHARING

Present law

The General Revenue Sharing (GRS) program provides unrestricted grants totalling about $4 billion in FY 1986 to local governments—counties, municipalities, and Indian tribes. Payments are made quarterly. Payments for the fourth quarter of FY 1986 would ordinarily be made within five working days after September 30.

House bill

Section 11003 would require that the GRS payments scheduled to be made in October of 1986, be made no later than September 30, 1986. This would have the effect of moving this revenue sharing payment from FY 87 to FY 86, thereby allocating the $680 million involved in this payment to Federal outlays for fiscal year 1986 instead of fiscal year 1987.

Senate amendment

Section 653 is the same as the House bill.

Conference agreement

Follows the House bill and Senate amendment.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 6, 1986.

Hon. JACK BROOKS,
Chairman, Committee on Government Operations, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached estimate of the budget impact of the reconciliation provisions within the jurisdiction of subconference 14.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

EDWARD GRAMLICH
(For Rudolph G. Penner, Director).

ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—SUBCONFERENCE 14

[By fiscal year, in millions of dollars]

		Change from Gradison base	Change from adjusted reconciliation basline		
		1987	1987	1988	1989
Direct spending:					
General revenue sharing...	BA				
	0	−680	−680		

SAVINGS IN EDUCATION PROGRAMS

The Senate included provisions from the Senate passed version of S. 1965, the reauthorization of the Higher Education Act, in S. 2706 in order to meet the Budget Committee's instructions to reduce spending in the Guaranteed Student Loan Program by $425 million in budget authority over the next 3 years. The House bill made reference to the final conference agreement on the reauthorization of the Higher Education Act to achieve the necessary savings in the Guaranteed Student Loan Program. The Senate recedes.

The conference report on S. 1965 meets the reconciliation savings through the following provisions:

(1) Requiring guaranty agencies to pay an annual fee to the Federal Government based on annual default rates. For agencies with a default rate less that 5 percent such fee will be equal to .25 percent of the total principal amount of loans on which they issued insurance during the preceding fiscal year. Agencies with default rates equal to or greater than 5 percent will pay a fee equal to .5 percent of such amount.

(2) Reducing the yield guaranteed to lenders (including the special allowance) from the quarterly average of the 91-day Treasury bill rate plus 3.5 percent to this Treasury bill rate plus 3.25 percent.

(3) Requiring all students to demonstrate need for financial aid regardless of income.

(4) Revising the independent student definition.

(5) Extending the unemployment deferment to 24 months.

The provisions contained in S. 1965 and H. Con. Res. 394, the technical amendments package that accompanied this reauthorization, meet the reconciliation instructions for savings in the Guaranteed Student Loan Program.

Also included in S. 2706 are amendments to the College Housing Loan Program and the Academic Facilities Loan Program authorized under Title VII of the Higher Education Act. The committees received instructions to achieve savings in these two programs by directing the Secretary of Education to sell a percentage of loans outstanding in the portfolios on these programs. The House bill made reference to pending conference report agreements on S. 1965 to meet the necessary savings in reconciliation. The Senate recedes. The following provisions are included in S. 1965 to achieve the necessary savings:

(1) The Secretary is directed to sell approximately 50 percent of the face value of the loan portfolio on the College Housing Loan Program in FY87.

(2) The discounting provisions in current law are reauthorized with additional instructions to the secretary to eliminate the requirement that a school must become current on their college housing or academic

facilities loan debts in order to participate in the Discounting Program. This exemption pertains only to schools delinquent or in default before the date of enactment of S. 1965.

Also included in S. 2706 was an amendment requiring the return of $20 million in state guaranty agency advances to the Department of the Treasury in fiscal year 1987. In the conference report of S. 1965 the Senate receded to the House on a provision requiring the return of $35 million in agency advances in fiscal year 1989. Therefore, the Senate recedes on the $20 million agency return requirement for fiscal year 1987.

BYRD RULE

The Senate amendment included in its reconciliation bill a provision making the Senate rule (Byrd rule) prohibiting extraneous matters in a reconciliation bill permanent.

The House bill had no such provision.

The conference agreement would extend the rule against extraneous matters in a reconciliation bill or conference report through 1987 and make some modifications in its application. It is the conferee's intent that the House and Senate Budget Committees should work with their respective authorizing committees to refine guidelines on the application of this rule for the fiscal year 1988 reconciliation process.

SMALL BUSINESS PROGRAMS

House bill

The House bill would establish a federally chartered Corporation for Small Business Investment (COSBI). The bill directs the Secretary of Treasury to sell to the Corporation the outstanding portfolio of Small Business Investment Company (SBIC) debentures guaranteed by the Small Business Administration (SBA) and now held by the Federal Financing Bank. The sale would be with recourse to the Government. COSBI would sell stock to SBICs and Minority Enterprise Small Business Investment Companies (MESBICs) and would obtain capital for its shareholders by issuing securities to private investors. The bill would allow the Treasury, at its discretion on terms and conditions as determined by the Secretary and subject to an appropriation by the Congress, to purchase up to $500 million of COSBI obligations. Under the House bill, SBICs and MESBICs in good standing would be eligible to join the new corporation. Within two years after the repayment of any outstanding SBA guaranteed debentures, the licenses of SBICs and MESBICs who did not join would be revoked. SBA would no longer have any regulatory authority over those that join and would delegate administration to COSBI for those that did not join.

Senate amendment

The Senate amendment directs the Secretary of Treasury to sell Small Business Administration-guaranteed debentures issued by Certified Development Companies (CDCs) now held by the Federal Financing Bank in sufficient sums to realize net outlay savings of $343 million in Fiscal Year 1987, $55 million in Fiscal Year 1988, and $14 million in Fiscal Year 1989. The sale would be without recourse to the Government.

Conference agreement

In light of the Administration's strong opposition to the House proposal and the expressed threat of a veto of the entire Reconciliation bill if the House proposal were included, the Senate Conferees would not agree to include the House proposal, with or without further modifications, and the House Conferees would not agree to include the Senate proposal, with or without further modifications.

The Senate recedes to the House position, with an amendment to strike the House provisions, which would have the effect of eliminating both the House and Senate provisions from the bill.

APPROPRIATIONS REDUCTION

House bill

Section 11001 of the House bill provided for an automatic reduction in fiscal year 1987 discretionary appropriations to the extent necessary to achieve a reduction in budget outlays to a level $1 billion below the level of fiscal year 1987 outlays allocated to the House Committee on Appropriations pursuant to section 302(a) of the Congressional Budget Act of 1974.

Senate amendment

The Senate amendment contained no comparable provision.

Conference agreement

The House recedes to the Senate.

FOOD FOR PEACE FUNDS

Senate amendment

Section 1106 of the Senate amendment provided that funds made available by Title IV of the Agriculture, Rural Development, and Related Agencies Appropriations Act of 1986 for Public Law 480, Title II programs, and not otherwise obligated, shall be obligated during fiscal year 1986 for the purpose for which they were made available only.

House bill

The House bill contained no comparable provision.

Conference agreement

The Senate recedes to the House.

TITLE VIII—REVENUES, TRADE, AND RELATED PROGRAMS

APPROPRIATIONS FOR IRS ENFORCEMENT

House bill

Section 11002 of the House bill provided that, for purposes of reconciliation, in order to provide for an accurate estimate of revenue raised by increased appropriations for the Internal Revenue Service, the enacted appropriations measure providing funding for the IRS for fiscal year 1987 would include specified levels of funding for the functions of the IRS. Section 11002 further provided for an increase in the allocation to the Senate Committee on Appropriations pursuant to section 302(a) of the Budget Act of $300,000,000 in both budget authority and outlays for fiscal year 1987.

Senate amendment

Section 665 of the Senate amendment contained a similar provision, specifying levels of funding identical to those in the House bill which would be included in the conference agreement on the appropriations measure providing funding for the IRS.

Conference agreement

The Senate recedes to the House position.

TITLES VIII AND IX—REVENUES, TRADE, AND RELATED PROGRAMS; INCOME SECURITY, MEDICARE, MEDICAID, AND MATERIAL AND CHILD HEALTH PROGRAMS

I. Income Security Provisions

1. ELIMINATION OF 3-PERCENT TRIGGER FOR COST-OF-LIVING INCREASES (SECTION 10001 OF THE HOUSE BILL)

Present law

The Social Security Act provides for a cost-of-living adjustment (COLA) for benefits under the Old-Age, Survivors, and Disability Insurance Program, based on the consumer price index (CPI), if the CPI increases by 3.0 percent or more during a specified base period (currently, the third quarter of the prior year through the third quarter of the current year). If the CPI rises by less than 3.0 percent during the base period, a COLA is not provided. In the following year, however, the COLA is based on the accumulated increase in the CPI over 2 years.

Several other automatic increase provisions are linked to the social security COLA, and are triggered only if the social security COLA is provided. These include the increase in: a) the maximum amount of earnings taxable under FICA and SECA; b) the amount of earnings exempt from the retirement test; c) the Supplementary Medical Insurance (SMI) beneficiary premium; d) railroad retirement, Supplemental Security Income (SSI), and Veteran's pension benefits; and e) certain eligibility standards for medicaid, food stamps, housing assistance, and Aid to Families with Dependent Children (AFDC).

House bill

Eliminates the 3-percent trigger for the provision of the social security COLA effective in December 1986. A COLA would be provided in any year in which there has been a measurable increase in the CPI during the specified base period. This would have the effect of assuring that the other automatic increase provisions linked to the Social Security COLA would also rise in any year in which the CPI rises.

Provides technical clarification for the implementation of the SMI "hold harmless" (mandated by the Deficit Reduction Act of 1984) to assure that the proceeds from rounding social security benefit amounts down to the next lower dollar accrue to the OASDI trust funds.

Effective date.—Date of enactment.

Senate amendment

Similar provision.

Conference agreement

The conference agreement follows the House bill.

2. DISINVESTMENT OF SOCIAL SECURITY TRUST FUNDS

Present law

The Old-Age, Survivors, and Disability Insurance (OASDI) program is financed primarily from Social Security taxes on employers, employees, and self-employed persons. Under the normalized tax transfer provisions of current law, the Treasury Department is required at the start of each month to credit the trust funds with an amount equal to the taxes expected to be received during the month. The Treasury Department is also required to invest the assets of the trust funds. Funds must be invested in securities issued (or fully guaranteed) by the Federal Government. The secu-

rities issued at the beginning of the month are redeemed as necessary to finance benefit payments. Funds not needed to finance current withdrawals are held by the trust funds in the form of invested assets.

Governmental securities issued to the trust funds are subject to the statutory limit on the public debt. When that debt limit is reached, the Treasury Department may be unable, without violating the limit, to meet the requirement that an amount equal to expected payroll tax receipt be fully invested at the beginning of the month.

In a situation where the debt limit prevents the Treasury Department from utilizing the normal investment and disinvestment procedures, present law does not provide specific guidance as to the alternative procedures to be followed. On several occasions in 1984 and 1985 the Treasury responded to such situations by disinvesting securities held by the trust funds that it would not have been necessary to redeem in the absence of the debt limit constraint. This procedure allowed the Treasury to create sufficient borrowing authority to finance current withdrawals without exceeding the debt limit.

In such circumstances, the trust funds may be placed in a position where they will earn less interest than would be the case under normal investment procedures. In addition, the redemption of trust fund holdings to generate cash to meet benefit obligations can result in significant changes in the portfolio of investments held by the funds—changes which would not occur in the absence of a debt limit constraint. Present law contains no mechanism to restore the lost interest or to reconstitute the portfolio of the trust funds.

Present law imposes on the Board of Trustees the duties of:

Holding the trust funds;

Meeting and reporting to the Congress at least once a year;

Reporting immediately if they find the balance in a trust fund to be "unduly small";

Recommending improvements to better coordinate Social Security and unemployment compensation; and

Reviewing and recommending changes in trust fund management policies.

House bill

No provision.

Senate amendment

Establishes rules for investment and disinvestment of the Old-Age, Survivors, and Disability Insurance (OASDI) Trust Funds during periods when the normal borrowing operations of the Treasury Department are constrained because of the debt limit:

The Treasury Secretary is directed to redeem securities held by the trust funds that absent the debt ceiling would not need to be redeemed to meet the program's obligations on a timely basis;

The amount of such redemptions cannot be greater than the amount which would be redeemed under normal operating conditions; and

If the trust funds have not been issued securities promptly because of debt limit constraints, those securities must be issued as room develops for investment within the debt limit (but only to the extent that the Treasury Department has actually received the Social Security taxes giving rise to those uninvested amounts).

Provides that, after the normal trust fund investment and disinvestment procedures have been affected by a period of debt limit constraint, the trust funds will be restored fully as soon as the debt limit is increased:

There is appropriated to the trust funds the amount of any interest that would have been earned, but was not, because of the impact of the debt limit;

The portfolio of the trust funds is to be reconstituted by the issuance or reissuance of securities as necessary to leave the funds with the same holdings they would have had but for the impact of the debt limit; and

A special Trustees' Report to the Congress is to be made detailing trust fund operations during any period of debt limit constraint and describing the actions taken to restore the funds after the end of that period.

Revises and clarifies the statutory requirements on the Board of Trustees:

The Treasury Secretary is required to report monthly to the Board of Trustees of the Social Security trust funds on the status of the funds, and is required to notify both the Board and the Congress 15 days prior to the date on which he expects, because of the debt limit, to be unable fully to comply with the transfer or investment requirements of the Act;

Funds appropriated or deposited in the Social Security trust funds are to be available immediately and exclusively for trust fund purposes;

The Board of Trustees will be required to meet twice, rather than once each year; and

The duty of the trustee faithfully to execute the responsibilities imposed on them by the Act is explicitly stated.

Effective July 1, 1990, repeals a provision enacted in 1983 under which the OASDI trust funds are credited on the first day of each month with the Social Security taxes expected to be collected during the month. Instead, the funds will be credited on a daily basis as the taxes are received.

Effective date.—Except as noted above, effective on enactment.

Conference agreement

The conference agreement follows the House bill.

3. AFDC FOR UNEMPLOYED TWO-PARENT FAMILIES (SECTION 10101 OF THE HOUSE BILL)

Present law

(a) State option.—States have the option to provide AFDC to financially eligible two-parent families in which the principal earner is "unemployed," defined as working fewer than 100 hours per month.

(b) Eligibility.—For eligibility, the law requires that the unemployed parent have worked six or more quarters in any 13-calendar quarter period ending within 1 year before applying for AFDC-UP.

NOTE.—States without AFDC-UP programs are: Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah, Virginia and Wyoming. The Virgin Islands and Puerto Rico also do not have AFDC-UP.

House bill

(a) State option.—Requires all State AFDC programs to offer coverage to financially eligible two-parent families in which the principal earner is "unemployed," defined as working fewer than 100 hours per month.

(b) Eligibility.—Permits States to substitute for 4 quarters of the 6 quarters of work, fulltime attendance in elementary or secondary school or full-time participation in vocational training, but sets a life-time limit of 4 quarters creditable to vocational training.

Effective date.—January 1, 1988.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

4. TARGETING THE USE OF THE INCOME AND ELIGIBILITY VERIFICATION SYSTEM (SECTION 10102 OF THE HOUSE BILL)

Present law

Section 1137 of the Social Security Act requires that States establish an income and eligibility verification system (IEVS) for certain public assistance programs. Under IEVS, the AFDC, Medicaid, unemployment compensation, Food Stamp and SSI programs must request and make use of IRS unearned income information and quarterly wage information.

The Act requires that the use of such information be targeted to those uses which are most likely to be productive in identifying and preventing ineligibility and incorrect payments.

Current regulations require that information be requested and verified for *all* applicants and recipients within a 30-day time period. Action can be delayed on up to 20 percent of the information items when collateral verification sources must be contacted.

House bill

Clarifies that the system is to be targeted to those uses which are likely to be most productive by adding that no State shall be required to use information obtained through the system to verify the eligibility of all recipients.

Report language calls for a 45-day time period for verification of information received.

Effective date.—On enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

5. ANNUAL CALCULATION OF FEDERAL PERCENTAGE OF AFDC EXPENDITURES (SECTION 1013 OF THE HOUSE BILL, SECTION 652 OF SENATE AMENDMENT)

Present law

Prior to enactment of P.L. 99-272, the Federal percentage was calculated between October 1 and November 1 of each even-numbered year. The percentage applied to the two-year period beginning the following October. P.L. 99-272 requires an annual rather than biennial calculation of the Federal percentage beginning in FY 1987.

The shift from a biennial to an annual calculation of the Federal percentage occurs in the middle of the two-year cycle and results in a loss of funds for 13 states in FY 1987.

NOTE.—According to the Department of Health and Human Services, the States affected are: Arizona, Florida, Georgia, Maine, Minnesota, Missouri, New Hampshire, North Carolina, Ohio, Rhode Island, South Carolina, South Dakota and Virginia.

House bill

For FY 1987 only, restores the biennial calculation of the Federal percentage for States that lost funds in the shift to an annual calculation.

Effective date.—October, 1986.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

6. RETROACTIVE MODIFICATION OF CHILD SUPPORT ARREARAGES (SECTION 651 OF SENATE AMENDMENT)

Present law

In most States, a child support order can be modified only prospectively; that is, the terms of the modification do not take effect until after the date on which it becomes final. Thus, only future child support payments would be affected. However, a number of States permit the child support award to be retroactively modified. In such States, the court (or administrative entity) has the authority to reduce or nullify arrearages. Further, under the Uniform Reciprocal Enforcement of Support Act (URESA), in interstate cases, the court in the noncustodial parent's State may modify the child support order of the custodial parent's State to the same extent the order could be modified in the State that issued the order.

House bill

No provision.

Senate amendment

Adds to the child support enforcement program established by title IVD of the Social Security Act a new requirement which States must meet to be in compliance with that program. To meet this new requirement, State laws relating to the enforcement of child support orders must prohibit changes in those orders which are effective on a retroactive basis. If the noncustodial parent's circumstances change because of unemployment, illness or another such reason, the amendment requires notification of the custodial parent and the court or entity which issued the child support order of this changed circumstances and his/her intent to have the child support order modified. No modification would be permitted before the date of this notification.

Effective date.—On enactment.

Conference agreement

Under the conference agreement, the House recedes to the Senate amendment, with an amendment which: (1) permits either parent to apply for modification; (2) clarifies the notice requirements; and (3) makes technical changes.

II. MEDICARE PROVISIONS (PART A)

1. CHANGES IN THE PART A DEDUCTIBLE (SECTION 10201 OF HOUSE BILL; SECTION 603 OF SENATE AMENDMENT)

Present law

Medicare's inpatient hospital deductible must, be law, be revised each January. The deductible is revised based on a formula which reflects the average cost of a day of hospital care. The deductible was $400 in 1985, and is $492 in 1986. The Administration estimates that the deductible will increase to $572 in 1987.

The deductible is used in computing the coinsurance amount for post-hospital extended care services and in computing the monthly part A premium.

House bill

(a) Inpatient hospital deductible for 1987.—Sets the inpatient hospital deductible for 1987 at $500.

(b) Inpatient hospital deductible for years after 1987.—No provisions; that is, current law would prevail.

Effective date.—Applies to inpatient hospital services furnished in 1987.

Senate amendment

(a) Inpatient hospital deductible for 1987.—Sets the inpatient hospital deductible for 1987 at $520.

(b) Inpatient hospital deductible for years after 1987.—Sets the inpatient hospital deductible for any succeeding year at an amount equal to the inpatient hospital deductible for the preceding calendar year, changed by the same percentage that applies to PPS payment rates and adjusted to reflect changes in real case mix. Any amount so determined which is not a multiple of $4.00 shall be rounded to the nearest $4.00.

Effective date.—Applies to spells of illness beginning on or after January 1, 1987.

Conference agreement

(a) Inpatient hospital deductible for 1987.—The conference agreement includes the Senate amendment with modifications to clarify current law. The part A deductible for calendar year 1987 will be $520. In subsequent years the part A deductible will be adjusted by the applicable percentage increase (as defined in 1886(b)(3)(B)) for hospital payments under medicare adjusted to reflect changes in real case mix. The part A deductible would continue to be applied on a spell of illness basis.

Current law would be clarified to indicate that the deductible applicable to a hospital stay which falls into two calendar years would be the deductible in effect on the first day of the hospitalization. Applicable cost sharing under part A would continue to be determined based on the annual deductible in effect for the year in which the cost sharing days are incurred. Further, the conference agreement requires that the Secretary of Health and Human Services published within 30 days after enactment the new deductible and coinsurance rates for calendar year 1987.

(b) Inpatient hospital deductible for year after 1987.—The conference agreement includes the Senate amendment.

2. APPLICABLE PERCENTAGE INCREASE IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES (SECTION 10202 OF HOUSE BILL; SECTION 601 SENATE AMENDMENT)

Present law

(a-c) Rate of Increase, Conforming Amendments, and Promulgation of New Rate.—The Social Security Amendments of 1938 (P.L. 98-21) authorized the Secretary to determine the rate of increase in the payment rates for hospitals included in the prospective payment system (PPS) for FY 1986 and thereafter; taking into account the recommendations of the Prospective Payment Assessment Commission (ProPAC).

HHS issued final rules on September 3, 1985, freezing the PPS payment rates for FY 1986. However, these rules were not implemented because of the enactment of emergency extension legislation which provided that the FY 1986 PPS rates would be frozen at FY 1985 levels through March 14, 1986.

COBRA continued the FY 1986 rate freeze until April 30, 1986, and provided for a rate of increase of ½ of 1 percent for the remainder of the Federal fiscal year for both PPS and PPS-exempt hospitals. In addition, for FY 1987 and FY 1988, it provided that the update factor may not exceed the rate of increase in the market basket index.

The Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177) reduced the FY 1986 Medicare payments to hospitals by 1 percent beginning March 1, 1986.

In proposed rules issued June 3, 1986, HHS provided for an increase of 0.5 percent in the FY 1987 PPS rates and in the target amounts per discharge for PPS-exempt hospitals. In a July 2, 1986, letter to HCFA, ProPAC recommended a 2.2 percent increase in the FY 1987 PPS rates if capital is to be included into the prospective payment system or a 1.9 percent increase without capital, a rate of increase for PPS-exempt children's hospitals of 3.2 percent, and a rate of increase for other PPS exempt hospitals and units of 3.5 percent.

(d) FY 1988 update recommendations.—The Prospective Payment Assessment Commission is required to issue a report to the Secretary on April 1 of each year with its recommendations on ways to update and improve the prospective payment system. The Secretary is required to promulgate proposed PPS regulations not later than June 1 and final PPS regulations not later than September 1.

(e) PPS-exempt update.—HHS has argued that a technical change in COBRA prohibits HHS from providing separate update factors for PPS and PPS-exempt hospitals.

(f) Outlier payments for small rural hospitals and sole community hospitals.—P.L. 98-21 provided for additional payments to PPS hospitals for "outliers"—cases with very long lengths of stay or extraordinarily high costs compared to most patients classified in the same DRG. The law requires that total outlier payments to all PPS hospitals be not less than 5 percent nor more than 6 percent of the total estimated Medicare prospective payments based on the DRG payment rates for the fiscal year.

COBRA required the Secretary to report to Congress no later than January 1, 1987, on the impact of outlier and patient transfer policies on rural hospitals (particularly on rural hospitals with fewer than 100 beds).

(g) Computing urban and rural averages.—P.L. 98-21 provided that PPS hospitals are paid, in part, on the basis of Federal regional and national standardized amounts per discharge. The law requires the calculation of separate urban and rural standardized amounts for each of the nine census regions and for the nation. These standardized amounts represent the urban or rural operating cost per discharge in the base year cost data (1981), averaged across all hospitals in the region (or nation) and updated to the year of payment. In this calculation, the average operating cost per discharge for each hospital is treated the same as the cost per discharge of any other hospital, regardless of how many Medicare discharges the hospital had during the base year. This results in amounts that represent the operating cost per discharge for the average hospital (rather than the average Medicare discharge).

(h) Regional referral centers.—PPS hospitals may apply for designation as a regional referral center. In order to qualify, hospitals must meet criteria based on bed size and location, or criteria based on case-mix, admission volume, or patient referrals. Hospitals meeting these criteria are paid prospective payments based on the applicable urban payment rates, rather than the rural rates, and adjusted by the hospital's area wage index.

Under regulations, once a hospital has achieved referral center status, it is paid at the applicable urban rate for a 3-year period.

House bill

(a) Rate of increase.—Increases the FY 1987 payment rates for PPS hospitals and PPS-exempt hospitals by 1.0 percent and increases the FY 1988 payment rate by the market basket increase minus 2.0 percent.

(b) Conforming amendments.—Provides for conforming amendments.

(c) Promulgation of new rate.—Requires the Secretary to republish in the Federal Register the determination of the percent increase which will apply for FY 1987, taking into account the amendments made by this section.

(d) FY 1988 update recommendations.—Requires the Secretary to submit a report to Congress by April 1, 1987, providing a documented recommendation on what the Secretary believes the update factor should be for FY 1988.

(e) PPS-exempt update.—Provides that PPS-exempt hospitals and units may receive a separate update factor from PPS hospitals.

(f) Outlier payments for small rural hospitals and sole community hospitals—No provision.

(g) Computing urban and rural averages.—No provision.

(h) Regional referral centers.—Extends the 3-year period granted for regional referral centers status to 4 years. After the 4th year, the hospital would be required to demonstrate, that it continues to meet the criteria. See also item 7(b) (section 10207 of House bill).

Effective date.—Applies rate of increase provision to hospital cost reporting periods beginning on or after October 1, 1986. For the Federal portion of the PPS payment rates, the rate of increase applies to discharges occurring on or after October 1, 1986. Conforming amendments are effective upon enactment. The promulgation of new rates provision requires the Secretary to republish the rate determination in the Federal Register within 30 days after the date of enactment of this Act but in no case later than October 1, 1986, without regard to the provisions of chapter 5 (Administrative Procedures) of title 5 (Government Organization and Employees), United States Code.

Senate amendment

(a) Rate of increase.—Increases the FY 1987 payment rates for PPS hospitals and PPS hospitals by 1.3 percent. The market-basket rate of increase limitation is extended to payment rates for FY 1989.

(b) Conforming amendments.—No provision.

(c) Promulgation of new rate.—No provision.

(d) FY 1988 update recommendations.—No provision.

(e) PPS-exempt update.—No provision.

(f) Outlier payments for small rural hospitals and sole community hospitals.—Requires the total amount of outlier payments for sole community hospitals with average occupancies of 50 beds or fewer, and small rural hospitals (defined as a hospital in a rural area with fewer than 50 beds) to be not less than 5 percent nor more than 6 percent of the total payments based on DRG prospective payment rates projected or estimated to be made to such hospitals in a given year.

Requires the Prospective Payment Assessment Commission to include in its annual report an analysis of the appropriate thresholds for outliers.

Requires the Secretary to report to Congress no later than January 1, 1987, on the impact of outlier and patient transfer policies on sole community providers.

(g) Computing urban and rural averages.—The current formula used to calculate the separate average standardized payment amounts for urban and rural hospitals under PPS would be changed to be based on the number of patients discharged rather than the number of hospitals. This would result in amounts that represent the operating cost per discharge for the average patient as opposed to the average hospital.

(h) Regional referral centers.—Hospitals designated as regional referral centers as of the date of enactment shall retain that designation for all hospital cost reporting periods beginning before October 1, 1989.

Provides that to be classified as a regional referral center, a rural hospital must (1) have a case mix equal to or greater than the median case mix for urban hospitals located in the same census region or the Nation (other than hospitals with approved teaching programs); (2) have 5,000 or more discharges a year (or in the case of a rural osteopathic hospital, meets the criterion established by the Secretary for the annual number of discharges); and (3) meet any other criteria established by the Secretary.

Effective date.—Applies rate of increase provision for PPS hospitals to discharges occurring on or after October 1, 1986 (for the Federal portion of the rate), and to discharges occurring in hospital cost reporting periods beginning on or after October 1, 1986 (for the hospital-specific portion of the rate). The rate of increase provision for PPS-exempt hospitals applies to hospital cost reporting periods beginning on or after October 1, 1986. The outlier payments for small rural hospitals and sole community hospitals provision (except the reports required from ProPAC or the Secretary) apply to discharges occurring after September 30, 1986, and before the first October 1 that is more than 270 days after the date on which the Secretary submits the report on outliers required by COBRA. The computing urban and rural averages provision is effective for discharges occurring on or after October 1, 1986. Hospitals which are regional referral centers on the date of enactment shall retain that status for cost reporting periods beginning on or after October 1, 1986, and before October 1, 1989.

Conference agreement

(a) Rate of increase.—The conference agreement includes the Senate amendment with modifications. Effective October 1, 1986, the FY 1987 payment rates for PPS hospitals and PPS-exempt hospitals will be increased by 1.15 percent. For FY 1988 the Secretary is required to increase the payment rates for PPS hospitals and PPS-exempt hospitals by an update factor equal to the market basket increase (as defined in Section 1886(b)(3)(B) of the Social Security Act), minus 2 percentage points.

The Secretary of Health and Human Services will be required to adjust the diagnosis-related group (DRG) categories and recalibrate the DRG relative weights annually, beginning in FY 1988, to ensure that the weights reflect the use of new technologies and other practice patttern changes affecting the relative use of hospital resources among DRG categories.

The conference agreement requires that the Secretary publish the June 1 proposed FY 1988 medicare prospective payment regulation—providing for the mandated update factor, adjusting the diagnosis-related group (DRG) categories, recalibrating the DRG relative weights, and making other adjustments as appropriate and within the scope of the law. The final regulation would be published by September 1, 1987, for implementation October 1, 1987.

(b) Conforming amendments.—The conference agreement includes the House provision.

(c) Promulgation of new rate.—The conference agreement includes the House provision with an amendment requiring promulgation of the new rates no later than 30 days after enactment. Provisions of chapter 5 of title 5 of the U.S. Code would be waived.

(d) FY 1988 update recommendations.—The conference agreement includes the House provision with an amendment to require that the Secretary provide a report with recommendations on the projected PPS and PPS-exempt update factors on April 1, 1987 and annually thereafter on March 1. The conference agreement requires that the Secretary, for the FY 1988 update factor provide a report and a documented recommendation to Congress by Arpil 1, 1987, on what the Secretary would recommend for the FY 1988 update factor. Congress will review this report, along with the report of the Prospective Payment Assessment Commission, and make a determination as to what, if any, adjustments should be made to the FY 1988 update factor (established under this legislation at the projected rate of increase in the hospital market basket index minus two percentage points). The Prospective Payment Assessment Commission's annual report submitted to the Secretary as required in Section 1886(e)(4) would be due annually on March 1, effective with the 1988 (FY 1989) annual report. The annual promulgation of the proposed prospective payment regulations currently required to be published no later than June 1 of a year would be moved to no later than May 1, beginning with the 1988 (the FY 1989) update factor. The purpose of requiring submission of the report on March 1 of a year, and promulgation of the proposed regulation on May 1 of a year, is to allow for a sixty day public comment period.

(e) PPS-exempt update.—The conference agreement includes the House provision.

(f) Outlier payments for small rural hospitals and sole community hospitals.—The conference agreement includes the Senate amendment with a modification. Effective October 1, 1986, a separate urban and separate rural set-aside factor for outliers would be established. The Federal standardized payment amount for each hospital group (i.e., urban hospitals and rural hospitals) would be reduced by the amount necessary to offset the projected outlier payments to that group in the forthcoming fiscal year. For fiscal year 1987 the standardized amount will be reduced by 5 percent to account for outlier payments. The rural standardized payment amounts will be increased by the dollar amount difference between the 5 percent previous reduction and the estimated rural outlier payments for fiscal year 1987 (most recent estimates are that outlier payments to rural hospitals will account for 3 percent of their total payments). The urban standardized amounts will be reduced by an equivalent dollar amount so as to result in the same level of total system payments. The outlier thresholds and standards used for making additional payments

shall be the same as those in effect on October 1, 1986. The conferees expect that the outlier adjustments will continue to be made as the last adjustment to the standardized payment amounts (following the budget neutral restandardization required by section 9104 of P.L. 99-272).

In addition the conference agreement extends for two years the provision of section 1886(d)(5)(C)(ii) of the Social Security Act which provides for an additional payment to sole community hospitals that experience a 5% decrease in volume.

(g) Computing urban and rural averages.—The conference agreement includes the Senate amendment with a modification to make the effective date October 1, 1987.

(h) Regional referral centers.—The conference agreement includes the Senate amendment with a modification. The Secretary is required to extend the current 3-year period of regional referral center designation for 3 additional years for hospitals so designated on the date of enactment. The provision is further amended to require that in establishing the discharge threshold for eligibility for regional referral center status that the threshold be the lesser of 5,000 discharges or the median number of discharges in urban hospitals in the region in which the hospital is located.

In addition the conference agreement requires the Secretary to conduct a secondary rural referral center demonstration at Lake Region Hospital and Nursing Home in Fergus Falls, Minnesota.

3. LIMITATION ON PAYMENTS FOR CAPITAL-RELATED COSTS FOR INPATIENT HOSPITAL SERVICES OF DRG HOSPITAL UNDER MEDICARE (SECTION 10203 OF HOUSE BILL; SECTION 602 OF SENATE AMENDMENT)

Present law

The Social Security Amendments of 1983 (P.L. 98-21) established a prospective payment system (PPS) for making payments on a per discharge basis to hospitals for the operating costs of inpatient services provided to Medicare beneficiaries. Hospital capital-related costs for inpatient services (including depreciation, leases and rentals, interest, and a return on equity for proprietary hospitals) are excluded from the definition of operating cost for PPS and are reimbursed on a reasonable cost basis. This exclusion from the operating costs was to expire on October 1, 1986, but was extended until October 1, 1987, by the Urgent Supplemental Appropriations Act (P.L. 99-349).

Current law provides that if Congress did not enact legislation by October 1, 1987, to include capital-related costs under PPS, Medicare payment for capital costs would be prohibited unless a State has a capital expenditure review agreement with the Secretary (under section 1122 of the Social Security Act) and the State has recommended approval of the specific capital expenditure.

House bill

(a) Payment limitation.—Requires the Secretary to cap the aggregate amount of PPS hospital capital-related payments. The cap for FY 1987 shall be the aggregate amount of hospital capital payments in 1986 as estimated by the Secretary plus 10 percent; for FY 1988 will be limited to the aggregate amount of hospital capital payments in FY 1986 plus 20 percent; and for FY 1989 will be limited to the aggregate amount of hospital capital payments in FY 1986 plus 30 percent. The FY 1986 base and the allowable costs reimbursed will be adjusted to reflect the phasing-out of payments for return on equity capital.

The Secretary would be permitted to adjust the FY 1986 base in each of the following fiscal years based on the most recent available data.

(b) Publication of capital reduction percentage.—If the Secretary determines the target limits will be exceeded, the Secretary would be required to determine and publish the appropriate capital reduction percentage for each fiscal year required to maintain payments within the limit. The percent would be based upon the best available information before the beginning of the fiscal year involved.

Requires the Secretary to publish in the Federal Register, no later than 30 days after the date of the enactment of this Act or, if earlier, by October 1, 1986, the capital reduction percentage for FY 1987. In promulgating the percentage for FY 1987, the provisions of chapter 5 (Administrative Procedures) of title 5 (Government Organization and Employees), United States Code, and of chapter 35 (Programs for Older Americans) of title 41 (Public Contracts), United States Code, shall not apply.

(c) No administrative or judicial review.—Prohibits administrative or judicial review of the capital reduction percentage.

(d) Interim and final payments.—Interim and final payments would be based on the percentage determined by the Secretary for portions of cost reporting periods occurring during the fiscal year.

(e) Sole community hospitals.—No provision.

Effective date.—Applies to payments for capital-related costs attributable to portions of cost reporting periods occurring on or after October 1, 1986.

Senate amendment

(a) Payment limitation.—Requires the Secretary to reduce the amounts for capital-related payments to PPS hospitals otherwise determined to be reasonable under current law, by 3 percent for cost reporting period beginning on or after October 1, 1986, and before October 1, 1987; by 5 percent for cost reporting periods beginning on or after October 1, 1987, and before October 1, 1988; and by 6 percent for cost reporting periods beginning on or after October 1, 1988, and before October 1, 1989.

(b) Publication of capital reduction percentage.—No provision.

(c) No administrative or judicial review.—No provision.

(d) Interim and final payments.—No provision.

(e) Sole community hospitals.—Does not apply to the capital-related costs of sole community hospitals.

Effective date.—Cost reporting periods beginning on or after October 1, 1986, and before October 1, 1989.

Conference agreement

(a) Payment limitation.—The conference agreement includes the Senate amendment with modifications. The Secretary is required to reduce the amounts for capital-related payments to PPS hospitals otherwise determined to be reasonable under current law, by 3.5 percent for portions of cost-reporting periods occurring in FY 1987; by 7 percent for FY 1988; and by 10 percent for FY 1989. The conferees expect that all capital costs (including return on equity payments and funded depreciation offsets) will be included in the base for calculating the payment reductions. The conferees anticipate that the reductions will be implemented on a pro rata monthly basis.

It is the intent of the conferees that the Congress reconsider the issue of payment for capital-related costs to hospitals under medicare in the forthcoming year. The conferees anticipate that, during this period, the Congress will develop a legislative proposal to incorporate capital payments under medicare into the prospective payment system. The conferees intend that this proposal will continue cost-related reimbursement for capital-related financial obligations, or enforceable agreements entered into, in the past by hospitals. The Conferees expressly indicate that at this time there be no specific date as to when a capital-related cost would be considered "obligated" for purposes of a "grandfather" clause.

If the Congress does not exercise its prerogative to legislate on this matter, the conference agreement recognizes that the Secretary has the authority, beginning in FY 1988, to incorporate capital-related costs into the prospective payment system. In promulgating any regulations which would incorporate capital payments into the prospective payment system, the Secretary shall ensure that the medicare total aggregate payments for capital under the new prospective payment system shall be neither more nor less than the payments that would otherwise have been provided under this section (i.e. be "budget neutral"). The Secretary is prohibited, between September 1, 1986 and September 1, 1987, from promulgating final regulations that change the methodolgy for computing the amount of payment for capital-related costs under title XVIII of the Social Security Act.

Further, the conference agreement provides a technical amendment to clarify that if the Secretary chooses not to incorporate capital into the prospective payment system, cost reimbursement would continue for capital-related costs, subject to the limitations in the conference agreement.

(b) Publication of capital reduction percentage.—The conference agreement does not include the House provision.

(c) Administrative or judicial review.—The conference agreement does not include the House provision.

(d) Interim and final payments.—The conference agreement does not include the House provision.

(e) Sole community hospitals.—The conference agreement includes the Senate amendment exempting, for three years, sole community providers from capital-related payment reductions and further would exempt, for three years, sole-community providers from a prospective payment system for capital if provided by the Secretary under regulations.

4. COVERAGE OF HOSPITALS IN PUERTO RICO UNDER DRG PROSPECTIVE PAYMENT SYSTEM (SECTION 10204 OF HOUSE BILL)

Present law

Hospitals outside the 50 States and the District of Columbia are excluded by law from the prospective payment system (PPS) and are paid on the basis of reasonable costs, subject to the TEFRA rate of increase limits.

The Secretary is required to report on methods of making payments to hospitals in the territories, including Puerto Rico, under a prospective payment system by April 1, 1984. The report has not yet been submitted.

House bill

(a) In general.—Requires the Secretary to include eligible Puerto Rico hospitals in PPS. A hospital would be included in PPS if it is located in Puerto Rico and otherwise

would be a PPS hospital if it were located in one of the 50 States.

(b) Payment rate.—Establishes payment amounts based on the sum of: (1) 75 percent of the Puerto Rico adjusted standardized payment amount; and (2) 25 percent of the national adjusted standardized payment amount.

(c) Base used to establish Puerto Rico amount.—Requires the Secretary to determine each hospital's target amount per discharge (under section 223) for hospital cost reporting periods beginning in FY 1986.

(d) Updating the base.—Requires the Secretary to increase the hospital's target amount per discharge by the applicable percentage increase for FY 1987.

(e) Standardizing the amount.—Requires the Secretary to standardize this amount by: (1) excluding an estimate of indirect medical education costs; (2) adjusting for variations in the Puerto Rico average hospital wage level; and (3) adjusting for variations in case mix among hospitals.

(f) Urban and rural hospitals.—Requires the Secretary to calculate an average standardized amount for urban and for rural hospitals.

(g) Additional reductions.—Requires the Secretary to reduce the Puerto Rico standardized amounts by a proportion equal to the proportion (estimated by the Secretary) that outlier payments and disproportionate share payments represent of total Puerto Rico payments.

(h) Puerto Rico prospective payment rate.—Requires the Secretary to establish Puerto Rico urban and rural prospective payment rates for discharges within a DRG, equal to the urban or rural average standardized amount, with the additional reductions, multiplied by the weighting factor for that diagnosis related group.

(i) Area wage adjustment.—Requires the Secretary to adjust the proportion (as estimated by the Secretary from time to time) of hospital costs attributable to wages and wage-related costs for area differences in hospitals wage levels by a factor (established by the Secretary) reflecting the relative wage level in the geographic area of the hospital compared to the Puerto Rican average hospital wage level.

(j) FY 1988 and beyond.—Requires the Secretary, for each hospital discharge after FY 1987, to compute the Puerto Rico adjusted DRG prospective payment rate by: (1) using the hospital's respective urban or rural average standardized amount as computed (in (f) above) for the previous fiscal year; (2) increasing this amount by the applicable percentage increase; and (3) by carrying out the steps described in (e) through (i) above.

(k) National adjusted standardized payment amount.—Requires the Secretary to determine the average of the national adjusted standardized payment amounts for urban and for rural hospitals.

(l) Additional payments.—Provides for payment to Puerto Rico PPS hospitals in the same manner and to the same extent as they apply to other PPS hospitals for the following: outlier payments (except that the total amount of outlier payments to Puerto Rico hospitals may not be less than 5 percent nor more than 6 percent of the total payments projected or estimated to be made for Puerto Rico hospitals for discharges in that year), payments for indirect medical education costs (expect that the calculation would conform to Puerto Rico's payment methodology), exceptions and adjustments, payments for costs of certified registered nurse anesthetists, and disproportionate share payments (except that the calculation would conform to Puerto Rico's payment methodology).

(m) Conforming amendments.—Provides for conforming amendments.

(n) No restandardization of national levels to reflect inclusion of Puerto Rico.—Prohibits the Secretary from restandardizing or otherwise adjusting the national DRG prospective payment rates to take into account Puerto Rico's inclusion into the prospective payment system.

Effective date.—Applies to cost reporting periods beginning on or after October 1, 1986. The Secretary is required to issue regulations no later than October 1, 1986, to implement such amendments without regard to the provisions of chapter 5 (Administrative Procedures) of title 5 (Government Organization and Employees), United States Code.

Senate amendment

No provision.

Conference agreement

(a) In general.—The conference agreement includes the House provision with a modification to include eligible Puerto Rico hospitals into the medicare prospective payment system effective for discharges occurring on or after October 1, 1987.

(b) Payment rate.—The conference agreement includes the House provision with technical corrections.

(c) Base used to establish Puerto Rico amount.—The conference agreement includes the House provision with a modification moving the effective date to October 1, 1987.

(d) Updating the base.—The conference agreement includes the House provision with a modification to move the effective date forward by one year and to make other technical amendments.

(e) Standardizing the amount.—The conference agreement includes the House provision with technical amendments.

(f) Urban and rural hospitals.—The conference agreement includes the House provision with a modification to require urban and rural standardized amounts to be discharge weighted (as opposed to hospital weighted).

(g) Additional reductions.—The conference agreement includes the House provision with technical clarifications.

(h) Puerto Rico prospective payment rate.—The conference agreement includes the House provision with technical clarifications.

(i) Area wage adjustment.—The conference agreement includes the House provision with technical amendments.

(j) FY 1988 and beyond.—The conference agreement includes the House provision.

(k) National adjusted standardized payment amount.—The conference agreement includes the House provision with a modification to require urban and rural standardized amounts to be discharge weighted (as opposed to hospital weighted).

(l) Additional payments.—The conference agreement includes the House provision with a modification to reduce the Federal standardized payment amount for Puerto Rico (i.e., separately for urban hospitals and for rural hospitals) by the amount necessary to offset the projected outlier payments to each subgroup of hospitals in Puerto Rico in the forthcoming fiscal year.

(m) Conforming amendments.—The conference agreement includes the House provision.

(n) No restandardization of national levels to reflect inclusion of Puerto Rico.—The conference agreement includes the House provision with a modification to require that the Secretary reduce the national and regional standardized payment amounts by the proportion necessary to assure that aggregate payments to PPS hospitals (including hospitals in Puerto Rico) in FY 1988 are neither greater nor less than the aggregate payments that would have been made to such hospitals under prior law (i.e., this section must be "budget neutral").

5. IMPROVING QUALITY OF CARE WITH RESPECT TO PART A SERVICES (SECTION 10205 OF HOUSE BILL; SECTIONS 604 AND 614 OF SENATE AMENDMENT)

Present law

(a) Refinement of Prospective Payment System.—Under Medicare's prospective payment system (PPS) hospitals are paid a predetermined rate based on a patient's diagnosis-related group (DRG) classification. The patient is classified into one of 468 DRGs based on his or her primary diagnosis, secondary diagnosis, primary procedure, age, and discharge status. Payment rates for each DRG reflect the average cost of providing care to patients classified in the DRG.

(b) Requiring Notice of Hospital Discharge Rights.—On February 24, 1986, the Secretary intructed hospitals to provide Medicare inpatients with a notice explaining hospital discharge procedures under PPS and patients' rights to appeal discharge decisions. There is no statutory requirement that a statement of patient rights be distributed.

(c) Requiring Hospitals to Provide Discharge Planning Process.—By regulation, hospitals participating in Medicare must have a discharge planning program to facilitate the provision of follow-up care.

(d) Review of Standards for Medicare Conditions of Participation for Assuring Quality of Inpatient Hospital Services.—For a hospital to be eligible for Medicare reimbursement, the hospital must be in compliance with Medicare's conditions of participation for hospitals as set forth in subchapter B of title 42 of the Code of Federal Regulations or must be accredited by a national accreditation body, such as the Joint Commission on Accreditation of Hospitals.

(e) Study of Payment for Administratively Necessary Days.—Under Medicare's prospective payment system (PPS) hospitals are paid a predetermined rate based on a patient's diagnosis-related group (DRG) classification. The patient is classified into one of 468 DRGs based on his or her primary diagnosis, secondary diagnosis, primary procedure, age, and discharge status. Payment rates for each DRG reflect the average cost of providing care to patients classified in the DRG. No special provision is made for separate payment for "administratively necessary days." An administratively necessary day is a day of continued inpatient hospital stay necessitated by delays in obtaining placement of a patient in a skilled nursing facility.

(f) Continuing Waiver of Liability or SNFs, Home Health Agencies, and Hospice Programs.—Under waiver of liability, payment may be made for services which are not covered because they were not reasonable and necessary or were for custodial care if neither the beneficiary nor the provider knew or could reasonably have been expected to know that the services were not covered for these reasons. By regulation, a

home health agency is presumed to meet this test if its denial rate on claims for services is 2.5 percent or less. A SNF is presumed to meet the test if its denial rate is 5.0 percent or less. Hospice providers are not eligible for a favorable presumption.

Final regulations published February 21, 1986, eliminated the favorable presumption of the waiver of liability. Payment for noncovered services would have continued on a case-by-case basis. However, COBRA maintained the favorable presumption criteria for SNFs and home health agencies. As a result of the law, the favorable presumption will be continued until October 7, 1988, for SNF services. The favorable presumption for home health services will be continued until 12 months after claims processing for home health agencies has been consolidated under 10 regional intermediaries.

(g) Extension of Waiver of Liability Provisions to Certain Coverage Denials for Home Health Services.—Beneficiaries who are homebound and require skilled nursing services on an intermittent basis or physical, occupational, or speech therapy are eligible for home health services. Program guidelines provide fiscal intermediaries and home health agencies with information and guidance about coverage determinations for patients who are "homebound" or whether skilled nursing and home health aide services are "intermittent." The current waiver of liability protection does not apply to noncovered home health services if the reason for the denial is because the patient was determined not to be confined to his home or not to need skilled nursing care on other than an intermittent basis. Denials of these kinds are often referred to as technical denials.

(h) Development of Uniform Needs Assessment Instrument.—There is no comparable requirement in current law.

(i) Expedited Review by Fiscal Intermediaries.—Claims for skilled nursing facility, home health services, and hospice care services generally are reviewed on a retrospective basis after the services are provided. Standards for timeliness in claims submission and review are not provided in present law.

(j) Including in Annual Reports on Prospective Payment System Information on Quality of Post-Hospital Care.—The Secretary is required to report on the impact of the prospective payment methodology for inpatient hospital services, due annually at the end of each year for 1984 through 1987.

(k) Prior Authorization Demonstration Project.—Medicare fiscal intermediaries have responsibility for deciding whether payment will be made for services provided by home health agencies and SNFs. Generally, these payment decisions are made on a retrospective basis after services are provided.

House bill

(a) Refinement of prospective payment system.—

(1) Development of legislative proposal.—Requires the Secretary to submit to Congress a specific legislative proposal to improve the classification and payment system under PPS (including the system for payment of outliers) in order to assure that the amount of payment per discharge approximates the cost of medically necessary care provided in an efficient manner for individual patients or classes of patients with similar conditions.

(2) Accounting for severity of illness.—Requires the Secretary, in developing the proposal, to account for variations in severity of illness and case complexity which are not adequately accounted for by the current classification and payment system.

(3) Deadline.—Requires the proposal be submitted to Congress by no later than 2 years after the date of enactment.

Effective date.—Enactment.

(b) Requiring notice of hospital discharge rights.—Requires hospitals to provide to each beneficiary (or to a legally responsible person acting on the beneficiary's behalf), at or about the time of the beneficiary's admission as an inpatient, a written statement which explains (1) the beneficiary's rights to Medicare benefits for inpatient hospital services and for post-hospital services, (2) the circumstances under which the beneficiary will and will not be liable for charges for a continued hospital stay, (3) the beneficiary's right to appeal denials of benefits for continued inpatient hospital services, including the practical steps to initiate such an appeal, and (4) the beneficiary's liability for payment for services if such a denial of benefits is upheld on appeal, and which provides any additional information as the Secretary may specify.

Effective date.—Requires the Secretary to first prescribe the language no later than 6 months after the date of enactment. Applies to admissions to hospitals occurring on such date as the Secretary shall provide, but no later than 60 days after the date such language is first prescribed.

(c) Requiring hospitals to provide discharge planning process.—

(1) Requirement as a condition of participation.—Requires hospitals as a condition of participation for Medicare to have a discharge planning process.

(2) Discharge planning process defined.—Considers a discharge planning process sufficient if it is applicable to services furnished by the hospital to Medicare beneficiaries and if it meets the guidelines and standards established by the Secretary.

Requires the Secretary to develop these guidelines and standards in order to ensure a timely and smooth transition to the most appropriate type of setting for post-hospital or rehabilitative care. These guidelines and standards must include the following: (a) the hospital must identify, at an early stage of hospitalization, those patients who are likely to suffer adverse health consequences upon discharge in the absence of adequate discharge planning; (b) the hospital must provide a discharge planning evaluation for the identified patients and for other patients upon the request of the patient, patient's representative, or patient's physician; (c) any discharge planning evaluation must be made on a timely basis to ensure that appropriate arrangements for post-hospital care will be made before discharge and to avoid unnecessary delays in discharge; (d) a discharge planning evaluation must include an evaluation of a patient's likely need for appropriate post-hospital services and the availability of those services; (e) the discharge planning evaluation must be included in the patient's medical record for use in establishing an appropriate discharge plan and the results of the evaluation must be discussed with the patient (or the patient's representative); (f) upon the request of a patient's physician, the hospital must arrange for the development and initial implementation of a discharge plan for the patient; (g) any such discharge planning evaluation or discharge plan must be developed by, or under the supervision of, a registered professional nurse, social worker, or other appropriately qualified personnel.

(3) Effect on accreditation.—Provides that the requirement of discharge planning may not be satisfied by accreditation of the hospital accreditation body action pursuant to section 1865 of the Social Security Act unless the Secretary determines that the discharge planning standards of the accreditation body are at least equivalent to the standards required under this provision.

Effective date.—Applies as of one year after the date of enactment.

(d) Review of standards for medicare conditions of participation for assuring quality of inpatient hospital services.—Requires the Secretary to arrange for a study of the adequacy of the standards used for hospitals, for the purposes of meeting Medicare's conditions of participation in assuring the quality of services furnished in hospitals. Requires the Secretary to report to Congress on the results of the study by no later than 2 years after the date of enactment.

Effective date.—Enactment.

(e) Study of payment for administratively necessary days.—

(1) In general.—Requires the Secretary to conduct a study to determine whether a payment should be made (in a budget-neutral way for PPS hospitals) to a hospital for administratively necessary days, separate from the DRG and outliner payments.

(2) Administratively necessary days defined.—Defines an "administratively necessary day" as a day of continued inpatient hospital stay, for a part A beneficiary, necessitated by a delay in obtaining placement for the individual in a skilled nursing facility.

(3) Consideration in conducting study.—Requires the Secretary, in conducting the study, to consider the need for such a payment to minimize the disproportionate financial impact of current law on certain hospitals (or hospitals in certain locations) due to difficulties in arranging for appropriate post-hospital care such as difficulties resulting from a shortage of beds in skilled nursing facilities where those hospitals are located and difficulties resulting from the source of payment for such care.

Requires the Secretary, in conducting the study, to consider the need for a payment to minimize the risk of inappropriate discharge to a non-institutional or inappropriate institutional setting of individuals who need post-hospital services in a skilled nursing facility.

Requires the Secretary, in conducting the study, to consider the administrative mechanisms that can be used to prevent inappropriate payments for administratively necessary days.

(4) Report on study.—Requires the Secretary to report to Congress on the results of the study no later than January 1, 1988.

Effective date.—Enactment.

(f) Continuing waiver of liability for SNFs, home health agencies, and hospice programs.—Continues the favorable presumption of waiver of liability for SNFs and home health agencies, and establishes a favorable presumption for hospices having 2.5 percent or fewer claims denied on the basis of care not being reasonable and necessary or determined to be custodial in nature.

Requires the Secretary to report annually to Congress on (1) the frequency and distribution of denials because care was not reasonable and necessary or was custodial; and (2) other information needed to evaluate the appropriateness of denial rates established for a favorable presumption.

Effective date.—For hospices, effective for care furnished on or after the first day of

the first month that begins at least 6 months after date of enactment and before October 1, 1989. For SNFs and home health agencies, effective for services furnished on or after date of enactment and before October 1, 1989.

(g) Extension of waiver of liability provisions to certain coverage denials for home health services.—Extends waiver of liability for home health agencies to coverage decisions about whether a patient is homebound or whether a person needs skilled nursing care on an intermittent basis or physical, speech, or occupational therapy. A favorable presumption regarding the waiver of liability for denials on these ground would be available for home health agencies which (1) comply with requirements on timely submittal of bills for payment and medical documentation, (2) promptly notify patients where it is determined that a patient is being or will be furnished items or services which are excluded from coverage, and (3) have no more than 2.5 percent of claims submitted during the previous quarter denied on the basis of home bound or intermittent care requirements.

Effective date.—Effective for services furnished on or after the first day of the first month that begins more than 90 days after date of enactment, with the favorable presumption provisions for denials based on homebound and intermittent coverage decisions effective through September 30, 1989.

(h) Development of uniform needs assessment instrument.—

(1) Development.—Requires the Secretary to develop a uniform need assessment instrument that (A) evaluates the functional capacity of an individual, the nursing and other care requirements of the individual to meet health care needs and to assist with functional incapacities, and the social and familial resources available to the individual to meet those requirements; and (B) can be used by discharge planners, hospitals, nursing facilities, other health care providers, and fiscal intermediaries in evaluating an individual's need for post-hospital extended care services, home health services, and long-term care services of a health related or supportive nature. The Secretary may develop more than one such instrument for use in different situations.

(2) Advisory panel.—Requires the Secretary to develop the instrument in consultation with an advisory panel appointed by the Secretary. The panel is to include experts in the delivery of post-hosptial extended care services, home health services, and long-term care services, and is to include representatives of hospitals, physicians, skilled nursing facilities, home health agencies, long-term care providers, fiscal intermediaries, and Medicare beneficiaries.

(3) Report of instrument.—Requires the Secretary to report to Congress, no later than 1 year after the date of enactment, on the instrument or instruments developed. The report is required to include an evaluation of the advantages to include an evaluation of the advantages and disadvantages of using the instrument or instruments as the basis for determining whether payment should be made for post-hospital extended care services and home health services provided to Medicare beneficiaries.

Effective date.—Enactment.

(i) Expedited review by fiscal intermediaries.—Requires the Secretary to develop procedures to expedite the determination of whether initial claims submitted for skilled nursing facility, home health services, and hospice care servicies provided (or to be provided) to an individual may be reimbursed by Medicare, in order to minimize the time between when the provider first provides the service to the individual and when the provider first receives notice of an initial determination on whether Medicare will pay for some or all of the provided services.

Effective date.—Requires the Secretary to provide for the expedited procedures no later than one year after the date of enactment.

(j) Including in annual reports on prospective payment system information on quality of post-hospital care.—

(1) Additional reports.—Extends the requirement for annual reports through 1989.

(2) Information on Quality of post-hospital care.—Requires the annual impact reports to include (A) an evaluation of the adequacy of the procedures for assuring quality of Medicare post-hospital services; (B) and assessment of problems that have prevented groups of Medicare beneficiaries (including those eligible for Medicaid) for receiving appropriate Medicare post-hospital services; and (C) information on Medicare reconsiderations and appeals for payment for post-hospital services.

Effective date.—Enactment. Applies to reports for years beginning with 1986.

(k) Prior authorization demonstration project.—Requires the Secretary of HHS to conduct a demonstration program concerning prior authorization for Medicare SNF and home health services. Requires the demonstration to include at least four projects implemented not later than July 1, 1987. Requires the Secretary to waive compliance with Medicare requirements to the extent and for the period the Secretary finds necesary to conduct the demonstration.

Requires that the demonstration be developed in consultation with an advisory panel that includes experts in the delivery of SNF services home health services, and long-term care services and include representatives of hospitals, physicians, SNFs, home health agencies, long-term care providers, fiscal intermediaries, and Medicare beneficiaries.

Requires the Secretary to evaluate the demonstration and report to Congress on the evaluation no later than January 1, 1989. Requires the Secretary to address the following issues in the evaluation: (1) the administration in comparison to costs under the current system of retroactive review, including costs for uncovered services paid under the waiver of liability which would not be incurred under prior authorization; (2) impact of prior authorization on access and availability of SNF and home health services in comparison to the current system and on timely discharge of hospital inpatients; and (3) accuracy and associated cost savings of payment determinations and rates of claim reversals under prior authorization versus the current system.

Specifies that funding for the demonstration would come from the Federal Hospital Insurance Trust Fund.

Effective date.—Enactment.

Senate amendment

(a) Refinement of prospective payment system.—No provision.

(b) Requiring notice of hospital discharge rights.—Section 604(a).—Similar provision.

Effective date.—Requires the Secretary to first prescribe the language no later than 6 months after the date of enactment. Applies to admissions to hospitals occurring after such date as the Secretary shall provide, no later than 60 days after the date such language is first prescribed.

(c) Requiring hospitals to provide discharge planning process.—Section 604(b).

(1) Requirement as a condition of participation.—Identical provision.

(2) Discharge planning process defined.—Similar provision.

(3) Effect on accreditation.—Similar provision.

Effective date.—Applies as of one year after the date of enactment.

(d) Review of standards for Medicare conditions of participation for assuming quality of inpatient hospital services.—No provision.

(e) Study of payment for administratively necessary days.—No provision.

(f) Continuing waiver for liability for SNFs, home health agencies, and hospice programs.—No provision.

(g) Extension of waiver of liability provisions to certain coverage denials for home health services.—Section 614.—Extends waiver of liability protection for home health agencies to coverage decisions about whether a patient is homebound or whether a person needs skilled nursing care on an intermittent basis.

Requires the Secretary not later than July 1, 1987, to publish final regulations specifying criteria used as of Jan. 1, 1986, in determining coverage for patients who are homebound or who require skilled nursing care on an intermittent basis.

Effective date.—Effective for coverage denials occurring on or after July 1, 1987.

(h) Development of uniform need assessment instrument.—No provision.

(i) Expedited review of fiscal intermediaries.—No provision.

(j) Including in annual reports on prospective payment system information on quality of post-hospital care.—No provision.

(k) Prior authorization demonstration project.—Section 604(c).—Requires the Secretary to develop and carry out a demonstration project to determine whether prior and concurrent authorization for SNF and home health services, when used in place of the current waiver of liability policy, will protect beneficiaries against liabilities incurred as a result of claim denials. Requires the Secretary to monitor claim denials. Requires the Secretary to monitor the acceptance of beneficiaries by providers to ensure that their placement is not delayed until the results of prior and concurrent review are known. Requires that the demonstration be initiated not later than January 1, 1987, and continue for not more than 2 years.

Authorizes the Secretary to require providers participating in the demonstration to submit such information as the Secretary determines is necessary to evaluate the project. Requires the Secretary to report to Congress on the result of the evaluation not later than April 2, 1988.

Effective date.—Enactment.

Conference agreement

(a) Refinement of prospective payment system.—The conference agreement includes the House provision.

(b) Requiring notice of hospital discharge rights.—The conference agreement includes the House provision.

(c) Requiring hospitals to provide discharge planning process.—The conference agreement includes the House provision with the following clarification. Standards for discharge planning should be applied in

a flexible manner in the case of small rural hospitals.

(d) Review of standards for medicare conditions of participation for assuring quality of inpatient hospital services.—The conference agreement includes the House provision.

(e) Study of payment for administratively necessary days.—The conference agreement includes the House provision.

(f) Continuing waiver of liability for SNFs, home health agencies, and hospice programs.—The conference agreement includes the House provision with respect to the application of the favorable presumption of liability rules to hospice providers through November 1, 1988. The conference agreement does not include the House provision that would extend the favorable presumption of the waiver of liability for home health agencies and SNFs through FY 1989.

Because many of the denials for payment to home health agencies by fiscal intermediaries stem from the lack of a clear and consistent implementation of the requirements that a patient be "homebound" and in need of "intermitten" skilled care, the conferees urge the Secretary to promulgate clearer definitions of these terms and provide better guidance to agencies and fiscal intermediaries.

(g) Extension of waiver of liability provision to certain coverage denials for home health services.—The conference agreement includes the House provision with amendments. The waiver of liability for "technical" denials would not include denials based on possible need for physical, speech, or occupational therapy. The effective date is delayed to July 1, 1987. The Secretary would be required to report on the frequency of denials for SNF, home health agency, and hospice benefits.

The Secretary would be required to report on the frequency and distribution of payment denials for extended care services, home health services and hospice care in 1987 and 1988.

(h) Development of uniform needs assessment instrument.—The conference agreement includes the House provision. The conferees note that an evaluation of the functional status of an individual should include not only a description of the individual's diagnosis, but an evaluation of the constraints on the individual's ability to engage in activities of daily living.

(i) Expedited review by fiscal intermediaries.—The conference agreement does not include the House provision.

(j) Including in annual reports on prospective payment system information on quality of post-hospital care.—The conference agreement includes the House provision.

(k) Prior authorization demonstration project.—The conference agreement includes the House provision with technical amendments. The agreement further changes the date for implementation of the demonstration from July 1, 1987 to January 1, 1987 and delays the date for submission of a report to Congress from January 1, 1989 to February 1, 1989.

6. OFF-BUDGET TREATMENT OF FEDERAL HOSPITAL INSURANCE TRUST FUND IN FISCAL YEAR 1987 (SECTION 10206 OF HOUSE BILL)

Present law

Federal Hospital Insurance (HI) Trust Fund receipts and disbursements are included in the unified budget of the U.S. Government, but are scheduled to be removed from the unified budget in FY 1993.

The Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177) removed the receipts and disbursements of the Social Security Trust Funds (the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, known as OASDI) from the unified budget effective for FY 1986. The disbursements and expenditures of the Social Security Trust Funds, however, are included for purposes of determining whether the deficit exceeds the "maximum deficit amount" targets set in the Gramm-Rudman-Hollings legislation.

House bill

Removes the receipts and disbursements of the Federal Hospital Insurance (HI) Trust Fund, from the unified budget of the U.S. Government. As under OASDI, the disbursements and expenditures of the HI trust fund would be included for purposes of determining whether the deficit exceeds the "maximum deficit amount" targets set in the Gramm-Rudman-Hollings legislation and would be exempt from any general budget limitation on outlays imposed by statute.

Effective date.—Applies to fiscal years beginning after September 30, 1986, and end before October 1, 1992.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

7. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PART A (SECTION 10207 OF HOUSE BILL)

Present law

(a) One-year extension of pass-through for costs of certified registered nurse anesthetists.—See item (section 4524 of House bill) for this description.

(b) Extended designation period for regional referral centers.—See item 2 (section 10202 of House bill; section 601 of Senate amendment) for this description.

(c) Temporary waiver of inpatient limitations for the Connecticut Hospice, Inc.—Medicare-certified hospices are required to maintain no more than 20 percent of total days as inpatient days. Connecticut Hospice, Inc., currently has waivers for a number of Medicare requirements. These waivers will no longer be in effect on October 1, 1986.

(d) Massachusetts Medicare repayment.—Massachusetts operated a Statewide hospital demonstration project from October 1, 1982, through June 30, 1986. The Secretary is required to judge the effectiveness of the demonstration to ensure that Medicare expenditures under the demonstration are not greater than they would have been under Medicare regular reimbursement rules. The Secretary has determined that Medicare part A overpayments were made during the first two years of the Massachusetts waiver and has established a repayment schedule for the alleged overpayments.

(3) Part A COBRA technical and other miscellaneous corrections.—Current law contains a number of technical errors.

House bill

(a) One-year extension of pass-through for costs of certified registered nurse anesthetists.—See item 18 (section 4524 of House bill) for this description.

(b) Extended designation period for regional referral centers.—See item 2(h) (Section 10202 of House bill; section 601 of Senate amendment) for this description.

(c) Temporary waiver of inpatient limitations for the Connecticut Hospice, Inc.—Waives Connecticut Hospice, Inc., from the 80/20 inpatient/home care day requirement for two years, provided they do not exceed 50 percent of total days as inpatient days.

(d) Massachusetts Medicare repayment.—Prohibits the Secretary from recouping or otherwise reducing payments to Massachusetts hospitals on or after the date of enactment of this section and before January 1, 1988.

(e) Part A COBRA technical and other miscellaneous corrections.—Corrects technical errors as follows: (1) corrects and clarifies a section regarding payments under the disproportionate share provision; (2) corrects and clarifies a section regarding payments under the indirect teaching adjustment; (3) clarifies that all hospitals which have a Medicare provider agreement would have to abide by the emergency care requirements; (4) allows SNFs to make election to be paid on a prospective payment basis based on their cost reporting periods rather than on a Federal fiscal year basis; (5) clarifies that the Hospital Insurance tax on State and local government does not apply to certain election workers (Note: see Revenue Provisions, item 1 (section 661 of Senate amendment) for a description of a similar provision.); and (6) makes other miscellaneous corrections to COBRA and related laws.

Effective date.—Enactment, except the technical corrections are effective as if they had been included in the enactment of the laws they amend.

Senate amendment

(a) One-year extension of pass-through for costs of certified registered nurse anesthetists.—No provision.

(b) Extended designation period for regional referral centers.—See item 2 (Section 10202 of House bill; Section 601 of Senate amendment) for this description.

(c) Temporary waiver of inpatient limitations for the Connecticut Hospice, Inc.—No provision.

(d) Massachusetts Medicare repayment.—No provision.

(e) Part A COBRA technical and other miscellaneous corrections.—No provision. Note: See Revenue provisions, item 1 (Section 661 of Senate amendment) for a description of a similar provision regarding election worker exemption from Hospital Insurance tax.

Conference agreement

(a) One-year extension of pass-through for costs of certified registered nurse anesthetists.—The conference agreement includes the House provision (see item 19(a)).

(b) Extended designation period for regional referral centers.—The conference agreement includes the Senate amendment (see item 2(h)).

(c) Temporary waiver of inpatient limitations for the Connecticut Hospice, Inc.—The conference agreement includes the House provision.

(d) Massachusetts Medicare repayment.—The conference agreement includes the House provision.

(e) Part A COBRA technical and other miscellaneous corrections.—The conference agreement does not include the House provision except with regard to a hospital accounting year amendment.

8. MEDICARE PAYMENTS TO LARGE RURAL HOSPITALS SERVING A DISPROPORTIONATE SHARE OF LOW-INCOME PATIENTS (SECTION OF SENATE AMENDMENT)

Present law

COBRA provided that additional payments will be made—for discharges occurring on or after May 1, 1986 but before October 1, 1988—to PPS hospitals that serve a disproportionate share of low-income patients.

For urban PPS hospitals with 100 or more beds having a percentage of low-income patients of at least 15 percent, the Federal portion of the PPS payment is increased by 2.5 percent plus half the difference between 15 percent and the hospital's percentage of low-income patients, not to exceed 15 percent. For urban hospitals with less than 100 beds having a percentage of low-income patients of at least 40 percent, the Federal portion of the PPS payment is increased by 5 percent.

For rural hospitals having a percentage of low-income patients of at least 45 percent, the Federal portion of the PPS payment is increased by 4 percent.

The percentage of low-income patients is defined as the hospital's total number of medicare-covered inpatient days attributable to Medicare patients who are eligible for Federal Supplemental Security Income benefits, divided by the total number of Medicare-covered patient days, plus the number of Medicaid-covered patient days divided by the hospital's total patient days.

Payments are also made to urban hospitals with 100 or more beds which demonstrate that more than 30 percent of their inpatient revenues are derived from State and local government payments for indigent care (excluding payments under Medicare and Medicaid).

House bill

No provision.

Senate amendment

Allows the Secretary to establish a separate threshold percentage of low-income patients required for rural hospitals with 300 or more beds to qualify for Medicare disproportionate share payments. These hospitals would have the Federal portion of the PPS payment increased by the same formula currently used for urban hospitals with 100 or more beds (2.5 percent plus half the difference between 15 percent and the hospital's percentage of low-income patients, not to exceed 15 percent).

Rural hospitals with less than 300 beds would continue to be required to have a percentage of low-income patients of at least 45 percent in order to qualify for Medicare disproportionate share payments. These hospitals would continue to have their payment increased by 4 percent.

Effective date.—Applies to discharges occurring on or after October 1, 1986.

Conference agreement

The conference agreement includes the Senate amendment with an amendment to change the bed threshold to 500. In addition, the present law provision which allows payments to disproportionate share hospitals will be continued for one additional year in a budget neutral fashion.

II. MEDICARE PROVISIONS (PARTS A AND B)

9. ELIMINATION OF PERIODIC INTERIM PAYMENTS (PIP) FOR PROSPECTIVE PAYMENT SYSTEM (PPS) HOSPITALS AND PROMPT PAYMENT FOR MEDICARE PROVIDERS (SECTION 10221 OF HOUSE BILL; SECTION 612 OF SENATE AMENDMENT)

Present law

Current law does not specifically provide for periodic interim payments (PIP); however, regulations allow hospitals, skilled nursing facilities, and home health agencies which meet certain requirements to receive Medicare periodic interim payments (PIP) every 2 weeks, based on estimated annual costs without regard to the submission of individual bills. At the end of the year, a settlement is made. In final regulations published on August 15, 1986, the Department of Health and Human Services eliminated PIP for most PPS and PPS-exempt hospitals, effective July 1, 1987.

The Health Care Financing Administration recently issued guidelines requiring each part A intermediary and part B carrier to process at least 95 percent of "clean" Medicare claims within 27 days of receipt. "Clean" Medicare claims are those not requiring development for payment safeguard activities or additional information. The guidelines apply to Medicare claims submitted by beneficiaries, physicians, providers, and suppliers.

House bill

(a) Elimination of PIP for PPS hospitals.—Eliminates periodic interim payments for inpatient services in PPS hospitals (including distinct psychiatric or rehabilitation units of PPS hospitals) except for disproportionate share hospitals, sole community hospitals, and hospitals receiving Medicare payment under a State hospital reimbursement system if payment on a PIP basis is an integral part of the reimbursement system.

Eligible PPS-exempt hospitals and other costbased providers (i.e., outpatient hospitals skilled nursing facilities, and home health agencies) may continue to receive periodic interim payments.

If a PPS hospital has significant cash flow problems resulting from operations of its intermediary or from unusual circumstances of the hospital's operation, the Secretary is required to make available accelerated payments.

(b) Part A prompt payment.—Provides (for Medicare claims not paid on a PIP basis) that if payment is not made by a part A intermediary by the 22nd calendar day after the day on which a clean claim is received, interest would accrue beginning on the day after the day on which payment was due and ending on the day payment is made. Intermediaries are required to notify the beneficiary or provider who submits a claim, within 22 calendar days after the date on which a claim is received, of any defect, impropriety, or circumstance that prevents the claim from being treated as a clean claim. If such notice is not provided on a timely basis and the claim is eventually paid, interest would accrue beginning on the day after the day the notice is required and ending on the day payment is made or the day notice is provided, whichever is earlier.

(c) Part B prompt payment.—Provides (for Medicare claims not paid on the PIP basis) that if payment is not made by a part B carrier by the 22nd calendar day (or by the 11th calendar day in the case of a participating physician or supplier) after the date on which a clean claim is received, interest would accrue beginning on the day after the day on which payment was due and ending on the day payment is made. Part B carriers are required to notify the beneficiary, physician, or supplier who submits a claim, within 22 calendar days (or by the 11th calendar day in the case of a participating physician or supplier) after the date on which a claim is received of any defect, impropriety, or circumstance that prevents the claim from being treated as a clean claim. If such notice is not provided on a timely basis and the claim is eventually paid, interest would accrue beginning on the day after the date the notice is required and ending on the day payment is made or the day notice is provided, whichever is earlier.

(d) Interest Rate.—Interest under this provision is paid at the rate used for purposes of section 3902(a) (Interest Penalties) of title 31 (Money and Finance), United States Code.

(e) Federal administrative costs.—Carriers and intermediaries will be reimbursed for interest payments from amounts made available for Federal administrative costs to carry out this provision (other than the amounts made available for intermediary and carrier agreements).

(f) Definition of "clean" claim.—A "clean" claim is defined as a claim that has no defect or impropriety (including missing required substantiating documentation) or particular circumstances requiring special treatment that prevents timely payment.

(g) Timely amendments to agreements and regulations.—No provision.

Effective date.—Applies PIP provision for discharges occurring on or after August 1, 1987. The timely payment for part A claims provision applies to claims received on or after October 1, 1987. The prompt payment for Medicare physicians and suppliers provision applies to claims received on or after October 1, 1987.

Senate amendment

(a) Elimination of PIP for PPS hospitals.—Eliminates periodic interim payments for inpatient services in PPS hospitals (including distinct psychiatric or rehabilitation units of PPS hospitals).

The elimination of PIP for PPS hospitals would be delayed until the intermediary demonstrates that it has complied with the prompt payment requirement for at least three consecutive months. If the intermediary fails to meet the prompt payment requirements for three consecutive months, all the PPS hospitals it serves may choose to be placed on PIP.

Eligible PPS-exempt hospitals and other cost-based providers (i.e., skilled nursing facilities and home health agencies) may continue to receive periodic interim payments.

(b) Part A prompt payment.—Requires (for Medicare claims not paid on a PIP basis) payment to be made by a part A intermediary for at least 95 percent of all Medicare clean claims by the applicable number of calendar days after the day on which a clean claim is received. In FY 1987, the applicable number of calendar days is 27, FY 1988 it is 26, in FY 1989 it is 25, and in FY 1990 and thereafter, it is 24.

For clean claims not paid on a PIP basis, if payment is not made by the applicable number of days after the date on which a clean claim is received, interest would be paid beginning on the day after the date on which payment was due, and ending on the date payment is made.

(c) Part B prompt payment.—Provides (for Medicare claims not paid on a PIP basis) that if payment is not made by a part B car-

rier for at least 95 percent of all Medicare clean claims by the applicable number of calendar days after the day on which a clean claim is received, interest would be paid beginning on the day after the day on which payment was due and ending on the day payment is made.

(d) Interest rate.—Similar provision.

(e) Federal administrative costs.—No provision.

(f) Definition of "clean" claim.—A "clean" claim is defined as a claim which meets Medicare requirements for payment under part A or part B respectively. In addition, in order for a part A claim to be a clean claim it must meet the requirements of section 1814(a)(1) (which defines a Medicare claim).

(g) Timely amendments to agreements and regulations.—Requires the Secretary to provide for timely amendments to intermediary and carrier agreements and regulations to the extent necessary to implement these provisions.

Effective date.—Applies to claims received on or after October 1, 1986, except that the interest penalties apply to claims received on or after April 1, 1987.

Conference agreement

(a) Elimination of PIP for PPS hospitals.—The conference agreement includes the Senate amendment with a modification. Under the agreement, the elimination of periodic interim payment (PIP) would not apply to prospective payment system hospitals (and their distinct psychiatric or rehabilitation units) with a disproportionate share adjustment percentage of at least 5.1 percent. For purposes of this provision, the disproportionate share adjustment shall be based upon the data base used for establishing the standardized amounts for fiscal year 1987 (i.e., the disproportionate share percentage calculated from the hospital's percentage of low income patients, which were based on the SSI percentage from 1985 SSI data and the medicaid percentage from 1984 cost report data). Prospective payment system hospitals with 100 or fewer beds located in rural areas could also qualify for continued periodic interim payments.

On a one-time basis during the cost reporting period beginning in fiscal year 1987, qualified disproportionate share and qualified rural hospitals could elect to continue receiving periodic interim payments provided that they were receiving such payments on June 30, 1987 and provided that they continue to meet the requirements specified in regulations that were applicable on October 1, 1986. Qualification for periodic interim payments for eligible disproportionate share hospials and eligible rural hospitals with 100 beds or less would be limited to those hositals which qualify under this exception during the cost reporting period beginning in fiscal year 1987. These qualified hospitals could continue to receive PIP payments indefinitely provided that they continue to meet standards established by the Secretary that were applicable on October 1, 1986. The conferees expect the Health Care Financing Administration to identify hospitals which would qualify for continued PIP payments and to inform such hospitals of their one-time opportunity to continue PIP payments.

The conferees recognize that elimination of PIP may present serious financial difficulties for certain hospitals. In addition to the current criteria under which accelerated payments are generally available, accelerated payments to hospitals should be made available by the Secretary if the hospital can demonstrate that it is experiencing significant cash flow difficulties resulting from operations of the intermediary or from unusual circumstances of the hospital's operation.

The PIP option would be retained for PPS-exempt hospitals, skilled nursing facilities, home health agencies, and hospitals in states holding waivers under section 1886(c) or section 1814(b)(3); and would be made available to hospice providers. The conferees require that the payment mechanism and requirements be comparable to those which are currently in place under 42 CFR 405.454(j).

(b) Part A prompt payment.—The conference agreement includes the Senate amendment with a modification which specifies that 95 percent of "clean" claims shall be paid in not more than 30 calendar days in FY 1987; 26 for FY 1988; 25 for FY 89 and 24 for FY 1990 and for each of the subsequent years.

Periodic interim payments could not be eliminated for hospitals receiving such payments until the intermediary has met the prompt payment standards for three consecutive months. Periodic interim payments could be provided for those hospitals that meet the standards required by the Secretary, as in place as of October 1, 1987, if an intermediary fails to meet the applicable prompt payment standard for three consecutive months. For providers not receiving periodic interim payments interest would be required to be paid on claims not processed within the specified time periods.

(c) Part B prompt payment.—The conference agreement includes the Senate amendment with a modification which specifies that 95 percent of "clean" claims shall be paid in not more than 30 calendar days in FY 1987; 26 for FY 1988; 25 for FY 1989; and 24 for FY 1990 and for each of the subsequent years except that for participating physicians the standard shall be 19 days for FY 1988; 18 for FY 1989 and 17 for FY 1990 and for each subsequent years. For claims not paid within the specified time period interest would accrue.

The conferees are concerned about the rapid slow down in payments to beneficiaries and providers that has developed over the last year. The conferees hope that intermediaries and carriers process claims in the most expeditious manner and consider the limits established in this bill as an absolute ceiling with a goal of processing claims according to historical experience. The conferees urge the Administration to manage more appropriately the payment function carried out by medicare's intermediaries and carriers and that the Administration request funds necessary to improve the administration of the medicare program and to pay claims in a timely manner consistent with the historical levels.

The Secretary should establish standards for timely payment of claims that do not meet the definition of "clean" claims or fail to meet the 95 percent minimum requirement. The conferees do not expect that the exclusion of some claims from timeliness requirements in this bill will result in increased numbers of claims classified as incomplete.

(d) Interest rate.—The conference agreement includes the House provision.

(e) Federal administrative costs.—The conference agreement includes the House provision.

(f) Definition of clean claims.—The conference agreement includes the Senate amendment with an amendment clarifying the definition of a clean claim. A "clean" claim is defined as a claim that has no defect or impropriety (including the absence of required substantiating documentation) or particular circumstances requiring special treatment that prevents timely payment.

(g) Timely amendments to agreements and regulations.—The conference agreement includes the Senate amendment.

10. HEALTH MAINTENANCE ORGANIZATION AMENDMENTS (SECTIONS 10222 AND 4510 OF HOUSE BILL)

Present law

Section 1876 of the Social Security Act, as amended by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), provides for Medicare payments to Health Maintenance Organizations (HMOs) and Competitive Medical Plans (CMPs) on either a risk or a cost contracting basis. In general, risk contracting plans are financially responsible for the cost of all benefits their enrollees would otherwise be eligible for under Medicare while enrolled in these plans.

(a) Two for one rule.—Section 114(c)(2) of TEFRA provides the HMOs with enrolled individuals under an existing cost-contract and convert such individuals to enrollment under a risk contract. However, the plan must enroll two new Medicare enrollees under the risk contract for each enrollee converted from the cost to the risk contract. This provision is known as the "two for one" rule.

(b) Explanation of enrollee rights.—Each HMO and CMP must meet certain requirements to be eligible to contract with the Secretary to enroll Medicare members. These requirements include accepting financial responsibility for contracted services and providing for meaningful grievance procedures. The enrolling member of a risk contracting plan accepts that, except for emergency and out-of-area care, neither the plan nor Medicare has financial responsibility for services not rendered by or through the contracting plan.

(c) Restriction on waivers of 50 percent Medicare and Medicaid enrollment.—Each Medicare contracting HMO and CMP must have at least half of their membership composed of enrollees that are not entitled to benefits under either Medicare or Medicaid. The Secretary can waive this requirement only if circumstances warrant such waiver and the organization is making reasonable efforts to enroll individuals not entitled to Medicare or Medicaid.

(d) Prompt payment of claims.—Each HMO and CMP is financially responsible for the cost of benefits used by its enrollees, whether provided directly or under arrangement.

(e) Financial disclosure.—Each HMO and CMP is required to comply with Section 1318 of the Public Health Service Act (relating to financial disclosure).

(f) Civil monetary penalties.—Medicare contracts with HMOs and CMOs are automatically annually renewable, unless the Secretary determines that the organization has failed to meet its contractual obligations. The Secretary may terminate such contracts at any time if it is found (after appropriate notice and opportunity for hearing) that the organization has substantially failed to carry out the terms of the contractual requirements.

(g) Study of AAPCC and ACR.—Reimbursement of risk contracting HMOs and CMPs is determined based on estimates of the average adjusted per capita cost (AAPCC) and the adjusted community rate (ACR).

(h) Allowing Medicare beneficiaries to disenroll at a local Social Security office.—No provision.

House bill

(a) Two for One rule.—

Section 10222.—Amends TEFRA such that the "two for one rule" does not apply for current nonrisk HMO Medicare enrollees for months beginning with April 1987.

Section 4510.—No provision.

(b) Explanation of enrollee rights.—

Section 10222.—Requires HMOs and CMPs contracting on either a risk or cost basis to provide each enrollee at the time of enrollment, and not less than annually thereafter, an explanation of the enrollee's rights, including enrollee's rights to benefits from the organization, restrictions on Medicare payments for services provided other than by or through the organization, out-of-area coverage, coverage of emergency services, and appeal rights of enrollees.

Section 4510.—No provision.

(c) Restriction on waivers of 50 percent Medicare and Medicaid enrollment.—

Section 10222.—

(1) Limits the Secretary's authority to issue new waivers of the 50 percent rule to plans with service areas that include populations more than half of which are entitled to either Medicare or Medicaid.

(2) Provides that, if an eligible organization fails to comply with the requirements for a waiver, the Secretary may suspend enrollment of Medicare enrollees by the organization.

(3) Provides that, in the case of organizations that currently have a waiver but that do not meet the requirements for such waiver as amended by this section, the Secretary is given the authority to suspend enrollments under Medicare if the organization does not meet scheduled enrollment goals approved by the Secretary.

Section 4510.—

(1) Similar provision.

(2) Provides that, if an eligible organization fails to comply with the requirements for a waiver, the Secretary may provide for a suspension of Medicare payments to the organization.

(3) Provides that, in the case of organizations that currently have a waiver but that do not meet the requirements for such waiver as amended by this section, the Secretary is given the authority to suspend payments under Medicare.

(d) Prompt payments of claims.—

Section 10222.—Requires that risk contracting organizations must provide for payment of claims submitted for covered services and supplies furnished to their enrollees by physicians, providers and suppliers not having a contractual arrangement with the organization within the same time limits for prompt payment that apply to Medicare carriers and fiscal intermediaries. If, after notice and opportunity for a hearing, an organization fails to make prompt payments, the Secretary may provide for direct payment of amount owed and then deduct the amount of such payments (and amounts incurred by the Secretary in making such payments) from payment otherwise made to such organizations.

Section 4510.—No provision.

(e) Financial disclosure.—

Section 10222.—Requires that HMOs and CMPs supply, on request of the Secretary and according to regulations specified by the Secretary, information as to ownership of subcontractors with whom the organization had business transactions in excess of $25,000 during the preceding 12 months, and complete information regarding significant business transactions between organizations and wholely owned subcontractors or suppliers during the 5-year period preceding the date of such request. The organization is required to notify the Secretary of loans or other special financial arrangements between the organization and its subcontractors, affiliates, and related parties.

Section 4510.—No provision.

(f) Civil money penalties.—

Section 10222.—Provides that any risk-contracting organization that fails substantially to provide any medically necessary items and services that are required to be provided under such contract, is subject to a civil money penalty of not more than $2,000 for each such failure if the failure has adversely affected (or has the likelihood of adversely affecting) individuals enrolled under such contract. Such penalties are subject to the requirements generally applicable to civil money penalties under Section 1128A of the Social Security Act (except for subsection (a)).

Section 4510.—No provision.

(g) Study of AAPCC and ACR.—

Section 10222.—Requires the Secretary to provide, through a contract with an appropriate organization, for a study of the methods by which the AAPCC and the ACR can be refined to more accurately reflect the cost of providing care to different classes of patients, and to submit to Congress not later than January 1, 1988 specific legislative recommendations concerning the methods by which these measures can be refined.

(h) Allowing Medicare Beneficiaries to Disenroll at a Local Social Security Office.—

Section 10222.—Requires the Secretary to provide that beneficiaries may disenroll from HMOs and CMPs at any local office of the Social Security Administration on or after June 1, 1987.

Section 4510.—No provision.

Effective date.—Section 10222.—Enactment except for the following:

(b) January 1, 1987.

(c) Except for subsection (3) relating to current waivers, applies to modifications and waivers granted after enactment.

(d) Applies to services furnished on or after July 1, 1987.

(e) Applies to contracts as of January 1, 1987.

Section 4510.—Except for subsection (3) relating to current waivers, applies to modifications and waivers granted after enactment.

Senate amendment

No provision.

Conference agreement

(a) Two for One rule.—The conference agreement includes section 10222 of the House provision.

(b) Explanation of enrollee rights.—The conference agreement includes section 10222 of the House provision. All HMO/CMP's would be required to provide medicare beneficiaries an explanation of their rights as HMO enrollees, including but not limited to understandable descriptions of the benefits package, the meaning of any "lock-in" provisions, the scope of out-of-area coverage and emergency and urgently needed services and appeal rights. This information would be supplied to beneficiaries enrolled in risk contract HMO/CMP's effective January 1, 1987 and no less often than every January thereafter.

Restriction of waivers of 50 percent Medicare and Medicaid enrollment.—The conference agreement includes section 10222 of the House provision with two amendments:

(1) Restrictions on new waivers—New waivers may only be granted "to the extent that" more than 50 percent of the population area served by the organization consists of individuals who are entitled to benefits under this title or under a State plan approved under title XIX.

New waivers of the requirements of section 1876(f)(1) of the Act would be allowed, at the discretion of the Secretary, for a period not to exceed three years if the organization is publicly owned and operated. The conferees note that the original purpose of this requirement was to ensure that the organization remain financially sound, and that it be of sufficient quality to attract nonmedicare enrollees. Because the financial viability of a publicly owned HMO would be guaranteed by the government, but such an HMO would typically serve a disproportionate share of medicaid and medicare beneficiaries, the requirements of section 1876(f)(1) do not serve their purpose and can appropriately be waived.

(2) Sanctions for noncompliance—If an eligible organization fails to comply with the requirements for a waiver, the Secretary may suspend medicare payments to the organization for beneficiaries newly enrolled after the date of a finding of noncompliance, and may also suspend new re-enrollment of medicare beneficiaries by the organization.

In the case of organizations that currently have a waiver but that do not meet the requirements for such waiver as amended by this section, the Secretary would be given the authority to suspend medicare payments for beneficiaries newly enrolled after the date of a finding of noncompliance, and to suspend new enrollments if the organization does not meet scheduled enrollment goals approved by the Secretary.

No new waivers of the current rule requiring that no more than 50 percent of enrollees be medicare or medicaid eligible would be granted other than for exceptions specified in the bill. Where an existing waiver has been granted for reasons other than "disproportionate" representation, the Secretary must establish a schedule under which each waived organization can meet the 50/50 requirement. Where a waiver has been granted for other than "disproportionate" representation, the waivers may only be extended if the Secretary determines that the organization (or its successor) has made and is continuing to make reasonable efforts to meet scheduled enrollment goals approved by the Secretary. The Secretary would be given authority to suspend further medicare enrollment if the waivered HMO/CMP fails to meet its enrollment schedule (in order to come into compliance with the 50/50 rule). If the HMO/CMP does not have a 50/50 waiver, but is out of compliance with the 50/50 rule, the Secretary would be given authority to freeze new medicare enrollment and to suspend medicare payments for new enrollments after the finding of non-compliance.

The conference agreement clarifies that the Secretary has the authority, to terminate (after reasonable notice and opportunity for hearing) contracts entered into under section 1876 if the organization substantially fails to meet the requirements of the new section 1876(f) relating to the 50/50 membership requirements.

(d) Prompt payment of claims.—The Conference agreement includes section 10222 of the House provision with an amendment that the requirements of the provision become effective with respect to services

furnished on or after January 1, 1987. Effective beginning on January 1, 1987 until December 31, 1987, "clean" claims submitted for services and supplies furnished to HMO/CMP enrollees pursuant to a Section 1876 contract furnished by physicians, providers and suppliers not having a contractual arrangement with the organization must be paid within thirty calendar days of receipt by the HMO/CMP. The conferees encourage HMO/CMP's to pay such claims in a shorter period than the maximum of 30 calendar days as required in this bill, especially in light of the fact that HMO/CMP's are paid prospectively by the medicare program. For calendar year 1988 the prompt payment standard would be 26 days; for 1989, 25 days; and for 1990 and beyond, 24 days. If the standards are not met, the Secretary would have the authority to provide for direct payment of the amounts owed to such providers and suppliers. In this case, the Secretary would provide for an appropriate reduction in the amount of payments otherwise made to the organization to reflect such payments.

(e) Financial disclosure.—The conference agreement includes section 10222 of the House provision.

(f) Civil monetary penalties.—The conference agreement includes section 10222 of the House provision with an amendment that the amount of the penalty is equal to $10,000 for each substantial failure to provide medically necessary items or services that are required to be provided under the contract. In determining whether the requirements of this section were breached, the Secretary is expected to take into consideration generally accepted HMO practice patterns for the delivery of medically necessary care.

(g) Study of the AAPCC and ACR.—The conference agreement includes section 10222 of the House provision.

(h) Allowing Medicare beneficiaries to disenroll at a local Social Security office.—The conference agreement includes section 10222 of the House provision.

(i) Use of benefit stabilization funds during the 1986 contract year.—The conference agreement allows amounts withheld and reserved in the Federal Hospital Insurance Trust Fund and in the Federal Supplementary Medical Insurance Trust Fund under section 1876(g)(5) during the 1986 contract period to be withdrawn by the organization to the extent that the organization was paid less than it would have otherwise been paid under a risk contract with the Secretary as a result of Federal spending reductions triggered under the Balanced Budget and Emergency Deficit Control Act of 1985.

11. PROVISIONS RELATING TO IMPROVEMENT OF QUALITY OF CARE (SECTION 10223 OF HOUSE BILL; SECTIONS 614 AND 615 OF SENATE AMENDMENT)

Present law

(a) Provider representation of beneficiaries on appleals and appeal of technical denials.—If a beneficiary disagrees with a payment denial for services provided under Medicare Part A, he or she is entitled to appeal the determination. In the past, beneficiaries have been permitted to be represented in their appeals by the provider who furnished the services in question. However, in April 1984, HCFA issued an intermediary manual instruciton prohibiting such representation. HCFA also has prohibited appeals of "technical" denials, such as homebound and intermittent care requirements for home health services.

(b) Prohibition of certain physician incentive plans.—Section 1866(d) of the Social Security Act provides for Medicare payments to most hospitals on a prospective basis. These PPS hospitals are responsible for the costs of all medically necessary part A inpatient services provided to Medicare beneficiaries during their inpatient stay. Section 1876 of the Social Security Act, as amended by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), provides for Medicare payments to Health Maintenance Organizations (HMOs) and Competitive Medical Plans (CMPs) on either a risk or a cost contracting basis. In general, risk contracting plans are financially responsible for the cost of all benefits their enrollees would otherwise be eligible for under Medicare while enrolled in these plans.

(c) Study to develop a strategy for quality review and assurance.—No provision.

House bill

(a) Provider representation of beneficiaries on appeals and appeal of technical denials.—Allows providers to represent beneficiaries on appeals, but prohibits representation by a provider with respect to issues described in section 1879(a)(2) of the Social Security Act unless the provider has waived any rights for payment from the beneficiary for services involved in the appeal.

Provides beneficiaries the right to appeal any payment denial for benefits under part A or part B home health services.

Effective date.—Enactment.

(b) Prohibition of certain physician incentive plans.—

(1) Prohibition of incentive payments.—Prohibits a hospital or risk-contracting HMO or CMP from knowingly making incentive payments to a physician as an inducement to reduce or limit services provided to Medicare beneficiaries who are under the direct care of the physician. With respect to HMOs and CMPs, the prohibition applies to Medicare enrollees of such entities. Hospitals and risk-contracting HMOs and CMPs who knowingly make such payments are subject to civil money penalties of $2,000 for each such individual with respect to whom the payments are made, in addition to any other penalties that may be prescribed by law. Any physician who knowingly accepts such incentive payments is subject to a civil money penalty of $2,000 for each such individual with respect to whom such payments are made, in addition to any other panalties prescribed by law.

(2) Study of incentive arrangements.—Requires the Secretary to conduct a study of inicentive arrangements offered to physicians by HMOs and CMPs, and to report the findings to Congress no later than April 1, 1987. The report shall include recommendations for providing exceptions for such organizations from the prohibition specified under (1) for incentive payments that encourage efficiency in the utilization of services but do not have a substantial potential for an adverse effect on quality.

Effective date.—The prohibition and civil money penalty provisions apply to payments made by hospitals occurring more than 6 months after enactment, and to payments made by risk contracting plans on or after January 1, 1988.

(c) Study to develop a strategy for quality review and assurance.—

(1) In general.—Requires the Secretary to arrange for a study to serve as the basis for establishing a strategy for reviewing and assuring the quality of care under medicare.

(2) Items included in the study.—The study is required among other items, to (a) identify the appropriate considerations which should be used in defining "quality of care"; (b) evaluate the relative roles of structure, process, and outcome standards in assuring quality of care; (c) consider whether criteria and standards for defining and measuring quality of care should be developed and, if so, how this should be done; (d) evaluate the adequacy and focus of the current methods for measuring, reviewing, and assuring quality of care; (e) evaluate the current research on methodologies for measuring quality of care, and suggest areas of research needed for further progress; (f) evaluate the adequacy and range of methods available to correct or prevent identified problems with quality of care; (g) review mechanisms available for coordinating and supervising at the national level quality review and assurance activities; and (h) develop general criteria which may be used in establishing priorities in the allocation of funds and personnel in reviewing and assuring quality of care.

(3) Report.—Requires the Secretary to report to Congress, no later than 2 years after the date of enactment. The report shall address the items in (2) above and shall include recommendations with respect to strengthening quality assurance and review activities for Medicare services.

(4) Arrangement for study.—Requires the Secretary to request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in this subsection. If the Academy submits an acceptable application, the Secretary is required to enter into an appropriate arrangement with the Academy for conducting the study. If the Academy does not submit an acceptable application, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an arrangement for the study with the entity which submits the best application.

Requires the Secretary, in developing plans for the conduct of the study, to assure that consumer and provider groups, peer review organizations, the Joint Commission on Accreditation of Hospitals, professional societies, and private purchasers of care with experience and expertise in the monitoring and quality of care are consulted.

Effective date.—Enactment.

Senate amendment

(a) Provider representation of beneficiaries on appeals and appeal of technical denials.—Similar provision, except prohibits provider representing beneficiary from imposing any financial liability on the beneficiary in connection with representation. Also prohibits costs incurred by provider for representing a beneficiary in an unsuccessful appeal from being allowed as reasonable costs.

Provides beneficiaries the right to appeal payment denials for home health services that do not meet the "intermittent or home bound" criteria.

Effective date.—For provider representation provisions, effective on enactment. For technical denials provisions, effective for coverage denials occurring on or after July 1, 1987.

(b) Prohibition of certain physician incentive plans.—No provision.

(c) Study to develop a strategy for quality review and assurance.—No provision.

Conference agreement

(a) Provider representation of beneficiaries on appeals and appeals of technical

denials.—The conference agreement includes the Senate amendment.

(b) Prohibition of certain physician incentive plans.—The conference agreement includes the House provision with an amendment extending its applications to Medicaid. The agreement modifies the House requirement for HMOs and CMPs by extending the period of exemption to April 1, 1989. The Secretary would be required to conduct a study of the impact of physician incentive arrangements and make legislative recommendations to refine the prohibition as it relates to HMOs and CMPs by January 1, 1988. The provision does not apply to incentive plans approved by the Secretary as part of a demonstration project.

(c) Study to develop a strategy for quality review and assurance.—The conference agreement includes the House provision with an amendment concerning coordination of quality of care studies. The Secretary of Health and Human Services (HHS) would be required to designate an office with responsibility for coordinating the planning of studies on quality of care, including the development of priorities for quality studies. The office would also be responsible for coordinating access to data necessary to conduct the studies and for maintaining a clearinghouse on PPS quality studies conducted by HHS and other entities. Such office may be located within the Health Care Financing Administration.

12. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PARTS A AND B (SECTIONS 10224, 4504, AND 4509 OF HOUSE BILL)

Present law

(a) Treatment of group purchasing vendor agreements.—It is prohibited to receive, give, solicit, or offer any remuneration in return for referring or arranging for the furnishing of any item or service or in return for purchasing, leasing, or ordering any good, facility, or service for which payment can be made under Medicare.

Some hospitals and other providers purchase medical supplies and equipment through their participation in group purchasing organizations (GPOs). GPOs purchase goods and services for participating institutions. A service or transactional fee is charged to participating institutions by GPOs. In some situations, fees are also paid by the vendor or supplier in order to participate in the GPO agreement. This practice constitutes a technical violation of Medicare anti-fraud and abuse preventions.

(b) Extension and clarification of competitive contracting authority.—DEFRA provided the Secretary with the authority to enter into two competitively bid contracts under part A and two such contracts under part B to replace poor performing contractors, i.e., intermediaries and carriers. This authority expires on September 30, 1986.

While the Secretary has used this authority to enter into competitively bid cost contracts, competitive bidding has not been used in the negotiation of fixed-price contracts.

(c) Parts A and B COBRA technical corrections.—Current law contains a number of technical errors.

(d) Delay in promulgation of regulations.—The Secretary may at any time issue regulations, instructions to Medicare carriers and fiscal intermediaries, and other instruments which change Medicare policy. Regulations must be issued in final form prior to August 15 or prior to October 6 to be included in the August or October Gramm-Rudman-Hollings baseline. As an exception to this general rule, proposed regulations updating prospective payments for hospital operating costs are included in the August or October Gramm-Rudman-Hollings baseline if they are issued prior to the August 15 or October 6 deadline.

House bill

(a) Treatment of group purchasing vendor agreements.—

Section 10224.—Permits the payment of administrative fees to group purchasing organizations by a vendor if the purchasing agent has an appropriate written contract and full disclosure of the payment is made to each provider.

Section 4594.—Similar provision.

Section 4509.—No provision.

(b) Extension and clarification of competitive contracting authority.—

Section 10224.—Extends the authority of the Secretary for 3 years to enter into competitively bid contracts with intermediaries and contractors to replace poor performing contracts. Language would be clarified to include fixed-price contracting.

Section 4504.—No Provision.

Section 4509.—No Provision.

(c) Parts A and B COBRA technical corrections.—

Section 10224.—Corrects technical errors as follows: (1) clarifies that a 1-year transition period is provided for foreign medical graduates (FMGs) who have not passed the Foreign Medical Graduate Examination in the Medical Sciences from July 1, 1986, through June 30, 1987, such a FMG will be counted at a rate equal to one-half of the rate at which the individual would otherwise be counted; (2) allows the Secretary to announce rather than publish health maintenance organization and competitive medical plan rates by September 7 of each year; (3) clarifies effective date of the provision regarding penalties for billing for assistants at surgery for certain cataract operations; (4) allows temporary use of carrier prepayment screening as a substitute for preprocedure review; (5) clarifies that the termination date of the ACCESS demonstration project is July 31, 1987; and (6) makes other miscellaneous corrections to COBRA and related laws.

Section 4504.—No provision.

Section 4509.—Identical provision.

(d) Delay in promulgation of regulations.—The Secretary would be prohibited from issuing in final form any regulation, instruction, or other policy before September 15, 1987, which is estimated by the Secretary to achieve Medicare savings in fiscal year 1987 of more than $50,000,000, except as required to implement specific provisions required under statute. The Secretary would also be prohibited from publishing in final form any regulation regarding changes in the methodology for computing the amount of payment for capital-related costs for inpatient hospital services under Medicare part A between September 1, 1986 and September 1, 1987. References in current law to regulations issued in final or proposed form pursuant to Sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act would be clarified. Under this provision, no such reference would be construed as including any regulation issued or proposed with respect to capital-related costs.

Effective date.—(a) Applies to payments made before, on, or after the date of enactment; (b) applies to contracts entered into on or after October 1, 1986; (c) applies as if it had been included in the enactment of COBRA; and (d) enactment.

Senate amendment

No provision.

Conference agreement

(a) Group purchasing agreements.—The conference agreement includes the House provision with an amendment. The conference agreement follows section 4504 of the bill which would exclude amounts paid by vendors of goods and services to authorized purchasing agents for groups of hospitals, nursing homes or other entities and individuals furnishing medicare services. The conference agreement would delete the reference to a specific percentage limit on the amount of such a fee. The deletion was made because of a concern that specifying a percentage might establish a norm for all such fees, resulting in increases in current fees that are typically below the amount specified. The Secretary shall monitor these arrangements for possible abuse, particularly those in excess of 3 percent. In addition, the conference agreement would require disclosure of fees paid by medicare providers as prescribed by the Secretary in regulations.

(b) Competitive contracting.—The conference agreement includes the House provision with an amendment which would clarify the Secretary's authority to enter into competitively bid fixed price contracts.

(c) COBRA technicals.—The conference agreement does not include the House provision.

(d) Moratorium on HCFA regulations.—The conference agreement includes the House provision with an amendment to prohibit the Secretary from issuing any regulation, instruction or other policy regarding hospitals or physicians before September 1, 1987 which would achieve medicare savings of more than $50 million in fiscal year 1988.

The conference agreement also prohibits the Secretary from issuing final regulations that change the methodology for computing the amount of payment for capital-related costs for inpatient hospital services under part A before September 1, 1987.

The agreement also requires that the Secretary allow 60 days for public comment on proposed regulations and notices, except for limited circumstances when such comment periods are not possible due to statutorily imposed deadlines for Secretarial action. This provision does not require the Secretary to provide an opportunity for public comment for items (such as interpretive rules, general statements of policy, or rules of agency organization, procedure or practice) that are not currently subject to that requirement. (See also item #2 and #3).

13. DIRECT COSTS OF GRADUATE MEDICAL EDUCATION (SECTION 4501 OF HOUSE BILL)

Present law

COBRA restructure the manner in which Medicare reimburses teaching hospitals for the direct cost they incur for graduate medical education. Effective with cost reporting periods beginning on or after July 2, 1985, hospitals are to receive payment on the basis of a formula that takes into account each hospital's previous average cost per full-time equivalent resident, the number for full-time equivalent residents during the period for which reimbursement is being made, an the hospital's proportion of total inpatient days used by Medicare patients during that period.

(a) Clarifying counting of time spent in out patient settings. Time spent by residents out of the inpatient setting is counted for these purposes only if the setting is part of the hospital.

(b) Reducing maximum initial residence period.—Beginning on July 1, 1986, distinctions are made among residents, for purposes of counting their full-time equivalency in this formula, and different weighting factors are applied depending on how many years of resident training they have completed. Residents are weighted at 1.00 during the period needed to obtain their first board eligibility, plus one additional year, not to exceed a total of 5 years. This results in full payments for either 4 or 5 years. After the initial residency period, payments are reduced; beginning on July 1, 1987, payments for such residents are reduced to half (i.e., a weight factor of .50) of what they would otherwise have been.

House bill

(a) Clarifying counting of time spent in outpatient settings.—Counts only time spent in patient care activities towards the determination of full-time equivalency (used in determining of payments for direct graduate medical education costs), and counts all time so spend by a resident under an approved medical residency training program, without regard to the setting in which the activities are performed, if the hospital incurs costs for the training program in that setting.

(b) Reducing Maximum Initial residency period. Reduces the length of the initial residency period from 5 years to 4 years. As a result, the support for the fifth year of residency is reduced by half (i.e., a weighting factor of .50), conforming to policy adopted in COBRA for the sixth and succeeding years.

Provides a one year transition, from July 1, 1987, through June 30, 1988, during which support for the fifth year of residency is reduced by one-quarter (i.e., a weighting factor of .75 instead of .50) for a resident whose support would otherwise be reduced by half.

Effective date.—Applies to payments for approved residency training programs as of July 1, 1987.

Senate amendment

No provision.

Conference agreement

(a) Clarifying counting of time spent in outpatient settings.—The conference agreement includes the House provision, with an amendment clarifying that, in order to receive payments under this provision, the hospital must incur all or substantially all of the costs of the residency training in the ambulatory setting. This requirement could be met, for example, if the hospital has an agreement with an independent entity to be legally responsible for reimbursing the entity for the costs the entity incurs for the residency program, subject to the maximum amount recognized as allowable under the Medicare formula enacted in P.L. 99-272, the Consolidated Omnibus Reconciliation Act of 1985.

(b) Reducing maximum initial residency period.—The conference agreement does not include the House provision.

14. COST LIMITS FOR HOME HEALTH AGENCIES (SECTION 4502 OF HOUSE BILL; SECTION 613 OF SENATE AMENDMENT)

Present law

Section 1861(v)(1(L) of the Social Security Act authorizes the Secretary to set limits on home health agency costs which may be recognized as reasonable in the efficient delivery of services. The Secretary is authorized to establish limits for home health agencies at the 75th percentile of the average cost per visit for freestanding home health agencies, or at a lower percentile or comparable or lower limit as the Secretary may determine. The Secretary is also authorized to provide for exemptions and exceptions to these limits as he deems appropriate.

Prior to final regulations published by the Secretary on July 5, 1985, limits to home health agencies were established by regulation at the 75th percentile of the labor-related component of per visit cost and the nonlabor component of per visit cost. Separate limits were established for each type of service (e.g., skilled nursing, home health aide, physical therapy); however they were applied in the aggregate to each home health agency based on its mix of services.

With the regulations published July 5, 1985, HCFA revised the home health limit methodology. For cost reporting periods beginning on or after July 1, 1985, the limits were set at 120 percent of the mean labor-related and nonlabor component of per visit costs. For cost reporting periods beginning on or after July 1, 1986, the limits are set at 115 percent of the mean, and for cost reporting periods beginning on or after July 1, 1987, the limits are to be set at 112 percent of the mean. These regulations also established and applied separate limits for each type of service.

House bill

(a) Application of cost limits.—Amends the Secretary's authority to establish limits for home health agency costs to require that limits be applied on an aggregate basis for all home health services, rather than on a discipline-specific basis, with appropriate adjustment for administrative and general costs of hospital-based agencies. The Secretary is also required to base limits on the most recent data available, which may be for cost reporting periods beginning no earlier than October 1, 1983. The Secretary must also take into account the changes in costs of home health agencies for billing and verification procedures that result from the Secretary's changing the requirements for such procedures, to the extent these changes in costs are not reflected in available data.

(b) GAO study.—Requires the Comptroller General to study and report to Congress by April 1, 1987, on: (1) the appropriateness and impact on Medicare beneficiaries of applying per visit home health agency cost limits on a discipline-specific basis, rather than on an aggregate basis; and (2) the appropriateness of the percentage limits established in regulation.

Effective date.—Cost reporting periods beginning on or after July 1, 1985.

Requirement for the Secretary to base limits on most recent data available: effective for cost reporting periods beginning on or after July 1, 1985.

Requirement for the Secretary to take into account changes in costs for billing and verification procedures: effective for changes in requirements of Secretary effected before, on, or after July 1, 1985.

Senate amendment

(a) Application of cost limits.—Repeals the Secretary's authority to establish home health limits at the 75th percentile of the average per visit cost and replaces it with authority to establish, for the cost reporting periods beginning on or after July 1, 1985, limits at 120 percent of the mean of the labor-related and nonlabor component of per visit costs for freestanding home health agencies; for cost reporting periods beginning on or after July 1, 1986, limits at 115 percent of the mean; and for cost reporting periods beginning on or after July 1, 1987, limits at 112 percent of the mean.

Requires that for cost reporting periods beginning on or after Oct. 1, 1986, limits must be applied on an aggregate basis, rather than on a discipline-specific basis, with appropriate adjustment for administrative and general costs of hospital-based agencies.

(b) GAO study.—Requires the Comptroller General to study and report to Congress, not later than Sept. 1, 1987, on the appropriateness of applying per visit home health agency cost limits on a discipline-specific basis, rather than on an aggregate basis.

Effective date.—Enactment.

Conference agreement

(a) Application of cost limits.—The conference agreement includes the House provision with an amendment changing the effective date to cost reporting periods beginning on or after July 1, 1986.

(b) GAO study.—The conference agreement include the House provision.

15. ESTABLISHMENT OF RESEARCH PROGRAM (SECTION 4503 OF HOUSE BILL; SECTION 616 OF SENATE AMENDMENT)

Present law

No provision.

A growing body of research on the utilization of medical services indicates variations in the scope of care furnished to otherwise comparable populations. Such research raises questions that have a bearing on policy decisions affecting the Medicare program. These include questions about the quality of care, the appropriateness of care, and the cost-effectiveness of care being received by Medicare enrollees and the effects of the payment methodologies and quality assurance measures currently employed.

House bill

(a) Research projects.—Requires the Secretary to provide for a research program on patient outcomes of selected medical treatments and surgical procedures for the purpose of assessing their appropriateness, necessity, and effectiveness.

The research is required to include (1) assessments of the extent of uncertainty regarding appropriateness; (2) assessments of the appropriateness of admissions or selection criteria; (3) development of improved measures of patient outcome; (4) evaluation of patient outcome; and (5) efforts to reduce existing levels of uncertainty or disagreement regarding appropriateness.

(b) Study priorities.—Requires the Secretary, in selecting treatments and procedures to be studied, to give priority to those medical and surgical treatments and procedures (1) for which data indicate a highly (or potentially highly) variable pattern of utilization among Medicare beneficiaries in different geographic areas; and (2) which are significant (or potentially significant) for purposes of this title in terms of utilization by beneficiaries, length of hospitalization associated with the treatment or procedure, costs to the program and risk involved to the beneficiary.

(c) Funding levels.—Makes available, for the purposes of carrying out the research program, (1) from the Federal Hospital Insurance Trust Fund—$4 million for FY 1987, $5 million for FY 1988, and $5 million for FY 1989; and (2) from the Supplementary Medical Insurance Trust Fund—$2 million for FY 1987, $2.5 million for 1988, and $2.5 million for FY 1989.

(d) Funding distribution.—Requires not less than 90 percent of each fiscal year's appropriation to be used to fund grants to and cooperative arrangements with, non-Federal research entities. The remaining funds may be used by the Secretary for research by Federal entities and for administrative costs.

(e) Administration.—Requires the research program to be run by the National Center for Health Services Research and Health Care Technology. The Center is required to establish application procedures for grants and cooperative agreements. The Center is required to establish peer review panels to review all such applications and all research findings. The Center is required to consult with the Council on Health Care Technology in establishing the scope and priorities for the research program and shall report periodically to the Council on the status of the program.

(f) HHS cooperation.—Requires the Secretary to make available data derived from the Medicare care program and any other HHS programs for use in the research program.

(g) Report to Congress.—Requires the Center to report to the Senate Committees on Finance and Appropriations and the House Committees on Ways and Means, Energy and Commerce, and Appropriations no later than 18 months after enactment, and annually thereafter, on the research program's findings.

(h) dissemination of findings.—Requires the Center, in cooperation with appropriate medical specialty groups, to disseminate the research program's findings as widely as possible, including disseminating the findings, to each peer review organization.

(i) Permitting services to be provided under research program.—Permits exceptions to the "reasonable and necessary" coverage exclusion, as necessary to carry out this research.

Effective date.—October 1, 1986.

Senate amendment

(a) Research project.—Similar provision, except the research is required to include (1) reorganization of data relating to claims under Part A and B in a manner that facilitates research with respect to patient outcomes; (2) assessments of the appropriateness of admissions and discharges; (3) assessments of the extent of professional uncertainty regarding efficacy; (4) development of improved methods for measuring quality-of-life patient outcomes; (5) model evaluations of patients outcomes, and (6) evaluation of the effects on physician's practice patterns of the dissemination to physicians and peer review organizations of the findings of the research in items (2), (3), (4), and (5) above.

(b) Study priorities.—Identical provision.

(c) Funding levels.—Makes available, for the purposes of carrying out the research program, (1) from the Federal Hospital Insurance Trust Fund—$3 million for FY 1987, $2.75 million for FY 1988, and $1.75 million for FY 1989; and (2) from the Supplementary Medical Insurance Trust Fund—$3 million for FY 1987, $2.75 million for FY 1988; and $1.75 million for FY 1989.

(d) Funding distribution.—Identical provision.

(e) Administration.—Similar provision.

(f) HHS cooperation.—Identical provision.

(g) Report to Congress.—Identical provision.

(h) Dissemination of findings.—Identical provision.

(i) Permitting services to be provided under Research Program.—Identical provision.

Effective date.—October 1, 1986.

Conference agreement

(a) Research projects.—The conference agreement includes the Senate amendment with a modification deleting the role of the Assistant Secretary for Planning and Evaluation.

(b) Study priorities.—The conference agreement includes the Senate amendment.

(c) Funding levels.—The conference agreement includes the House provision.

(d) Funding distribution.—The conference agreement includes the House provision.

(e) Administration.—The conference agreement includes the House provision.

(f) HHS cooperation.—The conference agreement includes the House provision.

(g) Report to Congress.—The conference agreement includes the House provision.

(h) Dissemination of findings.—The conference agreement includes the House provision.

(i) Permitting services to be provided under Research Program.—The conference agreement includes the House provision.

16. CIVIL MONETARY PENALTY AND EXCLUSION PROVISIONS (SECTION 4505 OF HOUSE BILL)

Present law

Practitioners and institutions who present false or certain other improper claims or requests for reimbursement under the Medicare, Medicaid, or Maternal and Child Health Services Block Grant programs are, in addition to potential criminal penalties, subject to civil monetary penalties of up to $2,000 for each item or service and, in lieu of damages, an assessment of up to twice the amount claimed. Civil money penalty proceedings are prosecuted by the Inspector General of the Department of Health and Human Services before an administrative law judge; provider's may appeal adverse determinations to the appropriate U.S. Circuit Court of Appeals. In addition, individuals who have been convicted of criminal offenses related to their participation in Medicare and Medicaid are subject to exclusion from both programs; these individuals are entitled to an administrative hearing and, if the agency upholds the Inspector General's decision to exclude, judicial review.

House bill

(a) Collateral estoppel effect of prior Federal criminal convictions.—In a proceeding to bar a physician or other individual from participating in Medicare or Medicaid which is against an individual who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal crime charging fraud or false statements, and which involves the same transaction as in the criminal action, the individual cannot relitigate (i.e., is estopped from denying) the essential elements of the criminal offense in a subsequent civil case including a civil monetary penalties case.

(b) Authority of hearing officer to sanction misconduct.—The official conducting such a hearing may sanction a person, including any party or attorney, for failing to comply with an order or procedure, failing to defend an action, or other misconduct that would interfere with the speedy, orderly, or fair conduct of the hearing.

Requires the sanction to reasonably relates to the severity and nature of the failure or misconduct. The sanction may include: (1) in the case of refusal to provide or permit discovery, drawing negative factual inferences or treating such refusal as an admission by deeming the matter, or certain facts, to be established; (2) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense; (3) striking pleadings, in whole or in part; (4) staying the proceedings; (5) dismissal of the action; (6) entering a default judgment; (7) ordering the party or attorney to pay attorney's fees and other costs caused by the failure or misconduct; and (8) refusing to consider any motion or other action which is so filed in a timely manner.

(c) Clarification of exclusion authority for certain offenders.—Considers a physician or other individual to have been "convicted" of a criminal offense: (1) when a judgment of conviction has been entered against the physician or individual by a Federal, State, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged; (2) when there has been a finding of guilt against the physician or individual by a Federal, State, or local court; (3) when a plea of guilty or nolo contender by the physician or individual has been accepted by a Federal, State, or local court; and (4) when the physician or individual has entered into participation in a first offender or other program when judgment of conviction has been withheld.

Effective date.—(a) Applies on enactment, without regard to when a criminal conviction was obtained; (b) applies to failures or misconduct occurring on or after the date or enactment; and (c) applies to judgments entered, findings made and pleas entered before, on or after the date of enactment (except for (4) which applies to participation in a program entered into on or after the date of enactment).

Senate amendment

No provision.

Conference agreement

(a) Collateral estoppel effect of prior Federal criminal convictions.—The conference agreement includes the House provision.

(b) Authority of hearing officer to sanction misconduct.—The conference agreement includes the House provision.

(c) Clarification of exclusion authority for certain offenders.—The conference agreement includes the House provision.

17. HOSPITAL PROTOCOLS FOR ORGAN PROCUREMENT AND STANDARDS FOR ORGAN PROCUREMENT AGENCIES (SECTION 4508 OF HOUSE BILL)

Present law

Current law does not include requirements with regard to hospitals and organ procurement protocols, or with respet to certification standard for organ procurement agencies.

The Task Force on Organ Transplantation, created by the National Organ Transplant Act (P.L. 98-507), found that opportunities for obtaining organs were lost due to shortcomings in the present organ procurement process. The Task Force recommended legislation requiring that hospitals establish protocols for encouraging organ and tissue donation and requiring certification standards for organ procurement agencies.

House bill

(a) Hospital protocols.—Requires that the Secretary provide that no hospital may participate in Medicare or Medicaid unless the hospital has established protocols for encouraging organ and tissue donation.

(b) Criteria and certification of organ procurement agencies.—Would prohibit payment under Medicare or Medicaid with respect to costs of procuring organs, by an organ procurement organization that is not qualified under section 317(b) of the Public Health Service Act (or does not meet the standards to be qualified), and that has not been certified (and recertified at least every 2 years) as meeting the standards established by the Association of Independent Organ Procurement Agencies.

Effective date.—Applies to hospitals as of July 1, 1987, and to the costs of organs procured on or after January 1, 1988.

Senate amendment

No provision.

Conference agreement

(a) Hospital protocols.—The conference agreement includes the House provision, with amendments. In addition to establishing protocols for making a routine inquiry, hospitals would have to notify the local organ procurement agency when a potential organ donor is identified. The conferees intend for the hospital and the organ procurement agency to cooperate in counseling and procurement activities.

Those hospitals in which organ transplants are performed would also have to be members of the national organ transplant network established under the National Organ Transplant Act of of 1984, and to comply with the policies of that network regarding the allocation of organs.

The requirement that these procedures be followed in cases of a potential tissue donor who is not also a potential organ donor has been removed. Instead, a definition or "organ" is added, which provides the Secretary discretion to extend these requirements to any tissue that the Secretary finds to be appropriate. This provision encourages tissue donation whenever the hospital has identified a potential organ donor. The hospital is required, under the conference agreement, to notify the organ procurement agency designated by the Secretary to serve that area. In turn, the organ procurement agency, under the terms of the conference agreement and the requirements of the National Organ Transplant Act, is required to have cooperative arrangements with tissue banks, in order to be designated by the Secretary as the organ procurement agency for the area.

(b) Criteria and Certification of Organ Procurement Agencies.—The conference agreement includes the House provision with an amendment. In order for its costs to be recognized by medicare, an organ procurement agency would have to comply with the requirements of section 371(b) of the Public Health Service Act, which were enacted as part of the National Organ Transplant Act of 1984. The alternative of meeting standards established by the Association of Independent Organ Procurement Agencies is deleted.

The conference agreement also adds several other requirements that agencies must meet. First, they must meet performance standards set by the Secretary, respecting the quality or competence of the services performed by the agency and the volume of organs procured.

Second, with respect to all organs within their control, they must comply with the policies established by the national organ transplant network regarding the allocation or organs, irrespective of whether the organ is placed through the network or is placed without the assistance of the network. This provision reflects the conferees' concern about wastage and criticisms of the allocation of available organs.

The conferees understand that the national network will have policies requiring that separate lists of potential recipients be maintained for U.S. residents and foreign nationals, and that all potential recipients on the first list be reviewed for an acceptable match between organ and recipient before the organ is offered to someone on the second list or exported out of the country. It is also the conferees' understanding that these policies require there to be documentation that an acceptable match was not available on either list before the organ was offered for export. The conference agreement is premised on these policies being retained and followed, and on all allocations being made on the basis of criteria established by the network.

Medicare payments will be made for organ procurement agencies only for those agencies specifically designated by the Secretary, and only one agency may be designated in each service area.

18. MEDICARE AS SECONDARY PAYER; COVERAGE REQUIREMENTS FOR CERTAIN OTHER PAYERS (SECTION 611 OF SENATE AMENDMENT)

Present law

TEFRA required employers to offer their employees ages 65 through 69 the same group health plans to employees under age 65. When the employee age 65 to 69 elects such coverage, Medicare becomes the secondary payer. The beneficiary retains the right not to elect such coverage and to be covered only by Medicare. DEFRA extended this provision to include beneficiaries covered under a working spouse's employer-based group health insurance plan when the working spouse is under age 65. COBRA further extended the provision to apply to the working aged and spouses over age 69.

House bill

No provision.

Senate amendment

Recodifies current law with respect to secondary payer provisions and amends the Social Security Act to provide that Medicare would be the secondary payer for all Medicare beneficiaries (including disabled and those who buy into Medicare) who elect to be covered by employment based health insurance as a current employee (or family member of such employee) of a large employer. This provision would explicitly include under the secondary payer provision those persons with group health coverage who are the employer, former employees under age 65, individuals associated with the employer in a business relationship, or members of the families of any such persons.

Uniform rules are established as to the benefits Medicare pays when other payers are primary but do not pay the full charge. Payments under workers compensation or liability or related insurance are counted toward the Medicare deductible, as provided under current law for other types of primary payers.

The secondary payer provisions are enforceable through private action or action brought by the Federal Government (with double damages payable). In addition, a tax is imposed on employers and employee organizations that contribute to plans that do not conform with the secondary payer provisions. The tax is 25 percent of the employer's or employee organization's annual contributions to nonconforming group health plans.

Federal Medicaid payments to a State would be reduced by an amount equal to 25 percent of the group health plan expenses of a State that does not comply with the secondary payer provision.

Conforming amendments are made to the section relating to special enrollment periods and premium penalties for part B of Medicare for individuals covered under employer based group health plans.

Effective date.—The special enrollment period and premium penalty provisions apply to enrollments occurring on or after October 1, 1986, and premiums for months beginning on or after October 1, 1986. All other provisions apply to items and services furnished in calendar quarters beginning on or after October 1, 1986.

Conference agreement

The conference agreement includes the Senate amendment with modifications. The provision which requires that medicare be secondary payer for disabled beneficiaries who elect to be covered under employer-based health insurance as a current employee (or family member of such employee) would only apply to employers with 100 or more employees. The provision would sunset October 1, 1991. The agreement would require the Secretary to study the impact of this provision. The agreement includes additional modifications to (1) retain enforcement of the requirements related to coverage of the working aged under the Age Discrimination Act, (2) add a private right of action to enforce the provision for the aged, and (3) eliminate reductions in Medicaid funds as a penalty for States which do not comply.

19. COVERAGE OF SERVICES OF NURSE ANESTHETISTS (SECTIONS 4524 AND 10207(A) OF HOUSE BILL)

Present law

Payments for services of certified registered nurse anesthetists (CRNAs) employed by hospitals are made to the hospital on a reasonable cost basis and are temporarily excluded from the definition of operating costs under PPS. For services of CRNAs employed by anesthesiologists, the anesthesiologist is paid on a reasonable charge basis as if he had performed the service. Physicians who provide medical direction for CRNAs employed by a hospital receive an adjusted reasonable charge payment. Provisions relating to payment for services of hospital-employed and physician-employed CRNAs are both effective for cost reporting periods beginning on or after October 1, 1984, and before October 1, 1987.

House bill

(a) Payment extension.—

Section 10207(a).—Extends current payment provisions for the services of CRNAs hospital-employed for cost-reporting periods beginning before October 1, 1988. [Note: See item 23(c) for related provision requiring study of prospective payment for radiology, anesthesia, and pathology services.]

Section 4524.—No provision.

(b) Direct reimbursement for services of a registered nurse anesthetist.—

Section 10207(a).—No provision.

Section 4524.—Authorizes direct reimbursement for anesthesia services and related care furnished by a registered nurse anesthetist which he/she is legally authorized to perform in the State. The term registered nurse anesthetist is defined as a registered nurse licensed by the State who meets such education, training, and other requirements relating to anesthesia services and related

care as the Secretary may prescribe. The Secretary may use the same requirements as those established by a national organization for the certification of nurse anesthetists.

Specifies that nothing in this section shall contravene provisions of State law relating to the practice of medicine or nursing or State law requirements or institutional requirements regarding the administration of anesthesia and its medical direction or supervision.

Authorizes direct reimbursement for services equal to 80 percent of the reasonable charge for such services. The reasonable charge is the amount determined by the Secretary to be consistent with efficient and high quality anesthesia services taking into account the prevailing rate for such services. However, the reasonable charge must be adjusted to the extent necessary to ensure that the total amount paid for such services by Medicare in any fiscal year may not exceed the total amount which would have been paid if such services were included as inpatient hospital services and paid for under Part A, in the same manner as payment was made in fiscal year 1986, adjusted to take into account changes in prices and technology relating to the administration of anesthesia.

Requires the Secretary to adjust the reasonable charge for medical direction of services of registered nurse anesthetists to the extent necessary to ensure that the total amount paid for medical direction and services would not exceed the amount which would have been paid in the absence of this provision. If the adjustment results in a reduction in the reasonable charge for a nonparticipating physician, such physician may not charge more than 125 percent of the adjusted prevailing charge; if the physician charges more, the physician would be required to refund the excess to the individual. If the physician knowingly and willfully imposes charges or fails to make required refunds, the Secretary could impose sanctions.

Effective date.—Section 10207(a).—Enactment. Section 4524.—Applies to items and services furnished on or after October 1, 1987.

Senate amendment

No provision.

Conference agreement

(a) Payment extension.—The conference agreement includes the House provision contained in Section 10207(a).

(b) Direct reimbursement for services of a certified registered nurse anesthetist.—The conference agreement includes the House provision contained in Section 4524 with a modification as follows. The conference agreement authorizes payments to be made in an amount equal to the lower of 80% of a fee schedule established by the Secretary or 80% of the actual charge. The Secretary could utilize time units, or a system of base and time units, or another appropriate methodology, in establishing the schedule. The Secretary is permitted to establish a nationwide fee schedule or to adjust the fee schedule for geographic areas. Initially, the fee schedule would be established at a level based on the costs of anesthesia services provided by certified registered nurse anesthetists determined from audited cost data from cost reporting periods ending in FY 85. The fee schedule amount would be adjusted annually by the change in the Medicare economic index.

The fee schedule amount would be adjusted to the extent necessary to ensure that the total amount paid by Medicare (plus applicable coinsurance amounts) in 1989 for certified registered nurse anesthetist services would equal the amount which would be paid under part A for the same volume of CRNA services in the absence of this provision. The Secretary would also be permitted to adjust payment levels in 1989 and 1990 for CRNA services and for medical direction provided by physicians (or both), in order to assure that payments made under this provision for both CRNA services and medical direction do not exceed those that would be made in the absence of this provision. The Secretary could do this by adjusting time or base units, or by any other means. The conferees recognize that it will be difficult to document the volume and cost of CRNA services currently being reimbursed under Part B and to estimate what total Medicare payments would be in the absence of this provision. The Secretary is expected to use the best estimates available for this purpose.

In the case of nonparticipating physicians whose actual charges have been reduced pursuant to this provision, a special limit on maximum allowable actual charges (MAAC) would apply. For the first year the reduction is in effect, the maximum allowable actual charge for the service would equal 125% of the reduced prevailing charge amount plus one-half of the difference between the physician's actual charge in the preceding period and 125% of the reduced prevailing charge amount. In the second year, the special maximum allowable charge for the service would equal 125% of the reduced prevailing charge amount.

Certified registered nurse anesthetists would be required to accept assignment for all Medicare services and civil monetary penalties could be imposed for violations of this requirement. Payments could be made directly to the certified registered nurse anesthetist. Alternatively, the hospital or physician could bill for and receive payment for these services where an employment relationship or contract so stipulates. The hospital or physician could not bill more for certified registered nurse anesthetist services than the amount the CRNA could bill directly.

The conference agreement specifies that the fee schedule would apply to items and services furnished on or after January 1, 1989. The current cost passthrough for hospital-employed CRNAs would be extended to that date, irrespective of the hospital's cost reporting period. The conferees intend that the Secretary will extend the limitation on physicians' rights to bill for inpatient services provided by CRNAs whom they employ, as provided under current law until January 1, 1989.

II. Medicare Provisions (Part B)

20. Extension of premium payment provision through 1989 (section 10231 of House bill; section 1001(c) of Senate amendment)

Present law

Under the original Medicare law, beneficiary premiums paid for 50 percent of the program cost of part B with the remaining 50 percent financed by Federal general revenues. However, between 1974 and 1982 the law limited the percentage increase in the part B premium to the percentage increase in Social Security cash benefits payments. By 1982, beneficiary premiums paid for approximately 25 percent of program costs.

TEFRA, as amended by the Social Security Amendments of 1983 (P.L. 98-21), specified that enrollee premiums in 1984 and 1985 would be allowed to increase to amounts necessary to produce premium income equal to 25 percent of program costs for elderly enrollees. If there is no Social Security COLA, the monthly premium would not be increased in that year. If the amount of a premium increase is greater than the Social Security COLA, the premium increase is to be reduced so as to avoid a reduction in the individual's Social Security check. Disabled enrollees pay the same premiums, though the per capita cost of services to these enrollees is higher. TEFRA extended this provision for 1986 and 1987, COBRA extended this provision through 1988. Beginning January 1, 1989, the premium calculation reverts to the earlier method.

House bill

(a) One year extension.—Extends the current 25 percent payment provision for one additional year, through calendar year 1989.

(b) Technical conforming change.—No provision.

Effective date.—Enactment.

Senate amendment

(a) One year extension.—No provision.

(b) Technical conforming change.—Makes technical clarifying changes in provision reducing the premium increase where necessary to avoid a reduction in the individual's Social Security checks.

Effective date.—Applies with respect to monthly premiums for months after December 1986.

Conference agreement

(a) One year extension.—The conference agreement does not include the House provision.

(b) Technical conforming change.—See Item 1, Part I, Income Security Provisions.

21. Payments for physicians' services (sections 10232 (a-d, and f-j) and section 4525 of House bill; sections 621(b-c) and 622 of Senate amendment)

Present law

Payments are made to physicians on the basis of reasonable charges. The reasonable charge for a service is the lowest of the actual charge, the physician's customary charge for the service or the prevailing charge for the service in the community. The prevailing charge for a service is the lower of the 75th percentile of customary charges for the service in the area, or the maximum allowed prevailing charge, which is the unadjusted prevailing charge in a base year increased by the Medicare economic index (MEI).

TEFRA froze physician fees for the 15-month period July 1, 1984 through September 30, 1985. P.L. 99-107, as amended, and COBRA extended this freeze through April 30, 1986 for participating physicians and December 31, 1986 for non-participating physicians.

Since July 1, 1984, the actual charges of non-participating physicians have been subject to a freeze. Violations have been subject to sanctions. The freeze expires on December 31, 1986.

On May 1, 1986, participating physicians received an increase in prevailing charges based on the MEI for 1986 plus an additional one percentage point. The one percentage point increase is temporary and will not be included after December 31, 1986. Participating and non-participating physicians will receive a prevailing charge increase each year beginning on January 1987. The in-

crease for non-participating physicians is to be lagged and will be based on the MEI for the preceding year.

The MEI, expressed as a maximum allowable percentage increase, has been tied to economic indexes reflecting changes in physician operating expenses and earnings levels. On August 12, 1986, the Administration has by regulation revised the calculation of the MEI to account for an adjustment to the housing cost component, which the Administration believes to be historically overstated. The index would be computed retroactively using the rental equivalence housing component of the CPI as a substitute for the home ownership approach.

COBRA required the Secretary, with the advice of the newly established Physician Payment Review Commission, to develop a relative value scale for physician payments. The Secretary is required to complete the development of the RVS and report to Congress on its development by July 1, 1987. The report is to include recommendations concerning its potential application to Medicare on or after January 1, 1988.

(a) Maximum allowable prevailing charges.—

Section 10232.—On January 1, 1987, all physicians will receive an increase in prevailing charges based on the percentage increase in the Medicare economic index (MEI) for services provided in 1987. The increase will apply to the maximum allowable prevailing charges of participating and nonparticipating physicians respectively in effect during the 8-month period ending on December 31, 1986. The Secretary is required to treat the maximum allowed prevailing charges recognized for participating and nonparticipating physicians respectively during such 8-month period as having been justified by economic changes. In years subsequent to 1987, the maximum allowed prevailing charges of participating and nonparticipating physicians is to be increased by the MEI increase factor applicable for services provided during the year.

Section 4525.—Specifies that the one percentage point increase for participating physicians permitted on May 1, 1986 is built into the MEI base for future calculations. Allows an MEI update for all participating physicians and all assigned claims submitted by nonparticipating physicians. Limits increases in prevailing charges for unassigned claims to 1 percent in 1987.

(b) Bonus for participating physicians.—

Section 10232.—Provides that in applying the percentage increase in the MEI for physicians' services furnished by participating physicians during each year after 1986, the Secretary shall provide for a bonus of one percentage point in the percentage increase otherwise determined. Such a bonus for each year will apply to physicians' services furnished only during the year and not in the calculation of payments for any subsequent year.

Section 4525.—No provision.

(c) Limit on actual charges for nonparticipating physicians.—

Section 10232.—The current freeze on actual charges of non-participating physicians would be replaced by a role of increase limit. In 1987, nonparticipating physicians could increase their actual charges above levels in effect during the calendar quarter beginning April 1, 1984 by an amount equal to the MEI for 1987 plus one percentage point. For nonparticipating physicians without actual charges for a procedure during the calendar quarter beginning April 1, 1984, the limit is the 50th percentile of customary charges (weighted by frequency of the procedure) for the procedure performed by nonparticipating physicians in the locality during the 12-month period ending June 30, 1986 increased by the MEI for 1987 plus one percentage point. In future years, the limit is the maximum allowed charge permitted for the previous year increased by the percentage increase in the MEI. If the physician knowingly and willfully bills for actual charges in excess of permitted charges, the Secretary may apply sanctions for noncompliance. Carriers are required to provide available information to nonparticipating physicians to enable them to determine maximum allowed charges.

In calculating customary charges for services furnished on or after January 1, 1988, the Secretary shall not recognize any increases in actual charges in excess of these limits.

Section 4525.—Similar provision with respect to monitoring of charges and application of sanctions. Nonparticipating physicians could increase their actual charges in 1987 by the percentage increase in the MEI for assigned claims and only by 1 percent for nonassigned claims. In calculating customary charges for services furnished during 1988 and 1989, the Secretary shall not recognize any increase in actual charges in excess of the limits.

(d) Medicare economic index (MEI).—

Section 10232.—Prohibits the Secretary from revising the MEI in a manner that provides for any period before January 1, 1985, for the substitution of a rental equivalence or rental substitution factor for the housing component of the consumer price index.

Section 4525.—Identical provision.

(e) Reasonable charge limitations.—(See item 21, Inherent Reasonableness.)

(f) Recruiting.—

Section 10232.—Requires carriers to implement programs to recruit and retain physicians as participating physicians, including educational and outreach activities and the use of professional relations personnel to handle billing problems for participating physicians. Carriers are also required to implement programs to familiarize beneficiaries with the participating physician program and to assist them in locating participating physicians. The Secretary is required to provide a system for measuring carriers' performance with respect to these responsibilities or those specified under section 1842(h) of the Social Security Act. An incentive pool, equal to 1 percent of total payments to carriers for claims processing, will be available to reward carriers for their success in increasing the percentage of participating physicians in the carrier's service area.

Section 4525.—No provision.

(g) Directories of participating physicians.—

Section 10222.—Requires the Secretary to provide that each appropriate area directory is sent to each Part B beneficiary residing in the area and that an appropriate number of copies is sent to hospitals in the area. The copies are to be sent free of charge.

Requires each directory to provide alphabetical listings for: (1) all participating physicians in the area; and (2) locality and specialty of such physicians.

Section 4525.—No provision.

(h) Prohibiting unassigned billing of services determined to be medically unnecessary by a carrier.—

Section 10232.—Provides that, where a physician has provided services on a nonassigned basis which are determined by a peer review organization or carrier to be unnecessary, the physician is required to refund any amounts collected from the beneficiary within 30 days after receiving a notice that the services were unnecessary or within 15 days after receiving notice of an adverse determination upon reconsideration or appeal. A refund would not be required if: (i) the physician did not know and could not reasonably have been expected to have known that the services would be found to be unnecessary; or (ii) the beneficiary was informed in advance that Medicare payment would not be made for a specific service and agreed to pay for the service. Physicians who knowingly and willfully fail to make required refunds on a timely basis would be subject to civil money penalties and/or exclusion from the Medicare program. Carriers and peer review organizations would be required to send denial notices based on medical necessity determinations to the physician and the beneficiary.

Section 4525.—No provision.

(i) Maintenance and use of participating directories by hospitals.—

Section 10232.—Amends Medicare participation agreements to require hospitals to make available directories of participating physicians and, where referral is made to a nonparticipating physician, inform the beneficiary of such fact. Wherever practicable, the hospital must identify at least one qualified participating physician.

Section 4525.—No provision.

(j) Submission and disclosure of information on unassigned claims.—

Section 10232.—Provides that where the actual charge on an unassigned elective surgical procedure exceeds $500, the physician is required to disclose to the individual in writing, the estimated charge, the estimated approved charge, and the excess of the physician's actual charge over the approved charge. A physician failing to comply with this requirement would be required to refund payments received in excess of the Medicare approved charge. Knowing and willful failures to make required refunds would be subject to civil money penalties and/or exclusion from Medicare.

Section 4525.—No provision.

(k) HCFA common procedure coding system.—No provision.

(l) Recommendations for relative value scale (RVS).—No provision.

Effective date.—Section 10232: (a) and (c) apply to services furnished on or after January 1, 1987. (b) and (d) are effective on enactment. (f) applies to carrier contracts as of October 1, 1987; carrier bonus payments shall be first paid not later than April 1, 1988, to reflect performance of carriers during November 1987. (g) applies for distribution of directories to beneficiaries for 1988 directories; organization of directories applies to 1987 directories. (h) applies to services furnished on or after October 1, 1987. (i) applies to agreements as of October 1, 1987. (j) applies to surgical procedures performed on or after October 1, 1987.

Section 4525: (a) and (c) applies to services furnished on or after January 1, 1987. (d) effective on enactment.

Senate amendment

(a) Maximum allowable prevailing charges.—No provision.

(b) Bonus for participating physicians.—No provision.

(c) Limit on actual charges for nonparticipating physicians.—No provision.

(d) Medicare economic index (MEI).—Provides that the adjustment of the MEI as proposed by the Administration would be made in two stages, with one-half of the adjustment becoming effective January 1, 1987, and the other half January 1, 1988. The Secretary is required to utilize the rulemaking process for proposed changes in the methodology, basis, or elements of the MEI.

(e) Reasonable charge limitations.—(See item 21, Inherent Reasonableness.)

(f) Recruiting.—No provision.

(g) Directories of participating physicians.—No provision.

(h) Prohibiting unassigned billing of services determined to be medically unnecessary by a carrier.—No provision.

(i) Maintenance and use of participating directories by hospitals.—No provision.

(j) Submission and disclosure of information on unassigned claims.—No provision.

(k) HCFA common procedure coding system.—Requires by July 1, 1987, the consolidation of the payment methodology under HCFA's Common Procedures Coding System (HCPCS) and mandates its use for hospital outpatient services by the same date. Carriers and intermediaries are required to report services and claims using HCPCS by January 1, 1988.

Recommendations for relative value scale (RVS).—Requires the Secretary in making recommendations for application of an RVS to: 1) develop and assess an appropriate index to reflect justifiable geographic variations in practice costs without exacerbating the geographic maldistribution of physicians; and 2) assess the advisability and feasibility of developing an appropriate adjustment to assist in attracting and retaining physicians in medically underserved areas. The Secretary is to take into account recommendations of the Physician Payment Review Commission. The Secretary is to develop an interim geographic index by July 1, 1987, and collect data for refining the index by December 31, 1989. The date of the Secretary is required to report on the RVS is deferred to July 1, 1989. The potential application date of the RVS is deferred until after December 31, 1989.

Effective date.—Enactment.

Conference agreement

(a) Maximum allowable prevailing charges.—The conference agreement includes the House provision with amendments. All physicians would receive an increase in their prevailing charges equal to 3.2% effective January 1, 1987. In 1987 and future years, the percent increase in the MEI would be applied to the maximum allowable prevailing charges for participating and nonparticipating physicians respectively in effect on December 31 of the previous year.

The conference agreement makes permanent the current differential in the prevailing charges of participating and nonparticipating physicians. In other words, the prevailing charges for nonparticipating physicians would equal 96% of the prevailing charges for participating physicians. In future years, participating and nonparticipating physicians would receive the same percentage increase based on the percentage increase in the medicare economic index (MEI) for the year. This provision replaces the 1-year lag in prevailing charges for nonparticipating physicians contained in the Consolidated Omnibus Budget Reconciliation Act of 1985.

The conference agreement does not include the House provision that would pay a higher rate for assigned claims of nonparticipating physicians.

(b) Bonus for participating physicians.—The conference agreement does not include the House provision that would provide a new bonus for participating physicians in addition to the differential in effect during the 8-month period ending December 31, 1986.

(c) Limit on actual charges for nonparticipating physicians.—The conference agreement includes the House provision with a modification as follows. In the case of a nonparticipating physician whose actual charge for a service in the previous year equals or exceeds 115% of the prevailing charge for nonparticipating physicians for the service in the current year, the maximum allowable actual charge (MAAC) is 101% of the physician's actual charge for the previous year.

A nonparticipating physician whose actual charge for a service in the previous year is less than 115% of the current year prevailing charge for nonparticipating physicians could increase his/her actual charge in the current year by the greater of: (i) 1% above the physician's previous year actual charge or (ii) an amount based on a comparison between the physician's MAAC for the previous year and 115% of the current year prevailing charge. Under clause (ii), the MAAC for the current year equals the previous year MAAC increased by a fraction of the difference between 115% of the current year prevailing and the previous year MAAC. The applicable fractions are one-quarter, one-third, one-half, and one for 1987, 1988, 1989, and 1990 respectively.

Thus, for calendar year 1987, the physician's MAAC for 1986 is compared with the prevailing charge for nonparticipating physicians in 1987. The 1987 MAAC is equal to the 1986 MAAC plus one-quarter of the difference between 115% of the 1987 prevailing charge amount and the 1986 MAAC. For example, if a physician's 1986 MAAC is $100 and 115% of the 1987 prevailing charge amount is $124, the 1987 MAAC for that physician for that service is $106 [$100+0.25 ($124—$100)].

In future years a similar calculation is made. In 1988, the MAAC equals the 1987 MAAC plus one-third fo the difference between 115% of the nonparticipating physicians' 1988 prevailing charge amount and the 1987 MAAC. In 1989, the MAAC equals the 1988 MAAC plus one-half of the difference between 115% of the 1989 prevailing charge amount and the 1988 MAAC. In 1990 the MAAC equals 115% of the 1990 prevailing charge. The limitation on maximum allowable actual charges expires on December 31, 1990 or one year after submission by the Secretary to the Congress of the required report on relative value scales, whichever occurs earlier.

Because of the July 1, 1984 through December 31, 1986 freeze on actual charges of nonparticipating physicians, a nonparticipating physician's 1986 MAAC equals the physician's April 1 through June 30, 1984 base period charges. The 1986 MAAC for a nonparticipating physician who does not have an actual charge for a service during the April to June 1984 base period is set at the 50th percentile of customary charges for the service as provided by nonparticipating physicians in the locality during the 12 month period ending on June 30, 1986. A similar rule applies in future years.

The conference agreement does not require a physician to have a single actual charge for a service. Instead, a physician may have a range of actual charges above the MAAC provided that there are offsetting charges below the MAAC. However, if the weighted average of the physician's actual charges for a procedure during a period of time exceeds the MAAC, the physician may be subject to civil monetary penalties.

The conference agreement requires that the carriers provide each nonparticipating physician with a list of MAACs for the procedures most commonly provided by the physician at the beginning of each year. It is expected that the list should be sent to each nonparticipating physician no later than March 1 for 1987 and no later than February 1 for subsequent years. While the conferees believe that it is important to provide this information, failure to receive MAACs at the beginning of a year should not be a defense in any action against a physician for failure to abide by the limits.

(d) Medicare economic index.—The conference agreement includes the House provision with amendments. The MEI update for 1987 is set by statute at 3.2%. The Secretary would be required to determine the percentage increase in the MEI on an annualized basis comparing appropriate year-to-year economic changes. For 1988, the MEI update should reflect economic changes comparing the period July 1, 1986 through June 30, 1987 with the period July 1, 1985 through June 30, 1986. (This comparison reflects the same comparisons that would be made under the current MEI methodology.)

The Secretary would be prohibited from revising the cumulative MEI on a retrospective basis. This is accomplished (i) by requiring the Secretary to recognize that the maximum allowable prevailing charges for participating physicians in effect on December 31, 1986 were justified by economic changes and (ii) by requiring use of the annualized MEI comparing appropriate year-to-year economic changes.

The Secretary would be required to conduct a study of the MEI to ensure that the index reflects economic changes in an appropriate and equitable manner for physicians providing service to medicare beneficiaries. The Secretary would be required to consult appropriate experts in conducting the study.

The Secretary would be precluded from changing the methodology used to determine the MEI until completion of the study and publication of a final notice changing the methodology. The new methodology must not reflect retrospective historical adjustments in the cumulative index. The Secretary would be required to publish a proposed notice and allow not less than 60 days for public comment. Until publication of the final notice, the Secretary would be required to use the general methodology that was used to calculate the MEI that was published in the Federal Register on September 30, 1985.

(e) Reasonable charge limitations.—(See item 22.)

(f) Recruiting.—The conference agreement includes the House provision.

(g) Directories of participating physician.—The conference agreement includes the House provision with an amendment. Annually, a letter reminding beneficiaries of the participating physician program and offering a copy of the participating physician directory would be sent to each beneficiary in the beneficiary's Social Security check. The letter would indicate that a free copy of the directory would be sent upon request and the beneficiary would be directed to

contact his local Medicare carrier or social security office.

(h) Prohibiting unassigned billing of services determined to be medically unnecessary by a carrier of PRO.—The conference agreement includes the House provision with an amendment specifying that the requirement only applies to covered services with are determined to have been medically unnecessary in the particular case.

(i) Maintenance and use of participating directories by hospitals.—The conference agreement includes the House provision.

(j) Submission and disclosure of information on unassigned claims.—The conference agreement includes the House provision with an amendment which indicates that the information is not to be used as the basis for or evidence in a civil suit.

(k) HCFA common procedure coding system.—The conference agreement includes the Senate amendment with amendments. The Secretary would be required to consult with appropriate experts including physicians and health economists to provide assistance in determining which procedure codes should be consolidated (and in what manner) for payment purposes. The Secretary would be required to publish a proposed notice in the Federal Register and allow 60 days for public comment.

(l) Recommendations for relative value scale.—The conference agreement includes the Senate amendment.

22. INHERENT REASONABLENESS; PAYMENTS FOR CATARACT SURGERY (SECTION 10232(E), SECTION 4526 AND SECTION 4527 OF HOUSE BILL; SECTION 621(A) OF SENATE AMENDMENT)

Present law

(a) Reasonable charge limits inherent reasonableness.—COBRA required the Secretary to promulgate regulations which specify explicitly the criteria of "inherent reasonableness" which are to be used for determining Medicare payments. On August 11, 1986, the Administration by regulation published "inherent reasonableness" guidelines.

There is no authority under current law for the Secretary to limit the actual charges billed by a physician or supplier to protect the beneficiary against increased expenses when Medicare payments are reduced.

(b) Payments for cataract surgery.—Payments for cataract surgery are made on the basis of reasonable charges. Payments for anesthesia services are based on a method that combines base units (with values assigned to each procedure) and time units.

If the Secretary were to reduce Medicare payments for these services, under "inherent reasonableness," he would not have authority to limit the actual charge billed to the patient.

House bill

(a) Reasonable charge limits/inherent reasonableness.—

Section 10232.—

(i) Specifies that for nonphysicians' services, the inherent reasonableness limitation may be used only by carriers and only in calculating prevailing charges for an item or service by eliminating charges for specific items or services in specific instances in which the charges, in comparison with the charges for similar items and services, are grossly excessive or deficient.

(ii) Prohibits the Secretary, through regulations, guidelines, instructions or otherwise, from requiring carriers to reduce payment amounts for specific items or services for which the Secretary had made a specific determination that the payment amounts or charges are excessive.

(iii) Requires the Secretary, after consultation with the Physician Payment Review Commission, to submit to Congress by April 1, 1987, recommendations concerning payment-reductions for overpriced items and services. The recommendations are to include the specific payment reductions recommended and measures to assure that reductions in payment do not result in corresponding increases in out-of-pocket costs to Medicare beneficiaries.

Section 4526.—

(i) Requires the Secretary before exercising the authority to adjust reasonable charges, to make specific findings. Specifies that the Secretary may compare: charges and resource costs for related procedures; charges and resource costs for the procedure over a period of time; charges for procedures in different geographic areas; and charges and allowed payments by Medicare and other payers. An adjustment on the basis of a comparison of prevailing charges in different localities may only be made if the Secretary determines that the prevailing charge allowed in one locality is grossly out of line with prevailing charges allowed in other localities after accounting for differences in practice costs. Specifies that the Secretary, in determining whether to adjust payment rates, shall consider the following: potential impacts on quality, access and beneficiary liability of the adjustment; likely effects on assignment rates, reasonable charge reductions on unassigned claims, and participation rates of physicians; proportion of such procedures for which payment is available under Medicare; and the prevailing charge of other third-party payers for the procedure.

(ii) Specifies that the Secretary is required to consult with the Physician Payment Review Commission with respect to a proposed adjustment, and after such consultation, publish a notice of the proposed adjustment and allow for public comment. The final notice must explain the factors and data taken into consideration in making the adjustment and respond to any comments made by the Physician Payment Review Commission.

(iii) Provides that if the adjustment results in a reduction in the reasonable charge for a nonparticipating physician, the physician may not charge the beneficiary more than 125 percent of the adjusted prevailing charge. Any excess amounts must be refunded. The Secretary may impose sanctions in the case of violations.

(b) Payments for Cataract Surgery.—

Section 4527.—

(i) Places a limit on prevailing charges for cataract surgery with intraocular lens implantation equal to 110% of the prevailing charge recognized for such surgery without the lens implant. In determining the reasonable charge for cataract surgery anesthesia, the Secretary may not recognize more than 4 base units (as used for purposes of determining anesthesia payments on the date of enactment).

(ii) Specifies that non-participating physicians may not charge more than 125% of the adjusted prevailing charge for cataract surgery with lens implantation and cataract surgery anesthesia. If the physician charges more he/she shall refund any excess amounts. The Secretary may impose sanctions in the case of physicians who knowingly and willfully impose excess charges or fail to make refunds.

Effective date.—(a) Effective on enactment. (b) Applies to services furnished on or after January 1, 1987.

Senate amendment

(a) Reasonable charge limits/inherent reasonableness.—

Section 10232.—

(i) No provision.

(ii) Specifies that the inherent reasonableness authority must be applied through regulation for physicians and prohibits carriers from acting independently, without the issuance of regulations.

(iii) Requires the Secretary, by October 1, 1987 to review the inherent reasonableness of reasonable charges for each of the 10 most costly procedures paid for under part B, determined on the basis of aggregate annual payments. The Secretary may review additional procedures.

Section 4526.—

(i) Specifies the factors to consider in determining the inherent reasonableness of charges. The identified factors would include cases where: prevailing charges are significantly different from those in comparable localities; Medicare and Medicaid are the main sources of payment; the marketplace for the service is not truly competitive because of the limited number of physicians performing the service; there have been increases in charges not explained by inflation; charges do not reflect changing technology or reductions in acquisition or production costs, or the prevailing charges are substantially higher than payments made by other purchasers. Regional differences in fees are to be taken into account unless there is substantial economic justification for a uniform national fee or payment limit.

(ii) Similar provision. Specifies that the proposed notice must explain factors and data taken into consideration and evaluate the impact on the accessibility of and beneficiary liability for the service. Provides that the Commission shall comment on the proposed rule during the public comment period.

(iii) No provision.

(b) Payments for cataract surgery.—No provision.

Effective date.—Applies to final regulations promulgated after July 1, 1986; required review by Secretary effective on enactment.

Conference agreement

(a) Reasonable charge limits inherent reasonableness.—The conference agreement includes the Senate provision and the House provision in section 4526 with modifications as follows:

Under the inherent reasonableness authority, the Secretary would be authorized to establish a payment level for a physician service based on considerations other than the actual, customary, or prevailing charge for the service. A departure from the standard methodology would be appropriate under a number of circumstances, including the following: (i) the prevailing charge for a service in a particular locality is significantly in excess of, or below, the prevailing charge for the same service in other comparable localities taking into account the relative costs of furnishing the service; (ii) Medicare and Medicaid are the sole or primary sources of payment for the service; (iii) the marketplace for the service is not truly competitive; (iv) there have been increases in charges for a service that cannot be explained by inflation or technology; (v) the charges do not reflect changing technology, increased facility with that technology, or reductions in acquisition or production costs; (vi) the prevailing charge for a service under this part are substantially higher or

lower than the payments made for the service by other purchasers in the same locality.

The Secretary would be authorized to make an adjustment in payment is such adjustment is justified on the basis of an appropriate comparison of resource costs or charges. An adjustment may be based on one of the following types of comparison: (i) a comparison between charges and resource costs for related procedures; (ii) a comparison between charges and resource costs for the procedure over a period of time; (iii) a comparison between charges for a procedure in different geographic areas; and (iv) a comparison between charges and allowed payments for a procedure under this part and by other payers. The term "resource costs" includes factors such as the time required to provide a procedure (including pre-procedure evaluation and post-procedure follow-up), the complexity of the procedure, the training required to perform the procedure, and the risk involved in the procedure.

Adjustments based on comparisons of charges for a procedure in different geographic areas may be made only if the Secretary determines that the prevailing charge allowed in a locality is out of line with prevailing charges allowed in other localities after accounting for differences in practice costs. The Secretary would not be authorized to establish a uniform fee or payment limit under this provision unless the Secretary determines that there is substantial economic justification for a uniform fee or a uniform payment limit. Such justification would have to be explained in a proposed and final notice.

In determining whether to adjust payments rates, the Secretary would be required to consider the potential impacts on quality, access, and beneficiary liability of the adjustment, including the likely effects on assignment rates, reasonable charge reductions on unassigned claims, and participation rates of physicians.

The Secretary would be required to consult with representatives of physicans likely to be affected at an appropriate stage in the process. The Secretary would also be required to publish a proposed notice: (i) specifying the charge or methodology proposed to be established, (ii) explaining the factors and data on which the proposal is based and (iii) explaining the potential impacts on quality, access, and beneficiary liability. After publication of the proposed notice, the Secretary would be required to allow 60 days for public comment. The Physician Payment Review Commission would be required to comment on the proposal, and the Secretary would be required to take into account the comments made by the Commission and by the public in making a final determination. The final notice shall explain the factors and data that the Secretary took into consideration in making a final determination and must include and respond to the comments made by the Commission.

If an adjustment is made that results in a reduction in the payments allowed for a service, a special limit on actual charges for nonparticipating physicians would apply. The purpose of this special limit is to moderate beneficiary liability for charges in excess of the medicare approved charge. For the first year the reduction is in effect, the maximum allowable actual charge for the service equals 125% of the inherently reasonable charge level plus one-half of the difference between the physician's actual charge in the preceding period and 125% of the inherently reasonable charge level. In the second year, the special maximum allowable charge for the service equals 125% of the inherently reasonable charge level.

The Secretary is required to review payments under this section for 10 of the most costly procedures paid for under Part B. The secretary should have flexibility in choosing the procedures in terms of those for which modifications might be the most cost effective. If the Secretary determines that for one or more of such overpriced procedures that a payment adjustment cannot be made pursuant to this section, he shall report recommendations to Congress concerning appropriate statutory changes.

(b) Payments for cataract surgery.—The conference agreement includes the House provision with amendments. The maximum allowable prevailing charges for participating and nonparticipating physicians providing cataract surgery would be cut by 10% effective January 1, 1987. The maximum allowable prevailing charges would be cut by an additional 2% effective January 1, 1988. In no case could the reduced amount be lower than 75% of the weighted national average prevailing charge amounts. The Secretary would be required to issue in final form the proposed notice which was published on August 15, 1986 in the Federal Register which would require that carriers recognize no more than 4 base units for anesthesia services provided during cataract surgery.

By ratifying the regulations relating to payment limits for anesthesia services, the Congress does not intend that the Secretary be restricted in his authority to subsequently revise these regulations.

Nonparticipating physicians providing cataract surgery services and cataract surgery anesthesia would be required to reduce their actual charges for these services effective January 1, 1987 pursuant to the method described under paragraph (a).

23. END STAGE RENAL DISEASE PROGRAM AMENDMENTS (SECTIONS 10233, 4506, AND 4507 OF HOUSE BILL, SECTION 623 OF SENATE AMENDMENT)

Present law

The End-Stage Renal Disease Program (ESRD) provides coverage for the cost of routine maintenance dialysis for persons with chronic kidney (renal) failure.

(a) Composite rate for dialysis treatment.—The Secretary shall provide by regulation for a method of reimbursing facilities for routine maintenance dialysis care. Such method provides for the prospective determination of rates based on a single composite weighted formula which takes into account the mix of patients receiving dialysis services at home or in a facility and which reflects the relative costs of providing dialysis services in such settings. The Secretary may provide for exceptions to the prospective payment rates as may be warranted, such as for sole facilities located in isolated rural areas.

In regulations published on May 13, 1983 (effective August 1, 1983), the Secretary established a prospective reimbursement rate for dialysis facilities. The reimbursement rates are calculated on per-treatment base rates (adjusted for wage differences) of $122.91 for independent facilities and $126.76 for hospital-based facilities. On May 13, 1986, the Secretary published a proposed rule that would reduce the base rates to $113.47 for independent facilities and $117.89 for hospital-based facilities.

(b) Payment for physician's services.—Physicians are reimbursed for services related to routine maintenance dialysis care on the basis of a monthly capitation fee that encourages the use of home dialysis.

The regulations establishing the payment rates for physicians were based, in part, on the assertion that the physician could oversee the dialysis care of ten home patients in the same amount of time as seven facility patients, resulting in a facility to home physician treatment capability ratio of 1 to 1.4 in the determination of the composite rate. On March 19, 1986, the Secretary published a proposed rule, based on GAO study, that would change the facility to home physician treatment capability ratio to 1 to 3.9. On July 2, 1986, this change was published as a final rule, effective August 1, 1986. This change will result in an estimated reduction of physicians' average monthly capitation payments for dialysis care from $187.88 to $173.07.

(c) Study of dialysis payment rates.—No provision.

(d) Coverage of immunosuppressive drugs.—Medicare provides coverage for kidney and heart transplants, including organ procurement costs, hospitalization, surgical fees, and immunosuppressive drugs provided in the hospital or administered by a physician.

(e) Reorganization of ESRD network areas.—The Secretary shall establish renal disease network areas and such network organizations (including a coordinating council and medical review boards) for the purpose of assuring the effective and efficient administration of the ESRD program. The Secretary has established 32 network areas. Under COBRA, the Secretary may consolidate the number of network areas to not less than 14. The Secretary is proposing through regulations to reduce the number of network areas to 14 and to modify the current functions of the networks.

(f) Patient representation on councils and medical review boards.—At least one patient representative shall serve as a member of each network coordinating council and executive committee.

(g) Responsibilities of network organizations.—The network organizations are responsible for: encouraging use of appropriate treatment settings, developing criteria, standards and network goals with respect to quality and appropriateness of treatment, evaluating procedures by which facilities assess appropriateness of treatment, identifying facilities not cooperating in achieving network goals, and submitting to the Secretary by July 1 of each year an annual report.

(h) Facility cooperation with networks.—The Secretary may terminate or withhold certification of facilities that consistently fail to cooperate with network plans and goals.

(i) Maximum use of vocational rehabilitation services.—It is the intent of Congress that the maximum practical number of patients who are medically, socially, and psychologically suitable for home dialysis or transplantation should be so treated.

(j) National end stage renal disease registry.—The Secretary shall submit to Congress an annual report on the ESRD program.

(k) Funding of ESRD network organizations.—No provision.

(l) Reuse of dialysis filters and other dialysis supplies.—No provision.

House bill

(a) Composite rate for dialysis treatment.—

Section 10233.—Permits the Secretary to adjust the composite rates to dialysis facilities, but only if the base rate for dialysis in an independent facility is not less than $117.50 per treatment and only if the base rate for hospital-based facilities is not less than $121.50 per treatment. An application for a payment exception for sole facilities located in isolated rural areas shall be deemed approved unless the Secretary disapproves it by not later than 45 working days after the request for the exception is filed.

Section 4506.—Similar provision except that it adds pediatric dialysis facilities as a basis for payment exception requests, and applies 45 day deadline to all exception requests.

(b) Payment for physicians' services.—

Section 10233.—Requires the Secretary to implement the changes in physicians' monthly capitation payments for dialysis payments as published in the Federal Register on July 2, 1986.

Section 4506.—Provides that the Secretary shall establish a home to facility physician treatment capability ratio such that the average monthly capitation payment to physicians (based on a weighted average by State ESRD population) would be reduced to $180.00. Such adjustment is to be made such that it would apply to services rendered on or after August 1, 1986.

(c) Study of dialysis payment rates.—

Sections 10233 and 4506.—The Secretary shall provide for a study to evaluate the effectiveness of reductions in payment rates for facility and physician dialysis services and report to Congress not later than January 1, 1988. The Secretary is required to request the National Academy of Sciences to submit an application to conduct the study. If the Academy does not submit an acceptable proposal, the Secretary may request other appropriate entities to submit applications to conduct the study.

(d) Coverage of immunosuppressive drugs.—

Section 10233.—No provision.

Section 4506.—Provides that immunosuppressive drugs furnished to a transplant patient within 1 year of the transplant would be a covered service under part B of Medicare.

(e) Reorganization of ESRD network areas.—

Sections 10233 and 4507.—Requires the Secretary to establish not less than 17 ESRD network areas, and to designate a network administrative organization that includes a network council of dialysis and transplant facilities in the area, and a medical review board. The Secretary shall develop standards, criteria and procedures for evaluating whether to enter into, continue or terminate an agreement with the network administrative organization. The Secretary may terminate such agreements only after applying such standards and finding that the organization has failed to perform its prescribed responsibilities. In the case of a termination, the Secretary may select a successor organization on the basis of competitive bidding. The Secretary shall designate the network areas not later than January 1, 1987. In first designating the network administrative organizations for the areas so established, the Secretary shall designate the current network organizations (or voluntary combinations of such organizations) unless such organizations do not meet the standards established.

(f) Patient representation of councils and medical review boards.—

Sections 10233 and 4507.—Requires at least one patient representative on each network council and each medical review board.

(g) Responsibilities of network organizations.—

Sections 10233 and 4507.—Amends the responsibilities of the network organizations to include in addition to current law functions: encouraging participation of patients, providers, and facilities in vocational rehabilitation programs, setting standards and criteria for such participation, reporting to the Secretary on facilities and providers not providing appropriate care, implementing a patient grievance process, conducting onsite review of facilities and providers, collecting and analyzing data to report to the Secretary, and providing data to assure maintenance of the National ESRD Registry.

(h) Facility cooperation with networks.—

Sections 10233 and 4057.—Adds failure to follow the recommendations of the medical review board as a basis for the Secretary to terminate or withhold certification.

(i) Maximum use of vocational rehabilitation services.—

Sections 10233 and 4507.—Amends current provision to include that the maximum number of patients who are suitable for vocational rehabilitation services be given access to such services and encouraged to return to gainful employment.

(j) National end stage renal disease registry.—

Section 10233.—Requires the Secretary to establish a national end stage renal disease registry using data from networks, transplant centers and other sources that will permit: preparation of the Annual Report to Congress, analysis of the economic impact and medical efficacy of alternative treatment modalities, evaluation of the allocation of resources for treatment and research and measurement of patient mortality and morbidity rates and other indices of quality of care over time. The Secretary shall provide for the appointment of a professional advisory group and will report to Congress on the progress made in establishing such registry not later than January 1, 1987, and establish the registry by January 1, 1988.

Section 4507.—Similar provision.

(k) Funding of ESRD network organizations.—

Section 10233.—Requires the Secretary to reduce the composite rates paid to facilities by $0.50 per treatment (adjusted for modalities of treatment other than hemodialysis) and to provide for payment of such amounts to the network organization for the area in which the treatment is rendered to provide for the administrative costs of the networks.

Section 4507.—Similar provision.

(l) Reuse of dialysis filters and other dialysis supplies.—

Sections 10233 and 4507.—Requires the Secretary to establish protocols on standards and conditions for the reuse of dialysis filters for those facilities and providers who voluntarily elect to reuse such filters. The Secretary shall study the appropriateness of establishing protocols for reuse of other dialysis supplies and, where appropriate, the Secretary may establish such protocols. The protocols established are to be incorporated into the requirements of participation for facilities. Failure to follow such protocols may result in denial of participation or denial of payment for services not in compliance with such protocols.

The Secretary shall establish the protocol on filter reuse not later than January 1, 1988 and shall report to Congress on the need for other such protocols by January 1, 1988.

Effective date.—Enactment except for the following:

(a) Payment provision applies to services rendered on or after October 1, 1986. Exception provision applies to exception applications filed on or after October 1, 1986.

(b) August 1, 1986, for section 4516.

(d) Applies to immunosuppressive drugs provided on or after October 1, 1986.

(e)(f), (g) and (h) No later than January 1, 1987.

(k) Applies to treatment furnished on or after January 1, 1987.

Senate amendment

(a) Composite rate for dialysis treatment.—Prohibits the Secretary from reducing the current prospective payment dialysis rates prior to October 1, 1986. The Secretary is required to reduce the prospective payment dialysis rates by $1 for services rendered on or after October 1, 1986 and before October 1, 1988, and is prohibited from further reducing the rates during this period.

(b) Payment for physicians' services.—Same provision as Section 10233 of the House bill.

(c) Study of dialysis payment rates.—The Comptroller General shall conduct a study of facility payment rates for dialysis services and report to Congress not later than September 30, 1987.

(d) Coverage of immunosuppressive drugs.—No provision.

(e) Reorganization of ESRD network areas.—No provision.

(f) Patient representation on councils and medical review board.—No provision.

(g) Responsibilities of network organizations.—No provision.

(h) Facility cooperation with network organizations.—No provision.

(i) Maximum use of vocational rehabilitation services.—No provision.

(j) National end stage renal disease registry.—No provision.

(k) Funding of ESRD network organizations.—No provision.

(l) Reuse of dialysis filters and other dialysis supplies.—No provision.

Effective date.—Enactment.

Conference agreement

(a) Composite rate for dialysis treatment.—The conference agreement includes the Senate amendment with a modification requiring the Secretary to reduce the base rate for calculating the prospective payment by $2 for services furnished on or after October 1, 1986. The Secretary must maintain that rate for two years and would be authorized to change the rate thereafter. The conference agreement includes section 4506 of the House bill's exceptions provision, with an amendment providing sixty, rather than forty-five, working days for the approval or disapproval requirement of exceptions requests.

(b) Payment for physicians' services.—The conference agreement does not include the House provision or Senate amendment. The Administration's changes in physicians' monthly capitation payments for dialysis payments as published in the Federal Register on July 2, 1986, remains effective as published.

(c) Study of dialysis payment rates.—The conference agreement includes the House provision.

(d) Coverage of immunosuppressive drugs.—The conference agreement includes the House provision.

(e) Reorganization of ESRD network areas.—The conference agreement includes the House provision with an amendment deleting the preference for existing networks in awarding competitive contracts. To allow for an orderly transition, the existing network organizations will remain in operation until thirty days after the new network organizations begin operation.

(f) Patient representation on councils and medical review boards.—The conference agreement includes the House provision.

(g) Responsibilities of network organizations.—The conference agreement includes the House provision.

(h) Facility cooperation with networks.—The conference agreement includes the House provision.

(i) Maximum use of vocational rehabilitation services.—The conference agreement includes the House provision.

(j) National end stage renal disease registry.—The conference agreement includes the House provision.

(k) Funding of ESRD network organizations.—The conference agreement includes the House provision, with amendments. The preference for existing networks is deleted. It is also clarified that the competitive bidding for the establishment of new networks includes price competition. In determining which applicant will be awarded the network contract, the Secretary may not weight the price of the bid by more than 20% and must weight the quality and scope factors by at least 80%. The conferees intend that the new funding mechanism is to cover the necessary costs of the existing networks until 30 days after the new networks begin operating.

(l) Reuse of dialysis filters and other dialysis supplies.—The conference agreement includes the House provision with an amendment. The Secretary shall impose standards and conditions for safe and effective dialyzer reuse and reprocessing, enforceable as a condition of medicare participation effective October 1, 1987. Beginning January 1, 1988, no reuse of blood lines, transducers, caps and other accessories shall be allowed in Medicare certified ESRD facilities until and unless standards and conditions for safe reuse and reprocessing of these devices and equipment are imposed as a condition of participation.

Effective dates.—The conference agreement includes the House provision, except the designation of the network areas is to be completed by May 1, 1987 and the new networks are to be established by July 1, 1987.

24. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PART B (SECTIONS 10234 AND 4531 OF HOUSE BILL)

Present law

(a) Additional members for Physician Payment Review Commission.—The Physician Payment Review Commission established by COBRA consists of 11 commissioners. The Commission was established to provide recommendations concerning physician reimbursement under part B. Commission members are appointed by the Director of the Office of Technology Assessment.

(b) Effective date on voluntary disenrollment from Medicare.—A beneficiary's coverage period under part B can be terminated by filing a notice that he or she no longer wishes to participate or by nonpayment of premiums. When a beneficiary files a notice to disenroll from part B, the effective date of the termination is the close of the calendar quarter following the calendar quarter in which the notice is filed; a termination for nonpayment of premiums takes effect with the end of a grace period (not more than 90 days).

(c) Study on prospective payment of radiology, anesthesia, and pathology services to hospital inpatients.—The Health Care Financing Administration conducts a variety of studies on reimbursement, coverage, eligibility, and management alternatives under Medicare.

House bill

(a) Additional members for Physician Payment Review Commission.—

Section 10234.—Expands the membership of the Physician Payments Review Commission by 2 members to 13. The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Commission no later than 60 days after the date of the enactment of this Act, for terms of 3 years, except that the Director may provide initially for such terms as will ensure that (on a continuing basis) the terms of no more than five members expire in any 1 year.

Section 5431.—Similar provision.

(b) Effective date on voluntary disenrollment from Medicare.—

Section 10234.—Modifies the effective date of disenrollment from Medicare when a beneficiary files a notice to disenroll to the close of the calendar quarter in which the notice is filed.

Section 4531.—No provision.

(c) Study on prospective payment of radiology, anesthesia, and pathology services to hospital inpatients.—

Section 10234.—Requires the Secretary to study and report to the House Ways and Means Committee by April 1, 1987, concerning the implementation of a part B prospective payment system for radiology, anesthesia, and pathology services furnished to hospital inpatients. The report is required to include data, from a representative sample, showing, for discharges classified within each diagnosis-related group, the distribution of total reasonable charges and costs for each inpatient discharge for such services.

Section 4531.—No provision.

Effective date.—(a) enactment; (b) applies to notices filed on or after October 1, 1986; (c) enactment.

Senate amendment

No provision.

Conference agreement

(a) Additional members for Physician Payment Review Commission.—The conference agreement includes the House provision. The conferees intend that at least one of the members would represent a rural area.

(b) Effective date on voluntary disenrollment from Medicare.—The conference agreement includes the House provision of Section 10234 with an amendment specifying that the effective date is the first day of the second month following the month in which the beneficiary files the required notice.

(c) Study on prospective payment of radiology, anesthesia and pathology services to hospital inpatients.—The conference agreement includes the House provision of Section 10234 with an amendment to delay the reporting date of the study to July 1, 1987.

25. VISION CARE (SECTION 4521 OF HOUSE BILL)

Present law

Medicare pays for eye examinations furnished by a physician to a patient with a complaint or symptom of eye disease or injury. Medicare excludes payment for eyeglasses and eye examinations for the purposes of prescribing, fitting, or changing eyeglasses (except for prosthetic lenses for aphakic patients; that is, those without the natural lens of the eye.) Payment is also excluded for procedures performed to determine the refractive state of the eye. An optometrist who is legally authorized by the State to practice optometry is defined as a physician, but only with respect to services related to the treatment of aphakic patients.

House bill

Allows payment under Medicare for vision care services performed by optometrists, if the services are among those already covered by Medicare when furnished by a physician and if the optometrist is authorized by State law to provide the services.

Effective date.—Services furnished on or after April 1, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House provision.

26. OCCUPATIONAL THERAPY SERVICE (SECTION 4522 OF HOUSE BILL; SECTION 625 OF SENATE AMENDMENT)

Present law

Medically necessary occupational therapy services are covered under part A when provided as part of covered inpatient hospital services, skilled nursing facility services, home health services or hospice care. Part B coverage is limited to treatment in a hospital outpatient department, comprehensive outpatient rehabilitation facility, home health agency, or when provided incident to physicians' services.

House bill

(a) Services furnished in skilled nursing facilities and other providers.—Extends part B coverage of occupational therapy services to services provided in skilled nursing facilities (when part A coverage has been exhausted), in a clinic, rehabilitation agency, or public health agency or by others under arrangements with such entities. Reimbursement is on the basis of reasonable costs subject to the provision that the reasonable costs of services furnished under arrangements cannot exceed the amount that would be paid on a salary related basis.

(b) Services furnished in beneficiary's home and private offices.—Extends part B coverage to occupational therapy services furnished by an independently practicing therapist in a therapist's office or a beneficiary's home. The independently practicing therapist would be required to meet licensing and other standards prescribed by the Secretary. Reimbursement is on the basis of 80 percent of reasonable charges, with no more than $500 in incurred expenses eligible for coverage in a calendar year. A physician must certify the need for such services and a treatment plan must be established by a physician or by the qualified occupational therapist.

Effective date.—Applies to expenses incurred for outpatient occupational therapy services furnished on or after April 1, 1987.

Senate amendment

(a) Services furnished in skilled nursing facilities and other providers.—Identical provision.

(b) Services furnished in beneficiary's home and private offices.—Identical provision.

Effective date.—Applies to expenses incurred for outpatient occupational therapy services furnished on or after October 1, 1986.

Conference agreement

(a) Services furnished in skilled nursing facilities and other providers.—The conference agreement includes the Senate amendment with an amendment changing the effective date to July 1, 1987.

(b) Services furnished in beneficiary's home and private office.—The conference agreement includes the Senate amendment with an amendment changing the effective date to July 1, 1987.

27. COVERAGE OF SERVICES OF A PHYSICIAN ASSISTANT (SECTION 4523 OF HOUSE BILL)

Present law

Payments are made to a physician for services and supplies furnished incident to a physician's professional services. The services of nonphysicians are covered as incident to physicians' services and such services must be rendered under the physician's direct supervision.

House bill

(a) Covered services.—Authorizes coverage of the services of physicians' assistants furnished under the supervision of a physician in a hospital, skilled nursing facility, or as an assistant-at-surgery. The physician assistant must be legally authorized to perform such services in the State in which the services are performed. Services and supplies furnished incident to these services are covered if they would be covered when furnished incident to physicians' services.

(b) Payment for services.—The prevailing charge for a service furnished by a physician's assistant may not exceed 90% of the prevailing charge for the same service when furnished by a physician. Payment may only be made to the employer of the physician assistant when services are provided on the basis of assignment.

Effective date.—Services furnished on or after January 1, 1987.

Senate amendment

No provision.

Conference agreement

(a) Covered services.—The conference agreement includes the House provision with an amendment to add to the definition of covered physician assistant services those services provided by a physician assistant in an intermediate care facility.

(b) Payment for services.—The conference agreement includes the House provision with a modification. Physician assistant services are subject to a prevailing charge screen equal to 85% of the prevailing charge for comparable physicians services performed by nonspecialists when such services are performed in skilled nursing facilities or intermediate care facilities. The prevailing charge screen is to be equal to 75% of the nonspecialist physicians prevailing charge level when such services are performed in a hospital and 65% of the reasonable charge for a physician when acting as an assistant at surgery. The conference agreement requires physician assistants to accept assignment for all claims and imposes civil monetary penalties for violations.

The agreement requires the Secretary to submit a report to Congress by April 1, 1988 concerning appropriate adjustments to payments for physician assistant services to ensure that payments for such services approximate the cost of furnishing such services, including compensation costs and overhead costs, and costs of physician supervision attributable to employment of physicians' assistants. The Secretary, in making recommendations to the Congress, shall consider both the advisability of adjusting current rates or developing a fee-schedule.

The Secretary is authorized to reduce Medicare payment rates to the extent necessary to avoid double payments for such services. The Secretary is expected to require carriers to conduct utilization review of claims to avoid duplication of payment for physicians and physician assistant services.

28. PAYMENT FOR CLINICAL DIAGNOSTIC LABORATORY TESTS (SECTION 4528 OF HOUSE BILL)

Present law

Payment for clinical laboratory services are made on the basis of two fee schedules. One fee schedule is established for laboratory tests performed either in a physician's office or by an independent laboratory (including a hospital laboratory furnishing services to persons who are not patients of the hospital). A second schedule is established for hospital laboratory services provided to a hospital's outpatients.

For the period beginning July 1, 1984, the rates under both schedules were established on a regional, statewide, or carrier service area basis. The first fee schedule was set at 60 percent of the prevailing charge levels established for the fee screen year beginning July 1, 1984. The second fee schedule was set at 62 percent of the prevailing charge levels established for the fee screen year beginning July 1, 1984. The fee schedules are adjusted annually to reflect changes in the consumer price index for all urban consumers. Beginning July 1, 1986, the Secretary is required to establish payment ceilings for each test to be applied nationwide. Beginning July 1, 1988, the fee schedule for tests performed either in a physician's office or by an independent laboratory is to be established on a national basis. At the same time, payment for hospital laboratory services is slated to revert to cost-based reimbursement.

House bill

(a) Treatment of hospital outpatient laboratories.—Conforms fee schedule for hospital outpatient laboratories to that for independent laboratories by eliminating the 2 percent differential and by eliminating the January 1, 1988, sunset provision on the fee schedule for such laboratory services.

(b) National fee schedule.—Eliminates requirement for the national fee schedule. The Secretary is required to report to the Congress by April 1, 1988, on the advisability and feasibility of establishing a national fee schedule.

(c) Payment for travel costs.—Authorizes the Secretary to provide for and establish a fee to cover transportation and personnel expenses for trained personnel to travel to the location to collect the sample. Such fee may only by provided with respect to a beneficiary who is homebound or an inpatient in a facility other than a hospital.

(d) State standards for directors of clinical laboratories.—Specifies that clinical laboratories that meet State licensure laws regarding medical direction are qualified to receive payments under Medicare.

Effective date.—(a) applies to tests performed on or after January 1, 1987. (b) effective on enactment. (c) applies to samples collected on or after January 1, 1987. (d) effective January 1, 1987.

Senate amendment

No provision.

Conference agreement

(a) Treatment of hospital outpatient laboratories.—The conference agreement includes the House provision with an amendment. The 2 percent differential for hospital outpatient laboratories would be maintained for such laboratories if they are in a hospital which operates a 24 hour per day emergency room, and the laboratory is available to provide laboratory services for the emergency room 24 hours a day, seven days a week.

(b) National fee schedule.—The conference agreement includes the House provision with an amendment. Implementation of the national fee schedule would be postponed for two years, until January 1, 1990.

(c) Payment for travel costs.—The conference agreement includes the House provision.

(d) State standards for directors of clinical laboratories.—The conference agreement includes the House provision.

In addition, the conference agreement would extend the moratorium on the competitive bidding demonstration project until January 1, 1988. The conferees expect the Secretary to continue to work with the industry and the Comptroller General to determine whether there is an alternative method of utilizing competitive market forces in establishing payment levels under Medicare.

29. PAYMENT OF PARENTERAL AND ENTERAL NUTRITION SUPPLIES (SECTION 4529 OF HOUSE BILL)

Present law

Reasonable charges for medical services, supplies and equipment that, in the judgment of the Secretary, do not vary substantially in quality from one supplier to another may not exceed the lowest charge levels at which such services, supplies and equipment are widely and consistently available, except to the extent and under circumstances specified by the Secretary. Regulations implementing this provision established such lowest charge levels at the 25th percentile of the charges submitted for the item or service in question.

Parenteral and enteral nutrition supplies and equipment are currently paid on the basis of reasonable charges.

House bill

Requires the Secretary to apply the lowest charge level provision to parenteral and enteral nutrition supplies.

Effective date.—Applies to supplies on or after January 1, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House provision with a modification. In establishing the "lowest charge level" for parenteral and enteral supplies, the Secretary would be required to base payments at the 25th percentile as currently set forth in regulations (42 CFR 405.511(c)). The conferees expect that all available charge data submitted by suppliers of such services would be used in calculating the lowest charge levels. The Secretary and carriers would therefore be prohibited from using "inherent reasonableness" in establishing the lowest charge level.

In addition, the conferees are concerned that some items (e.g. supply and administration kits) are billed on a partial month basis which may distort the charge data. The conferees expect the Secretary to ensure that

the data used in establishing the lowest charge level for these items are accurate.

In comparing charges submitted for various items, the conferees expect the Secretary to compare like products which are of comparable quality and nutritional content rather than looking solely at the volume of nutrients or calorie content. In addition, the conferees expect that the Secretary would not group together products of dissimilar quality or function.

The conferees are concerned that current categories for reimbursing premixed parenteral solutions may be inappropriate. The conferees therefore expect the Secretary to establish new categories for premixed parenteral solutions based on the amount of proteins prescribed per day. The Secretary would be expected to calculate payment levels at the 25th percentile based on the charge data available for the new categories. To provide sufficient time to collect the data, the effective date for parenteral products would be October 1, 1987.

Between January 1, 1987 and October 1, 1987, the Secretary is to apply existing charge screens to these parenteral nutrients. However, rather than applying many different screens to the various states, the Secretary should apply uniform screens throughout the nation, or uniform screens throughout each of the two carrier areas.

It is the conferees' understanding that certain parenteral nutritional patients require special parenteral solutions such as renal failure solutions, hepatic failure solutions, or acute metabolic stress formulas. The Secretary would be expected to provide for separate categorization or appropriate exceptions to accommodate these patients and for other special circumstances.

The provision would be effective for parenteral nutrients October 1, 1987, and for all other services and supplies on January 1, 1987.

30. PAYMENT FOR OXYGEN THERAPY SERVICES (SECTION 4530 OF HOUSE BILL)

Present law

Oxygen therapy services provided in the home are reimbursed on a reasonable charge basis under part B of Medicare.

Payments for equipment are determined separately from payments for consumable oxygen. Total payments for consumable oxygen are determined by the amount of oxygen actually supplied.

House bill

Requires the Secretary to establish monthly capitation fee schedules on a regional, statewide, or carrier service area basis for oxygen therapy services under part B. Payment shall be made on the basis of the number of units of oxygen prescribed by physicians, subject to verification by laboratory data or other means deemed appropriate by the Secretary.

No payment may be made for services prescribed by a physician if the physician has significant ownership or financial interest in the entity supplying the oxygen therapy services, except with respect to sole suppliers as determined by the Secretary.

The Secretary will provide for prompt payment of claims for oxygen therapy services (clean claims to be paid within 22 calendar days), or the carrier will pay interest on the amount payable. The carriers are to be reimbursed for their interest expense from amounts made available for Federal administrative expenses under part B.

The Secretary shall establish the monthly capitation fee schedules based on 100 percent of the reasonable charge level for oxygen therapy services (excluding purchase or rental of equipment) for such services furnished in the region, State, or area for the 12 month period ending June 30, 1986. The fee schedules are to be adjusted annually, effective January 1 (beginning in 1987), by the percentage change in the Consumer Price Index for All Urban Consumers, subject to adjustments for technological changes and other factors as determined by the Secretary.

The Secretary shall provide for a percentage increase in the fee schedule amounts for oxygen therapy services provided through a portable device. The Secretary shall also provide for a minimum monthly amount to assure the availability of such therapy for individuals consuming small amounts of oxygen.

Program payment amounts are to be 80 percent of the amount determined under the monthly prospective fee schedule. In general, payment would only be made on the basis of assignment.

Effective date.—Applies to oxygen therapy services furnished on or after January 1, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

31. CHANGING MEDICARE APPEAL RIGHTS (SECTION 4532 OF HOUSE BILL)

Present law

Beneficiaries dissatisfied with a carrier's disposition of a part B claim are entitled to a review by the carrier. A fair hearing by the carrier is then available if the amount in controversy is $100 or more. The law does not provide for any further administrative appeal or judicial review for a part B claim.

House bill

Provides that beneficiaries may obtain an administrative law judge hearing if the amount in controversy is $500 or more and judicial review if the amount in controversy is $1,000 or more. In determining the amount in controversy, the Secretary under regulations must allow two or more claims to be aggregated if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals. Carrier hearings are retained for amounts in controversy between $100 and $500.

Specifies that national coverage determinations made pursuant to section 1862(a)(1) of the Act are not subject to review by an administrative law judge but are subject to judicial review.

Effective date.— Applies to items and services furnished on or after January 1, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House provision with amendments regarding the scope of judicial review and the form of relief that a court may order.

Coverage determinations of national applicability could not be overturned solely on the grounds that they were not issued in accordance with the notice and comment procedures in the Administrative Procedure Act, as amended. The process used by the Secretary in making such determinations, including the role of the National Center for Health Services Research and Health Care Technology Assessment, is designed to assure consultation with the scientific and medical community and the general public. If that process is adhered to, the further procedure of publishing proposed and final regulations in the Federal Register does not seem essential.

The court could, however, review coverage determinations to determine whether the Secretary arrived at the result in a arbitrary manner or without an adequate basis. If the court invalidated a coverage determination on this basis, it would not substitute a revised coverage determination but, instead, would provide the Secretary a reasonable opportunity to supplement the record and substantiate or revise the coverage determination. If the court, on review of the supplemented record, concluded that the Secretary had still failed to substantiate the determination, the court could then enter an appropriate order.

The amendment also limits the judiciary in reviewing payment methodologies established by the Secretary. Methodologies established by regulation or policy instruction could not be declared invalid if the regulation was promulgated or the instruction issued prior to January 1, 1981. Policies would otherwise be reviewable.

32. ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS (SECTION 4533 OF HOUSE BILL)

Present law

Medicare beneficiaries with Alzheimer's disease or related disorders are covered for acute medical care services they might need. However, many of the home and community-based services which these persons require in order to remain in their homes are not covered by Medicare.

House bill

Requires the Secretary of HHS to conduct at least 5 demonstration projects to determine the effectiveness, cost, and impact of providing comprehensive services to Medicare beneficiaries who are victims of Alzheimer's disease or related disorders. Services provided under the demonstration projects must be designed to meet the specific needs of Alzhemier's disease patients and may include case management, home and community-based services, mental health services, outpatient drug therapy, respite care and other supportive services and counseling for family, adult day care services and other inhome services. Each demonstration project would be conducted over a period of 3 years and at sites chosen so as to be geographically diverse and located in States with a high proportion of Medicare beneficiaries and in areas readily accessible to a significant number of Medicare beneficiaries.

Requires that projects provide each Medicare beneficiary with a comprehensive medical and mental status evaluation upon entering the project and at discharge. Also requires that projects be conducted by entities which either directly or by contract are able to provide these evaluations and additional services covered. Projects also would be required to involve community outreach efforts at each site to enroll the maximum number of Medicare beneficiaries in each project.

Requires the Secretary to waive compliance with Medicare requirements to the extent and for the period he finds necessary for the projects.

Requires the Secretary to provide for an evaluation of the projects and to submit to Congress two reports: a preliminary report during the third year of the projects and a final report upon completion that includes

recommendations for appropriate legislative changes.

Specifies that expenditures not exceed $40 million for the projects and $2 million for the evaluation and be made from the Federal Supplementary Medical Insurance Trust Fund.

Effective date.—Enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House provision with an amendment permitting the Secretary to conduct additional demonstration projects, up to a total of 10, within the appropriation of $40 million over 3 years. The Secretary could undertake the additional projects by reducing the number of beneficiaries participating in these demonstrations from 500 to approximately 250.

The conferees intend the services covered under this demonstration to supplement current Medicare acute care benefits. These additional benefits are not to replace, reduce, restrict, or otherwise substitute for existing benefits provided through Medicare which the beneficiaries might need. These demonstration projects are to be funded from the Medicare Part B trust fund, without being charged against the monies appropriated for the research activities of the Health Care Financing Administration.

In addition, the conference agreement includes a modification to the preventive health services demonstration program as added by COBRA. The agreement would clarify that the $4 million funding limitation specified in COBRA applies only to the administrative cost of designing and conducting the demonstration and the accompanying evaluation. The funding limitation would be increased by $1.9 million.

The provision would also specify that at least one of the five sites chosen for the demonstration must serve a rural area.

33. AMBULATORY SURGERY (SECTION 624 OF SENATE AMENDMENT)

Present law

Payment for facility services.—Medicare may pay for ambulatory surgical procedures performed in three different settings:

Ambulatory surgical center (ASC).—The Omnibus Reconciliation Act of 1980 (P.L. 96-499) authorized payments for facility services furnished in connection with ambulatory surgical procedures specified by the Secretary. Payments to ASCs are made on the basis of prospectively set rates known as the "standard overhead amount." On August 5, 1982, HHS issued final regulations and an accompanying notice identifying four groups of surgical procedures and the payment amount for each group. The payment amounts and the list of procedures has not been updated. The rates do not include payments for physicians' services, prosthetic devices, or laboratory services. No beneficiary cost-sharing is required.

Hospital outpatient department.—Medicare payments for ambulatory surgery performed in a hospital outpatient department are made on the basis of reasonable costs. The standard Part B beneficiary cost-sharing is required.

Physician's office.—P.L. 96-499 also authorized payments to be made to physicians for the use of their office facilities when covered ambulatory surgical procedures were performed there. However, the legislation has not been implemented because adequate utilization and quality control peer review, which is required by law, is not available for office-based surgery.

Payment for physicians' services.—When surgery is performed in any of these three settings, Medicare reimburses 100 percent of the physician's reasonable charge, provided the physician agrees to accept assignment.

House bill

No provision.

Senate amendment

(a) Payment rates.—Provides that payments to hospital outpatient departments for procedures approved for ASCs, would be the lesser of the outpatient department's cost or the payment rate for the same surgical procedure in an ASC in the same geographic area.

When the payment rate is based on the ASC payment rate, the outpatient department would receive additional payments for the cost of the services of certified nurse anesthetists (for cost reporting periods beginning before October 1, 1987) and for the direct costs of medical education.

The Secretary is required to review and update the ASC payment rates not later than July 1, 1987, and annually thereafter, and to review and update the list of approved procedures not less than annually.

(b) Facility services definition.—Specifies that "facility services" for which payment is made includes all "medical and other health services" furnished in connection with the procedure except the services of physicians.

(c) PRO review.—Requires Peer Review Organization contracts to provide for review of all ambulatory surgical procedures (or, at the Secretary's discretion, a sample of selected procedures) performed in ASCs and hospital outpatient departments.

(d) Coinsurance and deductible to apply without regard to setting of ambulatory surgery.—Repeals current law provisions waiving coinsurance and deductible requirements for ASC services.

(e) Development of prospective payment methodology for outpatient hospital services.—Requires the Secretary to develop groupings of pre- and postoperative services that are related to surgical services performed in a hospital outpatient department and then develop a model prospective reimbursement system that may be used for reimbursing hospitals under part B. The Secretary is required to report to Congress on the groupings and the model reimbursement system not later than January 1, 1991.

(f) Study of educational activities.—Requires the Secretary to conduct a study on educational activities in hospital outpatient departments. The Secretary shall report the results to Congress not later than 2 years after enactment.

Effective date.—The payment provisions in (a) apply to cost reporting periods beginning on or after July 1, 1987. (b) and (d) apply to services furnished after June 30, 1987. (c) applies to contracts entered into or renewed after January 1, 1987. All other provisions are effective on enactment.

Conference agreement

(a) Payment rates.—The conference agreement includes the Senate amendment with modification. The conferees anticipate that the payment mechanism established under this section will be a transitional step, and the conference agreement requires the development and implementation of a fully prospective payment system for ambulatory surgery procedures provided in hospital outpatient departments (OPDs) by October 1, 1989.

Under the conference agreement, a new payment methodology for facility services provided by hospital OPDs in connection with ambulatory surgery would be established effective for hospital cost reporting periods beginning on or after October 1, 1987. Payments would be based on a comparison between the amount that would be paid to a hospital OPD under Section 1833(a)(2)(B) and a blended amount based on the amount that would be paid to an OPD under Section 1833(a)(2)(B) and the payment that would be made to a freestanding ambulatory surgery center (ASC) under Section 1833(i)(2)(A) (as amended by paragraph d). Under Section 1833(a)(2)(B), services provided by an OPD are paid at the lesser of the reasonable cost for the service or the hospital's customary charge for the service, less 20% of the hospital's reasonable charge, as provided under Section 1866(a)(2)(ii), not to exceed 80% of reasonable cost. Under Section 1833(i)(2)(A), ASCs are paid 80% of a "standard overhead amount" which is intended to reflect costs incurred by ASCs.

During a cost reporting period, aggregate payment to a hospital outpatient department (OPD) for facility services for ambulatory surgery procedures would be the lesser of: (i) the aggregate amount that would be paid to an OPD under Section 1833(a)(2)(B) of the Social Security Act of (ii) an aggregate amount based on a blend of the OPD payment under Section 1833(a)(2)(B) and the ASC payment under Section 1933(i)(2)(A). For cost reporting years beginning during FY 1988, the blend is 75% OPD payment and 25% ASC rate. For cost reporting years beginning during FY 1989 (and in subsequent years), the blend is 50% OPD payment and 50% ASC rate.

Medical and other health services, other than facility services, which are provided by a hospital OPD in connection with an ambulatory surgery procedure which are otherwise covered under medicare would continue to be reimbursed on the basis of Section 1833(a)(2)(B). While the Secretary will have flexibility in defining the term "facility services" for purposes of this provision, it is anticipated that the term will be defined in a manner that is comparable to the definition of the term "ASC facility service" that appears at 42 CFR 416.61.

The conference agreement does not include the Senate amendment concerning nurse anesthetist and direct medical education costs because, under the conference agreement, these provisions are not needed to ensure payment of these costs. The services of a nurse anesthetist are not included in the current definition of "ASC facility services," and it is anticipated that such services would not be included within the term "facility services" for purposes of paying hospital OPDs. Accordingly, no "pass-through" is required for the costs of hospital-employed nurse anesthetists, and these costs will continue to be reimbursed on a reasonable cost basis. In addition, no "pass-through" is required for direct medical education costs because of the payment methodology established for these costs under Section 1886(h) of the Social Security Act.

(b) Facility service definition.—The conference agreement does not include the Senate amendment, but does require that all services (other than physician services) provided by an OPD be billed through the hospital. Separate billing for such items or services by other suppliers would be prohibited and violations would be subject to civil monetary penalties.

(c) PRO review.—The conference agreement includes the Senate amendment with

technical clarifications regarding the requirement that PROs review some or all of the ambulatory surgery services provided by hospital OPDs and ASCs. Under the agreement, the Secretary would have discretion to review a sample of such procedures.

(d) Coinsurance and deductible to apply without regard to setting of ambulatory surgery.—The conference agreement includes the Senate amendment.

(e) Development of prospective payment methodology for outpatient hospital services.—The conference agreement includes the Senate amendment with the following modifications. The Secretary would be required to submit an interim report to Congress by April 1, 1988 concerning development of a fully prospective payment system for ambulatory surgery. The following issues are to be addressed in the interim report: (i) whether payment for hospitals should be based on hospital costs in providing ambulatory services, or the ASC payment rate, or a blend of the two; and (ii) recommendations for developing and implementing an all-inclusive payment for ambulatory surgery encompassing payment for facility services and all medical and other health services commonly furnished in connection with an ambulatory surgical procedure other than the physicians' service. The Secretary would be required to submit a final report to Congress no later than April 1, 1989 with recommendations concerning implementation of a fully prospective payment mechanism for ambulatory surgery services by October 1, 1989. The Secretary would also be required to develop a model system for prospective payment of OPD services other than ambulatory surgical procedures and submit a report to Congress concerning the model system by January 1, 1991.

(f) Study of educational activities.—The conference agreement does not include the Senate amendment.

III. UTILIZATION AND QUALITY CONTROL PEER REVIEW ORGANIZATION (PRO) PROVISIONS

1. PEER REVIEW ORGANIZATIONS (SECTION 10241 OF HOUSE BILL; SECTIONS 631, 632, AND 633 OF SENATE AMENDMENT)

Present law

(a) PRO Review of Hospital Denial Notices.—By regulation, hospitals are authorized to make determinations that further inpatient care is no longer medically necessary. If the attending physician concurs with this determination, the hospital may serve the beneficiary with a discharge notice and may begin to charge for continued stay beginning with the third day after serving the notice. The beneficiary may appeal the discharge notice to a peer review organization (PRO). If the PRO reverses the hospital's determination, the hospital may not bill for continued inpatient stay. The PRO is required to decide the appeal within 3 working days after receipt of the appeal. Under current policy, a beneficiary may incur financial liability for several days of continued stay before receiving notice of the PROs decision in the event of an adverse decision.

(b) PRO Review of Inpatient Hospital Services and Early Readmission Cases.—PROs review the necessity and quality of hospital services provided to beneficiaries.

(i) To initiate the review process, a PRO must receive data concerning the number and type of hospital discharges from hospitals in the PROs services area. This information is provided to PROs by Medicare fiscal intermediaries. There is no statutory provision regarding timely provision of data to PROs.

(ii) Under PRO contracts for 1986–88, PROs will be required to review all readmissions to a hospital where the readmission occurs within 15 days after initial discharge.

(c) Requiring PRO Review of Quality of Care.—PROs are required to review a sample of the professional activities of health care practitioners and providers for purposes of determining whether the services provided were medically necessary and meet professionally recognized standards of care. COBRA required PROs to review services provided by health maintenance organizations (HMOs) and competitive medical plans (CMPs) effective January 1, 1987. A required level of effort for PRO review of HMO and CMP services is not specified.

(d) Requiring consumer representation on PRO boards.—No Provision.

(e) Improve peer review responsiveness to beneficiary complaints.—No provision.

(f) Sharing of information by PROs.—PRO confidential information is subject to protection.

(g) Funding of PRO activities.—The costs of PRO review are funded by transfer of funds from the Federal Hospital Insurance Trust Fund. Under current law, the aggregate amount to be paid to all PROs during a year must be no less than the aggregate amount expended during FY 1986 on PRO reviews adjusted for inflation.

House bill

(a) PRO review of hospital denial notices.—

(i) Provides that if a hospital determines and the physician agrees that the patient no longer requires inpatient care, the hospital may provide that patient with a coverage denial notice.

(ii) Provides that if a hospital has determined but the physician does not agree that the patient no longer requires inpatient care, the hospital may request the PRO to review the validity of the hospital's determination.

(iii) Provides that if a patient has received a denial notice and requests the PRO to review the determination, the PRO shall conduct a review of the validity of the hospital's determination and shall provide notice to the patient, hospital, and attending physician. Such review is to be provided regardless of whether or not the hospital will charge for continued care or whether or not the patient will be liable for payment for continued care.

(iv) Provides that if the patient requests a review while still an inpatient and not later than noon of the first working day after receipt of the hospital denial notice, the hospital must provide the PRO with the records required to review the determination by the close of business of such day, and the PRO must provide notice by not later than one full working day after it has received the request and the records.

(v) Provides that if the patient has made a timely request, and the patient did not know and could not reasonably have been expected to know that continued inpatient stay was not necessary, the hospital may not charge the patient before noon of the day after receipt of the PRO's decision.

(vi) Requires PRO's in conducting reviews to solicit the views of the patient.

(b) PRO review of inpatient hospital services and early readmission cases.—

(i) Requires the Secretary to provide that PROs receive each month either from hospitals or through fiscal intermediaries, data necessary to initiate the review process on a timely basis.

(ii) Requires PROs to perform early readmission reviews to determine if the previous inpatient hospital services and post-hospital services met professionally recognized standards of health care. The reviews may be done on a sample basis if the PRO and Secretary determine it to be appropriate. Any early readmission case is defined as one where a readmission occurs within 31 days of discharge.

(c) Requiring PRO review of quality of care.—

(i) Requires each PRO to provide that a reasonable proportion of its activities are involved with reviewing the quality of services and that a reasonable allocation of such activities is made the different cases and settings (including inpatient hospital care, post-acute care settings, ambulatory settings, health maintenance organizations, and competitive medical plans). In establishing the allocation, the PRO shall consider: (1) whether there is reason to believe that there is need for review of particular cases or settings because of previous problems; (2) the cost and potential yield from reviews; and (3) the availability and adequacy of alternative quality review and assurance mechanisms.

(ii) Requires each PRO contract to provide for review of inpatient and outpatient services provided by HMOs and CMPs to determine whether the quality of services meets professionally recognized standards of health care, including whether appropriate health services have not been provided or have been provided in inappropriate settings. The level of effort expended by PROs under the requirement shall be equivalent on a per beneficiary basis, to that expended on utilization and quality reviews with respect to Medicare beneficiaries not enrolled in an HMO or CMP.

(iii) Requires the Secretary, in consultation with appropriate experts, to identify methods that would be available to assist PROs in identifying those cases which are more likely than others to be associated with substandard quality.

(d) Requiring consumer representation on PRO boards.—Requires at least one consumer representative on PRO boards.

(e) Improve peer review responsiveness to beneficiary complaints.—

(i) Requires PRO's to conduct appropriate reviews of all written complaints by beneficiaries about the quality of services not meeting professionally recognized standards. The PRO is required to inform the beneficiary of its conclusions and final disposition.

(ii) Before the PRO concludes that the quality of care is substandard, it must provide the practitioner or person concerned with reasonable notice and opportunity for discussion.

(f) Sharing of information by PROs.—

(i) Provides that confidential information, relating to a specific case or possible pattern of substandard care, obtained by PROs could be shared, upon request, with a State licensing or certification agency or with a national accreditation body, but only to the extent that such information is required by such agency or body to carry out official functions.

(ii) Provides that confidential information obtained by PROs could be shared with State ombudsmen and State protection and advocacy officials, but only to the extent that such information is related to the quality of services furnished and only if the

PRO determines that the information may reflect a failure in a substantial number of cases or a gross and flagrant failure in one or more instances to provide services of a quality which meets professionally recognized standards of health care. Further the information must be needed in connection with official duties.

(g) Funding of additional PRO activities.—Requires hospitals, skilled nursing facilities and home health agencies to maintain an agreement with the appropriate PRO with respect to review of services provided by hospitals, skilled nursing facilities or home health agencies (other than inpatient hospital services) and with respect to review of beneficiary complaints regarding quality. The activities are to be considered a cost of providing services and are to be paid directly by the Secretary to the PRO. Payments are to be transferred in appropriate amounts from the part A and part B trust funds and shall not be less in the aggregate than the amount determined by the Secretary to be sufficient to cover the costs of specified review activities. Similar provisions apply with respect to HMOs and CMPs.

Effective date.—(a) Applies to denial notices furnished by hospitals to individuals on or after the first day of the first month that begins more than 30 days after enactment except that (a)(v) effective on enactment. (b)(i) Requires the Secretary to implement amendment not later than 6 months after the date of enactment. (b)(ii) Applies to contracts entered into or renewed on or after January 1, 1987. (c)(i) and (c)(ii) apply to contracts as of January 1, 1987 except that provision requiring equivalent PRO effort for HMOs and CMPs applies to review activities conducted on or after January 1, 1988. (c)(iii) Effective on enactment. (d) Applies to contracts entered into or renewed on or after January 1, 1987. (e) Applies to complaints received on or after the first day of the first month that begins more than 9 months after the date of enactment. (f) Applies to requests for data and information made on and after the end of the sixth month period beginning on the date of enactment. (g) Amendments apply to provider agreements as of October 1, 1987 and risk-sharing contracts with HMOs and CMPs as of January 1, 1987.

Senate amendment

(a) PRO review of hospital denial notices.—

(i) Identical provision.

(ii) Identical provision.

(iii) Similar provision. Specifies that the provision applies to requests made by a person who is still an inpatient. The PRO notice must be given to the patient within two calendar days after receipt of request. No PRO notice to hospital or attending physician is required.

(iv) No provision.

(v) Provides that if an inpatient makes a request for PRO review within 1 day after the date he or she receives the denial notice, the hospital may not charge the patient for services furnished before the fourth day after receipt of the denial notice.

(vi) Identical provision.

(b) PRO review of inpatient hospital services and early readmission cases.—

(i) Requires the Secretary to provide that fiscal intermediaries are to furnish the necessary data. If the Secretary determines that a fiscal intermediary is unable to furnish the information on a timely basis, he may require the hospital to do so.

(ii) Identical provision.

(c) Requiring PRO review of quality of care.—

(i) Similar provision respecting allocation of activities except specifies that the allocation among cases and settings is to be based on instances where potential problems of quality have been identified. Does not include provision relating to items the PRO must consider.

(ii) No provision.

(iii) Identical provision.

(d) Requiring consumer representation on PRO boards.—No provision.

(e) Improve Peer Review Responsiveness to beneficiary complaints.—

(i) Similar provision. Specifies that the complaint and the name of the complainant shall be treated as confidential. The PRO is required to inform the individual that the organization has received the complaint and will take appropriate action.

(ii) No provision.

(f) Sharing of information by PROs.—

(i) Similar provision. Specifies information is related to a specific provider or practitioner. Provides that information can only be shared to the extent: (1) it relates to the quality of care provided; (2) the PRO determines it may reflect a failure in a substantial number of cases or a gross and flagrant failure in one or more instances to provide services meeting professionally recognized standards of health care; and (3) it is needed by the body in carrying out official duties.

(ii) No provision.

(g) Funding of additional PRO activities.—No provision.

Effective date.—(a) Applies to denial notices furnished by hospitals to individuals on and after the first day of the first month that begins more than 30 days after enactment. (b)(i) Requires the Secretary to implement the amendment not later than six months after enactment. (b)(ii) Applies to contracts entered into or renewed after January 1, 1987. (c)(i) Applies to contracts entered into or renewed on or after January 1, 1987. (c)(iii) Effective on enactment. (e) Applies to complaints received on or after the first day of the first month that begins at least 9 months after the date of enactment. (f) Applies to data and information requests made on and after the end of the six-month period beginning on the date of enactment.

Conference agreement

(a) PRO review of hospital denial notices.—The conference agreement includes the House provision.

(b) PRO review of inpatient hospital services and early readmission cases.—The conference agreement includes the Senate amendment with a modification excluding review of services provided by physicians in an office setting from the scope of review for early readmission cases until January 1, 1989.

(c) Requiring PRO review of quality of care.—The conference agreement includes the House provision with the following amendments. The requirement that PROs allocate a reasonable proportion of their review activities to reviewing different cases and settings would be delayed for two years as it pertains to review of services provided by physicians in an office setting.

The requirement of PRO review of HMOs and CMPs is amended by delaying the deadline for initiation of PRO review of HMOs and CMPs from January 1, 1987 as provided in the House bill to April 1 of that year. In at least 25 states the Secretary must contract for review of HMO and CMP services with the organization which has a contract to conduct review of inpatient and outpatient services pursuant to Section 1154 of the Social Security Act. The Secretary has the authority under the provision to competitively bid the contract for quality review of HOM and CMP services in the remaining twenty-five states on a state-by-state basis. No more than 50% of the total number of medicare beneficiaries enrolled in HOMs or CMPs, as of the date of the competition, can be included in the twenty-five states which are subject to competitive bidding. To qualify for the competitively bid contracts, quality review organizations must satisfy the requirements of Sections 1152 and 1153(b)(3) of the Act.

The Secretary would be required to provide data (and associated data processing support) to at least 12 PROs to enable each PRO to review and analyze small area variations in the utilization of hospital and other health services within the PROs service area. The PROs would use the small area variation information in establishing priorities for review activities and in conducting educational programs for community physicians.

(d) Requiring consumer representation on PRO boards.—The conference agreement includes the House provision.

(e) Improve peer review responsiveness to beneficiary complaints.—The conference agreement includes the Senate amendment with the following modifications. If the PRO makes a final determination with respect to whether the services which are the subject of a complaint did or did not meet professionally recognized standards of care, the PRO would be required to inform the beneficiary involved (or the beneficiary's representative) of any final action taken. Before the PRO concludes that the services involved did not meet professionally recognized standards of care, the PRO would be required to provide the practitioner (or other person concerned) with reasonable notice and opportunity for discussion.

(f) Sharing of information by PROs.—The conference agreement includes the House provision with respect to sharing of information with State licensing and certification agencies and with national accreditation bodies. The agreement does not include the House provision with respect to sharing of information with State ombudsmen and State protection and advocacy officials. The conferees emphasize the responsibility of PROs to protect the confidentiality of patient information.

(g) Funding of PRO activities.—The conference agreement includes the House provision.

VI. Access to Health Insurance Coverage Provisions

1. Incentives for the establishment of state health insurance pools (section 10251 of house bill)

Present law

States are not required to establish health insurance pools for the purpose of offering health insurance to people that are otherwise unable to purchase health insurance. However, 10 States have enacted laws establishing comprehensive health insurance associations. These associations are independent nonprofit corporations governed by a board and administered by an insurance carrier selected by the board.

The 10 States base employer participation in such pools on whether the employer maintains a health insurance plan, rather than requiring all employers to participate whether or not they maintain a health insurance plan. Accordingly, only health in-

surance carriers who provide health insurance plans governed by State law are required to participate in such pools. Because the Employment Retirement Income Security Act (ERISA) preempts State law, employer-based, self-funded health plans have been exempted from any State mandate to participate in such pools.

The existing State pools are financed primarily by beneficiary premiums. To the extent that the premium revenues are insufficient, the losses of the pool are shared among the health insurance carriers underwriting health insurance in the State. However, ERISA preempts State laws relating to employee benefit plans, except for laws relating to the regulation of insurance. Self-funded employer-based plans have been found to be exempt from State laws under the ERISA preemption. Accordingly, the self-funded plans do not share in the losses of the existing pools.

House bill

(a) General rule.—Amends Chapter 41 of the Internal Revenue Code of 1954 to provide for a tax on the wages paid by large employers that are not members of qualified State health insurance pools and that employ individuals to perform services in a State that has established such a pool. The tax is equal to 5 percent of the wages paid by the employer during the taxable year for services performed in the State by the employees.

(b) Large employer defined.—A large employer is defined as an employer who, on each of some 20 days (each day being in different calendar weeks), employed 20 or more individuals for some portion of the day. The term does not include the United States, any State or political subdivision, any possession of the United States, or any agency or instrumentality of any of the foregoing (including the Postal Service and Postal Rate Commission), except that the term shall include any nonappropriated fund instrumentality of the United States.

(c) Exception for certain churches and associated organizations.—Exempts church organizations from participation in the State health insurance pools which fund procedures that are contrary to their religious tenets.

(d) Qualified health insurance pool defined.—A qualified health insurance pool is defined as any organization which: (1) is a nonprofit organization established pursuant to and regulated by State law; (2) permits any large employer doing business in the State to be a participating member; and (3) makes available (without regard to health status) to all residents of the State not entitled to Medicare, levels of health insurance typical of large employer group coverage. Any such level of insurance must limit the annual out-of-pocket expenses to specified limits and may not establish lifetime benefit limits for any individual less than $500,000. The coverage may provide for a choice of deductibles but not to exceed $1,000 per covered individual. The plan may exclude coverage for preexisting conditions for a period not to exceed 6 months. The coverage must include the purchase and repair of durable medical equipment.

A qualified pool may charge a premium rate expected to be self-supporting, but such premium rate may not exceed 150 percent of average premium rates for individual standard risks in the State for comparable coverage.

State health insurance pools may deny coverage for some or all services or other costs relating to abortions.

The organization shall assess losses of the pool equitably among all participating members.

The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico.

(e) Establishment of qualified State health insurance pools.—Congress intends that each State shall establish a qualified health insurance pool by not later than January 1, 1988, or, if later, the end of the first regular State legislative session that begins after the enactment of this Act.

Effective date.—Applies to taxable years beginning on or after January 1, 1988.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision.

2. COBRA TECHNICAL AMENDMENTS RELATING TO CONTINUATION OF EMPLOYER-BASED HEALTH INSURANCE COVERAGE (SECTION 10252 OF HOUSE BILL)

Present law

COBRA amended the Internal Revenue code to prohibit deductions for employer contributions to group health plans maintained by private employers that do not provide continuation coverage to certain specified employees and their spouses and dependents who would otherwise lose their group health insurance coverage as a result of specified qualifying events. Qualifying events include: death of the covered employee; termination or reduction of hours of the covered employee's employment; divorce or legal separation of the covered employee from the employee's spouse; the covered employee becoming entitled to Medicare; or a dependent child ceasing to be a dependent child under the plan.

COBRA also made comparable amendments to the Employment Retirement Income Security Act and the Public Health Service Act.

(a) Modification of coverage.—All qualified beneficiaries who would otherwise lose coverage as a result of a qualifying event are entitled to elect continuation coverage. The continuation coverage must be identical to the coverage provided under the plan to similarly situated beneficiaries for whom a qualifying event has not occurred.

(b) Maximum period of continuation coverage.—The continuation coverage period must extend from the period beginning on the date of the qualifying event and end not earlier than 18 months after loss of coverage due to termination or reduction in working hours and 36 months in the case of other qualifying events.

(c) Grace period for payment of premiums.—The plan may require payment of a premium. No coverage need be provided under the plan if the beneficiary fails to make timely premium payments.

(d) Election by beneficiaries.—Each qualified beneficiary may elect continuation coverage. If the qualifying beneficiary is the covered employee (in the case of separation from service or a reduction of hours) or the spouse of the covered employee, the election is deemed to include election on behalf of any other qualified beneficiary who would otherwise lose coverage.

(e) Notice requirement.—The employer of any employee covered under a group health plan must notify the plan administrator within 30 days of the qualifying event in the case of the death of the employee, separation from service or reduction of hours of the employee, or the commencement of entitlement to Medicare benefits. In the case of other qualifying events, the covered employee or qualified beneficiary is responsible for notifying the plan administrator that a qualifying event has occurred. However, no time limit is specified in such events.

House bill

(a) Modification of coverage.—Amends the Internal Revenue Code to provide that if coverage is modified under the plan for similarly situated beneficiaries, such coverage shall be modified for all qualified beneficiaries.

(b) Maximum period of continuation coverage.—Amends the Internal Revenue Code to provide that in the case of a qualified beneficiary with respect to whom more than one qualifying event has occurred, the maximum period of coverage may be extended, but in no event may the coverage exceed a 36 month period (other than the period applicable to bankruptcies as described in section 10253 of the House bill; see item XX).

(c) Grace period for payment of premiums.—Amends the Internal Revenue Code to provide that the grace period for making timely payments is the longer of 30 days, the period the plan allows employees, or the period the insurance company allows the plan or employer, whichever the case may be.

(d) Election by beneficiaries.—Amends the Internal Revenue Code to clarify that each qualified beneficiary is entitled to make a separate election with respect to continuation coverage and among the types of such coverage available under the plan.

(e) Notice requirement.—Amends the Internal Revenue Code to provide that in the case of qualifying events for which the coverage employee or qualified beneficiary is responsible for notifying the plan administrator, such notice must be made within 60 days of the qualifying event.

Effective date.—Effective as if the amendments had been included in COBRA.

Senate Amendment

No provision.

Conference agreement

(a) Modification of coverage.—The conference agreement does not include the House provision.

(b) Maximum period of continuation coverage.—The conference agreement does not include the House provision.

(c) Grace period for payment of premiums.—The conference agreement does not include the House provision.

(d) Election by beneficiaries.—The conference agreement does not include the House provision.

(e) Notice requirement.—The conference agreement does not include the House provision.

3. CONTINUATION COVERAGE FOR RETIREES IN CASES OF BANKRUPTCIES (SECTION 10253 OF HOUSE BILL)

Present law

COBRA amended the Internal Revenue Code to prohibit deductions for employer contributions to group health plans maintained by private employers that do not provide continuation coverage to certain specified employees and their spouses and dependents who would otherwise lose coverage as a result of specified qualifying events.

COBRA also made comparable amendments to the Employment Retirement Income Security Act and the Public Health Service Act.

(a) Loss of coverage of retiree through bankruptcy.—The reduction of hours of the covered employee's employment; divorce or legal separation of the covered employee from the employee's spouse; the covered employee becoming entitled to Medicare; or dependent child ceasing to be a dependent child under the plan.

(b) Period of continuation coverage.—The continuation coverage period must extend from the period beginning on the date of the qualifying event and ending not earlier than 18 months after loss of coverage due to termination or reduction in working hours and 36 months in the case of other qualifying events. Continuation coverage may be terminated on the date on which the qualified beneficiary becomes entitled to Medicare.

(c) Definition of qualified beneficiary in reorganization cases.—A qualified beneficiary is defined as the covered employee of a group health plan (in the case when the qualifying event is the termination or reduction in hours of the employee) and any other individual who, on the day before the qualifying event, was a beneficiary under the plan as the spouse or dependent child of the employee.

House bill

(a) Loss of coverage of retiree through bankruptcy.—Amends the Internal Revenue Code to provide that the filing of a Title XI bankruptcy proceeding, commencing on or after July 1, 1986, is considered a qualifying event for continuation coverage with respect to the employer from whose employment the covered employee retired at any time, if such an event resulted in the substantial elimination of coverage for specified qualified beneficiaries within 1 year before or after the filing of the bankruptcy.

(b) Period of continuation coverage.—Amends the Internal Revenue Code to provide that the filing of a Title XI bankruptcy proceeding on or after July 1, 1986, which results in retirees' substantially losing health insurance coverage is a qualifying event, in which case, the maximum period of continuation coverage is life for the retiree or the retiree's widow. After the death of the covered retiree, the maximum period of continuation coverage is 36 months for the surviving spouse and dependent children. In the case of a Title XI bankruptcy as a qualifying event, entitlement to Medicare benefits does not terminate the period of entitlement to continuation coverage.

(c) Definition of qualified beneficary in reorganization cases.—Amends the Internal Revenue Code to provide that in the case of a Title XI bankruptcy as a qualifying event, the term qualified beneficiary includes a covered employee who had retired on or before the date of substantial elimination of coverage, and any other individual who, on the day before such qualifying event, is a beneficiary under the plan as the spouse or dependent child of the employee or as the surviving spouse of the employee.

Effective date.—In general, the amendments are effective as if they had been included in section 10001 of COBRA. Notwithstanding this effective date and section 10001 of COBRA, the amendments made by this section and section 10001 of COBRA shall apply in plan years ending during the 12 month period beginning July 1, 1986, but only with respect to a qualifying event of Title XI bankruptcy, and the qualifying event of death of the covered employee occurring after a Title XI bankruptcy. The section defining Title XI bankruptcy as the qualifying event applies to covered employees who retired before, on, or after the date of enactment.

Senate amendment

No provision.

Conference agreement

(a) Loss of Coverage of Retiree Through Bankruptcy.—The conference agreement includes the House provision with an amendment making a conforming amendment to Title I of ERISA. Because the continued access to private health insurance provision contained in COBRA, which this provision expands, amended both the Internal Revenue Code and ERISA, the conferees believe that an ERISA conforming amendment is appropriate. The conferees wish to clarify that upon the filing for Title XI bankruptcy retirees who have had their health benefits terminated or substantially reduced within one year of the filing for bankruptcy by the employer are entitled to buy the health coverage they had prior to the termination or substantial reduction in their health benefits.

(b) Period of Continuation Coverage.—The conference agreement includes the House provision with an amendment to include a Title 1 ERISA conforming amendment.

(c) Definition of Qualified Beneficiary in Reorganization Cases.—The conference agreement includes the House provision with an amendment to include a Title 1 ERISA conforming amendment.

V. Revenue Provisions

1. Extend Medicare coverage and hospital insurance tax to state and local government employees

Present law

In the Consolidated Omnibus Budget Reconciliation Act (COBRA), P.L. 99-272, Medicare coverage and the corresponding hospital insurance payroll tax were extended on a mandatory basis to State and local government employees hired after March 31, 1986. COBRA also authorized States to elect, by voluntary agreement with HHS, to extend Medicare coverage to State and local government employees hired prior to April 1, 1986.

For Medicare-covered employees, the hospital insurance tax rate for 1986 is 1.45 percent on the employer and 1.45 percent on the employee, applicable to wages up to $42,000 (Code secs. 3101, 3111, and 3121(a)).

House bill

No provision.

Senate amendment

The Senate amendment extends Medicare coverage on a mandatory basis to employees of State and local governments who are not otherwise covered for Medicare under present law. These employees and their employers will become liable for the hospital insurance portion of the FICA tax, and the employees will earn credit toward Medicare eligibility based on their covered earnings. (The optional Medicare coverage provision enacted in COBRA is terminated.)

Under the Senate amendment, the collection of the hospital insurance tax with respect to newly covered employees is to be carried out in the same manner as was provided in COBRA with respect to employees hired after March 31, 1986.

The Senate amendment is effective for services performed after April 30, 1987.

Conference agreement

The conference agreement does not include the Senate amendment.

2. Deposits of social security contributions by state and local government employers

Present law

A State that enters into a voluntary agreement with HHS to provide social security coverage for its employees and employees of its political subdivisions must collect and deposit the employer and employee social security tax payments on behalf of both the State and local entities. The local entities first pay over the social security taxes to the State, which must verify and consolidate the payments. The State then deposits these amounts, plus the appropriate tax payments with respect to its own employees, with the Federal Government on a twice-a-month deposit schedule.

Private employers must make payroll tax payments under a schedule that links the frequency of deposits to the amount of taxes withheld. Large employers may make deposits as frequently as eight times a month, while small employers may make deposits only once every three months. These rules applicable to private employers for depositing payroll taxes also apply to State and local governments for depositing Federal income taxes withheld from their employees.

Under present law, late deposits by State governments are subject to an interest charge at the rate of six percent per year. Private-sector employers pay an interest rate, adjusted semiannually, that is based on the prime interest rate charged by major commercial banks.

House bill

The House bill removes from State governments the intermediary role of collecting social security taxes from local governments, and relieves State governments from liability for verifying and depositing such taxes.

The House bill places State and local government employers under the same schedule for frequency of deposits as applies under present law to private-sector employers (and to deposits of Federal income taxes withheld by State and local government employers). Under the House bill, State and local governments are subject to the same interest charge and penalties for late deposits as apply to private-sector employers.

These provisions are effective for payments of social security taxes with respect to wages paid after December 31, 1986.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

3. Telephone excise tax

Present law

Tax rate.—A three-percent excise tax is imposed on local and toll telephone service and teletypewriter service. The tax is scheduled to expire with respect to telephone bills first rendered after December 31, 1987 (Code Sec. 4251).

Exemptions.—Exemptions from the tax are provided for private communications systems, installation services, certain calls from coin-operated telephones, news services (except local services), international organizations, the American Red Cross, servicemen in combat zones, nonprofit hospitals and educational organizations, and State and local governments.

House bill

Extension of tax.—The House bill extends the three-percent tax for two years, through December 31, 1989.

Study of exemptions.—The House bill requires the Treasury Department to study the effects of the exemption for private telecommunications systems and other specific exemptions from the telephone excise tax. The Treasury is to report on the study to the Congress before January 1, 1988. The report is to include revenue effects of all present-law telephone excise tax exemptions and descriptions of types of persons benefiting from such exemptions.

Senate amendment

Extension of tax.—No provision.

Study of exemptions.—No provision.

Conference agreement

Extension of tax.—The conference agreement does not include the House bill provision.

Study of exemptions.—The conference agreement follows the House bill, with modifications that (1) in conducting the study, the Treasury Department is to consult with the Commerce Department and the Federal Communications Commission, (2) the study is to include methods by which the tax could be extended to private communications services users, and (3) the report on the study is to be submitted to the Congress no later than June 30, 1987.

4. EXTENSION OF PORTION OF FEDERAL UNEMPLOYMENT TAX (FUTA) DUE TO EXPIRE AFTER 1987

Present law

Under present law, the gross FUTA tax rate of 6.2 percent of the first $7,000 in wages paid to an employee consists of a permanent component of 6.0 percent and a temporary component of 0.2 percent. (The net FUTA tax is 0.8 percent after taking into account the 5.4 percent credit for State unemployment taxes.) The funds generated by the temporary portion of the tax are used to repay advances made from general revenues to the Extended Unemployment Compensation Account. These advances have been utilized to pay for the Federal Supplemental Benefit program and the Federal share of the permanent extended benefit program.

The temporary 0.2-percent tax component is scheduled to expire at the beginning of the first year following the year in which the advances from general revenues are repaid (Code sec. 3301(1)). Current economic projections indicate that the advances will be fully repaid in mid-1987. As a result, for the year beginning January 1, 1988, the FUTA tax rate will be six percent (.6 percent after taking into account the 5.4 percent credit for State unemployment taxes).

House bill

The House bill provides that the temporary FUTA tax component of 0.2 percent will remain in effect for 1988 and 1989.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

5. ACCELERATED COLLECTION OF CERTAIN EXCISE TAXES

Present law

Excise taxes on alcohol and tobacco products are paid semimonthly, with payments being due the following number of days after each semimonthly period:

	Days
(a) domestically produced and bulk imported distilled spirits	30
(b) bottled imported distilled spirits	15
(c) beer and wine	15
(d) tobacco	25

In certain cases, payment of these excise taxes must be by means of electronic transfer of funds.

House bill

Under the House bill, payments of the excise taxes on tobacco, wine, and beer are due 14 days after the semimonthly period during which the products are removed from bonded premises. If the regular payment date falls on a Saturday, Sunday, or legal holiday, payment is due on the last preceding business day. The present-law rules requiring electronic transfer of funds in certain cases are retained.

This provision applies to taxable products removed during semimonthly periods ending on or after December 31, 1986. Under a special rule, tobacco excise taxes for the semimonthly period ending on December 145, 1986, will be due on January 14, 1986 (rather than January 10, 1986).

Senate amendment

The Senate amendment is the same as the House bill except that (1) no change is made to the present-law payment date for the excise taxes on wine and beer and (2) payments of the excise taxes on distilled spirits are due 14 days after the semimonthly period during which products are removed from bonded premises. (Bottled imported distilled spirits are taxed on removal from customs custody.)

The Senate amendment applies to taxes paid after September 30, 1986, for semimonthly periods ending on or after that date. Under a special rule, tobacco excise taxes for the semimonthly period ending on September 15, 1986, will be due on October 14, 1986.

Conference agreement

Under the conference agreement, the excise taxes on (a) domestically produced and bulk imported distilled spirits, (b) bottled imported distilled spirits, (c) beer and wine, and (d) tobacco products are due 14 days after the semimonthly period when the taxable event occurs (14 days after entry into the customs territory of the United States in the case of certain imported products). If the regular payment date falls on a Saturday, Sunday, or legal holiday, payment is due on the last preceding business day.

As under present law, the taxable event generally is removal from a bonded factory, distillery, winery, or brewery in the case of domestically produced taxable products and certain bulk imported products (i.e., distilled spirits). As stated above, the taxable event for other imported products is entry into the customs territory of the United States. A further exception is provided in the case of an entry pursuant to which taxable products are transferred directly to a customs' bonded warehouse ("CBW"). (A foreign trade zone is treated as a CBW for this purpose.) In such a case, the taxable event is removal from the first such CBW into which the products are placed upon entry into the United States. This rule does not apply, however, to any article so removed which is shown to the satisfaction of the Secretary to be destined for export. Finally, for taxable products brought into the United States from Puerto Rico, tax is due 14 days after the products are brought into the U.S.

The conference agreement retains the present-law requirements for payment of these taxes by electronic transfer of funds.

Effective date.—These provisions apply to products removed in semimonthly periods ending on or after December 31, 1986, and to products entered into the customs territory (including entry into a CBW) of the United States (or otherwise brought into the U.S.) after December 15, 1986.

Special rules are provided consolidating payments for the semimonthly periods ending on December 15, 1986, and December 31, 1986, in the case of distilled spirits and tobacco products that now receive more than 15 days after removal for payment of tax.

The Consolidated Omnibus Budget Reconciliation Act of 1986 imposed a manufacturers excise tax on smokeless tobacco, effective for taxable products removed from the factory after June 30, 1986. However, in June 1985, the Treasury Department incorrectly notified manufacturers of smokeless tobacco that the tax did not apply to products held at the factory on July 1, 1986, in a condition ready for sale to consumers. The conference agreement amends the effective date of the tax on smokeless tobacco to exempt otherwise taxable products held at the factory on July 1, 1986, in a condition ready for sale to ultimate consumers.

6. INCREASES IN CERTAIN TAX PENALTIES

A. PENALTY FOR FAILURE TO DEPOSIT TAXES

Present law

Employers and certain other taxpayers are required to make periodic deposits of various taxes (such as social security taxes or income taxes withheld from employees) prior to the close of the taxable year. Taxpayers who fail to comply with these deposit requirements may be subject to a penalty of five percent of any underdeposit not deposited on or before the prescribed date, unless it is shown that the failure is due to reasonable cause and not due to willful neglect (Code sec. 6656).

House bill

Under the House bill, the penalty for failure to comply with these deposit requirements is increased from five percent to 10 percent of the amount of any underdeposit. The provision is effective with respect to deposits required to be made (whether by the Code or by regulations) after the date of enactment of the bill.

Senate amendment

The Senate amendment is the same as the House bill, except that the Senate amendment applies to penalties assessed after the date of enactment of the bill.

Conference agreement

The conference agreement follows the Senate amendment.

B. PENALTIES FOR SUBSTANTIAL UNDERSTATEMENT OF TAX LIABILITY AND FOR NEGLIGENCE

Present law

Substantial understatement.—If a taxpayer substantially understates income tax liability for a taxable year, the taxpayer must pay an addition to tax equal to 10 percent of the underpayment of tax attributable to the understatement (sec. 6661). An understatement is substantial if it exceeds the greater of 10 percent of the tax required to be shown on the tax return or $5,000 ($10,000 in the case of most corporations). (Taxpayers subject to the penalty include individuals, corporations, and entities liable for the unrelated business income tax.) The penalty

generally does not apply (except with respect to certain tax shelter items) to the extent the taxpayer (1) had substantial authority for the taxpayer's treatment of the item on the return, or (2) adequately disclosed the relevant facts on the return.

Negligence.—If any portion of an underpayment of tax is due to negligence or intentional disregard of rules or regulations (but without intent to defraud), a penalty of five percent of the entire underpayment is imposed (sec. 6653(a)).

House bill

Substantial understatement.—The addition to tax for a substantial understatement of tax liability is increased to 25 percent, effective for returns the due date of which is after December 31, 1986.

Negligence.—No provision.

Senate amendment

Substantial understatement and negligence.—If either the negligence or substantial understatement penalties (or both) apply, then the aggregate of these penalties must be at least 25 percent of the underpayment of tax. This provision is effective for penalties assessed after the date of enactment.

Conference agreement

Substantial understatement.—The conference agreement follows the House bill, effective for penalties assessed after the date of enactment.

Negligence.—The conference agreement follows the House bill (i.e., no change is made to the negligence penalty).

7. TAX TREATMENT OF CONRAIL PUBLIC SALE

Present law

In general, the purchase of the stock in corporation has no effect on the corporation's tax attributes (e.g., net operating loss carryovers, earnings and profits, and asset basis).

House bill

Under the House bill, the sale of Conrail's stock will be treated as an asset sale. Conrail will be treated as a new corporation that purchased the assets after the public sale. Thus, the aggregate basis for Conrail's assets will be adjusted to reflect the stock purchase price (plus liabilities and other relevant items). Similarly, no NOL or other carryovers from periods before the public sale will be available for use in post-sale periods.

In addition, no amount will be included in the gross income of Conrail by reason of the cancellation of any obligation or preferred stock of Conrail. Also, the House bill provides any post-closing payments for back wages must be capitalized. Finally, certain ESOP provisions are waived.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with a modification providing that accounts receivable and materials and supplies will be treated as cash equivalents for purposes of applying the temporary regulations under section 338.

8. DENIAL OF TAX BENEFITS WITH RESPECT TO ACTIVITIES IN CERTAIN FOREIGN COUNTRIES

Present law

Foreign tax credit.—A credit against U.S. income tax is available for foreign income, war profits, and excess profits taxes paid to a foreign country or a U.S. possession. The amount of the foreign tax credit may be reduced, however, in certain circumstances. For example, a taxpayer that participates in or cooperates with an international boycott is denied a foreign tax credit for taxes paid on income derived within the countries associated with the boycott.

Deferral.—U.S. owners of a foreign corporation generally may defer U.S. tax on the corporation's income until the income is repatriated. However, this deferral of U.S. tax does not apply to certain kinds of income earned by U.S.-controlled foreign corporations, including income derived within countries associated with an international boycott in which the taxpayer participates or with which the taxpayer cooperates.

House bill

Foreign tax credit.—No provision.

Deferral.—No provision.

Senate amendment

Foreign tax credit.—The Senate amendment denies a foreign tax credit for taxes paid on income attributable to activities of the taxpayer conducted in a foreign country (1) that has been designated by the Secretary of State (pursuant to sec. 6(j) of the Export Administration Act) as a country that repeatedly provides support for acts of international terrorism, (2) with which the United States does not have diplomatic relations, or (3) the government of which the United States does not recognize (with certain expections). Income from one of these countries is subject to a separate foreign tax credit limitation, so that taxes from other countries cannot offset the U.S. tax on that income. The amendment provides regulatory authority for look-through rules to trace income (and taxes) from one of these countries through various entities.

Deferral.—The Senate amendment currently taxes U.S. shareholders of a controlled foreign corporation on the corporation's income attributable to activities conducted in a foreign country described in the preceding paragraph. The amendment provides regulatory authority for look-through rules to trace income from one of these countries through various entities.

Effective date.—The Senate amendment is effective on January 1, 1987.

Conference agreement

The conference agreement follows the Senate amendment. The conference agreement makes it clear that foreign taxes that are not creditable under this provision are deductible. In the case of dividends from foreign corporations that are attributable to earnings from activities conducted in one of the foreign countries subject to the agreement, the income of a U.S. recipient is the amount of the dividend net of foreign taxes (not grossed up by foreign taxes paid).

The conference agreement applies to income attributable to activities that occur after 1986 (and to taxes imposed on income earned after 1986). For example, in the case of a taxpayer with a fiscal year beginning October 1, income earned from January 1, 1987, to September 30, 1987 will be subject to the agreement, as will taxes (whenever paid) imposed on the income earned during that nine-month period.

9. OLDER AMERICANS PENSION BENEFITS

Present law

Age discrimination in Employment Act of 1967

Under present law, the Age Discrimination in Employment Act of 1967 (ADEA), as amended, makes it unlawful for employers to fail or refuse to hire or to discharge any individual (who is at least age 40 but less than age 70), or otherwise discriminate against such individual with respect to that individual's compensation, terms, conditions, or privileges of employment because of that individual's age.

Employers subject to ADEA include (1) any person engaged in an industry affecting commerce who has 20 or more employees (including agents of such persons), (2) a State, political subdivision of a State, or an agency of a State or political subdivision, and (3) any interstate agency. The United States, or a corporation wholly owned by the Government of the United States, is not considered an employer for purposes of ADEA. The Act does not apply to an employer who observes the terms of a bona fide employee benefit plan (such as a retirement, pension, or insurance plan) which is not a subterfuge to evade the purposes of the Act (sec. 4(f)(2)).

ERISA and the code

Employment benefit plans.—Under present law, benefits provided under employee benefit plans (including employer-maintained pension plans) are subject to certain requirements under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (the Code). ERISA and the Code impose certain minimum standards relating to minimum participation, vesting, and benefit accruals with respect to pension plans established or maintained by an employer engaged in commerce or in any industry or activity affecting commerce, or by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce, or by both. The minimum participation, vesting, and benefit accrual standards of ERISA and the Code do not apply to certain pension plans, such as governmental plans, certain church plans, and certain plans maintained only for executives.

If an employer-maintained pension plan satisfies the requirements of the Code, then contributions to the trust are deductible by the employer when made, trust earnings are not currently taxed, and contributions to the trust on behalf of an employee are not includible in the employee's income until distributed from the plan.

Exclusion from participation.—Under ERISA and the Code, a pension plan may not exclude an employee from plan participation merely because of the employee's age. However, a defined benefit pension plan and a target benefit plan may exclude an employee who is within five years of normal retirement age under the plan when the employee is first hired. Such employees are taken into account, even though otherwise excludable, in determining whether the plan satisfies minimum coverage requirements.

Benefit accruals.—Present law specifies certain requirements with respect to the rate at which benefits are accrued (i.e., earned) under a pension plan. These benefit accrual rules generally prevent the backloading of benefit accruals by specifying a minimum rate of benefit accrual for each year of plan participation.

A defined benefit pension plan is not required, under ERISA or the Code, to provide for benefit accruals for individuals who continue to work after the normal retirement age under the plan. In addition, under the suspension of benefit rules, benefits payable under a defined benefit plan are not required to be adjusted if an employee's benefit payments do not commence at normal retirement age. Plans that do not

comply with the suspension of benefit rules are required to provide benefits that are actuarially equivalent to the benefit payable at the normal retirement age.

Commencement of benefits.—Under present law, benefit payments are required to commence to an employee not later than the sixtieth day after the latest of the close of the plan year in which (1) the employee attains the earlier of age 65 or the normal retirement age under the plan, (2) the tenth anniversary of the year in which the employee commenced participation in the plan, or (3) the employee separates from service with the employer. Therefore, present law permits a pension plan to provide that benefits are not payable until an employee separates from service. If a payment is delayed, however, the benefits paid at the time of separation from service are to be actuarially increased to take into account the employee's age at retirement unless the plan has adopted a suspension of benefits provision.

Suspension of benefits.—Under present law, a pension plan may provide for the suspension of benefit payments when a retired employee is reemployed by the same employer or certain affiliated employers in the case of a single-employer plan. In the case of a multiemployer plan, a plan may provide for the suspension of benefit payments when a retired employee is reemployed in the same industry, in the same craft, and in the same geographic area covered by the plan.

Benefits not paid by a plan during a period of reemployment are permanently forfeited, rather than merely suspended. Present law provides that a pension plan (other than a multiemployer plan) may provide for such a forfeiture if (1) the employee has at least 40 hours of service a month with the employer maintaining the plan, (2) the plan provides proper notice to the employee of he suspension, and (3) certain other requirements are satisfied. Similar requirements apply to multiemployer plans.

If the requirements for suspension of benefits are not met (or if the plan does not provide for a suspension of benefits), the plan may still delay the payment of benefits until the employee who has reached normal retirement age separates from service. However, in this case, section 411 of the Code and Revenue Ruling 81-140 require that, if payment is delayed, the benefits paid at the later date (i.e., actual separation from service) must be actuarially increased to take into account the employee's age at retirement. This increase is required to avoid a prohibited forfeiture of benefits.

House bill

No provision.

Senate amendment

The Senate amendment amends ADEA, ERISA, and the Code to require a plan to provide for benefit accruals and contributions with respect to an employee's years of plan participation after normal retirement age. Under the Senate amendment, a defined benefit plan may not provide that an employee's benefit accrual or contribution is suspended or the rate of an employee's benefit accrual or contribution is reduced solely because of the employee's age before the employee accrues the maximum normal retirement benefit under the plan.

The provision requiring that benefit accruals may not be suspended or reduced does not apply if a defined benefit pension plan provides that an employee's retirement benefit is actuarially increased to reflect the payment of benefits after the attainment of normal retirement age.

A defined benefit pension plan is not treated as failing to satisfy the benefit accrual requirements merely because the plan (1) excludes an employee from plan participation if the employee is hired within five years before normal retirement age under the plan, or (2) imposes a limit on the benefits that the plan provides or on the number of years of service or plan participation taken into account in calculating an employee's benefit under the plan. In addition, a target benefit plan may exclude an employee from plan participation if the employee is hired within five years before normal retirement age under the plan.

A defined contribution plan satisfies the benefit accrual requirements in the plan provides that employer contributions (or forfeitures) allocated to an employee's account are not suspended or reduced on account of the employee's age. In addition, a defined contribution or target benefit plan may provide a limitation on the amounts allocated to an employee's account or on the number of years for which amounts are allocated to an employee's account.

The Senate amendment provides special rules in the case of a plan that provided (on the date of enactment) for the distribution or commencement of distribution of the entire interest of an employee under the plan on or after attainment of normal retirement age without regard to whether the employee has separated from service with the employer. Under this special rule, a plan amendment to postpone the date of commencement of benefits under the plan, which is adopted within the 12-month period following the date on which the provisions of the Senate amendment become applicable to the plan, is not to be treated as violating the rule that previously accrued benefits may not be retroactively reduced.

In the case of an integrated plan, the Senate amendment provides that the plan is not to be considered discriminatory merely because, in the case of an employee who has attained normal retirement age under the plan, the plan provides for a rate of benefit accrual or allocations to an employee's account (including retirement benefits created under State or Federal law) that does not exceed the rate of benefit accrual or allocations under the plan in the case of an employee who has not attained normal retirement age under the plan.

Effective date.—Under the Senate amendment, the provision is effective with respect to employees who are employed after December 31, 1988, with respect to accrual computation periods beginning after December 31, 1986. In the case of employees not employed after December 31, 1988, the provision applies to accrual computation periods beginning after December 31, 1988. A special effective date applies to collectively bargained plans.

Under the Senate amendment, plan amendments required by the provisions are not required to be made before the first plan year beginning on or after January 1, 1989, if (1) during the period after the amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of the Senate amendment, and (2) the plan amendment applies retroactively to the period after the amendment takes effect and before the first plan year for which the provision is effective. A pension plan is not treated as failing to provide definitely determinable benefits merely because it operates in accordance with this delayed plan amendment provision.

The Senate amendment requires the Secretary of Labor or the Secretary of the Treasury to issue final regulations with respect to the provision by February 1, 1988.

Conference agreement

The conference agreement generally follows the Senate amendment with certain modifications.

Reasons for change.—When both ADEA and ERISA were enacted, authority for the administration and enforcement of both laws was the responsibility of the Secretary of Labor. Presidential Reorganization Plan No. 1 of 1978 transferred the authority for ADEA from the Secretary of Labor to the Equal Employment Opportunity Commission (EEOC), effective July 1, 1979.

Prior to that date, the Secretary of Labor issued an amendment to the Interpretative Bulletin on Employee Benefit Plans, 29 C.F.R. 860.120(f)(2)(ii) (relating to the application of sec. 4(f)(2) of ADEA to employee benefit plans covered under ERISA), which allowed employers to cease benefit accruals and allocations to an employee's account with respect to employees working beyond the normal retirement age under the plan.

On June 24, 1984, the EEOC announced that it intended to rescind the Department of Labor's interpretation and require employers to continue benefit accruals and allocations. In March 1985, the EEOC unanimously approved proposed regulations requiring such accruals and allocations. That proposed regulation has not been adopted or published in the *Federal Register.*

Disagreement exists as to whether and to what extent benefit accruals and allocations are required under ADEA, as currently in effect.

In the past three Congresses, bills have been introduced to require employers to continue benefit accruals and allocations. Hearings were held by the Subcommittee on Labor-Management Relations of the House Committee on Education and Labor on September 5, 1984, and by the Subcommittee on Aging of the Senate Committee on Labor and Human Resources on October 17, 1985, on those proposals.

In general.—Under the conference agreement, benefit accruals or continued allocations to an employee's account under either a defined benefit plan or a defined contribution plan may not be reduced or discontinued on account of the attainment of a specified age. A plan may impose a limitation on the amount of benefits provided under the plan or a limitation on the number of years of service or plan participation taken into account. The conferees intend that a plan should not be treated as violating the general rule merely because the plan limits benefits to a stated dollar amount or a stated percentage of compensation.

The conferees intend that the provisions of ADEA, ERISA, and the Code that are amended to prevent the reduction or cessation of benefit accruals on account of the attainment of age are to be interpreted in a consistent manner and do not intend any differences in language in the provisions to create an inference that a difference exists among such provisions. (See, also, the discussion of interagency coordination, below.)

Under the conference agreement, a defined benefit plan may offset any benefit accruals required under the general rule by the amount of any adjustment in the benefits payable with respect to an employee attributable to a delay in the commencement of benefit payments after attainment of

normal retirement age. A similar offset is available with respect to plans that provide for the commencement of benefit payments occurring before separation from service, but after the attainment of normal retirement age.

Under the conference agreement, the rules preventing the reduction or cessation of benefit accruals on account of the attainment of age are not intended to apply in cases in which a plan satisfies the normal benefit accrual requirements for employees who have not attained normal retirement age. Under the benefit accrual rules, the rate of benefit accrual for an employee may vary depending on the number of years of service an employee may complete between date of hire and the attainment of normal retirement age.

For example, under the fractional benefit accrual rule, an employee may accrue a benefit ratably for each year of service between the employee's date of hire and the employee's attainment of normal retirement age. If a plan has a normal retirement age of 65, under this fractional rule, an employee who is hired at age 45 would accrue the normal retirement benefit between age 45 and age 65 (normal retirement age). Thus, the employee would accrue the benefit over 20 years. On the other hand, an employee with the same salary hired at age 55 would accrue the same normal retirement benefit over 10 years (the number of years between date of hire and normal retirement age). In this example, when both employees have completed five years of service, they will have different accrued benefits because of the different rate of benefit accrual for each year of service. The conferees do not intend that the plan is to be treated as violating the general rule that benefit accruals cannot be reduced or ceased on account of the attainment of age merely because a younger employee has a lower accrued benefit than an older employee with the same number of years of service.

Exclusion from participation.—The conference agreement eliminates the provision in current law which permits an employer to exclude from participation under certain plans employees hired within five years of normal retirement age. The conferees believe that modification of the existing law in this way is consistent with the overall objective of the provisions to assure that employee benefit plans do not discriminate on the basis of age.

The conferees recognize that repeal of this rule may have the effect of increasing an employer's minimum funding requirements significantly for employees hired within five years of normal retirement age. In order to ease this effect, the conference agreement provides that a plan may extend the normal retirement age specified in the plan with respect to individuals who begin employment with the employer after attaining a specified age that is not more than five years before the normal retirement age under the plan. With respect to any such individual hired after the effective date, a plan may provide that normal retirement age may be no later than the fifth anniversary of the time such participant commenced participation in the plan.

Target benefit plans.—The treatment of benefit accruals under a target benefit plan for employees who have attained normal retirement age is to be provided under regulations issued by the Secretary of the Treasury. The conferees expect that such regulations will provide that a plan is to take into account whether a participant's account balance is sufficient to provide the target benefit.

Highly compensated employees.—The conference agreement requires the Treasury to promulgate regulations that prescribe specific circumstances under which the benefit accrual and allocation requirements imposed by this amendment shall not apply to highly compensated employees. The conferees believe that such regulations are necessary because, in some situations, the requirements for continued benefit accruals or allocations may result in prohibited discrimination in favor of highly compensated employees.

While it is generally the view of the conferees that discrimination problems should be resolved by increasing the accrued benefits or allocations attributable to nonhighly compensated employees, the conferees understand that there may be circumstances under which such increases could (if made) result in violation of other plan qualification requirements specified in section 401(a) of the Code (including, for example, the limitations on contributions and benefits), or require employer contributions in excess of the deductible limits specified in section 404 of the Code. In such cases, the regulations are to provide methods for excluding highly compensated employees from the continued benefit accrual or allocation requirements.

Coordination with other provisions.—The conference agreement authorizes the Treasury to issue regulations coordinating the continuing benefit accrual requirements with other requirements, including the overall limits on contributions and benefits (sec. 415 of the Code), the nondiscrimination requirements applicable to qualified plans, tax-sheltered annuities, or SEPs, the coverage requirements (sec. 410 of the Code), the vesting requirements (sec. 203 of ERISA, and sec. 411 of the Code), the deduction limits (sec. 404 of the Code), and the Age Discrimination in Employment Act.

Integration of benefits.—The conference agreement does not follow the Senate amendment with respect to the special rules for integrated plans. The conferees believe that the new integration rules for qualified plans under the Tax Reform Act of 1986 make such special rules unnecessary because a plan is permitted under the Tax Reform Act to modify or reduce benefit accruals after a specified number of years of service. Thus, an integrated plan could avoid violation of the general benefit accrual requirement by ceasing benefit accruals after 35 years of service.

The conferees intend that Treasury regulations with respect to these provisions are to include special rules for periods during which the integration rules adopted in the Tax Reform Act are not effective.

Suspension of benefits.—The conference agreement does not alter the rules of existing law concerning the suspension of benefit payments to employees who are reemployed after attaining normal retirement age. Accordingly, a defined benefit plan complying with the suspension of benefit rules is required to provide additional benefit accruals but would not have to recommence payments until the employee actually retires (unless the provisions of section 401(a)(9) of the Code require the commencement of benefits because the employee has attained age 70½).

For example, if a plan provides a benefit of $10 monthly per year of service and an employee has 10 years of service at the plan's normal retirement age of 65, then the employee is entitled to receive a benefit of $100 a month if he or she retires at age 65. If, however, the retiree is reemployed after age 65 and the plan contains a suspension of benefits provision, the plan is not required to pay any benefits during a period of reemployment, assuming that the requirements for suspending benefits under the Code and ERISA are satisfied. Pursuant to the conference agreement, the plan is required to provide an additional benefit of $10 per month for each year of service after age 65 (until the employee has the maximum number of years of service for which credit is provided under the plan). Thus, at age 66, the retiring employee is entitled to receive a benefit of $110 a month, but if the employee is reemployed, the $110 may be forfeited under the suspension of benefit rules. Similarly, if the employee is to receive a benefit of $120 at age 67 and the employee is reemployed the amount payable may be forfeited for the period of reemployment if the plan contains a suspension of benefits provision.

As under present law (Code sec. 411), a defined benefit plan must provide actuarially increased benefits if the suspension of benefit rules did not apply or were not applied. In such a situation, a plan will fail to satisfy the requirements of this amendment unless it provides each participant in the plan with additional accruals. However, the conference agreement provides that benefit adjustments provided under the plan to take account of the delayed commencement of benefits are to be credited to the additional accruals otherwise required. Thus, the value of benefits upon the actual commencement of benefits would effectively offset the additional accruals that are otherwise required under the plan.

If a plan pays retirement benefits to an employee who continues working after attainment of normal retirement age (and, therefore, neither suspends benefits nor actuarially increases benefits upon later separation from service), the provision of such benefit payments are in effect equivalent to the provision of an actuarial increase in benefits under a plan that delays the commencement of benefits (without satisfying the suspension of benefit rules). Accordingly, under the conference agreement, such a plan could offset the additional accruals required by this amendment by the value of the effective actuarial increase in benefits. The conferees intend that the Treasury will provide guidelines for computing the offset.

Exception for certain early retirement benefits.—Under the conference agreement, an exception is provided to the rules relating to continued benefit accruals with respect to benefit accruals to the extent they are attributable to subsidized early retirement benefits. The conferees intend that similar exceptions generally are to be provided with respect to other types of benefits, such as disability benefits or social security supplements, which are payable before normal retirement age or the conditions of eligibility for which are not determined on the basis of age.

Age Discrimination in Employment Act.—It is the intention of the conferees, in adopting the amendments to ADEA (new sec. 4(i)), that the requirements contained in section 4(i) related to an employee's right to benefit accruals with respect to an employee benefit plan (as defined in sec. 3(2) of ERISA) shall constitute the entire extent to which ADEA affects such benefit accrual and contribution matters with respect to such plans on or after the effective date of such provisions (as described in the provi-

sion). No inference is to be drawn by the addition of section 4(i) as to whether or to what extent employee benefit plans might have been required to provide benefit accruals or allocations to employees' accounts for employees protected under ADEA prior to the effective date of section 4(i).

Effective date.—The conference agreement clarifies that the amendments apply to plan years beginning on or after January 1, 1988. Such amendments do not apply with respect to any employee who does not have an hour of service in any plan year to which the amendments apply. The provisions relating to the repeal of the provision which permits certain employees to be excluded from plan participation are effective for plan years beginning on or after January 1, 1988, with respect to hours of service on or after January 1, 1988. However, hours of service prior to January 1, 1988, shall be taken into account for purposes of section 410(a)(1)(A)(ii) and section 410(a)(1)(B) of the Code (relating to minimum service requirements) and the corresponding sections of ERISA, section 202(a)(1)(A)(ii) and section 202(a)(1)(B) of ERISA.

The conference agreement also limits the special effective date for plans maintained pursuant to a collective bargaining agreement to employees covered by such agreements. The conferees recognize that, as a result of the delayed effective date applicable to employees covered by a collective bargaining agreement, there may be situations in which a plan covering both employees who are covered by the agreement and those who are not so covered will be subject to two different effective dates. To the extent that the two effective dates may cause the plan to be considered discriminatory, the conferees intend that the Treasury will provide special rules ensuring that a plan will not fail to provide special rules ensuring that a plan will not fail to satisfy the nondiscrimination requirements applicable to qualified plans merely on account of the differing effective dates.

Interagency coordination.—The Secretary of Labor, Secretary of the Treasury, and the Equal Employment Opportunity Commission are to issue rulings and regulations that are consistent and are to consult and coordinate with one another in issuing such rulings and regulations.

10. PORT USE TAX AND RELATED TRUST FUND; INLAND WATERWAYS FUELS TAX AND RELATED TRUST FUND

Present law

Ports.—Present law does not impose Federal user taxes on the beneficiaries of Federal expenditures for development, operation, and maintenance of U.S. ports.

Inland waterways.—An excise tax of 10 cents per gallon is imposed on diesel and other liquid fuels used by commercial cargo vessels on designated inland or intracoastal waterways (Code sec. 4042). Amounts equivalent to the tax revenues are transferred to the Inland Waterways Trust Fund in the Treasury. Amounts in the Trust Fund are available, as provided by authorization and appropriations Acts, for construction and rehabilitation expenditures for navigation on the waterways covered by the fuels tax.

House bill

Port use tax and trust fund.—The House bill imposes an excise tax of 0.04 percent (4 cents per $100) on the use of a U.S. port by a commercial vessel for loading or unloading of commercial cargo, effective January 1, 1987. Certain exemptions are provided.

Amounts equivalent to revenues from the tax are transferred to a Port Trust Fund established by the bill; also, the bill authorizes annual appropriations to the Trust Fund equal to $1 billion less the port use tax revenue amounts transferred to the Fund. Amounts in the Port Trust Fund are to be available, as provided by appropriations Acts, for specified port expenditures, and for rebates of Saint Lawrence Seaway tolls (U.S. portion) attributable to cargo subject to the port use tax. The statutory provisions for this Trust Fund are placed in the Trust Fund Code of the Internal Revenue Code. These provisions are effective January 1, 1987.

Inland waterways trust fund and fuels tax.—The House bill adds the Tennessee-Tombigbee Waterway to the list of designated waterways with respect to which the inland waterways fuels tax applies. Also, the bill places statutory provisions for the Inland Waterways Trust Fund in the Trust Fund Code of the Internal Revenue Code and makes certain changes relating to Trust Fund expenditures. These provisions are effective January 1, 1987.

Senate amendment

No provision.

Conference agreement

Port use tax and trust fund.—The conference agreement does not include the House bill provision.

Inland waterways trust fund and fuels tax.—The conference agreement does not include the House bill provision.

11. OIL SPILL LIABILITY TRUST FUND AND PETROLEUM TAX

Present law

Funds relating to oil spill damages and cleanups have been created under various statutes, including (1) section 311(k) of the Federal Water Pollution Control Act (Clean Water Act) ("Coast Guard Fund"); (2) the Trans-Alaska Pipeline Authorization Act ("TAPS Fund"); the Deepwater Port Act of 1974 ("Deepwater Port Fund"); and the Outer Continental Shelf Act Amendments of 1978 ("Offshore Oil Fund"). These funds are financed by per-barrel fees on crude oil ranging from two to five cents per barrel and, in the case of the Coast Guard Fund, by general revenue appropriations.

A tax of 0.79 cents per barrel was imposed on domestic crude oil and imported petroleum products as part of the funding for the Hazardous Substance Response Trust Fund ("Superfund"); this tax expired after September 30, 1985.[1]

House bill

Oil spill liability trust fund

The House bill establishes in the U.S. Treasury the Oil Spill Liability Trust Fund ("Oil Spill Fund"). The general expenditure purposes of this fund are limited to payments, as provided in appropriation Acts, of (1) certain removal costs and related costs associated with oil spills; (2) claims asserted under the Comprehensive Oil Pollution Liability and Compensation Act ("COPLCA") that are not otherwise compensated; (3) administrative expenses incurred by the Federal Government under COPLCA; and (4) contributions to the International Fund for Compensation for Oil Pollution Damage ("International Fund") if the conventions establishing this fund come into force with respect to the United States.

Payments from the Oil Spill Fund may be made to a governmental entity only for removal costs and administrative expenses related to removal costs. Thus, for example, no amounts may be paid to any government for natural resource damage claims or loss of tax revenue.

Under regulations to be prescribed by the Treasury, expenditures from the Oil Spill Fund may be made for any contribution to the International Fund only in proportion to the portion of the International Fund that is used for purposes consistent with the expenditure purposes of the Oil Spill Fund.

Expenditures from the Oil Spill Fund are limited to $200 million per incident. Except in the case of removal costs, payments may not be made from the Oil Spill Fund to the extent that the balance of such Fund following such payment would be less than $30 million.

Under the House bill, the Oil Spill Fund is authorized to borrow up to $300 million. Advances made to the Oil Spill Fund are repayable with interest to the general fund of the Treasury. Interest accrues, with annual compounding, at a rate equal to the current average yield on outstanding marketable U.S. obligations with remaining maturity equal to the anticipated period over which the advance will be outstanding, as determined by the Secretary. All advances must be repaid no later than September 30, 1991.

Claims asserted under COPLCA may not paid from any source other than the Oil Spill Fund. Claims against the Oil Spill Fund are to be paid in full in the order in which they are finally determined, subject to the expenditure limitations described above.

Excise tax on petroleum

Under the House bill, the Oil Spill Fund is financed in part by an excise tax of 1.3 cents per barrel on crude oil and imported petroleum products ("oil spill tax"). The tax is imposed on the same crude oil and petroleum products, and is subject to the same definitional and other provisions, as the Superfund petroleum tax (sec. 4611) which expired on September 30, 1985. The collection, enforcement, and penalty provisions also are the same as under the Superfund petroleum tax.

A credit against the oil spill tax is allowed for amounts paid by the taxpayer before 1987 into the Deepwater Port Fund or the Offshore Oil Fund.

Effective date

The oil spill tax is effective January 1, 1987, through December 31, 1991. The Oil Spill Liability Trust Fund provisions are effective January 1, 1987.

Senate amendment

No provision.

Conference agreement

Oil spill liability trust fund

The conference agreement follows the House bill, except that—

(1) The Oil Spill Fund is authorized to borrow up to $500 million from the general fund of the Treasury, subject to the same conditions as under the House bill.

(2) The liability of the Oil Spill Fund cannot exceed $500 million for any single incident. (The conference agreement retains the restriction on any payment, other than

[1] The conference agreement on H.R. 2005 (The Superfund Amendments and Reauthorization Act of 1986), as passed by the Senate on October 3, 1986, and the House of Representatives on October 8, 1986, reimposes the prior-law excise tax on petroleum at a rate of 8.2 cents per barrel on domestic crude oil and 11.7 cents per barrel on imported petroleum products, effective January 1, 1987. A credit is added for certain crude oil which is returned to a pipeline.

for removal costs, that would reduce the fund balance below $30 million.)

(3) Payments from the Oil Spill Fund may be made to a governmental entity only for (A) removal costs and administrative expenses related to removal costs, and (B) natural resource damage claims not in excess of $250 million per incident and related administrative expenses.

(4) All references to COPLCA are treated as references to any authorizing legislation that is substantially identical to subtitle E of Title VI or subtitle D of Title VIII of H.R. 5300,[2] as passed by the House on September 24, 1986. If no such legislation is enacted by September 1, 1987, the trust fund provisions would never take effect (see effective dates, below).

Under rules to be prescribed by the Treasury, expenditures from the Oil Spill Fund may be made for any contribution to the International Fund only in proportion to the portion of the International Fund that is used for purposes consistent with the expenditure purposes of the Oil Spill Fund. The conferees intend that the portion of any contribution made to the International Fund that is paid out of the Oil Spill Fund shall be limited to the portion of the expenditures from the International Fund (after the date of enactment of authorizing legislation) that are made for purposes consistent with those of the Oil Spill Fund. (If the International Fund has made no expenditures for any purpose, no limitation would apply.) Expenditures by the International Fund that are inconsistent with the purposes of the Oil Spill Fund include, but are not limited to, payments to national or subnational governments (or agencies thereof) to the extent such payments are for (1) replacement of tax revenues, or (2) natural resource damage assessments and claims in excess of $250 million per incident.

Excise tax on petroleum

The conference agreement follows the House bill, with the following modifications:

First, if the Superfund Amendments and Authorization Act of 1986 is enacted, the tax would be imposed on the same crude oil and petroleum products as would be taxed under Code section 4611 (Superfund tax on petroleum) as amended by that Act.

Second, the excise tax on petroleum is to terminate when cumulative revenues from the tax reach $300 million. (This provision applies only to the portion of the petroleum tax used to finance the Oil Spill Fund.)

Third, the credit for previous contributions to the Deepwater Port Fund or the Offshore Oil Fund is to include the contributors' share of accrued interest on contributions, determined as of January 1, 1987.

Effective date

The Oil Spill Fund provisions and the tax on domestic and imported oil will be effective on the beginning of the first month occurring more than 30 days after enactment of authorizing legislation, but in no event will such provisions and taxes be effective before February 1, 1987. The taxes and trust fund provisions will never become effective if authorizing legislation is not enacted by September 1, 1987.

[2] These correspond to the oil spill liability and compensation provisions as reported by the House Committee on Merchant Marine and Fisheries and the House Committee on Public Works and Transportation, respectively, each of which is included in H.R. 5300.

12. APPROPRIATIONS FOR IRS ENFORCEMENT

Present law

The Internal Revenue Service (IRS) is responsible for administering almost all of the tax laws. The cost of the entire IRS budget is funded through annual appropriations of general revenues.

House bill

The House bill provides for increases in the funding levels appropriated to specific IRS functions for fiscal year 1987. Increased funds are to be directed to functions involving examination, collection, and related tax compliance activities, as follows:

Salaries and expenses.....	$95,147,000
Processing tax returns.....	1,332,902,000
Examinations and appeals.	1,623,162,000
Investigation, collection, and taxpayer service.....	1,196,581,000

These changes in funding are to be effective only if the allocation to the Senate Appropriations Committee for the budget for fiscal year 1987 for the IRS is increased by $300 million in both new budget authority and outlays.

Senate amendment

The Senate amendment generally is the same as the House bill.

Conference agreement

The conference agreement follows the House bill.

VI. OTHER PROVISIONS

1. CUSTOMS USER FEES (SECS. 8351 AND 8352 OF CONFERENCE AGREEMENT; SEC. 10361 OF HOUSE BILL; NO SENATE PROVISION)

Present law

The Consolidated Omnibus Budget Act of 1985 (P.L. 99-272) for the first time imposed a schedule of customs user fees to cover Customs' costs of processing the arrival of vessels, trucks, trains, private boats and planes, and passengers. No fees were imposed, however, on the processing of commercial merchandise. The total revenues from such fees are approximately $170 million per year.

House bill

Imposes a customs user fee on all formal entries of imported merchandise for consumption based on the customs value of such merchandise of 0.5 percent ad valorem for the period December 1, 1986, through September 30, 1987, and 0.2 percent ad valorem thereafter. The provision would not apply to informal entries or to articles classifiable under items in schedule 8 of the Tariff Schedules. These fees would be in addition to the processing fees required under present law. The proceeds of such fee would be deposited in a separate account within the general fund of the Treasury and be available, subject to appropriation, to the Customs Service for carrying out its operations.

On September 30, 1988, and every two years thereafter, the Secretary of the Treasury would be required to submit a report to the Congress concerning any necessary fee adjustments to bring the account into a zero balance and to ensure that the fee reflects the actual costs of the services provided.

Senate amendment

No provision.

Conference agreement

The conferees agreed to an amended version of the House provision imposing a user fee of 0.22 percent ad valorem in fiscal year 1987 and 0.17 percent ad valorem in fiscal years 1988 and 1989 on all formal entries of imported merchandise for consumption, beginning December 1, 1986, based on the appraised customs value of such merchandise. These fees would be in addition to the processing fees required under present law and all such fees would expire at the conclusion of fiscal year 1989. The provision would not apply to articles classifiable under items in schedule 8 of the Tariff Schedules or to the products of least developed developing countries (LDDCs), eligible countries under the Caribbean Basin Initiative (CBI), or U.S. insular possessions. The proceeds of such fees would be deposited in a dedicated account within the general fund of the Treasury and be available, subject to authorization and appropriation, to offset appropriations to the Customs Service for the cost of commercial services rendered. In fiscal years 1988 and 1989, a special formula would allow reduction of the fee if that became necessary to ensure that the fee structure and revenue derived therefrom in the outyears of the program are consistent with the international obligations of the United States.

During the effective period of the customs user fees, Customs would be precluded from assessing charges for cargo inspection or clearance services or any other customs service performed or personnel provided in connection with the arrival or departure of any commercial vessel, vehicle, or aircraft, its passengers, crew, and cargo, including those performed outside of normal business hours on an overtime basis and those performed outside of the United States except for those fees authorized under subsection (a) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 as amended by this Act. This provision includes, in section 8352, an authorization of appropriations for the U.S. Customs Service for fiscal year 1987 of $1,001,180,000 to serve as a measure of limitations applicable to such fees under existing international trade agreements.

The fee is intended to apply to all formal entries of merchandise for consumption, including warehouse withdrawals for consumption. The fee would not apply, however, to informal entries, merchandise which does not formally enter U.S. commerce for consumption, or any articles which are eligible for special tariff treatment under one of the provisions in schedule 8 of the Tariff Schedules of the United States. The conferees also agreed to exclude the products of U.S. insular possessions, LDDCs, and CBI countries from the application of this fee primarily because these are among the poorest nations in the world and the General Agreement on Tariffs and Trade (GATT) authorizes signatories to provide special and differential treatment to developing countries.

The conferees intend that the exemption for articles entering under schedule 8 shall include the full value of items which, if dutiable, would be eligible for entry under TSUS items such as items 806.30 or 807.00, even if the articles are currently duty-free under the parent provision.

The fee would apply to all other articles, however, regardless of whether such articles are dutiable or duty-free or whether the articles are eligible for a tariff preference such as the Generalized System of Preferences (GSP) or a bilateral free trade arrangement.

In the case of small airports and other facilities where the entire cost of maintaining customs services is already borne by the users of such facilities, the Secretary of the Treasury would be authorized to impose a

lower merchandise entry fee than would be applicable otherwise.

The conferees believe that a necessary corollary to the imposition of a merchandise user fee is adequate and expeditious customs processing of such merchandise. The importing community has a right to expect the Customs Service to be adequately staffed and to provide its services in an expeditious fashion. It is the intention of the conferees in providing for a customs user fee for cargo shipments, that such a fee will enable the Customs Service to guarantee that staffing and services will be provided at such times and at such levels as are necessary to meet the demand of the shipping public.

The conferees are also concerned that the creation of a user fee on consumption entries not be the occasion for an increase in the recordkeeping or other data collection burdens imposed upon the public. In this regard, it is anticipated that the Customs Service will continue to employ its existing standard consumption entry form (CF 7501) which contains sufficient information to assure proper collection of the user fee. In implementing the new user fee, the conferees direct the Commissioner of Customs to make certain that no new recordkeeping or data collection burdens are imposed upon the public, including all shippers, cargo-freight carriers, or related entities.

The new fees are consistent with U.S. obligations under the GATT. These fees are limited in amount to the approximate cost of services rendered by the Customs Service, and the fees are therefore consistent with the GATT exceptions regarding such charges. Article II, section 2, of the GATT authorizes any contracting party to impose at any time on the importation of any product "fees or other charges commensurate with the costs of services rendered." Article VIII is to similar effect. Moreover, Article XX of the GATT, entitled "General Exceptions," allows the United States to adopt any measure "necessary to secure compliance with laws . . . including those relating to customs enforcement. . . ." Since customs enforcement involves inspection and various duty collections over and above commercial operations, the fee does not cover all operations that such a fee may cover under GATT.

An overall ad valorem fee is the only way to equitably distribute the cost of Customs' commercial services. In line with GATT Article VIII, the fee is limited to the approximate cost of these services. The total revenues of approximately $170 million per year realized from the existing fees fall far short of covering the costs of services rendered by the Customs Service. The additional fees have been limited to less than the cost of all services rendered.

The fee level of 0.22 percent ad valorem in fiscal year 1987 was adopted because the CBO revenue estimate of $790 million in fiscal year 1987, which provides the basis for revenue scoring under the Budget Act, is based upon a CBO estimate of imports of $436.6 billion in that fiscal year. The conferees are advised by the Administration that imports in fiscal year 1987 will actually be significantly lower than the CBO estimate, largely because of the impact of the declining value of the U.S. dollar. Based on annualized trade data for the first six months of calendar year 1986 and the estimated effect of the decline in the value of the dollar, a more realistic projection of imports for fiscal year 1987 would be approximately $366.2 billion or $70 billion less than the CBO estimate. On the basis of this figure, the actual revenues realized from the user fee will be about $630 million which, together with the $170 million currently being collected, closely approximates the $830 million salary and expense figure authorized in this legislation for fiscal year 1987.

Second, the conferees opted for a slightly higher fee in the first year to ensure that there are adequate receipts in the fund to cover start-up costs and to cover any potential increases in the costs of customs operations. In this regard, the fee was reduced to 0.17 percent ad valorem after only 10 months of operation on the belief that, after the start-up costs were absorbed, the lower fee in subsequent years would offset any surplus resulting in fiscal year 1987, so that for the first two years the fees realized will closely approximate Customs' actual costs of commercial operations.

Third, beginning in fiscal year 1988, a mechanism is provided which would authorize the Secretary of the Treasury to reduce the applicable fee so that the amount realized from such fees would be reduced in an equivalent amount to any reductions in the amount appropriated to the U.S. Customs Service for commercial operations. The conferees are concerned that in future years, the amount authorized for the Customs Service would, in some part, not be appropriated, and therefore the fee provided for in fiscal years 1988 and 1989 in the conference agreement (which must, under the Budget Act, be established now in order to count as savings with respect to those years) would be higher than is consistent with the standard of Article VIII of the GATT. To answer this concern, the conferees have established a "fee reduction mechanism" applicable in fiscal years 1988 and beyond, which provides that the fee is the lower of the fee set by this bill or an ad valorem rate the Secretary of the Treasury is required to set in accordance with a formula. The formula requires that the Secretary reduce the rate of the fee to produce revenue each year equal to the amount authorized for salaries and expenses for commercial operations of the Customs Service in that same year. This authorization amount, as well as the fee, is required by the bill to be explicitly authorized each year.

All customs user fees, whether derived from merchandise entries or otherwise, are to be deposited in a dedicated account in the General Fund of the Treasury, to be used exclusively to reimburse the Customs Service appropriation. The fee reduction mechanism which is authorized for fiscal years 1988 and 1989 should ensure that the balance in this account is reduced to zero by the close of fiscal year 1989.

Finally, in order to ensure that the fees approximate the actual costs of Customs' operations, the Secretary is directed at the end of fiscal year 1988 and every two years thereafter to recommend corrections in the fee structure in order to bring the funds in the dedicated customs user fee account to a zero balance. Accordingly, the conferees chose to adopt a cautious approach and to approve a fee structure which would *guarantee* adequate funding at the outset and strive for overall balance in the ensuring years in a manner that is completely consistent with our obligations under the GATT.

2. TEMPORARY INCREASE IN PUBLIC DEBT LIMIT

The amount available for the debt limit through May 1987, $2,300 billion, is consistent with the budget totals and budget deficits in the Budget Resolution adopted by Congress for fiscal year 1987. The increase of $189 billion would expire on May 15, 1987 and the debt limit will revert to its permanent level of $2,111 billion.

3. RESTORATION OF LOST INTEREST TO CERTAIN TRUST FUNDS

The conference agreement provides for the restoration to certain Federal trust funds of lost interest and obligations due to any noninvestments, redemptions, or disinvestments that occurred as a result of the failure to extend the debt limit by September 30, 1986. This provision places those trust funds that experienced any disruption in normal investment and redemption procedures due to debt ceiling constraints in the same position they would have been in had H.J. Res. 668, as passed by the House of Representatives on June 26, 1986, been enacted into law on September 30, 1986.

MEDICAID PROVISIONS

1. OPTIONAL COVERAGE FOR POOR PREGNANT WOMEN AND CHILDREN (SECTION 9401)

Present law

States are required to provide Medicaid coverage to all children receiving assistance under the Federally-assisted Aid to Families with Dependent Children (AFDC) program and may provide coverage for children who would be eligible for AFDC except for income requirements (known as the medically needy). States are required to cover all children born after October 1, 1983, up to age 5 who meet the AFDC income and resources requirements and may extend coverage to all such children under age 5 immediately. States are also required to cover pregnant women meeting AFDC income and resources standards.

House bill

(a) New optional categorically needy group.—

(i) Creates a new optional categorically needy group composed of pregnant women (through 60 days following pregnancy) and infants up to 1 year of age with family incomes up to the Federal poverty level. A State choosing this option could not elect to cover only pregnant women or only children.

(ii) Provides that States could choose an income eligibility level between the AFDC payment level and 100 percent of the Federal poverty line. The State is required to use the same methodology used in determining eligibility for AFDC benefits. Costs incurred for medical care are not taken into account in determining eligibility.

(iii) Prohibits States from setting a resource standard for newly eligible pregnant women. For infants, States are not permitted to apply a resource standard that is more restrictive than the AFDC standard; they are permitted to use the SSI resource standard; some other less restrictive resource test; or to impose no resource requirements at all.

(iv) Specifies that any different treatment of income and resources provided for newly eligible persons shall not require or permit such treatment for other persons.

(v) Provides that if a State chooses to cover a new optional categorically needy group, it may not lower its AFDC payment levels below those in effect on April 17, 1986.

(b) Benefits.—Specifies that newly covered pregnant women are only entitled to services related to pregnancy (including prenatal, delivery, and postpartum services) and other conditions which complicate pregnancy.

(c) Continuation of assistance.—

(i) Permits a State to treat pregnant women eligible under this provision as eligible for Medicaid throughout their pregnancy without regard to any change in family income.

(ii) Requires States to extend eligibility for an infant receiving inpatient services on his/her first birthday until the end of the inpatient episode.

Senate amendment

(a) New optional categorically needy group.—

(i) Similar provision except that beginning in FY 88 States could increase the age level by one year in each fiscal year until all children up to age 5 were included. States could not elect to cover one age group unless children in all younger age groups were covered.

(ii) Similar provision except does not specify that the minimum level is the AFDC level.

(iii) Specifies that application of a resources standard is at a State option. The State may choose the resources standard and methodology used under AFDC, SSI, or the medically needy programs.

(iv) Identical provision.

(v) Similar provision except linked to enactment.

(b) Benefits.—Identical provision.

(c) Continuation of assistance.—

(i) Identical provision.

(ii) Identical provision except also includes newly eligible children.

Conference agreement

(a) New optional categorically needy group.—

(i) The conference agreement follows the Senate amendment.

(ii) The conference agreement follows the Senate amendment.

(iii) The conference agreement follows the Senate amendment with a modification. In the case of pregnant women, the States would be allowed to impose resource standards and methodologies that are no more restrictive than those under the SSI program. In the case of infants and children, the States would be allowed to impose resource standards and methodologies no more restrictive than those under their AFDC programs. As under current law, AFDC sibling and grandparent deeming rules would not apply to this population.

(iv) The conference agreement follows the Senate amendment.

(v) The conference agreement follows the House bill.

(b) Benefits.—The conference follows the Senate amendment.

(c) Continuation of assistance.—The conferenced agreement follows the Senate amendment with respect to items (i) and (ii).

Effective date.—Except for the phased-in coverage of children, applies to medical assistance furnished in calendar quarters beginning on or after April 1, 1987. The phased-in coverage for children begins October 1, 1987 and is extended in 1-year intervals until October 1, 1990, when all newly eligible children under age 5 may be covered. These options are effective on the dates specified whether or not final regulations have been promulgated by those dates.

2. OPTIONAL PRESUMPTIVE ELIGIBILITY PERIOD FOR PREGNANT WOMEN (SECTION 9407)

Present law

Title XIX of the Social Security Act allows for a 3-month retroactive eligibility period prior to the date on which application for medical assistance is made. Medicaid regulations further require State agencies to determine eligibility within 45 days from the day of the application for benefits. If the application is approved, medical expenses incurred during the 3-month retroactive eligibility period and services incurred after the date of application for benefits are reimbursed under the normal Medicaid rules. If the application is denied, medical expenses incurred during the 3-month retroactive eligibility period and services incurred after the day of application remain the responsibility of the individual.

House bill

No provision.

Senate amendment

Permits States to make ambulatory prenatal care available to pregnant women during a presumptive period of eligibility which is defined as: (1) beginning on the date on which a qualified provider determines on the basis of preliminary information that the family income falls below the applicable Medicaid standard; and (2) ending on the earlier of the day on which the application is approved or disapproved by the State agency or 45 days after the date the provider makes the determination. A qualified provider (1) is eligible for Medicaid payments; (2) provides outpatient hospital services, rural health services, or clinic services; (3) is determined by the State agency to be capable of making presumptive eligibility determinations; and (4) receives funds under the migrant health centers, community health centers, or the maternal and child health block grant programs; participates under the Special Supplemental Food Program for Women, Infants and Children or the Commodity Supplemental Food Program; or participates in a State perinatal program. The State agency is required to provide qualified providers with necessary application forms and information on how to assist pregnant women to complete the forms. A provider that determines a woman is presumptively eligible is required to notify the State agency within 5 working days of the determination. The provider also must inform the woman at the time the determination is made that she is required to apply for Medicaid within 14 days of the determination, and the woman is required to make such application. Payments made on behalf of presumptively eligible women shall be at the same rate otherwise applicable. The amounts of any excess payment under this provision are not to be included toward the calculation of excess payments under the State's quality control program.

Conference agreement

The conference agreement follows the Senate amendment with a clarification that the provision is effective on April 1, 1987, without regard to whether final regulations have been promulgated by that date. The conference agreement further clarifies that, in the case where a pregnant woman does not file a Medicaid application within the required 14 day period, the woman's presumptive eligibility terminates at the end of the 14 day period.

Effective date.—Applies to ambulatory prenatal care furnished in calendar quarters beginning on or after April 1, 1987, without regard to whether final regulations have been promulgated by that date.

3. OPTIONAL COVERAGE OF ELDERLY AND DISABLED POOR FOR ALL MEDICAID BENEFITS (SECTION 9402)

Present law

Eligibility of the elderly and the disabled for Medicaid is linked to actual or potential receipt of cash assistance under the Federal Supplemental Security Income (SSI) program. The elderly and the disabled covered under Medicaid generally are persons receiving Federal and/or State SSI payments, residing in a skilled nursing facility or intermediate care facility, or incurring substantial medical expenses. The income and resource eligibility criteria differ substantially among the States.

House bill

(a) New optional categorically needy group.—Creates a new optional categorically needy group composed of the aged and disabled with family incomes up to the Federal poverty level. A State choosing this option would have to offer the benefit package available to other categorically needy recipients. A State choosing this option would also have to cover some newly eligible pregnant women and children.

(b) Income and resources standards.—Provided that States could choose an income eligibility level up to 100 percent of the Federal poverty line. Costs incurred for medical care are not taken into account in determining eligibility. Required States to use SSI resource standards, except that if a State has a medically needy program utilizing higher resource standards, it may utilize those higher standards. Specifies that any different treatment of income and resources provided for newly eligible persons shall not require or permit such treatment for other persons.

Senate amendment

(a) New optional categorically needy group.—Identical provision.

(b) Income and resources standards.—Identical provision.

Conference agreement

The conference agreement follows the Senate amendment.

Effective date.—Applies to payments to States for calendar quarters beginning on or after July 1, 1987, without regard to whether final regulations have been promulated by that date.

4. OPTIONAL COVERAGE OF POOR MEDICARE BENEFICIARIES FOR MEDICARE COST-SHARING EXPENSES (SECTION 9403)

Present law

Coverage under Medicare Part B requires payment of monthly premium. Most States make this payment for their Medicaid eligibles under a "buy-in" agreement. While States may buy into Medicare for both their cash assistance and non-cash assistance populations who are eligible for Medicare, Federal matching for premium payments is only available for the cash assistance group.

States may receive Federal matching payments for Medicare cost-sharing charges, including deductibles and coinsurance, for services provided to their dual eligibles.

House bill

(a) New optional coverage group for medicare cost-sharing.—

(i) Creates a new optional coverage group composed of Medicare Part A beneficiaries not otherwise eligible for Medicaid with family incomes up to the Federal poverty level. A State choosing this option would

also have to cover some newly eligible pregnant women and children.

(ii) Provides that States could choose an income eligibility level up to 100 percent of the Federal poverty line. Costs incurred for medical care are not taken into account in determining eligibility.

(iii) Requires States to use SSI resource standards, except that if a State has a medically needy program using higher resource standards, it may apply those higher standards to this group.

(iv) Specifies that any different treatment of income and resources provided for newly eligible persons shall not require or permit such treatment for other persons.

(b) Benefits.—Specifies that covered benefits are limited to Medicare cost-sharing. Medicare cost-sharing is defined as Part B premiums, Part A deductibles and coinsurance, Part B deductibles and Part B coinsurance. The term may include, at the option of the State, premiums for enrollment of an eligible beneficiary with a Medicare-qualified risk-sharing HMO.

(c) Payment amounts.—Provides that the total of Medicaid payments for Medicare cost-sharing charges under this provision together with Medicare payments may exceed the amounts otherwise payable under the State Medicaid plan for such services.

(d) Effective date of benefits.—Specifies that if an individual is determined to be a qualified Medicare beneficiary as defined under this provision, the determination shall apply to services furnished after the end of the month in which the determination first occurs. The determination shall be considered to be valid for a 12-month period, except that a State may provide for more frequent determination, but not more frequently than every six months.

Senate amendment

(a) New optional coverage group for medicare cost-sharing.—Identical provision.

(b) Benefits.—Identical provision except includes (if applicable) Part A premiums.

(c) Payment amount.—Identical provision.

(d) Effective date of benefits.—Identical provision.

Conference agreement

The conference agreement follows the Senate amendment.

Effective date.—Applies to payments under Medicaid for calendar quarters beginning on or after July 1, 1987, without regard to whether final regulations have been promulgated by that date.

5. MEDICAID ELIGIBILITY FOR QUALIFIED SEVERELY IMPAIRED INDIVIDUALS (SECTION 9404)

Present law

Low-income individuals who qualify for Medicaid on the basis of disability must, in most States, meet the disability standards of the Supplemental Security Income (SSI) program. (Some States have opted to impose more restrictive criteria than those in SSI. These are commonly referred to as the "209(b) States" in reference to the statutory provision which gives them the option to use their 1972 eligibility standards for the elderly and disabled). For purposes of SSI, an individual is not considered to be disabled if, after a 9-month trial work period, he or she is able to engage in "substantial gainful activity" (SGA) which the Secretary has defined as average countable earnings of over $300 per month. Loss of disability status for SSI purposes means loss of categorical eligibility for Medicaid.

The Disability Amendments of 1980 (P.L. 96-265) added a new section 1619 to the SSI law. Section 1619(a) provides that an individual who loses eligibility for SSI because he or she has worked and demonstrated the ability to engage in SGA, but who continues to have a disabling impairment, may become eligible for a special cash benefit equal in amount to an SSI benefit until his or her countable income reaches the SSI income disregard "break-even" point (in 1986, $756 per month in a State with no supplementation). Those who qualify for these special SSI benefits continue to be eligible for Medicaid as long as they need medical assistance to continue working.

Section 1619(b) provides Medicaid coverage for individuals whose earnings cause their income to exceed the SSI income disregard "break-even point". This special Medicaid eligibility status applies so long as the individual: (1) continues to be blind or have a disabling impairment; (2) except for earnings, continues to meet all the other requirements for SSI eligibility; (3) would be seriously inhibited from continuing to work by the loss of Medicaid coverage; and (4) has earnings that are not sufficient to provide a reasonable equivalent of the Medicaid and SSI benefits that would have been available if he or she did not work. The Social Security Administration (SSA) has established a "threshold" in each State based on SSI and any State supplementation and the State's average per capita Medicaid expenditures; individuals with gross earnings in excess of this "threshold" no longer meet requirement (4) and therefore lose Medicaid coverage, unless their individual medical expenses exceed the State's average Medicaid expenditures.

According to SSA, section 1619 has enabled thousands of former SSI recipients to retain Medicaid coverage despite returning to work and performing SGA. Section 1619 expires on June 30, 1987.

House bill

Amends Title XIX of the Social Security Act to establish a new mandatory, categorically needy coverage group: "qualified severely impaired individuals." This group includes any individual under 65 who received either SSI, State supplementation, or special 1619(a) benefits and who: (1) continues to be blind or have a disabling physical or mental impairment; (2) except for earnings, continues to meet all other requirements for SSI eligibility (including the limitations on unearned income below the SSI benefit standard); (3) would be seriously inhibited by the lack of Medicaid coverage from continuing to work or from obtaining employment; and (4) has earnings that are not sufficient to provide a reasonable equivalent of the Medicaid, SSI, and Title XX attendant care benefits that would be available if he or she did not work. This mandatory coverage group applies both in States that currently follow the SSI definition of disability and in the "209(b)" States.

Senate amendment

No provision. In September, the Senate Finance Committee reported S. 2209, S. Rept. 99-466, which revises and makes permanent the provisions of section 1619 of the Social Security Act. This legislation, in different versions, has passed both Houses.

Conference agreement

The conference agreement follows the House bill with a clarification that, in order to qualify for Medicaid coverage under this provision, an individual must have eligible for Medicaid in the month preceeding the first month in which this provision applies to the individual. The conferees assume that section 1619(a) will be revised and made permanent in other legislation, in which case the Secretary, through the Social Security Administration, will continue to administer eligibility for Medicaid benefits for this population. Should the section 1619(a) authority expire, however, the Secretary may make other arrangements, if the Secretary finds it appropriate to do so.

Effective date.—Applies to payments for calendar quarters beginning on or after July 1, 1987, without regard to whether regulations to implement these amendments have been promulgated by such date. Delay would be permitted where State legislation is required to amend the State's Medicaid plan.

6. CLARIFICATION OF ELIGIBILITY OF HOMELESS INDIVIDUALS (SECTION 9405)

Present law

States are prohibited from imposing residency requirements that exclude any otherwise qualified individual who resides in the State. There is no Federal requirement that an individual have a fixed or permanent residence in order to qualify for Medicaid. However, according to the Department of Health and Human Services and the General Accounting Office, some States and localities require applicants for Medicaid and AFDC to supply a fixed address in order to qualify. It appears that these requirements are imposed out of concern by the States that the Federal government will penalize them if they approve fraudulent applications for homeless recipients.

House bill

Clarifies that States or localities are prohibited from imposing any residence requirement which excludes from Medicaid any otherwise qualified individual who resides in the State, regardless of whether or not the residence is maintained permanently or at a fixed address.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

Effective date.—Enactment.

7. TREATMENT OF INCOME AND RESOURCES REQUIRED TO BE PAID UNDER SPOUSAL AND CHILD SUPPORT

Present law

The Medicaid statute provides that, in determining eligibility, States take into account only such income and resources as are available to the applicant or recipient, in accordance with standards prescribed by the Secretary.

House bill

Clarifies that in determining the income and resources of an individual who is in an institution, the individual shall not be considered to have available to him or her income or resources which are required to be paid under court order for the support of the individual's spouse or child. The provision applies to States which had the policy or practice of disregarding such support payments in such circumstances as of July 22, 1986, without regard to whether or not the policy or practice, reflected in a State plan amendment or not, was approved by HCFA.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill.

8. PAYMENT FOR ALIENS UNDER MEDICAID (SECTION 9406)

Present law

The Medicaid statute does not explicitly identify whether otherwise qualified aliens are entitled to benefits. By regulation, the Secretary has limited Medicaid eligibility to otherwise eligible aliens who are lawfully admitted for permanent residence or permanently residing in the U.S. under color of law, including any alien who is lawfully present under sec. 203(a)(7) or sec. 212(d)(5) of the Immigration and Nationality Act. The Aid to Families with Dependent Children (AFDC) statute, section 402(a)(33) of the Social Security Act, and the Supplemental Security Income (SSI) statute, section 1614(a)(1)(B) of the Act, both limit eligibility for cash assistance benefits to otherwise qualified aliens who are lawfully admitted for permanent residence or otherwise permanently residing in the U.S. under color of law.

On July 14, 1986, a U.S. District Court struck down this regulation as outside the scope of the authority delegated under the Medicaid statute. The court reasoned that Congress "knew how to impose alienage requirements on social welfare programs when it intended, and its refusal to impose such a requirement on Medicaid should be respected." Because the AFDC and SSI statutes do include explicit exclusions of certain classes of aliens, the result of this decision is that otherwise qualified aliens who are eligible for Medicaid as non-cash beneficiaries—i.e., medically needy or optional categorically needy individuals—are entitled to Medicaid coverage.

House bill

Amends the Medicaid statute at section 1903(i) to make it explicit that Federal financial participation is not available for State expenditures for aliens who are not lawfully admitted for permanent residence or permanently residing in the U.S. under color of law. Further provides in sec. 1902(a) that nothing in Medicaid law should be construed to require a State to offer coverage to aliens who are not lawfully admitted for permanent residence or otherwise permanently residing in the U.S. under color of law.

Senate amendment

No provision.

Conference agreement

The conference agreement follows that House bill with a modification providing that Federal financial participation is not available for State expenditures for aliens who are not lawfully admitted for permanent residence or permanently residing in the U.S. under color of law except where the alien is otherwise qualified for Medicaid and has an emergency medical condition. In order to otherwise qualify for Medicaid as a categorically needy beneficiary, an alien need not actually receive a cash payment under AFDC or SSI (indeed, current law precludes payment in such cases); however, the alien must meet the income, resource, and categorial requirements of the applicable cash assistance program. An emergency medical condition is defined as a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. The costs of hospitals and other providers deliverying necessary services covered under the Medicaid State plan to aliens with emergency medical conditions are therefore allowable under Medicaid so long as the alien meets the applicable income, resource, and categorical eligibility requirements under the State Medicaid plan.

Effective date.—Applies to medical assistance furnished to aliens on or after January 1, 1987, whether or not final regulations have been promulgated by that date.

9. PERMITTING STATES TO OFFER HOME AND COMMUNITY-BASED SERVICES TO LOW-INCOME INDIVIDUALS WITH AIDS-RELATED CONDITIONS (SECTION 9411)

Present Law

(a) Eligibility for persons with AIDS or AIDS related conditions.—Section 1915(c) of the Social Security Act authorizes the Secretary to waive certain Medicaid requirements to allow States to provide a variety of home and community-based long-term care services to individuals (1) who would otherwise require the level of care provided in a SNF or ICF whose cost could be reimbursed under the State plan, or (2) who but for the provision of these services would continue to receive inpatient hospital, SNF, or ICF services because they are dependent on ventilator support whose cost is reimbursed under the State plan.

(b) Computing expenditures for AIDS patients.—In order to receive approval for a waiver, States must provide a number of assurances to the Secretary, including one requiring that the estimated average per capita expenditure for medical assistance under the waiver for those receiving waivered services in any fiscal year not exceed 100 percent of the average per capita expenditure that the State resonably estimates would have been incurred in that year for that population if the waiver had not been granted. COBRA allowed States, in estimating average per capita expenditures for waivers applying only to physically disabled individuals in SNFs or ICFs, to use only the expenditures associated with this group of persons and not expenditures associated with other eligible individuals.

(c) Providing case management services to AIDS patients.—Section 1915(g) authorizes the Secretary to provide case management services without regard to requirements that Medicaid services be available throughout a State and that covered services be equal in amount, duration, and scope for certain Medicaid recipients. Case management services are defined as services which will assist individuals eligible under the State's Medicaid plan in gaining access to needed medical, social, educational, and other services.

House bill

(a) Eligibility for persons with AIDS or AIDS-related conditions.—Extends eligibility for home and community-based services to individuals diagnosed as having AIDS or AIDS-related conditions who, but for such services, would continue to receive inpatient hospital care the cost of which is reimbursed under the State plan.

(b) Computing expenditures for AIDS patients.—Allows States, in estimating average per capita expenditures for waivers applying only to persons with AIDS or AIDS-related conditions who are in hospitals, SNFs, or ICFs, to use only the expenditures associated with this group of persons and not expenditures associated with other individuals in facilities.

(c) Providing case management services to AIDS patients.—Allows States to limit the provision of case management services under section 1915(g) to individuals with AIDS or AIDS-related conditions.

Senate amendment

No provision.

Conference agreement

(a) Eligibility for persons with AIDS-related conditions.—The conference agreement follows the House provision with a modification providing that eligibility for home and community-based services extends to all individuals who, but for the provision of such services, would require the level of care provided in a hospital, SNF or ICF, the cost of which could be reimbursed under the State Medicaid plan. States are allowed to target their waivers to groups of individuals at risk of hospital care, as defined by illness or diagnosis (e.g., AIDS of AIDS-related condition), or by condition (e.g., chronic mental illness, ventilator dependency).

(b) Computing expenditures for AIDS patients.—The conference agreement follows the House bill with a modification allowing States to make their expenditure estimates specific to any group of patients who are in hospitals, SNFs, or ICFs, as defined by illness or diagnosis (e.g., AIDS or AIDS-related condition), or condition (e.g., chronic mental illness, ventilator dependency).

(c) Provision case management services to AIDS patients.—The conference agreement follows the House bill.

Effective date.—Applies to applications for waivers (or renewals thereof) approved on or after date of enactment.

10. PERMITTING STATES TO OFFER HOME AND COMMUNITY-BASED SERVICES TO LOW-INCOME INDIVIDUALS WITH CHRONIC MENTAL ILLNESS (SECTION 9411)

Present law

(a) Eligibility for persons with chronic mental illness.—Section 1915(c) authorizes the Secretary to waive certain Medicaid requirements to allow States to provide a variety of home and community-based services to individuals (1) who could otherwise require the level of care provided in a SNF or ICF the cost of which could be reimbursed under the State plan, or (2) who but for the provision of these services would continue to receive inpatient hospital, SNF, or ICF services because they are dependent on ventilator support whose cost is reimbursed under the State plan.

(b) Computing expenditures for patients with chronic mental illness.—In order to receive approval for a waiver, States must provide a number of assurances to the Secretary, including one requiring that the estimated average per capita expenditure for medical assistance under the waiver for those receiving waivered services in any fiscal year not exceed 100 percent of the average per capita expenditure that the State reasonably estimates would have been incurred in that year for that population if the waiver had not been granted.

COBRA allowed States, in estimating average per capita expenditures for waivers applying only to physically disabled individuals in SNFs or ICFs, to use only the expenditures associated with this group of persons and not expenditures associated with other eligible individuals in these facilities.

(c) Providing case management services to patients with chronic mental illness.—Section 1915(g) authorizes the Secretary to provide case management services without regard to requirements that Medicaid services be available throughout a State and that covered services be equal in amount, duration, and scope for certain Medicaid recipients Case management services are defined as services which will assist individuals eligible under the State's Medicaid plan in gaining access to needed medical, social, educational, and other services.

(d) Expanding services covered under waiver.—Section 1915(c) including among the home and community-based services which may be covered under a waiver the following: case management services, homemaker/home health aide services and personal care services, adult day health services, habilitation services, respite care, and such other services as the State may request and the Secretary may approve.

House bill

(a) Eligibility for persons with chronic mental illness.—Extends eligibility for home and community-based services to persons with chronic mental illness who but for the provision of such services would continue to need inpatient hospital care reimbursed under the State plan. Also clarifies with a technical amendment that plan requirements which may be waived under section 1915(c) include comparability of covered services, i.e., that covered services be equal in amount, duration, and scope for certain Medicaid recipients.

(b) Computing expenditures for patients with chronic mental illness.—Allows States, in estimating average per capita expenditures for waivers applying only to persons with chronic mental illness who are in hospitals, SNFs, or ICFs, to use only the expenditures associated with this group of persons and not expenditures associated with other persons in these facilities.

(c) Providing case management services for patients with chronic mental illness.—Allows States to limit the provision of case management services under section 1915(g) to individuals with chronic mental illness.

(d) Expanding services covered under waiver.—Adds to the list of services which may be offered under a 1915(c) waiver the following: day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness.

Senate amendment

No provision.

Conference agreement

(a) Eligibility for persons with chronic mental illness.—The conference agreement follows the House bill with a modification providing that eligibility for home and community-based services extends to all individuals who, but for the provision of such services, would require the level of care provided in a hospital, SNF, or ICF, the cost of which could be reimbursed under the State Medicaid plan. States are allowed to target their waivers to groups of individuals at risk of hospital care, as defined by illness or diagnosis (e.g., AIDS or AIDS-related condition), or by condition (e.g., chronic mental illness, ventilater dependency).

(b) Computing expenditures for patients with chronic mental illness.—The conference agreement follows the House bill with a modification allowing States to make their expenditure estimates specific to any group of patients in hospitals, SNFs, or ICFs, as defined by illness or diagnosis (e.g., AIDS or AIDS-related condition), or condition (e.g., chronic mental illness, ventilater dependency).

(c) Providing case management services to patients with chronic mental illness.—The conference agreement follows the House bill.

(d) Expanding services covered under waiver.—The conference agreement follows the House bill.

Effective date.—Applies to applications for waivers (or renewals thereof) approved on or after date of enactment.

11. WAIVER AUTHORITY FOR THE CHRONICALLY MEDICALLY ILL DEMONSTRATION PROGRAM (SECTION 9412)

Present law

The Robert Wood Johnson Foundation and the Department of Housing and Urban Development (HUD) will jointly fund a 5-year demonstration "Program for the Chronically Mentally Ill." Grants and low-interest loans will be available to eight urban centers with populations in excess of 250,000 to assist in the establishment of a comprehensive system of care and rehabilitation and the expansion of housing options for chronically mentally ill persons. Grantees with approved housing plans will also be eligible for Federal rent subsidy assistance from HUD. HUD will pay the difference between the equivalent of 30 percent of the income of low-income individuals and locally established fair market rents. The Robert Wood Johnson Foundation plans to announce the recipients of grants on November 1, 1986.

House bill

Authorize the Secretary of HHS to waive certain Medicaid requirements to allow States to implement demonstration programs to improve the continuity, quality, and cost-effectiveness of mental health services available to chronically mentally ill Medicaid beneficiaries. Medicaid requirements which may be waived under this program include statewideness, comparability, freedom of choice, review and screening of care, and certain requirements pertaining to entities providing care on a prepaid capitation basis.

Requires that a waiver be granted only if:

(1) the demonstration program is receiving funding from the Robert Wood Johnson Foundation and HUD under the "Program for the Chronically Mentally Ill,"

(2) the State provides assurances to the Secretary of HHS that the estimated average per capita expenditure for medical assistance for mental health provided in any fiscal year to persons covered under the program does not exceed 100 percent of the average per capita expenditure that the State reasonably estimates would have been incurred in that year for such persons if the waiver had not been granted, and

(3) the State assures that there will be no reduction or limitation in benefits to a Medicaid beneficiary under the program.

States may cover the following services under these waivers: case management services for mentally ill patients, habilitation services (as defined in section 1985(c)(5) of Medicaid), day treatment or other partial hospitalization services, residential services (other than room and board), psychosocial rehabilitation services, clinic services (whether or not furnished in a facility), and such other services as the State may request and the Secretary may approve for individuals covered under the demonstration.

Requires that a waiver be granted for an initial term of 3 years and may be extended for an additional 2 years. The request for an extension shall be deemed granted unless the Secretary denies the request in writing within 90 days after submission. The authority for the Secretary of HHS to approve a waiver would extend only during the 5-year period beginning October 1, 1986.

Prohibits the Secretary from requiring, as a condition for approving a waiver, that the actual total expenditures for services provided under the waiver (and the associated claim for Federal matching payments) cannot exceed approved estimates for services. Nor could the Secretary deny Federal matching payments for services on the ground that a State has failed to limit actual total expenditures for services under the waiver to approved estimates for these expenditures.

Requires the Secretary to monitor the implementation of waivers to assure that requirements are met and to terminate any waiver, after notice and opportunity for a hearing, where he or she finds noncompliance has occurred.

Requires the Secretary to report to Congress, not later than Jan. 1, 1993, on the cost, accessibility, utilization, and quality of services provided under these waivers.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification directing the Secretary to grant Medicare and Medicaid waivers in connection with up to 10 projects for the provision of health services to the frail elderly on a risk basis. Section 9220 of P.L. 99-272 required the Secretary to extend Medicare and Medicaid waivers to the On Lok Community Care Organization for Dependent Adults in San Francisco, California. Under the terms of these waivers, On Lok assumes full risk for the provision of comprehensive health services to the frail elderly who are at risk of institutionalization. Capitation payments to On Lok will continue so long as it meets the conditions of its waivers. The Robert Wood Johnson Foundation has provided a grant to On Lok for the purpose of identifying and assisting other community-based organizations develop the ability to provide comprehensive services to frail elderly patients on a risk basis. The Foundation intends to provide financial assistance to this development process.

The conferees wish to learn whether the On Lok approach can be replicated in other areas of the country. The conference agreement therefore requires the Secretary to provide Medicare and Medicaid waivers to up to 10 community-based, public or nonprofit private organizations to enable them to provide health services to frail elderly beneficiaries on a risk basis. The waivers must be granted on the same general terms and conditions as the waivers granted to On Lok, with appropriate adjustments for the phasing in of risk and the circumstances unique to each project. The waivers may be granted only to public or nonprofit private organizations that are community-based and that have been awarded a grant by the Robert Wood Johnson Foundation. The Secretary is not authorized to waive freedom-of-choice protections for either Medicare or Medicaid beneficiaries in connection with these projects.

Effective date.—Enactment.

12. CONTINUATION OF "CASE-MANAGED MEDICAL CARE FOR NURSING HOME PATIENTS" DEMONSTRATION PROJECT (SECTION 9413)

Present law

Section 222 of the Social Security Amendments of 1972, section 402(a) of the Social Security Amendments of 1967, and section 1115 of the Social Security Act provide the Secretary of HHS general authority to conduct experiments and demonstrations on Medicare and Medicaid alternative payment systems and benefits and to waive compliance with various program requirements in conducting these demonstrations. Under this authority, the Secretary has approved Medicare and Medicaid waivers for the demonstration project, "Case-Managed Medical Care for Nursing Home Patients," for the period July, 1983, through July, 1986. These waivers were granted to the Massachusetts Department of Public Welfare to permit fee-for-service reimbursement for the provision of medical services by physician-supervised nurse practitioners/physician assistants for 6,500 residents of nursing homes. Under this demonstration, increased medical monitoring is expected to generate cost savings as a result of fewer hospital admissions and hospital outpatient visits. HCFA's Office of Research and Demonstration extended this project through June, 1987.

House bill

Requires the Secretary to approve applications for waivers for continuation of the "Case-Managed Medical Care for Nursing Home Patients" project for the period July 1, 1987, through June 30, 1989, and to continue the approval on the same terms and conditions as applied to the project on July 1, 1986.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

Effective date.—Enactment.

13. HOLDING STATE HARMLESS IN FISCAL YEAR 1987 AGAINST A DECREASE IN THE FEDERAL MEDICAL ASSISTANCE PERCENTAGE (SECTION 9421)

Present law

Section 9528 of COBRA, P.L. 99-272, provided that beginning in fiscal year 1987, the Federal Medical Assistance Percentage (FMAP) is to be calculated on an annual rather than a biennial basis. The FMAP, which represents the Federal share of Medicaid expenditures in the State, is tied to a formula inversely related to the per capita income of the States.

House bill

Provides that the change to the annual calculation shall not apply to a State Medicaid program for calendar quarters occurring in FY 87 if the State would be adversely affected by the change.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the Senate amendment.

Effective date.—Effective as though included in COBRA at the time of its enactment.

14. INDEPENDENT QUALITY REVIEW OF HMO SERVICES (SECTION 9431)

Present law

Regulations require that entities which serve Medicaid beneficiaries on a prepayment basis must have internal quality assurance systems meeting certain specifications. Under Medicare, services provided by risk contracting HMOs and CMPs are subject to review by utilization and quality control peer review organizations (PROs) effective January 1, 1987.

House bill

Requires the States to provide for an annual, independent, external review of Medicaid services rendered under prepayment and risk sharing contracts. Such review is to be performed by either a PRO or other private accreditation body. The results of such reviews are to be made available to the State and, upon request, to the Secretary, the Inspector General of the Department of Health and Human Services, and the Comptroller General.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

Effective date.—Applies to payments under Title XIX for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out the provision have been promulgated by such date.

15. CLARIFICATION OF FLEXIBILITY IN STATE UTILIZATION REVIEW SYSTEMS (SECTION 9432)

Present law

States may at their option implement second surgical opinion programs or hospital preadmission review programs. HCFA has proposed a rule which would require every State to have in place by January 1, 1987, a mandatory second surgical opinion program, or as an alternative, an existing utilization review plan that prevents unnecessary surgery, is cost-effective, and meets the Department's approval.

House bill

(a) Clarification.—Specifies that nothing in the Medicaid law is to be construed as authorizing the Secretary to require that States operate second surgical opinion programs or inpatient hospital preadmission review programs.

(b) Report.—Requires the Secretary to report to Congress not later than January 1, 1992, for each State in a representative sample of States on: (1) the high volume or high cost procedures used by Medicaid patients; (2) payment rates and aggregate spending rates for these procedures; (3) the extent of geographic variation in the rate of performance of such procedures; (4) the rate at which the procedure is performed on Medicaid patients compared to private patients; and (5) the number of physicians willing and qualified to perform second opinions for such procedures. The report is to include: (1) a list of procedures for which the Secretary believes a mandatory second opinion may be appropriate; and (2) an identification of underutilized Medicaid procedures.

Senate amendment

No provisions.

Conference agreement

The conference agreement follows the House bill with the following modifications. The Secretary would be prohibited from publishing interim or final regulations implementing the proposed rule published at 51 Fed. Reg. 21933 (June 17, 1986) until 180 days after submission of a report to the Congress. The report is due by October 1, 1988, but may be submitted earlier; however, implementing regulations may not be published until 180 days after the report has been received by the Congress. The report must provide, for each State in a representative sample of States with mandatory second surgical opinion programs, with hospital preadmission review programs, and with neither programs: (1) a list of high cost and high volume procedures provided under Medicaid; (2) payment rates and aggregate payment amounts for such procedures; (3) the rates at which such procedures are performed on Medicaid patients and, to the extent such data is available to the Secretary from other sources, a comparison of the utilization rates for such procedures among the Medicaid population and among non-Medicaid patients of comparable age; (4) the number of board-certified or board-eligible physicians in the State who serve Medicaid patients and who perform the procedure and, in those States with mandatory second surgical opinion programs, the number of these physicians who provide second opinions; and (5) in the case of States with mandatory second opinion programs or hospital preadmission programs, a description of the extent to which such programs impede access to needed care and the measures which States have taken to reduce these barriers, particularly with respect to Medicaid patients in rural areas. The report must also include a list of the surgical procedures for which the Secretary believes mandatory second opinion programs under Medicaid may be appropriate, according to specified criteria.

The conference agreement also provides that the Secretary submit to the Congress, by January 1, 1990, a study which examines the use of selected high volume or high cost medical treatments and surgical procedures in order to assess their appropriateness, necessity, and effectiveness for Medicaid patients. The study must analyze the extent of significant variation that exists in the rate of performance on Medicaid beneficiaries of selected high volume or high cost treatment procedures and services for small areas within States and among States. The study must also identify underutilized, medically necessary treatments and procedures for which a failure to furnish could have an adverse effect on health status, and the rate of use by Medicaid beneficiaries is significantly less than the rate for comparable, age-adjusted populations. To the extent practicable, the study shall be coordinated with the Medicare patient outcomes research program agreed to by the conferees, particularly with regard to the relationship between geographic variations and patient outcomes.

Effective date.—Enactment.

16. CLARIFICATION OF FLEXIBILITY FOR STATE MEDICAID PAYMENT SYSTEMS FOR INPATIENT SERVICES (SECTION 9433)

Present law

States are required to provide assurances to the Secretary that their Medicaid payments for hospital, SNF, and ICF services are "reasonable and adequate" to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with State and Federal laws, regulations, and quality and safety standards, and to assure that individuals eligible for medical assistance have reasonable access to inpatient hospital services of adequate quality.

On February 18, 1986, HCFA published a proposed regulation which would limit payments for inpatient hospital services or

long-term care facility services to hospitals, SNFs, ICFs, and ICFs/MR to the amount that can reasonably be estimated would have been paid for the services under Medicare reimbursement principles in effect at the time the services were furnished.

House bill

Clarifies that nothing in the Medicaid statute should be construed as authorizing the Secretary to limit the amount of payment that may be made for inpatient hospital services, SNF, or ICF services, including any limitation based on Medicare's reimbursement principles.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification providing that nothing in Title XIX of the Social Security Act shall be construed as authorizing the Secretary to limit the amount of payment adjustments that may be made under a State Medicaid plan with respect to hospitals that serve a disproportionate number of low-income patients with special needs.

Effective date.—As though it were included in P.L. 97-35.

17. FINANCIAL DISCLOSURE REQUIREMENTS FOR HMOS (SECTION 9434)

Present law

(a) Disclosure of interlocking relationships.—All entities furnishing services under Medicaid must disclose to the State the identity of each person with a control interest or with an ownership interest of 5 percent or more. In addition, participating providers must disclose, upon request by the State or the Secretary, full and complete information as to the ownership of a subcontractor with whom the entity has had business transactions in excess of $25,000 per year, and as to any significant business transaction with such subcontractor.

Title XIII of the Public Health Service Act, under which health maintenance organizations (HMOs) may become federally qualified, provides that such plans must report to the Secretary a description of transactions between the HMO and a party in interest, and shall make such information available to its members upon reasonable request.

(b) Approval of contractual expenditures.—Prior to 1983, HCFA regulations required prior approval, by the HCFA regional Medicaid director, of contracts with HMO's exceeding $100,000.

House bill

(a) Disclosure of interlocking relationships.—Requires that each entity that is contracting with a State to provide services to Medicaid beneficiaries on a capitated or risk basis and that is not also a Federally qualificated HMO under the Public Health Service Act must report to the State, and on request, to the Secretary, the Inspector General of DHHS, and the Comptroller General, a description of transactions between the entity and parties in interest. Transactions that must be reported include: (i) any sale, exchange, or leasing of property; (ii) any furnishing for consideration of goods, services or facilities (but not salaries paid to employees); and (iii) any loans or extensions of credit. Each organization shall make the information reported available to its enrollees upon reasonable request.

(b) Approval of contractual expenditures.—Requires that the Secretary subject to prior review and approval all contracts in excess of $100,000 between States and entities providing services to Medicaid beneficiaries on a capitated or risk basis.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification providing for the imposition of civil money penalties on entities providing services to Medicaid patients on a risk basis in the following circumstances. A risk-contracting entity has failed substantially to provide medically necessary items and services that are required (under the State Plan or contract) to be provided to Medicaid-eligible individuals, and if that failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals, then the entity is subject to civil money penalties of up to $10,000 for each failure. This provision applies to health maintenance organizations, health insuring organizations, or other prepaid health plans contracting with the States on a risk basis under section 1903(m) of the Social Security Act.

The provision is intended to remedy and deter serious failures to abide by acceptable standards of medical practice, rather than isolated cases of inadvertent omissions. The conferees intend that the Secretary, in determining whether and in what amount to apply civil money penalties, take into consideration whether there was a deliberate omission or a pattern of failing to provide necessary items and services, the seriousness of the effect on or risk to patients, and the reasons or circumstances involved. The conferees further expect that the practice standards used to determine that items or services were medically necessary would be based on generally accepted HMO practice standards.

Effective date.—The disclosure requirement is effective 6 months after enactment. The prior approval of contractual expenditures requirement is effective on enactment and applies to contracts entered into, renewed, or extended after the end of the 30-day period beginning on enactment. The civil penalty provision is effective on enactment.

18. DELEGATION TO INSPECTOR GENERAL OF AUTHORITY OVER STATE MEDICAID FRAUD CONTROL UNITS

Present law

Federal administrative responsibility for State Medicaid Fraud Control Units was transferred to the Office of the Inspector General in 1979.

House bill

Directs the Secretary to delegate the authority over State Medicaid Fraud Control Units to the Office of the Inspector General.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill.

19. COBRA TECHNICAL CORRECTIONS AND CLARIFICATIONS RELATING TO THE MEDICAID PROGRAM (SECTION 9435)

Present law

The Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272) was signed into law April 7, 1986. COBRA contains a number of technical errors relating to the Medicaid program.

House bill

(a) Trusts.—Clarifies that section 9506 of COBRA, regarding the treatment of income from certain trusts, does not apply to such trusts if they were established before April 7, 1986, solely for the benefit of residents in an intermediate care facility for the mentally retarded (ICF/MR).

(b) Health insuring organizations.—Clarifies that section 9517(c)(2) of COBRA, regarding the applicability of certain contracting requirements to prepaid plans, shall not apply to the Hartford Health Network, Inc.

(c) Other technical corrections and clarifications.—Makes technical corrections and clarifications to COBRA relating to Medicaid errors.

Senate amendment

No provision.

Conference agreement

(a) Trusts.—The conference agreement follows the House bill. The conferees emphasize that the rules set forth in section 9506 of COBRA relating to the treatment of certain trust distributions for purposes of Medicaid eligibility apply only to distributions from grantor trusts, not distributions or principal from non-grantor trusts, such as those established by parents for children.

(b) Health insurance organizations.—The conference agreement does not include the House bill provisions which are included in section 1895(c)(4) of H.R. 3838, the Tax Reform Act of 1986. The conference agreement clarifies that, for purposes of meeting the requirement in section 1903(m)(2)(A)(i) of the Social Security Act, a health insuring organization (HIO) need not be organized under the health maintenance organization laws of a State; instead, the health insuring organization is only required to be organized under the laws of the State in which it is doing business, including a State's corporation law. Thus, an HIO which is organized under the corporation law in the State in which it operates, which makes services accessible as required by section 1903(m)(1)(A)(i), and which has made adequate provision against the risk of insolvency as required by section 1903(m)(1)(A)(ii), has met the requirement of section 1903(m)(2)(A)(i). The HIO need not be organized under the HMO laws of the State in which it operates.

(c) Other technical corrections and clarifications.—The conference agreement does not include the provisions in the House bill that are included in section 1895(c) of H.R. 3838, the Tax Reform Act of 1986. The conference agreement clarifies the rules for payment with respect to an individual who is eligible for both Medicare and Medicaid, who resides in a skilled nursing facility (SNF) or intermediate care facility (ICF), who is having Medicaid payments made on his/her behalf for such institutional services, who has elected Medicare hospice coverage, and who is in a State that has not elected to cover hospice services under its Medicaid program, as allowed by section 9505 of COBRA, P.L. 99-272. In such circumstances, and where the hospice program and the SNF or ICF have entered into a written agreement under which the hospice takes full responsibility for the professional management of the individual's hospice care and the facility agrees to provide room and board, the State is directed to pay the hospice program an amount equal to the amounts allocated under the State Medicaid plan for room and board in the SNF or ICF, plus applicable coinsurance amounts. For

this purpose, and for purposes of the basic hospice payment provision at section 1902(a)(13)(D), the term "room and board" includes the performance of personal care services that a family caregiver would provide if the individual were at home, including assistance in the activities of daily living (washing and grooming, toileting, dressing, meal service), socializing (companionship, hobbies), administration of medication, maintaining the cleanliness of the resident's bed and room, and supervising and assisting in the use of durable medical equipment and prescribed therapies (such as range of motion exercises, speech and language exercises).

Effective date.—Applies as if included in the enactment of COBRA.

20. PAYMENT FOR CERTAIN LONG-TERM CARE PATIENTS IN HOSPITALS (SECTION 9436)

Present law

A State may reimburse hospitals for inpatient services rendered to Medicaid-eligible patients who no longer need acute hospital care, who do need a skilled nursing facility (SNF) or intermediate care facility (ICF) level of care, but for whom such services are unavailable due to the shortage of nursing home beds in the community. The rate of payment is the estimated State-wide average rate per patient day for SNF services rather than the hospital's inpatient acute care rate, with one exception. The State may choose to pay the higher inpatient hospital rate for such inappropriately-placed patients if there are no excess beds in the hospital and no excess beds in the region where the hospital is located. Under HCFA regulations, a hospital or region has excess beds if its occupancy rate is under 80 percent.

House bill

Allows the State of New York under its Medicaid plan to pay for services rendered to hospital patients who are awaiting long-term care placement at the higher acute care rate if either the facility *or* the region has an occupancy rate of 80 percent or more, but only if the Secretary of HHS determines that the State has decertified a sufficient number of hospital beds to offset the additional costs resulting from the higher payment rate.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

Effective date.—Applies to payments for services furnished during the 3-year period beginning Jan. 1, 1986, after the date the Secretary makes the determination described above.

21. RESPIRATORY CARE SERVICES FOR VENTILATOR-DEPENDENT INDIVIDUALS (SECTION 9408)

Present law

The Medicaid statute makes no direct provision for home respiratory services. A State could, at its option, pay for home respiratory services in any of three ways: (1) as home health care services if the State considers home respiratory services as a medically necessary component of home health care services; (2) as services provided to disabled children under 18, but only if the services cost no more than institutional care and only if all disabled children meeting certain criteria are covered under this optional service; and (3) as home and community-based services under a section 1915(c) waiver.

House bill

No provision.

Senate amendment

Requires States to cover respiratory services in the home for individuals who (1) are medically dependent on a ventilator for life support at least 6 hours per day; (2) have been so dependent for at least 30 consecutive days or the maximum number of days authorized under the State plan, whichever is less, as inpatients; (3) but for home respiratory care, would require respiratory care on an inpatient basis for which Medicaid would pay; (4) have adequate social support services to be cared for at home; and (5) wish to be cared for at home.

Defines respiratory care services as services provided on a part-time basis in the home of the individual by a respiratory therapist or other person skilled in respiratory therapy (determined by the State), payment for which is not otherwise included within other items and services covered for such persons under the State's Medicaid plan. States would not be required to offer respiratory services covered for such persons under the State's Medicaid plan. States would not be required to offer respiratory services of the same amount, duration, and scope to any person except those who meet the above requirements.

Conference agreement

The conference agreement follows the Senate amendment with a modification making the coverage of respiratory care services at home to ventilator-dependent individuals optional with each State.

Effective date.—Applies to services furnished on or after enactment.

22. NEW JERSEY RESPITE CARE PILOT PROGRAM (SECTION 9414)

Present law

Medicaid does not currently cover respite care services except where provided under a home and community-based services waiver approved by the Secretary under section 1915(c).

House bill

No provision.

Senate amendment

Requires the Secretary to enter into an agreement with the State of New Jersey to conduct a pilot project which would provide respite care services to Medicaid-eligible elderly and disabled persons and other elderly and disabled persons for whom respite services are not otherwise reasonably and actually available or provided, and who would be reasonably anticipated to require institutional care without the availability of these services.

Defines respite care services as short-term and intermittent companion or sitter services, homemaker and personal care services, adult day care, inpatient care, and emergency respite as well as peer support and training for family caregivers.

Requires that respite services be available to persons without regard to income (with cost-sharing on a sliding-scale basis related to income), but that priority be given to persons who would be eligible for Medicaid benefits upon institutionalization.

Requires the Secretary to pay New Jersey, in addition to payments the State is otherwise entitled to, an amount equal to 50 percent of the reasonable costs incurred for the project. The Federal payment for the project could not exceed $1 million for FY 87, and $2 million for each of the fiscal years 1988 through 1990. The project would have a maximum duration of 4 years, plus an additional period of up to 6 months for final evaluation and reporting.

Requires the Secretary to submit annual reports and a final report. Also requires the Secretary to waive requirements, including formal solicitation and approval requirements, as will further the expeditious and effective implementation of the project.

Conference agreement

The conference agreement follows the Senate amendment with the following modifications. Federal Medicaid matching funds available under the waiver are limited to payment for respite care services to individuals eligible for Medicaid under Title XIX of the Social Security Act, whether or not the State otherwise covered such individuals under its State Plan. The State of New Jersey is required to arrange for an evaluation of the project to be conducted by an entity independent of State government; the results of this evaluation are to be transmitted by the State to the Secretary within 6 months of the termination of the project. The Secretary is directed, upon request by the State, to waive requirements in current Medicaid law relating to statewideness, reimbursement, and comparability; waivers of patient freedom of choice of provider are not authorized.

23. WAIVER OF CERTAIN MEDICAID REQUIREMENTS (SECTION 9422)

Present law

Medicaid law authorizes coverage, for up to three months prior to application, for an individual if such individual: (1) received services during that time period of a type that would be covered under the plan; and (2) would have been eligible for Medicaid at the time the services were received if he or she had applied for Medicaid. South Carolina expanded its Medicaid program in October, 1984, to cover pregnant women with high medical bills. From October, 1984, to July, 1985, the Medical University of South Carolina had served 1,300 patients under the expanded program, but no Medicaid applications had been submitted for the women it served and no Medicaid payment to the University had been made.

Conference agreement

The conference agreement would extend the normal 3-month retroactive coverage period for the Medical University of South Carolina. Medicaid would be allowed to pay for claims for services provided during the period October 1, 1984, to July 1, 1985, to persons who are determined no later than 6 months after the date of enactment to have been eligible when the services were rendered.

Effective date.—Enactment.

MATERNAL AND CHILD HEALTH PROVISIONS

1. AUTHORIZATION OF ADDITIONAL MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT FUNDS (SECTION 9441)

Present law

(a) Funding level.—The Deficit Reduction Act of 1984, P.L. 98-369, established a permanent authorization level of $478 million for the Maternal and Child Health (MCH) Services Block Grant. Under the Balanced Budget and Emergency Deficit Control Act of 1985, P.L. 99-177, MCH Block Grant funds are fully sequesterable, subject to the uniform reduction percentages for nondefense programs.

(b) Set-aside for special projects.—Of the amounts appropriated for the MCH Block Grant, the Secretary is directed to use not

less than 10 percent and not more than 15 percent for special projects of regional and national significance, including maternal and child health improvement projects, and for research, training, hemophilia, and genetics grants.

House bill

(a) Additional funds.—Authorizes appropriations for the MCH Block Grant in the amount of $553 million for FY 1987, $557 million for FY 1988, and $561 million for fiscal years thereafter.

(b) Set-aside for newborn genetic disorders.—Requires the Secretary to retain $7 million in FY 1987, $7.5 million in FY 1988, and $8 million in FY 1989 for projects for the screening of newborns for sickle-cell anemia and other genetic disorders. This set-aside is in addition to the existing set-aside for special projects of regional and national significance. The set-aside will sunset after FY 1989 and the funds will become available for allocation to the States.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification to clarify the funding and administrative mechanisms for sickle-cell/newborn genetic screening programs and to establish demonstration programs and projects to help meet the primary and specialized health care needs of children.

The conference agreement provides that of the new amounts authorized and appropriated for the MCH Block Grant, a designated percentage (7% in FY 1987; 8% in FY 1988; and 9% in FY 1989) is to be allocated to the Secretary for projects for the screening of newborns for sickle-cell anemia and other genetic disorders. Project grants are to be selected and administered under the same procedures and practices that are currently in effect with regard to the special projects of regional and national significance that are funded directly by the Secretary. The specific allocation of funds for genetic screening projects is to end in FY 1989, at which time the funds designated for this purpose are to be included within the total amount of funding available to the States for MCH services and to the Secretary for special projects of regional and national significance.

Of the remaining new amounts authorized and appropriated under the Block Grant, the conference agreement provides that two-thirds of the total is to be allocated in accordance with current law. The remaining one-third of newly authorized and appropriated funds is also to be allocated to the States and to the Secretary in accordance with current law, but must be used by the States and the Secretary for primary and specialized health care services and projects for children. Thus, dedicated funds from the one-third allotment are to be used by the States to develop demonstration programs and projects that provide (1) primary health care services to children, and (2) community-based service networks and case management services for children with special health care needs. Similarly, dedicated funds from the one-third allotment are to be used by the Secretary for special projects of regional and national significance, training, and research that promote access to (1) primary health care services by children, and (2) community-based service networks and case management services for children with special health care needs.

The following example illustrates the Conferees' intended use of the additional funds authorized. Under the conference agreement, the authorization of appropriations for FY 1987 is $553 million. That represents an increase of $75 million over both the current authorization and the current appropriations level of $478 million. If FY 1987 appropriations for the Block Grant are increased by $75 million over the current level, 7% of that figure, or $5.25 million, is to be allocated to the Secretary for sickle-cell anemia/genetic screening programs. Of the remaining $69.75 million of new appropriations for FY 1987, two-thirds, or $46.50 million, is to be allocated under the requirements of current law which specify how much is to be allocated to the States (85%–90%) and how much is to be allocated to the Secretary (10%–15%). The other one-third, or $23.25 million also is to be allocated in accordance with the requirements of the current law, that is, 85% to 90% to the States, and 10% to 15% to the Secretary. However, these funds must be used by the States and by the Secretary for primary and specialized health care service programs and projects for children. The Conferees emphasize that these funding allocation rules apply only to the extent that appropriations for the Block Grant exceed the current appropriations level of $478 million. As explained above, however, the special allocation for sickle-cell anemia/genetic screening programs will no longer be in effect after FY 1989.

It should be noted that in dedicating funds for primary and specialized health services and projects, the Conferees intend that the States and the Secretary support programs that provide individual, personal health care services to children and children with special health care needs. The Conferees have, therefore, included within the conference agreement statutory definitions of the specific types of services that are to be made available through the one-third allotment of dedicated funds.

The Conferees have made no other changes or modifications in the requirements of the MCH Block Grant program with regard to the dedicated funds for primary and specialized health service demonstration programs and projects. Such programs and projects must, therefore, comply with each of the requirements of the MCH Block Grant statute, including those related to planning, non-discrimination, audits, and reports. With regard to mandated reports, however, States must include statistical data and other relevant information concerning these demonstrations on (a) the number and ages of the children served under the demonstrations; (b) the percentage of children assessed who are found to have at least one health condition or problem that requires a referral for additional care; (c) the most common types of health conditions or problems disclosed; (d) the number and location of demonstration service sites as well as a description of demonstration service providers; and (e) the availability of timely follow-up referral care for health conditions or problems that require additional services.

2. MATERNAL AND CHILD HEALTH AND ADOPTION CLEARINGHOUSE (SECTIONS 9442, 9443)

Present law

The Secretary may provide technical assistance to the States to assist them to develop foster care and adoption assistance programs. The Secretary is required periodically to (1) evaluate the foster care, adoption assistance, and child welfare services programs; and (2) collect and publish data pertaining to the incidence and characteristics of foster care and adoptions in the United States.

Each State is required to submit statistical reports as the Secretary may require with respect to children for whom payments are made under the foster care and adoption assistance programs, including information on legal status, demographic characteristics, location, and length of any stay in foster care.

House bill

Requires the Secretary to establish, either directly or by grant or contract, a National Adoption Information Clearinghouse. The Clearinghouse is required to (1) collect, compile, and maintain data and information obtained from studies, research, and reports by public and private agencies, institutions, or individuals concerning all aspects of infant adoption and adoption of children with special needs; (2) compile, maintain, and periodically revise directories of information concerning crisis pregnancy centers, shelters and residences for pregnant women, training programs on adoption, intercounty adoption, statistics on adoption, and any other information relating to adoption (for pregnant womens, infertile couples, adoptive parents, unmarried individuals who want to adopt children, individuals who have been adopted, birth parents who have placed a child for adoption, adoption agencies, social workers, counselors, or other individuals who work in the adoption field); and (3) disseminate the most current and complete information regarding adoption, including directories compiled, maintained, and revised pursuant to (2) above.

Conference agreement

The conference agreement follows the House bill with a modification to clarify the functions of the National Adoption Information Clearinghouse and to require the Secretary of HHS to develop a system for the uniform collection of data on adoption and foster care services in the United States.

Under the conference agreement, the National Adoption Information Clearinghouse is designed to serve two purposes: (1) to facilitate the identification and dissemination of available research, studies, and reports on infant adoption and adoption of children with special needs; and (2) to provide for the development and dissemination of directories of information regarding various aspects of adoption as specified in the conference agreement. Thus, the function of the Clearinghouse is simply to provide easy access to information that has already been developed, collected, and prepared on adoption services and programs. The Clearinghouse is not authorized to conduct research or gather statistical data on issues concerning adoption and foster care; rather it is only authorized to disseminate such research and data as it becomes available to all those who voluntarily seek this information.

The conference agreement also requires the Secretary of HHS to create an advisory committee to identify the national needs for data relating to adoption and foster care and to evaluate alternative ways of collecting such data on a comprehensive basis. By July 1988, the Secretary is required to report to Congress on a proposed data collection system. Final regulations providing for the implementation of such a system are to be promulgated by January 1, 1989 with full implementation to take place no later than October 1, 1991. Information gathered

through the data collection system is to be disseminated as it becomes available through the National Adoption Information Clearinghouse (described above).

Effective date.—Enactment.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 9, 1986.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached estimate of the budget impact of the reconciliation provisions within the jurisdiction of subconference 21.

If you wish further details on these estimates, we will be pleased the provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—SUBCONFERENCE 21: MEDICAID AND MATERNAL AND CHILD HEALTH

[By fiscal year, in millions of dollars]

Section provision	Change from Gradison base 1987	Change from adjusted reconciliation baseline 1987	1988	1989
DIRECT SPENDING—MEDICAID				
9401—Optional Coverage of Poor Pregnant Women and Children:				
Budget authority	25	25	85	110
Outlay	25	25	85	110
9402—Optional Coverage of Elderly and Disabled Poor:				
Budget authority	30	30	100	140
Outlay	30	30	100	140
9403—Optional Coverage of Poor Medicare Beneficiaries for Cost Sharing Expenses:				
Budget authority	15	15	70	100
Outlay	15	15	70	100
9404—Medicaid Eligibility for Qualified Severely Impaired:				
Budget authority	0	0	0	0
Outlay	0	0	0	0
9405—Clarification of Eligibility for Homeless:				
Budget authority	0	0	0	0
Outlay	0	0	0	0
9406—Payment for Aliens Under Medicaid:				
Budget authority	45	45	135	165
Outlay	45	45	135	165
9407—Optional Presumptive Eligibility Period for Pregnant Women:				
Budget authority	2	2	2	2
Outlay	2	2	2	2
9408—Optional Respiratory Care for Ventilator Dependents:				
Budget authority	(1)	(1)	(1)	(1)
Outlay	(1)	(1)	(1)	(1)
9411—Permitting States to Offer Home and Community Based Services to Certain Persons:				
Budget authority	0	0	0	0
Outlay	0	0	0	0
9412—Waiver Authority for Mentally Ill and Frail Elderly:				
Budget authority	0	0	0	0
Outlay	0	0	0	0
9413—Continuation of Case Managed Nursing Home Demonstration:				
Budget authority	0	0	0	0
Outlay	0	0	0	0
9414—N.J. Respite Care Project:				
Budget authority	1	1	2	2
Outlay	1	1	2	2
9415—Inapplicability of Paperwork Reduction Act:				
Budget authority	0	0	0	0
Outlay	0	0	0	0
9421—Hold States Harmless Against a Decrease in Match Rate:				
Budget authority	50	50	0	0
Outlay	50	50	0	0
9422—Waiver of Certain Requirements:				
Budget authority	2	2	0	0
Outlay	2	2	0	0
9431—Independent Quality Review of HMO Services:				
Budget authority	(1)	(1)	(1)	(1)

ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—SUBCONFERENCE 21: MEDICAID AND MATERNAL AND CHILD HEALTH—Continued

[By fiscal year, in millions of dollars]

Section provision	Change from Gradison base 1987	Change from adjusted reconciliation baseline 1987	1988	1989
Outlay	(1)	(1)	(1)	(1)
9432—Moratorium on Promulgation of Certain Regulations:				
Budget authority	0	0	0	0
Outlay	0	0	0	0
9433—Flexibility in State Medicaid Payment Systems:				
Budget authority	0	0	0	0
Outlay	0	0	0	0
9434—Financial Disclosure Requirements for HMOs:				
Budget authority	0	0	0	0
Outlay	0	0	0	0
9435—COBRA Technical Corrections and Clarifications:				
Budget authority	0	0	0	0
Outlay	0	0	0	0
9436—Payment of Certain Long Term Patients in Hospitals:				
Budget authority	0	0	0	0
Outlay	0	0	0	0
Total—Medicaid:				
Budget authority	170	170	394	519
Outlay	170	170	394	519
AUTHORIZATIONS—MATERNAL AND CHILD HEALTH				
9441—Authorization for MCH Services Block Grant Funds:				
Budget authority	75	75	79	83
Outlay	42	42	68	78
9442—MCH Adoption Clearinghouse:				
Budget authority	(1)	(1)	(1)	(1)
Outlay	(1)	(1)	(1)	(1)
9443—Collection of Data Relating to Adoption and Foster Care:				
Budget authority	(1)	(1)	0	0
Outlay	(1)	(1)	0	0
Total—MCH:				
Budget authority	75	75	79	83
Outlay	42	42	68	78
Total—Subconference 21:				
Budget authority	245	245	473	602
Outlay	212	212	462	597

[1] Means less then $500,000.

From the Committee on the Budget, for consideration of the entire House bill and Senate amendment, except for revenue measures on which conferees from the Committee on Ways and Means have been appointed:

WILLIAM H. GRAY III,
MIKE LOWRY,
BUTLER DERRICK,
ED JENKINS,
CHET ATKINS
(for purposes of short title/table of contents, title VII, and section 6004 only),
DELBERT L. LATTA,
LYNN MARTIN,

From the Committee on the Budget, solely for consideration of those portions of the House bill and Senate amendment, continuing revenue measures on which conferees from the Committee on Ways and Means have been appointed:

ED JENKINS,

From the Committee on Agriculture, solely for consideration of title II of the House bill and title I and section 501 of the Senate amendment:

E. DE LA GARZA,
ED JONES,
CHARLIE STENHOLM
(except for consideration of section 501 of the Senate amendment),
BERKLEY BEDELL
(solely for consideration of section 501 of the Senate amendment),
SID MORRISON,
STEVE GUNDERSON,

From the Committee on Appropriations, solely for consideration of sections 11001 and 11002 of the House bill and sections 665 and 1106 of the Senate amendment:

JAMIE L. WHITTEN,
VIC FAZIO,
SILVIO O. CONTE,

From the Committee on Banking, Finance and Urban Affairs, solely for the consideration of title III of the House bill, and title II of the Senate amendment:

FERNAND J. ST GERMAIN,
FRANK ANNUNZIO,
MARY ROSE OAKAR,
CHALMERS P. WYLIE,
STEWART B. MCKINNEY,
JIM LEACH,

From the Committee on Education and Labor, solely for consideration of section 11005 of the House bill and title VIII and sections 1210–1212 of the Senate amendment:

AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
BILL CLAY,
JOSEPH M. GAYDOS,
MARIO BIAGGI,
JAMES M. JEFFORDS,
MARGE ROUKEMA,
TOM COLEMAN,

From the Committee on Energy and Commerce, solely for consideration of sections 4701–4753 of the House bill and section 303 of the Senate amendment:

JOHN D. DINGELL,
PHILIP R. SHARP,
JIM SLATTERY,
NORMAN F. LENT,
BOB WHITTAKER,

From the Committee on Energy and Commerce, solely for consideration of section 501 of the Senate amendment:

JOHN D. DINGELL,
RICHARD SHELBY,
JIM SLATTERY,
NORMAN F. LENT,
ED MADIGAN,
BOB WHITTAKER,

From the Committee on Energy and Commerce, solely for consideration of sections 4001, 4101, 4201–4206, 4301, 4302, 4401–4405, 5001, and 8101 of the House bill and sections 401–405, 411, and 502 of the Senate amendment:

JOHN D. DINGELL,
PHILIP R. SHARP,
ED MARKEY,
AL SWIFT,
JIM SLATTERY,
NORMAN F. LENT,
BILL DANNEMEYER,
CARLOS MOORHEAD,

From the Committee on Energy and Commerce, solely for consideration of subtitles F and G of title IV, parts 2–4 of subtitle C of title X, sections 10001 (c) and (d)(3), section 10102, section 10205 (f)–(k), and that portion of section 10206 amending section 710(b)(2) of the Social Security Act, of the House bill, and section 604(c), parts 2–4 of subtitle A of title VI, and subtitle B of title VI of the Senate amendment:

JOHN D. DINGELL,
HENRY A. WAXMAN,
JAMES H. SCHEUER,

DOUG WALGREN,
JIM SLATTERY,
BOB WHITTAKER,

From the Committee on Government Operations, solely for consideration of section 11003 of the House bill and section 653 of the Senate amendment:

JACK BROOKS,
CARDISS COLLINS,
GLENN ENGLISH,
HENRY A. WAXMAN,
TED WEISS,
FRANK HORTON,
BILL CLINGER,

From the Committee on Government Operations, solely for consideration of sections 10206 and 11004 of the House bill and sections 1103, 1104, 1203, and 1204 of the Senate amendment:

JACK BROOKS,
DON FUQUA,
CARDISS COLLINS,
GLENN ENGLISH,
BARBARA BOXER,
FRANK HORTON,
ROBERT S. WALKER
(solely for purposes of Hospital Insurance Trust Fund treatment),
BILL CLINGER,

From the Committee on Interior and Insular Affairs, solely for consideration of title V and subtitle I of title VI of the House bill and section 502 of the Senate amendment:

MORRIS K. UDALL,
JOHN F. SEIBERLING,
JAMES WEAVER
(except for OCS/Buy American provisions),
GEO. MILLER,
PHIL SHARP,
DON YOUNG,
MANUEL LUJAN, Jr.,
BOB LAGOMARSINO,

From the Committee on the Judiciary solely for consideration of part C of title VII of the Senate amendment:

PETER W. RODINO,
DAN GLICKMAN,
BARNEY FRANK,
HOWARD L. BERMAN,
HAMILTON FISH, Jr.,

From the Committee on Merchant Marine and Fisheries, solely for consideration of title VI, except for part 5 of subtitle E thereof, subtitle C of title VII, and parts 1 through 4 of subtitle D of title VIII of the House bill, and sections 301, 302 and 501, and subtitle C of title IV of the Senate amendment:

WALTER B. JONES,
MARIO BIAGGI,
JOHN B. BREAUX,
GERRY E. STUDDS
(except for ocean dumping fees, comprehensive oil pollution liability and compensation, and Trans-Alaska pipeline provisions),
MIKE LOWRY
(except for OCS/Buy American provisions),
BOB DAVIS,
GENE SNYDER
(except for consideration of subtitle D of title VI of the House bill) (for EPA fees, ocean dumping fees, comprehensive oil pollution liability and compensation, and trans-Alaska pipeline provisions only),
DON YOUNG
(except for consideration of subtitle I of title VI of the House bill) (except for ocean dumping fees, comprehensive oil pollution liability and compensation, and trans-Alaska pipeline provisions),
JACK FIELDS
(solely for consideration of subtitles D and I of title VI of the House bill),

From the Committee on Post Office and Civil Service, solely for consideration of title VII of the House bill and sections 701, 711, and 1202 of the Senate amendment:

WILLIAM D. FORD,
MARY ROSE OAKAR,
MICKEY LELAND,
GENE TAYLOR,
FRANK HORTON,

From the Committee on Public Works and Transportation, solely for consideration of subtitles A and E of title VIII of the House bill and sections 503 and 504 of the Senate amendment:

JAMES J. HOWARD,
GLENN M. ANDERSON,
HENRY J. NOWAK,
BOB EDGAR,
DOUGLAS APPLEGATE,
GENE SNYDER,
BUD SHUSTER,
BILL CLINGER,

From the Committee on Public Works and Transportation, solely for consideration of section 501 of the Senate amendment:

JAMES J. HOWARD,
ROBERT A. ROE,
DOUGLAS H. BOSCO,
EDOLPHUS TOWNS,
BOB WISE,
GENE SNYDER,
JOHN PAUL HAMMERSCHMIDT,
ARLAN STANGELAND,

From the Committee on Public Works and Transportation, solely for consideration of subtitle B of title IV and subtitle B of title VIII of the House bill and section 411 of the Senate amendment:

JAMES J. HOWARD,
GLENN M. ANDERSON,
BOB EDGAR,
JOE NICK RAHALL,
GENE SNYDER,
JOHN PAUL HAMMERSCHMIDT,
BUD SHUSTER,

From the Committee on Public Works and Transportation, solely for consideration of subtitle A of title VI, parts 1-4 of subtitle E of title VI, subtitle C of title VIII, and parts 1-4 of subtitle D of title VIII of the House bill:

ROBERT A. ROE,
DOUGLAS H. BOSCO,
EDOLPHUS TOWNS,
BOB WISE,
JOHN PAUL HAMMERSCHMIDT,
BUD SHUSTER,
ARLAN STANGELAND,

From the Committee on Small Business, solely for the consideration of title IX of the House bill, and title IX of the Senate amendment:

PARREN J. MITCHELL,
NEAL SMITH,
JOSEPH M. MCDADE,

From the Committee on Ways and Means, solely for consideration of title X, subtitle F of title IV, part 5 of subtitle E of title VI, and part 5 of subtitle D of title VIII of the House bill and title VI, except for subtitle B thereof, title VI-A, except for section 665 thereof, title X, sections 1105, 1107, and 1201, subtitle B of title XII, and title XIII of the Senate amendment, and section 202 of the Senate amendment amending section 15(c) of the Export-Import Bank Act of 1945:

DAN ROSTENKOWSKI,
SAM GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,
PETE STARK,
ANDREW JACOBS, Jr.,
JOHN J. DUNCAN,
WILLIS D. GRADISON,

Managers on the Part of the House.

From the Committee on Agriculture, Nutrition, and Forestry:

JESSE HELMS,
BOB DOLE,
RICHARD G. LUGAR,
EDWARD ZORINSKY,
PATRICK LEAHY,

From the Committee on Appropriations:

MARK O. HATFIELD,
THAD COCHRAN,
JAMES ABDNOR,
DENNIS DECONCINI,
QUENTIN N. BURDICK,

From the Committee on Banking, Housing, and Urban Affairs:

JAKE GARN,
WILLIAM L. ARMSTRONG,
CHIC HECHT,
BILL PROXMIRE,
ALAN CRANSTON,
DON RIEGLE,

From the Committee on the Budget:

PETE DOMENICI,
WILLIAM L. ARMSTRONG,
NANCY LANDON KASSEBAUM,
RUDY BOSCHWITZ,
LAWTON CHILES,
ERNEST F. HOLLINGS,
J. BENNETTT JOHNSTON,

From the Committee on Commerce, Science, and Transportation:

For Conrail, Subconference 9:

JOHN C. DANFORTH,
BOB PACKWOOD,
NANCY LANDON KASSEBAUM,
RUSSELL B. LONG,

For Maritime, Subconference 10:

JOHN C. DANFORTH,
BOB PACKWOOD,
ERNEST F. HOLLINGS,
DANIEL K. INOUYE,

From the Committee on Energy and Natural Resources:

JAMES A. MCCLURE,
MALCOLM WALLOP,
JOHN W. WARNER,
J. BENNETT JOHNSTON,
WENDELL FORD,

From the Committee on Environment and Public Works:

ROBERT T. STAFFORD,
JOHN H. CHAFEE,

ALAN K. SIMPSON,
DAVE DURENBERGER,
STEVE SYMMS,
LLOYD BENTSEN,
GEORGE MITCHELL,
DANIEL PATRICK MOYNIHAN,
QUENTIN N. BURDICK,

From the Committee on Finance:
General:
BOB DOLE,
JOHN C. DANFORTH,
JOHN CHAFEE,
RUSSELL LONG,
LLOYD BENTSEN,
SPARK M. MATSUNAGA,

For Medicare, Medicaid and Maternal and Child Health, Subconferences 19, 20, and 21:
JOHN HEINZ,
DAVE DURENBERGER,
DANIEL PATRICK MOYNIHAN,
MAX BAUCUS,

From the Committee on Governmental Affairs:
WILLIAM V. ROTH, Jr.,
TED STEVENS,
WILLIAM S. COHEN,
DAVE DURENBERGER,
TOM EAGLETON,
CARL LEVIN,
ALBERT GORE, Jr.,

For Subconference 15:
WILLIAM V. ROTH, Jr.,
WILLIAM S. COHEN,
DAVE DURENBERGER,
TOM EAGLETON,
CARL LEVIN,

From the Committee on Labor and Human Resources:
For ERISA:
ORRIN G. HATCH,
DON NICKLES,
ROBERT T. STAFFORD,
EDWARD M. KENNEDY,
HOWARD M. METZENBAUM,

For GSL/Education Asset:
ORRIN G. HATCH,
ROBERT T. STAFFORD,
LOWELL P. WEICKER, Jr.,
EDWARD M. KENNEDY,
CLAIBORNE PELL,

From the Committee on Small Business:
LOWELL P. WEICKER, Jr.,
WARREN RUDMAN,
DALE BUMPERS,

Managers on the Part of the Senate.

PROBLEMS OF THE THRIFT INDUSTRY

(Without objection, Mr. PARRIS was allowed to address the House for 1 minute and to revise and extend his remarks.)

Mr. PARRIS. Mr. Speaker, I have the privilege of serving as a member of the Banking and Finance Committee in the House. I have taken the floor a number of times over the last year and half or so to discuss the problems facing particularly the thrift industry in this Nation.

This House passed recently H.R. 5576, which essentially has four fundamental provisions of that legislation.

The first is the Federal Savings and Loan Recapitalization provision. It is absolutely necessary to raise an additional $15 to $19 billion, in funding of one kind or another to recapitalize our insurance fund for the Nation's thrift industry. We have 500 institutions that are estimated to have assets of $95 billion that already have been or will be taken over by the Federal Government because of their failed insolvent condition within the next year.

□ 1515

The historical and traditional loss percentage of assets on liquidation is 15 percent. Some recent examples have been 50 percent. If we let those 500 institutions go down the drain over the next 2 years with 95 billion dollars worth of assets, we could be facing a potential loss of something in the vicinity of $30 to $50 billion. That may be a worst-case scenario, but I think that it is a real possibility.

The second portion of that legislation is the so-called regulators bill, where we have in addition to thrifts a problem as well in the banking industry of this Nation. That is a severe problem of failing banks. More banks will fail, according to the Chairman of the Federal Deposit Insurance Corporation, in a speech yesterday, this year and next year than at any previous time in the history of this Nation since the Great Depression.

The third part of that bill is housing, H.R. 1, which contains rehabilitation programs, rental housing, low-cost housing, elderly housing, and so forth, all very important legislation.

Finally, the funds availability legislation, where average Americans have access to their own money from the financial institutions of this Nation.

Unfortunately, Mr. Speaker, this legislation is being held hostage by the other body and some of its Members who for one reason or another want to include in banking legislation expanded powers for financial institutions so as to create what they call a more level playing field for all financial institutions around this country. Also to close the so-called nonbank-bank loophole, where some commercial institutions are increasingly engaged in banking transactions.

Anyone or all of those provisions might be good idea, Mr. Speaker, but it does not face the reality of the need to have this legislation passed. Regardless of how many different aspects of it any one or more of us would like to address, we simply have got to solve the problem of a two-tier thrift industry, most of which is adequately capitalized, well-managed and profitable, but about 30 or 40 percent of which is unprofitable, insolvent, undercapitalized, and in deep trouble.

The GAO has estimated that it is going to cost the taxpayers $1.4 billion over the next year because of our failure to act on the FSLIC recapitalization and the FDIC regulators bill. It would be, in my view, a criminal abrogation of the responsibility of this Congress, for each of us individually and collectively, if we do not adopt some form of legislation for at least those two critical problem areas, of the recapitalization of the Federal Savings and Loan Insurance Corporation, and the expanded powers of the regulators to deal with regulated and insured banks in this Nation.

If we do not do so, Mr. Speaker, I think that the American taxpayers sooner or later will demand accountability from all of us. I hope we do not make that necessary by our continued failure to act.

IS FOREIGN AID MONEY BEING WISELY SPENT?

(Mr. BURTON of Indiana asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURTON of Indiana. Mr. Speaker, I addressed the House last night and, I think, last week regarding this particular issue, regarding foreign aid.

The people of this country want to make sure that their taxpayers' dollars are being spent wisely, and I question whether some of our money is being spent wisely right now. We are giving foreign aid to countries that really are aiding, I think, enemies of the United States, and I think that if the people of this country were aware of that, that they would be very opposed to it.

Should we give massive foreign aid to countries that aid enemies of our friends and the United States? Should we give high technology to countries that might sell or give that technology to the Soviet Union? Of course, the answer is "no."

Should we participate in coproduction of military equipment in that country, when it might infringe upon the rights and protection of the United States of America? I think that the answer is "no." But we are doing it.

Should we give aid to a country that votes against us continually at the United Nations? The answer is "no."

India votes with the United States of America in the United Nations 8.9 percent of the time; the Soviet Union votes with us 12.2 percent of the time. And yet right now we are giving $600 million in direct aid to the Indian Government over the next 4 years. At the very time that we are doing that, the Indian Government has given $10.4 million of our money, of American taxpayers' dollars, to the Communist Sandinista Government. Daniel Ortega was in New Delhi, India, last week. He pinned the Order of Merit, the Order of Sandino, on Mr. Gandhi's chest, picked up a check for $10.4 million, American taxpayer's dollars, and flew to Beijing, where he probably purchased more military equipment

with which to fight the freedom fighters in Nicaragua.

That is unthinkable. We are giving them $600 million, and they are taking our taxpayers' dollars and supporting a war against our friends down there.

At the same time that we are giving this aid to India, they are buying and getting in return MI-26 helicopters, the latest that the Soviet Union has to give. They are only giving those helicopters to Warsaw Pact countries. They are giving Mig-29 fighter-bombers to India, the only country outside the Warsaw Pact, and we are giving our taxpayers' dollars to them.

Mr. Weinberger, our Secretary of Defense, was over there last week agreeing to give them the highest in technology, the new supercomputers that can be used for nuclear weaponry—technology that we do not want to fall into the hands of the Soviets. I ask my colleagues, should this technology be given to India, when they are deeply involved with the Soviet Union? Should our taxpayers' dollars to be used to subsidize this type of activity? The answer is clearly no.

I hope that my colleagues will take this to heart, think about this, and ask the Defense Department why this kind of activity has taken place. I have the highest regard for Mr. Weinberger, but I ask him today why we are doing this. Why are we giving this high technology to the Indians, when they are so deeply involved with the Soviet Union?

CONFERENCE REPORT ON H.R. 5300, OMNIBUS BUDGET RECONCILIATION ACT OF 1986

Mr. GRAY of Pennsylvania. Mr. Speaker, pursuant to the order of the House of Thursday, October 16, 1986, I call up the conference report on the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987.

The Clerk read the title of the bill.

The SPEAKER pro tempore. (Mr. BENNETT). Pursuant to the order of the House of Thursday, October 16, 1986, the conference report is considered as having been read. (For conference report and statement, see proceeding of the House of earlier today.)

The SPEAKER pro tempore. The gentleman from Pennsylvania [Mr. GRAY] will be recognized for 30 minutes, and the gentleman from Ohio [Mr. LATTA] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. GRAY].

Mr. GRAY of Pennsylvania. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report on H.R. 5300, the Omnibus Budget Reconciliation Act of 1986.

The reconciliation bill is necessary to reduce the projected fiscal year 1987 deficit below the $154 billion threshold which Congress pledged to meet under the Gramm-Rudman law.

On October 6, CBO—the Congressional Budget Office—and OMB—the Office of Management and Budget—submitted their final snapshot of the estimated deficit for fiscal year 1987. Their report states that, since no legislation affecting the deficit has been enacted since the August snapshot, the deficit is still estimated to exceed the Gramm-Rudman target by $19.4 billion. Further legislation and executive action will increase the deficit; therefore, the temporary revenue increase in 1987 from the tax reform bill will not be sufficient to achieve the Gramm-Rudman target.

However, the report further states that legislation which Congress is expected to enact before we adjourn—principally, this Reconciliation Act—would reduce the estimated deficit for 1987 below the $154 billion and therefore avoid the need for sequestration and deep cuts of $12.5 billion in domestic spending and $12.5 billion in national security spending.

This measure will reduce the deficit by $11 billion in fiscal year 1987. It achieves these savings in part by selling Conrail and land assets held by the Government, imposing new user fees, collecting oil overcharge fees, accelerating the collection of certain excise taxes, and increasing the penalties for tax avoidance.

In addition to these deficit-reduction provisions, there are important policy changes in the reconciliation bill which require actions before adjournment.

For instance, without reconciliation, Social Security retirees will not receive a cost-of-living adjustment in January.

Without reconciliation, the Medicare hospital deductible will rise to $572 in January 1987 rather than $520, and Medicaid reforms assisting poor, elderly, and disabled persons, and low-income pregnant women and infants, will not take place.

Without reconciliation, hospitals in general will lose $230 million, and small rural hospitals and those which serve large numbers of low-income patients will lose an additional $550 million under the administration's Medicare regulations.

And, without reconciliation, the minimum fill rate for the Strategic Petroleum Reserve will be only 35,000 barrels per day instead of 75,000 barrels per day, imposing additional hardship on domestic oil producers as well as Mexico.

□ 1515

I am very cognizant of the difficult choices which have faced the Congress and made it difficult to reach this conference agreement. I am also aware that this conference agreement does not do all that many of us would like it to do.

However, given the political realities that we face, I believe it is an acceptable agreement which will help us to meet our obligations before we adjourn, and at the same time provide for critical needs in Social Security and for our elderly in Medicare and for the poor in health care.

The simple fact is we must complete reconciliation as a matter of national fiscal policy. I urge all of my colleagues to support this conference report.

I also take this time to thank all of the committee Chairs who worked so diligently and hard to bring this reconciliation package together. I especially want to thank the staff of the Budget Committee and the ranking Member and his staff for the outstanding cooperation they have given.

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me say at the outset that I want to compliment the gentleman from Pennsylvania [Mr. GRAY] for the leadership that he has shown in the Budget Committee during this Congress. I think everybody in this House can attest to the fact that he has been outstanding, and I wish to compliment him for his work.

Mr. Speaker, last month Congress passed a bipartisan compromise on reconciliation because it would enable us to get below the $154 billion Gramm-Rudman-Hollings deficit ceiling for fiscal year 1987. I also warned that the package contained many flaws and certainly was no one's first choice for dealing with the deficit. Since then the reconciliation package has not been improved much in conference. I am pleased, however, that the conferees decided to banish the thought of extending Medicare and its taxes to all employees of State and local governments, which would have placed an unfair financial burden on many governmental units and millions of workers.

I do not believe we should be sidestepping our deficit-cutting problem with a massive yard sale of Federal assets. Once again we are demonstrating that Congress lacks the will to balance the budget the way it should be done, by cutting unnecessary Government spending. The failure to make any real domestic savings in this reconciliation package will come back to haunt us in just a few months, when we have to start work on making much bigger deficit reductions for fiscal year 1988.

We must now decide whether or not we should accept the plan for deficit reduction given us by the majority and now before us. Either we are willing to agree to a sequestration which could result in laying off hundreds of thou-

sands in the armed services, sharp cutbacks in our aid to farmers, and a halt to the newly declared war on drugs, or they are willing to ignore completely the requirements of the Gramm-Rudman-Hollings deficit reduction law.

The other body had wanted to include a provision to extend Medicare taxes to all State and local government employees hired before April 1, 1986—workers hired after that date are already covered. A total of 4 million workers in governmental units in every State would have been affected. Ten of these States would have had to pay tens of millions of dollars. For example, it would have cost Ohio $179.5 million. It seemed particularly unfair to burden State and local governments with increased payroll costs at the very time general revenue-sharing aid is being completed eliminated. Even though the taxes would have been phased in over 5 years, a worker could be paying as much as $735 in additional taxes by the fifth year. So it is good that conferees, faced with the knowledge that I and many others strongly opposed this plan, they dropped it.

On the positive side, this package does provide for paying cost-of-living allowances to recipients of Social Security, SSI, railroad retirement, and veterans' pensions even if the cost-of-living increase for the year does not reach the 3 percent required by current law. The part A deductible required for a hospital stay under Medicare is held at $520, rather than letting it rise to the $572 stipulated in current law.

But in trying to get under the $154 billion deficit ceiling, they are relying much too heavily on asset and loan sales. Out of the $8.7 billion in deficit reduction in this reconciliation bill, about 70 percent is from the sale of loans and assets, including $2 billion for Conrail. They are "one-shot" reductions which will not recur. Thus we sidestep the harder choices of making real savings which will recur in future years by reducing unnecessary spending.

I know that my Democrat colleagues argue that more spending cuts should come from defense. But defense has already been cut more than its fair share. Appropriations conferees cut President Reagan's request for fiscal year 1987 by 10 percent. The proposed level of about $290 billion is a 3-percent reduction below what it would take just to keep up with inflation. In the last year, defense will have suffered real cuts totaling about 8 percent.

President Reagan is firmly against any more sizable cuts in defense and so am I. You can be assured that the President would veto any bill making further substantial cuts in defense; just as he would also veto any bill substantially increasing taxes.

So the only real hope of living up to our responsibilities in future years and balancing the budget, as we promised to do in Gramm-Rudman-Hollings, is to cut unnecessary domestic spending. I hope my colleagues will prove willing to face that reality when the 100th Congress convenes early next year to face the task of reducing the deficit by as much as $50 billion.

One other important point is that this conference agreement is full of extraneous provisions. These are provisions which are not truly related to reconciliation and should be included in other legislation which this House should have an opportunity to vote on separately. Some of these provisions also add to our costs instead of reducing the deficit.

I objected to including this type of legislation in last year's reconciliation bill and I object again this year.

Last week Congress ignored the deadline for complying with the Gramm-Rudman-Hollings because Members were confident that we could get below the $154 billion deficit ceiling which under the law would trigger a sequester. But now it is apparent that if we do not pass this reconciliation bill, we will not have met that requirement. It would be the height of fiscal irresponsibility if we went home without complying with the Gramm-Rudman-Hollings budget-balancing law.

So, if we want to live up to the spirit of the law, we must agree to this conference report—despite its heavy reliance on gimmicks and asset sales, the proliferation of extraneous matters, and the fact that it just adds to next year's deficit reduction problem.

□ 1535

Mr. Speaker, I reserve the balance of my time.

Mr. GRAY of Pennsylvania. Mr. Speaker, I yield to the distinguished chairman of the Committee on Ways and Means, the gentleman from Illinois [Mr. ROSTENKOWSKI] who has had a major role in this reconciliation report.

Mr. ROSTENKOWSKI. Mr. Speaker, I rise today to urge support for this conference report on the reconciliation bill for three major reasons.

First, this bill reduces the deficit by approximately $12 billion in fiscal year 1987 and some $19 billion over the next 3 years. Enactment of the bill along with the continuing resolution, the tax bill, and the superfund bill will ensure that the deficit target of $154 billion in Gramm-Rudman is met. Without this bill, the projected deficit would be above $154 billion.

Second, the bill increases the public debt limit by $189 billion through May 15, 1987. Passage of this bill means that the House will not have to consider House Joint Resolution 668, the joint resolution increasing the statutory limit on the public debt and the 27 amendments that were attached to that vehicle. This means that the Gramm-Rudman amendments need not be considered this year. Consideration of those amendments would have delayed adjournment significantly.

Third, the bill also contains important policies which aid many individuals. The bill eliminates the 3-percent COLA trigger in the Social Security Program. Without this legislation, beneficiaries in the Social Security, veterans pensions, supplemental security income, and railroad retirement programs would receive no cost-of-living increase this January. A vote against this conference report is a vote against the elderly and their Social Security COLA.

The Medicare hospital deductible, which was scheduled to increase to $572 in 1987, an increase of $80, is held to an increase of only $28. Important reforms are contained in the bill which, among other things, ensure that Medicare beneficiaries are not moved out of a hospital setting prematurely due to incentives in the prospective payment system and ensure that adequate posthospital services are available.

This conference report contains several provisions which are designed to limit out-of-pocket medical costs for Medicare beneficiaries. Incentives are provided to encourage physicians to become participating physicians which ensures that the beneficiary is not charged more than Medicare allows. Upon request, information is made available to assist beneficiaries who wish to select a participating physician. And perhaps, most importantly, when the freeze on actual charges for nonparticipating physicians ends this December, it is replaced with a policy which limits the increase in how much physicians can charge elderly and disabled individuals beyond what Medicare pays.

Also, the bill mandates that most hospitals serving a disproportionate share of low-income patients would continue to receive periodic interim payments.

Medicare outlays are reduced by limiting the increase in the hospital reimbursement rate for both fiscal year 1987 and 1988, and reducing the growth in cost reimbursement for hospital capital expenses. It should be understood that the latter is a stopgap provision. It is the intent of the Committee on Ways and Means to consider legislation next year that will fold capital reimbursement into the existing prospective payment system.

It should be understood that both hospitals and physicians are reimbursed more under this conference agreement than would have been the case under administration regulations.

Several revenue provisions are included in the bill. However, there are no tax rate increases. The revenue provisions are speedups in the collection of existing taxes, increased penalties to encourage compliance, or user fees.

Tax collections of State and local payroll taxes and wine, beer, distilled spirits, and tobacco excise taxes are accelerated.

Included in the conference report are two changes to the low-income housing transition relief provided for in H.R. 3838, the Tax Reform Act of 1986. Specifically, those changes would: First, delete a limitation to no more than 80 percent of the credit base of low-income housing projects which may be financed with certain nonrecourse loans; and, second, expand a special transitional exception contained in the conference report in the case of certain low-income housing projects receiving assistance under the section 515 program of the Farmers Home Administration. In the interest of reaching a compromise on this reconciliation package, it was necessary to include these latter changes. However, I want to emphasize that inclusion of this latter rule should not be viewed as a precedent for additional future expansions of the low-income housing transition relief contained in the tax bill.

Title X also includes a new provision of law which would impose a customs user fee on all commercial entries of imported merchandise of 0.22 percent ad valorem beginning December 1, 1986, and 0.17 percent ad valorem on October 1, 1987, through September 30, 1989. This is a much smaller fee than was contained in the House-passed bill.

This conference agreement does not include the Senate provision mandating coverage of State and local workers under Medicare. However, the House was unable to maintain its position on mandating the AFDC-Two Parent Program. The Senate has promised to consider this next year.

Mr. Speaker, I am placing in the RECORD at this point a letter from the other body indicating this promise:

U.S. SENATE,
Washington, DC, October 16, 1986.

Hon. THOMAS P. O'NEILL, JR.,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: We are aware that the House of Representatives passed the Omnibus Budget Reconciliation Act of 1986 with a provision to mandate AFDC coverage for unemployed parents beginning in 1988. We are further aware that the House conferees on the reconciliation bill have been extremely supportive throughout the conference of maintaining the House provision. The Senate conferees have not accepted the provision.

We commit ourselves to future efforts to improve the nation's welfare system by taking into account the needs of parents and families for income support, child care, work requirements, and employment opportunities.

Sincerely,

BOB DOLE,
Majority Leader.
ROBERT C. BYRD,
Minority Leader.
PETE V. DOMENICI,
Chairman, Committee on the Budget.
LAWTON CHILES,
Ranking Member, Committee on the Budget.

Mr. Speaker, I am disappointed that the agreement does not contain the AFDC-UP provision. The combination of the other body's absolute refusal to accept this provision. Along with the President's promise of a veto, worked to defeat the provision. I want to tell my colleague from Tennessee [Mr. FORD], who has worked so hard to enact this fundamentally fair improvement to our welfare system, that I will join him next year in holding the other body to its promise.

I have attached to my statement a brief summary of the provisions within the jurisdiction of the Committee on Ways and Means:

THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986

Summary of Conference Agreement

Medicare Provisions, Income Security and Revenue Provisions

I. MEDICARE AND ACCESS TO HEALTH CARE PROVISIONS

1. INPATIENT HOSPITAL DEDUCTIBLE

Limits the inpatient part A hospital deductible to $520 for calendar year 1987. For each succeeding calendar year the deductible would change by the same percentage change that applies to the medicare hospital prospective payment rates (adjusted for real case mix).

2. RATE OF INCREASE

Increases the FY 1987 payment rates for PPS and PPS-exempt hospitals by 1.15 percent and increases the FY 1988 payment rates by the market basket minus 2 percent. The Secretary would be required to recalibrate the DRG relative weights annually. The Secretary must provide a report with recommendations on the FY 1988 update factors for PPS and PPS exempt hospitals by April 1, 1987, and each March 1 thereafter.

Effective October 1, 1986, a separate urban and separate rural set-aside factor for outliers would be established.

Effective October 1, 1987, the methodology for computing the urban and rural averages would be revised to reflect the operating cost per discharge for the average patient as opposed to the average hospital.

Hospitals designated as regional referral centers as of the date of enactment would be permitted to continue their designation for 3 additional years. Criteria for eligibility for regional referral center status would be established by law.

3. PAYMENTS FOR CAPITAL-RELATED COSTS

Payment amounts for capital-related payments for PPS hospitals would be reduced by 3.5 percent for portions of cost reporting periods in FY 1987, 7 percent for FY 1988, and 10 percent for FY 1989. Sole community hospitals would be exempt from payment reductions, and regulations, if provided, for a period of three years. The conference agreement clarifies that the Secretary may incorporate capital, on a "budget neutral" basis, into the prospective payment system effective October 1, 1987.

4. COVERAGE OF HOSPITALS IN PUERTO RICO IN THE PPS

Hospitals located in Puerto Rico will be included in PPS, effective with discharges occurring on or after October 1, 1987. Payment amounts would be based on 75% of Puerto Rico adjusted standardized amount and 25% of the national adjusted standardized amount. Requires the Secretary to calculate an average standardized amount for urban and rural hospitals. The Secretary would be required to restandardize the national PPS rates to take into account Puerto Rico's inclusion. With some adjustments applied, payments for indirect medical education costs, outliers, and disproportionate share payments will be made to a similar extent that they apply to other PPS hospitals.

5. IMPROVING QUALITY OF CARE WITH RESPECT TO PART A SERVICES

The Secretary would be required to submit, no later than 2 years after enactment, a legislative proposal to improve the classification and payment system under PPS to better account for severity of illness and case complexity.

Hospitals would be required to provide, upon admission, a notice of hospital discharge rights. Would require hospitals, as a condition of medicare participation, to have a discharge planning program. Would require the Secretary to conduct a study of standards of quality used for the conditions of medicare participation for hospitals. The Secretary would be required to conduct a study to determine if a payment should be made for administratively necessary days.

Favorable presumption of waiver of liability rules would be extended for hospices through November 1, 1988. The favorable presumption of waiver of liability will be extended to cover homebound and intermittent care denials for home health services.

Would require the Secretary to develop a uniform needs assessment instrument that evaluates functional capacity to be used in evaluating the need for post-hospital care services.

Would extend the requirement for PPS annual reports through 1989. Would require the Secretary to include information on quality of post-hospital care in the annual reports.

The Secretary will be required to conduct a demonstration program concerning prior authorization for medicare skilled nursing facility and home health services.

6. OFF-BUDGET TREATMENT OF THE HI TRUST FUND

The conference agreement does not include the House provision.S0634

7. TECHNICAL AMENDMENTS AND MISC. PROVISIONS RELATING TO PART A

a. Temporary Waiver of Inpatient Limitations for the Connecticut Hospice, Inc.—Connecticut Hospice, Inc. would receive a 2 year waiver of the inpatient day requirement provided that the proportion of the inpatient days does not exceed 50%.

b. Massachusetts Medicare Repayment—Prohibit the Secretary from recouping payments to Massachusetts hospitals on or after the date of enactment and before January 1, 1988.

c. Part A COBRA Technical and other Miscellaneous Corrections—The conference agreement does not include the House provision concerning COBRA technicals except

with regard to a hospital accounting year amendment.

8. PAYMENTS TO LARGE RURAL HOSPITALS SERVING A DISPROPORTIONATE SHARE OF LOW-INCOME PATIENTS

Allows the Secretary, effective with discharges occurring on or after October 1, 1986, to establish a separate threshold percentage of low-income patients required for rural hospitals with 500 or more beds to qualify for disproportionate share payments.

Payment to disproportionate share hospitals would be continued for one additional year in a budget neutral fashion.

9. PERIODIC INTERIM PAYMENTS AND PROMPT PAYMENT OF CLAIMS

Periodic Interim Payments (PIP) would be eliminated for all PPS hospitals with exceptions. Hospitals with a disproportionate share payment add-on of 5.1% or more and rural hospitals with less than 100 beds that qualified for, and receive PIP payments on June 30, 1987, (under regulations in effect on October 1, 1986), would be eligible to continue to receive PIP. PIP would also be retained for PPS-exempt hospitals, hospitals participating in State reimbursement systems, and certain cost-based providers (i.e., skilled nursing facilities and home health agencies). PIP would be made available to hospice providers.

Ninety-five percent of "clean" claims submitted for part A services would be required to be paid within 30 calendar days in FY 1987, 26 days in FY 1988, 25 days in FY 1989, and 24 days in FY 1990 and in subsequent years. PIP would not be eliminated for hospitals receiving such payments until the intermediary has met the prompt payment standard for three consecutive months. PIP would be reinstated for providers that meet the standards that were in place as of October 1, 1986, if the intermediary failed to meet prompt payment standards for three consecutive months.

Ninety-five percent of "clean" claims submitted for part B services would be required to be paid within 30 calendar days in FY 1987, 26 days in FY 1988, 25 days in FY 1989, and 24 days in FY 1990 and in subsequent years. "Clean" claims submitted by participating physicians would be required to be paid within 19 days in FY 1988, 18 days in FY 1989, and 17 days in FY 1990 and in subsequent years.

10. HEALTH MAINTENANCE ORGANIZATION AMENDMENTS

Would eliminate the "two for one rule" for current nonrisk HMO medicare enrollees for months beginning April, 1987.

Would require HMOs and CMPs to provide enrollees with an explanation of enrollees' rights.

Would restrict new waivers of 50 percent medicare and medicaid enrollment requirements to HMOs in service areas where the population of medicare and medicaid beneficiaries is greater than 50 percent and to HMOs that are publicly owned and operated. Would provide new sanctions for noncompliance with the 50 percent medicare and medicaid enrollment requirement, and for noncompliance with enrollment goals for currently waivered HMOs.

Would require that HMOs pay claims submitted by physicians, suppliers, and providers not under contract with the organization, within 30 calendar days of receipt in FY 1987, within 26 days in FY 1988, within 25 days in FY 1989, and within 24 days in FY 1990 and in subsequent years.

Would require that HMOs and CMPs supply, on request of the Secretary, information as to the ownership of subcontractors, and of signficant business transactions between organizations and wholely owned subcontractors.

Provides that HMOs that fail substantially to provide medically necessary items and services would be subject to a penalty not to exceed $10,000 for each failure.

Would require the Secretary to provide for a study of methods by which the AAPCC and the ACR could be refined, and to submit legislative recommendations no later than January 1, 1988.

Would allow medicare beneficiaries to disenroll from an HMO or CMP at a local Social Security Office.

Provides that amounts withheld in a benefit stabilization fund during the 1986 contract year be withdrawn by the organization to the extent that payments to the organization had been reduced under the Balanced Budget and Emergency Deficit Control Act of 1985.

11. PROVISIONS RELATING TO IMPROVEMENT OF QUALITY OF CARE

Allows provider representation of beneficiaries on appeals, but would prohibit provider representation with respect to certain issues unless the provider has waived any rights for payment from the beneficiary for services involved in the appeal. Would prohibit provider representing the beneficiary from imposing any financial liability on the beneficiary in connection with representation.

Would provide beneficiaries with the right to appeal payment denials for home health services that do not meet the "intermittent or home bound" criteria.

Would prohibit a hospital from making incentive payments to a physician as an inducement to reduce services to beneficiaries, effective with payments occurring 6 months after enactment. Prohibits HMOs and CMPs from making such payments to a physician effective April 1, 1989. Requires the Secretary to study and report on incentive plans offered to physicians by HMOs and CMPs no later than January 1, 1988.

Requires the Secretary to arrange for a study to serve as the basis for establishing a strategy for reviewing and assuring quality of care under medicare.

12. TECHNICAL AMENDMENTS AND MISC. PROVISIONS RELATING TO PARTS A AND B

a. Treatment of Group Purchasing Organizations—Permits the payment of administrative fees to group purchasing organizations by a vendor of the purchasing agent if the agent has an appropriate written contract and full disclosure of the payment is made of the payment to each provider.

b. Competitive Contracting Authority—Extends the authority of the Secretary to enter into competitively bid contracts with intermediaries and carriers to replace poor performing contractors for additional 3 years and clarifies language to include fixed-priced contracts.

c. Parts A & B COBRA Technical Corrections—The conference agreement does not include the COBRA technical corrections under this section.

d. Moratorium on HCFA Regulations—The Secretary would be prohibited from issuing any regulations or notices regarding hospitals or physicians before September 1, 1987, which would achieve medicare savings of more than $50 million in FY 1988.

The Secretary would be prohibited from issuing final regulations that change the methodology for computing the amount of payment for capital-related costs for inpatient hospital services under part A before September 1, 1987.

The agreement would also require the Secretary to allow 60 days for public comment on proposed regulations and notices, except for limited circumstances when such comment periods are not possible due to statutorily imposed deadlines for Secretarial action.

13. DIRECT COSTS OF GRADUATE MEDICAL EDUCATION

Would provide that time spent in a nonhospital outpatient setting would be counted for medicare reimbursement purposes if the hospital incurs all or substantially all of the costs of residency training in the ambulatory setting.

14. COSTS LIMITS FOR HOME HEALTH AGENCIES

Would require that limits for home health agency costs be applied on an aggregate basis for all home health services, rather than on a discipline-specific basis, effective with cost-reporting periods beginning on or after July 1, 1986.

15. ESTABLISHMENT OF RESEARCH PROGRAM

Would require the Secretary to provide for a research program on patient outcomes of selected medical treatments and surgical procedures.

16. CIVIL MONETARY PENALTY AND EXCLUSION PROVISIONS

Would prohibit individuals who have been convicted of a Federal crime from relitigating the essential elements of the criminal offense in a subsequent civil proceeding to bar the individual from the medicare or medicaid program, or to impose civil monetary penalties. The official conducting such a hearing would have the authority to sanction a person for failing to comply with an order or procedure, failing to defend an action, or other interfering misconduct.

17. HOSPITAL PROTOCOLS FOR ORGAN PROCUREMENT AND STANDARDS FOR ORGAN PROCUREMENT AGENCIES

Would require, effective July 1, 1987, that no hospital may participate in medicare or medicaid unless the hospital has established protocols for encouraging organ and tissue donation. Would prohibit payment, effective January 1, 1988, under medicare and medicaid with respect to costs of procuring organs, by an organ procurement organization that does not meet the national organ transplant network standards.

18. MEDICARE AS SECONDARY PAYER, COVERAGE REQUIREMENTS OF CERTAIN OTHER PAYERS

Medicare would be the secondary payer for disabled beneficiaries (except ESRD beneficiaries) who elect to be covered by employer-based health insurance as a current employee (or family member of such employee) of an employer with 100 or more employees. This provision would expire on October 1, 1991. Would require the Secretary to study the impact of this provision.

19. COVERAGE OF SERVICES OF NURSE ANESTHETISTS

Extends current payment provisions for the services of hospital-employed CRNAs for cost reporting periods beginning before October 1, 1988.

Authorizes direct reimbursement for anesthesia services and related care furnished by a registered nurse anesthetist for which he/she is legally authorized to perform in the State. These payments would be made equal to the lower of 80% of actual charges or 80%

of a fee schedule established by the Secretary. This provision is to be budget neutral. CRNAs would be required to accept assignment for all medicare services. The fee schedule would apply to services provided after October 1, 1988. Special limits on the actual charges of nonparticipating physicians for CRNA services and medical direction would apply.

20. EXTENSION OF PREMIUM PAYMENT PROVISIONS THROUGH 1989

The conference agreement does not include the House provision. The 25% payment provision would expire under current law at the end of calendar year 1988.

21. PAYMENTS FOR PHYSICIANS' SERVICES

Provides that all physicians would receive a 3.2% increase in their prevailing charges effective January 1, 1987. In 1988 and in future years, prevailing charges would be increased by the percentage increase in the MEI. The Secretary would be prohibited from revising the cumulative MEI on a retrospective basis. The current differential in the prevailing charges of participating and nonparticipating physicians would be made permanent.

Would require the Secretary to conduct a study of the MEI to ensure that the index reflects economic changes in an appropriate and equitable manner. The Secretary would be precluded from changing the methodology used to determine the MEI until completion of the study.

Includes a limitation on the actual charges of nonparticipating physicians, such that over a four-year period, the actual charges of nonparticipating physicians would be capped by an amount equal to the maximum allowable actual charge (MAAC), calculated for each physician in relation to the prevailing charge. The limitation on actual charges would expire on December 31, 1990, or one year after the submission by the Secretary to the Congress of the required report on relative value scales, whichever occurs earlier.

22. INHERENT REASONABLENESS; PAYMENT FOR CATARACT SURGERY

Would authorize the Secretary, under the inherent reasonableness authority, to establish payment levels for a physician service based on considerations other than the actual, customary, or prevailing charge for the service. Criteria and procedures for adjusting payments are specified. The Secretary would be required to review payments under this section for 10 of the most costly procedures covered under part B. If an adjustment is made on the basis of the inherent reasonableness authority that results in a payment reduction, a special limit would be applied to the actual charges of nonparticipating charges for that service.

Would specify that the prevailing charges for participating and nonparticipating physicians performing cataract surgery would be cut by 10 percent, effective January 1, 1987. An additional 2 percent reduction would be made effective January 1, 1988. In no case would the reduced allowable charge be lower than 75 percent of the national average prevailing charge. The Secretary would be required to publish, in final form, a proposed notice that would reduce payment for cataract surgery anesthesia.

Nonparticipating physicians performing cataract surgery services and cataract surgery anesthesia would be required to reduce their actual charges for these services effective January 1, 1987.

23. END STAGE RENAL DISEASE PROGRAM

The Secretary would be required to reduce the composite rate payments for dialysis services by $2 for services furnished on or after October 1, 1986. The Secretary would be prohibited from revising the composite rates for two years. An application for a payment rate exception for sole facilities located in isolated rural areas would be deemed approved unless the secretary had disapproved the application within 60 working days.

The conference agreement does not include either the House or Senate amendment concerning physician monthly capitation rates for dialysis services. Regulations regarding the capitation rate, published in the Federal Register on July 2, 1986, would continue to be effective.

Would provide that immunosuppressive drugs furnished to a transplant patient within one year of a transplant would be covered under part B of medicare.

The Secretary would be required to establish no fewer than 17 ESRD network areas. Funding for the networks will be provided by reducing the per treatment composite rate to facilities by $.50 per treatment. The Secretary would be required to designate the network area not later than May 1, 1987, and establish them by July 1, 1987. New networks would be established using competitive bidding procedures under specified guidelines. The existing network organizations would remain in operation until 30 days after the new network organizations begin operations. A national end stage enal disease registry is to be established.

The Secretary would be required to establish standards and conditions of participation for safe and effective dialyzer reuse and reprocessing by medicare certified ESRD facilities to be effective October 1, 1987.

24. TECHNICAL AMENDMENTS AND MISC. PROVISIONS RELATING TO PART B

a. Physician Payment Review Commission—Would expand the membership of the Physician Payment Review Commission by 2 members. At least one of the members would represent a rural area.

b. Effective Date on Voluntary Disenrollment from Medicare—Would modify the effective date of disenrollment from medicare when a beneficiary files a notice to disenroll to the close of the calendar quarter in which the notice was filed.

c. Study of Prospective Payment of Radiology, Anesthesia and Pathology Services to Hospitals Inpatient Services—Would require the Secretary to study and report by July 1, 1987, concerning the implementation of a part B prospective payment system for radiology, anesthesia and pathology services furnished to hospital inpatients.

25. VISION CARE

Would allow payment under medicare for vision care services performed by optometrists, if the services are among those already covered by medicare when furnished by a physician, and if the optometrist is authorized by State law to provide the services, effective for services furnished on or after April 1, 1987.

26. OCCUPATIONAL THERAPY SERVICE

Would extend part B coverage of occupational therapy services to services provided in skilled nursing facilities, (when part A coverage has been exhausted) in a clinic, rehabilitation agency, or public health agency, or by others in arrangements with such entities.

Would also extend part B coverage to occupational therapy services furnished by an independently practicing therapist in a therapist's office or in a beneficiary's home. Reimbursement would be provided on the basis of 80% of reasonable charges, with no more than $500 in incurred expenses eligible for coverage in a calendar year.

These provisions would be effective for occupational therapy services furnished on or after July 1, 1987.

27. COVERAGE OF SERVICE OF A PHYSICIAN ASSISTANT

Would authorize coverage of the services of physicians' assistant furnished under the supervision of a physician in a hospital, skilled nursing facility (SNF), intermediate care facility (ICF), or as an assistant at surgery. Physician assistant services would be reimbursed subject to a prevailing charge screen equal to 85% of the prevailing charge for comparable physician services performed by nonspecialists when such services are performed in a skilled nursing facility or intermediate care facility. The prevailing charge screen would be equal to 75% of the nonspecialists physicians prevailing charge level when such services are performed in a hospital, and 65% of the reasonable charge for a physician when acting as an assistant at surgery. Physician assistants would be required to accept assignment on all claims. This provision is effective with services furnished on or after January 1, 1987.

The Secretary would be required to report to Congress by April 1, 1988, concerning appropriate adjustments to payments for physician assistant services.

28. PAYMENT FOR CLINICAL DIAGNOSTIC LABORATORY TESTS

Would eliminate the 2% differential between hospital outpatient labs and independent labs (except in the case of qualified clinical labs which operate 24 hours per day), effective January 1, 1987. The January 1, 1988, sunset provision on fee schedules for such laboratory services would be eliminated. The Secretary would be required to report to Congress, not later than April 1, 1988, on the advisability, and feasibility of, and methodology for, establishing a national fee schedule for clinical diagnostic laboratory tests. Implementation of the national fee schedule would be postponed for two years, until January 1, 1990.

Would authorize the Secretary to establish a fee to cover, in certain situations, transportation and personnel expenses for trained personnel to travel to the location to collect the sample, effective January 1, 1987.

The moratorium on the competitive bidding demonstration project would be extended until January 1, 1988.

29. PAYMENT FOR PARENTERAL AND ENTERAL NUTRITION

The Secretary would be permitted to apply lowest charge level limitations to parenteral and enteral nutrition supplies. The provision would be effective for parenteral nutrients October 1, 1987, and for all other services and supplies on January 1, 1987. The Secretary would be prohibited from using "inherent reasonableness" in establishing the lowest charge level.

30. PAYMENT FOR OXYGEN THERAPY SERVICES

The conference agreement does not include this provision.

31. CHANGING MEDICARE APPEAL RIGHTS

Provides that beneficiaries may obtain an administrative law judge hearing if the amount in controversy is $500 or more and judicial review if the amount in controversy

is over $1000. National coverage determinations could not be overturned soley on the grounds that they were not issued in accordance with the notice and comment procedures in the Administrative Procedures Act, as amended. The court could, however, review coverage determinations to determine whether the result was arrived at in an arbitrary manner.

Regulations and policy instructions issued prior to October 1, 1979, could not be declared invalid. In the case of policies which are invalidated by the court, the Secretary could not be required to reopen and reprocess claims previously resolved, except with respect to the litigants. The Secretary could be required to implement a new policy prospectively.

32. ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS

Would require the Secretary to conduct up to 10 demonstration projects to determine the effectiveness, cost and impact of providing comprehensive services to medicare beneficiaries who have Alzheimer's disease or related disorders. Total expenditures cannot exceed $40 million over three years.

33. AMBULATORY SURGERY

Effective for cost reporting periods beginning on or after October 1, 1987, a new payment methodology would apply for facility services provided by hospital outpatient departments (OPDs) in connection with ambulatory surgery procedures. Payment would be based on a blend of the amount that would be paid to a hospital under cost reimbursement and the amount that would be paid to a freestanding ambulatory surgery center (ASC) for the same service. During the first cost reporting year the blend would be 75% cost and 25% ASC rate; during the second cost year and subsequently, the blend would be 50% cost and 50% ASC rate. A 20% coinsurance would apply to services provided by hospital OPDs and ASCs in connection with ambulatory surgery. The Secretary would be required to submit a final report concerning development of a prespective payment methodology for ambulatory surgery services by April 1, 1989.

34. PEER REVIEW ORGANIZATIONS

Procedures for appeal of hospital denials of continued inpatient stay would be modified to ensure than a beneficiary who makes an appeal is not liable for continued stay until noon on the day after receiving notice of the PRO's decision. PRO review of early readmission cases would be expanded. The requirement that PROs review services provided by HMOs and CMPs would be delayed from January 1 to April 1, 1987. In up to 25 states containing up to 50% of the medicare beneficiaries enrolled in HMOs or CMPs, the Secretary could provide for a state-by-state competition for review of HMO and CMP services. The current PRO in those states could compete for these contracts as could other entities provided that such entities satisfy requirements contained in Sections 1152 and 1153(b) of the Social Security Act. In the remaining 25 states, review must be conducted by the PROs for those states. A consumer representative would be required on each PRO governing board. PROs would be required to review beneficiary complaints concerning quality. PROs would be required to share certain confidential information with state licensure agencies and with national accreditation bodies.

35. INCENTIVES FOR THE ESTABLISHMENT OF STATE HEALTH INSURANCE POOLS

The conference agreement does not include the House provision.

36. COBRA TECHNICAL AMENDMENTS RELATING TO CONTINUATION OF EMPLOYER-BASED HEALTH INSURANCE COVERAGE

The conference agreement does not include the House provision.

37. CONTINUATION COVERGE FOR RETIREES IN CASES OF BANKRUPTCIES

Beginning on or after July 1, 1986, any retiree and dependents who lose their employer-based health insurance coverage because their employer filed for Chapter 11 bankruptcy would be entitled to remain in the employer health insurance plan if the retiree pays up to 102% of the applicable premium. The retiree, the widow of the retiree, and the spouse and dependent children of the retiree may remain in the health plan until the death of the retiree. Upon the death of the retiree the surviving spouse and the dependent children may remain in the group health plan for up to 3 years.

38. EXTEND MEDICARE COVERAGE AND HOSPITAL INSURANCE TAX TO STATE AND LOCAL GOVERNMENT EMPLOYEES

The conference agreement does not include the Senate provision.

II. Income Security Provisions

1. ELIMINATION OF 3-PERCENT TRIGGER FOR COST-OF-LIVING INCREASE

Eliminates the requirement that the increase in the CPI must reach three percent before a COLA is provided to social security beneficiaries. This provision guarantees a COLA increase will be provided the January, 1987 social security benefit checks. This provision has the effect of eliminating the trigger for several other automatic adjustments that increase only if a social security COLA is provided (e.g., the FICA wage base, the medicare part B premium, and SSI, railroad retirement, and Veterans' pension COLAs).

2. DISINVESTMENT OF SOCIAL SECURITY TRUST FUNDS

No provision.

3. MANDATE AFDC-UP

No provision.

4. TARGETING THE USE OF THE INCOME AND ELIGIBILITY VERIFICATION SYSTEM

Clarifies that the system is to be targeted to those uses which are likely to be most productive by adding that no State shall be required to use information obtained through the system to verify the eligibility of all recipients.

Report language calls for a 45-day time period for verification of information received.

5. ANNUAL CALCULATION OF FEDERAL PERCENTAGE OF AFDC EXPENDITURES

For FY 1987 only, restores the biennial calculation of the Federal percentage for States that lost funds in the shift to an annual calculation.

6. RETROACTIVE MODIFICATION OF CHILD SUPPORT ARREARAGES

Requires that State laws provide that child support payments be reduced to judgment on the date that they are due and that States grant full faith and credit to such judgments. Prohibits the retroactive modification of child support awards. Allows prospective modification only from the date that notice is given to the obligee or obligor, as appropriate, that a petition for modification has been filed.

III. Revenue Provisions

1. EXTEND MEDICARE COVERAGE AND HOSPITAL INSURANCE TAX TO STATE AND LOCAL GOVERNMENT EMPLOYEES

The conference agreement does not include the Senate provision.

2. DEPOSITS OF SOCIAL SECURITY CONTRIBUTIONS BY STATE AND LOCAL GOVERNMENT EMPLOYERS

Removes from State governments the intermediary role of collecting social security taxes from local governments, and relieves State governments from liability for verifying and depositing such taxes.

Places State and local government employers under the same schedule for frequency of deposits as applies under present law to private-sector employers (and to deposits of Federal income taxes withheld by State and local government employers). State and local governments are subject to the same interest charge and penalties for late deposits as apply to private-sector employers.

Effective for payments of social security taxes with respect to wages paid after December 31, 1986.

3. TELEPHONE EXCISE TAX

Requires Treasury Department (in consultation with Commerce Department and Federal Communications Commission) to study the effects of an exemption from communications excise tax for private telecommunications systems and other exemptions from the telephone excise tax and to report to the Congress by June 20, 1987.

4. FEDERAL UNEMPLOYMENT TAX EXTENSION

The conference agreement does not include the House provision.

5. ACCELERATED COLLECTION OF CERTAIN EXCISE TAXES

The excise taxes on (a) domestically produced and bulk imported distilled spirits, (b) bottled imported distilled spirits, (c) beer and wine, and (d) tobacco products are due 14 days after the semimonthly period when the taxable event occurs (14 days after entry into the customs territory of the United States in the case of certain imported products). If the regular payment date falls on a Saturday, Sunday, or legal holiday, payment is due on the last preceding business day.

As under present law, the taxable event generally is removal from a bonded factory, distillery, winery, or brewery in the case of domestically produced taxable products and certain bulk imported products (i.e., distilled spirits). As stated above, the taxable event for other imported products is entry into the customs territory of the United States. A further exception is provided in the case of an entry pursuant to which taxable products are transferred directly to a customs' bonded warehouse ("CBW"). (A foreign trade zone is treated as a CBW for this purpose.) In such a case, the taxable event is removal from the first such CBW into which the products are placed upon entry into the United States. Finally, for taxable products brought into the United States from Puerto Rico, tax is due 14 days after the products are brought into the United States.

Effective for products removed in semimonthly periods ending on or after December 31, 1986, and to products entered into the customs territory (including entry into a CBW) of the United States (or otherwise brought into the United States) after December 15, 1986.

Special rules are provided consolidating payments for the semimonthly periods ending on December 15, 1986, and December 31, 1986, in the case of distilled spirits and tobacco products that now receive more than 15 days after removal for payments of tax.

6. INCREASES IN CERTAIN TAX PENALTIES

a. Penalty for failure to deposit taxes—The penalty for failure to comply with periodic deposit requirements is increased from 5 percent to 10 percent of the amount of any underdeposit. This provision is effective with respect to penalties assessed after the date of enactment of the bill.

b. Penalty for substantial understatement of tax liability—The addition to tax for a substantial understatement of tax liability is increased to 25 percent, effective for returns the due date of which is after date of enactment.

7. TAX TREATMENT OF CONRAIL PUBLIC SALE

The sale of Conrail's stock will be treated as an asset sale. Conrail will be treated as a new corporation that purchases the assets after the public sale. Thus, the aggregate basis for Conrail's assets will be adjusted to reflect the stock purchase price (plus liabilities and other relevant items). However, accounts receivable and materials and supplies will be treated as cash equivalents. Similarly, no NOL or other carryovers from periods before the public sale will be available for use in postsale periods.

In addition, no amount will be included in the gross income of Conrail by reason of the cancellation of any obligation or preferred stock of Conrail. Also, any post-closing payments for back wages must be capitalized. Finally, certain ESOP provisions are waived.

8. DENIAL OF TAX BENEFITS WITH RESPECT TO ACTIVITIES IN CERTAIN FOREIGN COUNTRIES

Denies a foreign tax credit for taxes paid on income attributable to activities of the taxpayer conducted in a foreign country (1) that has been designated by the Secretary of State (pursuant to sec. 6(j) of the Export Administration Act) as a country that repeatedly provides support for acts of international terrorism, (2) with which the United States does not have diplomatic relations, or (3) the government of which the United States does not recognize (with certain exceptions). Income from one of these countries is subject to a separate foreign tax credit limitation, so that taxes from other countries cannot offset the U.S. tax on that income. Provides regulatory authority for look-through rules to trace income (and taxes) from one of these countries through various entities.

Currently taxes U.S. shareholders of a controlled foreign corporation on the corporation's income attributable to activities conducted in a foreign country described in the preceding paragraph. Provides regulatory authority for look-through rules to trace income from one of these countries through various entities.

Effective for activities that occur and taxes imposed on income earned after 1986.

9. OLDER AMERICANS PENSION BENEFITS

Benefit accruals or continued allocations to an employee's account under either a defined benefit plan or a defined contribution plan may not be reduced or discounted on account of the attainment of a specified age. Other miscellaneous modifications are included.

10. PORT USE AND INLAND WATERWAYS FUELS TAX

The conference agreement does not include the House provisions.

11. OIL SPILL LIABILITY TRUST FUND AND PETROLEUM TAX

Establishes in the U.S. Treasury the Oil Spill Liability Trust Fund. The Oil Spill Fund is financed by a new excise tax of 1.3 cents per barrel on crude oil and imported petroleum products. Only effective if authorizing legislation is enacted by September 1, 1987.

IV. OTHER PROVISIONS

1. CUSTOMS USER FEES

House and Senate conferees agreed to an amended version of the House provision. Under the agreement an ad valorem user fee would be applied to all formal entries of merchandise imported for consumption, including warehouse withdrawals for consumption. These fees would be in addition to the processing fee required under present law. The provision specifically excludes applicability of such user fees to articles classifiable in Schedule 8 of the Tariff Schedules or to products of the least developed developing countries (LDDC's), of eligible countries under the Caribbean Basin Initiative (CBI), or of U.S. insular possessions.

From December 1, 1986, through the end of fiscal year 1987, a user fee of 0.22 percent ad valorem would be applied, based on the appraised customs value of the imported merchandise. Beginning with fiscal year 1988 and continuing through fiscal year 1989, the fee would be 0.17 percent ad valorem. For fiscal year 1988 to 1989, a special formula is provided which would allow reduction of the fee so that the amount of money collected would continue to closely approximate the amount appropriated for Customs' commercial operations in order to be consistent with the international obligations of the United States. At the end of fiscal year 1989, all customs user fees, including those under present law, would cease to exist.

In the case of small airports and other facilities where the cost of customs services is already borne by the users of such facilities, the Secretary of the Treasury would be authorized to impose a lower user fee than would be applicable otherwise.

The Customs Service would collect these fees through usual entry procedures, employing its existing standard consumption entry form (CF 7501). No new recordkeeping or data collection burdens would be imposed on the public.

The proceeds of these fees would be deposited in a dedicated account within the general fund of the Treasury. Subject to authorization and appropriation, the funds would be available to the Customs Service to cover that agency's cost of commercial services rendered. The provision includes an authorization of appropriations for the U.S. Customs Service for fiscal year 1987 of $1,001,180,000 to serve as a measure of limitations applicable to such fees under existing international trade agreements.

2. TEMPORARY INCREASE IN PUBLIC DEBT LIMIT

The amount available for the debt limit through May 15, 1987 is $2,300 billion. The increase of $189 billion would expire on May 15, 1987 and the debt limit will revert to its permanent level of $2,111 billion.

3. RESTORATION OF LOST INTEREST TO CERTAIN TRUST FUNDS

The conference agreement provides for the restoration to certain Federal trust funds of lost interest and obligations due to any noninvestments, redemptions, or disinvestments that occurred as a result of the failure to extend the debt limit by September 30, 1986. This provision places those trust funds that experienced any disruption in normal investment and redemption they would have been in had H.J. Res. 668, as passed by the House of Representatives on June 26, 1986, been enacted into law on September 30, 1986.

Mr. LATTA. Mr. Speaker, I yield 3 minutes to the gentleman from Tennessee [Mr. DUNCAN].

Mr. DUNCAN. Mr. Speaker, I have decided to support H.R. 5300, despite some concerns about several provisions. As a whole, its positive aspects outweigh its negatives.

One of the positive provisions is removal of the 3-percent threshold—or "trigger"—from the Social Security COLA. Under current law, Social Security beneficiaries receive a cost-of-living adjustment only if the inflation rate for the preceding year was 3 percent or more. The Consumer Price Index [CPI] over the past year has not advanced at a rate exceeding 3 percent; therefore, there will not be an automatic Social Security benefit adjustment in January unless we act to change the law.

H.R. 5300 would assure an adjustment equal to the annual CPI advance—whatever it turns out to be—by eliminating the "trigger" for the Social Security COLA. This means that not only this year, but in future years, Social Security beneficiaries will receive a COLA adjustment no matter how low the inflation rate. This will not result in a long-term "cost" to the trust funds, because current law provides compensatory benefits in the first COLA following a year of no adjustments.

In the health area, H.R. 5300 would make numerous changes in the Medicare Program, including setting the hospital deductible at $520 for 1987. Without this provision the deductible would rise to about $580 in 1987.

The legislation also would increase Medicare payment rates for hospitalization by 1.5 percent and allow physicians a 3.2-percent increase in fees for services paid by Medicare. This increase is important in light of the freeze on physicians' fees which has been in effect for the past 24 months.

H.R. 5300 would, however, further limit the amount physicians can charge Medicare beneficiaries beyond what Medicare will pay for services. This limit concerns me. I know some may consider these restrictions as important beneficiary protections. But I am worried that limiting the fees which doctors charge might turn some of them away from serving Medicare beneficiaries.

Another Medicare provision in this package would expand access for beneficiaries to vision care services. I

wholeheartedly support this change, and view it as an important step in making needed services available to all Medicare beneficiaries.

Some of the best features of the conference report are certain omissions. For example, it does not include a provision of the House-passed bill which would have extended for 2 years the temporary 0.2-percent unemployment surtax. I had taken strong objection to this provision and I am pleased that it was dropped in conference.

Another troubling provision in the House-passed bill dealt with State health insurance risk pools. I had serious concerns about how this provision might infringe on the prerogatives of the States to develop their own risk pools. Fortunately, this new layer of Federal requirements also was dropped in conference.

One new provision in the conference report increases the ceiling on the public debt to $2,300 billion. This is a $189 billion increase over the current debt ceiling of $2,111 billion. The new debt ceiling language is designed to accommodate the Government's borrowing needs through May 15, 1987. This means that on May 16, the statutory limit reverts to its current level of $2,111 billion.

Including the debt ceiling in the reconciliation bill is a bit unusual, but there is good reason for it in this case. A long-term extension of the debt ceiling was embodied in House Joint Resolution 668, which passed the House in June as part of the first concurrent budget resolution for fiscal year 1987. However, the other body added more than two dozen nongermane amendments, and these would have been difficult to deal with in conference. The procedure we are following is readily understandable when viewed in that light.

In summary, Mr. Speaker, this conference report contains provisions which help Social Security and Medicare beneficiaries, and is a marked improvement over the House-passed bill. It represents the best compromise we could get, and I urge my colleagues to join me in approving it.

Mr. GRAY of Pennsylvania. Mr. Speaker, I yield 4 minutes to the gentleman from South Carolina [Mr. DERRICK], the chairman of the Reconciliation Task Force of the Budget Committee, who has worked extremely hard in putting together the budget reconciliation package that is before us.

Mr. DERRICK. Mr. Speaker, I want to make sure that my colleagues understand the importance of this conference report. On Monday, October 6, the Directors of the Office of Management and Budget and the Congressional Budget Office issued a report stating that their estimate of the Federal deficit for fiscal year 1987 remains $163.4 billion, which is $19.4 billion greater than the deficit target set by Gramm-Rudman-Hollings. As my colleagues well know, the Gramm-Rudman-Hollings Act requires that if the estimate of the deficit exceeds the target by more than $10 billion, that is $154 billion, then Congress must vote whether to impose a sequestration of $19.4 billion. We are, therefore, confronted with three choices.

First, we can act to reduce the deficit below $154 billion, avoiding the need to vote on a sequestration and meeting our obligation under Gramm-Rudman-Hollings.

Second, we can fail to cut the deficit and we can vote for a sequestration order which would cut all programs across the board. Resulting in the layoff of military personnel, cutting our drug enforcement efforts, cutting farm support programs in a time of agricultural crisis, and generally crippling the ability of our Government to operate in an efficient and rational manner.

Third, we can fail to cut the deficit and we can refuse to implement the sequester order required by Gramm-Rudman-Hollings. Then we can go home and tell our constituents that, yes we voted to cut the deficit last year, but we didn't really mean it. When it comes to actually doing something about the deficit, something that might be a little painful, we just don't have the stomach for it.

Mr. Speaker, those are our only options. And, if you are like me, cutting the deficit below $154 billion is the only real option, the only choice I can make and go home and look my constituents in the eyes and say "I am representing you the way you would want me to."

Furthermore, if we are to take the choice of responsibly cutting the deficit, we must enact the reconciliation conference report. This legislation will reduce the deficit by nearly $12 billion, and, combined with other legislation, it will allow us to meet the Gramm-Rudman-Hollings deficit target. If we do not enact reconciliation, we will not reach that target. Other legislation awaiting final action does not cut the deficit enough.

Mr. Speaker, the choice is clear. We can do the right thing and pass this reconciliation bill or we can do the easy thing and hide from any hard decisions. But the American people will be the losers if we take the easy road, and when they realize what is happening to them they may decide it is time to make losers of some of us. I urge my colleagues to pass this reconciliation bill.

□ 1545

Mrs. MARTIN of Illinois. Mr. Speaker, I yield 3 minutes to the gentleman from New York [Mr. LENT].

Mr. LENT. Mr. Speaker, I want to first commend the gentleman from Pennsylvania [Mr. GRAY], the chairman of the Committee on the Budget, and our colleague, the gentleman from Ohio [Mr. LATTA], the ranking member of the Committee on the Budget, for bringing this conference report to the floor.

Mr. Speaker, the reconciliation instructions received by the Committee on Energy and Commerce required the committee to recommend changes in laws to save $5.6 billion in outlays over the next 3 fiscal years. Of that amount, $3.25 billion were assumed to be saved through Medicare provider payment reforms. The remaining $2.35 billion were assumed to come from savings in the energy area. Subsequently, the energy savings were reduced by $750 million due to judicial action.

In the course of meeting these energy savings targets, the committee, and subsequently the House, approved a $130 million increase in annual charges for the Nuclear Regulatory Commission. The Senate, however, refused to accept these fees and they were dropped from the conference report. The House also approved an increase in user fees for the Federal Energy Regulatory Commission. A statutorily required industrial energy conservation survey was repealed. These measures are included in the conference report.

Finally, with respect to energy savings, the House provided for the U.S. Treasury to receive oil overcharge recoveries not governed by prior court orders if the parties injured by petroleum pricing violations cannot be found. I am pleased to report that the amendment of my distingushed colleague from Texas [Mr. FIELDS] was preserved in full by the conferees, thus carrying out the intent of the House as elaborated in my September 24, 1986, colloquy with the gentleman from Texas.

The Medicare and Medicaid amendments approved by the House fell far short of achieving the savings required by the budget resolution for fiscal year 1987. The minimal savings that would have come from changes to the Medicaid Program were overwhelmed by many provisions increasing Federal Medicare and Medicaid spending. This conference report, I am sorry to say, retains these new spending provisions and drops many of the savings items the House had adopted. Consequently, the final Medicare package is estimated to cost—not save—$912 million in fiscal year 1987 and $1.1 billion over the next 3 fiscal years. This spending level is $1.4 billion over the fiscal year 1987 budgetary goal for Medicare.

Turning to the remaining major component of H.R. 5300 within the jurisdiction of the Committee on Energy and Commerce, I am pleased to report that, after much work, the conferees

agreed on legislation authorizing the sale of Conrail. Modeled on the House bill, the Conrail Privatization Act would transfer Conrail to the private sector through a public offering administered by the Secretary of Transportation. Conrail must transfer $200 million in cash to the Government within 30 days of enactment. The Secretary may require Conrail to pay the Federal Government up to an additional $100 million taking into account the viability of Conrail. The Secretary shall then sell the Conrail common stock owned by the Government to the public if she determines that the gross proceeds will be adequate.

At the time the conferees reached agreement on Conrail, about 2 weeks ago, $2 billion was thought to be a reasonable goal for total Conrail proceeds. That assumed, however, that Conrail's tax basis would not be reduced. The agreement reached by the House Committee on Ways and Means and the Senate Committee on Finance yesterday reduced the tax basis substantially. A reasonable goal for Conrail sale proceeds with a higher tax basis is not the same as a reasonable goal with a lower tax basis. The Secretary has discretion under this bill to take this adjustment into account in judging what is an adequate return to the Government.

The conference agreement seeks to ensure that Conrail continues to provide rail service across its service territory. It does this by imposing on Conrail, for a period of 5 years, minimum capital expenditure and maintenance requirements, debt limits and restrictions on any breakup. In short, the conference agreement gets the Federal Government out of the freight railroad business in a workable, responsible, fiscally prudent way.

I would like to commend my colleagues from Illinois and Kansas, Mr. MADIGAN and Mr. WHITTAKER, respectively, for their long labor and large contributions to this legislation. I would also like to pay tribute to the chairman of the Subcommittee on Commerce, Transportation, and Tourism, Mr. FLORIO, and to the chairman of the Energy and Commerce Committee, Mr. DINGELL, for their leadership on this issue.

This Conrail legislation before us today is the result of an extraordinarily difficult process of study, negotiation, and compromise. Without the work of my colleagues and the help of my staff, including Jane Sutter Starke, Russell Smith, Judy Dungan, and Rob Mooney on this side of the aisle, and the patience of legislative counsel Tim Brown, who produced version after version of this 40-page bill, the notion of selling Conrail would have remained just that—a notion.

To conclude, Mr. Speaker, there are things in the conference report I would like to see done differently. On balance, however, H.R. 5300 deserves our support. Even a small reduction in the deficit is better than no deficit reduction at all and the prospect of a Gramm-Rudman sequestration order.

Mrs. MARTIN of Illinois. Mr. Speaker, I yield 1 minute to the gentleman from Minnesota [Mr. FRENZEL].

Mr. FRENZEL. Mr. Speaker, I shall not vote for H.R. 5300, the reconciliation bill. The reconciliation process was intended to reduce spending, but this bill merely raises taxes and sells assets. The spending baseline continues inexorably upward.

I take strong objection to one of the new taxes, euphemistically titled a custom's user fee. User fees are good, but only if applied to clearly defined services with a reasonable fee basis.

The user fee in H.R. 5300 has no reasonable basis, and it is not identified with any service. It is based on merchandise trade value only.

It will develop, in fiscal year 1987, about $850 million in new revenues. That's more than we will spend on all salaries and expenses of the entire Customs Service. It amounts to about a 7-percent surtax on total customs duties, and therefore will be subject to protest, retaliation and mirror laws by all our trading partners.

It's a shame we could not have cut some spending in the bill. Actually, H.R. 5300 increases the spending baseline by over $2 billion. It's a shame we are raising taxes in this bill. The new taxes are nearly $4 billion.

Again we have missed an opportunity, and missed it by a mile.

I shall vote against the bill.

Mr. GRAY of Pennsylvania. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Florida [Mr. MACKAY], a member of the committee.

Mr. MACKAY. Mr. Speaker, I would like to engage the distinguished chairman of the Budget Committee in a colloquy on the position taken by this conference report on the question of scoring the loan asset sales. Is it a correct understanding that this conference report does not dictate or endorse the manner in which the proceeds of asset sales shall be scored for deficit reduction purposes?

Mr. GRAY of Pennsylvania. If the gentleman will yield, the gentleman's understanding is correct.

Mr. MACKAY. Is it further correct that it is the position of the House Budget Committee and this conference report, as reflected in the statement of managers, that the loan asset sales should be conducted so as to ensure that the Government realizes the greatest possible net return from the sales of these assets?

Mr. GRAY of Pennsylvania. Again, the gentleman is correct.

Mr. MACKAY. I thank the chairman for his assurances.

Mrs. MARTIN of Illinois. Mr. Speaker, I yield such time as he may consume to the gentleman from Vermont [Mr. JEFFORDS].

Mr. JEFFORDS. Mr. Speaker, I rise in support of the conference report with respect to certain pension provisions.

Mr. Speaker, for the second time this year an omnibus budget reconciliation bill before this Congress has been expanded into much more than a budget bill. It should be noted that the bill before us is also a pension bill which extends valuable pension accrual protections to older Americans who work beyond normal retirement age.

It is important for this body to understand what this "Older Americans Pension Benefits" provision does and does not do. What it does is prevent a covered employee pension benefit plan from eliminating or reducing an employee's pension benefit accruals, because of the attainment of any age, for the period of employment after the employee attains the normal retirement age under his or her plan.

This is accomplished by means of a coordinated amendment to the Age Discrimination in Employment Act [ADEA], the Employee Retirement Income Security Act [ERISA], and the Internal Revenue Code. In this coordinated fashion the amendments also make it clear that pension benefit accruals prior to normal retirement age meet the age nondiscrimination provisions if they also conform to the benefit accrual rules described in section 204 of ERISA and section 411(b) of the Internal Revenue Code. The requirement that the Departments of the Treasury and Labor and the Equal Employment Opportunity Commission issue identical regulations on the same issues and that they be consistent in all other regards (given that the scope of plans covered is different under each statute) should provide a measure of comfort to employees in understanding their rights and to plan sponsors in understanding their obligations.

It should also be understood that these provisions do not require pension plans to provide post-normal retirement age benefit accruals in every instance. The legislation makes clear that factors other than age—such as plan cost, years of service or participation, nondiscrimination requirements for the highly compensated and other restrictions and limitations on contributions and benefits under the Internal Revenue Code, et cetera—are either allowed or required to be taken into account in a fashion which may reduce or eliminate post-normal retirement age accruals. In addition, plans which provide or are required to provide actuarial or similar post-normal retirement age adjustments are allowed to take into account the value of such adjustments as an offset to the value of the benefit accrual otherwise required during each plan year. Plans which pay out some or all of the pension benefits accrued at the time of normal retirement age are also to be treated in a similar fashion to plans which delay payment but provide for an actuarially equivalent increase.

In summary, these age nondiscrimination amendments to ERISA, ADEA, and the Internal Revenue Code remove a significant disincentive for older Americans to continue work-

ing beyond normal retirement age. As a result of these changes, the men and women who are able, willing, and choose to continue working beyond normal retirement, now usually age 65, will be making a major contribution to the improved health and productivity of our society and our economy.

Mr. GRAY of Pennsylvania. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. STARK] a member of the Committee on Ways and Means.

Mr. STARK. I thank the distinguished chairman of the Committee on the Budget for his excellent work on this bill.

Mr. Speaker, Title IX of H.R. 5300 is extremely important legislation. As chairman of the Ways and Means Subcommittee on Health, I would first like to thank our hard working chairman, the distinguished gentleman from Illinois, and the Health conferees, for their efforts in bringing this responsible conference report to the House floor.

I urge my colleagues to support this legislation because it achieves some very important goals as it provides net savings of over $1 billion from the Medicare Program.

We are particularly proud that in these budget cutting days we have protected beneficiaries from increased out-of-pocket costs. It's important to know that we all can go home and assure senior citizens in our districts that their Medicare benefits have been preserved.

The reconciliation legislation addresses the most important concern of beneficiaries by limiting the hospital deductible to $520 in 1987. The part A hospital deductible has increased rapidly as an unforeseen consequence of shorter lengths of stay in the hospital. Left unchecked, the deductible would have gone up from $400 in 1985 to $572 in 1987. This would have meant an increase of over 43 percent over 2 years. Because this would be unacceptable, the conference agreement establishes a deductible of $520 for 1987. By subcommittee plans on revisiting this issue next year to further consider how we can best protect our elderly and disabled against high hospital costs.

Concerned with more than costs, the House conferees have worked hard to protect the quality of care our elderly and disabled receive.

In particular, the House held firm in its insistence on outlawing certain physician incentive plans. We must not tolerate hospitals paying physicians to reduce or limit services to the elderly. The conference agreement also gives patients recourse if they feel they are being improperly treated.

I am also pleased to report that the House's quality assurance provisions to protect the elderly and disabled have been retained in this bill. As a response to widespread concern that many elderly are now being discharged "quicker and sicker," the conferees have worked to protect our elderly against premature hospital discharge and to improve access to needed post-hospital services. These provisions create a balance. They ensure that policies which obtain greater savings do not damage the quality of care provided to the elderly.

Further, we have achieved budget reductions and yet have still provided for increases in reimbursements to hospitals and physicians. We have sought fairness in Medicare payments to hospitals and in particular we have enhanced payments for rural and disproportionate share hospitals. The conference agreement provides a 1.15-percent increase in hospital payments; this is in comparison to a 0.5 percent increase proposed by the administration. Further, knowing how important prompt payment of claims is to physicians and hospitals, we have preserved periodic interim payments for high indigent care and rural hospitals and guaranteed prompt businesslike payment of claims to all Medicare providers.

Title IX of H.R. 5300 provides a 3.2-percent increase in payments to all physicians. The conference agreement also places limits on the actual charges of nonparticipating physicians to ensure that savings are not obtained at the expense of higher costs for the elderly. This is a fair outcome—physicians will receive a full inflation increase and beneficiaries will be protected from further increases in out-of-pocket costs.

H.R. 5300 also protects end-stage renal disease [ESRD] beneficiaries by: (1) strengthening ESRD networks, (2) providing a steady funding mechanism for these networks and (3) requiring that standards be established for the safe reuse of dialyzer filters. I would like to assure the many Members who have contacted me about the administration's proposals to reduce ESRD facility rates that the conference agreement does not unfairly reduce these rates. Instead of the administration's initial proposal to reduce the rates by $11, the conference agreement provides for only a $2-per-treatment reduction to those facilities.

To better protect Medicare beneficiaries enrolled in HMO's, the conference agreement increases the Secretary of HHS's authority to deal with problems that have arisen in the Medicare Health Maintenance Organization Program. It also repeals the 2 for 1 rule which is so inequitable to long time members of HMO's.

Even though the conference agreement contains all of these important provisions, I must say that I am extremely disappointed that the State health insurance risk pool provision is not included. The risk pool proposal simply provided incentives to States to provide access to health insurance for those who now have absolutely no access to health insurance. It is unfortunate that a campaign of misinformation has resulted in a denial of health insurance for people who must live in daily fear of being bankrupted by high medical bills. I do intend to reintroduce and fight for this proposal in the 100th Congress.

In conclusion, the conference agreement deserves your support because it responsibly restrains Medicare costs while protecting the elderly against cost-shifting or reductions in quality and access to care.

Mr. PEPPER. Mr. Speaker, will the gentleman yield?

Mr. STARK. I yield to the gentleman from Florida, the chairman of the Committee on Rules, for a colloquy.

Mr. PEPPER. Mr. Speaker, I would like to ask the gentleman from California, the distinguished chairman of the Health Subcommittee, a question regarding the provision H.R. 5300 that concerns physician incentive plans.

I understand that the provision will not harm HMO development. The Secretary of Health and Human Services would be required to develop recommendations concerning appropriate exceptions by January 1, 1988.

I understand that the law would be amended to include any necessary exceptions before the April 1, 1989, effective date.

Mr. STARK. If the gentleman will yield, the gentleman is correct. HMO's will have an opportunity to participate in the process, and I intend to hold hearings on the issue next year.

I understand there is a large HMO in Florida, IMC, which may have trouble meeting some HHS requirements. A corporation is interested in buying IMC, but has raised questions if H.R. 5300 is enacted with a prohibition on HMO incentive arrangements

I support a new management team at IMC.

Since the provision will not be effective until April 1, 1989, the new owner of IMC will have more than enough time to make any necessary changes.

Mr. PEPPER. I want to commend the able gentleman for the hearings that his own committee is going to hold in the early part of next year.

Mr. STARK. We look forward to the distinguished gentleman's participation.

Mr. PEPPER. Mr. Speaker, I thank the gentleman very much.

Mr. STARK. Mr. Speaker, I thank the gentleman and the distinguished chairman of the Committee on the Budget.

Mrs. MARTIN of Illinois. Mr. Speaker, I yield 1 minute to the gentleman from Virginia [Mr. BLILEY].

Mr. BLILEY. I thank the gentlewoman for yielding this time.

Mr. Speaker, I rise in strong support of the reconciliation package. I am particularly pleased that we will have funds in here, increased funds for genetic screening, also for benefits for first-time indigent pregnant mothers.

I urge all Members to support the reconciliation report.

Mr. GRAY of Pennsylvania. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Kansas [Mr. SLATTERY] a member of the committee.

Mr. SLATTERY. I thank the gentleman for yielding, and I certainly do not have any intention of using the 3 minutes.

Mr. Speaker, I rise in support of the Reconciliation Act. I happen to believe that we have done as good as can be done this year in the whole reconciliation process given the political realities of the day. I am particularly pleased that the agreement does include the Agricultural Shippers Protection Act, a piece of legislation that my colleague from Kansas [Mr. WHITTAKER], and I have been working on in the committee this year. We are very pleased to see it included in the final agreement.

Mr. Speaker, section 208(a) of the Staggers Rail Act authorizes rail carriers and shippers to enter into contracts to provide specified services under specified rates and conditions. In recognition of the fact that rail transportation contracts could be utilized as a form of rate discrimination, Congress specifically provided agricultural shippers with certain remedies to challenge contracts as "unreasonable discrimination" or "destructive competitive practices."

Access to this remedy—which would include the Interstate Commerce Commission ordering the railroad to offer the same rate to the complaining shipper or ordering the railroad to charge a higher rate to the shipper receiving favorable treatment—is totally dependent upon obtaining knowledge of rail transportation contracts. To provide shippers with the necessary information, Congress ordered the ICC to require the filing of contract summaries which contain sufficient information "to assure that the essential terms of the contract are available to the general public in tariff format."

It took the ICC 2 years to issue its first regulations in response to this provision of Staggers. They conditioned discovery upon an agricultural shipper's ability to demonstrate "a likelihood of success on the merits." These regulations were held to be defective by a U.S. court of appeals, which remanded the rules to the ICC to provide for "easier discovery."

In 1984, the ICC implemented interim rules which remain under consideration at this time. In November, 1985, the National Grain and Feed Association and the Association of American Railroads filed a petition (ex parte No. 387) with the ICC, proposing new disclosure rules. These proposed rules would not reveal sufficient information to provide agricultural shippers with access to specific remedies created under the Staggers Act. In addition, the ICC has failed to implement properly and enforce the minimal rules that currently are in place.

This legislation uses as a base point that information made available to the general public under present ICC interim rules, and adds thereto the following:

First. The identity of the shipper party to the contract;

Second. The specific points of origin, destination, and ports, not mere references to broad geographic areas such as "rail carrier A's points in Kansas";

Third. Transit points and other shipper facilities affected by the contract—the term "other shipper facility affected by the contract" is included in the act to require disclosure of shipper locations which may not be origins, destinations or ports specified in the contract, but which may be incorporated in the contract for purposes of computing and aggregating minimum volume requirements; and to require disclosure of contract provisions that affect shipper or railroad cars and tracks. Examples of the use of shipper facilities include storage of grain in shipper or carrier owned cars; the spotting of such cars or shipper or carrier owned tracks; and special demurrage or switching provisions.

Fourth. Actual minimum volume requirements specified in the contract; and

Fifth. Whether the rate specified in the contract has been applied to transportation services rendered before the date the contract was filed with and approved by the ICC, and if so, from what dates such services were rendered.

These provisions would not apply to contracts involving forest products and paper.

Mr. Speaker, the ICC would have 60 days after enactment of this legislation to issue regulations providing for the nonconfidential publication of this information. While the legislation mandates disclosure of these essential terms, the ICC must police and enforce these changes to the Staggers Act to ensure that shippers obtain this additional information. In addition, it would violate the spirit and intent of this legislation if the ICC were to impose any unreasonable filing fee for discovery of the information to be disclosed as a result of this legislation.

This legislation is intended to express congressional intent that shippers be afforded access to the remedies created for them under the Staggers Rail Act. These provisions are necessary because shippers cannot obtain sufficient information under ICC mandated first-tier disclosure to identify which contracts affected them, and more importantly, whether contracts that they know affect them are in fact the contract described in a specific summary. Without being able to connect a contract summary with a known contract, shippers have been effectively denied access to a remedy.

In fact, there have been several instances in the State of Kansas in which agricultural shippers sought to discover the terms of a rail transportation contract at a specific location between a specific shipper and a specific rail carrier. They could not determine, however, from the many thousands of nonconfidential rail contract summaries which summary described the contract against which they desired to complain.

The ICC should not infer from this legislation that second-tier discovery should be in any way or manner curtailed or limited because more information is required at first-tier disclosure. Once a shipper demonstrates that he or she is affected by the contract, under the liberal discovery mandate of this legislation, the shipper should be afforded discovery of the contract. ICC regulations currently provide for the use of protective orders to limit further disclosure of confidential contract information to persons other than those with a need to know for purposes of prosecuting a complaint by the shipper that the contract constitutes either unjust discrimination or a destructive competitive practice.

The price term, while undoubtedly an essential term of a contract, is not included in first-tier discovery because of the need to balance competing interests between the carrier's and shipper's reasonable expectations of privacy in their contract and a shipper's right to reasonable access to a remedy. At first tier, the balance is struck against disclosure of the actual price term and in favor of the contracting parties' reasonable expectation of privacy. Once the contract is determined to affect a complaining shipper, however, access should be provided to the price term of the contract, subject to reasonable protective orders to prevent further dissemination of this confidential information. The balance at second tier should be in favor of the complaining shipper's right to access to the remedies provided for in the Staggers Rail Act.

In addition, this legislation is not intended to permit shippers and rail carriers to avoid complying with mandated discovery of in-bound shipments of raw agricultural commodities, by combining such contracts with contracts for the transportation of out-bound processed agricultural commodities. While the latter may not be subject to disclosure, the former are.

Mr. Speaker, this legislation also would require the ICC to conduct a study assessing the impact on grain shippers of variations in contract rates and published tariff rates. In September 1985, the Office of Rail Transportation of the U.S. Department of Agriculture issued a similar report entitled, "Impacts of Rail Deregulation on Marketing of Kansas Wheat." The report concluded that:

Rail deregulation has resulted in economic injury for some shippers, particularly those in country locations attempting to compete with a competitor with a rail contract.

The report also noted that:

Small, single-location shippers generally do not participate directly in rail contracts and the competitive position of tariff shippers from country locations (is) threatened by competitors with a substantial market advantage from contract rates.

According to USDA, contract shippers have a permanent marketing advantage over tariff shippers in Kansas wheat marketing. The difference between contract and tariff rates from Kansas points averaged 17 cents per hundredweight in country locations and 21 cents per hundredweight in terminal locations. As the report concluded,

It is inconceivable that any firm could absorb a freight differential of 21 cents per hundredweight from these points and still remain in business.

Mr. Speaker, enactment of this legislation will grant these small shippers the day in court that Congress promised them 6 years ago when the Staggers Rail Act was signed into law. I believe that completion of this study by the ICC will demonstrate that this problem is not unique to Kansas.

I would like to take this opportunity to thank my distinguished colleague from Kansas, who also serves with me on the House Energy and Commerce Committee, Mr. WHITTAKER, who has been instrumental in moving this legislation forward. I would also like to express my appreciation to my Kansas colleague, Senator NANCY KASSEBAUM, who introduced this proposal in the other body and has worked tirelessly to see that this language is included in the legislation we are considering today. Finally, I would like to express my sincere appreciation to the chairman of the House Energy and Commerce Committee, JOHN DINGELL, who has been very helpful in working with me on this issue.

Mrs. MARTIN of Illinois. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. I thank the gentlewoman for yielding.

The bill before us is being referred to roundly as the Reconciliation Act. I think my colleagues should also know that it is also the National Debt Increase Act. Included within this particular measure is a $200 billion increase in the national debt so that in approving reconciliation, we will also be increasing the national debt by about 10 percent.

We ought to recognize we are doing that at the same time we are passing a bill of reconciliation which does nothing to cut into the structural deficit of the country but rather relies upon a series of asset sales and other gimmicks in order to try to give the illusion of cutting into the deficit.

Mr. Speaker, I would urge a "no" vote.

Mr. GRAY of Pennsylvania. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Michigan [Mr. DINGELL] who has played a very important role in helping to bring this deficit reduction package to the floor.

Mr. DINGELL. Mr. Speaker, I rise in strong support of the conference agreement of H.R. 5300. I commend the distinguished chairman of the Budget Committee, Mr. GRAY, for his leadership in pressing for passage of this reconciliation bill, while heading off the mischief of further Gramm-Rudman cuts.

The conferees from the Energy and Commerce Committee have labored to produce a package of very substantial savings. Several billion dollars in deficit reduction will be realized from the sale of Conrail, reforms in Medicare, and savings in the energy area.

With regard to Conrail, the conference agreement represents a major victory for shippers, consumers, and Conrail's employees. The national interest has been well-served by our consensus public offering package. I want to offer my thanks and my praise to the ranking minority member of the committee [Mr. LENT], whose cooperation and assistance in this effort was invaluable.

As the conference report makes clear, our paramount goals are the preservation of Conrail's long-term viability and the protection of rail service in the Northeast and Midwest. Our bill gives Conrail the strength and flexibility to thrive independently and provide continued rail service. At the same time, we set a goal of at least $2 billion in total proceeds from this sale.

I must observe, however, that the ability to achieve that goal is integrally related to the tax treatment given to Conrail's asset basis by the tax conferees. It is my understanding that the conference agreement on that issue substantially reduces Conrail's depreciable basis and thus its annual cash flow. This, in turn, may significantly affect the way in which the market values Conrail when its stock is ultimately offered to the public.

A privatization effort of this magnitude obviously entails some risks, but I believe we have held them to a reasonable minimum. For example, the bill contains an absolute prohibition on ownership of more than 10 percent of Conrail's stock by any person for a period of 1 year. Persons other than railroads are barred from more than 10 percent ownership for a total of 3 years. And railroads are required for the first 3 years to vote their shares in the same proportion as all other shares are voted, so as to eliminate their ability to exert influence or control on the management or direction of the company.

The conferees chose not to extend the limitations on railroad ownership beyond 1 year to avoid the possibility of Conrail's being frozen out of a merger with a western partner while its eastern competitors could exercise that option. While no such merger plans are currently evident, this limited flexibility is intended to prevent potential regional isolation of Conrail, with accompanying loss of traffic and jobs.

The primary purpose of the ownership limitations and voting restrictions, however, is to prevent any anticompetitive mergers with, or hostile takeovers by, Norfolk Southern or CSX—or, for that matter, any secretive or creeping efforts to obtain control. While the bill provides for the normal ICC merger review process after the first year, the Congress will expect that this provision will be complied with in a vigorous fashion in compliance with the intent of Congress, and not in the traditionally lackadaisical fashion of the ICC. The anticompetitive problems that overwhelmed the NS proposal this year will clearly dictate against any future eastern merger proposal.

In the event that this or any similar takeover effort were to surface, it would be the subject of the most intense congressional scrutiny. This public offering bill constitutes a rejection by Congress of the anticompetitive problems and job losses posed by the NS proposal. I certainly do not intend to see our committee's work on these matters in the 99th Congress undone.

In section 4751 of the House bill, we attempted to address the refusal of a renegade ICC to obey the law with respect to the rights of rail labor. These reasonable and much-needed labor protection provisions were not, unfortunately, included in the conference agreement. The pressures imposed by the budget process made it impossible for the House to insist on its position, particularly in the face of the Senate's adamant refusal even to discuss the issue and the administration's strange incoherence on the subject. Despite this, rail labor has shown great courage and statesmanship in supporting the sale provisions. And I have given my personal pledge to move a labor protection bill to the floor at the earliest possible minute next year.

I want to emphasize that the deletion of the House's labor provisions is not intended to prejudice the outcome of any pending litigation, as the Statement of Managers points out.

The issue addressed in section 4751(c) of the House bill—the ICC's most questionable arrogation to itself of the power to override and trample on the Railway Labor Act—is now before the Supreme Court. The conferees do not intend the deletion of the House provision to suggest that the ICC is correct. Indeed, the House language was intended to force the ICC to abide by existing law.

Similarly, other Federal courts are now considering cases brought against the ICC based on its announced policy of never imposing labor protection in line sale and abandonment cases. I find it both incredible and outrageous that the ICC should abuse its statutorily conferred discretion to impose labor protection arrangements in such cases by announcing that it will never exercise that discretion as a matter of policy. And here, too, the deletion of the House language in subsections (a) and (b) of section 4751 should not be taken by any court to suggest that the conferees support the ICC's position.

I should point out that the major source of Labor's difficulties in this area is the ICC's ongoing abuse and misuse of the Stagers Act to carry out its anti-labor and anti-shipper policies. My good friends, Mr. TAUZIN and Mr. TAUKE, came very close to having their shipper reforms included in our Committee's Conrail package. I look forward to working with them again in the next Congress in pressing for substantial Staggers revisions.

I would like to add one point of technical clarification concerning the intent of the conferees with respect to section 4024(a) of the conference bill. That provision makes Conrail responsible for labor protection under section 701 of the 3R Act "upon the exhaustion of appropriated funds available for payment of benefits or expenses of administration of the Railroad Retirement Board * * *, or on the expiration of 60 days after the date of enactment," whichever comes first. The continuing resolution passed by the House on Wednesday night deleted the administrative expense appropriation for the Board effective October 7, with the intent that, under this Conrail legislation, Conrail should advance administrative expenses to the Board retroactive to that date. The appropriations conferees did not lapse or transfer the approximately $2 million remaining for benefit payments.

I would simply like to make clear that this bill is not intended to make unavailable the remaining Federal funds intended for benefit payments. Further, it is the intent of the Conrail conferees that Conrail advance to the Board its administrative expenses not only during the 60-day period referred to in the bill, but also for the period from October 7 to the date of enactment. When the benefit funds are exhausted, or on the expiration of 60 days, whichever comes first, Conrail would become responsible for funding the benefit payments, as well as continuing to provide for administrative expenses of the Board.

Mr. Speaker, moving on to another subject, this conference agreement also includes a subtitle called "Distribution of Petroleum Overcharge Funds." This subtitle, which supplements existing statutes applicable to the enforcement of oil overcharge violations and the collection and distribution of oil overcharge funds, establishes clearly the obligation and duty of the Secretary of Energy and the Administrator of the Economic Regulatory Administration (1) to bring to a successful conclusion all cases involving the violation of the oil pricing and allocation regulations; (2) to identify in those cases the injured consumer as a high priority; (3) to provide for the identification and distribution of the funds once collected through the subpart V process; and (4) to provide for the distribution of the remainder to the States for energy conservation programs and to the U.S. Treasury as miscellaneous receipts. It also seeks to ensure that there will be an adequate mix or personnel to resolve these cases fairly and fully.

The subtitle binds the courts, as well as the Secretary and the Administrator. It applies to all overcharge funds, including crude oil and product funds, except those that have been disbursed as specified in section 3002(c) (1) and (2). Excluded also are the funds subject to the so-called Stripper Well settlement as that agreement was specifically approved on July 7, 1986 by Judge Theis. Subsequent court orders by Judge Theis or other courts, to the extent they change, explain or in any way affect the settlement as it existed and as it was approved on July 7, are subject to this legislation. (This provision is known as section 3002(c)(2).)

The legislation is neutral as to the applicability of the Stripper Well agreement to the disposition of future crude oil funds. I particularly have in mind the future oil overcharge funds under enforcement cases that were not in litigation before June 1, 1986. Just before the Stripper Well agreement was finalized, changes were incorporated therein by the Energy Department under the direction of, and in consultation with, the Justice Department, pursuant to a meeting between Justice and DOE people that occurred before the change was made. According to Energy Department officials, Justice required such a change consistent with the broad policy recently adopted by the Attorney General concerning application of settlements to future cases not yet in litigation. It is my clear understanding that under this policy such money was not intended by the settlement to be subject to it, and there is nothing in Judge Theis' order and opinion of July 7 changing that situation. In addition, the legislation does not affect that DOE-Justice change. Now after enactment, DOE must carry out the deal as so changed, consistent with the Attorney General's policy.

The subtitle effectively codifies DOE's subpart V regulations, which are now, and will continue to be, administered by the Office of Hearings and Appeals. It requires that all rulings, policies, or other statements, including all settlement agreements not final prior to enactment of this conference agreement, must conform to this legislation.

Let me stress that one of the principal objectives of this legislation is to ensure that injured consumers receive restitution. It is the duty of OHA's Director, the Secretary, and the ERA Administrator to achieve that objective. There is no discretion. In my view, it is a fiduciary duty. Thus, one of the most significant provisions is section 3003(c), under which the Secretary must determine annually what funds are needed to achieve this result on a petition-by-petition basis. The provision was drafted in the House to reflect the Subcommittee on Oversight and Investigations' hearings of February 24, 1986, relative to the Stripper Well and Exxon cases. The Secretary is expected to rely heavily on the OHA recommendations, and those must be more than mere guesses. I again stress that direct restitution is the primary purpose of this legislation. Federal deficit reduction and energy conservation, while very significant, are secondary to that purpose.

One of the concepts that the House conferees reluctantly accepted in conference was the idea of a statute of limitations. The provision in the conference agreement is substantially different from the version adopted by the other body. It does not, for example, include any concept of laches. While the House could not agree to the other body's approach as suggested by Senator JOHNSTON, we fully agree with him that such a limitation is now appropriate. At the same time, I stress the words of the Statement of Managers:

> Accordingly, the conferees agreed to a statute of limitation provision modified from the Senate version. The conferees stress our expressed intent that all alleged violations of the applicable law and regulations be pursued fully, fairly, and expeditiously. We do not want, or intend, by adopting this provision, to allow those who have violated the laws and regulations to escape prosecution. We have been assured by the Administrator of the ERA and by the Secretary of Energy, in an October 2 letter,

that all such cases can and will be pursued fully and appropriate litigation will be commenced even sooner than the time expressed in the conference agreement. Clearly, we expect those assurances to be fulfilled without exception.

Coupled with our agreement to any limitation is language aimed at ensuring that this program will continue to be adequately staffed. I urge the States' attorneys general and the National Governors Association to take as active a role in helping to ensure such staffing as they have in trying to negotiate agreements. Staffing and maintenance of morale and quality people are the key to the States' and the Government's receiving future funds under this legislation and the Stripper Well deal. The conference agreement makes it clear that the ERA Administrator shall provide information directly to Congress on personnel needs, caseloads, settlements, negotiations, and related matters without the clearances of Assistant Secretary Garrish and others at the DOE and at OMB.

Finally, the conference agreement requires DOE to monitor the Stripper Well settlement in the same way and manner as the court requires monitoring in the Exxon case. This includes monitoring of the distribution of the funds to various intervenors by their lawyers, et cetera. The committee will be following this monitoring closely, including the amount of attorney fees paid and to be paid.

Our committee has labored long on this program through extensive oversight. We intend to continue. This legislation makes it clear that Congress, as a whole, fully agrees that it is worthwhile and important. There can be no amnesty, directly or indirectly. It is a good approach.

With that, Mr. Speaker, let me once again commend the distinguished chairman of the Budget Committee for his fine work on this bill. It has been a pleasure to work with him during the 99th Congress on these important matters, and I look forward to continuing our cooperative and close relationship in the next Congress, as well.

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Mrs. MARTIN of Illinois. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as we all gratefully end this year, I have a special thanks to Chairman GRAY and to the ranking member, Mr. LATTA, and to the chairman of the reconciliation task force, Mr. DERRICK. Thay have all worked very hard. This has not been the most pleasant of the budget process, and it has been very difficult. I, therefore, must also add thanks to the chairman of the Ways and Means Committee and the ranking member, and also the chairman of the Energy and Commerce Committee, Mr. DINGELL, and the ranking member, Mr. LENT, because they had the biggest part of reconciliation and it was the most difficult.

I reluctantly rise in support of this reconciliation package before the House. All of the conferees are to be commended for the fact that the bill is returning to the House and it does achieve budget savings.

The reconciliation process is a critical step in the budget process. It is late, too late, and the entire process has been too late, but it is finally here and ready for consideration.

As an advocate of lower Federal spending, I can support this bill. As a believer that Gramm-Rudman targets must be met through congressional choices and not across-the-board cuts, I can support the bill.

Sequestration is an event to be avoided, if possible. It has been our responsibility as legislators to ensure that cuts are not handled in an arbitrary way. We have not done this in the reconciliation bill. There are parts I disagree with, but there are parts I believe are fair to my constituents and to Americans as a whole.

The provision to mandate Medicare coverage for all State and local employees has not been included. That is good.

The FUTA extension has been removed from the package, as the high-risk insurance pools.

Mr. Speaker, in our rush to complete our pending business, I can think of few pieces of legislation that are more important than this one.

I urge my colleagues to support its adoption. It is not fun to vote for debt ceilings. This is a medium-lousy reconciliation bill, but it is the best we have been able to come up with. It does meet the targets. It is not the best way, but it is now the only way, and I will support it when the vote comes.

Mr. GRAY of Pennsylvania. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey [Mr. FLORIO].

Mr. FLORIO. Mr. Speaker, this bill achieves a goal which many of us have been striving to accomplish for some time, the transfer of Conrail to the private sector. In 1981, Congress passed the Northeast Rail Service Act, which provided Conrail the opportunity to become profitable.

Through the hard work and dedication of Conrail's employees, the able leadership of Stanley Crane, Conrail's Chairman, and many others, Conrail has become profitable, earning over $400 million per year. Legislation returning Conrail to the private sector is the result of those efforts.

Maintaining competitive rail service in the Northeast and Midwest is a vital part of our efforts to transfer Conrail to the private sector. By continuing Conrail as an independent company, this legislation accomplishes that goal, and it provides guarantees that require Conrail to maintain its rail operations.

I want to thank my colleague, Mr. MADIGAN, for his help in developing this legislation, as well as Chairman DINGELL, Mr. LENT, and Mr. WHITTAKER. We have rejected attempts to harm rail service in the region through a misguided sale, and that is a significant accomplishment.

At the same time I am troubled by this legislation. The original House bill and two provisions which were important, which the other body insisted on dropping. The first was a restriction on the ability of other eastern railroads to purchase Conrail for 3 years. This version reduces that to 1 year, which means we could be confronted with a merger with Norfolk Southern, CSX, or some other eastern carrier almost immediately. That is a result which I can only characterize as unthoughtful. The loss of jobs, the loss of competition, and the loss of service that would result would be disastrous for the region.

The second provision that was in the House bill was a requirement that the sale produce at least $2 billion in proceeds from the public offering and cash to the Government. That requirement has been turned into a minimum goal of $2 billion, which is not binding on the Secretary of Transportation. CBO has estimated the value of Conrail to the Government to be nearly $3 billion. Allowing the Secretary to sell this valuable asset for less than $2 billion is foolhardy. But I want to emphasize that this $2 billion minimum goal is a most serious one. The Secretary of Transportation would be extremely ill-advised to agree to any sale which returns less than $2 billion to the Federal Government. Virtually all who have looked at this, including investment bankers, agree that we can get more than $2 billion. If we do not get this amount, we should not sell until we do.

I would note the Ways and Means and Finance Committees have agreed on a tax treatment for Conrail which interacts directly with the price the Government will get and the cash the Government will receive. I have been concerned, that we not create another Penn Central, where the Penn Central walked away from the Government with billions of dollars of tax advantages.

Unfortunately, because this sale was accomplished under the reconciliation process there was little opportunity to coordinate the efforts of the various committees involved, and it is going to take time to analyze the results of what we are doing today. I am troubled because I fear we may have created a sale situation which is not the best for the Government. I intend to review the implementation of this legislation and the sale process with the

utmost care, and will not hesitate to suggest that it be altered if necessary.

I would just like to take a minute to talk about a provision that is not in this legislation. In the House reconciliation package there was protection for employees who are laid off when large railroads sell off their lines. We fashioned a compromise that attempted to keep railroad employees working without imposing a financial burden on carriers or discouraging the purchase of marginal lines.

Unfortunately, because of the opposition of the railroad industry, and the other body, the Conference Committee agreed to drop it. Chairman DINGELL fought for it, as did other Members of the House, but did not succeed. This issue will not go away. It will be a matter of the highest priority next year.

I have been a strong advocate of a sound rail transportation system, and the need for healthy railroads throughout the country. I have fought repeatedly for legislation that would assist our rail transportation system. But I will not stand by and let the rail industry and the ICC destroy the transportation system we have built through some misguided effort to sell off lines merely to encourage nonunion operations.

In closing let me say that I have mixed emotions about this sale. I am not sure that we have produced a package that will result in a satisfactory sale of Conrail, and it is something that we will have to evaluate in the weeks and months ahead.

Mr. GRAY of Pennsylvania. Mr. Speaker, I yield 30 seconds to the gentleman from Ohio [Mr. PEASE].

Mr. PEASE. Mr. Speaker, I rise in support of this conference report and commend Chairman GRAY, Chairman ROSTENKOWSKI and all others involved for a very fine job on a difficult task.

I am especially pleased that our House conferees were able to dissuade Members of the other body from their desires to include current State and local employees in Medicare coverage. Public employees have been hit enough by Congress recently in other legislation. This was no time to hit them again. And now, when Federal revenue sharing is unfortunately breathing its last gasp, is not the time to add a large new burden of Medicare premiums to local govenment units.

Again I commend the conferees for keeping this coverage of State and local employees out of the reconciliation package, and I urge support for the report.

Mr. GRAY of Pennsylvania. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. WAXMAN].

Mr. WAXMAN. Mr. Speaker, I rise in strong support of the conference agreement. Not only will this enable us to avoid a sequestration under Gramm-Rudman, but it would also make needed improvements in the Medicare, Medicaid, and Material and Child Health programs.

The Medicare provisions in this bill which are in the jurisdiction of the Energy and Commerce Committee would, in combination with the provisions within the jurisdiction of the Committee on Ways and Means, meet the instructions from the Budget Committee.

The savings provisions in this bill entail reforms in the payments made to physicians and other providers, rather than increases in the beneficiaries' our-of-pocket expenses. In fact, we have built into this bill protections against greater patients liability, when Medicare payments to providers are reduced.

The bill would lift the current freeze on Medicare payments to physicians and increase those payments by 3.2 percent. It would also lift the current freeze on the amount that physicians can charge patients in excess of the Medicare payment. The bill would protect beneficiaries by placing reasonable limits on the amount by which physicians could increase these charges, and would allow physicians who have kept their fees low to increase them more rapidly than those with high fees.

This bill would also make several important improvements in the Medicare program, some of which were included in our reconciliation conference agreement last year. For example, it would: improve patient access to vision care; provide for administrative judicial review on disputed claims; mandate demonstration projects on providing services for patients with Alzheimer's disease; provide payments for the drugs that are essential to the success of organ transplants already paid for by Medicare; improve the supply and distribution of organs for transplantation; and initiate policy research on health care practices and patient outcomes that will enable us to make more sensible program improvements in the future.

With respect to Medicaid, the conference agreement contains a number of important program reforms. Following on a recommendation of the Southern Governor's Association, the bill would allow States, at their option, to extend Medicaid coverage to pregnant women, infants, and children up to age five, whose incomes fall below 100 percent of the Federal poverty line.

The conference agreement also includes a provision to allow States to use Medicaid funds to help their low-income elderly and disabled citizens pay their Medicare premiums, deductibles, and coinsurance requirements.

The conference agreement contains a provision of interest to many Members which holds 13 States harmless against decrease in their Medicaid matching rates in fiscal year 1987 as a result of a change made by last year's reconciliation bill. The States protected are: Arizona, Florida, Georgia, Maine, Minnesota, Missouri, New Hampshire, North Carolina, Ohio, Rhode Island, South Carolina, South Dakota, and Virginia.

The conference agreement clarifies that the Medicaid statute does not authorize the Secretary of HHS to limit the amount of payment adjustments that may be made under a State Medicaid plan with respect to hospitals that serve disproportionate numbers of low-income patients with special needs. The intent of this provision is narrow and specific: to reverse the Secretary's illegal disallowance of a Medicaid Plan amendment in Georgia—or any other State—which takes into account, through special payments, the circumstances of disproportionate share hospitals. The conference report does speak to the broader issue of the applicability of Medicare payment principles to Medicaid payments for inpatient services; in view of the clear legislative history delinking Medicare and Medicaid payment methodologies, this seemed unnecessary. However, should the Secretary persist in attempting to impose Medicare payment limits on State Medicaid payments, further statutory clarification may be necessary.

The conference agreement establishes new rules regarding the coverage of illegal aliens under Medicaid. The Medicaid statute is currently silent on this question, and a Federal district court recently ruled that certain categories of illegal aliens are eligible. The conference agreement provides that aliens who are otherwise eligible for Medicaid but who are not lawfully admitted for permanent residence or residing in this country under color of law are entitled to have Medicaid pay for treatment of emergency medical conditions. This includes labor and delivery services which, according to CBO, represent an estimated 90 percent of all hospital deliveries. The intent is that, for reimmbursement purposes, emergency labor and delivery be construed broadly so that hospitals do not have a financial incentive to delay admission until the last possible minute, thereby risking delivery outside the hospital.

I want to note one provision, passed by the House, that the conference agreement does not contain. Section 4606 of the House bill would have clarified that, in determining the income and resources of an individual in a nursing home or other institution, the individual could not be considered to have available to him income or resources required to be paid under court order for the support of the individual's spouse or child. The conferees decided not to include this provision in the final report because they felt the clarification was unnecessary, and because they viewed the House provision as unfair to those States that did not, as of July 22, 1986, have the policy or practice of disregarding such support payments in such circumstances. The conferees did not want to bar any State from disregarding such court-ordered support payments.

I urge my colleagues to pass this conference report.

Mr. GRAY of Pennsylvania. Mr. Speaker, I yield such time as he may consume to the gentleman from Tennessee [Mr. JONES].

Mr. JONES of Tennessee. Mr. Speaker, I want to congratulate all of the Members who had anything to do with this bill.

Mr. Speaker, this conference on budget reconciliation report contains the same provisions that are contained in H.R. 5635, the Farm Credit Act Amendments of 1986, that was recently passed by the House by unanimous voice vote on October 6. This is emergency legislation that will permit the Farm Credit System to avoid financial disaster and continue to fulfill its role as a major supplier of credit and related services to America's farmers and ranchers and their cooperatives.

I introduced H.R. 5635 on October 2, 1986, along with a bipartisan group of more than 60 cosponsors. The House and Senate conferees who worked on the Agriculture Committees' title in the budget reconciliation conference report adopted the same provisions as are contained in H.R. 5635.

Mr. Speaker, this legislation is an effort to address a combination of serious problems which are continuing to afflict the Farm Credit System. These problems are growing worse every day and must be dealt with before this Congress adjourns.

Last year, the Farm Credit System lost $2.7 billion and in the first 6 months of this year it lost nearly $1 billion more. By the end of this year, total losses for 1986 are projected to be anywhere between $1.7 and $2.9 billion.

In addition to these record-setting losses, the Farm Credit System also holds over $12 billion in nonaccrual and problem loans out of a total loan portfolio of about $61 billion. Due to a number of reasons, the System's total amount of outstanding loans has been steadily dropping since 1983 when it reached a peak of $85 billion.

As if record loan losses and a 30-percent decline in business were not enough, the System is also burdened with an extraordinary amount of high-interest debt which it must continue to service when its bonds come due on Wall Street. Even though the current bond rate is hovering around 6 percent, the System is still obligated for over $30 billion in outstanding bonds which bear interest rates of 9 percent or higher.

The legislation we are considering today will alleviate all three of these serious problems in a responsible manner without involving taxpayer costs in the solution.

First, the legislation removes the existing statutory authority for the System's Federal regulator to set interest rates which the System must charge its farmer and cooperative borrowers. The Farm Credit Administration has forced production credit associations and Federal land banks to charge interest rates that are well above competitive market rates. In large measure this has contributed to borrower flight. The System is unable to hold on to its most creditworthy customers who are abandoning the System for more favorable interest rates offered by other commercial lenders.

No other financial regulator has the power to set interest rates for the institutions it regulates, and neither should the FCA. This is not to say that the FCA should not continue to have the necessary enforcement powers to ensure safe and sound operation of the System. Nothing in this legislation strips the agency of its authority to address poor management or lending practices on the part of the System. It is, however, expected that the FCA will exercise this authority in a manner that is consistent with the regulations and practices of other Federal regulators of financial institutions. FCA may use its powers to monitor interest rates and loan terms to ensure the System institutions are following appropriate assets and liability management practices and are not charging interest rates that are below those offered on similar loans by other commercial lenders to borrowers of equivalent creditworthiness and access to alternative credit. But these problems may no longer be addressed by the agency through the prior approval of System interest rates. FCA is cautioned that any use of its authorities in a back door manner to require System institutions to charge interest rates that are noncompetitive would be inconsistent with the intent of this legislation.

I would add here that it is also important that we not mislead Farm Credit borrowers by any false promises of across-the-board and dramatic interest rate relief. There is no magic in this legislation, but at least the System will be in a better position to try to stay competitive with other lenders in the area of interest rates.

The second major element of this legislation addresses the System's high cost of its own debt that it incurred during the early 1980's when interest rates generally reached extraordinary levels. It contains a provision under which Farm Credit banks could, subject to the prior approval by the Farm Credit Administration, reduce the cost of their borrowed money by refinancing long-term debt on which they are currently paying high interest rates or by capitalizing their excess interest costs. The costs involved could be amortized by System banks and absorbed over a period of up to 20 years.

The third key provision of this legislation would permit Farm Credit System institutions, subject to prior approval by the FCA, to amortize over a period of up to 20 years the unusual loan losses they have suffered in recent years—losses that exceed levels they have customarily experienced.

Specifically, System institutions, with the prior approval of FCA and subject to such conditions as it may establish, would be permitted to capitalize, during the period from July 1, 1986, through December 31, 1988, the portion of their provision for losses that is in excess of one-half of 1 percent of loans outstanding. This capitalized amount may be amortized over a period not to exceed 20 years. It is the sponsor's intent that FCA expeditiously respond to requests by System institutions to exercise this authority in order to avoid impairment of capital stock of System institutions and to minimize, if not eliminate, the need for System banks to further activate their existing capital preservation and loss sharing agreements. This is particularly critical given the pending litigation with respect to the Farm Credit System Capital Corporation's assessment authority under the Farm Credit Amendments Act of 1985. The importance of prompt implementation of this is underscored by the inclusion of a retroactive effective date for this provision to July 1, 1986. With respect to the 1986 calendar year, the determination of the provision for losses in excess of one-half of 1 percent of loans outstanding is to be made on the basis of loans outstanding as of June 30, 1986, and any provision for loan losses accrued during the period January 1, 1986, through June 30, 1986, is to be counted in determining the amount, if any, of the provision for loan losses accrued after June 30, that may be capitalized and amortized.

There is no question that these provisions which would allow the System to amortize its high debt costs and excessive loan losses are not in accordance with generally accepted accounting principles. However, any such deferred loss accounting treatment will be subject to prior approval by the Farm Credit Administration and subject to the conditions it sets under regulatory accounting principles.

Finally, Mr. Speaker, I want to address what I suspect is on the minds of many Members who may criticize the approach taken in this matter. Some critics have suggested that we are doing nothing to help farmers and that we may even be adding to the Farm Credit System's problems by permitting the use of accounting approaches that depart from generally accepted accounting principles.

To the first argument, I simply have to say I am at a total loss to understand how it is not to the benefit of the system's farm borrowers to help preserve the System as a viable lending organization. It would be irresponsible for us to allow System banks to become impaired and lose farmers' stock without having tried to avoid such a situation.

To the second argument, I fully concede that this legislation would permit the System to possibly solve its own financial problems by deferring its losses instead of accounting for them all at once. As distasteful as this procedure may be to some people, I must argue that it is better than the alternatives.

In my opinion, all the options we face at this point are unattractive, but this legislation represents the most reasonable and practical of those options.

We can stand by and do nothing, and let the Farm Credit System come crashing down. I reject this option as no option at all.

We can argue that the Federal Government should rescue the System with a financial aid package now, because sooner or later it is inevitable. I, for one, am not willing to concede to this argument yet. I believe the System can still survive on its own without taxpayer contributions if we buy some time with this measure.

However, if anyone can point out where in the Federal budget there are several billion dollars in unallocated surplus that we can devote to the Farm Credit System, then I'm willing to listen. Perhaps out of an estimated $30 billion in Federal outlays for farm programs this year we can trim enough to rescue the Farm Credit System. Maybe we can redirect the spending from support programs from milk, cotton, wheat, rice, soybeans, and feed grains. Maybe we can divert some of the spending we have already approved for soil conservation, agricultural research, or export promotion.

Unfortunately, I am not prepared today to identify where in the agriculture budget we can afford to assist the Farm Credit System with taxpayer dollars. What I am prepared to do is to support this legislation as the best effort I know of to do something to save the Farm Credit System from going under. It may not be the perfect solution, but at least it is within the art of the possible. In fact, it may even work.

But if it is to have a chance to work, it is imperative that both the System and FCA seize the tools that are given them and put them to work at once. Their failure to do so would frustrate the emergency action Congress has taken to permit the System and its regulator to face up to a crisis. Time is very literally of the essence.

Mr. Speaker, for the reasons I have explained, we need this legislation on the books before the 99th Congress adjourns.

Mr. GRAY of Pennsylvania. Mr. Speaker, I yield 1 minute to the gentleman from Tennessee [Mr. FORD.]

Mr. FORD of Tennessee. Mr. Speaker, I rise in support of the conference report that is before us today, but with some opposition knowing that the conferees, and I served as one of the conferees on reconciliation, knowing that the AFDC unemployed parent provision has been a part of reconciliation now for the third year. Some of our friends on the other side, on the Senate side, felt that they could not agree to bring the unemployed parent provision with reconciliation. We on Ways and Means are very disappointed, but I am very happy to know that the chairman of the Ways and Means Committee and the chairman of the Budget Committee both have agreed with Members on the Senate side to bring it up next in reconciliation or even prior to reconciliation.

But it was the only provision within reconciliation that really responded to the poor and unemployed fathers in this Nation. I would hope that my colleagues in this House would see fit to take a strong position next year to make sure that we would have the AFDC unemployed parent provision as a part of reconciliation; if not, as a bill that will stand on its own, to let the fathers of this Nation live in the home with the children and not be penalized when they are unemployed to receive AFDC benefits.

Mr. GRAY of Pennsylvania. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. STENHOLM].

Mr. STENHOLM. Mr. Speaker, I rise in support of provisions in the conference report which incorporate H.R. 5635, the Farm Credit Act Amendments of 1986—emergency legislation that was passed unanimously by this body earlier this week, on Monday, October 6.

As all concerned with agriculture acknowledge, the Farm Credit System, a nationwide network of cooperative agricultural lending institutions, is in serious financial trouble. While the problem may be attributable to unwise judgments by the System in the past, it is also attributable, in significant part, to the devastating economic conditions that currently afflict the farm sector of the economy.

The measure we are considering is not a cure for the problems of agriculture generally or the Farm Credit System in particular. But if it is implemented immediately and effectively, it will buy the System time to absorb costs and losses that, would otherwise push it to the very brink of a financial crisis.

Under these circumstances, I cannot emphasize strongly enough the urgency of speedy implementation of the legislation by the Federal regulator—the Farm Credit Administration—and the System itself. The measure, as I will illustrate, contemplates such speedy action.

For example, it would grant the System, with FCA approval, for the period July 1, 1986 to December 31, 1988, the ability to capitalize and to amortize over a period of up to 20 years, excessive loan losses—that is, those losses that exceed one-half of 1 percent of loans outstanding, the traditional level of the System's provision for loan losses. The rationale for what may be termed a retroactive application of this provision for the 1986 calendar year, is to permit the earliest possible application of these provisions. To realize this objective, the authors intend that the level of loans outstanding as of June 30, 1986, be used for purposes of calculations under this provision. And it is also intended that the level of loan losses accrued during the first half of 1986 be "counted" or included for purposes of calculating when the trigger for capitalization of loan losses—when the provision for losses exceeds one-half of 1 percent of loans outstanding—has been reached for the current calendar year.

Further, the proponents intend that the provision in question be available for use on a monthly or quarterly basis, and thus be applicable to the System's monthly or quarterly financial statements. If the provision were applied only to the System's year-end financial statement, the relief afforded by this legislation would not be realized until sometime into 1987.

I believe that this is not what my colleagues and I in this body intended when we approved this legislation; rather, we clearly anticipate that the urgent situation facing the System will receive attention at the earliest possible date after enactment. Delay in action until after the end of calendar year 1986 would seriously undermine and frustrate this action Congress has taken on an emergency basis to permit the System to alleviate its financial crisis.

Mr. Speaker, I support this legislation not because it is a perfect or even that it is preferred but because it represents the only alternative available to the Congress at this time. It costs the taxpayers nothing. It postpones, and hopefully may avoid altogether, the need for the Federal Government to provide financial assistance to the System. But it will achieve its remedial purpose only if those most directly involved with its implementation—the Farm Credit Administration and the Farm Credit System—act to use the tools immediately upon enactment.

Mr. Speaker, I urge my colleagues to join in approving this needed legislation.

Mr. LATTA. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I know this is a very difficult vote. As a matter of fact, I wish I had two votes on this package, one for reconciliation which will reduce the deficit, even though in a direction which I do not want to go. I would

prefer, I would much prefer, to be making these reductions through reductions in expenditures by the Federal Government, rather than through user fees and the sale of assets.

In the next Congress, we are going to have to tackle this problem in the manner in which I just suggested, by reducing expenditures, by reducing some of these programs, tailoring them back to where we can afford them. We can no longer afford to keep going into the red every single year, and we are doing exactly that.

As a matter of fact, we have almost $150 billion this year to be paid out just in interest costs on the Federal debt. This cannot go on. We have to balance our budget. We have to do what Gramm-Rudman sets forth for us to do, hopefully to have a balanced budget down the road in 5 years. This is a step in that direction, but the wrong way to go in making that step, in my humble opinion.

Second, I certainly am not for increasing the debt ceiling by $189 billion. But there is one saving grace in doing that. We have a May 15 date out there where we can take a look at it again. I hope that at that time we can tailor it back, not go forward, but reduce that debt ceiling.

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So we have got to have a chance next year.

In view of that fact and in view of the fact that we do not have two votes, one for the debt ceiling and one for reconciliation, I urge my friends on both sides of the aisle to support it, otherwise, you are going to have sequestration. I mean that this will be a mean, cruel way to go, because all programs, with a very few exceptions, Social Security, Food Stamps, and so forth that are set forth in Gramm-Rudman itself are going to get cut evenly across-the-board. Certainly we all know there are some programs that are more viable than others. To cut them evenly across-the-board is not the thing to do. But that is exactly what would happen unless we pass this legislation.

I urge the passage of this legislation. I do want to say this is the first budget reconciliation bill that we have had on our side since we have had the able counsel and help of Martha Phillips, and Martha, we want to thank you and members of our staff on this side and to congratulate you for the work that you have done.

Also the majority staff, they have done an outstanding job. They have worked very hard. And once again I just want to say it is a real pleasure to work with our good friend, my good friend, BILL GRAY.

Mr. Speaker, I yield back the balance of my time.

Mr. GRAY of Pennsylvania. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to close this debate on the Reconciliation Conference Report, H.R. 5300, by again pointing out three things that we should remember as we vote.

First of all, in this reconciliation bill is nearly 12 billion dollars' worth of deficit reduction which will get us down under the Gramm-Rudman threshold. There will be those who will say that some of it is smoke, some of it is accounting procedures; it does not have an effect in 1988 and 1989. Therefore, it really does not do enough to the structure deficit problem.

I would say to them that they are probably correct; without a doubt. However, I would also say to them in the short period of time, under the strictures of Gramm-Rudman, where were we going to find the $12 billion? There are many here in the House who would say, "Let us take it out of domestic." So we would probably find 30 percent of the House that would vote for all of it coming out of the domestic, but they would say, "Do not touch the Pentagon."

There are some who would say, "Let us take it a little bit out of the Pentagon, a little bit out of domestic." Then there are those who would say, "No, do not touch domestic, we have touched it enough for the last 5 years, let us take it all out of the Pentagon." Of course, we would have been here debating this issue for another 6 months as we debated it from February to July before we even got the first budget for 1987.

Thus, what we have done is try to come up with a consensus approach which would give us the amount of deficit dollars to get below the Gramm-Rudman threshold.

We are not making a structural change in the deficit. That is absolutely true. What we are doing is putting together asset sales, some user fees and some reductions that will get us below the Gramm-Rudman threshold.

As the gentleman from Ohio says, in January we are going to have to face the difficult problem of addressing the structural deficit for real as we look at the 1988 budget. So, I would say to my colleagues as they vote, there are those who would have preferred to do it one way or another. The question is, That within the political context of the time we have was it feasible to achieve that perfect kind of budget that many of us would have wanted?" The answer, of course, is "No."

Second, I would also remind you that if you reject this reconciliation report, you are also rejecting the Social Security COLA's, you are also rejecting the Medicare deductable rate reduction that is here for the elderly as well as the children's programs that are designed to fight the povertization of America's children.

I would hope that when you look at that that you would see some attractive things that would cause you to vote for it.

Finally, I would say to those who would argue this is a raising of the debt ceiling. Well, everyone knows that the deficit has gone up over the last few years. In 1980 it was 50 billion dollars' worth of deficits we were arguing about. Now, for the second year in a row, we are over $200 billion. In 1980 the total debt of America was $914 billion; now we are talking about raising the debt ceiling well over $2.1 trillion. Let us not play political games. Let us face the fact that the Government has to operate and we are going to have to raise the debt ceiling.

So the best thing for us to do is to meet our obligations under the law, which many Members voted for Gramm-Rudman. Second, let us make sure that the elderly are provided for and Social Security and Medicare. Third, let us do the responsible thing and allow the Government to operate and let us get ready to come back here in January and I hope address the structural problem in our deficit and therefore make a major structural change in the direction of the growth of red ink.

Mr. Speaker, I urge all of my colleagues to vote for the reconciliation report. It is the best under the circumstances.

Mr. KOLBE. Mr. Speaker, I would like to take this opportunity to set forth the reasons for my vote today in opposition to H.R. 5300, the Omnibus Budget Reconciliation Act of 1986.

Mr. Speaker, this bill is an enormous piece of legislation which affects virtually every sector of the U.S. Government. As such, it becomes difficult to judge each part of the bill on its own merits, and the process becomes more of a weighing procedure—good provisions versus bad.

I have often expressed my displeasure at being forced into such a situation by the inaction of this body. Voting on everything at once at the last minute, as we are doing yet again today, is irresponsible, and is not the way that the affairs of this great country should be conducted.

Nevertheless, I do not want to focus on this aspect of the vote today. Rather, I wish to separate a few of the multifarious issues included in this single vote, and to elaborate on my rationale for voting against the bill.

One of the major provisions included in this bill was the elimination of the 3-percent trigger for cost-of-living increases. Currently, COLA increases only go into effect if inflation is in excess of the 3-percent threshold. Deletion of this threshold is an idea which I have supported in the past, and is one which I will continue to support in the future.

Also, the alternative to passage of a budget reconciliation bill means that automatic sequestration under the Gramm-Rudman bill would take place, since the budget for fiscal

year 1987 was in excess of the $144 billion target level set in that bill.

I do not favor automatic sequestrations of the budgets of the Government's various departments. But I even more strongly oppose the pattern of continued spending in excess of revenues which this Congress has so far demonstrated. I have pledged to my constituents, and have stated on many occasions, times that I would not support any additional taxes upon the American people, in whatever form they might take, until there had been demonstrated cuts in spending to offset the budget deficit.

I voted in favor of the reconciliation bill that this body passed on September 24, 1986. This bill passed by a margin of 309–106, and provided for budget cuts in the amount of $1.0 billion. These cuts were to be divided equally between defense and non-defense programs.

Other budget savings were all derived from either new taxes or the sale of Government assets. $7.6 billion in increased taxes and fees, together with $8.7 billion from the sale of Government assets were tolerable because they prevented sequestration, and because they were combined with at least some real budget cuts.

Mr. Speaker, the bill which came from the conferees abandoned all spending cuts of any kind whatsoever. I cannot accept increased taxes without any reductions in spending. I would like to have voted in favor of this reconciliation bill, and to have voted for a real reduction in the Federal deficit. Regrettably, this was a choice which was denied me, and was denied my colleagues and the American people today.

In addition, the bill as it came from the conferees extended the statutory debt limit from $2.1 to $2.3 trillion. They did this without attaching language to reinstate deficit reduction measures to correct the constitutionality of the bill as required after the Supreme Court's recent ruling on the subject. We cannot continue to liquidate assets forever. I do not feel that it is responsible government to continue to authorize spending and borrowing by the Government without concurrently giving Congress and the executive branch the tools to make the hard cuts which will be necessary to bring the deficit situation under control.

I regret having to vote against ideas I believe in, but I will not sit by while the future of this country is mortgaged by Congress' inability to control its spending. The spending reductions which this Congress endorsed with the adoption of Gramm-Rudman should not be lost, and I for one am willing to vote to that effect.

Mr. McEWEN. Mr. Speaker, today's Budget Reconciliation Conference Report certainly represents the dedicated and diligent efforts of many of our colleagues. One reason for my opposition, however, is the lack of a very basic exemption needed before imposing any new customs user fee on imported merchandise as proposed in this package.

As we know, the imposition of a customs user fee on imported merchandise has been considered in the past and a similar provision was defeated by this Congress last year. While I do not support a customs user fee in principal, this customs user fee is even harder to swallow in that, for some, this fee—and the lack of any exemptions—is double taxation.

Many of our Nation's air cargo carriers currently enjoy a mutually beneficial relationship with the U.S. Customs Service. These carriers, and their customs user stations, reimburse the Customs Service for 100 percent of the costs of these processing facilities. They pay for the employees, the structure, the utilities, the security, the furniture all at no cost to the taxpayer—I mean the Federal Government. The Customs Service receives the benefits of these facilities all at no cost.

Today, with the passage of this reconciliation measure, however, we tell these air cargo carriers that this isn't enough. We want them to pay an additional .22 percent fee on the value of all merchandise they import. I believe it is inherently unjust to doubly charge these private sector companies. While advocating an exemption for air cargo carriers who pay all costs for their facilities, such was not the case with this bill.

Mr. Speaker, I would have recommended, instead, that we stick with our previously stated commitment to these air cargo carriers through the General Agreement on Tariffs and Trade.

Mr. LIGHTFOOT. Mr. Speaker, I reluctantly support the conference report on H.R. 5300, the Omnibus Budget Reconciliation Act of 1986. This conference agreement achieves approximately $12 billion in budget savings, which should keep us beneath the Gramm-Rudman threshold. However, in general this bill does not contain true long-term deficit reduction savings, and only postpones the day of reckoning for Congress.

While I am disappointed in Congress' failure to address seriously the deficit problem, I am glad that the bill contains several provisions benefiting older Americans and rural hospitals. For example, the bill eliminates the 3 percent trigger for the Social Security cost-of-living adjustment. Without a change in the law, a Social Security recipient would not receive an increase in January because under current law, inflation must be above 3 percent before a COLA is given. This bill eliminates this requirement and enjoys bipartisan support among Members of Congress and the President.

This bill also seeks to control increases in the out-of-pocket health care costs of older Americans. The bill limits the inpatient part A hospital deductible to $520 in 1987, and limits future increases in the deductible. Without this provision, the deductible is expected to rise from $492 this year to $572 in 1987. During the past 2 years, senior citizens have been hit by large increases in the part A deductible due to the 1983 Medicare changes, and many have found it increasingly difficult to pay for health care services. This change should help.

In addition, the bill includes several provisions improving the quality of care Medicare beneficiaries receive under part A hospital services. For instance, hospitals would be required to provide Medicare patients, upon admission, with a notice of hospital discharge rights. Hospitals would be required to have a discharge planning program to ensure that patients receive appropriate and continuing health care services once dismissed from the hospital.

Furthermore, the bill requires the Secretary of Health and Human Services [HHS] to submit within 2 years a legislative proposal to improve the classification and payment system under the prospective payment system [PPS] to account for severity of illness and case complexity.

As a member of the House Aging Committee, I have attended several hearings that have examined how changes in Medicare have affected the level and quality of care senior citizens receive. Witness after witness testified that we need to revise PPS to take into consideration the severity of illness and the age of the patient. I am glad to see that Congress and HHS will address this issue during the 100th Congress.

The bill also contains several beneficial provisions for our rural hospitals. Since the implementation of the Prospective Payment System in 1983, small rural hospitals have been hurt by the reimbursement formula. Rural hospitals have come out on the short end of the stick under PPS, and provisions in this bill should help them.

Included in the bill is a provision continuing periodic interrim payment [PIP] for rural hospitals with less than 100 beds. The bill also addresses concerns about the health care financing administration's slowness in paying its Medicare claims in a timely fashion. The bill requires that 95 percent of "clean" claims must be paid within 30 calendar days in fiscal year 1987, 26 days in fiscal year 1988, 25 days in fiscal year 1989, and 24 days in fiscal year 1990 and in subsequent years. If HCFA fails to meet this target during 3 consecutive months, then PIP would be reinstated for previously qualified hospitals.

Under this bill, hospitals will receive a 1.15 percent increase in their fiscal year PPS payment rates. In the following years, the increase would be the market basket minus 2 percent. Also, effective October 1, 1986, a separate urban and separate rural set-aside factor for outliers would be established.

Furthermore, effective October 1, 1987, the methodology for computing the urban and rural averages would be revised to reflect the operating cost per discharge for the average patient as opposed to the average hospital. Another provision allows currently designated rural referral centers to keep that designation for 3 years. It also calls upon Congress to establish in law the criteria for eligibility for regional referral center status.

These and other provisions contained in the bill should help rural hospitals. Since 1983 these hospitals have been fighting to keep afloat. They perform an invaluable service in America's small communities, and their continued existence is extremely important. That is why we must continue to address the problems of rural hospitals and to devise ways to make sure that rural Americans have adequate and affordable access to health care services. We cannot let our Rural Health Care System be destroyed by unfair reimbursement under the Prospective Payment System. I am glad that my colleagues have begun to address these problems.

Mr. FORD of Michigan. Mr. Speaker, I rise to explain the provisions of the conference

report relating to Federal employees and the Postal Service.

At the outset I want to say that the savings achieved by these provisions substantially comply with our committee's reconciliation instruction.

Section 6001 of the conference agreement represents a compromise between the House and Senate to afford more time for the establishment of the new thrift savings plan under the Federal Employees' Retirement System Act of 1986. That act, among other things, established a new Federal thrift savings plan to be effective January 1, 1987. Recently, the conferees were advised by the administration that the thrift savings plan could not be operative by January 1, 1987, due to delays in making appointments to the Thrift Investment Board. The conference agreement, therefore, delays employee and employer contributions to the thrift savings plan to April 1, 1987. Because employees who are subject to the new Federal Employees' Retirement System [FERS] on January 1, 1987, otherwise could have begun participation in the thrift savings plan beginning in January 1987, the conferees agreed that such employees should not be penalized as a result of the delay. Therefore, such employees will receive an increased Government match for contributions made from April through June 1987 and be allowed a greater maximum contribution to the thrift savings plan through September 1987. This will compensate them for their inability to participate in the thrift savings plan beginning January 1, 1987, as originally provided by Public Law 99-335.

Section 6001 of the conference agreement provides the following for employees subject to the FERS on January 1, 1987:

First, employees may contribute up to 15 percent of basic pay from April 1 through September 30, 1987.

Second, employees' contributions made from April 1, 1987, through June 30, 1987, will be matched by the employing agency at a rate equal to $2 for each $1 contributed up to 3 percent of pay and at a rate equal to $1 for each $1 for employee contributions that exceed 3 percent but do not exceed 5 percent of pay.

Third, employees will continue to be entitled to a 1-percent agency contribution beginning January 1, 1987, but such contribution will not be paid to the thrift savings fund until April.

Fourth, the Thrift Investment Board is required to establish an election period beginning on July 1, 1987, during which employees may adjust their contributions to the thrift savings plan.

The conference agreement also permits employees subject to the civil service retirement system to begin contributing to the thrift savings plan on April 1, 1987, rather than on July 1, 1987, as provided in Public Law 99-335. They may contribute an amount S0634 not to exceed 7.5 percent basic pay during the period from April 1, 1987, through September 30, 1987. Beginning on October 1, 1987, such employee contributions are limited to 5 percent of pay pursuant to the provisions of Public Law 99-335. These individuals may also alter their contribution amounts during the election period described in paragraph (4) above.

Section 6002 of the conference agreement modifies and clarifies the authority of the Secretary of the Treasury to suspend investment or to disinvest assets of the civil service retirement and disability fund. The provision permits the Secretary temporarily to suspend investment of the fund's assets when such investment would otherwise result in the public debt limit being exceeded. If the Secretary should suspend investment under these conditions, at the end of the suspension period the Secretary is required to make the fund whole for any earnings lost as a result of the suspension or disinvestment by a combination of special investment and cash payment actions.

Section 6003 of the conference agreement implements one of the recommendations of the Postal Rate Commission from the June 18, 1986, report on its preferred rate study, which was required by the Consolidated Omnibus Budget Reconciliation Act of 1985. This recommendation revises the method for computing the amount of the revenue forgone appropriation for reduced-rate mail. Upon the effective date of this provision, through the annual revenue forgone appropriation, the Federal Treasury will bear the same percentage contribution to institutional costs as regular ratepayers are required to pay for the same general type of mail, resulting in a lower appropriation but with no adverse impact on preferred rates. The revised methodology will be introduced in conjunction with the next general rate adjustment, but for appropriation purposes will take effect not later than January 1, 1989.

Mr. BOULTER. Mr. Speaker, I rise today in opposition to a provision of the budget reconciliation conference agreement that sets the statute of limitations for petroleum overcharge cases to run until September 30, 1988, or 6 years after the date of the violation upon which the action is based.

This provision prevents the Government from clearing up the residuum of price controls of the 1970's. In the more than 5 years that have passed since President Reagan terminated crude oil price and allocation controls, I find it difficult to believe that every meritorious case has not been resolved. To allow enforcement actions to be brought for another 2 years is unfair and without justification.

The inequities which result from this prolonged delay are many. Both the companies involved in these proceedings and the potentially damaged parties are left in a state of uncertainty. Indeed, in many instances the accrued interest charges now exceed the sum of the alleged violation.

Many of my colleagues and I have spoken in favor of, or advanced initiatives designed to stimulate this critically strategic industry. Yet, to permit the unremitting enforcement of regulations which have not been in effect for more than 5 years and which are largely untested in law, and less clear in interpretation, is to deal another severe economic blow to an industry that is still reeling from recent legislative punches on tax reform and Superfund.

The price control regulations that were implemented in the 1970's were counterproductive for our Nation's security as they discouraged the search for domestic resources and thus increased our dependence on unstable foreign supplies. In addition, they were extremely complex and subject to great uncertainty in their application. The prolonged litigation associated with the controls bears evidence to this. Thus, it hardly seems fair that companies who in good faith tried to implement the controls in the midst of such confusion should be further penalized when they wish to settle the allegations associated with these controls and put this era behind them. Therefore, I strongly urge that the statute of limitations be shortened to October 1, 1986, or 5 years after the date of the violation upon which the action is based.

Mr. RAHALL. Mr. Speaker, among the many provisions of this conference report on the budget reconciliation bill is one I added as part of the Committee on Interior and Insular Affairs' contribution to this measure. The provision transfers the abandoned Mine Reclamation Research Program from the Office of Surface Mining to the Bureau of Mines.

As the author of this provision, I would like to make it clear that the majority of the research and demonstration projects selected to be undertaken under this program should be conducted on a contracted-out basis. Actual project selection will be made by a panel consisting of both State and Federal officials which will review research proposals.

It is of the utmost importance, however, that the Bureau of Mines in cooperation with the States and interested private sector parties first conduct a thorough review of the research needs of the surface coal mining industry as they relate to the reclamation of abandoned coal mine lands, prioritize these research areas and then select projects accordingly. An overall strategy for the use of those moneys appropriated from the Abandoned Mine Reclamation Fund for this program must be formulated with research concentrated on those proposals which seek to gain practical solutions to the problems being encountered in the effort to reclaim abandoned coal mine lands.

I believe the Bureau of Mines, in its Resource Conservation Technology Program, has the expertise necessary to make these research need judgments with appropriate State input in the process as well as to conduct a number of projects on an in-house basis. Within this context, when considering projects to be contracted out and as part of the overall strategy for this program, the Bureau of Mines and the project selection panel should give consideration to any proposal that involves a multidisciplinary approach to addressing in a comprehensive fashion the major technical problems facing reclamation practitioners in this country. I believe the establishment of a national mined land reclamation research center with assistance from this program is both appropriate and necessary and will greatly benefit and enhance our ability to improve the environment in those regions scarred by abandoned coal mine lands.

Mrs. ROUKEMA. Mr. Speaker, I rise in support of the older Americans pension benefit provisions included in this omnibus budget reconciliation bill (H.R. 5300). These provisions included in the conference report which amend ERISA, ADEA, and the Internal Revenue Code, remove a significant disincentive for our older citizens to continue working

beyond the point when they reach age 65 or an earlier normal retirement age as defined under the pension plans in which they participate. The legislation amends current law to preclude the "attainment of any age" as a reason for eliminating or reducing pension benefits accruals after normal retirement age. Therefore, employees who want or need to continue working beyond normal retirement age will no longer be able to be treated adversely under their pension plans because of their age.

The conference report on H.R. 5300 and the statement of managers makes it clear that, with respect to benefit accruals under normal retirement age, pension plans which conform with the existing benefit accrual rules under ERISA and the Internal Revenue Code are considered to meet the new requirements. This framework provides a safe harbor for prenormal retirement age accruals for all covered pension plans, even such pension plans as those of State and local governments which are subject to ADEA but which are not subject to the benefit accrual rules of ERISA and the Internal Revenue Code. Likewise the provisions of new subsection (i)(3) of ADEA extend to all covered pension plans, including State and local government plans, credit toward meeting the new benefit accrual requirements to the extent such plans provide for actuarial or similar increases for delayed payment after normal retirement age or for the actual payment of some or all accrued benefits during the employee's continued period of employment—or for any combination of the two.

It is important for my colleagues to understand that a significant benefit to employee pension benefit plans will arise under this amendment to ERISA, ADEA, and the Internal Revenue Code. Because any regulations or rulings issued by he three regulatory agencies involved are required by the statute to be consistent, plan sponsors should expect clear and unambiguous guidance such that a plan subject to and meeting the provisions of the Internal Revenue Code would also meet the requirements of ERISA—if also subject to such law—and ADEA—if subject to such law.

In addition, the statutory requirement for final regulations to be issued by February 1, 1988 ensures that plan will have early guidance as to the application of these provisions. Also plans would not have to be amended to reflect these new benefit accrual requirements until the date they would also have to be amended for purposes of the Tax Reform Act of 1986.

In conclusion, the enactment of the "older Americans pension benefit" provisions will serve to solve a currently contentious pension issue, but in a manner which will benefit older workers and avoid confusion for pension plan sponsors.

Mr. CLAY. Mr. Speaker, I rise in strong support of the older Americans pension benefits provisions in the conference report on H.R. 5300.

For a number of years the subcommittee on Labor-Management Relations, which I chair, has been concerned about the need for a national retirement income policy. Expanding coverage under private pension plans and improving the changes that workers covered under the plans will receive meaningful retirement benefits have been two of our major legislative goals. Today we take another important step forward toward meeting those goals.

This conference report amends the Age Discrimination in Employment Act, the Employee Retirement Income Security Act of 1974 [ERISA], and the Internal Revenue Code to make it clear that employee benefit plans may not reduce pension accruals or allocations on the basis of an employees's age. In short, these changes will assure that older americans who work beyond normal retirement age continue to earn pension credits.

In addition, the changes will prohibit employers from excluding older workers hired within 5 years of normal retirement age from participating in certain pension plans. This is an especially important improvement in the law in light of the new 5 year vesting rules contained in the recently passed tax reform legislation.

For several years, many of you have been getting letters from constituents complaining that they have been unfairly denied pension credit when they continue to work past normal retirement age. Genuine disagreement exists as to whether, under current law, additional pension accruals or allocations are required. My subcommittee heard testimony last year on this subject and was convinced that congressional action was needed to provide prospective guidance to employers. Despite the fact we are amending the law today, Congress does not intend any inference to be drawn as to whether and to what extent additional accruals and allocations might be required under current law. Regardless of what current law requires, H.R. 5300 requires such accruals and allocations in the future in most instances.

Passage of this bill in the closing days of the 99th Congress is a fitting climax to a year in which substantial progress has been made to improve benefits for participants and beneficiaries in private employee benefit plans. No year since the passage of ERISA has seen so much change in the laws governing employee benefit plans. In this year alone, P.L. 99-272—COBRA of 1985—made two important changes: 1. It strengthened the single-employer pension plan termination insurance program established under title IV of ERISA, and 2. It gave certain qualified beneficiaries the right to continue group health coverage at their own expense when a qualifying event occurs. Just a few weeks ago, Congress passed H.R. 3838, the tax reform bill, containing major changes in the law governing coverage, participation, nondiscrimination of pension and welfare plans, and vesting. Today, the conference report on H.R. 5300 makes two major changes in the pension rules affecting older Americans.

1986 will go down in the history books as the year of employee benefit plan reform.

Mr. HAWKINS. Mr. Speaker, I am enthusiastic about the older American pension benefits provisions in the conference report on H.R. 5300. Two more barriers to older Americans getting the pensions they deserve are falling today.

First, employers who work beyond normal retirement age will continue earning pension credit. The provisions in the conference agreement which prohibit employers from stopping benefit accrual or pension contributions for any employee on the basis of age are a significant step forward in our efforts to stamp out age discrmination.

Second, employees who are hired within 5 years of normal retirement age may no longer be excluded from participating in pension plans. Some have expressed concern that the effect of dropping this rule will be increased discriminaton in hiring of older workers. Despite the laws on the books that prohibit it, we all know that some discrimination does occur. The special rule for defining normal retirement age contained in the bill will go a long way toward mitigating any increased costs employers who hire older workers may incur as a result in this change in the law.

Pension benefits will become a more effective supplement to Social Security because we have enacted these provisions.

I would like to express a special word of thanks to the chairman of the Committee on Ways and Means for the fine spirit of cooperation which enabled us to reach agreement with the Senate conferees on these important issues. Because we worked together to develop this compromise, the legislative product before us today is far better than it might have been if each committee had gone its separate way. I hope this cooperative experience will serve as a model for next Congress.

In addition, I want to thank Chairman ROSTENKOWSKI for agreeing to have conforming amendments to title I of ERISA incorporated in H.R. 5300 when the conferees decided to make additional changes in the health insurance continuation provisions of Public Law 99-272. It is important that the code and title I remain consistent so as to avoid undue confusion for plan administrators and employers.

Mr. WHITTAKER. Mr. Speaker, I wish to associate myself with the remarks of my distinguished colleague and fellow Kansan, Mr. SLATTERY. He is to be commended for his diligence in moving this legislation forward in both committee and conference. Likewise, I would like to thank our colleague, Senator KASSEBAUM, for her courageous efforts as well.

As Mr. SLATTERY has pointed out, section 4051 of title IV of the pending budget reconciliation legislation mandates the disclosure of certain essential contract terms of agricultural shipper contracts. It is not the intent of the authors of this language—nor is it the intent of the House and Senate conferees—that these provisions apply to contracts involving forest products and paper. The language would apply to all other agriculture contracts and the terms to be disclosed are: The identity of the shipper party of the contract; specific origins, transit points and other shipper facilities such as shipper-owned or operated transportation facilities, cars, or track which are subject to the terms of the contract and which originate, store or handle agricultural commodities; the duration of the contract; and the actual volume requirements, if any.

Mr. Speaker, enactment of this legislation will provide small shippers with the tools they so desperately need to challenge contracts as unreasonable discrimination or destructive competitive practices under section 208(a) of

the Staggers Rail Act. For these new requirements to be successful, it is essential that the ICC carefully police the implementation of these provisions to ensure that disclosure is fully adequate. Further, it is not our intent that this legislation should result in the imposition of any unreasonable filing fees for discovery of the information to be disclosed.

In closing, I would like to take this opportunity to express my appreciation as well to the chairman of the House Energy and Commerce Committee, JOHN DINGELL, and to my distinguished subcommittee chairman, JIM FLORIO, and to my good friend and ranking member, NORM LENT, for their efforts in successfully resolving this issue.

Thank you Mr. Speaker.

Mr. COELHO. Mr. Speaker, I rise in support of those provisions contained in the budget reconciliation package relating to the Farm Credit System. This legislation is critically important to the farmers and ranchers of this country.

Last May 14, this body adopted overwhelmingly, by a vote of 407–0, a resolution authored by my colleague from Georgia, Mr. THOMAS, urging the Farm Credit Administration to permit system institutions greater flexibility in their day-to-day business affairs. I was pleased to have had a part in crafting a new provision, which was incorporated into that resolution. The additional language stated: "consistent with the purposes and objectives of the Farm Credit Amendments Act of 1985, the Farm Credit Administration should limit its involvement in system business affairs to only those situations where safety and soundness are primary concerns. The Farm Credit Administration should permit production credit associations, Federal land banks and banks for cooperatives to have flexibility in adjusting their interest rates to more accurately reflect changing market conditions so as to more accurately reflect changing market conditions so as to remain competitive in agricultural lending, consistent with the capital needs of the system."

While it has been nearly 5 months since we adopted the Thomas resolution, House Concurrent Resolution 310, we have before us today legislation which removes FCA from the interest rate approval process. However, I am concerned that FCA may still try to effectively control interest rates through misuse of their safety and soundness and capital adequacy regulations.

The policy statement in the farm credit provisions of this package states that borrowers from system institutions are to derive the greatest benefit practicable from the legislation. It is not the intent of Congress that FCA resort to any back door method to require system institutions to charge interest rates which are either noncompetitive or exceed rates generally charged by other commercial lenders on similar loans. Any attempt by FCA to exercise this type of control would be severely detrimental to the farmers, ranchers and cooperatives that borrow from the Farm Credit System.

Our Farm Credit System institutions obtain the funds they lend to farmers by selling securities in the Nation's money markets. Some have asked how the financial community will react to the Farm Credit proposal we are considering today. The answer can be found in a memorandum prepared by Allerton Smith of the Wall Street brokerage firm of L.F. Rothschild, Unterberg, Towbin, Inc. In this memo, Mr. Smith discusses what he sees as the two crucial elements of this legislation: lowering interest rates to borrowers and method to delay the anticipated need for Federal financial assistance.

Mr. Smith rightly points out that this legislation simply defers losses in order to achieve what are important and productive ends for the Farm Credit System. He continues, "We are less concerned with the accounting treatment of system losses under the new act than with the reality of the problems the system currently faces. Any reduction in the rate of interest charged its borrowers will not only preserve system market share, but also conserve system capital and slow the rate of loan losses. The time when the system might ultimately require Federal financial assistance will be postponed, and the additional breathing space the act provides improves the system's chances of surviving independently. Since the system can fund the losses with cash raised in the capital markets, this solution is workable and the ends certainly justify the means."

Mr. Speaker, I urge my colleagues to support the farm credit provisions in H.R. 5300, and submit the memorandum by Mr. Allerton Smith to be reprinted in the RECORD at this point:

THE FARM CREDIT SYSTEM PROPOSES TO USE DEFERRED LOSS ACCOUNTING

The Farm Credit System [FCS] has proposed a new plan which would allow it to both lower its cost of loans to farm borrowers and delay indefinitely its anticipated request for Federal financial assistance. The plan is to defer losses, which while questionable from a strict accounting viewpoint, will achieve several important and productive ends for the FCS. Our investment conclusion is that the plan would be neutral for FCS bond prices, since the short term costs are at least matched by the long term benefits. We are less concerned with the accounting treatment of FCS losses under the new act than the reality of the problems the FCS currently faces. Any reduction in the rate of interest charged its borrowers will not only preserve FCS market share, but also conserve FCS capital and slow the rate of loan losses. The time when the FCS might ultimately require federal financial assistance will be postponed, and the additional breathing space the act provides improves the FCS' chances of surviving independently. Since the FCS can fund the losses with the cash raised in the capital markets, this solution is workable, and the ends certainly justify the means.

The proposal is the Farm Credit System Borrower Interest Rate Relief Act of 1986. The FCS has issued a large volume of high coupon, long term non-callable debt over the last several years. As a consequence, the FCS average cost of funds is 10.6 percent, which is far above competing financial institutions. In addition, the FCS has high overhead expense. All these costs are passed through to FCS farmer-borrowers which makes rate on FCS loans non-competitive with other financial institutions. The market share of the FCS has eroded because of this differential in rates; FCS loans outstanding have fallen to $61.5 billion at 6/30/86 from $66.6 billion at 12/31/85, and $78.4 billion at 12/31/84.

The FCS had asked the Farm Credit Administration (its regulator) to allow it to lower the rate it charged on its loans, but the FCA refused on the grounds that lending at a negative spread would speed the erosion of FCS capital. The new proposal would take the rate setting power out of the hands of the FCA and place it with the 37 district banks of the FCS. This change, since it is endorsed by the Congress, would not stand in the way of any future needed financial assistance.

The new act would allow the FCS to charge a competitive rate to its borrowers and capitalize the difference between the actual cost of its funds and the prevailing market rate. The capitalized interest would be amortized as an expense over twenty years. Alternatively, the FCS could defense the high coupon bonds and capitalize the premium, also using a twenty year amortization.

In addition, the FCS could, upon approval from the FCA, capitalize their annual provision for loan losses, which was in excess of one-half of one percent of loans outstanding, and amortize it over 20 years.

The FCS stands to have its operating losses reduced by up to $1 billion annually under the proposal. While the deferred loss treatment is not in accordance with generally accepted accounting principles it is not uncommon in regulatory reporting for the thrift industry. This process would reduce the market erosion the System is experiencing and reduce the debt service requirements on many farmers. The System's capital would be conserved by the retention of borrowers (since they supply the funds for the FCS Capital Stock and Participation Certificates) and market share would be maintained by competitive rates. In addition, a reduction in the rate of interest charged to the FCS farmer/borrowers would help prevent many marginal farmers from defaulting, thus reducing FCS loan write-offs.

Last week before Congress, H. Brent Beesley, Chief Executive of the Farm Credit Corporation of America discussed the System's future financial prospects. He reported that a projected System loss of $1.7 billion for 1986 compares to a loss of $2.7 billion recorded for the year ending December 31, 1985. In addition, System projections reflect losses of $1.1 billion in 1987 and $600 million in 1988. The System's surplus is projected to decline to $1.7 billion by year-end 1986, to $600 million by year-end 1987 and to a negative $100 million at December 31, 1988. Beesley cautioned that there are many uncertainties surrounding these projections. Changes in such factors as general interest-rate levels, federal farm programs, land values and commodity prices could alter the projected results significantly. At the same time the General Accounting Office projected FCS losses of $2.9 billion in 1986, which would reduce surplus to $354 million. It seems clear that without a drastic change in either the farm economy or the accounting system used by the FCS, federal aid would be needed soon.

While it is not certain that this measure would be sufficient for the FCS to avoid requesting Federal financial assistance, it reduces the amount of assistance that might ultimately be needed. The FCS management is fighting to avoid the need to request assistance, and to miminize the amount of assistance that might be requested. This new proposal seems a logical and favorable step towards reducing and delaying the FCS needs for assistance from the Treasury.

Mr. ALEXANDER. Mr. Speaker, across America people in the countryside and in our small towns are in increasing danger of losing access to their community hospitals.

These are hard times for rural America. We have in our part of the country a growing number of poor, of unemployed, of elderly. These people depend on their hospitals. But if the hospitals don't get some relief from economic pressures confronting all of rural America, the hospitals may not be around to depend on much longer.

Between measures taken by Congress to hold the line on Medicare costs—measures which were necessary to keep the Hospital Insurance Fund from going broke—and the devastating depression in the farm economy, rural hospitals are struggling just to maintain a minimum level of service. Some have shut their doors permanently.

At this critical time for the midsection of our Nation, we are losing ever more of our ability to meet rural America's health care needs.

Fortunately, the reconciliation bill before us today contains provisions designed to help financially strapped rural hospitals, and for that reason I rise today in support of the conference report.

Three provisions in particular will be extremely helpful to hospitals in Arkansas' First Congressional District.

First, the bill will allow the Periodic Interim Payment Program (PIP) to continue for rural hospitals with less than 100 beds. A hospital with less than 100 beds is a very small hospital, indeed, and is therefore highly sensitive to cash flow disruption.

For various reasons, hospitals aren't always able to count on the timely arrival of Medicare reimbursement for individual cases. For the large urban hospital, this uncertainty is disruptive, but it doesn't usually endanger the continued operation of the hospital. For small rural hospitals, the disruption caused by payment delays is much more serious.

PIP provides the small rural hospital with a regular, biweekly lump reimbursement from Medicare. It protects these institutions' cash flow and allows them to meet their payrolls and purchase equipment and supplies without delay. PIP helps us avoid the horrifying scenario of a small rural hospital, vitally needed by its community, running out of money and shutting down simply because the health care bureaucracy doesn't move fast enough.

Second, the bill provides for a recalculation of hospital payment rates so that hospitals serving a larger proportion of Medicare patients will receive more money. It is well established that rural hospitals, on the average, serve a higher proportion of elderly patients than do urban hospitals. This means that the recalculation will increase Medicare payments to rural hospitals by an estimated 3 to 4 percent. Such an increase means $150 to $200 million more will go to the operating funds of rural hospitals. For hospitals right on the margin, that extra 3 or 4 percent could mean the difference between staying open or going out of business.

Finally, the reconciliation bill mandates changes in the way hospitals are assessed to cover reimbursement costs in unusually expensive cases.

Under current law, after a Diagnosis Related Group (DRG) reimbursement level is calculated, 5 percent is sliced off of it to create what is known as the "outlier" pool. This pool of money is used to pay for extremely costly cases in which the normal DRG payment to a hospital wouldn't even come close to meeting the cost of treatment.

But for some reason, rural hospitals haven't had to make as much use for the outlier pool. Outlier payments to rural hospitals have averaged only 3 percent of the original DRG computation. The outlier pool is therefore a money loser for these hospitals.

The reconciliation bill before us would address that problem by establishing separate outlier pools for urban and rural hospitals, and pegging the outlier assessment for rural hospitals at 3 percent of the DRG rate—an amount that more accurately represents the rural hospital's fair share. It is estimated that this provision will increase Medicare reimbursements to rural hospitals by $75 to $100 per patient.

Hard times have hit the heartland, Mr. Speaker, and hospitals are not immune from the economic pain. The important Medicare reimbursement provisions in the reconciliation bill will provide relief to the rural hospitals of the district I represent and other hard-pressed hospitals across the country.

The provisions of this bill will help prevent more hospitals from going under, the way Lee Memorial Hospital did. But, most importantly, by keeping rural hospitals open, the provisions may save some lives. That is reason enough to support the conference report.

Mr. STARK. Mr. Speaker, title IX of H.R. 5300 is extremely important legislation. As chairman of the Ways and Means Subcommittee on Health, I would first like to thank our hard working chairman, the distinguished gentleman from Illinois, and the Health conferees, for their efforts in bringing this responsible conference report to the House floor.

I urge my colleagues to support this legislation because it achieves some very important goals as it provides net savings of over $1 billion from the Medicare Program.

We are particularly proud that in these budget cutting days we have protected beneficiaries from increased out-of-pocket costs. It's important to know that we all can go home and assure senior citizens in our districts that their Medicare benefits have been preserved.

The reconcilation legislation addresses the most important concern of beneficiaries by limiting the hospital deductible to $520 in 1987. The part A deductible has increased rapidly as an unforeseen consequence of shorter lengths of stay in the hospital. Left unchecked, the deductible would have gone up from $400 in 1985 to $572 in 1987. This would have meant an increase of over 43 percent over 2 years. Because this would be unacceptable, the conference agreement establishes a deductible of $520 for 1987. My subcommittee plans on revisiting this issue next year to further consider how we can best protect our elderly and disabled against high hospital costs.

Concerned with more than costs, the House conferees have worked hard to protect the quality of care our elderly and disabled receive.

In particular, the House held firm in its insistence on outlawing certain physician incentive plans. We must not tolerate hospitals paying physicians to reduce or limit services to the elderly. The conference agreement also gives patients recourse if they feel they are being improperly treated.

I am also pleased to report that the House's quality assurance provisions to protect the elderly and disabled have been retained in this bill. As a response to widespread concern that many elderly are now being discharged "quicker and sicker," the conferees have worked to protect our elderly against premature hospital discharge and to improve access to needed post-hospital services. These provisions create a balance. They ensure that policies which obtain greater savings do not damage the quality of care provided to the elderly.

Further, we have achieved budget reductions and yet have still provided for increases in reimbursements to hospitals and physicians. We have sought fairness in Medicare payments to hospitals and in particular we have enhanced payments for rural and disproportionate share hospitals. The conference agreement provides a 1.15 percent increase in hospital payments; this is in comparison to a .5 percent increase proposed by the administration. Further, knowing how important prompt payment of claims is to physicians and hospitals, we have preserved periodic interim payments for high indigent care and rural hospitals and guaranteed prompt businesslike payment of claims to all Medicare providers.

Title IX of H.R. 5300 provides a 3.2-percent increase in payments to all physicians. The conference agreement also places limits on the actual charges of nonparticipating physicians to ensure that savings are not obtained at the expense of higher costs for the elderly. This is a fair outcome—physicians will receive a full inflation increase and beneficiaries will be protected from further increases in out-of-pocket costs.

H.R. 5300 also protects end-stage renal disease [ESRD] beneficiaries by: (1) strengthening ESRD networks, (2) providing a steady funding mechanism of these networks, and (3) requiring that standards be established for the safe reuse of dialyzer filters. I would like to assure the many Members who have contacted me about the administration's proposals to reduce ESRD facility rates that the conference agreement does not unfairly reduce these rates. Instead of the administration's initial proposal to reduce the rates by $11, the conference agreement provides for only a $2 per treatment reduction to these facilities.

To better protect Medicare beneficiaries enrolled in HMO's, the conference agreement increases the Secretary of HHS's authority to deal with problems that have arisen in the Medicare Health Maintenance Organization Program. It also repeals the 2 for 1 rule which is so inequitable to longtime members of HMO's.

Even though the conference agreement contains all of these important provisions, I must say that I am extremely disappointed that the State health insurance risk pool provision is not included. The risk pool proposal simply provided incentives to States to pro-

vide access to health insurance for those who now have absolutely no access to health insurance. It is unfortunate that a campaign of misinformation has resulted in a denial of health insurance for people who must live in daily fear of being bankrupted by high medical bills. I do intend to reintroduce and fight for this proposal in the 100th Congress.

In conclusion, the conference agreement deserves your support because it responsibly restrains Medicare costs while protecting the elderly against cost-shifting or reductions in quality and access to care.

Mr. WYDEN. Mr. Speaker, I rise today in support of the budget reconciliation conference agreement and urge its adoption.

This measure contains several provisions I authored, including one to provide adequate reimbursement for home health agencies, one to restore the right of senior citizens to appeal Medicare claims denials under part B and one to reimburse physician assistants for practice in nursing homes, hospitals, and as assistants at surgery.

On the subject of home health care, in July, I introduced legislation to force the Health Care Financing Administration to reimburse home health agencies on an aggregate basis and to recognize their increased administrative costs in the wake of voluminous increases in paperwork over the last year.

Home health care is cost-effective and allows patients to remain in the environment most pleasant and therapeutic—their own homes. Medical advances have made it possible for more and more procedures to be done on an outpatient basis. But, they cannot be done that way without access to followup care and basic services either at home or from community-based clinics.

The legislation before us today will allow home health agencies to continue to receive funding at levels adequate for their survival. And, that will benefit all of us: Patients, providers, and the Federal Government.

The reconciliation package also includes parts of a bill I introduced last year to give Medicare beneficiaries the right to appeal claims denials under part B of Medicare.

Currently, senior citizens have the right to be represented in an appeals proceeding by their doctor or a hospital under part A of Medicare. But, they don't have a corresponding right to representation under part B. Under the present appeals process, claims disputes are heard by hearing officers employed by insurance carriers.

This system was designed to take care of small claims disputes. Unfortunately, part B claims are no longer small claims. As health care inflation has risen and as more services have begun to be offered outside hospitals, claims have gotten bigger. It's high time we brought the appeals process in line with the times.

That's what my original appeals legislation did. While the provisions included in reconciliation are not identical to my original legislation, their effect is the same: Beneficiaries will have access to appeals through administrative law judges or the courts if the amount of the claim in question is high enough. And, physicians and suppliers will have the same rights.

There are some differences in the provisions before us today and my orignal legislation. Primarily, the provisions in reconciliation exclude national coverage decisions made by the Health Care Financing Administration [HCFA] before January 1, 1981. But, individual beneficiaries may still appeal decisions to administrative law judges if the dollar amount is high enough.

This legislation strengthens the rights established by the Supreme Court in its decision, Bowen versus Michigan Academy of Family Physicians, earlier this year. And, it ensures that beneficiaries and providers who feel wronged by Medicare's decisions have access to appeal.

Mr. Speaker, the final aspect of the reconciliation bill which I would like to mention today is a provision similar to a bill I authored and the House passed to allow Medicare to reimburse physician assistants for practice in nursing homes, hospitals, and as assistants at surgery. I believe this section is important and long overdue and I commend the conferees for its inclusion in their package.

Specifically, the physician assistants provisions of reconciliation would provide for reimbursement for physician assistants practicing in nursing homes and in hospitals or as assistants during surgery. Reimbursement would be paid to the employer of the physician assistant, not directly to the practitioner.

My original legislation, H.R. 3260, and the provisions adopted by the House in its version of reconciliation, would have reimbursed physician assistants at 90 percent of the prevailing charges applicable if a physician had provided the same service. The provision in the bill before us today would reimburse the physician assistant at 85 percent for services provided in a nursing home, 75 percent for hospital services, and 65 percent for assisting a physician at surgery. In addition, the provisions require the PA to accept assignment, thereby preventing the PA from passing the cost on to Medicare beneficiaries.

I would like to note that, while I continue to believe a 90-percent reimbursement rate to be appropriate, I endorse the changes adopted by the conference committee as does the American Academy of Physician Assistants.

For the record, I would like to take just a few minutes to discuss how I envision the variable rate structure of this provision working and the implications this holds for the Medicare Program.

There are two ways to determine the reasonable charge for a Medicare service. The Health Care Financing Administration looks at a physician's customary charge for a service and then at the prevailing charge for that service in that particular locality. Medicare pays the lower of the two.

This legislation ties the PA reimbursement rate to the local prevailing charge rate, not the maximum allowable prevailing charge. Clearly, actual reimbursement for PA services cannot exceed the maximum allowable rate, but for the purposes of determining the PA prevailing charge, the Health Care Financing Administration [HCFA] must look at the physician's prevailing charges.

Furthermore, the legislation asks HCFA to collect data on the relative practice costs of having PA's provide services and to report back to Congress with a recommendation on the appropriate reimbursement rate.

Mr. Speaker, again, I commend the conferees for their excellent work in putting together legislation to produce budget savings and streamline parts of the Medicare Program.

Mr. GRAY of Pennsylvania. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BURTON of Indiana. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 305, nays 70, not voting 57, as follows:

[Roll No. 487]

YEAS—305

Abercrombie	Dickinson	Hoyer
Akaka	Dicks	Huckaby
Andrews	Dingell	Hutto
Annunzio	DioGuardi	Hyde
Anthony	Dixon	Jacobs
Applegate	Donnelly	Jeffords
Aspin	Dornan (CA)	Jenkins
AuCoin	Dowdy	Johnson
Badham	Downey	Jones (NC)
Barnes	Duncan	Jones (TN)
Bartlett	Durbin	Kanjorski
Barton	Dwyer	Kasich
Bateman	Dymally	Kastenmeier
Bates	Dyson	Kemp
Bedell	Early	Kennelly
Bennett	Eckert (NY)	Kildee
Bentley	Edgar	Kindness
Bereuter	Edwards (CA)	Kleczka
Berman	Emerson	Kolter
Bevill	Erdreich	Kostmayer
Bilirakis	Evans (IL)	LaFalce
Bliley	Fascell	Lagomarsino
Boehlert	Fazio	Lantos
Boggs	Feighan	Latta
Boland	Fields	Leach (IA)
Boner (TN)	Fish	Lehman (CA)
Bonior (MI)	Flippo	Lehman (FL)
Bonker	Foglietta	Leland
Borski	Foley	Lent
Bosco	Ford (MI)	Levin (MI)
Boucher	Franklin	Levine (CA)
Boulter	Frost	Lewis (CA)
Bruce	Fuqua	Lewis (FL)
Bryant	Gallo	Lightfoot
Bustamante	Garcia	Lloyd
Byron	Gaydos	Lowery (CA)
Callahan	Gejdenson	Lowry (WA)
Carper	Gekas	Luken
Carr	Gibbons	MacKay
Chapman	Gilman	Madigan
Chappell	Glickman	Manton
Clay	Goodling	Markey
Clinger	Gordon	Martin (IL)
Cobey	Gray (IL)	Martin (NY)
Coble	Gray (PA)	Martinez
Coelho	Green	Matsui
Coleman (MO)	Guarini	Mavroules
Coleman (TX)	Gunderson	Mazzoli
Collins	Hall (OH)	McCloskey
Combest	Hall, Ralph	McCollum
Conte	Hamilton	McDade
Cooper	Hammerschmidt	McHugh
Coughlin	Hatcher	McKernan
Courter	Hawkins	McKinney
Coyne	Hendon	McMillan
Darden	Hertel	Meyers
Daub	Holt	Mica
Davis	Hopkins	Michel
Dellums	Horton	Mikulski
Derrick	Howard	Miller (CA)

Miller (WA)	Rowland (CT)	Swift
Moakley	Rowland (GA)	Synar
Molinari	Roybal	Tallon
Mollohan	Sabo	Tauke
Moody	Savage	Tauzin
Morrison (CT)	Saxton	Taylor
Morrison (WA)	Scheuer	Thomas (GA)
Mrazek	Schneider	Torres
Murphy	Schuette	Torricelli
Murtha	Schumer	Towns
Natcher	Seiberling	Traficant
Neal	Sensenbrenner	Traxler
Nelson	Sharp	Udall
Nowak	Shaw	Valentine
Oakar	Shelby	Vander Jagt
Oberstar	Sikorski	Vento
Obey	Sisisky	Visclosky
Olin	Skeen	Vucanovich
Ortiz	Skelton	Waldon
Oxley	Slattery	Walgren
Panetta	Slaughter	Watkins
Parris	Smith (FL)	Waxman
Pashayan	Smith (IA)	Weber
Pease	Smith (NE)	Wheat
Pepper	Smith (NJ)	Whitehurst
Perkins	Smith, Robert (OR)	Whitley
Price		Whittaker
Pursell	Snowe	Whitten
Quillen	Snyder	Williams
Rahall	Solarz	Wirth
Rangel	Solomon	Wise
Regula	Spence	Wolf
Reid	Staggers	Wolpe
Rinaldo	Stallings	Wortley
Ritter	Stangeland	Wyden
Roberts	Stark	Wylie
Rodino	Stenholm	Yates
Roe	Stokes	Yatron
Rogers	Strang	Young (AK)
Rostenkowski	Studds	Young (FL)
Roth	Sundquist	Young (MO)
Roukema	Sweeney	Zschau

NAYS—70

Anderson	Fiedler	Moorhead
Armey	Florio	Myers
Barnard	Ford (TN)	Nielson
Beilenson	Frank	Packard
Brown (CO)	Frenzel	Penny
Burton (IN)	Gingrich	Petri
Carney	Gonzalez	Porter
Chandler	Gregg	Ray
Chappie	Henry	Ridge
Cheney	Hiler	Robinson
Conyers	Hubbard	Roemer
Craig	Hunter	Schroeder
Crockett	Ireland	Schulze
Dannemeyer	Kolbe	Shumway
Daschle	Kramer	Shuster
DeLay	Livingston	Siljander
DeWine	Lujan	Smith, Denny (OR)
Dorgan (ND)	Lungren	
Dreier	Mack	Smith, Robert (NH)
Eckart (OH)	Marlenee	
Edwards (OK)	McCandless	Stump
English	McEwen	Swindall
Evans (IA)	Miller (OH)	Thomas (CA)
Fawell	Monson	Walker

NOT VOTING—57

Ackerman	Grotberg	Mitchell
Alexander	Hansen	Montgomery
Archer	Hartnett	Moore
Atkins	Hayes	Nichols
Biaggi	Hefner	Owens
Boxer	Hillis	Pickle
Breaux	Hughes	Richardson
Brooks	Jones (OK)	Rose
Broomfield	Kaptur	Rudd
Brown (CA)	Leath (TX)	Russo
Burton (CA)	Lipinski	Schaefer
Campbell	Loeffler	Spratt
Coats	Long	St Germain
Crane	Lott	Stratton
Daniel	Lundine	Volkmer
de la Garza	McCain	Weaver
Fowler	McCurdy	Weiss
Gephardt	McGrath	Wilson
Gradison	Mineta	Wright

□ 1630

The Clerk announced the following pairs:

On this vote:

Mr. Mineta for, with Mr. Hayes against.

Mr. McGrath for, with Mr. Hansen against.

Messrs. SILJANDER, CHENEY, MOORHEAD and SHUSTER changed their votes from "yea" to "nay."

Mr. ROBERTS, Mr. CALLAHAN, Mrs. VUCANOVICH, and Mr. DORNAN of California changed their votes from "nay" to "yea."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GRAY of Pennsylvania. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous material on the conference report just agreed to.

Mr. Speaker, may the RECORD also show a special debt of gratitude to the staff of the Budget Committee and the new chief of staff, Mr. Steven Pruitt.

The SPEAKER pro tempore (Mr. BENNETT). Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

DECLARATION OF TAKING ACT AMENDMENTS

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5363) to amend the interest provisions of the Declaration of Taking Act, with a Senate amendment thereto, and concur in the Senate amendment with an amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment and the House amendment to the Senate amendment, as follows:

Senate amendment: strike out all after the enacting clause and insert:

That section 258a of title 40, United States Code, is amended by striking "interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment," and inserting in lieu thereof "interest at a rate as provided by section 258g of this title".

SEC. 2. Title 40 of the United States Code, is amended by adding after section 258f the following new section:

"§ 258g. Same; interest rate formula to be applied to the amount awarded from the said date of the award to the date of payment

"Interest required to be paid under the foregoing provisions of this Act shall be calculated by the district court as follows:

"(1) Where the period for which interest is owed does not exceed one year, interest shall be calculated for such period from the date of taking at an annual rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of taking.

"(2) Where the period for which interest is owed is more than one year, interest for each additional year shall be calculated on the combined amount of the principal (the amount by which the award of compensation exceeds the deposit) and accrued interest at an annual rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the beginning of each additional year. The Director of the Administrative Office of the United States Courts shall distribute notice of those rates and any changes to all Federal judges.".

SEC. 2. (a) Notwithstanding any other provision of chapter 11 of title 11, United States Code, the bankruptcy trustee in each case described in subsection (b) shall pay benefits until May 15, 1987, to retired former employees under a plan, fund, or program maintained or established by the debtor in such case prior to filing a petitioner (through the purchase of insurance or otherwise) for the purpose of providing medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death.

(b) This section is effective with respect to—

(1) cases commenced chapter 11 of title 11, United States Code, in which a plan for reorganization has not been confirmed by the court and in which any such benefit is still being held on October 1, 1986;

(2) in cases under which an order for relief is entered under chapter 11 of title 11, United States Code, after October 2, 1986, while such case is a case under chapter 11; or

(3) in cases under title 11, United States Code, involving a partnership which was in existence prior to July 17, 1986, and was the subject of a petition under chapter 11 of title 11, United States Code, upon which an order for relief was entered by a bankruptcy court on August 7, 1986, and where one of the partners received bankruptcy court authorization on August 6, 1986, approving rejection of a partnership agreement.

(c) If any provision of this section or the application thereof to any person or circumstances is held invalid, the provisions of every other part of this section and the first section shall not be affected thereby.

House amendment to the Senate amendment: Strike page 1A through page 3, line 2 and insert the following in lieu thereof:

That the Act of February 26, 1931 (40 U.S.C. 258a through 258e), is amended—

(1) in the second paragraph of the first section by striking "interest at the rate of 6 per centum per annum", and inserting "interest in accordance with section 6 of this Act"; and

(2) by adding at the end the following:

"SEC. 6. Interest required to be paid under this Act shall be calculated by the district court as follows:

"(1) Where the period for which interest is owed does not exceed one year, interest shall be calculated for such period from the date of taking at an annual rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction 52 week United States Treasury

bills settled immediately before the date of taking.

"(2) Where the period for which interest is owed is more than one year, interest for the first year shall be calculated in accordance with paragraph (1) and interest for each additional year shall be calculated on the combined amount of the principal (the amount by which the award of compensation exceeds the deposit referred to in the first section of this Act) and accrued interest at an annual rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of 52 week United States Treasury bills settled immediately before the beginning of each additional year.

The Director of the Administrative Office of the United States Court shall distribute to all Federal courts notice of the rates described in paragraphs (1) and (2).".

Mr. GLICKMAN (during the reading). Mr. Speaker, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. BENNETT). Is there objection to the request of the gentleman from Kansas?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Kansas?

Mr. KINDNESS. Mr. Speaker, reserving the right to object, I yield to the gentleman from Kansas [Mr. GLICKMAN] in order to have an explanation of the amendment which has been offered.

Mr. GLICKMAN. Mr. Speaker, H.R. 5363 amends the interest provisions of the Declaration of Taking Act. This act is the statute under which the Federal Government derives its authority for the acquisition of any land or easement or right of way in land for the public use. The current statute, enacted in 1931, provides for interest at the rate of 6 percent per annum. This interest rate has not been changed since the statute was enacted. The courts have generally interpreted the 6-percent interest in the statute as a floor, but there has not been agreement as to what securities should be examined in order to determine the rate of interest in a given case.

This amendment provides the courts with a statutory formula based on the yield rates of 1 year Treasury bills, using the average accepted auction price of the last auction of the bills settled immediately prior to the date of taking. If interest is owed for more than 1 year, the bill provides for compounded interest using the same formula but based on the auction price established each subsequent year.

This bill was introduced at the request of the Department of Justice.

I urge my colleagues to vote to pass the bill, H.R. 5363.

The Senate amendment to the House language on the Declaration of Taking Act contains a technical defect. The purpose of my amendment is simply to strike the Senate language on this point and substitute instead the House language which accomplishes the same thing but is correctly drafted. The administration does support this bill, and supports the version set forth in my amendment.

I am aware that the Senate amendment came back with some additional language. Perhaps the gentleman could yield to the gentleman from Minnesota [Mr. OBERSTAR] in order to explain that.

Mr. KINDNESS. Mr. Speaker, further reserving the right to object, if the gentleman from Minnesota desires to be heard on that point, I yield to him at this time.

Mr. OBERSTAR. Mr. Speaker, I thank the gentleman for yielding.

The language included in the Senate amendment to the House bill will rectify an inadvertent oversight in a provision already approved in the Senate earlier that would allow the continued coverage of health insurance premiums for retirees of the Reserve Mining Co. in Minnesota. The language has been cleared by the two Senators from our State of Minnesota and by Senator STROM THURMOND, so that this matter applies only to employees of the Reserve Mining Co.

Mr. KINDNESS. Mr. Speaker, further reserving the right to object, I thank the gentleman for the clarification.

I would just note the beauty of the mystical draftsmanship of the other body has been appropriately corrected here.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Kansas?

There was no objection.

A motion to reconsider was laid on the table.

AUTHORIZING THE SECRETARY OF THE NAVY TO MAKE A CERTAIN CONVEYANCE OF REAL PROPERTY

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent that the Committee on Armed Services be discharged from further consideration of the bill (H.R. 5682) to authorize the Secretary of the Navy to make a certain conveyance of real property, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. KRAMER. Reserving the right to object, Mr. Speaker, I yield to the gentleman from California [Mr. DELLUMS] so that he might explain his request.

□ 1645

Mr. DELLUMS. I thank the gentleman for yielding.

Mr. Speaker, I will attempt to explain the purposes of the legislation before the House.

Mr. Speaker, this legislation would authorize the Secretary of the Navy to dispose of real property constituting the former naval training center, Bainbridge, Cecil County, MD, at fair market value.

The sale would be conducted in accordance with competitive bidding procedures and the property could not be sold for less than the fair market value.

Under this legislation, the Secretary of the Navy would be further authorized to require any additional terms and conditions that would be necessary to protect the interest of the United States.

However, before this sale can be conducted, Mr. Speaker, all property must be restored to a condition that meets all applicable Federal and State environmental protection regulations. This legislation would authorize the proceeds from the sale to be used to reimburse the costs of property restoration. Consequently, there would be no cost to the Government.

The Secretary of the Navy has indicated that he has no objection to this legislation. He further states that the Navy will be pleased to implement its provisions if enacted.

Mr. Speaker, without this legislation, the property concerned will remain in an unproductive and hazardous state, as has been the case since 1975 when the base was closed. The passage of this bill will enable the Government to restore the property and dispose of it so that once again it can be utilized in a productive manner. I urge passage of H.R. 5682.

Mr. KRAMER. Mr. Speaker, I support the request of my colleague, the gentleman form California, and with that I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. BENNETT). Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the bill, as follows:

H.R. 5682

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LAND CONVEYANCE, CECIL COUNTY, MARYLAND.

(a) AUTHORITY TO SELL.—Subject to subsections (b) through (f), the Secretary of the Navy may dispose of the real property (and improvements thereon) constituting the former Naval Training Center, Bainbridge, Cecil County, Maryland, by sale to private parties or transfer to other government agencies upon such terms and conditions as the Secretary determines to be in the public interest.

(b) COMPETITIVE BIDDING REQUIREMENT.—The sale described in subsection (a) shall be conducted in accordance with competitive bidding procedures prescribed in section 2404 of title 10, United States Code. In no event may the property described in subsection (a) be sold for less than the fair market value thereof.

(c) PROPERTY RESTORATION.—Before any sale, the Secretary shall, using any funds available for such purpose, restore such property to a condition that meets all applicable Federal and State of Maryland environmental protection regulations.

(d) USE OF FUNDS.—Upon the sale of the property, the proceeds from the sale shall be used to reimburse the source from which funds were provided for property restoration under subsection (c).

(e) LEGAL DESCRIPTION OF LAND.—The exact acreage and legal description of the property sold or exchanged under this section shall be in accordance with surveys that are satisfactory to the Secretary.

(f) ADDITIONAL TERMS.—The Secretary may require such additional terms and conditions under this section as the Secretary considers appropriate to protect the interests of the United States.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore (Mr. BENNETT). Is there objection to the request of the gentleman from California?

There was no objection.

ACT TO AUTHORIZE THE UNITED STATES TO PARTICIPATE IN CHAPTER II OF THE PATENT COOPERATION TREATY

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1230) to amend the patent laws implementing the Patent Cooperation Treaty, and ask for its immediate consideration in the House

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

Mr. MOORHEAD. Reserving the right to object, Mr. Speaker, would the gentleman from Wisconsin explain the unanimous-consent request?

Mr. KASTENMEIER. Mr. Speaker, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. Yes, I would be pleased to do so. S. 1230 is a bill relating to implementation of the Patent Cooperation Treaty that has twice passed the House in the form of H.R. 4899—the Patent Equity Act. The bill has the full support of the administration and indeed the gentleman from California [Mr. MOORHEAD] is a cosponsor. There is no known opposition to this measure. It is a good bill that will be signed by the President.

Mr. MOORHEAD. Further reserving the right to object, I wholeheartedly agree with the gentleman's representations. This bill is one small—but important—piece in the plan to improve this Nation's intellectual property system, both domestically and internationally.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1230

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Act to authorize the United States to participate in chapter II of the Patent Cooperation Treaty".

SEC. 2. (a) Section 351(a) of title 35, United States Code, is amended by striking out ", excluding chapter II thereof".

(b) Section 351(b) of title 35, United States Code, is amended by striking out "excluding part C thereof".

(c) Section 351(g) of title 35, United States Code, is amended by—

(1) striking out "term" and inserting in lieu thereof "terms";

(2) inserting "and 'International Preliminary Examining Authority' " after "Authority"; and

(3) striking out "means" and inserting in lieu thereof "mean".

(d) Section 361(d) of title 35, United States Code, is amended to read as follows:

"(d) The international fee, and the transmittal and search fees prescribed under section 376(a) of this part, shall either be paid on filing on an international application or within such later time as may be fixed by the Commissioner.".

SEC. 3. The item relating to section 362 in the analysis for chapter 36 of title 35, United States Code, is amended to read as follows:

"362. International Searching Authority and International Preliminary Examining Authority.".

SEC. 4. Section 362 of title 35, United States Code, is amended to read as follows:

"§ 362. International Searching Authority and International Preliminary Examining Authority

"(a) The Patent and Trademark Office may act as an International Searching Authority and International Preliminary Examining Authority with respect to international applications in accordance with the terms and conditions of an agreement which may be concluded with the International Bureau, and may discharge all duties required of such Authorities, including the collection of handling fees and their transmittal to the International Bureau.

"(b) The handling fee, preliminary examination fee, and any additional fees due for international preliminary examination shall be paid within such time as may be fixed by the Commissioner.".

SEC. 5. Section 364(a) of title 35, United States Code, is amended by—

(a) striking out "or", first occurrence and inserting in lieu thereof ",";

(b) inserting "International Preliminary Examining Authority" after "Authority, or"; and

(c) striking out "both".

SEC. 6. Section 368(c) of title 35, United States Code, is amended by—

(a) striking out the second occurrence of "or" and inserting in lieu thereof ","; and

(b) striking out "both" and inserting in lieu thereof "International Preliminary Examining Authority".

SEC. 7. (a) Section 371(a) of title 35, United States Code, is amended to read as follows:

"(a) Receipt from the International Bureau of copies of international applications with any amendments to the claims, international search reports, and international preliminary examination reports including any annexes thereto may be required in the case of international applications designating or electing the United States.".

(b) Section 371(b) of title 35, United States Code, is amended to read as follows:

"(b) Subject to subsection (f) of this section, the national stage shall commence with the expiration of the applicable time limit under article 22 (1) or (2), or under article 39(1)(a) of the treaty.".

(c) Section 371(c)(4) of title 35, United States Code, is amended by striking the "." and inserting in lieu thereof ";".

(d) Section 371(c) of title 35, United States Code, is amended by adding at the end thereof the following new paragraph (5):

"(5) a translation into the English language of any annexes to the international preliminary examination report, if such annexes were made in another language.".

(e) Section 371(d) of title 35, United States Code, is amended by adding at the end thereof the following sentence: "The requirement of subsection (c)(5) shall be complied with at such time as may be fixed by the Commissioner and failure to do so shall be regarded as cancellation of the amendments made under article 34(2)(b) of the treaty.".

(f) Section 371(e) of title 35, United States Code, is amended by inserting "or article 41" after "28".

SEC. 8. (a) Section 376(a) of title 35, United States Code, is amended by—

(1) inserting "and the handling fee" after the first occurrence of "fee";

(2) striking "amount is" and inserting in lieu thereof "amounts are";

(3) redesignating paragraph (5) as paragraph (6); and

(4) inserting the following new paragraph (5):

"(5) A preliminary examination fee and any additional fees (see section 362(b)).".

(b) Section 376(b) of title 35, United States Code, is amended by—

(1) inserting "and the handling fee" after the first occurrence of "fee" in the first sentence; and

(2) inserting "the preliminary examination fee and any additional fees," after "fee," in the third sentence.

SEC. 9. Sections 2 through 8 of this Act shall come into force on the same day as the effective date of entry into force of chapter II of the Patent Cooperation Treaty with respect to the United States, by virtue of the withdrawal of the declaration under ar-

ticle 64(1)(a) of the Patent Cooperation Treaty. It shall apply to all international applications pending before or after its effective date.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

PROVIDING FOR TAKING FROM THE SPEAKER'S TABLE HOUSE CONCURRENT RESOLUTION 395, WITH SENATE AMENDMENTS, AND DISPOSING OF THE SENATE AMENDMENTS

Mr. MOAKLEY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 598 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 598

Resolved, That upon the adoption of this resolution the House shall be considered to have taken from the Speaker's table the concurrent resolution (H. Con. Res. 395) to correct technical errors in the enrollment of the bill H.R. 3838, with the Senate amendments thereto, and to have disposed of the amendments as follows:

(1) Disagree to the following Senate amendments:

(A) the amendment beginning on line 2 of page 1A of the Senate amendments,

(B) the amendment beginning on line 7 of page 3 of the Senate amendments,

(C) the amendment beginning on line 16 of page 4 of the Senate amendments,

(D) the amendment beginning on line 4 of page 5 of the Senate amendments,

(E) the amendment beginning on line 8 of page 5 of the Senate amendments, and

(F) the amendment beginning on line 9 of page 7 of the Senate amendments.

(2) Agree, with an amendment, to the amendment beginning on line 8 of page 2 of the Senate amendment and agree, with amendments, to the amendment beginning on line 1 of page 8 of the Senate amendments.

(3) Agree, without amendment, to the remainder of the Senate amendments.

The amendment to the Senate amendment beginning on line 8 of page 2 of the Senate amendments is as follows:

At the end of the matter proposed to be inserted by the Senate amendment insert the following:

(QQ) Springville Mill Project, Rockville, Connecticut.

The amendments to the Senate amendment beginning on line 1 of page 8 of the Senate amendments are as follows:

Strike out the proposed paragraphs (294), (297), (305), (310), (319), (320), (322), (326), (343), and (350) and redesignate the other paragraphs accordingly.

Strike out the proposed paragraph (301) and insert the following:

(301) On page 124, in paragraph (1) of subsection (k) (relating to application of at-risk rules), strike out "qualified basis" and insert "eligible basis".

Add at the end of the matter proposed to be inserted by the Senate amendment the following:

(369) On page 83, in subparagraph (S)—

(A) strike out "placed in service" and insert in lieu thereof "to be placed in service", and

(B) strike out "Company" and insert in lieu thereof "Company, or its subsidiaries,".

(370) On page 627, in subparagraph (W) strike out "$225,000,000" and insert in lieu thereof "$25,000,000".

(371) On page 83, in subparagraph (X) strike out "the home rule city and State housing finance agency adopted inducement resolutions on December 20, 1985" and inserting in lieu thereof "the home rule city on December 4, 1985, and the State housing finance agency on December 20, 1985, adopted inducement resolutions".

(372) On page 381, immediately before subsection (e) (relating to effective dates) insert the following:

"(5) Sections 414(m)(4)(A) and 414(n)(3)(A) are each amended by striking out "and (16)" and inserting in lieu thereof "(16), (17), and (26)"."

(373) On page 614, in paragraph (2) of subsection (d) insert before the period "and if section 1313(b)(5) of this Act does not apply to any bond issued with respect to such facility or purpose".

On page 660, in paragraph (50) (relating to certain additional projects), as redesignated by this resolution, strike out "Section 141(a)" and insert in lieu thereof "Section 141(b)".

On page 660, in paragraph (51) (relating to transition bonds subject to certain rules), as redesignated by this resolution, strike out "section 148 and subsection (d) and (g) of section 149" and insert in lieu thereof "sections 147(g), 148, and 149(d)".

(374) On page 8 of the House Concurrent Resolution, strike out "$720,000" and insert in lieu thereof "$7,200,000".

(375) On page 63 of the House Concurrent Resolution—

(A) strike out "with respect to" in line 13 and insert in lieu thereof "with respect to current",

(B) strike out "issued before 1992" in line 14, and

(C) strike out "Section 146 of the 1986 Code and the last" in line 23 and insert in lieu thereof "The last".

□ 1655

The SPEAKER pro tempore (Mr. BENNETT). The gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, I yield the customary 30 minutes, for purposes of debate only, to the gentleman from Ohio [Mr. LATTA], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 598 is a rule providing for further House action on the concurrent resolution, House Concurrent Resolution 395, to correct enrollment of the Tax Reform Act of 1985.

Specifically, Mr. Speaker, this rule provides that upon its adoption the House shall be considered to have taken from the Speaker's table the concurrent resolution, House Concurrent Resolution 395, with the Senate amendments thereto, and to have disposed of the Senate amendments as specified in the rule.

The first portion of the rule provides that in several instances, the House will be deemed to have disagreed to particular Senate amendments. The second portion of the rule provides that the House is deemed to have agreed, with amendments, to two particular Senate amendments. The proposed House amendments to those portions of the Senate amendments are printed in the rule. Finally, Mr. Speaker, the third portion of the rule provides that the House is deemed to have agreed, without amendment, to the remainder of the Senate amendments.

Mr. Speaker, I will defer to the distinguished chairman of the Committee on Ways and Means to discuss the amendments this rule will make to the Senate amendments to House Concurrent Resolution 395. To put this matter in context, however, I would note that the purpose of House Concurrent Resolution 395 is to correct technical errors in the enrollment of the conference report on H.R. 3838, the Tax Reform Act of 1985. Therefore, the intent of this concurrent resolution is to make technical corrections to matters that were considered in the context of the conference on the tax bill. Some of these corrections would fall in the category of simple typographical errors, others embody whole provisions that were either left in the conference report or omitted in error, and in some cases the changes were to correct simple drafting errors.

In order to preserve the ideal of making only technical corrections to enrollment, Mr. Speaker, the one thing that the House managers sought to avoid were so-called new starters—items which were not considered in the context of the conference on the tax bill. The first thing this rule accomplishes, therefore, is to deem that the House disagrees to several Senate amendments to the concurrent resolution which contain these so-called new starters. And as I have already noted, the rule thereafter operates to deem that the House has adopted two amendments to two Senate amendments, and then agree to the remaining Senate amendments.

Mr. Speaker, the House passed the Tax Reform Act last December. The other body passed it in late June of this year. The conference report was agreed to in both Chambers in late September. Without question, we have come a very long way in the 99th Congress on the issue of tax reform. But we stand on possibly the last day of this Congress with one more action to

take on this legislation. Adoption of this rule will facilitate final action on House Concurrent Resolution 395 so that the necessary technical corrections can be made in the enrollment of the tax bill, and so that the tax bill can thereafter be sent to the President for his signature.

Mr. Speaker, I would like to take this opportunity to offer my very sincere congratulations to the Committee on Ways and Means, and particularly its chairman, the gentleman from Illinois, for what has been nothing short of a tireless pursuit of very meaningful and equitable reform of the U.S. Tax Code.

Mr. Speaker, I urge the adoption of this rule.

Mr. LATTA. Mr. Speaker, I ask unanimous consent that I be permitted to offer an amendment to provide that a small business in Ohio would be treated in the same manner in the transition rule as a small business in one of the Western States.

The SPEAKER pro tempore. Does the gentleman from Massachusetts [Mr. MOAKLEY] yield to the gentleman from Ohio for the purposes of a unanimous-consent request?

Mr. MOAKLEY. Mr. Speaker, I yield to the gentleman from Ohio for the purposes of such a request.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

AMENDMENT OFFERED BY MR. LATTA

Mr. LATTA. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LATTA: Section 558 of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new subsection:

"(e) SPECIAL RULES.—

"(2) In the case of an employer who entered into a collective bargaining agreement—

"(A) which was effective on April 1, 1979, and which remained in effect through June 5, 1982, and

"(B) under which contributions to the multiemployer plan were to cease on June 5, 1982,

"(C) of an employer incorporated in the State of Ohio August 16, 1962.

Subsection (a)(1) shall be applied by substituting 'June 12, 1982' for 'September 26, 1980'."

Mr. LATTA. Mr. Speaker, let me say that this matter was discussed in the Rules Committee last night and the chairman of the Ways and Means Committee indicated that there was some dissent by the Committee on Education and Labor.

I have cleared this matter with the gentleman from California [Mr. HAWKINS], chairman of the Committee on Education and Labor, and he supports the amendment.

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from Ohio [Mr. LATTA].

The amendment was agreed to.

Mr. LATTA. Mr. Speaker, I yield 1 minute to the gentleman from Tennessee [Mr. DUNCAN].

Mr. DUNCAN. Mr. Speaker, I rise in support of Chairman ROSTENKOWSKI's proposed amendment to House Concurrent Resolution 395. This resolution corrects many important errors in the file version of the conference report on the Tax Reform Act of 1986. Mr. ROSTENKOWSKI has accurately described the amendments suggested. It would be a tragedy if these errors in the final version of the conference report were not corrected so as to give taxpayers adequate guidance in interpreting the new law which will be signed by the President shortly. For that reason, I urge my colleagues to approve the resolution and send it to the other body for final action.

Mr. MOAKLEY. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. ROSTENKOWSKI], chairman of the Committee on Ways and Means.

Mr. ROSTENKOWSKI. Mr. Speaker, I thank the gentleman from Massachusetts [Mr. MOAKLEY] for yielding this time to me.

Mr. Speaker, House Concurrent Resolution 395 makes certain technical corrections to H.R. 3838, the Tax Reform Act. The concurrent resolution passed the House on September 25, 1986, immediately after passage of the Tax Reform Act.

Yesterday, the Senate approved a number of amendments making certain changes to the concurrent resolution. For the most part, the Senate amendments are technical modifications to provisions of the conference agreement. The rule before us now would accept those technical changes. However, certain of the Senate amendments propose substantive changes to the conference agreement or attempt to reopen issues which were settled in the conference agreement.

This rule would delete those substantive Senate amendments since they contradict the purpose and spirit of the concurrent resolution which is to correct only technical errors in the tax bill.

There are many important technical changes in the concurrent resolution which many Members on both sides of the aisle would like to see made part of the tax bill. Therefore, this rule provides an amendment to the Senate amendment to the concurrent resolution. I urge my colleagues to approve this rule.

Mr. FOGLIETTA. Mr. Speaker, will the gentleman yield?

Mr. ROSTENKOWSKI. I yield to the gentleman from Pennsylvania.

Mr. FOGLIETTA. Mr. Speaker, I rise to engage in a colloquy with the manager of the bill.

I wish to seek clarification from the chairman relating to several technical points relating to the transition rules provided for the two Philadelphia projects referenced in section 1316(g)(2)(A). As you know, these projects have been underway since Congress began work on the 1984 Act.

First, I understand the committee intends to extend the exception to the volume cap for both the projects referenced in section 1316(g)(2)(A) through 1988.

Second, the committee intends that the bond described in the second line of section 1316(g)(2)(A) is one "issued to provide a facility."

Mr. ROSTENKOWSKI. The Representative from Pennsylvania is correct in his understanding of the committee's intent.

Mr. FOGLIETTA. I thank the gentleman.

□ 1705

Mr. BORSKI. Mr. Speaker, will the gentleman yield?

Mr. ROSTENKOWSKI. I yield to the gentleman from Pennsylvania.

Mr. BORSKI. Mr. Speaker, I would like to seek clarification from the chairman of several points relating to the transitional rule provided for the Frankford Arsenal permitting certain expenditures to be expensed in 1986.

I understand the conference committee intends that the Frankford Arsenal project is to include the buildings, the property, and the infrastructure.

Mr. ROSTENKOWSKI. The Representative from Pennsylvania is correct in his understanding of the committee's intent.

Mr. BORSKI. Mr. Speaker, I thank the chairman of the committee.

Mr. ROSTENKOWSKI. Mr. Speaker, I thank the gentleman for yielding.

Mr. LATTA. Mr. Speaker, I yield 1 minute to the gentleman from Minnesota [Mr. FRENZEL].

Mr. FRENZEL. Mr. Speaker, a short while ago this House passed the Tax Reform Act. I voted against it; however, that act is not complete until this resolution is passed.

Those who voted for the tax bill really ought to vote for this resolution, as I shall, to make it a complete unit. I urge the adoption of the resolution.

Mr. LATTA. Mr. Speaker, I yield 1 minute to the gentleman from Nebraska [Mr. DAUB].

Mr. DAUB. Mr. Speaker, I am in support of the bill.

Mr. LATTA. Mr. Speaker, I support the bill and urge Members to vote for it.

Mr. MOAKLEY. Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution, as amended.

The previous question was ordered.

The resolution, as amended was agreed to.

A motion to reconsider was laid on the table.

The text of House Concurrent Resolution 395 is as follows:

On page 3, strike lines 9 through 18.

On page 6, strike lines 1 through 7, and insert: comma and "and", and add at the end thereof the following new subparagraph:

(D) such facility is to serve Haverhill, Massachusetts.

On page 10, line 9, strike "1983" and insert "1993".

On page 13 line 20, strike "or (C)".

On page 14, line 10, strike "Samuel A. Hardage Enterprises" and insert "Interests of Samuel A. Hardage".

On page 16, between lines 16 and 17, insert:

(E) Subsections (c) and (d) of section 49 of the Internal Revenue Code of 1986 shall not apply to property described in section 204(a)(4) of this Act.

On page 19, line 10, insert "Pittsburgh," after "in".

On page 19, between lines 17 and 18, insert:

(NN) Old Louisville Trust Project, Louisville, Kentucky.

(OO) Stewarts Rehabilitation Project, Louisville, Kentucky.

(PP) Bernheim Officenter, Louisville, Kentucky.

On page 25, after line 24, insert the following flush sentence:

In no event shall sections 382(a) and (b) of such Code (as so in effect) apply to any ownership change described in subparagraph (A).

On page 27, line 9, strike "stock in such corporation" and insert "such stock".

On page 27, line 20, after "1989" insert ", without regard to whether such corporation is completely liquidated".

On page 36, strike lines 16 through 18.

On page 38, beginning with line 21, strike through page 39, line 19, and insert:

(116) On page 322, in subsection (d) (relating to treatment of certain market discount bonds)—

(A) strike "28 percent" in paragraph (1) and insert "32 percent", and

(B) strike paragraph (2) and insert:

(2) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of paragraph (1), the term "qualified life insurance company" means any life insurance company subject to tax under part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986.

On page 40, between lines 21 and 22, insert:

(c) REVENUE LOSS LIMITED.—The decrease in the amount of Federal revenue by reason of the amendment made by this section shall not exceed $300,000 per year.

On page 41, strike lines 1 through 4, and insert:

(B) in subparagraph (A)—

(i) strike out "a deferred compensation plan" and insert "employees on August 16, 1986,", and

(ii) insert "maintaining a deferred compensation plan" after "Alabama", and

On page 41, line 7, insert "to" before "individuals".

On page 47, line 8, strike "(b)(2)(D)" and insert "(b)(2)(B)".

On page 47, line 9, strike "884(b)(2)" and insert "884(d)(2)".

On page 52, strike lines 4 through 18.

On page 60, line 25, before "projects" incert "the construction of such diagnostic and treatment center, or to finance construction and renovation".

On page 62, beginning with line 21, strike through page 63, line 25.

On page 66, line 17, strike "subparagraphs (A) and (B)" and insert "subparagraphs (A), (B), and (C)".

On page 71, strike lines 4 through 7, and insert:

(243) On page 76, in paragraph (11) (relating to certain aircraft)—

(A) strike "aircraft" each place it appears in the text and heading and insert "airplane",

(C) strike ", the date of conference committee action)" in subparagraph (B); and

(D) strike subparagraph (C) and insert:

(C) The aircraft is—

(i) purchased on or after August 16, 1986, and before January 1, 1987, or

(ii) is subject to a binding contract which was in effect on August 16, 1986, or entered into on or after August 16, 1986, and before January 1, 1987, and

is delivered and placed in service pursuant to such purchase or contract before July 1, 1987.

Any airplane which is one of 7 airplanes with respect to which an airline signed an airplane purchase agreement on January 20, 1986 (with respect to which the financing contingency was removed no later than February 7, 1986), the estimated cost of which is $2,900,000, and which was delivered before May 23, 1986, and placed in service by May 27, 1986, shall be treated as described in this paragraph.

On page 72, line 4, after "Industries" insert "after December 31, 1988".

On page 72, line 8, strike "paragraph" and insert "paragraphs".

On page 73, after line 25, insert the following:

(39) The amendments made by section 201 shall not apply to any facility for the manufacture of an improved particle board if a binding contract to purchase such equipment was executed March 3, 1986, such equipment will be placed in service by January 1, 1988, and such facility is located in or near Moncure, North Carolina.

On page 74, line 16, insert "(including repairs and maintenance)" before "of".

On page 74, line 20, strike "during 1986" and insert "(and allowable as a deduction) during 1986 and shall be treated as qualified rehabilitation expenditures made during 1986".

On page 76, between lines 17 and 18, insert:

(W) South Carolina Family Farm Development Authority.

(X) Clemson University Continuing Education and the Component Housing Project.

On page 78, strike lines 1 through 16, and insert after "1986" in line 17 "and the amendments made by section 1301 of the Tax Reform Act of 1986".

On page 80, line 12, strike "each place it appears" and insert "the second place it appears".

On page 80, between lines 19 and 20, insert the following:

(286) On page 31, in paragraph (4) of subsection (b) (relating to miscellaneous itemized deductions)—

(A) strike "deduction" and insert "deductions", and

(B) strike the comma at the end and insert "and section 642(c) (relating to deduction for amounts paid or permanently set aside for a charitable purpose),".

(287) On page 32, in the heading of subsection (e), strike "Determination of Adjusted Gross Income in Case of" and insert "Special Rules for".

(288) On page 32, after the period at the end of subsection (e) and before the close quotation marks, insert "For purposes of this section and section 56(b)(1), the deductions allowable to an estate or trust under sections 651 and 661 shall not be treated as itemized reductions.".

(289) On page 56, in subsection (b) (relating to system use for purposes of earnings and profits)—

(A) strike "Paragraph (3)" and insert:

(1) IN GENERAL.—Paragraph (3), and

(B) insert at the end the following new paragraph:

(2) CONFORMING AMENDMENT.—Section 312(k)(4) is amended—

(A) by striking out "paragraphs (1) and (3)" and inserting in lieu thereof "paragraph (1)", and

(B) by striking out the last sentence.

(290) On page 61, immediately before section 202 (relating to expensing of depreciable assets), insert the following new paragraph:

(15) Subparagraph (D) of section 46(e)(4) is amended by striking out "paragraphs (8) and (9) of section 168(j)" and inserting in lieu thereof "paragraphs (5) and (6) of section 168(h)".

(291) On page 62, the last line, insert after the end period the following new sentence: "No election may be made under this subparagraph with respect to property to which section 168 of the Internal Revenue Code of 1986 does not apply by reason of section 168(f)(5) of such Code."

(292) On page 65, at the end of subsection (d) (relating to mid-quarter convention), insert: "The preceding sentence shall only apply to property which would be taken into account if such amendment did apply."

(293) On page 67, in subparagraph (F) insert "either" after "if".

(294) On page 68, in the 21st line, strike "1993" and insert "1998".

(295) On page 81, in paragraph (29)—

(A) strike "January 18" in subparagraph (A) and insert "January 25", and

(B) strike "law suits filed on June 22, 1984, and November 21, 1985" in subparagraph (B) and insert "a law suit filed on October 25, 1985".

(296) On page 84, strike subparagraph (J) and insert the following:

(J) a 25.85 megowatt alternative energy facility located in Deblois, Maine, with respect to which certification by the Federal Energy Regulatory Commission was made on April 3, 1986, and".

(297) On page 84, immediately before subsection (b), insert the following new paragraph:

(40) The amendments made section 201 shall not apply to trucks, tractor units, and trailers which a privately held truck leasing company headquartered in Des Moines, Iowa, contracted to purchase in September 1985 but only to the extent the aggregate reduction in Federal tax liability by reason of the application of this subparagraph does not exceed $8,500,000.

(298) On page 85, the first 12 lines—

(A) insert "and" at the end of subparagraph (B),

(B) strike subparagraph (C), and

(C) redesignate subparagraph (D) as subparagraph (C).

(299) On page 108, in subparagraph (B) of paragraph (3) (relating to certain additional rehabilitations), strike "Pontabla" and insert "Pontalba".

(300) On page 110, in subparagraph (T) of paragraph (4), strike "Louisville" and insert "Covington".

(301) On page 124, in paragraph (1) of subsection (k) (relating to application of at-risk rules)—

(A) strike "subparagraph (D)(iv)(I)" and insert "subparagraphs (D)(ii)(II) and (D)(iv)(I)", and

(B) strike "qualified basis" and insert "eligible basis".

(302) On page 125, the 5th line, before the end period insert: ", except that this subparagraph shall not apply in the case of a Federally-assisted building described in subsection (d)(6)(B) if—

"(i) a security interest in such building is not permitted by a Government agency holding or insuring the mortgage secured by such building, and

"(ii) the proceeds from the financing (if any) are applied to acquire or improve such building."

(303) On page 127, in the third line, strike the period and insert ", and except for any building described in paragraph (2)(B), subsection (h)(4) shall not apply to any building placed in service after 1989.".

(304) On page 141, immediately before subsection (c) (relating to effective date) insert:

(14) Subparagraph (B) of section 172(d)(4) is amended by striking out ", (2)(B),".

(305) On page 167, between the fourth and fifth lines, insert:

(4) SPECIAL RULE FOR CERTAIN RURAL HOUSING.—In the case of any interest in a qualified low-income housing project which—

(A) is assisted under section 515 of the Housing Act of 1949 (relating to the Farmers Home Administration Program), and

(B) is located in a town with a population of less than 10,000 and which is not part of a metropolitan statistical area.

paragraph (1)(B) shall be applied by substituting "35 percent" for "50 percent" and subsection (b)(1) shall be applied by substituting "5th taxable year" for "6th taxable year". The preceding sentence shall not apply to any interest unless, on December 31, 1986, at least one-half of the number of payments required with respect to such interest remain to be paid.

(306) On page 177, the 11th line, insert "amount or" before "payment".

(307) On page 177, strike the last 4 lines, and insert:

"(B) except as provided in regulations, the only earnings and profits of such corporation were earnings and profits—

"(i) accumulated by such corporation (or any predecessor corporation) during such period, and

"(ii) not attributable to distributions from any other corporation unless the stock of such other corporation (or of any predecessor corporation) was held by such corporation during the entire period such other corporation (or predecessor corporation) was in existence, and

(308) On page 190, lines 8 and 9, strike "deposits described in subclause (II)" and insert "the amount of deposits in the new loss corporation immediately after the change".

(309) On page 190, in paragraph (6) (relating to special rule for insolvency transactions), strike "be the value of the new loss corporation immediately after the ownership change" and insert "shall reflect the increase (if any) in value of the old loss corporation resulting from any surrender or cancellation of creditor's claims in the transaction".

(310) On page 193, in the sentence immediately preceding paragraph (5) (relating to bankruptcy proceedings) strike "with respect to domestic building and loan transactions" and insert "with respect to transactions (including firm commitment underwritings) by institutions described in section 591 of such Code".

(311) On page 201, immediately before section 632 (relating to treatment of corporations electing subchapter S status), insert the following new paragraph:

(18) Section 334(b)(2) is amended by striking out "332(c)" each place it appears in the text and heading and inserting in lieu thereof "337(b)(1)".

(312) On page 203, immediately before subsection (b) (relating to treatment of distributions), strike the end quotation marks and insert the following new paragraph:

"(5) TREATMENT OF TRANSFER OF ASSETS FROM C CORPORATION TO S CORPORATION.—

"(A) IN GENERAL.—Except to the extent provided in regulations, if—

"(i) an S corporation acquires any assets from a C corporation, and

"(ii) the S corporation's basis in such assets is determined (in whole or in part) by reference to the basis in the hands of the C corporation.

then this section (other than subsection (c)(1)) shall apply to any recognized built-in gain on the disposition of any such asset.

"(B) SPECIAL RULES.—For purposes of subparagraph (A)—

"(i) paragraphs (1), (2), and (3) shall be applied by substituting the taxable year in which the assets were acquired for the taxable year referred to in such paragraphs, and

"(ii) the net unrealized build-in gain shall be computed by taking into account only such assets."

(313) On page 206, in paragraph (8), strike "becomes an S corporation for a taxable year beginning" and insert "makes an election to be an S corporation under section 1362 of such Code".

(314) On page 206, redesignate subsections (d) and (e) as subsections (e) and (f), respectively.

(315) On page 208, redesignate subsection (f) as subsection (g).

(316) On page 225, the 10th line, strike "contractual option" and insert "contractual obligation".

(317) On page 253, strike subparagraph (E) (relating to standard deduction not allowed) and insert:

"(E) STANDARD DEDUCTION AND PERSONAL EXEMPTION NOT ALLOWED.—The standard deduction under section 63(c) and the deduction for personal exemptions under section 151 shall not be allowed.

(318) On page 264, in paragraph (6)(A) (relating to appreciated property charitable deduction) insert "or 642(c)" after "section 170".

(319) On page 268, the 5th line from the bottom, strike the end quotation marks.

(320) On page 268, between the 4th and 5th lines from the bottom, insert:

"(j) TAXABLE INCOME FOR CERTAIN ORGANIZATIONS.—If the tax imposed by chapter 1 on any organization is determined by reference to an amount other than taxable income, such amount shall be treated as the taxable income of such organization for purposes of this part."

(321) On page 269, fifth line from the bottom, strike "earnings and profits" and insert "current earnings".

(322) On page 273, before the last line, insert:

(L) Section 511 is amended by striking out subsection (d).

(323) On page 295, the 7th line from the bottom, strike "Section 267(a)" and insert "Section 267(a)(2)".

(324) On page 313, in paragraph (3)(C) (relating to limitation on issuer), strike "qualified" the second place it appears.

(325) On page 315, strike subparagraph (P) and insert:

(P) Homewood, Alabama, the Club Apartments.

(326) On page 321, the 3rd, 4th and 6th line, strike "June 20, 1986" and insert "the date of the enactment of this Act".

(327) On page 349, in clause (iv) of paragraph (4)(B) (relating to information required to be supplied), strike "with or within which the taxable year ends" and insert "in which the taxable year begins".

(328) On page 350, in subparagraph (C) of paragraph (2) (relating to special rules for applying section 72), strike "with or within which the taxable year ends" and insert "in which the taxable year begins".

(329) On page 383, the 9th line from the bottom, strike "414(f)(1)(B)" and insert "3(37)(A)(ii)".

(330) On page 384, the first line, strike "Section 202(B)(i)" and insert "Section 202(a)(1)(B)(i)".

(331) On page 398, in section 4979(c) (defining excess contributions), strike "408(k)(8)(B)" and insert "408(k)(6)(C)".

(332) On page 419, line 11, strike "at the end thereof" and insert "after section 4981".

(333) On page 419, line 13, strike "SEC. 4981." and insert "SEC. 4981A.".

(334) On page 421, line 18, strike "at the end thereof" and insert "after the item relating to section 4981.".

(335) On page 421, in the matter following line 18, strike "Sec. 4981." and insert "Sec. 4918A.".

(336) On page 429, the 9th line, strike "(E)" and insert "(D)".

(337) On page 448, immediately before part II (relating to other provisions), insert:

(6) CERTAIN PLANS MAINTAINED BY EDUCATIONAL INSTITUTIONS.—If an educational organization described in section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986 makes an election under this paragraph with respect to a plan described in section 125(c)(2)(C) of such Code, the amendments made by this section shall apply with respect to such plan for plan years beginning after the date of the enactment of this Act.

(338) On page 451, in section 134(b)(1) of the Internal Revenue Code of 1986, as added by section 1168(a) of the Act, insert "(other than personal use of a vehicle)" after "in-kind benefit".

(339) On page 453, in paragraph (1) of section 2057(b) (relating to qualified sale, strike "is".

(340) On page 455, in subclause (II) of paragraph (2)(B)(i) (relating to effective date for subsection (b)), strike "July 18" and insert "May 23".

(341) On page 463, in clause (ii) of subparagraph (I) (relating to transitional rule), strike "1986" and insert "1987".

(342) On page 484, immediately above subsection (d) (relating to effective dates), insert the following new subparagraph:

(D) Paragraph (1) of section 2105(b) (relating to bank deposits and certain other debt obligations) is amended by striking out "section 861(c), if any interest thereon would be treated by reason of section 861(a)(1)(A) as income from sources without the United States" and inserting in lieu

thereof "section 871(i)(3), if any inserting thereon would not be subject to tax by reason of section 871(i)(2)".

(343) On page 488, in subparagraph (C) (relating to special rule), strike "to interest expenses paid or accrued".

(344) On page 511, in paragraph (2) of subsection (e) (relating to certain basis, etc. rules made applicable), strike "who was not" and insert "who was".

(345) On page 517, in the matter added by subsection (b) (relating to coordination of section 1246 with section 1248), strike "section 1248(g)(3)" and insert "section 1248(g)(2)".

(346) On page 543, immediately before part III (relating to cover over of income taxes), insert the following new paragraph:

(9) Section 1444 is amended by striking out "(as modified by section 934A)".

(347) On page 546, insert immediately after subsection (e) the following new subsection:

(f) EXEMPTION FROM WITHHOLDING.—Notwithstanding subsections (b) and (c), the modification of section 884 of the Internal Revenue Code of 1986 by reason of the amendment to section 881 of such Code by section 1273(b)(1) of this Act shall apply to taxable years beginning after December 31, 1986.

(348) On page 606, in paragraph (2) of subsection (b) (relating to section 1301(f)), insert "with respect to non-issued bond amounts elected" after "issued".

(349) On page 610, immediately after subparagraph (F), insert the following new subparagraph:

(G) Except as provided in the last sentence of subsection (c)(2) of this section, the requirements of section 145(b) (relating to $150,000,000 limitation on bonds other than hospital bonds).

(350) On page 615, in line 8, insert "and as having a carryforward purpose described in section 146(f)(5) of such Code," immediately before "but".

(351) On page 653, in clause (ii) of paragraph (33)(A) (relating to application of $150,000,000 limitation for certain qualified 501(c)(3) bonds)—

(A) strike "on" in subclause (II) thereof and insert "dated", and

(B) insert "dated on December 1, 1985" after "(Series 1985 A and 1985 B)" in subclause (III) thereof.

(352) On page 656, the last line, strike "$80,000,000" and insert "$400,000,000".

(353) On page 658, in the second item in the table in paragraph (44) (relating to New Mexico Hospital pool bonds), strike "Bonds Pool" and insert "Equipment Loan Council".

(354) On page 662, strike the end quotation marks at the end of section 673 (relating to reversionary interests).

(355) On page 662, immediately before section 1402(b) (relating to conforming amendments), insert:

"(c) SPELIAL RULE FOR DETERMINING VALUE OF REVERSIONARY INTEREST.—For purposes of subsection (a), the value of the grantor's reversionary interest shall be determined by assuming the maximum exercise of discretion by the fiduciary in favor of the grantor."

(356) On page 682, the fifth line, insert "(or revocable trust)" after "will".

(357) On pages 723 and 724, strike section 1608 and conform the table of contents.

(358) On page 744, in the matter inserted by subparagraph (G)—

(A) strike "Registry of Deeds" each place it appears and insert "Register of Deed", and

(B) strike "May 7, 1985" and insert "May 7, 1984".

(359) On page 758, in paragraph (9)(B), strike "1986" and insert "1954".

On page 784, sixth line from the bottom, strike "1985" and insert "1986".

(360) On page 833, in clause (i) of subparagraph (B) (relating to operating corporation), strike "placement period" and insert "replacement period".

(361) On page 886, strike paragraph (8) (the first 31 lines).

(362) On page 910, the 13th line, strike "401(a)(11)" and insert "205".

(363) On page 910, in subparagraph (B) of paragraph (7) (relating to clarification of nonforfeitable accrued benefit), strike "Subparagraph (C) of section 205(b)(1)" and insert "Clause (i) of section 205(b)(1)(C)".

(364) On page 911, in clause (i) of subparagraph (B) of paragraph (9) (relating to amendments of ERISA), strike "nonforfeitable accrued benefit" and insert "nonforfeitable right (within the meaning of section 203)".

(365) On page 917, the 10th line, strike "means earlier of" and insert "means the earlier of".

(366) On page 917, the 12th line, strike "in".

(367) On page 917, the 14th line, strike "in".

(368) On page 918, the 7th line, strike "section 203" and insert "section 203(e)".

NATIONAL YEAR OF FRIENDSHIP WITH FINLAND

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 645) to designate 1988 as the "National Year of Friendship with Finland," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HORTON. Mr. Speaker, reserving the right to object, and I will not object, but I do take this time to ask the gentleman from New York [Mr. GARCIA] if he will explain the bill; but at the same time I will indicate that I am one of the cosponsors of the bill.

Mr. Speaker, I yield to the gentleman from New York [Mr. GARCIA].

Mr. GARCIA. Mr. Speaker, what the joint resolution does, essentially, it talks about whereas the first Finnish settlers arrived in North America in 1638, with other Nordic settlers, and established the colony of New Sweden in what is now the State of Delaware; that whereas many of the settlers of New Sweden were either natives of Finland or natives of Sweden who spoke Finnish.

At this point, with your permission, if the gentleman from New York would be kind enough to yield to our colleague from Minnesota [Mr. FRENZEL] who is a prime sponsor of the bill.

Mr. HORTON. Mr. Speaker, under my reservation, I yield to the gentleman from Minnesota [Mr. FRENZEL] one of the principal sponsors, along with the other gentleman from Minnesota [Mr. OBERSTAR].

Mr. Speaker, this is a bipartisan bill, and I want to commend the gentleman in the well, Mr. OBERSTAR, for his sponsorship of this legislation. I will be glad to yield to him.

Mr. OBERSTAR. Mr. Speaker, I want to thank particularly the chairman of the subcommittee for taking this time, at this late hour, late in the session, to handle this measure which is of such importance to Americans of Finnish origin.

I want to express my appreciation to the gentleman from New York [Mr. HORTON], who has helped to gather the signatures necessary; Mr. FRENZEL, who had done the same; and especially to the gentleman from Michigan [Mr. DAVID] who is an original cosponsor of this measure with me and who has in his district, Suomi College, a major educational institution founded by Americans of Finnish descent, all of whom, along with Americans of Finnish origin in northern Minnesota, rejoice in this opportunity to pay justified tribute to the 350 years of friendship between Finland and the United States.

Finnish settlers played a role in the American War of Independence, serving in the Revolutionary Army. The early settlers took root in Pennsylvania, Delaware, New Jersey, on the east coast, in New York and in Maryland. They moved inland; migrating to Minnesota, Michigan, Wisconsin and even further on to Alaska.

There was a time in the 1600's when the population of Finns and Swedes in the United States exceeded that of settlers of Spanish, French, and German origin.

Finns have continued to play a role of significance in American cultural, scientific and engineering aspects of our civilization. They have made contributions in education, in mining; they continue to be America's greatest friends in the European comunity.

I suppose the thing that comes first to the minds of Americans is that the Finns were the first and perhaps the only ones to have paid off to the United States their World War I loans and other financial obligations, and they did it with interest, and they did it ungrudgingly.

The Finns are not so happy to have this reminded to them; they feel that is simply a matter of course. They are proud to be self-sustaining, very proud of their relationship with the United States.

This resolution commemorating the 350 years of friendship between Finland and America, recognizing the historical origins of many hundreds of thousands of Americans of Finnish descent is an appropriate way to recog-

nize the historical bonds between our two countries.

Mr. Speaker, I thank the gentleman for bringing up the resolution at this time, and also the gentleman from New York.

Mr. HORTON. Mr. Speaker, I commend the gentleman from Minnesota [Mr. OBERSTAR] for his leadership. I commend him also for the words he has just given us, and the explanation.

Under my reservation, I yield to the gentleman from Minnesota [Mr. FRENZEL].

Mr. FRENZEL. Mr. Speaker, I want to associate myself with the remarks of the distinguished gentleman from Minnesota's Eighth District, who represents most of the Finnish-Americans in my State.

Mr. Speaker, this is an appropriate resolution, and I am delighted to be here when it is passed.

Mr. HORTON. Mr. Speaker, I join with the gentleman in speaking in favor of the resolution.

Mr. Speaker, I withdraw my reservation of objection.

Mr. DAVIS. Mr. Speaker, I commend my good friend and colleague from Minnesota, Mr. OBERSTAR, for his leadership in commemorating the many contributions of American Finns. I am pleased to be an original cosponsor of House Joint Resolution 645 which designates 1988 as the "National Year of Friendship with Finland."

Finnish settlers first arrived in America more than 300 years ago. Their impact on our country's growth and culture has been tremendous. In my northern Michigan district, their contributions are particularly evident. Finns comprise the single largest ethnic group in my district. Their ancestors helped settle northern Michigan and eastern Minnesota, working tirelessly in the iron ore and copper mines. Finnish Americans possess what their native language terms "sisu" or guts. This quality enabled them to persevere in the forbidding frontier of their new home. Sisu continues to be a mainstay of the Finnish work ethic.

Suomi College, known nationally and the world over in Finnish communities, is the only institution of its kind in the United States. It is located in my district and is the cultural focal point for America Finns. Not only is it a fine institution of higher education, it sustains the rich Finnish heritage.

Mr. Speaker, I urge my colleagues to pass this resolution and extend this public overture of good will to our Finnish friends everywhere.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 645

Whereas the first Finnish settlers arrived in North America in 1638 and, with other Nordic settlers, established the colony of New Sweden in what is now the State of Delaware;

Whereas the settlers of New Sweden introduced European civilization to the Delaware River Valley;

Whereas many of the settlers of New Sweden were either natives of Finland or natives of Sweden who spoke Finnish;

Whereas, in the 17th century, Nordic communities existed in what are now the States of Delaware, Pennsylvania, New Jersey, Maryland, and New York;

Whereas Nordic culture was the 3d most represented culture in the original 13 colonies during the 17th century;

Whereas some of the ancestors of John Morton, a signatory of the Declaration of Independence from Pennsylvania, were born in Finland;

Whereas approximately 700,000 Americans of Finnish descent are now living in the United States;

Whereas the contributions of Americans of Finnish descent to American history, culture, and technology have been continuous and substantial;

Whereas, in 1983, festivities commemorating the 300th anniversary of the founding of New Sweden were attended by officials of the Government of Finland, Sweden, and the United States;

Whereas the Governor of the State of Delaware has formally invited the people of Finland to participate in festivities in 1988 commemorating the 350th anniversary of New Sweden; and

Whereas the relationship between the people of Finland and the people of the United States should be commemorated: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That 1988 is designated the "National Year of Friendship with Finland", and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such year with appropriate ceremonies and activities.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Joint Resolution 645, the joint resolution just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 AMENDMENTS

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that the Committee on Interior and Insular Affairs be discharged from further consideration of the Senate bill (S. 2091) to amend the provisions of the Federal Land Policy and Management Act of 1976 relating to the acquisition of public lands, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. MARLENEE. Mr. Speaker, reserving the right to object, and I will not object, I would ask the gentleman if this is the Olmsted Act, and ask him to explain the legislation.

Mr. Speaker, I yield to the gentleman from Ohio [Mr. SEIBERLING].

Mr. SEIBERLING. Mr. Speaker, the bill marks a major step in recognizing the importance of designed historic landscapes in our country. Frederick Law Olmsted, Sr., was the Nation's foremost landscape architect in the 19th century, and he is considered the father of landscape architecture in the United States.

Olmsted left a tremendous legacy, from the design of Central Park in New York and the U.S. Capitol grounds in Washington, D.C., to hundreds of other parks and landscapes throughout the country.

Olmsted's legacy also embraces the work of his sons, partners and associates. The Olmsted Heritage Landscapes Act would establish a program to inventory their works on a State-by-State basis.

The bill, which passed the House on June 3, 1985, would be amended in accordance with an understanding with Members of the other body to address some additional concerns raised by the National Park Service—which would administer the act on behalf of the Secretary of the Interior—and by several owners of Olmsted landscapes.

The amendments essentially clarify the original intent of the bill that this is a research program, not a regulatory one. The program would use existing procedures to form a useful, well-documented information base. Unlike historic buildings, landscapes have never been systematically surveyed, and very little information is readily available on them.

The amended bill would further clarify that the listing portion of the inventory under section 5(c) is not to be construed to define the historical value of a listed landscape, absent a determination of its eligibility for the National Register and that the Secretary's standards under section 6 are simply guidelines for applying existing standards for preservation projects to historic landscapes.

Other changes, all of which are acceptable to the House sponsors of the bill, would include deletion of the reference to a new Olmsted heritage landscape system, extension of various deadlines, and transfer of the technical committee from the Advisory Council on Historic Preservation to the Secretary of the Interior.

It should be noted that there are, already, several private efforts to identify the Olmsted heritage, including by the National Association of Olmsted

Parks, the American Society of Landscape Architects and the Frederick Law Olmsted Papers. These organizations, however, recognize that the size and complexity of the task indicate that the assistance and leadership of the Federal Government is both appropriate and necessary. These organizations—along with others such as the National Trust for Historic Preservation, Preservation Action, and the National Conference of Historic Preservation are strong supporters of the legislation.

One other point of clarification I would like to make about the bill. It has always been my intent that the Secretary of the Interior would have some discretion about what properties are actually included on the inventory.

Currently there are several so-called job lists of the work of Olmsted and his firm. These can be a bit misleading, since many of the jobs on the list were never actually executed. In some cases, the reference is merely to correspondence between Olmsted and a potential client, but the job was never carried out or Olmsted's involvement was so minor as to have been insignificant. Clearly these are cases which would not warrant inclusion of the property on the Olmsted list established under this act.

Last, I would simply like to thank a number of individuals who have contributed to the success of this legislation, including Ann Satterthwaite, chairperson of the National Association of Olmsted Parks; Patricia O'Donnell, Darwinna Neal, and Ray Freeman of the American Society of Landscape Architects; Charles Beveridge and Charles McLaughlin, editors of the Frederick Law Olmsted Papers; Nellie Longsworth, president of Preservation Action; Jack Walter, president of the National Trust for Historic Preservation, Charles McGimsey of the Society of Professional Archeologists, and Nancy Miller and Eric Hertfelder of the National Conference of State Historic Preservation Officers.

I would also like to thank Loretta Neumann and Janet Chisholm of the majority staff of the Subcommittee on Public Lands and Rick Agnew and Jean Toohey of the minority staff of the Committee on Interior and Insular Affairs, and National Park Service Director William Penn Mott and his associate director, Jerry Rogers.

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Mr. MARLENEE. Mr. Speaker, further reserving the right to object, I yield to my colleague, the gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. I thank the gentleman for yielding.

Mr. Speaker, I compliment the gentleman from Ohio for bringing this bill forward. I know how important this is to him. I want to just remark that among the Olmsted project designs there are a number of them in San Bernardino including one that is the city hall garden which is right across from my office there.

Another one that is rather important to me is what is described in the list as the Ventura County Building, which today is the seat of government for the city of Ventura. It was the seat for the county.

That holds very many fond memories for me. That is where I was sworn in to the State senate a number of years ago. It is also where I was born, even longer ago.

I congratulate my colleagues.

Mr. MARLENEE. Further reserving the right to object, I yield to the gentleman from Minnesota.

Mr. VENTO. I thank the gentleman from Montana for his cooperation.

Mr. Speaker, I want to commend the chairman of the Subcommittee on Public Lands for his work on this legislation. We had a special order the other night for the gentleman, but I think again, this shows the breadth and talent of our colleague from Ohio who will be ending his service this session. I felt it appropriate this last day that it is a hallmark of this man, of our colleague to be here pursuing in detail a proposal like this of such merit. Of course, obviously it is with great regret that I personally, and I am sure this body, will miss seeing him. I want to publicly state that, and I want to publicly thank him for the guidance and help he has given me and many other Members of this body.

He is an outstanding Member who will be missed.

Mr. MARLENEE. Further reserving the right to object, I would like to commend the chairman of the Subcommittee on Public Lands for the excellent work that he has done not only on this bill but on a number of pieces of legislation, many numerous pieces of legislation that have gone through this Congress in the past 2 years. It has been my pleasure to work with him. I would urge that we proceed with this. The bill is a modest proposal aimed at evaluating and identifying landscapes and protecting them.

Mr. Speaker, further reserving the right to object, I yield to the chairman of the Subcommittee Public Lands.

Mr. SEIBERLING. I thank the gentleman not only for his help and cooperation in this matter, but I have gotten to know the gentleman over the years that we have been associated together. We did not always agree, but I have gotten very fond of him personally and I think that we have each learned from each other, and I really appreciate the role he has played as well as the gentleman from Alaska with whom I have developed a similar relationship. I thank him and the minority staff as well as the majority staff for the great work they have done, without which none of us could accomplish very much.

Mr. MARLENEE. Mr. Speaker, I thank the gentleman.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

Mr. WALKER. Reserving the right to object, Mr. Speaker, I do so to question the gentleman. It is my understanding that as of yesterday the administration and particularly the Office of Management and Budget was vehemently opposed to this particular piece of legislation. Has the administration indicated at this point that they are in favor of the passage of this legislation?

Mr. SEIBERLING. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Ohio [Mr. SEIBERLING].

Mr. SEIBERLING. I thank the gentleman for yielding.

Mr. Speaker, I have no indication that they are in favor of it. However, I do not think they are vehemently opposed to it if indeed they are opposed to it at all.

I have a letter from the director of the National Park Service to Senator MOYNIHAN, a cosponsor of it, dated November 26, 1985, and he points out that he recommends that the Secretary not oppose the bill if the amendments that the Park Service requested were adopted by Congress.

The amendments have been adopted, are incorporated in this bill and therefore, as far as I can tell, the administration has no position against this bill.

The bill does not add any significant cost at all. It uses the existing Park Service organization to simply compile the list of Olmsted historical landscapes and to evaluate the list.

So the Park Service is supporting this bill based on the director's letter. Since it does not add any significant cost, if any, to the administration's operations, I do not imagine that the OMB at this point is going to have any position against this bill.

Since this is a revised bill, I doubt if they have a position at all.

Mr. WALKER. Further reserving the right to object, I yield to the gentleman from Montana [Mr. MARLENEE].

Mr. MARLENEE. Mr. Speaker, the administration has never contacted me as the ranking member on the Subcommittee on Public Lands that they did in fact oppose this. It is rather harmless. It is my understanding with regard to the budget it is harmless. There are no moneys appropriated, no moneys obligated. If the administration, and I emphasize "if," if they did have an objection, it would be because this, as I understand it, simply restates

what they could already do administratively.

Mr. WALKER. Further reserving the right to object, the gentleman indicates there is no money. The information that was given to me was there is $2 million to $3 million worth of cost involved in this bill. Is that not correct?

Mr. SEIBERLING. If the gentleman will yield, that was the original bill. The bill has been revised and that is no longer the case.

Mr. WALKER. Further reserving the right to object, what changed which eliminated the cost?

Mr. SEIBERLING. The original bill directed the Park Service to conduct an extensive evaluation as well as an inventory and to provide technical assistance and advice, and we have drastically curtailed the bill so that that requirement is no longer here.

Mr. WALKER. Further reserving the right to object, I yield to the gentleman from New York [Mr. DIOGUARDI].

Mr. DIOGUARDI. I thank the gentleman for yielding.

I would like to clarify a point on this. I have gotten several letters on these Olmsted properties, the concern being that they were listing properties that were not strictly Olmsted properties but done by the studios or done by the firm and not by Olmsted himself. One of these properties is in my district, the Society of New York Hospital property, 230 acres.

Could the gentleman clarify this for me please?

Mr. SEIBERLING. We have done two things. We have greatly narrowed the definition of what works by the Olmsted brothers firm are covered by this legislation in terms of listing the works and, second, in order to eliminate the original source of the complaint, we have simply made it clear that the New York Hospital property, by name, is simply removed from the bill. So that that eliminates the source of that complaint.

Mr. DIOGUARDI. So the bill recognizes that the 230 acres of Westchester County for New York Hospital is specifically excluded from the provisions of this bill.

Mr. SEIBERLING. Yes. On page 6 of the bill it provides "notwithstanding any other provisions of this title, no provision of this title shall apply to the approximately 230 acres of property owned by the Society of the New York Hospital on Bloomingdale Road in White Plains, New York."

Mr. DIOGUARDI. So this is an explicit recognition that that property is not an Olmsted property.

Mr. SEIBERLING. No; it simply says it is not covered by the bill. We cannot rewrite history as to who did the landscaping. We are explicitly stating as explicitly as you can that it is not covered by the bill.

Mr. WALKER. Further reserving the right to object, can the gentleman tell me when that language went into the bill?

Mr. SEIBERLING. The language went into the bill today to satisfy the concerns of the New York Hospital.

Mr. WALKER. I thank the gentleman.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2091

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 205 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715(c)) is amended—

(1) in the first sentence of subsection (c) by striking out "Lands and interests" and inserting in lieu thereof "Except as provided in subsection (e), lands and interests"; and

(2) by adding at the end thereof the following new subsection:

"(e) Lands acquired by the Secretary pursuant to this section or section 206 in exchange for lands which were revested in the United States pursuant to the provisions of the Act of June 9, 1916 (39 Stat. 218) or reconveyed to the United States pursuant to the provisions of the Act of February 26, 1919 (40 Stat. 1179), shall be considered for all purposes to have the same status as, and shall be administered in accordance with the same provisions of law applicable to, the revested or reconveyed lands exchanged for the lands acquired by the Secretary.".

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. SEIBERLING

Mr. SEIBERLING. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. SEIBERLING: Strike all after the enacting clause and insert:

TITLE I—AMENDMENTS TO FEDERAL LAND POLICY AND MANAGEMENT ACT

SECTION 101. ACQUISITION OF PUBLIC LANDS.

Section 205 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1976 (43 U.S.C. 1715(c)) is amended—

(1) in the first sentence of subsection (c) by striking out "Lands and interests" and inserting in lieu thereof "Except as provided in subsection (e), lands and interests"; and

(2) by adding at the end thereof the following new subsection:

(e) Lands acquired by the Secretary pursuant to this section or section 206 in exchange for lands which were revested in the United States pursuant to the provisions of the Act of June 9, 1916 (39 Stat. 218) or reconveyed to the United States pursuant to the provisions of the Act of February 26, 1919 (40 Stat. 1179), shall be considered for all purposes to have the same status as, and shall be administered in accordance with the same provisions of law applicable to, the revested or reconveyed lands exchanged for the lands acquired by the Secretary.".

TITLE II—OLMSTED HERITAGE LANDSCAPES

SEC. 201. CONGRESSIONAL FINDINGS.

The Congress finds and declares that—

(1) Frederick Law Olmsted, Senior, the premier American landscape architect during the nineteenth century, is considered the father of landscape architecture in the United States;

(2) Olmsted's philosophy and designs influenced the development of landscapes through the Nation, including National, State, and local parks, forests, parkways, scenic reservations, college campuses, cities and planned communities, and publicly and privately owned estates, institutions, cemeteries, and recreation areas.

(3) Through the partnership formed by Frederick Law Olmsted, Sr., Olmsted's sons, and their associates carried out his philosophy and designs well into the twentieth century and, coupled with the achievements of Olmsted himself, have left a tremendous legacy of historic landscapes and a philosophy that continues to benefit the American people and people throughout the world.

(4) Olmsted's social responsibility, ecological sensitivity, and landscape design creativity have inspired the development of large urban parks for public benefit in urban areas through the United States, creating a legacy of parks which today constitute a singular feature of the urban experience.

(5) Age, overuse, deteriorating infrastructure, inadequate maintenance, and inappropriate developments threaten many of these historic landscapes.

(6) Although voluntary, private efforts have been initiated to identify, commemorate, restore, and preserve the Olmsted legacy, the size and complexity of the task place the Federal Government, by virtue of its expertise relating to parks and historic preservation, in an especially appropriate position to assist in public and private efforts to identify and record the Olmsted legacy.

SEC. 202. DEFINITIONS.

As used in this title—

(1) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(2) STATE OUTDOOR RECREATION LIAISON OFFICER.—The term "State outdoor recreation liaison officer" means the State officer designated as such under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4-4601-11).

(3) OLMSTED HERITAGE LANDSCAPE.—The term "Olmsted heritage landscape" means any landscape, park, forest, parkway, scenic reservation, college campus, planned community, estate, institution, cemetery, or recreation area designed by Frederick Law Olmsted, Senior, his sons and partners, and his associates Calvert Vaux, Charles Eliot, Warren Manning, Jacob Weidenmann, Horace W. S. Cleveland, William Hammond Hall, and George Kessler.

(4) HISTORIC DESIGNED LANDSCAPE.—The term "historic designed landscape" means any designed landscape included in or eligible for inclusion in the National Register of Historic Places.

(5) INVENTORY.—The term "inventory" means the inventory of Olmsted heritage landscapes prepared pursuant to this title.

(6) DOCUMENTATION.—The term "documentation" includes drawings, blueprints, photographs, and other available records.

As used in this title, the terms "preservation", "State historic preservation officer", "State", and "local government" have the same meaning as when used in the National

Historic Preservation Act (16 U.S.C. 470-470t).

SEC. 203. HISTORIC DESIGNED LANDSCAPE POLICY.

The Secretary shall, through the utilization of existing procedures and programs, encourage the identification, preservation, and commemoration of historic designed landscapes.

SEC. 204. OLMSTED INVENTORY.

(a) PREPARATION.—The Secretary, acting through the Director of the National Park Service, and with the participation of other appropriate Federal agencies, State historic preservation officers, State outdoor recreation liaison officers, organizations representing local elected officials and local governments, concerned public and private organizations, academic institutions, professional associations, and interested individuals, shall direct that an inventory of Olmsted heritage landscapes be prepared. In the preparation and evaluation of the inventory, existing data and procedures shall be used to the maximum extent possible.

(b) AVAILABILITY.—The inventory shall be compiled on a State-by-State basis. Appropriate access to the inventory shall be provided at the Library of Congress, the Frederick Law Olmsted National Historic Site, Brookline, Massachusetts; the National Park Service regional headquarters, and at appropriate State offices.

(c) ELEMENTS OF INVENTORY.—

(1) TWO ELEMENTS.—The inventory shall consist of the following two elements—

(A) LISTING.—A listing of all Olmsted heritage landscapes, which shall contain a description of the landscape, its location, its principal designer or designers, and its present status, to be completed within three years after the date of the enactment of this Act. The listing of a landscape under this subparagraph is for purposes only of documenting the existence of such landscape. Such listing shall not be construed to define the historical value of the listed landscape in the absence of a determination under the National Historic Preservation Act that such landscape is eligible for inclusion on the National Register of Historic Places.

(B) EVALUATION.—A technical evaluation of all publicly owned Olmsted heritage landscapes, and of all Olmsted heritage landscapes on or eligible for inclusion on the National Register of Historic Places, to be substantially completed within ten years after the date of the enactment of this Act. Such evaluation shall be carried out with the consultation and participation referred to in subsection (a).

Notwithstanding any other provision of this title, no provision of this title shall apply to the approximately 230 acres of property owned by the Society of the New York Hospital on Bloomingdale Road in White Plains, New York.

(2) EVALUATION PORTION.—The technical evaluation portion under paragraph (1)(B) shall include at least the following—

(A) documentation on the design intention of the landscape, including its philosophical base, purpose, and social and physical aspects;

(B) documentation on the means by which the design intention was carried out, including horticulture, mechanical aspects (such as topographical alterations, roads, drainage, sewage systems, and structures), and other means;

(C) evaluation of the landscape's philosophical or physical influence on other sites and landscape designs;

(D) evaluation of the landscape's historical significance; and

(E) assessment of the historic integrity of the landscape at the time of its evaluation.

The inventory shall be updated as necessary. It shall be reviewed periodically (but not less frequently than every ten years) with the consultation and participation referred to in subsection (a).

SEC. 205. FEDERAL ASSISTANCE.

(a) DUTIES OF SECRETARY OF THE INTERIOR.—The Secretary of the Interior shall—

(1) in consultation with the Advisory Council on Historic Preservation, promulgate, as soon as practicable after the enactment of this Act, guidelines for applying the Secretary's Standards for Historic Preservation Projects to historic designed landscapes;

(2) provide technical assistance to other Federal agencies, State and local governments, private organizations and interested individuals, on the identification, commemoration, and preservation of historic designed landscapes;

(3) conduct and submit to the Congress, within five years after the enactment of this Act, a thematic study of historic designed landscapes to identify landscapes (including Olmsted heritage landscapes) which would qualify as national historic landmarks and to make findings and recommendations regarding their status and any maintenance or capital investment needs; and

(4) encourage a compatible program for the use of the Frederick Law Olmsted National Historic Site, Brookline, Massachusetts, as a center for research, fellowships, and related activities.

The above activities shall be conducted with the consultation and participation of those entities referred to in section 204(a).

(b) COORDINATION OF GRANT APPLICATIONS.—The Secretary shall take such steps as may be necessary to provide for and encourage the coordination of applications for grants from the Historic Preservation Fund, from the Land and Water Conservation Fund, and under the Urban Park and Recreation Recovery Program—

(1) which will assist the preservation of historic designed landscapes (including Olmsted heritage landscapes), and

(2) which are consistent with the criteria and standards developed under this title.

Nothing in this subsection shall be construed to alter or affect the requirements applicable to the making of grants from the Historic Preservation Fund, from the Land and Water Conservation Fund, or under the Urban Park and Recreation Recovery Program.

SEC. 206. PUBLIC AND PRIVATE COOPERATION.

The Secretary (and State and local governments participating in programs under this title) shall encourage maximum public participation in all aspects of the program established under this title.

SEC. 207. COMMEMORATION.

In order to commemorate the Olmsted achievements and influence on American life, the Secretary, in consultation with the Librarian of Congress, the Secretary of the Smithsonian Institution, and the Chairman of the Advisory Council on Historic Preservation, and with the participation of government agencies, concerned public and private organizations, academic institutions, professional associations, and interested individuals, shall coordinate appropriate activities during the decade of 1986 to 1995.

SEC. 208. TECHNICAL COMMITTEE.

(a) ESTABLISHMENT.—There is hereby established the Technical Committee on Olmsted Heritage Landscapes (hereinafter referred to as "the Committee"). The Committee shall advise the Secretary with respect to his duties and responsibilities under this Act and provide assistance as may be appropriate concerning Olmsted heritage landscapes, including but not limited to—

(1) recommending inventory priorities and standards for the identification, commemoration, and preservation of Olmsted heritage landscapes;

(2) assisting the Secretary in evaluating understakings that may affect Olmsted heritage landscapes and other historic designed landscapes; and

(3) making other recommendations concerning the implementation of this Act.

(b) COMPOSITION.—The Committee shall be composed of 13 members, to be appointed by the Secretary, as follows—

(1) 2 members to be appointed from recommendations submitted by national organizations concerned with Olmsted parks and heritage landscapes, Olmsted papers, and other Olmsted memorabilia;

(2) 2 members to be appointed from recommendations submitted by national organizations concerned with landscape architecture, historic architecture, architectural history, and historic preservation;

(3) 2 members to be appointed from recommendations submitted by national organizations concerned with parks, conservation, and recreation;

(4) 1 member to be appointed from recommendations submitted by statewide organizations concerned with Olmsted heritage landscapes or historic designed landscapes;

(5) 4 members who represent owners of privately-owned Olmsted heritage landscapes, at least two of which shall be Olmsted heritage landscapes owned by educational or charitable institutions; and

(6) 2 members who represent owners of publicly-owned Olmsted heritage landscapes.

The Chairman of the Committee shall be designated by the Secretary from among the members of the Committee and shall coordinate the activities of the Committee with those of the Advisory Council. Each member of the Committee shall serve for a term of four years from the expiration of his predecessor's term; except that the members first appointed shall serve terms of one to four years, as designated by the Secretary at the time of appointment, in such manner as to ensure that the terms of not more than two members will expire in any one year. A member may not serve more than two terms. A member whose term has expired shall serve until that member's successor has been appointed. The Secretary shall fill vacancies in the same manner as original appointments are made.

(c) COMPENSATION.—Members of the Committee shall serve without compensation as such, but may receive reimbursement for necessary travel and subsistence expenses reasonably incurred in carrying out their responsibilities under this Act.

(d) CONSULTATION.—The Secretary (or his designee) shall from time to time, but at least semiannually, meet and consult with the Committee on matters relating to the evaluation, commemoration, and preservation of Olmsted heritage landscapes, and shall seek the recommendations of the Committee during any consultation process required by the National Historic Preserva-

tion Act when that process concerns an Olmsted heritage landscape. Upon the request of the Committee, the Secretary shall provide such staff support as necessary.

(e) TERMINATION.—The Committee shall terminate on December 31, 1995, but may be extended by the Secretary for not longer than 5 additional years unless otherwise determined by the Congress.

Mr. SEIBERLING (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The SPEAKER. The question is on the amendment in the nature of a substitute offered by the gentleman from Ohio [Mr. SEIBERLING].

The amendment in the nature of a substitute was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

There was no objection.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate, by Mr. Hallen, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the joint resolution (H.J. Res. 738) "Joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes.".

The message also announced that the Senate agrees to the amendment of the House to the amendment of the Senate numbered 124 to the above-entitled bill.

The message also announced that the Senate disagrees to the amendment of the House to the amendment of the Senate numbered 19 to the above-entitled bill.

The message also announced that the Senate agrees to the amendment of the House to the amendment of the Senate numbered 59 with an amendment.

The message also announced that the Senate disagrees to the amendment of the House to the amendment of the Senate numbered 117 to the above-entitled bill.

The message also announced that the Senate recedes from its amendment numbered 23 to the above-entitled bill.

CONTINUING APPROPRIATIONS, 1987

Mr. WHITTEN. Mr. Speaker, I move to take from the Speaker's table the joint resolution (H.J. Res. 738) making continuing appropriations for the fiscal year 1987, and for other purposes, with the remaining Senate amendments numbered 19, 59, and 117, and offer the following motions:

The Clerk read the title of the joint resolution.

Mr. WHITTEN. Mr. Speaker, I offer several motions.

The SPEAKER. The Clerk will report the first motion.

MOTION OFFERED BY MR. WHITTEN

The Clerk read as follows:

Mr. WHITTEN moves that the House recede from its amendment to the Senate amendment numbered 19 and concur therein.

The SPEAKER. The question is on the motion offered by the gentleman from Mississippi [Mr. WHITTEN].

The motion was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER. The Clerk will report the second motion.

MOTION OFFERED BY MR. WHITTEN

The Clerk read as follows:

Mr. WHITTEN moves that the House concur in the Senate amendment to the House amendment to the Senate amendment numbered 59.

The SPEAKER. The question is on the motion of the gentleman from Mississippi [Mr. WHITTEN].

The motion was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER. The Clerk will report the last motion.

MOTION OFFERED BY MR. WHITTEN

The Clerk read as follows:

Mr. WHITTEN moves that the House recede from its amendment to the Senate amendment numbered 117 and concur therein.

The SPEAKER. The question is on the motion offered by the gentleman from Mississippi [Mr. WHITTEN].

The motion was agreed to.

A motion to reconsider was laid on the table.

Mr. REGULA. Mr. Speaker, I will very reluctantly recommend that the House recede to the Senate on the so-called Buy America amendment. I do this Mr. Chairman with great reluctance. Just 2 days ago this body voted overwhelmingly (264 to 133) to maintain the Buy America requirement for offshore oil rigs. I remain convinced that this is the right policy decision, and this body supported my conviction. However, it will not be the first time that other considerations get in the way of making good policy decisions and realistically I cannot hope to further delay the already late adjournment.

Mr. Speaker, I can assure my colleagues that this issue will not go away. Thousands of American jobs are at stake here. All but one of the 10 bid awards since 1982 for the jackets and pilings of West Coast offshore oil platforms have been placed with Korean and Japanese producers. Those workers will not go away and I am only hopeful that next year it will not be too late to again attempt to preserve their jobs.

Mr. Speaker I am hopeful that the strong show of support the Buy America provision has received in the House will send a message that this body is concerned with protecting American jobs. America's industries must work in tandem if we are to remain competitive abroad. Whether it be the oil industry or the steel industry it is important that we maintain our productive capability. We as a nation must insure that we do not become a nation of service industries. A strong industrial base is as critical to our national security as any of the money we have just appropriated for defense spending or foreign aid. All of our domestic industries must begin to voluntarily think twice before we export American jobs, American productive capacity, and American technology in the name of short-term savings.

GENERAL LEAVE

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the disposition of Senate amendments No. 19, 59, and 117 to House Joint Resolution 738.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

REQUEST FOR CONSIDERATION OF A JOINT RESOLUTION

Mr. MYERS of Indiana. Mr. Speaker, I have a joint resolution which I send to the desk for its consideration.

The SPEAKER. The Chair has no knowledge of a motion of this type being raised. To his knowledge, it has not been cleared by the leadership on either side.

Mr. MYERS of Indiana. Mr. Speaker, I ask unanimous consent that I might be given the opportunity to explain.

The SPEAKER. The Chair will recognize the gentleman for 1 minute but not for the purpose of offering a motion.

Mr. MYERS of Indiana. Mr. Speaker, we have just been notified by OMB that because of the lapse there was no authority to pay, no appropriation, and the people that were sent home today through no fault of their own will not be paid unless we allow this resolution to be considered and passed today. This is a simple resolution to pay the people that had to go home today because Government was closed down through no fault of their own.

The SPEAKER. The Chair has great concern also but insists the Member go through proper channels.

□ 1730

PARLIAMENTARY INQUIRY

Mr. MYERS of Indiana. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. MYERS of Indiana. Mr. Speaker, is my understanding correct that this resolution may not be offered at this time, but after the Chair has an opportunity to examine it?

The SPEAKER. It is the obligation of the Chair to run the schedules of the House. In view of the fact the gentleman has not cleared the resolution, to my knowledge, with his own leadership or with the majority leadership, I would say that that is the way we schedule the program. One of the great prerogatives of the Speaker is the ability to schedule the program, and at this particular time, the Chair does not recognize the gentleman for the purpose, but appreciates the gentleman and his tender heart.

LEGISLATIVE PROGRAM

(Mr. FOLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FOLEY. Mr. Speaker, Members should be advised that further legislation is expected tonight. H.R. 6 is expected to reach the floor for consideration within the next half hour, 20 minutes or a half an hour from now. We hope Members will be conscious of the fact that that is a major piece of legislation which we are going to consider. Other legislation may be considered as well.

It is anticipated that the House will finish its business this evening, but only after the regular program has been completed.

Mr. MICHEL. Mr. Speaker, will the gentleman yield?

Mr. FOLEY. I yield to the gentleman from Illinois.

Mr. MICHEL. Mr. Speaker, I really do not have anything significant to add to that.

In view of the fact that the meeting that we were to have with the distinguished majority leader over in the other body and the minority leader was delayed a few moments, and then we were obliged to come and dispose of this last moment's business here, it may very well be that now that we have concluded with this business that we can get a little bit better update, and hopefully to tell the Members more definitively. But from my vantage point, it looks very much like our pressing for getting this all accomplished has borne fruit and we can get out of here tonight.

Mr. FOLEY. Mr. Speaker, I think the gentleman is correct.

We will not be considering the adjournment resolution until after the consideration of H.R. 6. But there does not appear to me to be too much reason that we could not complete the program this evening.

Mr. MICHEL. Mr. Speaker, I want to thank the Members particularly for their cooperation and their facilitating our moving along as we have in these last couple of days.

I think the procedure that we have kind of inaugurated here between the majority and the minority with respect to advance notice on unanimous consent requests, at least a 20-minute notice, except for that last one here that we had no notice about and it fell by the wayside for the moment at least, because of our wanting to stick to that principle is the only way of having some orderly conclusion of these proceedings. I want to thank the Members for their cooperation in that respect.

Mr. FOLEY. Mr. Speaker, I certainly share the gentleman's expression of gratitude to the Members. I would like to say for our side that we appreciate the cooperation of the minority in the closing hours.

JOB WARS IS MORE IMPORTANT THAN STAR WARS

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute.)

Mr. TRAFICANT. Mr Speaker, I would just like to say that it is very disappointing to see that the Congress did not take up the issue of the trade bill, and also to see that the continuing resolution was stripped of the buy-American amendment that was brought forward by Mr. REGULA of Ohio.

I think it is a sad day when the most important issue facing the Congress is trade, that Congress will now adjourn, turning its cheek on America's greatest problem.

We talk about expanding the debt limit and the national debt. We have a trade deficit approaching $200 million, and it seems that the people in this House are oblivious to the problems we face.

I am hoping that those returning to this House in the 100th Congress will give the issue of trade the concern it truly deserves. I believe that job wars, in the Speaker's own language, is the most important issue in America, not star wars.

In closing, I have been very honored to serve in the 99th Congress with the Speaker of the House who is leaving us.

WE SHOULD TAKE PRIDE IN THE 99TH CONGRESS

(Mr. SCHEUER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHEUER. Mr. Speaker, as we look back at the 99th Congress during its last hours in a moment of retrospect, I must agree that it is true, as the prior speaker said, that we did not take up the crisis in trade, and we did not take up our deficit crisis. There are a lot of things that we have not done.

But I think if we look at some of the things that we have done, we can take great pride in this institution, and we can go back to our districts, those of us who are running for reelection to the 100th Congress, with great pride.

We have passed a monumentally important tax bill that brings fairness and equity to our tax laws. Just yesterday, we passed a drug bill with an enormous consensus-making effort on the part of Democrats and Republicans and the leadership and Members, alike.

I think that these acts, and many, many others, prove that this Congress can function. We are not perfect. But for 200 years now, the Congress has functioned, changing Members and changing party control by the ballot and not by the bullet. There have been no punches, there has been no violence. That is a pretty good record for 200 years.

It is generally regarded as the greatest legislative body in the world. Despite our occasional glimpses at our warts and pimples, the American people seem to like the way we function. Although we are constantly subject to a continuous barrage of criticism, most of us get reelected. Most constituencies think that their Congressman is a great guy, even though they may dislike the Congress as a whole and think that there are a lot of bums and scoundrels down there in Washington. We have a remarkable record of reelection, so we must be doing something right.

I think we should in our last moments here, before we go back to try to come back in the 100th Congress, stop for a moment and take pride in what we have accomplished.

Our beloved and respected and revered Speaker has completed the longest continuous service as Speaker in our history. Our minority leader [Mr. MICHEL] is respected and admired for his ability, for his hard-driving partisanship when that is appropriate, and also for his quintessential sense of decency. He is a fine human being, as is our Speaker. And they reflect the best that is in us. This is a remarkable group of men who have produced this kind of leadership on both sides of the aisle. I think we should take pride in the quality of our leadership and in the quality of our membership. It is a privilege to serve with 434 Members of the quality that one finds here.

I can only close, Mr. Speaker, in saying that the Congress has served us well. Bismark said one time, "The Lord in his wisdom takes care of babies, drunks, and the United States

of America." And Winston Churchill once wrote, "Yes, democracy is the worst possible form of government except all those other forms of government."

I think this House of Representatives in the year 1986 represents everything that Winston Churchill was trying to say in that thumbnail sentence about democracy.

I take enormous pride in being a Member of this body, and I look forward with the indulgence of the voters of the Eighth Congressional District in New York, I look forward with enormous pride and anticipation, to coming back here with all of you and serving in the 100th Congress of the United States of America starting in January 1987.

□ 1740

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE RESOLUTION 573

Mr. THOMAS of California. Mr. Speaker, I ask unanimous consent that my name be removed from the list of cosponsors of House Resolution 573.

The SPEAKER pro tempore (Mr. DONNELLY). Is there objection to the request of the gentleman from California?

There was no objection.

THE CONTINUING PERIL OF OUR ARMED FORCES FLYING ON CONTRACTED CIVILIAN AIRCRAFT

(Mr. GONZALEZ asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GONZALEZ. Mr. Speaker, I welcome the opportunity to have some time in order to round out something that has been of great concern to me here lately. That is the fact that because we have, through congressional budgetary exigencies, limited the Defense Department, compelling it to contract out, for instance, in the transportation of both personnel, soldiers, as well as material, 90 percent, at a total cost of almost $1 billion and therefore meaning much significance in the way of savings.

We have exposed our duly constituted defense institutions to the hazards of great accidents costing life and limb and property damages.

About a week ago in San Antonio at Kelley Air Force Base we had a cargo craft crash that was chartered as a private contracting transporter of material at 2:30 in the morning and endangering the barracks of our basic trainees at Lackland Air Force Base. Now this craft, privately owned, has no military accountability. That is, the military that must use it cannot control the standards of airworthiness of that craft.

Meanwhile, since it is civilian or privately owned, the FAA that ought to be regulating it confesses it cannot, has not and will not, as it did after the unhappy incident costing 248 lives of our soldiers at Gander, NF. I think that we should leave here with a note of intention to come back, those of us who will have that privilege, in the 100th Congress and devote ourselves to trying to help our Defense Department institutions conduct their business in the proper way to safeguard the lives and limbs of our personnel and the valuable property of our Government.

Mr. Speaker, I believe that those of us who are particularly in close touch with, either because of relatives or because of constituents in the services, whether it is the Navy, whether it is the Marines, whether it is the Army or the Air Force, have a grave responsibility to make sure that we do not push to the back burner once these accidents fade into the dim past of making sure that we will do everything in our power to avoid these incidences.

To those who might say that I am particularly taking after this particular administration, let me say that all during the Vietnam conflict this was an issue I raised and antagonized the President then, antagonized his advisers because it was a shame that our live and kicking soldiers from battalion size up was being transported in private craft, jerry-built, unsafe, and the way I found out about it was because I had some activitated reservists in my district who had been long-time constituents and long-time friends that almost lost their lives while being transported to Southeast Asia because they were being transported in these doggone contracted aircraft.

They asked me, since when are we sending our soldiers in these contract planes, not regular commercial chartered planes, these are contract companies that are founded not out of commercial enterprise, but for the specific purpose of enticing lucrative contracts from the U.S. Government.

The question to me was the only way we get to use military craft, safer, sounder and more efficient is if we are in a body sack or in a coffin. That is the only way we bring back personnel in military aircraft.

I thought that was a legitimate complaint. I began to holler and bellyache about it. I made myself a nuisance with the then President who was a friend and a neighbor, and I thought well, maybe something had been done.

Lo and behold, here after that war kind of leveled off, we are still doing it. What is worse, I have a letter from the Assistant Secretary of Defense for Logistics who says,

> Even in time of war, we will use 90 percent in the transportation of our personnel private contract craft and only 10 percent.

And this mostly for material,

> Military craft.

Mr. Speaker, this is most serious business. I believe it reflects the perversity in priorities that wittingly or unwittingly we have been victimized with. Even in the general defense expenditures, which now amount, and what we ask our American citizens to be taxed for, around $315 billion. About 55 percent or better of that is really for what we loosely call the defense of Europe. But that concept in turn is based on a concept of Europe of 1947. Not Europe in the 1980's where we have a brandnew generation on the threshold of power in Germany, in France, in middle Europe, and even in Russia. As an example, the Russian leader Gorbachev and the German leader Kohl were both 15 years of age at the time of World War II. But the new generations on the threshold of power in those countries have an entirely different outlook. World War II is ancient history to them.

In the meanwhile, we are making the most serious deliberative decisions based on a tremendous outpouring of treasure from our hard-burdened taxpayers based on a perception of a world that is no longer there. This is what we are doing in even such domestic things, such internal things as the transportation of our soldiers, of our servicemen, and exposing them to the disasters that we were so sorrowfully made aware of last December in Gander, NF.

What happened there? In that case it was the Arrow Airlines, also based in Florida. That airline had had a near disaster in Michigan just a few weeks before. In fact, I am told it was the same craft. But nothing was done. Then, in transporting those units, that, as I have said time and time again, serving in the Sinai, that I believe are preeminently exposed at this moment. That is another thing that I wanted to say in the way of departure. That as we leave and hurry back home to our districts and shut down this Congress we still have almost 2,000 of our airborne in the Sinai exposed to the most vulnerable dangers of this age of so-called terrorism that we can think of. This is our high point of vulnerability.

□ 1750

OUR THANKS TO THE 99TH CONGRESS

(Mr. CARNEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CARNEY. Mr. Speaker, I take the well for the last time as a Member of the 99th Congress to thank the people of eastern Long Island for

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granting me the high privilege of representing them in the 96th through 99th Congresses.

The 8 years that I have served in Congress have been years of far-reaching accomplishments for our great Nation. As I stand here in this Chamber, I am reminded of many legislative battles won and lost, of heated debates and down-to-the-wire votes, and the opportunity given to me to participate in the deliberations and decisions of the greatest legislative body in the world.

My warmest memories, though, will be of you, my colleagues in the House. It has been my pleasure to work with this country's finest men and women, concerned and compassionate public servants who share my desire to do what's best for our great Nation and the people we represent.

Your counsel and support have been invaluable to me, but I will most cherish your friendship, which I will carry with me forever.

Mr. Speaker, I know that I speak not only for myself but for all of the residents of New York's First Congressional District in thanking you and all the men and women of the 99th Congress for your great service to our Nation.

Mr. KEMP. Mr. Speaker, will the gentleman yield?

Mr. CARNEY. I yield to the gentleman from New York.

Mr. KEMP. Mr. Speaker, as a Member of the leadership of our party, and as a Congressman from the same State as the gentleman from New York, I just want to say that I was moved by his comments.

We are going to miss the gentleman from New York. It has been my pleasure to have known him and to have worked with him on many projects for our State, our region and, indeed, our country. The gentleman has really put America ahead of his political party and that is a high praise indeed for the gentleman's view of politics. He has certainly put the next generation ahead of any personal election.

I want to congratulate the gentleman on many years of service to community, country and thank him for his friendship. I just say that when we come back, hopefully we come back to the 100th Congress, and the 200th anniversary of the U.S. Constitution, we are all going to miss the gentleman from New York and we thank him for his service which, in many ways, on many issues, has been above and beyond the call of duty.

We wish him Godspeed from all of his friends on the Republican side of the aisle.

Mr. EMERSON. Mr. Speaker, will the gentleman yield?

Mr. CARNEY. I yield to the gentleman from Missouri.

Mr. EMERSON. Mr. Speaker, I, too, want to pay tribute to the gentleman from New York who had served in this Chamber for some time before I arrived. I want to say that he has always been very helpful to me. We have enjoyed your comaraderie and the statesmanship and patriotism which is exemplified by your service here.

Mr. LAGOMARSINO. Mr. Speaker, will the gentleman yield?

Mr. CARNEY. I yield to the gentleman from California.

Mr. LAGOMARSINO. Mr. Speaker, I am certainly sorry to see the gentleman go. We have known each other for quite a while now and worked together and had good times. It is a sad day, really, for all of us, but we do appreciate the good work you have done for your district and for your State and for the entire Nation.

May the gentleman have many enjoyable days in the future and I hope to see you back here some day.

Mr. LIVINGSTON. Mr. Speaker, will the gentleman yield?

Mr. CARNEY. I yield to the gentleman from Louisiana.

Mr. LIVINGSTON. Mr. Speaker, I want to extend my own comments to those who have preceded me.

The gentleman has been a great Congressman, a great Representative for the State of New York, and we, indeed, are going to miss him around here as an active Congressman, but it is my understanding that he will, from time to time, appear on the streets and the scenes of Washington, DC. We wish him every success in the future and look forward to working closely with him wherever life leads him.

Mr. CARNEY. I certainly look forward to working with you in the future, and I appreciate your kind remarks. This is a little embarrassing for me right now.

Mr. MOLINARI. Mr. Speaker, will the gentleman yield?

Mr. CARNEY. I yield to the gentleman from New York.

Mr. MOLINARI. Mr. Speaker, I would like to join in this "I love BILL CARNEY." The fact is if your colleagues knew that this was going to happen, BILL, we would have many more who would be out here. I was out here on another mission, but when I heard what you were saying, I wanted to join in.

As a New Yorker, as someone who represents the New York delegation, I have worked with you and have immense respect for some of the things the gentleman has done, particularly those fights where you have been best known, and that is where the interest of this country was at stake. You really stood tall in that case and I think we are all proud of you, particularly those of us who come from the New York delegation.

Mr. CHENEY. Mr. Speaker, will the gentleman yield?

Mr. CARNEY. I yield to the gentleman from Wyoming.

Mr. CHENEY. Mr. Speaker, I would like to join my colleagues in saying how much we will miss the gentleman's presence around here. There is a special bond and relationship that grows among those of us who come to the Congress at the same time. Not only have we been colleagues, but we have been classmates for the last 8 years.

It has been a real privilege to serve with you, BILL. I think all of us know that the House has been a better place for your presence in it. You have given great meaning to the word "politician" and "representative" and I am certain we all join in wishing you the very best in the years ahead.

Mr. LENT. Mr. Speaker, will the gentleman yield?

Mr. CARNEY. I yield to the gentleman from New York.

Mr. LENT. Mr. Speaker, I would like to join with my other colleagues in recognizing the gentleman from the First Congressional District of New York. I hail from the Fourth Congressional District and much of what I do, as chairman of the Long Island Congressional Caucus, involves the area that has been so ably and well represented by the gentleman in the well.

I know that I personally will feel very greatly the loss of your presence in the House and the camaraderie and the comradeship and the fact that we had been able to work so well together over the years.

It is reassuring to me to know that you have chosen to stay in the Washington, DC, area with your family. I look forward to many long and happy years of continuing our friendship and relationship.

Mr. BENNETT. Mr. Speaker, will the gentleman yield?

Mr. CARNEY. I yield to the gentleman from Florida.

Mr. BENNETT. Mr. Speaker, I would like to say that I have never been chairman of a committee which had a greater defender of national defense than yourself. You have made a magnificent contribution to the strength of our country. I am so grateful that I was in Congress when you were here and go on to good things in the future.

Mr. CARNEY. Thank you, and your work on the subcommittee will be part of our great Nation's history. It has been a great delight to work with you.

COMPENSATION FOR FURLOUGHED EMPLOYEES

Mr. WHITTEN. Mr. Speaker, I offer a joint resolution (H.J. Res. 754) providing for furloughed employees' compensation, and ask unanimous consent for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

Mr. HOYER. Mr. Speaker, reserving the right to object, I do not intend to object, but I would like to thank the chairman of the committee for this action which I think is appropriate and is supported by both sides of the aisle to make sure that our Federal employees are held harmless for the failure to adopt a timely CR.

Mr. WHITTEN. Mr. Speaker, will the gentleman yield?

Mr. HOYER. I yield to the gentleman from Mississippi.

Mr. WHITTEN. Mr. Speaker, this is to see that they are paid for the time that they have lost through no fault of their own.

Mr. HOYER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

Mr. WOLF. Mr. Speaker, reserving the right to object, I want to thank the committee chairman for bringing this up. I also want to thank the gentleman from Pennsylvania for not objecting, and I appreciate that very much. I think it is a good piece of legislation.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 754

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Federal employees furloughed as a result of the lapse in appropriations from midnight October 16, 1986, until the enactment of the House Joint Resolution 738 shall be compensated at their standard rate of compensation for the period during which there was a lapse in appropriations.

All obligations incurred in anticipation of the appropriations made and authority granted by that Act for the purposes of maintaining the essential level of activity to protect life and property and bring about orderly termination of government functions are hereby ratified and approved if otherwise in accord with the provisions of that Act.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

□ 1800

SOME REFLECTIONS ON AMERICAN HISTORY

(Without objection, Mr. BENNETT was allowed to address the House for 1 minute and to revise and extend his remarks.)

Mr. BENNETT. Mr. Speaker, as has already been addressed earlier this evening, this is a historic part of our Congress. It is going to be going into the 100th Congress. That is important for our country.

It is also the 200th anniversary of our Constitution.

We have been very, very blessed in this country by having tremendous leaders at times when there was a need for tremendous leaders. Actually, this is a time where we need tremendous leaders as well.

Reminiscing about my own congressional district, as I think every Member of Congress does in its history, I see there in the beginning of my district history, a little more than 400 years ago, the first movement to this country for religious freedom. These were French Huegenots—people seeking a haven for their religious beliefs in this country. They founded La Caroline. When it was founded, it was the only European settlement in what is now the United States.

History went on and many other things occurred there. Early on in my career in Congress, I introduced a bill to provide for a national park facility there. It is called Fort Caroline National Memorial.

Later on, I became enthusiastic about some of the things I discovered with regard to the period of the American Revolution in the area which I represent. Many people did not know the Revolution extended to the State of Florida, but it did. We were the 14th and 15th colonies—east and west Florida. Two battles occurred in the congressional district which I represent: the battle of Alligator Creek and the battle at Thomas Creek. One of them was in the city limits, Thomas Creek, the other in the environs of the city of Jacksonville, FL.

So later on with the help of people in Jacksonville, we established a King's Day regatta to recognize our affiliation with Great Britain during the period of 1763 to 1783 when Florida was British and in the years which have followed since the Revolution. At those times they celebrated in the St. John's River which flows through Jacksonville, FL, the King's birthday. So we now have a King's Day regatta which has been taking place in Jacksonville, FL, for a decade or so. It is a very important event in Jacksonville. Hundreds of sailing ships participate in it.

Then I am going to lead up to something that is happening in Lafayette Park which may be of interest to you. I will leave that to think about until I get to Lafayette Park and the statue there of somebody who is in the hearts of all Americans.

The next thing I did with regard to the history of my home town was to ask the King of Spain if he would give a cup to the marathon which is run every year in Jacksonville, so today we have the Spanish Cup which is the winning cup of the marathon race in Jacksonville, FL.

So we recognized our early beginnings of over 400 years ago with the French and then the Spanish which we had in Florida for hundreds of years and the English who occupied Florida for a long time and the affiliation we have today with these great countries abroad. We do have a great affiliation for them.

Running through my mind, having done this with regard to foreign countries, I ought to do something about the United States of America and its connection with the great State of Florida and with Jacksonville, FL.

Then I got to thinking about the statues in the city of Washington, DC, that were particularly inspiring to me. The most inspiring statue of all, of course, is the Lincoln Memorial, one of great reverence. It is perhaps the greatest memorial that has ever been erected to an ordinary man, so it is a great symbol.

But there is another symbol that means a lot to me and that is the symbol in the midst of Lafayette Park. What is it? It is a statue of Andrew Jackson on an up-rearing horse. It is a very upbeat statue. Just to look at that statue makes you think about America and its youth.

So I said, well why don't we reproduce this for Jacksonville? So if you go down there today to Lafayette Square you will see a lot of people down there working, reproducing this statue for Jacksonville, FL. Jacksonville was named for him in 1882. He was the first American Governor of Florida. In 1821, he was the Governor and in 1822 Jacksonville took its rather bucolic name of Cowford, the English name for Jacksonville, and turned it into the city of Jacksonville, one of the great cities of America today.

So I am reminiscing here for several purposes. One is that I hope I am productively using time which needs to be used until the next bill comes before us, but also to look at our history in America, the richness of it. I have talked to about three or four nations that affect my home town, but actually there are many others; the flag of Mexico, the flag of Venezula, and several republics flew over my home town.

Now, all Members of Congress have this kind of history in their areas.

Mr. Speaker, I yield to the gentleman from California who represents San Diego, which is sort of a sister city to Jacksonville, not in a foreign country, but in another great State.

I yield to the gentleman from California.

Mr. HUNTER. Mr. Speaker, I thank my friend for yielding.

I did not mean to break in on this special order, but I just wanted to thank the gentleman for the great help that he has given to San Diego, particularly with regard to ship repair and in the strong bond of camaraderie that has been established by our respective Chambers of Commerce.

I wanted to ask the gentleman a favor. I came in late and noticed the gentleman talking about our colleague, the gentleman from New York [Mr. CARNEY] who is leaving. I wanted to say a word or two if I could about this fine gentleman.

Mr. BENNETT. Well, the gentleman from California [Mr. HUNTER] is just like Congressman CARNEY, which means that the gentleman speaking is a great guy.

Mr. HUNTER. Listen, I thank the gentleman for that.

I want to say about Congressman BILL CARNEY that he has been one who has absolutely been a champion for national defense. He has been tough, he has been decisive. He has a keen intellect. He has worked that Arms Services Committee to a fare-the-well.

My only problem with Congressman CARNEY was when I went up to a fund raiser for him in New York and we flew up in a plane that had no air-conditioning. We were absolutely frozen. Then for some reason I got a bad plate of spaghetti at his fund raiser and had to spend a couple extra days in New York before I could come back to Washington.

But BILL CARNEY is really an outstanding individual.

Mr. BENNETT. I will say to the gentleman, do not blame him for that. I think the gentleman will agree with me that when Congressman CARNEY walks into the Seapower Subcommttee, the whole committee takes on life. He electrifies them. He is great guy, so I am glad the gentleman made his remarks. I am sorry the gentleman was ill, but it was in a good cause.

Mr. KASICH. Mr. Speaker, I thank the gentleman for yielding.

I would just like to say that it was a real pleasure to serve with Congressman BILL CARNEY on the Investigation Subcommittee and also right next to him on the full committee. We served, of course, together there for 2 years.

I think the gentleman from Florida [Mr. BENNETT] will admit that he really was a thorough person on that committee and always did what he believed was best for his country.

In addition to that, he was also valuable to me personally because he was a guy that would always give me a little direction and sometimes another point of view. That was very valuable to me. I am going to really miss Congressman BILL CARNEY in the 100th Congress. I understand he is still going to be around town promoting the defense of America, something he loves to do; but I will dearly miss him because I think he has been an outstanding Member.

I appreciate the gentleman from Florida yielding.

Mr. BENNETT. Mr. Speaker, to conclude my remarks, I would like to say the great history of America is built out of the great people of America and Congressman CARNEY is one of them; so is Congressman HUNTER; so is Congressman KASICH and the others who have spoken here. I think we are all very much enriched and very much blessed by the people who have come to Congress, made sacrifices for the country, not only on the battlefields, but also here on the battlefield of legislation.

But all of us in America, every person, regardless what your position may be in America, have battles to fight in this day. Perhaps the biggest battle, the biggest war that our country has ever had, is the war against drugs. It cannot be won except by the individual decision on the part of each and every individual that he or she will do the very best he or she can do to resist drugs, to fight against drugs, to fight against this scourge that has hurt our country.

Although my remarks have been discursive, they have been lengthy perhaps beyond what they should be and dealt in an extraneous manner perhaps; but the thrust of it is that our country is great because its people are great.

RECONCILIATION BILL INAPPROPRIATELY NAMED

(Mr. PENNY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PENNY. Mr. Speaker, earlier this afternoon, the House gave final approval to the reconciliation bill.

This year, the reconciliation bill has been inappropriately named. Nowhere in the bill do we reconcile with the instructions of the budget resolution to cut spending. In fact, as you read the bill it is difficult to find even one example where spending has been reduced.

Mr. Speaker, it is time that all of us in Congress reconcile ourselves to the fact that we are spending beyond our means.

We can maybe dodge the bullet this year on budget cuts. But these huge budget deficits are going to shoot down our economy in the years ahead. And our children will be burdened with debt because of our refusal to bite the bullet on budgets cuts this year.

I did not vote for the reconciliation bill because it doesn't cut spending and it doesn't cut the deficit. It is called a reconciliation bill, but it doesn't live up to its name.

AIR SAFETY

(Mr. MOLINARI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MOLINARI. Mr. Speaker, late this afternoon, I was called by John Galipault, who is the head of the Aviation Safety Institute, informing me that sometime between 10:30 and 11 o'clock today, Air Force One with President Reagan aboard was involved in an operational error. This incident occurred just north of Pittsburgh. We understand what happened was, the regulations of the FDA require a 5-mile separation. There was in fact 4.3 miles when the conflict alert went off.

Those of us who are Members of Congress who have flown with the President in Air Force One know that when we take off, we do not have to wait like we do at a commercial airflight. We expect that the skies are cleared because the President of the United States is on board. It is somewhat distressing to know that an incident like this occurred when all kinds of precautions are being taken, because in fact it is the President of the United States on board.

To put this in proper context, I do want to tell you that in talking to Admiral Engen, the Administrator of the FAA, he told me that the altitude separation was 700 feet and that the distance between the two planes was 4.3 miles.

The other plane was a military plane, an F–4. The controllers contacted the pilot of the F–4 and asked him to make a turn. The pilot refused to do so and told the controller to get the other plane to move.

I am advised by those who are experts that we are talking about approximately 25 seconds before their paths would converge. I am not suggesting there would have been a collision. The FAA would say, in fairness, that the system is working and they were able to avoid a more serious incident; however, I also learned that a couple weeks ago there was another incident involving Air Force One where reporters on board noticed another plane coming rather close and in their judgment they thought it was a near mid-air collision and they filed a report to that effect. Now, the pilots did not, so under the FAA regulations that it is not listed as a near mid-air collision.

I called the Cleveland Center. I spoke to the manager of the center, who refused to discuss the incident with me and said, "If you need any information, if you want any information, contact headquarters in Washington," and I did. Admiral Engen was very forthright in relating the incident to me.

I would like to make this point, however. We had an opportunity this year

to do something about aviation safety. We had an opportunity to increase staffing of the controllers with experienced people, those that were hired before in the system, that are desperately needed. I offered an amendment to that effect, which would have mandated the re-hiring of a thousand air traffic controllers. That was rejected by this body after a vigorous debate, but what did pass the House was permissive language saying that if the Department of Transportation and the FAA wanted to hire, had the right to do so. Sadly, even the language which would have done very little was deleted, so we did nothing.

I am told that they are waiting to take up another bill; so I will conclude my remarks by saying that I am one who is deeply concerned about the safety of the system. When we learn that the President of the United States himself on more than one occasion in the last 2 weeks was involved in an operational error and possibly a near mid-air collision, then bless us, it is time that we in the Congress start to look at this affair and take some affirmative action.

□ 1815

DISASTER ASSISTANCE FOR SALVADORAN EARTHQUAKE VICTIMS

(Without objection, Mr. WOLF was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WOLF. Mr. Speaker, I rise today to stress to my colleagues the desperate situation in El Salvador that has resulted from a recent earthquake in that country.

According to President Duarte, the death toll from this tragic earthquake in San Salvador has risen to around 1,000, the injury toll is 10,000, and 150,000 people have been left homeless. The devastation was confined mostly to San Salvador but the damage is reportedly around $2 billion. The downtown area and shanty towns of the outskirts of the capital were hardest hit. Tragically, some of the worst affected neighborhoods are among the poorest in the city, and the residents are without water, food, or medicine. Four of the six major hospitals were severely damaged and emergency medical care has been administered in parking lots within temporary quarters.

Historically, the United States has responded quickly to natural disasters around the world such as the one that has occurred in El Salvador. It is our responsibility as a leader of the free world to do all that we can to assist the Salvadoran earthquake victims. The country of El Salvador, which is struggling to preserve democracy, deserves our wholehearted support through government and private assistance. The needs of the citizens in El Salvador are acute. It is critical that we respond quickly to assist the injured and prevent epidemics which often follow natural disasters.

I encourage U.S. businesses to support disaster relief assistance to El Salvador through donations of needed supplies. We must act quickly to show our support for the country of El Salvador.

SENSE OF CONGRESS SUPPORTING ESTABLISHMENT OF CHILDREN'S CHALLENGE CENTER FOR SPACE SCIENCE

Mr. NELSON of Florida. Mr. Speaker, I ask unanimous consent that the Committee on Science and Technology be discharged from further consideration of the Senate joint resolution (S.J. Res. 336) to express the sense of Congress on recognition of the contributions of the seven *Challenger* astronauts by supporting establishment of a Children's Challenge Center for Space Science, and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore (Mr. DONNELLY). Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 336

Whereas the crew of the space shuttle Challenger was dedicated to stimulating the interest of American children in space flight and science generally;

Whereas the members of that crew gave their lives trying to benefit the education of American children;

Whereas a fitting tribute to that effort and to the sacrifice of the Challenger crew and their families is needed; and

Whereas an appropriate form for such tribute would be to expand educational opportunities in science by the creation of a center that will offer children and teachers activities and information derived from American space research: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the sense of Congress that—

(1) a Children's Challenge Center for Space Science should be established in conjunction with NASA at the Johnson Space Center as a living memorial to the seven Challenger astronauts who died serving their country and to other individuals who gave their lives in exploration of the space frontier; and

(2) the Federal Government should, along with public and private organizations and persons, cooperate in the establishment of such a Center.

AMENDMENT OFFERED BY MR. NELSON OF FLORIDA

Mr. NELSON of Florida. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. NELSON of Florida: Beginning on line 5, delete "NASA at the Johnson Space Center" and insert in lieu thereof "the Smithsonian Institution".

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from Florida [Mr. NELSON].

The amendment was agreed to.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. NELSON of Florida. Mr. Speaker, we have had considerable consultation with Members of Congress which have been involved in the space program; including my colleague, Senator GARN, in the other body, we have had extensive consultation with the families of the crew of the space shuttle *Challenger,* and all are agreed that there should be a Children's Challenge Center which should be established in conjunction with the Smithsonian here in Washington as a living memorial to the seven *Challenger* astronauts. With that consensus we bring forth this resolution to express the intent of Congress.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

□ 1825

ANTI-APARTHEID ACT ALREADY BEING VIOLATED

(Mr. LELAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LELAND. Mr. Speaker, on October 2, 1986, the Anti-Apartheid Act became the law of our land. According to the law of our land, South African Airways was supposed to stop flying in and out of the United States 10 days after our act became law.

Today, the 17th of October—15 days after the Senate override of the President's veto—I am appalled that South African Airways is still flying in and out of our country. There is in fact a flight leaving for Johannesburg tonight from New York City.

What I believe we in Congress and the American people deserve is for the administration to carry out the laws of our country. I am appalled that the antiapartheid law has not been carried out.

The American people and Congress have said no to apartheid. The administration has clearly demonstrated its refusal to not carry out a law mandated by the U.S. people. The administration, furthermore, has become an obstructionist to that law.

I would also like to inform my colleagues that the company selected to

mint the U.S. gold coin that seeks to replace in sales the South African Krugerrand, is none other than the Englehard Corp. The company awarded the contract to mint the U.S. gold coin is owned 27 to 29 percent by Anglo-American, the leading South African corporation.

The law of our great Nation must not be violated. The administration has not only a moral obligation but a legal obligation to sever these illegal ties with South Africa.

□ 1845

CONFERENCE REPORT ON H.R. 6, WATER RESOURCES DEVELOPMENT ACT OF 1986

Mr. ROE submitted the following conference report and statement on the bill (H.R. 6) to provide for the conservation and development of water and related resources and the improvement and rehabilitation of the Nation's water resources infrastructure:

CONFERENCE REPORT (H. REPT. 99-1013)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6) to provide for the conservation and development of water and related resources and the improvement and rehabilitation of the Nation's water resources infrastructure, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Water Resources Development Act of 1986".

(b) TABLE OF CONTENTS.—

Title I—Cost Sharing
Title II—Harbor Development
Title III—Inland Waterway Transportation System
Title IV—Flood Control
Title V—Shoreline Protection
Title VI—Water Resources Conservation and Development
Title VII—Water Resources Studies
Title VIII—Project Modifications
Title IX—General Provisions
Title X—Project Deauthorizations
Title XI—Miscellaneous Programs and Projects
Title XII—Dam Safety
Title XIII—Namings
Title XIV—Revenue Provisions

SEC. 2. DEFINITION OF SECRETARY.

For purposes of this Act, the term "Secretary" means the Secretary of the Army.

TITLE I—COST SHARING

SEC. 101. HARBORS.

(a) CONSTRUCTION.—

(1) PAYMENTS DURING CONSTRUCTION.—The non-Federal interests for a navigation project for a harbor or inland harbor, or any separable element thereof, on which a contract for physical construction has not been awarded before the date of enactment of this Act shall pay, during the period of construction of the project, the following costs associated with general navigation features:

(A) 10 percent of the cost of construction of the portion of the project which has a depth not in excess of 20 feet; plus

(B) 25 percent of the cost of construction of the portion of the project which has a depth in excess of 20 feet but not in excess of 45 feet; plus

(C) 50 percent of the cost of construction of the portion of the project which has a depth in excess of 45 feet.

(2) ADDITIONAL 10 PERCENT PAYMENT OVER 30 YEARS.—The non-Federal interests for a project to which paragraph (1) applies shall pay an additional 10 percent of the cost of the general navigation features of the project in cash over a period not to exceed 30 years, at an interest rate determined pursuant to section 106. The value of lands, easements, rights-of-way, relocations, and dredged material disposal areas provided under paragraph (3) shall be credited toward the payment required under this paragraph.

(3) LANDS, EASEMENTS, AND RIGHTS-OF-WAY.—The non-Federal interests for a project to which paragraph (1) applies shall provide the lands, easements, rights-of-way, relocations (other than utility relocations under paragraph (4)), and dredged material disposal areas necessary for the project.

(4) UTILITY RELOCATIONS.—The non-Federal interests for a project to which paragraph (1) applies shall perform or assure the performance of all relocations of utilities necessary to carry out the project, except that in the case of a project for a deep-draft harbor and in the case of a project constructed by non-Federal interests under section 204, one-half of the cost of each such relocation shall be borne by the owner of the facility being relocated and one-half of the cost of each such relocation shall be borne by the non-Federal interests.

(b) OPERATION AND MAINTENANCE.—The Federal share of the cost of operation and maintenance of each navigation project for a harbor or inland harbor constructed pursuant to this Act shall be 100 percent, except that in the case of a deep-draft harbor, the non-Federal interests shall be responsible for an amount equal to 50 percent of the excess of the cost of the operation and maintenance of such project over the cost which the Secretary determines would be incurred for operation and maintenance of such project if such project had a depth of 45 feet.

(c) EROSION OR SHOALING ATTRIBUTABLE TO FEDERAL NAVIGATION WORKS.—Costs of constructing projects or measures for the prevention or mitigation of erosion or shoaling damages attributable to Federal navigation works shall be shared in the same proportion as the cost sharing provisions applicable to the project causing such erosion or shoaling. The non-Federal interests for the project causing the erosion or shoaling shall agree to operate and maintain such measures.

(d) NON-FEDERAL PAYMENTS DURING CONSTRUCTION.—The amount of any non-Federal share of the cost of any navigation project for a harbor or inland harbor shall be paid to the Secretary. Amounts required to be paid during construction shall be paid on an annual basis during the period of construction, beginning not later than one year after construction is initiated.

(e) AGREEMENT.—Before initiation of construction of a project to which this section applies, the Secretary and the non-Federal interests shall enter into a cooperative agreement according to the provisions of section 221 of the Flood Control Act of 1970. The non-Federal interests shall agree to—

(1) provide to the Federal Government lands, easements, and rights-of-way, and to provide dredged material disposal areas and perform the necessary relocations required for construction, operation, and maintenance of such project;

(2) hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors;

(3) provide to the Federal Government the non-Federal share of all other costs of construction of such project; and

(4) in the case of a deep-draft harbor, be responsible for the non-Federal share of operation and maintenance required by subsection (b) of this section.

SEC. 102. INLAND WATERWAY TRANSPORTATION.

(a) CONSTRUCTION.—One-half of the costs of construction—

(1) of each project authorized by title III of this Act,

(2) of the project authorized by section 1103(j) of this Act, and

(3) allocated to inland navigation for the project authorized by section 844 of this Act,

shall be paid only from amounts appropriated from the general fund of the Treasury. One-half of such costs shall be paid only from amounts appropriated from the Inland Waterways Trust Fund. For purposes of this subsection, the term "construction" shall include planning, designing, engineering, surveying, the acquisition of all lands, easements, and rights-of-way necessary for the project, including lands for disposal of dredged material, and relocations necessary for the project.

(b) OPERATION AND MAINTENANCE.—The Federal share of the cost of operation and maintenance of any project for navigation on the inland waterways is 100 percent.

(c) AUTHORIZATIONS FROM GENERAL FUND.—Any Federal responsibility—

(1) with respect to a project authorized by title III or section 1103(j), or

(2) with respect to the portion of the project authorized by section 844 allocated to inland navigation,

which responsibility is not provided for in subsection (a) of this section shall be paid only from amounts appropriated from the general fund of the Treasury.

SEC. 103. FLOOD CONTROL AND OTHER PURPOSES.

(a) FLOOD CONTROL.—

(1) GENERAL RULE.—The non-Federal interests for a project with costs assigned to flood control (other than a nonstructural project) shall—

(A) pay 5 percent of the cost of the project assigned to flood control during construction of the project;

(B) provide all lands, easements, rights-of-way, and dredged material disposal areas required only for flood control and perform all related necessary relocations; and

(C) provide that portion of the joint costs of lands, easements, rights-of-way, dredged material disposal areas, and relocations which is assigned to flood control.

(2) 25 PERCENT MINIMUM CONTRIBUTION.—If the value of the contributions required under paragraph (1) of this subsection is less than 25 percent of the cost of the project assigned to flood control, the non-Federal interest shall pay during construction of the project such additional amounts as are necessary so that the total contribution of the non-Federal interests under this subsection

is equal to 25 percent of the cost of the project assigned to flood control.

(3) 50 PERCENT MAXIMUM.—The non-Federal share under paragraph (1) shall not exceed 50 percent of the cost of the project assigned to flood control. The preceding sentence does not modify the requirement of paragraph (1)(A) of this subsection.

(4) DEFERRED PAYMENT OF AMOUNT EXCEEDING 30 PERCENT.—If the total amount of the contribution required under paragraph (1) of this subsection exceeds 30 percent of the cost of the project assigned to flood control, the non-Federal interests may pay the amount of the excess to the Secretary over a 15-year period (or such shorter period as may be agreed to by the Secretary and the non-Federal interests) beginning on the date construction of the project or separable element is completed, at an interest rate determined pursuant to section 106. The preceding sentence does not modify the requirement of paragraph (1)(A) of this subsection.

(b) NONSTRUCTURAL FLOOD CONTROL PROJECTS.—The non-Federal share of the cost of nonstructural flood control measures shall be 25 percent of the cost of such measures. The non-Federal interests for any such measures shall be required to provide all lands, easements, rights-of-way, dredged material disposal areas, and relocations necessary for the project, but shall not be required to contribute any amount in cash during construction of the project.

(c) OTHER PURPOSES.—The non-Federal share of the cost assigned to other project purposes shall be as follows:

(1) hydroelectric power: 100 percent, except that the marketing of such power and the recovery of costs of constructing, operating, maintaining, and rehabilitating such projects shall be in accordance with existing law: Provided, That after the date of enactment of this Act, the Secretary shall not submit to Congress any proposal for the authorization of any water resources project that has a hydroelectric power component unless such proposal contains the comments of the appropriate Power Marketing Administrator designated pursuant to section 302 of the Department of Energy Organization Act (Public Law 95-91) concerning the appropriate Power Marketing Administration's ability to market the hydroelectric power expected to be generated and not required in the operation of the project under the applicable Federal power marketing law, so that, 100 percent of operation, maintenance and replacement costs, 100 percent of the capital investment allocated to the purpose of hydroelectric power (with interest at rates established pursuant to or prescribed by applicable law), and any other costs assigned in accordance with law for return from power revenues can be returned within the period set for the return of such costs by or pursuant to such applicable Federal power marketing law;

(2) municipal and industrial water supply: 100 percent;

(3) agricultural water supply: 35 percent;

(4) recreation, including recreational navigation: 50 percent of separable costs and, in the case of any harbor or inland harbor or channel project, 50 percent of joint and separable costs allocated to recreational navigation;

(5) hurricane and storm damage reduction: 35 percent; and

(6) aquatic plant control: 50 percent of control operations.

(d) CERTAIN OTHER COSTS ASSIGNED TO PROJECT PURPOSES.—Costs of constructing projects or measures for beach erosion control and water quality enhancement shall be assigned to appropriate project purposes listed in subsections (a), (b), and (c) and shall be shared in the same percentage as the purposes to which the costs are assigned, except that all costs assigned to benefits to privately owned shores (where use of such shores is limited to private interests) or to prevention of losses of private lands shall be borne by non-Federal interests and all costs assigned to the protection of federally owned shores shall be borne by the United States.

(e) APPLICABILITY.—

(1) IN GENERAL.—This section applies to any project (including any small project which is not specifically authorized by Congress and for which the Secretary has not approved funding before the date of enactment of this Act), or separable element thereof, on which physical construction is initiated after April 30, 1986, as determined by the Secretary, except as provided in paragraph (2).

(2) EXCEPTIONS.—This section shall not apply to the Yazoo Basin, Mississippi, Demonstration Erosion Control program, authorized by Public Law 98-8, or to the Harlan, Kentucky, or Barbourville, Kentucky, elements of the project authorized by section 202 of Public Law 96-367.

(f) DEFINITION OF SEPARABLE ELEMENT.—For purposes of this Act, the term "separable element" means a portion of a project—

(1) which is physically separable from other portions of the project; and

(2) which—

(A) achieves hydrologic effects, or

(B) produces physical or economic benefits,

which are separately identifiable from those produced by other portions of the project.

(g) DEFERRAL OF PAYMENT.—(1) With respect to the projects listed in paragraph (2), no amount of the non-Federal share required under this section shall be required to be paid during the three-year period beginning on the date of enactment of this Act.

(2) The projects referred to in paragraph (1) are the following:

(A) Boeuf and Tensas Rivers, Tensas Basin, Louisiana and Arkansas, authorized by the Flood Control Act of 1946;

(B) Eight Mile Creek, Arkansas, authorized by Public Law 99-88; and

(C) Rocky Bayou Area, Yazoo Backwater Area, Yazoo Basin, Mississippi, authorized by the Flood Control Act approved August 18, 1941.

(h) ASSIGNED JOINT AND SEPARABLE COSTS.—The share of the costs specified under this section for each project purpose shall apply to the joint and separable costs of construction of each project assigned to that purpose, except as otherwise specified in this Act.

(i) LANDS, EASEMENTS, RIGHTS-OF-WAY, DREDGED MATERIAL DISPOSAL AREAS, AND RELOCATIONS.—The non-Federal interests for a project to which this section applies shall provide all lands, easements, rights-of-way, and dredged material disposal areas required for the project and perform all necessary relocations, except to the extent limited by any provision of this section. The value of any contribution under the preceding sentence shall be included in the non-Federal share of the project specified in this section.

(j) AGREEMENT.—

(1) REQUIREMENT FOR AGREEMENT.—Any project to which this section applies (other than a project for hydroelectric power) shall be initiated only after non-Federal interests have entered into binding agreements with the Secretary to pay 100 percent of the operation, maintenance, and replacement and rehabilitation costs of the project, to pay the non-Federal share of the costs of construction required by this section, and to hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors.

(2) ELEMENTS OF AGREEMENT.—The agreement required pursuant to paragraph (1) shall be in accordance with the requirements of section 221 of the Flood Control Act of 1970 (84 Stat. 1818) and shall provide for the rights and duties of the United States and the non-Federal interest with respect to the construction, operation, and maintenance of the project, including, but not limited to, provisions specifying that, in the event the non-Federal interest fails to provide the required non-Federal share of costs for such work, the Secretary—

(A) shall terminate or suspend work on the project unless the Secretary determines that continuation of the work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests in connection with the project; and

(B) may terminate or adjust the rights and privileges of the non-Federal interest to project outputs under the terms of the agreement.

(k) PAYMENT OPTIONS.—Except as otherwise provided in this section, the Secretary may permit the full non-Federal contribution to be made without interest during construction of the project or separable element, or with interest at a rate determined pursuant to section 106 over a period of not more than thirty years from the date of completion of the project or separable element. Repayment contracts shall provide for recalculation of the interest rate at five-year intervals.

(l) DELAY OF INITIAL PAYMENT.—At the request of any non-Federal interest the Secretary may permit such non-Federal interest to delay the initial payment of any non-Federal contribution under this section or section 101 for up to one year after the date when construction is begun on the project for which such contribution is to be made. Any such delay in initial payment shall be subject to interest charges for up to six months at a rate determined pursuant to section 106.

(m) ABILITY TO PAY.—Any cost-sharing agreement under this section for flood control or agricultural water supply shall be subject to the ability of a non-Federal interest to pay. The ability of any non-Federal interest to pay shall be determined by the Secretary in accordance with procedures established by the Secretary.

SEC. 104. GENERAL CREDIT FOR FLOOD CONTROL.

(a) GUIDELINES.—Within one year after the date of enactment of this Act, the Secretary shall issue guidelines to carry out this section, consistent with the principles and guidelines on project formulation. The guidelines shall include criteria for determining whether work carried out by non-Federal interests is compatible with a project for flood control and procedures for making such determinations. The guidelines under this section shall be promulgated after notice in the Federal Register and opportunity for comment.

(b) ANALYSIS OF COSTS AND BENEFITS.—The guidelines established under subsection (a) shall provide for the Secretary to consider, in analyzing the costs and benefits of a proposed project for flood control, the costs and

benefits produced by any flood control work carried out by non-Federal interests that the Secretary determines to be compatible with the project. For purposes of the preceding sentence the Secretary may consider only work carried out after the date which is 5 years before the first obligation of funds for the reconnaissance study for such project. In no case may work which was carried out more than 5 years before the date of the enactment of this Act be considered under this subsection, unless otherwise provided in this Act.

(c) CREDITING OF NON-FEDERAL SHARE.—The guidelines established under subsection (a) shall provide for crediting the cost of work carried out by the non-Federal interests against the non-Federal share of the cost of an authorized project for flood control as follows:

(1) Work which is carried out after the end of the reconnaissance study and before the submission to Congress of the final report of the Chief of Engineers on the project and which is determined by the Secretary to be compatible with the project shall be included as part of the project and shall be recommended by the Secretary in the final report for credit against the non-Federal share of the cost of the project.

(2) Work which is carried out after submission of the final report of the Chief of Engineers to Congress and which is determined by the Secretary to be compatible with the project shall be considered as part of the project and shall be credited by the Secretary against the non-Federal share of the cost of the project in accordance with the guidelines promulgated pursuant to subsection (a).

In no event may work which was carried out more than 5 years before the date of enactment of this Act be considered under this subsection, unless otherwise provided in this Act.

(d) PROCEDURE FOR WORK DONE BEFORE DATE OF ENACTMENT.—The Secretary shall consider, under subsections (b) and (c), work carried out before the date of enactment of this Act by non-Federal interests on a project for flood control, if the non-Federal interests apply to the Secretary for consideration of such work not later than March 31, 1987. The Secretary shall make determinations under subsections (b) and (c) with respect to such work not later than 6 months after guidelines are issued under subsection (a).

(e) PROCEDURE FOR WORK DONE AFTER DATE OF ENACTMENT.—The Secretary shall consider work carried out after the date of enactment of this Act by non-Federal interests on a project for flood control under subsections (b) and (c) in accordance with the guidelines issued under subsection (a). The guidelines shall require prior approval by the Secretary of any flood control work carried out after the date of enactment of this Act in order to be considered under this section, taking into account the economic and environmental feasibility of the project.

(f) LIMITATION NOT APPLICABLE.—Any flood control work included as part of the non-Federal share of the cost of a project under this section shall not be subject to the limitation contained in the last sentence of section 215(a) of the Flood Control Act of 1968.

(g) CASH CONTRIBUTION NOT AFFECTED.—Nothing in this section affects the requirement of section 103(a)(1)(A).

SEC. 105. FEASIBILITY STUDIES; PLANNING, ENGINEERING, AND DESIGN.

(a) FEASIBILITY STUDIES.—(1) The Secretary shall not initiate any feasibility study for a water resources project after the date of enactment of this Act until appropriate non-Federal interests agree, by contract, to contribute 50 percent of the cost for such study during the period of such study. Not more than one-half of such non-Federal contribution may be made by the provision of services, materials, supplies, or other in-kind services necessary to prepare the feasibility report.

(2) This subsection shall not apply to any water resources study primarily designed for the purposes of navigational improvements in the nature of dams, locks, and channels on the Nation's system of inland waterways.

(b) PLANNING AND ENGINEERING.—The Secretary shall not initiate any planning or engineering authorized by this Act for a water resources project until appropriate non-Federal interests agree, by contract, to contribute 50 percent of the cost of the planning and engineering during the period of the planning and engineering.

(c) DESIGN.—Costs of design of a water resources project shall be shared in the same percentage as the purposes of such project.

SEC. 106. RATE OF INTEREST.

Whenever a non-Federal interest is required or elects to repay an amount under this Act over a period of time, the amount to be repaid shall include interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period, during the month preceding the fiscal year in which costs for the construction of the project are first incurred (or in the case of recalculation the fiscal year in which the recalculation is made), plus a premium of one-eighth of one percentage point for transaction costs; except that such rates for hydroelectric power shall be in accordance with existing law.

SEC. 107. LIMITATION ON APPLICABILITY OF CERTAIN PROVISIONS IN REPORTS.

If any provision in any report designated by this Act recommends that a State contribute in cash 5 percent of the construction costs allocated to non-vendible project purposes and 10 percent of the construction costs allocated to vendible project purposes, such provision shall not apply to the project recommended in such report.

SEC. 108. GENERAL APPLICABILITY OF COST SHARING.

Unless otherwise specified, the cost sharing provisions of this title shall apply to all projects in this Act. The Federal share of any cost of a project authorized by this Act for which cost a Federal share is not established in this title, shall be the share of such cost otherwise provided by law.

SEC. 109. DEFINITIONS.

For purposes of this title, terms shall have the meanings given by section 214 of this Act.

TITLE II—HARBOR DEVELOPMENT

SEC. 201. DEEP-DRAFT HARBOR PROJECTS.

(a) AUTHORIZATION OF CONSTRUCTION.—The following projects for harbors are authorized to be prosecuted by the Secretary substantially in accordance with the plans and subject to the conditions recommended in the respective reports designated in this subsection, except as otherwise provided in this subsection:

MOBILE HARBOR, ALABAMA

The project for navigation, Mobile Harbor, Alabama: Report of the Chief of Engineers, dated November 18, 1981, at a total cost of $451,000,000, with an estimated first Federal cost of $255,000,000 and an estimated first non-Federal cost of $196,000,000; except that if non-Federal interests construct a bulk material transshipment facility in lower Mobile Bay, the Secretary, upon request of such non-Federal interests, may limit construction of such project from the Gulf of Mexico to such facility and except that, for reasons of environmental quality, dredged material from such project shall be disposed of in open water in the Gulf of Mexico in accordance with all provisions of Federal law. Notwithstanding any other provision of law, no dredged or fill material shall be disposed of in the Brookley disposal area, referred to in such report of the Chief of Engineers.

MISSISSIPPI RIVER SHIP CHANNEL, GULF TO BATON ROUGE, LOUISIANA

The project for navigation, Mississippi River Ship Channel, Gulf to Baton Rouge, Louisiana: Report of the Chief of Engineers, dated April 9, 1983, at a total cost of $471,000,000, with an estimated first Federal cost of $178,000,000 and an estimated first non-Federal cost of $293,000,000. Nothing in this paragraph and such report shall be construed to affect the requirements of Public Law 89-669, as amended.

TEXAS CITY CHANNEL, TEXAS

The project for navigation, Galveston Bay Area, Texas City Channel, Texas: Report of the Chief of Engineers, dated March 11, 1986, at a total cost of $200,000,000, with an estimated first Federal cost of $130,000,000 and an estimated first non-Federal cost of $70,000,000.

NORFOLK HARBOR AND CHANNELS, VIRGINIA

The project for navigation, Norfolk Harbor and Channels, Virginia: Report of the Chief of Engineers, dated November 20, 1981, at a total cost of $551,000,000, with an estimated first Federal cost of $256,000,000 and an estimated first non-Federal cost of $295,000,000, including such modifications as the Secretary determines to be necessary and appropriate for mitigation of any damage to fish and wildlife resources resulting from construction, operation, and maintenance of each segment of the proposed project. The Secretary, in consultation with appropriate Federal, State, and local agencies, shall study the effects that construction, operation, and maintenance of each segment of the proposed project will have on fish and wildlife resources and the need for mitigation of any damage to such resources resulting from such construction, operation, and maintenance.

(b) AUTHORIZATION OF CONSTRUCTION SUBJECT TO FAVORABLE REPORT.—The following projects are authorized to be prosecuted by the Secretary substantially in accordance with the plans and subject to the conditions recommended in the respective reports cited, with such modifications as are recommended by the Chief of Engineers and approved by the Secretary, and with such other modifications as are recommended by the Secretary. If no report is cited for a project, the project is authorized to be prosecuted by the Secretary in accordance with a final report of the Chief of Engineers, and with such modifications as are recommended by the Secretary, and no construction on such project may be initiated until such a report is issued and approved by the Secretary.

LOS ANGELES AND LONG BEACH HARBORS, SAN PEDRO BAY, CALIFORNIA

The project for deepening of the entry channel to the harbor of Los Angeles, California, to a depth of 70 feet and for deepening of the entry channel to the harbor of

Long Beach, California, to a depth of 76 feet, including the creation of 800 acres of land with the dredged material from the project, as Phase I of the San Pedro Bay development, at a total cost of $620,000,000, with an estimated first Federal cost of $310,000,000 and an estimated first non-Federal cost of $310,000,000.

NEW YORK HARBOR AND ADJACENT CHANNELS, NEW YORK AND NEW JERSEY

The project for deepening of the Ambrose Channel feature of the navigation project, New York Harbor and Adjacent Channels, to a depth of 55 feet and widening such channel to 770 feet, and for deepening of the Anchorage channel feature of such navigation project to a depth of 55 feet and widening such channel to 660 feet, at a total cost of $326,000,000, with an estimated first Federal cost of $156,000,000 and an estimated first non-Federal cost of $170,000,000. Disposal of beach quality sand from construction, operation, and maintenance of such features of such project shall take place at the ocean front on Staten Island, New York, and Sea Bright and Monmouth Beach, New Jersey, at full Federal expense. No disposal of dredged material from construction, operation, and maintenance of such features of such project shall take place at Bowery Bay, Flushing Bay, Powell's Cove, Little Bay, or Little Neck Bay, Queens, New York.

SEC. 202. GENERAL CARGO AND SHALLOW HARBOR PROJECTS.

(a) AUTHORIZATION FOR CONSTRUCTION.—The following projects for harbors are authorized to be prosecuted by the Secretary substantially in accordance with the plans and subject to the conditions recommended in the respective reports designated in this subsection, except as otherwise provided in this subsection:

KODIAK HARBOR, ALASKA

The project for navigation, Kodiak Harbor, Alaska: Report of the Chief of Engineers, dated September 7, 1976, at a total cost of $15,000,000, with an estimated first Federal cost of $13,400,000 and an estimated first non-Federal cost of $1,600,000.

ST. PAUL ISLAND, ALASKA

The project for navigation, St. Paul Island Harbor, Alaska: Report of the Chief of Engineers, dated August 10, 1983, at a total cost of $24,800,000, with an estimated first Federal cost of $11,800,000 and an estimated first non-Federal cost of $13,000,000.

OAKLAND OUTER HARBOR, CALIFORNIA

The project for navigation, Oakland Outer Harbor, California: Reports of the Chief of Engineers, dated January 7, 1980, and July 1, 1983, at a total cost of $45,900,000, with an estimated first Federal cost of $30,100,000 and an estimated first non-Federal cost of $15,800,000. The Secretary, in consultation with appropriate Federal, State, and local agencies, shall study alternative dredged material disposal plans, including but not limited to plans which include marsh formation. The Secretary is authorized to undertake and monitor the effects of such dredged material disposal measures, including but not limited to such measures as will result in fish and wildlife habitat enhancement, as the Secretary determines are necessary and appropriate. The cost of any measures required for construction of the project to protect the Bay Area Rapid Transit facilities shall be undertaken by non-Federal interests and shall be credited toward the 10 percent payment required for such project under section 101(a)(2).

OAKLAND INNER HARBOR, CALIFORNIA

The project for navigation, Oakland Inner Harbor, California, Report of the Chief of Engineers, dated January 21, 1986, at a total cost of $28,100,000, with an estimated first Federal cost of $17,100,000 and an estimated first non-Federal cost of $11,000,000. The Secretary, in consultation with appropriate Federal, State, and local agencies, shall study the existence of, and possible adverse effects of project dredging on, any underground freshwater aquifer in the project area.

RICHMOND HARBOR, CALIFORNIA

The project for navigation, Richmond Harbor, California: Report of the Chief of Engineers, dated August 8, 1982, at a total cost of $43,800,000, with an estimated first Federal cost of $26,500,000 and an estimated first non-Federal cost of $17,300,000.

SACRAMENTO DEEP WATER SHIP CHANNEL, CALIFORNIA

The project for navigation, Sacramento Deep Water Ship Channel, California: Report of the Chief of Engineers, dated November 20, 1981, at a total cost of $125,000,000, with an estimated first Federal cost of $76,000,000 and an estimated first non-Federal cost of $49,000,000.

NEW HAVEN HARBOR, CONNECTICUT

The project for navigation, New Haven Harbor, Connecticut: Report of the Chief of Engineers, dated July 26, 1982, with such modifications as the Secretary determines to be necessary and appropriate to mitigate adverse effects of construction, operation, and maintenance of the proposed project on oyster beds and the production of oysters in New Haven Harbor, at a total cost of $26,500,000, with an estimated first Federal cost of $19,000,000 and an estimated first non-Federal cost of $7,500,000. The Secretary, in consultation with appropriate Federal, State, and local agencies, shall study the effects that construction, operation, and maintenance of the proposed project will have on oyster beds and the production of oysters in New Haven Harbor. Not later than one year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of such study.

PALM BEACH HARBOR, FLORIDA

The project for navigation, Palm Beach Harbor, Florida: Report of the Chief of Engineers, dated December 10, 1985, to assume maintenance, at an annual cost of $86,000.

MANATEE HARBOR, FLORIDA

The project for navigation, Manatee Harbor, Florida: Report of the Chief of Engineers, dated May 12, 1980, at a total cost of $16,400,000, with an estimated first Federal cost of $9,500,000 and an estimated first non-Federal cost of $6,900,000, including such modifications as the Secretary determines to be necessary and appropriate to mitigate the adverse effects of construction, operation, and maintenance of the project on the benthic environment of the area to be dredged. The Secretary, in consultation with appropriate Federal, State, and local agencies, shall study the effects that construction, operation, and maintenance of the proposed project will have on the benthic environment of the area to be dredged. Not later than one year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of such study. The Secretary shall monitor the effects of construction, operation, and maintenance of the project on the benthic environment of the dredged area.

TAMPA HARBOR, EAST BAY CHANNEL, FLORIDA

The project for navigation, Tampa Harbor, East Bay Channel, Florida: Report of the Chief of Engineers, dated January 25, 1979, at an average annual cost of $471,000. The Secretary shall monitor the effects of construction, operation, and maintenance of the project on water quality and the environment.

SAVANNAH HARBOR, GEORGIA

The project for navigation, Savannah Harbor Widening, Georgia: Report of the Chief of Engineers, dated December 19, 1978, at a total cost of $14,700,000, with an estimated first Federal cost of $7,100,000 and an estimated first non-Federal cost of $7,600,000.

HILO HARBOR, HAWAII

The project for navigation, Hilo Harbor, Hawaii: Report of the Chief of Engineers, dated December 4, 1984, at a total cost of $4,880,000, with an estimated first Federal cost of $3,380,000 and an estimated first non-Federal cost of $1,500,000.

GRAND HAVEN HARBOR, MICHIGAN

The project for navigation, modifications to Grand Haven Harbor, Michigan: Report of the Chief of Engineers, dated October 9, 1979, at a total cost of $17,600,000, with an estimated first Federal cost of $10,300,000 and an estimated first non-Federal cost of $7,300,000.

MONROE HARBOR, MICHIGAN

The project for navigation, Monroe Harbor, Michigan: Report of the Chief of Engineers, dated November 25, 1981, at a total cost of $142,000,000, with an estimated first Federal cost of $55,500,000 and an estimated first non-Federal cost of $86,500,000, including, for reasons of environmental quality, the formation of a 700 acre marsh in Plum Creek Bay, as described in the report of the District Engineer, Detroit District, dated February 1980, as revised December 15, 1980.

DULUTH-SUPERIOR, MINNESOTA AND WISCONSIN

(1) The project for navigation, Duluth-Superior, Minnesota and Wisconsin: Report of the Chief of Engineers, dated August 16, 1984, at a total cost of $12,500,000, with an estimated first Federal cost of $6,710,000 and an estimated first non-Federal cost of $5,790,000, including such modifications as the Secretary determines to be necessary and appropriate to mitigate losses of fish and wildlife habitat and productivity. The Secretary shall study, in consultation with appropriate Federal, State, and local agencies, the need for measures to mitigate losses of fish and wildlife habitat and productivity. Not later than one year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of such study.

(2) The Secretary shall also study, in consultation with appropriate Federal, State, and local agencies and taking into consideration existing plans, studies, and reports, whether it would be more cost-effective and environmentally sound to control future sedimentation than to conduct periodic maintenance dredging of such project. Not later than one year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on

the results of such study, along with recommendations for implementing measures to control sedimentation if such measures prove to be more cost-effective and environmentally sound.

PASCAGOULA HARBOR, MISSISSIPPI

The project for navigation, Pascagoula Harbor, Mississippi: Report of the Chief of Engineers, dated February 14, 1986, at a total cost of $59,100,000, with an estimated first Federal cost of $35,500,000 and an estimated first non-Federal cost of $23,600,000.

GULFPORT HARBOR, MISSISSIPPI

The project for navigation, Gulfport Harbor, Mississippi: Report of the Chief of Engineers, House Document Numbered 96-18, at a total cost of $81,700,000, with an estimated first Federal cost of $61,100,000 and an estimated first non-Federal cost of $20,600,000; except that, for reasons of environmental quality, dredged material from such project shall be disposed of in open water in the Gulf of Mexico in accordance with all provisions of Federal law. For the purpose of economic evaluation of this project the benefits from such open water disposal shall be deemed to be at least equal to the costs of such disposal.

PORTSMOUTH HARBOR AND PISCATAQUA RIVER, NEW HAMPSHIRE

The project for navigation, Portsmouth Harbor and Piscataqua River, New Hampshire: Report of the Chief of Engineers, dated February 25, 1985, at a total cost of $22,200,000, with an estimated first Federal cost of $16,700,000 and an estimated first non-Federal cost of $5,500,000, including such modifications as the Secretary determines to be necessary and appropriate to assure that adequate disposal sites are available for construction, operation, and maintenance of such project. The Secretary, in consultation with Federal, State, and local agencies, shall study the adequacy of potential disposal sites necessary for construction, operation, and maintenance of the project. Not later than one year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of such study.

GOWANUS CREEK CHANNEL, NEW YORK

The project for navigation, Gowanus Creek Channel, New York: Report of the Chief of Engineers, dated September 14, 1982, at a total cost of $3,310,000, with an estimated first Federal cost of $1,540,000 and an estimated first non-Federal cost of $1,770,000. Notwithstanding section 101 of this Act, the non-Federal share of the cost of such project shall be determined in accordance with the report of the Chief of Engineers.

KILL VAN KULL, NEW YORK AND NEW JERSEY

The project for navigation, Kill Van Kull and Newark Bay Channels, New York and New Jersey: Report of the Chief of Engineers, dated December 14, 1981, at a total cost of $325,000,000, with an estimated first Federal cost of $167,000,000 and an estimated first non-Federal cost of $158,000,000.

WILMINGTON HARBOR-NORTHEAST CAPE FEAR RIVER, NORTH CAROLINA

The project for navigation, Wilmington Harbor-Northeast Cape Fear River, North Carolina: Report of the Chief of Engineers, dated September 16, 1980, at a total cost of $10,000,000, with an estimated first Federal cost of $8,300,000 and an estimated first non-Federal cost of $1,700,000.

CLEVELAND HARBOR, OHIO

The project for harbor modification, Cleveland Harbor, Ohio, including bulkheading and other necessary repairs at pier 34 and approach channels and necessary protective structures for mooring basins for transient vessels in the area south of pier 34. The existing dredged material containment site known as site 14 may be used for the containment of excavated material from construction of the project, at a total cost of not to exceed $36,000,000, with an estimated first Federal cost of $27,000,000 and an estimated first non-Federal cost of $9,000,000.

LORAIN HARBOR, OHIO

The project for navigation, Lorain Harbor, Ohio: Report of the Chief of Engineers, dated February 5, 1985, at a total cost of $5,690,000, with an estimated first Federal cost of $3,740,000 and an estimated first non-Federal cost of $1,950,000.

CHARLESTON HARBOR, SOUTH CAROLINA

The project for navigation, Charleston Harbor, South Carolina: Report of the Chief of Engineers, dated August 27, 1981, including construction of an extension of the harbor navigation channel in the Wando River to the State port authority's Wando River terminal, Report of the Chief of Engineers, at a total cost of $88,500,000, with an estimated first Federal cost of $58,200,000 and an estimated first non-Federal cost of $30,300,000.

BRAZOS ISLAND HARBOR, TEXAS—BROWNSVILLE CHANNEL

The project for navigation, Brazos Island Harbor, Texas—Brownsville Channel: Report of the Chief of Engineers, dated December 20, 1979, at a total cost of $31,900,000, with an estimated first Federal cost of $22,700,000 and an estimated first non-Federal cost of $9,200,000. The Secretary shall study, in consultation with appropriate Federal, State, and local agencies, the need for additional measures to mitigate losses of estuarine habitat and productivity associated with the project. The Secretary is authorized to undertake measures which the Secretary determines to be necessary and appropriate to mitigate such losses.

BLAIR AND SITCUM WATERWAYS, TACOMA HARBOR, WASHINGTON

The project for navigation, Blair and Sitcum Waterways, Tacoma Harbor, Washington: Report of the Chief of Engineers, dated February 8, 1977, House Document Numbered 96-26, at a total cost of $38,200,000, with an estimated first Federal cost of $26,200,000 and an estimated first non-Federal cost of $12,000,000; except that a permanent bypass road for the Blair Waterway may be constructed in lieu of construction of the East 11th Street bridge replacement recommended in such report if (1) the Secretary determines that construction of the bypass road is economically and environmentally feasible, (2) construction of the bypass road is approved by the Governor of the State of Washington, and (3) the bypass road is approved through adoption of resolutions by both the Tacoma City Council and the Tacoma Port Commission. If the bypass road is constructed in lieu of the bridge replacement project, the Federal share of the cost of construction of the bypass road shall not exceed an amount equal to the amount which would have been the Federal share of the cost of the bridge replacement project if the bridge replacement project had been carried out in accordance with such report.

GRAYS HARBOR, WASHINGTON

The project for navigation, Grays Harbor, Washington: Report of the Chief of Engineers, dated May 4, 1985, at a total cost of $95,700,000, with an estimated first Federal cost of $63,100,000 and an estimated first non-Federal cost of $32,600,000.

EAST, WEST, AND DUWAMISH WATERWAYS, WASHINGTON

The project for navigation, East, West, and Duwamish Waterways, Navigation Improvement Study, Seattle Harbor, Washington: Report of the Chief of Engineers, dated May 31, 1985, at a total cost of $60,200,000, with an estimated first Federal cost of $30,300,000 and an estimated first non-Federal cost of $29,900,000.

SAIPAN HARBOR, COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

The project for navigation and harbor modification, Saipan Harbor, Commonwealth of the Northern Mariana Islands: Report of the Secretary of the Interior, pursuant to Public Law 96-597, prepared by the Army Corps of Engineers dated July 22, 1981, at a total cost of $14,000,000.

SAN JUAN HARBOR, PUERTO RICO

The project for navigation, San Juan Harbor, Puerto Rico: Report of the Chief of Engineers, dated December 23, 1982, at a total cost of $72,300,000, with an estimated first Federal cost of $52,700,000 and an estimated first non-Federal cost of $19,600,000, including the acquisition of 22 acres of land for mitigation of the loss of algal beds associated with the project, as recommended in the report of the District Engineer, Jacksonville, Florida, entitled "Phase I: General Design Memorandum on San Juan Harbor, Puerto Rico".

CROWN BAY CHANNEL—ST. THOMAS HARBOR, VIRGIN ISLANDS

The project for navigation, Crown Bay Channel—St. Thomas Harbor, Virgin Islands: Report of the Chief of Engineers, dated April 9, 1982, at a total cost of $8,290,000, with an estimated first Federal cost of $2,920,000 and an estimated first non-Federal cost of $5,370,000. The Secretary shall monitor the turbidity associated with construction, operation, and maintenance of the project and establish a program to maintain, to the extent feasible, such turbidity at a level which will not damage adjacent ecosystems. In selecting a configuration for the disposal area for dredged material from the project, the Secretary shall consider configurations which will minimize, to the extent feasible, the loss of shallow water habitat.

(b) AUTHORIZATION OF CONSTRUCTION SUBJECT TO FAVORABLE REPORT.—The following projects are authorized to be prosecuted by the Secretary substantially in accordance with the plans and subject to the conditions recommended in the respective reports cited, with such modifications as are recommended by the Chief of Engineers and approved by the Secretary, and with such other modifications as are recommended by the Secretary. If no report is cited for a project, the project is authorized to be prosecuted by the Secretary in accordance with a final report of the Chief of Engineers, and with such modifications as are recommended by the Secretary, and no construction on such project may be initiated until such a report is issued and approved by the Secretary.

FRESH KILLS IN CARTERET, NEW JERSEY

The project for navigation, Fresh Kills in Carteret, New Jersey, which project consists of extending the Arthur Kill Channel at a depth of 40 feet to the Fresh Kills in Carteret, New Jersey, and easing of such bends as the Secretary determines are necessary to

enhance navigation, at a total cost of $26,000,000, with an estimated first Federal cost of $19,500,000 and an estimated first non-Federal cost of $6,500,000.

ARTHUR KILL, NEW YORK AND NEW JERSEY

The project for navigation, Arthur Kill, New York and New Jersey, Report of the Board of Engineers for Rivers and Harbors, dated March 31, 1986, at a total cost of $42,600,000, with an estimated first Federal cost of $27,500,000 and an estimated first non-Federal cost of $15,100,000. At such time as construction may be initiated in accordance with the terms of this subsection, the project shall be included in and joined with the Kill van Kull and Newark Bay Channel, New York and New Jersey project under subsection (a) of this section.

NEW YORK HARBOR AND ADJACENT CHANNELS, NEW YORK AND NEW JERSEY

The project for (1) an access channel 45 feet deep below mean low water and generally 450 feet wide with suitable bends and turning areas to extend from deep water in the Anchorage Channel, New York Harbor, westward approximately 12,000 feet along the southern boundary of the Port Jersey peninsula to the head of navigation in Jersey City, New Jersey, at a total cost of $29,700,000, with an estimated first Federal cost of $21,000,000 and an estimated first non-Federal cost of $8,700,000; and (2) for a channel 42 feet deep below mean low water and generally 300 feet wide with suitable bends and turning areas to extend from deep water in the Anchorage Channel westward approximately 11,000 feet to the head of navigation in Claremont Terminal Channel, at a total cost of $16,000,000, with an estimated first Federal cost of $11,300,000 and an estimated first non-Federal cost of $4,700,000. No disposal of dredged material from construction, operation, and maintenance of such project shall take place at Bowery Bay, Flushing Bay, Powell's Cove, Little Bay, or Little Neck Bay, Queens, New York.

(c) PRE-CONSTRUCTION AUTHORIZATION.—The Secretary is authorized to carry out planning, engineering, and design for the following project for a harbor:

LAKE CHARLES, LOUISIANA

The project for deepening of the project for navigation, Lake Charles, Louisiana, to a depth of 45 feet, at a total cost of $1,070,000.

SEC. 203. STUDIES OF PROJECTS BY NON-FEDERAL INTERESTS.

(a) SUBMISSION TO SECRETARY.—A non-Federal interest may on its own undertake a feasibility study of a proposed harbor or inland harbor project and submit it to the Secretary. To assist non-Federal interests, the Secretary shall, as soon as practicable, promulgate guidelines for studies of harbors or inland harbors to provide sufficient information for the formulation of studies.

(b) REVIEW BY SECRETARY.—The Secretary shall review each study submitted under subsection (a) for the purpose of determining whether or not such study and the process under which such study was developed comply with Federal laws and regulations applicable to feasibility studies of navigation projects for harbors or inland harbors.

(c) SUBMISSION TO CONGRESS.—Not later than 180 days after receiving any study submitted under subsection (a), the Secretary shall transmit to the Congress, in writing, the results of such review and any recommendations the Secretary may have concerning the project described in such plan and design.

(d) CREDIT AND REIMBURSEMENT.—If a project for which a study has been submitted under subsection (a) is authorized by any provision of Federal law enacted after the date of such submission, the Secretary shall credit toward the non-Federal share of the cost of construction of such project an amount equal to the portion of the cost of developing such study that would be the responsibility of the United States if such study were developed by the Secretary.

SEC. 204. CONSTRUCTION OF PROJECTS BY NON-FEDERAL INTERESTS.

(a) AUTHORITY.—In addition to projects undertaken pursuant to sections 201 and 202 of this title, any non-Federal interest is authorized to undertake navigational improvements in harbors or inland harbors of the United States, subject to obtaining any permits required pursuant to Federal and State laws in advance of the actual construction of such improvements.

(b) STUDIES AND ENGINEERING.—When requested by an appropriate non-Federal interest the Secretary is authorized to undertake all necessary studies and engineering for any construction to be undertaken under the terms of subsection (a) of this section, and provide technical assistance in obtaining all necessary permits, if the non-Federal interest contracts with the Secretary to furnish the United States funds for such studies and engineering during the period that they are conducted.

(c) COMPLETION OF STUDIES.—The Secretary is authorized to complete and transmit to the appropriate non-Federal interest any study for improvements to harbors or inland harbors of the United States which were initiated prior to the date of enactment of this Act, or, upon the request of such non-Federal interest, to terminate such study and transmit such partially completed study to the non-Federal interest. Studies under this subsection shall be completed without regard to the requirements of subsection (b) of this section.

(d) AUTHORITY TO CARRY OUT IMPROVEMENT.—Any non-Federal interest which has requested and received from the Secretary pursuant to subsection (b) or (c) of this section, the completed study and engineering for an improvement to a harbor or an inland harbor, or separable element thereof, for the purpose of constructing such improvement and for which improvement a final environmental impact statement has been filed, shall be authorized to carry out the terms of the plan for such improvement. Any plan of improvement proposed to be implemented in accordance with this subsection shall be deemed to satisfy the requirements for obtaining the appropriate permits required under the Secretary's authority and such permits shall be granted subject to the non-Federal interest's acceptance of the terms and conditions of such permits: Provided, That the Secretary determines that the applicable regulatory criteria and procedures have been satisfied. The Secretary shall monitor any project for which permits are granted under this subsection in order to ensure that such project is constructed (and, in those cases where such activities will not be the responsibility of the Secretary, operated and maintained) in accordance with the terms and conditions of such permits.

(e) REIMBURSEMENT.—

(1) GENERAL RULE.—Subject to the enactment of appropriation Acts, the Secretary is authorized to reimburse any non-Federal interest an amount equal to the estimate of Federal share, without interest, of the cost of any authorized harbor or inland harbor improvement, or separable element thereof, constructed under the terms of this section if—

(A) after authorization of the project and before initiation of construction of the project or separable element—

(i) the Secretary approves the plans of construction of such project by such non-Federal interest, and

(ii) such non-Federal interest enters into an agreement to pay the non-Federal share, if any, of the cost of operation and maintenance of such project; and

(B) the Secretary finds before approval of the plans of construction of the project that the project, or separable element, is economically justified and environmentally acceptable.

(2) MATTERS TO BE CONSIDERED IN REVIEWING PLANS.—In reviewing such plans, the Secretary shall consider budgetary and programmatic priorities, potential impacts on the cost of dredging projects nationwide, and other factors that the Secretary deems appropriate.

(3) MONITORING.—The Secretary shall regularly monitor and audit any project for a harbor or inland harbor constructed under this subsection by a non-Federal interest in order to ensure that such construction is in compliance with the plans approved by the Secretary, and that costs are reasonable. No reimbursement shall be made unless and until the Secretary has certified that the work for which reimbursement is requested has been performed in accordance with applicable permits and the approved plans.

(e) OPERATION AND MAINTENANCE.—Whenever a non-Federal interest constructs improvements to any harbor or inland harbor, the Secretary shall be responsible for maintenance in accordance with section 101(b) if—

(1) the Secretary determines, before construction, that the improvements, or separable elements thereof, are economically justified, environmentally acceptable, and consistent with the purposes of this title;

(2) the Secretary certifies that the project is constructed in accordance with applicable permits and the appropriate engineering and design standards; and

(3) the Secretary does not find that the project, or separable element thereof, is no longer economically justified or environmentally acceptable.

(f) DEMONSTRATION OF NON-FEDERAL INTERESTS ACTING AS AGENT OF SECRETARY.—For the purpose of demonstrating the potential advantages and efficiencies of non-Federal management of projects, the Secretary may approve as many as two proposals pursuant to which the non-Federal interests will undertake part or all of a harbor project authorized by Congress as the agent of the Secretary by utilizing its own personnel or by procuring outside services, so long as the cost of doing so will not exceed the cost of the Secretary undertaking the project.

SEC. 205. COORDINATION AND SCHEDULING OF FEDERAL, STATE, AND LOCAL ACTIONS.

(a) NOTICE OF INTENT.—The Secretary, on request from an appropriate non-Federal interest in the form of a written notice of intent to construct a navigation project for a harbor or inland harbor under section 204 or this section, shall initiate procedures to establish a schedule for consolidating Federal, State, and local agency environmental assessments, project reviews, and issuance of all permits for the construction of the project, including associated access channels, berthing areas, and onshore port-related facilities, before the initiation of construction. The non-Federal interest shall submit, with the notice of intent, studies

and documentation, including environmental reviews, that may be required by Federal law for decisionmaking on the proposed project. A State shall not be required to participate in carrying out this section.

(b) PROCEDURAL REQUIREMENTS.—Within 15 days after receipt of notice under subsection (a), the Secretary shall publish such notice in the Federal Register. The Secretary also shall provide written notification of the receipt of a notice under subsection (a) to all State and local agencies that may be required to issue permits for the construction of the project or related activities. The Secretary shall solicit the cooperation of those agencies and request their entry into a memorandum of agreement described in subsection (c). Within 30 days after publication of the notice in the Federal Register, State and local agencies that intend to enter into the memorandum of agreement shall notify the Secretary of their intent in writing.

(c) SCHEDULING AGREEMENT.—Within 90 days after receipt of notice under subsection (a), the Secretary of the Interior, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and any State or local agencies that have notified the Secretary under subsection (b) shall enter into an agreement with the Secretary establishing a schedule of decisionmaking for approval of the project and permits associated with it and with related activities. Such schedule may not exceed two and one-half years from the date of the agreement.

(d) CONTENTS OF AGREEMENT.—The agreement entered into under subsection (c), to the extent practicable, shall consolidate hearing and comment periods, procedures for data collection and report preparation, and the environmental review and permitting processes associated with the project and related activities. The agreement shall detail, to the extent possible, the non-Federal interest's responsibilities for data development and information that may be necessary to process each permit, including a schedule when the information and data will be provided to the appropriate Federal, State, or local agency.

(e) PRELIMINARY DECISION.—The agreement shall include a date by which the Secretary, taking into consideration the views of all affected Federal agencies, shall provide to the non-Federal interest in writing a preliminary determination whether the project and Federal permits associated with it are reasonably likely to receive approval.

(f) REVISION OF AGREEMENT.—The Secretary may revise the agreement once to extend the schedule to allow the non-Federal interest the minimum amount of additional time necessary to revise its original application to meet the objections of a Federal, State, or local agency which is a party to the agreement.

(g) PROGRESS REPORTS.—Six months before the final date of the schedule, the Secretary shall provide to Congress a written progress report for each navigation project for a harbor or inland harbor subject to this section. The Secretary shall transmit the report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. The report shall summarize all work completed under the agreement and shall include a detailed work program that will assure completion of all remaining work under the agreement.

(h) FINAL DECISION.—Not later than the final day of the schedule, the Secretary shall notify the non-Federal interest of the final decision on the project and whether the permit or permits have been issued.

(i) REPORT ON TIMESAVINGS METHODS.—Not later than one year after the date of enactment of this Act, the Secretary shall prepare and transmit to Congress a report estimating the time required for the issuance of all Federal, State, and local permits for the construction of navigation projects for harbors or inland harbors and associated activities. The Secretary shall include in that report recommendations for further reducing the amount of time required for the issuance of those permits, including any proposed changes in existing law.

SEC. 206. NONAPPLICABILITY TO SAINT LAWRENCE SEAWAY.

Sections 203, 204, and 205 do not apply to any harbor or inland harbor project for that portion of the Saint Lawrence Seaway administered by the Saint Lawrence Seaway Development Corporation.

SEC. 207. CONSTRUCTION IN USABLE INCREMENTS.

Any navigation project for a harbor or inland harbor authorized by this title or any other provision of law enacted before, on, or after the date of enactment of this title may be constructed in usable increments.

SEC. 208. PORT OR HARBOR DUES.

(a) CONSENT OF CONGRESS.—Subject to the following conditions, a non-Federal interest may levy port or harbor dues (in the form of tonnage duties or fees) on a vessel engaged in trade entering or departing from a harbor and on cargo loaded on or unloaded from that vessel under clauses 2 and 3 of section 10, and under clause 3 of section 8, of Article 1 of the Constitution:

(1) PURPOSES.—Port or harbor dues may be levied only in conjunction with a harbor navigation project whose construction is complete (including a usable increment of the project) and for the following purposes and in amounts not to exceed those necessary to carry out those purposes:

(A)(i) to finance the non-Federal share of construction and operation and maintenance costs of a navigation project for a harbor under the requirements of section 101 of this Act; or

(ii) to finance the cost of construction and operation and maintenance of a navigation project for a harbor under section 204 or 205 of this Act; and

(B) provide emergency response services in the harbor, including contingency planning, necessary personnel training, and the procurement of equipment and facilities.

(2) LIMITATION ON PORT OR HARBOR DUES FOR EMERGENCY SERVICE.—Port or harbor dues may not be levied for the purposes described in paragraph (1)(B) of this subsection after the dues cease to be levied for the purposes described in paragraph (1)(A) of this subsection.

(3) GENERAL LIMITATIONS.—(A) Port or harbor dues may not be levied under this section in conjunction with a deepening feature of a navigation improvement project on any vessel if that vessel, based on its design draft, could have utilized the project at mean low water before construction. In the case of project features which solely—

(i) widen channels or harbors,

(ii) create or enlarge bend easings, turning basins or anchorage areas, or provide protected areas, or

(iii) remove obstructions to navigation,

only vessels at least comparable in size to those used to justify these features may be charged under this section.

(B) In developing port or harbor dues that may be charged under this section on vessels for project features constructed under this title, the non-Federal interest may consider such criteria as: elapsed time of passage, safety of passage, vessel economy of scale, under keel clearance, vessel draft, vessel squat, vessel speed, sinkage, and trim.

(C) Port or harbor dues authorized by this section shall not be imposed on—

(i) vessels owned and operated by the United States Government, a foreign country, a State, or a political subdivision of a country or State, unless engaged in commercial services;

(ii) towing vessels, vessels engaged in dredging activities, or vessels engaged in intraport movements; or

(iii) vessels with design drafts of 20 feet or less when utilizing general cargo and deep-draft navigation projects.

(4) FORMULATION OF PORT OR HARBOR DUES.—Port or harbor dues may be levied only on a vessel entering or departing from a harbor and its cargo on a fair and equitable basis. In formulating port and harbor dues, the non-Federal interest shall consider—

(A) the direct and indirect cost of construction, operations, and maintenance, and providing the facilities and services under paragraph (1) of this subsection;

(B) the value of those facilities and services to the vessel and cargo;

(C) the public policy or interest served; and

(D) any other pertinent factors.

(5) NOTICE AND HEARING.—(A) Before the initial levy of or subsequent modification to port or harbor dues under this section, a non-Federal interest shall transmit to the Secretary—

(i) the text of the proposed law, regulation, or ordinance that would establish the port or harbor dues, including provisions for their administration, collection, and enforcement;

(ii) the name, address, and telephone number of an official to whom comments on and requests for further information on the proposal are to be directed;

(iii) the date by which comments on the proposal are due and a date for a public hearing on the proposal at which any interested party may present a statement; however, the non-Federal interest may not set a hearing date earlier than 45 days after the date of publication of the notice in the Federal Register required by subparagraph (B) of this paragraph or set a deadline for receipt of comments earlier than 60 days after the date of publication; and

(iv) a written statement signed by an appropriate official that the non-Federal interest agrees to be governed by the provisions of this section.

(B) On receiving from a non-Federal interest the information required by subparagraph (A) of this paragraph, the Secretary shall transmit the material required by clauses (i) through (iii) of subparagraph (A) of this paragraph to the Federal Register for publication.

(C) Port or harbor dues may be imposed by a non-Federal interest only after meeting the conditions of this paragraph.

(6) REQUIREMENTS ON NON-FEDERAL INTEREST.—A non-Federal interest shall—

(A) file a schedule of any port or harbor dues levied under this subsection with the Secretary and the Federal Maritime Commission, which the Commission shall make available for public inspection;

(B) provide to the Comptroller General of the United States on request of the Comptroller General any records or other evidence that the Comptroller General considers to be

necessary and appropriate to enable the Comptroller General to carry out the audit required under subsection (b) of this section;

(C) designate an officer or authorized representative, including the Secretary of the Treasury acting on a cost-reimbursable basis, to receive tonnage certificates and cargo manifests from vessels which may be subject to the levy of port or harbor dues, export declarations from shippers, consignors, and terminal operators, and such other documents as the non-Federal interest may by law, regulation, or ordinance require for the imposition, computation, and collection of port or harbor dues; and

(D) consent expressly to the exclusive exercise of Federal jurisdiction under subsection (c) of this section.

(b) AUDITS.—The Comptroller General of the United States shall—

(1) carry out periodic audits of the operations of non-Federal interests that elect to levy port or harbor dues under this section to determine if the conditions of subsection (a) of this section are being complied with;

(2) submit to each House of the Congress a written report containing the findings resulting from each audit; and

(3) make any recommendations that the Comptroller General considers appropriate regarding the compliance of those non-Federal interests with the requirements of this section.

(c) JURISDICTION.—(1) The district court of the United States for the district in which is located a non-Federal interest that levies port or harbor dues under this section has original and exclusive jurisdiction over any matter arising out of or concerning, the imposition, computation, collection, and enforcement of port or harbor dues by a non-Federal interest under this section.

(2) Any person who suffers legal wrong or is adversely affected or aggrieved by the imposition by a non-Federal interest of a proposed scheme or schedule of port or harbor dues under this section may, not later than 180 days after the date of hearing under subsection (a)(5)(A)(iii) of this section, commence an action to seek judicial review of that proposed scheme or schedule in the appropriate district court under paragraph (1).

(3) On petition of the Attorney General or any other party, that district court may—

(A) grant appropriate injunctive relief to restrain an action by that non-Federal interest violating the conditions of consent in subsection (a) of this section;

(B) order the refund of any port or harbor dues not lawfully collected; and

(C) grant other appropriate relief or remedy.

(d) COLLECTION OF DUTIES.—

(1) DELIVERY OF CERTIFICATE AND MANIFEST.—

(A) UPON ARRIVAL OF VESSEL.—Upon the arrival of a vessel in a harbor in which the vessel may be subject to the levy of port or harbor dues under this section, the master of that vessel shall, within forty-eight hours after arrival and before any cargo is unloaded from that vessel, deliver to the appropriate authorized representative appointed under subsection (a)(6)(C) of this section a tonnage certificate for the vessel and a manifest of the cargo aboard that vessel or, if the vessel is in ballast, a declaration to that effect.

(B) BEFORE DEPARTURE OF VESSEL.—The shipper, consignor, or terminal operator having custody of any cargo to be loaded on board a vessel while the vessel is in a harbor in which the vessel may be subject to the levy of port or harbor dues under this section shall, within forty-eight hours before departure of that vessel, deliver to the appropriate authorized representative appointed under subsection (a)(6)(C) of this section an export declaration specifying the cargo to be loaded on board that vessel.

(e) ENFORCEMENT.—At the request of an authorized representative referred to in subsection (a)(6)(C) of this section, the Secretary of the Treasury may:

(1) withhold the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) for a vessel if the master, owner, or operator of a vessel subject to port or harbor dues under this section fails to comply with the provisions of this section including any non-Federal law, regulation or ordinance issued hereunder; and

(2) assess a penalty or initiate a forfeiture of the cargo in the same manner and under the same procedures as are applicable for failure to pay customs duties under the Tariff Act of 1930 (19 App. U.S.C. 1202 et seq.) if the shipper, consignor, consignee, or terminal operator having title to or custody of cargo subject to port or harbor dues under this section fails to comply with the provisions of this section including any non-Federal law, regulation, or ordinance issued hereunder.

(f) MARITIME LIEN.—Port or harbor dues levied under this section against a vessel constitute a maritime lien against the vessel and port or harbor dues levied against cargo constitute a lien against the cargo that may be recovered in an action in the district court of the United States for the district in which the vessel or cargo is found.

SEC. 209. INFORMATION FOR NATIONAL SECURITY.

Any non-Federal interest shall provide the United States the information necessary for military readiness planning and harbor, inland harbor, and national security, including information necessary to obtain national security clearances for individuals employed in critical harbor and inland harbor positions.

SEC. 210. AUTHORIZATION OF APPROPRIATIONS.

(a) TRUST FUND.—There are authorized to be appropriated out of the Harbor Maintenance Trust Fund, established by section 9505 of the Internal Revenue Code of 1954, for each fiscal year such sums as may be necessary to pay—

(1) 100 percent of the eligible operations and maintenance costs of those portions of the Saint Lawrence Seaway operated and maintained by the Saint Lawrence Seaway Development Corporation for such fiscal year; and

(2) not more than 40 percent of the eligible operations and maintenance costs assigned to commercial navigation of all harbors and inland harbors within the United States.

(b) GENERAL FUND.—There are authorized to be appropriated out of the general fund of the Treasury of the United States for each fiscal year such sums as may be necessary to pay the balance of all eligible operations and maintenance costs not provided by payments from the Harbor Maintenance Trust Fund under this section.

SEC. 211. ALTERNATIVES TO MUD DUMP FOR DISPOSAL OF DREDGED MATERIAL.

(a) DESIGNATION OF ALTERNATIVE SITES.—Not later than three years after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall designate one or more sites in accordance with the Marine Protection, Research, and Sanctuaries Act of 1972 for the disposal of dredged material which, without such designation, would be disposed of at the Mud Dump (as defined in subsection (g)). The designated site or sites shall be located not less than 20 miles from the shoreline. The Administrator, in determining sites for possible designation under this subsection, shall consult with the Secretary and appropriate Federal, State, interstate, and local agencies.

(b) USE OF NEWLY DESIGNATED SITE.—Beginning on the 30th day following the date on which the Administrator of the Environmental Protection Agency makes the designation required by subsection (a), any ocean disposal of dredged material (other than acceptable dredged material) by any person or governmental entity authorized pursuant to the Marine Protection, Research, and Sanctuaries Act of 1972 to dispose of dredged material at the Mud Dump on or before the date of such designation shall take place at the newly designated ocean disposal site or sites under subsection (a) in lieu of the Mud Dump.

(c) INTERIM AVAILABILITY OF LAWFUL SITES.—Until the 30th day following the date on which the Administrator of the Environmental Protection Agency makes the designation required by subsection (a), there shall be available a lawful site for the ocean disposal of dredged material by any person or governmental entity authorized pursuant to the Marine Protection, Research, and Sanctuaries Act of 1972 to dispose of dredged material at the Mud Dump on or before the date of such designation.

(d) STATUS REPORTS.—Not later than one year after the date of enactment of this Act and annually thereafter until the designation of one or more sites under subsection (a), the Administrator of the Environmental Protection Agency shall submit a report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate describing the status of such designation.

(e) FUTURE USE OF MUD DUMP RESTRICTED TO ACCEPTABLE DREDGED MATERIAL.—Notwithstanding any other provision of law, including any regulation, the Secretary shall ensure that, not later than the 30th day following the date on which the Administrator of the Environmental Protection Agency makes the designation required by subsection (a), all existing and future Department of the Army permits and authorizations for disposal of dredged material at the Mud Dump shall be modified, revoked, and issued (as appropriate) to ensure that only acceptable dredged material will be disposed of at such site and that all other dredged material determined to be suitable for ocean disposal will be disposed of at the site or sites designated pursuant to subsection (a) of this section.

(f) DEFINITION OF ACCEPTABLE DREDGED MATERIAL.—For purposes of this section, the term "acceptable dredged material" means rock, beach quality sand, material excluded from testing under the ocean dumping regulations promulgated by the Administrator of the Environmental Protection Agency pursuant to the Marine Protection, Research, and Sanctuaries Act of 1972, and any other dredged material (including that from new work) determined by the Secretary, in consultation with the Administrator, to be substantially free of pollutants.

(g) DEFINITION OF MUD DUMP.—For purposes of this section, the term "Mud Dump" means the area located approximately 5¾ miles east of Sandy Hook, New Jersey, with boundary coordinates of 40 degrees 23 min-

utes 48 seconds N, 73 degrees 51 minutes 28 seconds W; 40 degrees 21 minutes 48 seconds N, 73 degrees 50 minutes 00 seconds W; 40 degrees 21 minutes 48 seconds N, 73 degrees 51 minutes 28 seconds W; and 40 degrees 23 minutes 48 seconds N, 73 degrees 50 minutes 00 seconds W.

SEC. 212. EMERGENCY RESPONSE SERVICES.

(a) GRANTS.—The Secretary is authorized to make grants to any non-Federal interest operating a project for a harbor for provision of emergency response services in such harbor (including contingency planning, necessary personnel training, and the procurement of equipment and facilities either by the non-Federal interest, by a local agency or municipality, or by a combination of local agencies or municipalities on a cost-reimbursable basis, either by a cooperative agreement, mutual aid plan, or mutual assistance plan entered into between one or more non-Federal interests, public agencies, or local municipalities).

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal years beginning after September 30, 1986, and ending before October 1, 1992, $5,000,000.

SEC. 213. HARBOR OFFICE AT MORRO BAY, CALIFORNIA.

For reasons of navigation safety, subject to section 903(a) of this Act, the Secretary is authorized to make a grant to the non-Federal interest operating Morro Bay Harbor, California, for construction of a new harbor office at such harbor, at a total cost of $500,000, with an estimated first Federal cost of $375,000 and an estimated first non-Federal cost of $125,000.

SEC. 214. DEFINITIONS.

For purposes of this title—

(1) DEEP-DRAFT HARBOR.—The term "deep-draft harbor" means a harbor which is authorized to be constructed to a depth of more than 45 feet (other than a project which is authorized by section 202 of this title).

(2) ELIGIBLE OPERATIONS AND MAINTENANCE.—(A) Except as provided in subparagraph (B), the term "eligible operations and maintenance" means all operations, maintenance, repair, and rehabilitation, including maintenance dredging reasonably necessary to maintain the width and nominal depth of any harbor or inland harbor.

(B) As applied to the Saint Lawrence Seaway, the term "eligible operations and maintenance" means all operations, maintenance, repair, and rehabilitation, including maintenance dredging reasonably necessary to keep such Seaway or navigation improvements operated or maintained by the Saint Lawrence Seaway Development Corporation in operation and reasonable state of repair.

(C) The term "eligible operations and maintenance" does not include providing any lands, easements, rights-of-way, or dredged material disposal areas, or performing relocations required for project operations and maintenance.

(3) GENERAL CARGO HARBOR.—The term "general cargo harbor" means a harbor for which a project is authorized by section 202 of this title and any other harbor which is authorized to be constructed to a depth of more than 20 feet but not more than 45 feet;

(4) HARBOR.—The term "harbor" means any channel or harbor, or element thereof, in the United States, capable of being utilized in the transportation of commercial cargo in domestic or foreign waterborne commerce by commercial vessels. The term does not include—

(A) an inland harbor;

(B) the Saint Lawrence Seaway;

(C) local access or berthing channels;

(D) channels or harbors constructed or maintained by nonpublic interests; and

(E) any portion of the Columbia River other than the channels on the downstream side of Bonneville lock and dam.

(5) INLAND HARBOR.—The term "inland harbor" means a navigation project which is used principally for the accommodation of commercial vessels and the receipt and shipment of waterborne cargoes on inland waters. The term does not include—

(A) projects on the Great Lakes;

(B) projects that are subject to tidal influence;

(C) projects with authorized depths of greater than 20 feet;

(D) local access or berthing channels; and

(E) projects constructed or maintained by nonpublic interests.

(6) NOMINAL DEPTH.—The term "nominal depth" means, in relation to the stated depth for any navigation improvement project, such depth, including any greater depths which must be maintained for any harbor or inland harbor or element thereof included within such project in order to ensure the safe passage at mean low tide of any vessel requiring the stated depth.

(7) NON-FEDERAL INTEREST.—The term "non-Federal interest" has the meaning such term has under section 221 of the Flood Control Act of 1970 and includes any interstate agency and port authority established under a compact entered into between two or more States with the consent of Congress under section 10 of Article I of the Constitution.

(8) UNITED STATES.—The term "United States" means all areas included within the territorial boundaries of the United States, including the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and any other territory or possession over which the United States exercises jurisdiction.

SEC. 215. SHORT TITLE.

This title may be cited as the "Harbor Development and Navigation Improvement Act of 1986".

TITLE III—INLAND WATERWAY TRANSPORTATION SYSTEM

SEC. 301. AUTHORIZATION OF PROJECTS.

(a) AUTHORIZATION OF CONSTRUCTION.—The following works of improvement for the benefit of navigation are authorized to be prosecuted by the Secretary substantially in accordance with the plans and subject to the conditions recommended in the respective reports designated in this subsection, except as otherwise provided in this subsection:

OLIVER LOCK AND DAM, BLACK WARRIOR–TOMBIGBEE RIVER, ALABAMA

Construction of a lock and dam to replace the William Bacon Oliver Lock and Dam, Black Warrior-Tombigbee River, Alabama: Report of the Chief of Engineers, dated September 26, 1984, at a total cost of $150,000,000, with a first Federal cost of $150,000,000.

LOCKS AND DAMS 5 THROUGH 14, KENTUCKY RIVER, KENTUCKY

Disposition of Kentucky River, Kentucky, Locks and Dams 5 through 14, Report of the Chief of Engineers, dated July 2, 1984, for disposition purposes without any construction cost.

GALLIPOLIS LOCKS AND DAM REPLACEMENT, OHIO RIVER, OHIO AND WEST VIRGINIA

The project for navigation, Gallipolis Locks and Dam Replacement, Ohio River, Ohio and West Virginia: Report of the Chief of Engineers, dated April 8, 1982, and Supplemental Report of the Chief of Engineers, dated August 13, 1983, at a total cost of $285,000,000, with a first Federal cost of $285,000,000.

BONNEVILLE LOCK AND DAM, OREGON AND WASHINGTON—COLUMBIA RIVER AND TRIBUTARIES, WASHINGTON

The project for navigation, Bonneville Lock and Dam, Oregon and Washington—Columbia River and Tributaries, Interim Report: Report of the Chief of Engineers, dated March 14, 1980, and the Supplement thereto, dated February 10, 1981, at a total cost of $191,000,000, with a first Federal cost of $191,000,000. Dredged material from the project shall be disposed of at such sites considered by the Secretary to be appropriate to the extent necessary to prevent damage to the Blue Heron rookery on Pierce and Ives Islands. No construction shall take place on Pierce and Ives Islands during the heron nesting period.

LOCK AND DAM 7 REPLACEMENT, MONONGAHELA RIVER, PENNSYLVANIA

The project for navigation, Lock and Dam 7 Replacement, Monongahela River, Pennsylvania: Report of the Chief of Engineers, dated September 24, 1984, with such modifications (including acquisition of lands for fish and wildlife mitigation) as the Secretary determines are advisable, at a total cost of $123,000,000, with a first Federal cost of $123,000,000.

LOCK AND DAM 8 REPLACEMENT, MONONGAHELA RIVER, PENNSYLVANIA

The project for navigation, Lock and Dam 8 Replacement, Monongahela River, Pennsylvania: Report of the Chief of Engineers, dated September 24, 1984, with such modifications (including acquisition of lands for fish and wildlife mitigation) as the Secretary determines are advisable, at a total cost of $82,900,000, with a first Federal cost of $82,900,000.

(b) AUTHORIZATION OF CONSTRUCTION SUBJECT TO FAVORABLE REPORT.—The following project is authorized to be prosecuted by the Secretary in accordance with a final report of the Chief of Engineers, and with such modifications as are recommended by the Secretary, and no construction on such project may be initiated until such a report is issued and approved by the Secretary.

WINFIELD LOCKS AND DAM, KANAWHA RIVER, WEST VIRGINIA

Construction of improvements to, and an additional lock in the vicinity of, the Winfield Locks and Dam, Kanawha River, West Virginia, and acquisition of lands for fish and wildlife mitigation in such vicinity, at a total cost of $153,000,000, with a first Federal cost of $153,000,000.

SEC. 302. INLAND WATERWAYS USERS BOARD.

(a) ESTABLISHMENT OF USERS BOARD.—There is hereby established an Inland Waterway Users Board (hereinafter in this section referred to as the "Users Board") composed of the eleven members selected by the Secretary, one of whom shall be designated by the Secretary as Chairman. The members shall be selected so as to represent various regions of the country and a spectrum of the primary users and shippers utilizing the inland and intracoastal waterways for commercial purposes. Due consideration shall be given to assure a balance among the members based on the ton-mile shipments of the various categories of commodities shipped on inland waterways. The Secretary of the Army shall designate, and the Secretaries of Agriculture, Transportation, and Commerce may

each designate, a representative to act as an observer of the Users Board.

(b) DUTIES.—The Users Board shall meet at least semi-annually to develop and make recommendations to the Secretary regarding construction and rehabilitation priorities and spending levels on the commercial navigational features and components of the inland waterways and inland harbors of the United States for the following fiscal years. Any advice or recommendation made by the Users Board to the Secretary shall reflect the independent judgment of the Users Board. The Users Board shall, by December 31, 1987, and annually thereafter file such recommendations with the Secretary and with the Congress.

(c) ADMINISTRATION.—The Users Board shall be subject to the Federal Advisory Committee Act (83 Stat. 770; 5 U.S.C. App.), other than section 14, and, with the consent of the appropriate agency head, the Users Board may use the facilities and services of any Federal agency. Non-Federal members of the Users Board while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

TITLE IV—FLOOD CONTROL

SEC. 401. AUTHORIZATION OF PROJECTS.

(a) AUTHORIZATION OF CONSTRUCTION.—The following works of improvement for the control of destructive floodwaters are adopted and authorized to be prosecuted by the Secretary substantially in accordance with the plans and subject to the conditions recommended in the respective reports designated in this subsection, except as otherwise provided in this subsection:

VILLAGE CREEK, ALABAMA

The project for flood control, Village Creek, Jefferson County, Alabama: Report of the Chief of Engineers, dated December 23, 1982, at a total cost of $31,600,000, with an estimated first Federal cost of $23,600,000 and an estimated first non-Federal cost of $8,000,000.

THREEMILE CREEK, ALABAMA

The project for flood control, Threemile Creek, Mobile, Alabama: Report of the Chief of Engineers, dated April 20, 1984, at a total cost of $19,100,000, with an estimated first Federal cost of $13,400,000 and an estimated first non-Federal cost of $5,700,000.

LITTLE COLORADO RIVER, ARIZONA

The project for flood control, Little Colorado River at Holbrook, Arizona: Report of the Chief of Engineers, dated December 23, 1981, at a total cost of $11,900,000, with an estimated first Federal cost of $8,940,000 and an estimated first non-Federal cost of $2,960,000.

EIGHT MILE CREEK, PARAGOULD, ARKANSAS

The project for flood control, Eight Mile Creek, Paragould, Arkansas: Report of the Chief of Engineers, dated August 10, 1979, at a total cost of $16,100,000, with an estimated first Federal cost of $11,200,000 and an estimated first non-Federal cost of $4,900,000.

FOURCHE BAYOU BASIN, ARKANSAS

The project for flood control, Fourche Bayou Basin, Little Rock, Arkansas: Report of the Chief of Engineers, dated September 4, 1981, at a total cost of $33,400,000, with an estimated first Federal cost of $25,100,000 and an estimated first non-Federal cost of $8,300,000.

HELENA AND VICINITY, ARKANSAS

The project for flood control, Helena and Vicinity, Arkansas: Report of the Chief of Engineers, dated June 22, 1983, at a total cost of $15,000,000, with an estimated first Federal cost of $11,200,000 and an estimated first non-Federal cost of $3,800,000.

WEST MEMPHIS AND VICINITY, ARKANSAS

The project for flood control, West Memphis and Vicinity, Arkansas: Report of the Chief of Engineers, dated September 7, 1984, at a total cost of $21,900,000, with an estimated first Federal cost of $15,400,000 and an estimated first non-Federal cost of $6,500,000.

CACHE CREEK BASIN, CALIFORNIA

The project for flood control, Cache Creek Basin, California: Report of the Chief of Engineers, dated April 27, 1981, at a total cost of $28,500,000, with an estimated first Federal cost of $19,000,000 and an estimated first non-Federal cost of $9,500,000, except that, in lieu of constructing the recommended bypass channel, the Secretary shall accomplish the purposes of the project by removing the rock formation at the outlet channel and widening and deepening the channel in accordance with alternative 8 as described in the Feasibility Study of the District Engineer dated August 1979. The Secretary shall act in coordination with the State of California to assure that such project poses no danger to any component of its State park system.

REDBANK AND FANCHER CREEKS, CALIFORNIA

The project for flood control, Redbank and Fancher Creeks, California: Report of the Chief of Engineers, dated May 7, 1981, at a total cost of $84,600,000, with an estimated first Federal cost of $64,900,000 and an estimated first non-Federal cost of $19,700,000. The project shall include measures determined appropriate by the Secretary to minimize adverse effects on groundwater and to maximize benefits to groundwater, including ground water recharge.

SANTA ANA RIVER MAINSTEM, CALIFORNIA

The project for flood control, Santa Ana River Mainstem, including Santiago Creek, California: Report of the Chief of Engineers, dated January 15, 1982, at a total cost of $1,090,000,000, with an estimated first Federal cost of $809,000,000 and an estimated first non-Federal cost of $281,000,000, except that in lieu of the Mentone Dam feature of the project and subject to the provisions of section 903(b) of this Act, the Secretary is authorized to plan, design, and construct a flood control storage dam on the upper Santa Ana River. Any relocation of the Talbert Valley Channel undertaken in connection with the project shall be constructed with a channel capacity sufficient to accommodate a 100-year flood. If a non-Federal sponsor agrees to pay at least 50 percent of the cost of such investigation, the Secretary is authorized to investigate the feasibility of including water supply and conservation storage at Prado Dam. The Secretary of the Interior, in consultation with the Secretary, shall carry out such studies and analyses as he deems necessary to determine (1) the effects of water supply and conservation at Prado Dam on existing oil and gas leasehold interests owned by Prado Petroleum Company, and (2) the feasibility of exchanging the leasehold interests owned by Prado Petroleum Company for property of substantially equivalent value under the jurisdiction of the Secretary of the Interior. Such studies and analyses shall be completed within one year of the date of enactment of this Act. Pursuant to the Water Supply Act of 1958, any additional water supply and conservation storage at Prado Dam as may be recommended by the Secretary based on the investigation under this paragraph is authorized upon the exchange of leasehold interests in accordance with the recommendations of the Secretary of the Interior's studies. Nothing in this paragraph affects the Secretary's and the Secretary of the Interior's existing authority to operate Prado Dam for water supply and conservation.

FOUNTAIN CREEK, COLORADO

The project for flood control, Fountain Creek, Pueblo, Colorado phase I GDM: Report of the Chief of Engineers, dated December 23, 1981, at a total cost of $8,600,000, with an estimated first Federal cost of $6,320,000 and an estimated first non-Federal cost of $2,280,000.

METROPOLITAN DENVER, COLORADO

The project for flood control, Metropolitan Denver and South Platte River and Tributaries, Colorado, Wyoming, and Nebraska: Reports of the Chief of Engineers, dated December 23, 1981, and July 14, 1983, House Document Numbered 98-265, at a total cost of $10,800,000, with an estimated first Federal cost of $8,100,000 and an estimated first non-Federal cost of $2,700,000. In applying section 104 to such project, the Secretary shall consider work carried out by non-Federal interests after January 1, 1978, and before the date of the enactment of this Act that otherwise meets the requirements of such section.

OATES CREEK, GEORGIA

The project for flood control, Oates Creek, Georgia: Report of the Chief of Engineers, dated December 23, 1981, at a total cost of $13,700,000, with an estimated first Federal cost of $9,600,000 and an estimated first non-Federal cost of $4,100,000. Such project shall include (1) measures determined by the Secretary to be necessary and appropriate to minimize pollution of shallow ground and surface waters which may result from construction of the project, and (2) planting of vegetation along the channel for purposes of enhancing wildlife habitat.

ALENAIO STREAM, HAWAII

The project for flood control, Alenaio Stream, Hawaii: Report of the Chief of Engineers, dated August 15, 1983, at a total cost of $7,860,000, with an estimated first Federal cost of $5,500,000 and an estimated first non-Federal cost of $2,360,000.

LITTLE WOOD RIVER, IDAHO

The project for flood control, Little Wood River, vicinity of Gooding and Shoshone, Idaho: Report of the Chief of Engineers, dated November 2, 1977, Senate Document Numbered 96-9, at a total cost of $4,530,000, with an estimated first Federal cost of $3,400,000 and an estimated first non-Federal cost of $1,130,000. After completion of the project, the Secretary shall evaluate and monitor the extent of any fish losses that are attributable to the project and undertake such additional mitigation measures as he determines appropriate.

ROCK RIVER, ILLINOIS

The project for flood control, Rock River, Rockford and Vicinity, Illinois (Loves Park Interim): Report of the Chief of Engineers, dated September 15, 1980, at a total cost of $31,300,000, with an estimated first Federal cost of $23,500,000 and an estimated first non-Federal cost of $7,800,000. The project shall include flood protection measures along Small Unnamed Creek, as described in the Interim Report of the District Engineer, Rock Island, dated February 1979. Before the acquisition of land for, or the actual construction of, the project the Secretary shall study the probable effects of the project

on existing recreational resources in the project area and, as part of the project, shall undertake such measures as he determines necessary and appropriate to mitigate any adverse effects on such recreation resources.

SOUTH QUINCY DRAINAGE AND LEVEE DISTRICT, ILLINOIS

The project for flood control, South Quincy Drainage and Levee District, Illinois: Report of the Chief of Engineers, dated January 24, 1984, at a total cost of $11,900,000, with an estimated first Federal cost of $8,900,000 and an estimated first non-Federal cost of $3,000,000. The Secretary shall, to the extent feasible, obtain borrow material from sites in the main channel of the Mississippi River and place fill material on the landward side of the existing levee in order to protect wildlife habitat.

NORTH BRANCH OF CHICAGO RIVER, ILLINOIS

The project for flood protection for the North Branch of the Chicago River, Illinois: Report of the Chief of Engineers, dated October 29, 1984, at a total cost of $22,700,000, with an estimated first Federal cost of $15,000,000 and an estimated first non-Federal cost of $7,700,000. In recognition of the flood damage prevention benefits provided in the North Branch of the Chicago River, Illinois Basin, by the Techny Reservoirs constructed by non-Federal interests on the West Fork of the North Branch of the Chicago River and by the Mid Fork Reservoir and the Mid Fork Pumping Station constructed by non-Federal interests on the Middle Fork of the North Branch of the Chicago River, the Secretary shall, subject to such amounts as are provided in appropriation Acts, reimburse non-Federal interests for an amount equal to 50 percent of the costs of planning and construction of such reservoirs and pumping station.

O'HARE SYSTEM OF THE CHICAGOLAND UNDERFLOW PLAN, ILLINOIS

The project for flood control, O'Hare System of the Chicagoland Underflow Plan, Illinois: Report of the Chief of Engineers, dated June 3, 1985, at a total cost of $18,400,000, with an estimated first Federal cost of $14,800,000 and an estimated first non-Federal cost of $3,600,000, except that the capacity of the flood control reservoir shall be at least 1,050 acre-feet in order to provide optimum storage capacity for flood control purposes.

LITTLE CALUMET RIVER, INDIANA

The project for flood control, Little Calumet River, Indiana: In accordance with plan 3A contained in the Report of the Chief of Engineers, dated July 2, 1984, provided that all of the features of the plan 3A as recommended by and described in the report of the District Engineer are included, at a total cost of $87,100,000, with an estimated first Federal cost of $65,300,000 and an estimated first non-Federal cost of $21,800,000.

LITTLE CALUMET RIVER BASIN (CADY MARSH DITCH), INDIANA

The project for flood control, Little Calumet River Basin (Cady Marsh Ditch), Indiana, designated as Plan D as described in the Final Feasibility Report of the District Engineer, dated April 1984, at a total cost of $11,200,000, with an estimated first Federal cost of $6,600,000 and an estimated first non-Federal cost of $4,600,000.

GREEN BAY LEVEE AND DRAINAGE DISTRICT NUMBER 2, IOWA

The project for flood control, Mississippi River, Coon Rapids Dam to Ohio River, Green Bay Levee and Drainage District Number 2, Iowa: Report of the Chief of Engineers, dated October 21, 1981, except that borrow material for the project shall be obtained from the island source as recommended by the District Engineer, Rock Island District, in his report dated November 1978, and revised November 1979, at a total cost of $6,850,000, with an estimated first Federal cost of $5,140,000 and an estimated first non-Federal cost of $1,710,000.

PERRY CREEK, IOWA

The project for flood control, Perry Creek, Iowa: Report of the Chief of Engineers, dated February 4, 1982, House Document Numbered 98-179, at a total cost of $44,600,000, with an estimated first Federal cost of $31,200,000 and an estimated first non-Federal cost of $13,400,000.

DES MOINES RIVER BASIN, IOWA AND MINNESOTA

The project for flood control, Des Moines River Basin, Iowa and Minnesota: Report of the Chief of Engineers, dated July 22, 1977, at a total cost of $15,200,000, with an estimated first Federal cost of $10,900,000 and an estimated first non-Federal cost of $4,300,000. The Secretary shall, in consultation with appropriate Federal, State, and local agencies, study the feasibility of minimizing increased flood stages along Jordon Creek in the vicinity of the Chicago, Rock Island and Pacific Railroad Bridge and the implementation of nonstructural and structural flood plain management techniques along the reach of Walnut Creek, including the improvement of channel capacity in the vicinity of Grand Avenue. In addition, the Secretary shall, in consultation with appropriate Federal, State, and local agencies, review the location of river access points and boat ramps.

HALSTEAD, KANSAS

The project for flood control, Halstead, Kansas: Report of the Chief of Engineers, dated May 8, 1979, at a total cost of $7,200,000, with an estimated first Federal cost of $5,400,000 and an estimated first non-Federal cost of $1,800,000, including the acquisition of such additional lands and access points as the Secretary determines to be necessary and appropriate to mitigate the adverse effects of the project on fish and wildlife habitat. The Secretary, in consultation with appropriate Federal, State, and local agencies, shall study the need for additional lands for mitigation of fish and wildlife losses caused by the project and the need for additional access points to the Little Arkansas River. Not later than one year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report of such study.

UPPER LITTLE ARKANSAS RIVER, KANSAS

The project for flood control, Upper Little Arkansas River Watershed, Kansas: Report of the Chief of Engineers, dated December 18, 1983, at a total cost of $12,400,000, with an estimated first Federal cost of $9,300,000 and an estimated first non-Federal cost of $3,100,000.

ARKANSAS CITY, KANSAS

The project for flood control, Arkansas City, Kansas: Report of the Chief of Engineers dated September 9, 1985, at a total cost of $14,500,000, with an estimated first Federal cost of $10,880,000 and an estimated first non-Federal cost of $3,620,000.

BUSHLEY BAYOU, LOUISIANA

The project for flood control, Bushley Bayou, Louisiana: Reports of the Chief of Engineers, dated April 30, 1980, and August 12, 1982, at a total cost of $45,700,000, with an estimated first Federal cost of $32,800,000 and an estimated first non-Federal cost of $12,900,000.

LOUISIANA STATE PENITENTIARY LEVEE

The project for flood control, Louisiana State Penitentiary Levee, Mississippi River, Louisiana: Report of the Chief of Engineers, dated December 10, 1982, at a total cost of $23,400,000, with an estimated first Federal cost of $17,600,000 and an estimated first non-Federal cost of $5,800,000. No acquisition of land for or actual construction of the project may be commenced until appropriate non-Federal interests shall agree to undertake measures to minimize the loss of fish and wildlife habitat lands in the project area.

QUINCY COASTAL STREAMS, MASSACHUSETTS

The project for flood control, Quincy Coastal Streams, Massachusetts (Town Brook Interim): Reports of the Chief of Engineers, dated December 14, 1981 and December 13, 1984, at a total cost of $27,400,000, with an estimated first Federal cost of $20,600,000 and an estimated first non-Federal cost of $6,800,000. In applying section 104 to such project, the Secretary shall consider work carried out by non-Federal interests after January 1, 1978, and before the date of the enactment of this Act that otherwise meets the requirements of such section.

ROUGHANS POINT, MASSACHUSETTS

The project for flood control, Roughans Point, Revere, Massachusetts: Report of the Chief of Engineers, dated May 4, 1985, at a total cost of $9,200,000, with an estimated first Federal cost of $6,400,000 and an estimated first non-Federal cost of $2,800,000.

REDWOOD RIVER, MINNESOTA

The project for flood control, Redwood River at Marshall, Minnesota: Report of the Chief of Engineers, dated November 16, 1981, at a total cost of $4,370,000, with an estimated first Federal cost of $3,100,000 and an estimated first non-Federal cost of $1,270,000.

ROOT RIVER BASIN, MINNESOTA

The project for flood control, Root River Basin, Minnesota: Report of the Chief of Engineers, dated May 13, 1977, House Document Numbered 96-17, at a total cost of $8,360,000, with an estimated first Federal cost of $6,270,000 and an estimated first non-Federal cost of $2,090,000.

SOUTH FORK ZUMBRO RIVER, MINNESOTA

The project for flood control, South Fork Zumbro River Watershed at Rochester, Minnesota: Report of the Chief of Engineers, dated February 23, 1979, at a total cost of $61,500,000, with an estimated first Federal cost of $46,000,000 and an estimated first non-Federal cost of $15,500,000.

MISSISSIPPI RIVER AT ST. PAUL, MINNESOTA

The project for flood control, Mississippi River at St. Paul, Minnesota: Report of the Chief of Engineers, dated June 16, 1983, at a total cost of $8,610,000, with an estimated first Federal cost of $6,460,000 and an estimated first non-Federal cost of $2,150,000.

SOWASHEE CREEK, MERIDIAN, MISSISSIPPI

The project for flood control, Sowashee Creek, Meridian, Mississippi: Report of the Chief of Engineers, dated February 25, 1985, at a total cost of $17,500,000, with an estimated first Federal cost of $12,300,000 and an estimated first non-Federal cost of $5,200,000.

MALINE CREEK, MISSOURI

The project for flood control, Maline Creek, Missouri: Report of the Chief of Engineers, dated November 2, 1982, at a total

cost of $62,900,000, with an estimated first Federal cost of $43,700,000 and an estimated first non-Federal cost of $19,200,000.

ST. JOHNS BAYOU AND NEW MADRID FLOODWAY, MISSOURI

The project for flood control, St. Johns Bayou and New Madrid Floodway, Missouri: Report of the Chief of Engineers, dated January 4, 1983, at a total cost of $112,000,000, with an estimated first Federal cost of $78,500,000 and an estimated first non-Federal cost of $33,500,000, except that the land for mitigation of damages to fish and wildlife shall be acquired as soon as possible from available funds, including the Environmental Protection and Mitigation Fund established by section 908 of this Act, and except that lands acquired by the State of Missouri after January 1, 1982, for mitigation of damage to fish and wildlife within the Ten Mile Pond mitigation area shall be counted as part of the total quantity of mitigation lands required for the project and shall be maintained by such State for such purpose.

STE. GENEVIEVE, MISSOURI

The project for flood control, Ste. Genevieve, Missouri: Report of the Board of Engineers for Rivers and Harbors, dated April 16, 1985, at a total cost of $34,400,000, with an estimated first Federal cost of $25,800,000 and an estimated first non-Federal cost of $8,600,000. Congress finds that, in view of the historic preservation benefits resulting from the project, the overall benefits of the project exceed the costs of the project.

BRUSH CREEK AND TRIBUTARIES, MISSOURI AND KANSAS

The project for flood control, Brush Creek and Tributaries, Missouri and Kansas: Report of the Chief of Engineers, dated January 3, 1983, at a total cost of $16,100,000, with an estimated first Federal cost of $12,100,000 and an estimated first non-Federal cost of $4,000,000.

CAPE GIRARDEAU, MISSOURI

The project for flood control, Cape Girardeau, Jackson Metropolitan Area, Missouri: Report of the Chief of Engineers, dated December 8, 1984, at a total cost of $25,100,000, with an estimated first Federal cost of $18,700,000 and an estimated first non-Federal cost of $6,400,000, except that the project shall include the nonstructural measures recommended in the Report of the Division Engineer, dated January 3, 1983.

PAPILLION CREEK AND TRIBUTARIES LAKES, NEBRASKA

The project for flood control, Papillion Creek and Tributaries Lakes, Nebraska: Report of the Chief of Engineers, dated June 12, 1986, at a total cost of $6,400,000, with an estimated first Federal cost of $4,800,000 and an estimated first non-Federal cost of $1,600,000.

RAHWAY RIVER AND VAN WINKLES BROOK, NEW JERSEY

The project for flood control, Rahway River and Van Winkles Brook at Springfield, New Jersey: Report of the Chief of Engineers, dated October 24, 1975, House Document Numbered 96-20, at a total cost of $17,500,000, with an estimated first Federal cost of $12,500,000 and an estimated first non-Federal cost of $5,000,000.

ROBINSON'S BRANCH—RAHWAY RIVER, NEW JERSEY

The project for flood control, Robinson's Branch of the Rahway River at Clark, Scotch Plains, and Rahway, New Jersey: Report of the Chief of Engineers, dated October 10, 1975, House Document Numbered 96-21, at a total cost of $26,600,000, with an estimated first Federal cost of $20,000,000 and an estimated first non-Federal cost of $6,600,000.

GREEN BROOK SUB-BASIN, RARITAN RIVER BASIN, NEW JERSEY

The project for flood control, Green Brook Sub-basin, Raritan River Basin, New Jersey: Report of the Chief of Engineers, dated September 4, 1981, at a total cost of $203,000,000, with an estimated first Federal cost of $151,000,000 and an estimated first non-Federal cost of $52,000,000. Such project shall include flood protection for the upper Green Brook Sub-basin and the Stony Brook tributary, as described in plan A in the report of the District Engineer, New York District, dated August 1980.

MOLLY ANN'S BROOK, NEW JERSEY

The project for flood control, Molly Ann's Brook, New Jersey: Report of the Chief of Engineers dated December 31, 1985, at a total cost of $21,600,000, with an estimated first Federal cost of $16,200,000 and an estimated first non-Federal cost of $5,400,000.

LOWER SADDLE RIVER, NEW JERSEY

The project for flood control, Lower Saddle River, New Jersey: Report of the Chief of Engineers dated January 28, 1986, at a total cost of $36,500,000, with an estimated first Federal cost of $25,800,000 and an estimated first non-Federal cost of $10,700,000, including such modifications as the Secretary determines to be necessary and appropriate to improve aquatic habitat, including but not limited to the following instream habitat structures: pool-riffle areas, submerged scour holes, wing dam deflectors, and low-flow pilot channels. The instream habitat structures shall be carried out on the Saddle River beginning at Grove Street in Ridgewood, New Jersey, and continuing downstream to the Passaic River, on Sprout Brook from the Garden State Parkway to the Saddle River, and on Hohokus Brook from Grove Street downstream to the Saddle River.

RAMAPO RIVER AT OAKLAND, NEW JERSEY

The project for flood control, Ramapo River at Oakland, New Jersey: Report of the Chief of Engineers dated January 28, 1986, at a total cost of $6,450,000, with an estimated first Federal cost of $4,840,000 and an estimated first non-Federal cost of $1,610,000.

RAMAPO AND MAHWAH RIVERS, NEW JERSEY AND NEW YORK

The project for flood control, Ramapo and Mahwah Rivers, New Jersey and New York: Report of the Chief of Engineers dated November 27, 1984, at a total cost of $6,260,000, with an estimated first Federal cost of $4,630,000 and an estimated first non-Federal cost of $1,630,000.

MIDDLE RIO GRANDE, NEW MEXICO

The project for flood control, Middle Rio Grande Flood Protection, Bernalillo to Belen, New Mexico: Report of the Chief of Engineers, dated June 23, 1981, at a total cost of $44,900,000, with an estimated first Federal cost of $33,700,000 and an estimated first non-Federal cost of $11,200,000. The Secretary is authorized also to increase flood protection through the dredging of the bed of the Rio Grande in the vicinity of Albuquerque, New Mexico, to an elevation lower than existed on the date of enactment of this Act. The project shall include the establishment of 75 acres of wetlands for fish and wildlife habitat and the acquisition of 200 acres of land for mitigation of fish and wildlife losses, as recommended by the District Engineer, Albuquerque District, in his report dated June 13, 1979.

PUERCO RIVER AND TRIBUTARIES, NEW MEXICO

The project for flood control, Puerco River and Tributaries, Gallup, New Mexico: Report of the Chief of Engineers, dated September 4, 1981, at a total cost of $4,190,000, with an estimated first Federal cost of $3,140,000 and an estimated first non-Federal cost of $1,050,000.

CAZENOVIA CREEK, NEW YORK

The project for flood control, Cazenovia Creek Watershed, New York: Report of the Chief of Engineers, dated September 8, 1977, House Document Numbered 96-126, at a total cost of $2,050,000, with an estimated first Federal cost of $1,540,000 and an estimated first non-Federal cost of $510,000. Such project shall include features necessary to enable the project to serve as a part of a streamside trail system if the Secretary determines such features are compatible with the project purposes. Nothing in this paragraph affects the authority of the Secretary to carry out a project under section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s).

MAMARONECK, SHELDRAKE, AND BYRAM RIVERS, NEW YORK AND CONNECTICUT

The project for flood control, Mamaroneck and Sheldrake River Basins, New York and Connecticut, and Byram River Basin, New York and Connecticut: Report of the Chief of Engineers, dated April 4, 1979, at a total cost of $68,500,000, with an estimated first Federal cost of $51,400,000 and an estimated first non-Federal cost of $17,100,000. Such project shall include flood protection for the town of Mamaroneck as recommended in the report of the Division Engineer, North Atlantic Division, dated March 28, 1978.

SUGAR CREEK BASIN, NORTH CAROLINA AND SOUTH CAROLINA

The project for flood control, Sugar Creek Basin, North Carolina and South Carolina: Report of the Chief of Engineers dated February 1, 1985, at a total cost of $29,700,000, with an estimated first Federal cost of $19,500,000 and an estimated first non-Federal cost of $10,200,000.

SHEYENNE RIVER, NORTH DAKOTA

The project for flood control, Sheyenne River, North Dakota: Report of the Chief of Engineers dated August 22, 1984, at a total cost of $56,300,000, with an estimated first Federal cost of $39,500,000 and an estimated first non-Federal cost of $16,800,000. Such project shall include a dam and reservoir of approximately 35,000 acre-feet of storage for the purpose of flood protection on the Maple River. Modification of the Baldhill Dam for dam safety considerations shall not preclude the implementation of those project features not dependent on such safety modifications.

PARK RIVER, GRAFTON, NORTH DAKOTA

The project for flood control, Park River, Grafton, North Dakota: Report of the Chief of Engineers, dated April 17, 1984, at a total cost of $19,100,000, with an estimated first Federal cost of $14,300,000 and an estimated first non-Federal cost of $4,800,000.

MUSKINGUM RIVER, KILLBUCK, OHIO

The project for flood control, Muskingum River, Killbuck, Ohio: Report of the Chief of Engineers, dated February 3, 1978, House Document Numbered 96-117, at a total cost of $6,420,000, with an estimated first non-Federal cost of $4,820,000 and an estimated first non-Federal cost of $1,600,000. The Congress finds that the overall benefits of the project exceed the costs of the project.

MUSKINGUM RIVER, MANSFIELD, OHIO

The project for flood control, Muskingum River, Mansfield, Ohio: Report of the Chief

of Engineers, dated February 3, 1978, House Document Numbered 96-117, at a total cost of $4,260,000, with an estimated first Federal cost of $2,960,000 and an estimated first non-Federal cost of $1,300,000. Nothing in this paragraph affects the authority of the Secretary to carry out a project under section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s).

HOCKING RIVER, LOGAN, OHIO

The project for flood control, Hocking River at Logan, Ohio: Report of the Chief of Engineers, dated June 23, 1978, at a total cost of $7,760,000, with an estimated first Federal cost of $5,870,000 and an estimated first non-Federal cost of $1,890,000. The Secretary shall review potential sites for disposal of dredged material from the project and shall select such sites as he determines necessary and appropriate with a view toward minimizing adverse effects on fish and wildlife habitat areas.

HOCKING RIVER, NELSONVILLE, OHIO

The project for flood control, Hocking River at Nelsonville, Ohio: Report of the Chief of Engineers, dated June 23, 1978, at a total cost of $8,020,000, with an estimated first Federal cost of $6,090,000 and an estimated first non-Federal cost of $1,930,000. The Secretary shall review potential sites for disposal of dredged material from the project and shall select such sites as he determines necessary and appropriate with a view toward minimizing adverse effects on fish and wildlife habitat areas.

SCIOTO RIVER, OHIO

The project for flood control, Scioto River at North Chillicothe, Ohio: Reports of the Chief of Engineers, dated September 4, 1981 and February 1, 1985, at a total cost of $10,700,000, with an estimated first Federal cost of $8,080,000 and an estimated first non-Federal cost of $2,620,000.

LITTLE MIAMI RIVER, OHIO

The project for flood control, Miami River, Little Miami River, Interim Report Number 2, West Carrollton-Holes Creek, Ohio: Report of the Chief of Engineers, dated December 23, 1981, at a total cost of $8,910,000, with an estimated first Federal cost of $6,230,000 and an estimated first non-Federal cost of $2,680,000.

MIAMI RIVER, FAIRFIELD, OHIO

The project for flood control, Miami River, Fairfield, Ohio: Report of the Chief of Engineers, dated June 22, 1983, at a total cost of $14,400,000, with an estimated first Federal cost of $9,400,000 and an estimated first non-Federal cost of $5,000,000. To the extent the Secretary, in consultation with appropriate Federal, State, and local agencies, determines necessary and appropriate, the project shall include additional measures for mitigation of losses of fish and wildlife habitat, including seeding and planting in disturbed areas, limiting removal of riparian vegetation to the minimum amount necessary for project objectives, performing work along the north streambank where construction is planned on only one side of the channel, limiting construction activities to the right streambank in the reach of Pleasant Run extending from mile 2.75 to mile 3.10, the use of gabions and riprap for bank protection in lieu of concrete, and the inclusion of pool-riffle complexes at bridges. In applying section 104 to such project, the Secretary shall consider work carried out by non-Federal interests after July 1, 1979, and before the date of the enactment of this Act that otherwise meets the requirements of such section.

MINGO CREEK, OKLAHOMA

The project for flood control, Mingo Creek, Tulsa, Oklahoma: Report of the Chief of Engineers, dated November 16, 1981, at a total cost of $134,000,000, with an estimated first Federal cost of $94,000,000 and an estimated first non-Federal cost of $40,000,000. The project shall include measures determined appropriate by the Secretary, after consultation with the city of Tulsa, to minimize adverse effects associated with the use of flood water detention sites for the project.

FRY CREEKS, OKLAHOMA

The project for flood control, Fry Creeks, Oklahoma: Report of the Chief of Engineers, dated September 7, 1983, at a total cost of $13,200,000, with an estimated first Federal cost of $9,400,000 and an estimated first non-Federal cost of $3,800,000, except that the Secretary shall acquire a total of 20 acres of land for mitigation of fish and wildlife losses and such lands, to the extent feasible, shall be contiguous and shall be in a corridor not less than 50 feet wide.

HARRISBURG, PENNSYLVANIA

The project for flood control, Harrisburg, Pennsylvania: Report of the Chief of Engineers, dated May 16, 1979, at a total cost of $133,000,000, with an estimated first Federal cost of $99,800,000 and an estimated first non-Federal cost of $33,200,000, including such (1) modifications as the Secretary determines to be feasible and appropriate to construct a floodway along Paxton Creek between Wildwood Lake and Maclay Street as an alternative to the recommended plan, and (2) additional measures as the Secretary determines to be necessary and appropriate to reduce fish and wildlife habitat losses in the project area. The Secretary shall study the feasibility of providing a floodway along Paxton Creek between Wildwood Lake and Maclay Street as an alternative to the recommended plan and shall reexamine fish and wildlife habitat mitigation measures recommended in the report of the Chief of Engineers. Not later than one year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report of such study and reexamination.

LOCK HAVEN, PENNSYLVANIA

The project for flood control, Lock Haven, Pennsylvania: Report of the Chief of Engineers, dated December 14, 1981, at a total cost of $82,200,000, with an estimated first Federal cost of $61,700,000 and an estimated first non-Federal cost of $20,500,000. The project shall be constructed to provide protection at least sufficient to prevent any future flood losses to the city of Lock Haven, Pennsylvania, from flooding equivalent to a level of flooding 50 percent greater than the level of flooding which occurred as a result of tropical storm Agnes in 1972. Notwithstanding section 104 of this Act, work carried out by non-Federal interests on such project after January 1, 1973, and before the date of the enactment of this Act shall be taken into account in analyzing the costs and benefits of the project and shall be credited against the non-Federal share of the cost of the project.

SCHUYLKILL RIVER BASIN, POTTSTOWN, PENNSYLVANIA

The project for flood control and other purposes for Pottstown and vicinity, Schuylkill River Basin, Pennsylvania: Report of the Chief of Engineers, dated March 7, 1974, House Document Numbered 93-321, at a total cost of $5,540,000, with an estimated first Federal cost of $4,180,000 and an estimated first non-Federal cost of $1,360,000. The Congress hereby finds that the application of the provisions of section 209 of the Flood Control Act of 1970 result in the benefits from flood control measures authorized by this paragraph exceeding their economic costs.

SAW MILL RUN, PENNSYLVANIA

The project for flood control, Saw Mill Run, Pittsburgh, Pennsylvania: Report of the Chief of Engineers, dated January 30, 1978, House Document Numbered 96-25, at a total cost of $7,850,000, with an estimated first Federal cost of $5,890,000 and an estimated first non-Federal cost of $1,960,000.

WYOMING VALLEY, PENNSYLVANIA

The project for flood control, Wyoming Valley, Pennsylvania: Report of the Chief of Engineers, dated October 19, 1983, at a total cost of $241,000,000, with an estimated first Federal cost of $181,000,000 and an estimated first non-Federal cost of $60,000,000.

NONCONNAH CREEK AND JOHNS CREEK, TENNESSEE AND MISSISSIPPI

The project for flood control, Nonconnah Creek, Tennessee and Mississippi: Report of the Chief of Engineers, dated December 23, 1982, at a total cost of $28,000,000, with an estimated first Federal cost of $19,500,000 and an estimated first non-Federal cost of $8,500,000. The improvements for Johns Creek and tributaries shall be included as a separate part of the project and shall be constructed by the United States Department of Agriculture Soil Conservation Service, at a total cost of $34,700,000, with an estimated first Federal cost of $26,000,000 and an estimated first non-Federal cost of $8,700,000, in accordance with the recommendations of the State Conservationist as contained in the report, Nonconnah Creek and Tributaries, Tennessee and Mississippi, dated September 1981. The project shall include an evaluation of fish and wildlife losses which may result from construction of the project and such additional measures as the Secretary deems necessary and appropriate to mitigate such losses. The Secretary shall adopt and implement guidelines in connection with clearing and snagging as the Secretary determines necessary and appropriate to minimize adverse effects on fish and wildlife habitat.

HORN LAKE CREEK AND TRIBUTARIES, TENNESSEE AND MISSISSIPPI

The project for flood control, Horn Lake Creek and Tributaries, including Cow Pen Creek, Tennessee and Mississippi: Report of the Chief of Engineers, dated January 4, 1983, at a total cost of $3,890,000, with an estimated first Federal cost of $2,700,000 and an estimated first non-Federal cost of $1,190,000, including such additional measures as the Secretary determines to be necessary and appropriate to mitigate the adverse effects of the project on fish and wildlife habitat. The Secretary shall (1) reexamine the adequacy and feasibility of the recommended measures for fish and wildlife habitat, and (2) reexamine upland dredged disposal alternatives. Not later than one year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report of such reexamination. The Secretary shall also adopt and implement such guidelines in connection with channel clearing and drift removal for the project as the Secretary, in consultation with the Fish and Wildlife Service, deter-

mines are necessary and appropriate to minimize adverse effects on fish and wildlife habitat.

BOGGY CREEK, TEXAS

The project for flood control, Boggy Creek, Austin, Texas: Report of the Chief of Engineers, dated January 19, 1981, and the Supplemental Report of the Chief of Engineers, dated June 13, 1986, at a total cost of $24,000,000, with an estimated first Federal cost of $16,500,000 and an estimated first non-Federal cost of $7,500,000. In applying section 104 to such project, the Secretary shall consider work carried out by non-Federal interests after September 30, 1979, and before the date of the enactment of this Act that otherwise meets the requirements of such section.

BUFFALO BAYOU AND TRIBUTARIES, TEXAS

The project for flood control, Buffalo Bayou and Tributaries (Upper White Oak Bayou), Texas: Report of the Chief of Engineers, dated June 13, 1978, House Document Numbered 96-182, at a total cost of $92,100,000, with an estimated first Federal cost of $69,100,000 and an estimated first non-Federal cost of $23,000,000.

LAKE WICHITA, HOLLIDAY CREEK, TEXAS

The project for flood control, Lake Wichita, Holliday Creek, Texas: Report of the Chief of Engineers, dated July 9, 1979, at a total cost of $39,000,000, with an estimated first Federal cost of $27,300,000 and an estimated first non-Federal cost of $11,700,000.

LOWER RIO GRANDE, TEXAS

The project for flood control, Lower Rio Grande Basin, Texas: Report of the Chief of Engineers, dated February 13, 1986, at a total cost of $196,000,000, with an estimated first Federal cost of $137,000,000 and an estimated first non-Federal cost of $59,000,000.

SIMS BAYOU, TEXAS

The project for flood control, Sims Bayou, Texas: Report of the Chief of Engineers, dated April 17, 1984, at a total cost of $126,000,000, with an estimated first Federal cost of $94,700,000 and an estimated first non-Federal cost of $31,300,000.

JAMES RIVER BASIN, VIRGINIA

The project for flood control, James River Basin, Richmond, Virginia: Report of the Chief of Engineers, dated November 16, 1981, at a total cost of $91,800,000, with an estimated first Federal cost of $68,900,000 and an estimated first non-Federal cost of $22,900,000. Such project shall include flood protection for the Richmond municipal wastewater treatment facility, as recommended in the report of the District Engineer, Norfolk District, dated September 1980.

ROANOKE RIVER UPPER BASIN, VIRGINIA

The project for flood control, Roanoke River Upper Basin, Virginia: Report of the Chief of Engineers dated August 5, 1985, at a total cost of $21,000,000, with an estimated first Federal cost of $12,600,000 and an estimated first non-Federal cost of $8,400,000.

YAKIMA-UNION GAP, WASHINGTON

The project for flood control, Yakima-Union Gap, Washington: Report of the Chief of Engineers, dated May 7, 1980, at a total cost of $8,760,000, with an estimated first Federal cost of $6,570,000 and an estimated first non-Federal cost of $2,190,000, including such additional measures as the Secretary determines to be necessary and appropriate to mitigate the adverse effects of the project on fish and wildlife habitat. The Secretary, in consultation with appropriate Federal, State, and local agencies, shall review the probable effects of the project on fish and wildlife resources and the feasibility of including recreation as a project purpose. Not later than one year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report of such review.

CHEHALIS RIVER, WASHINGTON

The project for flood control, Chehalis River at South Aberdeen and Cosmopolis, Washington: Report of the Chief of Engineers, dated February 8, 1977, House Document Numbered 96-27, at a total cost of $22,400,000, with an estimated first Federal cost of $16,800,000 and an estimated first non-Federal cost of $5,600,000. Before beginning the actual construction of the project, the Secretary shall perform additional studies relating to foundation materials in the project area and with regard to dredged spoil disposal sites and make such modifications as the Secretary determines appropriate.

CENTRALIA, WASHINGTON

The project for flood control, Centralia-Chehalis Flood Damage Reduction Study, Chehalis River and Tributaries, Washington: Report of the Chief of Engineers, dated June 20, 1984, at a total cost of $19,900,000, with an estimated first Federal cost of $15,000,000 and an estimated first non-Federal cost of $4,900,000.

ISLAND CREEK BASIN, WEST VIRGINIA

The project for flood control, Island Creek Basin, in and around Logan, West Virginia: Report of the Chief of Engineers, dated April 25, 1986, at a total cost of $86,000,000, with an estimated first Federal cost of $62,200,000 and an estimated first non-Federal cost of $23,800,000.

PORTAGE, WISCONSIN

The project for flood control, Wisconsin River at Portage, Wisconsin: Report of the Chief of Engineers, dated May 20, 1985, at a total cost of $7,590,000, with an estimated first Federal cost of $5,660,000 and an estimated first non-Federal cost of $1,930,000.

AGANA RIVER, GUAM

The project for flood control, Agana River, Guam: Report of the Chief of Engineers, dated March 14, 1977, House Document Numbered 96-16, at a total cost of $4,880,000, with an estimated first Federal cost of $3,860,000 and an estimated first non-Federal cost of $1,020,000.

RIO PUERTO NUEVO, PUERTO RICO

The project for flood control, Rio Puerto Nuevo, Puerto Rico: Report of the Chief of Engineers, dated April 25, 1986, at a total cost of $234,000,000, with an estimated first Federal cost of $151,000,000 and an estimated first non-Federal cost of $83,000,000.

(b) AUTHORIZATION OF CONSTRUCTION SUBJECT TO FAVORABLE REPORT.—The following projects are authorized to be prosecuted by the Secretary substantially in accordance with the plans and subject to the conditions recommended in the respective reports cited, with such modifications as are recommended by the Chief of Engineers and approved by the Secretary, and with such other modifications as are recommended by the Secretary. If no report is cited for a project, the project is authorized to be prosecuted by the Secretary in accordance with a final report of the Chief of Engineers, and with such other modifications as are recommended by the Secretary, and no construction on such project may be initiated until such a report is issued and approved by the Secretary.

GUADALUPE RIVER, SAN JOSE, CALIFORNIA

Local flood control protection measures along the Guadalupe River in the vicinity of San Jose, California: Report of the Board of Engineers for Rivers and Harbors, dated June 29, 1986, at a total cost of $32,600,000, with an estimated first Federal cost of $22,800,000 and an estimated first non-Federal cost of $9,800,000.

MEREDOSIA, ILLINOIS

Flood control works for the protection of Meredosia, Illinois, at a total cost of $80,000, with a Federal cost of $60,000 and a non-Federal cost of $20,000. Such project shall be carried out under section 205 of the Flood Control Act of 1948. Such project shall include, but not be limited to, a levee which is approximately one-fifth of a mile long. For purposes of analyzing the costs and benefits of any project recommended by the Secretary as a result of any study on the Illinois River, authorized by resolution of the Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives, the Secretary shall take into account the costs and benefits of any measures undertaken by the Secretary pursuant to this paragraph in the interest of preventing flood damages along the Illinois River in the vicinity of Meredosia, Illinois.

MUSCATINE ISLAND, IOWA

The project for flood control, Muscatine Island Levee District and Muscatine-Louisa County Drainage District No. 13, Iowa: Report of the Chief of Engineers, dated July 22, 1977, at a total cost of $14,400,000, with an estimated first Federal cost of $10,500,000 and an estimated first non-Federal cost of $3,900,000, including such modifications as the Secretary determines to be necessary and appropriate to minimize adverse effects of the project on Spring Lake and on fish and wildlife habitat. The Secretary shall reexamine the drainage system recommended in the report of the Chief of Engineers and the feasibility of obtaining material for the levee from upland rather than aquatic sources in order to minimize adverse effects on fish and wildlife habitat. Not later than one year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report of such reexamination.

PEARL RIVER BASIN, ST. TAMMANY PARISH, LOUISIANA

Structural and nonstructural measures to prevent flood damage to communities in the Pearl River Basin, St. Tammany Parish, Louisiana, at a total cost of $33,300,000, with an estimated first Federal cost of $25,000,000 and an estimated first non-Federal cost of $8,300,000. For purposes of analyzing the costs and benefits of any project recommended by the Secretary as a result of the study entitled Pearl River Basin, Mississippi and Louisiana, the Secretary shall take into account the costs and benefits of measures undertaken pursuant to this paragraph.

WEST BANK HURRICANE PROTECTION LEVEE, JEFFERSON PARISH, LOUISIANA

Structural and nonstructural measures to prevent flood damage to those areas identified in the February 1984 draft environmental impact statement for the West Bank Hurricane Protection Levee, Jefferson Parish, Louisiana, at a total cost of $61,500,000, with an estimated first Federal

cost of $40,000,000 and an estimated first non-Federal cost of $21,500,000. Funds provided by non-Federal interests for interim hurricane protection may be considered beneficial expenditures and may be credited as part of the non-Federal contribution of the project pursuant to section 104 of this Act.

JAMES RIVER, SOUTH DAKOTA

A project consisting of channel restoration and improvements on the James River in South Dakota, which may include consideration of offstream storage, small impoundments on tributaries, and other features identified by the Secretary to alleviate flood damage and to regulate flows on such river, at a total cost of $20,000,000, with an estimated first Federal cost of $15,000,000 and an estimated first non-Federal cost of $5,000,000. The Secretary is authorized to participate with appropriate non-Federal sponsors in the project to demonstrate, on an expedited basis, the feasibility of non-Federal cost sharing for rural flood protection under the provisions of section 916 and title I of this Act and section 134 of the Water Resources Development Act of 1976. The Secretary shall report to Congress no later than September 30, 1989, on the extent to which additional features may be required to alleviate flood damage and regulate flows on such river.

(c) PRE-CONSTRUCTION AUTHORIZATION.—The Secretary is authorized to carry out planning, engineering, and design for the following projects:

GOLD GULCH, SANTA CRUZ COUNTY, CALIFORNIA

Flood damage prevention in the community of Gold Gulch, near Felton, Santa Cruz County, California, at a total cost of $800,000.

CALLEGUAS CREEK, CALIFORNIA

Flood control works along the lower portion of Calleguas Creek, Conejo Creek to the Pacific Ocean, California, at a total cost of $2,000,000.

COYOTE CREEK, CALIFORNIA

A project for local flood control protection measures along the lower portion of Coyote Creek adjacent to and in the vicinity of Alviso, California, at a total cost of $750,000.

LOUISVILLE, KENTUCKY

Measures to correct flooding problems in the south end of Louisville, Kentucky, within an area bounded by New Cut Road west to the city limits and Palatka Road south to the city limits, at a total cost of $300,000. The Secretary is authorized to provide technical assistance to the city of Louisville, Kentucky, to assist such city in the correction of flooding caused by drainage problems in such city.

LOUISIANA

A project to provide a level of protection sufficient to prevent recurring flood damages along the following rivers, at a total cost of $10,000,000:

(1) Amite River, Louisiana;
(2) Comite River, Louisiana;
(3) Tangipahoa River, Louisiana;
(4) Tchefuncte River, Louisiana;
(5) Tickfaw River, Louisiana;
(6) Bogue Chitto River, Louisiana; and
(7) Natalbany River, Louisiana.

BAYOU RIGOLETTE, LOUISIANA

A project to construct six additional floodgates at Bayou Rigolette, Louisiana, adjacent to the existing drainage structure, at a total cost of $2,300,000.

BROCKTON, MASSACHUSETTS

Flood control works for the protection of Brockton, Massachusetts, at a total cost of $1,500,000. The plans for such project shall include, but not be limited to, improvements to ponds in the D.W. Field Park area and the existing Brockton-Avon Reservoir to provide additional storage, improvements to the drainage system under E. B. Keith Field, new culverts, improvements to miscellaneous bridges and utilities, and such other downstream improvements as the Secretary deems necessary.

LAS VEGAS VALLEY AND TRIBUTARIES AREA, NEVADA

A comprehensive project for flood control in the Las Vegas Valley and tributaries area, Nevada, at a total cost of $2,000,000.

MANALAPAN TOWNSHIP, NEW JERSEY

Local flood protection measures, including such channel widening and deepening and environmental measures as the Secretary and the Governor of the State of New Jersey may agree, to prevent flood damage to the residents of the Pine Brook section of Manalapan Township, New Jersey, substantially in accordance with the report of the Division Engineer, North Atlantic Division, entitled "Expanded Reconnaissance Report for Flood Control on Pine Brook, New Jersey, Manalapan, New Jersey", dated September 8, 1977, at a total cost of $400,000.

PASSAIC RIVER BASIN, NEW JERSEY

A project for flood damage protection and allied purposes in the Passaic River Basin, New Jersey and New York, at a total cost of $3,750,000, consisting of the following:

(1) Upper Rockaway River Basin, New Jersey, at a total cost of $2,750,000.

(2) Nakoma Brook Sloatsburg, New York, at a total cost of $500,000.

(3) The project for flood protection in the Third River, Passaic Basin, New Jersey, at a total cost of $500,000.

MALHAUER AND HARNEY LAKES, OREGON

Structural and nonstructural measures to prevent flood damage resulting from rising lake levels at Malhauer and Harney Lakes, Oregon, at a total cost of $3,370,000.

MILTON, PENNSYLVANIA

A flood control project at Milton, Pennsylvania, at a total cost of $2,500,000.

(d) SECTION 205 PROJECTS.—The Secretary is authorized and directed to carry out the following projects under section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s):

SAN FRANCISCO RIVER AT CLIFTON, ARIZONA

A project for flood control on the San Francisco River at Clifton, Arizona, for the purpose of protecting residential and commercial properties on the east side of the river downstream of the State Highway 666 Bridge, at a total cost of $8,000,000, with an estimated first Federal cost of $4,500,000 and an estimated first non-Federal cost of $3,500,000. Such work shall be considered to complete all studies and proposals of the Secretary for such area.

MISSION ZANJA CREEK, REDLANDS, CALIFORNIA

Subject to section 903(a) of this Act, a project for flood control works along Mission Zanja Creek within the city of Redlands, California, in accordance with the plan developed by the District Engineer based on studies pursuant to section 205 of the Flood Control Act of 1948, at a total cost of $10,400,000, with an estimated first Federal cost of $4,500,000 and an estimated first non-Federal cost of $5,900,000.

SALT AND EEL RIVERS, CALIFORNIA

Subject to section 903(a) of this Act, such measures, including silt removal and channel modification, in the vicinity of the confluence of the Salt and Eel Rivers, California, as the Secretary determines necessary to prevent recurring floods along the Eel River and its tributaries, at a total cost of $800,000, with an estimated first Federal cost of $600,000 and an estimated first non-Federal cost of $200,000.

MONROE AND WEST MONROE, LOUISIANA, AND OUACHITA PARISH, LOUISIANA

Subject to section 903(a) of this Act, such structural and nonstructural measures as he deems feasible to prevent flood damage to the cities of Monroe and West Monroe, Louisiana, and Ouachita Parish, Louisiana. For purposes of analyzing the costs and benefits of any project recommended by the Secretary as a result of the study entitled Monroe-West Monroe Interim Study of the Ouachita Basin Study, Ouachita River Basin, Arkansas and Louisiana, the Secretary shall take into account the costs and benefits of measures undertaken pursuant to this subsection.

NOYES, MINNESOTA

Subject to section 903(a) of this Act, the purchase of such land along Highway 75 in Minnesota as may be required for the construction of the International Levee segment of the Emerson, Manitoba flood control project and the upgrading of existing flood control levees in the vicinity of Noyes, Minnesota, at a total cost of $250,000. The Secretary is authorized to accept funds from a project cosponsor in connection with construction of such project and to include as part of the Federal share of project costs those costs which the Secretary determines are attributable to protection of Federal property.

(e) ADDITIONAL AUTHORIZED PROJECTS.—

(1) SALYERSVILLE, KENTUCKY.—Subject to section 903(a) of this Act, the Secretary is authorized and directed to design and construct such flood control measures at or in the vicinity of Salyersville, Kentucky, on Licking River as the Secretary determines necessary and appropriate to afford the city of Salyersville, Kentucky, and its immediate environs a level of protection against flooding at least sufficient to prevent any future losses to such city from the likelihood of flooding such as occurred in December 1978, at a total cost of $7,000,000, with an estimated first Federal cost of $5,250,000 and an estimated non-Federal cost of $1,750,000. With respect to such project, Congress finds that the benefits determined in accordance with section 209 of the Flood Control Act of 1970 and attributable to the flood measures authorized for such project exceed the cost of such measures.

(2) POPLAR BROOK, NEW JERSEY.—Subject to section 903(a) of this Act, the Secretary is authorized to construct a project for flood control for Poplar Brook, New Jersey, including reconstruction of the brook through the Borough of Deal, New Jersey, to accommodate the runoff from a storm having an average frequency of occurrence of once every 15 years, replacement of the culvert through the Conrail railroad embankment with a new culvert designed to pass a maximum flow equivalent to the peak flow from a storm having an average frequency of occurrence of once every 15 years, use of the area upstream of the embankment as an on-stream detention basin, and gabion or other lining as determined appropriate by the Secretary, at a total cost of $2,300,000, with an estimated first Federal cost of $1,725,000 and an estimated first non-Federal cost of $575,000.

(3) PEARL RIVER BASIN, INCLUDING SHOCCOE, MISSISSIPPI.—The Secretary is authorized to construct a project for the purpose of pro-

viding flood control for the Pearl River Basin in Mississippi, including, but not limited to, Carthage, Jackson, Monticello, and Columbia, Mississippi, consisting of—

(A) the project for flood control, Pearl River Basin, Mississippi: Report of the Chief of Engineers, dated March 17, 1986, at a total cost of $80,100,000, with an estimated first Federal cost of $56,070,000 and an estimated first non-Federal cost of $24,030,000; and

(B) for the purpose of providing flood control for the upstream areas of the Pearl River Basin in Mississippi—

(i) a combination roadway crossing of the Pearl River and floodwater detention and storage facility in east central Leake County, Mississippi;

(ii) a levee system in the south part of Carthage, Mississippi, which will upgrade, extend, and improve the protective levee system on the south side of Highway 16 in Leake County and the city of Carthage;

(iii) appropriate drainage structure and bridge modifications to expand and improve the stormwater conduits under Mississippi Highway 35, south of Carthage, Mississippi, for the purposes of reducing backwater influence for areas upstream of such highway;

(iv) upstream reservoirs on the Pearl River;

(v) such other structures as may be necessary to alleviate unforeseen flooding in the Leake County area as a result of the construction of the Shoccoe Dry Dam; and

(vi) channel improvements on the upstream Pearl River.

For purposes of analyzing the costs and benefits of those portions of the project described in subparagraph (B), the Secretary shall take into account the costs and benefits of that portion of the project described in subparagraph (A).

(4) GREAT SALT LAKE, UTAH.—Subject to section 903(a) of this Act, the Secretary is authorized to construct the Newfoundland and Bonneville Dikes located along the west side of the Great Salt Lake, Utah, at a total cost of $7,500,000, with an estimated first Federal cost of $5,250,000 and an estimated first non-Federal cost of $1,750,000. The non-Federal share of the cost of the project authorized by this section shall be 25 percent.

(5) TARRANT COUNTY, TEXAS.—The Secretary is authorized and directed to develop detailed plans and specifications and to construct measures in Tarrant County, Texas, to eliminate flood damage in the historical stockyards along Tony's Creek and Marine Creek, at a total cost of $20,000,000, with an estimated first Federal cost of $15,000,000 and an estimated first non-Federal cost of $5,000,000. The non-Federal share of the cost of the project authorized by this section shall be 25 percent.

SEC. 402. COMPLIANCE WITH FLOOD PLAIN MANAGEMENT AND INSURANCE PROGRAMS.

Before construction of any project for local flood protection, the non-Federal interests shall agree to participate in and comply with applicable Federal flood plain management and flood insurance programs.

SEC. 403. GROUNDWATER INDUCED DAMAGES.

Section 2 of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved December 22, 1944 (58 Stat. 889; 33 U.S.C. 701a-1), is amended by inserting after "drainage improvements" the following: "and flood prevention improvements for protection from groundwater-induced damages".

TITLE V—SHORELINE PROTECTION

SEC. 501. AUTHORIZATION OF PROJECTS.

(a) AUTHORIZATION OF CONSTRUCTION.—The following works of improvement for the benefit of shoreline protection are adopted and authorized to be prosecuted by the Secretary substantially in accordance with the plans and subject to the conditions recommended in the respective reports designated in this subsection, except as otherwise provided in this subsection. Construction of the projects authorized in this title shall be subject to determinations of the Secretary, after consultation with the Secretary of the Interior, that the construction will be in compliance with the Coastal Barrier Resources Act (Public Law 97-348).

PANAMA CITY BEACHES, FLORIDA

The project for shoreline protection, Panama City Beaches, Florida: Report of the Chief of Engineers, dated July 8, 1977, House Document Numbered 96-65, at a total cost of $48,500,000, with an estimated first Federal cost of $22,800,000 and an estimated first non-Federal cost of $25,700,000.

ST. JOHNS COUNTY, FLORIDA

The project for shoreline protection, St. Johns County, Florida: Report of the Chief of Engineers, dated February 26, 1980, at a total cost of $18,200,000, with an estimated first Federal cost of $11,100,000 and an estimated first non-Federal cost of $7,100,000. To the maximum extent feasible, the Secretary shall construct such project so as to avoid adverse effects on sea turtle nesting.

CHARLOTTE COUNTY, FLORIDA

The project for shoreline protection, Charlotte County, Florida: Report of the Chief of Engineers, dated April 2, 1982, at a total cost of $3,950,000, with an estimated first Federal cost of $2,220,000 and an estimated first non-Federal cost of $1,730,000. To the maximum extent feasible, the Secretary shall construct such project so as to minimize the harm to marine borrow areas and reefs.

INDIAN RIVER COUNTY, FLORIDA

The project for shoreline protection, Indian River County, Florida: Report of the Chief of Engineers, dated December 21, 1981, House Document Numbered 98-154, at a total cost of $11,100,000, with an estimated first Federal cost of $6,800,000 and an estimated first non-Federal cost of $4,300,000. To the maximum extent feasible, the Secretary shall construct such project so as to avoid adverse effects on sea turtle nesting.

DADE COUNTY, FLORIDA

The project for shoreline protection, Dade County, north of Haulover Beach Park, Florida: Report of the Chief of Engineers, dated December 27, 1983, at a total cost of $21,600,000, with an estimated first Federal cost of $12,000,000 and an estimated first non-Federal cost of $9,600,000. To the maximum extent feasible, the Secretary shall construct the project so as to minimize adverse effects on coral reefs.

MONROE COUNTY, FLORIDA

The project for shoreline protection, Monroe County, Florida: Report of the Chief of Engineers, dated April 22, 1984, at a total cost of $7,420,000, with an estimated first Federal cost of $4,150,000 and an estimated first non-Federal cost of $3,270,000, including such modifications as the Secretary determines to be necessary and appropriate to minimize the adverse effects of construction, operation, and maintenance of the project (other than the portion of the project consisting of Smathers Beach) on the seagrass community in the project area. The Secretary, in consultation with appropriate Federal, State, and local agencies, shall study the effects that construction, operation, and maintenance of the proposed project (other than the portion of the project consisting of Smathers Beach) may have on the seagrass community in the project area. Not later than one year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of such study.

SARASOTA COUNTY, FLORIDA

The project for shoreline protection, Sarasota County, Florida: Report of the Chief of Engineers, dated February 28, 1986, at a total cost of $30,100,000, with an estimated first Federal cost of $17,400,000 and an estimated first non-Federal cost of $12,700,000.

CASINO BEACH, CHICAGO, ILLINOIS

The project for shoreline protection, Interim II, Casino Beach, Chicago, Illinois: Report of the Chief of Engineers, dated September 26, 1984, at a total cost of $5,480,000, with an estimated first Federal cost of $2,880,000 and an estimated first non-Federal cost of $2,600,000.

INDIANA SHORELINE, INDIANA

The project for shoreline protection, Indiana Shoreline Erosion, Indiana: Report of the Chief of Engineers, dated November 18, 1983, at a total cost of $20,000,000, with an estimated first Federal cost of $15,000,000 and an estimated first non-Federal cost of $5,000,000.

ATLANTIC COAST OF MARYLAND (OCEAN CITY)

The project for shoreline protection, Atlantic Coast of Maryland and Assateague Island, Virginia: Report of the Chief of Engineers, dated September 29, 1981, at a total cost of $58,200,000, with an estimated first Federal cost of $26,700,000 and an estimated first non-Federal cost of $31,500,000.

ROCKAWAY INLET TO NORTON POINT, NEW YORK

The project for shoreline protection, Atlantic Coast of New York City from Rockaway Inlet to Norton Point: Report of the Chief of Engineers, dated August 18, 1976, House Document Numbered 96-23, including beach fill up to 250 feet beyond the historical shoreline as described in the report of the District Engineer, New York District, dated August 1973, at a total cost of $22,500,000, with an estimated first Federal cost of $11,900,000 and an estimated first non-Federal cost of $10,600,000. The non-Federal share of the cost of construction and nourishment of the additional beach fill shall be 50 percent.

HEREFORD INLET TO CAPE MAY CANAL, DELAWARE BAY, NEW JERSEY

The projects for beach erosion control, navigation, and storm protection, Hereford Inlet to Cape May Canal, Delaware Bay, New Jersey: Report of the Chief of Engineers, dated September 30, 1975, House Document No. 94-641, at a total cost of $177,000,000, with an estimated first Federal cost of $104,000,000 and an estimated first non-Federal cost of $73,000,000. The beach erosion, navigation, and storm protection features of the project may be constructed separately or in combination with any other features of the project.

WRIGHTSVILLE BEACH, NORTH CAROLINA

The project for shore and hurricane wave protection, Wrightsville Beach, North Carolina: Report of the Chief of Engineers, dated December 19, 1983, at a total cost of $9,120,000, with a Federal cost of $5,470,000 and a non-Federal cost of $3,650,000, includ-

ing periodic beach nourishment of Figure Eight Island.

MAUMEE BAY, LAKE ERIE, OHIO

The project for shoreline protection for the southeast shore of Maumee Bay State Park, Ohio: Report of the Chief of Engineers, dated July 9, 1984, at a total cost of $15,900,000, with an estimated first Federal cost of $7,950,000 and an estimated first non-Federal cost of $7,950,000.

PRESQUE ISLE PENINSULA, ERIE, PENNSYLVANIA

The project for shoreline protection, Presque Isle Peninsula, Erie, Pennsylvania: Report of the Chief of Engineers, dated October 2, 1981, at a total cost of $34,800,000, with an estimated first Federal cost of $18,900,000 and an estimated first non-Federal cost of $15,900,000.

FOLLY BEACH, SOUTH CAROLINA

The project for shoreline protection, Folly Beach, South Carolina: Report of the Chief of Engineers, dated March 17, 1981, at a total cost of $7,040,000, with an estimated first Federal cost of $3,870,000 and an estimated first non-Federal cost of $3,170,000.

WILLOUGHBY SPIT, VIRGINIA

The project for shoreline protection, Willoughby Spit and Vicinity, Norfolk, Virginia: Report of the Chief of Engineers, dated April 17, 1984, at a total cost of $5,690,000, with an estimated first Federal cost of $4,250,000 and an estimated first non-Federal cost of $1,440,000.

VIRGINIA BEACH, VIRGINIA

The project for beach erosion control and hurricane protection, Virginia Beach, Virginia: Report of the Chief of Engineers, dated May 22, 1985, at a total cost of $42,400,000, with an estimated first Federal cost of $27,600,000 and an estimated first non-Federal cost of $14,800,000.

(b) AUTHORIZATION OF CONSTRUCTION SUBJECT TO FAVORABLE REPORT.—The following projects are authorized to be prosecuted by the Secretary substantially in accordance with the plans and subject to the conditions recommended in the respective reports cited, with such modifications as are recommended by the Chief of Engineers and approved by the Secretary, and with such other modifications as are recommended by the Secretary. If no report is cited for a project, the project is authorized to be prosecuted by the Secretary in accordance with a final report of the Chief of Engineers, and with such modifications as are recommended by the Secretary, and no construction on such project may be initiated until such a report is issued and approved by the Secretary.

PINELLAS COUNTY, FLORIDA

The project for beach erosion control for Pinellas County, Florida: Report of the Board of Engineers for Rivers and Harbors, dated April 23, 1985, at a total cost of $52,600,000, with an estimated first Federal cost of $32,700,000 and an estimated first non-Federal cost of $19,900,000.

ILLINOIS BEACH STATE PARK, ILLINOIS

The project for shoreline protection, Illinois Beach State Park, Illinois described as alternative 3A in Interim Report 1, Illinois-Wisconsin Stateline to Waukegan of the District Engineer, Chicago District, dated June 1982, at a total cost of $13,400,000, with an estimated first Federal cost of $9,390,000 and an estimated first non-Federal cost of $4,010,000.

COCONUT POINT, TUTUILA ISLAND, AMERICAN SAMOA

The project for shore protection at Coconut Point, Tutuila Island, American Samoa, including a 3,600-foot long rock revetment to protect communal lands and public facilities, at a total cost of $2,810,000, with an estimated first Federal cost of $2,030,000 and an estimated first non-Federal cost of $780,000.

(c) PRECONSTRUCTION AUTHORIZATION.—The Secretary is authorized to carry out planning, engineering, and design for projects for shoreline erosion control at the following communities in New Jersey: Fort Elsinboro, Sea Breeze, Gandys Beach, Reeds Beach, Pierces Point, and Fortescue, at a total cost of $1,000,000.

(d) SECTION 103 PROJECTS.—The Secretary is authorized to carry out the following project under section 103 of the River and Harbor Act of 1962.

ORCHARD BEACH, NEW YORK

Subject to section 903(a) of this Act, the project for beach erosion control, Orchard Beach, New York: Draft Report of the District Engineer, New York District, dated July 1985, at a total cost of $2,480,000, with an estimated first Federal cost of $1,000,000 and an estimated first non-Federal cost of $1,480,000.

(e) TANGIER ISLAND, VIRGINIA.—Subject to section 903(a) of this Act, the Secretary is authorized and directed to design and construct an erosion control structure approximately 8,200 feet in length on the western shore of Tangier Island, Virginia, adequate to protect such island from further erosion, at a total cost of $3,200,000, with an estimated first Federal cost of $2,080,000 and an estimated first non-Federal cost of $1,120,000. Such project shall be carried out on an emergency basis, in view of the national, historic, and cultural value of the island and in order to protect the Federal investment in public facilities. Cost sharing applicable to hurricane and storm damage reduction shall apply to the project under this subsection.

SEC. 502. WESTHAMPTON BEACH, NEW YORK.

The Secretary shall apply the cost sharing provisions of section 31(1) of the Water Resources Development Act of 1974 (Public Law 93-251) to periodic nourishment of the continuing construction project at Westhampton Beach, New York, for a period of 20 years after the date of enactment of this Act.

TITLE VI—WATER RESOURCES CONSERVATION AND DEVELOPMENT

SEC. 601. AUTHORIZATION OF PROJECTS.

(a) AUTHORIZATION OF CONSTRUCTION.—The following works of improvement for water resources development and conservation and for other purposes are adopted and authorized to be prosecuted by the Secretary substantially in accordance with the plans and subject to the conditions recommended in the respective reports designated in this subsection, except as otherwise provided in this subsection:

TENNESSEE-TOMBIGBEE WATERWAY, ALABAMA AND MISSISSIPPI

Tennessee-Tombigbee Waterway Wildlife Mitigation, Alabama and Mississippi: Report of the Chief of Engineers, dated August 31, 1985, at a total cost of $60,200,000. The Secretary is authorized to acquire from willing sellers in a timely manner at fair market value 88,000 acres of land for mitigation of wildlife losses resulting from construction and operation of the project for the Tennessee-Tombigbee Waterway, Alabama and Mississippi. Such lands shall be in addition to, and not in lieu of, lands currently owned by the United States in the project area which are designated as wildlife mitigation lands for such project. Of the lands acquired under this section, not less than 20,000 acres shall be acquired in the area of the Mobile-Tensaw River delta, Alabama, and not less than 25,000 acres shall be acquired in the areas of the Pascagoula River, the Pearl River, and the Mississippi River delta, Mississippi. Other lands acquired under this section may be acquired anywhere in the States of Alabama and Mississippi. The Secretary shall select lands to be acquired under this section in consultation with appropriate State and Federal officials. Emphasis shall be placed on acquisition of lands which are predominantly flood plain forest, except that the 34,000 acres of bottomland hardwood lost as a result of the construction of the navigation project shall be replaced in-kind. The States of Alabama and Mississippi shall provide for the management for wildlife purposes of lands acquired under this section and lands currently owned by the United States in the project area which are designated as wildlife mitigation lands for such project. Subject to such amounts as are provided in appropriation Acts, the Secretary shall reimburse such States for such management and initial development costs as specified in a plan for management of mitigation lands to be developed by the Secretary, the United States Fish and Wildlife Service, and the States of Alabama and Mississippi.

BETHEL BANK STABILIZATION, ALASKA

The project for bank stabilization, Bethel, Alaska: Report of the Chief of the Engineers, dated July 30, 1983, at a total cost of $19,400,000, with an estimated first Federal cost of $14,600,000 and an estimated first non-Federal cost of $4,800,000, including such modifications as may be necessary to accommodate related work undertaken and carried out by non-Federal interests.

SCAMMON BAY, ALASKA

Scammon Bay, Alaska (hydropower): Report of the Chief of Engineers dated August 9, 1983, at a total cost of $1,700,000, with a first Federal cost of $1,700,000.

SOUTH CENTRAL RAILBELT AREA, ALASKA

South Central Railbelt Area, Alaska, hydroelectric power, Valdez and Copper River Basin: Report of the Chief of Engineers dated October 29, 1982, at a total cost of $45,000,000, with a first Federal cost of $45,000,000.

HELENA HARBOR, PHILLIPS COUNTY, ARKANSAS

The project for navigation, Helena Harbor, Phillips County, Arkansas: Report of the Chief of Engineers, dated October 17, 1980, including such modifications as the Secretary determines to be necessary and appropriate to mitigate the adverse effects of the project on fish and wildlife habitat, at a total cost of $59,000,000, with an estimated first Federal cost of $35,800,000 and an estimated first non-Federal cost of $23,200,000. The Secretary, in consultation with the Fish and Wildlife Service, shall evaluate the adequacy of the recommended measures for mitigation of losses of wildlife habitat. Not later than one year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report of such evaluation.

WHITE RIVER NAVIGATION TO BATESVILLE, ARKANSAS

(1) The project for navigation, White River Navigation to Batesville, Arkansas: Report of the Chief of Engineers, dated December 23, 1981, at a total cost of

$29,300,000, with an estimated first Federal cost of $20,500,000 and an estimated first non-Federal cost of $8,800,000, except that the project shall include 1,865 acres of habitat mitigation lands. The project shall include modifications (A) for additional measures which the Secretary determines to be necessary and appropriate to mitigate the adverse effects of the project on the Fat Pocketbook Pearly Mussel, and (B) for weirs in tributary areas which the Secretary determines to be necessary and appropriate to benefit aquatic habitat. The Secretary shall deposit no spoil from such project onto lands of the White River National Wildlife Refuge without the approval of the Secretary of the Interior and without mitigating fully the adverse impacts of such spoil. The Secretary, in consultation with the Fish and Wildlife Service, shall evaluate the effect of the project on the Fat Pocketbook Pearly Mussel. The Secretary, in consultation with the Fish and Wildlife Service, shall also evaluate the feasibility of including weirs in tributary areas to benefit aquatic habitat and is authorized to include them as he determines appropriate. Not later than one year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report of such evaluations. Nothing in this paragraph or such report shall be construed to affect the requirements of Public Law 89-669, as amended.

SACRAMENTO RIVER BANK PROTECTION, CALIFORNIA

The project for mitigation of fish and wildlife losses, Sacramento River Bank Protection Project, California: Reports of the Chief of Engineers, dated September 1, 1981, at a total cost of $1,410,000, with an estimated first Federal cost of $890,000 and an estimated first non-Federal cost of $520,000.

JACKSONVILLE HARBOR (MILL COVE), FLORIDA

The project for navigation, Jacksonville Harbor, Mill Cove, Florida: Report of the Chief of Engineers, dated February 12, 1982, at a total cost of $4,000,000, with a first Federal cost of $4,000,000, including such modifications as the Secretary considers necessary and appropriate to assure that adequate dredged material disposal areas are available for construction, operation, and maintenance of the project. The Secretary, in consultation with the State of Florida, shall study the adequacy of available dredged material disposal areas for construction, operation, and maintenance of the project and the potential of such disposal areas for recreational development. Not later than one year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of such study.

PORT CANAVERAL HARBOR, FLORIDA

The project for mitigation of fish and wildlife losses at the Port Canaveral West Turning Basin Project, Florida: Report of the Chief of Engineers, dated October 1985 at a total cost of $276,000, with estimated first Federal cost of $126,000 and an estimated first non-Federal cost of $150,000.

RICHARD B. RUSSELL DAM AND LAKE, GEORGIA AND SOUTH CAROLINA

The project for mitigation of fish and wildlife losses at Richard B. Russell Dam and Lake Project, Savannah River, Georgia and South Carolina: Report of the Chief of Engineers, dated May 11, 1982, House Document Numbered 97-244, at a total cost of $20,200,000, with an estimated first Federal cost of $20,150,000 and an estimated first non-Federal cost of $50,000, including utilization for purposes of fish and wildlife habitat mitigation of such Federal lands as may be identified by the Secretary. The Secretary and the State of South Carolina, in consultation with the United States Fish and Wildlife Service, shall identify those Federal lands at Clarks Hill Lake to be utilized for purposes of fish and wildlife habitat mitigation.

METROPOLITAN ATLANTA AREA, GEORGIA

The project for construction of a reregulating dam for water supply purposes on the Chattahoochee River downstream of Buford Dam, Georgia: Report of the Chief of Engineers, dated June 1982, at a total cost of $28,000,000, with an estimated first Federal cost of $7,000,000 and an estimated first non-Federal cost of $21,000,000, including such additional measures as may be recommended or warranted by the General Design Memorandum and supplemental environmental impact statement approved under this paragraph. Before construction of the reregulation dam is initiated, the results of the Corps of Engineers' General Design Memorandum and supplemental environmental impact statement resulting from the continued planning and engineering studies must show that—

(1) the quality and quantity of water delivery to the State trout hatchery is maintained or improved and the hatchery can continue to operate satisfactorily;

(2) all water quality standards under the Federal Water Pollution Control Act and corresponding State law for the Chattahoochee River will be met, or, if such standards are not currently being met, neither the degree nor the frequency of violation will be increased;

(3) the design, construction, and operation of the reregulation project will facilitate and be compatible with downstream recreation, fisheries, and fisheries management and will include such measures as may be necessary to mitigate adverse effects of the project on turbidity, water temperature, and other water quality parameters, and water flow regimes;

(4) the project analysis evaluated the impact of the reregulation dam on—

(A) instream flows below the proposed dam for the current situation and proposed dam operation plans, under various hydrologic conditions and several demand rates;

(B) recreational use within the Chattahoochee River National Recreation Area, within the river corridor, and on the river itself; and

(C) economic issues.

Before construction of the reregulation dam is initiated, a general design memorandum and a supplemental environmental impact statement based on the continued planning and engineering studies shall be prepared and jointly approved by the Secretary and the Governor of Georgia. The authorization, design, construction, and operation of the reregulation dam by the Secretary or any other Federal or State body or agency must be in compliance with all applicable existing laws and with this paragraph without waiver of any conditions, requirements, or provisions contained therein. The reregulation dam may be constructed by the State of Georgia or its subdivisions at local cost.

DAVENPORT, IOWA (NAHANT MARSH)

The Davenport, Iowa Local Protection Project—Fish and Wildlife Mitigation Plan: Report of the Chief of Engineers, dated July 9, 1979, House Document Numbered 97-218, at a total cost of $517,000, with an estimated first Federal cost of $388,000 and an estimated first non-Federal cost of $129,000.

OBION CREEK, KENTUCKY

The project for mitigation of fish and wildlife losses, West Kentucky Tributaries Project, Obion Creek, Kentucky: Report of the Chief of Engineers, dated September 16, 1980, at a total cost of $4,900,000, with an estimated first Federal cost of $4,000,000 and an estimated first non-Federal cost of $900,000, except that (1) the Secretary, in consultation with the United States Fish and Wildlife Service, shall acquire and preserve not less than 6,000 nor more than 9,000 acres of woodland for mitigation of project-induced woodland and wetland habitat losses, and (2) the land for mitigation of damages to fish and wildlife shall be acquired as soon as possible from available funds, including the Environmental Protection and Mitigation Fund established by section 908 of this Act. Nothing in this paragraph affects the authority of the Secretary to carry out a project under section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s), in lieu of the West Kentucky Tributaries Project, Obion Creek. If such a project is carried out under section 205, the Secretary need only implement measures to mitigate fish and wildlife damages which are attributable to the project undertaken under section 205.

LAKE PONTCHARTRAIN NORTH SHORE, LOUISIANA

The project for navigation, Lake Pontchartrain North Shore, Louisiana: Report of the Chief of Engineers, dated February 14, 1979, at a total cost of $1,310,000, with an estimated first Federal cost of $655,000 and an estimated first non-Federal cost of $655,000.

ATCHAFALAYA BASIN, LOUISIANA

The project for flood control, Atchafalaya Basin Floodway System, Louisiana: Report of the Chief of Engineers, dated February 28, 1983, at a total cost of $250,000,000, with an estimated first Federal cost of $223,000,000 and an estimated first non-Federal cost of $27,000,000: Provided, That fish and wildlife enhancement benefits provided by this project shall be considered to be national for the purposes of section 906 of this Act.

RED RIVER WATERWAY, LOUISIANA

The project for mitigation of fish and wildlife losses, Red River Waterway, Louisiana: Report of the Chief of Engineers, dated December 28, 1984, at a total cost of $9,420,000, with an estimated first Federal cost of $8,860,000 and an estimated first non-Federal cost of $560,000, except that the land the Secretary may purchase for such project may include all or such portion of any land referred to in the report or all or such portion of any land adjacent to the Loggy Bayou Wildlife Management Area in Bossier Parish, Louisiana, which the Secretary determines is appropriate.

YAZOO BACKWATER AREA, MISSISSIPPI

The project for mitigation of fish and wildlife losses at the Yazoo Backwater Project, Mississippi: Report of the Chief of Engineers, dated July 12, 1984, at a total cost of $17,700,000 with a first Federal cost of $17,700,000. The project shall include acquisition of 40,000 acres for mitigation of project-induced fish and wildlife losses as recommended in the report of the District Engineer, Vicksburg District, dated July 1982. The Secretary may acquire a portion of such 40,000 acres from willing sellers in

the State of Arkansas, after consultation with the United States Fish and Wildlife Service and the Governors of the States of Mississippi and Arkansas.

GREENVILLE HARBOR, MISSISSIPPI

The project for navigation, Greenville Harbor, Mississippi: Reports of the Chief of Engineers, dated November 15, 1977, and February 22, 1982, at a total cost of $43,700,000, with an estimated first Federal cost of $28,000,000 and an estimated first non-Federal cost of $15,700,000.

VICKSBURG HARBOR, MISSISSIPPI

The project for navigation, Vicksburg Harbor, Mississippi: Report of the Chief of Engineers, dated August 13, 1979, at a total cost of $79,200,000, with an estimated first Federal cost of $55,900,000 and an estimated first non-Federal cost of $23,300,000.

HARRY S TRUMAN DAM AND RESERVOIR, MISSOURI

The project for modification of the Harry S Truman Dam and Reservoir Project, Missouri: Report of the Chief of Engineers, dated December 21, 1981, at a total cost of $2,100,000, with a first Federal cost of $2,100,000. The Secretary, in consultation with the State of Missouri and the United States Fish and Wildlife Service, shall acquire lands, or designate project joint-use lands, for mitigation of fish and wildlife losses in addition to those lands recommended for such purposes by such report; except that the total acreage of all mitigation lands shall not exceed 1,000 acres.

TRIMBLE WILDLIFE AREA, SMITHVILLE LAKE, LITTLE PLATTE RIVER, MISSOURI

The project for replacement of the Trimble Wildlife Area, Smithville Lake, Little Platte River, Missouri: Report of the Chief of Engineers, dated September 22, 1977, at a total cost of $1,570,000, with a first Federal cost of $1,570,000, except that the Secretary shall participate with the State of Missouri in the development of wildlife management measures and facilities on State lands rather than the acquisition of lands and the development of Jackass Bend.

ST. LOUIS HARBOR, MISSOURI AND ILLINOIS

The project for navigation, St. Louis Harbor, Missouri and Illinois: Report of the Chief of Engineers, dated April 30, 1984, at a total cost of $31,000,000, with an estimated first Federal cost of $10,400,000 and an estimated first non-Federal cost of $20,600,000.

MISSOURI RIVER MITIGATION, MISSOURI, KANSAS, IOWA, AND NEBRASKA

The project for mitigation of fish and wildlife losses, Missouri River Bank Stabilization and Navigation Project, Missouri, Kansas, Iowa, and Nebraska: Report of the Chief of Engineers, dated April 24, 1984, at a total cost of $51,900,000, with a first Federal cost of $51,900,000. The Secretary shall study the need for additional measures for mitigation of losses of aquatic and terrestrial habitat caused by such project and shall report to Congress, within three years after the date of enactment of this Act, on the results of such study and any recommendations for additional measures needed for mitigation of such losses.

OLCOTT HARBOR, NEW YORK

The project for navigation, Olcott Harbor, New York: Report of the Chief of Engineers, dated June 11, 1980, at a total cost of $12,600,000, with an estimated first Federal cost of $6,300,000 and an estimated first non-Federal cost of $6,300,000. The Secretary, in consultation with appropriate Federal, State, and local agencies, shall conduct additional studies of the effects of the project on fish and wildlife resources. The Secretary is authorized to undertake any additional measures which he determines necessary and appropriate to minimize any adverse effects of the project on fish and wildlife production and habitat.

ATLANTIC INTRACOASTAL WATERWAY BRIDGES, NORTH CAROLINA

The project for replacement of Atlantic Intracoastal Waterway Bridges, North Carolina: Report of the Chief of Engineers, dated October 1, 1975, House Document Numbered 94-597, at a total cost of $9,100,000, with a first Federal cost of $9,100,000, which shall be in addition to, and not in lieu of, any amounts authorized to be appropriated for such project under section 101 of the River and Harbor Act of 1970.

MUDDY BOGGY CREEK, PARKER LAKE, OKLAHOMA

The project for flood control and water supply, Parker Lake, Muddy Boggy Creek, Oklahoma: Report of the Chief of Engineers, dated May 30, 1980, at a total cost of $46,000,000, with an estimated first Federal cost of $3,410,000 and an estimated first non-Federal cost of $42,590,000.

FORT GIBSON LAKE, OKLAHOMA

The project for Fort Gibson Lake, Oklahoma: Report of the Chief of Engineers, dated August 16, 1984, at a total cost of $24,600,000, with a first Federal cost of $24,600,000.

BLUE RIVER LAKE, OREGON

Blue River Lake, hydroelectric power, Willamette River Basin, Oregon: Report of the Chief of Engineers dated August 9, 1983, at a total cost of $30,700,000, with a first Federal cost of $30,700,000. The authorization under this paragraph shall not preclude development of hydroelectric power by a non-Federal interest if, within three years of the date of enactment of this Act, such non-Federal interest obtains a license from the Federal Energy Regulatory Commission for non-Federal development of hydroelectric power at the Blue River Lake project.

BIG RIVER RESERVOIR, RHODE ISLAND

The project for flood control, Big River Reservoir, Rhode Island: Report of the Chief of Engineers, dated March 9, 1983, at a total cost of $86,700,000, with an estimated first Federal cost of $8,360,000 and an estimated first non-Federal cost of $78,340,000, including the acquisition of such additional lands as determined by the Secretary to be necessary and appropriate for mitigation of fish and wildlife losses. The Secretary, in consultation with appropriate Federal, State, and local agencies, shall reevaluate the acquisition of mitigation lands recommended in the report of the Chief of Engineers for purposes of determining the need for additional lands for mitigation of fish and wildlife losses. Not later than one year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of such reevaluation.

GREGORY COUNTY, SOUTH DAKOTA

Gregory County hydroelectric pumped storage facility, stages I and II, South Dakota: Report of the Chief of Engineers dated April 26, 1983, together with such additional associated multipurpose water supply and irrigation features as are generally described in the final feasibility report of the District Engineer, at a total cost of $1,390,000,000, with a first Federal cost of $1,390,000,000, not to exceed $100,000,000 of which may be used to construct such associated water supply and irrigation features: Provided, That the additional associated multipurpose water supply and irrigation features shall be undertaken concurrently by the Secretary of the Interior in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof and supplemental thereto), as a unit of the Pick-Sloan Missouri River Basin Program: Provided further, That the Secretary of the Interior is authorized to undertake a feasibility study of the additional associated multipurpose water supply and irrigation features of the Gregory County hydroelectric pumped storage facility and that construction of the Gregory County hydroelectric pumped storage facility and such additional associated multipurpose water supply and irrigation features shall not be undertaken until the Secretary of the Interior has completed the feasibility report on such additional features and submitted such report to the Congress along with his certification that, in his judgment, the benefits of such features will exceed the costs and that such additional features are physically and financially feasible, and the Congress has authorized the appropriation of funds for the construction thereof.

MEMPHIS HARBOR, MEMPHIS, TENNESSEE

The project for navigation, Memphis Harbor, Memphis, Tennessee: Report of the Chief of Engineers, dated February 25, 1981, at a total cost of $110,000,000, with an estimated first Federal cost of $38,400,000 and an estimated first non-Federal cost of $71,600,000, including acquisition of such additional lands for mitigation of losses of bottomland hardwood habitat as may be recommended by the Secretary and including such additional measures which the Secretary determines necessary and appropriate to prevent adverse effects on water quality. The Secretary shall reevaluate, in consultation with the Fish and Wildlife Service, the need for mitigation of project-induced losses of bottomland hardwood habitat. The Secretary, in consultation with the Environmental Protection Agency, shall conduct further studies of the quality of the water in the project area and the need for measures to prevent adverse effects on the quality of the water. Not later than one year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report of such reevalutation and study.

COOPER LAKE AND CHANNELS, TEXAS

The project for the mitigation of fish and wildlife resource losses, Cooper Lake and Channels, Texas: Report of the Chief of Engineers, dated May 21, 1982, at a total cost of $14,800,000, with an estimated first Federal cost of $8,160,000 and an estimated first non-Federal cost of $6,640,000.

HAMPTON ROADS DEBRIS REMOVAL, VIRGINIA

The project for the removal of debris from Hampton Roads and Vicinity, Virginia: Report of the Chief of Engineers, dated October 19, 1983, at a total cost of $7,030,000, with an estimated first Federal cost of $2,330,000 and an estimated first non-Federal cost of $4,700,000.

MC NARY LOCK AND DAM, WASHINGTON AND OREGON

The project for McNary Lock and Dam, Second Powerhouse, Columbia River, Washington and Oregon, Phase I, General Design Memorandum: Report of the Chief of Engineers, dated June 24, 1981, at a total cost of $667,000,000, with a first Federal cost of $667,000,000.

CABIN CREEK, WEST VIRGINIA

That portion of the Cabin Creek, West Virginia, demonstration reclamation project providing for flood damage prevention measures: Report of the Chief of Engineers, dated March 1, 1979, at a total cost of $6,800,000, with an estimated first Federal cost of $3,400,000 and an estimated first non-Federal cost of $3,400,000, including channel improvement for 10.5 miles on Cabin Creek, establishment of flood plain management guidelines, and supplemental flood proofing. The construction of such features shall be coordinated with any construction by other Federal agencies of other features described in such report under applicable Federal laws.

(b) AUTHORIZATION OF CONSTRUCTION SUBJECT TO FAVORABLE REPORT.—The following projects are authorized to be prosecuted by the Secretary substantially in accordance with the plans and subject to the conditions recommended in the respective reports cited, with such modifications as are recommended by the Chief of Engineers and approved by the Secretary, and with such other modifications as are recommended by the Secretary. If no report is cited for a project, the project is authorized to be prosecuted by the Secretary in accordance with a final report of the Chief of Engineers, and with such modifications as are recommended by the Secretary, and no construction on such project may be initiated until such a report is issued and approved by the Secretary.

RILLITO RIVER, TUCSON, ARIZONA

The project for bank erosion control, Rillito River in the vicinity of Tucson, Arizona: Report of the Division Engineer, dated July 14, 1986, for the purpose of providing protection against the level of flooding that occurred in October 1983, at a total cost of $26,000,000, with an estimated first Federal cost of $19,550,000 and an estimated first non-Federal cost of $6,450,000. Section 104 of this Act shall apply to the project authorized by this paragraph.

WAILUA FALLS, WAILUA RIVER, KAUAI, HAWAII

The project for hydroelectric power generation at Wailua Falls, Wailua River, Kauai, Hawaii, at a total cost of $13,500,000, with a first Federal cost of $13,500,000.

YAZOO RIVER, MISSISSIPPI

A project to perform intermittent dredging and such other work as may be required on the Yazoo River in Mississippi, from Greenwood south, to remove natural shoals as they occur, at an annual average cost of $200,000, so as to allow commerce to continue. Responsible local interests shall agree to (1) provide without cost to the United States all lands, easements, and rights-of-way required for dredging and disposal of dredged materials; (2) accomplish without cost to the United States such alterations, relocations, and rearrangement of facilities as required for dredging and disposal of dredged materials; and (3) hold and save the United States free from damages due to the dredging and disposal of dredged materials.

TRINITY RIVER, TEXAS

The project for the mitigation of fish and wildlife losses, Trinity River, Texas: Report of the Board of Engineers for Rivers and Harbors, dated October 4, 1982, at a total cost of $10,400,000, with an estimated first Federal cost of $10,000,000 and an estimated first non-Federal cost of $400,000.

(c) PRE-CONSTRUCTION AUTHORIZATION.—The Secretary is authorized to carry out planning, engineering, and design for the following projects:

NEPONSET RIVER, MILTON TOWN LANDING TO PORT NORFOLK, MASSACHUSETTS

The project for dredging, Neponset River, Milton Town Landing to Port Norfolk, Massachusetts, including the disposal of the dredged material at sea, at a total cost of $450,000.

MERRIMACK RIVER, MASSACHUSETTS

The project for navigation, Merrimack River, Massachusetts, consisting of (1) improvements along the Merrimack River from Lowell, Massachusetts, to Lawrence, Massachusetts (including a concrete weir running eastward from the confluence of the Concord River and the Merrimack River parallel to the southern bank of the Merrimack River), (2) a lock at the end of the channel created by the weir, and (3) such other measures as the Secretary deems necessary in the interest of navigation, at a total cost of $800,000. In addition, the Secretary is authorized and directed to conduct necessary reconnaissance studies and feasibility studies on extending such project from Lawrence, Massachusetts, to Haverhill, Massachusetts, and from Haverhill, Massachusetts, to the mouth of the Merrimack River.

BUFFALO HARBOR, NEW YORK

The project to replace the dike at the Small Boat Harbor, Buffalo Harbor, New York, at a total cost of $900,000.

WHEELING CREEK WATERSHED, OHIO

The project to prevent or reduce flooding problems in the Wheeling Creek Watershed, Ohio, including control of erosion of coal mine areas to reduce deposition of sediments in Wheeling Creek, removal of sediment deposits in Wheeling Creek, and other measures deemed appropriate by the Secretary, in consultation with the Soil Conservation Service of the Department of Agriculture, the United States Geological Survey, the Office of Surface Mining of the Department of the Interior, the State of Ohio, and other appropriate Federal and non-Federal agencies.

FIVE MILE CREEK, DALLAS, TEXAS

The project for flood protection along Five Mile Creek, Dallas, Texas, including dredging of a channel at the lower end of such creek and developing a retention structure at the upper end of such creek, at a total cost of $1,460,000.

FOX RIVER CHANNEL, GREEN BAY, WISCONSIN

The project to deepen the Fox River Channel, Green Bay, Wisconsin, to a depth of twenty-seven feet, at a total cost of $3,460,000.

(d) SECTION 107 PROJECTS.—The Secretary is authorized and directed to carry out the following projects under section 107 of the River and Harbor Act of 1960:

LARKSPUR FERRY CHANNEL, LARKSPUR, CALIFORNIA

Subject to section 903(a) of this Act, the project to maintain the Larkspur Ferry Channel, Larkspur, California, at a depth sufficient for ferry boat service between Marin County and San Francisco, California, at a total cost of $3,340,000.

SHELBURNE BAY, VERMONT

The project for navigation at LaPlatte River, Shelburne Bay, Vermont, at a total cost of $250,000.

RUDEE INLET, VIRGINIA

The project for navigation and shoreline protection, Rudee Inlet, Virginia Beach, Virginia: Report of the Division Engineer, dated February 4, 1983, at a total cost of $1,270,000.

AGAT SMALL BOAT HARBOR, GUAM

Subject to section 903(a) of this Act, the project to construct the Agat small boat harbor in Guam, at a total cost of $4,040,000, with an estimated first Federal cost of $2,816,000 and an estimated first non-Federal cost of $1,224,000.

SEC. 602. LAKES PROGRAM.

(a) Subject to section 903(a) of this Act, the Secretary shall carry out program for the removal of silt, aquatic growth, and other material in the following lakes:

(1) Albert Lea Lake, Freeborn County, Minnesota, removal of silt and aquatic growth;

(2) Lake George, Hobart, Indiana, and in that part of Deep River upstream of such lake through Lake Station, Indiana, removal of silt, aquatic growth, and other material and construction of silt traps or other devices to prevent and abate the deposit of sediment in Lake George and such part of Deep River;

(3) Greenwood Lake and Belcher Creek, New Jersey, removal of silt and stumps;

(4) Sauk Lake and its tributary streams in the vicinity of Sauk Centre, Stearns County, Minnesota, removal of silt and aquatic growth;

(5) Deal Lake, Monmouth County, New Jersey, removal of silt and stumps and the control of pollution from nonpoint sources;

(6) Lake Worth, Tarrant County, Texas, removal of silt and aquatic growth, including construction of silt traps and providing other devices or equipment to prevent and abate the further deposit of sediment in Lake Worth; such project shall also provide for the use of dredged material from Lake Worth for the reclamation of despoiled land;

(7) Hamlet City Lake, Hamlet, North Carolina, removal of accumulated silt and debris including construction of silt traps and providing other devices or equipment to prevent and abate the further deposit of sediment in Hamlet City Lake;

(8) Lake Herman, Lake County, South Dakota, removal of excess silt; and

(9) Gorton's Pond, Warwick, Rhode Island, mitigation activities recommended in the 1982 Environmental Protection Agency diagnostic feasibility study, including the installation of retention basins, the dredging of inlets and outlets in recommended areas and the disposal of dredge material, and weed harvesting and nutrient inactivation.

(b) The non-Federal share of the cost of each project carried out under this section shall be 25 percent.

(c) The Secretary shall report to the Administrator of the Environmental Protection Agency the plans for and results of the program under subsection (a), together with such recommendations as the Secretary determines necessary to carry out the program for freshwater lakes under section 314 of the Federal Water Pollution Control Act.

(d) There is authorized to be appropriated $40,000,000 for fiscal years beginning after September 30, 1986, to carry out this section. Not more than $8,000,000 may be obligated for any project under subsection (a).

SEC. 603. STREAMBANK EROSION CONTROL PROGRAM.

(a) Subject to section 903(a) of this Act, the Secretary is authorized to carry out a program to plan, design, and construct streambank erosion control projects listed in subsection (f) when, in the opinion of the Secretary, such work is economically justified and environmentally acceptable. Prior to construction of any projects for this purpose, non-Federal interests shall agree to provide, without cost to the United States, all lands, easements, and rights-of-way nec-

essary for construction and subsequent operation of the project; hold and save the United States free from damages due to construction, operation, and maintenance of the project, except damages due to the fault or negligence of the United States or its contractors; and operate and maintain the project upon completion. The non-Federal share of the cost of each project carried out under this section shall be 25 percent. Lands, easements, and rights-of-way provided by non-Federal interests shall be credited to the non-Federal share.

(b) For the purposes of this section, $30,000,000 is authorized to be appropriated to the Secretary for each of the fiscal years 1987, 1988, 1989, 1990, and 1991. Not more than $5,000,000 shall be allotted for the construction of a project under this section at any single locality and such amount shall be sufficient to complete Federal participation in the project.

(c) The program of projects under this section shall—

(1) identify streambank erosion measures likely to provide the highest degree of protection technically and economically feasible for both high and low flow conditions;

(2) conduct necessary research on the interaction of erodible boundaries with flowing water in order to more accurately predict the behavior and optimum design of protective works;

(3) define and test optimum designs of bed slopes and grade control structures for a wide range of soil and flow conditions;

(4) develop, field test, and evaluate new erosion protection products or methods, including but not limited to earth or rock-filled grids, reinforced earth bulkheads, stabilized mattings for vegetation seeding, and patterned schemes using manufactured blocks in loose, matted, or interconnected configurations;

(5) develop and evaluate engineering techniques to control overbank drainage; and

(6) identify and quantify economic losses occurring along rivers due to streambank erosion.

(d) The Secretary shall report to Congress each year of the demonstration program under this section on work undertaken pursuant to such program.

(e) For each project carried out under this section, the Secretary shall evaluate the environmental impacts of such project with respect to both riverine and adjacent land-use values, with the view of minimizing environmental losses.

(f) The program authorized by this section shall be undertaken at the following locations:

(1) LITTLE RIVER, ARKANSAS.—Little River in the vicinity of the Highway 41 bridge, Horatio, Arkansas, protection against stream bank erosion.

(2) SACRAMENTO RIVER, CALIFORNIA.—Sacramento River and its tributaries from Red Bluff to Shasta Dam, and from Chico Landing downstream along each bank to the head of the Sacramento River flood control project levees, construction of bank protection works, including mitigation of fish and wildlife losses induced by the project.

(3) WABASH RIVER, ILLINOIS.—Wabash River at Grayville, Illinois, construction of a low-level weir across the cutoff channel to restore the river flow to its original channel and prevent streambank erosion and damage to public and private facilities.

(4) RED LAKE RIVER, MINNESOTA.—Red Lake River, Minnesota, approximately one and one-half miles west of Gentilly, Minnesota, correction of erosion problems adequate to protect the nearby highway and bridge.

(5) CANEY CREEK, MISSISSIPPI.—(A) Caney Creek in the vicinity of Jackson, Mississippi, between McDowell Road and Raymond Road, construction of such bank stabilization measures as the Secretary determines necessary for flood damage prevention and erosion control along approximately 3,000 feet of the creek.

(B) The Secretary shall complete his study of flood and soil erosion problems along Caney Creek and its tributaries in the vicinity of Jackson, Mississippi. For purposes of analyzing cost and benefits of any project recommended by the Secretary as a result of such study, the Secretary shall take into account the cost and benefits of measures undertaken pursuant to subparagraph (A).

(6) PLATTE RIVER, NEBRASKA.—(A) Sites on the Platte River and its tributaries in Nebraska, projects for flood control and streambank erosion prevention. The program shall have as its objectives the protection of property, environmental enhancement, and social well-being.

(B) Flood control projects carried out under this paragraph shall include projects for the construction, operation, and maintenance of flood damage reduction measures, including but not limited to bank protection and stabilization works, embankments, clearing, snagging, dredging, and all other appropriate flood control measures, and shall also include recreational facilities deemed appropriate by the Secretary. Such projects shall be carried out substantially in accordance with the plan of action of the Chief of Engineers dated February 6, 1984, and with the Platte River and Tributaries, Nebraska, study of 1978 and the Platte River Basin, Nebraska, Level B Study of 1976.

(C) For each project under this paragraph, the Secretary shall evaluate the environmental impacts of such project with respect to both riverine and adjacent land-use values, with the view of enhancing wildlife and wildlife habitat as a major purpose coequal with all other purposes and objectives, and with the view of minimizing environmental losses.

(D) Projects authorized by this paragraph shall be undertaken to reflect a variety of geographical and environmental conditions, including naturally occurring erosion problems and erosion caused or incurred by man-made structures or activities. At a minimum, projects shall be conducted at sites on—

(i) that reach of the Platte River between Hershey, Nebraska, and the boundary between Lincoln and Dawson Counties, Nebraska; and

(ii) that reach of the Platte River from the boundary between Colfax and Dodge Counties, Nebraska, to its confluence with the Missouri River and that portion of the Elkhorn River from the boundary between Antelope and Madison Counties, Nebraska, to its confluence with the Platte River.

(E) The Secretary shall condition the construction, operation, and maintenance of any project under this paragraph upon the availability to the United States of such land and interests in land as he deems necessary to carry out such project and to protect and enhance the river in accordance with the purposes of this paragraph. Lands and interests in land for any project under this paragraph shall not be acquired without the consent of the owner, except that not to exceed five percent of the lands acquired for such a project may be acquired in less than fee title without the consent of the owner if determined necessary by the Secretary because of flooding or streambank erosion problems causing or threatening to cause serious damage in the Platte River Basin.

(F) The Secretary shall establish a Platte River Advisory Group consisting of representatives of the State of Nebraska and political subdivisions thereof, affected Federal agencies, and such private organizations as the Secretary deems desirable. Projects under this paragraph shall be carried out in coordination and consultation with such Advisory Group.

(7) ELM CREEK, DECATUR, NEBRASKA.—Elm Creek in the vicinity of Decatur, Nebraska, such emergency bank stabilization measures as are necessary to protect bridges.

(8) PASSAIC RIVER, NEW JERSEY.—(A) East bank of the Passaic River, New Jersey, from Dundee Dam to Kearney Point, bank stabilization and development, operation, and maintenance of a recreation and greenbelt area on public properties on, and along the bank. The project shall be carried out after consultation with the Passiac River Restoration Steering Committee, and shall include, but not be limited to—

(i) the construction, operation, and maintenance of recreational facilities (including, but not limited to, a multipurpose pathway described in the Passaic River Restoration Master Plan) and streambank stabilization structures;

(ii) terraforming; and

(iii) such tree plantings, vegetation and wildlife protection and development, and other activities as will enhance the natural environment for recreational purposes.

(B) The construction and maintenance of structures and plant and husbandry activities referred to in subparagraph (A) shall be conditioned upon the ownership by the public of the land or interest therein necessary for such purposes. The operation and maintenance of such structures and activities shall be undertaken by the counties or cities owning the lands on which such structures are to be located or on which such activities are to be carried out.

(C) In carrying out the project described in subparagraph (A), the Secretary may acquire by purchase, donation, exchange, or otherwise, lands and interests therein as the Secretary and the Passaic River Restoration Steering Committee determine are necessary to carry out such project. No lands or interests therein may be acquired by the United States or any State or local government to carry out such project without the consent of the owner, and nothing herein shall constitute an additional restriction on the use of any lands or interests therein which is not owned by the United States or a State or local government.

(9) OHIO RIVER AND TRIBUTARIES.—Ohio River and Tributaries, streambank erosion protection measures in the following locations:

(A) that reach of the Ohio River between the Captain Anthony Meldahl Locks and Dam and the McAlpine Locks and Dam;

(B) the Licking River;

(C) the Kanawha River in the vicinity of St. Albans, West Virginia;

(D) from the mouth of the Ohio River to Uniontown Dam, Illinois; and

(E) along the Wabash River, from the mouth of the Wabash River to its confluence with the Little Wabash River.

(10) UPPER MISSOURI RIVER, SOUTH DAKOTA.—Locations on the Missouri River upstream of the Fort Randall Dam and downstream of the Oahe Dam; upstream of the Oahe Dam and downstream of the Garrison Dam; upstream of the Garrison Dam

and downstream of the Fort Peck Dam; and upstream of the Fort Peck Dam to the confluence of the Missouri and Musselshell Rivers.

(11) MEMPHIS, TENNESSEE.—Sites on the Mississippi River in the vicinity of Memphis, Tennessee, construction of bank protection works.

(12) LA CONNER, WASHINGTON.—La Conner, Washington, such bank erosion control measures along the Swinomish Channel as the Secretary determines necessary to prevent damage to structures in the La Conner Historical District.

(13) KANAWHA RIVER, WEST VIRGINIA.—Kanawha River from approximately 55th Street to a point approximately 100 feet upstream of 57th Street in Charleston, West Virginia, construction of such streambank protection works as the Secretary deems necessary to prevent further bank failure and erosion of a 1,200-foot reach of the left descending bank.

SEC. 604. DES MOINES RIVER GREENBELT.

The project for the Des Moines Recreational River and Greenbelt, Iowa, authorized by Public Law 99-88, shall include the area described in the Des Moines Recreational River and Greenbelt Map, which description is printed in Committee Print 99-53 of the Committee on Public Works and Transportation of the House of Representatives (dated September 1986).

SEC. 605. BARNEGAT INLET TO LONGPORT, NEW JERSEY.

The Secretary is authorized to carry out the project for beach erosion control, navigation, and storm protection from Barnegat Inlet to Longport, New Jersey, substantially in accordance with the report of the Chief of Engineers dated October 24, 1975, except that such project may also include construction of a fisherman walkway on top of a jetty as described in the report of the Chief of Engineers dated January 20, 1983, at a total cost of $106,290,000, with an estimated first Federal cost of $59,505,000 and an estimated first non-Federal cost of $46,785,000. The Secretary may construct the beach erosion control, navigation, or storm protection feature of the project separately or in combination with the other such features. The non-Federal share for any such feature which is separately constructed shall be the appropriate non-Federal share for that feature.

SEC. 606. CHESAPEAKE BAY.

(a) The Secretary is authorized to construct projects for low-cost projects along the shore of the Chesapeake Bay and its tributaries for the control of streambank and shoreline erosion. The Secretary shall select an equal number of projects under this section in each of the States of Maryland, Pennsylvania, and Virginia. In selecting projects in Virginia under this section, the Secretary shall give priority consideration to the shoal at the mouth of the Coan River.

(b) The Federal share of the cost of the projects under this section shall be 50 percent.

(c) Information gathered in the study conducted under section 54 of the Water Resources Development Act of 1976 shall be used to the extent possible in selecting appropriate projects.

(d) There is authorized to be appropriated for fiscal years beginning after September 30, 1986, $5,000,000 to carry out this section.

SEC. 607. PASSAIC RIVER BASIN CHANNEL CLEARING.

Subject to section 903(a) of this Act, the Secretary is authorized and directed to implement snagging and clearing and channel rectification measures along the Passaic, Pompton, Pequannock, and Ramapo Rivers, New Jersey, from Beatties Dam in Little Falls on the Passaic River upstream to the confluence of the Pompton River at Two Bridges, upstream along the Pompton River to and including the Pompton Feeder on the Pequannock and Ramapo Rivers, and upstream along the Ramapo River to the Pompton Lakes Dam, and along tributaries of such rivers (including Singac Brook and Weasel Brook), including the modification of such structures, flood proofing, and flood warning measures as determined necessary by the Chief of Engineers, at a total cost of $33,300,000, with an estimated first Federal cost of $25,000,000 and an estimated first non-Federal cost of $8,300,000. In addition, subject to section 903(a) of this Act, the Secretary is authorized to undertake a project for flood control for the Passaic River in the vicinity of Beatties Dam in Little Falls, New Jersey, at a total cost of $20,000,000, with an estimated first Federal cost of $15,000,000 and an estimated first non-Federal cost of $5,000,000. The non-Federal share of the cost of the projects under this section is 25 percent.

SEC. 608. MOUND STATE PARK AND FORT TOULOUSE NATIONAL HISTORIC LANDMARK, ALABAMA.

(a) Subject to section 903(a) of this Act, the Secretary is authorized and directed to take such action as may be necessary to correct erosion problems along the banks of the Warrior River in order to protect Mound State Park, near Moundville, Alabama, substantially in accordance with the study directed by the Mobile district engineer and dated July 20, 1981, at a total cost of $4,400,000, with an estimated first Federal cost of $3,300,000 and an estimated first non-Federal cost of $1,100,000.

(b) Subject to section 903(a) of this Act, the Secretary is authorized to preserve and protect the Fort Toulouse National Historic Landmark and Taskigi Indian Mound in the county of Elmore, Alabama, by instituting bank stabilization measures, in accordance with alternative B contained in the Mobile district engineer's design supplement report entitled "Jones Bluff Reservoir, Alabama River, Alabama, Fort Toulouse, Design Report, National Historic Landmark", dated July 1975, at a total cost of $16,000,000, with an estimated first Federal cost of $12,000,000 and an estimated first non-Federal cost of $4,000,000.

SEC. 609. MUCK LEVEE, SALT CREEK, ILLINOIS.

Subject to section 903(a) of this Act, the Secretary shall repair and rehabilitate the Muck Levee, Salt Creek, Logan County, Illinois, at a total cost of $12,000, with an estimated first Federal cost of $9,000 and an estimated first non-Federal cost of $3,000.

SEC. 610. SWAN CREEK HARBOR OF REFUGE.

Subject to section 903(a) of this Act, the Secretary is authorized to take such measures as may be necessary to maintain a harbor of refuge in Swan Creek, Newport, Michigan. Non-Federal interests shall provide a public wharf and such other facilities as may be necessary for a harbor of refuge which shall be open to all on equal terms and such other requirements as the Secretary deems necessary.

SEC. 611. TRANSFER OF DREDGING VESSEL.

Notwithstanding any other provision of law, the Secretary shall transfer to New Hanover County, North Carolina, its successors or assigns, without consideration, all right, title, and interest of the United States to a surplus dredging vessel (known as the "Hyde hopper dredge") in Wilmington, North Carolina, if such county agrees in writing to utilize such vessel only for the purpose of establishing an artificial fish habitat at no cost to the United States.

SEC. 612. INTERIM MEASURES FOR WHEELING CREEK, OHIO.

Subject to section 903(a) of this Act, the Secretary is authorized to undertake interim emergency flood control measures, including the removal of sediment deposits from Wheeling Creek and other measures deemed appropriate by the Secretary, to reduce flood damage in the vicinity of Goosetown, Wolfhurst, Barton, Crescent, Maynard, Blainsville, Fairpointe, Crabapple, and Lafferty, Ohio, at a total cost of $4,000,000, with an estimated first Federal cost of $2,962,000 and an estimated first non-Federal cost of $1,038,000. For purposes of analyzing the costs and benefits of any project recommended by the Secretary as a result of the planning, engineering, and design for the Wheeling Creek Watershed authorized by section 601(c), the Secretary shall take into account the costs and benefits of measures undertaken pursuant to this section.

SEC. 613. TOLAY LAKE, CALIFORNIA.

The Secretary, the Secretary of the Interior, and the Administrator of the Environmental Protection Agency shall jointly develop a feasibility study for the construction in the vicinity of the former site of Tolay Lake in Sonoma County, California, of a water resources development project consisting of one or more of the reclamation project alternatives (other than the ocean outfall alternative) included in the Final Environmental Impact Report, Sonoma County Wastewater Reclamation Project, adopted by the Sonoma County Board of Supervisors, April 21, 1981, at a total cost of $3,000,000. Not later than one year after the date of the enactment of this Act, the Secretary, the Secretary of the Interior, and the Administrator of the Environmental Protection Agency shall submit a report to Congress with recommendations on a program and methods of financing the program.

SEC. 614. PROJECTS FOR SOIL EROSION PREVENTION.

(a) The Secretary of Agriculture, acting through the Administrator of the Soil Conservation Service, is authorized to complete construction of the following projects for run-off and waterflow retardation and soil erosion prevention:

(1) Bush River Watershed, Virginia;

(2) Great Creek Watershed, Virginia; and

(3) Cottonwood-Walnut Creek Watershed, New Mexico.

(b) Construction of such projects shall be completed in accordance with the resolutions adopted by the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives which authorized such construction; except that—

(1) construction of the project for Cottonwood-Walnut Creek Watershed, New Mexico, shall be completed in accordance with such resolutions as modified by Committee Print 99-11 of the Committee on Public Works and Transportation of the House of Representatives; and

(2) the amount authorized to be appropriated for construction of such projects shall be as follows:

(A) for Bush River Watershed, Virginia, $13,700,000;

(B) for Great Creek Watershed, Virginia, $3,900,000; and

(C) for Cottonwood-Walnut Creek Watershed, New Mexico, $28,063,000.

SEC. 615. PORT ONTARIO, SANDY CREEK, NEW YORK.

The Secretary is authorized to take such measures as may be necessary to maintain a harbor of refuge in Port Ontario, Sandy Creek, New York. Non-Federal interests shall provide a public wharf and such other facilities as may be necessary for a harbor of refuge which shall be open to all on equal terms and such other requirements as the Secretary deems necessary.

SEC. 616. DULUTH, MINNESOTA, SHORELINE PROTECTION.

The Secretary is authorized to construct shoreline protection measures for the shoreline adjacent to the runway at the Sky Harbor Municipal Airport, Duluth, Minnesota, including riprap shore protection, fueling area repairs and protection, and topsoil and turf establishment, at a total cost of $333,000, with an estimated first Federal cost of $250,000 and an estimated first non-Federal cost of $83,000.

TITLE VII—WATER RESOURCES STUDIES

SEC. 701. FEASIBILITY REPORTS FOR ILLINOIS AND KINNICKINNIC RIVERS.

The Secretary is authorized and directed to prepare and submit to Congress feasibility reports on the following water resources projects at the following locations:

Illinois River in the vicinity of Hardin, Illinois, to recommend remedial measures for bank stabilization.

Kinnickinnic River, Milwaukee County, Wisconsin, for flood control and allied purposes.

SEC. 702. TERRITORIES DEVELOPMENT STUDY.

The Secretary is hereby authorized and directed to make studies in cooperation with the Secretary of the Interior and the governments of the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands for the purposes of providing plans for the development, utilization, and conservation of water and related land resources of such jurisdiction, at a total cost of $2,000,000 for each of the five studies. Such studies shall include appropriate consideration of the needs for flood protection, wise use of flood plain lands, navigation facilities, hydroelectric power generation, regional water supply and waste water management facilities systems, general recreation facilities, enhancement and control of water quality, enhancement and conservation of fish and wildlife, and other measures for environmental enhancement, economic and human resources development. Such studies shall be compatible with comprehensive development plans formulated by local planning agencies and other interested Federal agencies. Any funds made available under this section for a study for any such jurisdiction which is not needed for such study shall be available to the Secretary to construct authorized water resources projects in such jurisdiction and to implement the findings of such study with appropriate cost sharing as provided in this Act.

SEC. 703. SURVEY OF POTENTIAL FOR USE OF CERTAIN FACILITIES AS HYDROELECTRIC FACILITIES.

(a) The Secretary shall, upon the request of local public officials, survey the potential and methods for rehabilitating former industrial sites, millraces, and similar types of facilities already constructed for use as hydroelectric facilities. The Secretary shall, upon request, provide technical assistance to local public agencies, including electric cooperatives, in designing projects to rehabilitate sites that have been surveyed, or are qualified for such survey, under this section. The non-Federal share of the cost of carrying out this section shall be 50 percent.

(b) There is authorized to be appropriated to the Secretary, to implement this section, the sum of $5,000,000 for each of the fiscal years ending September 30, 1988, through September 30, 1992, such sums to remain available until expended.

SEC. 704. STUDY OF CORPS CAPABILITY TO CONSERVE FISH AND WILDLIFE.

(a) The Secretary shall investigate and study the feasibility of utilizing the capabilities of the United States Army Corps of Engineers to conserve fish and wildlife (including their habitats) where such fish and wildlife are indigenous to the United States, its possessions, or its territories. The scope of such study shall include the use of engineering or construction capabilities to create alternative habitats, or to improve, enlarge, develop, or otherwise beneficially modify existing habitats of such fish and wildlife. The study shall be conducted in consultation with the Director of the Fish and Wildlife Service of the Department of the Interior, the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration, and the Administrator of the Environmental Protection Agency, and shall be transmitted within the 30-month period beginning on the date of enactment of this Act by the Secretary to Congress, together with the findings, conclusions, and recommendations of the Chief of Engineers. The Secretary, in consultation with the Federal officers referred to in the preceding sentence, shall undertake a continuing review of the matters covered in the study and shall transmit to Congress, on a biennial basis, any revisions to the study that may be required as a result of the review, together with the findings, conclusions, and recommendations of the Chief of Engineers.

(b) The Secretary is further authorized to conduct projects of alternative or beneficially modified habitats for fish and wildlife, including but not limited to man-made reefs for fish. There is authorized to be appropriated not to exceed $5,000,000 to carry out such projects. Such projects shall be developed, and their effectiveness evaluated, in consultation with the Director of the Fish and Wildlife Service and the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration. Such projects shall include—

(1) the construction of a reef for fish habitat in Lake Erie in the vicinity of Buffalo, New York;

(2) the construction of a reef for fish habitat in the Atlantic Ocean in the vicinity of Fort Lauderdale, Florida;

(3) the construction of a reef for fish habitat in Lake Ontario in the vicinity of the town of Newfane, New York; and

(4) the construction of a reef for fish habitat in the Chesapeake Bay in Maryland.

The non-Federal share of the cost of any project under this section shall be 25 percent.

SEC. 705. SAN FRANCISCO BAY AREA FLOOD CONTROL STUDY.

Section 142 of the Water Resources Development Act of 1976 (Public Law 94-587) is amended by inserting immediately after "Napa," the following: "San Francisco, Marin,".

SEC. 706. GREAT LAKES LEVELS STUDY.

(a) The Secretary, in cooperation with the National Oceanic and Atmospheric Administration, the Federal Emergency Management Agency, the International Joint Commission, and other appropriate Federal, State, and local agencies and the private sector, is authorized to conduct a study of shoreline protection and beach erosion control policy and related projects of the Secretary, in view of the current situation and long-term expected increases in the levels of the Great Lakes. Such study shall include, but is not limited to—

(1) a study to determine the magnitude and extent of current and expected future shoreline erosion on the Great Lakes and connecting channels occurring as a result of high water levels. The study shall examine the impacts of the long-term cold weather cycle on lake levels and shoreline damage. The study shall also examine the relationship of shoreline damage to the regulation of outflows from Lake Superior and Lake Erie in accordance with approved regulation plans of the International Joint Commission;

(2) an economic and hydrologic analysis to determine whether changes in the inflows and outflows of the existing structures may be desirable to reduce shoreline damages, and whether further regulation of the outflow of Lake Erie may be warranted to achieve better regulation of the water levels of the Great Lakes;

(3) a summary of the legal and institutional impacts of rising lake levels on riparian lands; and

(4) recommendations for new or additional criteria for Federal participation in shoreline protection projects along the Great Lakes and connecting channels.

(b) Within three years after the date of enactment of this Act, the Secretary shall transmit the studies prepared pursuant to subsection (a) of this section, together with supporting documentation and the recommendations of the Secretary, to the Committee on Environment and Public Works of the Senate and Committee on Public Works and Transportation of the House of Representatives.

(c) For the purposes of this section, there is authorized to be appropriated to the Secretary for the fiscal year ending September 30, 1987, or thereafter, the sum of $3,000,000, such sum to remain available until expended.

SEC. 707. CAPITAL INVESTMENT NEEDS FOR WATER RESOURCES.

(a) Not later than two years after the date of enactment of this Act, the Secretary shall prepare and submit to Congress an estimate of the long-range capital investment needs for water resources programs under the jurisdiction of the Secretary, including, but not limited to, deep-draft ports, inland waterway transportation, flood control, municipal and industrial water supply, and hydroelectric power and recreation and fish and wildlife conservation and enhancement associated with such programs.

(b) The estimate prepared under this section shall include, but not be limited to—

(1) an estimate of the current service levels of public capital investments and alternative high and low levels of such investments over a period of ten years in current dollars and over a period of five years in constant dollars;

(2) capital investment needs in each major program area over a period of ten years;

(3) an identification and analysis of the principal policy issues that affect estimated capital investment needs;

(4) an identification and analysis of factors that affect estimated capital investment

needs including, but not limited to, the following factors:

(A) economic assumptions;

(B) engineering standards;

(C) estimates of spending for operation and maintenance;

(D) estimates of expenditures for similar investments by State and local governments;

(E) estimates of demand and need for public services derived from such capital investments and estimates of the service capacity of such investments; and

(F) the effects of delays in planning and implementation of water resources projects on the capital investment costs of water resources programs, including increased costs associated with interest rates and inflation;

(5) a description of the economic, social, and environmental benefits realized from past investments and expected to be realized from future investments, including the protection of life and property; and

(6) an analysis of the effect of different levels of cost sharing and user fee recovery on the demand for water resources projects.

SEC. 708. NEW YORK HARBOR AND ADJACENT CHANNEL STUDY.

The Secretary is directed to expedite completion of the study of New York Harbor and Adjacent Channels, New York and New Jersey, authorized by a resolution of the Committee on Environment and Public Works of the Senate, dated December 15, 1980, and to submit a report to Congress on the results of such study not later than December 31, 1987.

SEC. 709. DIOXIN CONTAMINATION IN PASSAIC RIVER-NEWARK BAY.

(a) The Administrator of the Environmental Protection Agency shall study and monitor the extent and adverse environmental effects of dioxin contamination in the Passaic River-Newark Bay navigation system. The study and report under this section are not intended to encumber civil works projects under development or scheduled to be maintained. Work on these projects shall proceed along the present schedule.

(b) Not later than one year after the date of enactment of this Act, the Administrator shall transmit a report on the results of such study and monitoring along with any recommendations of the Administrator concerning methods of reducing the effects of such contamination to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives.

SEC. 710. DEAUTHORIZATION OF STUDIES.

(a) Not later than one year after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a list of incomplete water resources studies which have been authorized, but for which no funds have been appropriated during the 5 full fiscal years preceding the submission of such list. For each such study the Secretary shall include the following information:

(1) the date of authorization and the manner in which the study was authorized;

(2) a description of the purposes of the study;

(3) a description of funding that has been made available for the study;

(4) a description of any work that has been performed in carrying out the study and the results and conclusions, if any, of such work; and

(5) a description of any work that remains to be done in carrying out the study and the time necessary for and estimated cost of completing such work.

(b) Each study included in a list under subsection (a) is not authorized on and after the 90th day following the submission to Congress of such list if no funds have been appropriated for such study after the list is submitted and before such 90th day.

SEC. 711. SAGINAW BAY, MICHIGAN.

The Secretary is authorized and directed to undertake a study of the feasibility of navigation improvements at Saginaw Bay and Saginaw River, Michigan, including channel widening and deepening. The Secretary shall submit the feasibility report on such study to the Congress not later than December 31, 1989.

SEC. 712. RANCHO PALOS VERDES, CALIFORNIA.

The Secretary is authorized to study the feasibility of constructing shoreline erosion mitigation measures along the Rancho Palos Verdes coastline and in the city of Rolling Hills, California, for the purpose of providing additional stabilization for the Portuguese Bend landslide area and adjacent landslide areas. The Secretary shall submit the feasibility report on such study to the Congress not later than two years after the date of enactment of this Act.

SEC. 713. LOUISIANA SHORELINE EROSION STUDY.

In order to determine the feasibility of specific measures to diminish shoreline erosion, marsh deterioration, salt water intrusion, hurricane vulnerability, and barrier island destruction and to carry out reasonable planning efforts that require suitable sediment for nourishment, the Secretary is authorized to conduct a nearshore sediment inventory to determine availability of suitable sediment in the offshore waters of Louisiana between Southwest Pass and Sabine Pass and in Lake Pontchartrain and in Lake Borgne, at a cost not to exceed $2,000,000.

SEC. 714. LAND ACQUISITION POLICY STUDY.

The Secretary shall study land acquisition policies applicable to water resources projects carried out by the Secretary, including, among other things, an analysis of the acquisition policies of mineral rights in connection with such projects. Such study shall also include a complete detailed report on (1) the acquisition policies and procedures utilized by the Secretary in the acquisition of mineral rights at the water resources project for Lake Sommerville, Texas, authorized by the Flood Control Act of June 28, 1938, and (2) the acquisition policies and procedures followed in permitting reservoir lands to be used for mineral exploration and development subsequent to construction of such project. Not later than one year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of such study along with such recommendations as the Secretary may have for modifications of such land acquisition policies.

SEC. 715. COLUMBIA RIVER/ARKANSAS RIVER BASIN TRANSFERS.

(a) No Federal agency shall study or participate in the study of any regional or river basin plan or any plan for any Federal water and related land resource project which has as its objective the transfer of water from the Columbia River Basin to any other region or any other major river basin of the United States, unless such study is approved by the Governors of all affected States.

(b) For a period of 5 years after the date of enactment of this Act, no Federal agency shall study or participate in the study of any regional or river basin plan or any plan for any Federal water and related land resource project which has as its objective the transfer of water from the Arkansas River Basin to any other region or any other major river basin of the United States, unless such study is approved by the Governors of all affected States.

SEC. 716. BLACK WARRIOR-TOMBIGBEE RIVER.

The Secretary shall immediately conduct a feasibility study of protection from erosion problems on the southern bank of the Black Warrior-Tombigbee River from river mile 253 to river mile 255. Not later than six months after the date of enactment of this Act, the Secretary shall report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate on the results of such investigation along with recommendations for measures to alleviate such erosion problems, if feasible.

SEC. 717. STORMWATER RUNOFF CONTROL STUDY.

The Secretary is authorized to conduct a study of the feasibility of developing measures to control storm water runoff on a watershed basis. Such study shall include, among other things, a review of existing drainage codes, State statutes, and Federal programs relating to prevention of drainage soil erosion and flooding. Not later than two years after the date of enactment of this Act, the Secretary shall submit a report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate on the results of such investigation along with recommendations concerning development of such measures.

SEC. 718. BOUNDARY DELINEATION AND FENCING PRACTICES.

The Secretary is authorized and directed to conduct a study (1) to analyze the differences among Corps districts and Corps divisions regarding boundary delineation and fencing practices, (2) to analyze the cost of fencing activities and the relationship of such cost to the benefits derived from such activities, and (3) to analyze the need for providing, to the greatest extent practicable and consistent with authorized project purposes, access of the project area to the general public for recreational purposes. The Secretary shall submit a report on the results of such study to Congress not later than one year after the date of the enactment of this Act.

SEC. 719. PROJECT EVALUATION AND SELECTION CRITERIA.

The Secretary is authorized and directed to conduct a study of the Army Corps of Engineers project evaluation and selection criteria identifying all factors which affect the selection of flood control or other projects under the Secretary's authority in rural areas and in areas with greater percentages of low-income individuals. Not later than one year after the date of the enactment of this Act the Secretary shall transmit a report to Congress on the results of such study together with specific recommendations for changes in the selection criteria that would effectively eliminate any bias against projects in such areas.

SEC. 720. POTOMAC RIVER HYDRILLA.

The Secretary is authorized and directed to conduct a feasibility study of the eradication and control of hydrilla in the Potomac River and to develop an effective plan of action for such eradication and control. Not later than September 30, 1987, the Secretary

shall submit to Congress a report on the results of such study together with the plan of action which the Secretary recommends and an estimate of the cost of implementing such plan.

SEC. 721. CHESAPEAKE BAY DROUGHT MANAGEMENT.

(a) The Secretary shall study and develop a plan for drought management and low fresh-water inflow maintenance on the major tributaries entering the Chesapeake Bay, including, but not limited to, water conservation, water storage, emergency restrictions, and ground water recharge.

(b) Not later than two years after the date of the enactment of this Act, the Secretary shall submit a report on the study required by this section, together with recommendations, to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House. The Secretary shall include in the report recommendations for appropriate Federal and non-Federal responsibilities in carrying out the plan.

(c) The Secretary is authorized to undertake feasibility reports with respect to those responsibilities identified in the report under subsection (b) as Federal responsibilities.

SEC. 722. GUAYANILLA RIVER BASIN, PUERTO RICO.

(a) The Secretary shall conduct a feasibility study on providing flood protection in the Guayanilla River Basin, Puerto Rico.

(b) Not later than two years after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the results of such study together with such recommendations as the Secretary determines to be appropriate.

SEC. 723. STUDY OF HYDROPOWER STATUS.

The Secretary shall prepare and submit to Congress not later than October 1, 1987, a report on the status of feasibility and reconnaissance studies (including studies completed and studies currently being conducted) relating to the hydroelectric power potential at existing Corps of Engineers projects in the States of Illinois, Indiana, Michigan, Ohio, Wisconsin, Iowa, Minnesota, Pennsylvania, and West Virginia.

SEC. 724. CANADIAN TIDAL POWER STUDY.

(a) The Secretary, after consultation with the National Oceanic and Atmospheric Administration, the National Marine Fisheries Service, the United States Fish and Wildlife Service, and other appropriate governmental agencies, and the National Research Council of the National Academy of Sciences, is authorized and directed to undertake studies to identify the impacts on the United States of potential Canadian tidal power development in the Bay of Fundy, and submit such studies to the appropriate committees of the Congress.

(b) The Secretary shall conduct the studies authorized in subsection (a) of this section in two phases:

(1) Studies to be completed not later than October 1, 1988, to (A) identify effects of any such projects on tidal ranges and resulting impacts to beaches and estuarine areas, and (B) identify further studies which would be needed to meet the requirements of paragraph (2) of this subsection; and

(2) Studies to be completed not later than October 1, 1990, to (A) determine further environmental, social, economic, and institutional impacts of such tidal power development, and (B) determine what measures could be taken in Canada and the United States to offset or minimize any adverse impacts of such development on the United States.

(c) In the fiscal year ending September 30, 1987, or in any fiscal year thereafter, there is authorized to be appropriated to the Secretary the sum of $1,100,000 for the purposes of subsection (b)(1) of this section, and the sum of $8,900,000 for the purposes of subsection (b)(2) of this section, such sums to remain available until expended.

SEC. 725. RED RIVER BASIN HYDROELECTRIC POWER STUDIES.

The Secretary is directed to expedite the hydroelectric power studies of the Red River Basin Comprehensive Study, Arkansas, Texas, Louisiana, and Oklahoma (authorized by Public Law 98-63), with a particular view of investigating the feasibility of adding hydroelectric power generating facilities at the Tuskahoma Lake, Oklahoma, project.

SEC. 726. RAINY RIVER BASIN.

The Secretary shall conduct feasibility studies, in cooperation with Canada, for the purposes of providing plans for the development, utilization, and conservation of water and related land resources in the Rainy River Basin, Minnesota, and Ontario. Such studies shall include appropriate consideration of the needs for flood reduction, wise use of flood plain lands, navigation facilities, hydroelectric power generation, water supply, water quality, general recreation facilities, enhancement and conservation of fish and wildlife, and wild rice production. Such study shall be compatible with comprehensive development plans formulated by other agencies.

SEC. 727. UTAH RECONNAISSANCE STUDIES.

(a) The Secretary is authorized to undertake the following reconnaissance studies in the State of Utah in order to determine if improvements for the purposes of flood control and related purposes are economically and environmentally justified, and to report on such studies to Congress:

(1) the Provo River, from the mouth of Provo Canyon to Utah Lake;

(2) the existing levees along Utah Lake from the Provo River south along Interstate Highway 15;

(3) Interstate Highway 15, adjacent to Utah Lake;

(4) Rock, Little Rock, and Slate Canyons in the city of Provo;

(5) the Bear River, its tributaries and outlets;

(6) the Weber River, its tributaries and outlets; and

(7) the Sevier River, its tributaries and outlets.

(b) For the purposes of this section, the sum of $1,600,000 is authorized to be appropriated to the Secretary for fiscal years beginning after September 30, 1986, such sums to remain available until expended.

SEC. 728. NEW YORK BIGHT STUDY.

(a) The Secretary shall study a hydro-environmental monitoring and information system in the New York Bight in the form of a system using computerized buoys and radio telemetry that allows for the continual monitoring (at strategically located sites throughout the New York Bight) of the following: wind, wave, current, salinity and thermal gradients and sea chemistry, in order to measure the effect of changes due to air and water pollution, including changes due to continued dumping in the Bight.

(b) In addition, the Secretary shall study a proper physical hydraulic model of the New York Bight and for such an offshore model to be tied into the existing inshore physical hydraulic model of the Port of New York and New Jersey operated by the United States Army Corps of Engineers.

(c) The Secretary shall coordinate fully with the Administrator of the Environmental Protection Agency in carrying out the study described in this section and shall report any findings and recommendations to Congress. The Secretary and the Administrator shall also consider the views of other appropriate Federal, State, and local agencies, academic institutions, and members of the public who are concerned about water quality in the New York Bight.

(d) There is authorized to be appropriated not more than $1,000,000 per fiscal for each of fiscal years 1987, 1988, 1989, 1990, and 1991.

SEC. 729. STUDY OF WATER RESOURCES NEEDS OF RIVER BASINS AND REGIONS.

(a) The Secretary, in coordination with the Secretary of the Interior and in consultation with appropriate Federal, State, and local agencies, is authorized to study the water resources needs of river basins and regions of the United States. The Secretaries shall report the results of such study to Congress not later than October 1, 1988.

(b) In carrying out the studies authorized under subsection (a) of this section, the Secretaries shall consult with State, interstate, and local governmental entities.

(c) There is authorized to be appropriated $5,000,000 for fiscal years beginning after September 30, 1986, to carry out this section.

SEC. 730. STUDY OF RECAPTURE OF BENEFITS OF INCREASED LAND VALUES.

The Secretary shall study current practices on the sharing of costs related to the benefits of increased land values resulting from water resources projects carried out by the Secretary, together with potential methods by which any increase in land values should be shared between the Federal Government and the non-Federal interests. The Secretary shall report to Congress on the results of such study, along with recommendations, not later than 2 years after the date of enactment of this Act.

SEC. 731. STUDY OF RISING OCEANS.

(a) The Congress finds that increasing scientific evidence indicates the level of the oceans will rise significantly over the next seventy-five years.

(b) The Secretary, in cooperation with the National Oceanic and Atmospheric Administration, the Federal Emergency Management Agency, and other appropriate Federal, State, and local agencies and the private sector, is authorized to conduct a study of shoreline protection and beach erosion control policy and related projects of the Secretary, in view of the prospect for long-term increases in the levels of the ocean. Such study shall include, but is not limited to—

(1) an assessment of the probability and the extent of coastal flooding and erosion;

(2) an appraisal of various strategies for managing relocation, disinvestment, and reinvestment in coastal communities exposed to coastal flooding and erosion;

(3) a summary of the legal and institutional impact of rising sea level on riparian lands; and

(4) recommendations for new or additional criteria for Federal participation in shoreline protection projects.

(c) Within three years after the date of enactment of this Act, the Secretary shall transmit the study prepared pursuant to subsection (b) of this section, together with supporting documentation and the recommendations of the Secretary, to the Committee on Environment and Public Works of the Senate and the Committee on Public Works

and Transportation of the House of Representatives.

(d) There is authorized to be appropriated $3,000,000 for fiscal years beginning after September 30, 1986, to carry out this section, such sum to remain available until expended.

SEC. 732. SHORELINE EROSION DAMAGE ON LAKE SUPERIOR.

The Secretary, in consultation with appropriate Federal, State, and local agencies, shall determine the extent of shoreline erosion damage in the United States causally related to the regulation of the waters of Lake Superior by the International Joint Commission—United States and Canada, subsequent to an emergency application by the United States made on January 26, 1973. The Secretary shall report to Congress, not later than the end of the fiscal year following the fiscal year for which the initial appropriation is made to carry out this section, the results of such survey and, if justified, recommendations of a methodology for and a determination of the costs of indemnifying individual property owners and a recommended schedule for indemnification. There is authorized to be appropriated to carry out this section not to exceed $2,130,000.

SEC. 733. LAKE OKEECHOBEE STUDY.

(a) The Secretary, in consultation with the Administrator of the Environmental Protection Agency, is authorized to undertake a study of the water supply potential of Lake Okeechobee in Florida, with particular emphasis on determining the causes of water quality deterioration in the lake and the impact, if any, that the Central and Southern Florida Irrigation Project may have on water quality in the lake. In undertaking the study authorized pursuant to this section, the Secretary shall coordinate with the State of Florida and shall assess the impact of short- and long-term solutions proposed by Federal, State, and local entities to alleviate the water quality and water supply problems of Lake Okeechobee.

(b) Within two years after the first appropriation of funds for the study, the Secretary shall report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate on the results of the study authorized pursuant to this section and any recommendations of the Secretary concerning measures which may be implemented at the Federal, State, or local level to improve the water quality and the water supply potential of Lake Okeechobee.

(c) There are authorized to be appropriated $1,000,000 for fiscal years beginning after September 30, 1986, to carry out this section.

TITLE VIII—PROJECT MODIFICATIONS

SEC. 801. LYNNHAVEN INLET, VIRGINIA.

The navigation project for Lynnhaven Inlet, Bay, and connecting waters, Virginia, authorized by section 101 of the River and Harbor Act of 1962 (76 Stat. 1173, 1174) is modified to provide that the United States shall pay for the remedial work to Long Creek Canal which the city of Virginia Beach, Virginia, was required to carry out as a result of such navigation project, at a total cost of $2,600,000, with a first Federal cost of $2,600,000.

SEC. 802. ELIZABETH RIVER, VIRGINIA.

The project for navigation on the Southern Branch of Elizabeth River, Virginia, authorized by resolutions of the Senate and House Public Works Committees, dated October 1, 1976, and September 23, 1976, respectively, under the provisions of section 201 of Public Law 89-298, is modified to delete the requirement that local interests contribute in cash for land enhancement benefits 2.4 percent of the construction cost, including engineering and design and supervision and administration thereof, of all work to be provided by the Corps of Engineers, at a total cost of $151,000, with a first Federal cost of $151,000.

SEC. 803. MASSILLON, OHIO BRIDGE.

The general comprehensive plan for flood control and other purposes in the Ohio River Basin authorized by the Flood Control Act approved June 28, 1938, is modified to authorize the Secretary to reconstruct and repair the Cherry Street bridge and the Walnut Street bridge, Massillon, Ohio, at a total cost of $2,200,000, with an estimated first Federal cost of $1,100,000 and an estimated first non-Federal cost of $1,100,000. The non-Federal share of the cost of the work authorized by this section shall be 50 percent. Non-Federal interests shall own, operate, and, upon completion of the work authorized by this section, maintain such bridges in accordance with the requirements of the Flood Control Act approved June 28, 1938.

SEC. 804. MAMARONECK HARBOR, NEW YORK.

The navigation project at Mamaroneck Harbor, New York, authorized by the first section of the Act entitled "An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes", approved September 22, 1922 (42 Stat. 1038), the first section of the Act entitled "An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes", approved August 30, 1935 (49 Stat. 1029), and section 101 of the Rivers and Harbors Act of 1960 (74 Stat. 480) is modified to provide that the Federal share of the additional cost of disposing in ocean waters dredged material resulting from dredging necessary to maintain the project, above the cost of disposing of such dredged material on land, shall be 50 percent.

SEC. 805. LAKE PONTCHARTRAIN, LOUISIANA.

Subject to section 903(b) of this Act, the hurricane-flood protection project for Lake Pontchartrain, Louisiana, authorized by section 204 of the Flood Control Act of 1965 (Public Law 89-298) is modified to provide that the Secretary is authorized to construct features, such as a flood wall with sluice gates or other means, at a total cost of $3,500,000, with an estimated first Federal cost of $2,275,000 and an estimated first non-Federal cost of $1,225,000, to ensure that, by the most economical means, the level of protection within Jefferson Parish provided by the hurricane-flood protection project will be unimpaired as the result of any pumping station constructed by local interests. Requirements for non-Federal cooperation for the additional work authorized by this section shall be on the same basis as levee improvements for hurricane-flood protection on this project.

SEC. 806. REELFOOT LAKE, KENTUCKY.

The project for Reelfoot Lake, Lake numbered 9, Kentucky, authorized by resolution of the Committee on Public Works of the Senate adopted December 17, 1970, and resolution of the Committee on Public Works of the House of Representatives adopted December 15, 1970, under section 201 of the Flood Control Act of 1965 (Public Law 89-298), is modified to provide that the Federal share of the cost of operating the pumping plant feature of such project shall be 50 percent.

SEC. 807. YAQUINA BAY AND HARBOR, OREGON.

Subject to section 903(a) of this Act, the Yaquina Bay and Harbor project, Oregon, authorized by the River and Harbor Act approved March 2, 1919, is modified to authorize the Secretary to raise the south jetty to protect vehicular access which was provided at non-Federal cost and to protect public use areas on accreted land adjacent to the south jetty, from damaging effects of overtopping of the jetty, on condition that local interests provide the necessary lands, easements, and rights-of-way for such modification, at a total cost of $4,700,000, with an estimated first Federal cost of $2,350,000 and an estimated first non-Federal cost of $2,350,000. The non-Federal share of the cost of the work authorized by this section shall be 50 percent.

SEC. 808. SOUTH PLATTE RIVER BASIN, COLORADO.

The project for flood control and other purposes on the South Platte River Basin in Colorado, authorized by the Flood Control Act of 1950 (64 Stat. 175) is modified to authorize the Secretary, upon request of and in coordination with the Colorado Department of Natural Resources and upon the Chief of Engineers' finding of feasibility and economic justification, to reassign a portion of the storage space in the Chatfield Lake project to joint flood control-conservation purposes, including storage for municipal and industrial water supply, agriculture, and recreation and fishery habitat protection and enhancement. Appropriate non-Federal interests shall agree to repay the cost allocated to such storage in accordance with the provisions of the Water Supply Act of 1958, the Federal Water Project Recreation Act, and such other Federal laws as the Secretary determines appropriate.

SEC. 809. KING HARBOR, REDONDO BEACH, CALIFORNIA.

The project for King Harbor, Redondo Beach, California, authorized in the River and Harbor Act of 1950, is modified to provide that—

(1) the Secretary is authorized to carry out maintenance dredging;

(2) if recommended in a report of the Chief of Engineers, the Secretary is authorized to construct the breakwaters to a height of 22 feet and maintain the breakwaters at such height, in accordance with such report; and

(3) the Secretary is authorized to carry out planning, engineering, and design for a project to raise the breakwater to a height greater than 22 feet.

The non-Federal share of the cost of the work authorized by this section shall be 50 percent.

SEC. 810. HONOLULU HARBOR, HAWAII.

The plan for the harbor improvement at Honolulu Harbor, Oahu, Hawaii, authorized by section 301 of the River and Harbor Act of 1965 (79 Stat. 1092) is modified to delete the requirement that local interests contribute in cash, prior to initiation of construction, a lump sum amounting to 2.6 percent of the estimated first cost of the general navigation facilities for the project, ascribed to land enhancement through disposition of dredged material.

SEC. 811. SANTA CRUZ HARBOR, SANTA CRUZ, CALIFORNIA.

(a) Subject to section 903(a) of this Act, the navigation project for Santa Cruz Harbor, Santa Cruz, California, authorized in section 101 of the River and Harbor Act

of 1958 (Public Law 85-500) is modified to authorize the Secretary to seal the east jetty of such harbor to prevent sand from passing through, at a total cost of $4,000,000, with an estimated first Federal cost of $3,000,000 and an estimated first non-Federal cost of $1,000,000.

(b) The Secretary shall conduct a feasibility study of the long-term solutions to the shoaling problems in Santa Cruz Harbor and shall report the results of such study, along with recommendations, to the Congress upon completion of such study. There is authorized to be appropriated $600,000 for fiscal years beginning after September 30, 1986, to carry out such study.

SEC. 812. MOUTH OF THE COLORADO RIVER, TEXAS.

The project for the mouth of the Colorado River, Texas, authorized pursuant to section 101 of the River and Harbor Act of 1968 (82 Stat. 732), is modified to provide that the diversion features of the authorized project, to divert Colorado River flows into Matagorda Bay, shall be constructed in accordance with the cost sharing described in section 906(e) for activities providing enhancement benefits to species identified as having national economic importance by the National Marine Fisheries Service. The non-Federal share of the cost of operation and maintenance of the modification shall be 25 percent in accordance with section 906(e). The Secretary is directed to construct the remaining navigation features and diversion features concurrently.

SEC. 813. ALABAMA-COOSA RIVER AND TRIBUTARIES, ALABAMA.

The comprehensive plan for the development of the water resources of the Alabama-Coosa River and tributaries, authorized by section 2 of the River and Harbor Act approved March 2, 1945 (59 Stat. 10), as modified by Public Law 83-436, approved June 29, 1954 (68 Stat. 302), is further modified as follows: the plan for the Coosa River segment of the waterway between Montgomery and Gadsden, Alabama, is modified to authorize the Secretary to carry out planning, engineering, and design for a project generally in accordance with the plans contained in the report of the District Engineer, Mobile District, entitled "Montgomery to Gadsden, Coosa River Channel, Alabama, Design Memorandum No. 1, General Design", dated May 1982.

SEC. 814. LA FARGE DAM, KICKAPOO RIVER, WISCONSIN.

(a) The LaFarge Dam project for flood control and allied purposes for the Kickapoo River, Wisconsin, authorized by the Flood Control Act of 1962, is modified to authorize and direct the Secretary to construct as soon as possible under section 205 of the Flood Control Act of 1948, the flood control levee, channel improvement, and interior drainage facilities for Gays Mills, Wisconsin, substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 450, Eighty-seventh Congress, at a total cost of $5,000,000, with an estimated first Federal cost of $3,750,000 and an estimated first non-Federal $1,250,000. Benefits and costs resulting from construction of such project features shall continue to be included for purposes of determining the economic feasibility of completing the partially constructed LaFarge Dam.

(b) The Secretary is authorized and directed to complete as soon as possible a reconnaissance study under section 205 of the Flood Control Act of 1948 with respect to such structural and nonstructural measures as the Secretary determines are necessary and appropriate to prevent flood damage in the vicinity of Viola, Wisconsin.

SEC. 815. WINONA, MINNESOTA.

The project for flood protection at Winona, Minnesota, authorized under the provisions of section 201 of the Flood Control Act of 1965, is modified to provide that the non-Federal share of the cost of changes to two bridges within the limits of the city of Winona, Minnesota, made necessary by the project and its present plan of protection shall be 50 percent, at a total cost of $630,000, with an estimated first Federal cost of $315,000 and an estimated first non-Federal cost of $315,000.

SEC. 816. LITTLE CALUMET RIVER.

(a) Subsection (a) of section 66 of the Water Resources Development Act of 1974 (Public Law 93-251) is amended by striking out the period at the end thereof and inserting in lieu thereof a comma and the following: "and thereafter to maintain such channel free of such trees, roots, silt, debris, and objects, at a total cost of $10,000,000, with an estimated first Federal cost of $5,000,000 and an estimated first non-Federal cost of $5,000,000.".

(b) Subsection (b) of section 66 of the Water Resources Development Act of 1974 (Public Law 93-251) is amended by adding at end thereof the following new sentence: "Non-Federal interests shall pay 50 percent of the cost of maintaining the channel free of such trees, roots, silt, debris, and objects.".

SEC. 817. NORTH BRANCH CHICAGO RIVER.

The second sentence of subsection (b) of section 116 of the River and Harbor Act of 1970 (84 Stat. 1822) is amended to read as follows: "The Secretary of the Army shall, before beginning any operation to maintain the channel authorized by this section, enter into a separate agreement with the appropriate non-Federal interests which is applicable only to that operation and which requires such non-Federal interests to pay 50 percent of the cost of such maintenance operation.".

SEC. 818. BRAZOS RIVER BASIN, TEXAS.

The second paragraph under the center heading "BRAZOS RIVER BASIN" in section 10 of the Flood Control Act of 1946 (60 Stat. 649), is amended by inserting "or water supply" after "irrigation".

SEC. 819. HOUSTON SHIP CHANNEL, TEXAS.

The project for navigation at the Houston Ship Channel (Greens Bayou), Texas, authorized pursuant to section 301 of the River and Harbor Act of 1965 (79 Stat. 1091), the project for navigation at the Houston Ship Channel (Barbour Terminal Channel), Texas, authorized pursuant to section 107 of the River and Harbor Act of 1960 (74 Stat. 486), and the project for navigation at the Houston Ship Channel (Bayport Ship Channel), Texas, authorized by section 101 of the River and Harbor Act of 1958 (72 Stat. 298), are modified to authorize and direct the Secretary to assume responsibility for maintenance to forty-foot project depths, as constructed by non-Federal interests prior to enactment of this Act.

SEC. 820. RIO GRANDE BANK PROTECTION, TEXAS.

(a) Bank protection activities conducted under the Rio Grande bank protection project pursuant to the First Deficiency Appropriation Act, 1945, approved April 25, 1945 (59 Stat. 89), may be undertaken in Starr County, Texas, notwithstanding any provision of such Act establishing the counties in which such bank protection activities may be undertaken.

(b) Any bank protection activity undertaken in Starr County, Texas, pursuant to subsection (a) of this section shall be—

(1) in accordance with such specifications as may be prepared for such purpose by the International Boundary and Water Commission, United States and Mexico; and

(2) except as provided in subsection (a), subject to the terms and conditions generally applicable to activities conducted under the Rio Grande bank protection project.

SEC. 821. ANACOSTIA RIVER, DISTRICT OF COLUMBIA AND MARYLAND.

The project for the Anacostia River and tributaries, District of Columbia and Maryland, approved under authority of section 205 of the Flood Control Act of 1948, is modified to authorize the Secretary to carry out planning, engineering, and design to prevent damage to the project caused by the one-hundred-year flood, including, but not limited to, replacing riprap, removing sediment deposits, shaping and sodding slopes, and seeding, at a total cost of $250,000.

SEC. 822. YAZOO RIVER, MISSISSIPPI.

The navigation project for Yazoo River, Mississippi, authorized by the River and Harbor Act of 1968, is modified to provide that the Federal share of the cost of the alteration of the Shepardstown Bridge (mile 147.8) shall be 50 percent, at a total cost of $3,800,000, with an estimated first Federal cost of $1,900,000 and an estimated first non-Federal cost of $1,900,000.

SEC. 823. CORTE MADERA CREEK, MARIN COUNTY, CALIFORNIA.

The project for flood control on Corte Madera Creek, Marin County, California, authorized by section 201 of the Flood Control Act of 1962 is modified to authorize and direct the Secretary to construct the project for unit 4, from the vicinity of Lagunitas Road Bridge to Sir Francis Drake Boulevard, substantially in accordance with the plan, dated February 1977, on file in the office of the San Francisco district engineer. The plan is further modified to authorize and direct the Secretary to construct such flood-proofing measures as may be necessary to individual properties and other necessary structural measures in the vicinity of Lagunitas Road Bridge to insure the proper functioning of the completed portions of the authorized project. The project is further modified to eliminate any channel modifications upstream of Sir Francis Drake Boulevard.

SEC. 824. TECHE-VERMILION BASINS, LOUISIANA.

The project for improvement of the Mississippi River below Cape Girardeau with respect to the Teche-Vermilion Basins, Louisiana, authorized in the Flood Control Act of 1966, is modified to require the Secretary to relocate the Highway 71 bridge required to be relocated by this project or, at his discretion, to reimburse local interests for the Federal share of the cost of such relocation carried out by them, at a total cost of $1,200,000, with an estimated first Federal cost of $600,000 and an estimated first non-Federal cost of $600,000. The non-Federal share of the cost of the work authorized by this section shall be 50 percent.

SEC. 825. LEWISVILLE LAKE, TEXAS.

Subject to section 903(a) of this Act, the project for Lewisville Lake, Texas, authorized by the River and Harbor Act approved March 2, 1945, is modified to authorize and direct the Secretary to take such actions as may be necessary to insure that approximately four thousand feet, including bridges and approaches, of the road crossing Cottonwood Branch of Lewisville Lake, Texas,

formerly designated State Highway 24T, will be above elevation five hundred and thirty-two feet above mean sea level, at a total cost of $3,000,000, with an estimated first Federal cost of $1,500,000 and an estimated first non-Federal cost of $1,500,000. Prior to the undertaking of the work authorized by this section, appropriate non-Federal interests shall agree to furnish, without cost to the United States, lands, easements, and rights-of-way necessary for the work, to hold and save the United States free from damages due to the work and to accept all such work thereafter for operation and maintenance. The non-Federal share of the cost of the work authorized by this section shall be 50 percent.

SEC. 826. DARDANELLE LOCK AND DAM, ARKANSAS.

Subject to section 903(a) of this Act, the project for Dardanelle lock and dam, Arkansas, authorized by the River and Harbor Act approved July 24, 1946, is modified to authorize and direct the Secretary to take such action as may be necessary to replace the existing bridge across Cane Creek, Logan County, Arkansas, with a new bridge, at a total cost of $2,000,000, with an estimated first Federal cost of $1,000,000 and an estimated first non-Federal cost of $1,000,000. Prior to the undertaking of the work authorized by this section, appropriate non-Federal interests shall agree to furnish without cost to the United States lands, easements, and rights-of-way necessary for the work, to hold and save the United States free from damages due to the work, and to accept all such work thereafter for operation and maintenance. The non-Federal share of the cost of the work authorized by this section shall be 50 percent.

SEC. 827. SUSQUEHANNA RIVER AT SUNBURY, PENNSYLVANIA.

The project for flood protection on the Susquehanna River at Sunbury, Pennsylvania, authorized by the Flood Control Act of 1936, as modified by the Flood Control Act of 1941, is modified to authorize and direct the Secretary to permanently seal the closure structure at the abandoned Reading Railroad site, at a total cost of $75,000, with an estimated first Federal cost of $56,000 and an estimated first non-Federal cost of $19,000. Cost sharing applicable to flood control projects shall apply to the project under this section.

SEC. 828. HUDSON RIVER, NEW YORK CITY TO WATERFORD.

The project for the Hudson River, New York; New York City to Waterford, authorized by the Act of June 25, 1910 (Public Law 318, Sixty-first Congress), is modified to authorize the Secretary, if recommended in a report of the Chief of Engineers, to remove shoals between the mouth of Roeliff Jansen Kill, Columbia County, New York, and the present navigation channel and to place such removed material at an appropriate site designated by the State of New York, in accordance with such report, at a total cost of $150,000, with an estimated first Federal cost of $113,000 and an estimated first non-Federal cost of $37,000.

SEC. 829. SAN LORENZO RIVER, SANTA CRUZ COUNTY, CALIFORNIA.

The flood control project for the San Lorenzo River, Santa Cruz County, California, authorized by the Flood Control Act of 1954, is modified to authorize and direct the Secretary to carry out planning, engineering, and design for a project to dredge the San Lorenzo River to provide flood protection to Santa Cruz, California, and surrounding areas, at a total cost of $1,350,000.

SEC. 830. COLUSA TROUGH DRAINAGE CANAL, SACRAMENTO RIVER AND TRIBUTARIES, CALIFORNIA.

Subject to section 903(a) of this Act, the project for flood protection along the Sacramento River and its tributaries, California, authorized by the Flood Control Act of 1917, is modified to authorize and direct the Secretary to accomplish remedial construction necessary to restore the project flood control levees along the Colusa Trough Drainage Canal and the Knights Landing Ridge Cut, in accordance with such report, at a total cost of $11,000,000, with an estimated first Federal cost of $8,250,000 and an estimated first non-Federal cost of $2,750,000.

SEC. 831. GREAT EGG HARBOR, CORSON, AND TOWNSEND INLETS, NEW JERSEY.

The following water resources development projects are modified to authorize the Secretary, if recommended in a report of the Chief of Engineers, to construct the beach erosion control, storm protection, or navigation feature of the project separately or in combination with the other such features, in accordance with such report:

(1) Great Egg Harbor Inlet and Peck Beach, New Jersey, authorized in accordance with section 201 of the Flood Control Act of 1965 (79 Stat. 1073, 1074).

(2) Corson Inlet and Ludlam Beach, New Jersey, authorized in accordance with section 201 of the Flood Control Act of 1965.

(3) Townsend Inlet and Seven Mile Beach, New Jersey, authorized in accordance with section 201 of the Flood Control Act of 1965.

The non-Federal share for any such feature which is separately constructed shall be the appropriate non-Federal share for that feature.

SEC. 832. APALACHICOLA-CHATTAHOOCHEE-FLINT RIVERS, GEORGIA AND FLORIDA.

Subject to section 903(b) of this Act, the project for the Apalachicola-Chattahoochee-Flint Rivers, Georgia and Florida, authorized in section 2 of the River and Harbor Act of 1945 (Public Law 79-14; 59 Stat. 10) is modified to authorize the Secretary—

(1) in the course of routine maintenance dredging, to restore and maintain access (in the interest of navigation and ecological restoration) to bendways and interconnecting waterways, including the upper and lower inlets to Poloway cutoff, isolated during construction and maintenance activities by the Federal Government; and

(2) to acquire lands for and to construct, operate, and maintain water-related public use and access facilities along and adjacent to the Apalachicola River downstream of Jim Woodruff lock and dam to Apalachicola, Florida, except that the Secretary shall proceed with the acquisition of lands for the construction of water-related public use and access facilities and the operation and maintenance of such facilities at not more than one area within each county bordering the Apalachicola River;

at a total cost of $4,400,000, with an estimated first Federal cost of $2,950,000 and an estimated first non-Federal cost of $1,450,000.

SEC. 833. MILK RIVER, HAVRE, MONTANA.

Subject to section 903(b) of this Act, the project on Milk River for local flood protection at Havre, Montana, authorized by section 10 of the Flood Control Act approved December 22, 1944 (58 Stat. 897), is modified to authorize the Secretary to reconstruct or replace, whichever the Chief of Engineers determines necessary and appropriate, the water supply intake weir of the city of Havre, Montana, at a total cost of $1,400,000.

SEC. 834. CURWENSVILLE LAKE, PENNSYLVANIA.

The project for Curwensville Lake, Pennsylvania, authorized by the Flood Control Act of 1954 is hereby modified to authorize the Secretary to construct a water line with pumps from the Pike Township Water Authority to the Bloomington holding tank in order to provide water for municipal use to the town of Bloomington, Pennsylvania, at a total cost of $300,000, with an estimated first Federal cost of $225,000 and an estimated first non-Federal cost of $75,000. The non-Federal share of the cost of such project shall be 25 percent.

SEC. 835. WATERLOO, IOWA.

The project for flood protection, Waterloo, Iowa, authorized by section 204 of the Flood Control Act of 1965 is modified to provide for the reconstruction of the bridge on United States Highway 20 and the Lafayette Street bridge which are required as a result of the Blowers Creek phase of the project a total cost of $2,250,000, with an estimated first Federal cost of $1,125,000 and an estimated first non-Federal cost of $1,125,000. The non-Federal share of the cost of the work authorized by this section shall be 50 percent.

SEC. 836. MUD LAKE, WESTERN TENNESSEE TRIBUTARIES.

The Mud Lake feature of the project for the western Tennessee tributaries, Tennessee and Kentucky, authorized by resolution of the Committee on Public Works of the Senate adopted December 17, 1970, and resolution of the Committee on Public Works of the House of Representatives adopted December 15, 1970, under section 201 of the Flood Control Act of 1965 (Public Law 89-298), is modified to provide that the requirements of local cooperation shall be (1) 50 percent of the value of the lands, easements, and rights-of-way, (2) to hold and save the United States free from damages due to the construction works, and (3) to maintain and operate all the works after completion in accordance with regulations prescribed by the Secretary.

SEC. 837. KAWKAWLIN RIVER, MICHIGAN.

The project for flood control on the Kawkawlin River, Michigan, authorized under the authority of section 205 of the Flood Control Act of 1948, is modified to provide that the Federal share of the cost of operation and maintenance of the project shall be 50 percent.

SEC. 838. DENISON DAM (LAKE TEXOMA), RED RIVER, TEXAS AND OKLAHOMA.

(a) The project for Denison Dam (Lake Texoma), Red River, Texas and Oklahoma, authorized by the Flood Control Act approved June 28, 1938 (52 Stat. 1219), is modified to provide that the Secretary is authorized to reallocate from hydropower storage to water supply storage, in increments as needed, up to an additional 150,000 acre-feet for municipal, industrial, and agricultural water users in the State of Texas and up to 150,000 acre-feet for municipal, industrial, and agricultural water users in the State of Oklahoma.

(b) For that portion of the water storage reserved for users in the State of Oklahoma, the Secretary may contract, in increments as needed, with qualified individuals, entities, or water utility systems for use within the Red River Basin; except that for any portion of that water to be utilized outside the Red River Basin, the Secretary shall contract with the RedArk Development Authority.

(c) For that portion of the water storage reserved for users in the State of Texas, the

Secretary shall contract, in increments as needed, for 50,000 acre-feet with the Greater Texoma Utility Authority and 100,000 acre-feet with other qualified individuals, entities, or water utility systems. Nothing in the preceding sentence shall supersede any requirement of State law with respect to the use of any water subject to a contract.

(d)(1) All contracts entered into by the Secretary under this section shall be under terms in accordance with section 301(b) of the Water Supply Act of 1958 (Public Law 85-500), as amended by section 932 of this Act.

(2) No payment shall be required from and no interest shall be charged to users in the States of Oklahoma or Texas for the reallocation authorized by this section until such time as the water supply storage reserved under such reallocation is actually first used. Any contract entered into for the use of the water received under this section shall require the contracting entity to begin principal and interest payments on that portion of the water allocated under the contract at the time the entity begins the use of such water. Until such time, storage for which reallocation is authorized in this section may be used for hydropower production.

(3) With respect to any water supply contract entered into by the Secretary under this section after June 1, 1985, the Secretary shall determine (A) the amount of hydropower lost, if any, as a result of the implementation of such contract, and (B) the replacement cost of the hydropower lost (where replacement cost is defined as the cost to purchase power from existing alternative sources). If hydropower is lost as a result of the implementation of such contract, the Secretary shall provide credits to the Southwestern Power Administration of amounts equal to such replacement costs. Such credits shall be against sums required to be paid by the Southwestern Power Administration for costs of the project allocated to hydropower. In each such case the Southwestern Power Administration shall reimburse each preference customer for an amount equal to the customer's actual replacement cost for hydropower lost as a result of the implementation of such contract, less the cost such customer would have had to pay to the Southwestern Power Administration for such hydropower.

(4) The Secretary may not increase payments of water users under a water supply contract under this section on account of the credits and reimbursement required to be provided under this section.

(e) Nothing in this section shall be construed as amending or altering in any way the Red River Compact. In consideration of benefits in connection with such reallocation and usage of municipal, industrial, and agricultural water, all benefits that can be assigned to the Red River chloride control project, Texas and Oklahoma, or the Red River and tributaries multipurpose study, Oklahoma, Texas, Arkansas, and Louisiana, and any individual projects arising from such study, shall be reserved for such projects. Nothing in this section shall affect water rights under the laws of the States of Texas and Oklahoma.

(f) Such project is further modified to include recreation as a project purpose.

SEC. 839. BUFFALO SHIP CANAL, BUFFALO, NEW YORK.

Subject to section 903(a) of this Act, the navigation project for Buffalo Ship Canal, Buffalo, New York, authorized by the River and Harbor Act of March 2, 1945, is modified to authorize and direct the Secretary to take such actions as may be necessary to construct a high-lift span bridge in the vicinity of the Coast Guard station, approximately 3,600 feet north of South Michigan Avenue, over the ship channel, at a total cost of $18,000,000, with an estimated first Federal cost of $9,000,000 and an estimated first non-Federal cost of $9,000,000. The non-Federal share of the cost of the work authorized by this section shall be 50 percent.

SEC. 840. JACKSON HOLE SNAKE RIVER, WYOMING.

The project for Jackson Hole Snake River local protection and levees, Wyoming, authorized by the River and Harbors Act of 1950 (Public Law 81-516), is modified to provide that the operation and maintenance of the project, and additions and modifications thereto constructed by non-Federal sponsors, shall be the responsibility of the Secretary: Provided, That non-Federal sponsors shall pay the initial $35,000 in cash or materials of any such cost expended in any one year, plus inflation as of the date of enactment of this Act.

SEC. 841. NEWPORT BAY HARBOR, CALIFORNIA.

Subject to section 903(b) of this Act, the project for navigation for Newport Bay Harbor, Orange County, California, authorized by the River and Harbor Act approved August 26, 1937 (50 Stat. 849), and section 2 of the River and Harbor Act approved March 2, 1945 (59 Stat. 21), is modified to authorize the Secretary to dredge and maintain a 250-foot wide channel in the Upper Newport Bay to the boundary of the Upper Newport Bay State Ecological Preserve to a depth of 15 feet mean lower low water, and to deepen the channel in the existing project below the Pacific Coast Highway bridge to a depth of 15 feet mean lower low water, at a total cost of $3,500,000, with an estimated first Federal cost of $3,150,000 and an estimated first non-Federal cost of $350,000.

SEC. 842. SOUTH PLATTE RIVER BASIN, COLORADO.

The project for flood control and other purposes in the South Platte River Basin in Colorado, authorized by the Flood Control Act of 1950 (64 Stat. 175), is modified to provide that the Chatfield Dam and any other authorized Federal improvements in the South Platte River Basin shall be operated in a manner that achieves the authorized level of flood protection, as determined by the Secretary, for the area beginning at the Chatfield Dam and ending at a point 82 miles downstream.

SEC. 843. BEAVER LAKE, ARKANSAS.

Subject to section 903(a) of this Act, the multipurpose project at Beaver Lake, Arkansas, authorized by the Flood Control Act of 1954, is modified to authorize and direct the Secretary, in cooperation with the Administrator of the Environmental Protection Agency and in consultation with appropriate State and local agencies, to conduct a one-year comprehensive study of the Beaver Lake reservoir to identify measures which will optimize achievement of the project's purposes while preserving and enhancing the quality of the reservoir's water. Upon completion of the study the Secretary shall undertake a project at Beaver Lake to determine the effectiveness of measures identified in such study for preserving and enhancing the quality of the reservoir's water for current and future users, at a total cost of $5,100,000, with an estimated first Federal cost of $3,825,000 and an estimated first non-Federal cost of $1,275,000. The non-Federal share of the cost of the modification authorized by this section shall be 25 percent.

SEC. 844. MISSISSIPPI RIVER-GULF OUTLET.

(a) Subject to section 903(a) of this Act, the Mississippi River-Gulf outlet feature of the project for Mississippi River, Baton Rouge to Gulf of Mexico, authorized by the Act of March 29, 1956 (Public Law 455 of the Eighty-fourth Congress, 70 Stat. 65), is modified to provide that the replacement and expansion of the existing industrial canal lock and connecting channels or the construction of an additional lock and connecting channels shall be in the area of the existing lock or at the Violet site, at a total cost of $714,300,000. Before selecting the site under the preceding sentence, the Secretary shall consult with affected local communities. The costs of such modification shall be allocated between general cargo navigation and inland navigation, based on use patterns determined by the Secretary. Of the costs allocated to inland navigation, one-half of the Federal costs shall be paid from the Inland Waterways Trust Fund and one-half of the Federal costs shall be paid from the general fund of the Treasury. With respect to the costs allocated to general cargo navigation, cost sharing provided in section 101 shall apply.

(b) The Secretary is directed to make a maximum effort to assure the full participation of members of minority groups, living in the affected areas, in the construction of the replacement or additional lock and connecting channels authorized by subsection (a) of this section, including actions to encourage the use, wherever possible, of minority-owned firms. The Secretary is directed to report on July 1 of each year to the Congress on the implementation of this section, together with recommendations for any legislation that may be needed to assure the fuller and more equitable participation of members of minority groups in this project or others under the direction of the Secretary.

SEC. 845. SAGINAW RIVER, MICHIGAN.

The project for flood protection on the Saginaw River, Michigan, authorized by the Flood Control Act of 1958 (Public Law 85-500), is modified (1) to provide that the Secretary shall first construct the Flint and Shiawassee Rivers portion of the Shiawassee Flats unit of such project and that such construction shall begin, with available funds, during fiscal year 1987 and (2) to authorize the Secretary to reconstruct or relocate, whichever the Secretary determines is necessary, the Curtis Road Bridge, at a total cost of $626,000, with an estimated first Federal cost of $313,000 and an estimated first non-Federal cost of $313,000. The non-Federal share of the cost of the work authorized by the preceding sentence shall be 50 percent. The Secretary is also authorized to carry out planning, engineering, and design of measures to alleviate project-induced flood damages to areas outside the project area and such channelization measures in the Shiawassee Flats unit as the Secretary determines necessary for flood control purposes.

SEC. 846. BRUNSWICK HARBOR, GEORGIA.

The navigation project for Brunswick Harbor, Georgia, authorized by the River and Harbor Act of 1950, is modified to incorporate the Georgia Ports Authority's 30-foot-deep by 300-foot-wide by 8,000-foot-long channel in the South Brunswick River serving Colonel's Island terminal facilities.

SEC. 847. HANSEN DAM, LOS ANGELES AND SAN GABRIEL RIVERS, CALIFORNIA.

(a) The Hansen Dam project authorized as part of the flood control project for the Los Angeles and San Gabriel Rivers, California, by section 5 of the Flood Control Act approved June 22, 1936 (49 Stat. 1589), is modified to authorize the Secretary to con-

tract for the removal and sale of dredged material from the flood control basin for Hansen Dam, Los Angeles County, California, for the purposes of facilitating flood control, recreation, and water conservation. All funds received by the Secretary from the removal and sale of such dredged material shall be deposited in the general fund of the Treasury.

(b) There is authorized to be appropriated for fiscal years beginning after September 30, 1986, an amount not to exceed the amount of funds received by the Secretary from the removal and sale of dredged material under subsection (a). Amounts appropriated under this subsection shall be available to the Secretary—

(1) to construct, operate, and maintain recreational facilities at the Hansen Dam project; and

(2) to the extent consistent with other authorized project purposes, to facilitate water conservation and ground water recharge measures at the Hansen Dam project in coordination with the city of Los Angeles, California, and the Los Angeles County Flood Control District;

at full Federal expense.

SEC. 848. DUNKIRK HARBOR, NEW YORK.

Subject to section 903(a) of this Act, the project for navigation, Dunkirk Harbor, New York, authorized by section 201 of the Flood Control Act of 1965 and approved by resolution of the Committee on Public Works of the House of Representatives, dated December 15, 1970, and resolution of the Committee on Public Works of the Senate, dated June 22, 1971, is modified to authorize the Secretary to include dredging and maintenance of the eastern inner harbor of such project in accordance with such plans as the Secretary, in consultation with appropriate non-Federal interests, may develop, at a total cost of $4,600,000, with an estimated first Federal cost of $2,300,000 and an estimated first non-Federal cost of $2,300,000.

SEC. 849. KALIHI CHANNEL, HONOLULU HARBOR, HAWAII.

(a) The project for navigation for Honolulu Harbor, Hawaii, authorized by section 101 of the River and Harbor Act of 1954, is modified to authorize and direct the Secretary to maintain a 23-foot project depth in the Kalihi Channel portion of such project.

(b) The consent of Congress is given to the State of Hawaii to construct, operate, and maintain a fixed-span bridge in and over the water of the Kalihi Channel, Honolulu Harbor, Hawaii.

SEC. 850. BAYOU LAFOURCHE, LOUISIANA.

The project for navigation, Bayou Lafourche and Lafourche-Jump Waterway, Louisiana, authorized by the River and Harbor Act of August 30, 1935, is modified to authorize the Secretary to carry out planning, engineering, and design for a project for the maintenance by the Secretary of a channel 30 feet deep from mile minus 2 to mile 0 in Belle Pass and of a channel 24 feet deep from mile 0 to mile 4 in Bayou Lafourche. The Secretary is authorized and directed to study the feasibility of deepening the channel from mile 0 to mile 4 in Bayou Lafourche to 30 feet. The Secretary shall report the results of such study with recommendations to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 851. NOYO, MENDOCINO COUNTY, CALIFORNIA.

(a) The project for harbor improvement at Noyo, Mendocino County, California, authorized by the River and Harbor Act of 1962 (76 Stat. 1173), is modified to provide that the non-Federal interests shall contribute 50 percent of the cost of areas required for initial and subsequent disposal of dredged material, and of necessary retaining dikes, bulkheads, embankments, and movement of materials therefor.

(b) If, in lieu of diked disposal, the Secretary determines ocean disposal is necessary to carry out the project, the Federal share of the cost of such ocean disposal shall be 100 percent.

SEC. 852. ENDICOTT, JOHNSON CITY, AND VESTAL, NEW YORK.

Subject to section 903(a), the project for flood control, Endicott, Johnson City, and Vestal, New York, authorized by the Flood Control Act of 1954, is modified to authorize the Secretary to undertake such measures as may be necessary to correct erosion problems affecting the levee at Vestal, New York, and to perform necessary work to protect the levee and restore it to its design condition, at a total cost of $700,000, with an estimated first Federal cost of $525,000 and an estimated first non-Federal cost of $175,000. The non-Federal share of the cost of such measures and work shall be determined under section 103 of this Act.

SEC. 853. CAMBRIDGE CREEK, MARYLAND.

The project for navigation, Cambridge Creek, Maryland, is modified to authorize and direct the Secretary to narrow the channel in the existing project, as determined necessary by the Secretary for the purpose of enhancing economic development in the area of such creek.

SEC. 854. SANDY HOOK TO BARNEGAT INLET, NEW JERSEY.

(a) Subject to section 903(a) of this Act, the project for beach erosion control, Sandy Hook to Barnegat Inlet, New Jersey, authorized by the River and Harbor Act of 1958, is modified to provide that the first Federal construction increment of the Ocean Township to Sandy Hook reach of such project shall consist of a berm of approximately 50 feet at Sea Bright and Monmouth Beach extending to and including a feeder beach in the vicinity of Long Branch, at a total cost of $40,000,000, with an estimated first Federal cost of $21,200,000 and an estimated first non-Federal cost of $18,800,000.

(b) The non-Federal share of the cost of construction and maintenance of the Ocean Township to Sandy Hook reach of the project for beach erosion control, Sandy Hook to Barnegat Inlet, New Jersey, shall consist of amounts expended by non-Federal interests for reconstruction of the seawall at Sea Bright and Monmouth Beach, New Jersey.

(c) Before initiation of construction of any increment of the project for beach erosion control, Sandy Hook to Barnegat Inlet, New Jersey, non-Federal interests shall agree to provide public access to the beach for which such increment of the project is authorized in accordance with all requirements of State law and regulations.

SEC. 855. TAYLORSVILLE LAKE, KENTUCKY.

The project for flood control, Taylorsville Lake, Kentucky, authorized by the Flood Control Act of 1956, is modified to authorize and direct the Secretary to replace the Floyd's Fork Bridge on Routt Road, Jefferson County, Kentucky, in order to provide improved access to the project, at a total cost of $750,000, with an estimated first Federal cost of $375,000 and an estimated first non-Federal cost of $375,000. The non-Federal share of the cost of the work authorized by this section shall be 50 percent.

SEC. 856. LOWER SNAKE RIVER.

The project for the Lower Snake River Fish and Wildlife Compensation Plan, authorized by the Water Resources Development Act of 1976, is modified in accordance with the recommendations contained in the report of the Chief of Engineers, dated March 6, 1985, at a total cost of $177,000,000, with a first Federal cost of $177,000,000.

SEC. 857. ILLINOIS RIVER AT PEORIA, ILLINOIS.

The project for navigation, Illinois River at Peoria, Illinois, authorized by the River and Harbor Act of 1946, is modified to provide for the inclusion within the project an adjacent downstream water area of approximately 400 feet long by 200 feet wide developed by local interests for an enlarged small boat harbor, including Federal construction and maintenance of such area and an access channel to a depth of 7 feet, at a total cost of $50,000. The project features authorized by this section shall be carried out under section 107 of the River and Harbor Act of 1960.

SEC. 858. TAMPA HARBOR, FLORIDA.

The project for navigation for Tampa Harbor, Florida, authorized by the River and Harbor Act of 1970 is modified to authorize planning, engineering, and design for a project under section 107 of the River and Harbor Act of 1960 to widen the authorized Port Sutton Turning Basin an additional 105 feet to the fender line along Pendola Point, at a total cost of $900,000, with an estimated first Federal cost of $675,000 and an estimated first non-Federal cost of $225,000.

SEC. 859. SALEM RIVER, NEW JERSEY.

Subject to section 903(b) of this Act, the project for navigation, Salem River, New Jersey, is modified to provide that the depth of such project shall be 20 feet.

SEC. 860. COLD SPRING INLET, NEW JERSEY.

The navigation project, Cold Spring Inlet, New Jersey, is modified to authorize the Secretary to carry out planning, engineering, and design for a project to increase the depth of the 2,000 foot reach of the New Jersey Intracoastal Waterway in Cape May County to 15 feet.

SEC. 861. FORT PECK, MONTANA.

The project for navigation and power generation, Fort Peck, Montana, authorized by the Act entitled "An Act to authorize the completion, maintenance, and operation of the Fort Peck project for navigation, and for other purposes", approved May 18, 1938 (16 U.S.C. 833), shall include recreation as a purpose of such project.

SEC. 862. FISHTRAP LAKE, KENTUCKY.

The project for Fishtrap Lake, Pike County, Kentucky, authorized as part of the flood control project for the Ohio River Basin by section 4 of the Flood Control Act approved June 28, 1938 (52 Stat. 1217), is modified to authorize the Secretary, notwithstanding the completion of such project in 1968, to carry out planning, engineering, and design for a project (1) to acquire by purchase any property in the drainage area for Fishtrap Lake, Kentucky, which is being used as a residence and any property in such drainage area which is being used as a cemetery, and (2) to relocate the owners of any property so acquired and any cemetery so acquired.

SEC. 863. SABINE RIVER CHANNEL, TEXAS.

The Sabine River channel of the Sabine-Neches Waterway, Texas, authorized by the River and Harbor Act of 1954, is modified to authorize the Secretary to carry out plan-

ning, engineering, and design for a project to extend such channel at a depth of 30 feet and a width of 200 feet, from its present upstream terminus opposite Green Avenue in Orange, Texas, generally following the present river alignment a distance of approximately one and one-quarter miles to a point opposite Little Cypress Bayou.

SEC. 864. CLARKS HILL RESERVOIR, SAVANNAH RIVER BASIN, GEORGIA.

The project for flood control, Clarks Hill Reservoir, Savannah River Basin, Georgia and South Carolina, authorized by the Flood Control Act approved December 22, 1944, is modified to include recreation and fish and wildlife management as project purposes. Project lands which are managed or reserved as of the date of the enactment of this section for the conservation, enhancement, or preservation of fish and wildlife and for recreation shall be considered as lands necessary for such purposes.

SEC. 865. CAPE CHARLES CITY HARBOR, VIRGINIA.

The project for navigation, Cape Charles City Harbor, Virginia, authorized by the River and Harbor Act approved March 2, 1945 (59 Stat. 15), is modified to provide that the local interests shall not be required—

(1) to provide bulkheads, or

(2) to reserve berthing space for general public use,

along a greater distance of the shoreline than such bulkheads are provided or such berthing space is reserved on the date of the enactment of this Act.

SEC. 866. EAST CHESTER CREEK, NEW YORK.

The project for navigation, East Chester Creek, New York, authorized by the River and Harbor Act of 1950, is modified to provide that the Secretary, out of any amounts made available to the Secretary for operation and maintenance of water resources projects, shall dredge within two years after the date of the enactment of this Act, and maintain thereafter, the Y-shaped portion of such project, at a total cost of $500,000, with an estimated first Federal cost of $450,000 and an estimated first non-Federal cost of $50,000.

SEC. 867. SAVANNAH HARBOR, GEORGIA.

The project for navigation, Savannah Harbor, Georgia, authorized by the River and Harbor Act of 1965, is modified to authorize the Secretary to carry out planning, engineering, and design for a project to remove drift and debris from the harbor as part of operation and maintenance.

SEC. 868. TACOMA HARBOR, WASHINGTON.

The city waterway navigation channel project, Tacoma Harbor, Washington, authorized by the first section of the River and Harbor Act of June 13, 1902 (32 Stat. 347), is modified to direct the Secretary to redefine the boundaries of such project in accordance with the recommendations contained in the report of the Chief of Engineers, dated May 3, 1983.

SEC. 869. DELAWARE COAST, CAPE HENLOPEN TO FENWICK ISLAND.

Subject to section 903(a) of this Act, the project for hurricane-flood protection and beach erosion control along the Delaware Coast from Cape Henlopen to Fenwick Island at the Delaware-Maryland State Line, authorized by section 203 of the Flood Control Act of 1968 (Public Law 90-483), is modified to authorize the construction of sand bypass facilities and stone revetment erosion control measures at Indian River Inlet, Delaware, as described in the General Design Memorandum and Environmental Assessment, dated November 1984, and approved by the Chief of Engineers in January 1986, at a total cost of $4,000,000, with an estimated first Federal cost of $2,500,000 and an estimated first non-Federal cost of $1,500,000. Project costs shall be allocated under the terms of section 111 of the Flood Control Act of 1968 if that is determined by the Secretary to be appropriate.

SEC. 870. WINOOSKI RIVER, WATERBURY, VERMONT

The Waterbury, Vermont, project in the Winooski River Basin, authorized for modification in section 10 of the Act of December 22, 1944 (58 Stat. 892), is further modified to provide that restoration to the concrete work on the dam shall be undertaken by the Secretary. Nothing in this section shall be construed as altering the conditions established in the Federal Power Commission license numbered 2090, issued on September 16, 1954. Cost sharing applicable to flood control projects shall apply to the work authorized by this section.

SEC. 871. RIO GRANDE FLOODWAY, NEW MEXICO.

Subject to section 903(b) of this Act, the project for flood protection for the Rio Grande Floodway, Truth or Consequences Unit, New Mexico, authorized by the Flood Control Acts of 1948 and 1950, is modified to provide that the Secretary is authorized to construct a flood control dam on Cuchillo Negro Creek, a tributary of the Rio Grande, in lieu of the authorized floodway.

SEC. 872. CONNECTICUT RIVER BASIN.

(a) Subject to section 903(a) of this Act, the comprehensive plan for the control of floodwaters in the Connecticut River Basin, Vermont, New Hampshire, Massachusetts, and Connecticut, authorized by section 5 of the Act of June 22, 1936 (49 Stat. 1572), is modified to authorize and direct the Secretary to design, construct, operate, and maintain facilities at Townshend Dam, West River, Vermont, to enable upstream migrant adult Atlantic salmon to bypass that dam and Ball Mountain Dam, Vermont, and to provide at both Townshend and Ball Mountain Dams facilities as necessary for the downstream passage of juvenile Atlantic salmon, at a total cost of $1,000,000, with a first Federal cost of $1,000,000.

(b) Prior to construction of the work authorized by this section, non-Federal interests shall agree to hold and save the United States harmless for any damages incurred in the construction and operation of such fish-passage facilities, and provide all lands, easements, rights-of-way, and relocations as may be reasonably necessary for the construction and operation of the fish-passage facilities.

TITLE IX—GENERAL PROVISIONS

SEC. 901. ANNUAL OBLIGATION CEILINGS.

Notwithstanding any other provision of law, the Secretary shall, from funds appropriated, obligate no sums in excess of the sums specified in this title for the combined purpose of the "Construction, General" account and the construction component of the "Flood Control, Mississippi River and Tributaries" account:

(1) For the fiscal year ending September 30, 1987, the sum of $1,400,000,000.

(2) For the fiscal year ending September 30, 1988, the sum of $1,500,000,000.

(3) For the fiscal year ending September 30, 1989, the sum of $1,600,000,000.

(4) For the fiscal year ending September 30, 1990, the sum of $1,700,000,000.

(5) For the fiscal year ending September 30, 1991, the sum of $1,800,000,000.

Nothing contained herein limits or otherwise amends authority conferred under section 10 of the River and Harbor Act of September 22, 1922 (42 Stat. 1043; 33 U.S.C. 621). Any amounts obligated against funds furnished or reimbursed during each such fiscal year by other Federal agencies or non-Federal interests shall not be counted against the limitation on obligations provided for in this Act.

SEC. 902. MAXIMUM COST OF PROJECTS.

In order to insure against cost overruns, each total cost set forth in this Act, or an amendment made by this Act, for a project shall be the maximum cost of that project, except that such maximum amount—

(1) may be increased by the Secretary for modifications which do not materially alter the scope or functions of the project as authorized, but not by more than 20 percent of the total cost stated for the project in this Act or in an amendment made by this Act; and

(2) shall be automatically increased for—

(A) changes in construction costs applied to unconstructed features (including real property acquisitions, preconstruction studies, planning, engineering, and design) from the date of enactment of this Act (unless otherwise specified) as indicated by engineering and other appropriate cost indexes; and

(B) additional studies, modifications, and actions (including mitigation and other environmental actions) authorized by this Act or required by changes in Federal law.

SEC. 903. GENERAL REQUIREMENTS.

(a) PROCEDURE FOR CERTAIN PROJECTS AUTHORIZED FOR CONSTRUCTION.—(1) In the case of any project authorized for construction by this Act which is specifically made subject to this subsection, no construction may be commenced until the Secretary has reviewed and commented on such project and reported thereon to the Congress, or until 90 days have passed following the receipt of the proposed plan of the project from the Chief of Engineers, whichever first occurs.

(2) The Secretary shall review and comment on—

(A) at least one-third of the projects to which this subsection applies during the one-year period beginning on the date of enactment of this Act,

(B) at least two-thirds of such projects during the two-year period beginning on the date of enactment of this Act, and

(C) all of such projects during the three-year period beginning on the date of enactment of this Act.

(3) Any project to which this subsection applies on which the Secretary has not commented before the end of the 3-year period beginning on the date of enactment of this Act shall be deemed to have been approved by the Secretary for purposes of this subsection.

(b) PROCEDURE FOR PROJECTS AUTHORIZED FOR CONSTRUCTION SUBJECT TO A FAVORABLE REPORT.—Any project specifically made subject to this subsection is authorized to be prosecuted by the Secretary substantially in accordance with the plans and subject to the conditions recommended in the report cited for such project, with such modifications as are recommended by the Chief of Engineers and approved by the Secretary, and with such other modifications as are recommended by the Secretary. If no report is cited for a project, the project is authorized to be prosecuted by the Secretary in accordance with a final report of the Chief of Engineers, and with such modifications as are recommended by the Secretary, and no construction on such project may be initiated until such a report is issued and approved by the Secretary.

(c) BENEFIT-COST RATIO WAIVER.—(1) In his recommendations for authorization of any project, or separable element, for flood control, the Secretary may include features that would not produce national economic development benefits greater than cost, if the non-Federal interests enter into a binding agreement requiring the non-Federal interests to pay during construction of the project or separable element an amount sufficient to make the remaining costs of that project or separable element equal to the estimated value of the national economic development benefits of that project or separable element.

(2) Non-Federal payments pursuant to paragraph (1) shall be in addition to payments required under section 103 of this Act which are applicable to the remaining costs of the project.

(d) OTHER REQUIREMENTS.—Sections 201 and 202 and the fourth sentence of section 203 of the Flood Control Act of 1968 shall apply to all projects authorized by this Act.

SEC. 904. MATTERS TO BE ADDRESSED IN PLANNING.

Enhancing national economic development (including benefits to particular regions of the Nation not involving the transfer of economic activity to such regions from other regions), the quality of the total environment, the well-being of the people of the United States, the prevention of loss of life, and the preservation of cultural and historical values shall be addressed in the formulation and evaluation of water resources projects to be carried out by the Secretary, and the associated benefits and costs, both quantifiable and unquantifiable, shall be displayed in the benefits and costs of such projects.

SEC. 905. FEASIBILITY REPORTS.

(a) In the case of any water resources project-related study authorized to be undertaken by the Secretary, the Secretary shall prepare a feasibility report, subject to section 105 of this Act. Such feasibility report shall describe, with reasonable certainty, the economic, environmental, and social benefits and detriments of the recommended plan and alternative plans considered by the Secretary and the engineering features (including hydrologic and geologic information), the public acceptability, and the purposes, scope, and scale of the recommended plan. The feasibility report shall also include the views of other Federal agencies and non-Federal agencies with regard to the recommended plan, a description of a nonstructural alternative to the recommended plan when such plan does not have significant nonstructural features, and a description of the Federal and non-Federal participation in such plan, and shall demonstrate that States, other non-Federal interests, and Federal agencies have been consulted in the development of the recommended plan. This subsection shall not apply to (1) any study with respect to which a report has been submitted to Congress before the date of enactment of this Act, (2) any study for a project, which project is authorized for construction by this Act and is not subject to section 903(b), (3) any study for a project which is authorized under any of the following sections: section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s), section 2 of the Flood Control Act of August 28, 1946 (33 U.S.C. 701r), section 107 of the River and Harbor Act of 1960 (33 U.S.C. 577), section 3 of the Act entitled "An Act authorizing Federal participation in the cost of protecting the shores of publicly owned property", approved August 13, 1946 (33 U.S.C. 426g), and section 111 of the River and Harbor Act of 1968 (33 U.S.C. 426i), and (4) general studies not intended to lead to recommendation of a specific water resources project.

(b) Before initiating any feasibility study under subsection (a) of this section after the date of enactment of this Act, the Secretary shall first perform, at Federal expense, a reconnaissance study of the water resources problem in order to identify potential solutions to such problem in sufficient detail to enable the Secretary to determine whether or not planning to develop a project should proceed to the preparation of a feasibility report. Such reconnaissance study shall include a preliminary analysis of the Federal interest, costs, benefits, and environmental impacts of such project, and an estimate of the costs of preparing the feasibility report. The duration of a reconnaissance study shall normally be no more than twelve months, but in all cases is to be limited to eighteen months.

(c) For purposes of studies undertaken pursuant to this section, the Secretary is authorized to consider benefits which may accrue to Indian tribes as a result of a project resulting from such a study.

(d) The Secretary shall undertake such measures as are necessary to ensure that standard and uniform procedures and practices are followed by each district office (and each division office for any area in which there is no district office) of the United States Army Corps of Engineers in the preparation of feasibility reports on water resources projects.

SEC. 906. FISH AND WILDLIFE MITIGATION.

(a)(1) In the case of any water resources project which is authorized to be constructed by the Secretary before, on, or after the date of enactment of this Act, construction of which has not commenced as of the date of enactment of this Act, and which necessitates the mitigation of fish and wildlife losses, including the acquisition of lands or interests in lands to mitigate losses to fish and wildlife, as a result of such project, such mitigation, including acquisition of the lands or interests—

(A) shall be undertaken or acquired before any construction of the project (other than such acquisition) commences, or

(B) shall be undertaken or acquired concurrently with lands and interests in lands for project purposes (other than mitigation of fish and wildlife losses),

whichever the Secretary determines is appropriate, except that any physical construction required for the purposes of mitigation may be undertaken concurrently with the physical construction of such project.

(2) For the purposes of this subsection, any project authorized before the date of enactment of this Act on which more than 50 percent of the land needed for the project, exclusive of mitigation lands, has been acquired shall be deemed to have commenced construction under this subsection.

(b)(1) After consultation with appropriate Federal and non-Federal agencies, the Secretary is authorized to mitigate damages to fish and wildlife resulting from any water resources project under his jurisdiction, whether completed, under construction, or to be constructed. Such mitigation may include the acquisition of lands, or interests therein, except that—

(A) acquisition under this paragraph shall not be by condemnation in the case of projects completed as of the date of enactment of this Act or on which at least 10 percent of the physical construction on the project has been completed as of the date of enactment of this Act; and

(B) acquisition of water, or interests therein, under this paragraph, shall not be by condemnation.

The Secretary, shall, under the terms of this paragraph, obligate no more than $30,000,000 in any fiscal year. With respect to any water resources project, the authority under this subsection shall not apply to measures that cost more than $7,500,000 or 10 percent of the cost of the project, whichever is greater.

(2) Whenever, after his review, the Secretary determines that such mitigation features under this subsection are likely to require condemnation under subparagraph (A) or (B) of paragraph (1) of this subsection, the Secretary shall transmit to Congress a report on such proposed modification, together with his recommendations.

(c) Costs incurred after the date of enactment of this Act for implementation and operation, maintenance, and rehabilitation to mitigate damages to fish and wildlife shall be allocated among authorized project purposes in accordance with applicable cost allocation procedures, and shall be subject to cost sharing or reimbursement to the same extent as such other project costs are shared or reimbursed, except that when such costs are covered by contracts entered into prior to the date of enactment of this Act, such costs shall not be recovered without the consent of the non-Federal interests or until such contracts are complied with or renegotiated.

(d) After the date of enactment of this Act, the Secretary shall not submit any proposal for the authorization of any water resources project to the Congress unless such report contains (1) a recommendation with a specific plan to mitigate fish and wildlife losses created by such project, or (2) a determination by the Secretary that such project will have negligible adverse impact on fish and wildlife. Specific mitigation plans shall ensure that impacts to bottomland hardwood forests are mitigated in-kind, to the extent possible. In carrying out this subsection, the Secretary shall consult with appropriate Federal and non-Federal agencies.

(e) In those cases when the Secretary, as part of any report to Congress, recommends activities to enhance fish and wildlife resources, the first costs of such enhancement shall be a Federal cost when—

(1) such enhancement provides benefits that are determined to be national, including benefits to species that are identified by the National Marine Fisheries Service as of national economic importance, species that are subject to treaties or international convention to which the United States is a party, and anadromous fish;

(2) such enhancement is designed to benefit species that have been listed as threatened or endangered by the Secretary of the Interior under the terms of the Endangered Species Act, as amended (16 U.S.C. 1531, et seq.), or

(3) such activities are located on lands managed as a national wildlife refuge.

When benefits of enhancement do not qualify under the preceding sentence, 25 percent of such first costs of enhancement shall be provided by non-Federal interests under a schedule of reimbursement determined by the Secretary. The non-Federal share of operation, maintenance, and rehabilitation of activities to enhance fish and wildlife resources shall be 25 percent.

(f) Fish and wildlife enhancement measures carried out as part of the project for Atchafalaya Floodway System, Louisiana, authorized by Public Law 99-88, and the

project for Mississippi Delta Region, Louisiana, authorized by the Flood Control Act of 1965, shall be considered to provide benefits that are national for purposes of this section.

(g) The provisions of subsections (a), (b), and (d) shall be deemed to supplement the responsibility and authority of the Secretary pursuant to the Fish and Wildlife Coordination Act, and nothing in this section is intended to affect that Act.

SEC. 907. BENEFITS AND COSTS ATTRIBUTABLE TO ENVIRONMENTAL MEASURES.

In the evaluation by the Secretary of benefits and costs of a water resources project, the benefits attributable to measures included in a project for the purpose of environmental quality, including improvement of the environment and fish and wildlife enhancement, shall be deemed to be at least equal to the costs of such measures.

SEC. 908. MITIGATION FUND.

There is established an Environmental Protection and Mitigation Fund. There is authorized to be appropriated to such fund $35,000,000 for fiscal years beginning after September 30, 1986. Amounts in the fund shall be available for undertaking, in advance of construction of any water resources project authorized to be constructed by the Secretary, such measures authorized as part of such project, including the acquisition of lands and interests therein, as may be necessary to ensure that project-induced losses to fish and wildlife production and habitat will be mitigated. The Secretary shall reimburse the Fund for any amounts expended under this section for a water resources project from the first appropriations made for construction, including planning and designing, of such project.

SEC. 909. RIVER BASIN AUTHORIZATIONS.

(a) In addition to previous authorizations, there is authorized to be appropriated for the prosecution of the comprehensive plan of development of each river basin or project that is referred to below by name and date of basic authorization, such sums as are necessary for the Secretary to complete the comprehensive plan of development.

Basin	Act of Congress
Alabama-Coosa River Basin.	March 2, 1945
Arkansas River Basin	June 28, 1938
Arkansas-Red River Basin.	November 7, 1966
Baltimore Harbor	December 31, 1970
Blue River Basin	December 31, 1970
Brazos River Basin	September 3, 1954
Central and Southern Florida.	June 30, 1948
Columbia River Basin	May 17, 1950
Connecticut River Basin.	June 22, 1936
Cottonwood Creek, California.	December 31, 1970
Gulf Intracoastal Waterway, St. Marks, Tampa.	August 13, 1968
Mississippi River and Tributaries.	May 15, 1928
Missouri River Basin	June 28, 1938
North Branch Susquehanna River Basin.	July 3, 1958
Ohio River Basin	June 22, 1936
Ouachita River Basin	May 17, 1950
Red Run Drain and Lower Clinton River.	December 31, 1970
Red River Waterway	August 13, 1968
Sabine River Basin	December 31, 1970
Sacramento River Basin.	December 22, 1944
San Joaquin River Basin.	December 22, 1944
Santa Ana River Basin.	June 22, 1936
South Platte River Basin.	May 17, 1950
Tampa Harbor	December 31, 1970
Trinity River Basin	October 27, 1965
Upper Mississippi River Basin.	June 28, 1938
Wabash River Basin	August 13, 1968
White River Basin	June 28, 1938

(b) The sums authorized by this section include those necessary for the Secretary to complete local flood protection in the Columbia River Basin, as authorized by section 204 of the Flood Control Act of 1950 (64 Stat. 178).

SEC. 910. CONTINUED PLANNING AND INVESTIGATIONS.

(a) After the Chief of Engineers transmits his recommendations for a water resources development project to the Secretary for transmittal to the Congress, as authorized in the first section of the Act of December 22, 1944, and before authorization for construction of such project, the Chief of Engineers is authorized to undertake continued planning and engineering (other than preparation of plans and specifications) for such project if the Chief of Engineers finds that the project is without substantial controversy and justifies further engineering, economic, and environmental investigations and the Chief of Engineers transmits to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a statement of such findings. In the one-year period after authorization for construction of such project, the Chief of Engineers is authorized to undertake planning, engineering, and design for such project.

(b) Not later than January 15, 1987, and each January 15 thereafter, the Secretary shall prepare and transmit a report on the activities undertaken under this section in the preceding fiscal year to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(c) The authorization made by this section shall be in addition to any other authorizations for planning, engineering, and design of water resources development projects and shall not be construed as a limitation on any other such authorization.

SEC. 911. REVIEW OF COST EFFECTIVENESS OF DESIGN.

During the design of each water resources project which has a total cost in excess of $10,000,000, which is authorized before, on, or after the date of enactment of this Act and undertaken by the Secretary, and on which construction has not been initiated as of the date of enactment of this Act, the Secretary shall require a review of the cost effectiveness of such design. The review shall employ cost control techniques which will ensure that such project is designed in the most cost-effective way for the life of the project.

SEC. 912. SECTION 221 AGREEMENTS.

(a) Section 221(a) of the Flood Control Act of 1970 is amended—

(1) by inserting ", or an acceptable separable element thereof," after "water resources project", and by inserting "or the appropriate element of the project, as the case may be" after "for the project"; and

(2) by adding at the end the following: "In any such agreement entered into by a State, or a body politic of the State which derives its powers from the State constitution, or a governmental entity created by the State legislature, the agreement may reflect that it does not obligate future State legislative appropriations for such performance and payment when obligating future appropriations would be inconsistent with State constitutional or statutory limitations.".

(b)(1) The Secretary may require compliance with any requirements pertaining to cooperation by non-Federal interests in carrying out any water resources project authorized before, on, or after the date of enactment of this Act.

(2) Whenever on the basis of any information available to the Secretary, the Secretary finds that any non-Federal interest is not providing cooperation required under subsection (a), the Secretary shall issue an order requiring such non-Federal interest to provide such cooperation. After notice and opportunity for a hearing, if the Secretary finds that any person is violating an order issued under this section, such person shall be subject to a civil penalty not to exceed $10,000 per day of such violation, except that the total amount of civil penalties for any violation shall not exceed $50,000.

(3) Non-Federal interests shall be liable for interest on any payments required pursuant to section 221 of the Flood Control Act of 1970 that may fall delinquent. The interest rate to be charged on any such delinquent payment shall be at a rate, to be determined by the Secretary of the Treasury, equal to 150 percent of the average bond equivalent rate of the thirteen-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional three-month period if the period of delinquency exceeds three months.

(4) The Secretary may request the Attorney General to bring a civil action for appropriate relief, including permanent or temporary injunction, for any violation of an order issued under this section, to collect a civil penalty imposed under this section, to recover any cost incurred by the Secretary in undertaking performance of any item of cooperation under section 221(d) of the Flood Control Act of 1970, or to collect interest for which a non-Federal interest is liable under paragraph (3). Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides, or is doing business, and such court shall have jurisdiction to restrain such violation, to require compliance, to require payment of any civil penalty imposed under this section, and to require payment of any costs incurred by the Secretary in undertaking performance of any such item.

(5) The Secretary is authorized to determine that no funds appropriated for operation and maintenance, including operation and maintenance of the project for flood control, Mississippi River and Tributaries, are to be used for the particular benefit of projects within the jurisdiction of any non-Federal interest when such non-Federal interest is in arrears for more than twenty-four months in the payment of charges due under an agreement entered into with the United States pursuant to section 221 of the Flood Control Act of 1970 (Public Law 91-611).

SEC. 913. SECTION 215 AGREEMENTS.

Section 215(a) of the Flood Control Act of 1968 is amended by striking out "$1,000,000" and inserting in lieu thereof "$3,000,000".

SEC. 914. URBAN AND RURAL FLOOD CONTROL FREQUENCY.

In the preparation of feasibility reports for projects for flood damage prevention in urban and rural areas, the Secretary may consider and evaluate measures to reduce or eliminate damages from flooding without regard to frequency of flooding, drainage area, and amount of runoff. This section shall apply with respect to any project, or separable element thereof, the Federal share of the cost of which is less than $3,000,000.

SEC. 915. SMALL PROJECT AUTHORIZATIONS.

(a) Section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s) is amended by striking out "$30,000,000" in the first sentence and inserting in lieu thereof "$40,000,000" and by striking out "$4,000,000" in the third sentence and inserting in lieu thereof "$5,000,000".

(b) Section 2 of the Flood Control Act of August 28, 1937 (33 U.S.C. 701g) is amended by striking out "$5,000,000" and inserting in lieu thereof "$7,500,000" and by striking out "$250,000" and inserting in lieu thereof "$500,000".

(c) Section 14 of the Flood Control Act of 1946 (33 U.S.C. 701r) is amended by striking out "$10,000,000" and inserting in lieu thereof "$12,500,000" and by striking out "$250,000" and inserting in lieu thereof "$500,000".

(d) Subsection (a) of section 107 of the River and Harbor Act of 1960 (33 U.S.C. 577) is amended by striking out "$25,000,000" and inserting in lieu thereof "$35,000,000". Subsection (b) of such section is amended by striking out "$2,000,000" and inserting in lieu thereof "$4,000,000".

(e) Section 3 of the Act entitled "An Act authorizing Federal participation in the cost of protecting the shores of publicly owned property", approved August 13, 1946 (33 U.S.C. 426g), is amended (1) by striking out "$25,000,000" and inserting in lieu thereof "$30,000,000", and (2) by striking out "$1,000,000" and inserting in lieu thereof "$2,000,000".

(f) Section 111 of the River and Harbor Act of 1968 (33 U.S.C. 426i) is amended by striking out "$1,000,000" and inserting in lieu thereof "$2,000,000".

(g) Section 3 of the Act entitled "An Act authorizing the construction, repair, and preservation of certain public works or rivers and harbors, and for other purposes", approved March 2, 1945 (33 U.S.C. 603a), is amended by striking out "$300,000" and inserting in lieu thereof "$1,000,000".

(h) The Secretary is authorized to use the authority contained in section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s), section 2 of the Flood Control Act of August 28, 1937 (33 U.S.C. 701g), section 14 of the Flood Control Act of 1946 (33 U.S.C. 701r), section 107 of the River and Harbor Act of 1960 (33 U.S.C. 577), section 3 of the Act entitled "An Act authorizing Federal participation in the cost of protecting the shores of publicly owned property", approved August 13, 1946 (33 U.S.C. 426g), and section 111 of the River and Harbor Act of 1968 (33 U.S.C. 426i) in the Trust Territory of the Pacific Islands.

(i) The amendments made by this section shall not apply to any project under contract for construction on the date of enactment of this Act.

SEC. 916. FEDERAL REPAYMENT DISTRICT.

(a) The Secretary may enter into a contract providing for the payment or recovery of an appropriate share of the costs of a project under his responsibility with a Federal Project Repayment District or other political subdivision of a State prior to the construction, operation, improvement, or financing of such project. The Federal Project Repayment District shall include lands and improvements which receive identifiable benefits from the construction or operation of such project. Such districts shall be established in accordance with State law, shall have specific boundaries which may be changed from time to time based upon further evaluations of benefits, and shall include the power to collect a portion of the transfer price from any transaction involving the sale, transfer, or change in beneficial ownership of lands and improvements within the district boundaries.

(b) Prior to execution of an agreement pursuant to subsection (a) of this section, the Secretary shall require and approve a study from the State or political subdivision demonstrating that the revenues to be derived from a contract under this section, or an agreement with a Federal Project Repayment District, will be sufficient to equal or exceed the cost recovery requirements over the term of repayment required by Federal law.

SEC. 917. EMERGENCY AND DISASTER AUTHORITY.

Section 5(a) of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved August 18, 1941 (33 U.S.C. 701n), is amended by striking out "drinking" each place it appears in the second sentence and by inserting after the first sentence the following new sentence: "In any case in which the Chief of Engineers is otherwise performing work under this section in an area for which the Governor of the affected State has requested a determination that an emergency exists or a declaration that a major disaster exists under the Disaster Relief Act of 1974, the Chief of Engineers is further authorized to perform on public and private lands and waters for a period of ten days following the Governor's request any emergency work made necessary by such emergency or disaster which is essential for the preservation of life and property, including, but not limited to, channel clearance, emergency shore protection, clearance and removal of debris and wreckage endangering public health and safety, and temporary restoration of essential public facilities and services.".

SEC. 918. SURVEYING AND MAPPING.

Any surveying or mapping services to be performed in connection with a water resources project which is or has been authorized to be undertaken by the Secretary shall be procured in accordance with title IX of the Federal Property and Administrative Services Act of 1949.

SEC. 919. PETROLEUM PRODUCT INFORMATION.

(a) The Secretary shall disclose petroleum product information to any State taxing agency making a request under subsection (b). Such information shall be disclosed for the purpose of, and only to the extent necessary in, the administration of State tax laws.

(b) Disclosure of information under this section shall be permitted only upon written request by the head of the State taxing agency and only to the representatives of such agency designated in such written request as the individuals who are to inspect or to receive the information on behalf of such agency. Any such representative shall be an employee or legal representative of such agency.

(c)(1) Requests for the disclosure of information under this section, and such disclosure, shall be made in such manner and at such time and place as shall be prescribed by the Secretary.

(2) Information disclosed to any person under this section may be provided in the form of written documents or reproductions of such documents, or by any other mode or means which the Secretary determines necessary or appropriate. A reasonable fee may be prescribed for furnishing such information.

(3) Any reproduction of any document or other matter made in accordance with this subsection shall have the same legal status as the original, and any such reproduction shall, if properly authenticated, be admissible in evidence in any judicial or administrative proceeding as if it were the original, whether or not the original is in existence.

(d) The Secretary shall not disclose information to a State taxing agency of a State under this section unless such State has in effect provisions of law which—

(1) exempt such information from disclosure under a State law requiring agencies of the State to make information available to the public, or

(2) otherwise protect the confidentiality of the information.

Nothing in the preceding sentence shall be construed to prohibit the disclosure by an officer or employee of a State of information to another officer or employer of such State (or political subdivision of such State) to the extent necessary in the administration of State tax laws.

(e) For purposes of this section, the term—

(1) "petroleum product information" means information relating to petroleum products transported by vessel which is received by the Secretary (A) under section 11 of the Act entitled "An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes", approved September 22, 1922 (42 Stat. 1043; 33 U.S.C. 555), or (B) under any other legal authority; and

(2) "State taxing agency" means any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for the administration of State tax laws.

(f) Section 11 of the Act entitled "An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes", approved September 22, 1922 (42 Stat. 1043; 33 U.S.C. 555) is amended—

(1) by striking out "$100" and inserting in lieu thereof "not more than $5,000"; and

(2) by inserting a new sentence at the end thereof as follows: "In addition, the Secretary may assess a civil penalty of up to $2,500, per violation, against any person or entity that fails to provide timely, accurate statements required to be submitted pursuant to this section by the Secretary.".

SEC. 920. LAW ENFORCEMENT CONTRACTS.

Subsection (b) of section 120 of the Water Resources Development Act of 1976 (42 U.S.C. 1962d-5d) is amended to read as follows:

"(b) There is authorized to be appropriated $10,000,000 per fiscal year for each fiscal year beginning after September 30, 1986, to carry out this section.".

SEC. 921. PLANNING ASSISTANCE TO STATES.

Section 22(b) of the Water Resources Development Act of 1974 is amended—

(1) by striking out "$4,000,000" and inserting in lieu thereof "$6,000,000"; and

(2) by striking out "$200,000" and inserting in lieu thereof "$300,000".

SEC. 922. SERVICES TO STATE AND LOCAL GOVERNMENTS.

Section 3036(d) of title 10, United States Code, is amended by striking out "and may provide" and inserting in lieu thereof the following: "and, on a reimbursable basis, to a State or political subdivision thereof. Services provided to a State or political subdivision thereof shall be undertaken only on condition that—

"(1) the work to be undertaken on behalf of non-Federal interests involves Federal assistance; and

"(2) the department or agency providing Federal assistance for the work does not object to the provision of services by the Chief of Engineers.".

SEC. 923. REPROGRAMMING DURING NATIONAL EMERGENCIES.

(a) In the event of a declaration of war or a declaration by the President of a national emergency in accordance with the National Emergencies Act (90 Stat. 1255; 50 U.S.C. 1601) that requires or may require use of the Armed Forces, the Secretary, without regard to any other provision of law, may (1) terminate or defer the construction, operation, maintenance, or repair of any Department of the Army civil works project that he deems not essential to the national defense, and (2) apply the resources of the Department of the Army's civil works program, including funds, personnel, and equipment, to construct or assist in the construction, operation, maintenance, and repair of authorized civil works, military construction, and civil defense projects that are essential to the national defense.

(b) The Secretary shall immediately notify the appropriate committees of Congress of any actions taken pursuant to the authorities provided by this section, and cease to exercise such authorities not later than 180 calendar days after the termination of the state of war or national emergency, whichever occurs later.

SEC. 924. OFFICE OF ENVIRONMENTAL POLICY.

The Secretary shall establish in the Directorate of Civil Works of the Office of the Chief of Engineers an Office of Environmental Policy. Such Office shall be responsible for the formulation, coordination, and implementation of all matters concerning environmental quality and policy as they relate to the water resources program of the United States Army Corps of Engineers. Such Office shall, among other things, develop, and monitor compliance with, guidelines for the consideration of environmental quality in formulation and planning of water resources projects carried out by the Secretary, the preparation and coordination of environmental impact statements for such projects, and the coordination with Federal, State, and local agencies of environmental aspects of such projects and regulatory responsibilities of the Secretary.

SEC. 925. COMPILATION OF LAWS; ANNUAL REPORTS.

(a) Within one year after the date of enactment of this Act, the laws of the United States relating to the improvement of rivers and harbors, flood control, beach erosion, and other water resources development enacted after November 8, 1966, and before January 1, 1987, shall be compiled under the direction of the Secretary and the Chief of Engineers and printed for the use of the Department of the Army, the Congress, and the general public. The Secretary shall reprint the volumes containing such laws enacted before November 8, 1966. In addition, the Secretary shall include an index in each volume so compiled or reprinted. The Secretary shall transmit copies of each such volume to Congress.

(b) The Secretary shall prepare and submit the annual report required by section 8 of the Act of August 11, 1888, in two volumes. Volume I shall consist of a summary and highlights of Corps of Engineers' activities, authorities, and accomplishments. Volume II shall consist of detailed information and field reports on Corps of Engineers' activities. The Secretary shall publish an index with each annual report.

(c) The Secretary shall prepare biennially for public information a report for each State containing a description of each water resources project under the jurisdiction of the Secretary in such State and the status of each such project. Each report shall include an index. The report for each State shall be prepared in a separate volume. The reports under this subsection shall be published at the same time and the first such reports shall be published not later than one year after the date of the enactment of this Act.

SEC. 926. ACQUISITION OF RECREATION LANDS.

(a) In the case of any water resources project which is authorized to be constructed by the Secretary before, on, or after the date of enactment of this Act, construction of which has not commenced before such date of enactment, and which involves the acquisition of lands or interests in lands for recreation purposes, such lands or interests shall be acquired along with the acquisition of lands and interests in lands for other project purposes.

(b) The Secretary is authorized to acquire real property by condemnation, purchase, donation, exchange, or otherwise, as a part of any water resources development project for use for public park and recreation purposes, including but not limited to, real property not contiguous to the principal part of the project.

SEC. 927. OPERATION AND MAINTENANCE ON RECREATION LANDS.

The Secretary shall not require, under section 4 of the Flood Control Act of December 22, 1944 (58 Stat. 889), and the Federal Water Project Recreation Act, non-Federal interests to assume operation and maintenance of any recreational facility operated by the Secretary at any water resources project as a condition to the construction of new recreational facilities at such project or any other water resources project.

SEC. 928. IMPACT OF PROPOSED PROJECTS ON EXISTING RECREATION FACILITIES.

Any report describing a project having recreation benefits that is submitted after the date of enactment of this Act to the Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives by the Secretary, or by the Secretary of Agriculture under authority of the Watershed Protection and Flood Protection Act (68 Stat. 666; 16 U.S.C. 1001 et. seq.), shall describe the usage of other, similar public recreational facilities within the general area of the project, and the anticipated impact of the proposed project on the usage of such existing recreational facilities.

SEC. 929. AGRICULTURAL BENEFITS.

Section 2 of the Watershed Protection and Flood Protection Act (68 Stat. 666; 16 U.S.C. 1002) is amended by inserting after the proviso in the paragraph relating to the definition of "works of improvement" the following: "Each such project submitted to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives after July 1, 1987, must contain benefits directly related to agriculture that account for at least 20 percent of the total benefits of the project.".

SEC. 930. PUBLIC ACCESS TO WATER IMPOUNDMENTS.

The Secretary of Agriculture, acting through the Administrator of the Soil Conservation Service, shall study and report to the appropriate committees of the Senate and the House of Representatives by April 1, 1988, on the feasibility, the desirability, and the public interest involved in requiring that public access be provided to any or all water impoundments that have recreation-related potential and that were authorized pursuant to the Watershed Protection and Flood Protection Act (68 Stat. 666; 16 U.S.C. 1001 et. seq).

SEC. 931. INTERIM USE OF WATER SUPPLY FOR IRRIGATION.

Section 8 of the Act of December 22, 1944 (58 Stat. 891; 43 U.S.C. 390), is amended by adding at the end the following: "In the case of any reservoir project constructed and operated by the Corps of Engineers, the Secretary of the Army is authorized to allocate water which was allocated in the project purpose for municipal and industrial water supply and which is not under contract for delivery, for such periods as he may deem reasonable, for the interim use for irrigation purposes of such storage until such storage is required for municipal and industrial water supply. No contracts for the interim use of such storage shall be entered into which would significantly affect then-existing uses of such storage.".

SEC. 932. WATER SUPPLY ACT AMENDMENTS.

(a) Section 301(b) of the Water Supply Act of 1958 (72 Stat. 319; 43 U.S.C. 390b(b)), is amended as follows:

(1) in the third proviso, after "That" insert the following: "(1) for Corps of Engineers projects, not to exceed 30 percent of the total estimated cost of any project may be allocated to anticipated future demands, and, (2) for Bureau of Reclamation projects,",

(2) in the fourth proviso, after "That" insert the following: "for Corps of Engineers projects, the Secretary of the Army may permit the full non-Federal contribution to be made, without interest, during construction of the project, or, with interest, over a period of not more than thirty years from the date of completion, with repayment contracts providing for recalculation of the interest rate at, five-year intervals, and for Bureau of Reclamation projects,",

(3) after the first sentence insert the following: "For Corps of Engineers projects, all annual operation, maintenance, and replacement costs for municipal and industrial water supply storage under the provisions of this section shall be reimbursed from State or local interests on an annual basis. For Corps of Engineers projects, any repayment by a State or local interest shall be made with interest at a rate to be determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period, during the month preceding the fiscal year in which costs for the construction of the project are first in-

curred (or, when a recalculation is made), plus a premium of one-eighth of one percentage point for transaction costs.", and

(4) strike out "The interest rate used" and insert in lieu thereof: "For Bureau of Reclamation projects, the interest rate used".

(b) Nothing in this section shall be deemed to amend or require amendment of any valid contract entered into pursuant to the Water Supply Act of 1958, or Federal reclamation law and approved by the Secretary of the Army or the Secretary of the Interior prior to the date of enactment of this Act.

SEC. 933. COST SHARING FOR DISPOSAL OF MATERIAL ON BEACHES.

Section 145 of the Water Resources Development Act of 1976 (33 U.S.C. 426j) is amended by inserting "by such State of 50 percent" after "upon payment".

SEC. 934. BEACH NOURISHMENT.

Section 156 of the Water Resources Development Act of 1976 (42 U.S.C. 1962d-5f) is amended by striking out "fifteenth" and inserting in lieu thereof "fiftieth".

SEC. 935. ACQUISITION OF BEACH FILL.

Notwithstanding any other provision of law, in any case in which the use of fill material for beach erosion and beach nourishment is authorized as a purpose of an authorized water resources project, the Secretary is authorized to acquire by purchase, exchange, or otherwise from nondomestic sources and utilize such material for such purposes if such materials are not available from domestic sources for environmental or economic reasons.

SEC. 936. STUDY OF CORPS CAPABILITIES.

The Secretary shall study and evaluate the measures necessary to increase the capabilities of the United States Army Corps of Engineers to undertake the planning and construction of water resources projects on an expedited basis and to adequately comply with all requirements of law applicable to the water resources program of the Corps of Engineers. As part of such study the Secretary shall consider appropriate measures to increase reliance on the private sector in the conduct of the water resources program of the Corps of Engineers. The Secretary shall implement such measures as may be necessary to improve the capabilities referred to in the first sentence of this section, including the establishment of increased levels of personnel, changes in project planning and construction procedures designed to lessen the time required for such planning and construction, and procedures for expediting the coordination of water resources projects with Federal, State, and local agencies.

SEC. 937. REPORTS ON HYDROPOWER STATISTICS.

Not later than January 15, 1988, and each January 15 thereafter, the Secretary shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report which—

(1) specifies the amount of electricity generated by each water resource project constructed by the Secretary which generated electricity in the preceding fiscal year;

(2) specifies the revenues received by the United States from the sale of electricity generated by such project; and

(3) specifies the costs of construction, operation, and maintenance of such project allocated to the generation of electricity.

In carrying out the study under this section, the Secretary shall compare the actual amount of capital costs repaid to that amount that would be required to repay capital costs. The first report submitted under this section shall specify the amounts of electricity generated, the revenues received, and the costs allocated for each such project before October 1, 1985, on a fiscal year basis in constant dollars. Each report thereafter shall specify the amounts of electricity generated, the revenues received, and the costs allocated for each such project for the preceding fiscal year.

SEC. 938. REPORTS ON SMALL BUSINESS CONTRACTS.

(a)(1) The Secretary shall, on an annual basis, transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report describing the number and dollar amount of contracts awarded in each industry category or subcategory broken down by Engineer District of the Army Corps of Engineers. Such report shall include the number and dollar amount of contracts (A) set aside for small business concerns; (B) awarded to small business or small disadvantaged business concerns; (C) available for competition by qualified firms of all sizes; and (D) awarded to other than small business or small disadvantaged business concerns.

(2) For purposes of this section, the term—

(A) "contract" means any contract, or any subcontract in connection with a subcontracting plan entered into pursuant to section 8(d) of the Small Business Act, as amended (15 U.S.C. 637(d)), which is funded through appropriations made available to the Corps of Engineers-Civil; and

(B) "industry category or subcategory" means the four digit SIC category or subcategory defined by the Small Business Administration.

(b) In the interest of efficient and cost effective operations by the Secretary, the Comptroller General of the United States shall conduct a study of the Secretary's contracting procedures for civil works projects. Such study shall examine whether potential bidders or offerors, regardless of their size, are allowed to compete fairly in the interest of lowering cost on contracts for construction. Within two years of the date of enactment of this Act, the Comptroller General shall report his findings to Congress together with an assessment of whether contract procedures are applied uniformly among the various field offices under the Secretary's jurisdiction. The report shall also provide recommendations on improving contracting procedures, including (1) how the Secretary can prepare proposals for construction that assure, to the greatest extent reasonable, that no potential bidder or offeror is precluded from competing fairly for contracts, (2) whether recordkeeping requirements imposed by the Secretary on contractors are appropriate in the interest of competition, and (3) the extent to which the private sector can be used more efficiently by the Secretary in contracting for construction, architecture, engineering, surveying, and mapping.

SEC. 939. WRECK REMOVAL.

(a) Section 15 of the Act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 409) is amended—

(1) by striking out "voluntarily or carelessly";

(2) by striking out "accidentially or otherwise,"; and

(3) by inserting ", lessee, or operator" after "owner" each place it appears.

(b) Sections 19 and 20 of the Act of March 3, 1899 (30 Stat. 1154; 33 U.S.C. 414 and 415) are amended by inserting "(a)" before the first word of each section and by adding the following new subsection at the end of each section:

"(b) The owner, lessee, or operator of such vessel, boat, watercraft, raft, or other obstruction as described in this section shall be liable to the United States for the cost of removal or destruction and disposal as described which exceeds the costs recovered under subsection (a). Any amount recovered from the owner, lessee, or operator of such vessel pursuant to this subsection to recover costs in excess of the proceeds from the sale or disposition of such vessel shall be deposited in the general fund of the Treasury of the United States.".

SEC. 940. SHORE DAMAGE MITIGATION.

Section 111 of the River and Harbor Act of 1968 (82 Stat. 735, 33 U.S.C. 426i) is amended to read as follows:

"SEC. 111. The Secretary of the Army is authorized to investigate, study, plan, and implement structural and nonstructural measures for the prevention or mitigation of shore damages attributable to Federal navigation works, if a non-Federal public body agrees to operate and maintain such measures, and, in the case of interests in real property acquired in conjunction with nonstructural measures, to operate and maintain the property for public purposes in accordance with regulations prescribed by the Secretary. The costs of implementing measures under this section shall be cost-shared in the same proportion as the cost-sharing provisions applicable to the project causing the shore damage. No such project shall be initiated without specific authorization by Congress if the Federal first cost exceeds $2,000,000.".

SEC. 941. AQUATIC PLANT CONTROL.

Section 104(b) of the River and Harbor Act of 1958 (33 U.S.C. 610(b)) is amended by striking out "$10,000,000" and inserting in lieu thereof "$12,000,000".

SEC. 942. TECHNICAL ASSISTANCE.

(a) Upon request of the Governor of a State, or the appropriate official of local government, the Secretary is authorized to provide designs, plans, and specifications, and such other technical assistance as he deems advisable to such State or local government for its use in carrying out—

(1) projects for removing accumulated snags and other debris, and clearing and straightening channels in navigable streams and tributaries thereof; and

(2) projects for renovating navigable streams and tributaries thereof by means of predominantly nonstructural methods judged by the Secretary to be cost effective, for the purpose of improved drainage, water quality, and habitat diversity.

(b) The non-Federal share of the cost of any designs, plans, specifications or technical assistance provided under subsection (a) shall be 50 percent.

SEC. 943. HISTORICAL PROPERTIES.

The Secretary is authorized to preserve, restore, and maintain those historic properties located on water resource development project lands under the jurisdiction of the Department of the Army if such properties have been entered into the National Register of Historic Places.

SEC. 944. FLOOD HAZARD INFORMATION.

The Secretary, the Director of the Federal Emergency Management Agency, and the Administrator of the Soil Conservation Service shall take necessary actions, including the posting and distribution of information and the preparation and distribution of educational materials and programs, to ensure that information relating to flood

hazard areas is generally available to the public.

SEC. 945. DREDGE VESSEL DISPOSAL.

Notwithstanding any other provision of law, the Administrator of the General Services Administration, pursuant to the provisions of sections 202 and 203(j) of the Federal Property and Administrative Services Act of 1949, may dispose of any Corps of Engineers vessel used for dredging that is declared to be in excess of Federal needs by the Secretary, together with related equipment owned by the United States and under the control of the Chief of Engineers, through sale or lease to a foreign government as part of a Corps of Engineers technical assistance program, or to a Federal or State maritime academy for training purposes, or to a non-Federal public body for scientific, educational, or cultural purposes, or through sale solely for scrap to foreign or domestic interests. Any such vessel shall not be disposed of under this section or any other provision of law for use within the United States for the purpose of engaging in dredging activities. Amounts collected from the sale or lease of any such vessel or equipment shall be deposited into the revolving fund authorized by section 101 of the Civil Functions Appropriations Act, 1954 (67 Stat. 199; 33 U.S.C. 576), to be available, as provided in appropriations Acts, for the operation and maintenance of vessels under the control of the Corps of Engineers.

SEC. 946. LIGHTING AT DOCKS AND BOAT LAUNCHING FACILITIES.

Whenever the Secretary considers a permit application for a dock or a boat launching facility under section 10 of the Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. 403), the Secretary shall consider the needs of such facility for lighting from sunset to sunrise to make such facility's presence known within a reasonable distance.

SEC. 947. PRIORITY OF COAL LOADING VESSELS.

Section 5 of Public Law 96-387 (46 U.S.C. App. 1121-1) is amended by striking "until June 30, 1987,".

SEC. 948. BUDGET ACT REQUIREMENTS.

Any spending authority under this Act shall be effective only to such extent and in such amounts as are provided in appropriation Acts. For purposes of this Act, the term "spending authority" has the meaning provided in section 401(c)(2) of the Congressional Budget Act of 1974, except that such term does not include spending authority for which an exception is made under section 401(d) of such Act.

SEC. 949. SEPARABILITY.

If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

SEC. 950. USE OF FMHA FUNDS.

Notwithstanding any other provision of law, Federal assistance made available by the Farmers Home Administration may be used to pay the non-Federal share of any other Federal grant-in-aid program for any project for water resources, including water pollution control.

SEC. 951. REPORTS.

If any report required to be transmitted under this Act to the Committee on Public Works and Transportation of the House of Representatives or the Committee on Environment and Public Works of the Senate pertains in whole or in part to fish and wildlife mitigation, benthic environmental repercussions, or ecosystem mitigation, the Federal officer required to prepare or transmit that report also shall transmit a copy of the report to the Committee on Merchant Marine and Fisheries of the House of Representatives.

TITLE X—PROJECT DEAUTHORIZATIONS

SEC. 1001. (a) Any project authorized for construction by this Act shall not be authorized after the last day of the 5-year period beginning on the date of enactment of this Act unless during such period funds have been obligated for construction, including planning and designing, of such project.

(b)(1) Not later than one year after the date of enactment of this Act, the Secretary shall transmit to Congress a list of unconstructed projects, or unconstructed separable elements of projects, which have been authorized, but have received no obligations during the 10 full fiscal years preceding the transmittal of such list. A project or separable element included in such list is not authorized after December 31, 1989, if funds have not been obligated for construction of such project or element after the date of enactment of this Act and before December 31, 1989.

(2) Every two years after the transmittal of the list under paragraph (1), the Secretary shall transmit to Congress a list of projects or separable elements of projects which have been authorized, but have received no obligations during the 10 full fiscal years preceding the transmittal of such list. A project or separable element included in such list is not authorized after the date which is 30 months after the date the list is so transmitted if funds have not been obligated for construction of such project or element during such 30-month period.

(c) The Secretary shall publish in the Federal Register a list of any projects or separable elements that are deauthorized under this section.

SEC. 1002. The following projects, with a total estimated authorized cost of $11.1 billion, are not authorized after the date of enactment of this Act, except with respect to any portion of such a project which portion has been completed before such date or is under construction on such date:

ALABAMA

The project for flood control, Alabama River, Montgomery, Alabama, authorized by the Flood Control Act of 1958.

The project for hydroelectric power, Alabama-Coosa River Basin, Big Wills Creek Lake, Alabama, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The project for hydroelectric power, Alabama-Coosa River Basin, Crooked Creek Lake, Alabama, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The project for hydroelectric power, Alabama-Coosa River Basin, Hatchet Creek Lake, Alabama, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The project for hydroelectric power, Alabama-Coosa River Basin, Little River Lake, Alabama, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The project for hydroelectric power, Alabama-Coosa River Basin, Mill Creek Lake, Alabama, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The project for hydroelectric power, Alabama-Coosa River Basin, Terrapin Creek Lake, Alabama, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The project for hydroelectric power, Alabama-Coosa River Basin, Waxahatchee Creek Lake, Alabama, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The project for hydroelectric power, Alabama-Coosa River Basin, Weogufka Creek Lake, Alabama, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The project for hydroelectric power, Alabama-Coosa River Basin, Yellowleaf Creek, Alabama, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The project for hydroelectric power, Alabama-Coosa River Basin, Big Canoe Creek Lake, Alabama, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

ALASKA

The project for navigation, Myers Chuck Harbor, Alaska, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The jetty extension feature of the project for navigation, Nome Harbor, Alaska, authorized by the River and Harbor Act of August 30, 1935, Public Law 409, Seventy-fourth Congress.

The project for navigation, Skagway River, Alaska, authorized by the River and Harbor Act of June 20, 1938, Public Law 685, Seventy-fifth Congress, and section 10 of the Flood Control Act of 1946, except the 6,700-foot training dike and the 1,800-foot breakwater.

ARKANSAS

The project for flood control, Crooked Creek Lake Levee, Arkansas, authorized by the Flood Control Act of 1968.

The Gillette New Levee feature of the project for flood control, Lower Arkansas River, North Bank, Arkansas, authorized by the Flood Control Act of May 15, 1928, Public Law 391, Seventieth Congress; the Flood Control Act of June 22, 1936, Public Law 738, Seventy-fourth Congress; and the Flood Control Act of 1946.

The project for flood control, Murfreesboro Reservoir, Pike County, Arkansas, authorized by the Flood Control Act of 1950.

CALIFORNIA

The project for flood control, Alhambra Creek, California, authorized by the Flood Control Act of 1968.

The Aliso Creek Dam feature of the project for the Santa Ana River Basin, Orange County, California, authorized by the Flood Control Act of June 22, 1936, Public Law 738, Seventy-fourth Congress.

The project for flood control, Bear River, California, authorized by section 201 of the Flood Control Act of 1965 and approved by resolution of the Committee on Public Works and Transportation of the House of Representatives, dated September 23, 1976, and resolution of the Committee on Environment and Public Works of the Senate, dated October 1, 1976.

The project for flood control, Butler Valley Dam, Mad River, California, authorized by the Flood Control Act of 1968.

The project for flood control, Eel River, California, authorized by the Flood Control Act of 1965, except for the completed levees on the right bank of the Eel River in the Sandy Prairie area.

The Sierra Madre Wash feature of the project for flood control, Los Angeles County Drain Area, California, authorized by the Flood Control Act of August 18, 1941, Public Law 228, Seventy-seventh Congress.

The barrier groin and sandtrap feature of the project for navigation, Monterey Harbor, California, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The features of the project for navigation, Napa River, California, authorized by the River and Harbor Act of July 24, 1946, Public Law 525, Seventy-ninth Congress, which features consist of construction of dikes and revetments.

That portion of the project for navigation, Old River, San Joaquin County, California, authorized by the River and Harbor Act of August 26, 1937, Public Law 392, Seventy-fifth Congress, consisting of a side channel at Orwood and completion of the project channels from the mouth of Old River to Lammers Ferry road and from Crocker Cut to the Holly Sugar Factory.

The San Juan Dam feature of the project for the Santa Ana River Basin, Orange County, California, authorized by the Flood Control Act of June 22, 1936, Public Law 738, Seventy-fourth Congress.

The Trabuco Dam feature of the project for the Santa Ana River Basin, Orange County, California, authorized by the Flood Control Act of June 22, 1936, Public Law 738, Seventy-fourth Congress.

The project for flood control, University Wash and Spring Brook, California, authorized by section 201 of the Flood Control Act of 1965 and approved by resolution of the Committee on Public Works of the House of Representatives, dated December 15, 1970, and resolution of the Committee on Public Works of the Senate, dated June 22, 1971.

The shallow-draft channel, Colusa to Red Bluff, feature of the project for navigation, Sacramento River, California, authorized by the River and Harbor Act of August 30, 1935, Public Law 409, Seventy-fourth Congress.

Those features of the project for navigation, San Joaquin River, Stockton Deepwater Ship Channel, California, authorized by the River and Harbor Act of 1950, which features consist of construction of a new turning basin near Rough and Ready Island; enlargement of Upper Stockton Channel; construction of a 30-foot depth Burns Cut-off Channel around Rough and Ready Island, including construction of a combination rail and highway bridge; and construction of a new settling basin on San Joaquin River upstream from its confluence with Stockton Channel.

COLORADO

The project for flood control, Boulder, Colorado, authorized by the Flood Control Act of 1950.

The project for flood control, Castlewood Lake, Douglas County, Colorado, authorized by the Flood Control Act of August 18, 1941, Public Law 228, Seventy-seventh Congress.

CONNECTICUT

The features of the project for navigation, Bridgeport Harbor-Black Rock Harbor, Connecticut, authorized by the River and Harbor Act of 1958, which features provide for construction of two rubble-mound breakwaters at the entrance to Black Rock Harbor and dredging a 28-acre anchorage 6 feet deep in Burr and Cedar Creeks at the head of Black Rock Harbor.

The project for navigation, Connecticut River below Hartford, Connecticut, authorized by the River and Harbor Act of 1950.

The feature of the project for navigation, Mystic River, New London County Channel, Connecticut, authorized by the River and Harbor Act of March 4, 1913, Public Law 429, Sixty-second Congress, which provides for the widening of the channel extending 4,700 feet from the United States Route 1 drawbridge to the Mystic Seaport site from its constructed width of 80 to 90 feet to a width of 100 feet.

The Walnut Beach and impermeable groins features of the project for beach erosion control, Silver Beach to Cedar Beach, Connecticut, authorized by the River and Harbor Act of 1954.

The six-foot anchorage at northeast end of Stonington Harbor feature of the project for navigation, Stonington Harbor, New London County, Connecticut, authorized by the River and Harbor Act of 1950.

The feature of the project for navigation, Thames River, New London County, Connecticut, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress, which provides for an increased channel width in the bend at Long Reach Upper Light (river mile 6.8).

The uncompleted portions of the project for navigation, New Haven Harbor, Connecticut, authorized by the River and Harbor Act of 1946, which portions consist of deepening the lower end of the Quinnipiac River Channel to 22 feet up to a point 1,000 feet above Ferry Street.

The project for navigation, New Haven Harbor, Connecticut, authorized by the River and Harbor Act of June 25, 1910, Public Law 264, Sixty-first Congress.

The uncompleted portions of the project for navigation, Milford Harbor, Connecticut, authorized by the River and Harbor Act of June 13, 1902, and the River and Harbor Act of August 26, 1937, Public Law 392, Seventy-fifth Congress, which portions consist of a 5-acre anchorage, 10 feet deep, behind the east jetty at the east side of such jetty.

FLORIDA

The Cross Bank to Key West portion of the project for navigation, Atlantic Intracoastal Waterway, Miami to Key West, Florida, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The project for flood control, Biscayne Bay, Dade County, Florida, (Hurricane Barrier) authorized by the Act of June 15, 1955, Public Law 71, Eighty-fourth Congress.

That portion of the project for navigation, Cedar Keys Harbor, Levy County, Florida, authorized by the River and Harbor Act of July 5, 1884, consisting of the excavation of 1,500 cubic yards from an area known as the "middle ground" within the alignment of the main ship channel.

The Sebastian Channel feature of the project for navigation, Intracoastal Waterway, Jacksonville to Miami, Florida, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

Those portions of the project for navigation, Jacksonville Harbor Mooring Basin, Naval, Florida, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress, which portions consisting of a channel 28 feet deep by 590 feet wide extending from Laura Street to Saint Elmo W., Acosta Bridge; a channel and floodway along the south side of Commodore Point; and an approach and mooring basin at the Naval Reserve Armory near the Main Street bridge.

That portion of the project for navigation, Key West Harbor, Monroe County, Florida, authorized by the River and Harbor Act of September 19, 1890, consisting of two uncompleted jetties at the entrance to the northwest channel.

The uncompleted portions of the project for navigation, Miami Harbor, Miami River, Florida, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress, which portions consist of widening the mouth of the Miami River; providing a channel 8 feet by 20 feet from the mouth of the river to the Intracoastal Waterway, thence 100 feet wide to Government Cut; and providing a channel 12 feet by 100 feet from Miami to a harbor of refuge in Palmer Lake.

The Stuart turning basin feature of the project for navigation, Okeechobee Waterway, Martin County, Florida, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

That portion of the project for navigation, Oklawaha River, Florida, authorized by the River and Harbor Act of March 2, 1907, consisting of a channel 6 feet deep from the mouth of the river to the head of Silver Springs Run.

That portion of the project for navigation, Palm Beach Harbor, Florida, authorized by the River and Harbor Act of June 20, 1938, Public Law 685, Seventy-fifth Congress, consisting of a channel 16 feet deep and 150 feet wide from the Palm Beach Harbor Channel to an anchorage basin 16 feet deep, 750 feet wide, and 2,000 feet long in Lake Worth opposite Tangier Avenue.

The Carrabelle to St. Marks portion of the Gulf Intracoastal Waterway, Apalachicola Bay to Saint Marks River, Florida, authorized by the River and Harbor Act of August 26, 1937, Public Law 392, Seventy-fifth Congress; the Act of July 23, 1942 (Public Law 675, Seventy-seventh Congress); and the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The modification of the project for navigation, Pensacola Harbor, Florida, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

That portion of the project for navigation, Saint Augustine Harbor, Florida, authorized by the River and Harbor Act of 1950, which portion consists of the uncompleted future landward extension of the groin and jetty on the northside of the inlet.

That portion of the project for navigation, Tampa Harbor, Florida, authorized by the Flood Control Act of 1970, which portion consists of the last incremental one-foot depth for underkeel clearance.

That portion of the project for navigation, Tampa Harbor and Hillsborough Bay, Florida, authorized by the Act of August 8, 1917, which portion consists of the turning basin at the junction of Garrison Channel, Seddon Channel, and Hillsborough River.

GEORGIA

The project for hydroelectric power, Alabama-Coosa River Basin, Canton Lake, Georgia, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The project for hydroelectric power, Alabama-Coosa River Basin, Cartecay Lake, Georgia, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The project for hydroelectric power, Alabama-Coosa River Basin, Gilmer Lake, Georgia, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The project for hydroelectric power, Alabama-Coosa River Basin, Kingston Lake, Georgia, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The project for hydroelectric power, Lazer Creek Lake, Georgia, authorized by the Flood Control Act of 1965.

The project for hydroelectric power, Lower Auchumpkee Creek Lake, Georgia, authorized by the Act of December 30, 1963, Public Law 88-253.

The project for hydroelectric power, Spewrell Bluff Lake, Georgia, authorized by the Act of December 30, 1963, Public Law 88-253.

HAWAII

The project for navigation, Ala Wai Harbor, Oahu, Hawaii, authorized by the River and Harbor Act of 1968.

The project for beach erosion control, Hanapepe Bay Seawall, Kauai, Hawaii, authorized by the River and Harbor Act of 1958.

The project for beach erosion control, Waimea Beach Seawall, Kauai, Hawaii, authorized by the River and Harbor Act of 1958.

IDAHO

The project for flood control, South Fork, Clearwater River, Idaho, authorized by Flood Control Act of 1950.

The project for flood control, Teton River, Idaho, authorized by Flood Control Act of 1950.

The project for flood control, Blackfoot Reservoir, Idaho, authorized by Flood Control Act of 1962.

The project for flood control, Boise Valley, Idaho, authorized by Flood Control Act of 1950.

The project for flood control, Cottonwood Creek Dam, Idaho, authorized by Flood Control Act of 1966.

The project for flood control, Heise-Roberts Levee Extension, Idaho, authorized by Flood Control Act of 1950, except for constructed levees along the left bank of the Snake River downstream from the mouth of Henry's Fork.

The project for flood control, Whitebird Creek, Idaho, authorized by Flood Control Act of 1950.

ILLINOIS

The improvements to the beartraps feature of the project for navigation, Dam 43, Ohio River, Illinois, authorized by the River and Harbor Act of March 3, 1909, Public Law 317, Sixtieth Congress.

The project for flood control, Farmers Drainage and Levee District, Illinois, authorized by Flood Control Act of 1962.

The project for flood control, Freeport, Illinois, authorized by the Flood Control Act of June 22, 1936, Public Law 738, Seventy-fourth Congress.

The feature of the Illinois Waterway Navigation project, Illinois, authorized by the River and Harbor Act of August 30, 1935, Public Law 409, Seventy-fourth Congress, which feature consists of straightening a curve in the channel in the vicinity of Pekin, Illinois.

That portion of the project for shore protection, Kenilworth, Illinois, Shore of Lake Michigan, Illinois, authorized by the River and Harbor Act of 1954, which portion consists of protection of the Mahoney Park 200-foot long beach frontage located at the extreme south end of the village limits by constructing a steel sheet piling impermeable groin, about 200 feet long near the south lines of Mahoney Park.

The project for flood control, Levee Unit 1, Wabash River, Gallatin County, Illinois, authorized by the Flood Control Act of June 22, 1936, Public Law 738, Seventy-fourth Congress.

The project for flood control, Levees District Numbered 21, Vandalia, Illinois, authorized by the Flood Control Act of 1958.

The project for flood control, Little Calumet River, Illinois, authorized by the Flood Control Act of 1954.

The project for flood control, Metropolis, Illinois, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

That portion of the project for navigation, Mississippi River between Missouri River and Minneapolis, Minnesota, authorized by the River and Harbor Act of July 3, 1930, Public Law 520, Seventy-first Congress, which portion consists of construction of about 600 feet of guidewall extensions each at locks numbered 4, 5, 5A, 7, 8, 9, and 10.

The project for navigation, Ohio River Open Channel, Louis District, Illinois, authorized by the River and Harbor Act of March 2, 1927.

The project for navigation, Ohio River Open Channel, Ice Pier, Illinois, authorized by the River and Harbor Act of January 21, 1927.

The project for navigation, Ohio River Open Channel, Illinois, authorized by the River and Harbor Act of July 3, 1930.

The project for flood control, Shawneetown, Gallatin County Levee Enlargement, Illinois, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Scott County Drainage and Levee District, Illinois, authorized by the Flood Control Act of 1962.

The project for flood control, South Beloit, Illinois, authorized by the Flood Control Act of 1948.

The project for flood control, William L. Springer Lake, Illinois, authorized by the Flood Control Act of 1962.

The project for navigation, Alton Commercial Harbor, Illinois, authorized by the River and Harbor Act of 1958.

The project for flood control, Keach Drainage and Levee District, Green County, Illinois, authorized by the Flood Control Act of 1962.

The project for flood control, Big Swan Drainage and Levee District, Illinois, authorized by the Flood Control Act of 1962.

The project for flood control, Fort Chartres and Ivy Landing Drainage District Numbered 5, Illinois, authorized by section 201 of the Flood Control Act of 1965 and approved by resolution of the Committee on Public Works of the House of Representatives, dated December 15, 1970, and resolution of the Committee on Public Works of the Senate, dated December 17, 1970.

INDIANA

The project for flood control, Anderson, Madison County, Indiana, Earth Levee, authorized by the Flood Control Act of June 22, 1936, Public Law 738, Seventy-fourth Congress.

The project for navigation, Illinois Waterway, Cal-Sag Channel, Part 2, Indiana, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress, and the River and Harbor Act of July 24, 1946, Public Law 525, Seventy-ninth Congress.

The project for flood control, Levees between Shelby Bridge & Baums Bridge, Indiana, authorized by the Flood Control Act of June 22, 1936, Public Law 738, Seventy-fourth Congress.

The project for flood control, Marion, Indiana, authorized by the Flood Control Act of 1968.

That portion of the project for flood control, Vincennes, Indiana, authorized by the Flood Control Act of 1946, which portion consists of the uncompleted downstream levee to connect with high ground southeast of the city.

IOWA

The project for flood control, Davids Creek Lake, Iowa, authorized by the Flood Control Act of 1968.

The project for navigation, Fort Madison Harbor, Iowa, authorized by the River and Harbor Act of 1968.

The project for navigation, Keokuk Small Boat Harbor, Iowa, authorized by the River and Harbor Act of 1962.

The project for flood control, Missouri Levee System (units L-753, L-747, L-739, L-733, L-729, L-728, L-715, L-700, L-691, L-670, L-651, L-650, L-643, L-637, L-528), Iowa, authorized by the Flood Control Act of August 18, 1941, Public Law 228, Seventy-seventh Congress.

KANSAS

The project for flood control, El Dorado, West Branch, Walnut River, Butler County, Kansas, authorized by the Flood Control Act of 1965.

The project for flood control, Garnett Lake, Pottawatomie Creek, Kansas, authorized by the Flood Control Act of 1954.

The project for flood control, Grove Lake, Kansas, authorized by the Flood Control Act of 1962.

The project for flood control, Indian Lake, Kansas, authorized by the Flood Control Act of 1970.

The project for navigation, Kansas River Navigation, Kansas, authorized by the River and Harbor Act of 1965.

The project for flood control, Missouri River Levee System, Kansas, (units R402 and R395-393) authorized by the Flood Control Act of August 18, 1941, Public Law 228, Seventy-seventh Congress.

The project for flood control, Neodesha Lake, Wilson County, Verdigris River, Kansas, authorized by the Flood Control Act of August 18, 1941, Public Law 228, Seventy-seventh Congress.

The project for flood control, Tomahawk Lake, Blue River, Johnson County, Kansas, authorized by the Flood Control Act of 1970.

The project for flood control, Towanda Lake, Kansas, authorized by the Flood Control Act of 1965.

The modification to the project for flood control, Tuttle Creek Lake, Kansas, authorized by section 18 of the Water Resources Development Act of 1974, which modification consists of relocation of a portion of FAS 1208.

The project for flood control, Wolf-Coffee Lake, Kansas, authorized by the Flood Control Act of 1970.

The project for flood control, Cedar Point Lake, Kansas, authorized by the Flood Control Act of 1950.

The project for flood control, Cow Creek-Hutchison, Kansas, authorized by the Flood Control Act of 1962.

The project for flood control, Missouri River Levee System Levee R414, Kansas, authorized by the Flood Control Act of August 18, 1941, Public Law 228, Seventy-seventh Congress.

KENTUCKY

The project for flood control, Caseyville, Union County, Kentucky, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Cloverport, Kentucky, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Concordia, Meade County, Kentucky, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The section A-A portion of the floodwall of the project for flood control, Louisville, Kentucky, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Middlesboro, Yellow Creek, Bell County, Kentucky, authorized by the Flood Control Act of December 22, 1944, Public Law 534, Seventy-eighth Congress.

The project for flood control, Tolu, Crittenden County, Kentucky, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

LOUISIANA

The project for flood control, Black Bayou, Reservoir, Caddo Parish, Louisiana, authorized by the Flood Control Act of June 22, 1936, Public Law 738, Seventy-fourth Congress.

The project for navigation, Overton-Red River Waterway above Mile 31, Louisiana, authorized by the River and Harbor Act of July 24, 1946, Public Law 526, Seventy-ninth Congress.

A portion of the project for navigation, Bayou La Fourche, Louisiana, authorized by the River and Harbor Act of August 30, 1935, Public Law 409, Seventy-fourth Congress, which portion consists of a 6-foot deep by 60-foot wide channel, 22 miles in length from Thibodaux to Lockport, Louisiana.

MAINE

That portion of the project for navigation, Bar Harbor, Maine, authorized by the River and Harbor Act of August 11, 1888, and the River and Harbor Act of September 19, 1890, which portion consists of completing the breakwater to its fully authorized cross section.

The Dickey-Lincoln School project, Saint John River, Maine, authorized by section 204 of the Flood Control Act of 1965.

That portion of the project for navigation, Kennebec River, Maine, authorized by the River and Harbor Act of June 13, 1902, which portion consists of the 27-foot channel above the bridge at Bath, Maine.

That portion of the project for navigation, Rockland Harbor, Maine, authorized by the Act of June 29, 1956, Public Law 630, Eighty-fourth Congress, which portion consists of an 18-foot access channel, 100 feet wide and 900 feet long to the shipyard along southern waterfront, and uncompleted portions of the outer limits of three branch channels along the central waterfront.

MARYLAND

The feature of the project for navigation, Baltimore Harbor and channels, Maryland, authorized by the River and Harbor Acts of August 8, 1917, January 21, 1927, July 3, 1930, October 17, 1940, March 2, 1945, July 3, 1958, and December 31, 1970, which feature consists of a navigation channel 150 feet wide to Ferry Bar and thence 27 feet deep and 150 feet wide to the Hanover Street Bridge.

MASSACHUSETTS

The project for navigation, Edgartown Harbor, Massachusetts, authorized by section 201 of the Flood Control Act of 1965 and approved by resolution adopted by the Committee on Public Works of the House of Representatives on December 15, 1970, and by the Committee on Public Works of the Senate on December 19, 1970.

The feature of the project for navigation, Fall River Harbor Channel, Massachusetts, authorized by the Act of July 3, 1930, Public Law 520, Seventy-first Congress, which feature consists of rock removal to a depth of 30 feet at the lower end of Hog Island Shoal at the north side of the entrance to Mount Hope Bay.

The project for navigation, Ipswich River, Massachusetts, authorized by the Flood Control Act of 1968.

The feature of the project for navigation, Nantucket Harbor of Refuge Anchorage, Massachusetts, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress, which feature consists of 15-foot deep anchorage, 2,800 feet long by 300 to 1,100 feet wide near the west side of the inner harbor, and a 15-foot deep fairway 200 feet wide between the anchorage and the main waterfront.

The project for navigation, New Bedford and Fairhaven Harbor, Bristol County, Massachusetts, authorized by the River and Harbor Act of July 25, 1912, Public Law 241, Sixty-second Congress.

The feature of the project for navigation, Newburyport Harbor, Essex County, Massachusetts, authorized by the Act of March 2, 1945, Public Law 14, Seventy-ninth Congress, which feature consists of deepening the entrance channel from 12 to 15 feet and deepening the turning basin along the Newburyport waterfront from 9 to 12 feet.

The Nookagee Lake feature of the project for flood control, North Nashua River, Massachusetts, authorized by the Flood Control Act of 1968, which feature consists of a multiple-purpose earthfill dam and reservoir on the North Nashua River in Westminster, Massachusetts.

The project for navigation, Pleasant Bay, Massachusetts, authorized by the Flood Control Act of 1970.

The feature of the project for navigation, Salem Harbor, Essex County, Massachusetts, authorized by the Act of March 2, 1945, Public Law 14, Seventy-ninth Congress, which feature consists of deepening to 10 feet a channel from deep water in the central part of Salem Harbor to Pickering Wharf near the South River.

The uncompleted groin feature of the project for beach erosion control, Winthrop Beach, Massachusetts, authorized by the River and Harbor Act of 1950.

The feature of the project for navigation, Lynn Harbor, Massachusetts, authorized by the River and Harbor Act of 1954, which feature consists of enlarging the turning basin to include the easterly 300 feet of the municipal channel.

The feature of the project for navigation, Lynn Harbor, Massachusetts, authorized by the River and Harbor Act of August 30, 1935, Public Law 409, Seventy-fourth Congress, which feature consists of deepening from 22 to 25 feet a 2.7-mile channel from Bass Point to and including a turning basin at the head of Lynn Harbor.

The project for flood control, Monoosnoc Brook, Massachusetts, authorized by the River and Harbor Act of 1966.

The project for flood control, Monoosnoc Lake, Worcester County, Massachusetts, authorized by the River and Harbor Act of November 7, 1966.

The feature of the project for beach erosion control, Cape Cod Canal to Provincetown, Massachusetts (Town Neck Beach), authorized by the River and Harbor Act of 1960 which feature consists of widening approximately 6,500 feet of beach east of the eastern entrance to Cape Cod Canal to 125 feet and raising the inshore end of the existing east jetty at the east entrance to such Canal.

MICHIGAN

The project for navigation, Forestville Harbor, Michigan, authorized by the River and Harbor Act of 1968.

The project for navigation, Middle Channel, Saint Clair River, Michigan, authorized by the River and Harbor Act of July 24, 1946, Public Law 525, Seventy-ninth Congress.

The project for flood control, Red Run Drain, Lower Clinton River, Michigan, authorized by the Flood Control Act of 1970.

The uncompleted portion of the project for navigation, Grand Marais Harbor, Michigan, authorized by the River and Harbor Act of June 14, 1880, which portion consists of widening the inner portion of the channel from 250 to 300 feet.

The uncompleted portion of the project for navigation, Keweenaw Waterway, Houghton County, Michigan, authorized by the River and Harbor Act of August 30, 1935, Public Law 409, Seventy-third Congress, which portion consists of extending the lower entrance breakwater by 2,000 feet, including the necessary alteration or replacement of structures due to channel deepening.

The turning basin feature of the project for navigation, Ontonagon Harbor, Ontonagon County, Michigan, authorized by the River and Harbor Act of 1962.

The Sanilac Flats feature of the project for flood control, Saginaw River, Michigan, authorized by the Flood Control Act of 1958, which feature provides for major drainage improvements on Middle Branch and South Branch, Cross River, and a short reach of East Branch.

The Corunna feature of the project for flood control, Saginaw River, Michigan, authorized by the Flood Control Act of 1958, which feature provides for flood protection by channel improvement, levee construction, and related work including construction of a 1,500 foot levee on the right bank; widening of two constrictive reaches of the Saginaw River at, and downstream of, the mill dam; enlargement of the spillway capacity of the mill dam; and removal of the remains of an abandoned railway bridge at the tile plant.

The Owosso feature of the project for flood control, Saginaw River, Michigan, authorized by the Flood Control Act of 1958, which feature provides flood protection by enlarging the river channel from the Ann Arbor Railroad Bridge to the city sewage treatment plant, removal of a portion of a building which encroaches on the river channel, removal of four dams and underpinning of the Main Street Bridge, and the provision of scour protection of four bridges.

The project for beach erosion control, Berrien County, Michigan (Saint Joseph Shore), authorized by the Flood Control Act of 1958.

The feature of the project for navigation, Alpena Harbor, Michigan, authorized by the River and Harbor Act of 1965, which feature consists of the proposed turning basin and breakwater reconfiguration.

MINNESOTA

The project for flood control, Warroad River and Bull Dog Creek, Minnesota, authorized by the Flood Control Act of 1962.

The feature of the navigation project for the Mississippi River between the Missouri River and Minneapolis, Minnesota, authorized by the River and Harbor Act of July 3, 1930, which feature consists of extension of the upper guidewall about 600 feet in length at lock numbered 3.

MISSISSIPPI

The project for navigation, Biloxi Harbor, Old Fort Bayou, Mississippi, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The project for flood control, Buffalo River, Mississippi, authorized by the Flood Control Act of June 22, 1936, Public Law 738, Seventy-fourth Congress.

The project for navigation, Pascagoula Harbor, Main Channel, Mississippi, authorized by the River and Harbor Act of March 2, 1827.

MISSOURI

The project for recreation, Angler Use Sites, Missouri, authorized by the Flood Control Act of 1966.

The project for flood control, Mississippi River Agricultural Area 12, Missouri, authorized by the Flood Control Act of 1966.

The project for hydroelectric power, Pomme de Terre Lake (Power Project), Missouri, authorized by the Flood Control Act of 1954.

The project for navigation, Sandy Slough Remedial Measures, Missouri, authorized by the River and Harbor Act of 1962.

The project for flood control, Mill Creek Lake, Missouri, authorized by the Flood Control Act of 1970.

NEBRASKA

The project for flood control, Little Nemaha River, Nemaha County, Nebraska, authorized by the Flood Control Act of 1965.

NEVADA

The project for flood control, Gleason Creek Dam, Nevada, authorized by the Flood Control Act of 1960.

The project for flood control, Humboldt River and Tributaries, Nevada, authorized by the Flood Control Act of 1950.

NEW JERSEY

The feature of the project for navigation, Newark Bay, Hackensack and Passaic Rivers, New Jersey, authorized by the River and Harbor Act of 1954 and by the River and Harbor Act of 1966 which feature consists of deepening of portions of the Hackensack River to 32 and 15 feet.

NEW YORK

The project for flood control, Allegany, New York, Unit 2, Five Mile Creek, authorized by the Flood Control Act of July 24, 1946, Public Law 526, Seventy-ninth Congress.

The project for flood control, Allegany, New York, Unit 1, Allegheny River, authorized by the Flood Control Act of July 24, 1946, Public Law 526, Seventy-ninth Congress.

The project for navigation, Hudson River, New York City to Albany (12-foot harbors), New York, authorized by the River and Harbor Act of June 25, 1910, Public Law 264, Sixty-first Congress.

The project for navigation, Hudson River, New York City to Albany (27-foot channel), New York, authorized by the Act of March 3, 1925, Public Law 585, Sixty-eighth Congress.

The project for navigation, Ogdensburg Harbor, New York, authorized by the River and Harbor Act of August 30, 1935, Public Law 409, Seventy-third Congress.

The project for flood control, Red Creek, New York, authorized by the Flood Control Act of 1966.

The uncompleted portion of the project for navigation, Ticonderoga River, Essex County, New York, authorized by the River and Harbor Act of March 3, 1881.

The project for navigation, Cape Vincent Harbor, New York, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The project for hurricane protection, East Rockaway Inlet to Rockaway Inlet, Part 2, New York, authorized by the Flood Control Act of 1965.

The project for flood protection, Hammondsport, Glen Brook (Glen Brook Flume), New York, authorized by the Flood Control Act of August 18, 1941, Public Law 228, Seventy-seventh Congress.

NORTH CAROLINA

The feature of the project for navigation, Atlantic Intracoastal Waterway—Peltier Creek, Carteret County, North Carolina, authorized by the River and Harbor Act of 1954, which feature includes a 12-foot channel. Maintenance of the existing 6-foot deep by 50-foot wide channel shall remain authorized.

The project for navigation, Atlantic Intracoastal Waterway Tidal Lock in Snows Cut, North Carolina, authorized by the River and Harbor Act of January 21, 1927, Public Law 560, Seventieth Congress.

The feature of the project for beach erosion control, Fort Macon State Park, North Carolina, authorized by the River and Harbor Act of 1962 and the Flood Control Act of 1962, which feature includes placing of capstone and remaining portions of beach fill and replenishment thereof.

The feature of the project for navigation, Morehead City Harbor, North Carolina, authorized by the River and Harbor Act of August 26, 1937, Public Law 392, Seventy-fifth Congress.

The project for beach stabilization and hurricane protection, Ocracoke Island, North Carolina, authorized by the Flood Control Act of 1965.

The project for beach stabilization and hurricane protection, Ocracoke Island-Village Shore, North Carolina, authorized by the Flood Control Act of 1965.

The feature of the project for navigation, Ocracoke Inlet Jetty, Hyde County, North Carolina, authorized by the River and Harbor Act of 1960, which feature consists of a single jetty extending from Ocracoke Island to the 20-foot depth in the Atlantic Ocean.

The portion of the project for navigation, Roanoke River, Halifax County, North Carolina, authorized by the River and Harbor Act of June 20, 1938, Public Law 685, Seventy-fifth Congress, which portion consists of constructing a 50-mile-long channel above Palmyra Landing to Weldon, North Carolina, 5 feet deep and 50 feet wide by dredging, snagging, and regulating.

OHIO

The additional beartraps, guardwalls, and extension of guidewalls features of the project for navigation, Ohio River, Ohio, authorized by the Flood Control Act of 1937.

The project for flood control, Burlington, Ohio, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Chesapeake, Ohio, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Empire-Stratton, Ohio, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Martins Ferry, Belmont County, Ohio, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Powhatan Point, Belmont County, Ohio, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Proctorville, Ohio, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, South Point, Ohio, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Salt Creek Lake, Ohio, authorized by the Flood Control Act of 1962.

OREGON

The project for flood control, Columbia Drainage District No. 1, Oregon, authorized by the Flood Control Act of 1950.

The project for flood control, Deer Island Drainage District, Oregon, authorized by the Flood Control Act of 1950.

The project for flood control, Shelton Ditch, Marion County, Oregon, authorized by the Flood Control Act of 1950.

The project for flood control, Umpqua River-Scholfield River, Oregon, authorized by the Flood Control Act of September 22, 1922, Public Law 362, Sixty-seventh Congress, and the Flood Control Act of 1954.

The project for flood control, Cascadia Lake, Oregon, authorized by the Flood Control Act of 1962.

The project for flood control, Gate Creek Lake, Oregon, authorized by the Flood Control Act of 1962.

The project for flood control, Grande Ronde Lake, Oregon, authorized by the Flood Control Act of 1965.

The project for flood control, Grande Ronde Valley, Oregon, authorized by the Flood Control Act of 1950.

The project for flood control, Holley Lake, Oregon, authorized by the Flood Control Act of 1950.

The project for flood control, Pendleton Levees, Riverside Area, Oregon, authorized by the Flood Control Act of 1950.

The uncompleted portions of the project for navigation, Willamette River above Portland and Yamill River, Oregon, authorized by the River and Harbor Act of June 3, 1896, as modified by the River and Harbor Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for navigation, Willamette River at Willamette Falls, Oregon, authorized by the River and Harbor Act of June 25, 1910, Public Law 264, Sixty-first Congress, and the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

PENNSYLVANIA

The project for flood control, Brackenridge, Tarentum, and Natrona, Pennsylvania, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for navigation, Chester River, Delaware County (8-ft. channel), Pennsylvania, authorized by the River and Harbor Act of March 2, 1919, Public Law 323, Sixty-fifth Congress.

The project for flood control, Leetsdale, Allegheny County, Levee and Drainage Facility, Pennsylvania, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Muddy Creek Lake, Pennsylvania, authorized by the Flood Control Act of 1962.

The project for flood control, Neville Island, Pennsylvania, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, New Kensington and Parnassus, Pennsylvania, au-

thorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Rochester, Beaver County, Pennsylvania, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Trexler Dam and Lake, Lehigh County, Pennsylvania, authorized as part of the Delaware River Basin project pursuant to section 203 of the Flood Control Act of 1962.

The project for navigation, Youghiogheny River Canalization, Pennsylvania, authorized by the River and Harbor Act of 1930, Public Law 395, Seventy-first Congress.

The project for flood control, Aquashicola Lake, Pennsylvania, authorized by the Flood Control Act of 1962.

The project for flood control, Maiden Creek Lake Earth Dam, Pennsylvania, authorized by the Flood Control Act of 1962.

PUERTO RICO

The project for navigation, Fajardo Harbor (28 foot Channel and Tidal Basin), Puerto Rico, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The project for navigation, Guayanes Harbor (23 foot channel and anchorage), Puerto Rico, authorized by the River and Harbor Act of August 26, 1937, Public Law 392, Seventy-fifth Congress.

RHODE ISLAND

The features of the project for navigation, Great Salt Pond, Newport County, Rhode Island, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress, which features include a 1,200-foot long north jetty at the entrance to Great Salt Pond and a 12-foot access channel and basin in the inner harbor (Trim Pond).

The features of the project for navigation, Harbor of Refuge, Block Island, Rhode Island, authorized by the River and Harbor Act of July 25, 1912, Public Law 241, Sixty-second Congress, which features include two 15-foot anchorages in the outer harbor.

The portions of the project for navigation, Pawcatuck River, Washington County, Rhode Island, authorized by the River and Harbor Act of June 3, 1896, which portions include widening the middle section of the Little Narraganset Bay channel by an additional 100 feet to 200 feet, widening a 5,000 foot section of the river channel at Avondale by an additional 100 feet to 200 feet, and by deepening a 2,000 foot section of the upper river channel by an additional 3 feet to 10 feet.

The portion of the project for navigation, Providence River and Harbor, Rhode Island, authorized by the River and Harbor Act of 1965, which portion consists of the branch channel along the India Point waterfront, 30 feet deep, 150 feet wide, and about 1,000 feet long.

The project for flood control, Westerly Hurricane Protection, Rhode Island, authorized by the Flood Control Act of 1965.

SOUTH CAROLINA

The project for navigation, Charleston Harbor, Ft. Moultrie Anchorage Area, South Carolina, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The project for navigation, Myrtle Beach, Anchorage Basin, South Carolina, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The project for flood control, Reedy River, Greenville, South Carolina, authorized by section 201 of the Flood Control Act of 1965 and approved by resolution of the Committee on Public Works of the House of Representatives, dated December 1970, and resolution of the Committee on Public Works of the Senate, dated December 1970.

TENNESSEE

The project for navigation, Cumberland River above Nashville, Tennessee, authorized by the River and Harbor Act of August 5, 1886.

The project for navigation, Hiwassee River, Polk and Bradley Counties, Tennessee, authorized by the River and Harbor Act of August 14, 1876.

The project for flood control, Rossview Lake, Tennessee and Kentucky, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for hydroelectric power, Alabama-Coosa River Basin, Jacks River Lake, Tennessee, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

TEXAS

The project for flood control, Alpine, Texas, authorized by section 201 of the Flood Control Act of 1965 and approved by resolution of the Committee on Public Works of the House of Representatives, dated April 11, 1974, and resolution of the Committee on Public Works of the Senate, dated May 31, 1974.

The portion of the project for navigation, Brazos Island Harbor, Texas, authorized by the River and Harbor Act of 1960, which portion consists of the north jetty extension.

The project for navigation, Brazos River, Velasco to Old Washington, Texas, authorized by the River and Harbor Act of June 13, 1902.

The project for navigation, Cedar Bayou (mile 3.0 to mile 11.0), Harris, Texas, authorized by the River and Harbor Act of September 19, 1890, as amended by the River and Harbor Act of July 3, 1930, Public Law 520, Seventy-first Congress.

The feature of the navigation project for the Channel to Port Bolivar, Texas, authorized by the River and Harbor Act of March 2, 1907, Public Law 168, Fifty-ninth Congress, as amended by the River and Harbor Act of June 25, 1910, Public Law 264, Sixty-first Congress, and the River and Harbor Act of March 2, 1919, which feature consists of a turning basin of 750 feet wide by 1,600 feet long and 30 feet deep.

The project for flood control, Duck Creek Channel Improvement, Texas, authorized by the Flood Control Act of 1965.

The portion of the project for navigation, Gulf Intracoastal Waterway Channel to Harlingen, Texas, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress, which portion consists of a channel from mile 25.8 to mile 31.0 on the Arroyo Colorado, upstream of the turning basin between Rio Hondo and Harlingen, Texas.

The feature of the project for navigation, Gulf Intracoastal Waterway-Chocolate Bayou, Texas, authorized by the River and Harbor Act of 1965, which feature consists of channel enlargement to 9 by 100 feet from channel mile 8.2 to channel mile 13.2 and construction of a turning basin 600 feet wide and 9 feet deep at channel mile 13.2 on Chocolate Bayou.

The portion of the project for navigation, Houston Ship Channel, Greens Bayou, Texas, authorized by the River and Harbor Act of 1965, which portion consists of the upper 1.1 mile increment of the project channel on Greens Bayou.

The portion of the project for navigation, Gulf Intracoastal Waterway, Texas, Channel Relocation in Matagorda Bay, authorized by the River and Harbor Act of June 25, 1910, Public Law 264, Sixty-first Congress, as amended by the River and Harbor Act of 1925, Public Law 585, Sixty-eighth Congress, the River and Harbor Act of January 21, 1927, Public Law 560, Sixty-ninth Congress, the River and Harbor Act of July 23, 1942, Public Law 675, Seventy-seventh Congress, and the River and Harbor Act of 1962, which portion consists of the relocation of a segment of the Gulf Intracoastal Waterway in Matagorda Bay between miles 454.3 and 471.3.

The project for flood control, Lake Brownwood, Texas, authorized by the Flood Control Act of 1968.

The project for flood control, Lake Fork Lake-Lake Fork Creek, Texas, authorized by the Flood Control Act of 1970.

The project for flood control, Navasota Lake, Texas, authorized by the Flood Control Act of 1968.

The project for flood control, Peyton Creek, Matagorda County, Texas, authorized by section 201 of the Flood Control Act of 1965 and approved by resolutions of the Committee on Public Works of the House of Representatives and the Committee on Public Works of the Senate, dated October 12, 1972.

The project for flood control, Plainview, Texas, authorized by section 201 of the Flood Control Act of 1965 and approved by resolution of the Committee on Public Works of the House of Representatives, dated December 15, 1970, and the Committee on Public Works of the Senate, dated December 17, 1970.

The project for flood control, Roanoke Lake, Texas, authorized by the River and Harbor Act of 1965.

The portion of the project for navigation, Sabine Neches Waterway Channel to Echo, Texas, authorized by the River and Harbor Act of 1962, which portion consists of the unconstructed channel in the Sabine River between Orange and Echo, Texas.

The project for navigation, Sabine River, Echo to Morgan Bluff, Texas, authorized by the Flood Control Act of 1970.

The Liberty Local Protection feature of the project for flood control, Trinity River and tributaries, Texas, authorized by the Flood Control Act of 1965.

The portion of the project for Gulf Intracoastal Waterway-Channel to Port Mansfield, Texas, authorized by section 4 of Public Law 86-248, which consists of a small craft basin at Port Mansfield, Texas.

UTAH

The project for flood control, Weber River and Tributaries, Morgan County, Utah, authorized by section 206 of the River and Harbor Act of 1968.

VERMONT

The project for flood control, Bennington, Vermont, authorized by the Flood Control Act of June 22, 1936, Public Law 738, Seventy-fourth Congress.

The project for navigation, Otter Creek, Addison County, Vermont, authorized by the River and Harbor Act of June 10, 1872.

The project for flood control, Rutland Otter Creek, Vermont, authorized by the Flood Control Act of June 22, 1936, Public Law 738, Seventy-fourth Congress, as amended by the Flood Control Act of July 31, 1947, Public Law 296, Eightieth Congress.

VIRGINIA

The project for navigation, Thimble Shoal Channel, Virginia, authorized by the River and Harbor Act of 1954 consisting of side channels 32 feet deep and 450 feet wide on both sides of the 1,000-foot channel.

The project for flood control, water quality control, recreation, fish and wildlife enhancement, and hydroelectric power generation, Moore's Ferry Lake, Virginia and North Carolina, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The feature of the project for navigation, Pamunkey River, Hanover and King Counties, Virginia, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress, which feature consists of a channel 5 feet deep and 50 feet wide between Bassett Ferry and Manquin Bridge.

VIRGIN ISLANDS

The uncompleted portion of the project for navigation, Christiansted Harbor-St. Croix, Virgin Islands, authorized by the River and Harbor Act of 1950, which portion consists of an approach channel 25 feet and 300 feet wide from the Caribbean Sea to and including a turning basin 25 feet deep, approximately 600 feet wide, and 900 feet long.

The portion of the project for navigation, St. Thomas Harbor, Virgin Islands, authorized by the River and Harbor Act of August 26, 1937, Public Law 392, Seventy-fifth Congress, which portion consists of construction of an entrance channel 36 feet deep and 600 feet wide, an anchorage area 33 feet deep, a breakwater 700 feet long between Rupert Rock and the mainland, and removal of Scorpion Rock to a depth of 36 feet.

WAKE ISLAND

The project for navigation, Wake Island Harbor, Wake Island, authorized by the River and Harbor Act of August 26, 1937, Public Law 392, Seventy-fifth Congress.

WASHINGTON

The project for flood control, Entiat River, Chelan County, Washington, authorized by the Flood Control Act of 1950.

The project for flood control, Lower Walla Walla River, Washington, authorized by the Flood Control Act of 1950.

The project for flood control, Methow River, Okanogan County, Washington, authorized by the Flood Control Act of 1950.

The uncompleted portion of the project for flood control, Okanogan River, Okanogan, Washington, authorized by the Flood Control Act of 1950.

The unconstructed groin feature of the project for navigation, Quillayute River, Clallam County, Washington, authorized by the Act of July 3, 1930, Public Law 520, Seventy-first Congress.

The feature of the project for navigation, Seattle Harbor, King County, Washington, authorized by the Act of July 3, 1930, Public Law 520, Seventy-first Congress, which feature consists of a settling basin located at the upper end of the existing Duwamish waterway navigation project about 1.4 miles above the 14th Avenue South Bridge.

The project for flood control, Spokane River, Spokane, Washington, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Yakima River at Ellensburg, Washington, authorized by the Flood Control Act of 1950.

The project for flood control, Palouse River, Whitman County, Washington, authorized by the Flood Control Act of 1950.

The project for flood control, Pullman Palouse River, Washington, authorized by the Flood Control Act of 1944.

The project for navigation, Stillaquamish River, Washington, authorized by the Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

WEST VIRGINIA

The project for flood control, Moundsville, Marshall County, Levees, West Virginia, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Panther Creek Lake, West Virginia, authorized by the Flood Control Act of 1965.

The project for flood control, Proctor, Wetzel County, West Virginia, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Ravenswood, West Virginia, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Warwood, Ohio County, Wall and Drainage, West Virginia, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, North Wheeling, Ohio County, West Virginia, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Wheeling, Ohio County, Levees, Walls and Pumping Plant, West Virginia, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Wheeling Island, Ohio County, West Virginia, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Birch Lake, West Virginia, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The project for flood control, Woodlands, Marshall County, West Virginia, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

WISCONSIN

The project for navigation, Hudson Small Boat Harbor, Wisconsin, authorized by the Flood Control Act of 1950.

WYOMING

The project for flood control, Buffalo, Johnson County, Diversion Channel, Wyoming, authorized by the Flood Control Act of 1950.

SEC. 1003. (a) The project for flood control, Lakeport Lake, California, authorized by the Flood Control Act of 1965, is not authorized after the date of enactment of this Act.

(b) Notwithstanding section 203 of the Federal Property and Administrative Services Act of 1949 and any other provision of law, the Secretary shall, during the five-year period beginning on the date of enactment of this Act, make all lands acquired by the United States for the Lakeport Lake project available for purchase by the Lake County Flood and Water Conservation District at the price at which such lands were acquired by the United States. Such District may waive the right to purchase any lands under the preceding sentence at any time during such period.

(c) Any conveyance of land under subsection (b) shall be made on the condition that the Lake County Flood and Water Conservation District retain title to and administer such land for flood control and related purposes. If, at any time after such conveyance, title to such land is not retained or such land is not so administered, all right, title, and interest in such land shall revert to the United States which shall have immediate right of reentry thereon.

SEC. 1004. (a) The Onaga Lake project, Vermillion Creek, Kansas, authorized by the Flood Control Act of 1962 (Public Law 87-874), is not authorized after the date of enactment of this Act.

(b) The Secretary shall expedite the current study under section 216 of the Flood Control Act of 1970 with respect to the addition of water supply storage at Tuttle Creek Lake, Kansas.

SEC. 1005. (a) The portion of the flood control project for the Illinois River and tributaries, Illinois, Wisconsin, and Indiana, authorized by section 203 of the Flood Control Act of 1962 (76 Stat. 1189) which is to be located on the Sangamon River, Illinois, about 1 mile upstream from Decatur, Illinois, and which is known as the William L. Springer Lake project is not authorized after the date of enactment of this Act.

(b) Notwithstanding section 203 of the Federal Property and Administrative Services Act of 1949 and any other provision of law, before any lands acquired by the United States for the William L. Springer Lake project referred to in subsection (a) of this section are sold or otherwise disposed of or used for any purpose other than to carry out such project, such lands shall first be made available for purchase by the city of Decatur, Illinois, at the price at which such lands were acquired by the United States. Such lands shall remain in public ownership for use for public purposes, and if any of such lands are not so owned or used, then such lands shall revest in the United States.

SEC. 1006. (a) The portion described in subsection (b) of the project for navigation, Mianus River, Connecticut, authorized by the River and Harbor Act approved March 2, 1945, is not authorized after the date of the enactment of this Act.

(b) The portion referred to in subsection (a) is the portion located at the northwest corner of the project and described as follows:

Beginning at a point forming the northwesterly corner of the project and designated with the coordinate of North 14297.99; East 13035.00; thence along the following four courses and distances:

(1) South 86 degrees, 22 minutes, 56 seconds East 25.00 feet (coordinate: N14297.99 E13025.00)

(2) South 3 degrees, 37 minutes, 18 seconds West 326.25 feet (coordinates N14296.251 E13049.95)

(3) South 23 degrees, 23 minutes, 64 seconds West 73.89 feet (coordinate: N13970.8 E13029.34

(4) North 3 degrees, 37 minutes, 18 seconds East 395.78 feet (coordinate: N13903.00 E13000.00)

the point and place of beginning.

TITLE XI—MISCELLANEOUS PROGRAMS AND PROJECTS

SEC. 1101. CONTROL OF ICE.

(a) The Secretary shall undertake a program of research for the control of ice, and to assist communities in breaking up ice, which otherwise is likely to cause or aggravate flood damage or severe streambank erosion.

(b) The Secretary is further authorized to provide technical assistance to units of local government to implement local plans to control or break up such ice. As part of such authority, the Secretary shall acquire neces-

sary ice-control or ice-breaking equipment, which shall be loaned to units of local government together with operating assistance, where appropriate.

(c) There is authorized to be appropriated $5,000,000 per fiscal year for each of the fiscal years 1988, 1989, 1990, 1991, and 1992 for purposes of carrying out subsections (a) and (b) of this section, such sums to remain available until expended.

(d) To implement further the purposes of this section, the Secretary, in consultation and cooperation with local officials, is authorized and directed to undertake a demonstration program for the control of ice at Hardwick, Vermont. The work authorized by this subsection shall be designed to minimize the danger of flooding due to ice problems in the vicinity of such community. In the design, construction, and location of ice-control structures for this project, full consideration will be given to the recreational, scenic, and environmental values of the reach of river affected by the project, in order to minimize project impacts on these values. Full opportunity shall be given to interested environmental and recreational organizations to participate in such planning. There is authorized to be appropriated $900,000 for fiscal years beginning after September 30, 1986, for the purposes of carrying out this subsection, such sum to remain available until expended.

(e)(1) The Secretary is directed to complete an experimental program placing screens in the Salmon River in the vicinity of Salmon, Idaho, to trap frazil ice, and thus to eliminate flooding caused by ice dams in the river. Within one year of the enactment of this Act, the Secretary shall report to the Congress on the feasibility of such experiment, including consideration of any adverse environmental or social effects that could result from such experiment. If, in the Secretary's judgment, such experiment is not feasible or acceptable, the Secretary is authorized to consult with local public interests to develop a plan that is workable and practical, and then to submit such plan to Congress.

(2) There is authorized to be appropriated $1,000,000 for fiscal years beginning after September 30, 1986, for purposes of carrying out this subsection, such sum to remain available until expended.

(f)(1) To implement further the purposes of this section, the Secretary shall carry out a project for the control of ice on the Kankakee River in the vicinity of Wilmington, Illinois. The Secretary shall report to Congress not later than one year after the date of enactment of this Act and annually thereafter on the effectiveness of the program under this section with respect to the Kankakee River in the vicinity of Wilmington, Illinois.

(2) There is authorized to be appropriated $3,000,000 for fiscal years beginning after September 30, 1986, for purposes of carrying out this subsection, such sum to remain available until expended.

(g) Cost sharing applicable to flood control projects under section 103 shall apply to projects under this section.

(h) Not later than March 1, 1989, the Secretary shall report to the Congress on activities under this section.

SEC. 1102. GAULEY RIVER WHITEWATER RECREATION.

(a) Whitewater recreation on the Gauley River downstream of the Summersville Lake Project in West Virginia is a project purpose of that project.

(b) During the fall flood control drawdown period for the Summersville Lake Project, the Secretary shall provide releases from the Summersville Dam for whitewater recreation in the 26 mile tailwater segment of the Gauley River commencing at the base of such dam. Such releases shall be at levels (minimum 2,500 cubic feet per second) and at times suitable for whitewater recreation. The releases shall commence on the first weekend after Labor Day of each year. In each year there shall be releases on at least 20 days during the 6-week period beginning on Labor Day. Additional releases may be provided at other times during the fall drawdown at the discretion of the Secretary.

(c) The Secretary may temporarily suspend (for such period as may be necessary) or modify any release required under subsection (b) when necessary for purposes of flood control or any other project purpose, or for reasons of public health and safety. Except in cases of emergency, no suspension or modification of such releases may be made solely for reasons associated with the generation of hydroelectric power at the Summersville Dam.

(d) Nothing in subsection (b) of this section shall be construed to affect the authority of the Secretary regarding releases of water from the Summersville Dam for any project purpose (including the purpose set forth in subsection (a)) at any time other than during the period specified in subsection (b).

SEC. 1103. UPPER MISSISSIPPI RIVER PLAN.

(a)(1) This section may be cited as the "Upper Mississippi River Management Act of 1986".

(2) To ensure the coordinated development and enhancement of the Upper Mississippi River system, it is hereby declared to be the intent of Congress to recognize that system as a nationally significant ecosystem and a nationally significant commercial navigation system. Congress further recognizes that the system provides a diversity of opportunities and experiences. The system shall be administered and regulated in recognition of its several purposes.

(b) For purposes of this section—

(1) the terms "Upper Mississippi River system" and "system" mean those river reaches having commercial navigation channels on the Mississippi River main stem north of Cairo, Illinois; the Minnesota River, Minnesota; Black River, Wisconsin; Saint Croix River, Minnesota and Wisconsin; Illinois River and Waterway, Illinois; and Kaskaskia River, Illinois;

(2) the term "Master Plan" means the comprehensive master plan for the management of the Upper Mississippi River system, dated January 1, 1982, prepared by the Upper Mississippi River Basin Commission and submitted to Congress pursuant to Public Law 95-502;

(3) the term "GREAT I, GREAT II, and GRRM studies" means the studies entitled "GREAT Environmental Action Team—GREAT I—A Study of the Upper Mississippi River", dated September 1980, "GREAT River Environmental Action Team—GREAT II—A Study of the Upper Mississippi River", dated December 1980, and "GREAT River Resource Management Study", dated September 1982; and

(4) the term "Upper Mississippi River Basin Association" means an association of the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, formed for the purposes of cooperative effort and united assistance in the comprehensive planning for the use, protection, growth, and development of the Upper Mississippi River System.

(c)(1) Congress hereby approves the Master Plan as a guide for future water policy on the Upper Mississippi River system. Such approval shall not constitute authorization of any recommendation contained in the Master Plan.

(2) Section 101 of Public Law 95-502 is amended by striking out the last two sentences of subsection (b), striking out subsection (i), striking out the final sentence of subsection (j), and redesignating subsection "(j)" as subsection "(i)".

(d)(1) The consent of the Congress is hereby given to the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, or any two or more of such States, to enter into negotiations for agreements, not in conflict with any law of the United States, for cooperative effort and mutual assistance in the comprehensive planning for the use, protection, growth, and development of the Upper Mississippi River system, and to establish such agencies, joint or otherwise, or designate an existing multi-State entity, as they may deem desirable for making effective such agreements. To the extent required by Article I, section 10 of the Constitution, such agreements shall become final only after ratification by an Act of Congress.

(2) The Secretary is authorized to enter into cooperative agreements with the Upper Mississippi River Basin Association or any other agency established under paragraph (1) of this subsection to promote and facilitate active State government participation in the river system management, development, and protection.

(3) For the purpose of ensuring the coordinated planning and implementation of programs authorized in subsections (e) and (h)(2) of this section, the Secretary shall enter into an interagency agreement with the Secretary of the Interior to provide for the direct participation of, and transfer of funds to, the Fish and Wildlife Service and any other agency or bureau of the Department of the Interior for the planning, design, implementation, and evaluation of such programs.

(4) The Upper Mississippi River Basin Association or any other agency established under paragraph (1) of this subsection is hereby designated by Congress as the caretaker of the master plan. Any changes to the master plan recommended by the Secretary shall be submitted to such association or agency for review. Such association or agency may make such comments with respect to such recommendations and offer other recommended changes to the master plan as such association or agency deems appropriate and shall transmit such comments and other recommended changes to the Secretary. The Secretary shall transmit such recommendations along with the comments and other recommended changes of such association or agency to the Congress for approval within 90 days of the receipt of such comments or recommended changes.

(e)(1) The Secretary, in consultation with the Secretary of the Interior and the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, is authorized to undertake, as identified in the master plan—

(A) a program for the planning, construction, and evaluation of measures for fish and wildlife habitat rehabilitation and enhancement;

(B) implementation of a long-term resource monitoring program; and

(C) implementation of a computerized inventory and analysis system.

(2) Each program referred to in paragraph (1) shall be carried out for ten years. Before the last day of such ten-year period, the Secretary, in consultation with the Secretary of

the Interior and the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, shall conduct an evaluation of such programs and submit a report on the results of such evaluation to Congress. Such evaluation shall determine each such program's effectiveness, strengths, and weaknesses and contain recommendations for the modification and continuance or termination of such program.

(3) For purposes of carrying out paragraph (1)(A) of this subsection, there is authorized to be appropriated to the Secretary not to exceed $8,200,000 for the first fiscal year beginning after the date of enactment of this Act, not to exceed $12,400,000 for the second fiscal year beginning after the date of enactment of this Act, and not to exceed $13,000,000 per fiscal year for each of the succeeding eight fiscal years.

(4) For purposes of carrying out paragraph (1)(B) of this subsection, there is authorized to be appropriated to the Secretary not to exceed $7,680,000 for the first fiscal year beginning after the date of enactment of this Act and not to exceed $5,080,000 per fiscal year for each of the succeeding nine fiscal years.

(5) For purposes of carrying out paragraph (1)(C) of this subsection, there is authorized to be appropriated to the Secretary not to exceed $40,000 for the first fiscal year beginning after the date of enactment of this Act, not to exceed $280,000 for the second fiscal year beginning after the date of enactment of this Act, not to exceed $1,220,000 for the third fiscal year beginning after the date of enactment of this Act, and not to exceed $875,000 per fiscal year for each of the succeeding seven fiscal years.

(6)(A) Notwithstanding the provisions of subsection (a)(2) of this section, the costs of each project carried out pursuant to paragraph (1)(A) of this subsection shall be allocated between the Secretary and the appropriate non-Federal sponsor in accordance with the provisions of section 906 of this Act.

(B) Notwithstanding the provisions of subsection (a)(2) of this section, the cost of implementing the activities authorized by paragraphs (1)(B) and (1)(C) of this subsection shall be allocated in accordance with the provisions of section 906 of this Act, as if such activity was required to mitigate losses to fish and wildlife.

(7) None of the funds appropriated pursuant to any authorization contained in this subsection shall be considered to be chargeable to navigation.

(f)(1) The Secretary, in consultation with any agency established under subsection (d)(1) of this section, is authorized to implement a program of recreational projects for the system substantially in accordance with the recommendations of the GREAT I, GREAT II, and GRRM studies and the master plan reports. In addition, the Secretary, in consultation with any such agency, shall, at Federal expense, conduct an assessment of the economic benefits generated by recreational activities in the system. The cost of each such project shall be allocated between the Secretary and the appropriate non-Federal sponsor in accordance with title I of this Act.

(2)(A) For purposes of carrying out the program of recreational projects authorized in paragraph (1) of this subsection, there is authorized to be appropriated to the Secretary not to exceed $500,000 per fiscal year for each of the first ten fiscal years beginning after the effective date of this section.

(B) For purposes of carrying out the assessment of the economic benefits of recreational activities as authorized in paragraph (1) of this subsection, there is authorized to be appropriated to the Secretary not to exceed $300,000 per fiscal year for the first and second fiscal years beginning after the computerized inventory and analysis system implemented pursuant to subsection (e)(1)(C) of this section is fully functional and $150,000 for the third such fiscal year.

(g) The Secretary shall, in his budget request, identify those measures developed by the Secretary, in consultation with the Secretary of Transportation and any agency established under subsection (d)(1) of this section, to be undertaken to increase the capacity of specific locks throughout the system by employing nonstructural measures and making minor structural improvements.

(h)(1) The Secretary, in consultation with any agency established under subsection (d)(1) of this section, shall monitor traffic movements on the system for the purpose of verifying lock capacity, updating traffic projections, and refining the economic evaluation so as to verify the need for future capacity expansion of the system.

(2) The Secretary, in consultation with the Secretary of the Interior and the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin, shall determine the need for river rehabilitation and environmental enhancement and protection based on the condition of the environment, project developments, and projected environmental impacts from implementing any proposals resulting from recommendations made under subsection (g) and paragraph (1) of this subsection.

(3) There is authorized to be appropriated to the Secretary such sums as may be necessary to carry out this subsection.

(i)(1) The Secretary shall, as he determines feasible, dispose of dredged material from the system pursuant to the recommendations of the GREAT I, GREAT II, and GRRM studies.

(2) The Secretary shall establish and request appropriate Federal funding for a program to facilitate productive uses of dredged material. The Secretary shall work with the States which have, within their boundaries, any part of the system to identify potential users of dredged material.

(j) The Secretary is authorized to provide for the engineering, design, and construction of a second lock at locks and dam 26, Mississippi River, Alton, Illinois and Missouri, at a total cost of $220,000,000, with a first Federal cost of $220,000,000. Such second lock shall be one hundred and ten feet by six hundred feet and shall be constructed at or in the vicinity of the location of the replacement lock authorized by section 102 of Public Law 95-502. Section 102 of this Act shall apply to the project authorized by this subsection.

SEC. 1104. ILLINOIS AND MISSISSIPPI CANAL.

Section 110(f) of the River and Harbor Act of 1958 (72 Stat. 303) is amended by striking out "$6,528,000" and inserting in lieu thereof "$15,000,000".

SEC. 1105. NEW YORK STATE BARGE CANAL.

(a) The Secretary is authorized to reimburse the State of New York for 50 percent of the cost of operating, maintaining, and rehabilitating the New York State Barge Canal. Control and operation of such canal shall continue to reside with the State of New York. The Federal contribution to the costs of rehabilitating the New York State Barge Canal shall be limited in any fiscal year to $5,000,000, or 50 percent of the expenditures in that fiscal year, whichever is the lesser.

(b) For the purposes of this section, the New York State Barge Canal is defined to be—

(1) the Erie Canal, which connects the Hudson River at Waterford with the Niagara River at Tonawanda;

(2) the Oswego Canal, which connects the Erie Canal at Three Rivers with Lake Ontario at Oswego;

(3) the Champlain Canal, which connects the easterly end of the Erie Canal at Waterford with Lake Champlain at Whitehall; and

(4) the Cayuga and Seneca Canals, which connect the Erie Canal at a point near Montezuma with Cayuga and Seneca Lakes and through Cayuga Lake and Ithaca and through Seneca Lake with Montour Falls.

SEC. 1106. CALIFORNIA DEBRIS COMMISSION.

(a) The California Debris Commission established by the first section of the Act of March 1, 1893 (33 U.S.C. 661) is hereby abolished.

(b) All authorities, powers, functions, and duties of the California Debris Commission are hereby transferred to the Secretary.

(c) The assets, liabilities, contracts, property, records, and the unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used arising from, available to, or to be made available in connection with the authorities, powers, functions, and duties transferred by this section, subject to section 202 of the Budget and Accounting Procedure Act of 1950, are hereby transferred to the Secretary for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(d) All acquired lands, and other interests therein presently under the jurisdiction of the California Debris Commission are hereby authorized to be retained, and shall be administered under the direction of the Secretary, who is hereby authorized to take such actions as are necessary to consolidate and perfect title; to exchange for other lands or interests therein which may be required for recreation or for existing or proposed projects of the United States; to transfer to other Federal agencies or dispose of as surplus property; and to release to the coextensive fee owners any easements no longer required by the United States, under such conditions or for such consideration as the Secretary shall determine to be fair and reasonable. Except as specifically provided herein all transactions will be in accordance with existing laws and procedures.

SEC. 1107. RED RIVER CHLORIDE CONTROL.

(a) The first sentence of the paragraph under the center heading "ARKANSAS AND RED RIVERS" in section 203 of the Flood Control Act of 1966 is amended by striking out "$46,400,000" and inserting in lieu thereof "$177,600,000".

(b) Section 201 of the Flood Control Act of 1970, as amended by section 153 of the Water Resources Development Act of 1976, is amended by striking out the last sentence under the heading "ARKANSAS-RED RIVER BASIN" and inserting in lieu thereof the following: "Construction shall not be initiated on any element of such project involving the Arkansas River Basin until such element has been approved by the Secretary of the Army. The chloride control projects for the Red River Basin and the Arkansas River Basin shall be considered to be authorized as separate projects with separate authority under section 203 of the Flood Control Act of 1966.

(c) Construction of remaining elements of the project involving the Red River Basin shall be initiated in accordance with the recommendations regarding general design memorandum numbered 25 by the director of civil works on behalf of the Chief of Engineers, dated August 8, 1977. Such construction shall commence upon transmittal of a report to the Secretary and to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives of a favorable finding of the effectiveness of the operation of area VIII, to be made by a panel consisting of representatives of the United States Geological Survey and the Texas Water Commission, a person selected by the National Academy of Sciences, and two other qualified persons to be appointed by the Secretary with the concurrence of the governors of Texas and Oklahoma. The panel shall assess the improvement in water quality downstream of area VIII to determine its consistency with the water quality assumed in the development of project benefits in the economic reanalysis of the project completed in November 1980. Such report shall be submitted to the Secretary and to such committees no later than three years after the date area VIII commences operation. Cost sharing for construction on the Red River Basin project initiated under this section shall be the same as the cost sharing for area VIII of the project.

SEC. 1108. ST. JOHN'S RIVER BASIN, MAINE.

(a) The Secretary is authorized to implement a program of research in order to demonstrate the cropland irrigation and conservation techniques described in the report issued by the New England division engineer, dated May 1980, for the Saint John River Basin, Maine. The non-Federal share of the cost of such program shall be 35 percent.

(b) For the purposes of this section, there is authorized to be appropriated $1,825,000 for fiscal year 1988, $820,000 for fiscal year 1989, and $785,000 for fiscal year 1990, such sums to remain available until expended.

SEC. 1109. PROHIBITION ON GREAT LAKES DIVERSIONS.

(a) The Congress finds and declares that—

(1) the Great Lakes are a most important natural resource to the eight Great Lakes States and two Canadian provinces, providing water supply for domestic and industrial use, clean energy through hydropower production, an efficient transportation mode for moving products into and out of the Great Lakes region, and recreational uses for millions of United States and Canadian citizens;

(2) the Great Lakes need to be carefully managed and protected to meet current and future needs within the Great Lakes basin and Canadian provinces;

(3) any new diversions of Great Lakes water for use outside of the Great Lakes basin will have significant economic and environmental impacts, adversely affecting the use of this resource by the Great Lakes States and Canadian provinces; and

(4) four of the Great Lakes are international waters and are defined as boundary waters in the Boundary Waters Treaty of 1909 between the United States and Canada, and as such any new diversion of Great Lakes water in the United States would affect the relations of the Government of the United States with the Government of Canada.

(b) It is therefore declared to be the purpose and policy of the Congress in this section—

(1) to take immediate action to protect the limited quantity of water available from the Great Lakes system for use by the Great Lakes States and in accordance with the Boundary Waters Treaty of 1909;

(2) to prohibit any diversion of Great Lakes water by any State, Federal agency, or private entity for use outside the Great Lakes basin unless such diversion is approved by the Governor of each of the Great Lakes States; and

(3) to prohibit any Federal agency from undertaking any studies that would involve the transfer of Great Lakes water for any purpose for use outside the Great Lakes basin.

(c) As used in this section, the term "Great Lakes State" means each of the States of Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York, and Wisconsin.

(d) No water shall be diverted from any portion of the Great Lakes within the United States, or from any tributary within the United States of any of the Great Lakes, for use outside the Great Lakes basin unless such diversion is approved by the Governor of each of the Great Lake States.

(e) No Federal agency may undertake any study, or expend any Federal funds to contract for any study, of the feasibility of diverting water from any portion of the Great Lakes within the United States, or from any tributary within the United States of any of the Great Lakes, for use outside the Great Lakes basin, unless such study or expenditure is approved by the Governor of each of the Great Lakes States. The prohibition of the preceding sentence shall not apply to any study or data collection effort performed by the Corps of Engineers or other Federal agency under the direction of the International Joint Commission in accordance with the Boundary Waters Treaty of 1909.

(f) This section shall not apply to any diversion of water from any of the Great Lakes which is authorized on the date of the enactment of this Act.

SEC. 1110. BIG SOUTH FORK NATIONAL RIVER AND RECREATION AREA.

Section 108(k) of the Water Resources Development Act of 1974 is amended by striking out "$103,522,000" and inserting in lieu thereof "$156,122,000".

SEC. 1111. DALECARLIA RESERVOIR.

(a) The Secretary, on the recommendation of the Chief of Engineers, is authorized to permit the delivery of water from the District of Columbia water system at the Dalecarlia filtration plant, or at other points on the system, to any competent State or local authority in the Washington, District of Columbia, metropolitan area in Maryland. All of the expense of installing the connection or connections and appurtenances between the water supply systems and any subsequent changes therein shall be paid by the requesting entity, which shall also pay such charges for the use of the water as the Secretary may, from time to time in advance of delivery, determine to be reasonable. Payments shall be made at such time, and pursuant to such regulations, as the Secretary prescribes. The Secretary may revoke any permit for the use of water at any time.

(b) The Secretary is authorized to purchase water from any State or local authority in Maryland or Virginia that has, at the time of purchase, completed a connection with the District of Columbia water system. The Secretary is authorized to pay such charges for the use of the water as the Secretary has agreed upon in advance of delivery.

SEC. 1112. ABIQUIU DAM.

Subject to section 903(a) of this Act, the Secretary is authorized to construct a set of emergency gates in the conduit of the Abiquiu Dam, New Mexico, to increase safety and enhance flood and sediment control, at a total cost of $2,700,000. The non-Federal share of the project shall be 25 percent of those costs of the project attributable to an increase in flood protection as a result of the installation of such gates.

SEC. 1113. ACEQUIAS IRRIGATION SYSTEM.

(a)(1) The Congress finds that the irrigation ditch systems in New Mexico, known as the Acequia systems, date from the eighteenth century, and that these early engineering works have significance in the settlement and development of the western portion of the United States.

(2) The Congress, therefore, declares that the restoration and preservation of the Acequia systems has cultural and historic values to the region.

(b) Subject to section 903(a) of this Act, the Secretary is authorized and directed to undertake, without regard to economic analysis, such measures as are necessary to protect and restore the river diversion structures and associated canals attendant to the operations of the community ditch and Acequia systems in New Mexico that are declared to be a political subdivision of the State of New Mexico, at a total cost of $53,300,000, with an estimated first Federal cost of $40,000,000 and an estimated first non-Federal cost of $13,300,000. The non-Federal share of any work undertaken under this section shall be 25 percent.

(c) The Secretary is further authorized and directed to consider the historic Acequia systems (community ditches) of the southwestern United States as public entities, if these systems are chartered by the respective State laws as political subdivisions of that State. This public entity status will allow the officials of these Acequia systems to enter into agreements and serve as local sponsors of water-related projects of the Secretary.

SEC. 1114. CROSS FLORIDA BARGE CANAL.

(a)(1) For the multiple purposes of preserving, enhancing, interpreting, and managing the water and related land resources of an area containing unique cultural, fish and wildlife, scenic, and recreational values and for the benefit and enjoyment of present and future generations and the development of outdoor recreation, there is hereby established the Cross Florida National Conservation Area (hereinafter in this section referred to as the "Conservation Area").

(2) The Conservation Area shall consist of all lands and interests in lands held by the Secretary for the high-level barge canal project from the Saint Johns River across the State of Florida to the Gulf of Mexico, authorized by the Act of July 23, 1942 (56 Stat. 703) (hereinafter in this section referred to as the "barge canal project"), all lands and interests in lands held by the State of Florida or the Canal Authority of such State for such project, and all lands and interests in lands held by such State or such Canal Authority and acquired pursuant to section 104 of the River and Harbor Act of 1960.

(3) Within the Conservation Area there is hereby designated the Conservation Management Area which shall consist of all lands and interests in lands held by the Secretary within that portion of the barge canal project that is located between the Eureka Lock and Dam and the Inglis Lock and Dam (exclusive of such structures), plus all lands

and interests in lands held by the Canal Authority of the State of Florida between such structures and all lands and interests in lands held by such State or Canal Authority and acquired pursuant to section 104 of the River and Harbor Act of 1960.

(b) Those portions of the barge canal project located between the Gulf of Mexico and the Inglis project structures and located between the Atlantic Ocean and the Eureka Lock and Dam, inclusive, shall be operated and maintained by the Secretary for the purposes of navigation, recreation, and fish and wildlife enhancement and for the benefit of the economy of the region.

(c) In order to further the purposes set forth in paragraph (a)(1) of this section, that portion of the barge canal project located between the Eureka Lock and Dam and the Inglis Lock and Dam (exclusive of such structures) is not authorized for the purposes described in the Act of July 23, 1942 (56 Stat. 703) after the date this subsection becomes effective.

(d) The State of Florida shall retain jurisdiction and responsibility over water resources planning, development, and control of the surface and ground waters pertaining to lands cited in subsections (b) and (c) of this section, except to the extent that any uses of such water resources would be inconsistent with the purposes of this section.

(e)(1) Not later than one year after the date of the enactment of this Act, the Secretary, in consultation with the United States Forest Service, the United States Fish and Wildlife Service, and the State of Florida, shall develop and transmit to Congress a comprehensive management plan for lands (including water areas) located within the Conservation Management Area.

(2) Such plan shall, at a minimum, provide for—

(A) enhancement of the environment;

(B) conservation and development of natural resources;

(C) conservation and preservation of fish and wildlife;

(D) preservation of scenic and enhancing recreational values;

(E) a procedure for the prompt consideration of applications for easements across Conservation Management Area lands, when such easements are requested by local or State governmental jurisdictions or by a regulated public utility for a public purpose; and

(F) preservation and enhancement of water resources and water quality, including groundwater.

(3) Such plan shall establish, among the Secretary, the Forest Service, the Fish and Wildlife Service, and the State of Florida, the responsibilities for implementation of such plan.

(4) Until transmittal of such plan to Congress, the Secretary shall operate, maintain, and manage the lands and facilities held by the Secretary under the terms of subsection (c).

(5) Upon submission of such plan to Congress, the Secretary and other agencies, pursuant to the agreement under paragaraph (3) of this subsection, are authorized to implement such plan.

(6) The Secretary shall transmit recommendations for protecting and enhancing the values of the Conservation Area to Congress together with such plan.

(7) The Secretary shall consult and cooperate with other departments and agencies of the United States and the State of Florida in the development of measures and programs to protect and enhance water resources and water quality with the Conservation Area.

(f) The Secretary shall operate the Rodman Dam, authorized by the Act of July 23, 1942 (56 Stat. 703), in a manner which will assure the continuation of the reservoir known as Lake Ocklawaha. The Secretary shall not operate the Eureka Lock and Dam in a manner which would create a reservoir on lands not flooded on January 1, 1984.

(g)(1) As soon as possible, the Secretary shall acquire, for the sum of $32,000,000, all lands and interests in lands held on the date of the enactment of this Act by the Canal Authority of the State of Florida for the purposes of the barge canal project. In the event the sums available to the Secretary in any fiscal year are insufficient to purchase all such lands and interests, the State of Florida shall transfer to the Secretary that percentage of the total number of acres to be transferred that is proportionate to the sums received by the State compared with $32,000,000.

(2) From amounts received under paragraph (1) of this subsection, the Canal Authority shall forthwith make payments to the Florida counties of Duval, Clay, Putnam, Marion, Levy, and Citrus. Such payments shall, in the aggregate, be equal to $32,000,000. The amount of payment under this paragraph to each such county shall be determined by multiplying such aggregate amount by the amount of ad valorem taxes paid to the Cross Florida Canal Navigation District by such county and dividing such product by the amount of such taxes paid by all such counties.

(3) As soon as possible, the State of Florida shall transfer to the Secretary all lands and interests in lands held by the State of Florida or the Canal Authority of such State and acquired pursuant to section 104 of the River and Harbor Act of 1960.

(h) Subsection (c) shall become effective—

(1) 90 days after the Governor of Florida has certified to the Secretary that the State has met the conditions set out in subsection (i) of this section, unless the Secretary determines within such period that the State has failed to comply with such conditions; or

(2) on the date of the final order in a declaratory judgment action, brought by the State of Florida in a Federal District Court within Florida, finding that the State has met the conditions.

(i) Subsection (c) shall not become effective until the State of Florida enacts a law or laws which assure that—

(1) on and after the date on which construction of the portion of the barge canal project referred to in subsection (c) is no longer authorized, all lands and interests in lands held for the project by the State of Florida or the Canal Authority of such State will continue to be held by such State or canal authority pending transfer to the Secretary, as provided in this section; and

(2) on and after such date, all lands and interests in lands held by the State of Florida or the Canal Authority of such State and acquired pursuant to section 104 of the River and Harbor Act of 1960 will continue to be held by such State or Canal Authority, pending transfer to the Secretary as provided in this section;

(3) on and after such date, the State of Florida will never transfer to any person (except the Federal Government) any lands owned by such State or the Canal Authority of such State (except existing State roads, highways, and bridges and related rights-of-way, which may be transferred to a county or other local government) and contained within the expanded boundary of the Ocala National Forest as proposed and shown on the map dated July 1978, on file with the Chief of the Forest Service, Department of Agriculture, Washington, District of Columbia; and

(4) the State of Florida enacts a law which assures that, on and after such date, the interests in the lands described in paragraph (1) held by the State of Florida are sufficient to carry out the purposes of this section.

SEC. 1115. ABANDONED AND WRECKED VESSELS.

The Secretary shall—

(1) remove from the Miami River and Seybold Canal in Miami, Florida, between the mouth of the Miami River and the salinity control structure of 36th Street, any abandoned vessels and any vessels under the control of the United States by reason of their seizure or forfeiture;

(2) remove derelict vessels from the western shore of Hempstead Harbor, New York; and

(3) remove from waters off Mona Island, Puerto Rico, the abandoned vessel "A. Regina".

The Secretary shall enter into an interagency agreement to facilitate the removal of any such vessel under the control of the United States with the head of any Federal department, agency, or instrumentality which has control of such vessel. The non-Federal share of work authorized by this section shall be one-third, except that work authorized by paragraph (3) shall be at full Federal expense.

SEC. 1116. CHATFIELD LAKE.

Section 88(c) of the Water Resources Development Act of 1974 is amended by—

(1) inserting after "encroachments" the following: "(other than the Mineral Avenue/Ken Caryl Road extension and associated transmission lines)"; and

(2) inserting "significantly" after "areas which would".

SEC. 1117. W.D. MAYO LOCK AND DAM.

(a) Notwithstanding any other provision of law, the Cherokee Nation of Oklahoma is authorized to design and construct hydroelectric generating facilities at the W.D. Mayo Lock and Dam on the Arkansas River in Oklahoma, as described in the report of the Chief of Engineers dated December 23, 1981: Provided, That, the agreement described in subsection (d) of this section is executed by all parties described in subsection (b) of this section.

(b)(1) Conditioned upon the parties agreeing to mutually acceptable terms and conditions, the Secretary and the Secretary of Energy, acting through the Southwestern Power Administration, may enter into a binding agreement with the Cherokee Nation of Oklahoma under which the Cherokee Nation of Oklahoma agrees—

(A) to design and initiate construction of the generating facilities referred to in subsection (a) of this section within three years after the date of such agreement,

(B) to reimburse the Secretary for his costs in—

(i) approving such design and inspecting such construction, and

(ii) providing any assistance authorized under subsection (c)(2) of this section, and

(C) to release and indemnify the United States from any claims, causes of action, or liabilities which may arise from such design or construction.

(2) Such agreement shall also specify—

(A) the procedures and requirements for approval and acceptance of such design and construction are set forth,

(B) the rights, responsibilities, and liabilities of each party to the agreement are set forth, and

(3) the amount of the payments under subsection (f) of this section, and the procedures under which such payments are to be made, are set forth.

(c)(1) No Federal funds may be expended for the design or construction of the generating facilities referred to in subsection (a) of this section prior to the date on which such facilities are accepted by the Secretary under subsection (d) of this section.

(2) Notwithstanding any other provision of law, the Secretary is authorized to provide, on a reimbursable basis, any assistance requested by the Cherokee Nation of Oklahoma in connection with the design or construction of the generating facilities referred to in subsection (a) of this section.

(d)(1) Notwithstanding any other provision of law, upon completion of the construction of the generating facilities referred to in subsection (a) of this section, and final approval of such facilities by the Secretary—

(A) the Cherokee Nation of Oklahoma shall transfer title to such facilities to the United States, and

(B) the Secretary shall—

(i) accept the transfer of title to such generating facilities on behalf of the United States, and

(ii) operate and maintain such facilities.

(2) The Secretary is authorized to accept title to such facilities only after certifying that the quality of the construction meets all standards established for similar facilities constructed by the Secretary.

(e) Pursuant to any agreement under subsection (b) of this section, the Southwestern Power Administration shall market the excess power produced by the generating facilities referred to in subsection (a) of this section in accordance with section 5 of the Act of December 22, 1944 (58 Stat. 890; 16 U.S.C. 825s).

(f) Notwithstanding any other provision of law, the Secretary of Energy, acting through the Southwestern Power Administration, is authorized to pay to the Cherokee Nation of Oklahoma, in accordance with the terms of the agreement entered into under subsection (b) of this section, out of the revenues from the sale of power produced by the generating facilities of the interconnected systems of reservoirs operated by the Secretary and marketed by the Southwestern Power Administration—

(1) all reasonable costs incurred by the Cherokee Nation of Oklahoma in the design and construction of the generating facilities referred to in subsection (a) of this section, including the capital investment in such facilities and a reasonable rate of return on such capital investment, and

(2) for a period not to exceed fifty years, a reasonable annual royalty for the design and construction of the generating facilities referred to in subsection (a) of this section.

(g) Notwithstanding any other provision of law, the Secretary of Energy, acting through the Southwestern Power Administration, is authorized—

(1) to construct such transmission facilities as necessary to market the power produced at the generating facilities referred to in subsection (a) of this section with funds contributed by non-Federal sources, and

(2) to repay those funds, including interest and any administrative expenses, directly from the revenues from the sale of power produced by the generating facilities of the interconnected systems of reservoirs operated by the Secretary and marketed by the Southwestern Power Administration.

(h) There are authorized to be appropriated to the Secretary for the fiscal year in which title to the generating facilities is transferred and accepted under subsection (d) of this section, and for each succeeding fiscal year, such sums as may be necessary to operate and maintain such facilities.

SEC. 1118. CAVEN POINT, NEW JERSEY.

That portion of the Hudson River in the New York Bay consisting of—

(1) all that piece or parcel of land, containing 120.54 acres, situate, lying and being in the city of Jersey City, Hudson County, State of New Jersey, upon or around that certain lot or piece of land known as the Caven Point Area; and

(2) all that piece or parcel of land, containing 18 acres more or less, situate on the northwesterly side of New Jersey State Highway Route 185,

more particularly described in the Congressional Record dated March 11, 1986, pages S2446-2447, is hereby declared to be not a navigable water of the United States within the meaning of the Constitution and the laws of the United States, except for the purposes of the Federal Water Pollution Control Act.

SEC. 1119. SUNSET HARBOR, CALIFORNIA.

(a) The Secretary is directed to expedite completion of the feasibility study of the navigation project for Sunset Harbor, California, at a total cost of $900,000, and to submit a report to Congress on the results of such study not later than October 1, 1987.

(b) Upon execution of agreements by the State of California or local sponsors, or both, for preservation and mitigation of wetlands areas and appropriate financial participation, the Secretary is authorized to participate with appropriate non-Federal sponsors in a project to demonstrate the feasibility of non-Federal cost sharing under the provisions of section 916 of this Act. Such project shall consist of the project for navigation, flood control, and protection of the Seal Beach Naval Weapons Station at Sunset Beach Harbor, Bolsa Chica Bay, California, at a total cost of $89,600,000, with an estimated first Federal cost of $44,800,000 and an estimated first non-Federal cost of $44,800,000, including such modifications as the Secretary may determine are advisable. The Secretary shall not undertake construction without the concurrence of the Secretary of the Navy on measures to protect the Naval Weapons Station. The Secretary shall, not later than two years after the date of enactment of this Act, make a determination of financial feasibility of the project and, to the extent possible, transmit a copy of a final feasibility study and copy of any final environmental impact statement required by section 102(2)(C) of the National Environmental Policy Act of 1969, and any recommendations of the Secretary, with respect to such project to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. Agreements for local financial participation shall include the agreements set forth in section 916 so as to meet non-Federal contributions during the period of construction as required by Federal law as administered by the Secretary, together with full amortization of the remaining Federal investment, including costs of project feasiblility studies.

SEC. 1120. HILLTOP AND GRAY GOOSE IRRIGATION DISTRICTS.

(a) The existing irrigation projects known as the Hilltop Irrigation District, Brule County, South Dakota, and the Gray Goose Irrigation District, Hughes County, South Dakota, are authorized as units of the Pick-Sloan Missouri Basin Program. As so authorized, the Hilltop Unit and the Gray Goose Unit shall be integrated physically and financially with the other Federal works constructed under the comprehensive plan approved by section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887, 891), as amended and supplemented, and subject to Federal reclamation law (Act of June 17, 1902, 32 Stat. 388 and Acts amendatory thereof and supplemental thereto).

(b) Pick-Sloan Missouri Basin Program power shall be made available as soon as practicable for the Hilltop Unit and the Gray Goose Unit on the same basis as for other units of the Pick-Sloan Missouri Basin Program. The suballocated costs of the Pick-Sloan Missouri Basin Program assigned to the Hilltop Unit and the Gray Goose Unit shall be reimbursed by the water users as determined by the Secretary of the Interior in accordance with Federal reclamation law (Act of June 17, 1902, 32 Stat. 388 and Acts amendatory thereof and supplemental thereto).

SEC. 1121. OGALLALA AQUIFER.

(a) The Congress finds that—

(1) the Ogallala aquifer lies beneath, and provides needed water supplies to, the 8 States of the High Plains Region: Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming;

(2) the High Plains region has become an important source of agricultural commodities and livestock for domestic and international markets, providing 15 percent of the Nation's supply of wheat, corn, feed grains, sorghum, and cotton, plus 38 percent of the value of livestock raised in the United States; and

(3) annual precipitation in the High Plains region ranges from 15 to 22 inches, providing inadequate supplies of surface water and recharging of the Ogallala aquifer needed to sustain the agricultural productivity and economic vitality of the High Plains region.

(b) It is, therefore, the purpose of this section to establish a comprehensive research and development program to assist those portions of the High Plains region dependent on water from the Ogallala aquifer to—

(1) plan for the development of an adequate supply of water in the region;

(2) develop and provide information and technical assistance concerning water-conservation management practices to agricultural producers in the region;

(3) examine alternatives for the development of an adequate supply of water for the region; and

(4) develop water-conservation management practices which are efficient for agricultural producers in the region.

(c) The Water Resources Research Act (Public Law 98-242) is amended by adding at the end thereof the following new title:

"TITLE III—OGALLALA AQUIFER RESEARCH AND DEVELOPMENT

"SEC. 301. (a) There is hereby established the High Plains Study Council composed of—

"(1) the Governor of each State of the High Plains region (defined for the purposes of this title as the States of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming and referred to hereinafter in this title as the 'High Plains region'), or a designee of the Governor;

"(2) a representative of the Department of Agriculture; and

"(3) a representative of the Secretary.

"(b) The Council established pursuant to this section shall—

"(1) review research work being performed by each State committee established under section 302 of this Act; and

"(2) coordinate such research efforts to avoid duplication of research and to assist in the development of research plans within each State of the High Plains region that will benefit the research needs of the entire region.

"SEC. 302. (a) The Secretary shall establish within each State of the High Plains region an Ogallala aquifer technical advisory committee (hereinafter in this title referred to as the 'State committee'). Each State committee shall be composed of no more than seven members, including—

"(1) a representative of the United States Department of Agriculture;

"(2) a representative of the Secretary; and

"(3) at the appointment of the Governor of the State, five representatives from agencies of that State having jurisdiction over water resources, the agricultural community, the State Water Research Institute (as designated under this Act), and others with a special interest or expertise in water resources.

"(b) The State committee established pursuant to subsection (a) of this section shall—

"(1) review existing State laws and institutions concerning water management and, where appropriate, recommend changes to improve State or local management capabilities and more efficiently use the waters of such State, if such a review is not already being undertaken by the State;

"(2) establish, in coordination with other State committees, State priorities for research and demonstration projects involving water resources; and

"(3) provide public information, education, extension, and technical assistance on the need for water conservation and information on proven and cost-effective water management.

"(c) Each State committee established pursuant to this section shall elect a chairman, and shall meet at least once every three months at the call of the chairman, unless the chairman determines, after consultation with a majority of the members of the committee, that such a meeting is not necessary to achieve the purposes of this section.

"SEC. 303. The Secretary shall annually allocate among the States of the High Plains region funds authorized to be appropriated for this section for research in—

"(1) water-use efficiency;

"(2) cultural methods;

"(3) irrigation technologies;

"(4) water-efficient crops; and

"(5) water and soil conservation.

Funds distributed under this section shall be allocated to each State committee for use by institutions of higher education within each State. To qualify for funds under this section an institution of higher education shall submit a proposal to the State committee describing the costs, methods, and goals of the proposed research. Proposals shall be selected by the State committee on the basis of merit.

"SEC. 304. The Secretary shall annually divide funds authorized to be appropriated under this section among the States of the High Plains region for research into—

"(1) precipitation management;

"(2) weather modification;

"(3) aquifer recharge opportunities;

"(4) saline water uses;

"(5) desalinization technologies;

"(6) salt tolerant crops; and

"(7) ground water recovery.

Funds distributed under this section shall be allocated by the Secretary to the State committee for distribution to institutions of higher education within such State. To qualify for a grant under this section, an institution of higher education shall submit a research proposal to the State committee describing the costs, methods, and goals of the proposed research. Proposals shall be selected by the State committee on the basis of merit.

"SEC. 305. The Secretary shall annually allocate among the States of the High Plains region funds authorized to be appropriated under this section for grants to farmers for demonstration projects for—

"(1) water-efficient irrigation technologies and practices;

"(2) soil and water conservation management systems; and

"(3) the growing and marketing of more water-efficient crops.

Grants under this section shall be made by each State committee in amounts not to exceed 85 percent of the cost of each demonstration project. To qualify for a grant under this section, a farmer shall submit a proposal to the State committee describing the costs, methods, and goals of the proposed project. Proposals shall be selected by the State committee on the basis of merit. Each State committee shall monitor each demonstration project to assure proper implementation and make the results of the project available to other State committees.

"SEC. 306. The Secretary, acting through the United States Geological Survey and in cooperation with the States of the High Plains region, is authorized and directed to monitor the levels of the Ogallala aquifer, and report annually to Congress.

"SEC. 307. The amount of any allocation of funds to a State under this title shall not exceed 75 percent of the cost of carrying out the purposes for which the grant is made.

"SEC. 308. Not later than one year after the date of enactment of this title, and at intervals of one year thereafter, the Secretary shall prepare and transmit to the Congress a report on activities undertaken under this title.

"SEC. 309. (a) For each of the fiscal years ending September 30, 1987, through September 30, 1991, the following sums are authorized to be appropriated to the Secretary to implement the following sections of this title, and such sums shall remain available until expended:

"(1) $600,000 for the purposes of section 302;

"(2) $4,300,000 for the purposes of section 303;

"(3) $2,200,000 for the purposes of section 304;

"(4) $5,300,000 for the purposes of section 305; and

"(5) $600,000 for the purposes of section 306.

"(b) Funds made available under this title for distribution to the States of the High Plains region shall be distributed equally among the States.".

SEC. 1122. PICK-SLOAN PROGRAM.

The Pick-Sloan Missouri Basin Program shall be prosecuted, as authorized and in accordance with applicable laws including the requirements for economic feasibility, to its ultimate development on an equitable basis as rapidly as may be practicable, within the limits of available funds and the cost recovery and repayment principles established by Senate Report Numbered 470 and House of Representatives Report Numbered 282, Eighty-ninth Congress, first session. Nothing in this section shall be deemed to amend or alter the cost recovery or repayment provisions for the Garrison Diversion Unit, North Dakota, as set forth in Public Law 99-294.

SEC. 1123. FEDERAL TOWNSITES.

The section entitled "Transfer of Federal Townsites" in the Supplemental Appropriation Act, 1985, title I, chapter IV (Public Law 99-88; 99 Stat. 317) is amended as follows:

(1) Subsection (a)(1) is amended by striking out "without warranty of any kind" and inserting in lieu thereof "by warranty deed, said deed to include a covenant to defend title to the property".

(2) Subsection (a)(1)(A) is amended by—

(A) inserting "(i)" after "(A)", and

(B) adding at the end the following:

"(ii) The land utilized as a sanitary landfill by Riverdale, North Dakota, consisting of approximately ninety-six acres.

"(iii) The peripheral utility improvements at Riverdale, North Dakota, developed for, or being utilized as, sewage lagoons; the sewer pipeline extending from the townsite boundary to said lagoons; any outfall facilities or control structures in conjunction therewith; the water pipeline extending from the exterior boundaries of the powerplant to the townsite; and appropriate easements of right-of-way for the access to, and operation and maintenance of said improvements.".

(3) Subsection (a)(1)(B) is amended by—

(A) inserting "(i)" after "(B)", and

(B) adding at the end the following:

"(ii) The land utilized as a sanitary landfill by Pickstown, South Dakota, consisting of approximately twenty-three acres.

"(iii) The peripheral utility improvements at Pickstown, South Dakota, developed for, or being utilized as, sewage lagoons; water treatment plant; water intake structure; the sewer pipeline extending from the townsite boundary to the sewer lagoons; any outfall facilities or control structures in conjunction therewith; the water pipeline extending from the water intake to the water treatment plant and to the townsite boundary; and appropriate easements of right-of-way for access to, and operation and maintenance of, said improvements.".

(4) Subsection (a)(1)(C) is amended by—

(A) inserting "(i)" after "(C)", and

(B) adding at the end the following:

"(ii) The peripheral utility improvements at Fort Peck, Montana, developed and being utilized as a water storage reservoir; the sewer pipeline extending from the townsite boundary to the sewer lift station; the sewer lift station; the sewer pipeline extending from the sewer lift station to the sewage lagoon; the emergency outfall line extending from the sewer lift station to the Missouri River; the water pipelines extending from the exterior boundaries of the powerplant to the townsite boundary; the water pipeline extending from the townsite boundary to the water reservoir; and appropriate easements of right-of-way to the municipal corporation for access to, and operation and maintenance of, said improvements.".

(5) Subsection (b) is amended by inserting "or surplus" after "excess" and by striking out "subsection 3(e)" and inserting in lieu thereof "section 3".

(6) Subsection (c) is amended by adding at the end thereof: "Nothing in this provision prohibits the Secretary from placing reason-

able covenants in those deeds transferring improvements having significant historical, cultural, or social value in Fort Peck, Montana.".

(7) The Administrator of the Western Area Power Administration is authorized to allocate power from the Pick-Sloan Missouri Basin Program (P-SMBP) to the municipal corporations of Riverdale, North Dakota, Pickstown, South Dakota, and Fort Peck, Montana, or to such other preference entity as the Administrator may designate to provide electrical service to said municipal corporations. Such allocations shall be in the amount required to meet the annual loads established prior to the date of enactment of this Act, and under terms and conditions for marketing firm power from the P-SMBP: Except, That upon request of a municipal corporation specified in this subsection, the Secretary shall continue to operate municipal or community owned facilities for a period not to exceed three years from the date of incorporation of such municipal corporation.

SEC. 1124. SOURIS RIVER BASIN.

(a)(1) On behalf of the United States, the Secretary, in consultation with the Secretary of State, is authorized to cooperate with governments in Canada to study and to construct reservoir projects for storage in the Souris River Basin in Canada to provide flood control benefits in the United States.

(2) The Secretary is authorized further to participate in financing the storage referred to in paragraph (1) of this subsection to a maximum contribution of $26,700,000, in the event that only one reservoir, known as the Rafferty project, is constructed in Canada, or to a maximum of $41,100,000, in the event two reservoirs, known as the Rafferty and Alameda projects, are constructed in Canada. The amount of any such contribution shall be determined by an allocation of costs, based on the proportionate use of these projects for flood control in the United States and water supply in Canada.

(b) Upon completion of the structure or structures in Canada, as agreed upon between the United States and governments in Canada, the construction of Burlington Dam, North Dakota, as authorized by Public Law 91-611, and modifications at Lake Darling, North Dakota, to raise the level of the dam structure, as authorized by section 111 of the Energy and Water Development Appropriation Act, 1982 (Public Law 97-88; 95 Stat. 1138), shall no longer be authorized. Should the Secretary determine that an agreement between the United States and governments in Canada cannot be consummated, he shall proceed with the work authorized by section 111 of such Act, including raising the dam structure and including storage capacity for flood control purposes, with such work to be considered a nonseparable element of the flood control project for Minot, North Dakota, authorized under section 201 of the Flood Control Act of 1965.

(c) The Secretary is authorized further to make such modifications as necessary to the existing Lake Darling, exclusive of the modifications authorized by section 111 of the Energy and Water Development Appropriation Act, 1982, for the purpose of effective operation of the project for flood control, with such work considered to be a nonseparable element of the flood control project for Minot, North Dakota, authorized under section 201 of the Flood Control Act of 1965, and to operate and maintain the project with such modifications in a manner compatible with the migratory waterfowl refuge purpose of the project.

(d) The non-Federal share of the cost of contributions to governments in Canada, as authorized by this section, shall be in accordance with title I of this Act for the amount over $23,600,000. The total Federal cost of work authorized by this section and by section 111 of the Energy and Water Development Appropriation Act, 1982, as modified herein, and including related dam safety measures, is $69,100,000.

SEC. 1125. GARRISON LAND TRANSFER.

(a) Except as otherwise provided in this section, all rights, title, and interests of the United States in the lands described in subsection (b), including all improvements thereon, are hereby declared to be held in trust by the United States for the benefit and use of the Three Affiliated Tribes of the Fort Berthold Reservation and to be part of the Fort Berthold Reservation.

(b) The lands held in trust under subsection (a) are—

(1) approximately 136.44 acres lying above elevation 1,850 feet (mean sea level) and the probable ultimate erosion line (other than those portions which lie north of North Dakota State Highway 23) in the following sections of township 152 north, range 93 west of the Fifth Principal Meridian, McKenzie County, North Dakota:

Section 15: south half of the southwest quarter,

Section 21: northeast quarter and northwest quarter of the southeast quarter, and

Section 22: north of the half northwest quarter; and

(2) approximately 16.40 acres lying above elevation 1,850 feet (mean sea level) situated in the west half southwest quarter, section 15, township 152 north, range 93 west of the Fifth Principal Meridian, McKenzie County, North Dakota, and more particularly described as follows:

Commencing at the quarter corner common to sections 15 and 16; thence east along the quarter line a distance of 1,320.0 feet to the true point of beginning; thence north 45 degrees 0 minutes east a distance of 891.0 feet; thence south 0 degrees 3 minutes east a distance of 1,518.0 feet; thence to a point on a line which bears south 0 degrees 3 minutes east from the point of beginning; thence north 0 degrees 3 minutes west to the point of beginning.

(c) In consideration for the transfer in trust described above, the Secretary of the Interior shall transfer to the United States lands of equal value held in trust for the Three Affiliated Tribes of the Fort Berthold Reservation which are required for the maintenance and operation of the Garrison Dam and Reservoir Project: Provided, That the Tribes shall retain the right to use such lands for grazing purposes when such lands are not subject to flooding. The United States shall not be responsible for damages to property or injuries to persons which may arise from, or be incident to, the use of said lands.

(d) The United States hereby retains a flowage and sloughing easement for the purpose of flood control and related Garrison Dam and Reservoir project purposes over that portion of the lands described in subsection (b) that lie below the greater elevation of—

(1) 1,860 feet (mean sea level), or

(2) any alignment the Secretary determines to be necessary for such project operations.

SEC. 1126. CONTRACT SETTLEMENT.

The Secretary is authorized to pay the Federal share of the settlement amount, and any associated interest, resulting from the decision of the Engineer Board of Contract Appeals in ENC BCA Docket Numbered 4650 (June 28, 1985), notwithstanding the Federal cost limitation set out in section 84(c) of the Water Resources Development Act of 1974 (Public Law 93-251).

SEC. 1127. CAMPGROUNDS FOR SENIOR CITIZENS.

(a) The Secretary may establish and develop separate campgrounds for individuals sixty-two years of age or older at any lake or reservoir under the jurisdiction of the Secretary where camping is permitted.

(b) The Secretary may prescribe regulations to control the use of and the access to any separate campground established and developed under subsection (a) of this section.

(c) There are authorized to be appropriated such sums as may be necessary for fiscal years beginning after September 30, 1986, to carry out subsection (a) of this section.

(d) The Secretary shall establish and develop the parcel of land (located in the State of Texas at the Sam Rayburn Dam and Reservoir) described in subsection (g) of this section as a separate campground for individuals sixty-two years of age or older.

(e) The Secretary shall prescribe regulations to control the use of and the access to the separate campground established and developed pursuant to subsection (d) of this section.

(f) There are authorized to be appropriated for fiscal years beginning after September 30, 1986, $600,000 to carry out subsection (d) of this section.

(g) The parcel of land to be established and developed as a separate campground pursuant to subsection (d) of this section is a tract of land of approximately 50 acres which is located in the county of Angelina in the State of Texas and which is part of the Thomas Hanks survey. The boundary of the parcel begins at a point at the corner furthest west of tract numbered 3420 of the Sam Rayburn Dam and Reservoir:

thence north 81 degrees 30 minutes east, approximately 2,800 feet to a point at the edge of the water;

thence south along the edge of the water approximately 2,600 feet;

thence north 80 degrees 30 minutes west, approximately 1,960 feet to a point at the reentrant corner of tract numbered 3419 of the Sam Rayburn Dam and Reservoir;

thence along the boundary line of tract numbered 3419 north 46 degrees 15 minutes west, 220 feet to a point at the center line of a road at the corner common to tract numbered 3419 and tract numbered 3420;

thence along the southwestern boundary line of tract numbered 3420 north 46 degrees 15 minutes west, 230 feet to a point at the corner furthest east of tract numbered 3424 of the Sam Rayburn Dam and Reservoir;

thence along the boundary line of tract numbered 3424 south 32 degrees 4 minutes west, 420 feet to a point;

thence along the boundary line of tract numbered 3424 north 28 degrees 34 minutes west, 170 feet to a point;

thence along the boundary line of tract numbered 3424 north 38 degrees 15 minutes east, 248 feet to a point;

thence along the boundary line of tract numbered 3424 north 32 degrees 44 minutes east, 120 feet to a point at the corner furthest north of tract numbered 3424;

thence along the southwestern boundary line of tract numbered 3420 north 46 degrees 15 minutes west, 460 feet to the beginning point.

SEC. 1128. MERAMEC RIVER, MISSOURI.

Section 2(h) of the Act entitled "An Act to deauthorize several projects within the jurisdiction of the Army Corps of Engineers" (Public Law 97-128) is amended by striking out "Saint Louis and Jefferson Counties, Missouri." and inserting in lieu thereof "Saint Louis, Jefferson, and Franklin Counties (including the community of Pacific, Missouri), Missouri.".

SEC. 1129. BUFFALO HARBOR DRIFT REMOVAL.

(a) Section 202(f) of the Water Resources Development Act of 1976 is amended to read as follows:

"(f) There is authorized to be appropriated to carry out this section such sums as may be necessary for fiscal years beginning after September 30, 1986.".

(b) Subject to section 903(a) of this Act, the Secretary is authorized to develop, implement, and maintain a project under section 202 of the Water Resources Development Act of 1976 for removal of drift and debris from Buffalo Harbor, New York, and removal of dilapidated structures from the adjacent shoreline, in accordance with such report, at a total cost of $2,130,000, with an estimated first Federal cost of $1,065,000 and an estimated first non-Federal cost of $1,065,000.

SEC. 1130. NORFOLK DAM AND LAKE BRIDGE.

Section 16(b) of the Water Resources Development Act of 1974 (88 Stat. 18) is amended by striking out "$1,342,000" and all that follows through the period at the end of such section and inserting in lieu thereof "$2,482,000.".

SEC. 1131. DELAWARE RIVER.

With respect to the navigation project for the Delaware River, Philadelphia to the sea, the Secretary—

(1) shall conduct continuous monitoring of the materials being disposed of at the area known as the Penns Grove Disposal Area in Carneys Point, New Jersey;

(2) shall conduct continuous monitoring to ensure that there is no leakage into or contamination of any underground aquifer from such area;

(3) shall not fill such area, or allow such area to be filled, to an elevation in excess of ten feet; and

(4) shall not use, or allow to be used, for disposal of dredged material from such project any area immediately adjacent to the Penns Grove Disposal Area.

SEC. 1132. GREAT LAKES MARKETING BOARD.

(a) To ensure the coordinated economic revitalization and environmental enhancement of the Great Lakes and their connecting channels and the Saint Lawrence Seaway (hereinafter in this section referred to as the "Great Lakes"), known as the "Fourth Seacoast" of the United States, it is hereby declared to be the intent of Congress to recognize the importance of the economic vitality of the Great Lakes region, the importance of exports from the region in the United States balance of trade, and the need to assure an environmentally and socially responsible navigation system for the Great Lakes. Congress finds that the Great Lakes provide a diversity of agricultural, commercial, environmental, recreational, and related opportunities based on their extensive water resources and water transportation systems.

(b)(1) There is hereby established a Board to be known as the Great Lakes Commodities Marketing Board (hereinafter in this subsection referred to as the "Board").

(2)(A) The Board shall develop a strategy to improve the capacity of the Great Lakes region to produce, market, and transport commodities in a timely manner and to maximize the efficiency and benefits of marketing products produced in the Great Lakes region and products shipped through the Great Lakes.

(B) The strategy shall address, among other things, environmental issues relating to transportation on the Great Lakes and marketing difficulties experienced due to late harvest seasons in the Great Lakes region. The strategy shall include, as appropriate alternative storage, sales, marketing, multimodal transportation systems, and other systems, to assure optimal economic benefits to the region from agricultural and other commercial activities. The strategy shall develop—

(i) methods to improve and promote both bulk and general cargo trade through Great Lakes ports;

(ii) methods to accelerate the movement of grains and other agricultural commodities through the Great Lakes;

(iii) methods to provide needed flexibility to farmers in the Great Lakes region to market grains and other agricultural commodities; and

(iv) methods and materials to promote trade from the Great Lakes region and through Great Lakes ports, particularly with European, Mediterranean, African, Caribbean, Central American, and South American nations.

(C) In developing the strategy, the Board shall conduct and consider the results of—

(i) an analysis of the feasibility and costs of using iron ore vessels, which are not being utilized, to move grain and other agricultural commodities on the Great Lakes;

(ii) an economic analysis of transshipping such commodities through Montreal, Canada, and other ports;

(iii) an analysis of the economic feasibility of storing such commodities during the non-navigation season of the Great Lakes and the feasibility of and need for construction of new storage facilities for such commodities;

(iv) an analysis of the constraints on the flexibility of farmers in the Great Lakes region to market grains and other agricultural commodities, including harvest dates for such commodities and the availability of transport and storage facilities for such commodities; and

(v) an analysis of the amount of grain and other agricultural commodities produced in the United States which are being diverted to Canada by rail but which could be shipped on the Great Lakes if vessels were available for shipping such products during the navigation season.

(D) In developing the strategy, the Board shall consider weather problems and related costs and marketing problems resulting from the late harvest of agricultural commodities (including wheat and sunflower seeds) in the Great Lakes region.

(E) In developing the strategy, the Board shall consult United States ports on the Great Lakes and their users, including farm organizations (such as wheat growers and soybean growers), port authorities, water carrier organizations, and other interested persons.

(3) The Board shall be composed of seven members as follows:

(A) the chairman of the Great Lakes Commission or his or her delegate,

(B) the Secretary or his or her delegate,

(C) the Secretary of Transportation or his or her delegate,

(D) the Secretary of Commerce or his or her delegate,

(E) the Administrator of the Saint Lawrence Seaway Development Corporation or his or her delegate,

(F) the Secretary of Agriculture or his or her delegate, and

(G) the Administrator of the Environmental Protection Agency or his or her delegate.

(4)(A) Members of the Board shall serve for the life of the Board.

(B) Members of the Board shall serve without pay and those members who are full time officers or employees of the United States shall receive no additional pay by reason of their service on the Board, except that members of the Board shall be allowed travel or transportation expenses under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business and engaged in the actual performance of duties vested in the Board.

(C) Four members of the Board shall constitute a quorum but a lesser number may hold hearings.

(D) The co-chairmen of the Board shall be the Secretary or his or her delegate and the Administrator of the Saint Lawrence Seaway Development Corporation or his or her delegate.

(E) The Board shall meet at the call of the co-chairmen or a majority of its members.

(5)(A) The Board shall, without regard to section 5311(b) of title 5, United States Code, have a Director, who shall be appointed by the Board and shall be paid at a rate which the Board considers appropriate.

(B) Subject to such rules as may be prescribed by the Board, without regard to 5311(b) of title 5, United States Code, the Board may appoint and fix the pay of such additional personnel as the Board considers appropriate.

(C) Upon request of the Board, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Board to assist the Board in carrying out its duties under this subsection.

(6)(A) The Board may, for purposes of carrying out this subsection, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate.

(B) Any member or agent of the Board may, if so authorized by the Board, take any action which the Board is authorized to take by this paragraph.

(C) The Board may secure directly from any department or agency of the United States any information necessary to enable it to carry out this subsection. Upon request of the co-chairmen of the Board, the head of such department or agency shall furnish such information to the Board.

(D) The Board may use the United States mail in the same manner and under the same conditions as other departments and agencies of the United States.

(E) The Administrator of General Services shall provide to the Board on a reimbursable basis such administrative support services as the Board may request.

(7) Not later than September 30, 1989, the Board shall transmit to the President and to each House of the Congress a report stating the strategy developed under this subsection and the results of each analysis conducted under this subsection. Such report shall contain a detailed statement of the findings and conclusions of the Board together with its recommendations for such legislative and administrative actions as it considers appropriate to carry out such strategy and to assure maximum economic benefits to the

users of the Great Lakes and to the Great Lakes region.

(8) The Board shall cease to exist 180 days after submitting its report pursuant to this subsection.

(9) The non-Federal share of the cost of carrying out this subsection shall be 25 percent. There is authorized to be appropriated such sums as may be necessary to carry out the Federal share of this subsection for fiscal years beginning after September 30, 1986, and ending before October 1, 1990.

(c)(1) The President shall invite the Government of Canada to join in the formation of an international advisory group whose duty it shall be (A) to develop a bilateral program for improving navigation, through a coordinated strategy, on the Great Lakes, and (B) to conduct investigations on a continuing basis and make recommendations for a system-wide navigation improvement program to facilitate optimum use of the Great Lakes. The advisory group shall be composed of five members representing the United States, five members representing Canada, and two members from the International Joint Commission established by the treaty between the United States and Great Britain relating to boundary waters between the United States and Canada, signed at Washington, January 11, 1909 (36 Stat. 2448). The five members representing the United States shall include the Secretary of State, one member of the Great Lakes Commodities Marketing Board (as designated by the Board), and three individuals appointed by the President representing commercial, shipping, and environmental interests, respectively.

(2) The United States representatives to the international advisory group shall serve without pay and the United States representatives to the advisory group who are full time officers or employees of the United States shall receive no additional pay by reason of their service on the advisory group, except that the United States representatives shall be allowed travel or transportation expenses under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular place of business and engaged in the actual performance of duties vested in the advisory group.

(3) The international advisory group established by this subsection shall report to Congress and to the Canadian Parliament on its progress in carrying out the duties set forth in this subsection not later than one year after the formation of such group and biennially thereafter.

(d) The Secretary and the Administrator of the Environmental Protection Agency, in cooperation with the Secretary of the Interior, the Administrator of the National Oceanic and Atmospheric Administration, and other appropriate Federal and non-Federal entities, shall carry out a review of the environmental, economic, and social impacts of navigation in the United States portion of the Great Lakes. In carrying out such review, the Secretary and the Administrator shall use existing research, studies, and investigations relating to such impacts to the maximum extent possible. Special emphasis shall be made in such review of the impacts of navigation on the shoreline and on fish and wildlife habitat, including, but not limited to, impacts associated with resuspension of bottom sediment. The Secretary and the Administrator shall submit to Congress an interim report of such review not later than September 30, 1988, and a final report of such review along with recommendations not later than September 30, 1990.

SEC. 1133. GREAT MIAMI RIVER BASIN.

The prohibitions and provisions for review and approval of activities in waters of the United States as set forth in sections 9, 10, and 13 of the Act of March 3, 1899 (30 Stat. 1151) and the first section of the Act of June 13, 1902 (32 Stat. 371) shall not apply to any works or improvements constructed or maintained now or in the future in the Great Miami River Basin, the Great Miami River, and the tributaries of the Great Miami River above river mile 7.5, by any political subdivision established pursuant to chapter 6101, Ohio Revised Code, as in effect on July 1, 1983.

SEC. 1134. CABIN SITE LEASES.

(a) On and after December 31, 1989, the Secretary shall continue in effect any lease or assignment thereof to which this section applies, until such time as such lease is terminated by the leaseholder, any successors or assigns of the leaseholder, or by the Secretary under subsection (b) of this section. Any such continuation beyond the date of expiration of such lease as in effect on December 31, 1989, shall be at fair market rentals and on such other reasonable terms and conditions not inconsistent with this section as the Secretary deems necessary. No continuation shall be made beyond such date unless the leaseholder agrees (1) to hold the United States harmless from any claim for damages or injury to persons or property arising from occupancy of or through the use of the property subject to such lease, and (2) to not unreasonably expand existing improvements.

(b)(1) On and after December 31, 1989, the Secretary and any other officer or employee of the United States shall not terminate a lease to which this section applies, except as provided in paragraph (2) of this subsection.

(2) On and after December 31, 1989, the Secretary may terminate a lease to which this section applies only if—

(A) the property covered by the lease is needed for immediate use for public park purposes or other higher public use or for a navigation or flood control project; or

(B) the leaseholder substantially violates a provision of such lease.

(c) Subsections (a) and (b) of this section apply to (1) any cottage site lease of property, which lease was entered into by the Secretary of the Army pursuant to section 4 of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved December 22, 1944 (58 Stat. 889; 16 U.S.C. 460d), and is in effect on December 31, 1989, and (2) any assignment of such a lease.

(d) On and after December 31, 1989, no houseboat, boathouse, floating cabin, sleeping facilities at marinas, or lawfully installed dock or appurtenant structures shall be required to be removed from any Federal water resources reservoir or lake project administered by the Secretary on which it was located on the date of enactment of this Act, if (1) such property is maintained in usable and safe condition, (2) such property does not occasion a threat to life or property, and (3) the holder of the lease, permit, or license is in substantial compliance with the existing lease or license, except where necessary for immediate use for public purposes or other higher public use or for a navigation or flood control project.

(e) In any case in which a person holds a lease of property at Clarks Hill Reservoir, Georgia, which is terminated under this section on or after December 31, 1989, the Secretary shall offer for sale to such person real property at Clarks Hill Reservoir which is owned by the United States and is not needed for the project (if there is any such property). The property offered for sale shall be approximately equal in size to the property that was subject to such lease. The Secretary shall offer any such property for sale at the fair market value of the property, as determined by the Secretary. Each offer under this subsection shall be made on or before the date on which the lease is terminated and shall be open to such person for 18 months from the time the offer is made. As a condition to a sale under this subsection, the leaseholder shall restore the property subject to the terminated lease to a condition acceptable to the Secretary.

SEC. 1135. PROJECT MODIFICATIONS FOR IMPROVEMENT OF ENVIRONMENT.

(a) The Secretary is authorized to review the operation of water resources projects constructed by the Secretary before the date of enactment of this Act to determine the need for modifications in the structures and operations of such projects for the purpose of improving the quality of the environment in the public interest.

(b) The Secretary is authorized to carry out a demonstration program in the two-year period beginning on the date of enactment of this Act for the purpose of making such modifications in the structures and operations of water resources projects constructed by the Secretary before the date of enactment of this Act which the Secretary determines (1) are feasible and consistent with the authorized project purposes, and (2) will improve the quality of the environment in the public interest. The non-Federal share of the cost of any modifications carried out under this section shall be 25 percent.

(c) The Secretary shall coordinate any actions taken pursuant to this section with appropriate Federal, State, and local agencies.

(d) Not later than two years after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the review conducted under subsection (a) and on the demonstration program conducted under subsection (b). Such report shall contain any recommendations of the Secretary concerning modification and extension of such program.

(e) There is authorized to be appropriated not to exceed $25,000,000 to carry out this section.

SEC. 1136. WHITEWATER RIVER, CALIFORNIA.

(a) The Secretary is hereby authorized to develop and implement a flood warning system for the Whitewater River, San Bernadino and Riverside Counties, California, at a total cost of $300,000.

(b) Prior to installation, local interests shall agree to operate and maintain the system authorized by subsection (a), and develop, maintain, and implement emergency evacuation plans satisfactory to the Secretary.

SEC. 1137. REND LAKE.

The Secretary shall amend the contract between the State of Illinois and the United States for use of storage space for water supply in Rend Lake on the Big Muddy River in Illinois to relieve the State of Illinois of the requirement to make annual payments for that portion of the maintenance and operation costs applicable to future water supply storage as is consistent with the Water Supply Act of 1958 (Public Law 85-500). The relief provided by the preceding sentence shall apply for 5 years after the

date of enactment of this Act or until the storage space is used, whichever first occurs, and shall apply in such proportion as the storage is used for water supply purposes.

SEC. 1138. POE LOCK STUDY.

The Secretary shall expedite completion of the study of a new lock parallel to the existing Poe Lock being undertaken as part of the study of additional locks on the Saint Lawrence Seaway and shall submit to the Congress a report on such additional lock not later than March 31, 1987.

SEC. 1139. PORT OF BUFFALO.

The Secretary of Commerce, acting through the Economic Development Administration, shall make a grant to the Niagara Frontier Transportation Authority, Port of Buffalo, for the construction and improvement of facilities, including the construction of covered bulk storage facilities, additional paved wharf area, bulkheading up to a total length of 1,000 feet sufficient to facilitate a 1,000-foot class X vessel or a 730-foot class VII vessel, and other projects consistent with implementation of the master plan for the Port of Buffalo. The non-Federal share of the cost of the project authorized by this section shall be 50 percent. There is authorized to be appropriated $3,500,000 to carry out this section.

SEC. 1140. BEAVER RIVER, PENNSYLVANIA.

The Secretary is authorized to carry out planning, engineering, and design for a project to construct and maintain a navigation channel 9 feet deep and 100 feet wide from the mouth of the Beaver River at Bridgewater, Pennsylvania, a distance of approximately three miles upriver, to the dam at New Brighton, at a total cost of $175,000.

SEC. 1141. GROUNDWATER RECHARGE.

The Secretary, in consultation with appropriate Federal, State, and local agencies, is authorized to carry out planning, engineering, and design for a project for the recharge of groundwater in the drainage basins of the Tucson, Arizona, and Scottsdale, Arizona, metropolitan areas, at a total cost of $250,000.

SEC. 1142. MEASUREMENTS OF LAKE MICHIGAN DIVERSIONS.

(a) Beginning October 1, 1987, the Secretary, in cooperation with the State of Illinois, shall carry out measurements and make necessary computations required by the decree of the United States Supreme Court (388 U.S. 426) relating to the diversion of water from Lake Michigan and shall coordinate the results with downstate interests. The measurements and computations shall consist of all flow measurements, gauge records, hydraulic and hydrologic computations, including periodic field investigations and measuring device calibrations, necessary to compute the amount of water diverted from Lake Michigan by the State of Illinois and its municipalities, political subdivisions, agencies, and instrumentalities, not including water diverted or used by Federal installations.

(b) There are authorized to be appropriated $250,000 per fiscal year for each fiscal year beginning after September 30, 1986, to carry out this section, including those funds necessary to maintain the measurements and computations, as well as necessary capital construction costs associated with the installation of new flow measurement devices or structures declared necessary and appropriate by the Secretary.

SEC. 1143. BERKELEY PIER, CALIFORNIA.

The Secretary is authorized to carry out planning, engineering, and design for a project to remove the Berkeley Pier, which extends into San Francisco Bay, California, approximately 12,000 feet, at a total cost of $200,000.

SEC. 1144. CONSTRUCTION OF SEAWALL, AMERICAN SAMOA.

The Secretary is authorized to carry out planning, engineering, and design for a project to construct a seawall from the canneries in the village of Atu'u, Ma'oputasi County, to Breakers Point near the village of Tafananai, Sua County, Western Tutuila Island, American Samoa, at a total cost of $310,000.

SEC. 1145. REHABILITATION OF DOCK, AMERICAN SAMOA.

Subject to section 903(a) of this Act, the Secretary is authorized to rehabilitate the fuel dock adjacent to the Rainmaker Hotel between the villages of Utulei and Fagatogo in Ma'oputasi County, Eastern Tutuila Island, American Samoa, at a total cost of $3,000,000, with an estimated first Federal cost of $3,000,000.

SEC. 1146. ACCEPTANCE OF CERTAIN FUNDS FOR MITIGATION.

The Secretary is authorized to accept funds from any entity, public or private, in accordance with the Pacific Northwest Electric Power Planning and Conservation Act to be used to protect, mitigate, and enhance fish and wildlife in connection with projects constructed or operated by the Secretary. The Secretary may accept and use funds for such purposes without regard to any limitation established under any other provision of law or rule of law.

SEC. 1147. GREAT LAKES CONSUMPTIVE USES STUDY.

(a) STUDY OF CONSUMPTIVE USES.—In recognition of the serious impacts on the Great Lakes environment that may occur as a result of increased consumption of Great Lakes water, including loss of wetlands and reduction of fish spawning and habitat areas, as well as serious economic losses to vital Great Lakes industries, and in recognition of the national goal to provide environmental protection and preservation of our natural resources while allowing for continued economic growth, the Secretary in cooperation with the Administrator of the Environmental Protection Agency, other interested departments, agencies, and instrumentalities of the United States, and the eight Great Lakes States, is authorized to conduct a study of the effects of Great Lakes water consumption on economic growth and environmental quality in the Great Lakes region and of control measures that can be implemented to reduce the quantity of water consumed.

(b) MATTERS INCLUDED.—The study authorized by this section shall at a minimum include the following:

(1) a review of the methodologies used to forecast Great Lakes consumptive uses, including an analysis of the sensitivity of key variables affecting such uses;

(2) an analysis of the effect that enforcement of provisions of the Federal Water Pollution Control Act relating to thermal discharges has had on consumption of Great Lakes water;

(3) an analysis of the effect of laws, regulations, and national policy objectives on consumptive uses of Great Lakes water used in manufacturing;

(4) an analysis of the associated environmental impacts and of the economic effects on industry and other interests in the Great Lakes region associated with individual consumptive use control strategies; and

(5) a summary discussion containing recommendations for methods of controlling consumptive uses which methods maximize benefits to the Great Lakes ecosystem and also provide for continued full economic growth for consuming industries as well as other industries which depend on the use of Great Lakes water.

(c) GREAT LAKES STATES DEFINED.—For purposes of this section, the term "Great Lakes States" means Minnesota, Wisconsin, Illinois, Ohio, Michigan, Indiana, Pennsylvania, and New York.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $750,000 for fiscal years beginning after September 30, 1986, to carry out this section. Sums appropriated under this section shall remain available until expended.

SEC. 1148. PASSAIC RIVER BASIN.

Subject to section 903(a) of this Act, the Secretary is authorized to acquire from willing sellers lands on which residential structures are located, which lands are subject to frequent and recurring flood damage, within the area being studied pursuant to the Passaic River Basin flood control study authorized by section 101 of the Water Resources Development Act of 1976. Lands acquired by the Secretary under this section shall be retained by the Secretary for future use in conjunction with flood protection and flood management in the Passaic River Basin. There is authorized to be appropriated $50,000,000 to carry out this section. The non-Federal share of the cost of carrying out this section shall be 25 percent.

SEC. 1149. SAULT SAINTE MARIE, MICHIGAN.

Subject to section 903(b) of this Act, the Secretary is authorized and directed to construct a second lock 1,294 feet in length, 115 feet in width, and 32 feet in depth, adjacent to the existing lock at Sault Sainte Marie, Michigan, in accordance with the report of the Board of Engineers for Rivers and Harbors, dated May 19, 1986, at a total cost of $227,428,000. The Federal and non-Federal shares of such project shall be determined in accordance with section 101, with the method of payment to be determined in accordance with the report of the Chief of Engineers.

SEC. 1150. WILLIAM G. STONE LOCK.

(a) Notwithstanding any other provision of law, the State of California or any political subdivision thereof, or any non-Federal public body organized under the laws of the State of California, which is operating the William G. Stone Lock in Yolo County, California, under lease agreement with the Secretary may levy and collect tolls or other user fees from vessels using such lock. Such tolls or fees shall be in amounts not exceeding amounts necessary to recover the costs of operating and maintaining the William G. Stone Lock by such State, political subdivision, or public body under such lease agreement.

(b) Any lease for the operation of the William G. Stone Lock entered into by the Secretary after the date of enactment of this Act shall require the lessee to develop a plan of operation for such lock acceptable to Yolo County, California.

SEC. 1151. SATILLA RIVER BASIN, GEORGIA.

Subject to section 903(a) of this Act, the Secretary shall—

(1) undertake a demonstration project consisting of the placement of earthen plugs at Noyes and Bull Whirl Cuts on the Umbrella Creek-Dover Creek system in the Satilla River Basin in Camden County, Georgia, for the purpose of reducing shoaling; and

(2) monitor the effect of such plugs on the estuarine tidal system for a ten-year period; at a total cost of $500,000, with an estimated first Federal cost of $500,000. The Secretary shall use the results of such monitoring to verify a hydrodynamic model which will allow the Secretary to reasonably predict the effects of cuts and closures in tidally-influenced estuarine systems.

SEC. 1152. THURMAN TO HAMBURG, IOWA.

The Secretary is authorized to study measures to prevent flooding in the Thurman to Hamburg area of the Missouri River in western Fremont County, Iowa. Not later than two years after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the results of such study along with recommendations for measures to prevent such flooding. Pending completion of the study the Secretary shall install pumping facilities in such area, at a total cost of $1,100,000, with an estimated first Federal cost of $825,000 and an estimated first non-Federal cost of $275,000. Cost sharing applicable to flood control projects shall apply to work authorized by the preceding sentence.

SEC. 1153. UPPER ST. JOHN'S RIVER BASIN, FLORIDA.

(a) For any survey, planning, or design of any water resources project for the Upper St. John's River Basin, Florida, the Secretary shall give equal consideration to structural, nonstructural, and primarily nonstructural alternatives including, but not limited to, floodproofing of structures; flood plain regulation; acquisition of flood plain lands for recreation, fish and wildlife, and other public purposes; relocation; reductions in water demand; water-borne traffic scheduling; and vessel modification with a view toward formulating the most economically, socially, and environmentally acceptable means of solving the water resources problem.

(b) Cost sharing applicable to nonstructural local flood protection projects shall apply to any water resources project on the Upper Saint John's River Basin, consistent with section 903(c).

SEC. 1154. GREAT LAKES MATERIAL DISPOSAL.

In planning and implementing any navigation project (including maintenance thereof) on the Great Lakes and adjacent waters, the Secretary shall consult and cooperate with concerned States in selecting disposal areas for dredged material which is suitable for beach nourishment.

SEC. 1155. LOWER MISSISSIPPI WETLANDS.

The Secretary, in consultation with the Secretary of the Interior and the Secretary of Commerce and appropriate State agencies, may develop and implement projects for the creation, protection, restoration, and enhancement of wetlands in conjunction with authorized projects for navigation and flood control in the lower Mississippi Valley. There is authorized to be appropriated $2,000,000 for each of fiscal years 1987, 1988, and 1989 to carry out this section.

SEC. 1156. COST SHARING PROVISIONS FOR THE TERRITORIES.

The Secretary shall waive local cost-sharing requirements up to $200,000 for all studies and projects in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands.

SEC. 1157. MIAMI RIVER WATER QUALITY COMMISSION.

(a) The Secretary shall make a grant of $50,000, subject to an appropriation for that purpose, to the Governor of the State of Florida for the establishment of a Miami River Management Commission to develop a comprehensive plan for improving the water quality of the Miami River, Florida, and its tributaries and managing all activities which affect the water quality and use of such river and tributaries. The commission shall be composed of seven members appointed by the Governor. A grant may be made under this section only after the State of Florida agrees to provide an amount equal to the amount of the grant to carry out this section.

(b) There is authorized to be appropriated to carry out this section $50,000 for fiscal years beginning after September 30, 1986.

SEC. 1158. BREWERTON EXTENSION.

Any funds appropriated after the date of the enactment of this Act to complete the Brewerton Extension of the Baltimore Harbor and Channels (connecting channels to the Chesapeake and Delaware Canal), authorized by the River and Harbor Act of 1958, which are not needed to complete such project because of savings resulting from the redesign of the project shall be available for maintenance dredging of the Inland Waterway from the Delaware River to the Chesapeake Bay, Delaware and Maryland (Chesapeake and Delaware Canal), authorized by the River and Harbor Act of 1954.

SEC. 1159. MARSH CREEK BRIDGE, SAYERS LAKE, PENNSYLVANIA.

The Secretary is authorized to construct necessary repairs on the Marsh Creek Bridge near Foster Joseph Sayers Lake, Centre County, Pennsylvania, at a total cost of $50,000, with a Federal cost of $25,000 and a non-Federal cost of $25,000. The non-Federal share of the cost of the work authorized by this section shall be 50 percent.

SEC. 1160. MIDDLE RIVER, MARYLAND.

(a) That portion of the waterway in which is located Dark Head Creek in the community of Middle River, Baltimore County, Maryland, lying northwest of a line extending south 68 degrees 37 minutes 56 seconds west from a point (227.50 feet from the northeast corner of the existing bulkhead and pier line) whose coordinates in the Maryland State Coordinate System are north 544967.24 and east 962701.05 (latitude north 39 degrees 19 minutes 42 seconds and longitude west 76 degrees 25 minutes 29.5 seconds) and thence south 44 degrees 48 minutes 20 seconds west, 350.12 feet to a point (at the southwest corner of the existing bulkhead and pier line) whose coordinates in the Maryland State Coordinate System are north 544635.94 and east 962242.46 (latitude north 39 degrees 19 minutes 39 seconds and longitude west 76 degrees 25 minutes 35.4 seconds), is declared to be a nonnavigable water of the United States for purposes of the navigation servitude.

(b) The line described in subsection (a) shall be established as a combined pierhead and bulkhead line of Dark Head Creek.

(c) Any project heretofore authorized by any Act of Congress, insofar as such project is within the boundaries of Dark Head Creek as described in subsection (a), is not authorized after the date of enactment of this Act.

(d) The right to alter, amend, or repeal this section is hereby expressly reserved.

SEC. 1161. DEVIL'S KITCHEN LAKE.

The Secretary of the Interior, acting through the Fish and Wildlife Service, is authorized and directed to sell surplus water which may be available at the Devil's Kitchen Lake project, Illinois, for municipal use to the city of Marion, Illinois, on such terms and at such rates as such Secretary determines to be reasonable based upon comparable rates in the area of southern Illinois. To implement the purpose of this section, the city of Marion is authorized to construct a catch basin or similar facility downstream of Devil's Kitchen Lake for purposes of collecting and withdrawing water. Prior to initiation of construction of any facilities adversely affecting the Crab Orchard National Wildlife Refuge, the Secretary of the Interior, in consultation with the Secretary must review and approve the plans of such work, along with the associated water withdrawal plans. The Secretaries are authorized to provide technical assistance to the city in developing acceptable plans.

SEC. 1162. MIAMI RIVER SEDIMENTS.

Subject to section 903(a) of this Act, the Secretary is authorized and directed to remove polluted bottom sediments from the Miami River and Seybold Canal in Miami, Florida, between the mouth of the Miami River and the salinity control structure at 36th Street. Local interests shall furnish all lands (including dredge disposal areas), easements, rights-of-way, relocations, and alterations necessary for initial dredging and subsequent maintenance before the Secretary removes any such sediments. The non-Federal share of the cost of carrying out this section (including the contribution under the preceding sentence) shall be 25 percent.

SEC. 1163. EISENHOWER AND SNELL LOCKS.

Subject to section 903(b) of this Act, the Secretary is authorized to rehabilitate the Eisenhower and Snell Locks, Saint Lawrence River, Massena, New York, in accordance with the report of the District Engineer, dated November 1984, at a total cost of $39,200,000. The Federal share of such project shall be 100 percent, from the general fund of the Treasury, except that up to 25 percent of the cost of such project may be paid from tolls collected on the Saint Lawrence Seaway to the extent that the rehabilitation is not attributable to decisions and recommendations of the Corps of Engineers.

SEC. 1164. WATER SUPPLY FOR THE TERRITORIES.

Section 401(d) of the Act entitled "An Act to enhance the economic development of Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and for other purposes" (98 Stat. 1735), is amended by striking "in fiscal" and inserting in lieu thereof "effective fiscal".

SEC. 1165. SAN LUIS REY RIVER, CALIFORNIA.

The interest rate used for purposes of analyzing the costs and benefits of the San Luis Rey River flood control program in San Diego County, California, shall be the applicable interest rate at the time an agreement under section 215 of the Flood Control Act of 1968 was entered into.

SEC. 1166. BRIDGES OVER NAVIGABLE WATERS.

(a)(1) The Secretary shall reimburse, from sums appropriated under this section—

(A) the owner of the Port of Houston Authority bridge over Greens Bayou, Texas, appropriately two and eight-tenths miles upstream of the confluence of Greens Bayou and the Houston Ship Channel, and

(B) the owner of the pipeline bridge over Greens Bayou, Texas, immediately adjacent to the Port of Houston Authority bridge over Greens Bayou,

for work done before the date of enactment of this Act for alterations to each such bridge which were reasonably necessary for the purposes of navigation.

(2) There is authorized to be appropriated not to exceed $450,000 to carry out subparagraph (A) of paragraph (1) and not to exceed

$250,000 to carry out subparagraph (B) of paragraph (1).

(b) The Secretary of Transportation, in consultation with the Secretary, is authorized and directed to transmit to Congress a list of those bridges over navigable waters of the United States which have Federal permits and which were constructed, reconstructed, or removed during the period January 1, 1948, to January 1, 1985.

(c) In order to alleviate a navigational hazard in the Seekonk River in Providence, Rhode Island, the Secretary is authorized to demolish and remove the center span of the India Point Railroad Bridge, at a total cost of $500,000, with an estimated first Federal cost of $250,000 and an estimated first non-Federal cost of $250,000. The non-Federal share of the cost of the project authorized by this subsection shall be 50 percent. The Secretary shall not demolish such span until title to such bridge has been transferred to the United States. Revenue derived from the sale of scrap from this structure shall be credited toward the non-Federal share of the project.

SEC. 1167. PEARSON-SKUBITZ BIG HILL LAKE.

Subject to section 903(a) of the Act, the Secretary is authorized and directed to improve public access to, and lessen a health and safety hazard, at Pearson-Skubitz Big Hill Lake, Kansas, by upgrading existing roads to the extent feasible acquiring additional rights-of-way, and constructing new roads as required, at a cost of $4,000,000, with an estimated first Federal cost of $2,000,000 and an estimated first non-Federal cost of $2,000,000. The non-Federal share of the cost of the project authorized by this section shall be 50 percent.

SEC. 1168. NORTON BASIN AND JAMAICA BAY, NEW YORK.

The two portions of Norton Basin and Jamaica Bay, New York, that are particularly described in Committee Print 99-58 of the Committee on Public Works and Transportation of the House of Representatives are hereby declared to be nonnavigable waters of the United States for purposes of the navigation servitude.

SEC. 1169. AVALON BAY, CALIFORNIA.

Subject to section 903(a) of this Act, and following completion of all necessary environmental documents, the Secretary is authorized to perform dredging in Avalon Bay, Santa Catalina Island, California, to a depth of 10 feet mean lower low water, and remove approximately 12,800 cubic yards of material, at a total cost of $300,000, with an estimated first Federal cost of $150,000 and an estimated first non-Federal cost of $150,000. The non-Federal share of the cost of the project authorized by this section shall be 50 percent.

SEC. 1170. ELLICOTT CREEK, NEW YORK.

Notwithstanding section 103 of this Act, cost sharing for the project for flood protection and other purposes, Ellicott Creek, New York, authorized by section 201 of the Flood Control Act of 1970, shall be in accordance with the agreement entered into with respect to such project under section 221 of the Flood Control Act of 1970, dated January 20, 1984.

SEC. 1171. TOUTLE AND GREEN RIVERS, WASHINGTON.

For purposes of section 103 of this Act, physical construction shall be deemed to have been initiated before April 30, 1986, on the project for construction, operation, and maintenance of a sediment retention structure near the confluence of the Toutle and Green Rivers, Washington, authorized by Public Law 99-88.

SEC. 1172. SPECIAL PROVISIONS REGARDING CERTAIN DUMPING SITES.

(a) The Congress finds that the New York Bight Apex is no longer a suitable location for the ocean dumping of municipal sludge.

(b) Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.) is amended by inserting after section 104 the following new section:

"SPECIAL PROVISIONS REGARDING CERTAIN DUMPING SITES

"SEC. 104A. (a) NEW YORK BIGHT APEX.—(1) For purposes of this subsection—

"(A) The term 'Apex' means the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

"(B) The term 'Apex site' means that site within the Apex at which the dumping of municipal sludge occurred before October 1, 1983.

"(C) The term 'eligible authority' means any sewerage authority or other unit of State or local government that on November 2, 1983, was authorized under court order to dump municipal sludge at the Apex site.

"(2) No person may apply for a permit under this title in relation to the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex unless that person is an eligible authority.

"(3) The Administrator may not issue, or renew, any permit under this title that authorizes the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex after the earlier of—

"(A) December 15, 1987; or

"(B) the day determined by the Administrator to be the first day on which municipal sludge generated by eligible authorities can reasonably be dumped at a site designated under section 102 other than a site within the Apex.

"(b) RESTRICTION ON USE OF THE 106-MILE SITE.—The Administrator may not issue or renew any permit under this title which authorizes any person, other than a person that is an eligible authority within the meaning of subsection (a)(1)(C), to dump, or to transport for the purposes of dumping, municipal sludge within the site designated under section 102(c) by the Administrator and known as the '106-Mile Ocean Waste Dump Site' (as described in 49 F.R. 19005).".

SEC. 1173. CHICAGO TUNNEL AND RESERVOIR PROJECT.

Notwithstanding any other provision of law (including section 202 of the Federal Water Pollution Control Act), the Federal share of the cost of construction of the Chicago Tunnel and Reservoir Project, Illinois, shall be 75 percent.

TITLE XII—DAM SAFETY

SEC. 1201. (a) Section 1 of Public Law 92-367 (33 U.S.C. 467; 86 Stat. 506) is amended by striking out the final period and inserting in lieu thereof the following: ", unless such barrier, due to its location or other physical characteristics, is likely to pose a significant threat to human life or property in the event of its failure.".

(b) Public Law 92-367 is further amended by inserting after section 6 the following sections:

"SEC. 7. (a) There is authorized to be appropriated to the Secretary of the Army (hereafter in this Act referred to as the 'Secretary'), $13,000,000 for each of the fiscal years ending September 30, 1988, through September 30, 1992. Sums appropriated under this section shall be distributed annually among States on the following basis: One-third equally among those States that have established dam safety programs approved under the terms of section 8 of this Act, and two-thirds in proportion to the number of dams located in each State that has an established dam safety program under the terms of section 8 of this Act to the number of dams in all States with such approved programs. In no event shall funds distributed to any State under this section exceed 50 percent of the reasonable cost of implementing an approved dam safety program in such State.

"(b) No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs to assure dam safety for the protection of human life and property at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this section.

"SEC. 8. (a) In order to encourage the establishment and maintenance of effective programs intended to assure dam safety to protect human life and property and to improve such existing programs, the Secretary shall provide assistance under the terms of section 7 of this Act to any State that establishes and maintains a dam safety program which is approved under this section. In evaluating a State's dam safety program, under the terms of subsections (b) and (c) of this section, the Secretary shall determine that such program includes the following:

"(1) a procedure, whereby, prior to any construction the plans for any dam will be reviewed to provide reasonable assurance of the safety and integrity of such dam over its intended life;

"(2) a procedure to determine, during and following construction and prior to operation of each dam built in the State, that such dam has been constructed and will be operated in a safe and reasonable manner;

"(3) a procedure to inspect every dam within such State at least once every five years, except that such inspections shall be required at least every three years for any dam the failure of which is likely to result in the loss of human life;

"(4) a procedure for more detailed and frequent safety inspections, when warranted;

"(5) the State has or can be expected to have authority to require those changes or modifications in a dam, or its operation, necessary to assure the dam's safety;

"(6) the State has or can be expected to develop a system of emergency procedures that would be utilized in the event a dam fails or in the event a dam's failure is imminent together with an identification of those dams where failure could be reasonably expected to endanger human life, and of the maximum area that could be inundated in the event of the failure of such dam, as well as identification of those necessary public facilities that would be affected by such inundation;

"(7) the State has or can be expected to have the authority to assure that any repairs or other changes needed to maintain the integrity of any dam will be undertaken by the dam's owner, or other responsible party; and

"(8) the State has or can be expected to have authority and necessary emergency funds to assure immediate repairs or other changes to, or removal of, a dam in order to protect human life and property, and if the owner does not take action, to take appropriate action as expeditiously as possible.

"(b) Any program which is submitted to the Secretary under the authority of this section shall be deemed approved 120 days following its receipt by the Secretary unless the Secretary determines within such 120-day period that such program fails to reasonably meet the requirements of subsection (a) of this section. If the Secretary determines such a program cannot be approved, he shall immediately notify such State in writing, together with his reasons and those changes needed to enable such plan to be approved.

"(c) Utilizing the expertise of the Board established under section 9 of this Act, the Secretary shall review periodically the implementation and effectiveness of approved State dam safety programs. In the event the Board finds that a State program under this Act has proven inadequate to reasonably protect human life and property, and the Secretary agrees, the Secretary shall revoke approval of such State program and withhold assistance under the terms of section 7 of this Act until such State program has been reapproved.

"SEC. 9. (a) There is authorized to be established a National Dam Safety Review Board (hereinafter in this Act referred to as the 'Board'), which shall be responsible for reviewing and monitoring State implementation of this Act. The Board is authorized to utilize the expertise of other agencies of the United States and to enter into contracts for necessary studies to carry out the requirements of this section.

"(b) The Board shall consist of seven members selected for their expertise in dam safety, to represent the Department of the Army, the Department of the Interior, the Tennessee Valley Authority, the Federal Emergency Management Agency, and the Department of Agriculture, plus two members, selected by the President, from employees or officials of States having an approved program under section 8 of this Act.

"SEC. 10. The head of any agency of the United States that owns or operates a dam, or proposes to construct a dam in any State, shall, when requested by such State, consult fully with such State on the design and safety of such dam and allow officials of such State to participate with officials of such agency in all safety inspections of such dam.

"SEC. 11. The Secretary shall, at the request of any State that has or intends to develop a dam safety program under section 8 of this Act, provide training for State dam safety inspectors. There is authorized to be appropriated to carry out this section $500,000 for each of the fiscal years ending September 30, 1988, through September 30, 1992.

"SEC. 12. The Secretary, in cooperation with the National Bureau of Standards, shall undertake a program of research in order to develop improved techniques and equipment for rapid and effective dam inspection, together with devices for the continued monitoring of dams for safety purposes. The Secretary shall provide for State participation in such research and periodically advise all States and the Congress of the results of such research. There is authorized to be appropriated to carry out this section $2,000,000 for each of the fiscal years ending September 30, 1988, through September 30, 1992.

"SEC. 13. The Secretary is authorized to maintain and periodically publish updated information on the inventory of dams authorized in section 5 of this Act. For the purpose of carrying out this section, there is authorized to be appropriated to the Secretary $500,000 for each of the fiscal years ending September 30, 1988, through September 30, 1992.

"SEC. 14. No funds authorized in this Act shall be used to construct or repair any Federal or non-Federal dam.".

SEC. 1202. Any report that is submitted to the Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives by the Secretary, or the Secretary of Agriculture acting under Public Law 83-566, as amended, which proposes construction of a water impoundment facility, shall include information on the consequences of failure and geologic or design factors which could contribute to the possible failure of such facility.

SEC. 1203. (a) After the date of enactment of this Act, costs incurred in the modification by the Secretary of dams and related facilities constructed or operated by the Secretary, the cause of which results from new hydrologic or seismic data or changes in state-of-the-art design or construction criteria deemed necessary for safety purposes, shall be recovered in accordance with the provisions in this subsection:

(1) Fifteen percent of the modification costs shall be assigned to project purposes in accordance with the cost allocation in effect for the project at the time the work is initiated. Non-Federal interests shall share the costs assigned to each purpose in accord with the cost sharing in effect at the time of initial project construction: Provided, That the Secretary of the Interior shall recover costs assigned to irrigation in accordance with repayment provisions of Public Law 98-404.

(2) Repayment under this subsection, with the exception of costs assigned to irrigation, may be made, with interest, over a period of not more than thirty years from the date of completion of the work. The interest rate used shall be determined by the Secretary of the Treasury, taking into consideration average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the applicable reimbursable period during the month preceding the fiscal year in which the costs are incurred, plus a premium of one-eighth of one percentage point for transaction costs. To the extent that more than one interest rate is determined pursuant to the preceding sentence, the Secretary of the Treasury shall establish an interest rate at the weighted average of the rates so determined.

(b) Nothing in this section affects the authority of the Secretary to perform work pursuant to Public Law 84-99, as amended (33 U.S.C. 701n) or cost sharing for such work.

SEC. 1204. Section 3 of Public Law 92-367 (33 U.S.C. 467b) is amended by adding after the first sentence thereof the following new sentence: "In any case in which any hazardous conditions are found during an inspection, upon request by the owner, the Secretary, acting through the Chief of Engineers, may perform detailed engineering studies to determine the structural integrity of the dam, subject to reimbursement of such expense by the owner of such dam.".

SEC. 1205. (a) The Secretary is authorized to provide technical assistance related to the repair of the spillway and technical assistance related to other measures to restore the safety of the dam used to supply water to Schuyler County Public Water Supply District Number 1, Missouri. Such technical assistance may be provided on a nonreimbursable basis at a cost not exceeding $50,000, and may be provided as needed in additional amounts on a fully reimbursable basis.

(b) The Secretary is authorized to provide technical assistance for necessary repairs to the Milton Dam in Mahoning County, Ohio, in accordance with the remedial measures described in the report of the District Engineer, Pittsburgh District, entitled "Milton Dam, Mahoning County, Ohio, Investigation to Determine the Adequacy of Structural and Hydraulic Components", dated February 1980. Such technical assistance may be provided on a nonreimbursable basis at a cost not exceeding $50,000, and may be provided as needed in additional amounts on a fully reimbursable basis.

SEC. 1206. This title may be cited as the "Dam Safety Act of 1986".

TITLE XIII—NAMINGS

SEC. 1301. JENNINGS RANDOLPH LAKE.

Bloomington Lake located on the North Branch of the Potomac River near Bloomington, Maryland, and Keyser, West Virginia, is named and designated as the "Jennings Randolph Lake". Any reference in a law, map, regulation, document, record, or other paper of the United States to such lake shall be held to be a reference to the "Jennings Randolph Lake".

SEC. 1302. JAMES W. TRIMBLE LOCK AND DAM.

Lock and dam numbered 13 on the Arkansas River, Arkansas, constructed as part of the project for navigation on the Arkansas River and tributaries, shall hereafter be known and designated as the "James W. Trimble Lock and Dam". Any law, regulation, document, or record of the United States in which such lock and dam are referred to shall be held to refer to such lock and dam as the "James W. Trimble Lock and Dam".

SEC. 1303. ARTHUR V. ORMOND LOCK AND DAM.

Lock and dam numbered 9 on the Arkansas River, Arkansas, constructed as part of the project for navigation on the Arkansas River and tributaries, shall hereafter be known and designated as the "Arthur V. Ormond Lock and Dam". Any law, regulation, document, or record of the United States in which such lock and dam are referred to shall be held to refer to such lock and dam as the "Arthur V. Ormond Lock and Dam".

SEC. 1304. GREILICKVILLE HARBOR.

The harbor located in Elmwood Township, Leelanau County, Michigan, and authorized as the Grand Traverse Bay by section 101 of the River and Harbor Act of 1948 (62 Stat. 1173) shall hereafter be known and designated as the "Greilickville Harbor". Any reference in a law, map, regulation, document, record, or other paper of the United States to that harbor shall be deemed to be a reference to the "Greilickville Harbor".

SEC. 1305. WILBUR D. MILLS DAM.

Dam numbered 2 on the Arkansas River, Arkansas, constructed as part of the project for navigation on the Arkansas River and tributaries, shall hereafter be known and designated as the "Wilbur D. Mills Dam". Any law, regulation, document, or record of the United States in which such dam is referred to shall be held to refer to such dam as the "Wilbur D. Mills Dam".

SEC. 1306. S. W. TAYLOR MEMORIAL PARK.

The China Bluff access area which is being constructed by the Army Corps of Engineers as part of the Gainesville lock and dam portion of the Tennessee-Tombigbee Waterway project and which is located near Warsaw in Sumter County, Alabama, shall hereafter be known as the "S. W. Taylor Me-

morial Park". Any reference in any law, map, regulation, document, or other record of the United States to the China Bluff access area shall be held to be a reference to the "S. W. Taylor Memorial Park".

SEC. 1307. H. K. THATCHER LOCK AND DAM.

Calion Lock and Dam located on the Ouachita River near Calion, Arkansas, shall hereafter be known and designated as the "H. K. Thatcher Lock and Dam". Any reference in a law, map, regulation, document, record, or other paper of the United States to such lock and dam shall be held to be a reference to the "H. K. Thatcher Lock and Dam".

SEC. 1308. DEWAYNE HAYES RECREATION AREA.

The Stinson Creek Recreation Area which is to be constructed by the Army Corps of Engineers as part of the Columbus Lake portion of the Tennessee-Tombigbee Waterway project and which is located in Lowndes County, Mississippi, shall hereafter be known and designated as the "DeWayne Hayes Recreation Area". Any law, regulation, document, or record of the United States in which such recreation area is referred to shall be held to refer to such recreation area as the "DeWayne Hayes Recreation Area".

SEC. 1309. WINTHROP ROCKEFELLER LAKE.

The reservoir created by dam numbered 9 on the Arkansas River, Arkansas, constructed as part of the project for navigation on the Arkansas River and tributaries, shall hereafter be known and designated as the "Winthrop Rockefeller Lake". Any law, regulation, document, or record of the United States in which such reservoir is referred to shall be held to refer to such reservoir as the "Winthrop Rockefeller Lake".

SEC. 1310. WEHRSPANN LAKE.

Papillion Creek and Tributaries Lakes, Nebraska, site 20 on the West Papillion Creek shall hereafter be known and designated as the "Wehrspann Lake". Any reference in a law, map, regulation, document, record, or other paper of the United States to such site shall be held to be a reference to the "Wehrspann Lake".

SEC. 1311. JACK D. MALTESTER CHANNEL.

The main channel of the project for San Leandro Marina, California, authorized by section 201 of the Flood Control Act of 1965 and approved by resolution adopted by the Committee on Public Works of the House of Representatives on June 22, 1971, and by the Committee on Public Works of the Senate on December 15, 1970, shall be known and designated as the "Jack D. Maltester Channel". Each reference to such channel in a law, map, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the "Jack D. Maltester Channel".

TITLE XIV—REVENUE PROVISIONS

SEC. 1401. SHORT TITLE.

This title may be cited as the "Harbor Maintenance Revenue Act of 1986".

SEC. 1402. IMPOSITION OF HARBOR MAINTENANCE TAX.

(a) GENERAL RULE.—Chapter 36 of the Internal Revenue Code of 1954 (relating to certain other excise taxes) is amended by inserting after the chapter heading the following new subchapter:

"Subchapter A—Harbor Maintenance Tax

"Sec. 4461. Imposition of tax.

"Sec. 4462. Definitions and special rules.

"SEC. 4461. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any port use.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) on any port use shall be an amount equal to 0.04 percent of the value of the commercial cargo involved.

"(c) LIABILITY AND TIME OF IMPOSITION OF TAX.—

"(1) LIABILITY.—The tax imposed by subsection (a) shall be paid by—

"(A) in the case of cargo entering the United States, the importer,

"(B) in the case of cargo to be exported from the United States, the exporter, or

"(C) in any other case, the shipper.

"(2) TIME OF IMPOSITION.—Except as provided by regulations, the tax imposed by subsection (a) shall be imposed—

"(A) in the case of cargo to be exported from the United States, at the time of loading, and

"(B) in any other case, at the time of unloading.

"SEC. 4462. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) PORT USE.—The term 'port use' means—

"(A) the loading of commercial cargo on, or

"(B) the unloading of commercial cargo from,

a commercial vessel at a port.

"(2) PORT.—

"(A) IN GENERAL.—The term 'port' means any channel or harbor (or component thereof) in the United States, which—

"(i) is not an inland waterway, and

"(ii) is open to public navigation.

"(B) EXCEPTION FOR CERTAIN FACILITIES.—The term 'port' does not include any channel or harbor with respect to which no Federal funds have been used since 1977 for construction, maintenance, or operation, or which was deauthorized by Federal law before 1985.

"(C) SPECIAL RULE FOR COLUMBIA RIVER.—The term 'port' shall include the channels of the Columbia River in the States of Oregon and Washington only up to the downstream side of Bonneville lock and dam.

"(3) COMMERCIAL CARGO.—

"(A) IN GENERAL.—The term 'commercial cargo' means any cargo transported on a commercial vessel, including passengers transported for compensation or hire.

"(B) CERTAIN ITEMS NOT INCLUDED.—The term 'commercial cargo' does not include—

"(i) bunker fuel, ship's stores, sea stores, or the legitimate equipment necessary to the operation of a vessel, or

"(ii) fish or other aquatic animal life caught and not previously landed on shore.

"(4) COMMERCIAL VESSEL.—

"(A) IN GENERAL.—The term 'commercial vessel' means any vessel used—

"(i) in transporting cargo by water for compensation or hire, or

"(ii) in transporting cargo by water in the business of the owner, lessee, or operator of the vessel.

"(B) EXCLUSION OF FERRIES.—

"(i) IN GENERAL.—The term 'commercial vessel' does not include any ferry engaged primarily in the ferrying of passengers (including their vehicles) between points within the United States, or between the United States and contiguous countries.

"(ii) FERRY.—The term 'ferry' means any vessel which arrives in the United States on a regular schedule during its operating season at intervals of at least once each business day.

"(5) VALUE.—

"(A) IN GENERAL.—The term 'value' means, except as provided in regulations, the value of any commercial cargo as determined by standard commercial documentation.

"(B) TRANSPORTATION OF PASSENGERS.—In the case of the transportation of passengers for hire, the term 'value' means the actual charge paid for such service or the prevailing charge for comparable service if no actual charge is paid.

"(b) SPECIAL RULE FOR ALASKA, HAWAII, AND POSSESSIONS.—

"(1) IN GENERAL.—No tax shall be imposed under section 4461(a) with respect to—

"(A) cargo loaded on a vessel in a port in the United States mainland for transportation to Alaska, Hawaii, or any possession of the United States for ultimate use or consumption in Alaska, Hawaii, or any possession of the United States,

"(B) cargo loaded on a vessel in Alaska, Hawaii, or any possession of the United States for transportation to the United States mainland for ultimate use or consumption in the United States mainland,

"(C) the unloading of cargo described in subparagraph (A) or (B) in Alaska, Hawaii, or any possession of the United States, or in the United States mainland, respectively, or

"(D) cargo loaded on a vessel in Alaska, Hawaii, or a possession of the United States and unloaded in the State or possession in which loaded.

"(2) CARGO DOES NOT INCLUDE CRUDE OIL WITH RESPECT TO ALASKA.—For purposes of this subsection, the term 'cargo' does not include crude oil with respect to Alaska.

"(3) UNITED STATES MAINLAND.—For purposes of this subsection, the term 'United States mainland' means the continental United States (not including Alaska).

"(c) COORDINATION OF TAX WHERE TRANSPORTATION SUBJECT TO TAX IMPOSED BY SECTION 4042.—No tax shall be imposed under this subchapter with respect to the loading or unloading of any cargo on or from a vessel if any fuel of such vessel has been (or will be) subject to the tax imposed by section 4042 (relating to tax on fuel used in commercial transportation on inland waterways).

"(d) NONAPPLICABILITY OF TAX TO CERTAIN CARGO.—

"(1) IN GENERAL.—Subject to paragraph (2), the tax imposed by section 4461(a) shall not apply to bonded commercial cargo entering the United States for transportation and direct exportation to a foreign country.

"(2) IMPOSITION OF CHARGES.—Paragraph (1) shall not apply to any cargo exported to Canada or Mexico—

"(A) during the period—

"(i) after the date on which the Secretary determines that the Government of Canada or Mexico (as the case may be) has imposed a substantially equivalent tax, fee, or charge on commercial vessels or commercial cargo utilizing ports of such country, and

"(ii) subject to subparagraph (B), before the date on which the Secretary determines that such tax, fee, charge has been discontinued by such country, and

"(B) with respect to a particular United States port (or to any transaction or class of transactions at any such port) to the extent that the study made pursuant to section 1407(a) of the Water Resources Development Act of 1986 (or a review thereof pursuant to section 1407(b) of such Act) finds that—

"(i) the imposition of the tax imposed by this subchapter at such port (or to any transaction or class of transactions at such port) is not likely to divert a significant amount of cargo from such port to a port in a country contiguous to the United States, or that any such diversion is not likely to result in significant economic loss to such port, or

"(ii) the nonapplicability of such tax at such port (or to any transaction or class of transactions at such port) is likely to result in significant economic loss to any other United States port.

"(e) EXEMPTION FOR UNITED STATES.—No tax shall be imposed under this subchapter on the United States or any agency or instrumentality thereof.

"(f) EXTENSION OF PROVISIONS OF LAW APPLICABLE TO CUSTOMS DUTY.—

"(1) IN GENERAL.—Except to the extent otherwise provided in regulations, all administrative and enforcement provisions of customs laws and regulations shall apply in respect of the tax imposed by this subchapter (and in respect of persons liable therefor) as if such tax were a customs duty. For purposes of the preceding sentence, any penalty expressed in terms of a relationship to the amount of the duty shall be treated as not less than the amount which bears a similar relationship to the value of the cargo.

"(2) JURISDICTION OF COURTS AND AGENCIES.—For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, the tax imposed by this subchapter shall be treated as if such tax were a customs duty.

"(3) ADMINISTRATIVE PROVISIONS APPLICABLE TO TAX LAW NOT TO APPLY.—The tax imposed by this subchapter shall not be treated as a tax for purposes of subtitle F or any other provision of law relating to the administration and enforcement of internal revenue taxes.

"(g) SPECIAL RULES.—Except as provided by regulations—

"(1) TAX IMPOSED ONLY ONCE.—Only 1 tax shall be imposed under section 4461(a) with respect to the loading on and unloading from, or the unloading from and the loading on, the same vessel of the same cargo.

"(2) EXCEPTION FOR INTRAPORT MOVEMENTS.—Under regulations, no tax shall be imposed under section 4461(a) on the mere movement of cargo within a port.

"(h) REGULATIONS.—The Secretary may prescribe such additional regulations as may be necessary to carry out the purposes of this subchapter including, but not limited to, regulations—

"(1) providing for the manner and method of payment and collection of the tax imposed by this subchapter,

"(2) providing for the posting of bonds to secure payment of such tax,

"(3) exempting any transaction or class of transactions from such tax where the collection of such tax is not administratively practical, and

"(4) providing for the remittance or mitigation of penalties and the settlement or compromise of claims."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 36 of the Internal Revenue Code of 1954 is amended by inserting the following before the item relating to subchapter D:

"SUBCHAPTER A. Harbor maintenance tax."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on April 1, 1987.

SEC. 1403. CREATION OF HARBOR MAINTENANCE TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9504 the following new section:

"SEC. 9505. HARBOR MAINTENANCE TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is hereby established in the Treasury of the United States a trust fund to be known as the 'Harbor Maintenance Trust Fund', consisting of such amounts as may be—

"(1) appropriated to the Harbor Maintenance Trust Fund as provided in this section,

"(2) transferred to the Harbor Maintenance Trust Fund by the Saint Lawrence Seaway Development Corporation pursuant to section 13(a) of the Act of May 13, 1954, or

"(3) credited to the Harbor Maintenance Trust Fund as provided in section 9602(b).

"(b) TRANSFER TO HARBOR MAINTENANCE TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN TAXES.—There are hereby appropriated to the Harbor Maintenance Trust Fund amounts equivalent to the taxes received in the Treasury under section 4461 (relating to harbor maintenance tax).

"(c) EXPENDITURES FROM HARBOR MAINTENANCE TRUST FUND.—Amounts in the Harbor Maintenance Trust Fund shall be available, as provided by appropriation Acts, for making expenditures—

"(1) to carry out section 210(a) of the Water Resources Development Act of 1986 (as in effect on the date of enactment of this section),

"(2) for payments of rebates of tolls or charges pursuant to section 13(b) of the Act of May 13, 1954 (as in effect on April 1, 1987), and

"(3) for the payment of all expenses of administration incurred—

"(A) by the Department of the Treasury in administering subchapter A of chapter 36 (relating to harbor maintenance tax), but not in excess of $5,000,000 for any fiscal year, and

"(B) for periods during which no fee applies under paragraph (9) or (10) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985."

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of the Treasury (from the fees collected under paragraphs (9) and (10) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985) such sums as may be necessary to pay all expenses of administration incurred by such Department in administering subchapter A of chapter 36 of the Internal Revenue Code of 1954 for periods to which such fees apply.

(c) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of the Internal Revenue Code of 1954 is amended by adding after the item relating to section 9504 the following new item:

"Sec. 9505. Harbor Maintenance Trust Fund."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on April 1, 1987.

SEC. 1404. INLAND WATERWAYS TAX.

(a) IN GENERAL.—Subsection (b) of section 4042 of the Internal Revenue Code of 1954 (relating to tax on fuel used in commercial transportation on inland waterways) is amended to read as follows:

"(b) AMOUNT OF TAX.—The tax imposed by subsection (a) shall be determined from the following table:

If the use occurs:	The tax per gallon is:
Before 1990	10 cents
During 1990	11 cents
During 1991	13 cents
During 1992	15 cents
During 1993	17 cents
During 1994	19 cents
After 1994	20 cents."

(b) FUEL USE ON TENNESSEE-TOMBIGBEE WATERWAY SUBJECT TO INLAND WATERWAY TAX.—Section 206 of the Inland Waterways Revenue Act of 1978 is amended by adding at the end thereof the following:

"(27) Tennessee-Tombigbee Waterway: From its confluence with the Tennessee River to the Warrior River at Demopolis, Alabama."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 1405. INLAND WATERWAYS TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9505 the following new section:

"SEC. 9506. INLAND WATERWAYS TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is hereby established in the Treasury of the United States a trust fund to be known as the 'Inland Waterways Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFER TO TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN TAXES.—There are hereby appropriated to the Inland Waterways Trust Fund amounts equivalent to the taxes received in the Treasury under section 4042 (relating to tax on fuel used in commercial transportation on inland waterways).

"(c) EXPENDITURES FROM TRUST FUND.—

"(1) IN GENERAL.—Except as provided in paragraph (2), amounts in the Inland Waterways Trust Fund shall be available, as provided by appropriation Acts, for making construction and rehabilitation expenditures for navigation on the inland and coastal waterways of the United States described in section 206 of the Inland Waterways Revenue Act of 1978, as in effect on the date of the enactment of this section.

"(2) EXCEPTION FOR CERTAIN PROJECTS.—Not more than 1/2 of the cost of any construction to which section 102(a) of the Water Resources Development Act of 1986 applies (as in effect on the date of the enactment of this section) may be paid from the Inland Waterways Trust Fund."

(b) CONFORMING AMENDMENTS.—Sections 203 and 204 of the Inland Waterways Revenue Act of 1978 (relating to Inland Waterways Trust Fund) are hereby repealed.

(c) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new item:

"Sec. 9506. Inland Waterways Trust Fund."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1987.

(2) INLAND WATERWAYS TRUST FUND TREATED AS CONTINUATION OF OLD TRUST FUND.—The Inland Waterways Trust Fund established by the amendments made by this section shall be treated for all purposes of law as a continuation of the Inland Waterways Trust Fund established by section 203 of the Inland Waterways Revenue Act of 1978. Any reference in any law to the Inland Waterways Trust Fund established by such section 203 shall be deemed to include (wherever appropriate) a reference to the Inland Waterways Trust Fund established by this section.

SEC. 805. SAINT LAWRENCE SEAWAY EXPENDITURES AND REBATES OF TOLLS.

(a) IN GENERAL.—The Act of May 13, 1954 is amended—

(1) by striking out "and" at the end of paragraph (11) of section 4(a),

(2) by striking out the period at the end of paragraph (12) of section 4(a) and inserting in lieu thereof "; and",

(3) by adding at the end of section 4(a) the following new paragraph:

"(13) shall accept such amounts as may be transferred to the Corporation under section 9505(c)(1) of the Internal Revenue Code of 1954, except that such amounts shall be available only for the purpose of operating and maintaining those works which the Corporation is obligated to operate and maintain under subsection (a) of section 3 of this Act.", and

(4) by adding at the end thereof the following new section:

"REBATE OF CHARGES OR TOLLS

"SEC. 13. (a) The Corporation shall transfer to the Harbor Maintenance Trust Fund, at such times and under such terms and conditions as the Secretary of the Treasury may prescribe, all revenues derived from the collection of charges or tolls established under section 12 of this Act.

"(b)(1) The Corporation shall certify to the Secretary of the Treasury, in such form and at such times as the Secretary of the Treasury shall prescribe—

"(A) the identity of any person who pays a charge or toll to the Corporation pursuant to section 12 of this Act with respect to a commercial vessel (as defined in section 4462(a)(4) of the Internal Revenue Code of 1954),

"(B) the amount of the toll or charge paid by such person with respect to such vessel.

"(2) Within 30 days of the receipt of a certification described in paragraph (1), the Secretary of the Treasury shall rebate, out of the Harbor Maintenance Trust Fund, to the person described in paragraph (1) the amount of the charge or toll paid pursuant to section 12 of this Act."

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on April 1, 1987.

SEC. 1406. REPORT ON REDUCTION OR ELIMINATION OF TOLLS ON THE GREAT LAKES AND THE SAINT LAWRENCE SEAWAY.

Not later than 2 years after the date of enactment of this Act, the Secretary of State, in consultation with the Secretary of Transportation, shall initiate discussions with the Government of Canada with the objective of reducing or eliminating all tolls on the international Great Lakes and the Saint Lawrence Seaway, and the Secretary of Transportation shall report to the Congress on the progress of such discussions and on the economic effects upon waterborne commerce in the United States of any proposed reduction or elimination in tolls.

SEC. 1407. STUDY OF CARGO DIVERSION.

(a) INITIAL STUDY.—The Secretary of the Treasury, in consultation with United States ports, the Secretary of the Army, the Secretary of Transportation, the United States Trade Representative and other appropriate Federal agencies, shall conduct a study to determine the impact of the port use tax imposed under section 4461(a) of the Internal Revenue Code of 1954 on potential diversions of cargo from particular United States ports to any port in a country contiguous to the United States. The report of the study shall be submitted to the Ways and Means Committee of the House of Representatives and the Committee on Finance of the United States Senate not later than 1 year from the date of the enactment of this Act.

(b) REVIEW.—The Secretary of the Treasury may, at any time, review and revise the findings of the study conducted pursuant to subsection (a) with respect to any United States port (or to any transaction or class of transactions at such port).

(c) IMPLEMENTATION OF FINDINGS.—For purposes of section 4462(d)(2)(B) of the Internal Revenue Code of 1954, the findings of the study or review conducted pursuant to subsections (a) and (b) of this section shall be effective 60 days after notification to the ports concerned.

And the Senate agree to the same.

From the Committee on Public Works and Transportation, for consideration of the House bill (except Title XV), and the Senate amendment (except Title VIII):

JAMES J. HOWARD,
GLENN M. ANDERSON,
ROBERT A. ROE,
JOHN B. BREAUX,
NORMAN Y. MINETA,
JAMES L. OBERSTAR,
GENE SNYDER,
JOHN PAUL HAMMERSCHMIDT,

From the Committee on Public Works and Transportation, for consideration of the House bill (except Title XV), and the Senate amendment (except Title VIII):

ARLAN STANGELAND,
BILL CLINGER,

For consideration of sections 510, 605(b), 752, 1110(b), 1159, and 1185 of the House bill, and modifications committed to conference:

HENRY J. NOWAK,

For consideration of the paragraph entitled "Island Creek Basin, West Virginia" of section 301(a), and sections 302 and 813(21) of the House bill, and section 701(a)(1) and (b) of the Senate amendment:

NICK RAHALL,

For consideration of the paragraph entitled "Crown Bay Channel—St. Thomas Harbor, Virgin Islands" of section 102 and section 813(4) of the House bill and section 609(29) of the Senate amendment:

RON DE LUGO,

For consideration of section 536 of the House bill, and modifications committed to conference:

DOUGLAS BOSCO,

For consideration of the paragraph entitled "Gallipolis Locks and Dam Replacement, Ohio River, Ohio and West Virginia" and "Winfield Locks and Dam, Kanawha River, West Virginia" of section 201(a), the paragraph entitled "Cabin Creek, West Virginia" of section 501(a), and sections 507, 538, and 1120 of the House bill, and sections 317, 502(2), and 703(g) of the Senate amendment:

BOB WISE,

For the consideration of section 1199E of the House bill and section 333 of the Senate amendment:

E. CLAY SHAW, Jr.,

For consideration of the paragraph entitled "Santa Ana River Mainstem, California" of section 301(a) of the House bill, and section 703(a)(10) of the Senate amendment:

RON PACKARD,

From the Committee on Interior and Insular Affairs, for consideration of the paragraph entitled "Saipan Harbor, Commonwealth of the Northern Mariana Islands" of section 102, sections 814, 1102(c), 1121, 1199B, 1199G and Title XII of the House bill, and sections 219, 223(c), 238, 308, 314, 338, 339, 340, 348, 358, 504, 701(a)(2), and 703(b)(7) of the Senate amendment:

MO. UDALL,
GEORGE MILLER,
RON DE LUGO,
DON YOUNG,
DICK CHENEY,

From the Committee on Merchant Marine and Fisheries, for consideration of sections 104, 107, 109, 110, 112, 113, 115, 116, 605, 1114, 1121, 1122, 1186, 1199E, 1199P, and Titles XIII and XIV of the House bill, and sections 209, 221, 224, 316, 326, 333, 351, 504, 604, 605, 606, 608, 703(e)(2) and 704 of the Senate amendment:

WALTER B. JONES,
MARIO BIAGGI,
GERRY E. STUDDS,
BARBARA A. MIKULSKI,
MIKE LOWRY,
BILL HUGHES,
NORMAN F. LENT,

From the Committee on Merchant Marine and Fisheries, for consideration of sections 104, 107, 109, 110, 112, 113, 115, 116, 605, 1114, 1121, 1122, 1186, 1199E, 1199P, and Titles XIII and XIV of the House bill, and sections 209, 221, 224, 316, 326, 333, 351, 504, 604, 605, 606, 608, 703(e)(2) and 704 of the Senate amendment:

DON YOUNG,
BOB DAVIS,
WILLIAM CARNEY,
JACK FIELDS,

(In lieu of Mr. Young for consideration of section 1121 of the House bill and section 504 of the Senate amendment.)

From the Committee on Ways and Means, for consideration of Title XV of the House bill, and Title XVIII of the Senate amendment:

DAN ROSTENKOWSKI,
SAM GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,
PETE STARK,
JOHN J. DUNCAN,
GUY VANDER JAGT,
BILL FRENZEL.

Managers on the Part of the House.

On behalf of the Committee on Environment and Public Works:

ROBERT T. STAFFORD,
JAMES ABDNOR,
PETE V. DOMENICI,
DAVID DURENBERGER,
LLOYD BENTSEN,
DANIEL PATRICK MOYNIHAN,
QUENTIN N. BURDICK,

On behalf of the Committee on Finance on Section 606 and Title VIII of the Senate amendment to H.R. 6 and Section 109 and Title XV of H.R. 6:

BOB PACKWOOD,
WILLIAM V. ROTH, Jr.,
JOHN C. DANFORTH,
RUSSELL B. LONG,
SPARK M. MATSUNAGA.

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers of the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6) to provide for the conservation and development of water and related resources and the improvement and rehabilitation of the Nation's water resources infrastructure, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

Project Funding Priority

The conferees are aware that budget priorities are necessary and inevitable. How such priorities are determined is the joint responsibility of the Administration and the Congress.

Project priorities should be based on a combination of factors such as benefit to the nation, environmental and economic values, regional equity, and need.

Project priorities should not be based on the examination of any single variable, especially one which may be unrelated to the basic merits of the projects themselves.

Project priorities should not be set solely on the basis of the size of the local financial share of project development, the size or purpose of the project itself, or the ability of the local sponsor to pay the non-federal share of project costs.

NEPA

Nothing in this bill overrides or modifies the National Environmental Policy Act, commonly known as NEPA. Projects that have never been studied, or only partially studied, must complete environmental review required pursuant to NEPA before any work can go forward.

Cost Estimates

Projects included in the bill generally reflect the total project costs, the estimated Federal first costs, and the estimated non-Federal first costs. The cost figures have been updated to reflect the most current information available. The total project cost stated for each project represents an amount which is subject to the limitations on cost increases imposed by section 902 of the Conference Report. The estimated Federal first cost reflects the costs which would be required to be appropriated from Federal sources of revenue and includes amounts which are required to be repaid by local interests. Conversely, the estimated non-Federal first costs excludes amounts to be repaid over time. In many cases, the actual Federal share of costs may be somewhat lower than the share reflected in the costs shown in the bill.

DEFINITION OF "SECRETARY"

Section 2 of the Conference Report defines "Secretary" to mean the Secretary of the Army. In adopting the Senate bill's definition, the Conferees are not limiting the Secretary's existing authority to delegate duties or functions to the Chief of Engineers or other Corps of Engineers officials.

Pre-Construction Planning, Engineering, and Design

Certain projects are authorized for pre-construction planning, engineering, and design. Projects in this category have no completed Corps of Engineers feasibility report. These projects are authorized for the corps to conduct full study of the project as well as for the corps to go beyond the normal study phase and proceed with more detailed work toward the ultimate construction of the project including construction specifications. The corps will, in effect, be authorized to do everything necessary for construction, except let the contracts to actually initiate construction.

TITLE I—COST SHARING

Both the House and Senate bills contained changes to cost sharing formulas applicable to Corps of Engineers water resources development projects. The following paragraphs summarize the highlights of the cost sharing provisions of each bill, described by project purpose:

Harbors

Both bills required the following non-Federal share of the cost of constructing general navigation facilities, the amount depending on project depths: for depths of twenty feet or less (but greater than 14 feet under the House bill), 10 percent; for depths greater than twenty feet but no more than forty-five feet, 25 percent of the cost of increment greater than twenty feet; for depths greater than forty-five feet, 50 percent of the cost of the increment greater than forty-five feet.

The House bill required that a non-Federal interest provide all lands, easements, rights-of-way, relocation (other than for utilities), and dredged material disposal areas for project construction and maintenance, but the non-Federal interest would be reimbursed for any amount in excess of 5 percent of total project cost. The Senate bill required all lands, etc., with no reimbursement. The Senate bill also required the payment of an additional 10 percent of the cost of general navigation facilities, but allows the Secretary to credit certain traditional costs toward the 10 percent.

Under both bills, project operation and maintenance costs would be 100 percent Federal for work associated with maintaining depths to forty-five feet and 50 percent non-Federal for any additional costs of maintaining depths greater than that depth.

The Senate bill specified that costs of correcting erosion or shoaling problems due to a Federal navigation project was to be the same as that applicable to the project causing the problem.

The Conference Report is the same as both bills with respect to the requirement for payment during construction of 10, 25, and 50 percent for the incremental depths.

An additional 10 percent is to be paid over 30 years, with interest. The cost of lands, easements, rights-of-way, relocations, and dredged material disposal areas, which are to be provided in all cases, are to be credited against this 10 percent.

Operation and maintenance costs are to be Federal, except that in the case of a deep-draft project the non-Federal share is 50 percent of the incremental cost of maintenance below depths of 45 feet.

The Senate provision on erosion or shoaling damage is adopted.

The Conference substitute also details the elements of the agreement that must be entered into between the Secretary and non-Federal interests for construction of harbor projects.

UTILITY RELOCATIONS

Section 101(a)(4) provides that in cases of commercial channel or harbor projects deeper than forty-five feet, the cost of necessary relocations or alterations of pipelines, cables and related facilities will be divided equally between the non-Federal interests and the owner of such facility. Such relocation costs shall not include any cost for upgrading or improving such facilities, which is to be borne by the facility owner.

Except as provided in section 204, this section is not intended to place any new obligation on non-Federal interests to pay for relocations necessitated by commercial channel or harbor development involving depths of forty-five feet or less. This provision also continues the current policy that it is the responsibility of the non-Federal interest to ensure the relocations necessary for such a project are accomplished.

For projects involving depths of forty-five feet or less, the legislation does not restrict in any way the manner in which the non-Federal interest finances the relocation. If the non-Federal interest has the authority to compel the owner of the facility to pay relocation costs, it may do so. By the same token, the non-Federal sponsor may pay as much of the relocation costs as may be required or appropriate. This question is to be resolved between the non-Federal interest and the owners of the facilities being relocated.

Inland Waterway Transportation

Both the House and Senate bills use the existing Inland Waterways Trust Fund to pay a share of the cost of construction specified lock and dam projects. The House bill required that one-third of the construction cost be paid out of the Trust Fund, the balance to come from general revenues. The Senate bill required that one-half of such costs be paid out of the Trust Fund with the balance coming from general revenues.

The Conference Report requires that 50 percent of construction costs of seven specified inland lock projects is to be paid from the Inland Waterways Trust Fund and 50 percent is to be paid from the general fund of the Treasury. An eighth project will receive some funding from the Trust Fund. The Definition of "construction" from the House bill is adopted.

Flood Control

Both the House and Senate bills required a non-Federal interest to pay a minimum of 25% of total project cost for structural measures, including a minimum of 5% cash during construction plus lands, etc. The House bill limited the non-Federal share to 30% where lands, etc. exceeded 25% of total project cost. The Senate bill contained no maximum share. House nor Senate require cash payments during construction for non-structural measures.

The conference substitute provides for structural flood control project a minimum cost share of 25% and a maximum of 50 percent cost sharing as follows:

(1) 5 percent of the costs of each project assigned to flood control must in all cases be paid during construction.

(2) Lands, easements, rights-of-way, relocations, and dredged material disposal areas must be provided by non-Federal interests (except to the extent they exceed 50% when added to the cash required under paragraph (1)).

(3) If the amounts contributed under (1) and (2) are less than 25%, the non-Federal interests must contribute an additional amount in cash during construction in order to reach the 25% minimum.

The non-Federal interests may pay any portion of their share exceeding 30 percent over 15 years (or an agreed upon shorter period) with interest.

The cost sharing requirement for non-structural projects is 25% with no cash required during construction.

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Other Purposes

The House bill did not change existing law with respect to cost sharing for hydroelectric power, municipal and industrial water supply, agricultural water supply, recreation, hurricane and storm damage reduction, aquatic plant control, beach erosion control, water quality enhancement, and fish and wildlife mitigation and enhancement. The Senate bill did not change existing law with respect to cost sharing policy for hydroelectric power. However, with respect to other project purposes, the Senate bill generally increased non-Federal responsibility as follows:

(1) Municipal and Industrial Water Supply.—The Senate bill retains the existing 100% non-Federal share of project costs, with modifications to certain financing aspects of municipal and industrial cost sharing policy.

(2) Agricultural Water Supply.—The Senate bill specified that the non-Federal share is 35%, applicable to joint and separable costs.

(3) Recreation.—The Senate bill specified that the non-Federal share is 50%, applicable to joint and separable costs, and that recreational navigation is included.

(4) Hurricane and Storm Damage Reduction.—The Senate bill specified that the non-Federal share is 35%, applicable to joint and separable cost.

(5) Aquatic Plant Control.—The Senate bill specified that the non-Federal share is 50%.

(6) Beach Erosion Control, Water Quality Enhancement, and Fish and Wildlife Mitigation.—The Senate bill specified that costs are to be assigned to the appropriate purposes listed elsewhere in the bill and costs shared accordingly. It further required that costs for these types of projects that benefit privately owned shares or prevented loss of non-Federal land are to be 100% non-Federal.

The Conference substitute adopts the Senate provisions with respect to other project purposes.

Applicability

For harbors, the Senate bill applied the new cost sharing formula to any project, or separable element thereof, on which construction has not been initiated prior to the date of enactment. The House bill applied the new formula to any project on which construction funds are not obligated before January 1, 1985.

For flood control and other purposes (other than commercial navigation) the Senate bill applied the new cost sharing formula to any project, or separable element thereof, on which physical construction was not initiated prior to May 15, 1986. For flood control, the House bill applied new cost sharing requirements to any project for which a construction contract had not been entered into before the date of enactment.

With respect; to harbors the conference substitute applies the cost sharing provisions to any project or separable element on which a contract for physical construction has not been awarded before the date of enactment.

For flood control and other purposes, the conference substitute applies the cost sharing provisions to any project or separable element on which physical construction is initiated after April 30, 1986.

Ability to pay

Section 103(1) of the Conference Report requires any cost-sharing agreement under Title I for flood control or agricultural water supply to be subject to the ability of a non-Federal sponsor to pay. The ability of a non-Federal interest to pay shall be determined by the Secretary in accordance with procedures to be established by the Secretary. The provision is derived from language contained in the Senate bill which made cost sharing agreements under the bill for flood control, rural drainage and agricultural water supply subject to the ability of the non-Federal interest to pay. The House bill did not contain a similar provision.

It is the intent of the Conferees that where local interests are determined by the Secretary to be unable to satisfy the otherwise applicable non-Federal cost sharing requirements, this inability to pay should not be used to penalize them. In such cases, the Secretary should not assign any lower priority to otherwise meritorious projects because the local sponsor is economically disadvantaged. Futhermore, the Conferees intend that the ability to pay test is applicable to all projects with flood control and agricultural water supply benefits, regardless of the project's overall benefit to cost ratio. Accordingly, any costs required to be paid by local interests by virtue of the provisions of subsection 903(c) of the Conference Report would also be subject to a local sponsor's ability to pay.

General Credits

The House bill contained a number of provisions that authorized the Secretary to credit against the non-Federal share of project costs any work undertaken by local interests which was compatible with the flood control project authorized in the bill but which was undertaken prior to the project's authorization.

As a general matter, the Conference Report deletes such crediting provisions applicable to individual projects. As an alternative, the Conferees have expanded upon general provisions contained in the House and Senate bills allowing the Secretary to credit the cost of certain work undertaken by local interests prior to project authorization against the non-Federal share of project costs.

Under the compromise in the Conference Report, the Secretary, within one year, will develop guidelines for the consideration of compatible work. These guidelines are to be developed with public participation and in conformance with the principles and guidelines on water project review.

The non-Federal sponsor of any flood control project authorized in this Act may submit to the Secretary a request that work undertaken by the sponsor in the five years preceding the enactment of this Act be considered as compatible, and thus a part of the project for purposes of calculating project benefits and costs and for the purposes of cost sharing calculating the non-Federal share of project costs.

If the Secretary, based on the guidelines called for under the generic crediting provision, agrees with the non-Federal sponsor that the work is compatible with the authorized project, then the benefits and costs of the work will be counted towards the benefits and costs of the authorized project and the cost of such work can be applied toward the non-Federal share of project costs.

Such crediting does not relieve the non-Federal sponsor of the requirement that it contribute 5 percent of the project cost in cash during the period of construction.

In a limited number of specific cases, the Conferees have made work undertaken prior to the five-year period eligible for consideration by the Secretary within the overall framework of the generic provision on crediting. However, consistent with the general crediting provision, the Conferees have deleted specific crediting provisions for the Three Mile Creek, Alabama; Metropolitan Atlanta, Georgia; Quincy Coastal Streams, Massachusetts; and Lake Wichita (Holliday Creek), Texas, projects. The work specifically referenced for crediting in the House bill with respect to these four projects would, however, be eligible for consideration under the generic credit provision.

Feasibility Reports

Both bills and the conference report require a reconnaissance study, at Federal expense, and a feasibility report at 50% non-Federal cost. Up to half of the non-Federal share is payable in in-kind services. The Senate and the House bills and the conference report do not apply a study cost sharing to projects on the inland waterway system.

Interest Rate

Both the Senate and House bills contained similar provisions modifying the interest rate to be paid by non-Federal interests for that portion of project costs to be repaid over time. The Senate provision required an extra one-eight of one percent to be paid to cover Treasury transaction costs.

The conference report adopts the Senate provision.

Additional Work

A number of projects authorized in the Conference Report require the Secretary to review certain project-associated problems, such as problems associated with the fish and wildlife or other environmental impacts of a project. In a number of such cases, the Conference Report authorizes the Secretary to modify the project based on the result of such review.

Such a modification may increase project costs, although the extent of such cost increase may not be known at the time project construction is initiated.

Therefore, the Secretary is expected to include in cost-sharing agreements for such projects, a provision requiring that non-Federal interests pay the appropriate share of any project modifications implemented by the Secretary pursuant to the authority conferred in this Act.

TITLE II—HARBOR DEVELOPMENT

The House bill authorized thirty-seven harbor improvement projects in coastal waters and on the Great Lakes. In addition, it contained several specific provisions for certain port facilities, administrative requirements, and limits on certain dredging activities. Major provisions included:

—Allowing the study, design, and construction of harbor projects by non-Federal interest and, under certain circumstances, allowing Federal participation in the funding of such projects.

—Establishing procedures for expediting Federal, state, and local decisions on approvals required for harbor projects, including landside facilities.

—Creation of a program for Federal guarantees of non-Federal obligations to finance harbor projects.

The Senate bill authorized thirty-two harbor projects in coastal waters and on the Great Lakes. In addition, it contained several administrative provisions, such as consideration of national defense activities. Major provisions included:

—Allowing for planning and construction of harbor projects by non-Federal inter-

ests in accordance with guidelines prepared by the Secretary and, under certain conditions, providing for Federal participation in the funding of such projects.

—Establishing procedures for expediting Federal decisions on approvals required for harbor projects.

The Conference report authorizes 35 projects in accordance with existing Corps of Engineers reports. In addition, another five projects are authorized subject to a report of the Chief of Engineers and approval by the Secretary.

The Conference substitute also includes a combination of the House and Senate provisions permitting non-Federal interests to conduct feasibility studies of projects.

The Conference substitute adopts the Senate provision on construction of projects by non-Federal interests.

With respect to expedited permitting procedures the Conference substitute is substantially the same as the House provision.

The Conference report does not contain the House provisions providing loan guarantees for harbor construction.

The Conference substitute also includes the House provision on information for national security.

Additionally, the Conference substitute includes the Senate provision concerning authorizations from the Harbor Maintenance Trust Fund for eligible operations and maintenance costs.

Further, the Conference substitute includes the House provision concerning the Mud Dump, modified to require designation of an alternative site within 3 years from date of enactment and specifying that it be located not less than 20 miles from the shoreline.

The Conference substitute includes the House provisions on emergency services and the harbor office at Morro Bay, California.

Mississippi River Ship Channel, Gulf to Baton Rouge, LA

The Conferees have agreed to accept language from the House passed bill which requires the Corps of Engineers to obtain a permit from the Fish and Wildlife Service as required by Public Law 89-669 prior to conducting any project related work in the Delta National Wildlife Refuge.

Specific mention of compliance with the permitting requirements of Public Law 89-669 in this case is noted only to clarify any ambiguity on the need for such a permit in this specific case. The conferees expect that the Corps of Engineers will comply with the permitting requirements of Public Law 89-669 and any other environmental legislation which may affect the implementation of the projects authorized for construction in this Act.

ADDITION TO STATEMENT OF MANAGERS H.R. 6

Responsibility for Bay Area Rapid Transit tube protection costs is placed with local interests. The costs will be credited against the Section 101(a)(2) ten percent payment. This crediting will reduce the non-federal costs for the overall project by an estimated $3.356 million below what they would have been if tube protection had been defined as purely local responsibility to be met outside of the project.

Monroe Harbor, MI

The Conferees have included authorization of the formation of a 700 acre marsh in Plum Creek Bay as recommended by the District Engineer as part of the project.

The Conferees are in agreement that the construction of this marsh in necessary to mitigate the adverse environmental impacts of project development.

San Juan Harbor

Tidal and wave conditions in the vicinity of the San Juan Harbor dictate that to have a safe controlling navigational depth of 45 feet, the harbor must be dredged to an actual depth of 48 feet. This extra 3-foot increment is only authorized for safety purposes and is not intended to be for the purpose of accommodating vessels requiring a depth of more than 45 feet.

The Conferees have therefore included language providing that the full cost of this extra 3-foot increment of construction be shared between the Federal government and the project sponsor as if it were being constructed to a depth of only 45 feet.

Grays Harbor

Tidal and wave conditions in the vicinity of the Grays Harbor dictate that dredging to a depth of 46 feet is necessary to have a safe controlling depth of 45 feet. This extra one foot increment is only authorized for safety purposes and is not intended to be for the purpose of accommodating vessels requiring a depth of more than 45 feet.

The Conferees have, therefore, included language providing that the full costs of the Grays Harbor project be shared between the Federal government and the non-Federal sponsor as if it were being constructed to a maximum depth of 45 feet.

TITLE III—INLAND WATERWAY TRANSPORTATION SYSTEM

The House bill authorized construction of seven lock and dam projects on the inland waterway system and required that construction of those projects be completed within seven years after initial appropriation of construction funds. The Senate bill authorized six lock and dam projects and authorized the transfer of certain structures on the Kentucky River.

The conference substitute authorizes construction of six projects in accordance with Chief of Engineers reports and one project subject to a report of the Chief of Engineers and approval of the Secretary. The Senate provision with respect to the Kentucky River has been adopted.

In addition, an Inland Waterways Users Board is established to make recommendations regarding construction and rehabilitation priorities and spending levels for the inland waterways.

Because of the difficulty in predicting the pace of appropriations for individual projects, the Conferees have deleted the House provision requiring completion of all projects within seven years. Nevertheless, the Conferees encourage the Secretary to make every effort to construct each of these projects within a seven-year time frame.

With respect to the authorization for the Bonneville Lock and Dam project, the conference substitute deletes the House requirement for a bioengineering committee. It is the intent of the conferees that, notwithstanding the deletion of this legislative requirement, the Secretary establish a bioengineering committee or other appropriate mechanism to review plans for the project, recommend measures to minimize adverse affects of the project, and develop a mitigation plan for the project. The committee should include representatives of the Corps of Engineers, the contractor for construction of the project, and appropriate state and Federal agencies.

TITLE IV—FLOOD CONTROL

This House bill authorized 105 projects for the reduction of flood damages. The Senate bill authorized 81 projects. The House bill specifically required participation in and compliance with Federal flood plain management and flood insurance programs and would revise the term "flood control" to include measures to reduce damages due to groundwater.

The Conference report divides project authorizations into 5 categories:

(1) Eighty-six projects are authorized in accordance with feasibility reports prepared by the Corps of Engineers. There are listed in section 401(a).

(2) Six projects are authorized subject to a report of the Chief of Engineers and approval by the Secretary. These are listed in section 401(b).

Twelve projects are authorized for planning, engineering, and design. There are listed in section 401(c).

(4) Five small projects are authorized in accordance with section 205 of the Flood Control Act of 1948. These are listed in section 401(d).

(5) Five additional projects are authorized for full construction. These projects are listed in section 401(e). For these projects a special procedure is set forth in section 903(a) which requires review by the Secretary before these projects can be constructed.

The conference substitute includes the House provisions requiring participation in and compliance with Federal flood plain management and flood insurance programs, and revising the term "flood control" to include measures to reduce groundwater-induced damages.

Malheur and Harney Lakes, Oregon

Section 401(c) of the Conference Report authorizes the Secretary to carry out planning, engineering, and design for structural and non-structural measures to prevent flood damage resulting from rising lake levels at Malheur and Harney Lakes, Oregon. The Conference substitute is based largely on the House bill. The Senate bill had no comparable provisions.

The Conferees expect that the structural and non-structural measures contemplated by this provision will be compatible with the environmentally sensitive nature of the lake areas and in particular with the Malheur National Wildlife Refuge which is contiguous with the Lakes. Accordingly, the work authorized for Malheur and Harney Lakes must comply with any legal requirements which would otherwise be applicable to the project by nature of its proximity to the Refuge.

Harrisburg, Pennsylvania

With respect to the Harrisburg, Pennsylvania, project which was included in both the House and Senate bills, the Conferees have added language originally proposed by the House authorizing the Secretary to study the feasibility of providing an alternative to the recommended plan in the form of a floodway along Paxton Creek between Wildwood Lake and MacLay Street. Futhermore, the Secretary is authorized to include as part of the authorized project any modifications to the project which the Secretary determines to be feasible and appropriate based on such study.

In view of the concerns about the project raised by the Environmental Protection Agency, the Department of the Interior, and the Pennsylvania Fish Commission, the Conferees direct that a number of other measures be undertaken by the Corps to protect environmental values, to the extent determined necessary and appropriate. Spe-

cifically, the Conferees direct that the Secretary consider addition of a low-flow channel or fishway in both the improved earth channel and the concrete channel portion of the project, utilization of sloping sides sections in the concrete channel, and modifications to bridge crossing Paxton Creek to prevent damming of the creek. Additionally, the project is to include the cost of any relocation required for geodetic control survey monuments.

Nonconnah Creek

In connection with the Nonconnah Creek flood control project, which was authorized under both the House and Senate bills, the Conference Report has included language proposed by the House requiring the Secretary to evaluate fish and wildlife losses resulting from construction of the project and to implement any additional such measures which the Secretary deems necessary and appropriate to mitigate such losses. In addition, the Secretary is required to adopt and implement guidelines with respect to clearing and snagging as he deems necessary to mimimize any adverse effects on fish and wildlife habitat at the project. This language was included in response to concerns with the recommended plan raised by the Department of the Interior. However, inclusion of this language is not intended to minimize or alter the Secretary's responsibilities under the Fish and Wildlife Coordination Act and other Federal laws to mitigate any adverse fish and wildlife impacts of this or any other project authorized under this Act.

James River

The work which is being authorized for the James River in South Dakota is to be completely and thoroughly reviewed by the Secretary for economic viability and environmental soundness, as was intended by the Senate when this provision was first included in water resource legislation in the 98th Congress.

The Secretary is to consult with all appropriate non-federal public interests at the state and local levels in developing its recommendations for project development.

Construction of this project is contingent on approval by the Secretary of the Army of the plan of improvement, in accord with the recommendations of the Chief of Engineers and the Secretary.

Because local concerns have been raised that this project may be used for irrigation purposes the conferees wish to make it clear that the project is not authorized for irrigation purposes.

The conferees also encourage the Corps of Engineers and local project interests to investigate the potential for financing the local cost sharing required for this project under the provisions of Section 916 of this act relating to the acceptance of cost sharing from Project Repayment Districts.

Flood Control for Mansfield, Ohio

The Conferees are aware that the Corps of Engineers is developing a "Section 205" flood control project for the community of Mansfield which may be developed in lieu of the project which is authorized in this Act.

The Conferees intend that the local interests should be able to work with the Corps to determine whether the 205 project or the project authorized in this Act best serves the community's needs. Accordingly, the Conferees have included language in the Conference Report to ensure that authorization of a project by Congress will not preclude the development of a Section 205 project.

Des Moines River

The conference agreement requires the Secretary to study the feasibility of providing flood control in certain stated areas. The conferees intend that if additional measures are determined to be necessary and within the scope of the authorized project, the Secretary is authorized to implement those additional measures subject to appropriate cost sharing.

TITLE V—SHORELINE PROTECTION

The House bill authorized 23 projects for shoreline protection. The Senate bill authorized 22 projects and specified that project construction would be subject to compliance with the Coastal Barrier Resources Act.

In the Conference substitute, project authorizations are divided into 5 categories and provides for new Clean Lakes and Streambank Erosion Control Programs:

(1) Eighteen projects are authorized in accordance with existing Corps feasibility reports. These are listed in section 501(a).

(2) Three projects are authorized subject to a report of the Corps of Engineers and approval by the Secretary. These are listed in section 501(b).

(3) One project is authorized for planning, engineering, and design. This is listed in section 501(c).

(4) One small project is authorized in accordance with section 103 of the River and Harbor Act of 1962. This project is listed in section 501(d).

(5) One project is authorized subject to Section 903(a) of this Act.

The conference substitute specifies that construction of each project in this title is subject to compliance with the Coastal Barrier Resources Act.

TITLE VI—WATER RESOURCES CONSERVATION AND DEVELOPMENT

The House bill authorized 81 projects for such purposes as shallow draft navigation, fish and wildlife mitigation, hydroelectric power, silt and debris removal, streambank erosion, and multiple-purpose activities. The Senate bill authorized 41 projects generally coming under the same project purposes.

The conference report divides project authorizations into four categories:

(1) Thirty-five projects are authorized in accordance with Corps feasibility reports. These are listed in section 601(a).

(2) Four projects are authorized subject to a report of the Chief of Engineers and approval by the Secretary. These are listed in section 601(b).

(3) Six projects are authorized for planning, engineering, and design. These are listed in section 601(c).

(4) Four small projects are authorized in accordance with section 107 of the River and Harbor Act of 1960. These are listed in section 601(d).

Clean Lakes And Streambank Erosion Control Programs

Sections 602 and 603 of the Conference Report establish new programs for lake cleanup and streambank erosion control. Both the House and Senate bills authorized various individual projects to remove silt, aquatic growth, stumps and other debris from lakes. Neither bill contained a generic program for lake cleanups.

Under the new lake restoration provision in the Conference substitute, the Secretary is authorized and directed to undertake projects at specified lakes throughout the Nation. The program's total authorization is $40 million, with a per site limitation of $8 million.

Similarly, the House bill authorized various individual steambank erosion projects, while the Senate authorized a small generic streambank protection program.

Under the new provision contained in the Conference substitute the Secretary is authorized and directed to undertake projects at specified sites. Total authorization for the program is $150 million, with a per site limitation of $5 million.

The lake cleanup and streambank protection projects will not require the preparation of fully documented feasibility reports of the Chief of Engineers. The Conferees, however, expect the Corps to undertake a sufficient examination of problems posed at each site and alternatives available to remedy those problems.

In selecting recommended plans for each project in the clean lakes and streambank protection programs, the Corps is to choose the alternative that best achieves the program's objective in the most environmentally sensitive and cost-effective manner.

Inland Harbors

Five inland harbor projects were included in the House bill with a directive to construct the projects to full project dimensions. Under the Corps plan, the projects would be dredged initially to a depth of 9 feet, with dredging to a depth of 12 feet at such time as a 12 foot channel is constructed on the Mississippi River.

The Senate bill did not contain this directive. The House language directing the Corps to construct the project to full project dimensions has been deleted by the Conferees. This should not be interpreted as limiting the authority of the Corps to construct these projects to their full dimension at such time as the work is determined by the Secretary to be economically justified and environmentally acceptable. Furthermore, it is the Conferees' understanding that proceeding to dredging these projects to a 12 foot depth is not dependent upon construction of a 12 foot channel for the Mississippi River.

Jacksonville Harbor (Mill Cove)

Section 601(a) of the Conference Report authorizes a navigation project of Jacksonville Harbor (Mill Cove), Florida, containing provisions for both the House and the Senate bills. The Conferees adopt the Senate provisions with additional language for the House bill, which assures the availability of adequate dredged material disposal areas and requires the Secretary to report on, among other things, the potential for recreational development of such areas.

The purpose of the Jacksonville Harbor (Mill Cove) project is to mitigate damages caused by the Jacksonville Harbor navigation project. Current problems relate to shoaling conditions within Mill Cove which were induced by construction of the navigation project. Under the provisions of section 906 of the Conference Report, mitigation projects such as the Jacksonville project are to be cost shared on the same basis as the project which caused the damages to be mitigated. In this case, the project causing the shoaling problem was constructed entirely with Federal funds. Accordingly, the mitigation work authorized for the Jacksonville project is to be undertaken at full Federal cost.

Cooper Lake and Channels

The non-Federal share of any portion of the costs of fish and wildlife losses attributable to water supply features of the project shall be repaid in accordance with the

Water Supply Act of 1958. The non-Federal share of any portion of the costs of fish and wildlife mitigation losses attributable to recreation features of the project shall be repaid in accordance with the Federal Water Project Recreation Act.

Des Moines River Greenbelt

Section 604 of the conference agreement deletes the House provision because the basic authorization of the project was included in Public Law 99-88. The conferees intend that the Secretary consult with the advisory committee as provided for in the House provision.

The advisory committee is to be constituted as follows: Five persons appointed by the Governor of Iowa; two persons appointed by their respective boards of supervisors to represent Mahaska, Marino, Warren, Jasper, Polk, Dallas, Boone and Webster Counties; one person appointed by the Mayor of the City of Des Moines and one additional person appointed by the mayor or each other incorporated municipality within whose boundaries a portion of such recreation area lies; and three employees or officials of the Corps of Engineers designated by the Secretary.

Black Warrior-Tombigbee River Erosion Control

Section 623 of the conference report directs the Secretary to conduct a 6-month study of the erosion problems occurring along river miles 253-255 on the Black Warrior-Tombigbee River. The Secretary may provide technical assistance and help while the study is underway to asssist non-Federal interests in carrying out erosion prevention measures.

TITLE VII—STUDIES

The House bill authorized 29 studies, including site-specific studies as well as general studies. In addition, it established a procedure for the review of incomplete studies for possible deauthorization, required several special reports, and included other provisions affecting the preparation and conduct of studies. Major study provisions included:

—A study of the possibility of rehabilitating hydroelectric potential at former industrial sites and similar facilities.
—A study of the feasibility of using Corps of Engineers capabilities to conserve fish and wildlife resources.
—A study of the water resources needs of river basins and regions.
—An estimate of long-range capital investment needs for water resources programs.
—An assessment of studies that have not resulted in reports to Congress, with recommendations regarding possible deauthorization.

The Senate bill authorized 8 similar studies. In addition, it contained a general study deauthorization procedure and included several report requirements related to water resources investigations. Major study provisions included:

—A survey of potential methods for rehabilitating former industrial sites for use as hydroelectric facilities.
—A study of shoreline protection and erosion control policies in view of rising ocean levels.
—A procedure for automatic deauthorization of unfunded studies.

With few exceptions, the Conference Substitute includes all of the studies in both the House and Senate bills. Most appear in title VII of the substitute.

TITLE VIII—PROJECT MODIFICATIONS

The House bill modified 87 previously authorized Corps of Engineers projects to alter the physical components of a project; change project scope; revise the Federal and non-Federal responsibilities for project implementation or operation and maintenance; or change authorized project purposes. The Senate bill contained 20 similar provisions.

With few exceptions, the conference substitute adopts both the Senate and House modifications. Certain of these modifications are authorized for construction or, in some cases authorized subject to a report of the Chief of Engineers and approval by the Secretary under section 903(b) of the Act. Some projects are authorized only for planning, engineering, and design.

Curwensville Lake, Pennsylvania

The Conferees have adopted language contained in the House bill which modifies the Curwensville Lake project, Pennsylvania, to authorize the Secretary to construct a water line, including pumps, from the Pike Township Water Authority to the Bloomington holding tank in order to provide water for municipal use to the Town of Bloomington, Pennsylvania.

The modification is necessary to supplement water supply from a water well owned by the Bloomington Water Authority which was originally relocated as a result of the Curwensville Lake project.

The original well was located below the project's flood pool and provided adequate water to the community. The relocated well was drilled farther up slope in 1965, and was specified to provide 40 gallons per minute.

The relocated well is not producing sufficient water to meet local demand. In light of this past history, the Conferees have included authorization to obtain additional water supply for the Town of Bloomington.

Lake Texoma

Section 838 allows for an additional allocation of water from Lake Texoma to municipal, industrial and agricultural users in Texas and Oklahoma. It provides that should the Corps of Engineers determines that such allocation would diminish hydropower production for the Southwestern Power Administration's customers, compensation would be required.

The section also modifies the authorized project purposes at Lake Texoma, currently flood control, hydropower, and water supply, to add recreation as an additional authorized project purpose, at no additional cost to local, state or federal governments. The conferees emphasize that this modification would not provide for any water or water storage reallocation for recreation. The designation of recreation will have no impact upon other authorized project purposes, contracts for the purpose of hydroelectric power and/or benefits of hydroelectric power users. Should there be any later adjustment in water or water storage allocation, or any significant change in operational flexibility or scheduling for recreational purposes, hydroelectric power users shall receive compensation for replacement power costs and/or revenues lost consistent with the calculations set forth in this section.

Chatfield Lake

The conferees intend that nothing in section 842 of the Conference Substitute abrogate or alter the rights and obligations which exist under the Water Supply Act of 1958, as amended.

Industrial Lock

The bill includes language authorizing construction of the Mississippi River Gulf Outlet feature of the project for the Mississippi River, Baton Rouge to Gulf of Mexico (commonly referred to as the Industrial Lock in New Orleans). This lock serves both general cargo navigation and shallow-draft inland navigation.

For the purposes of cost sharing under the terms of this bill, the Corps will make an allocation of project cost based on the percentage of the benefits of the Industrial Lock project attributable to shallow-draft traffic, and the portion of benefits attributable to shallow-draft traffic, and the portion of benefits attributable to general cargo vessels with deeper drafts as well as other factors.

Once the cost allocation is made, half of the cost attributable to shallow-draft inland traffic shall be paid from the Inland Waterways Trust Fund; half from general revenues. The costs attributable to deeper-draft traffic shall be cost shared on the same basis as any general cargo project under the terms of Section 101 of the bill. In constructing the improvements at the lock, the Corps should minimize project closure because of their adverse impact on shipping.

TITLE IX—GENERAL PROVISIONS

The House bill included 62 provisions with general applicability to a broad range of projects or procedures. Major provisions included:

—Establishing ceilings on total Corps of Engineers Civil Works construction appropriations.
—Limiting project costs and project modifications to those caused by inflation, involving no change in project scope, or resulting from other provisions of law.
—Raising the program and single project ceilings for small project authorities.
—Specifying planning objectives to be included as part of the planning process for individual Corps of Engineers projects.
—Provisions for automatic deauthorization of projects authorized in the bill unless funds are obligated for planning, design or construction within certain time limits.

The Senate bill included 35 general provisions. These included:

—Establishing ceilings on total Corps of Engineers Civil Works construction obligations.
—Limiting project modifications to stay within a 25 percent percentage with regard to specified physical parameters and limiting project cost increases to 10% plus inflation.
—Raising single project ceilings for small project authorities.
—Authority to provide mitigation at Corps projects, and to require mitigation to be concurrent with project construction.
—Requiring favorable Corps of Engineers reports prior to construction of projects authorized in the bill.
—Automatic deauthorization of projects not having received funding for 10 years.

Title IX of the conference substitute combines the general provisions of the House and Senate bills. The major provisions are the following:

Obligation Ceilings.—The Conference substitute sets annual obligation ceilings for Corps of Engineers Civil Works construction activities of $1.4, $1.5, $1.6, $1.7, and $1.8 billion for fiscal years 1987 through 1991.

Project Limitations.—The total project cost for each project authorized for construction in this Act, which is given in October, 1985, prices unless otherwise specified, may be increased only: (1) for changes in construction costs as defined in Section 902 and as indicated by engineering or other appropriate cost indexes; (2) by not more than 20 percent for modifications which do not materially alter the scope or functions of the project.

These changes are to be additive and are not to be multiplicative.

The Conferees recognize that Corps of Engineers water projects often must be modified to take into account new information. The Congress may subsequently authorize changes to the original project which alters its scope or physical components. The Chief of Engineers may determine that certain post-authorization changes are necessary.

The Conferees have, therefore, provided for an explicit limit to the cost increases which may be incurred on any project authorized in this Act. This limit may be exceeded only to meet the needs of specific Congressionally mandated studies or modifications, and other actions such as mitigation or other environmental measures authorized by this Act or required by other changes in Federal law.

With these provisions, the Conferees hope to encourage within the Corps of Engineers a greater recognition of the need to establish early in the planning process for water project development the precise costs of project development.

General Requirements.—The conference substitute establishes procedures for Secretarial approval of projects authorized for construction in the bill without reports, and for projects that are authorized subject to a favorable report of the Chief of Engineers.

Fish and Wildlife Mitigation.—The conference substitute states general rules and cost sharing requirements for fish and wildlife mitigation and enhancement. For mitigation, costs are to be shared in accordance with the project purposes for which mitigation is required. Enhancement which provides benefits determined to be national, (where the enhancement benefits threatened or endangered species, or is performed on national wildlife refuge lands) is a Federal cost. Other enhancement is to be cost-shared on the basis of 25% non-Federal cost. The conference substitute also establishes an Environmental Protection and Mitigation Fund, for which $35,000,000 is authorized to be appropriated.

This revolving fund is for the acquisition of mitigation lands in advance of project construction where the Secretary deems appropriate.

Section 903(a) of the Conference Substitute provides that, for 62 specified projects in the bill which are authorized for construction, the Secretary is to review and comment on at least one third of the projects during the first year after authorization, two-thirds during the second year; and all of such projects by the end of the third year. Projects on which the Secretary has not commented by the end of the third year will be deemed to have been approved.

For purposes of this subsection, the Conferees direct the Secretary to review and comment on the following projects during the following years.

FIRST YEAR

Noyes, Minnesota (Section 401(d)); Popular Brook, New Jersey (Section 401(e)); Salyersville, Kentucky (Section 401(e)); Greenwood Lake, New Jersey (Section 602(a)(3)); Sauk Lake, Minnesota (Section 602(a)(4)); Deal Lake, New Jersey (Section 602(a)(5)); Lake Worth, Texas (Section 602(a)(6)); Gorton's Pond, Rhode Island (Section 602(a)(9)); Little River, Arkansas (Section 603(f)(1)); Red Lake River, Minnesota (Section 603(f)(4)); Passaic River, New Jersey (Section 603(f)(8)); Ohio River and Tributaries (Section 603(f)(9)); Kanawha River, West Virginia (Section 603(f)(13)); Passaic River Basin Channel Clearing, including work in the vicinity of Beatties Dam, New Jersey (Section 607); Muck Levee, Illinois (Section 609); Dardanelle Lock and Dam, Arkansas (Section 826); Buffalo Ship Canal, New York (Section 839); Beaver Lake, Arkansas (Section 843); Sandy Hook to Barnegat Inlet, New Jersey (Section 854); Connecticut River Basin (Section 872); Passaic River Basin, New Jersey (Section 1148); and Satilla River Basin, Georgia (Section 1151).

SECOND YEAR

Harbor Office at Morrow Bay, California (Section 213); Mission Zanja Creek, California (Section 401(d)); Salt and Eel Rivers, California (Section 401(d)); Monroe and West Monroe, Louisiana (Section 401(d)); Orchard Beach, New York (Section 501(d)); Tangier Island, Virginia (Section 501(e)); Larkspur Ferry Channel, California (Section 601(d)); Lake George, Indiana (Section 602(a)(2)); Hamlet City Lake, North Carolina (Section 602(a)(7)); Lake Herman, South Dakota (Section 602(a)(8)); Elm Creek, Nebraska (Section 603(f)(7)); Upper Missouri River, South Dakota (Section 603(f)(10)); Memphis, Tennessee (Section 603(f)(11)); Swan Creek Harbor of Refuge, Michigan (Section 610); Santa Cruz Harbor, California (Section 811); Delaware Coast, Delaware (Section 869); Aliquiu Dam, New Mexico (Section 1112); Buffalo Harbor Drift Removal, New York (Section 1129); Rehabilitation of Dock, American Samoa (Section 1145); and Pearson-Skubitz, Kansas (Section 1167).

THIRD YEAR

Great Salt Lake, Utah (Section 401(E)(4)); Agat Small Boat Harbor, Guam (Section 601(d)); Albert Lea Lake, Freeborn County, Minnesota (Section 602(a)(1)); Sacramento River, California (Section 603(f)(2)); Wabash River, Illinois (Section 603(f)(3)); Caney Creek, Mississippi (Section 603(f)(5)); Platte River, Nebraska (Section 603(f)(6)); LaConner, Washington (Section 603(f)(12)); Mound State Park, Alabama (Section 608(a)); Fort Toulouse National Historic Landmark, Alabama (Section 608(b)); Interim Measures for Wheeling Creek, Ohio (Section 612); Yaquina Bay and Harbor, California (Section 807); Lewisville Lake, Texas (Section 825); Colusa Trough Drainage Canal, California (Section 830); Mississippi River-Gulf Outlet, Louisiana (Section 844); Dunkirk Harbor, New York (Section 848); Endicott, Johnson City and Vestal, New York (Section 852); Acequias Irrigation System, New Mexico (Section 1113); Miami River Sediments, Florida, (Section 1162); and Avalon Bay, California (Section 1169).

Environmental Mitigation Fund

The conferees intend that expenditures from the Environmental Mitigation Fund established pursuant to Section 908 of the Conference substitute not be considered as the initiation of construction of the project.

Engineering Review

Section 911 is adapted from both the Senate and House bills and will require a new cost-cutting review on all projects with a total cost in excess of $10 million. Although not specified in the Conference Report, the type of study to be undertaken is commonly known as value engineering.

Urban and Rural Flood Control Frequency

Section 914 of the conference report provides that in the preparation of feasibility reports for projects for flood damage prevention in urban and rural areas, the Secretary shall consider and evaluate measures to reduce or eliminate damages from flooding without regard to frequency of flooding, drainage area, and amount of run-off. Drainage area and amount of discharge have no definite relation to the amounts of flood damages which may be inflicted, and no such limitation exists in the case of planning and recommending projects for flood damage reduction in rural areas. The provision places all areas on an equal footing. Section 914 should not be interpreted to direct the Corps to undertake a program to construct stormwater sewer systems.

Surveying and Mapping

The conferees adopted the House provision. Although section 918 of the Conference substitute will ensure that the Secretary will continue to be able to obtain quality surveying and mapping services, there exists the potential for the Secretary to abuse the authority granted here.

The Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House will closely monitor activities carried out under this provision.

Dredged Material Placement

Section 145 of the Water Resources Development Act of 1976 authorizes the Secretary to place clean, suitable dredged material from navigation projects on beaches for the purpose of beach restoration and beach erosion control if the State agrees to pay the additional costs associated with depositing the material on the beach as opposed to depositing it in the planned disposal area.

Section 933 of the Conference substitute amends section 145 to provide that the non-Federal share shall be 50 percent of the additional cost rather than 100 percent. This is appropriate in view of the fact that existing law provides for 50 percent Federal cost-sharing for the protection of public beaches.

The Secretary and the states should take advantage of this section.

Fill Material for Beach Erosion and Nourishment

In carrying out Section 935 of the Conference substitute, the Corps of Engineers is expected to acquire and utilize fill material which is abundant and commonly available. Further in obtaining such material, the Secretary shall ensure that fragile or rare ecosystems, including coral reefs, are not disturbed or destroyed.

Navigation Damage Mitigation

The conferees adopted the Senate provision with an increase in the maximum cost of any individual project carried out pursuant to Section 940 of the Conference substitute to $2,000,000.

It should be clarified that the cost of the construction and operation and maintenance of any damage mitigation or prevent project constructed pursuant to this section is to be the borne by the non-federal sponsor of the navigation project responsible for the real or expected damage on the same basis as the cost sharing for the specific project for which the navigation is undertaken. Cost sharing for these damage prevention or mitigation projects is to be based

only on the navigation related elements of the project responsible for the real or expected damage.

Projects constructed to prevent or mitigate damages caused by navigation projects constructed at full federal cost shall, also be constructed at full Federal cost.

Historical Properties

The Conferees adopt the House language with the clarification that Section 943 is in no way intended to provide the Secretary with the authority to repair, rehabilitate, or otherwise modify non-Federal dams even if such dams are on the National Register of Historic Places.

TITLE X—DEAUTHORIZATIONS

The House bill specifically deauthorized approximately 300 Corps of Engineers projects, or elements of projects, with a total cost exceeding $11 billion.

The Senate bill specifically deauthorized four projects.

Both the House and Senate bills also contained general provisions that establish procedures for potential future deauthorizations.

The Conference substitute also establishes a general deauthorization policy. Projects authorized by this bill are deauthorized if not funded within 5 years. In addition, the Secretary is to submit biannual lists of projects which are authorized but have received no funding for 10 years. Under the first list submitted, the projects are deauthorized if they receive no funding by December 31, 1989. Projects on subsequent lists are automatically deauthorized if they receive no funding within 30 months after the list is transmitted to Congress.

TITLE XI—MISCELLANEOUS PROJECTS AND PROGRAMS

The House bill included 72 provisions for programs or projects that are unique to a particular location or region, or that represent unique functions. The Senate bill included 27 provisions of this nature.

The conference substitute includes a number of projects from both the House and Senate bills.

Upper Mississippi Master Plan and L&D 26

The Conferees have adopted language from both the House and Senate authorizations of the Upper Mississippi Master Plan and the second lock at Locks and Dam 26 on the Mississippi River.

The authorization for the second lock, and the authorization of the fish and wildlife protection and enhancement work to be carried out pursuant to the Master Plan have been kept in the same section. This juxtaposition is meant to reinforce the importance of having the authorized portions of the Master Plan work go forward concurrently with the construction of the second lock.

It should further be emphasized that this section is not intended to confer upon the Department of the Interior responsibilities which presently reside with the Corps of Engineers. More specifically, although the Fish and Wildlife Service is to work closely with the Corps of Engineers on the planning and design of fish and wildlife enhancement and protection projects authorized pursuant to this section, the Corps will remain responsible for the undertaking of any actual construction work which results from those plans and designs.

Red River Chloride

In evaluating the effectiveness of the operation of area VIII, the panel established pursuant to section 1107 is directed to employ the monitoring equipment and the data base developed by the U.S. Geological Survey, which is currently available at the area VIII site.

Abiquiu Dam

Section 1112 authorizes the construction of a set of emergency gates at Abiquiu Dam in New Mexico. These gates were part of the original design of the dam, but were never constructed in order to reduce costs. The addition of the gates at this time will complete the project as designed and will result in lower operation and maintenance costs at the dam.

The Conference Report also calls for a non-Federal share of 25% for that portion of the costs associated with any increase in flood control benefits produced by the addition of the emergency gates.

Pick-Sloan Plan

The Conferees affirm that Section 1122 of the Conference substitute makes no change to existing law. For this reason language has been added to make it clear that the Public Law 99-294 is not affected in any way by this section.

Further, the Conferees wish to make it clear that the cost sharing policies established by this Act and affecting the Corps of Engineers program are to be applied to Corps of Engineers projects which are considered part of the Pick-Sloan Plan.

Townsites

Public Law 98-88; (99 Stat. 293) authorized the Corps to sell and transfer to the local residents and their communities the ownership, operation and maintenance of townsites at Fort Peck, Montana; Riverdale, North Dakota; and Picktown, South Dakota.

Section 1123 of the Conference substitute amends the law to require transfer of a clear property title to residents and their community and remaining public utility improvements.

Pursuant to subsection (b) of Public Law 99-88, none of the lands or improvements on such lands described in subsection (a) may be declared to be excess property. This provision applies to any and all lands and improvements retained in the townsites by the United States to enable the Corps of Engineers to carry out its duties and responsibilities.

The Administrator of the Western Area Power Administration is authorized to allocate power from the Pick Sloan Missouri River Basin Program to the municipalities.

Cabin Site Leases

Nothing in section 1134 of the Conference substitute is intended to diminish or enhance any authority the Secretary may have to charge fair market rentals or administrative fees.

Lower Mississippi Wetlands

Section 1155 of the conference report provides the Secretary the authority and direction to develop and implement projects for the creation, protection, restoration, and enhancement of wetlands in conjunction with authorized navigation and flood control projects in the lower Mississippi River Valley. Through natural and man-induced processes, wetlands in the lower Mississippi River Valley are disappearing at an alarming rate. The Secretary shall assume the lead in this important area and will consult with the Fish and Wildlife Service, the National Marine Fisheries Service, and state conservation agencies, as appropriate, in developing and implementing wetlands projects

Nothing in this section is intended to limit the Secretary's existing authority to implement, operate and maintain projects for navigation and flood control for their authorized purposes. The conferees intend that the provisions of this section will be compatible with the prosecution of other authorized projects in the valley.

For purposes of this section, "wetlands" includes wetlands or potential wetland sites occurring within the area of hydrologic influence of a project.

San Luis Rey River Flood Control

Section 1165 of the Conference substitute establishes the interest rate for purposes of analyzing the costs and benefits of the San Luis Rey River, California, flood control project as the applicable interest rate at the time an agreement under section 215 of the Flood Control Act of 1968 was entered into. The 215 agreement for this project was executed in April 1983. Since that time the project sponsor, the City of Oceanside, California, has spent more than $560,000 in clearing the river channel and constructing the project's stabilizer and rock levee.

The project was authorized 16 years ago with a favorable benefit to cost ratio. This ratio has diminished over the years as interest rates have risen. Section —— requires the interest rate for analyzing the costs and benefits of this project to remain at the rate when the Corps of Engineers signed the 215 agreement.

Definition of "Navigable"

For purposes of the list required to be prepared pursuant to Section 1166(b) of the Conference Report, the term "navigable waters of the United States" has the same meaning as that term has under Sections 9 and 10 of the River and Harbors Act of 1899.

Elliott Creek

The purpose of Section 1170 is to ensure that the local cooperative agreement entered into by the Department of the Army and the non-Federal interests on January 24, 1984 need not be altered or renegotiated as a result of the enactment of this bill.

Buffalo River Sediments

The Conference agreement deletes section 1185, which required the Corps of Engineers in consultation with the environmental Protection Agency, to remove and dispose of toxic pollutants from areas of the Buffalo River in New York.

That type of activity is appropriate for a response by E.P.A. under authority of the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund). One of the most heavily contaminated "hot spots" in the Buffalo River appears to be within the Federal navigation channel.

Areas of High Unemployment (Formerly House Section 1137)

When constructing any water resources project in an area which has a high unemployment rate, the Secretary should, to the extent he determines feasible, provide for the employment of residents of such a labor market area.

For the purposes of the above, the term "labor market area" has the same meaning given to this term by the Secretary of Labor. Further, a labor market area has a high rate of unemployment if the average rate of unemployment for such area, as determined by the Secretary of Labor, over the most recent twelve-month period for which statistics are available is higher than the national average rate of unemployment,

as determined by the Secretary of Labor, over such twelve-month period.

TITLE XII—DAM SAFETY

The House bill amended 1972 dam safety legislation to authorize:

—Restoration of non-Federal public dams.
—Engineering studies, where inspection reveals hazardous conditions.
—Repairs to two specific non-Federal dams.
—An annual update of dam inventory.

The Senate bill also amended the 1972 legislation to:

—Broaden the applicability of the legislation to apply to any potential serious dam failure, regardless of size.
—Provide for matching grants for developing and improving state dam safety programs.
—Establish a national dam safety review board.
—Allow for greater state involvement in activities such as inspections.
—Authorize Federal assistance in training state inspectors.
—Establish a dam safety research and development program.
—Authorize periodic updates of dam inventories.

The conferees adopted Senate Title IV—Dam Safety. In addition, the conferees include House language granting the Secretary the authority to provide, on a cost reimbursable basis, detailed engineering studies to determine the structural integrity of any dam found to be hazardous by the National Dam Inspection Program.

The conferees have also included language to ensure that those states that presently provide funding for dam safety programs will use the grant money provided by this title to improve their efforts and not use those funds in lieu of existing state funds.

The conferees note that although this new Title conveys new authorities upon the Secretary with respect to dam safety, the existing dam safety program of the Federal Emergency Management Agency is valuable and should continue to go forward. To the extent that there is some overlap between the new programs authorized in this title and FEMA's existing programs, FEMA should seek to redirect its efforts in a manner which is complementary to this new program.

This legislation is in no way intended to supersede or effect the work of the Interagency Committee on Dam Safety or FEMA's role as Chair of this interagency working group.

Further, compromise language has been adopted which authorizes the Secretary to provide technical assistance to the Schuyler County Public Water Supply District Number 1 in Missouri, and to the owners of the Milton Dam in Ohio.

It should be emphasized that this Title is in no way to be interpreted to convey upon the Secretary or any other official of the United States Government, the authority to perform any safety-related repairs or rehabilitations to any non-Federal dam.

TITLE XIII—NAMINGS

The House bill changed the names of eighteen projects or elements of projects. The Senate bill changed the names of two projects.

The conference substitute includes a number of the naming provisions from the House bill and adds the naming of "Jennings Randolph Lake" from the Senate bill.

TITLE XIV—REVENUE PROVISIONS

A. Port Use Tax and Trust Fund

1. Port use tax

Present law

Ports and harbors financing.—Federal expenditures for harbors and port development and maintenance have been financed from general revenues. No Federal user taxes or charges have been imposed for these expenditures.

Customs Service.—The U.S. Customs Service administers the collection of customs duties. The Tariff Act of 1930, as amended (19 U.S.C.), and the Customs Regulations set forth detailed rules and procedures for the classification and appraisal of imported merchandise and for the administration and enforcement of customs laws.

Saint Lawrence Seaway tolls.—The Saint Lawrence Seaway Development Corporation and the Saint Lawrence Seaway Authority of Canada jointly impose tolls for the commercial use of the Saint Lawrence Seaway. The tolls are per metric ton of cargo, varying by class of cargo and by specific portion of the Seaway.

House bill

Imposition of tax.—The House bill imposes an excise tax on the use of a U.S. harbor or channel ("port") by a commercial vessel for loading or unloading of commercial cargo. The tax is 0.04 percent (4 cents per $100) on the value of the cargo.

Applicability of tax.—The port use tax does not apply with respect to:

(1) a port on which no Federal funds have been used for construction, operation, or maintenance;

(2) cargo the transportation of which is subject to the inland waterways fuel tax;

(3) cargo when loaded or unloaded at ports in Hawaii or in U.S. possession, or when loaded on a vessel at a U.S. port for ultimate use or consumption in Hawaii or a possession (the tax applies when cargo loaded in Hawaii or a possession is unloaded at a U.S. port);

(4) transportation of passengers;

(5) cargo consisting of fish or other aquatic animal life caught on the voyage;

(6) cargo shipped by the U.S. Government or Federal agencies; and

(7) de minimis transactions, to the extent prescribed in Treasury regulations.

Payment of tax.—The tax is payable by the importer, exporter, or shipper of the cargo. The tax is imposed only once with respect to transportation of any cargo on the same vessel.

Administration of tax.—The port use tax is to be administered and enforced by the U.S. Customs Service in a manner similar to customs duties.

Seaway tolls.—The House bill provides a credit against the port use tax for Saint Lawrence Seaway tolls paid (U.S. portion). The credit for Seaway tolls paid is not to exceed the port use tax liability for the taxable period, but any excess credit may be carried over against any future port use tax liability.

Effective date.—January 1, 1986.

Senate amendment

Port use charge.—The Senate amendment imposes a charge (in the Internal Revenue Code) on the use of a U.S. port by a commercial vessel for loading or unloading of commercial cargo, and on the use of Great Lakes navigation improvements (other than the Saint Lawrence Seaway) for loading, unloading, or transporting commercial cargo. The charge is 0.04 percent (4 cents per $100) on the value of the cargo. Passenger vessels also are subject to the charge, with value generally determined by reference to the prices paid by passengers for their transportation.

Port maintenance charge.—The Senate amendment imposes a charge (in the Internal Revenue Code) of ½ cent per registered ton on the use by commercial vessels of such ports or Great Lakes improvements other than for loading, unloading, or transportation (i.e., for fueling, refitting, repair, etc.). This charge cannot be imposed more than three times per year with respect to a particular vessel.

Applicability of charges.—The port use charge does not apply with respect to:

(1) ports deauthorized prior to 1985, or ports receiving no U.S. funds since 1977;

(2) cargo the transportation of which is subject to the inland waterways fuel tax;

(3) cargo shipped from the U.S. mainland to Alaska, Hawaii, or a U.S. possession for local use, or cargo shipped from Alaska, Hawaii, or a U.S. possession to the U.S. mainland for local use (the charge applies to cargo shipped to or from a foreign country and to shipments of crude oil with respect to Alaska);

(4) short-haul ferrying (if regularly scheduled) of passengers and vehicles between U.S. points or between the United States and Canada or Mexico;

(5) fish or other aquatic animal life caught in voyage by a U.S. vessel, if not previously landed onshore;

(6) cargo shipped by the U.S. Government or Federal agencies;

(7) de minimis transactions, to the extent prescribed by Treasury regulations; and

(8) bonded cargo entering the U.S. for transportation and direct exportation to a foreign country. This exemption does not apply (a) if Canada imposes a similar port use charge or (b) to U.S. ports (or classes of cargo) if the mandated cargo diversion study (see below) shows that the charge is not likely to result in a significant diversion of cargo or that the nonapplicability of the charge to a given U.S. port would cause economic harm to another U.S. port.

Payment of charges.—The port use charge is payable the same as under the House bill port use tax. Only one port use tax may be imposed with respect to (1) the transportation of the same cargo on the same vessel, and (2) the loading and unloading of identical cargo at one port. The port maintenance charge is payable by the vessel owner.

Administration of charges.—The port use and port maintenance charges are to be administered and enforced by the U.S. Customs Service in the same manner as provided under the House bill.

Seaway tolls.—The Senate amendment provides for rebates of Saint Lawrence Seaway tolls (U.S. portion), to be paid out of the Trust Fund (see below).

Effective date.—April 1, 1986.

Conference agreement

Port use tax or charge.—The conference agreement follows the House bill, designating the use tax ("harbor maintenance tax") as an excise tax in the Internal Revenue Code. The rate (0.04 percent of the value of the cargo) is the same as in both the House bill and the Senate amendment. The conference agreement provides that the tax applies on use by a commercial vessel of a U.S. port for the loading or unloading of commercial cargo on or from the vessel, but does not include the additional provision in the Senate amendment that would also

have applied with respect to use of Great Lakes navigation improvements for transporting cargo.

Port maintenance charge.—The conference agreement does not include the Senate amendment.

Applicability of port use tax.—The conference agreement generally follows the Senate amendment with respect to the application of and exemptions from the tax. The conference agreement includes the following modifications:

(1) the tax does not apply with respect to cargo loaded on a vessel in Alaska, Hawaii, or a U.S. possession and unload in the same State or possession in which loaded;

(2) the fish and aquatic animal exemption is not limited to U.S. vessels; and

(3) the exemption for transportation and direct exportation of bonded cargo also does not apply if Mexico imposes a similar port use tax.

Payment of tax.—The conference agreement follows the House bill and the Senate amendment.

Administration of tax.—The conference agreement follows the House bill and the Senate amendment.

Seaway tolls.—The conference agreement follows the Senate amendment, providing for rebates of Saint Lawrence Seaway tolls (U.S. portion), to be paid out of the Trust Fund (see below).

Effective date.—Under the conference agreement, the port use tax applies to use of ports in loading or unloading of cargo occurring on or after April 1, 1987.

2. Port (Harbor) Trust Fund

Present Law

No provision (see *Present law* under 1., above). There are several existing trust funds financed from earmarked excise taxes.

House bill

Establishment.—The House bill establishes the "Port Infrastructure Development and Improvement Trust Fund" in the Treasury. The statutory provisions for the Trust Fund are placed in the Trust Fund Code of the Internal Revenue Code.

Funding.—The Trust Fund is to receive amounts equivalent to revenues from the new port use tax. Also, the House bill authorizes annual appropriations to the Trust Fund equal to $1 billion less the amounts received from the port use tax revenues for the fiscal year. In addition, the Trust Fund will earn interest on investments of any cash balance.

Expenditures from the Fund.—Amounts in the Trust Fund are to be available, as provided by appropriation Acts, for making expenditures for:

(1) construction, rehabilitation, operation, and maintenance costs (including feasibility studies) for U.S. ports;

(2) construction, rehabilitation, operation, and maintenance costs (including feasibility studies) for Saint Lawrence Seaway ports;

(3) relocation costs for utilities, structures, and other improvements necessary for construction, operation, and maintenance of projects in (1) or (2), above;

(4) payments to a State or local government entity for eligible costs incurred in planning, designing, or construction under section 104 of the bill;

(5) grants under section 113 of the bill (provision of port emergency response services);

(6) grant for construction of a new port office at Morro Bay Harbor, California; and

(7) Treasury Department expenses in administering the port use tax.

Effective date.—January 1, 1986.

Senate amendment

Establishment.—The Senate amendment establishes a "Harbor Maintenance Trust Fund" in the Treasury. The statutory provisions for the Trust Fund are placed in the Trust Fund Code of the Internal Revenue Code.

Funding.—The Trust Fund is to receive amounts equivalent to revenues from the port use and port maintenance charges, and revenues from the U.S. portion of Saint Lawrence Seaway tolls. In addition, the Trust Fund will earn interest on investments of any cash balance.

Expenditures from the Fund.—Amounts in the Trust fund are to be available, as provided by appropriation Acts, for making expenditures for:

(1) up to 40 percent of U.S. harbor (port) operation and maintenance costs (including Great Lakes navigational projects);

(2) 100 percent of eligible Saint Lawrence Seaway operation and maintenance costs; and

(3) rebates of the U.S. portion of Saint Lawrence Seaway tolls to payors.

Effective date.—April 1, 1986.

Conference agreement.

Establishment of Trust Fund.—The conference agreement follows the Senate amendment.

Funding.—The conference agreement generally follows the Senate amendment.

Expenditures from the Trust Fund.—The conference agreement generally follows the Senate amendment, as modified to reflect the Trust Fund expenditure provisions in section 210(a) of the conference agreement. Also, under the conference agreement, the costs of the customs service incurred in administering and collecting the harbor maintenance tax are to be reimbursed from the customs user fee enacted in 1986. In the event such fee is repealed, such costs, not to exceed $5 million annually, are to be reimbursed from the Harbor Maintenance Trust Fund.

Effective date.—April 1, 1987.

3. Studies

House bill

No provision.

Senate amendment

Port use charge and cargo diversion.—The Secretary of the Treasury, in consultation with the Secretaries of the Army and Transportation (and other appropriate Federal agencies) and with representatives of U.S. ports, is to conduct a study to determine the impact of the port use charge of potential diversions of cargo to Canada and Mexico from U.S. ports. The Secretary's report is to be made to the Congress within one year after enactment of the bill.

Saint Lawrence Seaway tolls.—The Secretary of State, in consultation with the Secretary of Transportation, is to initiate discussions with Canada regarding reducing or eliminating all tolls on the Saint Lawrence Seaway and international Great Lakes. The Secretary is to report to the Congress on the progress of such discussions within two years after enactment.

Conference agreement

The conference agreement follows the Senate amendment, with a modification to include Treasury consultation with the U.S. Trade Representative with respect to the port use tax and cargo diversion study.

B. INLAND WATERWAYS FUEL TAX AND TRUST FUND

1. Fuel tax

Present law

Fuel tax rate.—An excise tax of 10 cents per gallon is imposed on diesel and other liquid fuels used by commercial cargo vessels on designated inland or intracoastal waterways (Code sec. 4042). (The present tax rate was increased from 8 cents per gallon on October 1, 1985, under the rate schedule enacted in 1978). Amounts equivalent to the revenues from the tax are transferred to the Inland Waterways Trust Fund.

Waterways subject to tax.—The tax applies to taxable fuel used on 26 designated inland or intracoastal waterways (including the Mississippi River upstream from Baton Rouge, La., the Mississippi River tributaries, Columbia-Snake Rivers Inland Waterways, and the Gulf and Atlantic Intracoastal Waterways).

House bill

Fuel tax rate.—The House bill does not increase the rate of the inland waterways fuel tax.

Waterways subject to tax.—The House bill adds the Tennessee-Tombigbee Waterway to the list of inland waterways the use of which is subject to the fuel tax.

Effective date.—January 1, 1986.

Senate amendment

Fuel tax rate.—The Senate amendment increases the fuel tax rate by one cent per gallon per year, beginning on January 1, 1988, until the tax reaches 20 cents per gallon on January 1, 1997, and thereafter.

Waterways subject to tax.—The Senate amendment is the same as the House bill.

Effective date.—The increase in the fuel tax rate is effective on January 1, 1988 and January 1 of each year until 1997. The addition of the Tennessee-Tombigbee Waterway to the list of waterways with respect to which the fuel tax applies is effective April 1, 1986.

Conference agreement

Fuel tax rate.—The conference agreement provides that the inland waterways fuel tax is increased to 11 cents per gallon on January 1, 1990, to 13 cents per gallon on January 1, 1991, to 15 cents per gallon on January 1, 1992, to 17 cents per gallon on January 1, 1993, to 19 cents per gallon on January 1, 1994, and to 20 cents per gallon on January 1, 1995, and thereafter.

Waterways subject to tax.—The conference agreement follows the Senate amendment, effective on January 1, 1987.

2. Inland Waterways Trust Fund

Present law

Establishment and funding.—The Inland Waterways Trust Fund was established by section 203 of the Inland Waterways Revenue Act of 1978, and currently is not within the Trust Fund Code of the Internal Revenue Code (Chapter 98). Chapter 98 includes the Black Lung Disability Trust Fund, the Airport and Airway Trust Fund, the Highway Trust Fund, and the Aquatic Resources Trust Fund.

Amounts equivalent to the revenues from the inland waterways fuel excise tax are transferred to the Trust Fund. The Trust Fund also earns interest on investments of any cash balance.

Expenditures from the Fund.—Amounts in the Trust Fund are available, as provided by authorization and appropriations Acts, for making construction and rehabilitation expenditures for navigation on the specified

inland and intracoastal waterways, the commercial use of which is subject to the fuel tax.

House bill

Statute.—The House bill places the Inland Waterways Trust Fund in the Trust Fund Code of the Internal Revenue Code. The Trust Fund under the transferred statutory provision is treated as a continuation of the existing Trust Fund.

Expenditures from the Fund.—The House bill retains the general expenditure purposes of the Trust Fund as under present law, subject to the limitation that expenditures from the Trust Fund cannot be used to finance more than (1) one-third of the costs of specified inland waterways lock and dam projects or more than one-sixth of the costs of necessary relocation of pipelines, electricity, or communications cables or lines of related facilities in connection with such projects.

Effective date.—January 1, 1986.

Senate amendment

Statute.—The Senate amendment is the same as the House bill.

Expenditures from the Fund.—The Senate amendment provides that the Trust Fund is to pay, subject to appropriations Acts, one-half the costs (construction, rehabilitation, modification, and post-authorization planning) of certain specified inland waterways lock and dam projects.

Effective date.—April 1, 1986.

Conference agreement

Statute.—The conference agreement follows the House bill and the Senate amendment.

Expenditures from the Trust Fund.—The conference agreement generally follows the Senate amendment, as modified to reflect the Trust Fund expenditure purposes included in title III, section 844, and section 1103(j) of the conference agreement.

Effective date.—January 1, 1987.

From the Committee on Public Works and Transportation, for consideration of the House bill (except Title XV), and the Senate amendment (except Title VIII):

JAMES J. HOWARD,
GLENN M. ANDERSON,
ROBERT A. ROE,
JOHN B. BREAUX,
NORMAN Y. MINETA,
JAMES L. OBERSTAR,
GENE SNYDER,
JOHN PAUL HAMMERSCHMIDT,

From the Committee on Public Works and Transportation, for consideration of the House bill (except Title XV), and the Senate amendment (except Title VIII):

ARLAN STANGELAND
BILL CLINGER,

For consideration of sections 516, 605(b), 752 1110(b), 1159, and 1185 of the House bill, and modifications committed to conference:

HENRY J. NOWAK,

For consideration of the paragraph entitled "Island Creek Basin, West Virginia" of section 301(a), and sections 302 and 813(21) of the House bill, and section 701(a)(1) and (b) of the Senate amendment:

NICK RAHALL,

For consideration of the paragraph entitled "Crown Bay Channel-St. Thomas Harbor, Virgin Islands" of section 102 and section 813(4) of the House bill and section 609(29) of the Senate amendment:

RON DE LUGO,

For consideration of section 536 of the House bill, and modifications committed to conference

DOUGLAS H. BOSCO,

For consideration of the paragraph entitled "Gallipolis Locks and Dam Replacement, Ohio River, Ohio and West Virginia" and "Winfield Locks and Dam, Kanawha River, West Virginia" of section 201(a), the paragraph entitled "Cabin Creek West Virginia" of section 501(a), and sections 507, 538, and 1120 of the House bill, and sections 317, 502(2), and 703(g) of the Senate amendment:

BOB WISE,

For the consideration of section 1199E of the House bill and section 333 of the Senate amendment:

E. CLAY SHAW, Jr.,

For consideration of the paragraph entitled "Santa Ana River Mainstem, California" of section 301(a) of the House bill, and section 703(a)(10) of the Senate amendment:

RON PACKARD,

From the Committee on Interior and Insular Affairs, for consideration of the paragraph entitled "Saipan Harbor, Commonwealth of the Northern Mariana Islands" of section 102, sections 814, 1102(c), 1121, 1199B, 1199G and Title XII of the House bill, and sections 219, 223(c), 238, 308, 314, 338, 339, 340, 348, 358, 504, 701(a)(2), and 703(b)(7) of the Senate amendment:

MO UDALL,
GEORGE MILLER,
RON DE LUGO,
DON YOUNG,
DICK CHENEY,

From the Committee on Merchant Marine and Fisheries, for consideration of sections 104, 107, 109, 110, 112, 113, 115, 116, 605, 1114, 1121, 1122, 1186, 1199E, 1199P, and Titles XIII and XIV of the House bill, and sections 209, 221, 224, 316, 326, 333, 351, 504, 604, 605, 606, 608, 703(e)(2) and 704 of the Senate amendment:

WALTER B. JONES,
MARIO BIAGGI,
GERRY E. STUDDS,
BARBARA A. MIKULSKI,
MIKE LOWRY,
BILL HUGHES,
NORMAN F. LENT,

From the Committee on Merchant Marine and Fisheries, for consideration of sections 104, 107, 109, 110, 112, 113, 115, 116, 605, 1114, 1121, 1122, 1186, 1199E, 1199P, and Titles XIII and XIV of the House bill, and sections 209, 221, 224, 316, 326, 333, 351, 504, 604, 605, 606, 608, 703(e)(2) and 704 of the Senate amendment:

DON YOUNG,
BOB DAVIS,
WILLIAM CARNEY,
JACK FIELDS,

(In lieu of Mr. Young for consideration of section 1121 of the House bill and section 504 of the Senate amendment.)

From the Committee on Ways and Means, for consideration of Title XV of the House bill, and Title VIII of the Senate amendment:

DAN ROSTENKOWSKI,
SAM GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,
PETE STARK,
JOHN J. DUNCAN,
GUY VANDER JAGT,
BILL FRENZEL.

Managers on the Part of the House.

On behalf of the Committee on Environment and Public Works:

ROBERT T. STAFFORD,
JAMES ABDNOR,
PETE V. DOMENICI,
DAVID DURENBERGER
LLOYD BENTSEN,
DANIEL PATRICK MOYNIHAN,
QUENTIN N. BURDICK,

On behalf of the Committee on Finance on Section 606 and Title VIII of the Senate amendment to H.R. 6 and Section 109 and Title XV of H.R. 6:

BOB PACKWOOD,
WILLIAM V. ROTH, Jr.,
JOHN C. DANFORTH,
RUSSELL B. LONG,
SPARK M. MATSUNAGA.

Managers on the Part of the Senate.

Mr. ROE. Mr. Speaker, pursuant to House Resolution 587, I call up the conference report on the bill, (H.R. 6), to provide for the conservation and development of water and related resources and the improvement and rehabilitation of the Nation's water resources infrastructure.

The SPEAKER pro tempore (Mr. DONNELLY). Pursuant to House Resolution 587, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of earlier today.)

The gentleman from New Jersey [Mr. ROE] will be recognized for 30 minutes, the gentleman from Minnesota [Mr. STANGELAND] will be recognized for 30 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. ROE].

Mr. ROE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to bring to the floor the conference agreement on H.R. 6, the Water Resources Development Act of 1986. This conference agreement is the product of over 5 years of intensive work by the Subcommittee on Water Resources, including extensive hearings and countless hours of gathering information and consulting interested Members and their staffs. I am deeply appreciative of the many hours the members of the subcommittee, and of the full committee, have devoted to this legislation. I also wish to express my gratitude for the fine cooperation of the ranking minority member of the subcommittee, the gentleman from Minnesota [Mr. STANGELAND], and the ranking minority member of the full committee, the gentleman from Kentucky [Mr. SNYDER]. I want to thank the chairman of the committee, the gentleman from New Jersey [Mr. HOWARD], for the outstanding leadership he again has exercised in bringing this legislation to the floor.

Mr. Speaker, we began work on this legislation with two basic premises in mind. The first is that water is our most important and most valuable national asset, and resolving the problems relating to the use, overuse and abuse of our water resources, as well as protection from catastrophic flood-

ing, are items of the highest priority. The second premise is that we must begin to deal with these water resources problems according to a national policy that is both rational and bipartisan in nature. We have worked diligently to achieve that goal in this legislation.

While the most visible use of water for most of us is our personal household use, it is important to remember that there are many other competing water uses, each of which contributes significantly to the economic dynamics of the Nation and to the quality of life of all our citizens. We must continue to provide adequate supplies of fresh water for food production and other vital industries. We must continue to provide modern ports and inland, general cargo, and deep-draft navigation channels to facilitate the commerce that has become the lifeblood of our vast agricultural and manufacturing regions. We must also preserve adequate instream flows and preserve the general availability of clean water in our lakes, estuaries and wetlands to assure the preservation and enhancement of adequate fish and wildlife habitat and protection of the ecosystem, as a whole.

Water resources problems are not new; problems relating to the use, overuse and abuse of water have existed since the inception of civilization, particularly in arid regions. However, water resources problems in America are now becoming acute, and changes in public attitudes are beginning to reflect this condition. A growing population competing for a limited amount of water has caused the previously common perception of clean water as an unlimited resource to give way gradually to a more realistic public perception that clean water is no longer unlimited and no longer free.

Although the Nation's natural supply of water appears to be more than adequate to meet the needs of its present population, the real problem lies not in having inadequate quantities of water nationally, but in the fact that water of adequate quality is not always available at the time and place it is needed. All States have identifiable water resources distribution problems. To combat problems of distribution, governmental and private entities—Federal, regional, State and local—have often resorted to engineering or management solutions, with the States primarily responsible for the management and allocation of waters within their respective borders. Where water resources needs have transcended the States' abilities to resolve, the Federal Government has stepped in to provide assistance. This bill recognizes the complex intergovernmental relationships that have evolved to deal with water resources needs. It is intended not to diminish the traditional prerogatives and responsibilities of State and local governments, but to provide more rational framework for national water resources decisionmaking when national solutions are appropriate and to complement State, local, and private efforts.

The bill also recognizes that water resources needs and solutions are all unique. One region may be plagued by droughts and another by floods; and the appropriate solutions to flooding or drought problems in one region may be totally unsuited to another. Another region may have adequate supplies of fresh water and have adequate protection from floods, but have acute transportation problems relating to outdated navigation facilities. Because of its recognition of vast interregional differences in both the abundance and the use of water, and because of its recognition of the primacy of State and local governments in the allocation and management of water resources in many instances, the committee has sought, wherever possible, to ensure regional, State and local participation in the policymaking process.

This bill comprises a major step in the formulation of nationally coordinated water use policy. It is truly a landmark bill, for the first time integrating the authorization and deauthorization of all types of water resources projects with the establishment of an equitable new Federal/non-Federal partnership including cost-sharing requirements where appropriate. This bill embodies the committee's belief that it is possible to develop a nationally coordinated policy that will ensure the optimum yield from one of our most vital national assets—our water resources—and the committee's recognition that water resources development must be carried out in a rational and equitable manner that will benefit the Nation as a whole and meet the diverse needs of all its regions.

The last water resources development bill was signed into law in 1976. The last true construction authorization bill was signed into law in 1970. The 1974 and 1976 acts consisted primarily of authorizations for advanced engineering and design of projects rather than for construction. As a result, over this 16-year period, a very large backlog of proposed water resources projects has accumulated. Detailed testimony was received on all of these projects, and they have all been analyzed very carefully. While the total number of projects appears large, it must be remembered that they represent over a decade of detailed planning and study of water resources problems throughout the Nation.

Authorization of these projects at this time, together with the implementation of new policies adopted by the committee will enable the program to proceed once again in a responsive and expeditious manner to meet the critical water resources needs of our Nation.

H.R. 6, as is traditional with water resources development bills, contains project authorizations, authorizations of water resources studies, project modifications, and general provisions affecting the overall water resources program of the corps of Engineers. This bill also continues the practice of refining the manner in which the corps' existing water resources program is carried out to meet our constantly changing water resources needs. As a result, the bill contains a number of features addressing environmental concerns, energy needs, and project study procedures, in addition to the traditional provisions addressing flood control, navigation, erosion control, recreation, and the like.

The conference agreement includes an authorization for construction or study of over 270 projects. In addition, the conference agreement includes 33 studies, 72 project modifications and 72 miscellaneous projects. The total cost of the bill is $16.5 billion, of which $4.5 billion will be paid by non-Federal interests during construction. In addition, $2.5 billion will be repaid to the Federal Government under the repayment provisions of the bill, making the ultimate Federal cost $9.5 billion and the ultimate non-Federal cost $7 billion. The project authorizations consist of four basic types.

For those projects for which a Corps of Engineers feasibility study has been completed and the corps' review process is complete through a final report of the Chief of Engineers, the projects are fully authorized, subject only to appropriation of funds for their construction.

The second form of authorization in the conference agreement is for those projects for which a feasibility study of the corps has been completed, but the corps' review process has not resulted in a final report of the Chief of Engineers. These projects have reports of the district engineer, division engineer, or the Board of Engineers for rivers and harbors. These projects are authorized for construction, but construction may not commence until a final Chief of Engineers' report has been issued and approved by the Secretary. These projects will then be able to proceed to construction.

It is important for projects which had completed feasibility studies to be able to proceed to construction without the need for further congressional action once the corps, review process was complete.

The third group of projects is authorized for preconstruction planning, engineering and design. Projects in this category have no completed Corps of Engineers feasibility report. These projects are authorized for the corps to conduct full study of the project as

well as for the corps to go beyond the normal study phase and proceed with more detailed work toward the ultimate construction of the project including construction specifications. The corps will, in effect, be authorized to do everything necessary for construction, except let the contracts to actually initiate construction. Initiation of construction will require further congressional review and action.

There is also a fourth group of projects which are authorized for construction, but only after the Secretary of the Army has had an opportunity to review the projects and comment upon them to the Congress. This group consists of projects which generally have not been studied in depth by the Corps of Engineers but because of the nature of the project or the urgent need for the project, something more than preconstruction planning, engineering and design is required.

As I said, this fourth group of projects is authorized for construction, but with the requirement that the Secretary review and comment upon them. The Secretary is required to review at least one-third of the projects in each of the next 3 years. The schedule for review of the projects is contained in the conference statement of managers. In the event the Secretary does not complete his review of a project within the stated time period, the Secretary is deemed to have approved this project.

Mr. Speaker, I would now like to proceed with a brief description of what is in each title of the conference agreement.

Title I contains the cost-sharing provisions which are generally applicable to Corps of Engineers waters resources projects. For harbor development, non-Federal interests are required to pay a share of the project construction costs during construction, the amount depending on project depths. For depths 20 feet or less the non-Federal share is 10 percent of project costs; for depths greater than 20 feet, but not more than 45 feet, the non-Federal share is 25 percent of project costs associated with the increment greater than 20 feet; and, for depths greater than 45 feet, the non-Federal share is 50 percent of project costs of the increment greater than 45 feet. In addition to the non-Federal share of construction costs, the non-Federal interest must pay 10 percent of the cost of general navigation facilities over 30 years with interest, and the non-Federal interest must provide all lands, easements, rights-of-way, relocations—other than utilities—and dredged material disposal areas for project construction and maintenance. The cost of the lands, easements, rights-of-way, relocations, and dredged material disposal areas is credited against this additional 10 percent. The cost of utility relocations, other than utility relocations which are to be borne by the owner of the facility under Section 101(a)(4), are also credited toward the 10 percent repayment requirement.

With regard to utility relocations, if the harbor or channel project is deeper than 45 feet, the associated costs of the utility relocations are to be shared equally between the non-Federal interest and the utility owner. For depths 45 feet or less, the non-Federal interest may perform its obligations by assuring that utility relocations are performed. Finally, operation and maintenance costs are 100 percent Federal for work associated with depths not greater than 45 feet and 50 percent Federal for additional costs of maintaining depths greater than 45 feet.

Inland waterway transportation projects are to be funded 50 percent from the inland waterways trust fund, the balance from general revenues. This trust fund consists of revenues generated from a 10-cent-per-gallon tax on inland waterways fuel.

The conference agreement provides for flood control projects a minimum non-Federal share of 25 percent and a maximum of 50 percent. The non-Federal interest must pay 5 percent of the costs of each project assigned to flood control during construction. The non-Federal interests must provide lands, easements, rights-of-way, relocations, and dredged material disposal areas. If the amounts contributed in cash and in-kind are less than 25 percent, the non-Federal interests must contribute an additional amount in cash during construction in order to reach the 25 percent minimum. If the cash plus in-kind contribution exceeds 30 percent, the non-Federal interests may pay any portion of their share exceeding 30 percent over 15 years—or an agreed upon shorter period—with interest. In any event, the non-Federal interest must contribute 5 percent of the project cost during construction. The cost-sharing requirement for nonstructural projects is 25 percent with no cash required during construction.

There are areas of the country where non-Federal interests cannot afford to provide the non-Federal share required in this legislation. Therefore, the conference report includes a provision which requires that cost-sharing responsibilities of non-Federal interests for flood control and agricultural water supply be subject to their ability to pay. Under this provision the Secretary may reduce the non-Federal responsibilities below those otherwise applicable for the project purpose. In no instance should this provision penalize a project for consideration for construction, and in no instance can the Secretary increase an otherwise applicable non-Federal cost-sharing requirement. I would encourage the Secretary to use this discretionary authority to continue to provide new flood control protection at reduced or no non-Federal cost-sharing in areas where needs exist but ability to pay does not.

For other project purposes, the following cost-sharing is adopted.

First. Municipal and industrial water supply: Retains the existing 100 percent non-Federal share of project costs.

Second. Agricultural water supply: The non-Federal share is 35 percent.

Third. Recreation: The non-Federal share is 50 percent of separable recreation costs except that for recreation navigation, it is 50 percent of joint and separable costs.

Fourth. Hurricane and storm damage reduction: The non-Federal share is 35 percent.

Fifth. Aquatic plant control: The non-Federal share is 50 percent.

Sixth. Beach erosion control, water quality enhancement, and fish and wildlife mitigation: Costs are to be assigned to the appropriate purposes listed in the bill and costs shared according to the purposes for which they are incurred.

With respect to harbors, the conference agreement applies the cost-sharing provisions to any project or separable element on which a contract for physical construction has not been awarded before the date of enactment. For flood control and other purposes, the conference agreement applies the cost-sharing provisions to any project or separable element on which physical construction is initiated after April 30, 1986.

Title two authorizes 6 deep draft navigation projects—projects with an authorized depth of 45 feet or more—and 35 projects for the improvement of general cargo ports—ports with an authorized depth of between 14 and 45 feet. The cost of these ports is approximately $4 billion of which $1.8 billion is a non-Federal responsibility.

A non-Federal interest may levy port or harbor dues, in the form of tonnage duties but may only do so with regard to a vessel if that vessel is a beneficiary of the project. For harbor and channel deepenings, no dues may be imposed if the vessel, when fully loaded, could have utilized the port or harbor before construction of the project. In the case of project features which solely provide widening, bend easings, turning basins, anchorage areas, or removal of obstructions, only vessels comparable in size used to justify the project may be charged.

Sections 203 and 204 provide a mechanism to permit non-Federal interests to plan, design, and construct port projects and later to be reimbursed subject to appropriations for those costs that ordinarily would be a Federal responsibility, so that a project may be expedited by non-Federal interests.

In title III, the conference substitute authorizes construction of six inland waterways lock and dam projects in accordance with Chief of Engineers reports and one project subject to a report of the Chief of Engineers and approval of the Secretary. The provision with respect to the disposition of two Kentucky River locks has been adopted. These projects have a total cost of approximately $1.2 billion.

In addition, an inland waterways users board is established to make recommendations regarding construction and rehabilitation priorities and spending levels for the inland waterways.

Title IV authorizes, either for construction or design, 114 projects for the reduction of flood damages. Of these, 6 projects are subject to a final Chief of Engineers report and Secretary approval, 7 projects are subject to Secretary review and comment, and 12 projects are authorized for preconstruction planning, engineering, and design. The cost of these projects is approximately $4.7 billion of which $1.3 billion is a non-Federal responsibility.

Title V authorizes 24 projects for the protection of shorelines on the Atlantic and Gulf coasts and the Great Lakes. The cost of these projects is approximately $450 million of which $183 million is a non-Federal responsibility.

Title VI authorizes 80 projects for water resources conservation and development purposes—including mitigation of damages to fish and wildlife, hydroelectric power, streambank erosion control, navigation and other purposes, including many detailed provisions designed to protect specific environmental values. These projects have a cost of approximately $3.7 billion of which $600 million is a non-Federal responsibility. In addition, over $2 billion will be repaid from revenues generated from the sale of hydroelectric power.

Title VII authorizes the corps to conduct 33 studies. These include studies of specific water resources problems in particular localities, as well as studies of a more general nature. A few of the most important provisions for studies of a general nature are as follows.

Section 704 directs the corps and the Fish and Wildlife Service to study the feasibility of utilizing the corps' capabilities to conserve indigenous wildlife and wildlife habitats, including creating alternative habitats, and beneficially modifying existing habitats.

Section 707 directs the corps to prepare an estimate of the long-range capital investment needs for water resources programs within its jurisdiction—including investment needs for ports, inland waterway transportation, flood control, municipal and industrial water supply, hydroelectric power, recreation, and the fish and wildlife conservation and enhancement associated with those programs.

Section 710 directs the corps to prepare a list of authorized water resources studies for which no report has been transmitted to the Congress, and deauthorizes any study for which no funding has been received for 5 full fiscal years.

Title VIII contains project modifications for 72 authorized water resources projects. These modifications were all analyzed on a case-by-case basis and were determined to be necessary for the functioning of the projects to which they relate.

Title IX consists of a number of general provisions relating to the corps' Water Resources Program. A few of the more important provisions are:

First. Specifying that enhancing national economic development (including benefits to particular regions not involving the transfer of economic activity), the quality of the total environment, the well-being of the people, the prevention of loss of life, and the preservation of cultural and historical values are to be addressed in formulating and evaluating water resources projects.

Second. Establishing ceilings on corps of engineers civil works construction obligations of $1.4, $1.5, $1.6, $1.7, and $1.8 billion for fiscal years 1987 through 1991.

Third. Raising the program and single project ceilings for small project authorities such as small flood control and navigation projects.

Fourth. Establishing an environmental protection and mitigation fund of $35 million for the acquisition of mitigation lands in advance of project construction. Expenditures from the fund would be repaid from appropriations made for construction of the project.

Title X deauthorizes some 300 authorized corps projects or portions of projects. The cost of these deauthorized projects is approximately $11.3 billion.

Furthermore, an automatic procedure for deauthorizing projects in the future is established. Projects authorized by this bill are deauthorized if not funded within 5 years. In addition, the Secretary is to submit biannual lists of projects which are authorized but have received no funding for 10 years. Under the first list submitted, the projects are deauthorized if they receive no funding by December 31, 1989. Projects on subsequent lists are automatically deauthorized if they receive no funding within 30 months after the list is transmitted to Congress, thereby allowing Congress the time to act if it chooses.

Title XI contains a number of miscellaneous projects and provisions designed to address particular water resources needs.

Title XII adopts amendments to existing dam safety legislation. The conference agreement would be applicable to any potential dam failure regardless of size. A matching grant program is established for developing and improving State dam safety programs, and a National Dam Safety Review Board is established. Additionally, the secretary is authorized to provide, on a cost reimbursable basis, detailed engineering studies to determine the structural integrity of any dam found to be hazardous by the National Dam Inspection Program.

Title XIII changes the names of a number of water resources projects and project features which have been constructed by the Corps of Engineers. One naming is geographical and the others are in honor of prominent individuals who have contributed their efforts to the development of water resources.

Mr. Speaker, H.R. 6, which is the result of over 5 years of intense study by our committee, and over 7 months of work by the conference represents the first major construction authorization bill since 1970—and the most comprehensive and environmentally sensitive water resources bill ever developed. It is necessary to the dynamics of our Nation's economy; it is timely; and I urge its adoption.

Mr. HOWARD. Mr. Speaker, will the gentleman yield?

Mr. ROE. Mr. Speaker, I yield to the gentleman from New Jersey [Mr. HOWARD].

Mr. HOWARD. Mr. Speaker, I rise today to urge strong support for approval of the conference report on H.R. 6, the Water Resources Development Act of 1986.

This bill is the result of 6 years of work by the Subcommittee on Water Resources of the Committee on Public Works and Transportation. It has truly been an outstanding effort and I must commend my colleague from New Jersey [Mr. ROE], the subcommittee chairman, for his work on the bill. Over the years, he has shown remarkable energy and mastery of the subject matter. Without his persistence, there might not have been a water resources bill. The gentleman from Minnesota [Mr. STANGELAND], the subcommittee's ranking minority member, also deserves praise.

I would also like to commend the staff of the subcommittee for its work on this bill. They devoted long hours, late at night, on weekends and holidays, over a period of years to finish this bill.

This bill represents the first water project authorizations in a decade and the first revision of water policy in more than a decade and a half. It is a landmark bill that will set the Nation's water policy for at least the rest of the century. The bill prescribes the policy

for development and control of the Nation's water resources and authorizes specific projects in all areas of water resources development.

With the failure to produce authorizing legislation in recent years, pressure has developed in many areas of water resources development. There is a need for these projects. This Nation must develop and maintain its ports, it must maintain a strong system of inland waterway transportation and it must have a comprehensive and active program of flood control, beach protection, and resource development. This bill meets those needs in an environmentally sound manner.

H.R. 6 contains overall revisions of the statutes regarding the Federal Government's responsibility in the water resources field. In general, the result of these changes is to strengthen and enhance the role of non-Federal entities in the water resources field. While primary responsibility for funding and planning remains with the Federal Government, non-Federal interests must assume a role of partnership.

For port development, H.R. 6 requires non-Federal interests to pay 10 percent of the cost of deepening for depths of 20 feet or less, 25 percent for depths between 20 and 45 feet and 50 percent deeper than 45 feet. In addition, the non-Federal interest over 30 years with credits for easements, rights-of-way, relocations and dredged material disposal areas.

The bill authorizes a total of 41 port projects at a total cost of $4 billion, of which the Federal cost would be $2.1 billion.

H.R. 6 authorizes use of funds in the Inland Waterways Trust Fund which has been collected from the inland waterways users since 1980 but has not been spent because of the lack of an authorization bill. The trust fund will provide 50 percent of the cost of seven inland waterway projects at a total cost of $1.2 billion.

There will be an increase in the 10-cent-a-gallon tax on fuel used by the inland waterways users which funds the Inland Waterway Trust Fund. The tax will be increased to 20 cents a gallon by fiscal year 1997.

In the vital area of flood control, H.R. 6 standardizes the non-Federal costs at 25 to 50 percent of the project cost. The non-Federal interests must pay 5 percent of the costs during construction. In addition, they must provide lands, easements, rights-of-way, relocations and dredged material disposal areas up to 50 percent of the project cost. Those costs, in addition to the 5-percent cash payment, must equal 25 percent or the non-Federal interest must pay the difference.

H.R. 6 authorizes 111 flood control projects at a total cost of $4.7 billion of which the Federal cost will be $3.4 billion.

The bill authorizes a total of 267 projects at a total cost of $14 billion and a total Federal cost of $10 billion. Of those, there are 24 shoreline protection projects, 80 water resources projects, 73 project modifications, 31 studies and 63 miscellaneous projects.

There are several provisions of which I would like to take special notice. First, H.R. 6 would take action on the site known as the mud dump in the New York Bight which is of special concern to the residents of the New Jersey Shore. This provision would require the Environmental Protection Agency within 3 years to designate a new site for the disposal of dredged material in the New Jersey-New York area. The new site must be located at least 20 miles from shore.

When the new site is designated, the existing site located 6 miles from Sandy Hook will be closed to all dredged material except rock, beach quality sand, material excluded from testing under ocean dumping regulations promulgated by the EPA Administrator pursuant to the Marine Protection, Research and Sanctuaries Act of 1972 and any other dredged material determined by the Secretary of the Army, in consultation with the EPA Administrator, to be substantially free of pollutants.

The mud dump is of special concern to the New Jersey Shore because of its location near Sandy Rock. Closing of this site will protect our beaches from the possible harmful effect that disposing of contaminated dredged material 6 miles away might cause. This is a situation that has existed for much too long. This bill will move the site for contaiminated dredged material away from the New Jersey Shore and protect our beaches.

The bill also authorizes $40 million for beach restoration to protect the sea wall that in itself protects the Boroughs of Sea Bright and Monmouth Beach. The Federal Government will provide the funding for the 50-foot beaches as well as an additional beach in the northern section of Long Branch. The State of New Jersey will maintain its existing responsibility for repair of the seawall.

It is important to note, however, that these plans are contingent on compliance by the boroughs of Sea Bright and Monmouth Beach with all State laws and regulations concerning public access to the beaches. The Federal Government is not in the business of funding projects for the improvement of private or restricted beaches. If there is any Federal work involved, there must be appropriate public access to the beaches.

Finally, H.R. 6 contains the provisions concerning non-Federal payments that will allow work to proceed on the important Barnegat Inlet jetty. Earlier this year, the State of New Jersey signed a cost-sharing agreement with the Corps of Engineers in which the State agreed to pay 35 percent of the cost of the modifications to the jetty. The work is being done to correct a design deficiency, which is traditionally a 100-percent Federal responsibility. However, State officials agreed to pay 35 percent because of the importance of the project.

That cost-sharing agreement was contingent, however, on the enactment of legislation specifying that future legislations are not obligated by the agreement. H.R. 6 contains that necessary provision.

Upon enactment of this act, therefore, the corps may initiate the necessary steps to correct the alignment of the jetty. Because of the design deficiency, Barnegat Inlet is the most dangerous boat passage on the Atlantic coast. The problem should be corrected as soon as possible before any additional needless deaths take place.

Mr. Speaker, H.R. 6 is landmark legislation. It is the first authorization bill since the mid-1970's and it may be the last water policy legislation for some time to come. Much effort has gone into developing this revision of Federal water policy. It will allow development of the Nation's water resources on a systematic and coordinated basis. I urge passage of the conference report on H.R. 6.

Mr. STANGELAND. Mr. Speaker, I yield such time as he may consume to the gentleman from Kentucky [Mr. SNYDER].

Mr. SNYDER. Mr. Speaker, I rise in strong support of H.R. 6, the Water Resources Development Act of 1986.

H.R. 6 is a tribute to both bodies of Congress and particularly to certain Members who worked relentlessly toward its final passage. From personal experience, I know that members of the House Public Works and Transportation Committee—the full committee chairman, JIM HOWARD; the subcommittee chairman, BOB ROE; and the subcommittee ranking minority member, ARLAN STANGELAND—have spent days and nights for at least 4 years on this comprehensive, crucial legislation.

I would also like to thank members of the Senate Environment and Public Works Committee—the full committee chairman, BOB STAFFORD; the ranking minority member, LLOYD BENTSEN; the subcommittee chairman, JIM ABDNOR; and the subcommittee ranking minority member, PAT MOYNIHAN, for their heroic efforts in accomplishing this herculean task. I would particularly like to thank JIM ABDNOR, the chairman of the conference committee, for his invaluable leadership and good judgment.

With the indepth analysis, the relentless dedication of other House, Senate, and administration players,

and a prevailing spirit of compromise, we produced a strong final bill.

Mr. Speaker, the conference report before us today is truly a landmark bill. H.R. 6 is a worthy compromise that makes important, far-reaching changes in our Federal Water Resources Program. With this bill, countless communities and regions will finally receive the Federal assistance they critically needed for many years.

The Nation has waited far too long for a comprehensive water resources bill. The last omnibus bill became law in 1976, while the last major water resources construction authorization bill became law in 1970—over 16 years ago. During this period, our water resources infrastructure has deteriorated to the point where it is now in critical need of repair, rehabilitation and improvement. In addition, because so few new projects have been authorized, a large backlog of proposed water resource initiatives has accumulated.

Our bill is a bold and innovative attempt to address these increasing concerns. The size and scope of H.R. 6 represents over a decade of detailed planning and study of national water resource problems. The conference report makes numerous changes in the current Water Resources Program to respond to new priorities and needs of this diverse Nation. At the same time, it balances the need for new policies—including increased non-Federal cost sharing—with sensitivity for existing economic conditions and important environmental values.

H.R. 6 provides a framework for strengthening our water resources infrastructure. It authorizes studies for potential water resources projects, modification of authorized projects, and construction of new projects for the Army Corps of Engineers. The bill's carefully selected projects will strengthen local, regional, and national economies and encourage increased trade, which will, in turn, improve our balance of payments. H.R. 6 authorizes valuable new programs for lake protection, dam safety, streambank erosion, and other forms of assistance and protection to communities. The bill also contains numerous provisions to ensure a nationwide source of professional expertise and cooperation among Federal, State, and local entities. In addition, H.R. 6 deauthorizes many older water resources development projects which have not been constructed and are no longer necessary.

At the same time, this is a strong environmental bill. It creates a $35 million environmental protection mitigation fund and an office of environmental policy within the Corps of Engineers to formulate and carry out corps' policy on environmental quality. The bill also authorizes numerous projects specifically designed to address particular environmental concerns. To assure that any disruption caused by a Corps of Engineers' water resources project is minimized, the bill provides for development and implementation of mitigation plans consisting of construction requirements, purchase of lands or easements for fish and wildlife purposes, and development of habitat at projects.

Mr. Speaker, allow me to highlight some of the main features of H.R. 6. Title I is, in many respects, the heart of the bill. Comprehensive new cost-sharing policies are established to ensure the continued vitality and integrity of the corps program. H.R. 6 provides carefully planned formulas for Federal and non-Federal financing of projects involving port construction and maintenance, inland waterways, flood control, water supply, and operations and maintenance. Each formula reflects a reasonable compromise between the need to assist State and local governments and the need to conserve Federal dollars.

Title II establishes the Port Development and Navigation Improvement Act of 1986. The bill contains an important fast-tracking procedure to coordinate and improve Federal, State, and local permitting and construction activities. In addition to authorizing numerous port projects throughout the country, this title establishes a trust fund to help maintain port and harbor improvement projects. The fund will be financed, in part, from a 0.04-percent ad valorem fee to be levied on cargo which is expected to generate between $150 and $200 million per year in new revenues.

The port cost-sharing provisions, so crucial to the continued vitality of our Nation's harbors, largely reflect the ingenuity of and cooperation among leaders in Congress and the administration. The non-Federal share of construction costs for port improvement projects with depths of up to 20 feet is 10 percent in cash during construction, 25 percent for projects with depths between 20 and 45 feet, and 50 percent for those with depths greater than 45 feet. In addition to providing the upfront cash and a 10-percent cash contribution over time, the non-Federal share includes lands, easements, rights-of-way, relocations (except utility relocations not actually paid for by the project sponsor), and spoil disposal areas.

Another important feature of title II involves port user fees. The conference report recognizes the need of ports to recoup reasonable costs from beneficiaries for navigation improvements and services rendered, but at the same time establishes an important direct-beneficiary principle. Under the bill, ports may assess reasonable user fees only upon direct beneficiaries of port deepenings and other specified improvements. This compromise embodies the user-pays principle and will allow local authorities to meet their growing financial needs without penalizing or unreasonably burdening those who use or pass through ports or harbors.

A related provision, though not in title II, amends section 5 of Public Law 96-387, which established a loading priority for coal-carrying vessels engaged in U.S. coastal transportation over similar vessels engaged in export trade. The amendment allows this important priority-loading policy to continue beyond June 30, 1987, be removing the law's mandatory sunset date.

Title III of the bill authorizes the use of revenues from the inland waterways trust fund to finance several locks and dams. Here and in many other places, the bill recognizes the tremendous importance of our Nation's inland waterways transportation system. Millions of tons of raw materials such as grain, petroleum, lumber, and coal travel by barge on more than 26,000 miles of navigable waterways. It is extremely important to our national economy that we keep this invaluable network of navigable highways in top working order. These projects, financed by the trust fund and general appropriations, are expected to be completed within 7 years and will help to make our transportation system even stronger.

Title IV authorizes critically needed flood control projects and increases non-Federal cost sharing for those projects authorized. Traditionally, local sponsors have been required to provide real estate interests and relocations necessary in connection with local flood protection. These costs have varied from project to project, averaging between 15 and 20 percent. Under our bill, the local interests must pay for at least 25 percent of the total costs by providing needed real estate and a cash contribution of at least 5 percent. In no event, however, would the non-Federal interests be required to pay more than 50 percent of the total project costs. These important new cost-sharing requirements will interject greater fiscal responsibility to the decisionmaking process. I am also pleased that Harlan and Barbourville, KY, will receive the same treatment that other separate elements of the Tug and Levisa Fork project received under an earlier agreement with the administration.

Among other things, title IV authorizes a critical project for flood control along the Santa Ana River mainstem including Santiago Creek in California. The Secretary is authorized to investigate the feasibility of including water supply and conservation storage at Prado Dam. It is my understanding that upon completion of the water supply and conservation study at Prado Dam, that if that study recommends water conservation as a project

purpose for the Santa Ana project that such water conservation will then be considered automatically authorized as a project purpose. Furthermore, it is my understanding that the reference in H.R. 6 to the Water Supply Act of 1985 refers to any additional water supply and conservation that may be recommended at Prado Dam and that this reference is in no way meant to be a limitation on the corps' existing authority to impound water at Prado Dam for conservation purposes.

Title V authorizes numerous projects to protect our Nation's shoreline. By providing beach nourishment, erosion control, and other forms of assistance, the corps will help to assure that shores continue to provide recreational, economic, environmental, and flood control benefits.

Title VI contains a vast array of vital new programs and projects for the conservation, development, and management of our Nation's water resources. A new Streambank Erosion Control Program represents one of the many important improvements to the corps' overall program. Severe erosion problems have plagued multiple sites along the Ohio River for many years. Recently, however, streambank erosion between the Capt. Anthony Meldahl Locks and Dam and the McAlpine Locks and Dam has increased dramatically. Under the new program, the Secretary is authorized and directed to control this longstanding problem.

Title VI also establishes an important new $40 million program for cleaning up lakes. The Secretary must conduct demonstration projects at specific locations throughout the Nation. These projects, which involve the removal of silt and other debris, will enhance the ability of lakes to provide environmental, economic, and recreational benefits.

Title VII provides authority for a variety of water resources studies, including a review of the Nation's flood problems and water supply needs. The corps must study, among other things, the current high-water levels on the Great Lakes and the long-term capital investment needs of the Nation's water resources infrastructure. The title also includes a prohibition of any study by the Federal Government on interbasin transfers from the Arkansas River basin without prior approval of Governors of affected States. This important prohibition reaffirms that a State is the primary manager of water resources within its boundaries, and at the very least, should be consulted before the Federal Government seeks to export such resources to other regions.

Title VIII modifies many existing corps' projects to reflect new conditions and needs. Like so many other provisions in our bill, this title addresses changed circumstances by authorizing the corps to make critically needed modifications to existing projects. For example, the Secretary is directed to replace the Floyd's Fork Bridge at Routt Road in Jefferson County, KY. The bridge was constructed in the 1920's with a wooden plank floor for horse and buggy and the almost nonexistent motor traffic of the day. With the bridge's closing in 1983, the area has faced an intolerable safety problem. The bridge replacement will provide improved access and greater safety for residents and users.

Title IX contains general provisions relating to policies and programs of the Corps of Engineers. It authorizes new actions, increases or changes authorities, and provides congressional direction to certain corps' activities. In particular, the conference report improves upon the corps' construction program by prohibiting unjustified cost overruns for individual projects. Title IX establishes important policies for recreational projects, planning assistance to States, uniform procedures for feasibility reports, determining benefits and costs of environmental measures, contracting procedures, and local cooperation agreements. H.R. 6 also provides special emergency and disaster authority and navigational clearing and snagging to the Secretary. In addition, the bill increases spending levels for numerous special continuing authorities at the corps in order to keep programs in step with inflation.

One extremely important reform involves secretarial review and approval of projects. H.R. 6 recognizes the prerogative of the administration to study and comment on proposed projects but also recognizes the absolutely critical need to improve the review process. The current system, in which final project approval can take decades, is totally unacceptable. Therefore, the conferees have placed an outside time limit of 3 years on the Secretary's opportunity to review and comment on certain projects in H.R. 6 that lack chief's reports.

Title X is one of the many examples of fiscal responsibility throughout our bill. This title deauthorizes approximately 300 projects and, as a result, will save the Federal Government billions of dollars. H.R. 6 also establishes a new and improved procedure for automatic deauthorization of projects that are no longer desired or necessary. This reform will help to prevent the accumulation of a large backlog of proposed water resources projects.

Title XI provides for numerous other programs and projects not addressed in title IX. Some of title XI's important contributions include provisions on ice control, abandoned and wrecked vessels, a Great Lakes marketing board, project modifications to protect the environment, and cabin site leases. Section 1134 also strictly limits the circumstances under which houseboats, boathouses, floating cabins, sleeping facilities at marinas or other structures may be removed from Federal water resources reservoirs or lakes. No such facility or structure may be removed after December 31, 1989, except when absolutely necessary for immediate use for public purposes or other higher public use or for navigation or flood control projects. By prohibiting the Secretary from removing such facilities or structures except in the narrowest of circumstances, we are ensuring the fair and equitable treatment of private property owners without tying the hands of public officials.

Title XII establishes a national dam safety review board and authorizes the corps to provide valuable training, technical and financial assistance to States for the inspection, repair, and restoration of unsafe dams.

Title XIII provides necessary authorization to change the names of numerous water resources projects or project features in order to pay lasting tribute to deserving citizens.

Finally, title XIV incorporates all of the bill's revenue provisions, including those related to the collection and administration of special taxes to be paid by the beneficiaries of port and harbor improvement projects and inland waterway projects. This includes establishing a port trust fund to maintain our Nation's harbors. Other amounts collected will be retained to help fund navigation improvements along our inland waterways.

While I do not support the doubling of the inland waterways fuel tax, I am willing to accept a gradual increase over the years as part of a compromise package to get final passage of H.R. 6. The House Public Works and Transportation Committee recommended against a tax increase because of testimony received by the Water Resources Subcommittee. Witnesses testified at length that a high level of cost recovery would have serious adverse economic impacts, not only on the inland waterways transportation industry, but on many major commodities such as agricultural products, coal, steel, sand, and gravel. It would also reduce the competitive position of the United States in world trade.

Mr. Speaker, H.R. 6 is an enormously important piece of legislation. The conference report provides the basis on which to chart a strong, steady course for the Nation's water resource needs. It offers a comprehensive approach that takes into account critical economic, governmental, and environmental concerns. H.R. 6 embodies the belief that Congress can indeed develop a nationally coordinated policy that will ensure maximum benefits from one of our most vital national assets—our water resources. I urge the Mem-

bers to give this legislation the strongest possible vote so that we can finally enact in 1986 what we should have enacted years ago.

Finally, I would be remiss if I failed to mention the numerous staff members in the House, Senate, and Corps of Engineers who played such a significant role in the passage of H.R. 6. Specifically, I would like to thank John Doyle, Gabe Rozsa, Ben Grumbles, Kathy Guilfoy, Errol Tyler, Ken Kopocis, Randy Deitz, and Charlotte Miles of the House Public Works and Transportation Committee; Bob Bergman and Dave Mendelsohn of House Legislative Counsel; Bailey Guard, Lee Fuller, Hal Brayman, Tom Skirbunt, Mark Haynes, Ann Garrabrant, Nan Stockholm. Paulette Hansen, and Danny McNamara of the Senate Environment and Public Works Committee; and Mike Strachn, Gene Lawhun, and Alex Shwaiko of the Corps of Engineers.

These people worked relentlessly for months, and in some cases for years, toward this historic moment. Without their skills and tireless dedication, we could not have crafted such a strong and workable bill. For this reason, I want to give my heartfelt thanks and congratulations to these dedicated players behind the scenes.

I would also like to add, Mr. Speaker, that the 99th Congress will be remembered as one of the most environmental Congresses ever. We enacted into law major legislation to prevent water pollution, manage water resources, and clean up hazardous waste. We simply could not have done this without the outstanding technical assistance and guidance of one particular staff member—John Doyle of the House Public Works and Transportation Committee. Since he will be leaving at the end of this Congress, I feel compelled to pay tribute to Mr. Doyle, acknowledging at least some of his countless achievements and contributions.

Anyone who has followed water resources legislation in the last 8 years knows of John Doyle's tremendous stature and importance. As ranking minority member of the full committee, I have had the pleasure to work closely with John over the years. He is a tremendously talented, intellectually honest, and deeply perceptive counselor. His knowledge of water programs at the Corps of Engineers and the Environmental Protection Agency knows no bounds. His understanding of the unique world on Capitol Hill—including the legislative procedures, the political intricacies and personal dynamics—is truly remarkable.

Our legislative accomplishments are a tribute to, and indeed a product of John Doyle's efforts. I know of no one who has worked harder over the years than John Doyle. I know of no one who has provided better guidance than John. Unquestionably, John will be sorely missed in the 100th Congress. The Congress will miss his talents, his perceptiveness and uncanny foresight, and his wit and humor.

I know I speak for hundreds of others when I wish John the best in his new endeavors. John will set a splendid example for others in his new position as the Deputy Assistant Secretary of the Army for Civil Works—just as he did over the years on the Public Works Committee. I will miss John's counsel and company. At the same time, however, I know that his indelible mark on this magnificent institution, as well as the Nation's public laws, will remain forever. Thank you.

Mr. PETRI. Mr. Speaker, will the gentleman yield?

Mr. SNYDER. I am glad to yield to the gentleman from Wisconsin.

Mr. PETRI. Mr. Speaker, I rise in support of the conference report on H.R. 6, the omnibus water resources legislation. This bill is a major achievement.

It is the first such comprehensive authorizing legislation in 10 years. I believe one of the main reasons for this achievement is that the bill contains a reasonable compromise on the issue of cost-sharing. The purpose of a policy of cost-sharing is to put some economic rationality into the process of deciding which water projects to build with our scarce Federal dollars.

In a totally political process, we have no assurance that projects will have any real economic merit. However, if local beneficiaries of those projects have to foot at least part of the bill, presumably they will not support projects which are not worth at least their share of the cost.

In the last Congress when I offered a cost-sharing amendment to the predecessor of the bill before us today, the prospect for reaching an acceptable compromise on this issue appeared dim, and the prospects of passing a bill without such a compromise also appeared dim. Yet today we have a bill before us containing an acceptable compromise on this most crucial issue, and it looks like it will become law, at long last.

This is a major accomplishment, and a great deal of credit must be given to the members of the Public Works Committees in both Houses who have brought it about.

I would also like to recognize the contributions made by a former member of the staff of the Public Works Committee, Bob Dawson, now Assistant Secretary of the Army for Civil Works. Shortly after the introduction of H.R. 6, Secretary Dawson came up here to testify before the Public Works Committee on the administration's version of an omnibus bill. This version proposed strict local cost-sharing requirements on virtually all Federal water projects within the jurisdiction of the Corps of Engineers. Secretary Dawson's arguments were most persuasive, and when the subcommittee on water resources marked up H.R. 6, a compromise version was adopted. That version lay somewhere between the original H.R. 6 and the administration offering. The bill before us represents additional compromise, and comes a long way toward the policy I offered in 1984 and the policy subsequently proposed by the administration. Thanks to the diligent efforts of all involved we have landmark legislation before us representing significant reform. I urge my colleagues to support this legislation.

Mr. EMERSON. Mr. Speaker, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Missouri.

Mr. EMERSON. Mr. Speaker, I am going to vote for the conference report on H.R. 6.

It authorizes several projects which are of great importance to the Eighth District of Missouri and a number of other very worthwhile items. The bill contains authorization for flood control protection for the historic town of St. Genevieve, as well as for the Cape-La-Croix-Walker Creek project and the Birds Point-New Madrid floodway. These are all eminently worthy projects.

But I am going to have a reservation when I press that "yes" button because this bill also has a serious flaw that could perhaps prevent the Mississippi River and tributaries project from ever being completed. I have argued before this House on more than one occasion that the Mississippi River is a national resource and a national problem. The Congress authorized the MR&T back in 1928 for that very reason. The MR&T drains 40 percent of the Continental United States. It draws water from 28 States and Territories from the Atlantic Seaboard to Idaho. As Mark Twain pointed out so long ago in his book "Life on the Mississippi," the drainage basin is as great as the combined areas of England, Wales, Scotland, Ireland, France, Spain, Portugal, Germany, Austria, Italy, and Turkey.

Today we are telling the people of a few States in the Lower Mississippi Valley that it is their responsibility—more than ever before and in contradiction of a long-standing commitment—to deal with the water that flows to them from this vast area, flooding their cropland, ravaging their homes, and even taking their lives. After 58 years of waiting, we are at least momentarily telling them that we are not going to fully honor the commitment made to them in 1928.

The cost-sharing provisions of this bill as they relate to the MR&T are not only unfair to the localities in the Lower Mississippi Valley, but they pre-

clude the completion of the project on the basis of ground rules long established. I want to assure my colleagues that they have not heard the last of this change-in-the-rules-travesty. My colleagues and I from the Lower Mississippi Valley will be back, urging future Congresses in every way we can, to see that this burden is shifted from our constituents and spread fairly and evenly among all of those who have a responsibility to this national resource—the Mississippi River and its tributaries.

This bill is necessary—as a start. It will give us a chance to fight another day for what we believe is the proper formula for the completion of the MR&T project.

Mr. CLINGER. Mr. Speaker, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Pennsylvania.

Mr. CLINGER. Mr. Speaker, I rise in very strong support of H.R. 6, the water resources bill, and would encourage all Members, after the 12 to 14 years that we have been waiting for this day, to support this really desperately needed legislation.

The chairman, the gentleman from New Jersey, Mr. JIM HOWARD, has done a superb job on this legislation, and the subcommittee chairman, the gentleman from New Jersey, Mr. BOB ROE, has worked absolutely endlessly and indefatigably, I might say, to get us to this day, and I cannot say enough about this leadership and his energy in bringing this day.

The gentleman from Minnesota, ARLAN STANGELAND, sitting here to my right, has been an absolutely invaluable partner in this effort.

But I have to say a word about the gentleman who has the time here, the gentleman from Kentucky [Mr. SNYDER] who has given perhaps his last, if not his last speech on the floor of the House of Representatives. I would just like to commend him for his outstanding service to this body for so many years. I know of no one in this body who is better versed in the procedures of this House, who has a greater grasp of the public works needs of this country, and has addressed those needs with intelligence, with integrity, and with constant vigilance. I just want to tip my hat to my leader, GENE SNYDER, who has been a great leader for all of the Republicans, and indeed all of the Members of the Public Works and Transportation Committee.

What we are debating today I would say, Mr. Speaker, is not the product of this Congress alone, as all of us who have been working on this bill know. Rather it literally represents years of effort and repeated frustration in order to reach this point. We now have a bill at long last that has been agreed to by the House and the other body, and more importantly is supported by the White House. I would stress that, it is supported by the White House and the administration because of the significant new cost-sharing provisions that will begin to address the backlog of outstanding water projects.

Fourteen years, Mr. Speaker, have passed since the last water resources bill was signed into law. In that intervening period we have witnessed significant deterioration in many of our locks and dams that are so essential to our inland waterway system.

The Army Corps of Engineers has identified a number of flood control projects, and our ports and harbors have witnessed a major transition to larger ships used in oceangoing commerce, leaving many of them in poor competitive situations. These, and other events since 1970, make it absolutely imperative that we enact this legislation.

All too often, Mr. Speaker, when people think of water resources they do so without recognizing the huge investments in money, time and manpower necessary to ensure that adequate water supplies are available for our homes, our factories and our farmers. The projects included in this legislation before us today represent the distillation of years of study and debate. They have met the test of need, having survived a number of local, State and Federal reviews. Further, through the new cost sharing provisions, local and State governments must now assume a greater portion of the cost of flood control projects.

Mr. Speaker, I would note that in my own district the city of Lock Haven, which has been threatened with devastating floods almost every 3 years, gets some relief, some offer of help in this bill. It includes funds to help the city of Lock Haven build a large flood control levee. It does not mandate, nor does this bill mandate any project, it does not mandate that the work be completed; rather, should the city and county elect to go forward with a project, the Federal funding will be there. The option is there, the opportunity is there.

So this is the kind of bill I think we have crafted, Mr. Speaker, and I would encourage all Members to support energetically this conference report. We have to begin to rebuild the antiquated and failing waterways system, and we must improve our ports and harbors. We must protect a number of communities exposed to frequent flooding, and we must continue to develop a number of new water supply sources.

This is a good bill, Mr. Speaker, a responsible bill, and our country desperately needs it.

Mr. Speaker, I rise in strong support of H.R. 6, the Water Resources bill, and encourage all members to support this desperately needed legislation.

Chairman JIM HOWARD, Subcommittee Chairman BOB ROE, and ranking members GENE SNYDER and ARLAN STANGELAND have worked long and hard to produce this bill. What we're debating today is not the product of this Congress alone. Rather, it literally represents years of effort and repeated frustration in order to reach this moment. We now have a bill that has been agreed to by the House and Senate—and more importantly supported by the White House because of significant new cost-sharing provisions—that will begin to address the backlog of outstanding water projects.

Fourteen years have passed since the last Water Resources bill was signed into law. In the intervening period, we've witnessed significant deterioration in many of our locks and dams that are so essential to our Inland Waterway System; 2 years ago a portion of a lock on the Saint Lawrence Seaway collapsed during the height of the fall shipping season, seriously hampering Midwestern grain shipments; the Army Corps of Engineers has identified a number of flood control projects; and our ports and harbors have witnessed a major transition to larger ships used in ocean-going commerce, leaving many of them in a poor competitive situation.

These and other events since 1970 make it absolutely imperative we enact this legislation.

All too often, when people think of water resources, they do so without recognizing the huge investments in money, time and manpower necessary to insure that adequate water suppliers are available for our homes, factories, and farmers. They often don't recognize the years of planning, studies, and construction that goes into flood control projects. And very few people, I'm sure, aren't the least bit aware about how port and harbor improvement projects are designed and funded.

The projects included in the legislation before us today represent the distillation of years of study and debate. They've met the test of need having survived a number of local, State and Federal reviews. Further, through the new cost-sharing provisions, local and State government must now assume a greater portion of the cost of flood control projects.

Mr. Speaker, I encourage all members to support this conference report. We must begin to rebuild an antiquated and failing Inland Waterway System; we must improve our ports and harbors; and we must protect a number of communities exposed to frequent flooding; and we must continue to develop a number of new water supply sources. It's a good bill, a responsible bill, and our country desperately needs it.

This bill includes Federal funds to help Lock Haven build a large flood control levee. It does not mandate that the work be completed; rather, should Lock Haven and the county elect to go forward with the project, the Federal funding will be there. Lock Haven has suffered serious flooding in recent years, and local officials have identified a need to build some form of flood control project. This bill

provides a key element in that decision-making process.

Mr. SHUSTER. Mr. Speaker, will the gentleman yield?

Mr. SNYDER. I am glad to yield to the gentleman from Pennsylvania.

Mr. SHUSTER. Mr. Speaker, I thank the gentleman for yielding and I rise in strong support of this legislation, and most especially to once again pay tribute to our distinguished colleague, the gentleman from Kentucky, the Honorable GENE SNYDER.

As most of our colleagues know, Congressman SNYDER is retiring at an altogether too young age this year. But we will miss him and will miss his services greatly. There is no Member of the Congress that I have more respect and admiration for than GENE SNYDER. GENE SNYDER indeed is one of the most able legislators, one of the most distinguished tacticians, one of the most superlative managers, indeed, of managing the minority side of the committee. He is a great American and a man who has made an enormous contribution, and we will all miss you very, very much.

Mr. SHAW. Mr. Speaker, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Florida.

Mr. SHAW. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in support of H.R. 6, the water resources bill. I urge my colleagues to vote in favor of it.

This bill provides far-reaching legislation for new water development projects and necessary changes in existing ones.

The conference committee, on which I was proud to serve, worked hard to produce a sensible and effective bill and I believe we have accomplished that goal.

Mr. Speaker, I would like to point out a few of the bill's important portions, especially for residents of my home State of Florida.

After years of work by many members of the Florida congressional delegation, the conference committee has agreed to deauthorize the uncompleted Cross-Florida Barge Canal, a billion-dollar boondoggle that should have been eliminated many years ago.

I wish to mention the important work done on behalf of this effort by Congressman BUDDY MACKAY and Congressman ROE, chairman of the Subcommittee on Water Resources, as well as our ranking minority member of the subcommittee, Mr. STANGELAND.

Had it been completed, the barge canal would have cut across the State of Florida from Jacksonville to the east coast.

Environmental groups were rightfully concerned about the adverse effect the project would have on our precious Florida aquifers. In addition, nearly $75 million has already been spent on the canal and it would require another $500 million for completion.

Happily for all of us, the deauthorization puts an end to the canal at the same time it establishes a national conservation area to protect the land, water, and wildlife of the existing canal area. My friend and colleague BILL CHAPPELL of Florida along with BUDDY MACKAY deserve much credit for this accomplishment.

This area, which will be known as the Cross Florida National Conservation Area, will consist of the lands originally referred to the barge canal project.

Although the conservation area will be federally managed, the State of Florida will retain jurisdiction and responsibility over the water resources of the area and residents will be able to enjoy it as a natural preserve.

Also included in the conference report is an important provision to authorize up to $1 million for a comprehensive study of Lake Okeechobee by the Army Corps of Engineers and the Environmental Protection Agency.

Once again, Mr. ROE has earned a great debt of gratitude from me as well as the residents of Florida for his commitment to this project. This lake is an important source of water for drinking and irrigation and the recent appearance of dangerous algae blooms on Lake Okeechobee demand immediate attention.

Finally, two other provisions will improve our Nation's beaches by allowing the use of more durable fill material to prevent beach erosion.

As you know, erosion is a serious threat to the maintenance of our beaches and the Army Corps has found some fill material its engineers believe will be of use in this effort.

The bill also authorizes four fishing reef projects which have met with great success in increasing the habitat and proliferation of fish species off the coast of Florida and other areas.

I appreciate this opportunity to speak on behalf of H.R. 6 and I thank the many members who have helped to create it. I urge my colleagues to support it.

Mr. ROE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill comprises a major step in the formulation of national coordinated water policy, and it is truly a landmark bill; for the first time integrating the authorization and deauthorization of all types of water resources projects, with the establishment of an equitable new Federal/non-Federal partnership, including cost-sharing requirements where appropriate.

The bill embodies the committee's belief that it is possible to develop a nationally coordinated policy that will ensure the optimum field from one of our most vital natural assets, the water resources of our Nation.

The committee's recognition that the water resources development must be carried out in a rational and equitable manner that will benefit the Nation as a whole and meet the diverse needs of all the regions of the country.

May I suggest to the Members of the House that this bill has taken 5 years of work by the Committee on Public Works and Transportation.

Mr. Speaker, I wanted to just make a few comments. I realize our time is short and you have been infinitely patient; but no more patient than the chairman of the subcommittee has been to try to get this paperwork over here, which is on its way.

I do want to say to the Members of the House, particularly Public Works Committee Chairman HOWARD and our distinguished ranking member, GENE SNYDER from Kentucky, of the splendid leadership that they have given to this committee and to the House on this issue.

Certainly also my good friend and colleague, the distinguished gentleman from Minnesota, Mr. ARLAN STANGELAND, for the fine work he has done.

May I suggest to the Members of the House, to join with me in adding a great deal of commendation to GENE SNYDER. As you know, he is not going to be around here formally; I am sure we are going to see a great deal of him; but much of the work that has been carried out in the Public Works Committee, from my observation, from this Member's observation, from every Member of this House, would not have been possible without the strong leadership of GENE SNYDER, his bipartisan leadership. I think this House owes him.

Mr. Speaker, I want to thank the gentleman from Kentucky for all his help.

Mr. ROE. Mr. Speaker, I yield to the gentleman from Florida [Mr. SMITH].

Mr. SMITH of Florida. Mr. Speaker, I want to commend the gentlemen that have worked on this, along with Congressman MACKAY of Florida.

I want to commend the subcommittee and the full committee for finally working out a problem that has been so knotty for Floridians for so many years.

The solution has given, as you have indicated, a significant new approach to water resource/water management in Florida. We have now been able to straighten out the Kissimmee, develop an artificial reef, working on cleaning up Lake Okeechobee, and so many things which are important to the whole of the State, as well certainly as to south Florida.

I, on behalf of my constituents, am very grateful for the work of the committee and for the work of the gentleman in the well, for once and for all

bringing some sanity to the debate on the Cross-Florida Barge Canal.

Mr. SHAW. If the gentleman will yield, I thank the gentleman from Florida [Mr. SMITH] for his comments. He has long been known in Florida for his concern for the environment and water resources.

Mr. ROE. Mr. Speaker, I yield to the gentleman from California [Mr. MILLER].

Mr. MILLER of California. Mr. Speaker, I rise in support of the conference report on H.R. 6, the Water Resources Development, Rehabilitation and Conservation Act.

The bill contains a number of long-overdue reforms in water resources policy. Reforms such as cost-sharing and improved environmental mitigation requirements will result in more justified and sound projects.

The bill also authorizes construction of a number of important water resources projects. One of the most important is the authorization of improvements, dredging the inner harbor, in Richmond Harbor, CA. This project will revitalize the economy of Richmond and the surrounding portions of Contra Costa County. These improvements are essential for marine navigation, commerce and business expansion.

There are two portions of the conference agreement which I would like to highlight and clarify for my colleagues.

The first involves the authorization of one of the largest, and most expensive, of the hydropower projects authorized in the bill—the Gregory County SD pumped storage project.

Under the terms of section 601 of the conference agreement, construction of this facility is contingent upon a finding of feasibility of associated water supply and irrigation features, and the appropriation of funds for such features.

I want to point out that the conferees intended that the Secretary of the Interior's review of these associated features will follow the procedures employed in the preparation of feasibility studies for new water resources development projects submitted to Congress by the Interior Secretary. Thus, these associated features will be the subject of a thorough and comprehensive feasibility study using the most up-to-date evaluation procedures and criteria.

The second portion requiring clarification concerns language included in section 1122 of the conference agreement dealing with the Pick-Sloan Missouri Basin Program. This language is not intended to require the initiation of construction of any project not currently authorized for construction.

In addition, section 1122 is not intended to secure repayment from any project that is not currently authorized for construction. Thus, this section does not sanction the deferral of repayment of existing facilities in anticipation of repayment by future projects which are not currently authorized for construction as necessitated by the act of August 14, 1964 (P.L. 88-442).

Mr. ROE. Mr. Speaker, I yield to the distinguished chairman of the Rules Committee, the gentleman from Florida [Mr. PEPPER].

Mr. PEPPER. Mr. Speaker, it was back a little bit before the middle of the last century that a great American named Henry Clay was the real father of our Public Works Program for the building of America.

I want to commend the distinguished Public Works Committee for this great addition to the greatness of our country. You have done a fine job for America.

Mr. ROE. Mr. Speaker, I yield to the distinguished gentleman from Pennsylvania [Mr. EDGAR].

Mr. EDGAR. Mr. Speaker, I rise today in strong support of H.R. 6, the conference report on the Water Resources Development Act. Final passage of this important legislation culminates years of effort both to reform the process by which the Congress allocates funds for water projects and to rebuild our Nation's aging locks, dams, and waterways. I commend the House for its action on this historic legislation and I insert in the RECORD an editorial from the Pittsburgh Post-Gazette which explains the effect of H.R. 6 on Federal aid for waterways in my home State of Pennsylvania; dated June 1985.

WATERWAY WISHES

Hopefulness about the prospect of federal aid for Western Pennsylvania waterways seems to roll on like the mighty Ohio River. But as congressional appropriations for the rebuilding of locks and dams in this region sank once again in a tumult over "pork barrel" spending, the need for substantial local cost-sharing in the projects became all too apparent.

In the most recent disappointing round, Western Pennsylvania representatives tried to obtain federal funds through a supplemental appropriation, but, as in the past, their petition foundered in controversy over the size of federal spending for the nation's waterways at a time of high deficits. Such disappointment may be short-lived, however, because another Omnibus Water Bill, which would authorize funds for water projects on the basis of merit, is being marked up this week in the House Public Works Committee, and the locks and dams projects of Western Pennsylvania are included in it.

The money in the new bill may not be appropriated for this region as quickly as it would have been under the terms of the supplemental appropriation that was defeated earlier this month. But in the end the inclusion of those projects in the omnibus authorization bill is a much more politically reliable approach. A primary feature of this heavily reformed authorization process is a requirement that local and state governments share the cost of waterway construction. Because users of the Allegheny, Monongahela and Ohio rivers already share those costs through a special tax on marine fuels, they are more favorably positioned than many competitors for federal water funds in the West and the South, where capital costs have often been borne entirely by the federal government.

As Rep. Bob Edgar, a Democrat from Delaware County, has been rightly arguing, the politics of waterway projects have often been in conflict with the need to control federal spending. The way to resolve that conflict is to guide federal funding in this domain more rigorously toward the most meritorious projects. Unfortunately, supplemental appropriations circumvent a cost-benefit based review needed to determine merit. So, in the present fiscal climate, those who tried to guide their favorite waterway-expansion plans through that back channel have been swamped by opposition.

Even so, those new waterway politics suggest that the case for rehabilitating the locks and dams of the Allegheny, Monongahela and Ohio rivers should fare better in the reformed authorization process.

Pittsburgh is the largest inland port in the United States in terms of tonnage, and the products transported along the rivers radiating from it are distributed in national markets. Any balanced look at the situation will see that this system continues to serve economic purposes that are spread far beyond Western Pennsylvania. Yet, although the nation has a substantial interest in the system's maintenance, the federal government has not authorized revenues for that purpose for more than 20 years.

That there has been no history of log-rolling for dubious waterway projects ought to strengthen the region's request for federal assistance to rebuild locks and dams that are crumbling and to expand those that constrict current traffic. Even so, the size of the bill for the rehabilitation program—several billion dollars—suggests that the petition will be well served by a more earnest show of self-reliance.

In opposing the current supplemental appropriation that is now in the Senate Appropriations Committee, President Reagan made it quite clear that he is looking for a much larger share of local participation in these funding programs. When the new omnibus bill emerges from committee, Mr. Reagan will have a chance to make good on his implied promise to Western Pennsylvania and other regions that share the cost of waterway construction through their own user fees by throwing the support of his administration behind truly meritorious waterway petitions.

Mr. ROE. Mr. Speaker, I yield to the gentleman from Texas [Mr. BOULTER].

Mr. BOULTER. Mr. Speaker, I want to thank my good friend for yielding to me because this is an important day for localities and States and local governments across our country and also the Federal Government, keeping budget priorities in mind. It has been crafted under the watchful care of the Reagan administration.

For my part in working daily on this measure for the 2 years I have been here, I just want to say how much I appreciate the patience and the kindness and the gentleness but also the skill of the distinguished gentleman from New Jersey, the chairman of the Subcommittee on Water Resources,

BOB ROE. I also thank my colleague JIM HOWARD and my very good friend ARLAN STANGELAND, ranking minority member, GENE SNYDER, and to Senator LLOYD BENTSEN in the other body, and the other Senators there who ably assisted Bob Dawson, the Assistant Secretary, for visiting with members of the Wichita Falls City Council, with Mayor Charles Harper. On behalf of all of those people and the citizens of Wichita Falls, I thank you very much and urge support for this report.

Mr. ROE. Mr. Speaker, I yield 1 minute to the gentleman from Minnesota [Mr. PENNY].

Mr. PENNY. Mr. Speaker, H.R. 6, the water resources development bill, includes several important projects for southern Minnesota. We have a flood control project in here for the city of Rochester. They have waited 20 or more years for this project. We have management of the environmental habitat and recreational access along the upper Mississippi River provided for in this bill. We have several other projects important to other communities in our area.

I rise today to simply thank Mr. ROE and Mr. HOWARD and others on the committee for their diligent work throughout the many years in putting this bill together. Specifically, I want to thank my Minnesota colleagues, Mr. OBERSTAR and Mr. STANGELAND, for their concern and consideration for these southern Minnesota projects. If it had not been for their strong leadership and their commitment to helping their colleagues, these would not be in the bill.

Mr. ROE. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. DELLUMS].

Mr. DELLUMS. I thank the gentleman for yielding to me.

Mr. Speaker, I rise in support of the conference report on the Water Resources Act.

I would like to thank the chairpersons, the ranking minority member, and all the members of the full committee and the subcommittee who worked diligently on this legislation.

Finally, I specifically want to thank the distinguished gentleman from New Jersey [Mr. ROE] and my distinguished colleague from California [Mr. MINETA] who gave this gentleman from California very specific help with respect to this legislation.

Mr. STANGELAND. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to rise in support of the conference report accompanying H.R. 6, the Water Resources Development Act of 1986.

Mr. Speaker, this is truly landmark legislation. It was developed through years of effort on the part of the Committee on Public Works and Transportation, and the efforts of other House committees, the Senate and the administration. It is the first significant authorization bill for the Corps of Engineers' Water Resources Development Program in over a decade and a half and, arguably, one of the most important policy directives for the corps' program in a century and a half. It is a bill that, in the past, has earned strong bipartisan support in this body and one that I am confident will again be embraced by an overwhelming majority in this Chamber. Just as important, it is a bill that I believe the Senate and the administration can and will support.

I wish to take a moment to express my appreciation to the distinguished chairman of the Committee on Public Works and Transportation, the gentleman from New Jersey [JIM HOWARD] and to the ranking Republican member, the gentleman from Kentucky [Mr. SNYDER]. Without their wise leadership, this vessel may have foundered on the shoals of controversy and discord. I especially want to express my heart-felt thanks and sincere congratulations to my good friend, the chairman of the Subcommittee on Water Resources, BOB ROE, without whose unwavering energy and personal commitment we would not have achieved this remarkable success.

I also want to take a moment to thank the Senators who have labored patiently and tirelessly to develop the compromise bill we bring before the House today. I particularly want to mention the able chairman of the Committee on Environment and Public Works, Senator STAFFORD, and the ranking member of the committee, Senator BENTSEN. Their wisdom and perseverance were instrumental in crafting this bill. I also want to pay tribute to the ranking minority member of the subcommittee, Senator MOYNIHAN, whose wisdom and good humor proved indispensible. I especially want to thank the chairman of the Subcommittee on Water Resources, who served as chairman of the conference, Senator JIM ABDNOR. His persistence, his dedication and his hard work were absolutely essential to the successful conclusion of this historic conference.

Mr. Speaker, the enactment of a comprehensive water resources law is long overdue. The last water resources bill to be signed into law was in 1976. However, because that bill was a relatively small measure, the last comprehensive bill to become law was in 1970. This long hiatus has been caused by a complex combination of factors emcompassing budgetary, programmatic, institutional, and environmental concerns. While we can debate the implications of these concerns, the real fact is that our water resources infrastructure has greatly suffered from a near shutdown of the corps' civil works program. Today, we take a giant step toward a reemergence of the corps' program and a recommitment by the Federal Government to the Nation's water resources infrastructure.

Many of you remember that during the 95th Congress, both the House and Senate passed omnibus water project authorization bills, but final agreement could not be reached before the adjournment of that Congress.

During the 96th Congress, the House again approved a water resources development bill. The Senate, however, was not able to complete its work before adjournment.

Despite the diligent efforts of many members of this body—the House and Senate were unable to approve a water resources development bill during the 97th Congress. The effort during that Congress, however, helped to produce the water resources development bill which was approved on two different occasions during the last Congress and, I might add, by overwhelming margins. This legislation, however, failed to become law due to the opposition of the administration and the inability to bring a bill to the floor in the Senate despite widespread support in that body.

Clearly, this body has been willing to move ahead toward a comprehensive reauthorization bill but our efforts have, at times, fallen on deaf ears in the administration and in the other body. During this Congress, however, we have seen a significant change in the views held by the administration and in the Senate toward this issue. Under the able leadership of Senator JIM ABDNOR, members of the Senate Subcommittee on Water Resources of the Committee on Environment and Public Works engaged in a new dialog with Representatives of the House on this issue allowing us to develop the cost-sharing and policy reforms embodied in this bill. This dialog has continued throughout the conference leading to legislation that deserves all of our support—a bill that not only embodies many of the important policy objectives sought by the administration but one that also authorizes much needed projects in all regions of the country.

In my region, for example, the bill makes significant strides toward economic development in a way that is both fiscally responsible and environmentally sensitive. The bill is especially important to midwestern agriculture which depends heavily on low-cost water transportation, through the Great Lakes and on our inland navigation system, to get its crop to market. For example, the bill calls for construction of a second lock at Sault Saint Marie, MI, and expedited study of a second lock parallel to the existing Poe Lock. Also, at my request, we have included authorization of rehabilitation work for the Eisenhower and Snell Locks on the St. Lawrence

Seaway. Repair of these locks is necessary because of significant deterioration on the lock walls resulting from the use of improper construction materials at the time the project was originally constructed. Although the project is subject to the general cost-sharing provisions of the bill, the conferees have included language in the conference report to ensure that the Federal Government will bear all of the costs of rehabilitation related to such improper construction practices. The work at these facilities is needed to ensure that the St. Lawrence Seaway and the Great Lakes Navigation System continue to function efficiently.

Also contained in this bill are provisions to implement the Upper Mississippi River Basin master plan developed in cooperation with the affected States and the Federal Government. The upper Mississippi region is a unique and environmentally sensitive region which is heavily dependent on inland waterway transportation. The Upper Mississippi River Basin master plan strives to achieve a balance between the needs of navigation, recreation and protection of fish and wildlife resources.

Our water resources infrastructure is a crucial part of our Nation's transportation system. Despite its great importance to our economic well-being, we have allowed this system to fall into a state of disrepair. On the inland waterways, many canals, locks and dams are past the end of their design lives. Of the nearly 200 locks in the inland waterway system, the average age is 40 years, and some locks are approaching 80 years of service. A graphic example of the urgency of this situation is the breakdown of lock and dam 26 on the Mississippi River which blocked inland waterway transportation in the late 1970's and the more recent collapse of a lock on the Welland Canal on the St. Lawrence Seaway.

Our Nation's ports must be dredged and improved so that they can accommodate ships handling over 100,000 tons of cargo and thus allow our exporters of energy resources and agricultural products to take advantage of the economies of scale offered by the use of large vessels. These enormous vessels require port depths of 55 feet of more. The maximum depth of U.S. ports is generally only 45 feet. By contrast, major trading nations such as Japan, South Africa, Australia, and the Netherlands now have ports which can accommodate fully laden grain ships, supertankers, and supercolliers drawing depths in excess of 55 feet.

While our water resources can be put to good use in providing efficient transportation networks, they can also pose major threats to life and property when unleashed by the forces of nature. Floods continue to ravage many parts of the Nation, as evidenced by the recent flooding in Michigan, Illinois, and other parts of the Midwest. While we will never be able to harness mother nature, we have within our capacity the technology to implement cost-effective and environmentally sensitive flood control measures that could save hundreds of lives and prevent billions of dollars in property damage.

The bill before us today charts a bold, yet deliberate, program for ensuring efficient and effective development of our water resources. It is designed to upgrade our navigation system, both inland and coastal; to promote conservation and enhancement of environmental resources; and to afford protection from erosion and damaging flood waters. It represents not only a response to needs that have been building for a decade and a half but a long range investment in capital improvement infrastructure which will serve the Nation for generations to come.

The bill contains 14 titles which address various aspects of water resources use, development, and policy. Title I establishes the new cost-sharing partnerships between the Federal Government and project sponsors. The title covers the entire range of the corps' civil works program, including navigation, flood control, recreation, water supply, hydroelectric power generation, fish and wildlife protection, streambank erosion, and hurricane and storm protection.

Mr. Speaker, while I am not an advocate of increasing non-Federal project costs, I am convinced that these cost-sharing changes will resolve the long-standing obstacle to administration approval of an omnibus water resources authorization bill. I also feel that the cost-sharing provisions of our bill, coupled with our programmatic refinements, may improve the project selection and development process, leading ultimately to greater economic efficiency and revitalization of our port system.

In the area of deep draft port cost sharing, title I provides for bold new cost-sharing requirements under which local sponsors would pay between 10 and 50 percent of the cost of project implementation during the construction period. In addition, local sponsors would have to repay 10 percent of project costs over 30 years. The costs of any real estate needed for the project, including disposal areas, would continue to be a local responsibility, but would be credited against the 10 percent repayment requirement. The cost of utility relocations, other than utility relocations which are to be borne by the owner of the facility under Section 101(a)(4), may also be credited toward the 10 percent repayment requirement. Operation and maintenance would continue to be a Federal responsibility except for projects in excess of 45 feet in depth where local interests would be required to provide 50 percent of the incremental costs of dredging beyond 45 feet. I note that the port provisions in our cost recovery title are generally not opposed by the ports or the vessel operators that will be called upon to help pay for harbor improvement projects. I believe this is not only because of the fairness of our plan, but also because of a growing realization in all segments of out maritime system that the current Federal budgetary realities will no longer permit a system of almost total Federal subsidy for such projects.

Title I also provides for new increased cost-sharing requirements for corps flood control projects. In the past, non-Federal responsibility for local flood protection projects has been to provide lands, easements, rights-of-way and relocations needed for project purposes subject to a limitation where such costs exceed 50 percent of the project costs. These costs vary from project to project. H.R. 6 would establish somewhat more uniform requirements. Local interests would provide 5 percent of project costs in cash during construction plus any real estate required for the project, subject to a limitation that in no event can the total non-Federal share be less than 25 percent nor more than 50 percent.

The minimum 25 percent non-Federal share would be paid during construction, subject to the ability of the local sponsor to pay. Where the 5 percent cash requirement plus the value of lands, easements, rights-of-way, and relocations exceed 30 percent of the total project cost, the local interests could elect to repay any costs over 30 percent, plus interest, over a 15-year period. Therefore, under the compromise bill, the most that local interests would be required to pay during construction would be 30 percent. The bill also provides that for nonstructural projects, the non-Federal share will be 25 percent to be provided generally in the form of lands, easements, rights-of-way, and relocations. Finally, the bill would allow the Secretary of the Army to waive non-Federal flood control cost-sharing requirements upon a finding that those requirements exceed the financially capability of the sponsor.

Title II authorizes construction of six deep draft ports to handle ocean-going traffic from the east, west, and gulf coasts. These are the Nation's largest centers of international commerce which are in need of significant improvement if the U.S. ports are to stay competitive with foreign ports. Of the six, two projects are authorized on condition of completion of necessary review by the corps and the Secretary of the Army. Title II also authorizes

improvements at over 30 general cargo ports. These projects are located not only along our three seacoasts, but also in Hawaii, Alaska, our insular possessions, and along our fourth seacoast, the Great Lakes.

In order to help these localities finance their share of project costs, the bill would authorize local sponsors to implement fair and reasonable user fees intended to shift the financial burden of port development to those that directly benefit from the project.

Title II of the bill authorizes construction of six inland waterway projects. Additionally, the bill provides elsewhere for the authorization of a second lock at lock and dam 26 on the Mississippi River near St. Louis, MO. Over the years, we have developed a 25,000-mile network of inland waterways used primarily to transport bulk cargo by barge. It is one of the most efficient transportation systems this country is blessed with, and the seven projects authorized in our bill will help to ensure that the system remains efficient and viable.

The bill would require that one-half of the cost of construction for these projects come from the inland waterways trust fund. The fund was created in 1978 and consists of revenues derived from a tax on fuel used by inland waterway barge operators. The existing 10 cents per gallon tax would be increased to 20 cents per gallon over a 10-year period with the bulk of the increase coming at the end of the 10-year period to allow the barge industry to better plan for the cost increase. Operation and maintenance of inland navigation projects would continue to be a Federal responsibility.

Title IV authorizes construction of over 90 new flood control projects, including 4 projects which are authorized subject to obtaining necessary corps and Army approvals. In addition, 11 projects are authorized for advanced engineering and design and 5 small projects are specifically indentified for prosecution under the corps' existing section 205 small project authority. Included among the five section 205 projects in the bill is a small project in the northwestern corner of my State which will allow construction of a ring levee to protect the communities of Noyes, MN, and Emerson, MB, and, in particular, the U.S. Customs Office located in Noyes. The project is a cooperative effort with the Government of Canada, which has already initiated work on its portion of the project and is most anxious for the United States to proceed.

In connection with our work on title IV, I want to take a moment to pay special tribute to the contributions of Congressman RON PACKARD who was appointed as a special conferee on the Santa Ana River mainstem project in California, authorized in this bill. The project is one of the largest projects in the bill and will provide flood protection to a large segment of southern California. The bill also authorizes the corps to undertake a study of water supply and conservation storage at Prado Dam. If the study recommends water conservation as a project purpose for the Santa Ana project, then such water conservation will then be considered automatically authorized as a project purpose. Furthermore, it is my understanding that the reference in the Santa Ana provision to the Water Supply Act of 1958 refers to any additional water supply and conservation that may be recommended at Prado Dam and that this reference is in no way meant to be a limitation on the corps' existing authority to impound water at Prado Dam for conservation purposes.

Title V authorizes over 20 shoreline protection projects to prevent erosion problems, enhance recreation, protect against storm or hurricane damages, and provide opportunities for conservation of fish and wildlife.

Title VI authorizes a variety of water conservation and development projects that do not fall neatly into any particular category. Included within this title are hydroelectric power projects, inland harbor projects, and a number of fish and wildlife mitigation projects which result in permanent protection of valuable fish and wildlife habitat. Also included within this title is a new streambank erosion program which would be authorized at a level of $30 million per year for 5 years and would allow for implementation of specified streambank erosion projects at a Federal cost not to exceed $5 million per site. One of the projects specified is on the Red Lake River near Gentilly, MN. The project would allow correction of serious erosion problems to protect a nearby highway and bridge. This title also contains a new lake restoration program for cleanup of nine specified lakes at a total Federal cost of $40 million. One of the lakes specified is Sauk Lake in northwestern Minnesota. The lake rehabilitation program authorized in this title will allow Sauk Lake to be restored to its once pristine condition.

Title VII authorizes the corps to undertake a number of studies, allowing the corps to apply its engineering expertise to finding solutions to water resource problems. Studies of particular merit include a study of the current high water levels on the Great Lakes, a study of the long-range capital investment needs of the Nation, and a study of the feasibility of water and related land resources development in the Rainy River basin, Minnesota and Ontario.

Title VIII authorizes numerous modifications to existing Corps of Engineers projects to reflect changed circumstances.

Title IX includes a number of provisions of general applicability to the corps' civil works program. Provisions of particular merit include sections limiting the overall corps construction program based on realistic spending levels, prohibiting unjustified cost overruns for individual projects, defining the appropriate scope of corps water resources studies, and creating innovative initiatives for protection of environmental and fish and wildlife values. In this latter category, I would mention the establishment of a new mitigation fund to help provide funding for fish and wildlife protection and the creation of a new office of environmental policy to ensure that proper care and attention is paid to environmental values in all aspects of the corps' programs.

Title X would deauthorize approximately 300 projects which have been reviewed and found to be no longer necessary. This represents approximately 30 percent of the current inventory of corps projects and a savings of approximately $11 billion in current dollars. In addition, the bill establishes a new automatic procedure for deauthorization of projects which are no longer desired.

Title XI contains a number of program and project provisions relating to the full range of the corps' civil works mission. Included are requirements for implementation of recommendations contained in the upper Mississippi master plan, and construction of improvements at the Eisenhower, Snell, and Soo Locks. Title XI also contains a provision calling for establishment of a Great Lakes commodities board to develop strategies to improve the commercial capacity of the Great Lakes region.

Title XII establishes new or expanded authority for the corps in the area of dam safety, including periodic updates of the dam safety survey originally authorized in Public Law 92-367.

Title XIII establishes new official names for a number of corps water resources projects or project features.

The last title in the bill, title XIV contains the tax-related provisions in the bill and was developed by the House Ways and Means Committee and the Senate Finance Committee. The title includes provisions for a new special tax on port use which was proposed initially in the Senate and recommended by the Committee on Public Works and Transportation as part of our markup of H.R. 6. The new tax is intended to recover a portion of the Federal cost of operating and maintaining our Nation's port system. The tax is to be levied on cargo loaded or unloaded at ports which have been constructed, operated, or maintained with Federal assistance. The new tax is to be collected from the shipper rather than carrier of the cargo and

will be charged on an ad valorem basis at a rate of 4 cents per $100 worth of cargo. Money collected is to be deposited in the harbor maintenance trust fund which is also provided for in title XIV. The trust fund is to consist of the tax on port use and would be available to pay for approximately 40 percent of Federal operation and maintenance costs for our ports and harbors.

Mr. Speaker, this is a comprehensive and well-developed bill. It embodies not only years of effort in the House by the Committee on Public Works and Transportation, but also suggestions and improvements made by the Committees on Ways and Means, Interior and Insular Affairs, and Merchant Marine and Fisheries. Furthermore, it is not just a water project bill. It provides for new directions in the way water resource development programs of the Federal Government are planned, how they are to be undertaken, and most importantly, how they are to be financed.

Mr. Speaker, let me again commend all who have helped to develop this bill, both in the House and in the Senate. I want to thank not only the Members involved, but the staff also. This bill would not have been possible if it had not been for the tireless effort of the staff on both sides of the aisle in both bodies. I especially want to mention the contributions of John Doyle, Gabe Rozsa, Ben Grumbles and Kathy Guilfoy on the minority side of our Subcommittee on Water Resources, and their majority counterparts, Errol Tyler, Ken Kopocis, Randy Deitz and Charlotte Miles. Let me also mention the contributions of two former employees of the Water Resources Subcommittee, Craig Deremer and Gayle Chestnut. All these dedicated and extremely capable individuals have given up evenings and countless weekends to perfect this bill and to make it all come together.

I also want to pay tribute to the Senate staff who have worked so hard and have been so understanding in this somewhat arduous process. I particularly want to mention the contributions made by Bailey Guard, Lee Fuller, Hal Brayman, Ann Garrabrant, Tom Skirbunt, Mark Haynes, Paulette Hansen, Nan Stockholm and Dan McNamara. The staff at legislative counsel—especially Bob Bergman and Dave Mendelsohn—also deserve our thanks and praise for their tireless effort in crafting and recrafting this 500-page bill. Finally, I want to express my appreciation to Bob Dawson and his staff at the corps, particularly Mike Strachn, Dave Brower, Myron Yuschishin, Gene Lawhun, and someone who worked for years on this bill but has since retired, Alex Shwaiko, for their assistance and their tireless efforts.

Through the hard work of all involved, we have developed a good bill—a bill that can revitalize our water resources infrastructure and improve our commercial capabilities. It will provide jobs and protect environmental values. I urge all of my colleagues to join me in supporting this long-awaited, carefully crafted and much needed legislation.

Mr. ROE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Minnesota [Mr. OBERSTAR].

Mr. OBERSTAR. I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in strong support of H.R. 6, and to commend the leadership of the House Public Works and Transportation Committee, our chairman, the gentleman from New Jersey [Mr. HOWARD]; the Water Resources Subcommittee chairman, the gentleman from New Jersey [Mr. ROE]; our ranking Member, the gentleman from Kentucky [Mr. SNYDER]; and subcommittee ranking member, the gentleman from Minnesota [Mr. STANGELAND]. All have labored heroically over many months, indeed many years, to bring us the first water resources conference report since 1976. I especially commend them for the consideration they have given to the very real needs and concerns of the people of Minnesota.

Mr. Speaker, at this point I would like to engage the gentleman from New Jersey, the chairman of the Subcommittee on Water Resources [Mr. ROE] in a colloquy on section 732, shoreline erosion damage on Lake Superior.

This section, first, requires the corps to determine the extent of United States shoreline erosion damage causally related to the regulation of Lake Superior water levels by the United States/Canada International Joint Commission. The corps is then to report the results of this survey to Congress and, if justified, to include in that report recommendations of a methodology for and a determination of the costs of indemnifying individual property owners and a recommended schedule for indemnification.

Under any reading of this language, it would seem that once damages have "causally related" to regulation by the IJC—which frequently stores water in Lake Superior to alleviate water level damages in lower lakes—this causal relationship would automatically provide a basis on which to "justify" indemnification; and thus require the corps to provide the recommendations of a methodology for and a determination of the costs of indemnifying individual property owners, and the recommended schedule for indemnification.

Is this the gentleman's understanding of the section?

Mr. ROE. Yes, the gentleman's observations of the intent of the committee and the conferees is correct.

Mr. OBERSTAR. Does the gentleman from Minnesota [Mr. STANGELAND] concur?

Mr. STANGELAND. Yes, this gentleman from Minnesota concurs.

Mr. ROE. Mr. Speaker, I yield 1 minute to the gentleman from Illinois [Mr. EVANS].

Mr. EVANS of Illinois. Mr. Speaker, I understand section 1104 of the bill agreed to by the conference report provides $15 million for needed rehabilitation of the Hennepin Canal in west-central Illinois under an existing contractual obligation.

I want to congratulate the chairman for ensuring that this funding was included in the conference report. The same amount was contained in this year's House-passed version of the water projects bill and was also approved by the House last Congress.

The funding contained in this bill will fulfill contractual obligations made by the U.S. Army Corps of Engineers when the canal was turned over to the State. Needed repairs on the waterworks of the canal, long held up by lawsuits and bureaucratic redtape, can now proceed.

The Hennepin is a historically significant and structurally unique canal which was a forerunner of the construction techniques and waterworks used in Panama. This canal, by definition, begins at the Mississippi River and runs the breadth of the 17th Congressional District. The Illinois and Michigan Canal, which starts in Chicago, meets the Hennepin Canal at the Illinois River to form a waterway corridor across the entire State and can potentially become a leading recreational area in our State and a draw for tourists.

We in west-central Illinois who have grown up with this canal, who swam and fished in it as kids, and who recognize its historical significance will finally be able to see this canal developed to its fullest for recreational purposes.

I congratulate the chairman and the conferees for their hard work and thank the gentleman for yielding.

Mr. STANGELAND. Mr. Speaker, I yield 1 minute to the gentleman from Arkansas [Mr. HAMMERSCHMIDT].

Mr. HAMMERSCHMIDT. Mr. Speaker, I rise in strong support of the conference agreement on H.R. 6, the Water Resources Development Act of 1986.

To say that this landmark piece of legislation is long overdue is a classic understatement. H.R. 6 is the first major water resources development bill in 16 years. In fact, we have not had an omnibus bill of any kind enacted since 1976, although that shortcoming certainly has not been for a lack of concerted effort on the part of both Houses of Congress and the administration.

Notwithstanding our past inability to enact a bill, the needs of our water resources infrastructure have always received bipartisan support, and today's legislation is no exception.

Having served as ranking Republican on the Public Works and Transportation Subcommittee on Water Resources when earlier omnibus bills were considered and water issues were being developed, I am well aware of the tremendous amount of work invested in today's final product by our conferees and staff.

In that regard, let me first express my appreciation to our Public Works and Transportation Committee chairman, JIM HOWARD; our ranking Republican of the full committee, GENE SNYDER; and to our subcommittee chairman, BOB ROE; and ranking Republican, ARLAN STANGELAND. We would not have reached this historic point without the strong leadership of these distinguished committee colleagues.

After years of declining Federal spending on the Corps of Engineers Civil Works Program, we finally have before us legislation that strengthens our water resources infrastructure in an effective and environmentally sound manner, and on a broad front.

H.R. 6 authorizes projects to upgrade the Nation's inland and coastal navigation system, new programs for lake protection and streambank erosion, an expanded dam safety program, and numerous new flood protection projects. It also deauthorizes approximately 300 projects which have been reviewed and deemed no longer necessary, and as a result, will save the Federal Government billions of dollars.

The conference report also promotes the conservation and enhancement of our environmental resources. For instance, it establishes a $35 million environmental protection mitigation fund to make certain that fish and wildlife losses caused by a water resource project will be properly mitigated.

One of the major challenges facing the conferees during consideration of this bill was the balancing of the need for new policies, of which increased non-Federal cost sharing was a part, with economic and environmental concerns. I believe that, on the whole, the conferees have been successful in achieving that balance.

The conference report increases the non-Federal share of financing in a number of programs, including inland waterways, port construction and maintenance, and flood control. I personally would prefer not to place an increased burden on local project sponsors. Realistically, however, we would not be able to get a bill enacted into law without changing the cost-sharing formulas for a number of important programs.

It is also necessary that we consider the need to conserve Federal dollars and be more selective in our selection processes, so that we are able to adequately assist State and local governments in funding the most productive and most needed projects.

In the case of port development, the bill authorizes the construction of six deep-draft ports and improvements at over 30 general cargo ports, with local sponsors expected to pay between 10 and 50 percent of the cost during construction and repay 10 percent of the project costs over 30 years.

The Federal Government would continue to pay for 100 percent of operation and maintenance costs for projects up to 46 feet in depth. Local interest would, however, pay 50 percent of the additional cost of dredging over 45 feet.

The Federal cost of operation and maintenance for port and harbor improvement projects would be financed in part from A four-tenths-of-1-percent ad volorem fee levied on cargo loaded or unloaded at ports constructed, operated or maintained with Federal assistance.

The Conference report also authorizes construction of seven priority locks and dams on our Nation's 25,000-mile inland waterway system. Construction of these projects would be financed one-half from the inland waterways trust fund, which consists of revenues derived from an inland waterway barge fuel tax, and one-half from general appropriations.

In addition, H.R. 6 contains a vast array of vital programs and projects for the conservation, development and management of our Nation's water resources. I am particularly pleased that two important navigation projects were included in the final conference report. H.R. 6 authorizes $35.8 million to improve navigation at Helena Harbor, where a slackwater harbor would be constructed. In a second project, the White River Channel would be widened and deepened as far as Newport, and at an estimated cost of $20.4 million. These channel improvements are designed to meet the projected needs of barge transportation.

The ravages of floodwaters, which have plagued many areas of the country including parts of my home State of Arkansas, will be addressed in the legislation with authorized funding of the construction of critically needed flood control projects.

I am pleased that the conference report authorizes funding for the protection of Paragould, AR, by enlarging portions of 8-mile creek, 15-mile bayou, and 10-mile bayou. H.R. 6 authorizes $11.2 million to provide flood protection for the Paragould area by enlarging 11.4 miles of channel on 8-mile creek. Almost 12 miles of 15-mile bayou and just over 8 miles of 10-mile bayou would be enlarged, as well, to reduce the flooding of adjoining farm land.

Flooding problems in the Fourche Bayou basin and those facing Helena and West Memphis, AK, would also be addressed in the flood control provisions of this legislation. H.R. 6 provides $25 million to combat flooding in the Fourche Bayou basin. The project would include channel clearing and improvement, flood plain management, and acquisition of more than 1,700 acres of hardwood forest to preserve the environment. The conference report also addresses the flooding problems plaguing the city of Helena by authorizing $11.2 million for the improvement of 1.8 miles of stream channel and the construction of a pumping station to carry away flows to the Mississippi River. Another $15.4 million is authorized to correct recurrent flooding problems at West Memphis. To achieve that purpose, 10.8 miles of channel on 15-mile bayou and 13 miles on 10-mile bayou would be enlarged.

Under new cost-sharing requirements for flood control projects, local interests must pay at least 25 percent but no more than 50 percent of the total costs. This requirement is designed to inject a greater dose of fiscal responsibility into project selection.

A new 5-year Stream Bank Erosion Control Program would be authorized at a level of $30 million annually. Under this program, the Corps of Engineers is directed to provide protection against stream bank erosion on the Little River near Horatio, AR. In view of the serious bank erosion problems created by high riverflows near the highway bridge crossing, the project, expected to cost $500,000, will include placement of riprap and taking other measures to protect the 2,000 linear feet identified by the corps as needing protection.

I am also pleased that H.R. 6 authorizes $2 million to replace the existing bridge across Cane Creek in Logan County, AR, with a new bridge. The bridge will provide important economic and recreational benefits to the area. The replacement will dramatically improve the delivery of commercial food, poultry, and milk and provide direct access to the Cane Creek recreation area and the Arkansas River bridge.

The conference report also provides for an important new dam safety program. H.R. 6 authorizes $13 million annually for 5 years to provide matching grants for the development of State dam safety programs, and establishes a Federal-State board to review and monitor the programs. In addition, the conference report authorizes $2 million annually to train State dam inspectors and improve inspection techniques.

This legislation also authorizes $40 million to clean up the Nation's lakes. One of the projects approved under this new lake cleanup program invovles a study and demonstration project at the multipurpose Beaver Lake Reservoir in northwest Arkansas. The study would focus on what is needed to put the lake's flood control, water management, recreational and municipal water supply assets to their best use, with the demonstration project to examine the effectiveness of measures identified in the study.

A number of important water resources studies are authorized in the bill, incuding an evaluation of the long-term capital investment needs for water programs under the corps and a study to determine the feasibility of using the existing corps capability to conserve fish and wildlife resources.

I am particularly pleased that the conference report reaffirms the rights of States in different parts of the country to manage their own water resources and to be consulted before the Federal Government attempts to unilaterally export a State's water to other States and regions. Specifically, H.R. 6 contains my provision prohibiting any study by the Federal Government for at least the next 5 years on the interbasin transfer of Arkansas River basin water without prior approval from Governors of affected States.

Certainly I want to add my thanks and sincere commendation to the staff of the committee and particularly to Mr. John Doyle and Mr. Errol Tyler.

Mr. Speaker, this long-awaited legislation is our best opportunity to revitalize the Nation's water resources infrastructure. We cannot afford to let such an opportunity pass by. I strongly urge my colleagues to vote for this conference report.

Mr. ROE. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from Maryland [Ms. MIKULSKI].

Ms. MIKULSKI. I thank the gentleman.

Mr. Speaker, I rise in very strong support of the conference report to H.R. 6, the Water Resources Development Act of 1986.

This legislation is truly historic for the Port of Baltimore, the State of Maryland, and for every other region of the country that depends upon waterborne commerce and navigation for economic growth and vitality.

In fact, this bill is the most important measure considered by the Congress in the last decade to help America's port and waterway industry.

H.R. 6 sets in place a comprehensive cost-sharing frame work to help America's ports meet the demands of international trade and commerce in the 1990's and into the 21st century.

No port in this Nation has waited longer for water resources cost-sharing legislation to be passed than the Port of Baltimore.

We were authorized to dredge our channel to 50 feet in 1970. After meeting very stringent standards resulting from the first application of the National Environmental Policy Act to port development, Baltimore has been held hostage for 15 years to the battle over cost-sharing of new port development.

When Baltimore's 50-foot project was first authorized, the State of Maryland fulfilled the requirements imposed upon it by the Federal Government. In return, the Federal Government promised to pay 100 percent of the cost of deepening port channels to 50 feet.

Times have changed. We all recognize that the Federal Government no longer has the financial resources to pay for every cost associated with vital navigation projects.

The cost-sharing frame work set forth in H.R. 6, however, still maintains a strong and clear Federal stewardship over navigation and port development, while reducing the Federal financial burden. It is a formula that strengthens the partnership between the Federal Government, the private sector, and local government in maintaining our Nation's waterways.

The conference report does not contain an amendment I offered, and which was adopted by the full House, that would have given the State of Maryland full credit for its costs in building and operating Hart-Miller Island. Hart-Miller is the dredge disposal facility which will be used for the dredged material from the 50-foot project built to comply with the original Baltimore Harbor authorization.

As a member of the Conference Committee, I withdrew my amendment to further the chances for the bill's passage. In return, the corps agreed to provide the State of Maryland with two important items.

First, to waive any requirement that Maryland pay back 10 percent of the total cost of its project to the corps, saving Maryland about $24 million.

And second, that the corps would provide $30 million from its discretionary operations and maintenance account to dredge the Chesapeake and Delaware Canal to its authorized depth of 35 feet by December 1987.

This compromise represents an equitable solution to one of the Baltimore Harbor project's longest standing issues. Maryland will be able to afford to dredge to 50 feet to compete for additional bulk cargo, like grain and coal.

This crucial economic development project is expected to ultimately generate 1,500 new jobs, nearly 4 million tons of new cargo annually and over $110 million in new economic activity in the port each year.

At the same time, large container ships will be able to use the C&D Canal as a shortcut to Baltimore, meaning they will save time and money when they move goods through Baltimore.

In addition, the compromise insures that Baltimore will be able to continue the balance between cargo and quiche along its urban waterfront, preserving jobs in our manufacturing and trade sectors because the port will remain a hub of international commerce.

There are a number of other projects in this conference report of importance to Maryland which I strongly support.

First, is the provision guaranteeing over $20 million in Federal funds to protect Ocean City's shoreline from storm damage. In recent years, Ocean City's waterfront has been severely damaged from tropical storms, hurting the region's natural resources and its billion dollar tourist industry.

This project will fund construction of a bulkhead, sand dune, and beach which will protect the area from further severe harm. It complements a substantial State investment in beach restoration to begin next fall.

Second, are three items to improve the resources and management of the Chesapeake Bay.

Shoreline erosion—the conference report authorizes up to $5 million for low-cost demonstration projects to limit streambank and shoreline erosion into the bay. This has been cited as one of the major reasons for the bay's decline and should help reduce pollution further into the Chesapeake.

Drought management—the corps is also directed to study the problem of how to best manage the bay's water supply during drought conditions, as well as the broader problem of the bay's low inflow of fresh water. This latter issue is often cited as a key reason for the decline in marine life in the bay and should help us preserve our commercial and sport fisheries.

Fisheries conservation—the corps is also given responsibility to construct an artificial reef in the bay. These man-made aquatic habitats have proven to be a helpful tool in replenishing some fish stocks and could well have the same effect on some of the bay's fisheries.

Finally, H.R. 6 requires the corps to develop a plan for the control and eradication of the hydrilla in the Potomac River by the end of fiscal year 1987. It is my hope that they will complete this study so the three regions which border the Potomac can develop a way to handle this problem in an environmentally sound and fiscally responsible manner.

Mr. Speaker, many Members have worked on this legislation in this Congress, and for the past 5 Congresses, who deserve a special thanks today.

First and foremost are the chairman of the Public Works Committee, Rep-

resentative JIM HOWARD, and the chairman of the Water Resources Subcommittee, Representative BOB ROE. The people of Maryland and the Port of Baltimore owe them and their staffs a special note of thanks for their tireless efforts to fashion a bill that is fair and equitable.

In addition, I want to thank my own chairman, Representative WALTER JONES, and the chairman of the Subcommittee on Merchant Marine, Representative MARIO BIAGGI, for their crucial work in developing the port title of H.R. 6.

And finally, to my colleagues in the Maryland congressional delegation, who have worked so well together on this legislation and have helped bring it to a successful conclusion.

I consider it an honor to have served with these Members and believe that the legislation they have helped fashion will be a boost for our maritime industry and the national economy as a whole.

I urge my colleagues to support this conference report, to help bolster our Nation's water resources, and to help continue the renaissance at American ports like Baltimore.

I would like to thank the chairman of the Public Works Subcommittee, Mr. ROE, and the chairman of the full committee, Mr. HOWARD, for their wonderful work in moving this legislation; to Mr. BIAGGI of Merchant Marine and Fisheries, the chairman of my Subcommittee on Merchant Marine; and a special thanks to my Republican colleagues both on the Committee on Merchant Marine and Fisheries, Mr. SNYDER and others and also the gentleman on the Public Works Committee for their cooperation and their civility.

I look forward to seeing you in the other body.

Mr. STANGELAND. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. PACKARD].

Mr. PACKARD. Mr. Speaker, I rise in strong support of H.R. 6, the Omnibus Water Resources Development Act. I commend my fellow conferees for their diligence in crafting this important piece of legislation. I especially want to recognize the tireless work of the committee leadership and the staff members who have spent countless hours refining this legislation.

Omnibus water resources legislation has not been enacted by Congress since 1970. This legislation is long overdue. I urge my colleagues to support this crucial legislation and vote for the conference report.

As a conferee on a particular section of this legislation, I wish to state how important the Santa Ana River flood control project is. This project has been described as the most important flood control project west of the Mississippi River. This project is of vital importance to the safety and economic well-being of thousands of citizens of southern California.

The primary purpose of this project is flood control. It is the understanding of the conferees that upon completion of the water supply and conservation study at Prado Dam, that if that study recommends water conservation as a secondary project purpose for the Santa Ana River project that such water conservation will then be considered automatically authorized as a secondary project purpose. Water is the lifeblood of development in the Western United States. It is crucial that we have adequate water conservation and storage facilities in the West. Having water conservation and storage as a secondary purpose of the Santa Ana River mainstem project will go a long way in assuring adequate water resources in southern California.

Furthermore, it is the understanding of the conferees that the reference in H.R. 6 to the Water Supply Act of 1958 refers to any additional water supply and conservation that may be recommended at Prado Dam and that this reference is in no way meant to be a limitation on corps' existing authority to impound water at Prado Dam for conservation purposes. I believe that these provisions in the legislation need to be clarified so that there is no misunderstanding of the conferees intent with regard to these issues.

Again, may I commend my colleagues and all those who have worked so hard to see this legislation enacted. I ask my colleagues to support this much needed legislation.

Mr. Speaker, there are a couple of points involving the Santa Ana River mainstem project which I wanted to specifically bring to the attention of the House. Is it the understanding of the conferees that upon completion of the water supply and conservation study at Prado Dam, that if that study recommends water conservation as an additional project purpose for the Santa Ana project, that such water conservation will be automatically authorized as an additional project purpose?

Mr. ROE. If the gentleman will yield, the gentleman from California is correct. If water supply and conservation is found to be feasible at Prado Dam, then such finding shall automatically become a project purpose of the Santa Ana project.

Mr. PACKARD. Mr. Speaker, I thank the subcommittee chairman for the explanation. I also have a second issue which I wish to bring to the attention of the House. It is my understanding that the reference in H.R. 6 to the Water Supply Act of 1958 with respect to the Santa Ana project refers to any additional water supply and conservation that may be recommended at Prado Dam. This reference is in no way meant to be a limitation on the corps' existing authority to impound water at Prado for conservation purposes. Is that the conferees' understanding of this language?

Mr. ROE. The gentleman is correct. That is the conferees' understanding.

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Mr. STANGELAND. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. LEWIS].

Mr. LEWIS of California. Mr. Speaker, as the gentleman from New Jersey [Mr. ROE] knows, the Corps of Engineers has been reluctant to move forward with a flood control project on the San Timeteo Creek, a tributary of the Santa Ana. In the last week it has come to my attention that the Federal Emergency Management Agency has recently found that a substantial portion of the city of Loma Linda including the majority of the commercial downtown development area lies within the flood plain of the San Timeteo Creek. FEMA's regulations will prevent Loma Linda from any further development of its proposed commercial area. However, the construction of the San Timeteo flood control project would protect a good deal of this area and allow the development plan to go forward. The Energy and Water Subcommittee of Appropriations has directed the corps to reevaluate the cost benefits of the San Timeteo Creek project taking the new FEMA information into account. The city of Loma Linda is willing to participate in cost sharing as advocated in your bill. Mr. Speaker, if the corps finds this new information provides a positive cost-benefit ratio for San Timeteo, would the committee be willing to consider adding this tributary project to the construction of the Santa Ana?

Mr. ROE. Yes; the gentleman is correct.

Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. ANDERSON].

Mr. ANDERSON. Mr. Speaker, I rise in strong support of the conference report accompanying H.R. 6, the Omnibus Water Resources Development Act of 1986.

At the outset, let me congratulate Water Resources Subcommittee Chairman BOB ROE, Public Works and Transportation Committee Chairman JIM HOWARD, Water Resources Subcommittee ranking minority member ARLAN STANGELAND and Public Works and Transportation Committee ranking minority member GENE SNYDER for their diligence in crafting this badly needed legislation. Additionally, let me commend our fine Water Resources Subcommittee staff who have also, of course, devoted countless hours to the development of this bill.

Mr. Speaker, as we know, it has been over 1½ decades since the Congress last approved and the President signed

into law a comparable water development bill.

The compromise bill we have before us today is a sound proposal and one which should meet the approval of the President. Among other things, the bill authorizes for construction or study 262 new U.S. Army Corps of Engineers projects totaling $16.3 billion and, at the same time, deauthorizes 293 old, unfunded corps projects totaling $11.3 billion. New cost-sharing rules have been implemented, which are nearly identical to those proposed by the administration, that require non-Federal interests to pay a much greater share of project costs. Above all, it should be noted that H.R. 6 only authorizes projects for funding—not one thin dime is actually appropriated. Should a project not receive construction funding within 5 years, it will automatically be deauthorized.

Although there are a number of worthwhile projects in the bill to benefit my great State of California, I would like to highlight a few which directly impact my area.

First, phase I of the San Pedro Bay Development Plan is authorized, pending a favorable evaluation by the corps and approval by the Secretary. This project will provide for the deepening of the main channel at the Port of Los Angeles to a depth of 75 feet and the deepening of the main channel at the Port of Long Beach to a depth of 76 feet. Additionally, 800 acres of land will be created with the dredged material from the project. This additional land is important because it will permit the relocation of the loading and unloading facilities for handling toxic and hazardous materials as well as the storage tanks used for these dangerous substances, away from inner-harbor residential neighborhoods where they are today. The need to make this relocation has been a longtime concern of mine.

Next, I would like to turn my attention to that section of the bill relating to the Rancho Palos Verdes/Rolling Hills shoreline erosion study. The corps is authorized to conduct a study, which shall be completed not later than 2 years after the date of enactment of this act, on the feasibility of constructing shoreline erosion mitigation measures along the Rancho Palos Verdes coastline for the purpose of providing additional stabilization in the area of the Portuguese Bend landslide.

Over the past 25 years, portions of the hillside in this area have moved oceanward in excess of 500 feet. In fact, during the 1982–83 winter storms, over 30 feet of pristine coastline disappeared. Also, in recent years, two additional landslides, Abalone Cove and Klondike Canyon, have become active.

Another important feature of H.R. 6 will improve the breakwater at King Harbor in Redondo Beach. Specifically, all breakwaters at the harbor shall be restored to a height of 22 feet and maintained at such height and the corps is authorized to conduct a study, which shall be completed not later than 2 years after the date of enactment of this act, to explore the feasibility of raising the breakwater at the harbor to a height greater than 22 feet.

In recent years, high waves from winter ocean storms at King Harbor have caused great damage and have repeatedly demonstrated the need to improve the breakwater. In 1980 and 1983, storm damage totaled $4 million and $2.7 million, respectively. It is important that the corps move quickly to address this serious problem.

Last, Mr. Speaker, I would like to address that section of the bill dealing with the navigation project at Upper Newport Bay. The corps is authorized to dredge and maintain a 250-foot wide channel in Upper Newport Bay to the boundary of the Upper Newport Bay State Ecological Preserve to a depth of 15 feet, and to deepen the channel in the existing project below the Pacific coast highway bridge to 15 feet.

Upon completion of this important project, roughly 2 million cubic yards of sediment will have been removed from the bay. It will have been restored to the condition existing prior to 1930 when significant tidal changes began to occur. Removal of this sediment is needed to improve tidal flushing action, prevent the sediments from being washed into Lower Newport Bay and improve both recreational and commercial boating access.

In conclusion, I want to again express my strong and complete support of this conference report. It is a good bill and long overdue. I urge all of my colleagues to vote "aye."

Mr. ROE. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. PANETTA].

Mr. PANETTA. Mr. Speaker, I would like to engage the chairman in a very brief colloquy.

With regard to section 829, regarding the authorization for planning, engineering, and design of the flood control project in the San Lorenzo River in Santa Cruz, CA, it is my understanding that that section would provide for dredging as well as other actions that are found to be appropriate by the Corps of Engineers and the community; is that correct?

Mr. ROE. That is correct.

Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Arkansas [Mr. ANTHONY].

Mr. ANTHONY. Mr. Speaker, H.R. 6 is exremely important legislation. It has been over a decade in the making.

The revenue portions of this conference agreement follow the basic agreement reached last year between the administration and Senate leaders regarding cost sharing for water projects.

Under this agreement, the inland waterway fuel excise tax is increased, as under the Senate bill from 10 cents to 20 cents per gallon. However, rather than beginning in 1988, the increases would not begin until 1990. The tax would reach 20 cents per gallon by 1995.

The agreement would add the Tenn-Tom waterway to covered waterways under the Inland Waterway Trust Fund.

The conference agreement would impose a new excise tax of 4 cents per $100 on the value of commercial cargo loaded or unloaded at U.S. ports to fund certain operations and maintenance costs of U.S. harbors and the St. Lawrence Seaway. Certain cargo loaded or unloaded in Hawaii, Alaska, or the U.S. possessions would be exempted from the tax. Also, to preserve the competitiveness of U.S. ports, bonded cargo entering the United States for transshipment to Canada or Mexico would be exempted from the tax.

These revenues would be placed in a new Harbor Maintenance Trust fund along with tolls from the U.S. portion of the St. Lawrence Seaway. A rebate would be provided for tolls paid on the U.S. portion of the St. Lawrence Seaway.

There are numerous other miscellaneous provisions included in the revenue title. All of the provisions agreed to by the revenue conferees on this bill were included in either the House or Senate-passed versions of this legislation. The revenue title includes no new starter provisions.

This is historic and important legislation. I urge my colleagues to support its passage.

A description of the estimated revenue effects of this bill follows:

ESTIMATED REVENUE EFFECTS OF H.R. 6, AS APPROVED BY THE CONFERENCE COMMITTEE, FISCAL YEARS 1987–91

[In millions of dollars]

Provision	1987	1988	1989	1990	1991	1987–91
Gross receipts from port user charges (to Harbor Maintenance Trust Fund)	84	197	215	233	254	983
Increased Inland Waterways Trust Fund receipts	1	1	1	4	13	20
Gross increase in budget receipts	85	198	216	237	267	1,003
Net increase in budget receipts (after income tax offsets)	64	149	162	178	200	753

Source: Joint Committee on Taxation, October 17, 1986.

Mr. STANGELAND. Mr. Speaker, I yield 1 minute to the gentlewoman from Maryland [Mrs. BENTLEY].

Mrs. BENTLEY. Mr. Speaker, consideration and passage of the House-Senate conference report to the water resources authorization bill by this

99th Congress will mark a historic event. After more than a decade, the people of this great Nation will have long overdue water projects legislation ready for enactment. This legislation is needed to authorize construction and maintenance of our harbors and inland waterways.

It also is significant that this apparently is the last major piece of business before the House in the 99th Congress.

I wish to commend all those responsible for preparation of this water resources bill. House conferees who played a key role in achieving an agreement with conferees of the other body are to be commended. Chairman HOWARD, Mr. ANDERSON, Mr. ROE, Mr. BREAUX, Mr. MINETA, Mr. OBERSTAR, Mr. SNYDER, Mr. HAMMERSCHMIDT, Mr. STANGELAND, and Mr. CLINGER from the Committee on Public Works and Transportation served as House conferees of H.R. 6. I commend their leadership and work in helping to reach an agreement. I want to pay particular tribute to Mr. SNYDER who has been such a guiding light to me on this committee.

In bringing about this important legislation vital to water projects, many of my colleagues have contributed. During this Congress, I have been privileged to participate in two of the four committees responsible for H.R. 6. As a member of both the Committee on Public Works and Transportation and the Committee on Merchant Marine and Fisheries, I have worked with my colleagues to prepare H.R. 6 for passage and enactment.

I am pleased to report that the Congress has been successful in writing legislation that includes cost sharing language acceptable to the administration. Because Congress has worked to meet cost-sharing requirements recommended by the executive branch, we have before us a conference report that can be accepted both by Congress and the President.

In my home State of Maryland, the Port of Baltimore is one project that has already received a cost sharing formula under the supplemental appropriations bill acceptable to the State of Maryland and the Army Corps of Engineers of the Federal Government.

Maryland is prepared to meet the Federal Government's cost-sharing requirements and proceed with completion of the harbor development of the Baltimore Port. With enactment of this water resources authorization bill, Maryland will continue to work to meet cost-sharing requirements established by this legislation. Meeting the requirements will provide necessary funds to complete development of our harbor infrastructure.

We in Maryland have conducted a study to reduce the overall cost of the water project. In one instance, some $110 million is expected to be saved by narrowing the width of the 50-foot shipping channel. The State has also indicated to sell its World Trade Building and issue bonds to provide funds for its share of the costs prior to the 50-foot channel.

After the harbor development, larger ships will be free to enter the Baltimore Port. Greater means for trade will create more jobs and a stronger economy with the importation and exportation of goods. Industries such as the distressed steel industry will benefit from an increase of maritime trade.

The Baltimore ship channel is also vital to providing the measure for the United States to improve its exports—of coal and grain—and thus keep our balance of trade. It is a project also equally important to keeping a steel mill alive—by allowing deeper draft ships—more heavily laden with iron ore to call on our steel mill—and therefore providing cheaper steel.

The Baltimore Port is one of our oldest ports in America. Construction and maintenance of the port is necessary to ensure that the harbor retains its commerce. If we plan to be in a position to compete effectively with foreign investors, a strong national infrastructure is imperative to our success and survival in the world market. Because of these facts, I began the fight for the 50-foot channel in 1963. It will be good to see if finally happen.

Enactment of the water resources bill will free up funds necessary for water infrastructure development. Port development, inland waterways, flood control projects, beach erosion, municipal water supply systems, and other water resources will be funded. Support for the conference report on H.R. 6 will show support for investment in America's means to foster economic development through commerce and trade.

In conclusion, Mr. Speaker, I commend the leadership of all Members of Congress who have contributed to bringing about new water construction projects that have been in waiting for nearly two decades. Today, with the conference agreement on the water resources authorization bill before us, we in this Congress have the opportunity to meet our Nation's water infrastructure needs with fiscally sound cost sharing agreements.

I urge passage of the conference report accompaning the water resources authorization bill, H.R. 6.

Mr. STANGELAND. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia [Mr. BATEMAN].

Mr. BATEMAN. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, it has been 12 years that we have waited for a comprehensive water resources authorization bill. Horray, the hour is at hand when we will have done that.

The reason it has not been done certainly is not because of a lack of leadership on the part of the distinguished leaders of this committee. They have labored in an incredible way to make this day possible, and I commend them highly.

I can look forward and my constituents can look forward to going on with the deepening of the channel in the Port of Hampton Roads, to the improvement of the channels at Cape Charles, to the shoreline erosion project for Tangier Island. All of America can be very thankful for the passage of this bill and for the hard work and dedication that has gone into making this time possible.

Mr. ROE. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. GRAY].

Mr. GRAY of Illinois. Mr. Speaker, I rise in support of H.R. 6, the most far-reaching and comprehensive water resources bill since 1970. Mr. Speaker, I was in this body 16 years ago and I am happy to say that the last bill in the seventies has brought untold benefits in saving lives and property from floods. Also, Mr. Speaker, navigation and other benefits have accrued from previous water bills and I know this bill will bring even greater benefits when signed into law.

Mr. Speaker, I want to personally thank my friends, Mr. ROE and Mr. STANGELAND for their tireless efforts; also our chairman, Mr. HOWARD, and ranking member, Mr. SNYDER, and a great staff for outstanding work on this omnibus bill.

Mr. Speaker, I want to personally thank the members of the committee for allowing improvements on the Ohio and Mississippi Rivers and for helping us provide clean water for the city of Marion, IL, from surplus water from Devil's Kitchen Lake. Water transportation is very helpful to Illinois and the Nation and this conference report on H.R. 6 is a culmination of years of hard work. As one member of the committee, I deeply appreciate the hard work of our committee and staff on this bill, and again I express my thanks.

Mr. ROE. Mr. Speaker, I yield 1 minute to the gentleman from West Virginia [Mr. WISE].

Mr. WISE. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, there has been no comprehensive water bill authorization since the year 1970. This bill can mean the economic rejuvenation of West Virginia's river transportation system of the seven inland waterway projects, of which four are involved in my State. Happily, two involve the Third Congressional District.

Many of us worked for a long time on this bill. It means almost half a billion dollars' worth of construction over 10 years. It is estimated to create 1,000 jobs in construction with hundreds more in improved river transportation.

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This is a great opportunity for West Virginia, Mr. Speaker, not only in increased coal transportation but chemicals and so many other areas. I am proud that while this may be the last bill voted upon by the 99th Congress, it will be one of the most important for West Virginia.

Mr. STANGELAND. Mr. Speaker, I yield 4 minutes to the gentleman from Kentucky [Mr. SNYDER].

Mr. SNYDER. I thank the gentleman for yielding me this time.

Mr. Speaker, I take this time to enter into a colloquy with the subcommittee chairman, the gentleman from New Jersey [Mr. ROE].

Mr. Speaker, I have several questions to ask the chairman of the Subcommittee on Water Resources with regard to the vessel user fees for port construction imposed in section 208, as approved by the conferees. Is the intent of the conferees that port user fees be imposed on only the direct beneficiaries of project features?

Mr. ROE. If the gentleman will yield, the gentleman is correct. It is our intent that the direct beneficiaries pay port or harbor dues. The limitations in section 208(a)(3) are intended to assure that these dues are levied on vessels that demonstrably benefit from the project features that are constructed. Consequently, vessels of design dimensions smaller than those used to justify these project features would not be subject to dues under section 208. For example, project features which are justified by the benefits of allowing larger vessels to utilize a harbor would result in the imposition of dues on such larger vesssels. Such a project might reduce the need for smaller lightering or offloading vessels. Under this section these smaller vessels would not have been the design vessels used to justify the project feature and therefore would not be subject to port or harbor dues under section 208.

Mr. SNYDER. Would the gentleman explain the intent of the term "deepening feature"?

Mr. ROE. It is intended that when the depth of a harbor or channel is increased, there may also be some widening needed for that harbor or channel. Any dredging done with respect to such auxiliary widening is considered to be part of a deepening feature. Dredging done solely to widen a channel is not deemed to be part of a deepening feature.

Port or harbor dues under section 208(a)(3) shall otherwise be imposed strictly in accordance with the other provisions of section 208. Dues collected under this section should be clearly related to the costs of the project features for which they are collected.

Mr. SNYDER. Would the gentleman explain whether it is intended that the costs associated with separate project features will be determined by the Secretary of the Army?

Mr. ROE. Yes, those costs will be determined by the Secretary of the Army and shall be used in connection with the imposition of port or harbor dues if such dues are authorized under section 208(a)(3)(A).

Mr. SNYDER. Would the gentleman explain the intent of the terms "mean low water" and "comparable in size"?

Mr. ROE. The reference to mean low water is intended to describe situations such as vessels awaiting high tide to enter the channel in order to avoid running aground due to a draft which would be too great to enter the channel at any other time. The use of the term "comparable in size" is intended to address situations in which a vessel may not be identical to the design vessel but is so similar that it would require essentially the same features. For example, if a project feature was justified for a design vessel that was 1,000 feet long and 160 feet wide, a vessel that was 1,000 feet long and 150 feet wide would be comparable.

Mr. SNYDER. Would the gentleman explain whether it is intended that cases such as *Evansville-Vanderburgh Airport Authority District* v. *Delta Airlines, Inc.*, 405 U.S. 707 (1972), and its progency be followed in any court review of the legality of user fees established in section 208.

Mr. ROE. No. Those cases hold that courts should be concerned with the amount of the tax or user fee and not its formula. We specifically intend here that those cases should not be followed with regard to any evaluation of the legality of port or harbor dues. If the port or harbor dues structure established by the non-Federal interest fail to comply with the standards in section 208 they should be deemed to be unlawful.

Mr. SNYDER. I thank the gentleman for clarifying this important matter.

Mr. STANGELAND. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. FIELDS].

Mr. FIELDS. I thank the gentleman for yielding me this time.

Mr. Speaker, I want to give a special thanks to Chairman ROE and Chairman HOWARD, ARLAN STANGELAND and GENE SNYDER because for 6 years they have helped me with the Upper White Oak Bayou Flood Control Project. This project is located in central and northwest Houston including Jersey Village and Innwood Forest. The cost of this project is $92.1 million. Including within this figure is $69 million in Federal money and approximately $23 million in local funds.

The cost of this project has increased by nearly $20 million over the past 6 years. The Corps of Engineers has ranked this project as one of its 26 highest nationwide flood control priorities out of over 140 unauthorized projects. This project has a cost-benefit ratio of 1½ to 1, or $1.50 in flood protection for every $1 in Federal cost. It will provide badly needed flood control relief to over 5,000 homes and businesses.

The Corps of Engineers has indicated that this project will create over 2,000 new jobs in the Houston area economy during construction and it could not come at a better time for our local economy to have these new jobs.

This flood control plan recommended by the Army Corps of Engineers calls for channel enlargement, rectification and partial paving, nonstructural flood plain management to reflect future damageable development within portions of the flood plain and construction of hike and bike trails and a community park with picnic and playground facilities.

This project is strongly supported by citizens' groups, government agencies, environmental groups and business organizations. There is no opposition to this important project. Again, I want to thank very much the people who have been involved with this. I thank the chairman and the ranking minority member.

Mr. ROE. Mr. Speaker, I yield 1 minute to the gentleman from Wisconsin [Mr. MOODY].

Mr. MOODY. I thank the gentleman for yielding to me.

Mr. Speaker, I simply rise to add my voice of praise to the committee, to the chairman, Mr. ROE, and to the others for the excellent work done in this committee, particularly with respect to the policy changes in the area of cost sharing.

Mr. ROE. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. FAZIO].

Mr. FAZIO. I thank the gentleman for yielding me this time.

Mr. Speaker, this vast bill has been a long time coming and for that reason alone would be very welcome. We all know of water resource development needs in each corner of the country. For too long we have let them go unmet, and during that time our capability for meeting them has unfortunately withered.

The projects in this bill together with its modernized requirements for local cooperation mean that we can set about rebuilding systems which have fallen apart or behind. We can also begin work on a number of pressing flood control problems which have developed in the decade since the last bill. Several projects in this bill reflect those developments in Northern California: the Cache Creek project in Lake and Yolo Counties—about which some upstream controversies still

exist—and restoration of the project levees adjacent to the Colusa Trough Drainage Canal and the Knights Landing Ridge Cut.

The greatest difficulties encountered in this bill have concerned the cost-sharing requirements associated with the ports and inland waterways. One of the projects of concern to myself affected by this debate has been the Port of Sacramento's proposal to deepen its channel from 30 to 35 feet in order to make it competitive in the era of deeper-draft ships.

The Port of Sacramento was authorized in the 1985 supplemental appropriations bill, and it was eligible to begin construction in that and the 1986 fiscal years drawing upon an unallocated pot of money the supplemental awarded the corps. The port, under the capable leadership of former Director Mel Shore and now his successor, Dennis Clark, has successfully negotiated a contract with the corps for the construction of the project, reflecting the cost-share terms in this bill.

The Port of Sacramento has therefore met the final test for proceeding, even if this bill should not pass. The authority this bill provides is not necessary any longer. The port can and has drawn upon the $50 million pot of funds we provided in the 1985 supplemental, and it can draw upon an additional $3.6 million we provide specifically for the port in this year's 1987 energy and water bill wrapped into the continuing resolution.

The actual dredging to deepen the project can begin next spring or summer, we are told. The project should proceed in two major stages. Over the next 3 years it will be deepened to 35 feet. Then in the following 4 years it will be widened to facilitate navigation.

One matter needs clarification. The administration has taken the position that it will not proceed with any new starts in the 1985 supplemental unless H.R. 6 passes because the administration maintains it does not want to start projects until it is assured that the new operation maintenance trust fund in H.R. 6 will help fund the upkeep of the new projects. The administration seeks to use its discretion to not use money and authority provided until some third condition of its own is met.

My colleagues should be aware that the energy and water chapter of the 1987 continuing resolution contains a provision which statutorily mandates that the administration proceed. I quote the language below from the Senate report accompanying the energy and water chapter of the continuing resolution. It states clearly the intent of Congress and the effect of our statutory language:

1985 Supplemental New Construction Starts.—The Committee recommendation provides the full amount requested for the water resource projects funded and authorized in the Supplemental Appropriations Act, 1985 (Public Law 99-88).

The Committee is aware of administration efforts to make a distinction between various types of projects which could result in delaying the initiation of construction on the navigation projects. In passing Public Law 99-88, the Congress fully intended that these projects would be authorized after May 15, 1986, and for construction to begin after that date if non-Federal interests entered into a cost-sharing agreement. Further, the Committee, based on discussions in resolving this issue, expected and anticipated the good faith effort on the part of the administration to carry out this congressional intent. However, based on testimony and information presented, the Committee is concerned that the administration is not proceeding in good faith to begin construction on these projects as intended.

The Committee has, therefore, included a general provision directing the Secretary of the Army to initiate construction on those water resources projects contained in Public Law 99-88 on which cost-sharing agreements had been entered into prior to July 1, 1986, or on which no cost-sharing agreement is required. The language does not change the Committee's intent that these water resource projects proceed only under the new cost-sharing conditions spelled out when Congress passed the Supplemental Appropriations Act, 1985.

There should therefore be no doubt that the Port of Sacramento project can proceed without passage of H.R. 6.

Passage of this bill would nonetheless be helpful for Sacramento, however, because it confirms that the cost-share terms already negotiated with the corps are indeed consistent with law. Those provisions for navigation projects between 20 and 45 feet require a local cost share of 25 percent during construction, plus all lands easements and rights of way regardless of their costs, plus another 10 percent of the construction costs in cash over time. The latter 10 percent share would be adjusted downward, however, to give the local sponsor credit for the costs of lands, easements, and rights of way.

The official price for Sacramento is about $92.5 million. I am informed by port officials, however, that adjustments in the project have lowered the costs to about $76 million. About $16 million of that is attributable to lands easements and rights-of-way which are entirely a Sacramento responsibility. Therefore, Sacramento will have to come up with 25 percent of roughly $60 million, unless costs are reduced further, which Sacramento officials anticipate will be the case. This $15 million would make a total local share of roughly $30 million. Since lands, easements, and rights-of-way would outweigh the requirement for another 10 percent over time after construction, there will be no additional costs-share requirement.

I would like to make one other point concerning the Cache Creek project which I mentioned earlier. The project is in two parts which bear no real relationship to each other. The upstream end involves widening an outlet to Clear Lake, so that when rainfall threatens to flood the Clear Lake Basin, the Lake will empty faster and not flood over development which has been built too close to its shore.

This is a serious problem. However, enlarging the outlet by itself is controversial, because of wildlife refugees and other values in the immediate vicinity, The residents of Capay Valley downstream also fear that an enlarged outlet will result in faster flows down Cache Creek. We have funded a study by the corps of this problem for several years, and have another $500,000 to conduct the studies in the 1987 energy and water bill. If it is determined that the Capay Valley residents are justly afraid of intensified flows, we can delay or permanently block implementation of the upstream end of the project until a satisfactory solution is reached.

The Appropriations Committee has included language to that effect in its statement of managers accompanying the 1987 continuing resolution.

Meanwhile, the downstream end of the project—enlarging the Cache Creek sediment catchment basin—should proceed as quickly as possible in order to avoid loss to life and property in Yolo County and elsewhere in Northern California.

Lastly, Mr. Speaker, I would like to clarify the effect of a provision in this bill which establishes a 5 percent cash contribution from local flood control project sponsors on a previously authorized project in my district, the Fairfield stream project.

In the 1986 continuing resolution we provided that the local sponsors of this project should be given credit against any 5 percent cash requirement for the extensive work they did on the project itself during the long drought on new starts which was not broken until the 1985 supplemental.

The corps has maintained that the generic 5 percent requirement in H.R. 6 should, should it pass, supersede this Fairfield-specific requirement because it would pass subsequent to the 1986 supplemental. It is not our view, however, that the general provision in this bill would override the very specific provision for Fairchild in the 1986 supplemental merely because it comes along later. It is for this reason that the conference report on H.R. 6 felt no necessity to reiterate the provision in the 1986 supplemental.

The statement of managers of the 1987 continuing resolution, which provides another $3 million for Fairfield, makes this point as well.

Mr. ROE. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. MACKAY].

Mr. MACKAY. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of this conference report.

After years of effort, this bill deauthorizes the Cross-Florida Barge Canal. The deauthorization in this bill represents a compromise forged through the timeless efforts of Chairman BOB ROE, my colleagues from Florida, CLAY SHAW, BILL CHAPPELL, BILL MCCOLLUM, CONNIE MACK, CLAUDE PEPPER, CHARLIE BENNETT, and others in the Florida delegation, as well as Mr. EDGAR of Pennsylvania.

This deauthorization will be welcome news in my congressional district which contains the entire uncompleted portion of the canal. It will also be welcome throughout southeast Florida. A major threat to our drinking water has been removed. And the Oklawaha River will remain the hauntingly beautiful stream that it is today. For that I am sincerely grateful.

This deauthorization is a tribute to the tireless efforts of Marjorie Carr, a citizen of Gainesville, FL, who has led the opposition to the Cross Florida Barge Canal for more than a decade, and to the citizens' group she leads,

Florida Defenders of the Environment. Through this leadership, this is the first major project in Florida which was terminated before the environmental damage was done. Hopefully, this is the beginning of a new era in sensitivity for Florida's fragile environment.

Again, we would not have reached this point without the personal efforts of the gentleman from New Jersey, and I thank him for his diligence in this effort.

Mr. ROE. Mr. Speaker, I yield 1 minute to the gentleman from West Virginia [Mr. RAHALL].

Mr. RAHALL. I thank the gentleman for yielding me this time.

Mr. Speaker, it was 8 years ago almost to this day that we last came this close to passing such a major water resources bill. It was the last hours of the 95th Congress in October 1978. It has been longer than those 8 years that we have worked on such a bill, and to the gentleman from New Jersey [Mr. ROE], and to the gentleman from New Jersey [Mr. HOWARD], to the gentleman from Kentucky [Mr. SNYDER], and the gentleman from Minnesota [Mr. STANGELAND]. I commend and congratulate on the years and years of hard work they put in to make this bill reality.

The circumstances are different today, and I urge my colleagues and the President to agree to this bill.

Mr. Speaker, it gives me great pleasure to note that, after many years of intensive effort to gain enactment of this omnibus water resources bill, we are now on the verge of approving the conference report on H.R. 6.

This legislation is long overdue as across the Nation our water resources infrastructure is in dire need of rehabilitation. Many of our ocean ports are not deep enough to meet the challenges posed by increased competition in international shipping. Our locks and dams on the inland waterways are crumbling and threaten the viability of barge commerce. And in many regions such as West Virginia, flood waters continue to ravage the land, creating hardships and jeopardizing the health and welfare of the people.

As a member of the Subcommittee on Water Resources, I have worked under the able leadership of Chairman BOB ROE and with my committee colleagues to address these situations. It has been years since Congress last authorized an omnibus water projects bill and we have been stymied in this effort largely due to the administration's insistence on the imposition of unrealistic cost-sharing requirements. This legislation contains a fair and reasonable compromise on that issue as it relates to projects of importance to commercial navigation. We have, as such, forged a new course for water policy in this Nation and, with the project authorizations provided for by this bill, will be in a position to build a better future. There can be no doubt as to the essential nature of our water resources.

I would like to take a moment to comment on several of the projects contained in the bill that are crucial to southern West Virginia. As I mentioned briefly, there is a crisis developing with respect to this Nation's inland navigation infrastructure, particularly its lock and dam facilities. Many critical locks and dams, constructed over 50 years ago, are no longer adequate to accommodate larger barge tows and increased traffic. As a result, hazardous situations, time delays and escalating costs are common. We have addressed these problems in the conference report by authorizing the replacement or rehabilitation of those inland waterways projects which are most in need. Included in these projects is the Winfield locks and dam facility on the Kanawha River in West Virginia. The long due improvement of this facility will result in more efficient movement of steam and metallurgical coal from southern West Virginia to markets throughout the Nation.

This legislation also provides for the rehabilitation and construction of new locks at Gallipolis on the Ohio River about 30 miles upstream from Huntington, WV. This is the premier locks and dam project in need of improvement. In July of this year, there were delays of up to 3½ days for shipping traffic at Gallipolis due to repair construction of the old locks. Delays such as these, which are not uncommon, are extremely costly to the coal and shipping industries and must be alleviated.

Also included in the bill are authorizations for improvements at locks and dams No. 7 and 8 on the Monongahela River in Pennsylvania and West Virginia. These facilities are plagued by similar problems and are in desperate need of the modernization provided for in the conference report.

Among the flood control projects authorized by the bill is one which I sponsored in subcommittee located along the Island Creek Basin in Logan County, WV. Flooding in the Island Creek Basin area has resulted in significant financial and personal loss over many years. Average annual damages in the basin are estimated to be $11.8 million. The area has experienced significant flooding as recently as May 1984, when approximately $4 million in damages occurred. The people of Logan County are deserving of the relief from persistent, destructive flooding which the project will provide.

This omnibus water resources bill also contains a historic provision that will provide for a program of water releases from the Summerville Dam to facilitate whitewater rafting on the Gauley River. This U.S. Army Corps of Engineers dam represents the first of its kind to have among its project purposes an explicit authorization for whitewater recreation. The provision of H.R. 6 builds upon this authorization by establishing a program of water releases from the Summerville Dam during the fall drawdown period of the lake to enhance whitewater recreation on the Gauley River. The language provides for a minimum of 2,500 c.f.s. to be released from the dam for at least 20 days during the 6-week period following Labor Day each year. However, this provision does not preclude additional water releases from being made at other times during the fall or, for that matter, the year.

Mr. Speaker, I would like to reiterate my strong support for this omnibus water resources bill and urge my colleagues to lend their support to this much needed legislation.

Mr. STANGELAND. Mr. Speaker, I yield 2 minutes to the gentleman from Mississippi [Mr. FRANKLIN].

Mr. FRANKLIN. I thank the gentleman for yielding me this time.

Mr. Speaker, reluctantly I rise in opposition to this conference report, and I do so for a very parochial reason. There is a project that was contained in the House version of this bill that has been eliminated in this conference report by the arbitrary setting of a date for construction and for which projects begin construction after April 30, 1986, bear a full Federal cost share.

As a result of that date set in the bill, there is a project, the backwater pumping project in the lower Yazoo Basin in my district which was authorized in 1941. Money was appropriated to begin construction last year, construction began on May 5, 1986, 6 days after the effective date of this bill.

Eleven million dollars of the taxpayers' money are being expended right now by the moving of dirt, building a channel and an impoundment area to place a pump there. That $11 million will be wasted because a full cost share is going to be applied to this project 5 days after the effective date of the bill.

The result will mean that we will have an $11 million hole in my district which will be incomplete.

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For that reason, I will oppose this bill. But I do want to thank the chairman of the committee, the ranking member, in realizing this inequity and promising to work with me in the next Congress to correct this inequity.

Mr. Speaker, for years flood control projects have been a remarkable benefit to the district I represent. The Federal Government has always come through in the past, but I regret that a major flood control project in my district will be crippled as a result of this bill, a bill that I cannot and will not support under these circumstances.

My congressional district runs 250 miles from north to south along the Mississippi River. Much of the district is, quite literally, a drained swamp. Flooding has always been a problem here, and it is a particularly unique problem because of the nature of the land involved.

I know that the problems of drainage in the Lower Mississippi River Valley have been repeated many times on the floor of this House, but they are worth repeating one more time, because they are staggering. The Mississippi drains 28 States. It drains an area ranging from Delaware to Idaho, an area far larger than any other drainage basin on this continent. As the Mississippi River moves south, it not only accepts what it receives locally, but it adds to that the waters already sent from above. When that capacity is exceeded, as is often the case, localities in my district are flooded.

Since 1928, Federal law has established that the cost of such national flood control problems would be borne by the Federal Government. The impossibility of local cost sharing was recognized. For 58 years, the program of flood control has proceeded by Federal design, by Federal administration, and by Federal payments.

I am pleased that H.R. 6 recognizes the need for the Federal Government to continue to recognize that flooding on the Mississippi and its tributaries is a national problem. I am amazed, however, that it appears to be a national problem in every case except one.

In the Flood Control Act of 1941, Congress authorized the Yazoo Backwater Pumping Plant, a plant that was designed to drain high water from some of the most flood-prone land in this country. It was recognized at that time that the lower Yazoo Basin was being subjected to unreasonable backwater flooding that was the result of improvements to both the main line Mississippi River and the Yazoo River.

The normal procedure for constructing a flood control or drainage project is to provide the necessary outlet before doing the upstream work. However, in the Yazoo backwater project, the reverse was done. The upstream improvements were made before the proper outlets in the form of pumping plants were constructed. The people of my district have waited patiently for this pumping plant to proceed, and preliminary construction work was finally begun this spring.

Today, however, we have before us a bill that will require cost sharing on the remainder of this pump project. All of the remainder of the work on the Mississippi River and tributaries project is exempt from cost sharing, but the pump project is not. It was mysteriously excluded during the conference on this bill. In fact, the bill was written to exclude the pump, and only the pump.

This is unfair. The people in my district have supported upstream channel improvements to their detriment, not only in the lower Mississippi River but throughout the Mississippi River system, and now we find ourselves abandoned and in a position of not having the promises and commitments previously made fulfilled.

I recognize that many people, including the Office of Management and Budget and many in the environmental community, have never liked this project, and tried to paint it as an example of public works excess. This is not the case, and has never been the case.

This pump project is a final component in a comprehensive program, and the citizens who live in the project area deserve better treatment than this. The lack of adequate protection from flooding has almost totally denied this economically distressed area from attracting investment by business or industry that might otherwise locate there. Besides the lost potential in development, the Yazoo backwater area's agricultural economy has been threatened with financial disaster due to the accumulated losses that have accrued over the past decade due to area-wide flooding.

I have always been a supporter of the type of capital improvement projects contained in this bill, but I cannot support a bill that has arbitrarily traded off this important project. If the bill passes as it is now written, the Federal Government's investment in this pump will have been wasted, and the people of Mississippi will have to wait another day for the protection that has been promised them. That is sorry situation, and one that I hope the Congress will correct in the future.

Mr. ROE. Mr. Speaker, I yield 1 minute to the gentleman from Maryland [Mr. DYSON].

Mr. DYSON. Mr. Speaker, I rise today to express my strong support for the Water Resource Development Act. I commend my distinguished colleagues on the Public Works Committee for their commitment and hard work which has brought to this Congress the first comprehensive water resource and development bill in many, many years. I would like to express my appreciation to the committee's chairman, Mr. HOWARD, the chairman of the Subcommittee on Water Resources, Mr. ROE, and to my friends on the other side, especially Mr. SNYDER and Mr. STANGELAND.

This legislation is important to many States and Maryland is one of them. Many of my colleagues have had the pleasure of visiting the beautiful beach at Ocean City, MD. Some of you have asked me why the beach seems to be shrinking. I reply that it seems to be shrinking because it is shrinking.

But I have good news for my colleagues. The State of Maryland is committed to replenishing and extending this magnificent beach. Our State will spend well over $20 million in this effort. I am pleased that this cost-sharing formula has been agreed to because the Federal Government can no longer be expected to pay the full cost of these projects. The legislation before us provides for a cost-sharing formula and it is our duty to pass it into law because it is good for our country.

Mr. Speaker, this legislation will provide hurricane protection to the multi-billions of dollars that are invested in the coastal town of Ocean City. In addition, we will remove a life-threatening risk to a city which, at certain times of the year, becomes Maryland's second largest city. The personal safety of the residents who live here and the hundreds of thousands of visitors will no longer be vulnerable to the hurricanes and severe storms that regularly destroy our fragile shoreline.

A little more than 1 year ago, an extremely vicious hurricane named Gloria moved up the east coast. Ocean City lost a critical 4-foot strip of beachfront. According to the Army Corps of Engineers, this storm left the island's condominiums, hotels, businesses, and houses vulnerable to severe damage, and even destruction, from future hurricanes or severe storms.

Fortunately, Gloria passed well offshore and moved quickly. Still, the damage from Gloria was over $5 million, but we were lucky damage was kept this low because Gloria was the largest and most dangerous hurricane to lash the Atlantic coast. Since Gloria, we have had several more storms and hurricanes and the result has been even more loss to the protective beach and each results in greater potential for injury and property damage. Action now will prevent future tragedy.

Again, I urge my colleagues to support this legislation and I thank the committee and its leadership for presenting us with such a fine bill.

Mr. STANGELAND. Mr. Speaker, I yield 1 minute to the gentleman from Louisiana [Mr. LIVINGSTON].

Mr. LIVINGSTON. Mr. Speaker, I point out to the committee that I was on the Committee on Public Works back in 1978 when this was the last item of business on the floor. I had worked 2 years with hopes and prayers that the bill would pass and saw it fail for lack of a quorum. I do not want to see that happen again tonight.

I want to make sure that this one passes. I commend the chairman, the gentleman from New Jersey [Mr. HOWARD]; the gentleman from New Jersey [Mr. ROE] of the subcommittee; the ranking member, the gentleman from Kentucky [Mr. SNYDER]; the gentleman from Minnesota [Mr. STANGELAND]. I want to really commend the staff for doing an outstanding job, staying with this thing over the years, as the leaders of the committee have done. I want to thank all of them involved for their cooperation in projects that are so terribly important to Louisiana, most particularly of which are the Mississippi River and tributaries projects, the proposal to save the Atchafalaya Basin, and a project which I sponsored before original passage of this bill, the construction of the West Bank hurricane protection levee flood control project in Jefferson Parish, LA.

I urge the adoption of H.R. 6.

Mr. ROE. Mr. Speaker, I yield 1 minute to the gentleman from Virginia [Mr. BOUCHER].

Mr. BOUCHER. Mr. Speaker, I rise for the purpose of engaging the floor manager in a colloquy.

Mr. Speaker, it is my understanding that section 103 of the conference agreement on H.R. 6 provides that the Secretary of the Army may waive local cost-sharing requirements for projects located in impoverished areas. Is that correct?

Mr. ROE. Mr. Speaker, will the gentleman yield?

Mr. BOUCHER. I yield to the gentleman from New Jersey.

Mr. ROE. Mr. Speaker, the gentleman is correct.

Mr. BOUCHER. Mr. Speaker, section 202 of Public Law 96-367 author-

izes the Secretary to design and construct, at full Federal expense, flood control projects on the Tug and Levisa forks of the Big Sandy River, including projects in Haysi and Grundy, VA, and on the Upper Cumberland.

Section 202 also includes a congressional finding that the benefits attributable to the objectives set forth in section 209 of the Flood Control Act of 1970 exceed the cost of the flood control measures authorized by section 202.

Is it the chairman's understanding that this unique congressional finding reflects the Congress' determination that the areas affected by the section 202 project are impoverished areas?

Mr. ROE. The gentleman is correct; that is my understanding.

Mr. BOUCHER. Is it also the chairman's understanding that in the absence of significant changes in the economic status of the areas affected by the section 202 project, the Secretary must waive the local cost-sharing requirement for the separable elements of the section 202 project.

Mr. ROE. The gentleman is correct. It is the committee's view that impoverished area such as those affected by the section 202 project should be exempted from the cost-sharing provisions of the bill pursuant to the Secretary's discretionary authority.

Mr. STANGELAND. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey [Mr. RINALDO].

Mr. RINALDO. Mr. Speaker, I want to initially commend and particularly thank the gentleman from New Jersey [Mr. ROE] for his efforts and diligence in seeing that the House-passed version of this authorization was included in the final conference report.

I also want to thank the gentleman from New Jersey [Mr. HOWARD], the gentleman from Kentucky [Mr. SNYDER], and the gentleman from Minnesota [Mr. STANGELAND].

Mr. Speaker, after years of waiting, and countless hours devoted to hearings and drafting legislation, we finally have before us the first comprehensive public works bill since 1970.

This legislation is vitally important in enabling States and localities to proceed with the water resources improvement projects essentially to economic growth, but more importantly, these projects will save countless lives through flood control and hurricane protection.

The projects in my own area that need authorization are a good example of the kind of work that must go forward and upon enactment of this legislation, will go forward.

In this bill, approximately $137 million will be authorized for the Green Brook flood control project affecting many communities in my district. This is not a spur-of-the moment, ill-conceived, pork barrel project, but one that has been in the planning stage for years.

In 1973, a flash flood along the Green Brook killed six people and caused $87 million in property damage. The Army Corps of Engineers by that time had been studying flood control measures for the Green Brook area for 18 years, since 1955. By 1981, the corps finally make its recommendations for flood control protection along the Green Brook.

I commend and thank Chairman ROE for his efforts and diligence in seeing that the House-passsed version of this authorization was included in the final conference report that we are voting on today. It will provide flood protection for the upper basin communities of Plainfield, Fanwood, Scotch Plains, Warren, Watchung and Berkeley Heights as well as for the lower basin communities of Bridgewater, Bound Brook, Green Brook, North Plainfield, Dunellen, Middlesex, South Plainfield and Piscataway.

This bill also would authorize $20 million for flood control work along the Robinson's Branch of the Rahway River and provide protection to the communities of Clark, Scotch Plains and Rahway. Another $12.5 million would be authorized for work along the Rahway River and Van Winkles Brook that would provide protection against floods for the communities of Springfield and Union. These two projects have been languishing since 1978 when the Corps of Engineers completed its review and recommended structural work that could be undertaken to protect residents of these communities.

As a result of action by Congress years ago, the Corps of Engineeers has just this year completed a $75 million flood control project along the Elizabeth River in Elizabeth, also in my distict. The safety of the surrounding areas and the prevention of serious flooding are evident. The midtown commercial and transportation area, which was frequently cut off by serious flooding, no longer goes under water during a heavy and sustained rainstorm. The 5 miles of retaining walls, 13 new bridges and pumping stations have saved the city and private property owners millions of dollars annually in damages and costly flood insurance.

The residents of the communities in the Green Brook basin and along the Rahway River have long been waiting for and deserving the same benefits and protection against severe flood damage.

With the planning of these projects already completed, the authorization as provided by this bill will enable the Corps of Engineers to move into the construction stage within a few years. Before construction could begin, the corps would still need to complete the detailed designs for these projects. Thereafter, the corps would prepare the actual plans and specifications for construction and at the same time the local communities would acquire the necessary land easements and rights of way.

Mr. ROE. Mr. Speaker, I yield 1 minute to the gentleman from Indiana [Mr. VISCLOSKY].

Mr. VISCLOSKY. Mr. Speaker, I rise to strongly support the passage of H.R. 6, and to thank my colleagues for their diligence. I want to thank the gentleman from New Jersey [Mr. HOWARD]; I want to thank the gentleman from Kentucky [Mr. SNYDER], the gentleman from Minnesota [Mr. STANGELAND], and especially the gentleman from New Jersey [Mr. ROE].

Between the Clean Water Act, Superfund, and this bill, he has been patient and wise, diligent, and a gentleman throughout. It was a privilege to serve with him in my first term.

I urge passage of this bill.

Mr. STANGELAND. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. DELAY].

Mr. DELAY. Mr. Speaker, I rise in support of the conference report on H.R. 6.

Mr. Speaker, I would like to commend the Members on both sides of the aisle who worked so hard to make this important legislation a reality. As a new member of the Public Works and Transportation Committee this year, I have been very impressed by the legislative skill exhibited by its leadership. Congressmen HOWARD, SNYDER, ANDERSON, HAMMERSCHMIDT, ROE, and STANGELAND were among the Members whose work was essential to passing this legislation.

This bill has been a long time coming. The need has been great to improve, upgrade, and construct our inland and coastal navigation system and to construct and improve ports, navigation locks and dams on the Nation's 25,000-mile inland waterway system. The importance of these waterways to our Nation's commerce cannot be overstated.

In my own district, the Freeport Harbor project will have its funds freed up with passage of this bill. Freeport Harbor was one of the first federally funded water projects in which the local sponsors expressed interest in bearing a significant local share of the cost. The benefits of this project go far beyond local concerns. Not only is this project an integral and vital part of the future development and economic expansion in Brazoria County, but it will also boost the Nation's prospects for greater commerce by turning Freeport into one of the major ports along the gulf coast. In particular, shipping of petrochemicals at the jetty channel, which already carries 15 million tons of commerce annually, and shipping of produce will be vastly increased. Another important benefit of the project is reduced Federal maintenance and dredging cost and transportation cost savings that will result in about $6 in benefits for each $1 it costs.

Taking all of this into account, the Freeport project will be good for the area, good for the

State of Texas, and good for the Nation. I am proud to have this project and the people that have worked so hard to make it a reality in my district.

Mr. DAVIS. Mr. Speaker, I rise in support of the conference report on H.R. 6, a bill providing authorizations for various water projects—including the development of our Nation's ports.

As all of my colleagues are aware, this omnibus legislation has been years in the making. Countless water projects have been stalled for many years because of the lack of appropriate authorizing legislation. This legislation finally breaks through the barriers to provide the necessary authority to proceed with the development of our Nation's water resources.

The Merchant Marine and Fisheries Committee has been involved with this legislation from the very beginning. We have worked closely with our colleagues on the Public Works and Transportation Committee in crafting the very important provisions governing port development. In fact, it was legislation originally introduced and considered by the Merchant Marine and Fisheries Committee which began the process of port development. Our committee first considered this legislation several years ago and initially came up with many of the concepts that are now embodied in the port provisions of H.R. 6. In an effort to provide support for the water projects bill, our committee agreed with the leadership of the Public Works Committee to add the port provisions to the water resources bill. It is in that context that I am pleased to rise in support of the entire bill because of the port development provisions.

The key element is that for the first time there will be cost-sharing provisions—whereby non-Federal interests, desirous of dredging or otherwise modifying ports—will have to pay for part of the costs. In these times of our budgetary crisis, it is fitting and appropriate that the costs of these projects be shared by the local port authorities who are instituting the projects and paid for, in part, by fees levied by the local interests on the users of the ports. The specific section that provides local officials authority to levy fees against the users has been very carefully written. While it provides the ability to assess fees against the users, it stipulates that for deepening projects the fees may only be assessed against vessels that needed the deeper channels. For other projects, fees may only be assessed on vessels that are comparable in size to the vessels that prompted the port modification projects in the first place.

I also want to make note of some other provisions in this legislation that are of great concern to me and my district.

The Great Lakes region has been struggling for almost 2 years with rising water levels. Recent rainfall has only made this situation worse yet. Those of us who represent shoreline residents in the Great Lakes—and my congressional district borders three of the lakes—know that the level of the lakes is one of the most important issues we face now and into the foreseeable future. There are provisions in this bill which will help us to begin to take the long-term steps that are necessary to try to bring these levels down.

I am delighted that the conferees have included a provision which instructs the Secretary of the Army, working with appropriate Federal, State, and local agencies, to determine the extent of shoreline erosion damage due to the 1973 emergency regulation of the waters of Lake Superior by the International Joint Commission. This provision, which I have fought for since coming to Congress, will address the important issues surrounding the control of Lake Superior water levels through the gate on the St. Mary's River.

Another provision will begin a Federal investigation into how best to lower the Great Lakes levels. Perhaps we will need new diversions, or changes in outflows through existing structures. Also we will look at the need for increased Federal participation in shoreline erosion problems. While this again is a long-term project, it is vital in light of the expectation that the levels in the lakes will continue to go up.

Another provision of great importance to me is the one dealing with the economic revitalization of the Great Lakes and the establishment of the Great Lakes Marketing Board to develop a strategy to improve the capacity of the Great Lakes region to produce, market, and transport commodities. Those of us who have fought, and continue to fight, the idea of winter navigation on the Great Lakes will remember this provision as the compromise crafted in an effort to find a solution to the needs of farmers and others who produce commodities which need winter transportation. The Great Lakes region is a key area in terms of the international trade of U.S.-produced commodities and any effort to improve the competitive posture of goods coming from the central part of the country is of great importance to me and to all of us representing Great Lakes States.

I also want to express my approval and appreciation for the conferees including in this legislation the authorization for the construction of a second Poe-sized lock adjacent to the existing one at Sault Ste. Marie, MI. This new lock will replace two existing and older locks which need overhaul, and at the same time, provide an important improvement to the lock system which will allow modern lakes vessels easier access through the locks at Sault Ste. Marie. The new lock also will serve our national security needs by increasing the capacity through the locks in time of national emergency.

In conclusion, Mr. Speaker, I urge all of the Members to support this conference report.

Mr. VENTO. Mr. Speaker, I rise in support of this conference report on the Water Resources Act, H.R. 6, and am especially supportive of the cost-sharing provisions that have been crafted which recognize the concept of benefit to the local community and private sector from this measure.

The cost-sharing measures are generally a 25-percent local share which will help temper the enthusiasm for a free national Government project in an area and will test the degree of local support on a new basis. The billions spent on such water projects in the past would have been well-served by such cost-sharing provisions.

During the 97th Congress along with others concerned about this problem the gentleman from Pennsylvania [Mr. EDGAR] and I were instrumental in attaching cost-sharing provisions to the portions of the central Arizona project. I will remember the tough negotiations with the members from that State, including the chairman of the Interior Committee, MORRIS UDALL, well that started the process and the gentleman from Pennsylvania [Mr. EDGAR] has finally prevailed in writing the concept of cost sharing into the generic laws concerning water resources. The administration support for this concept and the recognition of the need for it were of course key, but they found a willing Member in myself and others in Congress who wanted to offer a positive alternative to the confrontation that has characterized water project appropriations on this House floor.

While I cannot testify to the wisdom of all the authorized projects in the measure before us to H.R. 6, I am satisfied that the five year limit for authorizations at which point they will lapse, according to this measure will ensure a renewed and intense scrutiny, with the best and most worthy, hopefully receiving appropriations, along with the cost-sharing support of the local and private sectors.

It is a significant accomplishment and we all look forward to a more orderly, objective efficient decisionmaking policy regarding water resource decisions. This is a milestone, a benchmark from which we can continue to meet the needs of our communities and Nation, and I commend all the Members that worked on this matter and cast my vote in its favor.

Mr. GALLO. Mr. Speaker, I rise today in support of H.R. 6, the Omnibus Water Resources Development Act, commonly known as the "Water Projects Bill." The product of 4 years of work, including months of conference negotiations, this landmark measure would authorize construction of hundreds of new Army Corps of Engineers water resources projects and require, for the first time, that the non-Federal beneficiaries of those projects pay a large part of the cost of the building, operating and maintaining them.

The conference report would authorize construction or study of 262 new Army Corps of Engineers water projects—41 port, 7 in land waterway, 113 flood control, 24 shoreline protection and 77 water resources conservation and development projects such as fish and wildlife mitigation works. The bill authorizes a total of $16.3 billion in spending, of which $12 billion would be paid by the Federal Government and $4.3 billion by non-Federal interests such as States, localities, port authorities and commercial navigation companies. The compromise accepts most of the House projects but requires substantial cost sharing requirements included in the Senate version.

The agreement would fundamentally restructure the way Federal river and harbor projects are financed by requiring non-Federal interests to pay a greater share of project costs. The new 10 percent to 50 percent cost-sharing rules in the conference report adhere closely to those backed by the administration and included in the Senate bill.

I am particularly pleased that this legislation includes a $50 million authorization for a Passaic basin flood buyout project. With a 25 per-

cent cost share, $62.5 million could be available for this important project.

Several projects in the conference report would receive only conditional authorization, such as the Pine Brook food control project that will receive only $400,000 in preconstruction costs, because they have not been all the way through the corps' review process. The bill makes their authorization contingent on completion of the reviews and a favorable recommendation to Congress by the Secretary of the Army.

Authorization in H.R. 6 only makes a project eligible for funding; the measure does not appropriate any money. In fact, it limits how much the corps can spend on construction in each of the next 5 years. Projects in H.R. 6 that do not receive construction funding in 5 years would be automatically deauthorized.

I do want to mention that I regret that the conferees dropped House provisions that would have established a new national water resources policy board and a Federal loan program for rehabilitation of aging municipal water supply systems. This action effectively killed House proposed loans to Morris County and Rockaway Township to improve their water supply systems. Although I regret that the conference reached this result, I am confident that the 100th Congress will revisit this issue next year.

Mr. Speaker, as the 99th Congress comes to an end, I am confident that the water projects bill will allow the Army Corps of Engineers to continue their vital role in developing plans to enhance, inland waterway, flood control, shoreline protection, conservation, cargo port projects. The State and residents of New Jersey will benefit greatly from this important legislative initiative.

Mr. MONTGOMERY. Mr. Speaker, I rise in support of H.R. 6. I agree with my other colleagues who have spoken here today. This legislation is a longtime coming and the fact that we have a conference report today is a tribute to the hard work of the chairman of the Subcommittee on Water Resources, Mr. ROE, and the ranking member, Mr. STANGELAND. I also want to commend the chairman of the full committee, Mr. HOWARD, and the ranking member, Mr. SYNDER, for their efforts to make H.R. 6 a reality.

I am especially thankful for the cooperation they showed to me in my work to get authorization for a flood control project in my hometown of Meridian, MS. A severe flood problem was found to exist along Sowashee Creek in Meridian. The flooding had damaged homes, businesses, public buildings, streets and utilities. This has caused severe financial hardship and personal hardship for the people in the area. It is great news to get this project approved and work under way to alleviate the problems.

Mr. Speaker, the flood control work authorized in this legislation for Sowashee will require a Federal share of $12.3 million and a local contribution of $5.2 million.

I urge a yes vote on the conference report.

Mr. BEVILL. Mr. Speaker, the recent storms in the central part of the country, from Texas through Oklahoma, Kansas, Arkansas, Missouri, Illinois, Indiana, Wisconsin and Michigan, as well as Montana, demonstrated how serious a problem flooding is over a large part of the United States. While much has been accomplished to prevent catastrophe in terms of flood control dams, levees, floodwalls and channel improvements, when the floods occur, it is often the heroic actions of the organizations and individuals that help avert a disaster in the face of nature's wrath.

Many dedicated employees of the Corps of Engineers worked around the clock in directing flood fights and in managing the flood flows. The individuals worked relentlessly to stay on top of this very extraordinary event. For example critical assistance was provided to State and local efforts under the corps Public Law 84-99 emergency flood fight authority. Nearly 300 corps personnel were involved in providing 24-hour-a-day flood fight assistance to well over 100 communities. This assistance included technical advice, emergency contracts, directing flood fight operations, loaning of pumps and visqueen and 2.5 million sandbags.

During the course of flooding, corps water control personnel worked around-the-clock for about 2 weeks. With limited manpower, they regulated projects to minimize flood damages for this unprecedented extraordinary sequence of storm events, which at many locations exceeded flood control volumes for which many of the reservoir projects were designed. Corps water control personnel continuously monitored rapidly changing conditions, and made exceptional on-the-spot reservoir regulation decisions in the face of intense rainfall over the basins, and uncertain forecasts. Because of these efforts Corps of Engineers projects prevented great losses. Estimated flood damages prevented by completed and operational projects are in the neighborhood of $1.4 billion. Had all the projects authorized, but not constructed been operational, an additional $132 million in damages could have been prevented. It is a tribute to the Corps of Engineers that the flood stage at Tulsa was reduced by 5½ feet. At Hermann on the Missouri River the record stage which was experienced would have been exceeded by 4 to 5 feet if not for the impounding of several million acre-feet of floodwaters in the Osage River basin projects.

Thus, we are reminded just how critical the water resources development program of the Corps of Engineers continues to be to the general well-being of our Nation's citizens. Thousands of additional people could have been spared the financial and emotional trauma associated with these major floods.

Mr. BIAGGI. Mr. Speaker, I rise in strong support of the conference report to accompany H.R. 6, the Water Resources Development Act of 1986. I commend the other conferees on the part of the House and Senate who labored long and arduously to reconcile the respective versions of this historic legislation.

In particular, I am gratified that the final version of what is now title II—harbor development—the Harbor Development and Navigation Improvement Act of 1986—codifies every major policy reform adopted and recommended by the House Merchant Marine and Fisheries Committee in legislation that I originally authored.

This process began with H.R. 4627—the only port development bill reported to the House in the 97th Congress.

It continued with H.R. 1512—subsequently incorporated in H.R. 3678, and passed overwhelmingly by the House in the 98th Congress.

It culminates today with H.R. 45—title II of H.R. 6 as approved by the conference committee.

Indeed, some of the key concepts embodied in this legislation, concerning port safety grants, have their origin in H.R. 362—the subject of committee hearings in the 94th Congress—and H.R. 2994—reported by the Merchant Marine Committee in the 95th Congress.

The principles contained in this legislation establish a coherent national policy on future port development in the United States. They constitute a magna carta of port development law. They represent the first major governmental reallocation of responsibilities for the conduct of navigation improvements in the Nation's ports and harbors since the adoption of one of the key compromises that led to the adoption of the Constitution. The substance of this agreement was the cession of State sovereignty over interests and foreign commerce.

The Federal Government was given the concomitant authority to levy duties of tonnage and customs duties in exchange for a commitment to promote and regulate commerce and undertake navigational improvements. In enacting this legislation, the Congress and the Executive expressly modify this constitutional agreement—a change necessitated by the political and fiscal realities of the age.

The following are the most important elements of this new compact between the Federal Government and the States, forged and tempered by the give and take of a political process spanning the last three Congress.

First, the Federal Government acknowledges and reaffirms its commitment to promote and regulate port development in the United States. The legislation for the first time defines the National Port System to include deep-draft, general cargo, and shallow harbors. It sets forth a national standard of depth—delineating special purpose deep-draft from general cargo ports consistent with prevailing international practice. The Federal Government will continue its commitment of resources to navigational improvements in proportion to channel depth—reflective of the relative contribution of those improvements to the promotion of international trade.

In addition, the Federal Government reaffirms its commitment to maintain at 100 percent Federal expense—except in the case of deep-draft ports where the maintenance costs are shared—the existing and approved extensions to the national port system. The Federal share will be financed through a first time levy of a uniform national fee on cargo passing through the ports maintained as part of the national system, and general fund appropriations.

Second, acknowledging the byzantine nature of the existing process, the Federal Government henceforth includes the States, operating through local ports, as full partners in port development. Under this new partnership agreement, the Federal Government formally recognizes the rights of local ports to

plan, finance, and construct navigational improvements with a minimum of Federal control and supervision.

Under this arrangement, local ports may, for the first time, undertake projects feasibility studies at local expense and submit those studies for Corps of Engineers approval. They may thereafter either undertake their own navigation improvements under corps approval and supervision—or rely on the corps to carry out those responsibilities on a reimbursable basis. Ports may seek congressional authorization of appropriations either in advance of, or as reimbursement of, the Federal share of project construction costs. In either event, as long as that project meets the corps' approval, it will be maintained af Federal expense.

The Federal Government acknowledges that the congressional and administrative review process involving the planning, financing, and conduct of navigational improvements has reached the point of requiring fundamental reform. It now consumes on the average 21.6 years from initiation of a project feasibility study to the initiation of project construction for the average port navigation project. I have said time and again in this reform effort that this is simply unconscionable.

The centerpiece of this legislation is the so-called "fast-track decisionmaking process"—encompassing all required Federal, State, and local approvals for port navigation projects. This includes the construction of federally approved main channels, access channels, berthing areas, and shoreside improvements—traditionally matters of local responsibility.

This one-stop consolidated approval approach to engineering, economic, and environmental decisionmaking for conventional port development is modeled after procedures in the Deepwater Port Act of 1974. It may be utilized by local ports—whether or not they eventually seek congressional authorization for local projects. It is intended to result in the implementation of an open, but not open-ended, decisionmaking process for port navigation projects.

Consistent with the adoption of local cost-sharing requirements for projects under this legislation, the measure also confers the consent of Congress upon local ports to levy port or harbor dues on vessels and cargo benefiting from port navigation projects constructed under this act.

I emphasize that this authority is intended to be exercised as one means by which local ports may discharge their requirements for local contribution to project construction costs, and operations and maintenance expenses imposed by the cost-sharing provisions of this legislation. By no means is this authority intended to be either the only manner in which those responsibilities may be discharged and cost recovered, or the sole authority under which local fees may be levied under the Constitution.

This authority does not contemplate the levy of tonnage duties—for which the consent of Congress separate and apart from this legislation is required. This is indicated since, under the conditions imposed on this authority, fees may not be levied for projects not completed—nor may they be levied strictly for the privilege of port entry, independent of the use of improved channels.

Therefore, each port must determine whether it will invoke this statutory authority and its procedural requirements and protections—or whether it will rely on independent authority in attempting to recover its costs associated with navigation improvements and port services.

Third, the Federal Government acknowledges the evolution of vague and sometimes arbitrary requirements for local contribution to navigation project construction. This legislation substitutes a formal, structured approval process for these previous ad hoc cost-sharing arrangements.

Under these formal cooperative arrangements, ports will assume proportionate responsibility for the cost of project construction—and, in some instances, project maintenance. They will be credited, for the first time, with the value of lands, easements, rights of way, and dredged material disposal areas they provide as part of the local share of project cost. In addition, for the first time, the contribution by local ports to project fish and wildlife mitigation is expressly recognized—and the associated cost will be shared between the Federal Government and local ports in the same ratio as project construction costs.

These policy reforms are historic and unprecedented. They demonstrate a renewed commitment by the Federal Government to the promotion of port development in the United States. I am proud to have initiated the reform process with hearings in the 94th Congress, which culminates in the consideration of this legislation today. That it so closely resembles my original concept is a testament to its validity and universal recognition of the need for port development reform.

Mr. UDALL. Mr. Speaker, the conference report on the Water Resources Conservation, Development and Infrastructure Improvement and Rehabilitation Act of 1986, H.R. 6, represents a reasonable compromise with the other body on the insular areas provisions which were included by the Committee on Interior and Insular Affairs. Three of the four provisions which were passed by the House and deleted by the Senate are included.

Improvements to the harbor at Saipan in the Northern Mariana Islands would be authorized. This $14 million project, reported on by the Corps of Engineers under the Omnibus Insular Areas Act of 1980, is vital to the economic development of the Commonwealth.

Improvements to the Commonwealth's water system would be reauthorized. The remaining amounts to be appropriated—perhaps as much as $12.3 million of the $15 million initially authorized by the Omnibus Insular Areas Act of 1984—are vital to the health of our fellow Americans there as well as the economic development of the newest member of the American political family.

A waiver of all cost-sharing requirements up to $200,000 for Corps of Engineers projects in American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands would be authorized. This clarifies the waiver of any matching requirements in all Federal programs authorized by a series of omnibus insular areas acts.

I hope that this will be the last time that the Congress needs to make such a clarification and that all agencies will implement the waiver as the Congress has reiterated so often it intends. To disgress for a moment, I note, for example, that Secretary Bowen is currently reviewing the Department of Health and Human Services' interpretation that the waiver does not apply to the Child Support Enforcement Program; I hope that he will recognize that this policy is contrary to congressional intent.

The waiver effectively requires the corps—and all other agencies—to add the waived amount to their contribution to a project's total cost. Because of this, agencies should allocate budgetary resources to the insular areas that are sufficient for necessary insular projects and programs.

The conference agreement does not authorize the Corps of Engineers to construct projects in insular areas which have a cost-benefit ratio of less than 1.0, a provision which was included in the House bill. Opposition from the Reagan administration and the other side of the Capitol compelled this compromise.

Corps officers recognize that flexibility in evaluating water resources projects in insular areas is warranted because the standards that are usually applied give inadequate weight to unique insular circumstances and needs. The bipartisan leadership of the Committee on Interior and Insular Affairs, therefore, intends that this problem be addressed in future legislation.

Members of the Committee on Interior and Insular Affairs were not conferees on another provision of the bill which originated in the committee but which was amended by the Committee on Ways and Means. The conference report amends the House-passed provision to provide an exemption for all of the insular areas from the new harbor use tax which the bill would levy for cargo shipped between the insular areas and the United States and within the insular areas.

Distant from supplies and markets and generally underdeveloped, the insular areas are far more dependent upon expensive ocean shipping and would be far more adversely impacted by a tax on cargo than other areas of the Nation. Most consumer and business goods and materials must be imported and most products must be exported in the case of the insular areas. Additionally, if a tax had been applied to them in most cases it probably would have to have been paid over to the insular governments since they generally receive the proceeds of Federal collections.

Finally, I would like to express my appreciation for the cooperation of the chairman of the Committee on Public Works and Transportation, JIM HOWARD, on the provisions of the bill affecting the U.S. insular areas. I also want to thank other leaders of that committee for their efforts on these provisions: BOB ROE; GENE SNYDER; and ARLAN STANGELAND. The chairman of the Committee on Ways and Means, DAN ROSTENKOWSKI, and our colleague from Hawaii, DAN AKAKA, have also been very helpful.

I must additionally recognize the work of the members of the Committee on Interior and Insular Affairs who are responsible for the insular areas provisions: conferees RON DE LUGO,

GEORGE MILLER, DON YOUNG, and DICK CHENEY; FOFO SUNIA, who along with RON DE LUGO is also a member of the Committee on Public Works and Transportation; the minority spokesman on insular issues, BOB LAGOMARSINO; as well as BEN BLAZ and JAIME FUSTER. The efforts of the Northern Mariana Islands representative in Washington, Froilan Tenorio, are also noted.

Mr. PERKINS. Mr. Speaker, it is with regret that I will be voting against this conference report. The House of Representatives has passed a good water bill on four separate occasions since 1976. The House Managers of this conference report have worked many years to reach this point. I intend no disrespect toward the House Managers because I am voting "no." Only during this Congress has the other body passed a water projects authorization bill and has been unable to pass a bill for the past 10 years.

H.R. 6 as passed by the House was acceptable to me and I supported it. This conference report, however, reflects the administration's policy. A policy which I adamantly oppose. In my opinion this reflection of administration policy and other outside groups makes this conference report unacceptable.

The administration policy reflected in this conference report makes this a rich man's bill. The provisions on cost sharing for flood control means very simply that working people and poor people will no longer be protected from flooding. Rich people do not live, as a general rule, in flood-prone areas because they can afford to live on the higher ground. It is the working people and the poor who are forced by cost to live in flood-prone areas. Poor communities and poor States will never be able to provide the cost sharing required under this bill. The policy reflected in this conference report condemns them to live in fear of floods. This administration policy violates the human rights of the poor and working people not only in my area, but throughout the Nation.

It is beyond my comprehension why the administration would pursue this policy of helping only the rich who will be able to come up with the necessary cost sharing. As we all know, this proposal has been actively promoted by various outside groups. When one understands the practical effects of this policy, one can only conclude that they have not a drop of the milk of human kindness in their souls.

I am also extremely concerned about the navigation portions of this bill. The port development and inland authorizations in this bill absolutely have to be done and I support them. The financing policy contained in this conference report, advocated by the current administration, is pennywise and pound-foolish. These activities promote the economic development of the United States. It has been a traditional function of our Nation to promote better transportation and where this has occurred, economic development has followed in almost every case. In the last century we promoted the development of ports and canals. This country was tied together by the railroads, financed by our Nation through the back door by giving land grants to railroad companies. Our Nation began development of navigation on our rivers, especially in this century.

We all know the tremendous tonnage which is carried on our major waterways, whether it is grain from the midwest, coal from Kentucky and West Virginia, or other bulk commodities.

Our Nation is suffering its greatest trade deficit in history and yet the financing mechanism for navigation projects will increase the cost of shipping goods on inland waterways and also to move goods out of our ports. It just makes no sense to me to increase these costs at this time.

An investment of these facilities is an investment in our Nation's economic future. The construction of such improvements in the past has proven in virtually every case to have stimulated economic activity through the affected regions. Much of this economic activity was never anticipated when the projects were constructed. In the late 1970's the Corps of Engineers went to several navigational projects which had been completed 10 or more years before. Using the original economic analysis they went back and determined what actual economic benefits had resulted from the completion of these projects. In case after case the actual benefits were 5 to 10 times what they were projected to be.

That is why I believe it is vital that these navigation improvements be made, but they are being financed in the wrong manner which, at a time of record trade deficits, will, I fear, inhibit our ability to compete in the world market.

The administration policy reflected in this conference report is wrong. Therefore, Mr. Speaker, I will vote against this conference report.

Mr. DAUB. Mr. Speaker, I appreciate this opportunity to rise in support of the conference agreement on H.R. 6, the Water Resources Conservation, Development, and Infrastructrue Improvement and Rehabilitation Act of 1985. This is certainly an important effort to improve this Nation's infrastructure, and I am especially pleased that the bill contains important projects located in Nebraska's Second Congressional District.

First, H.R. 6 includes language I authored directing the Army Corps of Engineers to proceed with the reevaluation report on the Papillion Creek and tributaries lakes flood control project. This reevaluation effort authorizes the 50-year channel proposal adopted by the Papio Watershed Coordinating Committee [PWCC]—a group I formed in 1981 in response to controversy over the flood control efforts in the Papio Basin—and deauthorizes features eliminated from the original authorization adopted in 1968.

Mr. Speaker, the modified Papio plan contemplated will save the Federal Government a substantial financial commitment in that the reevaluation is estimated to cost $7 million, while the original solution authorized in 1968 would have cost $120 million in terms of current prices. This authorization is truly as essential effort and duly rewards the hard work of the members of the PWCC and the Omaha Corps of Engineers.

Further, Mr. Speaker, I am most especially appreciative that this conference agreement on H.R. 6 includes an amendment I offered to the original House version of the bill to name Dam Site 20, which is a part of the Papio project, as Wehrspann Lake. This naming will honor Mr. Jerry R. Wehrspann, the director of the Papio Natural Resources District since its inception in 1972, who recently passed away. Mr. Wehrspann has been a driving force behind the Papio watershed project, and his devotion truly merits the naming of Dam Site 20 in his honor.

Another project included in H.R. 6 that I have advocated is that for emergency bank stabilization efforts necessary to protect structures of Elm Creek in the vicinity of Decatur, NE, at an estimated cost of $500,000. H.R. 6 includes the Elm Creek project in a new 5-year, $150 Million Bank Stabilization Program.

The Corps of Engineers has conducted field investigations along an 8-mile stretch of Elm Creek above Decatur; this investigation identified 17 sites as having erosion problems that are threatening houses, bridges, and culverts. The bank stabilization authorization will ameliorate these erosion problems and is certainly an important effort.

Finally, Mr. Speaker, H.R. 6 authorizes $50.5 million for the Missouri River Bank Stabilization and Navigation Project to mitigate fish and wildlife losses from Sioux City, IA to the mouth of the Missouri. This effort will mitigate losses of aquatic and terrestial habitat caused by development on the Missouri, and a number of areas in Nebraska's second Congressional District—14,000 acres in all—will benefit as a result.

Mrs. BOXER. Mr. Speaker, I would like to compliment Chairman BOB ROE on working out an appropriate means to fund the BART tube protection with the Water Resources conferees. This is an item in the Oakland Outer Harbor Project.

Congresman NORM MINETA successfully offered an amendment during House consideration of the water resources bill to make the tube protection a Federal responsibility. The Senate version of the bill contained no comparable provision.

The compromise struck under Mr. ROE's guidance reduces the obligation of the harbor project's local sponsor by $3.356 million below what should have been imposed under the Senate bill. The $3.356 million represents the cost necessary to protect the BART tube.

The conferees' decision is particularly critical because the project affects the integrity of the tube, which lies beneath the harbor channel bottom. The construction requires dredging over the tube. Moreover, the project once completed will result in a growth in harbor traffic. This in turn increases the possibility of a dragging anchor damaging the tube.

The existing protection over the tube will be inadequate once the project begins. The conferees' timely action provides assurance of the continuing safety of the tube. I applaud them for their action.

Mr. ALEXANDER. Mr. Speaker, I support flood control projects. I have supported flood control projects since I was old enough to know what the lack of them can mean to the people of First District of Arkansas. Having grown up experiencing and witnessing the threat to human life, to businesses and to industries posed by the flood waters of the Mississippi River and its tributaries like the St. Francis and the White, I can do no less.

But, today, I will vote reluctantly for the passage of the first omnibus water resources and flood control conference report brought before this House in more than a decade. I will vote for this conference report because it includes projects that can help First District in Arkansas.

At the same time, I must observe that with the insistence of the current Presidential administration and the assistance of the Republican-controlled Senate, this conference report is going to stop flood control progress in the Mississippi River and tributaries project. It is going to do that by overturning a wise policy that has protected the whole Nation for half a century.

In 1927, devastating floods rampaged over the lands along the lower Mississippi River and its tributaries. Ten years later, in 1937, even more destructive floods ravaged Arkansas and other States in the lower Mississippi River basin. If the only flood waters we in these States had to deal with were those from the reaches of rivers in our own States the threat would be serious enough.

That is not the case. The Mississippi River drains more than half the lands of our Nation. So, it is not the water draining from the lands in Arkansas and other lower Mississippi River valley States that threaten our lives and livelihood.

Half a century ago, Congress recognized this truth. That Congress determined that it was in the best interest of the Nation that the Federal Government pay the full cost of flood control in the Mississippi River and tributaries project. Since that time, Congress after Congress has reaffirmed the wisdom of that decision. And, when the House passed this bill almost a year ago, the House voted to continue this policy. The Senate version of the bill did not continue the policy. And, in the conference negotiations, the Presidential administration and Republican-leadership in the Senate won.

Today, I will vote for the passage of the conference report on the water resources bill because it has flood control projects that are needed in First District of Arkansas which I represent. I hope, though, that in the future wisdom will prevail with the majority of the Congress and we will return to the full Federal cost policy on the Mississippi River and Tributaries project.

Mr. DELLUMS. Mr. Speaker, I would like to compliment Chairman BOB ROE on working out an appropriate means to fund the BART tube protection with the Water Resources conferees. This is an item in the Oakland Outer Harbor project.

Congressman NORM MINETA successfully offered an amendment during House consideration of the water resources bill to make the tube protection a Federal responsibility. The Senate version of the bill contained no comparable provision.

The compromise struck under Mr. ROE's guidance reduces the obligation of the harbor project's local sponsor by $3.356 million below what should have been imposed under the Senate bill.

Mr. Speaker, I am submitting for the RECORD a table comparing the Senate treatment of the funding and the final conference resolution of the issue.

Costs to local sponsor	Senate	Conference
25 percent of General Navigation Facilities (GNF)	$10,025,000	$10,035,000
BART tube armoring	3,356,000	3,356,000
Berthing	2,403,000	2,403,000
10 percent of General Navigation Facilities (30 year note)	4,014,000	659,000
Total	19,808,000	16,452,000
Costs to Federal Government 65 percent of GNF	26,092,000	29,448,000

Mrs. ROUKEMA. Mr. Speaker, I wish to commend my colleagues for their efforts in bringing this landmark legislation to the point where it can be passed by the House. It has been over 10 years since Congress has been able to enact an omnibus water resources bill, and many necessary projects have been unduly delayed while awaiting authorization of funds. Now, however, with the inclusion of needed cost-sharing reforms, passage of an omnibus water bill is possible. Final enactment of this legislation will be an important milestone in our efforts to control devastating floods in northern New Jersey, and throughout the Nation.

Because of the Herculean efforts of the conference, this bill will authorize projects of critical importance to the people of my district who suffer from regular flooding damage. The conference agreement will authorize the expenditure of $8 million for silt and stump removal at Greenwood Lake and Belcher Creek, $4.3 million for a flood control project along the Ramapo and Mahwah Rivers in Mahwah and Suffern, NY, and $4.5 million for flood control efforts along the Ramapo River in Oakland, Pompton Lakes, and Wayne. The bill also includes a $50 million home buyout provision for homes in the Passaic River Basin, for which some residents of Oakland will be eligible.

Once again, I commend my colleagues in Congress, and especially Chairman BOB ROE of the House Subcommittee on Public Works, for their tireless efforts on behalf of the people of northern New Jersey. I am hopeful that the other body will act swiftly on this legislation, and that the President will sign it into law without delay.

Mr. ROE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. STANGELAND. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. ROE. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BROWN of Colorado. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 329, nays 11, answered voting 92, as follows:

[Roll No. 488]

YEAS—329

Abercrombie	English	Markey
Akaka	Erdreich	Marlenee
Anderson	Evans (IA)	Martin (IL)
Andrews	Evans (IL)	Martin (NY)
Annunzio	Fascell	Martinez
Anthony	Fazio	Matsui
Applegate	Feighan	Mavroules
AuCoin	Fiedler	Mazzoli
Badham	Fields	McCandless
Barnard	Fish	McCloskey
Barnes	Flippo	McCollum
Bartlett	Florio	McDade
Barton	Foley	McEwen
Bateman	Ford (MI)	McHugh
Bates	Ford (TN)	McKernan
Bedell	Frank	McKinney
Beilenson	Frenzel	McMillan
Bennett	Frost	Meyers
Bentley	Fuqua	Mica
Bereuter	Gallo	Michel
Bevill	Gejdenson	Mikulski
Bliley	Gekas	Miller (OH)
Boehlert	Gibbons	Miller (WA)
Boggs	Gilman	Molinari
Boland	Gingrich	Mollohan
Boner (TN)	Glickman	Monson
Bonior (MI)	Gonzalez	Moody
Bonker	Goodling	Moorhead
Borski	Gordon	Morrison (CT)
Bosco	Gray (IL)	Morrison (WA)
Boucher	Gray (PA)	Mrazek
Boulter	Green	Murphy
Bruce	Guarini	Murtha
Bryant	Gunderson	Natcher
Bustamante	Hall (OH)	Neal
Byron	Hall, Ralph	Nelson
Callahan	Hamilton	Nielson
Carney	Hammerschmidt	Nowak
Carper	Hendon	Oakar
Carr	Hertel	Oberstar
Chandler	Hiler	Obey
Chappell	Holt	Olin
Chappie	Hopkins	Ortiz
Cheney	Horton	Packard
Clinger	Howard	Parris
Cobey	Hoyer	Pashayan
Coble	Hubbard	Pease
Coelho	Huckaby	Penny
Coleman (MO)	Hunter	Pepper
Coleman (TX)	Hyde	Petri
Collins	Ireland	Porter
Combest	Jeffords	Price
Conte	Jenkins	Pursell
Cooper	Johnson	Rahall
Coughlin	Jones (NC)	Rangel
Courter	Kanjorski	Ray
Coyne	Kasich	Regula
Dannemeyer	Kastenmeier	Reid
Darden	Kemp	Ridge
Daschle	Kennelly	Rinaldo
Daub	Kildee	Ritter
Davis	Kindness	Roberts
DeLay	Kleczka	Robinson
Dellums	Kolter	Rodino
Derrick	Kostmayer	Roe
DeWine	Kramer	Roemer
Dicks	Lagomarsino	Rogers
Dingell	Lantos	Roth
DioGuardi	Latta	Roukema
Dixon	Leach (IA)	Rowland (CT)
Donnelly	Lehman (CA)	Rowland (GA)
Dorgan (ND)	Lehman (FL)	Roybal
Dornan (CA)	Leland	Sabo
Dowdy	Levin (MI)	Saxton
Downey	Levine (CA)	Schaefer
Dreier	Lewis (CA)	Scheuer
Duncan	Lewis (FL)	Schneider
Durbin	Lightfoot	Schuette
Dwyer	Livingston	Schulze
Dymally	Lloyd	Seiberling
Dyson	Long	Sensenbrenner
Early	Lowery (CA)	Sharp
Eckart (OH)	Lowry (WA)	Shaw
Eckert (NY)	Luken	Shelby
Edgar	Lungren	Shumway
Edwards (CA)	MacKay	Shuster
Edwards (OK)	Madigan	Sikorski
Emerson	Manton	Sisisky

Skeen	Strang	Walgren
Skelton	Stratton	Watkins
Slattery	Stump	Waxman
Slaughter	Sundquist	Weber
Smith (FL)	Sweeney	Wheat
Smith (IA)	Swift	Whitehurst
Smith (NE)	Swindall	Whitley
Smith (NJ)	Synar	Whittaker
Smith, Denny (OR)	Tallon	Whitten
	Tauke	Williams
Smith, Robert (NH)	Tauzin	Wirth
	Taylor	Wise
Smith, Robert (OR)	Thomas (CA)	Wolf
	Thomas (GA)	Wolpe
Snowe	Torres	Wortley
Snyder	Towns	Wyden
Spence	Traficant	Wylie
Staggers	Udall	Yates
Stallings	Valentine	Yatron
Stangeland	Vander Jagt	Young (AK)
Stark	Vento	Young (MO)
Stenholm	Visclosky	Zschau
Stokes	Vucanovich	

NAYS—11

Armey	Franklin	Perkins
Brown (CO)	Jacobs	Solomon
Crane	Jones (TN)	Walker
Fawell	Mack	

NOT VOTING—92

Ackerman	Gregg	Moore
Alexander	Grotberg	Myers
Archer	Hansen	Nichols
Aspin	Hartnett	Owens
Atkins	Hatcher	Oxley
Berman	Hawkins	Panetta
Biaggi	Hayes	Pickle
Bilirakis	Hefner	Quillen
Boxer	Henry	Richardson
Breaux	Hillis	Rose
Brooks	Hughes	Rostenkowski
Broomfield	Hutto	Rudd
Brown (CA)	Jones (OK)	Russo
Burton (CA)	Kaptur	Savage
Burton (IN)	Kolbe	Schroeder
Campbell	LaFalce	Schumer
Chapman	Leath (TX)	Siljander
Clay	Lent	Solarz
Coats	Lipinski	Spratt
Conyers	Loeffler	St Germain
Craig	Lott	Studds
Crockett	Lujan	Torricelli
Daniel	Lundine	Traxler
de la Garza	McCain	Volkmer
Dickinson	McCurdy	Waldon
Foglietta	McGrath	Weaver
Fowler	Miller (CA)	Weiss
Garcia	Mineta	Wilson
Gaydos	Mitchell	Wright
Gephardt	Moakley	Young (FL)
Gradison	Montgomery	

□ 1930

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ROE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous material, on the conference report just agreed to.

The SPEAKER pro tempore (Mr. DONNELLY). Is there objection to the request of the gentleman from New Jersey?

There was no objection.

□ 1945

LEGISLATIVE PROGRAM

(Mr. FOLEY asked and was given permission to address the House for 1 minute.)

Mr. FOLEY. Mr. Speaker, I take this time to advise the Members that we have completed most of the legislative business for the House, but the other body has not yet adopted the reconciliation bill together with the debt ceiling extension, and it will be necessary for the House to stand ready to consider that legislation further in the unfortunate event that the Senate should not accept it.

There may be a consideration in the other body of the question of the debt ceiling extension as extraneous matter, which would require a separate vote of 60 votes in the other body, and in the event that that is not achieved, we would have to proceed to consider a debt ceiling extension again in the House.

So I regret to inform the Members that following our legislative business we may have to ask unanimous consent that the House stand in recess until a time certain or until we receive information from the Senate that they have completed this important and necessary legislation.

I make this statement so that Members are not of the impression that following the proceedings that we are about to commence that it will be possible to leave with the assurance that there will be no further votes. That assurance cannot be given for the moment, and indeed it is possible—unlikely, I hope, but very possible—that the House will be asked to consider further essential legislation later this evening.

PROVIDING FOR THE CONVENING OF THE 100TH CONGRESS

Mr. FOLEY. Mr. Speaker, I offer a joint resolution (H.J. Res. 755) providing for the convening of the first session of the 100th Congress, and ask unanimous consent for its immediate consideration.

The SPEAKER. The Clerk will report the joint resolution.

The Clerk read the joint resolution, as follows:

H.J. RES. 755

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the first regular session of the One Hundredth Congress shall begin at 12 o'clock meridian on Tuesday, January 6, 1987.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

There was no objection.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

PROVIDING FOR ADJOURNMENT SINE DIE OF THE 99TH CONGRESS ON FRIDAY, OCTOBER 17, 1986, OR ON SATURDAY, OCTOBER 18, 1986

Mr. FOLEY. Mr. Speaker, I offer a privileged concurrent resolution (H. Con. Res. 417) and ask for its immediate consideration.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 417

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on Friday, October 17, 1986, or on Saturday, October 18, 1986, pursuant to a motion made by the majority leader or his designee, and that when the Senate adjourns on Friday, October 17, 1986, or on Saturday, October 18, 1986, pursuant to a motion made by the majority leader or his designee, they stand adjourned sine die.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

PROVIDING FOR PRINTING OF RULES AND MANUAL OF THE HOUSE OF REPRESENTATIVES FOR 100TH CONGRESS

Mr. FOLEY. Mr. Speaker, I offer a privileged resolution (H. Res. 600) and ask for its immediate consideration.

The SPEAKER. The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 600

Resolved, That a revised edition of the Rules and Manual of the House of Representatives for the One Hundredth Congress be printed as a House document, and that two thousand additional copies shall be printed and bound for the use of the House of Representatives, of which seven hundred copies shall be bound in leather with thumb index and delivered as may be directed by the Parliamentarian of the House for distribution to officers and Members of Congress.

The resolution was agreed to.

A motion to reconsider was laid on the table.

APPOINTMENT AS MEMBERS OF COMMITTEE TO NOTIFY THE PRESIDENT OF THE UNITED STATES THAT THE TWO HOUSES HAVE COMPLETED THEIR BUSINESS AND ARE READY TO ADJOURN

Mr. FOLEY. Mr. Speaker, I offer a privileged resolution (H. Res. 601) and ask for its immediate consideration.

The SPEAKER. The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 601

Resolved, That a committee of two Members be appointed by the House to join a similar committee appointed by the Senate, to wait upon the President of the United States and inform him that the two Houses have completed their business of the session and are ready to adjourn, unless the President has some other communication to make to them.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER. The Chair appoints as members on the part of the House of the committee to notify the President of the United States the gentleman from Washington [Mr. FOLEY] and the gentleman from Illinois [Mr. MICHEL].

A TRIBUTE TO THE HONORABLE THOMAS P. O'NEILL, JR., SPEAKER OF THE HOUSE

(Mr. MICHEL assumed the chair.)

Mr. MICHEL (presiding). The Chair sincerely thanks the acknowledge of the House, and the Chair especially relishes the opportunity to first turn to his left to ask if the gentleman from Massachusetts wants to be recognized.

RESOLUTION OF THANKS AND BEST WISHES TO THE HONORABLE THOMAS P. O'NEILL, JR., SPEAKER OF THE HOUSE, UPON HIS RETIREMENT

Mr. CONTE. Mr. Speaker, I offer a resolution (H. Res. 602) and ask unanimous consent for its immediate consideration.

The SPEAKER pro tempore. The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 602

Resolved, That the thanks of the House are presented to the Honorable Thomas P. O'Neill, Jr., Speaker of the House of Representatives during the 95th through the 99th Congresses, for the able and impartial manner in which he has presided over its deliberations and performed the arduous duties of the Chair during his tenure as Speaker; and be it further

Resolved, That the House of Representatives hereby extends to its Speaker, who has served continuously in that position longer than any of his predecessors, sincere wishes for a richly deserved and fulfilling retirement, blessed by good health, enriched by the love of his family, and warmed by the enduring friendship of his colleagues and associates in the House.

Mr. MICHEL (presiding). The Chair recognizes the gentleman from Massachusetts [Mr. CONTE].

Mr. CONTE. Mr. Speaker, I know about the Speaker's feelings that we are not to have a long dissertation this evening about the Speaker; we did it the other night. All I can say is, "Old pal, we love you, and we miss you, and you'll always be the Speaker of the House as far as I'm concerned."

□ 1955

Mr. Speaker, I yield to the gentleman from Washington [Mr. FOLEY] the majority leader.

Mr. FOLEY. Mr. Speaker, I thank the gentleman from Massachusetts.

Mr. Speaker, I know, as the gentleman from Masachusetts has said, the Speaker does not want a long ceremony tonight or anything that resembles a special order. But all of us on both sides of the aisle sense that this is a truly historic occasion in the House.

We have had, as was said once before recently, many precedents on how to elect a Speaker. We have few precedents on how to retire a Speaker, but perhaps that is just as well because I do not believe that we are going to retire a Speaker as TIP O'NEILL leaves this House, because as the gentleman from Massachusetts says, it is always going to be his House. He is always going to be welcome here in its corridors, in its Cloakrooms and on the floor and in the Speaker's lobby.

He has spent his life in the legislatures of Massachusetts and the Congress of the United States. He has attained the distinction of being for 16 years a member of the General Court of Massachusetts, the great General Court of Massachusetts, and for the last 4 years its first Democratic Speaker, and he has served longer as Speaker of this House than any other Speaker in our history in continuous service.

He has done so many things that each of us can think of and recall as making a great contribution to our work and our service here personally. But if I can just select one, in making the speakership a truly national office, in making its role international in importance and stature as it will always be in the precedence of our country, he has never changed personally. He has enlarged the speakership, but it has not changed him.

For those who have known TIP O'NEILL over the years of service from the most senior to the most junior, he is the same person that came here to serve year after year. He has maintained the openness, the willingness to greet and be a friend to all Members of both parties, and a willingness to hear a grievance or a complaint or a concern as a warm, human, wonderful man that has represented the Eighth Congressional District of Massachusetts for so many years.

So we do not bid goodbye, we say thank you, and we look forward to your continued counsel, advice, loyalty, freindship, affection in the years to come. And to you and your great lady, Millie, who has been the first lady of this House, we all send our continued affection, respect, and admiration.

Mr. Speaker, I am going to ask if the gentleman from Massachusetts [Mr. CONTE] will yield to the distinguished dean of the House, the gentleman from Mississippi [Mr. WHITTEN].

Mr. CONTE. I yield to the senior Member of the House of Representatives, the gentleman from Mississippi [Mr. WHITTEN], chairman of the Committee on Appropriations.

Mr. WHITTEN. Mr. Speaker, I rise to pay tribute to our Speaker, TIP O'NEILL. I have had the privilege of serving with the Speaker during his service here. He arrived here 32 years ago with a sense of care for people for which the Government was set up to serve. He has never lost that feeling.

During his service here he demonstrated his qualities to be a Speaker. Not regional, available to all, a good listener, he has kept himself available to all—yet he has remained Mr. Speaker.

The country has not realized how much help he has been to every region and every section. The entire country has profited from his assistance.

I served with Speakers Sam Rayburn, Joe Martin, John McCormack, and Carl Albert. Each was good in his own day and time, and Sam Rayburn was great.

Yet I truly believe for his day and time TIP O'NEILL has done better than any of them could have done.

Mr. Speaker O'NEILL, we wish you many happy years and trust we will see you often.

Mr. FOLEY. Mr. Speaker, I would ask the gentleman from Massachusetts [Mr. CONTE] to yield to the gentleman from Massachusetts [Mr. BOLAND].

Mr. CONTE. Mr. Speaker, I am glad to yield to the gentleman from Massachusetts [Mr. BOLAND].

Mr. BOLAND. Mr. Leader and my colleagues, I sense a feeling of sadness here, but it really is a sense of sadness I think filled with joy in the sense that there is a deep respect for the man that we honor in this rather unique meeting of this legislative body.

This is the end of a unique, a successful, yea, a brilliant legislative career. As the majority whip has said, the Massachusetts Legislature from 1936 to 1952, minority leader of that body from 1947 to 1948, speaker of that body in 1948 to 1952, the first Democratic speaker in the history of that great body, and then in the 83d Congress, 34 years ago, majority whip in the 92d Congress, majority leader in the 93d Congress and 94th Congress, and Speaker 10 years, from the 95th through the 99th Congress.

His 10 years as Speaker has defined that office certainly for the rest of the century.

He has become one of the most recognizable figures in America, and in the process has given to the office of the Speaker a degree of influence outside of this Chamber that rivals the

influence of past Speakers like Clay, Reed, Cannon, Rayburn, and McCormack, the kind of influence they enjoyed within it.

Speaker O'NEILL loves his politics and he loves his party. But beyond that, beyond these, he loves his country.

So, he has recognized that a line exists between the Speaker's role and his role as chief officer of this House.

I think that when the Members of the House remember TIP in the years to come they will recall the essential humanity that he brought to this office and to his profession.

Mr. Speaker, the title fits you well, TIP, and the manner in which you did your job add to it stature. You leave to your successor an office enriched by the example of a man who loved his country and this House, and who sought to summon each to do great things, and they did.

Mr. FOLEY. Mr. Speaker, I would ask the gentleman from Massachusetts [Mr. CONTE] to yield to the gentleman from Pennsylvania [Mr. MURTHA].

Mr. CONTE. Mr. Speaker, I am pleased to yield to the gentleman from Pennsylvania [Mr. MURTHA].

Mr. MURTHA. Mr. Speaker, usually when I address the Speaker, it is for a unanimous-consent request. This time it is to offer an Irish blessing:

AN IRISH BLESSING

May the road rise to meet you
May the wind be always at your back
May the sun shine warm upon your face
The rains fall soft upon your fields
Until we meet again
May God hold you in the palm of
His hand

Mr. MICHEL (presiding). I would ask that the distinguished gentleman from Washington [Mr. FOLEY] assume the chair.

Mr. CONTE. Mr. Speaker, I yield to my good friend, the gentleman from Illinois [Mr. MICHEL] the minority leader.

Mr. MICHEL. Mr. Speaker, I said earlier in the day during the course of the debate that this Congress had begun on a very cantankerous, partisan note, and I was happy that at the time we were debating the piece of legislation that we seemed to have that conciliatory sense about us as we came to the conclusion of this Congress. And I have seen some times when we have just been at it hammer and tongs during the closing moments of a Congress, and then you go away feeling bad about it.

But there is a good feeling that I have this evening as we draw this Congress to a conclusion and we see the conciliatory attitudes that have been expressed on both sides of the aisle. And then for this particular occasion when we bid farewell to our Speaker for those many distinguished years of service.

□ 2005

Before doing so, there is one gentleman missing, and maybe I am partially responsible for his not being here to express the very eloquent thoughts that I am sure he would have expressed if he were here; and that is the distinguished majority leader, JIM WRIGHT.

He had a commitment in his home district, in Texas. He was not aware that we could really put it all together so good today to come to this point and adjourn at this hour, thinking we would probably be here tomorrow, or maybe into next week. Those are some of the things you cannot predict on occasion in this House of Representatives.

I know, Mr. Speaker, and I am sure Members are aware that if he were here, he would have some very beautiful, eloquent things to say about our Speaker on this occasion.

The Speaker came to this House on January 3, 1953, and he cast his vote for Sam Rayburn for Speaker; but Republican Joe Martin won, 220 to 201. Twenty-four years later, after his first day in the House, TIP O'NEILL stood where Joe Martin had stood, having himself been elected Speaker of the House of Representatives, and in his first speech to this House on January 4, 1977, Speaker TIP O'NEILL said, "This House is greater than any of us. Its greatness is the product of 435 human beings collectively contending with extraordinary problems.

Mr. Speaker, you are leaving us, but we will go on collectively contending with extraordinary problems, trying to grow in our ability to render service and our knowledge of Government. Your contributions to that process brought you to the highest position of honor your colleagues can bestow.

As a colleague, I have admired your dedication to this institution and our country. As a political opponent, I have been more than willing to participate with you in the clash of principles, values, and yes, egos that go into making legislation in a democracy.

We have disagreed on policies, misunderstood each other from time to time and understood each other all too well on other occasions; but no matter what we agreed or disagreed on, we each understood that the other was speaking from his heart, with dedication to a set of principles the other may not share, but with love of country that we both held dear.

History will judge which one of us was right and which one was wrong on issue after issue; but as I said the other evening when we had that very beautiful ceremony right here in this Chamber, you have been an opponent who stuck to his principles.

So, Mr. Speaker, I honor you for that and for your service to this institution that we both love so very, very much. Thank you.

The SPEAKER pro tempore (Mr. FOLEY). Without objection, the previous question is ordered on the resolution.

There was no objection.

The SPEAKER pro tempore. The question is on the resolution.

The resolution was agreed to.

The SPEAKER pro tempore. The Chair declares the resolution unanimously adopted. A motion to reconsider was laid on the table.

FAREWELL ADDRESS OF THE HONORABLE THOMAS P. O'NEILL, JR., SPEAKER OF THE HOUSE

The SPEAKER pro tempore. The Chair requests the Honorable Speaker of the House to resume the chair and receive the respect and admiration of the House.

[Applause, the Members rising.]

The SPEAKER. Thank you.

Mr. MICHEL. Mr. Speaker, will you allow me to make just one observation?

The SPEAKER. The Chair recognizes the gentleman from Illinois.

Mr. MICHEL. Mr. Speaker, as we are often given to forgetting things, I neglected at the very outset to thank you for giving me that brief interlude on the chair.

The SPEAKER. I asked the Parliamentarian if it is permissible that I may speak out of order.

A couple of things happened, very interestingly, tonight. We had a meeting in the Speaker's office of the leadership in the House on both sides of the aisle, and the leadership in the Senate from both sides of the aisle, and we pretty well determined what the schedule of the evening would be; and as TOM FOLEY has expressed, I said, "TOM, I thought I would stay around for a while and come in in the morning and would adjourn the House then, so you just take over. I never realized that something of this nature was going to happen."

While I am always kind of embarrassed when accolades come in my direction, °I want you to know that I guess down deep in my memories it will be a night that I will never forget. How grateful I am to all of you and for the resolution.

BOB and I have a standing joke—BOB has always had his eye on the Speaker's chair. I said, "BOB, tonight you're going to have more than your eye on the Speaker's chair."

It is only a few nights ago, it seems as though, that the Members had a special tribute to me and to my Millie, for which my family was present. It was a great night, but I never anticipated this tonight, to be perfectly truthful.

I have so many dear friends out there: SIL CONTE, my Millie and I have

loved SIL and his Corinne, and we have been such close friends; EDDIE BOLAND and his Mary, Millie and I love them both. And you know EDDIE and I lived together for 25 years. I have served with all of the Republican leaders, from Jerry Ford, whom I served with, to John Rhodes, to BOB MICHEL.

We have all been close social friends, although philosophically we have opposed each other. You know, that is one of the things that I am proud of. I have traveled the world, and come back and you know the newspapers make so much fun out of "junkets" and names like that—that is what they call them; but I always feel that we do a lot of good when we are traveling: We get down to the tough questions in minutes that it takes diplomats to get down to in a month.

If you go to any country, any country in Europe, the majority sits on one side and the minority sits on the another side and they do not speak to each other; and they are amazed that my Millie and Corinne will be sitting there, chatting so friendly, or BOB and I will be sitting there, friendly; or that the Democrats are talking to the Republicans. They just do not understand it.

That is the way a democracy should be. There should be no rancor or hatred for anybody. It is the love of ideas: my ideas are different from yours and your ideas are different from mine, but we respect each other for it, and that is what makes a democracy great.

Fifty years ago I ran for public office and was elected to the State legislature. I never, never expected it would be a career as long as this. I had a little real estate and insurance office in Harvard Square when I got involved in elected office. And after 12 years in the legislature, at the age of 35 when I was elected by my party as the first democratic speaker, suddenly I could really do things. And I appreciated, oh so much, when I went into public life what the Nation was all about.

I have given this talk many times. You hear talk about the "good old days"; there is no such thing as the good old days.

I was going by Matignon High School up in North Cambridge not too long ago, and I said to one of my children, "That's where the alms house was, the poor farm, when I was a kid." "You've got to be kidding, Daddy. Never heard of such a thing."

Fifty years ago if a family could not take care of somebody, the community had a poor house or an alms house.

Your father, he worked 6 days a week. What was life all about? What life was all about was the family, the family. Being together, a roof over your head, a house to keep you warm, food and sustenance, your children to have a better education than you have. In the twilight of their lives that the parents would have a health program, that there would be no alms house.

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Your father worked, as I say, 6 days a week, you saw him on Sunday. What was life all about? What life was all about was being with the family; no recreation or things of that nature.

In 50 years I have seen a change, and I have seen a change because the American people wanted the change. And how did the change come about? Because every President of the United States, Democrat or Republican, and every legislator, Democrat or Republican, yielded to the will of the American people and that change came. We had the great laws, Social Security, Medicare, the G.I. Bill. We educated millions of Americans under that bill. Education made this Nation great.

But in 50 years I have seen so much. My first years in Congress I remember EDDIE BOLAND and I went out to Yucca Flats, Frenchman Flats, and we saw five different atom bomb explosions. They were mere fuses that we were seeing, yet they were larger than had been exploded at Nagasaki and Hiroshima. I have been against nuclear from that day. What a weapon. Yet it is a thousand times bigger today and could destroy the world.

I have seen this Nation in three wars. I have seen the change of this Nation, and I have seen it all because we respond in our own particular way to the will of the American people.

I think it hit me probably 48 hours ago when some of the Members started coming in to have their pictures taken, and they had their children with them. I had Republican Members come into my office whom I hardly knew. I may have just known their name. I know my own Members and probably half of you very closely on the other side. I know there is a love and affection out there.

Let me say this to you after 50 years in public life—this is the greatest country in the history of the world, we are the leaders of the world, this is the greatest legislative body in the world. We will always be great as long as we recognize the rights of one another across the aisle, as long as we respect each other for our thoughts, ideas, philosophies and as long as we respect those who disagree. This Nation is great. Why is it great? Because we are the voice of the American people and we respond to their will.

I leave with no rancor in my heart for anybody. I leave with tremendous love and affection for this great body. I will always be a man of the House of Representatives but always, first, I am an A:nerican and so proud of this body.

Thank you. I love you all.

LEGISLATIVE PROGRAM

The Speaker pro tempore. (Mr. WHITTEN). The Chair recognizes the gentleman from Washington, Mr. FOLEY.

Mr. FOLEY. Mr. Speaker, it is my duty to inform the House that the other body intends to send to us some additional legislation, and it will be our intention to have the final session of the House tomorrow.

The other body intends to send to us the NASA reauthorization bill; Export Administration; a tariff bill; immigration bills, plural, Indian bills, plural, and the Federal Savings and Loan Insurance Corporation Act.

So it will be our intention in a few moments to conclude legislation for this evening to proceed to the special orders of the House.

AUTHORIZING FILING AND PRINTING OF COMMITTEE REPORTS FOLLOWING SINE DIE ADJOURNMENT

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that reports may be filed with the Clerk, following the sine die adjournment, by committees authorized by the House to conduct investigations, and on committee activities pursuant to clause 1(d), rule XI, and may be printed by the Clerk, as reports of the 99th Congress.

The Speaker pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

AUTHORIZING EXTENSION AND REVISION OF MEMBERS REMARKS IN CONGRESSIONAL RECORD FOLLOWING SINE DIE ADJOURNMENT

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that all Members of the House shall have the privilege, until the last edition authorized by the Joint Committee on Printing is published, to extend and revised their own remarks in the CONGRESSIONAL RECORD on more than one subject, if they so desire, and may also include therein such short quotations as may be necessary to explain or complete such extensions of remarks, but this order shall not apply to any subject matter which may have occurred, or to any speech delivered subsequent to the adjournment of Congress.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

ANNOUNCEMENT BY THE ACTING MAJORITY LEADER

Mr. FOLEY. Mr. Speaker, it will be our intention when the House adjourns tonight to adjourn to 10 a.m. tomorrow.

CORRECTING ERRORS IN ENROLLMENT OF H.R. 5300, OMNIBUS BUDGET RECONCILIATION ACT OF 1986

Mr. FLIPPO. Mr. Speaker, I call up a concurrent resolution (H. Con. Res 416) to correct technical errors in the enrollment of the bill H.R. 5300, and ask unanimous consent for its immediate consideration.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

Mr. FRENZEL. Mr. Speaker, reserving the right to object, I yield to the distinguished gentleman from Alabama [Mr. FLIPPO] for an explanation.

Mr. FLIPPO. I thank the gentleman for yielding.

Mr. Speaker, this concurrent resolution simply corrects a technical error relating to the funding of the Alzheimer's demonstrations.

Mr. FRENZEL. Further reserving the right to object, I concur with the gentleman. Without this, we will not be able to go forward with the Alzheimer's program.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. MURTHA). Is there objection to the request of the gentleman from Alabama?

There was no objection.

The Clerk read the concurrent resolution as follows:

H. CON. RES. 416

Resolved by the House of Repesentatives (the Senate concurring), That, in the enrollment of the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987, the Clerk of the House of Representatives shall insert at the end of section 8081 of the bill the following: Paragraph (3) shall not apply to the authorization made by section 9342(f) of this Act.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

MILITARY LANDS WITHDRAWAL ACT OF 1985

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that the Committee on Interior and Insular Affairs and the Committee on Armed Services be discharged from further consideration of the bill (H.R. 1790) to withdraw certain public lands for military purposes, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. YOUNG of Alaska. Mr. Speaker, reserving the right to object, and I shall not object, I yield to the gentleman from Ohio [Mr. SEIBERLING] to explain the bill.

Mr. SEIBERLING. I thank the gentleman for yielding.

Mr. Speaker, this bill is an omnibus military withdrawal bill. I will offer a substitute that has been worked out through negotiations between Members and staff of both the House and the Senate. It deals with areas in four States which have been used by the military for a number of years but where the military is currently operating without clearcut legal authority. The bill would place those important military activities on a solid legal footing and would also provide for a proper division of responsibilities between the Department of Defense and the Department of Interior with respect to management of these lands. It also includes very important provisions addressing the unusual situation in Nevada which results from the unusually large number of areas in that State used for military and other purposes. All of these areas dealt with in this bill were included in the omnibus bill introduced by our colleague from Maryland [Mrs. BYRON] upon which hearings have been held. The House has already passed separate bills dealing with the areas in Nevada and Alaska. I believe this is a sound and balanced measure and much credit should go to the gentlewoman from Maryland [Mrs. BYRON], the gentleman from Nevada [Mr. REID], the gentleman from California, [Mr. DELLUMS], and the gentleman from Alaska [Mr. YOUNG], for their hard work, leadership, and creativity. Thanks to their efforts I believe that we are now in a position to complete this action on important and useful legislation.

Mr. YOUNG of Alaska. Further reserving the right to object, Mr. Speaker, I would like to engage the chairman in a colloquy.

Mr. Chairman, I understand that there is a somewhat unique situation regarding use of the McGregor Range in New Mexico for livestock grazing. We were told in our hearings that the BLM and the ranchers in that area have a memorandum of understanding worked out with the military which allows them to graze livestock on the range.

The language in section 3 of the bill reads:

To the extent consistent with applicable law and executive orders, the lands withdrawn under section 1 may be managed in a manner permitting the continuation of grazing pursuant to applicable law and executive orders where permitted on the date of enactment of this act.

Is that correct?

Mr. SEIBERLING. That is correct. If the gentleman will yield, it is my understanding that this language will allow the current situation at McGregor to continue. It does cover the memorandum of understanding. The intent of the language the gentleman is citing is that the present arrangement will continue in effect.

Mr. YOUNG of Alaska. Further reserving the right to object, I yield to the gentlewoman from Nevada [Mrs. VUCANOVICH].

Mrs. VUCANOVICH. Mr. Speaker, I thank the gentleman and want to say that this is truly a compromise all sides gave up something in order to draft a bill that all parties can live with. For Nevada, this bill addresses many of the concerns my constituents had by requiring the services to submit a report to Congress within 5 years on the cumulative effects these land withdrawals have on the entire State of Nevada. In this report, the services must look at the effects their operations have on the ground and in the air on the health and safety of the people of Nevada.

Both the Air Force and the Navy will be required to submit draft environmental impact statements on their respective land withdrawals within 12 years. This will give the public plenty of time to review the draft environmental impact statement before the withdrawals expire. The services have agreed to the 15-year withdrawal which has a compromise between the 10-year withdrawal in the House bill and the 25-year withdrawal in the Senate bill.

Mr. Speaker, I am glad that we have worked out ths compromise and I want to thank Congressman SEIBERLING for his work and determination to get this legislation passed. The services have been without an acceptable withdrawal of these lands for approximately 10 years and they need this legislation.

This is a good compromise and I hope my colleagues will support it.

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Mr. YOUNG of Alaska. Mr. Speaker, further reserving the right to object, if I can further clarify this, there are some expenses because of the requirement of the EIS statement which has to be made anyway. This is part of the requirement whenever the lands are withdrawn from military use.

Mr. WALKER. If the gentleman will yield, can the gentleman give me some estimate of what that cost is going to be?

Mr. YOUNG of Alaska. There is no estimate on it at this time.

The problem we have is the military needs these areas. They have used these areas. They will continue to use these areas. This is a renewal of 15 years. They were unable at that time

to give us the EIS requirements as far as money expenditures.

But under the law, they have to do it.

Mr. WALKER. Are we talking thousands or millions?

Mr. YOUNG of Alaska. I cannot tell the gentleman.

Mr. SEIBERLING. Mr. Speaker, will the gentleman yield?

Mr. YOUNG of Alaska. I yield to the gentleman from Ohio.

Mr. SEIBERLING. I think I can clarify the matter.

The bill provides for a 15-year withdrawal, and at the end of the 12th year, an EIS must be prepared in connection with the further withdrawal if the military so desires to do that in the future. That is already the existing law under the National Environmental Protection Act. It also provides for occasional reports by the military as to the nature of the activities being carried out on the land, which is also required under existing law.

So it really does not add any expenses that are not already in the requirements.

Mr. YOUNG of Alaska. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. MURTHA). Is there objection to the request of the gentleman from Ohio?

Mrs. BYRON. Mr. Speaker, reserving the right to object, this moment is the culmination of 2 years of tedious, time-consuming work on the variety of issues which affect the withdrawal of these ranges. Every affected party has had its concerns carefully considered and incorporated into the measure we have before us. The public lands subcommittees in both the Senate and the House have held long hearings on each of these ranges. The opportunity to testify was provided to not only the administration, the military, and environmental groups, but also to those citizens who live near the ranges and are most impacted by the activities on the ranges.

I believe that this substitute provides each of these groups with the best compromise possible. It ensures the continued use of these lands for military activities while it maintains protection of the wildlife refuges, and makes preparation for future decontamination should the military have no further need for the lands. In addition, the bill requires draft environmental impact statements to be published and public hearings to be held in each State in which a range is located.

Mr. Speaker, I am very proud of this legislation. I sincerely believe that it represents consensus at its best and I urge my colleagues to support its passage.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk will read the bill, as follows:

H.R. 1790

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Military Lands Withdrawal Act of 1985".

SEC. 2. WITHDRAWALS.

(a) MCGREGOR RANGE.—(1) Subject to valid existing rights, the public lands described in paragraph (2) are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws but not the mineral or geothermal leasing laws). Such lands are reserved for use by the Secretary of the Army—

(A) for training and weapons testing, and

(B) for other defense-related purposes.

(2) The lands referred to in paragraph (1) are the lands comprising approximately 608,384.87 acres in Otero County, New Mexico, as generally depicted on the map entitled "McGregor Range Withdrawal—Proposed", dated January 1985, and filed in accordance with section 3(a)(2).

(b) NELLIS AIR FORCE RANGE.—(1) Subject to valid existing rights, the public lands described in paragraph (2) are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws but not the mineral or geothermal leasing laws). Such lands are reserved for use by the Secretary of the Air Force—

(A) as an armament and high-hazard testing area,

(B) for training for aerial gunnery, rocketry, electronic warfare, and tactical maneuvering and air support, and

(C) for other defense-related purposes.

(2) The lands referred to in paragraph (1) are the lands comprising approximately 2,945,000 acres of land in Clark, Nye, and Lincoln Counties, Nevada, as generally depicted on the map entitled "Nellis Air Force Range Withdrawal—Proposed", dated January 1985, and filed in accordance with section 3(a)(2).

(c) FORT WAINWRIGHT MANEUVER AREA.—(1) Subject to valid existing rights, the public lands described in paragraph (2) are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws but not the mineral or geothermal leasing laws), under an Act entitled "An Act to provide for the admission of the State of Alaska into the Union", approved July 7, 1958 (48 U.S.C. note prec. 21), and under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.). Such lands are reserved for use by the Secretary of the Army for—

(A) military maneuvering,

(B) training for artillery firing, aerial gunnery, and infantry tactics, and

(C) other defense-related purposes.

(2) The lands referred to in paragraph (1) are the lands comprising approximately 247,951.67 acres of land in the Fourth Judicial District, Alaska, as generally depicted on the map entitled "Fort Wainwright Maneuver Area Withdrawal—Proposed", dated January 1985, and filed in accordance with section 3(a)(2).

(d) FORT GREELY MANEUVER AREA AND FORT GREELY AIR DROP ZONE.—(1) Subject to valid existing rights, the lands described in paragraph (2) are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws but not the mineral or geothermal leasing laws), under an Act entitled "An Act to provide for the admission of the State of Alaska into the Union", approved July 7, 1958 (48 U.S.C. note prec. 21), and under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.). Such lands are reserved for use by the Secretary of the Army for—

(A) military maneuvering, training, and equipment development and testing, and

(B) other defense-related purposes.

(2) The lands referred to in paragraph (1) are—

(A) the lands comprising approximately 571,995 acres in the Big Delta Area, Alaska, as generally depicted on the map entitled "Fort Greely Maneuver Area Withdrawal—Proposed", dated January 1985, and filed in accordance with section 3(a)(2); and

(B) the lands comprising approximately 51,590 acres in the Granite Creek Area, Alaska, as generally depicted on the map entitled "Fort Greely, Air Drop Zone Withdrawal—Proposed", dated January 1985, and filed in accordance with section 3(a)(2).

(e) LUKE AIR FORCE RANGE.—(1) Subject to valid existing rights, the lands described in paragraph (2) are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws but not the mineral or geothermal leasing laws). Such lands are reserved for use by the Secretary of the Air Force for—

(A) an armament and high-hazard testing area,

(B) training for aerial gunnery, rocketry, electronic warfare, and tactical maneuvering and air support, and

(C) other defense related purposes.

(2) The lands referred to in paragraph (1) are the lands comprising approximately 2,664,423 acres in Maricopa, Pima, and Yuma Counties, Arizona, as generally depicted on the map entitled "Luke Air Force Range Withdrawal—Proposed", dated January 1985, and filed in accordance with section 3(a)(2).

(f) BRAVO-20 BOMBING RANGE.—(1) Subject to valid existing rights, the lands referred to in paragraph (2) and all other areas within the boundary of such lands which may become subject to the operation of the public land laws are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws but not the mineral or the geothermal leasing laws). Such lands are reserved for use by the Secretary of the Navy for—

(A) testing and training for aerial bombing, missile firing, and tactical maneuvering and air support, and

(B) other defense-related purposes.

(2) The lands referred to in paragraph (1) are the lands comprising approximately 21,576.40 acres in Churchill County, Nevada, as generally depicted on the map entitled "Bravo-20 Bombing Range Withdrawal—Proposed", dated January 1985, and filed in accordance with section 3(a)(2).

SEC. 3. MAP AND LEGAL DESCRIPTION.

(a) PUBLICATION AND LEGAL DESCRIPTION.—As soon as practicable after the date of the enactment of this Act, the Secretary of the Interior shall—

(1) publish in the Federal Register a notice of the legal description of each area withdrawn under section 2; and

(2) file a map and the legal description of each area withdrawn under section 2 with the Congress.

(b) PUBLIC INSPECTION.—Each such map and legal description shall be available for public inspection—

(1) in the Office of the Director of the Bureau of Land Management of the Department of the Interior;

(2) in the Office of the State Director of the Bureau of Land Management for the State in which the area withdrawn under section 2 is located;

(3) in the case of lands withdrawn under section 2(b) or 2(e), in the appropriate Office of the Regional Director of the Fish and Wildlife Service of the Department of the Interior; and

(4) in the office of the military commander of such area.

(c) EFFECT OF MAP AND LEGAL DESCRIPTION.—Each such map and legal description shall have the same force and effect as if included in this Act, except that the Secretary of the Interior may correct any clerical or typographical error in any such map or legal description.

SEC. 4. MANAGEMENT OF WITHDRAWN LANDS.

(a) MANAGEMENT BY THE SECRETARY OF THE INTERIOR.—(1) During the period of the withdrawal, the Secretary of the Interior shall manage the lands withdrawn under section 2 pursuant to the Federal Land Policy and Management Act of 1976 and other applicable law, including this Act.

(2) The uses for which such lands may be managed include grazing, wildlife habitat, control of predatory animals, and the prevention and suppression of brush and range fires resulting from nonmilitary activities.

(3)(A) All use of such lands shall be secondary to the military use of such lands for the purposes specified in section 2.

(B) The Secretary of the Interior may issue any lease, easement, right-of-way, or other authorization with regard to the use of such lands only with the concurrence of the Secretary of the military department concerned.

(b) CLOSURE TO PUBLIC.—(1) If the Secretary of the military department concerned determines that military operations, public safety, or national security require the closure to public use of any road, trail, or other portion of the lands withdrawn by this Act, that Secretary may take such action as that Secretary determines necessary or desirable to effect and maintain such closure.

(2) Any such closure shall be limited to the minimum areas and periods which the Secretary of the military department concerned determines are required for the purposes specified in this subsection.

(3) During such a closure the Secretary of the military department concerned shall—

(A) keep appropriate warning notices posted, and

(B) take appropriate steps to notify the public concerning such closures.

(c) MANAGEMENT PLAN.—The Secretary of the Interior (after consultation with the Secretary of the military department concerned) shall develop a management plan for each area withdrawn under section 2. Each such plan shall be—

(1) subject to the restrictions under subsection (a)(3), and

(2) developed not later than five years after the date of the enactment of this Act.

(d) BRUSH AND RANGE FIRES.—(1) The Secretary of the military department concerned shall take necessary precautions to prevent, and shall suppress, brush and range fires occurring within and outside of the lands withdrawn under section 2 as a result of the military use of such lands.

(2) The Secretary may request assistance from the Director of the Bureau of Land Management in suppressing such fires. The Secretary shall reimburse the Bureau of Land Management for expenses incurred in providing such assistance out of funds appropriated for fiscal years beginning after the date of the enactment of this Act.

(e) MEMORANDUM OF UNDERSTANDING.—(1) The Secretary of the Interior and the Secretary of the military department concerned shall (with respect to each land withdrawal under section 2) enter into a memorandum of understanding to implement the management plan developed under subsection (c). Any such memorandum of understanding shall provide that the Director of the Bureau of Land Management shall provide assistance in the suppression of fires resulting from the military use of the lands withdrawn under section 2 when or if requested by the Secretary of the military department concerned.

(2) The duration of any such memorandum shall be the same as the duration of the withdrawal with respect to the lands withdrawn under section 2.

(f) SPECIAL WILDLIFE RULE FOR NELLIS AIR FORCE RANGE AND LUKE AIR FORCE RANGE.—Subject to the restrictions under subsection (a)(3)—

(1) the withdrawals under sections 2(b) and 2(e) and the management plan under subsection (c) with respect to those withdrawals shall not be construed to affect—

(A) the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.) as it applies to the Desert National Wildlife Range and to the Cabeza Prieta National Wildlife Refuge;

(B) any Executive order or public land order in effect on the date of the enactment of this Act with respect to the Desert National Wildlife Refuge and to the Cabeza Prieta National Wildlife Refuge; or

(C) any memorandum of understanding between the Secretary of the Interior and the Secretary of the Air Force or the Secretary of the Navy, as the case MAY BE, REGARDING THE ADMINISTRATION AND JOINT USE OF A PORTION OF THE DESERT NATIONAL WILDLIFE RANGE OR THE CABEZA PRIETA NATIONAL WILDLIFE REFUGE; AND

(2) the lands withdrawn under section 2(b) or 2(f) which are within the Desert National Wildlife Range or the Cabeza Prieta National Wildlife Refuge shall be managed by the Secretary of the Interior in accordance with the National Wildlife Refuge System Administration Act of 1966.

(g) SPECIAL RULES FOR LAND WITHDRAWALS IN ALASKA.—(1) In developing the management plan under subsection (c) for the lands withdrawn under sections 2(c) and 2(d), the Secretary of the Interior shall consult with other Federal agencies and the State of Alaska. Such plan shall include a fire management plan which considers habitat improvement and other resource values.

(2) Not later than one year after the date of the enactment of this Act, the Secretary of the Interior, the Secretary of the Army, and the State of Alaska shall develop an agreement for the management, conservation, and enhancement of fish and wildlife resources on the lands withdrawn under sections 2(c) and 2(d). Such agreement shall be in accordance with the Act entitled "An Act to promote effectual planning, development, maintenance, and coordination of wildlife, fish, and game conservation and rehabilitation in military reservations", approved September 15, 1960 (16 U.S.C. 670a-670f).

(3) The Secretary of the Army shall allow public access to and use of the lands withdrawn under sections 2(c) and 2(d) for purposes of recreation, hunting, and trapping shall be allowed to the fullest extent compatible with the essential military requirements relating to such lands as determined by the Secretary.

(h) MINERAL ANALYSIS ON LUKE AIR FORCE RANGE.—(1) Not later than 10 years after the date of the enactment of this Act, the Secretary of the Interior shall transmit to the Congress a report on the mineral potential of the lands withdrawn under section 2(e). Such report shall include the recommendations of the Secretary of the Interior, developed in consultation with the Secretary of the Air Force, identifying which (if any) of such lands should be opened to the operation of the mining laws. In making such recommendations the Secretary of the Interior shall consider—

(A) the military use of such lands;

(B) the relative availability of the minerals determined to be present on such lands; and

(C) if applicable, the contaminated state of such lands.

(2)(A) If the Congress, after receipt of the report transmitted under subsection (a) and before the end of the 11-year period beginning on the date of the enactment of this Act, adopts a joint resolution—

(i) stating that all or a portion of the lands shall be opened to the operation of the mining laws; and

(ii) identifying the lands which shall be opened,

the Secretary of the Interior shall immediately publish in the Federal Register an appropriate order modifying or terminating the withdrawal under section 2(e).

(B) Any such order under subparagraph (A)—

(i) shall be in accordance with the provisions of the joint resolution, and

(ii) shall state the date on which such lands will be opened to the operation of the mining laws or other public land laws.

(i) HUNTING, FISHING, AND TRAPPING.—Subject to the restrictions under subsection (a)(3), any hunting, fishing, or trapping on the lands withdrawn under section 2 shall be conducted subject to section 2671 of title 10, United States Code (relating to hunting, fishing, and trapping on military reservations and facilities).

SEC. 5. WATER RIGHTS.

(a) RESERVATION.—(1) The amounts of water described in paragraph (2) located on, under, over, or appurtenant to the lands withdrawn under section 2 which—

(A) have not been appropriated as of the date of the enactment of this Act; and

(B) are required for future military purposes,

are hereby reserved for such use by the Secretary of the military department concerned.

(2) The amounts of water referred to in paragraph (1) which are reserved under this section are—

(A) 5,525,000 gallons of water per day with respect to the lands described in section 2(a) (McGregor Range);

(B) 5,000,000 gallons of water per day with respect to the lands described in section 2(c) (Fort Wainwright Maneuver Area); and

(C) 1,500,000 gallons of water per day with respect to the lands described in sections 2(d) (Fort Greely Maneuver Area and Fort Greely Air Drop Zone).

(3) The Secretary of the military department concerned shall consult with the State

in which water is reserved under paragraph (1) before the actual future taking of water.

(b) LANDS FOR WHICH WATER RIGHTS NOT RESERVED.—(1) In the case of the withdrawals under section 2 of the lands described in section 2(b) (Nellis Air Force Range), section 2(e) (Luke Air Force Range), and section 2(f) (Bravo-20 Bombing Range), no amount of water is reserved.

(2) Paragraph (1) shall not be construed to affect in any manner the future reservation under State law, by the United States or others, of water on, under, over, or appurtenant to such lands.

(c) ACQUISITION OF ADDITIONAL WATER RIGHTS.—If the Secretary of the military department concerned determines that it is necessary to acquire additional water (in excess of the quantity identified in this section), that Secretary—

(1) may acquire the rights to such additional water in accordance with applicable State law relating to the control, appropriation, use, and distribution of water resources in such State; or

(2) shall request a specific reservation of additional Federal water rights through an Act of Congress.

(d) PRIOR ACQUISITION OF WATER RIGHTS.—This section shall not be construed to affect water rights acquired by the United States before the date of the enactment of this Act.

SEC. 6. DURATION OF WITHDRAWAL.

(a) GENERAL RULE.—Except as otherwise provided in this section, any withdrawal of land under section 2 shall terminate 25 years after the date of the enactment of this Act.

(b) NOTIFICATION AND APPLICATION.—(1) At least three years before the termination of any withdrawal under subsection (a), the Secretary of the military department concerned shall—

(A) determine whether the Secretary has a continuing need for any or all of the lands withdrawn under section 2;

(B) notify the Secretary of the Interior of that determination; and

(C) if there is a continuing military need for any or all of such lands, file an application for extension of the withdrawal of such lands with the Secretary of the Interior.

(2)(A) If there is not a continuing military need for any or all of the lands withdrawn under section 2, the Secretary of the military department concerned shall, in accordance with section 7, file with the Secretary of the Interior a notice of intention to relinquish such lands.

(B) The Secretary of the Interior shall publish in the Federal Register the notice and the certification of contamination referred to in section 7(a).

(c) SPECIAL RULE FOR EXTENSION OF WITHDRAWAL.—For purposes of the lands identified in subsection (b)(2), the withdrawal of such lands shall remain in full force and effect pending a decision on the proposed withdrawal—

(1) by the Secretary of the Interior; and

(2) by the Congress, if the application for extension is subject to the requirement of section 2 of the Act entitled "An Act to provide that withdrawals, reservations, or restrictions of more than five thousand acres of public lands of the United States for certain purposes shall not become effective until approved by Act of Congress, and for other purposes", approved February 28, 1958 (43 U.S.C. 156).

(d) INDEFINITE WITHDRAWAL.—If the Secretary decides not to accept jurisdiction of contaminated lands under section 7(d), the withdrawal of such lands shall continue under the provisions of this Act.

SEC. 7. CONTAMINATED LANDS.

(a) DETERMINATION OF CONTAMINATION.—Before filing a notice of intention to relinquish pursuant to section 6(b)(3), the Secretary of the military department concerned shall determine and certify to the Secretary of the Interior whether and to what extent lands to be relinquised are contaminated with explosives or toxic or other hazardous materials. A copy of the determination made under the preceding sentence shall be supplied with the certification.

(b) DECONTAMINATION FEASIBILITY.—If the lands to be relinquished under section 6 are contaminated, the Secretary of the military department concerned (in coordination with the Secretary of the Interior) shall determine if decontamination of such lands is feasible. The determination required under this subsection shall include the following factors:

(1) Whether decontamination is practicable and economically feasible.

(2) The potential future use and value of such lands.

(3) Whether, after decontamination, such lands could be opened to the operation of the public land laws (including the mining laws).

(c) AUTHORIZATION TO DECONTAMINATE.—If decontamination of the lands to be relinquished under section 6 is determined to be feasible under subsection (b), the Secretary of the military department concerned shall decontaminate such lands to the extent that funds are available.

(d) LANDS NOT DECONTAMINATED.—If the lands described in subsection (b) are not decontaminated, the Secretary of the Interior shall not be required to accept such lands for relinquishment. If the Secretary of the Interior does not accept such lands for relinquishment, the Secretary of the military department concerned, in coordination with the Secretary of the Interior, shall reassess the determination of contamination of such lands in accordance with this section every five years beginning five years after the date of the termination of withdrawal of land under section 6(a).

(e) ACCEPTANCE BY SECRETARY OF THE INTERIOR.—Once any of the lands withdrawn under section 2 are certified by the Secretary of the military department concerned to be free from contamination and safe for all nonmilitary uses, the Secretary of the Interior shall consider accepting jurisdiction over such lands.

SEC. 8. REVOCATION OF WITHDRAWAL.

(a) WITHDRAWAL REVOCATION ORDER.—Notwithstanding section 204(j) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714(j)), if the Secretary of the Interior decides to accept jurisdiction of the lands withdrawn by this Act which are proposed for relinquishment under section 6, the Secretary of the Interior shall publish in the Federal Register an appropriate withdrawal revocation order. Such order shall—

(1) constitute official acceptance of full jurisdiction by the Secretary of the Interior;

(2) terminate the withdrawal; and

(3) state the date upon which such lands will be opened to the operation of the public land laws (including the mining laws).

(b) APPROVAL LIMITED TO CERTAIN OFFICIALS.—The authority of the Secretary of the Interior—

(1) to accept a notice of intention to relinquish lands under subsection (a); and

(2) to publish a withdrawal revocation order under subsection (a),

may be delegated by the Secretary of the Interior only to individuals in the Office of the Secretary who have been appointed by the President, by and with the advice and consent of the Senate.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. SEIBERLING

Mr. SEIBERLING. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. SEIBERLING: Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. WITHDRAWALS.

(a) BRAVO-20 BOMBING RANGE.—(1) Subject to valid existing rights and except as otherwise provided in this Act, the lands referred to in paragraph (2) of this subsection, and all other areas within the boundary of such lands as depicted on the map specified in such paragraph which may become subject to the operation of the public land laws, are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws and the mineral leasing and the geothermal leasing laws). Such lands are reserved for use by the Secretary of the Navy for—

(A) testing and training for aerial bombing, missile firing, and tactical maneuvering and air support; and

(B) subject to the requirements of section 3(f), other defense-related purposes consistent with the purposes specified in this paragraph.

(2) The lands referred to in paragraph (1) of this subsection are the public lands comprising approximately 21,576,40 acres in Churchill County, Nevada, as generally depicted on the map entitled "Bravo-20 Bombing Range Withdrawal—Proposed", dated April 1986, and filed in accordance with section 2.

(3) This section does not affect the withdrawals of July 2, 1902, August 26, 1902, and August 4, 1904, under which the Bureau of Reclamation utilizes for flooding, overflow, and seepage purposes approximately 14,750 acres of the lands withdrawn and reserved by this subsection.

(b) NELLIS AIR FORCE RANGE.—(1) Subject to valid existing rights and except as otherwise provided in this Act, the public lands described in paragraph (2) of this subsection are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws and the mineral leasing and the geothermal leasing laws). Such lands are reserved for use by the Secretary of the Air Force—

(A) as an armament and high-hazard testing area;

(B) for training for aerial gunnery, rocketry, electronic warfare, and tactical maneuvering and air support; and

(C) subject to the requirements of section 3(f), for other defense-related purposes consistent with the purposes specified in this paragraph.

(2) The lands referred to in paragraph (1) of this subsection are the lands comprising approximately 2,945,000 acres of land in Clark, Nye, and Lincoln Counties, Nevada, as generally depicted on the map entitled "Nellis Air Force Range Withdrawal—Proposed", dated January 1985, and filed in accordance with section 2.

(c) BARRY M. GOLDWATER AIR FORCE RANGE.—(1) Subject to valid existing rights and except as otherwise provided in this

Act, the lands described in paragraph (2) of this subsection are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws and the mineral leasing and the geothermal leasing laws). Such lands are reserved for use by the Secretary of the Air Force for—

(A) an armament and high-hazard testing area;

(B) training for aerial gunnery, rocketry, electronic warfare, and tactical maneuvering and air support; and

(C) subject to the requirements of section 3(f), other defense-related purposes consistent with the purposes specified in this paragraph.

(2) The lands referred to in paragraph (1) of this subsection are the lands comprising approximately 2,664,423 acres in Maricopa, Pima, and Yuma Counties, Arizona, as generally depicted on the map entitled "Luke Air Force Range Withdrawal—Proposed", dated January 1985, and filed in accordance with section 2.

(d) McGregor Range.—(1) Subject to valid existing rights and except as otherwise provided in this Act, the public lands described in paragraph (2) of this subsection are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws and the mineral leasing and the geothermal leasing laws). Such lands are reserved for use by the Secretary of the Army—

(A) for training and weapons testing; and

(B) subject to the requirements of section 3(f), for other defense-related purposes consistent with the purposes specified in this paragraph.

(2) The lands referred to in paragraph (1) of this subsection are the lands comprising approximately 608,384.87 acres in Otero County, New Mexico, as generally depicted on the map entitled "McGregor Range Withdrawal—Proposed", dated January 1985, and filed in accordance with section 2.

(3) Any of the public lands withdrawn under paragraph (1) of this subsection which, as of the date of enactment of this Act, are managed pursuant to section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782) shall continue to be managed under that section until Congress determines otherwise.

(e) Fort Greely Maneuver Area and Fort Greely Air Drop Zone.—(1) Subject to valid existing rights and except as otherwise provided in this Act, the lands described in paragraph (2) of this subsection are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws and the mineral leasing and the geothermal leasing laws), under an Act entitled "An Act to provide for the admission of the State of Alaska into the Union", approved July 7, 1958 (48 U.S.C. note prec. 21), and under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.). Such lands are reserved for use by the Secretary of the Army for—

(A) military maneuvering, training, and equipment development and testing; and

(B) subject to the requirements of section 3(f), other defense-related purposes consistent with the purposes specified in this paragraph.

(2) The lands referred to in paragraph (1) of this subsection are—

(A) the lands comprising approximately 571,995 acres in the Big Delta Area, Alaska, as generally depicted on the map entitled "Fort Greely Maneuver Area Withdrawal—Proposed", dated January 1985, and filed in accordance with section 2; and

(B) the lands comprising approximately 51,590 acres in the Granite Creek Area, Alaska, as generally depicted on the map entitled "Fort Greely, Air Drop Zone Withdrawal—Proposed", dated January 1985, and filed in accordance with section 2.

(f) Fort Wainwright Maneuver Area.—(1) Subject to valid existing rights and except as otherwise provided in this Act, the public lands described in paragraph (2) of this subsection are hereby withdrawn from all forms of appropriation under the public lands laws (including the mining laws and the mineral leasing and the geothermal leasing laws), under an Act entitled "An Act to provide for the admission of the State of Alaska into the Union", approved July 7, 1958 (48 U.S.C. note prec. 21), and under the Alaska Native Claims Settlement Act (43 U.S.C 1601 et seq.). Such lands are reserved for use by the Secretary of the Army for—

(A) military maneuvering;

(B) training for artillery firing, aerial gunnery, and infantry tactics; and

(C) subject to the requirements of section 3(f), other defense-related purposes consistent with the purposes specified in this paragraph.

(2) The lands referred to in paragraph (1) of this subsection are the lands comprising approximately 247,951.67 acres of land in the Fourth Judicial District, Alaska, as generally depicted on the map entitled "Fort Wainwright Maneuver Area Withdrawal—Proposed", dated January 1985, and filed in accordance with section 2.

SEC. 2. MAPS AND LEGAL DESCRIPTIONS.

(a) Publication and Filing Requirement.—As soon as practicable after the date of enactment of this Act, the Secretary of the Interior shall—

(1) publish in the Federal Register a notice containing the legal description of the lands withdrawn and reserved by this Act; and

(2) file maps and the legal description of the lands withdrawn and reserved by this Act with the Committee on Energy and Natural Resources of the United States Senate and with the Committee on Interior and Insular Affairs of the United States House of Representatives.

(b) Technical Corrections.—Such maps and legal descriptions shall have the same force and effect as if they were included in this Act except that the Secretary of the Interior may correct clerical and typographical errors in such maps and legal descriptions.

(c) Availability For Public Inspection.—Copies of such maps and legal descriptions shall be available for public inspection in the offices of the Director and appropriate State Directors of the Bureau of Land Management; the office of the commander, Bravo-20 Bombing Range; the offices of the Director and appropriate Regional Directors of the United States Fish and Wildlife Service; the office of the commander, Nellis Air Force Base; the office of the commander, Barry M. Goldwater Air Force Base; the office of the commander, McGregor Range; the office of the installation commander, Fort Richardson, Alaska; the office of the commander, Marine Corps Air Station, Yuma, Arizona; and the office of the Secretary of Defense.

(d) Reimbursement.—The Secretary of Defense shall reimburse the Secretary of the Interior for the cost of implementing this section.

SEC. 3. MANAGEMENT OF WITHDRAWN LANDS.

(a) Management by the Secretary of the Interior.—(1) During the period of the withdrawal, the Secretary of the Interior shall manage the lands withdrawn under section 1 (except those lands within a unit of the National Wildlife Refuge System) pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and other applicable law, including the Recreation Use of Wildlife Areas Act of 1962 (16 U.S.C. 460k et seq.), and this Act. Lands within the Desert National Wildlife Range and the Cabeza Prieta National Wildlife Refuge shall be managed pursuant to the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.) and other applicable law. No provision of this Act, except sections 4, 11, and 12, shall apply to the management of the Desert National Wildlife Range or the Cabeza Prieta National Wildlife Refuge.

(2) To the extent consistent with applicable law and Executive orders, the lands withdrawn under section 1 may be managed in a manner permitting—

(A) the continuation of grazing pursuant to applicable law and Executive orders where permitted on the date of enactment of this Act;

(B) protection of wildlife and wildlife habitat;

(C) control of predatory and other animals;

(D) recreation; and

(E) the prevention and appropriate suppression of brush and range fires resulting from nonmilitary activities.

(3)(A) All nonmilitary use of such lands, other than the uses described in paragraph (2), shall be subject to such conditions and restrictions as may be necessary to permit the military use of such lands for the purposes specified in or authorized pursuant to this Act.

(B) The Secretary of the Interior may issue any lease, easement, right-of-way, or other authorization with respect to the nonmilitary use of such land only with the concurrence of the Secretary of the military department concerned.

(b) Closure to Public.—(1) If the Secretary of the military department concerned determines that military operations, public safety, or national security require the closure to public use of any road, trail, or other portion of the lands withdrawn by this Act, the Secretary may take such action as the Secretary determines necessary or desirable to effect and maintain such closure.

(2) Any such closure shall be limited to the minimum areas and periods which the Secretary of the military department concerned determines are required to carry out this subsection.

(3) Before and during any closure under this subsection, the Secretary of the military department concerned shall—

(A) keep appropriate warning notices posted; and

(B) take appropriate steps to notify the public concerning such closures.

(c) Management Plan.—The Secretary of the Interior (after consultation with the Secretary of the military department concerned) shall develop a plan for the management of each areas withdrawn under section 1 during the period of such withdrawal. Each plan shall—

(1) be consistent with applicable law;

(2) be subject to conditions and restrictions specified in subsection (a)(3) of this section;

(3) include such provisions as may be necessary for proper management and protection of the resources and values of such areas; and

(4) be developed not later than three years after the date of enactment of this Act.

(d) BRUSH AND RANGE FIRES.—The Secretary of the military department concerned shall take necesssary precautions to prevent and suppress brush and range fires occurring within and outside the lands withdrawn under section 1 as a result of military activities and may seek assistance from the Bureau of Land Management in the suppression of such fires. The memorandum of understanding required by subsection (e) shall provide for Bureau of Land Management assistance in the suppression of such fires, and for a transfer of funds from the Department of the Navy, Army, or Air Force, as appropriate, to the Bureau of Land Management as compensation for such assistance.

(e) MEMORANDUM OF UNDERSTANDING.—The Secretary of the Interior and the Secretary of the military department concerned shall (with respect to each land withdrawal under section 1) enter into a memorandum of understanding to implement the management plan developed under subsection (c). Any such memorandum of understanding shall provide that the Director of the Bureau of Land Management shall provide assistance in the suppression of fires resulting from the military use of lands withdrawn under section 1 if requested by the Secretary of the military department concerned.

(2) The duration of any such memorandum shall be the same as the period of the withdrawal of the lands under section 1.

(f) ADDITIONAL MILITARY USES.—(1) Lands withdrawn by section 1 (except those within the Desert National Wildlife Range or within the Cabeza Prieta National Wildlife Refuge) may be used for defense-related uses other than those specified in such section. The Secretary of Defense shall promptly notify the Secretary of the Interior in the event that the lands withdrawn by this Act will be used for defense-related purposes other than those specified in section 1. Such notification shall indicate the additional use or uses involved, the proposed duration of such uses, and the extent to which such additional military uses of the withdrawn lands will require that additional or more stringent conditions or restrictions be imposed on otherwise-permitted nonmilitary uses of the withdrawn land or portions thereof.

SEC. 4. SPECIAL WILDLIFE RULES.

(a) NELLIS AIR FORCE RANGE.—(1) Neither the withdrawal under section 1(b) nor any other provision of this Act shall be construed to amend—

(A) the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.) or any other law related to management of the National Wildlife Refuge System; or

(B) any Executive order or public land order in effect on the date of enactment of this Act with respect to the Desert National Wildlife Refuge.

(2) Neither the withdrawal under section 1(b) nor any other provision of this Act shall be construed to amend any memorandum of understanding between the Secretary of the Interior and the Secretary of the Air Force regarding the administration and joint use of a portion of the Desert National Wildlife Range. The provisions of the memorandum of understanding between the Secretary of the Interior and the Department of the Air Force regarding Air Force operations on the Desert National Wildlife Range in effect on March 15, 1986, shall not be amended sooner than 90 days after the Secretary of the Interior has notified the Committee on Interior and Insular Affairs of the House of Representatives, the Committee on Energy and Natural Resources of the Senate, the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Merchant Marine and Fisheries of the House of Representatives, and the Committee on Environment and Public Works of the Senate of any proposed amendments to such provisions.

(b) BARRY M. GOLDWATER AIR FORCE RANGE.—(1) Neither the withdrawal under section 1(c) nor any other provision of this Act shall be construed to amend—

(A) the National Refuge System Administration Act of 1966 (15 U.S.C. 668dd et seq.) or any other law related to management of the National Wildlife Refuge System; or

(B) any Executive order or public land order in effect on the date of enactment of this Act with respect to the Cabeza Prieta National Wildlife Refuge.

(2) Neither the withdrawal under section 1(c) nor any other provision of this Act shall be construed to amend any memorandum of understanding between the Secretary of the Interior and the Secretary of the Air Force regarding the administration and joint use of a portion of the Cabeza Prieta National Wildlife Refuge. The provisions of the memorandum of understanding between the Secretary of the Interior and the Department of the Air Force regarding Air Force operations on the Cabeza Prieta National Wildlife Refuge in effect on March 24, 1975, shall not be amended sooner than 90 days after the Secretary of the Interior has notified the Committee on Interior and Insular Affairs of the House of Representatives, the Committee on Energy and Natural Resources of the Senate, The Committees on Armed Services of the Senate and the House of Representatives, the Committee on Merchant Marine and Fisheries of the House of Representatives, and the Committee on Environment and Public Works of the Senate of any proposed amendments to such provisions.

SEC. 5. DURATION OF WITHDRAWALS.

(a) DURATION.—The withdrawal and reservation established by this Act shall terminate 15 years after the date of enactment of this Act.

(b) DRAFT ENVIRONMENTAL IMPACT STATEMENT.—(1) No later than 12 years after the date of enactment of this Act, the Secretary of the military department concerned shall publish a draft environmental impact statement concerning continued or renewed withdrawal of any portion of the lands withdrawn by this Act for which that Secretary intends to seek such continued or renewed withdrawal. Such draft environmental impact statement shall be consistent with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) applicable to such a draft environmental impact statement. Prior to the termination date specified in subsection (a), the Secretary of the military department concerned shall hold a public hearing on any draft environmental impact statement published pursuant to this subsection. Such hearing shall be held in the affected State or States in order to receive public comments on the alternatives and other matters included in such draft environmental impact statement.

(2)(A) For purposes of such draft environmental impact statement published by the Secretary of the Navy, the term "lands withdrawn by this Act" shall be deemed to include lands withdrawn by public land orders 275, 788, 898, and 2635 and lands proposed for withdrawals as specified in the draft environmental impact statement for the proposed master land withdrawal, Naval Air Station, Fallon, Nevada.

(B) For purposes of this subsection, lands withdrawn by section 1(b) shall be deemed to include lands withdrawn by Public Law 98-485.

(c) EXTENSIONS OR RENEWALS.—The withdrawals established by this Act may not be extended or renewed except by an Act or joint resolution.

SEC. 6. NEVADA REPORT.

(a) SPECIAL NEVADA REPORT.—No later than five years after the date of enactment of this Act, the Secretary of the Air Force, the Secretary of the Navy, and the Secretary of the Interior shall submit to Congress a joint report. In addition to the other matters required by this section, the report shall include an analysis and an evaluation of the effects on public health and safety throughout Nevada of—

(1) the operation of aircraft at subsonic and supersonic speeds;

(2) the use of aerial and other gunnery, rockets, and missiles; and

(3) the uses specified in section 1.

(b) EVALUATION OF CUMULATIVE EFFECTS OF CONTINUED OR RENEWED WITHDRAWAL.—Each of the military departments concerned and the Secretary of the Interior shall, in the report required by this section, evaluate the cumulative effects of continued or renewed withdrawal for military purposes of the military department concerned of some or all of the lands withdrawn by sections 1(a) and 1(b) on the environment and population of Nevada. In performing this evaluation, there shall be considered—

(1) the actual and proposed withdrawal for military and related purposes of other lands in Nevada, including (but not limited to)—

(A) lands withdrawn by sections 1(a) and 1(b) of this Act and by Public Law 98-485 (98-Stat. 2261);

(B) lands withdrawn by Public Land Orders 275, 788, 898, and 2635;

(C) lands proposed for withdrawal as specified in the draft environmental impact statement for the proposed master land withdrawal, Naval Air Station Fallon, Nevada; and

(D) lands withdrawn or being considered for withdrawal for use by the Department of Energy; and

(2) the cumulative impacts on public and private property in Nevada and on the fish and wildlife, cultural, historic, scientific, recreational, wilderness, and other values of the public lands of Nevada resulting from military and defense related uses of the lands withdrawn by sections 1(a) and 1(b) and the other lands described in paragraph (1) of this subsection.

(c) MITIGATION MEASURES.—The report required by this subsection shall include an analysis and an evaluation of possible measures to mitigate the cumulative effect of the withdrawal of public lands in Nevada for military and defense-related purposes, and of use of the airspaces over public lands in Nevada for such purposes, on people and property in Nevada and the fish and wildlife, cultural, historic, scientific, wilderness, and other resources and values of the public lands in Nevada (including recreation, mineral development, and agriculture).

SEC. 7. ONGOING DECONTAMINATION.

(a) PROGRAM.—Throughout the duration of the withdrawals made by this Act, the Secretary of the military department concerned, to the extent funds are made available, shall maintain a program of decontamination of lands withdrawn by this Act at least at the level of cleanup achieved on such lands in fiscal year 1986.

(b) REPORTS.—At the same time as the President transmits to the Congress the President's proposed budget for the first fiscal year beginning after the date of enactment of this Act and for each subsequent fiscal year, each such Secretary shall transmit to the Committees on Appropriations, Armed Services, and Energy and Natural Resources of the Senate and to the Committees on Appropriations, Armed Services, and Interior and Insular Affairs of the House of Representatives a description of the decontamination efforts undertaken during the previous fiscal year on such lands and the decontamination activities proposed for such lands during the next fiscal year including:

(1) amounts appropriated and obligated or expended for decontamination of such lands;

(2) the methods used to decontaminate such lands;

(3) amount and types of contaminants removed from such lands;

(4) estimated types and amounts of residual contamination on such lands; and

(5) an estimate of the costs for full decontamination of such lands and the estimate of the time to complete such decontamination.

SEC. 8. REQUIREMENTS FOR RENEWAL.

(a) NOTICE AND FILING.—(1) No later than three years prior to the termination of the withdrawal and reservation established by this Act, the Secretary of the military department concerned shall advise the Secretary of the Interior as to whether or not the Secretary of the military department concerned will have a continuing military need for any of the lands withdrawn under section 1 after the termination date of such withdrawal and reservation.

(2) If the Secretary of the military department concerned concludes that there will be a continuing military need for any of such lands after the termination date, that Secretary shall file an application for extension of the withdrawal and reservation of such needed lands in accordance with the regulations and procedures of the Department of the Interior applicable to the extension of withdrawals of lands for military uses.

(3) If, during the period of withdrawal and reservation, the Secretary of the military department concerned decides to relinquish all or any of the lands withdrawn and reserved by this Act, such Secretary shall file a notice of intention to relinquish with the Secretary of the Interior.

(b) CONTAMINATION.—(1) Before transmitting a notice of intention to relinquish pursuant to subsection (a), the Secretary of Defense, acting through the military department concerned, shall prepare a written determination concerning whether and to what extent the lands that are to be relinquished are contaminated with explosive, toxic, or other hazardous materials.

(2) A copy of such determination shall be transmitted with the notice of intention to relinquish.

(3) Copies of both the notice of intention to relinquish and the determination concerning the contaminated state of the lands shall be published in the Federal Register by the Secretary of the Interior.

(c) DECONTAMINATION.—If any land which is the subject of a notice of intention to relinquish pursuant to subsesction (a) is contaminated, and the Secretary of the Interior, in consultation with the Secretary of the military department concerned, determines that decontamination is practicable and economically feasible (taking into consideration the potential future use and value of the land) and that upon decontamination, the land could be opened to operation of some or all of the public land laws, including the mining laws, the Secretary of the military department concerned shall decontaminate the land to the extent that funds are appropriated for such purpose.

(d) ALTERNATIVES.—If the Secretary of the Interior, after consultation with the Secretary of the military department concerned, concludes that decontamination of any land which is the subject of a notice of intention to relinquish pursuant to subsection (a) is not practicable or economically feasible, or that the land cannot be decontaminated sufficiently to be opened to operation of some or all of the public land laws, or if Congress does not appropriate a sufficient amount of funds for the decontamination of such land, the Secretary of the Interior shall not be required to accept the land proposed for relinquishment.

(e) STATUS OF CONTAMINATED LANDS.—If, because of their contaminated state, the Secretary of the Interior declines to accept jurisdiction over lands withdrawn by this Act which have been proposed for relinquishment, or if at the expiration of the withdrawal made by this Act of the Secretary of the Interior determines that some of the lands withdrawn by this Act are contaminated to an extent which prevents opening such contaminated lands to operation of the public land laws—

(1) the Secretary of the military department concerned shall take appropriate steps to warn the public of the contaminated state of such lands and any risks associated with entry onto such lands;

(2) after the expiration of the withdrawal, the Secretary of the military department concerned shall undertake no activities on such lands except in connection with decontamination of such lands; and

(3) the Secretary of the military department concerned shall report to the Secretary of the Interior and to the Congress concerning the status of such lands and all actions taken in furtherance of this subsection.

(f) REVOCATION AUTHORITY.—Notwithstanding any other provisions of law, the Secretary of the Interior, upon deciding that it is in the public interest to accept jurisdiction over lands proposed for relinquishment pursuant to subsection (a), is authorized to revoke the withdrawal and reservation established by this Act as it applies to such lands. Should the decision be made to revoke the withdrawal and reservation, the Secretary of the Interior shall publish in the Federal Register an appropriate order which shall—

(1) terminate the withdrawal and reservation;

(2) constitute official acceptance of full jurisdiction over the lands by the Secretary of the Interior; and

(3) state the date upon which the lands will be opened to the operation of some or all of the public lands laws, including the mining laws.

SEC. 9. DELEGABILITY.

(a) DEFENSE.—The functions of the Secretary of Defense or of a military department under this title may be delegated.

(b) INTERIOR.—The functions of the Secretary of the Interior under this title may be delegated, except that an order described in section 7(f) may be approved and signed only by the Secretary of the Interior, the Under Secretary of the Interior, or an Assistant Secretary of the Department of the Interior.

SEC. 10. WATER RIGHTS.

Nothing in this Act shall be construed to establish a reservation to the United States with respect to any water or water right on the lands described in section 1 of this Act. No provision of this Act shall be construed as authorizing the appropriation of water on lands described in section 1 of this Act by the United States after the date of enactment of this Act except in accordance with the law of the relevant State in which lands described in section 1 are located. This section shall not be construed to affect water rights acquired by the United States before the date of enactment of this Act.

SEC. 11. HUNTING, FISHING, AND TRAPPING.

All hunting, fishing, and trapping on the lands withdrawn by this Act shall be conducted in accordance with the provisions of section 2671 of title 10, United States Code, except that hunting, fishing, and trapping within the Desert National Wildlife Range and the Cabeza Prieta National Wildlife Refuge shall be conducted in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.), the Recreation Use of Wildlife Areas Act of 1962 (16 U.S.C. 460k et seq.), and other laws applicable to the National Wildlife Refuge System.

SEC. 12. MINING AND MINERAL LEASING.

(a) DETERMINATION OF LANDS SUITABLE FOR OPENING.—As soon as possible after the enactment of this Act and at least every five years thereafter, the Secretary of the Interior shall determine, with the concurrence of the Secretary of the military department concerned, which public and acquired lands (except as provided in this subsection) described in subsections (a), (b), (d), (e), and (f) of section 1 of this Act the Secretary of the Interior considers suitable for opening to the operation of the Mining Law of 1872, the Mineral Lands Leasing Act of 1920, as amended, the Mineral Leasing Act for Acquired Lands of 1947, the Geothermal Steam Act of 1970, or any one or more of such Acts. The Secretary of the Interior shall publish a notice in the Federal Register listing the lands determined suitable pursuant to this section and specifying the opening date, except that lands contained within the Desert National Wildlife Range in Nevada or within the Cabeza Prieta National Wildlife Refuge in Arizona shall not be determined to be suitable for opening pursuant to this section.

(b) OPENING LANDS.—On the day specified by the Secretary of the Interior in a notice published in the Federal Register pursuant to subsection (a), the land identified under subsection (a) as suitable for opening to the operation of one or more of the laws specified in subsection (a) shall automatically be open to the operation of such laws without the necessity for further action by either the Secretary or the Congress.

(c) EXCEPTION FOR COMMON VARIETIES.—No deposit of minerals or materials of the types identified by section 3 of the Act of July 23, 1955 (69 Stat. 367), whether or not included

in the term "common varieties" in that Act, shall be subject to location under the Mining Law of 1872 on lands described in section 1.

(d) REGULATIONS.—The Secretary of the Interior, with the advice and concurrence of the Secretary of the military department concerned shall promulgate such regulations to implement this section as may be necessary to assure safe, uninterrupted, and unimpeded use of the lands described in section 1 for military purposes. Such regulations shall also contain guidelines to assist claimants in determining how much, if any, of the surface of any lands opened pursuant to this section may be used for purposes incident to mining.

(e) CLOSURE ON MINING LANDS.—In the event of a national emergency or for purposes of national defense or security, the Secretary of the Interior, at the request of the Secretary of the military department concerned, shall close any lands that have been opened to mining or to mineral or geothermal leasing pursuant to this section.

(f) LAWS GOVERNING MINING ON LANDS WITHDRAWN UNDER THIS ACT.—(1) Except as otherwise provided in this Act, mining claims located pursuant to this Act shall be subject to the provisions of the mining laws. In the event of a conflict between those laws and this Act, this Act shall prevail.

(2) All mining claims located under the terms of this Act shall be subject to the provisions of the Federal Land Policy and Management Act of 1987 (43 U.S.C. 1701 et seq.).

(g) PATENTS.—Patents issued pursuant to this Act for locatable minerals shall convey title to locatable minerals only, together with the right to use so much of the surface as may be necessary for purposes incident to mining under the guidelines for such use established by the Secretary of the Interior by regulation.

(2) All such patents shall contain a reservation to the United States of the surface of all lands patented and of all nonlocatable minerals on those lands.

(3) For the purposes of this section, all minerals subject to location under the Mining Law of 1872 are referred to as "locatable minerals".

(h) REVOCATION.—Notwithstanding any other provision of law, the Secretary of the Interior, if the Secretary determines it necessary and appropriate for the purpose of consummating an exchange of lands or interests therein under applicable law, is hereby authorized and directed to revoke the Small Tract Act Classification S.T. 049794 in Clark County, Nevada.

SEC. 13. IMMUNITY OF UNITED STATES.

The United States and all departments or agencies thereof shall be held harmless and shall not be liable for any injuries or damages to persons or property suffered in the course of any mining or mineral or geothermal leasing activity conducted on lands described in section 1 of this Act.

SEC. 14. SHORT TITLE.

Sections 1 through 15 of this Act may be cited as the "Military Lands Withdrawal Act of 1986".

SEC. 15. REDESIGNATION.

The Luke Air Force Range in Arizona is hereby redesignated as the "Barry M. Goldwater Air Force Range". Any reference in any law, regulation, document, record, map, or other paper of the United States to the Luke Air Force Range shall be deemed to be a reference to the "Barry M. Goldwater Air Force Range".

SEC. 16. BOUNDARY ADJUSTMENT TO CUYAHOGA VALLEY NATIONAL RECREATION AREA.

Section 2 of the Act entitled "An Act to provide for the establishment of the Cuyahoga Valley National Recreational Recreation Area", approved December 27, 1974 (16 U.S.C. 460ff et seq.), is amended as follows:

(1) In subsection (a), strike out "numbered 655-90,001-A and dated May 1978" and insert "numbered 644-80,054 and dated July 1986".

(2) At the end of subsection (a), insert the following:

"The recreation area shall also comprise any lands designated as 'City of Akron Lands' on the map referred to in the first sentence which are offered as donations to the Department of the Interior or which become privately owned. The Secretary shall revise such map to depict such lands as part of the recreation area.".

(3) In subsection (b), after the first sentence, insert the following:

"The Secretary may not acquire fee title to any lands included within the recreation area in 1986 which are designated on the map referred to in subsection (a) as 'Scenic Easement Acquisition Areas'. The Secretary may acquire only scenic easements in such designated lands. Unless consented to by the owner from which the easement is acquired, any such scenic easement may not prohibit any activity, the subdivision of any land, or the construction of any building or other facility if such activity, subdivision, or construction would have been permitted under laws and ordinances of the unit of local government in which such land was located on April 1, 1986, as such laws and ordinances were in effect on such date.".

Mr. SEIBERLING (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there object to the request of the gentleman from Ohio?

There was no objection.

The SPEAKER pro tempore. The question is on the amendment in the nature of a substitute offered by the gentleman from Ohio [Mr. SEIBERLING].

The amendment in the nature of a substitute was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

PROVIDING FOR A LAND EXCHANGE IN THE STATE OF ALASKA

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5730) to provide for a land exchange in the State of Alaska, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. WALKER. Mr. Speaker, reserving the right to object, I am a little concerned here about cost on this particular bill as well.

Mr. YOUNG of Alaska. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Alaska.

Mr. YOUNG of Alaska. This is the same bill that passed the House approximately a month ago. This is an authorization, not an appropriation. The bill had passed the House with an authorization.

On the Senate side, this is actually a duplicate of the Senate bill.

The reason we are taking the bill up at this time is because we probably will be adjourned before they adjourn, and they want to act on the legislation when we send it over to them. They have amended the House bill to take out the appropriation and substituted an authorization for it. So this has to go before the authorization committees in due time.

Mr. WALKER. The gentleman has confused me.

We are dealing only with an authorization here. We still have yet an appropriation pursuant to it.

Mr. YOUNG of Alaska. Yes, when it first passed the House and went over to the Senate, we had a appropriation process, and the Senate objected to that. They took the appropriation out and only the authorization is there. So consequently, we are sending this over to them so they can act on the bill. There is a timeframe here that has to happen or the people involved in this face a liquidation process that would not be compatible or right for the original intent of the act.

Mr. WALKER. And any appropriation pursuant to this would be in line with budget guidelines?

Mr. YOUNG of Alaska. Yes.

Mr. SEIBERLING. Mr. Speaker, will the gentleman yield?

Mr. WALKER. Further reserving the right to object, I yield to the gentleman from Ohio.

Mr. SEIBERLING. Mr. Speaker, this will probably be the last bill that I manage before I leave this House. I feel very good about it because this is a bill that is going to help the Native people of Alaska, a particular native village corporation that has, through circumstances beyond their control, got the short end of the distribution of land that went to native corporations in Alaska.

Because of my association in this body with the Alaska lands issue and

the long association with native problems in Alaska, and with the distinguished gentleman from Alaska, as well as my distinguished chairman, the gentleman from Arizona [Mr. UDALL], I feel particularly moved to be able to offer this bill to the House as my last official act.

I want to thank the gentleman from Alaska and all of my colleagues for the 16 years of help, support and friendship that they have given me and the opportunity to serve in this wonderful body.

Mr. YOUNG of Alaska. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Alaska.

Mr. YOUNG of Alaska. Mr. Speaker, I want to compliment the chairman, the gentleman from Ohio [Mr. SEIBERLING], for his friendship and his work on Alaskan matters. We have not always seen eye to eye, as the Speaker has mentioned, but we did it with a great deal of respect for one another. This issue is one we worked very closely together with and with the Senate side. I do deeply appreciate the gentleman's effort and his sincerity, the gentleman's and Mr. UDALL's both. This type of legislation is beneficial to all.

Mr. Speaker, I would like to thank the gentleman from Ohio, and the chairman of the committee, for the work they and their staffs have done to produce this legislation. This legislation is the product of many hours of meetings and negotiations by our respective staffs and the interested parties, including the U.S. Forest Service, so that a small Alaska Native village corporation, the Haida Corp., can survive.

Mr. Speaker, I rise in strong support of H.R. 5730. In order to reach a compromise all the parties could live with this year, anything that was controversial in the legislation was eliminated. What remains will keep the Haidas from their pending bankruptcy liquidation in December of this year, by allowing them to sell some of their land, and it also allows them to get some scattered traditional sites the Haidas used as summer camps for hunting and fishing. The legislation leaves for another day what lands of economic value the Haidas could receive to give them and their children a future. When the bill was introduced, we had hoped we could provide the Haidas with a land exchange this year which would provide them with timber lands of value—in fact, the lands in question were just a small part of what had traditionally been the Haidas' land in the first place. But those lands proved too controversial in light of the deadline imposed by the court of December 31 of this year, by which time Haida has to have some sort of legislation or it will be forced to liquidate all its holdings in bankruptcy. If that happens, the Haidas will lose everything they have, including all their land.

It should be remembered that historically these people had claim to the richest timber land in the entire State. But due to technicalities in ANCSA and the fact the Government moved these people from their traditional villages to a new site, their traditional timber rich lands were not available to them. The richest of those lands eventually were given to another Native corporation as part of the land exchange, and those lands which were once Haida territory have made that corporation the richest village corporation in the State.

The Haidas stand today on the brink of complete liquidation. What this legislation does is allow them to sell off some of their land—it is their best land—so they don't lose it all. It was only at the prospect of losing all their land, the Haidas decided they would have part with some. The bill also attempts to encourage tourism in this beautiful area and the hiring of local, Native residents. Their local economy is in a poor state. They were hard hit first by the decline in the fishing industry, and then the timber market.

Because it was impossible to find the Haidas lands of worth at this time, that the timber industry, the State or the environmentalists didn't also want, the Haidas will wait to finish its selections until after the Forest Service completes a new management plan and the State completes all its land selections in the national forest. The legislation leaves open the possibility, of however, the Haidas getting the rest of their lands on an earlier date, through existing authority, if the relevant parties can get together and agree.

These people have had a long difficult relationship with the Federal Government in the past and some of those problems and issues still remain unresolved, and may end up in court yet. We commend the Forest Service for working with us on this legislation to at least keep the Haidas from liquidation. The court and the future will have to decide the rest of the Haidas' fate another day.

I again want to thank everyone involved for cooperating to produce legislation which will let these people survive as an ANCSA corporation. I urge support for this legislation.

This bill is an offer by the United States to acquire from two Native corporations certain lands and interests therein located in southeast Alaska, in return for other lands and interests therein and other things of value. It also contains provisions related to fulfillment of the purposes of the Alaska Native Claims Settlement Act and the Alaska National Lands Conservation Act.

Haida Corp. is the village corporation formed pursuant to the Alaska Native Claims Settlement Act whose shareholders are Native residents in Hydaburg, in southeast Alaska. The regional corporation for that region, under the Alaska Native Claims Settlement Act, is Sealaska Corp.

Hydaburg was one of the villages in southeast Alaska specifically named in section 16 of the Alaska Native Claims Settlement Act—the Settlement Act. There originally were nine others so named; the village of Klukwan was included in the original section 16 list, but was deleted therefrom and dealt with separately through enactment of Public Law 94–456, which became law on October 4, 1976. Compared with the other villages so identified, and with villages dealt with in other sections of the Settlement Act, Hydaburg's circumstances are somewhat anomalous, and as a result Haida Corp. has encountered a situation particularly its own. The result of this situation, combined with other problems not entirely of Haida Corp.'s doing, has been that Haida Corp. has encountered servere economic difficulties.

In particular, the Haida Corp. is the only Settlement Act village corporation which could not select land outside its core township or townships. This unique restriction of Haida Corp.'s land selected options is an accident borne of the interplay between the provisions of section 16(b) of the Settlement Act and particular attributes of the geography and survey of the village of Hydaburg and surrounding area. The restriction severely limited Haida's ability to obtain lands suitable for economic development. The effects of this restriction have been compounded by the fact that the acreage involved in Haida Corp's Settlement Act entitlement—23,040 acres, the rule for section 16 villages—is almost identical to the acreage actually availble for selection within Haida's core townships. This means Haida had virtually no choice whatsoever in its land selection.

Under the Settlement Act, a village corporation was required to select its entitlement of land from its withdrawal area, which is composed of the "core" township or townships where the village is actually located and from 8 to 25 additional contiguous and cornering townships. The "core township rule" provided that in selecting lands from its withdrawal area a village corporation first had to select available lands in its core township or townships. Once that was accomplished, the village corporation then could look to the surrounding ring or rings of townships in its wirhdrawal areas to select the rest of its acreage entitlement, subject to certain requirements for compactness and contiguity of selection, and the like. Since the usual withdrawal areas for village corporations were much larger than the actual acreage entitlements of the village, this system provided the village corporations with flexibility as to which lands they could select outside the "core."

The village of Hydaburg was determined to have two core townships because the village extends a few hundred feet to the west over a township line. Although infrequent, having two core townships is not unique to Haida Corp. However, because the two Haida core townships together contained approximately the same acreage as Haida's total entitlement, Haida's entitlement was reached in the "core" and there was no further entitlement left over with which to select land in the rest of the withdrawal area. This result is unique to Haida, the only village corporation whose selections were based entirely, with no element of choice or input from Haida, on the chance location of "core" township survey lines on a map, with little relation to where the Haidas lived or for lands they used.

The lands Haida received in its core townships have relatively little in the way of developable resources, although many, particularly the islands, contain extremely valuable fish and wildlife habitat and are highly scenic. In contrast, there are lands in the Haida withdrawal area which contain extremely valuable timber, but because lands in its dual core exhausted its entitlement, Haida Corp. was precluded from selecting any of those surrounding townships.

In testimony before the Committee on Interior and Insular Affairs on similar legislation, representatives of Haida Corp. pointed out what they termed the poignant ironies of this result in light of past events.

In the first place, the Haida representatives told the committee, the dual-township rule as applied to Haida is particularly poignant because the Native people of Hydaburg are living in Hydaburg—on top of a township line—only because the U.S. Government moved them there. In 1912. the committee was told, the Government decided it would be best to relocate and consolidate three traditional Haida villages in this spot.

Further, the Haida representatives testified that in the 1940's, after extensive hearings, the Department of the Interior set aside 100,000 acres, with an exclusive right to the fishery, in a "Hydaburg reserve," based on aboriginal use and occupancy of those lands by the Hydaburg Indian community. Seven reserves of this type were created in the state. The committee was informed that the Justice Department decided to bring a test trespass case regarding these reserves on behalf of their Native inhabitants, which concerned, among other things, the exclusiveness of the fishery. A fish trap in the Hydaburg reserve was the subject of the test trespass suit. The suit was brought against the cannery company which was using the fish trap. The Justice Department lost the case. Testimony indicated that the court based its decision, which held the reserve itself was invalid, on a case holding against the existence of aboriginal title, a precedent which the committee understands has since been discredited twice by the U.S. Supreme Court, but the Justice Department never appealed on behalf of the community of Hydaburg. Although the Hydaburg reserve was disestablished, the other reserves of this type were allowed to continue.

Upon enactment of the Settlement Act, the Native corporations from those communities within the other reserves were allowed to choose between taking title to their reserve lands or selecting section 11 or 16 lands, pursuant to section 19(b) of the Settlement Act. Had the Justice Department not lost the trespass case, presumably, Haida Corp. would have had the option of selecting the 100,000 acres in its reserve or taking 23,040 acres from its two core townships. Since the reserve encompassed those two townships plus much more—at least 76,000 acres more—and the Haidas could get a full fee interest, it seems probable that they would have taken the reserve land.

The Haida representatives pointed out that Klukwan, another southeastern Alaska village, was allowed to select what the Haida representatives described as traditional Haida lands on Long Island under the special legislation enacted for Klukwan's benefit cited earlier, even though the Klukwan Natives are not Haidas and their village is at the opposite end of southeast Alaska. A withdrawal of 70,000 acres of public lands was made for Klukwan under this legislation, from which Klukwan then was permitted to select 23,040 acres. Klukwan was not restricted to a "core." The Long Island lands, which are far from Klukwan but adjacent to the original Haida villages, provided Klukwan valuable timber resources.

Further, the Haida representatives stressed in their testimony that Haida Corp. did not receive conveyance of the bulk of its Settlement Act land entitlement until 1980, although the Settlement Act was passed at the end of 1971. The dramatic drop in timber prices between the late 1970's and the present thus had the effect of depriving Haida of a significant opportunity to profitably harvest its lower-quality timber, since by the time the conveyance were effective the market for such timber had disappeared. The Haida representatives told the committee that on the basis of appraisals done first in 1979 and then in 1980, Haida's timber suffered an erosion of approximately 80 percent of its market value over the 6 years.

We were mindful of this history as we evaluated and revised H.R. 5353 and its successor, H.R. 5730. In our opinion, the bill is primarily an equitable and fair land-exchange and acquisition measure; but we have also included—in section 10—provisions intended to afford Haida Corp. greater flexibility in selecting lands in fulfillment of its Settlement Act entitlement.

The bill is in 11 sections as follows:

Section 1 provides a short title for the bill, namely the "Haida Land Exchange Act of 1986," and sets forth a statement of purpose for its enactment.

Section 2 defines a number of terms used in the bill, and provides for appropriate filing and interpretation of the maps referenced in the bill.

Section 3 sets forth the bill's offers to Haida Corp., and the terms on which the offers are made. It is in four subsections.

Subsection (A) provides that if Haida Corp. agrees to and carries out the relinquishment and conveyance to the United States of all its right, title, and interest in certain specified lands, the United States will provide to Haida Corp. title to certain specified Federal lands. The lands which the United States would acquire from Haida Corp. under this subsection are 4,222 acres of other lands selected by the Secretary of Agriculture from a defined "pool" of lands now owned by the Haida Corp.

Haida Corp. originally identified 12 traditional use sites that they would like to receive from the United States in exchange for equal acres of land they currently own near Hydaburg. The Forest Service conducted an analysis of each of the sites to determine the effects of exchanges on the management of public lands.

Eleven of the sites were determined to be available for exchange to Haida Corp. The Arena Cove site however was not recommended for exchange. The Arena Cove area of Sumez Island from Cape Felix to Lontana Point was recognized for its high scenic and recreational values in the Forest Service environmental assessment for Sumez Island. It was recommended in that assessment that the area be designated a scenic/geological area, and 6,000 acres were withdrawan from road building and logging activities in order to protect scenic and geological resources. Conveyance of the area adjacent to the beaches to private ownership could preempt the use and enjoyment of the area by the public. The Forest Service feels that the current management practices and those proposed for the future adequately protect traditional uses of the site and that conveyance should be denied.

Haida Corp. indicated that its purpose for wanting to select the site was to protect the scenic values and to assure continued traditional use by their people. With the assurance by the Forest Service that those values would continue to be protected, they withdrew their request for selection.

In light of this understanding, we expect the Forest Service to continue to protect the unique values of the Arena Cove area and evaluate it for potential administrative designation as a scenic area during the forthcoming revision of the Tongass Forest plan.

Subsection (B) provides an offer subject to further appropriation for the purchase of Goat Island, the South Pass Islands and a site for a cooperative information and education branch facility from Haida Corp. Goat Island and the South Pass Islands possess especially high scenic and wildlife habitat values and are desirable for public acquisition and Subsection (C) provides another offer to Haida Corp. to purchase up to 667 acres of Haida Corp.'s land from the "pool" of lands referred to above, at the price of $3,000 per acre.

Subsection (D) establishes a deadline of 2 years after the enactment of the bill for Haida to accept the offers specified in subsections (A), (B) and (C). Acceptance is to be signified by a properly executed and certified corporate resolution. Haida Corp.'s acceptance of one of the offers does not depend on or require the acceptance of the other offers.

Section 4 specifies the offers that are made to Sealaska Corp. by the bill. These offers are viewed as necessary for a variety of reasons. As the regional corporation for southeastern Alaska, under the Settlement Act, Sealaska Corp. received title to the subsurface estate in the lands selected by and conveyed to Haida Corp. in fulfullment of Haida's entitlement. Thus, acquisition by the United States of Haida's interest in lands with nothing more would result in the creation of a split estate of Federal surface and Sealaska subsurface, which would present potential problems for proper management of the surface. Also, we view acquisition of the full fee—rather than a partial estate—of Goat Island and the South Pass Islands and the cooperative information and education branch site to be important in order to assure proper protection of the resources and values of those areas.

This section has three subsections: Subsection (A) extends to Sealaska the offer that if Sealaska transfers to the United States Sealaska's interests in Goat Island and the South Pass Islands and the cooperative information and education branch site, the United States will transfer to Sealaska lands of equal value to Sealaska.

Subsection (B) is a separate offer to Sealaska. In it, the United States would provide Sealaska the option of transferring to the United States Sealaska's subsurface interests in the lands the surface estate in which would be transferred to the United States by Haida if Haida accepts the offer made in section 3(A), and to receive in return the subsurface estate in the lands the United States would transfer to Haida Corp. pursuant to section 3(A). This

option would be open for 2 years after the date of enactment of the bill.

Subsection (C) establishes a deadline of 2 years after the date of enactment of the bill for Sealaska to accept the offer made by subsection (A) of this section by providing appropriate documentation.

Section 5 provides for management of Goat Island and the South Pass Islands upon their acquisition by the United States. It is in two subsections.

Subsection (A) provides that if Haida does make a timely acceptance of the offers made by section 3, any corresponding acceptance made by Sealaska shall be ineffective and the United States shall not be bound to acquire any of Sealaska's interests in Goat Island, the South Pass Islands, or the cooperative information and education branch site or other lands.

Subsection (B) deals with the management of Goat Island and the South Pass Islands if they are acquired by the United States under this bill. Under this subsection, these are withdrawn from mineral entry, from operation of the mineral leasing and geothermal leasing laws, from State selection under the Alaska Statehood Act, and from Native selection under the Alaska Native Claims Settlement Act. The subsection also provides that section 1307(b) of the Alaska National Interest Lands Conservation Act is to apply to these areas although they are not conservation system units. That section of the Alaska Lands Act provides for affording a preference for local residents and affected Native corporations with regard to the provision of visitor services—except for guiding activities for sport fishing and sport hunting. It is the intention of the committee that Goat Island and the South Pass Islands, if acquired by the United States under this bill, will be treated, for purposes on section 1307 of the Alaska Lands Act but for no other purpose, as a single conservation system unit, and that for those purposes the date of final acquisition of the lands in those areas shall be considered to be the date of establishment of those areas.

Section 6 deals with the status of the offers made by the bill and the conditions of conveyances made under it. It is in two subsections.

Subsection (A) provides that the offers to Haida Corp. and Sealaska, respectively, are separate, and that an acceptance by one corporation does not bind the other corporation.

Subsection (B) deals with the status of the conveyances of lands conveyed to the United States under the bill after acceptance of one or more of the offers contained in the bill. It provides that such conveyances by Haida shall be subject to valid existing rights and other interests which as of the date of the previous interim conveyance from the United States—so long as that was before the date of enactment of this bill—were protected under Federal law, but otherwise free and clear of the claims of all creditors. It also provides that no encumbrances on lands conveyed by Haida to the United States under the bill shall be effective unless such encumbrances are either acceptable to the Secretary of Agriculture or subject to the jurisdiction of a U.S. court as of the date of the conveyance of the lands involved from Haida Corp. to the United States under this bill. It further provides that the Secretary of Agriculture shall require Sealaska to provide such title as is acceptable to the Federal Power Act. This withdrawal expires 18 months after the date of enactment of the bill.

Section 7 deals with the status of the lands conveyed under the bill. It is in two subsections.

Subsection (A) provides that all lands and other consideration of value conveyed to Haida Corp. or to Sealaska Corp. by the United States under the bill be considered as receipts of interests in land.

Subsection (B) provides that all lands conveyed to the United States under the bill will be included in the Tongass National Forest and managed accordingly. This supplements and does not supersede the provisions of section 5(b). It also provides that lands and interests therein conveyed to the United States under the bill are exempt from levy, foreclosure, or similar actions and from any action under the Quiet Title Act.

Section 8 deals with the status of lands eligible for conveyance to or from Federal ownership under the bill. It has three subsections.

Subsection (A) withdraws the Federal lands identified in the bill as eligible for conveyance to Haida Corp. or Sealaska from the operation of the public land laws, including the mineral leasing, geothermal leasing, and mining laws, and against issuance of preliminary permits and licenses.

Subsection (B) provides for interim management of the lands which under the bill may be exchanged between the United States and the two Native corporations. These lands are to be managed to maintain their existing character and resources—that is, as of the date of enactment.

Subsection (C) contains a variety of savings provisions. It provides that nothing in the bill is to be considered as a cloud on the title of any lands which as of the date of enactment are owned by either of the Native Corporations; that nothing in the bill is to be construed as affecting the existing ownership or limiting the use of lands owned by the corporations as of the date of enactment; that nothing in the bill is to be construed as limiting the authority of the Secretary of Agriculture to enter into land exchanges under other legal authorities; that implementation of the bill through conveyances of land is not to be deemed a major Federal action for purposes of the National Environmental Policy Act of 1969; and that such implementation shall not require any determination under section 810 of the Alaska National Interest Lands Conservation Act.

Since this subsection makes clear that enactment of the bill would not diminish or otherwise limit existing exchange authority, it follows that such authority will be available, notwithstanding that enactment, to effect administrative changes of the lands described herein or of Haida Corp.'s selection rights.

Section 9 provides for an authorization from the land and water conservation fund to fund payments to Haida Corp. under section 3, if Haida Corp. accepts the offers in section 3(b) and or 3(c).

Section 10 was included as a means of affording to Haida Corp. additional flexibility in fulfilling its entitlement under the Alaska Native Claims Settlement Act. It is to have no immediate effect, since its effectiveness is to be postponed until after the expiration of the authority of the State of Alaska to select national forest lands under the Alaska Statehood Act. It has four subsections.

Subsection (A) provides that the Secretary of the Interior shall withdraw lands for Haida Corp.'s selection on or after the date set forth in subsection (D). The purpose of the subsection is to establish the mechanism and the authority and direction to the Secretary of the Interior to make available for Haida Corp.'s selection. The provision permits the Secretary to make a certain amount of land available for Haida Corp.'s selection irrespective of the core township rule of section 16 of the Alaska Native Claims Settlement Act by which Haida has been uniquely burdened.

The subsection specifies that consultation among certain named parties shall precede any withdrawals. Those named parties are the Secretary of the Interior, the Secretary of Agriculture, the Governor of Alaska, Haida Corp. and Sealaska Corp.

It is our intent that consultation shall be a meaningful and orderly process through which the named parties communicate and attempt to reach mutual accommodation. Consultation should include, but need not be limited to, the timely solicitation of views and recommendations of each of the named parties regarding withdrawals pursuant to this section, and meetings among such parties. For one example, during the consultation process, it is intended and expected that the Governor, if he so chooses, shall identify lands of high fish and wildlife value for maintenance in public ownership and that the other named parties shall give great weight to such recommendations in their deliberations and communications.

We anticipate that during the consultation process and at least 60 days prior to the withdrawal of Federal lands under this section, a public hearing will be held in Hydaburg at which the views of the community will be solicited regarding such a withdrawal and that such views shall be given due consideration. We would expect that if the Governor of Alaska so requests, a public hearing would be held in other affected communities, if any. We expect that in advance of any withdrawal pursuant to this section the Secretary of the Interior will advise the named parties in writing of the lands to be withdrawn, and shall set forth a brief statement of reasons for choosing those lands.

It is the intent that the named parties, to the maximum extent feasible and in light of the upcoming revision of the Tongass Land Management Plan and the past and future identification of State selections pursuant to section 6(a) of the Alaska Statehood Act, shall begin the consultation process sufficiently in advance of the date set forth in subsection (D) that withdrawals pursuant to this section may be effected promptly after such effective date. It is our intent that lands be made available and transferred to Haida pursuant to this section as quickly as possible.

Paragraph (3) of subsection (A) provides criteria to be utilized by the Secretary of the Interior in determining which lands should be withdrawn for selection. In applying those cri-

teria, the Secretary of the Interior must consult Haida Corp. with respect to which lands are of like kind and character to those traditionally used and occupied by the shareholders of Haida Corp. Similarly, in determining what lands would be capable of providing an economic return to Haida, the Secretary of the Interior must take into consideration Haida Corp.'s long-range economic plans, the corporation's financial goals, and its existing and proposed land use plans. It is our intent that Haida Corp. had the opportunity to receive lands pursuant to this section which are economically valuable.

Subsection (A) specifies that even in the event it is determined that withdrawals from the national forest would best meet the purposes and criteria established in the subsection, the Secretary of Agriculture's concurrence shall be required to effect withdrawal of any such lands. The subsection also specifies that lands within conservation system units shall not be available for withdrawal and selection pursuant to this section.

Subsection (B) provides for Haida Corp.'s selection of lands from the withdrawal area or areas created pursuant to subsection (A). The number of acres Haida can select from such areas is the number of acres of "selection rights" Haida possesses, as the term "selection rights" is defined in the bill, as of the date of selection. However, Haida is not required to utilize or exchange all of rights under this section if it chooses not to. Under the bill's definition, the maximum number of acres of "selection rights" it possesses is determined by adding its unexercised Alaska Native Claims Settlement Act selection rights which are still outstanding and those acres of the Haida exchange lands which have not otherwise been exchanged or disposed of by Haida Corp. at the time of the selection provided for in this subsection. Subsection (B) allows Haida Corp. to choose which of the lands or unexercised rights it exchanges for the lands selected hereunder. It is our intent that an exchange effected with selection rights as defined in this act shall be on an acre-for-acre basis.

We understand that as the date of this report, Haida Corp. apparently had outstanding Alaska Native Claims Settlement Act selection rights amounting to about 2,300 acres. If so, the maximum acreage which could be selected under this section would be an amount equal to the sum of 2,300 acres plus the acreage of those lands identified as Haida exchange lands which Haida Corp. owns in January 1, 1995. The maximum acreage which Haida could select under section 10 would be reduced, acre for acre, to the extent that some of the present selection rights may be exercised or some of the Haida exchange lands may be transferred out of Haida's ownership—or both—prior to January 1, 1995.

Subsection (C) provides that all withdrawals made pursuant to subsection (A) of this section and all withdrawals pursuant to the Alaska Native Claims Settlement Act made prior to the date of enactment of the bill for purposes of Haida's selections will terminate after the last withdrawal is made under subsection (A) of this section. The intent is that uncertainties as to Haida's future land holdings are to be minimized, so far as possible consistent with the purpose of section 10—namely to provide a period of flexibility for Haida, commencing on January 1, 1995.

Subsection (D) provides that the provisions of section 10 are to take effect on January 1, 1995. This date was chosen to assure that withdrawals under this section will not commence until after the expiration of the period for State selections of national forest lands under the Alaska Statehood Act. We are hopeful that by then many of the present controversies arising from proposed adjustments in land ownership patterns in southeastern Alaska can be avoided as the Haida Corp. seeks to enhance its prospects for economic survival and success.

At the same time, we are well aware that Haida Corp. is already experiencing economic difficulties, and also that the Alaska Native Claims Settlement Act presently provides that the restrictions on alienability of shares of village corporations such as Haida Corp. will end prior to January 1, 1995. With respect to this bill, we stress that H.R. 5730 is an offer to Haida Corp. and to Sealaska Corp. as Native corporations under the Alaska Native Claims Settlement Act. Should their status change, we would expect to reevaluate the desirability of this bill, including the provisions of section 10.

Section 11 deals with a proposed cooperative information and education center in southeast Alaska.

The general purpose of this survey is to authorize that steps be taken to proceed with the survey, design, and related work necessary to establish such a center. Based on work already done with an eye to locating such a center pursuant to the Alaska National Interest Lands Conservation Act, the Secretary of Agriculture—after coordinating with the Alaska Land Use Council—has identified Ketchikan, AK, as the preferred site for this center. We concur in the Secretary's recommendation with regard to a Ketchikan location.

The principal purposes of the center will be to provide information to visitors to and residents of Alaska on the many diverse places to visit and activities in which to participate within the State.

The information provided to the public should include, but not be limited to, pamphlets, brochures, books, and other publications regarding National Park System units, national forest monuments, national forests, national wildlife refuge system units, national wilderness preservation system units, national wild and scenic river system units, the Steese National Conservation Area, the White Mountains National Recreation Area, and other natural resource areas under the jurisdiction of agencies of the Federal and State Government.

Such information should also include pamphlets, brochures, books, and other publications regarding all resources and values listed in paragraph 11(B)(1).

It is our understanding that the State of Alaska and the city of Ketchikan are prepared to make significant contributions to Federal efforts to obtain an appropriate site for and to eventually construct the center. Because of the convergence of interests in the center of the State, local, and Federal Governments as well as the private sector, we expect the Secretary of Agriculture to work in close cooperation not only with other Federal agencies but also with the local and State governments and others to maximize the benefit of the center to the people visiting Alaska and to the people residing in the State.

Because this center is to be "gateway" to all of Alaska, it should also contain information relating to natural resource areas within the jurisdiction of the State of Alaska as well as those within the jurisdiction of the Federal Government.

Although the center should contain information which covers resources located throughout the State of Alaska, special emphasis should be placed on providing information and interpretive exhibits focusing on southeast Alaska.

Among the areas which should receive such emphasis, are the cultural, historical, and archeological resources of the Native peoples indigenous to southeast Alaska.

Although the center is authorized by the Alaska Lands Act and by this section, only the start-up funds are provided. Once the Secretary has submitted the development plan for the center, the Congress will consider how much in the way of funding can and should be made available through subsequent authorization for actual construction of the center.

The Committee on Interior and Insular Affairs will have continuing responsibility for oversight of the implementation of H.R. 5730 after its enactment. No reports or recommendations were received by the Committee pursuant to rule X, clause 2(B)(2) of the Rules of the House of Representatives.

With respect to legislative history, I introduced H.R. 5730 on October 17, 1986, and it was taken from the desk by unanimous consent and passed. It is similar in many respects to H.R. 5353 as it passed the United States House of Representatives on September 30, 1986. H.R. 5353 was introduced on August 7, 1986. The Subcommittee on Public Lands began a hearing on the bill on August 8, 1986, with a second part of the hearing held on September 16, 1986. On September 23, 1986, the subcommittee adopted an amendment in the nature of a substitute and favorably referred the bill as so amended to the full committee. On September 25, 1986, the Committee on Interior and Insular Affairs adopted an amendment in the nature of a substitute and ordered the bill as so amended favorably reported to the House by a unanimous voice vote.

Mr. WALKER. Mr. Speaker, further reserving the right to object, let me say, too, the gentleman from Ohio has served this body with great distinction. The gentleman and I have stood here in this kind of scenario in congressional sessions on many occasions, sometimes agreeing and sometimes disagreeing. He is someone who will be missed in this House for the leadership that he has provided.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the bill, as follows:

H.R. 5730

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND PURPOSE.

(a) SHORT TITLE.—This Act may be cited as the "Haida Land Exchange Act of 1986".

(b) PURPOSE.—The purpose of this Act is to provide an offer for the owners thereof to relinquish and convey voluntarily to the United States certain lands and interests therein as described below and receive in lieu thereof certain Federal lands and money. Congress finds and declares that it is in the public interest to implement the land exchanges and acquisitions set forth herein, in order to carry out the purposes of the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act.

SEC. 2. DEFINITIONS AND MAPS.

(a) GENERAL DEFINITIONS.—As used in this Act:

(1) The "Alaska Native Claims Settlement Act" means Public Law 92-203, 85 Stat. 688 (December 18, 1971), as amended.

(2) The "Alaska National Interest Lands Conservation Act" means Public Law 96-487, 94 Stat. 2371 (December 2, 1980), as amended.

(3) The term "Secretary" means the Secretary of Agriculture, unless otherwise specified.

(4) The term "Haida Corporation" means the Alaska Native Village Corporation of Hydaburg, Alaska, which was organized pursuant to section 8 of the Alaska Native Claims Settlement Act.

(5) The term "Sealaska" means Sealaska Corporation, a Regional Corporation (as such term is defined in section 3(g) of the Alaska Native Claims Settlement Act) existing under the laws of the State of Alaska.

(6) The term "Haida Exchange Lands" means those lands and interests therein generally depicted on a map entitled "Haida Exchange Lands" dated August 1986, the surface estate of which was conveyed, subject to valid existing rights and the provisions of the Alaska Native Claims Settlement Act, to Haida Corporation in partial fulfillment of its entitlement under section 16(b) of the Alaska Native Claims Settlement Act.

(7) The term "Haida Traditional Use Sites" means those lands and interests therein generally depicted on a map entitled "Haida Traditional Use Sites" dated August 1986, which are presently owned by the United States.

(8) The terms "Goat Island" and "South Pass Islands" mean those lands and interests therein generally depicted on a map entitled "Goat Island and South Pass Islands Acquisitions" dated September 1986, the surface estate of which was conveyed, subject to valid existing rights and the provisions of the Alaska Native Claims Settlement Act, to Haida Corporation in partial fulfillment of its entitlement under section 16(b) of the Alaska Native Claims Settlement Act, and the subsurface estate to which was conveyed to Sealaska pursuant to the Alaska Native Claims Settlement Act.

(9) The term "selection rights" means the combination of Haida Corporation's selection rights under section 16 of the Alaska Native Claims Settlement Act which have not been exercised as of January 1, 1995, plus such acreage of the Haida Exchange Lands owned by Haida Corporation on January 1, 1995.

(10) The term "subsurface estate" has the same meaning as such term has when used in the Alaska Native Claims Settlement Act.

(11) The term "conservation system unit" has the same meaning as such term has when used in the Alaska National Interest Lands Conservation Act.

(12) The term "cooperative information and education branch site" means a tract of land of not to exceed 10 acres as shall be identified, through mutual agreement of the Secretary and Haida Corporation, for location of an affiliated branch of the center described in section 11 of this Act.

(b) MAPS.—The maps referred to in this Act shall be on file in the Office of the Chief, United States Forest Service and in the Office of the Secretary of the Interior, Washington, District of Columbia. The acreage cited in this Act is approximate, and in the event of discrepancies between cited acreage and the lands depicted on the referenced maps, the maps shall control, but such maps shall not be construed as an attempt by the United States to convey State or private lands, or as an attempt by Haida Corporation or Sealaska to convey to the United States lands not owned by Haida Corporation or Sealaska.

SEC 3. OFFERS TO HAIDA.

(a) OFFER.—For and in consideration of the relinquishment and conveyance to the United States of all of Haida Corporation's right, title, and interest in 4,222 acres of the Haida Exchange Lands as specified by the Secretary, there are hereby offered to Haida Corporation the following lands and interests in lands: All right, title, and interest of the United States in the surface estate of the Haida Traditional Use Sites. This conveyance shall be subject to valid existing rights and such perpetual easements as identified by the Secretary no later than 120 days after the date of enactment of this Act.

(b) OFFER.—For and in consideration of the relinquishment and conveyance to the United States of all Haida Corporation's right, title, and interest in Goat Island, South Pass Islands, and the cooperative information and education branch site, there is offered the sum of $9,000,000 subject to appropriation as authorized by section.

(c) OFFER.—For and in consideration of the relinquishment and conveyance to the United States of all Haida Corporation's right, title, and interest in up to 667 acres of the Haida Exchange Lands, with the amount of acres to be specified by Haida Corporation at the time of its acceptance, if any, of this offer, there is offered $3,000 per acre subject to appropriation as authorized by section 9. The Secretary shall specify which of the Haida Exchange Lands shall be conveyed to the United States pursuant to this subsection after Haida specifies the number of acres, if any, to be conveyed pursuant to this subsection.

(d) HAIDA DEADLINE.—Haida Corporation shall have two years from the date of enactment of this Act within which to accept the offers provided in this section by providing to the Secretary a properly executed and certified corporate resolution binding upon the corporation with respect to the relinquishment and conveyance of all of the corporation's right, title, and interest in the lands specified in subsection (a) and/or subsection (b) and/or subsection (c) of this section. At the Secretary's discretion, the Secretary may require that any such resolution be accompained by an opinion of counsel to Haida Corporation stating that the resolution comports with all requirements of Federal and State law and the rules and bylaws of the Haida Corporation.

SEC. 4. OFFERS TO SEALASKA

(a) ISLAND AREA.—For and in consideration of the relinquishment to the United States of all of Sealaska's right, title, and interest in Goat Island and South Pass Islands, the cooperative information and education branch site and such other lands of the Haida Exchange Lands as Haida Corporation may relinquish and convey pursuant to subsection 3(c), there is hereby offered to Sealaska, an exchange of lands or interests therein on an equal value basis.

(b) OTHER AREAS.—If not later than two years after the date of enactment of this Act, Sealaska notifies the Secretary and the Secretary of the Interior of Sealaska's desire to make an exchange, the Secretary of the Interior shall convey to Sealaska the subsurface estate in lands conveyed to Haida Corporation pursuant to this Act in exchange for the subsurface estate in the Haida Exchange Lands conveyed to the United States by Haida Corporation pursuant to section 3(a).

(c) DEADLINE.—Sealaska shall have two years from the date of enactment of this Act within which to accept the offer made by subsection (a) by providing to the Secretary a properly executed and certified corporate resolution binding upon Sealaska with respect to the relinquishment and conveyance of all Sealaska's interest in Goat Island and South Pass Islands, in the cooperative information and education branch site, and in such other lands of the Haida Exchange Lands as Haida Corporation relinquishes and conveys pursuant to section 3(c). At the Secretary's discretion, the Secretary may require that any such resolution be accompanied by an opinion of counsel to Haida Corporation and Sealaska stating that the resolutions comport with all requirements of Federal and State law and the rules and bylaws of the corporations.

SEC. 5. CONTINGENCY AND MANAGEMENT.

(a) CONTINGENCY.—In the event that Haida Corporation does not make a timely acceptance of the offers made by section 3, any acceptance by Sealaska shall be ineffective and the United States shall not be bound to acquire any of Sealaska's interests in Goat Island, or South Pass Islands or Haida Exchange Lands.

(b) MANAGEMENT.—If they are acquired by the United States pursuant to this Act, Goat Island and South Pass Islands shall be included within the Tongass National Forest, and shall be managed in accordance with laws applicable to the National Forest System and other applicable law. Subject to valid existing rights, Goat Island and South Pass Islands are hereby withdrawn from State selection under the Alaska Statehood Act and from native selection under the Alaska Native Claims Settlement Act. The provisions of section 1307(b) of the Alaska National Interest Lands Conservation Act shall apply to Goat Island and South Pass Islands notwithstanding the fact that such areas are not conservation system units.

SEC. 6. STATUS OF OFFERS AND CONDITIONS OF CONVEYANCE.

(a) SEVERABILITY.—The offers made in separate sections of this Act to Haida Corporation and to Sealaska respectively are separate, and acceptance of an offer made in one such section does not bind a corporation to accept any offer made in any other section.

(b) TERMS AND CONDITIONS.—Subject to valid existing rights and any other interests in land protected under Federal law as of

the date of interim conveyance of the relevant lands to Haida Corporation pursuant to the Alaska Native Claims Settlement Act where such conveyance accrued prior to the date of enactment of this Act, the conveyance of all lands and interests therein conveyed to the United States from Haida Corporation pursuant to this Act shall be free and clear of the claims of all creditors. No encumbrances on such lands and interests therein created after such interim conveyance which are not subject to the jurisdiction of a United States court as of the date of Haida Corporation's relinquishment and conveyance of lands to the United States pursuant to this Act shall be effective unless such encumbrances are acceptable to the Secretary. The Secretary shall require Sealaska to provide such title as is acceptable to the Secretary with regard to all lands conveyed to the United States by Sealaska.

SEC. 7. STATUS OF LANDS CONVEYED.

(a) TO CORPORATIONS.—All lands conveyed to Haida Corporation or Sealaska pursuant to this Act shall be considered as lands conveyed pursuant to the Alaska Native Claims Settlement Act. For purposes of section 21(c) of such Act, receipt by Haida Corporation or Sealaska of lands or other things of value pursuant to this Act shall constitute receipt of an interest in land.

(b) TO UNITED STATES.—All lands conveyed to the United States pursuant to this Act shall be included in the Tongass National Forest and shall be subject to the laws, rules and regulations applicable thereto. Lands and interests therein conveyed to the United States pursuant to this Act shall not be subject to any levy, foreclosure, or any other action which would encumber or divest the United States of any right, title, or interest in such lands. No action may be brought by any party in any United States district court pursuant to title 28, United States Code, section 2409a, to quiet title to such lands.

SEC. 8. WITHDRAWALS AND INTERIM MANAGEMENT.

(a) WITHDRAWALS.—Subject to valid existing rights, all lands identified in this Act as available for conveyance to Haida Corporation or Sealaska are withdrawn from all forms of location, entry, and selection under the mining and public land laws of the United States, from leasing under the mineral and geothermal leasing laws, and against issuance of preliminary permits and licenses pursuant to the Federal Power Act. This withdrawal shall expire eighteen months after the date of enactment of this Act.

(b) INTERIM MANAGEMENT.—Subject to valid existing rights, during acceptance periods provided in this Act, the Secretary and the Secretary of the Interior shall manage the lands available for conveyance under sections 3 and 4 of this Act so as to maintain their existing character and resources until conveyed. In the event that Haida Corporation or Sealaska does not maintain the character of the lands proposed for conveyance to the United States pursuant to section 3 or section 4, respectively, pending conveyance of such lands, the United States shall not be obliged to acquire any such lands from a corporation which has not so maintained the character of such lands.

(c) SAVINGS PROVISIONS.—Nothing in this Act shall be deemed as a cloud of title of lands or interests therein owned on the date of enactment of this Act by Haida Corporation or Sealaska. Nothing in this Act shall be construed in any way as affecting the existing ownership or as limiting the use of lands owned by the respective Corporations on the date of enactment of this Act. Nothing in this Act shall be construed to limit the authority of the Secretary to enter into land exchanges pursuant to existing exchange authorities. No action of the Secretary or the Secretary of the Interior in effecting any conveyance of lands or interests therein authorized under this Act shall be deemed a major Federal action for purposes of the National Environmental Policy Act of 1969, nor shall any determination pursuant to section 810 of the Alaska National Interest Lands Conservation Act be required prior to implementation of any provision of this Act.

SEC. 9. FUNDING.

There are authorized to be appropriated from the Land and Water Conservation Fund up to $11,000,000 to fund payments to Haida Corporation under section 3.

SEC. 10. FUTURE SELECTIONS.

(a) WITHDRAWALS.—(1) On and after the effective date of this section, the Secretary of the Interior, after consultation with the Secretary, the Governor of Alaska, the Haida Corporation, and Sealaska is authorized and directed to withdraw from all forms of entry and appropriation under the public land laws, including the mining, mineral leasing, and geothermal leasing laws, Federal lands in Alaska outside any conservation system unit for selection by Haida Corporation pursuant to this section. The Secretary shall not concur in any withdrawal which would impair the Secretary's ability to manage the Tongass National Forest in accordance with applicable requirements of law.

(2) Withdrawals pursuant to this subsection shall be in an aggregate amount equal to twice the acreage of Haida Corporation's selection rights.

(3) Lands withdrawn pursuant to this subsection shall be, to the maximum extent possible, lands accessible from the coast which are of like kind and character to those traditionally used and occupied by the shareholders of Haida Corporation and shall be, to the maximum extent possible, capable of utilization for economic return to Haida Corporation. No lands within the National Forest System shall be withdrawn under this subsection without the concurrence of the Secretary.

(b) SELECTIONS.—For one year after the completion of withdrawals pursuant to subsection (a) of this section, Haida Corporation shall be entitled but not required to select for conveyance to such corporation from lands withdrawn pursuant to subsection (a) lands not to exceed an amount equal in acreage to Haida Corporation selection rights which as of the date of selection had not been relinquished or disposed of by Haida Corporation. Haida Corporation shall notify the Secretary of the Interior which, if any, of the lands so withdrawn Haida Corporation wishes to select and which such selection rights Haida Corporation intends to relinquish in return for its selections. After their selection, the surface estate in lands selected by Haida Corporation pursuant to this subsection shall be conveyed to Haida Corporation and the subsurface estate in such lands shall be conveyed to Sealaska in partial fulfillment of such corporations' entitlements under the Alaska Native Claims Settlement Act and pursuant to the provisions of that Act.

(c) DURATION.—All withdrawals made pursuant to subsection (a) and all withdrawals in aid of Haida Corporation selections made pursuant to the Alaska Native Claims Settlement Act prior to the date of enactment of this Act of land not selected by Haida Corporation shall terminate two years after the last withdrawal is made pursuant to subsection (a).

(d) EFFECTIVE DATE.—This section shall take effect on January 1, 1995.

SEC. 11. COOPERATIVE INFORMATION AND EDUCATION CENTER.

(a) AUTHORIZATION.—There is hereby authorized to be appropriated $250,000 to be used by the Secretary of Agriculture to conduct surveys, develop designs, and carry out other preliminary work related to the establishment of an Information and Education Center provided for in section 1305 of Public Law 96-487.

(b) PURPOSES.—The purposes of the Center authorized by subsection (a) shall be—

(1) to collect and disseminate to visitors to and residents of Alaska information about the natural, recreational, cultural, historical, archeological, multiple use, and other resources and values of Alaska, with special emphasis on the Tongass National Forest and Southeast Alaska and its people.

(2) to publicly display temporary and permanent exhibits illustrating and interpreting these resources and values;

(3) to foster educational programs relating to the heritage resources of Alaska including those pertaining to Alaska Native peoples with particular emphasis on the Haida, Tshimshian, and Tglingit peoples of Southeast Alaska.

(c) DESIGN.—Design of the center in subsection (a) shall be developed in consultation with other appropriate Federal agencies, the Alaska Division of Tourism and other appropriate agencies of the State of Alaska, the local government of the city in which such center is to be located, and southeast Alaska Native organizations.

(d) CONSULTATION.—In establishing, operating, and maintaining the center (and any affiliated branches), the Secretary of Agriculture shall consult with, in addition to those listed in subsection (c), Alaska colleges and universities, the National Historic Association of Alaska, the Alaska Federation of Natives, and appropriate individuals and other organizations concerned with the diverse heritage resources of Alaska.

(e) COOPERATIVE AGREEMENTS.—The Secretary of Agriculture is authorized to enter into cooperative agreements with those individuals and organizations listed in subsections (c) and (d) to facilitate carrying out the purposes of the Center.

(f) DEVELOPMENT PLAN.—Within one year after the date of enactment of this Act, and after consultation with the individuals and organizations listed in subsections (c) and (d), the Secretary of Agriculture shall submit to Congress a development plan for the Center along with an estimate of the cost.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the legislation just adopted.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

AMENDING AN EXCEPTION TO BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

Mr. UDALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2921) to amend the Public Law 99-396 exception to the Balanced Budget and Emergency Deficit Control Act of 1985, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

Mr LAGOMARSINO. Mr. Speaker, reserving the right to object, I shall not object, and I yield to the gentleman from Arizona, the chairman of the committee, to explain the bill and the amendment the gentleman will offer.

Mr. UDALL. Mr. Speaker, we passed an omnibus territories bill which took care of a number of problems in the island possessions and territories of the United States.

This simply corrects a technical error in that bill. It costs no money. We worked it out with the administration. I know of no opposition to the amendment.

Mr. LAGOMARSINO. Mr. Speaker, further reserving the right to object, I would also urge the passage of this legislation, as amended. The bill will resolve a technical problem in the Omnibus Territories Act passed earlier this year. The bill is consistent with the intent of the original language of section 19 of the omnibus territories bill. The administration supports the enactment of this legislation as it will clarify the intent of the section of Public Law 99-396 when enacted in August of this year.

I want to thank those individuals who cooperated in seeking a resolution to this problem, when it was questionable as to whether the President would sign the bill. The Director of the Office of Management and Budget, James Miller, and his Associate Director, Randy Danis, along with William Ball, Assistant to the President for Legislative Affairs and Haley Barbour, Deputy Assistant to the President and Director of Political Affairs, were particularly helpful in finding a solution to the problem.

I would also like to commend the gentelman from Guam, BEN BLAZ, who expended a tremendous amount of energy in getting the bill signed into law. I am aware of BEN BLAZ, personal involvement in seeking to satisfactorily resolve the problem that would have prevented the enactment of the bill which does so much for the people of the U.S. insular areas. My thanks also to MORRIS UDALL, DON YOUNG, RON DE LUGO, BEN BLAZ, and JAIME FUSTER for cosigning a letter to the President urging the signing of the omnibus territories bill and committing to take corrective legislative action at the earliest possible time. Special commendation must go to minority staff assistant Manase Mansur without whose efforts the omnibus territories bill would likely have been vetoed.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2921

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 19(b) of Public Law 99-396 (100 Stat. 837, 844) is amended by:

(1) inserting "section 30 of" immediately before "the Organic Act of Guam";

(2) inserting "section 3 of" immediately before "the Joint Resolution to approve";

(3) inserting "section 4 of the Act of April 12, 1900 (31 Stat. 78, 48 U.S.C. 740), as amended, and section 9 of the Act of March 2, 1917 (39 Stat. 954, 48 U.S.C. 734), as amended, which became a part of" immediately before "The Puerto Rican";

(4) inserting "section 28(a) and (b) of" immediately before "the Revised Organic"; and

(5) inserting "section 4(c)(2) of" immediately before "an Act, to authorize".

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. UDALL

Mr. UDALL. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. UDALL: Strike all after the enacting clause and insert in lieu thereof the following:

"Section 19(b) of Public Law 99-396 (100 Stat. 837, 844) is amended by:

"(1) inserting 'section 30 of' immediately before 'the Organic Act of Guam';

"(2) inserting 'section 3 and 4 of' immediately before 'the Joint Resolution to approve';

"(3) inserting 'section 4 of the Act of April 12, 1900 (31 Stat. 78, 48 U.S.C. 740), as amended, and section 9 of the Act of March 2, 1917 (39 Stat. 954, 48 U.S.C. 734), as amended, which became a part of' immediately before 'The Puerto Rican';

"(4) inserting 'section 28 (a) and (b) of' immediately before 'the Revised Organic';

"(5) inserting 'section 4(c)(2) of' immediately before 'an Act to authorize'; and

"(6) inserting 'and sections 702 and 703(b) of such covenant' immediately before '(90 Stat. 263)'.".

Mr. UDALL (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The SPEAKER pro tempore. The question is on the amendment in the nature of a substitute offered by the gentleman from Arizona [Mr. UDALL].

The amendment in the nature of a substitute was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

MAKING CORRECTIONS IN COMPREHENSIVE ANTI-APARTHEID ACT OF 1986

Mr. SMITH of Florida. Mr. Speaker, I ask unanimous consent that the Committee on Foreign Affairs be discharged from further consideration of the joint resolution (H.J. Res. 756) to make corrections in the Comprehensive Anti-Apartheid Act of 1986, and ask for immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

Mr. GILMAN. Mr. Speaker, reserving the right to object, I yield to the gentleman from Florida so that he may explain the measure.

Mr. SMITH of Florida. Mr. Speaker, I rise in favor of a joint resolution to make corrections in the Comprehensive Anti-Apartheid Act of 1986.

This resolution makes grammatical corrections in the South Africa sanctions legislation and clarifies the intent of Congress in five areas.

First, it permits South African steel to be imported into the United States through December 31, 1986, provided that a contract was entered into before August 15, 1986. While the Kennedy amendment to H.R. 4868 banned all further steel imports into the United States, it was not intended to cause disruption and financial reverses for steel importers with imminent shipments. This provision gives them the 90-day window provided for coal and uranium.

Second, the resolution exempts personal apparel from the ban on textile imports.

Third, it exempts books, newspapers, and similar material from the ban on

imports from South African state agencies. These documents are part of the free flow of information and are also valuable for research into the apartheid system.

Fourth, the resolution adds to the sanctions legislation's ban on exports of oil and petroleum products to South Africa a cutoff date of December 31, 1986, for previously contracted exports. This is consistent with the 90-day window provided for other sanctions.

Last, it makes clear that iron ore is included in the ban on iron imports from South Africa.

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Mr. GILMAN. Mr. Speaker, further reserving the right to object, I want to thank the gentleman from Florida for taking time to explain this last Foreign Affairs measure on the floor.

Mr. Speaker, I would like to state that the minority has no objection to the passage of this necessary technical correction.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. MURTHA). Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 756

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Comprehensive Anti-Apartheid Act of 1986 is amended as follows:

(1) In the table of contents—

(A) strike out the item relating to section 309 and insert in lieu thereof the following new item:

"Sec. 309. Prohibition on importation of uranium, coal, and textiles from South Africa.";

(B) strike out the items relating to sections 317 and 318 and insert in lieu thereof the following new items:

"Sec. 317. Prohibition on export of items on the United States Munitions List.

"Sec. 318. Notification of certain proposed United States Munitions List exports.";

and

(C) strike out the item relating to section 510 and insert in lieu thereof the following new item:

"Sec. 510. Prohibition on the importation of Soviet gold coins.".

(2) In section 3—

(A) in paragraph (6)(B), strike out "Administration" and insert in lieu thereof "administration";

(B) at the end of paragraph (7), strike out "and";

(C) redesignate paragraph (8) as paragraph (9); and

(D) after paragraph (7), insert the following new paragraph:

"(8) the term 'South African national' means—

"(A) a citizen of South Africa; and

"(B) any partnership, corporation, or other business association which is organized under the laws of South Africa; and".

(3) In section 102—

(A) in subsection (b), insert "and" at the end of paragraph (3); and

(B) in subsection (c)—

(i) strike out "subsection 101(a)" and insert in lieu thereof "section 101(a)"; and

(ii) strike out "ANC" and insert in lieu thereof "African National Congress".

(4) Inssection 103(b)—

(A) in paragraph (1), insert a coma after "apartheid";

(B) in paragraph (4), strike out "to those whose nonviolent activities had" and insert in lieu thereof "(A) to those whose nonviolent activities have"; and

(C) in paragraph (7), strike out "such groups so as to achieve the objectives of this Act" and insert in lieu thereof, "groups promoting terrorism".

(5) In section 104(b)—

(A) in paragraph (5), strike out "that all countries of the region respect the human rights of their citizens and noncitizens residing in the country, and especially the release" and insert in lieu thereof "the respect by all countries of the region for the human rights of their citizens and noncitizens residing in their countries and, especially, the release by all such countries"; and

(B) in paragraph (6), strike out "demanding that all countries of the region take effective action" and insert in lieu thereof "demanding, effective action by all countries of the region".

(6) In section 105—

(A) insert "(1)" after "states"; and

(B) strike out "of means" and insert in lieu thereof "(2) any means".

(7) Section 106(c) is amended to read as follows:

"(c) the United States will work, through coordinated actions with the major Western allies and with the governments of the countries in the region, toward the achievement of an agreement to suspend violence and begin negotiations.".

(8) In section 109, strike out "Senate" and insert in lieu thereof "Congress".

(9) In section 207—

(A) in subsection (a), insert "with respect to the employment of those persons" after "implemented"; and

(B) in subsection (b), insert "with respect to the employment of those persons" after "Conduct".

(10) In section 208—

(A) in subsection (b)(3), strike out "make" and insert in lieu thereof "making"; and

(B) in the second sentence of subsection (c), strike out "this section" each of the two places it appears and insert in lieu thereof "section 207".

(11) In section 212, insert "are participated in by" after "as".

(12) In section 303—

(A) in subsection (b)—

(i) strike out "corporation or partnership owned or controlled" and insert in lieu thereof "corporation, partnership, or entity owned, controlled,"; and

(ii) strike out "corporation or partnership" the second place it appears and insert in lieu thereof "corporation, partnership, or entity"; and

(B) at the end of the section, add the following new subsection:

"(c) Nothing in this section prohibits the importation into the United States of any publication, including any book, newspaper, magazine, film, phonograph record, tape recording, photograph, microfilm, microfiche, poster, or any other similar material.".

(13) In section 306(d), insert "'air carrier'," after "'aircraft',".

(A) in the section heading relating thereto, strike out "URANIAN AND COAL" and insert in lieu thereof "URANIUM, COAL, AND TEXTILES";

(B) in subsection (a), strike out "is" and insert in lieu thereof "are";

(C) redesignate subsection (b) as subsection (c); and

(D) insert after subsection (a) the following new subsection:

"(b) For purposes of this section, the term 'textiles' does not include any article provided for in item 812.10 or 813.10 of the Tariff Schedules of the United States.".

(15) In section 312(b), strike out "civilians or" and insert in lieu thereof "civilians and".

(16) In section 313. strike out "the following convention and protocol".

(17) In section 314—

(A) strike out "agency" and insert in lieu thereof "agency,"; and

(B) strike out "diplomatic and" and insert in lieu thereof "diplomatic or".

(18) In section 317—

(A) in the section heading relating thereto, strike out "SALE OR EXPORT OF ITEMS ON" and insert in lieu thereof "EXPORT OF ITEMS ON THE UNITED STATES"; and

(B) in subsection (a), stirke out "Munition" and insert in lieu thereof "Munitions".

(19) In section 318—

(A) amend the section heading relating thereto to read as follows: "NOTIFICATION OF CERTAIN PROPOSED UNITED STATES MUNITIONS LIST EXPORTS";

(B) in subsection (a) in the text above clause (i), strike out "shall:" and insert in lieu thereof "shall—";

(C) in subsection (a), redesignate paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

(D) in subsection (a)(1), as redesignated by clause (C)—

(i) insert "of" after "Africa"; and

(ii) strike out "Munition" and insert in lieu thereof "Munitions"; and

(E) amend subsection (b) to read as follows:

"(b)(1) No item described in subsection (a) may be exported if the Congress, within 30 days of continuous session after a certification is made under subsection (a)(2), enacts, in accordance with section 602 of this Act, a joint resolution disapproving such export.

"(2) For purposes of paragraph (1), the term "continuous session" is used within the meaning of section 906(b) of title 5, United States Code.".

(20) In section 319—

(A) in the text above paragraph (1), strike out "no:" and insert in lieu thereof "no—";

(B) in paragraph (1), strike out "commodity, product, byproduct of derivative thereof," and insert in lieu thereof "commodity or product or any byproduct or derivative thereof, or"; and

(C) strike out paragraph (2) and insert in lieu thereof the following:

"(2) article that is suitable for human consumption,

that is a product of South Africa may be imported into the United States after the date of enactment of this Act.".

(21) In section 320—

(A) strike out "Notwithstanding" and insert in lieu thereof "Notwithstanding";

(B) insert after "produced" a comma and the following: "or iron ore extracted,"; and

(C) insert before the period at the end thereof a comma and the following: "except that any such commodity may be imported pursuant to a contract entered into before August 15, 1986, if no shipment of such commodity is imported by a national of the United States under such contract after December 31, 1986".

(22) In section 321—

(A) in subsection (a)—

(i) strike out "or which is exported by a person subject to the jurisdiction of the United States"; and

(ii) insert after "South Africa" the following: ", and no crude oil or refined petroleum product may be exported to South Africa by a person subject to the jurisdiction of the United States"; and

(B) in subsection (b), before the period at the end thereof insert a comma and the following: "if no shipment of such export is made under such contract after December 31, 1986".

(23) In section 322, insert "for" after "except".

(24) In section 401—

(A) in the third sentence of subsection (a), insert "agreements" after "cooperative";

(B) in the first sentence of subsection (b)(1), strike out "arrangements with the other industrialized democracies and other trading partners of South Africa" and insert in lieu thereof "agreements with the other industrialized democracies";

(C) in Subsection (c), strike out "sections 301 through 310" and insert in lieu thereof "title III"; and

(D) in subsection (d)(3), insert ", in accordance with section 602 of this Act," after "enacted".

(25) In section 402, strike out "against any national of the United States".

(26) In section 501—

(A) in subsection (c), strike out paragraph (1);

(B) in subsection (c)(3), strike out "food, agricultural products, diamonds, and textiles" and insert in lieu thereof "diamonds"; and

(C) in subsection (c), redesignate paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

(27) in subsection (a), strike out "material by" and isert in lieu thereof "material to"; and

In section 502—

(A) in subsection (a), strike out "material by" and insert in lieu thereof "material to"; and

(B) in subsection (b)(2), strike out "(1) and every thirty days thereafter, the President shall prepare and transmit" and insert in lieu thereof "(1), and every thirty days thereafter, the President shall prepare and transmit to the Congress a report containing".

(28) In section 505(a), insert a comma after "done" the second place it appears.

(29) In section 510—

(A) strike out subsection (b);

(B) redesignate subsection (c) as subsection (b); and

(C) in subsection (c), strike out "rubles" and insert in lieu thereof "gold coins".

(30) In section 512(a), strike out "Subsaharan" and insert in lieu thereof "subSaharan".

(31) In section 602—

(A) in subsection (a)(1), insert "318(b)," after "311(b),";

(B) in subsection (b)(1), insert "318(b)," after "311(b),";

(C) in subsection (b)(3), insert "the" after "with";

(D) in subsection (c), redesignate paragraphs (A), (B), and (C) as paragraphs (1), (3), and (4), respectively; and

(E) in subsection (c), insert after paragraph (1), as redesignated by clause (D) of this paragraph, the following new paragraph:

"(2) In the case of section 318(b), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives a certification of the President pursuant to section 318(b) and for which the matter after the resolving clause reads as follows: "That the Congress, having received on a certification of the President under section 318(b)(2) of the Comprehensive Anti-Apartheid Act of 1986, approves the President's certification.", with the date of the receipt of the certification inserted in the blank;".

(b) The Foreign Assistance Act of 1961 is amended as follows:

(1) In section 105(b)(2)(C)(i), strike out "inservice" and insert in lieu thereof "in-service";

(2) In section 116(f)(2)(B), strike out "paragraph" and insert in lieu thereof "subsection".

(3) In section 535(a)(1), insert "and" after "enterprise,".

(c) The amendments made by subsections (a) and (b) shall be deemed to have taken effect upon the enactment of the Comprehensive Anti-Apartheid Act of 1986.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SMITH of Florida. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the joint resolution just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

STATE COMPREHENSIVE MENTAL HEALTH SERVICES PLAN ACT OF 1986

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that the Committee on Energy and Commerce be discharged from further consideration of the Senate bill (S. 1744) to require States to develop, establish, and implement State comprehensive mental health plans, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. MADIGAN. Mr. Speaker, reserving the right to object, I do so for the purpose of yielding to the gentleman from California [Mr. WAXMAN] so that he might advise the body exactly what is in this vehicle that we are taking up or proposing to take up.

Mr. WAXMAN. I thank the gentleman for yielding to me.

Mr. Speaker, this bill combines a number of legislative initiatives of interest to Members from both sides of the aisle. The bill has the support of the minority and of the chairman and ranking minority Members of the other body.

Primary among these bills is the National Vaccine Injury Act, the bill passed earlier this week by the whole House by voice vote. This legislation is designed to achieve two goals: First, to protect the adequacy of the Nation's supply of vaccines against such diseases as polio and measles; and second, to compensate those children who are injured by side effects or adverse reactions to those vaccines.

This bipartisan legislation is strongly supported by a coalition of groups representing parents, health professionals, and industry. Supporters include the National PTA, the American Academy of Pediatrics, Merck & Co., the American Nurses' Association, Dissatisfied Parents Together, and others.

This legislation is necessary because the vaccines that protect us from epidemics of childhood diseases also cause injuries to a small number of children. Many of the families of these children have been turning to the courts for relief. Some of them have won—sometimes millions of dollars. Many more have lost. Those who lose are left to fend for themselves on Medicaid or disability or whatever else may be available.

But the litigation costs and the occasional large award have made pharmaceutical firms nervous about the vaccine market. One result, they say, is that they are forced to increase prices drastically or simply to get out of the market. Prices on some vaccines have risen 500 percent in the past 2 years.

We cannot afford to be without a supply of vaccines for childhood illnesses.

This legislation would establish a no-fault compensation system to pay for the medical, rehabilitation, and education costs of those children who are injured. If the injuries were particularly severe, the program would pay for lost earnings of the disabled child and for the pain and suffering that he or she endures.

In turn, the bill would limit that child's ability to sue the manufacturer of the vaccine. If an injury is the result of a bad vaccine or one inadequately researched or warned of, then the Courts could still make awards. But those children who are the innocent statistics of the necessary war on such diseases as polio or whooping cough would not have to go to court to get their medical bills paid.

Second the bill includes the provisions of the Health Care Quality Improvement Act, also passed by this

House this week by voice vote. This bill is noncontroversial and has strong bipartisan support.

Mr. Speaker, the following comments pertain to title IV of the bill, which incorporates a modified version of H.R. 5540, the "Health Care Quality Improvement Act of 1986." H.R. 5540, as amended, passed the House on October 14.

These provisions have underdone a number of revisions during the legislative process. I stress this because most of the objections that were raised about earlier versions of H.R. 5540 (and its predecessor, H.R. 5110) have been addressed in recent drafts, and particularly in the provisions that are now before the House.

I would specifically note that my distinguished colleague from California, DON EDWARDS, the chairman of Judiciary's Subcommittee on Civil and Constitutional Rights, inserted his thoughtful letter of October 10 to me, and I would now insert a number of quotes from my response of October 14 to that letter. This is quite relevant since numerous revisions to the bill were made in response to the concerns raised in that letter. In addition, the bill that is now before us includes a number of other revisions worked out with the Senate. These changes—resulting in the final bill—address the remarks of Mr. EDWARDS.

I would like to assure my distinguished colleague from California that in my opinion H.R. 5540 never did have any legal or constitutional flaws. And, I believe that the provisions now under consideration address every specific issue that he has identified. I wish to thank the gentleman from California for his help and for supporting the bill with these revisions.

Mr. Speaker, I would like to expand on one point I made in my extension of remarks regarding the Health Care Quality Improvement Act of 1986. At page H9958 in the CONGRESSIONAL RECORD of October 14, 1986, I indicated that nothing in the bill is intended to expand or narrow current discovery rights under State or Federal laws.

This statement deserves further clarification. The basic point to be made is that the courts should not read anything in this bill as authorizing the overriding of any State and Federal law relating to discovery. Specifically, I understand that there are a number of State shield laws that restrict the type of evidence that may be introduced in lawsuits challenging a disciplinary action in the context of peer review. Nothing in this bill is intended to preempt or override any such State shield law.

Mr. Speaker, I would also clarify the effect of our amendment which excludes any protection from damages under the civil rights laws. In any such case there are likely to be a number of causes of action filed, all based on the same or on closely related facts. As I have stated, this bill was never intended to shield anyone for violating a physician's civil rights under applicable laws. If a cause of action is proved and damages are awarded under the civil rights laws, this bill confers no immunity from civil rights damages.

On the other hand, the exemption regarding civil rights laws is not intended to allow a plaintiff to use a civil rights claim to override the immunity provisions regarding damage claims arising under other laws, such as the antitrust laws. In actions alleging multiple claims, including civil rights violations, the immunity provisions would apply to all claims except those arising under the civil rights laws.

Excerpts from the letter from the Honorable Henry A. Waxman to the Honorable Don Edwards:

Honorable DON EDWARDS,
U.S. House of Representatives
Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, Washington, D.C.

Re: "Health Care Quality Improvement Act of 1986"

Dear DON:

I have received your letter of October 10, 1986 regarding the "Health Care Quality Improvement Act of 1986." In response to the concerns you have raised,

I have directed my staff to make changes in the bill to provide extra assurance that the problems you raised will not occur under the legislation. With these changes, it is my intent to take the bill to the suspension calendar today.

Let me elaborate on your concerns and our responses.

CIVIL RIGHTS

At the outset, I would direct your attention to what we have done regarding State and Federal civil rights laws. In deference to your strong objections on this point, we have completely excluded any application of H.R. 5540 to the civil rights laws. Although I believe that H.R. 5540 never could have thwarted a legitimate civil rights claim, I am prepared to accommodate your feelings by making this change in the bill.

BREADTH OF IMMUNITY

At one point, the scope of immunity in this bill was substantially broader than it is currently. In response to a number of valid criticisms, we narrowed the bill's scope in order to ensure that the jurisdiction of the Federal Trade Commission, the Justice Department, the Equal Employment Opportunity Commission and State attorneys general remained intact. Furthermore, the only protection with regard to private actions is that damages are barred where the peer review group has acted properly in accordance with the four tests for reasonable belief, reasonable investigation and due process. Actions for reinstatement through injunctive and declaratory relief remain untouched. Finally, by the latest changes in H.R. 5540, we have completely removed from coverage any Federal or State civil rights laws. The immunity left after these modifications is extremely limited, but essential. Those who suggest that such immunity is still too broad are, in effect, rejecing the idea of providing any immunity for peer review. Unfortunately, this approach simply cannot work.

EFFECTIVENESS OF CURRENT PEER REVIEW SYSTEM

During the Judiciary Committee's hearings, one witness insisted that peer review currently operates effectively without immunity. This is wrong on two counts. Peer review is generally not working well and the only major peer review program that operates somewhat effectively does so under a significant federal statutory immunity.

To the extent the witness based his statement on the type of peer review that is conducted pursuant to title XVIII of the Social Security Act, he obviously overlooked section 1157 of that act. That statute provides a substantially broader immunity than that conferred by H.R. 5540. This immunity only applies to review by professional review organizations, not by professional review bodies in hospitals, however.

To the extent that he referred to the type of peer review covered by H.R. 5540, it is simply incorrect that the system now works well. As clearly documented by Dr. Sidney Wolfe, the leadoff witness at your hearings, the current peer review does a completely inadequate job in identifying and removing incompetent and unprofessional physicians.

EFFECTIVENESS OF CURRENT SHIELD LAWS

Several people referred to the impact of State shield laws on peer review. Some suggested that no further immunity was needed for peer review in light of existing State shield laws. One person suggested a Federal shield law as an alternative to H.R. 5540. Both views are misplaced. Simply stated, State shield laws provide protection only for State—not Federal—causes of action. In fact, it is the very comprehensiveness of State shield laws that has led to so much federal litigation. There are no Federal shield laws nor are we seeking a Federal shield law patterned after existing State laws. State shield laws offer a much broader immunity than that contained in H.R. 5540. Although we support immunity, we believe that it should be limited.

IMPLICATIONS OF THE REVERSAL OF PATRICK VERSUS BUDGET

You state in your letter that the recent decision by the Ninth Circuit in Patrick versus Buget demonstrates that peer review is not subject to sec-

tions 1 and 2 of the Sherman Act. Accordingly, adding a statutory exemption would be only a gratuitous exercise. If your statement is correct, I find it hard to reconcile with your view that the exemption in H.R. 5540 is too sweeping and unwarranted. It seems that the argument you raise would have it both ways, asserting that antitrust immunity is on the one hand already the law, and on the other hand that a statutory grant of immunity would be a dangerous precedent.

Nevertheless, I would make the following point with respect to the Patrick case and the antitrust laws. It is my understanding that a number of antitrust experts believe that the Ninth Circuit has extended the State action doctrine in Patrick farther than seems warranted by recent Supreme Court rulings. If appealed, the Patrick case may well be overruled or modified. If Patrick is upheld, the immunity from damages in antitrust actions granted by H.R. 5540 will be irrelevant in many States. If Patrick is overruled or modified, the immunity obtained under H.R. 5540 will be substantially narrower than the State action doctrine enunciated in that case. Bad faith peer review activities permitted by the Patrick case could never obtain immunity under H.R. 5540.

Finally, the immunity contained in H.R. 5540, although prompted in part by antitrust concerns, addresses matters beyond the current antitrust laws. The reporting system in the bill is likely to stimulate a large number of lawsuits raising numerous legal theories—many of them frivolous—that will deter legitimate peer review activities unless some measure of protection is provided to those engaged in such activities.

EFFECT OF A REPORTING SYSTEM ON PEER REVIEW ACTIVITIES

I was deeply disappointed to hear that several witnesses refused to concede the strong likelihood that the reporting system in H.R. 5540 will lead to increased litigation. Clearly, until the system is in place, we will not know with absolute certainty what its precise effect will be. But, to suggest, as one witness did, that the likelihood of increased litigation is merely speculation is disingenuous at best.

Under the present system, we know that doctors facing the loss of hospital privileges care enough about the need for such privileges that they will abandon their practices, pick up their families and move to another jurisdiction—often out of State—just to practice medicine with clinical privileges.

Under the reporting system in H.R. 5540, physicians will lose this opportunity to resign quietly and hide their pasts in another State. Thus, they will have to choose between giving up their hospital privileges or suing. To suggest that most of these doctors would simply accept the loss of clinical privileges—and the enormous undermining of their medical practices implicit in such a loss—without suing simply defies logic and human nature.

EVIDENCE IN SUPPORT OF IMMUNITY

You suggest that no evidence has been offered to justify an exemption for legitimate peer review activities from damages authorized under the antitrust laws (and, by implication, other State and Federal laws). To the contrary, I believe that ample evidence has been offered, including the testimony of a number of witnesses at your hearing.

At the hearing before the Subcommittee on Health and the Environment on July 15, nearly every witness indicated that the threat of litigation under current law is a major barrier to effective peer review. They also argued, as did witnesses at your hearings, that the current system does very little to protect patients from incompetent and unprofessional physicians.

Unless peer review can be encouraged, we simply will not be able to provide such protection. It is for the benefit of millions of patients at risk from these phyisicans—and not for any doctor or group of doctors—that we seek a limited, but essential, immunity.

Peer review is different from other activities conducted by doctors and from other activities covered by the antitrust laws. Doctors who engage in peer review do so as volunteers, not to make money from their activities. If they face years of litigation with the prospect of having to pay enormous litigation fees as well as treble damages assessed against them personally, they simply will not do peer review. Moreover, peer review stands as the primary basis upon which this country reviews the competence and professional conduct of doctors. Until a different or better system is devised, we must take every reasonable step to ensure its success.

PEER REVIEW INSURANCE AS AN ALTERNATIVE TO IMMUNITY

The suggestion was made at your hearings that peer review insurance would provide an alternative to the immunity provisions in H.R. 5540. My immediate response is to analogize to being hit on the head by a baseball. Most fans would prefer not to be hit on the head in the first place even if the owners of the stadium were willing to pay all damages arising from the injury. In similar fashion, most doctors would prefer to avoid the time and anguish involved in a lawsuit even if someone were willing to pick up all of their expenses.

But, this point deserves an additional response because even under the immunity provisions of H.R. 5540, doctors face an increased likelihood of litigation (although primarily for reinstatement rather than for damages). First, most doctors have no peer review insurance. Although hospitals may have such insurance, there is no guarantee that the doctors will benefit from it. For example, as you may know, in the Patrick case, the hospital dropped out the lawsuit before the verdict was rendered, leaving the defendant doctors with no insurance whatsoever. As a result of the verdict, at least one doctor had 100 percent of his income garnished for months.

Moreover, although we have not addressed the problems of liability insurance in this bill, we have seen enough evidence of the difficulty of obtaining such insurance to know that finding affordable peer review insurance could prove to be a difficult, if not impossible, task.

NEED FOR A PRESUMPTION BASED ON CLEAR AND CONVINCING EVIDENCE

You object to the presumption regarding professional review actions that requires clear and convincing evidence. You suggest that it would create needless complexity in the minds of a jury to apply different standards, thereby adding to the confusion and potential delay of a peer review trial in court.

Although I believe that the provisions of H.R. 5540, as drafted, are sound, I have modified the presumption to substitute the clear and convincing evidence test with a preponderance of the evidence test and to apply it uniformly. Such a step should simplify the immunity provisions and make them easier to understand and apply.

ADEQUACY OF DUE PROCESS PROCEDURES

In my opinion, the witnesses before the Judiciary Subcommittee on Civil and Constitutional Rights who testified that H.R. 5540 undermines a physician's due process rights, were totally incorrect. To the contrary, under H.R. 5540, a physician always has current—or better than current—due process rights.

Those who have raised the due process objections have obviously misconstrued the effect of section 102(b) which states that a professional review body's failure to meet the adequate due process provisions set forth in the bill shall not, in itself, constitute the failure to meet adequate due process for purposes of obtaining immunity. A simple reading of this language reveals that it does nothing whatsoever to lessen a physician's due process rights. As carefully explained in the report accompanying H.R. 5540, this language simply means that those who choose to rely on current law—rather than the specific provisions of H.R. 5540—regarding due process may do so.

With respect to the two points raised specifically by you regarding the bill's due process procedures, we have addressed both in what I hope is a satis-

factory manner. Instead of 10 days' time to request a hearing, a physician will now have 30 days [revised section 102(b)(1)(B)(ii)] and instead of 10 days' notice of a hearing, a physician will now have 30 days [revised section 102(b)(2)(A)]. I view these as useful changes and am delighted to make them.

Your second concern—that a physician have the right to compel the testimony of witnesses—has also been addressed. Although we cannot provide subpoena power to a private body, I plan to clarify in supplemental views for the record on H.R. 5540 that any witness who testifies for the hospital should be available to be called as a witness on an equal basis by the physician-respondent.

ATTORNEY FEES

In response to your objections and earlier comments by Judiciary Committee staff, we have modified the attorney fee provision in a manner that we trust you will find acceptable. First, we have completely restored existing law with respect to plaintiff's rights to attorney fees. Second, we have taken existing language previously drafted by the Judiciary Committee in the "National Cooperative Research Act of 1984" [see, 15 U.S.C. 4304] and applied it to our provisions relating to defendants' rights to attorney fees. Under this revised language, a defendant is entitled to such fees only where the plaintiff's claim or conduct during the litigation is frivolous, unreasonable, without foundation, or in bad faith.

Moreover, we have added a sentence to the bill making clear that a defendant shall not be considered eligible for the award of attorney fees whenever the plaintiff obtains an award for damages or permanent injunctive or declaratory relief. Frankly, we see no need for such language. But, in order to respond to the concern you might have following testimony on this point at your hearing, we, again, have made this modification.

PROTECTIONS FOR PHYSICIANS UNDER THE REPORTING SYSTEM

Physicians about whom reports are made under title 2 of H.R. 5540 enjoy substantial protections. Only final reports of professional review actions, State sanctions, and paid malpractice claims are to be reported, not the less formal information that is typically the basis for initiating an investigation. Section 206 requires the Secretary to disclose a physician's files to the physician upon request and to establish procedures in the case of disputed accuracy of the information. The information reported must be kept confidential and be disclosed only in accordance with the bill's provisons—with violations subject to a civil penalty of up to $10,000 for each violation.

One witness at the hearings before your Subcommittee on Civil and Constitutional Rights claimed that because the bill delegates the job of drafting the specific procedures for dealing with cases of disputed accuracy to the Secretary of HHS it is somehow defective. We disagree. This is the type of activity routinely delegated by Congress to executive agencies. This is particularly so with respect to the reporting system where it may take several adjustments during implementation of the system to develop workable procedures. Congress has ample oversight authority to ensure that fair and effective procedures will be worked out and I have no doubt that all of us will watch development here closely.

The same witness also claimed that the report language accompanying H.R. 5540 would bar a physician from having his or her disagreement noted when HHS transmits the reports. This is incorrect. The report language simply provides that the Secretary need not transmit points of disagreement where the Secretary has concluded that the information is false. The Secretary is still obligated to note that the physician disagrees with the report. The only point of the report language is to clarify that the Secretary need not retain or send a massive brief of the physician regarding a disputed report.

A CATCH-ALL PROVISION

One witness at your hearings suggested that H.R. 5540 ought to have a catch-all provision clarifying that the exceptions to considerations of competence or professional conduct set forth in section 301(9) are illustrative, not exhaustive. We agree and have included language to this effect.

With every good wish, I am,
Sincerely,

HENRY A. WAXMAN,
Chairman, Subcommittee on Health and the Environment.

Mr. Speaker, Title IV contains one further amendment that I would like to comment on. Part C, paragraph 9, defines a professional review action for the purposes of this Title as an action or recommendation that is based on the competence or professional conduct of an individual physician. The amendment further requires that professional conduct be conduct that affects or could affect adversely the health or welfare of a patient or patients. This requirement is not meant to be read narrowly. For example, such conduct would certainly include unlawful selling or dispensing of drugs by a physician, whether in or out of the hospital, and whether patients were involved or not. This amendment creates statutory language to implement the intent of my remarks on October 14 at page 30768 of the Record. As I noted then, "competence and professional conduct should be interpreted in a way that is sufficiently broad to protect legitimate actions based on matters that raise concerns for patients or patient care. It would certainly include all specific conduct that would adversely affect the health or welfare of a patient or patients. This would include not only activities directly involving patients of the physician but also activities that raise the possibility of adversely affecting other patients. . . ."

At that time I also noted additional examples of conduct that could be the basis for a professional review action, and those examples would not be affected in any way by this amendment.

The bill also includes legislation regarding the export of drugs manufactured in the United States. This legislation has been pending for some time, and I believe that we have arrived at provisions satisfactory to all parties who have interests in the problems.

The bill contains the reauthorization of Federal health maintenance organizations statute, a noncontroversial measure, passed by the House earlier in the year and now amended.

The bill also contains other important and agreed upon legislation, and I urge Members to support it.

Mr. MADIGAN. Mr. Speaker, further reserving the right to object, and asking for the attention of the gentleman from California, is it correct that this composite bill authorizes no new spending in fiscal year 1987 and $14 million in new spending in fiscal year 1988 which would then be subject to the appropriation process?

Mr. WAXMAN. The gentleman is correct in his statement.

If the gentleman will yield to me further, there is a correction. There is $22 million in 1987 as part of the bill that was earlier passed through the House on vaccines.

Mr. MADIGAN. But that bill has already passed the House?

Mr. WAXMAN. That is correct; that reflects a bill that had previously passed the House that is incorporated in this legislation.

Mr. MADIGAN. Mr. Speaker, further reserving the right to object, the other provisions to which I have referred, which are Senate provisions relating to mental health and geriatric special projects require $14 million in new spending in fiscal year 1988 subject yet to appropriations but no new spending in fiscal year 1987.

Mr. WAXMAN. If the gentleman will yield, the gentleman is correct in his reference to 1987. The mental health bill with the $14 million in 1988. The Alzheimer's section would be $12.4 million in 1988 but no spending in 1987. Those are authorizations subject to appropriations.

Mr. MADIGAN. Mr. Speaker, further reserving the right to object, I would ask the gentleman if he would concur in these comments.

That the drug export bill is the bill supported by the chairman of the Labor and Human Resources Committee in the other body and introduced by him and sought by the administration. The peer review immunity bill is a bill passed by unanimous voice vote in the House of Representatives. The vaccine compensation bill is a bill that was passed by unanimous consent in the House of Representatives; is that correct?

Mr. WAXMAN. The gentleman is correct in each of those statements.

Mr. MADIGAN. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. I thank the gentleman for yielding.

Mr. Speaker, I am just trying to ascertain here how many of the bills that have now been wrapped into this package actually passed the House of Representatives at some point during this Congress?

Mr. MADIGAN. Mr. Speaker, under my reservation I yield to the gentleman from California [Mr. WAXMAN].

Mr. WAXMAN. There are three major bills and a number of very minor ones. Of the three major bills, two have passed the House previously. The one of the three major bills that did not is the drug export bill which we have not yet taken up but we had a complete consensus in terms of what we wanted to do.

That legislation had been introduced by Senator HATCH and is backed by the administration.

Mr. WALKER. If the gentleman will yield, the drug export bill to which you refer, was that subjected to hearings in the House? Had it cleared the committee in the House?

Mr. WAXMAN. If the gentleman will yield, we did have hearings on that legislation.

Mr. WALKER. And it had cleared the committee?

Mr. WAXMAN. No; we did not vote on the bill in committee. We had not been able to resolve the differences. We have resolved all the differences that we had over the drug export question and are now in consensus.

Mr. WALKER. If the gentleman will yield, of the minor bills that are contained, how many of those have passed the House?

Mr. MADIGAN. Mr. Speaker, reclaiming my time under my reservation, there are two minor bills that I have described. One having to do with mental health and one having to do with geriatric special projects. Neither calling for any expenditure of funds in fiscal year 1987. One calling for the expenditure of $10 million in 1988. The other one calling for the expenditure of $4 million in 1988 and neither of those bills have previously passed the House of Representatives.

There also is contained in this package of bills an outright repeal of the health planning law which has been sought by the administration since 1981.

Mr. WAXMAN. If the gentleman will yield to me on that point, that had been part of previously passed bills in the House of Representatives to repeal health planning. That is now in this legislation.

There is a health maintenance organization bill that previously had passed the House as well. The others were Senate provisions.

Mr. WALKER. If the gentleman will yield further, the gentleman did discuss this legislation with me previously, and I think that it is a worthwhile attempt to try to accomplish something at the end of the session.

I might say though that I hope we are not going to see a pattern of taking relatively minor bills and making a big package out of them so that the Senate can dump onto the House floor in this manner. My guess is that that could become a pattern that we would not give approval to very often. But in this particular case I think they have done a good job and it was discussed with me previously.

Mr. MADIGAN. Mr. Speaker, further reserving the right to object, I thank the gentleman for his contribution and I observe that I am in complete agreement with him as is the gentleman from California. This is the procedure being insisted upon by the chairman of the committee in the other body.

Mr. Speaker, under my reservation I yield to the gentleman from Utah [Mr. NIELSON].

Mr. NIELSON of Utah. I thank the gentleman for yielding to me.

Mr. Speaker, I would have objected myself until I looked at the packages presented. As the gentleman from California and the gentleman from Illinois know, I very much objected to the mental health bill on the basis you were adding categorical things to a block grant and that you were also going to penalize. I have been informed that you are not going to add any new money until 1988. We will have another chance to look at it prior to that time.

As to the other bills, I have a question that the gentleman from Illinois might answer. Is the drug export bill the same bill that Senator HATCH entered in the Senate prior to amendments?

Mr. MADIGAN. Mr. Speaker, reclaiming my time, the drug export bill is not the bill introduced by me in the House and it is not the bill introduced by the gentleman from California in the House. It is the bill introduced by the gentleman from Utah in the other body. The language is the language that he has insisted upon in our meeting earlier today and the language does not contain any study, which was one of the items at issue.

Mr. NIELSON of Utah. If the gentleman will yield further, what about the export of milk formula; is that in the bill or not?

Mr. MADIGAN. No, it is not.

Mr. NIELSON of Utah. That is out of the bill.

The HMO bill and most of the bills there are very good bills. I think it is a good package. I am a little sorry that we just did not put the good things together in order to have a package but apparently you had to include a number of others in order to please both the majority and the minority of the other body; is that correct?

Mr. WAXMAN. If the gentleman will yield, the gentleman is correct.

Mr. NIELSON of Utah. It is basically a four-way compromise; you have got something for everyone in the bill?

Mr. WAXMAN. I think there were 20 different ways but we got everybody signed off on what is basically a good compromise package.

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Mr. NIELSON of Utah. Mr. Speaker, I congratulate the chairman of the subcommittee, the gentleman from California [Mr. WAXMAN] and the gentleman from Illinois [Mr. MADIGAN] for putting together a bill that I can support.

I am going to revisit that mental health bill. I am not against mental health planning. I am not against improving that area, but I want to make sure we do not destroy the block grant that was so carefully worked out and that we do not take away the flexibility States now enjoy.

Mr. MADIGAN. Mr. Speaker, further reserving the right to object, I yield to my colleague, the gentleman from New York [Mr. SCHEUER], a member of the committee.

Mr. SCHEUER. Mr. Speaker, I wish to express my admiration to the chairman of the subcommittee, the gentleman from California [Mr. WAXMAN] and the ranking minority member, the gentleman from Illinois [Mr. MADIGAN] for the artful and very constructive set of compromises that they have crafted here in putting this bill together.

The infant innoculation bill solves the thorny problem of how to cope with the extremely rare case of an infant or a child who has a very severe reaction to the innoculation, or in the extremely rare event where death occurs, how do we compensate that child and how do we compensate the family.

That was a knotty, thorny problem, and this bill solves it. The bill also includes very constructive treatment of the drug export situation. It protects the integrity of the foreign government's right to regulate drugs coming into their country. It protects the peo-

ples of those countries, and likewise, it protects the drug industries in this country and stops the flight of capital, of productive facilities, and of talent that has resulted for many years from the necessity, the perceived necessity on the part of the drug companies, to escape onerous and punitive regulations.

That burden is lifted from their shoulders in this bill and it enables them to bring home research and development activities abroad, bring home talent that they had assigned abroad, and bring home production of drugs that they have made abroad to our own shores where it belongs.

I do congratulate again the gentleman from California [Mr. WAXMAN] and the gentleman from Illinois [Mr. MADIGAN] for their truly expert abilities in crafting a very finely etched compromise that harmonizes all of the various sensitive issues involved and produces a result very much in the public interest.

Mr. WAXMAN. Mr. Speaker, will the gentleman yield?

Mr. MADIGAN. I yield to the gentleman from California.

Mr. WAXMAN. Mr. Speaker, there are many Members of this House and the other body who deserve special acknowledgement in bringing us to this point where the legislation is before us.

I want to pay special recognition to the gentleman from Illinois [Mr. MADIGAN], the gentleman from New York [Mr. SCHEUER], the gentleman from Utah [Mr. NIELSON], the gentleman from Oregon [Mr. WYDEN], and all the members of our subcommittee; Senator HATCH, Senator KENNEDY, and others in the other body.

I particularly want to pay tribute to the staffs that have worked on this legislation, the majority and minority of both sides of the Capitol. It is a good compromise and I thank the gentleman for all of his patience and cooperation in bringing us to this point.

Mr. MADIGAN. Mr. Speaker, further reserving the right to object, I would not be doing justice to my colleagues if I did not point out for the record that the gentleman from New York [Mr. ECKERT], the gentleman from Iowa [Mr. TAUKE], the gentleman from Virginia [Mr. BLILEY], the gentleman from California [Mr. DANNEMEYER], and the gentleman from California [Mr. LAGOMARSINO], the secretary of our conference, have worked very hard on components of this and I wish to acknowledge their hard work.

Mr. MADIGAN. Mr. Speaker, I withdraw may reservation of objection.

The SPEAKER pro tempore (Mr. MURTHA). Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1744

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "State Comprehensive Mental Health Services Plan Act of 1986".

STATE COMPREHENSIVE MENTAL HEALTH SERVICES PLAN

SEC. 2. Part B of title XIX of the Public Health Service Act is amended—

(1) by inserting before the heading for section 1911 the following:

"SUBPART 1—GRANT"; AND

(2) by adding at the end thereof the following:

"SUBPART 2—STATE COMPREHENSIVE MENTAL HEALTH SERVICES PLAN

"DEVELOPMENT GRANTS

"SEC. 1921. (a) The Secretary shall make grants to States for the development of State comprehensive mental health services plans which comply with section 1922. In order to receive a grant under this section, a State shall submit an application to the Secretary. Such application shall be in such form, and shall contain such information, as the Secretary may by regulation prescribe.

"(b)(1) Except as provided in paragraph (2), the amount of a grant to a State under this section for a fiscal year shall be the amount which bears the same ratio to the amount appropriated to carry out this section for such fiscal year as the population of the State bears to the total of the population of all States which submit applications under this section.

"(2) Notwithstanding paragraph (1), the amount of a grant to any State under this section shall not be less than $150,000.

"(c) To carry out this section, there are authorized to be appropriated $10,000,000 for each of the fiscal years 1987 and 1988.

"STATE COMPREHENSIVE MENTAL HEALTH SERVICES PLANS

"SEC. 1922. (a) For each fiscal year, beginning with fiscal year 1987, each State shall submit a State comprehensive mental health services plan (hereafter referred to in this subpart as the 'State plan') to the Secretary.

"(b) A State plan shall, for the fiscal year for which the plan is submitted and each of the 2 succeeding fiscal years, meet the following requirements:

"(1) The State plan shall provide for the establishment and of implementation of an organized community-based system of care for chronically mentally ill individuals.

"(2) The State plan shall contain quantitative targets to be achieved in the implementation of such system, including numbers of chronically mentally ill individuals residing in the areas to be served under such system.

"(3) The State plan shall describe services to be provided to chronically mentally ill individuals to enable such individuals to gain access to mental health services, including access to treatment, prevention, and rehabilitation services.

"(4) The State plan shall describe rehabilitation services, employment services, housing services, medical and dental care, and other support services to be provided to chronically mentally ill individuals in order to enable such individuals to function outside of inpatient institutions to the maximum extent of their capabilities.

"(5) The State plan shall provide for activities to reduce the rate of hospitalization of chronically mentally ill individuals.

"(6) Except as provided in paragraph (7), the State plan shall require the provision of case management services to each chronically ill individual in the State who receives substantial amounts of public funds or services. For purposes of this paragraph, the term 'chronically mentally ill individual' means a chronically mentally ill individual as defined under State laws and regulations.

"(7) The State plan may provide for the implementation of the requirements of paragraph (6) in a manner which—

"(A) phases in, beginning in fiscal year 1989, the provision to all chronically mentally ill individuals to which such paragraphs applies the case management services required to be provided under such paragraphs; and

"(B) provides for the substantial completion of the phasing in of the provision of such services by the end of fiscal year 1992.

"(8) The State plan shall provide for the establishment and implementation of a program of outreach to, and services for, chronically mentally ill individuals who are homeless.

"(c) In developing each State plan required under this section, the State consult with representatives of employees of State institutions and public and private nursing homes who care for chronically mentally ill individuals.

"(d) The Secretary shall provide technical assistance to States in the development and implementations of State plans which comply with this section. Such technical assistance shall include the development and publication by the Secretary of model elements for State plans and model data systems for the collection of data concerning the implementation of State plans.

"ENFORCEMENT

"SEC. 1923. (a) If the Secretary determines that a State has not, by the end of fiscal year 1988, developed the State plan required by section 1922, the Secretary shall reduce the amount of the State's allotment under subpart 1 for fiscal year 1989 by the amount specified in subsection (d).

"(b) If the Secretary determines that a State has not, by the end of fiscal year 1989, developed and substantially implemented the State plan required by section 1922, the Secretary shall reduce the amount of the State's allotment under subpart 1 for fiscal year 1990 by the amount specified in subsection (d).

"(c) If the Secretary determines that a State has not, by the end of fiscal year 1990, developed and completely implemented the State plan required by section 1922, the Secretary shall reduce the amount of the State's allotment under subpart 1 for fiscal year 1991 and each succeeding fiscal year by the amount specified in subsection (d). The Secretary shall discontinue the reduction under this subsection of a State's allotment under subpart 1 for a fiscal year if the Secretary determines that the State, has, in the preceeding fiscal year, developed and completely implemented the State plan required by section 1922.

"(d) The amount referred to in subsections (a), (b), and (c) with respect to a State is the total amount expended by the State for administrative expenses for fiscal year 1986 from amounts paid to the State under subpart 1 for such fiscal year.

"(e) Notwithstanding any other provision of this subpart, the Secretary shall not require a State government, in carrying out a State plan submitted under this subpart, to expend an amount for mental health serv-

ices for any fiscal year which exceeds the total amount that would have been expended for such services by such government for such fiscal year if such plan had not been implemented.

"MODEL STANDARDS FOR THE PROVISION OF CARE TO THE CHRONICALLY MENTALLY ILL

"SEC. 1924. (a) Within one year after the date of enactment of this subpart, the Secretary shall develop and make available a model plan for a community-based system of care for chronically mentally ill individuals. Such plan shall be developed in consultation with State mental health directors, providers of mental health services, chronically mentally ill individuals, advocates for such individuals, and other interested parties.".

STATE MENTAL HEALTH SERVICES PLANNING COUNCILS

SEC. 3. Section 1916(f) of the Public Health Service Act is amended—

(1) by striking out "With amounts available under section 1915(a), the chief executive officer of the State may" and inserting in lieu thereof "The chief executive officer of the State shall"; and

(2) by adding at the end thereof the following new sentence: "The State may use amounts available under section 1915(a) to establish and operate such a council.".

DEMONSTRATION PROJECTS FOR SERVICES FOR HOMELESS CHRONICALLY MENTALLY ILL INDIVIDUALS

SEC. 4. (a) Section 504(f)(1) of the Public Health Service Act is amended by striking out "and elderly individuals" and inserting in lieu thereof "elderly individuals, and homeless chronically mentally ill individuals".

(b) Section 504(f)(3) of such Act is amended by striking out "1985, 1986, and 1987" and inserting in lieu thereof "1985 and 1986, and $24,000,000 for fiscal year 1987".

(c) Section 504(f) of such Act is further amended by adding at the end thereof the following new paragraph:

"(4)(A) Not more than 25 percent of the total amount of a grant for fiscal year 1987 made to a State under this subsection for a project for services for chronically mentally ill adults (other than a project for services for elderly individuals or a project for services for homeless chronically mentally ill individuals) may be used by the State for administrative expenses in carrying out such grant in such fiscal year.

"(B) Not more than 25 percent of the total amount of any grant made to a State under this subsection for any fiscal year (beginning with fiscal year 1988) may be used by the State for administrative expenses in carrying out such grant in such fiscal year.".

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. WAXMAN

Mr. WAXMAN. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Cerk read as follows:

Amendment in the nature of a substitute offered by Mr. WAXMAN: Strike out all after the enacting clause and insert:

TITLE I—DRUG EXPORTS

SEC. 101. SHORT TITLE, REFERENCE.

(a) SHORT TITLE.—This title may be cited as the "Drug Export Amendments Act of 1986".

(b) REFERENCE.—Whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be a reference to a section or other provision of the Federal Food, Drug, and Cosmetic Act.

SEC. 102. EXPORT AUTHORITY.

Chapter VIII is amended—

(1) by inserting after the chapter heading the following:

"IMPORTS AND EXPORTS", and

(2) by inserting after section 801 the following:

"EXPORTS OF CERTAIN UNAPPROVED PRODUCTS

"SEC. 802. (a) A drug (including a biological product) intended for human or animal use

"(1) which—

"(A) requires approval by the Secretary under section 505 or section 512, or

"(B) requires licensing by the Secretary under section 351 of the Public Health Service Act or by the Secretary of Agriculture under the Act of March 4, 1913 (known as the Virus Serum Toxin Act),

before it may be introduced or delivered for introduction into interstate commerce to a country, and

"(2) which does not have such approval or license, which is not exempt from such sections or Act, and which is introduced or delivered for introduction into interstate commerce to a country,

is adulterated, misbranded, and in violation of such sections or Act unless the export of the drug is authorized under subsection (b).

"(b)(1) A drug (including a biological product) may, upon approval of an application submitted under paragraph (3), be exported if—

"(A) the drug contains the same active ingredient as a—

"(i) new drug—

"(I) which has an exemption under section 505(i), and

"(II) for which approval is actively being pursued by the person who has the exemption,

"(ii) biological product for human use—

"(I) which has an exemption under section 505(i), and

"(II) for which licensing of the biological product under section 351 of the Public Health Service Act is actively being pursued by the person who has the exemption,

"(iii) biological product for animal use—

"(I) for which authority has been granted under the Virus-Serum Toxin Act for the preparation of an experimental drug product, and

"(II) for which the licensing of the biological product under such Act is actively being pursued by the person who has the authority, or

"(iv) new animal drug—

"(I) which has an exemption under section 512(j), and

"(II) for which approval is actively being pursued by the person who has the exemption,

"(B) except as provided in paragraph (2), the drug is exported to a country which is listed under paragraph (4) and in which the drug is approved and has not been withdrawn from sale,

"(C) an application for the drug under section 505 or 512, section 351 of the Public Health Service Act, or the Virus-Serum Toxin Act has not been disapproved by an order of the Secretary under section 505(d) or 512(d) or 351 of the Public Health Service Act or by the Secretary of Agriculture in the case of an application under the Virus-Serum Toxin Act,

"(D) the drug is manufactured, processed, packaged, and held in conformity with current good manufacturing practice and is not adulterated under paragraph (a)(1), (a)(2)(A), (a)(3), (c), or (d) of section 501,

"(E) the outside of the shipping package is labeled with the following statement: 'This drug may be sold or offered for sale only in the following countries: , the blank space being filled with a list of the countries to which export of the drug is authorized under this subsection,

"(F) the drug is not the subject of a notice by the Secretary or the Secretary of Agriculture of a determination that the manufacture of the drug in the United States for export to a country is contrary to the public health and safety of the United States,

"(G) the requirements of subparagraphs (A) through (D) of section 801(d)(1) have been met.

The Secretary shall determine that an applicant is actively pursuing the approval or licensing of a drug if the applicant has demonstrated that degree of attention and continuous directed effort as may reasonably be expected from, and are ordinarily exercised by, a person before approval or licensing of a drug, such as the preparation for and the conduct of preclinical or clinical investigations, the analysis of the results of such investigations, conferences on such investigations with government officials, and the preparation of an application of approval or licensing for the drug.

"(2) The Secretary may permit the export of a drug under paragraph (1) to a country which is listed under paragraph (4) and in which the drug is not approved if the drug is exported to such country solely for the purpose of further export to a country listed in paragraph (4) in which the drug is approved.

"(3)(A) Any person may apply to have a drug exported under paragraph (1). Such an application shall be filed at least 90 days before the date the applicant proposes to export the drug for which the application is submitted. Before the expiration of 10 days from the date of the submission of such an application, the Secretary shall publish a notice in the Federal Register which identifies the applicant under such application, the drug proposed to be exported under such application, and the country to which the drug is proposed to be exported.

"(B) An application for the export of a drug shall—

"(i) identify the drug to be exported,

"(ii) list each country to which the drug is to be exported and list the persons in each such country to which the drug is to be exported,

"(iii) contain a certification by the applicant that—

"(I) the applicant will export the drug only to a country which is listed in paragraph (4) and in which the drug is approved unless the drug is authorized to be exported under paragraph (2) and will export only those quantities of the drug which may reasonably be sold in each country to which it is to be exported,

"(II) the drug is approved by each country to which it is to be exported unless the drug is authorized to be exported under paragraph (2) and the drug has not been withdrawn from sale in such country,

"(III) the drug meets the requirements of paragraph (1)(D),

"(IV) the drug will be labeled in accordance with paragraph (1)(E), and

"(V) the drug meets the requirements of paragraphs (1)(C) and (1)(G)

"(iv) contain a certification by the holder of the exemption or authority for such drug

described in paragraph (1)(A) that the holder will actively pursue the approval or licensing of the drug,

"(v) identify the exemption or authority for an experimental drug product in effect for such drug under the laws referred to in paragraph (1)(A),

"(vi) identify the establishments in which the drug is manufactured, and

"(vii) include a written agreement from each importer to whom the drug is to be exported from the United States that such importer will not export the drug to a country which is not listed under paragraph (4) and will provide notice to the applicant of any knowledge of an export of the drug to such a country by any person and will maintain records of the drug wholesale distributors to which the drug is sold.

"(C)(i) Before the expiration of 30 days after the date an application is submitted to the Secretary, the Secretary shall review the application to determine if the application meets the requirements of clauses (i), (ii), (iv), (v), (vi) and (vii) of subparagraph (B) and contains the certifications described in clauses (iii) (other than the certification required by clause (iii)(II)) and (iv). If the Secretary determines that the application meets such requirements and contains such certifications the Secretary shall conditionally approve the application. An application which is so conditionally approved shall be finally approved within 5 days of the submission of the certification required by clause (iii)(II).

"(ii) If the Secretary proposes to disapprove an application, the Secretary shall provide the applicant with a written statement specifying—

"(I) the deficiencies which the applicant must correct in order to enable the Secretary to approve the application, and

"(II) that the applicant has 60 days after receiving the statement to correct such deficiences.

"(D) If the holder of an application approved under subparagraph (C) for the export of a drug intends to export such drug to a country listed in paragraph (4) which is not listed in such application, such holder shall submit an amendment to such application to the Secretary not later than 30 days before the date of the proposed export to such country identifying the country to which the holder intends to export such drug and containing information sufficient to show that the drug is approved by such country and has not been withdrawn from sale in such country. The Secretary shall approve or disapprove the export of such drug to such country within 15 days of the receipt of the notice required by this subparagraph.

"(4)(A) The countries to which a drug may be exported under paragraph (1) are—

"(i) Australia,
"(ii) Austria,
"(iii) Belgium,
"(iv) Canada,
"(v) Denmark,
"(vi) Federal Republic of Germany,
"(vii) Finland,
"(viii) France,
"(ix) Iceland,
"(x) Ireland,
"(xi) Italy,
"(xii) Japan,
"(xiii) Luxembourg,
"(xiv) The Netherlands,
"(xv) New Zealand,
"(xvi) Norway,
"(xvii) Portugal,
"(xviii) Spain,
"(xix) Sweden,
"(xx) Switzerland, and
"(xxi) The United Kingdom.

"(B) Changes in the list contained in subparagraph (A) shall be based on the following criteria:

"(i) Statutory or regulatory requirements which require the review of drugs for safety and effectiveness by an entity of the government of such country and which authorize the approval of only those drugs which have been determined to be safe and effective by experts employed by or acting on behalf of such entity and qualified by scientific training and experience to evaluate the safety and effectiveness of drugs on the basis of adequate and well-controlled investigations, including clinical investigations, conducted by experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs.

"(ii) Statutory or regulatory requirements that the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of drugs in the country are adequate to preserve their identity, quality, purity, and strength.

"(iii) Statutory or regulatory requirements for the reporting of adverse reactions to drugs and procedures to withdraw approval and remove drugs found not to be safe or effective.

"(iv) Statutory or regulatory requirements that the labeling and promotion of drugs must be in accordance with the approval of the drug.

"(c)(1) The holder of an approved application under subsection (b) authorizing the export of a drug shall report to the Secretary—

"(A) any withdrawal of an approval of the drug by any country to which it has been exported,

"(B) any withdrawal of the drug from sale in any such country,

"(C) the withdrawal of an application by the holder under section 505 or 512, section 351 of the Public Health Service Act, or the Virus-Serum Toxin Act, and

"(D) the receipt of any credible information indicating that the drug is being or may have been exported from a country listed under subsection (b)(4) to a country which is not listed under such subsection.

The reporting of an event described in subparagraph (A), (B), or (C) shall be made within 15 days of the occurrence of the event and the reporting of the receipt of information under subparagraph (D) shall be made within 15 days of the receipt of such information.

"(2) The holder of an approved application under subsection (b) authorizing the export of a drug shall report annually to the Secretary after the date of the approval of the application of the actions taken by the holder in pursuit of the approval of such drug during the year reported on. Not later than 90 days from the date of the receipt of a report under this paragraph the Secretary shall determine if the holder is actively pursuing the approval of such drug.

"(d) A drug authorized to be exported to a country under an application approved under subsection (b) may not be exported to such country if—

"(1) an approval of such drug is withdrawn by such country,

"(2) the drug is withdrawn from sale in such country,

"(3) the Secretary issues an order refusing to approve an application of the holder of such application under section 505 or 512, section 351 of the Public Health Service Act, or the Virus-Serum Toxin Act, or

"(4) an application for such drug under such section or Act is withdrawn or if an exemption for such drug under section 505(i) or 512(j) or the authority granted for such drug to prepare an experimental drug product under the Virus-Serum Toxin Act is withdrawn and no application for approval of such drug has been submitted under section 505 or 512, section 351 of the Public Health Service Act, or the Virus-Serum Toxin Act.

"(e)(1) If the Secretary determines that—

"(A) a drug for which an application was approved under subsection (b) no longer complies with subparagraphs (A), (D), (E), and (G) of paragraph (1) of such subsection or with paragraph (2) of such subsection or the holder of such application has not made the reports required by subsection (c), or

"(B) the manufacture of a drug in the United States for export is contrary to the public health and safety of the United States and an application for the export of such drug has been approved under subsection (b),

then before taking action against the holder of an application for which a determination was made under subparagraph (A) or (B), the Secretary shall notify the holder in writing of the determination and provide the holder 30 days to take such action as may be required so that the Secretary would be unable to make such determination. When the Secretary takes action against such holder because of such a determination, the Secretary shall provide the holder a written statement specifying the reasons for such determination and provide the person, on request, an opportunity for an informal hearing with respect to such determination.

"(2) If the Secretary determines that the approval of a drug is not being actively pursued as required by subsection (b)(1)(A), the Secretary shall give the holder of the application authorizing the export of such drug 60 days to assure that actions are taken to actively pursue such approval. During the 60-day period the Secretary shall give the holder an opportunity for an informal hearing on the determination of the Secretary. If upon the expiration of such 60-day period the Secretary determines that approval of such drug is not being actively pursued, the Secretary shall prohibit the export of such drug.

"(3)(A) If at any time the Secretary, or in the absence of the Secretary the individual acting as the Secretary, determines that—

"(i) the holder of an approved application under subsection (b) is exporting a drug from the United States to an importer,

"(ii) such importer is exporting the drug to a country which is not listed under subsection (b)(4), and

"(iii) such export presents an imminent hazard to the public health in such country,

the Secretary shall immediately prohibit the export of the drug to such importer, give the person exporting the drug from the United States prompt notice of the determination, and afford such person an opportunity for an expedited hearing.

"(B) The authority conferred by subparagraph (A) shall not be delegated by the Secretary. A determination by the Secretary under subparagraph (A) may not be stayed pending final action by a reviewing court.

"(4)(A) If the Secretary, or in the absence of the Secretary the individual acting as the Secretary, determines that the holder of an approved application under subsection (b) is exporting a drug to a country which is not listed under subsection (b)(4) and that

the export of the drug presents an imminent hazard, the Secretary shall immediately prohibit the export of the drug to such country, give the holder prompt notice of the determination, and afford the holder an opportunity for an expedited hearing.

"(B) The authority conferred by subparagraph (A) shall not be delegated by the Secretary. A determination by the Secretary under subparagraph (A) may not be stayed pending final action by a reviewing court.

"(5) If the Secretary receives credible evidence that the holder of an application approved under subsection (b) is exporting a drug to a country which is not listed under subsection (b)(4), the Secretary shall give the holder 60 days to provide information to the Secretary respecting such evidence and shall provide the holder an opportunity for an informal hearing on such evidence. Upon the expiration of such 60 days the Secretary shall prohibit the export of such drug to such country if the Secretary determines that the holder of the application is exporting the drug to a country which is not listed under subsection (b)(4).

"(6) If the Secretary receives credible evidence that an importer is exporting a drug to a country which is not listed under subsection (b)(4), the Secretary shall notify the holder of the application authorizing the export of such drug of such evidence and shall require the holder to investigate the export by such importer and to report to the Secretary within 14 days of the receipt of such notice the findings of the holder. If the Secretary determines that the importer has exported a drug to such a country, the Secretary shall prohibit such holder from exporting such drug to the importer unless the Secretary determines that the export by the importer was unintentional.

"(f)(1) A drug (including a biological product) which is to be used in the prevention or treatment of a tropical disease may, upon approval of an application submitted under paragraph (2), be exported if—

"(A) the Secretary finds, based on credible scientific evidence, including clinical investigations, that the drug is safe and effective in the country to which it is to be exported in the prevention or treatment of a tropical disease in such country,

"(B) the drug is manufactured, processed, packaged, and held in conformity with current good manufacturing practice and is not adulterated under paragraph (a)(1), (a)(2)(A), (a)(3), (c), or (d) of section 501,

"(C) the outside of the shipping package is labeled with the following statement: 'This drug may be sold or offered for sale only in the following countries: ', the blank space being filled with a list of the countries to which export of the drug is authorized under this subsection,

"(D) the drug is not the subject of a notice by the Secretary or the Secretary of Agriculture of a determination that the manufacture of the drug in the United States for export to a country is contrary to the public health and safety of the United States, and

"(E) the requirements of subparagraphs (A) through (D) of section 801(d)(1) have been met.

"(2) Any person may apply to have a drug exported under paragraph (1). The application shall—

"(A) describe the drug to be exported,

"(B) list each country to which the drug is to be exported,

"(C) contain a certification by the applicant that the drug will not be exported to a country for which the Secretary cannot make a finding described in paragraph (1)(A),

"(D) identify the establishments in which the drug is manufactured, and

"(E) demonstrate to the Secretary that the drug meets the requirements of paragraph (1).

"(3) The holder of an approved application for the export of a drug under this subsection shall report to the Secretary—

"(A) the receipt of any information indicating that the drug is being or may have been exported from a country for which the Secretary made a finding under paragraph (1)(A) to a country for which the Secretary cannot make such a finding, and

"(B) the receipt of any information indicating any adverse reactions to such drug.

"(4)(A) If the Secretary determines that—

"(i) a drug for which an application is approved under paragraph (2) does not continue to meet the requirements of paragraph (1),

"(ii) the holder of such application has not made the report required by paragraph (3), or

"(iii) the manufacture of such drug in the United States for export is contrary to the public health and safety of the United States and an application for the export of such drug has been approved under paragraph (2),

then before taking action against the holder of an application for which a determination was made under clause (i), (ii), or (iii), the Secretary shall notify the holder in writing of the determination and provide the holder 30 days to take such action as may be required so that the Secretary would be unable to make such determination. When the Secretary takes action against such holder because of such a determination, the Secretary shall provide the holder a written statement specifying the reasons for such determination and provide the person, on request, an opportunity for an informal hearing with respect to such determination.

"(B) If at any time the Secretary, or in the absence of the Secretary the individual acting as the Secretary, determines that—

"(i) the holder of an approved application under paragraph (2) is exporting a drug from the United States to an importer,

"(ii) such importer is exporting the drug to a country for which the Secretary cannot make a finding under paragraph (1)(A), and

"(iii) such export presents an imminent hazard to the public health in such country,

the Secretary shall immediately prohibit the export of the drug to such importer, give the person exporting the drug from the United States prompt notice of the determination, and afford such person an opportunity for an expedited hearing. A determination by the Secretary under this subparagraph may not be stayed pending final action by a reviewing court. The authority conferred by this subparagraph shall not be delegated by the Secretary.

"(C) If the Secretary, or in the absence of the Secretary the individual acting as the Secretary, determines that the holder of an approved application under paragraph (2) is exporting a drug to a country for which the Secretary cannot make a finding under paragraph (1)(A), and that the export of the drug presents an imminent hazard, the Secretary shall immediately prohibit the export of the drug to such country, give the holder prompt notice of the determination, and afford the holder an opportunity for an expedited hearing. A determination by the Secretary under this subparagraph may not be stayed pending final action by a reviewing court. The authority conferred by this subparagraph shall not be delegated by the Secretary.

"(D) If the Secretary receives credible evidence that the holder of an application approved under paragraph (2) is exporting a drug to a country for which the Secretary cannot make a finding under paragraph (1)(A), the Secretary shall give the holder 60 days to provide information to the Secretary respecting such evidence and shall provide the holder an opportunity for an informal hearing on such evidence. Upon the expiration of such 60 days the Secretary shall prohibit the export of such drug to such country if the Secretary determines the holder is exporting the drug to a country for which the Secretary cannot make a finding under paragraph (1)(A).

"(E) If the Secretary receives credible evidence that an importer is exporting a drug to a country for which the Secretary cannot make a finding under paragraph (1)(A), the Secretary shall notify the holder of the application authorizing the export of such drug of such evidence and shall require the holder to investigate the export by such importer and to report to the Secretary within 14 days of the receipt of such notice the findings of the holder. If the Secretary determines that the importer has exported a drug to such a country, the Secretary shall prohibit such holder from exporting such drug to the importer unless the Secretary determines that the export by the importer was unintentional.

"(g) For purposes of this section—

"(1) a reference to the Secretary shall in the case of a biological product which is required to be licensed under the Virus-Serum Toxin Act be considered to be a reference to the Secretary of Agriculture, and

"(2) a reference in paragraph (3), (4), (5), or (6) of subsection (e) and in subparagraph (B), (C), (D), or (E) of subsection (f)(4) to the holder of an application shall be considered a reference to any person which is under common control with holder, is controlled by the holder, controls the holder, is owned by the holder, or owns the holder.".

SEC. 3. ENFORCEMENT.

For the fines authorized to be imposed under section 303 of the Federal Food, Drug, and Cosmetic Act, see section 3623 of title 18, United States Code, for the period ending October 31, 1986, and sections 3559 and 3571 of such title for the period beginning November 1, 1986.

SEC. 104. TROPICAL DISEASES.

Section 301 of the Public Health Service Act (42 U.S.C. 241) is amended by adding at the end the following:

"(c) The Secretary may conduct biomedical research, directly or through grants or contracts, for the identification, control, treatment, and prevention of diseases (including tropical diseases) which do not occur to a significant extent in the United States.".

SEC. 5. PARTIALLY PROCESSED BIOLOGICAL PRODUCTS.

(a) AMENDMENT.—Section 351 of the Public Health Service Act (42 U.S.C 262) is amended by adding at the end the following:

"(h)(1)(A) A partially processed biological product which is not in a form applicable to the prevention, treatment, or cure of diseases or injuries of man, which is not intended for sale in the United States, and which is intended for further manufacture into final dosage form outside the United States in a country listed under section 802(b)(4) of the Federal Food, Drug & Cosmetic Act may, upon approval of an application meeting the requirements of subparagraph (B), be exported to a country listed

under section 802(b)(4) of the Federal Food, Drug, and Cosmetic Act. The Secretary may not approve an application to export such a product unless the Secretary determines that the product is manufactured, processed, packaged, and held in conformity with current good manufacturing practice and the outside of the shipping package is labeled with the following statement: 'This product may be sold or offered for sale only in the following countries: , the blank space being filled with a list of the countries to which export of the drug is authorized.

"(B) An application for the export of a partially processed biological product shall—

"(i) describe the partially processed biological product to be exported,

"(ii) list each country to which the product is to be exported,

"(iii) contain a certification by the applicant that the product will not be exported to a country not listed under clause (ii),

"(iv) identify the establishments in which the product is manufactured, and

"(v) contain a certification by the applicant that the final product to be develop from the partially processed product is approved in the country to which it is to be exported or approval of the final product is being sought in such country.

"(2) A product described in paragraph (1) is not subject to licensure under this section.

"(3) If the Secretary determines that prohibiting the export of a product described in paragraph (1) is necessary for protection of the public health in the United States or the country to which it is to be exported, the Secretary may not approve an application under paragraph (1) for the export of such product.".

(b) EFFECTIVE DATE.—Paragraph (1) of section 351(h) of the Public Health Service Act as added by subsection (a) shall take effect upon the expiration of 90 days after the date of the enactment of this Act.

TITLE II—NATIONAL COMMISSION TO PREVENT INFANT MORTALITY

SEC. 201. SHORT TITLE.

This title may be cited as the "National Commission to Prevent Infant Mortality Act of 1986".

SEC. 202. DEFINITION.

For the purposes of this title, the term "infant mortality" refers to the number of infants born alive but who die before their first birthday.

SEC. 203. ESTABLISHMENT OF A NATIONAL COMMISSION.

(a) ESTABLISHMENT.—There is established the National Commission to Prevent Infant Mortality (hereinafter referred to as the "Commission").

(b) COMPOSITION.—The Commission shall be composed of fifteen members, as follows:

(1) Two members of the Senate, one to be selected by the majority leader of the Senate, the other to be selected by the minority leader of the Senate.

(2) Two members of the House, one to be selected by the Speaker of the House, the other to be selected by the minority leader of the House.

(3) Three representatives of State government shall be jointly selected by the majority leader of Senate and the Speaker of the House. One shall be a Governor; one shall be a chief State official responsible for administering the State medicaid program; and one shall be the chief State official responsible for administering the State maternal and child health programs.

(4) The Secretary of Health and Human Services shall be a member.

(5) The Comptroller General of the United States shall be a member.

(6) Six at large members, with demonstrated expertise in maternal and child health, including representatives of health care consumer and provider organizations, shall be jointly selected by the majority leader of the Senate and the Speaker of the House.

(c) CHAIRMAN AND VICE CHAIRMAN.—The Commission shall select a Chairperson and Vice Chairperson from among its members.

(d) QUORUM.—Eight members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(e) MEETINGS.—The Commission shall meet at the call of the Chairperson.

(f) VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

SEC. 204. DUTIES OF THE COMMISSION.

(a) DUTIES.—The Commission shall:

(1) Identify and examine comprehensively Federal, State, local, and private resources which impact infant mortality, including but not limited to—

(A) the effectiveness and adequacy of programs such as the Supplemental Feeding Program for Women, Infants, and Children; the Maternal and Child Health Block Grant; Community Health Centers; prepregnancy services and other programs that increase access to prenatal and postnatal education, care, and nutrition;

(B) the effectiveness of current Federal and State policies under the Medicaid Program to ensure adequate access to prenatal and post-natal care for low-income pregnant women, mothers, and infants up to age one;

(C) the role of income maintenance and other programs that impact infant mortality such as Aid to Families with Dependent Children and Federal housing subsidies;

(D) the adequacy of current Federal and State efforts to enable an appropriate distribution of properly trained health care professionals to provide comprehensive maternal and child health services;

(E) the adequacy of private health care financing systems and mechanisms to enable pregnant women and infants to receive comprehensive health care; and

(F) the adequacy of the national biostatistics registration system with respect to the collection and reporting of infant health statistics.

(2) Identify current financial, intergovernmental, and within the Federal Government, interagency barriers to the health care needed to prevent high infant mortality.

(3) Review recommendations made in recent regional and national reports that promote the health status of childbearing women and their infants and carry forward such recommendations as deemed appropriate.

(4) Hold hearings, in accordance with section 205(a), in areas of the United States with high infant mortality rates.

(b) RECOMMENDATIONS.—The Commission shall—

(1) recommend a national policy designed to reduce and prevent infant mortality, including recommendations concerning populations at risk of high infant death rates and recommendations concerning appropriate roles for the Federal Government, States, local governments, and private sector;

(2) recommend to the Congress and the President the specific changes needed within Federal laws and Federal programs to achieve an effective Federal role in preventing infant mortality, including the programs specified in subparagraphs (A) and (B) of subsection (a)(1);

(3) recommend to the Congress and the President the specific changes needed to improve the national vital statistics registration system with respect to infant death statistics; and

(4) present such recommendations to the President, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Finance and Governmental Affairs of the Senate no later than one year after enactment of this Act.

SEC. 205. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission, or at its direction, any subcommittee or member thereof, may for the purpose of carrying out the provisions of this title, hold such hearings, sit and act at such times and places, take such testimony, receive such evidence and administer such oaths, as the Commission or such subcommittee or member may deem advisable. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission, subcommittee, or member thereof.

(b) INFORMATION.—The Commission may secure directly from any Federal department or agency such information as may be necessary to enable the Commission to carry out this title. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) CONTRACTS.—To carry out this title, the Commission may enter into such contracts and other arrangements to such extent or in such amounts as are provided in appropriation Acts, and without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5). Contracts and other arrangements may be entered into under this subsection with or without consideration or bond.

(d) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act shall not apply to the Commission.

SEC. 206. COMMISSION STAFF.

(a) EXECUTIVE DIRECTOR.—The Chairperson and Vice Chairperson of the Commission shall appoint an executive director. The employment of such executive director shall be subject to confirmation by the Commission.

(b) OTHER PERSONNEL.—The Commission may appoint and terminate the executive director selected under subsection (a) and such other personnel as it considers appropriate to assist in the performance of its duties under this title, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may pay such executive director and other personnel without regard to the provisions of chapter 51 and subchapter 111 of chapter 53 of such title relating to classification and General Schedule pay rates, except that the rate of pay for such executive director and other personnel may not exceed the rate payable for GS-18 of the General Schedule under section 5332 of such title.

(c) APPLICABILITY OF OTHER FEDERAL LAWS.—Service of an individual as a member of the Commission or employment of an individual by the Commission on a part-time or full-time basis and with or without compensation shall not be considered as service or employment bringing such individual within the provisions of any Federal law relating to conflicts of interest or otherwise imposing restrictions, requirements, or penalties in relation to the em-

ployment of persons, the performance of services, or the payment or receipt of compensation in connection with claims, proceedings, or matters involving the United States. Service as a member of the Commission or as an employee of the Commission, shall not be considered service in an appointive or elective position in the Government for purposes of section 8344 of title 5, United States Code, or comparable provisions of Federal law.

(d) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Commission, the Chairman of the Commission may procure temporary and intermittent services under section 3109 of title 5, United States Code, at rates for individuals not to exceed the daily rate payable for GS-18 of the General Schedule under section 5332 of such title.

SEC. 207. SUNSHINE PROVISION.

The Commission shall establish procedures to ensure its proceedings are open to the public to the maximum extent practicable.

SEC. 208. TERMINATION OF THE COMMISSION.

Ninety days after the Commission submits its recommendations as required by section 204(b)(4) the Commission shall terminate.

SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission such sums as may be necessary. Amounts appropriated under this section shall remain available until the day on which the Commission terminates under section 208.

TITLE III—VACCINE COMPENSATION

SEC. 301. SHORT TITLE.

This title may be cited as the "National Childhood Vaccine Injury Act of 1986".

PART A—VACCINES

SEC. 311. AMENDMENT TO PUBLIC HEALTH SERVICE ACT.

(a) NEW TITLE.—The Public Health Service Act is amended by redesignating title XXI as title XXIII, by redesignating sections 2101 through 2116 as sections 2301 through 2316, respectively, and by inserting after title XX the following new title:

"TITLE XXI—VACCINES

"Subtitle 1—National Vaccine Program

"ESTABLISHMENT

"SEC. 2101. The Secretary shall establish in the Department of Health and Human Services a National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The Program shall be administered by a Director selected by the Secretary.

"PROGRAM RESPONSIBILITIES

"SEC. 2102. (a) The Director of the Program shall have the following responsibilities:

"(1) VACCINE RESEARCH.—The Director of the Program shall, through the plan issued under section 2103, coordinate and provide direction for research carried out in or through the National Institutes of Health, the Centers for Disease Control, the Office of Biologics Research and Review of the Food and Drug Administration, the Department of Defense, and the Agency for International Development on means to induce human immunity against naturally occurring infectious diseases and to prevent adverse reactions to vaccines.

"(2) VACCINE DEVELOPMENT.—The Director of the Program shall, through the plan issued under section 2103, coordinate and provide direction for activities carried out in or through the National Institutes of Health, the Office of Biologics Research and Review of the Food and Drug Administration, the Department of Defense, and the Agency for International Development to develop the techniques needed to produce safe and effective vaccines.

"(3) SAFETY AND EFFICACY TESTING OF VACCINES.—The Director of the Program shall, through the plan issued under section 2103, coordinate and provide direction for safety and efficacy testing of vaccines carried out in or through the National Institutes of Health, the Centers for Disease Control, the Office of Biologics Research and Review of the Food and Drug Administration, the Department of Defense, and the Agency for International Development.

"(4) LICENSING OF VACCINE MANUFACTURERS AND VACCINES.—The Director of the Program shall, through the plan issued under section 2103, coordinate and provide direction for the allocation of resources in the implementation of the licensing program under section 353.

"(5) PRODUCTION AND PROCUREMENT OF VACCINES.—The Director of the Program shall, through the plan issued under section 2103, ensure that the governmental and non-governmental production and procurement of safe and effective vaccines by the Public Health Service, the Department of Defense, and the Agency for International Development meet the needs of the United States population and fulfill commitments of the United States to prevent human infectious diseases in other countries.

"(6) DISTRIBUTION AND USE OF VACCINES.—The Director of the Program shall, through the plan issued under section 2103, coordinate and provide direction to the Centers for Disease Control and assistance to States, localities, and health practitioners in the distribution and use of vaccines, including efforts to encourage public acceptance of immunizations and to make health practitioners and the public aware of potential adverse reactions and contraindications to vaccines.

"(7) EVALUATING THE NEED FOR AND THE EFFECTIVENESS AND ADVERSE EFFECTS OF VACCINES AND IMMUNIZATION ACTIVITIES.—The Director of the Program shall, through the plan issued under section 2103, coordinate and provide direction to the National Institutes of Health, the Centers for Disease Control, the Office of Biologics Research and Review of the Food and Drug Administration, the National Center for Health Statistics, the National Center for Health Services Research and Health Care Technology Assessment, and the Health Care Financing Administration in monitoring the need for and the effectiveness and adverse effects of vaccines and immunization activities.

"(8) COORDINATING GOVERNMENTAL AND NONGOVERNMENTAL ACTIVITIES.—The Director of the Program shall, through the plan issued under section 2103, provide for the exchange of information between Federal agencies involved in the implementation of the Program and non-governmental entities engaged in the development and production of vaccines and in vaccine research and encourage the investment of non-governmental resources complementary to the governmental activities under the Program.

"(9) FUNDING OF FEDERAL AGENCIES.—The Director of the Program shall make available to Federal agencies involved in the implementation of the plan issued under section 2103 funds appropriated under section 2106 to supplement the funds otherwise available to such agencies for activities under the plan.

(b) In carrying out subsection (a) and in preparing the plan under section 2103, the Director shall consult with all Federal agencies involved in research on and development, testing, licensing, production, procurement, distribution, and use of vaccines.

"PLAN

"SEC. 2103. The Director of the Program shall prepare and issue a plan for the implementation of the responsibilities of the Director under section 2102. The plan shall establish priorities in research and the development, testing, licensing, production, procurement, distribution, and effective use of vaccines, describe an optimal use of resources to carry out such priorities, and describe how each of the various departments and agencies will carry out their vaccine functions in consultation and coordination with the Program and in conformity with such priorities. The first plan under this section shall be prepared not later than January 1, 1987, and shall be revised not later than January 1 of each succeeding year.

"REPORT

"SEC. 2104. The Director shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate not later than January 1, 1988, and annually thereafter on the implementation of the Program and the plan prepared under section 2103.

"NATIONAL VACCINE ADVISORY COMMITTEE

"SEC. 2105. (a) There is established the National Vaccine Advisory Committee. The members of the Committee shall be appointed by the Director of the Program, in consultation with the National Academy of Sciences, from among individuals who are engaged in vaccine research or the manufacture of vaccines or who are physicians, members of parent organizations concerned with immunizations, or representatives of State or local health agencies or public health organizations.

"(b) The Committee shall—

"(1) study and recommend ways to encourage the availability of an adequate supply of safe and effective vaccination products in the States,

"(2) recommend research priorities and other measures the Director of the Program should take to enhance the safety and efficacy of vaccines,

"(3) advise the Director of the Program in the implementation of sections 2102, 2103, and 2104, and

"(4) identify annually for the Director of the Program the most important areas of government and non-government cooperation that should be considered in implementing sections 2102, 2103, and 2104.

"AUTHORIZATIONS

"SEC. 2106. (a) To carry out this subtitle other than section 2102(9) there are authorized to be appropriated $2,000,000 for fiscal year 1987, $2,500,000 for fiscal year 1988, $3,000,000 for fiscal year 1989, $3,500,000 for fiscal year 1990, $4,000,000 for fiscal year 1991.

"(b) To carry out section 2102(9) there are authorized to be appropriated $20,000,000 for fiscal year 1987, $22,500,000 for fiscal year 1988, $25,000,000 for fiscal year 1989, $27,500,000 for fiscal year 1990, $30,000,000 for fiscal year 1991.

"Subtitle 2—National Vaccine Injury Compensation Program

"PART A—PROGRAM REQUIREMENTS

"ESTABLISHMENT OF PROGRAM

"SEC. 2110. (a) PROGRAM ESTABLISHED.—There is established the National Vaccine Injury Compensation Program to be administered by the Secretary under which compensation may be paid for a vaccine-related injury or death.

"(b) ATTORNEY'S OBLIGATION.—It shall be the ethical obligation of any attorney who is consulted by an individual with respect to a vaccine-related injury or death to advise such individual that compensation may be available under the Program for such injury or death.

"PETITIONS FOR COMPENSATION

"SEC. 2111. (a) GENERAL RULE.—

"(1) A proceeding for compensation under the Program for a vaccine-related injury or death shall be initiated by service upon the Secretary and the filing of a petition with the United States district court for the district in which the petitioner resides or in which the injury or death occurred.

"(2)(A) No person may bring a civil action for damages in an amount greater than $1,000 or in an unspecified amount against a vaccine manufacturer in a State or Federal court for damages arising from a vaccine-related injury or death associated with the administration of a vaccine after the effective date of this subtitle, and no such court may award damages in an amount greater than $1,000 in a civil action for damages for such a vaccine-related injury or death, unless—

"(i) a petition has been filed, in accordance with section 2116, under subsection (b) for compensation under the Program for such injury or death,

"(ii) a district court of the United States has issued a judgment under section 2112 on such petition, and

"(iii) such person elects under section 2121(a) to file such an action.

"(B) If a civil action which is barred under subparagraph (A) is filed in a State or Federal court, the court shall dismiss the action. If a petition is filed under this section with respect to the injury or death for which such civil action was brought, the date such dismissed action was filed shall, for purposes of the limitations of actions prescribed by section 2116, be considered the date the petition was filed if the petition was filed within one year of the date of the dismissal of the civil action.

"(3) No vaccine manufacturer may be made a party to a civil action (other than a civil action which may be brought under paragraph (2)) for damages for a vaccine-related injury or death associated with the administration of a vaccine after the effective date of this subtitle.

"(4) If in a civil action brought against a vaccine manufacturer before the effective date of this subtitle damages were denied for a vaccine-related injury or death or if such civil action was dismissed with prejudice, the person who brought such action may file a petition under subsection (b) for such injury or death.

"(5)(A) A plaintiff who on the effective date of this subtitle has pending a civil action for damages for a vaccine-related injury or death may, at any time within 2 years after the effective date of this title or before judgment, whichever occurs first, elect to withdraw such action without prejudice and file a petition under subsection (b) for such injury or death.

"(B) If a plaintiff who on the effective date of this subtitle had pending a civil action for damages for a vaccine-related injury or death does not withdraw the action under subparagraph (A), such person may not file a petition under subsection (b) for such injury or death.

"(6) If a person brings a civil action after the effective date of this subtitle for damages for a vaccine-related injury or death associated with the administration of a vaccine before the effective date of this subtitle, such person may not file a petition under subsection (b) for such injury or death.

"(7) If in a civil action brought against a vaccine manufacturer for a vaccine-related injury or death damages are awarded under a judgment of a court or a settlement of such action, the person who brought such action may not file a petition under subsection (b) for such injury or death.

"(b) PETITIONERS.—

"(1)(A) Except as provided in subparagraph (B), any person who has sustained a vaccine-related injury, the legal representative of such person if such person is a minor or is disabled, or the legal representative of any person who died as the result of the administration of a vaccine set forth in the Vaccine Injury Table may file a petition for compensation under the Program.

"(B) No person may file a petition for a vaccine-related injury or death associated with a vaccine administered before the effective date of this subtitle if compensation has been paid under this subtitle for 3500 petitions for such injuries or deaths.

"(2) Only one petition may be filed with respect to each administration of a vaccine.

"(c) PETITION CONTENT.—A petition for compensation under the Program for a vaccine-related injury or death shall contain—

"(1) an affidavit, and supporting documentation, demonstrating that the person who suffered such injury or who died—

"(A) received a vaccine set forth in the Vaccine Injury Table or, if such person did not receive such a vaccine, contracted polio, directly or indirectly, from another person who received an oral polio vaccine,

"(B)(i) if such person received a vaccine set forth in the Vaccine Injury Table—

"(I) received the vaccine in the United States or in its trust territories,

"(II) received the vaccine outside the United States or a trust territory and at the time of the vaccination such person was a citizen of the United States serving abroad as a member of the Armed Forces or otherwise as an employee of the United States or a dependent of such a citizen, or

"(III) received the vaccine outside the United States or a trust territory and the vaccine was manufactured by a vaccine manufacturer located in the United States and such person returned to the United States not later than 6 months after the date of the vaccination,

"(ii) if such person did not receive such a vaccine but contracted polio from another person who received an oral polio vaccine, was a citizen of the United States or a dependent of such a citizen,

"(C)(i) sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table in association with the vaccine referred to in subparagraph (A) or died from the administration of such vaccine, and the first symptom or manifestation of the onset or of the significant aggravation of any such illness, disability, injury, or condition or the death occurred within the time period after vaccine administration set forth in the Vaccine Injury Table, or

"(ii)(I) sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by a vaccine referred to in subparagraph (A), or

"(II) sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine referred to in subparagraph (A),

"(D)(i) suffered the residual effects or complications of such illness, disability, injury, or condition for more than 1 year after the administration of the vaccine, (ii) incurred unreimbursable expenses due in whole or in part to such illness, disability, injury, or condition in an amount greater than $1,000, or (iii) died from the administration of the vaccine, and

"(E) has not previously collected an award or settlement of a civil action for damages for such vaccine-related injury or death,

"(2) all available relevant medical records (including autopsy reports, if any) relating to the person who suffered such injury or who died from the administration of the vaccine and an identification of any unavailable records known to the petitioner and the reasons for their unavailability, and

"(3) appropriate assessments, evaluations, and prognoses and such other records and documents as are reasonably necessary for the determination of the amount of compensation to be paid to, or on behalf of, the person who suffered such injury or who died from the administration of the vaccine.

"COURT JURISDICTION

"SEC. 2112. (a) GENERAL RULE.—The district courts of the United States shall have jurisdiction (1) over proceedings to determine if a petitioner under section 2111 is entitled to compensation under the Program and the amount of such compensation, and (2) to issue and enforce such orders as the courts deem necessary to assure the prompt payment of any compensation awarded.

"(b) PARTIES.—

"(1) The Secretary shall be named as the respondent in all proceedings brought by the filing of a petition under section 2111(b). Except as provided in paragraph (2), no other person may intervene in any such proceeding.

"(2) Within 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the Federal Register. The special master designated with respect to such petition under subsection (c) shall afford all interested persons an opportunity to submit relevant, written information—

"(A) relating to the existence of the evidence described in section 2113(a)(1)(B), or

"(B) relating to any allegation in a petition with respect to the matters described in section 2111(c)(1)(C)(ii).

"(c) SPECIAL MASTERS.—

"(1) Following receipt of a petition under subsection (a), the district court of the United States in which the petition is filed shall designate a special master to carry out the functions authorized by paragraph (2).

"(2) A special master shall serve as an adjunct to the court and may—

"(A) require such evidence as may be appropriate for the preparation of proposed findings of fact and conclusions of law with respect to whether compensation is to be provided under the Program and the amount of any such compensation,

"(B) require the submission of such information as may be reasonable and necessary to determine if the petitioner is entitled to compensation,

"(C) require the testimony of any person and the production of any document as may be reasonable and necessary to determine if the petitioner is entitled to compensation,

"(D) conduct such hearings as may be appropriate, and

"(E) prepare and submit to the court proposed findings of fact and conclusions of law.

Information submitted to a special master in a proceeding on a petition may not be disclosed to a person who is not a party to the proceeding without the express, written consent of the person who submitted the information. There may be no discovery in a proceeding on a petition other than the discovery required under this paragraph.

"(d) ACTION BY THE COURT.—

"(1) Upon objection by the petitioner or respondent to the proposed findings of fact or conclusions of law prepared by the special master or upon the court's own motion, the court shall undertake a review of the record of the proceedings and may thereafter make a de novo determination of any matter and issue its judgment accordingly, including findings of fact and conclusions of law, or remand for further proceedings.

"(2) If no objection is filed under paragraph (1) or if the court does not choose to review the proceeding, the court shall adopt the proposed findings of fact and conclusions of law of the special master as its own and render judgment thereon.

"(3) The court shall render its judgment on any petition filed under the Program as expeditiously as practicable but not later than 365 days after the date on which the petition was filed.

"(e) ADMINISTRATION OF AWARD.—The Program shall administer the payments of such compensation. The Program shall audit the payments of compensation under a judgment. A petitioner awarded compensation shall notify the Program of any changes which significantly affect the compensation to be paid.

"(f) REVISION OF AWARD.—

"(1) If the court issues a judgment awarding to a petitioner compensation described in section 2115(a)(1)(A) for unreimbursable expenses and the compensation is insufficient to meet such expenses, such petitioner may petition the court to (A) review such award, and (B) increase the award to make it sufficient to meet such expenses or amend the periodic payment schedule established under section 2115, or both.

"(2) If an audit conducted under subsection (e) discloses the improper use of compensation awarded under a judgment or the termination of a need for an item of compensation, the Program shall petition the court which awarded the compensation to make an appropriate revision in the compensation.

"(g) APPEALS.—The findings of fact and conclusions of law of a district court of the United States on a petition shall be final determinations of the matters involved, except that the Secretary or any petitioner aggrieved by the findings or conclusions of the court may obtain review of the judgment of the court in the United States court of appeals for the circuit in which the court is located upon petition filed with such court of appeals.

"DETERMINATION OF ELIGIBILITY AND COMPENSATION

"SEC. 2113. (a) GENERAL RULE.—

"(1) Compensation shall be awarded under the Program to a petitioner if the court finds on the record as a whole—

"(A) that the petitioner has demonstrated by a preponderance of the evidence the matters required in the petition by section 2111(c)(1), and

"(B) that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition.

The court may not make such a finding based on the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion.

"(2) For purposes of paragraph (1), the term 'factors unrelated to the administration of the vaccine'—

"(A) does not include any idiopathic, unexplained, unknown, hypothetical, or undocumentable cause, factor, injury, illness, or condition, and

"(B) may, as documented by the petitioner's evidence or other material in the record, include infection, toxins, trauma (including birth trauma and related anoxia), or metabolic disturbances which have no known relation to the vaccine involved, but which in the particular case are shown to have been the agent or agents principally responsible for causing the petitioner's illness, disability, injury, condition, or death.

"(b) MATTERS TO BE CONSIDERED.—

"(1) In determining whether to award compensation to a petitioner under the Program, the court shall consider, in addition to all other relevant medical and scientific evidence contained in the record—

"(A) any diagnosis, conclusion, medical judgment, or autopsy or coroner's report which is contained in the record regarding the nature, causation, and aggravation of the petitioner's illness, disability, injury, condition, or death, and

"(B) the results of any diagnostic or evaluative test which are contained in the record and the summaries and conclusions.

Any such diagnosis, conclusion, judgment, test result, report, or summary shall not be binding on the court. In evaluating the weight to be afforded to any such diagnosis, conclusion, judgment, test result, report, or summary, the court shall consider the entire record and the course of the injury, disability, illness, or condition until the date of the judgment of the court.

"(2) The court may find the first symptom or manifestation of onset or significant aggravation of an injury, disability, illness, condition, or death described in a petition occurred within the time period described in the Vaccine Injury Table even though the occurrence of such symptom or manifestation was not recorded or was incorrectly recorded as having occurred outside such period. Such a finding may be made only upon demonstration by a preponderance of the evidence that the onset or significant aggravation of the injury, disability, illness, condition, or death described in the petition did in fact occur within the time period described in the Vaccine Injury Table.

"(c) RECORD DEFINED.—For purposes of this section, the term 'record' means the record established by a district court of the United States in a proceeding on a petition filed under section 2111.

"VACCINE INJURY TABLE

"SEC. 2114. (a) INITIAL TABLE.—The following is a table of vaccines, the injuries, disabilities, illnesses, conditions, and deaths resulting from the administration of such vaccines, and the time period in which the first symptom or manifestation of onset or of the significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths is to occur after vaccine administration for purposes of receiving compensation under the Program:

"VACCINE INJURY TABLE

I. DTP; P; DTP/Polio Combination; or Any Other Vaccine Containing Whole Cell Pertussis Bacteria, Extracted or Partial Cell Bacteria, or Specific Pertussis Antigen(s). Illness, disability, injury, or condition covered:	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration:
A. Anaphylaxis or anaphylactic shock	24 hours
B. Encephalopathy (or encephalitis)	3 days
C. Shock-collapse or hypotonic-hyporesponsive collapse	3 days
D. Residual seizure disorder in accordance with subsection (c)(2)	3 days
E. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed	Not applicable
II. Measles, mumps, rubella, or any vaccine containing any of the foregoing as a component; DT; Td; or Tetanus Toxoid.	
A. Anaphylaxis or anaphylactic shock	24 hours
B. Encephalopathy (or encephalitis)	15 days (for mumps, rubella, measles, or any vaccine containing any of the foregoing as a component). 3 days (for DT, Td, or tetanus toxoid).
C. Residual seizure disorder in accordance with subsection (c)(2)	15 days (for mumps, rubella, measles, or any vaccine containing any of the foregoing as a component). 3 days (for DT, Td, or tetanus toxoid).
D. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed	Not applicable
III. Polio Vaccines (other than Inactivated Polio Vaccine).	
A. Paralytic polio	
—in a non-immunodeficient recipient	30 days
—in an immunodeficient recipient	6 months
—in a vaccine-associated community case	Not applicable
B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed	Not applicable
IV. Inactivated Polio Vaccine.	
A. Anaphylaxis or anaphylactic shock	24 hours

"VACCINE INJURY TABLE—Continued

B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed	Not applicable

"(b) QUALIFICATIONS AND AIDS TO INTERPRETATION.—The following qualifications and aids to interpretation shall apply to the Vaccine Injury Table in subsection (a):

"(1) A shock-collapse or a hypotonic-hyporesponsive collapse may be evidenced by indicia or symptoms such as decrease or loss of muscle tone, paralysis (partial or complete), hemiplegia or hemiparesis, loss of color or turning pale white or blue, unresponsiveness to environmental stimuli, depression of consciousness, loss of consciousness, prolonged sleeping with difficulty arousing, or cardiovascular or respiratory arrest.

"(2) A petitioner may be considered to have suffered a residual seizure disorder if the petitioner did not suffer a seizure or convulsion unaccompanied by fever or accompanied by a fever of less than 102 degrees Fahrenheit before the first seizure or convulsion after the administration of the vaccine involved and if—

"(A) in the case of a measles, mumps, or rubella vaccine or any combination of such vaccines, the first seizure or convulsion occurred within 15 days after administration of the vaccine and 2 or more seizures or convulsions occurred within 1 year after the administration of the vaccine which were unaccompanied by fever or accompanied by a fever of less than 102 degrees Fahrenheit, and

"(B) in the case of any other vaccine, the first seizure or convulsion occurred within 3 days after administration of the vaccine and 2 or more seizures or convulsions occurred within 1 year after the administration of the vaccine which were unaccompanied by fever or accompanied by a fever of less than 102 degrees Fahrenheit.

"(3)(A) The term 'encephalopathy' means any significant acquired abnormality of, or injury to, or impairment of function of the brain. Among the frequent manifestations of encephalopathy are focal and diffuse neurologic signs, increased intracranial pressure, or changes lasting at least 6 hours in level of consciousness, with or without convulsions. The neurological signs and symptoms of encephalopathy may be temporary with complete recovery, or may result in various degrees of permanent impairment. Signs and symptoms such as high pitched and unusual screaming, persistent unconsolable crying, and bulging fontanel are compatible with an encephalopathy, but in and of themselves are not conclusive evidence of encephalopathy. Encephalopathy usually can be documented by slow wave activity on an electroencephalogram.

"(B) If in a proceeding on a petition it is shown by a preponderance of the evidence that an encephalopathy was caused by infection, toxins, trauma, or metabolic disturbances the encephalopathy shall not be considered to be a condition set forth in the table. If at the time a judgment is entered on a petition filed under section 2111(b) for a vaccine-related injury or death it is not possible to determine the cause, by a preponderance of the evidence, of an encephalopathy, the encephalopathy shall be considered to be a condition set forth in the table. In determining whether or not an encephalopathy is a condition set forth in the table, the court shall consider the entire medical record.

"(4) For purposes of paragraphs (2) and (3), the terms 'seizure' and 'convulsion' include grand mal, petit mal, absence, myoclonic, tonic-clonic, and focal motor seizures and signs. If a provision of the table to which paragraph (1), (2), (3), or (4) applies is revised under subsection (c) or (d), such paragraph shall not apply to such provision after the effective date of the revision unless the revision specifies that such paragraph is to continue to apply.

"(c) ADMINISTRATIVE REVISION OF THE TABLE.—

"(1) The Secretary may promulgate regulations to modify in accordance with paragraph (3) the Vaccine Injury Table. In promulgating such regulations, the Secretary shall provide for notice and opportunity for a public hearing and at least 180 days of public comment.

"(2) Any person (including the Advisory Commission on Childhood Vaccines) may petition the Secretary to propose regulations to amend the Vaccine Injury Table. Unless clearly frivolous, or initiated by the Commission, any such petition shall be referred to the Commission for its recommendations. Following—

"(A) receipt of any recommendation of the Commission, or

"(B) 180 days after the date of the referral to the Commission,

whichever occurs first, the Secretary shall conduct a rulemaking proceeding on the matters proposed in the petition or publish in the Federal Register a statement of reasons for not conducting such proceeding.

"(3) A modification of the Vaccine Injury Table under paragraph (1) may add to, or delete from, the list of injuries, disabilities, illnesses, conditions, and deaths for which compensation may be provided or may change the time periods for the first symptom or manifestation of the onset or the significant aggravation of any such injury, disability, illness, condition, or death.

"(4) Any modification under paragraph (1) of the Vaccine Injury Table shall apply only with respect to petitions for compensation under the Program which are filed after the effective date of such regulation.

"(d) ROLE OF COMMISSION.—Except with respect to a regulation recommended by the Advisory Commission on Childhood Vaccines, the Secretary may not propose a regulation under subsection (c) or any revision thereof, unless the Secretary has first provided to the Commission a copy of the proposed regulation or revision, requested recommendations and comments by the Commission, and afforded the Commission at least 90 days to make such recommendations.

"(e) RECOMMENDATION.—The Secretary may recommend to Congress revisions of the table to change the vaccines covered by the table.

"COMPENSATION

"SEC. 2115. (a) GENERAL RULE.—Compensation awarded under the Program to a petitioner under section 2111 for a vaccine-related injury or death associated with the administration of a vaccine after the effective date of this subtitle shall include the following:

"(1)(A) Actual unreimbursable expenses incurred from the date of the judgment awarding such expenses and reasonable projected unreimbursable expenses which—

"(i) result from the vaccine-related injury for which the petitioner seeks compensation,

"(ii) have been or will be incurred by or on behalf of the person who suffered such injury, and

"(iii)(I) have been or will be for diagnosis and medical or other remedial care determined to be reasonably necessary, or

"(II) have been or will be for rehabilitation, developmental evaluation, special education, vocational training and placement, case management services, counseling, emotional or behavioral therapy, residential and custodial care and service expenses, special equipment, related travel expenses, and facilities determined to be reasonably necessary.

The amount of unreimbursable expenses which may be recovered under this subparagraph shall be limited to the amount in excess of the amount set forth in section 2111(c)(1)(D)(ii).

"(B) Subject to section 2116(a)(2), actual unreimbursable expenses incurred before the date of the judgment awarding such expenses which—

"(i) resulted from the vaccine-related injury for which the petitioner seeks compensation,

"(ii) were incurred by or on behalf of the person who suffered such injury, and

"(iii) were for diagnosis, medical or other remedial care, rehabilitation, developmental evaluation, special education, vocational training and placement, case management services, counseling, emotional or behavioral therapy, residential and custodial care and service expenses, special equipment, related travel expenses, and facilities determined to be reasonably necessary.

The amount of unreimbursable expenses which may be recovered under this subparagraph shall be limited to the amount in excess of the amount set forth in section 2111(c)(1)(D)(ii).

"(2) In the event of a vaccine-related death, an award of $250,000 for the estate of the deceased.

"(3)(A) In the case of any person who has sustained a vaccine-related injury after attaining the age of 18 and whose earning capacity is or has been impaired by reason of such person's vaccine-related injury for which compensation is to be awarded, compensation for actual and anticipated loss of earnings determined in accordance with generally recognized actuarial principles and projections.

"(B) In the case of any person who has sustained a vaccine-related injury before attaining the age of 18 and whose earning capacity is or has been impaired by reason of such person's vaccine-related injury for which compensation is to be awarded and whose vaccine-related injury is of sufficient severity to permit reasonable anticipation that such person is likely to suffer impaired earning capacity at age 18 and beyond, compensation after attaining the age of 18 for loss of earnings determined on the basis of the average gross weekly earnings of workers in the private, non-farm sector, less appropriate taxes and the average cost of a health insurance policy, as determined by the Secretary.

"(4) For actual and projected pain and suffering and emotional distress from the vaccine-related injury, an award not to exceed $250,000.

Payments for projected expenses shall be paid on a periodic basis (but no payment may be made for a period in excess of 1 year). Payments for pain and suffering and emotional distress and incurred expenses may be paid in a lump sum.

"(b) VACCINES ADMINISTERED BEFORE THE EFFECTIVE DATE.—Compensation awarded under the Program to a petitioner under section 2111 for a vaccine-related injury or death associated with the administration of a vaccine before the effective date of this subtitle shall only include the compensation described in paragraphs (1)(A) and (2) of sub- section (a).

"(c) RESIDENTIAL AND CUSTODIAL CARE AND SERVICE.—The amount of any compensation for residential and custodial care and service expenses under subsection (a)(1) shall be sufficient to enable the compensated person to remain living at home.

"(d) TYPES OF COMPENSATION PROHIBITED.—Compensation awarded under the Program may not include the following:

"(1) Punitive or exemplary damages.

"(2) Except with respect to compensation payments under paragraphs (2) and (3) of subsection (a), compensation for other than the health, education, or welfare of the person who suffered the vaccine-related injury with respect to which the compensation is paid.

"(e) ATTORNEYS' FEES.—

"(1) The judgment of a court on a petition filed under section 2111 awarding compensation shall include an amount to cover—

"(A) reasonable attorneys' fees, and

"(B) other costs,

incurred in any proceeding on such petition. If the judgment of a court on such a petition does not award compensation, the court may include in the judgment an amount to cover petitioner's reasonable attorneys' fees and other costs incurred in any proceeding on such petition if the court determines that the civil action was brought in good faith and there was a reasonable basis for the claim for which the civil action was brought.

"(2) If the petitioner, before the effective date of this title, filed a civil action for damages for any vaccine-related injury or death for which compensation may be awarded under the Program, and elected under section 2111(a)(4) to withdraw such action and to file a petition for compensation under the Program, the judgment of the court on such petition may include an amount limited to the costs and expenses incurred by the petitioner and the attorney of the petitioner before the effective date of this subtitle in preparing, filing, and prosecuting such civil action (including the reasonable value of the attorney's time if the civil action was filed under contingent fee arrangements).

"(3) No attorney may charge any fee for services in connection with a petition filed under section 2111 which is in addition to any amount included under paragraph (1) in a judgment on such petition.

"(f) PAYMENT OF COMPENSATION.—

"(1) Except as provided in paragraph (2), no compensation may be paid until an election has been made, or has been deemed to have been made, under section 2121(a) to receive compensation.

"(2) Compensation described in subsection (a)(1)(A)(iii) shall be paid from the date of the judgment of the district court of the United States under section 2112 awarding the compensation. Such compensation may not be paid after an election under section 2121(b) to file a civil action for damages for the vaccine-related injury or death for which such compensation was awarded.

"(3) Payments of compensation shall be exempt from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(f) PROGRAM NOT PRIMARILY LIABLE.—Payment of compensation under the Program shall not be made for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity which provides health services on a prepaid basis.

"(g) LIABILITY OF HEALTH INSURANCE CARRIERS, PREPAID HEALTH PLANS, AND BENEFIT PROVIDERS.—No policy of health insurance may make payment of benefits under the policy secondary to the payment of compensation under the Program and—

"(1) no State, and

"(2) no entity which provides health services on a prepaid basis or provides health benefits,

may make the provision of health services or health benefits secondary to the payment of compensation under the Program.

"LIMITATIONS OF ACTIONS

"SEC. 2116. (a) GENERAL RULE.—In the case of—

"(1) a vaccine set forth in the Vaccine Injury Table which is administered before the effective date of this title, if a vaccine-related injury or death occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such injury or death after the expiration of 24 months after the effective date of this title,

"(2) a vaccine set forth in the Vaccine Injury Table which is administered after the effective date of this title, if a vaccine-related injury occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such injury after the expiration of 36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury, and

"(3) a vaccine set forth in the Vaccine Injury Table which is administered after the effective date of this title, if a death occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such death after the expiration of 24 months from the date of the death and no such petition may be filed more than 48 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of the injury from which the death resulted.

"(b) EFFECT OF REVISED TABLE.—If at any time the Vaccine Injury Table is revised and the effect of such revision is to permit an individual who was not, before such revision, eligible to seek compensation under the Program, such person may file a petition for such compensation not later than 2 years after the effective date of the revision, except that no compensation may be provided under the Program with respect to a vaccine-related injury or death covered under the revision of the table if—

"(1) the vaccine-related death occurred more than 8 years before the date of the revision of the table, or

"(2) the vaccine-related injury occurred more than 8 years before the date of the revision of the table.

"(c) STATE LIMITATIONS OF ACTIONS.—If a petition is filed under section 2111(b) for a vaccine-related injury or death, limitations of actions under State law shall be stayed with respect to a civil action brought for such injury or death for the period beginning on the date the petition is filed and ending on the date a final judgment is entered on the petition.

"SUBROGATION

"SEC. 2117. (a) GENERAL RULE.—

"(1) Upon payment of compensation to any petitioner under the Program, the trust fund which has been established to provide such compensation shall be subrogated to all rights of the petitioner with respect to the vaccine-related injury or death for which compensation was paid, except that the trust fund may not recover under such rights an amount greater than the amount of compensation paid to the petitioner.

"(2) In any case in which it deems such action appropriate, a district court of the United States may, after entry of a final judgment providing for compensation to be paid under section 2115 for a vaccine-related injury or death, refer the record of such proceeding to the Secretary and the Attorney General with such recommendation as the court deems appropriate with respect to the investigation or commencement of a civil action by the Secretary under paragraph (1).

"(b) DISPOSITION OF AMOUNTS RECOVERED.—Amounts recovered under subsection (a) shall be collected on behalf of, and deposited in, the trust fund which has been established to provide compensation under the Program.

"INCREASE FOR INFLATION

"SEC. 2118. The compensation under subsections (a)(2) and (a)(4) of section 2115 and the civil penalty under section 2127(b) shall, effective December 1 of each year beginning 1 year after the effective date of this title, be increased by the percent change in the Consumer Price Index for the base quarter of such year over the Consumer Price Index for the base quarter of the preceding year, adjusted to the nearest $\frac{1}{10}$ of 1 percent. For purposes of this section, the term 'base quarter', as used with respect to a year, means the calendar quarter ending on September 30 of such year and the price index for a base quarter is the arithmetical mean of such index for the 3 months comprising such quarter.

"ADVISORY COMMISSION ON CHILDHOOD VACCINES

"SEC. 2119. (a) ESTABLISHMENT.—There is established the Advisory Commission on Childhood Vaccines. The Commission shall be composed of:

"(1) Nine members appointed by the Secretary as follows:

"(A) Three members who are health professionals, who are not employees of the United States, and who have expertise in the health care of children, the epidemiology, etiology, and prevention of childhood diseases, and the adverse reactions associated with vaccines, of whom at least two shall be pediatricians.

"(B) Three members from the general public, of whom at least two shall be legal representatives of children who have suffered a vaccine-related injury or death.

"(C) Three members who are attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death and of whom one shall be an attorney whose specialty includes representation of vaccine manufacturers.

"(2) The Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control, and the Commissioner of Food and Drugs (or the designees of such offi-

cials), each of whom shall be a nonvoting ex officio member.

The Secretary shall select members of the Commission within 90 days of the effective date of this subtitle. The members of the Commission shall select a Chair from among the members.

"(b) TERM OF OFFICE.—Appointed members of the Commission shall be appointed for a term of office of 3 years, except that of the members first appointed, 3 shall be appointed for a term of 1 year, 3 shall be appointed for a term of 2 years, and 3 shall be appointed for a term of 3 years, as determined by the Secretary.

"(c) MEETINGS.—The Commission shall first meet within 60 days after all members of the Commission are appointed, and thereafter shall meet not less often than four times per year and at the call of the chair. A quorum for purposes of a meeting is 5. A decision at a meeting is to be made by a ballot of a majority of the voting members of the Commission.

"(d) COMPENSATION.—Members of the Commission who are officers or employees of the Federal Government shall serve as members of the Commission without compensation in addition to that received in their regular public employment. Members of the Commission who are not officers or employees of the Federal Government shall be compensated at a rate not to exceed the daily equivalent of the rate in effect for grade GS-18 of the General Schedule for each day (including traveltime) they are engaged in the performance of their duties as members of the Commission. All members, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703, title 5, United States Code, for employees serving intermittently.

"(e) STAFF.—The Secretary shall provide the Commission with such professional and clerical staff, such information, and the services of such consultants as may be necessary to assist the Commission in carrying out effectively its functions under this section.

"(f) FUNCTIONS.—The Commission shall—

"(1) advise the Secretary on the implementation of the Program,

"(2) on its own initiative or as the result of the filing of a petition, recommend changes in the Vaccine Injury Table,

"(3) advise the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions,

"(4) survey Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advise the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and

"(5) recommend to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out this subtitle.

"PART B—ADDITIONAL REMEDIES

"AUTHORITY TO BRING ACTIONS

"SEC. 2121. (a) ELECTION.—After the judgment of a district court of the United States under section 2111 on a petition filed for compensation under the Program for a vaccine-related injury or death has become final, the person who filed the petition shall file with the court—

"(1) if the judgment awarded compensation, an election in writing to receive the compensation or to file a civil action for damages for such injury or death, or

"(2) if the judgment did not award compensation, an election in writing to accept the judgment or to file a civil action for damages for such injury or death.

An election shall be filed under this subsection not later than 90 days after the date of the entry of the court's judgment with respect to which the election is to be made. If a person required to file an election with a court under this subsection does not file the election within the time prescribed for filing the election, such person shall be deemed to have filed an election to accept the judgment of the court. If a person elects to receive compensation under a judgment of a court or is deemed to have accepted the judgment of a court, such person may not bring or maintain a civil action for damages against a vaccine manufacturer for the vaccine-related injury or death for which the judgment was entered.

"(b) LIMITATIONS OF ACTIONS.—A civil action for damages arising from a vaccine-related injury or death for which a petition was filed under section 2111 shall, except as provided in section 2116(c), be brought within the period prescribed by limitations of actions under State law applicable to such civil action.

"STANDARDS OF RESPONSIBILITY

"SEC. 2122. (a) GENERAL RULE.—Except as provided in subsections (b), (c), and (e) State law shall apply to a civil action brought for damages for a vaccine-related injury or death.

"(b) UNAVOIDABLE ADVERSE SIDE EFFECTS; WARNINGS.—

"(1) No vaccine manufacturer shall be liable in a civil action for damages arising from a vaccine-related injury or death associated with the administration of a vaccine after the effective date of this subtitle if the injury or death resulted from side effects that were unavoidable even though the vaccine was properly prepared and was accompanied by proper directions and warnings.

"(2) For purposes of paragraph (1), a vaccine shall be presumed to be accompanied by proper directions and warnings if the vaccine manufacturer shows that it complied in all material respects with all requirements under the Federal Food, Drug, and Cosmetic Act and section 351 of the Public Health Service Act (including regulations issued under such provisions) applicable to the vaccine and related to vaccine-related injury or death for which the civil action was brought unless the plaintiff shows—

"(A) that the manufacturer engaged in the conduct set forth in subparagraph (A) or (B) of section 2123(d)(2), or

"(B) by clear and convincing evidence that the manufacturer failed to exercise due care notwithstanding its compliance with such Act and section (and regulations issued under such provisions).

"(c) DIRECT WARNINGS.—No vaccine manufacturer shall be liable in a civil action for damages arising from a vaccine-related injury or death associated with the administration of a vaccine after the effective date of this subtitle solely due to the manufacturer's failure to provide direct warnings to the injured party (or the injured party's legal representative) of the potential dangers resulting from the administration of the vaccine manufactured by the manufacturer.

"(d) CONSTRUCTION.—The standards of responsibility prescribed by this section are not to be construed as authorizing a person who brought a civil action for damages against a vaccine manufacturer for a vaccine-related injury or death in which damages were denied or which was dismissed with prejudice to bring a new civil action against such manufacturer for such injury or death.

"(e) PREEMPTION.—No State may establish or enforce a law which prohibits an individual from bringing a civil action against a vaccine manufacturer for damages for a vaccine-related injury or death if such civil action is not barred by this subtitle.

"TRIAL

"SEC. 2123. (a) GENERAL RULE.—A civil action against a vaccine manufacturer for damages for a vaccine-related injury or death associated with the administration of a vaccine after the effective date of this subtitle which is not barred by section 2111(a)(2) shall be tried in three stages.

"(b) LIABILITY.—The first stage of such a civil action shall be held to determine if a vaccine manufacturer is liable under section 2122.

"(c) GENERAL DAMAGES.—The second stage of such a civil action shall be held to determine the amount of damages (other than punitive damages) a vaccine manufacturer found to be liable under section 2122 shall be required to pay.

"(d) PUNITIVE DAMAGES.—

"(1) If sought by the plaintiff, the third stage of such an action shall be held to determine the amount of punitive damages a vaccine manufacturer found to be liable under section 2122 shall be required to pay.

"(2) If in such an action the manufacturer shows that it complied, in all material respects, with all requirements under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act applicable to the vaccine and related to the vaccine injury or death with respect to which the action was brought, the manufacturer shall not be held liable for punitive damages unless the manufacturer engaged in—

"(A) fraud or intentional and wrongful withholding of information from the Secretary during any phase of a proceeding for approval of the vaccine under section 351,

"(B) intentional and wrongful withholding of information relating to the safety or efficacy of the vaccine after its approval, or

"(C) other criminal or illegal activity relating to the safety and effectiveness of vaccines,

which activity related to the vaccine-related injury or death for which the civil action was brought.

"(e) EVIDENCE.—In any stage of a civil action, the Vaccine Injury Table, any finding of a district court of the United States or a master appointed by such court in a proceeding on a petition filed under section 2111 and the final judgment of a district court of the United States on such a petition shall not be admissible.

"PART C—ASSURING A SAFER CHILDHOOD VACCINATION PROGRAM IN THE UNITED STATES

"RECORDING AND REPORTING OF INFORMATION

"SEC. 2125. (a) GENERAL RULE.—Each health care provider who administers a vaccine set forth in the Vaccine Injury Table to any person shall record, or ensure that there is recorded, in such person's permanent medical record (or in a permanent office log or file to which a legal representative shall

have access upon request) with respect to each such vaccine—

"(1) the date of administration of the vaccine,

"(2) the vaccine manufacturer and lot number of the vaccine,

"(3) the name and address and, if appropriate, the title of the health care provider administering the vaccine, and

"(4) any other identifying information on the vaccine required pursuant to regulations promulgated by the Secretary.

"(b) REPORTING.—

"(1) Each health care provider and vaccine manufacturer shall report to the Secretary—

"(A) the occurrence of any event set forth in the Vaccine Injury Table, including the events set forth in section 2114(b) which occur within 7 days of the administration of any vaccine set forth in the Table or within such longer period as is specified in the Table or section,

"(B) the occurrence of any contraindicating reaction to a vaccine which is specified in the manufacturer's package insert, and

"(C) such other matters as the Secretary may by regulation require.

Reports of the matters referred to in subparagraphs (A) and (B) shall be made beginning 90 days after the effective date of this subtitle. The Secretary shall publish in the Federal Register as soon as practicable after such date a notice of the reporting requirement.

"(2) A report under paragraph (1) respecting a vaccine shall include the time periods after the administration of such vaccine within which vaccine-related illnesses, disabilities, injuries, or conditions, the symptoms and manifestations of such illnesses, disabilities, injuries, or conditions, or deaths occur, and the manufacturer and lot number of the vaccine.

"(3) The Secretary shall issue the regulations referred to in paragraph (1)(C) within 180 days of the effective date of this subtitle.

"(c) RELEASE OF INFORMATION.—

"(1) Information which is in the possession of the Federal Government and State and local governments under this section and which may identify an individual shall not be made available under section 552 of title 5, United States Code, or otherwise, to any person except—

"(A) the person who received the vaccine, or

"(B) the legal representative of such person.

"(2) For purposes of paragraph (1), the term 'information which may identify an individual' shall be limited to the name, street address, and telephone number of the person who received the vaccine and of that person's legal representative and the medical records of such person relating to the administration of the vaccine, and shall not include the locality and State of vaccine administration, the name of the health care provider who administered the vaccine, the date of the vaccination, or information concerning any reported illness, disability, injury, or condition resulting from the administration of the vaccine, any symptom or manifestation of such illness, disability, injury, or condition, or death resulting from the administration of the vaccine.

"(3) Except as provided in paragraph (1), all information reported under this section shall be available to the public.

"VACCINE INFORMATION

"SEC. 2126. (a) GENERAL RULE.—Not later than 1 year after the effective date of this subtitle, the Secretary shall develop and disseminate vaccine information materials for distribution by health care providers to the legal representatives of any child receiving a vaccine set forth in the Vaccine Injury Table. Such materials shall be published in the Federal Register and may be revised.

"(b) DEVELOPMENT AND REVISION OF MATERIALS.—Such materials shall be developed or revised by rule—

"(1) after notice to the public, opportunity for a public hearing, and 90 days of comment thereon, and

"(2) in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care providers and parent organizations, the Centers for Disease Control, and the Food and Drug Administration.

"(c) INFORMATION REQUIREMENTS.—The information in such materials shall be presented in understandable terms and shall include—

"(1) the frequency, severity, and potential long-term effects of the disease to be prevented by the vaccine,

"(2) the symptoms or reactions to the vaccine which, if they occur, should be brought to the immediate attention of the health care provider,

"(3) precautionary measures legal representatives should take to reduce the risk of any major adverse reactions to the vaccine that may occur,

"(4) early warning signs or symptoms to which legal representatives should be alert as possible precursors to such major adverse reactions,

"(5) a description of the manner in which legal representatives should monitor such major adverse reactions, including a form on which reactions can be recorded to assist legal representatives in reporting information to appropriate authorities,

"(6) a specification of when, how, and to whom legal representatives should report any major adverse reaction,

"(7) the contraindications to (and bases for delay of) the administration of the vaccine,

"(8) an identification of the groups, categories, or characteristics of potential recipients of the vaccine who may be at significantly higher risk of major adverse reaction to the vaccine than the general population,

"(9) a summary of relevant State and Federal laws concerning the vaccine, including information on—

"(A) the number of vaccinations required for school attendance and the schedule recommended for such vaccinations, and

"(B) the availability of the Program, and

"(10) such other relevant information as may be determined by the Secretary.

"(d) HEALTH CARE PROVIDER DUTIES.—On and after a date determined by the Secretary which is—

"(1) after the Secretary develops the information materials required by subsection (a), and

"(2) not later than 6 months after the date such materials are published in the Federal Register,

each health care provider who administers a vaccine set forth in the Vaccine Injury Table shall provide to the legal representatives of any child to whom such provider intends to administer such vaccine a copy of the information materials developed pursuant to subsection (a), or other written information which meets the requirements of this section. Such materials or other information shall be provided prior to the administration of such vaccine.

"MANDATE FOR SAFER CHILDHOOD VACCINES

"SEC. 2127. (a) GENERAL RULE.—In the administration of this subtitle and other pertinent laws under the jurisdiction of the Secretary, the Secretary shall—

"(1) promote the development of childhood vaccines that result in fewer and less serious adverse reactions than those vaccines on the market on the effective date of this subtitle and promote the refinement of such vaccines, and

"(2) make or assure improvements in, and otherwise use the authorities of the Secretary with respect to, the licensing, manufacturing, processing, testing, labeling, warning, use instructions, distribution, storage, administration, field surveillance, adverse reaction reporting, and recall of reactogenic lots or batches, of vaccines, and research on vaccines, in order to reduce the risks of adverse reactions to vaccines.

"(b) REPORT.—Within 2 years after the effective date of this subtitle, and periodically thereafter, the Secretary shall prepare and transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report describing the actions taken pursuant to subsection (a) during the preceding 2-year period.

"MANUFACTURER RECORDKEEPING AND REPORTING

"SEC. 2128. (a) GENERAL RULE.—Each vaccine manufacturer of a vaccine set forth in the Vaccine Injury Table or any other vaccine the administration of which is mandated by the law or regulations of any State, shall, with respect to each batch, lot, or other quantity manufactured or licensed after the effective date of this subtitle—

"(1) prepare and maintain records documenting the history of the manufacturing, processing, testing, repooling, and reworking of each batch, lot, or other quantity of such vaccine, including the identification of any significant problems encountered in the production, testing, or handling of such batch, lot, or other quantity,

"(2) if a safety test on such batch, lot, or other quantity indicates a potential imminent or substantial public health hazard is presented, report to the Secretary within 24 hours of such safety test which the manufacturer (or manufacturer's representative) conducted, including the date of the test, the type of vaccine tested, the identity of the batch, lot, or other quantity tested, whether the batch, lot, or other quantity tested is the product of repooling or reworking of previous batches, lots, or other quantities (and, if so, the identity of the previous batches, lots, or other quantities which were repooled or reworked), the complete test results, and the name and address of the person responsible for conducting the test,

"(3) include with each such report a certification signed by a responsible corporate official that such report is true and complete, and

"(4) prepare, maintain, and upon request submit to the Secretary product distribution records for each such vaccine by batch, lot, or other quantity number.

"(b) SANCTION.—Any vaccine manufacturer who intentionally destroys, alters, falsifies, or conceals any record or report required under paragraph (1) or (2) of subsection (a) shall—

"(1) be subject to a civil penalty of up to $100,000 per occurrence, or

"(2) be fined $50,000 or imprisoned for not more than 1 year, or both.

Such penalty shall apply to the person who intentionally destroyed, altered, falsified, or concealed such record or report, to the person who directed that such record or

report be destroyed, altered, falsified, or concealed, and to the vaccine manufacturer for which such person is an agent, employee, or representative. Each act of destruction, alteration, falsification, or concealment shall be treated as a separate occurrence.

"PART D—GENERAL PROVISIONS

"CITIZEN'S ACTIONS

"SEC. 2131. (a) GENERAL RULE.—Except as provided in subsection (b), any person may commence in a district court of the United States a civil action on such person's own behalf against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this subtitle.

"(b) NOTICE.—No action may be commenced under subsection (a) before the date which is 60 days after the person bringing the action has given written notice of intent to commence such action to the Secretary.

"(c) COSTS OF LITIGATION.—The court, in issuing any final order in any action under this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

"JUDICIAL REVIEW

"SEC. 2132. A petition for review of a regulation under this subtitle may be filed in a court of appeals of the United States within 60 days from the date of the promulgation of the regulation or after such date if such petition is based solely on grounds arising after such 60th day.

"DEFINITIONS

"SEC. 2133. For purposes of this subtitle:

"(1) The term 'health care provider' means any licensed health care professional, organization, or institution, whether public or private (including Federal, State, and local departments, agencies, and instrumentalities) under whose authority a vaccine set forth in the Vaccine Injury Table is administered.

"(2) The term 'legal representative' means a parent or an individual who qualifies as a legal guardian under State law.

"(3) The term 'manufacturer' means any corporation, organization, or institution, whether public or private (including Federal, State, and local departments, agencies, and instrumentalities), which manufactures, imports, processes, or distributes under its label any vaccine set forth in the Vaccine Injury Table, except that, for purposes of section 2128, such term shall include the manufacturer of any other vaccine covered by that section. The term 'manufacture' means to manufacture, import, process, or distribute a vaccine.

"(4) The term 'significant aggravation' means any change for the worse in a preexisting condition which results in markedly greater disability, pain, or illness accompanied by substantial deterioration of health.

"(5) The term 'vaccine-related injury or death' means an illness, injury, condition, or death associated with one or more of the vaccines set forth in the Vaccine Injury Table, except that the term does not include an illness, injury, condition, or death associated with an adulterant or contaminant intentionally added to such a vaccine.

"(6)(A) The term 'Advisory Commission on Childhood Vaccines' means the Commission established under section 2119.

"(B) The term 'Vaccine Injury Table' means the table set out in section 2114.".

(b) CONFORMING AMENDMENTS.—

(1) Sections 217(c), 465(f), and 497 of the Public Health Service Act (42 U.S.C. 218(c), 286(f), 289(f)) are each amended by striking out "2101" and inserting in lieu thereof "2301".

(2) Section 305(h) of such Act (42 U.S.C. 242c(h)) is amended by striking out "2113" each place it occurs and inserting in lieu thereof "2313".

SEC. 312. RELATED STUDIES.

(a) REVIEW OF PERTUSSIS VACCINES AND RELATED ILLNESSES AND CONDITIONS.—Not later than 3 years after the effective date of this title, the Secretary of Health and Human Services shall complete a review of all relevant medical and scientific information (including information obtained from the studies required under subsection (e)) on the nature, circumstances, and extent of the relationship, if any, between vaccines containing pertussis (including whole cell, extracts, and specific antigens) and the following illnesses and conditions:

(1) Hemolytic anemia.
(2) Hypsarrhythmia.
(3) Infantile spasms.
(4) Reye's syndrome.
(5) Peripheral mononeuropathy.
(6) Deaths classified as sudden infant death syndrome.
(7) Aseptic meningitis.
(8) Juvenile diabetes.
(9) Autism.
(10) Learning disabilities.
(11) Hyperactivity.
(12) Such other illnesses and conditions as the Secretary may choose to review or as the Advisory Commission on Childhood Vaccines established under section 2119 of the Public Health Service Act recommends for inclusion in such review.

The review under this subsection shall include notice and opportunity for a public hearing, consideration of written information submitted by the public, and consultation with such Advisory Commission.

(b) FINDINGS WITH RESPECT TO PERTUSSIS.—Not later than 3 years after the effective date of this title, the Secretary shall make, and publish in the Federal Register, the following specific findings:

(1) Whether each of the illnesses or conditions set forth in subsection (a) can reasonably be determined in some circumstances to be caused or significantly aggravated, by pertussis-containing vaccines.

(2) For each illness or condition for which a finding of causation or aggravation related to vaccines containing pertussis is made under paragraph (1), the circumstances under which such causation or aggravation can reasonably be determined to occur.

(3) For each illness or condition for which a finding of causation or aggravation related to vaccines containing pertussis is made under paragraph (1), and for each illness or condition set forth in the Vaccine Injury Table under section 2114 of the Public Health Service Act, the time periods within which the first symptom or manifestation of onset or aggravation of each such illness or condition can reasonably be determined to occur after pertussis vaccination.

(c) REVISION OF TABLE WITH RESPECT TO PERTUSSIS VACCINES.—At the same time the Secretary publishes in the Federal Register findings under subsection (b), the Secretary shall propose regulations to amend the Vaccine Injury Table under section 2114 of the Public Health Service Act as a result of such findings. Not later than 42 months after the effective date of this title, the Secretary shall promulgate such proposed regulations with such modifications as may be necessary after opportunity for public hearing.

(d) REVIEW OF MMR VACCINES AND RELATED ILLNESSES AND CONDITIONS.—Not later than 3 years after the effective date of this title, the Secretary of Health and Human Services shall complete a review similar to the review conducted under subsection (a) with respect to the potential relationship between vaccines containing rubella (including MMR) and radiculoneuritis. The review under this subsection shall include notice and opportunity for a public hearing, consultation with the Advisory Commission on Childhood Vaccines and consideration of written information submitted by the public. Not later than 3 years after the effective date of this title, the Secretary shall make and publish in the Federal Register findings similar to those required by subsection (b) and shall, if appropriate, propose similar regulations (and thereafter promulgate such regulations) to those required by subsection (c), with respect to compensation under the National Vaccine Injury Compensation Program established under section 2110 of the Public Health Service Act for radiculoneuritis caused, contributed to, or significantly aggravated by vaccines containing rubella.

(e) PERTUSSIS AND MMR STUDIES.—

(1) In order to assist the Secretary in making the findings required under subsections (b) and (d), the Secretary shall, in accordance with subparagraph (B), arrange for the conduct of studies of—

(A) the relationship between vaccines containing pertussis (including whole cell, extracts, and specific antigens) and the illnesses or conditions set forth in paragraphs (1) through (11) of subsection (a),

(B) the relationship between vaccines containing pertussis and any other illnesses and conditions, as selected by the Secretary or the Advisory Commission on Childhood Vaccines established under section 2119 of the Public Health Service Act, and

(C) the relationship between vaccines containing rubella (including MMR) and radiculoneuritis.

(2)(A) The Secretary shall request the Institute of Medicine of the National Academy of Sciences to conduct the studies required by paragraph (1) under an arrangement by which the actual expenses incurred by such Academy in conducting such study will be paid by the Secretary.

(B) If the Institute of Medicine is unwilling to conduct such study under such an arrangement, the Secretary shall enter into a similar arrangement with other appropriate nonprofit private groups or associations under which such groups or associations will conduct such study and prepare and submit the reports thereon as provided in paragraph (3).

(C) The Institute of Medicine or other group or association conducting the studies required by paragraph (1) shall conduct such studies in consultation with the Advisory Commission on Childhood Vaccines established under section 2119 of the Public Health Service Act.

(3) Reports on the results of the studies required by paragraph (1) shall be completed and submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate and to the Secretary not later than 32 months after the effective date of this title. Upon submission to the Secretary, the reports shall be made available to the public.

(4) There are authorized to be appropriated such sums as are necessary for the purpose of making payments for the conduct of the studies required under this subsection.

(f) DEFINITIONS.—For purposes of this section:

(1) The term "medical and scientific information" includes epidemiologic, clinical,

biostatistical, pathological, toxicologic, and other laboratory data and case study information, observations, studies, and reports in peer-reviewed literature or official Government publications, as well as relevant unpublished information, data, studies, and observations.

(2) The term "MMR" means a vaccine containing material intended to prevent or confer immunity against measles, mumps, and rubella disease.

SEC. 313. STUDY OF OTHER VACCINE RISKS.

(a) STUDY.—

(1) Not later than 3 years after the effective date of this title, the Secretary shall, after consultation with the Advisory Commission on Childhood Vaccines established under section 2119 of the Public Health Service Act—

(A) arrange for a broad study of the risks (other than the risks considered under section 102) to children associated with each vaccine set forth in the Vaccine Injury Table under section 2114 of such Act, and

(B) establish guidelines, after notice and opportunity for public hearing and consideration of all relevant medical and scientific information, respecting the administration of such vaccines which shall include—

(i) the circumstances under which any such vaccine should not be administered,

(ii) the circumstances under which administration of any such vaccine should be delayed beyond its usual time of administration, and

(iii) the groups, categories, or characteristics of potential recipients of such vaccine who may be at significantly higher risk of major adverse reactions to such vaccine than the general population of potential recipients.

(2)(A) The Secretary shall request the Institute of Medicine of the National Academy of Sciences to conduct the study required by paragraph (1) under an arrangement by which the actual expenses incurred by such Academy in conducting such study will be paid by the Secretary.

(B) If the Institute of Medicine is unwilling to conduct such study under such an arrangement, the Secretary shall enter into a similar arrangement with other appropriate nonprofit private groups or associations under which such groups or associations will conduct such study.

(C) The Institute of Medicine or other group or association conducting the study required by paragraph (1) shall conduct such studies in consultation with the Advisory Commission on Childhood Vaccines established under section 2119 of the Public Health Service Act.

(b) REVISION OF GUIDELINES.—The Secretary shall periodically, but at least every 3 years after establishing guidelines under subsection (a), review and revise such guidelines after notice and opportunity for public hearing and consideration of all relevant medical and scientific information, unless the Secretary finds that on the basis of all relevant information no revision of such guidelines is warranted and publishes such finding in the Federal Register.

(c) FACTORS AFFECTING GUIDELINES.—Guidelines under subsection (a) shall take into account—

(1) the risk to potential recipients of the vaccines with respect to which the guidelines are established,

(2) the medical and other characteristics of such potential recipients, and

(3) the risks to the public of not having such vaccines administered.

(d) DISSEMINATION.—The Secretary shall widely disseminate the guidelines established under subsection (a) to—

(1) physicians and other health care providers,

(2) professional health associations,

(3) State and local governments and agencies, and

(4) other relevant entities.

SEC. 314. REVIEW OF WARNINGS, USE INSTRUCTIONS, AND PRECAUTIONARY INFORMATION.

Not later than 1 year after the effective date of this title and after consultation with the Advisory Commission on Childhood Vaccines established under section 2119 of the Public Health Service Act and with other appropriate entities, the Secretary of Health and Human Services shall review the warnings, use instructions, and precautionary information presently issued by manufacturers of vaccines set forth in the Vaccine Injury Table set out in section 2114 of the Public Health Service Act and shall by rule determine whether such warnings, instructions, and information adequately warn health care providers of the nature and extent of dangers posed by such vaccines. If the Secretary determines that any such warning, instruction, or information is inadequate for such purpose in any respect, the Secretary shall at the same time require the manufacturers to revise and reissue such warning, instruction, or information as expeditiously as practical, but not later than 18 months after the effective date of this title.

SEC. 315. RECALL AUTHORITY.

Subsection (d) of section 351 of the Public Health Service Act (42 U.S.C. 262)) is amended—

(1) by inserting "(1)" after "(d)", and

(2) by adding at the end thereof the following new paragraph:

"(2)(A) Upon a determination that a batch, lot, or other quantity of a product licensed under this section presents an imminent or substantial hazard to the public health, the Secretary shall issue an order immediately ordering the recall of such batch, lot, or other quantity of such product. An order under this paragraph shall be issued in accordance with section 554 of title 5, United States Code.

"(B) Any violation of subparagraph (A) shall subject the violator to a civil penalty of up to $100,000 per day of violation. The amount of a civil penalty under this subparagraph shall, effective December 1 of each year beginning 1 year after the effective date of this subparagraph, be increased by the percent change in the Consumer Price Index for the base quarter of such year over the Consumer Price Index for the base quarter of the preceding year, adjusted to the nearest 1/10 of 1 percent. For purposes of this subparagraph, the term 'base quarter', as used with respect to a year, means the calendar quarter ending on September 30 of such year and the price index for a base quarter is the arithmetical mean of such index for the 3 months comprising such quarter.".

SEC. 316. STUDY OF IMPACT ON SUPPLY OF VACCINES.

On June 30, 1987, and on June 30 of each second year thereafter, the Secretary of Health and Human Services shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate—

(1) an assessment of the impact of the amendments made by this title on the supply of vaccines listed in the Vaccine Injury Table under section 2114 of the Public Health Service Act, and

(2) an assessment of the ability of the administrators of vaccines (including public clinics and private administrators) to provide such vaccines to children.

PART B—MISCELLANEOUS

SEC. 321. WAIVER OF PAPERWORK REDUCTION.

Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this title and implementing the amendments made by this title.

SEC. 322. NONSEVERABILITY.

If any provision of this title or the application of any provision of this title to any person or circumstance is held invalid by reason of a violation of the Constitution, the entire title shall be considered invalid.

SEC. 323. EFFECTIVE DATE.

(a) GENERAL RULE.—Subtitle 1 of title XXI of the Public Health Service Act shall take effect on the date of the enactment of this Act and Subtitle 2 of such title and this title shall take effect on the effective date of a tax enacted after the date of the enactment of this Act to provide funds for compensation paid under such subtitle 2.

(b) INSUFFICIENCY OF FUNDS.—If at any time there are insufficient funds to pay all of the claims payable under subtitle 2 of title XXI of the Public Health Service Act for 180 days, such subtitle shall cease to be in effect until sufficient funds to pay all of the claims under such subtitle become available.

TITLE IV—ENCOURAGING GOOD FAITH PROFESSIONAL REVIEW ACTIVITIES

SEC. 401. SHORT TITLE.

This title may be cited as the "Health Care Quality Improvement Act of 1986".

SEC. 402. FINDINGS.

The Congress finds the following:

(1) The increasing occurrence of medical malpractice and the need to improve the quality of medical care have become nationwide problems that warrant greater efforts than those that can be undertaken by any individual State.

(2) There is a national need to restrict the ability of incompetent physicians to move from State to State without disclosure or discovery of the physician's previous damaging or incompetent performance.

(3) This nationwide problem can be remedied through effective professional peer review.

(4) The threat of private money damage liability under Federal laws, including treble damage liability under Federal antitrust law, unreasonably discourages physicians from participating in effective professional peer review.

(5) There is an overriding national need to provide incentive and protection for physicians engaging in effective professional peer review.

Part A—Promotion of Professional Review Activities

SEC. 411. PROFESSIONAL REVIEW.

(a) IN GENERAL.—

(1) LIMITATION ON DAMAGES FOR PROFESSIONAL REVIEW ACTIONS.—If a professional review action (as defined in section 431(9)) of a professional review body meets all the standards specified in section 412(a), except as provided in subsection (b)—

(A) the professional review body,

(B) any person acting as a member or staff to the body,

(C) any person under a contract or other formal agreement with the body, and

(D) any person who participates with or assists the body with respect to the action,

shall not be liable in damages under any law of the United States or of any State (or political subdivision thereof) with respect to the action. The preceding sentence shall not apply to damages under any law of the United States or any State relating to the civil rights of any person or persons, including the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq. and the Civil Rights Acts, 42 U.S.C. 1981, et seq. Nothing in this paragraph shall prevent the United States or any Attorney General of a State from bringing an action, including an action under section 4C of the Clayton Act, 15 U.S.C. 15C, where such an action is otherwise authorized.

(2) PROTECTION FOR THOSE PROVIDING INFORMATION TO PROFESSIONAL REVIEW BODIES.—Notwithstanding any other provision of law, no person (whether as a witness or otherwise) providing information to a professional review body regarding the competence or professional conduct of a physician shall be held, by reason of having provided such information, to be liable in damages under any law of the United States or of any State (or political subdivision thereof) unless such information is false and the person providing it knew that such information was false.

(b) EXCEPTION.—If the Secretary has reason to believe that a health care entity has failed to report information in accordance with section 423(a), the Secretary shall conduct an investigation. If, after providing notice of noncompliance, an opportunity to correct the noncompliance, and an opportunity for a hearing, the Secretary determines that a health care entity has failed substantially to report information in accordance with section 423(a), the Secretary shall publish the name of the entity in the Federal Register. The protections of subsection (a)(1) shall not apply to an entity the name of which is published in the Federal Register under the previous sentence with respect to professional review actions of the entity commenced during the 3-year period beginning 30 days after the date of publication of the name.

(c) TREATMENT UNDER STATE LAWS.—

(1) PROFESSIONAL REVIEW ACTIONS TAKEN ON OR AFTER OCTOBER 14, 1989.—Except as provided in paragraph (2), subsection (a) shall apply to State laws in a State only for professional review actions commenced on or after October 14, 1989.

(2) EXCEPTIONS.—

(A) STATE EARLY OPT-IN.—Subsection (a) shall apply to State laws in a State for actions commenced before October 14, 1989, if the State by legislation elects such treatment.

(B) STATE OPT-OUT.—Subsection (a) shall not apply to State laws in a State for actions commenced on or after October 14, 1989, if the State by legislation elects such treatment.

(C) EFFECTIVE DATE OF ELECTION.—An election under State law is not effective, for purposes of subparagraphs (A) and (B), for actions commenced before the effective date of the State law, which may not be earlier than the date of the enactment of that law.

SEC. 412. STANDARDS FOR PROFESSIONAL REVIEW ACTIONS.

(a) IN GENERAL.—For purposes of the protection set forth in section 411(a), a professional review action must be taken—

(1) in the reasonable belief that the action was in the furtherance of quality health care,

(2) after a reasonable effort to obtain the facts of the matter,

(3) after adequate notice and hearing procedures are afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances, and

(4) in the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain facts and after meeting the requirement of paragraph (3).

A professional review action shall be presumed to have met the preceding standards necessary for the protection set out in section 411(a) unless the presumption is rebutted by a preponderance of the evidence.

(b) ADEQUATE NOTICE AND HEARING.—A health care entity is deemed to have met the adequate notice and hearing requirement of subsection (a)(3) with respect to a physician if the following conditions are met (or are waived voluntarily by the physician):

(1) NOTICE OF PROPOSED ACTION.—The physician has been given notice stating—

(A)(i) that a professional review action has been proposed to be taken against the physician,

(ii) reasons for the proposed action,

(B)(i) that the physician has the right to request a hearing on the proposed action,

(ii) any time limit (of not less than 30 days) within which to request such a hearing, and

(C) a summary of the rights in the hearing under paragraph (3).

(2) NOTICE OF HEARING.—If a hearing is requested on a timely basis under paragraph (1)(B), the physician involved must be given notice stating—

(A) the place, time, and date, of the hearing, which date shall not be less than 30 days after the date of the notice, and

(B) a list of the witnesses (if any) expected to testify at the hearing on behalf of the professional review body.

(3) CONDUCT OF HEARING AND NOTICE.—If a hearing is requested on a timely basis under paragraph (1)(B)—

(A) subject to subparagraph (B), the hearing shall be held (as determined by the health care entity)—

(i) before an arbitrator mutually acceptable to the physician and the health care entity,

(ii) before a hearing officer who is appointed by the entity and who is not in direct economic competition with the physician involved, or

(iii) before a panel of individuals who are appointed by the entity and are not in direct economic competition with the physician involved;

(B) the right to the hearing may be forfeited if the physician fails, without good cause, to appear;

(C) in the hearing the physician involved has the right—

(i) to representation by an attorney or other person of the physician's choice,

(ii) to have a record made of the proceedings, copies of which may be obtained by the physician upon payment of any reasonable charges associated with the preparation thereof,

(iii) to call, examine, and cross-examine witnesses,

(iv) to present evidence determined to be relevant by the hearing officer, regardless of its admissibility in a court of law, and

(v) to submit a written statement at the close of the hearing; and

(D) upon completion of the hearing, the physician involved has the right—

(i) to receive the written recommendation of the arbitrator, officer, or panel, including a statement of the basis for the recommendations, and

(ii) to receive a written decision of the health care entity, including a statement of the basis for the decision.

A professional review body's failure to meet the conditions described in this subsection shall not, in itself, constitute failure to meet the standards of subsection (a)(3).

(c) ADEQUATE PROCEDURES IN INVESTIGATIONS OR HEALTH EMERGENCIES.—For purposes of section 411(a), nothing in this section shall be construed as—

(1) requiring the procedures referred to in subsection (a)(3)—

(A) where there is no adverse professional review action taken, or

(B) in the case of a suspension or restriction of clinical privileges, for a period of not longer than 14 days, during which an investigation is being conducted to determine the need for a professional review action; or

(2) precluding an immediate suspension or restriction of clinical privileges, subject to subsequent notice and hearing or other adequate procedures, where the failure to take such an action may result in an imminent danger to the health of any individual.

SEC. 413. PAYMENT OF REASONABLE ATTORNEYS' FEES AND COSTS IN DEFENSE OF SUIT.

In any suit brought against a defendant, to the extent that a defendant has met the standards set forth under section 412(a) and the defendant substantially prevails, the court shall, at the conclusion of the action, award to a substantially prevailing party defending against any such claim the cost of the suit attributable to such claim, including a reasonable attorney's fee, if the claim, or the claimant's conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith. For the purposes of this section, a defendant shall not be considered to have substantially prevailed when the plaintiff obtains an award for damages or permanent injunctive or declaratory relief.

SEC. 414. GUIDELINES OF THE SECRETARY.

The Secretary may establish, after notice and opportunity for comment, such voluntary guidelines as may assist the professional review bodies in meeting the standards described in section 412(a).

SEC. 415. CONSTRUCTION.

(a) IN GENERAL.—Except as specifically provided in this part, nothing in this part shall be construed as changing the liabilities or immunities under law.

(b) SCOPE OF CLINICAL PRIVILEGES.—Nothing in this part shall be construed as requiring health care entities to provide clinical privileges to any or all classes or types of physicians or other licensed health care practitioners.

(c) TREATMENT OF NURSES AND OTHER PRACTITIONERS.—Nothing in this part shall be construed as affecting, or modifying any provision of Federal or State law, with respect to activities of professional review bodies regarding nurses, other licensed health care practitioners, or other health professionals who are not physicians.

(d) TREATMENT OF PATIENT MALPRACTICE CLAIMS.—Nothing in this title shall be construed as affecting in any manner the rights and remedies afforded patients under any provision of Federal or State law to seek redress for any harm or injury suffered as a result of negligent treatment or care by any physician, health care practitioner, or health care entity, or as limiting any defenses or immunities available to any physician, health care practitioner, or health care entity.

SEC. 416. EFFECTIVE DATE.

This part shall apply to professional review actions commenced on or after the date of the enactment of this Act.

Part B—Reporting of Information

SEC. 421. REQUIRING REPORTS ON MEDICAL MALPRACTICE PAYMENTS.

(a) IN GENERAL.—Each entity (including an insurance company) which makes payment under a policy of insurance, self-insurance, or otherwise in settlement (or partial settlement) of, or in satisfaction of a judgment in, a medical malpractice action or claim shall report, in accordance with section 424, information respecting the payment and circumstances thereof.

(b) INFORMATION TO BE REPORTED.—The information to be reported under subsection (a) includes—

(1) the name of any physician or licensed health care practitioner for whose benefit the payment is made,

(2) the amount of the payment,

(3) the name (if known) of any hospital with which the physician or practitioner is affiliated or associated,

(4) a description of the acts or omissions and injuries or illnesses upon which the action or claim was based, and

(5) such other information as the Secretary determines is required for appropriate interpretation of information reported under this section.

(c) SANCTIONS FOR FAILURE TO REPORT.—Any entity that fails to report information on a payment required to be reported under this section shall be subject to a civil money penalty of not more than $10,000 for each such payment involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1128A of the Social Security Act are imposed and collected under that section.

(d) REPORT ON TREATMENT OF SMALL PAYMENTS.—The Secretary shall study and report to Congress, not later than two years after the date of the enactment of this Act, on whether information respecting small payments should continue to be required to be reported under subsection (a) and whether information respecting all claims made concerning a medical malpractice action should be required to be reported under such subsection.

SEC. 422. REPORTING OF SANCTIONS TAKEN BY BOARDS OF MEDICAL EXAMINERS.

(a) IN GENERAL.—

(1) ACTIONS SUBJECT TO REPORTING.—Each Board of Medical Examiners—

(A) which revokes or suspends (or otherwise restricts) a physician's license or censures, reprimands, or places on probation a physician, for reasons relating to the physician's professional competence or professional conduct, or

(B) to which a physician's license is surrendered,

shall report, in accordance with section 424, the information described in paragraph (2).

(2) INFORMATION TO BE REPORTED.—The information to be reported under paragraph (1) is—

(A) the name of the physician involved,

(B) a description of the acts or omissions or other reasons (if known) for the revocation, suspension, or surrender of license, and

(C) such other information respecting the circumstances of the action or surrender as the Secretary deems appropriate.

(b) FAILURE TO REPORT.—If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board of Medical Examiners has failed to report information in accordance with subsection (a), the Secretary shall designate another qualified entity for the reporting of information under section 423.

SEC. 423. REPORTING OF CERTAIN PROFESSIONAL REVIEW ACTIONS TAKEN BY HEALTH CARE ENTITIES.

(a) REPORTING BY HEALTH CARE ENTITIES.—

(1) ON PHYSICIANS.—Each health care entity which—

(A) takes a professional review action that adversely affects the clinical privileges of a physician for a period longer than 30 days;

(B) accepts the surrender of clinical privileges of a physician—

(i) while the physician is under an investigation by the entity relating to possible incompetence or improper professional conduct, or

(ii) in return for not conducting such an investigation or proceeding; or

(C) in the case of such an entity which is a professional society, takes a professional review action which adversely affects the membership of a physician in the society,

shall report to the Board of Medical Examiners, in accordance with section 424(a), the information described in paragraph (3).

(2) PERMISSIVE REPORTING ON OTHER LICENSED HEALTH CARE PRACTITIONERS.—A health care entity may report to the Board of Medical Examiners, in accordance with section 424(a), the information described in paragraph (3) in the case of a licensed health care practitioner who is not a physician, if the entity would be required to report such information under paragraph (1) with respect to the practitioner if the practitioner were a physician.

(3) INFORMATION TO BE REPORTED.—The information to be reported under this subsection is—

(A) the name of the physician or practitioner involved,

(B) a description of the acts or omissions or other reasons for the action or, if known, for the surrender, and

(C) such other information respecting the circumstances of the action or surrender as the Secretary deems appropriate.

(b) REPORTING BY BOARD OF MEDICAL EXAMINERS.—Each Board of Medical Examiners shall report, in accordance with section 424, the information reported to it under subsection (a) and known instances of a health care entity's failure to report information under subsection (a)(1).

(c) SANCTIONS.—

(1) HEALTH CARE ENTITIES.—A health care entity that fails substantially to meet the requirement of subsection (a)(1) shall lose the protections of section 411(a)(1) if the Secretary publishes the name of the entity under section 411(b).

(2) BOARD OF MEDICAL EXAMINERS.—If, after notice of noncompliance and providing an opportunity to correct noncompliance, the Secretary determines that a Board of Medical Examiners has failed to report information in accordance with subsection (b), the Secretary shall designate another qualified entity for the reporting of information under subsection (b).

(d) REFERENCES TO BOARD OF MEDICAL EXAMINERS.—Any reference in this part to a Board of Medical Examiners includes, in the case of a Board in a State that fails to meet the reporting requirements of section 422(a) or subsection (b), a reference to such other qualified entity as the Secretary designates.

SEC. 424. FORM OF REPORTING.

(a) TIMING AND FORM.—The information required to be reported under sections 421, 422(a), and 423 shall be reported regularly (but not less often than monthly) and in such form and manner as the Secretary prescribes. Such information shall first be required to be reported on a date (not later than one year after the date of the enactment of this Act) specified by the Secretary.

(b) TO WHOM REPORTED.—The information required to be reported under sections 421, 422(a), and 423(b) shall be reported to the Secretary, or, in the Secretary's discretion, to an appropriate private or public agency which has made suitable arrangements with the Secretary with respect to receipt, storage, protection of confidentiality, and dissemination of the information under this part.

(c) REPORTING TO STATE LICENSING BOARDS.—

(1) MALPRACTICE PAYMENTS.—Information required to be reported under section 421 shall also be reported to the appropriate State licensing board (or boards) in the State in which the medical malpractice claim arose.

(2) REPORTING TO OTHER LICENSING BOARDS.—Information required to be reported under section 423(b) shall also be reported to the appropriate State licensing board in the State in which the health care entity is located if it is not otherwise reported to such board under subsection (b).

SEC. 425. DUTY OF HOSPITALS TO OBTAIN INFORMATION.

(a) IN GENERAL.—It is the duty of each hospital to request from the Secretary (or the agency designated under section 424(b)), on and after the date information is first required to be reported under section 424(a)—

(1) at the time a physician or licensed health care practitioner applies to be on the medical staff (courtesy or otherwise) of, or for clinical privileges at, the hospital, information reported under this part concerning the physician or practitioner, and

(2) once every 2 years information reported under this part concerning any physician or such practitioner who is on the medical staff (courtesy or otherwise) of, or has been granted clinical privileges at, the hospital.

A hospital may request such information at other times.

(b) FAILURE TO OBTAIN INFORMATION.—With respect to a medical malpractice action, a hospital which does not request information respecting a physician or practitioner as required under subsection (a) is presumed to have knowledge of any information reported under this part to the Secretary with respect to the physician or practitioner.

(c) RELIANCE ON INFORMATION PROVIDED.—Each hospital may rely upon information provided to the hospital under this title and shall not be held liable for such reliance in the absence of the hospital's knowledge that the information provided was false.

SEC. 426. DISCLOSURE AND CORRECTION OF INFORMATION.

With respect to the information reported to the Secretary (or the agency designated under section 424(b)) under this part respecting a physician or other licensed health care practitioner, the Secretary shall, by regulation, provide for—

(1) disclosure of the information, upon request, to the physician or practitioner, and

(2) procedures in the case of disputed accuracy of the information.

SEC. 427. MISCELLANEOUS PROVISIONS.

(a) PROVIDING LICENSING BOARDS AND OTHER HEALTH CARE ENTITIES WITH ACCESS TO INFORMATION.—The Secretary (or the agency designated under section 424(b)) shall, upon request, provide information reported under

this part with respect to a physician or other licensed health care practitioner to State licensing boards, to hospitals, and to other health care entities (including health maintenance organizations) that have entered (or may be entering) into an employment or affiliation relationship with the physician or practitioner or to which the physician or practitioner has applied for clinical privileges or appointment to the medical staff.

(b) CONFIDENTIALITY OF INFORMATION.—

(1) IN GENERAL.—Information reported under this part is considered confidential and shall not be disclosed (other than to the physician or practitioner involved) except with respect to professional review activity, with respect to medical malpractice actions, or in accordance with regulations of the Secretary promulgated pursuant to subsection (a). Nothing in this subsection shall prevent the disclosure of such information by a party which is otherwise authorized, under applicable State law, to make such disclosure.

(2) PENALTY FOR VIOLATIONS.—Any person who violates paragraph (1) shall be subject to a civil money penalty of not more than $10,000 for each such violation involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1128A of the Social Security Act are imposed and collected under that section.

(3) USE OF INFORMATION.—Subject to paragraph (1), information provided under section 425 and subsection (a) is intended to be used solely with respect to activities in the furtherance of the quality of health care.

(c) RELIEF FROM LIABILITY FOR REPORTING.—No person or entity shall be held liable in any civil action with respect to any report made under this part without knowledge of the falsity of the information contained in the report.

(d) INTERPRETATION OF INFORMATION.—In interpreting information reported under this part, a payment in settlement of a medical malpractice action or claim shall not be construed as creating a presumption that medical malpractice has occurred.

Part C—Definitions and Reports

SEC. 431. DEFINITIONS.

In this title:

(1) The term "adversely affecting" includes reducing, restricting, suspending, revoking, denying, or failing to renew clinical privileges or membership in a health care entity.

(2) The term "Board of Medical Examiners" includes a body comparable to such a Board (as determined by the State) with responsibility for the licensing of physicians and also includes a subdivision of such a Board or body.

(3) The term "clinical privileges" includes privileges, membership on the medical staff, and the other circumstances pertaining to the furnishing of medical care under which a physician or other licensed health care practitioner is permitted to furnish such care by a health care entity.

(4)(A) The term "health care entity" means—

(i) a hospital that is licensed to provide health care services by the State in which it is located,

(ii) an entity (including a health maintenance organization or group medical practice) that provides health care services and that follows a formal peer review process for the purpose of furthering quality health care (as determined under regulations of the Secretary), and

(iii) subject to subparagraph (B), a professional society (or committee thereof) of physicians or other licensed health care practitioners that follows a formal peer review process for the purpose of furthering quality health care (as determined under regulations of the Secretary).

(B) The term "health care entity" does not include a professional society (or committee thereof) if, within the previous 5 years, the society has been found by the Federal Trade Commission or any court to have engaged in any anti-competitive practice which had the effect of restricting the practice of licensed health care practitioners.

(5) The term "hospital" means an entity described in paragraphs (1) and (7) of section 1861(e) of the Social Security Act.

(6) The terms "licensed health care practitioner" and "practitioner" mean, with respect to a State, an individual (other than a physician) who is licensed or otherwise authorized by the State to provide health care services.

(7) The term "medical malpractice action or claim" means a written claim or demand for payment based on a health care provider's furnishing (or failure to furnish) health care services, and includes the filing of a cause of action, based on the law of tort, brought in any court of any State or the United States seeking monetary damages.

(8) The term "physician" means a doctor of medicine or osteopathy or a doctor of dental surgery or medical dentistry legally authorized to practice medicine and surgery or dentistry by a State (or any individual who, without authority holds himself or herself out to be so authorized).

(9) The term "professional review action" means an action or recommendation of a professional review body which is taken or made in the conduct of professional review activity, which is based on the competence or professional conduct of an individual physician (which conduct affects or could affect adversely the health or welfare of a patient or patients), and which affects (or may affect) adversely the clinical privileges, or membership in a professional society, of the physician. Such term includes a formal decision of a professional review body not to take an action or make a recommendation described in the previous sentence and also includes professional review activities relating to a professional review action. In this title, an action is not considered to be based on the competence or professional conduct of a physician if the action is primarily based on—

(A) the physician's association, or lack or association, with a professional society or association,

(B) the physician's fees or the physician's advertising or engaging in other competitive acts intended to solicit or retain business,

(C) the physician's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service or other basis,

(D) a physician's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with, a member or members of a particular class of health care practitioner or professional, or

(E) any other matter that does not relate to the competence or professional conduct of a physician.

(10) The term "professional review activity" means an activity of a health care entity with respect to an individual physician—

(A) to determine whether the physician may have clinical privileges with respect to, or membership in, the entity,

(B) to determine the scope or conditions of such privileges or membership, or

(C) to change or modify such privileges or membership.

(11) The term "professional review body" means a health care entity and the governing body or any committee of a health care entity which conducts professional review activity, and includes any committee of the medical staff of such an entity when assisting the governing body in a professional review activity.

(12) The term "Secretary" means the Secretary of Health and Human Services.

(13) The term "State" means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(14) The term "State licensing board" means, with respect to a physician or health care provider in a State, the agency of the State which is primarily responsible for the licensing of the physician or provider to furnish health care services.

SEC. 432. REPORTS AND MEMORANDA OF UNDERSTANDING.

(a) ANNUAL REPORTS TO CONGRESS.—The Secretary shall report to Congress, annually during the three years after the date of the enactment of this Act, on the implementation of this title.

(b) MEMORANDA OF UNDERSTANDING.—The Secretary of Health and Human Services shall seek to enter into memoranda of understanding with the Secretary of Defense and the Administrator of Veterans' Affairs to apply the provisions of part B of this title to hospitals and other facilities and health care providers under the jurisdiction of the Secretary or Administrator, respectively. The Secretary shall report to Congress, not later than two years after the date of the enactment of this Act, on any such memoranda and on the cooperation among such officials in establishing such memoranda.

(c) MEMORANDUM OF UNDERSTANDING WITH DRUG ENFORCEMENT ADMINISTRATION.—The Secretary of Health and Human Services shall seek to enter into a memorandum of understanding with the Administrator of Drug Enforcement relating to providing for the reporting by the Administrator to the Secretary of information respecting physicians and other practitioners whose registration to dispense controlled substances has been suspended or revoked under section 304 of the Controlled Substances Act. The Secretary shall report to Congress, not later than two years after the date of the enactment of this Act, on any such memorandum and on the cooperation between the Secretary and the Administrator in establishing such a memorandum.

TITLE V—STATE COMPREHENSIVE MENTAL HEALTH SERVICES PLANS

SEC. 501. SHORT TITLE.

This title may be cited as the "State Comprehensive Mental Health Services Plan Act of 1986".

SEC. 502. STATE COMPREHENSIVE MENTAL HEALTH SERVICES PLAN.

Part B of title XIX of the Public Health Service Act is amended—

(1) by inserting before the heading for section 1911 the following:

"SUBPART 1—BLOCK GRANT"; and

(2) by adding at the end thereof the following:

"SUBPART 2—STATE COMPREHENSIVE MENTAL HEALTH SERVICES PLAN

"DEVELOPMENT GRANTS

"SEC. 1920B. (a) The Secretary shall make grants to States for the development of State comprehensive mental health services plans which comply with section 1920C. In order to receive a grant under this section, a State shall submit an application to the Secretary. Such application shall be in such form, and shall contain such information, as the Secretary may by regulation prescribe.

"(b)(1) Except as provided in paragraph (2), the amount of a grant to a State under this section for a fiscal year shall be the amount which bears the same ratio to the amount appropriated to carry out this section for such fiscal year as the population of the State bears to the total of the population of all States which submit applications under this section.

"(2) Notwithstanding paragraph (1), the amount of a grant to any State under this section shall not be less than $150,000.

"(c) To carry out this section, there are authorized to be appropriated $10,000,000 for each of the fiscal years 1988 and 1989.

"STATE COMPREHENSIVE MENTAL HEALTH SERVICES PLANS

"SEC. 1920C. (a) For each fiscal year, beginning with fiscal year 1988, each State shall submit a State comprehensive mental health services plan (hereafter referred to in this subpart as the 'State plan') to the Secretary.

"(b) A State plan shall, for the fiscal year for which the plan is submitted and each of the 2 succeeding fiscal years, meet the following requirements:

"(1) The State plan shall provide for the establishment and of implementation of an organized community-based system of care for chronically mentally ill individuals.

"(2) The State plan shall contain quantitative targets to be achieved in the implementation of such system, including numbers of chronically mentally ill individuals residing in the areas to be served under such system.

"(3) The State plan shall describe services to be provided to chronically mentally ill individuals to enable such individuals to gain access to mental health services, including access to treatment, prevention, and rehabilitation services.

"(4) The State plan shall describe rehabilitation services, employment services, housing services, medical and dental care, and other support services to be provided to chronically mentally ill individuals in order to enable such individuals to function outside of inpatient institutions to the maximum extent of their capabilities.

"(5) The State plan shall provide for activities to reduce the rate of hospitalization of chronically mentally ill individuals.

"(6) Except as provided in paragraph (7), the State plan shall require the provision of case management services to each chronically mentally ill individual in the State who receives substantial amounts of public funds or services. For purposes of this paragraph, the term 'chronically mentally ill individual' means a chronically mentally ill individual as defined under State laws and regulations.

"(7) The State plan may provide for the implementation of the requirements of paragraph (6) in a manner which—

"(A) phases in, beginning in fiscal year 1989, the provision to all chronically mentally ill individuals to which such paragraph applies the case management services required to be provided under such paragraph; and

"(B) provides for the substantial completion of the phasing in of the provision of such services by the end of fiscal year 1992.

"(8) The State plan shall provide for the establishment and implementation of a program of outreach to, and services for, chronically mentally ill individuals who are homeless.

"(c) In developing each State plan required under this section, the State shall consult with representatives of employees of State institutions and public and private nursing homes who care for chronically mentally ill individuals.

"(d) The Secretary shall provide technical assistance to States in the development and implementation of State plans which comply with this section. Such technical assistance shall include the development and publication by the Secretary of model elements for State plans and model data systems for the collection of data concerning the implementation of State plans.

"ENFORCEMENT

"SEC. 1920D. (a) If the Secretary determines that a State has not, by the end of fiscal year 1989, developed the State plan required by section 1920C, the Secretary shall reduce the amount of the State's allotment under subpart 1 for fiscal year 1990 by the amount specified in subsection (d).

"(b) If the Secretary determines that a State has not, by the end of fiscal year 1990, developed and substantially implemented the State plan required by section 1920C, the Secretary shall reduce the amount of the State's allotment under subpart 1 for fiscal year 1991 by the amount specified in subsection (d).

"(c) If the Secretary determines that a State has not, by the end of fiscal year 1991, developed and completely implemented the State plan required by section 1920C, the Secretary shall reduce the amount of the State's allotment under subpart 1 for fiscal year 1992 and each succeeding fiscal year by the amount specified in subsection (d). The Secretary shall discontinue the reduction under this subsection of a State's allotment under subpart 1 for a fiscal year if the Secretary determines that the State has, in the preceding fiscal year, developed and completely implemented the State plan required by section 1920C.

"(d) The amount referred to in subsections (a), (b), and (c) with respect to a State is the total amount expended by the State for administrative expenses for fiscal year 1986 from amounts paid to the State under subpart 1 for such fiscal year.

"(e) Notwithstanding any other provision of this subpart, the Secretary shall not require a State government, in carrying out a State plan submitted under this subpart, to expend an amount for mental health services for any fiscal year which exceeds the total amount that would have been expended for such services by such government for such fiscal year if such plan had not been implemented.

"MODEL STANDARDS FOR THE PROVISION OF CARE TO THE CHRONICALLY MENTALLY ILL

"SEC. 1920E. (a) Within one year after the date of enactment of this subpart, the Secretary shall develop and make available a model plan for a community-based system of care for chronically mentally ill individuals. Such plan shall be developed in consultation with State mental health directors, providers of mental health services, chronically mentally ill individuals, advocates for such individuals, and other interested parties.".

SEC. 503. STATE MENTAL HEALTH SERVICES PLANNING COUNCILS.

Section 1916(f) of the Public Health Service Act is amended—

(1) by striking out "With amounts available under section 1915(a), the chief executive officer of the State may" and inserting in lieu thereof "The chief executive officer of the State shall"; and

(2) by adding at the end thereof the following new sentence: "The State may use amounts available under section 1915(a) to establish and operate such a council.".

SEC. 504. DEMONSTRATION PROJECTS FOR SERVICES FOR HOMELESS CHRONICALLY MENTALLY ILL INDIVIDUALS.

(a) DEMONSTRATION PROJECTS.—Section 504(f)(1) of the Public Health Service Act is amended by striking out "and elderly individuals" and inserting in lieu thereof "elderly individuals, and homeless chronically mentally ill individuals".

(b) AUTHORIZATION.—Section 504(f)(3) of such Act is amended by striking out "1985, 1986, and 1987" and inserting in lieu thereof "1985 and 1986, and $24,000,000 for fiscal year 1988".

(c) ADMINISTRATIVE EXPENSES.—Section 504(f) of such Act is further amended by adding at the end thereof the following new paragraph:

"(4)(A) Not more than 25 percent of the total amount of a grant for fiscal year 1988 made to a State under this subsection for a project for services for chronically mentally ill adults (other than a project for services for elderly individuals or a project for services for homeless chronically mentally ill individuals) may be used by the State for administrative expenses in carrying out such grant in such fiscal year.

"(B) Not more than 25 percent of the total amount of any grant made to a State under this subsection for services to chronically mentally ill adults for any fiscal year (beginning with fiscal year 1989) may be used by the State for administrative expenses in carrying out such grant in such fiscal year.".

TITLE VI—GERIATRIC TRAINING

SEC. 601. ESTABLISHMENT OF TRAINING PROGRAM.

(a) Section 788 of the Public Health Service Act is amended—

(1) by redesignating subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively; and

(2) by inserting after subsection (d) the following new subsection:

"(e)(1) The Secretary may make grants to, and enter into contracts with, schools of medicine, schools of osteopathy, teaching hospitals, and graduate medical education programs, for the purpose of providing support for geriatric medicine training projects to train physicians and dentists who plan to teach geriatric medicine or geriatric dentistry.

"(2) Each project for which a grant or contract is made under this subsection shall—

"(A) be staffed by full-time teaching physicians who have experience or training in geriatric medicine;

"(B) be staffed by full-time or part-time teaching dentists who have experience or training in geriatric dentistry;

"(C) be based in a graduate medical education program in internal medicine or family medicine;

"(D) provide participants in the project with exposure to a diversified population of elderly individuals;

"(E) provide training in geriatrics and exposure to the physical and mental disabilities of elderly individuals through a variety

of service rotations, such as geriatric consultation services, acute care services, dental services, geriatric psychiatry units, day and home care programs, rehabilitation services, extended care facilities, geriatric ambulatory care and comprehensive evaluation units, and community care programs for elderly mentally retarded individuals; and

"(F) provide training in geriatrics through one or both of the training options described in subparagraphs (A) and (B) of paragraph (3).

"(3) The training options referred to in subparagraph (F) of paragraph (2) are as follows:

"(A) A one-year retraining program in geriatrics for—

"(i) physicians who are faculty members in departments of internal medicine, family medicine, gynecology, and psychiatry at schools of medicine and osteopathy; and

"(ii) dentists who are faculty members at schools of dentistry or at hospital departments of dentistry.

"(B) A one-year or two-year internal medicine or family medicine fellowship program providing emphasis in geriatrics, which shall be designed to provide training in clinical geriatrics and geriatrics research for—

"(i) physicians who have completed graduate medical education programs in internal medicine, family medicine, psychiatry, neurology, gynecology, or rehabilitation medicine; and

"(ii) dentists who have completed post-doctoral dental education programs.

"(4) For purposes of this subsection—

"(A) the term 'graduate medical education program' means a program sponsored by a school of medicine, a school of osteopathy, a hospital, or a public or private institution, which—

"(i) offers postgraduate medical training in the specialties and subspecialties of medicine; and

"(ii) has been accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association through its Committee on Postdoctoral Training; and

"(B) the term 'post-doctoral dental education program, means a program sponsored by a school of dentistry, a hospital, or a public or private institution, which—

"(i) offers post-doctoral training in the specialties of dentistry, advanced education in general dentistry, or a dental general practice residency; and

"(ii) has been accredited by the Commission on Dental Accreditation.".

(b) Section 788(d)(1)(D) of such Act is amended by inserting "(other than training and retraining of faculty for schools of medicine and osteopathy) before the semicolon.

(c) Section 788(h) of such Act (as redesignated by subsection (a)(1) of this section) is amended—

(1) by striking out "$8,000,000" the third place it appears in the first sentence and inserting in lieu thereof "$12,000,000";

(2) by striking out "each of the fiscal years" in paragraph (2) and inserting in lieu thereof" the fiscal year";

(3) by inserting "25 percent of such amount for the fiscal year ending" before "September 30, 1988" in paragraph (2); and

(4) by adding at the end thereof the following: "One-third of the amounts appropriated to carry out this section for fiscal year 1988 shall be available to carry out subsection (e) for such fiscal year.".

TITLE VII—HEALTH PLANNING

SEC. 701. REPEAL OF TITLE XV.

(a) REPEAL.—Title XV of the Public Health Service Act is repealed effective January 1, 1987.

(b) FUNDS.—The repeal made by subsection (a) shall not affect any funds obligated for the purposes of title XV of the Public Health Service Act before January 1, 1987.

TITLE VIII—HEALTH MAINTENANCE ORGANIZATIONS

SEC. 801. SHORT TITLE.

This title may be cited as the "Health Maintenance Organization Amendments of 1986".

SEC. 802. REFERENCE.

Whenever in this title an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 803. ELIMINATION OF AUTHORIZATION OF SUPPORT FOR FEASIBILITY SURVEYS, PLANNING, AND INITIAL DEVELOPMENT COSTS.

(a) Sections 1303, 1304, and 1307(c) (42 U.S.C. 300e-2, 300e-3, and 300e-6(c)) are repealed.

(b)(1) Section 1306 (42 U.S.C. 300e-5) is amended—

(A) by striking out "grant, contract, loan," each place it appears (except in subsection (b)(6)) and inserting in lieu thereof "loan",

(B) by striking out "in the case of an application for assistance under section 1303 or 1304, such application meets the application requirements of such section and in the case of an application for a loan or loan guarantee," in subsection (b)(1),

(C) by striking out "1304," in subsection (b)(2), and

(D) by striking out "grants, contracts, loans," in subsection (c) and inserting in lieu thereof "loans".

(2) Section 1307 (42 U.S.C. 300e-6) is amended—

(A) by striking out "grant, contract, loan," each place it appears and inserting in lieu thereof "loan",

(B) by striking out "grant, contract, or" in subsection (a)(1), and

(C) by striking out "such assistance" in subsection (a)(1) and inserting in lieu thereof "the loan".

(3) Section 1309(a) (42 U.S.C. 300e-8(a)) is amended—

(A) by striking out paragraph (1), and

(B) by striking out "(2)".

(4) The first sentence of section 1317(b) (42 U.S.C. 300e-16(b)) is amended—

(A) by striking out clause (1), and

(B) by redesignating clauses (2) and (3) as clauses (1) and (2), respectively.

(c) The amendments made by this section do not apply to any grant made or contract entered into under title XIII of the Public Health Service Act before October 1, 1985.

SEC. 804. LIMITATION ON LOANS AND LOAN GUARANTEES FOR INITIAL COSTS OF OPERATION.

(a) The last sentence of section 1305(a) (42 U.S.C. 300e-4(a)) is amended by inserting before the period ", and unless the Secretary has made a grant or loan to, entered into a contract with, or guaranteed a loan for, the organization in fiscal year 1981, 1982, 1983, 1984, or 1985 under this section or section 1304(b) (as in effect before October 1, 1985)".

(b) The amendment made by subsection (a) does not apply to any loan or loan guarantee for the initial costs of operation of a health maintenance organization made under title XIII of the Public Health Service Act before October 1, 1985.

SEC. 805. ELIMINATION OF LOANS AND LOAN GUARANTEES FOR ACQUISITION AND CONSTRUCTION OF AMBULATORY CARE FACILITIES.

(a) Section 1305A (42 U.S.C. 300e-4a) is repealed.

(b) Section 1306(b)(2) (42 U.S.C. 300e-5(b)(2)) is amended by striking out "or 1305A,".

(c) The amendments made by this section do not apply to any loan or loan guarantee made under section 1305A of the Public Health Service Act before October 1, 1985.

SEC. 806. REPEAL OF REQUIREMENT FOR HEALTH SYSTEMS AGENCY REVIEW.

Section 1306(b) (42 U.S.C. 300e-5(b)) is amended by striking out paragraph (5) and by redesignating paragraphs (6), (7), and (8) as paragraphs (5), (6), and (7), respectively.

SEC. 807. LIMITATION ON BORROWING BY LOAN GUARANTEE FUND.

The first sentence of section 1308(d)(2) (42 U.S.C. 300e-7(d)(2)) is amended by inserting "before October 1, 1986," after "guarantees issued by him".

SEC. 808. REPEAL OF REQUIREMENT FOR PERIODIC DEMONSTRATION OF COMPLIANCE.

Section 1310(d) (42 U.S.C. 300e-9(d)) is amended by striking out the last sentence.

SEC. 809. ANNUAL UPDATE OF STATE LAW DIGEST.

The first sentence of section 1311(c) (42 U.S.C. 300e-10(c)) is amended by striking out "quarterly" and inserting in lieu thereof "annually".

SEC. 810. ELIMINATION OF UNNECESSARY REPORT.

Section 1318(e) (42 U.S.C. 300e-17(e)) is repealed.

SEC. 811. AUTHORIZATION OF APPROPRIATIONS.

Section 1309(b) (42 U.S.C. 300e-8(b)) is amended to read as follows:

"(b) To meet the obligations of the loan fund established under section 1308(e) resulting from defaults on loans made from the fund and to meet the other obligations of the fund, there is authorized to be appropriated to the loan fund for fiscal years 1987, 1988, and 1989, such sums as may be necessary.".

SEC. 812. ORGAN TRANSPLANTS AS PART OF BASIC COVERAGE.

(a) Section 1302(1) (42 U.S.C. 300e-1(1)) is amended by inserting before the last sentence the following new sentence: "Such term includes a health service directly associated with an organ transplant only if such organ transplant was required to be included in basic health services on April 15, 1985.".

(b)(1) The amendment made by subsection (a) shall take effect on October 1, 1985, and shall cease to be in effect on April 1, 1988.

(2) After April 1, 1988, for purposes of title XIII of the Public Health Service Act, no health service directly associated with an organ transplant shall be considered to be a basic health service if such service would otherwise have been added as a basic health service between April 15, 1985, and April 1, 1988.

SEC. 813. STUDY ON THE HEALTH MAINTENANCE ORGANIZATION PROGRAM.

(a) The Secretary of Health and Human Services shall provide for the conduct of a study to assess the operation and impact of the provisions of title XIII of the Public Health Service Act. The study shall—

(1) assess the attitudes of employers and employees toward prepaid health benefits plans, particularly health maintenance organization plans;

(2) examine the operation of the community rating approach and the impact of such approach on the membership composition and competitiveness of health maintenance organizations qualified under such title;

(3) analyze the effects of the dual choice option provided in section 1310 of such Act on health maintenance organizations and on other health benefits plans;

(4) assess the approach used to add services no longer considered to be experimental to basic health services for health maintenance organizations qualified under such title, particularly with respect to the addition of organ transplants to such basic health services and the impact of such addition on the competitiveness of such health maintenance organizations; and

(5) examine the effect of minimum benefit requirements, underwriting restrictions, restrictions on cost sharing, and the requirement that services be provided without limitation as to time or cost on the competitiveness of health maintenance organizations qualified under such title.

(b) Within 18 months after the date of enactment of this Act, the Secretary shall prepare and transmit to the Congress a report which describes the findings and conclusions of the study conducted under subsection (a) and contains such recommendations for legislative and regulatory action as the Secretary considers appropriate.

(c) Any contract entered into under this section shall be to such extent or in such amounts as are provided in appropriation Acts.

SEC. 814. SERVICES OF PSYCHOLOGISTS.

(a) Paragraphs (1) and (2) of section 1302 of the Public Health Service Act are amended by inserting "psychologist," after "podiatrist," each place it appears.

(b) Paragraph (4) of such section is amended by striking out "and podiatrists" and inserting in lieu thereof "podiatrists, and psychologists".

(c) Paragraph (5) of such section is amended by inserting "psychology," after "optometry,".

SEC. 815. EFFECTIVE DATE.

(a) Except as provided in subsection (b) and section 812(b), this title and the amendments made by this title shall take effect on October 1, 1985.

(b) Section 813 shall take effect on the date of enactment of this Act.

SEC. 816. CONSTRUCTION.

The provisions of this title and of the amendments made by this title do not authorize the appropriation of any funds for fiscal year 1986.

TITLE IX—ALZHEIMER'S DISEASE AND RELATED DEMENTIAS SERVICES RESEARCH

PART A—GENERAL PROVISIONS

SHORT TITLE

SEC. 901. This title may be cited as the "Alzheimer's Disease and Related Dementias Services Research Act of 1986".

FINDINGS

SEC. 902. The Congress finds that—

(1) best estimates indicate that between 2,000,000 and 3,000,000 Americans presently have Alzheimer's disease or related dementias;

(2) estimates of the number of individuals afflicted with Alzheimer's disease and related dementias are unreliable because current diagnostic procedures lack accuracy and sensitivity and because there is a need for epidemiological data on incidence and prevalence of such disease and dementias;

(3) studies estimate that between one-half and two-thirds of patients in nursing homes meet the clinical and mental status criteria for dementia;

(4) the care for individuals with Alzheimer's disease and related dementias falls primarily on their families, and such care is very often financially and emotionally devastating;

(5) the cost of caring for individuals with Alzheimer's disease and related dementias is great, and conservative estimates range between $38,000,000,000 and $42,000,000,000 per year solely for direct costs;

(6) although substantial progress has been made in recent years in identifying possible leads to the causes of Alzheimer's disease and related dementias and more progress can be expected in the near future, there is little likelihood of a breakthrough in the foreseeable future which would eliminate or substantially reduce the number of individuals with such disease and dementias or the difficulties of caring for such individuals;

(7) attempts to reduce the emotional and financial burden of caring for dementia patients is impeded by a lack of knowledge about such patients, how to care for such patients, the costs associated with such care, the effectiveness of various modes of care, the quality and type of care necessary at various stages of the disease, and other appropriate services that are needed to provide quality care;

(8) the results of the little research that has been undertaken concerning dementia has been inadequate or the results have not been widely disseminated;

(9) more knowledge is needed concerning—

(A) the epidemiology of, and the identification of risk factors for, Alzheimer's disease and related dementias;

(B) the development of methods for early diagnosis, functional assessment, and psychological evaluation of individuals with Alzheimer's disease for the purpose of monitoring the course of the disease and developing strategies for improving the quality of life for such individuals;

(C) the understanding of the optimal range and cost-effectiveness of community and institutional services for individuals with Alzheimer's disease and related dementias and their families, particularly with respect to the design, delivery, staffing, and mix of such services and the coordination of such services with other services, and with respect to the relationship of formal to informal support services;

(D) the understanding of optimal methods to combine formal support services provided by health care professionals with informal support services provided by family, friends, and neighbors of individuals with Alzheimer's disease, and the identification of ways family caregivers can be sustained through interventions to reduce psychological and social problems and physical problems induced by stress;

(E) existing data that are relevant to Alzheimer's disease and related dementias; and

(F) the costs incurred in caring for individuals with Alzheimer's disease and related dementias;

(10) it is imperative to provide appropriate coordination of the efforts of the Federal Government in the provision of services for individuals with Alzheimer's disease and related dementias;

(11) it is important to increase the understanding of Alzheimer's disease and related dementias by the diverse range of personnel involved in the care of individuals with such disease and dementias; and

(12) it is imperative that the Social Security Administration be provided information pertaining to Alzheimer's disease and related dementias, particularly for personnel in such Administration involved in the establishment and updating of criteria for determining whether an individual is under a disability for purposes of titles II and XVI of the Social Security Act.

PART B—COUNCIL ON ALZHEIMER'S DISEASE

ESTABLISHMENT

SEC. 911. (a) There is established in the Department of Health and Human Services (hereinafter referred to as the "Department") the Council on Alzheimer's Disease (hereinafter referred to as the "Council"). The Council shall be composed of—

(1) the Assistant Secretary for Health;

(2) the Surgeon General of the United States;

(3) the Assistant Secretary for Planning and Evaluation;

(4) the Director of the National Institute of Allergy and Infectious Diseases;

(5) the Director of the National Institute of Mental Health;

(6) the Director of the National Institute of Neurological and Communicative Diseases and Stroke;

(7) the Director of the National Institute on Aging;

(8) the Commissioner on Aging;

(9) the Administrator of the Health Care Financing Administration (or the designee of such Administrator);

(10) the Director of the National Center for Health Services Research and Health Care Technology Assessment;

(11) the Administrator of Veterans' Affairs (or the designee of such Administrator); and

(12) such additional members as the Secretary of Health and Human Services (hereinafter referred to as the "Secretary") considers appropriate.

(b) The Secretary shall select a Chairman for the Council from among its members.

(c) A majority of the members of the Council shall constitute a quorum, but a lesser number may hold hearings.

(d) The Council shall meet periodically at the call of the Chairman, but not less than twice each year.

(e) The Secretary shall appoint an Executive Secretary for the Council and shall provide the Council with such additional administrative staff and support as may be necessary to enable the Council to carry out its functions.

FUNCTIONS

SEC. 912. (a) The Council shall—

(1) coordinate continuing research conducted by or through the Department on Alzheimer's disease and related dementias;

(2) establish a mechanism for the sharing of information among all officers and employees of the Department involved in carrying out programs serving elderly individuals;

(3) identify the most promising areas of research concerning Alzheimer's disease and related dementias;

(4) establish mechanisms to use the results of research concerning Alzheimer's disease and related dementias in the development of policies, programs, and means to improve the quality of life for older Americans; and

(5) assist the National Institute on Aging, the National Institute of Mental Health, and the National Center for Health Services Research and Health Care Technology Assessment in developing and coordinating the plans for research required under part E, and in making revisions in such plans.

(b)(1) Not later than 9 months after the date of enactment of this Act, the Council

shall transmit to the Congress and make available to the public a report detailing the plans for research prepared by the National Institute on Aging, the National Institute of Mental Health, and the National Center for Health Services Research and Health Care Technology Assessment under part E. Such report shall—

(A) describe, insofar as feasible, the activities to be carried out under such part during each of the fiscal years 1987, 1988, 1989, 1990, and 1991; and

(B) ensure that activities carried out under such part are coordinated with, and use, to the maximum extent feasible, the resources of, other Federal programs relating to Alzheimer's disease and related dementias, including centers supported under section 445 of the Public Health Service Act, centers supported by the National Institute of Mental Health on the psychopathology of the elderly, relevant activities of the Administration on Aging, other centers supported by Federal funds involved in research on Alzheimer's disease and related dementias, and other programs relating to Alzheimer's disease and related dementias which are planned or conducted by Federal agencies other than the Department, State or local agencies, community organizations, or private foundations.

(2) Within 1 year after the date on which the report required by paragraph (1) is transmitted to the Congress, and annually thereafter, the Council shall transmit to the Congress, and make available to the public, a report on—

(A) the revisions made by the National Institute on Aging, the National Institute of Mental Health, and the National Center for Health Services Research and Health Care Technology Assessment in the plans for research required by part E;

(B) progress made by research sponsored by the Federal Government on Alzheimer's disease and related dementias; and

(C) new directions in research on Alzheimer's disease and related dementias which the Council considers potentially important.

PART C—ADVISORY PANEL ON ALZHEIMER'S DISEASE

ESTABLISHMENT OF PANEL

SEC. 921. (a) There is established in the Department the Advisory Panel on Alzheimer's Disease (hereinafter referred to as the 'Panel'). The Panel shall be composed of—

(1) 15 voting members appointed by the Director of the Office of Technology Assessment, of which—

(A) 3 shall be individuals who are biomedical research scientists with demonstrated achievements in biomedical research relating to Alzheimer's disease, including at least one individual who is a researcher at a center supported under section 445 of the Public Health Service Act;

(B) 3 shall be individuals with demonstrated achievements in research relevant to services for the care of individuals with Alzheimer's disease and related dementias;

(C) 3 shall be individuals who are providers of services, or administrators of organizations which provide services, for individuals with Alzheimer's disease and related dementias and their families;

(D) 3 shall be individuals who are experts in the financing of health care services and long-term care services, including one individual who is a representative of private health care services insurers; and

(E) 3 shall be representatives of national voluntary organizations which are concerned with the problems of individuals with Alzheimer's disease and related dementias and their families; and

(2) the Chairman of the Council, the Director of the National Institute on Aging, the Director of the National Institute of Mental Health, the Director of the National Center for Health Services Research and Health Care Technology Assessment, and the Commissioner on Aging, who shall be nonvoting ex officio members.

(b) The Director of the Office of Technology Assessment shall appoint members to the Panel under subsection (a)(1) within 90 days after the date of enactment of this Act.

(c) The Secretary shall appoint a Chairman of the Panel from among the members appointed under subsection (a)(1).

(d) Members of the Panel shall serve for the life of the Panel. A vacancy on the Panel shall be filled in the same manner as the original appointment was made. A vacancy on the Panel shall not affect its powers.

(e) A majority of the members of the Panel appointed under subsection (a)(1) shall constitute a quorum, but a lesser number may hold hearings. The Panel may establish such subcommittees as the Panel considers appropriate.

(f) The Panel shall meet at the call of the Chairman, but not less than twice per year.

(g) The Executive Secretary of the Council shall serve as Executive Secretary of the Panel. The Secretary shall provide the Panel with such additional administrative staff and support as may be necessary to enable the Panel to carry out its functions.

(h) Each member of the Panel appointed under subsection (a)(1) shall receive compensation at a rate of $100 per day for each day, including travel time, that such member is engaged in duties as a member of the Panel. While away from their homes or regular places of business in the performance of duties as a member of the Panel, members of the Panel appointed under subsection (a)(1) shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under section 5702 of title 5, United States Code.

FUNCTIONS OF THE PANEL

SEC. 922. (a) The Panel shall assist the Secretary and the Council in the identification of priorities and emerging issues with respect to Alzheimer's disease and related dementias and the care of individuals with such disease and dementias. The Panel shall advise the Secretary and the Council with respect to the identification of—

(1) emerging issues in, and promising areas of, biomedical research relating to Alzheimer's disease and related dementias;

(2) emerging issues in, and promising areas of, research relating to services for individuals with Alzheimer's disease and related dementias and their families;

(3) emerging issues and promising initiatives in home and community based services, and systems of such services, for individuals with Alzheimer's disease and related dementias and their families; and

(4) emerging issues in, and innovative financing mechanisms for, payment for health care services and social services for individuals with Alzheimer's disease and related dementias and their families, particularly financing mechanisms in the private sector.

(b) The Panel shall prepare and transmit to the Congress, the Secretary, and the Council, and make available to the public, an annual report. Such report shall contain such recommendations as the Panel considers appropriate for administrative and legislative actions to improve services for individuals with Alzheimer's disease and related dementias and their families and to provide for promising biomedical research relating to Alzheimer's disease and related dementias.

AUTHORIZATION OF APPROPRIATIONS

SEC. 923. To carry out this part, there are authorized to be appropriated $100,000 for each of the fiscal years 1988 through 1991.

PART D—AWARDS FOR LEADERSHIP AND EXCELLENCE IN ALZHEIMER'S DISEASE AND RELATED DEMENTIAS

AWARDS AUTHORIZED

SEC. 931. (a) The Director of the National Institute on Aging shall make awards to senior researchers who have made distinguished achievements in biomedical research in areas relating to Alzheimer's disease and related dementias. Awards under this section shall be used by the recipients to support research in areas relating to such disease and dementias, and may be used by the recipients to train junior researchers who demonstrate exceptional promise to conduct research in such areas.

(b) The Director of the National Institute on Aging may make awards under this section to researchers at centers supported under section 445 of the Public Health Service Act and to researchers at other public and nonprofit private entities.

(c) The Director of the National Institute on Aging shall make awards under this section only to researchers who have been recommended for such awards by the National Advisory Council on Aging.

(d) The Director of the National Institute on Aging shall establish procedures for the selection of the recipients of awards under this section.

(e) Awards under this section shall be made for a one-year period, and may be renewed for not more than six additional consecutive one-year periods.

AUTHORIZATION OF APPROPRIATIONS

SEC. 932. To carry out this part, there are authorized to be appropriated $5,000,000 for each of the fiscal years 1988 through 1991. Amounts authorized to be appropriated under this section are in addition to amounts authorized to be appropriated for biomedical research relating to Alzheimer's disease and related dementias under part E of this title and under other provisions of law.

PART E—RESEARCH RELATING TO SERVICES FOR INDIVIDUALS WITH ALZHEIMER'S DISEASE AND RELATED DEMENTIAS AND THEIR FAMILIES

SUBPART 1—RESPONSIBILITIES OF THE NATIONAL INSTITUTE ON AGING

RESEARCH PROGRAM AND PLAN

SEC. 941. (a) The Director of the National Institute on Aging shall conduct, or make grants for the conduct of, research relevant to appropriate services for individuals with Alzheimer's disease and related dementias and their families.

(b)(1) Within 6 months after the date of enactment of this Act, the Director of the National Institute on Aging shall prepare and transmit to the Chairman of the Council a plan for the research to be conducted under subsection (a). The plan shall—

(A) provide for research concerning—

(i) the epidemiology of, and the identification of risk factors for, Alzheimer's disease and related dementias; and

(ii) the development and evaluation of reliable and valid multidimensional diagnostic and assessment procedures and instruments; and

(B) ensure that research carried out under the plan is coordinated with, and uses, to the maximum extent feasible, resources of, other Federal programs relating to Alzheimer's disease and related dementias, including centers supported under section 445 of the Public Health Service Act, centers supported by the National Institute of Mental Health on the psychopathology of the elderly, relevant activities of the Administration on Aging, other programs and centers involved in research on Alzheimer's disease and related dementias supported by the Department, and other programs relating to Alzheimer's disease and related dementias which are planned or conducted by Federal agencies other than the Department, State or local agencies, community organizations, or private foundations.

(2) Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Director of the National Institute on Aging shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Director considers appropriate.

(c) In preparing and revising the plan required by subsection (b), the Director of the National Institute on Aging shall consult with the Chairman of the Council and the heads of agencies within the Department.

DISSEMINATION

SEC. 942. The Director of the National Institute on Aging shall disseminate the results of research conducted under this subpart to appropriate professional entities and to the public.

AUTHORIZATION OF APPROPRIATIONS

SEC. 943. To carry out this subpart, there are authorized to be appropriated $2,000,000 for each of fiscal years 1988 through 1991.

SUBPART 2—RESPONSIBILITIES OF THE NATIONAL INSTITUTE OF MENTAL HEALTH

RESEARCH PROGRAM AND PLAN

SEC. 944. (a) The Director of the National Institute of Mental Health shall conduct, or make grants for the conduct of, research relevant to appropriate services for individuals with Alzheimer's disease and related dementias and their families.

(b)(1) Within 6 months after the date of enactment of this Act, the Director of the National Institute of Mental Health shall prepare and transmit to the Chairman of the Council a plan for the research to be conducted under subsection (a). The plan shall—

(A) provide for research concerning—

(i) mental health services and treatment modalities relevant to the mental, behavioral, and psychological problems associated with Alzheimer's disease and related dementias;

(ii) the most effective methods for providing comprehensive multidimensional assessments to obtain information about the current functioning of, and needs for the care of, individuals with Alzheimer's disease and related dementias;

(iii) the optimal range and cost-effectiveness of community and institutional services for individuals with Alzheimer's disease and related dementias and their families, particularly with respect to the design of such services, appropriate staffing for the provision of such services, the timing of such services during the progression of such disease or dementias, and the appropriate mix and coordination of such services;

(iv) the efficacy of various special care units in the United States for individuals with Alzheimer's disease, including an assessment of the costs incurred in operating such units, appropriate standards to be used by such units, and the measurement of patient outcomes in such units;

(v) methods to combine formal support services provided by health care professionals for individuals with Alzheimer's disease and related dementias with informal support services provided for such individuals by their families, friends, and neighbors, including services such as day care services, respite care services, home care services, and nursing home services, and an evaluation of the services actually used for such individuals and the sources of payment for such services;

(vi) methods to sustain family members who provide care for individuals with Alzheimer's disease and related dementias through interventions to reduce psychological and social problems and physical problems induced by stress; and

(vii) improved methods to deliver services for individuals with Alzheimer's disease and related dementias and their families, including services such as outreach services, comprehensive assessment and care management services, outpatient treatment services, home care services, respite care services, adult day care services, partial hospitalization services, and nursing home services; and

(B) ensure that research carried out under the plan is coordinated with, and uses, to the maximum extent feasible, resources of, other Federal programs relating to Alzheimer's disease and dementia, including centers supported under section 445 of the Public Health Service Act, centers supported by the National Institute of Mental Health on the psychopathology of the elderly, relevant activities of the Administration on Aging, other programs and centers involved in research on Alzheimer's disease and related dementias supported by the Department, and other programs relating to Alzheimer's disease and related dementias which are planned or conducted by Federal agencies other than the Department, State or local agencies, community organizations, or private foundations.

(2) Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Director of the National Institute of Mental Health shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Director considers appropriate.

(c) In preparing and revising the plan required by subsection (b), the Director of the National Institute of Mental Health shall consult with the Chairman of the Council and the heads of agencies within the Department.

DISSEMINATION

SEC. 945. The Director of the National Institute of Mental Health shall disseminate the results of research conducted under this subpart to appropriate professional entities and to the public.

AUTHORIZATION OF APPROPRIATIONS

SEC. 946. To carry out this subpart, there are authorized to be appropriated $2,000,000 for each of fiscal years 1988 through 1991.

SUBPART 3—RESPONSIBILITIES OF THE NATIONAL CENTER FOR HEALTH SERVICES RESEARCH AND HEALTH CARE TECHNOLOGY ASSESSMENT

RESEARCH PROGRAM AND PLAN

SEC. 947. (a) The Director of the National Center for Health Services Research and Health Care Technology Assessment shall conduct, or make grants for the conduct of, research relevant to appropriate services for individuals with Alzheimer's disease and related dementias and their families.

(b)(1) Within 6 months after the date of enactment of this Act, the Director of the National Center for Health Services Research and Health Care Technology Assessment shall prepare and transmit to the Chairman of the Council a plan for the research to be conducted under subsection (a). The plan shall—

(A) provide for the inventory and analysis of existing data and studies relevant to Alzheimer's disease and related dementias, including data and studies available through the Health Care Financing Administration, the Administration on Aging, the National Center for Health Statistics, the Office of Human Development Services, the Office of the Assistant Secretary for Planning and Evaluation, and the Veteran's Administration;

(B) provide for research concerning the costs incurred by individuals with Alzheimer's disease and related dementias in obtaining services, particularly services which are essential to such individuals and which are not needed by other patients under long-term care;

(C) provide for research on the costs of various interventions to provide services for individuals with Alzheimer's disease and related dementias and their families;

(D) provide for research on the cost-effectiveness of various service interventions for individuals with Alzheimer's disease and related dementias and their families; and

(E) ensure that research carried out under the plan is coordinated with, and uses, to the maximum extent feasible, resources of other Federal programs relating to Alzheimer's disease and dementia, including centers supported under section 445 of the Public Health Service Act, centers supported by the National Institute of Mental Health on psychopathology of the elderly, relevant activities of the Administration on Aging, other programs and centers involved in research on Alzheimer's disease and related dementias supported by the Department, and other programs relating to Alzheimer's disease and related dementias which are planned or conducted by Federal agencies other than the Department, State or local agencies, community organizations, or private foundations.

(2) Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Director of the National Center for Health Services Research and Health Care Technology Assessment shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Director considers appropriate.

(c) In preparing and revising the plan required by subsection (b), the Director of the National Center for Health Services Research and Health Care Technology Assessment shall consult with the Chairman of the Council and the heads of agencies within the Department.

DISSEMINATION

SEC. 948. The Director of the National Center for Health Services Research and Health Care Technology Assessment shall disseminate the results of research conducted under this subpart to appropriate professional entities and to the public.

AUTHORIZATION OF APPROPRIATIONS

SEC. 949. To carry out this subpart, there are authorized to be appropriated $2,000,000 for each of fiscal years 1988 through 1991.

Subpart—Responsibilities of the Health Care Financing Administration

RESEARCH PROGRAM AND PLAN

SEC. 949A. (a) The Administrator of the National Health Care Financing Administration shall conduct, or make grants for the conduct of, research relevant to appropriate services for individuals with Alzheimer's Disease and related dementias and their families.

(b)(1) Within 6 months after the date of enactment of this Act, the Administrator of the Health Care Financing Administration shall prepare and transmit to the Chairman of the Council a plan for research to be conducted under (a). The plan shall—

(A) provide for a determination of the types of services required by individuals with Alzheimer's disease and related dementias and their families to allow such individuals to remain living at home or in a community-based setting;

(B) provide for a determination of the costs of providing needed services to individuals with Alzheimer's disease and related dementias and their families, including the expenditures for instutitional, home, and community-based services and the source of payment for such expenditures;

(C) provide for an assessment of the adequacy of benefits provided through the Medicare and Medicaid programs and through private health insurance for needed services for individuals with Alzheimer's disease and related dementias and their families; and

(D) provide for a determination of the costs to the Medicare and Medicaid programs and to provide health insurers (if available) of providing covered benefits to individuals with Alzheimer's disease and related dementias and their families.

(2) Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Administrator of the Health Care Financing Administration shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Administrator considers appropriate.

(c) In preparing and revising the plan required by subsection (b), the Administrator of the Health Care Financing Administration shall consult with the Chairman of the Council and the heads of agencies within the Department.

DISSEMINATION

SEC. 949B. The Administrator of the Health Care Financing Administration shall disseminate the results of research conducted under this subpart to appropriate professional entities and to the public.

AUTHORIZATIONS OF APPROPRIATIONS

SEC. 949C. To carry out this subpart, there are authorized to be appropriated $2,000,000 for each of fiscal years 1988 through 1991.

PART F—DISSEMINATION

CLEARINGHOUSE ON ALZHEIMER'S DISEASE

SEC. 951. (a) The Director of the National Institute on Aging shall establish the Clearinghouse on Alzheimer's Disease (hereinafter referred to as the "Clearinghouse"). The purpose of the Clearinghouse is the dissemination of information concerning services available for individuals with Alzheimer's disease and related dementias and their families. The Clearinghouse shall—

(1) compile, archive, and disseminate information concerning research, demonstration, evaluation, and training programs and projects concerning Alzheimer's disease and related dementias; and

(2) annually publish a summary of the information compiled under paragraph (1) during the preceding 12-month period, and make such information available upon request to appropriate individuals and entities, including educational institutions, research entities, and Federal and public agencies.

(b) The Clearinghouse may charge an appropriate fee for information provided through the toll-free telephone line established under subsection (a)(3).

(c) The Director of the National Institute on Aging, the Director of the National Institute of Mental Health, and the Director of the National Center for Health Services Research and Health Care Technology Assessment shall provide to the Clearinghouse summaries of the findings of research conducted under part E.

DISSEMINATION PROJECT

SEC. 952. (a) The Director of the National Institute on Aging shall make a grant to, or enter into a contract with, a national organization representing individuals with Alzheimer's disease and related dementias for the conduct of the activities described in subsection (b).

(b) The organization receiving a grant or contract under this section shall—

(1) establish a central computerized information system to—

(A) compile and disseminate information concerning initiatives by State and local governments and private entities to provide programs and services for individuals with Alzheimer's disease and related dementias; and

(B) translate scientific and technical information concerning such initiatives into information readily understandable by the general public, and make such information available upon request; and

(2) establish a national toll-free telephone line to make available the information described in paragraph (1), and information concerning Federal programs, services, and benefits for individuals with Alzheimer's disease and related dementias and their families.

(c) The organization receiving a grant or contract under this section may charge appropriate fees for information provided through the toll-free telephone line established under subsection (b)(2), and may make exceptions to such fees for individuals and organizations who are not financially able to pay such fees.

(d) In order to receive a grant or contract under this section, an organization shall submit an application to the Director of the National Institute on Aging. Such application shall contain—

(1) information demonstrating that such organization has a network of contacts which will enable such organization to receive information necessary to the operation of the central computerized information system described in subsection (b)(1);

(2) information demonstrating that, by the end of fiscal year 1991, such organization will be financially able to, and will, carry out the activities described in subsection (b) without a grant or contract from the Federal Government; and

(3) such other information as the Director may prescribe.

AUTHORIZATION OF APPROPRIATIONS

SEC. 953. To carry out this part, there are authorized to be appropriated $300,000 for each of the fiscal years 1988 through 1991.

PART G—EDUCATIONAL ACTIVITIES

PROVIDING INFORMATION FOR PERSONNEL OF THE SOCIAL SECURITY ADMINISTRATION

SEC. 961. (a) The Secretary shall develop a mechanism to ensure the prompt provision of the most current information concerning Alzheimer's disease and related dementias to the Commissioner of Social Security, particularly information which will increase the understanding of personnel of the Social Security Administration concerning such disease and dementias.

(b) The Commissioner of Social Security shall ensure that information received under subsection (a) is provided to personnel of the Social Security Administration, particularly personnel involved in the process of determining, for purposes of titles II and XVI of the Social Security Act, whether an individual is under a disability.

EDUCATION PROGRAMS FOR PROVIDERS OF CARE FOR INDIVIDUALS WITH ALZHEIMER'S DISEASE

SEC. 962. The Director of the National Institute on Aging, through centers supported under section 445 of the Public Health Service Act, professional associations, and continuing education programs, shall conduct education and information dissemination activities concerning the special problems of individuals with Alzheimer's disease and their families. Such activities shall be designed to enhance the understanding of such problems by individuals who provide care for individuals with Alzheimer's disease and related dementias, including physicians, nurses, psychologists, social workers, occupational therapists, nursing home administrators, nurses, and health care aides.

EDUCATION PROGRAMS FOR SAFETY AND TRANSPORTATION PERSONNEL

SEC. 963. The Director of the National Institute on Aging, through centers supported under section 445 of the Public Health Service Act, training academies, and continuing education programs, shall conduct education and information dissemination activities concerning Alzheimer's disease and related dementias for personnel involved in ensuring the public safety and providing public transportation. Such activities shall be designed to enhance the ability of such personnel to respond appropriately to individuals with Alzheimer's disease and related dementias whom such personnel may encounter in the course of their employment.

AUTHORIZATION OF APPROPRIATIONS

SEC. 964. To carry out this part, there are authorized to be appropriated $1,000,000 for each of the fiscal years 1988 through 1991.

Mr. WAXMAN (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. The question is on the amendment in the nature of a substitute offered by the gentleman from California [Mr. WAXMAN].

The amendment in the nature of a substitute was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to

revise and extend their remarks on the legislation just adopted.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

ALBERT V. BRYAN UNITED STATES COURTHOUSE

Mr. YOUNG of Missouri. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2890) to designate the United States Courthouse for the Eastern District of Virginia in Alexandria, VA, as the "Albert V. Bryan United States Courthouse," and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

Mr. SHAW. Mr. Speaker, reserving the right to object, I do not intend to object, but I take this time for the purpose of allowing the gentleman from Missouri [Mr. YOUNG] an opportunity to explain the bill to the House.

Mr. YOUNG of Missouri. Mr. Speaker, will the gentleman yield?

Mr. SHAW. I yield to the gentleman from Missouri.

Mr. YOUNG of Missouri. Mr. Speaker, I do have an amendment at the desk, thus the bill, as amended, would designate the Federal courthouse for the Eastern District of Virginia in Alexandria, VA, as the "Albert V. Bryan United States Courthouse".

In 1947, President Truman appointed Judge Albert Bryan to be a U.S. District Judge for the Eastern District of Virginia. He was elevated to Chief Judge in 1959, and appointed to the Court of Appeals for the Fourth Circuit in 1961.

Section 2 of the bill would compel the Department of Transportation to revise its regulation concerning special services to the handicapped for transit services.

Currently if a physically handicapped person is unable to use a bus service, he or she is eligible to use the service's special service or oncall accessible bus service. This language would require the Department of Transportation to expand this to allow the nonphysically handicapped the same opportunity. This legislation has been cleared by both sides of the committee and is noncontroversial and I urge my colleagues to support it.

Lastly, Mr. Speaker, the legislation would authorize the Administrator of the General Services Administration to issue obligations for purchase by the Secretary of the Treasury, to the extent authorized in annual appropriation acts, in amounts necessary to finance the acquisition or construction of any public building. Such obligations cannot be entered into before a prospectus has been approved by the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works, in accordance with the Public Buildings Act of 1959, as amended.

Mr. SHAW. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Virginia [Mr. PARRIS].

Mr. PARRIS. Mr. Speaker, I rise to pose a couple of inquiries to the gentleman. This is a bill that will commemorate the life-long service of a member of the judiciary in a courthouse in my district, and I have some modest and passing interest in the matter for that reason.

As I understand the bill as it is now brought before us, it is identical to the bill that was previously passed that I introduced in the House, which is H.R. 5470.

Is that correct?

Mr. SHAW. Mr. Speaker, the gentleman is absolutely right. This is an exact carbon copy of what the gentleman introduced in the House and had passed in the House some weeks ago. The bill is sitting over in the other body at this time.

I would also like to point out to the House that it is only because of the efforts of the gentleman from Virginia [Mr. PARRIS] that his particular bill is before us here this evening and because of the importance that he has placed upon it.

Mr. PARRIS. Mr. Speaker, if the gentleman will yield further, I have have one other question.

This S. 2890 is the bill that was previously passed by the House, as the gentleman has expressed, with some, what I call, at least, nongermane matters in regard to the time financing of Federal buildings and some arrangements for highway handicap provisions of one sort or another. Is that correct?

Mr. SHAW. Mr. Speaker, I would point out to the gentleman, as he so rightly pointed out, that this bill is being used as a vehicle for other matters, but that in no way lessens the importance that this House puts on this particular matter.

Mr. PARRIS. I would simply add, Mr. Speaker, that I appreciate very much, as I have expressed earlier when this matter passed the House, the cooperation of the gentleman from Florida [Mr. SHAW] and my good friend from Missouri [Mr. YOUNG] in moving this legislation.

I think it is a good piece of legislation and I, as one Member, have no reservation.

Mr. SHAW. Mr. Speaker, at this point, I would like to rise in support of this reservation.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2890

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, any reference in any law, regulation, document, record, map, or other paper of the United States to such courthouse is deemed to be a reference to the "Albert V. Bryan United States Courthouse".

AMENDMENT OFFERED BY MR. YOUNG OF MISSOURI

Mr. YOUNG of Missouri. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. YOUNG of Missouri: At the end of the bill, add the following:

SEC. 2. Not later than 90 days after the date of the enactment of this Act, the Secretary of Transportation shall amend the applicable provisions of part 27 of title 49 of the Code of Federal Regulations to provide that—

(1) all persons who by reason of handicap, physical or nonphysical, are unable to use the recipient's bus service for the general public shall be eligible to use the recipient's special service or on-call accessible bus service, and

(2) any costs incurred to accommodate the special needs of any person with a physical or nonphysical handicap on a fixed route bus shall be eligible to be counted in determining whether the recipient has exceeded its limitation on required expenditures.

SECTION 3. TIME FINANCING.

Section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606) is further amended by adding at the end thereof the following new subsection:

"(e) TIME FINANCING.—

"(1) ISSUANCE OF OBLIGATIONS.—Whenever the Administrator determines that the best interest of the United States will be served, the Administrator is authorized to issue obligations for purchase by the Secretary of the Treasury, to the extent authorized in annual appropriation Acts, in amounts necessary to finance the acquisition or construction of any public building.

"(2) TERMS AND CONDITIONS.—Obligations issued under this subsection shall be upon such terms and conditions as may be prescribed by the Secretary of the Treasury, taking into account that repayments shall not begin until the building is ready for occupancy and shall not extend beyond the useful life of the building but in no case for more than 30 years from the date of the initial repayment.

"(3) INTEREST RATE.—Obligations under this subsection shall bear interest at a rate determined by the Secretary taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturity.

"(4) LIMITATIONS.—

"(A) PROSPECTUS APPROVAL REQUIREMENT.—No authorization shall be made in an appropriation Act for the issuance of obligations under this subsection to finance the acquisition or construction of any public building for which a prospectus is required under this section, unless such acquisition or con-

struction has been approved under this section.

Mr. YOUNG of Missouri (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from Missouri [Mr. YOUNG].

The amendment was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

TITLE AMENDMENT OFFERED BY MR. YOUNG OF MISSOURI

Mr. YOUNG of Missouri. Mr. Speaker, I offer an amendment to the title.

The Clerk read as follows:

Amendment to the title offered by Mr. YOUNG of Missouri: Amend the title so as to read: "A bill to designate the United States Courthouse for the Eastern District of Virginia in Alexandria, Virginia, as the 'Albert V. Bryan United States Courthouse', and for other purposes".

The amendment to the title was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. YOUNG of Missouri. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous material, on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

AUTHORIZING TECHNICAL CORRECTIONS IN ENROLLMENT OF S. 2638, DEPARTMENT OF DEFENSE AUTHORIZATION ACT OF 1987

Mr. DYSON. Mr. Speaker, I offer a concurrent resolution (H. Con. Res. 418) to direct the Secretary of the Senate to make technical corrections in the enrollment of the bill S. 2638, and ask unanimous consent for its immediate consideration in the House.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 418

Resolved by the House of Representatives (the Senate concurring), That, in the enrollment of the bill (S. 2638) to authorize appropriations for fiscal year 1987 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, to improve the defense acquisition process, and for other purposes, the Secretary of the Senate shall make the following corrections:

(1) In section 234—

(A) strike out "(a) IMPROVED" and insert in lieu thereof "(c) IMPROVED";

(B) in paragraph (1) of subsection (c) (as designated by subparagraph (A)), strike out "adding at the end" and insert in lieu thereof "inserting after section 2363";

(C) in section 2364(c) of title 10, United States Code (as proposed to be added by such paragraph)—

(i) strike out "a decision" in paragraph (2) and insert in lieu thereof "the decision";

(ii) strike out "[a]/[the] selection by an appropriate official of the Department of Defense of" in paragraph (3) and insert in lieu thereof "the decision by an appropriate official of the Department of Defense selecting"; and

(iii) strike out "approval by an appropriate official of the Department of Defense for" in paragraph (4) and insert in lieu thereof "the decision by an appropriate official of the Department of Defense approving";

(D) in paragraph (2) of subsection (c) (as designated by subparagraph (A)), strike out "adding at the end" and insert in lieu thereof "inserting after the item relating to section 2363"; and

(E) at the end of such section add the following:

(d) Section 909 of the Defense Acquisition Improvement Act of 1986 (title X of the Department of Defense Appropriations Act, 1987 (as contained in section 101 of the Joint Resolution of the 99th Congress entitled "Joint Resolution making continuing appropriations for the fiscal year 1987, and for other purposes")) is amended—

(1) by inserting "(1)" in subsection (a) before "Chapter 139";

(2) by striking out "by adding after section 2364 (as added by section 234)" in subsection (a) and inserting in lieu thereof "by adding at the end"; and

(3) by striking out "by adding after the item relating to section 2364 (as added by section 234)" in subsection (a)(2) and inserting in lieu thereof "by adding at the end".

(2) At the end of section 614, add the following new subsection:

(c) REPEAL.—Section 9073 of the Department of Defense Appropriations Act, 1987 (as contained in section 101 of the Joint Resolution of the 99th Congress entitled "Joint Resolution making continuing appropriations for the fiscal year 1987, and for other purposes"), is repealed, and the amendments made by subsection (a) shall apply as if that section had not been enacted.

(3) At the end of section 661, add the following new subsection:

(e) REPEAL.—Section 9131 of the Department of Defense Appropriations Act, 1987 (as contained in section 101 of the Joint Resolution of the 99th Congress entitled "Joint Resolution making continuing appropriations for the fiscal year 1987, and for other purposes"), is amended by striking out "Section 642" and all that follows through "That the" and inserting in lieu thereof "The", and the amendments made by subsections (a) and (b) shall be executed, effective on the date of the enactment of this Act, as if that section had not been enacted.

(4) In section 900—

(A) insert "(a) SHORT TITLE.—" at the beginning of the text of the section; and

(B) at the end of the section add the following:

(b) CONSTRUCTION WITH APPROPRIATION ACT.—(1) This title shall be deemed to be enacted on the date of the enactment of the Department of Defense Appropriations Act, 1987 (as contained in section 101 of the Joint Resolution of the 99th Congress entitled "Joint Resolution making continuing appropriations for the fiscal year 1987, and for other purposes"), and any reference in this title to the date of the enactment of this Act shall be deemed to be a reference to such date.

(2) The amendments made by this title and by title X of the Department of Defense Appropriations Act, 1987, shall be executed concurrently.

(5) In section 1003—

(A) strike out "likely" in subsection (a)(2) and insert in lieu thereof "possible";

(B) in subsection (b)—

(i) strike out "likely" in the first sentence and insert in lieu thereof "possible"; and

(ii) strike out "In making such assessment, the Chairman shall specifically consider" in the second sentence and insert in lieu thereof "Such assessment shall address, among other considerations,";

(C) strike out "December 19, 1986" in subsection (c)(2) and insert in lieu thereof "October 15, 1986"; and

(D) redesignate subsection (e) as subsection (d) and in that subsection strike out "December 20, 1986" and insert in lieu thereof "October 16, 1986".

(6) At the end of section 1203, add the following new subsection:

(c) CONSTRUCTION WITH APPROPRIATION ACT.—The amendments made by this section and by section 9036(b) of the Department of Defense Appropriations Act, 1987 (as contained in section 101 of the Joint Resolution of the 99th Congress entitled "Joint Resolution making continuing appropriations for the fiscal year 1987, and for other purposes"), shall be executed concurrently.

(7) At the end of section 1311, add the following new subsection:

(k) CONSTRUCTION WITH APPROPRIATION ACT.—(1) This section shall be deemed to be enacted on the date of the enactment of the Department of Defense Appropriations Act, 1987 (as contained in section 101 of the Joint Resolution of the 99th Congress entitled "Joint Resolution making continuing appropriations for the fiscal year 1987, and for other purposes"), and any reference in this section to the date of the enactment of this Act shall be deemed to be a reference to such date.

(2) The amendments made by this section and by section 9115 of the Department of Defense Appropriations Act, 1987, shall be executed concurrently.

(8) At the end of section 3137, add the following new subsection:

(d) ASSISTANT TO THE SECRETARY OF DEFENSE FOR ATOMIC ENERGY.—(1) Chapter 4 of title 10, United States Code (as amended by title I of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99-433)), is amended by adding at the end the following new section:

"§ 141. Assistant to the Secretary of Defense for Atomic Energy

"There is an Assistant to the Secretary of Defense for Atomic Energy, who shall be appointed by the President, by and with the advice and consent of the Senate.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"141. Assistant to the Secretary of Defense for Atomic Energy.".

(3) Section 5316 of title 5, United States Code, is amended by striking out "Chairman of the Military Liaison Committee to the Atomic Energy Commission, Department of Defense" and inserting in lieu thereof "Assistant to the Secretary of Defense for Atomic Energy".

(4) The person serving on the day before the date of the enactment of this Act as the Chairman of the Military Liaison Committee shall, subject to the approval of the President, continue to serve as Assistant to the Secretary of Defense for Atomic Energy without regard to the requirements of section 141 of title 10, United States Code, as added by paragraph (1).

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DYSON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the concurrent resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

DESIGNATION OF HON. JIM WRIGHT TO ACT AS SPEAKER PRO TEMPORE TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS FOR REMAINDER OF 2D SESSION OF 99TH CONGRESS

The SPEAKER pro tempore. Laid before the House the following communication from the Speaker:

WASHINGTON, DC,
October 17, 1986.

I hereby designate the Honorable JIM WRIGHT to act as Speaker pro tempore to sign enrolled bills and joint resolutions for the remainder of the second session of the Ninety-ninth Congress.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

The SPEAKER pro tempore. Without objection, the designation is agreed to.

There was no objection.

□ 2100

SERIOUS PLIGHT OF FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

(Mr. WYLIE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WYLIE. Mr. Speaker, I would like to call the attention of my colleagues to a very serious situation confronting the Federal Savings and Loan Insurance Corporation, the insurer of our Nation's thrift deposits. FSLIC reserves are rapidly being depleted. The need to recapitalize FSLIC is critical. At the same time, we are also all aware of the critical need to give the banking regulators additional authority to handle failed or failing institutions; and yet while there is general agreement and recognition of the need to act, it now appears that nothing will be done by the 99th Congress.

Mr. Speaker, it should be obvious that we must at a minimum extend the Garn-St Germain emergency acquisition authorities. I am deeply disappointed that because of parochial interests we are unable to address the more critical underlying need for a recapitalization of FSLIC and a more permanent extension and expansion of the FDIC emergency acquisition provisions.

When the House approved both of these provisions on October 7 in passing H.R. 5576, the chairman of the House Banking Committee said:

If the Congress fails to enact H.R. 5576, it invites chaos among the Nations's system of depository institutions, a loss of confidence across a wide spectrum of the American public, and potentially heavy drains on Federal insurance funds and the ultimate prospect of direct appropriations to replenish these funds.

Mr. Speaker, I could not agree more with the statement of the distinguished chairman of the Banking Committee. It was true on October 7, and it is true today.

I have discussed the matter with Chairman GARN, Senator PROXMIRE and Chairman ST GERMAIN several times over the last several days. I believe all of these gentleman would pass separate bills to address these problems. Unfortunately, there are others who would hold up consideration of these programs because of programs they are interested in are being held up.

It really is too bad that we could not resolve the FSLIC recap and the regulators bill without these political crosscurrents.

Mr. PARRIS. Mr. Speaker, will the gentleman yield to me?

Mr. WYLIE. I am delighted to yield to the gentleman from Virginia.

Mr. PARRIS. Mr. Speaker, I thank the gentleman for yielding.

I appreciate and very much agree with the gentleman's statement. I made a statement in the House earlier this afternoon very much along the same lines.

The reason I asked the gentleman to yield is that the gentleman from Washington [Mr. FOLEY], the majority whip, indicated in his comments just a few minutes ago that the House, in its session tomorrow morning, would address its attention to a number of legislative matters, one of which included the FSLIC recapitulation bill.

Should I assume from what the ranking member on the Banking and Finance Committee has indicated that the House has no present intention to deal with that bill, or it has been exorcised from the package? Could the gentleman share with us exactly where we are?

Mr. WYLIE. Mr. Speaker, it is a very important question. I was just over in the other body and talked to Senator GARN and Senator PROXMIRE. They are going to bring it up very soon.

Unfortunately, I have been told by some Members of this body that if it does not contain a housing bill that there will be objection to bringing it up.

The bill that is being presented over in the other body at this moment does not have a housing provision in it. That was the point I was making a little while ago.

The FSLIC recap and the regulators bill are very important right now. They are critical and crucial to our savings and loan industry and to our banking industry.

I want a housing bill, too. I supported the housing bill and voted for the housing bill here on the floor; but to have these two very important bills held up by what I regard as extraneous matter, I do not think is responsible legislating.

Mr. PARRIS. Mr. Speaker, if the gentleman will yield to me very briefly, I could not agree more with the gentleman from Ohio [Mr. WYLIE].

I would urge my colleagues not to take precipitous action to object to the consideration of a package that will contain, hopefully, exclusively, the FSLIC recaptalization and the regulators bill.

If those of us who take the attitude that we will not play the game at all if you do not play under my rules in my back yard with my ball, then this system simply cannot work and we will have done a huge disservice to the banking consumers of this Nation and to the banking and thrift industry.

I would urge my colleagues, as I know my colleague from Ohio does, that they not take some action in spite as a result of the failure to get their pet portion of this legislation included in the package.

Mr. WYLIE. Mr. Speaker, I associate myself with the remarks of the gentleman from Virginia and thank him for his contribution.

MACHINE TOOL TRADE NEGOTIATIONS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Connecticut [Mrs. KENNELLY] is recognized for 5 minutes.

Mrs. KENNELLY. Mr. Speaker, before the 99th Congress at long last completes its work, I wanted to take just a moment to turn my colleagues' attention to ongoing machine tool negotiations.

Most of you are aware that the machine tool industry's request for temporary import relief, based upon a well-documented threat to U.S. national security posed by increasing machine tool imports, was plagued by a series of seemingly endless delays once it reached the White House. Consequently, I know many of us were relieved when the President finally announced, last May, his intention to negotiate voluntary import restraints on certain machine tool imports with the Governments of Japan, Taiwan, Switzerland, and West Germany.

But my relief has turned to apprehension in the nearly 5 months that have passed since that announcement. Negotiations continue, but nothing has been resolved.

I know that many of you share my concern about the future of this essential industry which provides the core of this Nation's basic manufacturing capability. I intend to monitor these negotiations closely and, if it appears that reasonable prospects for real progress are stalled, I will urge the President to assert his statutory authority under section 232 and impose temporary quotas. I understand that Secretary Baldrige, appearing before the House Energy and Commerce Committee, recently indicated the President's intention to do just that. I hope that is true. But if meaningful import relief is not made available to the domestic machine tool industry—either through the implementation of voluntary restraints or by this administration's directive, these nations should be aware that Congress is prepared to act. Our national security depends upon a prompt resolution of this issue and I urge you to join me in recognizing that the issue will be resolved.

HON. L.J. "LUD" ANDOLSEK: A TRIBUTE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Minnesota [Mr. OBERSTAR] is recognized for 5 minutes.

Mr. OBERSTAR. Mr. Speaker, life has been described as a series of beginnings and endings. One of those endings will occur Wednesday, December 31, 1986, when we will note the end of this calendar year, but it will also mark the end of 50 years of dedicated, successful public service for Hon. L.J. "Lud" Andolsek, former Vice Chairman of the U.S. Civil Service Commission.

For Commissioner Andolsek life has been consistently a series of endings and new beginnings. He completed his military service and began a career with the Veterans' Administration; he ended that career and began a new one as administrative assistant to my predecessor, Hon. John A. Blatnisk. He ended that career after 12 years to begin a new one as Vice Chairman of the U.S. Civil Service Commission, from which he retired only to begin another career as president of the National Association of Retired Federal Employees.

Now for the first time in half a century, Lud Andolsek is free to follow whatever path he chooses, but I'm certain he will find a new beginning in the new challenge.

Lud Andolsek served the U.S. Civil Service Commission for 14 years under four Presidents, but his presidency of NARFE has a limit of two 2-year terms on its presidency, so Lud's final term expires at the end of 1986. Nonetheless, he has served as president for an unprecedented 5 years since he was selected in 1981 by NARFE's executive board to fill the unexpired, 1-year vacancy of the late Michael C. Nave. At the time Lud was national secretary of NARFE, a position to which he was elected at the 16th National Convention of NARFE in Albuquerque, NM, late in 1980.

These 5 years at the helm of NARFE have been exceptionally busy ones; an entire new challenging, full, time-consuming pursuit of the concerns, needs, and interests of Federal Government retirees. That career has been marked with important victories, despite difficult, and often hostile, roadblocks from both the political arena and a State that generally has not been sympathetic to the concerns of Federal workers.

One might have expected that the presidency of NARFE would be a rather low-key, quiet position in stark contrast to the major visibility thrust upon Lud during his U.S. Civil Service Commission years under Presidents Kennedy and Johnson when he served as Vice Chairman or during the Nixon and Ford Presidencies when he served as a minority member. But silence, obscurity, and reticence are not the hallmarks of Lud Andolsek. During his 6 years with NARFE, he has literally propelled that organization into the forefront of political prominence.

During the Lud Andolsek years, NARFE's membership has grown from 400,000 to a half million, with active, grassroots membership in all 50 States, plus Puerto Rico, Guam, Panama, and the Philippine Islands.

Under Lud's leadership NARFE burst onto the political scene with the creation of NARFE's first political action committee, NARFE-PAC, in 1982. During the 1981-82 election cycle, the organization raised an astonishing $668,426, despite the fact that the PAC concept was new to Federal retirees and this was the first outing.

Today NARFE-PAC ranks among the top 10 associations in the Nation with a grand total of $3,950,000 having been raised during the three election cycles in which it has been active, collecting voluntary contributions from its members. NARFE-PAC's grand total is expected to surpass $4 million by election day, 1986, and has helped make the difference in many close elections.

Considering that Federal retirees were all but invisible in terms of political action only 6 years ago, it is truly astonishing to see the degree of credibility, visibility, and respectability that NARFE enjoys today on Capitol Hill, and elsewhere.

Lud himself likes to recall the historic rejoinder of Gen. Anthony McAuliffe when the Nazis surrounded his troops and demanded his surrender during the Battle of the Bulge in World War II. "Nuts!" said the general. And "Nuts!" said Lud to an administration which told Federal retirees to surrender their economic security and the value of their annuities. When the administration said "Cut back," NARFE said, "Fight back!" And fight back is exactly what Andolsek and NARFE did.

There have been losses in the subsequent battles. But the administration has lost more often than NARFE in the continuing struggle to defend every aspect of the civil service retirement system. Moreover, Lud has been careful to stress to his troops that NARFE's battles can only be won through bipartisan support that crosses party lines and rises above political idealogies. Justice for Federal employees, he is fond of saying, is not a Democratic or Republican issue but a matter of justice.

Through his efforts, the functioning of NARFE itself as an organism has been vastly improved. Space for the headquarters staff was more than doubled by the acquisition in 1982 of the four-story building adjoining their national headquarters in the Dupont Circle area of downtown Washington. Modern computer and communications technology has been applied to recordkeeping and automated systems and microcomputer undergird the financial operations. Word processing is complete throughout the headquarters network.

Needless to say, morale at national headquarters is at its highest level ever.

All this has been achieved in just 6 years. Lud's career in public service actually started 50 years ago on January 2, 1936, back in Minnesota when he gave up his job as hockey player/coach of the St. Cloud State Teachers College in St. Cloud, to join the fledgling National Youth Administration [NYA] as a project supervisor. He rose quickly as NYA District Director, State field representative, and finally area director.

Every hockey fan knows that a goalie has to be quick on his feet and that certainly is an essential characteristic of Lud Andolsek—not only quick on his feet, but quick thinking, quick of wit, quick of will in his determination to fight for the needy and underprivileged and those deserving justice in our society.

World War II interrupted his career, as it did for so many millions of young men. He rose in the military from an inductee in 1942 to the rank of captain which he held at the time of his discharge 4 years later. He is now a colonel in the U.S. Air Force retired reserve.

After postwar civilian stints in personnel recruiting, training and grievance procedures for the Veterans' Administration and the Ellsworth Air Force Base, he moved on to Washington, DC, in January 1951 as administrative assistant to the Hon. John A. Blatnik representing the Eighth District of Minnesota in the U.S. Congress.

For 11 years he sharpened his political skills as Congressman Blatnik's top aide during the decade of the 1950's. He served as president of the Congressional Secretaries Club in 1954 and president of the Congressional Employees Federal Credit Union 1958-63. In January 1963, he moved over to the staff of the House Committee on Public Works as chief clerk. That assignment lasted only 4 months. In April 1963, Lud was nominated by John F. Kennedy to serve as one of three U.S. Civil Service Commissioners, confirmed by the Senate and was sworn in on May 1. He served as Vice Chairman under Kennedy and under his successor, President Lyndon B. Johnson. President Nixon reappointed Lud to a second term in May 1969 and he was reappointed to a third term by President Gerald Ford in June 1975.

Among the many cherished citations he has received during his long career are the Distinguished Alumni Award from St. Cloud University in 1973, the VFW Gold Medal of Merit and the AMVETS Silver Helmet as the Civil Servant of the Year in 1966.

Lud has been married for 41 years to the former Regina A. Burnett, who served in the U.S. Army as a nurse and was retired as a first lieutenant. They have one daughter, Dr. Kathryn Andolsek of Durham, NC, and a grandson, Brendan, who addresses Grandpa as Pa.

This recap of a distinguished career does not begin to cover the many contributions public and private that Lud has made over the years through service at national, State and local levels and as a member of the board of directors of several philanthropic organizations. What this summary does suggest, however, is that a dynamo like Lud Andolsek does not stop humming when he completes either a job or a chapter. One thing is certain about Lud Andolsek: He'll be involved, he'll be active, dedicating his talents to another cause, to another purpose, to another human being in need.

I consider it a great honor and personal privilege to pay this tribute to a man I have known and respected all my life, the first American of Yugoslav origin to serve in high, appointive office in the Federal Government and a public servant of rare distinction, integrity, and personal courage. I know Lud's many friends join me in saluting him on this, his golden anniversary.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana [Mr. BURTON] is recognized for 5 minutes.

[Mr. BURTON of Indiana addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

WATSONVILLE ALL STARS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. PANETTA] is recognized for 5 minutes.

Mr. PANETTA. Mr. Speaker, I am pleased to announce to my colleagues that the Watsonville American Little League All-Stars went all the way to the final round of the Western Regional Little League Baseball Championship Tournament this year. The final round was held in San Bernardino, CA. The tournament began in July with 1,475 teams, and the Watsonville team became the first from Santa Cruz County since 1956 to make it to the final round. While they did not ultimately win the tournament, they played extremely well to make it as far as they did.

I would like to list for my colleagues the names of the Watsonville players, as well as their manager and coaches:

All-Stars: Richard Banuelos, Brandon Cole, Bonifacio Coma, Jr., Joey Diaz, Robert Flores, James, Gomez, Phillip J. Gomez, Danny Hall, Armando Hernandez, Chris Platero, Marc Rodriguez, Domingo Ruiz, Rodney Tao, and Benjamin Ybarra.

All-star alternates: Brian Toline and Gavino Mosqueda.

Manager: Carlos T. Gomez.

Coaches: Andrew Alderette, Phil Gomez, Sr., and David Ybarra.

Mr. Speaker, these players are to be commended for their dedication and hard work. The adult supervisors are to be commended, too, not only for their dedication to the great game of baseball but also for the guidance they provided to the young members of this Little League team. I know my colleagues join me in congratulating the team and in wishing them the best of luck in the future.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. MOLINARI] is recognized for 5 minutes.

[Mr. MOLINARI addressed the House. His remarks will appear hereafter in the Extentions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. BRYANT] is recognized for 5 minutes.

[Mr. BRYANT addressed the House. His remarks will appear hereafter in the Extentions of Remarks.]

NEWARK MEMORIAL PLAYGROUND, NEWARK, NY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. HORTON] is recognized for 5 minutes.

Mr. HORTON. Mr. Speaker, the Newark Memorial Playground in Perkins Park, Newark, NY, has dedicated on September 28 in the name of "All Newark children, past, present and future."

The initial idea for the Newark Memorial Playground originated with the Newark Business and Professional Womens Club as a need in the community. Barbara Ciuffa and Gail DeFisher suggested that this be a memorial to their sons, Christopher Ciuffa and Steve DeFisher, who had been involved in fatal accidents in Newark.

The community became involved in October of 1985. A core committee of 25 citizens organized the aspects of constructing the playground under the direction of Robert S. Leathers, an architect from Ithaca, NY.

The four coordinators were Mrs. Ciuffa, Elsie Dedrick, Linda Gross, and Connie Rogers, all members of the Newark Business and Professional Womens Club.

As an outstanding example of total cooperation in a community, nine committees were formed to handle tools, materials, food, child care, fund raising, publicity, a children's involvement committee, volunteers and dedication ceremonies.

Construction began on Wednesday, September 24 and the playground was completed on Sunday, September 28 with the final dedication at 8:30 p.m.

To all of the wonderful citizens in the Village of Newark, NY, including Mayor James Praino and Trustee Fred Pirelli, my congratulations on the completion of Newark Memorial Playground. Truly, a project completed through cooperation, enthusiasm, dedication and love of a village for its children.

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio [Ms. KAPTUR] is recognized for 5 minutes.

Ms. KAPTUR. Mr. Speaker, I was unavoidably detained in my district yesterday and therefore I missed rollcalls numbered: 478, 479, 480, 481, 482, and 483. Had I been present I would have voted "yea" on rollcall No. 478; "yea" on No. 479; "present" on No. 480; "nay" on No. 481; "yea" on No. 482; and "yea" on No. 483.

A TRIBUTE TO THE HONORABLE BOB EDGAR

The SPEAKER pro tempore (Mr. GRAY of Illinois). Under a previous order of the House, the gentleman from Iowa [Mr. BEDELL] is recognized for 5 minutes.

Mr. BEDELL. Mr. Speaker, I take this time to speak of two people. First of all, I want to thank my friend, the gentleman from Florida, CHARLIE BENNETT, who I see here. I want to thank CHARLIE BENNETT partly for the kind remarks he had about me today, but much more so I want to thank CHARLIE for the friendship he has shown me while I have been here these 12 years, for the leadership that I have seen him display while he has been here and for the great service that he has given to this great country of ours that I have been privileged to witness.

Also, Mr. Speaker, I want to take this time to speak of a friend who came to Congress with me some 12 years ago. As I came to Congress 12 years ago, I came with a group of people who I have always said were the greatest group of people that I have ever been associated with in my life. One of those persons was my friend, BOB EDGAR. As I have worked with BOB EDGAR here in Congress, I have seen him time after time come forth with an unpopular view that the leadership may not have supported and fought for that view because he believed in what he was doing.

I know of no one in the Congress who has been more of a fighter for his own belief than BOB EDGAR.

I believe that BOB EDGAR to a great extent has been the conscience of this House of Representatives as he has stood for what was right, rather than what the lobbyists might have wanted.

As I have seen BOB EDGAR fight for the environment, as I have seen BOB EDGAR fight for veterans, as I have seen BOB EDGAR fight for senior citizens, as I have seen BOB EDGAR fight for student citizens, as I have seen BOB EDGAR fight against waste in government, and indeed as I have seen BOB

EDGAR fight for whatever is in the interests of the people of this great land of ours, I have come to admire him more and more.

We will miss BOB EDGAR in this House of Representatives. Very possibly we will find him in the other House, but whether he is or whether he is not, I for one am most thankful that we have had people of his dedication serve here and that it has been my privilege to serve with people such as BOB EDGAR.

Mr. GONZALEZ. Mr. Speaker, will the gentleman yield?

Mr. BEDELL. I am glad to yield to my friend, the gentleman from Texas.

Mr. GONZALEZ. Mr. Speaker, once again I want to thank my very good friend from Iowa. I just simply want to thank him for this chance to join him in extolling the virtues, so to speak, of our colleague, Mr. EDGAR, who is a very fine example of the best in representation that our American system over and over again produces.

As the gentleman from Iowa knows, Mr. EDGAR is from a younger generation. He fulfills something that Sam Rayburn used to say about Texans. They used to ask, "Why is it that Texas produces so many of these men who come up and become national leaders in the Congress?"

He said, "Well, we pick them young, we pick them honest, we send them there and we keep them there."

He also meant that whether it was in the House or in the Senate, the good people would keep them there because they were young, they were industrious, they were efficient, they were faithful representatives of the entities and the electorate that elected them here, and therefore they were going to send them here and keep them here, whether it was in the House or in the Senate.

So I join the gentleman in wishing Godspeed to Mr. EDGAR, regardless of the outcome of the November elections.

I want to also render my testimonial to my respect for him as a very able and effective legislator.

Mr. BEDELL. Mr. Speaker, I thank the gentleman for his comments. It has been a great privilege to serve with the gentleman from Texas as well.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Maryland [Mrs. BENTLEY] is recognized for 30 minutes.

[Mrs. BENTLEY addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

CONSULTATION ON THE REFUGEE ADMISSIONS PROGRAM FOR FISCAL YEAR 1987

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey [Mr. RODINO] is recognized for 60 minutes.

Mr. RODINO. Mr. Speaker, the Refugee Act of 1980 (Public Law 96-212) requires the President to consult with Congress prior to the beginning of each fiscal year with regard to his proposals for refugee admissions for the coming year.

The consultation on the fiscal year 1987 proposals were initiated by the following communications:

U.S. COORDINATOR FOR REFUGEE AFFAIRS,
Washington, DC, September 8, 1986.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Represenatatives.

DEAR MR. CHAIRMAN: In accordance with the Refugee Act of 1980, I am pleased to transmit the President's recommendation for the Fiscal Year 1987 refugee admission ceiling in preparation for our annual consultations with the Congress.

The President's final determination on refugee admission levels and regional allocations will be made only after we have carefully considered Congressional and other views expressed during the consultation process.

Sincerely,

JONATHAN MOORE,
Ambassador at Large.

Enclosure.

THE WHITE HOUSE,
Washington, September 5, 1986.

Memorandum for: Hon. George P. Shultz, the Secretary of State.

Subject: Fiscal year 1987 Refugee Consultations.

In accordance with the Refugee Act of 1980, you are authorized to consult with the appropriate committees of the Congress on the following points:

The admission of up to 70,000 refugees to the United States during FY 1987. Of this ceiling, 66,000 would be allocated by specific region as follows: 3,500 for Africa, 32,000 for East/First Asylum, 8,500 for East Asia/Orderly Departure Program, 10,000 for Eastern Europe and the Soviet Union, 4,000 for Latin America and the Caribbean, and 8,000 for Near East and South Asia. In addition, a presently unfunded 4,000 would be reserved to meet emergency admissions; and

An additional 5,000 refugee admissions numbers which shall be made available for the adjustment to permanent resident status of aliens who have been granted asylum in the United States, as this is justified by humanitarian concerns or is otherwise in the national interest.

Further, I propose to specify that special circumstances exist such that, for the purpose of admission under the limits established above, the following persons, if they otherwise qualify for admission, may be considered refugees of special humanitarian concern to the United States even though they are still within their countries of nationality or habitual residence:

Persons in Vietnam with past or present ties to the United States, including Amerasian children; and

Present and former political prisoners, and persons in imminent danger of loss of life, and their family members, in countries of Latin America and the Caribbean.

RONALD REAGAN.

Using the two-tier consultation format as in prior years, a closed meeting was held on September 26, 1986, between the Secretary of State George Shultz and the consultative members of the Judiciary Committee, that is, the chairman and ranking members of the full committee and the Subcommittee on Immigration, Refugees and International Law.

Immediately following this closed meeting, a hearing before the full committee was held. The following officials who are responsible for the implementation of the Refugee Admissions and Resettlement Programs testified:

Ambassador Jonathan Moore, U.S. Coordinator for Refugee Affairs.

Thomas Ferguson, Deputy Commissioner, Immigration and Naturalization Service, Department of Justice.

Robert Funseth, Acting Director, Office of Refugee Programs, Department of State.

Bill Gee, Acting Director, Office of Refugee Resettlement, Department of Health and Human Services.

Alan Otto, Associate Director for Visa Service, Department of State.

There follows herewith comparative tables of refugee admissions for fiscal year 1986 and fiscal year 1987, the President's fiscal year 1987 admissions proposals by regions and relevant budget information for fiscal year 1986 and fiscal year 1987 on refugee resettlement and assistance:

U.S. REFUGEE ADMISSIONS

Area of origin	Fiscal year 1986 (estimated)		Fiscal year 1987 proposed admissions
	Authorized admissions	Estimated arrivals in the United States	
Africa	3,000	1,400	3,500
East Asia:			
First asylum countries	37,000	37,000	32,000
ODP from Vietnam	8,500	8,500	8,500
Eastern Europe and the Soviet Union	9,500	9,500	10,000
Latin America and the Caribbean	3,000	150	4,000
Near East and South Asia	6,000	6,000	8,000
Subtotal			66,000
Reserved for unanticipated refugee admissions needs			4,000
Total	67,000	62,550	70,000

AFRICA

Proposed ceiling

The proposed admissions ceiling for African refugees for FY 1987 is 3,500.

Explanation

The continued economic crisis and political oppression in Ethiopia will account for the largest group of refugees from any single African country. Because the situation in some African countries continues to be unpredictable, other refugees accepted for admission during FY 1987 will be on a case-by-case basis. An effort will be made to make U.S. refugee processing more accessible to African refugees who are not located near processing posts in Africa, or who have been stranded in Europe for several years.

EAST ASIA

Proposed ceiling

The proposed admissions ceiling for East Asian refugees for FY 1987 is 32,000 which will be allocated for Indochinese refugees in first asylum countries.

Explanation

This ceiling allows for the admission of Indochinese refugees who meet the criteria of the refugee admissions program and who have close ties to the United States. In addi-

tion, the ceiling would provide the flexibility to respond to other potential resettlement requirements in the region.

Proposed ceiling for Orderly Departure Program

A separate admissions ceiling of 8,500 is proposed for those persons departing from Vietnam under ODP.

Explanation

This number is necessary to (a) send a signal to the SRV of the importance the U.S. places on this program; (b) provide for the continuing movement of priority refugees—Amerasians, re-education camp inmates and their families, and former USG employees; and (c) be able to process applicants presented by the Vietnamese and interviewed by the UNHCR.

SOVIET UNION AND EASTERN EUROPE

Proposed ceiling

For FY 1987, the proposed admissions ceiling for refugees from the Soviet Union and other Eastern European countries is 10,000.

Explanation

Since the end of World War II, persons from Eastern Europe and the Soviet Union have been considered to be of special humanitarian concern to the United States because of the oppressive policies of the communist governments of those states. The Soviet Union permits only a very small number of dissidents and religiously committed individuals to depart legally "into exile". The only official justification for emigration acknowledged by Soviet authorities is family reunification with relatives abroad. Those who leave, however, cite abuses resulting from religious and political beliefs as their principal reasons for departure. Others who are trusted by Soviet authorities to travel abroad—such as seamen, artists, and officials—often defect while in the United States or other free countries.

Refugees from the Soviet Union admitted during FY 1987 will be principally Armenians, Jews, and a small number of other Soviet citizens, including former officials and dissidents. From Eastern Europe, Poles, Czechs and Romanians will be the principal groups considered for resettlement.

LATIN AMERICA AND CARIBBEAN

Proposed ceiling

The proposed admissions ceiling for refugees from Latin America and the Caribbean for FY 1987 is 4,000.

Explanation

The United States has long considered the admission of current and former political prisoners from Latin America as a matter of special concern. The admissions program for the region is designed to admit both current and former political prisoners and their families who have been imprisoned for engaging in political activities or for holding beliefs not favored by their governments. Their resettlement, in some cases, depends on the willingness of these governments to issue them exit permits.

The proposed admissions ceiling will permit the entry of current and former political prisoners and other persons in life-threatening situations, plus their immediate families, either directly from their homeland or from countries of first asylum provided they are not firmly resettled. In the case of Cuba, at present, only current and former long term (over ten years in prison) political prisoners and their families are eligible for processing. Virtually all of these persons will be processsed in Havana. Should Cuba terminate its suspension of the 1984 Migration Agreement with the United States, we would utilize the numbers available to admit up to 3,000 persons. A certain number of non-Cuban refugees in Latin American will receive more generous consideration for refugee admission through technical revisions to current refugee processing guidance.

NEAR EAST AND SOUTH ASIA

Proposed ceiling

The proposed admissions ceiling for refugees from the Near East and South Asia for FY 1987 is 8,000.

Explanation

Among the Afghan and Iranian refugees are some who have ties to the United States and the countries of Westen Europe. These ties include education and training in the United States and Western European countries, and associations through relationships or business with these countries. In addition there are Afghan and Iranian refugees who are urban in origin, or have been civil or military officials of the governments preceding the advent of the Soviet-installed regime in Afghanistan and the Khomeini regime in Iran.

The institutionalization of doctrinaire Shi'a religious views in the government of Iran, coupled with the arbitrary and repressive nature of Khomeini regime, has resulted in persecution of some members of other religious denominations, particularly Baha'is, Jews, and Christians. Congressional acknowledgment of persecution against these three groups led to the inclusion of Iran in the U.S. resettlement program and resettlement opportunities for Iranian religious minorities. Allowance will be made to include victims of religious persecution in other Near Eastern countries as well.

ESTIMATED COSTS OF REFUGEE MOVEMENT TO AND RESETTLEMENT IN THE UNITED STATES

[Dollars in millions]

Agency	Fiscal year 1986 program total cost	Fiscal year 1987— Arrivals: Fiscal year 1987	Arrivals: Prior	Fiscal year 1987 total
DEPARTMENT OF STATE				
Bureau for Refugee Programs:				
Voluntary agency services overseas	$15.8	$15.3	.....	$15.3
Language/orientation programs overseas	18.8	20.0	.....	20.0
Transportation loans	35.5	36.0	.....	36.0
Reception and placement agreements	35.2	37.8	.....	37.8
Subtotal	105.3	109.1	.....	109.1
DEPARTMENT OF HEALTH AND HUMAN SERVICES				
Office of Refugee Resettlement: [1]				
State administered programs	391.6	68.4	$288.1	356.5
Voluntary agency programs	3.8	1.0	.....	1.0
Preventive health	8.0	10.4	.....	10.4
Federal administration	6.1	6.1	.....	6.1
Subtotal	409.5	85.9	288.1	374.0
Other HHS [2]				
Aid to families with dependent children	61.1	.....	20.9	20.9
Medicaid	45.3	.....	9.5	9.5
Supplemental security income	9.5	5.0	5.0	10.0
Subtotal	115.9	5.0	35.4	40.4
DEPARTMENT OF AGRICULTURE [3]				
Food stamps, subtotal	125.7	.....		
Grand total	756.4	.....		

[1] Cuban/Haitian entrant funds that are appropriated for use by ORR are included.

[2] As a result of ORR's legislative proposal to switch, in fiscal year 1987, to an All-Refugee Cash and Medical Assistance Program for the first 18 months a refugee is in the country, the fiscal year 1987 cost estimates for AFDC and Medicaid cover aid only during a refugee's 19 to 36 month period.

[3] Cost estimates only for first 36 months in the United States.

U.S. CONTRIBUTIONS TO INTERNATIONAL REFUGEE SITUATIONS, FISCAL YEAR 1986 AND FISCAL YEAR 1987

	Fiscal year 1986, estimate as of August 1986	Fiscal year 1987 appropriation request
U.N. High Commissioner for Refugees [UNHCR]:		
Africa	[1] 45,600,000	43,500,000
East Asia:		
Indochinese	18,000,000	15,000,000
Order Departure Program	600,000	600,000
Latin America	11,500,000	14,000,000
Near East and South Asia: Pakistan	[2] 15,000,000	17,000,000
UNHCR subtotal	90,700,000	90,100,000
U.N. Relief and Works Agency for Palestine Refugees in the Near East [UNRWA]	67,000,000	67,000,000
Refugees resettling in Israel	11,962,000	25,000,000
International Committee of the Red Cross:		
Ordinary budget	4,500,000	4,500,000
Africa	[3] 21,850,000	14,000,000
East Asia: Khmer relief	1,500,000	1,500,000
Latin America	3,250,000	3,700,000
Near East and South Asia: Pakistan	750,000	1,000,000
Philippines	[4] 500,000	
ICRC subtotal	32,350,000	24,700,000
Other:		
Africa: Special projects	3,580,000	2,975,000
East Asia: Antipiracy	2,352,000	1,750,000
Khmer relief:		
UNBRO	9,500,000	9,500,000
Other	1,000,000	1,000,000
Latin America	1,020,000	
Intergovernmental Committee for Migration [ICM]	5,000,000	5,400,000
Other subtotal	24,702,000	23,125,000
Administration [5]	7,800,000	8,500,000
Subtotal: Refugee Program	234,514,000	238,425,000
Other Assistance: Food for Peace (Public Law 480, title II) [6]	150,000,000	150,000,000
Grand total	384,514,000	388,425,000

[1] Includes $3 million from the Emergency Refugee and Migration Assistance fund [ERMA].

[2] Does not include rupee contributions equivalent to $3.8 million for UNHCR, $725,000 for the ICRC, and $1.45 million for voluntary agencies in fiscal year 1986 and similar amounts in fiscal year 1987.

[3] Includes $8.5 million from ERMA.

[4] Includes $500,000 from ERMA.

[5] Portions of these funds are associated with the costs of the U.S. Refugee Admissions Program.

[6] Estimate as of August 13, 1986.

Upon completion of the consultation process the following letters were sent to the President of the United States expressing the views of the consultative members:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, September 30, 1986.

Hon. RONALD REAGAN,
The President
The White House, Washington, DC.

DEAR MR. PRESIDENT: We have completed the consultation process required by P.L. 96-212, the Refugee Act of 1980, with regard to your proposed refugee admissions and allocations for FY 1987, as contained in your memorandum dated September 5, 1986 to Secretary of State George P. Shultz.

We wish to advise you that we interpose no objections to the number and allocations as proposed.

We would request advance notification of the use of any of the 4,000 emergency numbers, as well as any reallocation of refugee numbers between regions. We also request to be advised of any reprogramming of funds which has an effect on refugee admissions to the United States during the fiscal year, as well as any use of funds from the Emergency Refugee and Migration Assistance Fund.

In considering your FY 1987 proposal, we urge the undertaking of renewed efforts to

broaden international cooperation in responding to worldwide refugee situations, both by seeking increased financial assistance and further resettlement opportunities from the members of the international community.

As in the past, the Committee on the Judiciary would appreciate receiving monthly reports on the progress of the FY 1987 refugee admissions program.

We are indebted to Secretary of State George Shultz, the U.S. Coordinator for Refugees Jonathan Moore, and the representatives of the Departments of State, Justice and Health and Human Services for their contributions, cooperation and assistance in the conduct of this consultative process.

We shall look foward to working with you to insure the successful implementation of the refugee program.

Sincerely,

PETER W. RODINO, Jr.,
Chairman,
Committee on the Judiciary.
ROMANO L. MAZZOLI,
Chairman,
Subcommittee on Immigration,
Refugees, and International Law.
HAMILTON FISH, Jr.,
Ranking Minority Member,
Committee on the Judiciary.
DANIEL LUNGREN,
Ranking Minority Member,
Subcommittee on Immigration
Refugees, and International Law.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, October 6, 1986.

Hon. RONALD REAGAN,
The President,
The White House, Washington, DC.

DEAR MR. PRESIDENT: Pursuant to the Fiscal Year 1987 refugee admission consultation, which was concluded September 26, 1986, there are certain matters I wish to address in this letter in order that some consideration may be given to them in the implementation of the FY 1987 program.

First of all, I am not clear on the purpose of the inclusion in your FY '87 proposal of 4,000 unfunded, un-allocated refugee numbers. No one who came before the consultative members of the House Judiciary Committee was able to cite the purpose for this request, nor was a need for these numbers substantiated in any of the proffered statements.

I, therefore, recommend that you not include these admissions in your final determination. This would result in a total ceiling of 66,000 admissions for FY 1987, a very generous and magnanimous proposal, in my judgment.

Of course, if additional refugee admissions are needed in the course of Fiscal Year 1987 because of unforeseen developments, I stand ready, under the auspice of the Refugee Act of 1980 (P.L. 96-212), to consider and consult with respect to a special request for additional numbers.

Although, I do not object to the proposed FY 1987 admissions ceiling of 66,000 and the allocation of these numbers, allow me the following observations:

The Administration's budget request for FY 1987 provided sufficient funds for 63,000 refugee admissions. Your proposal is for 66,000 refugee admissions. Yet, there is nothing in the proposal to explain how the Administration intends to fund the additional 3,000 admissions should the ceiling be reached.

The proposal for FY 1987 is again weighted heavily in favor of the Indo-Chinese refugees. Almost 50% of the 1987 refugee admissions are allocated to first asylum countries in East Asia. If the Orderly Departure Program resumes its normal course, the combined admissions level for the region would total over 60% of the numbers.

The Administration has claimed its intention is to "manage down" the Indo-Chinese program. However, there is no indication that the program is being managed down since the proposed FY 1987 numbers are virtually the same as the FY 1986 numbers.

I discussed, during the course of this year's consultation with Secretary Shultz, that $9 million in FY '86 funds were reprogrammed from refugee admissions to assistance for refugees living in first asylum countries. The result was a reduction of about some 4,500 refugee admissions in Fiscal Year 1986.

Without questioning this decision, I object to the fact that neither the Judiciary Committee nor any of its Subcommittees was ever advised of this reprogramming, nor consulted about it, nor given an opportunity to comment upon it.

I must, Mr. President, urge that the Committee be consulted in advance of major policy changes in refugee programs during Fiscal Year 1987. Otherwise, it will be very much more difficult for the Committee to explain or justify such changes when questions are raised, as they inevitably are, in the House by our colleagues.

In another vein, I urge that the African and Latin American refugee admissions programs be examined carefully and monitored to assure that the refugee guidelines are approved evenhandedly and without prejudgment. Many of our colleagues complain that foreign policy considerations lead to categorizing deserving refugees as economic migrants and refused refugee status.

As a final observation, it was suggested to the Committee during the FY '87 consultation that "there will be tangible improvements in the services received by the refugees and, especially, in the coordination of HHS-funded and state-administered social service programs." I am pleased with this optimistic prediction. However, I have heard such reports in the past and the actual improvements are hard to find. I would appreciate progress reports of any future "tangible improvements."

I wish to thank the Secretary of State, the U.S. Coordinator for Refugee Affairs and the various representatives of the Departments of State, Justice and Health and Human Services for their assistance in the 1987 consultative process.

Sincerely,

ROMANO L. MAZZOLI,
Chairman,
Subcommittee on Immigration,
Refugees and International Law.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan [Mr. SILJANDER] is recognized for 60 minutes.

[Mr. SILJANDER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

A SMALL BUSINESS AGENDA FOR THE 100TH CONGRESS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. LAFALCE] is recognized for 60 minutes.

Mr. LAFALCE. Mr. Speaker, as we approach the end of the 99th Congress, and the retirement of our distinguished colleague, PARREN MITCHELL, it is appropriate that we look to the future and consider the work that must be done by the Small Business Committee, which he chaired, in the upcoming 100th Congress. Chairman MITCHELL'S leadership and dedication will be missed, but his commitment to the small business community will be remembered and his important work on its behalf carried on.

I. THE IMPORTANCE OF THE SMALL BUSINESS COMMUNITY

Small business has been the backbone of our Nation since its inception. It is our largest employer and the principal source of growth in our economy. It employs, innovates and produces to such an extent that it has been largely responsible for making the American economy the strongest in the world.

Big business gets the headlines, but small business gets the job done, by providing jobs for over one-half of the American population, and over 45 percent of the Nation's nonagricultural work force. Stated another way, jobs provided by small business were 10 times greater than all the jobs in the Federal Government, 3 times greater than all the jobs in State and local government, or 3 times greater than the total number of jobs of the "Fortune 500". One estimate puts the number of new jobs created by small business at 80 percent of all new jobs. In 1985 employment rose 2.7 percent to a record high 110 million Americans, with growth in industries dominated by small business rising by 5.1 percent, compared to just 0.7 percent for all other industries.

Ninety-eight percent of our Nation's businesses are considered to be small businesses, over 15 million in all. Last year, these small businesses accounted for 39 percent of our gross national product—$1,400,000,000. This figure is 6 times greater than the cost of our national defense, 13 times greater than interest on the debt, 52 times greater than the cost of all our education programs. Only the United States as a whole, the Soviet Union and Japan produce more than our small business community. It is obviously crucial to all of us that small business be provided the environment it needs to prosper.

These numbers give us a sense about what small business is, and how important it is to the overall economy. The data is primarily definitional—placing numerical and verbal restraints on that segment of the economy we call small business. But these numbers do not tell us how to help small business, for what purpose and with what resources. And despite its record of achievement, the small business community does need help.

II. GOVERNMENT'S INADEQUATE RESPONSE TO SMALL BUSINESS

Given the critical importance of small business to the economy, it is ironic, indeed tragic, that the present administration continues to favor the interests of those whom Franklin Roosevelt called "the economic royalists of America who seek the control of our economy at the expense of the many small

businessmen and merchants." For example, several studies have concluded that small business received only between 10 and 20 percent of all business tax reductions under the 1981 tax cut. In 1982, while we were in the midst of a recession, the Reagan administration cut programs providing Government financial assistance to small business by more than one-third. In 1983, the administration proposed cutting this assistance an additional 30 percent and completely eliminating all direct loans to small businesses.

The assault on small business has continued. The administration has proposed the elimination of the Small Business Administration, including several of its vital programs such as the section 503 program and other credit programs that provide vital long-term financing of various kinds to small businesses. The proposed elimination of SBA's surety bond program is tantamount to an elimination of set-asides, which enable so many small businesses to grow and prosper. The administration also is seeking to sell the SBA's $12 billion loan portfolio at a fraction of its true value. The list of other small business-related functions or programs that the administration would like to eliminate is virtually as long as the number of programs themselves, including such vital activities as pollution bonds, local development funds, loan programs, disaster loans, and much, much more.

In addition to the administration's direct assault on small business programs, the economic conditions of the past several years have also undermined the strength of the small business community. The past 5 years have generally been characterized by high real interest rates, which are in real terms, 200 to 300 percent higher than the post-World War II average, an overvalued dollar, slow growth in manufacturing, declining competitiveness and skyrocketing trade deficits. Small business has had great difficulty in coping with these conditions. As a result, we have had the most business failures since the Great Depression. And 99 percent of the businesses which have failed during this period have been small businesses.

There is no doubt that the Government has been at least partially responsible for bidding up the cost of capital, which has militated economic growth. According to the President's Report on Small Business, in 1979 credit in the United States totaled $388.7 billion, of which the Federal Government absorbed $37.4 billion, or 9.6 percent, as compared to $152.7 billion or 39.3 percent for business. By 1984, total credit available was $755.6 billion, with the Federal Government taking $198.8 billion or 26 percent, with business receiving $262.4 billion, or 34.7 percent. During that same period, credit to households went from $181 billion (41.5 percent) to $249.5 billion (33 percent).

It is clear that our enormous deficits are robbing small business in two ways—by absorbing capital needed to modernize and expand business and by taking away capital from consumers to purchase more needed goods and services.

Under these circumstances, we cannot be completely sanguine that small business will be able to continue playing its traditional strong role in the future as successfully as it has done in the past.

We can no longer afford to overlook small business in favor of big business, as the current administration has done. Small business is simply too important to our economy to tolerate such indifference. We need small business now more than ever if we are to remain competitive in the world market, and maintain our standard of living which is the envy of all the world.

III. THE ROLE OF THE SMALL BUSINESS COMMITTEE

I would like to articulate what I believe is the appropriate role for the House Small Business Committee in assisting the small business community develop its full potential. The committee faces at least three imperatives in the next Congress. First, it must lead the fight to preserve and retain the SBA as an independent agency. Second, it must take the lead in devising ways to improve SBA and make it a more effective instrumentality to help small business. Finally, its greatest task will be to develop a broader vision and agenda than we have ever had before.

The Small Business Administration's activities, because of its limited resources, affect only a fraction of the small businesses of America. But all small business is directly affected by a broad range of other issues that have often not received adequate attention from the Small Business Committee. The Small Business Committee can play an increased role in formulating a broader vision and agenda by assuming an increasingly active ombudsman or oversight role in monitoring events and congressional action that impact on small business. The Small Business Committee can no longer afford the luxury of concerning itself only with those issues that have traditionally been considered "small business" ones. The committee can and should observe the actions of other committees dealing with those issues that affect small business, and work with them to insure that the small business perspective is fully presented in their deliberations. Most importantly, the committee also must provide input to the administration on issues having a small business impact. Only through such an active role will the committee be able to foster an increased awareness throughout the Congress that almost all its actions can have a direct impact on the small business community.

All this constitutes an ambitious and formidable challenge, but it must be done if the interests of small business are to be taken into account as Congress and the administration develop national policy.

A. THE NEED TO RETAIN SBA

If we are to fully utilize the resources and potential of the small business community, it must retain a powerful voice within Government circles. One of the means for increasing the productive capacity of small business has been the Small Business Administration. Since its creation in 1953, the SBA has loaned almost $40 billion to half-a-million small businesses. It has helped to create and retain millions of jobs for American workers.

If the SBA were to be abolished, hundreds of thousands of small business people would be unable to obtain financing, either directly from SBA or through its guaranteed loan program. The victims of hurricanes, floods, tornadoes and other natural calamities, 925,000 to date, would also be unable to obtain disaster loans. These and other vital programs would be lost to the American people.

Now the Reagan administration seems determined to gut this essential agency, leaving small businesses to compete both with each other, big business, and with foreign business, as best they can.

The Congress has firmly rejected the President's plan to do away with SBA, and rightly so. The SBA must remain as a permanent, independent agency of Government. This is non-negotiable. By trying to abolish it, the administration insulted the small business community, and have distracted us from the one truly important issue: the role small business can and should play in furthering economic goals.

In order to do so, small busines will need to be heard from as never before. It may even be necessary to upgrade SBA's status to Cabinet-level to accomplish this. One thing is clear, however, and that is the need to preserve a strong voice for small business at the highest levels of Government.

B. THE NEED TO IMPROVE SBA

If we are to achieve our economic goals, SBA, like everything else, cannot be immune from reform. We must take a careful look at all its programs to see which ones work and which ones do not. We also must strive to develop new and more effective approaches to assist small business in both becoming and remaining competitive.

Our commitment to small business does not mean, however, that we must continue to espouse a policy that has attempted to be all things to all small businesses. We have been employing a blunderbuss approach, hoping that if we spray the economy with enough money we may, by circumstance, hit an adequate percentage of valid targets. Consequently, critics have charged that our approach is wasteful; that it is ineffective; and that it is wrong.

We must carefully scrutinize these criticisms, and in the 100th Congress, better define what the appropriate role and mission of the SBA should be. The SBA can no longer be all things to all people. We should consider identifying those areas of the economy that are the most important to future economic growth, and marshall the proper mix of resources to promote a maximum return on the Federal investment.

Although it will be difficult from a political standpoint, we must seriously consider limiting the constituency of many of our small business programs, even though it is their broad-based approach that gives them so much support. Some sectors of the economy do not require any support or assistance from Government. They may be best served by being left alone. Still other sectors simply are not critical enough to society to entitle them to call on public resources for assistance. We should not ignore any segment of the economy. However, we also must not treat all segments as if they were the same. Only through such a discerning approach can we develop a truly effective policy toward small business.

The debate which we must have during the next Congress on small business issues

cannot confine itself to self-congratulatory messages, but must deal in a constructive way with the many criticisms that have been levied at small business programs in the past, some of which may be valid. SBA does need to be improved.

1. THE TARGETING DEBATE

One area which clearly requires careful scrutiny is SBA's multibillion dollar loan program which is not targeted to any particular segment of the economy. According to OMB, in fiscal year 1984, 15 percent of SBA loans were made to bars, restaurants, liquor stores, travel lodging and entertainment establishments; another 6.9 percent went to doctors, lawyers and other professionals; and 8.4 percent to car dealers and automotive service/sales establishments. Between 1978 and 1984, according to OMB, SBA advanced $1.8 billion in credit to restaurants; $300 million to bars, liquor and tobacco stores; $233 million to country clubs, tennis and golf clubs, pool halls and bowling alleys; $1 billion to gas stations, car washes and auto dealers; and $750 million to doctors, dentists, and other medical practitioners.

There is no doubt that SBA loans have helped to develop profitable businesses in sunrise industries and have helped promote competition in areas of the economy that may have been overly concentrated. However, these events have been fortuitous. The random allocation of credit may occasionally hit its targets, but it is also extremely wasteful.

In the next Congress we must review the Small Business Act, and begin the debate on whether SBA needs to be restructured to make it more attuned to the economic realities of today than that of the fifties. As part of these deliberations, we must determine whether we can afford to scatter resources needlessly on an endless array of industries that either do not need assistance to be competitive, or should not receive it because they are incapable of reciprocating with anything of greater value for the economy.

The debate must assess which industries, if any, should be targeted for assistance and under what criteria. Should assistance be limited only to businesses that are in growth industries or should we attempt to shore up declining ones? Should we target our assistance to socio-economically disadvantaged groups or to concerns that can make a contribution to the revitalization of a depressed area or rely on traditional economic considerations in determining which groups will receive assistance, or continue with our past blunderbuss approach? These priorities must be fully debated in the next Congress.

The debate on targeting should not, however, be confined solely to SBA's loan program. Under present law, SBA provides management and technical assistance on a first-come, first-serve basis regardless of whether the small business is in a concentrated industry or is only, for example, one restaurant in a block surrounded by three other similar small business entities. We must consider whether management and technical assistance should be targeted, and whether SBA should subsidize one small business to compete with another in industries that are already highly competitive.

2. PRIVATIZATION

The debate on privatization, which has occupied a considerable amount of time in this Congress, will continue on in the next. We must look at all programs with an open mind in order to determine which ones should continue to be the responsibility of Government, and which more appropriately may be carried on by the private sector.

This year the Small Business Committee favorably reported a bill to create a Corporation for Small Business Investment (COSBI) to finance small business investment companies presently licensed under the Small Business Investment Act. The purpose of the COSBI bill was, among other things, to provide that SBIC's would be financed solely through private commercial markets rather than through public financing mechanisms.

Government should not perform functions that more properly belong in the private sector. Of course, what properly belongs in the private or public sector is the subject of legitimate debate. We must guard, however, against being caught up in the wake of a popular euphemism. "Privatization" is not the solution for all problems confronting Government. We need to proceed at a deliberate pace, guided not by ideology but by results. If privatizing programs is the most effective means to accomplish our policy goals, fine; if not, we need to pursue other alternatives, even if it means a more direct Government involvement. The COSBI legislation, which the committee should take up again in the next Congress, offers one excellent vehicle around which to structure a portion of this debate, which can lead to a more effective, fine-tuned SBA.

C. THE NEED FOR A BROADER VISION AND AGENDA: THE SMALL BUSINESS COMMITTEE AS OMBUDSMAN

Small business is not just another special interest group promoting its own agenda. Rather, it is a microcosm of America itself. It must be concerned with the broadest range of issues, from balancing the Federal budget to tax reform, from education to immigration, because small business is affected by developments in all of these areas.

When the Federal Government incurs huge budget deficits that drive up the cost of capital and result in cuts in needed domestic programs, all Americans, including small business, feel the pinch. When we adopt a tax system that favors certain select corporations or puts an undue burden on employees, the economy, and most especially the small business sector, suffers. When we allow America's competitive position to deteriorate and huge trade deficits to accumulate, small business feels the pain. When we tolerate an educational system that cannot produce a trained and literate work force, small business is adversely affected.

Virtually every major issue confronting our society affects small business, and if small business is affected, so is the country. It should be the responsibility of the House Small Business Committee acting in its ombudsman capacity to address these issues in such a way as to enable the small business community to develop its fullest potential.

1. THE WHITE HOUSE CONFERENCE ON SMALL BUSINESS

The concerns of small business are so broad that I cannot possibly hope to discuss them all here. In reviewing issues that will be important to small business during the 100th Congress, it is appropriate that we consider the recommendations of the recently concluded White House Conference on Small Business held between August 17 to 21 of this year.

Preliminary to the national meeting held in August, 63 State and regional meetings were held, beginning in August 1985. A total of 1,823 delegates, 1,128 of whom were elected at the various State meetings attended. The remaining delegates were appointed by the President, Members of Congress, and Governors.

Of the thousands of recommendations made, only the top 60 were presented to the Congress and the President for their consideration. Each of these recommendations should, of course, be thoroughly evaluated during the next Congress. The top five recommendations dealt with liability insurance, employee benefits, unfair competition with nonprofits, deficit reduction, and international trade.

The specific recommendations of the White House Conference should not, however, set the boundaries for all future consideration of small business issues. There are other major initiatives, not all of which are traditional "small business" issues, that the Congress must consider in addition to those specifically suggested by the delegates.

2. THE LIABILITY INSURANCE CRISIS AND TORT REFORM

According to the White House Conference on Small Business, the issue of greatest concern to small business people is the liability insurance crisis. Many individuals, small businesses, professionals, communities, and other entities have had trouble obtaining reasonably priced insurance, and some have been unable to get any insurance at all. Insurance is required by law for most businesses, and is a necessary protection against unexpected losses. Without it, business cannot function. And when it is too expensive, as it has become, businesses must face the choice of either going out of business, or becoming noncompetitive.

In 1977-78, as a chairman of a Small Business Subcommittee, I held 19 days of hearings on the product liability insurance crisis that was taking place at that time. During this past year, my Economic Stabilization Subcommittee has held extensive hearings on this latest crisis, and we have made some progress in determining the actual causes of the crisis. But, this is one of the most complex issues that confronts our society, and much more work needs to be done. It is particularly important that the Small Business Committee also turn its attention once again to this issue.

Whether the crisis has been caused by a litigation explosion and unjust jury verdicts or by the financial practices of the insurance industry itself, it is clear that small business cannot tolerate such dramatic swings in the insurance cycle. We need to review the McCarran-Ferguson Act of 1945, as it relates to State regulation of insurance and the insur-

ance industry's limited exemption from antitrust laws, in order to determine whether this situation has led to inadequate competition and insufficient capacity within the insurance industry. We also need to carefully assess the adequacy of State regulation in order to determine whether some regulation at the Federal level could alleviate the crisis. Finally, we must assess the various proposals for tort reform, both as to their intrinsic merits and as to whether they will contribute to a resolution on the liability insurance crisis.

3. GOVERNMENT-IMPOSED BURDENS ON SMALL BUSINESS

The small business community has constantly brought to our attention the great burdens that many Government-imposed programs impose upon it. Small businesses correctly note that what may prove to be at most a minor inconvenience for large concerns, can put a smaller company, literally, out of business. Among the areas which are of greatest concern to small business are federally mandated fringe benefits, and the payroll tax.

THE PAYROLL TAX

One issue which places a severe burden on small business and deserves careful consideration in the next Congress is the payroll tax. This is a tremendously regressive tax, which also penalizes employment. The payroll tax now funds several programs that should be paid for out of general revenues. And to do so requires a very steep tax that may well be eroding the ability of many small businesses to create new jobs. If so, then we should seriously consider initiating the next great round of tax reform, which will move us away from what I believe to be both a regressive and economically counterproductive levy.

LEAVE POLICY

The next Congress will undoubtedly take up once again the Family and Medical Leave Act, which would require most public and private employers to grant their workers unpaid family leave under certain conditions. This legislation has engendered tremendous opposition from small business.

The United States is the only country in the industrialized world without some form of job-protected leave policy. However, one cannot reasonably expect a small business to offer the same type of benefits as a large corporation. For this reason, certain exceptions must be made to what otherwise is a socially desirable policy. The exact dimensions of this exception will continue, however, to be subject to vigorous debate. The present version of the bill exempts completely employers with fewer than 15 employees. Others maintain that rather than a numerical cutoff, all companies that constitute a small business under the definitions contained in the Small Business Act should be exempt. Regardless of the precise method chosen, the legislation should, to the maximum extent possible, strike a balance between the social goals which it seeks to achieve and the unique and special circumstances of small business.

4. FEDERAL PROCUREMENT POLICY AND SMALL BUSINESS

SMALL BUSINESS' FAIR SHARE

A 1982 Presidential Report on the State of Small Business observed that "The success of the American economy is critically dependent upon preservation of real opportunity for small business." Historically, one way that the Federal Government has sought to ensure such opportunities is through its own procurement policies. The administration has been notably reluctant to fully embrace set-aside programs designed to assist small business and minority-owned concerns. Rather, it is the administration's position that the Government should remain neutral in the competition between big and small business.

Small business views the situation quite differently, however. For example, even though 98 percent of all U.S. firms are classified as small businesses, they receive less than 20 percent of total Federal purchases. Small minority-owned firms receive less than 4 percent of the Federal procurement budget. The 2 percent that are classified as large businesses receive over 80 percent of the total procurement budget.

The debate on whether procurement programs to small business constitute an inefficient subsidy that ought to be eliminated or a necessary commitment to a vital sector of our economy that can get the job done will continue in the next Congress. Indeed, the small business community does not accept the administration's premise that it already is receiving too much assistance, but will be arguing for a "bigger slice of the pie," which translates into proposals to target a percentage of the Federal procurement budget equal to small business' contribution to GNP to small businesses.

FAIR TREATMENT OF SMALL BUSINESS CONTRACTORS

Small business cannot, however, be expected to assume a greater role in providing services to the Federal Government unless we first remove many of the needless burdens that have made contracting with the Federal Government hazardous to their financial health.

In 1982, Congress passed the Prompt Payment Act in an attempt to insure that the Government would pay its bills on time. This legislation was particularly important to small businesses, which do not have the financial capacity to withstand the abnormal delays in payment that often accompany doing business with the Federal Government. Generally, unless the contract specifies otherwise, this law requires the Government to pay for contracted goods or services within 30 days after receiving a proper invoice or after accepting goods and services, whichever is alter. If payment is not made, the Federal Government is imposed an interest charge 15 days after the due date.

The General Accounting Office has just issued a report critical of the implementation of this act. According to the report, the Government is clearly violating the statute. For example, during the period of May 1, 1985 and August 31, 1985, GAO found that Federal agencies were late in paying 24 percent of their commercial invoices, totaling $7.7 billion. Moreover, GAO estimates that these agencies paid only one out of every six late payment interest penalties owed to the vendors. GAO also found that small payments were far more likely to be late than large ones. Given this situation, it is little wonder that many small businesses simply refuse to do business with the Federal Government, a situation which decreases competition, drives up prices, and increases the concentration of the Federal procurement dollar in the hands of fewer and fewer large businesses.

BID PROTESTS

The Small Business Committee may have to legislate a new bid protest system as a result of the Supreme Court's recent decision striking down Gramm-Rudman on separation of powers grounds. Under the Competition in Contracting Act, interested parties may file bid protests within GAO. The statute gives GAO authority to adjudicate the dispute and issue a decision containing a recommended course of action to the agency.

While the recommendation is not binding on the agency, the law does contain some mandatory time delays pending GAO resolution of the protest. This provision, like Gramm-Rudman, has also been challenged on separation of powers grounds, and the Supreme Court is expected to resolve the matter this term.

Even if the Supreme Court does not strike down the mandatory "wait" provision, it is becoming increasingly apparent that the system needs careful review. Serious questions arise from both a philosophical and constitutional perspective regarding the appropriateness of the legislative branch, that is, GAO, adjudicating disputes between executive branch agencies and private parties. Moreover, it is integral to the concept of dispute resolution that the adjudicator have the authority to order appropriate remedial measures. Since GAO lacks the constitutional authority to order executive branch employees to take or not take action, serious questions arise regarding whether it is an appropriate forum for resolving such disputes.

It will be up to the Small Business Committee, working with the administration and other appropriate committees of the Congress, to review these issues, and fashion a workable and fair system to adjudicate and resolve bid protests.

5. COMPETITIVENESS AND SMALL BUSINESS

I would now like to turn to another area of critical concern to the economic well-being of small business, an area in which congressional action is clearly called for. That is the competitiveness question as it relates to small business. It includes competition between small businesses, competition between small and large businesses, and increasingly in these times, competition with foreign business.

The trade deficit between the United States and its foreign competitors reached a record high $150 billion in 1985, and will probably top $200 billion by the end of this year. This problem has had a great impact on small businesses, many of which do not have the financial wherewithal to withstand the competition that they face from foreign competitors. Many of our foreign competitors not only engage in unfair trading practices, but are the direct beneficiaries of their countries' industrial competitiveness strategies, a benefit which we have been unable to confer upon our small businesses.

The Reagan administration's obsession with huge defense budgets, financed by borrowed money, exacerbates this serious problem. Cut-

ting government programs designed to encourage the growth of small business in a quixotic attempt to balance the budget will do more economic harm than good in the long run.

Everyone agrees that reduction of the deficit is critical to the future economic health of American business. Business, labor, and many public officials are also coming to the conclusion that we must have a coherent and rational industrial competitiveness strategy if we are to preserve and enhance our economic well-being. Increasing the ability of small business to continue innovating, growing, and competing with foreign companies should be a central element of this industrial competitiveness strategy.

In order to do so, we must pursue a variety of options. Federal research and commercial innovation programs must be expanded. We also require a more focused Federal effort to disseminate information regarding business opportunties, increase export financing, improve education and training, facilitate trade missions, and upgrade other essential functions of international trade. Small business can and must play an important role in resolving our international trading difficulties and in restoring our international competitiveness. To accomplish this, in the next Congress, the Small Business Committee should examine those problem areas that most directly impact upon our competitiveness.

CAPITAL FORMATION AND RETENTION VEHICLES

Many small businesses need venture capital just to get started. Small businesses find it especially difficult to obtain long-term credit and capital. Because of the perceived uncertainties and risks associated with smaller businesses, access to the long-term bank credit, bond and equity markets is severely constrained. According to the GAO, up to 40 percent of banks' long-term lending to small businesses carry an SBA guarantee, a clear indicator that long-term credit, like liability insurance, may be another commodity that is simply unavailable to small business.

Private loans to small business clearly need encouragement, and recent legislation in Congress has provided that. Between March and December of 1984, the dollar total of commercial and industrial loans by federally insured savings and loan associations increased from $4.5 billion to $11.3 billion. This is a healthy trend which should continue to stimulate the formation and growth of small businesses.

After overcoming the initial problems of formation, successful small businesses need to expand, and to acquire new or larger physical plants to accommodate that expansion. However, it is often extremely difficult for small businesses, even successful ones, to obtain affordable mortgages, without which growth is held back.

I have proposed the creation of a Federal Industrial Mortgage Association, which would create an active secondary market for industrial mortgage loans to small- and medium-sized companies. The association would purchase loans to small businesses held by commercial banks, package them into pools, and sell shares in the pools to private institutional investors. The banks which originated the loans would continue to service them, but would not need to hold them in their own portfolios.

Such a market would stimulate long-term loans from commercial banks to small- and medium-sized businesses, without involving the Government in judgments of credit risks or decisions as to which firms to finance. Growth and the pursuit of innovative ideas would be well served by such a plan. Indeed, given the great success of the secondary market in the real estate area, there is no excuse for not establishing a similar vehicle for industrial loans.

An analogous program, which is already in place and greatly benefits small business is administered by the Small Business Administration, is the section 503 program. Although the Reagan administration would like to abolish it, this program provides critical long-term financing to various types of small businesses. The program represents a true Government-business partnership, providing funds at reasonable interest rates to new or existing business ventures, particularly in depressed economic areas. It has, to date, raised close to a billion dollars, coupled with more than another billion in private funding, to revitalize both urban and rural areas, and it needs to be preserved and strengthened, not eliminated.

TECHNOLOGICAL INNOVATION

In setting the small business agenda for the 100th Congress, the importance of promoting technological innovation cannot be overstated. Innovation is the product of research and development and is the key to economic growth. It creates new products for domestic and international trade, generates new jobs, and increases tax revenue. Realization of these economic benefits is faster and more effective when innovation occurs in small business. The encouragement of small business innovation should be one of our top economic priorities.

The entrepreneurial spirit that characterizes many small businesses has produced a disproportionate number of the technological innovations that have enabled the United States to become a world leader. For example, small businesses and individuals have produced half of the most significant new industrial products and processes since World War II. This feat was accomplished with barely 3 percent of the total funds spend in the United States during this period on research and development.

In this high-technology era, technological innovation is the key to competitiveness, and we must do all that we can to promote it. Unfortunately, lack of funding results in a lack of innovative research, and nowhere is the rate of decline in innovation and productivity of American business in recent years more dramatically illustrated than in high technology areas.

Recent legislation has attempted to stimulate innovation in two ways: First, by increasing the participation of small business in federally funded R&D and, second, by encouraging the commercial application of inventions occurring during the performance of such R&D. Efforts toward these goals must be sustained and increased. Small business receives approximately 19 percent of the Federal procurement dollar, but for R&D, the figure is much lower, only 3 percent.

In an effort to address this problem, in 1982 Congress passed the Small Business Innovation Development Act, which was recently reauthorized through 1993. Its purpose is to stimulate technological innovation, and to not simply allow, but to encourage the participation of small business in research and development programs by setting aside a percentage of the annual Federal R&D budget for this purpose. The program has had some measure of success, extending awards to companies in 47 States and the District of Columbia. But more needs to be done.

In 1985 the small business share of R&D procurement funds increased by 0.5 percent. But 3.5 percent is still an indefensibly low figure in light of the outstanding contribution small business makes to innovation. Legislation may be needed in the next Congress to encourage R&D set-asides to achieve a more reasonable utilization level for small innovative firms.

THE DISSEMINATION OF TECHNOLOGY: "THE FEDERAL INDUSTRIAL EXTENSION SERVICE"

Although money is required to fund research and development, the application of new information is equally important in developing new, commercially viable technologies. In rapidly developing technical fields, the need for dissemination of the most current information assumes a particularly important dimension. Regrettably, this needed dissemination of information is often not forthcoming, with negative consequences for the * * *.

To remedy this problem of dissemination, we should consider the creation of a Federal Industrial Extension Service, which could possibly be housed within SBA. The Service could be essentially State-operated, with Federal leadership and assistance, and could help bring together those who are developing new technology with those who can apply it to industry.

Other nations have recognized the critical importance of technological diffusion. Japan, for example, monitors new technological developments around the world and attempts to quickly adopt new ideas where appropriate. Such a diffusion of innovation would be a low-cost way for the United States to improve productivity, keep up with our international competitors, and reduce imbalances among different social sectors.

GOVERNMENT DISINCENTIVES TO INNOVATION

Legislation enacted in the 96th Congress encouraged innovation by permitting small businesses and nonprofits to retain patent rights to inventions arising during the performance of a Government contract. Recent changes in procurement policies may, however, be jeopardizing this program by reversing longstanding practices regarding contractor rights in technical data.

In some instances, contractors are being required to relinquish rights in data, even those developed at considerable private expense, as the price of doing business with the Government. From the Government's perspective, broad dissemination of data enables it to avoid sole sourcing and to encourage competition. Yet, without protection of these valuable rights, commercialization is discouraged.

Congress must carefully consider this issue and devise a policy which balances the Government's interest with those of the contractor. The overzealous confiscation of rights can create a disastrous disincentive to innovation and cause the mass exodus from Government

procurement of the most productive and innovative sector of our industrial resource base. Such a situation would not serve to promote competition in Government contracting, and the Small Business Committee should make it a top priority to carefully scrutinize propsed acquisition regulations relating to rights in data.

The Government's new interest in obtaining rights to technical data must also be considered in light of the 30,000 Government-owned patents that are simply gathering dust on agency shelves. When the Government takes proprietary rights to inventions that arise during contract performance, commercialization rarely occurs. Less than 4 percent of Government-owned patents are successfully commercialized, forfeiting much of the benefits of our R&D programs.

We must find a way to encourage the transfer of Government-held technology to the marketplace. An investigation into the operations and policies of our research-intensive agencies and national laboratories is needed if we are to reap commercial benefit from billions of dollars in Government R&D expenditures.

Increased patent fees also continue to present a problem to small business and an obstacle to achieving the greatest amount of technological innovation possible. Because of the burdens caused by the highest patent fees in history, many small businesses and independent inventors have had to abandon patents with clear commercial potential. The present 50-percent reduction in fees for small business should be made a permanent part of the patent statute, and consideration should be given to altering this new fee system to delay massive upfront charges until the commercial value potential of the patent can be assessed. Fees should be paid out of accruing profits rather than penalizing the inventor by taxing his or her creative efforts.

IV. CONCLUSION

These, and many other issues that affect small business will have to be addressed in the next Congress. The outcome of these deliberations will determine the prospects for the small businesses of America, and in turn, the prospects for all of us, whether or not we have any direct involvement with small business.

John F. Kennedy pledged to "strengthen the cause of the small businessmen who are threatened to be crowded out from the American economic scene and who constitute an historic cornerstone of our free enterprise system."

We need to renew President Kennedy's pledge with special vigor, because the challenges facing our small businesses today are more varied and stronger than at any other time in our history.

We are at a crossroads in the economic history of this Nation. Many of our leading basic industries are no longer capable of competing in the global marketplace. We are becoming increasingly dependent upon imports to preserve the quality of American life and are witnessing the incessant gravitation of the factors of production into fewer and fewer hands.

Small business has become, in great measure, a forgotten character in this larger scheme of macroeconomic concerns. We have forgotten our historic origins, and instead, have come to rely on big business and big government to solve our problems. Our attempts to assist small business have been directed primarily at political efforts to disseminate a finite amount of program resources over the widest constituency possible. We must reevaluate our goals and design new, more cost-effective ways to achieve them.

Small business is not simply another problem that must be addressed when we speak about our economic difficulties. Small business can be the solution to many of those problems, leading the way with innovation, resourcefulness, and responsiveness unmatched by both big business and big government.

To a great extent, the destiny of our Nation is the destiny of small business. I look forward to the 100th Congress and the opportunity as a member of the Small Business Committee to bring this revolution of ideas into being.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. ACKERMAN (at the request of Mr. WRIGHT), for today after 1 p.m., on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. WALKER) to revise and extend their remarks and include extraneous material:)

Mr. PACKARD, for 5 minutes, today.
Mr. LENT, for 5 minutes, today.
Mr. BARTON of Texas, for 5 minutes, today.
Mr. MOLINARI, for 5 minutes, today.
Mr. HORTON, for 5 minutes, today.

(The following Members (at the request of Mr. GRAY of Illinois) to revise and extend their remarks and include extraneous material:)

Mrs. KENNELLY, for 5 minutes, today.
Mr. ANNUNZIO, for 5 minutes, today.
Mr. OBERSTAR, for 5 minutes, today.
Mr. PANETTA, for 5 minutes, today.
Mr. BRYANT, for 5 minutes, today.
Ms. KAPTUR, for 5 minutes, today.
Mr. BEDELL, for 5 minutes, today.
Mr. RODINO, for 60 minutes, today.
Mr. LAFALCE, for 60 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. JEFFORDS, immediately before the vote on H.R. 598 in the House today.

Mr. REGULA, during debate of H.R. 5300, in the House, today.

Mr. AKAKA, on House Joint Resolution 738, in the House today.

(The following Members (at the request of Mr. WALKER) and to include extraneous matter:)

Mr. WHITEHURST.
Mr. MOLINARI.
Mr. GILMAN in 10 instances.
Mr. CHENEY.
Mr. PORTER.
Mr. MOORHEAD.
Mr. COURTER.
Mr. DORNAN of California in two instances.
Mr. LOEFFLER.
Mr. JEFFORDS in three instances.
Mrs. BENTLEY in two instances.
Mr. CONTE in two instances.
Mr. HANSEN.
Mr. RITTER.
Mr. KEMP in two instances.
Mr. MADIGAN.
Mr. BARTON of Texas in two instances.
Mr. EMERSON in five instances.
Mr. IRELAND.
Miss SCHNEIDER.
Mr. GINGRICH.
Mr. LAGOMARSINO.
Mr. SAXTON.
Mr. BEREUTER in two instances.
Mr. MILLER of Ohio.
Mr. MCEWEN.
Mr. KOLBE.
Mr. RIDGE.
Mr. RITTER in two instances.
Mr. DAVIS.

(The following Members (at the request of Mr. GRAY of Illinois) and to include extraneous matter:)

Mr. UDALL.
Mr. BATES.
Mr. FAUNTROY.
Mr. EDGAR.
Mr. APPLEGATE in two instances.
Mr. LEVINE of California in two instances.
Mr. LAFALCE in six instances.
Mr. RODINO.
Mr. FASCELL in five instances.
Mr. FLORIO in two instances.
Mr. MARKEY.
Mr. STARK in seven instances.
Mr. VENTO in two instances.
Mr. BRYANT in two instances.
Mrs. BOXER in two instances.
Mr. MORRISON of Connecticut.
Mr. MURTHA.
Mr. STARK.
Mr. LEHMAN of Florida.
Mr. CLAY.
Mr. ORTIZ.
Mrs. BOGGS.
Mr. HAWKINS.
Mr. ROYBAL.
Mr. ACKERMAN.
Ms. OAKAR.
Mr. RICHARDSON in two instances.
Mr. DYMALLY in two instances.
Mr. FAZIO in 10 instances.
Mr. HAMILTON in two instances.
Mr. FEIGHAN.
Mr. VENTO in two instances.
Mr. CARR.
Mr. LELAND.
Mr. BARNES.

Mr. LEHMAN of California.
Mr. BONKER in two instances.
Mr. THOMAS of Georgia.
Mr. WOLPE.
Mr. KOSTMAYER.
Mr. DYSON.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 2260. An act to settle certain claims arising out of activities on the Pine Ridge Indian Reservation; to the Committee on the Judiciary.

ENROLLED BILLS SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 1390. An act to authorize additional long term leases in the El Portal administrative site adjacent to Yosemite National Park. CA, and for other purposes;

H.R. 2826. An act to amend the Wild and Scenic Rivers Act by designating a segment of the Horse-pasture River in the State of North Carolina as a component of the National Wild and Scenic Rivers System;

H.R. 3578. An act to provide permanent authority for hearing commissioners in the District of Columbia courts, to modify certain procedures of the District of Columbia Judicial Nomination Commission and the District of Columbia Commission on Judicial Disabilities and Tenure, and for other purposes;

H.R. 3614. An act to restrict the use of Government vehicles for transportation of officers and employees of the Federal Government between their residences and places of employment, and for other purposes;

H.R. 4873. An act to authorize certain transfers affecting the Pueblo of Santa Ana in New Mexico, and for other purposes;

H.R. 5056. An act to permit registered public utility holding companies to own certain interests in qualifying cogeneration facilities;

H.R. 5496. An act to designate certain National Forest System lands in the State of Georgia to the National Wilderness Preservation System, and for other purposes; and

H.R. 5598. An act to provide for the transfer of the Coast Guard cutter *Taney* to the city of Baltimore, MD, for use as a maritime museum and display.

SENATE ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The SPEAKER announced his signature to enrolled bills and joint resolutions of the Senate of the following titles:

S. 197. An act for the relief of Elga Bouilliant-Linet;

S. 475. An act to amend section 408 of the Motor Vehicle Information and Cost Savings Act to strengthen, for the protection of consumers, the provisions respecting disclosure of motor vehicle mileage when motor vehicles are transferred,

S. 1082. An act granting the consent of Congress to the Arkansas-Mississippi Great River Bridge Construction Compact,

S. 1352. An act to enhance the carrying out of fish and wildlife conservation and natural resource management programs on military reservations, and for other purposes,

S. 1562. An act to amend title 31, United States Code, with respect to the fraudulent use of public property or money,

S. 2129. An act to amend the Product Liability Risk Retention Act of 1981 to include coverage of other lines of liability insurance, and for other purposes,

S. 2320. An act to amend an act to add certain lands on the Island of Hawaii to Hawaii Volcanoes National Park, and for other purposes,

S. 2370. An act to authorize the Francis Scott Key Park Foundation, Inc. to erect a memorial in the District of Columbia,

S. 2914. An act to extend through fiscal year 1988 SBA Pilot Programs under section 8 of the Small Business Act,

S.J. Res. 339. Joint resolution to designate the week of November 30, 1986, through December 6, 1986, as "National Home Care Week",

S.J. Res. 352. Joint resolution to designate the week beginning October 19, 1986, as "Gaucher's Disease Awareness Week",

S.J. Res. 407. Joint resolution designating November 12, 1986, as "Salute to School Volunteers Day"; and

S.J. Res. 422. Joint resolution commemorating the 100th anniversary of the birth of the first Prime Minister of the State of Israel, David Ben-Gurion.

BILLS AND JOINT RESOLUTION PRESENTED TO THE PRESIDENT

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee did on the following day present to the President, for his approval, bills, and joint resolution of the House of the following title:

H.R. 3352. An act to transfer certain real property to the City of Mesquite, NV;

H.R. 4175. An act to authorize appropriations for fiscal year 1987 for certain maritime programs of the Department of Transportation and the Federal Maritime Commission;

H.R. 3113. An act to implement the Coordinated Operations Agreement, the Suisun Marsh Preservation Agreement, and to amend the Small Reclamation Project Act of 1956, as amended, and for other purposes;

H.R. 2067. An act to validate conveyances of certain lands in the State of California that form part of the right-of-way granted by the United States to the Central Pacific Railway Co.;

H.R. 2032. An act entitled the Government Securities Act of 1986;

H.R. 2205. An act to authorize the erection of a memorial on Federal land in the District of Columbia and its environs to honor members of the Armed Forces of the United States who served in the Korean war;

H.R. 2722. An act to amend title 13, United States Code, to eliminate the requirement relating to decennial censuses of drainage;

H.R. 2921. An act to authorize the Secretary of Agriculture to issue permanent easements for water conveyance systems in order to resolve title claims arising under acts repealed by the Federal Land Policy and Management Act of 1976, and for other purposes;

H.R. 3559. An act to amend the act establishing a Commission on the Bicentennial of the Constitution of the United States to clarify the status of employees of the Commission, to raise the limits on private contributions, and for other purposes;

H.R. 4116. An act to extend and improve the Domestic Volunteer Service Act of 1973;

H.R. 4354. An act to authorize appropriations to the Secretary of Commerce for the programs of the National Bureau of Standards for fiscal year 1987, and for other purposes;

H.R. 5299. An act to amend title 38, United States Code, to increase the rates of compensation and dependency and indemnity compensation for veterans and survivors, and to improve veterans' health-care, education, employment, housing, and national cemetery programs, and for other purposes; and

H.J. Res. 753. Joint resolution making further continuing appropriations for the fiscal year ending September 30, 1987, and for other purposes.

ADJOURNMENT

Mr. BEDELL. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 14 minutes p.m.), the House adjourned until tomorrow, Saturday, October 18, 1986, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4342. A letter from the Chairman, Joint Chiefs of Staff, Department of Defense, transmitting an assessment of the military implications of the U.S. decision to no longer comply with strategic offensive arms limitation agreements; to the Committee on Armed Services.

4343. A letter from the Chairman, Federal Home Loan Bank Board, transmitting a copy of the Board's 1985 annual report, pursuant to 12 U.S.C. 1437(b); to the Committee on Banking, Finance and Urban Affairs.

4344. A letter from the Chairman, Council of the District of Columbia, transmitting D.C. Act 6-216, Rental Housing Act of 1985 Leased Condominiums Clarification Amendment Act of 1986, and report, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on the District of Columbia.

4345. A letter from the Chairman, Council of the District of Columbia, transmitting D.C. Act 6-209, D.C. Retirement Reform Administrative Exemptions Amendment Act of 1986, and report, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on the District of Columbia.

4346. A letter from the Chairman, Council of the District of Columbia, transmitting D.C. Act 6-210, District-WMATA Land Conveyance Act of 1986, and report, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on the District of Columbia.

4347. A letter from the Chairman, Council of the District of Columbia, transmitting D.C. Act 6-212, D.C. Child Support Enforce-

ment Amendment Act of 1986, and report, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on the District of Columbia.

4348. A letter from the Chairman, Council of the District of Columbia, transmitting D.C. Act 6-211, Hacker's License Record Keeping Amendment Act of 1986, and report, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on the District of Columbia.

4349. A letter from the Chairman, Council of the District of Columbia, transmitting D.C. Act 6-208, D.C. Government Pay Equity and Training Act of 1986, and report, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on the District of Columbia.

4350. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting notification of the proposed issuance of an export license for the export of defense articles and defense services to the Government of Saudi Arabia (Transmittal No. MC-47-48), pursuant to 22 U.S.C. 2776(c); to the Committee on Foreign Affairs.

4351. A letter from the Secretary of State transmitting the semiannual reports for the period October 1985-March 1986 listing voluntary contributions made by the U.S. Government to international organizations, pursuant to 22 U.S.C. 2226(b)(1); to the Committee on Foreign Affairs.

4352. A letter from the Deputy Secretary of Transportation, transmitting a draft of proposed legislation to authorize the use of currently apportioned highway trust funds for various highway projects; to the Committe on Public Works and Transportation.

4353. A letter from the Administrator, Environmental Protection Agency, transmitting a copy of a final rule on reportable quality adjustments, pursuant to 42 U.S.C. 9655(a); jointly to the Committee on Energy and Commerce and Public Works and Transportation.

4354. A letter from the Chairman, Nuclear Regulatory Commission, transmitting a report on abnormal occurrences at licensed nuclear facilities for the first calendar quarter of 1986, pursuant to Public Law 93-438, section 208; jointly to the Committees on Interior and Insular Affairs and Energy and Commerce.

4355. A letter from the Railroad Retirement Board, transmitting the budget request for fiscal year 1988, pursuant to 45 U.S.C. 231f (Public Law 93-445, title I, section 7(f) (97 Stat. 436)); jointly to the Committees on Energy and Commerce, Ways and Means, and Appropriations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. GRAY of Pennsylvania: Committee of conference. Conference report on H.R. 5300 (Rept. 99-1012). Ordered to be printed.

Mr. HOWARD: Committee of conference. Conference report on H.R. 6 (Rept. 99-1013). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. WRIGHT:

H.R. 5729. A bill to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes; jointly, to the Committees on Agriculture; Armed Services; Banking, Finance and Urban Affairs; Education and Labor; Energy and Commerce; Foreign Affairs; Government Operations; Interior and Insular Affairs; the Judiciary; Merchant Marine and Fisheries; Post Office and Civil Service; Public Works and Transportation; Veterans' Affairs; and Ways and Means.

By Mr. YOUNG of Alaska:

H.R. 5730. A bill to provide for a land exchange in the State of Alaska; to the Committee on Interior and Insular Affairs.

By Mr. BENNETT:

H.R. 5731. A bill to amend section 4101(f) of title 38, U.S. Code, with respect to the designation of certain Veterans' Administration outpatient clinics as centers of geriatric research, education, and clinical activities; to the Committee on Veterans' Affairs.

By Mr. DONNELLY (for himself and Mr. STARK)

H.R. 5732. A bill to amend title XVIII of the Social Security Act to require payments for physicians' services under the Medicare Program be made on an assignment-related basis; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. DORNAN of California:

H.R. 5733. A bill to amend the Export Administration Act of 1979 to allow gifts to be exported under a general license; to the Committee on Foreign Affairs.

By Mr. JEFFORDS:

H.R. 5734. A bill to make surviving spouses of judicial officials who died before October 1, 1986, eligible for increased annuities which are effective as of that date; to the Committee on the Judiciary.

By Mr. OXLEY:

H.R. 5735. A bill to amend the Communications Act of 1934 to improve the method of funding for public broadcasting, and for other purposes; to the Committee on Energy and Commerce.

By Mr. PEPPER:

H.R. 5736. A bill to provide for a national commission on health care reform; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. RICHARDSON (for himself and Mr. EDWARDS of California):

H.R. 5737. A bill to amend the Clean Air Act to protect the stratosphere from ozone depletion, and for other purposes; to the Committee on Energy and Commerce.

By Mr. RITTER:

H.R. 5738. A bill to amend the Communications Act of 1934 to require, as part of its obligation to ensure objectivity and balance in programming, that the Corporation for Public Broadcasting perform on-going, systematic content analyses of documentaries produced with funds provided by such Corporation; to the Committee on Energy and Commerce.

By Mr. RITTER (for himself, Mr. WALGREN, Mr. BOEHLERT, Mr. BROWN of California, and Mr. HENRY):

H.R. 5739. A bill to establish the National Bureau of Standards and Industrial Competitiveness, and for other purposes; to the Committee on Science and Technology.

By Mr. SCHUMER:

H.R. 5740. A bill to amend Part A of title IV of the Social Security Act to reduce the need for emergency assistance payments to provide temporary housing for destitute families and homeless AFDC families, and the expense of such payments, by authorizing grants to States for the construction or rehabilitation of permanent housing that such families can afford with their regular AFDC payments; jointly, to the Committees on Ways and Means and Banking, Finance and Urban Affairs.

By Mr. STARK:

H.R. 5741. A bill to prohibit the Secretary of Health and Human Services from conducting any Medicare physician-and-hospital capitation demonstration project involving more than $10 million in waivered funds in any year without congressional approval; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. WALDON:

H.R. 5742. A bill to provide for just and reasonable maximum lawful prices for old OCS gas; to the Committee on Energy and Commerce.

By Mr. WHITTEN:

H.J. Res. 754. Joint resolution providing for furloughed employees compensation; considered and passed.

By Mr. FOLEY:

H.J. Res. 755. Joint resolution providing for the convening of the first session of the One Hundredth Congress; considered and passed.

By Mr. WOLPE:

H.J. Res. 756. Joint resolution to make corrections in the Comprehensive Anti-Apartheid Act of 1986; to the Committee on Foreign Affairs.

By Mr. WRIGHT:

H. Con. Res. 415. Concurrent resolution to make corrections in the enrollment of the bill H.R. 5484; considered and agreed to pursuant to H. Res. 597.

By Mr. ROSTENKOWSKI:

H. Con. Res. 416. Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 5300; considered and agreed to.

By Mr. FOLEY:

H. Con. Res. 417. Concurrent resolution providing for the sine die adjournment of the two Houses of Congress on Friday, October 17, 1986, or Saturday, October 18, 1986; considered and agreed to.

By Mr. DYSON:

H. Con. Res. 418. Concurrent resolution to direct the Secretary of the Senate to make technical corrections in the enrollment of the bill S. 2638; considered and agreed to.

By Mr. FOLEY:

H. Res. 600. Resolution providing that a revised edition of the Rules and Manual of the House of Representatives for the One Hundredth Congress be printed as a House document; considered and agreed to.

By Mr. FOLEY.

H. Res. 601. Resolution providing for the appointment of the committee to notify the President of completion of business; considered and agreed to.

By Mr. CONTE:

H. Res. 602. Resolution commending Speaker Thomas P. O'Neill, Jr.; considered and agreed to.

By Mr. EDWARDS of California:

H. Res. 603. Resolution directing the President to provide to the House of Representatives documents and information in his

possession or under his control relating to a program or plan of real or illusionary events concerning the current Libyan Government; to the Committee on Foreign Affairs.

By Mr. FRENZEL (for himself, Mr. FISH, Mr. THOMAS of California, Mr. GINGRICH, and Mr. BADHAM):

H. Res. 604. Resolution deploring the practice of phantom voting in elections for public office, urging the States to purge voter registration lists of invalid names and addresses, and requiring the Comptroller General to study the general election of 1984 to determine the extent of phantom voting in that election; to the Committee on House Administration.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 382: Mr. ATKINS.

H.R. 1875: Mr. HUCKABY, Mr. BURTON of Indiana, and Mr. BROOMFIELD.

H.R. 1917: Mrs. LONG, Mr. SMITH of Iowa, and Mr. OBEY.

H.R. 2015: Mr. LUKEN, Mr. SWEENEY, and Mr. WILSON.

H.R. 2902: Mr. COLEMAN of Texas.

H.R. 3806: Mr. FLORIO.

H.R. 4553: Mr. MACK.

H.R. 4643: Mr. MACK.

H.R. 4715: Mr. HUTTO, Mr. STAGGERS, Mr. LEATH of Texas, Mr. HUCKABY, and Mr. ALEXANDER.

H.R. 4788: Mr. STRANG and Mr. SCHUETTE.

H.R. 4849: Mr. MCKERNAN.

H.R. 5000: Mr. YOUNG of Florida.

H.R. 5196: Mr. PASHAYAN.

H.R. 5350: Mr. STRANG, Mr. NIELSON of Utah, Mr. BOEHLERT, Mr. EMERSON, and Mr. ROGERS.

H.R. 5373: Mr. MITCHELL, Mr. RANGEL, Mr. CONYERS, Mr. FROST, and Mr. LUKEN.

H.R. 5477: Ms. SNOWE, Mr. RUSSO, and Mr. SOLOMON.

H.R. 5509: Mr. MARTINEZ.

H.R. 5532: Mr. DAVIS and Mr. MARTINEZ.

H.R. 5537: Mr. BATEMAN.

H.R. 5587: Mr. ATKINS.

H.R. 5600: Mr. ENGLISH, Mr. COBEY, Mr. ECKART of Ohio, and Mr. SHELBY.

H.R. 5668: Mr. HILER and Mrs. BURTON of California.

H.R. 5683: Mr. GARCIA, Mr. SENSENBRENNER, Mr. LIPINSKI, Mr. EVANS of Illinois, Mr. RICHARDSON, Mr. MCCLOSKEY, Mr. FEIGHAN, Mr. SIKORSKI, Mr. NIELSON of Utah, and Mr. CONYERS.

H.R. 5699: Mr. BEREUTER.

H.R. 5701: Mr. VANDER JAGT, Mr. ROTH, Mr. PETRI, and Mrs. JOHNSON.

H.R. 5720: Mr. PERKINS, Mr. FUSTER, Mr. LIPINSKI, Mr. SAVAGE, Mr. TOWNS, Mr. MORRISON of Connecticut, Mr. ABERCROMBIE, and Mr. MATSUI.

H.J. Res. 90: Mrs. BURTON of California, Mr. SYNAR, Mr. COURTER, Mr. FOLEY, Mr. MURPHY, Mr. RALPH M. HALL, Mr. ACKERMAN, Mr. RODINO, and Mr. MOLLOHAN.

H.J. Res. 244: Mr. LAFALCE, Mr. HAWKINS, and Mr. GAYDOS.

H.J. Res. 645: Mr. DWYER of New Jersey, Mr. FLORIO, Mr. GAYDOS, Mr. GIBBONS, Mr. GONZALEZ, Mr. GRAY of Pennsylvania, Mr. GREEN, Mr. GUARINI, Mr. HEFNER, Mr. HUBBARD, Mr. HUCKABY, Mr. JACOBS, Ms. KAPTUR, Mr. KLECZKA, Mr. LEHMAN of Florida, Mr. LELAND, Mr. LEVINE of California, Mr. ROBINSON, Mr. TORRICELLI, Mr. COELHO, Mr. BRUCE, Mr. ABERCROMBIE, Mr. RICHARDSON, Mr. ASPIN, Mr. CHAPMAN, Mr. MINETA, Mr. BOUCHER, Mr. AUCOIN, Mr. BRYANT, Mr. BOLAND, Mr. DONNELLY, Mr. STENHOLM, Mr. PANETTA, Mr. DINGELL, Mr. MICA, Mrs. MARTIN of Illinois, Mr. WYDEN, Mr. COLEMAN of Texas, Mr. JENKINS, Mr. SKEEN, Mr. WALKER, Mr. CRAIG, Mr. STUMP, Mr. HOPKINS, Mr. EVANS of Iowa, Mr. CARNEY, Mr. BARTLETT, Mr. BADHAM, Mr. KEMP, Mr. WORTLEY, Mr. BOEHLERT, Mr. LUJAN, Mr. MADIGAN, Mr. MILLER of Washington, Mr. NIELSON of Utah, Mr. LIVINGSTON, Mr. EDWARDS of Oklahoma, Mr. LEWIS of California, Mr. COBLE, Mr. CONTE, Mr. CHENEY, Mr. PORTER, Mr. LEWIS of Florida, Mr. YOUNG of Florida, Mr. REGULA, Mrs. BOXER, Mr. YATES, Mr. SLAUGHTER, Mrs. JOHNSON, Mr. LIGHTFOOT, Mr. HAMMERSCHMIDT, Mr. BLILEY, Mr. SMITH of New Hampshire, Mr. HENDON, Mr. ROTH, Mr. STRANG, Mr. GALLO, Mr. MCKERNAN, Ms. SNOWE, Mr. COBEY, Mrs. MEYERS of Kansas, Mr. DICKINSON, Mr. BURTON of Indiana, Mr. PARRIS, Mr. DANNEMEYER, Mr. SUNDQUIST, Mr. BOULTER, Mr. DELAY, Mr. COATS, Mr. GREGG, Mr. HILER, Mr. CLINGER, Mr. YOUNG of Missouri, Mr. DAUB, Mr. GRADISON, Mr. MCCOLLUM, Mr. WYLIE, Mr. HUNTER, Mr. WHITEHURST, Mr. HILLIS, Mr. TAYLOR, Mr. FOLEY, Mr. SAXTON, Mr. WHITTAKER, Mr. MILLER of Ohio, Mr. FASCELL, Mr. DORNAN of California, Mr. BARTON of Texas, Mr. SCHAEFER, Mr. IRELAND, Mr. LOWERY of California, Mr. SMITH of New Jersey, Mr. YOUNG of Alaska, Mr. COLEMAN of Missouri, Mr. TAUKE, Mr. WOLF, Mr. HYDE, Mr. DENNY SMITH, Mr. EMERSON, Mr. QUILLEN, Mr. BROWN of Colorado, Mr. FAWELL, Mr. DURBIN, Mr. CHAPPIE, Mr. CHANDLER, Mr. LOWRY of Washington, Mr. SHUMWAY, Mr. LOTT, Mr. JEFFORDS, Mr. MICHEL, Mrs. SMITH of Nebraska, Mr. COUGHLIN, Mr. BILIRAKIS, Mr. SHAW, Mr. KASICH, Mr. ROGERS, Mr. LATTA, Mr. DREIER of California, Mr. MACK, Mr. ZSCHAU, Mr. LEACH of Iowa, Mr. OXLEY, Mr. THOMAS of California, Mr. DEWINE, Mr. MOORHEAD, Mr. SOLOMON, Mr. LENT, Mr. FRANKLIN, Mr. ROWLAND of Georgia, Mr. MCMILLAN, Mr. MORRISON of Washington, Mr. BATEMAN, Mr. STRATTON, Mr. FLIPPO, Mr. CARR, Mr. WEAVER, Mr. OBEY, Mr. RANGEL, Mr. SIKORSKI, and Mr. UDALL.

H.J. Res. 700: Mr. PEPPER, Mr. ANTHONY, Mr. BATES, Mr. BEVILL, Mr. BOEHLERT, Mr. BONER of Tennessee, Mr. BORSKI, Mr. BOUCHER, Mrs. BOXER, Mr. BROOKS, Mr. BRUCE, Mrs. BURTON of California, Mr. BUSTAMANTE, Mr. CARNEY, Mr. CARPER, Mr. CHANDLER, Mr. CHAPPELL, Mr. CHAPPIE, Mr. CLAY, Mr. COATS, Mr. COELHO, Mr. COLEMAN, of Texas, Mr. CONTE, Mr. DANIEL, Mr. DANNEMEYER, Mr. DARDEN, Mr. DASCHLE, Mr. DE LA GARZA, Mr. DIOGUARDI, Mr. DIXON, Mr. DORNAN of California, Mr. DYMALLY, Mr. DYSON, Mr. EDGAR, Mr. FIELDS, Mr. FISH, Mr. FOGLIETTA, Mr. FORD of Tennessee, Mr. GALLO, Mr. GILMAN, Mr. HALL of Ohio, Mr. HANSEN, Mr. HAWKINS, Mr. HEFNER, Mr. HOWARD, Mr. HOYER, Mr. HUGHES, Mr. IRELAND, Mr. JONES of North Carolina, Mr. KANJORSKI, Ms. KAPTUR, Mrs. KENNELLY, Mr. KLECZKA, Mr. KOLTER, Mr. LAGOMARSINO, Mr. LANTOS, Mr. LEHMAN of California, Mr. LEHMAN of Florida, Mr. LELAND, Mr. LEWIS of California, Mr. LOWERY of California, Mr. MCEWEN, Mr. MCCAIN, Ms. MIKULSKI, Mr. MINETA, Mr. MOORHEAD, Mr. NATCHER, Ms. OAKAR, Mr. PICKLE, Mr. PORTER, Mr. RAHALL, Mr. RANGEL, Mr. RICHARDSON, Mr. ROWLAND of Georgia, Mr. SAXTON, Mr. SHUMWAY, Mr. SKELTON, Ms. SNOWE, Mr. STAGGERS, Mr. SWEENEY, Mr. VENTO, Mr. WALGREN, Mr. WEISS, Mr. WHITTEN, Mr. WILSON, Mr. WISE, Mr. WYLIE, Mr. YATES, and Mr. YOUNG of Alaska.

H.J. Res. 706: Mr. YATRON, Mr. DE LUGO, Mr. BONIOR of Michigan, Mr. ST GERMAIN, and Mr. STUMP.

H.J. Res. 722: Mr. DARDEN, Mr. BARNARD, Mr. MONSON, Mr. DORNAN of California, Mr. WORTLEY, Mr. LAGOMARSINO, Mr. NIELSON of Utah, Mr. HORTON, Mr. FRENZEL, Mr. CONYERS, Ms. KAPTUR, Mr. FISH, Mr. MATSUI, Mr. WYLIE, Mr. ROE, Mr. DAUB, Mr. BOUCHER, and Mr. PORTER.

H.J. Res. 731: Mr. RITTER.

H. Con. Res. 344: Mr. STALLINGS.

H. Con. Res. 351: Mr. LAFALCE.

H. Con. Res. 408: Mr. BRYANT, Mr. CARR, Mr. TRAXLER, and Mr. EDWARDS of California.

H. Res. 566: Mr. GARCIA, Mr. DE LUGO, Mr. MARTINEZ, Mr. FAZIO, Mr. LEVIN of Michigan, Mr. DURBIN, Mr. EVANS of Illinois, and Mr. LOWRY of Washington.

H. Res. 573: Mr. COUGHLIN, Mr. PORTER, and Mr. CARNEY.

H. Res. 581: Mr. SCHUMER, Mr. HORTON, Mr. HOYER, Mr. LOWERY of California, Mr. GUARINI, Mr. PERKINS, Mr. NEAL, Mr. CONYERS, Mr. TOWNS, Mr. MOLINARI, Mr. MITCHELL, Mr. FISH, Mr. HOWARD, Ms. KAPTUR, Mr. DE LUGO, Mr. SMITH of Florida, Mr. TALLON, Mr. PICKLE, Mr. STUDDS, Mr. CROCKETT, Mr. TRAXLER, Mr. WYDEN, Mr. DYMALLY, Mr. MARTINEZ, Mr. BRYANT, and Mr. ABERCROMBIE.

H. Res. 599: Mr. GILMAN.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 236: Mr. DIXON.

H. Res. 573: Mr. THOMAS of California.

SENATE—*Friday, October 17, 1986*

(Legislative day of Tuesday, October 14, 1986)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

Wise and righteous Lord, I do not understand enough about this situation to pray intelligently, but You know in microscopic detail in each heart. Patient Father, whatever is making the Senators hostage to this place by Your power and grace, let it be removed that the needs of families, election campaigns, and personal health can be cared for. In Your name and for Your glory. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able and distinguished majority leader, Senator ROBERT DOLE, of Kansas, is now recognized.

Mr. DOLE. Mr. President, I thank the distinguished Presiding Officer, the President pro tempore, Senator THURMOND, of South Carolina.

SCHEDULE

Mr. DOLE. Mr. President, I hope the short prayer is an indication it will be a short day. But in any event it has been a short night and I apologize to my colleagues. I assume some got home about 3 a.m. or later,

There is no reason we should not finish at a reasonable hour today but, of course, reasonable hours here are sometimes defined differently by different people.

I am going to reserve the time of the distinguished minority leader.

After the leader's time there will be routine morning business, not to extend beyond the hour of 10:30 a.m. with Senators permitted to speak for not more than 5 minutes each and then we will go back to House Joint Resolution 738. By unanimous consent at 1 p.m. a cloture vote will occur on the motion to invoke cloture on the immigration bill.

But we are really about done. I do not want to discourage Members because the reconciliation as I understand has been worked out. We had a number of meetings yesterday and I think fairly well the debt limit will be a part of reconciliation. So we will not have two matters to take up, just one unless that does not finalize, but I think it will.

There will be other conference reports. I think there is a water bill of some kind that we will be able to take up and legislative objective items and the matter before us. And I assume there will be some House action on the continuing resolution. But I would hope that there can be a resolution before too late today.

HOUSE SPEAKER THOMAS P. "TIP" O'NEILL

Mr. DOLE. Mr. President, I have learned a lot of lessons since becoming majority leader. One of them is that the job is not nearly as easy as it may look.

Trying to accommodate the wishes of 100 Senators is difficult enough. But to do so for 435 men and women, people of strongly held and disparate views, would seem an impossible task.

And yet, for the past 10 years one man, Speaker THOMAS P. O'NEILL, JR., has succeeded in guiding the House successfully through scores of complex and controversial issues. He has listened to his Members, modified his own views when necessary, stuck by them when he believed it was the true and right course.

Speaker THOMAS P. O'NEILL, JR., and I have been political adversaries on many occasions. He enjoys a good, partisan fight as much as I do. But TIP also believes that after the battle is over—whether you have won, or lost—it is time to shake hands, and go on to the next contest: No hard feelings, no grudges, it is all part of the process.

In fact, when I was elected majority leader, TIP called me and said that he hoped I would understand that there might be times when he would have to go out and "bash" me in public, but not to take it to heart—he would always be a friend.

During his tenure as Speaker, Congress has changed in a number of ways—not all of them designed to make life for the leadership any easier. Members often chart a personal course, one that does not necessarily respond to calls for party allegiance. Congress has become more attuned to the media and subject to external pressures from special interests—public or private. And the issues we face today—whether it is arms control, or budget control, are far more complex and intractable than a decade ago.

TIP has not only kept pace with the times, he has redefined the position and heightened the importance of Speaker. Although in his "heart of hearts" TIP may believe that all politics is local, he is keenly aware, and responsive to, the national role he plays as the key spokesman for the Democratic Party.

While keeping pace with these changes, TIP has never forgotten his own roots, or the roots of his commitment to public service. The needs and dreams of every American, whether the machine operator from North Cambridge, or the professor from Harvard Square, the farmer from Goodland, KS, or the longshoreman from Seattle—their concerns have been TIP's concerns.

But his sense of humanity goes beyond our own shores. And it is in the area of human rights that TIP and I have been able to work together, to speak together for Congress. We share the belief that no matter what a person's religion, place of birth, color or creed, he or she should be guaranteed certain fundamental rights. We have petitioned the President, and foreign heads of state to keep human rights concerns at the forefront. And happily, we jointly welcomed Anatoly Shcharansky to the Captiol—to show our appreciation of Shcharansky's courage, his indomitable spirit, and the hope his release gives to the thousands of Soviet citizens who struggle day-by-day for their existence.

Mr. President, I am not being facetious when I say TIP leaves big shoes to fill. I have found it a pleasure and a privilege to work with him; from the days we were colleagues in the House, to the past 2 years as leaders of our respective bodies. TIP has always been honest, straightforward, and understanding. You can't ask for much more than that in our business.

I wish TIP, and his wife Millie, health and happiness in their retirement. Boston's gain is Washington's loss. And since the Kansas City Royals are not in the World Series this year, I might even root for the Red Sox in TIP's honor.

Mr. PROXMIRE. Mr. President, will the majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. PROXMIRE. That was a marvelous tribute to TIP O'NEILL and it is an indication of the fine character that the majority leader has, and I am so proud of him.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

After all, we all know that Senator DOLE and Congressman O'NEILL disagree, disagree sharply on many issues, but this is the kind of civility, the kind of courtesy, the kind of genuine admiration that I think makes Congress distinctive.

So I want to thank my good friend from Kansas for his superlative statement this morning.

Mr. DOLE. I thank my colleague.

I reserve the remainder of my time and I reserve the time of the minority leader.

OCTOBER GOLDEN FLEECE AWARD GOES TO DEPARTMENT OF EDUCATION

Mr. PROXMIRE. Mr. President, I am awarding my Golden Fleece of the Month Award for October to the Department of Education for permitting education officals in Louisiana to misuse $912,678 earmarked to serve the educational needs of handicapped children.

No group deserves a "fair deal" more than handicapped children. Instead these special needs young people were given the worst type of "raw deal" by the people assigned to protect their interest. According to the audit report prepared by the Inspector General of the Department of Education:

> Our review of 13 projects funded between fiscal years 1982 and 1985 disclosed that, overall, the handicapped children received little, if any, benefit from the projects, some expenditures were for unallowable activities, and some purchased services were not provided.

In spite of the fact Federal law requires that the funds under this program be spent exclusively to serve the unique needs of handicapped children, the auditors found that $385,200 was spent on two highly suspicious computer projects for the general student population. After examining the project files, the Federal auditors could not find any information to support either the choice of the contractor or his estimated cost. After reviewing the major subcontract the report of the Inspector General stated:

> In our opinion, the amounts paid for the two of the major items were unreasonable. The first item was software development for which the subcontractor received $43,715. We requested a copy of the software to determine how it was designed to meet the unique needs of handicapped children. Our request was denied for the stated reason that the software had been marketed for general use in the classroom for some time and was proprietary. If no new software was developed to meet the special needs of handicapped children, the subcontractor should not be paid for research and design. The second item, for which the subcontractor was paid $89,700, was consultant services. According to the teachers interviewed, the subcontractor provided only minimal guidance on the basic use of the computers and software. It is the general practice in the computer sales field to provide such services free of charge when a number of computers are purchased. Moreover, costs of $89,700 for such minimal guidance appears to us to be unreasonable.

The audit report goes on to describe many other instances of misuse of Federal fundings including the hiring of inexperienced and noncertified personnel for unapproved projects and the paying of an individual for 9 months when in fact he performed only minimal work for 6 weeks before falling ill.

It is my understanding that officials from the Department of Education are now attempting to reach an agreement with Louisiana State education officials on refunding at least a portion of the misspent Federal money. However for permitting a gigantic, 3-year long, rip off of funds for the education of handicapped children to take place, the U.S. Department of Education richly deserves to receive this month's Golden Fleece Award.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. GOLDWATER). We will now proceed for a period of morning business with statements not to exceed 5 minutes.

I recognize the Senator from Wisconsin, Senator PROXMIRE, for 5 minutes.

Mr. PROXMIRE. Thank you very much, Mr. President.

HOW DO WE PAY FOR SDI?

Mr. PROXMIRE. Mr. President, yesterday I spoke on the floor of the Senate of how a decision by the Congress to go along with the President's star wars or SDI Program would very likely mean that most or all of the estimated $150 billion annual cost of the program would have to come out of other military expenditures. I argued that this would seriously weaken this country's military capability. Some star wars advocates have acknowledged that the annual cost would be $150 billion but they have argued that the Congress would not reduce our military strength to fund it. They contend the Congress would either raise taxes by $150 billion per year or cut nonmilitary programs by $150 billion or do both.

Let us consider each of these alternatives. What prospect is there that the Congress will raise taxes by $150 billion? What reason is there to believe Congress will impose such a punishing burden on the American people not to reduce the deficit but to fund this new military program? If the view of SDI's great advocate, President Reagan, are respected we would not raise taxes at all. The President has made only one priority superior to an all-out go-ahead for star wars, and that is his absolutely adamant opposition to any increase in taxes. The President has assumed a Clint Eastwood at the OK corral showdown on any tax increase. He has defied Congress to increase taxes with a "make my day" challenge. As anybody who has been or expects to be elected to office knows, this is a very popular position taken by this very popular President. It is one reason why the President is as popular as he is.

So what prospect is there that with another President 10 or 15 years from now when the star wars appropriation begins to reach $150 billion in 1986 dollars that the Congress will continue to fund the rest of Army, Navy, and Air Force needs at present levels and will turn to higher taxes to raise the funds necessary to pay for star wars? Let us consider what that would mean to the typical taxpayer. Our 1986 revenue from the Federal income tax was $349 billion. The corporation income tax brought in about $62 billion. The tax reform bill which the Congress passed earlier this year is in the long run revenue neutral. That means it will bring in about the same proportion of the national income that the current revenue law brings in. The other major source of Federal revenue is the payroll or social security tax. Would anyone argue that the Congress should tap the social security tax to pay for star wars? The rest of the Federal revenue—about $77 billion—comes from a variety of use taxes dedicated to such purposes as highway construction and airport development. So if the $150 billion a year for star wars does not come out of the rest of the military budget and if instead we increase taxes to provide it, how hard would this hit the American taxpayer? The answer, Mr. President, is that it would be a staggering body blow. It would mean a roughly one-third increase in Federal personal income and corporate income taxes. That means if you paid $3,000 in Federal income taxes without star wars, you would—with the same income—pay $4,000 with star wars. This would be the most massive tax increase in peacetime this country has ever imposed on its taxpayers. This Senator doubts if any President would call for such a huge tax increase no matter how strong his support for star wars.

Now Mr. President if we do not increase taxes to pay for star wars, couldn't we pay for it out of a $150 billion reduction on other nonmilitary programs. I wish we could. But consider what we have left if we take out military spending and the full social security program. We cannot cut the third biggest cost of Government—interest on the national debt. So we have to exempt that Federal expenditure from any cut. Mr. President, the overwhelming majority of Americans agree that we should not cut programs for the truly needy—Medicaid, unemployment compensation, assistance to

the handicapped and similar programs. If we take the programs exempted from Gramm-Rudman sequenstration precisely because they benefit the needy, that would leave after exempting the military Social Security, interest on the national debt about $200 billion that we would cut. So suppose we take the annual $150 billion for star wars out of this $200 billion. That would mean a 75-percent or three-quarters reduction in these programs: Federal highway construction, the Congress, the State Department, the FBI, the Customs Service, the national parks, the Justice Department, Federal aid to education, the farm programs administered by the Department of Agriculture, the Energy Department, the environment agency (that is EPA) and the space agency (or NASA). Now many Americans would like the Government to savage all these programs. But the fact is that we are not going to cut them significantly, certainly not by three-quarters or one-half or one-quarter.

All this brings us back, Mr. President to only two alternatives. We either take this star wars $150 billion each and every year out of other military programs and seriously weaken our national defense in the process or we borrow it and add another $150 billion a year to our national debt on top of the $200 billion we are already incurring.

Now, Mr. President, there is one other escape hatch for those who dream of a star wars that will not shoot Federal taxes through the roof or sharply reduce our military strength. That is the magic elixir—that the economy will grow so much in the next 10 or 20 years that we can pay for this out of the marvelous future growth of the American economy. This Senator wonders how anyone can fall for this one. After all isn't this illusion precisely what enchanted the President and the Congress into our present dilemma with back-to-back $200 billion deficits? This is still the biggest con game in town. The Congress and the administration are telling us we are going to meet those Gramm-Rudman goals—not by cutting spending as we should, not by raising taxes as we have to, but by a dreamy fantasy about exuberant economic growth. We will grab our bootstraps firmly in hand and lift ourselves to the land of balanced budgets. Mr. President we have not done it. We are not going to do it. The grim fact is that if we proceed with star wars we will either have to impose the most punishing peacetime tax in history on the American people to pay for it, or we will take it out of our military strength. There is no other honest alternative.

MYTH OF THE DAY: THE RECLAMATION ACT WORKS

Mr. PROXMIRE. Mr. President, the myth of the day is the commonly held assumption that the reforms built into the Reclamation Reform Act of 1982 are effective. In practice they are not. This is not the fault of the act itself but of those with the responsibility of enforcing the act.

Proponents praised the act in 1982 as a major reform which would save hundreds of millions of dollars yet the Department of Interior has failed to recover the subsidies to Western water users.

The Department's Bureau of Reclamation ducks the toughest issues raised by the act and fails to promulgate necessary regulations. What's worse, the bill's full implementation is just 6 months away, yet so far the Bureau has made no serious attempt to carry out the program.

When the Bureau of Reclamation proposed regulations in 1983 under the so-called Hammer Clause, Western water users objected and the agency dropped the regulations. The Hammer Clause forms the heart of the act, enforcing provisions to make a sweetheart deal with Westlands, the largest and most notorious violator of subsidy-size limitations. Under the deal Westlands could violate the law for an additional 20 years.

Recently the Department of the Interior confirmed a new agreement with Westlands exempting them from the Reclamation Reform Act and creating a new loophole around the act. This loophole could cost the taxpayers hundreds of millions in additional subsidies.

Finally, almost 1 year ago, the Bureau of Reclamation promised new regulations under the act. After further protests by Western water users once again they decided not to issue regulations.

Mr. President, the Department should move immediately to correct their past sins and produce effective regulations. The taxpayers deserve no less.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 0950

Mr. NUNN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NUNN. Mr. President, are we now in morning business, if I could inquire of the Chair?

The PRESIDING OFFICER. We are in morning business and Senators can speak for 5 minutes.

Mr. NUNN. I thank the Chair. I may not complete my remarks in 5 minutes. But I will do my best and perhaps, if no one else is on the floor, I will have a little more time.

THE REYKJAVIK SUMMIT: WHAT DID WE REALLY AGREE TO?

Mr. NUNN. Mr. President, we have now had 5 days to reflect upon the extraordinary events at the Reykjavik summit. The President and the Secretary of State have conducted lengthy briefings for Members of Congress, and administration officials have gone to great lengths to provide the media with detailed accounts of the discussions between the two leaders and the all-night work of the experts group. For their part, the Soviets have also gone public with extensive accounts of what transpired in these talks.

Given the remarkable degree of disclosure on both sides, one would not expect there to be any lingering questions concerning the details of the various potential agreements that were reached on Sunday. One would think that the administration would know perfectly well what President Reagan and General Secretary Gorbachev agreed to in the course of these critical negotiations. And one would hope and indeed trust that what the administration is telling the American people and the whole world about these agreements is accurate.

Mr. President, I may be wrong—and indeed I hope I am wrong—but based on my discussions this week with President Reagan, Secretary Shultz and other senior administration officials, there would appear to be a genuine question as to whether on Sunday, October 12, 1986, the President of the United States of America reached a verbal agreement with the General Secretary of the Communist Party of the Union of Soviet Socialist Republics to eliminate all, I repeat, all strategic offensive nuclear arms by 1996.

The first indication that I had that such an agreement might have been struck came when I listened to Secretary Shultz's press conference immediately after the breakup of the summit. Secretary Shultz said, and I quote, "as the agreement that might have been said, during this 10-year period in effect all offensive strategic arms and ballistic missiles would be eliminated." That same evening, Donald Regan, the White House Chief of Staff, underscored the comprehensive nature of the nuclear arms reductions that we were prepared to accept over the next 10 years. Mr. Regan said: "We said to the Soviets, we will do away with all nuclear weapons—nuclear bombs, nuclear shells for artillery. Everything was on the table."

Mr. President, I understand, and I think all of our colleagues understand, what fatigue can do to precision. We are going through that ordeal here in the closing days of the Senate.

Believing that these statements had been imprecise, I listened very carefully to President Reagan and Secretary Shultz in their presentation to the congressional leadership at the White House on Tuesday morning. Although I do not normally quote the President or the Secretary after such sessions,

the White House stressed that the administration was intentionally putting all the details of the summit on the record to make sure the public received an accurate version of these events. Under these unusual circumstances—and because of the critical importance of this overall area to our Nation and indeed to the world—I believe that the remarks of the President and Secretary of State to the congressional leadership should be known by the American public.

In his introductory remarks, the President said that we put on the table a proposal to eliminate within 10 years all nuclear ballistic missiles and everything else, including bombs. Administration officials have in recent days vigorously indicated that while the proposal the United States put on the table would have involved the total elimination by 1996 of all ballistic missiles, other types of strategic offensive nuclear arms, including bombers and cruise missiles, would have only been reduced by 50 percent over this 10-year period. To say the least, this suggests that there is considerable confusion within the administration on this absolutely critical matter. This is not a small detail. This is a critical distinction.

Later in the briefing, Secretary Shultz revealed that General Secretary Gorbachev made a counteroffer to the U.S. proposal. The General Secretary—according to our Secretary of State—proposed that during the second half of the 10-year period, all remaining strategic offensive nuclear arms—and not just ballistic missiles—would be eliminated. Secretary Shultz then informed the Members present at the briefing that during the discussions that followed between the two leaders, we compromised and agreed that the language of this agreement would refer to strategic nuclear arms and ballistic missiles.

During the question period, I told the President that I understood that he had agreed with General Secretary Gorbachev to eliminate all strategic offensive nuclear arms by 1996. I paused and the President nodded affirmatively. I then went on to question what we would do, under these conditions, to correct the conventional balance which now favors the Soviet Union so dramatically. I suppose it should be termed the conventional imbalance.

Although the President did not answer my question directly, Secretary Shultz intervened and defended the concept of eliminating all strategic offensive arms by 1996. The Secretary conceded that this would be a new world, but he insisted that NATO could find the will to provide a conventional balance with the Warsaw Pact.

Over the past 2 days, I have had a number of private conversations with top administration officials and high-ranking U.S. military leaders. I will not recite the details of these talks, but I will say that there are two key points which I conclude. First, although these officials insist that the United States offer was to eliminate ballistic missiles, I have found no one to authoritatively rebut the considerable evidence that the leaders agreed to eliminate both ballistic missiles and all strategic offensive nuclear arms. Second, prior to the Reykjavik summit, the Joint Chiefs of Staff were not consulted or asked to study the implications for our national security and defense policy of the President's proposal for a total elimination within 10 years of all ballistic missiles, let alone to consider the elimination of all strategic nuclear arms.

Mr. President, it has been 5 days since President Reagan and Mr. Gorbachev left Iceland. But I still find myself with far more questions than I have answers—questions that raise fundamental concerns about our strategic relationship with the Soviet Union.

As I consider the fact that the President has formally proposed the total elimination of all ballistic missiles by 1996 and may actually have agreed to eliminate all strategic offensive arms by that date, I cannot but ask: What is the thinking and the analysis on which these sweeping proposals are based?

Let us leave aside for the moment the question of whether the President is prepared to agree to the elimination of all strategic offensive arms and just look at the ramifications of destroying all ballistic missiles. Let us ask what would have happened if the Soviets had accepted the President's proposal—if the SDI disagreement had not gotten in the way and General Secretary Gorbachev had said "OK, Mr. President, you've got a deal." There are some deadly serious questions.

□ 1000

First, what is the resulting strategic balance under such an accord? Would we be leaving the United States/Soviet strategic balance resting precariously on the shoulders of our respective bomber and air defense forces?

In considering these questions it is important to emphasize that the United States has virtually no air defense network while the Soviet Union has made a massive investment in this area. It has hundreds of air defense radars, thousands of dedicated air defense interceptors and tens of thousands of surface-to-air missiles.

Mr. President, this is not a blueprint or a research project the Soviets have. These are deployed systems. Moreover, under the arms control agreement proposed by the President on Sunday, Soviet air defenses would remain unconstrained while our bomber force would be restricted to 350 aircraft.

In other words, they would have unconstrained defenses that would have no bounds and we would have constrained bomber forces.

One might also ask how the Soviets would spend their time over the next 10 years if they knew our bomber force would, by treaty, be so constrained. Might they not make a sustained effort to beef up their already formidable air defenses to the point that our bombers could not credibly be relied upon to get through? To what extent would the problem of penetrating Soviet air defenses be magnified if we no longer had the option of using ballistic missile precursor attacks to blast corridors in Soviet air defenses through which our bombers might conduct their attacks? This may sound somwhat esoteric, but this is crucial in terms of planning, in terms of the overall strategic plan that we have had for many years.

Second, whether the resulting balance was one of outright Soviet superiority or, if we made massive new investments in air defense, a strategic standoff, what would be the implications for conventional nonnuclear defense? We know that the Soviets and Warsaw Pact currently enjoy an overwhelming advantage in conventional forces—so overwhelming that the Supreme Allied Commander of NATO, Gen. Bernard Rogers, has repeatedly testified that, if the Warsaw Pact were to launch a purely conventional attack against NATO, not using nuclear weapons, he would have to request authorization to escalate to the use of nuclear weapons in, and I quote, "days, not weeks or months."

For many years, I have urged NATO to take long overdue measures to improve its conventional force capabilities, thereby raising the nuclear threshold.

There is no doubt that we need to improve our conventional defenses. There is no doubt that we need to rely less on the early use of nuclear weapons. We must move in that direction. But is it realistic to suggest that within a decade NATO could be ready for a new strategic situation in which ballistic missiles no longer provided the ultimate form of deterrence against Soviet aggression. Do we have some bold, new, innovative conventional arms control proposals in mind that will provide for parity in the NATO/Warsaw Pact conventional force balance? If so, where are these proposals?

We need these proposals. We need to emphasize the conventional picture more. We seem to be so obsessed with nuclear weapons in general and strategic nuclear weapons, ICBM's in particular, that we do not consider that even if all of those weapons were eliminated today, if we eliminate every

one of them, in my view war would become more likely, not less likely. That is very easy to understand when you look at the conventional balance.

So the question is, if we have those kinds of conventional arms control proposals in mind, they should be an essential and integral part of this overall deliberation. We should not be isolating ballistic missiles. We should not be isolating strategic offensive arms and saying that we can deal with the subject without doing something about the conventional balance.

Third, if there are no ballistic missiles—strategic or intermediate range—and our bombers are ineffective against substantially augmented Soviet air defenses, all that remains are short-range nuclear artillery shells and some aircraft-delivered tactical nuclear bombs. The former have such short range that most of them will have to be used on NATO's own territory—in other words, they do not have enough range to get to the enemy territory—while the latter serve primarily to punish the Soviet Union's East European allies, not Soviet homelands. For years, these systems have existed principally to provide linkage to U.S. strategic nuclear forces.

They are among our most destabilizing systems because in the early stages of a nonnuclear war, a commander in the field would have to decide very quickly whether to pull those weapons back very rapidly, thereby taking them out of the battle or taking a chance on losing them, or, the third alternative, and God forbid that we will ever be faced with this alternative, to use those weapons quickly in the early stages of a conventional war so we would not have them overrun and captured. How credible would this deterrent be if we did not have a linkage to U.S. strategic nuclear forces? How credible would this deterrent be in our own eyes, in the eyes of our own military, let alone the eyes of the Soviet Union?

Finally, Mr. President, what about the other nuclear powers? Where was the discussion on them in Iceland? Would we have elevated Britain, France, and China to superpower status since no mention was made in Iceland about their nuclear arsenals?

We should recall that 25 years ago we proposed to France that it forgo nuclear weapons. We said we would have a thousand missile warheads and our French allies could get along with no nuclear warheads. As we all know, President Charles DeGaulle said "non." He said in very unequivocal terms he was not interested in that proposition.

Now the President of the United States has actually proposed that by 1996 we would have no ballistic missile warheads and France would have a thousand. I cannot help but think that DeGaulle must be looking down from somewhere laughing and having a very good chuckle.

There is also the question of China and its strategic nuclear arsenal. Granted, we are on a friendly track with the People's Republic of China, but we are far from allies. Do we really want to make our friends in China not only the country with the largest conventional army in the world, but also a country that has many more strategic missiles than we do?

Mr. President, I do not raise these matters with any sense of pleasure. I think it is obvious that these proposals have not been thought through. I think it is obvious they have not been really studied adequately in terms of where they are leading us.

Perhaps many of these problems are manageable. Certainly, we need to improve our conventional defense. Certainly, we need to have conventional arms control proposals that are bold and sweeping to do something about the Soviet advantages in this area. Certainly, the MBFR talks are going on now, but even if they succeeded completely, if every proposal we put on the table in the talks prevailed, they still would not make a difference in the conventional balance of power.

I must say in closing that I, for one, am relieved that the superpowers did not reach an agreement along the lines proposed by the President. My sense of relief has nothing whatsoever to do with SDI. It seems to me that SDI has become such a focal point of these whole discussions that the main and original goal of doing something about nuclear weapons in a sensible way to improve the strategic balance has been lost.

I do not know where that goal went, but it seems to me our effort now is to protect our SDI no matter what else we do.

It may very well be that we need to sit down and refocus our own thinking in terms of arms control.

I am concerned that the President has emphasized that all of those proposals made in Reykjavik and all of the potential agreements that were reached there remain on the table. President Reagan has said that.

It gives me profound concern about the potential agreements that we may very well have reached there in the area we have discussed this morning.

I believe that the President must act immediately to pull our zero ballistic missile proposal off the table before the Soviets accept it. I also believe that the President and his administration must clarify exactly what kind of agreement was reached at Reykjavik.

□ 1010

I think they need to go back to the drawing boards in terms of what our real goals are in arms control. I believe the goal of total elimination of nuclear weapons is a laudable objective. I, too, can dream of a day in which the world is free from the nuclear menace. However, there are significant conditions precedent to reaching that day. There are a number of things that have to be done, fundamental matters, perhaps very expensive, before we contemplate going to zero strategic nuclear weapons.

Mr. President, a fundamental review of the administration's position on these matters is absolutely essential.

I see Chairman GOLDWATER in the chair today. No one has followed these issues closer than he has over the years. I know that he will be giving this matter a great deal of thought. We will be going home in the next 2 or 3 days and people will be scattering, but I hope that at the earliest opportunity our Senate Armed Services Committee will have a hearing and we will hear from our military leaders.

I do believe that even though we have, no doubt, civilian decisionmaking in this area, which is absolutely proper, the Joint Chiefs should at least be heard in these matters. I think they should be heard before summit conferences. I think they should be represented during summit conferences—not that their decision is final, not that their advice is always the best, but at least we need military advice and apparently we did not get it in Iceland.

I thank the Chair.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1020

Mr. DECONCINI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

FAREWELL TO SENATOR BARRY GOLDWATER

Mr. DECONCINI. It is with great sadness that I rise today to bid farewell to my senior colleague from Arizona, Senator BARRY GOLDWATER. In the 10 years I have served this body, I have never had to look beyond the borders of my home State to find a friend and colleague whose thoughtful guidance and candor made my job far more pleasant and rewarding.

BARRY GOLDWATER is more than 1 of 100 men and women called upon to help map the course of our Nation's history in this body. BARRY GOLDWATER is a man who represents the ideals Americans have held deep within their hearts since our Nation's humble beginnings. He has served his country faithfully during wartime and

peacetime. He has steadfastly supported issues he felt were important to Arizona and the Nation—regardless of whether such stances were popular or mainstream. What you see is what you get with BARRY GOLDWATER—and what you see is a man of great integrity, charisma, foresight, and decency.

It is particularly important to me that BARRY is presiding over the Senate now. He has been in the Senate for 30 years and has served our State of Arizona in an exemplary manner. For the 10 years that I have had the privilege of being in this body, Senator GOLDWATER has been here the entire time and has been an inspiration to me and this body. Though he and I have differences on occasions, we have enjoyed, I believe, a relationship which has benefited our State.

More than that, Senator GOLDWATER has set an example not only for this Senator but for every Senator. He is an example of what this body should be; that is, to get the work done and, to use his words, get on with our business and get the hell out of here.

We spend a lot of time here, in the Senate and in the House, debating issues that do not need to be debated nearly as much as we think they do. Senator GOLDWATER has always been one who got to the point, whether it was on military matters or the necessity for water projects or human projects to improve the quality of life.

BARRY GOLDWATER now is concluding 30 years here. He has served his State as well as or better than anyone who has been in the Senate. I am proud to come from Arizona where we have a great tradition of outstanding Senators—

Carl Hayden, with whom Senator GOLDWATER had the privilege of serving for a number of years; Paul Fannin; certainly Ernest McFarland, whom Senator GOLDWATER replaced in this body.

Because of your tutelage, Mr. President, because of your leadership, the Central Arizona project will be completed and will be completed in the next few years. I have only had the privilege of working on that project in this body for 10 years. I realized when I came here the difficulty of getting it authorized, and getting OMB and the White House to support it year after year. Senator GOLDWATER, along with House Members, had led that charge year after year.

Doing that has not always been easy. It is necessary to sell the need for any particular water project or any project in one's State to our colleauges, to impress upon them that this is an investment in our country, not just a parochial benefit to the State of Arizona or any other State.

BARRY's top priorities have been the best interests of this country, and the best interests of the State of Arizona. We have seen our State grow. We have seen Senator GOLDWATER lead the charge to preserve the environment of beautiful Arizona without suppressing a vibrant and expanding economy.

There is so much to be said about BARRY GOLDWATER that it almost would take a filibuster of many days to come close to explaining the feelings that some Senators, including this one, have toward my senior colleague. He is down to earth, he has a sense of humor, he speaks frankly. You know where he stands. He does not play games with you. If he tells you how it is and you do not like it, you can go and sit down and think about it.

The only way to get around him is to convince him that your position has real merits.

There is so much to be said about BARRY GOLDWATER and yet, after all these years, so little time. Business will conclude shortly in the 99th Congress and BARRY will return to the sunshine and beautiful landscapes of Arizona. Knowing my colleague, though, it is doubtful he will slow down. BARRY has flown more planes than most of us have driven cars. He's also told more jokes and created more laughter than 100 men. I have never served in this body without BARRY being present. When the next Congress convenes in January, I will look over at BARRY's desk and remember 10 years of wit, intelligent discussion, down-to-earth wisdom and, yes, heated debate. I will cherish those memories. On behalf of my colleagues in the U.S. Senate, fellow Americans and fellow Arizonans whom he has served so well, I wish him the best that life has to offer. If he approaches his retirement with the same zest and good humor with which he has approached his career in the Senate, BARRY will not fade away from the public arena. Hopefully, he will still be there guiding use along paths that we may fear to follow.

BARRY, we shall miss your leadership here and, quite frankly, I will miss the example you have set for this Senator from Arizona. We will always have your cherished legacy for the State of Arizona. Fortunately, you will be in Paradise Valley and be available to the students and the citizens of the great State of Arizona. I will miss your voice in this Chamber, but I will seek your counsel and guidance in the years ahead. I am losing a cherished colleague, but I hope I never lose your cherished friendship.

Mr. MELCHER. Mr. President, will my friend yield?

Mr. DECONCINI. I shall be glad to yield.

Mr. MELCHER. Mr. President, I thank my friend for yielding. I would like to concur in, endorse, and echo all of the statements just made by my friend from Arizona about the senior Senator from Arizona [Mr. GOLDWATER]. We will truly miss the magnificent contributions that Senator GOLDWATER has made to the Senate and to the country. I do not think those contributions will cease as far as the country is concerned after Senator GOLDWATER retires to that beautiful spot on the Camelback.

□ 1030

I would like to tell my friend, the junior Senator from Arizona, the conversation I had with the senior Senator from Arizona, Senator GOLDWATER, the first year we were in the Senate. Senator GOLDWATER said of DENNIS DECONCINI:

> I have known him since he was a baby. I have held him in my arms when he was a baby. He comes from a great family. He comes from a family that has contributed, as so many families have, to the betterment of Arizona.

I might add to my distinguished friend, Senator DECONCINI, that all of the Senators from Arizona—the very few who have served Arizona in the Senate—have left their marks. Indeed, I know of no State that believes more in keeping a good man in the Senate once you get him here. I say to my friend, Senator DECONCINI, that that means something to me and to the rest of this body, that the junior Senator from Arizona will continue his stay in the Senate.

I am well aware of the view or philosophy that Senator DECONCINI held—I hope he no longer holds it—of serving only two terms in this body, 12 years, which will come to an end in 1988. I believe I speak for the entire Senate when I say that we hope he changes his mind.

As to Senator GOLDWATER, it is a privilege for me to have known him and to have worked with him. It is a privilege I prize very highly.

Mr. DECONCINI. I thank the Senator from Montana.

The PRESIDING OFFICER (Mr. GOLDWATER). The Chair thanks both his friends.

Mr. DECONCINI. Mr. President, are we still in morning business?

The PRESIDING OFFICER. Morning business has ended.

Mr. DECONCINI. I ask unanimous consent that I may have 2 additional minutes in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

FAREWELL TO SENATOR THOMAS EAGLETON

Mr. DECONCINI. Mr. President, when the 99th Congress draws to a close, we must bid farewell to one of the strongest and most dedicated individuals ever to serve in the U.S. Senate. My esteemed colleague from Missouri, Senator THOMAS EAGLETON, will load the family back into the station wagon the way he did in 1968 upon winning his seat, and head back

to his beloved State to share his keen knowledge of the law and journalism with his fellow Missourians. TOM's love of politics began during the Depression and the beginning of World War II when his father served on the St. Louis school board. He learned politics at his father's side and it has become a lifelong obsession. TOM will be leaving us to return to St. Louis to teach government at Washington University. I would love to be one of his students. He has much to give and I am sure he will give his all. Missouri is regaining a statesman and a scholar. I will be losing the company and cherished guidance of a dear friend.

Since he became the youngest man to win the office of circuit attorney of the city of St. Louis at age 27, TOM EAGLETON has built a reputation as a tireless advocate of fairness in government. His senatorial career, which began back in 1968, is marked by a down-to-earth approach to issues that won the support of his constituents and the admiration of his colleagues. Senator EAGLETON became one of the first freshman Senators in history to serve as a committee chairman when he was chosen to head the Senate District of Columbia Committee. He played a major role in the enactment of the Clean Air and Clean Water Acts. As chairman of the Senate Subcommittee on Aging during his second term, TOM EAGLETON presided over the reauthorization of the Older Americans Act—the law authorizing most of the Federal social service programs for the elderly. He also served as chairman of the Senate Appropriations Subcommittee on Agriculture and the Subcommittee on Governmental Efficiency, where he sponsored a bill creating the office of inspector general in 12 major Federal department and agencies. Because of TOM's love of government, he was determined to change the image of rampant Government corruption, and the inspector generals have certainly helped to reverse Government's tarnished image.

Perhaps his crowning legislative accomplishment was an amendment he had tacked on to a 1973 appropriations bill that effectively eliminated funding for the bombing of Cambodia. Regardless of one's position on the issue, that amendment changed the course of history.

The list of TOM EAGLETON's contributions to his home State of Missouri and his country is virtually endless. On every committee on which he has served, TOM has left a positive imprint. He has given everyone who has known him a faith in government—a faith that good people serving their country can bring about effective, positive change. TOM is a liberal Democrat in the tradition of Presidents Roosevelt, Truman, and Kennedy. He has not changed his politics with changing winds. His political ideology has remained firmly fixed. That is a noble quality in a world of political opportunism.

I join my colleagues in wishing TOM and his wife, Barbara, the very best as he leaves the U.S. Senate. TOM, you will now have more time to enjoy your native Missouri and, hopefully, to spend some relaxing afternoons at the ball park. Another all-Missouri World Series like the one in 1985 has to be on the mind of a South St. Louis boy who is an insufferable fan of America's pastime. I have heard that TOM almost missed his flight to Missouri Tuesday night because he wouldn't miss the end of the extra inning Astros-Mets game. TOM, enjoy every pitch of the World Series. I'm sure you'll make solid contact on whatever pitch life throws to you. Remember your colleagues in the Senate who will miss you more with each passing day. We are your insufferable fans. No more honest and decent man has ever served in this body.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1040

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATOR BARRY GOLDWATER

Mr. MOYNIHAN. Mr. President, as we enter the final day, presumably, and final hours, of the 99th Congress—we are likely to stay in session for pro forma purposes next week, but this is likely to be our final full meeting of the Senate—I find an auspicious occasion arises in which the treasured and beloved senior Senator from Arizona who is in the chair and by the ancient and revered practice of this body, unable to address the Senate, unable to respond to anything said to him or about him, saving to make formal rulings that are given previous accord by the Parliamentarian.

This is auspicious in more than one respect because it gives me the opportunity to say what I really think about him in the certain knowledge that although he is taken of late to going about the Senate Chamber armed and is quite capable of thrashing any of the younger or not so young Members who say anything that would give rise to his well-known capacity for indignation and whereas he is especially indignant when people start being too nice about him, I find myself in a situation of relative immunity, and I mean to take advantage of it regardless of any subsequent retaliation that might come my way.

I have known BARRY GOLDWATER since I was a young Assistant Secretary of Labor in the administration of John F. Kennedy. It would be very characteristic on the 50th anniversary of the founding of the Department of Labor, the Senator from Arizona, a name one could use to frighten children in the effete and liberal East in those days, nonetheless gallantly and happily attended our dinner and I found myself with the great honor of sitting next to him.

The Senator may recall that in those days we had a simple wooden dais we were sitting on and a screen curtain behind and the audience in front. President Kennedy was there for the occasion. In rapt attention I turned and shifted my chair to the point where one of the legs was off the edge of the platform and shifting my weight I suddenly went tumbling into the arms of a Secret Service man who was presiding behind the curtain, and the young President was heard to mention to the Secretary of Labor that perhaps he had more assistant secretaries than was necessary.

I recovered my composure as best I could, but then inexperience and other matters led me to get myself right back in that same position where I was about to tumble over the second time and that would undoubtedly have been the end of my days in Washington, when BARRY GOLDWATER, arch conservative, defender of the right, scourge of the liberal and the Easterner, tapped me on the shoulder and said, "Son, if you don't want to go back over heels the second time, you better get your chair back on this platform." And for that I am indebted to him to this day.

I am indebted to him as an American. I am indebted to him as indeed all Americans are.

And for what? For two things? The first may be one that would surprise him.

He has asserted the importance of ideas in politics at a time when only interests sometimes visible and indeed when increasingly interests are thought to be perhaps the only legitimate coinage of politics, he said otherwise in his book "The Conscience of a Conservative," he described it. He does not think of himself as an intellectual, and I would not want the word to get back to Arizona that there are those of us who do, but he is. He has brought ideas to this body, to this body politic, and he has seen them first scorned as is the experience of persons who live in the world of ideas and then seen them come increasingly to be accepted, embraced with great enthusiasm by some Members in some parts of the political spectrum and respected in all or all respectable parts, if I might make that distinction.

Beyond the realm of ideas is the realm of character. He was meant to be a Senator. He was conceived in the mold of dignity and courage, of the special serenity that comes to those who know they are serving their Nation and their ideals and are prepared to accept any amount of turbulence, setback, and serious disappointment in doing so, knowing that the role they play is larger than any individual success they might achieve or any failure they might endure.

Last, of course, to all of those in this body who have known him, he has been a friend. I had the particular privilege of serving with him for 8 years as a member of the Select Committee on Intelligence and for 4 years he was chairman I was vice chairman in that very special arrangement whereby the presiding officer of the committee is either the one or the other, it being a bipartisan committee. In the absence of the majority leader chairman the minority vice chairman presides. It is a particular practice of the Senate Select Committee on Intelligence, well known, that there are some matters that as a matter of compartmentalizing as the matter of the narrowest possible distribution the Executive chooses to inform only the chairman and vice chairman, leaving to them the discretion whether the full committee needs to know.

He and I went through 4 years of this experience without ever a word of discord between us.

He molded a committee which had its potential to be partisan and fractious and to fail in its essential function, which was to establish a base in the Senate where the intelligence community could look to for understanding, criticism, and support as needed in those days, whatever the situation. We did that.

In 4 years, I do not know that we had four votes in the Committee on Intelligence. We had disagreements among us as we sorted out issues, but in the end a consensus emerged.

On the rarest occasion was it required that anybody take the yeas and nays, and when it was the outcome was always heavily on one side of the issue, and it was always inevitably, it was invariably BARRY GOLDWATER'S side.

There came an occasion, a painful one to many of us and not understood perhaps to this day by persons in this Chamber and outside, when the issue arose of a particular episode in Central America and the requirement that the question of whether the committee had been given advance notification with respect to a significant anticipated activity, that being the statutory language of which is required that the committee be informed.

The executive asserted that we had been informed. We had not. And the chairman, BARRY GOLDWATER, wrote a public and indignant letter to the official executive branch, saying we had not been. That concluded, that done, and the Senate having adjourned for the Easter period, the chairman went off to the Far East which on occasions he is able to do to look into military matters of which he is primarily responsible in this body as chairman of the Armed Services. The Senator from New York was about to leave on something similar when a discouraging event took place.

A senior official of the executive, a member of the White House staff, spoke to the Naval Academy and directly said that the committee had been informed. I learned of this and I can read it in only one sense. The proposition in effect was being asserted from the executive branch that BARRY GOLDWATER had said something that was not so regarding the national security of the United States and its laws.

It seemed to this Senator as his vice chairman and his friend that that was not a charge ever to be dismissed, shrugged off, ignored, and on this spot I announced that unless that matter was retracted, I would resign as vice chairman and not serve in a situation where it might be considered that I concurred in what had been said.

Within 3 weeks the principal involved apologized to our committee because what was said was not so and the individual who made the speech at the Naval Academy said to me, and I want it to be on record, that what he had been told was either disingenuous or outright wrong.

Did we end there with an exchange of charges and withdrawal? No, we did not. It was not BARRY GOLDWATER'S style.

We said here was an event where our statute did not work. It had broken down and charges of good faith had arisen.

How do we get past this with some improvement, how do we learn from this experience?

And we did. In the course of about a 1-month negotiation, we worked out a written agreement with the Executive in which we established what the term "significant anticipated activity" would at minimum mean.

□ 1050

And it was not difficult once we really thought about it. We said any activity of which the President must be informed is almost sure to be significant, given the program, activities, the pressures on time and the considerations that animate the executive branch. That was a signed agreement with the executive and the committee and to my knowledge it has worked invariably to this day. It put into routine a statutory requirement which had not been defined.

We said:

You do not have to think about every occasion that comes along that says: "Is this significant? Must the committee be told?" You have a simple criteria. If you had to get the President to approve, you know it is significant enough to inform the committee.

And it is in that constructive way, on countless issues and occasions that the Senator from Arizona has earned the respect of this body and the great indebtedness of his Nation.

I hesitate to go further because, while a man of greatest respect for the traditions of this Chamber, he is even so at this point capable of rising from the rostrum where he presides and charging forward with his formidable stick and putting an end to all of this encomium. I hope he will not do so and I will make certain that I am not the subject of his wrath by bringing to an end these brief remarks which, even so, I would like to think have given him some sense of the extent to which I have found him and a revered and treasured colleague.

I will miss him. I will be conscious, however, that the time has come when he would like to go home, for although he has learned the ways of Washington, he has always, in some measure, been a man of the frontier. It does not look like a frontier anymore, since the central Arizona project got everybody in Phoenix a swimming pool. But, even so, it is his home and we are delighted to know that he will be there. We hope he will invite us to visit him on occasion and we cannot but think that he might, on rare occasions, visit us.

Mr. President, I am honored to have made these remarks and with great respect, sir, I yield the floor and bid not farewell but adios.

The PRESIDING OFFICER. The Chair is grateful.

SENATOR BARRY GOLDWATER

Mr. BAUCUS. Mr. President, I would like to follow on the remarks of the senior Senator from New York. I will add another dimension in paying my respects and stating why I so honor and revere the senior Senator from Arizona.

When I was thinking about why I have such a high regard for him, I began to ask myself: Well, what are the reasons? What is it that, at the heart and root, explains why this Senator from Montana has such respect for the Senator from Arizona?

As I reflected upon it more, I realized that the Senator from Arizona is very, very much like my father. They both are over 6 feet tall. They are thin. They are very agile. They are quite conservative. They are both Republicans. And they both, in some ways, are taciturn, quiet and men of a few words. They are Westerners.

My father is a rancher. He was born and raised and lives in the open spaces

of the West. He does not see a lot of people much of the time and pretty much likes it that way.

The Senator from Arizona, I think, has some of the same serene qualities that one learns to appreciate because of the open space in the West. When one sees the sunrises, clear skies and sunsets, one also appreciates people very much. One has time to think and reflect and time to better understand what life is really all about when all the wheat and chaff are separated and the dust settles.

It is those qualities, the same qualities that the Senator from Arizona has, that are very similar to those of my own father, and I suppose that is the main reason why this Senator personally has such deep respect and admiration for the Senator from Arizona.

There is another quality, too, and that is they have a wry, sort of Western Will Rogers sense of humor—that is, they call it as they see it. It is straight talk, but not in a venal way, not in a vindictive way, not in a way that puts somebody else down. Rather, in a way that is a comment on a situation, the lighter side of the situation that pokes holes in stuffy balloons, in a way to appeal to the more instructive side and better side of human nature.

I was quite young when the Senator from Arizona ran for the Presidency and when he wrote his book, Conscience of a Conservative. But it was during those years, upon reflection, that I was beginning to form my political beliefs. And I must say that the views of the Senator from Arizona, as the views of my father, have had a very direct bearing on my inclination to run for public office; that is, to serve our fellow Americans, to do the best we can realizing that there are immense imperfections in the world, but still sticking to our principles because that is what really counts.

I have not served with the Senator from Arizona on any committee. I wish I had. But in the years that I have known him, I admired him; indeed, I do revere him.

I do not know who will replace the Senator from Arizona, but I know this: that Senator will have to work very, very hard, and go a very, very long way to fill the shoes of a giant. The Senator from Arizona will be deeply missed in this body. Fellow Arizonans would like to have him back home, but we are sad to see him leave us here.

Mr. President, I yield the floor.

BACK HERE ON EARTH

Mr. BYRD. Mr. President, I am a supporter of SDI. The strategic defense initiative. I believe it should be funded. I have supported its funding. I have voted for the President's initiative. I believe research should go forward so that we can investigate vigorously the true potential of space defenses for the future. In the last few days, the American people have learned a great deal about space weapons. Indeed, the American people have taken a crash course on laser defense technology.

But it is time now to bring the public debate back to terra firma, back to solid earth—down here, rather than up there. It is time to talk about our national interests in real terms before the President's public relations men place SDI in a permanent political orbit.

□ 1100

All this Buck Rogers, "Beam me up, Scotty," talk of space beams and lasers is about a future possibility that has little to do with the here and now reality that our economy is not working as it should be working. So let us begin the reentry phase, and get the public debate back down on Earth again.

Mr. LONG. Mr. President, will the Senator yield for a moment?

Mr. BYRD. Yes. I will be happy to yield to my friend.

Mr. LONG. May I say to my good friend that if we are worried about something that is going to be achieved with SDI, strategic defense initiative, during the next several years, based on what everybody can tell us what we have to be worried about is not what we can achieve during the next few years although it is possible if we spend an enormous amount of money this space wars contemplates we might find something else that might give us a problem. But if you look at what it would take to make the Star Wars project a success, for a purely defensive proposal, that is not something that can scare anybody at the moment because that is 15 years away, with the assumptions.

Mr. BYRD. It is.

Mr. LONG. But as the Senator so well knows if you spend a trillion dollars over a relatively short period of time you might find something even more effective and offensive rather than defensive weapons that scares the daylights out of the opposition.

Mr. BYRD. Yes.

Mr. LONG. So what they would have to be worried about here might not necessarily be what you can do to shoot down some missile or some balloon out there in outer space, but instead what could be done with the same research that could do the very damage to them right there on the ground inside the Soviet Union. I am sure the Senator has thought about the fact that those missiles, those lasers, and futuristic weapons which shoot a beam out there that can destroy an atomic missile could do a lot of damage if you just aimed it right at the Earth.

Mr. BYRD. Yes. The distinguished Senator from Louisiana is absolutely correct. I can understand how the Soviets are scared out of their wits because they know, they feel as I feel, that American technology can do just about anything that we want to do. De Tocqueville, the great Frenchman who visited this country 150 years ago, said that the incredible American, the incredible American, believes that if something has not yet been accomplished it is because he, that incredible American, has not yet attempted it.

So the Senator is correct. The Soviets have every reason to be concerned not only that SDI might achieve what the President has led us all to believe that in his fondest dreams it can achieve, but also whether it does that or not, that the spinoff in terms of other military capabilities are awesome—awesome. And I think I come with very good credibility to this debate because I am a supporter of SDI. I have made no bones about it. I am a supporter of it. I happen to believe in it. I do not quarrel with those who do not. I do not quarrel with those who differ with me. I just happen to feel the way I feel about it. I think American technology can do anything that Americans want to do with it.

Mr. LONG. Mr. President, may I say to the Senator, I agree with the Senator. I am also a supporter of it. Many of us here on this side of the aisle support the concept that you must be first in space, that you must be first in defensive capability. For that matter, just in case somebody attacks you, you can also be the first in offensive potential.

Mr. BYRD. Absolutely. Well, I thank the distinguished Senator from Louisiana.

But the thing I am trying to point out here now as we go down the road in the next few days and weeks, let us get this public debate back down here on Earth because people's pocketbooks are impacted, their jobs are involved, and the farmers' farms and homes are involved. The bank that lend money to the farmers are involved. The steelworkers who are out of work want to know what is going to happen to them. Those who are still working are wondering when they are going to get their pink slips and the coal miners who are out of work are more interested in hearing what we are going to do about this economy. What are we going to do about jobs? What are we going to do about this terrible trade imbalance? These are the things that we ought to be debating as we go into the elections.

(Mr. ROTH assumed the Chair.)

So let us begin, as I say, the reentry phase and get the public debate back on course. Back here on Earth, there are economic troubles, real troubles in

the heartland of America, down in Louisiana, in West Virginia, in the farm States, in the oil producing States, and in the steel producing States. Back here on Earth, the trade deficit continues to grow. We are now $170 billion in the red this year in the trade deficit. It could become $180 billion.

So back here on Earth, let us keep both feet on the ground now. Back here on Earth the national deficit continues to loom larger and larger. It is a veritable "black hole", if we are using space terminology. I read about the black hole that the scientists and the astronomers discovered a while back. I read something about it in the newspaper. Well, it is too black and too deep and too esoteric for me to understand. But there is a veritable black hole if we are using space terminology that we all know to be the immediate real threat to our national well being.

But here on Earth wages are stagnating. American workers are fighting to hold their own, and our standard of living continues to weaken. Our economy does not sit very well with us.

So it seems to this Senator that it is important for the public debate to take a midcourse change in direction. We must attend to the business at hand, making our economy competitive again, saving the family farm, and reducing the national deficit must hold our attention.

Our growing economic troubles will not be solved by laser beams from outer space. That is not going to put the unemployed people in Louisiana, Mississippi, and West Virginia back to work. The reality is that SDI represents possibilities for some future time. As SDI research moves on we will debate its merits in the next Congress, and in the next Congress, and probably in the next Congress after that. In time the American people in their wisdom will come to a consensus about the merits of the program.

It is a debate that is too serious to be rushed, and in the here and now with our economy beginning to tumble out of control, we need to focus on the immediate. The public debate needs to come back to Earth. The real truth of our situation, and we all know it to be true, is that America is living on the installment plan—stalling for time—even as we borrow our way deeper and deeper into debt.

America has borrowed its way into its current economic prosperity and the price is going to be paid by future generations.

The President spoke yesterday to a group of Moscow-bound young Americans. I will read from the news wire:

President Reagan told Moscow-bound schoolchildren Thursday he refused to trade his Star Wars missile defense program for a sweeping arms agreement at the Iceland summit because, "I couldn't give up your future."

Well, he told those young people he couldn't give up their future by trading star wars. But, Mr. President, their future is already spoken for. They will be paying our bills, our debts, our deficits. They will be paying for a very long time unless we get the national debate back to Earth.

Finally, Mr. President, I would like to make one last comment about the recent SDI debate. As I say, I think I can say it and look the most avid advocate of SDI straight in the eye because I have supported it all the way. I supported the President in it. Last week before the President went to the summit I stood right here on this floor, and I spoke to wish the President well when he went to the summit.

□ 1110

I said, "Mr. President, when you go to the summit you can feel, you can know, that it is as it were 100 Senators, Democrats and Republicans, sitting right behind you at the summit, as you look across the table into the eyes of Mr. Gorbachev. You can feel that there are 100 Senators, Democrats and Repubicans, holding up your hand. Do not forget, we are there with you in spirit. We are supporting our President. When it comes to a national security emphasis, there is no dividing aisle between the Democrats and the Republicans."

That is the kind of support I spoke of to the President as to what he could expect when he went to the summit.

As a supporter of SDI, I think, as I say, I come well qualified. I am a charter member, a blue ribbon supporter, of SDI.

I hope that in the days ahead, the national discussion about arms reduction will remain on a high level, a serious level, a level of debate that is above partisanship. The President wanted bipartisan support when he went to the summit. He got it. He got it. I meant every word I said when I said, "There are 100 Senators backing you up. Do not forget that. Keep that in your mind's eye as you look at Mr. Gorbachev's eyes. And the American people are backing you."

So he got that bipartisan support.

I believe that the President only demeans all that he strived for in Iceland if he simply reduces it now to a partisan political debate.

The election will soon be behind us, but the need for thinking of our Nation's future will always be ahead of us.

So I say in closing, let us keep our eyes on the problems here on Earth, let us keep our eyes on the fact that our people are losing their jobs, our manufacturing base is eroding, farmers are losing their farms, and our young people are being, in many cases, deprived of the opportunities for a better education by virtue of our unwisdom in our governmental policies.

Let us keep that debate on a high level with respect to SDI. Let us not use it in partisan, political debate.

"We gave you, Mr. President, our support. It was bipartisan. It was not just Republican. It was Democratic and Republican support. So now, let us keep partisanship out of the campaigns with respect to discussions of SDI."

Let us be as bipartisan, as nonpartisan, when we discuss SDI in political campaigns as we were when we supported the President on his way to the summit.

Mr. President, I yield the floor.

Mr. STENNIS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, I ask unanimous consent that I might be able to speak out of order for 60 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

OUR SIX RETIRING MEMBERS

Mr. FORD. Mr. President, it becomes very difficult, having listened to my learned colleagues, to find the words that would adequately express my respect and, I would say, love for my colleagues who are departing the Senate. I have tried in my own way to say how I feel about all six of them. I am somewhat dismayed by the political articles that make them facts and figures rather than human beings as it relates to their contribution and service to this body.

Mr. President, when the 100th Congress convenes next year, this will be a different Senate. During this election season our six retiring Senators are spoken of only as factors determining control of the Senate. But as individuals, they have influenced the history of this institution, and of our Nation. They will be missed as colleagues, and as friends.

Knowing these men and working with them has been my privilege for the past 12 years. Senators HART and LAXALT came to the Senate at the same time as I, and we learned both the formal and informal rules of this body together. It seems they may have similar goals these days, and I wish them both well.

I have come to know GARY HART as one of the Senate's true intellectuals. He keeps an eye on the future and how it will be affected by policies put in place today. He has been a key player in development of our important environmental legislation, particularly in shaping the Clean Air Act.

Senator HART has also pushed our Nation to reevaluate its defense policies with an emphasis on keeping our defense both strong and sensible. He is an innovative thinker, dedicated to moving our Nation forward. He has challenged the Democratic Party to look ahead, as he does, and I believe the entire Nation will benefit from his ideas.

PAUL LAXALT and I became friends in the 1970's as Governors. That friendship has grown as we worked together within this institution. Despite our strong loyalties to different political parties, we have been able to help each other personally, as well as within the Senate when bipartisan issues called for a tested alliance. Senator LAXALT is a man of his word. I have never been disappointed in him as a friend.

As a freshman Senator, I found Senators LONG, GOLDWATER, MATHIAS, and EAGLETON to be valued examples of leadership in the Senate. Each has his own unique style which could never be duplicated.

RUSSELL LONG is known as a brilliant legislative strategist. He is living proof that the seniority system works. He worked his way up from an observer, to a junior Senator, to being one of the most influential Members of this decade.

Clearly, RUSSELL is the most knowledgeable man on the most complicated subject the Senate has had before it. I have always respected both his wisdom and the cautious manner with which he approaches sensitive matters. Coupled with this insight and caution is an engaging sense of humor which makes him a joy to work with.

It is difficult for anyone to say enough about the contributions of BARRY GOLDWATER to this Nation. While we have often differed ideologically, I have always admired the steadfast way he has held to his beliefs. His love for America has resulted in a shaping of our Nation's defense policy which will be noted for decades to come.

It has been my privilege to serve with Senator GOLDWATER on the Commerce Committee. He has done a masterful job as chairman of the Subcommittee on Communications. Well known as a ham radio enthusiast, Senator GOLDWATER'S expertise in this field has been extremely valuable to the committee in many related policy areas.

I have also enjoyed my friendship with Senator EAGLETON. It was my privilege to campaign in Missouri for him. The "Show Me" State has a great affection for this man, and he has represented them well in Washington. It is a pleasure to work with someone who can agree to disagree in the way that Senator EAGLETON can. Even when we were on opposite sides in heated legislative battles, we have remained friends.

For the past several years, I have had a close working relationship with Senator MATHIAS on the Rules Committee, an association which I will miss enormously. We have been charged with overseeing internal operations of the Senate during a period of change. Senator MATHIAS has handled matters such as the introduction of television in the Chamber with well-advised caution, and with class.

When it came to the Senate's first impeachment trial in 50 years, CHARLES MATHIAS was given the awesome responsibility of seeing that the proceedings were fair and impartial, protecting the rights of both the public and the respondent. I see the Senate's loss of MAC MATHIAS as the loss of a great statesman. He is a fair man who has always voted his conscience, even when it meant breaking with his own party.

It is important to me that each of these men know that we appreciate the work they have done while in the U.S. Senate. They have all worked hard and shown a great love for our Nation, as well as a dedication to their own ideals. The Senate is truly a better place because of their labors.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE MARYLAND BEATEN BISCUIT

Mr. MATHIAS. Mr. President, one of the great cultural contributions of Maryland to the culinary arts is the beaten biscuit, one of the great favorites of the present occupant of the Chair. Today we are fortunate to be able to enjoy beaten biscuits baked by Ruth Orrell, one of the Maryland's preeminent culinary artists for over 50 years.

I have traveled to the Eastern Shore more times when I can count to obtain these unique biscuits—so distinctive with their crunchy exterior and soft, doughy interior. And I have served them to guests both from inside of Maryland and outside, to Americans and people who visit us from abroad. They all agree that Mrs. Orrell's beaten biscuits are like no others, any place in the world.

I have a suggestion to make to Senators who will serve in the Senate in the 100th Congress. I strongly recommend that they add Maryland beaten biscuits to the menu in the Senate dining room. Beaten biscuits would be an appropriate indigenous, as well as a delicious, addition to the qustatory opportunities available to those who dine under the Capitol dome.

In order to fully acquaint Senators who may not have feasted on Maryland beaten biscuits about their qualities, I ask unanimous consent that an article in the October 8, 1986, Baltimore Evening Sun be included in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

MARYLAND BEATEN BISCUITS—STILL BAKING THEM, STILL SELLING THEM AFTER ALL THESE YEARS

(By Mary Maushard)

Ruth Orrell is a lot like the biscuits she's been making for 50 years: Crusty on the outside, but sweet and soft on the in.

She'd stop producing Maryland Beaten Biscuits "tomorrow," says the 84-year-old woman, but her son, her sense of history and her customers keep her turning out more than 1,000 dozen in an average week. "The only real satisfaction I get is people coming in and talking about it," says Orrell as she shows off the six-person "production line" that continues to make the small biscuits that date at least to the early 18th century.

Orrell will be showing off her biscuits, if not the production line, at Country Fair Weekend, a benefit for The Baltimore Museum of Art and The Maryland Historical Society, Thursday through Sunday at Festival Hall.

You can tell she's told her story a thousand times, but she still does it with zest; you know she's made a million biscuits, but, still, she looks carefully over each one as it is fashioned in the supple hands of the women who work for her. She tells you that she beat her first Maryland biscuit more than 60 years ago, as a young bride, but she seems to remember it as if it were yesterday: "The first batch I made and baked, they were so hard you couldn't sink your teeth into them.

"I seldom make them anymore," Orrell says of the small, slightly browned biscuits that are doughy beneath a crunchy exterior. But she is never far from the mixing, making and baking in the added-on back room and kitchen of her home, almost in the shade of the Wye Oak in tiny Wye Mills on the Eastern Shore.

Beaten biscuits are unique to Maryland. They are the happy solution to the early settlers' problem of having no leavening agent for their bread. So, with a hardwood mallet or a blacksmith's hammer, these early cooks quite literally beat the dough, probably on a tree stump, until it had enough air in it to rise.

Orrell's recipe, adapted from her mother's, calls for 1 teaspoon of baking powder for every 25 pounds of flour, not enough to make them rise. "If you put in enough baking powder to get them to rise, it would give you teacakes," Orrell says.

The biscuits are no longer beaten by hand and have not been for at least 25 years, but the hammer Orrell used as a young bride is still on a shelf in her work room. She shows it off proudly. The dough, made of flour, sugar, salt, lard, water and the little bit of baking powder is "beaten" in a machine with a stainless steel roller that moves the dough about.

When a batch of dough is ready, it is turned over to the women who work for Orrell. Each one breaks off about a one-pound glob and then proceeds to fashion it into dozens of tiny knobs that bake into biscuits.

The mostly elderly women sit around a Formica-topped table chatting as their hands move rhythmically, each to her own drummer. Grabbing a piece of dough with her right hand, each woman works it through her fingers and then turns it into a ball, breaking off any extra dough and returning it to the pile.

The balls of dough are put in rows of five on well-used cookie sheets, which go through a little window and onto a conveyor belt that carries them up a ramp to the kitchen, where they are baked for 20 to 25 minutes in one of six ovens.

Reared in nearby Oxford, Orrell says she was raised on beaten biscuits, though she never wielded a heavy hammer over dough until she married Herman Orrell in 1925 and moved to Wye Mills. After her first inedible batch, she gave up the idea for a while. Then, in about 1935, she told her husband, "everybody else is trying to sell them, let's us try."

In the early years, Orrell, who also taught elementary school for 30 years in Talbot County, did all the baking in her own kitchen, at one time even moving some of it into the dining room of her home.

Then she and her husband, who now lives in a nursing home, converted a small shed into what is now the work room. Before that was even finished, Orrell had a walkway built connecting it to her house; that walkway is the ramp up which the conveyor belt of biscuits travel.

Although almost no one else is making beaten biscuits, Orrell, with the help of her son Herman, is still at it, much to the delight of her customers.

"I had a man stop here about a month ago from New York. He said, 'I've found a gold mine.' He bought four dozen and when he got home, he ordered four dozen more."

Unlike most others, beaten biscuits are not traditionally eaten warm. "I never ate a hot one until I started to make them," Orrell says. "At home, they were baked on Saturday and put in a stone crock. We were not allowed to have any, they were saved for Sunday dinner."

Beaten biscuits can be kept up to two weeks in a crock, glass canister or the plastic bag they're sold in. They can be frozen indefinitely, and are even compatible with a microwave; five seconds is all it takes to thaw and warm one biscuit, Orrell says.

Traditionally eaten with ham, chicken salad or butter and jam, beaten biscuits are also good with almost any sandwich filling and as a crunchy counterpoint to soup.

"I like to eat them any way," says Orrell. "Hot or cold, as long as I can cut them open."

Orrell's Maryland Beaten Biscuits are available in retail stores and farmers' markets on both Eastern and Western shores. Ruth Orrell also sells them out of her kitchen in Wye Mills and by mail for $1.60 a dozen, plus postage. Write: Orrells Maryland Beaten Biscuits, Box 7, Wye Mills, Md. 21679.

Mr. SIMPSON. Mr. President, it is just a curious set of circumstances as I came in to hear the Senator from Maryland speaking about the Maryland beaten biscuits because I, when I was practicing law in Cody, WY, used to read the CONGRESSIONAL RECORD and I saw this remarkable tribute to these peculiar—I mean this particular food item, and I have tried them since then. Senator MATHIAS has shared these with me, and they are like eating agates. They are very, very hard and difficult, but they are very good. I say to the Senator as he leaves this body, not only has he shared with me the mysteries of beaten biscuits, he has taught me about deciduous trees and shared with me a great deal of his extraordinary warmth and humanity and this Senator will miss him greatly.

CONCLUSION OF MORNING BUSINESS

Mr. DOLE. Mr. President, has morning business expired?

The PRESIDING OFFICER. Morning business is closed.

CONTINUING APPROPRIATIONS, 1987—CONFERENCE REPORT

The Senate resumed consideration of the conference report.

The PRESIDING OFFICER. The clerk will report the pending business.

The bill clerk read as follows:

Motion to concur in the House amendment to the Senate amendment No. 59 with an amendment to H.J. Res. 738 making continuing appropriations for fiscal year 1987, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the Senator from Arizona is recognized.

Mr. DECONCINI. Mr. President, last night, following our quality of life discussion, I wanted to thank the majority leader for making the arrangement that we could go home some time after 2:30.

Also, I yielded the floor to the Senator from Oregon and the Senator from Kansas in order to make the motion, I believe, that we go out and put this over and that it be the pending business.

All day yesterday I had continuously protected myself by indicating that in a continuation of my remarks, it would still be considered my first speech. Apparently, the record did not show that.

I ask unanimous consent that my remarks now be considered a continuation of my first speech.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Will the Senator from Arizona yield?

Mr. DECONCINI. I will be glad to yield without losing my right to the floor.

Mr. DOLE. Mr. President, let me indicate we have been trying to come together with some language that might satisfy the concerns of those who have an interest in the T-46. I am not certain we can do that. Maybe we have reached the point that we ought to be permitted to vote up or down on the Goldwater amendment. In exactly 40 minutes, if there will not be any CR over here by then, we will have, in many cases, nonessential Federal employees who will be told to go home.

I do not think that is what anybody would like to have happen. I have been visiting with the chairman of the committee. He is willing to make some modification.

It would seem to me that we have reached the point where we have to make a determination if the majority of this body is going to be able to work its will, a clear majority, a substantial majority, 75 to 80 percent who want to go on and finish the CR. I know the chairman, Senator HATFIELD, does, and also the distinguished ranking Member, Senator STENNIS.

□ 1120

I hope we can bring that to a close shortly after the cloture vote. We have reconciliation, we have a clean water bill that is important to a lot of people in this body. All of that can be done in a matter of hours—2 or 3 or 4 hours—if we can somehow get beyond the logjam right here.

There are no other amendments in order to this CR. We can dispose of this whole thing in 20 minutes if they would just let us vote on the Goldwater amendment.

Would the Senator from Arizona allow me to yield to the senior Senator from Arizona?

Mr. DECONCINI. I am happy to do that.

Mr. DOLE. Mr. President, I yield to the senior Senator from Arizona.

Mr. GOLDWATER. Mr. President, I might say to the majority leader that we have continued to try to work out some kind of agreement with the opposition. We are rather bound by what we can offer. The Senator was in the room last night when the Chief of Staff of the Air Force and all of their top Secretaries stated unequivocally that they would not take that airplane—for the simple reason that we do not have the money.

I think the Senator will recall that the Chief of Staff said that we are going to lose three fighter wings in the next 4 years; we are going to lose a search-and-rescue squadron and a weather squadron. That indicates only one thing: They are running out of money and we are starting to lose troops.

We cannot make any agreement with the proponents of the T-46 that involves money. I do not want to be

forced into explaining why we cannot do it, but if we keep pushing it, I am going to have to explain it and it is not going to be good for Fairchild.

I hope we can work something out. We have been on this thing years, it seems; it seems every year, we have this fight. The simple answer is the Air Force does not want a trainer plane. It should not be the prerogative of the Senate or the House to tell the armed services what weapons they have to use.

Mr. DOLE. If the Senator will yield just a moment more, I thank the distinguished chairman of the committee.

I read with some interest that this is a battle between Wichita, KS, and somewhere in New York. There is not any money to buy anything anywhere. We are not going to buy any planes in Wichita, KS. They have about 4 or 5 years before they can spend any money. I just want to dispel that rumor that somehow, this is a battle between Republicans and Republicans and Republicans and Democrats on where they are going to build the airplane.

If I heard the Chief of Staff and the Secretary of the Air Force correctly, they do not have any money. They do not have any money to spend anywhere. So this is not a fight between the T-37 and the T-46A. I have been and will continue to be as silent as I can on this issue, but I want to resolve it and get on to something else. I have friends on both sides and I want to stay with my friends. That is pretty hard to do.

Mr. DECONCINI. Mr. President, I appreciate the indication of my distinguished colleague from Arizona that there is no money and also that of the majority leader. I met with Senator GOLDWATER, Senator WARNER, Senator D'AMATO, the Secretary of the Air Force, and others. They certainly indicated that because of the $30 billion cuts that have come, they are indeed crunched and squeezed. But last night, when we were in those discussions, I believe it was the Senator from New Hampshire who did offer a compromise.

Some may say that involved money and others may say, well, it involves money, but it involves money that is already appropriated. Indeed, that compromise was satisfactory to this Senator and I do not dare speak for my other colleagues on the subject, but there is $171 million that is already appropriated for the T-46 for 1986. That is the fiscal year we are in now.

So, as I understand the suggestion of the Senator from New Hampshire, it is that that money be released—it has a "fence" around it—and that there be no money in the 1987 continuing resolution for the T-46. That being the case, it seems to me that the conditions that the Senator from Kansas and the senior Senator from Arizona point out—that there is no money—is substantiated, that there will be no money in 1987 for the T-46. If things change, so be it. If they do not change, so be it.

That, to me, seems a valid and a concrete offer of settlement. I cannot, here, speak for my two colleagues from New York that they are prepared to take that settlement, but it seems to me that there has been at least something put on the table here that makes sense.

Everybody wants to find a resolution here in "compromise," yet there does not seem to be much give. As far as this Senator is concerned, I am interested in winding this up. I think, for a lot of reasons, that this trainer is necessary, but I am satisfied that the Air Force is under great budget constraints and crunch and for 1987, this Senator would be prepared to use the settlement that was suggested by the Senator from New Hampshire.

Mr. President, I want to go back to some of the points I was discussing late last night, or perhaps even earlier this morning.

First, the Air Force needs something other than the T-37.

In 1979, during the Carter administration, the Deputy Secretary of Defense approved an Air Force mission element needs statement for a T-37 replacement. The replacement was accorded—and I quote—a "priority no less than equal to producing the prime weapons systems."

The T-37 shortcomings cited in this and subsequent Air Force statements remain valid today. Among the deficiencies:

Approaching end of service life with pilot shortfalls after 1988.

Excessive fuel consumption and related high costs.

Excessive maintenance and related high costs.

Engine noise double that allowed by Federal aviation regulations.

Limited to range/endurance.

Limited to altitudes below 25,000 feet.

Limited weather capability.

Outdated instruments.

I would submit to my colleagues that one could hardly make a more comprehensive case for replacing the T-37.

Second. The T-46 won the original competition for the replacement and is still the answer to the Air Force's training problem.

This statement requires no further elaboration, for as the following remarks illustrate, the T-46 test-fly program is proving that the next generation trainer aircraft can meet or exceed the ambitious programmatic and financial costs set forth. To quote the Congressional Research Service:

Both the Fairchild T-46 and Cessna T-37 are twin-engine, two-seat aircraft with the side-by-side seating of instructor and trainee that the Air Force prefers (in contrast to the Navy's preference for front-to-back tandem seating). The T-46 has better performance capabilities than the T-37 in many respects, with a range of 1,200 vs. 500 nautical miles (nmi), a speed of 430 vs. 370 knots (nmi/h), and an altitude of 47,000 vs. 25,000 ft.

In contrast, there is a pressurized cockpit in the T-46. There are substantially improved electronics and ejection seats and other avionic needs, and more fuel efficiency, all at the same time with a new engine, the F-109 turbofan engine.

□ 1130

Third. Manufacturer has overcome early difficulties. The Senator from New York was quite candid about the problems with Fairchild, the manufacturer of this plane. He has not hid anything about it. My senior colleague from Arizona indicates there are some things that might have to be said. In my opinion, everything should surface. Nobody is here to hide anything about Fairchild's economic problems or this industry's problem. Nobody is here to bail anybody out as far as this Senator is concerned. What is important is that we get the best bang for the buck.

The commander of the Air Force Contract Management Division, Major General Weiss, recently noted the remarkable turnaround of Fairchild. That is the manufacturer. This resulted from substantial corrective actions, actions initiated and paid for by that company.

Let me just point out some of the things they did. They appointed a new company president. We know that shakes up any organization. Indeed, it did this one. It was brought to the board of directors and the executive committee that they needed new management and new leadership. The company stepped up to the buzzsaw and the difficulties of that move and went through with that difficult change, which is in place today. They promoted a number of capable employees from within, bringing in those midmanagement people who had been with the company for a long period of time.

Fairchild sold $200 million of corporate assets to provide the needed funds to proceed with the T-46. Now, anybody would have to take note of $200 million of investment capital into a company so that it could meet the requirements set in the contract that had been awarded to it.

They invested over $110 million of stockholder funds in the T-46A program. I think it is significant to note that when a board of directors solicated stockholder investment—and investments are made from the public and existing stockholders—they must be acting in a prudent way. They are not there throwing the dice. They are

not there to take a gamble on a risk. They are making a management decision.

Now, it does not mean they might not make a mistake, but they are making a management decision that they can perform and deliver the aircraft as the Air Force needs require.

Next, they devoted additional personnel to this program. A number of people were shifted, moved to ensure the capability of Fairchild to meet their responsibility under the contract. They ordered new major equipment, and they have installed much of that equipment and some of it is still coming on line. They improved communications from the top to the middle management.

Mr. President, further, they have increased the skills of supervisory personnel; they increased the emphasis on quality and safety and schedules rather than just cost alone. They strengthened the quality analysis function within their company.

Now, this effort resulted in a very highly favorable GAO report on the T-46 programs. These are not things that were made up. These indeed were concrete changes that this company made.

Defense News boldly stated, and I would like to quote: "A clean bill of health," referring to Fairchild, manufacturer of the T-46.

A Defense Daily—another publication—headline, "GAO Issues Favorable Report on the Fairchild T-46."

The New York Times reported, "Canceled Jet Apparently Met Air Force Needs."

I think it most important that those types of publications' analyses indicated that, yes, there was a deep problem within that company, and I do not stand here and say, because I do not know, that everything is solved. But indeed there was a good faith effort, a good faith investment by stockholders as well as additional capital resulting in $200 million invested in this company. The results have proven by public recognition that this company now is prepared to go forward and can meet its responsibilities.

This airplane does meet the needs of the Air Force, as I see it. In the words of the former commander of the Air Training Command:

> The T-46 is a good airplane which meets our needs. The T-37 is running out of time and has many operational deficiencies. Modification of the T-37 is not a long-term solution—it doesn't solve the operational problems, and a replacement will be more expensive 5 to 10 years from now. To date, we have spent half a billion dollars on this program if 1986 funds are included.

The American public, through our Government, has made a substantial investment in the T-46 already. It appears to this Senator that it would be prudent and wise to at least move forward with, as I mentioned earlier, a proposed compromise to release the 1986 funds. As my senior colleague from Arizona has pointed out, if the Air Force does not have the money, we cannot do it in 1987, and that is part of that compromise—not to fund 1987. And if, as some predict, Fairchild cannot make it, cannot produce, will not be here, so be it. That is our free enterprise system. I am not interested in bailing them out if they cannot cut it. But I think that they ought to have the moneys for 1986 at a bare minimum because of the commander of the Air Training Command quote that I just read into the RECORD as well as many other reasons.

Fourth, economics favor the T-46.

Something that many of those opposed to the T-46 seem to ignore is the fact that the T-46 program will save the taxpayer a substantial amount of money. A March 1986 CBO study of trainer alternatives concluded that the the 20-year costs of the T-46 would be between $100 and $400 million less than the 20-year costs associated with the T-37 modifications being considered by the Air Force.

Several elements unique to the T-46 program make savings of this magnitude not just a possibility but a probability. Most important are the remarkable increases in fuel efficiency and maintenance designed into the T-46. The T-46 Flight Test Program is demonstrating better fuel efficiency than was anticipated. Fuel savings alone are now projected to total some $50 million per year.

An element of the T-46 program that is often forgotten but is sure to generate even further savings is its attraction to foreign buyers. There are more than 600 T-37's in overseas inventories that are going to have to be replaced in the near future. The worldwide trainer market holds the potential for $3.4 billion in export sales. The T-46 is the only American-made aircraft that can compete for these dollars and improve our national trade deficit. I am not here to argue that that alone is a reason for the T-46. I am pointing out that that is one of the fallouts of a prudent judgment to proceed with this trainer. That is what we are going to see in the future.

□ 1140

Fifth, the flight test program.

I cannot help but include in my remarks some of the comments received from the person responsible for the test effort Air Force Systems Command Assistant Deputy Chief of Staff for Test and Evaluation. There are a number of outstanding observations and comments regarding this.

First, the flying quality. It is a solid ride, they say; very stable and trimmed fit; excellent control response; very crisp, but smooth response to input; no slip in controls.

I am not a pilot, although some years ago I did a little of that. But this is not coming from the junior Senator from Arizona. This is coming from the Air Force Systems Command Assistant Deputy Chief of Staff for Test and Evaluation. His office, his job, is to analyze and give an impartial observation and report as to the system they are in the process of procuring. This is what they say.

The office went further and said: "Excellent speed stability; almost no trim required. No trim required for gear/flaps. Overall, great handling aircraft. Stable in close form."

What better recommendation could you have for a trainer that is going to be used by American servicemen in the Air Force to become prepared to fly the most sophisticated aircraft known to mankind, than to have a trainer that gets these commendations?

In this Senator's judgment, this plane is not a flop at all. It is a very good plane. Given the economic constraints that the Air Force is under, I realize that you cannot have all the money all the time. Those days may be gone for few years until, if ever, we get this deficit down.

Mr. President, I would like to make quick reference to the comments made by some in this body that the company could not afford to do this. As I indicated, I am not an economic analyst of manufacturers, and I do not know all the economic problems that Fairchild has had over the years. But it seems to me that if these problems are secret, they ought not be secret. If they are so severe, they should be brought out and debated.

I do not think the Senator from New York—and certainly not the junior Senator from Arizona—has any desire at all to see us get involved in bailout. But we are in a free enterprise system here, and so be it. When a company contracts with the Federal Government, it has always been my feeling that we should not bail them out. Let them go down and let them pay the price. If that means essentially a loss of jobs, I am sorry for those people who lose their jobs. I am sorry for the investors who would lose their investment money. I am sorry for the for the management, for their disappointment in not being able to make that company work.

There is a lot at stake here. There is a lot of incentive to make it work.

It seems to me that when we are here in the waning hours of the 99th Congress, we should proceed with this trainer—at least, as I said, with the 1986 money that has been appropriated and is there. We are not talking about adding money to the deficit by releasing the 1986 money, I truly hope we can resolve this in some manner.

Mr. President, I want to proceed with a few other articles and GAO reports in support of this subject matter.

One article is from the New York Times, dated June 8, 1986, not too many months ago, by John H. Cushman, Jr., which I would like to read into the RECORD. The article is dated June 7.

Recent tests have shown that a new training jet that the military decided not to buy last year would meet the Air Force's needs for a modern trainer for fighter pilots, a government agency reported.

The aircraft, the T-46A, is being built by the Fairchild Republic Company of Farmingdale, L-I. The future of the company's factory there hinges on whether Congress overrules the Air Force's decision to cancel the program.

A report by the General Accounting Office, an investigative arm of Congress, said that an official of the Air Force Air Training Command reported "that based on actual flights by their personnel, the T-46A's performance was excellent, met the command's need for a modern trainer, and would save millions of dollars in yearly maintenance cost."

The article goes on about modifying existing jets.

The GAO report was written last month at the request of the Senate Majority leader, Bob, Dole, a Kansas Republican who supports the Air Force's plan to cancel the Fairchild project. The new plane would replace a model produced in Mr. Dole's home state.

The plane, the Cessna T-87B, would need new engines and other modifications to meet the Air Force's performance goals, officials have suggested.

The Air Force decided last year to cancel the T-46A, trainer program because of production inefficiencies and rising costs at the Long Island plant.

While some members of Congress have sought to restore money for the T-46A, the Senate voted in May to rescind the unspent portion of this year's budget for the aircraft. That could effectively kill the program immediately if the House of Representatives agrees to cut off this year's funds.

A company official said Fairchild hoped the GAO report would help the company's allies in keeping the program alive. Originally, the Air Force wanted to buy as many as 650 new trainers worth more than $3 billion.

According to the report, "Air Force and Fairchild officials said flight test results have been very successful to date."

The plan is expected to "meet or exceed" most of the Air Force's original performance requirements, the report said.

Then the article talks about the decision to cancel the jet:

"However, it is not expected to meet some of the more stringent contract performance requirements," the report added. "These more stringent requirements were proposed by Fairchild when competing for the T-46A contract and were subsequently included in the contract."

An Air Force review of Fairchild's manufacturing facilities last summer turned up numerous examples of production and quality-control problems at the plant. As a result, the Air Force sharply curtailed payments to the company, and later decided not to exercise options to buy more planes.

By the end of March, the plane had been flown 74 times for a total fo 110 hours, by both Air Force and contractor test pilots.

Pilots from the Air Force and the company agreed, according to the the GAO, "that the T-46A's performance tests have been successful. They also said that technical tests have been outstanding and reliability and maintainability significantly better than predicted. They believe the T-46A's air worthiness is excellent."

The plane did show problems in several areas, which the accounting office said were being addressed. These include high wind resistance, which could affect performance and fuel consumption.

□ 1150

Now, Mr. President, I would like to put in the RECORD a very interesting article from the Defense News dated June 2. The headlines of this article indicate "GAO Report Gives Troubled T-46 a Clean Bill of Health." "Air Force says problems can be fixed without major modifications."

WASHINGTON.—A General Accounting Office study has given the troubled T-46 trainer aircraft a clean bill of health despite critics' objections that the plane is not meeting required performance specifications in recent test flights.

The May 20 study, "Development and Production Issues Concerning the T-46A Aircraft," says flight tests of the trainer have been "very successful." The report has provided additional ammunition to Fairchild Industries, which has launched a last-ditch effort to convince Congress to revive its troubled trainer program, deleted from the Air Force's 1987 budget request.

The GAO report, which has yet to be released officially, was requested by Sen. Robert Dole (R-Kan.), a critic of the T-46A who has championed the alternative of extending the life of the Air Force's current inventory of T-37 trainers built by Cessna of Wichita, Kan.

According to the GAO study, Air Force Systems Program Office and Flight Test Center officials at Edwards Air Force Base, Calif., agree that the technical tests of the T-46A have been "outstanding and reliability and maintainability significantly better than expected. They believe the T-46A's air worthiness is excellent."

The GAO study contradicts the view expressed by Sen. Barry Goldwater (R-Ariz.) during a Senate speech on May 15 in which the chairman of the Armed Services Committee blasted the plane's performance in recent test flights. On that day, the Senate voted to prohibit the Air Force from expending the $193.9 million authorized in the 1986 budget for the aircraft.

A pilot himself with 57 years of flying experience, Goldwater says that talks with test pilots at Edwards have convinced him that the aircraft has a number of key technical problems.

The test aircraft being flown at Edwards had an improperly manufactured wing incident angle, says Goldwater, which has caused an imbalanced flight. While the ailerons were rerigged to trim the aircraft, Goldwater warns that "if you have anything wrong with the main spar that requires any work at all you have an airplane that is in trouble."

Goldwater also says the engine air inlet, or flying speed brake, may have to be redesigned to meet specifications. "The aircraft has no stall warning system," he says, "and will need a stall warning system integrated into the aircraft prior to production." Fairchild also miscalculated the drag and weight of the aircraft, which has led to a significant reduction in its range, says the senator.

In addition, severe structural vibrations and wing flutter in the aircraft caused it to be grounded on May 5, says Goldwater. "When you get a flutter of 8 hertz or 8 cycles per second," he said, "anything can happen."

A spokesman for the Air Force's Flight Test Center at Edwards tells Defense News that the flutter problem has been corrected and that the aircraft will be back in the air this week. He says the problem, caused by a new set of specially balanced ailerons, was "not serious, they just had to rebalance the ailerons." The long downtime was due to the fact that the Air Force wanted to go through the aircraft with a "fine-tooth comb" to make sure the flutter did not create any other problems with the aircraft, he says.

Mr. President, there are numerous articles here. One in Defense Daily dated June 3 talks about the GAO issues favorable report again on the Fairchild T-46A and I would like to read that at this time.

In a special report requested by Sen. Robert Dole (R-Kan.), Senate majority leader, the General Accounting Office has given good marks to the quality of production and aircraft performance of the Fairchild Republic T-46A trainer which the Air Force has stricken from its budget rolls.

In the report to Dole, who represents the home state of Cessna T-37B trainer, which the Air Force will rely on in lieu of the T-46A, the GAO did not downplay Fairchild's contract difficulties with the T-46A, pointing out that "Fairchild was the first contractor to be rated unsatisfactory in all eight management areas reviewed."

However, the GAO quickly noted that the Air Force had found that Fairchild made "substantial progress" in correcting its deficiencies and that the reviews made by the Air Force of production quality have "concluded that Fairchild was capable of manufacturing the T-46A" and that the program office recommended that the production program be continued.

Now, Mr. President, I want to go off the article for a moment to comment on that particular statement. Here we have the GAO, which is an arm of Congress, nonpartisan, that is directed by Congress, sometimes Members or committees, to do impartial studies, and indeed I have found them to be excellent in the 10 years that I have been here. I have not always agreed with them but I found that they do not shade it for political purposes or for those Senators or Members of Congress who may be in a particular area of concern that the GAO may or may not know.

This report which has been gone through extensively by the junior Senator from New York, is a good report, and we ought to pay attention carefully to these reports, and this report says that they noted that Fairchild made substantial progress and that the Fairchild Co. was capable of manufacturing the T-47A and that the program office recommended that the production program be continued.

I do not know what much more we need as to the verifiability that the company, Fairchild, with all its problems that it may have had is prepared and ready to proceed.

That is not the junior Senator from Arizona saying they are ready to proceed. That is the GAO telling Congress or recommending to Congress that yes, there are problems, we have followed what you have suggested and done a study and now we are coming to a conclusion that you asked us to do, and we are making recommendations to you and we are telling you what we believe to be the truth and the facts regarding this company and the particular weapons system which is the T-46A, and we are telling you that Fairchild is capable of manufacturing that particular aircraft.

Going back to the article, Mr. President.

On March 28, 1986, the Secretary of the Air Force announced that he would not exercise the option for the second production lot of T-46As and that the Air Force will extend the life of the T-37B about five years beyond its original life expectancy to make up for the loss of the T-46A.

GAO also said that, meanwhile, the Air Force and Fairchild report a very successful flight test of the first T-46A aircraft and that the T-46A "is expected to meet or exceed most of the Air Force Air Training Command's original performance requirements," although it is not expected to meet some of the "more stringent requirements" proposed by Fairchild when competing for the contract.

Let me repeat that for the record.

. . . "is expected to meet or exceed most of the Air Force Air Training Command's original performance requirements," although it is not expected to meet some of the "more stringent requirements" proposed by Fairchild when competing for the contract.

□ 1200

To divert from the article, we are making an argument here on behalf of the T-46A. No one wants to leave that impression. But certainly experts conclude that it exceeds most of the Air Force Air Training Command's requirements.

The flight testings has identified problems in aircraft drag, lack of adequate stall warning, primary flight controls, and speed brake buffeting. However, again, the Air Force said "these types of problems are not unusual at this stage of development and they can be solved without major aircraft modifications and within the scope of the development contract."

The GAO quoted an Air Force Air Training Command official who said that "based on actual flights by (command) personnel the T-46A's performance was excellent, met the Command's needs for a modern trainer, and would save millions of dollars in yearly maintenance cost."

Now, let me divert again from this article to underscore this paragraph. The GAO quoted an Air Force Training Command official. This is what the GAO study has in it, a quote of an Air Force Training Command official. He said:

Based on actual flights by (command) personnel, the T-46A's performance was excellent—

Not fair, not pretty good, excellent—

met the Command's needs for a modern trainer, and would save millions of dollars in yearly maintenance cost.

That, to me, is significant out of this report. There is a lot of interesting information in this report, including the criticism of the Fairchild Co., but this is really significant to this Senator, that the Training Command officials say that this is excellent, that it meets the Command's needs for a modern trainer and, on top of it all, they believe the Air Force would save millions of dollars annually.

Now, going back to the article:

In summarizing the status of corrective actions that have been taken by Fairchild GAO said "corrective action has been completed and submitted to the Air Force for approval on 83 percent of the deficiencies. The Air Force has approved 61 percent of those actions as of March 31, 1986."

That is a number of months ago. So that Fairchild, according to GAO, is well on its way toward correcting the problems that rightfully were brought to their attention. And, indeed, they did not try to disguise them. They came forward and they corrected them at substantial cost to the company, by the way.

Going back to the article, Mr. President:

The Secretary of the Air Force cited the production difficulties, contract deficiencies, and budget constraints when he decided not to continue the T-46A acquisition program withholding the FY 1986 Lot 2 production funding for 33 aircraft and not requesting funding for FY 1987.

In addition to noting that the Air Force will extend the life of the T-37B five-years beyond its expected lifetime and that there is a shortage of the T-37B in the inventory, the GAO said that among the options the Air Force will explore during the next several months are the options to "resume or recompete" the T-46A production.

Senator D'AMATO, the junior Senator from New York, yesterday went over at great length this particular GAO study, so I am not going to belabor that because the RECORD is already there.

The GAO had another report, dated November 8, 1983, which addresses the problem of contract awards to Fairchild. I think it is important, because that has been raised here, to this company's financial problems and its ability to perform, and what have you.

Mr. President, I want to read into the RECORD some or all of the GAO's report, dated November 8, 1983, Code No. B206430, addressed to the Honorable NANCY KASSEBAUM, U.S. Senate; the Honorable ROBERT DOLE, U.S. Senate; and the Honorable DAN GLICKMAN, House of Representatives. The subject of this is "Evaluation of Contract Award for the Air Force's Next Generation Aircraft."

In response to your July 1982 requests and subsequent discussions with your staffs, we evaluated the Air Force's award of the Next Generation Trainer (NGT) Aircraft to the Fairchild Republic Company. Specifically, we considered whether the Air Force had followed established Department of Defense (DOD) and Air Force instructions in evaluating the proposals for full-scale development of the NGT and whether existing procedures precluded the Air Force from considering potential alternative NGT systems during the source selection process. We have already discussed our findings and conclusions with your offices. In summary, we found:

NGT source evaluation and selection was done according to DOD and Air Force instructions and the evaluation criteria in the request for proposals (RFP).

Consideration of alternative NGT systems during the source selection process was not precluded.

BACKGROUND

In July 1982 the Fairchild Republic Company was chosen to develop the NGT after the Air Force completed an evaluation of competitive proposals received from the Cessna Aircraft Company, Fairchild Republic Company, and Rockwell International Corporation. Two other companies—Ensign and Gulfstream—had been eliminated earlier from this phase of the competition.

Fairchild was awarded a contract for $104 million for the design, development, testing, and delivery of two NGT aircraft with data and support equipment for full-scale development. The award included options for up to 65 more NGT aircraft. The Air Force could order as many as 650 NGTs over the next several years, and total acquisition cost could run as high as $3 billion over the life of the program. The new trainer will replace the Cessna-produced T-37 jet aircraft which the Air Force is using as its primary flight trainer.

The Air Force used conventional source evaluation and selection procedures in awarding the NGT contract. It developed a source selection plan approved by the Secretary of the Air Force, the source selection authority for this program, and issued an RFP which requested technical and cost proposals. Both the source selection plan and RFP indicated that the following factors would be evaluated in descending order of importance: (1) operational utility, (2) readiness and support, (3) life-cycle cost, (4) design approach, and (5) manufacturing/program management.

An NGT Source Selection Evaluation Board (henceforth referred to as the "Evaluation Board") evaluated the proposals received against criteria, standards, and guidance in the source selection plan and RFP. Deficiencies in the proposals were identified and the offerors were permitted to submit revised proposals which were again evaluated by the Evaluation Board.

Definitive contracts were then negotiated with all offerors within the competitive range before contractor selection. A Source Selection Advisory Council (henceforth referred to as the "Advisory Council") monitored the overall evaluation and selection process and reported to the Secretary of the Air Force.

OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to determine whether the Air Force evaluated the proposals prop-

erly and considered alternative NGT systems.

We reviewed DOD and Air Force regulations on the source evaluation and selection process and procedures used in the NGT source evaluation and selection process. In particular, we reviewed 8 item evaluation reports randomly selected from the 36 NGT item evaluation reports prepared by the Evaluation Board.

The item evaluation reports contained a narrative assessment of the offerors' compliance with the RFP. They described the Evaluation Board's assessment of the proposals against important operational, logistical, cost, technical, and manufacturing/management criteria established before the proposals were received. Strengths, weaknesses, and risks of each item were identified and a color coding system was used to indicate overall acceptability. Relevant information in these reports was incorporated into summary documents cited in the source selection decision paper which announced the NGT contractor selection.

We reviewed the selected item evaluation reports to determine whether item strengths, weaknesses, risks, and their overall acceptability were assessed in terms of the evaluation criteria, standards, and guidance in the source selection plan approved for the NGT program. We did not evaluate the appropriateness of the items the Air Force deemed important for the evaluation.

In addition to the item evaluation reports, we examined other source selection records such as the source selection evaluation plan, factor evaluation write-ups, and various briefing documents. We interviewed officials of the NGT program office concerning general information about the program and the source selection process. We also interviewed members of the Evaluation Board who evaluated, contractor proposals. In interviews with the evaluators we discussed their credentials, qualifications, and the adequacy of NGT proposal evaluation procedures for ensuring impartial evaluations.

We did our review at the Aeronautical Systems Division, Air Force Systems Command, Wright-Patterson Air Force Base, from November 9, 1982, through February 25, 1983. Our review was performed in accordance with generally accepted government auditing standards.

SOURCE SELECTION PROCEDURES WERE FOLLOWED

On the basis of information we compiled, we believe that NGT source evaluation and selection were done in accordance with DOD and Air Force instructions and RFP evaluation criteria.

Mr. GOLDWATER. Will the Senator yield for a question?

Mr. DECONCINI. I will be glad to, without losing my right to the floor.

Mr. GOLDWATER. I wonder if he would indicate how much longer he is going to be.

Mr. DECONCINI. Yes. I would be glad to advise the Senator. I am going to suggest the absence of a quorum in about 1 minute or 2.

In July 1982, the Secretary of the Air Force chose Fairchild to develop the NGT, stating that the selection was based on:

Evaluation criteria established in the RFP,

The Secretary's integrated assessment of the Fairchild proposal;

The terms and conditions agreed on in negotiations;

The Evaluation Board's "Summary Evaluation Report."

The Advisory Council's "Proposal Analysis Report," and

The capability of Fairchild to fulfill requirements.

Mr. President, later today I intend to proceed with this 1983 GAO report because I think it has a great bearing on what we are talking about today.

Mr. President, for the time being, I want to reiterate that I truly hope as we have proceeded through this effort here that we will indeed find a way to compromise in this area. It is very important that this 99th Congress conclude its work, and that we find ourselves a way to resolve this particular issue. Nothing is going to be served if we continue to just hassle and talk.

What we need to do is, in my opinion, find a way, and I always believe having been in this body and seen many compromises that when you talk about compromise it means that both sides give. Nobody gets all they want, certainly, but, indeed, there is benefit.

So, Mr. President, I suggest the absence of a quorum.

Mr. GOLDWATER addressed the Chair.

The PRESIDING OFFICER. Will the Senator withhold the quorum call?

Mr. DECONCINI. Yes.

The PRESIDING OFFICER. The senior Senator from Arizona, Mr. GOLDWATER.

Mr. GOLDWATER. Mr. President, last night when we started this discussion relative to the T-46, I said that this is not a debate about an airplane or two or three airplanes. It is a debate based on the simple fact that the Air Force says unequivocally they will not take this airplane. Here we are. We have spent almost 12 hours talking about the T-46 and the T-37 when we should be talking about is it sensible to try to buy aircraft that the Air Force in effect says they will not take? But I do think it is time that I make a few corrections, very few, on some of the statements that have been made.

Mr. President, we have heard a lot about the GAO. The GAO does not have a night session. They have no way to evaluate an airplane unless they go out to Edwards Air Force Base or Patuxent or any other test base and ask the test pilots. I do not know if they have done that or not. But let me talk about the T-37.

The average time on a T-37 is about 15 hours or a little less. We have 1 aircraft of the T-37 that has had over 20,000 hours. Now the modifications that are being planned for the T-37 are line modifications. In other words, modifications that can be accomplished at the base where the aircraft is located. About 5 years from now, maybe 6 years, there will be some serious modifications on the T-37 like a new engine. We are not talking about the money involved in the T-37 at this time. That is 5 or 6 years away.

Mr. President, I heard mention of the T-46 price. Well, we do not know what the price is or what it is going to be. But we do know that they cannot produce this airplane and make a profit.

I did not want to get into this, but I think I have to. Let me go back into the history of this.

When the Fairchild design of the T-46——

Mr. STENNIS. Mr. President, may we have quiet so we can hear what the chairman is saying?

Mr. GOLDWATER. When the T-46 was developed Fairchild was a corporation entirely different than the corporation we have today. It was mostly in Maryland with branches in New York and other places. But the first thing that happened to the Fairchild Corp., Ed Uhl who was the president of the corporation and was responsible for some of the finest aircraft we have ever had made, was let out. With Mr. Uhl went their engineers, most of their good draftsmen, and most of the experts they had.

So what they wound up with after leaving Maryland, their home, well, they wound up with a corporation that could not make an airplane. Oh, they made one. The first T-46 arrived at Edwards Air Force Base, and it did not have much wrong with it. The main spar was crumpled, broken. The main spar is what makes the wings stay together. That took a long time for them to correct. I recite the history of the corporation because they are responsible for the record of the airplane that we have seen.

They still have not corrected the drag influence on the air intake of the engines. That is not a serious thing. There is a problem of control that is not serious but they have not corrected it. They have only built two airplanes. The original contract No. 1 was for 10 aircraft. If they build those 10 aircraft, Mr. President, the corporation will be bankrupt.

□ 1220

I hope we can get that across. I do not like to talk about things like that. I am sorry that they are in that fix. But what we are being asked to do is bail out a corporation that has gotten itself into a lot of trouble because of their own mistakes.

I am getting a little tired of bailing out Chrysler, bailing out New York City, bailing out everything in the country. If they cannot hack it, they have to pay for it.

So on the price of the T-46 if they want to make a profit—and they have to make a profit to stay in business—we do not know what it is going to be, but we know it is going to be a lot more than it is now. If they build the T-46's that are in the contract now the company will be bankrupt.

Mr. President, these are things that I did not want to discuss about this whole matter, but we have heard nothing on this floor but a recital of GAO, and they do not know which end of the airplane goes down the runway first. I have had that battle with GAO for so long I cannot remember when it started. I remember one day I asked one of the members testifying before the committee, "Who did your test work?"

"We do not have a test pilot. We got it out of a manual."

Well, that is about the way they go along with things.

Mr. President, I hope we get down to the meat of this thing. It is based on the fact that the Air Force does not want the airplane. I am not going to talk any more about airplanes. I have been living with them almost all my life. I like to hear people talk about airplanes that know something about them, but so far I have not.

Mr. President, I yield the floor.

Mr. STENNIS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1240

Mr. STENNIS. Mr. President, I ask unanimous consent that further proceedings under this quorum call be suspended.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STENNIS. Mr. President, I ask recognition.

Let me say a word. I am not intervening in this matter about the planes, but we are all here and we have the facts pretty well captured, and other matters. This bill is dependent to a degree on making a move now that will cause us to start moving along. I am not seeking any advantage for anyone, disadvantage for another, but we have to do something about this. We have a rollcall on invoking cloture, 15 minutes from now I believe. If we pass that and go on to that, it displaces the matter we have pending before us and we do not know when we will get back to it.

Now, I understand that some of our counterparts over in the House are planning to go if they do not get some action by 3 o'clock. So let us see if we cannot get this thing together and settle it ourselves, if possible. If we cannot, why, we will just resort to it.

I yield the floor, Mr. President.

Mr. GOLDWATER. Mr. President, I agree with the Senator from Mississippi. I am happy to say that we are approaching a solution to this. I think it looks all right, just as long as it does not have money in it.

Mr. STENNIS. Well, I am encouraged by the fact that the Senator is encouraged. I believe that Senators are acting in good faith and I believe we can come out with something that has a practical angle to it that will let us move along.

Mr. GOLDWATER. I am with the Senator.

Mr. STENNIS. I yield the floor, Mr. President.

I suggest the absence again of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1250

Mr. DOLE. Mr. President, I ask uanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I am advised that we are near some—I will not say solution—but some agreement on the T-46A. I doubt that we can quite get it done by 1 o'clock. I hope it will be at about that time.

There is still one other amendment to dispose of, and then final passage, then the immigration bill, then reconciliation, and whatever else may be hanging around.

So I ask unanimous consent that the cloture vote scheduled for 1 p.m. be postponed until 2 p.m.

Mr. SIMPSON. Mr. President, reserving the right to object—and I will not object—let me say that I will accommodate the majority leader in any way, and always have, and always will, and I will on this occasion. But I think it should be apparent that it is necessary to go to this cloture proceeding if we are going to have an immigration reform bill.

If there is a filibuster, we will quickly find out. I think we have already seen that there are indications of the beginning of that. Therefore, I hope my colleagues will insist on terminating debate, and we ought to get on with the issue and proceed with it; because, under cloture, if it is invoked—and I sincerly hope it is invoked—we will go forward and vote on this conference report.

There are considerations here that others have, and I think it is time to realize that this is a two-way street. If we want an accommodation on one side, you give accommodation on another. It is not simply a matter of taking and no giving.

That is what my position is on this particular item.

Mr. GRAMM. Mr. President, reserving the right to object——

Mr. DOLE. Mr. President, I withdraw my request.

Mr. STENNIS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I want to renew the request to postpone the cloture vote from 1 p.m. to 2 p.m.

Mr. GRAMM. Mr. President, reserving the right to object—and I will not object—I simply want to remind my colleagues that despite the fact that this bill has been worked on for 6 years, the immigration conference report before us—which is substantially different from the bill that was adopted by the Senate—has been debated in opposition for only 40 minutes. There have been only 40 minutes of debate in opposition, and I wanted to make that point clear.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. SIMPSON. Mr. President, I inquire of the Senator from Texas as to how much time he will require in his effort here if cloture is invoked. It would be interesting to us, as we try to work the flow of legislation yet to be done.

Mr. GRAMM. If our colleagues decide to end the debate, which from the point of view of opposition has lasted for only 40 minutes, then under the rules I could speak an hour and a person could yield me an hour, and that would end my ability to speak.

I understand that there are others who would speak as well. But if cloture is invoked, we are under a very strict set of rules, and in terms of the general debate, that general debate is open.

Mr. SIMPSON. I thank the Senator.

Mr. STENNIS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1320

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, today the President has signed the Superfund bill. In the past week, we have marshaled our forces to convince the White House to sign this bill. We sent the letter to the President with 81 cosignors from the Senate, urging him to sign the bill. I was joined by 56 of my colleagues in a letter to Senator DOLE expressing our will to stay in session as long as it took to ensure a veto override, should one have been necessary.

All these efforts, combined with clear public support for this bill, made the difference. And I believe a new era

of environmental protection has begun.

In this bill, we have an historic piece of legislation.

The Superfund Program has been on the books for 6 years. We have spent $1.6 billion. We have barely touched the surface. We want that changed. We think this bill will do the job.

New Jersey stands to gain a minimum of $500 million under this bill, and maybe much more.

This bill will ensure that the job is done right. It includes tough, new cleanup standards. At Lipari landfill in Pitman, NJ, the most hazardous site in the country, the EPA has proposed a cleanup plan that fails the test. The Lipari cleanup should be done right, and the 98 other sites in New Jersey should be done right. The cleanup standards in this bill serve that goal.

Mr. President, this bill gives citizens the right to know about the chemicals present in their communities, and the right to know about the toxics being released into their air and water. New Jersey experiences constant chemical spills and releases, and the air is despoiled by toxic emissions.

Mr. President, after the incident in Bhopal, India, I introduced legislation to insist that in America we inventory our chemicals and alert emergency response personnel to potential dangers in their communities. And, that we plan for the worst but insist on the best prevention. That legislation survived the conference. It's an enormous achievement, and important for New Jersey.

This bill contains my radon legislation, to set up a comprehensive program for radon detection and mitigation at EPA. In New Jersey, unfortunately we discovered radon. Now it is important that we lead the effort to abate it. This bill assures that these efforts will continue. A significant portion of these funds will go to New Jersey.

This bill also includes an important underground storage tank cleanup program, critical to protecting the drinking water supplies in New Jersey, and guarantees citizens the right to sue if EPA is not doing the job.

If the President had vetoed this bill, work would have stopped at over 100 sites across the Nation and at 16 sites in New Jersey. It never would have started at the remaining 83 New Jersey sites. That was unacceptable. We are prepared to stay in session as long as need to be to force final congressional action on this bill. I am gratified that the President signed this bill.

Mr. President, the enactment of this bill breathes new life into this program; $1.5 billion of funding will become available almost immediately for Superfund, which has been starved for more than 1 year. In the Appropriation Committee, I fought hard for the highest funding level. New Jersey has gotten $1 of every $5 of Superfund money. Every dollar added to the program helps our State.

A bold new program is in place. Resources are dedicated to do the job. The challenge is immense. Now we can get on with the job.

Mr. President, with the signing of Superfund today, this Nation embarks on a bold new program of environmental protection. In addition to its many new provisions, the bill contains a new community right-to-know program that greatly enhances the health and safety of this Nation. As the author of the Senate provisions, I would like to take this opportunity to clarify some features of the right-to-know program.

In doing so, I would like to commend the chairman of the Environment and Public Works Committee for his determination, patience, and commitment to protecting the environment. Without the labors of the distinguished senior Senator from Vermont we would not have had a reauthorized Superfund. His devotion to the bill as a whole, and to the right-to-know program, was an inspiration to all of the conferees, and I thank him.

Mr. President, given Senator STAFFORD's leadership role on this bill and contribution to right to know, I would welcome his views on the clarifications I am about to discuss.

Mr. President, I would like to begin by noting that the overriding goal of the title is to provide long absent information on the management of toxic chemicals to the public—as well as to firefighters, State and local officials, health professionals, and others. To that end, the information must be usable. Units of measurement must be consistent, descriptions of and identities must be uniform among the various reporting forms so that data can be cross-checked and tracked adequately.

Where volumes are to be reported in ranges, those ranges must be established so the information is valuable and not so broad that it is impossible to determine anything of relevance. In addition, it is extremely important to ensure that specific chemicals names are present on all forms since that information is needed to use many reference sources. This is a requirement which means EPA should be extremely vigilant in implementing and enforcing its trade secret obligation to ensure that the public is granted this meaningful data.

Mr. President, the public should be able to gain easy access to the information collected under this title. Information coordinators at the State and local level, as well as at EPA, must provide data to the public and it is expected that the public will be able to view reporting forms at specified locations and gain access through the mails—with costs reimbursed if appropriate. Moreover, while public access to tier II information is mandated if a hazardous chemical is stored in an amount in excess of 10,000 pounds or if the information has already been requested of the facility, it is the intention that the public should also have access to information regarding chemicals of lesser volumes. In short, information requests should be denied only if there are compelling reasons to do so.

Mr. President, requests for information must be met in a timely fashion. Under this title, facilities are allowed to provide lists of chemicals for which material safety data sheets are available, but then they must provide the actual MSDS' upon request. Additionally, in section 312, tier II information must also be made available upon request. It is the firm intention of this title that, when such requests are made, they shall be complied with as quickly as possible. Similarly, all information requests should be met in a timely fashion.

Mr. STAFFORD. Mr. President, I would associate myself with the remarks the junior Senator from New Jersey has made about the goal of public availability of the right-to-know title. It is essential that information collected be usable, easily accessible, and made available in a timely fashion.

Mr. LAUTENBERG. Mr. President, I would also like to comment on the issue of State and local authority. The community right-to-know and emergency planning provisions in the bill represent a milestone: The first Federal program addressing those essential needs. At the same time, however, it is recognized that States and localities have been active in this arena previously and will continue to act to serve their citizens. States and localities retain their authority to enact and implement community right-to-know programs, which are not preempted by these Federal provisions.

Mr. STAFFORD. Mr. President, again I concur with Senator LAUTENBERG. I worked with the junior Senator from New Jersey to ensure that State right-to-know programs would not be preempted by the provisions in this title. The ability of States to go forward with their own programs is vital, and that ability has been clearly preserved in this legislation.

Mr. LAUTENBERG. Mr. President, I would also like to touch briefly on the trade secret provisions in the title. The title does give facility owners and operators the ability to withhold only the specific chemical name or identity if various requirements and procedures are met. Those requirements and procedures are intended to set a high standard for trade secret claims and review, with the presumption that

this information should be made available to the public except in very narrow circumstances. In particular, chemical identities which are readily discoverable through reverse engineering cannot be claimed as trade secrets under this title.

Mr. President, I would make a final point about the discretion of the EPA. The title does provide the Agency with discretion in terms of setting thresholds, adding chemicals to the list of those who must report. In implementing this title, the EPA must remember and abide by the overriding purpose of this program and act to ensure that as much meaningful and usable information as possible be made available. This is essential not just so that the public will have access to this data but so that EPA itself will be better informed on the toxic picture in this country.

Mr. STAFFORD. Mr. President, again I concur with Senator LAUTENBERG's statements about the title's trade secret provisions, and the intent of Congress to guide EPA in implementing this right-to-know program. The right-to-know program is an important step forward in protecting the environment and public health, and I look forward to its implementation.

Mr. LAUTENBERG. Mr. President, I thank the distinguished chairman for his observations on the right-to-know program. Again, I wish to express my gratitude to Chairman STAFFORD for his support and leadership in crafting the right-to-know provisions and the Superfund reauthorization package.

SUPERFUND

Mr. DOLE. Mr. President, let me indicate that the President signed the Superfund legislation on Air Force One this morning on the way to North Dakota. So we are making progress.

Let me add, Mr. President, I understand he is signing the Superfund primarily on the strength of a letter he received late last evening signed by 50 Senators.

So I want to thank my colleagues who were willing to sign that letter which indicated to the President very properly in my view that if there is an effort next year to expand the program and raise the taxes that we would stand by the President if he were required to veto any such efforts.

So I think the President was pleased to have the letter. I thank my colleagues for their assistance. I think he did the right thing in signing the Superfund.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1330

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STENNIS. Mr. President, may we have order? This is important.

The PRESIDING OFFICER. The point is well taken. The Senate will be in order.

CONTINUING APPROPRIATIONS, 1987—CONFERENCE REPORT

Mr. DOLE. Mr. President, there has been a lot of good discussion, good-faith discussion, by Members on both sides of the aisle who have an interest in the particular issue before us now, the T-46. An hour and a half ago we were very close to some language that would have satisfied some, but on further study, it became apparent it was not acceptable to the distinguished chairman, the Air Force, and others. So we have to make a decision now, either to spend another 2 or 3 hours trying to reach some agreement or to vote on the Goldwater amendment.

It may be that if it goes back to the House, they will send it right back as it is now. But I would hope that those Senators who have fought in good faith would now let us vote up or down on the Goldwater amendment.

I am still optimistic enough to believe we can complete our work today.

Let me indicate to my colleagues the House is preparing to send us over another continuing resolution which will go until Tuesday midnight.

We do not have that much work to do. We can stay here today and stay here part of tomorrow and we can be out of here easily if we can just resolve this issue.

□ 1340

It has now been 21 hours and 40 minutes that we have been on this issue, one issue. We did have some intervening votes, but for the most part, we have been on this issue.

I know it is important. I am not trying to cut off anyone's rights, but it seems to me we have reached a point where we ought to vote on the Goldwater amendment. The chairman will be up here in just a moment. I think that is a course he would like to adopt. Obviously, if someone wants to discuss it more, we are not going to have a chance to vote on the Goldwater amendment.

The chairman has now arrived and he will make the judgment.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, at this time, I would like to call for the yeas and nays on the Goldwater amendment.

The PRESIDING OFFICER. Is there a sufficent second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HATFIELD. Mr. President, I would like to echo what the leader has indicated, the great disappointment that we have gotten so close and yet so far away at this moment to optimize agreement on the Goldwater amendment. I know there are some people who have wanted to vote for some many hours now, 5 or 6 hours. It constantly eludes the participants, reaching that final sign-off position.

We have had, of course, a rather extensive discussion on the Goldwater amendment. There are those who are deeply concerned about the underlying amendment, the Abdnor amendment. That does not lend itself to an easy conclusion, either.

I urge the parties to this to let us move to a conclusion. I urged that last night and, at that time, sought to bring it down to a firm decision, which was obviously not the will of the body, by tabling the underlying amendment.

I must say that in light of the circumstances, I would like to put the body on notice that I shall place that motion again or make that motion again at some point if we have not been able to resolve this in the efforts that are going on and, hopefully, continuing.

Second, I put on notice the parties to this dispute; namely, the Senators from New York State and the Senator from Arizona and others, and the protagonists on the other side—that we have to reach a point where we have had our day in court and then move on with or without one side or both sides being satisfied at all.

I remember Senator Russell, when I first came to the Senate, who had fought the battles on the civil rights issues time after time. He fought them up to the point of cloture. Then, Senator Russell, who had fought diligently for his convictions and for his beliefs, would comment that there comes a time in every Senator's life when his agenda has to be set aside for the will of the Senate, for the institution of the Senate to prevail. And he had utilized all the rights that he had under the rules of the Senate; he had exercised them right up to that point.

I think we are reaching that point now, where the will of the Senate has to prevail, the institution, over and above the individual agendas, as important as they are, and I do not in any way demean the individual agendas.

So I merely urge either a resolution of this through the informal meetings, or I shall at some point again bring the motion to the body for reconsideration of what we voted last night, hoping that we can then get a tabling motion to prevail, to bring down the

whole area of dispute in order to get the Government back on track.

As you know, there have already been actions taken to dismiss Federal employees. So I merely take this time to make this plea on behalf of the institution of Government and the institution of the Senate.

Mr. SIMON. Mr. President, will the Senator from Oregon yield?

Mr. HATFIELD. I am happy to yield to the Senator from Illinois.

Mr. SIMON. I wish to mention on the underlying amendment that Senator DIXON and I have been meeting with Senator ABDNOR. I think we are not too far from getting something worked out on the underlying amendment. So I hope that will not be an obstacle.

Mr. MOYNIHAN. Will the Senator yield?

Mr. HATFIELD. I am happy to yield.

Mr. MOYNIHAN. Just in the same spirit to say, sir, I have here an 8-line agreement which we had reached an hour ago with respect to the amendment in the second degree and which suddenly fell apart in some room off to the side here, which need not have been done.

Mr. HATFIELD. I know the Senator has worked hard, and all participants.

Mr. President, let me raise another possible alternative here. With the information that has just been stated by the Senator from Illinois, it would seem to me that we might look at the point down the line of separating these two issues. There has been a hotline, I believe, on both sides of the aisle suggesting that already. But let me remind the body that if the Senator from South Dakota [Mr. ABDNOR] and others interested in the underlying amendment should reach some kind of accommodation, the Senator from South Dakota is precluded at this time from even modifying his own amendment, according to the Parliamentarian, unless we have unanimous consent or unless we have consent to accept the two issues. It might just be a possibility at some point to accept the Goldwater amendment in the second degree as a freestanding issue, say, from the underlying amendment by the Senator from South Dakota.

□ 1350

Let me remind the body we have two issues really to settle. Settling the Goldwater amendment does not automatically settle the other amendment—well, it does if we vote the Goldwater amendment but there are many who are concerned about the underlying amendment. So we might reach that kind of a solution, too, of separating the two.

Mr. GOLDWATER. Will the Senator yield for a question?

Mr. HATFIELD. Yes, I will be happy to yield.

Mr. GOLDWATER. I just wanted to ask the question of whether or not my amendment being separated from the base amendment would have any effect? I understand that I have to have my amendment on that amendment in order to get it before the body.

Mr. HATFIELD. I say to the Senator the Parliamentarian has informed me that unanimous consent could be entered into that would make the Goldwater amendment an amendment to the House amendment and thereby put the Goldwater amendment in a freestanding position. That would require unanimous consent.

Mr. GOLDWATER. I do not think you will get that.

Mr. HATFIELD. No. I have had fairly good response already. That is why I am not propounding it at this time. But there may be a propitious time sometime down the road to do that.

Mr. GOLDWATER. I do not want my amendment lost or killed because of a technicality.

Mr. HATFIELD. I understand.

Mr. GOLDWATER. I only have been able to attach it to this amendment; it was the only place I could put it.

Mr. HATFIELD. I understand, and I would say that there would be no effort at all to try to short circuit the Senator from Arizona or to deny him any status for his amendment that he now enjoys. It would be a matter merely of a technicality of placing it as an independent amendment on the House amendment, separating it from the Abdnor amendment.

Mr. GOLDWATER. That would take unanimous-consent.

Mr. HATFIELD. It would take unanimous consent. So the Senator is well protected even if it were a fair maneuver.

Mr. STEVENS. Will the Senator yield for a parliamentary inquiry?

Mr. HATFIELD. I will be very happy to yield the floor.

Mr. STEVENS. Mr. President, is this Senator's understanding correct that last evening there was a unanimous-consent agreement entered into that no further amendments would be in order to any amendments of the CR?

The PRESIDING OFFICER. The Senator is correct.

Mr. STEVENS. I would object to any unanimous-consent request today.

Mr. HATFIELD. Would a unanimous consent to place something in the RECORD by an individual Senator be also in that category?

Mr. STEVENS. No. I mean pertaining to this bill.

If the Senator will yield, I have discovered in the authorization bill is a very punitive amendment that was aimed at my State and at this Senator, but it damages one of the most sensitive programs of the Department of Defense, and unless it is amended I shall join with the Senator from New York in full scale on the delay of this bill.

Mr. HATFIELD. That tends to indicate we are moving in the wrong direction, expanding the filibuster rather than narrowing the filibuster.

I think I will yield the floor before any information comes.

The PRESIDING OFFICER. The Chair would note the absense of a quorum. The clerk will call the roll.

Mr. HATFIELD. Mr. President, if there is no further discussion, I would call for a vote on the pending question.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. Is there further debate?

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Might I make a parliamentary inquiry of what the pending business is, what the motion is?

The PRESIDING OFFICER. The question before the Senate is the Goldwater amendment.

Mr. D'AMATO. Mr. President, I move that consideration of the Goldwater amendment to the Abdnor amendment to the amendment in disagreement be postponed until December 29.

Mr. President, the fact is that we have come so close, so very, very close—the Senator from Arizona and all those interested, my distinguished colleague from New York, the entire House of Representatives in terms of those who are interested in this. I believe that we can come to an accord. It is going to take a little giving on both sides, and let me say I do not intend to imply by that that Senator GOLDWATER has not been attempting to meet some of our very real concerns.

The PRESIDING OFFICER. The Senator will suspend. Conversation taking place on the Senate floor is obliterating the voice of the Senator from New York.

The Senator from New York.

Mr. D'AMATO. I thank the Chair.

Mr. President, what Senator MOYNIHAN indicated before happens to be factual. There is an agreement within our grasp. Let me suggest what takes place if we take a vote now. I have no doubt that the position of my distinguished colleague from Arizona will be sustained, overwhelmingly. We have had key votes, test votes on this. This matter will then go back to the House. I have spoken to Representative STRATTON of the Defense Authorization Committee. I have spoken to Representative CHAPPELL, who is the chairman of the Defense Subcommittee on Appropriations, and other of my colleagues in the House. The amendment that the Senator from Arizona puts forth will be rejected by the House of

Representatives, will be sent back to this body and will be started de novo, all over again.

Now, it seems to me, given the fact that we have spent quite a bit of time—everyone knows what their various positions are, what their legitimate concerns are, and they are legitimate concerns expressed by the Air Force, by Senator GOLDWATER, as we talk about the base of Fairchild, can they produce this airplane at a cost level which would be justified in the future. We have attempted to deal with that concern by providing language which would afford a fly-off, a competition which will enable the company to continue in such a way that it would be productive in order to achieve the best possible trainer in the future.

Mr. President, this Senator does not wish to unduly prolong these proceedings. I would suggest that it is simplistic to say that because of the opposition of my colleagues, Senator MOYNIHAN, myself and Senator DECONCINI, and other Members, absent that opposition here on this floor, what has taken place today would not have taken place in any event. What we have is that the House would reject it and we become more intransigent. We were able to convince Chairman CHAPPELL, Representative STRATTON, and others who have expressed strong concern and who are responsible for the legislative language that was passed in the House to accept the accord that we thought we had achieved among ourselves. They have agreed. They have signed off. We are within a matter of degrees, a very few degrees of achieving what I believe would be a salutary situation for this problem.

Mr. President, I am wondering if I might ask in terms of time, what is the status as it related to 2 o'clock being the time for a cloture vote? Is that true? Do I have 30 seconds before that?

The PRESIDING OFFICER. The Chair advises the Senator a cloture vote will occur at 2 p.m.

Mr. D'AMATO. Mr. President, therefore I will be forced of necessity then to relinquish the floor at the cloture vote. Would I then be recognized for the purposes of pursing this motion after the cloture vote?

The PRESIDING OFFICER. The Senator would have no automatic right of recognition following the cloture vote.

Mr. D'AMATO. Let me say up until the Chair advises that the hour of 2 has arrived, Mr. President, we worked very hard and very long in tremendous good faith, and I want to particularly thank the distinguished chairman of the Armed Services Committee, Senator GOLDWATER, for his personal activities in attempting to facilitate an agreement. I am deeply appreciative. I know that this has taken its toll on all the Members. It is not an easy matter for those of us who are considered a minority position in this body to take this action.

Therefore, I am doubly appreciate of the efforts with regard to this matter by the majority leader; the chairman of the Appropriations Committee, Senator HATFIELD; and particularly Senator WARNER and Senator RUDMAN, who have labored to bring together the various forces.

□ 1400

The PRESIDING OFFICER. The Senator will suspend.

CLOTURE MOTION

The PRESIDING OFFICER. The hour of 2 o'clock has arrived. Under the previous order, the hour of 2 p.m. having arrived, the clerk will report the motion to invoke cloture.

Mr. DOLE. Mr. President, I ask unanimous consent that following the cloture motion on the immigration bill, S. 1200, the Senate resume the consideration of amendments in disagreement to House Joint Resolution 738.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the cloture motion.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring a close the debate upon the conference report to accompany the bill S. 1200, to amend the Immigration and Nationality Act to effectively control unauthorized immigration to the United States, and for other purposes.

Alan K. Simpson, Robert Dole, Lloyd Bentsen, Jim Sasser, Robert T. Stafford, Bob Packwood, Thad Cochran, Nancy L. Kassebaum, Jake Garn, Slade Gorton, J.R. Biden, Robert C. Byrd, John R. Chafee, Claiborne Pell, J.C. Danforth, and Chuck Grassley.

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

The question is, "Is it the sense of the Senate that debate on the conference report to accompany the bill, S. 1200, to amend the Immigration and Nationality Act to effectively control unauthorized immigration to the United States, shall be brought to a close?"

The yeas and nays are automatic under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Dakota [Mr. ANDREWS], the Senator from North Carolina [Mr. BROYHILL], the Senator from Washington [Mr. EVANS], the Senator from Washington [Mr. GORTON], the Senator from Nevada [Mr. LAXALT], the Senator from Idaho [Mr. SYMMS], and the Senator from Virginia [Mr. TRIBLE] are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina [Mr. BROYHILL], and the Senator from Idaho [Mr. SYMMS] would each vote "nay."

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from Ohio [Mr. GLENN], and the Senator from Vermont [Mr. LEAHY] are necessarily absent.

I further announce that, if present and voting, the Senator from Ohio [Mr. GLENN] would vote "yea."

The PRESIDING OFFICER (Mr. DANFORTH). Are there any other Senators in the Chamber who desire to vote?

The yeas and nays resulted—yeas 69, nays 21, as follows:

[Rollcall Vote No. 355 Leg.]

YEAS—69

Baucus	Gore	Moynihan
Bentsen	Grassley	Murkowski
Biden	Harkin	Nunn
Bingaman	Hart	Packwood
Boschwitz	Hatfield	Pell
Bradley	Hawkins	Proxmire
Bumpers	Heflin	Pryor
Burdick	Heinz	Riegle
Byrd	Hollings	Rockefeller
Chafee	Johnston	Roth
Chiles	Kassebaum	Sarbanes
D'Amato	Kasten	Sasser
Danforth	Kerry	Simon
DeConcini	Lautenberg	Simpson
Dixon	Levin	Specter
Dodd	Long	Stafford
Dole	Lugar	Stennis
Domenici	Mathias	Stevens
Durenberger	Matsunaga	Thurmond
Eagleton	Mattingly	Wallop
Exon	McConnell	Warner
Ford	Melcher	Weicker
Garn	Metzenbaum	Wilson

NAYS—21

Abdnor	Gramm	McClure
Armstrong	Hatch	Mitchell
Cochran	Hecht	Nickles
Cohen	Helms	Pressler
Cranston	Humphrey	Quayle
Denton	Inouye	Rudman
Goldwater	Kennedy	Zorinsky

NOT VOTING—10

Andrews	Glenn	Symms
Boren	Gorton	Trible
Broyhill	Laxalt	
Evans	Leahy	

□ 1420

The PRESIDING OFFICER. On this vote, the yeas are 69, nays are 21, three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. DOLE. Mr. President, I would hope with that rather decisive vote on cloture we could now get some time agreement on how much debate there will be. But I know the distinguished Senator from Wyoming, Senator SIMPSON, is working on that. We are now back on the amendments in disagreement to House Joint Resolution 738.

Again, I plead with my colleagues, let us vote on something. The drug bill is winging its way over from the House

and reconciliation will be here before long. If we can complete the continuing resolution within the hour and send that back to the House, we still have an opportunity to leave here this evening.

CONTINUING APPROPRIATIONS, 1987—CONFERENCE REPORT

The Senate resumed consideration of the conference report.

The PRESIDING OFFICER. The question recurs on the motion of the Senator from New York [Mr. D'AMATO] to postpone consideration of amendment No. 3477 until December 29, 1986.

Mr. D'AMATO. Mr. President, it would be my hope that we could move on to other business that this body must consider before adjournment and in so doing allow the staffs and those of us who have come so very close to working out a compromise to do just that, to continue that work, to come out with a compromise that will give the opportunity for our Air Force to have the very best possible trainer and to do it in such a manner that the taxpayers' interests are protected.

And that is why, Mr. President, I moved to postpone the consideration to the date of December 29. Some have suggested that maybe we should postpone it to New Year's Eve.

I would hope that we could resolve this matter within a rather short period of time.

I would say this: If given the opportunity to attempt to resolve this, I am not looking to press this amendment or this motion to a vote or have a recorded vote on it. The chairman has indicated quite graciously to me that he would move to table this motion. I am simply going to ask that we move on to some other areas, give us an opportunity to seek to work this situation out. Otherwise, I will be forced to continue this pattern of extensive discourse, as will other of my colleagues.

So I would hope that, Mr. President, we could see a way to allow those of us who are vitally interested, our staff—maybe it is best because I am out here and the staffs are working in the Cloakroom. The interested parties are attempting to come up with a settlement and a resolve of this matter. I hope we can resolve it in such a way that when we take a vote on the issue and finally dispose of it, it is not one that is vain, it is not one that will create a situation with the House which then rejects our actions and sends it back and we find ourselves in the same stalemate.

Mr. GOLDWATER addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. GOLDWATER. Mr. President, I want to say to the Senator from New York once again, we are not debating an airplane. The Air Force does not want it. I wish you could get that through your head.

I am not talking about airplanes. I am talking about the Air Force, and they do not want it. And I am not going to agree to that kind of a motion. I want a vote on my amendment.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I move to table the motion of the Senator from New York and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Oregon [Mr. HATFIELD] to table the motion of the Senator from New York [Mr. D'AMATO].

The yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Dakota [Mr. ANDREWS], the Senator from North Carolina [Mr. BROYHILL], the Senator from Washington [Mr. EVANS], the Senator from Washington [Mr. GORTON], the Senator from Nevada [Mr. LAXALT], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

I futher announce that, if present and voting, the Senator from North Carolina [Mr. BROYHILL] and the Senator from Idaho [Mr. SYMMS] would each vote "yea."

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from Ohio [Mr. GLENN], and the Senator from Vermont [Mr. LEAHY] are necessarily absent.

I further announce that, if present and voting, the Senator from Ohio [Mr. GLENN] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 81, nays 9, as follows:

[Rollcall Vote No. 356 Leg.]

YEAS—81

Abdnor	Dixon	Heflin
Armstrong	Dodd	Heinz
Baucus	Dole	Helms
Bentsen	Domenici	Hollings
Biden	Durenberger	Humphrey
Bingaman	Eagleton	Inouye
Boschwitz	Exon	Johnston
Bradley	Ford	Kassebaum
Bumpers	Garn	Kasten
Burdick	Goldwater	Kennedy
Byrd	Gramm	Kerry
Chafee	Grassley	Levin
Chiles	Harkin	Long
Cochran	Hart	Lugar
Cohen	Hatch	Matsunaga
Cranston	Hatfield	Mattingly
Danforth	Hawkins	McClure
Denton	Hecht	McConnell
Melcher	Proxmire	Stafford
Metzenbaum	Pryor	Stennis
Mitchell	Quayle	Thurmond
Murkowski	Riegle	Trible
Nickles	Rockefeller	Wallop
Nunn	Roth	Warner
Packwood	Rudman	Weicker
Pell	Simon	Wilson
Pressler	Simpson	Zorinsky

NAYS—9

D'Amato	Lautenberg	Sarbanes
DeConcini	Mathias	Sasser
Gore	Moynihan	Stevens

NOT VOTING—10

Andrews	Glenn	Specter
Boren	Gorton	Symms
Broyhill	Laxalt	
Evans	Leahy	

So the motion to lay on the table the motion of the Senator from New York [Mr. D'AMATO] was agreed to.

□ 1440

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, what is the pending question before the Senate?

The PRESIDING OFFICER. The pending question is the Goldwater amendment No. 3477.

Mr. HATFIELD. Have the yeas and nays been ordered.

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. HATFIELD. Mr. President, I believe we are ready to vote.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, I would like to continue for a little bit on the GAO report, in which I was involved 2 or 3 hours ago.

The PRESIDING OFFICER. The Senator will withhold until the Senate is in order.

The Senator from Arizona.

Mr. DECONCINI. I thank the Chair.

Mr. President, this report is dated November 8, 1983. The subject of the report is "Evaluation of Contract Award for the Air Force's Next Generation Trainer Aircraft." It is addressed to the Honorable NANCY KASSEBAUM, the Honorable ROBERT DOLE, and the Honorable GLICKMAN, of the House of Representatives.

I went through part of it, Mr. President, setting forth the background and setting forth the objective, scope, and methodology used in this report. I was in the area of "Source Selection Procedures Were Followed."

The PRESIDING OFFICER. If the Senator will suspend, the Senate is not in order.

The Senator from Arizona.

Mr. DECONCINI. I thank the Chair.

Mr. President, I will continue in that particular area.

In the decision paper the Secretary also said that the five evaluation criteria against which the potential sources were measured, in order of importance, were (1) operational utility, (2) readiness and support, (3) life-

cycle cost, (4) design approach, and (5) manufacturing/program management. The Secretary further stated that although the most probable total life-cycle cost of the Fairchild NGT was not the lowest, it was only 1.5 percent higher than the lowest and the difference was more than offset by the superior characteristics of the Fairchild NGT.

The Advisory Council reported to the Secretary that the three competitive contractors—

Satisfied the NGT RFP requirements;

Had comparable 20 year life-cycle costs;

Had negotiated acceptable full-scale development contracts; and

Had the resources necessary to conduct and complete the NGT program.

Cessna, Fairchild, and Rockwell had acceptable proposals, but those of Ensign and Gulfstream were found to be beyond the competitive range and therefore unacceptable.

All five contractor proposals were evaluated by the Evaluation Board. The three within the competitive range received an Evaluation Board evaluation of cost and of all 36 operational, logistical, technical, and manufacturing/management items that were established for evaluation before proposals were received. An overall acceptability rating was given to each of the 36 items for each proposal. The Fairchild proposal received more exceptional ratings than those of Cessna or Rockwell.

The government prepared an estimate of the most probable total life-cycle cost of the program as proposed by each of the three contractors. The Fairchild proposal had the second lowest most probable life-cycle cost and was within 1.5 percent of the lowest. The Evaluation Board presented its evaluations of orginal and revised proposals to the Advisory Council in a briefing format.

Now I want to go, Mr. President, to "Procedure Used by the Evaluation Board to Evaluate the Proposals" in this GAO report.

Special evaluation criteria were established for each of the major evaluation areas. Life-cycle costs were evaluated for reasonableness, realism, and completeness. The remaining 4 areas were subdivided into 36 items which were then subdivided into 156 factors for evaluation.

Factor evaluators, item captains, and area chiefs were designated as members of the Evaluation Board. Factor evaluators prepared narrative factor evaluations for each proposal within the competitive range. Item captains summarized the factor evaluations and prepared item evaluation reports presented to the Advisory Council and incorporated into summary documents prepared for the source selection authority. Area chiefs supervised the item captains to ensure timely and complete evaluation of their respective items. An item evaluation report was prepared for each of the 36 items for each proposal to assess strengths, weaknesses, and risks. Each item was assigned a color coded overall acceptability indicator. Our review of 8 item evaluation reports, selected at random from the 36 item evaluation reports prepared by the Evaluation Board, showed that item strengths, weaknesses, risks, and overall acceptability were evaluated in terms of the criteria, standards, and guidance included in the NGT source selection plan.

ALTERNATIVE SYSTEMS WERE NOT EXCLUDED

Alternative NGT systems were considered during NGT proposal solicitation and evaluation.

Initially, the Air Force intended that only those contractors who successfully completed the NGT concept exploration phase would be solicited during the full-scale development phase. Five contractors, Cessna, Fairchild, General Dynamics, Rockwell, and Vought, successfully performed concept exploration. The Air Force later decided that the NGT RFP would be sent to any offeror who requested a copy in writing. Fourteen NGT full-scale development initial production RFPs were issued. Cessna, Ensign, Fairchild, Gulfsteam, and Rockwell responded. The plan stipulated that all five proposals would be evaluated by the Evaluation Board and all were evaluated.

CONCLUSIONS AND AGENCY COMMENTS

NGT source evaluation and selection were done according to DOD and Air Force instructions and the evaluation criteria in the RFP.

During NGT proposal solicitation and evaluation, consideration of alternative NGT systems was not precluded. The Air Force initially intended to limit participants in the NGT full-scale development competition, but plans were later changed. Competition was expanded by allowing requesting contractors to submit proposals. Five contractors submitted proposals, all of which were evaluated by the Evaluation Board.

The Office of the Secretary of Defense and the Air Force officials who reviewed the report agreed with our findings and conclusions and had no additional comments.

We are sending a copy of this report to the Secretary of the Air Force and to other interested parties.

Mr. President, just like the original report of GAO which the Senator from New York at some length reviewed and which of course is dated May 1986, which goes into an updated and far better explanation of where this whole process is now, this 1983 report is significant in this Senator's opinion because it lays out the background of how the process was put together. To me, it is very important because it was competitive, highly competitive. The November 8, 1983, GAO report substantiates that competitiveness and indicates that procedures were probably followed. So I do not think anybody can question why Fairchild has this contract and any economic problems that may have occurred, I think, have been substantially corrected, as was pointed out in the May 1986 GAO report which the junior Senator from New York went into at great length.

I have now read from two GAO reports. This office has truly recognized the neutral objective. They work for us, Congress. Their recommendations have been very supportive and thoroughly detailed as to support and recommendation for the procurement and continuation of the T-46. I shall also read from another equally fair and nonpartisan office, the Congressional Budget Office.

This particular report is a staff working paper dated March 1986. It is entitled "Alternative For an Air Force Trainer: T-46 or Modified T-37: The Congress of the United States; Congressional Budget Office."

There are the pro forma disclaimers at the beginning and a preface which I think would be interesting, writen by Director Penner. It says:

Should the Congress add funding for the Air Force's new primary trainer, the T-46? Or would modifications to the current trainer, the T-37, suffice? How would such a decision affect the cost and capabilities of the trainer fleet? These will be important questions as the Congress continues debate over the Department of Defense budget for 1987. This analysis by the Congressional Budget Office (CBO) assesses the costs and effects of alternative procurement or modification profiles that could result from these decisions. The study was done at the request of the House Committee on Armed Services. In keeping with CBO's mandate to provide objective analysis, the study contains no recommendations.

Then it states the people involved in the report. The first real page of the report is entitled "Summary," which I would like to share with this eagerly anticipating group of my colleagues here. I shall read to them a bit of this summary, which is quite a few pages, so I am sure there will be a great deal of interest.

Each year the U.S. Air Force trains about 1,200 new pilots. The early days of that training currently take place in a T-37 aircraft.

Each year the U.S. Air Force trains about 2,100 new pilots. Early phases of that training take place in a T-37 aircraft. But the T-37 is old and lacks features the Air Force believes are important. So in 1982 the Air Force contracted with Fairchild Republic Company to produce a new trainer aircraft, the T-46. Fairchild, however, has suffered major losses due to cost overruns and management problems in developing the T-46. The Air Force has also had to hold down its planned spending. For these and possibly other reasons, the Air Force has not put any money into its 1987 budget for further purchases of the T-46 and is considering alternatives.

This paper analyzes the costs and effects of several alternative approaches that meet Air Force trainer needs, including:

Continued procurement of T-46 aircraft;

Major modification of existing T-37 aircraft coupled with purchases of some additional trainer aircraft other than the T-46; and

Minor modifications of the T-37 coupled with purchases of other aircraft.

THE T-46 APPROACH

The T-46 would meet Air Force needs for a new trainer with a new, more capable aircraft. It would have a better engine than the existing T-37, a pressurized cockpit allowing flight at higher altitudes less congested with civilian aircraft, better bad-weather capability, improved ejection seats for safety, and other advantages like improvements in reliability and maintainability. These improvements, the Air Force argues, would allow the T-46 to provide better training for more hours per month than the existing T-37 but at less operating cost per hour.

□ 1500

Costs to design and buy 650 T-46s would total about $2.6 billion, more than the costs to modify-the T-37s. Costs to operate the T-46 would however, be lower than the T-37. Thus 20-year costs for the T-46 would total about $6.1 billion (see the Summary Table and Alternative I in the text). These costs include investment and costs to operate the fleet for 20 years (1987-2006), discounted at an annual real rate of 4 percent. (Alternative discount rates of 3 and 5 percent do not alter the relative rankings of the options considered in most cases.)

There is considerable risk of growth in T-46 investment costs, however. These investment costs reflect the funding that was included in the 1986 budget submission. Fairchild's cost difficulties in lot 1 of production suggest that actual investment costs could be higher than those assumed here, though it is difficult to assess the amount of the increase.

MAJOR MODIFICATION OF THE T-37

An alternative approach would buy no more T-46s instead make major modifications of the T-37 to give it many of the same capabilities as the T-46. These would include altering it to extend its service life into the next century, providing a new engine, pressurizing its cockpit, and improving its ejection seat and up-grading its avionics. In addition, this approach entails buying 100 of a new trainer to offset the limited size of the T-37 fleet. For specificity in costing, the new trainer is assumed to be additional purchases of the TTB trainer aircraft that the Air Force already plans to buy for other missions.

This option would eventually meet all Air Force requirements for training capacity with a modified T-37 designed to be nearly as capable as the T-46. It is not, however, identical in capability to the T-46 approach. Most importantly, this approach would not meet all needs until the mid or late 1990s because of the time needed to design and implement modifications and to buy the new TTB aircraft. The T-46—if it stays on the schedule assumed in last year's budget—would avoid most near-term shortfalls.

Given Air Force assumptions about the "utilization" hours that modified T-37s would be flown each month, total costs of this approach would be similar to those for the T-46, though investment costs would be less. This approach would cost much less in investment over the next five years than continuing to buy the T-46 because it would take more time to accomplish the modifications and buy TTB aircraft than to buy new T-46s that are already designed and under construction.

(Mr. COCHRAN assumed the chair.)

Mr. DECONCINI. I want to thank the Senator from Kentucky for giving me a very important message about my quality of life and I am not going to put that in the RECORD, but the Senator is correct.

I thank the Senator.

Let me continue because I know the Senator from Kentucky wants this information and I would not want him to be without it.

Total investment costs for this option would also be less than for the T-46 by 23 percent. Twenty-year costs, however, would be 2 percent higher because investment savings are offset by higher operating costs (see Summary Table and Alternative IV A in the text).

On the other hand, if the Air Force obtained improvements in utilization similar to those it expects for the T-46, this option would be substantially cheaper in terms of total investment (46 percent) and in terms of 20-year costs (16 percent). (See Summary Table and Alternative IV B in the text.) Currently, the Air Force believes that the T-46 can be operated 60 hours per month, but that the T-37—even though extensively improved—could not get above its current level of 45 hours per month. Since many of the factors that lead to assumed improvements in utilization of the T-46 are also part of this major modification, it would seem reasonable to expect some improvement in the utilization of the modified T-37, though it might be difficult to achieve 60 hours of monthly utilization. Absent a good assessment of potential utilization, this analysis shows both cases. In both cases, there should be less uncertainty about T-37 operating costs than about the T-46 because the Air Force has had extensive experience with the plane.

MINOR MODIFICATIONS OF THE T-37

If funds are stringent over the next few years, Air Force needs could be met at least partially through less extensive modifications of the T-37, such as modifications necessary to extend the life of the aircraft or those plus new engines. While these alternatives would be 35 to 69 percent cheaper in terms of total investment than continuing with the T-46 or making major modifications of the T-37, they would only be 3 percent to 12 percent cheaper in terms of 20-year costs as lower investment costs are offset by higher operating costs (see Summary Table and Alternatives I and II in the text). Moreover, in the long run, past the 20 years of this analysis, the advantages of lower investment costs would be outweighed by higher operating costs for these alternatives. Also, these more limited modifications would not provide the improvements in safety and utilization that the Air Force believes are important.

Mr. President, I ask unanimous consent that a summary table entitled "Comparison of Alternatives" be printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

SUMMARY TABLE.—COMPARISON OF ALTERNATIVES

Alternative	Alternative number in paper	Investment costs		20-yr costs [1]
		Next 5 yrs [3]	Total [2]	
Continue buying the T-46.....	I	2.7	2.6	6.1
Major modifications of the T-37 plus some new aircraft:				
Assuming current T-37 utilization.	IVA	.4	2.0	6.2
Assuming higher utilization.	IVB	.4	1.4	5.1
Minor modifications of the T-37 plus some new aircraft:				
Extending service life only.	II	.1	0.8	5.4
Extending service life and reengening.	III	.3	1.7	5.9

[1] In billions of 1986 dollars discounted at 4 percent.
[2] In billions of 1986 dollars.
[3] In billions of current dollars.

Mr. DECONCINI. Now, Mr. President, I think that clearly points out the great advantages that having the T-46 move ahead would bring to our national security and, of course, to the defense of this country.

It is important, Mr. President, to realize that the Air Force has money constraint problems, and we all understand that, and the Air Force has decided—only for this fiscal year, I might point out, because they have requested funds for this all the other years—not to request funds for this aircraft and yet to continue to advance and expand the F-15 and the F-16.

Now, that is an interesting decision they have made because those are the most sophisticated flying machines in the world and they require a great deal of training. Of course, where do we train these pilots? We train them in the T-37. We have just indicated through this report that there are certain misgivings about continuation of that, certainly without major modifications which would take some period of time, a commitment for a lot of money to continue to use the T-37.

So going to the T-46 would satisfy this and, quite frankly, ensure the safety of our pilots. What can be more important than taking a new pilot or a new officer in the Air Force and thrusting them into this very technical field, with high proficiency needed and have them launch into a trainer that is 25 years old, that has inadequate avionics, cannot go above 25,000 feet, even in the area of Arizona where they are trained, in some of the busiest airways now because of the tremendous commercial traffic in that area. We are asking them to continue to use a very antiquated trainer. So there is ample need already to proceed at least as we have talked before in the area of compromise as to the 1986 funds.

□ 1510

Now I want to read section 1 of this Congressional Budget Office report, called the introduction:

SECTION I. INTRODUCTION

In 1982, the Air Force contracted with Fairchild Republic Company to begin producing a new trainer aircraft, the T-46. Fairchild, however, has faced problems developing the aircraft. Fairchild's costs for the first lot of 10 T-46 aircraft will exceed the amount budgeted by about 80 percent (an excess that Fairchild absorbed), and last year Fairchild had many discrepancies on a contractor review. For this reason, because of the fiscally constrained budget environment, and possibly for other reasons, the Air Force has not put any money into its 1987 budget for further purchases of the T-46. Instead, the service is considering alternatives to continued production of the T-46.

Some in the Congress have expressed strong preferences in regard to this program. In 1985, for example, the conference report of the House and Senate Appropriations Committees on the 1986 appropriation for the Department of Defense stated, "The conferees expect the Air Force to budget for and procure T-46 Aircraft in fiscal year 1987, where firm fixed price contract op-

tions are available, and in subsequent years to meet this critical and well justified requirement."

This paper analyzes the costs and effects of further production of the T-46 and other alternatives. After a background discussion about the uses of trainer aircraft, the paper analyzes requirements for trainer aircraft, for other aircraft that would be candidates for acceptance, and the costs and benefits of alternative approaches.

SECTION II. USES OF TRAINER AIRCRAFT

The Air Force has several programs that use trainer aircraft; the largest trains new U.S. pilots to replace departing pilots and to support increases in force structure. This training is called undergraduate pilot training (UPT) and is carried out by the Air Training Command (ATC). ATC also uses aircraft to train navigators and instructor pilots, provides additional training to copilots, and trains some NATO pilots.

Undergraduate Pilot Training

Before entering UPT, pilot candidates learn to fly a simple, propeller-driven T-41 aircraft during screening programs. Those who pass the screening go on to the "primary" stage of UPT and fly the T-37 aircraft at one of five Air Force training bases. The current training syllabus requires 76 flight hours on the T-37, during which a student pilot learns to fly the T-37, acquires some simple navigational skills, and engages in some formation flying. Students also spend about 33 hours using flight simulators.

About 86 percent of student pilots complete the primary phase and proceed to the "basic" phase of UPT, flying an average of 104 hours in the T-38—a more complicated and faster airplane—and an additional 34 hours on flight simulators. Training on the T-38 is similar to that on the T-37 though it includes more instrument and formation flying.

Graduates of the basic phase—about 94 percent of those entering it—receive their "wings" and proceed to their assigned operational commands. There they receive on-the-job training in operational aircraft.

In 1985, the total cost of putting a person through UPT was $340,000. In that year, about 1,800 active Air Force officers graduated from UPT. Two to three hundred others also graduate annually from UPT, including Guard and Reserve pesonnel and foreign students who do not fall under the NATO program mentioned above.

Other Uses

In addition to the UPT program, ATC provides T-37 aircraft to train Strategic Air Command copilots, who receive only limited flight hours as copilots of bombers and tankers. The Air Force believes that differences in operating costs make this a useful program. For example, B-52H costs per flying hour were about $15,000 in 1985 in comparison with 1986 costs of about $1,100 for the T-37. ATC also has an undergraduate navigator training program, that uses T-37 trainer aircraft. A Joint US-NATO pilot training program also increases aircraft requirements, though the Europeans provide some aircraft. Instructor pilots for each of these programs must be trained as well.

SECTION III. TRAINER REQUIREMENTS

Quantification of the requirements for trainer aircraft depends basically on the number of hours of training required per pilot and the hours per month that a trainer aircraft can be flown. Estimates below reflect the following key assumptions made by the Air Force:

Undergraduate pilot training will be provided to about 1,700 active pilots per year over the next five years, slightly down from an average of about 1,740 for the period 1981 through 1985;

Training hours per pilot for undergraduate pilot training will increase to about 200 from the current 180 hours, reflecting the revised syllabus discussed below;

Requirements are expressed in terms of T-37 aircraft, and so assume 45 hours of operation per aircraft per month.

Mr. President, I ask unanimous consent to have a table printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

TABLE 1.—AIRCRAFT REQUIREMENTS, 1987–95

Program	1987	1988	1989	1990	1991	1992	1993	1994	1995
Undergraduate pilot training (UPT)	409	423	425	436	448	464	464	464	464
Instructor pilot training	49	49	49	49	49	49	49	49	49
NATO program	86	96	84	83	83	83	83	83	83
Undergraduate navigator training (UNT)	31	29	28	28	28	28	28	28	28
Accelerated copilot enrichment (ACE) (for Strategic Air Command)	62	62	62	62	62	62	62	62	62
Total requirement	637	659	648	658	670	686	686	686	686

Source: Congressional Budget Office estimates based on Air Force flying hour program

Assumptions: 8 percent additional aircraft are added for the maintenance pipeline, aircraft are operated 11.7 mo per year for all programs except ACE, for which 12 mo of operation are assumed, aircraft utilization rate is 45 hours per month.

Mr. DECONCINI. Mr. President, I continue reading:

THE TRAINER SHORTFALL

Figure 1 compares requirements for trainer aircraft with the projected inventory. (Table 1 breaks out the total requirements into the various programs that generate them.) As can be seen, the service had a shortfall equivalent to about 10 T-37 aircraft at the end of 1985. That shortfall increases gradually in the late 1980's as the Air Force increases its planned flying hours and the projected inventory of T-37's falls slightly because of peacetime accidents.[1] The shortfall increases very rapidly by the early 1990's when large numbers of T-37's reach the end of the 18,000-hour, 36-year life and are scheduled to be retired.

IMPORTANCE OF THE SHORTFALL

If the Air Force does nothing to add to its inventory of aircraft, one or more of several actions will have to be taken: some training programs described above will have to be terminated; the flying hours in the current syllabus will have to be reduced, rather than increased as is currently planned; or pilot production will have to go down. Any such changes, the Air Force argues, will reduce operational effectiveness.

The Air Force indicates, for example, that history shows reductions in flying hours per pilot would greatly harm training. The current syllabus is about 10 hours above the Air Force's historical minimum of 170 hours per pilot in 1977. Air Training Command states that commands receiving graduates at that time found some of them unable to pilot operational aircraft without additional training. Particular deficiencies were found in instrument flying, which had been removed from the flying syllabus. These deficiencies had to be made up with additional training in operational aircraft at substantially higher costs per flight hour. The Air Force also believes that additional simulator flying would not take the place of actual flying hours, on the basis of experience in 1977.

Rather than decreasing flying hours per pilot, the Air Force argues that they should be increased from their current 180 hours to about 200. The desired increase is associated with a revision in the training syllabus. Currently, those who complete the primary phase of undergraduate pilot training go on to basic training in the higher-performance T-38. Under the revised syllabus, those who will eventually fly high-performance aircraft—including fighter, attack, and reconnaissance aircraft—will continue to train on the T-38 for the basic phase. But those who will eventually fly tanker, transport, or bomber aircraft will not receive basic training on the T-38 but rather on a new aircraft—yet to be purchased—that is designated the tanker-transport-bomber aircraft or TTB. The net result of this revision of the syllabus will be an increase in flying hours per pilot.

Nor can other programs using T-37 aircraft be cancelled to reduce requirements, the Air Force argues. For example, should the Strategic Air Command be forced to cancel its program that uses T-37s to provide training to bomber and tanker copilots, then either the copilots would be less able or they would have to train an operational aircraft at substantially higher costs per flight hour.

Finally, pilot production probably cannot be further reduced to overcome a trainer shortfall. Direct production rates of undergraduate active Air Force pilots are assumed to be slightly lower over the next five years than they have been over the past five years, averaging about 1,700 pilots per year compared to an average of about 1,740 for 1981 through 1985. Further reduction might therefore affect capability, especially if a recent trend toward lower pilot retention continues.

As this discussion suggests, the Air Force appears to have reasonable arguments for all of the T-37 requirements displayed in Figure 1. On the other hand, there may be some flexibility. For instance, Figure 1 shows that the Air Force is currently about 10 planes or 2 percent of the T-37 aircraft that it requires. Yet training is being conducted, apparently successfully, though probably with more strain on trainers and trainees than if more aircraft were available. It may also be possible to delay or avoid planned increases in flying hours, thus minimizing the shortfall. This paper uses the requirements in Figure 1 as a basis for assessing alternatives but recognizes the possibility of some flexibility.

[1] The rapid decline in T-37 inventory from 1986 to 1987 resulted from a transfer of 29 T-37's to Tactical Air Command [TAC] to perform TAC's forward air control mission.

SECTION IV. AIRCRAFT THAT COULD MEET TRAINING REQUIREMENTS

Numerous types of aircraft could meet Air Force needs. This section briefly describes the aircraft analyzed in this paper. Other might also meet these needs but are not analyzed here for reasons noted at the close of the paper.

The T-37

The current primary jet trainer, the T-37 is a twin-engine, turbojet, two-seat airplane. The T-37's two seats are located side by side, a configuration the Air Force wants because of the advantages of learning by watching. It has a top speed of 370 knots and a maximum altitude of 25,000 feet. (Table 2 provides a description of the characteristics of current and planned trainer aircraft.) The altitude limitation is due at least in part to the fact that the plane is not pressurized.

T-37s have been in the Air Force inventory since 1956, when the service began buying a total of about 950. Of this number, about 610 remain in the U.S. inventory; 35 German T-37s are also used by the command in the NATO training program.

The T-46

In the late 1970s the Air Force became concerned that the T-37 inventory would be insufficient to meet its requirements. In addition to a shortage in numbers of aircraft, the service was concerned about operational deficiencies with the aircraft itself and that the plane would soon reach the end of its service life.

History.—The Air Force conducts its Undergraduate Pilot Training at five training bases. The airspace around them, according to the service, is becoming increasingly congested with civilian traffic, causing missions to be aborted because of aerial traffic jams. Other aborts occur because of weather conditions. If the primary trainer was pressurized, the service reasons, training could take place at higher altitudes, where fewer civilian aircraft fly. And if its range was increased, pilots could plan to divert to bases with better weather conditions, increasing the number of flights that could be made in inclement weather.

In addition to these factors there were other problems, associated in part with the age of the T-37. Among them:

Limited ejection seat capabilities—the T-37's ejection seat is not designed to work at certain low speeds and altitudes;

Lack of commonality with current instrumentation—the T-37 does not, for example, have the digital instrumentation common in today's aircraft;

Excessive fuel requirements and the number of hours needed to maintain the arcraft; and

Excessive noise.

In 1979 the Air Force issued a "statement of need" for a new trainer. The plane envisioned would continue to have the side-by-side seating and twin jet engines of the T-37, but the deficiencies noted above would be met. After a hiatus of three years during which the service answered Congressional concerns that this Air Force requirement could be met by buying a Navy trainer, Fairchild Republic Company received the contract to build the "next generation trainer," eventually designated the T-46.

Description.—The T-46 is a twin turbofan-engine plane with side-by-side seating (see Table 2). It has a range of about 1,200 nautical miles and a pressurized cockpit. It also has improved ejection seats and instrumentation to meet the Air Force statement of need. In addition, the T-46 is designed to use less fuel per mile than the T-37 and to be easier to maintain and to refuel. For these reasons, the T-46 is expected to have lower operting costs than the T-37.

Mr. President, I ask unanimous consent to have a table printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

TABLE 2.—AIR FORCE TRAINER AIRCRAFT PROFILES

	T-37 current primary trainer	T-46 primary trainer replacement	TTB basic trainer for multiengine pilots
Inventory at end of procurement	610 [1]	650[2]	200.[3]
First entrance to fleet	Late 1950's	Late 1980's	Early 1990's after off-the-shelf commercial procurement.
Operational characteristics:			
Range	500 nautical miles [4]	1,210 nautical miles	To be determined.
Speed	370 knots	430 knots	Do.
Engines:			
Number	2	2	Multiple.
Type	J-69 turbojet	F-109 Turbofan	Turbofan.
Maximum altitude	25,000 deet	47,000 feet	To be determined.
Accommodation	2	2	3.
Seating	Side by side	Side by side	2 side by side; 1 centerline.

[1] Total remaining in the U.S. inventory in 1985.
[2] Procurement total in fiscal year 1986 budget submission. Budget for 1987 contains no further procurement.
[3] Total procurement.
[4] Source: Cessna Aircraft Co.

Sources: Jane's All the World's Aircraft, 1974–75 and 1985–86 editions, and U.S. Air Force.

Mr. DECONCINI. I continue reading:

In 1985, 10 T-46s were purchased at a total program cost of $200 million, and these are currently being produced.[3] Another $260 million in total program costs to buy 33 more T-46s was authorized and appropriated by the Congress in 1986.

Despite these investments, the 1987 budget contains no request for funding for this aircraft, and the Air Force is undecided as to whether it will use the $260 milion provided last year by the Congress for continued T-46 development and procurement for that purpose.[4] While the Air Force had originally intended to buy 650 T-46s through 1990, cost growth, schedule slippage, and management problems at Fairchild Republic have made the survival of the program uncertain, though the Air Force maintains that its major concern is the current constrained budget environment. Lot 1, the 10 aircraft funded in 1985, will cost Fairchild about 80 percent more to produce than the company budgeted. Production is currently eight months behind schedule. Fairchild maintains that many of its problems have been solved, though it acknowledges that the schedule and costs associated with last year's budget are optimistic.

A Modified T-37 Aircraft

Another approach to meeting trainer requirements would involve modifying the T-37 aircraft. These modifications would extend its life for another 10,000 to 15,000 flight hours, enough to allow it to remain in the inventory into the next century at current rates of utilization. The modifications would be done by the winner of a future competition.

In addition to extending its life, modifying the T-37 could add capabilities desired by the Air Force. Three approaches have been proposed:

Service life extension, including such items as strengthening the airframe and tail;

Service life extension plus reengining; and

Service life extension, reengining, and upgrading of capabilities to more closely meet the Air Force statement of need.

The Tanker-Transport-Bomber Trainer (TTB)

The TTB is another aircraft that could meet some of the needs now met by the T-37; indeed, the Air Force expects to buy 200 of them, though they are intended for the basic phase of undergradute pilot training. As was noted above, the Air Force intends to modify the syllabus for its basic phase of undergraduate pilot training. Those pilots who will eventually fly tankers, transport aircraft, or bombers will no longer train on the higher-performance T-38 during the basic phase of undergraduate training; instead they will train on a new aircraft, the TTB. But additional TTBs would meet other needs relevant to this paper, such as the Strategic Air Command's need to train its copilots.

The exact specifications for the TTB, which the Air Force does not intend to begin purchasing until 1989, are not yet firm. Currently, however, it is intended to be an off-the-shelf aircraft similar to those used for corporate transportation. The TTB will, at a minimum, contain multi-engines and three seats.

[3] Total program costs include procurement and research and development funding and long-lead funding for the following year. Procurement costs in each of these years were $125 million and $212 million respectively (also including long-lead funding).

[4] Indeed, the Procurement Programs annex to the 1987 budget contains no funds in fiscal 1986 for the plane.

SECTION V. ALTERNATIVES THAT WOULD MEET TRAINING NEEDS

Several packages of aircraft could meet Air Force needs. Alternatives considered in this analysis include buying the T-46 aircraft, as the Air Force originally planned, or modifying the existing T-37 fleet of trainers coupled with the purchase of some new aircraft.

All the alternatives discussed in this section would eventually meet Air Force training needs, though some of them would leave the Air Force short of trainers for the next few years at least. All the options would also add to the proposed Administration budget, which included no funds for primary trainer aircraft. Costs and other data are generally based on Air Force rather than contractor data.

Mr. President, I ask unanimous consent to have tables printed in the RECORD.

There being no objection, the tables were ordered to be printed in the RECORD, as follow:

TABLE 3.—DESCRIPTION OF ALTERNATIVES

	Alternatives	Aircraft	Total procurement quantity		Monthly hours of utilization	Squadrons/ PAA per year [1]
			Next 5 years	Total		
I.	Continue T-46 procurement	T-46	607	650	60	7/68
II.	Modify T-37 to extend service life	T-37	280	645	45	8/68
		TTB	0	100		1/87
III.	Modify, and reengine T-37	T-37	136	645	45	8/68
		TTB	0	100		1/87
IVA.	Modify, reengine, and upgrade T-37	T-37	136	645	45	8/68
		TTB	0	100		1/87
IVB.	With higher utilization	T-37	136	645	60	7/68

[1] Because of the differing utilization rates for planes, CBO assumed that differing force sizes would need to be operated in order to fly the same number of hours. Primary Aircraft Authorization [PAA] is the number of aircraft per squadron.

TABLE 4.—INVESTMENT COSTS OF ALTERNATIVES I–IV [1]

[All costs are in billions]

	Alternatives		Investment costs 1987–91 (in current dollars)						Total investment costs	
			1987	1988	1989	1990	1991	1987–91	In current dollars	In 1986 dollars
I.	Continue T-46 procurement	Quantity	99	144	144	144	76	607	650	650
		Cost	0.6	0.7	0.6	0.6	0.3	2.7	[2] 2.9	[2] 2.6
II.	Modify T-37 to extend service life	Quantity	0	0	24	112	144	280	[3] 745	[3] 745
		Cost	0	[4]	[4]	[4]	[4]	0.1	[3] 1.1	[3] 0.8
III.	Modify and reegine T-37	Quantity	0	0	0	24	112	136	[3] 745	[3] 745
		Cost	0	[4]	[4]	0.1	0.2	0.3	[3] [5] 2.2	[3] [5] 1.7
IVA.	Modify, reengine, and upgrade T-37	Quantity	0	0	0	24	112	136	[3] 745	[3] 745
		Cost	0	[4]	[4]	0.1	0.3	0.4	[3] [5] 2.6	[3] [5] 2.0
IVB.	With higher utilization	Quantity	0	0	0	24	112	136	645	645
		Cost	0	[4]	[4]	0.1	0.3	0.4	[5] 1.7	[5] 1.4

[1] Numbers may not add to totals because of rounding.
[2] Estimate includes $0.3 billion provided by the Congress in 1986 for procurement of 33 aircraft, but excludes funding for 1985 and prior years as sunk costs.
[3] Cost and quantity includes funding for 645 T-37 modifications and 100 TTB aircraft. TTB costs total $0.6 billion in constant 1986 dollars and $0.9 billion in current dollars. As CBO assumed that TTB procurement would be added to the end of the current profile, five-year costs contain no TTB funding.
[4] Less than 100 million.
[5] Includes about $0.6 million in 1986 to begin engineering estimates.

Source: Congressional Budget Office estimates from fiscal year 1986 budget submission and Air Force data.

Mr. DECONCINI. I read further:

ALTERNATIVE I: CONTINUE BUYING T-46 AIRCRAFT

The Congress could continue buying T-46 aircraft to meet Air Training Command requirements for additional aircraft, and to solve the problem of T-37 deficiencies. This alternative assumes that 607 T-46 aircraft are bought over the next five years. Thus it returns to last year's Administration program (see Table 3). Informal discussions have suggested that the Air Force is considering delaying the program and buying substantially fewer T-46s over the next few years, but detailed data needed to analyze this option were not available.

The major advantage of this alternative is that it would meet ATC's aircraft needs with new, more capable planes. The T-46, according to ATC, would have a higher utilization rate—60 hours per month in comparison to the T-37's 45 hours—because it is easier to maintain and avoids limits on utilization such as those caused by airspace congestion or weather. Thus fewer aircraft would be needed to meet requirements. The plane is also projected to have substantially lower operating costs than the current aircraft because of lower costs for fuel and maintenance.

The pressurization of the new T-46 trainer would moderate potential problems associated with airspace congestion and make flying a less taxing physiological experience for students and pilots. The T-46 should also be safer because its ejection seats would function in almost all of the flight envelope.

The major disadvantage is that the alternative would be expensive in the near term. Research and procurement would require at least $0.6 billion in additional funding in 1987, and $2.7 billion over the next five years (see Table 4). These costs are based on last year's Administration budget. Actual procurement costs for the T-46 could be higher. As was noted above, Fairchild's costs for Lot 1 of the T-46 will exceed the contractor's budget by about 80 percent; recurring costs for Lot 1—which might most affect future procurement—will exceed the budget by about 30 percent. Since Fairchild's costs account for about half the total aircraft cost (the rest pays for the engines and other equipment), the experience with Lot 1 might suggest that costs could increase above those shown by 15 to more than 30 percent. Costs could also increase further if the Air Force decides to buy T-46s more slowly.

While near-term costs of investment are important, the longer-run costs of decisions are also important. Table 5 shows twenty-year costs for the T-46 option, defined as costs over the next 20-years (1987-2006) to buy T-46 aircraft and to operate the T-46s plus T-37s until they are replaced. An Air Force model, using Air Force and CBO inputs, suggests that each T-46 will cost about $0.5 million a year to operate once fully in service.[5] This implies that the cost to buy 650 T-46s and to operate ATC's primary trainer fleet for 20 years amounts to about $6.1 billion.

While these 20-year costs are a reasonable guide to long-term costs, the long time over which they are estimated causes them to be somewhat uncertain. One source of uncertainty is the discount rate that is used to reflect the preference for money now rather than later. The costs shown above are discounted in real terms (1986 dollars) at a rate of 4 percent a year.[6] The absolute values for the costs are very sensitive to this rate. A 1 percent change in the rate yields a $300 mil-

[5] The Air Force provided inputs that enabled CBO to arrive at a cost for each flying hour. Assumptions about the number of hours flown and the number of squadrons operated were calculated by CBO based on various assumptions about utilization rates.

[6] Discounting is a way to calculate, in today's dollars, the value of a future expenditure or future stream of annual expenditures—in this case, investment and operating costs. The result is called present value. A future expenditure is discounted to its present value using the following formula: Present Value=Future Value/$(1+i)^n$, Where n=the number of years between the present year and the year in which the expenditure is made, and i=the discount rate. The discount rate used in this analysis is 4 percent in real terms.

lion change in the total cost for this alternative. Thus, at a lower discount rate of 3 percent, the alternative costs would total $6.4 billion; at 5 percent, costs would be $5.8 billion.[7] Tables 1 and 2 in Appendix B show twenty-year costs of all the alternatives at 3 and 5 percent discount rates.) Relative rankings of options are less affected.

Nor are the discount rates the only source of uncertainty. Should T-46 investment costs increase as earlier discussed, 20-year costs would be substantially higher. Operating costs could also charge. The Air Force has never operated a T-46 in an operational setting and so has no actual cost data. The operating costs in Table 5 are estimates made during development; such estimates are frequently optimistic. Fairchild argues, however, that a more detailed modeling of operating costs for T-46 than was originally done at source selection would substantiate, even reduce, these estimates. Additionally, operating costs are affected by factors like the price of fuel for which estimates are speculative, though the results of this analysis are relatively insensitive to small changes in fuel prices.

ALTERNATIVE II: EXTEND THE SERVICE LIFE OF THE T-37

Because of the expense of Alternmative I, and possibly concern over Fairchild's operating problems, the Congress might consider other options to meet Air Force trainer needs. It might, for example, choose to forego procurement of the T-46 trainer aircraft and instead continue to rely mostly on the T-37, supplemented by some new aircraft to meet current and expected shortages. Specifically, DoD would purchase no more T-46s, canceling Lot 2 of the 1986 buy and all further purchases. Instead, it would undertake six basic modifications would include strengthening the tail section and the wings of the plane plus other alteration (see Appendix A for a detailed description). These modifications would, according to the Air Force, extend the service life of the T-37 by 10,000 to 15,000 hours, allowing it to fly—at current rates of utilization—for another 20 years.

As was noted above, however, the existing fleet of T-37 aircraft does not meet all current Air Force needs, and shortages would grow. To meet these shortages, this option calls for the purchase of about 100 new aircraft which, for specificity in costing, are assumed to be the TTB aircraft planned by the Air Force.[8] These 100 TTBs would be needed in addition to those purchased for other Air Force missions. Under this option, the 100 TTBs would be purchased in the 1990s, after other TTB needs were met. The TTB aircraft could be used, for example, by the Strategic Air Command for its copilot training, thus freeing the T-37s now used in that ACE mission to meet training shortfalls.

The TTB would not be the only aircraft that could be purchased, and its costs might be higher than other alternatives. For example, Cessna argues that the costs of buying new T-37s (the so-called new technology T-37 that contains the additions in capability discussed in Alternative IV) would be lower than those assumed here, and that operating costs of new T-37s could be substantially lower than those of the T-39, which was used as a proxy for the TTB. CBO is unable to estimate the effects of these alternative assumptions because of time constraints and the absence of Air Force funding estimates.

The major advantage of this alternative is that it would be relatively inexpensive in the near term, costing approximately $100 million over the next five years. Little or no funding would be required in 1987 because this modification is relatively simple and could be designed and implemented before T-37s begin to reach the end of their service lives, even if funding did not begin until 1988.[9] Near-term costs would be low because this alternative's modifications would be relatively cheap and because the additional 100 TTB aircraft would not be purchased until the 1990s. Total investment cost would be about $0.8 billion excluding inflation, still much less than under Alternative I. Modification costs for this option are based on estimates provided by the San Antonio Air Logistics Center.

While near-term costs would be substantially lower than those for Alternative I, total discounted 20-year costs of this alternative would be about $5.4 billion, lower by only 11 percent than under Alternative I. This is because the T-37's lower investment costs offset the higher operating costs of the plane and because the costs of buying and operating the additional 100 TTB aircraft as well as the additional squadron of T-37 aircraft occur in the mid-to-late 1990s.[10] Over the very long run—past the 20 years of this analysis—the option's higher operating costs should offset investment costs and yield a higher life cycle cost. As with Alternative I, estimated operating costs are based on an Air Force model and use Air Force and CBO input factors. (Air Force input factors assume a constant price per gallon of gasoline. If these prices were to fall, the T-37s more fuel-inefficient engine would be at less of a disadvantage—though the impact on the overall ranking of options is slight.)

Though this alternative costs less in the 20-year period of the analysis, it does not meet the performance requirements of the T-46. Specifically, T-37s would still be noisy, unpressurized, and unable to fly in bad weather; their ejection seats would still be unusable in certain parts of the flight envelope. Should ATC's concerns about increasing civilian traffic materialize, training usage also could fall because these modified T-37s would not be able to fly at altitudes that are less crowded but require pressurization. In addition, T-37s under this alternative might continue to be slightly underpowered. This would make it difficult for a T-37 that had lost the use of one engine to gain altitude on a hot day, which poses a potential safety problem, especially when combined with the ejection-seat limitation.[11]

In addition, the estimated modification costs of this alternative may be too low. The costs given were based on estimates from Kelly Air Force Base, but other estimates from the Air Training Command, which included upgrades to the J-69 engine, were about 50 percent higher than Kelly's. Though inclusion of ATC's estimates would not be likely to change the ranking of the alternatives, they suggest some uncertainty in these costs as well.

Moreover, this alternative would continue to rely on an old aircraft. The T-37s would be expected to remain in the inventory until many were 40 to 50 years old. It is difficult to appraise the reliability of such old aircraft, since the Air Force has had little experience operating airframes of that vintage.

Finally, this option would not solve the near-term shortage of trainer acircraft. That shortfall would remain until the mid-1990s, when new TTB aircraft enter the inventory.[12] Indeed, the near-term shortfall could be exacerbated by removal of T-37s for modification.

In sum, this option's main advantage is that it would cost little in the near term. While this might be important in a period of intense fiscal restraint, the approach would fail to solve many of the problems that led the Air Force to buy a new trainer.

ALTERNATIVE III: REENGINE AND EXTEND THE SERVICE LIFE OF THE T-37

To address some of these problems, Alternative III would perform the modifications described in Alternative II plus reengining each T-37 with the Garrett F109 turbofan engine, the same engine planned for the T-46. As in Alternative II, 100 new TTB aircraft would be purchased.

This alternative addresses some of the performance concerns of the ATC. Modifications to extend service life would allow the aircraft to operate an additional 10,000 to 15,000 hours, as in Alternative II. In addition, reengining should allow the aircraft to meet ATC's safety concerns relating to single-engine performance during hot weather while also reducing fuel usage and noise levels. Operating costs for a reengined T-37 should also be lower, although not as low for a new T-46

Investment for this option would be more expensive than in Alternative II but less than in Alternative I. Investment costs would be $0.3 billion over the next five years. Little or no funding would be required in 1987, because of the lead time necessary to design the modifications, but an additional $0.6 million might have to reprogrammed in 1986 to allow engineering ef-

[7] Some uncertainty exists concerning the appropriate values for this rate. For a discussion of discount rates, see Congressional Budget Office, "Pricing Options for the Space Shuttle," (March 1985), p. 15. As the rates relate to the assumed real interest rate which is currently projected by CBO to fall, the analysis also provides a calculation at 3 percent. See Congressional Budget Office, "The Economic and Budget Outlook: Fiscal Years 1987-1991," pp. 1-4.

[8] CBO assumed that the marginal cost to the government for each of these aircraft would average $6.4 million in constant 1986 dollars.

[9] The costs of all T-37 modification options reflect informal estimates from the Air Force. The numbers were provided by the San Antonio Air Logistics Center at Kelly Air Force Base. Air Training Command also provided estimates discussed later. One relatively minor disagreement between the Commands concerns the timing of the funding required. ATC felt that funding on the order of $10 million to $11 million would be required in 1987 for all modification options, while Kelly felt that no funds would be needed or could be spent in this first year of the program. Both Commands agree that about half a million dollars would have to be reprogrammed in fiscal year 1986 to begin engineering studies for Alternatives III and IV. These numbers are not budget-quality numbers and should be taken as preliminary estimates.

[10] It would be possible to form an additional squadron of T-37 aircraft—eight T-37 squadrons rather than seven of T-46—from the same total number of planes because the attrition rates are higher for the T-46 than for the T-37, according to Air Force projections.,

[11] Teledyne CAE says that this difficulty, associated with its J-69 turbojet engine, can be remedied at modest cost. The option contains funding for an engine overhaul, but no funding for improvements in engine capability, though this additional funding is discussed later.

[12] The length of this shortfall will depend upon when TTB aircraft become available for the ACE program, rather than being limited to the basic phase of the UPT program.

forts for the reengining to begin. Near-term investment costs would be low and total procurement costs for this option would be about $1.7 billion—still less than Alternative I by 35 percent—though higher than those of Alternative II.

Moreover, 20-year costs for this option would be higher than under the previous option. Costs would total about $5.9 billion. The 20-year costs would be higher than under Alternative II, which makes minimal modifications of the T-37, because the added costs of reengining would more than offset the lowering of operating costs that would result. Twenty-year costs of this option would be slightly lower than those of Alternative I, which buys the T-46, despite the T-37's higher operating costs and the costs of operating the additional 100 TTB aircraft, because some of the costs would occur in the mid-to-late 1990s, as with Alternative II. As with the previous alternatives, procurement costs are based on Air Force estimates while operating costs were estimated using an Air Force model with Air Force and CBO inputs.

Though this alternative would cost slightly less in the long run, it would continue to rely on an old T-37. Many of the new aircraft performance requirements desired by ATC would not be met. Altitude limitations would remain, since the plane would not be pressurized. Nor would there be any change in the useful envelope of the ejection seats, though the increase in power should enable a student to gain altitude or speed even with one engine out, thus reducing the likelihood of having to eject at a point where the current seat does this work.

Near-term aircraft shortfalls could also be substantial under this option, perhaps greater than under Alternative II. This modification is more extensive and would take longer to complete than Alternative II, thus leaving fewer aircraft available for pilot training.

For this option, the discount rate chosen is important to its ranking. With a lower rate—say 3 percent—the option would be slightly more expensive than Alternative I in the long run, with 20-year costs of $6.5 billion. (See Table B-1 in Appendix B.)

In sum, this option provides a middle ground between Alternative I, with its high up-front cost but substantial improvement in capability, and Alternative II with its low up-front costs but minimal improvement in capability. Nonetheless, this approach still does not meet the Air Force's stated needs for improvements in a trainer.

ALTERNATIVE IV: EXTEND THE SERVICE LIFE OF THE T-37 AND UPGRADE IT

Modifications proposed under this alternative would significantly upgrade existing T-37s to meet Air Force needs and purchase an additional 100 TTB aircraft to meet aircraft shortfalls. In addition to reengining and the improvements necessary to extend the T-37 service life, modifications would include cockpit pressurization, a new ejection seat, new controls and avionics, and some improvements in the plane's environmental control systems (primarily improving air conditioning). (See Appendix A.)

These modifications should meet most of the requirements listed by the Air Force in its statement of needs. The new engine would cut operating costs and improve safety. The pressurized cockpit and better performance in bad weather should improve utilization. The new ejection seat would be safer, though it would not have quite the capability of the T-46 ejection seat. And the instrumentation would make this modified T-37 more like modern aircraft.

Nonetheless, this option is not equal in capability to Alternative I. Near-term shortfalls of aircraft would continue until the mid-1990s. This option would also continue to rely on old T-37s, albeit extensively modified and updated. And it would not buy a new aircraft. Thus it could require the purchase of a new aircraft earlier than would Alternative I. But the Air Force does believe that the need to replace T-37s modified under this option would not occur until well into the next century.

In sum, while not equal in capability, this approach is much closer to the first one in capability than either of the other two. Thus its costs provide a better comparison with the T-46 option.

Costs results depend upon assumptions about utilization—the hours per month that the aircraft can be flown. Utilization reflects how much the Air Force needs to fly but also, given that demand is likely to be heavy, ease of maintenance, speed of ground turn-around refueling time, ability to fly in poor weather, and other factors.

Under Air Force assumptions about utilization of the modified T-37, the total costs of this option would be similar to the T-46, though investment costs would be less. Five-year costs for this alternative modification of the T-37 would be $0.4 billion, substantially less than for the T-46. As with Alternative III, no funds would be required in 1987 because the year would be spent designing modifications.

Total investment costs for Alternative IV would be about $2.0 billion, including the costs of 100 TTB aircraft. These costs are about 23 percent less than those of the T-46 alternative. But, the total discounted twenty year costs of this approach, at $6.2 billion, are slightly higher than those of the T-46. Thus in the long run the reduced operating costs that the T-46 is expected to experience would offset its higher investment cost. This would occur despite the fact that the phasing of the alternative means that CBO's 20-year analysis cannot capture the total costs as with Alternatives II and III.

The choice of different discount rates alters these results modestly. A lower discount rate of 3 percent would produce a 20-year cost of $6.8 billion, about $0.4 billion higher than the costs of Alternative I. A higher discount rate of 5 percent would make the alternative less expensive at $5.7 billion.

The investment and 20-year costs of the T-37 would, however, be highly dependent upon the utilization rate assumed for the aircraft. Air Training Command argues that, despite substantial modifications, the utilization of the T-37 would remain at 45 hours per month, the same as for the unmodified T-37. Yet the T-46 is expected to have a 60-hour utilization rate. Thus this option must buy 100 additional TTB aircraft to meet Air Force needs. If the modified and reengined version of the T-37 could achieve the same utilization rate as the T-46, then its 20-year costs discounted at 4 percent would fall to $5.1 billion, about 16 percent less than those of the T-46. This occurs because assumptions about utilization affect both procurement costs and operating costs. With higher utilization this option would not need to buy any TTB aircraft, nor would it need to operate them or the additional T-37 squadron.

Which utilization assumption is correct? There is reason to expect at least some improvement in the utilization of a modified and reengined T-37 though CBO cannot determine how much. The expected improvements in utilization of the T-46 occur at least in part because of the factors that this alternative would remedy—like pressurization and better bad-weather performance. Nor has the Air Force always assumed a 45-hour rate for the T-37. An Air Force study done by Air Training Command in May 1981 assumed a 50-hour utilization rate for an unmodified T-37. More important, a study done by the Analytic Services Corporation for the Air Force in October 1981 assumed a 56-hour utilization rate for a reengined and modified T-37 similar to the one in this option.[13] On the other hand, it might be difficult to achieve a 60-hour utilization rate for the modified T-37, which does not have all the new features of the T-46. Given the absence of a good assessment of potential utilization for the modified T-37, this analysis showed the effect of both the 45-hour and 60-hour assumptions.

The T-37 would also have the advantage of less uncertainty about operating costs, since it is an aircraft that the Air Force has operated extensively. Investment costs are, however, somewhat uncertain under this alternative. CBO received total modification costs from Air Training Command for this more extensive modification that are about 13 percent higher than those used in this analysis. Should these costs prove accurate, both investment and 20-year costs could go up.

ALTERNATIVES NOT ADDRESSED

Other alternatives exist that have not been considered in this study. In particular, the Air Force has received an unsolicited proposal from a Brazilian firm, Embraer, for a trainer called the Tucano. The press has also discussed several other foreign aircraft, as well as the Navy T-34 trainer.[14]

In the past the Air Force has argued strongly for side-by-side seating and two jet engines in its primary trainer aircraft. This requirement would rule out the T-34 and Tucano. Indeed, in 1982 the Congress wanted the Air Force to consider buying the Navy T-34s. Several Air Force studies at the time indicated that—because of single-engine performance, differences between propeller and jet performance, and reductions in learning because of lack of side-by-side seating—the overall costs of a training syllabus flown in part on the T-34 would be higher than costs using the T-37 or T-46.[15] The Tucano, which is a single-engine turboprop plane without side-by-side seating, would appear likely to generate the same Air Force concerns. Should the service change these requirements, then the Tucano or similar aircraft could be considered.

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[13] Air Training Command, U.S. Air Force, "An Evaluation of the T-34C as a Next Generation Trainer Alternative," (May 1981) and George E. Thompson, "Operational and Economical Analysis of Options for Air Force Primary Training Aircraft," Analytic Services, Inc. (October 1981). The Answer study also assumed a 65 hour utilization rate for the next generation trainer as the T-46 was then called.

[14] See for example "Grumman Corporation Ends Negotiations to Purchase Fairchild Republic," Aviation Week and Space Technology, December 23, 1985, p. 16. The Air Training Command has apparently received a presentation from Pilatus Aircraft Ltd., of Switzerland on the PC-9, a single-engine, tandem seating, turboprop plane that might be a contender if the Air Force were to relax its twin jet engine, side-by-side seating requirements.

[15] See footnote 13.

Additionally, the Air Force has received a letter offer from the Cessna Corporation for the new reengined and upgraded T-37 aircraft, discussed earlier. Should the Air Force stop buying T-46s and reopen bidding for a trainer, this plane could clearly be a contender.

Mr. President, I ask unanimous consent to have additional material printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

APPENDIX A—MODIFICATION DESCRIPTIONS (OPTIONS II-IV)

T-37 SERVICE LIFE EXTENSION MODIFICATIONS (SIX-PACK)

Option II.—Forward Carry-through Structure; Cockpit Rail; Wing Station-45.1 Rib and Forward Wing Spar; Aft Wing Spar; Forward and Aft Banjo Fitting; and Horizontal Stabilizer.

MODERNIZATION ALTERNATIVES

Option III.—Option II plus: Engine Replacement.

Option IV—Option III plus: Cockpit Pressurization; Ejection Seats; Instrument Panel; Avionics, Oxygen System; and Environmental Control System.

APPENDIX B—COST ESTIMATES USING ALTERNATIVE DISCOUNT RATES

TABLE B-1.—TWENTY-YEAR COSTS OF ALTERNATIVES [1]—(ASSUMING 3 PERCENT DISCOUNT RATE)

Alternative	Investment [2]	Operating and support [3]	Total
I. Continue T-46 procurement	[4] 2.4	4.0	6.4
II. Modify T-37 to extend service life	0.7	5.3	6.0
III. Modify and reengine T-37	1.4	5.1	6.5
IV-A. Modify, reengine, and upgrade T-37	1.7	5.1	6.8
IV-B. (With higher utilization)	1.2	4.4	5.6

[1] In billions of 1986 dollars.
[2] Total investment funding for all planes bought.
[3] Estimated by CBO from Air Force input factors using the cost-oriented resources estimating model AFR-173-13, assuming a 20-year time period starting in 1987 and going through 2006. CBO assumes that the planes procured under the various alternatives would be phased in as they were delivered. CBO also assumed the varying force sizes and annual operating hours per year shown in Table 3. The TTB estimates used T-39, a twin-engine executive jet now in Air Force inventory, as a proxy for the TTB.
[4] Excludes $0.4 billion in 1985 (current dollars) and earlier funding associated with developing the T-46 and buying the first production lot of 10 planes because these funds are already on contract, but includes $0.3 billion appropriated in 1986 (current dollars) for continued development and procurement of 33 planes.
Source: CBO estimates from Air Force data.

TABLE B-2.—TWENTY-YEAR COSTS OF ALTERNATIVES [1]—(ASSUMING 5-PERCENT DISCOUNT RATE)

Alternative	Investment [2]	Operating and support [3]	Total
I. Continue T-46 procurement	[4] 2.4	3.4	5.8
II. Modify T-37 to extend service life	0.5	4.5	5.0
III. Modify and reengine T-37	1.2	4.3	5.5
IV-A. Modify, reengine, and upgrade T-37	1.4	4.3	5.7
IV-B. (With higher utilization)	1.0	3.8	4.8

[1] In billions of 1986 dollars.
[2] Total investment funding for all planes bought.
[3] Estimated by CBO from Air Force input factors using the cost-oriented resources estimating model AFR-173-13, assuming a 20-year time period starting in 1987 and going through 2006. CBO assumed that the planes procured under the various alternatives would be phased in as they were delivered. CBO also assumed the varying force sizes and annual operating hours per year shown in Table 3. The TTB estimates used T-39, a twin-engine executive jet now in Air Force inventory, as a proxy for the TTB.
[4] Excludes $0.4 billion in 1985 (current dollars) and earlier funding associated with developing the T-46 and buying the first production lot of 10 planes because these funds are already on contract, but includes $0.3 billion appropriated in 1986 (current dollars) for continued development and procurement of 33 planes.
Source: CBO estimates from Air Force data.

Unless otherwise noted, all years referred to in this paper are fiscal years.

Details in the text, tables, and figures of this report may not add to the totals because of rounding.

All costs expressed in current dollars use the Administration's February 1986 economic assumptions.

Mr. MOYNIHAN. Mr. President, will the Senator from Arizona yield for a question?

Mr. DECONCINI. I yield, without losing my right to the floor.

Mr. MOYNIHAN. Without the Senator losing his right to the floor.

First, I would like to express, on behalf of those of us who have been concerned with this matter, the appreciation we feel for the energy and the information and the commitment which the Senator from Arizona has brought to this subject—which both Senators from Arizona have brought to this subject—and to say that it appears that a measure of resolution has been reached.

I see that the distinguished senior Senator and the majority leader are on the floor. I think it possible that the junior Senator from Arizona will find the resolution, which has been drafted, acceptable to his concerns, which he has ably set forth, and I think the Senate might be in a position to proceed with this matter.

□ 1520

I wonder if the Senator from Arizona felt that way.

Mr. DECONCINI. I thank my friend from New York and advise him that what I have been told of the proposed compromise certainly satisfies this Senator to the extent of where we are today at this time and this moment.

I would like to see far more extensive development of that trainer, but I think the reality is that the two Senators from New York and my esteemed senior colleague from Arizona have exhausted all the avenues of settlement and indeed we may be on the verge of putting it together. It sounds to me like it is a good solution to get beyond where we are here.

I do understand, if the Senator would correct me if I am wrong, that this will require another conference with the House because of its difference, and so there is still an area to negotiate with the House, if indeed we pass this particular settlement with R&D money and this sort of thing.

Mr. MOYNIHAN. If the Senator will be good enough I say that appears to be the case.

There are at least two other matters that we differ from the House on with regard to the continuing resolution. So that conference appears to be necessary.

Mr. DECONCINI. Let me say, Mr. President, I am prepared to yield the floor for those who want to propose this settlement.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WILSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILSON. Mr. President, I thought while we are waiting here I might share with my colleagues the seriousness of the situation that is imposed by our inability to finally come to cloture on the continuing resolution. It does have at least some lighter side to it.

I just received a call from a former employee of mine, Mr. Richard Mallory, who has just had an interesting experience. He has now left my employment in order to assume a new post as the State director in California for the Farmers Home Administration.

That new responsibility was supposed to bring with it a larger staff than he supervised when he was working for me.

His first day on the job, Mr. President, has consisted of his taking as his first act that of sending home all of his employees.

So he is there in his office in Sacramento answering his own phone. Since he had some time on his hands, he thought it only proper that he call and express his gratitude to me and to the other Members for what we have done by way of providing this assistance to him.

Mr. STEVENS. Did he call collect?

Mr. WILSON. He did call collect.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1530

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. DOLE. Mr. President, I ask unanimous consent that it be in order for the Senator from Arizona, Mr. GOLDWATER, to modify his amendment with the following text, which he sends to the desk.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. And I further ask unanimous consent that the modified amendment be considered an amendment to the House amendment.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, let us hear the text of the language.

The PRESIDING OFFICER. The clerk will read the text.

The legislative clerk read as follows:

The Senator from Arizona [Mr. GOLDWATER] modifies his amendment No. 3477 as follows:

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. BYRD. Mr. President, I thank the Chair and I thank the clerk. I have no objection.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment is so modified.

The amendment (No. 3477), as modified, reads as follows:

At the end of the amendment:

Notwithstanding any other provisions of this Act, no funds shall be appropriated for the procurement of T-46 aircraft in Fiscal Year 1987. Funds appropriated in FY-86 for the procurement of T-46 aircraft shall be available to conduct the competitive fly-off set forth in sec. 145 of the FY-87 Defense Authorization Act: *provided* that such funds shall not be available for the modification or development of any candidate aircraft for the purposes of that competition. Such competition shall be completed by January 1, 1988. The Air Force shall proceed immediately to prepare for the required competition mandated by Section 145: *provided further*, that section 2304 of said Act (S. 2638) shall not be interpreted to apply to any funds provided for operation and maintenance, design funds, or military construction funds for other than major military construction projects at any military installation or facility.

□ 1540

The PRESIDING OFFICER. The amendment is so modified.

Is there further debate on this amendment?

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I will not take much time. We spent an awful lot of time unnecessarily on this amendment. I want to assure the Senate and my colleagues that what we have worked out here is a far cry from what was originally in the bill that was called to the attention of the Senate by my distinguished colleague from Arizona.

Essentially the compromise we have worked out here comes down to this basic premise: that basic premise is we will have a competitive flyoff directed by the Secretary of the Air Force, no procurement funds for any additional T-46 aircraft will be expended.

The Secretary of the Air Force has personally assured me that he will resist and turn down any pressure that might be coming from any manufacturer connected with the fund and operation during the test period, that the most this is going to cost the taxpayers of the United States is no more than $20 million. That is an awful lot of money, but that is a far cry from what I think we would have been exposed to as taxpayers had we not written the restraints into the compromise that has been reached. Therefore, I am in support of it.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Have the yeas and nays been vitiated? I beg your pardon.

The PRESIDING OFFICER. The Chair is advised by the Parliamentarian that the yeas and nays have been ordered.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Have the yeas and nays been ordered?

The PRESIDING OFFICER. The Chair has been advised by the Parliamentarian that the yeas and nays have been ordered.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the yeas and nays be vitiated.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Is there further debate on the amendment?

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. D'AMATO. Mr. President, I do not intend to have protracted debate. I will ask this of the Senator from Arizona, and the Senator from Virginia. It is my understanding that the statement of the managers accompanying the continuing resolution includes language that directs the Secretary of the Air Force to reform the lot II production contract for the T-46. It is also my understanding that that direction to the Secretary of the Air Force is no longer appropriate since we have now mandated a competition that will be completed after the expiration of the lot II production option.

Therefore, if the T-46 is the winner of the proposed competition, any further procurement beyond lot I will require new contracts. Is that the understanding?

Mr. GOLDWATER. Yes. I say to my friend from the New York that is my understanding.

Mr. D'AMATO. Mr. President, let me say that though I am not enthusiastic in terms of the resolve that we have accomplished, it certainly at least gives us an opportunity to compete in a flyoff that I believe ultimately will demonstrate that the T-46 is no answer for our trainer. There is still uncertainty in terms of what this agreement will mean. Certainly if we were to have voted upon the amendment of my distinguished colleague from Arizona, there was no doubt that we would be lucky to get 8, 9, or 10 votes in opposition. So I believe at least it gives an opportunity for Fairchild to be in a competitive position in the future.

There will be some bargaining. We do not know if the House will accept or reject. They have indicated a very strong feeling and sentiment on their part in opposition to language and to a position that might deter production of the T-46. However, at some point in time we have to do the business of the people. And, I believe at the very least, we will give them an opportunity to demonstrate the merits of this plane which I am still very much convinced is really the answer to our training needs.

I thank those who have helped—Senator RUDMAN in particular, Senator WARNER for attempting to find a common ground upon which the legitimate interests and needs of both parties or both sides of this could result in this compromise. Senator STEVENS certainly and his committee have done yeoman's work.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I will just speak briefly to supplement the remarks of my distinguished colleague, Mr. D'AMATO on the agreement we have reached under the duress of not having the votes to achieve another agreement, but we have done one thing. We are assured there will be competition in which the T-46 will fly as a candidate for the trainer for the next generation of Air Force pilots. We will be forgiven perhaps in our judgment that in that competition it will prevail.

I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. DOLE. Mr. President, I want to take 1 minute to thank all who have been very helpful. This has been going on now for almost 24 hours. I think there was a few hours between 3 a.m. and 9 a.m. when people were sleeping. But beyond that, it has been almost continuous. There are a number of people who have been very helpful.

I want to thank the distinguished chairman of the committee, Senator GOLDWATER for his youthful patience, the distinguished Senator from Virginia, the Senator from Nebraska, both Senators from New York, all others, and in particularly the chairman of the Appropriations Committee. My view is it is a satisfactory resolution. I hope the House will accept it.

While I am on that topic, let me indicate I have just come from visiting with the Speaker. The House Mem-

bers would like to know whether they can go home this weekend or not. It is a question of whether or not the Senate can finish its work tonight.

I indicated I thought we could, that this was the last stumbling block. I think Senator BYRD and I plan to confer with them again at 5:15 to give them a final answer. So I would say to my Senate colleagues if we want to go home sine die this weekend, we would really appreciate your help.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment of the Senator from Arizona.

The amendment (No. 3477), as modified, was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. HATFIELD. Mr. President, I echo the leader's comments in expressing appreciation to the parties on this particular dispute. Let me indicate to the Senate.

The PRESIDING OFFICER. Will the Senate please be in order?

Mr. HATFIELD. Mr. President, let me indicate to the Senate we have one remaining issue. We, by the previous unanimous-consent request, agreed to separate the Goldwater amendment, and have disposed of it.

Now we have the underlying amendment by the Senator from South Dakota [Mr. ABDNOR] relating to Federal buildings. There has been an attempt to work out a modification of the Abdnor amendment that would take care of a number of objections. That is not quite ready.

In the meantime, I understand the Senator from Minnesota, Senator DURENBERGER, chairman of the Senate Intelligence Committee, would like to enter into a colloquy. So I would only say that we are diverting the action of the Senate momentarily for that colloquy, hoping that by the end of that colloquy the Senator from South Dakota will have arrived at a common agreement.

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I would have risen at this point with an amendment.

The PRESIDING OFFICER. The Senate is not in order. Will the Senators who are engaged in conversations on the floor please retire to the Cloakrooms? The Senate should be in order.

The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, as I indicated, I would have risen at this point with an amendment to the Abdnor amendment. But given the state of affairs that we try to keep the Government alive, I have made the decision not to propose an amendment at this time but the Senator from Maine [Mr. COHEN] and I both feel very strongly about this issue, and felt it was appropriate to bring the matter to the attention of our colleagues and to indicate that when the 100th Congress convenes we intend to do something about this.

Mr. President, only yesterday evening was I informed of the existence in the conference report on the continuing resolution received from the House of Representatives of the following section:

SEC. 9126. Notwithstanding the provisions of subsection 502(A) of the National Security Act of 1947, funds appropriated by this Act may be obligated and expended for particular intelligence activities contained in this act: *Provided*, That the funds appropriated or made available by this Act may be obligated and expended for the particular activities contained in this Act should the enactment of a National Defense Authorization Act for fiscal year 1987 fail to occur and this Act shall then be considered to provide the authorization and appropriation authority necessary to obligate and expend the funds provided herein.

□ 1550

This provision is ill advised and represents an unwarranted intrusion on the authorization process for intelligence programs. It also encourages further intrusions on intelligence authorization on behalf of interests of members of the Appropriations Committees, especially the defense subcommittees, both in the Senate and the House.

This provision was included in the continuing resolution without—as far as I am aware—any consultation with the members of the intelligence committee of either House. This is especially serious in the Senate.

When the Select Committee on Intelligence was created in 1976 and its authorization authority established, it was deliberately insured that there would be an overlapping membership between the appropriations committees and the intelligence committees of at least two Members. In fact, today, Mr. President, there are three crossover Members, including the ranking member of the Intelligence Committee.

Mr. President, when the Select Committee on Intelligence was established in 1976, its founding resolution—Senate Resolution No. 400 of that year—specified that funds could not be appropriated for the activities of intelligence agencies except if there were an authorization for these activities by the Senate. The only exception was in the case of continuing resolutions, since these might be required to permit such activities to proceed in the event no authorization had been passed.

Just last year, section 502 of the National Security Act was enacted to further clarify the relationship between the authorization and appropriations processes for intelligence programs. Section 502 clarified the ways in which appropriated funds could be made available for intelligence activities. Subsection 502(a)(1) specifies that appropriated funds made available for an intelligence activity may be obligated or expended only if the funds were specifically authorized by Congress for such use.

After 14 hours on the T-46 trainer there is no question, Mr. President, that there has been considerable tug and pull between the authorization and the appropriations committees of this body for several years.

The executive branch has occasionally been tempted to exploit these tensions. Subsection 502(a)(1) of the National Security Act was adopted in recognition of the inadvisability extending this state of affairs into the intelligence world.

The intelligence committees of the House and Senate take very seriously their annual review of the budgets for intelligence programs. Numerous hearings are held by the committees with senior intelligence officials and untold hours are dedicated by the staff to the review of the voluminous budget submissions of the intelligence agencies. Last year, the Director of Central Intelligence also agreed to submit each year to the intelligence committees a National Intelligence Strategy document to help further rationalize the setting of budgetary priorities and the allocation of available resources in relation to the multiple objectives of the national intelligence program.

Mr. President, let me be frank. There are significant discrepancies today in the funding levels established in the Intelligence Authorization Act, which was adopted by this Congress 2 weeks ago and those contained in the conference report on the continuing resolution before us today. I cannot describe the nature of the discrepancies because they involve highly classified matters.

The funding levels for certain programs are substantially different, in a way that undermines the results of the hard work and dedicated effort put into establishing these levels by the authorization committees and the intelligence community.

It is obvious to me that this situation is well understood by the interested members of the Appropriations Committee, particularly the Defense Subcommittee, and their staffs. Nevertheless, this important matter was never brought to my attention, nor—

as far as I am aware—to the attention of any of the Intelligence Committee members on the Appropriations Committee prior to completion of the conference report.

Mr. President, it is an unacceptable state of affairs when as a result of the appropriations process the hard work of the authorizing committees and the intelligence community itself, in establishing correct budgetary priorities is significantly unraveled. This situation is not only undesirable in itself but a portent for the future. Decisions on the funding of key intelligence programs have thus far been kept largely immune from this sort of legislative maneuvering.

This provision in the continuing resolution cannot be undone now, since to seek its deletion at this time could further delay the conclusion of business by the Senate for this session. But this provision cannot be allowed to stand either, and I will introduce legislation during the next session to repeal it.

Finally, Mr. President, I wish to comment on an inaccurate implication contained in section 9126 of this resoltution which, in my opinion, is not very well drafted.

The proviso clause tends to imply that the Defense Authorization Act is the source of legislative authorizations for intelligence programs. This is incorrect. The defense bill contains only the budgetary figures for classified intelligence programs all of which are aggregated in certain ways for publication in the unclassified defense budget. Actually, the specific authorizations for intelligence programs are adopted by the Intelligence Committees and they are contained only in the Intelligence Authorization Act, which I indicated to my colleagues was passed by the Congress 2 weeks ago.

At this point, Mr. President, I would be pleased to yield to my colleague from Maine who probably played as important a role as any in the budgetary process this year with his crossmembership between the Intelligence Committee and the Armed Services Committee, the other authorizing body with regard to these matters.

Mr. COHEN. I thank the Senator for yielding.

Mr. President, I will not take a good deal of time in speaking in the Chamber this afternoon.

Let me say that I join with what my colleague from Minnesota has said about the corruption of the process.

I would like to direct my comments to another item which also cannot be discussed, unfortunately, on this floor.

We have just gone through 2 days of debate on the whole issue of the infection of trichinosis in our appropriations process. That is not a new phenomenon to this body or to the other. I do not wish to accuse anyone of having less than noble intentions. But when it starts spreading into the intelligence field, then I fear for our country. What we have is an item that has been included in the continuing resolution which the intelligence community did not request, which it did not want, and which today it remains strongly opposed to. It is almost a parallel to what we have just gone through on the T-46, only it has far greater implications for our country, for the security of the country, and certainly for the economics of the country.

As a result of pure political pork barreling to satisfy one member of the appropriations conference, funding has been provided which is a small down payment on a future system which is unneeded, unwanted, and which is going to be outrageously expensive, at a time when we are facing declining budgets for defense and intelligence matters.

Mr. President, for the committee to yield to this sort of pork barreling to satisfy an individual constituency, seems to me to undermine the security of this country. I again regret that I and other Members cannot be at liberty to discuss the individual items, but I can assure my colleagues that as soon as we reconvene the next session, I intend to work very hard to see to it that that particular program is terminated.

On that note, Mr. President, I yield the floor.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I regret that I am the person who has to respond to these comments. It is very difficult to do because, as both Senators have mentioned, we are talking about highly classified programs that are classified in the national interest, and I think all concerned understand that.

I have deplored on this floor many times the separation of the powers in the defense and intelligence fields between the authorization committees on the one hand and the appropriations committees on the other. They are made up of separate Members of each body who have different approaches to both defense and to intelligence.

My good friend, the Senator from Arizona, has just left the floor. He has considerable feeling right now concerning the relationships of the authorization committee to the appropriations committee. The two Senators from the Intelligence Committee have just remarked about activities that took place in the conference concerning intelligence issues.

Let me comment on several of them.

When this bill came out of committee, because we did not have an authorization bill, we, in fact, did include the provision that the Senator from Minnesota read concerning authorization of intelligence matters.

Let me assure the Senator from Minnesota, however, that the defense bill itself does, in fact, have a serious impact on intelligence activities in this country, and we must deal with both of them in the appropriations processes in our subcommittee.

In terms of dealing with the items that the Senator from Maine has mentioned, there was a clear, not request, but demand for one function in terms of a classified area.

□ 1600

In order to achieve that goal, it was necessary to deal with the absolute command of the House and not just one member, but every member of the conference, in dealing with another subject in the classified area. That is, unfortunately, the process of compromise in a conference between the House and the Senate when the House has a demand which, unless it is met, will give us a situation where we would not have a resolution.

We have funded fully the area that had the absolute demand. In order to do so, we had to resolve a request of the House. As I said, it was a united request, turning on the continuation of activities in another classified area which the authorization committee had mandated be ceased.

Now, we understand that. I think the Senator understands that. There was no attempt to deceive anybody about it. It is stated in the classified index, it is available and provided to the committee that the two Senators represent.

Mr. COHEN. Will the Senator yield?

Mr. STEVENS. I just want to make sure that the two Senators are not somehow or other alleging some bad faith as far as those of us who sit on the Appropriations Committee and handle these matters. We have provided the funds for the essential items the Senators have mentioned. We went further and provided the funds the House demanded because of the necessity that they would not yield on matters that we considered highly essential unless they did. That is the simple answer.

I am happy to yield.

Mr. COHEN. Mr. President, I certainly had no intention to cast any aspersion on the remarks of the Senator. I am aware of the kind of pressure he is under when dealing with the House. By the same token, I did not intend to imply, nor do I now, that he is in any way trying to mislead anybody in the Senate. By virtue of the fact that the information is classified, most of the membership is simply unaware of what is contained in that annex. The Senator from Minnesota and I, by virtue of being on the committee, are

aware of what is contained in the classified portion and have access as such.

My criticism is not directed toward the Senator from Alaska but toward the other body. My criticism is that we now have to step into this minefield of ambiguity to talk about a specific system that was not requested by the Intelligence Committee. It is not needed, and it is going to be expensive and rob us of the ability to fund in the future other systems that are far more valuable.

What I am suggesting is that it was in fact pork-barrel legislating and appropriating, not by the Senator from Alaska but by the other body. What I am also saying is that as soon as we reconvene, I intend to do everything I can to see that we terminate that particular item.

Mr. STEVENS. Mr. President, we face that every year. We spent 5 months resolving the opposition of the legislating committees to the absolutes of the appropriations process. I remind my colleagues that in the old days, when we considered appropriations bills for intelligence and defense, we had those bills in June. We had them, we worked them over, we had time to confer with our colleagues. I do not remember that kind of dispute before about 1982 and 1983, when the budget process really started absorbing our time. I am not faulting the budget process, it is just a matter of time.

The impact is what the Senator has mentioned, what has happened. In defense of our compromise, though, we are highly constrained as to what we can talk about, but I am sure the Senator from Maine realizes that there is a hiatus in the systems, that in the interim the moneys will be expended, albeit the manner that they are expended will probably lead to further production in areas that the Intelligence Committee does not want. I understand that. But there is no question that there is a hiatus and that hiatus will be partially solved by the utilization of moneys we made available.

We cannot go into that total matter, Mr. President, and I cannot pique anybody's curiosity to try to look into this because it is highly sensitive and highly necessary.

The problem we have, again I say, is if we are going to find a way around this concept that plagues us annually so that my friend from Texas is not criticizing us and my friend from Arizona, I say to the Senate that it is time we had the authorization process merged with the appropriations process to the point that the people who have become expert in defense matters or intelligence matters are in fact the people who meet with the House in both matters. They have four and a half times the people we do, yet we do exactly the same functions they do. They have the luxury of spending full time on one authorization committee or full time on an appropriations committee. They have full time in the Budget Committee.

We spend our time—I do not know about the rest of my colleagues. I assume they are on the same number of committees I am, five or six committees. We have to finally end up in this situation where we are trying to solve issues in the appropriations process.

Mr. President, there are 13 appropriations bills in front of us in one bill. In days gone by, those were passed before September 30 as separate bills following the enactment of separate authorization bills that had been passed and signed by the President before we brought these bills to the floor.

Yet, year after year, the gentleman from the authorization committee complained and we had to take it a little personally, because the people on the Appropriations Committee find themselves in the position of having to resolve these issues in the last minute in all-night sessions. We were in 2 all-night sessions out of 10, Mr. President.

I do not know how we can do anything different than finally resolve them. In order to resolve them, we have to yield on some issues to the House. That is the legislative process. I do not know how anybody can complain.

The interesting thing is, no one has complained about what has been left out. Yet we have cut over $30 billion from the bills that first came out of both these committees.

Imagine that. Even the administration says this is a wonderful bill. Our staffs—Senator STENNIS' staff and mine—and the two of us, with the assistance of the people who serve on our committees. Basically, those who serve on our committees are chairmen and ranking members of others so they do not put a lot of time in on this bill—we do. We have cut about $30 billion out of this bill. It is totally in compliance with the budget. It is consistent in terms of the outlays, it is consistent in terms of budget authority. It saves money. It rescinds $5.3 billion of prior moneys and makes that money available for other projects this year to save money for the taxpayers. Yet we get the problem of people saying, "Wait a minute, you went too far. Even having done that, you have included too many things in here with this money."

The T-46, for instance. Everybody told us about the question of affordability. We could not afford it. It was in this bill, within the budget, within the outlays. And some way, we are going to get a next-generation trainer.

Again, I say to my good friends, we have done our level best. The problems they complain about, I say be my guest if you want to repeal something that is in here. But if you repeal it, I guarantee the House will take out the provisions you want. You will harm the intelligence program in the long run if you take out the rabbit in order that the team of horses cannot run.

Mr. COHEN. Will the Senator yield on that point?

Mr. STEVENS. Yes, Mr. President.

Mr. COHEN. First, I want to commend the Senator from Alaska for the enormous job he has done in bringing us 13 bills in 1 appropriations bill.

□ 1610

I do not think anyone has anything but commendation for the efforts of the Senator. What we are talking about is an institutional problem, and I would be the first to agree that we ought to merge the authorization and appropriation process. I am fully prepared to give up whatever position I hold on any committee to achieve that goal, because what we have now is paralysis. What we have now is a system that does not work and it does bring us to the edge of every single session with late night sessions, having one or two Members hold up the entire Congress and the country to protect their own special interests.

The system is in a state of gridlock. It ought to be changed. So I would be willing to give up my position on the Armed Services Committee, the Intelligence Committee, the Governmental Affairs Committee, or the Aging Committee, any of them, in order to achieve that. So the Senator has my support if that is what he would like to do.

My problem is this: neither the House Intelligence Committee nor the Senate Intelligence Committee ever authorized the particular system that I have to refer to so obliquely, and that particular system is going to cost us amounts of money that will make this T-46 look like a mere bagatelle. All I am suggesting to the Senator from Alaska is that when we start pork barreling intelligence, it is not his fault. It came from the other body; it originated in the House Appropriations Committee this time. I understand the pressures he is under, but I think that is setting a precedent we will regret. I am only putting the Senate on notice that I will renew next year my effort to take that out.

Mr. STEVENS. Mr. President, I just close by saying pork is not made only in the House of Representatives.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, we are 14 days past our planned adjournment. The Government is technically shut down. A lot of us are wondering what we are doing debating these projects, but I would like to make a

couple of points that I think are relevant to that debate.

I think one can criticize the process, criticize the timetable, but we are here today basically because of two types of pork barrel. One type of pork barrel is an attempt at the 11th hour to build buildings that have not been authorized and that the General Services Administration does not want. The second type of pork barrel is the type that comes from building a plane that the Air Force says it does not want.

Now, we can kick the institution around all we want to about being here. But here we are on what we hope is the last day of a session in which Federal spending has grown less than any year since 1955. This is a year in which we have cut defense. This is a year in which real entitlements have declined and a year in which real nondefense-nonentitlements have declined. If on the last day of this session we gave in to a handful of special interests who simply want to build buildings and airplanes that nobody in Government wants, I think it would be a great tragedy.

So I am sorry we are here. I am sorry we are in the position where technically the Government is shut down, but this would not have happened last year. It would not have happened in the last decade. It would not have happened because the special interests would have gotten their way. We would have built the buildings, and we would have bought the airplanes. The fact that we are here fighting on this tells me that something has changed. What has changed is we do not have the old pork barrel buddy system we used to have, and I rejoice in it.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I would now like to propose a unanimous-consent request.

Mr. LAUTENBERG. Reserving the right to object——

Mr. DOLE. He has not made it yet.

Mr. HATFIELD. I have not made it yet.

Mr. LAUTENBERG. I know.

ABDNOR AMENDMENT NO. 3476

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Senator from South Dakota [Mr. ABDNOR] be permitted to modify his amendment with the following text, which I send to the desk.

The PRESIDING OFFICER. Is there objection to the Senator's request?

Mr. LAUTENBERG. Reserving the right to object, what is the modification?

The PRESIDING OFFICER. The clerk will report the modification.

Mr. LAUTENBERG. I object.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. Objection is heard. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I would like to have the attention of the Chamber on the situation in which we find ourselves. I do not think it is of anyone's making. It certainly is not as a result of any design or any deliberate action, but we happen to be in an unusual parliamentary situation. The way that the Abdnor amendment is worded and even under the modification that he is proposing and that even being accepted, we would find that the adoption of the Abdnor amendment would bring down both the Goldwater amendment, which has already been acted upon, and as well the House pending amendment No. 59 relating to public buildings.

Because of the difficulty we had in resolving the Goldwater amendment, because of the late hour, and because there is opposition and lack of unanimity even on the modified language that the Senator from South Dakota expected to present, I will at the appropriate moment make a tabling motion to the Abdnor amendment, which would in effect preserve the Goldwater amendment that has been acted upon. At the same time it would return to the House language upon which we had disagreement and as currently embodied in House amendment in disagreement No. 59.

As I say, this is not by design. This is an unfortunate situation in one way, perhaps it is a fortunate one in another way, depending upon your perspective, but I would like to have the Senator from South Dakota recognized on the basis of at least giving a statement concerning this issue. Then at the end of that statement by the South Dakota Senator I would seek the floor to make a tabling motion, to clear this bill, this continuing resolution, and move it on its way back to the House.

The PRESIDING OFFICER. Who seeks recognition?

Mr. ABDNOR addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. ABDNOR. I thank the chairman for giving me this opportunity. I hope everyone will listen closely. To go back to my original amendment, the underlying amendment, without modification, I proposed that only the projects that have been authorized by both the authorizing committees from the House and from the Senate be accepted. It seems only fair that that takes place. There are some buildings in controversy that were authorized in the House. I would just like to point out that I happen to be a member of the Public Works Committee as well as chairman of the subcommittee that funds these projects once they are authorized.

□ 1620

When GSA was before our committee and we held hearings back in May, the General Services Administration provided no testimony on these projects because they are not part of the 1987 budget request for the public buildings service. So they were not considered or authorized.

Since then, there has been some revision, and the Public Works Committee is willing to accept two of the buildings that were not authorized. They are, however, needed and are feasible. The chairman of the Public Works Committee said he would accept them.

The Federal Buildings Fund has its limitations. You can only take money out of the fund to the extent the money is available. For a long time, GSA has been trying to carry on a proper program to take care of the needs of this country, so far as Federal buildings are concerned and so far as providing a work place to house Federal employees.

On October 7, I received a letter from GSA. It said:

> This letter encloses the information you requested concerning GSA's capital projects.
>
> The integrity and financial stability of the Federal Buildings Fund is the central challenge facing the Congress as it considers the GSA budget.
>
> Rents are escalating, taking out an increasing share of Federal Buildings Fund, and at the same time the Government's own inventory—
>
> The Federal buildings we have constructed over the years and taken over—
>
> average over 39 years in age and require repair and modernization. Hence, our priority decisions are increasingly crucial.
>
> Regarding the capital budget, our major priority is to address the health and safety concerns which pose an immediate threat to building occupants.

Mr. President, we are dealing with people's lives here, people all over the United States. We can go home and ignore it. We can take money out of the fund and show off a new building that we got completed in our district or our State, whether we needed it or not. It is something to boast about.

I want to talk about buildings that are not in the budget. Those we did not authorize on this side. I wish everyone had a copy of the priority list that GSA utilizes. You would find the buildings I am speaking of—which were left out, which were not authorized. They are almost all at the bottom of the totem pole as far as priorities are concerned.

The Miami building was originally needed because of the increase in judges needed to handle the drug problem. A deal for a lease provision

over 30 years they can adequately take care of space problems will be worked out. The Chicago building is to be done the same way. We found out that by changing the prospectus, we can make a smaller building and can release two buildings which are presently being rented.

There are two other buildings—one in Paterson, NJ, and one in Jasper, AL. Let me read what GSA says about the building in Paterson, NJ:

Agencies are housed predominantly in leased space with some space in U.S. Postal Service and Social Security Administration Trust Fund Buildings. Some of these are site specified and cannot be relocated.

There are 10 Federal agency assignments at 9 locations that are eligible for consolidation in Paterson. They occupy a total of 46,750 square feet and employ 396 people. The total annual rental is $489,788 per year, averaging $10.48 per square foot. The average utilization rate is less than 135 square feet per person.

As a result of GSA's investigation of Federal agencies needs in Paterson, it was determined that the space requirements of the agencies are being adequately satisfied in leased space and at the U.S. Postal Service facility in Paterson. There is no economic benefit or potential for increased efficiency to warrant consolidation of the agencies at this time. There are no outstanding agency requests for space which would affect the recommendation of this report.

Jasper is smaller but similar. Let me read this:

There is only about 17,500 square feet of Federal agency space in Jasper (excluding postal facilities). Over half of this space is location specific and the agencies would probably prefer to stay where they are (e.g.: The SSA in the shopping mall). Therefore, a new Federal building would be very expensive to construct since no economy of scale would be realized.

In addition, leasing costs are extremely reasonable in the Jasper area and space can be leased or lease-constructed for $10-15 per square foot.

The only point I want to make, before anyone votes to table my original amendment to go along only with the facilities and buildings that have been recommended by both Houses through authorization, is this: It is up to this body to make the determination if it wants to go on funding these new projects, to help the other guy have something in his State. Or should we take the limited dollars we have and do the best job we can to repair buildings and relieve the dangers that now exist because of asbestos, fire hazards, and PCB's?

If you believe that the best way to go is fund these new projects and get out of here; to keep everybody happy with buildings that were not requested, then that is the decision you have to make when you vote on the motion to table which the chairman will submit.

Frankly, it is a grave mistake. I am close to it on both committees, and I know what needs to be done for the good of the people and for the good of the country. We should make the repairs and do the construction we can to make it pay off.

The idea of doing this, I think, is to submit that we are really going to get our house in order. Sometimes I wonder how we are ever going to balance anything in this country and make our budget fiscally responsible. If this is the way we are going, that is up to each of you. Make that determination. But I want you to know that the way you should go is to do what is recommended by the GSA. What is right is to repair of our older buildings, to get them in shape and do only construction work where it is absolutely needed.

Mr. LAUTENBERG. Mr. President, I rise in opposition to the amendment offered by the Senator from South Dakota.

Mr. President, it is quite common in the Senate to hear that a provision, although not included in a bill before the Senate, is in the House companion measure and will be considered in conference. There is a certain solace in that situation, because almost never does a bill escape a conference without being modified on both sides. The Senate wins on some points; the House on others. This amendment in effect says that unless a project was included by the Senate, it cannot be included in the conference report.

I strongly support one project which was included in the House bill, but not in the Senate bill. The project is a Federal building for Paterson, NJ. The House bill included $1.5 million for planning and design work on the proposed facility.

Construction of a Federal building in Paterson is needed to serve the people of Passaic, Bergen, and Morris Counties in New Jersey. At the present time, the Federal Government leases space throughout the area. Residents are faced with traveling to Clifton, Lodi, Paramus, and Fairlawn for access to offices not in Paterson. A Federal building in Paterson will provide convenient access to the Internal Revenue Service, the Labor Department, and the Social Security Administration, which are currently located in leased space in Paterson. In addition, the building will consolidate space for the Defense Logistics Agency, the Occupational Safety and Health Administration, the Small Business Administration, the Defense Contract Audit Agency, and the FBI. Such a Federal building could serve as a focal point for the Federal activities in the area.

In addition, construction of a Federal building will provide much-needed stimulus to revitalize downtown Paterson. Paterson, NJ, is the poorest city of its size in the United States. Consolidation of Federal offices will provide a critical mass of workers in the downtown area which will stimulate further construction and revitalization.

Construction of a Federal building is also cost-effective in the long run. The current leasing plan will cost the Federal Government $15 million over the next 30 years. Building a new Federal building is estimated to cost $7.6 million. In the long run, it will save the taxpayers money if the Federal Government owns its building instead of continuing to rent space.

Mr. President, it has been the policy of the Senate, as outlined in public buildings authorization bills passed by this body, to move away from the expensive leasing of space and toward housing Federal agencies in federally owned buildings. The House provision to construct a new Federal building in Paterson, NJ, is consistent with that policy.

The Senator from South Dakota objects to any building unless it is authorized by both the House and the Senate. It is very difficult to get authorization here in the Senate for any structure unless it is approved by the administration. Are we simply saying that the Congress is abdicating any role in public buildings and leaving it up to GSA to decide what gets leased and what gets built?

The principle being employed in this case is an unusual one. We are saying that we will only agree to fund public buildings agreed to by the Senate. The usual give and take, which is the essence of the conference committee process, is not being respected in this case.

Mr. President, I strongly support inclusion of the Paterson Federal Building in the conference report. I oppose the Abdnor amendment and I urge its defeat.

Mr. HATFIELD. Mr. President, first, I commend the Senator from South Dakota. He has waged a valiant battle on a very good principle. I hope the Senator is back next year to continue to work on this particular issue.

I would have to respectfully disagree with the Senator from South Dakota in saying that this is a simple question that we are going to vote on, in relation to the tabling motion on the subject of the Senator's amendment. Let me repeat again that, unfortunately, we are in a situation where, if the Abdnor amendment should prevail, it would strike all previous actions on amendment No. 59, which is the compromise that was so delicately worked out and in such a delicate situation that it would strike the Goldwater amendment and would strike the House language in No. 59 on public buildings.

□ 1630

So really we are dealing in one way unfortunately with two issues not one, and so on the basis of preserving the

Goldwater compromise and on the basis of expediting the handling of this matter in total form, I now make a motion to table the Abdnor amendment to the amendment No. 59 that is pending to the House amendment.

The PRESIDING OFFICER. The question is on the motion to table.

Mr. ABDNOR. Mr. President, I ask for the yeas and nays.

Mr. BRADLEY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ABDNOR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ABDNOR. Mr. President, I ask unanimous consent that the rollcall be vitiated.

The PRESIDING OFFICER. The yeas and nays have not yet been ordered. The Senator did indicate he wished to have them. The Senator from New Jersey requested a call of the quorum.

The question is on agreeing to the motion of the Senator from Wyoming to lay on the table the amendment of the Senator from South Dakota.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. DIXON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HOUSE AMENDMENT TO SENATE AMENDMENT NO. 59

The PRESIDING OFFICER. The question recurs on the motion to concur in the House amendment No. 59.

The motion was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. STAFFORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I inquire of the Chair at this point. The business on the continuing resolution is at this point completed, is that correct?

The PRESIDING OFFICER. The Senate has just considered the total consideration of the continuing resolution, the Senator is correct.

Mr. HATFIELD. I thank the Chair.

AVIATION SAFETY COMMISSION

Mr. BYRD. Mr. President, I have spoken many times on the Senate floor over the past several months of my concern over the safety of our air traffic system. The incidence of midair collisions continues to rise. Last year, 526 individuals lost their lives aboard U.S. carriers. It was one of the worst years in terms of lives lost, and was the worst year for air accidents since Congress deregulated the domestic airline industry in 1978.

As a member of the Senate Appropriations Subcommittee on Transportation, I have reviewed the requests of the Federal Aviation Administration [FAA] and have closely questioned FAA officials that appeared before our subcommittee. The bottom line in FAA testimony before our subcommittee has been that we have the safest system in the world.

Yet, over and again, we read in the newspapers or hear on the news of another airplane crash that has taken lives.

Because of growing concern over the safety of our air traffic system, I introduced legislation (S. 2417) to establish a seven-member Aviation Safety Commission to make a complete study of the organization and functions of the Federal Aviation Administration [FAA]. Although this measure was passed by the Senate on September 11, because of the shortness of time remaining in the 99th Congress, it became clear that the House of Representatives would not be able to act on the bill prior to adjournment. Therefore, I offered an amendment to the continuing resolution to establish that Commission, and I am pleased that those provisions were agreed to by the joint House-Senate conference committee.

This Commission will undertake a comprehensive, independent study of the FAA and its responsibilities. Because of the tremendous increase in the volume of air traffic, it is imperative that we have an independent, in depth study of the organization and functions of the FAA to determine whether or not the dual functions of promoting and regulating the aviation industry are in conflict.

In view of the increasing number of air tragedies and the growing concern over FAA's ability to meet the challenges brought about by the dramatic growth of the airline industry, it is vital that this Commission be established as expeditiously as possible. The report of the Commission will be completed within 9 months of the enactment of this legislation, and will prove invaluable to the Congress in its efforts to restore the margin of aviation safety.

THE DEPARTMENT OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION AND RELATED AGENCIES APPROPRIATIONS

Mr. HEFLIN. Mr. President, I rise to emphasize a provision in the conference committee report on the Department of Labor, Health and Human Services, and education and related agencies appropriations bill as the measure relates to funding the Lister Hill Center for health policy.

When the labor, HHS and education appropriations bill was adopted by the Senate on September 10, 1986, by a vote of 83 yeas to 12 nays, it provided $5,000,000 for a Federal contribution to endow the Lister Hill Center for Health Policy at the University of Alabama at Birmingham.

The committee report which accompanies the bill contains the following wording which fully explained the statutory language embodied in the labor, HHS and education and related agencies appropriations bill:

The establishment of the Lister Hill Center for Health Policy honors in his own State the memory of a great Senator whose legislative achievements in public health, biomedical research, and hospital care earned him the title of the Nation's "statesman for health". The Center would be dedicated, as was Senator Hill, to improving the quality of our health care system. It would function as a national center for the advancement of disease prevention and health promotion, and would work specifically to refocus national health policy upon such goals as the development of a proactive health care system, the integration of treatment and prevention strategies and the reduction of societally imposed threats to health. The Hill Center would support research and scholarship on prevention topics, and its activities would include the establishment of a program of Lister Hill Health Fellows, who would receive support to serve as congressional staff knowledgeable in the area of prevention.

Mr. President, similar provisions relating to the Lister Hill Center for Health Policy, unfortunately, were not included in the Labor, Health and Human Services appropriations bill passed by the House of Representatives. When the House and Senate conferees convened to work out the differences in the two respective Chamber's versions of the Labor, HHS and education appropriations bill, the House conferees agreed that the Lister Hill Center should be fully funded. Adequate funds were included in the bill to enable the Secretary of Health and Human Services to make this grant for the Lister Hill Center.

The conference committee report accompanying the bill contains language that clearly states that the conference agreement includes the $5 million to endow the Lister Hill Center. It is clear that the conference committee report intends that the Lister Hill Center be funded in the full amount of $5 million.

Mr. President, it is important to note that in as much as the conferees agree to appropriate sufficient funds for the Lister Hill Center, it is crystal clear that it was the intent of Congress in passing the fiscal year 1987 Labor, HHS and education appropriations bill to endow the Lister Hill Center.

Certainly, there is ample precedence for earmarking funds in appropriations bills to honor outstanding individuals and for other purposes. For ex-

ample, the fiscal year 1983 Labor, HHS appropriations bill provided $3 million to the University of Oklahoma to establish the Carl Albert Congressional Research and Study Center. The fiscal year 1985 continuing resolution provided an appropriation to Northwestern University to establish a basic industry research institute, and the fiscal year 1986 Labor, HHS appropriations bill earmarked funds for the Mary B. Randolph Cancer Research Center in West Virginia. These important memorials were not included in authorizing bills; they were established solely by appropriations measures.

Similarly, the establishment of the Lister Hill Center for Health Policy will honor the memory of a great Senator whose legislative achievements in public health, biomedical research and hospital care are unmatched.

There is already adequate authorization for a grant to be made for the Lister Hill Center. This money will be appropriated by the Congress to the Office of Disease, Prevention and Promotion within the Department of Health and Human Services. The Office of Disease, Prevention and Promotion is charged with creating projects for the advancement of disease prevention activities. And again, the money provided for in the fiscal year 1987 appropriations bill will be made available to the Office of Disease, Prevention and Promotion under the Assistant Secretary of Health so that the Lister Hill Center at the University of Alabama in Birmingham will be funded.

Mr. President, what the Congress was seeking to do when it included the statutory language in the appropriations bill, was to provide money for an Office which is already in existence within the Department of Health and Human Services, so that HHS would have adequate funds to make a grant to the Lister Hill Center for Health Policy. The stated purpose of the Hill Center is to work on projects and conduct studies to advance health promotion and disease prevention within the United States of America. Certainly, this is consistent with the mission of the Office of Disease, Prevention and Promotion in the Department of Health and Human Services.

Mr. President, there is no question that establishing the Lister Hill Center for Health Policy is an appropriate method of honoring one of America's greatest humanitarians just as the projects I have previously recited honor other great Americans.

Here in the Senate, Lister Hill stood tall—a giant among giants. His record of accomplishments is awesome. They are massive in number and impressive in scope and substance.

Senator Hill's particular charge was his work in the field of health and medical research. He devoted his entire service in the Congress to helping fashion the tools and lay the foundations for the medical research, hospitals, and training and educational facilities which have led to the great strides that science, medicine, and public health have taken.

Of the many outstanding health programs which bear Lister Hill's name, perhaps the one with the most importance is the Hospital and Health Center Construction Act, popularly known as the Hill-Burton Act. More than 10,000 general hospitals, tuberculosis sanitariums, crippled children's clinics, diagnostic and training centers, and other medical facilities have been built throughout our Nation under the program.

Mr. President, it would be difficult, if not impossible to find anyone in our history who has done so much for the health of his fellowman as Lister Hill. Millions of Americans live better and longer because of Lister Hill, because of his total commitment to their well being. The betterment of his fellowman was his platform, his creed, and his record. The Lister Hill Center will allow his mission to remain alive. The great potential of the Lister Hill Center is his legacy to America.

I congratulate and extend my sincere appreciation to the Members of the Congress for their foresight in recognizing that the Lister Hill Center will function as a national center for the advancement of disease prevention and health promotion, and will work specifically to refocus national health policy upon such goals as the development of a proactive health care system, the integration of treatment and prevention strategies, and the reduction of societally imposed threats to health.

BASIC ENERGY SCIENCE

Mr. MATTINGLY. Mr. President, I am delighted that the conferees on House Joint Resolution 738, the continuing resolution, have concurred with the Senate regarding the need for increased complex carbohydrate research within the Department of Energy. I would ask the chairman whether or not it is his understanding that a portion of the funds included for DOE biological energy research as intended by the conferees to be utilized for funding an enhanced program of complex carbohydrate research?

Mr. HATFIELD. The conferees agreed with the Senate report language relating to research of complex carbohydrates. The Senate language was aimed at providing a cost estimate and schedule for research facilities at the University of Georgia. In our later colloquy in the Senate, I indicated that it was my view that funds for initial work for research facilities at the University were provided in the Senate report.

Mr. MATTINGLY. Mr. President, in a colloguy with the distinguished Chairman of the Senate Appropriations Committee during our floor debate on House Joint Resolution 738, I outlined the outstanding work being conducted at the University of Georgia in the area of plant complex carbohydrate research. Our earlier colloquy makes clear that it was the intent of the Senate Appropriations Committee that DOE provide adequate funding to initiate the establishment and operation of a plant complex carbohydrate center at the University, and noted that the fiscal year 1987 costs for such a project would approximate $3.0 million.

When the committee reported H.R. 5162, the 1987 Energy and Water Development Appropriations bill, we included language which contemplated the initiation of this research center by directing DOE to negotiate for space in an existing Department of Agriculture research building, and to submit for approval an estimate of the costs required to refurbish and equip the space for a plant complex carbohydrate laboratory. We had estimated in committee that such a program would cost $2.5 million to $3.0 million.

Since that time, the University of Georgia has made a commitment to construct an entirely new building to house the complex carbohydrate center, thus making the 1987 funds which we had earlier intended for refurbishment available instead for funding the startup of this ongoing research center.

Mr. HATFIELD. As the Senator knows, the conferees reduced the Senate allocation for operating expenses for biological energy research by about $3,000,000. The total amount provided by the conferees was $16,500,000 which is approximately $2,000,000 over the House level and the budget request. In view of the conference allowance and language, it is clear that there will be a smaller amount available for this program and other activities as compared to the Senate proposal. Based on the conference language, however, I believe it is the intent of the conferees to provide funds within the amount available to support this enhanced research effort at the University of Georgia.

BIOFUELS

Mr. MATTINGLY. Mr. President, I would like to ask our distinguished Chairman of the Senate Committee on Appropriations a brief question to simply clarify one of the provisions of the Energy and Water Development section of the continuing resolution. In the Department of Energy Biofuels Energy Systems portion of the Senate bill we instructed the Department to expend $450,000 for continuation of the entrained oil pyrolysis project. Now, as far as I am aware, the only lo-

cation where research is being conducted on that precise topic is at the Georgia Institute of Technology, and since we did not identify the institution by name in our report I would only ask whether or not the Chairman agrees that it was our express intent that the $450,000 be expended by DOE for the entrained oil pyrolysis project at the Georgia Institute of Technology?

Mr. HATFIELD. Mr. President, the Senator from Georgia is correct in stating that the Senate Committee had the Georgia Tech entrained oil pyrolysis activities in mind as qualifying for this funding. Although the conference agreement does not provide as much of an allocation for biofuels energy systems, we expect the Department to provide funds for this project.

Mr. BRADLEY. Mr. President. I would like to take this moment to express my strong support for the provisions of the Energy and Water Development Appropriations contained in the Continuing Appropriations Conference Report [H.J. Res. 738]. These projects are extremely important to the State of New Jersey.

Mr. President, I believe that the Federal Government has an obligation to help develop a basic infrastructure system and there is no more important part of that system than the water resource infrastructure. Some critics of these appropriations characterize them as "pork barrel" politics. However, there is significant evidence of the need for this legislation throughout the country. These appropriations provide water to our cities and farms, protect our people and their homes from floods, improve ports for commercial shipping, and provide safe recreation areas to all Americans. New Jersey is dependent on these funds to preserve and maintain its extensive intercoastal waterway, beautiful coastline, large northern and southern ports, and our western border—the Delaware River. Testimony given earlier this year to the Subcommittee on Energy and Water Development by the State of New Jersey's Maritime Advisory Council, the Port Authority of New York and New Jersey, the PenJerDel Council, and the South Jersey Port Corp., document the need for these appropriations. The impact that this funding has on commercial and recreational boating safety, and the overall impact on New Jersey's economy cannot be underestimated. In addition to the important commercial and recreational fishing industries, New Jersey's contiguous waterways provide a billion dollars of customs revenues annually and the State's seashore communities support a $10 billion recreation industry.

Therefore, Mr. President, I am especially pleased that the members of the Energy and Water Appropriations Committee and the conferees have made every effort to give careful consideration to the merits of funding the projects located in my State.

Two projects that I have been particularly concerned about for many years will receive funding when this bill becomes law. The $6 million appropriation for the new south jetty at the Barnegat Inlet will deepen the channel and correct the dangerous conditions which have plagued commercial and recreational boaters for over 30 years. This project will save the American taxpayer money and help prevent the further loss of life. In 1984, Barnegat Inlet's dangerous waters contributed to the deaths of eight people. Each and every year more lives are lost. These construction funds, as well as the moneys appropriated for operation and maintenance of the Inlet, will help to ensure that these waters remain safe for commercial and recreational users for years to come.

The flood control project at Liberty State Park will permit a further, needed extension to the New York Harbor cleanup and maintenance efforts undertaken by the U.S. Army Corps of Engineers. The Seawall project will help maintain the continued safe operation of one of our Nation's greatest commercial shipping areas. Moreover, it will protect Liberty State Park from flooding and erosion, and it will provide the millions of people who visit the Liberty State Park with an unparalleled view of the Statue of Liberty and Ellis Island.

The energy and water appropriations contained in this bill also provide funding for a project that is crucial to one of our Nation's greatest commercial shipping areas—the Kill Van Kull and Newark Bay Channels. Marine traffic to and from New Jersey pass through these waterways to Port Newark and other important New Jersey harbors. After more than a decade of study by the Army Corps of Engineers, this project was authorized in the fiscal year 1985 Supplemental Appropriations Act (Public Law 99-88). Although this $12 million appropriation will provide the initial funds for a $291 million deepening project which will bring the channel to a depth of 44 feet, there is an urgent need for additional funds during the next 2 fiscal years. Earlier this year, a large containership ran aground at the junction of Newark Bay and the Kill Van Kull. Recognizing the difficult decisions that the committee faced during its preparation of this bill, I hope that additional funds needed to expedite this project can be appropriated in fiscal year 1988. Authorization for this additional funding is contained in the conference report to the Omnibus Water Resources Development Act (H.R. 6) which should receive final passage in the very near future.

I am also extremely pleased that the committee acknowledged the need to fund dredging a 37-foot deep approach channel to the South Jersey Port Corp.'s Beckett Street Terminal in Camden, NJ. The Port's marine terminal facilities are of tremendous economic importance to the city of Camden. Inadequate channel depth has caused the Port to lose business it might otherwise have obtained. In addition to generating jobs in the Camden area, this long awaited deepening project is expected to increase activity in the Port by approximately 25 percent.

I applaud the committee for taking the steps necessary to continue protecting New Jersey's precious shoreline and waterways. The $2.3 million appropriated for the Barnegat Inlet Beach Erosion Control project will be used by the Army Corps of Engineers to continue preliminary work on the restoration of large sections of the northern New Jersey shore that were severely damaged by storms in 1984. The committee has also included $500,000 for the design and engineering work needed for the Cape May Inlet to Lower Township project. H.R. 6 authorizes a comprehensive erosion control and storm protection project for this area. This initial funding will permit construction to alleviate erosion that has already destroyed the helicopter landing pad at the Coast Guard facility. The committee's responsible action will help to preserve and protect the Federal Government's and the surrounding municipalities' property. I also would like to thank the committee for providing funding for the operation and maintenance of New Jersey's many waterways, especially the Intercoastal Waterway, the Delaware River, and the New York-New Jersey Channels.

Finally, the committee's willingness to continue funding projects geared toward flood damage protection and flood control in selected areas of the Passaic, Raritan, and Rahway River basins, is greatly appreciated. Residents living in the vicinity of these rivers have suffered through tremendous floods during the past decade and a half. The last major flood in the Passaic River basin occurred in April, 1984. Thousands of people living in the Basin were displaced from their homes, and property damage was estimated at over $300 million. Similar flooding problems have occurred in the towns surrounding the Green Brook subbasin of the Raritan River basin. In August, 1973, flooding in the Green Brook lower basin resulted in the deaths of six people. The $1.37 million appropriated for the Corps of Engineers continued planning and engineering study of the basin will help to

remedy a very serious flooding problem.

Mr. President, I would like to commend the Committee on Appropriations for its efforts to preserve and protect some of New Jersey's most precious and vital resources. I urge my colleagues to support passage of this bill.

VETERANS' ADMINISTRATION PROGRAMS

Mr. CRANSTON. Mr. President, as the ranking minority member of the Committee on Veterans' Affairs, I want to express my great appreciation to my colleagues in both Houses who worked so diligently in the conference on the fiscal year 1987 appropriations for Veterans' Administration benefits and services as provided for in the conference report on H.R. 5313, the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1987 (H. Rept. No. 99-977), as now set forth in section 101(g) of House Joint Resolution 738, the fiscal year 1987 continuing appropriations resolution. The conferees have done a fine job of providing fair and adequate levels of funding for veterans' programs.

Mr. President, I am particularly grateful to the Senate HUD-Independent Agencies Appropriations Subcommittee acting chairman [Mr. LAXALT], the ranking minority member [Mr. LEAHY], the Senator from New Mexico [Mr. DOMENICI], who served as acting chairman of the Senate conferees during the October 7 meeting of the conference committee, and the other Senate conferees, and the House subcommittee chairman [Mr. BOLAND], the ranking minority member [Mr. GREEN], and the other House conferees for their cooperation and their commitment to veterans in developing the conference agreement. I also express my appreciation to my distinguished colleague from Arizona [Mr. DECONCINI] who, as a member of both the Committee on Veterans' Affairs and the Appropriations Committee, has done so much to make sure that the VA is provided with sufficient resources to maintain the level and quality of services provided to our Nation's veterans.

Mr. President, the overall conference agreement on VA funding is generally very good in meeting the needs of our Nation's veterans as well as in recognizing and responding to the continuing developments and changes in the VA.

I would especially like to highlight two aspects of the agreement.

MEDICAL CARE ACCOUNT

First, I congratulate the conferees on their decision to provide $9.412 billion for the VA's medical care account in fiscal year 1987. This appropriation level, according to the conferees, will enable the VA to maintain fiscal year 1987 medical-care staffing of an estimated 194,140 full-time employee equivalents—FTEE. The conferees indicate that this level of funding is intended to maintain in fiscal year 1987 the 193,941 FTEE staffing level that has been appropriated for the VA in each of the last 2 fiscal years, as well as to provide for a total of 199 FTEE—the 99 FTEE requested by the administration plus 100 FTEE that the conferees added—for the purposes of implementing the income-eligibility and third-party-reimbursement provisions enacted on April 7, 1986, in title XIX of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272).

Mr. President, the administration's fiscal year 1987 budget proposed to reduce VA medical-care staffing levels by nearly 9,000 FTEE in fiscal year 1987. I viewed that unfair proposal with great alarm and have been working very hard over the past 9 months in the budget and appropriations processes to protect the VA's medical care account from cuts that would reduce VA medical-care staffing. For example, on March 4, 1986, joined by the other Democratic members of the Veterans' Affairs Committee, I submitted to the Budget Committee our strong recommendation that the administration's cutbacks in the VA's medical-care account be rejected. As we urged at that time, Mr. President, maintaining reliable, consistent support for the VA medical program is essential if the agency is to continue to fulfill its mission of providing quality care to our Nation's veterans. Fortunately, the Congress agreed, and in the fiscal year 1987 congressional budget—Senate Concurrent Resolution 120—adequate provision was made for the funding level provided in this appropriations measure.

Mr. President, with further reference to this issue of VA medical-care staffing levels, on October 2, 1986, three of my colleagues on the Appropriations Committee, Senators DECONCINI, LEAHY, and LAXALT, and I engaged in a colloquy which begins on page S 14777 of the October 2 RECORD. In that colloquy, Senator DECONCINI and I expressed our concerns regarding a proposed reduction in fiscal year 1987 in the VA medical-care staffing level as reported by the Appropriations Committee on September 25 (S. Rept. No. 99-487). We urged the Senate conferees to reconsider this important matter and to work with the House conferees in providing resources in the VA medical care account adequate to maintain the VA medical-care staffing levels. In response, Senator LAXALT and LEAHY both stated that they appreciated our concerns and pledged to do their best in conference to accommodate our concerns in determining the level of staffing and funding under the VA medical-care account. In view of these assurances, other discussions with the Appropriations Subcommittee, and certain actions agreed to be taken that were taken during full committee markup of the bill, Senator DECONCINI and I agreed not to offer amendments on VA medical care either during full Appropriations Committee markup or on the Senate floor.

Clearly, the Appropriations Subcommittee conferees have carried out their part of the bargain in full measure.

PARKING GARAGE REVOLVING FUND

Mr. President, the second provision in the conference agreement that I would like to highlight concerns an appropriation of $26 million to establish a parking garage revolving fund for the future construction and acquisition of VA parking facilities. This revolving fund has been authorized by law since 1979 but has not yet been activated.

Mr. President, I note that H.R. 5299, the proposed "Veterans' Benefits Improvement and Health-Care Authorization Act of 1986," which has now been passed by both Houses and thus cleared for the President's signature, includes a provision, section 223, which sets forth a mechanism for the collection of parking fees and the use of the revolving fund. The new legislation would require the Administrator to deposit in the revolving funds the fees that would be required to be collected at medical centers with new parking garages built or acquired with revolving fund money—plus any parking fees collected at other VA medical facilities, where the Administrator would continue to have the discretion to charge fees. These provisions, together with this initial appropriation, would finally break the 3-year deadlock over parking garage construction.

The $26 million appropriation for the revolving fund included in the conference report, together with the provision, also included in the conference agreement, transferring into the revolving fund from the VA's major construction account the $4 million previously appropriated for fiscal year 1984 for the construction of a parking structure in San Francisco, would give the VA a $30 million fund from which to draw to begin constructing parking garages needed to ease intolerable parking situations at various medical centers. The Appropriations Committees generally intend that the $30 million be spent for the garages at San Francisco, Syracuse, Durham, and Baltimore, and I concur with that.

Finally, I am pleased to note that the conference report includes an administrative provision, which was in the original Senate version of H.R. 5313 and which I had urged the Senate committee to adopt, authorizing the Administrator to increase the revolving-fund appropriation by up to 10 percent by means of transfer from

the VA's major or minor construction accounts.

Again, Mr. President, I would like to express my deep gratitude to the conferees on the VA appropriations in the continuing resolution fiscal year 1987 for their hard work and thoughtful decisions to help maintain and improve the quality and efficiency of the benefits and services provided to our Nation's veterans through the Veterans' Administration.

Mr. PACKWOOD. Mr. President, I rise today to set the record straight regarding an amendment on the subject of abortion agreed to by my colleagues who were members of the conference between the House and the Senate on the continuing resolution. When the Senate Appropriations Committee considered the Commerce, Justice, and State appropriations bill, H.R. 5161, the Senate Appropriations Committee struck the House-passed amendment that would preclude a Federal prison inmate from obtaining an abortion even with her own or non-Federal resources. When the full Senate considered the Commerce, Justice, and State appropriations bill in the continuing resolution, no amendment was offered on this subject. So when the House and Senate went to conference on the continuing resolution, the House version contained this amendment but the Senate version did not.

Now, when the conference committee met on the continuing resolution, the members of the conference agreed to a so-called compromise between the House and Senate versions on the question of the payment for an abortion for inmates in Federal prisons. This compromise will ban the use of Federal funds to pay for an abortion except in cases where the woman's life is at risk if the fetus is carried to term and in cases of rape. It is my understanding that given the exigencies of the circumstances and the view of the House conferees, the Senate conferees saw no alternative.

The language of this amendment is very similar to language that the Senate voted unconstitutional last year. On November 1, 1985, in this Congress, the Senate voted that an amendment to the Commerce, Justice, and State appropriations bill for fiscal year 1986 which denied Federal funding to pay for abortions for Federal prison inmates except where the life of the mother would be endangered, was unconstitutional. That is why I believe the members of the conference committee included the second part of this amendment which is, in effect, a severability clause. If the abortion provision contained in the continuing resolution is ruled unconstitutional by a court of law, the amendment will fall but the entire legislation will remain intact.

In my legal research, I have found substantial court precedent under the eighth amendment and the constitutionally protected right to privacy found in the abortion case law to support a ruling of unconstitutional by the court.

Regardless of whether or not the court rules on the constitutionality of this amendment, this is just a 1-year appropriation and the Senate will no doubt revisit this question in 1987. While I understand that my Senate colleagues in the conference committee needed to accept this amendment this year, it is my intention to oppose any effort to offer a similar amendment to the fiscal year 1988 Commerce, Justice, and State appropriations bill.

Mr. METZENBAUM. I want to follow up on the comments made by the distinguished Senator from Oregon [Mr. PACKWOOD]. There is no question in my mind that these abortion provisions are unconstitutional.

The key issue presented is whether the Government may confine an individual and deny the means to exercise a constitutional right. The previous precedents on Federal funding of abortion do not resolve this issue. The results in these cases turned in part on the absence of any governmental interference with the opportunity to obtain an abortion and on the premise that the Government had not imposed on women the poverty which made it difficult for them to pay for an abortion. Obviously, governmentally imposed imprisonment presents a very different situation—a situation of total governmental control over a woman's life and livelihood. In this situation, the Government has an obligation to support the right to an abortion. This is my view.

Moreover, I must also add that there are serious constitutional problems posed by this provision because it does not provide for abortions where the health of the woman would be harmed if she carries a pregnancy to term. I have reviewed Supreme Court cases which say that deliberate indifference to the medical needs of an inmate is unconstitutional under the eighth amendment. In these cases, the courts remind us that the Government undertakes certain obligations when it imprisons individual, and one obligation is to provide medical care. When an inmate needs an abortion for health reasons, prison officials have a constitutional duty to make that abortion available. So, there are serious constitutional problems with this legislation.

Ordinarily we would expect the Senate to give this kind of legislation full consideration, but the time element has made that impossible this year. The House included abortion language which was stricken by our own appropriations committee. No one brought this issue to the floor. And that is not surprising since several Senators would have no doubt offered serious opposition. And last year when we considered this issue, a point of order made by Senator RUDMAN based on the unconstitutionality of these restrictions was sustained.

The House should not expect agreement on this language in the future, whether the language is included at the beginning, middle, or end of the legislative session. If the House chooses to include restrictions on Federal inmate abortions in subsequent legislations, appropriations, or otherwise, I will do everything to defeat the restrictions. I am reassured by the statements of Senators KERRY and PACKWOOD on this issue. I welcome the opportunity to work with them to protect these important constitutional rights from legislative infringement. Thank you Mr. President.

Mr. KERRY. Mr. President, let me first state that I fully concur with the remarks made by my distinguished colleagues from Ohio and Oregon and I commend them on their tireless efforts on this very critical issue. In addition, I would like to reiterate their sentiments that it is likely that we will revisit this issue in the future. They can both be assured that I will be working with them to defeat such dangerous provisions.

Mr. President, I rise in opposition to a provision added to the continuing budget resolution during the conference committee between the House and the Senate. This provision which was not in the Senate passed Commerce, Justice, and State appropriations bill in the continuing resolution, will inhibit the right of women in Federal prisons to have abortions. Although I have no intentions on holding up the continuing budget resolution at this late stage in the session, I want to make it absolutely clear that my opposition to this specific provision is based on two factors. First, this provision is unconstitutional, and second, this action represents legislating on an appropriations bill.

Federal prisoners do not lose their constitutional rights when they are incarcerated. Last year the Senate was quite clear on this issue when they voted a similar measure unconstitutional. Furthermore, this has been upheld in numerous instances. For example in the case of *Wolff* v. *McDonnell*, 418 U.S. 539, 555–556 (1974), Justice White stated, "There is no iron curtain drawn between the Constitution and the prisons of this country."

In *Roe* v. *Wade*, 410 U.S. 113 (1973), the Supreme Court stated that up to the point of viability "the abortion decision is inherently, and primarily a medical decision * * *" and found that the Government cannot deny a patient the right to obtain an abortion. Moreover an incarcerated woman's right to appropriate medical care is

unquestionalby protected under the Constitution. This could not be more clearly portrayed than in the U.S. Supreme Court decision *Estelle* v. *Gamble,* 429 U.S. 97 (1976), where the court ruled that the eighth amendment's ban on cruel and unusual punishment requires prisons to provide medical services for inmates; particularly in situations where the denial of elective medical treatment would cause an "irreparable" condition. Preventing a woman from being able to choose to have an abortion in a timely and safe manner is undoubtedly "irreparable". This was most recently upheld in a New Jersey court case *Monmouth County Correctional Institution Inmates* v. *Lanzaro,* Civil No. 82-1924 (D.N.J. May 29, 1986). In this case, the court was determining whether it is appropriate for prisons to offer abortions as a medical service. They concluded in their ruling that inmates not only have the constitutional right to an abortion for medical reasons, but that abortions must be paid for by the Government. In sum this ruling clearly points out the fact that by denying Federal dollars for women in Federal prisons who choose to have abortions we are blatantly denying essential medical services.

I have clearly demonstrated that this provision is unconstitutional. Let us turn our thoughts for a moment to some actual facts about the living conditions in prisons and ask ourselves, should women really be forced to carry a pregnancy to term in a Federal prison if they choose not to? Fact—66 percent of the women in prison were unemployed prior to imprisonment; fact—58 percent of women in prisons lived on less than $3,000 a year prior to imprisonment and 92 percent had less than $10,000 yearly income; fact—the majority of women in prison are single parent mothers; fact—gynecological and prenatal care is inadequate in most prisons; fact—in prisons there is little to no medical care provided for newborn children; fact—50 percent of all children do not see their mother after incarceration; fact—prisons have limited support programs for child-inmate relations. Circumstances as grim as this must certainly be studied in depth to assess its impact on the health and welfare of a pregnant woman and her unborn child.

Mr. President, in conclusion let me say, that the constitutionality of a woman's right to abortion was determined in the case Roe versus Wade. Furthermore, the issues of abortion, and access to health care for women in prisons should be carefully examined by the appropriate authorizing committees. Issues of such far reaching consequences should be fully addressed and not cavalierly placed on a spending bill in the closing moments of this Congress.

AIR FORCE TRAINERS

Mr. DOLE. Mr. President, we've been preoccupied with this amendment for nearly a full day now. For a long time last evening, I was not certain this matter could be resolved. But we did reach a fair agreement, and I am apprecative of the efforts of many Senators: D'AMATO, MOYNIHAN, STEVENS, EXON, DECONCINI, WARNER, RUDMAN, and especially the distinguished chairman of the Armed Services Committee, who was the guiding force in this, the last major legislative effort of his illustrious career.

I am not certain anybody can declare victory here, and, as has often been said, that is often the best indication that a fair compromise has been reached. This is a complicated matter involving a Government contract which was originally awarded in 1982. Budget conditions changed and performance on the contract was not what had been anticipated. Senators have developed strong opinions on the question of whether the contract should be continued, fully or partially funded, or terminated. Many have viewed this effort as a show down, and that we would on this bill finally decide once and for all the fate of the T-46.

Well, we haven't done so. We have reached an agreement that preserves the integrity of the contract originally reached between the Government and Fairchild Industries. In my view, that was essential. The agreement which was reached recognizes the practical performance and budget difficulties which have arisen in regard to this contract without bailing out the contractor, as some had feared.

It does not cancel the contract with Fairchild. Instead, it references and clarifies the competitive fly-off which is embodied in the 1987 Defense authorization bill, which is nearing final passage. It provides that the Air Force shall prepare immediately for the fly-off, and that the fly-off shall be completed by January 1, 1988. Further, it makes certain procurement funds previously appropriated for fiscal year 1986 available for purposes of the fly-off but clarifies that candidates—to Fairchild—in the fly-off cannot utilize those fiscal year 1986 funds for modification or procurement of aircraft.

In my view, a fly-off is the only way we could have resolved this matter. Other Senators are fully aware of my interest in Cessna Aircraft Manufacturing Co. in Wichita, KS. Cessna has provided trainers for the Air Force since the mid-1950's. Their track record is excellent and I am confident they will fare quite well in the competitive fly-off. Let me make clear that this agreement means that the Air Force cannot utilize 1986 procurement funds to modify or develop T-37's for purposes of the competitive fly-off. The Air Force will, of course, have to make available T-37's to Cessna for modification and development purposes, but Cessna, not the Government, will have to incur the modification and development expenses.

So, Mr. President, we will have a fly-off and we now know the terms. We will know in 1988 the winner of the next generation trainer competition, revisited. But we can't ignore the fact that the Air Force announced its intention to terminate the T-46 program because they could not affort it. And unless conditions change dramatically, they will presumably not be able to afford the winner of the fly-off, either. The next Congress will have to make that decision based on budget circumstances at the time.

Until we make further decisions on which planes will be used to train our pilots in the decades to come, the T-37's will suffice quite well. Air Force Secretary Aldridge has made clear several times in the past few months, and again late last evening in my office, that the T-37 fleet is in good condition and has a useful life of several thousand more hours. But we all agree that the planes will not last forever and that we will address the trainer question in the near future. Until then, let's see what the competitive fly-off brings us.

DEBT COLLECTION ACT

Mr. DECONCINI. Mr. President, the continuing resolution contains a provision which prohibits the use of funds by the Farmers Home Administration to contract with private collection agencies to collect delinquent payments from FmHA borrowers. This provision was added to the continuing resolution due to the distressed conditions which now exist in many agricultural communities. As a cochairman of the Senate Grace caucus, as a sponsor of the Debt Collection Act of 1982, and S. 2620, the Federal Credit Management and Debt Collection Improvements Act of 1986, I rise to ensure that the prohibition on the use of private collection agencies by the Farmers Home Administration during fiscal year 1987 is not misinterpreted as a weakening of the resolve of Congress for the Federal debt collection effort.

The Debt Collection Act of 1982 was enacted to encourage and improve debt collection activities governmentwide. This act directed the Office of Management and Budget and the Treasury Department to undertake a number of initiatives to collect the rapidly growing debt owed the U.S. Government. The Debt Collection Act of 1982 was followed by the issuance of a number of executive branch directives, including OMB Circular A-129. While the executive branch has had some success in collecting delinquent student loans, a General Accounting Office report prepared for me in May indicates that nontax delinquencies

grew by 55 percent over the past 4 years to more than $24 billion. This dramatic increase in debt owed the Federal Government, combined with our serious budget deficit problems, led me to introduce S. 2620, the Federal Credit Management and Debt Collection Improvement Act of 1986.

This bill provides for the establishment of specific nontax debt collection targets for the Federal Government as a whole and a mechanism for setting debt collection targets for the individual agencies and departments with debt collection balances. New incentives would be provided for agencies to pursue nontax delinquencies and agencies with large debt collection balances would be directed to use private sector collection agencies, credit bureaus, and salary offset to collect delinquent loans.

In light of the serious depression in the farm sector economy, and the enormous human tragedies which have resulted, perhaps it was unwise and insensitive to let a contract for a private company to collect Farmers Home Administration past due accounts. Nevertheless, Mr. President, I do not believe we should allow the passage of this prohibition on the use of private collection by the Farmers Home Administration in this bill to send the wrong signal to the executive branch and to private collection firms. I believe it should be made clear that Congress remains committed to the goals of the Debt Collection Act of 1982. Mr. President, I believe that the Office of Management and Budget and the General Services Administration should work to ensure that those private collection firms denied Farmers Home Administration loan accounts are made whole for any losses or costs incurred. In addition, OMB and GSA should immediately locate and refer to the firms under contract with GSA who either have received or would have received accounts for collection from FmHA, alternative Federal loans or equal volume, value, and profitability potential to those denied by the continuing resolution. OMB and GSA should also explore and implement other actions, including an extension of the existing 2-year contract between the affected firms and GSA for debt collection, to ensure that the commitments made by GSA in the contracts with vendors are fulfilled.

Mr. President, I would like to inquire about the views of the chairman of the Senate Governmental Affairs Committee who has been a leader in the Federal debt collection effort. Does the chairman agree that it should be made clear that Congress remains fully committed to the collection of Federal debt and the use of private collection agencies to achieve that objective? And does the chairman concur with positions I have outlined on these important matters?

Mr. ROTH. Yes, I agree with my distinguished friend from Arizona. I share his view that the executive branch should strengthen its efforts in the debt collection field generally and should contract out for private assistance with debt collection where it is appropriate to do so. For that reason I have joined the Senator from Arizona in sponsorship of S. 2620, the Federal Credit Management and Debt Collection Improvement Act of 1986. I believe it is also this shared view that encouraged the Senator from Arizona to join me in sponsorship of S. 2230, the Federal Management Improvement and Cost Control Act of 1986, which was unanimously reported by the Committee on Governmental Affairs last July.

One of the critical objectives in both these legislative efforts, in S. 2620 and S. 2230, is to ensure the improved effectiveness of Federal debt collection efforts through the increased use of private debt collection agencies. To some extent the executive branch has already anticipated that goal, and contracts with private debt collectors have already been concluded. Where that has been done, and where specific delinquent loans are now under contract for private collection efforts, I agree with the Senator from Arizona and with the distinguished chairman of the Committee on Appropriations, that private contractors in these arrangements should be insulated from the effects of section 632, consistent with the terms of their contracts with GSA. One way to do this may be to provide sufficient replacements of delinquent loans from other portfolios to those firms under contract with GSA. In that way the goals established under those contracts might still be met.

I also want to assure my distinguished colleague from Arizona that a renewed effort to secure the adoption of effective debt collection legislation, such as the efforts we have made together in S. 2620 and S. 2230, will be a high priority for the Senator from Delaware in the 100th Congress.

IN SUPPORT OF DISASTER PAYMENT PROGRAM

Mr. RIEGLE. Mr. President, this continuing resolution means a great deal to farmers in the State of Michigan, and throughout the Nation in areas which have been devastated by flooding, hail, or drought. The bill contains a $400 million disaster payment program for most crops that have been afflicted by natural disasters in the past year.

Less than 20 days ago the Michigan congressional delegation was approached by a group of farmers representing a number of major farm and commodity groups in the State who had been severely damaged by heavy rains and floods. Due to an extraordinary bipartisan effort both in the Senate and in the House, we were able to craft a program that will meet in a significant way the needs of those producers throughout the country who are currently facing the loss of more than 50 percent of an entire crop.

Mr. President, this program is unique in many ways since prior to its enactment there was no disaster payment program for program corps, such as corn and soybeans. But the truly unique aspect of the program is its application to nonprogram crops such as potatoes, dry edible beans, fresh vegetables, fruits, and many other crops that are not covered by any Federal price support programs.

Michigan ranks in the top 10 producers of more than 20 different crops ranging from corn and soybeans to carrots and grapes. The total value of our farm production is almost $3 billion dollars. Agriculture is our second largest industry and even in the worst of times for Michigan, the farm sector has managed to keep the State's economy afloat.

There is no way to understate the amount of damage that has been done in Michigan since September 9 due to the unprecedented rains which have occurred. We have received over 85 percent of our normal annual rainfall in less than 1 month. Farmers, who were just beginning harvesting activities—after nurturing crops during the year—saw their labors turned into mud and the hopes of economic survival disappearing. Entire crops of potatoes, dry beans, sugar beets, and soforth were destroyed with little or no hope of salvage. Without the program that we are approving today, thousands of farmers would be forced out of business through no fault or mismanagement on their part. For example, it is estimated that 60 to 70 percent of Michigan's 5,500 dry bean farmers will be eligible for assistance under this program, that is the extent of the damage, and how critical the need for disaster assistance. Existing disaster loan programs are simply unavailable to farmers in this situation, there is no way to meet the repayment requirements with one's crop under water or completely destroyed.

This program would provide disaster payments to farmers who have suffered more than a 50-percent loss on each crop they produce. Payments would be limited to $100,000, and it would be available for both program and nonprogram crops that have been damaged by flood, drought and hail. Payments would be in the form of generic PIK certificates, and farmers can receive up to 50 percent of their total losses in payments. In addition, major changes were made by the House conferees in the existing farm loan programs, and by providing more funds for conservation and restoration projects.

Mr. President, I would like to note that this legislation would not have been possible without the active assistance and cooperation of Senator MATTINGLY. He is facing drought damages in proportions equal to the damages we face in Michigan due to flooding. This legislation is an example that we can work together in times of common need to craft a program which meets the needs of the people of this country while remaining within budgetary limits.

Mr. President, this program is not perfect by any means, it will help those farmers who have suffered the greatest loss due to natural disasters. It will permit farmers to receive disaster payments as one part of a total recovery package. Most importantly, it will help to ensure that farmers who have worked so hard to remain in business, during the most difficult times imaginable, will have another chance to farm in 1987.

Mr. MATTINGLY. Mr. President, I am deeply disappointed that the Senate conferees on the continuing resolution receded to the House on the issue of reimbursement for geophysical permittees who provide data and information to the Interior Department under 43 U.S.C. 1352. Not only is this decision likely to reduce the quality and quantity of information available to the Department in making important decisions concerning our Nation's offshore energy reserves; it also takes a heavy toll on the independent geophysical companies which are struggling to survive in the current depressed condition of the oil and gas industry. While this is unfortunate, it would help somewhat if the Department would change its current regulations and keep this data and information confidential and not release to the general public data and information supplied by the permittees while it remains commercially valuable to the permittee. The public release of such data and information obviously destroys its commercial value to the contractor.

The Interior Department's regulations which appear at 30 CFR 251.14-1(d) allow the release of most of this information. The regulations which are promulgated pursuant to 43 U.S.C. 1352(c) are unclear about the confidentially of proprietary information, but there remains the opportunity to change them. Thus, the regulations establish a 10-year timeframe for data release and ignore that data and information may continue to have proprietary value even though the 10-year period has run.

I would therefore inquire of the distinguished Senator from Idaho, who chairs both the Senate Interior Appropriations Subcommittee and the Energy and Natural Resources Committee, regarding the proper interpretation of 43 U.S.C. 1352(c). Is it the chairman's understanding that the statute requires the Secretary of the Interior to maintain the confidentiality of geophysical data and information for however long it remains of commercial or proprietary value to the permittees who invested effort and money in its collection?

Mr. McCLURE. The drafters of the Outer Continental Shelf Lands Act desired to make geophysical data and information collected under permit available to the Federal Government and, under certain conditions, to the States in order that they be better able to make informed decisions on the development of the OCS oil and gas reserves. However, it left the specific timeframe for the release of this data and information up to the Department. Clearly, the Department has the authority to change the regulations and to hold the data and information for so long as it remains commercially valuable to the permittee. I share the concerns of the Senator from Georgia that the current regulations should be reviewed to see if this change makes sense. I interpret the statute to require the Secretary to refrain from public release of such data and information so long as the permittee can show that it remains commercially valuable to him. I would suggest that some data may remain commercially valuable longer than the 10-year timeframe provided in the current regulations and that the Department should rethink their regulations.

Mr. LEVIN. Mr. President, the continuing resolution has good news for some of Michigan's farmers who were devastated by the recent recordbreaking flooding. For perhaps 5,000 of the hardest hit farmers, some greatly needed assistance will soon be on the way. I have urged Agriculture Secretary Lyng today to gear up the program * * * on a crash basis to get the disaster payments into the hands of the devastated farmers.

For the first time, we were able to provide some disaster payment relief for producers of beans, potatoes, and other vegetables that are not part of existing Government commodity programs, as well as for the crops that are part of those existing programs such as sugar beets, dairy products, corn, and other feed grains.

While it is difficult to know how many farmers in Michigan will benefit, I would guesstimate the number may end up being about 5,000. The farmers hit the hardest will benefit the most since the program, as it came out of conference, will assist only those farmers who lost at least 50 percent of their crops. The payment will roughly equal the value of the lost crop above the 50 percent threshold up to $100,000. For instance, the dry edible bean farmers who were hit so hard will be primary beneficiaries, since up to 70 percent of the 5,500 dry edible beangrowers in Michigan will probably qualify for some direct payment, that being the percentage who lost at least 50 percent of their crops. Since fewer sugar beet and potato farmers lost 50 percent of their crops, it seems likely a smaller percentage will qualify.

This was a tremendous bipartisan effort involving a full court press by the Michigan delegation in both Houses and Governor Blanchard. Congress has shown by this act that it can respond with the same generosity of spirit that Michiganite and others showed in the great voluntary outpouring of assistance to the drought-stricken farmers of the Southeast last summer.

The total program for the whole country is $400 million. Because there were so many other disaster areas with farmers who qualified for assistance under this legislation, Michigan's farmers will not get all they need. But we broke new ground and farmers who were hit the hardest will be getting at least some assistance. Farmers in counties which have been declared disaster areas and farmers in designated adjacent counties will be eligible.

Disaster payments will be made in the form of commodity certificates which can be redeemed for a federally owned surplus commodity or offered for sale. Payments will be limited to $100,000 per producer.

So in summary, some relief at least will soon be forthcoming for farmers in Michigan, where estimates indicate that without some assistance almost 25 percent will not be able to farm again next year.

AUTHORIZATION OF THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS

Mr. ROTH. Mr. President, I want to comment on the incorporation of the Paperwork Reduction Reauthorization Act of 1986 in the continuing resolution. This amendment makes a number of significant improvements in information management. But the key issue addressed in this legislation is the authorization of appropriations for the Office of Information and Regulatory Affairs—the President's right arm in the drive for regulatory reform and the elimination of unnecessary paperwork.

In August 1984, my Committee on Governmental Affairs reported a bill reauthorizing OIRA by unanimous vote. On July 31 of this year, the Governmental Affairs Committee again reported unanimously this bill as a separate title in the Federal Management Reorganization and Cost Control Act, S. 2230. It is time that this reauthorization of truly vital functions under the Federal Paperwork Reduction Act be passed.

Since passage of the Paperwork Reduction Act in 1980, the Office of Information and Regulatory Affairs has

reduced the Federal paperwork burden by nearly a third. The General Accounting Office agrees that OMB has exceeded the act's targets for the reduction of the total paperwork burden during its first years of operation. But at the same time, Mr. President, OMB has stated that the paperwork burden has proven much greater than was thought to be the case when the act was passed in 1980.

Earlier this year, OMB established reduced targets for paperwork reduction, stating that such lower targets are the direct result of the burgeoning increase in highly prescriptive paperwork requirements in recent tax measures and other legislation. Congress must assume greater responsibility for reducing this burden, but it is clear the job is unfinished and the President—through the Office of Information and Regulatory Affairs—must also provide leadership.

The Reauthorization Act sets targets for additional reductions in the paperwork burden over the next several years. Congress must provide this guidance to counteract the ever-present tendencies to expand the paperwork burden on the private sector.

Over the past 5 years, we have also seen significant gains in reducing Federal regulation. Two Executive orders issued by the President have established a highly effective regulatory review process and a more coherent regulatory program for major portions of the U.S. Government. Mr. President, I have often questioned the vigor and effectiveness of the management side of OMB. The Office of Information and Regulatory Affairs is perhaps the singular exception.

Shortly after I came to the Congress 20 years ago, my staff put together what became known as the Roth catalog. This imposing document counted some 1,571 Federal categorical grants under the Great Society. This burgeoning grant structure was accompanied by an astronomical number of regulations. In fact, between 1960 and 1980, the number of staff involved in creating regulations soared from 9,000 to 66,000. The dramatic increase in Federal mandates choked the life of State and local governments as well as private industries that struggled to comply with what were in some areas costly and counterproductive measures.

It was Americans crying out against unemployment, and looking for jobs, that persuaded Washington to rethink its affair with regulations. Overregulation was stifling American productivity and international competitiveness. It placed an unnecessarily large burden on American corporations, and the effects were felt at all levels of business—including competition, growth, and employment. In short, it was not working.

Efforts to curb regulation began at the Presidential level in the early 1970's. President Carter broadened the deregulation movement with the airlines. Since then it has quickly spread to other industries. In the late seventies, the number of regulations flowing from Washington averaged about 8,000 a year. With the Reagan administration's effort to control this flood of Federal constraints, not only were old regulations revisited to minimize their impact, but the number of new regulations immediately dropped by 25 percent, and it continues to decline each year.

As my distinguished colleagues are well aware, the President's efforts toward regulatory reform have generated some controversy. The Office has also been criticized on some of the methods by which it has carried out these efforts. Recently, OIRA instituted some additional administrative safeguards to ensure a fair and open regulatory process. The Reauthorization Act provides still further safeguards regarding the information collection functions.

The Reauthorization Act incorporated in the continuing resolution contains language requiring a separate appropriation account to fund OIRA's activities under the Paperwork Reduction Act. Funds to carry out these functions must come from this account. Other activities carried out by OIRA must be funded out of appropriations otherwise available to the Office of Management and Budget.

I want to make two points on this funding matter. First, the review of proposed regulations to assess the information collection burden they would impose is an integral requirement of the Paperwork Reduction Act and therefore is eligible for funding out of this new account. Second, OIRA will still be able to carry out its functions under Executive Orders 12241 and 12498 under funding otherwise available to OMB. To an extent, such functions are indistinguishable from the Paperwork Reduction Act functions I've just described.

I believe the successes in paperwork reduction and regulatory reform would not have been achieved without a strong arm such as OIRA in the Executive Office of the President. The need for this reform has not diminished. OIRA also has major responsibilities in information policy. This is the less visible but no less vital role this Office was assigned under the Paperwork Reduction Act. Some have criticized the level of OIRA's effort and attention in this area. But important steps have been taken recently, such as issuance late last year of a comprehensive policy framework for managing Federal information resources. The administration has outlined a three-point information resources management strategy designed to ensure maximum return on the Government's investment in this technology.

My committee has worked diligently for 3 years to enact the legislation embodied in the continuing resolution. OIRA has functioned without a funding authorization since October 1983. While this situation has caused some uncertainty, Congress has provided appropriations to carry out the President's paperwork, regulatory, and information management functions. This year the situation is different. The other body deleted OIRA's appropriation because there was no authorization. The continuing resolution not only provides the necessary funds, but also the authorization of funds for 3 additional years. This is a great achievement for all those who were involved. Senator CHILES should particularly be complimented for his efforts.

Mr. President, in order to reach this goal, it was necessary to accommodate the other body concerning certain modifications to section 111 of the Federal Property and Administrative Services Act, otherwise known as the Brooks Act. I want to comment on two of those modifications.

First, certain clarifications were made concerning the applicability of the Brooks Act. I support strong oversight by OMB and the General Services Administration to ensure that procurements of automated data processing equipment are carried out efficiently and effectively and in accordance with the law. However, I also believe the Federal Government must take advantage of the efficiencies available through such equipment and that Federal agencies, when qualified to do so, should be made responsible for determining their ADP requirements and making the needed procurements. Actions by GSA and OMB should be designed to facilitate that process.

Second, the authority of the General Services Board of Contract Appeals to determine whether or not a procurement falls under the Brooks Act was made specific, subject, or course, to judicial review. Proceedings, decisions, and orders of the board are not to be subject to interlocutory appeal or review, that is review while the board's decisionmaking process is underway. I want to make it clear that the Federal Court of Appeals will still have the opportunity to review decisions and orders of the board once completed. The only effect on judicial review is in its timing, not its scope or nature.

I look forward to working with OMB and GSA to further improve the Federal Government's information management, reduce the paperwork burden, and reform the regulatory process.

COLUMBIA RIVER GORGE

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of H.R. 5705, Columbia River Gorge National Scenic Area Act.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, the request has been cleared on this side of the aisle. There is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5705) to protect and provide for the enhancement of the Columbia River Gorge, and for other purposes.

The Senate proceeded to consider the bill.

Mr. HATFIELD. Mr. President, this is a bill that has been passed by the Senate and has now been passed by the House with certain amendments which the Senate would agree to.

● Mr. McCLURE. I would like to ask a few questions of the sponsors of this measure with respect to the changes which were made to the version which passed the Senate on October 8. This version makes a slight modification to the savings language contained in section 17(a)(5) that nothing would affect any interstate compact made by the States. This version inserts "before the enactment of this Act". I understand that the reason for the addition is that this act grants the consent of the United States to an agreement between Washington and Oregon and therefore this act would obviously affect an agreement which would occur subsequent to enactment. I am not certain that such a clarification was needed since I think the application of this measure to the agreement set forth in the measure is obvious. I would like the assurance of the sponsors that the savings language contained in section 17(a) (2), (3), and (4) which respect to water does apply to any actions taken by States in the future.

● Mr. EVANS. The Senator is correct. In on way would this act or any provision thereof or any action taken pursuant thereto in any way affect any action taken by any State either individually or in concert with respect to water or water-related rights nor with respect to any future or past action by the Federal Government with respect thereto.

● Mr. McCLURE. I appreciate the assurance. I would like to specifically seek the assurance that nothing in this act or the change made in this section would in any manner affect the Idaho-Wyoming compact on the Upper Snake.

● Mr. EVANS. The Senator is correct. Moreover, there is nothing in this act which would in any way affect anything which has occurred or would occur in either the State of Idaho or Wyoming.

● Mr. McCLURE. I appreciate the assurance. I would further like to inquire whether this language or the change thereto would in any way affect the authorization for the Columbia River compact which was enacted in 1925 for the States of Washington, Oregon, Idaho, and Montana and then amended in 1952 to include Wyoming and again in 1954 to include Nevada and Utah?

● Mr. EVANS. The Senator can rest assured that there will be no effect in any manner on the authorization for the Columbia compact or on the abilities of the several States to enter into the compact if they so choose.

● Mr. McCLURE. I would like to reemphasize that. There is absolutely no effect whatsoever on the authorization for the Columbia compact or the ability of the States to enter into it.

● Mr. EVANS. The Senator is correct. This act is completely irrelevant to such a compact.

● Mr. McCLURE. I appreciate that assurance. I would like to inquire whether the change in the consistency language by the addition of new section 14(e) in any way affects the understandings which we had and which we expressed on the Senate floor on October 8 with respect to the relation of the Commission and various Federal agencies?

● Mr. HATFIELD. Absolutely not. Federal agencies would continue to exercise their functions pursuant to Federal law. To the extent that Federal actions would otherwise take into account actions by State or local units of government, that would be unaffected even if the Commission were exercising the authorities which normally would be exercised by either the State or a county. In addition, I would point out that section 14(e) operates only in the absence of the Commission.

● Mr. McCLURE. Does the last comment mean that section 14(e) could exist in perpetuity if the States decide not to establish the Commission?

● Mr. HATFIELD. The Senator is correct.

● Mr. McCLURE. So, if section 14(e) only operates in the absence of a Commission, then is it equally correct to say that section 14(d) is the only and sole provision governing consistency of Federal actions if a Commission is established?

● Mr. HATFIELD. The Senator is correct. If the Commission is established, section 14(e) will have no effect and for all practical purposes will no longer exist, except in the unlikely event that the Commission is disestablished.

● Mr. McCLURE. I thank the Senator for that assurance. I would note that under 14(d) there is no authority to withhold Federal funds. The determination of what actions of Federal agencies are consistent with this act, is made solely by the Secretary of Agriculture. I find this to be very troublesome. However, as we have previously stated both today and on October 8, the act does not override the authorities pursuant to other Federal law of Federal agencies, such as the Bonneville Power Administration, the Bureau of Reclamation, the Corps of Engineers, or the Forest Service. Am I correct?

● Mr. HATFIELD. The Senator is correct.

● Mr. McCLURE. Am I also correct in stating that each Federal agency is the expert in knowing what its powers and responsibilities are under Federal law including this act, and that the role of the Secretary in determining "consistency" is ministerial?

● Mr. HATFIELD. The Senator is correct. The Secretary of Agriculture is in no position to determine whether or not a particular action by an agency of the Federal Government is pursuant to its particular statutory mandates including this act. Therefore, the Secretary's determination of consistency must be based on the other agency's own determination. This section is not meant to estblish the Secretary as a miniczar in the area, is not intended to give him a veto of other Federal agency's actions, or replace his judgment for the expertise of the agencies.

● Mr. McCLURE. This legislation as it passed the Senate required both Federal and State agencies to act in a manner consistent with the act. That language has been changed to delete the State agencies. The original version would have required the States as a condition of the Federal agreement to direct all their agencies to operate in a manner consistent with this act. Now, we could have a perpetual Federal control over the area with the Federal agencies bound forever while the States can do whatever they like. In addition, even if the Commission is established, there is no requirement for State agencies to act in a manner consistent with the actions of the Commission.

● Mr. HATFIELD. While the Senator is technically correct, it is our view that the States will act responsibly, including their agencies and that the potential of a perpetual Federal presence and the restrictions contained in section 14(e) will act as an incentive to the States to establish the Commission.

● Mr. EVANS. I agree with the remarks of my friend from Oregon with respect to the consistency provisions of this bill.

● Mr. McCLURE. I would like to thank my colleagues for their clarifications of this legislation which they have worked so diligently to see enacted.

● Mr. GORTON. Mr. President, I would like to add that I fully concur with the statements of my colleagues from Oregon, Idaho, and Washington concerning the amendments added to the Senate bill by the House of Representatives. As I understand the amendments, there is nothing in the bill as amended that would affect in any way either the Idaho-Wyoming compact on the Upper Snake River, nor the Columbia River compact.

I also agree with the statements made by my colleagues about the changes made by the House to the consistency provision in section 14. The provisions of section 14(e) only operate in the absence of a Commission being formed. If the Commission is formed, then only section 14(d) applies. Additionally, it is my understanding that Federal agencies would continue to exercise their individual authorities pursuant to the Federal laws pertaining to those agencies. Each Federal agency will make the substantive determination as to the consistency of its action. The Secretary of Agriculture's determination of consistency would be based on the determination of the respective Federal agency. It is also my view that State agencies are to act in a manner consistent with the provision of the act. I would hope that when the States take up consideration of this bill in their respective legislatures, that they will make that point clear.

Mr. President, while I strongly support the passage of this bill today, I must say that I am concerned about both the constitutionality, and the policy implications of the provision added by the House of Representatives to section 10. The Senate bill provides the Secretary of Agriculture with a limited authority to use condemnation to acquire land in the scenic area. The purpose of this provision is to ensure that there will be some oversight for development in the scenic area during the interim period before each country adopts a land use ordinance. The condemnation authority is greatly limited. With two limited exceptions, the Secretary cannot condemn an existing use at all. The Secretary is precluded totally from condemning a single-family residence, farming and grazing lands, and lands used for educational, charitable and religious purposes.

The House amended the language in the Senate bill to allow the Commission, with a vote of two-thirds of its membership, or either Governor of Washington and Oregon to disapprove a complaint filed by the Secretary of Agriculture for the condemnation of lands or interests in land in the scenic area, outside the special management area and the urban area.

Mr. President, I seriously question the wisdom of a policy that removes one of the most important oversight mechanisms in the bill. It seems to be inconsistent with the rest of the bill, and indeed with the purposes of the act itself, to have included a provision that allows one Governor the ability to veto an action of the Secretary that is meant to provide needed protection of the entire scenic area.

I must also state that I am not sure that this provision will withstand constitutional scrutiny. Given the very limited legislative time that we have available to act on this bill, I believe this body must pass the House bill. For the most part, it is extremely close to the bill that the Senate passed on October 8. I think, however, that this particular provision will need to be corrected at some point in the future. Both here in the Senate, and in the House of Representatives, we have worked long and hard on this bill. I know that the greatest concern has always been that we produce a bill that is both fair, and effective.

Mr. President, I would also like to clarify and confirm a point regarding the future operation of the Burlington Northern Railroad and the Union Pacific Railroad, both of which operate on existing rights-of-way within the Columbia Gorge and within the scenic area designated in the act. For the purposes of this act, the operation of these railroads within the boundaries of the scenic area should not be considered to be industrial development.

Routine railroad operation and maintenance activities, necessary modifications and access, particularly in emergency situations for repair and rebuilding the roadbed, will continue in the scenic area, subject, as relevant, to the applicable standards in the act. In certain situations, this may mean that the Commission may require mitigation measures to ensure that the activity will not adversely affect the resources protected under the act. These are vital transportation links that have historically operated through the gorge, and it is important to confirm that their continued operation is not endangered by the provisions of his legislation.●

BONNEVILLE POWER ADMINISTRATION

Mr. McCLURE. If my colleague would indulge me for just one more matter, I would like to turn to the question of hydroelectric facilities managed by the Bonneville Power Administration within the proposed scenic area. Section 2(j)(2) of the Senate-passed bill exempted the upgrading of existing electric transmission facilities from the definition of "major development actions." The House-passed version deletes this exemption. However, a savings provision in section 17(a)(6) of H.R. 5705 states that nothing in the act affects or changes the ability of the BPA to operate, maintain, and modify existing transmission facilities. Can the Senator give me an assurance that this change is not intended to impair the BPA's present work or ability to make future improvements in such areas as, for example, the replacement or addition of substation equipment?

Mr. HATFIELD. The Senator is correct.

Mr. McCLURE. With regard to power system controls?

Mr. HATFIELD. The Senator is correct.

Mr. McCLURE. In the installation of system protection equipment?

Mr. HATFIELD. The Senator is correct.

Mr. McCLURE. And communications equipment?

Mr. HATFIELD. The Senator is correct. It is our intention that the BPA be able to operate, maintain, or modify its equipment and facilities without interruption so long as these activities do not create visual or other adverse environmental impacts. We are pleased with the BPA's express willingness to work with the Forest Service, the new Columbia Gorge Commission, and the local jurisdictions to insure that its operations conform with the nature of the scenic area and the purposes of the act.

Mr. McCLURE. I thank the Senator for this clarification.

Mr. HATFIELD. Mr. President, I move the adoption of the bill.

The PRESIDING OFFICER. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 5705) was ordered to a third reading, was read the third time, and passed.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I wish to thank many people and I will not take the time to list each one. But I see on the floor, particularly, the chairman of the Subcommittee on Public Lands, Reserved Water and Resource Conservation, Mr. WALLOP, and the chairman of the full committee, Mr. McCLURE, from whom we have had excellent support. And I see also Senator MELCHER on the floor. We have had broad-based bipartisan support for this.

We have had extraordinary leadership in the House of Representatives, as well, from both sides of the aisle in the House and from a major number of the Northwest Congressmen; unfortunately, not all.

So I just want to thank each of those activists and those who participated in now setting aside a very major, unique piece of God's creation for the preservation and the beauty

and for the enjoyment of generations yet to come.

IMMIGRATION REFORM AND CONTROL ACT—CONFERENCE REPORT

The PRESIDING OFFICER. The question is now on the immigration conference report pursuant to cloture vote earlier today.

Who seeks recognition?

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DECONCINI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DECONCINI. Mr. President, I will vote against the conference report on S. 1200. I believe that the conference report represents real progress, but I am greatly concerned about two actions of the conferees. First, the conferees agreed to the House provision creating criminal penalties for employers who are convicted of a pattern and practice of knowingly hiring illegal aliens. Second, the conferees did not include the House-passed provision temporarily suspending the deportations of Salvadorans and Nicaraguans from the United States. Although I do want to congratulate the Senate and House for the efforts they have made and the improvements in this conference report, I have concluded that the bill is still flawed.

I believe that we do have a problem in this country with our inability to control illegal immigration, but I am convinced that it is not as big a problem as many would have us believe. I grew up and have lived virtually my entire life near our border with Mexico. In southern Arizona, we have created a thriving society that has integrated two cultures and two peoples. While we do have our tensions and problems we are working together to make our part of the country a better place. I believe that our example can be followed all over the country and our tradition of being a melting pot can continue. America is the great country that it is because we have learned to take in all of the world's peoples and use the strengths and assets of each individual and each people. But it is certainly the case that we cannot take in everyone in the world who wants to enter the United States. We must have limits and we must regain control. These limits must have flexibility. Flexibility would help affect the control that we desire. For instance, in past versions of the immigration reform bill, a provision has been included to double the number of legal immigrants from Mexico. I have supported this provision and believe not only that it would have been fair but that it would have facilitated control of the border.

I do not believe it is the responsibility of America's business community to enforce our immigration laws. I have repeatedly supported and introduced measures to strengthen our border enforcement efforts. I am pleased that the bill before us does increase our efforts and abilities in this regard. But I am not pleased that primary enforcement responsibility under this bill is given to business. While I am concerned about the impact civil penalties for knowingly hiring illegal aliens would have on business, I am even more concerned that the conferees have chosen to implement a system of employer sanctions which includes criminal penalties. It is bad enough to ask our business community to enforce our immigration laws, a job we acknowledge we have been unable to do, without putting an employer in jail for matching our lack of success. I believe that civil penalties for hiring illegal aliens is sufficient. American business follows the law. If we make it illegal to hire an illegal alien, employers will simply not hire illegal aliens. The civil sanctions will result in a sharp reduction in illegal immigration on their own. The fact that the employment of illegal aliens is severely reduced will result in a raising of both wages and working conditions in jobs for which legal residents and illegal aliens compete.

I am also concerned that the criminal penalties that could be imposed under the employer sanctions will excerbate discrimination against legal residents of the United States. I have long worried that imposing any sanctions on employers might result in increased discrimination against individuals with foreign-sounding names or who retain foreign accents. I have hoped that the imposition of sanctions would not give license to those in our society who would choose to discriminate against people who are different. I am concerned that an employer would have a slightly higher employment standard for an individual with a Hispanic surname simply because that employer would want to avoid any chance of having to pay a fine or go to jail. I am concerned that an employer would develop different procedures for interviewing and hiring foreign-looking and sounding individuals. For instance, an employer might verify the employment eligibility of a Japanese-American before the interview process begins and check on the Anglo-American after the hiring decision has already been made. The difference in procedure places another burden in the way of minority individuals in the United States. If these practices might occur under a system of civil penalties, they are even more likely if criminal penalties and jail terms might be imposed. I believe that the conferees have erred by adopting the House provision including criminal sanctions.

I am also very concerned that the conferees were unable to work out any agreement providing some kind of protection for Salvadorans who have fled their country and have come to the United States for safety and protection. I have been working for 5 years to persuade or require the administration to stop the deportations of Salvadorans back to that violent and strife-torn country. I have not engaged in this effort in order to criticize President Reagan's policies in El Salvador. I have supported the President policies and have been pleased at the progress that President Duarte has been able to achieve. I have met with President Duarte and have encouraged him to continue his efforts.

While the political situation in El Salvador has gotten better since the election of President Duarte, the security and human rights situation in that country remains critical. There were over 1,900 political killings and disappearances last year. This number is higher than any country currently receiving extended voluntary departure status by the United States. There have been over 60,000 civilian deaths in El Salvador as a result of the civil strife there. Over a million Salvadorans have been displaced, both internally and externally, since the violence started in 1980. These individuals are spread throughout Central and North America because of what President Duarte himself describes as "culture of terror." Duarte has supported resettlement of displaced Salvaldorans outside of El Salvador. I believe there is overwhelming evidence of the dire and urgent need for Congress to provide emergency and temporary protection for the Salvadorans who have fled to the United States. I am extremely disappointed that the administration and the conferees were unable to agree to at least a short-term suspension of deportations. The recent earthquake in El Salvador has excerbated the already frightful situation and, in my opinion, presented the administration with an opportunity to make a humanitarian gesture without creating the adverse precedent that the administration has sought to avoid.

I believe that the United States has a tremendous responsibility to those citizens of El Salvador who have been displaced by the civil strife occurring there. We have this responsiblity because of our involvement in that country. An involvement, as I stated before, that I have supported. With that involvement, however, comes the responsibility to those innocent persons adversely affected by it. I am once again

disappointed that we have not met that responsibility.

For these reasons, I will once again oppose the Immigration Reform and Control Act. I believe that if the criminal sanctions had not been included and some sort of protections for Salvadorans had been included, I would be able to, at long last, vote for the bill. But, with congratulations to Senator SIMPSON for his perseverenace, I will cast a nay vote.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, we have now invoked cloture on the conference committee report as compiled by the House and Senate and are now proceeding under post cloture activities under rule XXII, and in view of that I would hope that those who are prepared to speak in some further detail on this bill will come forward.

I do not have a great deal of further commentary except to say that indeed I think it is apparent that by a vote of 69 to 21 we are anxious to proceed.

The House has completed its work by a substantial vote. The Senate, I hope, will complete its work, and I know they will because we have invoked cloture and will complete our activity at this time of the schedule of the Senate.

The President awaits the bill and has agreed to sign it.

I want to pay particular respect to Senator GRAMM. He has been a dogged and persistent adversary and has truly represented the interests of his State as he has sought to restrict or to delay this measure. That is a good faith effort. There is nothing contrived in that effort, nothing sinister. It has been bold and up front.

I admire him. I admire the work he has done. He has been in this Chamber for just really a span of months rather than years and what he has done in that period of time is truly extraordinary as we deal with the deficit and budget matters.

Senator GRAMM did ask, is this the best bill that can be written?

I can tell you that there never will be a perfect bill any more than there are perfect children, perfect marriages, perfect crimes, perfect anything.

It is always interesting to me how people expect perfection out of us as legislators when they do not have it in their own lives. In fact the less they have in their own lives the more they demand of us. It is almost like the person who is out of control and always trying to control others. Interesting people those. We know them.

That does not have anything to do with this particular debate, but if I were a shrink I would want to pursue that I think with some further detail.

□ 1640

But, in any event, it is not a perfect bill. There are some things in there that pain me. Chairman RODINO and I have both pledged in our oversight capacity, and it will not matter who is in the majority or minority, to assure that this legislation works, because, you see, by doing nothing we perpetuate a status quo which we all, every single one of us, agree is reprehensible and repugnant.

I can certainly understand why some do not care for legalization. Legalization is a necessity if we are going to preserve our scarce INS [Immigration and Naturalization Service] resources, to deter future illegal immigration, and to remove a fearful, easily exploited subclass from our society. These things will only happen along with employer sanctions and more immigration enforcement.

I say that one of the principal reasons we are in this box in the United States is because of a piece of legislation passed in 1952 called the Texas proviso. How ironic, but not coincidental, that the Senator from Texas has played such a leading role in this debate over the immigration bill. It was originally because of certain interests of Texas that we are here today at all debating immigration reform because, in 1952, the Texas congressional delegation was successful in adding the Texas proviso which stated that it was illegal to harbor or conceal or transport or aid an illegal alien, but the word "employment" was not considered as being harboring or aiding.

So the law of the United States is the most bizarre of any law in any country. It simply means it is legal to hire an illegal, but it is illegal for the illegal to work. Now that is the law of the United States and that is how we got here. And is that not absurd?

Well, I will not go on. The proviso, of course, became a tacit invitation for unauthorized foreign workers to enter the United States in order to find jobs. That is why they came. The main thrust of the bill—and this is the guts of immigration reform—is employer sanctions, penalties against those who knowingly—knowingly—hire illegal, undocumented persons.

So I understand those deep concerns of the Senator from Texas about legalization and the agricultural worker program. Many caring people share that view, and we will deal with that in our oversight capacity. I look forward to a colloquy between the Senator from Texas and myself with regard to that program.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

Mr. STENNIS. Mr. President, will the Senator yield briefly to me?

Mr. SIMPSON. Certainly.

Mr. STENNIS. Mr. President, I want to especially thank the Senator here for the splendid work I have seen him do over the period of years in this very difficult field. During the years I have been here, this has been a tremendous problem and often it was virtually impossible to do anything very effective about it. But the Senator from Wyoming and the group that has worked with him found a different way and made an effective contribution.

I think all of us, the Nation, owes you a debt of gratitude. I want to especially thank and commend you for the quality and competence of your work. I thank the Senator very much.

Mr. SIMPSON. Mr. President, let me just say, in response to the Senator from Mississippi, there is no one that I respect more than the Senator from Mississippi. He is an inspiration to us all on a daily basis, especially when we are in until 3:30 in the morning and then back at 8:30 and he is the first one to show up and the last one to leave. He is an inspiration.

He served with my father. My father and Senator STENNIS are dear friends. He has extended that same friendship to me, and I cherish it.

He is the one that told me: "When you come to the Senate, some grow and some swell." And he hoped that I would be in the former category rather than the latter. A couple of years ago he told me he thought that was the case. That made me exceedingly proud.

So I thank you, Senator STENNIS.

Mr. WALLOP. Mr. President, I will take some time that would be alloted to me under the rules of cloture to speak briefly on another subject.

SENATOR NUNN ON THE ICELAND SUMMIT

Mr. President, I read with intense interest the extraordinary speech by the Senator from Georgia on recent arms control developments in Reykjavik. And I must say I am intrigued by a number of points the Senator made.

I am most pleased with the Senator's recognition that there is an intrinsic relationship between our strategic nuclear deterrent and the conventional and theater nuclear forces that we rely on to defend Western Europe and our Asian allies. He acknowledged that this relationship is a critical one. It is somewhat ironic, however, that the Senator from Georgia has strenuously argued against our strategic deterrent forces enjoying the highest priority in our defense budget, even though by his own logic, they are essential not only to the defense of the continental United States but also to our friends and allies. I would suggest that his record does not indicate that he regarded our strategic nuclear deterrent as the preeminent guarantor of our security.

I am also pleased that the Senator has recognized the massive Soviet strategic defense effort, in particular the Soviet air defense system to which we

possess no equivalent. He rightly states that this asymmetry in air defenses should have a chilling effect on the United States entering into any restrictions on our bomber force. I am puzzled, however, how Senator NUNN can square this statement with his unambiguous support of continued adherence to the numerical limits of SALT II, which also places no restrictions on Soviet air defenses. In fact, my recollection is that the Senator has been arguing for all manner of nuclear arms reduction agreements, such as the build-down concept and others, that included no restraints on Soviet air defenses. Conservatives have been chided in this body by Members on the other side of the aisle for even suggesting that we limit Soviet air defenses.

Finally, I am pleased that the Senator from Georgia has recognized the overall importance of our nuclear deterrent to the defense of this Nation. I would assume that the implication of his assessment is that the United States must maintain a vigorous nuclear testing program designed to maintain the adequacy and credibility of our strategic nuclear deterrent, at least as long as we rely on nuclear weapons to the extent the Senator has indicated. I wonder, however, why the Senator from Georgia did not vigorously oppose the House Democrats in their effort to impose nuclear arms control restrictions on the administration, including a virtual ban on nuclear testing, forcing the President to negotiate with Congress before he could go to Iceland to negotiate with Gorbachev. Why has he been helping in the effort to tie the President's hands while President Reagan was negotiating our future with the Soviet Communist Party leader?

If I am not mistaken the Senator said he thought the President should attend the Iceland meeting? What did he expect to come out of such a meeting? He offers no alternatives, he merely criticizes the President for making arms control offers that are too far-reaching. I hope his suspicion of the Soviets, his recognition of the need for a strong and credible nuclear deterrent, and his cautioning that all arms control agreements are not by definition in our interest, will be sustained into the next budget cycle.

So all this appears to represent a change of heart. If it is real, I applaud it. If it is real, I expect to see the Senator from Georgia down on the floor supporting fully the administration's request for modernizing our strategic nuclear deterrent, for modernizing and continuing completion of the strategic defense initiative. I expect to see him here opposing restrictions on our bomber force that do not take into account Soviet air defenses, and I expect him to lead the fight for a vigorous nuclear testing program.

It is most refreshing to hear the Senator from Georgia now pleading to save the missiles. I look forward to working with him next year when some in this Senate attempt to trim the administration's request for MX deployments.

Mr. President, I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

I suggest that that document and his reading of its clear terms should supersede any subsequent informal oral expressions made by a U.S. official to Senators or to anyone else and should lay the issue to rest. In fact, it seems clear that the United States offer was not to eliminate all strategic nuclear weapons. No such offer was or is on the table. No such offer need be withdrawn because in fact no such offer was ever made.

I also find curious that portion of the statement of the Senator from Georgia having to do with the wisdom of an offer to eliminate all ballistic missiles. There are several interesting points.

First, at page 6 of his statement the Senator from Georgia states a fact that I think no one can dispute. He said speaking of Soviet air defenses:

> The United States has virtually no air defense network while the Soviet Union has made a massive investment in this area. It has hundreds of air defense radars, thousands of dedicated air defense interceptors and tens of thousands of surface-to-air missiles.

Mr. President, his observations about Soviet air defenses is absolutely correct. Indeed, I think he could have gone much further and said there is a distinct possibility that by changing the radar used in conjunction with existing Soviet air defenses, the entire network could be converted into a nationwide network of rather primitive but effective antiballistic missile defenses.

Mr. WILSON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Mr. President, I, too, read with considerable interest the statement of the senior Senator from Georgia. Indeed, it was with more than with interest. It was with a great deal of curiosity on several points. The first of these had to do with the apparent uncertainty as to what the actual record was in Iceland. I must say that my curiosity was based in part upon a colloquy that I had earlier enjoyed with the senior Senator from Georgia and the junior Senator from Tennessee on this very point on what I believe was Wednesday afternoon, a day after we had received a briefing from the Secretary of State on that very point.

I felt a bit like Yogi Berra must have felt when he said, "I am feeling deja vu all over again," because we had, I thought, covered the point in the briefing with the Secretary of State and when we had our colloquy here on the floor the next afternoon. At that time I reminded my colleagues that the Secretary had produced a document which I thought disposed of the question.

Mr. President, as a distinguished old—well, not so old, certainly youthful and experienced trial lawyer, the Presiding Officer I am sure will recall from law school days, and from practice, something called the "best evidence rule." There is a precept in the law of evidence that the best evidence of the contents of a document is the document itself. And in that briefing for all Senators explaining what went on in Iceland, Secretary of State Shultz on Tuesday afternoon produced from his pocket a document which he identified as that from which he had read to the Soviets at Hofdi House, the United States offer, even as he was reading it to the assembled Senators in room S-407.

Another point raised by the Senator from Georgia had to do with the conventional imbalance in Europe—that is, inferiority of NATO's conventional capability as compared with that of the Warsaw Pact. He cites no less authority than the Supreme Allied Commander, General Rogers, who he quotes on page 7 of his statement for the proposition that this inferiority is so marked that it would necessitate going to a nuclear response on the part of NATO in days rather than weeks or months.

I do not take issue with the basic point. It seems to me, though, that it suggests a conclusion that can be fairly inferred from all else that is said in the Nunn statement: that we have come to rely long since upon our nuclear capability in order to equalize the odds in the NATO theater against the conventional superiority of the Warsaw Pact.

However, in the Senator's ensuing statement that if we cannot count on bombers to penetrate those Soviet air defenses, we are left to the inadequate capability of artillery, and aircraft-delivered tactical nuclear bombs, there is, strangely, no discussion of our cruise missiles. Perhaps unwittingly, and with unintended irony, the Senator's expressed concerns point out the wisdom of the President's announced intention to proceed to make the ALCM conversions that will exceed SALT II limits, and give the United States an increased ALCM capability that would seem even more needed against the background and context that the Senator from Georgia urged this morning as the true context of our NATO position.

Mr. President, I fully agree with the points made about Soviet air defenses and our lack of them. But I do not see

how anyone can argue that point, and when faced with the far more serious and destabilizing threat of ICBM's—the heavy hard-target killers that can reach America in 25 minutes—then vote to reduce the funding requested to try to provide an America now totally defenseless against that ICBM threat—except for MAD—with the necessary ABM defense that can be provided through the strategic defense initiative. And we have the rather anomalous position that those—not the Senator from Georgia, but all too many of his Democratic colleagues, especially in the House—who have at one time advocated a nuclear freeze rather than increase now seem to be urging upon both superpowers a freeze rather than reduction of their missile inventories. They seem to be urging that we undertake a movement to "Save the missiles."

What is clear is that there is a need to provide America with defenses against attack, both from Soviet bombers, from air-breathing attackers, and from Soviet ICBM's.

□ 1700

It is either explicitly stated or a fair inference from all that was contained in the statement made by the Senator from Georgia this morning that, without the assurance of a strategic deterrent, our conventional forces and those of our allies are inadequate; that in fact a ban on all strategic nuclear weapons would not be in our interest, and that it is largely the accuracy and credibility of our strategic deterrent which has preserved the peace in Europe.

It would be correct, Mr. President, to infer from this that today we rely more heavily on our strategic forces than on our conventional forces for deterrence. It would be correct to further infer by the Senator's own reasoning that an erosion in the adequacy or credibility of our strategic deterrent either by a treaty of the kind he has described, or by obsolescence, would pose a paramount danger for the United States and our allies.

And from that, the further logical inference can be made that as a result, our strategic deterrent forces should enjoy the highest priority in our allocation of resources during our defense budgeting process; that we should, in the instance of increasing budget constraints look first to cuts not in strategic forces, not in the nuclear deterrent, but rather in the secondary, although mightily important, conventional forces. That is the clear inference of the statements that he has made, and of his citation of General Rogers' admonition.

It is an ironic fact that, as we reduce defense spending, our emphasis upon strategic forces grows of necessity.

Reducing defense resources means increasing reliance upon our strategic forces.

Yet that clear point which the Senator seems at such pains to make to President Reagan is lost upon and is contradicted again and again by the record of his colleagues on the other side of the aisle, both in committee and on the floor, in voting to cut spending for that vital strategic capability in explicit preference for beefing up our conventional capability. There seems to be a sharp departure in the statement of the Senator from Georgia this morning from both his own prior position and certainly that of his Democratic colleagues in the Senate and in the House to a still greater degree.

There is also an inescapable implication that if we are in fact dependent, as he argues, upon a continued substantial nuclear deterrent, we are therefore dependent upon vigorous, continued nuclear testing to maintain the adequacy and credibility of our strategic nuclear deterrent; and that such required testing should be a very high priority for the United States.

If, in fact, he agrees, then I would urge upon the distinguished Senator from Georgia the role of needed advocate in admonishing his fellow Democrats in the House of Representatives who in this defense authorization bill insisted first upon an almost total ban of testing, a virtual elimination of any testing of the kind required to improve and maintain the credibility of our nuclear deterrent.

Mr. President, there is much in this statement to analyze at greater length. We will have the opportunity to debate its points in the future. But it raises points that require response now as well as more detailed discussion later, as the Senator from Wyoming and I have undertaken to provide this afternoon.

Mr. GORE. Will the Senator yield?

Mr. WILSON. I would be delighted to yield.

Mr. GORE. I missed part of the Senator's statement at the beginning. I heard it on the television system and came over to hear the rest of it.

I believe what the Senator has said, in part, is that the President of the United States did not agree, even tentatively, to eliminate all strategic nuclear weapons or all nuclear weapons because the Secretary of State produced a piece of paper which contained the formal offer made by President Reagan to General Secretary Gorbachev during their fourth and final meeting on the second day of their discussion. The Senator from California cited the best evidence rule to support that proposition. Before I ask the question, am I correct in my statement so far? Is that the Senator's position?

Mr. WILSON. The Senator is correct so far.

Mr. GORE. Might I ask my colleague this question: the piece of paper produced by the Secretary of State memorialized not an agreement but an offer. The Senator referred earlier to elementary contract law. There was a formal offer written down on a piece of paper, but according to accounts of participants at Reykjavik, General Secretary Gorbachev rejected that formal offer and said there was an inconsistency in the treatment between the two 5-year time periods. The 50-percent reduction during the first 5-year time period was intended to apply to all strategic weapons, but during the second 5-year period the reductions down to zero were to apply to ballistic missiles only, and the General Secretary at that point said, "We cannot accept that. Why not make it symmetrical and have the reductions to zero apply to all nuclear offensive weapons and not just the ballistic missiles?"

According to accounts by the President, and the Secretary of State as well, and also privately from members of the team over there, the President at that point said something to the effect, "If that is the point which hangs up an agreement that will be no problem. We can agree on that."

I ask my colleague whether or not he would not reach the same conclusion, that the written offer was superseded by the oral agreement. That may be stretching the definition of a word agreement, if someone says that will not be a problem if that is the only thing that hangs up an agreement. But it seems to me the statement earlier by the Senator from Georgia is right on target when he says it is impossible to determine the evidence any other way than to conclude that the President of the United States might very well have agreed to precisely this formulation, to eliminate all nuclear offensive weapons. Is that not a reasonable interpretation of events?

Mr. WILSON. I do not agree with my friend's statement of the facts as it varies from those made by certain officials on the record.

Mr. GORE. If I may ask the question——

Mr. WILSON. If the Senator from Wyoming will let me finish my sentence, I will be happy to yield to him as the manager of the immigration bill.

What is true, I think, is that the Senator from Tennessee is in error when he says that the written offer can be accepted orally in arms control negotiations. I think in anything as important as arms control negotiations, whatever preliminary oral discussions there may be is obviously not the final document upon which we

rely. We rely upon written records both to make the offer and to make the acceptance.

Mr. GORE. Will the Senator yield for one final short question?

Mr. SIMPSON. Would the Senator from California yield for a moment?

Mr. WILSON. I am happy to yield.

Mr. SIMPSON. Let me say I know this is going to get into a marvelously spirited debate on foreign policy, and I think that debate should go on. But I hope it does not go on during the conference committee report on immigration reform.

I have the greatest respect for the Senator from Tennessee. I frankly did not realize that those who were seeking time under the postcloture activities might not be directing their remarks toward the immigration issue.

If you have one further question, and one further response that could be shared, I am not going to object. But if it is going to go on, I will object on the basis that it is not germane to this issue.

Mr. GORE. I appreciate the statement of the manager.

If the Senator will yield for one further question, I will assure the manager of the bill I have no intention of getting into a lengthy debate. I felt if we were going to have a lengthy discussion of this issue, it ought not be one-sided.

To pose one further brief question, speaking hypothetically for a moment, if, in fact, the President of the United States had agreed that he would eliminate all strategic offensive nuclear weapons, would the Senator believe that would be a terrible mistake?

Mr. WILSON. First, I agree with the Senator from Tennessee that it would be wrong if there were a unilateral presentation of these issues, which is why the Senator from Wyoming and I sought time, with apologies to other Senators, to respond to questions raised by the Senator from Georgia.

Now, the answer to the Senator's question is that the situation he posits is purely hypothetical. It did not occur. Again I remind the Senator from Tennessee that the offer made in writing did not offer the terms he hypothesizes, nor was there any written acceptance of such terms.

Mr. GORE. If I may follow that answer, I neglected to realize that the colloquy was in response to the earlier speech today. Indeed, it was not a one-sided exchange.

□ 1710

I did want to seek clarification on those points and I thank the manager for his forbearance.

Mr. SIMPSON. I thank the Senator from Tennessee. I believe the Senator from Illinois, the manager of the bill on that side, has not made an opening statement. I yield so that he may be recognized.

The PRESIDING OFFICER (Mr. NICKLES). The Senator from Illinois.

Mr. SIMON. Mr. President, I want to speak briefly on this matter. I rise in support of the conference report.

I want to say first that our colleague, Mr. SIMPSON has done a tremendous job. He is a legislator. He is not only a man who bears the title of Senator; he has done a real, craftsmanlike job on the details. And he does not get any votes in Wyoming handling the immigration bill, let me assure my colleagues.

Let me also acknowledge the work in the subcommittee of Senator KENNEDY, Senator GRASSLEY, and Senator DENTON; also Senator METZENBAUM, who is not on the subcommittee now but formerly was on the subcommittee.

In the House, our colleagues were Representatives MAZZOLI, RODINO, BERMAN, PANETTA, LUNGREN, as well as the chairman of the full committee here [Mr. THURMOND]. In the past, I have voted against the immigration bill. I think that on balance, there have been some serious flaws in it. I do not like everything in the bill right now. I do not like some of the things that my colleague from Texas has criticized in this bill. But I believe it is as good a bill as we are going to get and I think it moves on a very fundamental problem.

First, it has something that is essential and something that causes oppostion. That is employer sanctions. You simply cannot have effective control of our borders without having employer sanction, and in this bill, the legalization and employer sanctions go together at the same time. That was my major reason for voting against the bill when it came out of the Senate this last time.

I think as long as you have employer sanctions, you are going to have some employers who are going to oppose it; you are going to have some in the Hispanic community who are going to oppose it. But I think those employer sanctions are absolutely essential.

Let me just add that with it goes the legalization for amnesty, whatever term you want to use. And it is not only Hispanics who benefit. We have people in the city of Chicago who are of Polish background or Greek background who are going to be able to benefit from the legalization provision. I think that combination is essential.

Second, there is protection for people here that was not in the original bill, that was not, with due respect to my colleague from Texas [Mr. GRAMM], who is a hard worker and, to his credit, digs in and does the kind of work that a scholar should do on these measures, there is substantially more protection in this bill than with the amendment that my colleague from Texas voted for when this bill was in the Senate originally.

We are offering legal assistance and we provide a legal status for people.

The third thing that I think we have to recognize is that it is absolutely essential that we get control of our borders.

Let me just give one illustration. I mention Mexico not because Mexico provides the only problems, but I think we have to recognize that the main problems are from Mexico. I see my other colleague from Texas here, too. Let me just give one illustration of why this is such a tremendous problem.

Mexico today has a population of 70 million people. If, by the end of this century, Mexico reaches a status where one female produces one female—I am not trying to be sexist, but that is the way demographers talk about zero population growth—Mexico will taper off with a population of 175 million people. If that does not happen until the year 2020, Mexico will have a population of 270 million people eventually. If we think we have illegal immigration problems today, my friends can look down the road a piece and the problems are just going to be horrendous. That means we have to work with Mexico.

We can pass a dozen bills like this but if we do not work with Mexico, we are not going to get anything done. I think this bill's provisions of working with Mexico are very important.

Among other things, it calls for the Immigration and Naturalization Service to report back to us 90 days after the enactment of this, consulting with Mexico, telling us what needs to be done in the way of personnel resources and technical help.

It adopts the sense of the Congress that the President of the United States should consult with the President of Mexico, because this bill is going to have a major impact on the economy of Mexico. And it provides other things that move us in the direction of working with Mexico.

Three other small points then—not small in terms of their importance. One is we talk about creating jobs in this country. The reality is we are going to gradually, under this bill, get hold of the agricultural worker program. It is not an ideal answer from my point of view, but it gradually gets hold of it.

There is no question that we have substitutions. The most conservative estimate I have seen is that 65 percent of those who come into our country illegally take the jobs of Americans. They take the jobs of low-skilled Americans, generally. In the city of Chicago, for example, it is estimated—and I do not know how accurate any of these estimates is—that there are 135,000 people who are there illegally.

Sixty-five percent means 81,000 jobs for the city of Chicago. That is a lot of jobs. Nationally, it is a major problem.

There is one small feature that is important to the Chinese-American community. That is increasing the quota for Hong Kong as part of this bill. I think it is an important part in view of the special problems and status of Hong Kong.

Finally, the bill requires reports to us on what is happening. It is very carefully drafted that way. But it will require oversight. I am sure that 2 years down the road or 3 years down the road, we may have to change the law. But the discrimination provisions to protect people, the provisions that give people legal status, I think on balance provide a very important piece of work here.

I add that there was some misunderstanding about legal services as a result of one statement in the House. I believe our colleague, Senator KENNEDY of Massachusetts, is going to put in the RECORD a colloquy between Representative RODINO and Representative BERMAN on this that clarifies that matter. But I think on balance, we have as good a bill as we are going to get.

On the Senate side, 95 percent of the credit for that goes to the Senator from Wyoming. A few of us have contributed just a little bit, but he is really the architect and has really done a tremendous public service for this Nation. I am grateful to him. I hope this body adopts this conference report overwhelmingly.

Mr. MOYNIHAN. Mr. President, I rise today in support of the passage of the conference report of the Immigration Reform and Control Act of 1985. We have before us, finally, an opportunity to act decisively to reform this Nation's laws dealing with illegal immigration in a comprehensive and just manner.

It is estimated that there are currently between 3 and 7 million illegal aliens in this country; between 200,000 and 250,000 in my own State of New York. The presence of so many illegal aliens within our borders is irrefutable testimony that our immigration laws are not working as they should, and reform of these laws is long overdue.

An essential part of any such reform must contain provisions granting amnesty to illegal aliens and penalties for employers who hire any illegal alien not granted such amnesty. The necessity for both provisions to be enacted simultaneously is clear. Employers will not hire any illegal aliens, even those who have resided and worked here for many years, if they face penalties for doing so. Imposing such penalties without providing some degree of amnesty will leave millions of these individuals with no means of support. Inevitably, then, the American taxpayer will be forced to foot the bill.

Fortunately, this bill does provide amnesty, for those illegal aliens who entered this country prior to January 1, 1982, enabling them to keep their current jobs and support themselves. Economics aside, this bill takes the important step of allowing these individuals the dignity and honor of supporting themselves and their families free from the fear of deportation. Together, the combination of amnesty and employer sanctions can reduce the influx of aliens by eliminating the attraction of jobs, and at the same time, protect those that have been living and working here for many years.

Importantly, this bill authorizes the essential funds to meet the needs of these newly legalized residents. Specifically, it will provide $1 billion annually for 100 percent Federal reimbursement for public assistance rendered to these individuals. It is reassuring that the Senate is not only enacting important legislation, but it is also providing the funds with which it can be successfully implemented.

On a related matter, I am pleased that the conferees chose to include an amendment which I offered during floor consideration of this immigration bill last September, mandating a study, to be concluded within a year of enactment, of technological alternatives for a more tamper-resistant Social Security card than that now issued. Since this bill declares that Social Security cards are a form of proof of authorization to work in this country, I feel that if is vital to curb abuse of these valuable documents by illegal aliens.

Another aspect of this bill, of great interest to me and the members of my State, is a provision to allow 10,000 additional immigration visas over the next 2 years for individuals from Ireland and Western Europe.

There is one problem, however, with the Immigration and Nationality Act which is not addressed in this bill, and it concerns the McCarran-Walter Act. This archaic provision allows INS officials to seize any alien in this country, or prevent the entry of an alien, who is suspected of Communist, subversive and terrorist activity designed to endanger the security of the United States. Just yesterday, the New York Times reported the detention of a very well-respected journalist from Columbia who was invited here by the Columbia University School of Journalism to receive an award for distinguished journalism. She was detained under the provisions of the McCarran-Walter Act apparently because she has written in opposition to President Reagan's policies in Central America.

This is reminiscent of the Alien and Sedition Acts, which, while in effect in the late 18th century, limited the right of free speech—one of the fundamental human rights upon which this country was built. This type of censorship was wrong then, and is wrong today and I look forward to next session, when I will fight for a full and complete review of this provision.

This reservation aside, let me again express my sincere desire that Congress see fit to pass this measure and to appropriate the necessary resources to fulfill the provisions of mandated by it. I am aware of the expense attached to this measure, however, I feel we must retain our firm resolve to carry out the intention of this bill—to give the preeminent country of immigrants fair and equitable immigrant laws at last.

Mr. President, immigrants have contributed so much to our Nation—and to my State. As a Senator from New York, I can particularly appreciate these contributions. Nathan Glazer and I wrote in Beyond the Melting Pot that New York, after all, is a merchant metropolis with an extraordinary heterogenous population composed of immigrants and their descendents. The first shipload of settlers sent out by the Dutch was comprised largely of French-speaking Protestants. British, Germans, Finns, Jews, Swedes, Africans, Italians, Hispanics, and Irish, among others, followed, beginning a steam that has never yet stopped. Nor, one hopes, will it ever. These immigrant groups have made, and continue to make, New York and these United States as a whole, the world's great cultural and financial center.

□ 1720

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, let me begin by joining my distinguished colleague from Illinois in congratulating the principal architect of this bill. It has generally been my pleasure in the last couple of days to have very intense discussions with him about the bill. I like somebody who feels strongly about what he is doing. I like somebody who is committed to the things he does and certainly ALAN SIMPSON is such a person. For many of us this is a relatively new debate. ALAN SIMPSON has been involved in it for 6 years.

When I first spoke on this bill yesterday, I raised major concerns. But I made clear at that time that my concerns about the bill say nothing in criticism of the efforts of those who have produced this bill. My concerns say nothing about the work that has been done and the value of the positive things in the bill. But each of us ultimately has to make a decision. And the decision is, given the possibility of a bill in the future, given the possibility of an alternative including no bill, does this bill represent an improvement over what we have today or what we might have tomorrow?

There has been a little confusion, Mr. President, and I would like to clear it up, about whether or not there has been delay on this bill: I did ask for a rollcall vote on the budget issue, and I thought it was important to have that vote. Because we are making a budget commitment on this bill, I thought it was vitally important that we have Members on record. This bill has substantial budgetary impact and through its adoption we commit ourselves to this budgetary impact, and we do so knowing that we face very difficult fiscal years as we try to meet a target we have set—to balance the budget in 1991.

I pointed out at that time to my colleagues that the direct spending provisions in the bill through 1991, are equivalent to authorizations and appropriations of about $4 billion. Trying to put together the conference report and moving between the House and the Senate, there are somewhere between $4.5 and $9.2 billion, probably about $6 billion of expenditures that occur directly or indirectly.

Now, Mr. President, the point is not that the bill spends the money. As the distinguished Senator from Wyoming has pointed out, maybe more money would be spent without the bill. But I wanted to make it clear on a rollcall vote on waiving section 303 of the Budget Act that we were knowingly entering this process, knowing that it was going to cost money, knowing that we were going to face the difficult decision next year and every year through 1991 as to whether or not we were going to make decisions about cutting other programs to pay for these new benefits and these new costs or whether we were going to call on the taxpayers to pay for them.

I think as a result of that vote—and the outcome of the vote was overwhelming—people made the decision that they wanted to go on record to waive the limitation on committing to expenditures in the future when a budget has not been adopted or when entitlements are being created. People said we are willing to pay for it, we are willing to take it away from other uses. And maybe some were saying they were willing to take it away from the taxpayers. But there is one positive result of that vote: Next year when the bills come due nobody can say, "Well, we had made these commitments about the budget but now all of a sudden there are these expenses nobody knew about, nobody could anticipate and therefore we are forgetting this idea of balancing the Federal budget."

That was my objective.

Second, I want to point out, Mr. President, that we have a rather unusual way of doing business around here sometimes. We had just 40 minutes of debate in opposition to this bill before there was filed a cloture motion. As a matter of fact, as far as I am aware—and we have been working long hours around here—I think the distinguished Senator from Wyoming filed a cloture motion before I ever spoke on this bill.

Now, that is how the process works, and it is perfectly legitimate. I probably would have filed it earlier had I been in his position. But the point I want to make is that we spent more time debating the President's proposals to Gorbachev than we had spent previously speaking in opposition to this bill.

Someone asked me outside, "Is it worth holding up the funding of the Government to debate immigration?" I think those who are really involved in the debate would be quick to point out that what held up the funding of the Government was not immigration. In fact, we spoke on immigration some 40 minutes yesterday before we pulled the bill down to go back to the continuing resolution. What held up the funding of the Government was an effort to build planes the Air Force did not want and to build buildings the GSA did not want and the Congress had not authorized.

So an effort to debate this bill has in no way held up the funding of the Federal Government.

Now, Mr. President, I have only been in this body for 2 years. I have had an opportunity to serve here in Congress for 8, and in this time I have learned how the process works. I have learned that you do not always win on issues. I like to win on issues, especially when I believe I am right, but I am not obligated to win. But I am obligated, just like every other Member of this body, to speak out when I am concerned about issues and to be sure the concerns of the people in my State are heard. I think that is especially important in the Senate.

I am reminded of the story of when Thomas Jefferson was our Ambassador to France. He had been in France while the Constitution was written. He came back to America and was having breakfast with General Washington, and he said:

> General, I've looked at the Constitution and I don't understand the bicameral government. What is the Senate for? What does the Senate do? What does it add to the process?

Jefferson had a habit, which Southerners in many cases still have today, of pouring his coffee into the saucer to let it cool, and he was sipping the coffee out of the saucer. General Washington pointed to the saucer and said:

> The Senate is the saucer. The public passion will overflow in the House. In the passion of the moment the House will act but the Senate will be the saucer where that passion will cool in the cold light of reality and objectivity.

Now, I have sought here not to delay this bill but to focus the cold light of reality on it. And I have done that. I believe that I have raised concerns. The concerns may not prove sufficient to prevent the bill from passing into law. In my mind they are. I am still struck by the provisions that would make a person who was here illegally for 90 days a temporary resident, then a permanent resident, and ultimately a citizen. I know that every one on the floor opposes those provisions, but we are taking them because of a conviction that that is part of the price you have to pay to get a bill.

I guess the reason I thought it was so important that this be thoroughly debated was because in the House, when the debate occurred on the McCollum amendment, that would have stricken the amnesty provision totally, the vote was 192 to 199.

□ 1730

I oppose the bill, Mr. President, not because I do not believe that we have an immigration time bomb; I believe we do. And I oppose it not because I doubt that we face a crisis; I believe we do face a crisis.

I listened to our distinguished colleague from Illinois talk about Mexico. I think the population is already up to 82 million. Perhaps he looked at last year's number.

With the problems in Central America, standing where I do in Texas, it is easy to see millions of people who want to come across the border. Quite frankly, I am sure like many here, I am struck with mixed emotions. I am always struck with mixed emotions on this issue.

My grandfather came here as an immigrant, as did my wife's grandfather. I have always thought, looking at this problem, that if I were in Mexico with my two little children and they were hungry, you would have to kill me to keep me from coming across the border.

So it is an incentive I understand. It is an incentive that drew people in search of opportunity, and, to some extent, that incentive is always going to exist.

However, I am concerned that this bill will not improve our circumstances. I am concerned that the amnesty provisions are so generous that we will immediately legalize somewhere between 4 million and 7 million people. Many of these people will not fit the traditional pattern that we have set out for legalization.

I listen to people talk about the amnesty provision and why it is needed, and it is hard to argue with the basic logic. Their logic is that we have people who have been in the country for many years, and when we impose employer sanctions, we are going to find that there are many people who

have become part of the fabric of our society who would be put out of work and, in essence, driven out of the country.

In fact, it is not unusual for us to vote on a private bill making somebody a citizen or halting their deportation when somebody has been here for 40 years, had a half-dozen children who have defended the Nation with great valor, and been contributing members of our society. That is a reality.

Nobody can argue that you could have employer sanctions and an immigration program without having some kind of program to differentiate between people who have established themselves here and people who have simply come here to work illegally. But I do not believe that anyone can argue that the provisions of this bill fit the pattern of what we are trying to do with amnesty.

I do not want to continue complaining about the bill. I have already decided that I am going to vote against it, and others I see on the floor have decided to vote for it. So I am not going to convince them. But I would like to use the time I have to raise some concerns. I hope that by raising those concerns, we can focus on the problems that are likely to occur, and perhaps in some way we can work, through enforcement and through the reforms we know will be made in the bill, to deal with these in the future.

The first has to do with the basic unfairness of the amnesty provision. Someone who is in the country, in agriculture last year for 90 days, is going to be a temporary resident alien and a permanent resident alien and ultimately a citizen. That is basically unfair to the 1.9 million people who are waiting to come to America, many of whom who have waited for a very long time.

I think it might be instructive to look at this unfairness; and in trying to be brief, let me just pick one point.

Let us say that you came to this country legally and that you are a permanent resident alien, and you wanted to bring in your spouse. So you go to the Immigration Service and, like going to Baskin-Robbins, you take a number. I thought my colleagues might be interested in what kind of situation you would face. You came to the United States from Mexico as a legal immigrant, and you wanted to get your wife into the country, and you went to the Immigration Service and applied. Do you know whose application they got to yesterday? Yesterday, they got to the applications of the people who applied on July 15, 1977. Yesterday, they got to the point of processing the people who applied 9 years ago as permanent resident aliens, under second preference, for spouse or unmarried son or daughter. Not that they came yesterday. They just started the paperwork yesterday for somebody who 9 years ago came here legally and said 9 years ago, "I would like to bring my wife to America."

We cannot correct this inequity in this bill, but I think it is important to look at it and, as we mold this legislation in the future, that we try to deal with this problem.

The second problem is that while we can all be unhappy about the 90-day amnesty, something that is anathema to the people of my State and greatly opposed, and something that, according to administration estimates, will legalize an additional 1 million people——

Mr. SIMPSON. Mr. President, will my colleague from Texas yield for a question? I know he is as interested as I am in clarification, and he has been very good with that.

Mr. GRAMM. I yield.

Mr. SIMPSON. The Senator is using the phrase "90-day amnesty," across the board. That is not correct. We are talking about two separate things. There is a legalization under this bill, with a legalization date set of January 1, 1982. I think the Senator will admit that that is the correct date.

Mr. GRAMM. Yes.

Mr. SIMPSON. That date is the date of legalization. Those persons who have been in the United States since that date are eligible for legalization in the United States. They will come forward. No figures I have ever heard, either from the Select Commission or in our studies, show that it is 4 million to 7 million. Indeed, the studies show that there may be no more than 2 million to 4 million here. I think there are more.

In any event, those persons will come forward, they will be given temporary status during the application period, and they will become permanent resident aliens. They are not citizens. They must remain in that status for 5 years, and then they may go forward to citizenship; and in doing so, they must pass all the tests for citizenship.

The 90-day provision is limited to a very small number of illegal immigrant population, and that is agriculture. Under that, they have to remain 3 years; they have to have been here 3 years. They must have worked 90 man-days a year for 3 consecutive years, with a residency requirement, and then they are temporary for a year, and then they go to permanent resident alien status, another 5-year wait. Then there is one group that is here for 1 year, a term already set, between May 1, 1985, to May 1, 1986. They are eligible, if they have worked here for 90 man-days during that time, to receive a status which will lead them to permanent resident alien status in 4 years, and on to citizenship in another 5.

As to replenishment workers, the Senator and I will discuss that, and I hope it will be a good discussion.

I just want to say that we are talking about amnesty, which is gut-hard, tough issue for Americans to swallow. At least, we are not talking about someone getting in in 90 days, as if they were getting amnesty in 90 days. That is not appropriate.

□ 1740

Mr. GRAMM. If I may respond, and I will make it clear I am not trying to make——

The PRESIDING OFFICER. If the Senator will withhold, the Senate will be in order. The Senator has a right to be heard.

The Senator from Texas.

Mr. GRAMM. I thank the President.

Mr. President, in talking about the extreme case, the 90-day case, I am, of course, talking about the following provision: Individuals who have worked in agriculture for 90 days during the year ending May 1 are eligible for temporary residency and that may be adjusted to permanent residency status after 2 years.

But my point remains basically the same: We do have a cap on that. But a person who was here illegally 90 days last year who can get in under the cap can become a temporary resident alien, a permanent resident alien and be on track toward becoming a citizen and toward the receipt of public benefits.

The final point related to this problem I want to talk about is the replenishment program. This bill has a very effective streamlined H-2 Program related to agricultural workers. It unfortunately, in my opinion, has a replenishment program that is based on the following logic, as best I can tell. The logic is that those who were here 90 days last year, who qualify if they continue to work in agriculture to stay here and become permanent resident aliens, are likely to then move on to other lines of employment, something that is as old as the Nation and is part of the Nation's growth process.

Those who had that concern put in a program called a replenishment program. Under this program, beginning in 1989, the year those who were here 90 days last year, if they chose to, would have become permanent resident aliens, there would be a program to replenish this pool of workers.

There is no cap on the number of people who could come into the country for replenishment work who, after they had worked here for 90 days, would, if they continue to work in agriculture for 3 years, then become permanent resident aliens and could move on to other employment.

This replenishment program would be in effect through 1993.

For it to come into effect, the Secretary of Labor and the Secretary of Agriculture would have to certify that there were shortages in agricultural labor. While there is no cap, they would certify the number.

Now we do not know who is going to be Secretary of Labor or Secretary of Agriculture beginning 2 years from now when the bill goes into effect.

But I would like, if I could, to engage in a colloquy here with the distinguished Senator from Wyoming on the subject of the replenishment program.

I would like to begin by asking the Senator from Wyoming the following questions on the replenishment program: As I look at the bill on the replenishment program, the Secretary of Agriculture and the Secretary of Labor would certify a shortage, individuals would be able to come in and with 90 days' work in agriculture for 3 years become permanent resident aliens. But what is not clear here is who these people would be, and I would hope through this colloquy to make legislative history. I would like to ask a question of the distinguished author of this movement—I will not say this bill, because I know he did not author this particular provision. Would it be his intent that if this program is ever used, and I will ask a question about that next, that this Replenishment Program be open to everybody around the world so that if there were somebody in Italy, or Germany, or Great Britain, or mainland China, or Taiwan, or wherever, that they would have an opportunity to apply, just as would someone who might show up illegally who had walked across the border whether they had come from El Salvador or from Brazil or whether they had flown over illegally from the Soviet Union?

Would it be the intent of the distinguished Senator from Wyoming here that if a replenishment program is ever employed that individuals from all over the world would have an opportunity to participate?

Mr. SIMPSON. Mr. President, of course that would be so. There would be persons from the United States, persons from abroad. There are no national limitations nor ethnic considerations. One of the things that was impressed upon the bill was the issue of discrimination.

So, obviously, anyone could come in as a replenishment worker under this limited program. And again, the Senator from Texas is so correct—I was not the author of this measure. The authors of this measure were Senator WILSON, Congressman PANETTA, and Congressman LUNGREN.

If I may, because the Senator is in an area which is tough and was not palatable to me, I think that we want to remember that the special agricultural workers who come, the first group, are a group that must have been here 3 consecutive years and have worked 90 man-days a year for that period. They then go into a temporary status for 1 year and then to permanent resident alien status. Those are called "SAW-1's," special agricultural workers-1. There is a cap on the number of those persons and that is an overall cap, a total cap, and that is 350,000. That is exactly the number as it left the Senate.

Then there is this group called "SAW-2's," special agricultural workers-2, those are people who have been here from May 1985 to May 1986. That pool never changes. They have to have been here. Obviously, you have to set the date before we were considering this bill.

Those persons are from that limited pool. It is difficult to know how many there would be there.

And then there finally comes a replenishment worker. Those people are admitted, and there is a difference because the number declines each year. The maximum number of replacement workers which may be admitted is the difference between 95 percent of the number special agricultural workers initially admitted and the number of special workers who remained in agricultural work during the previous year. The cap then declines annually.

But no replacement workers are admitted to the United States if the Secretaries of Agriculture and Labor find that workers here are available. They then have to go through a determination, the two Secretaries, in the replenishment program——

Mr. GRAMM. Mr. President, will the distinguished Senator yield?

Mr. SIMPSON. I certainly will yield.

Mr. GRAMM. I do not know how much time I have. I ask unanimous consent that the time the distinguished chairman speaks will be on his time rather than mine.

Mr. SIMPSON. Mr. President, I further ask unanimous consent that my brief remarks to this point in this debate on the replenishment workers be allocated to my time and not to the Senator's time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Wyoming.

Mr. SIMPSON. Let me say they must make a determination on whether or not there is a shortage of labor in agriculture.

When doing that, they must make the determination, this evaluation of the U.S. labor market, estimating the supply and the need for agricultural labor, and I think it is most interesting and very important that we review just a very short section of the bill. The following factors must be considered, three of them, and, of course, they are not limited to these.

The Secretary shall adjust the number to take into account the projected growth or contraction in the requirements for seasonal agricultural services as a result of the growth or contraction of the seasonal agricultural industry and the use of technologies and personal practices that affected the need for, or the retention of, workers to perform those services.

It was the intent of the crafters of this amendment, which is solely to serve the perishable food and crop industry of the United States, I can assure you, but these factors—again not limited to these factors—are how many of them remain in agriculture, any decrease in the plantings of perishable crops, reduction in labor needed through mechanization, whether increases in wages and working conditions would attract more domestic workers, or additional labor that would be available from the increased recruitment of rural and low-skilled unemployed workers.

Then, Mr. MAZZOLI added an amendment which provided that, if workers were available in the United States to perform the needed labor, no replenishment workers would be required.

So, I share with my colleague from Texas that the workers who will be adjusted as special agricultural workers are professional farm workers, at least that is the feeling—with little education and few skills outside of agricultural work. As a result, I think they can be expected to remain in agriculture. That would result in a low cap and little need for the replenishment worker during the 4-year life of the program.

I could tell you that I am committed to an oversight activity which would hope to assure that we would not use replenishment workers.

□ 1750

Mr. GRAMM. If I might just pose two precisely defined questions here, again to make legislative history. Well, one to make legislative history, the other to make a point.

If the replenishment program, then, should be used, you might envision or would envision a program whereby people could apply to embassies all around the world to participate in such a program?

Mr. SIMPSON. Mr. President, I would believe indeed that is the case. There can be no possibility of discriminating against who could come. And the Senator from Texas. I know already knows this remarkable statistic, that of the 1.8 million who were apprehended at the border this year—and we think we apprehended one out of two—those persons have come from 81 different countries. And, admittedly, many of them through the Southern border, but many of them from the East and West through various vessels. But indeed, 81 different nationalities are represented in that

flow, because they know that, just by coming to this hemisphere, they could come to the United States. But we would expect, I think, most of them to come from Mexico or Central America.

The PRESIDING OFFICER. The Senate will be in order. Senators kindly take their conversation to the rear of the Chamber.

Mr. GRAMM. The point I wanted to clarify here for legislative history was that this was envisioned to be a program, if it is ever employed, that people all over the world would have an opportunity to participate in.

On the second question I would like to ask, I would like to first state my view. My view is that the H-2 Program, as was designed by the distinguished Senator from Wyoming, is not needed. I intend to work to see that it never goes into effect. And I wanted to ask the Senator from Wyoming if he shared that view.

Mr. SIMPSON. Mr. President, we have done some remarkable things with the H-2 Program in this bill. We streamlined it. We made it workable. We finally have the Secretary of Agriculture in that game, and not just the Secretary of Labor. H-2 has worked where people chose to use it. But it has been so burdensome, so tedious, so restrictive. The Department of Labor seems to get some perverse enjoyment out of cutting the employers or cutting the agricultural growers out of the game. We think we have solved that with the H-2 Program in this bill. It is a very exceedingly attractive thing. More States are using it.

My colleague from Idaho is in the Chamber and there is a great new influx of H-2 workers in his State—and in mine, too. But the H-2 Program is the program that will be available for use after the special agricultural worker program ends.

In other words, this does terminate. The replenishment worker program terminates at the end of 7 years. Hopefully, with oversight and amending, we will have the H-2 Program in such shape that we will not have the replenishment workers.

But let me commit that, in my duties as chairman of the subcommittee, or in any capacity on the subcommittee, I will commit to making every single effort, along with the Senator from Texas, to try to assure that the replenishment workers are not ever used.

Mr. GRAMM. Let me thank the distinguished chairman for that.

I would like to make one other point and then pose one additional question and then I will conclude.

An additional problem that I have and that many people who live in the border States have, Mr. President, is the whole problem of documentation. It is one thing to set out a set of rules. We might debate what those rules are—where should the cutoff be on amnesty? Your initial bill, at least that we adopted this year, had that set at 1980. This bill has it set at 1982, except for these special agricultural provisions that we have talked a great deal about.

But the question really boiled down to not just what we define as a threshold, but how we enforce it. I tried to come up with a way of expressing the concern of the people of my State, and I found a way to let them express their own concern. It just happens that last night on the ABC affiliate, that is channel 7 in El Paso, there was a news segment about the immigration bill. And it expressed a concern. And I would like to just read this little section and then express the concern and ask you again to be sure that we have clear legislative history of our intent.

The news segment starts out with a reporter and the reporter says:

> Immigration officials say it's difficult to estimate how many undocumented workers are in El Paso but believes it in the tens of thousands, and finding falsified documents to satisfy new employment requirements and amnesty could increase black market demands in El Paso.

And then there is a sound bite from a border patrol agent. And he says:

> Any form of utility bill, electric bills to a light company, gas bill, anything that will try to establish residency. So we are anticipating a big, big rush on bogus-type documents.

Now it is the reporter speaking—"if the immigration package does become law, it will take more than a year before enforcement begins."

Now, Mr. President, a great concern in my part of the country, and I am sure it is a lesser concern or maybe equal in other parts of the country, is that, no matter how we may debate about what the right amnesty provision might be, there is great concern about it being enforced.

Is it the intent of the distinguished chairman that when we set a legalization date—1982, or 90 days in agriculture last year with a commitment to stay—that there be clearcut documentation and proof provided that people have actually met these requirements?

(Mr. CHAFEE assumed the Chair.)

Mr. SIMPSON. Mr. President, this is one of the most curious things of the entire debate in the 6½ years I have been involved. Document fraud is a cottage industry in America right now. Within 500 yards of this Capitol, you can pick up anything you wish in the form of a green card, a nonimmigrant visa, airline passages, which give an indication of your presence in the United States to be legal; passports are rather expensive. But in literally hundreds of places in this community—and this is a very active community—of illegal, undocumented persons, it is a cottage industry. So document fraud was something that all of us have paid close attention to.

The immigration bill provides for this reality in two ways. We increase the document fraud penalties to hundreds of thousands of dollars per violation. It is exceedingly heavy. And it makes provisions for improving the documents that we will use for verifying employment authorization.

It is my expectation and intention that document fraud will be of primary importance to the INS, and I assure you that I will vigorously exercise oversight responsibility to see that this is carried out by that agency. This bill has, for the first time, almost every word of the Senate's new, tough antifraudulent documentation laws, with increased criminal penalties, not just civil penalties. Indeed, I know that during the legalization application period, there will be a period of 6 months—as we discussed in employer sanctions—for an education period, and then a period of 12 months for a period of warnings to employers as to what is coming.

□ 1800

I can tell you that indeed we intend to pay careful attention because I, too, feel that because of legalization process—please understand and hear this so carefully. When this bill is signed by the President, it will be, there is going to be an extraordinary jubilation within the United States which is going to stun the people of the United States. My mail for years has been from the people who have been here for 10 years, 15 years, 20 years, raising U.S. citizen children. This is their only avenue toward coming out. They are people who, yes, came here illegally but are people with every equity in the United States.

So when they legalize they will have to know, as that call goes out that this legalization period is existent, that they must come forward because this is the last call. This is the first call, and the last call, a one-shot deal. Come on out. Go to your church. We are not trying to fool you this time. We are not the Census Bureau. We are actually here to say if you will come forward, you will be legalized if you can show that you have been in the United States since before January 1, 1982.

I am certain at that time we will see a cottage industry in rent receipts, W-2 forms—but it certainly could not possibly match the blizzard of fraudulent documents that we find now. It is something the INS is going to have to be terribly alert to. But that is why we go into a better document in the future under this bill, provide a secure Social Security card, counterfeit resistance documents, and those are the things we are guided toward in this legislation.

Mr. GRAMM. The Senator raised one additional point that I would like to make part of the record. I think it is vitally important. One deep concern

that I have had about the blanket amnesty provisions—let me say to the distinguished chairman that for those who have been here 5, 10, 15 years that he spoke of, I certainly support amnesty for them and to clear the way so that there could be no legal cloud over their future.

So the debate on amnesty is not what the threshold is. But one of the things that has concerned me having looked at the problem on our borders, is that there may be those in other countries who will say that since we granted amnesty once maybe we will do it again. And rather than sign up to be on this list of 1.9 million people that have the dream of someday being able to come here, maybe people will just come on across the border thinking it will happen again.

So I ask my colleague, as one who has worked 6 years on this bill, and who clearly is going to have much to say about changes that will occur in the future, is it the clear position of the distinguished chairman that under no circumstances will there be another blanket amnesty in the future?

Mr. SIMPSON. Mr. President, I can assure the Senator from Texas that as long as I am involved in it that will be exactly the message that will be sent, that this is it. This is a generous Nation responding; instead of going hunting for you and going through the anguish of that in the cities and communities of America, this is it. It is one time. You either show up on this one or you will be rejected by the employers because employer sanctions will be in place. Your choice then is to return to wherever you came from, or to become legalized through the legal immigration system, and you are very adept as you describe at the legal immigration system.

I think the Senator from Texas would be very interested as he talks about that backlog in Mexico. That is a very fascinating thing because there is a large number in the backlog from Mexico—7 years, 6 years. But the average in other countries is 2 years. But you have to go to the consul in Mexico to see what happens when their number comes up. When your number comes up and you have had this long delay, they come down from the United States to pick up their number because almost 85 percent of the people who come up under the legal immigration number system are in the United States. They come down to pick up their green card, their legal documents. That is the most fascinating statistic—85 percent are already here. When their number is called, they go back to get it and come back up into the United States.

Mr. SIMON. Will my colleague from Texas yield?

Mr. GRAMM. I would be happy to yield. I ask unanimous consent that the time of the distinguished Senator from Illinois count against his time since I know I am not only using up my colleague's patience, but my time.

Mr. SIMON. I shall take a minute. I agree with everything my colleague from Wyoming said.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMON. I think part of the answer to the question is the second point. If you get rid of employer sanctions, you will, I think, discourage this train of people coming into this country and therefore when you do not have those numbers coming in, the political pressure for an additional sanction bill, I think, may not disappear but it will diminish appreciably.

Mr. GRAMM. I do not doubt that our distinguished colleague from Illinois is partially right about that. But let me say that I believe the magnetism of America is so great that if there were any doubt about the fact that there would not be another blanket amnesty provision in the future, we would literally be overrun by millions of people, many of whom would not be coming here to work but in some cases would be coming here hoping to hold on until they could qualify for public benefits.

Let me say that we have room for people who want to work. And I want to make it clear. I know each of us in our own States run into people who say let us slam the door of the country; Let us close the borders.

I want to close the door to illegal aliens. I want to close the door to illegal immigration. And employer sanctions are a necessary and indispensable part of that. It has taken me a while to come to that conclusion, but I have come to that conclusion with absolute certainty. And they have to be stiff.

I wish we could have done it the other way around. I wish we could have had the Senator's provision in the Senator's bill that would have allowed us to establish that we stopped the flow before we granted amnesty. But that was not to be. That was part of the political compromise based on the Senator's wisdom. And we accepted it. But I am convinced that employer sanctions are indispensable.

I am also convinced that we should open up trade with Mexico, so that goods and services can come across the border instead of people, so that people on both sides of the border can get a job, earn a living, feed their children and stay at home. I, for one, am willing to enter into a trade agreement with Mexico to give them some initial advantages, to get that trade going, recognizing that ultimately trade is a two-way street, and they have to open up their markets as well.

Let me conclude, Mr. President, and I want to thank my colleagues for their patience, with two final points: first of all, I want to make it clear for my part, and I think for the part of everybody in this Congress, that this immigration bill is not a response to a fear of foreigners. It is not a closing of the American door. We should not be symbolically tearing down the Statue of Liberty. It is not my intention ever to slam the door to America. I believe many of our greatest Americans are people who have been here just a short period of time. What a great country it is, that its miracles work for everybody. The greatness of America is not that its people are extraordinary people. In many ways we are the Heinz 57 variety nation. The greatness of America is that the American system of freedom and opportunity produces extraordinary results from just plain old common people like us. I have no doubt that this system produces extraordinary results from people who will be legalized through this bill.

□ 1810

I have no doubt that in the not too distant future there will be people performing great public services, serving in Congress, winning Nobel Prizes, finding cures to diseases, who will be people who will be legalized under this bill, and their children and their grandchildren.

The concerns I have had about the bill were how do we go about it. We have decided to go this way. I intend to work to try to make this bill work. I intend to follow how it works and how it does not work. I intend to try to work to improve it. I hope that our initial result will be successful.

But it is a historic move we are taking here. I want to congratulate those who have worked on this bill, and pledge to work with them in the future to try to make it work.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, I share many of the concerns of my distinguished colleague from Texas. I understand his concern about the amnesty provisions.

This bill is not as I would have written and I am sure not as he would have written it. But that is the way it goes in a democracy. It reveals the differences and how you try to resolve them in a democracy, and that is through compromise.

I also know it is easy to bring a compromise apart by focusing on those parts or elements of a piece of legislation that we might think are the weakest link.

I have watched this piece of legislation for several years. I have watched it before the distinguished Senator from Wyoming was involved in it, back in the days of Senator Jim Eastland's bill.

I have supported immigration legislation since I have been in the U.S. Senate.

It is interesting to see the mood that has changed during that period of time, the intense opposition to it in the beginning and finally the understanding of what was happening to us as a Nation.

I look at the way this has been brought together by the distinguished Senator from Wyoming, Senator SIMPSON. As I reviewed that conference report, my feeling was one of gratitude to the distinguished Senator from Wyoming. I think his patient, informed search for a solution to what many have regarded as an intractable problem, ought to be held up as a model of what it is to be a U.S. Senator.

So I tip my hat to him for his patience, his sense of humor, and his dedication to the effort.

I thank my distinguished colleague from the State of Illinois, Senator SIMON, for his contribution to the effort.

I look at a situation in the area where I was born and reared down on the Mexican border in south Texas, the three highest unemployment areas in the United States, the three metropolitan districts in the United States with the highest unemployment, as high as 17.7 percent along that Mexican border.

I understand the attraction of this country. We are a wealth-generating society and a free society.

The magnetism of our country is like that of a magnet picking up iron filings as they rush to come here.

I look at a situation where in Matamoros a woman goes into labor and they put her in a car and rush her across the border to have her child born in the United States. I understand that. If I were a Mexican citizen and my wife was in labor, I would want her child born in this country too.

But I also look at Brownsville, TX, which is having severe economic problems, and I watch it adding one new school room every other week. One of the main problems is illegal alien children who have to be taught in that school.

That is the additional burden that is happening to us.

I look at a country with a 2,000-mile common border. I look at an industrialized nation that has a Third World country next door to it, and I know what that means to us.

I have watched at least three immigration bills progress almost to this point and then I have seen them fail because people were looking for a more perfect piece of legislation. I understand that.

I have also seen a situation where I sent a survey out to over 1,400 Hispanics in the State I have the honor of representing. I put in it provisions very comparable to the Simpson-Mazzoli bill and asked them how they stood on each and every one of those provisions and watched them vote overwhelmingly for the provisions.

Then you got to the last question and asked them how they stood on Simpson-Mazzoli and they said, "We are against that," because they had been told that bill was bad.

I understand the concern of those who want others of their own race to come in. All of us, really, have been foreigners in the not-too-distant past, whether we are naturalized citizens ourselves, or our parents, our grandparents, or before them.

Our attitude in this country is a complex one toward foreigners, a difficult one. But we have the most generous quotas of any major nation in the world, and I think we ought to have those, and I support those. But then we ought to abide by those quotas and observe those laws.

That is what this compromise piece of legislation is trying to bring about. If there ever was a problem that is serious and divisive it is the immigration problem, the problem of illegal immigration into the United States.

Many of them come from Mexico. A friend from Mexico says it has a population of 82 million with one of the highest birth rates in the world. You have a country there that has economic instability and serious problems, and that could have serious political instability. If that happened we would have 20 million more over that border in a hurry. There is no way in the world we could handle it without adequate immigation laws.

So what do we put on? We put on employer sanctions. I have sat down with ranchers and farmers and listened to those concerns about those kinds of sanctions and I share those concerns. I am still in farming, and I am still in ranching. I know what they are up against.

But I also know this: that we could not put enough border patrolmen on that border to stop them. There is no way we can do that. So you have to deny the reason for their coming here, you have to deny the job. That is what you do with employer sanctions.

Concerned about the burden, concerned about the paperwork? You bet I am. And so is the Senator from Wyoming. They have gone to great lengths to make it as easy as they could by a birth certificate, by a Social Security card.

All they ask is a good faith effort on the part of that employer, and then he is in compliance with the law.

The conference report emphasizes law enforcement. It substantially increases the funds available to Federal immigration authorities, and it doubles the size of the Border Patrol.

Incidentally, that stronger Border Patrol is going to help us on some drug interdiction, which is terribly important to our country.

The conference report also contains provision to regularize the status of illegal aliens who have been living continuously in our country prior to 1982; then, in turn, it gives three phases for agricultural workers, ultimately giving them a chance to become citizens of this country.

I, too, like the Senator from Wyoming, have talked to many who have been in this country for 10, 15 and even 20 years, and are still illegally in the country and are concerned about that tap on their shoulder.

Those people are going to be able to come out from undercover. They are here now. They are going to have a chance to become citizens of our country, and I think they will be good citizens.

□ 1820

The conference report contains money to help States and localities provide social services to newly legalized immigrants. There will be $1 billion per year for 4 years, less deductions for certain sums that will fund very limited Federal services under Medicaid and SSI. Legalized aliens are otherwise barred from Federal assistance for 5 years.

I say to my colleagues, I could go on and speak at length on this.

I also say, Mr. President, that we have climbed this hill time and time again in Congress only to see it crumble right at the last, because we wanted a more perfect bill. This is the best we are going to get. If we let it go without putting it into law, we are going to see the same result we have seen in years past when we had more millions of illegal aliens that came into this country and were not apprehended. The attraction was just too much for them to resist.

The sooner we pass an immigration law, the sooner we will finally develop integrity of our borders. One of the tests of a great nation is the integrity of its borders, and we have lost that. I think citizenship should have value in this country and we are losing it. I hope we can restore it with this legislation.

Mr. JOHNSTON addressed the Chair.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Let me thank the Senator from Texas for his gracious remarks. But let me say they are wholly too generous, because I watched the Senator from Texas in his election year vote for immigration reform and, representing the State of Texas, that was about the most courageous political act I have ever witnessed. He has been right here in my

corner since I started this operation. I am deeply appreciative.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I want to commend the Senator from Texas for a really outstanding speech. I think he puts his finger on the heart of what I consider to be one of the Nation's very top, foremost problems. I think he put it very well.

I also commend the Senator from Wyoming, whose dedication to this bill and whose good humor and perseverance have brought us to where we are. I think it is a miracle that we are here, that it has not fallen apart. I simply want to say that I think it has not fallen apart. I simply want to say that I think it is one of those efforts that is above and beyond the usual level of attainment in the Senate. I think his is an extraordinary achievement in getting this bill through and I want him to know that many of us admire him greatly for what he has done with this bill.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, the issue of how this country deals with illegal immigration remains one of the most vexing problems facing the Congress. It is an issue which forces us to balance our Nation's sovereignty—and ability to control the borders—with the role America has played as a haven for the oppressed. It is an issue which forces us to reconcile law enforcement needs with our commitment to civil liberties and civil rights.

The immigration issue must be addressed. Since the Carter-era Commission on Immigration issued its report, the Congress has labored to strike an appropriate balance between these competing, and often conflicting, values. Senator SIMPSON, in particular, deserves to be commended for his unrelenting attention to this issue.

Clearly, he wants to see this issue resolved. Many of our colleagues would like to see the problem of illegal immigration behind us.

When the Senate last considered this legislation, I identified a number of defects which forced me to oppose the legislation.

I opposed the bill because legalization and the imposition of sanctions were not contemporaneous.

I opposed the bill because of the provisions on agricultural workers.

And I opposed the bill because it offered insufficient protections against discrimination.

The employer sanctions and civil rights issues are, of course, related. The employer sanctions in the legislation will undoubtedly act as an incentive for businesses to "play it safe" and refuse to hire individuals whose status may be in question. This would mean that blacks, Hispanics, and Asians would encounter new difficulties in getting hired.

The conference report makes a major improvement in the legislation that initially passed the Senate. A special counsel in the Department of Justice is created to deal with discrimination issues. Language crafted by Congressman FRANK, based on the initial Hart-Levin antidiscrimination amendment, has been incorporated. That is an important step forward.

But anyone who votes in favor of this legislation must in conscience have lingering doubts. It is fashionable in this country to think that the major civil rights battles are behind us. We have made progress—laws have been passed and attitudes once hardened have softened with the passage of time.

But I would suggest this bill will recreate a civil rights issue—that of employment discrimination against blacks, Hispanics, and Asians.

In spite of the progress we have made in this country, men and women have a better chance of being hired if their skin color is white. The unemployment figures reflect that. Family income statistics reflect that. The street corners in our mighty cities reflect it.

When someone of color walks into the personnel department of a factory in search of a job, he is not going to be thinking about an obscure office in the Justice Department. An office which may or may not decide to protect his rights. That man or that woman will be thinking about the skin color God gave him. That jobseeker will be thinking about whether the threat of employer sanctions will work against him in that job interview. And he'll be thinking about providing for his family and his future.

The employer sanctions sunset in this legislation. And that means that the immigration issue will not, in reality, be behind us when this bill passes. It would be my hope, my plea, that Congress follows this issue as closely next year—and the years thereafter—as it has since this debate began.

Congress must watch the border patrols and the INS. Congress must monitor the Department of Justice. Congress must listen to the people of color who will be affected by this bill after it becomes law. Immigration reform does not end today. The search for a just and enforceable law begins today.

Mr. President, as an opponent of this legislation in the past, I want to join with many of our colleagues in commending my very dear friend and great American, the Senator from Wyoming [Mr. SIMPSON] for his steadfastness, commitment, and dedication to this issue, which have eventually brought us to this day and won many of us over. I want to add my words of commendation of him for the service he has provided our Nation on what is indeed a thorny and difficult issue.

I also express my own high regard to the distinguished Senator from Illinois, who has joined with the Senator from Wyoming in making this a bipartisan effort, providing enormous leadership, as he consistently does, on this very difficult question.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I will take a minute first of all to thank the distinguished Senator from Wyoming for coming this far after 6½ long years. It is certainly a personal tribute to him and the many of his colleagues who have worked on both sides of the aisle, and I think without the efforts of Senator SIMPSON this piece of legislation might not pass. And I say that as a compliment to the distinguished Senator from Wyoming and the Senator from Illinois [Mr. SIMON], and others, and many Members of the House. We ought to be grateful that this legislation is here and we are about ready to vote on it.

I want to alert the Members, because we are getting a number of inquiries whether we are going to complete our work this evening, I think we are. We, myself and Senator BYRD, have been visiting with the Speaker and the Republican leader of the House, Representative MICHEL. They are prepared to send us an adjournment resolution but we need to act on this piece of legislation as quickly as we can and then bring up reconciliation, which I understand may be subject to a point of order—there will be a point of order. We will have to waive the point of order—because the debt limit is included in the reconciliation package and the House, if that point of order should be sustained, would have to send us another debt ceiling. And they are reaching the point, as many former House Members know, of finding it hard to keep a quorum. So we have been urged by Speaker O'NEILL, in one of his last pleas, since this may be the last official day he is Speaker of the House, if we could be accommodative and try to expedite the process so they would not lose the quorum; in the event the point of order was sustained, they would have to call people back and it will probably then be Monday morning. So if we want to finish our work tonight, I encourage my colleagues to explain their marks as quickly as possible.

Mr. MCCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. MCCLURE. Mr. President, I am not going to burden this conversation very long because I think it is inevitable that this bill will pass tonight. Indeed, that is the meaning of the cloture vote earlier today. I join with the

Senator from Kansas, our distinguished majority leader, in paying a personal tribute to the distinguished Senator from Wyoming, the manager of the bill. I think it is more a tribute to his personal characteristics than it is to his skill as a legislator, however. I say that with great affection because I think he has laboured mightily and brought forth a mouse.

If that is all it was, I would not be speaking tonight. But I think there is a more fundamental problem, or perhaps two, inherent in this legislation, or expressed by this legislation that we as a Senate of the United States and we as American people must inevitably face. One is what is the nature of our society and our willingness to condone illegal actions. There has been a great deal said about amnesty, and I have a great deal of sympathy for some individuals who have violated the laws of this country and violated our borders on an individual basis. But on a policy basis they are rewarded for their illegality. They are preferred over others who try to comply with our laws, who seek entry into our country. Those who have complied with the laws are denied entry and those who violate our laws are granted amnesty. Now, why are they granted amnesty? Is is not really because of the merit of individual cases. It is because there is such a flood of them.

I listened to an earlier speaker expressing his concern over the unemployment rates in metropolitan areas in his State near the Mexican border. I will guarantee, with the passage of this legislation, the unemployment rates in those metropolitan areas will be larger. There will be greater difficulty for American citizens who are today unemployed, who will find it more difficult to obtain employment because of the passage of this bill. This is not answer to that problem. This exacerbates the problem.

□ 1840

We are told that no nation can be a great nation that cannot control its borders, and yet what is it we are doing? We are saying that we cannot control our borders, so let us ignore the fact that we cannot control our borders and make legal that which was illegal. Then we say, oh, no, never again. Five years from now, 7 or 8 years from now, we will have another illegal alien problem, calling for amnesty, because this does nothing to solve the basic problem. Well, it does one thing: it allows a program for those who are residents of Mexico to seek the opportunity to work in this country on a temporary basis, to fulfill the labor requirements in agriculture, that otherwise are unmet. That is one of the great provisions for the illegal immigration. But it does not close our borders to illegal immigration. It winks at it.

I am reminded of the schoolboy game in which, on the playground, you got into a confrontation with another boy. You draw a line in the dust with your toe and dare him to step across it. If he steps across it, you step back and draw another line in the dust with your toe and dare him to step across it. Then, if he steps across it, you step back and draw another line in the dust with your toe and dare him to step across it.

This bill is bluster. It is not policy. It reminds me, too, of that ancient allegory of which every person is aware, of the emperor who demanded new clothes and the tailor who hoodwinked him by saying that he had such fine clothes that nobody could see them. So the emperor rode through the streets naked and it took a boy to say: "Look, the emperor has no clothes."

We are saying in essence, then, "Look, the emperor is clothed in finery." There needs to be someone who says, "Look, the emperor has no clothes."

I am reminded further of another instance in more recent history, and in a more grim manner, when we refused to face the reality of the aggression by Hitler's Germany; and a prime minister went to Munich and said he had purchased peace in our time. This bill is another exercise in appeasement of a problem that will not be so appeased.

Mr. SIMON. Mr. President, will the Senator yield?

Mr. McCLURE. I yield.

Mr. SIMON. I should like to make one brief point.

My colleague said: "Why have amnesty? Why legalize people who perpetrate an illegal act?"

We have, as a matter of Government policy, said to employers, "It is OK if you hire people who are here illegally." So, really, through Government policy, we have encouraged this very illegal activity.

Mr. McCLURE. I could not disagree with my friend more. My friend is entitled to that viewpoint.

What this bill seeks to do, and another reason why I object to it, is to put upon private employers the burden of the enforcement of law, which the Government finds itself incapable of enforcing. It is a cop-out in terms of Government responsibility by loading the risk and the burden on people who really are only trying to make a living. In many instances, it is not the employer's fault as much as it is the fault of us as a nation, who have failed to confront the necessity for an enforcement policy.

So I say that this bill is a failure, a sham, and a fraud. That, by itself, is not bad enough, but it sets the stage for a repetition with greatly expanded numbers.

I have asked a question similar to the one the junior Senator from Texas asked earlier: How are you going to verify the genuineness or the lack of veracity of the documentation presented by millions of illegals in this country today, who seek to prove that they were here in one of the qualifying periods or in one of the ways in which they could qualify?

I do not know how many there are present in this country; no one really does. The Senator from Wyoming said earlier that the Senator from Texas comments that there are some 4 million to 7 million and it was wrong, that the official estimate was 2 million to 4 million, but he thought it was higher, which I think brings it back to the range the junior Senator from Texas was talking about. So it is somewhere in that range, so far as anyone knows.

How many documents will it take to prove the basic facts of the presence of 4 million to 7 million illegal aliens? Let us say they have to produce 5 million, offhand. That is 25 million to 35 million documents that they will produce, and we are supposed to have an Immigration Service that is capable of determining whether or not those documents are valid, whether the facts surrounding them can be verified, whether or not the person who has brought those documents forward has carried the burden of proof. That is going to take manpower.

The Immigration and Naturalization Service will be swamped, absolutely inundated, in a sea of paperwork which they must attempt to verify. We are told casually—no, I should not say casually—we are told it is as though it is no real problem, and we will simply put the burden of proof on them; and if they cannot prove it, there will be a severe penalty. What severe penalty? We will not deport them. We will probably put them in jail and support them and their families. What is that penalty to one to whom the greatest penalty is deportation? They are willing to take risks; that is why they are here.

There is a great magnet for people to come here. So what in the world do penalties mean to somebody who will risk that in order to come? They will take that chance, and they will provide the spurious documentation, and most of them will get away with it. As they get away with it, the example is set for millions of others to get away with it, and there will be the greatest flood of those seeking legalization under the amnesty provisions, far greater than just the ones who are here already: "Open the door. Come on in. Present your false documentation. All that you can happen to you if you get caught is that you will be sent back home. So try it."

I have asked our distinguished Attorney General how they will enforce this provision. He said, "We will have

to ask for more people." Yes, indeed, we will have to ask for more people.

I submit to you that if they get enough people to adequately enforce that one provision, just the documentation, they have enough people to enforce the current laws.

You do not have to wink at this problem and say that it will go away, as this bill attempts to do, by providing amnesty. If you are going to provide enough people and enough resources to enforce this statute, you could enforce the present statutes, and you do not have to invite it for the future.

Fundamentally, we, as Americans, are not yet ready to accept the fundamental necessity of allowing our own right to be here to be questioned. I say that because I agree with the Hispanic organizations that say that this bill and its enforcement will ultimately be racist, and it will be.

I say to the Senator from Wyoming, you are tall and relatively Caucasian-looking, and I suspect that, as a result, you will not be asked the question of whether you have the right to be here. I am blond and blue-eyed. I will have no problem being here. They will not even ask me about my right to stay here.

□ 1850

But I would suggest to you that if your skin is brown, your hair is dark, and your eyes are dark, and if by chance you did not learn to speak perfect English in our schools so that either you speak Spanish or you obviously speak with an accent, if there is to be any enforcement, that group of people will find themselves questioned more than other citizens of this country. That will apply to those who are American-born. It will apply to those who have exactly the same right of citizenship and the same right to be here as you and I, and they will not just be illegals who will be asked those questions; it will be people who look different than the Caucasian majority.

I object to an enforcement policy that does not force us as Americans to recognize, each one of us, that if we are to ask others in our society to justify their presence, we must be willing to have our presence justified. We must be willing to have them ask us that question.

I could not conclude my remarks in indicating that indeed I think employer sanctions are wrong. If the employer is hiring an illegal, the illegal can legalize his presence, but the employer is subject to sanctions.

There is the provision under this bill which rather curiously puts the employer in that rather strange case in which the illegal will be rewarded for his illegality and the employer is subject to penalty while the illegal is improving his right to be present.

I think we will have a nightmare for lawful employers in this country as a massive bureaucracy swoops down upon them trying to impose upon them the burden of enforcement of the law that the Government is incapable of enforcing.

Finally, Mr. President, I say as I did at the beginning, we are at this point largely because of the affection and esteem for which the Senator from Wyoming is held in this body. I share that feeling. When this bill first passed the Senate, I spoke very briefly against the bill and that bill which left this Senate is not nearly as bad as the one that has returned to it. Every reason to oppose it in the past is multiplied by its changes. For every reason to be fearful of its application as it passed the Senate there are much greater fears today as it comes back to us.

But it has its own inexorable momentum that says the show of achieving a bill is more important than what is in the bill.

I do want to thank my friend from Wyoming, however, for one provision which I think is essential in a variety of respects from civil liberties, to employer's rights, to the rights of individual Americans, and that is the search warrant provision that is required in the agricultural fields. That is an amendment which I offered and which was adopted in the Senate before it passed. It is a controversial matter in some areas. INS does not like it. They would rather be able to take a four-wheel drive pickup and run a worker to death in the field than to go down and get a search warrant. We have seen far too often that kind of enforcement activity by INS in the fields.

I commend the Senator from Wyoming for having not only accepted that amendent but protecting it throughout all of its processes as it comes back to us at this time.

Mr. President, I, with all due respect to my friend from Wyoming, must protest this legislation and urge the Senate to reject it.

Mr. SIMPSON. Mr. President, I just have a brief response to that.

I have come to highly respect the Senator from Idaho, my neighboring State. He is the most extraordinary legislator I have ever come across. I refer to him in a most extraordinary term, with my alliteration as a vacuum cleaner of legislation. He follows every single thing on this floor. He is like Senator DOMENICI. The two of them have an innate capacity to absolutely absorb everything that is going on in here. I do not have that. I have watched Senator MCCLURE do it. I have watched PETE DOMENICI do it, and it is extraordinary.

I want to say just one thing because obviously you can tell he feels very strongly about this.

All I want to add is that actually the Senator is too kind. It cannot be my personality that brought this here. I mean I have had some awfully good bills that they rammed in me since I have been here and if it is that good I am failing somewhere, so it cannot be that.

It is a national issue that will never go away and it is called sovereignty. It is called the first duty of a sovereign nation and the first duty of a sovereign nation is to control its borders. You can go through all the sophistries of the language and emotion, and as I say, this baby is filled with emotion, fear, guilt and racism. And I have heard the Senator from Idaho speak on terrorism with passion, on the security of our Nation with passion, and on drug abuse and control of drugs with passion.

How does anyone believe that we will ever have any of that when you have 1,800,000 human beings crossing our borders with no restrictions whatsoever.

That is the most extraordinary adventure into absurdity that I have ever had. One million eight hundred thousand people crossing the border each year, and we have apprehended one out of every two and we are supposed to have a country. We will not have a country. We will have an exploitable, subclass of human beings, based on one rich trait in America, which really may have been one that made our country.

I often said let us get to what made America great—greed—because that is what we have here. We have people who chose to take these people, have them here, use them, exploit them, and I think we fought a war about that about 120 years ago when we had people called slaves. It is what you got in the United States when you have a whole subculture of human beings who are afraid to go to the cops, afraid to go to a hospital, afraid to go to their employer who says "One peep out of you, buster, and you are down the road."

I tell you what you have. If you ever got the status quo you have a real society of discrimination. You are going to have a society where we will have more operation jobs, more operation sweeps, and when the employer has been busted about six times he is going to say, "I have got this baby figured out. I am never going to hire anybody again who looks foreign."

That is the way that one will work.

So we are asking here for the citizens of America and noncitizens and those who are authorized to work to present a document which probably is going to say on it "I am authorized to work in the United States of America."

It does not say whether you are a citizen. It does not say whether you

are a permanent resident alien. It does not say whether you are a temporary resident alien. But it says you are legal to work and that document is not intrusive. We have in this bill itself not a national ID. It need not be carried on the person. It is not used for law enforcement. It is not an internal passport, and it is presented at one time of life. It is presented at that time of new hire employment and it is presented by people who "look foreign" and by bald Anglo skinny guys like me, too. Anything else and you would truly have discrimination.

That is the issue. I have been through that one plenty of times, and it is extraordinary to me to think that the issue of employers being the policemen of the country, that one went out the window a long time ago. If we did not ask employers of America to handle our withholding tax, who would? Now we are going to ask the employer to sit there and check a box that says if you asked this person for his documentation or his work verification or his identification and he puts "yes" or "no." And the person stands there and the document written in about three or four or five languages says, "I am authorized to work in the United States under penalty of perjury," and that is what we are asking.

We have penalties against those employers who choose not to do that. That is what we are talking about.

You know, the issue is one if you stay in it long enough, I would say to people OK, if you do not like the bill, give us an alternative. But no fair quoting from the Statue of Liberty because it does not say on it "Send us everybody you have got legally or illegally:" That is not what it says. That is where you are in America. Prattle on all you want to about rights and humanity and everything else. But let me tell you when you have a United States of America that is going to be populated from stem to stern with illegal, undocumented people who have lesser rights than the rest of the citizens of the United States, if you think you have problems now, you try the status quo.

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Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, in the past two Congresses I have voted against the immigration bills brought to the Senate primarily because I felt they did not adequately guard against discrimination against minority Americans. However, I believe after much thought that the new version now before the Senate is a bill which this Congress should pass.

First, let me say that the problem of illegal immigration into this country is growing at an alarming rate. Public concern about this problem is also on the rise.

As the public concern about illegal entry into the United States continues to grow, I fear that without some legislative solution now, the future may bring a more repressive approach than what we are considering today.

Last year I strongly opposed the Senate version because it lacked adequate protections for those American citizens who, in the eyes of some, do not "look American" or "sound American"—in particular those of Hispanic descent. While I've always agreed that some type of limitation on immigration is called for, I remained troubled by the very real possibility of discrimination. My interest has been to minimize that risk and to support a reasonable process for redress of grievances that will surely arise. When this matter was debated last year I supported my colleague from Colorado [Mr. HART] in his amendment to provide a recourse for those violations of constitutional rights arising from employer sanctions. However, Mr. HART withdrew his amendment and the Senate never voted on the provision. Consequently, when the Senate passed its bill, it did not have the necessary protections built in against possible discrimination and redress of those violations. The version now before us does include such provisions, and several other changes that strike a fairer balance between individual and national interests.

First, the conferees agreed to include an Office of Special Counsel in the Department of Justice to investigate and prosecute claims of employment discrimination. Sanctions, including fines and granting of back pay, may be imposed against offending employers. An offending employer may also be required to keep paperwork on future job applicants. There was no similar provision in the earlier Senate bill because the Hart amendment, though debated, was not voted upon. I believe this is a most important feature of the compromise bill and am pleased it was included.

Second, the conferees agreed to keep the Senate provision requiring the General Accounting Office to submit to Congress and to a specially created task force, an annual report on possible patterns of employment discrimination based on national origins resulting from employer sanctions. Under the Senate version, if GAO finds such discrimination, the task force would then be required to submit its own report, with legislative recommendations, to Congress. Within 60 days after receiving the task force report, the Senate and House would hold hearings. Employer sanctions will cease if GAO finds discrimination, and Congress would enact a joint resolution stating that it approves the task force report's findings. In the event that Congress repeals employer sanctions by joint resolution, then the antidiscrimination provisions will also expire, since their purpose would have been removed.

In contrast, the House version provided an automatic termination of the employer sanctions and the Office of Special Counsel, 6½ years after date of enactment. The compromise, by adopting the Senate provision, guarantees at a minimum that we revisit the issue of employer sanctions. I supported this version when my colleague from Massachusetts [Mr. KENNEDY] offered it last year.

Third, my concern that employers will not hire foreign looking individuals to avoid sanctions was addressed in the conference report. The bill broadens the title VII protections of the Civil Rights Act to include national origin as well as citizenship. I believe this further protects against possible abuse.

Mr. President, in the 4 years I have been in this Senate, this is the first time that the two Houses of this Congress have been able to agree on legislation to reform our immigration laws. There are many criticisms that can be made of this bill and I share many of those criticisms. However, the choice before us is not whether we want this bill or a better bill on this subject. It is very possible, and even probable, that this is the best bill our complex system of checks and balances can come up with at this time. And time is of the essence in dealing with this problem.

I am persuaded that the choice before us is either this bill or no bill. Since I believe that action is needed on this crucial issue at this time and I believe that genuine effort has been made to craft a fair compromise on this difficult issue, I will support the bill.

I join with many of my colleagues in commending the Senator from Wyoming for his excellent work in fashioning this compromise.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, this bill comes before the Senate today because of the persistence, the patience, and, indeed, the fortitude of the distinguished Senator from Wyoming, Senator SIMPSON. It is truly a monumental accomplishment, and I would like to congratulate him.

There are others who have played a significant and, indeed, a large role in this whole process. The distinguished Senator from Massachusetts, Senator KENNEDY, for years before I even arrived in the Senate and I would say before the distinguished Senator from Wyoming arrived, was a champion of these immigration issues. The Senator from Illinois, Senator SIMON, Repre-

sentative MAZZOLI, and indeed Chairman PETER RODINO in the House all have played an enormous role in making this happen.

But this is really a moment when the distinguished Senator from Wyoming should stand tall and pull his shoulders back and be proud of a significant achievement.

Mr. President, I respect people who know what they are talking about and who are strong enough to listen and who do their work as legislators. Senator SIMPSON, I think, on this piece of legislation has epitomized what an ideal legislator means. He has shaped this legislation. He has listened. He has had countless hours of meetings with various groups and then with various Senators and various Members of the House of Representatives. The substance, you have got to assume, he knows it cold, but what he was dealing with were the personalities. He was looking for a change here, a modification there that might develop the consensus, that might produce the critical mass that would make this historic achievement a reality, and make it a reality without losing the core idea or the basic objective for the legislation in the first place.

Mr. President, an old coach used to say, "When you win, don't crow; when you lose, don't cry."

Back in 1982, Senator SIMPSON lost. The House did not even take it up. In 1983, we passed it quickly through the Senate again. It died in the House. Senator SIMPSON did not cry with the first loss or with the second loss. He kept working. He kept seeking that consensus. He kept listening.

And then in 1985, he assumed a leadership role in the Senate and people said, "Well, there goes immigration reform. All these new responsibilities." But, in fact, immigration reform was not put on the back burner. He kept working, looking for the consensus, shaping, committed to the idea as powerfully as he ever had been before.

Mr. President, this is truly a historic piece of legislation. And if you look back at the 99th Congress, I think this will be the most important piece of legislation. This will last. It will stand the test of time. Senator SIMPSON has made his mark on America.

Indeed, Senator SIMPSON, I believe, proceeds with good humor and sensitivity. He is unassuming, competent, responsible. And, before I start sounding like the Senate version of the Boy Scout oath, I will simply stop and say that he deserves our appreciation and our praise. As a friend, I will simply say to him tonight, I am proud of you. I am proud of this accomplishment.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I cannot say enough about my dear friend from Wyoming for his efforts, consistency, patience, and everything else that has been said about him with reference to this issue. So, suffice it to say, I do not think anyone could have done a better job.

I voted against the immigration bill the last time and I am going to vote against this one. I really cannot find within myself any justification for voting for this when I voted against the previous one because the problems I had with the previous bill are just magnified in this one.

But I want the Senate to know that I have been helpful to the Senator from Wyoming in making sure that we had this vote tonight. I did everything I could to help him make sure we got a Budget Act waiver, and I think he will agree with that.

In fact, I will say here that I told him exactly how he ought to do it and helped him plan to make sure that this bill would not be subject to any procedural shortcomings. I am very proud of that, because I think this is a major issue and we ought to vote tonight.

There is no doubt in my mind that this bill is going to pass. I am not in any way desirous of delaying that eventuality. We have to address the issue.

But, frankly, my vote "no" tonight is my way of saying I do not think this bill will work. And since I do not think it will work, I really do not want to be on the side of saying I am for it. Frankly, I believe we are creating an administrative nightmare. Maybe that is not enough reason to vote against it, but in my way of thinking we ought to try to solve this problem without creating some more very serious ones, as I believe we have and will.

I know this is not how this bill started out, and I know the distinguished Senator from Wyoming would not want it this way. But in an effort to get around the agricultural worker provisions that cleared the Senate, we have created an absolutely unworkable situation with reference to the agricultural workers and the privileges that we have given to them in this bill. I believe we are going to have a situation where our enforcement people will literally be besieged. There will be an invitation to fraud and abuse the likes of which we have not seen, as illegal aliens struggle to find a way to qualify as 90-day workers in the agricultural fields of this country, in the past and in the future under the replenishment provisions.

Although I have heard the Senator indicate that they will be somewhat controlled by Cabinet members who make the determinations, I am convinced that it is an invitation, an invitation to disaster and an invitation to a bit of servitude that I do not think anyone intended.

Having said that, obviously, I hope we vote tonight, and there is no doubt in my mind that it is going to pass.

As to the Senator from Wyoming, the distinguished Senator from Massachusetts, and the others on the committee obviously they deserve an A-plus in all respects for patience, consistency, determination, and just flat insisting that we do something.

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So my vote is one that says this bill will not work. I would like very much to be wrong. On the issue of discrimination, I voted against the previous bills because I thought they were rather open-ended invitations to discrimination. I believe that possibility still exists. It is somewhat moderated in this bill, so if that were the only issue I would probably vote for it.

On the general idea of amnesty, I probably would support amnesty for people who have lived here long enough that they clearly deserve to be American citizens. But I predict this will not be the last amnesty. We will have a new one because this just will not work. Consequently, in 8 or 9 years we will have another of those serious social problems that come from this.

I close by saying the Senator from Wyoming could say that is all fine, but where is your proposal? I understand. But I do believe in the interest of getting the agricultural worker problem solved we really did not solve the problem at all. And I regret that they had to do that. I think it will be the cornerstone of its failure.

I yield the floor.

Mr. WILSON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Thank you, Mr. President.

Mr. President, much has been said in praise of the sponsor and manager of this legislation, the Senator from Wyoming; but not too much praise because he has deserved every word of it.

This tall, lean and humorous man has been, though he will not say it, a driven man in pursuit of a solution to a problem that no one else really had the guts to handle. But he has sustained with a moral stamina, rare even in the annals of this body, a search for a solution to what seemed to many people to be the intractable problem of how America should deal with the incredible, massive flow of humanity spilling across an 1,800-mile long land bridge which is only lightly guarded.

As time has gone on, those who have been either resident in or passing through the Republic of Mexico have looked North, and in explosively increasing numbers, they have come North with little impediment.

The junior Senator from Texas said in his rather eloquent comments that he recognizes that we face a crisis.

Indeed, we face nothing less than a crisis, Mr. President. This year, the INS and the Border Patrol will apprehend and detain over 600,000 illegal aliens within the San Diego sector, alone. The figure provided by the Senator from Wyoming dealing with the entirety of the border is 1.8 million. And for every one who is actually apprehended and detained, INS estimates that at least one other illegal eludes them and enters the United States illegally.

What does that mean? Do these illegal immigrants pose a threat to employment for U.S. citizens? Have they increased crime and burdens upon law enforcement? Have they increasingly burdened local governments that provide health care, various types of welfare assistance? Have they finally, even in a hospitable nation, reached such a saturation point that they have deteriorated the attitude of hospitality and replaced it with resentment and with fear?

The unhappy answer to all these questions is "Yes!" Mr. President. Long since that has come to pass. And I regard it as tragic. But nothing is going to change that. Nothing is going to alter the dimensions of the problem unless we have the courage to act.

Many people tonight have said they have opposed prior legislation. I was among them. In 1983 I argued vociferously and unsuccessfully against the basic premise of this legislation, employer sanctions. I expressed great skepticism that employer sanctions in and of themselves would be sufficient to stop this massive flow of illegal immigration. I remain skeptical.

But I will tell you, Mr. President, when the distinguished Senator from Wyoming asks of critics "What is your alternative?", I have come to the unhappy conclusion that there is no alternative. No one else on this floor is offering another solution.

In the not quite 4 years that I have been in the Senate, the dimensions of this problem have grown enormously. The tenor has changed drastically. I spent 11 years as the mayor of San Diego, the largest border city, the busiest international crossing in the world—busiest in terms of both legal and illegal crossings.

I spent a great deal of my time working, trying to build relationships with my Mexican counterparts. I think they, as well as I, must view with great sadness the deterioration of these relationships and decades of good will as this problem of a hemorrhaging border has inevitably and understandably produced an entirely different climate of opinion.

Mr. President, this is not perfect legislation. The reservations I had about employer sanctions—not just in terms of their effectiveness, but in terms of the burdens on small employees which they add, I have still. I share the concern expressed by the Senator from Idaho that small business men and women may very well resort to what I term defensive discrimination and seek to avoid the hassle of Federal prosecution by the simple device of choosing the applicant for the job who does not look or sound foreign.

But unlike the bill that passed in 1983 this one does contain at least some safeguards against that discrimination. The Senator from Massachusetts, I, and others have put them there. The bill also provides for a Commission that will assess whether employer sanctions are working effectively, and whether they are posing an unfair burden upon the employers to whom we look to enforce them.

But the real point, Mr. President, is that no alternative has been offered. Centainly there are desirable alternatives that one could conceive. In 1983 we discussed some of those. I can recall stating that perhaps we should consider providing Marshall plan-like economic assistance to the Mexican Government to permit the Mexican economy could employ the Mexican people, and to secure Mexican Government cooperation in restraining illegal entry on their side of the border.

Well, Mr. President, we have supplied such economic assistance in generous measure, in the indirect forms perferred by the Mexican Government.

But I will tell you that if we wait, Mr. President, for a Mexican economy that can employ the people of Mexico to relieve the pressure, we will wait for perhaps half a century, and we may wait forever. They have been willing to take our loans. They have been much less willing to take our investments. The fact is that for whatever causes, the Mexican economy does not and will not soon support the employment of its own people. Whether they are willing to admit it or not, the Mexican Government inevitably must regard illegal immigration to this Nation as a safety valve, a release for those with the gumption to try to come here.

Those who try are of many nationalities, 81 nationalities according to the Senator from Wyoming. Whatever their differences, they have a common courage and determination to seek something better, and they will continue to try to come.

Employer sanctions may be distasteful, but they offer the only device by which we may hope to reverse this tide of unfortunate humanity with the gumption to seek a better life.

Mr. President, the junior Senator from Texas and others have expressed concerns about the fairness of the legalization provisions. They are not perfect. These do not bear the stamp of the Senator from Wyoming. They bear the stamp of the House of Representatives. They are not perfect. But I will simply say this: If the concern is that we are rewarding those who have violated the law by coming illegally, then let us examine that law, the existing law of the land which this immigration bill seeks to reform.

Those who have come illegally have done so because of an anomaly in our law. It has been perfectly legal for employers to hire illegal aliens who are here in violation of the immigration law. Even Charles Dicken's character Mr. Bumble, famed for his outraged judgment that "the law is a ass!", would be dismayed by a law that permits employers to hire legally workers who are illegal by their presence in the Nation. We should share his dismay and change our law.

What is more, this anomaly in our law has produced an anomaly in the American democratic system which denies its ideals and is repugnant to common decency. It has produced a subclass of workers who are by their illegality vulnerable to exploitation. As an example, agricultural workers for whom housing is provided by growers are often afraid to live in that housing for fear they will be an easy target for the INS and the Border Patrol. So instead they literally go to earth, to live like animals in holes in a way that no one in America or elsewhere should be forced to live.

Mr. President, let me just say that the question was raised, and properly, by the Senator from Texas. Can we do better than this immigration reform bill?

This poor man (the Senator from Wyoming) has been pulled and hauled, but he is tough, he can take it. And his legislation has been pulled and hauled. It is not what we sent to the House. It is what they sent back and what we finally fashioned as a compromise.

Let me say that it is probably the best bill that this frustrating process of compromise can achieve, and certainly the best that we can reach at this time. And we dare not delay, Mr. President. If we fail to act now, we face a most uncertain future, except in one regard: We face the absolute certainty that the terrible problems for America that flow from this exploding illegal immigration will only return grown much larger and more difficult, until such time as they become in fact intractable.

If we are concerned about the fairness of the legalization proposed in this bill, will we not be even more concerned when the number of illegal aliens resident in the country has doubled because we have done nothing in the interval to forestall their coming?

This bill is not what anyone wants in all its parts. But the time to act is now. What we will achieve by delay is not just delay: We risk the serious further deterioration of an already grave situation, a situation that the Senator

from Texas correctly described as one of crisis.

Mr. President, I feel very strongly about this measure.

Late on a night not long ago I pleaded with the Members of this body to allow consideration of a measure that the Senator from Wyoming wished to send to the House to resurrect immigration reform when it seemed quite dead in the House of Representatives. Somehow it has been resurrected, due largely to the fortitude, skill, patience and dogged purpose of the Senator from Wyoming.

Let us not lose this chance. Let us seize the chance. If we fail to act now, we will be guilty of the most criminal dereliction.

Mr. President, despite my obvious feeling, I will say no more, except that I congratulate my friend from Wyoming and I thank his parents for having produced this tough-minded, tenacious, sympathetic, humorous man of good will to serve his nation as an outstanding Senator.

Mr. ARMSTRONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, I will just join with all of those who have congratulated our friend from Wyoming. I certainly share everything that the Senator from California and others have said about this remarkable colleague of ours.

That, of course, has nothing to do with the bill before us. For some reason this is the night when ALAN SIMPSON at least gets his well-deserved plaudits. I will not let that pass.

I listened with interest to what the Senator from New Jersey said and I agree with all of it, about his skill as a legislator and his intellect, and so on. The plain fact of the matter is, to anyone in the Chamber, ALAN SIMPSON is a beloved figure. That is not the issue in this legislation.

As I have listened, not only this day but on many previous days, I am struck by the fact that those who are going to vote in support of this bill have spoken at great length and have really gone to elaborate length to justify their position in support of this bill. Really, it comes down to two propositions: One, "We love ALAN SIMPSON and he has worked hard for this over a long period of time so I am going to vote for him," and, two, "There is a terrible problem and we do not know what to do, but this is the only thing we have so we ought to vote for it."

Mr. President, I am going to vote against this for several reasons. In the final analysis, in 5 years, 10, or 20, history will record whether or not it is a good piece of legislation.

Here is my prediction: First, it is not going to work. It will not stem the tide of illegal immigration into this country.

Second, it is a budget buster. It will be costly. While that is not the most important issue in this legislation, it is noteworthy at a time when massive deficits are an important concern of our country.

Third, I think it is a sad, indeed tragic, thing when we grant amnesty to millions of people solely on the grounds that they have gotten here through an illegal act.

That is the common denominator of every one of the people who get amnesty, that they came to this country illegally.

I think that is in its essense unjust to the millions of people around the world who would like to live in this country, including in many cases people who are political refugees, for heaven's sake, who are following the established procedure, who may have relatives in this country and who are waiting years and even decades for the opportunity to enter this country legally.

Instead, in preference to them, we are granting amnesty to those who have broken the law to come here illegally.

I also note in passing, Mr. President, that by granting amnesty in this way, we set a standard for citizenship which I do not think is very promising. I do not say, and I would not want to be understood to say, that nobody who gets amnesty and thereby becomes a citizen cannot make a contribution to this country because in fact many of the people who are working here, even though they are illegal in their status, in fact are people who have a lot of the qualities that made this country great.

But when all we do to make a citizen is to say, "If you have been here illegally for a certain period of time, we will grandfather you in, we will give amnesty," that does not establish a very high standard for the integrity of this precious right of citizenship.

Finally, Mr. President, I just note that in my opinion, this will encourage more, not less, illegal entry into the country.

So despite my regard and affection for the Senator from Wyoming and for the tremendous amount of talent and effort he has brought to bear on this question, in spite of the fact that I recognize, as has every other Senator who has spoken, that we have a tremendous problem, I do not think that to do something even if it is wrong is the right standard for legislating in this Chamber. That is what this bill is, in my opinion.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, have the yeas and nays been ordered on this measure?

The PRESIDING OFFICER. They have not been ordered.

Mr. HELMS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. Mr. President, as long ago as July 21, 1981, Attorney General Williams French Smith testified that "We have lost control of our borders." Under this bill, illegal aliens who arrived prior to January 1, 1982, would be allowed to remain in our country. How many illegal aliens are currently here? While the exact number is impossible to calculate, estimates range from some 3½ million to over 10 million. Some estimates even range as high as 15 million. The administration has used a figure of 6 million which, it would appear, is a conservative estimate. Whatever the exact figure is, it is clear that effective measures are necessary to regain control of our borders.

EFFECTS OF AMNESTY

Mr. President, this bill would create a so-called legislation program which would give a legal right to millions of illegal aliens to remain permanently in these United States. It may well be that this amnesty proposal would create a precedent for further declarations of amnesty for those who might potentially be drawn here by the first amnesty program, drawn by the hope that the law would be set aside. The amnesty program would give a legal right to millions of illegal aliens to seek any job that an American worker has or might be able to find. It would give a legal right to millions of illegal aliens to full welfare benefits.

Other potential effects on our society could include a polarization between Hispanic-Americans and non-Hispanic-Americans. Additionally, polarization could well occur within the Hispanic-American community between those who have legally settled here and those involved in an amnesty program. Amnesty also creates a moral problem in that it rewards lawbreakers. In a society such as ours, respect for the law is fundamental to the well-being of our local communities and to our Nation as a whole. Therefore, there should be no amnesty provisions.

AMNESTY COULD INCREASE ILLEGAL FLOW

Amnesty for the millions of illegal aliens currently in these United States would establish a dangerous precedent which could well encourage additional illegal immigration. Additional millions of desperate people could head to the United States on the heels of economic chaos or political chaos in their homelands. For example, between the Rio Grande and the Panama Canal there are over 100 million people. If only 10 percent of these people flee

economic chaos or political chaos engendered by Communist expansion in this area the illegal population could very well be doubled in this country.

An Associated Press report from Mexico City on July 14, 1982, states that—

American officials predict that one of Mexico's worst recessions since World War II probably will increase the flow of Mexicans going illegally to the United States in search of jobs and a better life.

Inflation in Mexico is running at some 80 to 100 percent this year and Mexico's foreign debt has reached over $100 billion. The Mexican peso has been devalued which has added to Mexico's economic problems.

At the present time some 10 to 12 million Mexicans are either underemployed or unemployed in a work force of 24 million. Unemployment and underemployment now total about 45 to 50 percent of the labor force in Mexico and Mexico needs to create over 900,000 new jobs every year just to keep up with its population growth which is one of the highest in the world. Mexico is a resource-rich country with oil reserves which are well known as well as mineral and potential agricultural wealth. Yet, Mexico for decades has adopted a type of Socialist experimentation—including so-called land reforms—which has brought the country to its current straits. We would hope that the Mexican Government and all governments in the region would encourage policies which will lead to real economic growth. We in these United States should not adjust our immigration laws just to bail out other nations from the effects of decades of poor economic policies.

Mr. President, this year we expect to arrest some 1.8 million illegal aliens attempting to cross our southern border. For every illegal that is apprehended, Border Patrol officials indicate that at least two or three or more are able to slip through. Let us be frank, we cannot today control our own borders; yet, a massive amnesty is to be offered. Amnesty today encourages more illegal immigration tomorrow which may very well lead to proposals in the future for another amnesty based on the precedent set in this bill.

Mr. President, the San Antonio News has bluntly stated that—

It would be foolhardy to offer . . . amnesty without first beefing up the border patrol to a point where it can control our boundaries.

This bill does not provide for the dramatic strengthening of the Border Patrol that is necessary. To this Senator, it is essential to greatly strengthen our Border Patrol capabilities. Even if the Border Patrol were greatly strengthened, however, I believe that amnesty for untold millions of lawbreakers is foolhardy in the extreme.

SOVIET EXPANSION IN CENTRAL AMERICA

Mr. President, Soviet expansionism in Central America is causing havoc in Guatemala, Honduras, El Salvador, and Costa Rica. Nicaragua is a Soviet base. The fires are burning in Central America and could ignite a volcanic eruption in Mexico.

Recently, we have heard President Reagan describe the situation in Central America and the Caribbean. It is very grave. The convulsions wracking Central America today may well propel an explosion of "feet people" fleeing the chaos and illegally entering these United States.

Mr. President, we must regain sovereign control of our borders. Congress must have the will to face this very grave challenge to the peace and tranquility of our own homeland. Congress cannot buckle under to the voices of propaganda on this fundamental issue. Congress cannot buckle under to the voices of superficial rhetoric on this fundamental issue. Congress cannot jettison sovereign control of our borders by adopting an amnesty for illegal aliens. Those who come after us will rue the day should Congress grant amnesty to untold millions of illegal aliens and prepare the stage for further amnesties for further untold millions of illegal aliens.

AMNESTY AND U.S. UNEMPLOYMENT

Mr. President, there are today almost 8 million Americans out of work. Congress should be making every effort to remove illegal aliens from our work force and should avoid voting for legislation which will grant them legal rights and benefits through an amnesty program. It should be understood that illegals are at work in a broad spectrum of fields. Testimony before Congress shows that—

Only 15 percent of the illegals are estimated to work in agriculture; 50 percent are employed in service industries; and 30 percent are in blue collar jobs.

The Federation for American Immigration Reform has pointed out that, "half of all new jobs created in the late 1970's went to legal and illegal immigrants." FAIR also has pointed out that "there is not a single labor market that immigrants enter in which the majority of workers are not Americans." Marvin Stone, editor of U.S. News & World Report, has pointed out in this regard that—

If newcomers show skill and initiative as workers and entrepreneurs, they often cut in on the livelihood of local people and arouse hostility; if not, they lean heavily on the public purse.

I repeat that only 15 percent of the illegals are in agricultural jobs. It is a myth that illegal aliens seek and obtain only low-paying jobs; indeed, a number of studies and reports have found that illegal aliens obtain well-paying jobs. For example, the Phoenix Gazette of December 9, 1981 in reference to a nuclear reactor plant in Arizona stated that, "Immigration officials said they believe the relatively high-wage scale, which begins at about $10.50 per hour, has attracted a large population of illegal workers." Human Events some time ago described a case in Elgin, IL, in which Immigration and Naturalization Service officers arrested 69 aliens who earned between $4.50 and $13 an hour. Within hours, the Human Events story reported, hundreds of local residents had applied for these jobs, all of which were filled within 3 days.

Prof. Donald L. Huddle of the Department of Economics at Rice University has written a report on "Undocumented Workers in Houston Non-Residential and Highway Construction: Local and National Implications of a Field Survey." Professor Huddle has estimated, for example, that one-third, and possibly more, of the workers in the construction industry in the Houston area are illegals. He notes that residential construction is more heavily infiltrated by illegals than is commercial construction. This is because unions still act as a partial barrier in the commercial construction field. The wages earned by illegals ranged from $4 to $9.50 per hour. A study by Frank Bean and Allan King at the University of Texas for Governor Clement's task force on immigration was quoted in the Houston Post of April 7, 1982 and estimated that one in every five Texas Hispanics is illegal.

From his research, Professor Huddle extrapolates that, "For the United States as a whole, the number of illegals working in construction may reach an estimated 1 million or more." He then goes on to state that "the wages collected by the illegals in construction nationally probably exceed $7 billion per year and could well be over $9.5 billion."

Former Secretary of Labor, Ray Marshall, has stated that removing illegal aliens from the work force could cut our unemployment rate in half. According to Professor Huddle's research:

The amnesty provisions of the Simpson-Mazzoli bill are too generous * * * giving amnesty to illegals * * * will be costly in terms of implementation, will cost unemployed American citizens hundreds of thouands if not millions of jobs, and lead to many more millions of relatives of illegals not now in the U.S. becoming legalized in the future.

It is important to consider a report by the Congressional Budget Office which shows that each unemployed American received $7,000 annually in unemployment benefits and other public assistance. Thus, 10 million unemployed Americans cost the taxpayers a minimum of $70 billion annually. This does not include the loss of revenues to the Federal Government from tax payments generated by working Americans.

Where there is a genuine need for seasonal foreign workers, for example, in the agricultural field, the answer is a temporary Guest-Worker Program. Amnesty is not the answer. In fact, by giving permanent resident status and access to our generous welfare programs to millions of illegals currently in low-paying agricultural jobs we will encourage them to move away from this type of work and into the welfare system.

AMNESTY WILL INCREASE WELFARE COSTS

Mr. President, amnesty would increase welfare costs dramatically. Many millions of illegal aliens would qualify for various welfare programs—AFDC, SSI, Medicaid, Food Stamps, State and Local Assistance, and Public Housing. A number of factors currently are holding the use of welfare programs by illegal aliens down. These include the fear of discovery by authorities and the percentage of illegal aliens who are working males with their families across the border. Amnesty would change the situation significantly.

The National Association of Counties, in their newsletter states that:

Such a legalization program would constitute a costly new federal mandate which would require states and localities to provide increased services and assistance to illegal aliens granted residency status. As legal residents, they would become eligible for cash and medical assistance not available to illegal aliens. NACo estimates that the total cost to state and local governments for providing such assistance would exceed one-half billion dollars in the first year of legalization alone.

Mr. President, for a fraction of the increased welfare costs that amnesty would entail, the enforcement capabilities of the Immigraton and Naturalization Service could be substantially strengthened. Not only could enforcement be made more effective, but also, jobs could be opened up for hundreds of thousands, if not millions, of Americans as enforcement activities take effect over a period of time.

AMNESTY CAN POLARIZE OUR SOCIETY

Mr. President, I fear that the granting of amnesty to millions of illegal alien could polarize our society. With 8 million Americans out of work, with our economy suffering from unbalanced budgets, and with increasing crime and lack of respect for our laws, amnesty could engender a tremendous backlash.

This backlash could affect relations between Hispanic and non-Hispanic Americans generally as well as between illegal Hispanic and Hispanic Americans who have either legally settled here themselves or whose parents or ancestors came to our land to settle. It is not just illegal Hispanic aliens that we are talking about, of course; there are illegal aliens here from all parts of the world. We must not allow through an amnesty program, the polarization of our society.

Referring to illegal Mexican aliens, it is important for this body to consider the opinion of Hispanic-Americans who are legal citizens. The Dallas Times Herald, some time ago carried an article entitled, "Illegal alien issue splits Hispanic citizens." The article pointed out that, "in Dallas, most of the complaints to the U.S. Immigration and Naturalization Service about illegal aliens come from Mexican-Americans." The article goes on to state that the regional INS Director, William Chambers, reported that 85 percent of the complaints about illegal aliens are by Mexican-American citizens. He added that—

A lot of people are surprised by this, and it used to be that Mexican-Americans did not get into reporting illegal aliens. But they (Mexican-Americans) are being much more adversely affected than previously. The illegal aliens go into their neighborhoods to live and they are in direct competition with them for jobs.

In an article published by the Washington Post, additional information is presented which demonstrates that polarization is already in progress. For example, the distinguished State Senator Hector Uribe who represents the lower Rio Grande Valley in Texas was quoted as warning that—

Those most traumatized (by the Supreme Court's education decision) are Mexican-Americans at the lower rung of the ladder. They see themselves paying for the education of illegal aliens' children. And they see their jobs being taken away by these illegal aliens.

The Post article pointed out a study by the Institute for Constructive Capitalism at the University of Texas which found that among various demographic groups, Mexican-American citizens were those most likely to believe that illegal immigration was the most important problem facing Texas. Another study, a poll taken by the Southwest Polymetrics Co. of Austin, TX, found that 58 percent of those surveyed in the Lower Rio Grande Valley—State Senator Uribe's district—opposed free education to illegal alien children. Among the Mexican-American respondents to the poll, the percentage of negative respondents was even higher.

Raul Besterio, superintendent of schools in Brownsville, TX, expressed his sentiments in the Post article and the sentiments of many Mexican-American citizens stating that—

Think how I feel. I'm a Mexican-American. People say why are you against your own people. Well, I'm an American. I was born and raised here. The Federal Government made me a Mexican-American.

Mr. President, the polarization process has begun in our country between illegal aliens and our fellow citizens. This body must face up to this fact and act in a responsible manner to prevent any escalation in this process and to heal the wounds that already exist.

Mr. President, it is wrong to reward lawbreakers. It is wrong to set in motion a program which will encourage further lawbreaking and which will polarize our society. Citizenship in our great Republic is too precious to grant in a vast blanket program to millions of foreign nationals who have flagrantly violated our laws. We expect our fellow citizens to obey the law. We proudly say that this is a nation of laws. Yet, amnesty for millions of illegal aliens—for millions of conscious lawbreakers—would show our citizens and indeed the world, that our great country cannot muster the will necessary to enforce our own very generous immigration laws.

What will the working man and woman in this country think of this massive surrender? What will the children of the working man and woman of this country think of this surrender? Will it teach them respect for the law? Or, will it engender disrespect for the law and our institutions? My office has been deluged by phone calls and letters opposing amnesty for illegal aliens. The public outcry against amnesty for millions of illegal aliens may well exceed anything that we in this Congress have experienced in recent years.

Our duty, as representatives of the citizens of these United States of America, is to protect the interests of the American people. We are not here to legislate bailouts for foreign governments whose internal policies have led to severe problems in their own countries. These governments must accept the responsibilities to improve the conditions in their own countries in order to achieve progress.

Mr. President, I hope that all of my colleagues will carefully consider the far-reaching consequences of amnesty for illegal aliens before they vote on the conference report. What may appear to be the easy way out of a difficult and grave problem will cost the American taxpayer billions of dollars, and could encourage even more illegal immigration as well as a loss of respect for our legal system and institutions.

Let me say to Senators that Senators will rue the day that they allowed this bill to go through with amnesty for 6 million aliens, or is it 10 million, or 15? We do not even know.

I repeat, there is not a simple solution, there is not an easy solution. Certainly, we need to strengthen our Border Patrol. We have more people guarding the Capitol of these United States today than we have guarding our entire southern borders. That is a ludicrous situation under the circumstances.

Let me warn the Senate that giving amnesty to illegals will be costly in terms of implementation. It will cost unemployed American citizens hundreds of thousands, if not millions of

jobs that they might otherwise get. It will lead to many more millions of relatives of illegal aliens not now in these United States becoming legalized in the future.

Mr. President, the treatment of aliens and the question of citizenship have been issues throughout the ages. The consequences of the decisions made by ancient societies on these matters, by the Romans and others, endured for generations—indeed, for centuries. The decisions that we make on these matters will affect our Nation's destiny and the lives of those who come after us.

Mr. President, I ask unanimous consent that an article from the Wall Street Journal, dated October 15, 1986, concerning this subject be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Oct. 15, 1986]

THEIR RANKS ERODED, UNIONS TRY TO RECRUIT ILLEGAL IMMIGRANTS

(By Dianna Solis)

HOUSTON.—As the gleaming oil palaces that jut into the downtown skyline here begin emptying of office workers around 5 p.m., they begin filling up again with mostly Hispanic janitorial crews.

These workers toil almost invisibly, scouring fern-lined foyers, swabbing porcelain toilets and even scrubbing down sidewalks. But one night recently, as their shifts ended at two downtown office towers, nearly 70 Mexicans and Salvadorans were hauled away as illegal aliens by agents of the U.S. Immigration and Naturalization Service.

Though the Department of Labor was a day away from certifying election results, the janitors already believed they were victorious in winning union representation. And as they were being hustled into immigration vans, an onlooker shouted an angry farewell in broken Spanish. Translation: "You damn wetbacks. Union in your own country."

CONTRADICTIONS AND IRONIES

Contradictions and ironies abound in the new drive by U.S. unions to organize millions of "undocumented" workers in such immigrant meccas as Houston, Chicago, Los Angeles, New York and San Francisco. Often low-paid and sometimes abused, these workers are seen as ripe pickings for beleaguered labor unions, which now represent a scant 18 percent of the national work force—half the postwar peak.

But local organizers who work the fields and factory floors are encountering more than ordinary difficulties signing up recruits. Foremost is the ambiguous legal climate in which the organizers must operate: Illegal aliens have the right to join unions and are covered by many labor standards. But they are still subject to deportation if discovered—and employers have been known to call in the INS at the first sign of labor unrest.

There are other obstacles, including language differences and mistrust of labor unions among certain immigrant groups. Finally, there is serious division within the U.S. labor movement over whether illegal workers should be organized at all.

The AFL-CIO leadership has fought vigorously to keep illegal immigrants out of the U.S. work force, this week continuing its lobby for a landmark immigration bill that would include fines against employers who knowingly hire illegal aliens (see story on page 3). While it is illegal for undocumented workers to be in the U.S., under current law it is not illegal for employers to hire them.

OUT OF TOUCH?

"Our experience is that they [illegal immigrants] have depressed wages," says Edward Hahn of the United Brotherhood of Carpenters and Joiners, an AFL-CIO affiliate based in Washington, D.C. "We don't think they should be allowed in any industry."

But locals of the Teamsters union, the United Auto Workers, the Service Employees International Union, the International Ladies Garment Workers Union (ILGWU), the Amalgamated Clothing and Textile Workers Union, and the Hotel Employees and Restaurant Employees International Union are actively recruiting illegal immigrants. Maria Elena Durazo, a Los Angeles organizer with the Hotel Employees union, says many union leaders are out of touch with the union trenches. "It's easy for someone in D.C. to say, 'Oh yes, employer sanctions, we're for them,' but they haven't organized in 30 years," she says. "There's no choice but to organize immigrants. You might as well come to grips with it."

This year for the first time, the Los Angeles and Orange County AFL-CIO Organizing Committee held a conference on unionizing immigrant workers, including illegal ones. Many local union officials considered it long overdue. "I was persona non grata with the AFL-CIO for a long time," says Mexican-born Humberto Camacho, a veterans organizer of undocumented workers for the United Electrical, Radio and Machine Workers union in Los Angeles. "These days I get more respect."

DISPELLING ANTAGONISM

A good number of the immigrant organizers are immigrants themselves or the children of immigrants. They argue that many illegal workers have built U.S. "equity" through homeownership, tax payments and productivity. They predict that successful organizing efforts will help to dispel the union leaders' antagonism.

"Myself, I came here as an undocumented worker," says Anthony Orea, a Los Angeles ILGWU organizer. "I know what it is like. People work 60 hours and get paid for 30 hours. Workers get hurt, and they don't know they can get disability." Organizing such workers, he says, "is the best way to defend the entire work force."

So local organizers are handing picket signs to the undocumented, staging boycotts and even filing a slew of labor-rights suits on their behalf. Organizers are also sponsoring citizenship classes and "know your rights" seminars and producing videotapes advising what to do during an INS raid. A few even post bond for illegal immigrants who are apprehended during organizing drives.

With union backing, once-pliant illegal immigrants are showing new militancy. Take Antonio Gallo, a janitor who led the organizing drive for the Service Employees union in Houston that was shattered by the INS raid. After losing his job in the incident, He filed an unfair-labor-practices complaint against his employer, American Building Maintenance Industries; the case was dismissed, but he has appealed to Washington, D.C., labor officials and is now fighting his deportation to El Salvador."Only with a union could we have a voice," says Mr. Gallo, whose union furnished him with a Spanish-speaking lawyer.

In Los Angeles, undocumented workers organized by the 15,000-member Hotel and Restaurant Employees union (Local 11) have been picketing a Hilton hotel for the past five months, protesting low wages and the hotel's demand for an open shop. The hotel's Mexican and Salvadoran maids, busboys and pantry workers say that the hotel's threat to call la migra, or INS agents, no longer frightens them. "They wanted us to disappear," says a 52-year-old maid from Mexico. "We are only mojadas [wetbacks], but with the union we have benefits like a medical plan. We have to fight for it." (The Hilton's general manager, calling the union's position on the open-shop issue "ridiculous," says the hotel has offered the union an 8 percent pay raise.)

Over the years, U.S. union chiefs have generally been antagonistic toward immigrants labor. (Among the exceptions: the legendary United Mine Workers President John L. Lewis, who argued that Mexican miners employed in the U.S. should be treated like their U.S. counterparts.) In the early 1900s, AFL leaders declared that it was best for the federation "to permit the newcomers to sink or swim by themselves." For years citizenship was a prerequisite for membership in many AFL-CIO unions. And during the Great Depression, AFL leaders fully supported the federal government's "repatriation" efforts that sent thousand of undocumented Hispanics—along with Mexican-Americans—back to Mexico.

Today, local union leaders often find themselves allied with illegal immigrants against government immigration officials. In Los Angeles, for example, the ILGWU obtained "INS clauses" in some of its contracts. These require employers to notify the union if INS agents are seen near the workplace and to reinstate any employee absent because of an INS proceeding.

In San Francisco, the Instituto Lagoral de la Raza, whose board consists of U.S. union leaders, assists Latino immigrant workers with job-related problems and immigration concerns. A recent issue of its bilingual newspaper carried this advice for undocumented workers stopped by the INS: "Do not allow them to force you to talk through threats, physical force, jailing, high fines or insults. Let them know that you will inform your lawyer and community organizers of their illegal procedures."

All the same, union leaders acknowledge the frustrations of trying to win job security and higher wages for undocumented workers. A case brought by a leather makers' union against Chicago-based Sure-Tan Inc. suggests the legal uncertainties: Two years ago, the U.S. Supreme Court ruled in that case that immigration raids were illegal if inspired by an employer's anti-unionism. But the high court provided none of the traditional remedies of job reinstatement and back pay for workers deported after such raids.

Redress for workers who aren't deported is still being fought in the courts. In a separate case this summer, the federal appeals court in Los Angeles held that undocumented workers who remain in the U.S. after losing their jobs in an unfair-labor-practice dispute are entitled to back pay. (The employer plans to appeal to the U.S. Supreme Court.)

Proving an employer's "anti-union motive" isn't an easy matter. The Service

Employees union in Houston raised charges of union-busting following the raids at the downtown office buildings, the only two sites in the city where janitors were organized. But an attorney for American Building Maintenance Industries, the employer, insists it was merely taking part in the INS's "Operation Cooperation," a campaign to encourage employers to divulge the names of undocumented workers. The attorney adds that participation in Operation Cooperation began before the onset of union organizing. Meanwhile, the maintenance crews that chose the union have scattered since the raid, thus undercutting the union's victory.

Union organizers also have a tough sell in those immigrant communities where anti-union sentiment runs high. Many Asian workers, for example, consider unions racist or communist.

Frank Cho, a 41-year-old Korean dentist in Los Angeles, is struggling to change those perceptions and in his spare time works to organize Korean and Latino garment workers. After one employer cut the immigrants' piecework pay by 30 percent, Dr. Cho began a door-to-door campaign to muster support for his Korean Labor Association. He says that his union lost the election, 97-82, in part because the company, French Rags Inc., charged that it was a communist-influenced organization. French Rags denies that it linked the union to communism.

Mr. HELMS. Mr. President, I wonder if I can spend a few minutes with the distinguished chairman with some questions.

Mr. SIMPSON. Certainly.

Mr. HELMS. I apologize to him. These points may have been covered while I was trying to shake the tree on some agricultural matters this afternoon.

Mr. SIMPSON. I will be delighted to respond.

Mr. HELMS. Mr. President, I noticed the distinguished Senator from Wyoming was feeling his pulse a while ago to see if he still had one.

Mr. SIMPSON. Mr. President, I was feeling the heat from the majority leader, who said that as soon as we finish this up, we can get to reconciliation, I say to the Senator from North Carolina.

Mr. HELMS. Let me ask my friend about the provisions on the legal services of H-2 farm workers.

It is true that under this bill, these foreign nationals will be treated as permanent resident aliens for the purposes of obtaining legal services?

Mr. SIMPSON. Mr. President, that is not correct. The legal services that will be available to H-2 workers—and they are foreign nationals, and the Senator from North Carolina is correct—are limited only to housing and transportation and wages and anything within the terms of the contract, nothing more. No adventurism, no domestic problems, no anything. The legal services are limited strictly to that.

Then we had an additional proviso to the effect that nothing in the contract would violate the present H-2 law. That is very precisely limited. It was one of the sticking points in conference, I can tell my colleague, because we did not want it to be something for activist groups to use to harass an H-2 employer.

Mr. HELMS. Then the Legal Services Corporation or any similar service would not provide legal counsel for suing employers on wages and other matters?

Mr. SIMPSON. They would be limited only to the employment issues related in the worker contracts, worker contracts made between groups and the employer. They cannot go off outside the scope of a very limited few items.

Mr. HELMS. I thank the Senator.

With respect to unionized aliens—let me give a hypothetical situation. A farmer contracts with a union to provide x number of workers. Suppose one or more of these workers is or are illegal. The employer is penalized in that event, is that correct?

Mr. SIMPSON. If the employer has failed to keep the minimal verification records, he would be penalized. That is correct.

Mr. HELMS. But the labor union would not be affected by this.

Mr. SIMPSON. In that instance, we have provisions where labor unions have the same burdens as employer organizations, associations, or workers, that type of thing. But in this instance the Senator speaks of, only if they were referred—if there were a referral for a fee—are they responsible.

Mr. HELMS. Why would there be any distinction whether there was a fee or not?

Mr. SIMPSON. Unions are exempted from this in that sense.

Mr. HELMS. The point I am making is, I do not think the labor union ought to be exempt from any action. If they send to a farmer a worker or workers who are illegal, do they escape any liability whatsoever in this way?

Mr. SIMPSON. I am sorry, I was preoccupied.

Mr. HELMS. I am asking if the labor unions in the hypothetical instance that I mentioned will be exempt from any liability in the event that they send an illegal worker to be hired by the farmer. The farmer would be penalized but the labor unions would not, is that correct?

Mr. SIMPSON. They would be exempt unless they charged a fee. But if the employer kept the paperwork, he would not suffer any penalties whatsoever. And the paperwork is simply checking the box and even if he is given fake documents and the person has given him fraudulent documentation, the employer is off the hook. As long as he has asked for the documents under the law.

Mr. HELMS. Can unions knowingly organize illegal aliens?

Mr. SIMPSON. Oh, Mr. President, they do that now with great gusto. Many union ranks are filled with illegal, undocumented persons. It has become a great source of discord in unions, because the INS will pick them up. But they recruit and organize many illegal undocumented people who pay dues, and these people lose their dues when they are deported.

Mr. HELMS. That is the point I am making, I say to my friend. I shall windup these questions in just a second.

I do not understand the construction of the responsibility in this bill whereby the burden is on the employer but the labor union goes scot-free. If I understand the bill correctly, it is not illegal for unions to supply such workers to an employer.

Mr. SIMPSON. Mr. President, under the bill, that is the case. That was one of the sticking points, again, in the conference. In the situation referred to, we have provided affirmative defenses for the employers, tried to remove the burdens from them as best was possible. But unless one refers for a fee, he is not subject to those penalties, that is correct.

Mr. HELMS. And the sticking point in the conference—was this mainly the House conferees who insisted on this inequitable situation, as I see it?

Mr. SIMPSON. That is correct. That was the case. It was one of the 91 items where the Senate receded some 43 times and the House about 48—it was about an equal receding in the conference.

Mr. HELMS. I shall make just an editorial comment. This is another example of the inordinate influence labor union bodies have over Members of Congress. This is patently unfair. It is unequitable. I say frankly to the Senator it is a defective bill, and I think he remembers my saying that. He also said to me, I believe, that he agrees with me that it ought not to be in this fashion in this bill.

Mr. SIMPSON. Mr. President, when it left the Senate, we had the previous language that would be embraced by the Senator from North Carolina. I shall work with him to see that we have appropriate hearings. I know in his State migrant labor is a critically important matter.

But I say to my colleague from North Carolina that under the language of the conference committee report, unions are not exempted from checking the documents. All must check the documents. Employers check the documents, the unions must check the documents. But the penalty provision——

Mr. HELMS. I understand that. But just as the Senator has indicated, the union can go ahead and send this illegal worker to the farmer and there is no penalty on the union, but there is a penalty on the farmer if he makes the same mistake.

Mr. SIMPSON. Yes, I would say that that is so, but the penalty can come if they do not do the paperwork. That falls against the unions, too.

Mr. HELMS. Let me say to the distinguished Senator from Wyoming what he already knows, that I admire him greatly. I am not going to be as profuse as other Senators, but you have done an astonishing job. It is an extraordinary piece of work and I compliment you, Senator, even though, as I told you yesterday, I cannot support you. I congratulate you and wish you well.

Mr. SIMPSON. Mr. President, I thank the distinguished Senator from North Carolina. He and I have had some interesting struggles in our time here. Since that one time some years ago, I have had extraordinary respect for him. That has grown each and every day I have been here and it means a great deal to hear that from him, particularly.

Mr. HELMS. I thank the Senator.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, it appears that in just a very few minutes the Senate will move to vote on this conference report. I have indicated my position in my statement to the Senate yesterday. I intend to vote in opposition for the reasons I expressed in my statement when we first laid down this conference report yesterday.

There are times when we take a position where we believe in it very deeply and we are called to vote yea or nay on some of matters of basic principles. We have differing degrees of intensity about the views which we do have. I believe that my position is the correct one, but I may very well be wrong.

One of the reasons that I think I may be wrong is the extraordinary amount of work and effort that has been done by the Senator from Wyoming in reaching a conference compromise, and this has been recognized by all of those who support this legislation and even those who will vote in opposition to it.

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Before taking a very few minutes of the Senate's time, I also want to acknowledge the excellent work that the chief counsel of the Immigration Subcommittee, Dick Day, and his colleague, Carl Hampe. They have been available not only to the majority of the committee but they have been available to all members on the committee and the Senate.

On my own staff, Jerry Tinker has been on the staff of the Judiciary Committee almost as long as I have and has worked through the immigration issues, the refugee issues for that same number of years. He has been of invaluable help and assistance to me. I am grateful to all of those who worked so hard in achieving this very signal time in the Senate's deliberation.

Mr. President, I remember in 1978 when we passed the legislation to establish the Select Commission to review immigration policy. It was to be implemented in 1979. I had the opportunity of going on that Commission since at that time the Democrats were in the majority and as chairman of the Judiciary Committee I could appoint myself as a member of the Select Commission. We were supposed to have a bipartisanship membership on the Commission, and I remember the ranking member, Senator THURMOND, going through the Republican members of the Judiciary Committee and saying, "We are having a difficult time finding enough Republicans interested enough on the question of immigration to assume that responsibility." So they turned to the most junior Republican member of the Judiciary Committee, the Senator from Wyoming [Mr. SIMPSON]. The Commission was established in 1979, reported back in 1981 after extensive hearings, which were very well attended, and that is when I really began to know of the interest of the Senator from Wyoming in this issue.

So many of the matters that we have here in the Senate and in which we are interested just affect our State, affect interests which for one reason or another we may have brought to the Senate or developed while in the Senate. I for the life of me always wondered what the immigration issue would mean to the State of Wyoming. Really, very, very little. I am sure the Senator from Wyoming would point out various occasions when it might have some impact on particular communities. The historical pattern of migration obviously had an important impact in the development of Wyoming, but this issue is not a burning issue, I do not believe, in the State of Wyoming.

For hours that Senator SIMPSON spent on this issue—weeks, months, years, some 6½ years exactly to reach this particular occasion—the citizens of that State must ask, what does it really mean to Rock Springs or Cheyenne or Cody or many other places in that very extraordinary State. The answer would be it is important and significant in terms of our national interest, and Senator SIMPSON was working to promote our Nation's best interests. It means very little I believe in terms of the people who he serves. I am sure they were asking him, "Why aren't you spending more time on matters more directly related to Wyoming?" But he has persevered.

We heard, in the very eloquent statement of the Senator from New Jersey [Mr. BRADLEY], talk about perseverance. In the words of Shakespeare: "perseverance, dear my Lord, keeps honor bright." I think that is what we have seen with Senator SIMPSON whether we agree or differ.

The fact is I believe even as one who will differ with the Senator from Wyoming, he may very well be right. Certainly the cause which has motivated him and activated him in this effort has been for a noble purpose.

I express again my very deep sense of appreciation for his willingness to spend the time and the effort on this issue. It is an extraordinary accomplishment, no matter where we come out on it. All of us feel this has been a real legislative effort which few of us have had the opportunity to see. I certainly have not seen many instances like this in the 24 years I have been in the Senate. All of us are indeed grateful and are in his debt for what he has done for our country.

The PRESIDING OFFICER. Does any other Senator desire to speak?

The Senator from Wyoming.

CLOSING REMARKS

Mr. SIMPSON. Mr. President, I am deeply honored by those remarks by my fine friend from Massachusetts. All the other remarks, too. I sniff that stuff but I don't inhale it! No, actually I love it! I do want to thank TED KENNEDY. He's been with me on this extraordinary adventure all these years. It was a tough issue for him. Tough pressures upon him. He has to represent a State with greatly diverse ethnic backgrounds and many illegal undocumented persons. He knows the great deal of extraordinary passion there is about this bill. I understand. He was loyal to the cause and there were many, many occasions in which he steered me through many of the boulders in the current. He has followed this issue for all the years of his Senate experience—and he was quick and generous to share all of that experience with me. I am deeply appreciative. And I thank him for the very special counsel and participation in this tough issue.

Let me try to conclude—for the hour is late and the majority leader is viewing us all with his steeley eye as we wind down the post-cloture activities on the Immigration Conference Committee report.

Someone asked me several years ago what it was like to pass immigration reform legislation. That was the first time and it was a quite complex and difficult procedure and I stated in a rather smart alec fashion that it was about like "giving dry birth to a porcupine." So it has proven to be! It's been 5 years now since introducing the first bill. It's been exhilarating, exciting, disappointing. It's been a drain, an adventure; at times a nightmare; but a necessary and sometimes very painful experience—yet I'm firmly and deeply convinced that it is in the broad national interest.

The situation was bad in 1982 during the debate on the first bill. It is much worse now. Border apprehensions and border violence have doubled. I've shared all of that with you. The American public has been demanding reform, but never, never have the long term national interests been so often thwarted by short term special interests—and those special interests are often driven simply by greed.

It was greed that brought the bill down in the 97th and 98th Congress. It was really tough for me to watch when you know you have the votes—if only you could get to a vote. But what's new about that? That's the litany chanted around this remarkable arena that we all love so well.

But watching the clock tick down in the House in the last two Congresses—knowing that somewhere down in there a majority of both Houses wanted a bill. That was tough for me. But I kept my patience and never wanted to lose my sense of perspective by becoming obsessed with the legislation. And I think my colleagues sensed that and then just several days ago I said "you know, I'm done." I can't get it and rather than brood about it, I'm sorry and I'm gonna forget it. I'm not saying that out of petulance or pettiness. We just have so much else to do and we'll deal with the issue of legal immigration next year and a review of the preference system and other things, but no more of taking my marvelous colleagues—both Democrats and Republicans alike—through the hoops again in the U.S. Senate. That was an honest and pure statement when I made it. Then my friend, that remarkable legislator from New Jersey, that superb man who was really "Mr. Immigration" of the entire Congress, Chairman PETER RODINO called me and he said "You know AL, I really didn't sleep. I was thinking about how important that bill is and why we ought to bring it up and do it and get is passed." And I said "PETER, I had the best night's sleep I've ever had last night because I knew the damn thing was finished up for another year and I'm just admitting it to myself and I'm quite resigned to the result. Disappointed, Yes. But resigned. And then PETER RODINO brought it back before us. Congressman CHUCK SCHUMER was an infatigable and dogged and persistent man as he pressed us all forward "to do something." He was probably the catalyst that kept it all moving through some very dark times. But the chemistry was remarkabl this trip. A blend of Congressmen RODINO, HAMM FISH, DAN LUNGREN, RON MAZZOLI, CHUCK, SCHUMER, LEON PANETTA, HOWARD BERMAN, SID MORRISON, BILL MCCOLLUM in the House. My indefatigable and extraordinarily loyal and supportive chairman in the Senate, STROM THURMOND who pushed me on and pressed me to continue over these entire past years. This man, STROM THURMOND, gave me the bouyancy and spirit to continue at all times. He was always available, always asking me if I was ready for markup, ready to proceed, could he be of any help. I could not have asked more—nor could he have given more. He has been like a second father to me in this remarkable institution and I cherish his friendship. And thny my friend, TED KENNEDY, my ranking miniority member on the subcommittee, I've stated my remarkable appreciation to him. And then my friend, CHUCK GRASSLEY, who has been right there at my side through all the years of activity on this bill. He has been superb. Helpful, questioning, supportive. Always there to make a quorum and always my bright and genial coworker. Senator JERRY DENTON who just recently came on the subcommittee and has turned his remarkable energies to the task. He, too, has been observant and thoughtful and most helpful as we deal with the legislation that confronts the subcommittee. It has been a pleasure to have him aboard. And then the others on the subcommittee, Senator PAUL SIMON of Illinois. Here is a man who probes and does his homework and his research and then in a very thoughtful and well modulated way states his case in a splendid fashion. He has added much to the subcommittee and it has been a great pleasure to renew a friendship that started when we were State legislators together in 1971. He from Illinois and me from my native State of Wyoming. Senator HOWARD METZENBAUM has been a strong and steady ally—through thick and thin. He and I argue like hell but I have rich respect for him. I owe him much on this one.

And then our majority leader deserves perhaps the richest portion of my commendation and appreciation. For he was always there to "open the door" to let me proceed with the bill, to get it to the floor and without his remarkable stewardship and guidance today and yesterday this bill would not be ready for your vote in just a few moments. BOB DOLE has been absolutely fair and persistent. There were several occasions where he could have taken up other business and I would say, "BOB, if you could just give me another hour or an hour and a half, I think I can get through this postcloture time activity. He'd stand at the back of the Chamber with that magnificant and impish grin and just keep pushing me on and yet letting me know that the business of the Senate had to go forward and that we would just simply have to conclude so we could move on to reconciliation and other matters which will consume us long into the night. That is typical of his generosity and fairness. Being the first lieutenant to BOB DOLE, the captain, has been one of the great pleasures of my past 2 years as assistant majority leader.

And then Senator ROBERT BYRD, my friend from West Virginia. It was he who when I first launched into this remarkable activity came to me and said "ALAN, you're on a very important mission with illegal immigration reform. And I support you. And I have only one question to ask." Then he asked his question. It had to do with his employers and H2 workers in West Virginia. That issue was early resolved back in 1982 and ROBERT BYRD became one of my most loyal and persistent supporters. He, too, always assisted me in getting the bill to the floor, pressing on, asking me about its progress and genuinely interested in it. When we thought we had lost it all, just 3 weeks ago, I remember my friend, ROBERT BYRD and I were opening the Senate for its morning business and I made my remarks about the disappointment of not seeing immigration reform come to pass again this year and Senator BYRD in his remarks which are on page S13865 of the CONGRESSIONAL RECORD of September 27, 1986, was beautifully expressive. He indicated that he hoped I would "take comfort" in the fact that Plato, wrote the opening sentence of the Republic 16 times before he was satisfied. And he urged me to continue and not be discouraged. He said "I've found after many, many years that there is nothing like patience and tenacity. When those two virtues are combined one may marvel 'What hath God wrought.'" And so it is. I shared with him at the time that I tried to live by a credo that I had framed and tacked on my wall many years ago. It didn't mean much to me then. It surely does now. Let me share it with you. It is entitled "press on." Here it is. "Nothing in the world can take the place of persistence. Talent will not; nothing is more common than unsuccessful men with talent—genius will not; unrewarded genius is almost a proverb. Education will not; the world is full of educated derelicts. Persistence and determination alone are omnipotent." That is a credo I have learned and tried to live by. It means much more to me as I think of it and share it with you again today at this special time.

I want to pay particular thanks to you, my colleagues, right here in the U.S. Senate. You are the ones that helped me push that massive boulder up the mountain on three separate occasions. Admittedly Sisyphus had it worse. For he is still engaged in his mythical and arduous straining. For me, if we don't get this thing passed tonight the strained and arduous pushing will only continue. I hope we might do it right now.

Now we have the bill which will be approved in moments, I hope, by you

in the Senate. And the President has promised to sign it. That commitment was made yesterday.

The guts of immigration reform are here. All of it. Employer sanctions; increased enforcement, worker authorization system, verification systems, and legalization is there, as are provisions for farm labor. It has the essence of what the Select Committee on Immigration and Refugees Policy proposed and just what was incorporated in the bill in 1982 and every Congress since. All of these issues were addressed as completely in the first bill which we introduced in 1982.

No wonder it only gets done every 35 years. No one would touch it with a stick. Perhaps this rather ghastly job has to be done by people who are not as deeply involved and emotionally targeted by their constituents. During the last immigration reform 35 years ago it was Senator McCarren of Nevada and Congressman Walter from the 16th District of Pennsylvania. But the wheel comes around and it's just my distinct pleasure to be part of the combination working with PETER RODINO and RON MAZZOLI and TED KENNEDY and HAMM FISH and DAN LUNGREN and some of those persons I named before.

Let me pledge to you tonight that I will use all of my skills and abilities to work diligently in my oversight jurisdiction capability. I will work hard to study and improve and amend this legislation if necessary. I will work closely to observe the implementation of this bill and more assuredly I'll pledge that we will carry out the legislative intent of this measure. I can assure you that Congressman RODINO will provide that similar degree of oversight in the House of Representatives.

One final and significant tribute is yet to be made. That is to my friend of many years, Dick Day. He serves as the Chief Counsel and Staff Director of the Subcommittee on Immigration and Refugee Policy. Whenever I asked, he gave. He came to the inauguration in 1980 and I had just taken on my new duties as chairman and I said "Dick, I'm headed into the worst damn thicket and briar patch I can ever imagine in all of my public life. I'm going into an issue fraught with emotion, fear, guilt, and racism and I need someone at my side who knows me, cares about me, shares my ideas and ideals and spirit of adventure as we take on the cause. You're it, Dick. Pull up your roots in Cody, WY, where you've been practicing law, give up $30,000 or $40,000 difference in salary and come on out here and let's give it a whirl." He came here. A bright and intelligent man, a former professor, a most extraordinary lawyer. And he came here with his lovely wife, Judy, and they laid themselves on the line for me. The payoff is tonight. You have been my counselor, my right hand, an additional hemisphere of my brain, a lovely friend. I owe you much. The effort that you expended on my behalf, the diversions and alternations you made in your own life will never be forgotten by me. You are the splendid essence of the word "friend."

Many other things come to mind. If I go on I could become a bit maudlin. We're ready to vote. I'm ready to vote. And amidst all the rhetoric, all the debate, all the emulsification of words and words and words over the past 6½ years I think of only two that seem to suffice—and this is so in all situations of life. For at this point eloquence fails, verbiage never matches the mood, words can't match the feelings. And never will. So enough. From my heart—to each and every one of you who have been a part of this remarkable odyssey. Just simply and sincerely and expressively the two words "thank you."

PRESS ON

Nothing in the world can take the place of persistence. Talent will not; nothing is more common than unsuccessful men with talent. Genius will not; unrewarded genius is almost a proverb. Education will not; the world is full of educated derelicts. Persistence and determination alone are omnipotent.

Mr. GRASSLEY. I rise to offer my most heartfelt congratulations to my good friend, the junior Senator from Wyoming.

He has labored long and with great patience on this bill. Everyone who discusses it mentions his efforts and the appreciation they feel for him. I have worked closely with him on this bill for more than 5 years, and I can tell you that these accolades for Senator SIMPSON are truly well deserved.

Immigration is one of the toughest issues Congress has dealt with in recent decades. We have had to counteract the efforts of 30 years of inaction in moving this bill forward. I know of no one who could have handled the sensitive and difficult job in a more evenhanded and courageous manner.

Every person in this country whether citizen, permanent resident, or illegal alien owes Senator SIMPSON a great debt.

In addition, I would like to thank the senior Senator from Massachusetts, Senator KENNEDY, for his patience and steadfast support for representation of those who are most concerned about this bill.

I would also like to express my deep appreciation for the efforts of the senior Senator from South Carolina, Chairman of the Judiciary Committee, Senator STROM THURMOND. Without his guiding hand and tremendous support, we would have never gotten to this point. He has long been involved in immigration reform and his knowledge and expertise has helped me and other members of the committee to understand the consequences of this legislation. His personal interest in even the smallest details has amazed those who know the demands on his time.

In addition both the President and the Attorney General have been directly involved in the development and progress of this bill. Their involvement has demonstrated the commitment this administration feels to immigration reform after so many previous administrations have ignored the problem and have been afraid to bite the political bullet.

I would also like to mention one of the unsung heroes of the Senate in the immigration area, the former Senator from Kentucky, Senator Dee Huddleston—who through many years of frustration and inaction by the body kept doggedly working to bring about these important reforms.

Finally, it is important to note the fine staff work of the Immigration and Refugee Policy Subcommittee. Dick Day and Carl Hampe have labored tirelessly to ensure every "i" has been dotted and every "t" has been crossed.

Without all of the efforts of these people, we would not now enjoy such a fine product. I hope we conclude this matter quickly and send the right message to the American public—that we care about immigration reform.

Mr. CRANSTON. Mr. President, I rise with very mixed feelings about the conference report on immigration reform legislation that is before us.

As many commentators have noted, including some of the bill's foremost proponents, this bill is far less than perfect, like most legislative compromises.

And, as legislators, we often settle for imperfect instruments.

I have devoted many hours of concern over this conference report.

That any bill on this vital subject should be at the verge of enactment is a tribute to the hard work, diligence, and perserverance of my good friend, the Senator from Wyoming, ALAN SIMPSON, who only a few short weeks ago, during one of those late-night Senate sessions, proclaimed his frustration by telling the Senate that he would not trouble us again on this subject.

I congratulate Senator SIMPSON on his efforts and his apparent success in bringing forth a bill which so many in both houses of the Congress support.

There has never been any doubt that illegal immigration and our uncontrolled Southern border are a major concern for our Nation, and that Congress needs to do something about it.

There has always been wide agreement on some of the steps that needed to be taken—strengthening our border

enforcement, for example. I have always supported such steps.

And there have been thorny, complex, multisided disagreements on the value, effectiveness, and potential side effects of some of the central strategies of the present bill and its predecessors, in the ways it attempted to control future illegal immigration and deal with the 2 to 12 million undocumented people—probably around 6 million—who are already here.

The conference report before us is, from my point of view, more tolerable than any version the Senate has considered.

It does strengthen our Border Patrol.

It assures—for the first time, in ways acceptable to both growers and American farmworkers—additional agricultural workers to harvest California's perishable crops under conditions where exploitation of foreign workers is less likely, and dependence on undocumented workers is unnecessary.

It offers more generous and humane terms of legalization for undocumented workers who qualify than any previous version presented to the Senate. I believe that the bill may reduce the vulnerability to exploitation of many of those who have been here without documents.

And, for the first time, it attempts to provide a remedy for those Americans—especially Hispanics and Asians—who may face increased employment discrimination as a result of the employer sanctions provisions of this bill.

I certainly hope, though I am not entirely convinced, that this remedy will deter or alleviate some of the consequences of that discrimination.

The inclusion of Frank amendment language, despite modifications which have weakened it almost to the point of meaninglessness, is a step forward over previous Senate bills, though I certainly would prefer a bill which does not engender employment discrimination over one which hopes to remedy the employment discrimination it may create.

These, then, are the major improvements in the present conference report over previous versions the Senate has considered and adopted over my objection. And many have suggested that if this conference report is not adopted, any subsequent version of this bill will be worse, not better. And that is a consideration that weighs heavily on me.

Against these developments, I am forced to consider that this legislation still depends on employer sanctions as its major enforcement tool to deter illegal immigration, and that its restrictions on Federal reimbursement will impose major new costs on many of my State's larger counties which will result from bringing the undocumented out of the limbo in which they previously have survived—costs that will not be shared by taxpayers in many other States.

These are costs that should be borne by the Federal Government, but under the formula in this legislation, much of these costs will be borne by taxpayers in Santa Clara, Los Angeles, Fresno, San Diego, and Orange Counties.

But, Mr. President, the crux of the immigration reform debate has always been over this bill's dependence on sanctions on employers to deter hiring of undocumented workers as the key to deterring illegal immigration.

Employer sanctions unwisely impose the burden of enforcing the Nation's immigration laws on the Nation's employers,

Employer sanctions may cause employment discrimination, because the safest way to avoid scrutiny and sanctions is to have an all-Anglo work force,

Employer sanctions may breed a cottage industry in forged documents, and

Employer sanctions can be the first step toward a national identification card-internal passport system—a primary tool of totalitarian governments to restrict the freedom of its citizens. And, when employer sanctions are discovered not to be working, they have not worked to quell illegal immigration everywhere they have been tried, that is when the danger of taking the second step occurs.

This danger underscores the importance of the provision crafted by the very able senior Senator from Massachusetts, EDWARD KENNEDY, for a triggered sunset of employer sanctions upon a finding by GAO that employer sanctions are causing discrimination. Oddly, the conference report has tilted that sunset language so that it now would eliminate the antidiscrimination language, if it proves to be a burden on employers, reflecting the feeling of the managers that sanctions are more important to protect than the civil rights of individuals.

I would have preferred stronger medicine, namely the "Pure sunset" on employer sanctions considered in the House.

This legislation leaves unresolved or unfinished some major immigration-related problems, and, predictably, it will cause some new ones.

By substituting beefed up labor law enforcement, coupled with sanctions targeted only on those employers with a pattern or practice of immigration-related labor law violations—that is, those employers who traditionally use or exploit the undocumented for their economic benefit—we could avoid the worst side effects of employer sanctions, while preserving whatever deterrent effect sanctions may have.

When we come back in 1987, we will need to come back to take care of the unfinished business: Alleviating any employment discrimination; dealing justly and promptly with the growing question of Central American refugees seeking political asylum; improving the service functions and eliminating the sometimes abusive practices of the Immigration and Naturalization Service; and returning to the Federal Government the properly Federal responsibility for paying the costs of our national immigration policy.

It is only in the hope that we can deal equitably and promptly with these remaining issues in the next Congress, and with recognition of the value of the improvements in the present bill that I announce my intention to vote for the conference report before us, in spite of my serious reservations about it.

Mr. HUMPHREY. Mr. President, I rise in strong opposition to the pending conference report, and particularly to the inclusion of various amnesty or "legalization" provisions therein. These provisions are found in title II and title III of S. 1200, now before us.

On September 19, 1985, the Senate passed a version of S. 1200 similar to that before us today. I was one of the 30 votes opposing the bill back in 1985, and I do not support the version of the bill before us today.

I oppose this version of S. 1200 primarily because it includes amnesty and "legalization" provisions. I believe that these provisions will not only counteract the positive provisions included elsewhere in this bill—they will gut the effect of employer sanctions and improved Immigration and Naturalization Service [INS] resources—but they also represent a basic unfairness that is unworthy and offensive to the millions of law-abiding immigrants who wait years to enter this country legally.

The amnesty—legalization—provision that is contained in this conference report includes the House provision granting temporary-resident status to illegal aliens who entered the United States prior to January 1, 1982, and who have resided here continously since. This date represents a compromise from the original Senate-prescribed date of January 1, 1980—a date I find less distasteful, but nevertheless a date which I could not support.

After 18 months, instead of the 30-month provision included in the Senate bill, these aliens will become permanent residents, assuming they meet certain other relevant conditions. Within 5 years, these aliens, formerly illegals, may now become citizens of the United States. It is my understanding that these provisions apply to any illegal alien, in any line of employment, or unemployment, and not just agricultural workers.

Another legalization provision, one which I find to be even less justifiable,

is the provision which applies only to agricultural workers harvesting perishable crops. This provision establishes classifications by which illegal aliens working in this country for as little as 90 days, may be granted amnesty or may be legalized. The bill sets up a two-tier legalization system:

Tier 1 allows illegals who resided temporarily—90 days—between May 1985 and May 1986, to receive 2-year temporary status, and after 2 years in that status, they could apply for permanent status. There is no cap whatsoever on the number of aliens who qualify under this tier.

Tier 2 allows illegals who resided temporarily—90 days—for 3 prior years to receive 1-year temporary status and to then apply for permanent resident status. Tier 2 is capped at 350,000.

Beyond this, the bill allows "replenishment workers" needed to fill farm worker shortages to receive 3 years temporary status with a requirement that they work 90 days each year.

As I have mentioned, these amnesty, or legalization, provisions are offensive to me. An important objection that I have to these legalization provisions is that it will destroy the other gains this bill seeks to achieve. Where employer sanctions have been enacted to eliminate one drawing card, or magnet, for aliens considering breaching our borders and entering the country, these amnesty provisions create another powerful magnet for illegals. Where sanctions would encourage legal entry, amnesty provisions only foster unnecessary and destructive hopes of future amnesty.

Not only are those illegals now here allowed to remain, and not only are they allowed to bring relatives into the country, further increasing the breach of our borders, but future aliens will enter the country illegally with the perhaps vain—but who can tell—hope of an amnesty in years to come.

I have been unable to find consistent estimates on the numbers of aliens who might be legalized under this amnesty provision, the number of relatives they might bring with them, and just as importantly, the number of aliens who would be encouraged to enter once these provisions are passed. All estimates range in the millions. For instance, the U.S. Bureau of the Census has estimated that currently from 3.5 to 6 million illegal aliens currently reside in the country. However, Congressman McCollum, an opponent of amnesty, who narrowly failed to remove the provision on October 9, 1986, from this bill, and his colleagues estimate that perhaps 20 million illegals currently reside here, and up to 70 million ultimately would be legalized, granted amnesty when the relatives of illegals now here, enter by way of a chain reaction of migration. These numbers are of shocking significance in relation to the current population of 250 million U.S. residents.

Nor have I been able to find consistent estimates on the cost to the Nation of such an amnesty program. I note however a Congressional Budget Office [CBO] report which estimates that in the later years of the program, the States would bear some significant costs as a result of legalization, despite the Federal payment provided to offset such expenses.

Under this bill the Federal Government will reimburse the States for costs they may experience as a result of providing assistance to legal aliens, up to $1 billion per year for each of 4 years. It is because of this that we were required to vote to waive the provisions of the Budget Act, a waiver that I opposed yesterday and continue to oppose. Note that this figure, while significantly greater than the $3 billion to be provided in the Senate bill over a period of 6 years, still will not cover the costs of providing that assistance to these aliens.

The Congressional Budget Office has calculated the expenses to State and Federal governments of providing the assistance that is permitted under the bill. That assistance now excludes most Federal assistance, except for specified education and health programs—Medicaid is not one of them, from being provided to newly legalized aliens for the period of 5 years. There exists however an exception for the aged, the blind, the disabled, and Cuban and Haitian entrants. Also note that these provisions are more generous than the Senate proposal which would have allowed no assistance whatsoever for 6 years.

So, after subtracting Federal share for SSI, Medicaid and food stamp benefits provided to legalized aliens, including the special agricultural workers, benefits provided through State programs, and after subtracting the estimated State costs for public assistance and education, the Budget Office has estimated the net gain or loss to the State after the Federal $1 billion grant.

Note that in the second 2 years the States will actually lose money in spite of the grants. I have very considerable concerns about the burden on the individual States and localities that this bill's legalization provisions will create.

I ask unanimous consent that the chart prepared by the Congressional Budget Office be printed in the Congressional Record.

Moreover, in analyzing the costs of this legislation it is imperative that we examine the costs to the Nation posed by displacement of American citizens from jobs that would subsequently be held by legalized aliens. Some of these costs are detailed in a table prepared by the American Immigration Control Foundation using the central office of the U.S. Immigration and Naturalization Service in Washington, DC, as a source. This table indicates that despite the aliens' tax contributions, the net cost to taxpayers of supporting illegals runs in the millions. I ask unanimous consent that the table be printed in the Congressional Record.

Mr. President, I suggest that notwithstanding the arguments above, the legislation before us is even more objectionable on the grounds that we violate the basic principle of fairness in passing such legalization provisions. The—by the count of my colleague, Mr. Gramm—1.9 million immigrants now waiting patiently to enter our Nation legally will, in effect, be punished when we legalize those who have not sought legal recourse, and have entered illegally. Here we are doing nothing more than sanctioning illegal activity at the expense of those hundreds of thousands of immigrants that have followed standard immigration procedures. This is wholly unfair.

It is the lack of a principle of fairness that I must oppose. I note that there are hundreds, even thousands of refugees from the tyranny of the Soviet invasion of Afghanistan who may have waited for years now to emigrate to the United States. These are refugees whose poverty is extreme, whose dignity has been gravely violated, and whose geographic proximity to the United States does not permit them the opportunity to walk across an American border. And yet these Afghan refugees, for example, who have waited patiently for a legal entry into the United States, will continue to wait, while those who have breached the borders illegally will now be granted legal residency status.

I also must oppose the principle that, in legalizing those who have entered the country illegally, we will be rewarding lawbreakers. This is a slap in the face to legal aliens who now reside here, it is a slap to those who continue to wait, and I believe it sets an untenable and undesirable principle for dealing with future lawbreakers. We should not reward those who have successfully violated U.S. immigration policy, those who can prove they have broken U.S. law.

I also wish to remind my colleagues that the American people oppose amnesty provisions such as these, and in fact oppose provisions which are significantly less generous than these. A recent U.S. News & World Report poll taken in February of this year, indicates overwhelming opposition to the general principle of amnesty or legalization. In that poll only 17.4 percent of those polled favored granting amnesty to those illegal aliens already living in the United States. At the same time, 75 percent polled favored further restricting immigration policy. An Associated Press poll supports this

latter view of where we want immigration policy to go.

I ask unanimous consent that these polls be printed in the CONGRESSIONAL RECORD.

It seems to me the primary argument in behalf of legalization is not one of principle, and is not one made in defense of those who have laid down roots in this country, have established homes and families, and may even be contributing members to our society.

Rather, in my view, the argument for amnesty and legalization provisions is one based on expedience. Supporters of these provisions, it seems, prefer to argue that without amnesty, we will not pass any immigration reform. Without a balance we will not be able to reach the compromises necessary to achieve such legislative reform. Supporters also argue that we do not have the resources to ferret out so many illegals who have resided here for years, and to send them back.

Mr. President, I do not believe it is wise to support legislation with provisions whose primary justification is expedience rather than prudent national policy. No, in this case we must err on the side of fairness and justice, respect for those who have waited patiently and respect for the law.

I support the Senator from Texas in his opposition to the amnesty provisions included in the version of S. 1200 now before us. I encourage my colleagues to oppose the amnesty and legalization provisions included in this bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

METHODOLOGY

This Associated Press/Media General public opinion poll was conducted by Media General Research among a representative sample of 1,532 adults across the nation living in telephone households.

Interviews were conducted between February 6 and February 13, 1985, during the hours when men and working women could also be reached. Up to three callbacks were made to reach the appropriate respondent.

The telephone sample was drawn using a random method by Survey Sampling, Inc., of Westport, Connecticut. It included listed and non-listed telephone households.

The data projects to an estimated 161 million adults in telephone households.

11. In general, do you believe immigration laws should be changed to make immigration more difficult, less difficult, or should the immigration laws remain the same?

	Base	More difficult (percent)	Less difficult (percent)	Remain the same (percent)	DK (percent)
All Adults	1,532	55	9	24	12
White collar	609	54	11	24	11
Blue collar	308	62	8	23	7
Other occupations	146	57	13	21	9
Not in work force	466	51	6	26	17
18–34 years	632	51	11	27	11
35–54 years	498	57	9	24	10
55–64 years	202	64	6	22	8
65+ years	199	55	6	19	20
Not high school graduate	234	55	6	21	18
H.S. graduate	571	60	7	23	10
Part college	351	56	9	24	11
College graduate	374	48	13	28	11
Black	108	46	15	24	15
White	1,358	57	8	24	11
Other	62	47	16	29	3
Protestant	834	60	6	23	11
Catholic	365	50	13	28	9
Jew	33	37	24	24	15
Other faith	131	49	13	21	17
No preference	162	52	10	24	14
Democrat	489	55	11	23	11
Republican	435	64	4	23	9
Independent	489	51	10	27	12
Ind. Lean Dem	150	52	17	21	11
Ind. Lean Repub	162	55	8	25	12
Ind./Ind	177	47	6	33	14
Democrat + Lean	639	54	13	23	11
Republican + Lean	597	62	5	23	11

Most Americans polled are against amnesty.

[From the U.S. News & World Report, February 1986]

WHAT OUR READERS HAVE TO SAY

They're proud of America—but concerned about education, crime, the budget deficit and future of Social Security.

U.S. News readers have always shown a strong interest in what's going on in the nation and the world. They got their chance to express their views in the readers' survey included in the year-end Outlook '86 issue.

More than 36,000 readers took the trouble to tear out the questionnaire, mark their choices and mail it back. The results that follow—while not a true cross section of our readership—are a statistically reliable sample of the reader group that responded to the survey.

The survey answers reflect a strong sense of satisfaction in the way things have been going recently—58.4 percent saying their personal financial conditions are better today than four years ago. Just 14.3 percent said they were worse off. In the year ahead, 39.8 percent expect to be better off and 46.4 percent think they'll stay about the same. Just 10 percent think their personal condition will be worse.

A majority, 57.7 percent, said the U.S. position in the world is more secure today than it was four years ago. An additional 25.6 percent said things are about the same, and only 15.9 percent said the U.S. position is worse.

But that doesn't mean our readers are happy about everything. The hundreds who included letters with their survey forms wrote strong words about crime, education, immigration, the federal budget deficit and Social Security.

U.S. NEWS SURVEY RESULTS

Which of these concerns you the most?

	Percent
Crime	57.9
Another recession	22.4
Nuclear war	13.0
AIDS	6.6

Do you believe American children are receiving a good education?

	Percent
No	69.0
Yes	24.0
Don't know	6.6

If not, who is primarily to blame?

	Percent
Parents	39.4
Administrators	33.5
Teachers	17.9
Students	5.4
Taxpayers	4.8

How should immigration policy be changed?

	Percent
Restrict immigration further	74.9
Grant amnesty to illegal aliens already here	17.4
Let more immigrants come	6.1

Will the budget be balanced in 1991 as required by Congress?

	Percent
No	79.8
Yes	12.5
No opinion	6.8

Do you favor raising taxes, even your own, to reduce the federal deficit?

	Percent
No	52.8
Yes	43.3
No opinion	3.3

Would you rather retain Social Security or provide for your own old age?

	Percent
Keep Social Security	60.5
End it	32.3
Don't know	6.5

Asked to select among U.S. problems that concern them most, 57.9 percent of the respondents said crime. Other top concerns were a possible recession, nuclear war and AIDS, in that order.

Sixty-nine percent said they don't believe that American children are receiving a good education. The respondents split widely on a follow-up question about who is to blame for that—citing parents first, then school administrators, teachers, students and taxpayers.

"There is enough blame to go around for everybody," said a reader from North Royalton, Ohio. That sentiment was echoed by several others.

Our readers stood firm on the immigration questions, with 74.9 percent urging further restrictions on the influx. Said one: "I don't believe that everyone born into the world is an American who just hasn't gotten here yet, nor do I believe that everyone has a 'right' to come if they want to."

Worry about the deficit was a theme running through many responses, with 79.8 percent prediciting the federal budget will not be balanced by 1991, as the law now requires. "Gramm-Rudman can easily be amended or repealed by the next Congress," noted a reader in Omaha.

Although 52.8 percent opposed raising taxes to reduce the deficit, 43.3 percent said they would be willing to pay more. But many prefaced that with comments on the need to change Congress's spending habits. A Baltimore reader said he voted no on higher taxes because "Congress does not have the guts to say no to the special interests nor to stop trying to buy votes."

That 32.3 percent would opt to provide for their own old age without Social Security may be a bit surprising. But some who favored keeping Social Security said they would have switched sides if there were a workable alternative.

Many readers included complimentary notes about President Reagan, and there was heavy support for the Republican Party as best equipped to handle both foreign and

domestic issues. But there was wide divergence on what Reagan's main legacy will be.

While 33.9 percent said he will be remembered for having reduced the role of government, 32 percent said his legacy will be the "largest deficit in history." Other choices: Largest peacetime defense budget, 13 percent; peacemaker, 12.1 percent; tax reform, 9.5 percent.

A number chided us for not offering a wider choice on Reagan. "I believe Ronald Reagan's main legacy will be the restoration of America's pride and self-image," said a Texan.

Asked where war is most likely to break out this year, 75.1 percent said the Mideast, 13 percent said Central America and 11 percent said South Africa. Nearly 75 percent said the use of nuclear weapons is unlikely in the next 10 years.

Several questions drew inconclusive responses. These included whether having more women in the workplace is a positive or negative trend, whether farm supports should be continued and which environmental issues are the most important.

Our readers are bullish on the stock markets, with 56.5 percent predicting the Dow Jones index will be at 1,600 or higher at year's end.

A final question about the "mood of America" drew the response from 55.9 percent that it was "mixed, depending on income level." But 39.3 percent said they were generally happy, and just 4.2 percent were generally unhappy.

Legalization assistance under S. 1200 conference bill:

AMOUNTS FOR STATES UNDER A FIXED $1 BILLION A YEAR

(Fiscal years, in millions of dollars)

	1988	1989	1990	1991
Fixed $1 billion	1000	1000	1000	1000
Subtract Federal costs for SSI, Medicaid, and Food Stamps for legalized aliens (including special agricultural workers)	71	307	415	448
Remaining grant for State reimbursements	929	693	585	552
Estimated State costs for public assistance	108	429	588	613
Grant less costs	821	264	−3	−61
Estimated state costs for public assistance and education	122	593	849	804
Grant less costs	807	100	−264	−252

Mr. LEVIN. Mr. President, for years now the Congress has grappled with the problem of illegal immigration. There has been a consensus for some time that something must be done to stop the flow of illegal immigration, but there has not up to this moment been a consensus on how to achieve this goal.

I opposed the most recent Senate version of immigration reform when we voted on it in September 1985 because several of its key provisions were seriously flawed. It did not provide any mechanism to allow persons discriminated against as a result of employer sanctions to seek redress. By delaying the legalization program, it created a very unfair situation in which people who have been here long enough to quality for legalization could not be hired legally during a 3-year interim period, and would be subject to deportation during that period. And the Senate bill also created an unmanageable Guest-Worker Program which would have jeopardized the wages and working conditions of American farmworkers and allowed the large-scale influx of foreign farmworkers.

The conference report before us today goes a long way toward addressing the problems that caused me to vote against S. 1200 last September. It isn't perfect, but since it relates to a matter as perplexing and controversial as immigration reform, it is hard to imagine how it could be.

First of all, the bill that has emerged from conference contains the House provision known as the Frank amendment. It is similar to an amendment offered by Senator HART and myself last September. The Frank amendment prohibits discrimination by employers based on national origin or citizenship status, sets up a procedure for filing charges against such discrimination, and establishes the position of "Special Counsel for Immigration-Related Unfair Employment Practices" inside the Justice Department.

The bill also provides for GAO review of the employer sanctions and the possiblity that the sanctions will be phased out after 3 years if it is found that they lead to discrimination against legal residents.

Mr. President, we would be kidding ourselves if we think that the Frank amendment or any antidiscrimination amendment we might adopt will absolutely prevent any discrimination against Hispanic citizens and legal residents by employers who are subject to sanctions for hiring illegal aliens. But it does provide a mechanism for redress, it does designate a Government official whose sole responsibility will be to deal with this discrimination issue, and it does provide for a review and possible phaseout of employer sanctions if discrimination becomes a serious problem.

I am troubled by the possibility that U.S. citizens and legal residents might not be hired after this bill is enacted simply because they look Hispanic or speak with an accent. But the problem of illegal immigration is so serious and the window of opportunity for passing this legislation is so narrow that I am willing to give the Frank amendment a chance to work.

When S. 1200 was before the Senate last year, I offered an amendment to close the gap between the time employer sanctions were to go into effect—6 months from the date of enactment—and the time illegal aliens who have lived here long enough to be legalized would become eligible for legalization—3 years from the date of enactment. I thought this created an inconsistency and a terrible anomaly for those persons who would be eligible to become legal residents. These people would be eligible for legalization but it would be illegal to hire them during the 3-year interim period and they could be deported during that period. Unfortunately, my amendment did not pass. The failure of the Senate bill to provide stopgap protection for the narrow class of aliens eligible for legalization was one of the main reasons I voted against S. 1200.

This bill eliminates the need for my amendment because the 3-year delay for legalization in the Senate bill is not included. Instead, an alien who has been since January 1, 1982, can make application for adjustment to temporary resident status within an 18-month period beginning on a date designated by the Attorney General. And that date cannot be later than 180 days after the date of enactment. There won't be a gap between sanctions and legalization, and the group of aliens to whom we are saying, "you have been here long enough to have established roots—you are going to be eligible for legalization," will not be caught in this "never-never land" between legality and illegality that the Senate bill would have put them into.

Finally, Mr. President, this compromise bill contains a complicated compromise relating to foreign agricultural workers and the so-called guest-worker program. This was the provision that threatened to derail the bill in the House, and it was only after drawn-out negotiations between the various concerned parties that this compromise was worked out. I still have reservations about this provision. But it involves a compromise painstakingly arrived at and attempts to balance a number of conflicting interests. It appears that the bill could not pass without this comprise. Therefore, I will not oppose this legislation on the basis of the guest-worker provision.

The immigration bill before us today takes important steps toward addressing a critical problem. I will support it with the realization that the process of implementing such an extensive reform will be extremely difficult. I hope and trust that Congress is not simply sweeping this problem under the rug by passing this legislation, but that we will monitor the implementation of these reforms carefully with an eye to maintaining our country's commitment to a fair and compassionate immigration policy.

I congratulate intrepid, extraordinary magician, ALAN SIMPSON, for his unflagging effort and for a thankless task and his unfailing and robust good humor in prodding us to action.

Mr. DOLE. Mr. President, S. 1200 authorizes a substantial increase for the Border Patrol. My information is that this will amount to a 50-percent increase. At the same time, the drug bill also authorizes several enforce-

ment agencies to enhance their enforcement activities on the border. This raises the possibility of overlapping jurisdiction, duplication of effort, or rivalry occurring in our efforts to more effectively police our Southern border against illegal entry of individuals as well as dangerous drugs. Can you advise me of some of the Border Patrol's recent activities as far as arrests and seizures in recent months? Why was it felt necessary to increase the authorization so much? What will happen, as far as coordination of efforts and enforcement activities, if both pieces of legislation are enacted?

Mr. SIMPSON. Last year the Border Patrol broke all previous records for drug seizures between ports of entry along our southern land border. These seizures were more than any other enforcement agency including DEA and Customs combined.

There is good reason for this: The INS is the physical presence of the Federal Government along our Southern border. More specifically, the Border Patrol has had primary enforcement authority on the border; 2,700 of the total force of just under 3,500 agents are assigned to border service. After all, this is where the problems of illegal entry and smuggling of drugs are the worst.

The trends are truly alarming. The INS just announced a recordbreaking year for drug seizures—over 3,000 with a street value of over $170 million. In September, near Campo, CA, the Border Patrol made the largest seizure or cocaine and "crack"—some 1,300 pounds, worth an estimated $150 million—in the history of border seizures.

What makes the Border Patrol good at this dangerous job is its capability and extensive training, tracking, intelligence gathering, Spanish language capability, and the use of sophisticated equipment and techniques.

If new financial resources are to be made available to enhance border surveillance activities, certainly the lion's share of these resources should be allocated to the agency that has the prime responsibility for border enforcement.

Mr. DOLE. Both bills also provide authority for expeditious deportation of convicted felons. This is a particular concern of mine, since there are about 6,000 aliens currently in Federal prisons and many more in the State and local systems. Will these provisions give the INS and the Board of Immigration Appeals sufficient authority to remove these felons from our criminal justice system without years of delays and appeals? Are title VII of S. 1200 and the Narcotics Traffickers Deportation Act provisions of the drug bill compatible?

Mr. SIMPSON. Subtitle M of the drug bill amends the Immigration and Nationality Act to facilitate the deportation of aliens who have entered the United States for the sole purpose of importing and distributing narcotics grown and manufactured in their home countries.

I strongly support the revision of the immigration act to expedite the removal of alien narcotic traffickers. The change will key into the Controlled Substances Act, finally making it possible for the INS to respond effectively when aliens are convicted for the manufacture and distribution of opium and cocaine derivatives and "designer drugs."

The companion to this provision creates vital information exchange systems to provide our Embassies and consulates with information about aliens involved in narcotics traffic, in order to prevent the issuance of entry visas.

These important changes must of course be supported by resources from the INS to apprehend, detain, and remove illegal aliens engaged in narcotics traffic. Removal or preventing the entry of these aliens will interrupt the flow of drugs and money, and will improve the effectiveness of the system. Providing this authority to the Attorney General will give him an effective tool to be used by the INS and the Executive Office of Immigration Review for alien deportation. Not only will the Federal prison system benefit from an enhanced program to deport aliens in its custody, but even greater benefits can be anticipated at the State and local level, if the program can reach that far. It may well be that a supplemental request may be necessary to provide for additional personnel and resources to expedite these deportations. However, any such increases would be but a small fraction of the cost to provide prison and jail space for these individuals.

In my view, Mr. President, the provisions of the two bills are compatible. Taken together, they are a clear mandate to the Attorney General to deport these individuals forthwith.

INS RESOURCES FOR MICHIGAN

Mr. LEVIN. Mr. President, I would like to direct a question to my friend from Wyoming, the distinguished manager of this bill, Senator SIMPSON. I am concerned about the strain the requirements of this immigration bill will place on the already strapped Immigration and Naturalization Service in Michigan. It has been projected that 50,000 aliens in Michigan will be eligible for legalization under the terms of S. 1200. They will begin applying for legalization within the first 6 months after enactment of this legislation.

My understanding is that the demands of the legalization program in terms of INS personnel could easily paralyze the day-to-day operation of the Service. S. 1200 does contain additional funding for INS personnel, but I am not aware that the money is allocated geographically.

There has been a tendency to see illegal immigration as a Southern border problem, and therefore much of the attention when we speak of the issue is directed toward States that border on Mexico. And indeed, the illegal aliens first enter the United States through California, Arizona, New Mexico, and Texas. But what is often forgotten is that many of these aliens go on to settle in cities in the Northeast and Midwest. Many States in this region, including Michigan, have enormous illegal alien populations.

Can the Senator from Wyoming give me assurances, first that S. 1200 provides the INS with the resources it will need to carry out the provisions of the legislation before us while continuing its day-to-day operations, and second, that Northern States, like Michigan, will not be forgotten in the allocation of resources to different INS districts?

Mr. SIMPSON. I assure the Senator from Michigan that we expect that the additional resources this bill provides for the INS will allow it to perform its regular duties as well as the added duties this legislation calls for. I also assure them that it is my intention that the additional resources should go where they are needed. I understand that many States which do not actually border on Mexico have large illegal alien populations, that Michigan is one of these States, and I can assure him that those who crafted this bill intended for States like Michigan to receive their fair and needed share of the additional resources.

CUBAN POLITICAL PRISONERS

Mr. CHILES. Mr. President, there is a section of this comprehensive immigration bill that has particular interest to many Cuban-Americans. This provision calls on the administration to ease their restrictions which have denied entry into the United States for Cuban political prisoners who are stranded in third countries around the world, especially in Panama, Venezuela, Spain, and Mexico.

We are all too familiar with the number of Cuban political prisoners whom the Castro regime has held in prisons since 1960. Negotiations have resulted in the release of these persons, usually one by one over the past 25 years. Some of these persons have been allowed entry into the United States while others have attempted entry into this country through a third country. These former political prisoners in essence are stranded in these third countries such as Venezuela awaiting passage into the United States. Many are in a "limbo" status in these countries and in many instances forbidden work permits.

Mr. President, the language in the immigration conference report urges the administration to ease restrictions

on entry into the United States for these particular Cubans and I add my voice to encourage the administration to do so. Many of my colleagues in this Chamber have worked with me over the years to facilitate entry for Cuban political prisoners and this language reflects our keen interest. However, questions have been raised by this section in the report and I would like to ask Senator SIMPSON to clarify one point.

Senator, as you know, traditionally when the United States allows political prisoners from Cuba into this country under a refugee status, immediate family members are also granted entry. As family reunification is the premise of U.S. immigration and refugee law, I would ask the chairman of the Subcommittee on Immigration, if it is understood that the Congress in encouraging entry for Cuban political prisoners under this provision, intends that immediate family members be included in this allowance.

Mr. SIMPSON. Yes; the Senator from Florida is correct in his interpretation that political prisoners granted entry into this country traditionally are allowed entry for immediate family members. I would hope that the administration would grant such status to immediate family members of these particular Cuban political prisoners, if the administration, or when the administration, determines to again process these political prisoners for entry.

Mr. CHILES. I thank the Senator from Wyoming and know he understands the interest in this point for this Senator from Florida and for many Cuban-Americans.

Mr. DOLE. Mr. President, the Senate today considers the conference report on S. 1200, the Immigration Reform Act. That the Senate is able to take final action on this legislation is nothing short of a miracle. It is simply a monument to the leadership, dedication, and tenacity of the distinguished Senator from Wyoming [Mr. SIMPSON].

The immigration bill contains several features that fundamentally change our immigration laws. Leading the list is the legalization feature. This provision would allow hundreds of thousands perhaps even millions of persons now illegally residing in the United States to come forward and legitimize their status. Persons who can convince the Immigration and Naturalization Service that they have resided continuously in this country since January 1, 1982 or before, and are otherwise qualified to become citizens, will now be eligible to apply for permanent residence. The trigger date of this provision, January 1, 1982 is the date contained in the House bill. The Senate-endorsed date was January 1, 1980. This change will no doubt allow hundreds of thousands to come forward. Undoubtedly this will mean increased costs to Federal, State, and local governments to provide services and benefits to these individuals. At this point no firm estimates are available. We are truly signing a blank check that will impose heavy burdens on the taxpayers.

On the other hand, many of these individuals have demonstrated that they should become U.S. citizens.

This is the price we must pay for a new schedule of civil and criminal sanctions to be applied against employers who willfully hire persons not lawfully entitled to live or work in the United States. To this Senator, these provisions represent perhaps the last meaningful chance we have to stem the tide of illegal immigration. In the past few years the INS has made an ever-increasing number of arrests on our borders. This year the figure will probably exceed 2 million. However, for each arrest, others go undetected and successfully evade our immigration control system. How many succeed is anybody's guess. Perhaps now we can begin to get this problem under control.

Legalization will place a major new responsibility on the INS. Not only will the Service now have to process those who seek to legitimize their status—and this could mean a doubling or tripling of current workloads—but the INS will have to develop programs for effective oversight over employers. This too will mean a major new workload.

In addition, the Department of Justice is to be authorized to establish a special counsel to investigate and prosecute claims of employment discrimination against those who are legally entitled to work and live here.

The conferees also agreed to a verification process involving an enhancement of the Social Security card. As I understand it, the conferees generally agreed with the Senate on a future verification system. I have concerns about this issue and ask unanimous consent that relevant extracts of the report be inserted in the RECORD at the close of my remarks.

DEPORTATION

The new authority contained in S. 1200 as well as the drug bill also will give the INS new tools to deport those who should not remain here. I am particularly mindful of the thousands of deportable aliens who are now housed in our prisons and jails. In the Federal prison system alone there are over 6,000 convicted felons who are deportable. They are occupying space that is desperately needed. They are costing the taxpayers millions for their board and keep. These new tools should help deal with this chronic problem.

ENHANCED BORDER PATROL

S. 1200 and the drug bill both place new priorities on enhanced enforcement activities along our Southern borders. S. 1200 calls for a 50-percent increase in the authorization for the Border Patrol. This figure is probably just a downpayment on the increased resources that will be needed to do the job that we are entrusting to the front line enforcement agency protecting our borders.

It is regrettable, Mr. President, that the Senate was not able to complete action on my bill to provide a clarification of the arrest authority for the INS. This bill is pending in the Judiciary Committee. I have been assured by the distinguished chairman of the Immigration Subcommittee, as well as those who wanted to consider the proposal further, that this will be a priority matter in the next Congress.

It will also be my intention, Mr. President, to introduce amendments to the immigration legislation to authorize a new category of investors and entrepreneurs to be admitted outside of the existing quota system. Other countries such as Canada have successfully attracted new jobs and new investment this way. Perhaps a measure such as this will help to offset the massive costs of S. 1200.

FARM WORKERS

As I understand the conference report, the conferees adopted the House provisions which create a new program for agricultural workers. This will allow hundreds of thousands of temporary workers to enter and remain here permanently. This program alone could well double the number of persons lawfully admitted. Currently about 400,000 are legally admitted. S. 1200 authorizes up to 350,000 to be admitted on a temporary basis. These individuals would remain in this status for 1 year before they could apply for adjustment to permanent status. The conferees adopted the House version which was somewhat more generous than the earlier Senate version. This Senator would have preferred the Senate version, but will defer to the judgment of the Senate conferees who considered the matter in great detail and agreed to recede to the House.

In conclusion, Mr. President, I again want to pay tribute to Senator SIMPSON and his able staff, headed by Dick Day. I should also acknowledge the long-time interest and dedication to immigration legislation by the ranking minority member of the Immigration Subcommittee, Senator KENNEDY. He is ably assisted by Jerry Tinker who is one of the real pros in this complex and controversial legislative field.

There being no objection, the report excerpt was ordered to be printed in the RECORD, as follows:

IMMIGRATION REFORM AND CONTROL ACT OF 1985

Identification fraud is a staggering problem. A May 12, 1983, report of the Senate Permanent Subcommittee on Investigations

dealing with Federal identification fraud estimated that the cost of fraudulent schemes involving Federal, State, and local entitlement programs alone exceeds $24 billion annually. Hearings on this issue during the 98th Congress by Senator Dole's Senate Judiciary Committee's Subcommittee on Courts also found that, at present, there is easy access to counterfeit identification documents such as Social Security cards, birth certificates, and driver's licenses. Counterfeit documents can be obtained readily and inexpensively anywhere in the United States or neighboring countries from illegal commercial vendors or can be fashioned by "do it yourself" techniques.

Last October, as part of the Comprehensive Crime Control Act, Congress required that agencies operating identification systems use identification documents, insofar as possible, with common description terms and formats so as to reduce redundancy and duplication and to facilitate positive identification. In addition, the Congress required that within 3 years the President make recommendations to the Congress for the enactment of comprehensive legislation concerning Federal identification systems taking into account: (1) the protection of privacy, (2) appropriate civil and criminal sanctions for the misuse or unauthorized disclosure of personal identification information, and (3) the exchange of personal identification information authorized by Federal or State law.

The Committee expects that the President and the Attorney General will take the identification fraud considerations expressed in the Comprehensive Crime Control Act into account, including the results of the President's study, when available, when decisions are made about the type of identification and employment authorization documents which should be relied upon by employers to make determinations under section 121 and about the improvements which should be made therein.

Futhermore, the Committee believes that the President and the Attorney General, in conjunction with other interested Departments and agencies, should work with State and local identification document-issuing authorities to develop demonstration projects and programs to improve the reliability and validity of identification documents. Efforts should be made to bring State and Federal document-issuing authorities together to deal with the problems of document fraud and abuse and to develop common strategies to deal with them. Document formats could be standardized and software developed for the exchange of document information for the purposes of update, correction, and verification. For example, one of the most prevalent forms of document fraud involves the use of duplicate copies of birth certificates of deceased individuals to obtain new identification documents for an individual who then assumes the identity of the deceased individual. Unless some systematic means is developed for annotating the birth certificate with death information, the potential for fraudulent misuse will remain great.

Mr. SIMPSON. Mr. President, over the years of study, hearings, legislative drafting, debate, and negotiations leading to the enactment of this legislation—8 years, beginning with the appointment of the Select Commission on Immigration and Refugee Policy by President Carter, to the passage of the Immigration Reform and Control Act of 1986—many persons have made large contributions to this effort, sometimes little noticed, and I would like to recognize their contributions today.

Larry Fuchs, Executive Director of the Select Commission.

David Hiller, Don Baker, Ralph Thomas, Phil Brady, Greg Leo, John Bolton, Ken Berquist and Tom Boyd of the Justice Department

Donna Alvarado, Chip Wood, Arnold Leibowitz, Tina Jones, Betsy Greenwood, Carl Hampe, Jodi Brayton, Frankey Degooyer, Dee Dee Herzog, Helen York, and Stephanie Kellum of the subcommittee staff.

Jerry Tinker of Senator KENNEDY's staff, Ally Milder of Senator GRASSLEY's staff, Dick Dargon of Senator THURMOND's staff, Mark Contreras and Steve Smith of Senator SIMON's staff, and Ken Fulp of Senator DENTON's staff.

These and others have been an important part of the effort which has brought us to this stage of the process.

Mr. WILSON. Mr. President, on page 36 of the statement of managers there is a statement clarifying the residency requirements of the special agricultural workers. As a participant in the deliberations on the agricultural provisions of the bill, I do not think the language as it reads reflects the intent of the conferees. My understanding is that the intent of the conferees is to place at least a 6-month requirement on the first group and a 3-month requirement on group 2. Is that correct?

Mr. SIMPSON. If the Senator will yield, the Senator's understanding is correct.

Mrs. HAWKINS. Mr. President, I rise in support of the conference report to accompany the Immigration Reform and Control Act of 1986, S. 1200. No legislation during my tenure in the Senate has been as difficult to pass than this immigration reform proposal. This is unfortunate because I can think of no area more in need of major reform than our immigration policy. It is a basic responsibility of the Federal Government to control the flow of people into our country. It is clear that the Federal Government is failing to fulfill this basic responsibility. I hope the measure before us will be a step toward regaining control of our borders. Finally, I commend Senator SIMPSON for his tireless efforts to enact comprehensive immigration reform. All the American people owe a debt of gratitude to Senator SIMPSON for his dedication to this cause in the face of endless controversy, delay, and frustration.

Mr. President, I want take this opportunity to point out several provisions of the conference report, which I consider very important. First, the report contains a provision to establish a $35 million contingency fund to handle immigration emergencies. The State of Florida knows better than any other State how local communities suffer major dislocations when mass migration occurs. The Mariel boatlift overwhelmed local communities. Local services were strapped and Federal assistance failed to make up the difference. The Federal Government should never be caught as unprepared for this kind of emergency as it was during the Mariel crisis. The contingency fund provision contained in this conference report to this bill will make sure that the Federal Government has the resources to any future emergencies similar to the Mariel crisis. As the sponsor of this provision in the Senate, I am glad to see that this provision is retained in the conference report.

A second provision contained in the conference report to S. 1200, is the so-called SAVE amendment. SAVE is an acronym for systematic alien verification for entitlements. I offered this amendment during Senate consideration of S. 1200, last year. This provision will require States to verify, through INS computer records, the legal status of all aliens applying for benefits under certain programs of public assistance. The States will now be required to screen applicants for entitlements to determine if they are in this country illegally. It will prevent illegal aliens who are not entitled to receive these benefits from receiving them. The provision in the report also reimburses the States for 100 percent of the costs associated with implementing the program. These costs, however, will be more than made up in savings under the entitlement programs. I am very pleased that the final version of S. 1200 will include the SAVE provision.

Mr. President, one of the most controversial aspects of this immigration reform proposal is the provision granting legal status to illegal aliens who have resided continuously in the United States since 1982. I have been a reluctant supporter of past legalization provisions and I support the legalization provision before us now. The fact is that the Immigration and Naturalization Service cannot hope to find and deport all the illegal aliens who are currently in this country. There is not even a reliable figure as to how many illegal aliens there are in the United States. Given these circumstances, it is clear that we should give the INS a clean slate and encourage it to focus on preventing future illegal immigration.

While I share the concern expressed by those who believe that the legalization program is rewarding those who have broken the law, I see no other solution to the current crisis. Also, it is important to note that it is a fact that without a legalization there will be no

immigration reform. The need for comprehensive immigration reform is so great that we must move forward. This is the case now, just as it was the case when the Senate considered this bill last year.

I must state, however, that I have deep reservations about the provision in this bill that grants temporary resident status to designated agricultural workers. I fail to understand why we should give such generous treatment to these designated agricultural laborers in our immigration laws. I intend to follow the implementation of this program very closely and will work to tighten this provision if there is a need. I would prefer a more tightly controlled system to meet the labor needs of the producers of perishable commodities that is similar to the existing H-2 Program.

In a related matter, the conference report contains a provision to provide an immediate $1 billion appropriation for each of fiscal years 1988 through 1991 to cover the cost of the Legalization Program. There have been expressions of concern that this appropriation will not cover the real cost of the Legalization Program. The fact is that our immigration policy is the sole responsibility of the Federal Government and we should not saddle our local communities with extra burdens associated with this Federal policy. Thus, it is my hope that if the $4 billion does not prove to be adequate to cover that cost of the Legalization Program, that we will return to provide more funds.

Mr. President, the most important aspect of this bill is the question of enforcement. The bill contains an employer sanctions provision that will impose both civil and criminal penalties on employers who knowingly hire illegal immigrants. This provision is essential to preventing illegal immigration. If we are going to gain control over our borders, we must eliminate the incentive that brings illegal aliens to this country, the opportunity for employment. The bill also provides over $400 million in supplemental authorization funds for immigration enforcement and border patrol in both fiscal years 1987 and 1988. These supplemental funds should help the Immigration and Naturalization Service to increase Border Patrol personnel by 50 percent.

Finally, Mr. President, I must say that I am somewhat disappointed in the final outcome of this bill. When we first considered the question of comprehensive immigration reform in the 97th Congress it was a truly comprehensive reform proposal that was before us. I wish the bill before us now was not so limited in scope. Thus, I believe that it is important in the next Congress that we consider issues such as judicial reform and summary deportation, which are not included in the bill before us now. But I understand how the scope of this immigration proposal became so limited and I will support the conference report as a step toward more comprehensive reform of our immigration laws. Again, I want to commend Senator SIMPSON for his efforts on this bill. He has earned the Senate's respect on this issue. I commend this conference report to my colleagues and urge its adoption.

Mr. KENNEDY. The "Statement of Managers' that accompanies the conference report on S. 1200 contains a clerical error.

On the issue of "Time for Compliance with the Verification Process," the sentence in the statement that reads:

> However, the conferees direct the Attorney General to develop and promulgate regulations regarding the time for compliance which address the practical problems of farm workers and agricultural employers in satisfying the discrimination and verification requirements of this legislation.

should be the last sentence on this issue. Is that not correct, Mr. Chairman?

Mr. SIMPSON. Yes. The further language does not reflect the agreement of the conferees.

Mr. KENNEDY. Mr. President, I would also like to clarify a point raised in the debate in the House yesterday regarding our provision of legal services for H-2 workers.

When we provided that it was our intent that H-2A contracts "shall not violate any provision of the Immigration and Nationality Act authorizing the H-2 Program or any regulations" and went on to authorize Legal Services representation to secure "the rights * * * under the * * * contract," we obviously intended that such workers could use Legal Services attorneys to sue not only to enforce breaches of their contract but also, obviously, when those contracts violated the act or regulations. To hold otherwise is to deny the plain meaning of those two dictates. For it would allow an employer to offer illegal contracts that violate the law, but allow suit if, and only if, there was a breach of those—illegal—terms.

The language of the report and statement of the managers would be vitiated by such an interpretation.

Mr. HATCH. Mr. President, I rise in opposition to the Immigration Reform and Control Act of 1986. I well realize that the distinguished chairman of the Immigration Subcommittee, Senator SIMPSON, has spent 3 laborious years attempting to put together an act which would both control illegal immigration and reform our current immigration laws. As I said on this floor just over a year ago, Senator SIMPSON has done a herculean task of attempting to draft a workable, meaningful, and effective immigration bill. All of us in this Chamber are aware that we have lost control of our own borders. The President of the United States has made statements to that effect. I do not deny that something has to be done. I do not deny that perhaps as many as 1 to 2 million illegals are crossing our borders every year to enter the United States. I do not deny that illegal immigration has also been tied in with the enormous flow of illegal drugs into this country and to the potential, fortunately only potential at present, of international terrorist violence being exported here from abroad. I do not deny all of this. But this bill is not the answer, Mr. President. It will in no way resolve many of the basic problems which it makes more difficult rather than less difficult.

The idea that a legalization or amnesty can be given to potentially 6 to 16 million illegal immigrants, who arrived illegally in this country before January 1, 1982, is to undermine the very principles of legality upon which our entire immigration system is founded. In the words of my former colleague, Senator Richard Schweiker, the so-called legalization or amnesty "puts the Government squarely behind the lawbreaker, and in effect, says 'Congratulations, you have successfully violated our laws and avoided detection—here is your reward.'" In clear language, granting amnesty rewards the lawbreaker pure and simple.

Just yesterday, a representative of a coalition of Hispanic groups from my own State called our office to tell us of Hispanic opposition in Utah to the bill. Polls taken during recent years, such as the Associated Press Media Journal Public Opinion on February 6, 1985, of 1,532 adults in a scientific polling sample, indicate that almost half of the Hispanic citizens in this country oppose legalization and they wish to make our immigration laws more difficult instead of less difficult. A U.S. News & World Report survey, in February 1986, elicited 36,000 responses from its readership, 74.9 percent of those responding indicated that immigration should be restricted further. In the words of a senior fellow at a Center for Immigration Studies here in Washington, himself a Hispanic: "I know of many Mexican-Americans who are telling me that they feel that * * * the coin of citizenship for them is being debased by this virtually uncontrolled mass of illegal immigration." I might add that I have received literally dozens and dozens of letters from ordinary citizens who are in a state of outrage over using legalization as a tool to immigration control. These concerned citizens ask: Control what? And once legalized, is this not an incentive to other potential illegals to come here and to try and attempt to do the same thing? How do you explain to these unsophisticated

people that the Congress has decided that this should be a one-time-only amnesty?

Of even greater concern, Mr. President, are the punitive measures directed against employers in several serious forms. I opposed employer sanctions a year ago, when S. 1200 first came to the Senate floor, and I am still opposed. Employer sanctions are unjust. They are unwise. They are unfair. They penalize the wrong group for actions of individuals which sanctions cannot knowingly, willfully, and with the specific intent of violating U.S. immigration laws. They do not have a job waiting for them in advance as illegals. They do not know when, or where, or if they are going to find employment. But they come anyway. And they will continue to come with or without sanctions.

Employer sanctions have been legislated in 11 States in one form or another. Those States include the two jurisdictions where illegal immigration is at its highest—California and Florida—have chosen not to enforce them. Illinois and New Jersey have rejected such legislation, and for good reason. Sanctions will hurt the small businessman. Despite the so-called antidiscrimination provisions of this bill, which I shall address in a moment, sanctions will depress the employment market for Hispanic minorities in particular, and make it more difficult, rather than less difficult, for any business with a need for unskilled workers to function. Sanctions will make it more difficult for unskilled workers to find employment. Both a 1982 GAO report and a 1985 GAO report indicate, out of nine foreign countries surveyed, France and Switzerland definitely had numerous problems with making sanctions work. West Germany and Spain had to pass new legislation in 1985 to attempt to remedy the difficulties which arose from their initial sanctions legislation, and so far the results are inconclusive. Three other countries, Austria, Denmark, and Sweden attribute the workability of sanctions imposed by their governments to the assistance of the large and powerful labor unions in working with employers in a socialist society in limiting the employment of illegal immigrants. We are not a socialist society, nor do we intend to become one. Our large labor unions do not dominate our economy. And, it should be emphasized, the sanctions in those three countries are aided by a rigorous identification system with frequent identity checks at the workplace. Americans do not carry identity cards. Not everyone has a driver's license. Not everyone has a Social Security card. Identity cards for the general population do not fit in with the concept of individual rights as enunciated in our Constitution and Bill of Rights. We cannot impose the kind checks and control upon our citizenry that would easily identify who is illegal and who is not.

Criminal sanctions to be imposed upon "Any person or entity which engages in a pattern or practice of violations" are unacceptable. This will have an absolute detrimental effect upon the employment of unskilled workers. The language of this subsection is not clear. It is ambiguous, indeed, it is vague and overbroad; and thus there is a serious question of whether it will stand the scrutiny of the courts in a due process void-for-vagueness test. There is also a question of the enforceability of criminal sanctions and of the effect of their possible arbitrary and capricious application to offending employers and businesses. If criminal sanctions are not enforced, they will breed a disrespect and disdain for the law and the legal process. On the other hand, if they are capable of being vigorously and effectively enforced, that type of sanction is far too excessive for the violations which it is designed to prevent.

Mr. President, the burden on the employer to prove the legality of his workers is immense. It is not at all clear as to the requirement placed upon the employer with respect to determining the authenticity of the documents presented to him by the applicant worker. During the last debate of this body on S. 1200, a number of my colleagues pointed out how easy it is to obtain false or counterfeit documents in the Los Angeles and the San Diego areas. Social Security cards, counterfeited, sell for as little as $5. An entire documentation packet can be obtained for as little as $10 to $20, and top-of-the-line forgeries may sell for between $50 and $60, including birth certificates and drivers' licenses. This bill, in fact, will probably create a thriving new false documentation industry in southern California and elsewhere.

The paperwork to be created in checking out employers, in investigating violations, in holding hearings, and in reviewing the system is not only burdensome, it will also be costly. It will create a great deal of unneeded litigation, and place yet another financial burden on good-faith employers who are unable to determine the authenticity of documentation or the true status of their applicant workers despite appearances of legality. Cease and desist orders carry fines, there are automatic fines ranging up to $1,000 for paperwork violations, and there is a duty to open business records to anyone investigating alleged claims of illegal employment. The employer has a tremendous and unfair burden under this proposed system. The average businessman and grower will, inevitably, begin to shy away from employing any ethnic and minority groups, despite the attempt by this bill to prevent a pattern of discrimination on the basis of national origin. It will be done. It will be hard to prove. And the attempt at an "alienage provision" creating a new civil rights offense is bad policy and bad law.

S. 1200 makes it an unfair immigration-related employment practice for a person or an entity to discriminate against any individual, except for an illegal alien, with respect to hiring or to employment recruitment on the basis of an individual's national origin, ethnic background, or citizenship status. In other words, if an employer or business discriminates either in hiring, or recruiting, or referring, except for an unauthorized alien, that employer would be liable in civil penalty for an unfair immigration employment practice. The bill does, admittedly, permit employers to choose a U.S. citizen or national over another alien individual when the applicants are equally qualified, but who is to determine the degree and the measure of qualification between one individual and another? On the other hand, the bill provides for a special counsel to investigate and prosecute claims of employment discrimination. The special counsel is empowered to establish regional offices. In these days of fiscal responsibility, budget austerity, and enormous deficits, the creation of a new—and costly—bureaucracy to monitor and enforce this unsound system is bad politics and bad government. The cost of this program in just this one area would be enormous.

This bill further expands the civil rights provisions of title VII, first by adding the concept of a citizenship category, and second, by extending the coverage of title VII from employers and entities of 15 or more persons to employers and entities of 4 or more persons. This was not the legislative intent in enacting title VII. It will bring about a tidal wave of litigation that the employers and that the courts can ill-afford. The managers of the bill claim that its anti-discrimination provisions only grant this sweeping coverage as long as sanctions are in effect. The managers statement indicates that the remedy to the problems in this expansion is by the repeal of sanctions through a joint resolution of the Congress as contained in the language of the bill. In actuality, this is neither inevitable nor even probable. The drafters of the bill are on record as saying that the Immigration bill rests upon the twin pillars of employer sanctions and legalization. Viewed from this perspective, if one of the pillars should happen to be removed, the bill would then lose its meaning and its validity.

I fully concur that discrimination in any form is bad. And racial or religious discrimination is reprehensible. The stated purpose of the anti-discrimination clauses in this bill is to prevent

employer or business discrimination on the basis or national or racial origin. But the hard fact of the matter is that current civil rights law already prohibits discrimination on the basis of national origin, as well as race, gender, and religion. This is more than adequate to deal with a pattern of discrimination in any business, industry, or agricultural setting. But to reduce the exemption of the number of workers in a particular business or entity, down to three, will be unfair for both employers and employees. I should also note for the record, Mr. President, that union hiring halls are exempted from all sanctions, including the knowing referrals of illegal aliens. This in itself is discriminatory. It discriminates against business. It discriminates against the employer. And the result will be economic disaster, particularly for the small businessman. That also includes economic dislocation for the worker. It means economic difficulty for the entire country, just to give the appearance of the extension of civil rights to individuals who are already covered and protected by existing civil rights statutes.

In the Wall Street Journal of October 15, 1986, the lead news analysis story on the front page focuses on "the new drive by U.S. unions to organize millions of 'undocumented' workers in such immigrant meccas as Houston, Chicago, Los Angeles, New York, and San Francisco." A variety of unions are actively recruiting illegal aliens. These organizations include the UAW, the ILGWU, the Teamster's Union, the Amalgamated Clothing and Textile Workers Union, and the Hotel Employees and Restaurant Union. A Los Angeles ILGWU organizer admits that he began his own career as an undocumented worker, though he does not mention the way he removed the taint of his illegal status. What kind of fundamental fairness exists in an immigration policy which penalizes employers civilly and criminally from employing undocumented workers, but then allows the labor unions to do exactly what the employers are prohibited from doing? This is, as I have already said, bad policy and bad law. My good friends in labor should no more be exempt from the reach of the law than any other group. This approach is in itself discriminatory. It demonstrates all too graphically the major flaws in the premise underlying S. 1200.

I leave to my other colleagues in opposition to this bill the task of further analyzing the inequities of legalization and the other serious flaws in this well-intentioned but misguided effort. I do feel constrained to point out, in closing, that a recent Congressional Budget Office estimate put the probable cost of the entire bill at around $14 billion. Even if that estimate is too high by a factor of 10, the overall economic burden put upon a Government already weighed down by enormous debt is too costly for this country to bear. We cannot mortgage our present for the promise of a system the consequences of which we still cannot foresee but can very well surmise. There are too many controversial elements in this bill. There are too many unfair and unjust policies contained in its statutory language. There are too many uncertainties, the cost of which will be far beyond any benefits to be reached.

Mr. President, I again commend the sincerity, the diligence, and the good faith of the Senator from Wyoming in fashioning this bill. He has truly attempted an undertaking worthy of the legendary Hercules. But we legislators are mere mortals. We perhaps would be better off with a piecemeal approach. We would be much better off if we could concentrate on our security first and not attempt to restructure an economic system that does not need restructuring and will be harmed by it.

Mr. President, for all the reasons given, I oppose this bill. It is a well-intentioned attempt to do too much, too soon. I urge my colleagues to vote against it also. There indeed is a solution to our problems, but it is not contained in this legislation.

Mr. MOYNIHAN. Mr. President, I rise today in support of the passage of the conference report of the Immigration Reform and Control Act of 1985. We have before us, finally, an opportunity to act decisively to reform this Nation's laws dealing with illegal immigration in a comprehensive and just manner.

It is estimated that there are currently between 3 and 7 million illegal aliens in this country; between 200,000 and 250,000 in my own State of New York. The presence of so many illegal aliens within our borders is irrefutable testimony that our immigration laws are not working as they should, and reform of these laws is long overdue.

An essential part of any such reform must contain provisions granting amnesty to illegal aliens and penalties for employers who hire any illegal alien not granted such amnesty. The necessity for both provisions to be enacted simultaneously is clear. Employers will not hire any illegal aliens, even those who have resided and worked here for many years, it they face penalties for doing so. Imposing such penalties without providing some degree of amnesty will leave millions of these individuals with no means of support. Inevitably then, the American taxpayer will be forced to foot the bill.

Fortunately, this bill does provide amnesty, for those illegal aliens who entered this country prior to January 1, 1982, enabling them to keep their current jobs and support themselves. Economics aside, this bill takes the important step of allowing these individuals the dignity and honor of supporting themselves and their families free from the fear of deportation. Together, the combination of amnesty and employer sanctions can reduce the influx of aliens by eliminating the attraction of jobs, and at the same time, protect those that have been living and working here for many years.

Importantly, this bill authorizes the essential funds to meet the needs of these newly legalized residents. Specifically, it will provide $1 billion annually for 100 percent Federal reimbursement for public assistance rendered to these individuals. It is reassuring that the Senate is not only enacting important legislation, but it is also providing the funds with which it can be successfully implemented.

On a related matter, I am pleased that the conferees chose to include an amendment which I offered during floor consideration of this immigration bill last September, mandating a study, to be concluded within a year of enactment, of technological alternatives for a more tamper-resistant Social Security card than that now issued. Since this bill declares that Social Security cards are a form of proof of authorization to work in this country, I feel that it is vital to curb abuse of these valuable documents by illegal aliens.

Another aspect of this bill, of great interest to me and the members of my State, is a provision to allow 10,000 additional immigration visas over the next 2 years for individuals from Ireland and Western Europe.

There is one problem, however, with the Immigration and Nationality Act which is not addressed in this bill, and it concerns the McCarran-Walter Act. This archaic provision allows INS officials to seize any alien in this country, or prevent the entry of an alien, who is suspected of Communist, subversive and terrorist activity designed to endanger the security of the United States. Just yesterday, the New York Times reported the detention of a very well-respected journalist from Colombia who was invited here by the Columbia University School of Journalism to receive an award for distinguished journalism. She was detained under the provisions of the McCarran-Walter Act apparently because she has written in opposition to President Reagan's policies in Central America.

This is reminiscent of the Alien and Sedition Acts, which, while in effect in the late 18th century, limited the right of free speech—one of the fundamental human rights upon which this country was built. This type of censorship was wrong then, and is wrong today and I look forward to next session, when I will fight for a full and complete review of this provision.

This reservation aside, let me again express my sincere desire that Con-

gress see fit to pass this measure and to appropriate the necessary resources to fulfill the provisions manadated by it. I am aware of the expense attached to this measure, however, I feel we must retain our firm resolve to carry out the intention of this bill—to give the preeminent country of immigrants fair and equitable immigrant laws at last.

Finally, Mr. President, I would state my belief that immigrants have made our Nation great, and as a Senator from New York I can particularly appreciate these contributions. Nathan Glazer and I wrote in "Beyond the Melting Pot" that New York, after all, is a merchant metropolis with an extraordinary heterogenous population composed of immigrants and their descendants. The first shipload of settlers sent out by the Dutch was comprised largely of French-speaking Protestants. British, Germans, Finns, Jews, Swedes, Africans, Italians, Hispanics, and Irish, among others, followed, beginning a stream that has never yet stopped. Nor, one hopes, will it ever. These immigrant groups have made, and continue to make, New York and these United States as a whole, the world's great cultural and financial center.

IMMIGRATION REFORM—AT LONG LAST

Mr. CHILES. Mr. President, I rise to congratulate Senator SIMPSON, Senator KENNEDY, and the other members of the Subcommittee on Immigration who have diligently—and patiently—shepherded immigration reform through the Senate three times and at long last appear to have a victory. It was a tough battle—with much pain, arm twisting, and bruises. But, they finally won out, and I applaud their determination and stamina.

Yes, it appears that we are making a valiant attempt to gain control of our borders. This bill provides for several tools that will hopefully assist the United States in controlling the flow of illegal aliens into this country.

For the first time, it will be illegal for an employer to knowingly hire an illegal alien. Civil sanctions and criminal sanctions for those who repeatedly hire undocumented workers will be enforced. Fines as high as $10,000 per alien will be imposed against those who repeatedly hire illegal aliens. In my view, this provision will go far in doing away with the carrot that has long drawn persons over our border—a job.

In addition, the bill provides for long-needed increases in our enforcement at the border. The reform provides for a 50-percent increase in manpower for the INS which has been a recognized weakness of too many years.

Mr. President, I will support this conference report because the need for reform overwhelms my considerable concerns about several provisions. In particular, I have great reservations—distaste, in fact—about the so-called guestworker provisions. This program appears unworkable to me in many respects. In general terms, I cannot envision how it will be administered, let alone monitored. I want to go on record as objecting to this program and predict that this Senator will be the first to initiate a move to abolish this program if it proves to be a disastrous loophole in our new immigation law.

As a Senator from a major agriculture-producing State, I certainly understand and support the need for agricultural workers. However, the H-2 Program works in my State and provides adequate manpower for our year-round seasonal crops. I contend that such a documented worker program could be phased in, even in the Southwest and Western States. But, those regional representatives prevailed in this package and have their program. Time will tell if it provides adequate workers or a channel to seek entry into this country.

Another provision which alarms me is the cap on funds for reimbursement to the States for costs associated with the vast legalization program. As someone who is still battling for Florida to receive compensation for our immigration debts from the 1980 Mariel and Haitian influxes, I can't help but feel I'll continue to fight this uphill struggle. Immigration is a Federal responsibility, and that certainly includes costs. If this new amnesty program results in millions of new residents for my State, I can attest that this body will revisit this issue.

Mr. President, again I express my thanks to those who got us this far with immigration reform. I was one of those who feared, if it died in this Congress, most of us here, would never witness any reform. For all of these reasons, I support the conference report with reluctance, but with an overwhelming sentiment that necessary reform is hopefully at hand.

Mr. BIDEN. Mr. President, this is in essence the fourth time in 4 years that the Senate has been asked to consider comprehensive immigration reform legislation. I say that because the bill before us is distinctly different from the bills that have passed the Senate in previous years; and it is very different from the original S. 1200 that was approved by the Senate in September 1985. It is, in fact, so different, that it justifies a new look at this complex and troublesome issue.

Since 1980, with the recommendations of the select commission on immigration and refugee policy, three main concerns have dominated this long debate: First, liberal amnesty for those individuals who have established a place for themselves in this land of refuge and opportunity; second, the imposition of employer sanctions for knowingly hiring illegal aliens, and third, adequate civil rights protections to guard against discrimination based on alienage. These three elements taken together have served as the foundation for a variety of legislative proposals; and the failure to adequately take each element into account has been the reason each of the previous bills has failed.

Despite some serious doubts about some provisions in this bill, it is time to accept a new approach. If it is a truism that the United States is a nation of immigrants, it is also fair to say that it can no longer be a nation of unlimited immigration. While our Nation must remain the beacon of hope and refuge for "all of the huddled masses yearning to be free," we must be guided by the basic national and security interests of the people of the United States. And our people are telling us, from Maine to California, that the time has come to act.

We have before us a compromise which is by no means perfect. It would be possible to point to a number of flaws in this bill which might justify a negative vote.

The farm labor provisions create a terrible disparity between individuals who have been here long enough to make some investment in a future in our country for themselves and their families and those who have worked in the United States for as little as 90 days.

The criminal sanctions, even if necessary as a means of enforcement, are subject to criticism for vagueness as to what kind of "pattern or activity" would be prosecuted.

And finally, and most significantly, there remain serious doubts as to whether employer sanctions will actually stem the flow of illegal immigration into the United States, or whether only hardship and discrimination against American citizens and those legally in this country, will result.

But to my mind there are two features of this bill which demand support and override these other reservations. First, generous amnesty is provided for illegal aliens who have resided continuously in the United States since 1982. No one knows precisely how many people this will affect, but perhaps as many as 5 million individuals, from every country on Earth, will be offered the promise of American citizenship. Hopefully, this will move a growing underclass living in the shadows into the daylight of citizenship and opportunity. These individuals must become full partners in government and full participants in our society, not just the object of our concern. Immigration has always been in the national interest and the amnesty program in this bill represents the best of that tradition.

There is no question that this initiative is viewed with trepidation. But overall, the results may prove to be extremely positive. The American people have grown suspicious of people different from themselves, especially those who speak a different language. Action on this legislation may demonstrate that the problem has been acknowledged and it may cause Americans to rekindle the spirit of generosity and understanding that is so much a part of our national character.

Equally important, legalization will move millions of illegal aliens into the American mainstream. That means millions of new citizens, with real voting clout in their communities and in their States. It means the ability to determine their own political destiny and to significantly impact the future of the entire Nation.

Second, this conference report specifically prohibits employment discrimination based on citizenship status or national origin and establishes a new civil rights office within the Department of Justice to enforce these antidiscrimination laws. No immigration reform bill previously presented to the Senate has contained such provisions and all attempts to offer such amendments were defeated. These antidiscrimination provisions are absolutely essential to the success of this experiment. The fact that this was finally acknowledged in conference is a major victory for those concerned for the civil rights of aliens and American citizens alike and it cannot be lightly cast aside.

Mr. President, the fear that some employers may decide not to hire foreign appearing individuals, or those with a different accent, is real. The only way to gain the confidence of the Hispanic community or the Asian community is to put teeth into the antidiscrimination guarantees that are now part of this legislation.

Let me make my position on this very clear. And let those who will be responsible for the establishment of the new civil rights office in the Justice Department and for the initial enforcement efforts provided for in this bill carefully. As the ranking member of the Judiciary Committee, or perhaps even as its chairman, I intend to see that the civil rights mandate contained in this bill is carried out. Obstruction or delay will not be tolerated. The antidiscrimination programs will be fully funded. And enforcement efforts against those shown to be discriminate against Hispanics or other individuals of foreign origin will be vigorously pursued. This will be a matter of the highest priority for the Judiciary Committee and for this individual Senator.

There is no question that immigration reform is an experiment that will take the generosity, patience, and understanding of all Americans to make work. I believe that spirit exists, and that our people will accept this challenge with an open mind and an open heart. If it proves to be a source of misunderstanding and prejudice, then changes must and will be made. But now is the time to turn strangers in our midst into friends and neighbors we trust.

I will support the immigration reform conference report and I commend the tireless efforts of the distinguished Senator from Wyoming, the chairman of the Immigration Committee, and the distinguished Senator from Massachusetts, the ranking member. There have been, and there remain, disagreements about this legislation, but they have worked together in the best interests of the American people: Neither may be completely satisfied, but perhaps the best result has been obtained. I applaud them both and hope to join with them as we move to solve one of this Nation's most troubling and complex problems.

The PRESIDING OFFICER. Is there any other Senator desiring to speak? If not, then the question is on agreeing to the conference report. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called to roll.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. BROYHILL], the Senator from Washington [Mr. EVANS], the Senator from Arizona [Mr GOLDWATER], the Senator from Washington [Mr. GORTON], the Senator from Nevada [Mr. LAXALT], the Senator from Maryland [Mr. MATHIAS], the Senator from Alaska [Mr. MURKOWSKI], and the Senator from Idaho [Mr. SYMMS], are necessarily absent.

On this vote, the Senator from Washington [Mr. GORTON] is paired with the Senator from North Carolina [Mr. BROYHILL].

If present and voting, the Senator from Washington would vote "yea" and the Senator from North Carolina would vote "nay."

On this vote, the Senator from Alaska [Mr. MURKOWSKI] is paired with the Senator from Idaho [Mr. SYMMS].

If present and voting, the Senator from Alaska would vote "yea" and the Senator from Idaho would vote "nay."

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from Arizona [Mr. DECONCINI], the Senator from Ohio [Mr. GLENN], the Senator from Vermont [Mr. LEAHY], and the Senator from Mississippi [Mr. STENNIS], are necessarily absent.

I further announce that, if present and voting, the Senator from Arizona [Mr. DECONCINI], would vote "nay."

I further announce that, if present and voting, the Senator from Vermont [Mr LEAHY], and the Senator from Ohio [Mr. GLENN], would each vote "yea."

The PRESIDING OFFICER (Mr. STAFFORD). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 63, nays 24, as follows:

[Rollcall Vote No. 357 Leg.]

YEAS—63

Andrews	Grassley	Nunn
Baucus	Harkin	Packwood
Bentsen	Hart	Pell
Biden	Hatfield	Proxmire
Bingaman	Hawkins	Pryor
Boschwitz	Heinz	Quayle
Bradley	Hollings	Rockefeller
Burdick	Johnston	Roth
Byrd	Kassebaum	Sarbanes
Chafee	Kasten	Sasser
Chiles	Kerry	Simon
Cranston	Lautenberg	Simpson
D'Amato	Levin	Specter
Danforth	Long	Stafford
Dixon	Lugar	Stevens
Dodd	Matsunaga	Thurmond
Dole	Mattingly	Trible
Durenberger	McConnell	Wallop
Eagleton	Melcher	Warner
Exon	Metzenbaum	Weicker
Gore	Moynihan	Wilson

NAYS—24

Abdnor	Garn	Kennedy
Armstrong	Gramm	McClure
Bumpers	Hatch	Mitchell
Cochran	Hecht	Nickles
Cohen	Heflin	Pressler
Denton	Helms	Riegle
Domenici	Humphrey	Rudman
Ford	Inouye	Zorinsky

NOT VOTING—13

Boren	Goldwater	Murkowski
Broyhill	Gorton	Stennis
DeConcini	Laxalt	Symms
Evans	Leahy	
Glenn	Mathias	

The conference report was agreed to.

□ 2000

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. SIMON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 2010

The PRESIDING OFFICER. What is the pleasure of the Senate?

ANTI-DRUG ABUSE ACT

Mr. DOLE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 5484, the drug reform bill.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the amendment of the Senate to the amendment of the House to the amendment of the Senate to the bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit

drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes".

(The amendment of the House is printed in the RECORD of October 17, 1986).

BIPARTISAN/BICAMERAL DRUG BILL

Mr. DOLE. Mr. President, sometimes the American people speak, and Congress listens. That's the way it has been with antidrug legislation. The momentum behind this measure was enormous. And it is a testament to the will and dedication of a small but tenacious group of Members and staff, that we are here today, ready to pass this landmark legislation.

The drug bill has traveled five times, back and forth through the rotunda. The latest round was initiated after bipartisan, bicameral meeting yesterday at which we ironed out the remaining differences between the House and the Senate. The only truly contentious issue was the death penalty. We devised a method so the House could pass the bill with the death penalty, but we would have the option of leaving it out.

This was achieved when the House approved a bill without the death penalty provision in it. But it also passed a concurrent resolution correcting the enrollment of the bill, which only included death penalty language.

The option is before us to do both. But I am not going to ask the Senate to go through the hoops on the death penalty again. We have a good fix on how a majority of Members feel about the issue. But we also must be realists. There is no way of resolving that controversy this year. The proposal, however, will no doubt be revisited next session.

Even without death penalty provisions, the bill before us contains tough law enforcement provisions, enhanced penalties for drug traffickers, authority for limited military interdiction, provisions for greater international cooperation on halting drug traffic and traffickers. What's more we provided additional funds for education, prevention and rehabilitation programs. We've done all this while managing to keep the cost of the bill to $1.7 billion—close to the original Senate level.

And this is not the end of the road. I know those who have a longstanding commitment to combating drug abuse will continue their efforts next session, with oversight and additional proposals.

Mr. President, before closing I want to offer my gratitude to that special group of colleagues: STROM THURMOND, PAULA HAWKINS, MACK MATTINGLY, JIM BROYHILL, and JEREMIAH DENTON, on the Republican side; the distinguished minority leader, JOE BIDEN, DENNIS DECONCINI, and LAWTON CHILES.

I also urge President Reagan to sign this measure. It has widespread support, in both Houses, on both sides of the aisle. It is not the final answer to this Nation's drug problem—but it is a meaningful first step.

Mr. CHILES. Mr. President, we have come a long, long way in a very short time to the completion of a comprehensive new drug policy. The Senate acted in a most responsible manner to draft and pass a bipartisan bill that provides for increased enforcement, enhanced eradication, reinforced interdiction and major new programs in drug education and treatment. Yes, it was put together on a rather fast track—when compared to normal Senate transactions. But, it is a good plan, it is a responsible policy and it is what the American people have asked us to produce. It is a comprehensive drug policy to meet the demands afflicted on this country by drug offenses and drug abuse.

There are a lot of people who deserve credit for this final, multifaceted product. I offer them my sincere gratitude for helping us to respond to the critical need for drug assistance in this country. First, we should acknowledge the influence of many Americans, including thousands of Floridians, who have impressed upon this Chamber their keen interest in securing a drug bill. I certainly heard them and thank them.

I want to thank the majority leader, Senator DOLE, Senator BYRD, and Senator THURMOND for their continued negotiations on this most important package. They have contributed and sacrificed much for this bill and I thank them for their tireless efforts and continued commitment.

A special nod of thanks to Senator BIDEN, my cochair on the Democrats Drug Task Force. His spirit of cooperation and knowledge of judicial issues contributed immeasurably to our successful efforts.

Many, many thanks to all Senators and their staffs who have devoted much time and effort to this final product. Our task force members—Senators CRANSTON, DECONCINI, DODD, LEAHY, MITCHELL, MOYNIHAN, NUNN, ROCKEFELLER, and SASSER have all left their mark on this bill. I appreciate their continued interest and dedication toward this accomplishment.

Sally Mernissi and Scott Bunton of Senator BYRD's staff were, as usual, of great assistance to us all.

Scott Green and John Bentigviolo of Senator BIDEN's staff committed hours of effort and counsel. I applaud and thank them.

Sheila Burke and Jim Whittinghill of Senator DOLE's staff offered guidance throughout the long debate and drafting of this vast package. I appreciate their assistance.

Terry Wooten and Diane Waterman of Senator THURMOND's staff were gracious and dedicated in their efforts toward a bipartisan bill.

Lastly, I want to thank my staff who banned together like an army to help us maneuver this package through the battles we have encountered—Rick Farrell, Lisa Faulkner, Mike Hall, Carnie Hayes, and Debby Kilmer. Their hours of efforts and persuasion significantly contributed to my commitment to secure this bill.

Mr. President, this bill is a major accomplishment for this Congress and every Senator should be proud of having a part in seeing its development.

Mr. LUGAR. Mr. President, the purpose of may remarks is to establish a legislative history for section 2005 of the Senate omnibus drug bill, entitled "Restriction on the Provision of United States Assistance."

As I said in my earlier remarks on September 27, our objective is to ensure that the U.S. Government uses the full measure of its economic, military and other assistance, as well as its diplomatic and political leverage, in pursuit of its international narcotics control objectives.

Section 481 of the Foreign Assistance Act has served us well, by initiating an annual review process through which the Department of State, in cooperation with other agencies, evaluates the adequacy of the narcotics control measures undertaken in the reporting period by each narcotics source and trafficking country which is deemed to be of significance. The resulting assessment is communicated to the Congress through the annual international narcotics control strategy report.

As much as has been done, and there had been progress in many countries, we must do more. In particular, we believe that all major drug producing and drug transit countries, regardless of their cooperation in the past, must understand that we definitely link our continued economic, military, and other assistance to their cooperation on narcotics control, to which we assign an increasingly higher foreign policy priority.

Therefore, in addition to providing us with an annual assessment in the report, we are requiring that the President certify the adequacy of narcotics enforcements actions taken during the previous year in controlling illicit narcotics trade. These Presidential certifications are subject to congressional resolutions of disapproval.

Given the number of countries which will likely be covered by the new provision, it is anticipated that the President may choose to submit a single statement of initial certification, identifying these countries in the report for which he is certifying ade-

quacy in accord with this law. This, of course, does not preclude an introduction of a congressional resolution of disapproval for an individual country listed in this single statement.

For these purposes, the reporting period is the previous calendar year. However, it is understood that the Department may include information in the report about activities or events occurring after the start of the new calendar year, if such information significantly changes the perspective of the country, that is the information is needed to clarify a situation, or provides the solution to a problem noted in the report, or identifies a remedial action taken. This information could, of course, also be taken into account in the Presidential certification.

Moreover, section 481 identifies a review and consultation process wherein the Congress considers the annual report and calls the Department and other witnesses to a hearing, wherein findings by the Congress can be presented, and responding statements provided by the administration. Obviously, any data or information, even concerning events coming after the end of the reporting period, which affect a country perspective should be provided at such hearing or during such consultation by the Department and other witnesses.

The data on fiscal year outlays available to the Congress indicate that withholding 50 percent of U.S. assistance—as defined under section 653(a) of the act—until March 1 should not create hardship for U.S. supported programs. However, the Congress recognizes that certain extraordinary circumstances could arise in one or more countries wherein it is necessary for our vital national interests to allocate at the start of the fiscal year all or nearly all of the economic and other assistance intended for said country. It is our intent that the authority under section (c)(2)(A)(ii) permits the President to submit a certification in advance of March 1, for any such country for which he believes the vital national interests of the United States require such funding. It is also our intent that such an early certification would be a rare procedure, used only in extraordinary circumstances.

In providing the authority under subsection (c)(2)(A)(ii), the Congress has deliberately cited "vital national interests" rather than security interests, and it is not the intention of the Congress that a section 614 waiver is required for these purposes.

The Congress recognizes that the administration, for good and sufficient reason, may want to delay certification. This contingency is anticipated in subsection (c)(5). No assistance may be received by such country and the country will receive negative U.S. votes in miltilateral development banks until such time as the President submits a certification request, subject to a joint resolution of approval. The Congress realizes this is a higher standard, in that the certification does not automatically become fact after 30 legislative days if Congress fails to take action, and the requirement is for joint approval, rather than disapproval. The intention here is to discourage late submissions of certifications to the maximum extent possible.

The intention is to focus the attention of the administration and affected countries on performance during each calendar year, with all parties acutely conscious that each year's achievements and failures must be reported to the Congress and the adequacy of that performance certified. If Congress is to render a proper judgment, it is desirable that reporting be as uniform as possible, and not have certifications staggered throughout the months following submission of the annual narcotics report.

These provisions affect major drug transit countries, which the measue defines as significant direct sources of illicit narcotic or psychotropic drugs, or a country through which significant sums of drug related profits or moneys are laundered with the knowledge or complicity of the Government. The Congress recognizes that the Department's annual report provides information on 3 dozen or more countries, and that a number of such countries are included because information on acitivities occurring within their territories is essential to filling out the global picture. It is not necessarily the intention of the Congress to ask the President to certify the cooperation provided by major allies such as the United Kingdom, France, Italy, the Federal Republic of Germany, and others, although illicit drugs do transit their territory en route to the United States and illicit drug profits may be processed through their banking systems. we believe the language about "knowledge or complicity" of the governments serves adequately in this regard.

Mr. LEVIN. Mr. President, I am pleased that both Houses of Congress have now agreed on a final version of this very important drug abuse legislation, so that it can be sent to the President and signed into law. I am disappointed, however, that the price of agreement with the House of Representatives was the striking of the section providing for mandatory life imprisonment without parole when there is an international murder in certain drug transactions. This penalty represents the kind of strong action which we must be willing to take as part of a serious and sustained war on drug abuse. It is more than unfortunate to drop this penalty from the legislation when it is so close to enactment. It is tragic that this strong medicine was rejected. In pushing to go in another direction, a misguided direction in my view, the House of Representatives has, in effect, decided that, because it is so committed to the death penalty, it is better than to have life imprisonment without parole. With all due respect, Mr. President, this reasoning flies in the face of logic, and just plain common sense. We should have done better.

STATEMENT ON H.R. 5484 TREATMENT PROGRAMS

Mr. BIDEN. Mr. President, much of the debate on the drug bill has focused on the incresed funding and tough new penalties in the area of law enforcement and rightfully so.

But, if we are truly interested in reducing drug abuse in America, we must advance new initiatives on the demand side of the drug abuse equation including in the often neglected area of medical research.

We must use every effort to turn today's addicts into tomorrow's productive citizens. These efforts include extensive professional counseling, and I'm glad to see the many programs established in both the private and public sector to provide this counseling; they include methadone treatment where effective; and they include the use of new antidrug pharmaceuticals. One such pharmaceutical which has recently come to may attention is Trexan.

Trexan is officially listed by the FDA as an orphan drug. It works by blocking the effects of narcotics, producing withdrawal symptons in opiate addicts who haven't been drug-free for 10 days or more. An addict who goes through withdrawal and continues to take Trexan cannot become readdicted to or feel the effects of such narcotics as heroin.

Dr. Arnold M. Washton, director of substance abuse research and treatment at Regent Hospital in New York, has commented that this is the first truly nonaddictive drug in the treatment of narcotic addicts to be approved by the FDA. Dr. Washton added that even if an addict takes narcotics while also taking Trexan, it is pharmacologically impossible to get readdicted or feel the effects of the narcotic.

I hope that we will see other innovative technology on the marketplace to help us fight this drug problem.

Mr. FORD. Does section 3403, the provision on ICC review of motor carriers acquisitions, address section 11243 of title 49 as well as section 11344?

Mr. DANFORTH. No, the only section that needs to be addressed is section 11344. That section was the subject of a recent court decision that overruled the ICC policy change that had been relied on by the parties. This provision of the bill reinstates the standards applied by the ICC for certain limited cases.

Mr. FORD. What then is the status of ICC exemption decisions under section 11343(e)?

Mr. DANFORTH. The exemption decisions under section 11343 are not directly affected in any way by this provision. Those decisions however are entirely consistent with the ICC policy statement under section 11344, consistent with this provision of the bill, and I believe accurately reflect congressional intent regarding the standards to be used in section 11343 exemption proceedings.

Mr. BIDEN. Mr. President, I rise today in support of the House/Senate compromise drug bill. For almost a month now, the leadership from both sides of the aisle has been crafting bipartisan legislation aimed at reducing drug abuse in America. The leadership of the House also has been working toward this same goal in the past few weeks.

And as you know, there have been substantial differences in the drug bills passed by the respective bodies, leading to what many thought were irreconcilable differences. Today, I stand before my colleagues very proud to report that these differences have been resolved, and that we are now able to enact the most comprehensive revision to this Nation's drug control strategy in almost two decades.

As I mentioned previously, I am very proud to be able to address this body and to report that we have achieved a consensus on the drug bill. Many of my colleagues doubted whether we would be able to pass drug legislation this session, and for good reason. The political posturing and maneuvering by Members from both Houses, and both sides of the aisle, has not made this an easy task.

The Members of this body faced a similar situation in the 98th Congress. When we attempted to pass the crime bill, many differences separated us, and on several occasions, it appeared that we would not get a crime bill that session. But the leadership of this body came together, in the true spirit of compromise, and carefully assembled a consensus bill that we passed nearly unanimously. That was no small achievement. Many Members had to be persuaded to accept provisions that, if it were left solely to their discretion, would not have been included in the bill. But what united this body, was the fact that there were so many areas of agreement, that it was obvious that it would have been irresponsible to let the many worthwhile and noncontroversial provisions in the crime bill die over the several significant areas of disagreement.

Fortunately, this same mood has prevailed with the drug bill. There have been major, major areas of disagreement. The death penalty is the most obvious, but there were others, too. Like the use of the military, modifications to the exclusionary rule, and others. In fact, I withheld a provision that I feel would be one of the most significant steps we could take in our effort to reduce the scourge of drug abuse in America. I am referring, of course, to the drug czar proposal, a proposal that I think is essential to our efforts in this area. But I withheld this proposal, because I wanted to see a drug bill pass. And I am proud of the leadership of this body, and the many other Members, who felt just as strongly about parts of the bill that they withheld in order to move this legislation.

We did not resolve all of the issues this time around. Many of the battles that we visited during our recent debate will be visited again, probably in the next session. I look forward to those debates, because I think there is still so very much more that needs to be done in the area of drug abuse. But I think that the result of the many hours of negotiations and debate is a very, very good piece of legislation.

This bill provides for tough new penalties for virtually all drug related offenses, and increases fines significantly to reflect the enormous profits generated from the drug trade. In addition, we provide assistance to State and local law enforcement agencies for drug law enforcement. We increase our commitment and funding for international narcotics control and we practically double the border interdiction budget. But what I think is the most significant component of this bill is the refocusing of resources toward the demand side of the drug abuse equation.

For many years now, we have recognized that law enforcement efforts alone will not solve the drug problem. And that does not mean that efforts to reduce demand will, in and of themselves, solve the problem. Rather, we need a balanced approach, combining rigorous law enforcement with efforts to reduce the demand for narcotics and other dangerous drugs through education and treatment programs. In fact, the President and the Attorney General and even the former DEA Administrator have said this on many occasions. But before this bill, we have never devoted the resources necessary to achieve a balanced approach. Right now, we spend $3 million annually on drug abuse education. That's less than 1 percent the total drug control budget.

This bill provides $200 million to State and local school districts for drug abuse education. It is the intent of this bill that every school child in this Nation, in both public and private schools, receives objective, credible information in the consequences and hazards of drug abuse. This bill further commits additional resources to treatment and rehabilitation programs, and for medical research in the area of drug abuse. The result is an entirely new strategy for drug control at the Federal level. After recognizing the need to develop a more balanced Federal response to the drug problem for many, many years this bill finally implements that policy.

I have heard a great deal of skepticism about what this bill will do. The grandiose statements and lofty political rhetoric that has characterized this debate has contributed to this skepticism. But I believe that this bill will contribute significantly to our efforts to move this country toward our goal in this area: A drug-free America. And I mention this because I think the Members of this body feel the same way as I do, and that's why this bill moved. It moved because there was so much agreement, on so many areas, that we were able to put our differences aside and move those initiatives upon which we all agreed.

I commend the leadership on both sides of the aisle for their incredible support and hard work on this bill. They too should be proud. I would further like to thank Senator CHILES, the cochair of the Democratic working group on drugs, for his leadership and effort in this area that were so valuable in crafting this legislation.

In sum, this is a very meritorious piece of legislation. It will not solve the problem. But it will move us significantly closer to our goal. I urge my colleagues to support this bill, and I thank the Chair.

TITLE XII OF THE COMMERCIAL MOTOR VEHICLE SAFETY ACT OF 1986

Mr. DANFORTH. Mr. President, after months of effort we have reached agreement with the House on an important part of the drug bill, the "Commercial Motor Vehicle Safety Act of 1986" (title XII). This important truck and bus safety legislation will save lives by removing unsafe commercial drivers from our highways, particularly those who use drugs or alcohol.

Last December, I introduced the "Commercial Motor Vehicle Safety Act of 1985" (S. 1903) on behalf of myself and Senator PACKWOOD to address a number of critical motor carrier safety issues. The Commerce Committee favorably reported the bill on August 7, 1986, with an amendment in the nature of a substitute. On September 27, 1986, the Senate included my amendment incorporating the features of S. 1903 in its amendment to the House drug legislation (H.R. 5484). When the House subsequently sent the drug legislation back to the Senate, the House included its own version of truck and bus safety legislation as an amendment. On October 15, 1986, the Senate returned the drug bill to the House with a version of truck and bus legislation which incorporated a number of safety enhancing features

from the House version. Yesterday, we reached an agreement with the House on the final form of the legislation.

Mr. President, I will first briefly summarize the legislation's important provisions that have not been changed since the Senate's last action on it. First, the legislation provides that anyone who operates a commercial motor vehicle while under the influence of either drugs or alcohol loses his commercial license for a year on the first violation and permanently on the second violation. Anyone who uses a commercial vehicle in the course of a drug related felony loses his license permanently on the first violation. Second, it would direct the Department of Transportation to establish Federal minimum standards for licensing, testing, qualification, and classification of commercial drivers. This would end the 20 State practice of giving anyone who passes a driving test in a subcompact passenger car the right to drive a 40-ton truck or a bus carrying dozens of passengers. Third, it prohibits any commercial driver from having more than one license. This will end the notorious practice of using multiple licenses to spread traffic violations. Fourth, it directs the Department of Transportation to set up a computer link between the States so that they could determine if a commercial license applicant has another license, and transmit and receive driver record information to stop unsafe drivers from operating commercial vehicles. Fifth, it provides increased funding for inspections of commercial drivers and equipment.

Mr. President, I now turn to an explanation of the differences between the last Senate passed version of this legislation and the agreement we reached yesterday. One difference concerns the prohibited blood alcohol content [BAC] for truck and bus drivers. I strongly supported the Senate version of this legislation which would have established the BAC level at 0.04 percent—the same level that currently exists for other transportation professionals including railroad engineers, airline pilots, and flight attendants—to be effective on March 1, 1988. The House would not agree to the establishment of a 0.04 BAC level in this legislation. We agreed on the following: One, the National Academy of Science [NAS] must study the question of the appropriate BAC level at which a commercial driver would "be deemed to be impaired" and report to the Secretary of Transportation; two, based on the NAS study and other information the Secretary would issue a rule, not later than 2 years after the legislation's enactment, to establish the appropriate BAC level at which a commercial driver would "be deemed to be impaired;" and three, if 2 years after enactment, the Secretary had not set the level, it would automatically be fixed at 0.04 percent. I am confident that at the end of this process a 0.04 percent BAC level will be the established level for truck and bus drivers.

The dangers posed to the public by big rigs and buses are similar to the dangers posed by trains and planes. All these transportation modes should have the same BAC standard. Research and field tests indicate that BAC levels of 0.04 increase the risk of having an accident by impairing important driving abilities such as hazard judging, signal anticipation, and reaction in emergencies. The Secretary should interpret the term "deemed to be impaired" to reflect this research, and to be consistent with the Federal regulations which prohibit commercial drivers from consuming any alcohol while on duty, or for 4 hours prior to going on duty. It is not necessary to establish that everyone is impaired at the 0.04 BAC level. Rather, if some drivers' driving abilities are reduced, that is enough. The Federal regulations are clear: any alcohol is too much alcohol.

Enforcement of a 0.04 BAC standard is workable because there are inexpensive, portable devices capable of accurately measuring alcohol content at levels below 0.04 BAC. Furthermore, I do not believe the 0.04 BAC standard would place an undue burden on those commercial drivers who may be called to work. Over 90 percent of the drivers know exactly when or have a good idea of when they will have to report to work. In addition, an average 170 pound person must consume three beers within 1 hour, after a normal meal, before reaching 0.04 percent. Moreover, current Federal regulations already prohibit commercial drivers from drinking within 4 hours of reporting to work. The 0.04 percent standard would give enforcement officials an objective measure for determining if this rule had been violated.

On a related subject, the agreed upon legislation contains another sanction for those who are found to be in violation of the 4-hour rule or other Federal regulations related to driving. These drivers will be placed out-of-service immediately for a 24-hour period. This will keep them from further endangering the public.

Another difference in the agreed version is that it provides that a State must "substantially" comply with the new licensing requirements in order to avoid highway finding sanctions. The Senate passed version did not contain this qualifier. This term is to be interpreted narrowly as covering only inadvertent or technical noncompliance—for example, the failure of a State to file one of its reports on a commercial driver within the prescribed number of days. I would not permit a State to in any way reject this legislation's requirements.

In closing Mr. President, I am pleased that we will shortly have this historic legislation to eliminate unsafe commercial drivers and equipment from our highways.

Mr. DANFORTH. Mr. President, I wish to provide some additional interpretive language for a small but important provision of the drug bill that addresses a matter within the jurisdiction of the Commerce Committee. Section 3451 of that bill deals with communications. Many drug dealers rely heavily upon modern communications methods in their operations. To the extent that we can make it more difficult for them to use these methods for illegal purposes, we will have taken an important step in our war against drugs.

This amendment would authorize the Federal Communications Commission to assist in drug law enforcement in two ways: First, the Commission would be authorized to revoke any private operator's license issued to any person under the Communications Act of 1934 if the person is found, presumably by a court of law, to have "willfully used" the license "for purpose of distributing, or assisting in the distribution of, any controlled substance in violation of any provision of Federal law." The intent of this provision is to penalize only those persons who are using an FCC license for an illegal purpose, for example, a licensed radio operator soliciting a sale of a controlled substance in violation of Federal law. This language is not intended, however, to penalize those persons who hold an operator or station license which is being used by others in the ordinary course of business, but which is being used, without the licensee's knowledge, for illegal purposes such as drug dealing.

Second, this amendment would authorize the Commission to assist appropriate Federal law enforcement agencies "in the enforcement of Federal law prohibiting the use or distributing of any controlled substance where communications equipment" within the Commission's jurisdiction is "willfully being used for purposes of distributing, or assisting in the distribution of, any such substance." This provision would not require the Commission to use its own limited resources to assist other agencies in such drug law enforcement. Rather, it is contemplated that the Commission will enter into interagency, reimbursable agreements with the appropriate law enforcement agencies, as, for example, currently exist between the Commission and the U.S. Coast Guard.

Mr. HATCH. Mr. President, during the past 12 weeks Members of Congress have heard President Reagan's plea for the tools to conduct a massive war on drugs and other forms of substance abuse. And I am pleased that,

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today, Congress has granted his request. We join our fellow Americans as committed foot soldiers in this battle for the health, welfare, and, yes, national security of our citizens.

This is a truly historic event when you consider that Republicans and Democrats were able to rise above partisan politics to tackle this serious problem. It only took a few weeks to draft the basic components that became the cornerstone of this legislative initiative that will broaden our efforts against drug and substance abuse.

Our strategy is to attack from all fronts. We are not only expanding our treatment and education efforts, we are also targeting them.

We are also bolstering the criminal penalties for those criminals—the parasites—in our societies who are trying to infest our communities with the plague of drug trafficking. We are strengthening our border controls to stop foreign countries who import their illegal drugs into our country.

In conclusion, I can only say that we have found ways of making existing programs work better, and to harness some of this momentum into pushing some new initiatives along the same path.

At this time, I want to express my sincere gratitude and appreciation to Senator PAULA HAWKINS for her fortitude, patience, and perseverance in bringing the nature of severity of this problem to our attention. In addition, acknowledgment should be given to Senators CHILES, THURMOND, BIDEN, and LUGAR for their hard work. But I offer a very special tribute for Senators DOLE and BYRD for their leadership in putting this legislation on a fast track for action. I urge my colleagues to expeditiously approve this legislation so we can send it to the President for his signature.

Mr. DODD. Mr. President, I am pleased that the final version of the Drug Reform Act of 1986 contains my original proposal, S. 2800, authorizing model, community-based prevention and treatment programs for young people at great risk of abusing drugs and alcohol.

There can be no question but that drug and alcohol abuse crosses all economic, racial, age, ethnic, and religious lines. Nevertheless, a certain segment of our young people—we can call them high risk youth—are in much greater danger of drug and alcohol abuse than other children. If you talk to child protection workers who deal with the children who have been victimized by physical or sexual abuse; or to the directors of Shelters Harboring Runaway Adolescents; or to staff of the Boys and Girls Clubs, and other groups working with unemployed school dropouts, or to those who work with pregnant teens and teenage parents; they will all tell you that the chances that the young people they work with will end up abusing drugs or alcohol go way off the charts.

As a result, any package would be incomplete without a special program targeting drug and alcohol prevention and treatment services for high risk young people. In the case of these children, drug abuse does not occur in a vacuum. And unless we get at some of the underlying causes of such abuse, we will fail to make a big dent in the battle to combat the drug epidemic now confronting us. Failure to target high risk young people will keep us from preventing the birth of infants addicted to cocaine as a result of an adolescent mother's substance abuse problem. Moreover, we will not prevent some of the serious crimes committed by adolescents in association with drugs, unless we target some treatment and rehabilitation services to curb their substance abuse.

The Carnegie Corp. of New York and its president, Dr. David Hamburg, are to be commended for recently establishing a council on adolescence, focusing on high risk youth. As the Carnegie Council has so aptly stated, during adolescence a significant number of youth abuse drugs and alcohol; are the victims of physical, sexual or psychological abuse; drop out of school; become pregnant; are economically disadvantaged; commit violent or delinquent acts; experience mental health problems; attempt suicide; or are disabled by intentional injuries. The measure which the Senate is enacting today is an attempt to explore the connections between these problems and subsequent substance abuse. In addition, concrete help will be provided in the form of community-based prevention and treatment programs for such young people.

Although I would have preferred to have seen more resources directed toward such model projects, $20 million will be available for demonstration grants through a newly established office on substance abuse. I wish to express my appreciation to colleagues on both sides of the aisle and in both the Senate and the House for accepting these model projects directed toward high risk youth in the final package.

Mrs. HAWKINS. Mr. President, I rise to express great satisfaction at the passage of the Omnibus Drug Bill. This is a red letter day for America. Our Nation has been swamped in a flood of illegal drugs. They have brought violence to our streets, pain to our families, chaos to our schools, and inefficiencies to our industries. While the problem has grown more and more severe, the Nation seemed paralyzed to take effective action. Many argued that it couldn't be done. They said we couldn't afford it, or the necessary solutions would violate civil liberties.

Mr. President, I've said it before, but I'll say it again: Where there's a will, there's a way, and where there's no will, there are excuses. Today we proved that the Senate had the will, and that it managed to find a way.

Mr. President, you can't make significant progress such as that represented by this bill without the contributions of many people. I would like to commend the chairman of the Judiciary Committee, Senator THURMOND, for his dedication and commitment to this issue. Also critical to this effort was the efforts of the ranking member of the Judicary Committee, Senator BIDEN. But many others have played key roles as well: the majority leader, the minority leader, Senator CHILES, Senator MATTINGLY, Senator HATCH, Senator DECONCINI only to mention a few.

Mr. President, we shouldn't forget the staff as well. I would like to express my personal appreciation to Sheila Burke, Jim Whittinghill, Diana Waterman, and Terry Wooten, as well as to my own staff. I know that many other staff members have worked long and hard on this bill on both sides of the aisle and they deserved to be commended too. Recognizing that this bill will not solve all our problems, I believe it still is a piece of legislation of which we can be proud.

I don't mean to say by that, Mr. President, that this bill will solve all our problems—there are no magic bullets. Politics and the rush to adjournment conspired to make it impossible to include needed provisions in this bill. We need a death penalty for major drug crimes, and this bill does not have that. We need to get the military involved in the war on drugs in a big way, and this bill falls short of that goal as well. We need to reform the exclusionary rule, and again that's absent from this bill. Does this mean that this bill is ineffective. Absolutely not. But it does mean that it is weaker than it could have been, and for that reason I'm sure that we will have to come back and address these subjects again.

Mr. President, this bill is a good start. It contains tough new penalties and creates new crimes such as money laundering that will provide direct contributions in the war on drugs. In addition, we have increased spending for all the major drug law enforcement agencies; we've upped the money for drug education that teaches our kids to "Just Say No!" and we've added funds for rehabilitation and treatment. In all this bill will spend roughly $1.7 billion in the war on drugs. Perhaps the greatest accomplishment of this bill Mr. President was to focus national attention on the issue and move it up to the top of the national agenda—where it belongs. And Mr. President I'm committed to keeping it

at the top of the national agenda until the problem is solved.

Mr. MATTINGLY. For the third time, by an overwhelming majority, the House of Representatives has affirmed the firm view that drug kingpins who kill in the course of their continuing drug enterprises should be subject to the death penalty. That belief, as my colleagues know, is also held by the majority of the Members of this body.

On Wednesday evening, when the Senate approved a version of the antidrug legislation which omitted the death penalty and substituted mandatory life in prison without the possibility of parole, I said that pragmatism had prevailed. The price of attaining a critically important drug bill, for those of us favoring the death penalty, was the sacrifice of that provision. Of greater consideration was the approval of a comprehensive, bipartisan drug package which would arm the Nation to fight the war on drugs. We negotiated and arrived at an agreement that the full Senate could accept

The House rule which sends the amended drug measure back to us enables us to act on a bill which both the House and the Senate can approve and send to the President. That is something that I am committed to accomplishing. So I support this action.

My colleagues need to realize that the House has also offered us another opportunity to approve a death penalty. I think we should vote on that provision, because I am convinced that such a penalty would improve the antidrug package. Furthermore, I believe that the majority of Senators favor it. But I am a realist. I know that, in the last hours of the 99th Congress, we cannot begin consideration of a measure which would surely bring another filibuster. Once again, pragmatism will prevail. So we will not have a chance to vote—at least not this year.

During the course of Senate consideration of the drug package, I said on several occasions that I believe the American people support the death penalty for pernicious drug bosses who murder. A number of citizens have contacted my office to convey their support. Last week, in fact, the National Federation of Parents for Drug-free Youth held a convention in Washington. Those who attended that convention were parents who have been and are deeply involved in the antidrug movement in this country. They are, by their own description, American families who have borne the brunt of the drug epidemic. During the meetings, some learned of opposition to the death penalty by some Members of the Senate, and they drew up a petition. There was little time to circulate the petition. Nevertheless, more than 80 individuals from 18 States signed the petition. It was delivered to my office with the request that it be used to communicate support for the death penalty to the Senate. I want to make clear that the petition does not represent the official position of the NFP, which has not taken any position on the death penalty. Rather, it represents the strongly held views of a number of individuals. In order that my colleagues may examine it, I ask unanimous consent that the text of the petition be printed in the RECORD at the conclusion of my remarks.

Mr. President, the drug kingpins targeted by the death penalty are public enemies—the most despicable of criminals. They should be on notice that this is not the end of the debate on the death penalty. We will be back again next year, probably with a comprehensive death penalty bill. And I pledge now to work to see that it explicitly contains a provision applying to drug kingpins who in the course of a continuing criminal enterprise knowingly kill another. Given the time to debate the matter fully, I am sure that the Senate will approve a drug kingpin death penalty.

But, tonight is a night of victory when we have approved a strong bipartisan package. We have acknowledged that we have a serious drug problem—a crisis—and we have committed ourselves to solving that problem. We have said to the American people, yes, we will take a leadership role in the national crusade to which the President has called us. We have significantly strengthened our law enforcement capabilities. We have provided resources—funding, manpower, equipment—for improved interdiction activities. We have provided for assistance to State and local agencies. We have authorized funding for education, prevention, rehabilitation, and treatment. In short, we have adopted a comprehensive approach.

As I said the other night when we considered an earlier version of this bill, the bill is not perfect. But it is an excellent beginning. And our commitment to the drug bill must not end here, and neither must the American people.

In fact, the success of our campaign depends on the people and on their will to defeat what has been called the enemy within. I have spoken with hundreds of people about the drug issue; my wife, Carolyn, has spoken to thousands. From those conversations, we know of their sincere concern and of their dedication. And knowing that, we are certain of the victory ahead.

Again and again, I have called the drug problem the most serious we face. I am pleased and proud that we have given it time and attention and addressed the issue in a responsible way.

This is major legislation, the importance of which I am not sure we even realize. But, in a real sense, our future and that of our children, depends on it. It is fitting, I believe, that we close the 99th Congress with this bill, for it affirms our commitment to promoting the general welfare and securing the blessings of liberty—specifically freedom for addiction and death and the destruction and crime which accompany the drug trade—for ourselves and our posterity.

Mr. MOYNIHAN. Mr. President, I seek assurance from my distinguished colleague from Utah, the chairman of the Labor and Human Resources Committee, that he shares my intention that the new grants for treatment of drug and alcohol abuse be made available to States and localities as soon as possible.

Under the formula passed by this body, 45 percent of the funds are to be distributed immediately to the States based on their population. The remaining 55 percent is awarded on the basis of need. Although I realize it might take some degree of time for the Secretary of Health and Human Services to further develop the need criteria provided in this bill, do you agree that it is the intent of Congress that the Secretary act to release these funds immediately, and as expeditiously as possible, to those States most in need of treatment funds.

Mr. HATCH. Yes, I entirely agree. I will join my colleague from New York in working to see that these funds are distributed in an expeditious manner. I thank you for raising this issue.

Mr. DECONCINI. I would like to propound a question to the distinguished chairman of the Senate Judiciary Committee concerning the meaning of the language in the new substantive offense entitled "Engaging in monetary transactions in property derived from specified unlawful activity." Is it the chairman's understanding that the scienter requirement of "knowingly" in (a)(1) is intended to require that the defendant knows that he is engaging in a monetary transaction and knows that the property involved is from a specified unlawful activity?

Mr. THURMOND. The distinguished Senator from Arizona is correct. Thus, to be guilty of this offense, the mere suspicion that the property involved in the monetary transaction is derived from a specified unlawful activity will not be enough. The defendant would have to know that the property is criminally derived to be guilty of the new offense. Similarly, the mere suspicion that the person engaging in the transaction with the defendant is a criminal, based on allegations expressed in the media, for example, would not meet the requirement that the defendant has engaged in a transaction which he knows involves criminally derived property.

Mr. DECONCINI. I thank the chairman of the Senate Judiciary Committee. I know that his interpretation is the one that he and I along with Senator BIDEN intended when we agreed to the inclusion of this provision. I once again want to thank the chairman and the ranking member and say how pleased I am at the results we have reached in this money laundering provision of the drug bill.

Mr. DOLE. Mr. President, I move the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Kansas.

The motion was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. CHILES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. CHAFEE). The Chair, on behalf of the Vice President, in accordance with 22 U.S.C. 1928a–1928d, as amended, appoints the following Senators as members of the Senate delegation to the North Atlantic Assembly Fall Meeting during the second session of the 99th Congress, to be held in Istanbul, Turkey, on November 13–18, 1986: the Senator from North Dakota [Mr. BURDICK], the Senator from Maryland [Mr. MATHIAS], the Senator from Texas [Mr. BENTSEN], the Senator from Idaho [Mr. MCCLURE], the Senator from Arizona [Mr. DECONCINI], the Senator from Alaska [Mr. MURKOWSKI], and the Senator from Washington [Mr. EVANS].

Mr. FORD. Mr. President, I make the point of order that the Senate is not in order.

The PRESIDING OFFICER. The Senator's point of order is well taken. The Chair is unable to hear Senators asking for recognition. Once again, the Senate will not proceed until we have order in the Senate.

The Senator from New Mexico.

OMNIBUS BUDGET RECONCILIATION ACT—CONFERENCE REPORT

Mr. DOMENICI. Mr. President, I submit a report of the committee of conference on H.R. 5300 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The bill clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of today, October 17, 1986.)

Mr. DOMENICI. Mr. President, today we come to the end of a long, and at times very exasperating, process. I am, of course, referring to the completion of this year's budget proceedings. No one is more aware than I, and the distinguished ranking member of the committee, Senator CHILES, of the time and effort involved by so many in bringing this final reconciliation conference agreement to the floor today.

I would like to begin by complimenting all those members who have worked so hard over the last year, and particularly these last 2 weeks, to bring this final conference agreement to fruition. I am also grateful to the distinguished majority and minority leaders for their patience and understanding as we have worked to put together this year's budget.

Back on May 2, Mr. President, when we passed the Senate's version of this year's budget, I told the Senate about an old print in my office depicting the ancient Greek story of Sisyphus who was destined to spend his after life pushing a rock up a mountain. Only in his old Daumier (Doe-me-a) political cartoon of Sisyphus he is pushing a budget. As I told the Senate then, every time Sisyphus got just to the top of the mountain the rock came rolling back over him, and he began again his unending trek up the mountain.

Since last May, I discovered that the distinguished majority leader also has a copy of this print hanging in his suite of offices. Maybe Senators are all destined to spend our mortal life pushing, shoving, cajoling, and fighting this thing called the budget.

But, today I believe we can claim that we have at least traversed one small hill, if not a mountain, in this frustrating process of deficit reduction. The conference agreement on the reconciliation bill before us today will reduce the fiscal year 1987 budget deficit by $11.7 billion, and over the next 3 years the deficit will be reduced by about $17 billion. This bill provides the majority of budget savings needed to reduce the fiscal year 1987 budget deficit—under the Gramm-Rudman-Hollings scorekeeping procedures—to the $154 billion trigger point that would have been required to have avoided a sequester.

Given the outcome of the continuing resolution appropriations conference, the increased spending for the drug bill, and other direct spending measures that we have passed in the last month, the Congress would have had to enact savings of $16.7 billion in order to have met the $154 billion Gramm-Rudman-Hollings deficit target. This bill, together with the savings in the higher education conference report and the revenues in the Superfund bill as signed by the President today, will save $12.3 billion of this amount. The $11.4 billion in increase in fiscal year 1987 revenues from the tax bill will make up the remaining $4.4 billion required. We now estimate that the Gramm-Rudman-Hollings deficit estimate for fiscal year 1987 will reach $148.9 billion, well below the $154 billion trigger target.

Before we enter into a debate on the substance of the bill, I would like to make a few observations about the impact of Gramm-Rudman-Hollings on the budget process this year, particularly as it bears on this bill. For my part, Mr. President, this bill is the result of much hard work on the part of Members of this Chamber.

This bill contains primarily fiscal year 1987 deficit reduction activities. I must admit that it contains very few permanent spending cuts or tax changes that help reduce the deficit in the outyears. This bill contains almost $4.8 billion in one-time loan asset sales which may actually add slightly to future year deficits because they reduce receipts the Federal Government would ordinarily receive from these loan asset holdings.

In addition to the financial asset sales, this bill includes the long-debated sale of a major physical asset—Conrail. In total, then, asset sales total $7 billion in fiscal year 1987, or nearly 60 percent of the fiscal year 1987 deficit reduction.

Mr. President, I support this package and I urge the Senate to adopt it. Some may not agree with the budget policies in this bill, but what is clear to me from my experience with this year's process is that the Gramm-Rudman-Hollings legislation worked—in the sense that it set a fixed goal to reach, and Congress as guided throughout in its authorizing, appropriating, and budgeting deliberations to reach that goal. Next year we are going to have another goal to reach. And, if we are to meet that new goal with any degree of sincerity, we will have to build a substantial policy base early on in the regular budget resolution process and we will have to commit, through reconciliation, to meet the target that we set for ourselves.

As I said at the outset, maybe we are destined to spend our mortal lives rolling and pushing that budget toward some goal, only to find that once one goal is reached another one looms on the horizon. A major advancement was made this year. We should not despair.

For any reduction in the deficit of the magnitude we will see this coming year—from $230 billion in fiscal year 1986 to $150 to $160 billion in the current fiscal year—is an unheard of achievement in the fiscal annals of this country. Between fiscal year 1986 and 1987 Federal spending will grow at the slowest rate in over 30 years.

We have accomplished a great deal. It has not been easy. We should pause and take some pride in this accomplishment. But again, we cannot rest on our laurels. Another mountain looms in the near distance, and the 100th Congress will once again begin its trek up that difficult mountain.

Mr. President, I ask unanimous consent that descriptive material and data summarizing this conference agreement appear in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SAVINGS IN CONFERENCE AGREEMENT ON THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986 BY CATEGORY

[In millions of dollars]

	Savings from CBO's gradison base	Savings from CBO's adjusted reconciliation base			
		Fiscal year—			
	Fiscal year 1987	1987	1988	1989	1987–89
Asset sales:					
RDIF loan asset sales	−1,000	−1,000	−552	−547	−2,099
Rural housing loan sales	−1,715	−1,715	233	233	−1,249
Sale of Eximbank loans	−1,500	−1,500	424	398	−678
EDA loan asset sales	−50	−50	27	0	−23
Sale of Conrail	−2,160	−2,160	237	246	−1,677
College housing and higher education loan asset sales	−579	−579	−223	−13	−815
Subtotal, asset sales	−7,004	−7,004	146	317	−6,541
Revenues:					
Increase IRS penalties	−981	−981	−990	−1,020	−2,991
Accelerate excise tax collections	−319	−319	−1	−1	−321
Tax treatment of Conrail sale	0	0	0	0	0
Accelerate State and local deposits	−388	−388	−290	−1,158	−1,836
Foreign tax credits	−14	−14	−26	−28	−68
Pension benefit accrual	0	0	−(*)	−(*)	0
Increase IRS compliance	−2,355	−2,355	−400	−100	−2,855
Subtotal, revenues	−4,057	−4,057	−1,707	−2,307	−8,071
User fees:					
FERC annual charges	−60	−65	−66	−67	−198
Coast Guard user fees	−1	−1	−2	0	−3
Customs user fees	−790	−790	−780	−840	−2,410
Subtotal, user fees	−851	−856	−848	−907	−2,611
Other spending changes:					
Prepayment of REA loans	−797	−797	110	110	−577
Advance deficiency payments	0	0	0	0	0
Petroleum overcharge collections	−400	−400	−200	0	−600
Energy conservation programs	0	50	184	140	374
Strategic petroleum reserve	215	215	29	0	244
Maritime loan defaults	−12	−12	−36	−6	−54
Thrift savings participation	−96	−96	32	23	−41
Revenue foregone	0	0	0	−210	−210
Part-time annuity computation	−(*)	−(*)	−(*)	−(*)	−1
General revenue sharing	−680	−680	0	0	−680
Guaranteed student loans	−65	−65	−110	−270	−445

SAVINGS IN CONFERENCE AGREEMENT ON THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986 BY CATEGORY—Continued

[In millions of dollars]

	Savings from CBO's gradison base	Savings from CBO's adjusted reconciliation base			
		Fiscal year—			
	Fiscal year 1987	1987	1988	1989	1987–89
Medicare Part A	533	533	−105	−498	−70
Medicare Part A and B	495	495	618	−27	1,086
Medicaid	170	170	394	519	1,083
AFDC/CSE	14	14	−2	−3	9
Eliminate COLA triggers	808	808	−761	75	122
Extend benefit accrual	−1	−1	−8	−19	−28
Subtotal, other	184	234	145	−166	212
Total reconciliation savings	−11,728	−11,683	−2,264	−3,063	−17,011

COMPARISON OF SAVINGS IN HOUSE, SENATE AND CONFERENCE RECONCILIATION BILLS [1]

[Fiscal year 1987, in millions of dollars]

	Senate-passed bill	House-passed bill	Conference
Revenues:			
Accelerate State and local deposits	388	388	388
State and local medicare coverage	789	0	0
Increase IRS compliance	2,355	2,400	2,355
Accelerate excise tax collections	319	153	319
Increase IRS penalties	987	656	981
Waterways bill (H.R. 6)	0	102	0
Oil pollution compensation	0	42	0
Foreign tax credits	14	0	14
Subtotal, revenues	4,852	3,741	4,057
Outlays:			
REA loan prepayments	−500	−1,095	−797
RDIF loan asset sales	−1,000	−1,000	−1,000
Rural housing loan asset sales	−1,405	−1,405	−1,715
Eximbank loan asset sales	−1,500	−2,810	−1,500
Housing bill (H.R 1)	0	468	0
Coast Guard user fees	−38	−1	−1
Ship Mortgage Act amendments	−12	−34	−12
Crude oil overcharges	−400	−336	−400
SPRO	0	242	215
FERC fees	−33	−33	−60
NRC user fees	−21	−130	0
EPA fees	−10	−3	0
Sale of EDA notes	−50	0	−50
Broaden FDIC assessment base	−310	0	0
Highway programs	0	0	0
Sale of Conrail	−2,160	−2,160	−2,160
Medicare	756	1,508	1,028
Medicaid	121	110	170
Assistance payments	14	15	14
Civil service retirement	−205	−135	−96
Sale of college housing loans	−579	0	(−579)
GSL changes	−30	0	(−65)
SBA loan asset sales	−343	−850	0
Advance final GRS payment	−680	−680	−680
Eliminate COLA triggers	808	808	808
Extend benefit accrual	−1	0	−1
Custom Service user fees	0	−1,830	−790
Farm deficiency paymetns	0	0	0
Part-time retirement computation	0	0	0
Increase IRS budget	384	0	0
Appropriations 50–50 cut in discretionary budget authority	0	0	0
Subtotal, outlays	−7,194	−9,351	−7,027
Total deficit reduction in bill	−12,046	−13,092	−11,084
Savings in Higher Education Act	(−644)	−644	−644
Total reconciliation savings	−12,046	−13,736	−11,728
Other savings (revenues):			
Superfund legislation	0	0	−583
H.R. 6 (waterways bill)	0	(−102)	−102
Total	−12,046	−13,736	−12,413

[1] Savings from Gradison baseline.

PRELIMINARY BASELINE DEFICITS ASSUMING SPECIFIC POLICY ACTIONS [1]

[In billions of dollars]

	Fiscal year—			
	1987	1988	1989	1987–89
CBO August baseline deficits	184.2	150.2	126.6	461.0
Technical changes since August	−2.0	−0.5	0.0	−2.5
Major policy changes: [2]				
Tax reform bill	−11.4	16.7	15.1	20.4
Appropriations [3]	−6.0	−6.0	−6.0	−18.0
Fiscal year 1986 reconciliation bill	−11.0	−1.9	−2.8	−15.7
Higher Education Act	−0.6	−0.3	−0.3	−1.2
Superfund bill	−0.6	−1.0	−1.1	−2.7
H.R. 6 (Water Bill)	−0.1	−0.2	−0.2	−0.5
Immigration bill	+(*)	0.3	1.0	1.3
Bankruptcy Amendments of 1986	−0.1	−0.1	−0.1	−0.3
Veterans compensation COLA	0.2	0.2	0.3	0.7
Compact of Free Association	0.1	(*)	(*)	0.1
Tariff and Customs bill	0.1	0.1	0.1	0.3
Subtotal, policy changes	−29.4	−7.8	−6.0	−15.6
Total changes	−31.4	−7.3	−6.0	−18.1
Debt service savings	−1.2	−2.2	−1.8	−33.6
Revised baseline deficits	151.6	155.3	130.7	409.3

[1] Estimates do not reflect economic and technical revisions that CBO will make as part of their February 1987, baseline estimates.

[2] Preliminary estimates of all policy changes. Certain estimates could change based on subsequent congressional action.

[3] Estimates assume funding levels in Senate-passed continuing resolution. Estimates not yet available for conference agreement. Outyear estimates are straightlined because reliable estimates are not yet available from CBO.

SUMMARY OF CONFERENCE AGREEMENT ON THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986

This summary provides a brief description of the major provisions in the conference agreement on the Omnibus Budget Reconciliation Act of 1986. A table following the narrative contains estimates from the Congressional Budget Office (CBO) for each spending or revenue provision in the Act. Based on CBO estimates, reconciliation savings total $11.7 billion in FY 1987 and $17.0 billion over the three years, FY 1987–89.

TITLE I—AGRICULTURE PROGRAMS

Rural development insurance fund loan asset sales

Directs the Secretary of Agriculture to sell notes or other obligations in the Rural Development Insurance Fund (RDIF) in such amounts as to realize net proceeds of not less than $1 billion in FY 1987, $552 million in FY 1988, and $547 million in FY 1989.

Prepayment of rural electrification administration debt

Requires the Federal Financing Bank (FFB) to waive prepayment penalities on a minimum of $2 billion of rural cooperatives' loans issued by the Federal Financing Bank and guaranteed by the Rural Electrification Administration (REA). Establishes criteria to determine which cooperatives would be eligible for refinancing. Save $0.8 billion in FY 1987 outlays.

The agreement also prohibits the sale and prepayment of REA direct loans after FY 1987.

Advance deficiency payments

Requires the Secretary of Agriculture to make advance deficiency payments for the 1987 crops of wheat, feed grains, upland cotton, and rice. These deficiency payments may not be lower than 40 percent for wheat and feed grains or 30 percent for rice and upland cotton. This provision results in no additional costs relative to CBO's baseline

estimates, because the baseline estimates already assume these payments will occur in FY 1987.

Farm credit institutions

Allows the farm credit system to ease its heavy debt load and excessive interest rates by changing its accounting practices. Each bank in the system would be permitted to amortize the capitalization of debt and excessive interest expense over 20 years.

TITLE II—BANKING AND HOUSING PROGRAMS

Rural housing loans sales

Directs the Secretary of Agriculture to sell rural housing loans to the public in amounts sufficient to reduce outlays by $1.7 billion in FY 1987. Does not require sales in FY 1988 and 1989.

Export-Import Bank loan sales

Requires the Board of Directors of the Export-Import Bank to sell loans to the public in amounts sufficient to reduce FY 1987 outlays by $1.5 billion. No further sales are required in FY 1988 and 1989.

Housing authorization

Does not include the housing authorization bill, H.R. 1, as proposed by the House.

FDIC fees

Does not include the provision to expand the assessment base of the Federal Deposit Insurance Corporation, as proposed by the Senate.

TITLE III—ENERGY AND ENVIRONMENTAL PROGRAMS

Recoupment of overcharge funds

Requires the deposit into Treasury of all crude oil and product overcharge funds not subject to a Department of Energy (DOE) administrative order or a court order. Does not affect the Stripper Well Agreement. Anticipated overcharge fund recoveries total $400 million in FY 1987 and $300 million in FY 1988.

Energy conservation grants

Requires the expenditure of recovered overcharge funds to ensure that Department of Energy (DOE) conservation state grant programs are funded at a minimum of $200 million annually. Increases budget authority by $200 million and outlays by $50 million in FY 1987 relative to CBO's baseline estimates.

Strategic petroleum reserve

Changes current law to increase mandatory fill rate from 35,000 barrels per day to 75,000 barrels per day. Increases FY 1987 outlays by $215 million.

Federal Energy Regulatory Commission (FERC) fees

Increases FERC fees to levels necessary to recover the Commission's entire budget. Saves $60 million in FY 1987 outlays.

Statute of limitations on petroleum pricing cases

Places a statute of limitations on further enforcement actions of alleged petroleum pricing violations.

Manufacturing energy survey

Redefines Department of Energy industrial energy survey activities.

Modifications of definition of "fuel costs"

Changes definition of fuel costs for the purpose of calculating energy savings in Federal buildings.

Department of Energy (DOE) oil study

Requires DOE to conduct a study on crude oil production and refining capacity in the United States.

Abandoned mine research and development

Transfers research and development activities on abandoned mine lands from the Office of Surface Mining to the Bureau of Mines.

Great Swamp National Wildlife Refuge

Requires the Environmental Protection Agency (EPA) to report to Congress on the progress in cleaning up the Great Swamp National Wildlife Refuge in New Jersey.

NRC fees

Drops House and Senate provisions requiring an increase in Nuclear Regulatory Commission (NRC) fees.

EPA fees

Drops a Senate provision requiring increases in Environmental Protection Agency (EPA) fees.

Oil pollution/ocean dumping

Drops provisions proposed by the House that created a new offshore pollution compensation program and revamped the Environmental Protection Agency's ocean dumping permit program.

Buy America (OCS)

Drops House provision that would require 50 percent of equipment used in the Outer Continental Shelf (OCS) to be American made.

TITLE IV—TRANSPORTATION AND RELATED PROGRAMS

Conrail

Sells Conrail through a public offering sale with a goal of $2.0 billion in proceeds to the federal government. The sale will be handled through a team of investment bankers chosen by the Secretary of Transportation. The House agreed to drop its provisions concerning railroad labor protection.

EDA asset sales

Sells defaulted Economic Development Administration (EDA) loans in amounts sufficient to reduce outlays by $50 million in FY 1987.

Highway programs

Drops all provisions on highway programs, leaving no change in current law.

TITLE V—MARITIME PROGRAMS

Maritime loan guarantees

Reforms the treatment of bankrupt firms in default on Title XI maritime ship loans. The Federal government may foreclose on ships guaranteed with Title XI loans owned by firms entering bankruptcy after August 1, 1986. Saves $12 million in FY 1987 outlays.

Coast Guard user fees

Drops Senate provision that created a voluntary stamp program through which boaters would pay in advance for certain Coast Guard services. Retains House provision that increases Coast Guard user fees by about $1 million a year.

Panama Canal investment

Drops House provision that changed the accounting of the Panama Canal Investment Base.

TITLE VI—CIVIL SERVICE, POSTAL SERVICE AND GOVERNMENTAL AFFAIRS GENERALLY

Thrift savings participation

Allows all Federal employees to contribute to the new thrift savings plan beginning April 1, 1987. Saves $96 million in FY 1987 outlays.

Civil Service Retirement System investment

Allows disinvestment of civil service retirement and disability trust funds to pay benefits when the debt ceiling is approached. Restores the portfolio and repays interest if disinvestment occurs.

Revenue foregone

Changes the method of computing the revenue foregone appropriation for the U.S. Postal Service.

Program civil fraud

Establishes procedures for certain Federal agencies to impose civil penalties on any person or organization that knowingly makes false claims or statements to the Federal agency or to intermediaries that disburse Federal funds.

TITLE VII—FISCAL PROCEDURES

Federal program COLA adjustment

Exempts Federal civilian, military, and related retirement COLA's from future sequesters under the Balanced Budget Act.

Dual benefit exemption

Exempts railroad retirement windfall benefits from future sequesters under the Balanced Budget Act.

Part-time annuity computation

Makes a technical change to the computation of retirement benefits for part-time employees at Veterans Administration medical centers.

General revenue sharing

Requires general revenue sharing payments normally made on October 5 to be made on September 30. (The payment was made on September 30, but legislation is needed to count savings of $680 million in FY 1987.)

Higher education savings

Conferees have agreed that the provisions of S. 1965, the Higher Education Act conference report, as passed by the House and Senate and submitted to the President for signature, shall be the vehicle for budgetary savings in compliance with the Budget Resolution for FY 1987. Accordingly, H.R. 5300 references the provisions of S. 1965, and previous Senate legislative language has been deleted from the bill. The main savings provisions in the bill are described below.

Guaranteed Student Loans

Requires guaranty agencies to pay an annual fee to the Federal government based on annual default rates of loans in their portfolios. Reduces the special allowance paid to banks from 3.5 percent above the three month treasury bill bond equivalency rate to 3.25 percent above that rate. Requires all students to demonstrate need for financial aid regardless of income, and limits borrowing to the "needed" amount or the statutory maximum. Tightens the definition of independent student and extends student deferments because of unemployment to 24 months. Saves $65 million in FY 1987 outlays.

Academic Facilities Loans

Instructs the Secretary of Education to sell Federal academic facilities loans in such amounts that will carry out the directions in the Budget Resolution for FY 1987. Reauthorizes and modifies the discounting provisions in current law in order to permit the necessary sales. Saves $579 million in FY 1987 outlays.

Bryd amendment

Modifies section 20001 of COBRA to clarify the application of the rules governing extraneous provisions in reconciliation bills in the Senate, and extends these rules through calendar year 1987.

President's budget submission

Does not change current law date for submission of the President's budget from the first Monday after January 3.

Treatment of loan sales

Drops general language in both the Senate and House bills concerning the treatment of loan asset sales.

TITLE VIII—REVENUES, TRADE, AND RELATED PROGRAMS

Increases penalties

Doubles the current 5 percent business penalty for failure to deposit withheld taxes in a timely fashion to 10 percent of the underdeposit. Effective for deposits required after date of enactment.

Increases the penalty rate from 10 percent to 25 percent of the portion of a tax underpayment due to substantial understatement of tax liability. An understatement is substantial if it exceeds the greater of 10 percent of the tax return or $5,000. Effective for penalties assessed after date of enactment.

Accelerate excise tax payments

Shortens the payments due date for beer, wine, distilled spirits and tobacco products to 14 days after the close of each semimonthly deposit period. The period is currently 15 days for beer, wine and imported distilled spirits, 25 days for tobacco and 30 days for domestic distilled spirits. Effective for semi-monthly periods ending on or after December 31, 1986.

Port use tax

Drops port use tax provision proposed by the House.

Oil spill liability tax

Imposes an excise tax of 1.3 cents per barrel on domestic crude oil and on imported crude oil and petroleum products to fund an Oil Spill Liability Trust Fund. The Trust Fund will be used to clean up off-shore oil spills with a limitation of $250 million per spill. The tax will trigger off when the Trust Fund contains $300 million and trigger on when it contains less than $150 million. This provision will become effective only if authorizing legislation is enacted by February 1, 1987.

Rate of FUTA tax

Drops extension of the FUTA tax proposed by the House.

Telephone excise tax

Drops telephone excise tax proposed by the House.

Customs user fee

Imposes an ad valorem fee of 0.22 percent in FY 1987 and 0.17 percent in FY 1988 and FY 1989 on entries of imported commercial merchandise. In FY 1988 and FY 1989, the fee will be reduced if the revenue gain exceeds the amounts necessary to fund customs commercial operations. The fee does not apply to products of least developed developing countries, Caribbean Basin Initiative countries. U.S. Insular possessions, or to schedule 8 products. Effective December 1, 1986.

Accelerate Social Security payroll deposits

Subjects state and local governments to the same standards for timely deposit of social security contributions as private organizations. Relieves states of the responsibility for collecting the social security contributions of their political subdivisions. Effective January 1, 1987.

Foreign tax credit

Denies the foreign tax credit to companies operating in countries that are not recognized by the United States or that have been determined by the Secretary of State to repeatedly support acts of international terrorism. Effective January 1, 1987.

IRS compliance

Provides that appropriations to the IRS shall be made at a level above baseline sufficient to fund increased revenue collecting activity. This is expected to generate $2.4 billion in increased revenue for FY 1987.

Tax treatment of Conrail sale

Provides that the stock sale shall be treated as an asset purchase with the result that no net operating losses or other carryovers such as unused investment tax credits will be usable after the public sale.

Debt limit extension

Temporarily increases the statutory debt limit by $189 billion, from $2.111 trillion to $2.300 trillion. On May 15, 1987, the statutory debt ceiling falls back to its previous permanent level of $2.111 trillion.

TITLE IX—INCOME SECURITY, MEDICARE, MEDICAID, AND MATERNAL HEALTH PROGRAMS

AFDC

Drops provision to mandate the AFDC Unemployed Parent program. Includes a hold harmless provision for states adversely affected by funding formula changes passed in COBRA.

Social Security

Eliminates the 3 percent social security COLA trigger, thus allowing a COLA to be paid in January. Drops the provision to guarantee that social security benefits will be paid even when the public debt limit is reached.

Medicare part A

Increases medicare hospital prospective payment rates by 1.15 percent, compared to the Administration's 0.5 percent increase. Limits the increase in hospital capital costs by 3.5 percent in 1987, 7 percent in 1988, and 10 percent in 1989. Limits the 1987 increase in the medicare inpatient hospital deductible to $520, and modifies the index for computing the deductible. Adds provisions to improve quality of care.

Medicare parts A and B

Eliminates medicare periodic interim payments (PIP), except for hospitals which serve a large proportion of low income beneficiaries and for rural hospitals with less than 100 beds. Requires prompt payment of claims in 26 days effective in FY 1988. Makes medicare the secondary payor for beneficiaries who receive employment-based health benefits. Prohibits the Administration from publishing before September 1, 1987, final regulations which effect hospital payments, hospital capital, or physician payments.

Medicare part B

Reduces payments for cataract surgery and specifies criteria which the Administration must consider before making inherent reasonableness decisions. Reduces end stage renal dialysis payments by $2 per service, compared to the Administration's regulatory reduction of $11. Limits payments for clinical labs and nutrition supplies. Allows medicare reimbursement for vision care services offered by optometrists. Provides a two-tier increase in medicare physician payments.

State and local Medicare coverage

Drops Senate provision to extend medicare coverage on a mandatory basis to all state and local employees.

Medicaid

Allows states to provide medicaid coverage for pregnant women and infants, and the elderly and disabled with income below poverty level, but who do not qualify for AFDC or SSI. Holds harmless those states adversely affected by a change in the medicaid formula made in COBRA.

Pension benefits

Requires employers to continue pension accrual for employees who work beyond the normal retirement age. Saves $1 million in FY 1987 outlays.

Risk pools/access to health care

Drops all provisions.

OTHER PROVISIONS DROPPED FROM HOUSE OR SENATE BILLS

Across-the-board appropriations reductions

Drops House language instituting an automatic reduction in FY 1987 appropriations sufficient to reduce outlays in that year by $1 billion, with the reductions to be implemented in the same manner as under the Balanced Budget Act.

Food for peace

Drops Senate language requiring all funds appropriated for FY 1986 for Public Law 480, Title II programs be obligated during FY 1986.

Medicare off-budget

Retains current law treatment of medicare as part of the unified Federal budget.

SBA loan asset sales

Drops both the House COSBI proposal and the Senate Section 503 loan asset sales from the reconciliation bill.

SAVINGS IN CONFERENCE AGREEMENT ON THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986

[In millions of dollars]

	Savings from CBO's Gradison base				
	Fiscal year 1987	Savings from CBO's Adjusted Reconciliation Base	Fiscal years—		
			1988	1989	1987–89
Title I—Agriculture Programs:					
RDIF loan asset sales	−1,000	−1,000	−552	−547	−2099
Prepayment of REA loans	−797	−797	110	110	−577

SAVINGS IN CONFERENCE AGREEMENT ON THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986—Continued

[In millions of dollars]

	Savings from CBO's Gradison base				
	Fiscal year 1987	Savings from CBO's Adjusted Reconciliation Base	Fiscal years—		
			1988	1989	1987–89
Advance deficiency payments [1]	0	0	0	0	0
Subtotal, title I	−1,797	−1,797	−442	−437	−2,676
Title II—Banking and Housing Programs:					
Rural housing loan sales	−1,715	−1,715	233	233	−1,249
Sale of Eximbank loans	−1,500	−1,500	424	398	−678
Housing Bill (H.R. 1) [2]	0	0	0	0	0
Broaden FDIC assessment base [2]	0	0	0	0	0
Subtotal, title II	−3,215	−3,215	657	631	−1,927
Title III—Energy and Environmental Programs:					
Petroleum overcharge collections	−400	−400	−200	0	−600
Energy conservation programs	0	50	184	140	374
Strategic petroleum reserve	215	215	29	0	244
FERC annual charges	−60	−65	−66	−67	−198
NRC user fees [2]	0	0	0	0	0
EPA fees [2]	0	0	0	0	0
Ocean dumping fees [2]	0	0	0	0	0
Subtotal, title III	−245	−200	−53	73	−180
Title IV—Transportation and Related Programs:					
Sale of Conrail	−2,160	−2,160	237	246	−1,677
Highway programs [2]	0	0	0	0	0
EDA loan asset sales	−50	−50	27	0	−23
Subtotal, title IV	−2,210	−2,210	264	246	−1,700
Title V—Maritime Programs:					
Maritime loan defaults	−12	−12	−36	−6	−54
Coast Guard user fees	−1	−1	−2	0	−3
Panama Canal investment [2]	0	0	0	0	0
Subtotal, title VI	−13	−13	−38	−6	−57
Title VI—Civil Service, Postal Service and Governmental Affairs Generally:					
Thrift savings participation	−96	−96	32	23	−41
Revenue foregone [3]	0	0	0	−210	−210
Subtotal, title VI	−96	−96	32	−187	−251
Title VII—Fiscal Procedures:					
Part-time annuity computation	−(*)	−(*)	−(*)	−(*)	−1
General revenue sharing	−680	−680	0	0	−680
Guaranteed student loans [4]	(−65)	(−65)	(−110)	(−270)	(−445)
College housing and higher education loan asset sales [4]	(−579)	(−579)	(−223)	(−13)	(−815)
Subtotal, title VII	−680	−680	0	0	(−681)
Title VIII—Revenues, Trade and Related:					
Increase IRS penalties	−981	−981	−990	−1,020	−2,991
Accelerate excise tax collections	−319	−319	−1	−1	
Tax treatment of Conrail sale	0	0	0	0	0
Accelerate State and local deposits	−388	−388	−290	−1,158	−1,836
State and local medicare coverage [2]	0	0	0	0	0
Foreign tax credits	−14	−14	−26	−28	−68
Customs user fees	−790	−790	−780	−840	−2,410
Waterway Bill Port use tax [2]	0	0	0	0	0
Telephone excise tax [2]	0	0	0	0	0
Extend FUTA repayment tax [2]	0	0	0	0	0
Oil spill liability trust fund [1]	0	0	0	0	0
Pension benefit accrual	0	0	−(*)	−(*)	0
Increase IRS compliance [5]	−2,355	−2,355	−400	−100	−2,855
Subtotal, title VIII	−4,847	−4,847	−2,487	−3,147	−10,481
Title IX—Income Security, Medicare, Medicaid, and MCH:					
Medicare, part A	533	533	−105	−498	−70
Medicare, part A and B	495	495	618	−27	1,086
Medicaid	170	170	394	519	1,083
AFDC/CSE	14	14	−2	−3	9
Eliminate COLA triggers	808	808	−761	75	122
Extend benefit accrual	−1	−1	−8	−19	−28
Subtotal, title IX	2,019	2,019	136	47	2,202
Other provisions dropped from bills:					
Appropriaitons 50–50 cut in discretionary budget authority [2]	0	0	0	0	0
SBA loan asset sales [2]	0	0	0	0	0
Subtotal, other	0	0	0	0	0
Total Savings in bill	−11,084	−11,039	−1,931	−2,780	−15,751
Savings in Higher Education Act	−644	−644	−333	−283	−1,260
Total reconciliation savings	−11,728	−11,683	−2,264	−3,063	−17,011

[1] Provision has no cost relative to CBO's Gradison or adjusted reconciliation baseline.
[2] Provision was dropped in conference.
[3] CBO scores this provision as an authorization. The Budget Committees have generally disagreed and scored this type of savings as direct spending.
[4] Senate and House conferees have agreed that S. 1965, the Higher Education Act, shall be the legislative vehicle for achieving savings in compliance with the reconciliation instructions for FY 1987. Therefore, CBO will not score these savings as part of the reconciliation bill. However, these savings will be counted in the reconciliation total for FY 1986.
[5] CBO will score the revenue increase associated with this provision if the appropriations for the IRS referenced in the reconciliation bill is enacted on a full year basis and necessary administrative actions are taken by the IRS.

Mr. ARMSTRONG. Mr. President, could we have order in the Senate and also could we ask if the chairman has copies of that that Members could refer to while this matter is under debate?

Mr. DOMENICI. I did not hear the distinguished Senator.

Could we have order, Mr. President?

Mr. ARMSTRONG. Mr. President, that underscores the first request, which was, could we have order in the Senate?

The PRESIDING OFFICER. If the Senator will withhold, the Chair will try to get order. We may be getting near the end of the session, I would say to Members, but we do need order in this Chamber if we are going to complete the work.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I have a statement, dated October 17, "Statement of the Administration Policy from the White House on H.R. 5300." In essence, the statement of policy says:

The administration supports the enactment of reconciliation legislation for FY 1987. While the conference report on H.R. 5300 has addressed many of the concerns raised by the administration * * *.

Basically, the letter, while it says here they are disappointed, indicates that they support it.

I ask unanimous consent that the Statement of the Administration Policy be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF ADMINISTRATION POLICY

The Administration supports enactment of reconciliation legislation for FY 1987. While the Conference Report on H.R. 5300 has addressed many of the concerns raised by the Administration—including deleting AFDC-UP, deleting housing act provisions, and devising mostly acceptable language for the sale of Conrail—problems still remain.

Specifically, the Administration opposes several provisions still contained in the bill.

The provision mandating a fill rate of 75,000 barrels per day for the Strategic Petroleum Reserve (SPRO) is altogether unnecessary and would increase outlays by $220 million per year over the present minimum fill rate of 35,000 barrels per day.

Customs fees are set artifically high—exceeding the actual cost of cargo inspection and thus appearing to be GATT illegal.

The tax provisions relating to Conrail are burdensome and may interfere with obtaining the best price for the railroad.

It is disturbing and disappointing that this reconciliation bill, which is supposed to reduce spending, not only has few outlay reductions, but actually incorporates substantial program expansions, mainly in the Medicare area—increasing outlays on the order of $2 billion in FY 1987 and even more annually thereafter.

Mr. DOMENICI. Mr. President, I want to summarize in gross terms what this reconciliation bill does.

Mr. ARMSTRONG. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The point of order is well taken. The Chair is having great difficulty in persuading the Senate to be in order.

We will ask the Senator from New Mexico to withhold now until audible conversations have ceased. The Chair would urge Members who are conversing with staff to do so in the cloakroom.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, let me just summarize what we will accomplish if we adopt the reconciliation conference report that is before us.

We will reduce the deficit for 1987 by $7 billion with asset sales; we will reduce the deficit by $4.1 billion with revenues; $851 million with user fees; other spending changes add $184 million; for a total of $11,728 million in the first year.

I regret to say that that does not carry out into the out-years, but the sum total that we will effect by way of savings or reductions, I should say, off the deficit amount to, over the next 3 years, $17,011 million.

I would also like to inform the Senate that with the adoption of this reconciliation bill, if it is adopted—and I hope it is. It was adopted by the House about 2 hours ago by a vote of 305 to 69. If we adopt it and it is signed by the President, and as I indicated I have no doubt the President will sign it, we will have accomplished the following: The Gradison baseline deficit from which any sequester would have been calculated would be $148.9 billion. As everyone knows, when that is accomplished, there would be no sequester, even if we had the automatic provision that the distinguished sponsors of the bill are seeking to put into the legislation, because $148.9 billion is less than the $154 billion which we must reach in order to avoid a sequester.

Obviously, that includes the $11.7 billion reduction in this bill. It includes the $11.4 billion in tax reform, wherein the revenues go up. But it also contemplates that we take into consideration that we have passed an appropriations bill for 1 full year. When we voted in the CR awhile ago, that is calculated into this. That is why I have been saying for the last 3 or 4 weeks there would be no sequester. That is why I said yesterday that we were on a path now this year for the largest reduction in the expenditure side of this Government in some 30 years. As a matter of fact, the expenditure side is growing far less than inflation. In fact, there has not been a bigger decline in the last 30 years. The bill includes defense for a whole year, all of the entitlements for a full year, and all of the appropriated accounts.

Obviously, there will be a few supplementals that are necessary. I do not know how they will be worked out, because there is no more room left in the budget, but as of this point we are well within the sequester. And, as I indicated before, I complimented those who accomplished that.

Mr. President, I am not telling the Senate that we have before us a reconciliation bill that we should imitate in future years, even though it does exactly what I have just said and even though I hope it will become law. I am not suggesting that it is the kind of reconciliation bill that we should have in place as we move to reach the totals of Gramm-Rudman-Hollings because under the guidelines that the U.S. Congress followed, with the President of the United States admonishing us, most of these savings are one-time savings and most of the revenues, most, are nonrecurring revenues.

As a consequence, we will meet the targets this year and it will help us somewhat in 1988, but not a great deal.

Mr. President, there is one other feature of this bill that I must tell the Senate about. When this bill came out of conference, the Ways and Means Committee and the Finance Committee, because they were of the opinion that we ought to get the business of the Senate behind us here tonight, incorporated in their part of this bill the extension of the debt limit of the United States, so that it will continue until May 15 of the coming year.

□ 2020

In other words, instead of the full year extension of the debt limit, this reconciliation bill contains an extension until May 14 and contains within it the requisite deficit numbers to carry the Treasury of the United States through that day.

I do not want to deceive the Senate. This is extraneous. There is no question about it. It is in this reconciliation bill. It is not part of the reconciliation instruction. Under the Byrd amendment which we adopted unanimously, it is extraneous to the reconciliation bill. Everyone should know that is not fatal because we have within ourselves here as the U.S. Senate the prerogative to waive that. I will ask the U.S. Senate very shortly to waive that because I know it is extraneous.

Those who put it in, working with the leader of the U.S. Senate and myself as chairman of the Budget Committee, knew it was extraneous. But we thought we ought to present one package to the U.S. Senate. Let us vote on it. If somebody wants to challenge the debt limit's propriety, they can do so. I have been informed somebody intends to, and consequently I intend myself to move that we waive the requisite provisions of the current law. We will have to vote on that, and it will have to have 60 votes to be waived.

I am going to yield the floor in a moment. I am ready to answer any questions. But before I yield, I will move, Mr. President, that we waive the provisions of Senate Resolution 509 for the purposes of considering section 8201 of the conference report and H.R. 5300, the Omnibus Budget Reconciliation Act of 1986.

Mr. ARMSTRONG. Mr. President, will the Senator yield for a question?

Mr. DOMENICI. Might I just repeat for the Senate this motion that I made and that is now before the Senate is provided for within the rules of the Senate. The Senate will have an opportunity to decide whether they want the debt limit in this reconciliation bill or not. It will take 60 votes under our rules for us to leave the debt limit in this bill. But I remind the Senate if we take it out, we will have to send the bill back to the House, and we will have to see what they do about a debt limit bill.

I am pleased to yield to the Senator from Colorado for a question.

Mr. ARMSTRONG. Mr. President, the question I wanted to address to the Senator is this: If he is making that waiver motion on the expectation that I am going to make a point of order, he can save us all about 15 minutes of time and not make the motion.

I have been thinking about it. I have determined that there is no point in raising this point of order. I am going to resolve my concerns in a different way. I would speak on the bill. He can save us that time if he would like to.

Mr. FORD. Mr. President, would the Senator from New Mexico yield for a question?

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Parliamentary inquiry. What would the Senator from New Mexico have to do to remove his motion from consideration?

The PRESIDING OFFICER. The Senator has the right to withdraw his motion at this time.

Mr. DOMENICI. I withdraw my motion at this time.

The PRESIDING OFFICER. Who yields time?

Mr. FORD. I would like to ask the Senator from New Mexico a question, if I could.

The PRESIDING OFFICER. The Senator is recognized for that purpose.

Mr. FORD. Would the Senator tell me what the debt ceiling increase is in this particular legislation?

Mr. DOMENICI. Let me say I did not tell the Senate the number. I told them the date. The date is May 15. The number is $189 billion, I am informed.

Mr. FORD. That is, $189 billion more than the present debt ceiling?

Mr. DOMENICI. That is correct.

Mr. FORD. That is the increase?

Mr. DOMENICI. The Senator is correct.

Mr. FORD. That will only carry us until May 15, 1987.

Mr. DOMENICI. The Senator is correct.

Mr. FORD. I thank the Senator.

Mr. CHILES addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. CHILES. Mr. President, the reconciliation bill is the last piece of the budget puzzle that we have been building throughout the year.

The budget is not written on one piece of paper—it is written as the cumulative effect of a host of tax and spending bills we have written through the year. We have passed the tax reform bill, the continuing resolution appropriations bill, the Superfund bill, the highway bill, and many others. As we go to pass the reconciliation bill, we put the last piece in the puzzle and we get to see what the picture is which emerges. I would therefore like, at this moment to play art critic, and say I am not sure that we have painted a masterpiece in that puzzle which we put together.

The standoff locked inside this year's budget has a parallel in literature nearly identical to the story of the last 6 years.

The story is "Dr. Doolittle," and the character that best fits our recent economic policy is the Pushmi-Pullyu. It is an animal with conflicting ideas at both ends, an indecisive beast, constantly at odds with itself and making little progress.

After 6 years of pushing and pulling, when you look at the net results we are sort of where we were when we started. The budget deficit remains at over $150 billion, with a prospect for more when our goal is less. It is a product of pushing for budget cuts in one direction, while pulling out revenues at an even faster rate.

When you strip out the smoke and mirrors we end up with $6 billion in savings from a $180 billion deficit. It is not as much as we would like to have done, and certainly it is not as much as we should have done.

Our international trade deficit is at a record level, the result of too little pushing, and too much pulling, and a trade policy that does little, and produces less.

And although the administration pushed all year for its brand of tax reform, the outcome has been to pull the rug from beneath those who hoped revenue policy would be an ally in the battle for lower deficits.

After 5 years of administration policy that punished Government as a substitute for clear thinking about the future, we are at a standstill. We have said "no" so often without ever getting around to deciding which way we are headed.

In truth, things are static—a precarious inertia that finds the United States no better equipped to confront a competitive world today than we were 6 years ago.

We have been standing still, but our competition has been on the move. Germany, for example—a nation just over one-fourth the size of the United States—now exports more goods and services to the world than we do.

Japan—less than half the size of the United States—actually graduates more engineers than we do.

So we must do much better. We must be bold. But consider this year's budget.

We are better prepared to defend America. But we are no better prepared to pay for it. After years of increased spending, we have now essentially frozen military expenditures at last year's levels. To cut defense further, may well eat into our combat readiness.

We have made deep cuts in domestic spending to fight the deficit. But when the Senate was asked this year if it was willing to follow the White House notion that the budget could be balanced with domestic spending cuts alone, the proposition got only 14 votes.

We have said we will sell off our properties if it will reduce our debts. But even if we were to sell our direct loan portfolio and all Federal lands, we would still have a deficit 2 years from now of $122 billion.

We have passed a variant of tax reform on the pledge that it would be revenue neutral. But next year that so-called neutrality will add $17 billion to the Federal deficit, and that will make our hopes for sustaining recovery that much more difficult.

We have made some adjustments in the budget. We have reshaped some priorities. We will invest a bit more in education. We will apply a bit more of our resources to the war on drugs. But these investments are minimal compared to our needs. We have demonstrated a glimmer of wisdom, but what we need is a beacon.

Where we are now is not only back where we began, but a little farther back than that. In fact, a lot farther back. Our national debt is more than $1 trillion higher than it was 6 years ago. Our competition is stronger than it was 6 years ago. And after 6 years, it is time to rethink our prospects.

□ 2030

To begin with, we must disenthrall ourselves from the notion that government is the stumbling block to progress.

The central question of our time is not government. The central question is what will this country do as a people to leave its mark on history and the

hopes of all of us for a better life in a more peaceful world.

In that quest, the driving force is not government, but the people. It is not a matter of public activity versus private enterprise; it is a matter of whether we can join the two creatively to further our national purposes.

The GI bill was a partnership that put tens of thousands through college. The Federal Housing Administration and VA housing helped many of us buy our first homes. Land grant colleges are the combined vision of public and private initiative. And Social Security is a trust the people assigned the Government to safeguard funds for our retirement years.

If we want the next century to be another 100 years of American advancement, it is the people and their leaders—together—who must shape the policies and make them happen.

Within government, within business, industry, our schools and research centers, we must seek new paths.

One new path has recently been cleared. At the National Bureau of Standards, an alliance of business, industry, universities, and Government have created a workplace of the future. Computer-driven robots manufacture precision goods at low cost. From this experiment we can learn to improve our productivity, and provide our workers with the skills to reassert themselves as the best and most productive in the world.

As a people, we must decide which programs, now in place, serve us well, and which do not. As a people, we must decide which new directions we must follow—which new adjustments we must make—to strengthen our economy now and for the decisive economic competition that lies ahead of us.

If we are going to turn onto new paths, we must leave the old ones.

And as a people, we must decide whether the status quo is status enough for an inventive country with the proudest record of achievement in the history of the world.

The choices we must make are very hard. But we must make them in the years ahead because we have failed to make them in the years before.

What we must do is nothing less than mobilize our society in search of new levels of achievement for this Nation.

We have, today, a structural deficit that has defied every step we have taken. It is a deficit that will remain even under conditions of full employment because we do not have the financial resources to erase it. It will remain unless we reestablish a market vitality and rebuild our level of productivity. And its existence makes each of those steps more difficult.

But the problems are not insurmountable. Their solution rests on our ability to decide and our capacity for vision and daring.

We must do more than say "no" to excess spending; we must say "yes" to spending that invests in our future growth.

We must do more than tinker with existing programs. We must drop some of the old to make room for the new.

What we must do is boldly stretch our imaginations—and commit our resources—even within the constraints of our massive debts—to get this country moving into the future.

Our record this year—as it has been for the 5 years that came before—has been indecisive, and this year's budget confirms it. We had no end of opportunity to shift our thinking into a higher gear. But we clutched, and if we continue in that course, we will tie ourselves up in grid lock.

The explanation of the budget that follows includes some evidence that we are willing to change our ways. But we must do better—much better.

We have hopes to explore and commercialize space. But we must question those intentions in the aftermath of the *Challenger* tragedy. The questions are not about our will to go on. We will go on. But when the administration seeks a new orbiter without providing the funds to pay for it, the questions persist.

In the past 6 years, we have purchased $1 trillion in military hardware. We must now provide the resources to operate and maintain it.

In the past 6 years, we have spent a lot of money preparing for a nuclear war we hope we never have to fight. But with all that money—and all the funds we have invested to guard against a conventional war in Europe—we are still not prepared for the immediate threats we face in Libya, Lebanon, the Middle East, and Central America.

We are ill equipped to fight either the terrorist or the brushfire war. We are no better prepared to rescue hostages in 1986 than we were to get them out of Iran in 1980. Whether it is because of interservice rivalry or lack of planning, we still do not have the command structure, the transportation, or the communication to win the battles that could prevent the wars.

So we must do better.

In this budget we will find some discipline of our military spending, but we have not yet faced up to rethinking whether our military resources are being committed to the areas where we are most likely to fight.

In this budget we will find some savings, but most is for 1 year rather than the long haul; we are not on track to a balanced budget at any foreseeable date.

And in this budget we will find a measure of vision, but it is hindsight, combing through the same list of programs, adding a little here, subtracting a little there, but not providing any major policy departures. We seem to be providing a microscopic view of our problems, and losing sight of our opportunities.

We have crossed this path before—and recrossed it many times while we debate rather than make bold decisions.

Why is it that we react to crisis rather than plan ahead?

Why do we lock ourselves in the politics of random fear and narrow horizons rather than swinging open the doors to a higher ambition and expanding possibilities.

A great nation can only be timid so long. Our country deserves better.

It is time for this country to turn in a fresh direction, to put aside the political archaeology of the past, and pledge ourselves to boldness, advancement, exploration, and growth.

We must be daring and strong, willing to challenge every convention, ready to seize each opportunity, and determined to advance along the lines of leadership we must rediscover among ourselves.

Our future does not hinge on the size of Government. Our future does not hinge on how much money we can spend or how fast we can spend it. Our future is—to put it simply—ours. It is ours to decide the extent of the American adventure.

Mr. President, I ask unanimous consent to have printed in the RECORD a summary of the total budget.

There being no objection, the fiscal year 1987 budget wrap-up was ordered to be printed in the RECORD, as follows:

FISCAL YEAR 1987 BUDGET WRAP-UP

HIGHLIGHTS

FY 1987 Deficit: Deficit estimated at about $151 billion. Sequestration is avoided by coming within $10 billion of the Gramm-Rudman-Hollings target of $144 billion for FY 1987. More realistic budget estimates show the FY 1987 budget deficit is likely to end up at *$180–190 billion.*

Deficit Reduction in FY 1987: A Domenici-Chiles bipartisan budget proposal, reported by the Senate Budget Committee, would have achieved the Gramm-Rudman-Hollings deficit target of $144 billion in FY 1987 and exceeded the three year deficit reduction target of $322 billion. This would have been achieved largely through permanent changes, such as holding the line on defense spending, increasing revenues by $18.4 billion and saving some $14.3 billion in non-defense spending. Instead, in 1987, the first year of Gramm-Rudman-Hollings, *only $6 billion of deficit reduction from policy changes were enacted* (see Table 1).

In FY 1987, $26 billion was "cut" from CBO's baseline deficit of $182 billion by legislation that has no permanent or long-run impact on the deficit. $11 billion comes from the tax reform windfall and $8 billion in one time-only asset sales that will raise future deficits.

Some "savings" are highly questionable. For example, $3 billion of increased revenues from additional IRS compliance activities and penalties is doubtful. Moving the date of military paychecks by one day

(moving one paycheck into the next fiscal year) is purely an accounting change which "saves" $2.9 billion in outlays.

In FY 1987, only $4 billion net reduction in the deficit was accomplished by policy changes. Cuts include $3 billion in domestic appropriations; $2 billion from defense; and, $2 billion in increased revenues. These savings are offset by $1 billion in increased entitlement spending. Moreover, almost all of the savings in defense and domestic programs are derived by foregoing increases for inflation. In the aggregate, FY 1987 appropriations are above FY 1986 levels.

What Will the FY 1987 Deficit Really Be?: Deficit estimates made at the beginning of the fiscal year are often revised upwards (in FY 1986, for example, the deficit estimate rose about $35 billion during the year). When FY 1987 has ended next October, the deficit will probably be in the range of *$180-$190 billion* (see Table 2).

Higher FY 1987 deficits are likely due to: (1) Unrealistic economic assumptions ($10-12 billion impact); (2) Unrealistically low outlay estimates for defense and farm programs, and insufficient funds budgeted for the usual range of contingencies which arise in any given fiscal year (e.g., in FY 1986 extra funds for the FDIC and FSLIC were needed) ($9-12 billion impact); (3) Overestimation of revenues from tax reform ($5-10 billion impact); and, (4) A variety of other technical re-estimates (total of $5 billion impact).

TABLE 1.—*Current estimate of deficit for fiscal year 1987* [1]

[In billions of dollars]

CBO baseline deficit [2]	182
Policy changes reducing deficits:	
Defense	−2
Domestic appropriations	−3
Revenues	−2
Entitlements (new spending)	+1
Subtotal	−6
Other deficit reductions:	
Tax reform windfall	−11
Asset sales	−8
IRS compliance and penalties	−3
Move defense pay-date	−3
Debt service	−1
Subtotal	−26
Total deficit reduction [3]	−31
Revised deficit estimate	151

[1] Minority Staff Senate Budget Committee Estimate based on preliminary data supplied by CBO.

[2] CBO August Baseline Deficit Projection with adjustments for consistency with CBO August Sequestration Report.

[3] Totals may not add due to rounding.

TABLE 2.—*Likely deficit estimate for fiscal year 1987*

[In billions of dollars]

Current estimate	151
Reestimates:	
Economy	+10-12
Farm, defense and unanticipated contingencies	+9-12
Tax reform	+5-10
Other re-estimates	+5
Revised deficit estimate	180-190

FY 1988 and Outyear Implications: The FY 1988 deficit is likely to exceed $200 billion. The FY 1987 revenue windfall of $11 billion will become a $17 billion *revenue shortfall* in FY 1988 (adding almost $30 billion to the deficit). Asset sales of $8 billion in FY 1987 disappear in FY 1988 and, in fact, increase future deficits due to lost receipts. Thus, even with a deficit reduction of $20 billion, which naturally occurs from one year to the next with modest economic growth, the deficit is likely to exceed $200 billion. Meeting the FY 1988 Gramm-Rudman-Hollings target of $108 billion will be a monumental challenge.

GROWTH BUDGET

During Senate consideration of the FY 1987 Budget Resolution, Senators Chiles and Hart proposed a "Growth Budget" amendment, calling for increased funding for programs in science, education, technological development, training, natural resources, and trade promotion.

The proposal would have provided an additional $3 billion for these programs in fiscal 1987 and a total of $17 billion over three years—to be paid by increased revenues. $1.5 billion was eventually earmarked by the full Senate for these programs in FY 1987.

The growth initiative helped hold the line against many of the Republican cuts that would have undermined future economic growth. But measured against the initial proposal, the outcome was disappointing.

TRADE

During the 99th Congress, the U.S. merchandise trade deficit increased by $50 billion and will be a record $170 billion in 1986.

Despite these record trade deficits, and clear and convincing evidence that foreign trade barriers are a major impediment to U.S. exports, the Republican leadership failed to move a single piece of Senate trade legislation to the floor.

The only piece of trade legislation voted by the Senate was the textile bill. It was sent over by the House (never reported out of the Finance Committee), approved by the Senate, and vetoed by the President. The House failed to override the President's veto, preventing further consideration by the Senate.

Numerous trade bills were introduced during the 99th Congress. Three omnibus trade bills with widespread support were offered—S. 1837 (Bentsen), S. 1860 (Danforth) and S. 2033 (Chiles). Not one of these bills was reported from the Finance Committee.

The Telecommunications Trade Act of 1985 (S. 942) was reported from committee, as was S. 1404—the Japan Unfair Trade Practices bill. Neither bill was brought to the floor.

In the closing months of the 99th Congress, the House sent over its Omnibus Trade bill (H.R. 4800). As it had done in the case of all previous Congressional initiatives—whether protectionist or not—the Administration immediately labeled it as such. The Finance Committee failed to consider H.R. 4800 and it was not brought to the floor.

TAX REFORM

Although the recently passed tax reform bill increases corporate taxes $120 billion over the next five years, none of those dollars are used for deficit reduction. In fact, the new tax law increases outyear deficits by $17 billion in FY 1988 and $15 billion in FY 1989. During those same two years, the Gramm-Rudman maximum deficit amounts drop to $108 billion and $75 billion respectively.

In addition to projected revenue shortfalls over the next few years, the tax reform legislation is likely to even further exacerbate deficit cutting attempts since it is highly sensitive to economic performance. The Senate's tax reform package, for example, was reestimated and found to be $21 billion short of revenue neutrality only two weeks after the bills passage on the Senate floor.

RECONCILIATION REVENUE PROVISIONS

The President's budget called for increased revenues of $6.7 billion in FY 1987 and $21.9 billion over the next three years. The largest single component of that recommendation was $1.7 billion annually from retention of the 16 cents per pack cigarette excise tax. Congress voted to make the 16 cents tobacco excise tax permanent as part of COBRA.

Total reconciled revenues for FY 1987 are $1.5 billion below the level recommended by the Administration. When combined with tax reform, total revenues will be down by almost $10 billion over the next three years compared to baseline and nearly a full $32 billion below the increased revenue target set by the President.

[In billions of dollars]

	1987	1988	1989	Total
Proposed New Revenues				
President's request	6.7	7.0	8.2	21.9
Domenici-Chiles (Budget Committee reported)	18.7	26.8	28.8	74.3
Senate-passed	13.2	20.2	20.6	54.0
Conference report	3.5	2.6	2.4	8.5
Impact of Enacted Revenue legislation				
Reconciliation	+4.8	+2.5	+3.1	+10.5
Tax reform	+11.4	−16.7	−15.1	−20.4
Total	+16.2	−14.2	−12.0	−9.9

DRUG BILL

The Senate and House of Representatives adopted a comprehensive, drug enforcement, education and control act in the closing days of the 99th Congress. A total of $1.7 billion in new funds was provided to implement H.R. 5484, the Anti-Drug Abuse Act, in the FY 1987 Continuing Resolution. Major provisions of the measure are as follows:

Stiffer penalties for possession and distribution of "crack" cocaine, the manufacture of controlled substances within 1,000 feet of a college, and narcotics trafficking. Major drug traffickers would face a minimum of ten years and up to life imprisonment for a first offense.

Establishment of money laundering in narcotics enterprises as a federal crime and the setting of related penalties.

Additional funds ($504 million in FY 1987) for the Drug Enforcement Administration, the Federal Prison System, the U.S. Marshals Service, the Department of Justice and the Judiciary to improve the enforcement of strengthened federal drug laws.

Additional funds for the U.S. Customs Service, its air interdiction program and the U.S. Coast Guard to increase federal efforts to interdict illicit drug smuggling (a total of $575 million in FY 1987 was provided under the Departments of Treasury, Transportation and Defense for this purpose).

Additional funds ($58 million in FY87) for international narcotics control assistance to encourage foreign cooperation in eradicating illegal drug crops and to increase U.S. drug abuse education and prevention programs in other countries.

Expansion of federal support for state and local drug abuse treatment and rehabilitation programs through a new $228 million grant.

Promotion of "drug-free" schools and communities through a new $200 million grant to enhance drug prevention and education programs.

To Rethink Our Future: An Overview of the Budget

(By Senator Lawton Chiles)

The standoff locked inside this year's budget has a parallel in literature nearly identical to the story of the last six years.

The story is *Dr. Doolittle*, and the character that best fits our recent economic policy is the Pushmi-Pullyu. It is an animal with conflicting ideas at both ends, an indecisive beast, constantly at odds with itself and making little progress.

After six years of pushing and pulling, we have done very little. The budget deficit remains at over $150 billion, with a prospect for *more* when our goal is *less*. It is a product of pushing for budget cuts in one direction, while pulling out revenues at an even faster rate.

When you strip out the smoke and mirrors we end up with 4 billion in savings from a $180 billion deficit. Not very much. Not enough.

Our international trade deficit is at a record level, the result of too little pushing, and a trade policy that does little, and produces less.

And although the administration pushed all year for its brand of tax reform, the outcome has been to pull the rug from beneath those who hoped revenue policy would be an ally in the battle for lower deficits.

After five years of administration policy that punished government as a substitute for clear thinking about the future, we are at a standstill. We have said "no" so often without ever getting around to deciding which way we are headed.

In truth, things are static—a precarious inertia that finds the United States no better equipped to confront a competitive world today than we were six years ago.

We've been standing still, but our competition has been on the move. Germany, for example—a nation just over one-fourth the size of the United States—now exports more goods and services to the world than we do.

Japan—less than half the size of the United States—actually graduates more engineers than we do.

So we must do better. We must be bold. But consider this year's budget.

We are better prepared to defend America. But we are no better prepared to pay for it. After years of increased spending, we have now essentially frozen military expenditures at last year's levels. To cut defense further, may well eat into our combat readiness.

We have made deep cuts in domestic spending to fight the deficit. But when the Senate was asked this year if it was willing to follow the White House notion that the budget could be balanced with domestic spending cuts alone, the proposition got only 14 votes.

We have said we will sell off our properties if it will reduce our debts. But even if we were to sell our direct loan portfolio and all federal lands, we would still have a deficit two years from now of $122 billion.

We have passed a variant of tax reform on the pledge that it would be "revenue neutral". But next year that so-called "neutrality" will add $17 billion to the federal deficit, and that will make our hopes for sustaining recovery that much more difficult.

We have made some adjustments in the budget. We have reshaped some priorities. We will invest a bit more in education. We will apply a bit more of our resources to the war on drugs. But these investments are minimal compared to our needs. We have demonstrated a glimmer of wisdom, but what we need is a beacon.

Where we are now is not only back where we began, but a little farther back than that. In fact, a lot farther back. Our national debt is more than a trillion dollars higher than it was six years ago. Our competition is stronger than it was six years ago. And after six years, it is time to rethink our prospects.

To begin with, we must disenthrall ourselves from the notion that government is the stumbling block to progress.

The central question of our time is *not* government. The central question is what will this country do as a people to leave its mark on history and the hopes of all of us for a better life in a more peaceful world.

In that quest, the driving force is not government, but the people. It's not a matter of public activity *versus* private enterprise; it's a matter of whether we can join the two creatively to further our national purposes.

The G.I. bill was a partnership that put tens of thousands through college. The Federal Housing Administration and VA housing helped many of us buy our first homes. Land Grant colleges are the combined vision of public and private initiative. And Social Security is a trust the people assigned the government to safeguard funds for our retirement years.

If we want the next century to be another hundred years of American advancement, it's the people and their leaders—*together*—who must shape the policies and make them happen.

Within government, within business, industry, our schools and research centers, we must seek new paths.

One new path has recently been cleared. At the National Bureau of Standards, an alliance of business, industry, universities, and government have created a work place of the future. Computer-driven robots manufacture precision goods at low cost. From this experiment we can learn to improve our productivity, and provide our workers with the skills to reassert themselves as the best in the world.

As a people, we must decide which programs now in place, serve us well, and which do not. As a people, we must decide which new directions we must follow—which new adjustments we must make—to strengthen our economy now and for the decisive economic competition that lies ahead of us.

If we are going to turn onto new paths, we must leave the old ones.

And as a people, we must decide whether the *status quo* is status enough for an inventive country with the proudest record of achievement in the history of the world.

The choices we must make are very hard. But we must make them in the years ahead because we have failed to make them in the years before.

What we must do is nothing less than mobilize our society in search of new levels of achievement for this nation.

We have, today, a structural deficit that has defied every step we've taken. It is a deficit that will remain even under conditions of full employment because we do not have the financial resources to erase it. It will remain unless we re-establish a market vitality and rebuild our level of productivity. And it's existence makes each of those steps more difficult.

But the problems are not insurmountable. Their solution rests on our ability to decide and our capacity for vision and daring.

We must do more than say "no" to excess spending; we must say "yes" to spending that invests in our future growth.

We must do more than tinker with existing programs. We must drop some of the old to make room for the new.

What we must do is boldly stretch our imaginations—and commit our resources—even within the constraints of our debts—to get this country moving into the future.

Our record this year—as it has been for the five years that came before—has been indecisive, and this year's budget confirms it. We had no end to opportunity to shift our thbinking into a higher gear. But we clutched, and if we continue in that course we will tie ourselves up in grid lock.

The explanation of the budget that follows includes some evidence that we are willing to change our ways. But we must do better—much better.

We have hopes to explore and commercialize space. But we must question those intentions in the aftermath of the Challenger tragedy. The questions are not about our will to go on. We *will* go on. But when the administration seeks a new orbiter without providing gthe funds to pay for it, the questions persist.

In the past six years, we have purchased a trillion dollars in military hardware. We must provide the resources to operate and maintain it.

In the past six years, we've spent a lot of money preparing for a nuclear war we hope we never have to fight. But will all that money—and all the funds we've invested to guard against a conventional war in Europe—we are still not prepared for the immediate threats we face in Libya, Lebanon, the Middle East and Central America.

We are ill-equipped to fight either the terrorist or the brushfire war. We are no better prepared to rescue hostages in 1986 than we were to get them out of Iran in 1980. Whether it's because of inter-service rivalry or lack of planning, we still don't have the command structure, the transportation of the communication to win the battles that could prevent the wars.

So we must do better.

In this budget we will find some discipline for our military spending, but we have not yet faced up to re-thinking whether our military resources are being committed to the areas where we are most likely to fight.

In this budget we will find some savings, but most is for one year rather than the long haul; we are not on track to a balanced budget at any foreseeable date.

And in this budget we will find a measure of vision, but it is hindsight, combing through the same list of programs, adding a little here, subtracting a little there, but not providing any major policy departures. We seem to be providing a micro-scopic view of our problems, and losing sight of our opportunities

We have crossed this path before—and re-crossed it many times while we debate rather than make bold decisions.

Why is it that we react to crisis rather than plan ahead?

Why do we lock ourselves in the politics of random fear and narrow horizons rather than swinging open the doors to a higher ambition and expanding possibilities.

A great nation can only be timid so long. Our country deserves better.

It's time for this country to turn in a fresh direction, to put aside the political archaeology of the past, and pledge ourselves to boldness, advancement, exploration and growth.

We must be daring and strong, willing to challenge every convention, ready to seize each opportunity, and determined to advance along the lines of leadership we must rediscover among ourselves.

Our future dose not hinge on the size of government. Our future does not hinge on how much money we can spend or how fast we can spend it. Our future is—to put it simply—ours. It is ours to decide the extent of the American adventure.

Revenues and Spending Programs

(Note.—The figures labelled "final FY 1987" are estimates made by the Democratic Staff of the Senate Budget Committee based on preliminary data supplied by CBO)

REVENUES

The President's budget called for increased revenues of $6.7 billion in FY 1987 and $21.9 billion over the next three years. The largest single component of that recommendation was $1.7 billion annually from retention of the 16 cents per pack cigarette excise tax. Congress voted to make the 16 cents tobacco excise tax permanent as part of COBRA.

Total reconciled revenues for FY 1987 are $1.5 billion below the level recommended by the Administration. When combined with tax reform, total revenues will be down by almost $10 billion over the next three years compared to baseline and nearly a full $32 billion below the increased revenue target set by the President. Reconciled revenue provisions include:

REVENUES

[In billions of dollars]

	1987	1988	1989	Total
Proposed New Revenues				
President's request	6.7	7.0	8.2	21.9
Domenici-Chiles (Budget Committee reported)	18.7	26.8	28.8	74.3
Senate-Passed	13.2	20.2	20.6	54.0
Conference report	3.5	2.6	2.4	8.5
Impact of Enacted Revenue Legislation				
Reconciliation	+4.8	+2.5	+3.1	+10.5
Tax Reform	+11.4	−16.7	−15.1	−20.4
Total	+16.2	−14.2	−12.0	−9.9

REVENUE PROVISIONS—SAVINGS FROM CBO'S ADJUSTED RECONCILIATION BASE

[In millions of dollars]

	Fiscal year—			
	1987	1988	1989	1987–89
1. Accelerate State and local deposits	388	290	1,158	1,836
2. Telephone excise tax	0	0	0	0
3. Accelerate excise tax collections	319	1	1	321
4. Foreign tax credits	14	26	28	68
5. Pension benefit accrual	0	0	0	0
6. Customs user fees	790	780	840	2,410
7. Tax treatment of CONRAIL sale	0	0	0	0
8. Oil spill liability trust fund	0	0	0	0
9. Amend COBRA health insurance continuation in bankruptcy	0	0	0	0
Subtotal	1,511	1,097	2,027	4,635
10. Increase IRS penalties	981	1,010	1,020	3,011
11. Increase IRS compliance	2,355	400	100	2,855
Total	4,847	2,507	3,147	10,501

Note.—Finance Committee dropped a 3-year $5,000,000,000 revenue pickup from an 8 cents increase in the tobacco excise tax.

EXPLANATION OF PROVISIONS

1. Accelerate Deposits of Social Security Contributions by State and Local Governments. Subjects State and local governments to the same standards for timely deposit of social security contributions as private employees. States would be relieved of the responsibility of collecting social security contributions of their political subdivisions. Provision effective January 1, 1987.

2. Extend Telephone Excise Tax. Continues current law three percent telephone excise tax beyond December 31, 1987 for two additional years.

3. Accelerate Excise Taxes on Distilled Spirits, Beer, Alcoholic Beverages and Cigarettes. Shortens the time period for which excise taxes on alcoholic beverages and cigarettes are payable to the Federal government. The interval for payment of excise taxes, currently ranging from 15 to 25 days after close of the period in which the excise tax liability is incurred, would be reduced to 14 days.

4. Increase Certain Penalty Tax Collections. Raises to 10 percent the current 5 percent business penalty tax for failure to deposit withheld taxes. Increase to 25 percent, the penalty for "understatement of tax liability" that currently stands at 10 percent.

5. Deny Tax Benefits with Respect to Activities in Certain Foreign Countries. Denies foreign tax credit for taxes paid on income attributable to activities conducted in foreign countries that provide support for acts of international terrorism, have no diplomatic relations with the United States or, in general, have governments not recognized by the United States.

6. Extend Benefit Accrual Beyond Normal Retirement Age. Modifies the Age Discrimination in Employment Act, the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code to provide that an employee benefit plan may not require or permit the suspension or reduction of benefit accruals on account of attainment of a specified age. Under current law, a defined pension plan is not required to provide for benefit accruals for employees who continue to work beyond their normal retirement age.

7. Impose Customs User Fees. Imposes a customs user fee on all formal entries of imported merchandise for consumption based on the customs value of such merchandise of 0.22 percent in FY 1987; 0.17 percent in FY 1988 and FY 1989.

8. Modify Tax Treatment of Conrail Public Sale. Unlike current law, where the purchase of stock in a corporation has no effect on the corporation's tax attributes, the sale of Conrail's stock will be treated as an asset sale, thus, the aggregate basis for Conrail's assets will be adjusted to reflect the stock purchase price. Similarly, no NOL or other carryovers from periods before the public sale will be available for use in post sale periods.

9. Establish Oil Spill Liability Trust Fund and Tax. Establishes an Oil Spill Liability Trust Fund in the Teasury to be financed, in part, by a 1.3 cents-per-barrel tax on domestic crude oil and imported petroleum products. Amounts in the oil spill fund would be available for removal costs, certain damages sustained by U.S. claimants and certain related costs associated with oil.

10. Amend COBRA Health Insurance Continuation in Bankruptcy Provisions. Modifies COBRA amendments to Internal Revenue Code that prohibit deductions for employer contributions to group health plans that deny continuation of coverage to employees who would otherwise lose coverage as a result of specified qualifying events. Amendments add loss coverage of retiree through bankruptcy as a qualifying event. Changes also effect period of continuation coverage and definition of beneficiary in reorganization cases.

11. Increase IRS Appropriations. Provides for increased funding for IRS to be directed to functions involving examination, collection and related tax compliance activities.

FUNCTION 050—NATIONAL DEFENSE

HIGHLIGHTS

Defense budget authority decreased in nominal terms by $2.0 billion or 1 percent over FY 1986 levels. Defense outlays increased by $9 billion or 3.2 percent over 1986 levels.

Funding for research and development grew by $2.3 billion or 7 percent.

The operations and maintenance accounts grew by $3.3 billion or 4.4 percent.

Military personnel and DoD civilian personnel received a 3 percent January pay raise.

Procurement accounts were reduced by $8.3 billion or 10 percent below FY 1986 levels.

The President requested $5.4 billion for the Strategic Defense Initiative (SDI) program. This represented nearly an 80 percent increase over FY 1986. Final appropriations for the SDI totaled $3.5 billion, a 15 percent increase over FY 1986. This is more than twice the rate as the rest of the R&D appropriation.

Staff analysis prepared for the FY 1987 budget mark-up estimated that all major moderization programs could be continued, military and civilian personnel could receive a pay raise, and readiness programs maintained at current program levels for less than $290 billion.

Final appropriations show that all major conventional and strategic programs—M-1 tank, F-16 fighter, F-18 fighter, SN-668 attack submarines, Aegis cruiser, Trident submarine—continued apace. In addition, three major new starts the C-17 transport, small ICBM, and Stealth bomber received increased funding as they approach new production. This was accomplished with appropriations at $284.7 billion.

FUNCTION 050.—NATIONAL DEFENSE

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	286.6	284.3	−2.3	−15.1	−35.9	−16.7	+15.0
Outlays	273.3	279.2	+5.9	−5.4	−17.5	−2.8	+10.8
Baseline:							
Budget authority	299.4						
Outlays	284.6						
President's budget reestimated:							
Budget authority	320.2						
Outlays	284.6						
Senate-passed resolution:							
Budget authority	301.0						
Outlays	282.0						
1987 sequester:							
Budget authority	269.3						
Outlays	268.4						

FUNCTION 150.—INTERNATIONAL AFFAIRS

HIGHLIGHTS

Congressional cuts in this function represent one of the few real reductions in the budget.

Foreign aid appropriations were cut $1.1 billion (−7%) below FY 1986; $3.1 billion

(−19%) below the President's budget request.

President requested almost a 10 percent increase in foreign aid.

Funding for aid programs in Israel and Egypt was protected at FY 1986 levels of $3 billion.

Cuts were due to Congressional concerns about excessive growth in foreign aid during FY 1980–1986 period (outlays up 113%) and questionable performance of foreign aid programs.

A $4.5 billion, five-year embassy construction and security upgrade program proposed by the President was left unfunded due to Congressional concerns over program management.

FUNCTION 150.—INTERNATIONAL AFFAIRS

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year final:							
Budget authority	18.9	17.9	−1.0	−2.8	−5.8	.....	−0.3
Outlays	17.1	12.5	−4.6	−3.1	−4.0	−1.7	−2.0
Basline:							
Budget authority		20.7					
Outlays		15.6					
President's budget reestimated:							
Budget authority		23.7					
Outlays		16.5					
Senate-passed resolution:							
Budget authority		17.9					
Outlays		14.2					
1987 sequester:							
Budget authority		18.2					
Outlays		14.5					

FUNCTION 250—GENERAL SCIENCE, SPACE AND TECHNOLOGY

HIGHLIGHTS

Outlays for general science and basic research programs of the budget were essentially frozen at FY 1986 levels.

Funding for a replacement space shuttle was included in the budget, using $3.0 billion in budget authority transferred from the Defense function. Although the President requested a new shuttle, he did not specify a means for paying for it. How an additional $3 billion in outlays in FY 1988–1990 will be accommodated with the Gramm-Rudman-Hollings deficit targets has not been specified.

FUNCTION 250.—GENERAL SCIENCE, SPACE AND TECHNOLOGY

[In billions of dollars]

	Fiscal year—		Fiscal year final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	8.8	12.1	+3.3	+2.4	+2.6	+2.8	+3.5
Outlays	8.9	9.6	+0.7	−.1	+.5	+.5	+.7
Baseline:							
Budget authority		9.7					
Outlays		9.7					
President's budget reestimated:							
Budget authority		9.5					
Outlays		9.1					
Senate-passed resolution:							
Budget authority		9.3					
Outlays		9.1					
1987 sequester							
Budget authority		8.6					
Outlays		8.9					

FUNCTION 270—ENERGY

HIGHLIGHTS

Rural Electrification Administration: Final Congressional budget contains lending levels equivalent to 1986. President's budget request would have raised interest rates on REA loans, assessed an annual fee and phased out the loan program by 1990. The 1986 Budget Reconciliation bill will allow guarantee borrowers to prepay their high interest loans without prepayment penalty up to $2.0 billion. Proposals to permit unlimited borrower prepayment failed to pass the Congress.

Strategic Petroleum Reserve: Current policy assumes a 35,000 barrel per day fill rate. The President's budget request would have placed an indefinite moratorium on fill despite historically low oil prices and large carryover balances. The final Congressional budget provides sufficient funds to maintain a 75,000 barrel per day fill rate.

Power Marketing Administration: Under the President's budget request the five power marketing administrations would have been sold by 1990 and their debt placed on a fixed repayment schedule. Both of these proposals have been rejected by the Congress.

Energy research: The President's budget request assumed a 35 percent reduction for energy supply, fossil and conservation research programs and the termination of energy conservation grant programs. The Congressional budget provides a 20% increase above the FY 1986 levels for energy research programs.

FUNCTION 270.—ENERGY

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	−0.8	4.1	+4.9	−1.7	+0.3	−0.6	−1.4
Outlays	4.6	2.8	−1.8	−1.7	−1.6	−1.8	−1.5
Baseline:							
Budget authority		5.8					
Outlays		4.5					
President's budget reestimated:							
Budget authority		3.8					
Outlays		4.4					
Senate-passed resolution:							
Budget authority		4.7					
Outlays		4.6					
1987 sequester:							
Budget authority		5.5					
Outlays		4.3					

FUNCTION 300—NATIONAL RESOURCE AND ENVIRONMENT

HIGHLIGHTS

Superfund: The final Congressional Budget provides $9 billion for the FY 1987 program. An $8.5 billion Superfund program has been authorized by the Congress.

Soil Conservation Programs: The Administration proposed deep cuts in soil conservation programs (50 percent reduction from 1986) including the complete elimination of the Great Plains, Agricultural Conservation, Water Bank and Forestry Incentive programs. The Congressional Budget provides 1986 funding levels for most programs.

Water Programs: The President's budget request increased Bureau of Reclamation and Corps of Engineers construction programs by 18 percent and proposed increased navigation user fees to pay for new projects. In addition, an omnibus water bill which authorizes programs and increases navigation and barge user fees is pending before the Congress.

FUNCTION 300.—NATIONAL RESOURCE AND ENVIRONMENT

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	12.8	13.1	+0.3	−0.3	+2.1	+0.6	+1.3
Outlays	13.2	13.8	+.6	+.1	+1.7	+1.2	+1.2
Baseline:							
Budget authority		13.4					
Outlays		13.7					
President's budget reestimated:							
Budget authority		11.0					
Outlays		12.1					
Senate-passed resolution:							
Budget authority		12.5					
Outlays		12.6					
1987 Sequester:							
Budget authority		11.8					
Outlays		12.6					

FUNCTION 350—AGRICULTURE

HIGHLIGHTS

Farm Price Supports: Final Congressional Budget provides $21.2 billion in 1987 and $59.2 billion over 3 years for the Commodity Credit Corporation. No comprehensive farm policy initiatives passed the Congress this year although proposals were introduced to expand marketing loan provisions, impose mandatory controls and target payments. Southeast regional drought assistance which provides aid to farmers through expanded disaster assistance was adopted as part of the Appropriations bill.

Farm Credit: Final Congressional budget provides levels authorized in the 1985 farm ownership and disaster loan programs in 1987. Financial assistance was neither requested nor provided for the troubled Farm Credit System. Instead, changes in accounting procedures were incorporated in Budget Reconciliation legislation.

Agricultural Research: Final Congressional budget provides $332.2 million for the Extension Service; $192.2 million higher than Administration requests. Other agricultural research and services are largely frozen at 1986 levels.

FUNCTION 350.—AGRICULTURE

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	32.4	27.7	−4.7	+0.7	+4.5	+3.9	+1.9
Outlays	31.7	26.9	−4.8	.....	+4.5	+3.4	+1.3
Baseline:							
Budget authority		27.0					
Outlays		26.9					
President's budget reestimated:							
Budget authority		23.2					
Outlays		22.4					
Senate-passed resolution:							
Budget authority		23.8					
Outlays		23.5					
1987 sequester:							
Budget authority		25.8					
Outlays		25.6					

FUNCTION 370.—COMMERCE AND HOUSING CREDIT

HIGHLIGHTS

Congress rejected virtually all of the President's recommendations for this function, including proposals to:

Terminate funding for Section 202 elderly housing;

Eliminate subsidies to provide reduced mail rates for religious, charitable and nonprofit organizations, as well as free mail for the blind;

Deny FHA mortgage insurance to families with combined incomes of $40,000 or more;

Increase upfront FHA fees and closing costs effectively shutting out the bottom one-third of all FHA homebuyers;

Scrap all rural housing homeowner and rental assistance activities administered by the Farmers Home Administration;

Terminate Small Business Administration business development loans;

Increase Government National Mortgage Associations guarantee fees.

Congress approved funding for Function 370 as follows:

Section 202 housing funded at $508 million, enough to provide almost 11,000 new elderly housing units; provided $650 million for postal subsidies, enough to maintain current subsidized postal rates; maintained FHA and GNMA fees at existing levels and provided FHA mortgage insurance sufficient to aid all homebuyers eligible under current law; SBA business programs are frozen; and the rural housing insurance fund, with an appropriation of $2.456 billion, is authorized to provide just over $2 billion in new loan activity.

FUNCTION 370.—COMMERCE AND HOUSING CREDIT

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—			
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	8.8	8.8		+0.1	[1] −2.4	[1] −1.2	+1.5
Outlays	5.7	3.0	−2.7	−1.7		−.5	−1.1
Baseline:							
Budget authority		8.7					
Outlays		4.7					
President's budget reestimated:							
Budget authority		11.2					
Outlays		3.0					
Senate-passed resolution:							
Budget authority		10.0					
Outlays		3.5					
1987 sequester:							
Budget authority		7.3					
Outlays		4.1					

[1] Spending reductions largely due to technical and economic adjustments rather than actual program cuts.

FUNCTION 400—TRANSPORTATION

HIGHLIGHTS

Coast Guard: Congress enhances drug interdiction efforts. Congress adds $237 million for operations and $90 million for construction of new vessels. $200 million over the President's total request.

Conrail: Administration had proposed sale of Conrail to Norfolk Southern, with questionable impacts on competitiveness within the rail industry, for $1.2 billion. With reconciliation, Congress authorizes public offering of Conrail. Expected receipts: $2.2 billion.

Amtrack: President proposed elimination of subsidies. Congress maintained existing level of subsidies.

Highways: Four-year highway reauthorization stalled by disagreement on Senate provisions on liberalization of speed limits, highway beautification and House provisions on local projects. Temporary extension likely. Continuing Resolution limits obligations at $13 billion, $125 million below FY 1986 and $580 million above President's request.

Urban Mass Transit Authority: Frozen at FY 1986 levels.

FAA: Congress adds $175 million to FAA operations for improvements in air safety and security.

FUNCTION 400—TRANSPORTATION

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—			
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year: 1987 final:							
Budget authority	28.9	[1] 14.4					
Outlays	28.5	25.9	−2.6	−2.4	0.3	−1.9	−1.3
Baseline:							
Budget authority		29.2					
Outlays		28.3					
President's budget reestimated:							
Budget authority		22.9					
Outlays		25.6					
Senate-passed resolution							
Budget authority		26.8					
Outlays		27.8					
1987 sequester:							
Budget authority		[1] 15.0					
Outlays		27.2					

[1] Funding not included for programs where authorization has expired. Authorization of the Federal Highway Program expired on Oct. 1, 1986.

FUNCTION 450—COMMUNITY AND REGIONAL DEVELOPMENT

HIGHLIGHTS

Congress voted against the President's proposal to terminate:

Urban development action grants;

Housing development action grants;

Housing rehabilitation action grants;

Economic Development Administration;

Appalachian Regional Commission;

Rural water and sewer facilities program;

Small Business Administration disaster assistance;

Tennessee Valley Authority regional, economic, community and agriculture development programs.

Congress also rejected the Administration's request to defer $500 million of FY 1986 community development block grant appropriations and to rescind $220 million in UDAG monies.

Final spending levels for community and regional development programs include: Freezing CDBG funding at $3.09 billion; $229 million for housing rehabilitation and development grants; economic development assistance at $190 million; rural water and sewer facilities grants at $109 million; $220 million in UDAG appropriations; and $100 million for TVA funding.

FUNCTION 450.—COMMUNITY AND REGIONAL DEVELOPMENT

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—			
	1986	1987	1986	Baseline	President reestimated	Senate-Passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	7.3	7.8	0.5	0.6	4.0	0.9	1.0
Outlays	8.1	6.5	−1.6	−1.1	.2	−.7	−1.0
Baseline:							
Budget authority		7.2					
Outlays		7.6					
President's budget reestimated:							
Budget authority		3.8					
Outlays		6.3					
Senate-passed resolution:							
Budget authority		6.9					
Outlays		7.2					
Sequester:							
Budget authority		6.8					
Outlays		7.5					

FUNCTION 500—EDUCATION, TRAINING, EMPLOYMENT AND SOCIAL SERVICES

HIGHLIGHTS

Department of Education:

Administration sought cuts of 14 percent. Instead, Congress increased federal investment in education by 8 percent.

Elementary and secondary education: Congress rejected the Administration's proposals to freeze funding for most programs. Instead, Congress:

Increased funding for compensatory education by $416 million or 12 percent;

Doubled funding for math-science education. Support for such vital skills a key ingredient of the Chiles-Hart growth initiative;

Expanded the federal role in handicapped eduction by extending services to infants and increasing federal share of costs of education the handicapped. Funding increased by $392 million or 29 percent; and

Rejected Administration proposals to eliminate Impact Aid, Part B, and to cut funding for vocational education by 44 percent.

Higher Education: Administration targeted higher education for deep cuts (22 percent). Congress acted instead to curtail abuses in student financial assistance, yet also increased aid to most needy students.

Guaranteed Student Loan Program: Enactment of COBRA and the Higher Education Act achieved about $1.1 billion in three-year savings. Needs analysis to include assets test and extended to all students. Subsidies to banks and assist guaranty agencies reduced. Loan limits increased for needy students.

Pell Grants: Administration proposed 16 percent cut, resulting in 600,000 fewer students receiving aid. Congress increased funding by $265 million, enabling 280,000 more needy college students to receive grants.

Employment and Training Programs:

Job Training Partnership: Congress rejected Administration proposal to cut JTPA funding by 13 percent. Instead increased funding by 10 percent.

State grants for employment of disadvantaged youths and adults (IIa): Funded at $1.84 billion, $60 million over FY 1986.

Summer youth employment: Congress rejects Administration proposal to cut funding by 22 percent and instead increases funding for the summer of 1988 by $114 million. Congress however, did not revise funding

for the summer of 1987 (as established in the FY 1986 appropriations bill); unless Administration sends up a spring supplement, next summer's funding is still cut by $90 million to $636 million, resulting in 150,000 fewer teens employed in summer programs.

Dislocated workers: Congress funds at $200 million, double the FY 1986 level and the President's request for FY 1987.

Job Corps: Congress rejected Administration's proposal to cut funding by one-third. Instead, increases funding by $44 million and imposes moratorium on closing of centers until January, 1988.

WIN: Administration proposes elimination; Congress provides $110 million (half the FY 1986 level) for just three quarters, pending new welfare reform proposals in next Congressional session.

Social Services:

Social Service Block Grant: Remains capped at $2.7 billion.

Community Service Block Grant: Administration again proposed its elimination; Congress restored Gramm-Rudman cut (+$16 million).

Administration on Aging: Nutrition and social service programs for elderly received 10 percent increase over FY 1986.

Head Start: Congress increased funding by $90 million to $1.3 billion.

FUNCTION 500.—EDUCATION, TRAINING, EMPLOYMENT AND SOCIAL SERVICES

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	30.4	32.8	2.4	1.0	5.6	−0.4	4.4
Outlays	30.6	30.3	−.3	−.5	2.8	−.3	.5
Baseline:							
Budget authority		31.8					
Outlays		30.8					
President's budget reestimated:							
Budget authority		27.2					
Outlays		27.5					
Senate-passed resolution:							
Budget authority		33.2					
Outlays		30.6					
1987 sequester:							
Budget authority		28.4					
Outlays		29.8					

FUNCTION 550—HEALTH

HIGHLIGHTS

Medicaid: Congress rejected the Administration's proposal to cut payments for next year by $1.3 billion and cap increases in future years. Instead, modest, high priority benefit improvements were enacted to combat infant mortality and expand coverage for low-income elderly.

Biomedical Research: Funding for the National Institutes of Health was increased by $900 million, or 17.5 percent, to $6.2 billion. The Administration had proposed a cut of $600 million, or 6.7 percent.

Health Services: Congress increased funding for other public health services by $660 million over the Administration's request, rejecting many proposed freezes and cuts.

Federal Employees: Proposed cut of $1.2 billion in Federal Employee Health Benefit Program rejected.

Health Professions Training: Proposed elimination of all funding for nurse training and other health education assistance programs rejected.

Food Inspection User Fees: Proposed user fees to cover full cost of meat and poultry inspection rejected.

FUNCTION 550.—HEALTH

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	37.0	39.9	+2.9	+1.2	+4.4	+1.3	+2.4
Outlays	36.1	39.9	+3.8	+.8	+4.8	+1.6	+1.5
Baseline:							
Budget authority		38.7					
Outlays		39.1					
President's budget reestimated:							
Budget authority		35.5					
Outlays		35.1					
Senate-passed resolution:							
Budget authority		38.6					
Outlays		38.3					
1987 sequester:							
Budget authority		37.5					
Outlays		38.4					

FUNCTION 570—MEDICARE

HIGHLIGHTS

Total Cuts: Compared to original Administration requests during the year to cut Medicare by $9.0 billion in FY 1987, a combination of legislative initiatives and regulatory action resulted in total program restraint of $3.1 billion. Several Administration proposals were modified to lessen their impact on beneficiaries and providers, though savings were achieved. Others were rejected as too harsh.

Beneficiary Out-of-Pocket Cost Increases Reduced: The annual hospital deductible increase was limited to 5.7 percent in 1987, compared to anticipated 16 percent increase under prior law. (Would increase from $492 to $520, rather than $572.) Congress rejected Administration proposals to increase the Part B premium and deductible, require a new co-payment for home health services, and delay medicare eligibility for one month.

Hospital Cost Containment: Congress provided a 1.15 percent rate increase for hospitals (compared to 0.5 percent proposed by the Administration), and reduced hospital capital payments by $155 million (compared to a $390 million reduction proposed by the Administration.) Periodic interim payments were eliminated but exemptions were provided for certain financially troubled hospitals.

Physician Fee Restraint: An increase of 3.2 percent was provided for prevailing fees. Congress also continued limiting the increases in charges which can be passed on to beneficiaries.

Prompt Pay: New standards were set to ensure prompt payment of all Medicare claims (30 days in FY 1987, 26 days in FY 1988, except those physicians who take Medicare reimbursement as full payment would be paid within 19 days in FY 1988).

Secondary Payor: Medicare would become a secondary payor for all beneficiaries who are covered by employer health insurance, including disabled workers. The new extension to the disabled is limited to employers with 100 or more employees.

Quality of Care: Several measures were enacted to improve hospital, home health and HMO quality of care.

FUNCTION 570.—MEDICARE

[In billions of dollars]

	Fiscal year—		Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-Passed Resolution	Sequester
Fiscal year 1987 final:							
Budget authority	86.9	83.4	−3.5	−0.4	+1.3	+0.5	−0.4
Outlays	68.4	71.1	+2.7	+0.3	+0.5	−1.7	+1.6
Baseline:							
Budget authority		83.8					
Outlays		70.8					
President's budget reestimated:							
Budget authority		82.1					
Outlays		70.6					
Senate-passed resolution:							
Budget authority		82.9					
Outlays		72.8					
1987 sequester:							
Budget authority		83.8					
Outlays		69.5					

FUNCTION 600—INCOME SECURITY

HIGHLIGHTS

COLAs: Rejected President's proposal to eliminate COLAs for civil service retirees, military retirees and Tier II railroad retirees for a second year in a row.

New Civil Service Retirement System: Completed action on a new civil service retirement system for workers hired after January 1, 1984. Other workers have option to switch into new system or take advantage of its savings plan.

Current Civil Service Retirement System: Rejected President's proposal to permanently cut COLAs and benefits and increase contribution rate.

Child Nutrition: Rejected President's attempt to cut $800 million from school lunch and breakfast and other child nutrition programs. Passed H.R. 7 which provides for modest increase in benefits for school breakfast and special milk programs.

WIC: (Supplemental Feeding Program for Women, Infants and Children). The President proposed to cut the program $14 million below current service levels. The Congress approved funds to raise the program $51 million above current service levels.

Subsidized Housing: Congress rejected the Administration's funding proposals for subsidized housing. The President's budget proposal to rescind $4.4 billion of the $10 billion FY 1986 appropriation and to defer an additional $2.3 billion to be used as the FY 1987 appropriation. The House and Senate denied both the rescission and deferral requests and provided almost $8 billion for subsidized housing for FY 1987.

Aid to Families With Dependent Children: Rejected President's cuts including mandatory work requirements for all employable applicants and recipients.

Food Stamps: Rejected President's cuts, including repeal of benefit improvements enacted in December 1985, and initiation of mandatory work requirements for all applicants and recipients.

Low-Income Energy Assistance: Reduced FY 87 funding to $1.8 billion, about $.2 billion below FY 86 funding. Rejected Republican plan to cut funding by one-half. Republicans argued that Exxon oil overcharged cazse funds could be used as a substitute.

FUNCTION 600.—INCOME SECURITY

[In billions of dollars]

	Fiscal year—	Fiscal year 1987 final compared to—				
	1986	1987 final	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:						
Budget authority	149.8	160.8	+11.0	+2.4	+3.5	−0.6
Outlays	119.7	122.2	+2.5	−.1	+2.8	+.7
Baseline:						
Budget authority		163.2				
Outlays		122.3				
President's budget reestimated:						
Budget authority		157.3				
Outlays		119.4				
Senate-passed resolution:						
Budget authority		161.4				
Outlays		121.5				
1987 sequester:						
Budget authority		161.3				
Outlays		121.0				

FUNCTION 650—SOCIAL SECURITY

HIGHLIGHTS

Congress provided for a full COLA for Social Security recipients next January. Due to a low rate of inflation, this COLA will likely be about 1.2 percent.

Congress repealed the provision of law which postpones a COLA when inflation is less than 3 percent. Had Congress not done so, no COLA would have taken place next January.

Congress passed legislation that provided that the deposit of state and local payroll taxes in the Federal Treasury be made on the same schedule that is required for private sector employers. State governments would no longer collect funds on behalf of local governments.

The President proposed cutting 3,000 staff from the Social Security Administration. Although the Congress reduced overall administrative funding for the Social Security Administration, it provided enough funds to avoid some of the staffing cuts proposed by the President in order to avoid cutbacks in service to the public. It is unclear whether the Administration will follow Congress' intentions for staffing levels.

FUNCTION 650.—INCOME SECURITY

[In billions of dollars]

	Fiscal year—	Fiscal year 1987 final compared to—				
	1986	1987 final	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:						
Budget authority	201.3	228.3	+27.0	+0.8	+1.4	−0.1
Outlays	199.0	208.0	+9.0	+1.9	−3.6	−1.4
Baseline:						
Budget authority		227.5				
Outlays		206.1				
President's budget reestimated:						
Budget authority		226.9				
Outlays		211.6				
Senate-passed resolution:						
Budget authority		228.4				
Outlays		209.4				
1987 sequester:						
Budget authority		227.5				
Outlays		205.9				

FUNCTION 700—VETERANS BENEFITS AND SERVICES

HIGHLIGHTS

Veterans Disability Compensation and Pensions were granted a COLA increase of 1.3 percent, the same as Social Security.

Congress did not make cuts in the veterans medical care and education programs, as requested by the Administration. Congress also rejected a requested increase in veterans housing loan fees.

FUNCTION 700.—VETERANS BENEFITS AND SERVICES

[In billions of dollars]

	Fiscal year—	Fiscal year 1987 final compared to—				
	1986	1987 final	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:						
Budget authority	27.3	26.9	−0.4	−0.1	+0.2	−0.1
Outlays	26.7	26.3	−.4	—	−.2	−.2
Baseline:						
Budget authority		27.0				
Outlays		26.3				
President's budget reestimated:						
Budget authority		26.7				
Outlays		26.5				
Senate-passed resolution:						
Budget authority		27.0				
Outlays		26.5				
1987 sequester:						
Budget authority		26.2				
Outlays		25.8				

FUNCTION 750—ADMINISTRATION OF JUSTICE

HIGHLIGHTS

The Congress approved H.R. 5484, the Anti-Drug Abuse Act of 1986, in the closing days of the session, and provided a total of $1.7 billion to implement the act's provisions in FY 1987. Although the President's budget request did not include a proposal for comprehensive federal drug control, it was only after the introduction of two Democratic measures—one in the Senate, the other in the House—that the Administration was prompted to offer its own, less far-reaching version of this legislation. (For further details, see Highlights section.)

The Administration requested increases for the FBI and Drug Enforcement Administration; Congress provided $1.3 million for the FBI and $472 million for the DEA—an increase of $60 million over the President's proposal.

Congress rejected the Administration's proposal to cut the U.S. Customs Service and its air interdiction program and instead, increased these programs to $830 million and $171 million.

For the sixth consecutive year, Congress rejected the President's proposal to terminate the Legal Services Corporation, by providing $306 million for the program.

The Administration proposed termination of the Office of Juvenile Justice and Delinquency Prevention and State and local criminal justice assistance grants; Congress rejected this request.

FUNCTION 750.—ADMINISTRATION OF JUSTICE

[In billions of dollars]

	Fiscal year—	Fiscal year 1987 final compared to—				
	1986	1987 final	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:						
Budget authority	6.9	7.9	+0.1	+0.9	+0.8	+0.7
Outlays	6.9	7.5	+.6	+.4	+.4	+.3
Baseline:						
Budget authority		7.0				
Outlays		7.1				
President's budget reestimated:						
Budget authority						
Outlays		7.1				

FUNCTION 750.—ADMINISTRATION OF JUSTICE—Continued

[In billions of dollars]

	Fiscal year—	Fiscal year 1987 final compared to—				
	1986	1987 final	Baseline	President reestimated	Senate-passed resolution	Sequester
Senate-passed resolution:						
Budget authority		7.2				
Outlays		7.2				
1987 sequester:						
Budget authority		6.4				
Outlays		6.5				

FUNCTION 800—GENERAL GOVERNMENT

HIGHLIGHTS

Congress provided $4.2 billion for the Internal Revenue Service to enhance taxpayer compliance, improve tax processing and hire 2,500 additional auditors along the lines of the Administration's proposals for FY 1987.

Congress rejected the Administration's proposal to impose user fees for letters of determination and private letter rulings by the Internal Revenue Service, and also rejected the President's proposal to impose user fees on five government-sponsored credit agencies.

The Administration proposed Customs Service user fees on merchandise processing; Congress adopted this proposal.

FUNCTION 800.—GENERAL GOVERNMENT

[In billions of dollars]

	Fiscal year—	Fiscal year 1987 final compared to—				
	1986	1987 final	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:						
Budget authority	6.2	5.9	−0.3	+0.1	±0.4	+0.4
Outlays	6.2	5.6	−.6	−.2	−.6	+.2
Baseline:						
Budget authority		5.8				
Outlays		5.8				
President's budget reestimated:						
Budget authority		6.3				
Outlays		6.2				
Senate-passed resolution:						
Budget authority		5.5				
Outlays		5.4				
1987 sequester:						
Budget authority		5.6				
Outlays		5.2				

FUNCTION 850—GENERAL PURPOSE FISCAL ASSISTANCE

HIGHLIGHTS

The President's budget proposed the early termination of General Revenue Sharing by Advancing the fourth and final payment from FY 1987 into FY 1986; Congress adopted this proposal.

Congress rejected the Administration's proposal to allow the Federal government to deduct administrative costs of managing receipt-sharing programs under the Minerals Management Service, Bureau of Land Management and the Forest Service.

FUNCTION 800.—GENERAL PURPOSE FISCAL ASSISTANCE

[In billions of dollars]

	Fiscal year—	Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	5.2	1.9	−3.3	+0.1	+0.1	+0.1	+0.1
Outlays	5.5	2.0	−3.5	−.6	+.2	−.8	−.5
Baseline:							
Budget authority		1.8					
Outlays		2.6					
President's budget reestimated:							
Budget authority		1.8					
Outlays		1.8					
Senate-passed resolution:							
Budget authority		2.0					
Outlays		2.8					
1987 sequester:							
Budget authority		1.8					
Outlays		2.5					

FUNCTION 920—ALLOWANCES

HIGHLIGHTS

Congress provided funds for a 3 percent pay increase for Federal civilian workers on January, 1987.

In February, the President proposed a 3 percent pay increase but he wanted an increase of 2 percent in the contribution rate for civil service retirement, which would have led to a net reduction in pay for many Federal workers.

Congress rejected the President's proposal to raise the retirement contribution rate.

FUNCTION 920.—ALLOWANCES

[In billions of dollars]

	Fiscal year—	Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	0	0.4	+0.4	−0.9	−0.3	−0.1	+0.3
Outlays	0	.4	+.4	−.9	−.3	−.1	+.3
Baseline:							
Budget authority		1.3					
Outlays		1.3					
President's budget reestimated:							
Budget authority		.7					
Outlays		.7					
Senate-passed resolution:							
Budget authority		.5					
Outlays		.5					
1987 sequester:							
Budget authority		.1					
Outlays		.1					

FUNCTION 950—UNDISTRIBUTED OFFSETTING RECEIPTS

HIGHLIGHTS

Recoups $400 million in FY 1987 for crude oil and product overcharge funds not subject to a DOE administrative or court order. Uses some of these funds to increase Budget Authority for energy conservation state grant programs by $200 million in FY 1987.

FUNCTION 950—UNDISTRIBUTED OFFSETTING RECEIPTS

[In billions of dollars]

	Fiscal year—	Fiscal year 1987 final compared to—				
	1986	1987	1986	Baseline	President reestimated	Senate-passed resolution	Sequester
Fiscal year 1987 final:							
Budget authority	−33.6	−36.2	−2.6	+0.3	+0.6	+5.9	+0.6
Outlays	−33.6	−36.2	−2.6	+.3	+.6	+5.9	+.6
Baseline:							
Budget authority		−36.5					
Outlays		−36.5					
President's budget reestimated:							
Budget authority		−36.8					
Outlays		−36.8					
Senate-passed resolution							
Budget authority		−42.1					
Outlays		42.1					
1987 sequester:							
Budget authority		−36.8					
Outlays		−36.8					

ECONOMIC CONDITIONS AND PROSPECTS

Over the last several years, the Administration has projected an economic growth rate of 4 percent while CBO has projected growth rates near 3.3 percent. CBO's forecast has generally been close to the Blue Chip consensus of private economists, but recently it has become much more optimistic. The Blue Chip consensus foresees 2.7 percent growth in 1987 while CBO sees 3.4 percent. In the last year and a half, actual performance has been below all these forecasts, with a growth rate of 2.7 percent in 1985 and 2.2 percent in the first half of 1986.

The major cause of the slow growth has been the trade deficit. It has increased from the record $148 billion in 1985 and is running at an annual rate of $170 billion in 1986. Consumer spending has continued to grow at a brisk pace in 1986 (4.6 percent at an annual rate), but much of this demand has flowed to foreign rather than domestic producers. Investment is another weak sector. Nonresidential fixed investment (both structures and equipment) has declined as a result of poor sales prospects and excess capacity (largely related to foreign competition), the decline in oil and commodity prices, and reduced investment tax incentives.

Slow economic growth has increased our deficit problem—the deficit in 1986 would have been $30 billion lower if the economy had grown strongly.

The prospects for an economic rebound rest on the hope that the trade deficit will begin to narrow. The most favorable development is the recent decline in the dollar. But the decline has not been nearly as large as advertised. When measured using data that reflect existing trade patterns rather than those of a decade ago, the decline of the dollar is closer to 15 percent rather than the 30 percent that the Federal Reserve index shows. The currencies of countries such as Canada and Mexico have actually depreciated against the dollar.

While dollar depreciation aids our price competitiveness, foreign economies must grow strongly to absorb our exports. Foreigners are reluctant to lose market share and have responded by reducing their profit margins. And American firms that moved production overseas will not quickly reverse their decisions.

Even with a narrowing of the trade deficit, the American consumer must have the wherewithal *and* the confidence to continue spending. But employment and income gains have slowed markedly this year, and the Consumer Sentiment Index has fallen from 99.3 in June to 91.9 in September.

At the moment, the Federal Reserve finds itself "pushing on a string". The discount rate has been lowered four times this year but the economy has not yet revived.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, how much time does my friend from North Dakota desire?

Mr. ANDREWS. Ten minutes.

The PRESIDING OFFICER. I yield 10 minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota is recognized

Mr. ANDREWS. Mr. President, the reconciliation package contains a number of Farm Credit Act amendments of 1986. As the Chamber knows, because it has been told so often, there are a number of economic problems in rural America.

Part of this Reconciliation Act, a very important part, are the Farm Credit Act amendments that are contained within it. This proposal is derived from S. 2770, a bill I cosponsored with Senator COCHRAN.

High interest rates, Mr. President, continue to take their toll on our Nation's family farmers.

This farm credit package is not a cure-all to this problem, but what we have before us is a step in the right direction.

Mr. President, I want to commend my colleague from New Mexico, the chairman of this conference, for this wisdom and for his understanding in including and keeping this package intact with these farm credit amendments. They are extremely important to us and I think they will have a great deal to do, Mr. President, with improving the infrastructure of our country about which the Senator from Florida spoke a moment ago.

This proposal provides the means for the Farm Credit System's interest rates to be competitive with other commercial lenders. It reduces the high cost of credit that the Farm Credit System now carries, and allows loan losses to be charged off over a longer period of time.

Across North Dakota, I have heard FCS borrowers say that the FCS interest rates must become more competitive. The FCS rates are above those of commercial lenders.

Service centers in my State have indicated a steady decline in loan volume that can be directly attributed to refinancing with competitive lenders at lower interest rates. One area reported having lost over 70 loans during a 5-month period, for a total loss in loan volume of approximately $5 million, a loss that is hardly acceptable to a lending facility of that size.

Many of my constituents are members of several commodity groups which have given their support for this proposal. The National Association of Wheat Growers, National Cattlemen's Association, National Milk Producers Federation, the National Pork Producers Council, as well as the American Soybean Association, are among those who have gone on record in support of this much-needed legislation.

This package does not guarantee lower interest rates for every borrower. However, it does provide the system the means to lower its cost of credit.

Frank Naylor, the chairman of the Farm Credit Administration Board—with whom many of use have fought in the past—said in last Sunday's Washington Post that this legislation should allow for interest rates to be reduced by 1.5 to 2 percent.

Mr. President, a reduction in interest rates to the farm customer in the neighborhood of 1.5 to 2 percent is a fantastically important item.

The PRESIDING OFFICER (Mr. TRIBLE). The Senator will suspend. The Senate is not in order. The Senate will be in order.

□ 2040

Mr. ANDREWS. Let me conclude, Mr. President, by pointing out that the board of the St. Paul District Farm Council stated in a recent letter:

> While passage of this legislation has the potential of raising unrealistic borrowers expectations for drastically reduced rates, we are confident you recognize we could not make large "across-the-board" interest rate reductions even if we had the authority to do so. We clearly understand that reducing FCS interest rates below competitive market rates would not be a "safe or sound" business practice in the eyes of Congress, the Farm Credit Administration, the U.S. Treasury or our stockholders. We do believe passage of this legislation can give us flexibility we need to provide more competitive rates to better serve our overall membership and stem the flight of borrowers from the system who have competitive options.

Mr. President, this is extremely important for rural America. There are two things we need: one, higher prices for the crops and the livestock we produce; two, lower interest rates for the cost of production. This amendment to this bill can give from 1½ to 2 percent lower interest rates to those farmer borrowers.

I applaud the Congress for the great job they have done in continuing to include this bill originally cosponsored by the Senator from Mississippi and myself.

Mr. DOMENICI. Mr. President, I yield myself one minute. Then I am going to yield the floor.

I just want to say I want to compliment Senator ANDREWS for the work he did on the REA effort and the other agricultural efforts here. Frankly, when the Senator from North Dakota compliments the Senator from New Mexico, I hope he understands that I just sort of help put it all together. Each chairman is responsible and each ranking member worked together with members on committees. So it was the chairman of the Committee on Agriculture and the ranking members who did what that the Senator alluded to. I assume when he thanked the Senator from New Mexico, he included the chairman of the Committee on Agriculture which did the work.

Mr. ANDREWS. The Senator from New Mexico and I served together on the Budget Committee and I know how often we have had individuals who say, no, it cannot be this way or it cannot be that way. But he, the chairman of the Agriculture Committee, and other conferees on both sides of the aisle recognized the need for this package and they included it in a vehicle that was moving and that is why we got our support. We appreciate what he has done and it is going to make a big difference in rural America.

Mr. DOMENICI. Does the Senator from Colorado desire 10 or 15 minutes? How much would he like?

Mr. ARMSTRONG. Mr. President, how much does the Senator from New Mexico have left?

Mr. DOMENICI. I have a lot of time, but the leader tells me we do not want to use it all. We have 5 hours.

Mr. ARMSTRONG. I would not need any such time as that. Would the Senator yield me an hour?

Mr. DOMENICI. I would be reluctant to yield an hour. How about 10 minutes?

Mr. ARMSTRONG. I hope the Senator from New Mexico would yield me an hour and then be pleasantly surprised at how much he is going to get back.

Mr. DOMENICI. Mr. President, I yield the Senator an hour.

Mr. ARMSTRONG. Mr. President, I assure the chairman of the Budget Committee that his patience will be amply rewarded because I am not going to speak for anything like an hour, but I may speak for 10 minutes.

I just want to make one point, Mr. President. I want to say this session is ending up in as disappointing a way as it could possibly end as far as the budget is concerned. I had high hopes last year that at long last, we were going to do something. In fact, earlier this year, when we adopted the Gramm-Rudman budget proposal, I believed that after years of horsing around with these budget deficits, we were going to get serious about it.

Even after watching the national deficit rise each year and the accumulated national debt rise year after year, from more or less $300 billion when I came here just 8 years ago to now over $2 trillion, I have remained an optimist. Despite the evidence year after year that Congress did not have the willpower or the horse sense or the integrity or the guts or anything else to do anything about these mammoth deficits which so greatly threaten our country and which have been acknowledged as a serious threat to the future of America, I remained—and even now, I guess, I remain—somewhat optimistic that we were going to do that.

I thought earlier, when we passed that famous Gramm-Rudman-Hollings budget mechanism, that this was going to be the year. My confidence that that might happen began to slip a few weeks ago when, after the court struck down a portion of it, we had an up or down vote on whether or not to restore the so-called trigger. That is where we actually do something if a deficit is going to result. I must admit, when the Senate declined to take that step, it sort of shook my confidence a little.

Then, when we put together a reconciliation bill intended to meet the spending targets to bring the deficit down, not to $144 billion, which was to be the target this year, but to $154 billion—you remember, we built in a $10 billion pad. We said it might be too tough for us to meet our target of a $144-billion deficit so we will give ourselves $10 billion more. That concerned me some.

But then, when I looked at the reconciliation bill that we passed a few weeks ago, I realized this is a joke. This has nothing to do with trimming Federal spending. This is a deal where we are basically going to do two things: we are going to raise taxes a little—in fact, quite a little. Some of them we call user fees, some we call tax reform. But in effect, it constitutes through various and sundry ways—user fees, State and local deposits—a substantial increase. The other piece is we are selling off a bunch of assets owned by the Government.

That is all right. I have no objection to selling off the agriculture loans, selling off the Eximbank loans. We are going to sell them at a discount because by and large, the marketplace does not think these loans are any good, or certainly not worth their par value. But I have no objection to selling them off.

Just as a matter of record, that has nothing to do with curtailing Federal spending. To put it into perspective, we started off with a projected deficit of $184 billion this year. After all our machinations, we hope to get down—I say we hope—to $151 billion for the year.

I have listened in the last day or two to extensive discussions about how, by achieving this, we will have held the rate of increase in Federal spending for fiscal 1987 to the lowest level we

have seen in years and years. And, of course, that is true. But, Mr. President, first, the Senate is not in order.

The PRESIDING OFFICER. The Senate is not completely in order. The Senate will be in order.

Mr. ARMSTRONG. I thank the Chair.

The point is that we have not achieved a budget deficit of $151 billion for fiscal 1987. That is the number that is written on this piece of paper that is floating around the Chamber. But I will tell you that a year from now—that is to say on September 30, 1987—we are going to look back and find the budget deficit will not be $151.3 billion. I do not know how much it is going to be. My opinion is it is going to be substantially more than that, maybe $20 billion, maybe $30 billion more than that. Maybe, if the economy turns a little sour—and it is turning pretty sour in a lot of places—maybe it will be $200 billion. I do not know what it will be.

But the one thing that is going to be certain is this: We can look back on this session of Congress and say we passed up a dozen or two opportunities to reduce the deficit. The Senator from Florida made a good speech not long ago about how it is time we took a good look at these programs and phased out the ones that are not working and maybe make some investments in programs that are going to do something for this country.

We did not do that in this session of Congress. We kept all the old programs, started a few new programs. Then, in order to make Gramm-Rudman-Hollings budget target, we are going to sell off a bunch of assets and raise taxes.

The PRESIDING OFFICER. The Senate is not in order. The Chair observes countless discussions going on on the floor. Will staff members engaged in conversations retire to the cloakroom or other chambers in the Capitol Building?

□ 2050

The hour is late. The Senate must be in order. The Senator from Colorado has a right to be heard. The Chair will insist order be maintained at this hour.

The Senator from Colorado.

Mr. ARMSTRONG. I am grateful to the Chair and I am about to sum up.

On the spending side we really have not done anything. That is the fact. We have not. We are going to sell off some assets and next year if we still want to do anything we can sell off some more. I guess we could sell off the national parks if somebody wants to do that or we could sell off the Russell Building or we could sell off the White House or we could sell off something else, but the reality is we are digging ourselves deeper and deeper into debt. The interest on the public debt is growing greater. The situation is getting worse and we are ignoring the problem. We are just basically ignoring it. That is what we are doing.

That would be bad enough, but to that we have added in this reconciliation bill, which I really think was a charade when it left the Senate, a huge increase in the national debt, which makes it even worse. In fact, that is the predominant feature of this legislation. It is called a reconciliation bill but the predominant feature in terms of its actual impact and substance and content as it comes before us tonight is not reconciliation, or spending cuts, or assets sales or whatever they are; it has just increased the national debt by, oh, I guess $189 billion.

Now, Mr. President, I am not going to vote to do that. I am going to vote against it. There was some thought that I might offer a point of order to separate that issue out as a separate matter. Clearly this violates the rules of the Senate. Clearly it is subject to a point of order, but what is the sense in voting on that separately? That does not get us anyplace. So I have decided not to make that point of order, but I just want to make it clear that I am going to vote against this reconciliation bill and why I am going to do so.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI addressed the Chair.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The time is controlled on both sides of the aisle.

Mr. METZENBAUM. I understand.

Mr. DOMENICI. Mr. President, I will yield to the Senator. Senator CHILES is not here but could I answer the Senator for one minute?

Mr. METZENBAUM. Of course.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. I yield myself 2 minutes.

Mr. President, I think the Senator from Colorado knows that I hold him in the highest of esteem but, frankly, I disagree with the Senator with reference to what we have before us and what we have done.

Frankly, this reconciliation bill that is before us is what the U.S. Senate basically told the committees of the Senate, and hopefully joined by the House, to do.

Now, if you start a year out when you are not going to change the revenue rates in this country, you are not going to change the entitlement programs of this country, you have 17.5 percent of the budget the discretionary nondefense appropriations of this country, and you have the defense of our country, and that is all there is to the cut, we have done pretty well. As a matter of fact, the appropriated accounts nondefense are down 5.4 percent in real terms.

Now, there are some who would say we ought to cut them 50 percent. Let me say, if you took them all out, eliminated them altogether, you would not get rid of the deficit. Every one of the programs of this Government from environmental protection to the highways of the National Institutes of Health. But, we did cut 5.4 percent and that's not bad.

So, I think we have done pretty well. Nobody wants to change the entitlement programs. You try and the President says no. Maybe when everyone says yes and the President says yes we will do it.

Revenues are the only other thing in the budget. The Senator from Colorado says we raised revenues. There is user fees of some $851 million. There are enforcement provisions under IRS which are supposed to raise revenues because people who do not now pay their taxes will pay, and a couple other mild provisions that the chairman of the Finance Committee would allude to. If that is some enormous, some enormous tax increase in order to get the deficit of the United States in 1 year from $230 billion to $149 billion as of this period, I just do not believe we have done very bad. I think we have done a pretty good job with the limitations that are imposed on us by the checks and balances of the executive branch, a House and a Senate.

Now, I will tell the Senate as of right now if we took a picture of Government, we pass this and let the President sign it, the tax bill gets signed, continuing resolution gets signed, Superfund gets signed, and if we just stopped it would be $149 billion or $151 billion if we locked the likely CBO estimates, but the Senator is right. We have to keep on going. We can only estimate agriculture. It may be off $2 billion, it may be off $10. I would say to my friend, however, incredible as it sounds, the estimates for this year on agriculture were too high. Current estimates are they are coming down.

Mr. ARMSTRONG. Will the Senator remind us of the occasions in the past when at the start of the fiscal year we overestimated the subsequent deficit?

Mr. DOMENICI. I do not know that we have ever done that.

Mr. ARMSTRONG. I do not think we have.

Mr. DOMENICI. But I was going to say to the Senator——

Mr. ARMSTRONG. Have we not done exactly the opposite every year?

Mr. DOMENICI. Yes. But I was going to say two things to the Senator. No. 1, we never had Gramm-Rudman-Hollings either, and as we move

through the remainder of the year it gets exceedingly more difficult to add new appropriated account money. We can do it but it gets pretty tough, because we are already up against the ceiling. We are getting better at estimating the program expenditures than we have been in the early part of this budget process.

It looks like the economy is stabilizing a little bit as compared to the first part of the year. But I am willing to say it will not be $149 or $151 billion come the end of September of next year, but do not forget it is $230 billion this year. If it ends up at $170 billion, which I think the Senator speculated may be at the low end of his assessment, if that is it, it will be the largest reduction in the deficit in 1 year in real terms or nominal terms in the history of the Republic. Not low enough certainly because we are still plenty high, but that will be quite an achievement, from $230 billion this year to $170 billion. I think that is about right.

Now, frankly, I say to my friend, he can vote against this because it has debt limit extensions in it, he can vote against it because it is not enough reconciliation. My respect for him will not be diminished one bit. But I do not believe the Senate could have done much better with the limitations that were placed on it. I just do not think it could have.

Mr. ARMSTRONG. The Senator is very skillfull in erecting a platoon of straw men. To say that because the Senate has voted not to cut entitlement programs, that somehow justifies this huge debt begs the issue entirely. Of course, the Senate should do something about the entitlement programs.

Of course, we should cut back on some of the programs that have run out of control. To suggest, either in so many words or by implication, that I was urging all of this come out of the appropriated accounts is completely off the mark. I think we have done a pretty good job on the appropriated accounts, which as the Senator pointed out correctly is the smallest end of the budget. Three-quarters of all the Federal spending, of course, is in nonappropriated accounts. So for my part I am ready to take on the entitlement programs any way, any time. I am well aware that there is not a very big constituency for that in this Chamber tonight, but clearly that is what we are going to do when we get serious about controlling the deficits. Passage of this bill is not a serious effort at controlled deficits.

Mr. DOMENICI. Mr. President, I yield myself 1 additional minute and then I am going to yield to Senator CHILES.

Mr. GRAMM. Mr. President, could we have order.

The PRESIDING OFFICER. The Senate is not in order. The Senate will be in order.

□ 2100

Mr. DOMENICI. Mr. President, I yield myself 2 minutes.

I say to the Senator from Ohio that I will stay on the floor if he desires to ask me questions. I just told the Senator from Florida that I must leave, and I will be right back. It will take me 3 or 4 minutes. I have summaries, if the Senator from Ohio wants me to go through them, or I will answer specifically, or the Senator from Florida will, or we will call the chairmen who put this together. I only help them package it, urge them, and push where I can.

If we need help to answer the Senator's questions, we will get some other Members here.

Let me make one point in response to the Senator from Colorado.

I do not want to leave this evening with the impression that the U.S. Senate has not tried to do a better job and address the entitlement issues and address the issues across the board, because we have. I do not want to leave the impression that this Senator has not tried and has not been in the vanguard.

I do not want to leave the impression that others were ahead of us by years, trying to change the entitlements somewhat and put some revenues on some meaningful level.

If the Senator, my good friend, my neighbor, thinks we ought to keep trying we will. But we have done it three times, only to find that the President, the House, or both say, "Don't touch it. We're not going to have anything to do with this entitlement business. There are too many beneficiaries out there, and don't touch the revenues." It does not appear to be a promising course.

I will tell my friend, Senator ARMSTRONG, that I have been there three or four times, and I did not choose to do it again this year, but I did anyway.

Then we were told that we could not do these things because the President and the House did not want it. Frankly, I am getting a little tired of it.

So, it is in that context that I say we have done fairly well.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. CHILES. I yield 1 minute to the distinguished Senator from New Hampshire.

Mr. RUDMAN. Mr. President, before the Senator from New Mexico leaves the floor, I want to say something that ought to be said tonight about the Senator from New Mexico and the Senator from Florida.

As one who has been involved, with my friend from Texas, Senator GRAMM, and my friend from South Carolina, Mr. HOLLINGS, in this whole budget process, but not being on the Budget Committee, I think Congress and the American people owe a tremendous debt of gratitude to Senator DOMENICI and Senator CHILES for their leadership and their work. They have literally put their own health and themselves into trying to make this process work, and the results are what we have before us tonight.

It is not perfect. Senator CHILES does not think it is perfect. The Senator from New Mexico does not think it is perfect. But rarely in this body will we see two people, the chairman and the ranking minority member of one of the most important committees of Congress, work in tandem as they have this year for the good of this country.

I want to say that tonight, on the eve of the adjournment of the 99th Congress, because I have watched them up close. They are a remarkable team, and we are lucky to have them working for us.

Mr. CHILES. I thank the Senator.

Does the Senator need any more time? [Laughter.]

Mr. DOMENICI. I did no know he was going to say that, or I would have given him time. [Laughter.]

Mr. GRAMM. Mr. President, will the Senator yield?

Mr. DOMENICI. I yield 10 minutes to the Senator from Texas.

Mr. GRAMM. I thank the distinguished chairman for yielding.

Mr. President, I should like to begin by explaining why there is no Gramm-Rudman-Hollings II on the debt ceiling. The Senate has adopted Gramm-Rudman-Hollings II twice. We adopted it as part of the permanent debt ceiling that went to the House on August 8. We named conferees, but the House never named conferees to deal with the debt ceiling problem.

Then, prior to the adjournment for Labor Day, we again adopted Gramm-Rudman-Hollings II in the Senate. We sent it to the House. They voted on it, rejected it, sent back a so-called clean debt ceiling, and then adjourned before we had an opportunity to deal with it again.

A great deal of thought has gone into whether or not we should reconstitute Gramm-Rudman-Hollings with an amendment on this debt ceiling extension that would restore the automatic trigger as a disciplining mechanism.

I think it is the virtually unanimous decision of those who have been actively involved in this process not to do that tonight, when we are on the eve of adjournment, and those who do not want the discipline of the process could simply say, "Don't let this be forced on us in the 11th hour." The House could reject it and simply adjourn.

Mr. President, we decided, rather than do that, to pass a debt ceiling that would extend through about May 15, when we will be in the heart of the budget debate. The debt ceiling will at that time expire prior to an adjournment date; and, as a result, we will have an opportunity to revisit this issue.

I can assure my colleagues that around May 15, when we again have the opportunity to vote on the debt ceiling, Gramm-Rudman-Hollings II will be offered. I am confident that it will be successful in the Senate, and I am confident that at that point, when we face the very difficult budget decisions in trying to meet the second year's target, we will find that the House will be cooperative. Under the circumstances, I think this is a wise decision, given the fact that our objective is not simply to vote on good legislation but to adopt it.

I heard my friends, the Senator from New Mexico and the Senator from Colorado, debate the question that we all have to ask ourselves: Did we succeed? People always ask me, "Did Gramm-Rudman work?" I try to answer it by saying that Gramm-Rudman is not a four-sided fort. When we passed the Gramm-Rudman-Hollings bill, we did not build a four-sided fort with a drawbridge that we could pull up.

In the vernacular of my State, Gramm-Rudman-Hollings is a good stone wall to your back in a gunfight.

When people ask, "Did Gramm-Rudman work?" they are asking the wrong question. Gramm-Rudman is like the wrench you use to do plumbing with. It is the plumber who does the work, not the wrench. And whether the plumbing is done well or poorly has relatively little to do with the wrench. It has to do with the person using the wrench.

Gramm-Rudman-Hollings did one and only one important thing, really: Prior to Gramm-Rudman-Hollings, every time some pro-spending interest group wanted money spent, they were looking over the Congressman's right shoulder; and he was sending letters back home, be he Democrat or Republican, telling the people how he cared for the poor, the sick, the tired, the bicycle rider, and the list goes on. Nobody was looking over the left shoulder and, as a result, day in and day out we spent money.

What the Balanced Budget and Emergency Deficit Control Act did was to set out targets. It forced the President to submit budgets. It forced us to deal with those targets, and it set out some binding constraints.

It did not solve the problem; it did not yield a solution, But, rather than the whole process of the Senate being biased against controlling spending, Gramm-Rudman-Hollings sought to bias the process in favor of controlling spending.

□ 2110

And despite the validity of much of what the Senator from Colorado said and much of the frustrations that he feels and that I feel and others feel, I believe that we have tilted the process toward controlling spending and fiscal responsibility.

People ask whether we will have the same deficit when the numbers are tallied up that we have today? Probably not. If the historical precedent holds, the economic assumptions we made will probably prove to be overly optimistic. Or, they may be overly pessimistic.

But because of Gramm-Rudman-Hollings there are a couple of things we know. We know, No. 1, that in order to raise spending, except through an entitlement, we are going to have to vote for it. And I agree with the Senator from New Mexico that we have gotten a lot better at estimating entitlement spending. I remember in 1981 when we were trying to estimate entitlement spending we were simply grasping at gnats in the air.

Our record is substantially improved, and I think we are not going to have a big entitlement overrun if we do not have a recession.

But one thing we know under the Gramm-Rudman-Hollings process is that if discretionary spending rises we are going to have to vote for it, and we are going to have to waive the Budget Act. That is a strength we never had before we created these strong, binding constraints on the budget at the 302(b) level and the 60-vote margin on the major point of order; and I believe these will serve us well.

Did we do a good job? Not as good as we should have done, not as good as I would like to have done, but we did better than we have done before in terms of controlling spending.

The Senator from New Mexico has said it and it is true. If we enforce this budget we will have a smaller real growth in spending than we have had since 1955. Eisenhower was President in 1955. We had a completely different political structure in terms of spending in 1955.

That is a remarkable achievement. This is an election year. Within 3 weeks the people go to the polls. Spending money buys votes. And if you do not believe it, for the last 10 election years Federal spending has grown on average by 11.2 percent in the budgets we wrote in those election years.

Does anybody think that it is an accident that this year we are not going to have any nominal growth in the budget.

Now, that did not mean that we did any dramatic cutting or that we reformed entitlements. I have consistently voted to control the explosive growth in entitlements. But with the exception of the fiscal year 1982 budget we have made little progress in reforming entitlements. What we have done this year is to freeze the aggregate level of spending so the $63 billion of new revenues that we anticipated will come from growth in the economy will not be spent. They will go to reduce the deficit.

Now, I submit that that is progress. Is it success? Well, we are not going to gauge success until we look back on this period.

I guess for those of us who were part of the 1984 mandate, who were elected in 1984 with Ronald Reagan, success has got to be gauged on how we use that mandate, and by that measure I do not call it success.

We turned the corner, we changed the direction, but I do not believe that we have fulfilled that mandate.

I believe the people in my State and the people in the Nation really meant for us to fundamentally reorder Federal spending.

This year's budget was essential to get an opportunity to do that. I hope we do it next year. I will be working on it.

I am proud of what we have done. I wish we had done more, but I am very grateful for the leadership of the distinguished chairman of this committee who have been kind to me in all ways, who really did more of writing Gramm-Rudman in many ways than I did, even though it has my name on it. And I want to thank Senator CHILES. Senator CHILES was not an initial proponent of this Balanced Budget and Emergency Deficit Control Act. But even though he did not support it initially, he has done everything within his power to carry it out, and I am grateful for that and I am very appreciative.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I just want to make this statement. I hope everybody that has listened to either how well we have done or how poorly we have done will understand that we still have for 1987 a deficit, somewhere between $151 billion and $175 billion, and that results, even though defense spending is growing at seven-tenths of 1 percent negative, not even inflation. Appropriated accounts are growing at negative 5.4, well below inflation. Entitlements are only growing at five-tenths of 1 percent negative, less than inflation.

So I ask the question: How are you going to balance the budget? How are you going to balance the budget?

You still have that much deficit and this year you have effectively done more than ever on the those accounts,

and there are many who say defense needs more, not less. There are many who say entitlements cannot be cut, and I believe the discretionary accounts have been cut as much as you could and you have to pay your debts to arrest interest. It floats up and down with interest. But it is going to be $2.3 trillion come May 15 of next year. You are going to pay interest on that much debt.

So I think the real question is how you are going to get down to zero in 4 or 5 years, and those are the stark facts facing us right square in the face.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. EXON. Mr. President, I yield 10 minutes to the Senator from Hawaii.

The PRESIDING OFFICER. The Senator from Hawaii, Mr. MATSUNAGA.

Mr. MATSUNAGA. I thank the Senator for yielding.

Mr. President, as a member of the conference committee, I rise in support of the conference report on the Omnibus Budget Reconciliation Act, 1987—H.R. 5300.

Mr. President, in the face of budgetary constraints and many conflicting policy concerns, the conferees were able to agree upon numerous beneficial changes in the Medicare, Medicaid, maternal and child health, and income security programs. For beneficiaries, these program refinements will result in improved quality of care and the selective extension of coverage.

In particular, I point to the inclusion of two Medicare provisions in the legislation before us. The first authorizes direct part B reimbursement for anesthesia services and related care furnished by a registered nurse anesthetist which he or she is legally authorized to perform in the State. This provision also extends current payment provisions for the services of certified registered nurse anesthetists [CRNA's] until October 1, 1988. The second provision covers occupational therapy services under part B in a skilled nursing facility, clinic, rehabilitation agency, or public health agency.

Mr. President, in the first instance, the CRNA reimbursement provision addresses an urgent problem. The passthrough exemption, in which Medicare, outside the prospective payment system, pays hospitals for the costs of services performed for hospital patients by a CRNA, which Congress enacted as part of the Deficit Reduction Act of 1984—Public Law 93-369—will expire on October 1, 1987.

This provision extends and replaces the expiring passthrough which, in some locations, has not been achieving its desired result of not discouraging the use of CRNA's; this failure is attributed to its complexity and the assumption by hospitals that it will not be available as a source of funding for the long term. As a result, some hospitals are shifting CRNA employees to physician employment and billing Medicare and patients for these physician charges. Alternatively, they are reducing the use of CRNA's. The provision establishes a single, permanent, CRNA payment system replacing at least five payment methods currently in use. As the introducer of the original legislation designed to accomplish this end in the 98th Congress, I am especially pleased that we are finally recognizing CRNA's as directly reimbursable health professionals and consolidating and simplifying the payment methodology. We will be able to take advantage of a proven, cost-effective option in providing safe, physician-supervised anesthesia services at reduced costs.

Mr. President, the conference report also contains the occupational therapy services provision which I first introduced as a bill in the 98th Congress and which I offered as an amendment to H.R. 5300 during the Senate Finance Committee's deliberations earlier this year. Part B payments are authorized for occupational therapy services in certain settings which presently are not covered, including limited reimbursement for those provided in private practice settings.

Such services may reduce the need for institutional care or eliminate it entirely, while they enable the beneficiary to function more independently. Occupational therapy is a medically necessary rehabilitative service which provides treatment for persons suffering from strokes, rheumatoid arthritis, cerebral palsy, multiple sclerosis, spinal cord injury, severe burns, and mental disorders. There is a growing need for posthospital services that accompany the trend toward earlier and sometimes premature discharges. Without adequate coverage of these rehabilitative services, the relapse rate for patients, particularly the elderly, increases. Extension of part B coverage of occupational therapy services will address this growing problem because continuation of rehabilitative services after leaving the hospital is crucial in enabling Medicare patients to recover their physical independence.

Mr. President, this reconciliation bill represents the concerted efforts of the conferees to improve the Medicare and other Federal health and assistance programs. I urge my colleagues to approve the conference report.

□ 2120

The PRESIDING OFFICER. Who yields time?

Mr. EXON. Mr. President, I yield 2 minutes to the Senator from Oregon.

Mr. PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. I thank my good friend from Nebraska.

Mr. President, I am going to support the conference report, although I have grave misgivings about one particular section in the Ways and Means finance part of it. That is the custom user fee section.

We are starting down the road that is going to irritate our allies, that is going to be unfair to all our commercial importers and exporters by imposing a custom user fee, that is just a tariff. It collects much more money than we need to run the customs service.

In addition, we have exceptions for some countries from the user fee, all of the Caribbean Basin Initiative countries, all of the lesser developed countries, but we have not made an exception for Canada, our largest trading partner, or for Israel, our strongest ally in the Middle East, or for Mexico, or for any of the other major trading countries with which we do business.

So, first of all, we have made a mistake in starting down the road of calling something a user fee that is clearly a tariff. We have exempted some countries and covered others that should or should not be exempted as a whole but not piecemeal.

I think the reconciliation, on balance, I will support. But that particular section of the report I feel very badly about and, given my druthers, I would wish it was not in there.

Mr. METZENBAUM. Will the chairman of the Finance Committee be good enough to yield to me?

Mr. PACKWOOD. I do not have the floor. The Senator from Nebraska has the floor.

Mr. METZENBAUM. Will the Senator yield to me such time as I may need to ask a question?

Mr. EXON. I yield to the Senator from Ohio.

Mr. METZENBAUM. I want to ask the chairman of the Finance Committee his views with respect to using this vehicle to include tax provisions that the Senator from Oregon has already directed his attention to, not at this moment, but the so-called trucking amendment which was in the concurrent resolution which you brought to us the other day and which I know we passed at a cost of $8½ million, and the application of the at-risk rules to low-income housing credit, also, I believe, in the tax bill.

I am frank to say I do not know how many other provisions from the tax bill now wind up in the Budget Reconciliation Act. I just want to ask him whether or not he, as the chairman of the Finance Committee, is comfortable with the fact that matters that are unquestionably within his jurisdiction and that are matters which he supported, and I have indicated I had no objection of his proceding forward

with those matters, now wind up in the budget reconciliation bill because the concurrent resolution is in some difficulty?

Mr. PACKWOOD. Well, when you say a budget reconciliation bill, almost every committee has some part of this bill. They have done something to help it; Finance and Ways and Means did something to help. We have a debt ceiling in here which is clearly the jurisdiction of Ways and Means and Finance. We put it in this bill.

I have no objection in the sense I do not regard this as a budget reconciliation bill in the normal sense of a budget reconciliation bill. This is basically a composite of all the committees of the Senate, of the Congress, putting together their pieces to try to make the whole.

Mr. METZENBAUM. I thank the Senator.

Will the Senator be good enough to yield me 15 minutes?

Mr. EXON. I am glad to yield 15 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, I rise to indicate my concern about this process. Now I am a member of the Budget Committee. I have attempted to attend those meetings regularly and I have no fault to find with the leadership of that committee. I think they worked extremely hard. I think they have worked well and I think they are committed to the budget process. But I am very much concerned that we have emasculated the process.

In the effort to achieve some sense of unity, in the effort to achieve that which is considered to be a budget, we——

Mr. DOMENICI. Mr. President, could we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. METZENBAUM. We have looked around and scraped the bottom of the barrel for everything under the Sun and thrown it into this bill.

And there is no argument about the fact that a point of order could be raised with respect to the fact that the bill contains much extraneous matter, but I am not here to do that. I have no intention of doing that.

But I want to point out why I think this is a horrible way to legislate. Now at 25 after 9 on the last night of the session, we are going to pass a number of bills, a number of measures that the Members of this Senate have no idea about.

There is one provision that is cute. It is cute. It is literally cute. But when I am saying it is cute, I could describe it in another way and that is it consists of phony accounting. Phony, phony, phony accounting.

Now, I do not lay this at the doorstep of the Senator from New Mexico or the Senator from Florida. I lay it at the doorstep of those who are concerned about the agriculture legislation. I have no problem about dealing with the agricultural problems, agricultural programs, the Farm Credit Administration——

Mr. DOMENICI. Mr. President, could we have order?

The PRESIDING OFFICER. The Senator will suspend. Senators engaged in conversation are asked to take their seats. Senators in the well engaged in conversation are asked to take their conversations elsewhere.

The Senator from Ohio [Mr. METZENBAUM] is entitled to be heard.

The Senator will suspend. We will not proceed until the Senate is in order. Senators on both sides of the aisle are asked to take their seats.

Senators on both sides of the aisle are asked to take their seats and be silent in a measure of respect to their colleague from Ohio, Mr. METZENBAUM.

The Chair will insist in maintaining order. It is the duty of the Chair.

The Senator from Ohio is recognized. Mr. METZENBAUM.

Mr. METZENBAUM. I very much appreciate the courtesy of the Chair in bringing the Senate to order.

Let me read you one provision called accounting for the period. It has to do with the Farm Credit Administration. Now I am not opposed to our addressing ourselves to the concerns of the Farm Credit Administration in the normal legislative proposals. But let me read you what this provides.

"For the period July 1, 1986, through December 31, 1988"—Mr. President, I am going to again withhold until there is order in this body.

□ 2130

The PRESIDING OFFICER. The Senate is in order.

The Senator may proceed.

Mr. METZENBAUM. "For the period July 1, 1986, through December 31, 1988, the institutions of the Farm Credit System may, subject to such conditions as it may establish, capitalize annually their provision for losses in excess of one-half of 1 percent of loans outstanding, and amortize such capitalized amounts over a period not to exceed 20 years."

Members of the Senate, that may be hard to understand what I said as I read it. But let me explain it to you in simple terms. For those losses that are in excess of one-half of 1 percent of the loans that are outstanding, what they are saying is if that happens to be $1 billion or $5 billion—and I think this amendment has to do with $5 billion of excess obligations, excess losses—they are saying take those and do not show them as losses. Show them as a loss over the next 20 years. No business would be permitted to do that. That would just be considered totally phony. No accounting firm would certify an accounting statement on that basis.

And what are we doing? We are putting it into the Budget Reconciliation Act in order that we may get the bill through and somehow we are going to be able to claim that we are balancing the budget or getting closer to it.

Then there is a provision in here having to do with the Conrail sale. The Conrail sale was put in because ostensibly they were going to pick up some money from the Conrail sale in order to help balance the budget, but who had the audacity to take out of the bill provisions having to do with labor protection. That is bad enough.

But then let me tell you about another provision that is in the bill. This one ought to shock anybody within range of my voice. What they provided was that the company that was trying to buy this company, put it together, and to merge it together with its own Norfolk Southern, that or any other railroad company could start buying up the stock of Conrail 1 year after the transaction was completed. One year after, but listen to this. Neither you nor anybody else except a railroad would be able to start buying up that stock for a 3-year period.

So what we have said in simple language is that Norfolk Southern, which attempted over a period of months and months and months to take this railroad and put it under its wing, to merge it, cost jobs, and cost service to the community to put it together, what we now said is, well, we have given you an opportunity to do it. But no way did we do it so that it was through the normal legislative processes. We put it in the middle of a big bill. Nobody would know it was there. Nobody could do anything about it. We cannot come to the floor and knock that provision out. If we did, nobody would comprehend what it was all about. That does not belong in the budget reconciliation bill.

Then, as you look at some of the other provisions you provided that place after place after place that there are provisions in it. There is a whole list of them to be found on your desk. You'll find what we have done is we have made this into a total legislative package. I think some of the provisions might be right. It think some of the provisions may be wrong. But whether some of the provisions are right or whether some of the provisions are wrong, I am sure this is the wrong way to legislate.

I spoke to the chairman of the Finance Committee about two of the tax provisions in the bill. I stand before you, and I am frank to admit that I do not know whether there are 22 other provisions in the bill.

I would say last evening I was excoriated by the distinguished minority manager of this bill for putting into

the continuing resolution a provision having to do with RICO. There was merit to what he was saying. It did not belong in that bill. And the Senate turned it down. But at least the U.S. Senate had an opportunity to make its own decision as to whether they wanted to put it in or to take it out.

In this instance, the Members of this body do not have that privilege. We are called upon to vote the bill up or down. I think it is a horrible way to legislate. I think it is an abuse of the budget provisions. Some have stood on this floor and talked about whether or not we are balancing the budget, and whether we were doing the job that we were called upon to do. I agree that is a fair question to raise. But I think it is also a fair question to raise: Is it right to use the budget reconciliation measure to be a catch-all for every single kind of legislative proposal that has not been able to stand the light of day and has not been able to pass on the basis of its own merits?

This Senator does not think this is the right way to legislate.

Mr. COCHRAN. Mr. President, would the distinguished Senator from new Mexico yield to me 2 minutes?

Mr. DOMENICI. Mr. President, I will do that shortly.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. What I have been asked by the distingusihed majority leader—and I believe the minority leader, who is here on the floor concurs—I ask the Chair to lay before the Senate a message from the House on H.R. 5484, the drug reform bill.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr President, I withdraw my previous request.

FURLOUGHED EMPLOYEES COMPENSATION

Mr. DOMENICI. Mr. President, In now ask unanimous consent that the Senate turn to the consideration of House Joint Resolution 754, relative to Government employees, just received from the House.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. There is no objection. It has been cleared on this side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 754) providing for furloughed employees compensation.

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. DOMENICI. Mr. President, I ask unanimous consent that statements on this issue by Senators WARNER and TRIBLE be inserted as if read. A Senate version has been prepared for introduction, cosponsored by Senators WARNER, TRIBLE, STEVENS, and SARBANES, but expeditious action by the other body has rendered that unnecessary.

The PRESIDING OFFICER. Without objection, it is so ordered.

● Mr. WARNER. Mr. President, I rise to take but a few moments of my colleagues time to assure that Federal Government employees will not be penalized because of the delay in our completion of the appropriations process.

I am pleased to be joined in this effort by my colleague from Virginia, Senator TRIBLE, my colleague from Maryland, Senator SARBANES, and the distinguished chairman of the Senate Civil Service Subcommittee, Senator STEVENS.

This action is not unprecedented.

Congress has historically tried to make Federal employees whole regarding their pay when we have found ourselves in a legislative logjam.

I make no criticism of the process.

Completion of the fiscal year 1987 continuing resolution has been delayed because of important vested interests—interests which reserve the benefit of full debate.

My interest, if you will, is the welfare of the Federal Government employee who may suffer a reduction in pay because of our intransigence.

Simply stated, this joint resolution will assure that Federal Government employees will be fully credited for any loss of pay due to a temporary shutdown.

They will be fully compensated, just as if we had completed the appropriations process in an orderly manner.

Mr. President, this is all that I am seeking, and I encourage the unanimous support of all of my colleagues.

The employees of the Federal Government deserve our good faith agreement in this important matter.●

● Mr. TRIBLE. Mr. President, I am a cosponsor of this joint resolution, offered by my colleague from Virginia [Mr. WARNER], and I urge its swift approval.

Federal employees are being released from work early today because the Federal Government is out of funds. Technically, there is no money to keep the Government in operation or to pay the salaries of Federal workers.

We all know the cause of this predicament. We have thus far been unable to enact the continuing resolution needed to provide necessary funding for the Government. Unfortunately, civil servants stand to lose pay as a result of congressional inaction. They could be penalized for a situation which is not of their making and one which is beyond their control.

Clearly, Federal workers should not be required to lose pay because we have been unable to complete our work in a timely manner. Civil servants are not responsible for our troubles today and they should not be required to suffer financial loss as a result.

Mr. President, this amendment would ensure that Federal workers are not penalized due to our inability to enact the continuing resolution. Fairness requires this amendment to be adopted and I urge my colleagues to support this measure.●

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 754) was ordered to a third reading, was read the third time, and passed.

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, I yield as much time as the distinguished Senator from Mississippi desires.

The PRESIDING OFFICER (Mr. BOSCHWITZ). The Senator from Mississippi is recognized.

OMNIBUS RECONCILIATION—CONFERENCE REPORT

The Senate resumed consideration of the conference report.

Mr. COCHRAN. Mr. President, I thank the distinguished chairman of the Budget Committee for yielding to me.

As the distinguished Senator from Ohio has pointed out, Mr. President, this legislation contains provisions which will permit the Farm Credit System to solve some of the critical financing problems that it is facing. Let me just say that I think there is a good reason for including this bill in this Reconciliation Act.

FARM CREDIT SYSTEM

Mr. COCHRAN. Mr. President, included in this conference report are provisions that will permit the Farm Credit System to alleviate some of the critical financial problems that it is experiencing.

The Farm Credit System is a federally chartered, cooperatively owned nationwide system of banks and asso-

ciations that provide credit and closely related services to farms, ranchers, producers or harvesters of aquatic products, rural homeowners, and selected farm related businesses. It also provides credit services to agricultural cooperatives and certain other entities. The System, operating under Federal law—the Farm Credit Act of 1971—is active in all 50 States and Puerto Rico.

The System has served American agriculture since 1916. It is a major provider of funds to this segment of the economy. While the amount of System loans outstanding has declined from a high of about $85 billion at the end of 1983 to a level of $61.5 as of June 30, 1986, it remains one of the Nation's primary financers of agriculture.

The severely depressed condition of the agricultural section is reflected in the financial condition of the Farm Credit System. To illustrate, the production credit associations (that make shorter term operating loans) and the Federal land banks (that make longer term loans, primarily of farm real estate) are carrying more than $7.5 billion in nonaccrual loans that are not considered fully collectible. They hold another $5 billion in other high risk loans. Even though repayments are not currently being made on most of these troubled loans, the Farm Credit System is continuing to bear the cost of servicing its obligations to investors who have purchased bonds to finance the System's lending activities. In other words, while the System tries to practice forbearance with its borrowers, it nevertheless must meet its bills when they come due to the investing public.

The growing volume of troubled loans has caught up with the Farm Credit System. Last year, the System posted the largest annual loss of any financial institution in history, nearly $2.7 billion. For the first 6 months of 1986, it lost another $968 million, and there is little reason to believe this trend has yet to run its course. In view of these fact, it is not surprising that the System faces a financial crisis.

Another major source of the System's stress is the high cost associated with much of its borrowings from the public. A heavy volume of System obligations of relatively long maturity was sold in the early 1980's when interest rates generally reached unprecedented levels. These obligations largely represent financing for the Federal land banks; $30.8 billion of such obligations have a weighted average maturity of 3.4 years and bear interest rates of 9 percent or higher, and the average cost of these System funds is 10.6 percent.

An additional factor also poses a serious threat to the System's viability. It is losing substantial numbers of financially sound borrowers to other lenders whose terms and conditions are more attractive and who respond more quickly to the overall downward trend of interest rates. The cost of money over the past year has declined rapidly. Interest rates of 5-year Treasury bills have dropped from 9.81 percent to 6.8 percent. Since August 1985, the prime rate has dropped from 9.5 percent to 7.5 percent. Home mortgage rates have fallen from an average of 12.41 percent to 10.5 percent. However, during this same period, the Farm Credit System's interest rates have only dropped an average of less than 1 percent. No business organizations can long survive a competitive disadvantage such as this.

In this regard, the Farm Credit Act explicitly gives the FCA a power unique among agencies that regulate financial institutions—the power to approve the interest rates charged by System banks and associations on their loans. Many System institutions have been seeking to lower their rates, but the System's regulator has not reponded in a timely fashion to request for limited interest rate reductions.

In another area of concern, the Farm Credit Amendments Act of 1985 established a new System entity, the Farm Credit System Capital Corporation. Its purpose is to marshal the resources of the System for "self-help"—so that financially stronger elements of the System can channel assistance to the elements experiencing financial stress. Although financially healthy System institutions have made over $1 billion available to their distressed sister institutions, further System self-help efforts recently have been frustrated. While the Capital Corporation is organized and is functioning, lawsuits filed by certain System institutions have challenged the ability of the Corporation to collect assessments from stronger institutions for redistribution to those that are financially troubled.

The combination of factors that I have outlined threatens the very existence of the System. Emergency action of the part of Congress is necessary to maintain, for the benefit of American farmers, ranchers and their cooperatives, this borrower-owned, cooperative-financing System.

The provisions of the conference report to which I refer will permit the System to address promptly its most pressing problems. These provisions will not cure these problems—only a recovery of agriculture to a healthy condition will do that. But I am confident that they will enable the System to continue to fulfill its vital role—and at least postpone, if not avoid entirely, the need to provide Federal financial assistance to the System.

With respect to interest rates on loans made by System institutions, the bill deletes from the Farm Credit Act the provisions that subject such rates to FCA approval. Thus, the establishment of interest rates—a fundamental, day-to-day business decision for any lender—will be left to the boards of directors of System banks. That is not to say, however, that the System will be allowed to operate free of any restraints. FCA will continue to have authority, under other provisions of current law relating to "safety and soundless" and "capital adequacy," to ensure that the System does not take actions that threaten its viability. However, the FCA will no longer have prior approval authority over the business judgment of System boards in fixing interest rates.

Other provisions confront the two problems discussed above that generate much of the System's financial distress—the high costs of its borrowings and the high levels of its loan losses. They make available to the System some effective tools to help it manage, and alleviate over time, the problems that now severely threaten it.

Use of these tools will give the System time to work off costs and losses that, if required to be recognized currently, would compound its financial woes. With the prior approval of the subject to conditions set by the FCA, each System bank would be allowed (1) to contract with a third party or a limited purpose System service organization for payment of the bank's and other System bank's obligations incurred before January 1, 1985, in consideration of payment of market interest rates on such obligations plus a premium, (2) for the period July 1, 1986, through December 31, 1988, to capitalize the "excess" interest costs on such obligations, or (3) to take other similar actions, and to amortize the premium or excess interest or like cost over a period of not to exceed 20 years.

Also, with the prior approval of the subject to the conditions set by FCA, for the period July 1, 1986, through December 31, 1988, System institutions would be allowed to capitalize their excess loan losses over a period of not to exceed 20 years.

With respect to the costs of borrowings, the excess would be the amount by which interest costs on System obligations incurred before January 1, 1985, exceed the estimated interest costs on a like amount of System securities of like maturities at prevailing market interest rates as of the date of enactment of the bill, a rate likely to be close to 6 percent. With respect to loan losses to be capitalized for calendar years 1986, 1987, and 1988, the excess would be the amount by which the System's provision for losses exceeds one-half of 1 percent of loans outstanding—the level of provision for losses ordinarily maintained by the System.

Under these provisions, the System would be relieved of none of its obliga-

tions. Holders of System securities would be paid interest and principal in full when due. However, the recognition of the excess costs and losses described could be spread over a period sufficient to permit the System to absorb them under normal conditions.

It is recognized that this treatment of costs and losses would not be consistent with generally accepted accounting principles [GAAP]. The Farm Credit Amendment Act of 1985 required that System financial statements be prepared in accordance with GAAP. An exception from this requirement would be made with respect to the extended amortization periods that are provided for. But it is expected that the System will make full and fair disclosure of precisely what its financial condition is. And it is expected that such disclosure of measures, taken under statutory authority, will enhance investor confidence in the System. This result should follow when it is clearly understood that such measures will increase the likelihood that the System will be able to alleviate its financial problems and continue as viable and healthy financial institution.

The accounting changes authorized should reduce—but will not eliminate—the need for the System to provide financial assistance to its troubled institutions. These changes do not, therefore, relieve the System of its self-help responsibilities. It is expected that the System will, as necessary, use its resources to help its own distressed units, as contemplated by the Farm Credit Amendments Act of 1985.

It should be strongly emphasized that the System's use of the fiscal tools supplied by the legislation will be subject to strict regulations. I reiterate that these tools may be employed only with the prior approval of the FCA, and subject to such conditions as the agency may establish.

Some of the provisions I have referred to present issues that merit further discussion. The legislation expresses the policy of Congress with respect to System interest rates. While the policy statement is not a provision of positive law, it does enumerate some of the elements to be taken into consideration with respect to levels of interest rates. It should be apparent that Congress expects no "free fall" of System interest rates, and no application of these remedial provisions in a manner that would dissipate System resources or undercut interest rate levels generally being charged by other commercial lenders on similar loans.

The accounting principles provided for in the legislation will have an impact on borrower interest rates. The ability of System institutions to offer competitive interest rates in order to retain creditworthy borrowers and preserve their earnings base will over time enable them to work out of their financial difficulties. As reflected in the policy statement, the Congress does not intend that System institutions depress earnings by charging interest rates that are below competitive market rates for similar loans from other commercial lenders. But it is recognized that the interest rates charged by the System need to respond to the various competitive environments in which it operates. Ailing System institutions simply cannot sustain a recovery by offering above-competitive interest rates to existing and prospective borrowers.

In this connection Congress is aware that there are areas of the country where the System supplies much of the agricultural credit. In some regions, few commercial lenders are actively engaged in financing farmers, ranchers, and their cooperatives. Agricultural producers and cooperative should not be expected to suffer unreasonable credit conditions simply because there is a dearth of aggressive competition for their business.

It should be clear, as the policy statement expresses it, that the System is expected to carry out these provisions in a fashion that allows its borrowers to derive the greatest benefit practicable from the legislation. So that such benefit is afforded to sorely pressed farmers in time to meet their financing needs for the 1987 crop, it is absolutely essential that the System and the FCA move swiftly to implement these provisions.

With respect to timely implementation of the legislation, its provisions would, as I have pointed out, permit the System, with FCA approval and for the period July 1, 1986 to December 31, 1988, to capitalize and to amortize over a period for up to 20 years, excessive loan losses—that is, loan losses that exceed one-half of 1 percent of loans outstanding, which in the traditional level of the System's provision for loan losses. To achieve the objective of this provision, it must be applied so as to be effective promptly.

To illustrate the proper application of the provision, assume an institution has $10 million in loans outstanding as of June 30, 1986, and has made provision for loan losses of $30,000 during the first 6 months of 1986. If approved by FCA, the institution may capitalize additional provisions to its reserves during the balance of 1986 that exceed $20,000. If the institution had made a provision for loan losses of $50,000 rather than $30,000 during the first half of 1986, the full amount of any additional provision for loan losses during the remainder of 1986 would be eligible for capitalization.

Further, it is intended that this provision be available for use in monthly or quarterly System financial statements. This would not be possible for calendar year 1986 if use of this provision were delayed until issuance of the 1986 annual financial statements.

The provisions that I have discussed represent our best judgment as to the action that Congress can take at this time to aid the Farm Credit System. These provisions, while far from perfect, represent a workable and practical approach to a problem that cannot be ignored. They will give the System a reasonable opportunity to remain a vital supplier of credit to American agriculture. And they will impose no cost whatever on the Federal Treasury. They deserve the support of the Congress.

Everybody knows, and it has been quietly publicized and discussed here on the Hill, in hearings, and committee meetings that the Farm Credit System is in very serious trouble. As a matter of fact, there is a danger that it could go out of business, that it could collapse, or in the alternative that it would have to turn to the Federal Treasury for a bailout.

The prospects for a drain on the Treasury in that instance is one reason why this is proper subject for reconciliation. The Agriculture Committee realizes after hearings and conversations from Farm Credit System officials, the Farm Credit Administrator, other experts in the field, that there is a way to at least postpone, if not alleviate, the need for direct Federal assistance to the Farm Credit System by the adoption of this legislation that is included in the bill. That is the point, Mr. President.

There is an opportunity to permit the Farm Credit System to reamortize, to stretch out, defer losses if we permit this legislation to be passed tonight.

□ 2140

The reason for that is to let borrowers who are part of this system share in some of the reduced interest rates that other borrowers from other institutions are enjoying in our economic system today.

The Farm Credit System has been charging its borrowers as much as 3 percentage points more than they could be getting if they were borrowing from banks or other lending institutions. This is a big problem. Better borrowers are really being encouraged under the circumstances to go elsewhere, to leave the Farm Credit System to those who are less able to repay their loans and service their loans.

So that is what the amendment seeks to do, Mr. President, to permit the Farm Credit System to have more flexibility through its production credit administration, its Federal land banks, and local lenders, with borrowers so that the system will have a

chance to work its way out of this difficulty.

The second thing it will permit it to do is to roll over some of this old, high-cost debt, stretch out the repayment, and reamortize it over a long period of time.

Mr. President, I have a letter which was unsolicited from an investment firm in New York City.

In direct response to one of the suggestions of the Senator from Ohio, I wanted to read a sentence:

We are less concerned with the accounting treatment of FCS losses under the reality of the problems the FSC currently faces.

Then they go on to say:

This change will permit FCS management to avoid the request of assistance. It will minimize the amount of assistance which might be requested. This new proposal seems a logical and favorable step in reducing and delaying the FCS need for assistance from Treasury.

Mr. President, I ask unanimous consent that the entire statement from Rothschild, Unterberg, Towbin, Inc., be printed in the RECORD at this point.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

THE FARM CREDIT SYSTEM PROPOSES TO USE DEFERRED LOSS ACCOUNTING

The Farm Credit System (FCS) has proposed a new plan which would allow it to both lower its cost of loans to farm borrowers and delay indefinitely its anticipated request for Federal financial assistance. The plan is to defer losses, which while questionable from a strict accounting viewpoint, will achieve several important and productive ends for the FCS. Our investment conclusion is that the plan would be neutral for FCS bond prices, since the short term costs are at least matched by the long term benefits. We are less concerned with the accounting treatment of FCS losses under the new act than the reality of the problems the FCS currently faces. Any reduction in the rate of interest charged its borrowers will not only preserve FCS market share, but also conserve FCS capital and slow the rate of loan losses. The time when the FCS might ultimately require federal financial assistance will be postponed, and the additional breathing space the act provides improves the FCS' chances of surviving independently. Since the FCS can fund the losses with cash raised in the capital markets, this solution is workable, and the ends certainly justify the means.

The proposal is the Farm Credit System Borrower Interest Rate Relief Act of 1986. The FCS has issued a large volume of high coupon, long term non-callable debt over the last several years. As a consequence, the FCS average cost of funds is 10.6%, which is far above competing financial institutions. In addition, the FCS has high overhead expense. All these costs are passed through to FCS farmer-borrowers which makes rates on FCS loans non-competitive with other financial institutions. The market share of the FCS has eroded because of this differential in rates; FCS loans outstanding have fallen to $61.5 billion at 6/30/86 from $66.6 billion at 12/31/85, and $78.4 billion at 12/31/84.

The FCS had asked the Farm Credit Administration (its regulator) to allow it to lower the rate it charged on its loans, but the FCA refused on the grounds that lending at a negative spread would speed the erosion of FCS capital. The new proposal would take the rate setting power out of the hands of the FCA and place it with the 37 district banks of the FCS. This change, since it is endorsed by the Congress, would not stand in the way of any future needed financial assistance.

The new act would allow the FCS to charge a competitive rate to its borrowers and capitalize the difference between the actual cost of its funds and the prevailing market rate. The capitalized interest would be amortized as an expense over twenty years. Alternatively, the FCS could defer the high coupon bonds and capitalize the premium, also using a twenty year amortization.

In addition the FCS could, upon approval from the FCA, capitalize their annual provision for loan losses, which was in excess of one-half of one percent of loans outstanding, and amortize it over twenty years.

The FCS stands to have its operating losses reduced by up to $1 billion annually under the proposal. While the deferred loss treatment is not in accordance with generally accepted accounting principles it is not uncommon in regulatory reporting for the thrift industry. This process would reduce the market erosion the System is experiencing and reduce the debt service requirements on many farmers. The System's capital would be conserved by the retention of borrowers (since they supply the funds for the FCS Capital Stock and Participation Certificates) and market share would be maintained by competitive rates. In addition, a reduction in the rate of interest charged to the FCS farmer/borrowers would help prevent many marginal farmers from defaulting, thus reduce FCS loan write-offs.

Last week before Congress, H. Brent Beesley, Chief Executive of the Farm Credit Corporation of America discussed the System's future financial prospects. He reported that a projected System loss of $1.7 billion for 1986 compares to a loss of $2.7 billion recorded for the year ending December 31, 1985. In addition, System projections reflect losses of $1.1 billion in 1987 and $600 million in 1988. The System's surplus is projected to decline to $1.7 billion by year-end 1986, to $600 million by year-end 1987 and to a negative $100 million by December 31, 1988. Beesley cautioned that there are many uncertainties surrounding these projections. Changes in such factors as general interest-rate levels, federal farm programs, land values and commodity prices could alter the projected results significantly. At the same time the General Accounting Office projected FCS losses of $2.9 billion in 1986, which would reduce surplus to $354 million. It seems clear that without a drastic change in either the farm economy or the accounting system used by the FCS, federal aid would be needed soon.

While it is not certain that this measure would be sufficient for the FSC to avoid requesting Federal financial assistance, it reduces the amount of assistance that might ultimately be needed. The FCS management is fighting to avoid the need to request assistance, and to minimize the amount of assistance that might be requested. This new proposal seems a logical and favorable step towards reducing and delaying the FCS needs for assistance from the Treasury.

(By Allerton Smith)

Mr. ZORINSKY. Mr. President, title I of the conference substitute reported by the conferees on the Omnibus Budget Reconciliation Act of 1986 relates to agricultural programs. This legislation includes a provision relating to the repayment of rural utility loans financed by the Federal Financing Bank and guaranteed by the Rural Electrification Administration. Under the provision, such loans may be prepaid without penalty. In conference, it was agreed that the REA is to permit such prepayments under prescribed conditions, including the passing along of savings to utility customers. The objective is to realize net proceeds to the Government of $2,017,500,000 in fiscal year 1987. The administration would be directed to establish eligibility criteria to ensure that the loan prepayments will be directed to those cooperative borrowers in greatest need of the benefits of this program.

Another important part of title I requires that advance deficiency payments be paid to producers of certain agricultural commodities. The conference committee agreed to require the Secretary of Agriculture to make advance deficiency payments available for the 1987 crops of wheat, feed grains, Upland cotton, and rice under the criteria in current law, at a rate not less than 40 percent of the projected 1987 crop payment rate for wheat and feed grains and 30 percent of the rate for Upland cotton and rice.

Further, title I includes a provision relating to the sale of notes and obligations from the Rural Development Insurance Fund. The notes in this fund primarily represent Farmers Home Administration loans made to rural communities under its water and waste disposal and community facilities loan programs. This provision will require the Secretary of Agriculture to sell notes from this fund in such amounts as to realize to the Government net proceeds of $1 billion in fiscal year 1987, $552 million in fiscal year 1988, and $547 million in fiscal year 1989. Under this provision, the institutions of the Farm Credit System will be specifically authorized to purchase, service, collect, and dispose of these notes. This will provide an additional market to help ensure that the savings projections under the legislation will be achieved.

Mr. President, I fully support the provisions I have summarized. They will go far toward making the anticipated savings a reality. They will provide some desperately needed benefits to farmers and others who are bearing directly the burden of the continuing depression in the agricultural sector.

The conference report contains other provisions that relate to the financial crisis that now faces the Farm Credit System. While I support these

provisions as representing an emergency, stop-gap approach that may allow the System to alleviate this crisis, I am disturbed by the process that brings them before us at this late date.

Only a few weeks ago, a representative of the System appeared before the Agriculture Committee and stated that the System was not seeking Federal financial assistance this year. The System has not sought such assistance, and the legislation we are considering does not provide it. However, the legislation does give Federal approval to accounting procedures that depart from standards Congress prescribed less than a year ago. The need for the new changes in law was precipitated by a series of lawsuits by System institutions that at least temporarily hamstring the System "Self-help" measures that Congress also put in place just a year ago.

Mr. President, the System accounting that would be authorized can be briefly described. With the approval of its Federal regulation, the Farm Credit Administration, and under conditions FCA may establish, the System would be allowed, through December 31, 1988, to capitalize both the "excess" costs associated with bonds it sold before 1985, and the "excess" loan losses it is experiencing. The excess funding costs and loan losses are those that exceed, respectively: First, the amounts by which interest costs on bonds issued before 1985—at rates in excess of 9 percent—exceed interest costs on such bonds had they been issued currently—at rates of about 6 percent—and second, one-half of 1 percent of loans outstanding, which is the System's traditional level of loan loss reserves. These capitalized amounts could be amortized over a period of up to 20 years. This procedure is not consistent with generally accepted accounting principles; therefore, an exception from those principles is provided for that would apply to System accounting during the amortization period.

The objective is to permit the System to absorb, over up to 20 years, costs and losses that, if recognized currently, could push the System to the brink of financial collapse. The expectation—or perhaps hope—is that this approach will let the System charge its farmer-borrowers more competitive interest rates, reduce the amount of funds healthy institutions will need to transfer to those that are in most serious trouble, and postpone or possibly avoid the need for Federal assistance.

I know that these provisions will not solve the System's financial problems. They will merely alleviate them. I am, therefore, concerned that the institutions of the Farm Credit System not be lulled into complacency because they would no longer be required to record on a current basis the staggering losses they are suffering. In good conscience, I could not support these provsions if I did not make clear that the Farm Credit System must face head on its problems of waste and inefficiency, and must provide such self-help as may be necessary, just as Congress contemplated when it adopted the Farm Credit Amendments Act of 1985. I intend to keep the pressure on and to ask those questions that must be asked about streamlining the System, eliminating unnecessary bureaucracy, and using its own resources to address its problems.

Mr. President, I would add that deviating from standard accounting practices is not unprecedented. It was permitted in the insurance industry in the 1930's. The primary investment vehicle used by insurance companies has traditionally been corporate bonds. Prior to the Depression, statutory accounting recognized bond assets as a function of market value. However, with so many corporations having impaired value during this period, the solvency of several insurers was in question. As a result, enabling legislation at the State level was passed to allow fixing the carrying value of corporate bonds at their par or maturity value—with the purchase discount or premium being amortized over the duration of the investment. This acounting treatment assisted many firms through a very difficult period. A significant departure from standard accounting principles has also been implemented in the thrift industry with approval of the Federal regulator.

While I am very uncomfortable with both the timing and manner in which this legislation reaches us, and I am concerned that we are taking a step backward on accounting, I believe we have no other practical choice. Our failure to do so could imperil the existence of the System as a major source of credit for the farmers and ranchers of America and their cooperatives.

FARM CREDIT SYSTEM INTEREST RATES

Mr. BENTSEN. Mr. President, the reconciliation package now before the Senate contains a provision dealing with the Farm Credit System. Part of that provision is a modification of S. 2770, a bill which I joined with the distinguished Senator from Mississippi [Mr. COCHRAN] and others in introducing last August.

S. 2770 was intended to remove the Farm Credit Administration Board from the business of telling districts where to set their interest rates. The FCA board had been arbitrarily requiring interest rates to be kept at levels well above the market, arguing that more funds were needed to cover losses within some parts of the System. That short-sighted policy is penny wise and dollar foolish. It has run off many of the System's best borrowers, causing losses of annual revenue in the millions of dollars.

The proposal now before us allows the Farm Credit System to change its accounting practices and write off many losses over 20 years instead of recognizing them immediately. As a result, the day when Federal capital will be needed is delayed. Another result is that these paper savings can be used to lower interest rates to market levels for the farmers and ranchers who are borrowing from the System.

The interest rate reduction language in this bill has been modified, and has been weakened, from the proposal which we originally introduced. Nevertheless, I support its passage. It is the best available alternative in a very bad situation.

A major problem facing the System today is that interest rates charged to Farm Credit System borrowers are well above market rates. Repeated requests to the Farm Credit Administration Board from the Texas district board to lower these interest rates have been ignored, refused, or approved with restrictions that made them almost meaningless.

As a result the entire Farm Credit System, not just the Texas district, is threatened. New loans by Texas land banks in 1986 are down 58.3 percent from 1985 and 69.4 percent from 1984. In addition, loan payoffs for the Federal Land Banks of Texas in the first 9 months of 1986 were up by 102 percent from the same period a year ago, and up by 175 percent from 2 years ago. The payoffs alone have cost the Texas district more than $7.5 million in lost earnings.

At the same time, huge assessments are being levied against Texas and other healthy districts to cover losses in other districts. It is only a matter of time, and possibly a short time, until the capital of the entire system is exhausted if those assessments go forward.

Those assessments are not going forward because of numerous court suits questioning the validity of the capital adequacy regulations promulgated by the Farm Credit Administration. I objected to those regulations when they were proposed.

Last week a judge in Lubbock, TX, issued a temporary injunction blocking assessments against 42 of the 44 land banks and 23 of the 28 production credit associations in Texas. Also last week a Federal judge in Missouri issued a permanent injunction against those regulations, saying that the FCA board had exceeded the intent of Congress. Many other suits are also pending.

Under current accounting rules, major portions of the system, particularly in the Midwest, will soon be out of capital if these assessments remain blocked. When the capital of a local association is exhausted then the class

B stock, which is held by all borrowers as a condition of getting a loan, is frozen. It does not matter whether those borrowers are current on their loans or not, and they cannot get that money out even if they pay off their loans. The B stock funds are used to cover any additional losses, and then the remainder, if any, is unfrozen and distributed after the crisis is settled.

Thus anyone contemplating borrowing from the Farm Credit System now must be willing to pay interest rates that could be two full points or more above the market, and must also risk the freezing and possible loss of their B stock investment. It is no wonder that farmers are leaving the System in droves.

As these borrowers leave for other sources of credit, the FCS is squeezed even harder. It has a much smaller volume of loans, and thus less income. Also, the quality of the remaining loans is lowered by the flight of top-quality borrowers, leaving a portfolio with more potential losses and producing less interest income. The overhead costs of operating the FCS, however, are relatively fixed.

For the healthy districts and associations, the assessments take away funds saved up over decades for just such a rainy day as this. When those reserves are gone even small losses can result in capital impairment, and in today's depressed farm economy almost every association is going to have some loan losses. In addition, interest income from those reserves is lost, and more of the association's costs must be covered from interest rates charged to borrowers.

I am deeply concerned that this combination of circumstances poses a real threat to the long-term survival of the Farm Credit System as we know it today. And the longer that the FCA waits to deal with this the more difficult it will be. This bill gives the FCA another opportunity to deal with this problem.

Mr. President, I would also point out that the FCA we deal with today is not the FCA we dealt with last year, when the Farm Credit Amendments Act of 1985 was passed. The FCA is now under the control of a politically-appointed board of directors created by that act. That board has taken the broad powers given them in that bill and expanded them even further, to the point where the courts have now intervened.

Last year I warned when the bill passed the Senate that it was a bad bill. I said, "This bill will provide a lot of regulation and very little actual help. It will effectively eliminate the concept of local control on which the Farm Credit System was founded. It will wind up giving political appointees control of the System."

I pointed out last December that that legislation would not necessarily mean that financial assistance would be provided to the Farm Credit System. The problems of the FCS have now become critical, and we are finally here to provide some assistance.

Mr. President, this bill now before us provides smoke and mirrors help, but it is help. It does not require that all savings be passed on to borrowers as lower interest rates, as I would prefer. But it does allow that, and this is apparently the only chance to get those lower interest rates before the refinancing season for next spring's crops.

I want the farm credit banks of Texas to remain competitive and dedicated to serving the farmers and ranchers of Texas. This bill can help them do that, and I urge its passage by the Senate.

(By request of Mr. BYRD, the following statement was ordered to be printed in the RECORD.)

● Mr. LEAHY. Mr. President, certain provisions of the conference report amend important agricultural programs. These amendments should be supported by the Senate.

FARM CREDIT PROVISIONS

Provisions of the conference report will amend the Farm Credit Administration's authority to set or to approve interest rates of the lending institutions it supervises, and will permit farm credit institutions to purchase back outstanding high-cost debt. Under the debt purchase plan, the farm credit institutions will be able to amortize the expense of debt purchase over a period of not more than 20 years, with approval of the Farm Credit Administration.

Removing the FCA's authority to set or to approve interest rates is consistent with actions taken by Congress last year when enacting, striking in the 1985 Farm Credit Amendments Act. The FCA is entended to be an arms-length regulator, removing itself from the day-to-day management activities that it had previously engaged in. This same view was reaffirmed in the confirmation hearings for the FCA board members.

Unfortunately, today it is necessary to specifically limit FCA's authority in the area of interest rate regulation, making clear that such authority is inappropriate for a financial regulator. No other financial regulatory agency—the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, or the Federal Home Loan Bank Board, for example—has the authority to set, or to approve, interest rates for those lending institutions they regulate. I understand that there is not even the slightest suggestion in the rules or regulation of other, similar regulators that would suggest that those regulators might even require an institution under the supervision of those agencies—even a financially troubled trouble one—to charge competitive rates.

Mr. President, by enacting this legislation, Congress is making it clear to the FCA that it must remove itself from the setting or approval of interest rates for farm credit lending institutions.

Consistent with this congressional intent, I ask unanimous consent that comments made by the System to the capital adequacy regulations as proposed by the FCA be printed in the RECORD at the conclusion of my remarks.

If these regulations, as proposed, are adopted by the FCA as not proposed, one form of interest rate approval will be substituted for another. The System cannot achieve a financial recovery by charging uncompetitive interest rates to its borrower-shareholders, and these regulations must be rewritten to reflect congressional intent.

The interest rate charged by a lending institution is both a right and a responsibility of that institution, and should be based on the cost of debt, risk, and normal operating expenses. Of course, it is also congressional intent that these same institutions should not be allowed to artificially lower their rates in order to reduce the capital that they might otherwise have available to assist in this self-help effort.

The legislation included in the budget reconciliation bill also allows system institutions, with the FCA's approval, to change accounting systems in order to defer losses, and to amortize the expense incurred in buying back high cost debt that was issued over the last several years.

While this deferred loss accounting is not in accordance with GAAP [generally accepted accounting practices], it is not uncommon in regulatory reporting for the thrift industry. Furthermore, it will give the Farm Credit System the breathing room needed to mount a recovery. The action we take today will reduce the erosion of the market of the Farm Credit Banks, and reduce the debt service requirements on many farmers. It is also a logical step toward reducing and delaying the need for the Farm Credit System to seek Federal financial assistance.

Mr. President, my colleagues should know that, in approving this legislation, the authority of the FCA is not weakened. Like other Federal regulators, the FCA will have many powers available to it in dealing with the unsafe and unsound institutions. Authorities retained by the FCA include cease and desist authority, the ability to remove officers and directors for cause, and many other authorities that are available to other Federal financial regulatory agencies.

SALE OF RURAL DEVELOPMENT LOAN FUND ASSETS

The Budget Reconciliation Act also contains a provision to require the sale of Farmers Home Administration [FmHA] Rural Development Loan Fund [RDIF] loan assets. RDIF loans are made to rural communities to finance water systems and other community facilities. The purpose of this sale is to realize net proceeds to the Federal government of not less than $2.099 billion over the next 3 years.

Under the arrangement, RDIF assets—or loans—will be sold on the open market as a way to reduce the Federal deficit. Rural communities will make their loan payments to the holders of these notes. FmHA will no longer be responsible for servicing and providing assistance to rural communities on these loans.

Because maintaining the facilities financed by FmHA is very important to me, I strongly support the provision contained in the Reconciliation Act requiring the purchaser of RDIF assets to provide servicing, related assistance, and additional credit to rural communities.

About 12,000 loans have been made to rural communities through the RDIF. Many of these communities are small with few, if any, paid employees. As a result, they will continue to need servicing and technical assistance along with a reliable, sympathetic lender interested in resolving any credit problems that may arise.

While it is important to reduce the deficit, there can be no higher priority than maintaining the federally financed facilities that have so improved the quality of life in rural America.

The Reconciliation Act therefore establishes two goals. First is the reduction of the deficit through loan sales. Second, and equally important, is the continued assistance, by the purchaser, to rural communities, including servicing and additional credit.

CONCLUSION

Mr. President, in addition to the contribution the budget reconciliation actions will make toward reducing the Federal deficit, it makes the important changes I have noted. I urge my colleagues to adopt the conference report.

There being no objection, the comments were ordered to be printed in the RECORD, as follows:

SELECTED SYSTEM COMMENTS ON FCA CAPITAL ADEQUACY REGULATIONS (SUBMITTED BY SENATOR LEAHY)

Sound management and careful FCA supervision are critical to the recovery of the System's troubled institutions. Indeed, management and directors of the highest caliber are required in the most troubled areas. Given the close inter-relationship of System entities, the System has great incentive to ensure that the proper individuals are placed in control of the troubled institutions and that such individuals be given the ample flexibility to address identified problems. We expect this to be a principal objective of the Capital Corporation. Similarly, we believe that one of FCA's primary objectives should be to ensure that the management and operating issues identified above are being addressed. Primary reliance on capital adequacy determinations will not, in our view focus FCA's resources where they are most needed and can have the greatest impact.

In this respect, our view of capital adequacy recognizes that the System differs markedly from other types of financial institutions which are not bound together with the legal and financial bonds present within the System.

USE OF CAPITAL ADEQUACY REGULATIONS TO CONTROL SYSTEM INTEREST RATES

While the System strongly supports the concept of eliminating FCA prior approval requirements with respect to "the establishment of or changes to the rate of interest charged on loans," it appears that the proposed Capital Adequacy Regulations would merely substitute one form of FCA control over System interest rates for another. Under the Regulations, System institutions would be permitted to establish or change interest rates if such action were taken "in accordance with the institution's financial plan." However, another provision of the Regulations imposes a limitation on the financial plans of System institutions that will effectively preclude many, if not all, System institutions from adopting financial plans that provide for competitive interest rates to borrowers.

During the period in which the Capital Corporation is in operation, the Regulations would require each System institution, regardless of zone classification, to adopt "financial plans" which conform with certain specified requirements. 51 Fed. Reg. 26,409 (1986) (to be codified at 12 C.F.R. § 615.5230) (proposed July 23, 1986). (Institutions classified in Zone D and certain Zone C institutions must have their "financial plans" specifically approved by FCA. 51 Fed. Reg. 26,408 (1986) (to be codified at 12 C.F.R. § 615.5225) (proposed July 13, 1986). One of the requirements applicable to all "financial plans" relates specifically to reductions in interest rates (or, as described in the Regulations, "any decrease in the base spread of the institution"). Under this requirement, any decrease in interest rate spreads must be "justified on the basis of a statistical and economic analysis that demonstrates that such decrease will increase total interest income over the level that the institution would have realized without the spread decrease." 51 Fed. Reg. 26,409 (1986) (to be codified at 12 C.F.R. § 615.5230(c)) (proposed July 23, 1986) (emphasis added).

This requirement constitutes a significant burden, if not an insurmountable carrier, for those System institutions that are considering reduction in interest rates in order to remain competitive in their respective markets. Indeed, it may well require many institutions to increase interest rates, and thereby become even more noncompetitive. The reason for this that many System institutions are now burdened with significant amounts of outstanding debt on which they are paying above market interest. Until these high cost obligations mature, the "weighted average rate paid for its outstanding interest/bearing obligations" will likely increase as the volume of loans outstanding declines. Thus, as volume declines in response to noncompetitive interest rates, the proposed regulation would, when applied literally, require the institution to increase interest rates to borrowers to maintain its "base" spread, making the institution even more noncompetitive and further exacerbating the adverse financial impact on the institution of its high cost debt.

The System cannot mount a financial recovery by charging noncompetitive interest rates to its borrower/shareholders. There is substantial and mounting evidence that the System's share of the total agricultural debt is declining, and that this decline is largely attributable to the System's noncompetitive interest rates. It is indisputable that the entire System is experiencing a substantial runoff of business, particularly on the part of its most creditworthy customers. In these circumstances, it is incumbent on all System institutions to determine whether their interest rates are at levels calculated to maximize interest income over a reasonable period of time. To look only to the short term impact of interest rate reductions on "total loan interest income" and ignore the impact of such reductions on the anticipated levels of nonaccrual loans, chargeoffs, and the long term earnings base of the institution is the epitome of "tunnel vision." Retaining existing rates and losing good customers because those rates are too high compounds the System's financial problems by reducing the volume of acceptable loans which form the earnings base of the System and by decreasing the System's ability to access new and lower cost funds.

While it is clear that projections of loan volume based upon possible change in interest rates will never be a perfect science, and that the advisability of interest rate reductions cannot be separated from the analysis of credit risk, the clear bias in the proposed Regulations against interest rate reductions is unjustified. Decisions to maintain or increase existing rates may, in our judgment, have just as profound and impact on the future financial health of the System as decisions to reduce interest rates. These are decisions that require the exercise of business judgment; they should not be made by an arm's-length regulator.

The System has carefully reviewed the existing capital adequacy regulations of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board, as well as the proposals that these regulators are currently considering with respect to amending to their present regulations. There is nothing in those regulations or proposals that even remotely resembles FCA's proposed requirements with respect to the interest rates charged by System institutions. While it may well be the case that other financial regulators can take enforcement actions to prevent a financial institution from dissipating its capital by charging less than competitive rates for its loans, there is no suggestion in any of these regulations that any of the other financial regulators would ever require an institution under its supervision to charge more than competitive rates. The absence of such provisions in the regulations of the other financial regulators strongly suggests that the control of System interest rates contemplated by the proposed Regulations cannot be justified on the basis of FCA's authority to establish capital adequacy levels under Section 4.3(c) of the Act.●

(By request of Mr. BYRD, the following statement was ordered to be printed in the RECORD)

FARM CREDIT SYSTEM PROVISION IN RECONCILIATION

● Mr. BOREN. Mr. President, during the conference on reconciliation, extraneous provisions relating to the Farm Credit System were added. Among other things, these provisions allow system banks to set their own interest rates and allow, with the approval of the Farm Credit Administration, system banks to amortize their losses over a period of up to 20 years.

While the House has passed these provisions as a separate bill, the Senate has not been given an opportunity to consider this legislation either in committee or on the Senate floor. It is true, that the Senate Agriculture Committee held a hearing on S. 2770, a bill which allows system banks to set their own interest rates. However, the only persons permitted to testify at the hearing were Frank Naylor, Chairman of the Farm Credit Administration Board and Brent Beasely, president of the Farm Credit Corporation of America. No one else was permitted to testify. None of the agricultural groups or persons representing the farmer-borrowers of the Farm Credit System were given an opportunity to express their views of this legislation.

There have been no hearings on the effect of permitting the banks to amortize their losses over 20 years.

Mr. President, I cosponsored S. 2770 when the bill was introduced in the Senate, however it was and is my belief that before the banks are allowed to set their own interest rates, all the farmer-borrowers of the banks must be guaranteed a reduction in interest rates. Regretfully, since the provision was added in conference, I had no opportunity to offer an amendment requiring that interest rates be reduced, if only minimally, across the board.

Once again, Mr. President, we are going to enact farm credit legislation which will not guarantee lower interest rates for all borrowers and will not provide any perceivable relief to the farmers and ranchers of this Nation. In fact, it is doubtful that all districts will be able to reduce interest rates. More than likely, only a few districts will be able to do so and those districts will not be required to lower interest rates for all borrowers. This may result in lower interest rates for 5 percent of the best borrowers, those who are in a position to obtain credit elsewhere.

There are two points I believe we must consider as we enact this legislation. First, if the healthy banks lower their interest rates, will that reduce the amount of capital that would otherwise be available for loss sharing with the weaker banks? It would appear to be quite possible that a loss in interest income would result in less assistance.

Second, the interest rate provision in this legislation is directed at preventing borrower flight. I, too, am concerned about borrower flight. However, it is important to remember that these borrowers can get credit elsewhere. This is not to imply that these borrowers are not important to the system. They are important, but they are not the majority of the borrowers. This legislation does nothing for the majority of the borrowers. In fact, it is quite possible that this legislation will only help the top 5 percent of all borrowers residing in healthy districts.

The Farm Credit System was not established to help the top 5 percent of the farmers in this country. Quite the contrary in fact. The Federal Farm Loan Act of 1916 which was the original legislation states specifically that the purpose of the act was to "provide capital for agricultural development * * * to equalize rates to interest upon farm loans." In 1916, the top 5 percent of farmers in the United States were not having difficulty obtaining credit. There was credit available in 1916, but there was not adequate credit available for all farmers. It was the lack of adequate credit and the need to equalize interest rates on farm loans that led to the Development of the Farm Credit System.

Regretfully, the purpose of the legislation we are considering today is not to help all farmers or to help any farmers in reality. Rather, we are once again enacting legislation to "save the system" and not farmers. This past December, we enacted legislation to "save the system" and not the farmers. In fact, an article to that effect by Jim Schwab appeared in the January 18, 1986, edition of the Nation. I ask unanimous consent that a copy of this article be included in the RECORD at the conclusion of my remarks.

At best, Mr. President, the system appears to only be interested in the top 5 percent of the borrowers. Despite the fact that thousands of farmers are being foreclosed this year by the system, the system has expressed no desire for legislation to prevent the massive foreclosures. Further, the system has failed to come forth with any meaningful restructuring program to keep producers in business.

In the 1930's when massive foreclosures were taking place, interest rates were reduced, across the board, to 4.5 percent for old and new loans. A special fund was set up to make "rescue" loans. These actions resulted in providing more than 760,000 farmers with loans, thereby keeping these farmers in business. Today, regretfully, system officials have expressed no interest in providing this kind of assistance.

The System apparently doesn't see its purpose as keeping farmers in business anymore. Like many large organizations, the Farm Credit System appears to have become a bureaucracy interested only in perpetuating itself.

While foreclosing on farmers everywhere, the System has developed, and this legislation contains, a proposal allowing the banks to amortize their losses over a 20-year period. I know hundreds of farmers who would give anything if they were permitted to "keep two sets of books." If farmers were permitted to amortize their losses over 20 years, we wouldn't see all these foreclosures, in fact, we could probably make all farmers completely solvent with this provision. They would be as solvent, at least, as the System.

Mr. President, I do have some reservations about allowing the banks to write off their losses over 20 years. First, it will make the System appear healthier than it is. Second, it reverses what we all attempted to do in the 1985 Act; that is, to force the system to clean up its accounting practices. Third, the current problem is merely delayed and the effect of this may exacerbate the problem in the long term. Finally, interest rates will ultimately have to rise to cover the losses that are deferred. This increase could force the System to charge extremely high rates in future years. More than likely, when that happens, the Farm Credit System will come back to Congress saying that borrow-flight has reached epidemic proportions because of high interest rates.

The Comptroller General cautioned against the enactment of this provision in a letter to the distinguished chairman of the House Agriculture Committee, Congressman DE LA GARZA. The Comptroller stated, "* * * these short-term benefits may be far outweighed by the long-term costs of failing to deal with financial problems in a direct and forceful manner." I ask unanimous consent that the letter from the Comptroller be inserted in the RECORD at the conclusion of my remarks.

Mr. President, perhaps it is a positive step to allow the banks to write off their losses over 20 years. We regretfully have not had hearings on this to determine whether this is the proper direction for the System. However, if it is good enough for the banks in the Farm Credit System, it ought to be good enough for commercial banks and it ought to be good enough for the farmer-borrowers. In this sense, by failing to extend this provision to commercial banks and to farmer-borrowers, this legislation is extremely inequitable.

Perhaps the System was afraid someone would want to require any benefits of legislation to be passed on to all borrowers and its officials therefore sought their legislation in an extraordinary manner—by gaining its inclusion in a conference report. As it

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stands now, we are granting all these new benefits to the System without requiring that the System pass on their savings to all borrowers, without requiring that the System do anything to help the borrowers.

I have long been a strong supporter of the Farm Credit System. I believe the system has, in the past, provided a valuable service to all farmers in this Nation. However, if the representatives of the System are only concerned with perpetuating the System and with the top 5 percent of all farmers, I am not certain we need a Farm Credit System any longer.

The Farm Credit System has strayed too far from its original purpose. It was established by Congress; it was chartered by Congress and it therefore is not merely a private lending institution. It was established to provide adequate credit for more borrowers than the top 5 percent of the farmers and it was chartered to equalize interest rates. This legislation flies in the face of the purpose of the System. This legislation, as it stands, is only, at best, directed to the best borrowers.

It is quite possible that this legislation, with a few modifications, could be a step in the right direction. If there were a requirement that all borrowers receive the benefits, this legislation could have a positive influence on the agricultural economy.

Mr. President, as the 99th Congress comes to a close, I am deeply disappointed in our failure to enact meaningful farm credit legislation. True, we have tinkered with various aspects of farm credit legislation. We have gone through the motions of helping relieve the farm credit crunch facing our farmers. However, we have not come close to dealing with the root of the problem.

The legislation we are considering today is a perfect example in that it fails to address the true problem of the Farm Credit System—the agricultural economy and the lack of income with which farmers can make loan payments. It is the farmers who are in trouble and the ills affecting the system are a symptom of that. This legislation falls far short of helping farmers through this difficult period.

It is my earnest hope that in the next Congress we will enact meaningful Farm Credit System legislation designed to help all of the System's farmer-borrowers. Only in this way will we provide any real assistance to the Farm Credit System.

Mr. President, while this legislation is far from adequate since no one had an opportunity to amend it, I will not stand in the way of its passage. Even a small, inadequate and less than fair provision may be better than total inaction. I do, however, want to clearly sound a warning that this legislation is no solution to the problem.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Nation, Jan. 18, 1986]

SAVING THE SYSTEM, NOT THE FARMERS

(By Jim Schwab)

The new farm bill that President Reagan signed on December 23 seeks to reduce farm prices in an effort to make U.S. products more competitive overseas. According to the Food and Agriculture Policy Research Institute in Missouri, however, the law will reduce farm income by 23 percent. The result, says Gary Lamb, an aide to Iowa's Senator Tom Harkin, is a "growing sense of desperation among farmers."

"The Farm Credit System bailout bill that Reagan signed [the same day] will also do little to still the growing insurgency against the system's lending and foreclosure policies, and its plans to centralize its local associations. Many farmers feel the system has been more interested in saving itself than in helping them, and the bailout does nothing to dispel this impression." The new law provides scant direct aid to strapped farmers and only a modest borrowers' bill of rights, including the right of a farmer to examine his own loan file. The law also provides a Federal charter for the Farm Credit System Capital Corporation, which will buy up delinquent loans held by member banks in the system. For the first time the system is given a line of credit to the Treasury Department, which can grant additional funds at the discretion of Secretary James Baker. The end result is to put a Congressional stamp of approval on the consolidation moves that have been bitterly criticized by farmers who fear the remaining vestiges of local control will be wiped out.

Despite a decline from its peak $82 billion loan portfolio of 1983, the Farm Credit System is still by far the nation's leading agricultural lender, providing over one-third of all real estate and operating credit for farmers and their marketing and production cooperatives. It raises funds by selling bonds on Wall Street, and its members acquire "stock" by leaving a percentage of their loans on deposit. Each stockholder gets one vote in his local association. Local Production Credit and Federal Land Bank associations are represented on the boards of the twelve districts. Those boards each govern three regional subsidiaries—the Banks for Cooperatives, as well as the Federal Land Banks and the Federal Intermediate Credit Banks, which oversee the Production Credit Associations (P.C.A.).

Long before Congress passed the Farm Credit System bailout law, the system was moving to curtail the local autonomy enjoyed by the Production Credit and Land Bank associations. A report called Phase III-Project 1995, which was leaked a year ago, alerted members to this plan. "They are seizing an opportunity when farmers generally are in great trouble to centralize the system," complained Luman Holman, executive director of Grassroots, an independent group of nationwide stockholders.

The report envisioned the formation of a central bank that would expand the system's services to include insurance, brokerage, and related businesses not authorized in the Farm Credit System's Congressional charter. More significant, the report called for a reorientation toward serving larger farmers. "Votes according to [loan] volume, rather than membership, may be critical," it said. In other words, the principle that each stockholder would have an equal vote would be abandoned in favor of voting according to the number of shares, as in a private corporation. "The system can no longer afford the luxury of a slow, methodical decision-making process that involves grass-roots input to the extent utilized in the past," the report said. "The system needs national leadership that is accountable and positioned to move swiftly and take decisive action within appropriate checks and balances." Accountable to whom? disgruntled farmers are asking.

Under the bailout bill, a national farm credit bank company will buy up nonperforming loans (those not being paid off), using cash advanced by other system banks, and by the U.S. Treasury when those funds are exhausted. The foundation for this scheme was laid last July with the creation of the Denver-based Farm Credit Corporation of America. Citing the deepening agricultural crisis, the Farm Credit System announced the new bank would serve as "the central policy-making institution for the nationwide cooperative lending system."

The rush to reorganize aroused considerable bitterness, particularly in the districts at Spokane, Washington, and at Omaha, which are the first two to receive aid from other system banks because of their parlous financial condition. The Spokane Federal Intermediate Credit Bank received a $135 million aid package early in 1985, while the one in Omaha is scheduled to receive $340 million. In both cases, most of the money will go to the new Wichita-based Farm Credit System Capital Corporation, which will buy up delinquent mortgages and hold the properties off the market until land values begin to rise. The theory behind this policy is that removing a glut of foreclosed land from the market will stabilize the collateral value of the remainder of the system's loan portfolio.

Signs of the urge to centralize were apparent two years earlier in the Spokane district. The sparks first flew in 1983 during an audit of the Willamette Valley, Oregon, P.C.A. by the Farm Credit Administration, which serves as the regulatory body for the system. A surfeit of loans for fishing boats—an area the F.C.A., had encouraged P.C.A.s to move into—had weakened some of the associations. Nonethless, an audit by the regional Federal Intermediate Credit Bank two months earlier had found Willamette Valley to be in good financial health, though it did note $2 million in loan losses because of declining collateral values. The F.C.A.'s auditors, however, calculated those total losses to be $8.9 million, enough to place the P.C.A. in receivership. But its board of directors obtained a preliminary injunction on October 26, 1983, preventing the liquidation. Federal District Judge Owen Panner condemned the Farm Credit Association for its arbitrary appraisal methods and ordered a new audit.

Philip Brandt, president of the Willamette P.C.A. from 1937 to 1980 and since then a voluntary consultant to the board, told me what happened next: "They bled us to death." Brandt contends that the Farm Credit Association conducted "a laborious examination procedure," which lasted several months. During that time, the uncertainty about the P.C.A.'s future caused its most solvent customers to withdraw, leaving it a corporate shell. With two other coastal Spokane-district P.C.A.s also in financial trouble, Brandt said, liquidations caused the bottom to fall out of the fishing boat market, further eroding the banks' equity.

With the district in trouble, members were asked by system officials to vote for a plan that would consolidate all the Production Credit Associations into one entity and all the Land Bank Associations into another to serve the entire five-state region. Brandt and other members fought this proposal, mobilizing opposition through the Ag Credit Crisis Committee, in Salem, Oregon. The first vote, held in June, required the unanimous approval of all the local associations. The Eastern Idaho P.C.A. and the Blackfoot, Idaho, Land Bank opposed the merger and defeated the plan. Another vote was held in which rule required only 80 percent approval and allowed the dissenting associations to remain independent. This time the plan passed. A Montana P.C.A. voted to leave the system entirely and reconstitute itself as an independent lender. Meanwhile, several members of Congress requested that the General Accounting Office study several liquidations. The G.A.O.'s findings, released this past October, generally upheld the F.C.A's procedures but did not examine the Willamette Valley case because at the time it was still in litigation.

Last fall, farmers in the Omaha district were urged to follow the consolidation route. With fifteen of thirty-one Land Banks rejecting the merger, the Midwestern rebellion proved to be widespread.

Former Iowa P.C.A. loan officer Melvin Schneider maintains that farmers should follow the Montana association's example rather than knuckle under to system pressure for consolidation. If they formed and capitalized their own credit unions, he told me, they could acquire discounted loan funds from the Federal Intermediate Credit Bank under the 1971 Farm Credit Act. However, Schneider points out that the weak financial condition of most farmers makes it almost impossible for them to amass the capital necessary to qualify for those funds as an independent lending institution. An alternative would be for state governments to invest economic development funds in rural credit unions. Schneider says two such fledgling credit unions have already organized in Iowa and are signing up members. "They would be a much better investment for the state than the $30 million proposed for a World Trade Center in Des Moines," he says.

Merger drives by system banks in other districts also provoked member uprisings. Militant protests against P.C.A. policies started in Ohio, which is in the Louisville, Kentucky, district, two years ago and there have been revolts in Wisconsin and North Dakota, which are in the St. Paul, Minnesota, district. The St. Paul Intermediate Credit Bank fired its general counsel, James Corum, when he advised the board that P.C.A.s could not be forced to reorganize or merge against their will.

Texas, a single-state district and one of the most financially sound, has bred a unique rebellion. Forty-four of forty-six Federal Land Bank Associations there pooled their funds for a legal battle against the imposition of joint management for the three banks in the state. With Republican attorney John Connally, the former governor and Presidential candidate, among their counsel, the Land Banks have sued district officials, while intensively lobbying their Congressional delegation for measures to retain the existing structure. Representative Sam Hall has been leading their charge legislatively. Eleven Texas P.C.A.s joined the battle against the district consolidation. Voluntary assessments for the lawsuit by the Texas associations have made theirs the best funded rebellion in the country. They have also turned their statewide member group, Grassroots, into a national force representing disgruntled borrowers.

That attempt illuminates some divisions in the ranks of the rebellion. Unlike other districts, the revolt in Texas started among the Land Banks and is a preventative action by people who still have something to lose. Land Banks have traditionally dealt with larger customers than the Production Credit Associations. The Land Banks were the first part of the Farm Credit System to be authorized by Congress, in 1916, largely because private banks had failed to offer credit tailored to farmers' mortgage needs. Many farmers with those mortgages have also been able to get operating credit from private banks and do not have to go to Production Credit Associations. Thus, there has been a subtle class distinction between Land Bank and P.C.A. borrowers.

Texas Land Bank members feared joint management would lessen their power and independence. That does not necessarily imply that most P.C.A. borrowers desire mergers; the voting in the Omaha district refutes that notion. But the Texans bring a more conservative political flavor to their debate than the Midwestern dissidents. Horace McQueen, board chair of the Tyler, Texas, Land Bank, told two Nebraska groups at a September meeting in South Sioux City that the trend toward centralization of the system "smacks of socialism."

What bothered some of the Texans most bothered some of the Midwesterners least: the prospect of government intervention to bail out the system. The Texans maintained that a bailout could be avoided if officials used the available internal resources and reversed the consolidation movement. Iowans like Jim White, a member of a farmers' delegation that has met regularly with district and F.C.A. officials and with Iowa lawmakers, saw some form of bailout as inevitable. They'd been saying the system is in bad shape well before F.C.A. governor Donald Wilkinson, reversing a long-held position, declared last September that $5 billion in Federal assistance was needed. Lawmakers on Capitol Hill from farm states had mixed feelings about a bailout because they were not sure what good it would do. Senator Harkin, for example, said a bailout would help the credit system without helping the farmers. He preferred reforming farm policy to restore profitability. He also sought to set a floor under farm land prices below which lenders could not sell foreclosed land or value it as collateral. Harkin's approach was embodied in an amendment to the bailout bill but was defeated by a narrow margin. The amendment included a provision requiring the Capital Corporation to sell the properties it acquires by foreclosure to family farmers, thus preventing corporations and absentee owners from buying them up.

Meanwhile, Congress awaits the findings of a massive G.A.O. audit of the system due next spring. Last October, the General Accounting Office projected that the system's losses, through June 30, 1986, would be $2.6 billion, a figure F.C.A. spokesman Ron Erickson contested. The Reagan Administration ordered an independent audit by the Price Waterhouse accounting firm, but most people no longer see the question as whether the Farm Credit System is swimming in a sea of red ink. Now, it's what to do about the system before it drowns.

COMPTROLLER GENERAL OF THE
UNITED STATES,
Washington, DC, October 6, 1986.

Hon. E. (KIKA) DE LA GARZA,
Chairman, Committee on Agriculture, House of Representatives.

DEAR MR. CHAIRMAN: I wish to convey my deep concern over recently introduced legislation that would allow the Farm Credit System to amortize over a period of 20 years the losses resulting from its poorly performing loan portfolio and the high current cost of its debt. This legislation, if enacted, could have the effect of hiding the very serious financial problems that the System will experience in the future. We estimate that the accounting changes allowed by the legislation could overstate earnings by $5 billion or more over the next 30 months.

Of more importance, adoption of this legislation could impede the speed of reforms to the management practices and operations of the Farm Credit System that were contemplated by the Congress when the 1985 amendments to the Farm Credit Act were enacted into law just 9 months ago. In addition to putting the System on a solid basis of financial accounting, the amendments were designed to achieve desperately needed reforms to credit evaluation and approval procedures. In effect, the legislation may turn the clock back to the earlier era of undisciplined accounting practices and loose credit analysis and approval.

I urge you to carefully weigh the effect of the proposed legislation on the long-run viability of the Farm Credit System. These amendments may have short-term salutory effects on the appearance of the financial condition of the System as well as the federal deficit. However, reliance on legislatively sanctioned regulatory accounting in the thrift industry has taught us all too well that these short-term benefits may be far outweighed by the long-term costs of failing to deal with financial problems in a direct and forceful manner. The danger here, as there, is that System officials will begin believing the fiction that is created, which, in turn, will slow if not halt efforts at reform.

Sincerely yours,

CHARLES A. BOWSHER,
Comptroller General of the United States.89174—Taulton, J.—10/19/86—J. 91-060—Folio(s) 972S-972/2S—%128.0—Ext. A17OC6.632

Mr. CHILES. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DOMENICI. Mr. President, I want to thank all the chairmen and ranking Members who, in these last 2 weeks, having more than enough to do, found time to work in many, many subconferences to put this together. I say to my friend from Ohio, this process is not perfect. Each year we do a little better than the previous year. This is slightly better, or maybe I should say just a little bit less onerous by way of content than the last one.

The Senator has talked about that and I respect him for it. I just wish we could find a way to get deficit reduction without that yearning to put new material on and to modify laws, which

is so prevalent in find its way into these bills.

Having said that, I understand the distinguished chairman of the Energy Committee, Senator McCLURE, has a bill that he has cleared and which he wants to ask the Senate to pass.

Mr. President, I ask unanimous consent that the matter that Senator McCLURE will bring before the Senate be in order and that immediately thereafter the rollcall vote which has been called for on the omnibus reconciliation conference report take place.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Has the matter of Senator McCLURE's bill been discussed with the majority leader?

Mr. DOMENICI. Yes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

MODIFYING THE BOUNDARIES OF THE CUYAHOGA VALLEY NATIONAL RECREATION AREA

Mr. McCLURE. Mr. President, this matter has been cleared on both sides of the aisle.

Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be discharged from further consideration of H.R. 4645, to modify the boundaries of the Cuyahoga Valley Recreation area, and I ask for its immediate consideration.

Mr. BYRD. Mr. President, the requests have been cleared on this side of the aisle.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4645), to modify the boundaries of the Cuyahoga Valley National Recreation Area.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

AMENDMENT NO. 3489

Mr. McCLURE. Mr. President, I send an amendment in the nature of a substitute to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) proposes an amendment numbered 3489 in the nature of a substitute.

Mr. McCLURE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 3489) appears in today's RECORD under Amendments Submitted.

Mr. McCLURE. Mr. President, this has been cleared by all parties on both sides of the aisle. I move adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3489), in the nature of a substitute, was agreed to.

Mr. DURENBERGER. Mr. Chairman, I commend your leadership on reporting out a bill that promises to take care of some serious resource challenges in the National Parks by providing additional funding for resources through increased fees.

It is my understanding that all revenues from fees, after defraying the cost of collection, would be available for resource protection, research, interpretation, resource management training, and maintenance activities pertaining thereto at the collecting unit and then to all other units of the National Park System as set forth in S. 2204.

I am particularly gratified that the bulk of the money from increased fees will go toward resource protection, which was the primary goal of S. 2130, which I introduced last February.

Am I correct in my understanding that the additional funds made available under S. 2204 would therefore not be spent on items such as concession management, law enforcement, and other items generally found under the category of park operations, but rather would be targeted to protecting resources and activities?

Mr. McCLURE. I am aware of the commitment the distinguished Senator from Minnesota has toward protecting the valuable resources of the National Park System. He is correct. Funds will go toward resource protection under this act.

Mr. DURENBERGER. Could you give me some examples of what those maintenance projects might be, because it is my understanding in Park Service budgeting that the Service might interpret this language to provide money for high-cost projects that were only tangentially related to resource protection and ones that are normally funded under direct appropriations? In my mind, this language would not provide authority to spend these funds on capital projects and other major infrastructure maintenance such as road repair for which we recently spent $1 billion under the Program.

Mr. McCLURE. I would be happy to give you several examples of projects which might be defined as maintenance. Under the National Park Service Act of 1916, the Service is given the fundamental charge "to conserve the scenery and the natural and historic objects * * * and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

By a system of fees dedicated to natural and cultural resource management, the legislation before us creates a direct link between requirements that have often been described as contradictory: (1) use and enjoyment of the resources and (2) leaving the resources unimpaired. In this connection, maintenance activities are defined as being those activities identified in natural resource management plans are prepared by park units or defined in NPS-28, Cultural Resource Guidelines. In short, the receipts from all fees will go directly to preserving the values for which the National Park System was established.

Cultural resources need money for several basic types of projects:

First. Stabilization, often undertaken in emergency circumstances, halts active deterioration. Stabilization of prehistoric ruins at Mesa Verde is an example.

Second. Restoration replaces missing elements in order to return the resource to a "historic" condition or appearance it had prior to deterioration or alteration, Robert E. Lee's home, Arlington House, has been partially restored.

Third. Rehabilitation returns a historic resource to a state of utility for contemporary purposes. The Park Museum at Yellowstone is located in an old Army bachelor officers quarters rehabilitated for that purpose.

Cultural resources that are in suitable condition—perhaps as a result of stabilization, restoration, or rehabilitation—require specialized cyclic and routine maintenance in order to prevent deterioration. Cylic maintenance includes the performance of certain tasks at approximately regular intervals, for example, painting of wooden structures, plaster patching on adobe structures, or repointing historic masonry.

Because historic properties are less predictable than new buildings, routine inspections and maintenance are of commensurately greater importance. A single strip of wooden siding must be carefully replaced if it has so deteriorated that moisture can penetrate the structure and cause greater harm. Snow needs to be shoveled away from the base of prehistoric ruins in order to minimize damage from the freeze-thaw cycle.

Housekeeping in a room full of historic furniture is a good example. Sweeping, mopping and other cleaning procedures acceptable for the visitor center floor could easily damage historic floor coverings, baseboards, wainscoting, wallpaper, chair and table legs, and so forth. Labor-saving waxes and compounds acceptable for office furniture and restrooms can easily harm irreplaceable historic materials. Temperature and humidity controls are necessary not for human comfort

but because fluctuations cause deterioration of historic objects. The homes of Carl Sandburg and Theodore Roosevelt, examples that represent many others, contain large numbers of original objects and papers directly associated with those great individuals.

Some of the types of activities that might be characterized as maintenance relating to natural resources management include hazard tree removal, fencing, trail maintenance, insect and pest management, vista clearing, some vegetation and fire management activities, the development of plant nurseries, and some aspects of campground rehabilitation. Though these activities are often perceived to be of a maintenance character, they are frequently contained in park natural resource management plans, are directly related to natural resources management objectives, and should be performed in accordance with natural resources management goals and concerns. For example, the building of fencing may be used to delineate boundaries or for aesthetic purposes and is generally considered a "construction type" activity. However, fencing is also an important resource management technique in order to keep within the park those park wildlife who are unwelcome outside park boundaries, that is, bison in Yellowstone National Park, and to keep out of the park unit nonnative animals who are damaging to park resources, that is, feral pigs at Hawaii Volcanoes National Park and trespass grazing at a number of park units. Similarly, trails serve a variety of purposes, but, in sensitive resource areas, it is particularly important that they be properly maintained so that visitors are encouraged to stay on them and not create adjacent resource problems such as soil compaction, plant damage, and erosion. Nevertheless, trails often cause erosion and some trail repairs are primarily erosion control measures. Campground rehabilitation often involves vegetation management concerns—a vegetation recovery project which allows existing camp sites to recover from use and the careful identification of new sites to be cleared.

Mr. DURENBERGER. Another area I would like to clarify is that the additional funds provided in S. 2204 would be used to supplement existing programs and projects under current appropriations—it would not be used to substitute for base funding of those programs. All those people who testified at the hearings on this legislation and all of us who support the objectives of this legislation are concerned that the small base level funding of these natural and cultural resource programs would be reduced by OMB in future years to take account of the increased revenues from fees. Is it your intention that these funds should supplement rather than offset current appropriations?

Mr. McCLURE. I thank the Senator for bringing this issue to the attention of the Senate for it is one with which we are all concerned. It is the committee's intent that these fees should not be used as an offset against general appropriations. Fee revenue is to be made available in addition to funds normally appropriated, not as a substitute for all or a portion of those funds. The committee feels very strongly that these revenues ought not be used as an excuse to reduce the base level of funding for natural and cultural resources programs. You can be sure we will diligently monitor OMB to ensure this does not happen.

In fairness, I do want to point out that this measure does not avoid either the appropriations process nor the effect of Gramm-Rudman on that process. I am confident that we will not see any attempt to use these fees to offset normal appropriations, but I do think that we should acknowledge the potential effect of Gramm-Rudman on the process.

Mr. DURENBERGER. I appreciate the Senator taking the time to clarify these points. It has been a pleasure to work with you, Mr. Chairman, in developing this legislation. I am satisfied that the revenues raised will be used to further protect and conserve the resources of the National Park System for the enjoyment of present and future generations.

FEDERAL ONSHORE COMPETITIVE OIL AND GAS LEASING ACT OF 1986

Mr. BUMPERS. Mr. President, I am extremely gratified to be able to rise today in support of S. 2439, the Federal Onshore Competitive Oil and Gas Leasing Act of 1986, which was reported favorably by the Committee on Energy and Natural Resources in July. The text of S. 2439 has been incorporated into the amendment in the nature of a substitute to H.R. 4645.

As every Member of this body knows, I have long fought for this change in our current leasing system, which I believe is outmoded, susceptible to fraud and manipulation, and not designed to provide the Government with a fair return. S. 2439, as reported by the Energy Committee, would enact several long overdue changes to the Federal onshore leasing laws. These reforms will establish a leasing system which is fair and workable and will enhance our domestic energy situation. I urge my colleagues to support this bill.

PROBLEMS WITH THE CURRENT LEASING SYSTEM

Mr. President, I believe that reform of the Federal Government's onshore leasing system is absolutely necessary. The current system serves neither the public nor the oil and gas industry's best interests. For the edification of my colleagues who may not have heard this speech before, and to refresh the memories of those who have, I will attempt to summarize the problems with the present Federal leasing system for oil and gas.

Under existing law—the Mineral Leasing Act of 1920—only those lands with known oil and gas potential—those overlying a known geological structure of a producing oil or gas field [KGS]—may be leased on a competitive basis. Because of this restrictive test, less than 5 percent of all onshore leases are now offered competitively. Oil and gas leases not within a KGS must be leased noncompetitively—for a small filing fee and a dollar an acre.

In addition to the restrictive nature of the KGS test, it is exceedingly difficult to apply with any degree of certainty. The distinguished Senator from Wyoming, Senator WALLOP, has called the KGS system "witch-craft, at best" and I emphatically agree. Currently, the Bureau of Land Management does not profess to make a technical or professional decision on whether lands overlie a KGS. They simply determine that if a tract is within a mile of producing acreage, it is presumed to be a KGS. Anything further than 1 mile from a producing tract is deemed not to be KGS lands.

The Bureau of Land Management has often made these determinations without current information on producing wells and complete, dependable geologic data. These problems have been further complicated by staffing and communications problems within BLM. As a result of errors in BLM's KGS determination process, several leases, determined by BLM not to be within, a KGS, have been leased on a noncompetitive basis, even though there was a high degree of competitive interest in the leases. In these instances, the Federal Government received far less than fair market value. The most egregious examples of these occurrences were at Fort Chaffee, AR, and Amos Draw, WY.

In 1979 the Interior Department issued noncompetitive leases on 33,000 acres near known gas producing wells at Fort Chaffee for $1 an acre. ARKLA Gas sued to set the leases aside, claiming that they were over a KGS and, under the law, should have been leased competitively. The district court agreed, ruling that the Interior Department's decision to lease the area noncompetitively was arbitrary. This decision has been upheld on appeal. In 1980, 24,000 acres of adjoining lands were leased competitively for $1,705 per acre. So intend of the Treasury receiving $24,000 for the leases, it received $43 million, half of which was returned to the State.

More recently, 18 tracts in the Amos Draw region of Wyoming located adjacent to producing lands were leased noncompetitively. The Government

received $13,000 in rental fees and $1.2 million in lottery filing fees for the tracts. Within 6 weeks, the lottery winners sold their lease rights for fees estimated at $50 to $100 million. The Amos Draw scandal led to a suspension of the onshore leasing program for 10 months from 1983 to 1984.

In 1984, the National Academy of Sciences began a thorough study of the KGS Program. The NAS report, issued earlier this year, makes several proposals for improving the program. However, the Academy's bottom line conclusion was that its proposals

> at best can lessen the criticism of the KGS program . . . (and that) the nature of both oil and gas exploration and existing law preclude resolving the issues to everyone's satisfaction. Uncertainty and individual judgment will always exist even if every piece of data were acquired by the BLM. Some errors in classification will always occur. (*Known Geological Structures under the Mineral Leasing Act: Interpreting and Applying the Term "Known Geologic Structure of a Producing Oil and Gas Field"*, National Academy Press, 1986, p. 52)

These findings support my belief that the existing competitive leasing system is anachronistic, wasteful and must be replaced. The committee bill would replace the KGS determination process with a neutral market based test. This change will help to assure that the Federal Government receives market value for its leases and will streamline the administration of the leasing program.

An equally serious problem associated with the current leasing system is the potential for fraud and abuse within the competitive system, particularly within the simultaneous filing [SIMO] or lottery system. In 1980, evidence of multiple filings by single applicants in the lottery led to a 3-month hiatus in the program and remedial rule changes. Shortly thereafter filing services for the lottery began to spring up in large numbers. These services recruit clients and then, for a fee, file lottery applications in their names. These services commonly misrepresent the value of the tracts to be offered for lease and the filer's chances of winning a tract. A number of filing services charge service fees greatly in excess of actual filing fees. Some even claim to guarantee their clients will be winners.

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Nevertheless, the unscrupulous are ingenious and indefatigable and other types of fraudulent activities have been introduced into the system. One example involves the so-called "40 acre merchants" who break up leases, which are typically over a thousand acres in size, into 40-acre parcels and sell them to the unsuspecting public. Another fraud involves misrepresentation of the value of lands which were leased noncompetitively—for example tracts in Alaska with no known potential for oil and gas were sold as "valuable oil lands within sight of the Trans-Alaska Pipeline."

The committee bill enhances the Government's authority to combat fraudulent practices and provides the Secretary of the Interior with the authority to disapprove lease assignments of less than 640 acres. The requirement that all lands be subject to a competitive test before being offered noncompetitively should also reduce the lottery's attraction for speculators because lands available in the lottery would be presumed to be worth less than $20 an acre.

BACKGROUND AND SUMMARY OF LEGISLATION

At the beginning of this Congress, I introduced legislation (S. 373) to establish an all-competitive leasing system for onshore oil and gas resources on Federal lands. I have championed the all-competitive approach here in the Senate for the past 7 years and I would still prefer to see an all-competitive system. However, in the hopes of achieving a consensus regarding leasing reform I introduced S. 2439 in May of this year. It is this legislation, with a few modifications, which the Energy Committee considered and reported to the Senate by a vote of 15 to 2. The legislation creates a two-tiered system for onshore oil and gas leasing which can be summarized as follows:

All Federal lands subject to oil and gas leasing would be offered first for competitive bidding.

A minimum bid of $20 per acre would be required in the competitive tier. Parcels receiving at least one bid of $20 or higher would be leased to the highest bidder.

Parcels receiving no bids or bids below the minimum would then be available for leasing in the second—noncompetitive—tier for 1 year.

If these parcels are not leased within the year, they again become available only under the competitive system.

The royalty payment under this proposal would be fixed at 12½ percent. Other lease terms, such as rental rates and the length of the lease remain as in existing law. The maximum lease size would be 2,560 acres.

The primary virtue of this legislation, in my view, is that it eliminates the use of known geologic structures [KGS] as the determinant of eligibility for competitive leasing and substitutes a market-based price test. The lottery system—for lands which have been leased previously—and the over-the-counter system—for lands which have never been leased—are preserved for those parcels which the market has determined to be worth less than $20 an acre.

The Government's authority to combat fraudulent practices involving the onshore oil and gas leasing system would be enhanced under the committee bill.

The Secretary would have new authority to disapprove lease assignments of less than 640 acres in order to prevent "40 acre merchants" from marketing small parts of leases to the unsuspecting public.

Specific authority to combat fraud, including civil and criminal penalties, is provided for regulatory and enforement agencies.

The Congressional Budget Office estimates that passage of this legislation would increase gross Federal receipts from bonus bids by approximately $50 million in fiscal year 1987 and by about $100 million per year over the fiscal years 1988 through 1991. Net receipts to the Government would be $15 million for 1987 and $30 million, because half of the receipts go to the States and receipts for filing fees for noncompetitive leases would be slightly reduced.

The Senator from Wyoming, a State which has a high proportion of Federal onshore leasing activity, has proposed several clarifying amendments to the committee bill which I am willing to accept. The amendments generally spell out in greater detail how the Department of the Interior is expected to implement the new leasing program. One relatively significant change requested by the Senator to address concerns of small independents is to increase the length of time during which lands may be leased noncompetitively between competitive offerings from 1 year to 3 years. Thus, if a tract of land did not receive the minimum bid in a competitive sale, it would be available for lease noncompetitively for 3 years. This change primarily affects so-called "wildcat" lands in frontier areas where there is little, if any, competitive interest. Exploration in these areas should be encouraged, and although I would prefer a more frequent competitive test, I am willing to accommodate the Senator in this regard.

I have also reluctantly agreed to accept an amendment offered by the Senator from Montana which is intended to address a related concern of the independent oil and gas industry. The amendment would exempt lands from being subject to the provisions of the act requiring a competitive test until January 1, 1991 if: First, they

were available for noncompetitive leasing under existing law prior to enactment of this act; second, were not covered by an oil and gas lease on January 1, 1986 and; third, are not subject to a pending lease application or offer.

There are four major exceptions to this provision: lands within the State of Arkansas, lands under study for inclusion in a known geological structure or in a favorable petroleum geological province, in Alaska, lands referred to a surface managing agency such as the Forest Service for a recommendation or consent regarding leasing, and lands within the Overthrust Belt in Wyoming. These lands shall be subject to the competitive test provisions of S. 2439 upon enactment. The lands excluded from the competitive test for a 50-month period are those previously unleased lands—and those previously leased noncompetitive lands which failed to receive even one SIMO application—which are available for noncompetitive leasing today but for which no one has indicated a willingness to pay even $1 per acre to lease. Leases issued pursuant to this section, are intended to be subject to all of the conditions set forth in the act of February 25, 1920, as amended, including those pertaining to royalties, rentals and lease terms.

Given the current state of the oil market and its affect on domestic exploration the likelihood that valuable lands will be leased noncompetitively is remote during the next 50 months. However, the Secretary will retain his full discretionary powers under the Mineral Leasing Act to suspend leasing or to refuse to issue a lease during this transistional period, and Members of Congress interested in the leasing system will exercise our oversight duties vigorously during this period.

Finally, I wish to clarify the intent of the section of the bill relating to the National Environmental Policy Act [NEPA]. That provision is intended to preserve the status quo with respect to the application of NEPA to the Onshore Oil and Gas Leasing Program. It is not intended to have any impact on pending litigation. The provision merely makes clear that a programmatic impact statement on the regulations and procedures issued under this act, as well as environmental impact statements for future lease sales or future regulation changes, are not required under NEPA.

Mr. President, before I conclude my statement, I want to thank the Senator from Idaho, the distinguished chairman of the Energy and Natural Resources Committee, for his support for S. 2439. His knowledge of the current program and his understanding of the oil and gas industry were invaluable to me and, I am sure, to the other members of the committee as well, during our consideration of this measure. The staff of the Energy Committee on both the majority and minority side have also been most helpful.

I also want to recognize the contributions of the Department of the Interior to the development of S. 2439. I think it is fair to say that the problems in the current Onshore Leasing Program have received the attention of Interior's highest ranking officials and that they have worked closely with interested Members of the Congress on developing a solution to those problems. I am pleased that the committee's bill has the full support of the Department and the administration.

Mr. President, this legislation does not provide all I would wish for in a leasing system for our Federal oil and gas resources. It is less than half a loaf for me. But I think it is a workable bill and a fair compromise between diverse interests. I urge the Senate to adopt this legislation and I hope our colleagues in the House will see fit to accept our work without substantial amendment. However, if it is not enacted this Congress I will be back next year with stronger legislation to fight this battle yet again.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, is the bill open to further amendment?

Mr. President, a parliamentary inquiry. Is this measure open for amendment?

The PRESIDING OFFICER. No, it is not. With the amendment in the nature of a substitute having been agreed to, no further amendments are in order.

Is there further debate? If there be no further debate, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed for a third reading and the bill to be read the third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 4645), as amended, was passed.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. CHILES. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLURE. I thank the Senator from New Mexico.

OMNIBUS RECONCILIATION—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. KASSEBAUM. Mr. President, I would like to make brief comments about the Farm Credit System reforms included in the reconciliation package.

I understand fully the concerns about the future of the Farm Credit System, and I have always committed my best efforts to assure adequate and affordable credit for our farmers. I am concerned, however, that we too often lack a comprehensive view of the credit crunch in American agriculture. For the second time in 11 months, we are focusing our discussion of farm credit problems only on the Farm Credit System. This ignores the needs of our commercial banks. In that same period we have offered no practical relief for private banks which support much of the farm borrowing. I would hope we can, in the near future, devote similar attention to commercial banks which face the same serious problems and struggle with the same bleak outlook for the future of the agricultural economy.

Congress must recognize that 25 percent of outstanding farm debt is held by commercial banks. In Kansas, the debt held by commercial banks, approximately 34 percent is even higher than that held by Federal land banks or production credit associations, approximately 30 percent. That debt is just as burdensome, just as troublesome, and relief is just as necessary as for Farm Credit System debt.

I continue to believe we should seriously consider a loan loss amortization program for commercial ag and energy banks. We are about to support this accounting concept for the Farm Credit System. It is a responsible way to give banks time to overcome today's challenges. This proposal would permit agricultural banks to amortize loan losses over a period of years. In essence, agricultural banks would only have to recognize a certain percentage of a loan's loss each year. Consequently, farm banks would not have to seek out new capital infusions. This step would be the most effective way to increase a farmer's access to credit.

Importantly, the Farm Credit System relief proposal before us today contains essentially the same relief but limits it to the Federal Farm Credit System. I am convinced that if we are to extend this benefit to land banks and PCA's, we should extend it to ag banks as well. If amortizing debt losses is acceptable for the local land bank or PCA, it should be acceptable for the more heavily supervised commercial bank.

This concept has been suggested before. Earlier this year, Senator

DIXON and others introduced legislation which incorporated this approach. Unfortunately, the farm credit package which emerged from the Senate Banking Committee in March did not include loan loss amortization. Instead, reliance was placed on relief initially offered by the Federal bank regulatory agencies. Agricultural and energy banks were to be saved by a capital forebearance program and greater utilization of rule 15 of the Fiscal Accounting Standard Board. Because these reforms were adopted through the regulatory process, Congress in fact did not act at all on a farm credit package.

How has the regulator's package worked? Not well. August figures show only 64 requests for capital forebearance had been received by the FDIC. Fewer requests have been received by the Comptroller of the Currency. Those figures are virtually the same today.

Nearly as many farm banks have failed in 1986, Mr. President, as have applied for assistance under the Capital Forebearance Program. More farm banks, 48, have failed than have received assistance.

There is only one way to ensure farm banks can survive this long period of a depressed agricultural economy. We should permit farm banks to write off loan losses over a 5-year period. By amortizing loan losses, we give banks, and their farm customers, a cushion against current hard times. If, on the other hand, we maintain current law and require banks to recognize the entire loan loss in a single calendar year, we can guarantee continued growth in the number of bank failures, smaller or nonexistent profit margins, and less credit available for the farmer.

Mr. President, let me cite a few facts prepared by the Kansas Bankers Association. These examples indicate that farm banks need help and that they need it now. Outstanding farm loans decreased by $250 million in 1985, indicating a reluctance to offer additional credit. During 1985, the last full year for which figures are available, Kansas banks charged off more in loan losses, $207 million, that they earned in net income, $159 million. Loan chargeoffs increased 40 percent from 1984 to 1985. Moreover, nearly 36 percent of the smallest banks—zero to $9 million in assets—and almost 26 percent of the next smallest banks—$10 to $24 million—operated at a loss.

Bankers in Kansas understand that they are going to take a loss on many of their outstanding farm loans. They can absorb that loss and continue to offer credit services in their community if, and in many cases only if, they can spread the pain of that loss over a period of years. I believe legislation implementing such a concept for commercial banks should be a priority when Congress reconvenes in January.

Mr. DOMENICI. Mr. President, when the Congress approved the Balanced Budget and Emergency Control Act of 1985, it changed the transmittal date of the President's budget to the first Monday after January 3. This change seemed desirable to us at the time because it would have given the Congress about a month longer each year to review the President's budget. It is obvious to me now that the date is unrealistic.

Such an early date would require that the budget precede the President's State of the Union by 2 to 3 weeks and, thereby, ensure substantial inconsistencies between the two. This would not be fair to the President, and we should not insist upon it.

This year Congress failed to complete its work in time. As a result, the executive branch must begin now—at this very late date—to develop a fiscal year 1987 reference base for the 1988 budget. This will take weeks of intensive work.

Having been forced by the Congress to delay its preparation of the 1988 budget, it is now literally physically impossible for the budget process to be completed in time for transmittal on January 3.

Mr. CHILES. When can we expect to receive the President's budget?

Mr. DOMENICI. The budget will be transmitted as soon as possible after the delivery of the State of the Union Message, the date of which has not been decided. We will receive it not later than the first Tuesday in February.

FEDERAL ONSHORE COMPETITIVE OIL AND GAS LEASING ACT OF 1986

Mr. BUMPERS. Mr. President, I am extremely gratified to be able to rise today in support of S. 2439, the Federal Onshore Competitive Leasing Act of 1986, which was reported favorably by the Committee on Energy and Natural Resources in July. The text of S. 2439 with certain modifications which I will describe, has been incorporated into the amendment in the nature of a substitute to H.R. 4645.

As every Member of this body knows, I have long fought for this change in our current leasing system, which I believe is outmoded, susceptible to fraud and manipulation, and not designed to provide the Government with a fair return. S. 2439, as reported by the Energy Committee, would enact several long overdue changes to the Federal onshore leasing laws. These reforms will establish a leasing system which is fair and workable and will enhance our domestic energy situation. I urge my colleagues to support this bill.

PROBLEMS WITH THE CURRENT LEASING SYSTEM

Mr. President, I believe that reform of the Federal Government's onshore leasing system is absolutely necessary. The current system serves neither the public nor the oil and gas industry's best interests. For the edification of my colleagues who may not have heard this speech before, and to refresh the memories of those who have, I will attempt to summarize the problems with the present Federal leasing system for oil and gas.

Under existing law—the Mineral Leasing Act of 1920—only those lands with known oil and gas potential—those overlying a known geological structure of a producing oil or gas field [KGS]—may be leased on a competitive basis. Because of this restrictive test, less than 5 percent of all onshore leases are now offered competitively. Oil and gas leases not within a KGS must be leased noncompetitively—for a small filing fee and $1 an acre.

In addition to the restructive nature of the KGS test, it is exceedingly difficult to apply with any degree of certainty. The distinguished Senator from Wyoming, Senator WALLOP, has called the KGS system "Witchcraft, at best" and I emphatically agree. Currently, the Bureau of Land Management does not profess to make a technical or professional decision on whether lands overlie a KGS. They simply determine that if a tract is within a mile of producing acreage, it is presumed to be a KGS. Anything further than 1 mile from a producing tract is deemed not to be KGS lands.

The Bureau of Land Management has often made these determinations without current information on producing wells and complete, dependable geologic data. These problems have been further complicated by staffing and communications problems within BLM. As a result of errors in BLM's KGS determination process, several leases, determined by BLM not to be within a KGS, have been leased on a noncompetitive basis, even though there was a high degree of competitive interest in the leases. In these instances, the Federal Government received far less than fair market value. The most egregious examples of these occurrences were at Fort Chaffee, AR, and Amos Draw, WY.

In 1979, the Interior Department issued noncompetitive leases on 33,000 acres near known gas-producing wells at Fort Chaffee for $1 an acre. Arkla Gas sued to set the leases aside, claiming that they were over a KGS and, under the law, should have been leased competitively. The district court agreed, ruling that the Interior Department's decision to lease the area noncompetitively was arbitrary. This decision has been upheld on appeal. In 1980, 24,000 acres of adjoining lands were leased competitively for $1,705 per acre. So instead of the Treasury receiving $24,000 for the

leases, it received $43 million, half of which was returned to the State.

More recently, 18 tracts in the Amos Draw region of Wyoming located adjacent to producing lands were leased noncompetitively. The Government received $13,000 in rental fees and $1.2 million in lottery filing fees for the tracts. Within 6 weeks, the lottery winners sold their lease rights for fees estimated at $50 to $100 million. The Amos Draw scandal led to a suspension of the onshore leasing program for 10 months from 1983 to 1984.

In 1984, the National Academy of Sciences began a thorough study of the KGS Program. The NAS report, issued earlier this year, makes several proposal for improving the program. However, the Academy's bottom line conclusion was that its proposals "at best can lessen the criticism of the KGS program * * *—and that—the nature of both oil and gas exploration and existing law preclude resolving the issues to everyone's satisfaction. Uncertainty and individual judgment will always exist even if every piece of data were acquired by the BLM. Some errors in classification will always occur." Known Geological Structures under the Mineral Leasing Act: Interpreting and Applying the Term "Known Geologic Structure of a Producing Oil and Gas Field," National Academy Press, 1986, p. 52.

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Given the current state of the oil market and its affect on domestic exploration the likelihood that valuable land will be leased noncompetitively is remote during the next 50 months. However, the Secretary will retain his full discretionary powers under the Mineral Leasing Act to suspend leasing or to refuse to issue a lease during this transitional period, and Members of Congress interested in the leasing system will exercise our oversight duties vigorously during this period.

Finally, I wish to clarify the intent of the section of the bill relating to the National Environmental Policy Act [NEPA]. That provision is intended to preserve the status quo with respect to the application of NEPA to the onshore oil and gas leasing program. It is not intended to have any impact on pending litigation. The provision merely makes clear that a programmatic impact statement on the regulations and procedures issued under this act, as well as environmental impact statements for future lease sales or future regulation changes, are not required under NEPA.

Mr. President, before I conclude my statement, I want to thank the Senator from Idaho, the distinguished chairman of the Energy and Natural Resources Committee, for his support for S. 2439. His knowledge of the current program and his understanding of the oil and gas industry were invaluable to me and, I am sure, to the other members of the committee as well, during our consideration of this measure. The staff of the Energy Committee on both the majority and minority side have also been most helpful.

I also want to recognize the contributions of the Department of the Interior to the development of S. 2439. I think it is fair to say that the problems in the current onshore leasing program have received the attention of the Interior's highest ranking officials and that they have worked closely with interested Members of the Congress on developing a solution to those problems. I am pleased that the committee's bill has the full support of the Department and the Administration.

Mr. President, this legislation does not provide all I would wish for in a leasing system for our Federal oil and gas resources. It is less than half a loaf for me. But I think it is a workable bill and a fair compromise between diverse interests. I urge the Senate to adopt this legislation and I hope our colleagues in the House will see fit to accept our work without substantial amendment. However, if it is not enacted this Congress I will be back next year with stronger legislation to fight this battle yet again.

DISCLOSURE OF AGRICULTURAL CONTRACTS

Mrs. KASSEBAUM. Mr. President, this year's Budget Reconciliation Act includes a small but significant reform of the Staggers Rail Act of 1980. In a nutshell, the Staggers Act is amended to specify more conclusively the "essential terms" of a rail contract for the shipment of agricultural commodities which are to be disclosed to the public. I have been working for this reform since 1983, when I chaired a Commerce Committee hearing on the issue in Hutchinson, KS, and I would like to make a few comments on this provision.

The Staggers Act effectively deregulated the rail industry. In most instances, railroads were freed from rate regulation. The level of scrutiny by the Interstate Commerce Commission was reduced in virtually every phase of rail regulation.

One of the most significant changes made by Staggers was permitting railroads and shippers to enter into individual shipping contracts. Contract rates and terms were allowed to vary from published tariff rates. However, the statute and its legislative history make very clear the fact that Congress did not sanction all contracts in all situations. Special and specific protections were included where there was the potential for anticompetitive or discriminatory activity.

During debate, many Members of Congress recognized the potential for abuse of this contracting power. Shippers with large market power or shippers with transportation alternatives, either intramodal or intermodal, could exert substantial leverage over a carrier's contracting practices. Smaller and captive shippers, lacking the advantages of contract terms and rates, could face economic disaster. In short, it was recognized that situations exist where supervision of contracting practices was required.

In response to the specific concerns of small agricultural shippers, special protections were provided in the statute to ensure fair competition in contract rates. Railroads could not engage in unfair discrimination nor could railroads and shippers engage in destructive competitive practices.

To effectuate these special protections for small grain shippers, Congress mandated the disclosure of "essential terms" of rail contracts.This disclosure was intended to allow agricultural shippers the opportunity to discover contracts which could potentially affect them and to challenge those contracts before the ICC. By granting this unique measure of protection, Congress sought to provide a particular remedy for discrimination or unfair competition.

The potential for competitive damage from contract rates has been documented by a U.S. Department of Agriculture study entitled "Impacts of Rail Deregulation on Marketing of Kansas Wheat," released in October 1985. That study indicated that shippers with origin contracts to the Gulf paid an average of 17 cents per hundred weight less on grain transportation than shippers using the published tariff rate. In addition, the study reported that the average shipper with a contract for shipping wheat from Kansas has approximately three such contracts, and average of 18 shipping locations in four States, and a total licensed storage capacity of about 40 million bushels.

These conclusions demonstrate that large shippers with transportation alternatives have advantages over smaller and captive shippers. The disclosure mandated by the Staggers Act was intended to permit a competing shipper to test the legality of those advantages before the Commission. The provisions included in this legislation would mandate further study of the effect of contracting on grain shippers. I believe that completion of this study will demonstrate that this is a serious problem.

Unfortunately, in 6 years not one small shipper has been able to successfully negotiate the obstacle course established by Commission rules. The minimal disclosure required by the Commission is essentially useless. The Commission's interpretation of "essen-

tial terms" has fostered a disclosure environment in which the information is too general to provide any benefit.

Shippers are expected to identify contracts which may affect them by studying thousands of contract summaries which include the broadest possible terms—including "all points in the States of Kansas, Nebraska, and Colorado" for origin information. Shippers attempting to avail themselves of the statutory remedy understand that too much general information is no information at all.

In order to provide the small shipper the opportunity to challenge potentially destructive or discriminatory contracts, more specific information is required in the contract summary. Such information need not and will not unduly undermine the legitimate or necessary right to confidentiality. Nor will it deter legitimate and economically efficient contracting activity. The disclosure requirements contained in this package are, I believe, the minimum necessary if shippers are to have access to the statutory protections enacted in 1980.

These provisions are the heart of the disclosure issue. Unless and until the Commission provides specific information on the "essential terms" of a rail contract, shippers will be forced to expand valuable resources in a nearly impossible search for "the right contract" or will face the prospect of competing in an environment where the concept of "fair competition" cannot be tested.

On May 14, I introduced S. 2447, which would define specifically those essential terms which are to be disclosed in the nonconfidential contract summary. The heart of S. 2447 has been included in the reconciliation package.

This bill would mandate the disclosure of certain terms which I believe everyone in 1980 considered essential. The identity of the shipper party to the contract, the specific origins, transit points and other shipper facilities, the duration of the contract, and the actual volume requirements, if any, would be disclosed. These disclosures do not include any direct economic terms of the contract. To protect the legitimate confidentiality concerns of contracting shippers, a first-tier disclosure proceeding should not disclose the actual rates in the contract or other obvious economic terms. It should, however, include sufficient data for potentially aggrieved shippers to evaluate the potential impact on their operations.

The Commission should not infer from this legislation that second-tier discovery should be curtailed or limited simply because more information is required at first-tier disclosure. Once a shipper can demonstrate that he or she is affected by a contract, the liberal discovery mandate of this legislation should facilitate access to the contract. ICC regulations currently provide for the use of protective orders to limit further disclosure of confidential contract information to persons other than those who must need that information in order to prosecute a complaint that the contract constitutes either unjust discrimination or a destructive competitive practice.

The price term, while undoubtedly an "essential term" of a contract, is not included in first-tier discovery because of the need to balance competing interests betweeen the carrier's and shipper's reasonable expectations of privacy in their contract and a shipper's aright to reasonable access to a remedy. At first-tier, that balance is struck against disclosure of the actual price term and in favor of the contracting parties' reasonable expectation of privacy. The balance at second-tier should be in favor of the complaining shipper's right to access to the remedies provided for in the Staggers Rail Act.

Mr. President, enactment of this legislation will grant small shippers the day in court promised them 6 years ago when the Staggers Rail Act was signed into law.

Before I close, I want to express my appreciation for the efforts of my Kansas colleagues who have joined in a united effort to secure this reform. Senator DOLE cosponsored S. 2447 in the Senate. Congressmen BOB WHITTAKER and JIM SLATTERY, both members of the House Energy and Commerce Committee, shepherded the legislation in the House. Finally, I wish to thank Senator DANFORTH and Congressman DINGELL who, as cochairmen of the conference committee, were able to reach an agreement on this matter. These efforts have been worthwhile.

THE CORPORATION OF SMALL BUSINESS INVESTMENT

Mr. DOMENICI. Mr. President, the conferees from the Senate and House Small Business Committees had under consideration but were unable to agree on a proposal to create a new Government-sponsored enterprise known as the Corporation for Small Business Investment [COSBI]. While this Senator is concerned that there is no small business title in the reconciliation bill, I also believe that we are best served not enacting the COSBI legislation at this time.

Mr. President, there are still too many questions that remain to be answered about COSBI. Foremost among them is whether we ought to be creating another one of these Government-sponsored enterprises. These are private entities that enjoy substantial advantages in the marketplace, but which operate totally outside the budgetary controls of the Congress.

Even if the Congress decides to establish another Government-sponsored enterprise, there are many questions that need to be answered about how it should be structured. A recent article by Thomas Stanton in the Legal Times raises a number of these questions. Mr. President, I ask unanimous consent that this article be reprinted in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

PENDING LEGISLATION WOULD END IMPASSE OVER SBA PROGRAM

(By Thomas Stanton)

Hidden in House bill H.R. 5300, the Omnibus Budget Reconciliation Act of 1986, is legislation to create the Corporation for Small Business Investment (COSBI). The corporation, designed to allocate credit to small business on favorable terms, would be capitalized from the sale of stock to small business investment companies (SBICs) and boosted by purchase of federally guaranteed Small Business Administation (SBA) assets at a favorable price.

COSBI would pay $850 million for assets valued at about $1.1 billion, giving the corporation an initial capitalization of $250 million.[1]

The creation of COSBI would resolve an impasse between the administration, which has sought to zero out the entire SBIC program, and the small business community, which has successfully resisted. The tug-of-war over the past six years has cast uncertainty over the future of SBA programs, restricted available funds, and even forced SBA to close its loan windows on several occasions.

The creation of COSBI would permit the Federal Government to provide substantial advantages in funding SBIC securities, without actually committing appropriated funds after the initial sale of assets.

The COSBI model is an enticing alternative for other direct credit programs now feeling Federal fiscal pressure; after the initial capitalization, the Federal Government continues to support a favored economic sector without spending scarce appropriated funds. Federal maritime or export loans, for example, might lend themselves to the COSBI model, instead of current Maritime Administration or Ex-Im Bank programs.

In analyzing a program such as COSBI, which is backed by a perceived special Federal relationship, the charter legislation must be carefully drafted to limit the government's exposure to substantial financial losses while assuring the new corporation's dedication to intended public purposes. Within this framework, the COSBI legislation is structured to maximize business opportunities for dealing in small business investment securities while minimizing government regulatory control.

Compared with other government-sponsored enterprises (GSEs), Treasury regulatory authority over COSBI is circumscribed, and COSBI is free from intervention by any other regulator. Under prudent management, as the House committee report urges upon the corporation, COSBI will do well.

Under less prudent management, however, COSBI invites financial difficulty followed by belated Federal efforts to impose strong regulation. (This occurred last year with the Farm Credit System.) At press time, the Senate conferees appeared to be addressing some of these concerns. COSBI is likely to

[1] Footnotes at end of article.

emerge, however, in approximately the format analyzed here, albeit with a lower initial capitalization from the SBA asset sales.

COSBI is based on the model of five GSEs that are currently directing funds to selected sectors of the economy. They are the Federal Home Loan Banks; Federal Home Loan Mortgage Corporation (Freddie Mac); Federal National Mortgage Association (Fannie Mae); Student Loan Marketing Association (Sallie Mae); and the Farm Credit System (composed of Banks for Cooperatives, Federal Intermediate Credit Banks, and Federal Land Banks).

Because they are privately owned, these institutions are not included in the federal budget. By law, their debt obligations (and some other securities) clearly state that they are not guaranteed by the United States.

Despite this explicit disclaimer, the financial markets perceive a special relationship between GSEs and the Federal Government. Thanks to this perception, GSEs sell their debt obligations at more favorable rates than commercial companies without the perceived relationship.

Because the borrowing costs of these enterprises are lower, they can purchase assets (student loans, farm mortgages, home mortgages) bearing lower rates of interest. The intended result is lower borrowing costs for students, farmers, and homeowners than would otherwise be the case.

While the implicit subsidy is not as substantial as when loans are funded directly by Treasury borrowing, as they are currently in the SBIC program, it is a significant benefit nevertheless.[2]

In addition, the COSBI charter act is drafted to provide COSBI an exemption from state and local taxes—except for property taxes—to exempt COSBI obligations (i.e., interest income on those obligations) from state and local taxes, and to provide other benefits accorded some of the GSEs.

Several statutory characteristics, varying somewhat among the five GSEs, lead the market to perceive the special federal relationship. COSBI creates this perception with the following features (relevant charter act sections are noted in parentheses):

(1) COSBI is federally chartered with presidential appointment of one-third of its 15-member board of directors. The remaining directors are elected by shareholders (§ 352(d)).

(2) COSBI obligations may be issued only upon approval of the Secretary of the Treasury (§ 354(a)).[3]

(3) All COSBI stock and obligations are exempt from regulation by the Securities and Exchange Commission to the same extent as U.S. government securities (§ 355).

(4) COSBI obligations, preferred stock, and guaranteed securities are lawful investments for fiduciary, trust, and public funds; are eligible to be bought and sold in Federal Reserve open market operations; are legal investments to satisfy reserve requirements of banks and thrift institutions; and are deemed U.S. agency obligations for purposes of Bankruptcy Code provisions relating to repurchase agreements (COSBI § 355 and § 9009 of H.R. 5300).

(5) COSBI obligations are exempt from state and local taxation (§ 355). This is a substantial benefit not afforded to Fannie Mae and Freddie Mac.

(6) The Secretary of the Treasury is permitted to purchase up to $500 million in COSBI obligations. With variations, such a so-called backstop authority is common to virtually all GSEs. In contrast to other GSE charters, the COSBI legislation provides that funds for this Treasury backstop must be appropriated in advance by the Congress (§ 354(c)).

By conferring on COSBI stock and obligations the same preferred investment status as U.S. Treasury obligations, the Federal Government makes a strong statement to investors. The exemption from SEC laws removes investor protections considered necessary for all but the most secure—i.e., federally backed—securities.

Similarly, the exemption from investment restrictions on banks and thrift institutions is otherwise limited to federally backed securities. Investors perceive that the Federal Government would not permit these exemptions from basic investor protection unless the securities were extremely safe.

Over time, the market can become even more confident about the government's likelihood of backing obligations of GSEs. At the beginning of this year, GSEs had more than $350 billion in debt obligations outstanding. The government would be unlikely to permit any one of these institutions to default on its obligations for fear of shaking investor confidence in all GSE obligations, and potentially causing the price of more than one-third of a trillion dollars in such securities to plummet.

Thus, while borrowing costs did rise somewhat for the Farm Credit System during the financially troubled period leading up to the 1985 remedial legislation, yields on farm credit securities remained significantly below yields on A-rated private corporate bonds.[4] In other words, investors look primarily to the implicit Federal backing as a guarantee of GSE creditworthiness. As the value of outstanding GSE obligations increases, so does the inability of the Federal Government to intimate that it would not stand behind this debt.

In summary, then, COSBI represents a true compromise position between an administration that seeks to end all support for SBICs and the small business community now accustomed to receiving federally guaranteed funds to support small business investment.

MINIMIZING RISKS TO TAXPAYERS

The contingent liability of the Federal Govenments has increased sharply over the past decade because of the increasing volume of outstanding GSE debt. To assure that the public is protected against the need to bail out a failing GSE, a course that some suggest is now necessary with the Farm Credit System, each one must be carefully structured regulated. When one looks at the technical language of the COSBI charter legislation, significant questions arise.

Consider the extent of potential public exposure. Because the market essentially looks to the Federal Government to assure creditworthiness of outstanding GSE debt, GSEs can afford to issue high amounts of debt relative to their equity capital.

Under the House bill, COSBI would have an initial capitalization about $250 million from its favorable purchase of SBA assets. COSBI is statutorily committed (§ 361(a)) to placing $100 million of this in a trust to subsidize special SBICs, those owned by socially or economically disadvantage enterpreneurs. This leaves $150 million as start-up capital, plus $15 million in an initial offering of common stock (§ 325(d)).

Since the perceived Federal relationship gives GSE's the opportunity to achieve very high debt-to-capital ratios—for examble, at the start of the year, Fannie Mae stood at about a 70-1 ratio of debt to shareholder equity—COSBI could eventually issue billions of dollars in obligations, plus additional debt leveraged from stock issued after the initial offering. This could mount to several times the current SBIC assets outstanding. Indeed because of COBSI's additional authority to guarantee securities, the potential public exposure could be immense.[5]

Compared with other GSE charter acts, the COSBI charter fails to include a number of protections that would limit this huge potential public exposure. In particular, COSBI lacks internal and regulatory controls familiar from the other charter act.[9]

(1) Ther is no statutory of regulatory limit on COSBI's debt-to-capital ratio; there is also no statutory requirement that COSBI refrain from issuing debt in excess of its assets.

(2) There is no statutory or regulatory limit on the quality of assets of COSBI may purchase; under the broad definiton of "small business investment securities," COSBI is allowed to buy stock, warrants, and even junk bonds of small business investment companies, virtually without statutory limitation as to the credit quality of the asset.[7]

(3) COSBI is structured so that the board of directors is likely to represent the interests of COSBI's loan customers. The House committee report (page 384) makes this explicit: "The Committee expects elected members of COSBI's Board will be experienced SBIC professionals and leaders in the industry." This was a problem for the Farm Credit System. It is hard for representatives of borrowers, unless fortified by tough statutory requirements and regulatory enforcement, to turn down loans to their less creditworthy peers.

(4) COSBI's regulatory is a toothless watchdog. Indeed, the Small Business Administration has no formal regulatory authority over COSBI at all. Instead, SBA is given mere "review authority" (§ 360(a)), with power to examine the corporation's books and records, and to require the corporation to make reports.[8] Additionally, the Secretary of the Treasury may inspect the corporation's books, verify transactions, and receive an independent audit of the corporation's accounts.

The absence of more systematic regulatory control places COSBI under more lax supervision that most of the other GSEs, with the possible exception of Sallie Mae, and under substantially less supervision than the Federal Government provides for banks and thrift institutions. Finally, unlike some GSE charters, the President has no power to remove shareholder-elected COSBI directors, even for cause. With its weak regulatory framework, COSBI is inviting financial instability followed by future strong regulations such as Congress belatedly imposed upon the Farm Credit System in 1985.

Besides the public loss exposure, there is the question of COSBI's public purpose. GSEs are intended to serve public purposes. Fannie Mae and Freddie Mac are limited to making a secondary market in mortgages on homes below a certain mortgage limit; Sallie Mae is limited to purchasing student loans whose terms, including loan size, are largely dictated by other governmental programs.

By contrast, COSBI is virtually unlimited in the size or type of SBIC security in which it may deal (§ 356). While the structure of COSBI's activities to further its public purpose depends upon careful economic analy-

sis, some statutory criteria beyond the limitations in the current COSBI charter legislation would seem to be in order.

GSEs have many advantages as a tool of Federal policy. They have successfully overcome market imperfections. Allocating credit to such special sectors of the economy as housing, farming, and education.

Over the years, Fannie Mae has helped standardize the previously regionalized and overly fragmented residential mortgage market. The Farm Credit System made a market in farm loans that commercial banks were unwilling to make. Sallie Mae has greatly increased the supply of student loan funds. Significantly GSEs allocate credit without drawing on federally appropriated funds.

But there is no free lunch. Like Continental Illinois Bank and other large financial institutions, GSEs are too big for the Federal Government to permit a failure. That means that the chance of failure must be reduced, both in the enabling legislation and in careful regulation and oversight.

This is not to say that past regulation has been ideal. HUD's zealous attempt to regulate Fannie Mae's mortgage purchases in the late 1970s led to virtually no positive results.[9] The Farm Credit Administration lost its independence regulating the banks of the Farm Credit System.[10] But COSBI goes too far in excluding itself from regulatory oversight (except for the limited Treasury approval power needed to assure market perception of a special Federal relationship). Beyond mere review authority, an independent regulator must be able to intervene to prevent catastrophe. The House committee report (page 387) completely glosses over this problem.

From the regulatory perspective, the professional industry leadership elected to COSBI's Board of Directors should do a far better job of regulating business practices of SBIC's than government regulators. The knowledge and awareness of these professional SBIC managers and the self-interest in keeping the industry free from abusive practices should create a tremendous incentive for consistent and diligent oversight and strong enforcement of proper business practices.

Maybe so, but financial institutions, including GSEs, are too large and too vulnerable today to permit such intentions to stand unsupported by a carefully designed regulatory structure.

FOOTNOTES

[1] The Congressional Budget Office says that the entire $250 million would count against Federal budget targets for purposes of Gramm-Rudman. In addition, other SBA assets would be used to further support special SBICs, assisting disadvantaged entrepreneurs. House Comm. on the Budget, *Report: Omnibus Reconciliation Act of 1986*, H.R. Rep. No. 727, 99th Cong., 2d Sess., at 398-399 (July 31, 1986) [hereinafter *House committee report*].

[2] *See, e.g.*, Congressional Budget Office, *Government-Sponsored Enterprises and Their Implicit Federal Subsidy: The Case of Sallie Mae*, ch. 3 (Dec. 1985); General Accounting Office, *The Federal National Mortgage Association in a Changing Economic Environment*, at A-80 to A-85 (Apr. 15, 1985); Moran, *The Federally-Sponsored Agencies: An Overview*, Fed. Reserve Bull., June 1985, at 373-88.

[3] Unlike other GSEs, this regulatory authority has been carefully drafted to limit Treasury to approving time of issuance, rate of interest, and other terms and conditions (and not, for example, the volume of securities issued). Also, Treasury has no approval authority over issuance of subordinated debt or COSBI guaranteed securities. (§ 353, § 354(b), and § 356(c)).

[4] Office of Management and Budget, *FY 1987 Special Analysis of the Budget of the United States Government*, Special Analysis F, "Federal Credit Programs," at F-27 to F-28 (1986).

[5] One question is whether the market will accord these COSBI-guaranteed securities the perception of Federal backing. In contrast to guaranteed securities of other GSEs, the COSBI legislation does not exempt such COSBI securities from SEC regulation and does not require that they be approved by the Treasury.

[6] The Sallie Mae charter is closest to the COSBI legislation in this regard. Yet Sallie Mae's board of directors is statutorily required to be more diversified than COSBI's; more important, Sallie Mae's portfolio consists almost entirely of student loans guaranteed by others, rather than COSBI's inherently more risky portfolio of SBIC paper.

[7] Although COSBI is required to set criteria for SBICs with which it does business, the statutory language is permissive rather than mandatory. "Such criteria *may* include, among other things, the general business reputation and character of the owners and management . . . and the probability of successfully operations . . . including adequate profitability and financial soundness." § 357(a) (emphasis added).

[8] The COSBI charter act also expressly removes current SBA regulatory authority over SBICs, *House committee report*, at 375-76, 387-89.

[9] *See, e.g.*, General Accounting Office, *Symposium: The Federal National Mortgage Association in a Changing Economic Environment*, at 233 (1985).

[10] *See, e.g.*, Farm Credit Amendments Act, Pub. L. No. 99-205, 99 Stat. 1678 (1985) Agriculture Comm., H.R. Rep. No. 425, 99th Cong., at 11-13 (1985).

MEANING OF PRESENT VALUE

Mr. DOMENICI. Mr. President, I would like to engage in a colloquy for clarification on the provision relating to prepayment or sale of direct or insured REA loans.

The provision provides that an REA direct or insured loan "when sold to or prepaid by the borrower" will be accomplished "at the lesser of the outstanding principal balance due on the loan or the loan's present value discounted from the face value at maturity at the rate set by the Administrator."

I would ask Senator HELMS, the chairman of the Senate Committee on Agriculture, to inform me if my understanding of that language is correct. My understanding is that in selecting a discount rate for the purpose of determining present value of loans, the Administrator may use an appropriate private-market rate which reflects the borrowers cost of replacement financing, rather than Treasury's rate.

Mr. HELMS. Mr. President, the Senator is correct. It is expected that in selecting a discount rate for the purpose of calculating the loan's present value, the Administrator shall use the cost of money to a doubled A rated utility or some similar financial benchmark.

ASSET SALES

Mr. DOMENICI. Mr. President, if I may have the attention of the chairman of the Agriculture Committee, I have a question concerning the intent of language dealing with the sale of assets from the rural development insurance fund by the Secretary of Agriculture. According to subsection (e) of section 1001, the Secretary must require potential purchasers of the assets in question to demonstrate an ability or resources to provide servicing of loans to ensure their continued performance. It also requires persons offering to purchase the note or other obligation to demonstrate the ability to generate capital to provide the original borrowers such additional credit as may be necessary for the proper servicing of the loans.

I understand that the administration has expressed concern that these two requirements could be interpreted as imposing such an array of restrictions that many otherwise qualified purchasers would be deterred—if not prohibited outright—from making offers to purchase these assets. If that is the case, it will reduce the marketability of these issues and proceeds to be realized from the sales. Would the Senator comment?

Mr. HELMS. The Senator from New Mexico has raised a good question.

I would say to the Senator, we gave considerable attention to this issue in the statement of managers accompanying the conference report. For example, it was brought to the attention of the conference committee that the pending language could be construed as limiting potential bidders to one category of purchasers or perhaps a handful of major institutions. That is certainly not the intent.

The bill provides the loans that are sold must continue to be serviced, which may include the availability of additional credit to accomplish the purposes for which the loans were made. As the managers' language also makes clear, however, there is ample flexibility in the statutory language to allow purchasers of notes "to conduct loan servicing directly, indirectly through contractural arrangements with third parties, or through such other vehicles as the purchasers may develop." Any such requirements is not intended to inhibit the marketability of the notes, nor are such requirements to be drawn so stringently as to reduce the market value of the notes.

In this respect, the conference report concludes as follows:

The Committee also intends that any regulations issued to implement the servicing of notes not substantially reduce the pool of potential purchasers. An environment should be established in which competitive bidding among large numbers of potential buyers will result in the Government obtaining the highest possible price for the notes.

I believe this should allay the Senator's concern.

Mr. DOMENICI. I thank the Senator.

NUCLEAR REGULATORY COMMISSION USER FEES

Mr. SIMPSON. Mr. President, I have just a few brief remarks that I would like to make about the issue of NRC user fees. Both the Senate and the House included provisions in their respective bills authorizing the NRC to collect additional fees from NRC licensees.

Section 502 of the Senate bill would have authorized the NRC to assess and collect annual charges from its li-

censees on a fiscal-year basis for fiscal years 1987, 1988, and 1989, for costs incurred by the Commission with respect to such licensees, if the Commission demonstrates that—First, the fee to be assessed a given licensee is reasonably related to the regulatory service provided by the Commission to the licensee from whom the Commission proposes to collect the fee; and second, the fee fairly reflects the actual cost to the Commission of providing such service to each such individual licensee. The fees collected pursuant to this provision could not, when added to other amounts collected by the Commission pursuant to other provisions of law, exceed 38 percent of the funds appropriated to the Commission each such fiscal year.

The House bill contained two separate provisions. Section 4001 of the House bill, recommended by the Committee on Energy and Commerce, would have required the Commission to collect 100 percent of its regulatory costs through fees and charges that, when combined with other fees levied by the Commission, would total about $270 million in fiscal year 1987, or about $135 million more than would be collected under current law. Section 5001 of the House bill, recommended by the Committee on Interior and Insular Affairs, would have required the Commission to assess and collect annual charges from its licensees beginning with fiscal year 1987. Under this provision, the charges are to be assessed at the rate of $750 per million watts of the rated thermal capacity of nuclear powerplants operated by NRC licensees, and are applicable to any nuclear facility with a rated thermal capacity in excess of 50 million watts.

The conferees were unable to reach agreement. Accordingly, the House and Senate have agreed to recede from their respective provisions, and include no provision in the legislation.

With the decision by the House and Senate conferees not to include any additional NRC user fee legislative authority in this year's reconciliation bill, the existing statutory authority for the assessment of fees by the NRC—contained in section 7601 of the Consolidated Omnibus Budget Reconciliation Act and in the Independent Offices Appropriation Act—will continue to govern the conditions under which NRC may assess fees and the procedures and requirements which must be met before such fees may be assessed.

The Commission's implementation of section 7601 was the subject of considerable discussion by the conferees charged with addressing the NRC user fee issue in this year's reconciliation conference. In fact, a number of Members raised questions about whether section 7601 could be implemented by the Commission, in a manner that would result in the assessment of the fees contemplated under this provision. I strongly disagree with those who have maintained that section 7601 cannot be implemented and that it will not result in the assessment of fees approximating 33 percent of the NRC's budget. Accordingly, I would like to take this opportunity, Mr. President, to review just briefly the background of this provision and the steps that, if taken by the NRC, should result in the successful—and highly legally defensible—implementation of section 7601.

Section 7601 authorizes the Commission to assess and collect annual charges from its licensees, on a fiscal year basis, in an amount up to 33 percent of the annual costs incurred by the Commission, provided that the Commission can demonstrate that the charges assessed are reasonably related to the regulatory service provided by the Commission and fairly reflect the cost to the Commission of providing such service. In addition, section 7601 provides that any assessments imposed pursuant to this provision shall be established by rule.

On July 1, 1986, the Commission published proposed regulations to implement section 7601 (51 Fed. Reg. 24078), and on September 18, 1986, the Commission promulgated a final rule (51 Fed. Reg. 33224).

The approach that the Commission has taken in implementing section 7601 does not meet the clear and unambiguous requirement of section 7601 that the charges assessed must be reasonably related to the regulatory service provided by the Commission and also must fairly reflect the cost to the Commission of providing such service. In fact, Mr. President, by adopting a flat annual fee for all nuclear power reactors—other than those not authorized to operate—regardless of the variance in the regulatory service that would be provided to each individual licensee and the corresponding variance in the cost of providing such service—the Commission has virtually disregarded the directive contained in section 7601. Indeed, the "back calculation" that the Commission has undertaken in order to reach this flat fee—dividing its total budget by 3 percent, subtracting the fees collected under part 170, and dividing the remainder by the number of licensed reactor—is about as far from what was contemplated under section 7601 as anything I can possibly imagine. If the fee reached through this bizarre calculation has any relation to the actual regulatory costs for individual licensees, it is only by coincidence, Mr. President—and certainly it is not the kind of determination that I think the Congress had in mind when it enacted section 7601.

Beyond this fundamental problem, Mr. President, the Commission had excluded a large number of licensees from consideration, citing in the proposed rule "the administration costs for administering such a collection program." It is for these reasons, all related to the implementation of section 7601—and not because of any fundamental infirmity in section 7601—that the Commission is now embroiled in legal controversy over its final rule.

Although section 7601 requires the Commission to demonstrate on a licensee-specific basis that the fee to be assessed is reasonably related to the actual cost of the regulatory service provided, this is a standard that, in my judgment, can be met—if the Commission establishes a procedure for identifying licensee-specific costs and a mechanism for assessing such costs against individual licensees. This standard was adopted by the Congress because of a strong feeling—which I share—that where the Commission devotes substantial resources to a given license—such as, for example, a "problem plant" or a plant applying for an operating license—the fee assessed should reflect such actual costs. On the other hand, where the Commission devotes lesser resources to a given licensee, that, too, should be reflected in the fee collected from that licensee.

Some have argued that this standard is so stringent that the Commission will never come close to collecting the 33 percent contemplated under section 7601. I crisply disagree with that assessment. In fact, Mr. President, I would be astonished if the Commission—whose regulatory program is now, by and large, concentrated on operating reactors and high- and low-level waste disposal—all of which involve specific licensees and presumably specific benefits—could not demonstrate that 33 percent of its budget is related to licensee-specific services. If this standard cannot be met, I think the time has come to take a much more careful look at the NRC's budget when it is submitted in January in order to determine why less than one-third of the Commission's money is going to identifiable expenses for individual licensees and more than two-thirds of the Commission's budget is going to generic expenses, rather than just hop to the conclusion that the standard must somehow be fundamentally flawed and must therefore be relaxed.

With regard to the issue of "administrative costs," Mr. President, I am wholly unpersuaded that the "administrative costs" of a fee collection system, as provided for in section 7601, are substantial. Nevertheless, I remain willing to consider whatever further information the Commission wishes to provide to use on this issue and, if necessary, take appropriate steps to ensure that the administrative costs of the Commission's fee program remain within reasonable bounds.

I appreciate the opportunity, Mr. President, to provide this additional background, together with my thoughts on how we can best proceed with a successful program for implementing section 7601. I look forward to a redoubled effort on the part of the Commission and I trust that next year, if and when we revisit this issue, the Commission will have done everything within its current statutory power and authority to carry out section 7601 in the manner contemplated by the Congress. I will surely be watching with great interest.

LOAN ASSET SALES

Mr. CHILES. Mr. President, as part of this reconciliation package, the Federal Government will be selling some $5 billion of loan assets in fiscal year 1987.

These loans will be sold from a variety of portfolios, including rural development and housing programs, the Economic Development Administration, the Export-Import Bank, the college housing program, and the Small Business Administration.

Five billion dollars—that is a lot of loan sales. And we have to make sure that the Government gets the best possible price. The trouble with our selling these loans, is that we are real newcomers to this game.

Suddenly, many of our executive agencies will have to play in the big leagues with the world's best investment bankers. If we are going to get our money's worth, we're going to have to be as quick and as clever as Wall Street's finest.

Most importantly, we've got to make sure that we play by a set of rules that protects the public interest.

I've recently sent letters to OMB and the Treasury Department, two agencies which have major responsibility for overseeing the sale of loans by Government agencies. I have also sent a letter to the Securities and Exchange Commission in their role as watchdog for our private investors.

The letter serves notice that Congress will see that the public interest is served. We must guarantee that the proceeds from the sales are as great as possible.

And we have to make sure that the investment banking community serves our interests rather than their own. Wall Street knows how high the stakes are—just look at the fight over who will manage the sale of Conrail.

We do not want a situation in which a small number of underwriters can come in with low bids and turn around and sell the loans for much more. We want their fees and commissions to depend on the amount of money they can make for the Government.

Everything must be kept out in the open. Audited records and evaluations of the loan assets as well as final details of the sales need to be part of the public record.

Last July, the Office of Management and Budget issued guidelines for loan asset sales. Those guidelines are a start—but there is a long way to go. My letter to the agencies raises numerous questions that need to be answered.

For example:

How can we protect the rights of borrowers? Will they still have the same provisons regarding repayment procedures, use or nonuse of collection agencies, and forebearance?

How should the compensation of underwriters be structured so that we get their best efforts at making money for the Government?

Should these loan offerings be exempted from SEC registration requirements?

And there are numerous other questions. I ask unanimous consent that a copy of the letters be placed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON THE BUDGET,
Washington, DC, October 9, 1986.

Mr. JOHN SHAD,
Chairman, Securities and Exchange Commission, Washington, DC.

DEAR MR. SHAD: Both the President and Congress have proposed loan asset sales as part of our effort to meet the Gramm-Rudman-Hollings deficit goals. In his fiscal year 1987 budget request, the President proposed the sale of $15 billion of loans from 13 loan portfolios. And the Conference Report on the Reconciliation Bill proposes loan sales that would yield approximately $5 billion in fiscal year 1987.

The federal government has relatively little experience with loan sales and has certainly never engaged in transactions of the size currently being considered. As we go forward with these sales, it is essential that procedures be established and followed to guarantee that the public interest is served.

Specifically, we must insure that:

The government's proceeds from the sales are as great as possible;

There be no collusion or uncompetitive practices on the part of underwriters;

The rights of current borrowers are protected;

There is full and open competition in choosing financial advisers for the loan sales;

Audited records and evaluations of the loans to be sold are made publicly available; and

Final details of the sale be made part of the public record.

Several aspects of loan sales require greater scrunity. For example:

Many borrowers from the agencies enjoy a variety of consulting and advisory services that have traditionally been a part of the loan package. What would be the status of these services when the loans are sold?

Many existing loans carry special provisions regarding repayment procedures, use or nonuse of collection agencies, forebearance, etc. What would be the status of these provisions when the loans are sold?

OMB's guidelines for loan asset sales disallow the sale of assets with recourse. Might not some forms of pooling of assets, combined with certain types of government guarantees result in greater revenue to the government?

How should underwriters' compensation be structured to maximize the proceeds to the government? Flat fees offer little incentive for extra effort by the underwriter, whereas percentage fees (and perhaps graduated fees) could make the public and private interest coincide.

Should a fixed bid by an underwriter be allowed in cases where the bid is negotiated with little or no competition?

In cases where the underwriters' bids appear too low, can a third party be brought in (and rewarded) for seeking out underwriters with higher bids?

Should government loan sales be allowed exemptions to SEC registration requirements?

What agencies should be involved in oversight to protect government and investor interests?

Do individual agencies have the expertise to market their loans—or is a centralized effort required?

In the months ahead, I will be leading an effort to insure that loan sales serve the public interest. With the huge sums involved and the potential for abuse, it is imperative that we institute appropriate procedures and be vigilant in our oversight.

It is my expectation that you will investigate the above questions that fall in your areas of responsibility and report back your conclusions. I look forward to working with you in this critical area of oversight as preparations for loan sales go forward.

Sincerely,

LAWTON CHILES.

U.S. SENATE,
COMMITTEE ON THE BUDGET,
Washington, DC, October 9, 1986.

Hon. JAMES BAKER,
Secretary, 15th and Pennsylvania Avenue NW., Washington, DC.

DEAR MR. BAKER: Both the President and Congress have proppsed loan asset sales as part of our effort to meet the Gramm-Rudman-Hollings deficit goals. In his fiscal year 1987 budget requests, the President proposed the sale of $15 billion of loans from 13 loan portfolios. And the Conference Report on the Reconciliation Bill proposes loan sales that would yield approximately $5 billion in fiscal year 1987.

The federal government has relatively little experience with loan sales and has certainly never engaged in transactions of the size currently being considered. As we go forward with these sales, it is essential that procedures be established and followed to guarantee that the public interest is served.

Specifically, we must insure that:

The government's proceeds from the sales are as great as possible;

There be no collusion or uncompetitive practices on the part of underwriters;

The rights of current borrowers are protected;

There is full and open competition in choosing financial advisers for the loan sales;

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Do individual agencies have the expertise to market their loans—or is a centralized effort required?

In the months ahead, I will be leading an effort to insure that loan sales serve the public interest. With the huge sums involved and the potential for abuse, it is imperative we institute appropriate procedures and be vigilant in our oversight.

I request that you exercise your responsibility as the chief officer for federal financing to explore the issues, to ensure that agencies making loan asset sales do so prudently, and provide me a report on your conclusions. I look forward to working with you in this critical area of oversight as the loan sales go forward.

Sincerely,

LAWTON CHILES.

U.S. SENATE,
COMMITTEE ON THE BUDGET,
Washington, DC, October 9, 1986.

Mr. JAMES MILLER,
Director, Office of Management and Budget, Washington, DC.

DEAR MR. MILLER: Both the President and Congress have proposed loan asset sales as part of our effort to meet the Gramm-Rudman-Hollings deficit goals. In his fiscal year 1987 budget request, the President proposed the sale of $15 billion of loans from 13 loan portfolios. And the Conference Report on the Reconciliation Bill proposes loan sales that would yield approximately $5 billion in fiscal year 1987.

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In the months ahead, I will be leading an effort to insure that loan sales serve the public interest. With the huge sums involved and the potential for abuse, it is imperative that we institute appropriate procedures and be vigilant in our oversight.

I request you to use the management responsibilities of OMB to require the agencies involved to address the above questions and provide me a consolidated report of your conclusions. I look forward to working with you in this critical area of oversight as the preparation and execution of loan sales go forward.

Sincerely,

LAWTON CHILES.

Mr. CHILES. Mr. President, with the huge sums that are involved in these sales it is our responsibility to do it right. I intend to get the answers we need and make sure we do just that.

HOUSE RESOLUTION 5300

Mr. McCLURE. Mr. President, for the last 5 years the Congress has made many difficult budgetary choices in our efforts to achieve fiscal restraint and streamline the Federal Government. For example, funding for programs within the jurisdiction of the Energy and Natural Resources Committee have decreased by approximately 19 percent from approximately $16 billion down to $13 billion for fiscal year 1986. These budgetary cuts in Federal energy and natural resource programs have affected all regions of our country.

Since we began this process in 1981 with the fiscal year 1982 budget, considerable progress has been made in bringing efficiency to the Federal Government. But in our efforts to achieve fiscal restraint, there is a point of diminishing return. At stake is the economic viability of the U.S. energy and resource future. Also at stake is not only the U.S. long-term economic viability, but the daily lives and livelihoods of current and future Americans.

For these reasons, as well as others, I am concerned should there be further uniform, across-the-board cuts, such as those that would occur if it became necessary to enact a fiscal year 1987 sequester resolution. What is needed instead is carefully tailored appropriations acts, accompanied by targeted reconciliation measures such as those contained, in part, in the conference report before us.

The reconciliation portion of this conference report on the Omnibus Budget Reconciliation Act of 1986 represents the culmination of a long process that began last year with enactment of the Gramm-Rudman-Hollings Act. This measure represented the first opportunity afforded under that act for the Congress to consider an alternative to an across-the-board sequester of the Federal funds for certain, exempted programs. Therefore it is indeed unfortunate that this measure is also being used to raise the limit on the Federal debt.

It is my judgment, Mr. President, the Congress has risen to the task necessary to avoid a sequester. The reconciliation portion of this conference agreement represents a constructive alternative to a fiscal year 1987 sequestration and, as such, should be approved. Nevertheless, I must vote against the measure because it also raises the debt limit.

With regard to matters within the jurisdiction of the Committee on Energy and Natural Resources, which I chair, the conference agreement is consistent with the assumption in the Senate-passed measure and the original reconciliation instruction to the committee. For example, the conference agreement provides for the recoupment of additional petroleum overcharge funds over the next 3 years and provides for recovery by the Federal Energy Regulatory Commission of its direct and indirect costs through the use of fees and annual charges assessed against all companies that are subject to its jurisdiction.

The committee participated in two subconferences which emcompassed programs and activities of the Department of Energy, the Federal Energy

Regulatory Commission, and the Department of the Interior.

Consistent with provisions in both the Senate- and House-passed measures the conference agreement includes provisions regarding: First, the distribution of petroleum overcharge funds; second, the DOE manufacturers energy consumption survey; third, a DOE study of crude oil production and refining capacity in the United States and the effects of oil imports thereon; and fourth, recovery by the Federal Energy Regulatory Commission of its direct and indirect costs through the use of fees and annual charges.

The conference agreement also includes provisions addressing the two matters from the Senate-passed measure: Federal energy management and the Great Swamp National Wildlife Refuge. In addition, the conference agreement includes the two matters from the House measure: The strategic petroleum reserve and State energy conservation programs.

In the aggregate, the conference agreement achieves direct spending savings in fiscal year 1987 of approximately $460 million in budget authority and outlays, when adjusted for strategic petroleum reserve funding which was provided earlier in the Urgent Supplemental Appropriations Act for 1986 and carried over into fiscal year 1987. In addition, the conference agreement achieves savings in fiscal years 1988 and 1989.

PETROLEUM OVERCHARGE FUNDS

With regard to the recoupment of petroleum overcharge funds, the conference agreement provides for eventual distribution as either direct or indirect restitution of all crude oil overcharge funds not subject to the so-called "Stripper Well" agreement and settlement, and all petroleum product overcharge funds. The provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 establishes a policy for the eventually final distribution of certain crude oil and petroleum product overcharge funds resulting from alleged crude oil or petroleum product pricing violations under the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1973.

The conference agreement provides, to the greatest extent possible, for direct restitution to those individuals and entities, such as farmers, school districts, small businesses, utilities, governmental entities, transportation entities, and other consumers, who experienced injury. With that objective in mind, the conferees encourage and expect the Department of Energy [DOE], acting through its Economic Regulatory Administration [ERA], to identify injured customers and provide direct restitution to them.

The conference agreement covers all overcharge funds—whether crude oil funds or product funds—other than funds already disbursed or designated for disbursement, either as direct or indirect restitution; and funds to be distibuted to overcharged consumers who prove direct injury in a DOE claims process. In addition, the conference agreement excepts from recoupment those funds governed by the "Stripper Well" settlement approved on July 7, 1986, by the U.S. District Court of the District of Kansas; and those funds to be allocated to the States to make up for appropriations shortfalls for certain specified energy conservation programs.

By specifically excluding those funds covered by the court-approved "Stripper Well" settlement from recoupment, the conferees leave it to the terms and conditions of the settlement and court approved order themselves to determine what funds are covered by that settlement. The disbursement of any crude oil overcharge funds not covered by that settlement are subject to the conference agreement.

In this regard, Mr. President, I am pleased to report that the conference committee fully carried out the intent of the Senate, as was elaborated in the July 29, 1986 report of the Committee on Energy and Natural Resources, which was incorporated in Senate Report No. 99-348. That intent was to preserve fully and in all respects the "Stripper Well" settlement and judgment, and to neither expand nor reduce in any way the scope or the settlement agreement or the court's judgment approving the settlement, including the amount of funds covered by the settlement and judgment, and the terms and conditions applicable to the distribution and use of such funds. Thus, future orders and judgments implementing the settlement, such as the court's August 7, 1986 order of disbursement, are also excepted from requirements of the conference agreement.

In the Stripper Well settlement the court also imposed certain reporting requirements which are excepted under the conference agreement. However, the conference agreement does require the Secretary of Energy to monitor the disposition by the States of any funds disbursed to the States by the court pursuant to the "Stripper Well" settlement in a manner substantially similar to that required under the earlier Warner amendment—section 155 of Public Law 97-377. Nevertheless, this monitoring requirement by the Secretary does not authorize him to require preapproval or approval of State plans for the utilitization of such funds.

As in the Senate-passed measure, any funds to which the Federal Government is entitled under this subtitle will be deposited into the general fund of the Treasury as "miscellaneous receipts."

Under the conference agreement, all future DOE rules, policies, guidelines, et cetera, and all future court orders, et cetera, must be consistent with the agreement. The agreement includes a disclaimer that the legislation does not change the Stripper Well settlement as approved by the court on July 7, 1986 or affect orders issued by the court to implement that settlement in the form and substance approved on July 7. However, if the court or the parties change the settlement or the court's approval as of July 7, the changes must be consistent with this legislation.

Accordingly, the conferees agreed to a statute of limitation provision modified from the Senate version. It is the expressed intent of the conferees that all alleged violations of the applicable law and regulations be pursued fully, fairly, and expeditiously. The conference agreement thus includes a nonbinding statement of congressional intent that ERA bring these cases to litigation this year as promised by Secretary Herrington in his letter of October 2, that I request be included at this point in my remarks.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

Hon. PETE V. DOMENICI,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to you in your capacity as Chairman of the Committee of Conference on H.R. 5300, the "Omnibus Budget Reconciliation Act of 1986." It is my understanding that the conferees have agreed to amend the Emergency Petroleum Allocation Act (EPAA) to apply a statute of limitations to the government's cases regarding oil pricing overcharges committed by petroleum sellers. It is my understanding that the amendment would bar the Department's initiation of any action after September 30, 1988, or six years after the violation, whichever, is later. The conferees, however, would have Congress express the intent that the Department will commence all actions sooner. I can assure you we will.

The Administration supports vigorous and timely enforcement of all the laws of this nation, including enforcement actions under the now-expired EPAA, even though we believe, for example, that the petroleum pricing laws have resulted in undue governmental interference with free market forces. Consistent with our convictions, the Department is now in a position to bring all pre-litigation matters to a conclusion. By December 31, 1986, the Economic Regulatory Administration (ERA) will have initiated litigation, settled, decided to close out on the merits, or entered into a tolling agreement on all pre-litigation matters. Even absent this legislation, I would have allowed no ERA staff reduction which would have impeded this effort.

I hope this will allay any concerns that the enforcement program will be extended unnecessarily.

Yours truly,

JOHN S. HERRINGTON.

Mr. McCLURE. From this perspective, Mr. President, the conferees applaud that promise and encourage

ERA and the Secretary to fully exert themselves to bring these cases to litigation.

Finally, in adopting this limitation, the conference agreement also includes provisions aimed at ensuring that there will continue to be sufficient personnel—and a proper mix of personnel—to pursue all cases fully and expeditiously.

STATE ENERGY CONSERVATION PROGRAMS

The conference agreement provides for the disbursement of specified excess amounts of petroleum overcharge funds for the four energy conservation grant programs managed by the Department of Energy: the Low-Income Weatherization Program the Schools and Hospitals Program, the State Energy Conservation Program, and the Energy Extension Service Program. The aggregate of direct appropriations and disbursement of excess funds under the conference agreement for these programs is to $200 million per year.

STRATEGIC PETROLEUM RESERVE

In recognition of the importance of full implementation of the International Energy Agreement, particularly those provisions regarding emergency stocks, the conference agreement provides a 3-year authorization for the strategic petroleum reserve. I repeatedly have urged that we take advantage of low oil prices to upgrade the Reserve.

Recently, on August 6, the President supported such an effort by the United States and called on the other oil consuming, International Energy Agency member nations to upgrade their strategic stocks as the best defense against world oil supply disruptions. Japan has accelerated the filling of its reserves to 60,000 barrels per day from 50,000 barrels per day.

Much more can and should be done by our IEA partners to shoulder the burden of maintaining adequate emergency stocks. Therefore, it is incumbant of the United States to set an example for other IEA member states.

The conference agreement also provides for a minimum fill rate of 75,000 barrels per day until there are at least 750 million barrels stored in the reserve. If this minimum fill rate is not achieved, the conference agreement, consistent with previous authorizations, provides for a shut-in of the naval petroleum reserve [NPR] production or transfer of NPR oil to the SPR.

The conference agreement mandates a SPR fill rate of "the highest practicable fill-rate achievable subject to the availability of funds" during fiscal years 1987 through 1989. Because current law provides authority to the reserve for interim storage of SPR oil, the conferees intend that insufficient availability of permanent SPR storage capacity would not render a particular fill rate impracticable.

FERC FEES AND ANNUAL CHARGES

This conference agreement provides the Federal Energy Regulatory Commission with additional authority to collect fees and annual charges. The Commission is required to assess and collect fees and annual charges in amounts equal to all of the costs incurred by the Commission, including any hearing costs and indirect personnel costs.

Mr. President, as I stated earlier, the reconciliation portion of this conference agreement represents a constructive alternative to a fiscal year 1987 sequestration and, as such, should be approved in its own right. Nevertheless, I must vote against the conference agreement because this measure is also being used to raise the limit on the Federal debt.

Mr. WEICKER. Mr. President, I would like to explain to my Senate colleagues the Small Business Committee's decision with regard to title IX of H.R. 5300, the Reconciliation Act. The Senate, to meet its mandated savings, had proposed the sale by the Secretary of the Treasury of guaranteed loans from the portfolio of section 503 debentures in sufficient quantities to meet the goal of $412 million over 3 years. The House, by contrast, had proposed the creation of a new Government-sponsored enterprise called COSBI, which would purchase the entire billion dollar portfolio of SBIC loans currently held at the FEB, thereby producing the necessary savings.

The COSBI concept is not one that I am unfamiliar with, and indeed it is similar to legislation that Senator BUMPERS and I introduced on July 16, 1986 as S. 2647, and on which the Small Business Committee held 1 day of hearings on August 7, 1986. While the committee did not have time to report out S. 2647, it remains an idea whose time may well have come and which has generated a great deal of interest from the small business investment companies [SBIC] and the small business community in general. Although there are a great number of points of agreement between the House-passed version of COSBI and S. 2647, there were fundamental issues unresolved by our deliberations, not the least of which was whether the sale of the billion dollar SBIC portfolio held at the Federal Financing Bank should be sold with or without recourse to the Federal Government; the Senate and House Small Business Committees felt it would be imprudent to sell the loan assets without recourse since it would require a deep discount of the securities. The Congressional Budget Office required a nonresource transaction if the committee were to receive any credit under reconciliation for cost-savings.

Mr. President, COSBI—the Corporation for Small Business Investment—would be the latest Government-sponsored enterprise, and much like its successful prior models such as Fannie Mae and Sallie Mae, it would borrow money from the private capital markets at rates slightly above the Government's own cost of money, relending the money to SBIC's and MESBIC's, the small business investment companies and minority enterprises small business investment companies. The SBIC's and MESBIC's would in turn continue to make debt and equity investments in small businesses as they do now. One of the great advantages of COSBI is that the legislation would free the SBIC and MESBIC industries from the vagaries of the appropriation process and the bureaucratic burdens of SBA regulations. SBIC's and MESBIC's are essentially venture capital companies servicing small business in America; they are risk-takers by nature and they have sought from some time to privatize their funding mechanism. COSBI is responsive to those concerns.

While we were able to make substantial progress in hammering out the details of COSBI in conference, we learned of strenuous objections from both the Treasury Department and the Office of Management and Budget. The Treasury Department, for example, wanted language assuring its ability to control the volume of issuances of COSBI securities and limitations on the Corporation's debt-to-equity ratio similar to the one under which Fannie Mae operates. OMB and Treasury wanted a greater degree of regulatory supervision over the Corporation, at least so as to have control over the quality of COSBI's assets and liabilities. It was clear that to fully address the specific concerns of Treasury and OMB would have required both committees to revisit the entire legislation.

In addition, the exact terms and conditions of the sale of the SBIC debentures to COSBI was still at issue, and it was not clear whether the portfolio would be sold with or without a Government guarantee. Because this matter was unresolved, there was commensurate disagreement as to the appropriate degree of Federal regulatory supervision over COSBI. The case for regulation is all that much stronger if the portfolio were to be sold with the Government's guarantee attached thereto. Mr. President, I ask unanimous consent that the full text of the letters I received from the Secretary of the Treasury, James Baker, and the Director of the Office of Management and Budget, James Miller, be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF THE TREASURY,
Washington, DC, October 1, 1986.
Hon. LOWELL P. WEICKER, Jr.,
U.S. Senate,
Washington, DC.

DEAR LOWELL: I am writing to express my strong concern regarding the provisions approved by the conferees on the Reconciliation Bill to establish a Corporation for Small Business Investment.

Although the proposal has been advanced as a "privatization" measure, the proposed corporation would not be truly private due to the extensive financial ties to the Federal Government and other benefits which would be provided to the corporation. These ties and benefits include the authority of the Corporation to borrow from the Treasury to backstop its financial obligations, the ability to purchase SBIC debentures held by the Federal Financing Bank at prices unrelated to market prices, exemption from State and local taxation, and exemption from SEC regulation.

I strongly urge that the COSBI provisions be deleted from the bill.

In addition to my general opposition to the creation of a new Government sponsored enterprise, I am deeply concerned by what the bill would not do. In particular, I am very disturbed about the absence of any effective oversight or control over the Government's exposure to loss from the operations of either COSBI or the SBICs. There should be some clear regulatory oversight over COSBI, as HUD has over FNMA. This COSBI regulator should have reasonable oversight and authority over the SBICs. The Treasury should have approval authority over the issuance of COSBI debt, not just its terms and rates. There should be a reasonable debt to equity ratio limit on COSBI's borrowings reflecting the credit quality of its assets, which could easily be argued to be as low as 3-to-1 given the default record on SBIC debentures to date.

Sincerely,

JAMES A. BAKER, III

EXECUTIVE OFFICE
OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, October 1, 1986.
Hon. LOWELL WEICKER, Jr.,
Chairman, Senate Small Business Committee, U.S. Senate, Washington, DC.

DEAR LOWELL: We understand a proposal to establish a Corporation for Small Business Investment (COSBI) may be added to the Senate Reconciliation bill. I would like to convey again Administration views on the legislation.

COSBI would be a new government sponsored corporation to provide funds for small business investment companies (SBICs). The Administration objects to its establishment most strongly. We further believe it is inappropriate to put such a complex and technical proposal in the reconciliation bill, especially at this late date. Therefore, if the COSBI provision were included in reconciliation, the President's senior advisors would be inclined to recommend veto.

COSBI would enjoy special advantages over fully private borrowers in the credit markets. These advantages would include standby ("back-stop") borrowing authority from the Treasury, exemption from securities regulation, and treatment of its securities in the same manner as Treasury instruments are treated. These Federal ties would enable COSBI to borrow at lower interest rates than it would otherwise experience. The lower borrowing costs constitute implicit Federal subsidies to one special category of borrowers. As the Grace Commission noted, the demand for credit by GSEs, like COSBI, raises the overall cost of Treasury borrowing, thereby increasing the Federal deficit. By reducing these implicit subsidies, the overall availability of credit is increased and the cost of credit is lowered to non-subsidized borrowers, such as the vast majority of small businesses. Therefore, rather than benefitting only 3,000–4,000 small businesses per year through the establishment of COSBI, the Administration believes that all of this Nation's 15 million small businesses would be better served by a lower Federal deficit and reduced competition in the credit markets from Federal and federally-sponsored agencies.

Thank you for considering our views.

Sincerely yours,

JAMES C. MILLER III,
Director.

MAJOR OBJECTIONS TO COSBI (TITLE IX)

1. Terms of sale of the $950M SBIC portfolio (currently held by the FFB) to COSBI—

Under the negotiated sale mechnaism, net proceeds from sale could be as little as $410M ($560M minimum price less the $150M for the MESBIC Trust). Treasury should have the ability to walk away from the sale.

Loss on sale would be realized by FFB or Treasury, not by SBA inspite of SBA's 100 percent guarantee of the SBIC debentures from the sale.

Treasury should be "held harmless" as a result of the sale, and budgetary impact should be reflected on SBA's books.

2. $500M backstop line of credit to Treasury: No restrictions on the use of proceeds is provided (At a minimum, COSBI should only have access to Treasury only to avoid default.)

3. Federal oversight, investigative, and regulatory authority over COSBI is insufficent.

No Federal agency (SEC, SBA, Treasury) has any general regulatory oversight of COSBI (unlike the authority provided to Treasury and HUD over FNMA). (Although SBA has "review" authority and can report findings to Congress, SBA cannot take any enforcement action.)

Some control over COSBI's debt to equity ratio, the type of assets COSBI can hold, etc. to protect the Federal interest is needed.

The Board structure, heavily dominated by SBIC industry representatives, will not be able to protect the Federal interests. Authority should be provided to remove Directors.

4. Transfer of the $255M MESBIC portfolio to COSBI for nothing.

5. Prohibition of additional loan asset sales.

Mr. WEICKER. Given the intensity of administration opposition to the version of COSBI under discussion and given the tight timeframe within which the committees were expected to reach an agreement, the Senate conferees felt it imprudent to continue to review such sweeping and complex legislation as COSBI within the constraints of the reconciliation process. The Senate Small Business Committee therefore made a counteroffer to the House to sell loans from the 503 portfolio currently at the Federal Financing Bank. The house rejected that offer and the conference was deadlocked. In the interest of not jeopardizing the entire reconciliation bill, the House and Senate Small Business Committees agreed to disagree.

This decision to disagree must be understood in the context of the entire $15 billion reconciliation bill. Passage of H.R. 5300 will generate enough spending reductions in fiscal year 1987 to avoid the prospect of another painful round of across-the-board percentage cuts, or sequestration, called for under the Gramm-Rudman-Hollings. Everyone agrees that such blind cuts, oblivious to priorities and needs, are the worst way to meet our deficit targets for 1987, and should be avoided at all costs. Reconciliation is our last hope of avoiding sequestration. Thus, given the administration's strong opposition to COSBI and its threat to veto the entire bill if COSBI were included, it would have been hazardous to pursue the COSBI concept on this bill.

However, Mr. President, I believe that we can build upon the significant progress on COSBI that was made in the reconciliation conference. I intend actively to pursue the COSBI concept next year and will reintroduce legislation to create the Corporation next January. The enactment of COSBI will be one of the committee's top priorities for the 100th Congress. In the interim period, I will be meeting with all interested parties in an effort to resolve some of the outstanding and difficult issues.

Mr. HELMS. Mr. President, Senator THURMOND and I, as well as others, have reservation concerning the constitutionality of denying a right to jury trial under the so-called antifraud provisions of the Budget Reconciliation Act.

In that connection, I ask unanimous consent that there be printed in the RECORD during the debate on the Reconciliation Act an article entitled "Jury Trials for Business, Federal Regulators Show Indifference," by Paul Kamenar and Kevin McIntyre, printed in Legal Times, October 6, 1986.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

FEDERAL REGULATORS SHOW INDIFFERENCE

(By Paul Kamenar and Kevin McIntyre)

When the U.S. Supreme Court reconvenes today, one of the more important constitutional questions before the Court will be whether a businessman is entitled to a jury trial under the Seventh Amendment when the government seeks to impose civil penalties for alleged violations of federal law.

In *Tull v. United States*, the government sued Edward Tull in federal court for $22 million in penalties for violating the Clean Water Act and the Rivers and Harbors Act by developing land without a permit from the U.S. Army Corps of Engineers. A district

court's denial of Tull's request for a jury trial was affirmed by a divided panel of the 4th Circuit.

This case may force a change in the procedures used to enforce the civil penalty provisions of about 225 federal statutes—ranging from the environmental laws involved in *Tull*, to antitrust, aviation, banking, and election laws. Overzealous regulators who delight in fixing and assessing civil penalties reaching into the millions of dollars have been operating with seeming indifference to the right to a jury trial, a basic constitutional protection with roots back to the Magna Charta. The Supreme Court now has the chance to call a halt to this situation.

It will be interesting to see how the Justice Department—whose attorney general and assistants are strong advocates of the jurisprudence of original intent—presents the government's case in its brief to be filed later this month.

Tull's argument should appeal not only to many supporters of the original intent theory, but also to supporter of the "living Constitution" theory. And civil libertarians would also seem willing to embrace a concept that protects individual liberty from encroachment by the state.

The Seventh Amendment to the U.S. Constitution, ratified in 1791, states, "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." No interpretation, of course, is needed to understand the meaning of "twenty dollars," nor is there a serious problem understanding what is meant by a "jury trial." The controversy centers on the meaning of the phrase "suits at common law."

At first blush, one might simply conclude, since modern statutes did not exist in 1791, that enforcement actions and civil penalties brought under these laws are by definition not "suits at common law" and that therefore no jury trial is available unless Congress provides for such a remedy in the statute.

But the proper meaning of "suits at common law" has long been determined by the Supreme Court to include actions involving rights and remedies of the sort typically enforced in an action at law as opposed to an action in equity.

When the Seventh Amendment was adopted, the phrase "suits at common law" referred to those actions triable in an English court of law before a jury (such as a suit for a money judgment), as opposed to those cases tried in a court of equity before a judge sitting without a jury (such as a suit for specific performance or an injunction).

Jury trials were commonplace in civil penalty actions both during and long after the ratification of the Seventh Amendment. Suits by the government for civil penalties were regarded as an action for debt at common law and, thus, the right to a jury trial was protected.

Indeed, one major complaint of the American colonists that helped spark the revolution was that the right to a jury trial was being eroded when the English system began to substitute in the colonies the vice admiralty courts, which did not use jury trials. There is a rich history of federal courts utilizing jury trials in many types of civil penalty actions.

This historical right to a jury trial in a government civil penalty case was abruptly curtailed in 1977, however, in a case in which a roofing company was charged with violating OSHA regulations. In *Atlas Roofing Co., Inc. v Occupational Safety and Health Review Comm'n*, the Supreme Court ruled that Congress could create new "public rights" without a right to jury trial and commit their enforcement to administrative agencies. The Court held for the first time that the "Seventh Amendment does not prohibit Congress from assigning the factfinding function and initial adjudication to an administrative forum with which the jury would be incompatible."

The Court did not explain why juries are incompatible as factfinding in determining whether statutory violations have occurred or, if they have occurred, in determining the proper amount of the penalty. Juries decide such complex cases as antitrust and medical malpractice and assess punitive damages all the time. If the roofer in *Atlas* was expected to understand the Occupational Safety and Health Administration regulations, why can't jurors do so as well?

* * * * *

It is precisely because of the tremendous growth of the modern administrative state that small- to medium-sized businesses find themselves exposed to financial liabilities in the form of civil penalties that risk their very survival. Not only do many federal regulations inhibit the growth of the free enterprise system and of entrepreneurship, but the civil penalties that can be imposed for inadvertently violating them can be staggering. A jury in such cases will be able to temper with some measure of restraint the overzealousness of government enforces and the awesome power of federal judges.

It seems only fair that if a businessman facing criminal penalties were entitled to a jury trial under the Sixth Amendment, he should be afforded one under the Seventh Amendment when the government is seeking the equivalent in civil penalties. From a cost point of view, many a businessman would rather face spending six months in a federal facility than be forced to pay ruinous civil penalties. Yet in one situation, a jury trial is guaranteed; while in the other, such a right is being denied.

Apparently underlying the *Atlas* Court's assault on the Seventh Amendment was its expressed concern about the possibility of overcrowded dockets. Many litigants may choose to forgo their right to a jury trial, however, or the case may be largely disposed of by summary judgment. While many judges may find it more convenient to sit without a jury, the Supreme Court recently warned us in the *Chadha* legislative veto case and again in the Gramm-Rudman decision that "the fact that a given law or procedure is efficient, convenient and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution."

If the right to a jury trial can be denied to Tull under these circumstances, not much will remain of the Seventh Amendment. In *Tull v. United States*, the High Court will have an opportunity to render a decision appropriate for the bicentennial of the Constitution by reaffirming the original intent of the Seventh Amendment's right to a jury trial rather than casting it aside as a curious relic that interferes with the efficient operation of the modern administrative state.

ABDNOR/FARM CREDIT AMENDMENT

Mr. ABDNOR. Mr. President, no one is more aware of nor more concerned with the grave problems facing the Farm Credit System than am I. The Omaha Farm Credit District, of which South Dakota is a part, is perhaps in the most precarious financial position of any of the 12 district banks. The recent management shakeup in the Omaha District is just a symptom of the difficult transitions which are taking place. Aside from having the President of the Omaha Banks resign, the System has just laid off another 50 employees.

There's no question that the Farm Credit System is in dire straits. The need for serious action is imminent. No one would argue that.

Still, the greatest tragedy of the plight of the Farm Credit System is the plight of its member/borrowers. As the System banks continue to rack up unprecedented losses, to stay afloat, they continue to exact an ever-increasing toll on the borrowers.

Good borrowers have fled and located other sources of credit. Of those who are left, the top third who qualify for the best interest rate offered by the System have chosen to continue in the System. The bottom third have no alternative but to stay and may very well already be delinquent on payments of interest, principal, or both. It's the middle third that is being literally choked by the high interest rates they're forced to pay to prop up the marginal borrowers of the bottom third and subsidize the interest rate break given the sound borrowers of the top third.

Mr. President, somewhere along the line we've got to do something to assist the borrower and not just the System itself. We passed sweeping legislation last December hailed by the System banks as a godsend, a solution to all their problems. The net benefit of that effort to the System has been debatable but more importantly, the net benefit to the borrower has been nil.

Mr. President, I've advocated for a long time that any solution to the problems of the Farm Credit System has got to be borrower-oriented. I'm sorry to say that this effort again fails that fundamental test. Until it can be proven to me that the cost savings attributed to any legislative fix will be passed on to the borrower in the form of reduced interest rates, I cannot support a legislative solution.

Mr. President, I must also take issue with the manner in which this legislation has been advanced. I don't believe that waiting to attach a substantive amendment such as this at the 11th hour to a conference report is any way to legislate.

It's for this reason that I must oppose the inclusion of this amendment in the conference report on reconciliation. I traveled for the entire August recess in the State of South Dakota and a recurring theme in those travels was that something has got to be done to get land bank interest rates down. High interest is choking the life right out of hundreds of land bank borrowers in my State. And so I sug-

gest to my colleagues that we attempt to deal with this problem in a responsible fashion, not under the gun of 11th hour pressure, and that we ultimately approve a solution which is in the best interests of the borrower and not just System lenders.

I thank the Chair.

Mr. CHAFEE. Mr. President, the reconciliation conference report before us addresses many troubling health care issues in both the Medicare and Medicaid Programs. The original House and Senate reconciliation packages contained substantial differences in their Medicare and Medicaid provisions. The agreement before us represents compromise by both the Senate and the House, but I believe it represents better health care policy than either of the original bills.

As chairman of the Senate subconferees on Medicare and Medicaid issues, I would like to thank Senators HEINZ, DURENBURGER, MOYNIHAN, and BAUCUS for the time and effort they devoted to achieving this agreement.

I would like to take a few moments to highlight a few of the provisions included in the conference report.

MEDICARE

One of the most troubling problems addressed in the conference report involves the part a deductible—the amount a Medicare beneficiary must pay for the first day in the hospital.

The prospective payment system established a single rate of payment for hospitals based upon the illness to be treated—the DRG rate. This new payment system has created an incentive for hospitals to economize, which in turn has resulted in shorter hospital stays for Medicare beneficiaries. Currently, the part A deductible is based on the national average cost per day in the hospital. However, because we now pay a flat rate per hospital stay and hospital stays on the average are shorter, the average cost per day for Medicare beneficiaries has increased at a tremendous rate.

Because of this the part A deductible increased at about 43 percent over the past 2 years. Last year alone the part A deductible for Medicare increased by an unprecedented 23 percent—from $400 to $492. The projected increase for 1987 is another $80—which would bring the first day deductible to $572. When Congress enacted the prospective payment system, this possibility was not foreseen.

The provision agreed to by the conferees would reduce the increase in the part A deductible in 1987 by more than one-half. Instead of increasing to the projected rate of $572, the deductible will increase to $520. Equally important, the provision will keep increases in subsequent years to a reasonable amount.

Another difficult issue addressed by the conference was physician reimbursement under the Medicare Program. The position originally adopted by the Senate would have lifted the current reimbursement freeze and allowed physicians to increase charges to beneficiaries with no limits. The House provisions would have retained controls on physician charges and imposed an annual cap on the amount a physician could charge a beneficiary. This was one of the most contentious issues in the subconference.

Under the conference agreement, all physicians will be allowed a 3.2-percent increase in their Medicare reimbursement. In addition, the amount a physician can charge a beneficiary over the Medicare reimbursement rate will be limited in the following manner: first, those physicians charging above 115 percent of the prevailing rate will be allowed a 1-percent increase per year; and second, those physicians charging below 115 percent of the prevailing will be allowed to increase up to 115 percent of the prevailing over 4 years. These caps will be removed on December 31, 1990 or 1 year after a study on relative value scales is completed, whichever is earlier.

I believe the agreement we reached with the House is a reasonable compromise and good policy. It will save the Federal Government money, control beneficiary out-of-pocket costs and allow physicians to increase their charges at a reasonable rate. In addition, it will sunset once Congress has received enough information to develop a reasonable and fair system of reimbursement for physicians.

The conference report also allows a 1.15-percent increase in hospital reimbursement rates—this is more generous than the .5-percent increase recommended by the administration. The agreement cuts back on the amount Medicare will pay for capital reimbursement for hospitals by 3.5 percent in 1987 and by larger amounts in 1988 and 1989. Understandably, the hospital industry is not pleased with the capital provision; This provision will give them a strong incentive to work with Congress next year to develop a reform program.

MEDICAID

Mr. President, the conference report before us today also makes a number of critical changes in the Medicaid Program.

First, it would expand coverage to pregnant women and children under the age of 5 who are beneath the Federal poverty level. This provision will address the serious problem of infant mortality and low birth weight among babies. It reflect legislation introduced in the Senate early this year which I cosponsored.

Under current law, States that wish to provide essential health care under Medicaid to poor women and infants, can only provide such services to those who are eligible for cash welfare. As a result, health care services offered through Medicaid reach fewer than one-half of all infants living in poverty. Under the conference agreement, States will have the option of providing prenatal, delivery, and postpartum care to low-income pregnant women and medical assistance to low-income infants and children under 6 years of age in families living below the Federal poverty level without requiring that they also meet the eligibility standards for aid to families with dependent children.

Eleven babies die out of every 1,000 infants born in this country. Few events are as tragic as the death of a baby or the birth of a baby with birth defects—especially when such an outcome could have been prevented with proper prenatal care.

The National Academy of Sciences estimates a cost-benefit ratio of $3.38 saved in the first year of a child's life for $1 spent in prenatal care. The conference agreement recognizes that even in times of fiscal restraint, it is good Federal policy to invest in the health of poor mothers and children.

The conference agreement also allows States to provide Medicaid coverage to elderly and disabled individuals whose familiy income is at or below the Federal poverty level without liking such coverage to eligibility for Federal or State supplemental security income payments.

Another provision makes it clear that a State cannot impose any residence requirement which excludes from Medicaid an otherwise eligible individual who lives in a State regardless of whether or not such residence is a permanent address. This provision ensures that "homeless" individuals are not discriminated against.

Finally, the Senate conferees adopted a provision in the House reconciliation package which would enact a piece of S. 2209, the Disabled Person Act, of which I am a cosponsor. This provision is a great importance to disabled Americans who want the opportunity to be productive members of the work community. By enacting this provision Congress will finally acknowledge that individuals with disabilities should be supported and assisted in their efforts to join the work force rather than discouraged because they cannot afford the high cost of their disability-related health care needs without some help from Federal programs.

I fully support efforts to encourage disabled individuals who wish to join the work force to have the chance to do so. But we must be certain that barriers that discourage their participation, such as the possible loss of SSI or Medicaid benefits, are eliminated. Access to the work community is critical in order to assist disabled persons to pursue full and active lives.

We are in an era of changing technology and experience. Our understanding of the capabilities of those with disabilities is changing quickly. We have made tremendous strides in our ability to help those with disabilities to learn and to participate in many different facets of life. These individuals represents a highly motivated, dependable work force. This provision will give them the opportunity to fulfill their potential.

MATERIAL AND CHILD HEALTH BLOCK GRANT

Mr. President, the final provision I wish to discuss today involves an issue Senator BENTSEN and I have worked on over the past few months—A $75 million increase in the authorization level for the maternal and child health block grant.

Because of my concern about the number of infant deaths each year and the lack of preventive health care services for poor children, I have worked with a variety of interested organizations to develop a special set aside of one third of this increase for primary health care services and children with special needs.

This provision underscores my deep concern about the status of preventive health care services for children in this country. It also enhances the infant mortality initiative included in the Medicaid section fo the conference agreement. We cannot afford to let children suffer and sometimes die from easily prevented diseases and disabling conditions. We cannot afford to have pregnant women who do not see any health care professional until the day they go into labor. In the long run, inaction of this front will cost us much more in human anguish and lost potential than it would cost us to develop comprehensive prevention services today.

I am pleased that our set-aside program was adopted by the House conferees.

In summary, Mr. President, I am pleased with the conference report before us today. I urge its adoption by the Senate.

PREPAYMENT OF FFB LOANS GUARANTEED BY REA

Mr. ABDNOR. Mr. President, I would like to ask the distinguished chairman of the Agriculture Committee for clarification on section 1011 of H.R. 5300 which amends the Rural Electrification Act of 1936 to provide for the prepayment of Federal financing bank loans, repayment of which is guaranteed under section 306 of the Rural Electrification Act. Section 1011 replaces a provision providing for prepayment of certain FFB loans contained in an act entitled "An Act Making Urgent Supplemental Appropriation for the Fiscal Year Ending September 30, 1986, and for Other Purposes" (P.L. 99-349) enacted July 2, 1986.

Under section 1011 the Administrator of the Rural Electrification Administration would establish eligibility criteria for the prepayment program which would permit prepayments in fiscal year 1987 in an amount to realize net proceeds not less than $2,017,500,000. While section 1011 does contain a provision that a borrower will not qualify for prepayment if, in the opinion of the Secretary of Treasury, to prepay in such case would adversely affect the operation of the FFB, that provisions is only effective in fiscal year 1987 for loans the prepayment of which would cause the cumulative prepayments for fiscal year 1987 to exceed the $2,017,500,000.

I would ask for a clarification of those provisions of section 1011 under which the Administrator is to establish eligibility criteria to ensure that any required prepayment activity will be directed to those cooperative borrowers in greatest need of the benefits associated with prepayment, as determined by the Administrator, and such other eligibility criteria as the Administrator determines are necessary. My understanding of section 1011 is that the Administrator is not limited in establishing eligibility criteria to criteria related to the financial hardship of the borrower. While the criteria should ensure that prepayments are directed to those in greatest need of the benefits of prepayments, it would appear that the Administrator has very wide discretion in this area and may consider criteria in addition to improving the borrower's financial strength in cases of financial hardship. I would ask the chairman of the Agriculture Committee if my understanding of that provision is correct.

Mr. HELMS. The Senator is correct. The provision gives wide discretion to the Administrator to establish eligibility criteria based on greatest need as long as in fiscal year 1987 the proceeds of prepayments shall be not less than $2,017,500,000.

Mr. ABDNOR. In establishing eligibility criteria, it is my understanding that the Administrator may consider other factors related to need such as the average customer density of the borrowers. Customer density has long been one of the means for targeting financial assistance available under the Rural Electrification Program to those who need it. When Congress passed the 1973 amendments to the Rural Electrification Act, section 305 provided that those electric borrowers with two or fewer consumers per mile and those telephone borrowers with an average subscriber density of three or fewer per mile would be eligible for loans at the special interest rate of 2 percent. Section 408 of the act similarly creates a preference for low density borrowers. While section 305 of the act has been subsequently amended, it is clear that density is a criteria which has been used historically in targeting financial assistance to need and the Administrator would have the discretion to use density as a criteria for establishing eligibility for the prepayment program.

Mr. HELMS. The Senator again is correct in this intepretation. The Administrator can certainly consider average customer density either by itself or in conjunction with other criteria, in establishing eligibility for the prepayment program.

Mr. ABDNOR. I agree with the Senator and thank the Senator for his clarification. With the explanation and colloquy I can now support section 1011.

Mr. HELMS. Mr. President, the agriculture title in the conference report will reduce budget outlays by nearly $1.8 billion in fiscal year 1987, through sale of $1 billion in loans from the Rural Development Insurance Fund, and just over $2 billion in prepayments of REA loan guarantees to the Federal financing bank.

Also, the bill allows sale or prepayment of direct and insured REA loans from the revolving fund, only if the sale or prepayment is to the borrower, and only during this fiscal year. Advanced deficiency payments mandated in the Senate bill are also preserved in the conference report.

Mr. President, there is an additional provision in the conference report that provides authority to the Farm Credit System, subject to approval by the Farm Credit Administration, to restructure two of its most pressing problems: High-cost debt and non-performing loans.

This provision is an amended form of S. 2770, introduced by Senator COCHRAN with numerous cosponsors.

This provision was added as an amendment to language in the Senate bill which provides the eligibility for the Farm Credit System institutions to purchase notes and other obligations from the Rural Development Insurance Fund.

Very simply, Mr. President, this provision was included to provide authority to the System and its regulator to address the financial difficulties of certain System institutions should a need arise in the coming months. There is no apparent financial emergency currently; on September 17, in hearings in the Senate Agriculture Committee, system representatives said there was no need for Federal assistance at the present time. Indeed, this is not a package of Federal assistance, and no Federal moneys are involved.

However, in past weeks some uncertainty has arisen out of suits brought by varous System institutions, challenging the operation of the Capital Corporation's operation as contemplated in the Farm Credit Amendments Act of 1985. There is every reason to expect that the outcome of

these suits will permit loss sharing and other Capital Corporation functions to continue. However, it is the judgment of the agriculture subconferees that it is prudent to provide this standby authority, subject to approval by the Farm Credit Administration, to ensure that the System has adequate tools to maintain the technical viability of all System institutions.

Mr. President, we are not changing the intent of the Farm Credit Act amendments, nor are we providing a bailout for the Farm Credit System. Indeed, it is hoped that the Capital Corporation will be Allowed to operate in the manner contemplated and provided for in the amendments of last year. Furthermore, this legislation should enhance the reforms begun by last year's amendments. This provision gives the System an additional tool in implementing last year's act, and provides the System another self-help mechanism which may delay, and perhaps avert, the need for Federal assistance. We are providing the System the authority to deal with an emergency that may arise, depending on the rulings in a number of court cases.

I would emphasize that this in no way is intended to halt or reverse the management and operational reforms intended in the Farm Credit Amendments Act of 1985. Those reforms must continue as expeditiously as possible, and the implementation of these provisions should be done in a way to enhance and encourage those reforms.

I hope the Senate will support the agricultural provisions of this reconciliation conference report and, in particular, preserve this standby authority for the Farm Credit System and its regulator.

Mr. President, let me expand briefly on the section of this bill dealing with the prepayment of REA loan guarantees. The bill allows that the loan guarantees, if assigned and transferred, be assigned or transferred to a loan or security that will be grouped with nonguaranteed loans and securities so they are sold in a way not to unreasonably compete with other Treasury obligations.

I urge the Administrator of the Rural Electrification Administration, the Secretary of the Treasury, and the Chairman of the Securities and Exchange Commission, to consult for purposes of ensuring that the groups or pools of loans or securities to be offered for sale under section 306(A) are marketable and that the sale of these groups or pools, or secondary securities issued against the groups or pools, do not unreasonably compete with the marketing of Treasury securities.

I expect the Securities and Exchange Commission to monitor the development of the groups or pools of loans or securities to provide appropriate administrative relief from the provisions of the Investment Company Act if compliance with the act unnecessarily hinders development of the market. Section 6(c) of that act (15 U.S.C. 80a-6(c)) empowers the Commission to grant exemptions to the extent necessary and appropriate in the public interest and consistent with the protection of investors. This authority permits the Commission to deal with any problems that arise under the Investment Company Act in a manner that assures adequate investor protection. I further expect that the Commission will exercise this authority in a way that will encourage a vigorous private secondary market.

Mr. President, I urge that the reconciliation conference report be approved.

Mr. GRASSLEY. Mr. President, I can not say I am excited about the Farm Credit System provisions of this bill or the manner in which they have been brought up. As a matter of fact, I can't even say that I am sure it is going to have any effect on interest rates or in providing for a stronger more stable Farm Credit System. I am extremely suspect of the accounting practices that this bill will allow. I would even go so far as to say that I believe it could cause more long-term problems than it will provide short-term solutions. Another concern of mine is that this bill may allow some financially stable districts to run away from their responsibility to help troubled districts.

I have thought hard about this legislation and can say that I was very tempted to not support this provision. I have introduced a bill, along with Senator SYMMS, called the "Farm Credit System Interest Reduction Act of 1986" which I believe addresses the real issues of the System: stockholder rights, local control, and direct assistance to guarantee lower interest rates to farmers. If this legislation we are considering today has been brought up in any other way I would have offered my bill as an alternative solution to the Farm Credit System's problems.

I must tell my colleagues, however, that I have been contacted by several farm groups and Farm Credit System stockholders and employees who believe that this bill will help them. Staff at the Omaha district have told me that this will allow them to lower interest rates. They have assured me that the board of directors in Omaha will lower interest rates if the provisions of this bill are allowed to be implemented. I have also been told that the Farm Credit Administration and the Treasury Department estimate that this bill will allow the System to lower interest rates.

Hearing all this I was forced to ask myself this question: "What other option do we have at this time?" I must tell my colleagues that we don't have many options, and maybe not any before the end of this Congress. Recognizing this reality, I must say that I will support its retention in the bill. I base this decision on the fact that we don't have any alternatives and that I have been assured that interest rate relief is not only possible but probable if we pass this. Let me be on record, however, as being against the accounting practices in this bill and believing that it can lead in the long-run to some real problems for the System, its stockholders, and the taxpayer, who will end up holding the bag when everything falls apart. Let me also be on record as saying I support a legislation similar to the "The Farm Credit System Interest Reduction Act of 1986" which guarantees stockholders interest relief and reaffirms their rights. Let me also say that I will continue to push for these provisions in the future whenever I have the opportunity.

I reluctantly favor the provision being retained in the bill and would like to encourage my colleagues to support looking into serious long-term solutions as soon as we are back in session for the 100th Congress.

Just one final comment. I am very tired of Farm Credit System legislation coming up in the closing hours of a session and being brought up in such a way as to prevent time for review or amendment to improve the legislation. Again, I would like to encourage my colleagues to start early in the next Congress to address this problem and not let rush legislation overtake us again. I think this is a very bad precedent we are setting and this is the second year in a row this has happened.

Mr. GLENN. Mr. President, I am opposed to this reconciliation bill because it does not address the underlying causes of the most serious public policy problem of the day. We have a Government living beyond its means to the tune of over $200 billion, and this bill proposes no significant permanent reductions in spending or permanent increases in revenue. It accomplishes a $11.7 billion deficit reduction primarily through accounting gimmicks and fiscal flim-flammery.

Painted as a deficit reduction package, this bill violates truth in advertising. In the words of the distinguished chairman of the Budget Committee, most of the bill's savings are one-time, and most of the revenues are nonrecurring. This will not make a permanent dent in the deficit. It is the big lie. Mark Twain once said that:

> One of the most striking differences between a cat and a lie is that a cat has only nine lives.

This bill differs from other lies in one important respect in that it is a lie that has but one life. The deficit reduction measures found in this bill are one shot deals; they arrive at savings for fiscal year 1987 only and once made the Congress will never again be

able to return to the well. Mark Twain would have never tolerated such a poor choice of lies—his contempt for Congress would have only been heightened by our inability to pick a lie that could go at least one better than a cat.

Look what this bill has to offer in the way of deficit reduction. Its primary source of savings comes from the sale of Government assets like Conrail for $2.16 billion and the sale of up to 5 billion dollars' worth of loans. The loans the bill proposes to sell range from rural development and rural housing loans, to Economic Development Administration notes, college housing loans, and Export-Import Bank loans. Now, I believe a good argument can be made for the responsible and timely—I repeat, "responsible and timely"—sale of Government assets to private owners. Maybe a Government-owned Conrail is no way to run a railroad.

But these savings are one shot deals and do absolutely nothing to reduce spending or increase revenue on a permanent basis. Worse yet, the sale of Government loans may create other problems. When the Government sells a performing loan, it turns future income into ready cash, which admittedly helps us reduce the deficit for that particular year. But the Government loses the stream of dollars that the loan would have produced over a great number of years.

The prospect that the Government will be forfeiting substantial future cash flow for instant cash is very troubling to me. This is a serious issue and should be addressed before this body votes on this bill. It is comparable to a spendthrift carpenter who in the face of hard times, sells his tools instead of building more houses or cutting down on his expenses. He may stay out of the poor house for a while, but he won't be building any either.

The most disturbing thing to me about the sale of Government loans is that it may turn into a fire sale. No one knows how much these loans are worth. I am told that many of the loans are not marketable, and that other will be sold at discounted, if not subjunk, prices. Investors will be reluctant to buy loans at face value since they carry low interest rates and were issued with the Government's traditionally lenient terms. Moreover, the sales will be made without Government guarantees that the U.S. Government will step in and pay the private investor should the borrower default. Without this guarantee, the investment carries more risks, and investors will further discount the price.

I am not about to vote for this bill until I hear from the Budget Committee what they expect to get for these loans on the market. Until the Budget Committee produces fair assessments of what these loans will draw on the free market—something I am told is simply impossible to do—we cannot trust the numbers found in this bill. The amount of savings presented are surely exaggerated. They simply won't add up.

Let me stop here and ask, why are we worried about the deficit in the first place? It is my opinion that the deficit poses the greatest danger to our credit markets. Private borrowing has been crowded out of the credit market by Government borrowing, thus increasing interest rates. I will admit that selling assets produces cash which can be used to reduce the deficit. But that merely shifts the debt from the Government to a private party. In other words, someone else has to go out and borrow the money to buy the loans from the Government. So, in this respect, too, it's a wash.

If anything, the reconciliation bill will be a welfare program for investment bankers. Civil servants just don't have the experience in selling nonrecourse loans in the market and as a result will end up relying on investment bankers to handle the transaction.

On top of the loan sales, the bill contains other devices that make even more of a mockery out of the budget process. Instead of taking a knife to duplicative or nonessential programs, it proposes to save $4 billion by taking more steps to make sure more Americans pay the income taxes they are already supposed to pay, and by speeding up some excise and payroll tax collections. Improving tax compliance is a laudable goal. But is it a serious effort at deficit reduction? If we can increase tax collections by $2.355 billion simply by typing the numbers on a chart, why didn't we do this before? Why don't we double the number, type that in, and thereby free up billions more for low income housing or education?

The acceleration of tax collection is such an obvious ruse as to hardly deserve comment, except that it's being done on such a large scale. I ask my colleagues to take a look at what we're doing, and I quote: "Accelerate excise tax collections"—$319 million. "Accelerate State and local deposits"—$388 million. Together, that's more than $700 million. And in a similar ploy, the conference agreement proposes to "score the last quarter fiscal year 1986 revenue sharing payment to fiscal year 1986." So, by a stroke of the pen we have gone back into time and declared that money we are about to spend was actually spent some time ago. Frankly, I marvel at this feat, which the greatest thinkers of mankind have for centuries thought impossible.

When future historians examine how this Nation grappled with the great issues of the day, I can assure you that none of us will be compared to Lincoln or Jefferson. Houdini, maybe, or even Alice in Wonderland.

We are putting off the judgment day when Congress will be forced to make the tough decisions on spending—the day when we will have to take a long hard look at our national priorities and tell our constituents "no." Congress has opted for the easy way out. Fearful of offending powerful constituencies in an election year, we have resorted to myopic gimmicks to fudge this year's numbers at the expense of the next's. This display of political cowardice may pad our margins of victory, but will not grace the pages of our political biographies. This is not the stuff of profiles in courage. In that these are times that try men's souls and this bill is the best we can offer, we must be summer soldiers and sunshine patriots.

Mr. BYRD. Mr. President, the conference report on the reconciliation bill, which is before the body now, represents what is probably the lowest common denominator in deficit reduction this year. Having just completed fiscal year 1986—a year in which this Nation experienced the largest single deficit in its history—$230 billion—I would have hoped that the Congress could do more to reduce these dangerous budget deficits.

These seemingly uncontrollable deficits are sapping our economic vitality today and mortgaging our children's future tomorrow. Since fiscal year 1981, this administration has piled one triple digit deficit on top of another, reaching a new record nearly every year. The result is that the public debt, which was $999 billion when this administration took control of the budget, has now topped $2.1 trillion. And contained in this reconciliation bill is yet a further increase in the debt limit—to $2.3 trillion.

Faced with this mounting flood of red ink, one would think that the administration would be leading the charge for deficit reduction. Certainly its rhetoric over the past years would indicate that. Yet, despite the clear and present danger that these deficits pose to our future security, the White House has spoken loudly, but carried no stick at all. It is this lack of Presidential leadership in reducing the Federal budget deficit, among other things, that fostered the conditions in which a Gramm-Rudman proposal could take root.

The sad fact is that this administration's inability to control one of the greatest threats to the long-term economic security of this Nation will leave a mounting public debt as its fiscal legacy.

Mr. President, the conference report on the reconciliation bill will not achieve any miracles. It will not bring the deficit under control overnight. In fact, it hardly makes a dent in the problem.

The conference agreement would reduce the fiscal year 1987 deficit by some $12 billion. But by relying largely on the one-time savings resulting from the sale of Government assets, ranging from various loan portfolios to Conrail, even this deficit reduction overstates the progress it makes against the deficit.

Of course, it is important to do what can be done to reduce the deficit. So I will support this conference report. But let me be clear on what lies ahead.

The Gramm-Rudman deficit target for fiscal year 1988—the budget on which we will begin to work in a few short months—is $108 billion. Many experts believe that in the absence of further action, the deficit for that year could be upwards of $160 billion, or more. If the difficulty in achieving $12 billion in deficit reduction is any guide, the task confronting us next year—when $50 billion or more in savings may be needed—is formidable, indeed.

That task will not be made any easier if the President remains unwilling to work with the Congress to achieve a credible, effective, responsible deficit reduction package.

This problem will not go away, Mr. President. In fact, it gets worse every day. To finance the $2.1 trillion debt, this administration will incur a net interest cost of $139 billion next year. That is more than $380 million per day in finance charges.

Mr. President, this reconciliation bill may not be all that I, or others, might want. I know it is not all that the senior Senator from Florida, Mr. CHILES, would like the bill to achieve. But with mountainous deficits facing this Nation, every savings is needed. This bill is not the first step in deficit reduction and it certainly is not the last. It is yet another milemarker on the road, hopefully, to a balanced budget some day in the not too distant future.

PHYSICIAN PAYMENT REFORMS

Mr. BAUCUS. Mr. President, the budget reconciliation bill is the way that Congress makes some of its toughest choices, including difficult decisions about the way the Federal Government pays for health care.

On the whole, I believe that the conferees on the reconciliation bill have done a good job. The conference agreement is the result of the hard work by the conferees to reach reasonable compromises on the dozens of Medicare and Medicaid provisions that needed to be resolved.

Reluctantly, I have decided not to support the conference agreement, because it contains yet another increase in the Federal debt limit, added to this bill at the last minute. This is no way to bring Government spending under control. This is just a confirmation of a budget out of control.

In addition, I have serious reservations about certain provisions that I cannot support.

In particular, I am disturbed that the conference agreement places unrealistic limits on physicians who have kept their charges lower than the prevailing fees in their own area and far below comparable national average charges. These physicians, many of whom practice in rural areas, are caught in the grip of a Medicare fee freeze that has gone on for too long.

Unfortunately, I believe that the physician payment provisions will only worsen the already burdensome and needlessly confusing process that Medicare uses to pay for physician services. The additional complication included in this reconciliation bill will make it even more difficult for claims submitted by physicians and their Medicare patients to be paid on time.

I am also concerned that the physician payment provisions contained in the conference report may make it more difficult for physicians to accept assignment of claims for their elderly patients who truly cannot afford high medical costs.

This is one more example of how health policy is being driven by budget pressures. The Medicare Program cannot be immune from budget concerns, but we also must not allow the pressures of a deficit reduction bill to erode the commitments that we have made to provide America's senior citizens the quality of health care that they deserve.

I regret that the conference report does not make more progress toward a rational payment policy for physician services. Instead, there will be a continuation of the indiscriminating and patchwork payment policies of the past.

I urge the administration to move swiftly to complete its work on alternative plans for the payment of physician services so that we can restore confidence in this essential portion of the Medicare Program.

No bill is perfect. And the reconciliation bill is no exception.

I know that this is not the last time that Congress will consider the issue of physician payment reform. But, I hope that next time it will be possible to find solutions that lead to a more rational and fair way to pay for physician services.

RURAL HEALTH CARE

Mr. BAUCUS. Mr. President, all too often rural America is forgotten when decisions are made on national health care programs. Even worse, the way that we pay for health care tends to take on a distinct urban bias.

That's why earlier this year Senator GRASSLEY and I introduced S. 2410, the Rural Health Care Improvement Act.

It just seems that, too often, the special health care concerns of rural communities get lost in the large numbers of national decisions.

Just take a look at the figures: Medicare pays over $40 billion each year for hospital care, of which only about 5 percent goes to small rural hospitals.

Small rural hospitals account for only a tiny fraction of Medicare's costs. But from the perspective of a small rural hospital, Medicare is the largest source of its revenues.

So, changes in Medicare payments can be life and death issues for rural hospitals.

According to the American Hospital Association, about 70 percent of the hospitals that closed last year had fewer than 100 beds. Many more are operating on the edge of solvency or are operating in the red.

We have asked these hospitals to tighten their belts, and they have tightened their belts. They have reduced their staffs, eliminated wasteful costs and deferred discretionary expenses.

But once you get down to bare bones, there is no where else to cut.

Well, for once, there is some good news for rural health care.

The good news comes from a very unlikely source: the budget reconciliation bill, our annual effort to lower the deficit by cutting Federal programs and raising revenues.

As a conferee on this year's budget reconciliation bill, I have been working hard to make sure that rural health concerns were put at the top of the conference agenda.

It was a long, difficult conference for those of us who have been negotiating the Senate's provisions in the budget reconciliation bill. At times, agreement seemed almost impossible to achieve.

But I am proud that every single provision in the Senate reconciliation bill to improve rural health care bill is now part of the final conference agreement and will soon be presented to the President for signature.

Some of these provisions came from my bill, S. 2410. Others were sponsored by other members of the Finance Committee including Senator DOLE, Senator BENTSEN, and Senator DURENBERGER.

But none of these provisions could have been accomplished without the strong support of the Senate conferees for all of the rural health improvement package.

These rural provisions will help to preserve quality health care in rural communities. They are no guarantee that rural hospitals will not fail. There are no such guarantees to give.

But we have increased the margin of financial safety for the hospitals that serve rural Americans. More importantly, the unique concerns of rural communities have moved out from the fringes of health care issues and into

the center of the debate around the bargaining table.

We have made an important statement that the health care needs of 60 million people who live in rural communities can no longer be ignored.

Let me briefly describe the rural provisions contained in the conference agreement of the reconciliation bill.

First, we agreed to exempt sole community hospitals from any reductions in Medicare payments for their capital costs.

Sole community hospitals will continue to be paid 100 percent of Medicare's share for their costs related to land, buildings, and medical technology. These costs are often 10 percent or more of a hospital's total expenses. Continuing to pay Medicare's full share for these costs will help to ensure that sole community hospitals do not have to cut patient services to pay for their fixed expenses.

Second, small rural hospitals will be allowed to continue to receive biweekly payments from Medicare to protect them from sudden disruptions in cashflow.

Regular cash-flow is a particular concern for small rural hospitals because they are more vulnerable to delays in Medicare payments. Maintaining biweekly payments will protect these small rural hospitals from unexpected drops in revenues that cannot be made up from other sources.

Third, the bill directs the Secretary of Health and Human Services to recalculate hospital payments to both urban and rural hospitals.

Starting October 1, 1987, standard Medicare hospital payments will be recalculated based on a method that increases payments to hospitals serving a larger percentage of elderly patients. Since rural hospitals tend to serve higher than average percentages of Medicare patients than urban hospitals, the recalculation is expected to increase rural payments by about 3 to 4 percent. In terms of total dollars, rural hospitals will receive about $150 to $200 million more in payments from Medicare as a result of this change.

Fourth, the bill will change the way that rural hospitals are assessed to cover the costs of unusually high cost cases.

Currently, estimated Medicare DRG payments to hospitals are reduced by 5 percent at the front end to create a pool of funds available to hospitals that treat extremely high cost cases, known as outlier cases. However, since outlier payments to rural hospitals have averaged about 3 percent, rural hospitals have had to pay more than their fair share to the outlier pool.

The reconciliation bill corrects this problem by establishing separate outlier pools for rural and urban hospitals. Rural hospital contributions to the pool will be lowered to about 3 percent of their estimated Medicare payments and future assessments will be no more than the amount Medicare pays to rural hospitals for outlier costs.

Fifth, the bill allows rural referral hospitals to retain their status for 3 more years. Rural referral hospitals are large rural hospitals that provide comprehensive health services to an entire region. Because these hospitals have higher costs related to serving more complex cases, Medicare pays a higher amount for services provided by rural referral hospitals.

Finally, the bill extends the authority of the Secretary of Health and Human Services to make appropriate adjustments in Medicare's payments to sole community hospitals that experience sharp drops in their occupancy.

I believe that the reconciliation bill will send a positive message to rural communities. It says that Congress wants to make sure the Federal Health Policy is fair. And it says that fairness is just as important for a 50-bed hospital in Lewistown, MT, as it is for the 500-bed hospital in Los Angeles, CA.

More importantly, it says that Congress wants to make sure that rural citizens will have access to quality health care.

Are the provisions in the reconciliation bill the complete answer for the problems of rural health care? Of course not. But it was Plato who said, "A good start is half the job." And, we have made a good start.

Mr. President, the budget reconciliation bill is the way Congress makes some of its toughest decisions. It involves dozens of complex—and oftern controversial—choices. But all of those choices do not have to be negative.

I am pleased that the conferees of the reconciliation bill made the right decision to begin to restore more fairness in the way that the Federal Government pays for health care.

I wish that I could have supported the entire conference report without reservation. It includes the results of much honest, hard work and many solid accomplishments.

Reluctantly, I concluded that I could not support the final conference report primarily because of a last minute, major increase in the Federal debt limit. I object to such an enormous expansion of the Government's authority to borrow more and spend more on the very same bill that is supposed to bring Federal spending under control.

Mr. MOYNIHAN. Mr. President, I rise to discuss the conference report on H.R. 5300, the Omnibus Budget Reconciliation Act of 1986.

MIDICARE AND MEDICAID

I was appointed a conferee from the Finance Committee for purposes of considering Medicare and Medicaid issues. And I must say, I believe these issues were resolved in ways that maintain health care for the elderly and poor in the face of ever-present budgetary pressures.

For example, while limiting payments for capital-related costs for inpatient hospital services, the conference report also stresses a congressional commitment to continue cost-based reimbursement of financial obligations incurred, or enforceable agreements entered into, by hospitals. Such a commitment is very important to regions of the country—such as New York—where, old obsolete facilities are clearly inadequate in serving the health care needs of these patients.

During the seventies approximately $25 billion was spent on hospital construction in the United States. Estimates of hospital industry capital requirements for the eighties generally exceed $100 billion for repairs, replacement, or expansion for facilities and services. These projections suggest that capital acquisition stands as one of the most critical issues facing the hospital industry today.

I also note that the continuation of the Periodic Interim Payment [PIP] Program for hospitals serving a disproportionate share of low-income Medicare and Medicaid patients is most helpful. PIP permits hospitals that meet certain Medicare requirements to receive biweekly payments based on estimated annual costs instead of individual bills. These payments are reconciled periodically during the year with actual billing data. This method of reimbursing hospitals is very important to public and urban hospitals that serve a large number of low-income Medicare and Medicaid patients—so-called disproportionate share hospitals. PIP guarantees a certain level of cash flow for these institutions. According to the president of the Greater New York Hospital Association in New York City, without a consistent and stable cash flow many of these hospital would find it impossible to meet their financial obligations to suppliers and staff.

The reconciliation bill also provides for the inclusion of Puerto Rico into the prospective payment system [PPS] for hospitals. This legislation is a result of a report required by the Finance Committee in the Social Security Amendments Act of 1983. That report was finally signed by Secretary Bowen this summer with recommendations as to how Puerto Rico would enter the PPS.

The provision in this bill requires the Secretary to include Puerto Rico in the PPS. The rates would be established at 75 percent Puerto Rico specific standardized rate and 25 percent national standardized rate. There would be a rural/urban distinction for Puerto Rico. The national portion of the standardized rate would be based on urban and rural national standard-

ized rates. An adjustment would be made to reflect costs associated with indirect teaching costs. Disproportionate share adjustment would be applied to eligible hospitals in Puerto Rico. Outliers—payments for expensive cases—would be extended to Puerto Rico on the same basis as for the rest of PPS. The sole-community-hospital provision would not apply to Puerto Rico, and all Puerto Rican hospitals would be brought into the PPS on October 1, 1987.

Mr. President, although several improvements were made in the Medicaid Program, two provisions require special note.

First, coverage for AIDS victims under the Medicaid Home Health Care Program will provide additional services desperately needed by those persons suffering from this disease. Federal Medicaid matching funds will now be used for home, or community-based services for Medicaid-eligible individuals with AIDS or AIDS-related conditions. In a June 1986 Public Health Service report it was recommended that home and community services be made available to AIDS victims. The report clearly stated that by making such services available, the average cost per patient could be reduced from $140,000 per case—for inpatient care—to $46,000—for home-health care.

Second, on the issue of Medicaid payments for the health care of illegal aliens, I had introduced S. 2644, a bill requiring the Federal Government to pay 100 percent of Medicaid costs for illegal aliens. It is altogether unfair that local and State governments should have to assume a large share of the cost of dealing with illegal aliens, whose presence is a manifest evidence of a failure by the Federal Government to enforce its laws. Were the Immigration and Naturalization Service able to police our borders and regulate their movement, as they are required to do under law; if the Federal Government did what it says it must do, there would be no illegal aliens, or if there were, there would be an insignificant number. Clearly stated, since the Federal Government is responsible for the presence of illegal aliens, it ought to be responsible for their medical care. This reconciliation bill, at a minimum, recognizes the importance of providing emergency services and emergency care for pregnant women in active labor.

AFDC-UP

Mr. President, I was also a Finance Committee conferee for two other provisions—AFDC-UP and a provision regarding disinvestment of the Social Security trust funds. Unfortunately, I cannot report that these issues were resolved at all to my satisfaction. In fact, I am extremely troubled and dissatisfied by what was agreed to.

It turned out that one of the primary issues in disagreement between the Senate and House versions of reconciliation was the House provision that would have mandated an extension of the Aid to Families with Dependent Children-Unemployed Parent [AFDC-UP] Program to those 24 States that do not now participate in that program. The Senate had no such provision and some Senate conferees insisted that they would not accept one. Indeed, only a few hours ago, I had some doubts about our ability to find common ground on this bill. The rift between the Senate conferees and the conferees from the other body seemed insurmountable.

I must note, Mr. President, that I find the Senate position very vexing. I have long been a proponent of the AFDC-UP Program. Simply put, poor children, whether they live with one or both parents, ought to receive help. We are not entertaining thoughts of luxurious benefits. We are speaking of the most basic sort of provision. Minimal assistance, in fact, for children.

Along with 25 other States, my own State of New York provides aid to two-parent families with dependent children when the family is poor and the primary earner is unemployed. The 26 States now participating in the Two-Parent Program contain approximately 71 percent of the Nation's total AFDC caseload. During the seventy's, the AFDC-UP Program served, on average, 120,000 families per month. In this decade, the number of AFDC-UP families has risen sharply, from 209,000 families per month, on average, in fiscal year 1981, to a high 288,000 families per month in fiscal year 1984. In 1985, this monthly average is estimated to have dropped to 273,000 families.

Yet, Mr. President, compare the average monthly AFDC-UP caseload with that of the Single-Parent Program—the AFDC Program that serves dependent children who have been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent. In 1985, the average monthly number of AFDC families served is estimated to be nearly 3.7 million; the AFDC-UP caseload just over a quarter of a million.

There are still hundreds of thousands of two-parent families who are poor and in need of economic assistance. However, under current law and regulations, unemployment for purposes of the AFDC-UP Program is defined very narrowly. The primary earner must work fewer than 100 hours per month. Should the head of household work 100 hours or more per month, even if his earnings come to less than the State's standard of need, the household is automatically disqualified from receiving assistance. That, Mr. President, is a significant disincentive to work.

Additionally, to qualify for AFDC-UP assistance, the primary earner must have worked 6 or more quarters in any 13-calendar-quarter period ending within 1 year of the date of application. This so-called workforce-connection requirement further limits eligibility to only those households in which the primary earner has strong ties to the labor force.

The Congressional Budget Office estimated that another 550,000 poor two-parent families would become eligible for AFDC-UP if the workforce-connection and 100-hour rules were eliminated and all States required to operate the program.

That is why, Mr. President, I have labored for many years to extend assistance to working-poor families with dependent children. In 1985, I introduced the Family Economic Security Act. Among other things, that bill would have extended the AFDC-UP Program to all States, basing eligibility on the economic need of recipients, rather than on arbitrary limits on the number of hours worked or previous ties to the labor force. In other words, my bill would have brought eligibility for AFDC-UP into conformity with eligibility requirements in the Single-Parent Program.

In order to alleviate State anxieties concerning the new costs of this program, my legislation would have increased the Federal matching rate for AFDC-UP benefits to equal the higher of 75 percent or the current law matching rate in the Single-Parent Program.

Finally, Mr. President, my initiative would have conditioned AFDC-UP eligibility on the active participation of one parent in: first, job search activities and second, training or a State work program of the State's design.

In short, Mr. President, I proposed a mandated extension of the AFDC-UP Prorgram to all States that would have: Recognized the economic needs of poor children in two-parent families; eliminated capricious limits on eligibility—the workforce connection requirement—and work disincentives—the 100 hour rule; required work or training as a condition of eligibility; and shifted much of the funding burden from States to the Federal Government. In my mind, Mr. President, my legislation was an eminently sensible response to a tragic problem.

And yet, there is enormous resistance among some of my colleagues to accepting a provision that would extend the AFDC-UP Program to the 24 States not now operating it. I am baffled by this response. Here is a program that assists the very sort of family we purport to endorse: The two-parent variety. I have said before and I will say again, now, Mr. President, that the two-parent family is becoming an endangered species.

The statistics are alarming: Recent testimony before the Senate Rules Committee on Senate Resolution 330, my initiative to create a Special Committee on Families, Youth, and Children, revealed that fully 60 percent of the children born in 1985 can expect to live in a one-parent family before reaching their 18th birthdays. Ninety percent of these children will be living in female-headed households and roughly one-third will be living in households receiving AFDC payments.

So there we have it, Mr. President. We speak eloquently of strengthening the family and of putting able-bodied adults to work, but in fact, we withhold assistance from poor children in 24 States because they have the misfortune of having two parents to look after them. Worse, we withhold assistance from poor children whose fathers commit the sin of working 100 hours or more per month. It saddens me, Mr. President, but I am forced to conclude that opponents of the AFDC-UP Program neither wish to strengthen intact families nor encourage work.

And then, in the final hours of the 99th session of Congress, there appeared to be a last glimmer of hope. The other body seemed determined to insist on its provision to mandate the AFDC-UP Program in all States.

The House provision was hardly a radical proposal. Indeed, it was more modest in scope than my own 1985 initiative. Where my bill would have extended AFDC-UP to an additional 550,000 families, the House provision would, according to the CBO, add only about 75,000 two-parent families to the rolls.

The House proposed to retain the 100-hour rule, but would have slightly modified the workforce-connection requirement. States also would have been permitted the option of substituting participation in school or training for quarters of work. The Congressional Budget Office estimated that the House extension of the AFDC-UP Program would have cost the Federal Government $115 millin in fiscal year 1988 and $255 million in 1989. As sensitive as we all are to new spending in this era of Gramm-Rudman-Hollings, dare I say, Mr. President, that those proposed new outlays are a small price to pay for providing minimal assistance to poor children.

Unfortunately, Mr. President, even this modest House proposal is not to be. Unyielding opposition on the part of some Seante conferees has once again doomed the AFDC-UP extension.

I am, in a word, disappointed. But I do not despair. When the 100th Congress convenes, in 1987, I shall again offer legislation to extend assistance to poor two-parent families with children. I shall again do my best to persuade my colleagues in the Senate that there is nothing to be gained by punishing low-income families with both parents in the home. Neither are real savings achieved by discouraging poor fathers from working. Next year, Mr. President, I fervently hope that reason will prevail.

SOCIAL SECURITY DISINVESTMENT

I would also like to comment briefly on an important Social Security provision which had been included in the Senate-passed version of budget reconciliation—but not in the House version. That provision, based on the Social Security Trust Funds Management Act which I had offered with a dozen cosponsors earlier this year, would have placed restrictions on future disinvestment of the old-age, survivors, and disability insurance [OASDI] trust funds by the Department of the Treasury during debt limit crises.

As most of my colleagues will well recall, during the autumn of 1984, and again in 1985, the Secretary of the U.S. Treasury agreed to disinvest—in short, redeem—interest-bearing assets held in the Social Security trust funds. When Congress cannot agree to raise the debt limit, the Federal Government's authority to borrow funds expires. During such borrowing crises, Federal obligations may go unmet. Hence the need for disinvestment of the OASDI trust funds. Disinvestment of these assets provides cash to the Federal Government, keeping it solvent during the hiatus in its borrowing authority.

The Secretary, as managing trustee of the Social Security trust funds, prematurely redeemed more than $25 billion in long-term bonds between September and November 1985. Moreover, some $6 billion in OASDI bonds were prematurely cashed in between September and October 1984. The Social Security actuary estimates that $382 million in interest would have been lost as a result of the premature disinvestment in 1984. And the 1985 disinvestment would have lost another $875 million.

Legislation has since been enacted to restore all lost interest to the trust funds as a result of the 1984 and 1985 actions. Nonetheless, Mr. President, Congress has not yet passed legislation to regulate future disinvestments or to ensure the immediate restoration of any interest lost if such actions must again be taken.

It isn't that we haven't tried to resolve this problem. My colleagues in the Senate have adopted this legislation twice in the past few months. And the issue, we thought, was resolved. In July, the Finance Committee offered the provisions of the Social Security Trust Funds Management Act as a committee amendment to the debt limit resolution, House Joint Resolution 668. This amendment was modified, with technical improvements, a number of times during the consideration of the debt limit bill.

However, after Senate passage of the debt limit bill, the measure never reached conference. And when we took up and passed a short-term debt limit extension, the disinvestment language was not included.

Later in September, during floor consideration of this omnibus budget reconciliation measure, Senator GORTON and a number of our colleagues offered an amendment providing protections under the Gramm-Rudman law for certain retirement benefits. In addition, the Senate accepted my disinvestment language, in its entirety, as a modification of the Gorton measure. This, the reconciliation bill, as passed by the Senate in the early hours of September 20, included the language restricting future disinvestment practices.

More precisely, our language would have restricted future disinvestment of the OASDI trust funds—when the debt ceiling is reached—for the exclusive purpose of paying Social Security benefits and administrative expenses. Additionally, it would have required that any interest lost as a result of premature disinvestment be automatically restored to the trust funds, as soon as the debt ceiling is raised. Finally, the Social Security trust funds management language would have made other technical revisions and improvements in current trust funds investment practices.

I say "would have," Mr. President, with deep regret. For as you know, the disinvestment language described above was not included in the final conference report on the reconciliation bill. In spite of unanimous support for our language by Senate conferees, Members of the House disagreed, and thus, an opportunity to provide greater certainty and to quiet fears has been lost.

I am convinced that disinvestment is a problem which, absent correction, will threaten public confidence in the solvency of the Social Security trust funds. Indeed, I'm afraid it has already done so. We can ill afford to lose the trust of the millions of Social Security beneficiaries in this Nation who depend on the Social Security System.

While I am disappointed that the reconciliation conferees did not reach agreement on this important and needed disinvestment language, I am determined to see Congress pass such legislation in the next session. I urge my colleagues to join me in pursuit of that end.

DEFICIT REDUCTION

The purpose of the reconciliation bill is, of course, to create a package of revenue increases and spending reductions to reduce the deficit. This year, for the first time, we are attempting to

use the reconcilation process to reach a specific deficit target: $144 billion.

The bill proposes to save $11.7 billion in outlays, although some of the savings result from budget gimickry.

The bill claims to reduce the fiscal year 1987 deficit by $680 million by advancing the final general revenue-sharing payment from fiscal year 1987 to fiscal year 1986—something the Treasury Department did on its own on September 30. A not so sleight of hand.

The bill also claims to reduce the deficit some $3.4 billion through increased compliance with the Tax Code, and increased IRS penalties. On its face, this seems somewhat unrealistic. To increase revenues from compliance in this fiscal year, new auditors will have to be hired and trained. It takes several months to train auditors under the best of circumstances. We are already 16 days into the fiscal year. We will have a new Tax Code next calendar year. New auditors will have to be trained in both the new and the old Tax Code if they are to increase collections in this fiscal year for the simple reason that most of the audits this fiscal year will be performed on tax payments made under the old law.

Finally, $7.8 billion in savings is derived from loan asset sales—a notion I first proposed in the spring of 1985. This approach could work well and would not even require the Government to sell the loans below their face value if it minimized the danger to potential buyers which could result from a default on repayment of these loans. Last year, I suggested such an approach: The overcollateralized sale of loans.

Simply put, we ought to set aside a pool of loans from the Government's $257 billion portfolio. If any loans which are sold should default, the Government would take back the defaulted loan from the buyer and replace that loan with another performing loan. If potential buyers knew that any loan they buy which defaults would be replaced with a performing loan, they would require little, if any discount, in the sale price of the loan.

Despite the reservations and disappointment which I have outlined, I will vote for this bill. Although we may not achieve all the deficit reduction necessary to reach the Gramm-Rudman-Hollings deficit target, we ought to approve that on which the House, the Senate, and the administration could agree.

FARM CREDIT

Mr. DOLE. Mr. President, earlier this session, Senator COCHRAN introduced S. 2770, the Farm Credit System Borrower Interest Rate Relief Act of 1986. A modified version of that language has been incorporated into the House and Senate agriculture reconciliation conference's report provisions.

The Senator from Kansas is not an advocate of using the reconciliation process to accomplish nonbudgetary legislative objectives. However, this may be one of the few times that such procedure is necessary.

1985 LEGISLATION

Mr. President, last December, Congress enacted legislation aimed at providing tighter regulation of the Farm Credit System [FCS] to protect the System's investors, and help farmers by enabling the System to provide steady, reasonably priced credit.

The legislation provided: First, more enforcement authorities for the Farm Credit Administration [FCA] to help maintain sound institutions; second, better mechanisms for the Farm Credit System [FCS] to use its own capital in dealing with financial stress; third, a means of Federal assistance through the Secretary of the Treasury, subject to a specific appropriation of funds by Congress; and fourth, a legal basis for the rights of borrowers and stockholders.

It was recognized then that Congress might later be called upon for an infusion of Federal funds to ensure the soundness of the System. By addressing this legislation today, we are attempting to provide the System more flexibility in setting interest rates and reducing the costs of its borrowings and loan losses. We are attempting to delay, or perhaps avoid altogether, the need to invest taxpayers' money into the system, while at the same time preserve the intent and direction of the legislation passed last December.

A TIME OF TRANSITION

Although the difficult process of restructuring and reform has begun to take place within the System, the System continues to struggle with serious problems. As farm real estate values have declined dramatically in recent years, the System finds itself carrying a large volume of nonaccrual and high-risk loans.

The system is also locked into over $30 billion of relatively long maturity obligations with an average cost of funds at approximately 10.6 percent—much higher than other commercial lenders. With these high costs restricting its institutions, the System has experienced a steady erosion of quality borrowers to competing lenders.

RECENT DEVELOPMENTS

The Capital Corporation established in the 1985 legislation has recently encountered lawsuits by several System institutions challenging the constitutionality and regulations by which the Capital Corporation can assess stronger FCS institutions to assist other System banks. I have been advised that three court decisions have rejected those lawsuits in preliminary decisions, while two other court decisions have resulted in preliminary injunctions against the Capital Corporation's assessments.

Adverse rulings in such cases could threaten the System's financial condition and impair borrower stock. This legislation is designed to enable the System and its regulator to effectively address such financial difficulties while at the same time continuing the function and authorities of the Capital Corporation. It is intended to require FCS to provide full and accurate disclosure of its financial condition to ensure that the system will continue to meet its self-help responsibilities as set forth in the 1985 legislation.

PROVISIONS

Mr. President, the legislation deletes requirements for prior approval by the FCA in setting interest rates so that boards of directors of System institutions can set rates in a timely, yet responsible and businesslike manner. The FCA will continue to monitor interest rates and loan terms to ensure that System banks are following appropriate management practices, but will not be involved in the day-to-day judgments of System boards in fixing rates.

The System, subject to prior approval and conditions set by the FCA, for the period July 1, 1986, through December 31, 1988, would be able to capitalize the excess portion of its costs of borrowing and its loan losses, and amortize these amounts over a period of up to 20 years. The excess costs of the System's high-interest-bearing securities, in conjunction with the System's loan losses, pose a very serious financial dilemma for System institutions and borrower members.

While the legislation allows the System to operate without the constraints of generally accepted accounting principles [GAAP] with respect to the extended amortization periods, it is expected the System will make every effort to fully disclose its financial condition. It is intended that the FCA will strictly regulate the fiscal practices of the FCS through its prior-approval authorities and such terms and conditions as established by the FCA.

CONCLUSION

Mr. President, the legislation will not cure the system's fundamental problems. However, it does present a reasonable response to some of the immediate problems faced by the system and its borrowers.

The plan proposed could allow the Farm Credit System to delay indefinitely any anticipated request for Federal financial assistance, and, although not specifically mandated in the legislation, would hopefully allow the FCS latitude in lowering interest rates to its farmer borrowers.

Mr. President, these provisions in the reconciliation bill are timely, practical, and workable. This approach

does not require Federal funding and gives the system additional tools to manage its high funding costs and loan losses responsibly over time, while providing full and frank disclosure.

Mr. President, I ask unanimous consent that an article from the Washington Post be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

FARM CREDIT SYSTEM READY TO PAPER

(By John M. Berry)

With the quiet acquiescence of the Reagan administration, Congress is on the verge of authorizing the Farm Credit System to pretend that it is making money instead of chalking up the largest losses of any financial institution in history.

The Farm Credit System, or FCS, comprises 37 banks and hundreds of local "associations." Last year the system lost a staggering $2.7 billion, and there was another $1 billion loss in the first half of this year.

Many farmers continue to be unable to make payments on the $65 billion worth of loans the system has outstanding and losses are still mounting. In a gamble to hold onto more creditworthy borrowers who could get loans elswhere, FCS last summer began cutting the variable interest rates it charges to more competitive levels, and in the process added roughly $200 million to this year's losses, which FCS officials expect to hit at least $1.7 billion. The General Accounting Office has warned that the system is in such bad shape that the final 1986 figure could be as much as $2.9 billion.

In a two-year period this borrower-owned cooperative system will have lost, by these estimates, upward of $4.4 billion, with more to come. Remarkably, the system in previous years had accumulated a large enough surplus to cover these losses without dipping into its basic capital, virtually all of which has been provided by borrowers, who are required to buy stock in the system when they get a loan.

To protect the farmers and other rural residents who own that stock, Congress last year gave the system authority to borrow money directly from the U.S. Treasury if needed.

In return for honoring what had long been regarded as an implicit federal guarantee of FCS liabilities, Congress directed the system to clean up its lax management and accounting practices and to submit to serious, arms-length regulation by a revamped Farm Credit Administration. In prior years, the FCA had operated more like a part of the system than a regulator of it, critics said last year.

Congress' concern is more for the borrowers, mostly farmers, than for the Farm Credit System itself.

Thus, last year's legislation protected the value of the cooperative banks' stock owned by the borrowers. And this election year, as the losses mounted and it seemed that FCS would soon be knocking on the Treasury's door, the legislators are again moving swiftly to aid the borrowers.

With federal budget deficits so high and the Gramm-Rudman-Hollings deficit reduction law setting ever smaller targets for federal red ink, representatives of FCS proposed some creative accounting changes to postpone the day of reckoning for the system. Reversing some strict provisions of last year's law, including one that FCS must use generally accepted accounting practices, the House last week approved the changes.

The Senate is expected to attach them as an amendment to a pending budget reconciliation bill that likely will pass this week.

Without spending a dime that will show up in the budget, FCS losses likely will be turned into reported profits.

Meanwhile, Congress has made it clear that to the maximum extent possible, the resulting savings are supposed to be passed on to FCS borrowers through lower interest rates.

The theory behind it all is one of postponing recognition of actual losses until American agriculture and the Farm Credit System are in better shape to bear them.

The accounting changes will allow FCS to show much lower current-year costs and thus charge their borrowers lower interest rates.

The system is losing money for several reasons, including:

Depressed commodity prices and plunging farmland values which have left many borrowers without either the current income out of which to make loan payments or valuable assets that can be sold to reduce or pay off the loans.

A very high cost of acquiring funds to relend to borrowers, a cost that is much higher for FCS than its competitors, including commercial banks and some insurance companies.

Unusually high overhead that, according to Frank Naylor, head of the Farm Credit Administration, is partly the result of the system's traditionally decentralized operations through many small local offices.

After a $762 million second-quarter loss, FCS had a little more than $2 billion left in the surplus account built up from prior profits, but the surplus is expected to dwindle fast.

Losses are likely to continue since FCS at mid-year still had $7.6 billion worth of so-called nonaccrual loans—loans on which payments were not being made and on which the value of the land or other collateral was so doubtful that the system was no longer bothering to add overdue interest to the amount that was due. In addition, FCS labeled another $4.7 billion worth of loans "high risk."

At the same time, the system's current cost of funds—about 10.6 percent—is so high, Naylor says, that FCS has a negative interest rate spread. That is, the system is paying more to borrow money than it is receiving on its loans. That means FCS has no cushion at all out of which to absorb provision for loan losses, which are normally treated as a current cost, or even to cover normal operating overhead.

The system's current cost of funds is so high because it has outstanding more than $38 billion worth of securities on which it is paying interest rates in excess of 9 percent. These securities were issued several years ago when interest rates were generally much higher than they are today, and they do not have any provision under which they can be retired early. Another roughly $25 billion worth of FCS securities carry lower interest rates.

At the time the high-yielding bonds were issued, the Farm Credit System set rates on its loan according to its average cost of funds, which in those days was still being held down by a preponderance of older, lower-yielding securities. Now many of those older bonds have matured but they have not been replaced with a new set of lower-yielding bonds of the same magnitude. The reason is that the size of FCS, and therefore its need for new money, has been shrinking rapidly.

Total outstanding loans, for instance, have dropped by nearly $15 billion in the past year and a half. And because of greatly increased provisions for loan losses, the net amount of loans outstanding has dropped by an even larger $17 billion.

One major feature of the proposed creative accounting that the new legislation would allow is, in effect, pretending that the FCS's $38 billion worth of high-yielding securities are paid off by issuing new bonds. The system would have to incur a one-time loss estimated by system officials at $2.8 billion to buy and retire the high-yielding bonds, if it were possible to do so. Naylor believes the actual market premium would be much higher. But instead of recording that loss all at once, the system would be allowed to write it off over a 20-year period—that is, at the rate of $140 million a year. The difference to the system's income statement would be much greater, however. According to Naylor, the maneuver would reduce the FCS cost of funds by enough to allow it to reduce the interest rates its borrowers are paying by between 1½ and 2 percentage points.

A 2 percentage point reduction in rates on the roughly $50 billion worth of FCS loans that are still in the "performing" category would reduce actual system income by $1 billion a year. But the new accounting procedure would reduce the system's reported interest expense by even more, only the latter reduction is only on paper.

The accounting gimmickry does not stop there, however. The legislation also would allow the system a similar 20-year writeoff period for any loan losses incurred between last June 30 and the end of next year in excess of one-half of 1 percent of total outstanding loans.

Here is how that would work. System officials currently estimate that FCS will lose an additional $1.8 billion over that 18-month period, with much of it due to provisions for loan losses.

Suppose outstanding FCS loans remained at $65 billion. Half of 1 percent of that figure would be $325 million.

If loan losses were, say, $1.325 billion over the period, then the system would report loan losses during the six quarters of only $325 million. The remaining $1 billion would be written off at the rate of $50 million a year.

In this example, this accounting device would reduce reported FCS losses by nearly $700 million in 1987. The losses would still be there, of course.

The resulting better-looking balance sheets for the banks in the 12 FCS regions around the country would also temporarily relieve another major source of strain within the system. The healthier regions, such as those served by the Farm Credit Banks in Maryland, Massachusetts and Texas, would no longer be sending cash to Omaha, Wichita, Kan., and Spokane, Wash., among others, to keep them afloat.

A number of suits have been filed challenging the 1985 law, which required the sysem to transfer resources from healthy banks to those in deep trouble before seeking Treasury assistance. While the law itself and various regulations issued by the Farm Credit Administration to implement it generally have been upheld by the courts, the whole idea of transfers remains under fire.

The legislation would bar the FCA from requiring that FCS banks get its permission before lowering interest rates, as is now the case.

The legislation, if it becomes law, won't solve the Farm Credit System's fundamental problems, which are rooted in its past mismanagement and the current depression on America's farms.

As one member put it on the floor of the House, the legislation is intended to place FCS on "more or less of a holding pattern until we can confront this issue head-on next year. . . ."

The administration, no more anxious than anyone else to add cash to FCS right now, passed the word that it has no objection to the new legislation.

Reagan officials want nothing to increase the already huge budget deficit, and as one noted last week, "It was hard to say no when we have already let the savings and loans do it."

THE DETERIORATING FINANCE OF THE FARM CREDIT SYSTEM

[In billions of dollars]

Operations	1984	1985	1986 [1]
Interest income	$9.9	$9.0	$3.8
Interest expense	8.4	7.7	3.4
Net interest income	1.5	1.3	.5
Provision for loan losses	.3	3.0	1.0
Other expenses	.7	1.0	.4
Net income (loss)	.4	(2.7)	(1.0)
Condition	Dec. 31, 1984	Dec. 31, 1985	Dec. 31, 1986
Loans	$79.8	$69.8	$65.0
Allowance for loan losses	1.3	3.2	3.5
Net loans	78.5	66.6	61.5
Investments and other assets	8.5	13.2	11.2
Total assets	87.0	79.8	72.7
Total liabilities	75.2	71.5	65.7
Total capital	11.8	8.4	7.0
Capital stock and participation certificates	5.6	5.0	4.6
Surplus and other	6.2	3.4	2.4

[1] First half figures only.

Note. Totals may not add due to rouding.
Source of data. Farm Credit Corp. of America.

Mr. BENTSEN. Mr. President, the reconciliation bill now before the Senate is a good-faith effort to address the Federal deficit. If Congressional Budget Office estimates are correct, enactment of this measure will bring us $11 billion closer to balancing the budget in fiscal year 1987 and generate $17 billion in new savings over the next 3 years.

Moreover, H.R. 5300 contains a number of significant policy changes that will have a profound impact on access to health services. Some of the changes are very good. For example, we have made major progress in our efforts to narrow the gap between rural and urban hospital payment rates. We have recognized the growing importance of ambulatory surgery by approving Medicare support of residency training in outpatient settings. And we have made a permanent correction in the index used to calculate the hospital deductible, thereby assuring the elderly and disabled who require hospitalization that they will be protected from unwarranted cost increases in future years.

As principal architect of the child health initiatives, I am especially pleased that the conference agreement includes several Medicaid provisions relating to greater flexibility in coverage for pregnant women, infants, and young children. States will now have the authority to target cost-effective health services to some of our most vulnerable citizens. In addition, the conference agreement authorizes an increase of $75 million in maternal and child health block grant programs. Since 1935 MCH has been an important tool in the national effort to reduce infant mortality rates and to promote comprehensive community based care for children with special health care needs.

I am deeply disappointed, however, with the conference agreement on provisions pertaining to Medicare reimbursement of physician services. A brief review of the historical records on this issue may be useful.

At the President's request, a freeze on physician fees has been in effect for 2½ years. The freeze has affected all physicians—those who, out of sensitivity to their patients' economic circumstances, had kept their fees as low as possible, and others who, for similar procedures, had charged excessive rates compared to their colleagues. Currently, I am advised that the prevailing rate for a cataract procedure in the District of Columbia is $2,400, while the prevailing rate for the same procedure in the adjacent State of Maryland is $1,678. In Texas, the prevailing rate for cataract surgery is $1,839—or nearly $300 less than the amount charged by California ophthalmologists. The freeze expires on December 31, 1986, which has prompted the development of various proposals to reform the Medicare physician payment system.

As our colleagues may recall, the Senate reconciliation measure included the text of the Medicare Physician Payment Reform Act of 1986, (S. 2368) a bill which I introduced with Senators DOLE and DURENBERGER in March of this year. S. 2368 permits reduction of reimbursement rates when advances in the field of medicine—such as technological innovations—alter the cost of providing a service. However, the bill also requires the Secretary of Health and Human Services to consult with health care experts when recalculating reimbursement rates. This statutory language was included in our bill out of concern that, in its zeal to obtain budget savings, the Office of Management and Budget would direct the Health Care Financing Administration to cut payment rates so deeply that physicians would be reluctant to accept Medicare patients.

I had been hopeful that when Senate and House Members met to resolve the differences between the two reconciliation bills, a compromise could be struck so that any necessary budget cuts in physician payments would be targeted at the higher charging doctors. Regrettably, the House-approved measure, which formed the basis of the final conference agreement, makes no distinction between charge differences such as the ones described earlier.

Specifically, 1987 fee screen adjustments for all physicians will be held to 3.2 percent. This increase is nearly 4 percentage points below the Medical Economic Index, which is the indicator used to set medical fees. A 1-percent limit on fee increases will be applied to those doctors whose charges have been exceeding 115 percent of the local prevailing rate.

With respect to physician reimbursement for cataract surgery, a cut of 10 percent will go into effect immediately, and a 2-percent cut will be applied in 1988. If an ophthalmologist's charges exceed 125 percent of the local prevailing rate his or her actual charge level will be adjusted downward to the 125 percent mark. Cuts in physician fees cannot be offset by increasing costs to the patient.

Fortunately, during conference deliberations, we were able to obtain some modification of the original House-approved provisions. For example, the conference agreement permits doctors whose fees are below 115 percent of the prevailing charge to close that gap at an accelerated rate. In the case of cataract surgery, reimbursement will not be reduced below 75 percent of the national prevailing rate. In addition, the impact of the cut in reimbursement for cataract surgery will be mitigated by reducing the rates over a 2-year transition period.

Mr. President, on the whole, I am pleased with the reconciliation conference agreements on health related provisions. However, I believe we have made a grievous error on the question of physician payment reform. Failure to target necessary cuts in reimbursement will perpetuate a system that allows physicians in some areas to continue the practice of charging much more than their colleagues in other regions. Continuation of a reimbursement policy that sanctions these inequities is especially injurious to physicians who have made a conscious effort to keep their fees as low as possible.

Through this year's reconciliation measure, we had an opportunity to begin the transition toward a more fair system of payment under Medicare. Yet we failed to seize that opportunity—in fact, we may have made our goal more difficult to reach by further complicating an already cumbersome and inequitable payment structure. I regret that the most charitable comment I can make about these provisions is that they will expire in 4

years. When that occurs, we may again have a chance to initiate real reform in physician payment under Medicare.

Mr. JOHNSTON. Mr. President, I am in strong support of the provisions of the reconciliation bill covering the jurisdiction of the Committee on Energy and Natural Resources.

In this bill, we have provided for an accelerated fill of the strategic petroleum reserve that will take advantage of lowered world oil prices to increase our independence from oil suppliers in the Persian Gulf.

We have provided for the distribution of money collected by the Federal Government for petroleum overcharges to the States, to the Federal Treasury and to energy conservation programs.

We have established authority for the Federal Energy Regulatory Commission to recover the costs of operating the Commission in fees and charges.

We have revised data collection by the Department of Energy on energy consumption in manufacturing that will reduce costs and regulatory burden while increasing the value for energy policy analysis of the information collected from industry.

We have made changes in the rules under which the Department of Energy analyzes energy conservation investments that will make for a more cost-effective program.

We have, years and years after the fact, finally established a definite statute of limitations for overcharge cases based on the regulations under the Emergency Petroleum Allocation Act of 1973.

I am pleased that the administration, whatever its views are of the other provisions of the bill, has pledged to meet and in fact exceed the requirements of the statute of limitations provision by agreeing to closeout all prelitigation activities of the Economic Regulatory Administration by December 31, 1986, 1 full year and 9 months before the requirements of the statute. I ask unanimous consent that the letter of the Secretary of Energy in which this pledge is made be printed in the RECORD at this point.

Mr. President, the conference agreement also permits the Department of Energy to use average fuel costs instead of marginal fuel costs in calculations of the energy cost savings of energy conservation investments in Federal buildings. This change would make such calculations simpler, more accurate, and less costly. This change would also result in more cost-effective program of investments in Federal building conservation projects.

The conferees were concerned that basing on energy-conservation decisions on marginal energy costs that are speculative and highly dependent on the methodology of calculation and on assumptions about the future may lead to unintended effects that burden a very important program that has limited resources.

The conferees were also concerned that a gap may develop between calculations made under the Federal Energy Management Program and reality if theoretical marginal costs are used throughout the program while fuel and electricity suppliers in fact are charging average prices.

In a report entitled "The Impact of Energy Prices and Discount Rate Policies on Energy Conservation in Federal Buildings" issued by the National Bureau of Standards in November 1985, the NBS concluded that, under current law:

Marginal-cost pricing will tend to increase the size of electricity projects or favor more costly designs. Additionally, marginal-cost pricing will tend to increase the priority of electricity-saving projects relative to projects that conserve other types of energy. With a limited budget, marginal-cost pricing of electricity will tend to drive out distillate-saving projects. In regions where the average price of electricity is considerably higher than the average price of other fuels, a change to marginal-cost pricing will increase the existing tendency to favor electricity-saving projects over distillate-saving projects.

The conferees were concerned that with the availability of limited funds for energy conservation investments in Federal buildings, bias in favor of electricity projects will unbalance the program at a time when excess electric generation capacity in the United States is large on one hand while oil imports are rising on the other.

Finally, the conferees were also concerned that the Shared Energy Savings Program enacted earlier this year—title 42, United States Code, section 8287—may encounter implementation difficulties if estimates of energy cost savings under the program are made based on marginal prices while the fuel bills are paid under the program—as they inevitably will be—on an average-cost basis.

Mr. President, I urge my colleagues to vote to approve the conference report and send the bill to the President.

There being no objection the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF ENERGY,
Washington, DC, October 2, 1986.

Hon. PETE V. DOMENICI,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to you in your capacity as Chairman of the Committee of Conference on H,R, 5300, the "Omnibus Budget Reconciliation Act of 1986." It is my understanding that the conferees have agreed to amend the Emergency Petroleum Allocation Act (EPAA) to apply a statute of limitations to the government's cases regarding oil pricing overcharges committed by petroleum sellers. It is my understanding that the amendment would bar the Department's initiation of any action after September 30, 1988, or six years after the violation, whichever is later. The conferees, however, would have Congress express the intent that the Department will convence all actions sooner. I can assure you we will.

This Administration supports vigorous and timely enforcement of all the laws of this nation, including enforcement actions under the now-expired EPAA, even though we believe, for example, that the petroleum pricing laws have resulted in undue governmental interference with free market forces. Consistent with our convictions, the Department is now in a position to bring all prelitigation matters to a conclusion. By December 31, 1986, the Economic Regulatory Administration (ERA) will have initiated litigation, settled, decided to close out on the merits, or entered into a tolling agreement on all pre-litigation matters. Even absent this legislation, I would have allowed no ERA staff reduction which would have impeded this effort.

I hope this will allay any concerns that the enforcement program will be extended unnecessarily.

Yours truly,

JOHN S. HERRINGTON.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. BROYHILL], the Senator from Washington [Mr. EVANS], the Senator from Arizona [Mr. GOLDWATER], the Senator from Washington [Mr. GORTON], the Senator from Nevada [Mr. LAXALT], the Senator from Maryland [Mr. MATHIAS], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Idaho [Mr. SYMMS], and the Senator from Connecticut [Mr. WEICKER] are necesarily absent.

I further announce that, if present and voting, the Senator from North Carolina [Mr. BROYHILL], the Senator from Washington [Mr. GORTON], and the Senator from Alaska [Mr. MURKOWSKI] would each vote "yea."

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from Arizona [Mr. DECONCINI], the Senator from Vermont [Mr. LEAHY], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

The PRESIDING OFFICER (Mrs. KASSEBAUM). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 61, nays 25, as follows:

[Rollcall Vote No. 358 Leg.]

YEAS—61

Abdnor	Cohen	Garn
Andrews	D'Amato	Gore
Bentsen	Danforth	Gramm
Biden	Denton	Hart
Boschwitz	Dixon	Hatfield
Bradley	Dodd	Hawkins
Burdick	Dole	Hecht
Byrd	Domenici	Heinz
Chafee	Durenberger	Hollings
Chiles	Eagleton	Inouye
Cochran	Ford	Johnston

Kassebaum	Moynihan	Simon
Kennedy	Nunn	Simpson
Lautenberg	Packwood	Stafford
Levin	Pell	Stevens
Long	Quayle	Thurmond
Lugar	Rockefeller	Trible
Matsunaga	Roth	Wallop
Mattingly	Rudman	Wilson
McConnell	Sarbanes	
Mitchell	Sasser	

NAYS—25

Armstrong	Hatch	Nickles
Baucus	Heflin	Pressler
Bingaman	Helms	Proxmire
Bumpers	Humphrey	Pryor
Cranston	Kasten	Riegle
Exon	Kerry	Warner
Glenn	McClure	Zorinsky
Grassley	Melcher	
Harkin	Metzenbaum	

NOT VOTING—14

Boren	Gorton	Specter
Broyhill	Laxalt	Stennis
DeConcini	Leahy	Symms
Evans	Mathias	Weicker
Goldwater	Murkowski	

So the conference report was agreed to.

□ 2210

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

WATER RESOURCES DEVELOPMENT ACT—CONFERENCE REPORT

Mr. STAFFORD. Madam President, I submit a report of the committee of conference on H.R. 6 and ask for its immediate consideration, under a 20-minute time limitation, to be equally divided, in the usual form.

Mr. METZENBAUM. Madam President, reserving the right to object—and I do not intent to object—will the Senator take 30 seconds to tell us what this bill is?

Mr. BYRD. Madam President, may we have order?

Mr. STAFFORD. It is the regular water resources bill.

The PRESIDING OFFICER. The Senate is not in order. The Senator from Vermont will suspend until he can be heard.

The Senator from Vermont is recognized.

Mr. METZENBAUM. I have no objection.

The PRESIDING OFFICER. The report will be stated.

The assistent legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6) to provide for the conservation and development of water and related resources and the improvement and rehabilitation of the Nation's water resources infrastructure, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 17, 1986.)

□ 2020

Mr. STAFFORD. Madam President, let me announce that there will be a rollcall on final passage.

Mr. MOYNIHAN. Madam President, may we have order? The chairman of the Committee on Environment and Public Works is addressing the Senate on a major piece of legislation.

The PRESIDING OFFICER. The Senator from New York is correct. It is very difficult for the speaker and the Presiding Officer to hear. Those who wish to talk should go outside the Chamber.

The Senator from Vermont.

Mr. STAFFORD. Madam President, I ask for the yeas and nays on the matter of adoption of the conference report.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. STAFFORD. Madam President, the conference report is important legislation. It is legislation that shifts dramatically the relationship between the Federal Government and the non-Federal beneficiaries of water resources projects.

This provides a giant stride forward, probably several strides in the effort to renew the infrastructure of this Nation.

And it is a shining tribute to the leadership of the chairman of our Subcommittee on Water Resources, Mr. ABDNOR.

In order to give my colleagues a sense of the scope of this bill, Madam President, I would like to point out the interrelationship of many of the provisions in the bill, and to discuss my views on the conference report.

1. COST SHARING

The key to this bill—possibly the single most important reform ever crafted onto the Nation's water resources development policy—is cost sharing.

This legislation shifts the manner by which projects are financed. Thus, this bill will shift the manner in which the public looks at water projects, and in what manner the public uses to seek new projects.

The Reagan administration, the Nation's environmental groups, and a wide variety of user groups generally support new cost-sharing formulas for water development.

It is a simple concept: Those who benefit from a Federal water project must carry a greater share of the project's costs.

The cost sharing is probably most significant on new harbor projects. On the date this bill becomes the law of the land, we will begin to weave the tests of the marketplace into decisions that are essentially commercial ones.

A harbor-deepening project involves the way international commercial traffic is routed and where new industrial plants locate. These projects draw the routes by which trade moves through the American economy.

Thus, a decision to deepen a particular harbor is essentially a commercial decision.

Under this bill, the sponsor of every future harbor project—remember, each is a commercial decision—will be required to contribute cash toward any Army Corps of Engineers expenditure on the project.

Specifically, the conference report calls for cost sharing of 10 percent on projects with depths of less than 20 feet—these are very often projects on the Nation's inland waterways; 25 percent on harbor projects with depths of between 20 and 45 feet, and 50 percent for harbor projects with depths greater than 45 feet.

In each case, the non-Federal sponsor is also required to pay an additional 10 percent over a 30-year period, with interest.

A significant issue before the conferees was how to handle expenditures for several special items, such as protection of tunnels in San Francisco Bay and at the entrance to Norfolk Harbor when the channels above them are deepened.

While we have dropped all specific cost offsets in the House bill, we do allow this special work when it is an integral component of the project to count toward that 10 percent payback due over time.

It must be emphasized that there is no cost offset against the basic 10 percent, or 25 percent, or 50 percent. Those percentages of the cost of each project are due during construction, and they are due in cash from the non-Federal sponsor to the Federal Treasury.

2. VESSEL FEES

A major aspect of the issue of port cost sharing is how the port will finance their share of these projects.

A number of ports can be expected to finance the local share out of local tax revenues. This certainly appears true of the smaller projects, where the local share will be tiny in relation to the current income from dockage and other charges.

Other jurisdictions are likely to turn to general obligation bonds.

The conferees assume that some port authorities will seek to finance their share with revenue bonds. This should be encouraged.

But these ports will need an assured revenue source. The conference report

allows non-Federal authorities to charge port use fees under certain, controlled conditions.

The Senate-passed bill offered the ports broad authority on user fees. I still believe that is the best approach. The ports of America are not in the business of driving business away from their harbors with excessive fees.

In the Senate, we passed legislation that gave the ports the flexibility they need. The language we have agreed upon in this conference report is somewhat more restrictive. Nevertheless, I trust that it will be sufficient flexibility to allow the ports to meet their cost-sharing obligations.

If the ports are unable to raise their share of new projects, work must simply be scaled back to what is more realistic, or it will not take place at all. Ports must not come back to the Congress with complaints that they are unable to meet these financial requirements.

Any such plea will not prove any flaw in the basic approach of the bill; it will prove the flaw due to excess restrictions on the implementation of use fees. It may also be an indication that the project cannot meet the test of the marketplace.

The shipping industry has done everything it could to shift these costs onto the shoulders of local taxpayers and off the ledgers of the shipping companies and their customers. Such a shift is clearly inappropriate to the thrust of this bill. The corps and the ports of this Nation are urged to do all they can to implement the user-pays concept.

It is important to emphasize the user-pays concept in this provision, as well as in other sections in this bill.

This is the basis under which the water resources program must go forward in the future, if it is to move forward at all.

In its House-passed form, the bill contained a program for up to $1 billion in bond guarantees, permitting port authorities to obtain Federal support for their projects, even if they had no realistic expectation that they could payoff the bonds with user fees.

The conferees agreed to drop those guarantees, thus making whatever bonds are issued hold their own on the market. This was a major step forward. If those guarantees had been incorporated into the final bill, the entire cost-sharing provision on harbor development would have been unworkable.

3. FLOOD CONTROL COST SHARING

If the port-cost-sharing provisions in the bill are the single most significant concept in this legislation, the flood control cost sharing must be second.

We hav established a standard with this legislation that every flood control project, or component, built in the future must carry a non-Federal contribution of at least 25 percent.

The new standard in this bill affects all flood control work, whether a local protection levee or a large reservoir.

Under current law, non-Federal sponsors of project for local flood protection must contribute the lands, easements, rights-of-way, and relocations necessary for the projects.

In most cases, the Federal Government picks up the entire tab on the cost of flood control reservoirs with more widespread effects.

Under the conference report, the non-Federal sponsor must still provide the package of lands and easements, and so forth, with a minimum share of 25 percent. But there is a caveat. That caveat requires the non-Federal sponsor, in every case, to provide, atop the lands, easements, and rights-of-way, a minimum of 5 percent of the project's cost in cash during the period of the project's construction.

This means that even if the lands, easements, rights-of-way, and relocations exceed 25 percent, the non-Federal sponsor still owes that 5 percent in cash. If the total exceeds 30 percent, the non-Federal sponsor still owes the sum over 30 percent, but may, at its discretion, pay the differential above 30 percent over a 15-year period, with interest.

When the non-Federal share reaches 50-percent, the non-Federal contribution stops, but at least 5 percent must still be contributed in cash during construction.

The application of this principle will be universal. We have stricken from the bill virtually all of the many House provisions that permitted various projects to move forward at full Federal expense.

And we have expanded that 25 percent standard to other areas.

Thus—and this is a critical point—essentially every project in this bill carries with it the requirements for at least 25 percent non-Federal share.

The only exceptions would be shallow ports, where the total non-Federal cost share would be 20—10 percent immediately, plus 10 percent over time.

I hope my colleagues recognize the significance of this achievement: Every project will move forward under the same new, tougher rules.

4. ABILITY TO PAY

Yet, Mr. President, such a standard may sound harsh to some of my colleagues. What about poorer communities? What about small towns lacking a tax base from which to pay their share? Does this bill price them out of flood control projects? Will flood control simply become a convenience of the rich?

The answer is no, no, and, again, no.

First, it must be remembered that if a project is to go forward, we must assume that it has a benefit-to-cost ratio of higher than 1 to 1.

In other words, it produces more than $1 in benefits for every $1 invested.

This bill now says local communities must, in general, pay 25 cents to get at least $1 in benefits, sometimes much more than $1 in benefits.

Even the poorest communities should be able to find a quarter to invest in order to get $1 or more in return.

The States should be able to help poorer local jurisdictions pay these upfront costs. In fact, nothing in the bill requires that affected communities contribute any or all of the local share toward flood control. States are eligible and encouraged to assist communities in need.

But let us assume they can't. Let us assume the community truly cannot raise its full local share on a project, which otherwise is sound.

This conference report meets that need.

We have included a provisions from the Senate bill—section 103(m) that was written by our distinguished subcommittee chairman Mr. ABDNOR. This is the so-called ability-to-pay test. Under this provision, the Secretary of the Army could modify standard cost-sharing requirements in cases of great financial need.

There are several points to make:

This applies only to projects for controlling floods and improving agricultural water supplies. It does not apply to ports or municipal water supply, or to any of the other numerous responsibilities of the Corps of Engineers.

It is anticipated that the Secretary will only rarely invoke this authority.

And this provision can never be used to eliminate the non-Federal share. Even the very poorest jurisdictions can and should make some contribution to the improvement of the community. The Secretary might offer help by adjusting the timing of such payments to ease the cost burden on the local community.

5. SEPARABLE ELEMENTS

A key issue affecting harbor development, as well as other types of water projects, is what is known as separable elements.

Many, many corps projects contain an overall plan for improvements to a harbor or for controlling floods—a plan with several components. Practically every one of these projects will have componets that can be evaluated and can be built on their own.

Among the hundreds and hundreds of authorized Corps of Engineers projects, a great many contain separate components that have never been initiated. This may involve a recreational component, and upstream levee that protects one town in a valley of several towns, a flood control or drainage work on a minor tributary,

or a side channel within a major harbor.

The House-passed bill grandfathered—at the old, out-of-date cost sharing—several billion dollars' worth of those so-called separable elements.

The Senate bill, by contrast, imposed cost sharing on this unstarted list of work.

In conference, we agreed to take the Senate's approach, to treat separable elements as new projects from the point of view of cost sharing. To do otherwise would have endangered the bill at the White House. To do otherwise would surely have been unfair to communities all across the Nation, and would have allowed unnecessary and avoidable environmental damage to occur.

Thus, we agreed to treat all unstarted work alike, whether it was a new project, or a new aspect of an older project.

That is fair to project sponsors; it is fair to the American taxpayer.

Under the terms of the conference report, the term separable elements assures that any construction that began after April 30, 1986, will come under new cost sharing.

Initiation of physical construction means an act that physically alters the environment, such as moving earth, removing an existing structure, or pouring a foundation; it is to be distinguished from the acquisition of land, the award of a construction contract, and the subsequent mobilization of contractor's equipment, all of which must be accomplished before physical construction can begin.

As one example, this means that a large drainage project known as the Yazoo pumping plant in Mississippi will be covered by cost sharing.

6. STUDY COST SHARING

Once we have reshaped the manner by which projects are financed, how do we reach back to reshape the foundations of this program, to make it more responsive to public need?

Under this bill, that is achieved by instituting a system for cost sharing on studies. These are the studies that lead to the development of water projects.

Section 105 and 905 require 50-50 cost sharing on all future studies the corps undertakes following its initial "reconnaissance."

One of the important studies in the conference report is contained in section 703 of the bill, language very similar to a provision I offered initially several years ago. This authorizes the corps to help small communities redevelop old industrial sites for new hydropower.

This is not a program for new Federal construction; it simply allows the corps to assist smaller communities by providing special technical assistance.

Section 731 authorizes a study of the impact of the potential rise in the world's ocean levels, a rise that seems certain to come about due to the warming trend in the Earth's atmosphere.

The corps should study the effect on its present programs, and what the impact will be on coastal cities, barrier islands, and Federal policies.

Another section that should be of interest to many Members is section 732. This provision authorizes the corps to review the controls over Lake Superior to see if indemnification is justified to local landowners suffering high water. The corps is expected to make a recommendation for indemnification only, and I stress that word "only," if it can be demonstrated clearly that joint Federal and Canadian actions caused the damages.

7. INLAND WATERWAYS

There are several items that deserve careful attention in regard to the manner in which this legislation affects our commercial inland waterways.

First, of course, is the authorization of eight new projects that have great significance of the inland barge industry. This list includes six projects in title 3, plus a second lock at locks and dam 26 on the Mississippi River, authorized in section 1103, and the so-called New Orleans Industrial lock, affected by the language in section 844.

To pay a small portion of the costs of the commercial inland system, the bill increases the barge fuel tax, which has been in existence since 1980. The bill takes the current 10 cents a gallon tax charged on about 10,000 miles of inland waterways, and doubles that tax over the next decade.

While many argue that this imposes on the barge industry a considerable cost, I would simply point out that it probably no more than keeps the tax even with the anticipated level of inflation that is likely to occur over those 10 years.

The revenues from the barge fuel tax will go into the existing inland waterways trust fund. In turn, this will be used to pay half the costs of the seven new lock and dam projects, plus a portion of the cost of the New Orleans Industrial lock.

With current funds and the anticipated rate of spending, a large surplus in the trust fund could develop by within a few years. Such a surplus should not become the excuse for tampering with the level of the tax in this bill, or eliminating that tax.

Such a backoff from the policy of this bill is clearly unacceptable.

Frankly, I believe we should have expanded the use of the tax to other purposes, such as maintenance, and I shall continue to so argue.

In line with the intent of this bill and rational oversight of the program of the corps, we dropped an automatic authorization for new navigation projects contained in the House version of the bill. This provision would have permitted an expenditure of billions and billions on the inland waterways with no scrutiny by the congressional authorizing committees.

There is one final point to be made on this issue. This bill authorizes development of five big commercial inland harbor projects. The conferees agreed to include the five projects with the understanding that any work taking the harbors below 9 feet—the depth of the Mississippi River channel—will go forward only after the Secretary of the Army determines that such work is economically justified and environmentally acceptable.

8. UPPER MISSISSIPPI RIVER MASTER PLAN

In 1978, following a long period of debate and dispute, Congress authorized construction of a new lock and dam 26 on the Mississippi River at Alton, IL. The new lock is now under construction, and will have a length of 1,200 feet.

As a part of that authorization, Congress directed that the Upper Mississippi River States, together with the appropriate Federal agencies, study the need for a second lock, as well as methods for enhancing the environment of the Upper Mississippi River.

The result of that study was the recommendation for a second lock, as well as the recommendation for a large number of remedial environmental activities to be undertaken by the Department of the Interior.

Such a compromise holds great importance to transportation as well as the environment. This portion of the Mississippi Valley consists of heavily forested floodplain and islands, with diverse aquatic areas.

It is an ecosystem of national significance.

Section 1103 authorizes that compromise: The enviromental work, plus a second lock at Alton, this one to be 600 feet long. The environmental measures are essential to mitigate for past damage caused by navigation development on the Upper Mississippi River. The Upper Mississippi River system must be managed to balance navigational and environmental needs.

I must note that these two issues—the locks and the environmental work—have been linked by Congress since 1978. There is, however, no legal linkage in this bill. Nevertheless, the Secretary is expected to move these two important programs forward in a unified manner.

I should also note that damage to fish and wildlife resulting from increased tow traffic attributable to this second lock are to be mitigated separately and fully under this bill.

9. OPERATIONS AND MAINTENANCE

Another major step forward in this bill is the requirement that non-Federal sponsors assume the responsibility

for operations and maintenance at projects constructed by the corps.

Local sponsors have that responsibility for many types of work now. This bill clarifies that non-Federal responsibility for operations and maintenance covers practically everything except commercial navigation.

10. COST CONTROLS

As this conference report stiffens cost sharing requirements, it also imposes new cost controls on the work of the corps, effective cost controls.

These cost controls have two basic components. The first involves section 902, where we set specific cost limitations on each and every project authorized in this bill.

In the past, projects have been authorized by Congress at an estimated cost. This practice imposed practically no control over how much costs might increase. Costs did grow, often by quite a lot.

But no more. Under the provisions of this bill, project costs will be limited strictly to the price listed in the bill, with three variables:

Costs can go up by as much as 20 percent of the project's base price.

Costs can also rise to accommodate the rate of inflation on construction costs and land values during the period of construction.

Finally, costs can go up—or down—based on other laws passed by the Congress subsequent to the authorization of the project.

Elimination of the word "estimated," as it applies to the overall costs of a corps project, means the American people can expect more accurate calculations on the costs of future projects. A $200 million project can no longer balloon into a $2 billion project.

This new approach affects the total cost of a project. The conferees have used the word "estimated" in describing the numbers that also appear in the bill on the initial Federal and initial non-Federal costs of a project. In this case, the word "estimated" is justified and necessary. The actual breakdown between the Federal and non-Federal shares may vary, for example, if the types of benefits change.

It also must be noted that the figures for the Federal costs is an initial cost, the money required for an appropriation of Federal funds to build the project. In some cases, much of that money will later be repaid. One example is the sale of hydropower.

This bill also imposes, for the first time, an annual obligation limitation on the money the corps can spend on construction of civil works projects.

This important provision appears in section 901 of the bill.

Until now, the corps Civil Works Program was a hodgepodge of projects limited only by the controls worked out between the White House and the Appropriations Committees.

Under the approach in this bill, an annual obligations ceiling is imposed on construction work on the corps' basic construction program, as well as its mammoth Mississippi River and Tributaries project.

While this covers all spending out of the Inland Waterways Trust Fund, it does not cover non-Federal contributions during construction, such as the local share of a harbor deepening project.

Thus the dollar ceilings provided—$1.4 billion in fiscal 1987 rising to $1.8 billion by the fifth year—should be more than sufficient to meet even the most ambitious construction effort.

But the principle is essential. It must be one that is carried forward into all future corps efforts.

11. NEPA AND OTHER ENVIRONMENTAL ASPECTS OF THE BILL

Madam President, water resources bills are not normally a font of environmental betterment. I can say with assurance that it is rather unusual for a water resources bill to contain provisions that protect the environment, provisions that are favored by the environmental community.

This bill bears that unusual character.

In reviewing the projects in the House bill, we have accepted many specific environmental requirements that were in the House bill.

We have accepted provisions that protect the environment effectively in connection with a number of projects in this bill.

As a few examples, the conferees agreed to special language protecting oyster beds at New Haven, CT, the shallow bay bottom in Mobile Bay, AL, reefs off Dade County, FL, turtle areas at Indian River, FL, plus special environmental efforts at Monroe Harbor, MI, Lower Saddle River, NJ, and Albuquerque, NM.

These provisions are just a few among many sound environmental efforts.

I applaud the House for taking the leadership in developing so many of these important environmental protection provisions.

Another important environmental provision appears in section 907. This requires the corps to count the benefits of work for environment improvement as equaling the costs of that work. Such a provision is necessary because of the corps' procedures which frequently exclude assigning any economic value to many environmentally related activities.

We also adopted, in section 924, a House proposal to establish an Office of Environmental Policy within the corps. This is a sound idea. Yet, such an office will only prove successful if it has independence and holds the ear of the Secretary.

This bill charges this new office with substantive responsiblities, including the development of environmental quality procedures to be used in planning and evaluating corps projects.

I urge the Secretary to take this requirement seriously.

Possibly most significant for the purposes of protecting the environment is this fact: Nothing in this bill alters or circumvents NEPA, the National Environmental Policy Act. This point is critical.

We have included a number of provisions where work that has never been subject to a corps study will nevertheless, be constructed. I must stress this fact: Such work will be moved forward only within the requirements of the National Environmental Policy Act, as well as other provisions protecting America's environment.

12. THE SECRETARY

In the past, Madam President, omnibus water resources bills have directed that water resources projects be undertaken by the "Secretary of the Army, acting through the Chief of Engineers." Thus, the real authority, the real responsibility, rested with the general in charge of the corps.

This responsibility did not rest with the appropriate official of the administration, an official confirmed by the Senate.

Under the terms of the conference report, the authorizations and directives in this bill—whether to construct a project or impose cost sharing—operate through the Secretary of the Army.

This change from past practice authority and responsibility where it belongs, with the appropriate appointee of the President.

13. SECRETARIAL REVIEW

As part of our effort to bring the entire water resources development effort under tighter controls, this conference report requires in section 903(a) and (b) that the Secretary of the Army review virtually every project in this bill it can go foward.

When this bill left the Senate, it carried close to 150 projects, each of which had been reviewed favorably by the Chief of Engineers. We also included a provision stating that for any work that lacked such review, construction could only begin after the Chief of Engineers had made his analysis, and the project had passed all the appropriate levels of environmental review.

The House bill carried no such restriction.

The conference report includes a construction authorization of one sort or another for well over 100 projects that lack a Chief of Engineers report. Most of these projects were taken from the House bill.

The Administration believes—and I share its concern—that such projects must have a thorough examination at the Washington level on their econom-

ic soundness and environmental acceptability before any construction can be initiated.

The language in section 1103 assures the administration that it will have that responsibility.

14. REIMBURSEMENT AND CREDITS

The House bill, as it came to conference, contained a large number of items where past work by non-Federal interests was eligible for a direct Federal reimbursement.

We have dropped all those direct reimbursements.

The House bill also included a number of provisions where non-Federal sponsors were to receive a special dollar-for-dollar credit on future flood control projects for compatible work that was undertaken before the project was authorized.

Those special credits, too, have largely been washed out of the bill.

Instead, we have crafted, in section 104, a general program where non-Federal sponsors will have the opportunity to make their case to the Secretary for credits on future flood control projects.

Under the approach the conference report, the Secretary of the Army is given a year to develop guidelines for considering what kind of compatible work should be credited.

These need to be tough guidelines.

If they are not, the issue of credits could become a subterfuge through which local sponsors escape their responsibilities for cost sharing.

The Secretary must come up with a system to determine fairly that work was undertaken solely in anticipation of the Federal prospect, and if such work would have been an integral part of the project. Only then should the local interests be able to obtain credits.

To repeat, the Secretary must be quite parsimonious in granting credits under the terms of this section.

Locals can go forward on their own, or be eligible for Federal maintenance, only if the Secretary finds the work economically and environmentally acceptable. It is very important that the Secretary undertake that responsibility with care.

Again, of course, there is to be no NEPA override.

15. B–C RATIO OVERRIDE

Another issue facing the conferees was how to handle projects lacking a positive benefit-to-cost ratio. In other words, how to deal with projects that cost more than the benefits produced.

In response, we wrote, in section 903(c), a new approach for handling such projects, a scheme that allows non-Federal interests to, in effect, buy up the non economical portion of a potential flood control project.

While I am not happy with the method we have agreed upon, I believe it is the best we could obtain. But I must urge that the waiver be used only in very unusual situations.

Possibly most beneficial, the waiver I will describe should eliminate any compulsion the corps may feel to fabricate benefits so they can edge it over the point where it has a positive benefit-to-cost ratio.

The provision we have included will work this way:

If a project has a B–C ratio of 0.8-to-1, that means it produces 80 cents in benefits for every $1 invested. To assure that such a project can still go forward, the provision in section 903(c) permits the non-Federal sponsor to pay that entire extra 20 cents—the noneconomic component of the project—as well as the standard cost sharing on the project.

It must be pointed out that this applies only to flood control projects.

To help assure that the benefit-to-cost test is realistic and fair, I am gratified that the conferees dropped any special treatment for so-called regional benefits. This is an important change, as regional benefits are simply transfers from one region of the Nation to another.

While the bill in section 904 reaffirms the longstanding commitment of Congress to the quality of the environment and national economic development and the display of other factors, these displays do not affect the way benefits and costs of a project are calculated.

This bill contains no general interest waviers; it contains no special grandfathering provisons. It contains no special treatment for so-called poor areas, although such areas may qualify under circumstances to be determined by the Secretary for the ability-to-pay provision, which is section 103(m).

A related item of considerable concern was the provision in the House bill that shifted dramatically the benefit-to-cost studies on the Alabama-Coosa River project, an inland navigation project. The House bill overrode the benefit-cost ratio by imposing an old, unrealistic interest rate to be used in calculating the effects of the project.

Madam President, the House language basically was designed to take a $1.3 billion project that produced about 30 cents in benefits for every $1 invested, and magically declare it as justified.

The House dropped the use of the old interest rate, and limited the authority in the section to the development of plans on the project, plans that would have to be authorized for construction by the Congress in the future, should the investment appear sound.

16. FISH AND WILDLIFE MITIGATION

One of the more important provisions in this bill is section 906, which strengthens the fish and wildlife mitigation program of the Corps.

Until now, mitigation for land turned over to water development projects came about on a hit-or-miss basis.

Often, in the view of many, the corps failed to recommend adequate fish and wildlife mitigation programs. The corps simply refused to own up to the environmental dislocation produced by its projects.

On other occasions, the mitigation work was often proposed after the project was completed. In such instances, the mitigation—often involved land purchases for providing wildlife cover—ran into opposition from local developers.

The retort: We have our project, why give those bird-and-bunny people anything?

This conference report shifts that thinking, and shifts it significantly.

For the first time, mitigation will have to go forward with the project requiring the mitigation, not afterward. This bill requires that the corps develop mitigation plans for each and every new project, or tell the American people why such work is not justified.

In addition, this section establishes a new, continuing authority, funded at $30 million a year. This authority will allow the corps to go back and repair the fish and wildlife damage that its existing projects have produced.

Activities under this authority may include such elements as wetlands restoration or provision for upstream and downstream migration of fish at Corps of Engineers dams.

In addition, we have included several important mitigation measures, most specifically the effort to mitigate the damages caused by the construction of the Tennessee-Tombigbee Waterway, which slices across Mississippi and Alabama.

The conferees accepted the basic thrust of the Senate version of the Tenn-Tom mitigation, which involves two essential components:

Acquisition of 88,000 acres of land, the amount recommended as appropriate by the President's Council on Environmental Quality, plus

In-kind replacement of bottomland hardwoods destroyed for the Tenn-Tom project.

In-kind replacement is absolutely essential to this project. What it means is that the environmental values of some 30,000 acres of bottomland hardwoods lost to the project must be replaced, and replaced fully. Many more acres of bottomland hardwoods will have to be acquired to assure the same degree of environmental protection.

The conference report also authorizes construction of several projects that will require the most careful environmental sensitivity and protection. One is the White River navigation

project. This controversial project is opposed strongly by the environmental community, as it could affect adversely a national wildlife refuge.

The conferees approved language that reaffirms the authority of the Fish and Wildlife Service under Public Law 89-669. The Corps must obtain a right-of-way from the Service prior to conducting any work in the White River National Wildlife Refuge.

Issuance of a permit is to be contingent upon a determination by the Service's regional director that the proposed work will be compatible with the purposes for which the refuge was established.

In instances where damages to the refuge will result, the regional director may require mitigation measures within the right-of-way or on adjacent Service land. If the proposed use can not be made compatible, then no right-of-way will be granted.

Another example involves Devil's Kitchen Lake in Illinois. The House bill would have allowed the city of Marion, II, to tap the lake, a national wildlife refuge, for local drinking water.

The House language was opposed strongly by the State of Illinois, the Department of the Interior, and environmental groups.

What we produced as a substitute allows Marion to use the lake for water—but only surplus water that has spilled out of the lake, and only within the approval of the Secretary of the Interior. The Secretary of the Interior must determine that a catch basin downstream will impose no adverse impact on the existing wildlife refuge.

This test is essential. I urge the Secretary of the Interior to examine very carefully any plans to make absolutely certain that the interest of the refuge are protected fully.

17. DEAUTHORIZATION

The conference report contains several important provisions to deauthorize unneeded work, cleaning out the deadwood of old, outdated projects and studies.

In section 1001, we have included a provision that strengthens the present program to delete outdated and unneeded projects. While this provison is not as effective as the Senate version would have proved, it should provide the Congress and the Corps with a rational method for cutting back unneeded work.

By doing this, we allow resources to be focused on work that is readily needed.

Possibly the most significant single deauthorization in this bill, or any recent water resources bill, appears in section 114. This section eliminates any authority for construction of the Cross-Florida Barge Canal.

This project was halted by President Nixon 15 years ago, after it became clear that the project would prove an environmental disaster. Further, its high costs produced benefits that were marginal at best.

The provision in this bill eliminates that authorization once and for all. It drives a stake into the heart of a bad idea. While this bill saves the stub ends of the project for recreational navigation, this proposal transfers the center section to conservation management.

18. DAM SAFETY.

In Title 12, the conference report includes the language of the Senate's dam safety provisions. This program was brainchild of the distinguished senior Senator from Idaho [Mr. MCCLURE] at a time when he served on the Committee on Environment and Public Works.

Specifically, we have created a new program, with an annual costs of $16 million, to encourage States to establish and augment programs for dam safety.

The title calls for 5 years of matching grants to those states that develop dam safety programs with inspections and other necessary activities, plus technical assistance and research.

This dam safety title also establishes a new policy governing safety-related improvements at Federal dams built by the corps. Fifteen percent of the costs of such improvements that are necessary as a result of new seismic or hydrologic data, or changes in state-of-the-art design or construction criteria, will be reimbursable.

Safety-related improvements that are necessary as a result of age and normal deterioration of the structure shall continue to be considered a project cost, and be fully reimbursable in accordance with current cost allocation procedures and the cost sharing formula in this bill.

The House bill provided no authority for program grants. But it did contain a provision authorizing repairs to non-Federal, even private, dams.

That program has been rejected by the conferees, with two very narrow exceptions: technical assistance of $50,000 for each of two non-Federal dams. In no way is this a precedent for a general program on support for non-Federal dam repairs.

I would like to underscore this point: The owners of existing non-Federal dams should have no expectation that the authorities and policies contained in this bill will lead to a general program of Federal assistance for the repair of non-Federal dams.

For fiscal reasons, it simply won't happen. Furthermore, the policy directions in this bill, by seeking to strengthen the ability of the states to police the safety of non-Federal structures within their jurisdiction, move in the exact opposite direction.

19. FEDERAL PERMITS.

The conference report also includes a provision that seeks to overcome the tedious delays that often occur in the preparation of permits for new harbor projects.

This provision deals with situations when non-Federal authorities wish to go forward on their own, with no Federal involvement. In those cases, the Federal Government is expected to do everything that it reasonably can to expedite the process, including the consolidation of Federal permits.

There are several items to note. This is a neutral provision. This is not intended to take away any existing Federal agency authority.

Nor is this provision intended to force non-Federal agencies to become involved in the consolidation process. It is to be hoped they will, but this in no way forces that consolidation.

20. PROJECTS.

Mr. President, as this bill passed the Senate, it contained some 150 projects costing about $12 billion. As it passed the House, the bill had about twice as many projects, with a cost nearly double the Senate's total.

In developing our bill, Chairman ABDNOR had insisted on a standard that a project had to undergo extensive corps review before it was eligible for inclusion in the bill.

After all, $12 billion in work will carry the corps along for nearly a decade, not counting any work on its existing backlog that ranges into the tens of billions of dollars.

The compromises necessary to obtain the important policy changes in this bill brought the conferees to a decision to add, in one form or another, nearly every project from the House list. Fortunately, the House was willing to scale back many of its projects to authorize, at this time, only the planning, engineering, and design work; construction authorization must come later.

Thus the cost of this bill runs somewhere around $16 billion, with an estimated first Federal cost of $12 billion, and an estimated first non-Federal cost of $4 billion.

21. SMALL FLOOD CONTROL PROJECTS

While we have made great steps forward in cost sharing in general on flood control projects, this bill does take some steps backward in regard to such projects.

For example, current administration policy sets a size limit on flooding necessary to justify Federal involvement. That is a standard termed "800 cubic-feet-per-second." A flood must be that large to qualify for Federal participation.

A flood of 800 cubic feet per second is not a particularly large flood, at least by the standards we often think of. For example, when Rock Creek here in Washington, DC, floods every

2 or 3 years, it carries at least three times as much water as an 800-cubic-feet-per-second-flood.

The House insisted on overturning that limit, and said we should set no standard for determining where the Federal interest lies and where it doesn't.

We have included language in the conference report that relates to the corps' determination on whether certain flood events are eligible for consideration and treatment in a federally assisted water resources project. The language does not mean that we are modifying or affecting the evaluation procedures of the corps, which necessarily depends on data regarding flood frequency to establish economic benefits for flood damage reduction measures.

22. LAKES CLEANUP

The Senate bill contained a number of provisions for cleaning up small lakes clogged with silt and other debris. The House bill contained those provisions, plus several more.

Rather than authorize each separately, we have combined the projects into a unified program. Specifically, we have authorized $40 million to be allocated among the various projects, requiring that a 25 percent non-Federal contribution on any such work.

23. STREAMBANK EROSION

Similarly, the conference report includes a new program designed to deal with streambank erosion. The House bill had contained a large number of new projects to control streambank erosion; the Senate bill contained a small, general program.

We have taken that small Senate program, increased it to $30 million a year for each of 5 years, then listed each of the House projects as eligible, as well as important work on the Upper Missouri River, a focus of the original Senate version and a particular interest of Senator ABDNOR's.

24. WATER SUPPLY LOANS

Before discussing some of the other issues in the bill, I would point out some of the things that we did not do.

The House bill, as it came to us, contained a major program authorizing a large number of water supply loans.

Such a program was opposed strongly by the administration, and could have, on its own, attracted a veto to this important bill.

While the conferees agreed to drop entirely the House loan program, the House agreed to accepted our provision modifying the existing Water Supply Act. This modification will bring that Act into line with the intent of the cost sharing provisions in this bill.

Specifically, the Senate and conference language in section 932 shortens the repayment period on water supply loans to 30 years, and requires local interests to be fully responsible for maintenance costs. The intent of these changes is to protect against the construction of reservoirs that are too large, and under-utilized.

25. NATIONAL WATER POLICY BOARD

Another major item from the House bill that was not included in the conference report is the National Water Policy Board.

In a differing form, such a board has been approved in the past by the Senate Committee on Environment and Public Works. I have supported strongly that action, and continue to believe that the concept is a wise one.

Nevertheless, such a board was opposed strongly by the administration. Therefore, I have favored dropping the board as its inclusion would have made it far more difficult to obtain the President's signature on this bill.

The key issue has been the replacement of firm principles and standards for the development of projects with more flexible principles and guidelines.

Our action does not endorse the principles and guidelines over the principles and standards. Rather, it allows pending litigation that challenges the repeal of the principles and standards to go forth, rather than affecting it in any way in this bill.

26. SHORELINE PROTECTION

The bill contains a number of project authorizations for coastal beach protection projects. It is important to emphasize that such work can only go forward to the extent that it will be harmony with the Coastal Barriers Act.

It must be noted that some authorizations in this bill, in particular for an area called Figure Eight Island in North Carolina, involve work on shorelines that are privately owned, and where the uses of the beach is restricted to the owners.

Under such circumstances, the Federal Government can and will only do the work on a fully, 100 percent reimbursable basis.

The owners of the shoreline can shift a portion of that cost burden only if they provide realistic, full, and open public access to their beach. That does not mean the owners simply have to say their beach is open to the public. Rather, it means that they must actually provide free public parking to a reasonable degree, and restrict in no way whatsoever the public use of this beach.

To do otherwise would simply mock the use of public funds.

In cases where the public does have regular access, the cost sharing would be 50–50, with the non-Federal sponsors expected to pay their share during construction.

27. REPAYMENT DISTRICTS AND SUNSET HARBOR

The conference report includes a provision taken from the Senate bill that authorizes the establishment of something we have called Federal repayment districts. These districts could be established as a way to raise the money needed to finance the costs of a project.

This provision is strictly discretionary. We are trying to help non-Federal interests meet their obligations; we are not forcing this scheme on anyone.

This scheme can be used only as a way to meet cost sharing requirements as otherwise laid out by this bill. In no instance can this approach be used in lieu of up-front cost sharing.

To demonstrate the potential of this approach, the conference report also authorizes a project at Sunset Harbor, CA. In this instance, local interests may, at their discretion, establish a repayment district.

Such a district would be used to raise the fund that would repay the Federal Government and moneys the non-Federal sponsors may wish to pay to the Federal Government over and above all up-front money, which in this case is at least 50 percent. That percentage assumes that the bulk of the project will be considered a recreational boat harbor.

It is understood by this Senator that the potential non-Federal sponsors of the project have promised to pay that 50 percent or so up-front, then also pay the remaining costs of the project over time.

28. NAMINGS

Title 13 of the bill contains a number of namings for various water resources projects.

The Committee on Environment and Public Works has long had what I consider to be a very sound rule. This rule states that public facilities can only be named for persons who have died, with two exceptions: former Members of Congress over the age of 70 or living ex-Presidents and ex-Vice Presidents.

That is a sound rule. As we bring the bill back to the Senate, we have held close to that rule. More significantly, the House has agreed to a provision honoring one of our most beloved former members, Jennings Randolph.

We have named a lake on the Potomac River between West Virginia and Maryland as Jennings Randolph Lake. I believe that is one of the finest tributes we, as a body, can bestow upon the man who served as chairman of the Committee on Environment and Public Works for about 15 years.

29. MIAMI RIVER AND SECTION 404

Few Federal programs carry the importance to this Section of the requrements of what we know as section 404 of the Clean Water Act. This is the provision designed to protect America's wetlands.

As H.R. 6 passed the House, it contained an exemption under section 404 for the Miami River in Ohio. Such an exemption was wholly unacceptable to me, and to my fellow Senate conferees.

As a result, section 1133, as we have written it into the conference report, exempts the Miami River from certain permit procedures of the corps, but not from the 404 Program.

This decision is wise, and I commend the conferees.

30. CABIN LEASES

Section 1134 of the conference report provides that certain lease and permit holders at corps reservoirs and other sites may obtain an automatic extension on their permit or lease.

While I believe that is unwise, I agreed to go along with the modified House language on the understanding that any such leases and permits would only be extended beyond 1989 if the corps implemented its authority to charge market rental rates. To do otherwise would be grossly unfair to those not so fortunate as to hold such leases.

31. VERMONT CONCERNS

Madam President, I have talked at some length about the national aspects of this bill, and the bill's impact on new project development, as well as the operation of existing projects. But I am pleased to report that this bill also contains several provisions that hold great interest for the citizens of Vermont.

I am compelled to note the rather tiny price tags on each of these items, at least in comparision with most projects in the bill.

But each holds importance to the State of Vermont.

Section 1101, for example, will carry great importance for many smaller communities in Vermont as well as towns throughout the northern regions of the Nation. This section authorizes a program of $5 million per year to assist these communities in reducing flooding associated with the ice buildup that often occurs in wintertime.

The section specifically lays out a program of assistance for the community of Hardwick, VT, which has been struggling with ice-flooding problems for many years. The bill makes $900,000 available to Hardwick, with cost sharing and any ability to pay tests based on flood control.

I would also congratulate the distinguished Senator from Idaho [Mr. SYMMS] for his leadership in developing a provision in this section that will reduce ice flooding along the Salmon River at Salmon, ID.

Another small, but important provision in this bill is section 872, which affects the return of the salmon to the Connecticut River valley.

This section, taken from the Senate bill, authorizes up to $1 million for work at two dams in Vermont. This work will assure that the salmon can safely pass by the dam in their migrations from fresh water to salt, and back again.

Section 870 authorizes certain, limited repairs at Waterbury Dam in Vermont. The Corps of Engineers has recently repaired the dam to eliminate a leakage problem.

This section directs that the corps also repair the dam's spillway. As with other flood control related repair works in this bill, a non-Federal sponsor will be expected to furnish 25 percent of these costs.

In conference with the House, we also agreed to rectify a minor problem affecting navigation at Shelburne Bay, VT. There is a need to dredge a sandbar in the bay, and the State of Vermont has been more than willing to pay its share.

Unfortunately, the Corps of Engineers has dragged its feet on this project. Therefore, this bill directs that the corps go forward with this work under its small projects authorities. While there is a figure of $250,000 listed in the bill, it is very likely that the work will cost less than $100,000.

I would pay a particular word of praise to Representative BRONSON, who represents the area in the State legislature, for here effective leadership is helping to resolve this problem.

32. REVENUE PROVISIONS

For the last, I have saved a discussion of those provisions in the conference report that are basically within the jurisdiction of the Committee on Finance. This tax material appears in title 14 of the conference report.

First, the title imposes a new ad valorem tax on the value of goods moving through America's ports. This money will be used to help pay a portion of the costs of maintaining our harbors.

Second, this bill implements an increase, a very modest increase, in the existing fuel tax on barges using a portion of our commercial inland waterway system.

I would note that each of these taxes is quite modest, and each produces far less than the Government spends annually on these programs.

In my view it will be almost certain that we will have to obtain greater increases in each of these taxes at some later date.

Madam President, before I close I would like to express several words of thanks to key members of the Committee on Public Works for their distinguished leadership on this issue.

The most fulsome words of praise must go to our good friend and distinguished colleague, the Senator from South Dakota [Mr. ABDNOR], who is chairman of our Subcommittee on Water Reserves. Senator ABDNOR served as chairman of the conference on this bill.

But those facts in no way describe the hard work and the great leadership JIM ABDNOR has given to this bill. He has worked on it when everyone said it couldn't fly. He worked on it when people said it was sure to be vetoed. He worked on it when others would have lost heart.

He continued to work and to struggle with this bill, and today's action is vindication of his struggle and his vision that this was a necessary bill.

This is JIM ABDNOR's bill and it is his moment to triumph.

By mentioning JIM ABDNOR, I do not mean to slight the fine contribution of other members of our committee. Senator MOYNIHAN worked hard on the bill, bringing to it his experience and views on the need for infrastructural renewal.

Senator DOMENICI, who has served on the Water Resources Subcommittee since he arrived in the Senate in 1973, has given him imprint to many of the reforms and initiatives in this bill. PETE DOMENICI believes it is a strong and effective water resources program, and this bill will give such a program back to the Nation.

The ranking member of the full committee [Mr. BENTSEN] has been particularly effective in developing ideas and working out the necessary compromises on such issues as vessel fees. We on the Committee on Environment and Public Works will miss him greatly next year when he moves to the Committee on Commerce.

Before closing, I believe it is necessary that I mention two persons from the Reagan administration who have been so instrumental to the development and ultimate passage of this bill.

The first is the former Director of the Office of Management and Budget, David Stockman. It was Dave Stockman who spent hours in the majority leader's office some 15 months ago working out the details of the compromise on cost sharing that made this bill possible.

Then it was the Assistant Secretary of the Army, Robert K. Dawson, who worked tirelessly with the Congress to push, push, and push again until we were able to reach agreement.

I thank each of you. America thanks you.

Madam President, I ask unanimous consent that an additional 500 copies of the report of the Committee on Environment and Public Works on this legislation, Senate Report 99-126, be printed for the use of the Committee on Environment and Public Works

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STAFFORD. Madam President, I also send to the desk two items, and ask unanimous consent to have them printed in the RECORD.

I ask that a copy of an editorial from the Washington Post be printed. I also ask permission to print in the RECORD a letter in support of water resources reform written by various environmental organizations.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Oct. 7, 1986]

WATER WAYS

Last November the House passed a bill to transform the way the government builds and maintains the nation's commercial waterways. The forbiddingly titled Water Resources Conservation, Development, and Infrastructure Improvement Act of 1985 authorized the first new rivers and harbors, flood control and other such water projects since 1976. Members and interested groups—shippers, state and local governments, farmers, developers—badly wanted these. The price on which the administration insisted and for which environmental groups pressed as well was a new way of paying for the projects. For the first time, beneficiaries would bear part of the cost.

The Senate passed its better version of the bill—fewer new projects, more cost-sharing—in March. Conferees have been at work since June. Now they have apparently reached agreement. A lot of the House projects remain in the bill, but so do most of the Senate cost-sharing requirements. It is a good combination; the cost-sharing rules will serve over time to winnow the projects list. Congress should pass the bill.

Jimmy Carter should be invited to the signing ceremony. He began the fight that ends here. One of his first acts in office was to publish a hit list of water projects he felt should be dropped from the budget. The list was intended as a symbol of the new president's independence from traditional politics and his determination to guard both the public purse and the environment. The list backfired; it became a symbol instead of ineptness in dealing with the press and Congress. The arguments against the projects—as large expenditures of public funds that often end up helping the already rich at enormous environmental cost—were poorly made.

President Reagan has now achieved what Mr. Carter could not with the trade of further projects for structural reform. The theory is that seekers after projects will think twice when they have to pay. Localities will have to pay part of the cost of digging harbors, depending on depth; a cargo tax will also be imposed to help with maintenance costs. Barge owners will pay half the cost of locks and dams through an increased fuel tax. Localities will have to share in flood control costs.

In 1982 Congress rewrote the law on those (mostly western) water projects that have to do with irrigation and other water supply. The waterways bill would be companion to that. It is one of several important environmental bills to have moved in recent months. Legislation expanding the federal role in safeguarding the drinking water supply has passed. Last winter's farm bill provided for a conservation reserve to take highly erodible land out of production. Agreement has finally been reached (though not yet with the president) on extension and expansion of the Superfund program to clean up industrial dumps. The two houses seem close to agreement on a long overdue bill to speed up testing of pesticides. Though its prospects are less clear, a clean-water bill is also in conference. This could be the most important environmental Congress in years.

WASHINGTON, DC, *July 21, 1986.*

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: The remaining days of the 99th Congress will be critical for shaping the water resources development activities of the Army Corps of Engineers for the rest of the century. We share your conviction that fundamental reform of this program is long overdue.

America's wetlands, bays, and bottomland forests are some of our most productive wildlife habitat. Thus, federal projects to dam, drain, dredge, and divert our waterways are among the most environmentally damaging activities undertaken directly by the federal government. For this reason, conservationists have repeatedly opposed unneeded or wasteful water projects and have actively sought basic reforms in this program.

As Congress completes its work on the proposed Water Resources Development Act, we want to reaffirm our support for the key improvements in this program that have been repeatedly sought by your Administration: greater cost-sharing by non-federal interests, and increased user fees to be paid by commercial navigation. Such reforms will not eliminate the need for strict environmental standards and statutes. However, we are convinced that, by increasing the local financial responsibility for Corps projects, the environmental damages resulting from unneeded or oversized projects can be greatly reduced.

Although both the House and Senate versions of the legislation contain important advances over existing law, significant shortcomings exist in each. We strongly believe that a bill emergency from conference without substantially increased cost-sharing, applicable to all regions of the country, and reasonable increases in user fees for commercial navigation, should be vetoed.

Conservations from around the country would welcome such actions, should it become necessary. The nation has waited for ten years for the Congress to reform federal water development policy. With your continuing leadership, remaining obstacles can be overcome and a new course chartered for the conservation and development of America's water resources.

Sincerely,

PETER A. A. BERLE,
President, National Audubon Society,
JAY D. HAIR,
Executive Vice President National Wildlife Federation.
DOUGLAS P. WHEELER,
Executive Director, Sierra Club.

Mr. STAFFORD. In addition, I wish to make several further comments on the bill:

As I mentioned in my statement, the question of private gain from public expenditure is an issue that needs to be confronted by the Corps of Engineers. I believe the policy must be updated. But, until it is, the corps must at the very least carry out the policy it has to charge non-Federal interests the full costs of land enhancement work.

For example, the corps must charge non-Federal interests the full cost associated with creation of 800 acres of land in the Los Angeles-Long Beach Harbor project.

As I have mentioned, the bill includes an important provision involving salmon passage at two dams in Vermont. I would suggest that the corps will probably wish to contract with the Vermont fish and wildlife agencies to undertake some of this work, even though the work is at full Federal expense.

Another question that has come up has been how to handle interest costs when payments are delayed and would begin only following construction of a separable element of a project. In line with other aspects of the bill, interest is to accumulate during the construction period, even though a portion of the project cost will not be due until after construction. This would happen, for example, on a flood control project where locals delay their payments that are due over and above the initial 30 percent.

Another issue of real significance involves a provision that was contained in the Senate bill involving a study of navigation on the Wabash River.

While we dropped that provision in conference, the Senate conferees remain greatly concerned over the environmental impact, economic justification, and technical viability of potential navigation improvements on the Wabash River between Indiana and Illinois.

Currently, the corps is conducting a reconnaissance investigation of potential navigation works on the Wabash. The conferees expect that the Secretary will obligate no money for a detailed feasibility study of navigation improvements on the Wabash unless the reconnaissance report indicates clearly that any navigation project that would likely be recommended will be economically justified and that the project will have acceptable environmental and technical impacts. Only then will any additional study be clearly warranted.

Another issue I have discussed is the question of cabin sites and rentals to be charged. It is clear that the Secretary has the authority to charge market rate rentals of such cabin leases. The Secretary is expected to do so.

In several cases, the phrase "necessary and appropriate" is used in the bill to describe the test the Secretary will use to determine whether certain environmental work is to be undertaken following special studies outlined in the bill. What is meant by that phrase is essentially the same thing as the phrase "practicable." If the Secretary finds the environmental work is practicable, he is urged and expected to undertake it.

There is an important dam safety title in the bill. I have discussed most

of the provisions, but I failed to discuss language that was intended to track cost sharing on dam safety work undertaken by the Bureau of Reclamation. It should be noted that under this section, work due to general wear and tear is expected to be undertaken at full non-Federal expense, unless specified to the contrary by Congress.

I will at this point reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Texas.

WATER RESOURCES DEVELOPMENT ACT OF 1986

Mr. BENTSEN. Madam President, this is truly an historic occasion. Passage of the conference report on H.R. 6, the Water Resources Development Act of 1985, will result in the first water project authorization bill in a decade. Because the last bill containing major policy changes was enacted in 1970, this is the first major legislative initiative in water resources policy in 16 years. I am pleased to have played an active role in the development of this legislation.

The Committee on Environment and Public Works has labored long and hard over the development of this legislation. As ranking minority member on the full committee for the past 2 years and a member of the committee since 1971, I know the hard work and the dedication which has been expended on this bill.

From a parochial viewpoint, I wish to observe that of the $15.3 billion in projects and programs authorized in H.R. 6, $885.2 million is for construction and/or modifications to projects in the State of Texas. I will address these and their importance later in this statement. For the present I will briefly discuss the important policy issues in this legislation.

Through the civil works program, the Army Corps of Engineers has played an essential role in the development of water resources facilities in this Nation. The inland waterway system and our coastal ports, both so essential to interstate and international commerce, have been a corps responsibility since the early years of the 19th century. Flood control dams and reservoirs have been implemented on a large scale by the corps since 1936, when unprecedented floods in the Ohio River basin led the Congress to establish in law the principle that flood control benefits were national in scope and therefore a Federal responsibility. The hydropower program of the corps dates from the 1930's.

In the last few decades the Congress has authorized the Corps of Engineers to become more involved with water supply, fish and wildlife mitigation, and recreation.

All of these activities have brought significant benefits to citizens in all 50 States as well as in U.S. territories and other possessions. Corps of Engineers projects have served to save lives, facilitate transportation, and otherwise improve the quality of life for many years.

In recent years, critics have charged that the civil works program of the Corps of Engineers has outlived its usefulness. They believe that the majority of the most needed water resources projects have been built, and the need for a significant Federal role in this area is questionable. They also believe that many unnecessary projects have been authorized by the Congress and constructed by the Corps. Today's budgetary climate has contributed to this negative dialog. The last three administrations have advocated serious changes in the way water projects are implemented. Republican and Democratic presidents alike have urged that the beneficiaries of projects providing flood control, navigation, recreation, and other benefits should bear a greater portion of their costs. Unnecessary, expensive projects will not be built, these critics maintain, if local sponsors are made to contribute a more significant share.

After years of hearings and dialog and consideration, the Congress will now speak. This bill contains major new initiatives in the procedures under which water resources projects are planned, constructed, operated, and maintained. Local governments and other public bodies will be participating in the development of projects from the very beginning of the survey process.

H.R. 6 contains authorizations for 377 projects, studies and programs at a total estimated cost of $15.3 billion. The total first Federal cost is $11.2 billion, a great deal of which will be repaid over time. The total first non-Federal cost, money to be paid up front or during project construction, is $4.1 billion. The new cost-sharing formulas will apply to projects authorized in this bill as well as to already authorized projects and separable elements thereof not under construction as of April 30, 1986.

I will not attempt to describe the cost-sharing changes for all types of projects. I do want to address the new policy as it affects commercial ports and habors, which are so important to the economy of coastal States such as Texas. In a larger sense, these ports and harbors are the gateways of commerce for this country. Developing an appropriate, yet sound, cost-sharing policy in this area is essential to the future international competitiveness of the United States. I believe that we have achieved this objective, but Congress and the administration must continue to diligently review these policies to assure that they are not limiting the trade of the Nation.

For the first time, non-Federal sponsors will be required to bear a significant portion of the cost of harbor improvement projects. The local share will range from 10 percent to 25 percent to 50 percent, depending on the depth of the channel. Regardless of channel depth, an additional 10 percent of the total project cost is to be repaid by project sponsors, with interest, over a period of up to 30 years following project completion.

Under certain conditions, non-Federal interests will be able to undertake their own port feasibility studies, in compliance with guidelines promulgated by the Secretary of the Army. Procedures are established enabling local sponsors to construct their own harbor improvements, either in whole or as a part of a Federal project. In the latter case, the cost of non-Federal improvements can be credited toward a sponsor's share. If the entire harbor improvement is authorized by the Federal Government but constructed by a non-Federal sponsor, the Federal Government is authorized under this legislation to reimburse what would have been the Federal share of the project to that sponsor. Finally, if the non-Federal sponsor constructs a project that has not been authorized and the Federal Government determines that the project is environmentally and economically sound, the non-Federal sponsor can receive the Federal operation and maintenance payments that it would have received if the project had been an authorized project.

Madam President, both the House and Senate versions of this legislation contained a port or harbor dues authority, meant to assist local sponsors in raising sufficient revenues to finance their share of harbor improvements. The Senate provision, requiring dues to reflect "to a reasonable degree" the benefits provided by a project to various types of vessels, gave ports considerable leeway in assessing vessel fees. The House measure contained a direct beneficiary clause which permitted ports to levy fees only on those vessels benefiting from channel deepening. Under the House language, vessels which benefited from other improvements such as channel widening and jetty construction could not be charged. I considered this to be unduly restrictive and inequitable.

I am gratified that, with the help of the Finance Committee, we were able to reach agreement on a compromise approach to this issue (sec. 208) which retains much of the key concepts of the Senate bill. The harbor dues authority language contained in the conference report is far more workable and fair than what was suggested by the House. It continues to permit fees to be collected from vessels benefiting from a deeper channel. But it also allows fees to be collected from comparably sized vessels benefiting from channel widenings; new or enlarged bend easings, turning basins, anchorage areas, and protected areas; and re-

moval of navigation obstructions. The provision also stipulates other criteria which may be considered by non-Federal sponsors in developing harbor dues, including: elapsed time and safety of passage, vessel economy of scale, and under keel clearance.

The conference substitute should assure that vessels which substantially benefit from harbor improvements will be assessed fees. Vessels of design dimensions not comparable to those used to justify the project during its formulation would not be subject to dues under section 208.

In view of the lack of legislative history on the harbor dues provision, Madam President, I think it advisable to expand my remarks. The reference to "utilized the project at mean low water" in this section is intended to describe situations such as vessels awaiting high tide to enter the channel in order to avoid running aground due to a draft which would be too great to enter the channel at any other time. Similarly, the reference to design draft is included to assure that the fee structure is based on the draft a vessel would be drawing under its normal design conditions, not some light-loaded situation. For example, if the design draft of the vessel was 40 feet, this draft would be used in determining its responsibility for dues, not whether on this voyage it was drawing 38 feet of draft.

The use of the term "at least comparable in size" is intended to address a situation in which a vessel may not be identical to the design vessel, but is so similar that it would require essentially the same features. For example, if a project feature was justified for a design vessel 1,000 feet long and 160 feet wide, a vessel 1,000 feet long and 150 feet wide would be comparable.

I want to briefly mention some of the projects in H.R. 6 which benefit the State of Texas. Full construction authorization is contained for two navigation projects, six flood control projects, and one fish and wildlife mitigation project, at an estimated total cost of $742.9 million. An additional $142.3 million is authorized in project modifications.

Every one of these projects is important to the economy of Texas. I will not list all of them, but I am particularly pleased at the construction authorization of the Lower Rio Grande project, which will provide much-needed flood protection for the Lower Rio Grande Valley, where I grew up. I have worked for the authorization of this project since I came to the Senate. While the battle is not over because significant portions of the overall project must be funded through the Soil Conservation Service, the authorization contained in this bill is a critical step.

Equally important are the other flood control projects authorized for construction, which include Lake Wichita at Holliday Creek, near Wichita Falls; Boggy Creek in the vicinity of Austin; Sims Bayou and Buffalo Bayou, both near Houston, and the stockyard area of Fort Worth.

H.R. 6 also includes a clarification that the $126 million of remaining work on the Red River chloride project will be built at full Federal expense in accordance with its authorization 20 years ago, subject to a determination that the completed protion of the project known as Area VIII provides water quality consistent with that assumed in the development of project benefits.

The previously authorized Mouth of the Colorado project is also modified to assure that the diversion channel component of the project will be constructed at full Federal expense because of the national benefits derived from the fish and wildlife to be protected.

Madam President, these are only a few of the projects which will provide widespread benefits to the State of Texas. At this time I would like to compliment the other members of the Committee on Environment and Public Works, particularly full committee Chairman BOB STAFFORD and Water Resources Subcommittee chairman and ranking member JIM ABDNOR and DANIEL PATRICK MOYNIHAN.

Tribute should be paid also to members of the Finance and Ways and Means Committees, especially Chairmen BOB PACKWOOD and DAN ROSTENKOWSKI. These committees had jurisdiction over title XIV, dealing with the port ad valorem charge on cargo and the raising of the existing fuel taxes for barges. Senator PACKWOOD also was especially helpful in resolving the vessel fee issue in title II which I described earlier.

Madam President, I am proud to have played a part in the development of this important legislation. I urge speedy Senate approval of the conference report on H.R. 6.

Mr. ABDNOR. Madam President, I don't know how many times I have stood before the Senate and pointed out that it has been over a decade since the last major water resources development bill, but I hope that this is the last time.

Madam President, the conference report on H.R. 6 which is now before the Senate is without a doubt the most significant water resources development bill in over 50 years. It is the product of more work on the part of Members of Congress than any other water development bill in history.

There are two major reasons why this bill is so historically significant. First, because it has been so long since there has been a water resources bill, a large blacklog of projects is being authorized.

In fact, the conference report on H.R. 6 authorizes a total of 377 Corps of Engineers water resources projects, project modifications, and studies. If, and I emphasize "if," all of these were carried out, they would cost a total of approximately $15.3 billion. The first Federal share of this cost would be about $11.2 billion, and the ultimate Federal cost would be $8.5 billion.

The second and more important reason that this bill is so significant is that it makes sweeping reforms to the relationship between the Federal Government and the non-Federal sponsors of water projects.

This bill will insure that from this point on, a non-Federal sponsor will bear a greater share of the costs of Corps of Engineers water projects. Along with this new responsibility, the non-Federal sponsor will have a greater input into the planning, design, and construction process. These changes are absolutely fundamental to invigorating and reestablishing a productive Federal water resources development program.

The reforms in this bill that have received the most attention are of course the cost-sharing reforms. I am very pleased to report that the cost-sharing provisions contained in the conference report are, with only very minor differences, the Senate-passed formulas.

Since cost sharing is described more fully in the statement of managers, language which will be reproduced in the RECORD, I will not review it here.

It should be emphasized, however, that these new cost-sharing requirements not only apply to all new project authorizations, but they also apply to unconstructed elements of already authorized projects.

When you consider that in the past, non-Federal sponsors of Corps of Engineers project were, for most types of projects, responsible only for providing the lands, easements, and rights of way for project construction, the reforms contained in this bill seem all the more significant.

Madam President, in the past, I have heard some Members say that requiring significant new cost sharing will present many communities with an unfair and unbearable burden.

To these Members I say that the Committee on Environment and Public Work has worked on cost-sharing formulas for the past several years. During that time it has become clear that cost-sharing requirements such as the ones in this bill will not prove to be an undue burden on local project sponsors.

In the rare event that a local sponsor is unable to provide the required share of the cost of an economically sound project, H.R. 6 provides that the Secretary may consider the ability of that sponsor to pay when fixing the local share.

On the issue of the cost of the bill, Madam President, it is virtually certain that there are those that will claim that this is a budget busting bill because of the large number of projects that are authorized. In righteous tones they will ask: "How can we, in such fiscally distressed times, be approving a bill that has a price tag of over $15 billion?"

To these people I say this: "Read the bill."

First of all, this is only authorizing legislation and does not appropriate 1 penny.

Second, a careful examination will reveal that budgetary considerations permeate H.R. 6.

For example, the conference report retains the Senate cap on Corps of Engineers civil works construction spending. These annual caps correlate very closely with CBO and OMB projections of future Corps of Engineers spending.

Therefore, even if there were trillions of dollars worth of project authorization in this bill, the corps ability to obligate money in any 1 year is strictly limited.

Further, there are limits placed on cost increases for the individual projects authorized in H.R. 6. The bill ensures that the corps must come back to Congress for further authorization if a project's cost escalates beyond a certain point.

This protection will prevent a situation where the corps is authorized to perform a rather modest project and, through the years, that rather modest project becomes a huge, not so modest project.

A further protection in this bill is the automatic deauthorization provision. Title X of this bill provides for automatic deauthorization of those projects which receive no appropriation within 5 years of their authorization.

Further, title X of this bill also specifically deauthorizes over $11 billion worth of sorely outdated corps projects.

In addition to the numerous budgetary protections in H.R. 6, there are also numerous environmental protections.

First, this bill requires that mitigation work is to proceed along with the construction of Corps of Engineers water projects.

In addition, H.R. 6 requires that all future water project plans that the corps sends to the Congress contain specific environmental mitigation plans.

Further, this bill creates an environmental mitigation revolving fund which can be used to provide migitation for any Corps of Engineers project, including those already constructed.

And finally, every project in this bill either has or will be subject to a full review under the National Environmental Policy Act.

Madam President, if you were to take the cost-sharing reforms, the project authorizations, and the environmental provisions out of H.R. 6, you would still be left with a very substantial piece of legislation.

There are numerous studies and programs in this bill that I believe are of great value.

I will mention only one of these and that is the Dam Safety Program that is authorized in title XII. This program which it taken from the Senate bill, establishes a modest matching grant program to encourage the creation and maintenance of adequate State dam safety programs.

Since the safety of non-Federal dams is the responsibility of the States, and since the dam safety programs of half the States in this Nation are woefully inadequate, the program in title XII is sorely needed to help protect our citizens from the very real danger of unsafe dams.

Madam President, this legislation has had a long and arduous history. As many Members are aware, one of the landmarks of that history was an agreement that was worked out with the administration last year over the funding of certain projects on a supplemental appropriations bill.

Among other things, that agreement spelled out the level of cost sharing and user fees necessary to make an omnibus water resources development bill acceptable to the administration.

The Senate-passed version of H.R. 6 reflected this agreement, and by essentially adopting the Senate's cost-sharing provisions, the conferees have kept a critical part of the agreement that was made with the administration 1½ years ago.

Further, the administration has been kept abreast all during the conference negotiations on H.R. 6. From every indication I have had, this bill will be signed by President Reagan.

Madam President, the role of water resources development in economic growth is all too frequently overlooked. The founders of this country had a profound understanding of this truth and laid the groundwork for the vast system of water resources projects that form an indispensable part of our national infrastructure.

H.R. 6. extends and modernizes this tradition

By authorizing improvements to many of our most important ports and to our inland wateway system, this bill helps pave the way for new industrial and commercial growth.

By authorizing flood control works for many of our cities, and shoreline erosion work for many coastal communities, this bill provides for the protection of health that we have already developed.

In spite of many cynical remarks about the pork barrel and the wasting of the taxpayers dollars for projects of dubious merit, the types of projects which are authorized by this bill form an essential part of our economy. They are an indispensable basis of future economic growth.

Indeed, it is no exaggeration to say that the Federal role in the development of this country's water resources has been a cornerstone of our economic success.

Madam President, I would never imply that the projects authorized in this bill can be bought at no cost to the taxpayers—they will cost money. However, it is safe to say that the lost opportunities and the consequences such as flood damages we would suffer for not building them would cost the public far more.

Before I close my remarks, I would like to express my thanks to Chairman STAFFORD, Senators BENTSEN, PAT MOYNIHAN, and my other colleagues on the Committee on Environmental and Public Works Committee for all of their work on this legislation. I would also like to thank Senators PACKWOOD and LONG and the other members of the Finance Committee who put together the tax related portions of H.R. 6.

Finally, I would also like to thank Bob Dawson, the assistant secretary of the Army for civil works, for all of the support and assistance he has provided throughout this process. Mr. Dawson has been well served by Mike Strachn, Ed Dickey, and Myron Yushishin, who have provided invaluable technical assistance and advice throughout this process.

Madam President, H.R, 6 is a bill that enjoys a very broad base of support. With few exceptions it is supported by the States, the cities, the ports, the shippers, many environmental groups, the construction industry, and a host of other interest groups.

The conference report on H.R. 6 is a long overdue opportunity to both reform and revitalized a critically important aspect of government. This bill helps lay the groundwork for the future and I urge my colleagues to support its passage.

Madam President, I ask unanimous consent that a letter from the National Wildlife Federation supporting the conference report on H.R. 6 be printed at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL WILDLIFE FEDERATION,
Washington, DC, October 16, 1986.

Hon. JAMES ABDNOR,
Chairman, Subcommittee on Water Resources, Committee on Environmental and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I want to convey our support for the conference agreement on

H.R. 6, the Water Resources Development Act of 1986. In our opinion, H.R. 6 is the most significant water resources development legislation since the New Deal, and the most environmentally responsible water projects bill to date.

Enactment of H.R. 6 would go a long way toward the implementation of reforms that have been sought by successive Administrations, Republican and Democratic alike, laid out by the landmark report of the National Water Commission in 1973. Most notably, the bill contains significant new requirements for greater non-Federal participation in the financing of most types of new water resources projects. These cost-sharing and user fee provisions will enfranchise thousands of new participants in the process of planning and constructing Federal water projects. These new requirements will not only save the Treasury money, but they also will spare the environment from damage by the construction of unneeded or oversized projects.

In addition to these fundamental financial reforms, the bill contains an important provision requiring timely implementation of measures to mitigate damages to the environment that result from project development. The bill also includes needed general authority for the Corps of Engineers to restore previously damaged fish and wildlife habitat, undertake improvements at existing projects to improve their environmental performance, and protect wetlands in the Lower Mississippi Valley.

H.R. 6 contains numerous provisions and projects to enhance natural values or restore previously damaged resources. The most significant of these include the protection of the Atchafalaya River Basin in Louisiana, the mitigation of damages to fish and wildlife habitat resulting from construction of the Tennessee-Tombigbee Waterway in Alabama and Mississippi, and the initial stage of a major mitigation effort for the lower Missouri River, in Iowa, Nebraska, Kansas, and Missouri.

Several hundred unbuilt projects would be deauthorized by H.R. 6, and a new process will be set up to automatically cull the "dead wood" from the Corps' construction backlog in the future. Notably, the Cross-Florida Barge Canal would be deauthorized, with previously acquired lands to be managed for their natural and recreational value.

Among the many studies authorized by the bill is a study of the Corps' capability to create or improve fish and wildlife habitat, along with limited authority to demonstrate such capabilities. Also, in one of the first undertakings of its kind, the bill authorizes a three-year study of the implications of rising sea levels on coastal communities and related policies and programs of the Corps. This study is to include an appraisal of various strategies for managing relocation, disinvestment, and reinvestment in coastal communities exposed to coastal flooding and erosion.

To be sure, H.R. 6 also includes among its 400-plus pages several projects and provisions which we believe to be unjustified or unwise. Nevertheless, these shortcomings do not, on balance, detract from the significance of the reminder of the bill.

I urge the Senate to approve the conference agreement on H.R. 6. Your support for the restructuring of the Army's water resources development program as embodied in this legislation is greatly appreciated.

Sincerely,

JAY D. HAIR.

Mr. ABDNOR. Madam President, I think we are all familiar with the bill. It has been a long time in the making and we consulted probably everyone on this floor at one time or another trying to reach agreement.

But before I close my remarks, I particularly want to express my thanks to my chairman, Chairman STAFFORD, and Senator BENTSEN. They always were there and they were the force that helped really bring this together.

I do not mind saying that without Senator MOYNIHAN, it would have been really difficult to get this through. I think he would be the first to admit it was a real bipartisan effort on our part.

I thank the other colleagues on the Committee on Environment and Public Works for all their work on this legislation. I also wish to thank Senators PACKWOOD and LONG and other members of the Finance Committee who put together the tax-related portion of H.R. 6. Their work was crucial. It has not been easy to deal with taxes and fees in this area. But they were very helpful, very effective, and more than willing to do their part.

Of course, I would really be remiss in my remarks if I did not thank the staff who labored so long and hard to see this legislation through: Hal Brayman, Tom Skirbunt, Mark Haynes, Nan Stockholm, Ann Garrabrant, and Lee Fuller. They spent enormous amounts of time trying to see this legislation through.

Probably for every few minutes I put in, the staff worked for an hour helping us put this thing together and work out our differences with the House.

We are very proud of this piece of legislation and think it is an excellent piece. I am sure everyone will want to support it.

Mr. MOYNIHAN. Mr. President, I yield 1 minute to the distinguished Senator from Hawaii.

Mr. MATSUNAGA. I thank the Senator for yielding.

Mr. President, as a member of the conference committee I rise in support of the conference report on the Water Resources Development Act (H.R. 6). I am particularly pleased that the conference agreement contains a provision which I proposed in the Finance Committee relating to the tax treatment of Hawaii and the insular possessions of the United States.

Mr. President, the underlying legislation imposes a 0.04 percent ad valorem charge on cargo loaded onto, or unloaded from, commercial vessels in waterports of the United States. The conference committee considered at length and in depth the unique circumstances pertaining to Hawaii and the insular possessions of the United States, which are almost completely dependent on waterborne commerce. Under an amendment approved by the conference committee, the proposed port use charge would not apply to either the loading or subsequent unloading of cargo that is loaded in Hawaii or in any U.S. possession and shipped to the U.S. mainland or Alaska for ultimate use or consumption in the U.S. mainland or Alaska. Similarly, the port use charge would not apply to either the loading or subsequently unloading of cargo that is loaded at a port in the U.S. mainland or Alaska for transportation to Hawaii or a U.S. possession for ultimate use or consumption in Hawaii or a U.S. possession. Finally, the port use tax would not be imposed on cargo shipped from one port in Hawaii to another port within the State. The tax would apply to the loading or unloading in Hawaii or in the U.S. possessions of cargo shipped to or from a foreign country.

Mr. President, in my view these provisions which were drafted with the understanding, cooperation and able assistance of the distinguished chairman of the Finance Committee, Mr. PACKWOOD, are an adequate and appropriate response to the concerns which I raised in September 1985, during the Finance Committee hearing on the pending legislation.

Mr. President, in concluding my remarks, I wish to thank Senator PACKWOOD, along with the ranking Democrat of the Finance Committee, Senator LONG, without whose assistance the economies of Hawaii and the U.S. possessions would have been subjected to undue burden. Mahalo!

Mr. BRADLEY. Mr. President, as the 99th Congress comes to a close, it is fitting that the Senate acts on the conference report to the Omnibus Water Resources Development Act. The passage of this bill breaks a decade-long stalemate which was caused by the debate over how to finance these projects. The compromise on the cost sharing schedules and port user fees reestablishes the Federal Government's traditional role in the development and maintenance of our Nation's water resources infrastructure.

This infrastructure cannot be left for some other day. Our reservoirs, waterways, harbors, and coastal areas are in serious disrepair. Authorization and funding of these projects will improve our ability to provide water to our cities and farms, protect our people and their homes from floods, improve ports for commercial shipping and fishing, and provide safe recreational areas for all Americans.

The problems that have held this authorization bill up for so many years were noticeable this past summer when the Office of Management and Budget considered rejecting the cost sharing agreement for the Liberty State Park seawall and levee

project for Jersey City, NJ. OMB officials argued that the seawall project would be used primarily for recreational purposes. Designed to prevent flooding and to ensure that erosion does not occur at Liberty State Park, the project has additional benefits as well. It will provide the millions of people who visit Liberty State Park with an unparalleled view of the Statue of Liberty and Ellis Island. OMB's suggestion that the project should not go forward was shortsighted at best. If, decades ago, officials had blocked funding because of the potential recreational nature of the many dams, levees, waterways, harbors, and coastal areas designated as "flood control" or "navigation" projects, Americans would have suffered serious economic and environmental hardships as well as lost invaluable recreational opportunities which we still enjoy to this day.

The continued maintenance of our Nation's coastline and waterways is vitally important for safety and for economic reasons. Commercial fishermen and recreational boaters throughout the country need to know with confidence that our waters are navigable and safe. Shore and lake communities across the country depend on their ability to attract vacationers in order to sustain economic growth. Without properly maintained beaches, this opportunity will be lost.

Mr. President, it has been nearly 10 years since a water projects bill of this magnitude was passed. Further inaction will only increase the costs of these projects in the future, and because so many of these projects are designed to correct treacherous waterways and recurrent flooding problems, failure to act could result in further loss of life. Again, I would like to commend the members of the committees who drafted this legislation, and I ask my colleagues to support this authorization bill.

Mr. GORE. Madam President, I rise to express my concerns over this legislation, especially as it relates to the Mississippi River and tributaries [MR&T] project. Unfortunately, this bill will saddle many local governments and levee districts throughout the lower Mississippi Valley region with the burden of paying for national flood-control problems. It will do so by requiring cost sharing on separable elements of the MR&T.

Along with six of my colleagues—Senators SASSER, FORD, SIMON, LONG, STENNIS, and PRYOR—I asked members of the conference committee to address this issue of cost sharing for separable elements. We found the term "separable elements" to be vague, and thus open to misinterpretation. It is my understanding that a definition has been applied to the term: It specifically means features that are physically separate from other portions of a project and produce entirely separate hydrological and economic benefits.

This language is helpful, but there are still many portions of the MR&T which I fear will be delayed and perhaps not built because of this cost-sharing requirement. And even if portions of the MR&T which are already under construction—such as the west Tennessee tributaries project in my State—are grandfathered and not subject to cost sharing, I am concerned that future elements of this major project will be affected in a negative way.

First authorized by Congress in 1928 as a single project, the MR&T program is a vast system of flood protection dams, levees, drains and channels spread over Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee. The flooding programs addressed by MR&T are really national problems, as the Mississippi River drains 41 percent of the continental United States—nearly 30 States from Delaware to Idaho. This program, then, cannot be divided and considered as a series of local projects addressing only local problems. The Mississippi River is a natural resource and controlling it is a national responsibility.

Despite the scope of the problem, there are still some who insist that this is a localized project benefiting only those counties, towns, and levee districts bordering the river. They contend that localities should bear the expense of flood-control projects on the Mississippi. The vast majority of the localities in these seven States cannot bear such an expense. Even if they could, however, it is unfair to ask them to pay to manage water which entered the system hundreds or even thousands of miles away. Localities do not have the resources to solve national problems, and they should not be required to make the attempt.

The Lower Mississippi Valley Flood Control Association has been very concerned with this matter, and officers of that organization have submitted a list of some of the MR&T work which they believe will be adversely affected by this legislation:

In Illinois, the Cache River Pumping Plant.

In Kentucky, the western Kentucky tributaries project; and the Lake Number Nine project.

In Missouri, St. John's Bayou-New Madrid Floodway.

In Tennessee, the Mud Lake Pumping Plant; and the Harris Fork Creek project which also has an effect in Kentucky.

In Arkansas, the White River-Big Creek and tributaries project; the Cache River basin; the L'Anguille River basin; Eight Mile Creek-Paragould tributaries project to the St. Francis River; Helena flood-control work; and West Memphis flood-control work.

In Mississippi, Horn Lake Creek tributaries project.

In Louisiana, Boeuf Tensas River basin project; the Bayou Cocodrie tributaries basin; Mississippi Delta region project; Eastern Rapides-South Central Avoyelles work; Bushley Bayou; and the Louisiana State Penitentiary levy.

It is not now my intention to stand in the way of the bill. I realize that it has been many years since a comprehensive water projects bill has been enacted, and there are many other provisions of interest to Members of this body. However, I want these concerns about cost sharing to be fully understood. The precedent we establish with this legislation will be a lasting one. The effects of cost sharing must be watched closely; and if portions of the MR&T are in fact not built because of these provisions, the Nation may well pay much more for repair of flood damages in the lower Mississippi Valley than we will save by requiring cost sharing. If so, some future Congress will need to remedy what has been done here.

In closing, I ask unanimous consent to include in the RECORD the statement of Mr. George C. Grugett, executive vice president of the Lower Mississippi Valley Flood Control Association, who made a presentation of that organization's concerns in a breakfast meeting on September 17 here in Washington. This statement expresses the concerns of that organization:

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF GEORGE C. GRUGETT, EXECUTIVE VICE PRESIDENT, LOWER MISSISSIPPI VALLEY FLOOD CONTROL ASSOCIATION, SEPTEMBER 17, 1986

Ladies and gentlemen, speaking on behalf of the 110 water-related organizations that make up the membership of the Lower Mississippi Valley Flood Control Association and especially on behalf of the 10 gentlemen who are elected by their neighbors to serve on the executive committee that manages and directs the policy established by the association, let me say thanks to each of you who have taken the time from your all too busy schedule this morning to join with us for our seventh annual breakfast.

When I say our seventh annual breakfast there may be some who would think that this is a relatively new "kid on the block" or as we in the South might say, "a comelately." Not so, the Lower Mississippi Valley Flood Control Association held its 50th annual meeting this past December and was in fact first organized in 1922. Our 110-member organizations include levee boards, drainage districts, port authorities, harbor commissions, State agencies, municipalities, and also just individuals that share our problems and concerns. Those problems address themself to flood control, navigation, channel improvements, and major drainage in the seven States of the Alluvial Valley of the lower Mississippi River and I think more importantly our concerns are for the

welfare and prosperity of this great Nation of ours.

Our association is comprised of a very large group of individuals who are businessmen, property owners, conservationists, farmers, attorneys, doctors, wildlife enthusiasts, engineers, accountants, environmentalists, civil servants, and elected officials from all political parties. We are indeed fortunate that for the past 50 years our officers, that are elected annually by the membership, have been distinguished Members of the Congress of these United States.

I feel that it is important that I give you this very brief amount of background information on the Lower Mississippi Valley Flood Control Association in order that you might clearly see that when we again today discuss with you our problems and concerns with pending water resources legislation that we are not being parochial, regional, or unfair in our approach or requests but that we do in fact represent a unique and different situation because the principal objective of this association is the support and sponsorship of a single, comprehensive, multi-State project that was established by law to solve a national problem and one that the Congress in its wisdom, by almost unanimous consent, agreed should be a complete Federal responsibility.

I sincerely hope that I might be successful in this attempt and in order to gain some advantage I will be quoting from several highly respected individuals and from facts and records of others. In all probability I will quote some that are present, certainly with no intent other than to emphasize what you have already stated.

I feel that some explanation and a little history of the Mississippi River and tributaries project is required even if it may be repetitious to most of those present.

The Mississippi River has the third largest drainage basin in the world. It drains 41 percent of the lower 48 States and two Provinces of Canada. The River renders vital service to over 40 percent of the area of the country but at the same time it poses a significant and continuing flood threat to the inhabitants of the lower Mississippi Valley.

Prior to 1926, the inhabitants of the valley had spent about $300,000,000 for flood control. In spite of this huge outlay of money they suffered direct damages from the 1927 flood in excess of $236,000,000. In addition as many as 500 lives were lost, 162,000 homes were inundated and there were approximately 325,000 refugees to be cared for.

In 1928, the Congress passed the Flood Control Act of May 15 that established the Mississippi River and tributaries project as a single project to solve a national problem. It is a complete authorization within itself adopted to prevent the misery, suffering and loss occasioned by floods on the Lower Mississippi River. Section 2 of the Act expressed legislative intent and emphasized that the project is a Federal project. No doubt should remain on that score in light of the concluding cause—"no local contribution to the project herein adopted is required."

Now let's look at what has happened since passage of the 1928 act.

On June the 22d of this year the Corps of Engineers celebrated the 50th anniversary of the signing of the Flood Control Act of 1936. The one that is sometimes called the General Flood Control Act or the Copeland Act in honor of Royal Copeland then the distinguished Senator from New York. The Corps could have also celebrated on June the 15th the 50th anniversary of the other Flood Control Act of 1936, the one that is sometimes called the Mississippi River and Tributaries Act or the Overton Act in honor of John Overton the then distinguished Senator from Louisiana who was at that time serving as the first president of the Lower Mississippi Valley Flood Control Association.

Of course, the Overton Act was an amendment to the 1928 act and applied only to the Mississippi River and Tributaries project. Let's look at the other 1936 act, the Copeland Act, this Act by section 8 specifically provided that "nothing in this act shall be construed as repealing or amending any provision of the 1928 Flood Control Act." In all subsequent flood control legislation this division of law between the projects for the Lower Mississippi River and Tributaries and for general flood control has been continued by specific language and all subsequent flood control acts have included the language "the project for flood control of the Lower Mississippi River adopted by act of May 15, 1928, as amended is hereby modified, etc." Consequently, the act of May 15, 1928, and its amendments is the controlling legislation for the Lower Mississippi River and Tributaries Project and the General Flood Control Acts have no application thereto, a construction that has been accepted for over 50 years and one that should not be changed at this time.

Let me quote only a very few individuals in order to give you their thoughts on this premise.

Congressman Tom Bevill of Alabama—Chairman of the Subcommittee on Energy and Water Development:

"The Mississippi River and tributaries project is one project addressing the flood problems of the seven States—failure to complete this project as a complete unit will totally cripple the project. It is totally unrealistic to expect the citizens of the lower Mississippi Valley to pay new or additional costs to protect themselves from devastating floods coming down on them from over 40 percent of the land area of the United States."

Congressman Gene Snyder of Kentucky—ranking minority member, Committee on Public Works and Transportation:

"The Mississippi River and tributaries is a single project, albeit a large one, with many parts, and to apply a new cost-sharing formula to these parts by considering each as a separate project is unrealistic, unfeasible and unfair. The people in the lower Mississippi River Valley have been fighting the floodwaters of that great river and its tributaries for years, and they have contributed substantially to flood control efforts. It is not their water which floods their land and their homes, it is water brought down to them from the upper reaches of the Mississippi."

Congressman Arlan Stangeland of Minnesota—ranking minority member, Subcommittee on Water Resources:

"Given the history and unique nature of the Mississippi River and tributaries project, to treat each element as a separate project would in my judgment, be most unfair to the MR&T project. There are, in fact, not new projects; they are elements and features of a single comprehensive overall project."

Let me next give you just one example of how the Congress of the United States, as well as the Administration, has considered the Mississippi River and tributaries project in the past and I quote from section 201 of the Flood Control Act of 1962.

"The project for flood control and improvement of the lower Mississippi River adopted by the act approved May 15, 1928, as amended by subsequent acts, is hereby modified and expanded to include the following items: (A) Monetary authorizations heretofore and hereafter made available to the project or any portion thereof shall be combined into a single sum and be available for application to any portion of the project."

This appears to be clear indication that the Mississippi River and tributaries project was considered by one and all to be a single project not to be broken into "separable elements" or what have you.

Just one more from a statement by the past distinguished Senator from Arkansas, made on December 2, 1955, in New Orleans, Louisiana. Quoting from Senator John C. McClellan:

"The physical geography of the Mississippi River is such that flood control interests do not stop at the main river but extend upstream along the adjacent tributary streams and valleys. The flood control plan on the lower Mississippi River therefore cannot be considered adequate or complete until the flood control plans for these valleys, authorized as a part of the Mississippi River and tributaries project, are completed."

I would like at this time to point out to you an example of what the Mississippi River and tributaries project has done for this Nation and to show you what an excellent Federal investment has been made.

I mentioned earlier that the Corps of Engineers celebrated the 50th anniversary of the signing of the General Flood Control Act of 1936, during that time they published information that states that:

"Appropriations from Congress have enabled the corps to invest $23 billion in flood control projects throughout the Nation over the past 50 years. More than $150 billion worth of flood damages have been prevented by more than 300 projects currently operated by the corps. This represents more than seven times the original investment."

Now this is something to be proud of.

Included in those figures of course is the Mississippi River and tributaries project and I would like to separate them for you. Out of the total of $23 billion invested less than $4 billion has been spent for the Mississippi River and tributaries project or about 17 percent of the total. Out of the $150 billion in flood damages prevented about $107½ billion is attributed to the Mississippi River and tributaries project or about 72 percent of the total. The Mississippi River and tributaries project represents more than 27 times its original investment. Now there's something to really brag about.

Even with that fantastic track record, the Mississippi River and tributaries project is not completed and we are still unable to pass the project flood to the Gulf of Mexico. We need to complete the work that is required to make this great project and wonderful investment function properly.

This association has long recognized the need for passage of a water resources authorization bill and I quote from a statement made on September 30, 1980, by a member of our executive committee at the occasion of our first annual breakfast meeting here in the Rayburn Building:

"The Lower Mississippi Valley Flood Control Association is concerned over the fact that it has been over four years since the Congress has passed a Water Resources Authorization Bill. We see this as a very seri-

ous problem and one that needs to be solved.

"We are all aware that the problem of flood control in the Lower Mississippi Valley is far from being solved and we are also aware that additional authorizations are needed from the Congress before all the problems can be solved."

We still support passage of a water resources authorization bill but we cannot in good conscience support a bill that will deauthorize all projects, or separable elements of projects where construction has not commenced within ten years of authorization. In the Mississippi River and tributaries project alone this could mean the deauthorization of close to $1 billion worth of work that the Congress has authorized as needed to complete this project. I say could because at this point in time we are not sure what definition of several in the record we should use for separable elements. We do know we have strong concerns for legislation that will have such an impact on the people of the lower Mississippi Valley and the Nation which contains a term throughout the bill that has not been properly defined by the Congress.

We also find it totally uneconomical to deauthorize any projects or separable elements of projects without first investigating their merits especially where the Federal Government has already invested millions of dollars. It would appear that the local taxpayer is being unduly penalized for the length of time required for the Corps of Engineers to bring an authorized project to construction.

In our opinion we find the language in the Senate version of H.R. 6 dealing with mitigation of fish and wildlife losses on completed and under construction projects to be expensive, expansive, and unreasonable and we wonder why the Congress would now give up their long-held policy that only they should authorize the acquisition of lands for mitigation purposes. We foresee the authorization to the Secretary of the Army for this unknown expenditure of moneys to be one that could certainly be devastating to the economy of this Nation and could take millions of acres of land out of private ownership. The Senate version of H.R. 6 does limit the obligation to no more than $30 million in any fiscal year but it does not limit the number of years.

Ladies and gentleman for the sake of time I will not go into all the details concerning cost sharing for the Mississippi River and tributaries project. We have addressed that problem with all who would listen certainly over the past four years. You have heard or read statements opposing new or additional cost sharing for the Mississippi River and tributaries project that have been made by every Senator and Congressman in the seven States of the lower Mississippi Valley as well as several distinguished Members outside the valley. Both Houses of the Congress voted for and the President signed the recent supplemental appropriations bill that contained language that would exempt the Mississippi River and tributaries or any other comprehensive, multi-State flood control project from new or additional cost sharing. We desire and must have a bill that will continue this policy.

We and you have been assured on several occasions that only unscheduled portions of the Mississippi River and tributaries project, or according to the last schedule we saw, something over $700 million worth of unfinished authorizations will have to be cost-shared.

We in the lower Mississippi Valley have two big problems with this theory of scheduled versus unscheduled work, first we can ill afford to give up this so-called unscheduled work and give it up we must because of a financial inability to provide the required cost sharing. The other real problem we have is that no one can assure us that this interpretation will remain in future administration until we complete the Mississippi River and tributaries project and can safely pass the project design flood that's coming from over 40 percent of the country.

We note that the executive department has stated in correspondence that although certain items are already under construction, the remaining features of the work will have to be cost shared under the concepts agreed to by the administration and the Senate majority leadership.

Let me try to wind-down by quoting Mr. Ron Besson in his statement at this meeting last year.

"The most pressing point that we wish to make to you ladies and gentlemen is that the comprehensive project that was authorized in the flood control act of 1928 is not completed and each element and feature of this project is an integral part of the overall project and each is interdependent, the remaining work is not new but are merely steps toward completing an existing project and no new or additional cost-sharing should be required for any part of such a comprehensive project."

One other point I wish to make, this association has been accused of being anti-water resources bill. Nothing could be further from the truth, this association has always supported every water resources authorization bill since 1922. Today we would be very pleased to see the House version of H.R. 6 signed into law. We have to believe that we are being called anti simply because we do not totally agree with the Administration's position that the Senate version of H.R. 6 is the only game in town. We cannot blindly and with no changes or compromises accept a bill, that will deauthorize almost $1 billion worth of vitally needed Mississippi River and tributaries work that we have worked so hard to achieve. We cannot say yes to a bill that will impose unreasonable and unpayable new and additional cost sharing to the unfinished part of the Mississippi River and tributaries project when we know all too well that we must complete the entire project before the people in the valley can be safe from the devastating flood waters coming down from over 40 percent of this Nation. As taxpayers we cannot in good conscience support legislation that will authorize unlimited mitigation for completed projects. We feel we must know the amounts of dollars and land that this obligates us and the future to.

We feel now as we have always felt that any major decisions, be it water resources or whatever, should be made in the open forum of the Congress. This arrangement has served this country well over the years and we do not feel that it should change now or ever.

Secretary Dawson has been quoted in the newspapers as saying that if cost sharing is enacted then "projects will be smaller but we'll have the best ones." If it works for projects maybe it will work for authorization bills. Perhaps we need smaller bills and maybe we should have separate bills for the Mississippi River and tributaries project and other flood control as we did in 1936 and as I've stated earlier the Mississippi River and tributaries has always been separate legislation. I will go back to our first breakfast meeting in 1980 and quote one of our spokesman who said:

"The Bills that have been acted on but not passed by the Congress in recent years have contained several vitally needed projects. They have also contained a lot of items. Maybe we should work together to establish priorities in order to limit what's in the Bill which may make it easier to get passed and signed into law."

One thing I do know for certain. Our Federal program of river development and improvement must go on. The long history of the world proves that when a nation hesitates in its internal betterment it begins to slip backward.

America's destiny I hope is not ready to go into reverse.

Thank you for this opportunity and special thanks for your kind attention.

Mr. SASSER. Madam President, I rise to express my reservations about this conference report. I certainly commend my colleagues on the conference committee for having reached agreement with the House on this sweeping legislation, and for succeeding in bringing this bill to the floor before the end of this session. This legislation contains many fine provisions, including language I offered on section 211. However, I have grave concerns about the impact of the cost-sharing provisions contained in this legislation on communities throughout Tennessee and the lower Mississippi Valley.

The legislation before us today is very important to the continuation of work on the Mississippi River and tributaries project. While many believe this is simply a regional project, the MR&T project is certainly national in scope and benefits.

The Mississippi River and its tributaries is the third largest drainage basin in the world. The system drains 41 percent of the continental United States—nearly 30 States from Idaho to Delaware. The river systems of the MR&T are vital to interstate and international commerce, and provide water, power and recreational opportunities for millions of Americans. It is certainly safe to say that the Mississippi River is a national resource.

Controlling it should thus be a national responsibility. The flooding problems addressed by the MR&T project are really national problems. The project, authorized by Congress in 1928 as a single project, cannot be divided and considered as a series of local projects addressing only local problems.

Unfortunately, this legislation takes the attitude that the MR&T project is a localized project benefiting only those counties, towns, and levee districts bordering the river. This legislation will force localities to bear the expense of flood control projects on the Mississippi. However, the vast majority of the localities in the seven States within the MR&T project cannot bear

such an expense. Even if they could, it is unfair to ask them to pay to manage water which entered the Mississippi River system hundreds, or even thousands, of miles away. Localities simply do not have the resources to solve national problems, nor should they be required to do so.

The House version of H.R. 6 did not require local cost-sharing on the MR&T. I, along with several of my colleagues, urged the Senate conferees to retain the House cost-sharing provisions for the MR&T. These provisions are not only consistent with the supplemental appropriations bill passed last year, but would enhance, rather than hinder, the development of MR&T flood control projects.

I believe that the cost-sharing requirements of H.R. 6 place a disproportionate burden on those residents at the southern end of the Mississippi River watershed. I simply am not convinced that Tennessee localities will be able, or should be required, to pay for these flood control projects.

Therefore, while I believe this legislation is necessary to continuing vital construction work on the MR&T project—a project essential to the economic well-being of millions of Americans—I cannot support these inequitable cost-sharing provisions.

Mr. BYRD. Mr. President, I am pleased that we have here before us the conference report on H.R. 6, the water resources development bill. It has been 10 years since the Congress last enacted an omnibus water resources authorization bill, and this legislation is long overdue.

The improvement and modernization of the inland waterway system are vitally important to many of West Virginia's industries, including coal and chemicals. Included in this bill is the authorization for several water projects that are located on West Virginia waterways: $128 million for the Winfield locks and dam on the Kanawha River, and $163.1 million for locks and dam 7 and 8 on the Monongahela River, as well as the Gallipolis locks and dam replacement, which had been authorized through the appropriation process. Under this legislation, these projects will require increased cost sharing; however, I am pleased that the barge industry has shown its willingness to cost share the construction of such projects through the inland waterway trust fund.

This legislation will also provide for new harbor improvement projects, such as the deepening of the Hampton Roads channel. That will increase the West Virginia coal industry's ability to effectively compete in the world market.

This is a major piece of legislation that addresses the serious problems that are present in our waterway infrastructure. It is not perfect, but it breaks the decade-long impasse on Army Corps of Engineers projects that will be of benefit to the economies of our States and to the Nation.

Mr. President, I support the adoption of this conference report.

Mr. FORD. Madam President, I am delighted that H.R. 6 is before us in conference report form. Far too many years have elapsed since the Congress passed an omnibus water projects bill, and I am sure that all my colleagues are equally as pleased that one will soon be sent to the President for his signature.

For one provision in particular I am profoundly grateful to the members of the conference committee. That is the exemption of three Kentucky flood control projects from the cost-sharing provisions in the bill.

These three, the nonstructural relocation efforts at Barbourville and the entire project at Harlan and South Williamson, are so close to the beginning of construction that you can almost touch them. It was heartbreaking to think that they might never have been able to proceed any further.

The communities on the Upper Cumberland and Big Sandy Rivers desperately need flood walls and relocation efforts to protect them from devastating cyclical floods. But such measures are expensive and local governments simply do not have the ability to pay for them, primarily because the numerous and major floods that have occurred in this century have severely hampered economic developments in the area.

In Harlan County, 26 percent of the people live below the poverty line; in Knox County, it is 37 percent. Pike County has suffered double-digit unemployment for years. They are caught up in a vicious cycle—they are too poor to afford to participate in cost-sharing, yet they will never, ever escape that poverty without flood protection.

On behalf of the people of eastern Kentucky, who now have that chance, I deeply thank my colleagues.

At the risk of sounding ungrateful—and I am not, I would wistfully add that I wish all of the so-called section 202 flood control projects could have been exempted from the cost-sharing provisions of this legislation. Of the many potential projects on the Tug and Levisa Forks of the Big Sandy River and on the Upper Cumberland River, only the aforementioned have been excepted. Given current budgetary restraints, the conferees had to be selective and I understand that. However, we will revisit this issue at another time.

This important piece of legislation also contains authorization for the construction of six new inland waterway projects. In April 1983, as cochairmen of the Senate Coal Caucus, Senator HEINZ and I introduced a bill to authorize the improvement of seven existing locks and dams. The Nation's inland waterway system is in a desperate state of neglect; our initiative was designed to facilitate the flow of traffic on these waterways. Obsolete and undersized locks and serious congestion hamper our commerce generally, and the use and development of coal in particular.

Finally our effort has borne fruit, as evidenced by the conference report before us. The Gallipolis locks and dam on the Ohio River in Ohio and West Virginia will be replaced; existing locks at Locks and Dams 7 and 8 on the Monongahela River in Pennsylvania also will be replaced. The William Bacon Oliver lock and dam on the Black Warrior River in Alabama, another high priority of the Corps of Engineers, will have a replacement. A new lock plus entrance channels will be constructed at the Bonneville lock and dam on the Columbia River. Last, but certainly not least, a second lock will be built at Locks and Dam 26 on the Mississippi River at Alton, IL.

Our inland waterways are important to industry and commerce, but agricultural commodities and other raw materials are equally as dependent upon the system. I would point out that these facilities also serve purposes other than commerce. The pools assure water supply for local communities and industry, while the locks and dams provide an essential degree of flood control along the rivers.

Four years ago the Congress passed major legislation designed to rebuild America's highways. Time is long overdue for us to turn to our other major infrastructure system—our inland waterways. At last, the time is now.

Another important provision of H.R. 6 is the removal of funding for the mitigation requirement of the Obion Creek project, long a subject of great controversy in western Kentucky. The project was authorized by the Flood Control Act of 1965 and funds were appropriated in 1971, but work on the project has been unable to start due to intense disagreement over environmental matters.

Because original efforts to combat the flooding of agricultural lands entailed channel enlargement and diversions, 6,000 acres of mitigation land was required. To say that the latter part of the plan met with local opposition would be to grossly understate the case. A scaling back of the project, agreed upon by both the Corps of Engineers and local sponsors, would require only snagging and clearing of the creek with no land offset.

The reduction in the scope of the Obion Creek project obviates the need for the $4.9 million requested in the bill as originally reported from committee. Language clarifying this point was adopted during Senate consideration of H.R. 6, and I am pleased that

the provision has been retained in conference.

Finally, the authorized money limit for the Big South Fork National River and Recreation Area in Kentucky and Tennessee is increased in this conference report by nearly $53 million.

When the Corps of Engineers completes work within the cap now permitted, this beautiful recreation area will be able to accommodate only 30 percent of its potential visitors. The additional funding will provide for visitor use up to one half of the original potential of the project by authorizing the construction of lodges in both States plus the construction of Bear Creek Road, recreation areas, ranger stations and the Rugby Recreation Area.

This may mean little to my Senate colleagues, but it means a great deal to the people of the Big South Fork Area of Kentucky. With the development of this national park comes an opportunity for the economic awakening of the area. I invite you all to come down and visit one of the most scenic parts of the country and enjoy some good old Kentucky hospitality.

Mr. MOYNIHAN. Madam President, as our time is brief I would ask once more for your great courtesy in bringing this Senate to order.

The PRESIDING OFFICER. Will the Senate please be in order? It will help us to proceed with expeditious behavior and decorum at this late hour if everyone would take their seat and visit outside the Chamber door.

The Senator from New York.

Mr. MOYNIHAN. Madam President, the Presiding Officer has an intimidating glance.

I yield 1 minute to our treasured senior member of our committee, the senior Senator from North Dakota.

Mr. BURDICK. Madam President, I rise in support of this legislation. This is indeed a red-letter day for the developing of our water resources. Ten years have elapsed since legislation in this area has been enacted. This bill will meet the needs of this Nation long overdue. I am particularly pleased that the Souris River project that involves Canada and North Dakota in a joint venture has been approved, to the benefit of both nations.

Mr. MOYNIHAN. Madam President, I had the pleasure to yield a minute to the distinguished junior Senator from Maryland whose great harbor of Baltimore is so much involved in this legislation.

Mr. SARBANES. Mr. President, I commend the committee on a very impressive legislative achievement. This is the first water resources bill in over a decade that has been enacted by Congress. It is a great step forward.

It is of great significance to us in Maryland because it will enable the Port of Baltimore to move forward with dredging a 50-foot depth and ensuring that we continue as a world class port. It has important provisions dealing with beach erosion control and hurricane protection at Ocean City and Assateague Island, and contains important provisions for improving and cleaning up the Chesapeake Bay. All of these projects have been held back by the fact that we have not been able to enact a major water resource legislation. The committee has done that. I commend the committee and those who have worked so hard for it.

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Mr. President, I rise in strong support of the conference report on H.R. 6, the Water Resources Development Act. Passage of this bill will ensure that we can proceed with the deepening of the Port of Baltimore, the protection and restoration of the beach at Ocean City and several other important projects in the State of Maryland and throughout the country.

With the final approval of the water resources legislation and passage of the continuing resolution, the Corps of Engineers will be able to begin deepening the Baltimore Harbor and Channel from 42 feet to its authorized depth of 50 feet. Funding of $54 million, included in the continuing resolution, will now be available in addition to approximately $8 million contained in the fiscal 1985 supplemental appropriations bill for the project. Together with the deepening of the Brewerton connecting channel already underway with over $15 million made available in the fiscal 1986 and 1987 appropriations bills and the recent agreement by the Army Corps of Engineers to provide $18 million to accelerate maintenance dredging of the C&D Canal, the Port of Baltimore will continue to be one of the great ports of the world and on the competitive edge with other east coast ports.

Deepening of the Baltimore Harbor and its channels is, of course, of great importance to the economic health of the port and the State. The Port of Baltimore is Maryland's most important economic asset. An estimated 79,000 jobs are related to the port and its operation. Fully one-tenth of the gross State product is related to the port. The port also generates more than $300 million in State and local taxes each year. The impact of the port is felt throughout the State.

The harbor dredging project would open up the port to large ships that cannot now navigate the shallow part of the channel. Bigger ships mean bigger cargos, lower transportation costs for coal and grain exporters, and greater foreign trade. It would also mean more private port development, extra State and local revenue and an improved image for Baltimore as a world class port.

Mr. President, I am pleased that the conference agreement incorporates the Ocean City and Assateague Island beach erosion control and hurricane protection project. Specifically the bill authorizes $35,200,000 to be cost shared with the State of Maryland and the town of Ocean City for widening and raising the beach and constructing a dune line and sheet pile bulkhead for 100-year storm protection.

The damage caused to Ocean City beaches and public and private property by Hurricane Gloria last October underscores the need to provide more protection for the area from hurricanes and major storms. Hurricane Gloria swept away over 4 feet of protective beachfront, and caused $15 million in damages to public properties, hotels, residences, and businesses. The hurricane, in addition to erosion of the beach which has averaged over 2 feet per year at Ocean City and over 30 feet per year on the northern portion of Assateague Island, has left the area increasingly vulnerable to destruction from the sea. A recent Environmental Protection Agency study projects that in the next 40 years, a rising sea level could double the rate of shore erosion. Unless swift action is taken to restore the beach, Maryland's principal beach resort area could be heavily damaged by future storms due to the lack of a natural sand buffer from the ocean. The authorization contained in the water resources bill will ensure that this project can get underway shortly.

It should be emphasized that this authorization for construction of the Ocean City beach erosion control and hurricane protection project is the result of a detailed study by the Army Corps of Engineers completed in February 1981. After careful deliberation, the corps rejected an alternative "groin" plan and in cooperation with the State of Maryland and the town of Ocean City recommended the plan that is authorized in this bill. The corps has concluded that the recommended plan is economically justifiable and environmentally acceptable.

The conference agreement also contains two items of importance to the Chesapeake Bay cleanup effort—erosion control and fish habitat demonstration projects. The agreement authorizes funding for the Army Corps of Engineers to construct low-cost streambank and shoreline erosion control projects along the shore of the Chesapeake Bay and its tributaries. The corps is directed to select an equal number of projects in each of the States of Maryland, Pennsylvania, and Virginia. It also authorizes up to $10 million for the corps to construct demonstration projects for fish enhancement, including artificial reefs for fish habitat, in the Chesapeake Bay, among other areas.

Let me point out that the two projects are in keeping with the goals

and objectives established in the Chesapeake Bay Restoration and Protection Plan and approved by the EPA, in cooperation with Maryland, Virginia, Pennsylvania, and the District of Columbia. They would be an important part of our effort to improve and protect the water quality and living resources of the Chesapeake Bay estuarine system and I am pleased that they were included in the agreement.

Mr. President, the conference agreement on H.R. 6 is an important measure which addresses the water resource needs of many States, including Maryland, and I urge its adoption.

Mr. STAFFORD. Madam President, I now yield 2 minutes to the able Senator from New Mexico, Senator DOMENICI, who has been in this vineyard ever since we first started plowing it.

Mr. DOMENICI. I thank my chairman.

About 10 years ago, the distinguished Senator from New York and I started down this path of trying to find some way to balance a little better the approach of water projects between the States and the Federal Government. Tonight is the culmination of that effort, landmark legislation on water resources, perhaps the most significant in 50 years.

There are some people that stayed on this issue for so long that it is difficult to compliment them all. But let me say to the distinguished Senator from South Dakota, Senator ABDNOR, who chairs the subcommittee, he has been here at least three times that I can recall, ready to invite this U.S. Senate to pass a new water resource bill. One way or another, his efforts were thwarted. Now we have a conference report. In a week or so, the President will sign this bill, and my hat is off to him.

This bill does a lot of things. It establishes user fees where they were not. It says one way to make sure you do not have water boondoggle projects is to let those that benefit pay a little bit of the cost even right up front on doing the studies. Unless you are too poor a jurisdiction, you will have to start right at the beginning. If you are going to be the beneficiaries, you are going to have to pay something. And that means they are only going to ask for things that are good. They are going to have to cost share in many areas and even our harbors, those who use them are going to have to pay a little bit of the cost. This means we will have more water projects, more States will have them. They will be better diffused across this land. And that is what water policy is all about.

Madam President, the conference report before the Senate is probably the most significant water resources development bill to be considered in the Congress in recent years, possibly in this century.

This is truly landmark legislation. It is legislation that makes a dramatic shift in the relationship between the Federal Government and the non-Federal beneficiaries of new water resources projects.

It brings to an end the era when water projects were simply a gift from Washington; and it transforms them into projects that provide an opportunity for the Federal Government and the non-Federal sponsor to work together for progress.

Madam President, this legislation is a tribute to the work of the distinguished Senator from South Dakota [Mr. ABDNOR], who serves as chairman of the Senate's Subcommittee on Water Resources.

For more than two decades, the Federal Water Resources Program has been in decline. Spending has declined by nearly 80 percent in real dollars. New starts are rare. Public confidence in the program has slipped.

Very simply, while our Nation confronted vast, unmet needs in the area of water resources development, the Corps of Engineers withered.

Since it takes nearly 30 years to get a typical project under construction, we were working on projects designed to meet problems left over from the days of our parents and grandparents.

This was a problem many of us recognized, yet few had the courage to confront. Mr. President, when Americans look back a decade or two hence and wonders how we put ourselves back into the water business, all they need do is look at the work of JIM ABDNOR and the achievements contained in this legislation.

For nearly 6 years since he came to the Senate, JIM ABDNOR has worked for this day when Congress will send to the President a water resources bill that contains realistic projects and rational reforms.

That is the balance that this bill achieves.

Madam President, this is good legislation. This is progressive legislation. I do not pretend that it is perfect in every way. It is not. It does not contain all the reforms I would have liked. Nor does it weed out all the marginal projects that are not needed at this time.

But that fact cannot subtract from the achievements of this bill.

This bill provides a number of important items for the people of New Mexico—the project for the Albuquerque levees; an acequias renovation effort; flood protection for Gallup and Truth or Consequences; Ogallala Aquifer research. And more.

But, Madam President, before I discuss those issues in some detail, I would like to give my colleagues some sense of this bill, its pluses and minuses, the good and the bad.

In case there is any doubt, the pluses far outweigh the minuses.

The key element in this bill—possibly the single most important reform ever crafted onto water resources development policy—is realistic cost sharing.

The Reagan administration, the Nation's environmental groups, and a wide variety of user groups generally support the new cost-sharing formulas in this bill.

I have long been an advocate of reforms in water policy, particularly reforms in cost sharing. That is true for flood control work; it is true for navigation; it is true for reclamation, even though reclamation policy is not affected by this legislation.

The simple concept that those who benefit from a Federal water project must carry a greater share of the project's costs will fulfill several important objectives:

It will spread very limited Federal funds among more projects;

It will weed out projects lacking the broad local support needed to support local funding;

It will scale back large projects to more accurately reflect true economic need; and

It will reduce the environmental damages that result from unneeded and oversized projects.

This new policy of across-the-boards cost sharing is probably most significant in relation to new harbor projects. On the date this bill becomes the law of the land, we will for the first time begin to weave the tests of the marketplace into decisions that are essentially commercial ones.

Until now, harbor deepening projects have been free. The Army Corps of Engineers provided deeper channels and wider turning basins, doling them out to whatever community had the political muscle to obtain them.

Yet a harbor deepening project involves the way international commercial traffic is routed and where new industrial plants locate.

Thus, any decision on which of America's harbors to deepen is essentially a commercial decision.

Under this bill, the sponsor of every future harbor project—remember, each is a commercial decision—will be required to contribute cash toward the Army Corps of Engineers expenditure on the project.

Specifically, the conference report calls for cost sharing of 10 percent on projects with depths of less than 20 feet, 25 percent on harbor projects with depths of between 20 and 45 feet, and 50 percent for harbor projects with depths greater than 45 feet.

That is cash to be paid during construction. No ifs, ands, or buts.

In each case, the non-Federal sponsor is also required to pay an additional 10 percent over a 30-year period, with interest.

I reiterate: There is no cost offset against the basic 10 percent, or 25 percent, or 50 percent. Those percentages are due during construction, and they are due in cash from the non-Federal sponsor to the Federal Treasury.

It is important to emphasize the user-pays concept in this provision, as well as in other sections in this bill. This is the basis under which the water resources program must go forward in the future, if it is to go forward.

Both bills contained provisions altering somewhat the existing policy on utility relocations required in a harbor deepening project.

Under current law, these relocations are essentially the responsibility of the non-Federal interest, which, in turn, requires the utility owner, under permits, to pay for the relocations.

The Senate bill recognized that it was impossible for utility owners to have foreseen the superport era. When they buried their cables or pipelines at a time when a harbor channel was dredged to 40 or 45 feet, the utilities could not have been expected to anticipate the move to 55-foot channels. Nor did they have the technology to achieve those depths. So they failed to bury their cables at depths that would enable them to avoid relocation costs now.

The Senate bill adopted a very limited exception to the current law. This change affected utilities only when the harbor project went deeper than 45 feet, or when the project was entirely a non-Federal project. In that limited set of cases, the Senate bill required the port and the utility to share relocation costs equally.

The House bill affected all relocations at whatever depth, then imposed half of the costs for relocations on the Federal taxpayers.

The conferees adopted the basic Senate approach, affecting only those projects deeper than 45 feet, with costs to be shared between the utilities and the local authorities. The Federal Government will not be involved in the cost of relocations.

If the port cost-sharing provisions in the bill are the single most significant concept in this legislation, the flood control cost sharing must be the second.

In this legislation, we have established a standard that every flood control project, or component, built in the future must carry a non-Federal contribution of at least 25 percent.

The new standard in this bill affects all flood control work, whether it involves what is called local protection, or whether it involves a major reservoir.

Under current law, non-Federal sponsors of projects for local flood protection must contribute the lands, easements, rights-of-way, and relocations necessary for the project.

In most cases, the Federal Government picks up the entire tab on the cost of flood control reservoirs with more widespread effects.

Under this conference report, the non-Federal sponsor must provide the package of lands and easements, and so forth, up to that minimum share of 25 percent.

But there is a caveat. That caveat requires that the non-Federal sponsor, in every case, provide, atop the lands, easements, and rights-of-way, a minimum of 5 percent of the project's cost in cash during the period of the project's construction.

This means that even if the lands, easements, rights-of-way, and relocations exceed 25 percent—which happens in possibly 20 percent of the cases—the non-Federal sponsor still owe's that 5 percent in cash.

If that total of lands and 5 percent in cash exceeds 30 percent, the non-Federal sponsor continues to owe the sum over 30 percent, but may, at its discretion, pay the differential above 30 percent over a 15-year period, with interest.

When the non-Federal share reaches 50 percent, the non-Federal contribution stops, but at least 5 percent must still be contributed in cash during construction.

The application of this principle will be universal. We have striken from the bill virtually all of the many House provisions that permitted various projects to move forward at full Federal expense.

And we have extended that 25 percent standard to other types of work under the responsibility of the corps.

Thus—and this is a critical point—essentially every project in this bill carries with it the requirement for at least 25 percent non-Federal share.

I hope my colleagues recognize the significance of this achievement: Every project will move forward under the same new, tougher rules.

Once we have reshaped the manner by which projects are financed, we also sought to make the corps study process more responsive to real need, not wishful thinking.

Sections 105 and 905 require 50/50 cost sharing on future project related studies the corps undertakes. All new feasibility studies, except inland waterways studies, are subject to this requirement.

And it would be my expectation that this omission of inland waterway studies can be corrected in the not too distant future.

This approach seems certain to assure there will be true local interest and need before the Federal Government cranks up a future study to examine a flooding or water supply problem.

This means that real priority work is likely to get the Federal dollars.

This bill also contains a large number of special studies on water resources problems and issues. One is an examination of water project needs.

My initial reaction to this study was quite negative. It is the kind of study that could lead to a giant wish list, a long chart of projects we could build if only America faced no fiscal constraints.

Such a study would prove wasteful at best, damaging at worst.

To prevent that, we added a requirement in paragraph (6) that the study include an evaluation of the impact of user charges and cost sharing on the "need" for new water projects. Such balancing is critical.

The "need" for free projects is unlimited. The "need" for cost-shared projects where the user shares the cost is certain to be far less.

This bill also contains several items that deserve careful examination in regard to our commercial inland waterways.

To pay a small portion of the costs of the system, this bill increases the barge fuel tax, which has been in existence since 1980. The bill takes the current 10-cents-a-gallon fee charged on about 10,000 miles of inland waterways, and doubles that tax over the next decade.

While many argue that this imposes on the barge industry a considerable cost, I would simply note that it actually just keeps the tax up with the anticipated level of inflation that is likely to occur over the next decade.

The revenues from the barge fuel tax will go into the existing Inland Waterways Trust Fund. In turn, this will be used to pay for half the costs of the seven new lock and dam projects, plus a portion of the cost of the New Orleans industrial lock.

With current funds and the anticipated rate of spending, a large surplus in the trust fund could develop by the early 1990's. Such a surplus must never be used as an excuse for reducing this modest tax. Rather, we need to consider an expansion of the use of the fund to the full cost of new projects, plus its possible use on a portion of inland waterways maintenance.

The bill also contains a provision considered by neither the Senate nor the House. This is an Inland Waterways Users Board, authorized in section 302 of the bill.

Such a board was first recommended a number of years ago by Senator ABDNOR as a way to help the Congress determine an adequate level of Federal spending for our Nation's waterways. Federal spending and non-Federal cost sharing were then to be based on those recommendations.

I continue to believe that would have proved a sound approach.

However, such a linkage between Federal and non-Federal spending

based on the requests of the users does not exist in this bill.

Nevertheless, after the bill passed both bodies, the waterways industry came to the conferees to request authorization for such a board. While I am not convinced it will prove to be much more than a cheering section, without any responsibilities, I favor its creation.

I would urge the Secretary of the Army and the persons who serve on the Board to act responsibly to help the administration and the Congress identify real priorities. The Board will serve no useful purpose if it simply develops another wish list of those items the waterways industry would like Uncle Sam to build.

America can no longer afford a wish-list development mentality if we expect to remain competitive in world markets.

We must begin to focus resources on constructing what we identify as priorities.

As another example, we dropped an automatic authorization for the construction of new lock and dam projects, which was contained in the House version of the bill.

Such a provision would have permitted the expenditure of billions and billions of dollars on the inland waterways with no scrutiny by the congressional authorizing committees.

Another item of great concern was the provision in the House bill that shifted the benefit-to-cost studies on the Alabama-Coosa River project. The House bill provided an override of the benefit-cost ratio by imposing an old, unrealistic interest rate.

Madam President, the House language basically was designed to take a $1.3 billion project that produced about 30 cents in benefits for every $1 invested, and magically declare it as justified.

Fortunately, we were able to have the House drop the use of the old interest rate and limit the authority to the development of plans on the project, plans that would have to be authorized for construction by the Congress in the future, should the investment appear sound.

As this bill imposes new cost-sharing requirements on the beneficiaries of water projects, and as it imposes tighter restraints on what visions the corps may develop for our future, this bill also sets some reasonable spending limits.

For the first time, Congress sets an annual obligation limitation on the money the corps can spend on construction of civil works projects. This important provision appears in section 901 of the bill.

Until now, the corps civil works program was a hodgepodge of projects limited only by the controls worked out between the White House and the Appropriations Committees.

Under the approach in this bill, an annual obligations ceiling is imposed on construction work on the basic construction program of the corps, as well as its mammoth Mississippi River and tributaries project.

This also covers all spending out of the inland waterways trust fund that I mentioned earlier, but it does not cover non-Federal contributions during construction, such as the local share of a harbor deepening project.

Thus the dollar figures provided—$1.4 billion in fiscal 1987 rising to $1.8 billion by the fifth year—should be more than sufficient to meet even the most ambitious construction effort.

But what is essential is the principle of budgetary controls, and it is a principle that must be carried forward once that 5-year period has expired.

There is a continual concern on the part of this Senator regarding windfall benefits that can result from Federal spending on a Corps of Engineers project.

In an effort to confront that problem, the Senate passed section 201 of our version of H.R. 6. That section addressed a situation that, while unusual, is not unique: Flood control projects where at least 10 percent of the benefits go to a single person or corporation. Section 201 required this special beneficiary, or the non-Federal project sponsor, to contribute an extra amount toward the project, based on the amount of those special, windfall benefits.

The House resisted that requirement. The conference report includes a study of the problem, but expands it to encompass the issue of land enhancement on port and harbor development projects.

The corps will examine and recommend ways the value of new land created as a result of in such projects can be shared fairly.

A number of examples exist in this bill. These include several of the inland harbor projects, as well as the Los Angeles-Long Beach harbor project. A need exists for the corps to examine the equities and issues involved, and to find methods where the taxpayers of America share more effectively in this development.

But as we add billions of dollars in work to the stockpile of work for the Army Corps of Engineers, the conference report also contains several important provisions to deauthorize unneeded work, cleaning out the deadwood in old, outdated projects and studies.

Section 1001 is not as effective as the Senate version, but it should provide the Congress and that corps with a rational method for cutting back on unnecessary work, thus allowing resources to be focused on the needed projects.

The conference report also kills the authorization for several hundred old, out-of-date projects. That is wise.

Section 1149 authorizes the construction of a new lock at Sault Ste. Marie, MI. The conference language recognizes that the cost-sharing standards in this bill require that the new lock also carry cost sharing. But, frankly, we are not certain of the best and fairest method to achieve this goal.

As a result, the language requires that the Chief of Engineers, in his report to the Congress on the lock, include a cost-sharing proposal based on the concepts in the port title. There must be an agreed-upon cost-sharing mechanism before construction can be initiated.

Section 1134 of the conference report provides that certain lease and permit holders at corps reservoirs and other sites may obtain automatic extensions on their permits or leases.

This provision was accepted with the understanding that leases and permits about 1989 would be extended only at fair-market rental rates. That is within the spirit of this bill. And to do otherwise would be grossly unfair to those not so fortunate in holding such leases.

Current law, and this rewrite of that law, permits the corps to charge fair market rentals for such leases. Because of the windfall nature of what we have provided, it is important that the corps charge fair prices.

Before talking of the important things this bill does for New Mexico, I would like to mention one other item of national scope. This is section 929, which represents an effort to return the Soil Conservation Service soil conservation program to its agricultural roots. I am pleased the conferees adopted this provision from the Senate bill. Section 929 requires on any future Soil Conservation Service water resources projects that at least 20 percent of the project's benefits must be related directly to agriculture.

As I have mentioned, this bill contains many important projects and programs to benefit the water resources development of New Mexico.

Each and every one of these items carries cost sharing. There are no exceptions.

New Mexico is willing to carry its fair share of project costs, because we know this will accelerate the development of needed work.

Among the most important projects in this conference report is what we know in New Mexico as the Albuquerque levee project. This project appears in title 4 of the bill as the Middle Rio Grande, from Bernalillo to Belen.

This $44.9 million project will extend the present levee system to the north and to the south of Albuquerque, providing far more effective flood

protection for the citizens of the Middle Rio Grande Valley.

I applaud the conferees for approving this vital project. I applaud the conferees also for including a Senate provision for dredging, if justified, the river bed to a level below the existing level of the bed of the Rio Grande. This authority is strictly discretionary, but potentially useful, as a way to increase flood protection and lessen seepage problems that affect some areas near the river.

Another important project authorization in the bill is the authority for the Rio Puerco and tributaries flood control project in the area of Gallup, NM. This $3,810,000 project should provide numerous benefits to the people of Gallup.

Section 871 authorizes changes at the Truth or Consequences, NM, flood control project. Instead of the floodway project now authorized, this bill directs the Corps of Engineers to construct a dam on the Cuchillo Negro Creek. This dam will provide the needed level of flood protection without disrupting the community.

One of the most significant items in the bill is contained in section 1113, which authorizes a new effort to renovate acequia water diversion structures and systems in New Mexico.

This provision is nearly identical to the provision that I developed several years ago, and which was included in the Senate's version of the water bill. These historic structures have been utilized by family farmers in New Mexico since the 18th century.

The bill establishes a program to match $40 million in Federal funds with $13.3 million in non-Federal funds to rebuild and renovate many of these systems and structures.

It must be noted that this section permits the Federal participation in such work—cost shared on a 75–25 basis—without regard to economic analysis. That is necessary because of the historic importance of these systems, and the fact that it is almost impossible to calculate accurately their true benefits to the community.

Another item of interest to me is section 1112, which authorizes the construction of emergency gates at Abiquiu Dam in New Mexico. These gates were a part of the original design of the dam, but were dropped years ago to cut costs. The addition of the gates at this time will complete the project, as it was designed.

The provision in the conference report also calls for a non-Federal share of 25 percent. That share applies solely to those costs associated with any increase in flood control benefits that may result from the construction of the emergency gates.

Frankly, Mr. Chairman, it is assumed that most, if not all, of the benefits that result from the addition of these gates will come in the form of lower maintenance expenditures by the corps. This is properly a Federal expense, since the benefits come solely to the Federal Treasury.

One of the most far-reaching and important provisions in the bill is one that affects not simply the State of New Mexico, but the eight-State area that overlies what is known as the Ogallala Aquifer.

The water table has been declining for years, a fact that imperils the rich agricultural area that is dependent upon Ogallala water. It is a problem of considerable national importance.

To meet this challenge, the conferees included from the Senate bill a provision to study water needs for the Ogallala area. The program will spend $13 million a year on water research in connection with the Ogallala. This money will be distributed among the eight Ogalalla Aquifer States—New Mexico, Texas, Colorado, Oklahoma, Kansas, Nebraska, South Dakota, and Wyoming.

This is a 5-year program, one that will give the Nation new information upon which we can build solutions to the decline of the aquifer.

One of the more troublesome provisions in the House bill is related, at least to the House Members, to the Ogallala Program. This is language that passed the House establishing a permanent prohibition on any Federal participation in any export of water out of the Arkansas River basin.

Such prohibitions are bad policy, when approached on a basin-by-basin basis. If we want to pass a bill allowing each State full control over any waters in each State, then we should debate that issue. We certainly should allow States to control fully their underground waters.

But in order to move this important legislation to the President's desk, and to resolve a very sticky issue, the conferees agreed to the prohibition for 5 years, and only 5 years.

It would be my expectation that such a prohibition will not be renewed, unless it carries with it a far broader application.

I said this issue was somewhat related to the question of the Ogallala Aquifer decline. But that relation is tenuous, at best. Few people can realistically expect anyone to pay close to $1,000 an acre-foot in order to pump water out of the Arkansas River to West Texas.

The conferees did, at my suggestion, drop one Senate provision affecting New Mexico. This was section 304, which would have moved the western borders of the Albuquerque District of the corps to the Arizona State line.

This provision is no longer needed since the corps has made this change administratively.

The corps wisely moved the Albuquerque district eastern border to the Texas line recently, and within recent months took similar action on the western boundary.

I am very pleased at the action of the corps. Until I began to discuss the issue, the State of New Mexico was divided among five corps districts—Albuquerque, Tulsa, Fort Worth, Los Angeles, and Sacramento. Splintering our State into five parts clearly made it very difficult for State officials and the people of New Mexico to resolve many water resources problems.

I applaud the corps, and urge that it find more work and programs for the excellent people who work in the Albuquerque district.

I have saved for the last a discussion of the provisions that are basically within the jurisdiction of the Committee on Finance. This material appears in title 14 of the conference report. The title imposes two tax provisions: An ad valorem tax on the value of goods moving through America's ports as a user fee to help finance a small portion of the costs of maintaining our ports each year, plus an increase, granted a small increase, in the existing barge fuel tax.

As I mentioned, these taxes are quite modest, and will produce far less in revenues than the Government spends annually on these programs.

In my view it is quite likely that we will have to obtain greater increases in these programs at some later date.

Madam President, before I close I would like to reiterate my thanks and appreciation for the work of my colleagues on the Committee on Environment and Public Works.

I have stated my appreciation—the deep appreciation that all Members of this body feel—toward the Senator from South Dakota [Mr. ABDNOR] for his leadership. JIM, we thank you. America thanks you.

The distinguished chairman of the committee [Mr. STAFFORD], has been JIM's compatriot and right-hand man throughout this struggle. He has devoted great energy to the original development of this legislation in committee and on the Senate floor, as well as its long gestation within the Committee on Conference.

Madam President, Chairman STAFFORD has placed a strong and lasting imprint on this vital bill.

While Senators ABDNOR and STAFFORD have worked long and hard on this bill, their colleagues on the other side of the aisle Senators MOYNIHAN and BENTSEN, also played key roles in pushing and pushing to get this bill completed, to get America working on this bill.

America needs to be thankful to each of them.

In closing, I would like to note the constant and hard work by the Assistant Secretary of the Army, Mr. Robert K. Dawson, to get this bill to the White House. He and his staff have

worked tirelessly, and we are in their debt.

Mr. STAFFORD. Madam President, I now yield to an extraordinarily able member of our committee who participated in these deliberations, Senator CHAFEE of Rhode Island.

Mr. CHAFEE. I wish to thank the chairman of our full committee, Madam President, and pay tribute to the chairman of the subcommittee, Senator ABDNOR, who did such a remarkable job on this legislation.

As has been mentioned, this legislation has been before us time after time. We have never succeeded in getting it through both bodies. But the persistence of the Senator from South Dakota has made it all possible, with the able assistance of the senior Senator from New York.

I would like to touch on one thing, Madam President, and that is the importance of the cost sharing, not only for the project themselves but for the study.

Every single one of us who have been Governors or mayors, whenever we thought it might be useful to have the engineers come in and do something, we would invite them in. But this provides that now the community or the State has to help pay for that study. That will slow down the communities from blithely asking the Corps of Engineers to come in and spend $100,000 or $200,000 on some study that the entity has no intention of implementing. So that is a major step forward. I congratulate those who had such a big part in this.

Mr. STAFFORD. Madam President, let me just finally say that I concur with the statements that have been made with respect to the two who have been most instrumental in bringing this bill here—I never thought we would make it at times—Senator MOYNIHAN and Senator ABDNOR. Their tireless work, their dedicated work, and their creative thinking on the programs and the plans that we have had have made possible bringing this bill through conference to this point where I think in a minute we will be able to vote on it.

Mr. MOYNIHAN. Madam President, I would like to thank the graciousness with which the chairman and Senator DOMENICI have spoken about the work of this side of the aisle.

I would like to repeat what my dear friend and colleague from South Dakota has said about the staff, particularly our own Nan Stockholm here. We would not be on this floor with historic legislation without them.

American National Government began its commitment to the internal development of the United States with water projects, specifically with inland navigation. In 1791, Alexander Hamilton gave his "Report on Manufacturers," which defined a role for the Federal Government in developing waterways for commerce. The system worked well for a century-and-a-half. It stopped working 16 years ago and commences today on a wholly new basis, a sustainable basis of cost-effectiveness and cost-shared projects.

The Senator from New Mexico spoke about our efforts 10 years ago. One of the things that the fine gentleman from the Southwest came to this Senator from the East to say is that the Water Development Program cannot be sustained if it is a regional program. It must be a national one. And this is a national one. Tonight we have heard about Baltimore, and we have heard about Hawaii.

Madam President, I would make one particular point. It is just 174 years since Thomas Jefferson declined to involve the Federal Government in support for the Erie Canal; 174 years later that one rare misunderstanding of our third President has been remedied, and the Federal Government assumes a proportionate and legitimate cost of the Erie Canal's maintenance and rehabilitation.

Madam President, I must thank, of all people, our chairman, Senator STAFFORD, who, with his serenity and his determined Yankee persistence, has made us feel serving him would serve the Nation, and it has.

Madam President, I thank my friend from Texas, Senator BENTSEN, who has given me the opportunity to speak on this occasion, our ranking member on the Committee on Environment and Public Works.

I see no Member on this side wishing to speak.

With greatest deference to Senator STENNIS, with whom we shall never again have to discuss the Tennessee Tombigbee, and with great assurance to the minority leader that Tug Fork is taken care of.

Madam President, I am delighted to join my subcommittee chairman, Senator ABDNOR, and my Environment and Public Works Committee colleagues, Senators STAFFORD and BENTSEN in offering the conference report for H.R. 6, the Omnibus Water Resources Development Act of 1986. I also want to recognize the efforts of Senator PACKWOOD, chairman of the Finance Committee, and Senator LONG in expediting their committee's review of the revenue portions of H.R. 6. I must pay tribute, too, to Chairman ROE of the House Public Works and Transportation Committee, whose leadership and devotion to producing a conference agreement enables us to present this report to the House and Senate today.

As former chairman of the Water Resources Subcommittee, and now as its ranking minority member, I have labored for many years to introduce rational economic criteria and equitable cost sharing into the Federal water planning process. Many times I have stood on this floor in the early morning hours at the end of a legislative session, and pleaded for a national policy that would end the squandering of our irreplaceable water resources. After many months of conference negotiations, I believe that we have produced a bill that will chart a new course for responsible water development into the next century.

HISTORY OF DEADLOCK IN WATER POLICY

Before I address specific reforms in this conference report, I must digress a bit to examine the historical reasons for our current deadlock in water policy. Congress has not passed omnibus water resources legislation since 1970.

In 1791 in his "Report on Manufactures," Alexander Hamilton enthusiastically advocated a role for the Federal Government in public works:

> The symptoms of attention to the improvement of inland Navigation, which have lately appeared in some quarters, must fill with pleasure every breast warmed with a true Zeal for the prosperity of the Country. These examples, it is to be hoped, will stimulate the exertions of the Government and the Citizens of every state. There can certainly be no object, more worthy of the cares of the local administrations; and it were to be wished, that there was no doubt of the power of the national Government to lend its direct aid, on a comprehensive plan. This is one of those improvements, which could be prosecuted with more efficacy by the whole, than by any part or parts of the Union.

Despite Hamilton's zeal for Federal navigation improvements, the congressional debate over their constitutionality continued for decades. Chief Justice Marshall's 1824 ruling in Gibbons against Ogden confirmed the plenary power of the Congress over commerce and navigation. By the 1860's the Federal Government had embarked on the building of an inland waterway system.

PUTTING THE GOVERNMENT IN THE WATER BUSINESS

In 1902 the Congress, led by President Theodore Roosevelt, enacted the 1902 Reclamation Act. The act put the Federal Government into the business of irrigation, as well as water supply, hydroelectric power, and flood control. With this the Federal Government began the development of the West.

The Federal Flood Control Act of 1936 established the then novel tool of benefit/cost analysis for water resources projects. The Federal Water Program today is the collection of the projects undertaken by the Army Corps of Engineers, the Bureau of Reclamation, the Tennessee Valley Authority and the Soil Conservation Service.

A PROCESS GONE AWRY

Unlike earlier times, there is today a consensus that the Nation's system of ports, inland waterways, multipurpose reservoirs, and hurricane protection projects have contributed greatly to

the wealth of the Nation, and that it is proper for the Federal Government to finance at least part of their costs. At the same time, there is a recognition that something has gone terribly awry in the water planning process, particularly in recent years.

As members of the Senate Water Resources Subcommittee we have seen the complexity and inefficiency of the water planning process develop into virtual paralysis. There is a backlog of 36 billion dollars worth of authorized but unbuilt projects. Republican and Democratic administrations have debated the causes and proposed reforms to no avail. It has been 15 years since passage of the last Omnibus Water Development Act, during which time only three new Corps of Engineers projects have been undertaken. A minor bill was passed in 1976. The construction program of the corps is a mere 25 percent of what it was 15 years ago, and still declining. Today, the corps spends more on maintenance than on construction, even though its maintenance funds have not increased in real dollars over the same period. By law the corps is permitted to contract to perform work outside the United States, and its expertise is in demand. Ironically, until last year the Corps of Engineers did more work in Saudi Arabia than in America.

According to the General Accounting Office, a corps flood control project takes an average of 26 years to complete, from the time that Congress initiates a feasibility study to the time that construction is actually finished. Over half of this time is attributable to the congressional authorization and appropriations process. Part of it also results from the corps' insensitivity to the environmental impacts of its projects which stimulates local opposition and litigation. However, since the enactment of the National Environmental Policy Act [NEPA] in 1970 and implementation of programs like the section 404 permit process which requires cooperation by the corps with the EPA and the Department of the Interior, the corps has made significant progress in this area.

The cost of the stalemate in water policy has been onerous for the Nation. Our ports remain unimproved and inadequate for modern commerce at a time when we must address our trade imbalance. Our inland waterways require lock replacements to relieve critical bottlenecks that hinder the orderly shipment of goods. Hydropower projects, remarkably clean energy sources, need to be built in areas suited to their development. And the devastating floods in the West have recently reminded us, dams and levees need repair and upgrading.

HALTING BUSINESS AS USUAL

The time is long past to halt the "business-as-usual" way of funding water projects. The old free-booting days—when whoever was chairman of the subcommittee got two dams; the ranking minority member got one, everybody else on the committee got a promise; and nobody else got any—must yield to sound technical review, environmental impact analysis, and the budget deficit.

As a manager of earlier incarnations of water bills, I have fought again and again against piecemeal appropriations and last minute project additions which make a mockery out of the congressional authorization and corps' planning process.

The Water Resources Development Act of 1986 presents us with the best opportunity we have had in more than a decade to address the important public works needs of our Nation. We must dredge our ports; replace old, inadequate locks; protect communities from flooding; and ensure the safety of our dams.

PROJECTS AUTHORIZED

The bill authorizes $16.3 billion in spending of which $12 billion would be paid by the Federal Government and $4.3 by non-Federal interests such as States, localities, port authorities, and commercial navigation companies. The conference report authorizes for construction or study 377 new Army Corps of Engineers water projects—43 port projects, 7 inland waterway projects, 115 flood control projects, 24 shoreline protection projects and 61 water resources conservation and development projects such as fish and wildlife mitigation works. Moreover the bill includes 38 studies, 63 project modifications and 26 other miscellaneous projects and programs.

REFORMS IN THIS BILL

What is innovative about this bill is the number of reform measures agreed to by the conferees which will establish a working partnership among the Federal Government, the Army Corps of Engineers and the non-Federal interests be they States, localities, ports, or commercial navigation companies. The bill initiates a system of cost sharing as well as national and local user fees, guaranteeing that non-Federal interests will have a share in planning, financing, and maintaining water projects.

COST SHARING FOR NAVIGATION PROJECTS

Foremost among the reforms is the cost-sharing scheme introduced by H.R. 6, which is based on the Senate bill. The conference report's new cost-sharing rules will apply to all corps water projects that were not yet under construction as of May 1, 1986. That includes the unbuilt separable elements—stand-alone features—of regional flood control projects like the seven-state Mississippi River and Tributaries [MR&T] Program. For navigation projects, non-Federal or local sponsor would have to contribute 10 to 50 percent of the costs of deepening or widening a channel, depending on the depth of the project. A summary of navigation cost sharing follows:

Non-Federal share of commercial harbor and channel improvement costs to be paid in cash during construction for:

Shallow ports 20 feet deep or less—10 percent.

General cargo ports—10 percent for the portion of the project 20 feet deep or less, plus 25 percent for the portion 21 to 45 feet deep.

Deep draft ports—10 percent for the portion 20 feet deep or less, plus 25 percent for the portion 21 to 45 feet deep, plus 50 percent for the portion deeper than 45 feet.

In addition the local sponsor would pay another 10 percent plus interest over a maximum of 30 years. However, the value of the lands, easements and rights of way contributed by the locals will count toward this additional 10 percent. It is fitting that the locals share in these costs for projects which directly benefit them. This cost sharing will ensure that our scarce Federal dollars go to where they are most needed. (Under current law, local interests must provide only lands and disposal areas for navigation projects, and no cash contribution is required).

AD VALOREM CARGO TAX

For the maintenance of harbors, H.R. 6 has introduced a 0.04 percent tax (4 cents per $100) which would be paid by shippers on the value of cargo moving through American ports. Revenues from the ad valorem tax expected to reach about $140 million annually will be used to pay up to 40 percent of harbor maintenance dredging costs now paid entirely by the Federal Government.

FUEL BARGE TAX FOR INLAND LOCKS AND DAMS

Half the costs of seven major inland lock and dam projects will be paid for by a doubling of the barge fuel tax from 10 cents per gallon to 20 cents per gallon by 1997. Eventually this tax will produce $120 million in revenues annually for these inland projects.

FLOOD CONTROL COST SHARING

For flood control projects, local beneficiaries will pay between 25 to 50 percent of construction costs, with the local lands, easements and rights-of-way counting toward the noncash share. At least 5 percent of the total project cost would have to be paid in cash during construction. However, H.R. 6 includes an ability-to-pay provision so that cost-sharing requirements can be reduced or waived for communities unable to meet them.

PROJECT STUDIES

As important a reform as financing projects is the new method of financing project studies in H.R. 6. Under current law, if requested by local sponsors, the corps has been obliged to undertake feasibility studies at full Federal expense. Since no local contribution was required, these studies often wasted corps' resources on impractical

studies. Only 30 percent of all project studies have produced recommendations to build.

Under the new approach, the corps will provide at Federal expense an initial reconnaissance study to be completed in 12 to 18 months. If warranted, the next step is a full feasibility study to be cost shared 50-50 by the Federal Government and local sponsors. The bill also provides value engineering reviews to increase the efficiency of corps plans and increased opportunities for competitive bidding. This will ensure that only those projects supported by local interests will proceed, and then only on a practical scale and at a prudent cost.

LOCAL DESIGN AND CONSTRUCTION OPTIONS

A related improvement will give local port officials more flexibility. They will be able to design their own projects and finance them jointly with the Federal Government; to receive design services from the corps and complete construction on their own; or to design and construct from start to finish jointly with the Federal Government. This will allow private interests to build projects more economically wherever feasible.

AUTOMATIC DEAUTHORIZATIONS

The unwieldly water planning process has left the Federal Government with a pool of authorized, but unobligated corps construction work of close to $36 billion. Under the old system, this amount plus the new amount authorized by the Water Resources Development Act of 1986, would have been theoretically available to be appropriated during any fiscal year. H.R. 6 remedies this by automatically deauthorizing any projects which have not received funding for 10 years. Estimates are that projects eligible for this deauthorization total about $26 billion. In the future projects will be automatically deauthorized if they receive no appropriations for 5 years after their authorization.

In the past, projects authorized and added to over the years grew and grew, escaping comprehensive review by Congress or agencies independent of the corps. An example is the Tennessee Tombigbee Waterway, a 234 mile long system of rivers, dams, locks and canals that was debated for decades, finally costing over $2 billion. I led the floor fight to deauthorize this project in 1981, because I believed that the economies did not justify Tenn-Tom. Unfortunately, we lost that fight 48 to 46.

A recent study shows that the Tenn-Tom traffic is only 6 percent of the tonnage predicted by the corps 10 years ago. Moreover, due to the untoward environmental consequences of Tenn-Tom, the Corps of Engineers will perform $60 million of mitigation work to offset the waterway's impact. H.R. 6 will prevent Tenn-Toms in the future by requiring the corps to return to Congress for review and reauthorization if costs increase significantly, or if major physical alterations are made to the original plan.

MITIGATION OF DAMAGES TO FISH AND WILDLIFE

Another longstanding problem which H.R. 6 addresses is adequate protection for and mitigation of damage to wildlife and fish habitat from corps' projects. To assure balanced development, the bill builds mitigation measures into every step of the construction process, in consultation with the appropriate Federal and non-Federal wildlife agencies. Moreover, every project in the bill will have to comply with the National Environmental Policy Act [NEPA].

THE CORPS OF ENGINEERS PROCESS

The projects in this bill were not hastily picked out of thin air, nor were they selected merely to please individual committee members. Each has survived an extensive process of economic and environmental review conducted by the Army Corps of Engineers. Those that were not yet past that stage of review are conditionally authorized, subject to full economic and environmental reviews.

First, the district office of the Corps of Engineers conducts a reconnaissance survey to determine whether a project is needed and, if so, to explore alternative plans. The next step is to prepare a full feasibility report, including a recommended plan, an environmental impact statement, and a determination of the economic benefits and costs of the plan. Based on the results of these studies, the district engineer makes a recommendation on whether to proceed with the project.

But that is hardly the end of the process. The District Engineer's recommendation must then be reviewed by the Division Commander, the Board of Engineers for Rivers and Harbors, the Chief of Engineers, and the Assistant Secretary of the Army for Civil Works. Finally, if the project is deemed to be in the national interest, we in the Environment and Public Works Committee receive a recommendation to authorize the project.

NEW YORK PROJECTS AND STUDIES IN H.R. 6

Mr. President, having waited 15 years for an omnibus water bill, it is not surprising that New York State, home of one of the world's great ports, and part of the Great Lakes-St. Lawrence Seaway shipping network, should have hundreds of millions of dollars of projects in this legislation—about $973.5 million worth. These projects, large and small, all will make a lasting contribution to the commerce of New York in particular, and to the Nation's economy in general. These range from the huge projects for navigation at Arthur Kill and Kill van Kull which together total about $368 million and which will ensure that the Port of New York and New Jersey remain competitive internationally—to a dredging project for Eastchester Creek which costs $500,000 but which is of no less import to the local residents. We have for the first time secured Federal assistance for the Erie Canal, built completely with State funds. Now, for the first time since 1825, the Erie Canal which links the Great Lakes to the Atlantic will receive from the Federal Government 50 percent of its annual operations and maintenance costs and up to $5 million per year in rehabilitation costs.

Mr. President, I ask unanimous consent that a summary of the provisions in the Omnibus Water Resources Act, of special significance to New York and a letter from the President of the National Wildlife Federation be printed in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

PROJECTS OF INTEREST TO NEW YORK IN H.R. 6, THE WATER RESOURCES DEVELOPMENT ACT OF 1986

ESTIMATED VALUE OF PROJECTS = 1.1 BILLION DOLLARS

[Note: for costs, m = million and k = thousand]

Project	Comments
New York Harbor area:	
Arthur Kill, Navigation—total cost $42.6m; estimated Federal cost $27.5m; estimated local cost $15.1m; H.R. 6, sec. 202b.	This project will deepen the existing channel from 35 to 41 feet between Newark Bay and the Howland Hook Marine Terminal, and to 40 feet from the Terminal to Bayonne, NJ.
Fresh Kills—NJ—total cost $26m; estimated Federal cost $19.5m; estimated local cost $6.5m; H.R. 6, sec. 202b.	The Arthur Kill will be extended to a 40-foot depth to the Fresh Kills in Carteret, NJ, to enhance navigation.
Kill van Kull, navigation—total cost $325m; estimated Federal cost $167m; estimated local cost $158m; H.R. 6, sec. 202a.	This project will deepen the existing Federal channels in the Kill van Kull and Newark Bay to 45 feet and widen them at Robbins Reef, St. George, Central RR Bridge, and the Port Newark Channel junction. Also included is a turning basin at Port Elizabeth and pierhead channels at Port Newark and Port Elizabeth; 30 million tons of dredged materials will be disposed of at sea.
New York Harbor/adjacent channels, 45 feet; total cost $45.7m; estimated Federal cost $32.3m; estimated local cost $13.4m; H.R. 6, sec. 202b.	This project will add an access channel 45 feet deep and 450 feet wide from deep water in the Anchorage Channel to the head of navigation in Jersey City and another access channel 42 feet deep and 300 feet wide from the Anchorage Channel to the Claremont Terminal Channel. None of the dredged materials may be dumped in Bowery, Flushing, Little, or Little Neck Bays, or in Powell's Cove.

ESTIMATED VALUE OF PROJECTS=1.1 BILLION DOLLARS—Continued

[Note: for costs, m=million and k=thousand]

Project	Comments
New York Harbor/adjacent channels, 55 feet; total cost $326m; estimated Federal cost $156m; estimated local cost $170m; H.R. 6, sec. 201b.	The Ambrose and Anchorage Channels will be deepened to 55 feet to accommodate deepdraft vessels. Beach-quality dredged sand will be moved to Staten Island and Monmouth, NJ, at full Federal expense. No dredged materials may be disposed of in Queens, NY, harbors.
Gowanus Creek Channel—total cost $3.3m; estimated Federal cost $1.5m; estimated local cost $1.7m; H.R. 6, sec. 202a.	This project will improve the channel connecting the New York Harbor entrance channel with the Brooklyn interior. The channel will be deepened to 32, 35, and 40 feet in sections.
New York Harbor/adjacent channels study—H.R. 6, sec. 708	The Secretary is instructed to expedite the study of deepening needs for the Claremont Channel, which runs from the head of navigation in the Upper Bay approximately 2 miles eastward, and to report results of the study by Dec. 31, 1987.
New York Bight study—cost; up to $1m/yr. for 5 years, 1987–91; H.R. 6, sec. 728	The Army Corps of Engineers in cooperation with the Environmental Protection Agency will study and begin to implement if feasible a Hydro-Environmental Monitoring and Information System for the New York Bight area using a computerized buoy system and radio telemetry to assess effects of dumping in the bight. The corps will also develop a physical hydraulic model of the bight for use with existing models of the New York Harbor. The corps will consult with appropriate State, local, and academic institutions and agencies in performing this study.
Buffalo area:	
Buffalo Harbor, drift removal—total cost $2.3m; split 50/50 Federal/local; H.R. 6, sec. 1129	The project will remove debris from the harbor and remove dilapidated structures from the harbor waterfront. A continuing program will improve navigation safety in the area of the harbor.
Buffalo Harbor, small boat improvements—total cost $900k; H.R. 6, sec. 601c	All planning, design, and engineering studies for the project are authorized. The project will be ready for construction after these studies are done. Total construction costs may run as high as $9 million. Construction will need additional authorization at a later date. This project will replace the deteriorating dike and extend its dogleg extension to improve harbor safety, wave protection, and future expandability.
Cazenovia Creek, flood control—total cost $2.05m; estimated Federal cost $1.54m; estimated local cost $510k; H.R. 6, sec. 401a.	This project will protect against winter flooding resulting from ice jams. A low-concrete dam will create an 11-acre pool with an ice retaining boom. The pool will hold ice that would otherwise drift downstream and block the Creek. Flood damage will be reduced by 70 percent.
Buffalo River, toxic pollution removal—H.R. 6, sec. 1186	The conference will recommend that the problem of pollution in the river be ameliorated under the Superfund Program.
Buffalo Ship Canal Bridge—total cost $18m; split 50/50 Federal/local; H.R. 6, sec. 839	A lift-span bridge will be built across the Canal 3600 feet north of South Michigan Ave.
NYS Barge Canal—estimated O+M $10–12m per year; H.R. 6, sec. 1105	The Federal Government will henceforth reimburse NYS for 50 percent of the canal's operation and maintenance costs, and up to $5m or 50 percent per year of costs for rehabilitation and repairs of the barge canal.
Olcott Harbor, navigation—total cost $12.6m; split 50/50 Federal/local; H.R. 6, sec. 601a	Navigation improvements will include a breakwater, stone jetty, and channel work. Fishing improvements will be studied in consultation with appropriate Federal, State, and local agencies.
Niagara Frontier Transportation Authority—total cost $7m; split 50/50 Federal/local; H.R. 6, sec. 1139.	The conference will recommend that this provision for bulk storage facilities and wharves be funded under a grant from the Economic Development Administration.
Port Ontario Harbor of Refuge—H.R. 6, sec. 615	The Federal Government will assume the operation and maintenance costs of this harbor of refuge.
Dunkirk Harbor, dredging—total cost $4.6m; split 50/50 Federal/local; H.R. 6, sec. 848	The eastern inner harbor will be dredged and maintained in accordance with plans developed by the Secretary in consultation with appropriate non-Federal interests.
Buffalo fish study—total cost $5m for 4 projects; split 75/25 Federal/local; H.R. 6, sec. 704	This project will demonstrate methods of fish habitat creation in Lake Erie to be evaluated for potential use on a general basis.
Other NYS Projects:	
Coney Island/Rockaway, shoreline protection—total cost $177m; estimated Federal cost $104m; estimated local cost $73m; H.R. 6, sec. 501a.	The project will restore the Coney Island public beach to its historic shoreline, extend the westerly terminal groin, and add an easterly terminal groin. The groins will include walkways and railings for recreational fishing, and the restored beach will be periodically replenished.
East Chester Creek, navigation—total cost $500k; estimated Federal cost $450k; estimated local cost $50k; H.R. 6, sec. 866..	The Secretary will use a portion of previously authorized operation and maintenance funds to dredge and maintain the Y-shaped portion of the project.
Ellicott Creek—non-Federal cost credit; H.R. 6, sec. 1170	The already authorized flood control project is modified to allow a credit against the non-Federal share of construction costs equal to the fair market value of lands, easements, rights-of-way, or relocations provided by non-Federal interests which is greater than 25 percent of total project costs. The project will be cost-shared in accordance with the January 1984 local/State agreement.
Hempstead Harbor, vessel removal—total cost $3m; split 67/33 Federal/local; H.R. 6, sec. 1115	The Secretary will remove derelict vessels from the western shore of Hempstead Harbor as part of the already authorized New York Harbor drift removal program of the 1974 Water Resources Development Act.
Hudson River, shoal removal—total cost $150k; estimated Federal cost $113k; estimated local cost $37k; H.R. 6, sec. 828.	The Secretary shall remove the shoals between the mouth of the Roeliff Jansen Kill in Columbia County and the existing navigation channel and place the removed materials at a site designated by the city of New York.
Jamaica Bay channel—feasibility study; H.R. 6, sec. 1168	The Secretary will conduct a 1-year study of opening a channel between Jamaica Bay and Reynolds Channel, Long Island, for the purpose of water quality improvement.
Mamaroneck Harbor, navigation—H.R. 6, sec. 804	The ongoing project is modified to provide that the Federal share of costs for dredging necessary to maintain the project will be 50 percent.
Mamaroneck, Sheldrake, and Byram Rivers, flood control—total cost $68.5m; estimated Federal cost $51.4m; estimated local cost $17.1m; H.R. 6, sec. 401a.	This provides protection for the village and town of Mamaroneck and for Port Chester using channel modifications, levees, floodwalls, and other measures.
Mud dump disposal alternatives—H.R. 6, sec. 211	The EPA will designate within 3 years 1 or more sites for disposal of dredged materials other than the mud dump located 5.75 miles off Sandy Hook, NJ. The new site(s) will be not less than 20 miles from shore and will be used in lieu of the mud dump beginning 30 days after such designation.
Nakoma Brook, Sloatsburg flood control—total cost $500k; H.R. 6, sec. 401c	This project is 1 of 3 in the Passaic River Basin and will provide for flood damage protection.
Orchard Beach, erosion control—total cost $2.48m; estimated Federal cost $1m; estimated local cost $1.48m; H.R. 6, sec. 501d.	Erosion of the beach will be repaired according to the recommendations of the corps report of July 1985 using beach fill and periodic sand replenishment.
Ramapo and Mahwah Rivers, flood control—total cost $6.26m; estimated Federal cost $4.63m; estimated local cost $1.63m; H.R. 6, sec. 401a.	The project for flood control will be carried out according to the recommendations of the corps report of Nov. 27, 1984.
Westhampton Beach, periodic nourishment—estimated cost $47m over 20 years; split 70/30 Federal/local; H.R. 6, sec. 502.	This project, originally authorized in 1960, has been the subject of litigation for almost 30 years. The cost sharing provisions of Public Law 93–251, the Water Resources Development Act of 1974, will be applied for 20 years after the enactment of H.R. 6.
Vestal levee, flood control—total cost $700,000; estimated Federal cost $525,000; estimated local cost $175,000; H.R. 6, sec. 852.	The project for flood control on the Susquehanna River for Endicott, Johnson City, and Vestal is modified to authorize protective measures for the levee at Vestal to correct erosion problems and restore it to its design condition.
Great Lakes:	
Great Lakes diversions—H.R. 6, sec. 1109	To more carefully manage the lakes and protect their waters from unwarranted diversions, any diversions out of the Great Lakes Basin must be approved by the Governor of each of the Great Lake States.
Great Lakes dredged, materials disposal—H.R. 6, sec. 1154	The Secretary and corps must consult and cooperate with the concerned States in selecting disposal areas for dredged materials suitable for beach replenishment.
Great Lakes erosion/water levels—total cost $3m; H.R. 6, sec. 706	The appropriate Federal, State, and local agencies will conduct a study of shoreline protection and erosion control policy for the Secretary, in view of current and future high Great Lakes levels. At the end of the 3-year study the Secretary will report findings and recommendations to Congress.
Great Lakes commodities, marketing board—H.R. 6, sec. 1132	The board is established to develop a strategy to improve the capacity of the Great Lakes region to produce, market, and transport commodities. It will include representatives of the Great Lakes Commission, the Secretary, the Transportation, Commerce, and Agriculture Departments, EPA, and the St. Lawrence Seaway Development Corporation.
St. Lawrence Seaway/Great Lakes locks:	
Poe lock—H.R. 6, sec. 1138	Completion of the corps study of a second parallel lock next to Poe lock will be expedited, with a deadline of Sept. 30, 1986, for submission of the study to Congress. The new lock is needed to handle the potential problems if Poe Lock is closed for rehabilitation, since it is the only existing lock at that location that can accommodate 1,000-foot vessels.
Sault Ste. Marie—total cost $240m; H.R. 6, sec. 1149	A second lock is authorized at Sault Ste. Marie, MI, at full Federal expense, to be built adjacent to the existing lock in accordance with the corps report of March 1985.
Eisenhower and Snell locks—total cost $39.2m; H.R. 6, sec. 1163	The corps will rehabilitate these locks at Massena, NY, in accordance with the corps report of November 1984. The Secretary will determine appropriate cost sharing. The local share will probably come from seaway users' tolls.
General provisions:	
Petroleum product, information disclosure—H.R. 6, sec. 1199a	The Secretary will provide information relating to petroleum products transported by vessel to any State agency charged with responsibility for the administration of State tax laws that requests such information.

NATIONAL WILDLIFE FEDERATION,
Washington, DC, October 16, 1986.

Hon. DANIEL PATRICK MOYNIHAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOYNIHAN: I want to convey our support for the conference agreement on H.R. 6, the Water Resources Development Act of 1986. In our opinion, H.R. 6 is the most significant water resources development legislation since the New Deal, and the most environmentally responsible water projects bill to date.

Enactment of H.R. 6 would go a long way toward the implementation of reforms that have been sought by successive Administrations, Republican and Democratic alike, laid out by the landmark report of the National Water Commission in 1973. Most notably, the bill contains significant new requirements for greater non-Federal participation in the financing of most types of new water resources projects. These cost-sharing and user fee provisions will enfranchise thousands of new participants in the process of planning and constructing Federal water projects. These new requirements will not only save the Treasury money, but they also will spare the environment from damage by the construction of unneeded or oversized projects.

In addition to these fundamental financial reforms, the bill contains an important pro-

vision requiring timely implementation of measures to mitigate damages to the environment that result from project development. The bill also includes needed general authority for the Corps of Engineers to restore previously damaged fish and wildlife habitat, undertake improvements at existing projects to improve their environmental performance, and protect wetlands in the Lower Mississippi Valley.

H.R. 6 contains numerous provisions and projects to enhance natural values or restore previously damaged resources. The most significant of these include the protection of the Atchafalaya River Basin in Louisiana, the mitigation of damages to fish and wildlife habitat resulting from construction of the Tennessee-Tombigbee Waterway in Alabama and Mississippi, and the initial stage of a major mitigation effort for the lower Missouri River, in Iowa, Nebraska, Kansas, and Missouri.

Several hundred unbuilt projects would be deauthorized by H.R. 6, and a new process will be set up to automatically cull the "dead wood" from the Corps' construction backlog in the future. Notably, the Cross-Florida Barge Canal would be deauthorized, with previously acquired lands to be managed for their natural and recreational value.

Among the many studies authorized by the bill is a study of the Corps' capability to create or improve fish and wildlife habitat, along with limited authority to demonstrate such capabilities. Also, in one of the first undertakings of its kind, the bill authorizes a three-year study of the implications of rising sea levels on coastal communities and related policies and programs of the Corps. This study is to include an appraisal of various strategies for managing relocation, disinvestment, and reinvestment in coastal communities exposed to coastal flooding and erosion.

To be sure, H.R. 6 also includes among its 400-plus pages several projects and provisions which we believe to be unjustified or unwise. Nevertheless, these shortcomings do not, on balance, detract from the significance of the remainder of the bill.

I urge the Senate to approve the conference agreement on H.R. 6. Your support for the restructuring of the Army's water resources development program as embodied in this legislation is greatly appreciated.

Sincerely,

JAY D. HAIR.

Mr. MOYNIHAN. Madam President, let me also thank the staff, some of whom, like the members, have worked for years on this legislation—all of whom have worked very long hours during the 99th Congress to complete work on this historic legislation.

For the Republicans: Bailey Guard, majority staff director, Thomas Skirbunt, Mark Haynes, Hal Brayman, and the support staff, Debbie Terpening and Margaret Daily.

For our side: Lee Fuller, minority staff director, Ann Garrabrant, Michael Weiss, Dick Hood, Paulette Hansen, Nan Stockholm, and support staff, Elizabeth Thompson, Marge Wright, Tanya Hart, and Andy Wolff, and Bob Bergman, our legislative counsel for this bill.

We owe special thanks to Michael Strachn, of the Army Corps of Engineers for his endless patience and assistence.

Mr. DOLE. Madam President, Congress has been unable to write a new water bill for nearly a decade because of an impasse over how costs were shared by the Federal Government, States, and local communities. This legislation shifts a larger portion of the costs associated with a water resource project to the localities benefited by the project. Such a policy encourages local communities to more adequately assess the need for, and feasibility of, building these types of projects.

KANSAS PROJECTS

Madam President, this legislation authorizes the construction of several important water projects in Kansas and contains a provision that establishes a comprehensive research and development program on the depletion of the Ogallala Aquifer. This aquifer is the largest in the United States and is an important source of water to the High Plains States of Colorado, Nebraska, New Mexico, Oklahoma, Texas, and my home State of Kansas. Monitoring over the last few years has indicated that the natural recharge is not keeping pace with the rate at which the water is being pumped from the acquifer. If this continues, these States will soon be faced with a critical water shortage.

Another provision in this bill authorizes the construction of a 21,000-foot levee and floodwall along the Little Arkansas River near Halstead, KS, and allows for the straightening of the river channel. This will allow the city of Halstead to finally receive the flood protection they have been awaiting for years. The city has had virtually no protection from a 100-year flood.

One important provision authorizes $16,100,000 to provide for the deepening of the Brush Creek Channel and the replacement of two bridges in Kansas City. This authorization is in direct response to the serious flooding that occurred in this area in 1977.

Madam President, farmers living along the upper Little Arkansas watershed in central Kansas will receive some protection from the devastating flooding they have suffered in the past. This legislation will authorize the building of 18 small dams along the river in an effort to protect acres of valuable farmland.

Of special interest to those living in southeast Kansas is a section authorizing $4 million for the construction of a paved road to the Pearson-Skubitz Big Hill Reservoir. This area is a popular recreation site. Unfortunately, when the reservoir was constructed in 1981, no paved roads were built to provide access to the area. This legislation authorizes the project on a 50-50 cost-share basis.

Madam President, levee failures during the flood of 1923 in Arkansas City, KS, left 3,000 homeless, caused about $3 million in damages, and resulted in several deaths. Flooding again occurred in 1928, 1944, and 1945. This bill authorizes the raising and extending of the Walnut River levees near Arkansas City, at a cost of $14.5 million. Doing so will protect an area of 4,000 inhabitants where property values are high.

In addition, this legislation reverses current law and allows water from Marion Lake near Marion, KS, to be used for irrigation of farmland. Doing so will allow the local farmers to obtain much-needed water for their crops while still protecting the original project purposes.

CONCLUDING REMARKS

Madam President, I wish to thank the members of the Environment and Public Works Committee for their hard work on the Water Resources Development Act. The distinguished chairman of the committee, Senator STAFFORD; the chairman of the subcommittee, Senator ABDNOR; and the ranking minority members, Senators BENTSEN and MOYNIHAN, and the House members of the conference committee, are to be commended for their efforts on this important piece of legislation.

Madam President, I commend my colleagues, the Senator from New York, and in particular the distinguished Senator from South Dakota, for an outstanding job. We have been waiting a decade for this. Thank you very much.

Mr. WARNER. Madam President, I rise in strong support of the conference report on H.R. 6, the Omnibus Water Resources Development Act.

It has been nearly 15 years since the last major water resources bill, and I want to pay special tribute to Senator ABDNOR who is chairman of the Water Resources Subcommittee, for his tireless work on this issue and for bringing us to this point tonight.

I also want to commend the able chairman of the Environment and Public Works Committee, Mr. STAFFORD, the ranking member of the full committee, Mr. BENTSEN, and the ranking member of the subcommittee, Mr. MOYNIHAN for their leadership.

Without the unfailing persistence of the members of the Environment and Public Works Committee, we would not be here to approve this historic legislation.

This is a day I have been working for since I first arrived as a Member of this distinguished body in January 1979.

It has been one of my highest priorities. I have introduced legislation and worked in coalition with my colleagues who shared in my commitment.

My colleagues and I have traveled a long, tiresome, and sometimes rocky road to reach the end of this journey for a national coordinated water policy.

This is a good, fair bill that equitably distributes the burden of financing the development of our resources and provides needed environmental protections.

Virginia Governor Baliles, the Virginia General Assembly, and our congressional delegation list the passage of this omnibus water resources bill as an essential ingredient in the economic good health of the Commonwealth.

Governor Baliles is the third Governor of Virginia—preceded by Gov. John Dalton and Gov. Charles Robb—with whom I have worked on this legislation.

I am grateful for the dedication and cooperation of these three Governors in shaping this legislation and fulfilling the non-Federal commitment which is such a crucial part of this proposal.

It was a particular privilege for me, Mr. President, to work with a highly distinguished group of my colleagues in 1983 to draft omnibus water resources legislation. Our coalition which drafted S. 865 included, in addition to myself, Mr. HATFIELD, Mr. BYRD, Mr. THURMOND, and Mr. MATTINGLY.

We were convinced then, and we remain convinced now, that the cost-sharing structure in our bill was equitable and appropriate both for our National Port System and for the Nation's taxpayers.

It is gratifying to us that the legislation before the Senate today incorporates many of the major provisions of the legislation which we introduced 3 years ago.

The Federal interest in a modern harbor system is twofold: To promote America's trade potential and economic strength, as well as to meet our defense commitments.

The United States must be prepared to meet the world demand for its goods by developing a more competitive port transportation system.

Likewise, the constitutional obligation to provide for the Nation's defense demands that the Federal Government continue its strong role in supplying both our allies' and our own energy needs.

The quick and efficient deployment and servicing of troops and equipment must be assured by modern, well-maintained harbors.

Our National Port System annually transports in excess of $318 billion in waterborne foreign commerce and generates $7 billion in Customs revenues.

A strong port system which increases our capacity to export reduces our balance of trade deficit and makes a positive contribution to employment in every State in the Nation.

This bill authorizes the deepening of the Port of Hampton Roads to 55 feet at an estimated cost of $538 million at a benefit-to-cost ratio of 3.6 to 1. It allows the project to be built in operable segments.

The Virginia Port Authority has signed a local cooperative agreement, or "221" with the Corps of Engineers to construct a 50 foot outbound channel at a cost of $46.7 million to be cost shared by the Federal Government and the State.

The Virginia General Assembly has appropriated the State share and we are ready to start dredging as soon as we approve this bill.

Madam President, as this is the first major water resources bill in nearly 15 years, we know that staff has spent untold hours to draft this bill.

I personally want to extend by appreciation to Tom Skirbunt and Mark Haynes of the Environment and Public Works Committee, who have showed me and my staff every consideration for the many projects—flood control, beach erosion protection, harbor dredging—important to Virginia.

Again, Madam President, I support this conference agreement. I urge my colleagues to support it as well.

Mr. WILSON. Mr. Chairman, there are a couple of points involving the Santa Ana River Mainstem project which are not immediately clear upon first reading of the legislative language. It is the understanding of the conferees that upon the completion of the water supply and conservation study at Prado Dam, that if that study recommends water conservation as a secondary project purpose and upon completion of the exchange for the Santa Ana Project that such water conservation will then be considered automatically authorized as a secondary project purpose?

Mr. STAFFORD. The Senator from California is correct. If water supply and conservation is found to be feasible at Prado Dam then such finding shall automatically become a secondary project purpose of the Santa Ana project.

Mr. WILSON. Thank you, Mr. Chairman for that clarification. I have a second point of inquiry and clarification, as well. It is my understanding that the reference in H.R. 6 to the Water Supply Act of 1958 refers to any additional water supply and conservation that may be recommended at Prado Dam. This reference is in no way meant to be a limitation on the corps' existing authority to impound water at Prado for conservation purposes. Is that the conferees understanding of this language?

Mr. STAFFORD. The Senator is correct. The language we have adoped is prospective, and effects additional potential storage

Mr. STAFFORD. Will the distinguished manager of the bill yield for purposes of a colloquy?

Mr. ABDNOR. I would be happy to yield to the distinguished Chairman of the Committee on Environment and Public Works.

Mr. STAFFORD. I thank the Senator. As the Senator knows, new cost-sharing requirements are the centerpiece of this bill, and constitute a major shift in the division of Federal and non-Federal financial responsibilities for water resources development in this country. In addition to simply reducing the Federal cost of new construction, what additional objectives are intended to be achieved by these new requirements?

Mr. ABDNOR. The cost-sharing reforms contained in the bill are intended to achieve several important objectives. These include: bringing the benefits of the water resources development program to more communities; producing plans with more widespread local support; encouraging smaller, more efficient projects, where appropriate; enabling the marketplace to help determine investment priorities, especially for deep draft ports; reducing environmental damages that result from unneeded or oversized projects; and helping to assure more cost-effective development.

Mr. STAFFORD. I thank the Senator for elaborating on these objectives and concur with his remarks. I am pleased to note that section 103(b) of the conference agreement provides encouragement for nonstructural projects to reduce flood damages, including waiving the requirement for cash contributions during construction. What types of measures are intended to qualify for this treatment?

Mr. ABDNOR. A variety of measures, either singly or in combination, are considered to be "nonstructural." These may include flood warning systems, flood plain regulation, removal or relocation of structures or building contents, flood proofing of structures, acquisition of flood plain lands for conversion to compatible uses, and restoration of wetlands for purposes of flood water retention. Other innovative approaches may be found in the future to reduce flood damages without construction of traditional flood water retention structures, and these too should qualify under section 103(b).

Mr. STAFFORD. Would the techniques for stream renovation and channel improvement known as the Palmiter Method be considered nonstructural within the meaning of this provision?

Mr. ABDNOR. Yes; that is certainly our intent.

Mr. STAFFORD. I thank the Senator for his clarification, and for his support on this issue. If the Senator

will yield further, I would like to clarify the intent behind certain portions of title 2 of the conference agreement, which deals with harbor development. Is section 204(d) intended to diminish the authority of the Administrator of the Environmental Protection Agency under section 404 of the Clean Water Act?

Mr. ABDNOR. No; it is not.

Mr. STAFFORD. Is section 205 intended to modify any existing environmental statutes?

Mr. ABDNOR. No; it is not.

Mr. STAFFORD. Is section 205 intended to suspend any public participation procedures currently in effect for either Federal or non-Federal agencies?

Mr. ABDNOR. No; it is not.

Mr. STAFFORD. Is section 205 intended to limit the authority or responsibility of any Federal agency to issue or deny permits under existing law?

Mr. ABDNOR. No; it is not.

Mr. STAFFORD. Is section 205 intended to limit in any way the Secretary of the Army's continuing obligations under the Endangered Species Act?

Mr. ABDNOR. No; it is not.

Mr. STAFFORD. Are permits that may be required for the operation and maintenance of new navigation projects expected to be issued within the schedule established under section 205(c)?

Mr. ABDNOR. No; they are not.

Mr. STAFFORD. I thank the distinguished sponsor of the Senate bill and chairman of the conference committee for these clarifications.

Mr. DURENBERGER, Madam President, for those of us who care deeply about this nations water resources, the accomplishment of this, the 99th Congress, have been truly remarkable. In furtherance of those objectives, I rise to express my strong support for the conference report accompanying H.R. 6, The Water Resource Development Act of 1986.

I want to make it clear from the outset that the lions-share of the credit for this historic and long-overdue legislation rightfully belongs to the chairman of the conference, and chairman of the Water Resource Subcommittee, my good friends Senator JIM ABDNOR. Through it all, JIM's dogged determination and commitment kept us moving forward when it appeared all hope was lost.

As I have indicated in previous statements, our actions to date on such important legislation as the reauthorization of the Superfund, Clean Water and Safe Drinking Water Acts represent a tremendous first step in our efforts to preserve the integrity of our water resources for future generations. With passage of the legislation before us today, we will be taking the equally important step of improving our water resource infrastructure.

Like every Member of the Senate, I have a project or two in this measure. In fact, as a member of both the authorizing committee and subcommittee, there are over 17 projects in H.R. 6 which I know will improve the quality of life for the residents of Minnesota. But I can claim with conviction that every single one of those projects is environmentally sound and economically justified. And that is the reason why, after 16 years of failure, the body will succeed where the last eight Congresses have failed.

I will not take up my colleagues time reciting the names, location and cost of all of the projects which I labored over, but there are a number of provisions which I believe are deserving of special emphasis. I would include in this group the Rochester Flood Control Project, the master plan for the Upper Mississippi River System, and the entire package of Great Lakes-St. Lawrence Seaway provisions. These projects are significant for a number of reasons, some of which bear special mention here.

ROCHESTER

Congressional approval of the South Fork Zumbro River Flood Control project brings to a happy conclusion my first legislative initiative as a U.S. Senator. Over 8 years ago I stood in the back yards of homeowners in Rochester, MN and watched in silence as the receding waters of the Zumbro River and Bear Creek slowly and painfully revealed the destruction Mother Nature wreacked on an unsuspecting and unprotected community. The loss of five lives made the $100 million in property damage seem trivial, and I vowed then that, if elected to the Senate, I would make authorization of flood protection project for the community one of my top priorities. It is with mixed emotions, then, that I view the long-awaited passage of this legislation. For, if this proposal had passed the Congress in 1980, the 3 individuals who perished in a flash flood last month might still be with us today.

MASTER PLAN-UPPER MISSISSIPPI RIVER

While many people question the utility of expanding the capacity of our inland navigation system at a time when grain isn't moving and the barge industry is suffering the consequences of over capacity, I view the authorization of a second chamber at Lock and Dam 26 and the attendant environmental mitigation and enhancement package as one of the most foresighted provisions in the bill. In one fell swoop we have taken action which promises to remove an inefficient bottleneck on the inland navigation system while at the same time putting in place the most comprehensive environmental mitigation program for a project ever adopted by the Congress. It is a provision which should enjoy the strong support of both the transportation, agricultural and environmental communities alike.

GREAT LAKES—ST. LAWRENCE SEAWAY SYSTEM

Without question, the treatment of the Great Lakes navigation system in this legislation brings to an end one of the greatest inequities in our Nation's transportation system. For the first time since the St. Lawrence Seaway opened to traffic in 1959, shippers on the Great Lakes will no longer enjoy the unenviable distinction of being the only citizens compelled to pay fees to the U.S. Government for the use of a Federal navigation improvement project. This legislation, by requiring the Secretary of State to undertake negotiations with the Canadian Government for the purposes of eliminating tolls for the use of the Welland Canal and rebating U.S. toll proceeds to users of the system brings the Great Lakes one step closer to joining our other coastal ranges as an equal partner in our national port system.

In closing, Madam President, I want to thank everyone who played a role in getting us to this point, particularly to the chairmen and staff of the Environment and Public Works and the Appropriations Committee, without whose patience and assistance this whole effort would have collapsed.

Mr. BOREN: Madam President, I would like to publicly thank the distinguished chairman of the Water Resources Subcommittee, Senator ABDNOR, and his staff for their fine work in sheparding this important legislation to the verge of enactment. I would also like to thank them for the help they provided to myself and Senator NICKLES in our efforts to assist the Cherokee Nation in building a hydroelectric facility on the Arkansas River.

This particular project is unique in that the U.S. Army Corps of Engineers and the Department of Energy's Southwestern Power Administration are being reimbursed for their expertise, in the role of subcontractor, in support of the W.D. Mayo hydroproject. This legislation should be interpreted as allowing these Federal agencies to provide their services on a par with private industry in terms of timing, cost, and efficiency.

The passing of this legislation now, and the expeditious execution of the necessary contracts between all parties, should allow the Cherokee Nation of Oklahoma to enter the private market for project financing at the current, relatively low interest rates, which will reduce the overall cost of the project, and will in the long run provide savings to the retail purchaser of the electric power produced.

I am very concerned that we must work to expedite the normally slow Federal bureaucracy. To that end I would like to cite just one example in-

volving the W.D. Mayo project. With the current thinking in the Corps of Engineers, the Cherokee Nation will not be able to enter into a formal contract for this project for over 2 years after enactment of this legislation.

The corps envisions a 2-year period following enactment for cost estimating, project design, et cetera, before they would be ready to finalize their costs. These costs are necessary so that Southwestern Power could determine the optimum economic feasibility of the project. This means that the Cherokee Nation will be precluded from securing their private financing for up to 2 years after enactment of this legislation. I don't know where interest rates are going to be in 2 years and I don't think we should ask the Cherokee Nation to assume that risk. What is interesting is that the Nation's engineering contractor, Benham-Holway, has over 60 years experience with corps projects. In fact, they are the engineers for the corps project at lock and dam 13 just down the Arkansas River. So, it would seem that a realistic and bondable cost estimate can be accomplished within 2 months. I would also like to note that the corps wrote a comprehensive feasibility study on lock and dam 13 themselves, which could be easily and quickly updated to bring about the necessary cost estimates.

Madam President, the W.D. Mayo project is a truly unique, local initiative. I would ask that the distinguished chairman of the Water Resources Subcommittee have the report language reflect these concerns.

Mr. NICKLES. Madam President, I would also like to thank the distinguished chairman of the Water Resources Subcommittee, Senator ABDNOR, for his help with the W.D. Mayo project.

Like my colleague from Oklahoma, Senator BOREN, I have concerns about how the Corps of Engineers will interpret their role in this project. In the past, contracts between the Corps of Engineers and/or the Southwestern Power Administration and a design/construction contractor, utilizing Federal funds, have always included a clause which restricted arbitration to within the corps or Southwestern Power. As a result, unilateral "final determinations" were made by those Federal agencies.

The Cherokee Nation is building the W.D. Mayo project without Federal funds. Consequently, this project, should be treated as a standard industry project, and as such, standard industry arbitration rules should apply, (each party to select an arbitrator and those two will select a third).

The bottom line, Madam President, is that when we talk about Federal agencies carrying out work on a "par with industry" we are not advocating that they are in competition with industry, just that they perform their functions with the speed of efficiency of the private sector. I would also urge my colleague, the distinguished chairman, for his support of our concerns about the unique role that the Corps of Engineers and the Southwestern Power Administration will have in the swift completion of the W.D. Mayo project.

Mr. ABDNOR. Madam President, I thank my distinguished colleagues from Oklahoma for their kind remarks and for their support of this legislation as it has made its way through Congress.

I want to join them in urging the Corps of Engineers to move as quickly as possible to execute the necessary agreements to which will permit the Cherokee Nation of Oklahoma to proceed as invisioned in this bill with hydroelectric development at the W.D. Mayo site.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the conference report. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. BROYHILL], the Senator from Washington [Mr. EVANS], the Senator from Arizona [Mr. GOLDWATER], the Senator from Washington [Mr. GORTON], the Senator from Nevada [Mr. LAXALT], the Senator from Maryland [Mr. MATHIAS], the Senator from Alaska [Mr. Murkowski], the Senator from Idaho [Mr. SYMMS] and the Senator from Connecticut [Mr. WEICKER] are necessarily absent.

I further announce that, if present and voting, the Senator from Alaska [Mr. MURKOWSKI], would vote "yea."

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from Florida [Mr. CHILES], the Senator from Arizona [Mr. DECONCINI], the Senator from Missouri [Mr. EAGLETON] and the Senator from Vermont [Mr. LEAHY] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 84, nays 2, as follows:

[Rollcall Vote No. 359 Leg.]

YEAS—84

Abdnor	Cranston	Grassley
Andrews	D'Amato	Harkin
Armstrong	Danforth	Hart
Baucus	Denton	Hatch
Bentsen	Dixon	Hatfield
Biden	Dodd	Hawkins
Bingaman	Dole	Hecht
Boschwitz	Domenici	Heflin
Bradley	Durenberger	Heinz
Bumpers	Exon	Helms
Burdick	Ford	Hollings
Byrd	Garn	Humphrey
Chafee	Glenn	Inouye
Cochran	Gore	Johnston
Cohen	Gramm	Kassebaum
Kennedy	Moynihan	Sasser
Kerry	Nickles	Simon
Lautenberg	Nunn	Simpson
Levin	Packwood	Specter
Long	Pell	Stafford
Lugar	Pressler	Stennis
Matsunaga	Pryor	Stevens
Mattingly	Quayle	Thurmond
McClure	Riegle	Trible
McConnell	Rockefeller	Wallop
Melcher	Roth	Warner
Metzenbaum	Rudman	Wilson
Mitchell	Sarbanes	Zorinsky

NAYS—2

Kasten	Proxmire

NOT VOTING—14

Boren	Evans	Mathias
Broyhill	Goldwater	Murkowski
Chiles	Gorton	Symms
DeConcini	Laxalt	Weicker
Eagleton	Leahy	

So the conference report was agreed to.

□ 2250

Mr. STAFFORD. Madam President, I move to reconsider the vote by which the conference report was agreed to.

Mr. MOYNIHAN. Madam President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

NATIONAL FORESTS OF NEVADA ENHANCEMENT ACT OF 1986

Mr. HECHT. Madam President, I ask unanimous consent that the Committee on Energy and Natural Resources be discharged from further consideration of S. 2698, the National Forests of Nevada Enhancement Act of 1986.

Mr. METZENBAUM. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. HECHT. Madam President, this bill is being held up over disputed water rights language. I just want to make it clear that the water rights language in question was also in the original H.R. 5277, the companion measure which was introduced in the House.

These bills, and that water rights language, enjoy the strong bipartisan support of the entire Nevada delegation. I want to point out that I think it is unfortunate that the House chose to ignore that language when it passed H.R. 5277. I also think it is unfortunate that there are some in this body who want to take advantage of this measure to accomplish a potentially massive reservation of the scarce waters of Nevada to the Federal Government.

Madam President, S. 2698 contains clear and unambiguous language to ensure that the transfer of lands from the BLM to the Forest Service does not create any new Federal water rights. With the Senate language, everything would be the same tomorrow as it is today, except that administration and management would be en-

hanced. I regret that the House Democrats strongly oppose that basic protection. Instead, they would use this bill to establish new Federal water rights which could severely impair future economic development in Nevada.

Madam President, a lot of people in Nevada will be disappointed that this bill did not pass this year. Many Nevadans have been working hard for 2 long years on this issue, and some have contributed their hard-earned money to send representatives to Washington to testify in favor of this bill.

I want to assure the people of Nevada that although this bill may be dead, the issue is not dead. When the Congress reconvenes in January, I will once again come before the Senate to reintroduce this bill. I am hopeful that in the less frantic early days of the 100th Congress, we will be able to act quickly and cooperatively on this issue.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. ARMSTRONG). The majority leader is recognized.

Mr. DOLE. Mr. President, I am happy to yield to the Senator from Ohio.

Mr. METZENBAUM. Mr. President, I ask the Senator from Nevada if this is the land exchange bill?

Mr. HECHT. It is not. It is an exchange between the Forest Service and the BLM.

Mr. METZENBAUM. Mr. President, I shall submit a statement for the record.

Mr. DOLE. Mr. President, if we could have order, I would like to make an announcement that might be of some use.

The PRESIDING OFFICER. The Senate will be in order. The Senators are requested to take their seats. Staff is requested to retire to the rear of the Chamber or to the Cloakroom.

Mr. DOLE. Only those who want to go home have to listen.

The PRESIDING OFFICER. The majority leader.

NO MORE VOTES THIS SESSION

Mr. DOLE. I want first of all to thank my colleagues. I think we have reached a point where, unless we have something that has been approved by unanimous consent, we are not going to bother with any more this year. We have people buzzing around here like flies saying, "Oh, this is important, you have to do this, you have to do that." We want to accommodate as many of our colleagues as possible where there is absolutely no problem. What we cannot do is start loading up a lot of things where the administration has opposition or somebody else has opposition in this Chamber and say, "Well, let us just have one more vote." I am prepared to announce there will be no more votes this session.

[Applause.]

Mr. DOLE. That means unless we can work it out, it is probably not going to happen this year.

There are a lot of things we are going to do tomorrow, but I do not see any reason for everybody to stay tomorrow unless you just want to be around tomorrow. Senator BYRD will be here, I will be here, others may be here. What we are going to do tomorrow is deal with issues.

I shall yield to the distinguished minority leader in just a moment. I understand there are issues that have been cleared that are not controversial and that is it. Then we shall see you all after the elections.

Mr. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. BYRD. Mr. President, I thank the distinguished majority leader for his announcement. We have discussed this matter. We have agreed that on tomorrow only those matters that have been cleared to be acted on by unanimous consent will be taken up. We both urge Senators not to come here to ask unanimous consent to call up a matter on which they know there is going to be an objection just so they can get an objection and be able to say to the people back home that they tried to call it up. They had all year now. They have had plenty of time. So I am ready to join with the majority leader in objecting to everything tomorrow. I would like both of us to stand together and object to anything that is called up that is not previously cleared on both sides.

Mr. DOLE. I am prepared to do that. I think we have reached a point—I know a lot of people may be temporarily disappointed that they cannot roll it on through tomorrow. But I assume they will be back next year and a lot of these ideas are so good they are going to wait.

Mr. BYRD. So there will be no more rollcall votes.

Mr. DOLE. No more rollcall votes this session.

Mr. BYRD. I thank the majority leader and I congratulate him on a good job well done.

(Applause, Senators rising.)

Mr. DOLE. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. DOLE. I am running for reelection. But I am way ahead, so I shall be back.

I appreciate that very much. There are a couple or three items that we have cleared and that is probably all we are going to do tonight.

Senator DANFORTH wishes to make a statement, Senator PACKWOOD. We have a resolution.

Let me yield, if I may, to the distinguished Senator from Missouri.

THANKS TO SENATORS

Mr. BYRD. Mr. President, if the majority leader will yield so I may make one comment.

Mr. DOLE. Yes, I yield.

Mr. BYRD. I want to take this opportunity to express my gratitude to all Members on both sides who have been so courteous and so cooperative in working with the joint leadership, dealing with tough problems, especially in these last few days. Members have been courteous, have been understanding. Many of them have wanted to get matters cleared that could not be cleared. I want to express my appreciation and also my good wishes that they may get some good rest and have a good Thanksgiving and a good Christmas and be back next year, fully refreshed, to do lots of work again.

THANKS TO THE MINORITY LEADER

Mr. DOLE. Mr. President, let me indicate that I did not know earlier that we were going to have this little outburst. I planned to make a statement tomorrow thanking the distinguished minority leader, but since many of my colleagues will not be here tomorrow, I want again, as I have many times in the past, to thank the distinguished minority leader for his patience, his encouragement, his guidance, his direction, his advice, and above all, his support when times are tough. They get pretty tough out here from time to time and I certainly want to extend my thanks to the distinguished minority leader.

Mr. BYRD. Mr. President, I thank the distinguished majority leader.

(Applause, Senators rising.)

THE MISCELLANEOUS TARIFF BILL

Mr. DOLE. Mr. President, I yield to the Senator from Missouri.

Mr. DANFORTH. Mr. President, a number of Senators have expressed interest in a miscellaneous tariff bill. There is a tariff bill which has been passed by the House. It contains maybe 100 generally fairly small tariff items, but they are very important to various Members of Congress. We have been working valiantly trying to clear some kind of miscellaneous tariff bill for consideration on the floor of the Senate. We have tried various approaches, including an approach which would strip out absolutely everything that is in any way controversial in the House bill. Unfortunately, I have to announce tonight that

there is no possibility of passing any miscellaneous tariff bill this Congress. There are two basic reasons for that.

One reason is that one of the controversial features in the House bill relates to reclassification of television tubes. The chairman of the Ways and Means Committee has taken the position that he does not want any bill passed that does not have the TV tube provision in it. That provision is very controversial here, in the Senate, and some Sentors have taken the position that they would not grant unanimous consent to a bill with a TV tube provision in it. So that is one impossibility.

A second relates to watches. There is a provision in the House bill that makes watches eligible for duty-free treatment under the generalized system of preferences. That, too, is a very controversial item in the Senate. At least one Senator has taken the position that he does not want to sign off on even a noncontroversial bill without the watch provision in it. That would take a rollcall vote. The leader has indicated he does not want any more rollcall votes. So that is the end of miscellaneous tariff bills.

I am sure there are people either in Washington or watching this very carefully, or other Senators who are going to say, "Can't you please just clear the small items?" The answer to that is no, we cannot, for reasons previously stated. But we will be back next year.

I know Chairman PACKWOOD has taken the position that trade is going to be a major issue in the Senate Finance Committee. There will be ample opportunity to pass miscellaneous tariff bills next year.

DIGITAL AUDIO TAPE TARIFF ACT OF 1986

Mr. DANFORTH. Mr. President, I sincerely regret that it has not been possible to take up S. 2842, the Digital Audio Tape Tariff Act of 1986, because I believe it is vital that Congress take some affirmative steps to demonstrate to the electronics industries of the world that America does not intend to stand by and watch helplessly as its music community is decimated by the new technology of digital audio tape. Rumors are rampant that these new DAT machines will be introduced into the American marketplace in the very near future, before the Congress has had an opportunity to consider the threat that these machines pose as part of a comprehensive solution to the home-taping problem. That is why I introduced S. 2842, because I do not believe that copyright legislation dealing with the home-taping issue should be undermined before there is an opportunity for it to be fully considered by the Congress. I hope that, notwithstanding our inability to enact such legislation this year, the electronics manufacturers will voluntarily agree to insert copy-coder chips in their DAT machines if such machines are introduced in this market before this bill or more comprehensive copyright legislation can be considered.

I am heartened by the widespread support I have received for my measure. I am grateful to my cosponsors—Senators CHAFEE, BENTSEN, WILSON, CRANSTON, GORE, HEINZ, and SASSER—and to the administration, which announced in August that it supports the mandatory installation in new tape recorders of copy-code scanners. Although I view this bill as an essential interim measure, I recognize that ultimately there must be a global solution to this problem—one in which the electronics industries of all countries are uniformly obliged to provide for the protection of the intellectual property rights of copyright owners. Such a comprehensive solution is best incorporated in our copyright laws. It is my sincere hope that the home taping issue will soon be resolved, under the copyright law, so that the trade implications of this problem will not add to the already strained trading relations between the United States and Japan.

Mr. PACKWOOD. Mr. President, I wish to commend the leadership that the distinguished Senator from Missouri and chairman of the International Trade Subcommittee has shown on this matter. I too regret that it has not been possible to consider S. 2842.

Personally, I would welcome the opportunity to cast a vote in favor of S. 2842. I wholly agree with Senator DANFORTH about the need to send a clear message to our trading partners that where the technology is available for a fair method of protecting copyrights, the Congress would not want that opportunity jeopardized. Foreign electronic producers should not mistake our careful consideration of the home-taping issue for a lack of resolve to implement a legislative solution or as an invitation to flood our market with a new generation of taping machines. To many of us, the premature introduction of DAT machines in the United States would appear opportunistic and inappropriate, and it would not contribute to the evenhanded debate that this issue deserves.

RIGHTS OF SONGWRITERS AND RECORDING ARTISTS DESERVE PROTECTION

Mr. WILSON. Mr. President, I rise to associate myself with the remarks of my distinguished colleagues on the subject of S. 2842, which would provide protection against the importation of equipment whose very design invites copyright infringement.

Digital audio tape technology, so-called DAT, offers some wonderful benefits, but it is also capable of doing serious damage to the music industry in the United States and throughout the world. Before this new technology is unleashed, Congress must consider whether steps should be taken to protect against its abusive use.

Similar steps are being considered right now by the EEC. Indeed, I undertand that the EEC has already informally notified the Japanese Trade Ministry [MITI], that DAT machines are not likely to be permitted in the Common Market unless they contain copy-code scanners—which protect against unauthorized production of perfect copies of copyrighted music.

Wouldn't it be ironic if, by reason of the EEC's strong hand in favor of intellectual property, America were to become the dumping ground for all the new DAT machines, damaging American intellectual property owners even more severely.

Owners of intellectual property rights deserve the same protection as owners of real and personal property rights. Whenever one considers intangible property, such as that owned by a copyright holder, it may be difficult to appreciate the issues at stake. Yet, if there is no protection afforded by our Government for the rights of authors, filmmakers, songwriters, performing artists, and others, we will suffer a great loss, for we cannot expect the efforts of these people to continue.

The arts entertain and enlighten us, but, after all, those who work to bring them to us must be fairly compensated. The bill offered by Senator DANFORTH, S. 2842, is one small but important step that we can take to protect one group of artists who have sufferd greatly and unfairly as a result of new technology—specifically, songwriters and recording artists.

As the hasty introduction of DAT machines would precipitate a confrontation that nobody wants. I share the hope of my colleagues that the introduction of these recorders will be postponed until a consensus solution can be developed. After all, it is in the best interest of the electronics manufacturers—who likewise depend on intellectual property protection to preserve the benefits of their own technological creativity—to uphold the values and respect the rights of intellectual property.

DIGITAL AUDIO TAPE TARIFF ACT OF 1986

Mr. GORE. Let me rise to echo the sentiments of my distinguished colleague. As a cosponsor of S. 2842, I share Senator DANFORTH's deep concern about this issue, and I am likewise disappointed that time does not remain for us to act on this legislation.

It is essential that this issue be revisited promptly in the next Congress. This interim legislation, I believe, is necessary to protect the American music community. I would urge the chairman of the Finance Committee, and the chairman of the International Trade Subcommittee to take up this issue at the beginning of next year.

Mr. CRANSTON. I rise to associate myself with the remarks of my colleagues on the subject of S. 2842. Digital audio tape technology will revolutionize the quality of sound recordings at costs affordable to consumers. But digital audio technology, like other forms of electronic technology available today, poses serious threats to the integrity of intellectual property rights in music and sound recordings.

This time, however, there is a simple solution to the problem. An integrated circuit chip has been developed which when implanted in digital sound equipment will effectively prevent unauthorized copying of recorded music. The chip's effectiveness depends on the cooperation of the manufacturers of digital audio tape equipment. The purpose of S. 2842 is to provide an incentive for cooperation in the form of a significant tariff differential in favor of equipment carrying the chip.

The copy-code scanner provides vital protection for intellectual property rights in sound recordings while making it possible for digital audio tape equipment manufacturers to export and sell equipment which will be used in conformity with our laws.

Mr. President, today there is a rapidly growing market for types of electronic equipment for which the principal purpose is to evade the law in one way or another. Many of these devices are technological marvels. I do not wish to stop the advance of technology but surely there must be some balanced accommodation between technology which appropriates the property of others and the rights of intellectual property owners.

I was pleased to cosponsor S. 2842 and I commend Senator DANFORTH for his leadership on this matter. It is critical, not only to the economic future of this music industry, but for all industries based upon intellectual property to find effective answers to the threat of piracy and unauthorized copying.

TELEVISION PICTURE TUBE IMPORTS

Mr. BUMPERS. Mr. President, I am disturbed by a provision in the miscellaneous tariff bill which has been sent to us by the House. Specifically, I question the provision which closes a loophole in the customs treatment of imports of certain television picture tubes. While this provision addresses a real issue and closes what I agree is an unintended loophole in the customs regulations, the manner in which this loophole is closed potentially is counterproductive to U.S. interests.

Let me provide some background. U.S. companies still manufacture some television picture tubes in the United States, but other picture tubes are not manufactured here and are only available from foreign suppliers as imports. Both United States and foreign-owned companies buy television picture tubes from U.S. suppliers and they both also import picture tubes for manufacture and assembly of television sets in the United States. Sometimes these manufacturers import picture tubes even though there is an available U.S. supplier, and this is where the controversy has arisen.

Interestingly, the current tariff structure sets a lower tariff on imports of completed television sets and a higher tariff on imports of picture tubes. The tariff on completed TV sets is only 5 percent while the tariff on television picture tubes is 15 percent. This inverted tariff itself provides some incentive for foreign-owned and U.S. companies to manufacture complete television sets abroad and not to assemble any television sets in the United States.

The problem with this legislation is that it may exacerbate this problem with the current inverted tariff. Specifically, if there is a tariff on imports of television picture tubes and if this tariff is the same for picture tubes which are and are not manufactured in the United States, then companies which assemble television sets in the United States have an even greater incentive to move their manufacturing facilities abroad to take advantage of the lower tariff on completed sets. There would be no special incentive for buying U.S.-made picture tubes when they are available.

The customs loophole we are discussing here permits picture tubes to be imported at the lower tariff rate applicable to completed television sets. This avoids the perverse incentive which the current inverted tariff creates to assemble the completed sets abroad. But when we close this loophole, the tariff will again become inverted, creating the incentive of foreign-owned manufacturers—and U.S. manufacturers—to assemble complete television sets abroad. That is what this debate is all about.

In dealing with trade issues concerning television picture tubes and television sets, we have to keep these distinctions and incentives in mind so that we do not unintentionally encourage either for United States or foreign manufacturers to import picture tubes that are available from U.S. suppliers or for United States or foreign manufacturers to move their manufacturing or assembly operations abroad. Unfortunately, the House-passed bill might create precisely these counterproductive incentives.

The House-passed miscellaneous tariff bill is directed at closing the loophole which permits the importation of television picture tubes under the lower tariff which applies to completed television sets. I think this is a loophole and I do not object to its being closed. But both the loophole and the bill close this loophole for both picture tubes manufactured in the United States and those not manufactured here. It should be restricted only to those picture tubes which are manufactured in the United States and the lower tariff should continue to apply to television picture tubes which are imported because there is no available U.S. supply.

If there is a higher tariff on picture tubes that are available in the United States, the inverted tariff encourages both U.S.- and foreign-owned companies with manufacturing facilities in the United States to buy U.S.-made picture tubes. If the tariff on unavailable picture tubes remains the same as on completed television sets, there will be an incentive to shift manufacturing facilities abroad.

In short, by limiting the higher tariff only to picture tubes which are available in the United States, there will be two incentives for creation of U.S. jobs: one in television picture tube manufacturing and one in assembly of television sets. This is a double-win situation for the United States. The House-passed bill is a double-lose situation, both providing no incentive to purchase U.S.-made tubes and providing an incentive for manufacturing completed television sets abroad.

If the House-passed bill is not limited, the United States will be attacking imports and attacking U.S. manufacturing jobs. This is dumb and counterproductive. I am not in favor of encouraging imports where there are U.S. suppliers of the same product, but it simply makes no sense to penalize companies which do establish manufacturing facilities in our country and which must import certain components of the products they manufacture here. Taking that approach hurts employment both in the facilities manufacturing the component and in the facilities where these components are assembled into final products.

The House-passed bill acknowledges this problem by including a special exemption from the higher duty for certain small picture tubes which are not available from U.S. suppliers. I can say that this one exemption in the House bill is helpful because it applies to the projection screen picture tubes which are imported by Sanyo Manufacturing Co., which assembles televisions in Arkansas. While the screen for these tubes is large, the actual picture tube and its display diagonal are substantial smaller than 12 inches, the size limit for the small tubes exempted from the higher duty. These projection screen tubes are not available from any U.S. supplier so it is important and proper that they be exempt from the higher duty.

I understand that Senator DANFORTH has pledged to consider additional exemptions for other tubes which are not available from any U.S. supplier. Specifically, Sanyo also imports some 35-inch tubes which are not available

from a U.S. supplier and I will pursue a temporary duty suspension for these tubes if and when the Congress considers this miscellaneous tariff bill or a trade remedy bill in the next Congress.

The issue of duty suspensions can become complicated. In the case of 35-inch tubes there clearly are no U.S.-made television picture tubes, so eliminating the tariff on imports of these tubes has no effect on U.S. television picture tube manufacturers. In other cases, the issue may not be so clear. There may be a U.S.-made tube which is roughly comparable to the imported tube, but the manufacturer may find the differences commercially important even if the tubes are of roughly the same diagonal screen size.

Similarly, U.S. companies may manufacture a certain tube but not be willing or able to supply enough of the tubes to a manufacturer willing to buy them. Supply of these tubes may be abruptly interrupted, leaving the company with no alternative but to import a comparable tube. In these situations, there should be a duty suspension for the tube even though it may be available at some times or in some quantities from a U.S. producer. I understand that Senator DANFORTH cannot make any firm representations with respect to these complicated issues, but I look forward to working with him on this issue to define the terms for any duty suspension for imported television picture tubes.

This issue is like all trade issues—it's a two-edged sword. It is legitimate to encourage U.S.-based manufacturers to buy U.S.-made picture tubes when they are available. But, it would be unwise to give U.S.-based manufacturers an incentive to move their facilities offshore to take advantage of a lower tariff on completed television sets. We want assembly jobs here just as we want manufacturing jobs here. We should not take an action which creates an incentive for either assembly or manufacturing jobs to be lost. I am happy that the House-passed provision contains one important exemption and will work to see that further exemptions are adopted in cases where picture tubes are not manufactured in the United States.

I very much appreciate the willingness of Senator DANFORTH and his trade staff person, John Hall, to discuss these issues. Both the Senator and Mr. Hall have been very forthcoming and patient. This forms the basis for a continuation of these discussions in the next Congress. I regret we were unable to secure on agreement to consider this bill here and I look forward to working on this issue next year.

Mr. BUMPERS. Mr. President, I regret that the Senate could not vote on the amendment of my colleague from Arkansas, Senator Pryor, and our two colleagues from Connecticut and I that would amend the Trade Act of 1974 to allow watches to be designated as eligible articles under the generalized system of preferences [GSP].

Briefly, this amendment would have removed watches from the list of products statutorily excluded by the Trade Act of 1974 from GSP treatment. According GSP treatment to watches would bolster U.S. competitiveness against Japanese and Hong Kong suppliers and thus safeguard the 1,600 watch jobs that still remain in the United States.

Removing watches from the list of articles ineligible for duty-free treatment under GSP would have provided additional incentives for the economic development of qualified Third World countries without causing any harm to the U.S. watch industry. This would also have benefited the American consumer by eliminating the duties that imported watches now must pay.

Of particular importance is the impact that this bill would have had on the Philippines, a crucial U.S. ally that has gone through a very difficult period and is still experiencing difficulty. The best thing we can do to help the Philippines is to bolster its economy, and the fact is that the Philippines are deeply involved in the manufacture of watches. Best of all, this amendment would have done just that without jeopardizing U.S. jobs. In fact, it would have actually helped preserve existing U.S. jobs and give American consumers a break as well.

This double benefit would have come about because the sad but true fact is that the U.S. watch industry is in a sorry state: in fact, the production of completed watches has effectively ceased in the United States. Virtually all watches we buy now are imported. The U.S. industry has been reduced to producing some parts, servicing, and distribution. This is where the 1,600 U.S. jobs remain, and these jobs would have been helped by this amendment since increased demand for foreign-assembled watches would increase the demand for watch parts, watch servicing, and watch distribution.

In many ways, Mr. President, the watch industry offers a stark glimpse into the future of where the U.S. shoe industry may be just a few years down the road. This is why I have been fighting to provide some relief for the shoe industry, which is losing market share by the month in the fact of a flood of imports, and now has only about 25 percent of the market.

There is a very small watch industry in the Virgin Islands, but even that would not have been significantly affected by this amendment. The watches they produce are almost entirely of Swiss origin and have much higher retail prices than the overwhelming majority of imported watches. Furthermore, the Virgin Islands already enjoys special trade and tariff treatment that already far outweighs the benefits of GSP protection.

Mr. President, there was a time about 12 years ago when it made sense to exclude watches from GSP treatment. At that time, the U.S. watch assembly industry was fighting for its life, and Congress rightly tried to help. Unfortunately, that help was not enough, and today the U.S. watch industry, in terms of production of completed watches, is dead. We need to recognize this sad fact and let our GSP exclusion list reflect today's reality. Recognizing this reality would be a boost to the American consumer, a boon to the Philippine economy, and thus a distinct plus to U.S. security interests.

I hope we can accomplish this next year and I will do my best to bring that about.

Mr. HELMS. Mr. President, I have matter that has been cleared on both sides.

The PRESIDING OFFICER. If the Senator will suspend, the Chair will attempt to get order. The Senate will be in order.

□ 2310

FUTURES TRADING ACT

The PRESIDING OFFICER. The Chair must insist that the Senate be in order.

Mr. HELMS. Mr. President, I ask that the Chair lay before the Senate a message from the House on H.R. 4613, the Commodity Exchange Act.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. Mr. President, may I inquire of the distinguished Senator the nature of this particular proposal?

Mr. HELMS. Pardon?

Mr. WARNER. May I inquire of the Senator the nature of this particular proposal?

Mr. HELMS. It has been cleared on both sides. It is a message on the commodity futures trading reauthorization.

Mr. WARNER. I thank the Senator.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House recede from its disagreement to the amendment of the Senate to the bill (H.R. 4613) entitled "An Act to reauthorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements to that Act", and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Futures Trading Act of 1986".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title and table of contents.
TITLE I—FUTURES TRADING
Sec. 101. Fraudulent practices.
Sec. 102. Options transactions.
Sec. 103. Extraterritorial service of subpenas.
Sec. 104. Ex parte appointment of temporary receivers.
Sec. 105. Certain prohibited transactions.
Sec. 106. Authorization for appropriations.
Sec. 107. Registered futures association disciplinary actions and membership restrictions.
Sec. 108. Rule review procedures.
Sec. 109. Leverage transactions.
Sec. 110. Technical corrections.
Sec. 111. GAO study of trading in cattle futures contracts.
TITLE II—MISCELLANEOUS PROVISIONS
Sec. 201. Cross compliance for producers of extra long staple cotton.
Sec. 202. Basis for computation of emergency compensation under the 1986 wheat program.
Sec. 203. Valencia peanuts.
Sec. 204. Local agricultural stabilization and conservation committees.
Sec. 205. Eligibility of certain land under the conservation reserve program.
Sec. 206. Marketing practices and training.
TITLE III—GRAIN QUALITY IMPROVEMENT
Sec. 301. Short title.
Sec. 302. Declaration of policy.
Sec. 303. Foreign material recombination.
Sec. 304. Insect infestation.
Sec. 305. Study of premiums for high-quality grain.
Sec. 306. Review of optimal grade proposals.
Sec. 307. Study of uniform end-use value tests.
TITLE IV—FEDERAL MEAT INSPECTION
Sec. 401. Short title
Sec. 402. Purpose.
Sec. 403. Amendments to Federal Meat Inspection Act.
Sec. 404. Savings provision.
Sec. 405. Sense of Congress.
Sec. 406. Annual report.
Sec. 407. Congressional reevaluation.
Sec. 408. Effective date; application of amendments.

TITLE I—FUTURES TRADING

SEC. 101. FRAUDULENT PRACTICES.

Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended—

(1) by striking out "on or subject to the rules of any contract market," the second place it appears in the first sentence; and

(2) by adding at the end thereof the following new paragraph:

"Nothing in this section shall apply to any activity that occurs on a board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market, located outside the United States, or territories or possessions of the United States, involving any contract of sale of a commodity for future delivery that is made, or to be made, on or subject to the rules of such board of trade, exchange or market.".

SEC. 102. OPTIONS TRANSACTIONS.

Subsection (c) of section 4c of the Commodity Exchange Act (7 U.S.C. 6c(c)) is amended to read as follows:

"(c) Not later than 90 days after the date of the enactment of the Futures Trading Act of 1986, the Commission shall issue regulations—

"(1) to eliminate the pilot status of its program for commodity option transactions involving the trading of options on contract markets, including any numerical restrictions on the number of commodities or option contracts for which a contract market may be designated; and

"(2) otherwise to continue to permit the trading of such commodity options under such terms and conditions that the Commission from time to time may prescribe.".

SEC. 103. EXTRATERRITORIAL SERVICE OF SUBPENAS.

Section 6(b) of the Commodity Exchange Act (7 U.S.C. 15) is amended—

(1) in the third sentence, by inserting "(except as provided in the fifth sentence of this subsection)" immediately before "may administer oaths and affirmations, subpena witnesses";

(2) in the fourth sentence by striking out "or any State" and inserting in lieu thereof ", any State, or any foreign country or jurisdiction"; and

(3) by inserting after the fourth sentence the following new sentence: "A subpena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission.".

SEC. 104. EX PARTE APPOINTMENT OF TEMPORARY RECEIVERS.

The proviso of the first sentence of section 6c of the Commodity Exchange Act (7 U.S.C. 13a-1) is amended by inserting within the parenthetical phrase before the closing parenthesis the following: ", and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate".

SEC. 105. CERTAIN PROHIBITED TRANSACTIONS.

Section 9(d) of the Commodity Exchange Act (7 U.S.C. 13(d)) is amended—

(1) by inserting immediately before the period at the end of the first sentence the following: "if nonpublic information is used in the investment transaction, if the investment transaction is prohibited by rule or regulation of the Commission, or if the investment transaction is effected by means of any instrument regulated by the Commission"; and

(2) by striking out the second and third sentences and inserting in lieu thereof the following new sentence: "The foregoing prohibitions shall not apply to any transaction or class of transactions that the Commission, by rule or regulation, has determined would not be contrary to the public interest or otherwise inconsistent with the purposes of this subsection.".

SEC. 106. AUTHORIZATION FOR APPROPRIATIONS.

Subsection (d) of section 12 of the Commodity Exchange Act (7 U.S.C. 16(d)) is amended to read as follows:

"(d) There are authorized to be appropriated to carry out this Act such sums as may be necessary for each of the fiscal years during the period beginning October 1, 1986, and ending September 30, 1989.".

SEC. 107. REGISTERED FUTURES ASSOCIATION DISCIPLINARY ACTIONS AND MEMBERSHIP RESTRICTIONS.

Subsections (h) and (i) of section 17 of the Commodity Exchange Act (7 U.S.C. 21 (h) and (i)) are amended to read as follows:

"(h)(1) If any registered futures association takes any final disciplinary action against a member of the association or a person associated with a member, denies admission to any person seeking membership therein, or bars any person from being associated with a member, the association promptly shall give notice thereof to such member or person and file notice thereof with the Commission. The notice shall be in such form and contain such information as the Commission, by rule or regulation, may prescribe as necessary or appropriate to carry out the purposes of this Act.

"(2) Any action with respect to which a registered futures association is required by paragraph (1) to file notice shall be subject to review by the Commission on its motion, or on application by any person aggrieved by the action. Such application shall be filed within 30 days after the date such notice is filed with the Commission and received by the aggrieved person, or within such longer period as the Commission may determine.

"(3)(A) Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments).

"(B) The Commission shall establish procedures for expedited consideration and determination of the question of a stay.

"(i)(1) In a proceeding to review a final disciplinary action taken by a registered futures association against a member thereof or a person associated with a member, after appropriate notice and opportunity for a hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction imposed by the association)—

"(A) if the Commission finds that—

"(i) the member or person associated with a member has engaged in the acts or practices, or has omitted the acts, that the association has found the member or person to have engaged in or omitted;

"(ii) the acts or practices, or omissions to act, are in violation of the rules of the association specified in the determination of the association; and

"(iii) such rules are, and were applied in a manner, consistent with the purposes of this Act,

the Commission, by order, shall so declare and, as appropriate, affirm the sanction imposed by the association, modify the sanction in accordance with paragraph (2), or remand the case to the association for further proceedings; or

"(B) if the Commission does not make any such finding, the Commission, by order, shall set aside the sanction imposed by the association and, if appropriate, remand the case to the association for further proceedings.

"(2) If, after a proceeding under paragraph (1), the Commission finds that any penalty imposed on a member or person associated with a member is excessive or oppressive, having due regard for the public interest, the Commission, by order, shall cancel, reduce, or require the remission of the penalty.

"(3) In a proceeding to review the denial of membership in a registered futures asso-

ciation or the barring of any person from being associated with a member, after appropriate notice and opportunity for a hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the action of the association)—

"(A) if the Commission finds that—

"(i) the specific grounds on which the denial or bar is based exist in fact;

"(ii) the denial or bar is in accordance with the rules of the association; and

"(iii) such rules are, and were applied in a manner, consistent with the purposes of this Act,

the Commission, by order, shall so declare and, as appropriate, affirm or modify the action of the association, or remand the case to the association for further proceedings; or

"(B) if the Commission does not make any such finding, the Commission, by order, shall set aside the action of the association and require the association to admit the applicant to membership or permit the person to be associated with a member, or, as appropriate, remand the case to the association for futher proceedings.

"(4) Any person (other than a registered futures association) aggrieved by a final order of the Commission entered under this subsection may file a petition for review with a United States court of appeals in the same manner as provided in section 6(b).".

SEC. 108. RULE REVIEW PROCEDURES.

Section 17(j) of the Commodity Exchange Act (7 U.S.C. 21(j)) is amended by striking out the third sentence.

SEC. 109. LEVERAGE TRANSACTIONS.

Section 19 of the Commodity Exchange Act (7 U.S.C. 23) is amended to read as follows:

"SEC. 19. (a) Except as authorized under subsection (b), no person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract.

"(b)(1) Subject to paragraph (2), no person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of silver bullion, gold bullion, bulk silver coins, bulk gold coins, or platinum under a standardized contract described in subsection (a), contrary to the terms of any rule, regulation, or order that the Commission shall prescribe, which may include terms designed to ensure the financial solvency of the transaction or prevent manipulation or fraud. Such rule, regulation, or order may be made only after notice and opportunity for hearing. The Commission may set different terms and conditions for transactions involving different commodities.

"(2) No person may engage in any activity described in paragraph (1) who is not permitted to engage in such activity, by the rules, regulations, and orders of the Commission in effect on the date of the enactment of the Futures Trading Act of 1986, until the Commission permits such person to engage in such activity in accordance with regulations issued in accordance with subsection (c)(2).

"(c)(1)(A) Not later than 2 years after the date of the enactment of the Futures Trading Act of 1986, the Commission shall—

"(i) with the assistance of a futures association registered under this Act, conduct a survey concerning the persons interested in engaging in the business of offering to enter into, entering into, or confirming the execution of, the transactions described in subsection (b)(1); and

"(ii) transmit a report of the results of the survey to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

"(B) Notwithstanding any other provision of law, for purposes of completing such report the Commission may direct, by rule, regulation, or order, a futures association registered under this Act to render such assistance as the Commission shall specify.

"(C) Such report shall include the findings and any recommendations of the Commission concerning—

"(i) whether such transactions serve an economic purpose;

"(ii) the most efficient manner, consistent with the public interest, to permit additional persons to engage in the business of offering to enter into, entering into, and confirming the execution of such transactions; and

"(iii) the appropriate regulatory scheme to govern such transactions to ensure the financial solvency of such transactions and to prevent manipulation or fraud.

"(2) The report shall also include Commission regulations governing such transactions. The regulations shall provide for permitting additional persons to engage in such transactions. The regulations shall become effective on the expiration of 90 calendar days on which either House of Congress is in session after the date of the transmittal of the report to Congress. The regulations—

"(A) may authorize or require, notwithstanding any other provision of law, a futures association registered under this Act to perform such responsibilities in connection with such transactions as the Commission may specify; and

"(B) may require that permission for additional persons to engage in such business be given on a gradual basis, so as not to place an undue burden on the resources of the Commission.

"(d) This section shall not affect any rights or obligations arising out of any transaction subject to this section, as in effect before the date of the enactment of the Futures Trading Act of 1986, that was entered into, or the execution of which was confirmed before the date of the enactment of such Act.".

SEC. 110. TECHNICAL CORRECTIONS.

The Commodity Exchange Act is amended—

(1) in the third sentence of section 2(a)(1)(B)(iv)(I) (7 U.S.C. 2a(iv)(I)), by striking out "Securities Exchange Commission" and inserting in lieu thereof "Securities and Exchange Commission";

(2) in the fourth full sentence of section 5a(12) (7 U.S.C. 7a(12)), by striking out "particpate" and inserting in lieu thereof "participate";

(3) in the first sentence of section 9(c) (7 U.S.C. 13(c)), by striking out "section 4k." and inserting in lieu thereof "section 4k,";

(4) in the first sentence of section 9(d) (7 U.S.C. 13(d)), by striking out "advance guarantee" and inserting in lieu thereof "advance guaranty";

(5) by repealing section 11 (7 U.S.C. 14 note);

(6) in the second full sentence of section 17(b)(2) (7 U.S.C. 21(b)(2)), by striking out "with in" and inserting in lieu thereof "within"; and

(7) in section 17(k)(1) (7 U.S.C. 21(k)(1)), by striking out "title" and inserting in lieu thereof "section".

SEC. 111. GAO STUDY OF TRADING IN CATTLE FUTURES CONTRACTS.

(a) STUDY.—The Comptroller General of the United States shall conduct and complete a comprehensive study of the effect of trading in contracts for the future delivery of live cattle on the cash market price of live cattle, with particular emphasis on—

(1) whether the reaction of the live cattle futures market to the results of the milk production termination program in March 1986, conducted under section 201(d)(3) of the Agricultural Act of 1949 (7 U.S.C. 1446(d)(3)), was based on and accurately reflected the then prevailing conditions of supply and demand;

(2) the effect of the trading in contracts for the future delivery of live cattle on—

(i) the price relationship between feeder cattle and fed cattle;

(ii) the price discovery process with respect to live cattle; and

(iii) price competition within the cattle industry;

(3) the effect of the use of packer contracts, as a means of obtaining slaughter cattle, on the increase in short hedging in contracts for the future delivery of live cattle and the effect of this increase in short hedging on prices in the futures and cash markets;

(4) the effect on the ability of the cash markets to accurately reflect prevailing conditions of supply and demand if packer contracts become the prevalent method of marketing fed cattle;

(5) whether the present delivery system for contracts for the future delivery of live cattle creates any bias (either upward or downward) in the cash price for cattle;

(6) whether the present delivery system for contracts for the future delivery of live cattle creates price volatility during the delivery month; and

(7) whether there are advantages or disadvantages to a cash settlement system in lieu of the present delivery system in the case of contracts for the future delivery of live cattle.

(b) REPORTS.—

(1) PRELIMINARY REPORT.—Not later than January 15, 1987, the Comptroller General shall submit a preliminary report on the results of the study required under subsection (a) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(2) FINAL REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to such committees a detailed final report of the results of the study required under subsection (a).

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. CROSS COMPLIANCE FOR PRODUCERS OF EXTRA LONG STAPLE COTTON.

Paragraph A(16) of section 103(h) of the Agricultural Act of 1949 (7 U.S.C. 1444(h)(16)) is amended to read as follows:

"(16)(A) Notwithstanding any other provision of law, except as provided in subparagraph (B), compliance on a farm with the

terms and conditions of any other commodity program may not be required as a condition of eligibility for loans or payments under this subsection.

"(B) In the case of each of the 1989 and 1990 crops of extra long staple cotton, the Secretary may require that, as a condition of eligibility of producers for loans or payments under this subsection, the acreage planted for harvest on the farm to any other commodity for which an acreage limitation program is in effect shall not exceed the crop acreage base established for the farm for that commodity.

"(C) Notwithstanding any other provision of law, in the case of each of the 1987 and 1988 crops of extra long staple cotton, compliance with the terms and conditions of the program authorized by this subsection may not be required as a condition of eligibility for loans, purchases, or payments under any other commodity program.".

SEC. 202. BASIS FOR COMPUTATION OF EMERGENCY COMPENSATION UNDER THE 1986 WHEAT PROGRAM.

Section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 (7 U.S.C. 1445b-3(c)(1)(E)(ii)) is amended by striking out "marketing year for such crop" and inserting in lieu thereof "first 5 months of the marketing year for the 1986 crop and the marketing year for each of the 1987 through 1990 crops".

SEC. 203. VALENCIA PEANUTS.

Section 108B(4)(A) of the Agricultural Act of 1949 (7 U.S.C. 1445c-2(4)(A)) is amended by inserting after "additional peanuts" the following: "(other than net gains on additional peanuts in separate type pools established under paragraph (3)(B)(i) for Valencia peanuts produced in New Mexico)".

SEC. 204. LOCAL AGRICULTURAL STABILIZATION AND CONSERVATION COMMITTEES.

The fifth paragraph of section 8(b) of the Soil conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) (as amended by section 3 of Public Law 99-253 (100 Stat. 36)) is amended—

(1) by inserting after the third sentence the following new sentence: "Notwithstanding the preceding sentence, there may be one local administrative area in any country for which there had been established less than three local administrative areas as of December 23, 1985."; and

(2) in the sixth sentence (as it existed before the amendment made by paragraph (1)), by striking out "; *Provided*," and all that follows through the period and inserting in lieu thereof a period.

SEC. 205. ELIGIBILITY OF CERTAIN LAND UNDER THE CONSERVATION RESERVE PROGRAM.

Section 1231 of the Food Security Act of 1985 (16 U.S.C. 3831) is amended by adding at the end thereof the following new subsection:

"(f) For purposes of this subtitle, alfalfa and other multiyear grasses and legumes, in a rotation practice approved by the Secreary, shall be considered agricultural commodities.".

SEC. 206. MARKETING PRACTICES AND TRAINING.

(a) MARKETING PRACTICES OF FmHA APPLICANTS AND BORROWERS.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study of marketing practices used by applicants for and borrowers of farm loans made, insured, or guranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.). The study shall include an examination of the methods used by the applicants and borrowers in marketing agricultural commodities, livestock, and aquacultural products and the extent to which the applicants and borrowers use advanced marketing techniques for such sales.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the study conducted under paragraph (1), together with any appropriate recommendations.

(b) ADVANCED MARKETING TRAINING FOR FARMERS AND RANCHERS.—the Secretary of Agriculture may establish a program to train farmers and ranchers in advanced techniques for the marketing of agricultural commodities, livestock, and aquacultural products produced by such farmers and ranchers, including (where appropriate as determined by the Secretary) training in the use of futures and options markets.

TITLE III—GRAIN QUALITY IMPROVEMENT

SEC. 301. SHORT TITLE.

This title may be cited as the "Grain Quality Improvement Act of 1986".

SEC. 302. DECLARATION OF POLICY.

Section 2 of the United States Grain Standards Act (7 U.S.C. 74) is amended—

(1) by inserting "(a)"after the section designation; and

(2) by adding at the end thereof the folowng new subsection:

"(b) It is also declared to be the policy of Congress—

"(1) to promote the marketing of grain of high quality to both domestic and foreign buyers;

"(2) that the primary objective of the official United States standards for grain is to certify the quality of grain as accurately as practicable; and

"(3) that official United States standards for grain shall—

"(A) define uniform and accepted descriptive terms to facilitate trade in grain;

"(B) provide information to aid in determining grain storability;

"(C) offer users of such standards the best possible information from which to determine end-product yield and quality of grain; and

"(D) provide the framework necessary for markets to establish grain quality improvement incentives.".

SEC. 303. FOREIGN MATERIAL RECOMBINATION.

(a) PROHIBITED ACT.—section 13 of the United States Grain Standards Act (7 U.S.C. 87b) is amended by adding at the end thereof the following new subsection:

"(d)(1) Subject to paragraphs (2) and (3), to ensure the quality of grain marketed in or exported from the United States—

"(A) no dockage or foreign material, as defined by the Secretary, once removed from grain shall be recombined with any grain; and

"(B) no dockage or foreign material of any origin may be added to any grain.

"(2) Nothing in paragraph (1) shall be construed to prohibit—

"(A) the treatment of grain to suppress, destroy, or prevent insects and fungi injurious to stored grain;

"(B) the marketing, domestically or for export, of dockage or foriegn material removed from grain if such dockage or foreign material is marketed—

"(i) separately and uncombined with any such whole grain;

"(ii) in pelletized form; or

"(iii) as a part of a processed ration for livestock, poultry, or fish;

"(C) the blending of grain with similar grain of a different quality to adjust the quality of the resulting mixture;

"(D) the recombination of broken corn or broken kernels, as defined by the Administrator, with grain of the type from which the broken corn or broken kernels were derived;

"(E) effective for the period ending December 31, 1987, the recombination of dockage or foreign material, except dust, removed at an export loading facility from grain destined for shipment as a cargo under one export official certificate of inspection if—

"(i) the recombination occurs during the loading of the cargo;

"(ii) the purpose is to ensure unformity of dockage or foreign material throughout that specific cargo; and

"(iii) the separation and recombination are conducted in accordance with regulations issued by the administrator; or

"(F) the addition to grain of a dust suppressant, or the addition of confetti or any other similar material that serves the same purpose in a quantity necessary to facilitate identification of ownership or origin of a particular lot of grain.

"(3)(A) The Secretary may, by regulation, exempt from paragraph (1) the last handling of grain in the final sale and shipment of such grain to a domestic user or processor if such exemption is determined by the Secretary to be in the best economic interest of producers, grain merchants, the industry involved, and the public.

"(B) Grain sold under an exemption authorized by this paragraph shall be consumed or processed into one or more products by the purchaser, but may not be resold into commercial channels for such grain or blended with other grain for resale. Neither products nor byproducts derived therefrom (except vegetable oils as defined by the Secretary and used as a dust suppressant) shall be blended with or added to grain in commercial channels.".

(b) Effective Date.—The amendments made by this section shall become effective on May 1, 1987.

SEC. 304. INSECT INFESTATION.

Not later than 6 months after the date of enactment of this Act, the Administrator of the Federal Grain Inspection Service shall issue a final rule that revises grain inspection procedures and standards established under the United States Grain Standards Act (7 U.S.C. 71 et seq.) to more accurately reflect levels of insect infestation.

SEC. 305. STUDY OF PREMIUMS FOR HIGH-QUALITY GRAIN.

(a) STUDY.—After public comment from and in consultation with grain producers, grain merchants, grain processors, and grain exporters, the Secretary of Agriculture shall conduct a study of the feasibility and appropriateness of adjusting Commodity Credit Corporation grain premium and discount schedules—

(1) to encourage the delivery, storage, and export of high-quality, clean grain; and

(2) to offer incentives to minimize the quantity of moisture, foreign material, dockage, shrunken and broken kernels, and damaged kernels in lots of grain pledged as collateral for Commodity Credit Corporation loans or in grain owned by the Commodity Credit Corporation.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall transmit a report describing the results of the study required under subsection (a), together with recommendations, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

SEC. 306. REVIEW OF OPTIMAL GRADE PROPOSAL.

(a) NOTICE AND COMMENT.—To evaluate the effects of moving to an optimal grain grading system, the Administrator of the Federal Grain Inspection Service shall—

(1) publish in the Federal Register a detailed description of the proposals contained in H.R. 5354, 99th Congress, the Optimal Grain Grading Act of 1986; and

(2) solicit public comment, during a period of not less than 60 days on—

(A) the optimal grain grading system as proposed in H.R. 5354; and

(B) the general objective of improving grain quality by revising the official United States grain standards to provide greater economic incentives for production and sale of high-quality grain.

(b) REPORT.—The Administrator shall report to Congress, by May 1, 1987, on the comments received and on the recommendations of the Administrator with respect to the matters on which comments were solicited.

SEC. 307. STUDY OF UNIFORM END-USE VALUE TESTS.

(a) STUDY.—The Secretary of Agriculture shall direct the Federal Grain Inspection Service and the Agricultural Research Service to conduct a study of the need for and availability of uniform end-use value tests for grain. The study shall include the following:

(1) A survey of domestic and foreign buyers of grain to identify the information about grain characteristics that would be most useful to such buyers. The survey shall take into account those factors that buyers specify in contracts, test for, measure, or would measure if tests were available, including—

(A) the starch, oil, and protein content, breakage susceptibility, and individual kernel moisture of corn;

(B) the baking characteristics, protein content, gluten content and quality, and milling hardness of wheat; and

(C) the protein, oil, and free-fatty-acid content of soybeans.

(C) A review of the development and availability of tests for the characteristics identified in the survey conducted under paragraph (1), including an evaluation of the costs of providing an evaluation of the costs of providing such tests.

(b) END-USE TESTS.—

(1) ONGOING REVIEW.—The Secretary of agriculture shall direct the Federal Grain Inspection Service and the Agricultural Research Service to maintain an ongoing review to determine the end-use tests that are of economic value to buyers, and the availability and costs of such tests.

(2) REVISION OF PROCEDURES.—The Administrator of the Federal Grain Inspection Service, to the extent practicable, shall revise official grain inspection and certification procedures to include within official inspection (as defined in section 3(i) of the United States Grain Standards Act (7 U.S.C. 75(i))) those tests that are identified under the study conducted under subsection (a) as useful, available, and economically feasible.

(c) REPORTS.—

(1) STUDY AND REVISION OF PROCEDURES.—Not later than 1 year after the date of enactment of this Act, the Administrator of the Federal Grain Inspection Service shall submit a report to Congress setting forth the results of the study conducted under subsection (a) and actions taken under subsection (b)(2).

(2) ONGOING REVIEW.—The Administrator shall report yearly to Congress on the ongoing review conducted under subsection (b)(1).

TITLE IV.—FEDERAL MEAT INSPECTION

SEC. 401. SHORT TITLE.

This title may be cited as the "Processed Products Inspection Improvement Act of 1986".

SEC. 402. PURPOSE.

The amendments made by this title are in furtherance of the findings made by Congress in section 2 of the Federal Meat Inspection Act (21 U.S.C. 602).

SEC. 403. AMENDMENTS TO FEDERAL MEAT INSPECTION ACT.

(a) MANNER AND FREQUENCY OF INSPECTION.—Effective only during the 6-year period beginning on the date of enactment of this Act, section 6 of the Federal Meat Inspection Act (21 U.S.C. 606) is amended by striking out "That for the purposes" and all that follows through "*Provided,* That" and inserting in lieu thereof the following:

"(a)(1) For the purposes set forth in the preceding provisions of this Act, the Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of meat food products prepared for commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment.

"(2) Such examination and inspection shall be conducted with such frequency and in such manner as the Secretary considers necessary, as provided in rules and regulations issued by the Secretary, taking into account such factors as the Secretary considers to be appropriate, including—

"(A) the nature and frequency of the processing operations at such establishment;

"(B) the adequacy and reliability of the processing controls and sanitary procedures at such establishment; and

"(C) the history of compliance with inspection requirements in effect under this Act, by the operator of such establishment or anyone responsibly connected with the business (as described in section 401(g)) that operates such establishment.

"(b)(1) All such products found by any of such inspectors and by the operator of such establishment to be not adulterated shall be marked, stamped, tagged, or labeled as 'Inspected and passed'.

"(2) All such products found by any of such inspectors or by the operator of such establishment to be adulterated shall be marked, stamped, tagged, or labeled as 'Inspected and condemned'. Each such condemned product shall be destroyed for human food purposes. The Secretary may suspend inspection at, and remove inspectors from, any establishment that fails to so condemn adulterated meat food products or fails to so destroy condemned meat food products.

"(c) For purposes of any examination and inspection, such inspectors shall have access to every part of an establishment at all times, by day or night, and without regard to whether such establishment is operated.

"(d) Notwithstanding the preceding provisions of this section,".

"(b) ENFORCEMENT METHODS.—Effective only during the 6-year period beginning on the date of enactment of this Act, section 401, of the Federal Meat Inspection Act (21 U.S.C. 671) is amended—

(1) by inserting "(a)" after the section designation;

(2) in the first sentence—

(A) by striking out "applicant, for" and inserting in lieu thereof "applicant for";

(B) by striking out "any felony, or (2)"; and

(C) by inserting before the period at the end thereof "or (2) any felony";

(3) in the second sentence—

(A) by indenting the first word so as to create a new paragraph; and

(B) by inserting "(f)" before the first word;

(4) by inserting "(g)" before the first word of the third sentence;

(5) in the fourth sentence—

(A) by striking out "The" and inserting in lieu thereof "(h) Except as provided in subsection (e)(2), the"; and

(B) by striking out "this section" and inserting in lieu thereof "subsection (e)"; and

(6) by inserting after subsection (a), as so designated by paragraph (1) of this subsection, the following new subsections:

"(b)(1) On the request of the Secretary at the time of the sentencing of an individual who is a person responsibly connected with any business requiring inspection under title I and who is convicted of a felony involving—

"(A) the intentional adulteration of food (except as defined in section 1(m)(8));

"(B) the adulteration of food, as defined in section 1(m)(8), with intent to defraud;

"(C) bribery; or

"(D) extortion;

the sentencing court shall issue a temporary order forbidding such individual to exercise operational control of, or to be physically present at, any establishment requiring inspection under title I if the court finds that the exercise of operational control by, or the presence of, such individual at any such establishment either poses a direct and substantial threat to the public health or safety or, if such individual is convicted of a felony described in subparagraph (B), poses a clear likelihood of significant economic harm to consumers.

"(2) Such order shall terminate—

"(A) whenever the Secretary determines by order, after a hearing on the record, whether such individual should exercise operational control of, or be physically present at, any establishment requiring inspection under title I, and judicial review, if any, of such determination is completed; or

(B) 90 days after the issuance of such temporary order by the court if the Secretary does not commence such hearing before the expiration of such 90 days;

whichever occurs earlier.

"(c) Any determination and order of the Secretary issued under subsection (a) or (b) shall be conclusive and enforceable unless the affected applicant for, or recipient of, inspection service or the affected individual files, not later than 30 days after the effective date of such order, a petition for review of such order in the United States Court of Appeals for the District of Columbia Circuit or the court of appeals for the circuit in which the relevant establishment is doing business. Judicial review of such order shall be on the record on which the determination and order are based.

"(d)(1) Subject to paragraph (3), the Secretary may commence a civil action in an appropriate court, as provided in section 404, to withdraw inspection service under title I with respect to any establishment or to prevent any individual responsibly connected with any business requiring inspection under title I from exercising operational control of, or being present at, any establishment requiring inspection under title I.

"(2) If the court finds, on the basis of clear and convincing evidence, that the recipient of inspection service or such individual has repeatedly failed to comly with the requirements of this Act, or the rules and regulations issued under this Act, in a manner that poses a direct and substantial threat to the public health or safety, the court shall issue an order—

"(A) withdrawing inspection at such establishment; or

"(B) forbidding such individual to exercise operational control of, or to be physically present at, such establishment, for such period as the court determines is necessary to carry out the purposes of this Act.

"(3) Not less than 90 days, and not more than 450 days, before commencing a civil action under paragraph (1), the Secretary shall provide to each recipient of inspection service, and each individual responsibly connected with the business, with respect to which such action is commenced, a written notice that includes—

"(A) a statement that the Secretary intends to commence such action;

"(B) a comprehensive description of the violations of this Act and the regulations issued under this Act alleged by the Secretary; and

"(C) a description of the actions the Secretary considers necessary to be taken by such recipient or such individual to comply with this Act and to eliminate the need to commence such civil action.

"(e)(1) The Secretary may temporarily withdraw inspection service under title I with respect to any establishment for such period as is necessary to ensure the safe and effective performance of official duties under this Act if the Secretary determines, after an opportunity for a hearing on the record, that an officer, employee, or agent of such establishment—

"(A) threatened to forcibly assault;

"(B) focibly assaulted;

"(C) forcibly intimidated; or

"(D) forcibly interfered with,

an employee of the United States engaged in, or on account of, the performance of any of such official duties.

"(2)(A) Notwithstanding paragraph (1), the Secretary may temporarily suspend inspection service under title I with respect to any establishment, pending an expedited administrative hearing on the record and judicial review of the order of the Secretary based on such record, if the Secretary determines that temporary suspension of such inspection service is necessary for the safety of any employee who performs official duties under this Act.

"(B) If the Secretary receives, before or after temporarily suspending such inspection service in accordance with subparagraph (A), adequate written assurances from the recipient of inspection service, or the individuals involved, that the conduct or circumstances that threatened the safety of such employee will not continue or recur, the Secretary may continue or restore such inspection service on condition that such assurances are fulfilled.".

(c) WARNING; REPORTING OF VIOLATIONS.—Effective only during the 6-year period beginning on the date of enactment of this Act, section 406 of the Federal Meat Inspection Act (21 U.S.C. 676) is amended—

(1) in subsection (b), by adding at the end thereof the following new sentence: "In determining whether the public interest could be adequately served by a written notice of warning, the Secretary shall take into account, among other factors—

"(1) the compliance history of such establishment;

"(2) the magnitude of the violation;

"(3) whether compliance with this Act would likely be obtained as a result of such notice; and

"(4) whether such violation is of a minor or technical nature."; and

(2) by adding at the end thereof the following new subsection:

"(c) Unless the Secretary by regulation provides otherwise, before any violation of this Act is reported by the Secretary for prosecution in a criminal proceeding, the Secretary shall give the person alleged to have committed such violation—

"(1) reasonable notice that the Secretary intends to report such violation for prosecution; and

"(2) an opportunity to present to the Secretary, orally or in writing, views with respect to such proceeding.".

(d) CONFORMING AMENDMENTS.—

(1) NIGHTTIME.—Effective only during the 6-year period beginning on the date of enactment of this Act, section 9 of the Federal Meat Inspection Act (21 U.S.C. 609) is amended by inserting ", except as provided in section 6," after "equines, and" the first place it appears.

(2) ADMINISTRATION.—Effective only during the 6-year period beginning on the date of enactment of this Act, section 21 of the Federal Meat Inspection Act (21 U.S.C. 621) is amended by striking out "and meat food products" and inserting in lieu thereof "thereof, and of meat food products".

(e) CONSTRUCTION OF AMENDMENTS.—The amendments made by this section shall not be construed to authorize the Secretary of Agriculture to refuse to provide inspection under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) at an establishment solely because such establishment does not participate in a total plant quality-control program.

SEC. 404. SAVINGS PROVISIONS.

The expiration date provisions of section 403 shall not have the effect of releasing or extinguishing any penalty, forfeiture, or liability incurred under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), as amended by section 403, or under the rules or regulations issued under such Act.

SEC. 405. SENSE OF CONGRESS.

It is the sense of Congress that the Secretary of Agriculture should—

(1) carry out a program to detect residues in livestock that are subject to inspection under title I of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.); and

(2) evaluate the feasibility of, and develop, a program that would enable the Secretary to trace any particular livestock that are subject to inspection under title I of the Federal Meat Inspection Act, in order to identify the producer of such livestock.

SEC. 406. ANNUAL REPORT.

Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing—

(1) any action proposed or taken by the Secretary to implement the amendments made by section 403;

(2) any action proposed or taken by the Secretary to carry out a program to detect residues in livestock that are subject to inspection under title I of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.);

(3) any action proposed or taken by the Secretary to evaluate the feasibility of, and develop, a program that would enable the Secretary to trace any particular livestock that are subject to inspection under such title, in order to identify the producer of such livestock; and

(4) any personnel action proposed or taken by the Secretary as a result of the amendments made by section 403 and any effort made by the Secretary to minimize any adverse economic effect of such amendments on employees of the Department of Agriculture.

SEC. 407. CONGRESSIONAL REEVALUATION.

It is the sense of Congress that, not later than 6 years after the date of the enactment of this Act, Congress shall—

(1) evaluate the operation and effects of the amendments made by section 403, for the purpose of determining whether to extend or modify the operation of such amendments; and

(2) enact such legislation as may be necessary to efficiently and effectively carry out the Federal Meat Inspection Act (21 U.S.C. 601 et seq.).

SEC. 408. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) GENERAL EFFECTIVE DATE.—Except as provided in subsection (b) of this section, this title and the amendments made by this title shall become effective on the date of the enactment of this Act.

(b) TEMPORARY APPLICATION OF EXISTING LAW.—Sections 6, 9, and 21 of the Federal Meat Inspection Act (21 U.S.C. 606, 609, and 621), as in effect immediately before the date of the enactment of this Act, shall apply with respect to establishments until the Secretary of Agriculture first issues rules and regulations to implement the amendments made by section 403(a).

Mr. HELMS. Mr. President, we are on the Senate floor again tonight to deal with H.R. 4613, the Futures Trading bill. The bill was originally passed in the Senate on October 6, and a conference on the bill with members of the House Committee on Agriculture was commenced on October 8. The House and Senate conferees reached agreement on all outstanding issues on October 9 and the conference bill and report was filed in the House on October 14.

This report was taken up on the floor of the House on October 15. Under the House rule under which the conference report was considered, however, two provisions were subject to a separate vote and one provision was stricken out. The remainder of the conference bill was then passed and sent to the Senate as a further amendment to the Senate amendment to H.R. 4613.

Mr. President, the one provision that was stricken from the bill provided for the transfer of approximately 173

acres of National Forest System land for use as a State park. The remainder of the conference bill is before us today.

Mr. President, the most contentious issue with which the conferees dealt was that of leverage transactions. The Senate provision would have caused leverage contracts to be regulated under the same regulatory scheme applicable to futures contracts, beginning 2 years after the date of enactment of the bill. The 2-year transition period was put in to give the existing leverage transaction merchants time to adjust to the changes in the regulatory structure.

The House proposal would require the Commission to conduct a survey of firms interested in entering the leverage business and to report to Congress within 2 years.

The results of the survey;

Whether leverage transactions serve an economic purpose;

The most efficient manner, consistent with the public interest, to permit new firms to enter the leverage business; and

The appropriate regulatory scheme for leverage.

In addition, the Commission's report would have to include regulations spelling out the terms and conditions under which additional firms could enter the leverage business. This entry of new firms could be on a gradual basis, so as not to overburden the Commission with new regulatory responsibilities. The regulations could also require a registered futures association to regulate the leverage business. The new leverage regulations would go into effect at the end of 45 days of congressional session after being transmitted to Congress.

The conferees debated this issue at length and it seemed to me that a compromise between the Senate and House positions was needed. After extensive debate, however, it became clear that there would be little movement from the House position and the Senate conferees ultimately receded to the House with an amendment lengthening the period for congressional review of the new leverage regulations from 45 to 90 days. I might also say, Mr. President, that the reauthorization period was set at 3 years, in part, because of the outcome on the leverage issue.

While I would have preferred a final resolution of the question of leverage, the provision that was adopted will give the Congress additional time to reexamine leverage, if such reexamination is warranted. I suspect, however, that the Senate has not seen the last of this issue.

In addition, Mr. President, the conference bill requires the Commodity Futures Trading Commission to end its pilot program in the trading of commodity options contracts and to authorize such options trading under terms and conditions set by the Commission. The bill also authorizes the extraterritorial service of subpoenas on persons located outside the territorial jurisdiction of the United States. Such subpoenas, however, may not be issued for service abroad without the prior approval of the Commission.

The conference bill also makes minor technical adjustments in the statutory framework for disciplinary actions and membership restrictions imposed by registered futures associations and requires that the General Accounting Office conduct a comprehensive study of the issues inherent in the trading of cattle futures contracts.

Mr. President, the conference bill also contains a number of miscellaneous provisions. Section 201 of the bill would prohibit the Secretary of Agriculture from requiring participants in the 1987 and 1988 Acreage Reduction Programs for wheat, feed grains, upland cotton, and rice, to limit their acreage of extra long staple [ELS] cotton to the established acreage base for ELS cotton on their respective farms. The Secretary of Agriculture would retain discretion to impose this requirement, commonly known as limited cross-compliance, on ELS cotton producers who also participate in the 1989 and 1990 programs for wheat, feed grains, upland cotton, and rice.

This provision is needed to correct a requirement in the Food Security Act of 1985 that limited cross-compliance be applied to all of—or none of—the crops for which there are acreage reduction programs, including wheat, feed grains, rice, cotton, and ELS cotton. I do not believe the farm bill conferees intended to require cross-compliance for producers of ELS cotton whenever it is required on other crops for which acreage reduction programs are in effect.

This provision will permit ELS cotton producers to expand their production to meet a burgeoning export market. Because participation in other target price programs will not be required to limit ELS acreage on their farms to their respective acreage bases, participation in the ELS program may actually decrease as a result of this legislation. For this reason the Congressional Budget Office has attributed a zero cost to this section.

In addition, the bill would, for the 1989 and 1990 crops, allow the Secretary of Agriculture to prohibit participants in the ELS Cotton Program from producing in excess of their acreage bases for other crops for which acreage reduction programs are in effect. The Secretary of Agriculture does not have this authority under current law.

Section 202 of the bill would amend the Agricultural Act of 1949 to provide that, for the 1986 crop of wheat, the payment rate per bushel will be determined on the basis of the weighted average market price per bushel for the first 5 months of the marketing year. Current law requires that the payment rate be determined on the basis of the average market price during the entire marketing year.

This provision will allow the Secretary of Agriculture to pay the balance of all deficiency payments due wheat producers after the average price for the first 5 months has been finalized. The Department of Agriculture has indicated that if this provision is enacted into law, the remainder of deficiency payments due participants in the 1986 wheat program will be made in December 1986.

This provision will move up the distribution of more than $1 billion in deficiency payments by about 7 months. Because the provision will not shift these deficiency payments from one fiscal year to another and because the payment rate is expected to be identical whether calculated under the 5-month or the 12-month formula, the Congressional Budget Office attributes zero cost to this amendment.

Section 203 of the bill would amend the Agricultural Act of 1949 to provide that distributions of net gains to producers on additional Valencia peanuts produced in New Mexico and placed in a separate pool for these peanuts not be reduced by Commodity Credit Corporation losses on quota peanuts that are placed under loan from other pools.

This amendment is needed to exempt producers of Valencia peanuts in New Mexico from cross-compliance requirements of the Agricultural Act of 1949. I do not believe the farm bill conferees intended to include New Mexico Valencia peanuts in the cross-compliance process, so I supported this technical amendment.

Section 204 of the bill would make a technical change in section 8(B) of the Soil Conservation and Domestic Allotment Act to correct language controlling the establishment of local Agricultural Stabilization and Conservation [ASC] committees.

Section 1711 of the Food Security Act of 1985 requires that each county be composed of three local administrative areas from which local ASC committees could be elected, except from counties having a population of less than 150 farmers and those areas determined by the Secretary of Agriculture to have an insufficient number of farmers to make up a slate of candidates for a local ASC committee.

This bill would give the Secretary of Agriculture discretionary authority to permit continuation of a single ASC administrative area in those counties having less than three local ASC administrative areas on December 23, 1985, the date of enactment of the Food Security Act of 1985.

Section 205 of the bill would amend the Food Security Act of 1985 to provide that, for purposes of the Conservation Reserve Program only, alfalfa and other multi-year grasses and legumes, in a rotation practice approved by the Secretary, must be considered agricultural commodities.

The statement of managers that accompanied the conference bill included language expressing the conferees' strong continuing support for implementation of the Conservation Reserve Program in a manner that provides for the conversion of highly erodible cropland (currently suffering from severe erosion problems) to less intensive uses.

Section 206 of the bill would require the Comptroller General of the United States to conduct a study of the marketing practices used by Farmers Home Administration borrowers. The section also authorizes the Secretary of Agriculture to establish a program to train farmers and ranchers in advanced techniques for marketing agricultural commodities.

Mr. President, the bill also includes a separate title dealing with the issue of grain quality. Title III of the bill, entitled the "Grain Quality Improvement Act of 1986," would make certain improvements to the U.S. Grain Standards Act to ensure the quality of grain marketed in and exported from the United States.

Section 302 of the bill would revise the U.S. Grain Standards Act to add a declaratory statement that it is the policy of Congress to promote the marketing of high quality grain; that the primary objective of U.S. grain standards is to accurately determine grain quality; and that the grain standards must provide a framework for establishing grain quality improvement standards.

Section 303 of the bill would prohibit (1) the recombination of dockage and foreign material, as defined by the Secretary of Agriculture, with grain, and (2) the addition of dockage or foreign material to grain. It should be emphasized that the conference bill does not prohibit the recombination of grain dust with grain or the addition of grain dust to grain.

Section 303 of the bill also provides that the prohibition against recombination or the addition of dockage or foreign material will not apply to certain specified activities. Further, the Secretary of Agriculture would be permitted to exempt from the prohibitions, by regulation, the last handling of grain in its final sale and shipment to a domestic user or processor, when the exemption is in the best interest of producers, grain merchants, the industry, and the public. The blending of grain products or byproducts with grain (except for vegetable oils used to suppress dust) is prohibited in the bill.

Section 304 of the bill would require the Administrator of the Federal Grain Inspection Service, not later than 6 months after the bill is enacted, to issue a final rule revising grain inspection procedures and standards to more accurately reflect levels of insect infestation.

Section 305 of the bill would require the Secretary of Agriculture, in consultation with farmers and the grain industry, to study the feasibility of adjusting Commodity Credit Corporation grain premium and discount schedules to encourage the marketing of high quality grain. The Secretary would be required to report to the respective congressional oversight committees on the results of the study within 180 days of the date of the bill's enactment.

Section 306 of the bill would require the Administrator of the Federal Grain Inspection Service to publish and seek comment on the proposals contained in H.R. 5354, the "Optimal Grain Grading Act of 1986." The Administrator would be required to report to Congress by May 1, 1987, on comments received and his recommendations with respect to the proposals.

Section 307 of the bill would require the Secretary of Agriculture to study the need for and availability of uniform end-use tests for grain. The Federal Grain Inspection Service would be directed to adopt the tests when they are found to be useful, available, and economically feasible. In addition, within 1 year of the date of enactment of the bill, the Administrator of the Federal Grain Inspection Service would be required to report to Congress describing the results of the study and actions taken to adopt useful end-use tests. The Administrator would be required to report annually on the ongoing review of end-use tests.

Mr. President, title IV of the bill, the last title, deals with the issue of Federal meat inspection. Title IV contains provisions that authorize the Secretary of Agriculture to reduce the frequency of meat inspection at certain facilities while increasing inspection activities at other facilities. The bill would likely reduce the number of Federal inspectors present at processing plants that have a strong history of compliance with the Federal Meat Inspection Act.

Title IV also strengthens the Department of Agriculture's ability to immediately withdraw inspection from processing plants that have a history of violations of the Federal Meat Inspection Act. Meat products could not be sold from these plants once an inspection withdrawal occurs.

Mr. President, I urge my colleagues to support the bill.

Mr. ZORINSKY. Mr. President, I am pleased that the Senate is taking final action on the Futures Trading Act of 1986. The legislation before the Senate incorporates the agreement reached by the committee of conference on H.R. 4613, except for a provision transferring certain National Forest System land to the Nebraska Game and Parks Commission.

Under the legislation, appropriations will be authorized to carry out the Commodity Exchange Act during fiscal years 1987 through 1989. Certain improvements also will be made in the current Commodity Futures Regulatory Program.

In addition, the legislation addresses other matters that are important to American farmers, ranchers, and consumers. These matters include: First, Federal meat inspection; second, extra long staple cotton; third, 1986 Wheat Program payments; fourth, Valencia peanuts; fifth, acreage eligible for the Conservation Reserve Program; and sixth, local agricultural stabilization and conservation committees.

FUTURES TRADING PROVISIONS

The futures markets are an integral part of the Nation's economy. They have a direct effect on agricultural producers, consumers, large and small investors, financial institutions, manufacturers, Government, and business of all types. One of the more important roles of the Federal Government is to ensure that these markets are free from fraud and manipulation.

The Commodity Futures Trading Commission is the Federal agency charged with the primary responsibility of regulating the futures industry. In addition, the industry's Registered Futures Association supplements the activities of the Federal regulatory agency through its program of self-regulation.

The CFTC was established as an independent regulatory agency in 1974. The authorization of appropriations for the CFTC was extended in 1978 and 1982. Under the Senate-passed bill, appropriations would have been authorized for an additional 6 years. Under this legislation, appropriations would be authorized for 3 years. The 3-year reauthorization period will ensure Congress an early opportunity to examine the changes made by the pending legislation.

This legislation will make relatively few changes in the Federal regulatory program of the CFTC. Most of these changes were included in the Senate-passed amendment to the House bill. The major provisions of title I of the legislation involve:

First. Clarification of the CFTC's authority to pursue off-exchange operators who engage in fraudulent activities;

Second. Removal of the pilot status of commodity option trading and numerical restrictions thereon, and authorization of such trading under

terms and conditions prescribed by the CFTC;

Third. Clarification of the CFTC's authority to serve subpoenas outside the jurisdiction of the United States;

Fourth. Procedural changes relating to disciplinary proceedings of a registered futures association and CFTC review of association rules;

Fifth. Expansion of authority for trading in leverage contracts and the separate regulation thereof by the CFTC, subject to review by Congress;

Sixth. Modification of restrictions on certain investments by CFTC personnel; and

Seventh. Conduct of a study of trading in live cattle futures by the General Accounting Office.

REGULATION OF LEVERAGE TRANSACTIONS

One of the major differences between the House bill and the Senate amendment concerned the treatment of leverage transactions. Under current law, the CFTC is required to separately regulate leverage transactions. The Senate amendment would eliminate this requirement, thereby prohibiting transactions involving leverage unless conducted on an exchange. The House bill would provide for the continued regulation of the leverage industry.

The legislation before us today will continue to authorize the separate regulation of leverage transactions by the CFTC. However, commodities on which leverage contracts could be offered will be restricted to gold, silver, and platinum. Leverage contracts involving foreign currencies and copper will no longer be permitted once existing contracts have expired.

Currently, there are only two firms permitted to engage in leverage transactions. This legislation will require the CFTC to conduct a survey of firms interested in entering the leverage business and to submit to Congress, within 2 years, the results of the survey, together with its proposed regulations to govern leverage transactions. Such regulations will be required to permit additional entrants into the leverage business. The entry of new persons into this business could be granted by the CFTC on a gradual basis so that the resources of the Commission will not be unduly burdened.

Although I believe that the Senate-passed provision that would have eliminated the authority for the separate regulation of the leverage industry within 2 years in preferable, the legislation before the Senate contains numerous safeguards to ensure that the public interest will be protected. The regulations proposed by the Commission would be subject to a 90-day congressional review period before they could be effective. In addition, appropriations will have to be reauthorized in 3 years, and this will ensure Congress the opportunity to examine the effectiveness of such regulations.

OTHER PROVISIONS RELATING TO FUTURES TRADING

The legislation will direct the General Accounting Office to make a comprehensive study of the effect of cattle futures trading on the cash market for live cattle. The study will seek to determine, among other things, whether the reaction of the futures market in March 1986 to the Government's dairy herd buyout program was an accurate reflection of the supply-demand conditons at that time. The GAO would also study the effect of futures trading on price relations between feeder and fed cattle on price competition in the cattle industry. The effect of packer contracts for slaughter on market prices would also be examined. I believe that the results of this study will be helpful to the Agriculture Committees of the House and Senate in determining whether any restrictions on such futures trading are warranted.

In addition, the legislation contains two provisions relating to advanced marketing techniques for farmers and ranchers. One provision will direct GAO to conduct a study of marketing practices of farmers and ranchers who borrow from the Farmers Home Administration. The other authorizes the Secretary of Agriculture to establish a training program for farmers and ranchers on how advanced techniques, including trading of futures and option contracts, can be used in marketing their agriculture products.

There is also a provision that will eliminate the current pilot program for commodity options trading on contracts markets. Under the pilot program currently authorized in the statute, there are restrictions on the number and types of commodity options contracts that can be traded on the various exchanges. Under this legislation, commodity options trading will be permitted under such terms and conditions as the CFTC may prescribe. Inasmuch as the pilot program has shown that such trading can serve useful purposes for investors and agricultural producers alike, the elimination of the pilot status of this program appears to be warranted.

GRAIN QUALITY

Another matter addressed by the pending legislation is grain quality. Under the provisions of this legislation, handlers will be prohibited from recombining—with any grain—dockage or foreign material that has been removed from grain. This prohibition will be effective on May 1, 1987. The prohibition will apply to grain sold in both the domestic and foreign markets, but the Secretary of Agriculture would be permitted to exempt from the requirement final sales to domestic users, such as feed lots. However, any grain that was granted such an exemption could not be resold in commercial channels or blended with other grain for resale.

The prohibition on recombining dockage or foreign material will not prohibit a number of traditional marketing and handling processes. These include the treatment of grain to suppress insect infestation, the separate marketing of dockage, and the blending of grain to adjust quality.

Another provision will require the revision of the Federal grain inspection procedures and standards to more accurately reflect levels of insect infestation.

While I am supportive of efforts to improve the quality of the grain this Nation markets, I have grave reservations concerning the amendments the legislation would make in the Federal Grain Inspection Act.

In my judgment, the amendments—which are contained in title III of the legislation—give the appearance of doing something to improve grain quality but, in operation, will not actually achieve that goal.

During the conference on the 1985 farm bill, we adopted language that was enacted into law requiring the Office of Technology and Assessment to conduct a study of U.S. grain export quality standards and grain handling practices. The study is to be conducted in consultation with the Secretary of Agriculture. The Office of Technology Assessment is to—

First, evaluate the competitive problems the United States faces in international grain markets that may be attributed to grain quality standards and handling rather than price;

Second, identify the extent to which U.S. grain export quality standards and handling practices have contributed toward the recent decline in the U.S. grain exports;

Third, perform a comparative analysis between the grain quality standards and practices of the United States and the major grain export competitors of the United States; and the grain handling technology of the United States and the major grain export competitors of the United States; and

Fourth, evaluate the consequences on U.S. export grain sales, the cost of exporting grain, and the prices received by farmers should U.S. export grain elevators be subject, by law or regulation to requirements that—

No dockage or foreign material—including but not limited to dust or particles of whatever origin—once removed from grain shall be recombined with any grain if there is a possibility that the recombined product may be exported from the United States;

No dockage or foreign material of any origin may be added to any grain that may be exported if the result will be to reduce the grade or quality of

the grain or to reduce the ability of the grain to resist spoilage; and

No blending of grain with similar grain of different moisture content may be permitted if the difference between the moisture contents of the grains being blended is more than 1 percent.

Also, under the language of the 1985 farm bill, the study is to evaluate the current method of establishing grain classifications, the feasibility of using new technology to classify grains correctly, and the effect of new seed varieties on exports and users of grain.

The Office of Technology Assessment is to submit to the agriculture committees of the House and Senate by December 1 of this year a report containing the result of the study, together with such comments and suggestions for the improvement of the U.S. grain export quality standards and handling practices as appropriate.

Nebraska wheat producers have visited me and argued strenuously against the amendments contained in title III of the pending legislation. The National Wheat Producers, as well as the National Grain and Feed Association and the National Grain Trade Council, oppose the legislation.

In short, Mr. President, the amendments to the Federal Grain Inspection Act contained in the pending legislation are, in my judgment, unwise and untimely. Congressional action should await the results of the study being conducted by the Office of Technology Assessment.

However, as I noted previously, the amendments would not become effective until May 1, 1987. That is indeed fortunate. It is my hope that with the study mandated by the 1985 farm bill, Congress will be able to fashion prior to May 1987 more effective and workable grain quality legislation than the provisions before us.

EXTRA LONG STAPLE COTTON PROVISIONS

The legislation will provide a modification in the current cross-compliance requirement for producers of extra long-staple cotton. For the 1987 and 1988 crops, producer compliance with the terms and conditions of the extra long-staple cotton program will not be required for eligibility for benefits under any other commodity program.

For the 1989 and 1990 crops, if there is an acreage limitation program for a commodity in effect, producers may be required to comply with the farm acreage base for that commodity to be eligible for benefits under the extra long-staple cotton program. This provision will allow producers of the 1987 and 1988 crops of extra long-staple cotton to exceed their farm acreage bases for that commodity without losing benefits under any other commodity program. This provision is especially important. Export sales of extra long-staple cotton have been very good, and it is anticipated that the demand for the 1987 and 1988 crops will exceed the amount that could be produced on the base acreage.

LOCAL ASC COMMITTEES

Current law requires that each county be composed of three local administrative areas from which local ASC committees are elected. There is an exemption from this requirement for counties having a population of less than 150 farmers and those areas determined to have an insufficient number of farmers to make a slate of candidates for a local ASC committee. The pending legislation will further modify this requirement to permit counties in which there were less than three such administrative areas on December 23, 1985, to have only one local administrative area.

EMERGENCY COMPENSATION UNDER THE 1986 WHEAT PROGRAM

The legislation will modify the basis for determining the portion of the wheat program payments for the 1986 crop that provides emergency compensation to wheat producers. Such emergency compensation is required because the Secretary of Agriculture lowered the loan rate for the 1986 crop of wheat.

Under current law, the Secretary must use the national weighted average market price received by producers during the marketing year in determining the payment rate for such compensation. The amendment will provide that the basis for the payment rate will be the national weighted-average market price received during the first 5 months of the marketing year instead of the entire marketing year. This change will allow wheat producers to receive their payments before next summer and will help to alleviate cash-flow problems they may otherwise experience in preparing for the 1987 crop-year.

CONSERVATION RESERVE ELIGIBILITY

Under current law, land on which alfalfa and multiyear grasses and legumes are produced is not considered cropland for the purposes of the Conservation Reserve Program. Therefore, producers of these commodities are not eligible to place this land in the Conservation Reserve Program even though it may otherwise be highly erodible land. Nor can they produce row crops on the land without risking the loss of other benefits under other commodity and lending programs because such production would violate the sodbuster or swampbuster provisions of the 1985 farm bill.

There are many producers in Nebraska and other States in the upper Midwest who produced alfalfa on their land during the years 1981 through 1985. It was the intention of these producers to plant, in accordance with their normal crop rotation practices, a row crop on the land after it had been in alfalfa for 5 years. The crop rotation practices of many of these farmers resulted in less erosion than the practices of other farmers who produced more highly erosive row crops on similar land. However, their alfalfa land is not eligible to be placed in the conservation reserve, while their neighbors' land on which row crops were produced during the same period is eligible for the reserve. The pending legislation will correct this inequity by making alfalfa or grassland eligible for inclusion in the program if produced under an approved rotation practice.

MEAT INSPECTION

The legislation also will amend the Federal Meat Inspection Act. This provision is designed to eliminate redundant inspection by granting the Secretary of Agriculture the discretion to determine the intensity and frequency of the physical inspection of the processing of meat and meat food products and to use new, innovative techniques to assure the public that the meat it consumes is both wholesome and safe. The changes in the act will not affect the requirement for continuous Federal inspection of livestock slaughtering. It affects only the use of previously inspected meat in making processed foods, such as meat pies, soups, pizzas, and similar items. The provision also strengthens the Secretary's authority to remove from the meat industry individuals and companies that threaten the public health and undermine public confidence in the meat supply.

Mr. President, modern processing control procedures can tell more about the wholesomeness of meat products than visual inspections by a Federal inspector. In relying more on these controls in cases that the Secretary determines appropriate, the cost of the Federal meat inspection program will be reduced.

LAND TRANSFER TO CHADRON STATE PARK

Mr. President, a provision of the legislation agreed to by the committee of conference on H.R. 4613—but deleted during the consideration of the conference report by the House of Representatives—would have transferred a 173-acre trace of land within the Nebraska National Forest to the Nebraska Game and Parks Commission. The land was to be used as part of the Chadron State Park. This park attracts some 200,000 visitors a year. The National Forest System land in question is contiguous to the park.

The legislation passed the Senate as a separate measure (S. 360) as well as part of the CFTC reauthorization bill.

I regret the action of the House of Representatives in rejecting the decision of the House conferees to accept the Chadron State Park amendment. However, I am happy to report to the Senate that the Secretary of Agriculture has agreed to an alternative solution under which the National Forest System land would be leased to the

Nebraska Game and Parks Commission. The length of the lease will be negotiated by the Department and the commission. At the option of the commission, the lease could extend to 30 years.

I compliment the Secretary of Agriculture for his willingness to take action under existing law that will permit the commission to use the National Forest System land as part of the Chadron State Park. The additional land will enable the commission to expand the camping facilities and nature trails at the park. The use of the land will result in a great improvement to a valuable public resource in my State.

I ask unanimous consent that the text of Secretary Lyng's letter to me of October 16, 1986, be printed at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY
Washington, DC, October 16, 1986.

Hon. EDWARD ZORINSKY,
Ranking Minority Member, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.

DEAR SENATOR ZORINSKY: We appreciate your deep interest in the Chadron State Park and the desire of the Nebraska Game and Parks Commission to expand the camping facilities and nature trails at the park. We understand that Congress is considering legislation that contains a provision that would convey a 173-acre tract of land within the Nebraska National Forest to the Commission.

In that connection, we wish to inform you that the Department of Agriculture stands ready to enter into immediate negotiations with the Nebraska Game and Parks Commission for a special use authorization with respect to approximately 173 acres of National Forest System land in Dawes County, Nebraska (as depicted on a Department of Agriculture, Forest Service map entitled "Land Conveyance, Nebraska National Forest"). As you know, the National Forest System land lies north of and adjacent to the State Park.

Subject to the conditions specified in this letter, the Department is prepared to issue a lease for up to 30 years to the Nebraska Game and Parks Commission with respect to the land in question. The Commission would have use of the land only for State Park purposes. Under conditions specified in the authorization and with the concurrence of the Forest Service, the Commission would be authorized to develop the land consistent with its use as a park. Inasmuch as the land in question was acquired by the Federal Government under authority of the Bankhead-Jones Farm Tenant Act of 1937, the lease would be issued under authority of Section 32(c) of that Act.

Current statutory authority requires that the Federal Government receive fair market value for the use authorized. Thus, the annual fee, payable in advance, would ordinarily be established at five percent of the fair market value of the land. However, in view of the public purpose for which the land would be developed, this Department, under authority available to it, is prepared to reduce the annual fee charged the Commission to three percent. We have determined through a preliminary estimate that the value of the land is $30,275, or an average of $175 per acre. The fee would be subject to adjustment at the end of each five-year period of the permit; however, the fee would be increased or decreased only to the extent that there is an increase or decrease in the fair market value of the land. Any improvements made by the Commission would be disregarded in computing the fair market value of the land at each five-year interval.

We are hopeful that this arrangement will be acceptable to the Commission. However, we feel that transfer of the property to the Commission by means of a land exchange is the preferred means to permanently resolve this issue. We are hopeful that the Commission will elect to reexamine the land exchange discussed as recently as 1984 and reopen negotiations to satisfactorily conclude it. A map depicting this exchange is enclosed.

As you know, under the Multiple-Use Sustained-Yield Act of 1960, it is the Policy of Congress that our national forests be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The use of the National Forest System land in Dawes County as part of the Chadron State Park would be consistent with the declaration of Congressional policy in the 1960 Act.

We look forward to working with the Nebraska Game and Parks Commission in arranging for the Commission to use the land as part of the State park.

Sincerely,

RICHARD E. LYNG

CONCLUSION

Mr. President, the legislation before the Senate resolves the differences on a number of important issues between the House-passed bill and the Senate amendment. Many compromises were accepted on both sides. While I am far from happy with all of the provisions of the legislation, I urge my colleagues to support the recommendations of the conference committee on H.R. 4613 and pass this important legislation.

Mr. MOYNIHAN. As you know, Mr. President, I strongly opposed the leverage provision in the House bill which the conferees have seen fit to include in the final CFTC reauthorization legislation. The Senate provision was demonstrably stronger from a customer protection perspective, as evidenced by its supporters—major consumer groups, the CFTC and the North American Securities Administrators Association. Since the House itself was so evenly split on this issue, I find it hard to understand why a compromise could not have been fashioned in conference to merge the House and Senate approaches.

Nevertheless, Mr. President I have been assured by the Senate conferees that the leverage provision in this legislation will enable us to revisit the leverage issue, with the full benefit of a comprehensive CFTC report, before any form of leverage expansion is permitted. At that time, Congress should consider whether to require exchange trading of leverage, freeze leverage trading at present levels, or adopt a new regulatory approach. I ask my colleague, the distinguished Senator from Indian is my understanding correct?

Mr. LUGAR. The Senator from New York is correct. The legislation calls for a survey of possible new leverage firms and a report on whether leverage serves an economic purpose and how expanded leverage would be regulated. This CFTC report will be completed in 2 years. The CFTC then will transmit to Congress new leverage regulations. Congress will then have 90 days to review those regulations. Of course, at that time, Congress should be in the process of considering again CFTC reauthorization and will review leverage expansion or termination based upon this new CFTC report.

Mr. D'AMATO. Mr. President, I am disappointed that the CFTC reauthorization legislation as reported by the conference committee does not contain the Senate provision on leverage contracts. In its present form the legislation is inequitable because it allows leverage trading only on commodities—gold, silver and platinum—traded primarily on New York exchanges.

This discriminatory treatment is particularly curious since an original objective of the House bill was to perpetuate existing leverage business. However, this legislation actually limits existing leverage business by banning leverage trading in foreign currencies which has existed at least since 1979. I do not yet comprehend the justification for the disparate treatment between these types of commodities.

It is my understanding that the CFTC will implement this legislation by thoroughly reviewing the economic purpose issue as well as the investor protection issue. When this CFTC report is concluded, Congress will be poised, in the context of the next CFTC reauthorization, to reconsider this issue before any leverage expansion actually occurs. Through this mechanism, I hope, we can finally and properly resolve this issue and assure a strong measure of investor protection in this area.

Mr. MELCHER. As a strong supporter of the Senate leverage provision, and a member of the conference committee, let me assure the Senate that the Senate conferees understood clearly that no leverage expansion could occur without prior congressional review. Since the conference adopted a 3-year reauthorization, I would expect that in 2 years or so, when we receive the CFTC report, we will be in an excellent position to revisit the leverage issue and adopt, I hope, the leverage solution in the Senate bill. Therefore, the Senator's understanding is completely correct.

LEVERAGE

Mr. MELCHER. Mr. President, while I am pleased that this legislation reauthorizes the CFTC for 3 years and do not intend to delay enactment of this legislation, I want the record to be clear that I am most disturbed by the leverage provision in this bill.

To put it simply, it seems to me that we sacrificed the integrity of longstanding statutory principles designed to guarantee meaningful customer protections in order to reauthorize the CFTC, at all costs. In my view, we got it a little backward.

My concern is that the conferees have created an artificial, unprincipled distinction between futures contracts and nonfutures contracts, like leverage. We do not want unscrupulous con artists and bucket shop operators to seize this inadvertent loophole and design other nonfutures contracts that will not need to be traded on exchanges.

The mayhem caused by commodity bucket shops is what caused Congress, over 60 years ago, to create a broad futures contract definition and require all lawful futures to be traded on federally approved exchanges. This sound Federal policy has not been, clearly defined in, the leverage provision in this legislation.

We all should recognize that when we enact legislation which modifies principle in order to preserve private business interests, the public could ultimately suffers. I hope that the public interests are not harmed before we revisit this question again within 3 years and resolve the leverage issue properly once and for all.

Mr. HELMS. Now, Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. Is there further discussion?

The motion was agreed to.

Mr. HELMS. I move to reconsider the vote, Mr. President.

Mr. BYRD. Mr. President, I move to lay the motion to reconsider on the table.

The motion to lay on the table was agreed to.

TECHNICAL CORRECTION TO THE IMMIGRATION—CONFERENCE REPORT

Mr. SIMPSON. Mr. President, I have cleared these two items with the Democratic leader, Senator MELCHER, and others on both sides of the aisle. These are two technical corrections to the immigration conference report. They were passed yesterday in the House by Chairman RODINO. I therefore ask unanimous consent that the Senate turn to the consideration of House Concurrent Resolution 412 making technical corrections to the immigration conference report.

The PRESIDING OFFICER. Is there objection?

The clerk will report.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 412) to make a correction in the enrollment of the bill S. 1200.

The PRESIDING OFFICER. Are you ready for the question? The question is on agreeing to the concurrent resolution.

The concurrent resolution was agreed to.

Mr. SIMPSON. I move to reconsider the vote.

Mr. BYRD. Mr. President, I move to lay the motion on the table.

The motion to lay on the table was agreed to.

TECHNICAL CORRECTIONS TO THE IMMIGRATION CONFERENCE REPORT

Mr. SIMPSON. Mr. President, I ask unanimous consent the Senate turn to the consideration of House Concurrent Resolution 414 making technical corrections to the immigration conference report.

The PRESIDING OFFICER. Is there objection? Hearing none, the clerk will report.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 414) to correct the enrollment of the bill S. 1200.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution?

The concurrent resolution was agreed to.

Mr. SIMPSON. I move to reconsider the vote.

Mr. BYRD. Mr. President, I move to lay the motion to reconsider on the table.

The motion to lay on the table was agreed to.

THE LEADERSHIP

Mr. SIMPSON. Mr. President, I have heard the very remarkably honest and sincere accolades toward our majority leader and our minority leader. Let me just say it has been a distinct pleasure for me to be part of this leadership and serve as the assistant majority leader to BOB DOLE, who is really one of the most remarkable legislators I have seen. There are majority leaders who have certain skills. This man is a legislator and accommodator and facilator. He has the patience that has escaped me so far in my travels here.

As far as the Democratic leader, he has been most cordial to me, most helpful, most supportive, been a counselor and a friend, and BOB DOLE and BOB BYRD have been superb in helping me through my duties, which I have come to enjoy. Senator CRANSTON is also a fine person to work with. He and I have shared our duties as chairman and ranking member of the Veterans Affairs Committee. It is just one of my most distinct pleasures to have served as a member of the leadership of this Congress. I thank the Chair.

Mr. BYRD. Mr. President, will the distinguished Senator yield to me.

I thank him for his overly gracious and very charitable remarks. I want to say to him that in my 28 years in the U.S. Senate I have not found a more congenial, amiable, agreeable, likable, personable individual than my good friend, the distinguished majority whip.

Mr. SIMPSON. The Senator is most gracious.

Mr. BYRD. In the words of Alexander Pope, "Thou art my guide, philosopher and friend."

Mr. SIMPSON. I love it. Throw it on again.

Mr. STEVENS. Mr. President, I am delighted my good friend, the Senator from Kansas, the majority leader, is seated here beside me. I would like to make a statement, if I may.

We have come through now the first 2 years of Senator DOLE's leadership as majority leader. This has been an historic Congress. When we come back in January we will be entering the 100th Congress of our Nation and we will be making preparations for the celebration of the bicentennial of our Constitution.

We had a very contested election not quite 2 years ago. There will be another election for the leader on our side in November. BOB DOLE has done an excellent job at the majority leader. If he will allow me, it would be my intention to place his name in nomination in November. He seeks reelection as the majority leader and he deserves the right to continue as majority leader on the basis of what he has accomplished.

BOB, if you have done nothing else, you are allowing us to go home before the election with the understanding that we will not come back to a post election session. As an old friend of mine Ev Dirksen would say: The country will be safe for 2 months for the Congress will not be in session.

So we thank you very much BOB DOLE; I thank you personally for what you have done and congratulate you on your service as our majority leader.

FARM TALK

Mr. EXON. Mr. President, we are all very much aware of the extreme difficulty that the farm States and our farmers and ranchers are going through today. I am continually advised by a very close friend of mine, Vince Rossiter of Hartington, NE, who is an expert of experts as far as farm matters are concerned. He recently sent to me an excellent editorial from the Parsons, Kansas Farm Talk. I ask

unanimous consent that the entire editorial be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

GRAIN IN THE CHAFF

Sir Leslie Price, retired chairman of the Australian Wheat Board, reported in Feedstuffs by William S. Scholes—"Overproduction in the world is such that any relief for the Australian (wheat) industry is likely to be only temporary. There is a major trade war going on between the European Community and the U.S., and by the looks of it, they are going to run this one right out to the end. (In Australia) there will be restructuring and some of the larger growers are going to expand, but others aren't going to make it. Between 7 percent and 10 percent of Australia's 50,000 wheat farmers will be forced to give up their farms. Some may be fortunate enough to have a neighbor who will buy up their land, but others won't be. . .. Australia is not big enough to turn the rest of the world around, and we need to remember that."

1980. Republican Platform on Agriculture.—"We pledge . . . a president who will listen to American farmers."

1985 Democratic Criticism of Republican Farm Policy—"Not only is the Administration not acting in the interest of American farmers . . . it is not even listening to American farmers. Whether the Administration pursues is so-called market-oriented farm policies out of ideological blindness or simply cites them as an excuse to justify its callousness toward American farmers is difficult to determine, but it is certain that the Republican-Reagan policies have meant the neglect and abandonment of American farmers in their hour of need."

John Block (while serving as Secretary of Agriculture), reported in the Los Angeles Times—"You can't stop the farm crisis. It's like trying to lay down in front of a steamroller . . . you lay down but you're not doing anything to stop it. Whatever happens, happens. Agriculture is being reshaped, restructured by powerful economic forces, some national, some even international in nature. They are just forces beyond the reach of farm programs and secretaries of agriculture and presidents and congresses.'

Keith Schneider, journalist, reported in the New York Times article "Looking Abroad to Fill Our Bellies"—"With Americans eating so much foreign food, the nation's balance of trade in agriculture—once a huge source of export hearings—is dipping into deficit. In May and June, the nation imported $419.7 million more farm products, edible and non-edible, than it exported, the first monthly agricultural trade deficits in a generation . . . Imported food is flooding the market at prices that American farmers can't possibly match."

Bill Janis, Department of Commerce economist, reported in the New York Times by Keith Schneider—"The entire emphasis in American agriculture has been on sending raw grain overseas. But that policy is dead as dinosaurs. Argentina, Canada, Brazil, France, China, India—everybody's competing with us in major grains, and we're losing our share of the market. Let's stop pretending we're going to get back to where we were five or ten years ago, and concentrate on exporting higher value products."

Richard Lyng, Secretary of Agriculture, reported in Grass and Grain by Agri-News Service—"We will continue to have a large number of small farms that are surviving and thriving because they will have off-farm income. I don't see anything wrong with that. I don't think he (the small farmer) can expect to make a living on that farm . . . he can have the best of both world's by staying in farming and having some off-farm employment as well . . . The American farmer is fortunate in being able to find other work. In Europe, they've had no place to go."

Harold Beyeler and Mike Toner, farmers from Stuarts Draft, Virginia, a position paper on how beef imports have affected American cattlemen in the past 16 years—"USDA's own import-export statistics on beef show that not once in the last 16 years did America produce enough beef to fulfill its domestic needs. We've imported beef that's the equivalent of 48,177,273 head of live cattle in 16 years—that's 3,011,080 head of slaughter cattle per year that we didn't get an opportunity to raise."

Rudolf Bentzel, economist for Protestant Farmers Organization in West Germany, excerpt from meeting in McPherson, KS, reported by Ray Hemman in the Hutchinson News—"In the last four years farm incomes (in Europe) have dropped 30 to 50 percent. We have so many farmers on the edge of poverty. Many have negative incomes. About 30 percent of our farmers will not survive the next three or four years. Another 30 percent is on the edge of survival. The final 30 percent are pretty well off, and they will survive and buy up the land of the other farmers."

Lord Belstead, Minister of State at the Ministry of Agriculture, Fisheries and Food, United Kingdom, reported in Feedstuffs—"The problem with which Britain has to contend is not simply one of reducing crop surpluses, but also of maintaining rural structures, populations and proper care of the environment. . . . This makes it imperative that we seek alternative crops, new uses for crops and alternative uses for land."

Dr. Val Farmer, rural sociologist and counselor, syndicated column entitled "The Farm Crisis Has No Boundaries"—"Farmers in New Zealand feel that they have been 'left naked in a cold wind' by the government's bringing in market-oriented economic policies too quickly. A lot of New Zealand farmers are at the stage in the farm crisis of 'screaming, marching and blaming.' This is a small world after all. The pain and suffering extend beyond national borders. What happens here is happening elsewhere. Global economic and trade issues have great impact on agricultural producers in exporting nations. Everybody wants a level playing field, slightly tilted in their direction."

Folger Addison, journalist, article in the Spotlight—"America's trade woes are usually depicted in terms of deindustrialization, the loss of our country's industrial base to foreign competition. But another ugly specter has just raised its head; the loss of America's balance of trade in agriculture, once a major source of export earnings has declined into a deficit."

Rene Hochull, president, of Switzerland's Union for Small and Medium Peasant-Holdings, reported by Daniel Menning in Le Paysan Travailleur and reprinted in the North American Farmer—"It is high time that the Swiss Confederation engaged in an agricultural policy favorable to peasants and small farmers. The disappearance of small farmers has now reached such a magnitude that one no longer has the right to remain simply a spectator."

Gil Pederson, coordinator for the Saskatchewan National Farmers Union, Canada, reported in the North American Farmer—"Canadian farmers cannot afford to compete against the treasuries of the U.S. and the ECC. Unless deficiency payments are implemented, there will be a lot more bankrupt farmers (in Canada) in the next few years."

William Seidman, chairman of the FDIC, reported in the Washington Post by Hobart Rowan—"Last year a record 120 commercial banks failed. This year about 150 will fold, and the banks that are closing are getting bigger. The FDIC is trying to liquidate an inventory of $12 billion in assets."

TAX TAG BILL

Mr. PACKWOOD. Mr. President, so that I might advise the Senate, I do plan to offer the House concurrent resolution that is the tax tag bill that we had here last night. The House has sent it back to us and taken out many things we had in it. It is my intention to put most of them back—I do not have the papers yet; they will be here in about 10, 15 minutes—send it back to the House tonight in the hopes they will accept it tomorrow but I am not prepared to go forward until about 11:30.

POSTHUMOUS PROMOTION TO LT. COL. E.S. ONIZUKA

Mr. MATSUNAGA. Mr. President, I send a bill to the desk and ask for its immediate consideration.

SEC.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Reserving the right to object, I am sure I will not. Will the Senator tell me what it is?

Mr. MATSUNAGA. It has been cleared by both sides.

Mr. METZENBAUM. I have no objection.

□ 2320

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2948) to authorize the President to promote posthumously the late Lieutenant Colonel Ellison S. Onizuka to the grade of Colonel.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. MATSUNAGA. Mr. President, the bill I am introducing today—which has been cleared on both sides—for the relief of Ellison S. Onizuka is a substitute for S. 2674, which I introduced on July 22, 1986, with the cosponsorship of my colleague from Hawaii, Mr. INOUYE. S. 2674 was referred to the Committee on Armed Services but has not yet been reported out. The bill I am introducing today provides for a posthumous promotion of Lt. Colonel Onizuka to the rank of colonel in the Air Force, but does not

provide for an increase in survivor benefits to Ellison Onizuka's surviving widow.

Lieutenant Colonel Onizuka, aged 39, was one of the astronauts who perished in the *Challenger* disaster on January 28, 1986.

Passage of this bill will serve not only to recognize the supreme sacrifice which Ellison Onizuka made to advance our country's space program, but would also assure future military astronauts that their devotion and dedication will be rewarded and not forgotten. The Department of the Air Force in behalf of the Department of Defense has recognized the unique circumstances of Lieutenant Colonel Onizuka's death and fully supports the bill. The Office of Management and Budget has no objections to its consideration.

Mr. President, I urge passage of the bill, and I ask unanimous consent that an article entitled "Boyhood Friend Seeks Meaning of Onizuka's Death," written by Hubert S. Kimura for the Windward Sun Press of Hawaii, be printed at this point in the RECORD, along with an article entitled "Ellison Onizuka: A Quite Pride in His Ancestry, Faith and Island Heritage," written by Pauline Yoshihashi for the New York Times.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Windward Press, March 13-19, 1986]

BOYHOOD FRIEND SEEKS MEANING OF ONIZUKA'S DEATH

(By Hubert S. Kimura)

While watching the spaceship Challenger explode into a flaming ball of fire with plumes of white smoke on TV, my teary-eyed teenage daughter asked me. "Why did he have to die . . . why Ellison?" I heard her question but I wasn't really listening. I tried to respond but my vocal cords were frozen.

Although my eyes were glued to the shocking reruns, my jumbled-up-thoughts flashed back in time to my high school days when I enjoyed "talking story" and playing basketball and baseball with Ellison.

Thinking of Ellison had always brought back cherished memories of my youth. As an assistant coach to Ellison's Pony League baseball team in the 1950s. I was fortunate to help him develop his athletic skills and watch him display his leadership talents. Ellison had the knack for motivating his teammates to play at peak levels game after game.

Our coach, Zane Fujimoto, recently told me, "I remembered Ellison's bunch, they were real close and they played real hard." He added, "they were an awesome team . . . they won practically every game they played."

I have long forgotten this team's outstanding stats . . . the number of hits, home runs and RBIs, but I clearly remember their unbeatable team spirit and incredible positive attitude.

These unselfish Kona boys radiated genuine happiness and joy when any one of them did something well. They had a strong sense of fair play. For example, during pick-up baseball games after baseball practices. Ellison, Walter Harada and Stanley Oka (two other team leaders) voluntarily chose weaker players to even-up the contest.

To them, winning at all cost took a backseat to being fair. They had a wholesome, contagious kind of spirit that made them special. In some ways, they were typical Kona boys. They loved to play sports and hated to pick coffee in the rain.

During the peak of the coffee season, it was not uncommon for "Kona kids" to work from sunrise to sunset, rain or shine, seven days a week. They had numerous unpleasant chores such as spraying weed killer in the hot sun, washing fermented coffee beans and loading and transporting hundreds of pounds of coffee beans to the mill. I always wondered if hard work on the coffee farm contributed to quality human values.

I knew Ellison as a vibrant all-around boy who cared about people and was extremely sensitive to their feelings. He was a super Eagle Scout who scored a "10" on each of the 12 points of the Scout Law, "trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty, brave, clean and reverent." He was the kind of boy who would plant flowers that he may never smell or plant shade trees under which he may never sit.

Although I did not know him well as an adult, accounts of his "glass-house" lifestyle as a NASA astronaut and well-publicized accomplishments assured me that he was the same gifted and talented person I knew as a youth.

Ellison clearly showed that a sincere and humble country boy who grew up with coffee-stained T-shirts and faded jeans can reach the stratosphere of success, become a national hero and still wear his fame with amazing grace and humility.

Instead of basking in the spotlight and taking personal credit for his phenomenal achievements, Ellison was more interested in "giving credit where credit is due." At every opportunity, he recognized and praised his supporters and associates who opened pathways for him.

In one tragic countdown, he gave his life which now serves as a spiritual freeway to the stars for other dreamers to travel. Ellison had, as usual, returned more than he had received.

Ellison was a distinguished leader, a courageous adventurer and a soft-spoken achiever who was Hawaii's celebrated "home-grown" astronaut in the U.S. manned space program. His heroics placed Kona on the world map.

I just cannot help but feel a deep sense of loss and sorrow. I just cannot keep from thinking . . . Why did this dreadful thing happen to a precious Kona boy? What other accomplishments might he have achieved? What does his death mean?

I have searched high and low within myself for the answers . . . but there are none. Life is fragile, and sometimes it seems to be so terribly unfair, often to those who are genuinely good. But for reasons known only to the one "upstairs," he took Ellison with him.

I will always remember Ellison as a special bright-eyed youngster who never forgot his Kona roots, as a courageous young astronaut who rode on the wings of his dream and as an unselfish winner who taught me the true meaning of success.

Through him, I have come to understand that at the heart of commitment and achievement is a genuine positive attitude. Patti LaBelle's upbeat song "New Attitude" captures the essence of this attitude, "feeling good from my head to my shoes . . . know where I'm going and I know what to do . . ."

Through him, I have grasped a clearer insight to the old proverb, "As you sow, so shall you reap." Those who give without expecting return will win in the game of life . . . givers gain, takers lose. The more Ellison received, the more he gave back to his friends, community and country.

He lived by the Scout Oath, "On my honor, I'll do my best, to do my duty to God and my Country. . . ." He laid his life "on the line" for human progress. What more can you ask from a "giver."

Through him I have learned the true meaning of the "Ganbare" spirit, a Japanese word that means the courage and determination to keep on going, keep on trying, to "hang in there tough" with every ounce of energy.

Ellison personified a win-win philosophy of humanity, sincerity, and warmth. In his attitude, behavior and deeds, he exemplified a spirit that sprouted from the heart of the Kona coffee fields. I call this spirit the "Kona Spirit."

People with Kona Spirit don't cut in line, proliferate graffiti, hurt people's feelings or tell lies. They allow other drivers to change lanes, volunteer their time and resources to help people, keep their word and deliver more than they promise.

To my daughter and other young people who are searching for answers, I say look up into the heavens, seek Ellison's spirit and when you find it, tell him, "I have found the Kona Spirit . . . I am ready to fly with you!"

ELLISON ONIZUKA

(By Pauline Yoshihashi)

HOUSTON.—Growing up on the Kona coast of Hawaii, Ellison Shoji Onizuka picked coffee beans, played basketball and dreamed of hurtling through space in an imaginary supercharge craft.

No one knew where the idea came from, including his parents. "He had it inside of him, like a dream," said his mother, Mitsue Onizuka. "We didn't understand it, but he knew what he would do."

Three decades later, in January 1985, Lieutenant Colonel Onizuka rocketed into the sky aboard the space shuttle Discovery.

As one of a handful of minority applicants selected for training by NASA, he became the first Hawaiian, the first Japanese-American and the first Buddhist astronaut. He was quietly and frankly proud of that heritage; in turn, many people who were Hawaiian or Japanese American or Buddhist saluted him as one of their own. He presided over their festivals, spoke at their functions, practiced their religion and continually thanked them for helping him along his way.

The horror of the Challenger explosion has now cast him as a hero to many in those communities, and family members and friends say such a thing would have astonished him.

They say he was a modest man genuinely surprised with his own success. "I still pinch myself to convince myself that the dream came true," he said last spring. Friends and relatives often saw him as he saw himself.

"Around us, he was just El," Claude Onizuka, his older brother, said in a telephone interview from Hawaii last week. "When he'd come home, he'd drink beer and talk story, and be just another guy."

A TENACIOUS, AFFABLE PROFESSIONAL

Colleagues in the Air Force and the shuttle program knew Colonel Onizuka as a tenacious and affable professional who could simplify complicated problems. As an aeronautical engineer, he recognized the risks of the shuttle, they said.

William B. Scott, an old friend from Edwards Air Force Base, Calif., said that Colonel Onizuka had described the explosive force of the Discovery launching as amazing and unnerving. He remembered his saying, "You're really aware that you're on top of a monster, you're totally at the mercy of the vehicle."

The astronaut's wife, Lorna Yoshida Onizuka, told a Honolulu newspaper last year that he had collected the insurance policies and documents that she would need if he did not return from the coming Challenger mission. Mrs. Onizuka has been described as extremely distraught since the explosion.

Despite the risks, her husband had had unwavering enthusiasm for the shuttle. "It was so beautiful up there that we didn't want to come back," he told Barbara Spencer, a neighbor, at a welcome-home party for the Discovery crew.

Born in Kealakekua on Hawaii's main island on June 24, 1946, Ellison Shoji Onizuka was the third of Masamitsu and Mitsue Onizuka's four children. His grandparents had emigrated from Japan to be contract laborers on the sugar plantations.

His 72-year-old mother still runs the family's little general store in Keopu, a coffee-growing community halfway up the sculpted slope of an inactive volcano, Mount Hualalai. Ellison helped out in the store, explored the island's mountains and caves with friends and developed a fascination for seeing how things worked.

"When he was a young child, we would tease him because he would break things apart and not be able to put them back together," his mother said in a telephone interview last week. "He was experimenting, seeing how things go."

In the local elementary and high schools, his mother said, he was "a good student, not excellent, but pretty good." In high school he became involved in Buddhism, the Boy Scouts and the 4-H Federation. He attained Eagle Scout rank in his senior year.

In 1964, he left the islands to attend the University of Colorado and study aerospace engineering in the Air Force Reserve Officer Training Corps.

Classmates and instructors at Colorado said he excelled in aerodynamics and astronautics. "He felt that discovery was the name of the game in engineering and science," said Maj. Michael Francis, a fellow student.

In the summer of 1969 Ellison Onizuka received his master's degree in engineering and married Lorna Yoshida, a fellow Hawaiian who was studying at a nearby college. The couple had two daughters, Janelle Mitsue Onizuka, now 16 years old, and Darien Lei Shizue Onizuka, 10.

AN INTOLERANCE FOR INCOMPETENCE

He went on active duty in 1970 at McClellan Air Force Base near Sacramento, Calif. He was a link between pilots and designers, devising tests to adapt aircraft to new functions and equipment. Among his projects was a system for using heavy helicopters to salvage jets that went down in Vietnam.

Associates say his nature hastened his rise. "He wasn't a systems-oriented person," said John L. Jones, a mechanical engineer who worked with Colonel Onizuka at McClellan. "If the military system or a person got in the way, he would find a way to go around. He liked people, but couldn't stand incompetence blocking his way."

He applied for the Air Force Test Pilot School at Edwards Air Force Base, Calif., while studying at McClellan, and entered in 1974. The class cited him for keeping morale up in the demanding program and instructors commended him for his spirit. "He was a fighter pilot disguised as a flight test engineer," said Brig. Gen. John P. Schoeppner of the Air Force.

Colonel Onizuka stayed at Edwards to become an instructor in the classroom and in the air. Then, in 1978, he became one of a class of 35 selected for astronaut training. He moved his family near the Johnson Space Center in Houston.

He liked to putter around the family's brown brick house or tinker with his car. Neighbors said that colonel Onizuka often spent hours splitting wood and ran about 10 miles each day.

Family members said that he was very close to two daughters and enjoyed watching them play soccer for the school teams. "Janelle is the father all over," Claude Onizuka said of his niece. Ellison also loved deep-sea fishing, Mr. Onizuka said, and had helped his daughter Darien land a small marlin after fighting a 420-pound marlin of his own on his last trip to Hawaii.

Last year he was grand marshal of Nisei Week festivities in Los Angeles, the oldest and largest Japanese-American cultural festival in the country. "He was so excited by that," said Matt Matsuoka, retired executive of the Honda International Trading Corporation, a close friend who asked had him to participate. "He wore his dress uniform with all his medals for almost all of the events, and even his family had never seem him wear that uniform before," Mr. Matsuoka said.

Like many third-generation Japanese Americans, Colonel Onizuka did not speak fluent Japanese. On a promotional tour of Japan he read a speech first in English, then in Japanese, and traveled with his mother and family to the Fukoka Prefecture to pay respects at his family's ancestral shrine.

He also took pride in being Hawaiian, and would return from his visits home with Kona coffee, crates of pineapples and macadamia nuts for fellow engineers and pilots.

Buddhism played an important part in his life. Last September he presented a medallion with a wisteria blossom, the symbol of his Jodo Shinshu faith, to Monshu Koshin Ohtani, the Abbot of Jodo Shinshu Buddhism. He had worn the medallion, which was given as an act of devotion, in the Discovery mission.

"As a test pilot and an astronaut, he had to deal with life and death," Bishop Seigen Yamaoka, head of the Buddhist Churches of America, said. "As long as death is seen as the enemy, you fight it, and become more attached to life.

"In time he came to the realization that death is not an enemy to defeat, but a compassionate friend," Bishop Yamaoka said. That realization allowed him to appreciate the sacrifice of his family in allowing him to do the work he loved, the Bishop said.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2948

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized to promote posthumously to the grade of colonel the late Lieutenant Colonel Ellison S. Onizuka, United States Air Force, who died on January 28, 1986, while serving as a crew member on the space shuttle Challenger.

SEC. 2. No increase in compensation or benefits based on the military service of the late Lieutenant Colonel Ellison S. Onizuka shall result from a posthumous promotion authorized under the first section of this Act.

Mr. MATSUNAGA. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RETIREMENT OF SENATOR CHARLES McC. MATHIAS

Mr. SARBANES. Mr. President, it is difficult for me to imagine the Senate without my senior colleague from Maryland. For over a quarter of a century MAC MATHIAS has been one of our Nation's leading public servants and one of Maryland's most illustrious sons.

Since coming to the Congress in 1971, I have been honored to work with MAC MATHIAS and to be his colleague and friend. He is a leader of integrity and intellect, of courage and compassion, for whom I have the deepest respect and affection.

Throughout his public career MAC MATHIAS has been steadfast in his commitment to the vision of our Founding Fathers, to the principles of the Constitution, and to the well-being of all our people. His eloquent advocacy of humane values has elevated our national life and made a singular contribution to a just and decent society. MAC's politics have been marked by a civility and grace which ennoble our national life and drive from the political scene the mean and petty. Maryland and the Nation have been fortunate to have a man of his quality in public office.

Having served the people of Maryland—as Frederick city attorney, State legislator, Congressman, Senator—MAC now plans—to put it in his own words—"to shift to a new field of activity, while retaining many of the interests and concerns" of his life.

These interests and concerns have been many and varied over the course of MAC's distinguished public career, touching virtually every matter that has come before the Nation. Many of these are worthy of extended comment but let me mention two in particular—his outstanding record on protecting and preserving our environment, especially the Chesapeake Bay, and his role in creating a nation in

which "there is no legal barrier of any kind between Americans of differing race or creed."

Mr. President, last year when he was reflecting on some of the events during his time in the Congress, MAC MATHIAS pointed out that:

In 1960 we were a nation divided by barriers of law, custom and practice. Today there is no legal barrier of any kind between Americans of differing race and creed. That is change in its most positive form.

With characteristic understatement, MAC then added "I am proud to have played a role in that peaceful revolution." Mr. President, MAC MATHIAS played a very major role in every piece of civil rights legislation that came before this body during his time in the Senate. Working with his close friend, the late Clarence Mitchell, Jr., the head of the Washington office of the NAACP, MAC was instrumental in helping to tear down those barriers of law, custom, and practice of which he spoke.

At a time when the Chesapeake Bay was reaching a crisis stage in its environmental decline, MAC MATHIAS took the lead on this issue and made it his personal crusade. He understood that the magnitude of the problem called for an effort involving not just the Federal Government and Maryland but also Virginia and Pennsylvania—not only the Environmental Protection Agency, but all the Federal agencies with activities along the bay's shores. MAC MATHIAS has been the catalyst which led ultimately to the completion of the EPA's comprehensive study 3 years ago, laying out a program for reversing the decline of the Chesapeake Bay. Our hopes for restoring this national resource, America's largest and richest estuary, are the consequence of MAC's dedicated and intelligent leadership.

Mr. President, in reflecting on MAC's career, the Baltimore Evening Sun in an editorial aptly commented:

Let us also not forget the great distinction with which "Mac" Mathias has served this state, for eight years in the House of Representatives, and 18 years in the United States Senate. In that quarter of century of service he has shown himself to be a man of principle and conscience in areas ranging from civil rights to the control of nuclear weapons. His single-minded pursuit has been a humane public policy within the limits of our fiscal ability. As he bows out, the appropriate words are those chosen by Oliver Wendell Holmes when he saw his colleague Louis Brandeis passing at a distance: "There goes a good man."

Mr. President, as MAC MATHIAS leaves this body, as he puts it, "to practice law, lecture at Johns Hopkins and pull long overdue weeds at his farm," he goes with the respect and admiration of all of us who have been fortunate enough to serve with him, and, more importantly, with the appreciation and best wishes of the people of Maryland and the Nation. Christine and I will always cherish the friendship of MAC and Ann Mathias, and we join so many others in wishing them happy and satisfying lives in the years ahead.

Mr. President, since MAC MATHIAS, upon his retirement from the Senate, will be turning his attention to the teaching of our next generation, I think it appropriate that an article in the University of Maryland's Diamondback, explaining in his own words the "Tremendous Satisfaction" he has felt from his public service, be printed in the RECORD, and I ask unanimous consent to do so.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

TREMENDOUS SATISFACTION

Charles Mathias Jr.

My years as a U.S. Senator have been a rare and rewarding experience. The Senate is unique—a legislative body with jurisdictions and responsibility without parallel or precedent anywhere else in the world.

"The world's greatest deliberative body" has been recognized as a remarkable institution by people from all over the world, including Britons, from whom we borrowed our system. That is high praise indeed! The Senate was "the most remarkable of all inventions of politics," according to William Gladstone, a Prime Minister of Great Britain during the Victorian era. To one British ambassador, it was a "masterpiece of the Constitution makers."

So, I am proud to have served here for 18 years and for eight years before that in the House of Representatives. But being a senator has not always been easy. The pressures and challenges of the Senate are demanding as well as rewarding. I have been fortunate to have had outstanding predecessors, beginning with Charles Carroll of Carrollton. Their examples provided guidance in making some of the difficult decisions.

But I also depend on the people of Maryland to help me decide the controversial issues. Often it is the points in a constituent letter or the arguments from a Marylander who visits my office that provides the deciding factor in issues facing not only the state but the entire country.

I am often asked what I will miss the most after I leave the Senate. Of course I will miss the prestige of the office and the chance to meet and discuss important issues with world and national leaders; it would be unnatural not to miss such privileges.

But most of all, I will miss the opportunity to help people solve their individual problems with government. The widow who has not received her Social Security check, the immigrant who needs an extended visa, the disabled veteran trying to cut through red tape to get his benefits—these people have turned to me for assistance and I have received tremendous satisfaction from helping them.

Maryland has changed dramatically since I first came to Washington. At that time the Chesapeake Bay was endangered, Baltimore was in disrepair, the state's roads and highways were filled with potholes and inexpensive public transportation seemed an impossible dream.

But after pounding the fragile ecology of the Bay with decades of pollution, we have begun action to restore this great waterway to a healthy condition.

Today, Baltimore is a national model of inner-city renewal. It is possible to drive across Maryland from Ocean City to Garrett County without having to stop for repairs to your car. And for state residents unable or unwilling to drive, efficient and reasonably inexpensive public transportation systems operate in many parts of the state.

I have been a witness to many of the changes that have shaped this state in the past quarter-century and, indeed, a participant in them. Some of the improvements are nothing less than remarkable.

When I was first elected to Congress in 1960, the nation was divided by barriers of law and custom that denied many Americans the basic rights we cherish. When I became a senator in 1968, the delicate balance of power was in peril from the excesses of the presidency. Today, the Civil Rights and War Powers acts are legislative actions that will transcend our lifetime to protect the foundation of democratic government for generations to come. Their enactments have brought me a tremendous sense of fulfillment.

These achievements notwithstanding, as I approach my final days of public service in the Senate, my work here is far from complete.

Twenty-two years after the passage of the Civil Rights Act, a myriad of legal and economic obstacles still exists that deny some Americans equal access to our nation's blessings. Fair housing is one of these problem areas. I am currently sponsoring the Fair Housing Act Amendments to insure that Americans will not be discriminated against as they seek a comfortable place to live.

As chairman of the Rules Committee, I am trying to substantially change the funding of congressional campaigns. The extravagant financial demands of political campaigns and the accompanying pressures to yield to special interests constitute nothing less than a crisis of liberty.

During my remaining time in the Senate, I will continue to press for public financing of congressional races to restore public confidence to our electoral system.

Many other problems remain to be solved. The Chesapeake Bay's wetlands are still shrinking and Baltimore's unemployment remains too high.

I would offer some advice to my successors. The protection and extension of basic human rights in America and around the world must never disappear from the public agenda. More and more we will discover that the measure of our civilization will be taken from how we protect and provide for minorities and the disadvantaged.

Nor can this country shrink from its duty to protect individual liberties established by the Constitution. As our technology grows, deliberate threats and unintentional incursions on our basic freedoms must continually be checked.

Finally, I would urge my successors to follow the voice of reason and conscience instead of bowing to special interests or parochial pressures. Public office demands vigilance and dedication that, at times, can seem extraordinary.

I have served in Congress under seven presidents through a turbulent and fascinating period. The friendship, support and dedication of my fellow Marylanders during this period have been the greatest reward of this experience.

□ 2330

SENATOR CHARLES "MAC" MATHIAS

Mr. METZENBAUM. Mr. President, MAC MATHIAS is an intelligent, gracious, and thoughtful man whose personal qualities have translated themselves into a Senate career marked by integrity and fairness.

We have served together for many years on the Judiciary Committee, where the entire Nation has seen Senator MATHIAS' deep personal concern for civil rights, for fairness, the Constitution, judicial quality, and for compassion in the law and in the court system. He was a giant in our work on the death penalty, the Voting Rights Act, antitrust and fair housing law.

The people of the State of Maryland very likely would have reelected Senator MATHIAS to be their Senator for as many terms as he wished to serve. He did a great job in representing the interests of Maryland, a beautiful State with a wide variety of resources and a diverse and skilled population. But MAC MATHIAS also meant a great deal to the rule of law and justice under which all Americans live, and which we cherish as uniquely American.

He has been a staunch guardian of all of our liberties, and I will miss his voice and integrity in the Senate.

SENATOR CHARLES McC. MATHIAS, JR.

Mr. CHAFEE. Mr. President, if I might I would just like to pay tribute to the Senator from Maryland who made that very eloquent statement regarding his senior colleague and I just like to say regarding MAC MATHIAS I think the phraseology that Senator SARBANES used was so appropriate. He lacked any vestige of meanness and pettiness. His career indeed was marked by grace and civility and also by principle and determination.

MAC MATHIAS is a man of character as so well has been testified to here today.

Also I would like to mention he is a joyous human being, a great person to be with, a marvelous companion, one with a grand sense of the history of our Nation, and although he will be leaving this Chamber I and I think all of us look forward to our continued association with him, Ann, and his family in the days ahead.

We wish him the very best.

SENATOR BARRY GOLDWATER

Mr. METZENBAUM. Mr. President, I rise to say farewell and Godspeed to Senator BARRY GOLDWATER, a man for whom I truly have respect and admiration and affection.

BARRY GOLDWATER's voice became familiar to generations of Americans, as he worked tirelessly to carve out a space for his ideas in the political territory, and the political philosophy, of our country. The Senate will seem different, less lively, less diverse, after he leaves it.

I don't know if there has ever been an odder couple in the Senate than when BARRY GOLDWATER and I worked together on problems related to military weapons procurement. He and I wrote a long, long letter together to Secretary Weinberger, just after he became Secretary of Defense, in which we offered him our best thinking on a number of ideas relating to military procurement, and the need to introduce real competition into the procurement system. We then met together with the Secretary to share our ideas with him.

And Senator GOLDWATER and I filed suit together in Federal court to stop the Defense Department from its proposal to let a sole-source contract for the CTX airplane.

BARRY GOLDWATER was right on those important issues, just as on many other occasions he has stood up and spoken his mind, no matter whose feathers may be ruffled.

I particularly remember his statement on the importance of judicial independence, when he quoted the Federalist Papers on the floor of the Senate to make his point asking. . . .

". . . whether or not it is wise and enduring public policy to say that the Federal courts are forbidden to use certain kinds of remedies in cases properly brought before them or are denied jurisdiction to consider this or that social issue.

Nevertheless, if I had an hour, it probably wouldn't be enough time to list those issues on which BARRY and I have disagreed over the years, but he has always been willing—more than willing, eager—to say what he believes, and stand up for what he says. That is exactly what every Senator owes his or her country, and that is why I am going to look forward to BARRY GOLDWATER's continued speaking out, even though it will not be from his usual desk on this floor.

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR

Mr. CHAFEE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1374.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1374) entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", do pass with the following amendment:

Strike out all after the enacting clause; and insert:

ESTABLISHMENT OF NATIONAL HERITAGE CORRIDOR

SECTION 1. That for the purpose of preserving and interpreting for the educational and inspirational benefit of present and future generations the unique and significant contributions to our national heritage of certain historic and cultural lands, waterways and structures within the Blackstone River Valley in the States of Massachusetts and Rhode Island there is hereby established the Blackstone River Valley National Heritage Corridor (hereafter in this Act referred to as the "Corridor"). It is the purpose of this Act to provide a management framework to assist the States of Massachusetts and Rhode Island and their units of local government in the development and implementation of integrated cultural, historical and land resource management programs in order to retain, enhance and interpret the significant values of the lands, waters and structures of the Corridor.

BOUNDARIES AND ADMINISTRATION

SEC. 2. (a) BOUNDARIES.—The boundaries shall include those lands generally depicted on a map entitled Blackstone River Valley National Heritage Corridor, numbered BRV-80,000 and dated October 1986. The map shall be on file and available for public inspection in the office of the Department of the Interior in Washington, D.C. and the Massachusetts and Rhode Island Departments of Environmental Management. The Secretary of the Interior (hereafter referred to as the "Secretary") shall publish in the Federal Register, as soon as practical after the date of enactment of this Act a detailed description and map of the boundaries established under this subsection.

(b) ADMINISTRATION.—The corridor shall be administered in accordance with the provisions of this Act.

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

SEC. 3. (a) ESTABLISHMENT.—There is hereby established a commission to be known as the Blackstone River Valley National Heritage Corridor Commission (hereafter known as the Commission) whose purpose shall be to assist Federal, State and local authorities in the development and implementation of an integrated resource management plan for those lands and waters as specified in section 2.

(b) MEMBERSHIP.—The Commission shall be composed of nineteen members appointed by the Secretary as follows:

(1) the Director of the National Park Service, ex officio, or a delegate;

(2) six individuals nominated by the Governors of Rhode Island and Massachusetts and appointed by the Secretary, who shall be the Department of Environmental Management Directors from Rhode Island and Massachusetts, the State Historic Preservation Officers from Massachusetts and Rhode Island, and the Department of Economic Development Directors from Massachusetts and Rhode Island;

(3) four representatives of local government from Massachusetts and four from Rhode Island nominated by the Governor of their State and appointed by the Secretary, to represent the interests of local government; and

(4) two individuals, nominated by the Governor of Massachusetts and two individuals nominated by the Governor of Rhode Island appointed by the Secretary, to represent other interests each Governor deems appropriate.

A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(c) TERMS.—Members of the Commission shall be appointed for terms of three years.

(d) COMPENSATION.—Members of the Commission shall receive no pay on account of their service on the Commission, but while away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(e) CHAIRPERSON.—The chairperson of the Commission shall be elected by the members of the Commission.

(f) QUORUM.—(1) Ten members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(2) Any member of the Commission may vote by means of a signed proxy exercised by another member of the Commission, but any member so voting shall not be considered present for purposes of establishing a quorum.

(3) The affirmative vote of not less than ten members of the Commission shall be required to approve the budget of the Commission.

(g) MEETINGS.—The Commission shall meet at least quarterly at the call of the chairperson or ten of its members. Meetings of the Commission shall be subject to section 552b of title 5, United States Code (relating to open meetings).

STAFF OF THE COMMISSION

SEC. 4. (a) STAFF.—(1) The Commission shall have the power to appoint and fix the compensation of such staff as may be necessary to carry out its duties.

(2) Staff appointed by the Commission—

(A) shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service; and

(B) shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(b) EXPERTS AND CONSULTANTS.—Subject to such rules as may be adopted by the Commission, the Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code, but at rates determined by the Commission to be reasonable.

(c) STAFF OF OTHER AGENCIES.—(1) Upon request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out the Commission's duties.

(2) The Commission may accept the services of personnel detailed from the States of Massachusetts and Rhode Island (and any political subdivision thereof) and may reimburse that State or political subdivision for those services.

POWERS OF COMMISSION

SEC. 5 (a) HEARINGS.—The Commission may, for the purpose of carrying out this Act, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(2) The Commission may not issue subpoenas or exercise any subpoena authority.

(b) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission, if so authorized by the Commission, may take any action which the Commission is authorized to take by this Act.

(c) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) USE OF FUNDS TO OBTAIN MONEY.—The Commission may use its funds to obtain money from any source under any program or law requiring the recipient of such money to make a contribution in order to receive such money.

(f) GIFTS.—(1) Except as provided in subsection (g)(2)(B), the Commission may, for purposes of carrying out its duties, seek, accept, and dispose of gifts, bequests, or donations of money, personal property, or services, received from any source.

(2) For purposes of section 170(c) of the Internal Revenue Code of 1954, any gift to the Commission shall be deemed to be a gift to the United States.

(g) ACQUISITION OF REAL PROPERTY.—(1) Except as provided in paragraph (2) and except with respect to any leasing of facilities under subsection (c), the Commission may not acquire any real property or interest in real property.

(2) Subject to paragraph (3), the Commission may acquire real property, or interests in real property, in the corridor—

(A) by gift or devise; or

(B) by purchase from a willing seller with money which was given or bequeathed to the Commission on the condition that such money would be used to purchase real property, or interests in real property, in the corridor.

(3) Any real property or interest in real property acquired by the Commission under paragraph (2) shall be conveyed by the Commission to an appropriate public or private land managing agency, as determined by the Commission. Any such conveyance shall be made—

(A) as soon as practicable after such acquisition;

(B) without consideration; and

(C) on the condition that the real property or interest in real property so conveyed is used for public purposes.

(h) COOPERATIVE AGREEMENTS.—For purposes of carrying out the plan, the Commission may enter into cooperative agreements with the State of Massachusetts and the State of Rhode Island, with any political subdivision of each State, or with any person. Any such cooperative agreement shall, at a minimum, establish procedures for providing notice to the Commission of any action proposed by the State of Massachusetts and the State of Rhode Island, such political subdivision, or such person which may affect the implementation of the plan.

(i) ADVISORY GROUPS.—The Commission may establish such advisory groups as the Commission deems necessary to ensure open communication with, and assistance from, the State of Massachusetts and the State of Rhode Island, political subdivisions of the State of Massachusetts and the State of Rhode Island, and interested persons.

DUTIES OF THE COMMISSION

SEC. 6. (a) PREPARATION OF PLAN.—Within one year after the Commission conducts its first meeting, it shall submit a Cultural Heritage and Land Management Plan to the Secretary and the Governors of Massachusetts and Rhode Island for review and approval for 90 days. The plan shall be based on existing State plans, but shall coordinate those plans and present a unified historic preservation and interpretation plan for the corridor. The plan shall—

(1) provide an inventory which includes any property in the corridor which should be preserved, restored, managed, developed, maintained, or acquired because of its national historic or cultural significance;

(2) establish standards and criteria applicable to the construction, preservation, restoration, alteration, and use of all properties within the corridor;

(3) develop an historic interpretation plan to interpret the history of the valley;

(4) contain policies for land use management which consider and detail the application of appropriate land and water management techniques, including but not limited to local zoning, use of easements, and development of intergovernmental cooperative agreements, so as to protect the Corridor's historical, cultural, scenic, and natural resources and enhance water quality of the Blackstone River in a manner consistent with supporting economic revitalization efforts;

(5) contain a coordination and consistency component which details the ways in which local, State, and Federal programs may best be coordinated to promote the purposes of this Act; and

(6) contain a program for State and local government implementation of the plan.

(b) APPROVAL OF THE PLAN.—(1) No plan submitted to the Secretary under this section shall be approved unless the Secretary finds that the plan, if implemented, would adequately protect the significant historical and cultural resources of the corridor and consistent with such protection provide adequate and appropriate outdoor recreational opportunities and economic activities within the corridor.

(2) In determining whether or not to approve the plan, the Secretary shall consider whether:

(A) the Commission has afforded adequate opportunity, including public hearings, for public and governmental involvement in the preparation of the plan;

(B) he has received adequate assurances from appropriate State officials that the recommended implementation program identified in the plan will be initiated within a reasonable time after the date of approval of the plan and such program will ensure effective implementation of the State and local aspects of the plan.

(3) If the Secretary disapproves the plan, he shall advise the Commission in writing of the reasons therefor and shall indicate any recommendations for revisions. Following completion of any necessary revisions to the plan, the Secretary shall have forty-five days to either approve or disapprove the plan.

(c) IMPLEMENTATION OF THE PLAN.—(1) After review and approval of the plan by the Secretary and the Governors of Massachusetts and Rhode Island as provided in subsections (a) and (b) the Commission shall give priority to actions which assist in—

(A) preserving and interpreting the historic resources of the valley;

(B) completing State and local parks in the corridor; and

(C) supporting public and private efforts in economic revitalization consistent with the goals of the Cultural Heritage Plan.

(2) Priority actions to be carried out under paragraph (1) shall include—

(A) assisting the States in appropriate preservation treatment of the Blackstone Canal;

(B) assisting the States in designing, establishing, and maintaining visitor centers and other interpretive exhibits in the corridor;

(C) encouraging private landowners adjacent to the canal or river to retain or reestablish, where possible, vegetative, or other buffers as specified in the State park plans;

(D) assisting in the enhancement of public awareness of an appreciation for the historical and architectural and geological resources and sites in the corridor;

(E) assisting the State or any local government or any nonprofit organization in the restoration of any historic building in the corridor;

(F) encouraging, by appropriate means, enhanced economic and industrial development in the corridor consistent with the goals of the plan;

(G) encouraging local governments to adopt land use policies consistent with the goals of the State park and the plan and to take actions to implement those policies; and

(H) ensuring that clear, consistent signs identifying access points and sites of interest is put in place.

TERMINATION OF COMMISSION

SEC. 7. (a) TERMINATION.—Except as provided in subsection (b), the Commission shall terminate on the day occurring five years after the date of the enactment of this Act.

(b) EXTENSION.—The Commission may be extended for a period of not more than five years beginning on the day referred to in subsection (a) if, not later than one hundred and eighty days before such day—

(1) the Commission determines such extension is necessary in order to carry out the purpose of this Act;

(2) the Commission submits such proposed extension to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate; and

(3) the Governor of Massachusetts, the Governor of Rhode Island, and the Secretary each approve such extension.

DUTIES OF THE SECRETARY

SEC. 8. (a) PURPOSE.—To carry out the purposes of this Act, the Secretary shall assist the Commission in preparing the Cultural Heritage and Land Management Plan. Following approval of the plan as provided under section 6 (a) and (b) the Secretary shall assist the Commission to design and fabricate interpretive materials based on the plan including—

(A) guide brochures for exploring the heritage story of the valley by automobile, train, bicycle, boat, or foot;

(B) visitor displays (including video presentations) at several locations well distributed along the corridor, including both indoor and outdoor displays; and

(C) a mobile display depicting the heritage story to be used in the park, public buildings, libraries, and schools.

(b) TECHNICAL ASSISTANCE.—The Secretary shall, upon request of the Commission, provide technical assistance to the Commission in the preparation of the plan and for implementing the plan as set out in section 6(c).

DUTIES OF OTHER FEDERAL ENTITIES

SEC. 9. Any Federal entity conducting or supporting activities directly affecting the corridor shall—

(1) consult with the Secretary and the Commission with respect to such activities;

(2) cooperate with the Secretary and the Commission in carrying out their duties under this Act and, to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and

(3) to the maximum extent practicable, conduct or support such activities in a manner which the Commission determines will not have an adverse effect on the corridor.

AUTHORIZATION OF APPROPRIATIONS

SEC. 10. There is authorized to be appropriated annually to the Commission $250,000 for the next five fiscal years to carry out the purposes of this Act; except that the Federal contribution to the Commission shall not exceed 50 per centum of the annual operating costs of the Commission.

Mr. CHAFEE. Mr. President. I am delighted that S. 1374, a bill which I introduced last year along with Senators PELL, KENNEDY, and KERRY, to establish the Blackstone River Valley National Heritage Corridor in Rhode Island and Massachusetts, is on its way to the President for signature. This bill provides national recognition to the Blackstone River Valley, the cradle of the American industrial revolution.

I regret that the House of Representatives did not agree to the full amount of funding the Senate legislation had originally provided. The Senate version of the bill provided for $500,000 for 5 years to establish a 19-member commission. This amount was reduced to $250,000 by amendments adopted by the House of Representatives.

The purpose of this measure is to preserve for the benefit and inspiration of present and future generations the cultural, historical, recreational, and economic resources of the Blackstone River Valley corridor. This bill is not only important to the States of Rhode Island and Massachusetts, but to the Nation as well.

The mills, villages, transportation networks, and social history of the settlers of the Blackstone River Valley tell the story of the industrialization of 18th and 19th century America. From the Blackstone Valley an appreciation of the larger national patterns of industrial development may be gained.

The Blackstone Valley illustrates several historical themes which are at present underrepresented in the National Park System. Three factors distinguish the Blackstone Valley from other industrial regions. The valley is the first industrial region in the United States. The first widespread use of waterpower for industry occurred along the Blackstone River. And lastly, the Rhode Island system of manufacturing developed here.

The water power potential of the river and its waterfalls played an important part in the development of the Blackstone Valley. In 1793, an event occurred that would change the history of America. In that year Samuel Slater constructed the first water powered mill in Pawtucket along the banks of the Blackstone. The American industrial revolution was born.

As the industrial revolution took hold, entrepreneurs looked for ways to move their goods more cheaply. Construction of the Providence to Worcester Canal began in 1823 and was completed in 1828. The construction of the Providence to Worcester Railroad along the river made the canal uncompetitive, and the Blackstone Canal quickly lost its prominence. However, the impact of the canal on the development of Providence, Worcester, and the towns and villages of the valley was considerable.

In 1983, Congress requested that the National Park Service assess the national significance of the Blackstone River corridor. The National Park Service prepared a report, "Conservation Options," to address future options to conserve the Blackstone Valley corridor. The draft report suggests the development of an interstate heritage protection plan complemented by an expanded level of Federal recognition, support, and technical assistance.

The legislation takes account of the recommendations of the National Park Service, and builds upon the research and the efforts of the departments of environmental management in Rhode Island and Massachusetts, the Rhode Island Blackstone Citizen's Advisory Committee, and other interested parties. This bill provides national recognition for the corridor, lending distinction to this important project.

This legislation will establish a commission to develop a unified historic preservation and interpretation plan for the corridor in Rhode Island and Massachusetts. The Commission will operate for 5 years and will assist in the marketing and implementation of the plan. For example, the Commission will assist in the restoration of historic buildings, the preservation of the canal, or the reconstruction of the towpath. It will assist in the establishment, design, and maintenance of the visitors centers. The operating budget for the Commission will not exceed $250,000 per year.

The Commission will be composed of 19 members, including the Director of the National Park Service, the directors of the departments of environmental management of Rhode Island and Massachusetts, the directors of the departments of economic development for the two States, four representatives of local government from each State appointed by their Gover-

nors to represent local interests, and two individuals from each State to represent the States' interest.

National designation helps to assure that the cultural, historical, natural, and recreational resources of the corridor realize full potential. We can help to establish a legacy of the past as well as develop a vision for the future of the valley. With our assistance today the vision of a renewed Blackstone Valley and Park will become a reality.

I urge my colleagues to join with Senator PELL and myself in supporting this important and worthwhile bill.

Mr. McCLURE. In the passage of S. 1374, the House of Representatives included new language regarding the miscellaneous powers and duties of the Blackstone River Valley National Hertiage Corridor Commission. I would appreciate some clarification from my friend from Rhode Island as to their exact meaning.

Mr. CHAFEE. I would be happy to respond to the questions of my friend from Idaho.

Mr. McCLURE. It is my understanding that the commission is essentially an advisory body with primary responsibility to develop a plan for the management of the corridor, but has no authority to actually mandate or control the activities set forth pursuant to the plan or plans that ultimately may be adopted by the States of Rhode Island and Massachusetts. Does the Senator concur with this interpretation?

Mr. CHAFEE. Yes, the Senator is correct in his interpretation.

Mr. McCLURE. Is it also the Senator's understanding that it is the intent of the legislation to base the plan for the corridor on existing State plans and that the implementation of the plan will be under the jurisdiction of the State or local governments?

Mr. CHAFEE. Yes, the Senator is correct.

Mr. McCLURE. Does the Senator agree that there is no intent whatsoever to create or adopt any Federal zoning regulations or requirements as a part of any plan adopted pursuant to this bill?

Mr. CHAFEE. There is no intent to create any Federal zoning requirements and I believe the language of the bill clearly suggests no such requirement.

Mr. McCLURE. One final point, is it the Senator's understanding that the Secretary of the Interior is given no authority to override or preclude in an way the control and implementation of the final plan by the State or local governments.

Mr. CHAFEE. Yes, that is my understanding of the intent of this legislation.,

Mr. McCLURE. I thank the Senator for his responses with respect to this legislation which I know he has worked so diligently to see enacted. Based on the Senator's remarks I am willing to accept S. 1374 as approved by the House of Representatives.

Mr. CHAFEE. Mr. President, this is a matter of great importance to my State and also to the State of Massachusetts.

I defer to my senior colleague.

BLACKSTONE—BIRTHPLACE OF THE INDUSTRIAL REVOLUTION

Mr. PELL. Mr. President, S. 1374, the Blackstone River Valley Heritage Corridor Act of 1986, represents an important step toward preserving the birthplace of the American industrial revolution—the Blackstone River Valley in Rhode Island.

The Blackstone River Valley is where we fought an economic battle that changed the world. We owe it to ourselves and our children to make sure that it is preserved and that we learn from its lessons.

We have worked hard at the Federal level to earn national recognition of the legacy of the Blackstone River Valley, and I appreciate the help and guidance of the Senate Energy and Natural Resources Committee.

My colleague, the junior Senator from Rhode Island [Mr. CHAFEE] and I have worked long and hard together with Representative FERNAND J. ST GERMAIN of Rhode Island toward this goal. We have been encouraged by the enthusiastic support of State and local officials and the residents of Rhode Island.

The Federal assistance authorized by this legislation will help preserve our historic heritage at the same time that it helps encourage private investment and joint public and private ventures too numerious to mention.

I am confident that the Blackstone River Valley National Heritage corridor will help revitalize the Blackstone and will be a source of justifiable pride to Rhode Island.

It also will assure that we preserve a part of our historic legacy. The Blackstone River is our link not only to the past but to the future.

Mr. CHAFEE. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Rhode Island.

The motion was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. PELL. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Louisiana.

WELFARE REFORM

Mr. LONG. Mr. President, one regret on leaving the Senate is that I will not be here to participate in the effort to reform our welfare system. I wish to leave my thoughts—for whatever they are worth—for my former colleagues.

Before we can achieve welfare reform, we need to think carefully about what welfare reform really is. With welfare, as with other issues, there is too much of a tendency to equate reform with change. Not every change is a reform.

In 1971, the Governor of the State of California, Ronald Reagan, concluded his testimony on welfare reform before the Senate Committee on Finance in this way:

> We should measure welfare's success by how many people leave welfare, not by how many more are added.

President Reagan restated this same definition of the goal of welfare reform in his address earlier this year on the state of the Union.

Welfare reform should seek to reduce the welfare rolls. This is not because of any theory that welfare recipients are loafers or cheats. Rather it is because what they want and need is the opportunity to work. The welfare rolls should be reduced because Government has no right to relegate productive members of society to a status of lifelong dependency.

This country has ample capacity to provide opportunity for employment to all who are able to work. There is no excuse to continue a welfare system which promotes dependency.

It is a matter of simple economics that society and the families involved will both benefit if we redirect the resources spent on welfare into productive employment. Welfare reform should not be a matter of making welfare more attractive. It should be a matter of making work more attractive than welfare.

We have already accomplished a degree of welfare reform over the past 10 years or so. In the late 1960's and early 1970's, the welfare rolls were exploding. The number of recipients of Aid to Families with Dependent Children increased from 3 million in 1960 to 11 million by the mid-1970's. The idea gained currency that welfare dependency was a fundamental right. This led to proposals for guaranteed income plans which would have added more millions to the rolls of those who were dependent on public assistance. Government agencies and so-called welfare advocates viewed the concept that parents should work and should support their children with indifference or hostility.

The Senate, however, upon the recommendation of its Committee on Finance, declined to adopt this philosophy of dependency and set about to make such improvements as it could to the welfare system in ways calculated to reduce rather than increase dependency.

Mr. President, it was my lot to be chairman of the committee during those years and to absorb a great amount of abuse from the more liberal of the printed media. In my judgment, time has—to a large extent—proved me right.

One major element of welfare reform was the Child Support Enforcement Program enacted in 1975 despite much opposition from within and without the Government. At the time, arguments were raised that the program was punitive and that Government agencies and courts had more important tasks than making parents support their children. Opponents said it would not prove to be worth the effort.

In fact, the program proved to be a great success. In 1978, it collected $1 billion from absent parents. Now, it is collecting three times that amount. What taxpayers spend on this program is less than what they save through the direct reduction of welfare costs. And there are much larger hidden savings to the extent that this program enables families to avoid becoming dependent on welfare.

Child support is welfare reform. It obtains support for children not from the taxpayer but from those who are legally responsible for those children. The children affected are better off financially because of the program, and they learn important lessons from it. They learn that the Government respects and will enforce their rights. And they learn that, as adults, they will be expected to live up to their responsibilities.

Another important element of welfare reform is the effort to develop employment opportunities and to make work as attractive as possible to those who might otherwise become dependent on welfare.

During the past several years, Congress has acted on a number of items addressing these issues. The social services program was established in large part to help make available the child care that mothers may need to enable them to undertake employment. Tax provisions assisting working families with child care expenses were also broadened. The targeted jobs tax credit was enacted to encourage employers to make entry level jobs available to those who would otherwise become dependent on welfare.

An important element of welfare reform is aid to low-income working families—not by adding them to the welfare rolls but by keeping them off the welfare rolls. One way in which Congress has achieved this objective is through a program called the earned income tax credit.

Originally, the Finance Committee proposed to call this program the "work bonus." And that is what it is. If a family is choosing between work and welfare, this program provides a bonus for choosing work. With welfare, going to work reduces your benefit. With the earned income tax credit, going to work brings you an added benefit.

The recently passed tax bill will provide a large degree of welfare reform by expanding the earned income tax credit and by eliminating or significantly reducing the income tax burden on low-income working families. Both of these actions will tend to make work more valuable and more attractive than welfare.

Congress has done a great deal of welfare reform in the past decade or so. But we have only scratched the surface. Our Government is still spending billions of dollars to continue employable persons and their families in situations of dependency. Our Government is still asking the taxpayer to help support the children of absent parents who could and should be made to live up to their responsibilities. The Government thereby subsidizes irresponsible, antisocial conduct to the tune of billions of dollars.

We can do better.

We are collecting about $3 billion a year in child support. This is several times what we collected when the program started in 1976, but it is a very small portion of what should be collected. A recent census study shows that only about a third of absent parent families get any support whatever from working fathers. When support is collected, it is often very little. A book entitled "Child Support Enforcement: Unequal Protection Under the Law" was published last year by the National Forum Foundation. That book estimates that the child support potential is $30 billion—10 times—I repeat, 10 times—our present level of success.

When the Child Support Program was first proposed, it had a great deal of opposition. Welfare rights advocates said it was punitive. Welfare agencies felt it interfered with their primary job of distributing assistance payments. The Social Security Administration and the Internal Revenue Service objected to using their resources in the effort to find and collect from absent fathers. The armed services objected to the idea of withholding child support from runaway fathers seeking, I suppose, the same sort of appeal as the French Foreign Legion—an escape from one's past and a refuge from family obligations.

Despite all this opposition, the legislation was enacted. One major reason it was enacted was the emergence of the women's movement. Women's organizations came to recognize that opposition to the Child Support Program was a direct attack on the legal rights of children and their mothers. The reluctance of Government agencies to help enforce those rights was a major factor in condemning millions of female-headed families to a life of poverty and dependency.

With the active support of women's organizations the Child Support Program was enacted in 1975 and significantly strengthened last year.

But a great deal remains to be done. With some exceptions, many Government agencies still see child support enforcement as a very low priority. Interstate collection is a major problem, and the 1975 act authorized access to the Federal courts to help deal with this problem. But that authority remains virtually unused. The Justice Department—under Edwin Meese, of all people—now heads the list of those agencies that have managed to escape their proper share of what should be a coordinated attack on dependency and poverty. I have been told of cases where U.S. marshals simply declined to carry out court orders dealing with child support. In a recent article, the attorney general of Connecticut was quoted as calling delinquent child support the Nation's greatest example of widespread "lawlessness."

Another area in which we are doing far less than we could is the establishment of paternity. This is the fundamental element in the success of any child support enforcement system. We have developed all the necessary scientific tools to make it possible to prove paternity with a high level of certainty. But we are simply not putting enough effort into this job. The number of illegitimate births each year is running about three times the number of paternity determinations.

If we are to have welfare reform, the first step must be a strengthening of the effort to obtain for children the support they are entitled to have from their parents. This should be a continuing area of high priority for women's organizations and for the Congress. We must find ways to make public officials understand that the establishment and enforcement of children's support rights is a major national priority. It is not less important than their other duties. We must convince or require courts to set child support awards at adequate levels. We must reach the point where those who have children, do so in the knowledge that they will not be able to evade their responsibility to support those children.

In addition to a stronger Child Support Program, we must undertake a fundamental reform of the welfare programs themselves. Our major welfare programs are designed in a manner that might be appropriate if they served only those who are truly unemployable. But that is not the case. The great bulk of our spending on these programs goes to families which have—at least in part—capability of self-support. Instead of spending

those funds to foster continued dependency, we should spend them in ways which unleash that capacity for self-support.

The essence of our present approach to welfare is that the Government pays people for doing nothing. It then tries to coax or coerce them into doing some work, but drastically reduces their assistance payment when they do work. This is an inherently flawed approach.

We should drop this dependency-oriented welfare system and create a new system which offers job opportunities rather than handouts to those who are in need but capable of work.

A recent article in the New Republic, entitled "The Work Ethic State" by Mickey Kaus presents a careful analysis of the damage which our present welfare system is doing to our society. Mr. Kaus examines many of the proposals currently being considered for welfare reform and demonstrates their weaknesses compared with an approach which starts out by offering a job opportunity. I strongly urge my colleagues to read this outstanding article, and I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. LONG. Mr. President, I also ask unanimous consent to have printed in the RECORD an article on child support enforcement to which I referred earlier. This article by Neal R. Pierce appeared in the Boston Sunday Globe on July 27.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. LONG. Another disturbing aspect of welfare dependency should be discussed.

A new study by the National Bureau of Economic Research shows that children from welfare families have a much higher rate of criminal conduct and they, themselves, also have a much greater tendency toward becoming wards of the Government.

By contrast children from low-income working families have a far higher rate of employment and socially desirable conduct.

I ask unanimous consent to have printed in the RECORD an article describing a new book, based on that study, which discusses the problems of crime, dependency, and the contribution that our present welfare system is making to both of these problems.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 3.)

Mr. LONG. Mr. President, if one will read the articles and the books that I have mentioned, unless that person is irreversibly prejudiced from the beginning, he or she will be forced to the same conclusion which the Senate Committee on Finance reached after it spent 3 years focusing on the problem.

That conclusion was this: The answer lies in moving away—just as rapidly as feasible—from every aspect of the program that pays idle persons who are capable of working to remain idle.

The money devoted to that program should be spent paying or subsidizing activities where persons in need will be put to work, or at least required to do some socially desirable activity rather than paying them to let their productive capabilities atrophy or, worse, to drift into mischief.

In effect, the $17 billion of Federal and State money going into the AFDC Program is being used in a manner which subsidizes dependency, idleness, even misconduct that is only a part of what is being spent in this way. If one includes health benefits, food stamps, certain aspects of unemployment benefits, public housing, and the advantageous tax treatment of these benefits, the overall cost runs to many billions more. Overall we are spending as much as $40 billion, perhaps more, for these various benefits for people of working age and their families. This means that, on average, each income taxpayer is contributing something over $400 per year to provide these dubious benefits. If these benefits were all targeted to the 3.7 million welfare family units in jobs or job subsidies they would average upward of $10,000 per family.

If we could direct these funds—or a large part of them—to making those families productive, a great deal could be achieved for the good of the family and the taxpayer. Every individual who can be put to work in day care, health care generally, including hospital care, law enforcement, sanitation, and beautification can be an asset where we once had a liability.

How could such a change of direction be made? Over a period of time we could stipulate that no more able-bodied adults would be paid to be idle. New applicants would be offered work rather than welfare.

In the early stages of such a program, enough work could be found in child care, health care, and other Government activities to put all new applicants to work. After that, we should start subsidizing employers to hire those who need jobs.

Perhaps one-third of the welfare mothers could—and should—be usefully employed in child care. Those familiar with the talents of welfare clients report that, on average, welfare mothers do a very good job working in child care facilities.

Also there are many jobs—more than we need for the purpose—presently held by illegal aliens. If the new immigration bill proves successful to make it a crime for an employer to hire illegal aliens, many of these jobs will be available to those who would otherwise be on welfare.

A problem will be to persuade welfare clients to take the low-paying jobs. The answer is to subsidize such jobs using the sort of approaches that have already proved effective. To make the jobs pay enough, more subsidy will be required than we have been willing to provide in the past.

But which is a better approach: To have a mother with a college diploma doing housework when she would prefer work outside the home, while the welfare mother lives in dependency, or an arrangement between the two women so that the college graduate could afford to hire the erstwhile welfare client to do housework while the college graduate took a job requiring a college education? Every dollar spent in such a fashion helps two families.

The tax credit for child care is a success that is here to stay. The trouble is that it is not enough. To make it enough it should be made refundable—as is the earned income credit.

Furthermore to make these jobs attractive we would need to make the alternatives—idleness and dependency—less attractive by reducing the grants for dependency to able bodied people.

The shift from welfare dependency to work need not be all or nothing. It could be done by degrees.

For example, the program could start with new applicants who have but one child. When the program was working as intended for these new applicants, it could be broadened to add all those with one child as a second step, and so on.

As one who has struggled in this vineyard for a lifetime, I do not advocate that we leap into a new program with both feet in such a fashion as to create needless hardship or chaos.

The important thing is to change the direction and to allow plenty of time to experiment with new techniques to see how they are working.

It took this Government at all levels 40 years to create those aspects of our social service program which have earned the name of the "welfare mess".

If it should take us 10 years or even 20 years to replace the "mess" with a carefully structured replacement that we can proudly proclaim as our answer to poverty, it is worth the time and trouble.

What I have outlined as a better approach to solving the problem of family support is not an offhand, unworkable panacea. Something quite like this proposal was carefully developed in the early 1970's by the Committe on Finance and recommended to the Senate. The Senate approved widespread pilot testing of such an approach, but it did not become law because of the resistance of the other

body. In 1981, Congress did enact authority for States to exercise broad discretion in trying an approach of this type and that authority was expanded in 1984. Unfortunately, up till now, no State has really availed itself of this authority even though it is now written in such a way as to permit as limited or extensive use of the authority as the State finds appropriate.

Why have States been so reluctant to embark on efforts to have an employment program rather than a dependency program?

Persons familiar with the jobs and mental attitudes of State welfare administrators tell me that the employment approach is not something that one can expect to be recommended by an administrator whose experience and success has been gained in operating what is basically a program designed to hand out assistance payments. An administrator who endeavors to move in that direction may find it controversial. If it fails—even in the short run—it could cost him his job. The safe way for a bureaucrat is to avoid rocking the boat. It is much easier to continue on with the traditional attitudes and thinking of those similarly situated.

In order for a State to move from the existing type of welfare program to a program that truly emphasizes work, it will almost invariably require that the Governor, concerned about the attitude of taxpayers who are paying for such a system, insists upon trying the new approach.

Most governors have little knowledge or expertise in the details of running welfare programs and therefore rely on their welfare administrators. Hence the tendency on the part of most State administrators has prevailed. They have clung to that which they inherited rather than boldly accept the risk of trying something that has the potential of being better.

Only a few Governors, such as former Governor Ronald Reagan, have had the courage and the audacity to break with a familiar program that is a failure in hopes of starting a new one that could be a success. The Kaus article demonstrates how the AFSCME union has been hard at work for selfish reasons to prevent such programs from succeeding.

As we begin to seriously search for ways to reform the welfare programs, I would hope the administration would undertake to encourage States to make use of the new authority to experiment with the concept of providing jobs instead of welfare.

The articles I have asked to insert in the RECORD demonstrate that the existing welfare system not only does not work, but it is counter productive to the goal of helping families become self-sufficient. Welfare reform cannot come from expanding the present welfare system. It must come from replacing that system with one that directs employable people to employment rather than subsidizing their continued unemployment. The present system has been in existence for some 50 years. It is hard to abandon something that has been around that long—but abandon it we must because it does harm not good. It does not liberate families, it entraps them.

EXHIBIT 1

THE WORK ETHIC STATE

(By Mickey Kaus)

"The most important analytic point . . . is the fact that poverty in America forms a culture, a way of life and feeling, that makes it a whole."

Who said that? Here's a hint—he wrote in the early '60s. Here's another: he dramatically portrayed the breakdown of family life in the black ghetto, the tendency of young men to move from one woman to another without forming marital bonds, and the disastrous rise in the number of families headed by women. This new culture, he said, was different from the culture of other poor ethnic immigrants—more isolated, more dispiriting, more self-perpetuating.

Give up? Did you guess Daniel Patrick Moynihan, author of a famous government report on this topic in 1965? Well, you're wrong. If you guessed Kenneth Clark, the black sociologist whose book *Dark Ghetto* anticipated much of Moynihan's report—you're also wrong. Those are both good guesses. But the quote is from the socialist Michael Harrington—from his 1962 book, *The Other America*, generally credited with prodding a Democratic administration into launching the War on Poverty.

Today it's Ronald Reagan who warns of "a permanent culture of poverty . . . a second and separate America." Reagan conservatives blame the growth of this underclass on the antipoverty war Harrington started. The mere existence of this underclass is considered a refutation of liberalism, and many liberals seem to react as if that were true. But as Harrington's quote shows, we really haven't come very far since 1962, when the War on Poverty hadn't even begun.

In the intervening years much of America's policy establishment fled from the underclass problem. Black leaders, caught up in the enterprise of building ethnic pride ("black is beautiful") and worried in part that an unflattering description of ghetto life would reflect on all blacks, reacted against Moynihan's report, enforcing an etiquette of silence on the subject. Liberal whites, frustrated by the failure of the "hand-up-not-handout" programs of the early Great Society, nevertheless were reluctant to "blame the victim." Instead, they gravitated toward a bland redistributionism which held that if the poor couldn't or wouldn't earn their way out of poverty, the government should simply give them cash in the form of a guaranteed income.

Now we're back at the beginning. The government is not about to try to end poverty by simply mailing out checks. More important, there is justified doubt that cash in itself can end the pathology. No one who has watched Bill Moyers' "CBS Reports" on the black family's decline, or read Leon Dash's series on black teenage pregnancy in the *Washington Post*, or Nicholas Lemann's recent *Atlantic* articles on "The Origins of the Underclass," or Ken Auletta's book on the same subject, can doubt that there is a culture of poverty out there that has taken on a life of its own. Right and left now recognize that neither robust economic growth nor massive government transfer payments can by themselves transform a "community" where 90 percent of the children are born into fatherless families, where over 60 percent of the population is on welfare, where the work ethic has evaporated and the entrepreneurial drive is channeled into gangs and drug-pushing. In the District of Columbia ghetto, "getting paid" is slang for mugging somebody.

The underclass embraces only a minority of the poor. It doesn't even include most who go on welfare. (A majority get off the welfare rolls within two years.) On the other hand, about 10 to 15 percent of single mothers who go on welfare stay there for eight years or more, and they account for about half the money spent on welfare at any one time, according to a study by David Ellwood and Mary Jo Bane of Harvard. These people, who are poor on a more or less permanent basis, are part of who we're talking about.

Is the underclass black? Certainly it does not include most blacks, two-thirds of whom live above the poverty line. And it has become fashionable for conservatives to downplay the significance of race in the poverty culture, the better to lay the blame squarely on liberal welfare programs. "The focus on blacks cripples progress," writes Charles Murray, author of *Losing Ground* and the most prominent neocon underclass theorist. Murray claims to have found a town in Ohio where white mothers are producing illegitimate babies at Moynihan-report levels (25 percent of all births), presumably encouraged by the same welfare system that ensnares blacks.

But it is simply stupid to pretend that the culture of poverty isn't largely a black culture. Lemann's recent *Atlantic* essay effectively debunks the idea that we can treat the underclass as a color-blind phenomenon. Lemann stresses a fairly direct connection between those blacks who worked in the sharecropping system in the South and those who formed the lower class of the ghettoes after the great migration North. When desegregation allowed middle- and upper-class blacks to escape the ghetto, Lemann argues, they left behind the black lower class that had always been there. Only now that isolated lower-class culture was free from the restraints the black middle class had quite self-consciously imposed on it.

A large ongoing survey at the University of Michigan shows that although blacks compose only 12 percent of the population, they make up 62 percent of those who stay poor for a long time and 58 percent of the "latent poor"—that is, those who would be poor but for welfare. In this respect the old stereotype that most of the poor are black is accurate. The statistics are equally striking on the question of family breakup. Black illegitimacy rates have always been many times higher than white rates. Then, starting around 1965, the black rate rose dramatically from its already high Moynihan-report level of 25 percent to close to 60 percent today. White illegitimacy rates have been rising too, but the white rate is still only about 13 percent. That Murray could find one poor town where the white rate reaches less than half the average rate for *all* blacks only proves how vast the gap is. Even if whites were a majority of the long-term poor, it would be hard for them to create a poverty "culture" because poor

whites have never been confined to segregated communities.

So yes, the problem I am talking about is the culture of our largely black, largely urban ghettos. It is only part of the broader problem of poverty, although it is the most intractable part. It is only part of the problem facing black Americans, although all blacks are unfairly stigmatized by the behavior of the underclass minority. Today, when most liberal black leaders are finally speaking frankly about the crisis in the ghettos, the important question is no longer whether there is a culture of poverty, but what we are going to do to change it.

ONLY BLACK PEOPLE CAN DO THIS

One possible solution is "self-help," which means efforts by the black middle and upper classes to perform what William Raspberry calls "an unprecedented and enormously difficult salvage operation" in the ghetto. This strategy accords with both the hesitancy of liberal whites to tell blacks how to behave and the interest of bootstrapping black neocons in shifting the focus away from a "civil rights" strategy that relies on government intervention. "Only blacks can effectively provide moral leadership for their people," says Glenn Loury of Harvard, a prime spokesman for self-help. More successful blacks, especially, "are strategically situated to undertake" this task. Even Loury's liberal black critics, such as Roger Wilkins, accept both the need for changing underclass culture and the assumption that "only black people can do this." Let-Blacks-Do-It is the new left-right consensus.

When you get to just how the black community itself is going to accomplish a "massive cultural turnaround," however, things get vague. Loury talks about "discussion of values" and "building constructive, internal institutions." Wilkens admits he has only "the sketchiest of ideas." The "local Urban League," he says, could "assemble a roster of role models and present them as a package of assembly speakers for inner-city schools."

Good luck to such efforts, but let's be realistic: today's underclass infants will be great-great-grandparents before these well-intentioned and pathetically limited schemes accomplish any "massive cultural turn around." The "luckier blacks" can't do it themselves. I'm not even sure it's *fair* to expect middle-class blacks to bear the load of reshaping the underclass simply because they share the same skin color.

Nor is it clear that all the black talk of "self-help"—tinged as it often is with an element of separatism—will push in the right direction. Blacks are more likely to make it by integrating with mainstream economic culture than by selling each other toothpaste. But self-helpers from Louis Farrakhan to Republican heroes such as conservative community activist Robert Woodson seem to be promoting inherently limited bootstrapping operations that restrict the arena for black enterprise to the nation's poorest community.

Above all, the Let-Blacks-Do-It boom tempts nonblacks to avoid thinking with any urgency about solutions to the problem that everyone is so proud to have reacknowledged. The biggest disappointment was Moynihan's recent book *Family and Nation*, an effort long on elegantly posed questions and short on answers. Moynihan was once a bold social reformer, but here he was talking about the "limits of government." Likewise, former Virginia governor Charles Robb recently attracted a lot of attention with a speech referring to "self-defeating patterns of [black] behavior." The *New York Times* praised Robb's willingness to face up to "hard truths." But when it came to hard solutions, Robb's most concrete suggestion was that "young mothers, as a condition of receiving welfare" be required to "let visiting teachers come to their homes periodically, to teach learning games and encourage language development. . . ." Learning games!

The alternative is to search for the sort of sweeping government effort that has helped solve our other problems—not new civil rights laws, but efforts that might have the same beneficial effect as the early civil rights laws. As Moynihan says, in the best two sentences in his book, "The central conservative truth is that it is culture, not politics, that determines the success of a society. The central liberal truth is that politics can change a culture and save it from itself.'

THE UMBILICAL CORD THEORY

That brings us to the subject of welfare reform. If you are looking for a political handle on the culture of poverty, there is none bigger. Welfare reform is a hot topic in Washington these days, next on the National Agenda once tax reform is out of the way. Task forces are springing up all over the place. Reagan has commissioned three. Mario Cuomo has one. Bruce Babbitt has one designed to keep Reagan's honest from the left, while Michael Novak chairs one to horn in from the right. The mood is early War on Poverty, but in Reagan's Washington the eager young antipoverty warriors are carrying copies of *Losing Ground* rather than *The Other America."* They are going to break the culture of poverty by replacing the Great Society with a "conservative vision of the welfare state."

What's wrong with the current welfare state, anyway? The basic features of our current system for the poor are these: Fairly generous benefits are available to those who are deemed totally and permanently disabled. Very little in the way of benefits (mainly Food Stamps and stingy state "general relief" money) is available to able-bodied men and women, single or married. But if you are a single parent (almost always a mother) responsible for taking care of a child, you qualify for Aid to Families with Dependent Children (AFDC), which is what most people mean by welfare. In California and New York the AFDC benefit, combined with other benefits, is high enough to bring a welfare mother close to the poverty line. In most Southern states the AFDC benefit is much lower.

The central dilemma of our welfare state, then, is not the age-old general tension between "compassion" and "dependency." For most of the able-bodied, Americans have decided against much cash compassion. Ours is a more specific and modern dilemma: what about a single able-bodied woman who must also care for a child? If we give her no more aid than we give able-bodied men, we may be punishing the child. But to aid the child, we must aid the mother, as AFDC does—and then risk the "social hazard" of encouraging women to put themselves in that disastrous position. To women, the AFDC system seems to say, "Have a kid and the state will take care of you—as long as you don't live with the father." To men, if says, "Father children and the state will take care of them."

This can't *help*. But the current attack on welfare by conservatives mixes up two quite distinct theories as to how it might hurt. In theory #1, prospective mothers and fathers are influenced directly by the economic blandishments of AFDC, much as if by bribes. A mother might have a baby "to go on welfare." A father might leave his wife or girlfriend so she qualifies for the program. Believers in this theory are apt to say that welfare *caused* the growth of the underclass. This is the theory behind Charles Murray's notorious "Harold and Phyllis" story, which compares in minute detail the financial prospects of a fictitous ghetto couple on and off welfare, concluding that between 1960 and 1970 benefit increases and eased eligiblity rules had tipped the balance and made welfare an appealing option.

As "absent father" cases grew from 30 percent of AFDC homes in 1940 to 64 percent in 1960, even many liberals were quite willing to denouce AFDC's discrimination" against intact families. The preferred liberal solution, however, was not to take benefits away from broken families but to extend them to intact ones. The guaranteed-income concept was the logical conclusion of this line of thought.

But once the guaranteed income was politically dead, liberals took off after the Bribe Theory. And it turns out the theory doesn't hold up very well. For one thing, as Lemann points out, the Bribe Theory doesn't account for black exceptionalism. Welfare certainly couldn't have caused the black family patterns that W.E.B. DuBois noted in Philadelphia in 1899, 35 years before welfare existed.

For another, the impact of marginal Harold-and-Phyllis style calculations on the decision of women to have a child out of wedlock does not appear to be great. The illegitimacy problem got worse in the mid- to late 1970s, even though AFDC benefits were falling in real dollars. And, in a much-cited study, Ellwood and Bane compared family structures in states with varying benefit levels and concluded that high benefits have no effect on the decision to have a baby. Ghetto teenagers don't have children to go on welfare, these experts tell us. They have babies to increase their self-esteem, to give themselves "something to love" in a world where delayed gratification seems pointless. Teenage men seek to prove their masculinity, while girls as Dash's series described in horrifying detail, are often ridiculed by other girls if they remain virgins too long into their teens.

But there is a second, and far more plausible, theory that implicates welfare in this cultural catastrophe. It holds that although welfare might not cause the underclass, it sustains it. With AFDC in place, young girls look around them and recognize, perhaps unconsciously, that girls in their neighborhood who have had babies on their own are surviving, however uncomfortable (but who lives comfortably in the ghetto?). Welfare, as the umbilical cord through which the mainstream society sustains the isolated ghetto society, permits the expansion of this single-parent culture. It is its economic life support system, much as the entertainment deduction is the life support system of the culture of the $45 business lunch. No businessmen goes into an overpriced restaurant in order to run up a big deduction. But without the deduction, businessmen would quickly change their lifestyle and such restaurants would disappear.

The Umbilical Cord Theory doesn't talk of families being directly "pulled apart" by welfare, but of families that are never formed in the culture welfare subsidizes. Once AFDC benefits reach a certain threshold that allows poor single mothers to sur-

vive, the culture of the underclass can start growing as women have babies for all the various non-welfare reasons they have them. Indeed, precisely because nobody has babies in order to go on welfare, marginally lowering welfare benefits won't affect them.

If the Bribe Theory is the basis for Murray's "Harold and Phyllis" example, the Umbilical Cord Theory underlies his equally notorious "thought experiment." What would happen, he asks, if there were no welfare at all? Answer: things would have to change. "You want to cut illegitimate births among poor people? . . . I know how to do that," Murray told Ken Auletta in a Washington Monthly interview. "You just rip away every kind of government support there is. What happens then? You're going to have lots of parents talking differently to daughters, and you're going to have lots of daughters talking differently to their boyfriends. . . ." If the daughters didn't, their plight trying to raise kids without welfare would serve as an example to their neighbors.

The implications of this second view of welfare are far nastier than those of the Bribe version. If the Umbilical Cord Theory is correct, it isn't enough to extend welfare benefits so that intact families are well off in comparison to single-parent families. You have to deny benefits to the single-parent families, to unplug the underclass culture's life support system.

Those of us who don't have the stomach to go through with Murray's "experiment" (and Murray himself waffles) are compelled to come up with a more humane way of changing welfare culture. And there remains the possibility that something less than Murray's "let-them-starve" solution might work—something that doesn't cause pain exactly, but that does impose upon individuals the consequences of their choices, at the same time that it offers them a way out. Something like work.

This is the promise of "workfare," right now the hottest thing in the hot field of welfare reform. Workfare holds out the hope of achieving the ends of Murray's "experiment," without the intolerable toll of human suffering, simply by exposing welfare recipients to the necessity that has been the fate of mankind since Eden: the necessity of labor.

THE 6-PERCENT SOLUTION

In 1969, when Nixon proposed this ambitious guaranteed income scheme for families with children, his domestic adviser, one Daniel Patrick Moynihan, threw in a token "work requirement" to placate conservatives. This gave William Safire, Nixon's speechwriter, the excuse he needed to label the entire concoction "workfare," thus permanently confusing the meaning of that term. The Nixon plan, in reality, offered the poor money with no strings attached. As such it was the opposite of what most people mean by workfare, and what I mean by workfare, which is what Ronald Reagan meant by workfare when he first proposed in 1967 that welfare recipients in California be required to work, in government public service jobs if necessary, in exchange for their welfare checks.

Workfare drove liberals berserk back then. Thanks in part to liberal opposition, Reagan's California program never really got off the ground. But he persisted, and when he got to Washington in 1981 he proposed requiring all states to make welfare recipients work off their grants at the minimum wage. Congress didn't give him that, but it did allow states to experiment with workfare if they wanted.

The result is one of those bipartisan movements that seems to herald a genuinely productive marriage of liberalism with the more authoritarian wing of conservatism. *Time* magazine reports: "In statehouses across the country, Democrats and Republicans have joined forces to support legislation that combines the job programs traditionally favored by liberals with efforts to pare the welfare rolls advocated by conservatives." Some 28 states have run experiments, most of them small, with one or another variety of workfare. More important, three of the five biggest states in the union—California, New York, and Illinois—all recently announced ambitious plans to apply workfare precepts to their entire caseloads.

The appearance of a new bipartisan toughness can be deceiving, however. Virtually everybody by now agrees that, as Cuomo put it, "work is better than welfare"—that welfare recipients, mothers included, should be in the labor force (something neither liberals nor conservative women's-place-is-at-home types would have agreed on a few years ago). Beyond that, "workfare"—like "industrial policy"—is vague enough to mean quite different things to different people.

On one extreme is Massachusetts's touted Employment and Training Choices program, ET for short. But ET is not really workfare at all. There is nothing mandatory about it. True, welfare mothers with no children under six must *register* for the program, but registration for work has been a federal welfare requirement since 1967. (It's "nothing other than filling out a form," says Massachusetts Welfare Commissioner Charles Atkins.) Everything else about ET is voluntary and upbeat. Welfare mothers are offered a variety of services designed to help them find work—job appraisals, career planning workshops, remedial education, job training, placement services. Those who find jobs get transportation allowances and free day care for a year after they start work, plus Medicaid for up to 15 months if their employers don't provide health insurance.

But welfare recipients don't have to do any of this. If they prefer they can still stay home and collect a check. If "clients" decline ET's "invitation" to participate, they are placed on an automated "future participation" list and targeted for "special marketing campaigns." As for mandatory programs—that is to say, workfare—Atkins has a simple answer: "I think workfare is slavery."

ET is the new hope of liberals who don't really like workfare at all. The Democratic National Committee flew Massachusetts governor Michael Dukakis down to Washington in March to brag about the program as an example of "Democrats Making It Work." The DNC publicity brochure contrasts Massachusetts's success story" with Reaganite workfare. "They offer a punitive approach, a negative approach," it says. "They try to club people off welfare." ET offers "ladders of opportunity." "We don't need another study," DNC Chairman Paul Kirk said, ridiculing the Reagan administration's welfare task forces. "Governor Dukakis has been out solving the problem."

Why might ET make a difference where similar programs had failed? First, it seems to have changed the perception that welfare mothers are unemployable. Various studies have shown that, of all "underclass" groups, AFDC mothers are the most capable of making the transition to the world of work. (It's the men who are most often unemployable.) But state employment departments, which are typically responsible for placing the unemployed in jobs, have traditionally told AFDC mothers, "don't call us, we'll call you," worried that if they actually refer them to jobs, employers will be so horrified they will stop asking the state for referrals. Atkins signed the Massachusetts Division of Employment Security to an interagency "performance contract" under which it gets paid $1,000 for every welfare case placed in a job. This appears to have broken through the prejudice against AFDC mothers. (It may have helped that the head of the Massachusetts Division of Employment Security is Atkins's wife.)

Second, there are undoubted advantages to ET's all-carrot, Up-With-People approach. "If we went confrontational, they would feel criticized, scared, angry," argues Anne Peretz, director of The Family Center, a clinic that serves welfare recipients living in public housing. (She is also the wife of TNR's editor-in-chief). "If you try to force somebody to do something, they will succeed in not doing it." Peretz says the "excuses" available to those in the welfare culture "are just endless"—sickness, baby-sitter troubles, teenagers who need emergency attention. "You can get everybody up and marching in the right direction, but you will lose the war" unless the behavior is truly self-motivated. Peretz sees no alternative to coaxing and cajoling welfare cases into action by appealing to "that part of themselves" that wants to become self-supporting, a process she likens to "seduction."

ET is the embodiment of this classic social-work approach—dealing one-on-one with each "client," tailoring a plan for each, slowly building up "self-esteem" and "mastery" from within, overcoming the welfare culture through the skilled application of "human services."

Unfortunately, the grandiose claims made for ET tend to wilt on close inspection. Dukakis boasts that 25,000 recipients have been placed in jobs since October 1983, but one-third of those are only in part-time jobs. And it's only the full-time jobs that pay ET's much-touted "average of over $10,000 per year"—$5 an hour. In ET's first 18 months, half of its full-time job placements paid less than $4.50 an hour. Half of the part-time placements paid less than $3.75. A big ET selling point is that it offers, not minimum-wage slots, but "real jobs with real wages" paying enough to support a family. But even in a state with a 3.3 percent unemployment rate (lowest in the nation), many ET graduates must content themselves with work not far above the $3.35 minimum wage. A year after they leave the program, about half of ET's success stories still aren't earning enough to go off welfare completely.

The ET hype encourages a fallacy that commonly plagues government training programs: the Gross vs. Net Fallacy. It's one thing to boast about placing 25,000 people in jobs. It's another to say those 25,000 wouldn't have gotten jobs without ET. Reasons for skepticism abound. As pro-ET types stress in other, more convenient, contexts, there is always tremendous movement on and off welfare. As of June 1985, some 31 percent of ET's job placements were listed as "appraisal only"—that is, their contact with ET was limited to an initial counseling session before they got a job (although they may also use ET's free day and transporta-

tion). Surely many of these people would have found work without ET.

Welfare commissioner Atkins will say only that the "vast majority" of the 25,000 jobs are attributable to ET. Even that claim is dubious. Atkins has refused to allow an independent study to compare ET's success with that of a local control group that doesn't get ET. He says, reasonably, that he doesn't want to deny any recipient full access to ET's training. But where such studies have been done they have consistently shown that huge "gross" job placement gains turn out to be slim or non-existent "net" improvements over the placements that would have happened anyway. In San Diego's "work experience" experiment, for example, a gross gain of 61 percent melted into a net gain of less than 6 percent.

The most important criticism of ET, however, is that it doesn't come close to "solving the problem" of the culture of poverty. ET is about as good a voluntary job-training program as we are likely to get. It is competently run, well-funded, skillfully marketed. It operates in the hottest regional economy in the country. But of 112,983 welfare cases in 1985, about 7,660, or 6.8 percent, actually got full-time jobs through ET. Even if all of those people wouldn't have found work otherwise, that isn't a big enough percentage to transform the underclass. "What we did in ET is pick off the people who are most motivated to go to work," Atkins admits. Those remaining are the least-motivated, the hardest to "seduce." ET offers those willing to work their way out of the culture of poverty a way to do it, no small thing. But it leaves the culture itself largely unscathed.

WHISTLE-WHILE-YOU-WORKFARE

If we could rely on volunteers to end the culture of poverty by working themselves out of it, we probably wouldn't have a culture of poverty in the first place. The whole problem is that there are people who won't climb up a "ladder of opportunity" even when the economy or the government dangles it in front of their noses. If it's dramatic change we want, we must look to programs that "make" people do things they might not do if they have a check coming every month. I say "make" with caution, given the liberty with which terms like "slavery" are used in the workfare debate. Nobody is talking about throwing indigents in jail if they don't work. True workfare—the mandatory kind—merely says that if you take the state's money, the state has a right to ask something in return.

That said, there is often little practical difference between ostensibly "mandatory" work programs and "voluntary" programs such as ET. I watched a crack ET caseworker, Betty Wornum, process a welfare mother who had been called in for her "registration." It was obvious that, if Wornum could help it, there was no way that woman was going to get out of the office without signing up for some sort of training program. ("I've got a real good program for you!") The "client," visibly nervous among the bureaucrats who controlled her check, was not about to stand on her rights, at least not just then.

For their part, many "mandatory" programs are not so mandatory after all. Some maintain large "unassigned pools" of recipients who are receiving welfare but not working. Illinois, which hopes to dissolve its unassigned pool, will nevertheless have a "modified job search component," in which the state will do little more than contact the recipient "at least" every six months. San Diego's highly published experimental program "required" new applicants to perform public service work. But once applicants had been "excused for health or other reasons" or obtained an "exemption," San Diego's plan didn't embrace a noticeably higher portion of the eligible welfare population than Massachusetts's.

Instead of flaunting their permissiveness ET-style these "soft" workfare programs do formally require able-bodied welfare recipients to participate. The formal requirement performs what Richard Nathan, a Nixon welfare expert and a leading Soft Workfare advocate, calls a "signaling" function. It tells those on welfare that it's not good to sit at home, instead of "it's too bad you're a victim." Working off one's welfare grant can also teach "life skills"—the importance of showing up on time, of working with others, etc. But work requirements should not, the Softs wil tell you, be "punitive." The results is a sort of whistle-while-you-workfare emphasizing the positive things working can do for a recipient, in which work requirements are not really applied to people who resist them. "Welfare mothers who don't want to work probably do have hangups, physical or emotional problems," Nathan told me—veering close to the "you're a victim" excuse-making he had just criticized.

Some Softs quite openly see workfare as a convenient conservative cover to protect the existing welfare system from Reaganite dismantling. The theory is that if the public thinks able-bodied welfare cases are being made to work, that will remove the "stigma" from welfare, and the public will be more inclined to support a generous system. But unless the beneficiaries really *are* made to work, this strategy is more than a bit cynical. cal.

Most state workfare programs are of the soft variety. West Virginia, for example, is typically billed as one of the toughest workfare states. But it excuses welfare mothers from work when they are "job ready" (because working off their grant can't teach them anything more) or when they have "barriers" to employment—a euphemism for people who are so screwed up they won't get jobs anyway. That lets off the hook 20,000 of the 36,000 participants. Other programs only require recipients to show up for 12 or 13 weeks of "work experience."

Indeed, soft workfare usually offers alternatives to what are sometimes called "crude" work-off-your-grant schemes. "Job search," where recipients learn how to write a résumé, dress for an interview, read the want ads, and then actually look for jobs under the prodding of supervisors, became a hot alternative because it promised cheap placements—at least until a recent study by the Manpower Demonstration Research Corporation cast doubt on its effectiveness. Most of the programs billed in the press as "workfare" are really mandatory job search schemes with a short work "experience" requirement at the end for those who don't find a job.

In judging workfare programs, Softs ask questions like: What was the net gain in placing people in private sector jobs? In income? Did workfare teach any usable skills? At what cost? The MDRC's thick, professional, and well-publicized studies describe the incremental successes of work programs according to these measures in mincing detail. MDRC's latest report of modest gains for "work experience"—3 to 6 percent increases in private sector employment, 0 to 15 percent decreases in welfare payments—rated 20 inches in the *New York Times*. Those who oppose soft workfare tend to use the same client-centered criteria, noting evidence that work experience participants feel they aren't learning many new skills. "Sweeping streets or cleaning buildings," says Massachusetts's Atkins, "doesn't do shit for preparing someone to go and get a job in the private sector."

Of course, if you worry about the effect of welfare in sustaining the underclass, umbilical-cord style, the Softs have it all wrong. Workfare should not be a short-term program to help existing welfare clients, but a long-term program to destroy the culture of poverty. In this "hard" view, what's most important is not whether sweeping streets or cleaning buildings helps Betsy Smith, single teenage parent and high school dropout, learn skills that will help her find a private sector job. It is whether the prospect of sweeping streets and cleaning buildings for a welfare grant will deter Betsy Smith from having the illegitimate child that drops her out of school and onto welfare in the first place—or, failing that, whether the sight of Betsy Smith sweeping streets after having her illegitimate child will discourage her younger sisters and neighbors from doing as she did. These are questions MDRC doesn't ask, and they would be very difficult to answer if it did ask them.

Hard workfare advocates, such as Robert Carleson, architect of Reagan's first-term welfare cuts, or Lawrence Mead, whose book *Beyond Entitlement* champions work requirements, think it's good when someone works off her grant, whether or not it increases her income. If she is still working for her grant two years or ten years later, it's still better than not working. If she learns some skills while sweeping and cleaning, if it motivates her to go get a private sector job, that's gravy. Where the Softs seem quite content with their modest six percent improvements in employment, the Hards at least ask the urgent question: Will program X eventually destroy the culture of poverty or only help a few escape it?

The Hard Workfare prescription is a bit of a leap into the dark, a piece of social engineering bold enough to make anyone familiar with the Law of Unintended Consequences extremely nervous. Not the least of the doubts is whether it is even possible to apply a truly mandatory work requirement to the entire caseload of a large state. None of the workfare experiments, mostly Soft, that have been going on long enough to study has been large enough to have a measurable impact on a big amorphous thing like Culture. That is about to change.

THE POVERTY LAWYERS' PLAYPEN

If George Deukmejian, California's Republican governor, could talk like Mario Cuomo, we would all have heard more than enough about GAIN (Greater Avenues for Independence), the welfare reform plan that sailed through the state's legislature early this year. But Deukmejian's a bore, so the most important welfare reform in decades went largely unnoticed in the Eastern press.

GAIN is big. It tries to impose a mandatory program on the largest welfare caseload in the country. GAIN is also complicated. Democrats added so many options, protections, and furbelows to Deukmejian's basic work-off-your-grant proposal that the GAIN flow chart resembles a diagram of the Chernobyl nuclear plant. As finally adopted, California's plan offers a generous menu of training and education "options" to welfare recipients in addition to "work experience,"

here relabeled "pre-employment preparation" (PREP). Welfare recipients (who get free day care if necessary) can choose to take vocational education, remedial education, English-as-a-second-language, among others, instead of working for their checks. This smorgasbord approach is the latest workfare fashion. Attribute it to ET's influence.

But unlike ET, under GAIN recipients must do *something*. No welfare recipient will be forced to work off her grant right away. If she doesn't get a job after training in a specific job skill, then the state may require her to work off her grant—but it must offer her a workfare job that uses the skill she has learned. Welfare mothers trained as nurses' aides may not be required to work as secretaries, etc. Only if the recipient screws up in some way—drops out of school or falls out of the training program—may she be required to take a long-term public service job unrelated to her training. These "long-term PREP" cases are reviewed every six months, and may then be recycled through the system.

As a hard workfare strategy to destroy the poverty culture, GAIN suffers from the two major structural flaws common to most such programs. First, it requires nothing of welfare mothers until their oldest child reaches the age of six. This one restriction excuses two-thirds of the welfare caseload in California. If the sight of other teenagers living on welfare after having babies is a bad influence on their contemporaries, workfare programs limited to those with school-age children may not dramatically change those background conditions. And if anyone wants to avoid the workfare obligation, one way out is obvious—she can "go home and have another baby," as California State Senator Diane Watson threatened her inner-city constitutents would do when confronted with "forced labor." Hard workfare advocates such as New York's Blanche Bernstein worry privately about this have-a-kid loophole. Bernstein would extend workfare to mothers with no children younger than three, which would bring 62 percent of the national welfare caseload into the program. Beyond that, Bernstein says she is "depending on physiological constraints"—i.e., there are only so many babies a woman can have.

Even more important, neither GAIN nor any mere "workfare" plan does much to employ those in the underclass who have few welfare benefits to "work off," namely able-bodied men. The welfare mother whose ET session I observed asked if there were any way the program could find a job for her "friend." That was the third such request the caseworker had had that day. It will be hard to break the culture of single motherhood as long as among non-whites aged 20–24 there are only 48 employed civilian—i.e., "marriageable"—men for every 100 women (as William Julius Wilson and Kathryn Neckerman of the University of Chicago estimate). In fact, the absolute number of illegitimate black births has not been increasing, but the rate at which legitimate black families are formed has plummeted. No program is apt to arrest this decline unless it puts more men into jobs. By offering women who head fatherless families a way out of poverty, while failing to offer it to potential fathers (or childless women), work and training programs may reinforce whatever incentives in favor of single-parent families the AFDC system generates ("Have a Kid, Get Job Training").

There's another perverse incentive created by AFDC-only workfare, which might be called the Cheryl Liberatore Factor. Liberatore is the 13,000th graduate of ET in Massachusetts, a pert, enthusiastic-looking woman who may be seen on the front cover of an ET publicity brochure. "After one year, Cheryl is earning more than twice what she received on welfare and is employed as a secretary at one of Boston's largest universities," the caption reads. What the caption does not say is that before she was on welfare, Liberatore was employed in a low-wage job, but she quit it to go on welfare to qualify for ET training. Programs like ET and GAIN may not cause a stampede of Liberatores to the welfare office, but they are certainly *unfair*, in that they offer a goodie to those on welfare that isn't available to the poor suckers who labor in lousy jobs.

Even as applied to welfare mothers with school-age children, GAIN has big problems. The first, pointed out by Mead, is a dilemma common to all workfare schemes, perhaps to all political activity—namely that its harder to take something away from someone that it is not to give it to them in the first place. In workfare, what is being taken away is the right to a welfare check with no strings attached.

The government has been trying since 1967 to require able-bodied welfare recipients take available private sector jobs. The effort has been a failure, in part because states didn't really think welfare mothers could work, in part because it's easy to arrange not to be hired by a private employer ("All you have to do is show up drunk," a former Carter welfare official told me). But it has also failed because taking away someone's welfare benefits is a long, cumbersome business hedged about by legal restrictions. Workfare eliminates the first two reasons by having the government provide the job itself. The third problem—the Take Away problem—remains.

California's workfare statute is a poverty lawyer's playpen. Welfare recipients don't have to participate in GAIN if they are "seriously dependent upon alcohol or drugs," if they have "an emotional or mental problem," a "medically verified illness," "legal difficulties,"; or a "severe family crisis." Participants may not be penalized for failing to work if the job they are offered is more than one hour or one mile's walk away from their home (those California winters!), if the job is "not related to the individual's capability to perform the task on a regular basis" (whatever that means), if the government fails to give them, not one, but a choice of two day-care arrangements, if the government fails to provide "necessary" services, if it rains ("inclement weather or other act of nature precludes . . . other pesons similarly situated . . ."), etc. etc. etc., including the lawyers' favorite elastic clause, "good cause." The law announces in advance that recipients may be absent or tardy ten percent of the time without penalty.

A recipient who refuses to work will first lose the right to spend her grant as she sees fit—the welfare office will assume "management" of her money, paying her landlord directly, and so on. If she continues to refuse, and is somehow shown at all the various hearings and appeals to have had no excuse, the ultimate penalty is not loss of her entire grant. Federal law limits the penalty to only that portion of the grant designated for her own personal support—about $115 to $120 a month, according to California officials, out of an average combined AFDC-Food Stamp grant of about $700 a month for a family of three.

To this impressive array of loopholes California adds a peculiarly revealing one: no recipient has to take a private sector job if it is "at a wage level that results in a loss of income." This clause reflects one of the genuine practical riddles of welfare reform, the Low Wage dilemma. The dilemma is simply that the sort of jobs welfare recipients can get in the marketplace will not support a mother with kids—so that any decent welfare standard will pay more than most potential jobs. Under California's rules, a job must pay more than welfare after child care, transportation, and health insurance. If the average monthly benefit for a mother with two kids is $700, and if you figure that child care costs $200 and health insurance and transportation $100, that means that the state can only require this average welfare mother to take a private sector job paying the equivalent of $1,000 a month, or $5.76 an hour. Remember that in Massachusetts, the most prosperous state of the union, half the successful ET graduates made less than $4.50 and you have some idea of the task California has set for itself.

Faced with the dilemma of low wages, California has simply grasped one horn, embracing what might be called the Good Jobs Fallacy. At a famous set of hearings staged by the National Welfare Rights Organization in 1970, militant welfare mothers pounded the table and declared, "We only want the kind of jobs that will pay $10,000 or $20,000." California's scheme comes close to accepting the very moral assumption workfare is supposed to deny—that it's OK to stay home and get a check, so if we want recipients to work we must offer something better than "menial" or "dead end" jobs. Through an elaborate training and education of effort, it seeks to enable its welfare clientele to get these "good job." But the unpleasant truth is that most of the jobs available to long term-welfare mothers will be menial, dead end jobs. There's also that annoying question of fairness again. A great many Americans work in dead end jobs. According to Columbia labor market expert Eli Ginzberg 40 percent of the jobs in the economy are "bad jobs" paying low wages and offering little chance for advancement. Are all these people to be given the option of going on the dole?

But mightn't the prospect of having to work off your grant in a public service job provide an incentive to take a "bad" private sector jobs even if it's not required? Not likely at least in a state with generous welfare benefits. The minimum rate at which California workfarers work off their grants is set at $5.07. But because workfare hours are limited to 32 a week (to leave a day for job search) no matter how high a welfare mother's benefit, many recipients will in effect be earning more per hour. Workfare may not be as good a deal as just getting a check, but it's likely to be a better deal than any private job a welfare mother can find (especially if workforce comes with free child care and Medicaid). Won't welfare recipients begin stacking up in workfare jobs? At this point, GAIN's architects begin to talk about how embarrassing it is to be on workfare, how it's not really a "job" at all. Workfare advocates like Nathan may hope it removes the "Stigma" of depending on the government, but in California they are relying on stigma.

What will the workfare workers do, anyway? GAIN officials estimate that about 20 percent of those participating in GAIN will end up on long-term workfare. That's a minimum of 34,000 jobs, with a maximum of

. . . who knows? Ah, but there are plenty of things to do, you say. Roads are crumbling. Playgrounds and schools are falling into disrepair. Streets are increasingly filthy. The elderly need care. Have workfarers help perform some of these jobs and the public will see it's getting something for its money. Isn't that what liberals always meant by the government being the employer of last resort?

Perhaps, but you don't hear too many liberals saying that anymore, for a simple reason; public employee unions. They are a bedrock Democratic interest group, and they hate workfare. Their most obvious fear is that lowpaid workfare workers will be used to displace regular, highly paid union members. Even if no regular workers lose their jobs, and even if all workfare workers were paid the same as regular workers, workfare would still depress wages of existing workers by forcing them to compete with people hungrier than they are. At the Washington headquarters of AFSCME, the nation's largest public employee union, there is a spare, windowless office occupied by a kindly man named Al Russo. Russo's job is to fight any attempt to employ the destitute in public service jobs. The row of files behind him, each with the name of a different state, shows he's been busy lately.

If AFSCME can't kill a workfare scheme, it settles for statutory language to protect its members. In California, Democrats inserted a few key clauses written by AFSCME's lobbyist. As a result, not only may no current state employees be fired to make way for workfare workers, but none may be deprived of overtime. No work "customarily performed" by union members may be performed by welfare recipients. And no workfare slots may be opened at any agency in which regular employees are on layoff—which, in the land of Prop. 13, means most agencies.

California officials, in fact, have given up on using workfare recipients in state agencies. They hope, instead, to put them to work in the nonprofit sector. The United Way, the American Red Cross, the Urban League, and organizations that supply "adult services" and "child care services" are mentioned as possible job sites. One L.A. official suggested workfare workers might be assigned to welfare rights organizations, where they would presumably work to abolish workfare.

This nonprofit gambit sharply restricts the number of potential jobs. It also means that workfare workers will almost never actually build anything, clean anything, or perform any service useful enough for the government to already be doing it itself. Meanwhile, if you're looking for a potential swamp of makework, the nonprofit sector, which has neither the discipline of the bottom line nor that of the ballot box, is a good place to start.

The biggest potential swamp is training itself. When people pay for their own training, they're likely to try to make it worth the money. This self-motivation is less likely when the programs are offered free (as with ET), and even less likely still if training is a way to avoid workfare, as with GAIN. Sound alarmist? Here is how Willie Brown, speaker of the California assembly, described his vision of his state's plan: "[You] will agree to go through a series of training programs, we will agree to increase your welfare benefits, your child care benefits, your grooming benefits, and all the other things. At the end of the training we'll start a search process to place you. If after a series of incidents at which we have attempted to place you and there's nonavailability, starting the next January you'll come back to us. We'll talk again. If we haven't been successful at finding you a job, then we'll put you in another training program . . . and we keep this process going, maybe forever."

Maybe California is just too soft. Those searching for a government trying to impose hard workfare on a big urban caseload might look to the Koch administration in New York City. Koch's welfare officials like workfare for its deterrent effect. They have tended to favor programs with few loopholes and programs that keep recipients working off their grants for long periods, if necessary. Koch's problem is Governor Cuomo, whose administration resisted even a city effort that applied workfare only to mothers with no child under 14. Last October, Koch aides finally convinced Cuomo to approve a new plan for New York City in which workfare is supplemented by a number of training and work options. Cuomo promptly hogged the headlines when his administration leaked the plan to the press and pledged to extend it statewide.

Cuomo has only embraced workfare of the softest sort. His statewide plan, still being debated in Albany, falls for the Good Jobs Fallacy in a big way, promising "individualized" training for "salaried" jobs to be created in "opportunity zones" as part of a "new partnership" between business and labor. Workfare assignments are a last resort, only when it will "enhance the employability of the recipient," and then only for six months. In May, New York City welfare official Herb Rosenzweig charged that Cuomo's statewide proposal would "emasculate" the city's plan. Nathan, a workfare moderate, calls Cuomo's effort "a lot of air."

Even Koch's relatively tough program is limited to mothers with children over six—just one-fifth of the New York City caseload. And, in another indication of how difficult it is to require work from those who are already getting a welfare check, some 40 percent of the cases called up so far this year are listed as "pended," meaning they are in some stage of adjudication.

ONLY WORK WORKS

What would a program that had a real chance of undermining the underclass look like? The deficiencies in the efforts currently underway give us some idea. First, it would be a program that expects women to work even if they have young children. Second, it would offer work to ghetto men and single women as well as to the welfare mothers. Third, it will have to deal with the related Take Away and Low Wage dilemmas; how can you require welfare recipients to accept private jobs if they pay less than welfare? How can you avoid making workfare or training more lucrative than private sector work?

Solving these problems will take something more radical than and existing workfare plan. It must be far bigger, in order to offer jobs to men, and far tougher in its dealings with young mothers. Above all, the program must unambiguously announce the cultural norm it seeks to promote in place of the culture of welfare.

What is required, I think, is something like this: replacing all cash-like welfare programs that assist the able-bodied poor (AFDC, general relief, Food Stamps, and housing subsidies, but not Medicaid) with a single, simple offer from the government—an offer of employment for every American citizen over 18 who wants it, in a useful public job at a wage slightly below the minimum wage. If you could work, and needed money, you would not be given a check (welfare). You would not be given a check and then cajoled, instructed, and threatened into working it off or "training it off" (workfare). You would be given the location of several government job sites. If you showed up, and worked, you would be paid for your work. If you don't show up, you don't get paid. Simple.

Unlike "workfare" jobs, these jobs would be available to everybody, men as well as women, single or married, mothers and fathers alike. no perverse "anti-family" incentives. No "means test" either. If David Rockefeller showed up, he could work too. But he wouldn't. Most Americans wouldn't. The low wage itself would "ration" the jobs to those who needed them most, and preserve the incentive to look for better work in the private sector. Instead of paying what in effect are high workfare "wages" and then relying on the stigma of welfare to encourage people to leave, this program would pay low wages but remove the stigma. Those who worked in the jobs would be earning their money. They could hold their heads up. They would also have something most unemployed underclass members desperately need: a supervisor they could give as a job reference to other employers. Although the best workers could be promoted to higher paying public service positions, for most workers movement into the private sector would take care of itself. If you have to work anyway, why do it for $3 an hour?

Those who didn't take advantage of these jobs, however, would be on their own. No cash doles. Mothers included. (Remember, we're only talking here about those able to work.) People who show up drunk for their jobs, who show up high, or who pick a fight with their supervisor could be fired (though they could show up again after a decent interval). There would be no need to "require" work. Work would be all that was offered. The problem of having to take away high benefits to force low-wage work would be solved by simply not providing those benefits in the first place.

This is not a new idea. Similar proposals have been advanced in the past by Russell Long and (of all people) Arthur Burns. Basically, it makes the same decision Franklin Roosevelt made in 1934, when he decided to replace a system of cash relief for the able-bodied with the Work Projects Administration, the WPA. Liberals who invoke Roosevelt's "compassionate" legacy tend to forget this anti-dole decision. Meanwhile, Reagan gleefully quotes Roosevelt's description of the dole as "a narcotic," somehow failing to mention that FDR said it in the speech where he proposed the largest government jobs program in the nation's history. In fact, FDR's anti-dole and pro-WPA opinions were of a piece, a decision in favor of work-welfare and against cash-welfare.

Of course, Roosevelt's WPA was designed to combat general unemployment at a time when most of those needing "relief" were veteran workers and nobody imagined that the tiny AFDC program, nestled unnoticed in the New Deal structure, would one day sustain millions of husbandless mothers. Our goal, in contrast, is to break the culture of poverty by providing jobs for ghetto men and women who may have no prior work habits, at the same time as we end the option of a life on welfare for single mothers. It is the transformation of the welfare state into the Work. Ethic State, in which status, dignity, and government benefits

flow only to those who work, but in which the government steps in to make sure work is available to all. There are a number of obvious objections to so simple a solution.

Will the wage be enough to support a family? No. This is the Low Wage dilemma. The poverty line for a family of three is $8,570. A full-time, minimum-wage job brings in only $7,000, and the government jobs proposed here would pay less than that. But there are ways to supplement the incomes of low-wage workers outside the welfare system (while preserving an incentive to seek better pay). The current Earned Income Tax Credit is one, the innovative Wage Rate Subsidy system of Brandeis professor Robert Lerman (which would pay half the difference between the family breadwinner's wage and 56 an hour) is another. Even Ronald Reagan once proposed this approach while testifying against the guaranteed income in 1972.

A subsidized wage would, in effect, be a guaranteed income *for those who work* (a far more affordable proposition than an income guarantee that doesn't have a base of wages to start from). There is no objection, in the Work Ethic State, to the government sending out checks as long as able-bodied people only get them if they work. Supplementing wages is a much better solution to the Low Wage problem than pretending the underclass can get "good jobs" that pay enough in themselves to support a family.

Will people be allowed to starve? That state's basic obligation, in this scheme, is to provide dignified work for all who can work, and a decent income for the disabled. There will be those who refuse work. Many ghetto men, at least initially, will prefer the world of crime, hustle, and odd jobs to working for "chump change." One advantage of the Work Ethic State is that criminals can be treated as criminals, without residual guilt about the availability of jobs. Others—the addled and addicted—will simply fail at working, or not even try. Even a fraction of welfare mothers, the most employable underclass group, will have trouble. "The workplace is so foreign to so many people who are second-and third-generation dependents," says Tom Nees, a Washington, D.C., minister whose Community of Hope works with welfare families poor enough to be homeless.

The first underclass generation *off* welfare will be the roughest. Those people who fail at work will be thrown into the world of austere public in-kind guarantees—homeless shelters, soup kitchens, and the like—and the world of private charitable organizations like Nees's. This aid would be stigmatizing (as it must be if work is to be honored), but it could be compassionate. Nobody would starve. Counseling, therapy, training, could be offered, even subsidized by the government, in order to help these people back on their feet. The one thing the government would not offer them is cash.

What about mothers with young children? The government would announce that, after a certain date, single mothers would no longer qualify for cash welfare payments. The central ambiguity of our welfare system—whether single mothers should work—would be resolved cleanly and clearly in favor of work. This hard choice is a key way the Work Ethic State would hope to break the self-perpetuating culture of poor, single-parent families. Teenage mothers who had babies could no longer count on welfare to sustain them. They would have to work like everyone else, and the prospect of juggling motherhood and a not-very-lucrative job would make them think twice, although it would also offer a way out of poverty that Charles Murray's starvation solution would deny.

What would the children do when their mothers were working? If the government is going to expect poor mothers to work, then it will have to provide day care for all those who need it. This will be expensive (Massachusetts pays $2,800 a year for each day-care slot). But it won't be as prohibitively expensive as many who raise the day-care issue seem to believe. In every state in which free day care has been offered to AFDC mothers, demand has fallen below predictions. "It is never utilized to the extent people thought it would be," says Barbara Goldman of MDRC. Most mothers, it seems, prefer to make their own arrangements. Whether those arrangements are any good is another question. The government might actually have to take steps to encourage day care, as part of the general trend toward getting kids out of underclass families and into school at an early age.

What about mothers with very young children, two years and under? A destitute mother with a newborn infant presents the basic AFDC dilemma in its starkest form. It *is* a dilemma, meaning there are arguments on both sides. One alternative is to allow temporary cash welfare for the first two years of a child's life, with a three-year limit to avoid the have-another-kid loophole. A two-year-free ride is better than a six-year free ride. Teenagers are likely to be friends with someone in their community who has a two-year-old kid and is "up against it," as Murray puts it. On the other hand, no free ride at all (except for in-kind nutritional assistance during pregnancy and infancy to avoid disastrous health problems) would clearly have stronger impact. It would also put mothers into the world of work without letting them grow accustomed to dependency. Oklahoma applies its soft workfare requirement to mothers as soon as their kids are born, with no apparent ill effects.

And if a mother refuses? The short, nasty answer is that if a mother turns down the state's offer of a job with which she might support her children, and as a result her children live in squalor and filth, then she has neglected a basic task of parenthood. She is subject to the laws that already provide for removal of a child from an unfit home.

What about teenagers who haven't even finished high school? They could receive free day care while finishing, and inkind nutritional assistance, but no cash. To obtain any extra cash necessary to support a baby, they would have to work, in one of the guaranteed government jobs if necessary. Again, the government could offer as many free training programs as it wanted, but without cash entitlements. Since training would no longer be an alternative to working, trainees would have every incentive to make the most of it.

Will there be enough jobs these people can do? As noted above, the objection can't be that there aren't enough worthwhile jobs to be done. The crumbling "infrastructure" that preoccupied Washington three years ago hasn't been patched up overnight. All around the country governments have stopped doing, for financial reasons, things they once thought worthwhile, like opening libraries on Saturday and picking up trash twice a week. Why not do them again?

But there are plausible doubts whether the welfare recipients who would need public service employment are suited to doing all these worthwhile jobs. One objection has to do with women and physical labor. Are we really going to have teenage girls repairing potholes and painting bridges? One response is, why not? Women can fill potholes and paint bridges (and water lawns and pick up garbage), just as women can be telephone repairmen and sailors. Feminism has rightly destroyed the sex stereotypes that used to surround much physical work. Anyway, there are many non-arduous "women's" jobs that need doing—nurses' aides, Xerox operators, receptionists, clerks, coat checkers, cooks, and cleaners. Private schools often require parents to keep order on playgrounds twice a month. Public schools might employ one or two parents to do the same full-time. Day-care centers could too. Is there any point in offering women free day care and then putting some of them to work in day-care centers? Yes. First, that would still free up a lot of women for employment. Second, and more important, the day-care jobs would exist within the culture of work—with alarm clocks to set, appointments to keep, and bosses to please—rather than the culture of welfare.

A second objection has to do with competence. Can an illiterate, immature high school dropout be trusted to work in a hospital as a nurses' aide, or in a public office as a clerk? Maybe not. But who can't sweep a floor? The liberals who make this objection often seem to have an opinion of underclass capability that makes William Shockley look generous. In fact, supervisors of soft-workfare workers polled by MDRC rated welfare recipients as productive as regular entry-level workers. For those with severe limitations—well, even a leaf-raking job takes leaves. If that's all someone's capable of doing, does that mean she shouldn't be paid for doing it? The alternative, remember, is to pay her to stay home and raise children.

A third objection is that any program will inevitably degenerate into makework. Exhibit A here is not the WPA, which left a whole legacy of valuable public works. Even Reagan has been known to get misty-eyed about the WPA. The problem is CETA, the Ford-Carter program that is now universally condemned as a boondoggle. CETA (Comprehensive Employment and Training Act) was a disaster for a variety of reasons, but one big reason was that doing anything useful would have offended unions. Construction unions insisted on restrictions that basically precluded CETA from building anything. AFSCME was on guard lest CETA provide any useful service that might be performed by civil servants. So we wound up with CETA workers in experimental film workshops and mime troupes. In California they took a dog and cat census.

It's not as if government unions are wrong to think a guaranteed job program will hurt them. It will. It's not as if the unions can be easily "bought off." I asked AFSCME's Russo if there was anything—any bribe, compromise, or protective language that would allow his union to sign off on the idea of low-wage public service jobs. He had a ready answer: "No." At some point, if we are serious about breaking the poverty culture, we must be serious enough to sacrifice the interests of this protected group. Why should well-paid government workers be shielded from the competitive labor market at the expense of the poorest segment of society?

Pragmatism, if not fairness, requires that no current government workers be laid off. As those workers leave through natural attrition, however, the government would be free to replace them with guaranteed jobholders. Guaranteed job projects could then be chosen on the basis of how useful they are, not whether a union objects to them. Wherever possible, they would be designed to produce a tangible benefit—collected garbage, clean subway station, a basketball hoop with a new net—that the public could see. If they took underclass workers outside the ghetto, so much the better. Projects could be ongoing, expanding as necessary in times of high unemployment. Vague-sounding service efforts—drop-in centers for veterans, community organizing—would be avoided, not because they aren't valuable, but because results are hard to measure and the possibility of spending all day doing very little is high.

Yes, public works jobs would be relatively inefficient compared with their private sector counterparts. The government would have to learn to work with the dregs of the labor market, and the program (like the most successful War on Poverty program, the Job Corps) would have to be relatively authoritarian. Boondoggles would happen. But at least the public would be getting *something* for its money.

Won't it cost a fortune? The WPA, at its peak, employed 3.3 million people full time. CETA, at its peak, 750,000. At the pit of the past recession, there were 11.4 million unemployed (4.6 million for more than 15 weeks). What fraction of them would want subminimum-wage jobs—and how many of those not in the labor force would come out of the woodwork to claim those jobs—is anybody's guess. It's usually more expensive, at least initially, to give people jobs than it is to give people cash welfare. Jobs require materials and expensive supervisors. A reasonable estimate, based on previous programs, is about $10,000 per job. That's $10 billion for every million jobs. Pretty soon you're talking real money. The long-run savings, of course, would be huge if the welfare culture was absorbed into the working, taxpaying culture. In the short run, however, welfare savings would be less, and the benefit of the work done would show up as savings only if it was work the government would be doing anyway. Would these short-term savings balance out the extra short-term costs? Probably not. Who cares? The point isn't to save money.

The point is to enforce the work ethic. This is a long-term cultural offensive, not a budget-control program or an expression of compassion. The sharpness and simplicity of its choices—no cash welfare for the able-bodied, no exceptions for parenthood—are its main virtue, because they embody with unmistakable clarity the social norms that are in danger of disappearing in the underclass culture.

Liberals, in particular, should leap at the chance to reassert those values. The Work Ethic State proclaims the equal dignity of all who work, an idea that seems more Democratic than Republican. In any case, it's very American. If it helps, ambitious liberals might note that every poll ever taken shows that cash for the disabled and jobs for the able-bodied is what the public supports. Now is a propitious moment to appeal to these sentiments, because the current workfare boom gives liberals a chance to achieve, through the back door, the ancient Democratic dream of a guaranteed job. Indeed, workfare, expanded to include everyone and not just single mothers, is a guaranteed job. But I won't tell if you won't.

Certainly we can't rely on the new conservative poverty fighters to save the day. The feverish reforming now under way is long on ambition and short on institutional memory. One young Reagan official was cited recently in the *Washington Post* as being shocked, shocked, that "a welfare mother who ventures to work sometimes loses as much in benefit reductions as she earns." But of course it was liberals in the late 1960s who tried to cure this problem, by providing "work incentives" that let welfare mothers keep part of what they earned. It was Reagan who got rid of them when they didn't work.

Reagan's main welfare task force, headed by a second-echelon official named Charles Hobbs, has been sending out signals in all directions. One memo, circulated to several states, contains a bland and self-contradictory list of "policy goals" virtually identical to the list issued by Jimmy Carter eight years ago. There is talk of letting each state devise its own welfare program, financed by federal "bloc grants."

Some type of work program is likely to emerge from this conservative rethinking. But already many conservatives are having second thoughts about the WPA-like implications of workfare. A few Reagan advisers, like Carleson, still favor it. But others, such as former OMB counsel Michael Horowitz, are lobbying for an austere cash system. Still others would make welfare temporary. The fact is that conservatives are ideologically incapable of solving the underclass problem. It takes more government than they can stomach. Reforming welfare means requiring work. Requiring work eventually means providing government jobs. Requiring work of welfare mothers means a large day-care program. The work ethic culture we want to establish is a national culture, and it requires a national program, not a federalist cacophony.

The Reaganites need help. If they ask for it, if they seek to learn from past mistakes, liberals, who have had plenty of opportunities for such learning, might usefully start by telling them this: Welfare doesn't work. Work "incentives" don't work. Training doesn't work. Work "requirements" don't work. "Work experience" doesn't work and even workfare doesn't quite work. Only work works.

EXHIBIT 2

ENFORCING CHILD SUPPORT WITH A FEDERAL STICK

(Neal R. Peirce)

WASHINGTON.—If there's been a dark island in policies of the 50 states, it's child support. With rare exceptions, state bureaucrats and judges have failed to force deadbeat fathers to support their offspring.

Connecticut Attorney General Joseph Lieberman calls delinquent child support this nation's "most widespread incidence of lawlessness." Of almost 9 million women supporting children on their own, the last Census Bureau count showed 58 percent legally entitled to child support from the father. But fewer than half received the full support to which they were entitled. A quarter received nothing.

Tough federal standards, supposedly out of style in the Reagan era, are to be the saving force. With near-unanimous congressional and Reagan administration support, Congress two years ago passed rigorous child-support conditions that states must meet to avoid loss of federal welfare funds. Now most states are getting around to enforcement.

It is a classic use of the big federal stick—cajoling states into compliance by threatening a cutoff of aid funds. But who's to say these rules are wrong?

They require: That states tap the salary of a father who falls more than 30 days behind in support payments. That tax refunds to negligent parents be intercepted. That credit agencies be informed about parents in arrears on child payments. That states streamline their judicial machinery so cases won't drag on year after year before indifferent courts.

What's more, aggrieved mothers (or the occasional aggrieved father) won't have to hire a lawyer first: Filing a complaint with a local child-support enforcement agency will start the proceedings. And the protections will apply to all families with a child-support problem, not simply welfare families.

Simple justice should require no less.

Why have states been so negligent on the child-support issue? In the case of public assistance families, suggests University of Michigan law professor David Chambers, it's because welfare departments falsely believed most fathers of kids on welfare couldn't pay.

For families above the welfare line, states assumed child support was a matter of private dispute connected with a divorce—not the public's business.

Only with the goading of the women's movement have governments recognized that child support is a public problem.

A political consensus is behind child-support reform today. Women's rights groups continue in the forefront. But now they're joined by conservative organizations which see a chance to cut the welfare rolls.

Says Wayne Dixon, author of a report on child support for the New Right-affiliated National Forum Foundation: "The federal legislation was needed; it is excellent and the feds have now done all they can in providing carrots and sticks."

Dixon praises the child-support record of a handful of states, including Pennsylvania, Michigan and Massachusetts. But on the whole, he charges, "The states are grossly understaffed and the legislatures haven't allocated enough money and staff."

Which raises the bottom-line question: Will the new federal legislation be enough to force positive state-level reform? Washington is serious about securing compliance and withholding states' AFDC funds if necessary, says David Smith of the federal Office of Child Support Enforcement in the Department of Health and Human Services.

Women's groups are more skeptical. State and local social-service agencies will likely face "an explosion" of child-support cases when women realize how easily they can now have their ex-mates' salaries attached, speculates staff attorney Nancy Polikoff at the Women's Legal Defense Fund. That may cost big new bucks, which legislatures will likely resist. Polikoff predicts outside advocates will have to sue some states to make them comply with the new federal law.

State governments are going to have to cope—in law, rules, money—with an issue they've long swept under the rug. The silver lining is that the tougher the states are, the more today's lawbreaking fathers will make their payments upfront, fully, as automatically as they pay taxes. With luck, enforcement costs can then drop again. And a climate of justice, that our society should have

had all along, will exist for the children of broken families.

EXHIBIT 3

[From the Washington Times, Aug. 14, 1986]

THE WORK ETHIC AND WELFARE

(By Allan C. Brownfield)

Despite the laws against discrimination and requirements for affirmative action, and other government programs to alleviate the effects of the racism of previous years, young black Americans have an unemployment rate which far exceeds that of other young people.

In 1983, a bare 45 percent of black men who were aged 16 to 21 and out of school were employed, whereas 73 percent of their white counterparts had jobs. In 1985, with the U.S. economy in full swing, only 36 percent of black male youths aged 18 and 19, and 60 percent of those aged 20 to 24 were employed, compared with 51 percent of 18- and 19-year-olds and 77 percent of 20- to 24-year-olds 15 years earlier. Nearly half of 16- to 24-year-old black men had no work experience at all in 1984. Even compared with European countries such as Britain or Belgium, joblessness among young black Americans is staggering—and shows no signs of improving.

Why is this? What can be done to improve the situation? Is "racism" the primary factor, as so many civil rights organizations argue?

To try to answer these questions, the National Bureau of Economic Research developed a survey to illustrate the lives on young, inner-city black men living in poverty areas of Boston, Chicago, and Philadelphia. The survey was conducted in 1979 and 1980, and the results—together with analyses of their meaning—have just been published in The Black Youth Employment Crisis, edited by Richard B. Freeman and Harry J. Holzer.

Mr. Freeman, director of the Labor Studies Program at NBER and professor of economics at Harvard University, and Mr. Holzer, assistant professor of economics at Michigan State and faculty research fellow at NBER, declare that, "In many respects, the urban unemployment characteristics of Third World countries appear to have taken root among black youths in the United States."

Perhaps the most important finding of the study was that there is no single cause of the problem and hence no single solution. Rather, joblessness among young black men is part of other social pathologies that go beyond the labor market, including youth crime, drug and alcohol abuse, and performance on the job, particularly absenteeism.

An important alternative to work for black youth is crime. In the NBER survey, 32 percent of the youths thought they could earn more from criminal "street" activity than from legitimate work. In fact, about one-fourth of all income reported by the inner-city black youth was from crime.

Perceptions of the riskiness of crime were also found to be a major factor in whether youths chose a legitimate job or criminal activity. Clearly, the increased leniency of law enforcement has increased criminal activity among the young inner-city residents.

The NBER study also found that youth joblessness is connected to a family's welfare status. Mr. Freeman reports that, "Black youths from welfare homes with the same family income and otherwise comparable to youths from non-welfare homes had a much worse experience in the job market. Youths living in public housing projects also did less well than youths living in private housing.

"Thus, the unemployment rate among 19- to 24-year-olds who received no public assistance and who did not live in public housing was 28 percent in 1979. Among those from families on welfare, the unemployment rate rose to 43.0 percent. And among those whose families who collected welfare and lived in public housing, the unemployment rate soard to 52 percent. Clearly, the current welfare system—lacking programs or incentives to promote employment—is doing nothing to correct joblessness."

Another finding was that youths from families in which other members worked tended to do better in the mob market. In an essay, Linda Datcher-Loury, assistant professor of economics at Tufts University, and Glenn C. Loury, professor of political economy at Harvard, note that, "The results obtained in this analysis indicate that a young man's subjective attitudes and ocupational aspirations have a large, significant effect on the hours they work."

It also was found that church-going and "good" attitudes or aspirations are important in enabling youths to take appropriate steps toward escaping poverty. Professors Freeman and Holzer point out that "churchgoing turned out to exert a significantly positive influence," as did possession of strong long-term career desires.

The wide differences between black and white youth employment have developed only in the past few decades. In 1954, nearly equal percentages of black and white youths were employed. Since, unemployment rates for black youth have soared. Among the factors which the study shows to have contributed to the deterioration of black youth employment: the growth of the female labor force, the rising number of welfare households, and the increasing willingness of youth to participate in crime.

It is clear that dependence upon welfare destroys the work ethnic. Robert Lerman, director of the Center for Human Resources at Brandeis University, writes that, "the findings make clear the importance of linkages between family characteristics, welfare programs, and the employment outcomes of young black men. Understanding how these interactions operate is essential for devising policies that can make a difference . . . . It may be . . . that family-centered policies—that raise job holding and family stability among black adults—are the best approach for improving the employment chances of black youth."

Evidently, the youths' attitudes toward school and work—not racism in the larger society—are the No. 1 problem. The authors persuasively argue that solutions which deal only with the labor market, and not with the family structure from which subjective attitudes are developed, are likely to fail. What is needed is an approach which rewards work, not crime, and a welfare system which provides an incentive for work, not indolence and dependency. Above all, efforts are needed to strengthen black family life.

Few who read this study will continue to propose many of the failed policies of the past, for now they will understand exactly why such policies bore so little fruit.

AMENDMENTS TO DECLARATION OF TAKING ACT

Mr. DURENBERGER. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 5363.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 5363) entitled "An Act to amend the interest provisions of the Declaration of Taking Act", with the following amendment:

Strike out all on page 1A of the Senate hand-engrossed amendment over to and including line 2 on page 3, and insert:

That the Act of February 26, 1931 (40 U.S.C. 258a through 258e), is amended—

(1) in the second paragraph of the first section by striking "interest at the rate of 6 per centum per annum", and inserting "interest in accordance with section 6 of this Act"; and

(2) by adding at the end the following:

"SEC. 6. Interest required to be paid under this Act shall be calculated by the district court as follows:

"(1) Where the period for which interest is owed does not exceed one year, interest shall be calculated for such period from the date of taking at an annual rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of 52 week United States Treasury bills settled immediately before the date of taking.

"(2) Where the period for which interest is owed is more than one year, interest for the first year shall be calculated in accordance with paragraph (1) and interest for each additional year shall be calculated on the combined amount of the principal (the amount by which the award of compensation exceeds the deposit referred to in the first section of this Act) and accrued interest at an annual rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of 52 week United States Treasury bills settled immediately before the beginning of each additional year.

The Director of the Administrative Office of the United States Courts shall distribute to all Federal courts notice of the rates described in paragraphs (1) and (2).".

Mr. DURENBERGER. Mr. President, I move to concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. COHEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MULTIPLE APPEAL DECISIONS WITH RESPECT TO THE SAME AGENCY ORDER

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar Order No. 1059, H.R. 439, dealing with the court of appeals.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 439) to amend title 28, United States Code, to provide for the selection of the court of appeals to decide multiple appeals filed with respect to the same agency order,

The PRESIDING OFFICER. Is there objection to the request of the Senator from Minnesota?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3490

(Purpose: To amend title 28 of the United States Code to provide that judges of the United States Claims Court shall continue in office after their 15-year term has expired if reappointed or until a successor takes office, and to provide that such judges receive the same Federal salaries as the judges of the United States Tax Court)

Mr. DURENBERGER. Mr. President, I send an amendment to the desk on behalf of Senator HATCH and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. DURENBERGER], on behalf of Mr. HATCH, proposes an amendment numbered 3490.

Mr. DURENBERGER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

At the appropriate place insert the following:

SEC. . Section 172 of title 28, United States Code, is amended to read as follows:

"§ 172. Tenure and salaries of judges

"(a) Each judge of the United States Claims Court shall be appointed for a term of 15 years. Any such judge so appointed may be reappointed and shall continue in office until his successor takes office.

"(b) Each such judge shall be compensated at the rate equal to the rate received by judges of the United States Tax Court.".

Mr. METZENBAUM. Mr. President, would the Senator from Minnesota be good enough to explain what the Hatch amendment is?

Mr. DURENBERGER. I would like to be good enough to do that.

[Laughter.]

Mr. METZENBAUM. Is this the salary matter for the Court of Claims judges?

Mr. DOLE. Yes.

Mr. DURENBERGER. I am informed that the Senator is correct in his assessment of the contents of the amendment.

Mr. METZENBAUM. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3490) was agreed to.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. COHEN. I move to lay that motion on the table.

The motion to lay on the table is agreed to.

Mr. METZENBAUM. Mr. President, may I have some assurance that the only thing in that amendment is the increase in salary for the members on the part of the judiciary and there is nothing more in the amendment?

Mr. DURENBERGER. Mr. President, I would say to my colleague from Ohio that I have been assured, at the time that I undertook this responsibility, that the Senator is correct in his assessment of the contents of all these amendments. They all relate to the pay issue with regard to the court of appeals.

Mr. METZENBAUM. Mr. President, I do not wish to provide any difficulty for the Senator from Minnesota, for whom I have the highest respect. But I wonder if he might put in a quorum call so that the Senator from Ohio might have a chance to go down the list.

Mr. DURENBERGER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. COHEN. I ask unanimous consent that the quorum call be rescinded.

The PRESIDING OFFICER. Without objecton, it is so ordered.

TRIBUTE TO SENATOR GARY HART

Mr. COHEN. Mr. President, this may be the last day that a close friend of mine will serve in this body.

I want to offer just a few words about what his service has meant to the Senate and to the country and what his friendship has meant to me.

First let me say that I will miss him because I'm afraid the press will stop knocking at my door to ask me: "What can you tell us about GARY HART? What's he really like? Do you think he's been successful? Does he have leadership qualities? What kind of President would he make? Can you give us some insights into the interior man?"

These are all important questions, and I have tried to provide some serious answers.

There are many tests of success in our occupation—I hesitate to use the word profession. For some, it may be the racking up of a long list of bills that bear their names. For others, it may be the passage of a single piece of legislation that leaves an indelible stamp upon the Congress or the country. For still others, it may consist of carrying the bacon home to their States or serving as ombudsman for their constituents—all may carry the stamp of success.

I think each of us has known the joy of helping a vulnerable constituent overcome an inequity and has shared in the fleeting glory of having an amendment or bill bear our name. The inner applause thumping in our hearts is gratifying, albeit momentary.

But I do not believe that GARY HART has ever been satisfied with just the ephemeral rewards we receive. He is a serious and high-minded man who cares deeply about the quality of the water we drink, the air we breathe, the quality of life we will provide for an aging society and that which we will leave as a legacy for our children and grandchildren.

Most of all, he thinks about the tough issues of how we preserve the peace by preparing for war. Indeed, he is justifiably concerned about whether we are capable of deterring the kinds of military conflicts that we are most likely to face in the future, and if deterrence fails whether we can hope to win them.

Not everyone will agree with his proposals for military reform or those for arms control and reductions. The measure of his success is not whether a majority on any given day agrees with him. The mark of his success is that he has forced us to challenge so many conventional and comfortable assumptions. Perhaps he knows the joys of a thinker or teacher—what Justice Holmes called the subtle rapture of a postponed power—what Justice Holmes called the subtle rapture of a postponed power—the knowledge that some of his thoughts will last well beyond his years. If so it is the kind of success that many of us would envy and few enjoy.

There is another standard of success that is important or, at least, should be important to all of us. And that is the question of manners, of civility, of how we conduct ourselves in conducting the Nation's business, of how we go about winning our legislative battles.

Adlai Stevenson once remarked that it is important to win, but it is more important to win without engaging in conduct that shows you're unworthy of winning. One thing that I have admired about Gary—even while disagreeing with him—is that he has never stooped to conquer. He has always kept the level of debate high, civil and responsible. In this respect, he is very much in the select company of former colleagues like Howard Baker and Abe Ribicoff.

Finally, on a personal note, I have had the extraordinary experience of slipping into the world of fiction with GARY. In the early morning hours of a day of legislative exhaustion—much

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like this one—6 years ago, we decided to explore questions about international terrorism, drug smuggling, espionage, the Kennedy assassination and the multidimensions of patriotism by writing a novel. It was a wonderful and rewarding adventure. I discovered a coauthor of many facets and delights.

Should Senator HART decide to pursue higher political aspirations, I wish him well. In the event he is unsuccessful in such an endeavor, I hope he would consider retiring to a Venetian villa. Perhaps then, we could find a way to bring Thomas Chandler and Elaine Dunham back from Moscow.

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

□ 2350

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. DURENBERGER. Mr. President, frankly, I am glad we were delayed on the adoption of my amendment. I enjoyed that a great deal. Among the people here in the Senate, probably no one has gotten to know GARY HART quite the way that our colleague from Maine has. I am glad I was here for those comments.

Mr. MOYNIHAN. Mr. President, will the Senator yield for a question?

Mr. DURENBERGER. Yes.

Mr. MOYNIHAN. The Senator from Maine mentioned his pleasure of having coauthorship with the Senator from Colorado. And the Senator also suggested that the Senator from Maine might continue to be an author. I feel honored on behalf of my friend to say that he has his newest treatise in a bound galley, and it will shortly be on sale. It has to do with the arms negotiations in Geneva. And there is a meticulously fine map of the city, and a listing of the persons involved.

Mr. COHEN. Mr. President, if the Senator will yield, as a matter of fact, I think the title of the novel is taken from one of the poems of Aechyles, which I am sure the Senator from New York has read.

Mr. MOYNIHAN. Indeed, I have.

Mr. DURENBERGER. Mr. President, to get back to something more mundane, I believe I have an amendment at the desk.

The PRESIDING OFFICER. The pending question is the motion to lay on the table the motion to reconsider the vote by which the prior amendment was agreed to.

Mr. BOSCHWITZ. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3491

Mr. DURENBERGER. Mr. President, I have an amendment at the desk on behalf of Senator DOLE, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. DURENBERGER] for Mr. DOLE, proposes an amendment numbered 3491.

Mr. DURENBERGER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new section:

Section 140 of Public Law 97-92, 95 Stat. 1183, 1200, is hereby repealed.

Mr. DURENBERGER. Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. Is there debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Kansas.

The amendment (No. 3491) was agreed to.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MATSUNAGA. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCONNELL. Mr. President, H.R. 439 is designed to simplify the procedure for selecting the proper forum when a Federal agency order is appealed in more than one Federal circuit court. The present law confers jurisdiction on the circuit where the appeal was first filed.

This first-to-file rule has had some very unseemly consequences. It has fostered sophisticated "races-to-the-courthouse" by attorneys who believe they will receive a more favorable ruling in the circuit of their choice. This belief by attorneys, whether true or not, damages the publics' perception of the Federal courts as impartial arbiters of justice.

The races are also not without their economic costs. Our courts are frequently tied up in an effort to determine where a certain appeal was first filed. Many times the petitions are filed at the exact same time and the courts have no way of knowing the proper forum to consolidate the appeal. Our courts have better things to do than act as finish-line judges and that is why I have pushed this legislation through the Judiciary Committee and onto the floor.

H.R. 439 would give all sides 10 days in which to appeal an agency's order. If more than one appeal was filed within that time, the judicial panel on multidistrict litigation would, by means of random selection, designate the circuit to consider the appeal from among the courts of appeals in which petitions for review had been filed.

The circuit court chosen by the judicial panel on multidistrict litigation to hear the appeal would continue to have the flexibility afforded by the doctrine of forum nonconveniens. If the court determines that, for the convenience of the parties and in the interest of justice the case should be transferred, it can transfer the appeal to a more appropriate forum.

H.R. 439 would remove the incentive for attorneys to race to the circuit of their choice. It would save their clients a lot of money and it would let the courts get back to their traditional role of resolving cases and controversies between litigants.

AMENDMENT NO. 3492

(Purpose: To provide for private relief in the case of Nabil Yaldo)

Mr. MATSUNAGA. Mr. President, I send two amendments to the desk on behalf of Senator LEVIN, and ask for their immediate consideration. I ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Hawaii [Mr. MATSUNAGA], for Mr. LEVIN, proposes an amendment numbered 3492, which is amended by adding at the appropriate place the following new section:

"In the administration of the Immigration and Nationality Act, the provisions of section 204(c) of that Act shall be inapplicable in the case of Nabil Yaldo."

AMENDMENT NO. 3493

(Purpose: To provide for the private relief of Hyong Cha Kim Kay)

The assistant legislative clerk read as follows:

The Senator from Hawaii [Mr. MATSUNAGA] for Mr. LEVIN, proposes an amendment numbered 3493, which is amended by adding at the appropriate place the following new section:

"Notwithstanding the provisions of section 212(a)(23) of the Immigration and Nationality Act, Hyong Cha Kim Kay may be issued a visa and admitted to the United States for permanent residence if she is found to be otherwise admissible under the provisions of that Act.

This exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice had knowledge prior to the date of the enactment of this Act."

The PRESIDING OFFICER. Is there debate on the amendments? If not, the question is on agreeing to the amendments of the Senator from Michigan.

The amendments (No. 3492 and 3493) were agreed to.

Mr. MATSUNAGA. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

Mr. DURENBERGER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 439), as amended, was passed.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

MEMORIAL TO THE AMERICAN ARMORED FORCE

Mr. THURMOND. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on Senate Joint Resolution 43.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the resolution from the Senate (S.J. Res. 43) entitled "An Act to authorize the Armored Force Monument Committee, the United States Armor Association, the World Wars Tank Corps Association, the Veterans of the Battle of the Bulge, the 11th Armored Cavalry Regiment Association, the Tank Destroyer Association, the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, and 16th Armored Division Associations, and the Council of Armored Division Associations jointly to erect a memorial to the "American Armored Force" on United States Government property in Arlington, Virginia, and for other purposes," do pass with the following amendments:

Strike out all after the resolving clause, and insert:

SECTION 1. ESTABLISHMENT OF MEMORIAL.

(a) GENERAL.—Subject to subsection (c), the organizations specified in subsection (b) are authorized jointly to establish a memorial on Federal land in the District of Columbia or its environs to honor members of the American Armored Force who have served in armored units. The memorial shall commemorate the exceptional professionalism of the members of the American Armored Force and their efforts to maintain peace worldwide.

(b) ORGANIZATIONS.—The organizations referred to in subsection (a) are: the Armored Force Monument Committee, the United States Armor Association, the United States Field Artillery Association, the World Wars Tank Corps Association, the Veterans of the Battle of the Bulge, the 11th Armored Cavalry Regiment Association, the Tank Destroyer Association, the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, and 16th Armored Division Associations, the Council of Armored Division Associations, and the National Association of Uniformed Services.

(c) STANDARDS.—The memorial shall be established in accordance with the standards set forth in H.R. 4378, as passed by the Senate with amendments on September 10, 1986, and further amended by the House of Representatives on September 29, 1986, except that section 6(b)(1) of H.R. 4378 shall not apply to the memorial.

SEC. 2. PAYMENT OF EXPENSES.

The United States shall not pay any expense of establishment of the memorial.

Amend the title so as to read: "Joint resolution authorizing establishment of a memorial to honor the American Armored Force.".

Mr. McCLURE. Mr. President, the Congress has recently approved legislation (H.R. 4378) which establishes guidelines for commemorative works to be located on Federal land in the District of Columbia and its environs. That legislation provides that military memorials shall only be established to honor branches of the service—that is, Army, Navy, Air Force, Marine Corps, Coast Guard, and Merchant Marine—or wars or major conflicts. Absent such criteria, there would be a potential for hundreds of requests for memorials to subdivisions of the military.

Mr. President, there may be as few as 50 sites remaining for future commemorative works in Washington, DC. I believe it is impossible for the Congress to choose among worthy military units when we have such a limited amount of space remaining in the Nation's Capital. The National Capital Memorial Advisory Committee, an advisory panel to the Secretary of the Interior, recommends that memorials to military units be located in the areas where they were headquartered.

Mr. President, I note that today the Senate will approve Senate Joint Resolution 43, to establish a memorial to the American Armored Force in the Nation's Capital. Certainly our tank forces have served this country well and are most deserving of national recognition. I must state, however, that such a memorial does not meet the criteria established for military monuments in the memorial policy legislation. The reason we are approving Senate Joint Resolution 43 today is because it has passed the Senate twice before, once in the 98th Congress and also in September 1985. This project was approved by the Senate 6-months prior to introduction of the memorial policy legislation. Consequently, I believe it is equitable and appropriate to authorize a memorial to the American Armored Force at this time. Passage of this legislation, however, should not be considered a precedent for other military units wishing to establish monuments in Washington, DC. Those groups should be encouraged to honor their own in the areas where they were based.

Mr. President, I want to make it clear that while the memorial policy legislation provides limitations on the kinds of memorials which may be established, it also ensures that every individual who has served in a branch of the Armed Forces of the United States may be honored with a memorial in Washington, DC, and that those involved in combat can receive special recognition.

Mr. THURMOND. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. Is there objection to the motion?

Mr. METZENBAUM. Mr. President, reserving the right to object, I am sure I will not, I did not hear the Senator from South Carolina describe this. What is this?

Mr. THURMOND. This is a memorial to the American Armored Force in the Nation's Capital. The House has already passed it. There is no objection as I understand it.

Mr. METZENBAUM. I have no objection. I thank the Senator from South Carolina.

The PRESIDING OFFICER. Is there objection to the motion?

The motion was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. MATSUNAGA. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. THURMOND. Mr. President, I move that the Senate concur in the House amendment to the title.

The motion was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. MATSUNAGA. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

PUBLIC THANKS TO SENATOR METZENBAUM'S STAFF

Mr. METZENBAUM. Mr. President, I rise to take a couple of minutes to publicly speak about my own staff.

I know everyone around here relies to a great extent on their staff. I particularly do.

I am frank to say that I could not do what I do without them.

Jim Brudney, my labor counsel, made the age discrimination bill possible. It may be of interest to my colleagues to know that the bill was passed last night somewhere around 2:30 in the morning.

I do not think Senator HEINZ or myself, who are coauthors, were on the floor at the time. There is not much doubt about the fact that his dogged pursuit of a compromise actually saved that bill's very existence.

It bears his imprint, as does the sheltered workshop bill, and the senior citizens and blind and disabled of this country will be able to reach their full potential as a result of his efforts in seeing to it that there is no arbitrary provision making people retire merely by reason of their having obtained a particular age.

□ 2400

Another one of my staff, Eddie Corriea, of my judiciary staff, has done an incredible job on RICO, the drug bill, the pesticide law, and the plain fact is there would not be any RICO bill without Eddie's work.

James Wagoner has been a one man strike force against the drug export bill. Few will know how his work has helped literally save thousands of lives in the Third World. Even as late as tonight he was working to bring about a satisfactory conclusion with respect to that matter. As we all know, that matter has not become law and will not become law in this session.

Joel Johnson, a new father, married another one of the members of my staff. He is also father of the infant formula bill which will do so much to improve the health of newborn babies.

Linda Green, who only came onto my staff some months ago, seems to know every civil rights law ever written and every court decision on those laws. She came on my staff some months ago and has made a great contribution by reason of her being with us.

Dick Woodruff, who handles transportation issues, did so much to help indentify the deficiencies in the Conrail deal. His work has saved the taxpayers hundreds of millions of dollars.

Evelyn Bonder authored an important bill on Alzheimer's research which is very close to becoming law this year, and if it does not become law this year, I feel certain it will become law next year. The elderly and the hungry have no greater champion.

David Starr, some have described as being on my staff merely to dig out new tax loopholes to which we might object. Some have suggested he is on a bonus arrangement for each loophole that he finds. David has done a superb job. Not only does he know the laws as well as anyone; he is a master of pension law. When LTV retirees receive their health and life insurance benefits, each payment should carry a footnote of thanks to David Starr.

Ellen Bloom may handle more issues than anyone on my staff. When working Americans are in trouble or consumers need some protection, Ellen Bloom is at my office door with an idea to help them out in a hundred different ways.

Bob Roach is my enthusiastic, energetic energy legislative assistant who has boundless energy and enthusiasm on countless complex issues which I am frank to say I would not be able to understand without his help, whether the issue has to do with uranium enrichment or Price Anderson or military lands. He has protected the taxpayers and the environment.

Cheryl Birdsall has been with me a good many years. She handles education issues. She recently helped untangle a thorny problem with the higher education bill. Her work means so much to our children and their future.

Then those who have left my staff: Peter Harris, my administrative assistant, who was willing to work untold hours with a sense of dedication and devotion that is incomparable. Without him I could not do it.

Doug Lowenstein, chief of the legislative staff, who gives a sense of dedication, determination, and devotion to the problems that existed in my office and the legislative responsibilities, and I am everlastingly grateful to both of those.

Finally, Anthony just began handling public land issues. As a quick study, he has already saved the taxpayer money and protected them on environmental issues.

I want to thank all of you. I do not think there is a sharper, more dedicated, greater legislative staff in Congress. I know that the hour is past 12 midnight and tonight like so many other nights you are in the office attending to your responsibilities. I know that you are in early and I know that you stay late. You all have my deep gratitude.

One last special note of appreciation to the Democratic floor staff because the Democratic floor staff, day in the day out, is there to help every Member on this side. They attend to our concerns. They look out for our problems. I am everlastingly grateful to them. Without them it would just be impossible to do.

Mr. President, I thank my colleagues for bearing with me while I took a few moments to express my appreciation for my own staff.

PROVIDING FOR A LAND EXCHANGE IN THE STATE OF ALASKA

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate now turn to H.R. 5730, the Haida land bill, which has been received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5730) to provide for a land exchange in the State of Alaska.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. STEVENS. Mr. President, I commend the efforts of my colleagues from Alaska, Senator MURKOWSKI and Representative DON YOUNG, on H.R. 5730, the Haida land exchange bill. This bill is a fair compromise, which addresses the legitimate needs of the Haida people and furthers the interests of the Federal Government in southeast Alaska.

H.R. 5353, as amended by the Senate, authorizes the appropriation of funds for the purchase of Goat Island from Haida Corp. Unfortunately, we were not able to secure such an appropriation in the fiscal year 1987 interior appropriations bill. I want to assure the Haida people, however, that I will pursue the necessary appropriation in the fiscal year 1988 appropriations process, and I hope that my friends, the distinguished chairman of the Interior Appropriations Subcommittee and Senator JOHNSTON, will support my efforts. H.R. 5730 is identical to H.R. 5353 as amended by the Senate.

Mr. McCLURE. Mr. President, I understand the concern expressed by my colleague from Alaska, and I will certainly work closely with him next year to protect the interests of the Haida people and the United States.

Mr. JOHNSTON. Mr. President, I concur with the comments made by my colleague from Idaho, and I certainly intend to work with him and Senator STEVENS to accommodate the needs of the Haida people next year.

Mr. MURKOWSKI. Mr. President, I rise today in strong support of this bill. It was passed in the House of Representatives on September 30 on the suspension calendar. What the bill would do is authorize the Forest Service to enter into a land exchange in my State with a small native village corporation, called the Haida Corp. It would also permit the sale of some of the corporation's land.

In order to obtain legislation this year, every conceivable item of controversy has been eliminated from the bill. The timber industry, the environmental community and the State of Alaska are apprised of the bill's particulars, and their concerns have been met. Extensive hearings have been held in Congress, and negotiations have been conducted with the Forest Service and other interested parties

both here and in the State. The Forest Service also endorses the legislation.

As introduced, the bill included a land exchange by which the Haidas could obtain valuable timber lands which had once been part of their traditional territory. But due to objections from the Forest Service and conflicting interests of the timber industry and environmentalists, and in light of the pressing need to get these people legislation this year, that section was eliminated. The bill now leaves for another day what lands the Haidas might obtain to complete their ANCSA entitlement and provide them with a future. The value for the land to be acquired was determined through negotiation with the Forest Service and meets with Forest Service approval.

These people have suffered greatly from the decline of the fishing industry and the crash in the timber market. The land they received under ANSCA had marginal commercial timber value to start with, and the disastrous drop in timber prices in recent years has made much of it of little value today for timber harvesting purposes. There was considerable delay on the Government's part in conveying the Haidas their land. This delay greatly exacerbated the problem of the falling timber prices.

It is critical that the Haidas obtain legislation this year which permits them to sell some of their lands. Such legislation is the only feasible way they can reorganize in chapter 11 and avoid liquidation. At present, they are facing a December 31 deadline of this year by which time they must file a satisfactory plan of reorganization or face foreclosure.

I should mention that for hundreds of years the Haidas had claim to the richest timberland in the entire State. But due to technicalities in ANCSA, including the particulars of how the village of Hydaburg was surveyed, and the fact the Government moved these people from their traditional villages to a new site, their traditional timber rich lands were not available to them. The Haidas stand today on the brink of complete liquidation. This bill will allow them to survive and accommodates the interests of every conceivable interested party. I commend the efforts of all those involved in working to produce this legislation. I urge support of this legislation.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on third reading.

The bill (H.R. 5730) was ordered to a third reading, read the third time, and passed.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MATSUNAGA. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I thank my good friend for clearing this bill.

TECHNICAL CORRECTIONS IN THE ENROLLMENT OF H.R. 3838—TAX REFORM ACT OF 1986

Mr. PACKWOOD. Mr. President, I believe we are now prepared to turn to the concurrent resolution.

Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on House Concurrent Resolution 395.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendments of the Senate to the resolution (H. Con. Res. 395) entitled "Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 3838", with the following amendments:

(1) Page 2, line 8, at the end of the matter inserted by the Senate amendment, insert:

(QQ) Springville Mill Project, Rockville, Connecticut.

(2) Strike out the proposed paragraphs (295), (297), (305), (310), (319), (320), (322), (326), (343), and (350) and redesignate the other paragraphs accordingly.

(3) Strike out the proposed paragraph (301) and insert the following:

(301) On page 124, in paragraph (1) of subsection (k) (relating to application of at-risk rules), strike out "qualified basis" and insert "eligible basis".

(4) Page 23, after line 15, insert:

(369) On page 83, in subparagraph (S)—

(A) strike out "placed in service" and insert in lieu thereof "to be placed in service", and

(B) strike out "Company" and insert in lieu thereof "Company, or its subsidiaries,".

(370) On page 627, in subparagraph (W) strike out "$225,000,000" and insert in lieu thereof "$25,000,000".

(371) On page 83, in subparagraph (X) strike out "the home rule city and the State housing finance agency adopted inducement resolutions on December 20, 1985" and inserting in lieu thereof "the home rule city on December 4, 1985, and the State housing finance agency on December 20, 1985, adopted inducement resolutions".

(372) On page 381, immediately before subsection (e) (relating to effective dates) insert the following:

"(5) Sections 414(m)(4)(A) and 414(n)(3)(A) are each amended by striking out "and (16)" and inserting in lieu thereof "(16), (17), and (26)"."

On page 614, in paragraph (2) of subsection (d) insert before the period "and if section 1313(b)(5) of this Act does not apply to any bond issued with respect to such facility or purposes".

On page 660, in paragraph (50) (relating to certain additional projects), as redesignated by this resolution, strike out "Section 141(a)" and insert in lieu thereof "Section 141(b)".

On page 660, in paragraph (51) (relating to transition bonds subject to certain rules), as redesignated by this resolution, strike out "section 148 and subsection (d) and (g) of section 149" and insert in lieu thereof "sections 147(g), 148, and 149(d)".

On page 8 of the House Concurrent Resolution, strike out "$720,000" and insert in lieu thereof "$7,200,000".

On page 63 of the House Concurrent Resolution—

(A) strike out "with respect to" in line 13 and insert in lieu thereof "with respect to current",

(B) strike out "issued before 1992" in line 14, and

(C) strike out "Section 146 of the 1986 Code and the last" in line 23 and insert in lieu thereof "The last".

(5) Section 558 of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new subsection:

"(e) SPECIAL RULES.—

"(2) In the case of an employer who entered into a collective bargaining agreement—

"(A) which was effective on April 1, 1979, and which remained in effect through June 5, 1982, and

"(B) under which contributions to the multiemployer plan were to cease on June 5, 1982,

"(C) of an employer incorporated in the State of Ohio August 16, 1962.

Subsection (a)(1) shall be applied by substituting June 12, 1982' for 'September 26, 1980'.

Resolved, That the House disagree to the following amendments of the Senate:

(A) the amendment beginning on line 2 of page 1A of the Senate amendments,

(B) the amendment beginning on line 7 of page 3 of the Senate amendments,

(C) the amendment beginning on line 16 of page 4 of the Senate amendments,

(D) the amendment beginning on line 4 of page 5 of the Senate amendments,

(E) the amendment beginning on line 8 of page 5 of the Senate amendments, and

(F) the amendment beginning on line 9 of page 7 of the Senate amendments.

Mr. PACKWOOD. Mr. President, I ask unanimous consent to dispose of the amendments of the House in the following fashion: The Senate concur in amendments 1 and 3; recede from its amendment referred to on page 5F; disagree to House amendment No. 5; insist on Senate amendments referred to on page 5(A), 5(B), and 5(C).

I further ask unanimous consent that the Senate recede and concur with an amendment to the Senate amendment referred to on 5(D), as follows, which I send to the desk.

AMENDMENT NO. 3494

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. PACKWOOD] proposes an amendment numbered 3494.

On page 5(D)

In lieu of the matter proposed, insert the following:

On page 62, beginning with line 21, strike through page 63, line 6.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3494) was agreed to.

Mr. METZENBAUM. Mr. President, the Senator from Oregon and I have discussed this. I believe this totally reflects the various matters we have discussed heretofore and I think matters which have been cleared by staff. I think pretty much it also goes back to the same position that we were in before when this went back to the House the first time.

Mr. PACKWOOD. It went back to the same position, exactly as the Senator from Ohio stated it.

Mr. METZENBAUM. I thank the Senator.

AMENDMENT NO. 3495

Mr. PACKWOOD. Recede and concur with an amendment to the Senate amendment referred to on page 5(D), as follows:

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. PACKWOOD] proposes an amendment numbered 3495.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter proposed, insert the following:

On page 71, strike lines 4 through 7 and insert:

"(243) On page 76, in paragraph (11) (relating to certain aircraft)—

(A) strike "Kansas, Florida, Georgia, or Texas" in subparagraph (A) and insert "the United States";

(B) strike ", the date of conference committee action)" in subparagraph (C) and insert:

(C) strike subparagraph (C) and insert:

(C) The aircraft is—

(i) purchased on or after August 16, 1986, and before January 1, 1987, or

(ii) is subject to a binding contract which was in effect on August 16, 1986, or entered into on or after August 16, 1986, and before January 1, 1987, and

is delivered and placed in service pursuant to such purchase or contract bfore July 1, 1987.

Any airplane which is one of 7 airplanes with respect to which an airline signed an airplane purchase agreement on January 20, 1986 (with respect to which the financing contingency was removed no later February 7, 1986), the estimated cost of which is $2,900,000 and which was delivered before May 23, 1986, and placed in service by May 27, 1986, shall be treated as described in this paragraph.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3495) was agreed to.

AMENDMENT NO. 3496

Mr. PACKWOOD. Mr. President, I further ask that the Senate concur in the House amendment No. 2 with an amendment, as follows:

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. PACKWOOD] proposes an amendment numbered 3496.

In lieu of the matter proposed insert the following:

Strike out the proposed paragraphs (297) and (305).

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3496) was agreed to .

AMENDMENT NO. 3497

Mr. PACKWOOD. Mr. President, I ask that the Senate concur in the House amendment No. 4 with an amendment, as follows:

The PRESIDING OFFICER. The clerk will report.

□ 0010

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. PACKWOOD] proposes an amendment numbered 3497.

Mr. PACKWOOD. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Add at the end of the matter proposed to be inserted by the House amendment (4) the following:

( ) On page 315, in paragraph (3) (relating to transitional rules) add the following new subparagraphs:

(W) South Carolina Family Farm Development Authority with respect to obligations the aggregate amount of which shall not exceed $10,000,000 issued on or before December 31, 1989.

(X) Clemson University Continuing Education and the Component Housing Project.

( ) On page 617, insert between the 5th and 4th lines from the bottom of the page, the following flush language:

"The provisions of this paragraph shall not apply to any bond issued after December 31, 1990."

( ) On page 73 of the House Concurrent Resolution, strike "a 150,000 square foot office building which is projected to cost" and insert "the Eastman Place project and office building in Rochester, New York, which is projected to cost up to".

AMENDMENT NO. 3498

(Purpose: To amend section 408 of the Federal Aviation Act of 1958 to ensure fair treatment of airline employees in airline mergers and similar transactions)

Mr. MOYNIHAN. Mr. President, I send an amendment in the second degree to the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. MOYNIHAN], for himself and Mr. PACKWOOD, proposes an amendment numbered 3498 to amendment No. 3497.

At the end of the amendment, insert the following new section:

SEC. . (a) Section 408 of the Federal Aviation Act of 1958 (49 U.S.C. App., 1378) is amended by adding at the end the following new subsection:

"FAIR TREATMENT OF EMPLOYEES

"(g) In any case in which the Secretary determines that the transaction which is the subject of the application would tend to cause reduction in employment, or to adversely affect the wages and working conditions including the seniority of any air carrier employees, labor protective provisions calculated to mitigate such adverse consequences, including procedures culminating in binding arbitration, if necessary, shall be imposed by the Secretary as a condition of approval, unless the Secretary finds that the projected costs of protection would exceed the anticipated financial benefits of the transaction. The proponents of the transaction shall bear the burden of proving there will be no adverse employment consequences or that projected costs of protection would be excessive.".

(b) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 408. Consolidation, merger, and acquisition of control."

is amended by adding at the end the following:

"(g) Fair treatment of employees.".

Mr. MOYNIHAN. Mr. President, this is an amendment to ensure fair treatment of airline employees in airline mergers, requiring equitable treatment in integration of seniority lists, or where an employee loses his job or his wages are reduced as a result of the merger and the arbitration of disputes arising from labor-protection provisions.

I send the amendment to the desk for myself and Mr. PACKWOOD.

The PRESIDING OFFICER. The Chair, in his capacity as the Senator from Missouri, suggests the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I hope the Senate will not be in much longer. After all, the Senate is going to be back in tomorrow. There are so few Senators around. I know that Senators are in need of rest and the staff is in need of rest. If the Senate were not going to be in tomorrow, it would be a different thing, but the majority leader has said we will be in and I hope we will complete action on this measure soon and go out.

I suggest the absence of a quorum.

Mr. PACKWOOD. Mr. President, will the Senator withhold?

Mr. BYRD. I withhold.

Mr. PACKWOOD. I say to the minority leader, as soon as the Moynihan amendment is settled one way or the other, that is the last of it.

Mr. ARMSTRONG. Mr. President, for the benefit of the minority leader, I might mention that a number of us have been waiting patiently and do expect to offer a resolution which I do not expect to be controversial. A number of Members have been waiting patiently to speak who will not be here tomorrow.

Mr. BYRD. I hope the resolution is cleared.

Mr. ARMSTRONG. I understand it is cleared at this point and as soon as the amendment of the Senator from Oregon is taken care of, we shall call it up.

Mr. BIDEN. Mr. President, is it appropriate to ask unanimous consent—I am not asking for it—to temporarily set aside the measure we are considering for 3 minutes for the purpose of taking up and passing the resolution of which the Senator from Colorado speaks? I make that unanimous-consent request.

Mr. ARMSTRONG. Mr. President, that would be fine with me, but it is going to take longer than 3 minutes.

Mr. BIDEN. I withdraw the request.

Mr. ARMSTRONG. There are several people who wish to speak and who think it is important enough that the issue be laid out to make a record.

Mr. PACKWOOD. Mr. President, I support the amendment of the Senator from New York very strongly, but there has been objection offered to it and it has been indicated there would be no more rollcall votes. If this were pushed, it would require a vote. As strongly as I do support it, I feel the bill cannot go anyplace as long as the amendment is left on it.

Mr. MOYNIHAN. Mr. President, in the circumstances, it having been announced that there will be no more rollcall votes, I do withdraw the amendment reluctantly.

The PRESIDING OFFICER. The Senator has that right.

The amendment (No. 3498) was withdrawn.

Mr. PACKWOOD. Mr. President, I have a series of different colloquies involving the tax bill which have been cleared on both sides. I ask unanimous consent that the colloquies be entered into the RECORD as if given.

PRESIDING OFFICER. Without objection, it is ordered.

GENERAL AVIATION TRANSITION RULE

Mr. ROTH. Mr. President, the Packwood amendment to House Concurrent Resolution 395 would have that provision dealing with new airplanes with 19 or fewer passenger seats contained in sec. 204(a)(11) of the enrolled tax bill (H.R 3838) apply to all such airplanes "manufactured at the point of final assembly in the United States".

I have a question I would like to pose to the distinguished manager of the resolution. Is it his understanding that the expression "manufactured at the point of final assembly" would apply to airplanes initially constructed overseas to which firms located in my State add 10 percent or more value through the installation or completion of: a portion of the avionics; interior finishing process including seats, tables or carpeting; inside or outside lighting; exterior painting; and windows and their component parts?

Mr. PACKWOOD. Yes, that is my understanding. I want to make it clear that this does not mean that a foreign manufacturer could simply fly a completed airplane to the United States, tighten some screws, and claim that the "point of final assembly" for the aircraft is in the United States. What we have in mind with this rule is that at least 10 percent of the value of the airplane must be added in the United States.

Mr. BUMPERS. May I ask the chairman whether this 10 percent value added must all be added at the "point of final assembly" or whether some of this U.S. value may be added through U.S. suppliers? For example, I understand that certain aircraft manufacturers use U.S.-made engines, but these engines are first flown to manufacturing facilities abroad to be attached to the airplanes. The airplanes then are flown to the United States where more U.S. value is added at the point of final assembly. The result is that substantially more than 10 percent of the value added and domestic content of the airplanes made by these companies is from U.S. workers at the point of final assembly and from U.S. suppliers in many States at many points in the assembly process. My question is whether this meets the requirement that 10 percent of the value added be in the United States.

Mr. PACKWOOD. My answer is yes. It makes no difference whether all the 10 percent U.S. value added is added at the "point of final assembly" or whether some of it is added to the airplane earlier in the manufacturing process, as for example, by the installation of U.S.-made engines during the assembly done abroad.

Mr. BOREN. Mr. President, I am very pleased that a transition rule of significant help to the economic development of eastern Oklahoma was included in this concurrent resolution. It was intended that it be originally included in the text of H.R. 3838. Oklahoma industries has been planning for a long time to undertake this project using tax exempt bonds in order to qualify for lower cost financing as a part of an urban development action grant. This new chicken processing plant would provide 800 jobs for Le Flore county which is suffering from severe unemployment. The grant process has been held up because of the indecision surrounding this tax exemption. I appreciate the assistance of the chairman in helping to clear up this matter. This action will be good news to eastern Oklahoma and to so many who want a chance to work and support their families in these very difficult times in our State.

There is a second provision in this concurrent resolution of importance to Oklahoma, the expansion of the ITC exemption for aircraft assembled in Oklahoma City. My colleague from Arkansas, Mr. BUMPERS, has explained the general purpose of this modification and I am delighted that the Oklahoma facility where British Aerospace assembles its planes has been included.

Specifically, British Aerospace has a facility in Oklahoma City, operated by AAR, where it prepares airplanes for final delivery including modifying planes for customers, installing air conditioning and baggage parts and painting the aircraft. In addition, the planes assembled there use U.S. engines manufactured by Garret Turbine Engine Co. in Arizona.

This Oklahoma facility is a "point of final assembly" within the meaning of the transition rule and substantially more than 10 percent of the value of the aircraft comes from U.S. suppliers, the Garrett and U.S. labor at the AAR facility. In short, by extending the reach of this transition rule to all 50 States, the chairman of the Finance Committee has extended the rule to include the airplanes assembled at the Oklahoma City facility for British Aerospace.

Mr. LAUTENBERG. Mr. President, I would like to address a question to the distinguished chairman of the Finance Committee dealing with a matter we discussed earlier this week.

It deals with what I consider a real and obvious unfairness in the measure before us. It has to do with certain transition rules for the investment tax credit. What we have are three U.S. shipping firms. They will compete in the exact same market—the Japan-United States auto trade. Each firm has a contract to purchase new car carrying ships.

I discussed with the chairman an amendment I intended to offer that would make sure that each firm would get the same transition relief. The amendment related to the Japan-United States auto trade. The Japanese have exported millions of automobiles to the United States. They use some 80 to 90 ocean going vessels to ship those cars. But, the Japanese never used United States-flag ships. One third of those vessels have been Japanese-flag ships. The rest have been flags of convenience. But, never U.S. flags.

Then, Mr. President, the Congress brought pressure. And the Japanese

Government, and the Japanese automakers responded. The automakers agreed to use four U.S.-flag ships. That's a modest concession, when you consider that they use 20 times that many ships. But, it was a welcome concession. It means an important toehold in a major market. It means jobs for U.S. merchant seamen. And, by breathing life into the U.S. merchant marine, it means enhanced U.S. national security.

Those four U.S.-flag ships are being built now. They're being built pursuant to contracts with three U.S. shipping firms. Two of the ships are being built for Central Gulf Corp. of New Orleans. One is being built for Maritime Overseas Corp. of New York. And one is being built for Marine Transport Lines of New Jersey.

The ITC for Central Gulf's ships is protected by H.R. 3838. The ITC for Maritime Overseas' ship would be protected by the resolution before us. But, the ITC for Marine Transport would not be protected.

That's unfair. There are three firms, in the identical situation. They will all compete in the same market. If preserving the ITC makes sense for one, it makes sense for all.

If we impair the ability of one firm to compete, we risk undermining our efforts to open up a market with the Japanese. We risk undermining our own credibility.

The fact is that without the ITC, operation by MTL will be uneconomic. It might be forced to back out of its contract. If that happened, the United States would be embarrassed and we would be handing the Japanese an excuse to turn away from United States shipping firms.

Mr. President, the problem is that the Finance Committee staff says that they were never made aware of the need for transition relief for Marine Transport. I, for one, was not contacted by representatives for the shipping firm until last week. They relied upon contacts they made on the House side. The union, which wants the jobs, made their own efforts in the Senate and the House.

The bottom line is that the chairman considers this a new item. And, as I understand the chairman, there are many other Senators with new items. If he opens the door for one, he would feel compelled to open the door for others. If he amends his unanimous-consent agreement to allow an amendment to add one, he would have to amend it to allow amendments for others. There is no time for that. The concurrent resolution would die, and many necessary, clarifying changes of a technical nature would die with it.

Mr. President, I do not intend to kill the resolution. However, I would like to put my concern on the record and to seek a response from the chairman.

Mr. PACKWOOD. Mr. President, the Senator from New Jersey is right. We simply cannot accommodate his amendment, without opening the door to others. However, as we have discussed this matter privately, I do want to say that he raises a justified complaint. There is no fair reason why one of the four ships should be denied relief granted to the remaining three. It puts the shipping firm at a competitive disadvantage. I certainly would not want to impair our efforts to get more U.S.-flag vessels in the Japan-United States auto trade. For that reason, I want to say to the Senator from New Jersey that I look forward to working with him next year to address his concerns.

Mr. LAUTENBERG. Mr. President, I thank the chairman. I regret that this matter was not brought to our attention earlier, so that it might have been included this year. But, I accept his commitment to address the matter next year, and I look forward to working with him to ensure that all three competitors are treated the same.

Mr. President, for the sake of the record, I ask unanimous consent that certain documents pertaining to this matter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION,
Washington, DC, October 14, 1986.

Hon. FRANK R. LAUTENBERG, U.S. SENATE,
Senate Hart Office Building,
Washington, DC.

DEAR SENATOR LAUTENBERG: I want you to know that you have MEBA's wholehearted support in your endeavor to correct an oversight in the tax reform bill in regard to transitional rules for car carrier contracts.

The Marine Engineers' Beneficial Association has been at the forefront in efforts to persuade the Japanese automobile manufacturers and the Japanese government to employ a reasonable number of United States-flag vehicle carriers in the important Japan/United States automobile trade. Although the United States is the most important market for Japanese automobiles, it has provided no employment for American seamen. This has taken place despite the fact that we permit more than 2.3 million Japanese automobiles to arrive in the U.S. annually—*all* on Japanese-controlled car carriers.

Three Japanese automobile manufacturers have agreed to charter four United States-flag vehicle carriers for this trade. This is nothing short of a revolution in Japanese trade practices, but it also signifies that we are able now to offer service every bit as efficient as one of our major foreign competitors. Each of the four charters was negotiated during 1985, and charter contracts and construction contracts were consummated before July 31, 1986. The companies—Central Gulf Lines of New Orleans, Louisiana; Maritime Overseas Corporation of New York, New York; and Marine Transport Lines of Secaucus, New Jersey—assumed the availability of the investment tax credit in working out the charter rates and the financing.

Because of an apparent oversight, the transition rules and the concurrent resolution to correct oversights, which passed the House of Representatives, includes only three of these vessels—even though they are all similarly situated and they all need the transition rule relief. The carrier contract for Marine Transport Lines was omitted. The consequences of omitting one vessel could adversely impact the American Merchant Marine and render the omitted vessel uneconomic in a very competitive market.

As matters now stand only three of the four vessels are included in the transition rule and in the Concurrent Resolution (H. Con. Res. 395) to correct technical errors in the enrollment of H.R. 3838. The Conference Report to accompany H.R. 3838 (Page I-79) includes only two vessels. The House concurrent resolution adds one additional vessel.

I strongly support your efforts to correct this oversight by including the fourth vessel in the concurrent resolution to correct technical errors that is now before the Senate. Your amendment is essential for badly needed jobs in our merchant fleet. It is important as well in the interest of fairness to all U.S.-flag carriers about to enter this new market.

With kind personal regards.

Sincerely,

C.E. DEFRIES,
President.

KURRUS & KIRCHNER,
Washington, DC, October 7, 1986.

Hon. FRANK R. LAUTENBERG,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR LAUTENBERG: As the attorney for Marine Transport Lines, Inc. (MTL), which has its headquarters in Secaucus, New Jersey, I should like to call to your attention a gross inequity that now exists in the transition rules to accompany the Tax Reform Act, and to request your assistance. MTL is a United States shipping company which owns or operates more than 50 ships in various bulk trades in international oceanborne commerce.

The transition rule that affects MTL would preserve the investment tax credit for certain United States-flag vehicle carriers, for which construction contracts and charters were negotiated during 1985 and concluded prior to June 1986. During that period, three Japanese automobile manufacturers agreed to charter four United States-flag carriers for use in the Japan/United States automobile trade. MTL had the honor of being the first United States company selected by a Japanese automobile manufacturer.

The contracts that were concluded for the MTL vessel were the result of more than one year of planning and effort. This agreement by the Japanese automobile manufacturers to charter four United States-flag vessels repesented a significant breakthrough. Even though the United States is the largest market for Japanese automobiles and the United States consumer pays the cost of transportation, the Japanese automobile manufacturers, who control the routing and choice of ocean carriers, had never previously agreed to employ a United States-flag vehicle carrier in this.

Because of an apparent oversight at the staff level, the transition rules and the concurrent resolution to correct oversights, which passed the House of Representatives, includes only three of these vessels—even

though they are all similarly situated and they all need the transition rule relief. Ironically, even though MTL was the pioneer in this effort, the MTL vessel was the one omitted. The consequences of omitting one vessel could be damaging to the American Merchant Marine and render the omitted vessel uneconomic in a very competitive market. This inequity should not be left for technical correction by the next Congress. Let me undertake to explain why the case is *sui generis.*

During 1985, three American companies (MTL, Central Gulf Corp. and Maritime Overseas Corp.) negotiated independently with individual Japanese automobile manufacturers for the construction and charter of four new vehicle carriers to be registered under the United States flag. Because this was considered a breakthrough for the American Merchant Marine, the companies were willing to negotiate contracts that were only marginally profitable. In order to obtain the vessel financing, each company was required to guarantee the availability of the investment tax credit that existed under the Internal Revenue Act at this time. The availability of the ITC was considered essential to the economic feasibility of the contracts. These credits were intended to offset costs that the Japanese automobile manufacturers were unwilling to bear, including workers' compensation expenses.

In the consideration of a transition rule to preserve the ITC for these vessels, there has been some confusion over the number of vessels that need such a rule. The language for the transition rule covering vehicle carriers was sent to Senator Packwood by Senator Murkowski. It was understood that the rule would be introduced by Senator Long at the conference on the Tax Reform Act. Central Gulf Corporation, which contracted for two vessels, is a constituent of Senator Long. Although Senator Murkowski's office was fully aware that the Japanese had concluded arrangements to charter four United States-flag vehicle carriers, it was Senator Murkowski's understanding that only three of the vessels required protection under the transition rule because contracts for the MTL vessel had been concluded prior to January 1, 1986. Unfortunately, Senator Murkowski's understanding was incorrect. All four of these vehicle carriers require the benefits of the transition rule.

The fact that all four vessels require the transition rule was made clear to each of the Senate and House conferees on H.R. 3838 but not to Senator Murkowski's office. On August 7, 1986, the leadership of the House Merchant Marine and Fisheries Committee sent a letter (copy enclosed) to Chairman Rostenkowski and to each of the other House conferees pointing out that there were four vehicle carriers that were similarly situated which should receive the same protection under a transition rule concerning the investment tax credit. On August 27, 1986, the president of the National Marine Engineers' Beneficial Association wrote a letter (copy enclosed) to each of the Senate conferees pointing out this same circumstance and urging that the transition rule include all four vessels. As far as I am aware, the House and Senate conferees intended to treat all of these vessels alike and that the failure to include all of the vessels in the transition rule was clearly an oversight at the staff level.

As matters now stand only three of the four vessels are included in the transition rule and in the Concurrent Resolution (H. Con. Res. 395) to correct technical errors in the enrollment of H.R. 3838. The Conference Report to accompany H.R. 3838 (page I-79) includes only two vessels:

(c) SPECIAL AUTOMOBILE CARRIER VESSELS.—The amendments made by section 201 shall not apply to two new automobile carrier vessels which will cost approximately $47,000,000 and will be constructed by a U.S.-flag carrier to operate, under the U.S.-flag and with an American crew, to transport foreign automobiles to the United States, in a case where negotiations for such transportation arrangements commenced in April 1985, formal contract bids were submitted prior to the end of 1985, and definitive transportation contracts were awarded in May 1986.

The concurrent resolution adds one additional vessel:

(P) The amendments made by section 201 shall not apply to a new automobile carrier vessel, the contract price for which is no greater than $28,000,000 and which will be constructed by Maritime Overseas Corporation to transport, under the United States flag and with an American crew, foreign automobiles to North America in a case where negotiations for such transportation arrangements commenced in 1985 and definitive transportation contracts were awarded before June 1986.

I am aware that a number of technical corrections will have to be made in the Tax Reform Act by the next Congress. However, it is important that this oversight should not be left for such action—it should be corrected by including the fourth vessel in the concurrent resolution to correct technical errors that is now before the Senate. If no action is taken on this vessel at this time, it is possible that a decision may be made not to register the vessel under the United States flag. This would be disastrous for the American Merchant Marine and to our national security.

Therefore, I request that you urge Senator Packwood to correct the above oversight and to include in the concurrent resolution the following transition rule for the vehicle carrier that has been omitted.

The amendments made by section 201 shall not apply to a new automobile carrier vessel, the contract price for which is no greater than $22,000,000 and which will be constructed by Marine Transport Lines, Inc. to transport, under the United States flag and with an American crew, foreign automobiles to North America in a case where negotiations for such transportation arrangements commenced in 1985 and definitive transportation contracts were awarded before June 1986.

Sincerely,

RICHARD W. KURRUS.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, DC, August 7, 1986.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR DAN: Reference is made to our letter to you of July 22, 1986, (copy enclosed) concerning a transition rule for automobile carriers that will be offered during the conference on H.R. 3838 by Senator Russell B. Long.

As stated in that letter, Senator Long's proposal would retain the investment tax credit for three United States-flag vehicle carriers which will be constructed for United States companies and will be used to transport vehicles from Japan to the United States.

Senator Long's proposed transition rule assumes that there are only three vehicle carriers involved in this situation which should be protected insofar as the investment tax credit is concerned. We are now informed that there are four vehicle carriers that are all similarly situated and should receive the benefit of the transition rule. Therefore, in order to treat all companies that come within the intent of Senator Long's transition rule alike, we request that you support the following proposed transition rule:

PROPOSED AMENDMENT: "AUTOMOBILE CARRIERS"

At page 1518, line 12, add the following as number "(24)" and renumber the ensuing transition rules:

"(24) SPECIAL AUTOMOBILE CARRIER VESSELS.—The amendments made by Section 201 shall not apply to four (4) vehicle carrier vessels which will be constructed by or for United States companies at a total cost of approximately $94,000,000 under transportation contracts that were negotiated during 1985 and were consummated prior to June 30, 1986; the vessels that are subject to this rule shall be documented under the laws of the United States, comply with United States manning laws, and be used to transport vehicles in the foreign commerce of the United States.

Sincerely,

WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries.
ROBERT W. DAVIS,
Ranking Minority Member, Committee on Merchant Marine and Fisheries.
MARIO BIAGGI,
Chairman, Committee on Merchant Marine.
GENE SNYDER,
Ranking Minority Member, Subcommittee on Merchant Marine.

NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION,
Washington, DC, August 27, 1987.

Re: Transition Rule for Certain United States-Flag Vehicle Carriers Under H.R. 3838.

DEAR CONFEREES: The Marine Engineers' Beneficial Association has been at the forefront of efforts to persuade the Japanese automobile manufacturers and the Japanese government to employ a reasonable number of United States-flag vehicle carriers in the important Japan-United States automobile trade. Although the United States is the most important market for Japanese automobiles and even though this trade provides employment for a considerable number of Japanese seamen (approximately 4,000 billets), it has provided no employment for American seamen. This has taken place despite the fact that we permit more than 2.3 million Japanese automobiles to arrive in the U.S. annually—all on Japanese-controlled car carriers.

As I believe you know, three Japanese automobile manufacturers have recently agreed to charter four United States-flag ve-

hicle carriers for this trade. This is nothing short of a revolution in Japanese trade practices, but it also signifies that we are able now to offer service every bit as efficient as one of our major foreign competitors. Even though this may be a token gesture by the Japanese, we consider it an extremely important step, and we hope it will be the prelude to the introduction of a considerable number of United States-flag vehicle carriers in this trade.

Each of the four charters was negotiated during 1985, and charter contracts and construction contracts were consummated before June 30, 1986. The companies—Central Gulf Lines of New Orleans; Maritime Overseas Corporation of New York; and Marine Transport Lines of Secaucus, New Jersey—assumed the continued availability of the investment tax credit in working out the charter rates and the financing.

These companies have to honor these contracts the increased costs. In fact, they will lose money because the rates they negotiated are so tight that even with the ITC, they expect just to break even. It would be unfair under these circumstances, I believe, to deny the investment tax credit to these four vessels. Although there is still no provision for protecting the investment tax credit for these vessels in the transition rules in either the Senate or the House versions of H.R. 3838, it is my understanding that Senator Russell Long has agreed, in principle, to sponsor an amendment which would protect the investment tax credit for these vessels.

We have discussed this proposed rule with most of the conferees and they have not expressed any objection to the following transition rule, which I hope you will be able to help shepherd through even at this late date.

PROPOSED AMENDMENT: "AUTOMOBILE CARRIERS"

At page 1518, line 12, add the following as number "(24)" and renumber the ensuing transition rules:

"(24) SPECIAL AUTOMOBILE CARRIER VESSELS.—The amendments made by Section 201 shall not apply to four (4) vehicle carrier vessels which will be constructed by or for United States companies at a total cost of approximately $94,000,000 under transportation contracts that were negotiated during 1985 and were consummated prior to June 30, 1986; the vessels that are the subject of this rule shall be documented under the laws of the United States, comply with United States manning laws, and be used to transport vehicles in the foreign commerce of the United States.

We have here the penetration of a brand new market, a first for American shipping and the kind of aggressive pro-U.S. trade that we all know this country desperately needs. It will provide hundreds of American jobs and more U.S.-flag vessels—at no cost to our government. It is everything that we have all been working so hard for for so many years.

With all best wishes, I remain

Sincerely,

C.E. DEFRIES,
President.

Mr. BUMPERS. Mr. President, I supported the Senate amendments to the House concurrent resolution and I am disturbed by the House action in rejecting these amendments. The Senate has a legitimate role in the constitutional process and I think the amendments we adopted here should at least be considered on the merits by the House.

It has been said that the Senate amendments which the House now has rejected are "new starters" and "substantive changes," or that they "reopen" issues that had been resolved. I cannot speak to all the Senate amendments, but I can speak to the one on page 5, line 8, of the Senate amendments, the amendment correcting the enrollment of the general aviation transition rule.

This provision corrects an error. The amendment avoids an unintended result. It is technical in nature. And, the issues with which it deals is a Senate issue, not a House issue, and the correction was agreed to by the Senate sponsor of the provision in the tax conference.

Let me be specific. The tax reform bill contains a transition rule which extends the availability of the investment tax credit for purchases of aircraft manufactured in 4 explicitly named States. The Senate amendment would extend the scope of this amendment to all 50 States and, to finance this change, it restricts the rule so that it does not provide a retroactive windfall to purchasers who had no reasonable expectation that they would receive a tax credit on their purchase.

The chairman of the Finance Committee said on the Senate floor during debate on the tax reform conference report that it was his impression that this rule covered all general aviation aircraft with a point of final assembly in the United States. It turns out that this understanding is not correct, so Senator PACKWOOD and the Senate sponsor of this transition rule, Senator DOLE, agreed that the rule should be corrected to apply to all 50 States, not just to the four explicitly enumerated States.

That is what the Senate amendment to the House concurrent resolution does. It corrects a factual error in the tax reform bill. It avoids an unintended result. The issues were raised with respect to a transition rule offered by a Senator and the amendment to that rule was agreed to by that Senator. This is not a matter with respect to which the House has any reason to object.

This issue is very important to Arkansas. It turns out that both of the major general aviation aircraft companies inadvertently left out by the initial provision are in Arkansas, Falcon-Jet and the Arkansas Modification Center. They both have major facilities in Arkansas and they manufacture planes with a substantial U.S. value added, a value added ranging from 30 percent to 60 percent depending on the particular plane. All the planes manufactured by these companies in the United States use U.S.-made engines and U.S.-made avionics. By granting the transition rule to the aircraft manufactured in other States, the transition rule put the two Arkansas companies at a disastrous competitive disadvantage.

So, we avoided an injustice. We corrected an error. We did not raise any new issues. We consulted fully with the affected Member. We did nothing out of order. We did not relitigate any issue. The Senate amendment on this issue is technical in nature.

If there are Senate amendments which do introduce new substantive issues not raised in the conference, let's focus on them. If there are issues which simply relitigate an issue resolved in the conference, let's focus on them. But, let's be selective. Let's not lump everything in one basket and reject it out of hand.

So, I support the correction of the tax reform bill on this subject. I am sure if the House would look at this issue, it will see it as a legitimate correction of an error.

I am delighted that the Senate is insisting on this amendment as it sends this resolution back to the House. I am sure we could have consulted more fully about these amendments before we sent them over the first time, but it is very hard to juggle all the duties we have in these closing days. I am hopeful that the consultations we have had last night and today have cleared the air and have demonstrated to the House that this amendment is appropriated for this concurrent resolution.

Mr. PACKWOOD. Mr. President, several Senators have sought my advice about interpretation of several provisions in the Tax Reform Act of 1986. I would like to take this opportunity to respond. Many of these points relate to statements made by Chairman ROSTENKOWSKI on October 2, 1986, which appear on pages E3389 through E3393 of that day's CONGRESSIONAL RECORD.

First, I would like to reiterate my understanding of the meaning of "income equivalent to interest" under the foreign tax provisions in the bill. This term is used to refer to items which have historically been interpreted as the equivalent of interest, such as commitment fees. It does not refer to broad categories of income that have historically and consistently been distinguished from interest, such as income derived from factoring receivables of unrelated parties.

I cannot agree with Mr. ROSTENKOWSKI's statement, at pages E3389-3390, that the plain meaning of the words "income equivalent to interest" includes factoring income. The courts, and the Internal Revenue Service informally, have consistently distinguished such income from interest, unless a purchase of receivables is in economic substance a loan to the

seller—which may be secured by the receivables.

I also disagree with Mr. ROSTENKOWSKI's statement that this provision was designed to prevent abuses under the related party factoring rules enacted in 1984. This was not the reason we added the provision.

The 1984 provisions were directed at related party factoring involving controlled foreign corporations, particularly the factoring of domestic related party receivables. Such factoring could give rise to a tax deduction in the United States, while shifting the income to a foreign affiliate. Tax on this income would be deferred since such income is neither foreign personal holding company income nor subpart F income. In addition, the factoring of domestic related party receivables would serve to effectively repatriate the tax deferred earnings of the controlled foreign corporation without the incidence of tax. It was this tax-free transfer of earnings and effective repatriation, where the credit risk and collection obligations with respect to the receivables remain within the same controlled corporate group, at which the 1984 provisions were aimed.

In contrast, the factoring of unrelated party receivables results in neither a transfer of earnings among affiliates nor a repatriation of earnings. Such factoring results in the transfer of credit risk and collection obligations from one unrelated person to another. Thus, taxpayers who factor receivables to unrelated parties are in much different circumstances than related parties who factor receivables. Unrelated party factoring simply does not involve the tax benefits that the 1984 provisions were designed to restrict.

Second, with respect to the statement by Mr. ROSTENKOWSKI on page E3390 regarding the colloquy between Senator MOYNIHAN and me on the subject of binding written contracts for depreciation and ITC transition relief, Mr. ROSTENKOWSKI stated that a binding written contract must be between a taxpayer and a person who will build or supply the property in order to qualify for transition relief. This statement is not reflected in the discussion of the rule appearing in the statement of managers, nor is the rule so limited. In the situation described in the colloquy between Senator MOYNIHAN and me, a taxpayer was obligated by contract between the taxpayer and a municipality to construct a building for the taxpayer's own account. That contract, if breached, would have subjected the taxpayer to damages not limited to a specified dollar amount. There is no reason which would justify treating the taxpayer any differently than a taxpayer contractually bound to pay for property built by or acquired from the other party to the contract.

Third, Mr. ROSTENKOWSKI's statement regarding my colloquy with Senator GLENN about FERC licenses misinterprets the facts discussed in the colloquy. The FERC order, although not a license, states specifically that the project will be a qualifying small power production facility. In that situation, the owner of the facility should be able to rely on a specific finding—not a mere assumption—contained in a FERC order that project meets FERC requirements, although the order is not a license per se.

Fourth, Mr. ROSTENKOWSKI's statement regarding my colloquy with Senator HAWKINS concerning section 204(a)(2) of H.R. 3838—concerning what constitutes a substantial modification when the facility is virtually identical to the facility described in the original certification, merely because the amended certificate allows for a change in the location of the facility within the same oil field and merely because the amended certificate allows for the possibility that additional partners may be admitted to the partnership which owns the facility.

Fifth, I would like to clarify the operation of the provision in the conference report modifying the rules governing qualified scholarship funding corporations. The new rules require that all earnings of such corporations be used to finance additional student loans or be rebated to the Federal Government, rather than to State or local governments, as under present law. In making this modification, it is not the intent of the conferees that existing qualified scholarship funding corporations must cease operations pending modifications of their articles of incorporation to reflect the revised Federal law, provided that steps are taken to effect those amendments with reasonable speed.

Sixth, I would like to clarify two aspects of the changes to the extraordinary dividend rules as they relate to qualified preferred dividends. The statement of managers might possibly suggest that basis reduction is required with respect to qualified preferred dividends only for the portion of the total excess dividends that is attributed on a prorata basis to the dividends that were actually within the 2-year holding period. I agree with Mr. ROSTENKOWSKI that such an interpretation is not correct. In addition, the statement of managers suggests that taxpayers may elect to have the special qualified preferred dividend computation apply. The statute provides no election and none is intended.

Finally, I would like to clarify a provision in new section 89 of the Internal Revenue Code. That section imposes five qualification requirements on certain employee benefits that are excluded from gross income under other code sections. One of the requirements is that the benefit plan be maintained for the exclusive benefit of employees. The statement of managers indicates that a benefit plan that covers spouses and dependents of employees may satisfy the exclusive benefit requirement if such coverage is permissible.

I would like to clarify that an employee benefit plan will not fail the exclusive benefit test if the plan benefits a person who is not a spouse or dependent, as long as that person is permitted to exclude the benefit from gross income under the same code section which excludes that benefit from the gross income of employees. For example, section 132(f) treats retired employees, disabled employees, and parents of employees as employees for the purpose of certain excludible fringe benefits. Fringe benefit plans to which section 132(f) apply would not violate the exclusive benefit requirement of new section 89 simply because they provided a benefit to the persons described in section 132(f).

Mr. BUMPERS. Mr. President, I support the Finance Committee amendment to the concurrent resolution correcting the enrollment of the tax reform bill. The committee amendment contains a correction of vital interest to Arkansas and I appreciate the efforts of Senator PACKWOOD to correct this error.

The error is contained in section 204(a)(11) of the tax reform bill. This section would provide special transition relief to purchasers of aircraft manufactured in four explicitly enumerated States, Kansas, Florida, Georgia, and Texas. The relief provided is that the investment tax credit—which is repealed effective January 1, 1986, under the bill—would continue to be available for certain aircraft. The aircraft covered are aircraft which are "in inventory or in the planned production schedule of the final assembly manufacturer," which have had "orders placed for the engine(s) on or before August 16, 1986," which are subject to a binding contract "on or before December 31, 1986," and which are "delivered and placed in service by the purchaser, before July 1, 1987."

The chairman of the Finance Committee said during the Senate debate on the tax reform conference report on Saturday that "he was under the impression—this provision—covered all the domestic plane manufacturers in the United States." September 27, 1986, RECORD at S13891. As I will explain, this impression is based on a misconception about the structure of the aircraft manufacturing industry in the United States.

Arkansas—a State not covered by this transition rule—has two manufacturers of general aviation aircraft, FalconJet, a French-owned company, and the Arkansas Modification Center, which manufactures aircraft for British Aerospace. While neither of these companies is U.S. owned, both compa-

nies manufacture planes which have substantial value added in Arkansas or from U.S. suppliers, and the point of final assembly for these planes is in the United States.

For example, the FalconJet uses engines manufactured by Garrett Turbine Engine Co. of Arizona and avionics manufactured by Collins Avionics of Iowa. The British Aerospace planes—both those assembled in Arkansas and in Oklahoma—also use Garrett engines. Both companies have major facilities in Arkansas, where much of the work on these planes is done. FalconJet employs about 600 people and AMC employes about 300 in Arkansas. Clearly, both of these companies are "domestic" in the key sense—they employ U.S. workers, directly and through U.S. suppliers, and the final assembly of the planes is in the United States. There is substantial U.S. "domestic content" in all the planes they assemble in the United States.

Both companies meet the other principal limitation in the provision that the aircraft be manufactured in the United States. According to the provision, a plane is manufactured at the "point of its final assembly." In the case of both FalconJet and British Aerospace planes, the companies fabricate and install the cockpit and cabin furnishings, prepare and install the avionics equipment and radar and paint the planes in Arkansas. These efforts include installation of any customer selected optional equipment. Similarly, British Aerospace has a major facility in Oklahoma City operated by AAR where it prepares aircraft for final delivery including modifying planes for customers, installing airconditioning and baggage parts, and painting the aircraft. In short, the point of final assembly for the FalconJet and for the British Aerospace planes at both the Arkansas and Oklahoma facilities is in the United States.

The only respect in which these two companies did not meet the standards set in section 204(a)(11) at these facilities in Arkansas and Oklahoma was that these two States were not among the four explicitely mentioned States in the rule. By specifically including Arkansas—and all other States—in the list of States to which this provision applies, both FalconJet and the British Aerospace planes now are covered.

It should be obvious that I was not involved in the drafting of the transition rule in the tax reform bill. The retroactive repeal of the investment tax credit is one of the most ill-conceived provisions in the bill. I strongly oppose this retroactive repeal and have received many complaints from companies in Arkansas this issue. I would support extending the ITC at least through 1986 for all taxpayers.

I made no request that FalconJet or British Aerospace planes be exempt from this repeal of the investment tax credit. I would be happy if this transition rule was repealed altogether and if no aircraft manufactured in the United States is exempt from the ITC repeal. I understand that both FalconJet and the Arkansas Modification Center would support repeal of this transition rule. Furthermore, I am not sure that any manufacturers of business aircraft has provided a justification for a special exception to the ITC repeal. But, if this transition rule is to remain in effect—and that clearly is the desire of its sponsors—then it should be applicable to all the companies which compete in the U.S. market and which manufacture aircraft in the United States.

It is for this reason that I support adding Arkansas to this list of States. Only by adding Arkansas—and all other States—to the application of this transition rule can we avoid an injustice. I am not attempting to secure special treatment for an Arkansas company or for the business aircraft industry. But, I am trying to secure equal treatment for the business aircraft manufacturers in Arkansas.

We would not have had this problem if in the first instance the transition rule had been drafted as a generic rule, rather than one which necessarily gives certain companies a competitive advantage over others. There may be other transition rules in the tax reform bill which are drafted this way, but most of them simply provide relief to one company or one industry. By benefiting one company, these transition rules may help that company compete with other companies, but these rules are not drafted specifically to have an anticompetitive effect, as was the case here.

The impact of the original provision in the tax reform bill on foreign-owned aircraft companies with substantial operations in the United States would surely have led to a major international dispute. The United States has, for example, argued strenuously that the European Airbus consortium should not do precisely what this original provision would have done, discriminate against foreign companies and suppliers. Were this amendment to remain in effect, the Airbus governments might be justified in providing launch aid for the A330/340 next March.

After the GATT Conference in Uruguay last month, it would have been quite unwise for the United States to have enacted a provision designed specifically to benefit United States manufacturers and to give them a competitive advantage over their foreign competitors. Do you think for one minute that the Governments of France and Britain would stand by and permit the United States to provide special tax incentives only to United States companies and which benefits are specifically denied to French- and British-owned companies even though these companies have substantial manufacturing facilities in the United States?

In fact, the United States and France have signed an Agreement on Trade in Civil Aircraft, dated April 12, 1979, which includes an agreement "to avoid attaching inducements of any kind to the sale or purchase of civil aircraft from any particular source which would create discrimination against suppliers from any signatory." Article 4.4. The transition rule in the tax reform bill would seem clearly to violate this agreement.

By correcting this provision in the concurrent resolution we have avoided these disputes and have provided transition relief on an equal base to all general aviation planes manufactured in the United States. This is fair and it is smart. In a time when we are running huge trade deficits, it would be counterproductive to penalize foreign-owned companies which establish substantial manufacturing operations in the United States.

While the provision is fairer as amended by the concurrent resolution, I still have some questions about it. There may still be repercussions from this provision with our trading partners. Even as amended it provides special tax benefits to U.S. taxpayers who purchase aircraft manufactured in the United States and does not provide these benefits to any U.S. taxpayer if the plane he purchases is not manufactured in the United States. This has the effect of an explicit "buy American" requirement and it directly discriminates against foreign-manufactured planes. Even though the provision now includes planes manufactured by foreign-owned companies in the United States, it still does not include planes which are manufactured abroad, either by U.S.-owned or foreign-owned companies. This is a problem I wish we had been able to remedy.

In addition, the original provision was retroactive to purchases which already have occurred. The House tax reform bill—adopted by the House on December 17, 1985—repealed the investment tax credit for property placed in service after December 31, 1985. The Finance Committee reported its version of the tax reform bill on May 29, 1986, and this bill repealed the investment tax credit effective on the same date as did the House bill. Persons who purchased aircraft after the House passed the tax reform bill last December have been on notice since then that they might not receive the benefits of the investment tax credit. Certainly, they have been on notice of this possibility since May 29 of this year when the Senate Finance Committee agreed to repeal the investment tax credit retroactively. Only

when the tax reform conference report was agreed to on August 16 and made public on September 18, 1986, did anyone become aware of the possibility that certain of these aircraft purchases might quality for the investment tax credit.

I am delighted that the committee amendment takes care of this problem and that it would apply to contracts that were binding on August 16, which will avoid purchasers canceling contracts and entering into new contracts before the end of the year. This improves the bill and reduces its revenue impact as well.

During discussions on this transition rule the issue of retroactivity has been raised as a way to reduce the revenue impact of this provision, which is estimated to be $27 million, or the revenue impact of the provision expanded to include other U.S.-based manufacturers. Redrafting this provision to avoid this windfall has been resisted, but I want to make it clear that in including Arkansas in the list of States I am not supporting the retroactive application of the initial or modified provision.

I am pleased that we have avoided an injustice here. I am not sure that transition relief is called for here, but if it is provided it should be provided uniformly to all U.S. manufacturers of general aviation aircraft. That is the principle that I have worked for and that is the principle we have established here. We may not be finished with the mischief that is caused by the original transition rule, but the committee amendment to the concurrent resolution is an improvement.

Again, let me express my appreciation to Senator PACKWOOD for his assistance in correcting this error.

I ask unanimous consent that several letters and other documents on this issue be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNITED STATES SENATE,
COMMITTEE ON SMALL BUSINESS,
Washington, DC, September 22, 1986.

Hon. BOB PACKWOOD,
Chairman, Senate Finance Committee, Dirksen Building, Washington, DC.

DEAR BOB: We are writing to call to your attention the implications of the drafting of a provision in the tax reform legislation, a copy of which we have just obtained. The provision in question seeks to preserve U.S. jobs in the aircraft manufacturing industry, but it fails to include aircraft manufactured in Arkansas and in other states where aircraft are manufactured. This is unfair and these states should be included in the provision to prevent a grave injustice.

Specifically, the final draft contains a transition rule on page I-76 which exempts "certain aircraft" from the amendments made by section 201 and 211. The aircraft which are exempted are those "manufactured in Kansas, Florida, Georgia, or Texas." Aircraft manufactured in other states are not exempted no matter how many U.S. jobs are affected and no matter how much they are put at a competitive disadvantage.

One of the many companies which engages in the final assembly of aircraft with "19 or fewer passenger seats" is Falcon Jet Corporation of Arkansas. FalconJet employs 650 people and expects to expand its employment to 800. It expects that this provision may result in the loss of the sale of six to eight aircraft. These sales would be lost to companies which are included in the transition rule. This will hurt FalconJet but it also will hurt its principal suppliers, which are located in Arizona (Garrett Turbin Engine Corporation) and Iowa (Collins Avionics).

We are informed that another state disadvantaged by this provision is Delaware, where Atlantic Aviation assembles the Westwind.

The revenue effect of including Arkansas (and other states adversely affected) in the list of states covered by this transition rule should be negligible because the sole effect will be to retain the same number of sales in Arkansas, instead of shifting them from Arkansas to the states mentioned in the transition rule. The inclusion of another state (or states) should not increase the total number or value of sales, thus, it should not increase the amount of accelerated depreciation and investment tax credit that is taken.

In terms of Arkansas jobs, 50% of the value of the planes assembled in Arkansas is directly attributable to U.S. suppliers. Most of this value is added in Arkansas but much of its comes from Arizona, Iowa and elsewhere. The issue here, therefore, is U.S. jobs vs. U.S. jobs, not U.S. jobs vs. foreign jobs.

We would expect that the Finance Committee will offer an amendment to correct technical erriors in the drafting of this bill. In our view, it would be appropriate in this amendment to extend the effect of this provision to aircraft manufactured in Arkansas.

If you have any questions about this issue, please contact either of us or contact Chuck Ludlam at 224-3095.

Sincerely,

DAVID PRYOR,
DALE BUMPERS.

FALCON JET,
September 29, 1986.

Attention: Mr. Chuck Ludlum.

Hon. DALE BUMPERS,
U.S. Senate,
Washington, DC.

GENTLEMEN: I am pleased to present the following data in support of your efforts to have Arkansas included as one of the states eligible for extended ITC coverage for small aircraft under the new tax bill's transition rules.

As currently written, Falcon Jet and its operation in the State of Arkansas will be severely effected. Sales of our aircraft during the transition period would be virtually nonexistent and employment at our Little Rock, Arkansas completion facility reduced below currently planned levels.

The Falcon series aircraft has a significant portion of U.S. content in its total price. Engines, avionics and many airframe systems such as wheels and brakes are manufactured in the U.S. in addition to the work accomplished in Little Rock. It should also be noted that some of the other aircraft currently qualifying for this ITC extension contain significant foreign content, i.e. the Gulfstream, manufactured in Georgia has Rolls Royce engines, the Cessna Citation, manufactured in Kansas, has Pratt Whitney of Canada, engines, and the Beech Jet, manufactured in Kansas, is assembled from a Japanese kit. More specifically, of the $207,000,000 in Falcon Jet new aircraft sales last year, $120,000,000 or 58% was of U.S. origin.

In addition to Arkansas, we anticipate a negative impact upon our major suppliers, Garrett and Sperry in Arizona and Rockwell/Collins in Iowa and Florida and at our home office in New Jersey. We estimate that up to 300 jobs may be lost in these areas with over ½ of these in Arkansas alone. A list of some of our additional U.S. suppliers is attached for your information.

I hope that this is of assistance to you. Please call me at (201) 393-8047 if I can provide any additional data.

Sincerely,

J. MORGAN YOUNG,
Vice President, Finance & Administration.

ADDITIONAL U.S. SUPPLIERS FOR SOME OR ALL OF OUR PRODUCTS LISTED BELOW.

Abex, California; ADR, New York; Aeronco, Ohio; Aerosonic, Texas; Aeroquip, Michigan; AiResearch, California; Airpax, Maryland; Astek, New York; Baker, Georgia; Barfield, Florida.

Barker Coleman, Illinois; Bendix, New Jersey; Cannon, California; Circle Seal, California; Conrac, California; Custom Components, California; Dayton Granger, Florida; Deutsch, California; Dorne & Margolin, New York; Dukes International, California.

Eldec, Washington; Flite-Tronics, California; Fox Tronics, Texas; Gables, Florida; General Electric, Massachusetts/Pennsylvania; Global, California; Goodyear, Ohio; Grimes, Illinois; Grumman, New York/Florida; Gull, New York.

Hartwell, California; Honeywell, Minnesota; HTL, California; I.D.C., New Jersey; I.T.T., California; J.E.T., Michigan; Kollsman, New Hampshire; Lear Siegler, Illinois; Leland, Ohio; Lewis, Connecticut.

Lindberg, California; Litton, California; Lord McGraw Edison, Massachusetts; Pacific Scientific, California; Resistoflex, New Jersey; Rayehem, California; R.C.A., New Jersey; R.C. Allen, California; Rosemont, Minnesota.

Smiths, Florida; Stratoflex, Texas; Turbomach, California; Sperry Vickers, Mississippi; Sterer, California; Sunstrand, Illinois; Systron Donner, California; Teledyne, California; Texas Instruments, Texas; Walter Kidde, New Jersey; Wemac, Illinois; York, Pennsylvania and Zip Aero, Georgia.

RESPONSE TO ROSTENKOWSKI STATEMENT

Mr. DOLE. Mr. President, I would like to ask the distinguished chairman of the Finance Committee if he would comment on a few additional issues discussed in Mr. ROSTENKOWSKI's statement.

Mr. PACKWOOD. I would be pleased to respond to the distinguished majority leader.

LIFE INSURANCE

Mr. DOLE. I thank the chairman. As the distinguished chairman will recall, he and I discussed several items of interpretation concerning the limitation of the deduction for interest paid in connection with a life insurance policy owned by a business. The chairman of the Ways and Means Committee

seems to have been somewhat reluctant to commit himself on the extent of the grandfather provision.

I can understand the reluctance on the part of the Ways and Means chairman to commit to all the specifics in each of the colloquies entered into in the Senate. The provision concerning business life insurance, for example, was a Senate provision. We have had a greater opportunity to study the specifics of the types of transactions which could possibly be affected, and therefore, would naturally feel more comfortable in giving appropriate guidance to taxpayers on this subject.

Would the distinguished chairman of the Finance Committee care to comment on this subject?

Mr. PACKWOOD. I am encouraged that the chairman of the Ways and Means Committee has suggested that an application prior to the effective date would suffice to evidence a purchase, and I am also pleased that he expects the IRS and the courts to review the facts of specific cases as, of course, they should. However, I continue to believe that the guidance as to intent contained in our earlier colloquy should help the IRS and the courts apply the facts in accordance with congressional intent.

MIRROR SUBSIDIARIES

Mr. DOLE. I would also like to ask the chairman if he would care to comment on Mr. ROSTENKOWSKI's statement concerning so-called mirror subsidiaries. We had engaged in a colloquy in which we had agreed that change of the tax treatment of mirror subsidiary transacitons could not be fairly implied from the repeal of the general utilities doctrine and that we did not, in fact, specifically address the subject of mirror subsidiaries. Treasury has authority to promulgate regulations in this area on a prospective basis, but they are not required to do so by the Tax Reform Act.

Does the distinguished chairman still share this view?

Mr. PACKWOOD. My views on this subject are unchanged. I am absolutely confident that there was no consensus on the part of the Senate conferees that the tax treatment of mirror subsidiaries should be changed. In fact, several of the Senate conferees explicitly made known their opposition to any required change in this area.

Let me take a moment to give some further background on how this issue developed during the conference on H.R. 3838. The Senate conferees adopted the House provision, with modifications, repealing the general utilities doctrine. The House bill does not change in any way the tax treatment of mirror subsidiary transactions under current law. Nor does the report of the Committee on Ways and Means even mention mirror subsidiary transactions. The report merely alludes to the issue by stating in a footnote: "The committee anticipates that, in a consolidated return context, the Treasury Department will consider whether aggregation of ownership rules similar to those in sec. 1.1502-34 of the regulations should be provided for purposes of determining status as an 80-percent distributee."

The final bill also does not contain any language which would change the tax treatment of mirror subsidiary transactions. However, the staff proposed new language requiring such a change for possible inclusion in the statement of managers. This additional language was the subject of specific negotations by Mr. ROSTENKOWSKI and me during the final days of drafting the conference report. We agreed not to adopt that language. Nevertheless, language similar to that rejected during the drafting of the conference report appears in Mr. ROSTENKOWSKI's statements on September 25, 1986—page H8358 of the CONGRESSIONAL RECORD—and on October 2, 1986—page H3389 of the CONGRESSIONAL RECORD. The fact that this interpretation was explicitly rejected should be dispositive.

I would like to emphasize my understanding that, although the Treasury Department has authority to promulgate regulations in this area, there is no requirement to do so under the bill. In my view, taxpayers can continue to rely on existing consolidated return regulations on this pont.

PRE-1981 STRADDLES

Mr. DOLE. The distinguished chairman of the Ways and Means Committee also discussed the treatment of investors in pre-1981 straddles. He disagreed with our earlier colloquy that the conferees did not intend to incorporate the language of the Ways and Means Committee report as part of the conference agreement. Would the chairman of the Finance Committee care to comment on this issue, as well?

Mr. PACKWOOD. As the majority leader well knows, this issue was the subject of some dispute during the conference on the Tax Reform Act. After the amount of discussion on the issue, it would seem unreasonable to believe that the Senate conferees intended to adopt language concerning these investors contained in the Ways and Means Committee report merely by remaining silent in the conference statement of managers.

ITC TRANSITIONAL RULE FOR TRANSFERRED PROPERTY

Mr. NICKLES. Mr. President, I wish to confirm with the distinguished chairman of the Committee on Finance a point relating to the repeal of the investment tax credit. It is my understanding that property qualifying as transition property under the binding contract exception may continue to qualify if the contract is transferred, including cases where there is more than one transfer and a transfer between related parties. Further, it is my understanding that, while transition property generally may not be placed in service before such a transfer, transition property may be placed in service before a transfer if it is leased back to the transferor, under a sale/leaseback transaction, within 3 months after the date the property was originally placed in service.

Mr. BOREN. I am pleased that my distinguished colleague has raised this matter, as I believe that a clarification is necessary. It is important to establish clearly, first, that the 3-month rule of the Code also applies for purposes of the binding contract exception of the bill and the statement of the managers in the conference report regarding transfers of binding contracts; and, second, that there are no special restrictions applicable to multiple transfers or transfers between related parties.

Mr. PACKWOOD. The understanding of the Senators is correct. For example, property otherwise eligible for the binding contract exception retains that status if the contract is transferred, including a transfer between related parties, and then placed in service within 3 months of a sale/leaseback agreement.

SCHOLARSHIPS

Mr. DANFORTH: Mr. President, I would like to ask the chairman of the Finance Committee for his view on my interpretation of section 123 of the tax reform bill which deals with the taxation of scholarships. Normally, amounts received as qualified scholarships are not taxable to the recipient except to the extent that the amount of the scholarship exceeds amounts necessary for tuition and basic fees. This provision also states that where a student receives payment for "teaching, research, or other services" that are required as a condition of receiving the qualified scholarship, the payment is taxable to the student.

My concern is that normal student activities that may be required as a condition of receiving the scholarship (such as playing a sport for a recipient of an athletic scholarship, or playing in the orchestra for a recipient of a music scholarship) do not constitute "other services" for which these students are being compensated and therefore, that the portion of their scholarships which are necessary for tuition and fees should not be taxable to them.

Mr. PACKWOOD. The Senator's interpretation is correct. The term "other services" does not include normal student activities required as a condition for receiving a scholarship. Amounts received for tuition and fees in those cases is not taxable to the recipients of those scholarships.

INSTALLMENT SALES

Mr. DECONCINI. Mr. President, I want to raise an issue which became apparent after the conference report was released. The new disproportionate disallowance rule for installment sales has an effective date of taxable years ending after December 31, 1986, instead of beginning after December 31, 1986, as in the original Senate bill. The change of the word "beginning" to "ending" substantially changes the effective date in the Senate passed bill.

It is my understanding that this provision was designed to allow those taxpayers now using the installment sales method, particularly homebuilders, time to adjust to these new rules. Am I correct that this was the intent of the conferees.

Mr. PACKWOOD. The Senator is correct.

Mr. DECONCINI. I have been advised by a number of builders who happen to have a taxable year other than a calendar year that the new rules will impact on them in a significantly different, and adverse, way than it will on calendar year taxpayers. I assume that there was no explicit decisions by the conferees to treat taxpayers differently based solely on their fiscal year.

Mr. PACKWOOD. The Senator is correct in his assumption.

Mr. DECONCINI. I would ask the chairman to review this situation to determine whether the change of the world "beginning" to "ending" contradicted the intention of the conferees.

Mr. PACKWOOD. I believe that the Senator from Arizona raises a valid concern regarding this new rule. I look forward to working with the Senator from Arizona next year in an effort to address his concerns.

Mr. HEINZ. Mr. President, I wish to seek clarification from the chairman relating to several technical points relating to transitional rules important to my state. The first relates to the Philadelphia Convention Center and trash-to-steam projects. As you know, these projects have been underway since Congress began work on the 1984 act.

First, I understand that the exception to the volume cap for both the convention center and trash-to-steam projects is intended to be extended through 1988.

Second, the bond described in the second line of section 1316(g)(2)(A) of the tax bill is one "issued to provide a facility."

Mr. PACKWOOD. The Senator from Pennsylvania is correct in his understanding.

Mr. HEINZ. The second relates to the transitional rule for the Frankford Arsenal.

I understand the Conference Committee intends that the Frankford Arsenal project is to include the buildings, the property, and the infrastructure.

Mr. PACKWOOD. The Senator from Pennsylvania is correct in his understanding of the committee's intent. It is hoped that this provision will save this important historic rehabilitation project.

Mr. HEINZ. If I may, Mr. President, I would like to ask the chairman a question about another issue that appears to me to be unclear at this time. The matter concerns a transition rule that would grandfather from loss of the investment credit and current depreciation, any property that is part of a project that the Federal Energy Regulatory Commission certified as a qualifying facility before March 2, 1986. Qualifying facility is a legal term. The designation gives the project certain rights under the Public Utility Regulatory Policies Act.

Independent Power Systems, (IPS) has been working for several years to build a facility in Archbald, PA, that will burn culm to generate steam and electricity. The plan from day one has been to sell the electricity to a local utility and to use the steam to grow lettuce in a hydroponic greenhouse. The greenhouse will be built next to the powerplant. The same person will own both facilities.

The Federal Energy Regulatory Commission certified the project as a qualifying cogeneration facility on April 24, 1985. The FERC certificate describes the powerplant. It does not mention the greenhouse because FERC is concerned only with powerplants. Nevertheless, it is clear from the FERC order and from supporting documentation submitted to FERC in connection with the order that the greenhouse was part of the original project. In order to be certified as a qualifying cogeneration facility, (IPS) had to show that some form of thermal energy would be produced—and actually consumed as thermal energy—amounting to at least 5 percent of the total output of the cogeneration facility. The greenhouse is the sole user of the steam.

The transition provision in the bill says that property is grandfathered if it is part of a project that was certified by the Federal Energy Regulatory Commission before March 2, 1986. I assume the project in this case includes not only the powerplant but also the greenhouse. I want to ask the chairman whether that is also his understanding.

Mr. PACKWOOD. That is my understanding.

SECTION 633(F) OF TAX BILL

Mr. HEINZ. Finally, I have a question concerning section 633(f) of the bill which clarifies pre-1982 law by stating that a certain transaction is a tax-free exchange. Unfortunately, the relief is company specific and does not cover the other two public companies which consummated almost identical exchanges. One of these companies is a corporate constituent of mine. It was my intention to broaden the bill in a generic fashion to cover all three impacted taxpayers. This is apparently not possible at this time.

What concerns me is the possible implication of the provision on the ongoing tax controversies. The transactions met the requirements of law when consummated. The transactions were undertaken for sound business reasons with the advice and opinion of counsel that these exchanges were tax free. I would hope that no contrary inference would be drawn from the fact that one company has successfully sought legislative relief. Would the chairman so state?

Mr. PACKWOOD. No contrary inference as to the proper determination or application of law to the ongoing cases should be drawn from the enactment of section 633(f).

Mr. HEINZ. I thank the chairman. In addition, I would be hopeful that any subsequent technical clarification legislation would remove the obvious inequity and make the section 633(f) relief generic.

TRANSITION RULE FOR EASTMAN PLACE, ROCHESTER, NY

Mr. MOYNIHAN. Mr. President, I would like to clarify an item in House Concurrent Resolution 395, paragraph (251), which includes the following item:

"(38) The amendments made by section 201 shall not apply to—

* * * * *

"(D) a 150,000 square foot office building which is projected to cost $20,000,000, with respect to which an inducement resolution was adopted in December 1986, and for which a binding contract of $500,000 was entered into on April 30, 1986,

"(E) * * *"

I wish to clarify with the distinguished chairman of the Finance Committee that this provision is intended to describe the Eastman Place project in Rochester, NY. I have recently learned that the square footage of the building we attempted to describe may be somewhat less than 150,000 square feet. Further, while the total budgeted for the project is $20 million, the final cost may be somewhat less. To avoid any possible confusion, I would ask the chairman to confirm my understanding that the provision in question is intended to apply to the Eastman Place project in Rochester, NY.

Mr. PACKWOOD. The Senator from New York is correct. The provision denominated 38(D) in paragraph (251) of House Concurrent Resolution 395 is intended to apply to the Eastman Place project in Rochester, NY.

Mr. GRASSLEY. If the distinguished Senator from Oregon will be so kind as to clarify a point relating to what constitutes portfolio income

under the Tax Reform Act of 1986. If an individual, partnership or closely held corporation receives interest income with respect to fees receivable, for example fees owed for services previously provided, will not be treated as portfolio income?

Mr. PACKWOOD. As the distinguished Senator from Iowa is aware, the Senate report and the conference agreement provided certain exceptions from the definition of portfolio income in cases where such income is derived in the ordinary course of a trade or business. As noted in the Senate report, interest charges on accounts receivable will not be considered portfolio income. Thus, by the same token, interest income received by a taxpayer with respect to fees receivable which are similar to accounts receivable and arise in the ordinary course of the trade or business, will not be considered portfolio income for purposes of section 469(c).

Mr. HATCH. Mr. President, I rise to inquire of my good friend, the distinguished chairman of the Finance Committee, if he would indulge me in a brief colloquy to clarify the wording of a particular transition rule contained in the Tax Reform Act of 1986.

The able staff who worked tirelessly to complete the drafting of the conference report to this landmark legislation inadvertently omitted an important date in the depreciation section of the report pertaining to a transition rule for a mixed-use development project located in a home-rule city, the zoning for which was changed to residential business planned development on November 26, 1985, and with respect to which both the home rule city on December 4, 1985, and the State housing finance agency on December 20, 1985, adopted inducement resolutions. The date in question is the date on which the home rule city adopted an inducement resolution, December 4, 1985. To avoid any problems in the identification of this project for depreciation tax treatment, I would like to ascertain if it was the intention of the conference to include this date, as it did for the transition rule for this project in the tax-exempt bond section?

Mr. PACKWOOD. That is correct. The date was inadvertently left out.

Mr. HATCH. I thank the Senator. In addition, the description used to identify this project in both the depreciation and tax-exempt bond sections does not accurately reflect the nature and scope of the project, which includes apartments, office rentals and commercial space, not just multifamily housing. If amendments would be in order on this resolution, I would ask that the Senate consider changing the definition of this project from multifamily mixed-use housing project to simply mixed-use development project to better capture the true extent of this project and avoid any legal misinterpretation.

REPEAL OF THE INVESTMENT TAX CREDIT SECTION 202 OF THE BILL

Mr. KASTEN. I would like to seek clarification on two aspects of the transition rules for the investment tax credit.

It is my understanding that, based on the Finance Committee report, for all ITC transition rules the term "property" includes any and all spending which is properly chargeable to the capital account for that property.

As one specific example, in the case of production machinery that is subject to the binding contract rule, the term "property" includes not only spending for such items as freight and installation but also any wiring, piping, fabrication costs, and engineering and overhead costs which are properly chargeable to the capital account under IRS regulations. These other costs that are incidental to the purchase of the basic hardware or components parts are included in the term "property" even though these incidental costs were not themselves subject to the binding contract as of December 31, 1985.

Mr. PACKWOOD. Yes, all expenditures which are properly chargeable to capital are also included within the term "property" under the ITC transition rules.

Mr. KASTEN. I also want to clarify operation of the transition rule for self-constructed property. I have a constituent who is reconstructing a number of diaper machines pursuant to the multiphase but interrelated plan begun in 1984 and to be finished in 1986. The overall plan began in 1984 and fully 70 percent of the total cost of the plan had been either spent or was committed for by December 31, 1985. This total interrelated plan involves reconstruction of a number of components of the taxpayer's entire diaper lines. For example, two components involved modifications of new manufacturing technologies while another component involves reconstruction of the airhandling system for these upgraded diaper machines. These components are absolutely essential for the operation of these diaper machines. Because the entire plan that began in 1984 is dependent upon completion of all components, the whole plan, including all of its various component parts, is but one integrated "property" within the meaning of the ITC transition rule.

My understanding is that the transition rule for self-constructed property will include all the spending necessary to bring that integrated property to a state of readiness for its intended use, notwithstanding the fact that a limited amount of actual spending for and construction of some components may not have been formally approved or occurred until 1986.

Mr. PACKWOOD. Yes; the taxpayer's diaper machine is but one integrated property within the meaning of the ITC transition rule. The reconstruction of the diaper machines you have just described which involve many components will qualify in its entirety for transition relief provided that the spending satisfies the monetary standard set forth in the transition rule, assuming that otherwise the components would be treated as a single property.

The PRESIDING OFFICER. The question is on agreeing to the motion to concur with an amendment.

The motion was agreed to.

Mr. PACKWOOD. Mr. President, I move to reconsider en bloc the vote on the motions on the House message on House Concurrent Resolution 395.

Mr. MATSUNAGA. Mr. President, I move to lay that motion on the table.

The PRESIDING OFFICER. The motion to lay on the table was agreed to.

JUDICIARY COMMITTEE HEARINGS ON IMPROPER INVESTIGATIVE AND PROSECUTORIAL PRACTICES

Mr. ARMSTRONG. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 514) to hold hearings in the Judiciary Committee on procedures for protecting citizens against improper investigative and prosecutorial practices.

Mr. ARMSTRONG. Mr. President, this resolution arises out of concerns which are shared by a number of Members on both sides of the aisle about episodes of unethical or illegal conduct by employees of the U.S. Government, including the Department of Justice and the IRS. Some of these episodes are just allegations and it remains to be seen whether or not they are well-founded and will in fact be proven. In other cases, this wrongdoing has been found by the courts.

I think there are several Members who want to speak. I have a fairly lengthy statement I want to make in a few minutes, but in the interest of those who want just to associate themselves with it and have brief statements, I would like to yield the floor so they may seek recognition.

Mr. BIDEN. Mr. President, I shall take just a moment. It is presumptuous of me to speak on behalf of the Judiciary Committee, but whether I or any Democrat has the responsibility for conducting these hearings or the committee composition stays as it is and the majority stays as it is and Senator THURMOND or Senator HATCH have that responsibility, I want to point out the one amendment to the

resolution that was made by the Senator from Delaware before it was sent to the desk.

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The resolved clause says, "Resolved that the Committee on the Judiciary appropriately funded shall hold hearings," et cetera. I want to make it clear, in order to hold such series of hearings to investigate the allegations of wrongdoing requires additional funding for the Judiciary Committee primarily made up of investigators of some experience and consequence. And so if the Senate wishes the Judiciary Committee next year to hold hearings into the allegations arising out of matters that were before the Senate this year, I want to warn the Senate the committee will not be able to do that without additional funding, additional moneys to be able to do it.

I have no objection to the resolution. I agree with the purpose for which the Senator from Colorado submits it, but I want to make it clear, it is understood that in order to be able to get this job done, if the Senate chooses the job should be done, it will require additional moneys.

I thank my colleagues. I yield the floor.

Mr. ARMSTRONG. Mr. President, I would now like to take a few minutes to give the background of this resolution and how it comes to us in this form at this particular time.

During the course of the deliberations on the Claiborne matter, questions arose about the propriety of the strike force activities which led to the indictment and conviction and later the impeachment of Judge Claiborne. Some Members expressed concern of whether or not the prosecution in the Claiborne case was overbroad, overreaching, whether or not in fact it was overzealous to the point of being improper. As that question arose, a number of us who had similar concerns involving other cases began to express those concerns. I want to share one case which illustrates the depth and seriousness of this matter.

About 3 years ago a constituent of mine, one William Kilpatrick, called me and said, "Look, I am about to be indicted for something which is not a crime, but I am going to be indicted because the prosecutors want to put me out of business and even though what they charged me with is not a crime, it will have that effect."

Well, I looked into it with some skepticism for obvious reasons because everybody, I guess, who is about to be indicted or who is convicted or sent to jail says, "I am not guilty," or "It wasn't a crime," or "I didn't do it," or something of the kind.

Now, Mr. President, Mr. Kilpatrick was so insistent that finally I just had to at least listen to what he was trying to tell me, and in fact he submitted memoranda of law from his defense counsel and so on and persuaded me at length that there was at least some reason to be concerned about a miscarriage of justice. And so I sought legal advice; what could I do as a Senator to prevent this from happening if, in fact, everything that he said was absolutely right, which I was not prepared to believe at that point.

What I found out was there was not anything I could do and since that was the case, since I was not in a position to intervene and there was not any proper action I could take, I promised that I would follow the case and when it was disposed of I would continue to be interested.

Well, the case in due course came to trial and the court held—two courts in fact—that the 24 counts on which Mr. Kilpatrick was indicted and subsequently tried in fact did not constitute crimes under the Federal Code. And in fact Mr. Kilpatrick's business was ruined and he alleges that he spent some $6 million in defending himself.

Well, he got off. He did defend himself.

A national television program took interest in the Kilpatrick case and in the course of doing their story on it came around and asked me what I thought and what I intended to do.

I recounted basically what I have told the Senate, that I had promised to be interested, and in fact I promised that I would seek hearings of some sort to give Mr. Kilpatrick and others who might be similarly situated the opportunity to tell their side of the story.

After that appeared on a nationwide television network, I began to hear from people all over the country who had or claimed to have had similar experiences. I had no way to really cope with that, but I determined I would seek before the Finance Committee some hearings on a handful of cases where courts had actually looked into issues. I am not talking now about rumors, I am not talking about unsubstantiated accusations, or tax protestors, or people who think the whole idea of an income tax is unconstitutional. I am talking about cases where there had been an investigation, where a trial had been held and where courts handed down rulings.

One of these cases was the Kilpatrick case, and in that case the judge, Judge Fred Winner of the District Court of Colorado, not only exonerated Mr. Kilpatrick but he excoriated the Justice Department in the case in the following particulars. In a moment I am going to ask that that opinion be inserted in the RECORD but in essence what the court found in the Kilpatrick case was harassment, knowingly indicting Kilpatrick for offenses which did not constitute crimes, subverting the grand jury process, abusing the rights not only of Mr. Kilpatrick but of witnesses before the grand jury, abuse of pocket immunity, a general attitude of improper and unethical behavior, and a cavalier disregard for the rights of people who had business before the court.

That is the Kilpatrick case.

The second case which came to my attention involved the so-called omni case which I also will ask unanimous consent to insert in the RECORD. In that case, Mr. President, the issue is altering evidence. The Federal prosecutor admitted having done so. It so happens that this same Federal prosecutor was involved in a similar case 5 years earlier. And the question that occurs to me, which has not been satisfactorily answered to date, is how could a person do this, be involved in the same kind of an episode twice 5 years apart and what was the Justice Department management practice by which they sought to avoid such improper conduct and protect the rights of taxpayers and other citizens?

Mr. President, I am also concerned as a result of what I have learned about these cases about the independence of the grand jury system. We had an attorney representing a national association of attorneys, I believe it was the trial lawyers, who testified that he had often heard prosecutors make statements such as the following about grand juries: "I could get a grand jury to indict a ham sandwich." The indication being—this is something we have discussed with Judge Winner, with other attorneys, and others who are far more knowledgeable than I—that perhaps the grand jury system is not functioning in its intended way.

Mr. President, I am not sure what the outcome of this investigation by the Judiciary Committee will be, but I will tell you this:

In the hearings which Senator GRASSLEY and I held by the Finance Committee, the Department of Justice was not responsive to our concerns. They were not forthcoming. They did not give me the impression that they wished to be cooperative. And so I hope that if the Senate passes this resolution, as I expect we are going to, the Judiciary Committee will employ the kind of investigators and legal counsel that will enable them to bring all the facts to light and, if necessary, subpoena people from the Justice Department, the IRS, or elsewhere. So I think it is important that we know what is going on, what steps may be necessary, if any, to be sure that the rights of taxpayers and other citizens are properly protected.

Mr. President, that is what this is all about. I only want to close by saying that while I am concerned, I would not want anything I have said to constitute a blanket indictment. I am convinced that there are a few bad apples

in any barrel and the problems which have come to my attention may not be general in nature and scope, they may not be representative of the IRS or the Justice Department, and indeed I believe that is unlikely, but I think it is important that we know for sure. I think it is tremendously important that the Senate assure itself that the business of the Justice Department and the IRS is managed in a way that there will not be repetition of these events and the rights of taxpayers and other citizens are protected.

Mr. President, I do ask unanimous consent to insert this material in the RECORD and then yield and look forward with interest to what others may have to say.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNITED STATES OF AMERICA, PLAINTIFF,

v.

WILLIAM A. KILPATRICK, DECLAN J. O'DONNELL, JOHN PETTINGILL, SHEILA C. LERNER, MICHAEL L. ALBERGA, C.S. GILL, C.M. SMITH, BANK OF NOVA SCOTIA, DEFENDANTS.

Crim. No. 82-CR-222

United States District Court, D. Colorado.

Sept. 24, 1984

Defendants were charged with conspiracy, mail fraud, and tax fraud, and one defendant with obstruction of justice. The United States District Court for the District of Colorado dismissed all except one count, and the Government appealed. The Court of Appeals, after briefing but before oral argument, partially remanded case for determination of whether prosecutorial misconduct and irregularities in grand jury process constituted additional grounds for dismissal. Before and immediately after the partial remand, the District Court, 575 F.Supp 325, Fred M. Winner, Senior District Judge, ordered that the Government provide defendant with copies of transcripts of all grand jury proceedings. On remand, the District Court, Kane, J., held that indictment had to be dismissed because of totality of circumstances, which included numerous violation of federal criminal rule pertaining to grand juries, violations of statutory witness immunity sections, violations of the Fifth and Sixth Amendments, knowing presentation of misinformation to the grand jury and mistreatment of witnesses.

Indictment dismissed.

1. Grand Jury ⚖23

Prosecutor's description to grand jury of role of "grand jury agent" in connection with office of "agent of the grand jury" created for Internal Revenue Service special agents misled grand jury, which was consistently reminded of agents' uniquely created and described role and urged to rely on special agents as their "agents," as to appropriate role of IRS agents in investigation in violation of criminal rule relating to grand juries, especially since agents did not view their role and conduct their investigation as agents of independent unbiased grand jury. Fed.Rules Cr.Proc.Rule 6, 18 U.S.C.A.

2. Grand Jury ⚖42

Responsibility and decision-making authority that criminal rule relating to grand juries vests in government attorneys was relinquished to and exercised by Internal Revenue Service, which undertook policy of determining whether and to whom disclosure of confidential grand jury material would be made and whether notifications of disclosure would be made. Fed.Rules Cr. Proc.Rule 6(e), 18 U.S.C.A.

3. Grand Jury ⚖41

Disclosure of grand jury information is only one of forbidden purposes and it is equally improper to manipulate grand jury investigation to obtain evidence for eventual civil use by the Internal Revenue Service. Fed.Rules CR.Proc.Rule 6(e), (e)(3), 18 U.S.C.A.

4. Grand Jury ⚖41

Government's publicizing of names of individuals and entities that were being in vestigated as well as nature of grand jury's inquiry breached grand jury rule's imposition upon government attorneys of obligation to secure grand jury information from improper disclosure. Fed.Rules Cr.Proc.Rule 6(e), 18 U.S.C.A.

5. Grand Jury ⚖41

Government's imposition of unauthorized secrecy obligations upon two witnesses, in order to prevent suspects from determining nature and extent of any communication that might have been revealed and to foreclose challenge to testimony based upon applicable privilege, violated a grand jury rule. Fed.Rules Cr.Proc.Rule 6(e)(2), 18 U.S.C.A.

6. Grand Jury ⚖36

General instructions, months prior, that grand jurors not draw inferences from individual's invocation of privilege against self-incrimination cannot correct practice of calling witnesses only to have them invoke their Fifth amendment privilege before the grand jury. U.S.C.A. Const.Amend. 5.

7. Grand Jury ⚖1

Most important function of grand jury is to stand between government agents and suspect as unbiased evaluator of the evidence.

8. Grand Jury ⚖39
Indictment and Information ⚖144.1(2)

Events which occurred in grand jury room while special agents assigned by Internal Revenue Service to assist prosecutors were present as "agents" of the grand jury and not under oath as witnesses under examination violated grand jury rule provision concerning who may be present, before grand jury and required dismissal of indictment charging conspiracy, mail fraud, tax fraud and obstruction of justice. Fed.Rules Cr.Proc.Rule 6(d), 18 U.S.C.A.

9. Indictment and Information ⚖144.1(2)

When grand jury provisions concerning secrecy is violated recklessly, and systematically dismissal of indictment is appropriate; when knowing violations of rule prejudice and embarrass targets whose identities the government reveals, contempt remedy is not always wholly adequate and under those circumstances it is not necessary for defendant to show that he has been prejudiced by violations. Fed.Rules Cr.Proc.Rule 6(e) 18 U.S.C.A.

10. Indictment and Information ⚖144.1(2)

Violations of grand jury secrecy requirments and direction to witnesses not to disclose fact or substance of their grand jury testimony based on prosecutors' relinquishment to Internal Revenue Service of their responsibility to determine persons to whom disclosure would be made, and IRS's failure to provide mandated prompt notification of disclosure and improper manipulation of secret material to obtain information and data for use during civil litigation required dismissal of indictment charging conspiracy, mail fraud, tax fraud and obstruction of justice. Fed.Rules Cr.Proc.Rule 6(e), (e) (2, 3), 18 U.S.C.A.

11. Witnesses ⚖304(1)

Practice of bestowing informal or pocket immunity through letters of assurance rather than following congressionally authorized procedure for conferring grants of immunity is illegal; when granting immunity, Deparment of Justice must comply with statutory requirements. 18 U.S.C.A. §§ 6002, 6003.

12. Indictment and Information ⚖10.1(4)
Witnesses ⚖304(1)

Prosecutors' repeated use of letters of assurance or so called "pocket immunity" for grand jury witnesses violated applicable witness immunity statutes and tainted grand jury indictment with its illegality. 18 U.S.C.A. §§ 6002, 6003.

13. Indictment and Information ⚖144.1(2)

Calling of seven witnesses before grand jury to take advantage of impermissible inferences that arose from their invocation of privilege against self-incrimination did not require dismissal of indictment per se but a factor to be considered in determining whether grand jury had been overreached or usurped. U.S.C.A. Const. Amend. 5.

14. Grand Jury ⚖36.4(2)

Improper efforts to prejudice defendants by impermissible inferences from seven witnesses' assertions of their privilege against self-incrimination was compounded by questioning before grand jury concerning payment of witnesses' legal fees, since no legitimate purpose for such questioning exists. U.S.C.A. Const. Amend. 5.

15. Grand Jury ⚖36.8

Mischaracterization of testimony before grand jury and unidentified use of questionable hearsay information with regard to vital issues intrudes upon independent role of grand jury particularly where misrepresentations could not be expected to be readily apparent to grand jury and relate to material issues in prosecution.

16. Criminal Law ⚖662.1

Guarantees of Sixth Amendment apply to corporate defendants with same force as to individual defendants. U.S.C.A. Const. Amend. 6.

17. Indictment and Information ⚖144.1(2)

Dismissal of indictment was inappropriate remedy for *Massiah* violations as result of interrogations of bank employees in absence of counsel where bank's counsel performed ably and adequately throughout litigation and no prejudice was demonstrated, but *Massiah* violations entered into qualitative assessments of prosecutors' and grand jury's conduct in determining whether indictment should be dismissed based on totality of the circumstances.

18. Indictment and Information ⚖144.1(2)

Totality of circumstances concerning grand jury investigation, from inception of 20-month grand jury investigation when prosecutors divined office of "agent of the grand jury" on Internal Revenue Service agents through time agents' improper "summaries" were presented shortly before indictment was returned, usurped indicting grand jury and required dismissal of indictment charging conspiracy, mail and tax fraud, and obstruction of justice. 18

U.S.C.A. §§ 2, 371, 1341; Fed. Rules Cr. Proc. Rule 6, 18 U.S.C.A.

Charles Alexander, Trial Atty., U.S. Dept. of Justice, Tax Div., Washington, D.C., and Robert N. Miller U.S. Atty., Linda S. Surbaugh, Asst. U.S. Atty., Denver, Colo., for U.S.A.

William C. Waller, Richard K. Rufner, Wagner & Waller, P.C., Engewood, Colo., for Kilpatrick.

James L. Treece, Littleton, Colo., for O'Donnell.

David L. Hiller, Dubosky & Hiller, Denver, Colo., for John Pettingill.

Thomas French, Dill, Dill & McAllister, Denver, Colo., for Lerner.

Donald E. Van Koughnet, Naples Fla., for Alberga & Gill.

C.M. Smith, No Appearance.

James E. Nesland Ireland, Stapleton & Pryor, Denver, Colo., and Robert J. Anello, Obermaier, Morvillo & Abramovitz, New York, for Bank of Nova Scotia.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Kane, District Judge.

PROCEDURAL BACKGROUND

After a twenty month investigation conducted before two successive grand juries, the instant proceeding was commenced on September 30, 1982 by the filing of a twenty-seven count indictment chargin seven individuals and The Bank of Nova Scotia with conspiracy, mail fraud and tax fraud and also charging William A. Kilpatrick with obstruction of justice (Count 27). The bank was charged in ten counts with conspiracy to defraud (18 U.S.C. § 371) (Count 1) and aiding and abetting a mail fraud (18 U.S.C. § 1341 and § 2) Counts 13 through 21).

On February 21, 1983, I dismissed the first twenty-six counts of the indictment for failure to charge a crime and as improperly pleaded. Additionally, upon separate motion by the bank, I dismissed the charges in which the bank was named upon the ground that the indictment failed to allege that the bank or any of its representatives had the requisite knowledge and intent to commit the crimes charged. The government appealed the dismissals.

On August 8, 1983, after briefing but before oral argument, the Tenth Circuit entered an order partially remanding the case to me so that all defendants could participate in hearings to determine whether prosecutorial misconduct and irregularities in the grand jury process constituted additional grounds for dismissal.

Before and immediately after the partial remand by the Tenth Circuit, the Honorable Fred M. Winner, Senior United States District Judge, presided over post-trial motions hearings following a guilty verdict against Mr. Kilpatrick on Count 27. On August 25, 1983, at about the time of his retirement from the bench, Judge Winner issued a memorandum decision which, among other things, summarized the status of the hearings which were being reassigned to me. Further, Judge Winner ordered that the government provide defendants with copies of transcripts of all proceedings that occurred before the grand juries. After some bizarre episodes of procedural novelty, Judge Winner's opinion was finally published. *See United States v. Kilpatrick*, 575 F. Supp. 325 (1983). The instant Findings of Fact, Conclusions of Law and Order must be read in conjunction with Judge Winner's opinion.

The government attorneys failed to provide defendants with complete transcriptions as ordered. They apparently overlooked, and did not transcribe, dozens of proceedings before the grand jury. The latter proceedings—which converted into hundreds of pages of transcript and, more significantly, disclosed clear violations of Rule 6—were not produced until the defense detected the lack of compliance with Judge Winner's order. Even now, the government remains unable to provide transcripts of all the proceedings and was unable to produce a single Rule 6(e) order (which the government attorneys testified they obtained) authorizing several major disclosures of grand jury matters. The government asserts that it had turned over such transcripts as could be had as soon as they were received from the court reporter. Such, in my view, does not excuse the failure to produce complete and accurate transcripts. If the assertion minimizes the inference of dissimulation, it exacerbates stronger ones of confusion and indifference.

FACTS ESTABLISHED BY THE RECORD [1]

A. Grand Jury Agents

[1] Despite detailed instructions from the impaneling court that the grand jury should maintain its independence and not develop into a "prosecutor's agent," shortly after both grand juries involved in the investigation leading to the instant indictment were sworn, the prosecutors created the office of "agent of the grand jury" for Messrs. Mendrop and Raybin, Special Agents assigned by the IRS to assist the prosecutors.[2] Several months later an IRS agent assigned to the civil division and who the prosecutors relied upon as an expert was also sworn in as an "agent of the grand jury." G.J. Tr. Schneider, May 3, 1982, 1:34 p.m. at pp. 2-3. The prosecutors divined the office of "grand jury agent" by personally administering oaths before the grand jury to Raybin, Mendrop and Schneider.[3] The government concedes that the prosecutors possessed no authority to administer such oaths. Indeed, the prosecutor who administered the oaths now concedes he created the oath and was "shooting from the hip" when he did so. K.Tr. 501.

The government argues that this event should be viewed as a technical mislabeling of no great import. It is, however, more than a misnomer.

First, the prosecutor's description to the grand jury of the role of a "grand jury agent" clearly misled the grand jury as to the appropriate role of the IRS agents in the proceedings. *See* Winner opinion, 575 F.Supp. at 329. As conceded by the prosecutor, there is simply no basis for his description to the grand jury of the role of grand jury agents.[4] K.Tr.501.

Second, the grand jury was consistently reminded of the agents' uniquely created and described role and urged to rely upon the IRS special agents as their "agents." Thus, on many occasions when Raybin and Mendrop appeared as witnesses the government attorney reiterated that they were appearing as "agents of the grand jury." [5] *See e.g.*, G.J. Tr. Mendrop, August 4, 1981, 9:25 a.m., at p. 2, August 5, 1981, 4:04 p.m., at p. 2, September 29, 1982, 9:32 a.m., at p. 2; G.J. Tr. Raybin, July 8, 1981, 9:11 a.m., at p. 5, March 3, 1982, 1:19 p.m., at p. 2, September 29, 1982, 2:32 p.m., at p. 2. Further, the government attorneys assigned special importance to identifying the IRS agents with the grand jury. When conducting interviews in connection with the investigation, Raybin and Mendrop were directed by the prosecutor to inform witnesses that they were "assisting a grand jury investigation in the Judicial District of Colorado." K.Tr. 619; *see also* G.J. Tr. Mendrop, August 5, 1981, 4:04 p.m., at p. 2; G.J. Tr. Raybin, July 8, 1981, 9:11 a.m., at p. 5, September 29, 1982, 2:32 p.m., at p. 2.[6]

Third, contrary to the role of the IRS agents described to the grand jury by the prosecutors, Mendrop and Raybin *did not* view their role and conduct their investigation as agents of an independent, unbiased grand jury. Rather, they viewed their role as agents of the Department of Justice, not the grand jury. When asked if his function as an agent of the grand jury was to assist the grand jury, Raybin testified:

A: My duties were designed to assist the Department of Justice in its investigation.

K.Tr. 232.

Mendrop similarly interpreted his role as agent of the grand jury to be "primarily" to assist the prosecutors;

Q: Mr. Mendrop, who were you really assisting in this matter during the grand jury investigation?

A: Well, *primarily, I was assisting the attorneys for the government* and indirectly I'm sure that I must have been assisting the grand jury through the work that I was doing for the investigation that they were, that they had under consideration.

Q: Well, in fact, you directly represented to the grand jury that you were assisting them, did you not, sir?

A: I'm not sure how you mean that.

Q: In fact, you represented to the grand jury that you were their agent and Mr. Snyder also represented to the grand jury that you were their agent; is that correct, sir?

A: I believe those words were used, yes, sir.

K.Tr. 401-02 (emphasis supplied).

Ironically, the government attorneys who created the grand jury agents and described their role are confused themselves as to whether the "agents" roles should be considered aligned with that of independent grand jurors or the prosecutors.[7] K.Tr. 534-35; 1126.

Fourth, the government attorneys used the "grand jury agents" to do more than assist the attorneys in the investigation. They used them to summarize evidence in front of the grand jury. On the first day that the second grand jury convened, after his pseudo-investiture as a grand jury agent, Raybin summarized the investigation so far conducted, explained tax shelters to the jury, and opined that the circular financing utilized in the tax shelters under investigation was illegal. *See* G.J.Tr. Raybin, September 29, 1982, 2:32 p.m.; Mendrop, September 29, 1982, 9:32 a.m.; Raybin, September 30, 1982, 10:40 a.m. Similar kinds of substantive testimony were given by Raybin on September 9, 1981, and March 3, 1982. *See* G.J. Tr. Raybin, September 9, 1982, 10:02 a.m.; March 3, 1982, 1:19 p.m. On September 29 and 30, 1982, when the government attorneys, and apparently the "agents of the grand jury," were seeking the indictment, Raybin and Mendrop purported to summarize the evidence for the grand jury to support the 27 count indictment presented by the government attorneys. On September 30, 1982, Schneidera appeared as "the expert" in the field of tax shelters to summarize the legal theory. G.J. Tr. Schneider, September 30, 1982, 9:22 a.m. These summaries contained numerous inaccuracies and

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Footnotes at end of article.

were misleading in several respects. Although the government attorneys were quick to inform the grand jury of their role as advocates, the grand jurors were never informed that their "agents" were "primarily" representing the interests of the Department of Justice attorneys.

Finally, the prosecutors' creation and use of grand jury agents resulted in many other abuses and Rule 6 violations. Most notably the agents made many joint appearances before the grand jury, without the presence of government counsel, and read transcripts to the jurors. K.TR. 483-87; 636-39; 691-92; 707-12.

Raybin and Mendrop appeared before the second grand jury to give testimony regarding the investigation. Each time they appeared alone, were sworn, and were examined by the government attorneys. When they appeared to read testimony from the first grand jury to the second grand jury, they appeared together, were apparently not sworn, and were not examined by government attorneys because the latter were usually absent. It is not clear in what capacity they were appearing to read testimony. The conclusion was exacerbated by two other IRS agents—Burke and Shea—also appearing together to read testimony to the second grand jury. In what capacity they were appearing is even less evident since they were not made "grand jury agents" and the record of their appearance does not support a finding that they were witnesses.

The transcripts of the agents' simultaneous appearances establish that they were not present as witnesses. They appear not to have been sworn; they appeared together; they were not examined; and they were mostly unaccompanied by government attorneys. The testimony of the prosecutors and agents that the agents were sworn, even if evidenced by a transcript, would not authorize their simultaneous appearances under Rule 6(d). The recollection of the prosecutors and agents that the oath was administered is challenged by the almost dozen transcripts showing the oath was not administered on any single occasion where the agents appeared together.

The record reveals that the agents' many appearances before the second grand jury, whether sworn or unsworn, were largely unsupervised. The agents were frequently unattended by government attorneys and, in some instances, may have convened the grand jury sessions without government counsel in order to read testimony. K.Tr. 483-87; 636-39; 691-92; 707-12.

In other instances the transcripts do not make clear precisely when the agents entered or left the grand jury room. It appears that they many have been present while the prosecutors engaged in coloquy with grand jurors. G.J. Tr. Remarks of Prosecutor, February 2, 1982, 1:07 p.m. at p. 18; Remarks of Prosecutor, February 4, 1982, 3:30 p.m. at pp. 2-3; Remarks of Prosecutor, April 6, 1982, 9:08 a.m. at p. 8.

Both prosecutors acknowledge that the agents *"were not* under examination" when they read to the grand jury. K.Tr. 485 (emphasis supplied); *see also* K.Tr. 707. The conclusion that they were not under examination is inescapable because no attorney was present to conduct an examination. Further, the grand jurors were under instructions *not* to question the agents during such appearances. K.Tr. 481-87.

B. Improper Disclosure, Improper Use and Secrecy Violations

[2] During the course of the grand jury investigation, the government representatives systematically disregarded the strictures of Rule 6(e). The record demonstrates that the responsibility and decision making authority that Rule 6(e) vests in government attorneys was relinquished to and exercised by the Internal Revenue Service. Members of that agency undertook a policy of determining whether and to whom disclosure of confidential material would be made and whether notification of such disclosure would be made pursuant to the Federal Rules. Moreover, the evidence suggests that information was disclosed to other IRS agents for use in civil cases. Grand jury secrecy was repeatedly breached by those with a duty to remain silent and secrecy obligations were imposed upon others of whom the law does not require confidentiality.

(1) Disclosure

The disclosure notices filed pursuant to Rule 6(e)(3)(B) indicate that numerous individuals at all levels of the Internal Revenue Service, many of whom were assigned from the civil division of that agency, were permitted access to grand jury material. DX Q; *see* K.Tr. 26, 29-36, 40, 43, 50. The hearings have demonstrated that numerous other IRS personnel (all of whom were civil personnel), were given access to grand jury material, that these people were never identified on a disclosure notice and that they remain unknown even now.

That the decision as to which individuals should be privy to the grand jury material was frequently made by the IRS, rather than by the prosecutors, was admitted by the agents.[8] K.Tr. 241. That it was the norm is confirmed by several additional facts. Disclosure was made liberally and often before obtaining attorney approval, an act the prosecutors acknowledged violates Department of Justice rules. K.Tr. 57-69; 754. Notice of such disclosure was not made "promptly" as required by Rule 6(e). The decision as to which names to include on the disclosure lists was largely left up to the IRS agents. The integrity of the lists themselves, as well as the decisions to make disclosure to the listed personnel, is lacking. The government attorneys admitted that they were unable to identify a substantial number of those named on the disclosure notices. K.Tr. 498-99. Further, these notices were frequently filed by attorneys having little relationship to the investigation. *See* K.Tr. 15-67; DX Q. The IRS agents were likewise unable to identify many of the persons on the list or why they were listed. K.Tr. 14-22, 30, 36-38, 39, 43-44, 56, 60-61, 65, 69, 106-09.

Perhaps the best illustration of the insouciance with which grand jury disclosures were made and recorded appears in the circumstances surrounding the post-indictment notice. The agents were directed by the government attorneys to pick their brains and prepare a catch-all disclosure notice listing any individuals whom they could recall may have had access to secret grand jury materials but who were not listed as required. Thus, on October 20, 1982, approximately three weeks after the indictment was returned, a final notice of disclosure adding sixteen names of IRS employees was filed. K.Tr. 57-59.

The agents' post hoc attempt to determine to whom disclosure had been made in order to supplement the disclosure notices was not entirely successful. Numerous persons with access to grand jury material were forgotten and never included on the notices. The discovery of these forgotten people occurred only because, during the hearings, government representatives testified at length concerning two computer programs compiled from grand jury documents, ostensibly for purposes of assisting in the grand jury's investigation. *See, e.g.,* K.Tr. 71-79, 87-91, 157-61. The performance of this function was riddled with Rule 6(e) violations.

Although the prosecutors testified that a court order was obtained permitting the transfer of the derivative grand jury information for that purpose to Lowry Air Force Base, the government was unable to produce such an order at the hearings. K.Tr. 494-9; 517; 755; 807. The prosecutors acknowledge that no order was obtained permitting transfer of similar information to Dallas and Utah, a failure caused by their unawareness even at the hearing that the IRS agents had taken it upon themselves to arrange for the computer work to be done at those locations and because the prosecutor left the "details" of the computer work to the IRS. K.Tr. 87-88, 494-96, 523, 807.

Many IRS employees with access to information used in compiling the computer program were eventually listed on the disclosure notices. *See* K.Tr. 34, 40, 43, 61, 72, 76, 78. Just as many, however, apparently never found their way onto the lists. Although the computer programs were created by computer "groups" in Dallas and Ogden (K.Tr. 74-76), the Disclosure Notices list few, if any, of the computer personnel from Utah or Texas. The indifference of the government attorneys is further revealed by the fact that a student clerk assisting the prosecutors was not listed as having had access to grand jury material although it was revealed at these hearings that she did. K.Tr. 1085-87.

Whatever instructions there were, if any, concerning disclosure and use of the grand jury material as apparently passed on by the staff of the Internal Revenue Service itself and not by the Department of Justice attorneys. Little or no instruction concerning the strictures of Rule 6(e) is included in the training of many of those IRS employees who has access to the information. K.Tr. 155.

Further, when the IRS agents acting as "agents of the grand jury" undertook the task of explaining the secrecy provisions to other employees of the IRS, it is clear that the information was of little practical use. For example, one such agent testified that, although he informed the supervisor of the computer program that he should disclose information only to one whose name was listed on the disclosure notices, only a few of the names on those lists were revealed to the supervisor. K.Tr. 155.

(2) Improper Use

The free rein given the IRS by the Department of Justice attorneys in this investigation and in the use and disclosure of grand jury material presents a serious possibility that the extraordinary powers of the grand jury were manipulated in order to obtain evidence useful in later civil litigation. The record reveal that such a danger was real and that substantial investigative activities disclosures were made for purposes other than "to assist an attorney for the government in the performance of [his] duty to enforce federal criminal law." *See* Rule 6(e)(3), Fed. R. Crim. P.

[3] IRS institutional intent to take advantage of the grand jury investigation in civil audits was confirmed by Richard Gullion, a civil IRS agent assigned to the examination division in Denver, who freely acknowledged that the IRS hoped to take advantage of

the facts developed by criminal investigation after conclusion of the criminal proceedings. W.Tr. 836-38. The government, in resisting this claim, has asserted that no improper disclosure to IRS civil agents has occurred. K.Tr. 150-51, 413-14, 416-17, 645-46. Disclosure of only one of the forbidden purposes. It is equally improper to manipulate the grand jury investigation to obtain evidence for eventual civil use by the IRS. *United States v. Sells Engineering, Inc.*, 463 U.S. 418, 103 S. Ct. 3133, 77 L. Ed. 2d 743 (1983). As is discussed below, the record confirms that the grand jury's extraordinary powers and resources were, in part, initiated and channeled for just such a purpose.[9]

The government's investigation of defendants originated at the IRS in 1979. From August, 1979 to July, 1980, the IRS conducted a joint civil and criminal investigation. In July, 1980, the IRS referred its investigation to the Tax Division of the Department of Justice with the recommendation that a grand jury investigation be conducted because its administrative processes were potentially ineffective. DX M.

The agents' testimony that they abandoned all civil interest when the grand jury commenced reminds me of Joel Chandler Harris' story about Bre'r Rabbit asking the fox not to throw him in the briar patch. At least one witness believed that the government was anxious to build civil cases through the use of grand jury information. W.Tr. 73-74. Several facts confirm that the IRS agents did not abandon entirely IRS civil interest in recouping taxes.

For example, agents of the IRS interviewed numerous tax shelter investors. The interviewees were threatened that if they did not speak voluntarily a grand jury subpoena might be obtained. Thus, they were informed that the interview was being conducted in lieu of a grand jury appearance. K.Tr. 191. In connection with these investor interviews the IRS agents assisted in the creation of "Investor Questionnaires." These questionnaires instructed interviewers to ask numerous questions concerning the tax shelters. Several of the questions involved investor motives, a subject of no conceivable relevance to a criminal investigation of the targets but highly relevant in a civil audit of the investor. DX W; G.J. Tr. Raybin, January 6, 1981 at pp. 4-7. That this interviewing program had no criminal investigation purpose is demonstrated by the fact that no investor, let alone any investors interviewed, appeared before the grand jury. None of the interviews, nor the results of the interviews, was presented to the grand jury. K. T. 149. The government offered no explanation at the hearings of why and for what purpose such interviews were conducted.

Civil IRS employees, armed with grand jury information, were brought into the investigation to prepare audits of the tax shelter investors. These audits, like the interviews, were not presented to the grand jury and no reasons or explanations for their preparation were offered at the hearings. K. Tr. 149.

IRS activity since the return of the indictment confirms its intent to utilize the grand jury investigation and information for civil litigation purposes. Since return of the indictment the IRS has issued civil audit letters to the investors interviewed, notifying them that their returns were being examined. The letter read in part "[a] report will be issued in the near future containing a position consistent with *facts* as presented in the Federal Grand Jury Indictment of September 30, 1982, for the United States District Court for the District of Colorado." DX L (emphasis supplied); *see also* K. Tr. 176-78, 344-48.

Finally, several statements attributed to the prosecutors by witnesses during the course of the investigation confirm that the grand jury proceedings, at least in part, were conducted for other than legitimate federal criminal purposes. Richard Birchall, a former attorney with the Department of Justice, testified that "[t]here was a vengeance to the manner in which [the prosecutor] conducted the investigation." W.Tr. 69. Mr. Birchall also reported that on one occasion the prosecutor indicated that even if he were unsuccessful on the merits, the defense would be excessively expensive to the defendants. W. Tr. 133.

A similar improper motive was testified to by Donald Morrison a witness who made numerous grand jury appearances. With regard to a proposed business activity of some of the defendants, Morrison testified that a prosecutor indicated that they were going to "shoot in the [the] ass [the] coal deal." W. Tr. 192. These statements were vigorously denied by the prosecutors. I am in no position to resolve the obvious conflict in the testimony by assessing the credibility of witnesses appearing before Judge Winner with those appearing before me. Thus, I do not find as a fact that the statements were actually made. I describe them here because they illustrate the infusion of hostility and vitriol which permeates this entire case—a condition which I attribute to the frequently rude, consistently arrogant, and occasionally obnoxious conduct of some of the government attorneys assigned to the prosecution of this case.[10]

(3) Secrecy Violations

[4] Several instances demonstrate blatant disregard for the time-honored tradition of grand jury secrecy. As discussed below, such violations were utilized by the government, not only to gain what was certainly perceived as an advantage in connection with the intended prosecution but were also apparently part of an improper attempt to embarass the targets and hinder the ongoing operation of their business during the course of the grand jury investigation.

Throughout the course of the grand jury investigation the government widely publicized the names of the individuals and entities that were being investigated as well as the nature of the grand jury's inquiry. The dissemination of information concerning the proceedings before the grand jury was undertaken without the circumspection normally afforded such disclosure by government attorneys. Such disclosures were particularly egregious insofar as the recipients of the information were known customers and business associates of the targets.

With the knowledge of Department of Justice attorneys, numerous letters were sent out identifying the targets, the related entities and the nature of the criminal investigation. The letters were sent to individuals beyond the subpoena power of the grand jury and with whom it was understood the targets had ongoing business and professional relationships. The letters, which were written on the letterhead of the United States Attorney, but signed by supposed agents of the grand jury, were not only misleading in terms of the capacity in which they were sent, but also clearly posed a danger of adversely affecting the acknowledged business and professional relationships. K. Tr. 121-25, 597-98, 969-75; DX V-1 through V-15; DX Y.

The text of the letters read in part as follows:

The *United States Department of Justice is conducting a Grand Jury investigation of the business activities of William A. Kilpatrick, Declan J. O'Donnell, John Pettingill and Sheila C. Lerner* for the years 1977 through 1980. The Grand Jury is attempting to determine whether these individuals, through United Financial Operations, Inc., P & J Coal Company, Inc., Marlborough Investments, Ltd., International Fuel Development Corp., Ltd., and International Block Construction Company, Ltd., have committed violations of Title 18 and Title 26 of the United States Code.

The Grand Jury has obtained information which indicates that you have had and/or currently do have a business relationship with one or more of the individuals and/or entities listed above. It has been determined that your testimony will be helpful in resolving questions which still face the Grand Jury. Subsequently, the United States Department of Justice cordially invites you to appear and testify before the Federal Grand Jury in Denver, Colorado (U.S.A.) at your convenience. Transportation, lodging and meals will be arranged for and paid by the United States Department of Justice.

* * * * *

We look forward to your response,
Sincerely yours,
STEPHEN L. SNYDER
Trial Attorney
Criminal Section
Tax Division
By: PAUL E. RAYBIN
Special Agent

(Emphasis supplied.)

The impropriety of publicly identifying targets in these letters was readily apparent to Judge Winner:

[T]he identity of the persons and the transactions which were under grand jury scrutiny shouldn't be disclosed to anyone by letter or otherwise, but these startling letters did precisely that.

575 F. Supp. at 334.

The prejudicial disclosure of the targets and the nature of the grand jury's investigation, however, was not limited to these "startling letters." During the course of the investigation, the "agents of the grand jury," and other employees of the IRS, ostensibly in connection with the ongoing criminal investigation, interviewed numerous investors in the tax shelters. Those investors, too, were informed of the nature of the grand jury's inquiry and the names of those being investigated. K. Tr. 93-94.

Rule 6(e) imposes upon government attorneys the obligation to secure grand jury information from improper disclosures. That obligation was breached several times. The disclosure of secret grand jury material was not limited to identification of the targets of the investigation. Grand jury information was also shared with Richard Birchall a witness and one-time potential target.[11] Details of the investigation were revealed to Birchall during a meeting in which one of the prosecutors attempted to persuade him to assist in the government's investigation by suggesting that the grand jury had received evidence warranting his consideration as a target. W. Tr. 44-52, 983-84; 575 F. Supp. at 332-33.

Moreover, Birchall, who apparently was led to believe that he might face criminal exposure, was left unattended in a room housing grand jury material. He admittedly utilized the opportunity to rummage

through the grand jury documents. 575 F.Supp. at 332-33. In further disregard of the secrecy provisions of Rule 6(e) another witness, Bernard Bailor noted that the room in which the grand jury material was housed was generally left open. W. Tr. 1130-31. Judge Winner commented that he found Mr. Bailor's testimony to be knowledgeable and candid during the hearings. 575 F.Supp. at 338-43.

Whatever may be said as to the impropriety of Richard Birchall's rummaging through grand jury testimony and documents when he was left alone in the grand jury storage room, it does not excuse the government attorneys' impropriety in availing him of that opportunity. Before leaving him alone in the grand jury storage room they accuesed Birchall of making several extortion threats to O'Donnell, a target of the investigation. K.Tr. 377, 381, 422-23, 425-26. Birchall obviously took advantage of the opportunity improperly provided to him to search through the grand jury records and documents.

(4) Improper Imposition of Secrecy Obligations

[5] For what the record reveals was clearly an improper strategic purpose, secrecy obligations in clear violation of Rule 6(e)(2), Fed.R.Crim.P., were imposed upon two grand jury witnesses. On January 5, 1982, David H. Hoff and David R. Major appeared before the grand jury. When Hoff appeared separately before the grand jury he was advised:

Q: You are also aware that the proceedings of this Grand Jury are secret and that is covered by Rule 6 of the Federal Rules of Criminal Procedure, that is, any questions I put to you today, questions that the Grand Jury may have, any discussion we have in this room at your appearance, that your appearance should be kept secret by you; do you understand that?

A: Yes, sir, I do.

G.J.Tr. Hoff, January 5, 1982, 9:59 a.m., at p. 4. A similar directive was given to David R. Major, G.J.Tr. Major, January 5, 1982, 11:13 a.m., at p. 5.

These confessed violations of Rule 6(e) were neither innocent nor inadvertent. Rather, the record reveals the improper obligation to keep the information and fact of their appearances secret was imposed for a strategic purpose.

Both witnesses occupied positions as attorneys who had formerly represented Defendants Kilpatrick and O'Donnell in previous SEC proceedings involving the same tax shelters under investigation before the grand jury. *See* G.J.Tr. Remarks of Prosecutor, January 5, 1982, 9:09 a.m., at p. 8. The government attorney explained to the grand jury the purpose of calling them as follows:

The primary focus of our investigation involving the financing is the factual representations made concerning Marlborough Investments Limited, IFDC; we want to know what the lawyers were told by the principals, and what information they relayed to the parties.

G.J.Tr. Remarks of Prosecutor, January 5, 1982, 9:09 a.m., at p. 12. Thus, the government attorney imposed the unauthorized secrecy obligations upon these two witnesses to prevent defendants from determining the nature and extent of any such communication that might have been revealed and to foreclose a challenge to such testimony based upon an applicable privilege.

Such a conclusion is buttressed by the fact that the same government attorney examined four other witnesses that same day, several witnesses two days later on January 7, 1982, and approximately fifteen witnesses on other occasions. *None* of those witnesses were given the same directive. The prosecutors were fully cognizant that Rule 6(e) prohibits the imposition of secrecy obligations on grand jury witnesses.[12]

Indeed, during these hearings, the Department of Justice attorney involved acknowledged that at the time he imposed the improper obligations he was aware of the United States Attorneys' Manual provisions prohibiting the imposition of an obligation of secrecy upon a witness. Yet, although provided with ample opportunity, he was unable to offer any legitimate reason for his transgressions. K.Tr. 697-99.

C. Use of Pocket Immunity

During this investigation, Department of Justice attorneys ignored entirely the federal immunity statute (18 U.S.C. §§ 6001, *et seq.*) which prescribes the congressionally authorized procedure for conferring grants of immunity and, instead, secured testimony by engaging extensively in what I have previously described as the "damnable practice" of bestowing "informal immunity" through "letters of assurance." *United States v. Anderson*, 577 F.Supp. 223, 223[13] (D.Colo.1983). The testimony of 23 witnesses in this investigation was secured by means of such "immunity" conferred by Snyder and Blondin. K.Tr. 513. Not one witness was given statutory immunity.

The profligate issuance of such "letters of assurance" had its inception shortly after the investigation commenced, in a telephone call between one of the prosecutors and Bernard Bailor, Esq., who, with his firm, represented many of the witnesses who later received such letters. K.Tr. 476. Bailor explained that his clients would not testify voluntarily before the grand jury. In response, the prosecutor suggested that in lieu of statutory immunity he would be willing to issue letters of assurance. Mr. Bailor accepted the offer and at that point a procedure for issuing the so-called informal "immunity" was inaugurated. K.Tr. 476-77.

After reaching his agreement with Bailor, the prosecutor apparently consulted with senior assistant chief Edward Vellines of the Tax Division. According to the prosecutor, Vellines indicated that the prosecutor had the authority to issue such letters of assurance provided he abided by the instructions of a Department of Justice memorandum and the United States Attorneys Manual and provided further that the recipient was not a target of the investigation. K.Tr. 514-15; 602; 623.

Thereafter, the prosecutors undertook, without seeking specific approval from any superior, what was characterized as a "liberal" policy of distributing this type of informal immunity to witnesses. At no point was an effort made to obtain statutory immunity for any witness, nor was the United States Attorney's Office for the District of Colorado informed of the issuance of such letters though written on United States Attorney's stationery. K.Tr. 476-77, 720, 731-32; 575 F.Supp. 335-36; Remarks of Prosecutor, February 2, 1982 at 1:07 p.m. at p. 5-8; DX U-1-U-17.

No witness who testified pursuant to this form of informal "immunity" bestowed by the prosecutors indicated that he or she would have been less cooperative or unwilling to testify had he or she been granted statutory immunity. Rather, the government attorneys readily concede that they chose the method they did simply for the sake of expediency—to by-pass the review procedure established by Congress in the statutory scheme. K.Tr. 476, 721-22; 724-28. Among the vehicles for review avoided by the unauthorized method chosen here was the statistical compilation that Congress indicated as among its purposes for establishing the statutory procedure. Indeed, the government acknowledged that, unlike grants of statutory immunity on which central records are maintained, there is no realistic way for the Department of Justice to determine the number of letters of assurance executed. K.Tr. 729; 839. Despite what the prosecutor explains were his specific instructions, informal immunity was bestowed upon individuals once considered targets of the investigation (*i.e.*, John Jewell and Richard Bell). Moreover, one of the prosecutors admitted having conferred immunity upon an individual who it was later learned had failed to file tax returns for several years. K.Tr. 734-35; *see also* G.J.Tr. Kitrick, May 5, 1981, 10:36 a.m., at p. 3-4; Stephenson, April 6, 1981, 3:01 p.m., at p. 3-4, 575 F.Supp. at 335.

In their deliberate efforts to avoid the review process and the certainty that Congress intended in the granting of witness immunity, the prosecutors injected serious ambiguity in the critical area of witness credibility. Several facts demonstrate the seriousness of the ambiguity created by this unauthorized procedure.

Despite alleged explanations of letters of assurance,[14] the grand jurors whose job it was in this investigation to assess witness credibility were presented with conflicting descriptions of the effect of these letters upon the witnesses and, consequenlty upon the value to place upon their testimony. On some occasions, the witnesses were advised before the grand jury that the letters gave them "immunity" and that they had no Fifth Amendment privilege. *See, e.g.*, G.J.Tr. Stanley, April 6, 1981, 4:27 p.m., at p. 5; Stephenson, April 6, 1981, 3:01 p.m., at p. 4; Kitrick, May 5, 1981, 10:36 a.m., at p. 4; Miller, June 2, 1981, 9:28 a.m., at pp. 3-4. On other occasions, witnesses were advised that although they were testifying after receiving a letter of assurance, they retained their Fifth Amendment privilege and could refuse to testify. *See, e.g.*, G.J.Tr. Jewell, February 4, 1982, 1:19 p.m., at pp. 2-3; Caddell, February 4, 1982, 10:50 a.m., at p. 3; Folsom, April 6, 1982, 11:42 a.m., at p. 4; *see also*, G.J.Tr. Remarks of Prosecutor, February 2, 1982, 1:07 p.m. at pp. 5-8.

Moreover, the prosecutors' avoidance of statutory immunity in this investigation left every witness in the posture of testifying with the impression and fear that unless the witness' testimony pleased the government, the government might withdraw its assurances. That such a fear was more real than imagined was apparent to Judge Winner in his review of the events surrounding the grand jury appearance of Richard Bell, a witness who testified with a "Letter of Assurance."

Mr. Bell was represented by his borther, Malcolm, and attorney practicing in New York City, and a witness I found to be straight-forward, fair, convincing, and most generous to Mr. Snyder. Malcolm Bell succumbed to the carrot of pocket immunity for his brother, but, later he was told by Mr. Snyder that if Richard "testified for Mr. Kilpatrick, all bets were off." Maybe this meant that if Mr. Bell perjured himself he would be prosecuted for perjury, but if the immunity statute had been followed, the nagging question of the meaning of "all bets are off" wouldn't confront us.

575 F.Supp. 335.

The meaning of the admonition of the prosecutor was a "nagging question" to Malcolm Bell, who as an experienced attorney ultimately determined that the prosecutor must have meant that the deal was not withdrawn but that Richard Bell was subject to perjury. More significantly, however, Richard Bell, as would most lay witnesses, believed it meant the "Letter" would be withdrawn. T.Tr. 460-63.

D. Witness Innvocation of Privilege Against Self-Incrimination

The prosecutors pursued their course of distributing letters of assurance "quite liberally" until, in the words of one of them, it was decided "all good things come to an end." G.J.Tr. Remarks of Prosecutor February 2, 1982, 1:07 p.m. at p. 5. At that point they replaced the unauthorized procedure with the equally abusive and dubious practice of calling witnesses who had not been issued letters and having them invoke their Fifth Amendment privilege before the grand jury regarding the targets and the transactions under investigation; knowing in advance that they would do so. K.Tr. 515.

In all, seven witnesses were called to invoke their privilege in February and March, 1982. That the purpose was to prejudice the grand jury against the targets and the tax shelter transactions under investigation, and not to lay a statutory predicate for immunizing the witnesses (which the prosecutor never did) cannot be denied. First, the prosecutor who called the witnesses admitted that he did not do so to obtain congressionally authorized grants of immunity. K.Tr. 515. Second, the uniform questions posed to the witnesses evidence the intention to utilize the witnesses assertion to prejudice the grand jurors against the targets:

Q: Now, Mr. Drizin, if I would ask you any questions concerning any relationship you may or may not have had with William A. Kilpatrick, John Peddingill [sic], Shiela Lener or Declan J. O'Donnell or United Financial Operations, would you assert your right against self-incrimination on those questions?

A: Yes, sir.

G.J.Tr. Drizin, March 2, 1982, 9:29 a.m., at p. 4. Third, the prosecutor did not limit his questioning merely to have the witness invoke his Fifth Amendment privilege but rather questioned several of the witnesses to elicit that Kilpatrick's company, United Financial Operations, was paying their attorneys' fees, leaving the grand jury with the impression that their refusal to testify was being financed by the targets.[15] *See e.g.*, G.T.Tr. D'Amico, February 4, 1982, 12:35 p.m., at pp. 6-7.

[6] That the prosecutor's conduct in this regard (which occurred before the second of the two grand juries empanelled in connection with this investigation) was known to him to be improper and prejudicial is revealed by his statements to the first grand jury several months earlier:

Immediately all the witnesses I had subpoenaed today decided that they would not want to come in here and testify and they said they would assert their Fifth Amendment rights.

I could force them in here under their Fifth Amendment rights, but under the Department of Justice guidelines *I should not do that except in exceptional circumstances should I bring a person in here and have them assert their Fifth Amendment rights because it serves no purpose and it only serves to prejudice, and it can prejudice a layman.*

G.J.Tr. Remarks of Prosecutor, February 2, 1981, 9:40 a.m. at pp. 2-3 (emphasis supplied). Indeed, the prosecutor did to the second grand jury precisely what he told the first grand jury he could not and should not do. The only difference is that, when he did it anyway, he did not tell the grand jurors that he was doing it to them. General instructions, months prior, that jurors not draw inferences from an individual's invocation of the privilege against self incrimination cannot correct such corruptions of the grand jury process. G.J.Tr. Remarks of Prosecutor, July 8, 1981, 10:50 a.m. at p. 6; January 5, 1982, 9:09 a.m. at pp. 22-23.

E. Government Summaries of the Evidence

Although the investigation of the instant case covered almost two years, the transcripts reveal that the case against The Bank of Nova Scotia was, for the most part, presented on a single day, September 29, 1982, the day before the indictment was returned. It was done, moreover, almost exclusively by having Mendrop summarize the "evidence" against the bank. The government seeks to explain these summaries as nothing more than legitimate use of hearsay testimony by the grand jury. *See United States v. Roger*, 652 F.2d 972, 975 (1981)

During the course of the September 29, 1982 proceedings, the grand jurors expressed concern that The Bank of Nova Scotia was being singled out for prosecution while other banks that allegedly permitted similar banking activity were not being named as defendants. In response, the prosecutor suggested that the Bank of Nova Scotia was a more appropriate target because, unlike the other institutions involved, it was a large internationally known bank doing business in the United States and its prosecution could be expected to deter others. *See* G.J. Tr. Mendrop, September 29, 1982, 9:32 a.m., at p. 50-52. The prosecutor erroneously suggested that the "evidence" indicated that The Bank of Nova Scotia representatives were familiar with the operation of Kilpatrick's business and that the IRS was to be defrauded by virtue of the banking activity. *See* G.J. Tr. Remarks of Prosecutor, September 29, 1982, 8:52 a.m. at pp. 8, 13.

No evidence of the kind suggested by the prosecutor had been presented to the grand jury. The discussion of these points was heard for the first time during the testimony of Mendrop. Instead of being presented as a witness who was to present hearsay investigative information concerning the Bank's role, Mendrop was introduced to the grand jurors as one who was to "summarize" and "just walk through, one more time, and refresh your memory." *See* G.J. Tr. Remarks of Prosecutor, September 29, 1982, 8:52 a.m. at p. 5. Mendrop then proceeded to "summarize the evidence relating to each of the individuals involved" and "the evidence pertaining to The Bank of Nova Scotia." *See* G.J. Tr. Mendrop, September 29, 1982, 9:32 a.m., at pp. 40, 52, 64, 66, 72. on the vital issue of the bank's knowledge and intent, however, it is clear that Mendrop's testimony was both misleading and inaccurate. In particular, Memdrop purported to "summarize" in connection with the bank's role the testimony presented by three witnesses: Messrs. Walters Ros and Charles. An examination of the grand jury testimony, however, reveals that it was not a summary of the evidence before the grand jury. One of the witnesses whose testimony was "summarized" never appeared before either grand jury. The other two witnesses whose testimony was "summarized" did not give testimony even remotely resembling that supposedly. "summarized" by Mendrop. The grand jury was never informed of these mischaracterizations or of any alternative basis for Mendrop's summary.

The inaccurate "summaries" of the evidence before the grand jury concerning the role of The Bank of Nova Scotia was particularly abusive for several reasons:

(i) The misleading "summaries" were presented by an individual upon whom the grand jurors had been urged to rely as their "agent,"

(ii) The investigation spanned 20 months and two successive grand juries. Much of the testimony of the 27 witnesses who appeared before the first jury was read to the second grand jury in an improper and unsupervised manner,

(iii) The grand jurors had not previously focused on The Bank of Nova Scotia as a target since the bank was not mentioned as a target until the month the indictment was returned;

(iv) The reading of testimony from the first grand jury (which included the testimony of Ros and Charles) occurred early in the presentation of the case to the second grand jury. The grand jurors and the prosecutors frequently commented upon the monotony and difficulty of listening to the readings and, indeed, the grand jurors expressed confusion as to which transcripts had been read. *See, e.g.* G.J.Tr. Remarks of Prosecutor, November 4, 1981, 9:12 a.m. at p. 5; Remarks of Prosecutor, February 2, 1982, 1:07 p.m. at p. 20; and

(v) The improper summaries related to vital issues concerning the Bank's knowledge and intent. Unbeknown to the grand jurors, the government attorneys contemporaneously entertained serious doubts as to the accuracy of certain critical "facts" contained in the summaries.

In sum, the mischaracterizations reasonably could not have been expected to be picked up by the grand jurors and, undoubtedly, formed a substantial basis for the indictment against the bank. The examples of improper mischaracterizations of the evidence are detailed below.

(1) Mr. Waters

Asserting that he was discussing a "few of the pieces of evidence" and "the summary of the evidence pertaining to The Bank of Nova Scotia," Mendrop purported to summarize what the prosecutor characterized as the "evidence" provided by Waters about a trip supposedly made by defendant Monte Smith, the bank's Cayman Island branch manager, to Kilpatrick's offices in Denver. (Smith was vital as it is upon his activities that the bank has been claimed vicariously liable.) G.J.Tr. Mendrop, September 29, 1982, 9:32 a.m., at p. 36, 64, 65-72; *see also* G.J.Tr. Remarks of Prosecutor, September 29, 1982, 9:07 a.m., at p. 10. According to Mendrop and the prosecutor, this claimed trip by Monte Smith was important because it demonstrated that Smith was familiar with Kilpatrick's tax shelter operations. Apparently unbeknown to the grand jurors, Waters never testified before either of the grand juries. The grand juries were never informed of the actual source of Mendrop's testimony which apparently was an interview of Waters or testimony of Waters at a contempt hearing involving Kilpatrick.

Whatever the source, it is clear that Mendrop's supposed "summary" of Waters' testi-

mony is an inaccurate recitation of "facts" in several significant respects. At the time Mendrop was supposedly summarizing the "facts" of Monte Smith's trip to Denver, the government attorneys entertained serious doubts about its accuracy because Waters' description of the individual he met at Mr. Kilpatrick's offices did not resemble Monte Smith.[16] The testimony of Waters during the 1983 obstruction trial of Mr. Kilpatrick confirms the inaccuracies of Mendrop's testimony. During that trial Waters testified that when picking up some checks from Kilpatrick for payment due him, he was informed by Kilpatrick that one of the people present was Mr. Smith who was the manager of the Bank branch on which the checks were drawn. R. Waters' description of that individual during trial does *not* resemble Monte Smith. T.Tr. 311-12. In fact, at these hearings, commenting on Mr. Waters' somewhat unusual description of Monte Smith, one of the prosecutors admitted that at the time "[t]here was a real question as to whether or not it was the same person." K.Tr. 742-43. Despite the facts that Waters was not called as a witness before either grand jury, that the grand jurors were never informed that transcripts of taped interviews of Waters existed and that a "real question" existed as to the accuracy of Waters' identification, Mendrop was permitted to represent to the contrary that there was "considerable confirmation that Mr. Smith did actually come out here and visit with Mr. Kilpatrick." G.J.Tr. Mendrop, September 29, 1982, 9:32 a.m., at pp. 66-68.

(2) Mr. Ros

Raul Ros, a "chauffeur" for Mr. Kilpatrick, testified before the grand jury. He did not appear before the grand jury that returned the indictment; his tesimony was read to the second grand jury, G.J.Tr. Mendrop, September 9, 1981, 8:44 a.m., at p. 3. A year after Mendrop read his testimony to the grand jurors, Mendrop purported to summarize it. According to Mendrop, Ros' evidence confirms the testimony of Waters with regard to Monte Smith's appearance in Denver. G.J.Tr. Mendrop, September 29, 1982, 9:32 a.m., at p. 66. Mendrop indicated that Ros commented that during Smith's claimed visit to Denver, he and Kilpatrick discussed funding for the tax shelters. No such testimony can be found in Raul Ros' grand jury transcript. Mendrop gave absolutely no explanation of an alternative source, but rather erroneously led the grand jurors to believe that he was simply relaying information contained in the Ros testimony before the prior grand jury.

(3) Mr. Charles

Mendrop's "summary" also mischaracterizes the testimony of Barry Charles. Like Raul Ros, Charles testified before the first grand jury not the second grand jury. As he did with Raul Ros' testimony, Mendrop attributed "testimony" to Charles that the bank fulfilled virtually all of Mr. Kilpatrick's requests and that it "appeared" to Charles that the bank officers knew what was being done. G.J.Tr. Mendrop, September 29, 1982, 9:32 a.m., at p. 68. The "summary" given by Mendrop is at odds with Charles' testimony. G.J.Tr. Charles, June 2, 1981, 8:40 a.m. Again, Mendrop did not identify any alternate source for the comments attributed to Charles.

In his testimony before the first grand jury Charles indicated that he was not present during most of the transactions in the bank. Charles, who traveled to the Cayman Islands with Kilpatrick, Pettingill and O'Donnell, was the least involved in the group and observed less than Oliver Hemphill who himself testified that he had witnessed little of the banking activity. *See* G.J.Tr. Hemphill, May 5, 1981, 9:28 a.m., at p.12. Thus, Mendrop's suggestion to the grand jurors of the "evidence" to be gleaned from Charles "testimony" is contradicted by the actual testimony of Charles and others.

(4) Comments by the Prosecutor

In addition to presenting Mendrop's summary of the "important evidence" against the bank on the day before the indictment, the prosecutors also argued in favor of an indictment of the bank. Once again, the evidence against the bank on the essential issue of knowledge of the claimed object of the conspiracy was seriously mischaracterized by the prosecutor, who asserted:

[A]s my agents will tell you there is evidence that the Bank knew it was the IRS—*they were in fact told that it was the IRS they were defrauding.*

G.J.Tr. Remarks of Prosecutor, September 29, 1982, 8:52 a.m. at p. 13 (emphasis supplied). No such evidence was ever presented. Indeed, even the misleading summary of Mendrop provides no basis for such a statement.

F. Interrogation in Absence of Counsel

In February, 1983, during the period between indictment and dismissal of the charges against the Bank of Nova Scotia, one of the prosecutors departed from the traditional role of a government trial attorney in order to travel to Puerto Rico and engage in investigative activity. The prosecutor undertook his journey with the intention of interviewing bank employees concerning the whereabouts and reasons for transfer of another bank employee, Malcolm Haynes, who the prosecutor understood was the second in command at the bank's Cayman Island branch during the period covered by the indictment. No attempt had been made to talk to this potential witness before indictment. The prosecutor's purpose was to interview him concerning matters underlying the indictment. W.Tr. 642-49; 694; 709-10.

Although the prosecutor was fully aware that the bank, an indicted defendant, was represented by counsel, he did not feel constrained by the Supreme Court's dictates in *Massiah v. United States*, 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246 (1964) to inform counsel of his intentions to interview high ranking bank employees.[17] Instead, he undertook this investigative exercise with the "hope" of eventually interviewing Malcolm Haynes "in the absence of Mr. Morvillo,"[18] firm in the belief that, if he committed a constitutional violation of the type identified in *Massiah*, the only likely sanction was the suppression of evidence in the government's case-in-chief. In the prosecutor's words, "no indictment has ever been dismissed because of [a *Massiah* violation)." K.Tr. 1114, 1122; W.Tr. 643, 693-94, 709-10.

The prosecutor also testified that he believed it was permissible to interview high ranking employees of an indicted corporate defendant because it was authorized in *Upjohn Co. v. United States*, 449 U.S. 383, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981) and because, unlike *Massiah* he was not engaged in acts of "subterfuge."[19] W.Tr. 643, 693-94, 709-10; K.Tr. 1114-15.

When he arrived in Puerto Rico, the prosecutor and another investigator, Victor Torrez Perez, an IRS special agent, appeared without prior arrangement at the branch offices of The Bank of Nova Scotia and proceeded to interrogate several of its representatives. Among others, they questioned Malcolm Haynes' former secretary and his replacement, the branch's controller. They also interrogated other high ranking representatives of the bank—including Douglas Rector, the Puerto Rico area manager of The Bank of Nova Scotia and chief executive officer of the Bank's Puerto Rico subsidiary. W.Tr. 640-42, 696-99.

After leaving the bank, accompanied by Special Agent Torrez Perez, he searched out the school attended by Haynes' two small daughters, ages eight and ten, in order to determine the whereabouts of their parents. At the end of the school day, the prosecutor (who had already elicited information from the school's principal and the girls' teachers) followed the children on foot "by about a hundred yards." His purpose was to have the girls lead him to their mother. W.Tr. 642-45; 699-708.

The prosecutor's visit to Pureto Rico, however, did not end his endeavor to interrogate high ranking representatives of the defendant bank without notice to or leave of defense counsel. Shortly after his interrogation of Mrs. Haynes, he wrote a letter to her requesting that she use her efforts to have her husband speak with the government. Like his previous efforts this approach was made without informing defense counsel. Indeed, the prosecutor asserted that he "would have interviewed Mr. Haynes in the absence of Mr. Morvillo hopefully." W.Tr. 709-10.

G. Mistreatment of Witnesses

Professor Roland Hjorth, a tax law professor who Judge Winner observed "is a recognized expert who was employed by defense counsel" was permitted to testify before the grand jury that returned the indictment. His treatment by the prosecutor on the occasion of his appearance contrasts markedly with the treatment the prosecution afforded its own expert, Roger Schneider, who was passed off as an "agent of the grand jury."

As Judge Winner observed:

[Professor Hjorth's] views of tax law differed markedly from those of [the prosecutor], who bragged on frequent occasions that he had never taken a course in taxation and knew almost nothing about it. Nevertheless, Professor Hjorth was browbeaten and ridiculed by [the prosecutor], and some of the conversation so out of place for an ethical prosecutor took place during a recess in the hearing of some grand jurors.

575 F.Supp. at 333.

Indeed, the prosecutor's heated argument with Professor Hjorth was also overheard by witnesses scheduled to appear before the grand jury. W.Tr. 334. Moreover, the conduct was so shocking that Richard Slivka, a local attorney formerly employed by the Department of Justice and Colorado United States Attorney's Office, who was representing witnesses scheduled to appear and who himself observed the conduct, wrote a letter to Chief Judge Finesilver shortly thereafter reporting the incident. W.Tr. 317-27; 350-64. Professor Hjorth testified that the prosecutor's conduct was so abusive that he would never again appear as an expert witness in a similar proceeding.

Judge Winner concluded of the prosecutor's conduct that:

Intimidating witnesses by telling them that their testimony disgraces them and implying that the Tax Division of the Department of Justice will take after the witness and will complain to the University of

Washington Law School because an expert testified to his expert opinions does no credit to our government. . . . [s]eemingly, the professor's testimony isn't seriously contested. I hope that we haven't gotten to the point that disagreement with the legal concepts of the IRS provides grounds for attacks by that bureaucracy because sometimes the IRS is wrong. *U.S. v. Sells Engineering*, 463 U.S. 418, 103 S.Ct. 3133, 77 L.Ed.2d 743 and *U.S. v. Baggot*, 463 U.S. 476, 103 S.Ct. 3164, 77 L.Ed.2d 785.

575 F.Supp. at 333; *see also* K.Tr. 502-05.

CONCLUSIONS OF LAW

The government's position in this case is reminiscent of the common law defense of confession and avoidance in which, for the most part, the truth of the averments of fact are admitted, but argument is made which tends to deprive the facts of their ordinary legal effect or obviates them. Thus, it is said:

Just as there has never been a perfect lawyer, a perfect judge, or perfect trial, so has there never been a perfect investigation. Contrary to what one might expect, in view of the defense allegations, the transcripts of the grand jury proceedings do not reveal any conduct whatsoever by the prosecutors seeking to overreach or override the independence of the grand jury.

Government Memorandum, Government Response to The Bank of Nova Scotia's proposed Findings of Fact and Conclusions of Law, filed April 9, 1984, at pp. 3-4. The government's response to the defendants' several proposed findings of the facts is mainly a recitation of the number of instances in which its prosecutors did not violate the law.

As I view the present state of the law as it applies to this case, there are four analytical modalities which must be considered. In the first, specific violations of specific rules require dismissal. I view this form of analysis as essentially quantitative. There either is a violation or there isn't and the conclusion is ineluctable depending on the factual premise which is established. The second modality requires an evaluation of the totality of circumstances extant so that a qualitative assessment may be made. Finally, cases distinguish the third modality, the authority and duty of district courts to supervise the conduct of prosecutions and grand juries, from the fourth modality, the duty to enforce the mandates of the Constitution.

In articulating the conclusions of law I have reached in this case, I shall consider all four modalities in the order in which I have just expressed them. I shall begin with Rule 6, Fed.R.Crim.P.

A. Violations of Rule 6(d)

[7] As noted by Judge Winner, Rule 6, Fed.R.Crim.P. does not authorize grand juries to have agents. The creation of that role and its misleading description to the grand jury is an improper intrusion into the exclusive and independent province of the grand jury by government attorneys and investigators. The most important function of the grand jury is to stand between the government agents and the suspect as an unbiased evaluator of the evidence. *United States* v. *Dionisio*, 410 U.S. 1, 16-17, 93 S.Ct. 764, 772-773, 35 L.Ed.2d 67 (1973). "The purpose of the grand jury requires that it remain free, within constitutional and statutory limits, to operate "independently of either prosecuting attorney or judge." *United States v. Sells Engineering, Inc*, 463 U.S. 418, 103 S.Ct. 3133, 3141, 77 L.Ed.2d 743 (1983).

[8] Rule 6(d), Fed.R.Crim.P., delimits those who may be present in grand jury proceedings by the following explicit language:

(d) Who May Be Present. Attorneys for the government, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.

After his usual thorough analysis of the relevant case law and with characteristic pungency, Judge Matsch, of our Court, stated in *United States v. Pignaticllo:*

A review of all these cases reinforces the conclusion that the only effective sanction for a violation of Rule 6(d) is dismissal without any further inquiry into the effects of that violation.

582 F.Supp. 251, 254 (D.Colo. 1984).

I conclude that events which occurred in the grand jury room while *soi-disant* agents of the grand jury were present and not under oath as witnesses under examination violated Rule 6(d) and therefore require dismissal of the indictment. As Judge Matsch carefully notes in *Pignatiello*, brief intrusions on the proceedings during which no testimony is taken nor questions asked nor statements made about the case by grand jurors such as the delivering of a note to the prosecutor by his secretary or the repair of a switch by a maintenance man are not included within the *per se* rule. In this case, there is no doubt that matters of considerable substance occurred while Rule 6(d) was being violated.

B. Violations of Rule 6(e)

[9] Courts have held that violations of the strictures of Rule 6(e), Fed.R.Crim.P., typically require the sanction of contempt rather than dismissal. *United States v. Hoffa*, 349 F.2d 20, 43 (6th Cir. 1965). However, where Rule 6(e) is violated recklessly and systematically, dismissal is appropriate. *United States v. Gold*, 470 F.Supp. 1336, 1352-56 (N.D.Ill.1979). Where knowing violations of Rule 6(e) prejudice and embarrass targets whose identities the government reveals, the government itself has recognized that the contempt remedy is *"not always* . . . wholly adequate." United States Attorneys' Manual § 9-11.370 (emphasis supplied).

(1) *Rule 6(e)(3)—Improper Disclosure and Use*

[10] Rule 6(e)(3) provides in relevant part:

(3) Exceptions.

(A) *Disclosure otherwise prohibited* by this rule of matters occurring before the grand jury, other than its deliberations and the vote of any grand jury, *may be made to*—

(i) an attorney for the government for use in the performance of such attorney's duty; and

(ii) *such government personnel as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce federal criminal law.*

(B) Any person to whom matters are disclosed under subparagraph (A)(ii) of this paragraph shall not utilize that grand jury material for any purpose other than assisting the attorney for the government in the performance of such attorney's duty to enforce federal criminal law. *An attorney for the government shall promptly provide the district court, before which was inpaneled the grand jury whose material has been so disclosed, with the names of the persons to whom such disclosure has been made.*

(emphasis supplied).

The prosecutors in this case permitted several violations of this rule. They relinquished to the IRS their responsibility to determine the persons to whom disclosure would be made. The IRS agents then failed to provide the "prompt" notification of such disclosure mandated by the rule. Moreover, the IRS representatives, in direct contravention of recent Supreme Court dictates, improperly manipulated the secret material and their novel roles as "agents of the grand jury" to obtain information and data for use during civil litigation that they knew would follow on the heels of the criminal case. *See United States v. Sells Engineering, Inc., supra, United States v. Baggot*, 463 U.S. 476, 103 S.Ct. 3164, 77 L.Ed.2d 785 (1983).

Rule 6(e)(3) provides that disclosure can be made to "such government personnel as are deemed necessary by an attorney for the government . . ." provided the "attorney for the government . . . promptly provide[s] the district court . . ." with notice of such disclosure. The instant record reveals not only that IRS representatives regularly took it upon themselves to determine to whom disclosure should be made, but also that in some cases the "attorneys for the government" were not notified of such disclosure until after it had occurred, if they were notified at all. Moreover, notices to the district court were not filed promptly but were prepared in some instances substantially after such disclosure, even after the investigation had concluded and the indictment was filed.

With regard to the delegation of the Rule 6(e)(3) responsibilities in this investigation by Department of Justice attorneys, Judge Winner noted:

I am troubled about testimony suggesting that authority to make the disclosure decisions was delegated to the IRS Special Agent/Grand Jury Agents/Prosecutor's helpers. Under common law rules of agency, this authority couldn't be delegated to a subagent, and especially it couldn't be delegated to an IRS agent whose fellow workers were aiming at the defendants from a different angle. My worry on this score is not lessened by an IRS letter in evidence saying that making a civil tax case under the administrative process would be difficult. *United States v. Sells Engineering and United States v. Baggot*, both *supra*, which settle the question of using a grand jury to collect taxes.

575 F.Supp. at 338 (1983).

The board delegation to the IRS of control over the course of the grand jury investigation is amply supported by the record. The extensive disclosure of grand jury material to IRS civil employees, the haphazard and *post hoc* method of identifying those to whom disclosure was made and the omission from the disclosure notices of numerous IRS employees privy to grand jury information clearly contravene the rule. It is fanciful to suggest that these IRS and civil employees will erase from their minds that material obtained as part of the grand jury's investigation.

In *United States v. Sells Engineering, Inc., supra*, the Supreme Court recognized that it is difficult or impossible to demonstrate the extent of improper disclosure and use of grand jury material made during the course of an investigation. *Id.* 103 S.Ct. at 3142. In the instant case a significant portion of the direction of the investigation was unrelated

to the federal criminal goals. As the Supreme Court observed:

[B]ecause the Government takes an active part in the activities of the grand jury, disclosure to government attorneys for civil use poses a significant threat to the integrity of the grand jury itself. If prosecutors in a given case knew that their colleagues would be free to use the materials generated by the grand jury for a civil case, they might be tempted to manipulate the grand jury's powerful investigative tools to root out additional evidence useful in the civil suit. . . .

Id.

In *Sells* the Supreme Court analyzed the grand jury process and the provisions of Rule 6(e) in deciding whether civil division lawyers in the Department of Justice should have automatic access to grand jury materials to assist them in civil litigation. The court denied such access for three reasons: (1) civil disclosure threatens to subvert the limitations otherwise imposed on the government's powers in civil and administrative discovery and investigation; (2) civil disclosure may tempt presecutors to manipulate the grand jury investigation to obtain evidence useful in civil litigations; and (3) civil disclosure increases the number of persons privy to grand jury matters thereby increasing the risk of inadvertent or illegal disclosure to others. *Id.* at 3142, 43. The IRS's participation in the grand jury investigation in this case achieved each of these illicit purposes.

As noted by Judge Winner, the genesis of the grand jury's inquiry was a belief by the IRS that it could not effectively investigate the facts underlying the subject tax shelters pursuant to its congressionally circumscribed administrative enforcement powers. Thus, the extraordinary powers of the grand jury were sought and usurped.

(2) *Rule 6(e)(2)—Secrecy Violations* Rule 6(e)(2), Fed.R.Crim.P. provides:

(2) General Rule Of Secrecy.—A Grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the government, or any person to whom disclosure is made under paragraph (3)(A)(ii) of this subdivision shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules. No obligation of secrecy may be imposed on any person except in accordance with this rule. A knowing violation of Rule 6 may be punished as a contempt of court.

Rule 6(e)(2) is a codification of the traditional requirement that matters occurring before the grand jury should be treated as confidential. Courts have consistently recognized that this traditional requirement exists to no small degree in order to protect the name and reputation of the targets during the pendency of the period the allegations are being investigated. *See e.g. United States v. Malatesta,* 583 F.2d 748, 752 (5th Cir. 1978), *cert denied,* 444 U.S. 846, 100 S.Ct. 91, 62 L.Ed.2d 59 (1979). Thus, courts have held that Rule 6(e) prohibits the government from publicly identifying the targets of a grand jury's inquiry. *See, In re Bart,* 304 F.2d 631, 637 n. 19 (D.C.Cir.1962); *Hawthorne v. Director of Internal Revenue,* 406 F.Supp. 1098, 1128-29 (E.D.Pa.1975).

During the course of this investigation the government repeatedly and systematically disclosed the identity of the targets to individuals and entities that the government acknowledged had a "business relationship" with the targets and to investors identified as customers of the targets. These numerous disclosures adversely affected the business activities of the targets at a time when the grand jury was charged with investigating whether any crimes may have been committed. The abuse of power is evident.

The violations of Rule 6(e)(2) do not end with the improper violations of the secrecy requirements. In order to gain a tactical advantage, prosecutors selected two witnesses and directed them not to disclose the fact or substance of their testimony. As Judge Winner held, this was done in direct contravention of Rule 6(e)(2):

[The imposition upon witnesses of secrecy obligations] is now verboten because of the language of the rule saying, "No obligation of secrecy may be imposed on any person except in accordance with this rule." This language has been uniformly interpreted to prohibit any instruction to a witness that his testimony is secret. *In re Langswager,* (1975) D.C. III. 392 F.Supp. 783; *In re Grand Jury Witness Subpoenas* (1974) D.C.Fla. 370 F.Supp. 1282; *In re Alvarez* (1972) D.C. Cal. 351 F.Supp. 1089; *In re Minkoff* (1972) D.C.R.I. 349 F.Supp. 154; *In re Investigation before April 1975 Grand Jury* (1976) D.C.Cir 531 F.2d 600; *In re Vescovo Special Grand Jury* (1979) 473 F.Supp. 1335, and many other cases. In spite of this express command of Rule 6(e), secrecy obligations were imposed on several witnesses, and, to make the violation more disturbing, secrecy obligations were imposed on lawyers called to furnish information concerning their clients. That makes the violation gravely beyond the pale, because of the impossible position the lawyer-witness is placed in, but that's what the grand jury transcript discloses. No "oath" of secrecy was administered, but an obligation of secrecy was imposed by instructions from government counsel to witnesses. This foolishness may or may not have been intentional, but ignorance of the law is not a defense available to a prosecutor. *This misconduct is established by the record, and it will prove difficult for the government to deny,* just as the government had to admit the attempted administration of an "oath" by Mr. Snyder. The government surprisingly defends the proven mishmash of functions of the IRS Special Agent/Grand Jury Agents/Assistants to the Attorney for the Government appointed under Rule 6(e), but maybe it thinks that admitting that this was error would confess the motion to dismiss.

575 F.Supp. at 331, 332 (1983); *see also United States v. Radetsky,* 535 F.2d 556, 569 (10th Cir.), *cert denied,* 429 U.S. 820, 97 S.Ct. 68, 50 L.Ed.2d 81 (1976); *Application of Eisenberg,* 654 F.2d 1107, 1113 n. 9(5th Cir. 1981); *In re Russo,* 53 F.R.D. 564, 570 (C.D.Ca 1971); *In Re Disclosure of Evidence,* 184 F.Supp. 38, 41 (E.D.Va 1960); *Arlington Glass Co. v. Pittsburgh Plate Glass Co.,* 24 F.R.D. 50, 52 (N.D.Ill. 1959).

As Judge Winner suggests, the only issue that could not be determined by the record before him was whether the secrecy obligations were imposed intentionally. The prosecutor's testimony during the hearings before me, however, leaves no doubt that the improper obligation was imposed deliberately, with full knowledge of the witness's relationship to the targets and in violation of the commands of the United States Attorney's Manual.[20] Moreover, no legitimate explanation for the activity was ever presented.

The numerous violations of Rule 6(e) by the Department of Justice attorneys ignore the rights of unindicted subjects of an investigation and the secrecy and independence of the grand jury itself. As I shall discuss later, a court's supervisory power to dismiss an indictment is appropriately utilized to ensure that governmental impropriety of a similar nature is not repeated in future investigations or prosecutions. *United States v. Owen,* 580 F2d 365, 367 (9th Cir. 1978); *United States v. Houghton,* 554 F.2d 1219, 1224 (1st Cir.), *cert, denied,* 434 U.S. 851, 98 S.Ct 164, 54 L.Ed.2d 120 (1977). Dismissal is particularly appropriate in order to hold all government prosecutors acting within this district to the same high standard of conduct that the United States Attorney demands of his own assistants. *United States v. Jacobs, 547 F.2d 772, 778 (2d Cir. 1976) (Organized Crime Strike Force attorney operating in the Eastern District of New York); United State v. Gold,* 470 F.Supp. 1336 (N.D. III. 1979) (Environmental Protection Agency Staff attorney appointed as Special Attorney in the Department of Justice); *see also United States v. Estepa,* 471 F.2d 1132, 1137 (2d Cir.1972).

As previously indicated, however, I hold that where violations of Rule 6(e) are intentional or reckless and systemic, the sanction of contempt is insufficient and dismissal of the indictment is warranted. Under such circumstances, it is not necessary for the defendant to show that he has been prejudiced by the violations. In the instant case, however, such showing of prejudice has been convincingly made.

C. Violations of Witness Immunity Statutes

Earlier in this opinion,[21] I indicated that I believe I was unduly diffident in describing so-called pocket immunity or "Letters of Assurance" as a "damnable practice." I believe I was wrong because I did not then have the benefit of the Supreme Court's opinion in *United States v. Doe.—U.S. —, 104 S.Ct 1237, 79 L.ED.2d 552 (1984).*

In *Anderson v. United States, supra,* I wrote:

The government, in this case, made extensive use of informal or "pocket" immunity. This is putative immunity granted to a witness by letter or oral representation of the prosecutor rather than ordered by a judge after satisfaction of the procedures of 18 U.S.C. §§ 6002 and 6003. Such immunity poses serious problems since it circumvents the statute and leaves an inadequate record of the scope of the immunity granted. *See, United States v. Quartermain, Drax,* 613 F.2d 38 (3rd Cir. 1980). The procedures established by Congress in 18 U.S.C. §§ 6002 and 6003 clearly indicate an intent to formalize, standardize and limit the use of immunity. The statute requires approval of a senior Justice Department official as well as application to and order of a United States District Court Judge before immunity is conferred. The procedure leaves no doubt as to the accomplishment of the grant, the particularized need of the witness and the scope of the immunization. It also leaves for Congress and the public a complete and definite record of the frequency, efficacy and reasons for the use of immunity. Informal immunity, apparently in widespread use by the Justice Department, accomplishes none of those goals. It is a damnable practice. No notice need be given to senior Justice Department officials or to a judge. The only record if any, is a letter by the U.S. Attorney or a transcript of an oral representation, if it was made on the record. Such informality has resulted in confusion over witnesses rights in the past, *Quartermain, Draz, supra,* 613 F.2d 38, and lends itself to excessive use of unchecked discretion. While

the immunity grant is always a matter of prosecutorial discretion, the procedures of §§ 6002 and 6003 subject it to the light of public, congressional and judicial scrutiny and insure that it is not invoked or revoked arbitrarily or capriciously.

In *United States v. Doe*, Justice Powell wrote:

As we stated in *Pillsbury Co. v. Conboy*, 459 U.S. 248, 74 L.Ed.2d 430, 103 S.Ct. 608 (1983), in passing the use immunity statute, "Congress gave certain officials in the Department of Justice exclusive authority to grant immunities." *Id., at* 253, 74 L.Ed.2d 430, 103 S.Ct. 608 [at 612]. 'Congress foresaw the courts as playing only a minor role in the immunizing process: . . .' *Id.*, at 254, n. 11, 74 L.Ed.2d 430, 103 S.Ct. 608 [at 613]. The decision to seek use immunity necessarily involves a balancing of the Government's interest in obtaining information against the risk that immunity will frustrate the Government's attempts to prosecute the subject of the investigation. *See United States v. Mandujano*, 425 U.S. 564, 575, 48 L.Ed.2d 212, 96 S.Ct. 1768 [1776] (1976) (plurality opinion). Congress expressly left this decision exclusively to the Justice Department. If, on remand, the appropriate official concludes that it is desirable to compel respondent to produce his business records, the statutory procedure for requesting use immunity will be available.

——U.S. at——, 104 S.Ct. at 1244-45, 79 L.Ed.2d at 562-63.

[11] It thus can be seen most clearly that Congress has vested exclusive authority to grant immunities in a few specified officials in the Department of Justice. Further, Congress has clearly and unequivocably set forth the parameters within which that discretion must be exercised. Ordinary statutory construction employing the principle of *expressio unius est exclusio alterius* and buttressed by the quoted language of Justice Powell leads to only one conclusion: Pocket immunity is illegal; when granting immunity, the Department of Justice must comply with the requirements of 18 U.S.C. §§ 6002 and 6003.

[12] I hold that the repeated use of letters of assurance or so called "pocket immunity" in the instant case violated the applicable statutes and tainted the grand jury indictment with its illegality.[22]

D. Violations of the Fifth Amendment

[13] Courts have consistently held that it is improper to call a witness solely for purposes of having that witness assert their rights under the Fifth Amendment when the prosecutor is aware of the witnesses' intention to do so. *See Namet v. United States*, 373 U.S. 179, 186, 83 S.Ct. 1151, 1154, 10 L.Ed.2d 278 (1963); *United States v. Ritz*, 548 F.2d 510, 521 (5th Cir. 1977); *United States v. Maloney*, 262 F.2d 535, 537-38 (2d Cir. 1959). The facts here demonstrated that the prosecutor hoped to take advantage of impermissible inferences that arise from invocation of the privilege. *See United States v. Maloney*, 262 F.2d 535 (2d Cir. 1959). The prosecutor's ploy "served no other purpose than calculated prejudice." *United States v. Samango*, 607 F.2d 877, 883 (9th Cir. 1979).

[14] Moreover, the improper efforts to prejudice the defendants by impermissible inferences flowing from the seven witnesses' assertions of their privilege against self-incrimination was compounded by the questioning concerning the payment of the witnesses' legal fees. No legitimate purpose for such questioning exists. Indeed, similar questioning before a grand jury has been held to be improper. *United States v. Gold*, 470 F.Supp. 1336, 1352 (N.D.III. 1979).

Dismissal of an indictment is not required *per se* by the deliberate contriving of a prosecutor to have witnesses invoke their Fifth Amendment privilege. Such conduct is, however, a factor to be considered in the totality of circumstances in determining whether a grand jury has been overreached or usurped.

E. Presentation of Misinformation

[15] The mischaracterization of the testimony before the grand jury and the unidentified use of questionable hearsay information with regard to vital issues intrudes upon the independent role of the grand jury. *See United States v. Samango*, 607 F.2d 877 (9th Cir. 1979). The court in *Samango* emphasized that such behavior, even if unintentional, causes "improper influence and usurpation of the grand jury's role." *United States v. Samango*, 607 F.2d at 882. Such a danger is particularly present where, as here, the misrepresentations could not be expected to be readily apparent to the second grand jury and related to material issues in the prosecution. *See id.* at 883; *United States v. Lawson*, 502 F.Supp. 158 (D.Md. 1980) (indictment dismissed where prosecutor's examination of witness created a false impression and misled grand jurors as to nature of the evidence); *United States v. Gallo*, 394 F.Supp. 310 (D.Conn. 1975) (indictment dismissed where grand jurors misled as to hearsay nature to testimony and misstatements).

F. Violations of the Sixth Amendment

[16] It is beyond cavil that, upon indictment, a defendant becomes an "accused" with a right to counsel guaranteed by the Sixth Amendment. *See Brewer v. Williams*, 430 U.S. 387, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977); *Massiah v. United States*, 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246 (1964). The guarantees of the Sixth Amendment apply to corporate defendants with the same forces as to individual defendants. *United States v. Rad-O-Lite of Philadelphia, Inc.*, 612 F.2d. 740, 743 (3d Cir. 1979); *see also Grandbouche v. Adams*, 529 F.Supp. 545, 547 (D. Colo. 1982). In order to give meaning to these guarantees, the Supreme Court has held that once a defendant becomes an accused, it is improper for a government official to question that defendant out of the presence of counsel. *Brewer v. Williams, supra; Massiah v. United States, supra.*

[17] In the instant case, the Department of Justice engaged in priecisely the type of interrogation proscribed by the Supreme Court.[23] Without notifying counsel for the indicted bank, the prosecutor along with a federal agent, impermissiby interrogated several high level bank employees in hopes of obtaining incriminating information. In several respects the instant conduct is even more egregious than that which occurred in *Brewer* and *Massiah*. The prosecutor's actions here were premeditated and prompted by the expectation that the worst that would become of his constitutional violations would be a limited suppression of evidence.[24]

The defendants have not, however, demonstrated any prejudice from the interrogations of bank employees in the absence of counsel. The bank's counsel has performed ably and adequately throughout the litigation. Under such circumstances, the Supreme Court has specifically rejected the remedy of dismissal based upon a prosecutor's violation of a defendant's Sixth Amendment rights. "[A]bsent demonstrable prejudice or substantial threat thereof, dismissal of the indictment is plainly inappropriate, even though the violation may have been deliberate." *United States v. Morrison*, 449 U.S. 361, 365, 101 S.Ct. 665, 668, 66 L.Ed.2d 546 (1981). *See also United States v. Drake*, 655 F. 2d 1025, 1027 (10th Cir. 1981); *United States v. Kapnison*, 743 F.2d 1450 at 1454 (10th Cir. 1984). As in *Morrison*, so it is here:

[Defendant] has demonstrated no prejudice of any kind, either transitory or permanent, to the ability of [its] counsel to provide adequate representation in these criminal proceedings. There is no effect of a constitutional dimension which needs to be purged to make certain that [defendant] has been effectively represented . . . .

449 U.S. at 366, 101 S.Ct. at 669. Accordingly dismissal of the indictment is an inappropriate remedy for the *Massiah* violations in this case.[25]

The Sixth Amendment abuses were, in some instances, undertaken by the prosecutors appearing before the grand jury. Thus, while not directly implicating actions by the grand jury, such actions do reflect upon the general abuses of the grand jury process practiced by the government. The *Massiah* violations must enter into my general qualitative assessments of the prosecutor's and grand jury's conduct.

G. The Totality of Circumstances Test

[18] As I stated in *United States v. Anderson*, 577 F. Supp. 223, 230 (1983):

The Tenth Circuit Court of Appeals has recently articulated the standards to be applied in cases where dismissal of an indictment is sought because of prosecutorial misconduct:

An indictment may be dismissed for prosecutorial misconduct which is flagrant to the point that there is some significant infringement on the grand jury's ability to exercise independent judgement.

Untied States v. Pino, 708 F.2d 523, 530 (10th Cir. 1983). While the remedy of dismissal is extraordinary, it may be used "to insure proper standards of conduct by the prosecution." 708 F.2d at 530. District courts are also empowered to dismiss indictments because of inherent supervisory powers which protect the integrity of the judicial system. 708 F.2d at 531. Isolated errors and improprieties do not require dismissal of the indictment. It is only when the government engages in deliberate conduct which interferes with the grand jury's independent function or damages the integrity of the judicial process that the remedy of dismissal becomes necessary. Because I find that the government engaged in a pattern of conduct calculated to infringe the grand jury's ability to exercise independent judgment, the indictments must be dismissed.

* * * * *

The grand jury is more than a symbol of the limitations the constitution places on the government's power. When the government usurps the grand jury and destroys its independence so that it looks and acts like an arm of the prosecution, the very essence of a government of limited powers is destroyed. *See, United States v. Dionisio*, 410 1, 17, 93 S. Ct. 764, 773, 35 L.Ed,2d 67 (1973); *Stirone v. United States*, 361 U.S. 212, 80 S.Ct. 270, 4 L.Ed.2d 252 (1960).

In *United States v. Samango*, the Ninth Circuit said:

The Court's power to dismiss an indictment on the ground of prosecutorial misconduct is frequently discussed but rarely in-

voked. Courts are rightly reluctant to encroach on the constitutionality-based independence of the prosecutor and grand jury.[26] The Court 'will not interfere with the Attorney General's prosecutorial discretion unless it is abused to such an extent as to be arbitrary and capricious and violative of due process.' *United States v. Welch.* 572 F.2d 1359, 1360 (9th Cir.), *cert, denied,* 439 U.S. 842, 99 S.Ct. 133, 58 L.Ed.2d 140 (1978). Nevertheless:

On occasion, and widely-varying factual contexts, federal courts have dismissed indictments because of the way in which the prosecution sought and secured the charges from the grand jury. . . . These dismissals have been based either on constitutional grounds or on the court's inherent supervisory powers. . . . Whatever the basis of the dismissal, however, the courts' goal has been the same, to protect the integrity of the judicial process,' . . . particularly the functions of the grand jury, from unfair or improper prosecutorial conduct (citations and footnotes omitted.)

607 F.2d at 881 quoting *United States v. Chanen,* 549 F.2d 1306, 1309 (9th Cir.) *cert. denied,* 434 U.S. 825, 98 S.Ct. 72, 54 L.Ed.2d 83 (1977).

From the inception of the twenty-month grand jury investigation when the prosecutors divined the office of "agent of the grand jury" on the IRS agents through the time of the agent's improper "summaries" presented shortly before the indictment was returned, the conduct of the Department of Justice attorneys substantially undermined the ability of the grand jury to exercise independence. The numerous abuses and violations of rules and constitutional principles must be considered particularly serious because of the admissions in these hearings that, for the most part, the activity was undertaken knowingly and purposefully.

In addition to the abuses detailed in this memorandum opinion numerous other instances of misconduct are recounted by Judge Winner in his August 25, 1983 Opinion. In sum, the substantial departures of prosecutors in this case from established notions of fairness, from clearly articulated rules of law, from specific rules of procedure and, indeed from the Department of Justice's own manual and operating directives constitute systematic and pervasive overreaching. There is no doubt that the indicting grand jury was unsurped and that timehonored constitutional principles were sullied.

Some of the violations, standing alone, require dismissal. Others, while not singularly requiring dismissal, when combined with one another amount to travesty. What is perhaps most alarming is that even in the very last of so many hearings, one of the prosecuting attorneys continued to refer to the challenge to his and his colleagues' conduct as "silly" and "frivolous." K. Tr. 1137. The supervisory authority of the court must be used in circumstances such as those presented in this case to declare with unmistakable intention that such conduct is neither "silly" nor "frivolous" and that it will not be tolerated.

The government attorneys, who replaced the prosecutors whose activities are at issue, reluctantly acknowledge that with regard to *at least* two of the procedures employed in this investigation they were "technically inaccurate" and "should obviously not be repeated in the future." *See* Government Response to Defendants' Opening Brief in Support of Motions to Dismiss the Indictment, filed November 14, 1983, att pp. 11, 15. When all the "technically inaccurate" procedures and abuses which "should obviously not occur in the future" are accumulated, what emerges is a picture of an IRS investigation out of control and a grand jury which was converted into little more than a rubber stamp.

The Fifth Amendment guarantees that no person shall be held to answer for an infamous crime "unless on a presentment or indictment of a grand jury." The Supreme Court observed in *United States v. Dionisio,* 410 U.S. 1, 16-17, 93 S.Ct. 764, 772-773, 35 L.Ed.2d 67 (1973) that "[t]his constitutional guarantee presupposes an investigative body 'acting independently of either prosecuting attorney or judge,' *Stirone v. United States,* 361 U.S. 212, 218, 80 S.Ct. 270, 273, 4 L.Ed.2d 252, whose mission is to clear the innocent, no less than to bring to trial those who may be guilty." As a result of the conduct of the prosecutors and their entourage of agents, the indicting grand jury was not able to undertake its essential mission. That such is a significant and prejudicial deprivation of these defendant's constitutional rights to due process of law and personal liberty should require no further recitation of authority.

ORDER

Based on the foregoing I hold and ORDER as follows:

1. The indictment is dismissed because of the numerous violations of Rule 6(d), Fed. R.Crim.P.

2. The indictment is dismissed because of the numerous violations of Rule 6(e), Fed. R.Crim.P.

3. The indictment is not dismissed solely for the use of "pocket immunity" in contravention of 18 U.S.C. §§ 6002 and 6003.

4. The indictment is not dismissed solely for violations of the Fifth Amendment to the United States Constitution.

5. The indictment is not dismissed solely for the knowing and deliberate presentation of misinformation to the grand jury.

6. The indictment is not dismissed solely for violations of the Sixth Amendment to the United States Constitution.

7. The indictment is dismissed because of the totality of the circumstances which include numerous violations of Rule 6(d) and (e), Fed.R.Crim.P., violations of 18 U.S.C. §§ 6002 and 6003, violations of the Fifth and Sixth Amendments to the United States Constitution, knowing presentation of misinformation to the grand jury and mistreatment of witnesses.

FOOTNOTES

[1] The facts relied upon in this opinion are taken from voluminous transcripts of hearings before two grand juries, Judge Winner, and me and a trial before a jury. To aid the reader, the following citation form is used: references to the trial to the jury presided over by Judge Winner are cited as "T. Tr."; references to hearings on the motion for a new trial or acquittal and the motion to dismiss before Judge Winner are cited as "W. Tr."; and references to hearings on the motions underlying this order are cited as "K. Tr." Citation of the grand jury transcripts are captioned "G.J. Tr." and recite the relevant witness or declarant, the date and the time of the transcription. Defense and prosecution exhibits submitted on this matter are designated respectively "DX" and "PX."

[2] The government seeks to absolve the prosecutors of any misconduct by pointing to instances where the prosecutors themselves informed the grand jury of its independent and unbiased mission. *See, e.g.,* G.J. Tr. Remarks of Prosecutor, July 8, 1981, 8:39 a.m. at pp. 9, 11; October 6, 1981, 10:58 a.m., at pp. 2, 3; September 29, 1982, 8:52 a.m., at p. 8. Such admonishments, however, are not curative of actions taken at other times which constitute abuses of the system and impinge upon the grand jury's integrity.

[3] Agent Raybin testified that before Mr. Snyder gave him his oath as an agent of the grand jury, he was also sworn in by the foreman of the grand jury. K.Tr. 267.

[4] Snyder did suggest that the swearing in of grand jury agents was practiced in Atlanta, Georgia and the Southern District of Florida. He did not, however, testify as to what grand jury agents did in these other districts or whether the practices employed elsewhere were similar to those used here. K.Tr. 414-15.

[5] On some occasions Mr. Snyder referred to Raybin and Mendrop as his agents. G.J. Tr. Remarks of Prosecutor, July 8, 1981, 8:39 a.m., at pp. 9, 15, 18, 21, 23; July 8, 1981, 12:05 p.m., at p. 5; August 5, 1981, 3:50 p.m., at p. 5; September 9, 1981, 8:37 a.m., at p. 2; September 9, 1981, 10:00 a.m., at p. 2; October 6, 1981, 10:58 a.m., at p. 12; May 3, 1982, 9:15 a.m., at p. 5. Such references did not, however, clarify the ambiguous role of the grand jury agents. As noted, the IRS agents were often referred to as agents of the grand jury. The confusion over the agents' role is discernible from isolated statements made by the prosecutors to the grand jury. Snyder, for example, said that he would, "have my agents, when I ask them to be sworn as agents of the Grand Jury, analyze [the documents] and basically figure out what they mean." G.J. Tr. Remarks of Prosecutor, July 8, 1981, 8:39 a.m., at p. 21; *see also* G.J. Tr. Remarks of Prosecutor, July 8, 1981, 12:05 p.m., at p. 5. The agents worked, in form, for the grand jury; but, in substance, they worked for the prosecution.

[6] Mendrop and Raybin claim that they never introduced themselves to witnesses as agents of the grand jury. K.Tr. 243, 266-67, 366-67.

[7] *See supra* note 5 and accompanying text.

[8] The government claims that all prosecutorial decisions made by IRS agents were done in consultation with the prosecuting attorneys. K.Tr. 145-46.

[9] The occasional self-serving statements by prosecutors to the grand jury that use of grand jury information in IRS audits is improper does not absolve the improper disclosures but merely serves to highlight the seriousness of the misconduct. G.J. Tr. Remarks of Prosecutor, July 8, 1981, 8:30 a.m. pp. 12-13; Novermber 4, 1981, 9:12 a.m., at pp. 12-13; November 4, 1981, 9:12 a.m., at p.6.

[10] For examples, sec sections of this opinion entitled "Facts Established by the Record," F. and G.

[11] Both government attorney Snyder and agent Mendrop dispute Birchall's testimony. K.Tr. 423-36; 376-89.

[12] *See supra* note 20.

[13] As discussed later, *see supra* text accompanying note 21, I now believe I was unduly diffident in *Anderson.* The practice is not merely damnable: I believe now that it is clearly illegal.

[14] The government's brief, Government's Response to the Bank of Nova Scotia's Proposed Findings of Fact and Conclusions of Law, filed April 9, 1984, at p. 19 provides:

On February 2, 1982, Mr. Snyder advised the grand jury of his negotiations with Mr. Ballor [attorney for many of the witnesses], and again explained to the grand jury the difference between statutory immunity and letters of assurance. 2/2/82(1:07 p.m.) G.J. Colloquy 5-14.

The transcript for G.J. Tr. February 2, 1982, 1:07 p.m. presents the testimony of Gordon MacManus. The substance of the testimony consists entirely of an inquiry as to whether Mr. MacManus's attorney was being paid for by Realty Inc. and whether Mr. MacManus would invoke his right against self incrimination. Contrary to the government's assertion, the transcript reflects the prosecutor's attempts to prejudice the grand jury. *See supra* text accompanying not 15.

[15] *See supra* note 14.

[16] The government claims that the doubts about the accuracy of Water's description did not arise until after Mendrop testified. Nevertheless, even under the government's version, such doubts existed months before the indictment. K.Tr. 1067-68.

[17] The government argues that interviewing Haynes does not give rise to *Massiah* violations because he was only "a potential witness who had information as to the the bank's conduct concerning the events charged in the indictment." Government's Response to The Bank of Nova Scotia's Proposed Findings of Fact and Conclusions of Law, filed April 9, 1984, at p. 37. The government ignores *Massiah* because Haynes was not individually named as a defendant in the indictment. *id.* Nevertheless, the government does recognize that Haynes "was the number two man in the Cayman Island

branch of The Bank of Nova Scotia at the time of the events in question." *id.* quoting W.Tr. 653.

[18] Mr. Morvillo is the bank's lead defense counsel.

[19] *See supra* note 23.

[20] The United States Attorneys' Manual provides at §9-11.362:

Rule 6(e) specifically prohibits any obligation of secrecy from being imposed upon any person except in accordance with this rule.' Witnesses, therefore, cannot be put under any obligation of secrecy. *Application of Eisenberg*, 654 F.2d 1107, 1113 n. 9 (5th Cir.1981). This, however, should not prevent the grand jury foreman from requesting a witness not to make unnecessary disclosures when those disclosures or the attendant publicity might hinder an investigation.

[21] *See supra* note 13.

[22] The conventional remedy for illegal use of "pocket immunity" would, in most instances, take the form of a *post facto* grant of statutory immunity or the equitable enforcement of the pocket agreement, for the benefit of grand jury witnesses who relied on the prosecutor's promises. These concerns are not before me here. Still, the use of pocket immunity was so pervasive in this case that it reflects upon the general conduct of the prosecutors and the grand jury.

[23] The prosecutor's *post hoc* rationalizations attempting to demonstrate the propriety of his conduct do the opposite. *See supra* text accompanying note 18. *Upjohn Co. v. United States*, 449 U.S. 383, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981) establishes that corporate employees of the kind interrogated here fall within the ambit of the attorney-client relationship and must be considered, in essence, the corporation for purposes of communications. Indeed, while the Supreme Court in *Upjohn* noted that instead of procuring interview notes of the corporation's attorneys, counsel for the government might themselves question employees about relevant events, the facts of that decision give no indication that questioning would be proper if conducted behind counsel's back. Rather, the opinion indicated that questioning would occur with appropriate procedural safeguards. Moreover, *Upjohn* was not a criminal case and the corporation had not been indicted. Thus, *Massiah* and its progeny, of course, were inapplicable. Indeed, the facts and relevance of *Upjohn* are so inapposite as to raise questions as to the sincerity of its invocation.

The prosecutor also relied upon *Diversified Industries, Inc. v. Meredith*, 572 F.2d 596 (8th Cir. 1977) as support for its position. That case too dealt with civil litigation and the question of attorney client privilege with a corporate client. The case did not concern post-indictment activity by prosecutors.

The prosecutor's second *post hoc* rationalization that *Massiah* did not restrict his interrogation because he did not employ subterfuge requires little discussion. The Supreme Court did not base it holding in *Massiah* upon the use of subterfuge. Rather, that opinion was premised on an accused's right to counsel. Thus, in *Brewer v. Williams*, the Supreme Court specifically noted that the fact that "the incriminating statements were elicited surreptitiously in the *Massiah* case, and otherwise here, is constitutionally irrelevant." *Brewer v. Williams*, 430 U.S. at 400, 97 S.Ct. at 1240.

[24] Unlike the situations in *Brewer* and *Massiah*, the interrogation of the bank's represcntatives was conducted not by an investigatory agent, but primarily by an attorney involved in the prosecution also calling into question a possible violation of that attorney's ethical obligations.

Disciplinary Rule 7-104 of the Code of Professional Responsibility provides in relevant part:

Communicating With One of Adverse Interest.

(A) During the course of his representation of a client a lawyer shall not:

(1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

See United States v. Thomas, 474 F.2d 110, 111-12 (10th Cir., cert. denied, 412 U.S. 932, 93 S.Ct. 2758, 37 L.Ed.2d 160 (1973). *Cf. Ceramco, Inc. v Lee Pharmaceuticals*, 510 F.2d 268 (2d Cir. 1975).

[25] The prosecutor's interrogation and surveillance here is precisely the type of deliberate governmental impropriety that should be discouraged. *See United States v. Owen*, 580 F.2d 365, 367 (9th Cir. 1978), *citing Elkins v. United States*, 364 U.S. 206, 80 S.Ct. 1437, 4 L.Ed.2d 1669 (1960); *United States v. Houghton*, 554 F.2d 1219, 1224 (1st Cir. 1977), *cert denied* 434 U.S. 851, 98 S.Ct. 164, 54 *L.Ed.2d 120*. Insofar as the prosecutor by his own admission was not deterred by the possibility of other available remedies, dismissal remains the only viable prophylactic tool. The Supreme Court has gone to great lengths to explain that the good faith efforts of law enforcement officials should not be overcome by technicalities beyond their control. *See United States v. Leon.*—U.S.—,104 S.Ct. 3430, 82 L.Ed.2d 677 (1984). The opposing proposition requires that effective sanctions be imposed to prevent deliberate constitutional violations by law enforcement officials. Constitutional protections are of little value if violations are permitted without the imposition of meaningful sanctions. See *Mapp v. Ohio, 367 U.S. 643, 655, 81 S.Ct. 1684, 1691, 6 L.Ed.2d 1081 (1961); Elkins v. United States*, 364 U.S. 206, 217, 80 S.Ct. 1437, 1444, 4 L.Ed.2d 1669 (1960). Here, the prosecutor's premeditated interrogation of bank employees behind the back of the bank's counsel plainly violated the Sixth Amendment protections outlined by the Supreme Court in *Massiah and Brewer*.

[26] In almost seven years on this bench this case and *United States v. Anderson, supra.* are the only two instances out of many cases in which I have felt constrained to dismiss an indictment.

UNITED STATES OF AMERCIA, PLAINTIFF,

v.

WILLIAM A KILPATRICK, ET AL., DEFENDENT [1]

No. 82-CR-222

United States District Court, D. Colorado

Aug. 25, 1983

Following jury verdict of guilty of obstruction of justice, defendent moved for dismissal or new trail with pending dismissal motions resting on accusations of Internal Revenue Service and prosecutorial misconduct during grand jury proceedings and during trial. The District Court, Winner, J., held that: (1) there was a more than adequate showing that grounds may have existed for motion to dismiss indictment and accordingly entire grand jury transcript dealing with indictment would be made available for study by defense counsel, and (2) one defendent was entitled to new trail.

Ordered accordingly.

1. Criminal Law ⚖627.6(6)

There was a more than adequate showing that grounds may have existed for motion to dismiss indictment because of Internal Revenue Service and prosecutorial misconduct during grand jury proceedings; accordingly, entire grand jury transcript dealing with indictment would be made available for study by defense counsel Fed. Rules Cr. Pro. Rules 6, 6(e)(3)(C), 18 U.S. C.A.

2. Witnesses ⚖

Lawyers cannot substitute themselves for the court to release a witness from subpoena.

3. Criminal Law ⚖919(1)

Defendant was entitled to new trial because of alleged improprieties including government counsel's releasing a witness from subpoena.

William Waller and Richard K. Rufner, Wagner and Waller, Englewood, Colo., for defendant Kilpatrick.

James L. Treece, Treece, Zbar, Webb & Kenne, Littleton, Colo., for defendant Declan O'Donnell.

James Nesland, Ireland, Stapleton & Pryor, Denver, Colo., for defendant Bank of Nova Scotia.

H. Alan Dill, Dill & Dill, P.C., Denver, Colo., for defendant Sheila Lerner.

Linda Surbaugh and Robert Miller for U.S. Atty's Office, D. Colo., Denver, Colo., and Charles J. Alexander, Dept. of Justice, Tax Div., Washington, D.C., for U.S.

WINNER, District Judge.

This case was started with a multiple count, multiple defendant indictment returned after an investigation spanning the lives of two grand juries. Judge Kane dismissed all except one count, which left a one defendant charge of obstruction of justice case to try. It was prosecuted by three attorneys employed by the Tax Division of the Department of Justice in Washington. The single remaining count of the indictment has absolutely nothing to do with tax law, and the trial could have been handled competenly and with aplomb by any assistant United States Attorney living in Denver, but the administrative decision of the Department of Justice was to send three lawyers from the Tax Division to try an obstruction of justice case a prosecution unrelated to their professed area of expertise.

I mention this fact for one very important reason. Following a jury verdict of guilty, defendant moved for dismissal or a new trial, and the pending dismissal motions rest on accusations of IRS and prosecutorial misconduct during the grand jury proceedings and during the trail. There is absolutely no suggestion of any improper conduct on the part of the United States Attorney for the District of Colorado or on the part of any of his assistants. Defense counsel carefully point out that neither they nor their client complain about anything other than acts of the IRS and Department of Justice Tax Division lawyers who ran the grand jury and tried the case. Based upon my review of the record and participation in the trial, I share their view that the Colorado United States Attorney's Office is absolutely blameless in this case so fraught with problems. Also, it should be emphasized that no one is critical of government counsel now handling the post trial motions.

To fully cover all of the headaches of this case would require a volume, and I don't plan to write that book for reasons which will appear presently. Instead, I shall highlight some of the things which occurred during the investigation and during the trial of the case. But, there are so many things to cover that this opinion won't be short. Many of the accusations are disputed by the accused government counsel and agents, but they are forced to admit a few instances of "mistake", and their denials of facts run contrary to testimony of a large number of witnesses. To accept the testimony of government witnesses at full value would require that I effectively decide that quite a few reputable lawyers and citizens of this community and other communities are guilty of perjury, and I make no such determination. The record made to date is incomplete. A full evidentiary hearing was scheduled, but, as will be explained later, present government counsel was not able to prepare for the first hearing, and the testimony of essential government witnesses was put over for three weeks. It was ordered that a summary of the testimony of government witnesses be furnished in advance of a hearing scheduled some three weeks later. The summary was furnished, but the government witnesses weren't called although I and defense counsel wanted them called. Therefore, at this point, all I have to rely on is the summary of proposed testimony, but

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[1] This opinion which was originally published at 570 F. Supp. 505 was withdrawn from the bound volume or order of the United States Court of Appeals for the Tenth Circuit that further publication be temporarily delayed. The order so providing has now been vacated by the Court of Appeals.

the witnesses have not been sworn nor have they been cross examined.

With that, then, I set the stage of some of the bizarre happenings in this case, and I do so by mentioning a frequently quoted case. In 1935, in *Berger v. United States* 295 U.S. 78, 55 S.Ct 629 79 L.Ed. 1314, Justice Sutherland, speaking of a unanimous court, criticized the misconduct of the prosecutor in that case. The prosecutor had injected his personal belief concerning the facts of the case (so did a prosecutor here) and he had unfairly cross-examined witnesses. That which the court said concerning reliance by a jury on a prosecutor's integrity is even more applicable to the reliance of a grand jury on a prosecutor. As to a prosecutor's duties, the Court said:

"The United States Attorney is the representative not of an ordinary person to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

"It is fair to say that the average jury, in a greater or less degree, has confidence that these obligations, which so plainly rest upon the prosecuting attorney, will be faithfully observed . . ."

Perhaps the thing which disappoints me the most is the forgetfulness of the grand jury itself in going along with having two IRS agents in charge of the IRS investigation sworn as "agents of the grand jury". Yet, I can understand, as Justice Sutherland said in *Berger v. United States*, that grand jurors rely on Justice Department lawyers for their legal advice. They should do this, because I empanelled the first of these two grand juries, I know what those jurors were told, and I strongly suspect that the second grand jury was told about the same thing. I orally, and on the record, stressed that a grand jury has a duty to protect the innocent and I emphasized that a grand jury is an independent body, separate and apart from investigative agencies and that grand juries are not an arm of the prosecution but instead, they have a duty to examine the government's case carefully. I didn't tell them that they couldn't appoint IRS agents as their own "agents", because it never occurred to me that there could be such a blurring of the "investigative agency", "prosecuting attorney" and "grand juror" functions. However, I did supply each grand juror with a copy of the recommended instructions to grand jurors authored under the auspices of the Judicial Center, and I urged each grand juror to read the instructions frequently to be sure that they adequately performed their duties. (I now urge that Justice Department prosecutors read them). Those instructions say in important part:

"You will recall from my earlier remarks that the grand jury developed in England as an entity independent from the king to protect a subject from an unwarranted prosecution. The king could not charge a subject with a serious crime without first submitting evidence and witnesses to a grand jury, which then decided whether to return an indictment against the accused person.

Just as the English grand jury was independent of the king, the federal grand jury under the United States Constitution is independent of the United States Attorney, the prosecutorial agent of the executive branch of the federal government. The grand jury is not an arm of the Federal Bureau of Investigation; it is not an arm of the Internal Revenue Service; just as it is not an arm of the United States Attorney's Office. There has been some criticism of the institution of the grand jury for allegedly acting as a mere rubber stamp approving prosecutions that are brought before it by government representatives. Similarly, you would perform a disservice if you did not indict where the evidence warranted an indictment.

As a practical matter, you must work closely with the government attorneys. The United States Attorney and his assistants will provide you with important service in helping you to find your way when confronted with complex legal matters. It is entirely proper that you should receive this assistance.

However, you must remember that you are not the prosecutor's agent. Your role is related to but clearly distinct from that of the government attorneys who will assist you, and it is important that you keep the distinction between the roles clearly in mind. Although you must work closely with the government, you must not yield your powers nor forego your independence of spirit.

These comments are meant to be cautionary in nature. The government attorneys are sincere men and women, and you will develop ordinary human feelings as you work with them during your term of service. If past experience is any indication of what to expect in the future, then you can expect candor, honesty, and good faith efforts in every matter presented by the government. However, it is because you may tend to expect such high quality from the government's agents that there is a potentially grave risk to your independence of thought and action, which may cause you to lapse into reliance when you should be dubious or questioning.

You should also remember that the government attorneys are advocates of the government's interests. They are prosecutors; you are not. While they will usually balance fairly the government's interest against the interest of a citizen's personal liberty, it is your responsibility to ensure that the proper balance is acheived in every case brought to your attention. You must exercise your own judgment, and if the facts suggest a different balance than that advocated by the government attorney's then you must achieve the appropriate balance even in the face of their opposition or criticism."

In the face of these instructions, the grand jury wasn't two minutes into its investigation when one of the Justice Department lawyers personally administered an "oath" to an IRS Special Agent, and that "oath" was:

"Mr. Mendrop, do you swear to carry out the duties as directed by the Foreman and Members of the Grand Jury, keep all proceedings and matters and documents which are received pursuant to your work with this grand jury secretive?" (sic).

In its brief the government says:

"The government concedes that Mr. Snyder had no authority to administer oaths to agents. However, Mr. Snyder will testify, and the record will reflect, that the agents were first given an oath by the foreman. It was only after they had been sworn in by the foreman that Mr. Snyder gave the agents what purported to be an additional oath directing the agents to maintain secrecy."

[As had been noted, this testimony hasn't been presented yet, and on the sworn record made to date, it is not clear who gave an oath to testify truthfully.]

The government then "quotes" from the transcript which shows that those were the facts. That's not what the transcript which was supplied to me shows and I am concerned about the validity of someone's transcript. It is true that other "oaths" administered by Mr. Snyder do appear to have followed an oath administered by someone to testify truthfully, but if any such oath was administered to Mr. Mendrop at the first session, it doesn't show up in my copy of the transcript.

Six months later, the Special Agents of the IRS were each sworn as an "agent" of the second grand jury, and if there could be any doubt as to the mingling of the investigative agency/prosecutorial/grand jury functions, the hash which results from the following proceedings eliminates that doubt. After a statement by government counsel that he wanted the agent sworn as an "agent of the grand jury", this job description was furnished by Mr. Snyder:

". . . when he interviews people and he looks at this stuff, he is not looking at it so much as a special agent of the criminal investigation division of the Internal Revenue Service, and he is looking at (it) as your agent and he is amendable to you and he is amendable to Rule 6. Do you recall Rule 6, the Grand Jury secrecy?

"*What it is, is very, very plain, and it states in what capacity he is operating in this investigation so there is no question about it.*

(The agent was then sworn as a witness by someone, and the transcript continues).

"Mr. SNYDER: Do you have the oath to make him a—they don't have the oath. Raise your right hand. Do you solemnly swear that the information and evidence which you receive pursuant to the Grand Jury you will keep secret to yourself *except as provided by the foreman of the Grand Jury* or federal judge? . . . In the course of your *duties as a special agent and also as an agent of a previous grand jury* have you conducted an investigation into the affairs of one William A. Kilpatrick?"

I don't know how it could be any clearer than in Mr. Snyder's eyes, the agent's investigation was a combined IRS and Grand Jury investigation conducted by a single "agent", and, of course, under Rule 6 he was the prosecuting attorney's little helper. That isn't what the stock instructions to grand jurors say should be done, and, although the government argues that other grand juries have had agents, it fails to come up with a case approving the practice and it fails to mention any case discussing the blurring of functions. The government relies on *United States v. Cosby*, (1979) 5 Cir., 601 F.2d 754. There, the court itself challenged the practice of appointing an "agent of the grand jury", but it "assumed" that the practice was proper because it reversed the case on other grounds. The opinion cites several cases where "the use of third parties to assist grand juries has been considered and approved," but it is to be noted that those cases were decided before

the amendment of Rule 6(e) which makes no mention of grand jury "agents" and which says that disclosure may be made to government lawyers for use in the performance of duty, and to other governmental personnel "as are deemed necessary by an attorney for the government to assist an attorney for the government, *in the performance of such attorney's duty to enforce federal criminal law.*" The rule does not permit the grand jury to have an "agent", and it categorically says that Rule 6(e) permits disclosure to non-lawyers for the single purpose of assisting the "attorney for the government". The rule doesn't mix up the separate functions of prosecutor and grand jury, and with Rule 6(e) clarified, those functions cannot be blended.

My thoughts on this score are in full accord with those of the Advisory Committee, because its note to the 1972 amendment to Rule 6(c) says:

"Federal crimes are 'investigated' by the FBI, the IRS, or by Treasury agents, *and not by government prosecutors or the citizens who sit on grand juries.*"

Here, the "Grand Jury Agents" investigated and they testified, all the while being special agents of the IRS, and, as will be detailed later, a government prosecutor "investigated" on the streets of Puerto Rico.

The government concedes the obvious. A lawyer employed by the Tax Division of the Department of Justice can't administer oaths, but, sworn or unsworn, I don't think that an IRS special agent can act in the combined capacity of IRS Agent, "Agent for the Grand Jury" and recipient of grand jury information supplied under Rule 6(e) for the sole purpose of helping out the prosecutor. This is a confusion not of apples and oranges. It is confusing apples, oranges and bananas.

Admitting impropriety in the conduct of counsel, the government's brief argues that the error wasn't serious and that it resulted from good motives of Mr. Snyder. The error may or may not be serious, and I express no opinion as to the gravity of the error. However, the government is playing with fire in arguing that good motive excuses making one's own law. I discussed my thinking of this argument at quite some length in *United States v. Best,* (1979) 476 F.Supp. 34, where I ruled that a belief that blocking some railroad tracks would save the world from nuclear devastation didn't excuse the offense, and the Tax Division has surely heard tax protestors say that their motives in refusing to obey the tax laws are pure as the driven snow. Mr. Snyder's good intentions don't excuse his arrogation of a power he didn't have. And, even if the illegal "oath" doesn't amount to serious error, it started the case downhill on a course of repeated excesses on the part of the prosecution. Good intentions or ignorance of the law don't make those errors go away. The creation of the "office" of grand jury agent is harder to excuse when the impartial jurors' "agent" is a chief investigator of the IRS case against the defendants and is receiving grand jury information under Rule 6(e) only to help out the attorney for the government charged with the supervision of presentation of the government's case to the grand jury.

What has been said thus far, and much of that which is to follow, bear in no way on the trial itself, and, therefore, those things can't enter into a decision of whether a new trial should be granted. That which took place during the grand jury proceedings and most of that which took place outside the presence of the jury couldn't poison the jury verdict, and these alleged transgressions are argued in support of the motion of dismiss because of prosecutorial misconduct and in support of claimed lack of professionalism of government counsel. Therefore, insofar as possible, I shall try to discuss the arguments bearing on the new trial motion in a separate part of this memorandum.

In a brief filed by trial counsel (not signed by present counsel for the government and not adopted by Colorado's United States Attorney whose typewritten signature does appear) the many accusations were described as "silly", but they aren't either silly or frivolous. Indeed, the brief filed by trial counsel was couched in language far different from that which the court is accustomed to reading. When asked, Mr. Scharf said that higher authority in the Justice Department Tax Division has approved the brief and its phraseology, and that higher authority thought the whole thing was a ploy of defense counsel. If that be so, the lawyers in the upper echelon of the Tax Division have adopted a style of brief writing markedly different from that Justice Department lawyers have filed with this court in the past and I have had my fair share of experience in dealing with Tax Division lawyers for whose ability and ethics I have the highest regard. And if the overlords of the Tax Division think this whole mess is just a ploy, I recommend that they take a second look.

Since I started this with the grand jury proceedings, I think that I should continue with them and with matters which occurred during the trial which don't impact on the new trial motion but which are aimed at the dismissal motion and lack of professionalism. I think that the place to start is with Rule 6(e), F.R.Cr.P. itself, because that is the rule which governs grand juries and it is the rule which was violated here. I quote from Rule 6(c) and I italicize the phrases in that section which are of importance to this case:

"(e) Recording and Disclosure of Proceedings.

"(1) All proceedings, except when the grand jury is deliberating, shall be recorded stenographically or by an electronic recording device. An unintentional failure of any recording to reproduce all or any portion of a proceeding shall not affect the validity of the prosecution.

The recording or reporter's notes or any transcript prepared therefrom shall remain in the custody or control of the attorney for the government unless otherwise ordered by the court in a particular case.

"(2) A grand juror, and interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, *an attorney for the government, or any person to whom disclosure is made under paragraph (3)(A)(ii) of this subdivision shall not disclose matters occurring before the grand jury* except as otherwise povided by these rules. *No obligation of secrecy may be imposed on any person except in accordance with this rule.* A known violation of Rule 6 may be punished as a contempt.

"(3)(A) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made made to—

"(i) an attorney for the government for use in the performance of such attorney's duty; and

"(ii) such government personnel as are deemed necessary *to assists an attorney for the government in the performance of such attorney's duty to enforce criminal law.*

(I don't know how it can be argued that this language permits disclosure to IRS agents to work as "agents for the grand jury" unless it is argued that the grand jury is simply an arm of the prosecutor's office, and if that be the argument, almost 800 years of history is going to have to be forgotten. The document King John signed at Runnymede contains no such concept, nor does our Constitution.)

"(ii) such government personnel *as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty* to enforce federal criminal law.

(It seems pretty clear to me that the IRS agents to whom disclosure was made were hired guns of the prosecutor and the IRS—not of the grand jury.)

"(B) . . . An attorney for the government shall promptly provide the district court, before which was empanelled the grand jury whose material has been so disclosed, with the names of the persons to whom such disclosure has been made. (The language of the rule is this clumsy.) "(C) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made.

* * * * *

"(ii) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury.

If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct."

I first mention something not raised by defense counsel, but defense counsel had no way of knowing anything about it. I found out about it from a scanning of the full file drawer of grand jury transcript. A while back, it was the practice to make grand jury witnesses take an oath of secrecy, and this is still the rule in some state court systems. Because of public outcry, the rule was changed, and, as has been seen, this is now verboten because of the language of the rule saying, "No obligation of secrecy may be imposed on any person except in accordance with this rule." This language has been uniformly interpreted to prohibit any instruction to a witness that his testimony is secret. *In re Langswager,* (1975) D.C.Ill. 392 F.Supp. 783; *In re Grand Jury Witness Subpoenas (1974)* D.C.Fla. 370 F.Supp. 1282; *In re Alvarez* (1972) D.C.Cal. 351 F.Supp. 1089; *In re Minkoff* (1972) D.C.R.I. 349 F.Supp. 154; *in re Investigation before April 1975 Grand Jury* (1976) D.C.Cir. 531 F.2d 600; *in re Vescovo Special Grand Jury* (1979) 473 F.Supp. 1335, and many other cases. In spite of this express command of Rule 6(e), secrecy obligations were imposed on several witnesses, and, to make the violation more disturbing, secrecy obligations were imposed on lawyers called to furnish information concerning their clients. That makes the violation gravely beyond the pale, because of the impossible position the lawyer-witness is placed in, but that's what the grand jury transcript discloses. No "oath" of secrecy was administered, but an obligation of secrecy was imposed by instructions from government counsel to witnesses. This foolishness may or may not have been intentional, but ignorance of the law is not a defense available to a prosecutor. This misconduct is

established by the record, and it will prove difficult for the government to deny, just as the government had to admit the attempted administration of an "oath" by Mr. Snyder. The government surprisingly defends the proven mishmash of function of the IRS Special Agent/Grand Jury Agents/Assistants to the Attorney for the Government appointed under Rule 6(e), but maybe it thinks that admitting that this was error would confess the motion to dismiss.

I come now to other accusations made by defendant and pretty much denied by the prosecutors and IRS agents. I make no finding as to whether most of the charges are proven or unproven, but I do find that as to all assertions made by defendant there is cause for concern that the prosecutor's conduct before the grand jury may require dismissal of the indictment. The accusations are made sincerely; there is some evidence to support all of them, and there is quite a bit of evidence to support some. However, before factual findings can be made, a further hearing permitting participation by all parties interested in the grand jury proceedings is necessary—something which will be explained later. Most importantly, of course, the testimony of government counsel is essential, and it is still missing although all three of the lawyers were in Denver during the last hearing.

Because that additional hearing is required, I shorten discussion of most of the claims of prosecutorial misconduct, but I shall comment briefly on them. Frequently I will phrase the charges as if the facts had been established, but I emphasize that I am not saying that the facts have been proven. I am just adopting the practice of the government in phrasing an indictment in language saying that thus and so are the facts. I am only phrasing the defendant's charges against the government in the same way the government phrases its charges against a defendant, and the fact that the charges are made is not evidence that they are true, nor do I find that they are.

Richard Birchall is a lawyer formerly with the Tax Division who practices in New Jersey and who did some work for defendant and his company. He was subpoenaed to testify before the grand jury, and he showed up in Denver pursuant to the subpoena. He says that he met Mr. Snyder and the agents in a bar and they downed a few drinks paid for by Mr. Snyder. During this session Mr. Snyder supposedly disregarded the secrecy rules and, having done so, he told Mr. Birchall he was a potential target. He added that there was testimony about a personal relationship of Mr. Birchall's, a comment which was bothersome to the witness because of marital problems of Mr. Birchall. These communications are of a nature (if they were made) designed to bring about hurried cooperation from a witness, and especially from a witness who is a former Tax Division lawyer practicing tax law in the private sector. While in Denver, Mr. Birchall was left in a room with some grand jury transcripts and material lying on a table in plain sight. Mr. Birchall scanned some of the material trying to locate that which dealt with the matters discussed by Mr. Snyder. Perhaps he shouldn't have done this, but this is a matter of morals while grand jury secrecy is a matter covered by Rule 6, and Mr. Snyder was under it, but Mr. Birchall wasn't. Moreover, Mr. Birchall testified that he thought that he was being treatened by Mr. Snyder, and he was reacting to the treats. I pass no moral judgment on what happened because that's not the question to be decided in this case.

This doesn't end the accusations made through Mr. Birchall's testimony. He said that Mr. Snyder tried to persuade him to breach his ethical duty of confidentiality and he attributed to Mr. Snyder a remark that even if the defendant wasn't guilty, the government would "break him" with the cost of the defense. These accusations got to the heart of our system of justice, and it was no ploy on the part of defense counsel to bring the accusations out for public scrutiny.

Professor Roland Hjorth teaches tax law at the University of Washington Law School, and he is a recognized expert who was employed by defense counsel on the recommendation of the professor or tax law at the University of Michigan. At the request of defendant, Professor Hjorth was permitted to testify as an expert before the grand jury. His views of tax law differed markedly from those of Mr. Snyder, who bragged on frequent occassions that he had never taken a course in taxation and knew almost nothing about it. Nevertheless, Professor Hjorth was brow-beaten and ridiculed by Mr. Snyder, and some of the conversation so out of place for an ethical prosecutor took place during a recess in the hearing of some grand jurors. The government's post trial brief says as to this breach of ethics and standards of common courtesy:

"It was poor judgment on the part of Mr. Snyder to carry on a conversation with Professor Hjorth while two grand jurors were present. However, the record fact is that there was no disclosure of Grand Jury material during the conversation."

I'm not so sure about that. The record shows that the argument and ridicule was as to that which Professor Hjorth had testified to, and that presons other than grand jurors could hear the argument. However, even if the government is correct in this statement, the fact is that the argument begs the real question. Professor Hjorth also testified that as a result of Mr. Snyder's conduct, he would never again appear as an expert witness. Intimidating witnesses by telling them that their testimony disgraces them and implying that the Tax Division of the Department of Justice will take after the witness and will complain to the University of Washington Law School because an expert testified to his expert opinions does no credit to our government. I think that the government's argument in its post trial brief is unconvincing, and, seemingly, the professor's testimony isn't seriously contested. I hope that we haven't gotten to the point that disagreement with the legal concepts of the IRS provides grounds for attacks by the bureaucracy because sometimes the IRS is wrong *U.S. v. Sells Engineering* (1983)— U.S.—, 103 S.Ct. 3133, 77 L.Ed.2d 743 and *U.S. v. Baggot*,— U.S.—, 103 S.Ct 3164, 77 L.Ed2d 785.

Peter Parrish is a former IRS agent who is now employed as an accountant and who worked for defendant. He said that when he responded to a subpoena, he was interviewed by Mr. Blondin and matters which took place before the grand jury were discussed. He also said that the discussions could be heard by outsiders. I don't approve this causual approach to witness interviews, but I think that the incident is picayune. It doesn't deserve discussion.

To further muddle the status of the Special Agent/Grand Jury Agent/Assistant to the Prosecutor matter, letters were written on the letterhead of the United States Attorney for the District of Colorado, and they were signed by the IRS agents with an explanatory line under their signature saying that they were "Special Agents". The letters were authorized by Justice Department attorneys, but they were not authorized by the United States Attorney in Colorado. Apart from the fact that IRS agents who claim to be "agents of the grand jury" shouldn't be using the U.S. Attorney's letterhead, the identity of the persons and the transactions which were under grand jury scrutiny shouldn't be disclosed to anyone by letter or otherwise, but these startling letters did precisely that. I can't fault the IRS agents for this because the government's brief says as to these singular letters:

"Mr. Blondin and Mr. Snyder on these occasions asked the agents to send out correspondence and to sign the letters for them, after having the contents of the letter read to them over the phone. On no occasion, did the agents who were acting under the direction and control of Mr. Snyder, Mr. Blondin and the United States Attorney's Office sign any such letters without advance authority from the government's attorneys."

The United States Attorney of the District of Colorado has disavowed the letters written on his letterhead, and he has seen to it that this won't happen again.

Thus, the disclosures were made with knowledge of Tax Division lawyers and the IRS agent signatures on U.S. Attorney stationery were approved by them. The government has cited no authority for this novel procedure by which the nature of that which was going on before the grand jury and the identity of a target was certified to in writing on the letterhead of the U.S. Attorney who was not running the investigation. Once more, I attribute no fault to the U.S. Attorney.

In recent years, the use of "pocket immunity" has become prevalent. The phrase, for the benefit of the uninitiated, refers to a practice of ignoring the Congressional mandate as to how immunity can be granted and instead of doing what Congress commands, informally substituting a "deal" struck between a prosecutor and a witness. The enforceability of the side agreement in the federal court is an open question, but I have never heard it even argued that federal pocket immunity applies to state court prosecution. However, when it is coyly suggested that a lawyer's client is a target of a grand jury inquiry and that the client can escape the range of fire by incriminating himself along with someone else, the carrot proffered by the prosecutor is hard to resist. Not unimportant, of course, is the fact that the pocket immunity need not be included in statistical reports showing the number of immunities granted in federal prosecutions. (These statistics have been of interest to Congess in the past, and I believe that they still are.)

The deal is a good one for both sides, but it skirts the law. It can be granted on a local level by lawyers not authorized to approve the grant of formal immunity, and no report of its use is required. Formal immunity would have required the approval of the United States Attorney and a designated Assistant Attorney General. But pocket immunity can be granted at the whim of any lawyer running a grand jury, and there is no public record of the side deal. Here, the United States Attorney didn't authorize nor did he approve the immunities. In fact, he didn't know anything about them, although statutory immunity requires his okay.

The history of immunity statutes, colonial, state and federal, is set out in footnotes to *Kastigar v. United States* (1972) 406 U.S.

441, 92 S.Ct 1653 L.Ed.2d 212, and the present immunity statute enacted in 1970 is there discussed, as is the Congressional intent in its enactment. The intent as to the formality of grants of immunity is quite plain 18 U.S.C. § 6002 effectively recognizes privilege against self-incrimination up to the point "the person presiding over the proceeding communicates to the witness an order issued under this part," to testify. The preliminaries to obtaining such an order are spelled out in 18 U.S.C. § 6003, and they are:

1. There must be a request for the order *made by "the United States attorney for such district.*

2. The request by the United States Attorney for the immunity grant *must then be approved by "the Attorney General, the Deputy Attorney General, or any assistant Attorney General."*

3. There must be a certification that the testimony may be necessary for the public interest and that the witness has refussed or is likely to refuse to testify because of his privilege against self-incrimination.

At that point, a district judge performs the ministerial act of signing the immunity order. *In re Corruglated Container Antitrust Litigation* (2nd Cir. 1981) 644 F.2d 70, *In re Daley,* (7th Cir. 1977), 549 F.2d 469. The order typically tracks § 6002 and says that "no testimony or other information compelled under the order . . . may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order." This was the statute which was in *Kastigar v. United States* (1972), 406 U.S. 441, 92 S.Ct. 1653, 32 L.Ed.2d 212, in which the old case of *Counselman v. Hitchcock* (1982) 142 U.S. 547, 12 S.Ct. 195, 35 L.Ed. 1110, was explained and distinguished. In *Kastigar* it was held that the statute did not grant transactional immunity and that the grant was limited to use. "The statute, like the Fifth Amendment grants neither pordon nor amnesty. Both the statute, like the Fifth Amendment allow the government to prosecute using evidence from legitimate independent sources." When the statute is followed, there is a formal, understandable record of the immunity granted and its extent, but, with pocket immunity, no one is sure what the deal is, and there is no adequate record—statistical or otherwise. An underlying purpose of the statute is to reduce to written record the identities of persons granted immunity to permit necessary comparison at a later time of their relative guilt, as compared with persons not let off the hook. With the informal pocket immunity, only a few of the grants come to light, and clear Congressional purpose behind the law is defeated. The statute cannot be read to mean anything other than a limitation on immunity grants to requests made by a "United States Attorney", approved by "the Attorney General, the Deputy Attorney General, or any assistant Attorney General". Congress did not delegate to Tax Division Assistants any right to formally or to informally deal out immunity to the objects of their bounty, but here persons identified as targets of the grand jury were later bargained out of the case by Messrs. Snyder and Blondin. Whether there was any approval of the gifts of pocket immunity, and if so, by whom, I know not, but I do know that there was not compliance with 18 U.S.C. §§ 6002-6003, and I do know that the United States Attorney did not authorize the pocket immunities granted by Tax Division lawyers.

This is especially troublesome in this case in light of the record made concerning the witness Richard Bell who was allegedly targeted by the grand jury (or at least by Mr. Snyder and Mr. Blondin). Mr. Bell was represented by his brother, Malcolm, an attorney practing in New York City, and a witness I found to be straightforward, fair, convincing, and most generous to Mr. Snyder. Malcolm Bell succumbed to the carrot of pocket immunity for his brother, but, later he was told by Mr. Snyder that if Richard "testified for Mr. Kilpatrick, all bets are off." Maybe this meant that if Mr. Bell perjured himself he would be prosecuted for perjury, but if the immunity statute had been followed, the nagging question of the meaning of "all bets are off" wouldn't confront us. Under the statute, all bets weren't off if Richard Bell testified for Mr. Kilpatrick, although he could have been prosecuted for perjury if he testified falsely, but incriminating testimony given by him couldn't be used in a prosecution of the charges with which he was threatened. If the statute had been followed, the government couldn't welch on the bet of not using any incriminating testimony and I doubt that it can welch on that bet when the immunity grant is in pocket form. All too often, pocket immunities are carelessly granted, and sometimes they grant transactional immunity which Congress has not authorized. It is not surprising that there was uncertainty and misunderstanding in this instance. Grand jurors can't be expected to know the requirements of the concerning lawful immunity grants, that the prosecutor ignores the statute, the grand jury should be told that witnesses are testifying under a side deal made with the witness by the prosecutor. The nature and informality of the immunity grant might bear on a grand juror's evaluation of the credibility of a witness, especially if the grand juror knew of the short cut used by the prosecution.

James Treece is a former United States Attorney for the District of Colorado. He was representing one of the targets of the grand jury investigation, and he was served with a subpoena duces tecum to produce records before the grand jury. He told the IRS Special Agent/Grand Jury Agent/Assistant to the prosecutor who served him that he had no such records in his possession, to which the agent, speaking in which capacity I know not, responded, "You're a liar." I guess that at this point this "man of many occupations" decided to act as a grand juror and pass on credibility. That this was said is denied, but I cannot disregard the testimony. I have no knowledge that any such comment was communicated to the grand jury, but Mr. Treece was required to testify after being called a liar by the "grand jury agent", and although I doubt that Mr. Treece was intimidated, other witnesses may have been.

We have not one but two problems under *Massiah v. United States,* 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246. With full knowledge that he was represented by counsel, Declan O'Donnell appeared before the grand jury against the advice of his counsel, and the advice was known to the prosecutors. The government argues that O'Donnell was a lawyer and that he appeared voluntarily. I don't think that this is any answer to *Massiah,* although I concede that the case deals with an indicted defendant and O'Donnell was not then indicted. The government excuses its conduct saying it is permitted under *Edwards v. Arizona,* 451 U.S. 477, 478, 101 S.Ct. 1880, 1881, 68 L.Ed.2d 378. I don't think that *Edwards v. Arizona* is apposite. That case has to do with *Miranda* rights, and, although the government asks that I read footnote 9 of the opinion, I think that footnote 8 has more to do with the *Massiah* problem. I do not rule that there was or was not a violation of *Massiah* in the case of Mr. O'Donnel's testimony before the grand jury because such a ruling is not necessary to this memorandum, but defendant's argument isn't frivolous.

Robert G. Morvillo is a prominent lawyer practicing in New York City, and his testimony was taken by telephone. He represented the Bank of Nova Scotia, and he testified concerning the activities of Mr. Scharf in going to Puerto Rico to play cop in a further and total blurring of the distinction between prosecutor and investigator. In its brief, the government sees no impropriety in this conduct, but I remind of the Advisory Committee's comment that "Federal crimes are 'investigated' by the FBI, the IRS or by Treasury Agents and not by *government prosecutors* or the citizens who sit on grand juries." (They surely aren't investigated by "reviewers" something next to be discussed) In any event, I have no doubt that when a prosecutor turns cop, he loses his *Imbler v. Pachtman,* 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 prosecutorial immunity.

While in Pureto Rico, Mr. Scharf conducted a surveillance of some little girls and tailed them to their home. This let him question their mother as to the whereabouts of his prey who happened to be her husband, and who is a Bank of Nova Scotia employee. Of course, Mr. Scharf must have known that the wife couldn't have been compelled to testify to her husband's wereabouts, even under the lessened privilege adopted in *Trammel v. United States,* 445 U.S. 40, 100 S.Ct. 906, 63 l.Ed.2d 186. As an investigative technique tailing the little girls and quizzing the wife may have been briliant police work, but I am quizzical as to the propriety of a lawyer questioning someone he knows he couldn't question in court because of an absolute privilege which, according to *Trammel,* can be waived only with full knowledge of the incompetence to testify. It seems to me that whatever may be the obligations of an IRS agent, a prosecutor owes a duty not to question a wife about her husband's whereabouts unless *Berger v. United States,* 295 U.S. 78, 55 S.Ct. 629, 79 L.Ed. 1314 has been overruled, and it hasn't been. Totally apart from the propriety of Mr. Scharf's actions in Puerto Rico under *Trammel,* the witneses were employees of the Bank of Nova Scotia, well known to Mr. Scharf to be represented by Mr. Morvillo. He says that interviews conducted by Mr. Scharf violate *Massiah;* the government says they don't, and I express no judgment as to who is right or wrong, but, undeniably, there is a problem, and I think that the problem was well known to Mr. Scharf when he visited Puerto Rico.

Next we come to still another confusion in who occupied what job. It seems that within the administrative procedures of the Department of Justice sometimes conferences can be arranged with "reviewers" who are higher ups in the Tax Division. Many lawyers are of the impression that the "reviewers" occupy a sort of quasi-judicial capacity to pass judgment on whether a case should be prosecuted, and that they are pretty much like the Appellate Staff on the civil side of the Tax Division. Experienced tax lawyers think that a "reviewer" is someone with whom compromise can be discussed.

Moreover, from time immemorial, lawyers have dealt with one another in trying to settle cases in the belief that they can be straightforward without having their words thrown back at them at time of trial. The IRS hasn't always shared this view, and problems with the IRS played no small part in the enlargement of the coverage of the common law rule by the enactment of Rule 408 of the Federal Rules of Evidence. That rule now provides, "Evidence of conduct or statements made in compromise negotiations is likewise not admissable."

During the troubled history of this case, some lawyers were and some were not afforded the luxury of a conference with a "reviewer". Experienced tax lawyers think that a conference with a Reviewer offers a last ditch opportunity to avoid a criminal prosecution through negotiation, and memoranda are submitted to the Reviewer to analyze defense counsel's legal position. Conferences are then set up, attended by IRS agents, trial attorneys for the government, and defense counsel to present arguments pro and con for more or less impartial consideration by the Reviewer. Counsel for some targets were and some were not favored with a conference with a Reviewer, but those who were so favored met with one Jared Scharf acting as the Reviewer. Something which was not disclosed to defense counsel was that he was a behind the scenes prosecutor, and, not only was he a behind the scenes prosecutor, he was actually an investigator in the case.

Rule 6(e) says that the grand jury transcript shall "remain in custody or control of the attorney for the government". The transcript of this grand jury was in the custody and control of the IRS. After the indictments were handed down, the transcript was stored away from the United States Courthouse in a room obtained from the General Services Administration by the Internal Revenue Service. It was a room assigned to the IRS, and, if the United States Attorney wanted in, he would have had to get a key from the IRS Special Agents. One cannot help fretting about this violation of the express language of the rule, and *United States v. Sells Engineering, Inc.*,— U.S. —, 103 S.Ct. 3133, 77 L.Ed.2d 743, coupled with *United States v. Baggot*, —U.S. —, 103 S.Ct. 3164, 77 L.Ed.2d 785, decided a few weeks ago, don't lessen the concern as to why the IRS retained custody of the transcripts which the rule unambiguously says should be under the control of the United States Attorney and only the United States Attorney.

There is testimony that Mr. Snyder threw his jacket on the floor and mouthed obscenities at me as I left the bench. I didn't see anything like that, and the conduct is denied. I don't know whether he did or didn't do any such thing.

When I recessed court one day, the players were in their usual positions. Mr. Snyder, Mr. Blondin, Ms. Surbaugh, and an IRS agent were seated at plaintiff's table. Mr. Scharf was in his bleacher seat, a couple of rows back in the spectator's section where he always sat while the jury was in the courtroom. It was only when the jury left the courtroom that he sat at the counsel table and became an active trial participant. Because of suspicions I had based on testimony in the case (suspicions enhanced by post trial testimony) I was concerned about possible violations of *Massiah*, and I cautioned one and all that I didn't want the rule violated. I started to leave the bench, and Mr. Scharf yelled at me (he says that he spoke in a loud voice, but, the dictionary I have suggests that the difference between a loud voice and a yell is quibble). Mr. Scharf's discourtesy amused me more than it offended me, but according to that which has been said in the post trial hearings, members of the public were distressed that a government lawyer would shout at the judge from the spectator's section of the courtroom. I thought that my court reporter's comment as we left the courtroom was discerning. She said that if her five year old son did something like that he would be sent to bed without his supper.

Rule 6(e) was amended to change the procedure for disclosure of grand jury information to "such government personnel as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce the criminal law." No court permission for the disclosure is required, and the rule is complied with if the attorney for the government "promptly provide(s) the district court . . . with the names of the persons to whom such disclosure is made." As I read it, any "attorney for the government" can promptly provide the information, and any "attorney for the government" can make the decision to disclose. I have no fault to find with the paper trail left in this matter inosofar as the disclosure requirements are concerned. I am troubled about testimony suggesting that authority to make the disclosure decisions was delegated to the IRS Special Agent/Grand Jury Agents/Prosecutor's helpers. Under common law rules of agency, this authority couldn't be delegated to a subagent, and, especially it couldn't be delegated to an IRS agent whose fellow workers were aiming at the defendants from a different angle. My worry on this score is not lessened by an IRS letter in evidence saying that making a civil tax case under the administrative process would be difficult. *United States v. Sells Engineering* and *United States v. Baggot*, both *supra*, which settle the question of using a grand jury to collect taxes.

At the post trial hearing, Donald D'Amico, a witness called by the government, testified as to his appearance before the grand jury. He said that in the presence of the grand jury, Mr. Snyder threw his arm around his shoulder and whispered, "Don't let them cut you up." Then Mr. Snyder introduced him to the grand jury with a glowing recitation of Mr. D'Amico's war record and said, "We have a genuine war hero." After that, Mr. Snyder read off a list of names and asked if the witness would take the Fifth Amendment if inquiry was made concerning those persons. Upon receiving an affirmative answer, the witness was excused from further testimony, and it was not until the post trial hearing that Mr. D'Amico received oral pocket immunity. From what was said at the hearing I glean that counsel for Mr. D'Amico had discussed the grand jury testimony before the witness was called, and why he was called just to claim his privilege remains unexplained.

Bernard Ballor was called as a witness by the government. He is a lawyer of long experience with the Tax Division of the Department of Justice, and I was impressed with his knowledge and with his candor. He said that if a case is being prosecuted by a United States Attorney, it is not unheard of to have a Reviewer assigned to assist in a trial if the United States Attorney so requests, but that when a case is being prosecuted by Tax Division lawyers, it would be most unusual to have a Reviewer act as a trail attorney. He also summarized the security given grand jury material in a major case be handled, and that security was far greater than the security in this case. He made the statement that abuse of the grand jury process should bring about a dismissal of the indictment.

[1] I think that I have talked enough about the grand jury to explain why I think there has been more than an "adequate showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury." There is such motion, and, accordingly, I act under the provisions of Rule 6(e)(3)(C) which says that disclosure of grand jury matters may be made "when permitted by the court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury." The Advisory Committee note to Rule 6 requires a "preliminary factual showing of serious misconduct" and I am convinced that the requirement has been met. I guess that technically, the requisite "request" to examine the entire grand jury transcript hasn't been made, but in light of this memorandum, I am sure that it will be. I have scanned the transcript, but I haven't had time to study it, and, even if I had the time, nuances recognizable by counsel wouldn't be apparent to me. Because of the showing made as to the claims of prosecutorial conduct, and without finally ruling that there was or was not any such misconduct, I order that the entire grand jury transcript dealing with this indictment be made available for study by defense counsel. Defense counsel say that a grand juror who is also a lawyer, if permitted, would testify that Mr. Snyder oppressed witnesses before the grand jury and that he was overbearing and discourteous. I leave to another judge to decide whether this evidence should be received.

The rule says, "If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct." The conditions follow: Disclosure shall be made to counsel and only to counsel. Paralegals shall not be used as substitute lawyers, and only members of the bar shall examine the transcript. They shall hold secret matters they learn, and they shall discuss them with no one other than co-counsel, and, insofar as necessary to the preparation of their arguments, with their clients. Typists given direct or indirect information concerning the context of the transcript shall receipt for a copy of a written order commanding that they hold secret any information learned by them as to what took place before the grand jury, and those receipted orders shall be filed with the clerk. During the time a transcript is being used to prepare arguments in this case, counsel shall be personally responsible for its secrecy, and when not in actual use, the transcript shall be placed in locked storage to which only counsel have access. When need for the transcripts no longer exist, all copies of it shall be returned to the United States Attorney to remain in his custody and control. All briefs disclosing grand jury testimony shall be sealed.

I make this ruling because I think that disclosure of the transcript is necessary in the interest of justice, and I make it because of recent action by the United States Court of Appeals for the Tenth Circuit. I also have in mind that which I anticipate the future

holds in store for me. I noted earlier that Judge Kane has dismissed all except one count of the indictment, and the government has appealed his ruling. Because the prosecutorial misconduct, if proven, may result in a dismissal of the entire indictment, the Court of Appeals has ordered a partial remand to permit full development of the facts by all defendants. The remand is of such recent date that other defendants cannot be adequately prepared, and they should be permitted to participate in the matter to whatever extent they desire. They may be satisied with the record made, or they may want to expand on it. Even defendant Kilpatrick's lawyers may want to expand the record after reading the full transcript. I cannot, and I do not rule on the motion to dismiss. I earlier asked for suggestions as to remedy, and the government has said that such suggestions are premature. I think that is correct. Dismissal is a possibility under a theory of a totality of the circumstances, and it is because proof of repeated misconduct is necessary to order dismissal that I have discussed the many accusations. See, *U.S. v. Gold,* (1979) D.C.Ill. 470 F.Supp. 1336. But dismissal is a last resort seldom used. *U.S. v. Narciso* (1976) D.C. Mich. 446 F.Supp. 252. Contempt is a possibility, and it is the remedy usually suggested. See, *U.S. v. Hoffa* (6th Cir. 1965) 349 F.2d 20, *U.S. v. Dunham Concrete Products* (5th Cir. 1973) 475 F.2d 1241, *U.S. v. District Court* (4th Cir. 1956) 238 F.2d 713. Disciplinary proceedings are a possibility, and the government has advised that "all of the allegations under consideration have been referred to the Office of Professional Responsibility" of the Department of Justice. Our local committee on conduct would also have jurisdiction of some of the matters.

Because further hearings are essential to a ruling on the motions to dismiss, and, perhaps, because Rule 605 of the Rules of Evidence, but more importantly because I aim to quit the judging business before the hearings can be completed, I make no ruling on and I intimate no belief as to what should be done with the dismissal motions. This decision will have to be made by Judge Kane, as will all other decisions concerning remedy.

No defendant other than defendant Kilpatrick is interested in the motion for new trial, and I am the only judge who should rule on it because I was there and watched in amazement the trial's conduct. But little discussion is necessary to this ruling. I have talked about the testimony of Richard Bell and his brother. I heard that testimony outside the presence of the jury, and I wouldn't let the jury hear it. I think that was an error, and I don't think that I should put the parties to the expense of having the Court of Appeals tell me it was error. The witness was a key to the prosecution's case, and testimony as to the alleged pressures was important to an evaluation of his credibility. The pocket immunity and the circumstances of its grant bear on credibility. I initially thought that the testimony went only to prosecutorial misconduct which is for the court to determine, and I overlooked the credibility aspect of the implied threat coupled with the pocket immunity grant just as I overlooked the right of the jury to know that immunity wasn't granted the way Congress says it shall be. The jury should have heard the testimony and it might have changed some juror's mind. As a trial lawyer I didn't like the phrase "harmless error", and as a trial judge I don't use it when the error has any substance at all. This error has substance.

[2,3] One Wilson Quintela was subpoenaed by the government, and he was arrested as a material witness. The prosecutors exercised a power possessed only by the court, and they released the man from subpoena. He promptly returned to his home in Brazil. Lawyers can't substitute themselves for the court to release a witness from subpoena. *U.S. v. Sanchez* (2nd Cir. 1972) 459 F.2d 100. At the time of trial, the government admitted that their conduct was in error, and every effort was made to get the witness to come back from Brazil when defense counsel said that he was relying on the availability of the witness. After the trial started, the government said that the witness would return, but defense counsel said at that point he had developoed this trial strategy on the basis of the release of the witness from the subpoena. He may have correctly thought that an interruption of the trial to permit travel from Brazil would be detrimental. That the government was guilty of no evil intent I am sure, but that the defendant suffered no harm I am not sure. Standing alone, this is one mistake I might reluctantly say was "harmless error", but coupled with other things, I can't so rule.

If there is any one thing that Tenth Circuit has been vehement about it is expressions of personal opinions by counsel as to whose testimony they believe. That rule was violated here, and I suggest that a review of the grand jury transcript may show frequent violations of the rule during grand jury proceedings. My thinking on this score goes immediately to the appearance of Professor Hjorth before the grand jury. I jumped in during final argument to try to lessen the error of the comment, but I doubt that I cured it.

It is argued that in the presence of the jury one of the agents stared at and laughed at the defendant. The prosecution says that this didn't happen, and that if it did, I would have seen it. I didn't see it, but that doesn't mean that it didn't happen, because no judge sees everything which goes on in a courtroom. This is especially so because I was concentrating my attention on Mr. Scharf's glowering as he sat in the second row of the spectator's section, and I doubt that defense counsel could see him. I mention this only because it is one more tiny aspect of the atmosphere of the trial. It was an atmosphere of unfairness and overreaching illustrated in small degree by ex parte telephone calls to my law clerk made by government counsel inquiring through the back door to learn my thinking as to some legal situations in the case. (Colloquy about this appears in the record, and, consistent with their denials of what so many others say, government counsel deny my law clerk's statements as to the conversation.) The case is the only trial I have ever conducted in which the courtroom deputy complained about discourtesy on the part of counsel, and I suppose that it goes without saying that it was not defense counsel who were discourteous. (An apology by government lawyers was extended later.)

Other arguments are advanced supporting the new trial motion, but I don't think that I need extend this opinion by discussing them. I have taken them into account in my thinking. Usually, when a case goes to the jury, there are no more difficulties to be encountered, but that's not so in this ill-starred case which had its first questionable conduct during the opening two minutes of grand jury investigation and which had conduct suspect under the Canons of Professional Responsibility lasting into post trial hearings. While the jury was deliberating a note was received. I notified counsel on both sides, and a hearing was held in open court with the defendant present, defense counsel present. Ms Surbaugh of Colorado's United States Attorney's Office, and Mr. Blondin were there on behalf of the government. (Messrs. Scharf and Snyder didn't show up, although when the jury retired all counsel had been told to stand by for jury questions or a verdict). We discussed the answer which should be given to the jury, and we all agreed on it. The answer was written and a copy was given to both sides.

I was more than a little surprised when a telephone call from Mr. Scharf was received a few minutes later. He had decided that he wasn't satisfied with that which those who saw fit to come to the hearing all agreed to. He demanded a further hearing, and I told him we would have one right away. He then made the most ridiculous demand I have ever heard in the almost 50 years since I graduated from law school. Mr. Scharf directed that I instruct the jury to "cease its deliberations" until he could have his hearing. This direction was made on the telephone and it was obviously not made in the presence of defendant or defense counsel. To accede to this absurd demand would have created irretrievable error under Rule 43 and under *Rogers v. United States,* 422 U.S. 35, 95 S.Ct. 2091, 45 L.Ed.2d 1. That error I avoided because I told Mr. Scharf I wouldn't even consider obeying his command to instruct the jury to quit deliberating. We did have the hearing and it didn't take long. Exactly what was said at that time is part of the record in the case.

After the jury verdict, timely motions were filed, and it was apparent from a reading of them that Mr. Scharf, Mr. Blondin and Mr. Snyder were going to have to testify about matters raised in the motions. Their recognition of the factual dispute is clearly shown in the flippant brief filed in opposition to the motions. At the outset of the hearing I inquired concerning the ethical bind in which the prosecutors found themselves, and I asked if other counsel should not be handling the hearing. I admit to surprise when I was told that top lawyers in the Tax Division of the Department of Justice saw nothing wrong with the continued participation in the case of lawyers whose testimony was quite obviously going to be required. We started the hearing with participation by two of the lawyers who were essential witnesses. (One was said to be in trial somewhere else.) The hearing went for a little while, when, suddenly, there was a 180 degree change of direction, and government counsel announced that they wanted to withdraw. They were permitted to do so, and the hearing recessed. Mr. Alexander took over, and he has performed ably and ethically. However, he was handicapped by lack of time to prepare, and the hearing which I had hoped to complete weeks ago had to be continued for later testimony. We are still waiting for that testimony.

This brings us down to date. I have already explained that I cannot and I do not rule on the motion to dismiss, but I do grant the motion for a new trial. I deny the motion for judgment of acquittal, but I do so without intent that this is the "law of the case", and leave it to another judge to take a fresh look at the motion if the case is tried again.

ORDER

Rule 6 of the Federal Rules of Criminal Procedure provides that matter occurring before a grand jury shall be secret, subject to a few exceptions. One exception is that there may be disclosure when directed by a court in connection with a judicial proceeding. I have directed that there be some disclosure of grand jury matters, and undoubtedly, typists will have to learn what is contained in grand jury transcripts in the performance of their secretarial work for lawyers who read the transcripts. Accordingly, such disclosures as may be necessary to the accomplishment of secretarial duties is authorized, but any typist who so learns of any such grand jury matters is ordered to keep secret such information. Rule 6 itself provides that violation of the secrecy requirements of the rule may be deemed contempt of court, and violation of this order may be deemed contempt of court.

[In the United States District Court for the District of Maryland]

CRIMINAL NO. B-84-00101

UNITED STATES OF AMERICA V. OMNI INTERNATIONAL CORPORATION (FORMERLY KNOWN AS OMNI INVESTMENT CORPORATION), WAYNE J. HILMER, EVAN T. BARNETT, THOMAS A. WESTRICK, JR., AND JOSEPH P. BORNSTEIN

Filed: May 15, 1986.

J. Frederick Motz, Former United States Attorney for the District of Maryland; and Elizabeth H. Trimble, Catherine C. Blake, John G. Douglass, Ty Cobb, and Steven A. Allen, Assistant United States Attorneys; and John R. Maney, Jr. and Ronald Allen Cimino, Attorneys, Tax Division, United States Department of Justice: for the Government.

Paula M. Junghans and Garbis & Schwait, of Baltimore, Maryland: for defendant, Omni International Corporation (formerly known as Omni Investment Corporation).

Marvin J. Garbis and Garbis & Schwait, of Baltimore, Maryland: for defendant, Wayne J. Hilmer.

Cono R. Namorato, Bernard S. Bailor, and Gaplin & Drysdale, of Washington, D.C.: for defendant, Evan T. Barnett.

Brendan V. Sullivan, Jr., Barry S. Simon, and Williams & Connolly, of Washington, D.C.: for defendant, Thomas A. Westrick, Jr.

James E. Merritt, John W. Spiegel, and Morrison & Foerster, of Washington, D.C.: for defendant, Joseph P. Bornstein.

Black, District Judge.

On March 13, 1984 a grand jury returned a seven-count Indictment against Omni International Corporation, formerly known as Omni Investment Corporation, Wayne J. Hiller, Evan T. Barnett, Thomas A. Westrick Jr., and Joseph P. Bornstein. The five defendants each were charged with conspiracy to defraud the Internal Revenue Service, conspiracy to commit income tax evasion, five counts of income tax evasion for the years 1976-1960, inclusive, and aiding and abetting. The Government alleges that Hilmer was the majority owner of Omni and its chief executive officer, and president of Euro Air (a subsidiary of Omni), that Barnett was vice president of Omni and Euro Air, and that Westrick was president of Omni. The Government further alleges that Bornstein, a certified public accountant, prepared or supervised the preparation of the federal income tax returns for Omni.

The defendants promptly filed numerous pretrail motions. All defendants except Bornstein (hereinafter collectively referred to as the Omni defendants) filed motions jointly. Bornstein filed his own motions and also joined in the majority of the Omni defendants' motions. On April 27, 1984, the Omni defendants filed a motion to dismiss the indictment, disqualify government counsel and investigators, and suppress evidence based on violations of the attorney-client privilege (hereinafter referred to as the motion to dismiss). The Government answered this motion on May 11, 1984. Somewhat contemporaneously, Bornstein filed a related motion to dismiss the indictment based, in part, on governmental minsconduct. Additional supplemental memoranda have been received in connection with these motions.

A hearing—which would ultimately require twenty-eight days over an extended period—commenced on June 11, 1984 on all then-pending motions. The immediate focus of the hearing became the Omni defendants' motion to dismiss. Bornstein participated in the hearing in connection with his own motion. Following legal argument on June 11, proffers by the Omni defendants at that time in court and in their pleadings, and the testimony of two witnesses for the Omni defendants on June 12, the Court held an evidentiary hearing on the Omni defendants' motion to dismiss, with testimony before the Court as finder of fact occurring over the course of twenty-eight days between June 1984 and March, 1985. The record consists of hundreds of exhibits and over 5,500 pages of testimony.

During the course of the hearing the defendants repeatedly asserted that the Government had deliberately set out to breach the attorney-client privilege, and later tried to conceal its actions by misrepresentation, obstruction of justice, and perjury. According to the defendants, subsequent to the Indictment, an Assistant United States Attorney (AUSA) and two agents of the Internal Revenue Service attempted to thwart the Court's inquiry into their misconduct by creating, altering, and suppressing documents, by making misrepresentations to the Court and defense, and by repeatedly lying under oath. For this alleged deliberate, flagrant and repeated misconduct the defendants seek dismissal of the Indictment.

After the Court heard all testimony relevant to the proceedings which the litigants wished to present, proposed findings of fact and conclusions of law were submitted by the Omni defendants and the Government. Bornstein adopted almost all of the Omni defendants' submissions, as well as submitting his own. The Court heard oral argument on the motion to dismiss on June 25, 1985, and the matter was taken under advisement. This opinion constitutes the Court's findings of fact and conclusions of law.

I. ATTORNEY-CLIENT PRIVILEGE

The basis of the Omni defendants' motion, as originally filed and undoubtedly as originally contemplated by the defendants, was that the Government breached the attorney-client privilege in presenting its case to the grand jury and, thereafter, in preparing for the motions hearing and trial. The requested sanctions for the alleged deliberate breaches are dismissal, disqualification, or suppression. The Government has consistently disputed whether an attorney was even involved in the case, given the fact that the privilege related primarily to communications to defendant Bornstein and his dual role as a certified public accountant as well as attorney; whether any confidential communications were breached; and whether any defendant other than Omni is entitled to claim the privilege in any case. The Government has always maintained that the thrust of the motion relates solely to attorney-client privileges which defendants have failed to prove.

A. Background

In order to appreciate the arguments raised by counsel at this juncture of the proceedings, the Court will briefly discuss the underlying criminal tax case. Omni, a domestic corporation, buys, sells and leases aircraft world-wide. Hilmer is the majority owner and Chairman of the Board. Westrick, a certified public accountant, is President of the company, and Barnett, also a certified public accountant, is financial Vice President. Bornstein, an attorney as well as a certified public accountant, was Omni's outside counsel and tax advisor. For the years in question, 1976-1980, inclusive, Bornstein signed the relevant Omni tax returns.

The Government investigated Omni for a period of years prior to the return of the Indictment, considering various alleged crimes before focusing on tax issues. Enormous manpower and resources were devoted to the effort; the case consumed more than 2000 man-days and required the full-time attention of several investigators. The primary Internal Revenue agents who were involved in the investigation, especially in late 1983 and 1984, will be referred to throughout this opinion as the Special Agent and the Revenue Agent. This Special Agent directed the entire investigation as it drew to a close and prosecutorial decisions were being made. The primary function of the Revenue Agent was to assist the Special Agent. The IRS, through many agents, conducted interviews on three continents. The other principal Government representative involved is the Assistant United States Attorney (AUSA) who supervised the investigation and presented the case to the grand jury. This individual will be referred to as the AUSA throughout the opinion.

The investigation focused ultimately on Omni's wholly-owned Bermuda subsidiary, Euro Airfinance, Ltd (hereinafter referred to as Euro Air). The Government contends that income reported on Euro Air's information returns was properly taxable to Omni and that tax should have been paid in the year that the income was earned. According to the Government, the defendants evaded taxes by falsely reporting income in the name of Euro Air, when the income in fact belonged to Omni, a domestic corporation. Omni allegedly has not paid taxes on millions of dollars of income passed along improperly to Euro Air.

As the Government put its case together against Omni, the attorney-client privilege issue surfaced. Omni claimed the privilege based on its relationship with Bornstein. In particular, in the Fall of 1983 the Government sought production of Bornstein's invoices to Omni in order to trace expenses and tie Bornstein to particular transactions. Omni asserted that those invoices were not producible pursuant to subpoena because they were subject to the privilege. The AUSA filed a motion to compel their production. On November 8, 1983, Judge Joseph H. Young of this District ruled that there was a privileged attorney-client relationship between Bornstein and Omni and that the invoices need not be produced because "statements or correspondence showing the *nature* of the legal services performed are covered by the attorney-client privilege," and the invoices would reveal the

"type of work performed by Bornstein for the client and the particular legal matter which Bornstein worked on." (emphasis in original) This was the first—and only—ruling relative to the subject of attorney-client privilege in these proceedings. It is significant that Judge Young considered Bornstein to be an attorney and found that the invoices were privileged. The evidence before the Court is overwhelming that Bornstein acted as Omni's attorney.

At least from that point on, Omni vigorously asserted the privilege. Yet the Government recognized that discussions between Omni and its lawyers were significant with regard to the tax theory of prosecution and undertook to obtain all the information it could. The Government, particularly the Special Agent and the Revenue Agent, attempted to circumvent the privilege. In pursuing their goal, the agents interviewed numerous attorneys who had represented Omni. Notes taken by the agents prior to at least one interview reveal the agents' intent. The first page of notes taken before an interview of William Green shows that the agents planned to ask Green "what did they [Omni] present to him," and "what did he say to them about the law." [1] To ascertain whether Omni had obtained the advice of Green as to several aircraft transactions involving Euro Air, the agents presented the attorney with several "hypothetical" fact patterns, each based precisely upon an actual Euro Air aircraft transaction. The agents took the actual facts of transactions under investigation, converted them to hypotheticals, and asked Green whether or not he had heard these hypotheticals previously. The agents asked the attorney what tax advice he would give in response to the hypotheticals.

In addition to seeking privileged information from Omni attorneys, the agents sought information from former Omni employees. The Government granted informal "pocket immunity" to Samuel Russell, Omni's former assistant controller, and obtained from him letters written by William Green to Bornstein, summarizing tax advice regarding Euro Air. When Russell finally appeared before the grand jury, the AUSA asked questions which related to tax advice given by attorneys to Omni. The agents also granted informal immunity to Seth McCormick, a former Omni controller. Once again, the agents attempted to discover privileged information.

The two most significant events which relate to the attorney-client privilege, as it developed during the evidentiary hearing, involved Bornstein, directly and indirectly. Beginning in July, 1983, Bornstein was represented by the Washington, D.C. law firm of Steptoe & Johnson, specifically Gerald Feffer, James Bruton, and Greg Gadarian. Several meetings occurred between Bornstein's attorneys and the AUSA, with the attorneys attempting to learn what allegations were being made against their client. The investigation continued and the Government considered bringing charges against Bornstein.

Pursuant to Department of Justice regulations, the Tax Division must approve any criminal tax prosecution, with minor exceptions not applicable here. If requested, the Tax Division will provide potential defendants an opportunity to have a conference with an attorney from the Division. This attorney acts as a reviewer of the factual and legal position of the IRS and recommends to his superiors whether or not prosecution should be authorized. The purpose of the conference is to provide the potential defendant an opportunity to demonstrate why prosecution is unwarranted.

On October 31, 1983, a conference on behalf of Bornstein occurred at the Department of Justice. At that time Bornstein's attorneys attempted to convince the reviewing attorney at the Tax Division, Mark Friend, that the Government lacked a viable theory of prosecution against their client. The AUSA attended the meeting. The meeting was extremely unusual in its scope, length, and candid discussion of the tax issues. Bornstein's attorneys made a full factual and legal analysis during the conference, addressing each area that had been identified by the Government as a matter for concern. Immediately after the meeting, Friend told the AUSA that there was a question in his mind about the basis for proceeding in the case. Friend particularly expressed concern about the sufficiency of the evidence against Bornstein.

The AUSA thereafter contacted Bornstein's attorneys and stated that the IRS agents who had worked on the investigation for several years wished to hear the presentation that had been made at the Justice Department. The AUSA noted that, as a matter of fairness and because the agents had spent three years developing a case, the conference at Justice should be "replayed" for the agents. The request struck the attorneys as unusual in their collective careers, but they consented to a replay of the October 31st conference.

Such a meeting took place on November 18, 1983. Bornstein's attorneys began by presenting the reasons why they believed the Government's theory of the case against their client was legally untenable. Early in the meeting the IRS agents began arguing with the attorneys, questioning their interpretation of the law. The tone of the meeting became argumentative and heated. For the first time, the Special Agent raised issues concerning alleged documents in Bornstein's safe deposit box that could be used to blackmail Hilmer. If such documents existed, they would demonstrate Bornstein's knowledge of and participation in fraud being committed by his clients. Defense counsel were upset that a new allegation was being raised for the first time at such a late date. Bornstein's attorneys impressed upon the Government that it lacked any witness against Bornstein and thus a case in which the Government had to prove criminal intent would inevitably fail. Defense counsel responsed to the allegation of the safe deposit box by stating: "You don't have a witness that implicates Bornstein, you don't have a witness." The meeting ended acrimoniously.

On November 22, 1983, only two weeks after Judge Young upheld Omni's privilege claim with regard to the invoices, and two business days after the meeting occurred with Bornstein's attorneys, the Special Agent and Revenue Agent travelled to the residence of Sandra Poe Wilkins, a former secretary to Bornstein. The decision to interview Wilkins was made in response to challenges by Bornstein's attorneys that the Government was operating on innuendo and did not have a witness against Bornstein. The agents arrived unannounced, presented a grand jury subpoena to Wilkins that had been prepared on November 21, and offered Wilkins, in lieu of appearing before the grand jury, an opportunity to talk directly with the agents. Wilkins consented and the agents then interrogated her for at least five hours. The agents specifically questioned her about her knowledge of Bornstein's activities and what advice Borestein had given to Omni.

Subsequent to the interveiw the agents prepared a typewritten memorandum which purported to relate the substance of the matters discussed. According to the memorandum, which at this time was disseminated to anyone other than the AUSA and other IRS investigators, Borenstein clearly had knowledge of criminal activities undertaken by the Omni defendants. According to the memorandum, Bornstein told Wilkins that in the event anything ever happened to him, he had documents in a safe deposit box which would prevent Omni from pinning anything on him. Wilkins also made several statements that appear to be privileged.

Following the interview the AUSA informed Bornstein's attorneys that the interview had created serious problems for their client. The AUSA arranged a meeting for a Special Agent and the Revenue Agent to inform the attorneys of the evidence that Wilkins had provided to the agents during the interveiw. When the "debriefing" actually took place on December 15, 1983, the agents provided few details Bornstein's attorneys stated that there was no incrimnating documents in any safe deposit box. The Special Agent said that it was frustrating to deal with the attorneys, instead of directly with Bornstein. At the meeting, the agents did not volunteer the information about the Wilkins interview as Bornstein's counsel had anticipated. The Special Agent stated that he did not want to disclose the substances of the Wilkins interview and then said words to the effect: "I hope I am not stepping on any toes here [turning to the AUSA], but it would be really helpful to me to see Mr. Bornstein respond to these questions." Bornstein's counsel avoided the issue and asked further about the safe deposit box. The Special Agent later repeated his request to speak directly with Bornstein. The AUSA then also stated that "I thought we would get a chance to talk with Mr. Bornstein at some point."

To summarize this sequence of events, the desire of the AUSA, Special Agent, and Revenue Agent to talk with Bornstein intensified after the October 31st conference. Bornstein's attorneys had demonstrated a weakness in the case against their client. The AUSA Special Agent, and Revenue Agent knew that Friend had concerns about the case, particularly with the lack of evidence against Bornstein. They knew that information was needed if the case was going to go forward. Their witness would be either Wilkins or Bornstein himself.

On the advice of his attorneys, Bornstein consented to make a proffer as suggested at the December 15 conference. On December 23, 1983, Bornstein's attorneys filed an application with the Court for an order permitting an off-the-period proffer to the Government. The application sought permission to disclose attorney-client confidences and other information necessary to defend himself against the proposed criminal indictment. Authority for the proffer was found in a portion of the Code of Professional Responsibility, DR 4-101(C)(4), which permits an attorney to disclose confidential communications made to him by a client in the attorney's own self-defense: "A

[1] The sources of all quoted material in this opinion are either the exhibits or the hearing transcript unless otherwise indicated. However specific citations have been omitted because of the extraordinary volume of the record in this case.

lawyer may reveal . . . [c]onfidences or secrets necessary . . . to defend himself of his employees or associates against an accusation of wrongful conduct." This provision affects the limitations otherwise imposed on the attorney by the attorney-client privilege. The Omni defendants vigorously challenged Bornstein's right to make a proffer and requested the opportunity to intervene, to be heard with respect to the scope, if any, of the breach of the attorney-client privilege, and to limit the use of any privileged disclosures which may have been made.

On January 12, 1984, after hearing arguments from Omni, Bornstein, and the Government, Judge Young issued an opinion setting forth the procedures that he would require Bornstein and the Government to follow for the proffer. Judge Young, again recognizing that Bornstein was an attorney, allowed the proffer to proceed but only under certain conditions "which will ensure that the rights of the attorney's former clients are not compromised, or that, if they are compromised, the clients will be able to seek appropriate remedies." Judge Young ruled that.

The government will be ordered to submit to the Court for *in camera* inspection by January 16, 1984, a list of the questions and the general areas of inquiry it wishes to pursue with the attorney. The attorney will then have until January 23, 1984, to submit to the Court, again for *in camera* inspection, his responses to the questions propounded by the government. At that point, the Court will issue a ruling on the appropriate areas of inquiry, and the proffer of evidence may proceed, as long as the inquiry does not stray from the bounds set by the Court. The proffer of the evidence presented by the attorney will be stenographically recorded and the record will be sealed pending further order of the Court. The preliminary *in camera* inspection will afford the Court the opportunity to determine that the inquiry is relevant, and that the disclosure by the attorney does not exceed that allowed by Disciplinary Rule 4-101(C)(4).

Judge Young subsequently ruled on February 7, 1984 that "the purpose of the inquiry is for Mr. Bornstein to attempt to convince the government that he should not be indicted and that the questions asked of Mr. Bornstein, and his responses to those questions, are to be used for no other purpose."

The Omni defendants appealed Judge Young's ruling to the United States Court of Appeals for the Fourth Circuit. On February 8, 1984, argument before the appellate court concerned whether Judge Young's order should be stayed pending formal appeal. On March 5, 1984 the Fourth Circuit denied the stay. That Court approved the procedures enumerated by Judge Young, recognizing that Bornstein was an attorney, but that the procedures protected the confidentiality of the attorney-client privilege.

Bornstein, in fact, made a proffer to the Government on March 9, 1984. After the proffer the Government determined that Bornstein was not credible. Four days later the grand jury returned an indictment against Omni, Hilmer, Westrick, Barnett, and Bornstein.

B. Conclusions

The above-described events constitute the sum and substance of the major alleged breaches of the attorney-client privilege. Most of the alleged breaches—such as the statements of the two former controllers of Omni who allegedly revealed privileged information—were known to the Omni defendants even before the hearings began. Under close examination it is clear that the alleged breaches of the privilege do not rise to the level at which this Court would consider dismissal of the indictment or disqualification of the AUSA or the IRS agents. It is doubtful whether, in any event, dismissal of the indictment would be appropriate for breaches of the attorney-client privilege, no matter how flagrant the intrusion. *See United States* v. *Morrison*, 449 U.S. 361, *reh'g denied*, 450 U.S. 960 (1981); *United States* v. *Gatto*, 763 F.2d 1040, 1046 (9th Cir. 1985).

In light of the limited showings made by the defendants during the hearing, this Court need not address at length the law of attorney-client privilege. The purpose of the privilege is to encourage free consultation and the complete and unimpeded flow of information between clients and their counsel, thereby "promot[ing] broader public interests in the observance of law and administration of justice." *Upjohn Co.* v. *United States*, 449 U.S. 383, 389 (1981); *Fisher* v. *United States*, 425 U.S. 391, 403 (1976). Nonetheless, because the privilege "impedes the investigation of the truth," it "must be strictly construed." *United States* v. *(Under Seal)*, 748 F.2d 871, 875 (4th Cir. 1984). In the Fourth Circuit, the privilege "is not 'favored' and is to be 'strictly confined within the narrowest possible limits.'" *In re Grand Jury Proceedings (John Doe)*, 727 F.2d 1352, 1358 (4th. Cir. 1984).

With respect to every specific communication that is claimed to be privileged, defendants bear the burden of proving each of the following elements:

(1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom the communication was made (a) is a member of the bar of a court, or his subordinate and (b) in connection with this communication is acting as a lawyer; (3) the communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceedings, and not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client.

United States v. *United Shoe Machinery Corp.*, 89 F. Supp. 357, 358-59 (D. Mass. 1950); *see United States* v. *Jones*, 696 F.2d 1069, 1072 (4th Cir. 1982). A recent Fourth Circuit decision, *United States* v. *(Under Seal)*, 748 F.2d 871, distinguishes between public and private transactions in a manner that impacts on the question of privilege: for public transactions, such as filings with the Securities and Exchange Commission, none of the underlying discussions are privileged, because the communications are presumptively made with the expectation of public disclosure; however, for unconsummated, private transactions, such as a potential commercial deal that the client ultimately decides not to pursue, all communications relating thereto remain privileged. As stated in *(Under Seal)*, communications that "relate to contemplated public actions . . . do not exhibit a reasonable expectation of confidentiality" and are not privileged. *Id.* at 877. The complexities inherent in this distinction need not concern this Court here.

Defendants have failed to meet the burden imposed on them. The proffer by Bornstein concededly did include matters which reveal confidential communications that ordinarily would be subject to the privilege. But Judge Young and the Fourth Circuit explicitly and specifically approved this procedure. And this procedure appears contemplated by the Code of Professional Responsibility. The Omni defendants do not contend that the Government strayed afar from Judge Young's mandate. The Government has never had access to the proffer. Moreover, the information obtained in the proffer cannot, by the terms of the proffer, be used against Omni at trial.

The other episode to which the parties have given much attention concerns the November 22, 1983 interview of Sandra Poe Wilkins. The Court will later discuss the propriety of the interview. *See United States* v. *Valencia*, 541 F.2d 618 (6th Cir. 1976). In the context of the motion, however, it is clear that Wilkins revealed no confidential communications. In their Proposed Findings, the Omni defendants identify only two items subject to the privilege. The first is that Bornstein advised Omni to file an amended tax return for an unspecified year, but that Omni refused to do so. The defendants show only the statement and do not show enough surrounding information for the Court to conclude that the statement is even privileged. Similarly, the defendants fail to show that Wilkins' statement that "Omni sought legal advice about the information of aircraft registry in Liberia" was privileged. Wilkins' own testimony at the hearing indicates that she divulged nothing of any significance. The Government certainly tried to breach the privilege in its interview of Wilkins, but it failed.

The Omni defendants also place great weight on the number of interviews undertaken by the IRS of various Omni attorneys. The mere fact of an interview of an attorney who rendered legal advice is not controlling. No authority has been cited to the Court for the proposition that it is misconduct for a Government agent to interview an attorney, and to ask questions which relate to legal advice. In fact, in *United States* v. *Rogers*, 751 F.2d 1074, 1080 (9th Cir. 1985), the Court found no misconduct in an interview of an attorney conducted by an IRS agent. In *Rogers*, the legal advice given by the attorney to the target of the investigation was the subject of the agent's questions.

Additionally Omni must demonstrate "not only that an attorney-client relationship existed, but also that the particular communications at issue are privileged and that the privilege was not waived." *United States* v. *Jones*, 969 F.2d at 1072. Omni has failed to do so.

Attorneys are cognizant of the limits of the privilege. Attorneys are better informed than investigating agents on the applicable law and particular facts presented to them to make judgments about compliance with the attorney-client privilege. Attorneys will not readily disclose confidential communications. This Court is confident that attorneys possess the ability to defend vigorously their clients' interests, even when interviewed by government agents. *See, e.g., United States* v. *Rogers*, 751 F.2d 1074; *United States* v. *Rasheed*, 663 F.2d 843, 854 (9th Cir. 1981), *cert. denied sub nom. Phillips* v. *United States*, 454 U.S. 1157 (1982); *IN re Walsh*, 623 F.2d 489, 495 (7th Cir.), *cert. denied*, 449 U.S. 994 (1980); *United States* v. *Wolfson*, 558 F2d 59, 66 (2d Cir. 1977). Therefore, when the agents asked a former Omni attorney questions in the form of hypotheticals, as opposed to direct issues, the attorney was fully capable of protecting

any privileged information and would have declined to answer the hypotheticals if an answer would have violated the privilege. The agents may have set out to breach the privilege, by asking the attorney about advice he gave his client, but it then becomes incumbent on the attorney either to refuse to discuss the matter in an interview or to testify before the grand jury, or to risk a civil suit against him for revealing confidential communications.

With respect to other interviews, in some situations the defendants have failed to identify what communications were even made. Alternatively, the nature of the matters discussed clearly falls within the ambit of *(Under Seal)*, and therefore is not privileged.

In sum, the extent to which the attorney-client privilege may have been violated, if at all, does not compel the conclusion that the indictment should be dismissed, or that Government prosecutors or investigators should be disqualified. Later in this opinion, *see infra* section III, the Court will discuss whether evidence should be suppressed.

II. PROSECUTORIAL MISCONDUCT

The Omni defendants' motion, which began as a not atypical pretrial motion to dismiss the indictment, changed as the hearing progressed; it became a motion to dismiss based largely on government misconduct committed before this Court during the hearing itself. Government misconduct, possibly rising to the level of perjury and obstruction of justice, became the real essence of the motion. At the outset of the hearing, the defendants brought into question the Government's conduct in the investigation, particularly focusing on various documents. During the course of the extended hearing, that conduct became the focus of the hearing and the most troubling matter to the Court.

There are three general categories of concern into which all relevant issues fall, albeit with some overlap: documents altered or created after the Omni defendants' motion was filed and the attorney-client privilege issue was raised; incorrect testimony before the Court, along with the criminal allegations of perjury and obstruction of justice, largely in connection with the documents referred to in the first category; and, a disheartening lack of candor in colloquies with and testimony before the Court.

A. Documents

The first area of grave concern to the Court involves the creation and alteration of documents which were subsequently turned over to the defendants in preparation for the hearing. Particularly troublesome is the timing of the preparation of the documents, namely after an issue was raised in litigation, and the failure of Government personnel to state candidly what had been done.

The Omni defendants filed their motion to dismiss on April 27, 1984. The motion, along with then-pending discovery requests, directed the Government's attention to possible violations of the attorney-client privilege. The Government then embarked on a project of generating documents which would respond to the issues. In so doing, the Government ultimately produced ten relevant documents. The memoranda relate to interviews conducted by Government agents with the following individuals on the following dates:

Defendants' Exhibit 4: Interview of William Green (a New York attorney who met with Bornstein at a public conference in 1980 and later met with Bornstein and certain Omni officers) on September 15, 1983.

Defendants' Exhibit 5: Interview of William Green on August 24, 1983.

Defendants' Exhibit 6: Interview of John Campbell (a Bermuda attorney and a director of Euro Air) on July 25, 1983.

Defendants' Exhibit 7: Interview of Sandra Poe Wilkins (Bornsteain's former secretary) on November 23, 1983.

Defendants' Exhibit 8: Interview of Sandra Poe Wilkins on November 22, 1983.

Defendants' Exhibit 9: Interview of Martin Redler (an accountant employed in Bornstein's accounting office) on September 7, 1983.

Defendants' Exhibit 11: Interview of Martin Redler on August 24, 1982.

Defendants' Exhibit 12: Interview of Samuel Russell (former controller of Omni) on February 23, 1983.

Defendants' Exhibit 21: Interviews of Seth McCormick (former controller of Omni) on August 20, 1981, November 5, 1982, and August 5, 1983.

Defendants' Exhibit 35: Interviews of David Candler (former controller of Omni) on April 28, 1982 and February 29, 1984.

At least nine of these documents, and probably all ten, were either created or altered by Government personnel after the defendants filed their motion and before the hearings began on June 11, 1984. The Government filed its answer to the motion on May 11, 1984. In that response the Government represented that it had "provided all defendants with all memorandum in its possession reporting the substance of those interviews". That representation was incorrect. After the filing of this answer the Government continued to generate and produce memoranda of interviews.

Between the time when the Omni defendants filed their motion and the Government filed its response, Government personnel altered a typewritten memorandum of the November 22, 1983 interview of Sandra Poe Wilkins (Defendants' Exhibit 8). A preexisting version of the interview memorandum, which eventually surfaced in various individuals' filed during the hearings, had been initially prepared by the Special and Revenue Agents the week after Thanksgiving, 1983. The document was certainly finalized before December 15, 1983. The final version was delivered to the AUSA in charge of the case and Mark Friend, the reviewing attorney at the Tax Division of the Department of Justice. The 1983 version of the memorandum mentions that Bornstein wrote memos to Omni concerning the taxability of controlled foreign corporations. it then states: 'The contents of those memos were not discussed due to the attorney/client privilege." The altered version of the memorandum, prepared between April 30, 1984 and May 8, 1984, states: "We told Wilkins that we did not want to discuss the contents of those memos due to the attorney/client privilege." The change from passive to active voice in this sentence made the agents appear sensitive to the very issues raised in the hearing.

A second document altered during this time frame was an interview memorandum concerning one of the attorneys contacted by the agents, William Green (Defendants' Exhibit 5). Reference has previously been made to this interview because, in the course of that interview, the agents posed "hypothetical" aircraft transactions. In the prexisting version of the memorandum prepared shortly after the interview on August 24, 1983, it is clear that hypotheticals posed to Green were actually based on five specific aircraft transactions that were the subject of the Government's investigation and which are encompassed in the Indictment. The memorandum suggests that Green was "hesitant" to discuss details of his conversations with Omni officials because of possible violations of the attorney-client privilege, and that he "therefore" provided general information. The memorandum indicates that the agents were interested in obtaining the specific information provided to Green by his clients, and the specific advice he would have provided in response.

In the altered version the memorandum states that during the "meeting" with Green, "he would not" discuss the details of his conversation because of the possible violation of the privilege. This modification attempted to put the conduct of Government personnel in a better light and the question of breach of the privilege during the interview in a different perspective. There is no reference to any particular aircraft in the altered version, which simply refers to "hypoethetical sales" described in general terms. The altered version also adds the sentence that Green "never stated an opinion as to whether the [hypothetical] sales were taxable or non-taxable." No corresponding statement exists in either the preexisting version of the memorandum of the handwritten notes of the interview.

A third altered memorandum is of an interview of Samuel Russell on February 23, 1983 (Defendants' Exhibit 12). A preexisting, nine page version of that memorandum was prepared in 1983. An altered, seven page version was prepared after April 27, 1984. The Government concedes that the changes are not merely grammatical corrections, but do involve matters of substance. First, the last paragraph of page three of the preexisting version describes a meeting between Omni personnel and Green. After a statement that Green spent about one day in Omni's office and discussed the foreign taxation laws, the memorandum states that "Russell said that Omni's officers appeared to be concerned and shaken by what they had heard." In the altered version, the phrase "appeared to be concerned and shaken by what they had heard" is deleted.

The pre-existing version also states:

Russell said that during all the conferences with attorneys and discussions concerning the foreign corporation he asked Bornstein how things had gotten so 'fouled up'. Russell said that by this he meant the several issues which he had noted during the course in New York and they had discussed previously such as the improper reporting of airplane sales on the books and records of Euro Airfinance.

This paragraph suggests more than one conference between Russell and Bornstein about matters getting "fouled up." It also specifically indicates that there were not only conversations during the conferences at New York, but also previous discussions concerning reporting of aircraft sales on the Euro Air books. The altered version states, by contrast:

Russell said that during the return flight from New York following the accounting course, he asked Bornstein how things had gotten so 'fouled up.' Russell said that by this he meant the several issues which he had noted during the New York course and discussed above such as the improper reporting of airplane sales on the books and records of Euro Airfinance.

The interview memorandum of Seth McCormick (Defendants' Exhibit 21), was certainly prepared after the indictment. In all likelihood the document was prepared after the attorney-client privilege issue was raised. After the motion was filed the AUSA instructed the agents to insert the three dates borne on the document. Without dates the defendants would have reasonably assumed that the memorandum was based on one undated interview. With the three dates, however, the defendants could reasonably have assumed that the compilation memorandum constituted all of the interviews of McCormick.

Although none of the above described changes are earth-shattering, they do involve matters of substance. The appearance of sensitivity to attorney-client privilege questions mattered greatly to the Government. Subtle shifts in tone, such as the statement that "We told Wilkins that we did not want to discuss the contents of those memos due to the attorney/client privilege" instead of "The contents of those memos were not discussed due to the attorney/client privilege," could have been significant to the Court. In any event, the Court condemns the practice of altering and revising documents once the matter is in litigation without disclosure that such an alteration had occurred. The impropriety was not corrected by providing the underlying notes and preexisting memoranda under pressure during the course of these proceedings; it was wrong for Government personnel to so act, and the Government's action was aggravated by its reticence in stating what had been done.

Compounding the major error in producing altered documents without an explanation of the alteration was the Government's failure to admit its mistake, to candidly inform the Court and defense counsel of the changes, and to minimize the harm done. If defense counsel in a criminal case received a subpoena and made "minor" modifications to the documents sought, allegedly to clarify errors in style and grammar, the Court is certain that the process by which such changes were made would be cause for major concern to the Government, and would probably lead to the threat of criminal prosecution. Whatever the intent might have been in such a hypothetical situation seems quite beside the point; such conduct is wrong and strikes at the heart of fundamental values in our adversary system of justice.

Justice cannot function in a system in which one side feels free to make even minor modifications which only aid its position slightly, without informing the other side of its actions. Trust and confidence in the system would be lacking. Minor modifications today could become significant alterations tomorrow, based on the judgment of the reviser. Prohibiting such action must be the rule whether the changes are made by defense counsel or government counsel. This must be true even when, as here, the underlying documents are finally produced. Our system cannot rely on lengthy evidentiary hearings in which a collateral document search is conducted and the true manner of preparation is exposed. The appropriate documents must be turned over at the outset and in unaltered form.

In addition to *altering* preexisting documents during this time frame, and producing said documents to defense counsel without a representation that alterations had been made, Government personnel *created* typewritten interview memoranda during this period. The typed memoranda were prepared from handwritten notes taken at the time of the interview, but the memoranda were only prepared after defense raised the issue of attorney/client privilege.

The Special Agent initially prepared an interview memorandum pertaining to Martin Redler (Defendants' Exhibit 9) on May 3, 1984, one week after the Omni defendants filed their motion to dismiss. The AUSA edited the document before it was pronounced to defense counsel on May 8, 1984. The memorandum was based on handwritten notes taken during an interview on September 7, 1983. It bears only the date of the interview and not the date of preparation. From the face of the document it would appear that the memorandum had been prepared in September, 1983, or soon thereafter. Creating this erroneous impression and, worse yet, not correcting the resultant misunderstanding, was wrong.

The IRS earlier had conducted another interview of Redler on August 24, 1982. The Special Agent initially dictated the typewritten memorandum (Defendants' Exhibit 11) once again on May 3, 1984. The AUSA again reviewed and edited the document before it was produced to the defendants on May 3, 1984. The typewritten version bears only the date of the interview and ordinarily one might assume from this date that the memorandum had been prepared contemporaneously with the interview. Once again, the Government failed to properly inform defense counsel that the document had been prepared months after the interview, after the attorney-client privilege issue had been raised. In connection with this document the Government produced during the hearings a draft typewritten version which could not have been initially prepared prior to May 3, 1984. The second page of the draft memorandum reflects that "to the best of Redler's knowledge, Windsor is either working in Las Vegas or Atlantic City at a gambling casino at the time of the interviews." The Special Agent changed this sentence to read, in the final version: "to the best of Redler's knowledge, Windsor is currently working in Las Vegas or Atlantic City at a gambling casino." This change could have been made either to clarify an awkward sentence, with the work "currently" inserted to refer to the August 24, 1982 date of the interview, or to suggest to the reader of the document that the memorandum had been prepared contemporaneously with the interview. In light of the Special Agent's credibility and demeanor as a witness, which will be discussed in greater detail below, the Court finds tht this change also was made in an attempt to obfuscate the date of preparation.

By letter to the AUSA dated May 14, 1984 the defense specifically sought information concerning when various memoranda were prepared and by whom, as well as the underlying handwritten notes. The Omni defendants mentioned Wilkins, Russell, Green, and McCormick by name. Following this notification the Government prepared other typewritten memoranda. These memoranda were created after defense counsel specifically inquired about when memoranda were prepared and who prepared them. The Government failed to admit that the documents were created at that very time, specifically in response to issues raised by defendants. One interview memorandum (Defendants' Exhibit 4), relating to a September 15, 1983 interview of William Green, contains statements not found in the handwritten notes of the interview. This memorandum also contains self-serving, editorial comments by the Special Agent which appear to show Government sensitivity to the very issues being raised by defense counsel. The typewritten version states

We told Green that it was our understanding that he had provided information to Bornstein and Omni for use in preparation of their income tax returns. It was our interpretation of the law that this would not constitute a violation of the attorney-client privilege, although we made several attempts to describe hypothetical situations, Green would not provide any information as to his advice or what advice he would provide to a client who had asked a question similar to the hypotheticals that we described.

The Special and Revenue Agents interviewed Sandra Poe Wilkins, the former secretary to Bornstein, on November 22 and 23, 1983. The alteration of the preexisting version of the November 22, 1983 interview memorandum (Defendants' Exhibit 8) has been previously described. The agents also created a typewritten memorandum, bearing no date of preparation, for the November 23, 1983 interview (Defendants' Exhibit 7). This document was prepared between May 14, 1984 and May 18, 1984.

After the return of the Indictment the Special Agent created a memorandum purporting to summarize discussions with David Candler (Defendants' Exhibit 35). The memorandum omitted Candler's disclosure that commission payments were discussed with an Omni attorney, which potentially would impact on the attorney-client privilege.

The last matter worthy of specific discussion by the Court involves a typewritten memorandum of an interview of John Campbell which had occurred on July 25, 1983 (Defendants' Exhibit 6). This memorandum was in fact prepared no earlier than May 29, 1984, and it bears only the date of interview. On May 24, 1984 the defense issued subpoenae *duces tecum* calling for documents relevant to the motion to dismiss. The subpoena specifically called for, once again, interview memoranda. On June 6, 1984, the Government filed a motion to quash the subpoenae. The Government represented that all witness statements arguably relevant had been turned over to the defendants. On that same day the Government sent to the defendants an interview memorandum for the Campbell interview. This memorandum was prepared after the motion was filed, the Government had answered the motion, and the defendants made additional specific requests for memoranda by serving subpoenae. Once again, the Government failed to indicate that the document was generated at the very time it was produced.

As was the case with the altered documents, the Court is shocked and dismayed by the Government's approach to document production. It was an egregious error for the Government to create documents and turn them over to defense counsel as if they had been prepared contemporaneously with the interviews. This impropriety was particularly acute because there existed a pending motion to dismiss and request for evidentiary hearing which would be based on the contents of the memoranda. While it may be appropriate in certain circumstances to create a typewritten memorandum of an interview after an issue is raised in litigation, it is inappropriate not to indicate that just that course of action has been followed.

To summarize, the Government created and altered at least nine, and probably all ten, relevant documents which were the source of the defendants' motion to dismiss after the attorney-client privilege issue surfaced. Production was made without acknowledging that the documents had just been prepared, even though from the face of the documents one could erroneously conclude that the documents were prepared contemporaneously. These errors were exacerbated by erroneous testimony at the evidentiary hearing given by the Special Agent, Revenue Agent, and AUSA, to which the Court now turns.

B. Testimony

The second major area of concern to the Court involves the repeated untrue and incorrect testimony which occurred during the course of the proceedings. The impact of such testimony to this Court, sitting as fact-finder for the evidentiary hearing, cannot be underestimated. Based on the erroneous testimony given, as uncovered during the hearing, the Court simply cannot put its complete trust and confidence in certain Government witnesses. Untrue testimony occurred in connection with the documents created and altered after the motion to dismiss was filed, discussed above. Untrue testimony also occurred in connection with the interview of Sandra Poe Wilkins on November 22, 1983, and with the use of the typewritten memorandum subsequently prepared. Other examples of such testimony will be set forth as the Court continues to make its findings of fact. The sheer magnitude of the erroneous testimony prejudiced the defendants and the Court.

The Special Agent who was in charge of the investigation beginning in the Fall of 1983 took the witness stand for the first time on June 12, 1984. This agent continued his testimony when the hearings resumed in September, 1984. The testimony was wrong in numerous respects. When the agent began to testify in June, the Omni defendants immediately sought to date the preparation of the ten documents. Many of these documents were dictated, prepared, or modified by the agent within the month prior to his testimony. He repeatedly and vociferously, without hesitation or doubt, indicated several of the documents had been prepared in 1983. This testimony was incorrect. The agent also was unwilling to testify as to the dates of preparation of other documents. The Court finds that the agent must have been able to recall documents he had prepared within several weeks of his testimony, and this testimony therefore was inaccurate, and misleading as well. As the evidence unfolded it became clear that at least nine, if not all ten, of the documents in question had been prepared no earlier than May, 1984.

Although tedious, it is necessary for the Court to recount some of the agent's untrue or misleading testimony with regard to the interview memoranda.

Defense counsel asked the Special Agent when Defendants' Exhibit 4, the memorandum of interview of William Green that occurred on September 15, 1983, was prepared. The agent responded: "I can't say exactly. It wouldn't have been within a day or two of the interview . . . I don't recall specifically when it was prepared." The questioning continued:

Q: Well was it prepared since the first of the year [1984]?

A: I believe that this one was . . . I believe that this particular memorandum was probably prepared sometime this year, but I can't be certain of that.

Q: Was it prepared since the return of the indictment in this case?

A: I believe it may have been, but again I can't say with certainty. . . .

Q: Was there a reason why this memorandum was prepared after the return of the indictment?

A: No, nothing particularly comes to mind as to why it would have been specifically after the indictment.

This testimony was wrong and incomplete; the agent prepared the memorandum in May, 1984.

Testimony was also incorrect with regard to the preparation of the memorandum of interview of Green that had occurred on August 24, 1983 (Defendants' Exhibit 5). When questioned about the date of its preparation, the Special Agent responded: "This memorandum, I believe, was actually prepared by [the Revenue Agent] and I am not certain when this one was prepared." In fact, the Special Agent played a significant role in the editing process along with the Revenue Agent when the document was revised in May, 1984.

Defense counsel asked the Special Agent about the preparation of the Campbell interview memorandum (Defendant's Exhibit 6), which was later proven to have been generated by the agent on May 29, 1984, only two weeks prior to his testimony:

Q: When was this memorandum prepared?

A: Again, I can't say with certainty, Mr. Simon, as to an exact date. In this particular interview, I even had a problem narrowing it down as to some time.

It would have been, let me explain it this way if I might, it wouldn't have been a day or two after the interview [which had been conducted on July 25, 1983]. It probably was several months after that, but I believe it was within say several months of that interview.

This testimony was repeated on several occasions.

Defense counsel inquired about the preparation of the second Wilkins interview memorandum (Defendants' Exhibit 7). The interview occurred on November 23, 1983. The agent testified wrongly about when the interview memorandum was prepared: "I think that this was [prepared] just prior to Thanksgiving weekend and that memorandum was dictated, I would say, the following Monday or Tuesday [November 28, or 29, 1983]." This particular document, in fact, was initially prepared between May 14 and May 18, 1984. Similar testimony was given with regard to the other Wilkins interview memorandum (Defendants' Exhibit 8), pertaining to the interview on November 22, 1983. When asked when the memorandum was dictated, the Special Agent testified: "Approximately the same time as the other memorandum [the November 23rd interview of Wilkins], I believe. This would have been within a couple of days of the following week. The memorandum was . . . I would say within approximately a week of that time the memorandum was prepared." Defendants' Exhibit 8, in fact, was revised in May, 1984 from a preexisting memorandum.

Similar misstatements were made with regard to the Redler interview memoranda: "[Exhibit 9] was prepared relatively soon after the interview itself, within a week or ten days [September 14-17, 1983]." Furthermore, Exhibit 11

A: would have been prepared probably at approximately the same time as [Exhibit 9] was prepared.

Q: So it was prepared approximately one year after the date of the interview [i.e., August 1983]?

A: I believe that is correct.

The Agent, in fact, dictated both memoranda in May 3, 1984.

Finally, the agent was asked by defense counsel about the preparation of the Russell interview memorandum based on a February 23, 1983 interview (Defendants' Exhibit 12). That memorandum was, in fact, prepared from a preexisting memorandum in May, 1984. Nonetheless, the testimony was as follows:

Q: When did you prepare that memorandum?

A: I couldn't say with certainty.

Q: Was that after the first of the year?

A: I don't believe so. I believe this memorandum was prepared prior to June of '83 and it is dated February 23, '83.

Q: Sometime prior to June but approximately June of '83?

A: No. I am saying between February and June of '83.

The agent further failed to inform the Court of preexisting memorandum.

The Government minimizes this testimony. According to the Government, the argument made by defendants is that the memoranda were "passed off" as contemporaneous. The Government states that this argument cannot be true. The Government supports its argument by noting that two of the memoranda show on their face that they are not contemporaneous and are, instead, compilations (*e.g.,*) Defendants' Exhibits 21 & 35). Although the Government likely did not intend to mislead defense counsel and the Court about the preparation, the simple fact is that no one knew when the documents were prepared. Moreover, when the defendants raised the issue, the Government was unable or unwilling to provide the answers. Even the Special Agent, in attempting to date the documents, stated on at least one occasion that the likely date of preparation related to the date typed on the face of the interview memorandum: in dating Exhibit 12, the Russell momorandum, the agent noted that he believed the date of preparation was "prior to June of '83 *and it is dated February 23, '83"* (emphasis supplied) The Court therefore rejects the Government's position. The reasonable assumption from the face of the document would be that it had been prepared at roughly the time stated on it.

The Special Agent's untrue testimony was not limited to document production issues. He gave such testimony relating to his diary. The Omni defendants asked the agent whether he kept a daily log or diary of his activities; the defendants were attempting to discover when the documents actually were created. The agent testified that his diaries contained only the number of hours that he worked in a day and did not indicate the substance of his activities. When the Court ultimately ordered relevant portions of the 1983 and 1984 diaries produced, it became clear that this testimony was untrue. The diaries, although sketchy, often indicate that the agent prepared for certain critical meetings, and generated certain interview memoranda at issue in these hearings on particular days.

The other IRS employee who testified at great length during the hearings, and did so falsely or wrongly on many occasions, was

the Revenue Agent involved in the case. As was the case with the Special Agent, this witness also had difficulty dating accurately when memoranda were prepared. The Revenue Agent's false testimony extended beyond dating the production of documents, however. One fact issue which arose during the hearings concerned a line in the agent's handwritten notes of the November 22, 1983 interview of Sandra Poe Wilkins. That line stated: "Not discuss contents, atty/client priv." This sentence, if taken to be true, would demonstrate government sensitivity to the privilege.

Defense counsel asked the Revenue Agent as he testified for the first time when this sentence was written. The agent testified adamantly that his notes followed the course of the interview exactly, and that he therefore wrote down the statement as it was spoken. This testimony was clear and unequivocal. It remained unshaken under intense examination by defense counsel. In fact, this testimony was false, and the agent later returned to the witness stand to recant it.

Disturbing, confliction testimony was also presented. With regard to Exhibit 5, one of the interview memoranda involving William Green, different IRS agents took responsibility for the document's alteration from a preexisting memorandum. The Revenue Agent testified forcefully, during two different appearances, that he alone made the changes without any input or consultation with any other person. According to this version, the changes were made in the Spring of 1984, before the defense motion to dismiss was filed. A different agent testified forcefully that he alone made the changes. This agent testified that the changes were made prior to October 1, 1983. In fact, the Revenue Agent made the changes with assistance from the Special Agent between May 8, 1984 and May 18, 1984.

The AUSA who directed the entire investigation and presented the case to the grand jury also gave incorrect testimony. For instance, defense counsel asked about the date of preparation of the November 22, 1983 Wilkins interview memorandum (Defendants' Exhibit 8). The AUSA stated on many occasions that it was prepared soon after the interview; in fact, it was not prepared until May, 1984. Another example of untrue testimony given by the AUSA concerned the use made of the Wilkins interviews in the decision to indict Bornstein. The AUSA testified on repeated occasions that Wilkins' potential testimony was put out of mind, was not presented to the grand jury, and was not part of the decision-making process. However, evidence in the record shows that the AUSA did consider the substance of statements allegedly made by Wilkins against Bornstein.

Perhaps the most flagrant, troubling aspect of the entire tax investigation occurred when the Government interviewed Sandra Poe Wilkins, Bornstein's secretary. The Government contends that there is no impediment, legal, technical, ethical, or otherwise, to an unannounced, uncounselled, surprise interview of a lawyer's secretary when the focus of the interview will be on what the secretary knows about the relationship between the lawyer and his client. Unlike lawyers, who can protect the attorney-client privilege, secretaries have no legal training and cannot be expected to make sophisticated judgments regarding the scope of the privilege. This Court is shocked and offended by such a procedure and condemns this investigatory tactic, especially in the factual situation presented here.

As has already been described in great detail, Omni asserted the attorney-client privilege before Judge Young. On November 8, 1983, Judge Young held that invoices sent by Bornstein to Omni were privileged. Although fully cognizant of this ruling, the Special Agent and the Revenue Agent travelled two weeks later to Wilkins' home for an interview. The AUSA knew such an interview was to occur. The interview also followed by only two business days the conference with Bornstein's attorneys, who had forcefully stated that the case against Bornstein was fatally flawed because the Government lacked a witness. The purpose of the meeting with Wilkins was clearly to find such a witness. In light of this purpose, the proper course of action would have been to subpoena Wilkins before the grand jury and allow Omni an opportunity to intervene.

The Special Agent testified that Wilkins was only interviewed because she was a "loose end", "for no particular reason", and as part of "unfinished business." This testimony was certainly misleading and probably false. Even the agent's diary reflects that he spent twelve hours on the day preceding the interview preparing for it.

Subsequent to the interview of Wilkins, the agents prepared a memorandum which purported to summarize statements made by Wilkins. As has already been detailed, the Revenue Agent added at least one line to his notes at a later point in time, to wit: "Not discuss contents, atty/client priv." At the evidentiary hearing Wilkins testified that the contents of the memorandum read like a novel to her and were largely false. Only at the hearing did it emerge that the agents had related certain facts to Wilkins which, according to the agents, Wilkins confirmed and, according to Wilkins, she denied. In either event the memorandum makes it appear as if Wilkins made certain statements which she did not.

The most damaging episode to Bornstein related in the memorandum consisted of statements to the effect that Wilkins had corroborated the allegation about the safe deposit box. According to the memorandum, Wilkins stated that Bornstein had a safe deposit box which held United Aviation Service documents. The documents purportedly demonstrated that Bornstein had properly advised his clients and that the clients ignored the advice. Paragraph 17 of Exhibit 8 states that if Omni "ever tried to pin anything on him [Bornstein], he had proof that he advised them the correct way to do it and they didn't." Wilkins denied these statements at the hearing. She testified that the only document known to her in Bornstein's safe deposit box was his will.

The significance of the memorandum is that it is not entirely and fully accurate. At the time, however, Bornstein's counsel did not know the true situation; they were unable to speak with Wilkins and they did not receive a copy of the memorandum.

Another issue that arose concerned who delivered a copy of the earlier version of the Wilkins November 22, 1983 interview memorandum to Mark Friend, the Department of Justice Tax Division attorney who reviewed the case. Friend testified that the document was brought to him at his office in Washington, D.C. by the Special Agent, Revenue Agent, AUSA, or some combination thereof. None of the three witnesses admitted to delivering the document during their extended testimony; all three denied doing so. Someone clearly gave the document to Friend, however, and it would appear that at least one of the witnesses testified falsely in that regard. When the memorandum was delivered, the person who delivered it made a comment to the effect that "this was really good stuff, it was really dynamite." From this statement, the Court finds that it appears most likely that the Special Agent delivered the memorandum. But it is not necessary to conclusively determine who actually delivered the item. The crucial fact is that there was, once again, false testimony.

On the basis of this continuous stream of incorrect, misleading and false testimony, the Omni defendants charge that the three individuals committed perjury and obstructed justice. It is neither the role nor the function of this fact-finder in the context of a pretrial motions hearing to make findings of criminal conduct. Throughout the lengthy proceedings the Government has focused its attention on the alleged breaches of the attorney-client privilege, and not on allegations of perjury and obstruction of justice. The Government has not "defended" the Special Agent, Revenue Agent, or AUSA against these charges; these three persons are not on trial for the alleged crimes in any case. Clearly it would be imprudent for this Court to draw the conclusions requested by defendants.

It would also be unnecessary to do so. The *motive* involved in this case is irrelevent to the court's disposition of the matter. The critical fact is that there was a considerable amount of false, wrong testimony. At issue here are not merely a few, isolated incidents that can be shrugged aside due to the passage of time and length of the hearings. The Court can easily understand innocent misrecollection. But the effect of this testimony and the obvious prejudice which resulted cannot be so easily dismissed. It will be evaluated *infra* in section III of this opinion.

Having reached these conclusions, the Court does express its view that the *AUSA* did not commit perjury and did not obstruct justice. The Court is left with a sufficient reasonable doubt on these criminal questions, even without a defense being mounted on behalf of the AUSA. The Court is statisfied that the AUSA had become so immersed in the prosecutorial role and so protective of the Government's handwritten interview notes that it was impossible for the AUSA to give proper attention to the enormity of what was being done. Testimony given by the AUSA certainly was untrue and wrong in certain places. However the criminal intent required by law has not been proven. The Court further notes that it makes no findings at all with regard to the criminality of testimony given and conduct undertaken by the *Special Agent* and the *Revenue Agent.*

C. Lack Candor

The third area of the Court's concern may be described as lack of candor. It is clear beyond any doubt that misrepresentations were made to the Court, from the beginning of the evidentiary hearing. Misrepresentations occurred in colloquies with the Court and in testimony by witnesses. The Court recognizes that events about which certain witnesses testified often occurred several years prior to the hearing. Nonetheless there was virtually a wholesale failure of recall of critical events by the relevant Government witnesses, and no such failure by the defendants' witnesses. At the least this failure consititutes a lack of candor. The primary (but not sole) offender is the *AUSA.*

At the outset of the hearing on June 11, 1984, extensive discussion concerned whether the agents' handwritten notes should be

produced to the defendants. On June 11th, the AUSA argued that the Government's motion to quash the Omni defendants' subpoenae should be granted because all memoranda had been produced and there was no need to obtain the handwritten notes. The AUSA did proffer the notes to the Court for *in camera* inspection. However, the AUSA did not inform the Court at that point that all memoranda had been prepared or altered within six weeks of the hearing. Nor was the Court informed that there were preexisting versions of some altered memoranda in the files. If the Court had been so informed, it undoubtedly would have ordered the immediate production of the underlying documentation. Instead, the Court reviewed the handwritten notes *in camera* that evening. On June 12, 1984, the Omni defendants called two witnesses to demonstrate the need for an evidentiary hearing. These witnesses addressed the typewritten memoranda pertaining to interviews to which they had been either a party or a witness, and they basically testified that the memoranda were false, misleading, and incomplete.

A crucial colloquy which evinces lack of candor began between the Court and the AUSA after the witnesses testified and the defendants renewed their request for handwritten notes:

The Court: Clarify for me, . . . if you will, first of all, under what circumstances did the Government give the typewritten statements to the Defendants? Was this in response to some Motion? Was it totally voluntary? Did you take the position that you didn't have to produce them but nevertheless were going to voluntarily? What were the circumstances under which they were turned over?

The AUSA responded that the purpose of the hearing was to give the defendants an opportunity to show that the privilege was breached:

AUSA: We realized that they could not make a factual showing . . . unless they had the actual statements that were made. Accordingly, we provided the memoranda which we believed were—which there couldn't be any questions that might have mentioned attorney/client dealings so that they could then make a factual showing to the Court. . . . But we provided the memoranda to them to enable them to prepare themselves for the hearings yesterday and today.

In this statement the AUSA did not indicate that the memoranda were given to the defendants precisely in response to the motion to dismiss or that all the memoranda had then been created or altered. The Court then naively asked a second question which addressed what became the critical issue concerning the preparation of the documents:

The Court: Well, now is there significance in themselves to the fact that they are typed, if one of these would have been handwritten, would you have taken the position that was not producible?

A candid answer would have fully apprised the Court of the activities that had recently been undertaken. The AUSA, however, gave a totally nonresponsive answer to the inquiry:

AUSA: Your Honor, it is a matter of practice within the Government, I assume, that the notes are taken, contemporaneous notes are taken by the agents as well as from time to time by the attorneys in the case during the course of an interview. And, then memoranda are prepared. These memoranda, I guess, are similar, if you are dealing with the Federal Bureau of Investigation, to the FBI 302's, with respect to the DEA they would be the DEA 6's. Underlying all those documents I think Your Honor is aware are the handwritten notes of the agents from which the documents were prepared and I believe the law in the Fourth Circuit is that those notes do not have to be produced, that the memoranda are what is——

The Court: Well, what I am asking you, what if under certain circumstances the government agent does not reduce it to a typewritten report, then would the government take the position because it was never typed up the handwritten one is not producible?

AUSA: No, Your Honor, we would provide the other side with whatever was the official document reflecting that particular interview. . . .

In this colloquy the AUSA failed to inform the Court that the Government had, in fact, been producing typewritten memoranda exactly because none had been prepared. The AUSA also failed to indicate that changes in preexisting reports had been made.

Later in oral argument on the issue of the production of the notes, the Court directed its attention to the Candler memorandum (Defendants' Exhibit 35). Testimony earlier on June 12, 1984 had revealed that certain conversations between the agents and Candler were omitted from the memorandum. The Court went so far as to ask:

The Court: Now I am at a loss to understand, unless these papers were prepared solely on the issue of attorney/client privilege, which I am confident is not the fact, how did the conversation get omitted?

The AUSA again failed to correct the obvious assumption made by the Court which was certainly in error, as the AUSA knew; the papers referred to had in fact been prepared solely in response to the attorney-client privilege motion.

The AUSA's failure to be fully candid could have had tragic consequences. The Court was faced with the issue of whether or not to permit an evidentiary hearing. If the Court had blindly relied on the AUSA's representations, no hearing would have been held.

Later in the same day the Special Agent took the witness stand and began his testimony. The Omni defendants immediately focused on the dates of preparation of the typewritten memoranda, item by item. The Special Agent testified either falsely or incompletely, as described earlier. Approximately forty-five minutes into the questioning, the AUSA made the following representation:

AUSA: Your Honor, as far as the Government is concerned, when this dispute was raised as far as the attorney-client privilege was concerned and we felt obligated to provide information to the other side so that they could be prepared for the hearings today, I did, in fact, ask the agents to change their original notes into memoranda so to the extent that it came from me and I knew the Motion had been filed, that is certainly true, and it didn't reflect on the agents at all, it reflects on me as opposed to them that we knew the material had to be turned over and we had to put it into typewritten form rather than handwritten notes.

Mr. Simon: That answers the Court's question earlier if these were prepared in connection with the Motion. Possibly we could find out which of the memoranda were in fact prepared on that basis.

AUSA: That may not be true for all of them. I told the agents to go through their notes and see who that applied to with respect to attorney-client and to the extent there weren't memoranda prepared they were prepared and produced to the other side.

This representation by the AUSA, along with the exchange with defense counsel, is significant to the Court in several respects. First, it shows that the AUSA was not fully candid in the earlier statements to the Court that if no memoranda existed the notes would have been produced. Secondly, it showed that the AUSA was involved directly in the creation and alteration of the documents. Thirdly, the representation along with the qualification finally made by the AUSA left the issue murky; even when the AUSA finally addressed the matter, there was not a full response to the issues.

The Government has consistently relied on these representations by the AUSA for the proposition that the record had then been made clear and the defendants then possessed all the knowledge relevant to the legal issues. Under examination it is clear that the statements in themselves are neither complete nor candid. The defendants sought to know exactly when documents were created and altered and by whom. At the time that these questions were originally posed, no one but the Government knew the answers. And, the Government throughout the hearings never gave the answers. The facts were made available to the Court only through extensive investigation on behalf of defendants and many days of hearings.

Without belaboring the lack of candor exhibited by several Government witnesses during the hearing, the Court does wish to note that the AUSA was not candid during portions of testimony given from the witness stand. The AUSA testified that there was never a possibility at the Department of Justice that the prosecution would be declined. This testimony was incorrect. Friend testified that not only did such a possibility exist but that he so informed the AUSA on December 15, 1983.

However significant the lack of candor with the Court may appear in this one interchange, the AUSA was less than candid in another, perhaps more significant way. One of the primary issues in the hearings involved the process by which Bornstein made his proffer to the Government, which has been discussed above. During these heaings Bornstein's former counsel testified credibly about the procedure. Bornstein became interested in making a proffer only after the Government reported that Sandra Poe Wilkins had given statements which were damaging to him.

In attempting to convince the courts that a proffer ought to proceed, the Government maintained that Bornstein sought the opportunity to make a proffer and that the Government, in the interests of treating all potential defendants fairly, wished to give Bornstein that opportunity. In its answer to the motion to dismiss, the Government implied that Bornstein virtually begged the Government for this option. The facts concerning the proffer are much more complex. For quite some time the Special Agent wanted to hear what Bornstein might want to say. Prior to the meeting of December 15, 1983, the AUSA clearly had always wanted to talk to Bornstein, because he was the return preparer. The Government was willing to make any efforts necessary because,

according to the AUSA, "[we] had to talk to him if we in any way could."

The desire to talk to Bornstein only intensified after the conference at the Department of Justice. Bornstein's counsel also hammered home the point on November 18, 1983, that the Government lacked a witness against their client. Both the AUSA and the Special Agent were frustrated in dealing indirectly with Bornstein's attorneys instead of directly with Bornstein himself. On December 15th, prior to the meeting with Bornstein's counsel, the AUSA had a discussion with Friend. According to Friend's notes of that conversation, the AUSA "is trying to figure a way to get testimony from Bornstein, . . . agree[ing] that we must know what he will say." At the December 15, 1983 meeting, the Special Agent on two occasions and the AUSA at one point both suggested the viability of a direct discussion between Bornstein and the Government.

Unlike the AUSA who refused or declined to relate candidly the Government's approach toward Bornstein, the Government investigator assigned to the United States Attorney's Office stated that "the key is Bornstein, if he flips and tells the truth, they're all dead, we plead this thing out, that kind of thing." If Bornstein did "flip", "it would be a cakewalk for the rest of the case."

The Special Agent, Revenue Agent, and especially the AUSA were less than candid in relating the proffer procedure and the Government's actual motive for the proffer. This Court does *not condemn* the Government's motive; it does, however, take issue with the manner in which the *real motive was obfuscated* before Judge Young, the Fourth Circuit, and this Court. True candor would have at least revealed the Government's mixed motives, as described above. The Court notes that none of the three Government representatives recalled the momentous meeting of November 18, 1983, at which time Bornstein's attorneys gave a replay of the Justice Department conference, at the specific request and for the benefit of the agents. The AUSA had virtually no recall of this meeting, beyond "being in the room." The Special Agent recalled nothing about a "replay" or of a meeting with Feffer in November, 1983, even though his diaries reflect that he spent thirty hours in preparation for the November 18th meeting on the three days prior to that meeting. The Revenue Agent also had no recollection of the meeting. This is particularly surprising because the tone of the meeting was acrimonious and heated, with voices raised and with some of the participants pounding on the conference table.

None of the three recalled the December 15, 1983 meeting, the purpose of which was to debrief Bornstein's attorneys on the statements allegedly made by Wilkins. The Special Agent could not recall the purpose of the meeting, nor of a meeting at which time the Wilkins memoranda was to be discussed. The Special Agent also stated he had no recollection of saying that he wanted to speak directly with Bornstein. The Revenue Agent purported to recall nothing of the meeting; he, however, did at least recall a statement that the Special Agent "would like to question Mr. Bornstein personally." The sum of the AUSA's testimony was lack of recollection at all.

The lapse of memory disappoints the Court and evidences a lack of candor by these three witnesses. Confirmation of these meetings and the events transpiring within was made by Bornstein's attorneys and the investigator in the United States Attorney's Office.

III. SANCTIONS

Having set forth at length the three principal areas of concern to the Court that occurred during the course of the hearings, namely the alteration and creation of documents, false and incorrect testimony, and a lack of candor, in colloquies with and testimony before the Court, the question becomes what sanction, if any, is appropriate. The Omni defendants request, in the alternative, dismissal of the indictment, disqualification of government prosecutors and investigators, and suppression of evidence. Each sanction will now be treated separately.

A. Dismissal

The issue of dismissal of the indictment is not an easy one. Federal courts have a general supervisory power with respect to the administration of justice in federal judicial proceedings. *See United States* v. *Hastings*, 461 U.S. 499, 505 (1983); *United States* v. *Payner*, 447 U.S. 727, 734-36, 735 n.8, *reh'g denied*, 448 U.S. 911 (1980); *McNabb* v. *United States*, 318 U.S. 332, *reh'g denied*, 319 U.S. 784 (1943); *see generally* Beale, *Reconsidering Supervisory Power in Criminal Cases; Constitutional and Statutory Limits on the Authority of the Federal Courts*, 84 Column L. Rev. 1433 (1984). The use of the supervisory power supports three institutional goals: deterring illegal conduct by government officials, protecting and preserving the integrity of the judicial process, and implementing a remedy for violation of recognized rights. *See United States* v. *Hasting*, 461 U.S. at 505; *United States* v. *Payner*, 447 U.S. at 735 n.8; Note, *The Exercise of Supervisory Powers to Dismiss a Grand Jury Indictment—A Basis for Curbing Prosecutorial Misconduct*, 45 Ohio St. L. J. 1077, 1084 (1984). Within limits, federal courts may formulate procedural rules not specifically required by the Constitution or the Congress. *United States* v. *Hasting*, 461 U.S. at 505.

Courts have dismissed criminal prosecution because of serious government abuse in the investigation leading to the indictment. *See United States* v. *Kilpatrick*, 594 F. Supp. 1324, 1352-53 (D. Col. 1984); *United States* v. *Lawson*, 502 F. Supp. 158, 170 (D, Md. 1980); *United States* v. *Dahlstrum*, 493 F. Supp. 966, 974-75 (C.D. Cal. 1980), *appeal dismissed*, 655 F.2d 971 (9th Cir. 1981), *cert. denied*, 455 U.S. 928 (1982). Moreover, courts have dismissed indictments because of serious government misconduct following the indictment. *See United States* v. *Pollock*, 417 F. Supp. 1332, 1348-49 (D. Mass. 1978); *United States* v. *DeMarco*, 407 F. Supp. 107, 115 (C.D. Cal. 1975); *United States* v. *Banks*, 383 F. Supp. 389, 397 (D.S.D. 1974), *appeal dismissed sub nom. United States* v. *Means*, 513 F.2d 1329 (8th Cir. 1975).

If the defendants demonstrate actual prejudice, the indictment can be dismissed under the supervisory power. *See, e.g., United States* v. *McKenzie*, 678 F.2d 629, 631 (5th Cir.), *reh'g denied*, 685 F.2d 1386 (5th Cir.), *cert. denied*, 459 U.S. 1038 (1982); *United States* v. *Nembhard*, 676 F.2d 193, 200 (6th Cir. 1982). Yet the defendants maintain that no showing of harm to them is required to justify dismissal pursuant to the supervisory power. The Government argues by contrast that actual prejudice must be shown, because even where violations of *constitutional* rights are at issue dismissal is inappropriate absent demonstrable prejudice to defendants.

The courts have not definitively resolved whether an indictment can be dismissed pursuant to the supervisory power absent prejudice to the defendant. The Supreme Court has not squarely addressed the issue. However, the Court made clear in *United States* v. *Morrison*, 449 U.S. 361, *reh'g denied*, 450 U.S. 960 (1981), that dismissal of an indictment is inappropriate under the sixth amendment even if the violation is deliberate, absent demonstrable prejudice or a substantial threat thereof. The recent pronouncements of the Court in *Payner* and *Hasting* imply a more limited use of the supervisory power, possibly including a requirement of actual prejudice for dismissal. *See United States* v. *Lehr*, 562 F. Supp. 366, 371 (E.D. Pa. 1983), *aff'd without opinion*, 727 F.2d 1100 (3d Cir. 1984). These decisions, however, leave intact the well-settled proposition that the supervisory power still exists for "truly extreme cases." *United States* v. *Broward*, 594 F.2d 345, 351 (2d Cir.), *cert denied*, 442 U.S. 941 (1970).

A review of circuit court decisions shows disarray on the requirement of prejudice, with the full significance of the *Payner* and *Hasting* rulings not yet evaluated. The Fourth Circuit has yet to speak on the question. The decision by the Ninth Circuit in *United States* v. *Rogers*, 751 F.2d 1074, 1077-79 (9th Cir. 1985), is representative of those circuits which suggest that prejudice must be shown: *United States* v. *Acosta*, 526 F.2d 670, 674 (5th Cir.), *cert denied*, 426 U.S. 920 (1976); *United States* v. *McKenzie*, 678 F.2d 629, *United States* v. *Crow Dog*, 532 F.2d 1182, 1196-97 (8th Cir. 1976), *cert denied*, 430 U.S.L 929 (1977); *United States* v. *Brown*, 602 F.2d 1073, 1076-77 (2d Cir.), *cert denied*, 444 U.S. 952 (1979). A contrary line of authority exists. The following courts have concluded that an indictment can be dismissed in the absence of prejudice, in extreme circumstances. *See, e.g., United States* v. *Serubo*, 604 F.2d 807, 817 (3d Cir. 1979); *United States* v. *McCord*, 509 F.2d 334, 349 (D.C. 1974), *cert denied*, 421 U.S. 930 (1975). The Eleventh Circuit has not yet determined whether prejudice is required. *See United States* v. *Pabian*, 704 F.2d 1533, 1540 (11th Cir. 1983).

In resolving the obvious divergence among the authorities, a few salient points emerge. The supervisory power may be invoked in a myriad of situations based on the peculiar circumstances presented. It should be exercised sparingly and only on a showing of demonstrated and longstanding prosecutorial misconduct, *see United States* v. *Adamo*, 742 F.2d 927, 942 (6th Cir. 1984), *cert. denied sub nom. Freeman* v. *United States*,—U.S.—105 S.Ct 971 (1985), just as reversals of convictions under the supervisory power must be approached "with some caution." *United States* v. *Hasting*, 461 U.S. at 506-07. *See also United States* v. *Artuso*, 618 F.2d 192, 196-97 (2d Cir.), *cert denied*, 449 U.S. 861, 449 U.S. 879 (1980); *United States* v. *Fields*, 592 F.2d 638, 648 (2d Cir. 1978), *cert denied*, 442 U.S. 917 (1979). Sparing use, of course, does not mean no use. Even "disfavored remedies", *United States* v. *Rogers*, 751 F.2d at 1076-77, must be used in certain situations. Exercising the inherent authority is most appropriate in particular fact situations that do not lend themselves to rules of general application. *United States* v. *Harrison*, 716 F.2d 1050, 1053 n.1 (4th Cir. 1983), *cert. denied sup nom. Wissler* v. *United States*, 466 U.S. 972 (1984).

A common thread underlying many decisions is that the magnitude of the misconduct affects the use of the supervisory

power, whether or not actual prejudice is shown. *See, e.g., United States* v. *Serubo*, 604 F.2d at 818 (prosecutorial conduct extreme; graphic and misleading reference by prosecution to Cosa Nostra hatchet men); *United States* v. *Hogan*, 712 F.2d 757 (2d Cir. 1983) (misconduct flagrant); *United States* v. *Fischbach & Moore, Inc.*, 576 F. Supp. 1384, 1396 (W.D. Pa. 1983) (isolated incident of misconduct). In determining the proper remedy pursuant to the supervisory power, the relief chosen should be directly related to the seriousness of the misconduct. *United States* v. *Banks*, 383 F. Supp. at 392. Repeated instances of deliberate and flagrant misconduct justify dismissal of the indictment. *See id.; United States* v. *Hogan*, 712 F.2d at 761; *United States* v. *Kilpatrick*, 594 F. Supp. at 1352-53; *United States* v. *Lawson*, 502 F. Supp. at 172.

Exhaustive research reveals no case in which Government personnel committed repeated misconduct in so many forms as has occurred here, at the preindictment stage, the discovery stage, and in hearings before this Court. In light of the Supreme Court's general statements concerning the purpose for which the supervisory power was created and that Court's sensitivity to the need to invoke the doctrine to promote fairness and assure justice, the supervisory power must be utilized in this case. Court decisions emphasize the unifying premise in all of the supervisory power cases—that although the doctrine operates to vindicate a defendant's rights in an individual case, it is designed and invoked primarily to preserve the integrity of the judicial system.*United States* v. *Leslie*, 759 F.2d at 372. The Court has particularly stressed the need to use the supervisory power to prevent the federal courts "from becoming accomplices to such misconduct." *United States* v. *Payne*, 447 U.S. at 744 (Marshall, J., dissenting). Utilization of the supervisory power remains a harsh ultimate sanction, but must be used for "conduct that shocks the conscience."*United States* v. *Baskes*, 433 F. Supp. 799, 806 (N.D. Ill. 1977) (quoting *Rochin* v. *California*, 342 U.S. 165, 172 (1952)).

Factually, the misconduct here is not isolated, but longstanding. Indeed untrue testimony and a lack of candor permeated the entire ten-month hearing. The Government did not proffer the truth about the creation and alteration of the documents during all that time. The misconduct here is as extreme as any found in the reported decisions reviewed by this Court. Defendants and the Court clearly suffered prejudice from the misconduct. Whether or not there is prejudice, the supervisory power to have any significance must be applicable to cases of repeated, flagrant governmental misconduct. In light of all the testimony adduced at the evidentiary hearing, it is clear that this case rises to the high threshold imposed for invocation of the supervisory power. The Court condemns the manner in which the Government proceeded, and cannot now stand idly by, implicitly joining the federal judiciary into such unbecoming conduct.

As reviewed in detail above, the Court is deeply troubled by the manner in which the Government handled the submission of documents to defense counsel and the Court, and in the evidentiary hearing before the Court. It simply is wrong for Government personnel to act as they have done here. This type of conduct cannot and must not be condoned; in fact, it must be strongly condemned. The Court has not set forth the details of the prosecutorial abuses lightly and without regard to the individuals involved.

When oral argument on the motion was held on June 25, 1985, the Government did concede that it was wrong to prepare memoranda as had been done. But the Government recommends almost a "harmless error" approach as a sanction for this egregious error, contending that no harsh remedy should follow because all underlying documents were finally produced to the defendants.

The Court rejects this notion. Absolutely no justification exists for revising documents that are being turned over to an adversary in litigation once the issue has been raised, particularly without notice of revision to the opposition. The Government offers no excuse, other than to maintain that the changes were made for the sake of accuracy. However, the unrevised documents were apparently sufficient for review by the Department of Justice as it decided whether or not to approve the prosecution. The only possible conclusion that the Court can reach is that changes were made to strengthen the Government's position at the hearing, even though the effect of the alterations was minimal. Similarly, there is no justification for creating documents during this time period, without indicating so, no matter what the motive.

The Government's argument overlooks one critical consequence that would have resulted if the Government's representations and the documents had been accepted at face value: There would have been no hearing, and the truth would have never been known. As tragic as are the events which transpired during the evidentiary hearing, it would have been even worse for the Court to have denied the defendants a hearing. The fact that all the relevant documents were finally produced only occurred because of the Omni defendants' strenuous efforts.

It is neither reasonable nor proper to change, alter, correct, modify, or create documents once a matter is in litigation, especially absent notice to opposing counsel. This rule must apply equally to the Government as it does to defendants. The rule applies irrespective of alleged good faith.

The Court is equally troubled by the consistent pattern of false testimony and lack of candor exhibited by various Government representatives who played prominent roles in this tax investigation. The details have already been recounted. This Court has considered carefully the large volume of disturbing testimony on a whole range of issues.

The Court finally is extremely disturbed by the Government's cavalier attitude with regard to a surprise interview of an attorney's secretary, when the purpose of the interview will be to discover communications between the attorney and his clients. If no legal precedent presently exists in reported cases to proscribe such outrageous conduct, one needs to be added at this time. This investigatory tactic is patently improper. A grand jury appearance would be a preferable approach; in any event, before such an interview is conducted, court approval should at least be obtained.

The case closest to this issue is *United States* v. *Valencia*, 541 F.2d 618 (6th Cir. 1976). In *Valencia*, a lawyer's secretary was also a paid government informant. The secretary had been present when various narcotics transactions occurred; she had also been instructed by her employer to take notes during that time for the purpose of defending one of the clients on smuggling charges. At trial, the secretary testified. After learning that the secretary had become a paid government informant during the investigation, the district judge dismissed the indictment as to four of the defendants, including the attorney. The basis for dismissal was the outrageous governmental intrusion into the attorney-client privilege. On appeal, this determination was affirmed: "We agree with the district court that it was improper for the government to have intruded into an attorney-client relationship by paying an attorney's secretary for information about his clients." *Id.* at 623. This was true even though the attorney was directly involved in a criminal conspiracy with his clients, because "the law in its majesty . . . [cannot] be equally slimy." *Id.* at 621 (quoting the District Judge).

The Court finds the Government's intrusion in the Omni investigation equally intolerable. This is not a situation in which a secretary cooperates with the Government in an investigation and informs the attorneys and clients involved to proceed accordingly at their own peril. *See United States* v. *King*, 536 F. Supp. 253 (C.D. Cal. 1982). *Valencia* also stands for the proposition that the secretary's testimony, when so obtained, cannot be admitted at trial. It follows that the testimony of Wilkins would be inadmissible at any trial involving Bornstein or his clients.

Thus, in exercising the supervisory power entrusted to it to ensure the smooth and proper administration of justice, the Court has determined that the indictment should be dismissed. Twenty-eight days of hearings produced example after example of conduct unbecoming to the Government. Innocent misrecollection by witnesses is a common occurrence and is excusable, but the cumulative effect of the evidence presented here adds up to more than innocent misrecollection. Defendants should not be forced to conduct lengthy hearings to learn the basic essential facts needed as a predicate to a pretrial motion. Courts should not be forced to question whether government witnesses are testifying truthfully and fully. The Government's conduct was patently egregious and cannot be tolerated or condoned. Its manner of proceeding shocks the Court's conscience. The indictment must be dismissed as a prophylactic sanction for the consistent course of entrenched and flagrant misconduct. *United States* v. *Birdman*, 602 F.2d 559 (3d Cir. 1979), *cert. denied*, 444 U.S. 1032, 445 U.S. 906 (1980).

However, the Court does not take lightly the fact that an impartial grand jury indicted these five defendants on serious criminal tax charges. This grand jury was completely untainted by and ignorant of the matters of significance to the Court. Therefore, the indictment will be dismissed without prejudice. Although defendants have certain rights which have been violated here, they have no concomitant right to bar forever investigation into their alleged criminal conduct. *United States* v. *Lawson*, 502 F. Supp. at 172. The Court recognizes that the passage of time may have caused the statute of limitations to run as to certain tax years charged in the Indictment. This fact does not affect the decision to dismiss the Indictment without prejudice.

B. Disqualification

In the event that the Government decides to seek another indictment in this matter, an issue undoubtedly will arise about whether any of the Government prosecu-

tors or investigators should be disqualified. Based on the misconduct described in detail throughout the opinion, this Court has determined that the Special Agent, the Revenue Agent, and the AUSA involved in this litigation must not participate further in the prosecution of the case.

C. Suppression

The last sanction requested in the Omni defendants' initial motion relates to the suppression of evidence. Had it not dismissed the indictment, the Court might have concern over what evidence ought to be suppressed. In light of the Court's disposition, the issues are greatly simplified, and will need to be addressed only in the event of reindictment.

The Bornstein proffer need not be suppressed because its use has already been limited by rulings of Judge Young and the Fourth Circuit. Statements made by Sandra Poe Wilkins need not be suppressed here; although the Court condemns the investigatory technique utilized to obtain the interview of Wilkins, her testimony during the hearings demonstrated clearly that the Government will be unable to use her as a trial witness. If Wilkins should be proffered as a witness at a future trial, the full ramifications of *United States* v. *Valencia*, 541 F.2d 618 (6th Cir. 1976), can be explored. All other issues relating to the suppression of evidence based on violations of the attorney-client privilege can be raised during a future trial, if then appropriate.

The Court will enter a formal order dismissing the indictment without prejudice.

WALTER E. BLACK, Jr.,
U.S. District Judge.

[In the United States District Court for the District of Maryland]

UNITED STATES OF AMERICA v. OMNI INTERNATIONAL CORPORATION (FORMERLY KNOWN AS OMNI INVESTMENT CORPORATION), WAYNE J. HILMER, EVAN T. BARNETT, THOMAS A. WESTRICK, JR., AND JOSEPH P. BORNSTEIN

ORDER

For the reasons set forth in the foregoing opinion, It Is, this 15th day of May, 1986, Ordered as follows:

1. That the Motion to Dismiss the Indictment, Disqualify Government Counsel and Investigators, and Suppress Evidence Based on Violations of the Attorney-Client Privilege (Defendants' Joint Pretrial Motion Number 3) (Paper 20), filed on behalf of defendants, Omni International Corporation, Wayne J. Hilmer, Evan T. Barnett, and Thomas A. Westrick, Jr.—being treated as a motion to dismiss indictment—Be, and the same hereby Is, Granted, and the indictment in this case as to said defendants Be, and the same hereby Is, Dismissed without prejudice.

2. That the Motion of Defendant Joseph P. Bornstein to Dismiss the Indictment on Grounds of Abuse of the Grand Jury Process and Governmental Misconduct, and seeking alternate relief (Bornstein Motion Number 4) (Paper 45)—being treated as a motion to dismiss indictment—Be, and the same hereby Is, Granted, and the indictment in this case as to said defendant Be, and the same hereby Is, Dismissed without prejudice.

3. That copies of the foregoing opinion and this Order are being transmitted to counsel of record for the parties to this action.

WALTER E. BLACK, Jr.,
U.S. District Judge.

[In the United States District Court for the District of Maryland]

CRIMINAL NO. B-84-00104

UNITED STATES OF AMERICA v. OMNI INTERNATIONAL CORPORATION (FORMERLY KNOWN AS OMNI INVESTMENT CORPORATION), WAYNE J. HILMER, EVAN T. BARNETT, THOMAS A WESTRICK, JR., AND JOSEPH P. BORNSTEIN

ORDER

Since April 27, 1984, the defendants herein have filed numerous motions which have not yet been scheduled for hearing, pending the Court's ruling on the Motion to Dismiss the Indictment Disqualify Government Counsel and Investigators, and Suppress Evidence Based on Violations of the Attorney-Client Privilege (Paper 20), filed on behalf of Defendants, Omni International Corporation, Wayne J. Hilmer, Evan T. Barnett and Thomas A. Westrick, Jr., and the Motion of Defendant Joseph P. Bornstein to Dismiss the Indictment on Ground of Abuse of the Grand Jury Process and Governmental Misconduct, and seeking alternate relief (Paper 45). By previous Orders of Court (see Paper 28 and Order entered immediately prior to this Order), the periods of time from April 13, 1984 to January 7, 1985 and from January 7, 1985 to June 25, 1985, have been determined to be excludable time within the meaning of the Speedy Trial Act, 18 U.S.C. § 3161. The time from June 25, 1985 to the date of this Order is also excludable under 18 U.S.C. § 3161(h)(1)(F) because of the pending motions.

Accordingly, it is, this 15th day of May, 1986, Ordered that the period of time from June 25, 1985 to the date of this Order shall be excludable time within the meaning of the Speedy Trial Act, 18 U.S.C. § 3161(h)(1)(F).

WALTER E. BLACK, Jr.,
U.S. District Judge.

[In the United States District Court for the District of Maryland]

CRIMINAL NO. B-84-0010

UNITED STATES OF AMERICA v. OMNI INTERNATIONAL CORPORATION, ET AL., DEFENDANTS

ORDER

This matter having come before the Court upon the Motion of the Omni defendants, Omni International Corporation, Wayne J. Hilmer, Evan T. Barnett, and Thomas A. Westrick, Jr. for a determination that the period of time from January 7, 1985 up until June 25, 1985 shall be excludable time within the meaning of the Speedy Trial Act, 18 U.S.C. § 3161(h)(8)(A) (*see* Paper 135); defendant Joseph P. Bornstein having concurred, in his Statement (Paper 1 IT IS, this 15th day of May, 1986,

Ordered, that the period of time from the original trial date of January 7, 1985 up until June 25, 1985, the date scheduled for oral agrument on Defendants' Motion to Dismiss the Indictment, Disqualify Government Counsel and Investigators, and Suppress Evidence Based On Violations of the Attorney-Client Privilege (Defendants' Joint Pretrial Motion Number 3), shall be excludable time within the meaning of the Speedy Trial Act, 18 U.S.C. § 3161(h)(8)(A). The ends of justice outweigh the interest of the public and the defendants in a speedy trial for the reasons that: the Motion to Dismiss in this multi-defendant, multi-court conspiracy case is unusual and complex. Establishing the evidentiary basis for the Motion has necessitated almost thirty days of testimony and hearings, spanning nine months and generating approximately 5500 pages of transcript and several hundred exhibits; and a detailed review of the evidence was necessary for the parties to submit proposed findings of fact and conclusions of law relevant to this threshold and potentially dispositive pretrial Motion.

WALTER E. BLACK, Jr.,
U.S. District Judge.

[From the Washington Post, May 16, 1986]

U.S. MISCONDUCT SPURS DISMISSAL OF CASE IN MARYLAND

(By Susan Schmidt)

A federal judge dismissed a multimillion-dollar tax fraud case against a Rockville-based jet leasing company yesterday because of "flagrant and repeated" instances of misconduct by the federal prosecutor and IRS agents, including the altering of documents and false testimony in court.

In an opinion dismissing an indictment against the Omni International Corp., Judge Walter E. Black of the U.S. District Court in Baltimore called the misconduct "outrageous" and "as extreme as any found in the reported decisions reviewed by this court."

Black agreed with Omni's claim that Assistant U.S. Attorney Elizabeth Trimble and two IRS agents altered or manufactured the summaries of key witness interviews to prevent dismissal of the case against Omni. Black also found that Trimble and the two agents subsequently provided "a continuous stream of incorrect, misleading and false testimony" about the documents during a 28-day hearing in his courtroom in 1984.

"The only possible conclusion that the court can reach is that the changes [to the documents] were made to strengthen the government's position . . . ," Black said in a 64-page opinion. "The government's conduct was patently egregious and cannot be tolerated or condoned. Its manner of proceeding shocks the court's conscience."

Trimble declined to comment on the judge's ruling. Her superior, Maryland U.S. Attorney Breckinridge Willcox, said, "We strongly disagree with the reasoning and conclusions Judge Black has come to.

"This whole matter has been and will be examined by the Office of Professional Responsibility at the Department of Justice," he said. "I am confident that when a review is made of these facts, the matter will be closed with no action taken against Liz."

A spokesman for the IRS said officials there had not had time to examine the opinion and would have no comment on it. The two agents, Donald Temple and Paul Mitchell, could not be reached for comment.

Omni, which sells and leases jets, was charged in March 1984 with conspiring to route millions of dollars in income to a subsidiary in Bermuda to avoid paying U.S. taxes. The indictment alleged that between 1974 and 1980, Omni recorded $16.8 million on the books of its subsidiary, Euro Airfinance. That company reported only $91,574 of that income on its U.S. tax returns, according to the indictment.

Black's opinion was issued in response to a 700-page brief filed a year ago by lawyers for Omni, who contended that Trimble and the agents created or altered 10 memos on witness interviews in an effort to save a weak case they had spent three years preparing.

The documents in question were turned over to Omni lawyers in spring 1984 in preparation for a hearing on Omni's request

that the indictment be dismissed. Lawyers for the company had sought dismissal on the ground that Trimble and the two agents had violated the attorney-client privilege of confidentiality by trying to persuade Joseph P. Bornstein, a former Omni attorney and accountant, and other witnesses to give them information about Omni's tax filing practices.

Omni contended that after a subsequent meeting with Justice Department superiors to discuss possible weaknesses in the case, Trimble directed the agents to create new interview summaries and alter existing ones to make it appear they had been careful not to violate the attorney-client privilege.

Black found that "at least nine of these documents, and probably all 10, were either created or altered by government personnel after the defendants filed their motion [for dismissal] . . . ."

Black said he was "shocked and dismayed" that the government then gave the witness summaries to defense lawyers "as if they had been prepared contemporaneously with the interviews." During a June hearing on the attorney-client privilege issue, Black said, the agents and Trimble repeatedly gave false testimony about dates on which the documents were prepared, in several instances testifying that interview summaries had been written the previous year when they had been written only weeks before.

An example of an altered document cited by Black was a summary of the IRS agent's interview with Bornstein's secretary, Sandra Poe Wilkins, who was questioned about memos her boss had written to Omni on tax matters.

The agents' original summary of the conversation, written Nov. 22, 1983, said in part, "The contents of those memos were not discussed due to the attorney-client privilege." The altered version was designed, Black wrote, to make the agents appear sensitive to the attorney-client issue. It said, "We told Wilkins that we did not want to discuss the contents of those memos due to the attorney-client privilege."

The government had contended it made those types of minor revisions to the documents to correct errors in style and grammar.

[From the Washington Post, May 28, 1985]

U.S. ATTORNEY DENIES PROSECUTION ERRED

INDICTED MARYLAND FIRMS SAYS SHE ALTERED DATA

(By Paul W. Valentine)

BALTIMORE, May 28.—The U.S. attorney's office here denied today allegations that one of its prosecutors orchestrated the fabrication and alteration of documents in a criminal case, contending instead that she ordered only minimal revisions to enhance the accuracy of the documents.

"Mistaken though that action may have been, it was not an obstruction of justice or any other form of deliberate misconduct," the court papers said.

In an angry response to the allegations made by attorneys for Omni Internationl Corp., a Rockville-based jet airplane trading company indicted in a multimillion-dollar tax-fraud case, the U.S attorney's office said the Omni lawyers had turned a routine pretrial motion into a "series of personal attacks" on the prosecutor, Assistant U.S. Attorney Elizabeth H. Trimble, and on IRS agents Donald Temple and Paul Mitchell.

Throughout the 144-page response signed by Trimble, U.S Attorney J. Frederick Motz and another assistant prosecutor John G. Douglass, the office maintained that its procedures in interviewing potential witnesses against Omni and preparing memos of those interviews were proper and acceptable in federal court.

"Paradoxically," they said, "the techniques employed by [Omni] are frequently characterized as classic abuses of prosecutorial power: intimidation of witnesses . . . bullying trial tactics and disclosure of information to the press in a manner calculated to destroy the reputations of those whom they accuse." The courts papers said that Omni attorneys had "broadcast" the allegations to lawyers not involved in the case and to "numerous officials in government" and, as well, "their personal attacks found their way to The Washington Post."

The Post first reported the Omni allegations on April 27.

Neither Motz nor attorneys for Omni would comment on the papers filed today.

The allegations and denials come as the government is preparing for trial aganist Omni, three of its corporate executives and its former attorney and accountant. The giant corporation is charged with siphoning millions of dollars in airplane sales and leasing income to an untaxed subsidiary in Bermuda. The defendants have denied all charges.

Last month, Omni attorneys filed a 700-page brief, claiming Trimble and IRS agents had altered or "created" at least 10 witness interview memos in a desparate effort to prevent dismissal of the case.

The attorneys said Trimble and the agents had unsuccessfully attempted to persuade former Omni attorney and accountant Joseph P. Bornstein to cooperate with the government by giving information about Omni's tax-filing practices in exchange for immunity from prosecution.

In an April 1984 motion to dismiss the case, Omni attorneys claimed that that effort, plus government interviews with other witnesses privy to information given to Omni by Bornstein, violated the attorney-client privilege of confidentiality.

Omni attorneys said that after Trimble was questioned by her bosses in the tax division of the Justice Department about possible weaknesses in the Omni case, she directed the IRS agents to alter existing interview memos or create new ones to reflect a heightened sensitivity by the agents in avoiding breaching the attorney-client privilege.

At an evidentiary hearing last summer before U.S. District Court Judge Walter E. Black Jr., a documents expert and other witnesses contradicted claims of IRS agents that several of the memos were written in 1983, prior to Omni's motion to dismiss. In fact, according to the testimony, the memos were prepared in the spring of 1984, most of them after Omni's motion to dismiss was filed on April 27, 1984.

In the government's reponse to day, prosecutors acknowledged that the language of some memos was revised to improve their accuracy. "It is a common practice," the response said," . . . . that memoranda are drafted, edited and revised until, in the agent's view, they accurately reflect the substance of an interview."

In the Omni case, according to the court papers, "there were revisions to several memoranda which took place after [Omni] filed their motion. Mistaken though that action may have been, it was not an obstruction of justice or any other form of deliberate misconduct. Any changes were made in good faith to make the memoranda accurate."

In one case cited by Omni attorneys, IRS agents said in an original memo based on an interview with former Bornstein secretary Sandra Poe Wilkins that the contents of certain documents relating to Omni's overseas tax status "were not discussed due to the attorney-client privilege." That language was changed in a superseding memo prepared five months later, according to court papers, to say, "We told Wilkins that we did not want to discuss the contents of those memos due to the attorney client privilege."

In their response today, the prosecutors acknowledged that Trimble had testified she believed the revised working was prepared in late 1983. While an Omni expert witness said a 1984 watermark on the memo stationery and other evidence showed it was not prepared until May 1984, after the Omni motion to dismiss the case was filed.

Trimble's "forthright" acknowledgement of this indicates she is not "covering up" or committing perjury, as Omni contends, the prosecutors said.

As for violating the attorney-client privilege, the prosecutors contended that agents are free to ask potential witnesses any kind of questions, including those that violate the privilege. It is up to the witness, they said, to invoke the privilege. Omni attorneys had argued in other court papers that a pretrial ruling by federal Judge Joseph H. Young barred such questions.

Prosecutors also maintained today that minor inconsistencies in memos and the testimony of IRS agents are not part of a massive cover-up," as claimed by Omni, but result from the massive paperwork generated by the five-year-long investigation into Omni activity. Agents "had only sketchy recollections of the dates particular memoranda were drafted," prosecutors said," hardly a suprising event in a case involving contacts with over 100 witnesses and documents filling three rooms."

INDICTED MD. FIRM ACCUSES IRS OF ALTERING DOCUMENTS; OMNI CORP. ALSO NAMES U.S. PROSECUTOR

(By Paul Valentine)

Attorneys for a Rockville-based jet airplane trading company indicted in a multimillion-dollar tax fraud case here have accused a federal prosecutor and several Internal Revenue Service agents of altering or "creating" documents to prevent dismissal of the case by a federal judge.

The unusual accusations, contained in a massive memorandum filed in court here this week by Omni International Corp., say that an assistant U.S. attorney and at least three IRS agents hid, altered or manufactured key witness interview summaries and then lied about their actions in court.

The U.S. Attorney's Office here vehemently denied the allegations today and said it will be filing a detailed written response next month.

Citing experts in handwriting, type sizes and watermarks on government stationery, Omni attorneys claimed it had evidence showing that the government tinkered with at least 10 documents and "embarked upon a sordid cover-up, a cover-up that entailed alteration of evidence, creation of evidence, suppression of evidence, destruction of evidence, misrepresentations, unethical conduct and repeated perjury."

The allegations, couched in unusually strong terms, come as attorneys on both sides prepare for the trial of Omni, three of

its corporate executives and its former accountant and attorney.

Neither U.S. Attorney J. Frederick Motz nor his assistant, Elizabeth Trimble, the prosecutor accused in the filing, would comment on specific allegations but denied any wrongdoing.

Motz, who is expected to be nominated soon for a federal judgeship by President Reagan, said in a formal statement: "We categorically deny that Ms. Trimble or any of the IRS agents committed perjury or obstructed justice. We will answer the specific allegations which have been made in due course in the proper forum."

Motz added, "We believe that it is improper for The Post to publish an article based upon the one-sided representations of the defendants before the government has had an opportunity to fully present its position to the court in the time frame estabished by the court. The damage which you will cause to the reputations of dedicated government employees by your premature article is incalculable and can never be repaired."

Obviously there's a whole other side to this story," Trimble said. . . . "Nothing is as simple as it sounds . . . . I think you're going to get a fairer picture when you read our response."

Trimble, a veteran of the U.S. Attorney's Office here, is considered by colleagues to be a competent and effective prosecutor.

The company, which has handled jet planes for corporate VIPs. First sheiks and such celebrities as singer Frank Sinatra and the late rock music idol Elvis Presley, is charged with conspiring to siphon off millions of dollars in income to its subsidiary in Bermude to avoid paying U.S. taxes.

According to the indictment, between 1974 and 1980, Omni transferred $16.8 million in airplanes sales and leasing income to the books of its Bermuda subsidiary, called Euro Airfinance at the time and now called Omni International, Ltd. The firm reported only $91,574 of that income on its U.S. tax returns, the indictment says.

Altogether, the indictment says, Omni reported $4.4 million in taxable income in the fiscal years between 1975 and 1980, though "the taxable income and tax of the corporation . . . were substantially greater than the amount disclosed."

Omni was indicted in March 1984 after an extensive investigation of the company's far-flung financial operations.

According to court papers, the allegations of prosecutorial misconduct originated when defense attorneys, including two former high-ranking Justice Department tax division prosecutors hired by Omni Vice President Evan T. Barnett, found government witness interview summaries that they said appeared to be altered or written long after witnesses said they were.

The two former federal prosecutors are Cono R. Namorato, who once served as deputy assistant attorney general for the tax division, and Bernard S. Bailor, who was a senior trial attorney in the division. Namorato is also a former IRS agent.

According to papers filed by the attorneys, Trimble and IRS agents had unsuccessfully attempted to persuade an attorney for Omni to cooperate with the government by giving information about Omni tax procedures in exchange for Immunity against possible prosecution. In an April 1984 motion to dismiss the charges, Omni claimed that that effort and interviews with witnesses privy to information given the company by its attorneys violated the attorney-client privilege of confidentiality.

This week's Omni filings further claim that Trimble was questioned about the strength of the Omni case by tax division lawyers at Justice Department headquarters in Washington. She directed IRS agents to alter existing interview summaries or create new ones to reflect a heightened desire by the agents to avoid breaching any attorney-client confidentiality, according to papers filed by Omni attorneys.

The attorneys' allegations focus on 10 summaries of interviews conducted by the government, contending that all were altered or written after Omni's motion to dismiss the indictment, not before, as several government witnesses claimed during and evidentiary hearing before U.S. District Court Judge Walter Black last summer.

At last summer's evidentiary hearing, Lyndal Shaneyfelt, a retired FBI documents expert called to testify by Omni's attorney, contradicted claims by IRS agents that the summaries were written in 1983 prior to Omni's motion to dismiss the indictment, according to the Omni papers.

He said watermarks on several of the summary sheets had the date 1984 impressed on them, and those sheets were not delivered to the U.S. Attorneys's Office in Baltimore from an Ohio printing plant until late April 1984, according to the Omni papers. Furthermore, they said, Shaneyfelt testified that Trimble's secretary had changed word processing disks during the course of the investigation, and that later disks produced a slightly different comma than the earlier ones, and could therefore prove when certain documents had been typed.

Omni attorneys contended in the papers that several documents said by the government to have been written before Omni moved to dismiss the indictment that actually had to have been written after that motion was filed.

□ 1230

Mr. MOYNIHAN. Mr. President, this resolution, in the main, I believe, arises from a request I made of the distinguished President pro tempore and chairman of the Judiciary Committee in the course of the impeachment proceedings which the Senate went through several weeks ago. On that occasion, as on previous occasions on the Senate floor, I questioned the activities of some of our law enforcement agencies in the executive branch in dealing with legislative branch.

The most celebrated of these was the so-called Abscam operations, which led the Senate, some 4 years ago, to establish a select committee to study undercover activities of components of the Department of Justice.

On the occasion to which I refer, I read an excerpt of the final report of that select committee, which was chaired by our distinguished and treasured colleague, the senior Senator from Maryland [Mr. MATHIAS], who, unhappily, is departing this Chamber at the end of this Congress. Having looked at the matter in an impartial, bipartisan manner, the Select Committee said: "Descriptive targeting occurred in Abscam on the basis of political party and on the basis of geographic location." This one sentence in essence, describes my concern.

Basically, the select committee referred to a point during the Abscam investigation at which the Department of Justice officials, in an understandable and organizational effort to appear impartial, frankly said: "We are getting too many Democrats; we need to get some Republicans." They quote an exhange between two of the people involved:

CRIDEN: That's what you would prefer, to have guys spread out all over the conutry?

DE VITO: Well, I would. I would. And I tell you what I would prefer, too: Like I have discussed with you, and I even mentioned it to Angelo [Errichetti], it would be nice to have some guys that are Republicans in here, too. Only for the fact that it doesn't look like the push would be comin' from just, ya know, one group. . . .

No one ever suggested any political motives on the part of the Department of Justice, but the dynamics of certain investigations can reach the point where you have events of this kind; and, basically, the questions arises of an invasion by the executive branch of the legislative branch—not intended, but nonetheless real.

I had hoped that we might look into this. The select committee set forth some guidelines for such investigative activities. It seems to me that the Judiciary Committee could very usefully, as an oversight measure, ask how those guidelines have been implemented, if they have been and whether they seem apt.

This is an altogether friendly inquiry but one that is of concern, and a serious one.

To give a few examples, of what I was referring to at the time of the impeachment I mentioned specifically a number of Senators in this body, and I was one, who through no fault of their own had been mentioned during Abscam. Apparently, at one point or another, someone allegedly asked: "See if you can get him. See if you can get this other person."

This is well known, but the aftermath is not well understood, and I hope these studies might reveal this.

I am particularly concerned that the superb memory of my dear colleague Jacob Javits be attended to in this regard, because he felt very hurt by this action, a man of impeccable integrity, to find himself caught up in this squalor, for no other reason but the dynamics of an organization.

Mr. President, in order that I might make clear what I referred to, I have some materials on this matter which I ask unanimous consent to have printed in the RECORD.

There being no objection, the material was order to be printed in the RECORD, as follows:

[From Newsday, December 13, 1980]

FBI LET EX-CON PICK BRIBE TARGETS

(By Anthony Marro)

WASHINGTON—FBI operatives, acting on nothing more than the word of an elderly ex-convict that he might be able to arrange a political fix, authorized large cash bribes during ABSCAM to three prominent New York politicians, and to a former U.S. Senator from Oklahoma who, at the time of the go ahead, had been dead for nearly 17 years.

No contact was ever made with the men, and no bribes were paid. But defense lawyers in the bribery conspiracy trial of Rep. Richard Kelly (R.-Fla.) and two other men returned to the tape-recorded scene several times yesterday, to persuade jurors that the Justice Department was targeting people for bribe attempts without solid evidence that they were anxious, or even willing, to be bribed.

The three New York politicians were Sens. Jacob Javits and Daniel Moynihan, and Rep. Norman Lent (R-East Rockaway). The man sent to bribe them was ex-convict William Rosenberg, 67, of Lynbrook, who had suggested to one of the undercover operatives that he already had made contact with all three, and thought they would be willing to perform favors for an anonymous Arab sheik.

In fact, defense lawyers said and Justice Department officials admitted, that Rosenberg hadn't been near any of the men, never made an approach to them and never passed any funds. At one point, he referred to Lent as "William," rather than Norman. And apparently neither he nor the FBI operatives realized that a fourth person targeted for an attempted bribe, former Sen. Robert Kerr (R-Okla), had died in January, 1963.

Javits could not be reached for comment yesterday. But Moynihan and Lent reacted angrily, saying they didn't know Rosenberg, and criticizing the FBI for setting him after them. Moynihan, who telephoned FBI Director William Webster yesterday to protest the action, later called it "contemptible and totally unwarranted behavior," and demanded an apology. Lent said he was sorry that "such irrelevant and scurrilous statements should be permitted to be aired in open court."

The authorization was made by Melvin Weinberg, the con man turned FBI snitch who was a central figure in ABSCAM, posing as a representative of a fictitious Arab sheik who was seeking official favors from political figures. At one point, he told Rosenberg: "Javits we would definitely like, and we'd like Moynihan." He said the going rate was $50,000 for a senator, and $25,000 for a representative, but in Javits' case it would be less than $50,000, because Weinberg was led to believe he wouldn't run for re-election.

"We'll buy him for two years then," he said, apparently thinking Javits was up for re-election in 1982, rather than 1980. "Tell him we realize it's only two years, so we cut the price down a bit."

Anthony Amoroso, the FBI agent who supervised Weinberg during ABSCAM, testified that "it didn't bother me" to let Rosenberg try to make such offers, because no investigation started unless one of the politicans agreed to a meeting. Asked by Kelly's lawyer, Anthony Battaglia, if the FBI hadn't, in effect, manufactured the crimes now being prosecuted, Amoroso replied: "We didn't create or manufacture anything. Whatever these people [such as Rosenberg] brought us, we took."

It was Rosenberg, a former securities dealer who was convicted of selling stock at inflated prices, who led the FBI operatives to the men who eventually led them to Kelly, who is charged with accepting a $25,000 bribe.

The references to Javits, Moynihan and Lent are only three of many in the ABSCAM tapes in which middlemen, hoping to get a cut of money paid to officials, overstate their supposed influence, trying to impress the sheik's agents of their worth. In this particular case, prosecutors argue that Rosenberg did produce a congressman, Kelly, who accepted a bribe.

Defense lawyers, however, are trying to show that there was no probable cause to think Kelly was corrupt, and thus to persuade the judge, if not the jury, that there was no reason to have targeted him for a bribe offer. Two weeks ago, a U.S. District Court Judge in Philadelphia threw out convictions of two city councilmen caught in ABSCAM there, saying, in part, that the FBI had gone after them without good cause to think they were predisposed to accept a bribe—and thus had overstepped the bounds of investigative activity.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, DC, January 27, 1981.

Re ABSCAM.

Hon. DANIEL P. MOYNIHAN,
United States Senate,
Washington, DC.

DEAR SENATOR MOYNIHAN: As you know, during the course of the ABSCAM investigation, an individual named William Rosenberg made certain false representations about contacts with you. These remarks were tape recorded, and after the indictment of Rosenberg and his co-defendants in the case involving Congressman Richard Kelly, the tapes were provided, among others, to counsel for the defendants.

When the Government interviewed Rosenberg in connection with his ultimate plea of guilty, he admitted that his statements concerning you were false. Thereafter, defense counsel and the court were fully advised that the statements concerning you were untrue, Indeed, during his opening statement, counsel for one of Congressman Kelly's co-defendants advised the jury that Rosenberg's statements on that tape were false.

Neither in the Kelly case nor in any other ABSCAM case has the Government sought to introduce the Rosenberg tape in evidence. However, defense counsel in the Kelly case introduced the tape during the cross-examination of a government witness, and this was the first public revelation of the tape.

We regret any inconvenience Mr. Rosenberg's remarks may have caused you, but it is quite common during any prolonged undercover operation to receive statements from targets which ultimately proved not to be true. There is, of course, no way to screen such statements in advance or to prevent even untrue statements from being made part of a public record when they are relevant to a criminal prosecution.

Sincerely,

CHARLES B. RENFREW,
Deputy Attorney General.

[This is a conversation between Melvin Weinberg and William Rosenberg, 9/10/79, JFK Hilton, New York (Q-19).]

WR—William Rosenberg.
MW—Melvin Weinberg.
BB—Bruce Brady.

WR. Hello Bruce.

BB. How are ya?

WR. How's the handsome young fella?

BB. Well, I'll let ya know . . .

WR. You're getting taller Bruce. Either you're getting taller or I'm getting shorter.

MW. . . . 6:30 . . . Yeah we gotta be there by ah 7:30 at the latest. It can't be no more than ten, fifteen minutes away right?

BB. Oh you mean goin to this airport over here?

MW. Yeah, Kennedy.

BB. Yeah, that should be no problem. I'm gonna leave my stuff here.

MW. All right. You need the keys to the other room or what?

BB. . . . I'll come in here . . . I got that key . . .

MW. Ok.

WR. So how ya feelin Mel?

MW. Good.

WR. I'm glad.

MW. So you have good news for me or what?

WR. Well I don't know whether I've got good news for ya or not. Yeah, I don't know whether I have good news for you or not. It's ah . . .

MW. Did ya reach out for them or what?

WR. Yeah. One guy Javits, doesn't know if he's going to run.

MW. When's his election come up?

WR. Well it'll be up ah in '80 or '82.

MW. Well that's all right.

WR. Moynihan wants to know if I have to register an a private agent, foreign agent representing a foreign corporation. Both of them and a fellow by the name of Norman Lent who's at the House of Representatives?

MW. Yeah.

WR. Ah he didn't say anything about this, Moynihan wanted to know whether I had to register as a foreign agent.

MW. No.

WR. Cause, I. Ya know I counldn't even identify the corporation that I was representing.

MW. All we want, all we want is that we call on him that he will put a bill in to sponsor him in the country.

WR. To sponsor X person in the country?

MW. Yeah. If . . . we may not even call on him.

WR. OK. The best way if this is to be fed into their hopper is as a political contribution. Neither one wants to talk to outsiders.

MW. Well what do ya mean by political contribution?

WR. As a political contribution to their re-election, where the corporation . . .

MW. I don't care, I don't care what they call it you fellow me? I want a one and one sit down with him. Let him and Tony, I don't have to be here, sit down with him and Tony will give him the fifty G's and, what he wants to do that's his business.

WR. All right, we have to, you know, it'll take another . . . We'll know after the end of October, early November what is the situation with both of them. With Lent I can get a little better action but he's in the House of Representatives.

MW. Now when you say House of Representatives.

WR. Yeah.

MW. What for state or the government?

WR. Oh no no no no, I'm talking federal government.

MW. That's all right, ok. That's all right, no problem.

WR. Ok, then I will be able to get to him in about two weeks. He's five minutes from my house.

MW. All he has to do is tell us that he will sponsor him when we call on him, that he will sponsor him to come into the country . . . Whatever he's gotta do, he knows what he's gotta do.

WR. And he's ah twenty-five, because he's a Representative?

MW. Huh?

WR. He's twenty-five because he's a Representative?

MW. What do you mean twenty-five?

WR. He's in the House of Representative.

MW. He gets twenty-five thousand?

WR. Yeah.

MW. Yeah.

WR. And the others are fifty?

MW. Fifty.

WR. How about outside of the state completely?

MW. I don't care where it is. We wanna get as much people behind him, that if the time comes that he has to leave his country that he can go and say here I got this political pull that these people are gonna back me up to come in.

WR. Ok.

MW. The more the better.

WR. The more the better all right. At the same figures?

MW. Yeah same figures.

WR. Can I mention any names as to who the person is?

MW. Yeah, you can mention the names. It'll be either Kambir Abdul Raman or Yassir Habib.

WR. And could you identify them for me so I can . . . Tell me exactly what you want me to tell them. Who are they? Are they part of the family that run the government? Are they part of the government? Are they independent?

MW. They're independent.

WR. . . . operators?

MW. Operators over there that . . .

WR. Petroleum operators?

MW. . . . that realize when the.

WR. Time comes.

MW. Time comes they have to get out and they would . . . need a clout to get into this country. Simple as that.

WR. Well.

MW. Who ya got in mind outside of the state?

WR. It's not so simple, and I know what you mean by it's simple as that for them to be sponsored, but they have to have a reason for being.

MW. No they don't If they're a refugee from their country.

WR. Well these guys are not refugees.

MW. They will be when they come . . . wanna come to this country.

WR. How soon will they want to move out?

MW. They may not move at all. They just want to prepare for the future they don't want the same trouble as Somosa and the Shah ran into, that the Shah put all his money on Nixon and Nixon can't do a freaken' thing for him. And Somasa after he made the deal with this government and they were gonna let him in this country turned around and they may throw him out. They're gonna extradite him. He just wants to make sure that when his country's overthrown and he gives to these people that he can call on them to help him. If they can't do nothing I mean, as long as then, they try to help him. He realizes that everybody can't help him but at least they can try to help him.

WR. This is a one-time deal?

MW. One time. And then if he calls on them then they get paid the balance of the money.

WR. Well how—what's the balance?

MW. It's worth a hundred grand.

WR. You get fifty down and fifty when they . . .

MW. Right.

WR. . . . deliver . . . Oh.

MW. It's as simple as that.

WR. As long as you spell it out for me so I know what I can say. I didn't know what the hell to say to them.

MW. Who, who are the other guys outta state ya got?

WR. Well, there's somebody in Oklahoma. There's somebody in California.

MW. Who in Oklahoma?

WR. A guy by the name of Kerr.

MW. Kerr? What's he, a Congressman or a Senator?

WR. Oh he was a Senator.

MW. Oh a Senator.

WR. Was his family. He no longer is Senator there now, but the family's been . . . He's been a Senator for twenty-five, thirty years . . . retired . . .

MW. Oh and . . .

WR. The family nows him well, I don't know the people. I have to go there. I may have to see them. The other people would be out in California and I don't know who I'll be able to call on there, but these are the connections that I have at this moment.

MW. Javits we would definitely like and we'd like Moynihan.

WR. Well I don't know whether Javits is going to continue. I'll have to see him in November.

MW. Well if he's, if he's not . . . what has he got to lose?

WR. He has nothin he has nothing to lose but he may not be a Senator, and he . . . do it under those circumstances. If you want a man to put in the word at the right time it could be five years down the line, it could be two years down the line, as you say it could be ten years down the line . . . You don't want a guy that's retiring at the end of this session.

MW. I mean ah. Let's not kid each other, ten years, I mean ah only a fool would think he's gonna go look for a favor . . . ten years they can be kicked out of office in four years.

WR. Well that's . . . ok ah.

MW. I mean that's his problem.

WR. He's not the kinda guy who'd take it on that basis. He would . . . you know what he has to deliver and he'll sponsor the thing, but I . . . if his time is limited ah . . .

MW. Well, we'll buy him for two years then. Tell him we realize it's only two years so we cut the price down a bit. Of we need him for two years he'll make a little bit less money. That's fair enough.

WR. I'll have the . . . I'll arrange for a meeting just between Tony and them within the next two months.

MW. All right, but I don't have to be there, let them . . .

WR. I don't have to be there, what the hell . . .

MW. . . . talk one and one and make the guy safe.

WR. Exactly right. I'll just give them the rough idea of what this is about. Because they asked me. They had, had to know whether or not I was working with a . . . ah . . . as a foreign agent.

MW. No.

WR. You know lobbying for . . .

MW. What, will you explain to them what it is.

WR. I will, I told them what it was but I didn't know how to handle it.

MW. We don't wanna wind up like the Shah with all . . . he put all his eggs in one basket.

WR. We're only talkin about two people now.

MW. Yeah, yeah. Whoever else you get, the more the merrier.

WR. No no. Two people to come out.

MW. One person . . . either one who wants, only one. If the other guy wants him, he gets paid again for the other guy.

WR. Oh I see. Yassir Habib or . . .

MW. Yeah, either one.

WR. All right, long as I have a clear idea of what I'm doin'.

MW. All right?

WR. Yep. Now, now. If I can't get the House of Representatives guy ok I'll let it go. I'll just work with the Senate.

MW. Now, what about that accountant you said that's . . .

WR. Ok. I spoke with him and he said that it is tougher to get the certificate than he thought. And he's gonna put some pressure to bear on them. They are not even . . . revealing the certificates or giving them to the people who are actually doing the purchasing of the gold and having it escrowed. He has had a great deal of trouble getting them. However, I spoke to him today and I said the folks were back in town, you tell me what's a good afternoon to make an appointment, how about Thursday? What's today—Monday?

MW. It is Tuesday, how about Wednesday?

WR. Wednesday is fine. Wednesday afternoon you want him here or go out to Smithtown?

MW. No. Let him come here.

WR. How is this hour? Earlier, later?

MW. Let's make it ah early in the afternoon.

WR. How about 3:30?

MW. 3:30? Ok. Wednesday at 3:30 is fine.

WR. Put it down in your book. Aah can I use . . . aah, no he won't be there. Well, maybe. Can, can I use your phone?

MW. Huh?

Wr. Can I use your phone?

MW. Yeah. Right there.

WR. Ok, and I'll call him. I'm gonna tell him what's what.

MW. Let me get my book.

WR. He may not be there at this hour. (Dialing of phone) Ash. Oh 77, ah 718. Right . . . Stan, hi. Ha ha, I knew you're not there I'm just telling ah Mel that you probably won't be . . . But I took a chance. All right. I'm over at the Hilton International it's on Van Wyck going to ah to Idyl . . . ah to Kennedy. How is 3:30 Wednesday afternoon? I'll meet you at this hotel, their room number is 718. . . This Wednesday, the twelth . . . It's probably ok? Good, 3:30, Room 718, You're gonna meet a man by the name of Mel Weinberg, if I should be a little late or ya know. And I'll, I'll try and be here a little before so we can do it and please make sure if you can about the other ah stock certificates . . . Ok? 3:30, Hilton, ah Hotel at the Van Wyck, you know how to come in off the service road? Fine, good, yeah, J . . . JFK . . . I beg your pardon? Yeah, yeah, yeah, I think they call it the Riviera now or something . . . It's the Hilton right on the corner . . . right next door to the Howard Johnson's. 718 at 3:30, we"ll see ya Wednesday. Yep. Ok, I'm sitting with him now so let's make it confirmed thing, all right? We're set. Now, if you can get a hold of your buddy on that other thing be sure you get it. Good, take care. Ok, we're set.

MW. All right.

WR. He will ah, he will, ah, try and get that certificate. Please tell me . . . ah, I'll make it my business to see him earlier, what do you want to use his services for? The certificate, number one . . .

MW. That's the gold certificates, he's got.

WR. That's all I'm taking about. Is there anything else you want to use his services for?

MW. Well speak to him, maybe he can come up with somethin'.

WR. He is a extremely bright, intelligent . . .

MW. . . . Let me ask you a question, you say he works for the boys right?

WR. He just came back.

MW. What boys does he work for? I ask ya . . . Ya know I hear a lotta bullshit guys workin for the boys.

WR. I can't. I don't . . . I can't mention names and I have never discussed it.

MW. Between me an' you . . .

WR. I can't mention names. I don't know some of the names.

MW. Well, who ya know, there's a reason I'm askin . . .

WR. I have, yeah. I have worked with a guy named ah Vinnie . . . I can't give ya his last name at this point. They've been in the trucking business out here on the Island. They've been friends with him. He is definitely one of the group. I don't know what group and what. But I know that he works very hand in glove with several in this thing. If he wants to talk, he'll talk. If he doesn't wanna talk he won't talk.

MW. Well ya know I hear a lotta bullshit the guys work for the boys and all this. . .

WR. Oh no, oh no. Hey Mel . . .

NW. When you say he works for the boy what does he do?

WR. I Mean . . .

MW. He handles it watches their money.

WR. He watches their money. He puts it in the proper places for them. I know he was in Switzerland, ah six months ago, where what his cut was about a quarter of a million dollars for taking care of money handled properly, so that they either work in a trust fund which was lost in the pile of continuities that they made. Or bearer bonds were secured which could be cleared through banks without the slightest bit of trouble, without an identification. And he knows all the ins and outs of taxes and manipulation on whatever has to be done when it's shady. I know this guy is good. I've worked with him for years.

NW. Well, cause I know quite a few of the boys out here.

WR. He'll mention the names if he wants to. I can't, I don't want to.

NW. I just wanta know if I'm gonna trust the guy with my money I like to know who. . .

WR. I trust him with mine and you, you check it out yourself.

MW. Well the only way I can check it out is you know if tells me who he works for.

WR. Be my guest. I vouch for him without hesitation.

MW. And what's he gonna get a sample of them, and then he'll get them printed up or what?

WR. He'll get the sample, then he'll have them printed up.

MW. All right.

WR. And maybe it'll work.

MW. Ok.

WR. . . . The ah. Now, here's what I secured for you in the way of some ideas. Couple of places that are outrageous. I'm talking about, you wanted a New York setup. Let me start with the best set up and the worst deal. It's the Waldorf Towers. They want $59,000 to a hundred and twenty thousand a year with one bedroom. But you could have the suite, you could have a girl there, and telephone service, all things set up, that's $5,000 to $10,000 a month.

MW. Nah, ten thousand a month is a 120 grand a year.

WR. That's what it is . . . That's what I'm tellin' ya.

MW. . . .

WR. That's what I'm tellin' ya. So, it's gonna be fifty-nine to a hundred and twenty thousand a year. They also have two-bedroom set ups from ninety to a hundred and fifty, so you're talking about ah seventy-five hundred to ah twelve-five or better . . . Ok, that's that's the top. Ok now at the Hampshire House on Fifty-ninth street, they have . . . have gone condo, so their suites would cost seventy thousand dollars furnished with a bedroom ah living room and two baths—about the fourth floor. There's one available October fifteenth. And the carrying charges would be fourteen sixty a month. In my opinion if you lay down 70 grand for the apartment as condominium, that property would never depreciate.

MW. . . . one bedroom aren't enough for . . .

WR. Ok. I'm just tellin ya what it is. But it's possible that you can get a two bedroom but this is what they have available October first. The New York Sheraton which is on Fifty-sixth and Seventh . . .

MW. Yeah, I know where it is.

WR. They are running sixteen hundred to twenty-eight hundred a month, one or two bedrooms, depending on the size. The Gotham. You see what I did I tried to get a couple of areas around town. The Parkland on Fifty-ninth Street doesn't have anything. I didn't bother with the Essex House cause I found that most of these prices were running pretty consistently outside of the Waldorf. The Gotham, on Fifty-Fifth Street and Fifth Avenue. One bedroom, twenty-eight hundred a month. But again we're talking suite and very nicely furnished and this of course would give you the facilities. If this is of interest to you, ah, take a look at them, check it out and I'll go further.

MW. All right, give me the list . . .

WR. It's all yours. And a couple of names there of people that you can contact, there's a Mrs. Holt at the Gotham there's a Mr. Vicerliny or something like that at the New York Park Sheraton, and ah the names . . . do what you please . . . If you want me I'll go there if you don't, you guys accommodate yourself.

MW. Well we're gonna be tied up uh, like we got a meeting tonight, yet. And we'll be tied up all day tomorrow, and ah Wednesday we'll see you at 3:30.

WR. Wednesday we'll see you at 3:30.

MW. And you work on aah . . .

WR. I will work on the other aspect because I have a clearer idea now of what you want. And if they say yes, ok . . . If they say no I'll tell you I can't make the appointment.

MW. Well what's your feeling so far?

WR. Oh there's an opportunity whether it's with these two guys or any other two. It will happen. What I'll do is I'll reach out for a few people and I'll ask . . . I wanta meet these people. I'm working on behalf of some friends and ah I'll lay it on the line for these. . . . And, also, I may not even spell out dollars and cents I may simply say very substantial fees, if when needed they can be called on to sponsor a bill to bring in Mr. Smith or Mr. Jones and I would like them to meet a man who is empowered to make the arrangements, and you and I will keep our nose clean. Make sense?

MW. All right.

WR. Is this the way to handle it?

MW. Well it's good to let them know the figure.

WR. All right, I'll bring it up. I'll tell them that they can pick up fifty grand, fifty grand when they're called on to deliver. Or twenty-five thousand, twenty-five thousand when they're called on to deliver. I assume that's the figures you want me to use . . .

MW. Right.

WR. Tell me, what's good with us.

MW. It's a matter of time. The banks said just to get the money out. That's a headache. Every time we go over to go over to get the money out the screwabll over there backs down. He's . . . not enough to get out. He's supposed to have it straightened out by next month. He gave his word . . .

WR. By next month you say?

WR. We should, by the end of this month even start really be movin.

WR. . . . wonderful.

MW. I spoke to Bill Eden.

WR. When?

MW. He called me. And I spoke to him, I called him back.

WR. I said nothing.

MW. Yeah. I told him exactly how it's goin'. And I says soon as it breaks he'll be the first one to know.

WR. Ok. I don't I don't think I've spoken to him since you work here. But before then . . . you run wherever you have to go.

MW. Yeah I got some tickets . . .

WR. Yeah, you run wherever you have to go. I don't say a word. That he . . . I told him a couple of months ago as soon as I hear right in line we'll take care of what we have to. And that's it. I said nothing and he probably told I didn't say anything to him.

MW. All right.

WR. That's it. What about the Chemical ah Bank aah the chemical plant in the . . . chemical plant . . . When do you think we can come to a conclusion on that?

MW. That should be sometime in November, should be closed. That should be definitely closed sometime in November . . . near the end of November.

WR. What's doin with your wife, did she go over?

MW. Huh?

WR. Is your wife over.

MW. Yeah, yeah, . . . yeah she went over.

WR. . . . help her.

MW. Oh, let's hope so . . .

WR. When are we supposed to sit down with those guys from the mine and chemical . . .

MW. Just as soon as the money comes in we're ready to close you'll be at the closing. All right? and I have . . . I told them already that your got a finder's fee coming.

WR. Your did tell 'em?

MW. Yes.

WR. Did you tell it to Errichetti?

MR. No I spoke to the attorney on it and there's no problem.

WR. And he says no problem?

MW. No. It worked . . . we'll work that out . . .

WR. Oh that's beautiful. Well, I can't ask for anything more than that.

MW. What they give ya I don't know. That, ya know.

WR. Well your got the figure in your mind.

MW. Oh I figure it's worth any where up to a hundred thousand for ya . . .

WR. We were talkin about half a million the last time . . .

MW. Well if we get it, I'm talkin the least they should give ya is a hundred . . .

WR. From each one?

MW. Huh?

WR. From each one?

MW. No, nor for the whole deal, but I think that they'll give ya more. I really do.

WR. Considering what ya said before that that's ah . . .

MW. Well, ah hey.

WR. We we're talkin about a half million.

MW. I said . . . well you're entitled to what, two points?

WR. All right it's a hundred million dollar deal. That's a hell of a . . .

MW. So, will argue over it . . . you'll have to open your mouth and talk. Tony and me will be in your corner fightin for you. All rightie? I wanna take a shower.

WR. Yeah, you go ahead. Now what else can I do as far as you . . . and where else do I belong in this picture?

MW. Well you work on the other thing which is very important to us.

WR. I'll do the best I can. Now what else can I do in this picture? When do you think something can be done with me here?

MW. Not to the first of the year, I told ya. As Tony told they're hiring around the first of the year. We'll see what we can do for ya . . . Fair enough?

WR. All right, that's it Mel.

MW. And we'll see you Wednesday at 3:30.

WR. 3:30 I'll be here.

NW. All rightie?

WR. Yep . . . Stay well.

MW. You can go out this way . . .

WR. Yeah sure.

MW. I'm waitin for Tony to come in here.

WR. Huh?

MW. I'm waitin for Tony to come in too.

WR. Tony's coming here?

MW. Yeah. All right?

WR. Yeah, take care.

MW. Now keep in touch with me, and I'll see ya Wednesday all right?

WR. Yeah . . . aah person to person.

MW. Well, we'll normally be here, so . . .

WR. Yeah . . .

MW. 746 7031. 7.

WR. 305?

MW. Yeah. 746 7031.

WR. Ok.

MW. Bye bye.

[A transcript of a conversation recorded between William Rosenberg, Mel Weinberg, and Tony DeVito on 10/21/79 at Hilton JFK. (Q–49)]

WR. William Rosenberg.

MW. Mel Weinberg.

TD. Tony DeVito.

WR. You guys been workin' hard, eh?

TD. Huh? Nah.

MW. Yeah.

WR. That's really something, what's the good news for us?

TD. Huh?

WR. What's the good news?

MW. What's the good news?

WR. Yeah.

MW. Well, we're, we got a place down in Atlantic City.

WR. Good.

MW. We got the apartment.

WR. Oh, that's good.

MW. And we're gettin' ready set to move. We deposited a million dollars in a bank down there, the Atlantic Bank.

WR. Where ya down at Ocean City?

MW. Uh

WR. Or are you right in the ci . . . in the . . .

TD. No, the, the townhouse is in Ventnor.

WR. Wha . . . da . . .

TD. Which Ventnor, right . . . ya know, just on the . . .

WR. Yeah, right next to, gee right next to . . .

TD. south, south part of, uh Atlantic City.

WR. Sure.

TD. Okay. And then, then we put in

WR. Very good.

TD. Uh, we talked to the, to the Mayor and he suggested that we put the, ah, th . . . for reasons, ya know.

WR. Oh sure.

TD. Give it to him. He . . . he wanted us to put the money

WR. Sure.

TD. Atlantic Bank. That used to be called Broad, Broadwalk Bank?

WR. I don't know what they were. I, I don't come over there

TD. They changed. Yeah, they changed over.

WR. I think he had a couple of friends who ran the bank.

TD. Yeah.

MW. Oh, yeah?

WR. Errichetti you're talking about?

TD. Yeah.

WR. Yeah sure.

MW. . . . Isn't that McDonald's bank?

WR. Yeah, I think that was the name, and, uh he thought that, uh . . . Oh, Jesus, this goes back seven, eight months ago. He thought . . . He had a couple of friends down there. He thought it would be a very feasible thing to set up a good line with guys like this because they were important in the town.

MW. Well, that's all taken care of so we're really uh . . . ya know, movin'.

WR. that's good.

MW. Next thing is, uh, we got an option on a piece 'a land . . . been secured.

WR. Next to where?

MW. W. . . . We got an option on a piece 'a land down there. Next thing is to secure the damn thing. Gocionni, pleased nothin's happenin' to it. They stopped work completely. Hotel is closed up.

WR. They just had an article in the Post two days ago that he was suing some trade magazine, I guess it's called Record or something like that, for twenty-five million because they said he had Mafia associations. And, uh, they mentioned that his casino was opening in December. And . . .

MW. In December

WR. (Laugh) I'm quoting it from the paper just as I saw it.

MW. No way in the world he's gonna open in December.

WR. I'm telling you what they quoted. My . . . as a matter 'a fact, uh, my wife who brought it to my attention. It was in the Post, two days ago. I don't think we got the copy of it. But if we do I'll clip it out and I'll save it for ya.

MW. Nah, it's not important.

WR. It doesn't make no difference.

MW. Now, what about those, uh, people ya spoke to me, what's the story there?

WR. Everything is set. The way you and I were talking about it is absolutely wrong. There is no way to do it that way.

MW. Well, how do they wanna do it?

WR. It could be done absolutely legitimately, openly, not uh, excuse me. I shouldn't say it that way. Any way in which the thing will be done will be done with legitimate contributions which can show, and they will be done with approximately ten to twelve members of the House of Representatives to start with. And it will all be funneled through the executive director.

MW. Oh

TD. Well, explain, I, I don't . . . follow what you're sayin'.

MW. I don't follow you either. What do you mean by the executive director?

WR. There is an executive director of the GOP. By the way, I didn't attempt to tackle the, uh, Democrats. There's gonna be a real knock down, dragged out fight here, nobody knows where the hell they're goin', they don't know how they're gonna be able to evaluate anything.

TD. Uh-huh.

WR. So I went to the Republican setup. And the Republican setup will be handled through the executive director of the Congressional Campaign Committee.

MW. Who's that.

WR. A fella by the name of *Stockmeyer.*

MW. Stockmeyer?

WR. You never heard of him and I never heard of him until I was put next to him. But he will designate all the people who are to receive campaign contributions. And they will, in turn, work on behalf of the people you have in mind. Uh, there is a bill currently being discussed on contribution allowances. It was passed with a very tight vote. I mean something like 217 to 198, and they are not sure it's going to stick as far as this session is concerned so if you guys wanna move, ya gotta move fast, and this is so that contributions can be allocated . . .

MW. All right, let me ask you a question.

WR. before the end of the year.

MW. Let's say this Stockmeyer says that, uh, what we want, he wants so much money.

WR. Right.

MW. How the hell we know that h . . . they're gonna keep their promise, that he's not . . .

WR. Well, the way they do it now is you will have about from six to twelve guys. Let's take ten.

MW. Yeah.

WR. They will be across the country. He will, when we, we get this thing moving properly.

TD. Uh-huh.

WR. Assure Tony. Let's say we, uh, bring Tony in touch with him. Well, they don't want anybody involved. They'd rather you wouldn't even get set up, but I said there will be one guy that I would like to meet. Uh, there is no absolute guarantee it will pass, but there is a God damn good ninety-five percent shot, that it will

MW. Well, you don't follow me Bill. Let's say he. Let's take a round figure a hundred thousand.

WR. Yeah.

MW. All right?

WR. Yeah.

MW. Or six, whatever it is. And he's gonna . . . that . . . when they call on hm to get in the country, he's gonna give us six candidates are gonna . .

WR. Oh, no. Oh, no.

MW. What?

WR. No, this is gonna be set up in advance where th the men who are running for re-election or who are on the, already in the House of Representatives.

MW. Yeah.

WR. will be directed that a bill is to be brough forth

MW. All right, but how do we know that they're gonna do this, Ya know, this guy could take the money . . .

WR. In the same way.

MW. and say, all right, it was a contribution

WR. Let me tell you this in the same way that labor organizations, business people,

uh, trade associations, make contributions and build up political good will. There is

MW. Yeah, are the contributions they make, they can write that off. We don't have a write-off problem.

WR. You will have to do it openly. It'll have . . . You definitely will have a write-off problem.

MW. Well, we

TD. So, wha . . . wha . . . what you're sayin' is the way, the way they want this

WR. We're going to set up is that John Smith is going to receive a donation from Abdul Industries.

MW. All right, will this guy Stockhouse or S, Whatever this

WR. Yeah.

MW. . . . name is, come up and speak to us how to set it up?

WR. I'm telling you he . . . he's speaking to me and has already set it up.

MW. Yeah, no

TD. Yeah, but . . . then, w . . . w . . . w . . . what we're doing' is we're just gonna give the, uh, uh, of one fat . . .

WR. You're going to make a political contribution

TD. To the

WR. To John Smith.

TD. For the, uh, Republican Party is what you're sayin'.

WR. Of the Republican Party who will be in Minnesota.

TD. All right. Now.

WR. You'll make a contribution to Tom Brown who will run in Colorado. You will make a contribution to, uh, uh, Joe.

MW. Yeah but this could be a big ripoff too.

WR. Well.

TD. In other words how . . . how is the money gonna be . . . What I'm . . . what I'm not totally, uh, sure of here is, how is the money gonna be dispensed with? Are we supposed to give it to the candidate himself or . . .?

WR. Absolutely, You put it through the party to the candidate.

TD. Oh, in other words, we have to give it to the party sayin' . . .

WR. . . .

TD. this is for, for the candidate.

WR. They will direct you to make this out to the organizing committee of Tom Brown.

TD. Okay.

WR. And he is running in, uh. . .

TD. But I thought that there were only, um, uh, maximums that you could contribute to a . . .

WR. Of course, there is.

TD. But, uh.

WR. There is a maximum, and that will be the maximum and that's it. At this point it's ten thousand dollars.

TD. Right.

WR. The bill will call for about six so you will have an expense, depending on the number of guys who will be running, of somewhere between seventy-two and a hundred and twenty thousand dollars to put this across. You won't need more than about ten guys, and I'm figuring it on the basis of ten, twelve guys.

MW. But, I mean it's un . . . what I don't understand, are we gonna met Stockel and he's gonna explain it to us, uh

WR. No, You won't . . . you won't meet anybody. I'll be your liaison man there.

MW. That's gonna be no good

WR. What you will do

MW. That's gonna be no good

WR. What you will do, listen to me.

MW. Yeah.

WR. What you will do is you will receive instructions to make out a check for candidate Robert Freezle wa . . . runing in Minnesota, and you will send him a check for six thousand dollars as a political contribution.

MW. Well how in the —— he knows what we're giving him the check for?

WR. Oh, the rest I'll take care of that.

MW. Yes, but what guarantee when we go to Yassir what can we say guarantee we got. He . . . No, he wants know did we meet with somebody, I'm gonna say I met with Bill Rosenberg he told me, and then . . .

WR. No.

MW. . . . gimme a hunderd and twenty thousand dollars?

WR. No, no, no, no.

MW. What?

WR. As this thing is made . . . as contributions are made . . .

MW. Yeah.

WR. There will be a meeting set up with you and Freezle of, uh, Minnesota, or you and Brown of Colorado, you and Jones of St. Louis. Whatever it is

MW. Now you told me on the phone there was three candidates, two from . . .

WR. Yeah

MW. . . . New York.

WR. . . . That's not the way to handle it. I been down twice. That is not the way to handle it. You will . . . you cannot bring it through from the Senate for this kind of bill. The third guy is a guy who is in the House. His name is Lent.

MW. Lent?

WR. William Lent. He's up and coming young man. He's been very active, and he's part of the GOP. But you will not be able to set up anything, and as far as a guarantee is concerned . . .

MW. Well, I know that.

WR. Let me tell ya this uh, Mel, you're not buying a house.

MW. No. I . . . I understand.

WR. Clearing title and . . .

MW. that I understand, but the only thing I don't like.

WR. Okay.

MW. a guy could sit down wi . . . Let Tony sit down with Lent one on one. All right? And say, *Lent*, this is what we want

WR. Oh, I'll have that.

MW. (Here's fifty G's, for ya.)

WR. Oh, no. No, no. You don't give fifty G's. There is nothing here that they looking to take under the table. They are . . . It's important enough for them to have contributions made where they stand a chance for local reelection. These are not big guy. These are not in the class with . . .

MW. All right . . . Lent come up and say to us . . .

TD. Well let me . . . Let's do this. I, I understand what you're sayin'

WR. You see it, ok.

TD. I think, and what . . . what I think, uh, I have to do is I have to . . . Let me talk to, uh, Yassir and see . . .

WR. Oh you got it now, I need, look, wait a minute. Not only this, you have to give me the resumes on both guys because they have to know their background . . .

TD. Right.

WR. . . . otherwise they won't even touch it. And, I will set up an appointment with you, Yassir and Abdul, is that the other man's name?

TD. Right.

WR. Uh, in Washington.

TD. Um

WR. And there will be a meeting with the guy who will direct the funds. Don't misunderstand. And it will be clearly understood what these funds are to be used for. You guys aren't in the . . .

TD. All right.

WR. . . . electric power business.

MW. I don't, I don't think it's a . . . would be a smart move to bring Yassir and, uh, Abdul in to meet these guys.

WR. I don't know whether Stockmeyer will ask for this or whether or not be will ask for just the resumes, but I gotta submit those.

TD. All right, well, look . . .

MW. Well, the resumes all right

WR. And he may be . . . ya know . . . Let me tell ya another thing, Mel. The answer to th . . . a lot of this stuff is not along will this thing be done. I already know the approximate timing of this thing. They will bring this thing and put these bills into hopper approximately January of 1981 . . .

MW. Well, we don't want 'em in yet, they don't wanna a, a

WR. They don't go in before January of 1981.

MW. You don't follow me . . . They only want the insurance that when the time comes that they have to get out and they wanna come to this country to stay, that they got the clout to stay and nobody's gonna bust their chops.

WR. Okay. And there's ah another much more important point than that. Once this stuff is proposed at that time, and it'll be proposed in January, 1981, it'll be part of a whole raft of bills so it doesn't . . . nothing is conspicuous. This is the way it'll be posed. When they take advantage of it is gonna be their business.

MW. Now you spoke to, uh . . .

WR. I was in . . . Washington twice.

MW. And who'd you meet there with?

WR. Stockmeyer once, and once prior to that I met with Javits and I met with Lent. And this is the way I was directed. And compared to some of the guys that they are . . . I . . . I never mentioned that there was anybody else involved. I never mentioned any other names. They don't know Errichetti from a hole in the wall. I never mentioned Harrison Williams whom I know is involved with a couple'a things because I had seen him. I never said a word. All I asked was how do we play this game. 'Cause these people have to be done. I, I will tell you one thing that you must get, and I can't even move until you do. I must have backgrounds on these two men. How they are in the country, what they're doing here. Are they here on visas? Are they here for a period of time.

MW. Well, when they come here, they come on visas.

WR. Okay. Are they gonna live, uh, in Miami or in St. Louis or wherever.

MW. I don't know if they even wanna live here.

WR—This . . . ultimately now. They . . . They've gotta be able to . . . There'll be a, uh, some kind of investigation into these guys. They don't want any . . . L . . . L . . . Look, I know you're not working for any terrorists, but they sure as hell don't want anybody like that in this country.

TD. Yeah.

WR. And there won't be a Chinaman's chance of getting it through.

TD. Yeah. All right. Well, why don't I . . . I . . . I think I got you . . .

WR. If you can give me . . .

TD. following what you're sayin'.

WR. If you can give me the resumes that you want, and, by the way, the suggestions was made to move before the first of the year. Quickly. Because bills are up now, one of which passed the other day and yet may not go through the Senate, and it may be

tied up with a filibuster. Let me tell ya what happened politically. Some years ago Presidential campaigns were modified and deductions were made from your income tax and yours for Presidential campaigns that candidates themselves could put in any money they wanted. If you wanted to run for President and you had fifty million bucks, you could spend forty-five of it if you wanted to. And nobody could stop you. But when it came to him making a contribution to you or me making a contribution we were limited.

TD. Right.

WR. Okay. This is the way they resolved the Presidential bid. When the Congress was to come up nothing was done, and so a bunch'a guys in the Congress have been pushing for various bills. They were . . . He quoted me some figures. I gather something li . . . in the neighborhood of forty-five to forty-eight million dollars is spent a year by businesses, by trade associations, by, uh, labor unions. All have various committees that they make contributions to. Uh, General Electric's union gets two bucks a piece from the guy and they make a contribution to somebody in Schenectady who should be pro labor instead of pro, uh, c . . ., uh company. On the other hand, General Electric itself makes a contribution to the same guy or to a guy who's for their . . .

TD. Yeah their point of view

WR. Particular political interest. And this is the way it goes. Now, the change is right now. And they don't know whether the senate will approve of what the House did because the vote was almost a flat tie. It just was twenty votes made the difference in reducing the amount. The guys in the House are reducing the amount. They're bringing it down from ten thousand to six thousand. But these contributions, by the way, for whatever purpose you use, is absolutely legitimate. You don't have to hide anything. You issue your check as a political contribution to the guy that is designated to handle this particular thing. Now, if you're getting men running for House of Representatives, and they win elections or they are reelected, and the guys'll be, uh, directed to be, uh, fellas who at least stand a chance to be part of the party because these contributions are important. Sometime in the next couple 'a years these fellas are gonna have to take advantage of this. Otherwise the money they're putting out will be wasted. So if it is in their mind that somewhere around '81, '82, '83 they wanna come into the country as, whatever the designation will be, favored status, refugee control from their own country which they couldn't possibly write into that kind 'a bill. There may be other things that may arise. Me. These guys . . .

MW. Well, Bill, Stackhouse is . . .

WR. These guys . . .

MW. . . . the, uh, GOP.

WR. Let me tell ya something. Wait a minute. Let me finish and then you ta . . . ask me any questions. If I can answer 'em I will. I . . . I'll try. I'm trying' to give ya the whole substance of everything that was discussed with me. From time to time, some of these guys who are admitted, who are very wealthy, make contributions to universities, to, uh, social welfare program of some kind, whatever it may be. Generally speaking, once this thing is established them it's up to this guy, with his own public relations, to make, uh, hay in the country if he wants to, but he's in the country. He's an accepted, uh, citizen of the country, and if he's making investments in real estate, in, uh, the chemical company, in the mines, and so on, fine, he's a substantial, upstanding citizen. And all of these things work. You cannot guarantee anything. But ya got a hell of a shot. And I wouldn't discuss this with ya over the phone for that reason. You got a ninety-five percent shot that these fellows will be accepted.

MW. Now . . . Stackhouse, was he the GOP fundraiser?

WR. Yeah, this is all through the GOP fundraiser. He . . . He doesn't raise funds. Actually, he directs the funds that people are . . . are ready to make contributions to.

TD. Yeah. A lot of people contribute to the party as opposed to candidates and then . . . Yeah.

TD. . . . the party has to disburse . . .

WR. Then he disburses . . .

TD. Has to disburse the . . .

WR. But in this particular case, I think the technique will be he'll tell you where to put the funds.

TD. Right. Which candidates to . . .

WR. Which candidates and . . .

TD. . . . direct that to.

WR. Uh, I didn't know what . . . You said, uh, y . . . you'd like a little surety on this thing, considering the amount of money and what you thought you would like to spend. I said figure roughly we'd need about ten, twelve guys. And if the limit is six thousand, it'll cost about sixty thousand. If the limit is ten, it'll cost a hundred to a hundred and twenty depending on what the limits are.

MW. And what did Javits say to ya?

WR. I can't hear ya.

MW. When you spoke to Javits what did he say?

TD. Mel, why don't you take the cigar out of your mouth when you talk to him.

WR. Aah

MW. (Laughter) Why?

TD. So he can hear ya.

MW. He's gettin' too old.

WR. Yeah, I'm getting a little old in one ear, on the left side. He was the one who directed me into this thing. This is nothing. You can't buy him. He is at the tail end of his political life. He doesn't know how long. He doesn't even know he's gonna run again. The papers are picking him for the fact that he may go for reelection, but . . . And he's a hail and hardy guy. But he's not sure and this is not the way to do it, and he wouldn't put his reputation on the line for any amount of money that you could come up with. Whether it was fifty thousand or a hundred and fifty thousand or five hundred thousand. He just wouldn't do it. But he directed me on how to handle this. He won't oppose it, don't misunderstand. And if anything comes through and it has to be approved, it'll, ya know, uh . . . He's a . . . Favors, ya . . . I never ask these guys for anything. I never look out for anything at all, and if I need a favor for something like this and there's somebody ready to pay like you fellas are for this task, we would have been all wrong to have gone the other route.

MW. How 'bout Lent?

WR. Lent could be part of the, uh, contributions that will be received.

MW. Was he a Congressman?

WR. You'll meet Lent. There'll be no problem with Lent.

MW. Is he a Congressman, Lent, or what?

WR. Yeah. Yeah.

TD. All right. I'll tell ya what. I think what I'll do is . . . The next time I have to go over there I'll sit down with them . . . and discuss with them just what you said . . .

WR. Fine.

TD. . . . and see if they're . . . if they're interested how a, a . . . handlin' it that way, and, uh if, if they . . .

WR. They may have another technique. But this . . .

TD. . . . If they are . . .

WR. This is the least trouble.

TD. Uh, if they are, maybe that would be a good idea bringing both of them over here, uh, if I can ever get them both together well . . .

WR. They may . . .

TD. Maybe one at a time.

WR—And they may not be necessary.

TD. Right.

WR. The only guy necessary may be you.

TD. Right. All right.

WR. But if we have the resumé and background of these guys, and this can be authenticated either by the State Department, who permit them to come in in the first place, which I assume can be gotten.

TD. Yeah. Yeah, we . . . that's no problem.

WR. And a little bit of their background and what they are planning to do here, uh . . . They . . . As I say they're not looking to start a terrorist . . .

TD. Yeah.

WR. . . . organization.

TD. Right.

WR. They're looking . . .

TD. All right.

WR. . . . to make s . . . contributions to the county.

TD. A . . . All right. Let me put it out to them that way and see . . .

WR. That's all.

TD. . . . uh, see . . .

MW. What I don't understand is how could they, uh, go down and meet with this guy and then give a contribution and ask for a favor. Wouldn't that look funny?

WR. They don't . . . They may or may not meet the guy. They will meet the executive director who will make their contribution, if it's necessary. Otherwise we'll meet with Tony. They may not show up at all.

MW. I meant . . . it looks . . .

WR. It just . . .

MW. . . . kind 'a funny wouldn't it, them meetin' with them, givin' 'em the contribution an' this guy's . . . want these politicians give him a favor.

WR. I wanna tell you something. When the CIO . . . AF of L, CIO's Political Action Committee makes contributions to these guys, there's a guy who directs it in the . . . in the Labor Union and he dispenses the money. And the treasury makes the dough, and . . . what do you think he does? He spends twelve months a year doing nothing but this kind 'a thing.

MW. I can understand that.

WR. That's the difference.

MW. There's a lot 'a difference.

WR. General Electric want certain bills safeguarded in New York State or in Scheectedy, an . . . I . . ., uh, I . . . I mean in, uh, Connecticut or Jersey, they have their guys who . . . that know they can, uh, be reached for a contribution. The guy himself doesn't have to come out of the woodwork and say I want the contribution. He had somebody in his office who does it for him. As long as the funds are made out to the candidate of the party, and it is made as a contribution to that, and the check clears, they got it back and they take it off their income tax, it's perfectly legitimate. Listen, I . . . I'm not saying that some of these guys don't get paid in the dark and under the table, but I don't know. And this is not

the kind 'a thing that has to be done that way.

MW. Wha . . . What happened with Monahan ya said?

WR. Never got back to him. Never got back. He was the coldest of the three.

TD. All right, Why do . . . Why don't I run it by them this way, the way you . . .

WR. See if they like it.

TD. . . . propose it and see what they say.

WR. That's all.

TD. Uh, ya know, I think, uh, they're here every so often in Washington and arrange a . . .

WR. It may not even . . . They may not even be required to come in . . . But what the . . .

TD. Yeah.

WR. . . . the hell do they have to lose? They come in . . . come here for a cultural visit.

TD. Yeah. Well, like I say, they're always here on business every so often, ya know, so I can . . . let me . . . When I go over there let me run it by them.

WR. If you can, great.

TD. Or if you go over ahead of me . . .

WR. I know that the thing's a very serious matter for them in order to achieve, and this is the best information I have to be able to do it that way. And to do it legitimately, Mel. That's the best part. Because nobody can, uh, criticize these contributions. There is always the underlying factor, what the hell is, uh, a labor union making contributions politically to a candidate. The answer's very simple. He favors labor legislation. Just like there are guys who are favoring oil decontrol, while other guys oppose it. Just like anybody and . . . All the vested interests in the country are attacking these things almost on an individual basis for an individual goal. This is the word that these guys dub it. They . . . they . . . One of the big stinks in Congress today is the fact that there is so much of this, which is done, just for those special privileges to be gathered from. Because of the way they make the contributions. This is the only way they got political clout. But it's getting to the point where it's beginning to raise stinks in the newspapers. You'll see it.

TD. All right, let's leave it at that.

WR. All right?

TD. I'll present the package to them that way.

WR. Good.

TD. See what they think.

WR. Now, tell me something good. When the hell am I gonna see some dough from you, Egypt?

MW. We hope by the first a the year.

TD. 'Course nothing is guaranteed by the first a the year. We'll have . . .

Huh?

TD. We'll set up an office and everything. We'll set, finish settin' up the office here by the first 'a the year.

WR. Are you talking about me here . . .

TD. Yeah.

WR. . . . in the office?

TD. Yeah.

WR. Oh, no, no. I'm talking about the money from, uh, abroad.

TD. Oh, oh okay. I'm sorry. I'm . . . I . . . I misunderstood.

WR. You . . . you weren't involved in that.

TD. I know. I know that. That was with him and that was when, uh . . .

WR. Those were letters 'a credit and CDs that I prepared. When the he . . . We . . . we gotta ton of dough in there.

MW. Well, by the first 'a the year should be in.

WR. Is there anything that can be done in advance, as an advance on this deal?

MW. Yeah, you wanna go . . .

WR. These guys want the kind 'a thing I'm af . . . ready . . . to ah . . . to . . . bring to their, uh, benefit. And let me tell ya, Mel . . . I think ya got a better chance of establishing this thing for them, than not. I think that these guys play for real. I think when you talk money to these fellows, which means their own livelihood and their own status in the community because of reelection, I think ya got yourself a . . . a setup where nobody'll give ya a written guarantee, like you will take title to a house for example, but they'll . . . you'll surely get a hell of a shot at it to be able to achieve it and . . . Look, I'm tellin' ya, I think you're better than ninety percent home with a thing like this. And if this is what they want, because of what may happen abroad in the future, you can't put a price on it. Now, I know I can deliver this. I have made many contributions to some of the things that you're talking about, so far. Let me see some life on this thing.

MW. Well, the first 'a the year we should have it.

WR. Yeah, but . . . I . . . I . . . I'm . . . I'd rather you wouldn't say the first of the year. I understand what you wanna do for the first of the year, which is great. How 'bout between now and the first of the year? How about something where I can do something. I wanna buy a condominium down in Palm, uh, just in the ah Northern part of Palm Beach.

MW. The only way we can do that for ya, all right . . .

WR. You tell me

MW. . . . is we gotta to Abdul or to Yassir an' ask 'em.

WR. I wish you would

TD. Well. . . .

WR. . . .

TD. why don't I do this. Why don't I ask them when we . . . uh, when I bring this package over to discuss with them about . . .

WR. Tony, I have given them the ways of pulling in a tremendous amount of money. I laid that out. We got ya involved in Atlantic City, certainly advantageous. Uh, ya got involved in this mine and this, uh, chemical company, certainly advantageously. How about a little up-front dough to me? And, by the way . . .

TD. Uh, why don't . . . Okay. Let me see.

WR. Will you do it?

TD. Let me say this. I'm s . . . When I go over and talk to them about this thing, okay? I'll see if I can get somethin'. All right? I wasn't involved in that other thing.

WR. I know you weren't.

TD. But let me . . . let me see if I can get somethin' out of 'em, all right?

WR. Don't you think it's fair?

TD. I . . . I . . . I agree with ya.

WR. It's a year.

TD. I agree with you.

WR. It's a year's time.

TD. Le . . . Let me . . . I'm . . . I'll be over there. I'll have . . . within thirty days I'll have an answer. All right?

WR. Okay.

TD. And I'll, I'll . . . I'm gonna go over there, like I say, to present this package to them as what you said, and we can get anywhere from six to . . . to twelve people . . .

WR. Oh, yeah, that you can.

TD . . . depending on . . . on what they want, and . . .

WR. That you can.

TD. . . . and see . . .

WR. And, by the way, we don't have to limit it to that . . .

TD. Right

WR. . . . if you don't want to. Ah, I personally don't see any sense to go on beyond twelve people . . .

TD. Yeah. I agree with ya. I agree with ya.

WR. Ya gotta core and it'll operate for you.

TD. All right. Let me present it to them that way and then I'll . . . I'll put in a pitch, ya know, showin' what you've uh, what you've been responsible for and tell 'em how 'bout comin' up with somethin' I, uh . . .

WR. Great.

TD. All right?

WR. Now, what do ya want me to do with a guy like Stan? You know, uh, I . . . I . . . I was surprised that you'd never got back to him, or me for him.

MW. Well, we've been so damn busy.

WR. Ah, bull shit, You know what we can take care of for ya. We can get the ground work set.

MW. See, ya gotta understand our situation . . .

WR. I . . .

MW. . . . we just can't . . .

WR. I don't, ya know, I don't . . .

MW. We just can't take money and do somethin' without their okay. Ya know, we got somebody holding our purse strings.

WR. I assume . . .

MW. How . . .

WR. . . . that you do have a list of priorities.

MW. How can I go tell Yassir that, uh . . . give me money I wanna buy a gold certificate to give to you so you can print them up, ya know? I just can't tell him that.

WR. Why?

MW. Why?

WR. Yeah. Ain't that what he's interested in. Or is this your idea?

MW. He, uh . . . No. He doesn't wanna know where I get 'em from.

WR. Okay. All right then, all I can tell you is that if you wanna move in that direction, and you wanna make a deposit in the bank and get a gold certificate representing it and move further with it, I got everything set up for ya. Don't waste time. Ya know, uh, you strike while the iron is hot. This guy, I told you before, was absolutely perfect for many things that you fellas would be concerned with.

TD. Uh-huh.

WR. He's as brainy a CPA as you'll run into in your . . . all your associations. I don't care who the hell they are. And he has the connections among the legal talent to direct you to what you want. I . . . I think you were impressed with the guy, weren't you?

TD. Yeah. I was.

WR. Okay. I'm trying to make, uh, ya know, I'm trying to move into a family here a . . . and to prove myself . . .

MW. Hey . . .

WR. . . . every way I can.

MW. We . . . We . . . Don't ya feel we've grown quite a bit, and we're doin' more than we ever did.

WR. I'm sure of it.

MW. All right? And, uh, ya know, it takes time to get everything set up . . .

WR. Mel, okay.

TD. Let me do this. Let me . . . Let me work on that other thing first.

WR. All right.

TD. . . . gettin' you somethin', all right? I . . . I . . . ya know, I feel bad that you've been in a position like that now, and, uh . . .

Let me . . . Let me get you taken care of first.

WR. Okay.

TD. Okay? I think . . .

WR. Okay.

TD. I think, uh, ya know, to show our good faith we better get used to taking care of it . . .

WR. Fine.

TD. . . . so let me get over there an' present him with this . . . with . . . what you told me about . . .

WR. Where do you have to go? You gotta go to the Middle East?

TD. I'll probably go to London.

WR. Oh.

TD. I'll see him in London. That's . . . That's usually . . . I hate to go to there. I hate to go to that other place. London is a lot better . . .

WR. You want me to tell ya something?

TD. . . . for me.

WR. I've been here twice this morning. My daughter just got off a plane. She spent two weeks in Cairo . . . in, uh, Egypt . . .

MW. In Egypt?

WR. They were . . . yeah. She, my sister and brother-in-law, and my niece, the four of 'em went on a trip to Egypt for two weeks. And my sister says last night after you've been to five of these, uh, pyramids, where the hell are ya goin'? Two weeks there was crazy. She said it was so hot that every night when my brother-in-law would come back he t . . . he took his shirt off, he was just . . . was just watery.

MW. An' they don't have decent hotels over their either.

TD. I, um, d . . .

WR. They had 'commodations in Cairo, some place I don't know where, but they were on a ship that went down the Nile and where they stopped . . . all the way down . . . they went as far down as Aswan . . . And they had quite a time. My daughter had a ball. She loved it.

TD. Well . . .

WR. But I just picked them up this morning at five o'clock.

TD. Ya know, it's one thing goin' over there for a little vacation . . .

WR. Yeah.

TD. . . . once in a while. I . . . I personally . . .

WR. . . .

TD. What I do is I . . . I find . . . I call an' find out when he's gonna, ya know . . . They always work out 'a London, all right? I find out when he's gonna be there and that's where I go an' meet him because for me, ya know, I'd rather be there then, uh, then . . .

WR. Okay.

TD. And . . .

WR. One more thing.

TD. Yeah.

WR. When do you . . . what do you have in mind to set up in New York for a guy like me? What can I do there?

MW. I don't think there's anything that can be done before the first 'a the year.

WR. . . . that part, that part I'm not concerned

TD. . . .

MW. Let me explain why, Bill, let me explain why. I just gettin' Atlantic City squared away.

WR. Yeah.

MW. We just moved in this week down there.

WR. Yeah.

MW. All right?

WR. It's been a year.

MW. And I . . . it's . . . it's a bitch to even to get places. Know how long we looked.

WR. I don't know.

MW. I mean it isn't like . . . you know you can get a lotta dumps there, but decent places are hard to find. So we just gettin' set up there now, right? Now they just gave us a limousine which was 'sposed to be delivered this week, now they gonna be the next week. So it takes time.

WR. Oh, yeah.

MW. And, ya know, uh unfortunately we have other things 'n closings we gotta take care of outside of this area and, uh, we're only up here certain times an' take care of it.

WR. Sure.

MW. And, ya know, they move at a slow pace. Before we do anything it's gotta be okayed by them. They have to sign it an' release it, and ta get them to sign 'n release it, that takes time.

WR. Oh, yeah.

MW. An' so before ya know it, the months roll by.

WR. When is the, uh, closing on the, uh, mine and the . . .

MW. That's the fir . . . Uh, everything is set for the first 'a the year on that.

WR. Really?

MW. Yeah.

WR. Are ya gonna . . . pushed that for . . .

MW. Unless we run into problems. So far no problems.

WR. All right. Now, once more. When do ya think that all the funds will be in from abroad?

MW. We got a problem gettin' the funds out of Iran. They are not keepin' their word to us at all. Every time that we set a deal up with them they screw us up more. And, uh, it's . . . it's to a point that it's aggravating as hell and ya can't believe a word they say. Uh, I thought they all be in already, that would be released, and they haven't released nothin'. They got one shipment out and that was it.

WR. Okay.

TD. Who ge . . . Y . . . You're talkin' about this other deal that ya . . .

MW. Talkin' 'bout the CDs . . .

TD. Yes.

MW. . . . and stuff.

TD. Uh . . . I, uh . . . Like I say, when I get over there, let me see if I can get you a percentage anyway of what . . . what you're supposed to get on that. Ya know, somethin'.

WR. Right.

TD. All right, just ta . . . just ta keep you . . . you goin', all right? I . . . Like I said, I . . . I feel that I moved into this spot and I feet obligated.

WR. Right. . .

TD. Ya know, to do somethin' for ya, and let me, uh, let me talk to him about at least giving you some kind of percentage of . . . of what ya got comin', uh . . .

WR. Okay.

TD. . . . on that thing.

MW. I know ya . . . 'member what the hell . . . ya got comin'?

WR. Yeah, I know.

MW. I know you know. I've forgotten.

WR. You forgot?

MW. I got it written down.

TD. Well, he's got a reason, he's got it written down.

WR. I gave ya a million, a billion two, and I'm supposed to collect seven percent that's eighty-four million, and you were getting half.

MW. Right.

WR. And if anything comes through, by the way, ya know . . .

TD. Well, le . . . let me see if I can . . .

WR. I have two silent partners, uh, on anything.

TD. Let me . . . let me see if I can get you at least a percent on it, uh, ya know . . .

WR. Great.

TD. . . . u . . . up front, uh, okay? Let me talk to him about that . . .

MW. I don't even know th . . . w . . . why, an' I gotta get over there ta see where the hell his, uh, status is, is, ya know . . . where they're comin' through 'cause . . .

WR. All right. We are . . . we are also supposed to maneuver with some land in Atlantic City, and I was supposed to be up in front and take care of your interest and Mel's. So if a piece 'a land costs twenty-five and we're payin' thirty, the five million I was supposed to be able to handle for us. Now I'm being . . . uh, aware of that. This mine and the chemical plant, I'm supposed to get a piece 'a that in cash.

MW. And he's also promised . . . ya might as well tell him now . . . he's also promised the, uh, concessions . . .

WR. Yeah.

MW. . . . in the casino we open by Jack.

WR. . . . I was. On every . . .

TD. On the one that we open, ya mean?

WR. On everything that was . . . you opened. Everything that we were involved with. At least to head it up so that there would be an income flowin' for it.

TD. All right, I . . .

MW. I . . . I can . . .

TD. . . . I can . . . I can s . . . Let me say something now, all right . . .

MW. I, I didn't hear this, an' didn't know it til you told me.

WR. Yeah, I remember in the, ah, you were in the . . .

TD. All right, I . . . I . . .

WR. . . . uh, you were in the room when I . . . I . . .

MW. No, no.

WR. . . . mentioned it. Uh, you had just walked out. Don't you remember?

MW. I walked out, but I . . .

WR. Yeah.

MW. . . . didn't . . . when you told me I says I couldn't believe Jack told you.

WR. No we started with Errichetti and brought him into the picture so that it would be meaningful to you. He said to us, you be the business manager, to Bill and myself, and whatever has to be done fine, and, we set it up with McCloud, Errichetti, Pete, and myself. Now I want ya to understand this. The Atlantic City stuff, the funds from abroad on these CDs. The mine and the chemical plant and everything like this, I ha . . . have to give a piece . . . half of mine to Bill.

TD. All right.

WR. I haven't spoken to Bill now for a month or two. I think he's trying his best to get himself reestablished. He went off on a bender by . . . on his own. It cost him seventy grand, and I backed away from it. On this stupid commodity thing.

TD. Yeah.

WR. Which is ridiculous. But I will fulfill this obligation. However, I have never said, as you asked me to, one word to him about what's going on. If he calls, I simply say nothing has come through yet, Bill, as soon as they invite me down to the closing, I will tell Mel, expect something.

TD. All right. L . . . Let me say somethin' now, uh, and, um

MW. . . .

TD. . . . As far . . . w . . . all these other things that you say are . . . are okay, as far as I'm concerned. Okay? There's one

. . . one . . . only one thing I . . . I s . . . I'm gonna have a problem with, and that's givin' you the concessions at the casino. I can probably do somethin' for you along the lines of maybe giving you out right maybe . . . one 'a the concessions or

WR. Ok

TD. makin' ya overseer a . . . as far as a . . . a p . . . job position is concerned for them. But in order to do business with a lot

WR. Ya gotta take care of them, hey, Tony I understand this 'a different people the concessions are gonna have to be given to wise guys. Apparently . . . Ya know what I mean?

WR. I, I, I. fully appreciate it so you put me on the books as the, uh . . .

TD. Okay.

WR. . . . Supervisor

TD. All right.

WR. Ok.

TD. I can . . . That . . . That I can do for ya, but, ya, but, ya know, like I say, Jack said you can have all the concessions. Well, I gotta give the concessions away to . . . to stop problems that would arise normally.

WR. Absolutely. I know what you're saying.

TD. All right? So . . .

WR. I know absolutely, what you're saying.

TD. All right, so . . . I . . . I . . . I'll handle ya in another way by puttin' ya on their . . .

WR. Fine. Fine.

TD. . . . in that capacity.

WR. So you put me on there for, uh, a substantial fee, and that's it. I don't have to be down . . .

TD. Al right. Okay. That I can do for ya. The other one I'd be lyin' to ya if I said could. Uh, ya know, I could handle it that way.

WR. Tony, I wanna tell you something. Mel, uh, you've worked with me for about a year? Have you ever found me to say anything that wasn't legitimate

MW. No.

BR. . . .

MW. Yeah, I didn't doubt your word you said that. But . . .

WR. And secondly . . .

MW. But I did say that

WR. Have ya ever . . . Huh?

MW. 'member I did say to ya, I said I don't know he can promise ya that.

WR. Oh, oh. I been talking about that, petifically . . . specifically. I just want you to know that I'd like to be a part of what you guys are doing because it sounds stimulating and alive.

TD. Yeah.

WR. Ya know?

TD. And profitable.

WR. You can trust me in . . . pl . . . uh, and profitable. You can trust me implicitly. If I work with ya, I work with you and with him.

TD. All right.

WR. Period. And that's it.

MW. What're you doin' now?

WR. I got involved in an electronic field, and, by the way, this might be very worthwhile in Atlantic City because they're gonna open up a setup. I was in, I used to have my own brokerage firm, and I . . . which I headed. Any you know I got myself into a little trouble there on conspiracy charge and I sold the business, walked away. One of the setups we . . . were involved in was Graphics Scanning, and they took over a company called Radio Relay. These guys now place with doctors, with anybody who has to be in communication with a central point. If you guys are down in Atlantic City and you're not in your office, and you want somebody to reach you, a very simple thing is a . . . a radio beep. You carry a thing about as big as that deck 'a cards and when they want you they put a number into a . . . the telephone and when the thing starts to beep and you call the office. What's the message? You get 'em. You stay in touch with everybody that way.

MW. . . .

WR. They now have . . . these with the voices where you can put a ten cent . . . second message so you can give this out to fifteen guys instead of just one from your home base. And the message can say, Mel, this is Bill, call me at 599-1949. Ya hang up.

MW. That's a radius of so many miles though, right.

WR. It'll stay . . . It'll give you coverage around sixty miles around New York right now. And I can reach anybody in Westchester or any part 'a Long Island, any Borough in New York, Manhatten, Brooklyn, Staten Island, and it'll go south to about, well around Newark or so

TD. If it'll go sixty, if it'll go sixty miles from New York, it should go a lot further some place else 'cause you haven't got the buildings and . . . and . . . and interference.

WR. To, ta, but ya gotta put up transmitters . . .

TD. Yeah.

WR. . . . ya see. And what happened with these transmitters is ya gotta win an area. And that's what I been doing. I been marketing the thing. I got involved in the thing. And, uh, it keeps me busy.

MW. I gotta . . . I gotta beeper.

WR. Pardon?

MW. I have a beeper system now.

WR. You got a beeper now?

MW. Yeah.

WR. Same thing. Who gave it to you? Radio Relay or

MW. I had it a long time.

WR. Sure. You bought it.

MW. But the only trouble is . . . yeah . . . seventy-five dollars you pay for it, you can rent for twenty years.

WR. Oh no no. Not any more.

MW. Twenty-one dollars a month.

WR. Yeah. Yeah, they're around that.

MW. Yeah. But the only problem is ya can't . . . mine, uh . . . distance ain't that great.

WR. Well, if you were to set up a place in New York and you needed to reach a staff, all around the city there'd be nothing to it. Absolutely nothing to it. Sixty miles around. The voice won't be as clear in that distance because of what it is but this is what I got involved in, and I like it. Keeps me busy. Listen, all I wanna do is, uh, use my brains and use my talent for what I, aah

MW. What, do you sell 'em?

WR. I'm managing the thing. I'm marketing it . . . Uh, appointments at hospitals for the guys, or for myself. And I'm out, uh, hustling that stuff, I like it very much. Makes a living, you know, and, uh, this is, uh, the way the thing is at this time.

TD. All right. Well

WR. All right

TD. why don't we just go ahead and, uh . . . Let me . . . Let me get over there an' see him. Do that, and

WR. You'll be back, middle of November?

TD. Yeah.

WR. That's good.

TD. Yeah, that's a good . . . That's good. Yeah.

WR. Is there any place you want me to get in touch with you in Atlantic City from now on

MW. Oh, you won't be back, you won't be back until December.

TD. No, around Thanksgiving. When's Thanksgiving?

WR. End of the month, about the twenty-fifth.

MW. I don't think we'd be back Tony. I don't think we'd be back until sometime in December.

TD. Well, I plan on bein' back thereafter.

MW. Because their schedule . . . came over the telex yesterday . . . They're not gonna be over there until the end of November.

TD. Well, I . . . I'll get here. I . . . I'll . . . I . . . I . . .

WR. Tony, I have complete faith...

TD. Around Thanksgiving, all right?

WR. Fine.

TD. Give or take a little bit, all right?

WR. Very good. Where do I reach you in Atlantic City if you want it.

MW. Uh, you got that number

WR. I . . . I won't do anything further on what I done until I hear from you.

TD. Yeah.

WR. Whatever remains to be dome

TD. Eight . . . eight, two, three . . .

MW. 0, 3, 9, 9 . . .

WR. Gimme a pencil. What 'a you got, a . . . an answering service like ya do?

MW. No.

TD. No. We di . . . We didn't put the thing on there yet, that hafta handle . . .

MW. We just got in.

TD. . . . We just got in there

MW. We ain't had a chance ta do anything.

WR. Oh, great. All right. Give me a number so I'll reach you. Call me if you want something done. You gonna be headquartered down there now?

TD. Oh yeah.

WR. Will that be your main spot?

MW. Not yet . . .

TD. . . . I, you know what will be my ma, my main spot'll be a hotel room some place. Uh, you know.

WR. All right. Please do this. If ya need anything done in New York, give me a buzz.

TD. All right.

WR. Tell me what to do and I'll do it.

TD. Yeah, it's 8, 2, 3 . . .

WR. Hey, I don't have to go on the payroll until the first 'a the year, but just start use me.

TD. That's it, 8, 2, 3 . . .

WR. Ya got a pencil, uh . . .

MW. Oh . . .

WR. Pen?

MW. Yeah.

WR. Was it 6, 0, 9?

TD. Yeah.

WR. All right.

TD. . . . 8, 2, 3, 0, 3, 9, 9.

WR. 8, 2, 3, 0, 3, 9, 9.

TD. Yeah.

WR. Do you want me to use, uh, the Florida number if, uh, I wanna reach you?

TD. Oh . . .

WR. . . . that's still going to be in operation or ya givin' it up?

TD. Yeah.

MW. Yeah, use that number.

WR. Okay. I'll just call down there and set one up. And if you prefer I don't get involved with this number for whatever reason I don't know.

TD. No. We . . . uh, you know, if ya don't get as at, uh, one, uh, you always get him through Florida number, uh . . .

MW. Florida number's . . .
TD. I gotta . . .
MW. . . . the best because . . .
TD. I gotta put the, uh, an answering service on that thing. We haven't had time yet. I gottta send Bruce, uh, down there to do that.
WR. On the other thing. All right, that's good. By the way, you know part 'a this electronic setup I got involved in, we can put a receiving set down there for ya and a call diverter where the call, the message . . .
TD. Yeah, well . . .
WR. . . . will go to you wherever you are . . .
TD. Right.
WR. . . . and if he's in San Francisco, he can reach you if you're in Oshkosh.
MW. How's that work?
WR. Huh?
TD. The phone company has that
WR. Do they have the forwarders?
TD. Yeah.
WR. . . . for this?
TD. Yet . . . What do you, is you dial in . . . in, uh, another number and . . .
WR. Yeah.
TD. . . . it forwards the calls, uh . . . i . . . calls that way. In fact I was (laugh) . . . I was talkin' to a bookmaker, right. And the guy said this is the greatest thing that ever came down the pike for bookmakers. You know why, right? What they do is they go rent an apartment some place.
WR. OK, so that all their calls
TD. an' have a phone put in. They go from that phone they dial another number and every day they can change the number . . .
WR. Sure.
TD. . . . and move around and use it from one location.
WR. Absolutely.
TD. How's that for, uh . . .
WR. That's right.
TD. How's that for an operation?
WR. And that little machine, by the way, you put the two things in tandem, and you can put 'em up for about twenty-five hundred bucks. You don't even need an answering service, anything . . .
TD. All right, let me see if Bruce is in the other room. I wanna have him check everything out? Bruce, do me a favor . . .
WR. All right tootsie?
MW. Okay.
WR. Did a good job for ya? Ya owe me some money. who's paying me? . . . Tony? All right. By the way, I flew down there again for an hour. I didn't take anybody out. I spent about, uh, about three hundred dollars. I spent three-twenty and another hundred. Shall I ask him for it now?
MW. Yes. Speak to him.
WR. All right.
MW. I don't know if he has it on him, but see what he says.
WR. You happy?
MW. Huh?
WR. Are you happy or are you worn out?
MW. Well, I . . . I mean . . .
WR. Okay.
MW. I . . . I really can't answer that. I don't know.
WR. Just workin' . . . You're so damn busy wi . . . workin' you . . . Tony, I laid some dough out.
TD. Uh, excuse me Bill.
WR. Yeah.
TD. Uh, he's in, uh . . .
WR. Boy, this is a beautiful case.
MW. Huh?
WR. This is a beautiful . . .
TD. I'm sorry, Bill . . .
WR. Uh, I laid some dough out. Can I collect it?
TD. Ah . . .
WR. Have to go through channels. I laid two-twenty and then I flew down again. I laid out three-twenty in all . . .
TD. Okay. I tell ya what, uh . . .
WR. You tell me what to do.
TD. . . . se . . . send . . . send a bill to the . . . to the office. Okay?
WR. Sure.
TD. Write . . .
WR. just tell me where to do it.
TD. To, uh, what is it? What's the address there? Four, uh . . .
MW. Forty-two, fifty Vets Memorial Highway.
WR. You want me to address it to you? To Abdul . . . How do you want me to do it?
TD. Yeah, Abdul. Send it . . . ad . . . address it to Adbdul.
WR. Abdul Industries.
TD. Right.
WR. And what is it?
TD. Forty . . .
MW. Forty-two, fifty . . .
WR. Forty-two, fifty . . .
MW. . . . Vets Memorial Highway.
WR. Veterans Memorial Highway? Way the hellout here?
MW. Yeah.
WR. Well, I know that one. I thought you gave it up.
MW. No we still got it.
WR. Are ya involved in a lease?
MW. I really don't know.
TD. In fact, I tell ya what. Don't even send it there. Send it . . . send it to the Jersey place, allright? 'Cause I'm having Bruce move down there Let me give ya the address in . . . in, uh, in New Jersey. I'll have'n him . . .
MW. Fifty-two hundred Boardwalk, ain't it?
TD. Yeah.
WR. What is it?
TD. Uh . . . Let me make sure. let me give it to ya.
WR. It will be Abdul Industries?
MW. No.
TD. Just address it to Bruce Bradley, B-R-A-D-L-E-Y . . .
WR. Okay.
TD. Fifty-two hundred . . .
WR. Okay.
TD. . . . Broadwalk, Apartment eight F. Ventor . . .
WR. Apartment . . .
TD. Eight F.
WR. Eight F?
TD. Right. Ventor, New Jersey.
WR. V-E-N-T-O-R?
TD. Right.
WR. What's the, uh, zip?
TD. Uh, I knew you'd ask me somethin' I didn't know. I don't know what it is.
WR. You got it?
MW. I don't know . . . No.
WR. Don't use the name Abdul on it.
TD. No. It's a . . . it's a f . . . Ya know, i . . . it's a private residence, uh, an', uh, th . . . if you do that, then they're not gonna . . . they're not gonna get it. The apartment's in Bruce's name.
WR. Okay.
TD. Uh, the town . . . the condominium is in his name.
WR. Okay. Right. So you want me to ignore this Veterans Highway?
TD. Yeah. Yes. The hell with that, 'cause we're not . . .
WR. How do you want me to show this? Just, uh, mark it trip to Washington?
TD. Yeah. Just put a little squib in there of . . . of . . . of whatever, uh . . .
WR. Meet . . . Necessary meetings.
TD. . . . uh, . . . In connection with, uh . . .
WR. Necessary meetings.
TD. Yeah.
WR. Okay. That's all right.
TD. All right?
WR. I'll do that.
TD. I'll have him get a check out to ya.
WR. Anything else I can do for you fellas?
TD. Uh. . .
WR. I think we've covered everything.
TD. . . . no, I don't think so now. Let me see what I can do for you, more important.
WR. That'd be great.
TD. All right,
WR. I appreciate it.
TD. Okay.
WR. Mel . . . be well.
MW. All right.
WR. Wife came back all right?
MW. Yeah.
WR. She's in good shape?
MW. I guess so.
WR. Are you kidding? You mean you haven't seen her since she's back?
MW. How the hell can I see her, I've been all over.
WR. (Laughter).
TD. That's why it's good not to be married.
WR. Oh, you're not?
TD. No.
WR. Well, that's good. Do you have a lady?
TD. I can't find anybody that'd . . .
WR. Would tolerate what you do.
TD. Well, not only that . . . that . . . who's company I could stand for more than a week at a time.
WR. (Laughter).
TD. I may think differently a few years from now, but right now . . .
WR. All right . . . This is the way you wanna live . . . Take care fellas.
MW. Okay, Bill.
WR. All right. I think we did a . . . a good job for what they're after. And this, of course, is serious stuff for them and I think it will work
TD. Okay.
WR. Cheerio. . . .

Mr. MOYNIHAN. Mr. President, I do hope that the Judiciary Committee will take this assignment in the spirit in which it is presented.

What the President pro tempore has said he will do, he always does. I thank the President pro tempore for this and for his openness to the concerns of other Members. And I thank him for his absolutely unshakable concern that justice and equity be done in all our proceedings.

I thank the Senator from Colorado, who is associated with me in this matter.

The PRESIDING OFFICER (Mr. ARMSTRONG). The Senator from South Carolina.

Mr. THURMOND. Mr. President, will the Senator yield?

Mr. MOYNIHAN. I yield.

Mr. THURMOND. I assure the able and distinguished Senator from New York that the investigation will be held in a fair and just manner, and no holds will be barred. All the facts will come out, and I think the Senator will be well pleased with what is done.

Mr. MOYNIHAN. I cannot think otherwise.

Mr. HECHT. Mr. President, the hour is late, and I do not wish to delay the Senate, except to extend the concerns that the senior Senator from Nevada [Mr. LAXALT] expressed as he left Washington. He wanted very much to have this resolution passed, as I do, and I thank the Senator for its consideration.

Mr. DANFORTH. Mr. President, I should like to share with the Senate my concern about what we are doing.

Several years ago—1982, as I recall—when Senator Williams' case was before the Senate, a number of allegations were made to the Senate about the propriety of the actions of the Department of Justice. As the Williams case proceeded, Senator Williams resigned from the Senate. He was subsequently convicted of a felony and sentenced to prison.

The Senate set up the select committee to investigate the alleged overreachings of the Deparment of Justice. That select committee was in existence, I believe, for about a year, and it issued a report of some 1,000 pages—give or take some pages.

A week or two ago, we had before the Senate the unfortunate case of a U.S. district court judge who had been convicted of two counts of tax fraud, and we tried his impeachment in the Senate, and we removed him from office, having found him guilty of three counts that were before us.

□ 0040

At the time of those proceedings, general allegations were made about overreachings on the part of the Department of Justice and again a move was afoot to investigate strike forces of the Justice Department, and so on.

The original version of the resolution that was prepared by most of those who have cosponsored this resolution constituted more or less an indictment of Federal law enforcement efforts.

Mr. President, I have asked the Federal Bureau of Investigation for whatever numbers they have, and for the calendar year 1985 the Department of Justice reported 1,182 indictments and 997 convictions resulting from Federal investigations of corrupt public officials. At the same time, no reports were received at FBI headquarters in which a court suppressed evidence or criticized FBI practices in public corruption cases.

Mr. President, I am not suggesting that Federal strike forces or the Justice Department or the Treasury Department are perfect. They are not perfect. And certainly in law enforcement there will be from time to time overreaching by law enforcement personnel and improper conduct by law enforcement personnel.

But it is also true, Mr. President, that every inmate as far as I know in every prison in this country believes that the reason that he was convicted was because he got a raw deal from Government officials or from law enforcement officials or someone targeted that person or someone was out to get that person. The business of protecting the public is one which constantly requires a balance in which the civil liberties of individuals are protected but at the some time enforcement of the laws is vigorous.

Now, the figures that were given by the FBI are amazing; 1,182 and 997 convictions of corrupt public officials. And, Mr. President, it is sad to say but it is true there is corruption in public office. And my concern, and I have expressed this to the distinguished Presiding Officer and to the Senator from New York and others, my concern is that the U.S. Senate should not indicate, in effect, by passing resolutions that whenever there is an investigation of a public official whether he is a Senator or a judge that comes before this body we automatically are going to respond by investigating the investigators.

So my hope is that the ensuring effort by the Judiciary Committee is not of an investigative nature at all, not sensational, not a media event, but instead that it be an effort to analyze those procedures that exist and those procedures that should exist to make sure that the balancing of civil liberties versus the interests of the public in protection against crime is carried out in a just way and in a way which is in keeping with our American traditions.

I hope that this is not going to be a Kefauver-type hearing. I hope this is not a public effort to call on the carpet law enforement in the United States but that instead it is an orderly business like, sober, serious, and indeed fair-minded effort to teach those rational conclusions that I think the cause of justice demands.

I just wanted to share those concerns with the Senate. I do not believe that we should be engaging in a broadside against law enforcement. I think that we should use a rifle shot at the real problem and not a broadside against problems based primarily on anecdotes rather than the statistics. I think whatever we do, it should not be an effort either to demoralize good law enforcement or to create in any way the impression that anyone who brings to the Senate a charge or corruption in public office is immediately going to be the target of some sort of an investigation of himself.

Mr. MOYNIHAN. Mr. President, will the Senator allow me to make one comment?

Mr. DANFORTH. I yield the floor.

Mr. MOYNIHAN. Mr. President, I would simply like to say to the Senator from Missouri, I agree with each and every word he has said. I will say it once more. I agree with each and every word he has said.

The PRESIDING OFFICER (Mr. STEVENS). The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, you know the statement that has been made by the Senator from Missouri is really illustrative of a very special gift that he brings to the work of this Senate. There is a lot of times around here when Senators are running around like chickens with their heads cut off and everybody is getting wrought up. At a critical moment the Senator from Missouri, JACK DANFORTH offers the kind of broad-gauged perspective of these things that really helps us keep our balance and it is a fact that his statement tonight serves that purpose and indeed the language of the resolution is language which either he wrote or was written at his direction and is a bit less flamboyant than the eariler language, although I was comfortable with the earlier language, let me say to my friend from Missouri.

So, he has done a real service. I want to associate myself with his call for a serious, sober, thoughtful, judicious kind of investigation. But I want to make this point: Do not anybody go home thinking that what we are talking about is some public official who has come around yelling that "I have been the subject of targeting" and it is some unfounded isolated case. We are talking about the findings of courts. Findings of abuse of the grand jury process, of altering evidence, of encouraging people to pry into and break into the mails which is a Federal crime. That is not something that is just rumored, that is what courts in different cases may have found, and that is serious business.

We are also, let me say to my friend from Missouri, in my own case talking about a Senator who has tried to come to grips with this issue by dealing with the Justice Department in a thoughtful, sober, serious, low key, way.

I think they stonewalled me. Let me say to my friend from Missouri that I am ready to have a review of this by the Judiciary Committee which results in a clean bill of health by the Judiciary Committee, but the reason I am interested in this is that I gave them that opportunity for 3 days before the Finance Committee and they came in and convinced me that there was more wrong than what I knew, not by anything I said or anything I can prove, but by their manner.

I suppose the Justice Department will read this transcript; maybe the Attorney General or someone over there will read it, and I hope they will approach the Judiciary Committee of which I am not a member and subcommittee of which I do not expect to be a

member or wish to be a member in a different spirit than they approached Senator GRASSLEY and me when we held these hearings in the Finance Committee. If they do, my guess is we will have a result that will not be inflammatory that will not be a circus, but if they do not, by gosh I hope the Judiciary Committee gets tough with them because this is an important issue and it deserves to have that kind of treatment.

Mr. President, I think we are ready for the vote on the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 514

Whereas our system of justice requires both firm defense of individual liberties and vigorous enforcement of the law, and

Whereas it is the responsibility of Congress to assure that the zeal of the Executive Branch in enforcing the law is always balanced against the rights of citizens under the Constitution, and

Whereas it is in the interest of justice for procedures to exist within the government to assure that the rights of citizens are protected against improper investigative and prosecutorial practices, now therefore be it

Resolved, that the Committee on the Judiciary, appropriately funded, shall hold hearings, exercising full Committee powers as necessary, on procedures for protecting citizens against improper investigative and prosecutorial practices and report its findings and recommendations to the Senate on or before September 1, 1987.

MAINLAND TOUR BOAT FACILITY FOR FORT SUMTER NATIONAL MONUMENT

Mr. THURMOND. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2534.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2534) entitled "An Act to authorize the acquisition and development of a mainland tour boat facility for the Fort Sumter National Monument, South Carolina, and for other purposes", do pass with the following amendment:

Page 5, after line 15, insert:

SEC. 6. (a) Not later than 45 days after the date of enactment of this Act, the Secretary of the Interior shall receive, consider, and act on the application of Mr. and Mrs. J. W. Wells of Waynesboro, Mississippi, for a patent for the land described in subsection (c) of this section under the Act entitled "An Act to authorize the Secretary of the Interior to issue patents for lands held under color of title" approved December 22, 1928 (43 U.S.C. 1068 et seq.), notwithstanding the requirement of that Act that a tract of public land be held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application during which time they have paid taxes levied on the land by State and local governmental units.

(b) Any patent issued pursuant to subsection (a) shall be without any mineral reservation to the United States, and all mineral interests of the United States in and to the land described in subsection (c) shall be transferred to Mr. and Mrs. J. W. Wells without consideration.

(c) The land referred to in this section, comprising approximately 160 acres, is the NW¼ of Section 21, T. 10 N., R. 8 W., St. Stephens Meridian.

Mr. THURMOND. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER (Mr. ARMSTRONG). Is there further discussion?

Mr. STEVENS. Mr. President, the bill has been cleared by the majority leader.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from South Carolina.

The motion was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TRIBUTE TO SENATOR CHARLES McC. MATHIAS

Mr. DODD. Mr. President, in a moment not unusual for our retiring colleague Senator MATHIAS, he said at a recent dinner that what he would miss most about being an eminent public leader would be the ability to "pick up the phone and do something for someone's life." Well MAC MATHIAS has done just about as many great things for people's lives as any one man can do in a lifetime. He may leave this body with the peace of mind that only comes with having accomplished one's noblest ambitions.

Senator MATHIAS has brought to this Congress a sense of public service that he derives from his deep reverence for the rights and liberties provided in our Constitution. His longstanding championship of civil rights can be traced clear back to the early stages of his public career. For instance, Marylanders may recall when as municipal attorney in Frederick he desegregated a local theater—in the early 1950's. In the Congress, it was often he who, aligning himself with more liberal Members despite party pressures, assured the approval of major civil rights legislation in the years when it was moving through the Judiciary Committee.

Senator MATHIAS always transcended partisan labels and contrived ideological alignments. He strove instead to uphold personal and national principles with a startling sense of independence. I had the privilege of seeing this quality, along with his intelligence and political savvy, first hand when we worked extensively together on the Foreign Relations Committee to strike an agreement on the issue of Central American policy. He is truly one of the most intelligent and thoughtful men I have worked with—never someone to rely on the expertise of others on the stage of political combat. His diligence and dedication to this work was always reflected in his formidable knowledge and command of the agenda he believed in.

He leaves us for the noble pursuit of transmitting to his students what his long and illustrious career has given him. His devotion and ability will be missed greatly in this Chamber. We can only envy his students the opportunity they will perhaps never quite appreciate fully until they, too, have taken on the challenges he overcame with dignity, scholarship, and commitment in this institution.

FAREWELL TO SENATOR GARY HART

Mr. DECONCINI. Mr. President, we are soon to part with several of our colleagues who are retiring from this body, and I rise to acknowledge the unique contributions of one of them, my colleague from the Great American West, the senior Senator from Colorado, Senator HART.

In his two terms in the U.S. Senate, GARY HART has witnessed great changes in both the institution and the Nation it serves. And he has had the vision to recognize these changes for what they are—precursors of a new era, full of challenge and hazard and opportunity.

GARY HART, perhaps more than any other Senator, has made this realization the theme of his service to his country. He has channeled his energies toward preparing America for its new age. He is a man of ideas who has faced the complex challenges of the Nation and translated those challenges into constructive solutions.

Last winter, I was pleased to cosponsor one product of GARY HART's energy—the budget alternative that he and other Budget Committee Democrats offered for fiscal 1987. I supported him in that effort, because I share his belief that we can have fiscal responsibility in this country without mortgaging our national future. In fact, we cannot have it any other way.

Moreover, I share his belief that true responsibility means providing for the education of our young and investing in our future commerce and industry. GARY HART never shrank from the truth in framing the policy questions before us. It is our generation that must prepare for the generations to come, with investment and also with sacrifice.

Nothing is more essential to our national future than our national security. And in his work on the Armed Services Committee, GARY HART demonstrated a commitment to the Nation's defense that was second to none. He joined the Navy Reserve and cofounded the military reform caucus. He became a leading national advocate for a leaner, meaner defense that plans for the future—not the past—and spends its money accordingly. While GARY and I may have differing views on how to achieve our passionate and mutually shared objective of a peacful and nuclear-free world, GARY's indepth knowledge and analysis of military and nuclear issues will be sorely missed. In the world's most prestigious deliberative body, GARY HART ranks among the premier debaters in its history. It is difficult to imagine a debate on arms control without GARY being a major participant. His thoughtful and informed voice will be especially missed in those discussions.

GARY HART's concern for the future shone through as clearly in his work on the Environment Committee. The natural resources of America are the basis of our prosperity and the heart of our national legacy. As a Senator from the Nation's still-unspoiled West, GARY carried a special concern for this legacy with him when he came to Washington. It was this concern that motivated GARY to help expand wilderness designations to a magnificent and unprecedented 2.6 million acres. But GARY HART's concern went beyond his home State.

He arrived here when national awareness of the environment was stirring as never before. He played a critical role in developing some of the landmark environmental legislation of the 1970's: the Clean Air Act, the Clean Water Act, and the creation of Superfund. In the current decade, he has worked to renew and broaden and strengthen all of these laws.

He served as Chairman of the National Commission on Air Quality and delivered an early warning against the threat of acid rain. He served as chairman of the Nuclear Regulation Subcommittee and as chairman of the Senate investigation of the Three Mile Island nuclear accident, identifying himself with heightened protections for citizens and consumers and greater performance accountability for the nuclear industry.

Again and again, GARY HART has taken tough positions on behalf of future generations. For a decade, he has fought an often lonely fight against our dependence on foreign oil—so that Americans in the 1990's and beyond will have the energy they need.

He has taken a principled stand against contributions from PAC's—political action committees—even as such contributions have become the centerpiece of political fundraising.

And he has been willing not only to take a stand, but to lead the fight, no matter what the odds. The Senate will remember his battle against Gramm-Rudman and his long struggle on behalf of arms control.

GARY HART was here when I first came to the Senate, and it's hard for me to imagine the Senate without him. At the same time, I know that GARY will not really be gone. He may be passing into the Senate's history, but he will remain a part of the Nation's present and the Nation's future—for as long as he chooses.

GARY is one westerner who has never ridden off into the sunset. He is still riding into the dawn.

I want to join my colleagues in thanking GARY for his dedicated service to this Chamber, to the Nation, and to the people of Colorado, and to wish him a fond farewell and every good wish as he rides into the dawn.

Mr. President, Senator HART's staff has compiled an impressive and detailed summary of GARY's achievements during his tenure as a U.S. Senator. The thickness of the document bears witness to the imprint that GARY has left on this Chamber. I believe it merits review by the Members of this body, by Senate staff and by the American people, and I ask unanimous consent that the full text be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LEADERSHIP

In the last twelve years, the Senate has dealt with a variety of challenging issues—issues that were exceptional because they were complex, politically difficult or emotionally charged. It is significant that, in the face of these challenges, the Senate turned to Gary Hart:

Appointed to Select Committee to Investigate the Intelligence Community; Chairman of National Commission on Air Quality; Adviser to SALT II Geneva Talks; Chairman of Senate Three Mile Island Inquiry; Coauthor of Armed Services Committee Study on Strategic Warning System; Chairman of Senate Budget Committee Task Force on Synthetic Fuels; Founder of Military Reform Caucus; and Co-Chairman of Democratic Budget Task Force.

Senate Select Committee to Investigate the Intelligence Community (1975). Formed under the Chairmanship of the late Senator Frank Church to investigate abuses by the intelligence community, effort and recommend reforms.

Hart: Key role in investigation and drafting of Committee findings.

Elected Chairman, National Commission of Air Quality (1978). The panel was created by Congress with the passage of the 1977 Clean Air Act amendments to study the implementation of the new statute and to recommend ways to improve environmental regulation.

The Commission had 13 representatives of the environmental, scientific, and business communities, Republican and Democratic Members of Congress, state government and Indian tribes.

After two and one-half years of study, the Commission published a comprehensive report, "To Breathe Clean Air," that contained 433 findings and 109 specific recommendations.

Appointed advisor to SALT II arms control talks in Geneva. Urged approval of the Treaty during Senate reelections campaign in spite of intense, conservative opposition to the Treaty.

Chairman, Senate Investigation of the Three Mile Island nuclear reactor accident (1979). As Chairman of the Senate Environment and Public Works Subcommittee on Nuclear Regulation, Senator Hart led an extensive and difficult inquiry into the accident at Three Mile Island. At the conclusion of study, Hart convinced the Senate to approve a series of significant reform measures to:

1. Require each State with a nuclear powerplant to have the evacuation plan approved by the Nuclear Regulatory Commission;

2. Accelerate the assignment of NRC inspectors at each nuclear powerplant and increasing the number of such inspectors being trained;

3. Improve the training, retraining and licensing of nuclear plant operators;

4. Require the NRC to propose a plan to respond to emergencies; and

5. Require the President to develop a national contingency plan to ensure a coordinated Federal response to future emergencies.

Coauthor, with Senator Barry Goldwater, of 1980 Senate Armed Services Committee report on Command, Control, and Communications strategic warning system. In addition to recommending ways to modernize the NORAD facility, the inquiry revealed that during an eighteen-month period, the warning system had registered 151 false alarms—one of which lasted a full six minutes, half the time it would take a Soviet submarine launched ballistic missile to reach its target in the United States.

Hart authors comprehensive proposal [Strategic Talks on Prevention] to prevent the triggering of a nuclear conflict by miscalculation:

Creation of jointly staffed US-Soviet crisis prevention centers;

Steps to prevent nuclear proliferation;

Reductions of nuclear war-heads and missiles, particularly MIRVs.

Chairman, appointed by then-Senator Edmund Muskie, of Senate Budget Committee Task Force on Synthetic Fuels (1980):

Played the decisive role in scaling back the Carter-proposed $88 billion synthetic fuels program to a more reasonable, two-phased $20 billion effort;

Fought suspension of environmental standards and won adoption of amendment requiring Congressional approval if there were attempts to spend more than $20 billion on the program;

Proposed alternative tax credit for production approach to massive price support subsidy.

Founder, Congressional Military Reform Caucus (1981):

With Republican Congressman William Whitehurst of Virginia, founded Caucus dedicated to promotion of military reform;

Caucus now boasts membership of 130 Members of Congress from both sides of the aisle. Caucus has led the fight to:

Terminate the DIVAD air defense weapon;

Win Congressional approval of an Independent Testing office for weapons under development in the Pentagon.

Authored, with William S. Lind, American Can Win, a book to educate the American public on the principles of military reform.

Co-Chairman, with Senator Lawton Chiles, Democratic Task Force on Alternative Budget (1985–1986, appointed by Minority Leader Robert Byrd):

Led floor against enactment of Gramm-Rudman-Hollings "I";

Coauthored, with Senator Chiles, "budget principles," adopted unanimously by Democratic Conference in January 1986;

Coauthored, with Senator Chiles, alternative budget to FY1987 budget resolution (final Conference Agreement on budget resolution included $400 million from Hart-Chiles amendment to improve math and science education).

Led successful effort to prevent enactment of Gramm-Rudman-Hollings "II" in the wake of Supreme Court decision striking down automatic budget cutting procedure in Gramm-Rudman-Hollings I.

Opposing Bad Policies; Proposing Alternatives

It takes courage to resist the political stampede when others engage in a march of folly. In the Senate, Gary Hart opposed bad policies and offered alternative solutions even when it was in his political interest to go along:

	Position	Hart approach
Economic Policy		
Chrysler land guarantees.	Opposed	Industrial Modernization Agreements
1981 budget and tax cuts.	Opposed	Offered comprehensive alternative: tax cuts to equal not exceed spending cuts; indexing of personal rates.
Gramm-Rudman I/II	Opposed	Led opposition. Offered legislation to repeal. Wrote alternative budget.
Domestic Content and Textile quotas.	Opposed	Introduced first comprehensive trade bill.
Energy Policy		
Oil import fee	Initiated 1977	Supported Carter effort in 1980. Brought proposal to a vote in 1985 and 1986.
Gasoline tax	Supported	
Synthetic fuels	Opposed	Won approval to scale back program from $88–$20 billion. Drafted alternative plan using tax credits instead of price subsidies.
National Security		
Salt II	Supported	Served as advisory to the talks; won 1986 approval of "no undercut" resolution.
MX Missile	Opposed	Led opposition and filibuster.
Reagan build-up	Opposed	Criticized both size and composition. Formed Military Reform Caucus in Congress and offered military reform budget.
Foreign Policy		
Grenada invasion	Opposed	Author of resolution to invoke the War Powers Act.
U.S. troops in Lebanon.	Opposed	
Reagan doctrine	Opposed	Criticized both Contra war and weapons for Savimbi, offered alternative policy "Enlightened Engagement" in three-part Georgetown lecture series.
Middle East		Authored comprehensive economic policy tied to peace plan.

Specifics

Reaganomics

In 1981, Hart resisted the political stampede, voting against the Reagan budget and tax plans.

One of twenty Senators to oppose passage of Reagan budget resolution. Senate version and Conf. Report.

One of fifteen Senators opposing passage of the 1981 Omnibus Budget Reconciliation measure (enforces cuts in budget resolution)—Senate bill and Conf. Report.

One of eleven Senators opposing passage of the so-called "Economic Recovery Tax Act" of 1981.

Alternatives. Introduced measures to:

Make tax cuts contingent on achievement of a balanced budget

Require sunsetting of tax expenditures

Provide for a capital budget.

Anticipating tides. In October of 1978, Hart introduced comprehensive legislation providing tax cuts and equivalent spending reductions. He criticized Kemp-Roth, a thirty-percent across the board tax cut (seeing it as inflationary and running the danger of creating deficits). The Hart legislation:

Provided a 20% reduction in personal taxes and cut taxes for business:

Cut spending by an equivalent amount, holding transfer payments and discretionary programs to levels below the current budget baseline;

Indexed personal tax rates against inflation.

Tax Reform

The movement for comprehensive reform of the tax code began more than a decade before President Reagan's conversion. Gary Hart campaigned for the Senate beginning in 1973 on a platform stressing tax reform and never wavered from his commitment to that goal.

During consideration of the 1976 tax bill, Hart won unanimous approval from the Senate for his amendment providing for the establishment of a Commission on Tax Simplification and Modernization.

In 1977, Hart introduced legislation providing for the "sunset" of 80 tax expenditures.

In 1978, Hart offered a non-inflationary, deficit-neutral alternative to the so-called "Kemp-Roth" tax bill, providing for:

A phased, 20-percent reduction in personal taxes and business tax cuts;

Reductions in federal spending equivalent to the tax reductions he proposed; and

Indexation of personal tax rates.

He offered a similar plan in 1980 during consideration by the Senate Budget Committee of the FY1981 budget resolution.

In 1981, he was one of only 11 Senators to oppose the extravagant, $750 billion Reagan tax give-away program.

In 1983, he endorsed Senator Bill Bradley's Fair Tax proposal and, in 1984, urged Democratic Presidential nominee Walter Mondale to make comprehensive tax reform a key element of the Democratic Platform.

In 1985, Hart won passage by the Senate Budget Committee of his Sense of the Congress resolution urging passage of comprehensive tax reform.

In 1986, he was the *only* Senator to vote against every substantive change in the Bradley-Packwood tax reform bill.

Reagan Build-Up

From the beginning of his service on the Senate Armed Services Committee, Hart fought to change the debate on defense from "more is better" to "better is better." This meant fighting for specific amendments to delete large aircraft carriers, build greater numbers of less expensive submarines, and fighting costly and destabilizing weapon systems.

It also meant campaigning for the adoption of the SALT II Treaty in 1979—an extremely unpopular position for a Senator up for reelection the next year to take. (Hart won adoption by the Republican-controlled Senate of legislation urging the President (in 1986) to continue to abide by the SALT II Treaty.

To recruit new voices to the military reform movement, Hart founded the Military Reform Caucus in the Congress in 1981. Co-chaired by Rep. William Whitehurst, the Caucus grew to boast a membership of Republican and Democratic Members now totalling more than 130.

On the Senate Budget Committee, Hart fought the extravagant increases asked by Defense Secretary Weinberger. In addition, he offered a comprehensive military reform budget in 1983, a budget which:

Reduced Pentagon spending by a net $12 billion over two fiscal years; approximately $27 billion in cuts and $14 billion in military reform additions;

Boosted needed investments in soldier pay, operations and maintenance and readiness; and

Terminated the Bradley fighting vehicle, the DIVAD air defense gun (subsequently killed by the Pentagon under pressure from Congress), the MX missile and B1 bomber.

Hart launched a filibuster against the MX missile in 1983. He cosponsored an amendment, approved by the Congress, which slowed the development of the missile. In 1985, he was the floor leader for the Democrats in a fight to delete all funding for the MX from the 1986 defense budget. Later that year, he joined a compromise effort to limit to 50 the number of MX missiles procured by the Administration—which initially asked for 200. In 1986, he won approval from the Republican controlled Senate Armed Services Committee for his language establishing a permanent cap on the 50 missiles—after the Administration indicated it would renege on the 1985 agreement.

Protectionism

Since President Reagan took office, the country has seen a dramatic reversal in its once commanding trade posture. For the first time in nearly a century, we are now a debtor nation. Where we once enjoyed a trade surplus, we have unprecedented triple-digit trade deficits, now threatening to exceed $175 billion. Even in the agriculture sector, which once enjoyed a commanding trade surplus, we are now a net importer of food.

Once the party of free trade, Democrats moved in 1983 to become the Party of protectionism. Support of domestic content legislation, for example, became a litmus test for Presidental candidates in the primaries. Hart resisted that tide, campaigning against protections for automobiles in the industrial heartland.

In 1985, this trend worsened. Certain key leaders in the Democratic Party introduced legislation to impose a surcharge on imports. Had this legislation been adopted, the United States would have imposed tariffs in 1985 higher than those required under the Smoot-Hawley bill in the 1930s—legislation which prolonged and deepened the Great Depression. Also introduced in the same session of Congress was legislation to impose strict quotas on textile and apparel im-

ports—legislation which would break 34 international agreements the United States had signed. Hart's opposition to both bills was significant.

Unwilling simply to criticize, Hart introduced the first comprehensive trade alternative that promoted competitiveness in lieu of protectionism. His legislation, the Comprehensive Trade Reform Act, identifies both the source of trade problems and proposed comprehensive solutions to deal with them:

Value of the dollar: preparation of agenda for approval by Congress for a "New Betton Woods."

Collapse of overseas markets; revives the Cooley Loan Program to sell surplus U.S. commodities for LDC local currencies.

Coordination of US economic policy: Creates an economic counterpart to the NSC.

Reform of trade laws to encourage end of violations: *Reform of GATT* including trade in services, ag., intellectual property; end unfair practices by talks or competitors to face penalties stronger than in current law.

Reforms for industrial competitiveness: Contains reforms in the areas of trade in services, export promotion, antitrust reform;

Educating students: improvements in elementary, secondary, and college courses in math, science, computers, and foreign languages to provide students with competitive skills.

Strengthen and improve trade adjustment assistance program.

GRAMM-RUDMAN

In October of 1985, Senate Republicans tried to rush approval without debate of the most sweeping changes in Congressional budget policy in a decade: the deeply-flawed Gramm-Rudman-Hollings legislation. The bill provided for arbitrary across-the-board cuts in Federal programs; exempted "big-ticket" military hardware; put tax increases "off-limits" for deficit reduction; and, in defiance of the constitution, charged an unelected federal bureaucrat with the responsibility of making the deep reductions.

In spite of the political popularity of the measure—it won on the first day of introduction over 40 Senate sponsors—Hart resisted the tide. He forced the Senate to debate the measure. In an extraordinary Saturday session, he used over 2 hours of debate time. In questions posed to Senate sponsors, he uncovered a series of "mistakes" and drafting problems in the legislation (including the fact that military contracts were excluded from the cuts). Hart asserted the measure was unconstitutional.

House Democrats did not have a strategy for dealing with Gramm-Rudman. Hart's dissent layed the groundwork for nine days of Senate debate buying time for the House. At the end of the first Senate debate, he was one of only 24 Senators to oppose Gramm-Rudman.

In 1986, Hart introduced legislation to repeal Gramm-Rudman. He offered a comprehensive budget alternative to the first Senate budget produced under Gramm-Rudman constraints. When the Supreme Court declared the measure unconstitutional, Hart again led a floor fight against Gramm-Rudman-Hollings II. In August, 1986, he was able to prevent the Senate from adopting the measure as an amendment to the debt ceiling legislation.

ENERGY POLICY

Hart first came to the Senate during the first "oil crisis," and became a leader on energy policy. He fought for conservation, incentives for independent oil and gas producers, in favor of vertical divestiture, of the industry, and on behalf of strict regulation of nuclear energy. In 1977, he first proposed a fee on imported oil.

In the midst of the Iranian oil cut-off, there was a political stampede to do something, "anything," to deal with the energy crisis. Hart, who was involved with the debate over energy policy from the beginning of his first Senate term, played a leadership role—opposing key elements of the unwise Carter proposal and proposing alternatives.

Synthetic Fuels. Hart opposed the creation of a massive $88 billion synthetic fuels program. He proposed a less costly alternative:

Instead of an independent Energy Security Corporation, an Office of Energy Security within the Department of Energy. The Office would be directly responsible to the Secretary of Energy. Rather than guaranteeing funding in advance, Hart proposed a limited annual budget determined by Congress each year based on the actual amount of price guarantees and purchase contracts let.

The ESC, reconstituted as the Synthetic Fuels Corporation, turned out to be a disaster. It was mismanaged. The principal officers were paid extravagant salaries. The office of President changed hands numerous times, and many of the few projects it actually supported folded, because the big energy companies running them determined the projects would never be financially viable.

Hart was appointed Chairman of the Senate Budget Committee Task Force on Synthetic Fuels. In that capacity, he successfully led the fight to scale down the Administration's $88 billion request to a more reasonable $20 billion amount.

Windfall Profits tax. During Senate consideration of the Windfall Profits tax legislation, Hart offered an alternative to the proposed tax on newly discovered oil (which he criticized as a disincentive to exploration). He proposed a tougher measure, opposed by the major oil companies, asking a 100% tax on unearned profits from the sale of old oil which had been decontrolled by President Carter.

Energy Mobilization Board. Hart led the Senate opponents of this measure, creating a panel with extraordinary powers to overturn environmental regulations over nonnuclear energy facilities.

Fee on imported oil. In 1980, Hart was one of only thirteen Senators to vote in support of President Carter's fee on imported oil. In the years that followed, he introduced legislation providing a $10 per barrel fee on imported oil, with consumers receiving rebates through Social Security payroll tax reductions and increases in the low-income energy assistance program. In 1985 and again in 1986, he offered variations of this proposal.

REAGAN MIDDLE EAST POLICY

After taking office in 1981, the Reagan Administration was unable to build on the progress started by Camp David to move toward a comprehensive Middle East Peace. It effectively abandoned work on the so-called Reagan Peace Plan of 1982, and committed American troops to Lebanon in 1983—a move Hart opposed.

Once the U.S. Embassy was destroyed by a terrorist's suicide truck bomb, killing over 250 American troops, the US retreated and failed to exercise a role in the region.

After visiting the Middle East in 1986, as leader of a study mission authorized by the Senate Armed Services Committee, Hart unveiled a comprehensive economic proposal—to be complemented by strong, hands-on diplomatic efforts by the Administration, to renew progress in the peace process. The central components of the package are:

Increased aid to Jordan to provide quality of life improvements on the West Bank;

Debt relief for Egypt;

Proposals to increase and improve military cooperation between the United States and Israel.

HART HIGHLIGHTS—99TH CONGRESS

The Senate adopted:

Veterans Judicial Review, S. 367;

Improvements in Department of Labor "job bank";

Interagency study on US-Soviet verification capabilities;

Payments to sugar beet producers; and

Investigation of defense contractor fraud; 6-month day of Interior Department patenting on oil shale claims to prevent land- and resource give-away.

Committees adopted:

Budget Committee approves Hart tax reform amendment to FY1986 Budget resolution;

Environment and Public Works Committee approves Hart citizen suit provisions of Superfund;

Armed Services Committee adopts Hart amendments retaining cap on MX missile production and urging the Administration against undercutting SALT II; and

Environment Committee accepts Hart language increasing nuclear plant liability limits ten-fold.

FLOOR ACTION AND SPONSORSHIPS

Economics and Budget:

Leader of Senate opposition to Gramm-Rudman-Hollings I.

Appointed to chair a Senate Democratic Task Force on Alternatives to the President's budget by Senate Minority Leader Robert Byrd. Hart-authored principles to guide Democratic planning for FY1987 budget adopted unanimously by Senate Democrats.

Introduced legislation, cosponsored by Senator Daniel Patrick Moynihan of New York, to repeal the Gramm-Rudman law. Urges "New Contract of Cooperation," an agreement to restrain defense spending, increase revenues, and finance increased investments in programs critical to the nation's future with measured domestic spending reductions.

Authored a comprehensive budget alternative to the President's 1987 spending plan: urges new investments in education, retraining, economic growth, and new opportunities for employment and self-sufficiency for the nation's poor.

Although the amendment was rejected, a $400 million math and science initiative, a fundamental part of the plan, was adopted by the Congress as part of the final conference agreement on the budget on June 26.

Led the fight against Gramm-Rudman-Hollings II (Senate declined to accept this amendment during debate on the debt ceiling legislation, August 1986.

Recognized as the only Senator, during the debate on tax reform, to have voted against every amendment to weaken the bill approved by the Senate Finance Committee.

Testified before the House Commerce Committee on behalf of his Competitive America Trade Reform Act, the first com-

prehensive Democratic proposal to rewrite the nation's trade laws.

Introduced legislation designed to make risk and long-term capital available to new, young and small businesses. [National Entrepreneurship Act.]

FOREIGN POLICY AND ARMS CONTROL

Won approval by the Republican-controlled Senate Armed Services Committee of the first Congressional statement supporting SALT II after the Administration announced its decision to abrogate the Treaty.

Won approval by the Senate Armed Services Committee for language opposing plans by the Administration to expand the production of the MX missile.

Introduced legislation to prohibit the use of funds for the production of chemical weapons.

Pushed passage by the Senate Armed Services Committee of significant, new legislation to reform the Joint Chiefs of Staff system.

Introduced legislation, following reports of widespread election fraud in the Philippines, to put aid to that country into a "Trust Fund for Philippine Democracy," pending a transition to democratic rule.

Introduced amendment to delete funds for the MX Missile program. Amendment not agreed to by 42-56 vote.

Introduced amendment, agreed to in Senate, to require a study to examine the verification capabilities of the U.S. and the Soviet Union and possible avenues for cooperation.

Introduced amendment, agreed to in Senate, to express the sense of the Senate that the Federal government audit and investigation defense contractor billing practices.

Introduced legislation praising South Africa's Bishop Tutu for his courageous work on behalf of peace and equality in that country.

ENERGY/ENVIRONMENT

Introduced bill imposing $10/bbl import fee on crude oil and petroleum products. Pushed for Senate votes in 1985 and 1986. Testifies before Senate Finance Committee in support of fee. Hart's alternative FY1987 Budget included fee and gasoline tax in revenue component.

Introduced bill to repeal Price-Anderson Act and force nuclear industry to demonstrate its safety and economic efficiency by obtaining its own insurance against third-party claims.

Environment and Public Works Committee adopted the Hart amendment raising ten-fold the amounts nuclear power plant operators and held liable if an accident occurs.

Introduced bill requiring the DOE to weigh the effects of transporting highly radioactive waste before siting the permanent repository for such waste. Also requires DOE to assess transit routes and pay for safety improvements.

Introduced bill designating an additional 770,000 acres of wilderness in Colorado (bill stalled by objections from Armstrong over water diversion rights). Sense of the Senate amendment urging protection of these areas pending the outcome of the legislative process defeated on a narrow vote in the Senate.

After public disclosure of a move by the Interior Department, conveying resource rich lands to private interests at $2.50 an acre, the Senate adopted a Hart amendment barring approval of such claims by Interior for a six month period. Adoption of the amendment stopped the permit approval in the case leaked to the press.

Co-sponsored bill to give states the standards and funding to fight groundwater contamination such as that around Rocky Mountain. Will have hearings and mark-up in '86.

EDUCATION

Introduced legislation, cosponsored by 20 Senators, to provide incentives for elementary and secondary schools to improve math, science and foreign language education. Testified on the bill before the Senate Subcommittee on Education. (American Defense Education Act.]

Introduced legislation to encourage partnerships among private industry, state government and educational institutions to strengthen science, engineering and technical education. [High Technology Morrill Act.]

Testified before the House Subcommittee on Elementary and Secondary Education on behalf of legislation to provide assistance to states for encouraging educational excellence and increasing opportunties for underserved populations. [School Excellence and Reform Act.]

COMMUNITIES AND FAMILIES

Introduced legislation to establish a Select Commission on National Service Opportunities to examine policy questions relating to national service. The Commission would examine how to establish incentives and opportunities for our young people to provide useful service to the nation.

Introduced legislation to provide grants to support family day care providers. [Family Day Care Provider Act.]

Introduced bill to reduce the deduction for business meals and earmark the savings for school lunch programs.

WORKER RETRAINING AND ADJUSTMENT

Introduced legislation to establish a system of retraining accounts founded by voluntary, tax-deductible contributions by employers and employees. [National Individual Training Account Act.]

Introduced legislation and provide unemployed workers with opportunities to create their own jobs. Legislation establishes a demonstration project to allow unemployed workers to use their UI benefits for income support while starting their own jobs. [Self Employment Opportunity Act.]

Introduced amendment, now signed into public law, to improve the operations of the national interstate job bank system so that workers can be more efficiently matched with available jobs. Legislation requests the Department of Labor to study the costs and methods of computerizing the job bank system.

OTHER SIGNIFICANT ACTIVITIES

Introduced the National Infrastructure Act to provide for Federal investment in highways, bridges, transit systems, sewers, and water treatment facilities. Includes unique mechanism to leverage new spending.

Introduced comprehensive veterans' rights legislation (principal provisions: provide access to Federal Courts to appeal adverse benefit decisions and repeal $10 limit on attorneys fees), agreed to in Senate.

Introduced legislation to provide emergency credit relief to financially strapped farmers. Targets small- and medium-sized farmers.

Cosponsored amendment offered by Senator Tom Harkin (D-Iowa) urging speed-up of payments to farmers, enabling them to afford spring planting payments, equipment and mortgage costs.

Endorsed passage of a mandatory supply management program as part of the wheat referendum being conducted by the Department of Agriculture. Enactment of such a program would improve farm income, lower costs to the governments, and aid American agricultural exports.

Introduced legislation to close "the Deaver loophole," to stop former White House officials from lobbying other offices within the Executive Branch and skirting the application of the Ethics in Government Act.

Authored the "Fair Foundations Act," the first legislation introduced in the Congress requiring political leaders with educational foundations to disclose their contributors and expenditures.

FAREWELL TO SENATOR RUSSELL LONG

Mr. DECONCINI. Mr. President, as the 99th Congress draws slowly to a close, we are all deeply saddened by the loss of many of our colleagues who have chosen not to seek reelection to their seats in the Senate. Of all our colleagues who have decided to either retire or pursue new career challenges, perhaps the individual we will miss the most is the esteemed senior Senator from Louisiana, RUSSELL LONG.

Senator LONG comes from a distinguished Louisiana political family which has served the State of Louisiana and the country for as long as I can remember. The name Long is synonymous with Louisiana politics. RUSSELL LONG has served in this body since 1949, having been elected one day prior to his 30th birthday. During his 38 years of distinguished service, RUSSELL LONG has earned a reputation as one of our most respected, revered, and beloved colleagues. He is by any standard of measure, a Senator's Senator. He is the model by which each of us can measure our own effectiveness as legislators. In short RUSSELL LONG is a leader among leaders—a giant in the annals of the history of the U.S. Senate.

RUSSELL LONG is both a master of Senate rules and procedures and a master of the United States Tax Code. Because he has been a student of the rules and of the issues that fell under the jurisdiction of the committee on which he has served, RUSSELL LONG became an accomplished legislator. If our computer systems went back 38 years, I am certain that the printout of RUSSELL LONG'S legislative accomplishments would be thicker than for any other Member of this Chamber. Among his monumental legislative achievements are the landmark 1972 and 1976 revenue-sharing laws; the 1975, 1977 and 1978 tax cuts; changes in the Social Security and Medicare benefit systems which have moved most of the Nation's aged, blind, disabled and truly needy out of poverty and made them eligible for medical care; his successful campaign for em-

ployee stock ownership plans; and the dollar checkoff on tax returns for presidential campaigns.

Because of his extraordinary in-depth knowledge of a myriad of issues, RUSSELL LONG could easily have ignored his colleagues' wishes and ramrodded legislation in which he had a special interest through this body. But that was not RUSSELL LONG's style. He is a student of politics as well as of issues, and he knew better than most that the true art of politics is compromise. RUSSELL LONG always tried his best to accommodate the views of his supporters as well as his opponents in shaping legislation. He very patiently, calmly and quietly tried to build a consensus and in the process, he treated each Senator with equal kindness, consideration and deference. That is a legacy for all to envy.

From his days as a student body president at Lousiana State University, to his service as a naval officer in World War II to his nearly four decades of service in the Senate, Senator LONG has exhibited leadership and a rare dedication to the tasks he has undertaken. He will be missed by this Senator and by every colleague, past and present, who has had the pleasure of serving with him.

I want to bid RUSSELL LONG a fond farewell and wish him the very best that life has to offer as he returns to his beloved State of Louisiana. I want to thank him for the time and energy he has devoted to this body and to the Nation. Louisiana's gain is our loss. RUSSELL, we will miss your skills as a legislator as we will miss your wit and humor.

God bless.

SENATOR CHARLES McC. MATHIAS, JR.

Mr. JOHNSTON. Mr. President, it is altogether fitting that Senator CHARLES MCC. MATHIAS should have represented the State and people of Maryland in the U.S. Senate for the last 18 years. He is the embodiment of the virtues of tolerance, graciousness, respect for the past, and diversity which characterize that great State. I don't know where his talents will be most missed—on the Foreign Relations Committee, where he was a leader in drafting antiapartheid legislation; on Judiciary, where he has scrutinized closely but fairly the credentials of those who will sit on our courts; or on Rules and Administration, whence he led the Senate, over my sometimes heated objections, into the television era. His greatest legislative legacy may well turn out to be the Chesapeake Bay on whose rehabilitation he has worked for 15 years. It is certain, however, that the poor and disenfranchised on whose behalf he sponsored civil rights, voting rights, and fair housing legislation have reason to be grateful to him for his untiring efforts on their behalf.

Like Sir Christopher Wren, his monuments are all around us, so we are not likely to forget him. I am sure that he will continue to be active on behalf of his State and its citizens in the years to come.

SENATOR THOMAS F. EAGLETON

Mr. JOHNSTON. Mr. President, Harry Truman, another Senator from Missouri, once said that democracy was based on the conviction that man has the moral and intellectual capacity to govern himself with reason and justice. I suspect that TOM EAGLETON took that as his motto a long time ago. It is clear that in his 18 years in the U.S. Senate, Senator THOMAS F. EAGLETON has devoted himself to ensuring that Government operates with both compassion and efficiency. The inspectors general legislation he sponsored have saved the taxpayers many millions of dollars, but even more important, have conveyed to the Nation the urgent sense of responsibility the Congress feels for the upright administration of Government.

Senator EAGLETON in going home to Missouri to practice law, to teach and to write. We know that he will do all of these well, because we know him as one of those rare Senators who, by the power of a single speech, can change the direction of thought in the Senate. This is not only because of his eloquent delivery, the cadence, the timbre of voice, the cogent and persuasive reasoning; in the end what convinces us is the force of character of the man. He has earned our admiration and affection, and we wish him well.

SENATOR GARY HART

Mr. JOHNSTON. Mr. President, last year the Senate was pleased but not surprised to discover that Senator GARY HART had unveiled yet another talent. His best-selling novel, "The Double Man," demonstrated his ability both to shine in a new genre, and to work successfully with a colleague from the other side of the aisle. It is clear that, both as a Senator and a writer, he is a man for all seasons.

Since he came to the Senate in 1972, Senator HART has shown a capacity for hard, meaningful work. His eloquence in debate on critical defense issues reflects both his mastery of detail and the long thought which has gone into the shaping of his positions. In his 14 years in this body, we have learned to recognize and appreciate his subtle sense of humor and the strength of his character. He is his own man, never following the polls or going with the flow, but consistently defending the national interest as he sees it. Like the mountains of Colorado, he stands up straight and tall. We will miss him.

SENATOR RUSSELL B. LONG

Mr. JOHNSTON. Mr. President, at the end of this Congress, my very good friend RUSSELL LONG is going home to Louisiana. I will miss him very much. He has been in every way the perfect Senate colleague.

Since the first day I came here, he has been more than generous in giving me credit for matters we jointly worked on, and this generosity has been reflected in the way our staffs have cooperated—no rivalry, no jealousy, no envy of the other's success.

RUSSELL LONG is one of the country's great raconteurs. He has an incredible store of anecdotes, many about Uncle Earl, which he can recall at will to suit the occasion. Time after time, I've seen him in serious, intense debate bringing out the perfect story to illustrate the silliness of his opponent's arguments. His designation by his colleagues a few years ago as the "Best Senate Debater" was due in no small measure to his ability to tell the right story at the right minute.

His command of legislative procedure and substance is remarkable; I've never seen him read a speach. Even more important, his sense of timing in debate is without parallel. He knows when to delay and when to ask for a vote. He hs a sixth sense about the mood of the Senate.

His humor and affability are contagious. He is equally at home regaling hundreds with an after-dinner speech or sharing a joke with two or three Senators at lunch. One of his more endearing characteristics is the way he laughs at his own stories as he tells them.

RUSSELL LONG was born into a political family. In their tradition, he enjoys politics and is a consummate politician. One secret of his effectiveness has been his candor. If there is a Louisiana interest involved in a piece of legislation he is handling, he not only doesn't try to hide it, he lets it be known up front. The casual observer might mistakenly dismiss this openness and realism as pork-barrel politics, but Senators know better. RUSSELL does not stoop to subterfuge, and I've never known a public servant who has a higher sense of the national interest.

One of the clearer examples of this was the controversy over the Panama Canal treaties. As the debate progressed, it became obvious that the treaties were terribly unpopular in Louisiana. A man who valued prudence over principle might have ducked the issue. RUSSELL chose to vote his conscience and suffer the consequences; happily for him and for us, he has outgrown them, and, if there is

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anywhere he is better loved and appreciated than in the U.S. Senate, it is in Louisiana.

Polonius advises us to be true to ourselves so that we will not be false to others. In his 38 years in the Senate, RUSSELL LONG has been true to himself, and to the best interests of his State and his country. You cannot say more—or better—about a public servant. We will miss him.

TRIBUTE TO SENATOR PAUL LAXALT

Mr. JOHNSTON. Mr. President, the end of a Congress inevitably brings loss to the Senate. It is always hard to say goodbye to friends and colleagues who have shared legislative experiences, but especially so when your friend is also your tennis partner. So let me express my profound hope that PAUL LAXALT's retirement will not take him out of the city.

Senator LAXALT brought to the Senate the candor and congeniality characteristic of the West. Secure in himself and in his judgments, he "tells it like it is," and, in so doing, has earned bipartisan respect and affection. He has the confidence of the President, and has carried out the diplomatic efforts entrusted to him with a frank honesty which, in the case of the Philippines, may have averted disaster and great loss of life. Being an ombudsman is often a thankless task, but Senator LAXALT has worked long and loyally for his party and his President. I am sure that I speak for my colleagues on both sides of the aisle when I say how much we will miss him.

TRIBUTE TO SENATOR BARRY GOLDWATER

Mr. JOHNSTON. Mr. President, when Emerson said that there is no history, only biography, he was anticipating Senator BARRY GOLDWATER. It is not possible to imagine the last 35 years in American politics or the last 50 years in American aviation without him, and American political writing would be much blander in the absence of his blunt, pithy aphorisms.

The Nation, not just his electorate in Arizona, owes him a vote of thanks for his Senate service. To the Senate Armed Services Committee he has brought knowledge, practical experience, critical judgment, and the invaluable ability and courage to tell the truth and shame the devil. He embodies the conscience of a true conservative, and the courage of the air transport pilots with whom he flew in World War II. I honestly cannot imagine the Senate without him.

TRIBUTE TO SENATOR THOMAS EAGLETON

Mr. INOUYE. Mr. President, as the 99th Congress draws to a close, we will be saying goodbye to many friends who will be leaving the Senate. I wish to take this opportunity to bid a fond aloha to a dear and trusted friend, TOM EAGLETON.

I have had the privilege to serve with TOM in the Senate since 1968, and in these 18 years of service TOM has been a leader, and served with pride and dignity.

I have been the ranking member and past chairman of the Senate Appropriations Subcommittee on Foreign Operations, and in this capacity, I have found TOM's expertise in foreign relations invaluable. TOM has been a member of the Senate Foreign Relations Committee and has been a valuable adviser to his colleagues on that committee.

TOM is respected by his colleagues here in the Senate, and admired by his staff and his constituents. He has served the people of the United States and his constituents of Missouri well. They can be pleased in their decision to have TOM represent them in this body.

I wish him well in his future endeavors.

TRIBUTE TO SENATOR BARRY GOLDWATER

Mr. DODD. Mr. President, after a political career that has spanned four decades and after 30 years in this body, Senator BARRY GOLDWATER will retire at the end of this Congress. As his colleagues, we will miss his intensity, his candor, and his independent thinking.

His political career has been spectacular by any standards. He stormed onto the national political scene in 1964 with a Presidential candidacy that sparked his party to life. Many in his party, including our President, acknowledge their debt to Senator GOLDWATER. His inspiration and leadership encouraged them to pursue their own political careers. Although we are often on opposite sides on an issue, I have learned to respect and admire Senator GOLDWATER's fierce loyalty to his values and his willingness, or more accurately, his insistence on speaking his mind.

Besides his role as a national spokesman for conservative policies, Senator BARRY GOLDWATER has been a significant legislative force on many fronts in the U.S. Senate. His Senate career has been highlighted by important work in establishing national telecommunications policy as chairman of the Commerce Committee's Subcommittee on Telecommunications. As chairman of the Intelligence Committee, he provided diligent and responsible leadership. His adamant insistence on proper congressional oversight and his criticism of the administration's covert operations proved that underneath all the tough talk, there was a man well aware of the legitimate uses and limits of force.

Finally and most recently, as chairman of the Armed Services Committee, he undertook the monumental task of reforming our military bureaucracy. The final product was the Armed Services Reorganization Act designed to alleviate the chain-of-command and service rivalry problems which have dogged our military for years. Only a man of Senator GOLDWATER'S stature and unquestioned commitment to our national security could have carried it off, and for this we will remember Senator GOLDWATER for a long, long time. This carefully crafted legislation may well be Senator GOLDWATER'S greatest contribution to the defense of liberty. I wish the Senator well in his new career as a private citizen.

TRIBUTE TO SENATOR PAUL LAXALT

Mr. DODD. Mr. President, to the media, PAUL LAXALT is known as Ronald Reagan's best friend in the Senate but to his colleagues in the Senate he is known as a loyal public servant, an able legislator, and a good friend. After 12 years of service in this body, PAUL LAXALT has chosen to retire.

PAUL'S tenure in the Senate has been marked by loyal service to his constituents and his conservative political goals. Although I am often at odds with PAUL on policy issues, I have grown to admire and respect his integrity, his courage, and his independence. PAUL has also served as an able spokeman for the Western States, arguing for low water-user fees for westerners and leading the successful effort to quash the MX missile "racetrack" basing proposal. In addition, PAUL has also ably served the President, advising him on many fronts, from up-to-the minute reports on the political pulse of this body to sensitive defense and foreign policy issues. Recently, we saw PAUL serving as the President's special envoy to the Philippines and advising Ferdinand Marcos to relinquish power.

It is with great fondness and reluctance that I say goodbye to Senator PAUL LAXALT. His cool-headed leadership has served this country well and I wish him all the luck in the world. I am sure we have not seen the last of PAUL LAXALT.

TRIBUTE TO SENATOR GARY HART

Mr. DODD. Mr. President, it is with considerable regret that I rise now at

the occasion of the retirement of Senator GARY HART. At the peak of his career, he takes from this institution his rare energetic and optimistic spirit, his inspirational and ambitious hopes for bettering our society, and a comprehensive understanding of military and environmental issues, among others, which has provided immeasurable benefit to this body through 12 or our Nation's most uncertain years.

It is common to say that GARY HART is a visionary. He is a man who has dedicated himself not to the minutiae of the present, but to seeking long-term legislative, economic, and military strategies for charting America's future. But in accomplishing that, the resources he drew upon and the bold and often startling new policies he advanced were far from common or conventional. Rather, GARY HART has brought to the Senate a battery of impressive initiatives that evidence his formidable intellect and know-how, his integrity as a man, and his faith in the future of this country as a just society and world power.

It has been a pleasure to have had the opportunity to work with a man who cares as deeply about this country as GARY HART. In environmental issues, for instance, he is unmatched in his devotion to preserving the quality of our lives. Whether he was fighting for the protection of our air or water, or that of our children from the risks of nuclear power, Senator HART always went after permanent, effective solutions. Yet through those efforts, he was always tremendously realistic—GARY HART is an achiever, not a zealot. He was always as quick to tell the most ardent not only what they could accomplish, but what they would not, and in the tradition of great leaders, he defined his goals with an acute sense that incorporated his own vision with a deep understanding of the possible in America.

In his tenure in the Senate, GARY HART never shrank from taking on the most firmly entrenched ideas or institutions. He surprised us and shook up many in the defense establishment when he outlined his strategy for the congressional "military reform" movement. He brought understanding of warfare and defense policy to this body that few were able to apply to this difficult issue.

Senator HART's departure will be a great loss to the U.S. Senate. But we all know he will continue to be a prominent figure in the national political debate. Although he leaves many friends and admiring colleagues here, I am sure the American people will continue to benefit from his service. We look forward to his continued presence on the national scene.

TRIBUTE TO SENATOR THOMAS EAGLETON

Mr. DODD. Mr. President, a catalog of the accomplishments of the retiring senior Senator from Missouri, THOMAS EAGLETON, will record the most profound moments in the last two decades of American history.

Senator EAGLETON took upon himself the burden of the most salient, formative issues of our time. Anyone who has had the opportunity to engage him in debate, especially on an issue that truly moved him, knows that neither florid rhetoric nor fancy rationales ruffled his feathers or penetrated his firm sense of right and wrong. This body saw no Senator who could so quickly and so economically drive to the heart of an issue, and his were the issues that have fundamentally shaped our Nation in the 1970's and 1980's.

A staunch opponent of the war in Indochina, he took the lead in the Senate as a first-term, junior Senator by successfully advancing the amendment that cut off funding for the bombing of Cambodia. But recognizing more quickly than anyone the vital historical lessons of that war, he wrote his convictions into national principle by drafting a great part of the War Powers Act which redefined Presidential power to exercise American might. As on all issues he truly cared for, he was a diligent, powerful advocate of that bill, but he displayed his true stuff when, feeling that the final format was insufficiently restrictive, even after the considerable time, dedication, and sweat he poured into it, he withdrew his support.

More recently, I personally found Senator EAGLETON across the fence on an issue that was extremely delicate, significant, and morally difficult for both of us. That was the determination of the final format of the United States-United Kingdom Supplementary Extradition Treaty. Mr. President, I need only say that any one who has locked horns with THOMAS EAGLETON can only have increased respect for his intellectual powers and his professional capabilities. He is a formidable advocate and a principled man, and he has demonstrated that time and time again in this institution.

His contributions have been many, and in his pursuits as a legal scholar, I am certain he will continue to produce great things, and move many minds in his productive years ahead. His departure will be a great loss to this body, but we can take satisfaction in knowing that that loss will be his students', and ultimately society's, gain.

RETIREMENT OF SENATOR GOLDWATER

Mr. MATTINGLY. Mr. President, I rise to pay tribute to a distinguished colleague, a valued friend and a political godfather of mine, Senator BARRY GOLDWATER.

The 1964 Goldwater Presidential campaign—crusade, perhaps, is a better word to describe that exhilarating effort—was a catalyst that resulted in the political activism of millions of Americans; one of whom was a businessman in Georgia who became increasingly intrigued with the message of the Arizona Senator and who, more than 20 years later, has the high honor of serving in the U.S. Senate with him.

The results of the 1964 campaign, for those of us who believed that more government is not necessarily better government, were disappointing to say the least. Indeed, at the time, his defeat in the Presidential contest was so overwhelming, apparently so final, that many viewed that effort, that crusade, as having ended in failure.

But with the advantage of hindsight and the benefits of the passage of more than two decades, we are able to view that electoral outcome in a somewhat different perspective and recognize that it was not the end of the effort to inform public policy and public offices with the conscience of conservatism, but merely the beginning of what was to become one of the most enormously successful political revolutions that our Nation has ever seen.

I find it irony of the highest order that during that 1964 campaign BARRY was pilloried as some sort of throwback, a man with one foot planted in the 19th century, his gaze firmly fixed on the 18th.

Well, Mr. President, if he was a throwback it was not to the 19th or 18th centuries but to the 14th because if ever there was a true renaissance man, it is BARRY GOLDWATER.

Here is a man, Mr. President, who has served with distinction in the U.S. Senate; obtained his party's nomination and ran for the highest elective office in our land. He has flown every aircraft in the Air Force inventory, and, I suspect, some that are not. He is a magnificent photographer. He is probably an electronic genius. He is a family man who has never lost sight of what truly is important in our daily lives.

Mr. President, time does not permit me to go on at the length that I would like and that would be required to even begin to detail the accomplishments of this extraordinary man.

Those who have been fortunate enough to serve in this body with this man have been truly blessed. It will not take long for those who return next year to lament the loss of his presence.

His Senate seat will be filled—but not his shoes.

Mr. President, with deepest respect and affection, I will conclude only by

noting, that in our hearts, we always knew he was right.

RETIRING SENATORS

TRIBUTE TO SENATOR TOM EAGLETON

Mr. CHILES. Mr. President, the State of Missouri has sent some superior men to the U.S. Senate, from Thomas Hart Benton and Carl Shurz, to Stuart Symington, and Harry Truman. To that distinguished roster, Missouri added the name of TOM EAGLETON in the autumn of 1968. And, as he leaves the Senate now, he also leaves behind him the record of a man as young in spirit as the 39 year-old former Missouri attorney general who took his seat here 18 years ago.

Each person, I believe, possesses two key qualities. One is a sense of fairness. The other is the ability to discern right from wrong. In TOM EAGLETON, both those qualities are honed to a fine edge.

I have seen him toss niceties aside and cut right to the core of judgment on some very difficult issues. I have been with him in hearings where sentiments and emotions were tightly strung. In those times, while so many others wrestled with their own prejudice, I have seen TOM EAGLETON set down the facts, make the case clear, and help his Senate colleagues see the right and the wrong of a question.

TOM EAGLETON—like Senator TOM EAGLETON— is true to his own feelings. In the grain of his life, it is a strong sense of justice and courage that has guided him through a career of honor and good will.

What it comes down to is TOM EAGLETON is a decisive man. There is a cost in that. We all pay a price for making up our minds. But TOM EAGLETON has not spent his Senate tenure defending his personal balance sheet. He has acted out of concern for his country and personal commitment to doing what's best.

He has been a champion of older Americans, an enemy of waste in Government, and as the former chairman of the Senate Appropriations Subcommittee on Agriculture, he has been a constant friend of farmers throughout this country.

Senator EAGLETON has always been a faithful Democrat, a man to look hard choices straight in the face, and do what he thought necessary and best for his country and his party.

TOM EAGLETON returning, now, to the practice of law teaching and journalism, is not a man to be still about the course of his country. He has poured 18 years of his life into this Nation, but the contributions have many years yet to flow.

I extend to him and to his family my best wishes, in friendship and respect, for a short rest, and a long career as a Missourian with new youth and plenty more to give his country.

TRIBUTE TO SENATOR GARY HART

Mr. CHILES. Mr. President, more than half a century ago, Antoine de Saint Exupery wrote "Night Flight." And in it, he said this: "in life there are no solutions. There are only motive forces, and our task is to set them acting—then the solutions follow."

In his two terms in the U.S. Senate, GARY HART has "set the motive forces acting." Across a broad range of national issues— from better education to international trade, from clean air, to skies free of radioactivity, to a world free from the nuclear arms race—he has been an inventive voice for change in a stubborn world.

I have served with GARY HART on the Senate Budget Committee, where his deliberate, thoughtful manner belied the passion of his beliefs. GARY HART has vision, but he is a practical man. He knows the kind of America he wants us to become, but is willing to immerse himself in the hard policy choices to get us there.

As a candidate for the Democratic Presidential nomination in 1984, he was relentless in the search for fresh thinking to shake the Nation from what he saw as a lethargy induced by dodging one more economic bullet. He saw the economic recovery as an opportunity for the country to make plans for the future.

Senator HART understands better than most that this country is on the seam between what we were and what we hope to become. His belief is that the days of comfortable domination in international affairs are over. We can no longer depend on our economy as an automatic savior.

But rather than viewing these affairs as a setback or a loss, he sees them as the inevitable consequence of a world which has patterned itself to so great a degree on the American example. In that respect, these new challenges are an opportunity for this Nation to set a new example and a still higher standard.

That, it seems to me, is the message GARY HART leaves as his legacy to the Senate and to the Nation. None of us can know the future. But all of us can influence its direction.

GARY HART knows that, and it's certain that his influence will be felt for many years to come.

TRIBUTE TO SENATOR BARRY GOLDWATER

Mr. CHILES. Mr. President, many years ago someone asked Harry Truman about his habit of giving people hell. The former President said, "I never give people hell. I just tell them the truth and they think it's hell."

In the 30 years BARRY GOLDWATER has served in the U.S. Senate, he has dished out a lot of truth to all of us, and some have left singed in the aftermath.

He is blunt, honest, impatient, wise, and generally unimpressed with testimonials. A native born son of Arizona, BARRY GOLDWATER speaks the common sense language born of a lifetime among the rivers, canyons, and deserts of the Southwest.

He ran for President in 1964, took his defeat in stride, and 4 years later returned to the Senate where he's spearheaded the reconstruction of American defense readiness.

When Major General GOLDWATER retired from Air Force duty in 1967, he was a seasoned, hands-on expert in the frontiers of military aviation. He's been in the cockpit of Thunderbolts, Lightnings, Warhawks, and Mustangs. He's flown Sabre Jets, Starfighters, Flying Fortresses, B-52's, and our frontline helicopters. He made his first solo flight in 1929, and has flown the most modern, high-performance planes in our inventory.

The aircraft he's flown—too numerous to list—and the impact he's had on aviation, led to his induction into the Aviation Hall of Fame in 1982, and to the Harmon Trophy for lifetime achievement in aviation.

BARRY GOLDWATER has been a vital part of this country's advance into the era of high technology. And, perhaps most important of all, he has been on the ramparts of national defense throughout his years of public service.

His skilled leadership that produced this year's reorganization of the military, is a tribute to his insight, vision, and patriotism.

I really can't say enough about the quality of BARRY GOLDWATER's service to this Nation, but he would probably protest that I've said more than enough already. But it must be said that he's a man of deep conviction, and an authentic statesman.

Each of us in this body knows we sometimes snarl ourselves in bickering to the neglect of straight-ahead movement on key issues. And in those times, we have been able to count on the Senior Senator from Arizona to get us back in the saddle.

We will miss that in this body with the departure of Senator GOLDWATER. But the record of candor and achievement he leaves written on the pages of our history mark him as a man who knows America. He knows our genius and he knows our shortcomings. And he knows, so much better than most, the virtue of a stiff push when it's needed most.

He now leaves the Senate and returns to Arizona. But his work and wisdom will influence this Senate and this Nation for years to come.

TRIBUTE TO SENATOR RUSSELL LONG

Mr. CHILES. Mr. President, after 38 years, the Senate without RUSSELL LONG will be a reduced institution. For 14 of those years, he was chairman of the Senate Finance Committee. His

expertise on tax policy is legendary. His stewardship over Social Security, and his involvement in the birth and development of Medicare are achievements to fill the memoirs of several Senators.

In fact, that is what Senator LONG has been. He was a stalwart on energy policy during the Arab oil embargo. He has been assistant majority leader. But more than anything else, he has always been formidable.

Regardless, of the issue, RUSSELL LONG, could sit in this chamber and listen. I have seen the Senate inundated with conflicting arguments, charts, statistics, and lofty phrases. I have seen us locked in frustration and raw tempers. And I have seen RUSSELL LONG, ask for the floor, and boil down the choices. He had the special ability to force the Senate to understand.

RUSSELL LONG is a brillant man, with an amazing memory. He will rise to his feet in the Senate, the picture of apology for intruding upon debate. He tells a folksy story and Senators smile. He will pause, go off in a different direction, then go off in another. He injects an anecdote. He shuffles some papers on his desk. There is a look on his face that can be read by the unknowing as a question. But it is really the look of the fox inviting the chicken to dinner.

When RUSSELL LONG asks you a question, he already knows the answer, what his reply will be, that your response to that will be and how the question will be decided. He knows people, their strength, their weakness, and their ways.

He has been at the center of national economic debate for nearly four decades. His inventory of experience has proven to be a source of caution in times of doubt, and leadership when the Senate was at a standstill.

Senator LONG has held a unique place in this body. He, in fact, has been a one-man institution, spinning plans, ideas, and reason into the mainstream of American affairs.

Lousiana is a State rich in political tradition, and those who serve after RUSSELL LONG goes back home will be quality folks. But the LONG magic is part of history. And it is in our future. The work he turns over to others will bear the stamp of RUSSELL LONG for generations to come.

I strongly suspect he will miss the Senate to the same degree that the Senate will miss him. But in the archeology of national affairs, RUSSELL LONG has left sizable prints. They will be studied for years as the historians try to unravel the years that took us from the industrial surge to the threshold of high technology. To all that, RUSSELL LONG was more than a witness, more even than a principal. He has been a shaper of the course and a giant in the Senate.

TRIBUTE TO SENATOR CHARLES MC C. MATHIAS

Mr. CHILES. Mr. President, it is a well-known maxim that the Senate is a continuing body. But the practical source of that continuity are those people with the long view of events, those who work hard to fashion the workable agreements. Senator MATHIAS has been that kind of craftsman.

He has strong views of his own. He never relents in his efforts to do what's best for Maryland. But it is not his style to let partisanship rule his judgment, nor to put his preferences ahead of the national interest.

It has been my good fortune to serve with him on the Senate Committee on Governmental Affairs. His affability, and temperate approach to thorny matters has always been instrumental in whatever progress we make.

By training, he is an attorney, and that training together with his patience has made him a respected voice on the Judiciary Committee. His work on the Foreign Relations Committee reflects his own decency and compassion for all people throughout the world.

CHARLES MATHIAS is a man of discernment and courage, a reasoned force for deficit reduction and sensible economic policy. He is a softspoken man, who takes the time to listen, to survey the options, weigh them, and cast an informed vote despite the pressures of politics.

He has been a widely popular Senator, able to earn votes across the party spectrum because his fellow citizens always believed his only aim was to do what was right.

The Senate will miss him as much as his State will miss his service. He was and remains a man of his word, a strong and determined Senator doing the best he can.

I wish him the very best, and hope he will not be a stranger to the Senate as he takes up a second career.

TRIBUTE TO SENATOR PAUL LAXALT

Mr. CHILES. Mr. President, earlier this spring, I read a newspaper article in which PAUL LAXALT talked about deciding to retire from the Senate. He said, "There is life outside the U.S. Senate . . . If I can work on the outside and keep my hand in public service, it would be the best of both worlds."

By his own admission, Senator LAXALT has not been especially fond of the plodding pace of the legislative process. In some ways, the long hearing and markup sessions have left him with a sense of confinement.

But that is not surprising considering his affection for the hills of his native Nevada. I have heard him say on many occasions how much he loves the solitude of the hills where he spent so many summers herding sheep with his father. And he has taken his own grandchildren to those same hills to let them develop a feeling for the beauty and strength of nature.

On two occasions PAUL LAXALT has had to make difficult decisions about his career in Government. Although a popular and respected Governor, he turned down the opportunity to seek another term. Although a popular and nationally respected Member of the Senate, he has decided to lay that aside. He has made it clear there are things in his life more important than public acclaim, and we must respect his wishes.

Certainly, PAUL LAXALT has been a dependable lieutenant of Ronald Reagan throughout the President's tenure in office. He has been steadfast in supporting the White House positions on the broad range of issues, and has often taken to the White House sometimes unwelcome but always realistic assessments of events in Congress. Yet Senator LAXALT also took that same message from President Reagan to Ferdinand Marcos when it became clear the former Philippine leader no longer had the support of the American people.

Senator LAXALT, throughout his Senate career, has had a feel for the big-picture side of the issues. His contribution to the Senate has been solid, genuine and worthy. He certainly has my heartfelt good wishes for his retirement years, which I trust will continue to be active in service to his native State.

FAREWELL TO SENATOR GARY HART

Mr. DECONCINI. Mr. President, we are soon to part with several of our colleagues who are retiring from this body, and I rise to acknowledge the unique contribution of one of them, my colleague from the great American West, the Senator from Colorado, Senator HART.

In his two terms in the U.S. Senate, GARY HART has witnessed great changes in both the institution and the Nation it serves. And he has had the vision to recognize these changes for what they are—precursors of a new era, full of challenge and hazard and opportunity.

GARY HART, perhaps more than any other Senator, has made this realization the theme of his service to his country. He has channeled his energies toward preparing America for its new age. He is a man of ideas who has faced the complex challenges of the Nation and translated those challenges into constructive solutions.

Last winter, I was pleased to cosponsor one product of GARY HART'S energy—the budget alternative that he and other Budget Committee Democrats offered for fiscal 1987. I supported him in that effort, because I share his belief that we can have fiscal re-

sponsibility in this country without mortgaging our national future. In fact, we cannot have it any other way. Moreover, I share his belief that true responsibility means providing for the education of our young and investing in our future commerce and industry. GARY HART never shrank from the truth in framing the policy questions before us. It is our generation that must prepare for the generations to come, with investment and also with sacrifice.

Nothing is more essential to our national future than our national security. And in his work on the Armed Services Committee, GARY HART demonstrated a commitment to the Nation's defenses that was second to none. He joined the Navy Reserve and cofounded the Military Reform Caucus. He became a leading national advocate for a leaner, meaner defense that plans for the future—not the past—and spends its money accordingly. While GARY and I may have differing views on how to achieve our passionate and mutually-shared objective of a peaceful and nuclear-free world, GARY's indepth knowledge and analysis of military and nuclear issues will be sorely missed. In the world's most prestigious deliberative body, GARY HART ranks among the premier debaters in its history. It is difficult to imagine a debate on arms control without GARY being a major participant. His thoughtful and informed voice will be especially missed in those discussions.

GARY HART's concern for the future shone through as clearly in his work on the Environmental Committee. The natural resources of America are the basis of our prosperity and the heart of our national legacy. As a Senator from the Nation's still-unspoiled West, GARY carried a special concern for this legacy with him when he came to Washington. It was this concern that motivated GARY to help expand wilderness designations to a magnificent and unprecedented 2.6 million acres. But GARY HART's concern went beyond his home State.

He arrived here when national awareness of the environment was stirring as never before. He played a critical role in developing some of the landmark environmental legislation of the 1970's—the Clear Air Act, the Clean Water Act and the creation of Superfund. In the current decade, he has worked to renew and broaden and strengthen all of these laws.

He served as chairman of the National Commission on Air Quality and delivered an early warning against the threat of acid rain. He served as chairman of the Nuclear Regulation Subcommittee and as chairman of the Senate investigation of the Three Mile Island nuclear accident, identifying himself with heightened protections for citizens and consumers and greater performance accountability for the nuclear industry.

Again and again, GARY HART has taken tough positions on behalf of future generations. For a decade, he has fought an often lonely fight against our dependence on foreign oil—so that Americans in the 1990's and beyond will have the energy they need.

He has taken a principled stand against contributions from PAC's—political action committees—even as such contributions have become the centerpiece of political fundraising.

And he has been willing not only to take a stand, but to lead the fight, no matter what the odds. The Senate will remember his battle against Gramm-Rudman and his long struggle on behalf of arms control.

GARY HART was here when I first came to the Senate, and it's hard for me to imagine the Senate without him. At the same time, I know that GARY won't really be gone. He may be passing into the Senate's history, but he will remain a part of the Nation's present and the Nation's future—for as long as he chooses.

GARY is one Westerner who has never ridden off in to the sunset. he's still riding into the dawn.

I want to join my colleagues in thanking GARY for his dedicated service to this Chamber, to the Nation, and to the people of Colorado, and to which him a fond farewell and every good wish as he rides into the dawn.

SENATOR HART'S ACHIEVEMENTS

Mr. DECONCINI. Mr. President, Senator HART's staff has compiled an impressive and detailed summary of GARY's achievements during his tenure as a U.S. Senator. The thickness of the document bears witness to the imprint that GARY has left on this Chamber. I believe it merits review by the Members of this body, by Senate staff and by the American people, and I ask unanimous consent that the full text be printed in the Record.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

I.—LEADERSHIP

In the last twelve years, the Senate has dealt with a variety of challenging issues—issues that were exceptional because they were complex, politically difficult or emotionally charged. It is significant that, in the face of these challenges, the Senate turned to Gary Hart:

Appointed to Select Committee to Investigate the Intelligence Community;

Chairman of National Commission on Air Quality;

Advisor to SALT II Geneva Talks;

Chairman of Senate Three Mile Island inquiry;

Coauthor of Armed Services Committee Study on strategic warning system;

Chairman of Senate Budget Committee Task Force on Synthetic Fuels;

Founder of Military Reform Caucus; and

Co-Chairman of Democratic Budget Task Force.

LEADERSHIP

Senate Select Committee to Investigate the Intelligence Community (1975). Formed under the Chairmanship of the late Senator Frank Church to investigate abuses by the intelligence community, report and recommend reforms.

Hart: Key role in investigation and drafting of Committee findings.

Elected Chairman, National Commission on Air Quality (1978). The panel was created by Congress with the passage of the 1977 Clean Air Act amendments to study the implementation of the new statute and to recommended ways to improve environmental regulation.

The Commission had 13 representatives of the environmental, scientific, and business communities, Republican and Democratic Members of Congress, state government and Indian tribes.

After two and one-half years of study, the Commission published a comprehensive report, "To Breathe Clean Air," that contained 433 findings and 109 specific recommendations.

Appointed advisor to SALT II arms control talks in Geneva. Urged approval of the Treaty during Senate reelection campaign in spite of intense, conservative opposition to the Treaty.

Chairman, Senate Investigation of the Three Mile Island nuclear reactor accident (1979). As Chairman of the Senate Environment and Public Works Subcommittee on Nuclear Regulation, Senator Hart led an extensive and difficult inquiry into the accident at Three Mile Island. At the conclusion of study, Hart convinced the Senate to approve a series of significant reform measures to:

1. Require each State with a nuclear power plant to have an evacuation plan approved by the Nuclear Regulatory Commission;

2. Accelerate the assignment of NRC inspectors at each nuclear power plant and increasing the number of such inspectors being trained;

3. Improve the training, retraining and licensing of nuclear plant operators;

4. Require the NRC to propose a plan to respond to emergencies; and

5. Require the President to develop a national contingency plan to ensure a coordinated Federal response to future emergencies.

Coauthor, with Senator Barry Goldwater, of 1980 Senate Armed Services Committee report on Command, Control, and Communications strategic warning system. In addition to recommending ways to modernize the NORAD facility, the inquiry revealed that during an eighteen-month period, the warning system had registered 151 false alarms—one of which lasted a full six minutes, half the time it would take a Soviet, submarine launched ballistic missile to reach its target in the United States.

Hart authors comprehensive proposal [Strategic Talks on Prevention] to prevent the triggering of a nuclear conflict by miscalculation:

Creation of jointly staffed US-Soviet crisis prevention centers;

Steps to prevent nuclear proliferation;

Reductions of nuclear war-heads and missiles, particularly MIRVs.

Chairman, appointed by then-Senator Edmund Muskie, of Senate Budget Committee Task Force on Synthetic Fuels (1980):

Played the decisive role in scaling back the Carter-proposed $88 billion synthetic fuels program to a more reasonable, two-phased $20 billion effort;

Fought suspension of environment standards and won adoption of amendment requiring Congressional approval if there were attempts to spend more than $20 billion on the program.

Proposed alternative tax credit for production approach to massive price support subsidy;

Founder, Congressional Military Reform Caucus (1981):

With Republican Congressman William Whitehurst of Virginia, founded Caucus dedicated to promotion of military reform;

Caucus now boasts membership of 130 Members of Congress from both sides of the aisle. Caucus has led the fight to:

Terminate the DIVAD air defense weapon;

Win Congressional approval of an Independent Testing office for weapons under development in the Pentagon.

Authored, with William S. Lind, *America Can Win,* a book to educate the American public on the principles of military reform.

Co-Chairman, with Senator Lawton Chiles, Democratic Task Force on Alternative Budget (1985–1986, appointed by Minority Leader Robert Byrd):

Led floor fight against enactment of Gramm-Rudman-Hollings "I";

Coauthored, with Senator Chiles, "budget principles," adopted unanimously by Democratic Conference in January 1986;

Coauthored, with Senator Chiles, alternative budget to FY 1987 budget resolution (final Conference Agreement on budget resolution included $400 million from Hart-Chiles amendment to improve math and science education).

Led successful effort to prevent enactment of Gramm-Rudman-Hollings "II" in the wake of Supreme Court decision striking down automatic budget cutting procedure in Gramm-Rudman-Hollings I.

II.—Opposing Bad Policies; Proposing Alternatives

It takes courage to resist the political stampede when others engage in a march of folly. In the Senate, Gary Hart opposed bad policies and offered alternative solutions even when it was in his political interest to go along:

	Position	Hart approach
Economic Policy		
Chrysler loan guarantees.	Opposed	Industrial Modernization Agreements.
1981 Budget and tax cuts.	Opposed	Offered comprehensive alternative: tax cuts to equal not exceed spending cuts; indexing of personal rates.
Gramm-Rudman I/II	Opposed	Led opposition. Offered legislation to repeal. Wrote alternative budget.
Domestic content and textile quotas.	Opposed	Introduced first comprehensive trade bill.
Energy Policy		
Oil import fee	Initiated 1977	Supported Carter effort in 1980. Brought proposal to a vote in 1985 and 1986.
Gasoline tax	Supported	
Synthetic fuels	Opposed	Won approval to scale back program from $88—$20 billion. Drafted alternative plan using tax credits instead of price subsidies.
National Security		
Salt II	Supported	Served as advisor to the talks; won 1986 approval of "no undercut" resolution.
MX Missile	Opposed	Led opposition and filibuster.
Reagan build-up	Opposed	Criticized both size and composition. Formed Military Reform Caucus in Congress and offered military reform budget.
Foreign Policy		
Grenada invasion	Opposed	Author of resolution to invoke the War Powers Act.
U.S. Troops in Lebanon	Opposed	
Reagan Doctrine	Opposed	Criticized both Contra war and weapons for Savimbi, offered alternative policy "Enlightened Engagement" in three-part Georgetown lecture series.
Middle East		Authored comprehensive economic policy tied to peace plan.

SPECIFICS

Reaganomics

In 1981, Hart resisted the political stampede, voting against the Reagan budget and tax plans.

One of twenty Senators to oppose passage of Reagan budget resolution. Senate version and Conf. Report.

One of fifteen Senators opposing passage of the 1981 Omnibus Budget Reconciliation measure (enforce cuts in budget resolution)—Senate bill and Conf. Report.

One of eleven Senators opposing passage of the so-called "Economic Recovery Tax Act" of 1981.

Alternatives. Introduced measures to:

Make tax cuts contingent on achievement of a balanced budget;

Require sunsetting of tax expenditures;

Provide for a capital budget.

Anticipating tides. In October of 1978, Hart introduced comprehensive legislation providing tax cuts and equivalent spending reductions. He criticized Kemp-Roth, a thirty-percent across the board tax cut (seeing it as inflationary and running the danger of creating deficits). The Hart legislation:

Provided a 20% reduction in personal taxes and cut taxes for business;

Cut spending by an equivalent amount, holding transfer payments and discretionary programs to levels below the current budget baseline;

Indexed personal tax rates against inflation.

Tax Reform

The movement for comprehensive reform of the tax code began more than a decade before President Reagan's conversion. Gary Hart campaigned for the Senate beginning in 1973 on a platform stressing tax reform and never wavered from his commitment to that goal.

During consideration of the 1976 tax bill, Hart won unanimous approval from the Senate for his amendment providing for the establishment of a Commission on Tax Simplification and Modernization.

In 1977, Hart introduced legislation providing for the "sunset" of 80 tax expenditures.

In 1978, Hart offered a non-inflationary, deficit-neutral alternative to the so-called "Kemp-Roth" tax bill, providing for:

A phased, 20-percent reduction in personal taxes and business tax cuts;

Reductions in federal spending equivalent to the tax reductions he proposed; and

Indexation of personal tax rates.

He offered a similar plan in 1980 during consideration by the Senate Budget Committee of the FY1981 budget resolution.

In 1981, he was one of only 11 Senators to oppose the extravagant, $750 billion Reagan tax give-away program.

In 1983, he endorsed Senator Bill Bradley's Fair Tax proposal and, in 1984 urged Democratic Presidential nominee Walter Mondale to make comprehensive tax reform a key element of the Democratic Platform.

In 1985, Hart won passage by the Senate Budget Committee on his Sense of the Congress resolution urging passage of comprehensive tax reform.

In 1986, he was the *only* Senator to vote against every substantive change in the Bradley-Packwood tax reform bill.

Reagan Build-Up

From the beginning of his service on the Senate Armed Services Committee, Hart fought to change the debate on defense from "more is better" to "better is better." This meant fighting for specific amendments to delete large aircraft carriers, build greater numbers of less expensive submarines, and fighting costly and destabilizing weapon systems.

It also meant compaigning for the adoption of the SALT II Treaty in 1979—an extremely unpopular position for a Senator up for reelection the next year to take. (Hart won adoption by the Republican-controlled Senate of legislation urging the President (in 1986) to continue to abide by the SALT II Treaty.

To recruit new voices to the military reform movement, Hart founded the Military Reform Caucus in the Congress in 1981. Co-chaired by Rep. William Whitehurst, the Caucus grew to boast a membership of Republican and Democratic Members now totalling more than 130.

On the Senate Budget Committee, Hart fought the extravagant increases asked by Defense Secretary Weinberger. In addition, he offered a comprehensive military reform budget in 1983, a budget which:

Reduced Pentagon spending by a net $12 billion over two fiscal years; approximately $27 billion in cuts and $14 billion in *military reform additions;*

Boosted needed investments in soldier pay, operations and maintenance and readiness;

Terminated the Bradley fighting vehicle, the DIVAD air defense gun (subsequently killed by the Pentagon under pressure from Congress), the MX missile and B1 bomber.

Hart launched a filibuster against the MX missile in 1983. He cosponsored an amendment, approved by the Congress, which slowed the development of this missile. In 1985, he was the floor leader for the Democracts in a fight to delete all funding for the MX from the 1986 defense budget. Later that year, he joined a compromise effort to limit to 50 the number of MX missiles procured by the Administration—which initially asked for 200. In 1986, he won approval from the Republican controlled Senate Armed Services Committee for his language establishing a permanent cap on the 50 missiles—after the Administration indicated it would renege on the 1985 agreement.

Protectionism

Since President Reagan took office, the country has seen a dramatic reversal in its once commanding trade posture. For the first time in nearly a century, we are now a debtor nation. Where we once enjoyed a trade surplus, we have unprecedented, triple-digit trade deficits, now threatening to exceed $175 billion. Even in the agriculture sector, which once enjoyed a command-

ing trade surplus, we are now a net importer of food.

Once the party of free trade, Democrats moved in 1983 to become the party of protectionism. Support of domestic content legislation, for example, became a litmus test for Presidential candidates in the primaries. Hart resisted that tide, campaigning against protections for automobiles in the industrial heartland.

In 1985, this trend worsened. Certain key leaders in the Democratic Party introduced legislation to impose a surcharge on imports. Had this legislation been adopted, the United States would have imposed tariffs in 1985 higher than those required under the Smoot-Hawley bill in the 1930s—legislation which prolonged and deepened the Great Depression. Also introduced in the same session of Congress was legislation to impose strict quotas on textile and apparel imports—legislation which would break 34 international agreements the United States had signed. Hart's opposition to both bills was significant.

Unwilling simply to criticize, Hart introduced the first comprehensive trade alternative that promoted *competitiveness* in lieu of protectionism. His legislation, the Comprehensive Trade Reform Act, identifies both the source of trade problems and proposed comprehensive solutions to deal with them:

Value of the dollar: preparation of agenda for approval by Congress for a "New Betton Woods."

Collapse of overseas markets; revives the Cooley Loan Program to sell surplus U.S. commodities for LDC local currencies.

Coordination of US economic policy: creates an economic counterpart to the NSC.

Reforms of trade laws to encourage end of violations: *Reform of GATT* including trade in services, ag., intellectual property; end unfair practices by talks or competitors to face penalties stronger than in current law.

Reform for industrial competitiveness: Contains reforms in the areas of trade in services, export promotion, antitrust reform;

Educating students: improvements in elementary, secondary, and college courses in math, science, computers, and foreign languages to provide students with competitive skills.

Strengthen and improve trade adjustment assistance program

Gramm-Rudman

In October of 1985, Senate Republicans tried to rush approval without debate of the most sweeping changes in Congressional budget policy in a decade: the deeply-flawed Gramm-Rudman-Hollings legislation. The bill provided for arbitrary across-the-board cuts in Federal programs; exempted "big-ticket" military hardware; put tax increases 'off-limits' for deficit reduction; and, in defiance of the constitution, charged an unelected federal bureaucrat with the responsibility of making the deep reductions.

In spite of the political popularity of the measure—it won on the first day of introduction over 40 Senate sponsors—Hart resisted the tide. He forced the Senate to debate the measure. In an extraordinary Saturday session, he used over 2 hours of debate time. In questions posed to Senate sponsors, he uncovered a series of "mistakes" and drafting problems in the legislation (including the fact that military contracts were excluded from the cuts). Hart asserted the measure was unconstitutional.

House Democrats did not have a strategy for dealing with Gramm-Rudman. Hart's dissent layed the groundwork for nine days of Senate debate *buying time for the House.* At the end of the first Senate debate, he was one of only 24 Senators to oppose Gramm-Rudman.

In 1986, Hart introduced legislation to repeal Gramm-Rudman. He offered a comprehensive budget alternative to the first Senate budget produced under Gramm-Rudman constraints. When the Supreme Court declared the measure unconstitutional, Hart again led a floor fight against Gramm-Rudman-Hollings II. In August, 1986, he was able to prevent the Senate from adopting the measure as an amendment to the debt ceiling legislation.

Energy Policy

Hart first came to the Senate during the first "oil crisis," and became a leader on energy policy. He fought for conservation, incentives for independent oil and gas producers, in favor of *vertical divestiture,* of the industry, and on behalf of strict regulation of nuclear energy. In 1977, *he first proposed a fee on imported oil.*

In the midst of the Iranian oil cut-off, there was a political stampede to do something, "anything," to deal with the energy crisis. Hart, who was involved with the debate over energy policy from the beginning of his first Senate term, played a leadership role—opposing key elements of the unwise Carter proposal and proposing alternatives.

Synthetic Fuels. Hart opposed the creation of a massive $88 billion synthetic fuels program. He proposed a less costly alternative:

Instead of an independent Energy Security Corporation, and Office of Energy Security *within the Department of Energy.* The Office would be directly responsible to the Secretary of Energy. Rather than guaranteeing funding in advance. Hart proposed a limited annual budget determined by Congress each year based on the actual amount of price guarantees and purchase contracts let.

The ESC, reconstituted as the Synthetic Fuels Corporation, turned out to be a disaster. It was mismanaged. The principal officers were paid extravagant salaries. The office of President changed hands numerous times, and many of the few projects it actually supported folded, because the big energy companies running them determined the projects would never be financially viable.

Hart was appointed Chairman of the Senate Budget Committee Task Force on Synthetic Fuels. In that capacity, he successfully led the fight to scale down the Administration's $88 billion request to a more reasonable $20 billion amount.

Windfall Profits tax. During Senate consideration of the Windfall Profits tax legislation, Hart offered an alternative to the proposed tax on newly discovered oil (which he criticized as a disincentive to exploration). He proposed a tougher measure, *opposed by the major oil companies,* asking a 100% tax on unearned profits from the sale of old oil which had been decontrolled by President Carter.

Energy Mobilization Board. Hart led the Senate opponents of this measure, creating a panel with extraordinary powers to overturn environmental regulations over nonnuclear energy facilities.

Fee on imported oil. In 1980, Hart was one of only thirteen Senators to vote in support of President Carter's fee on imported oil. In the years that followed, he introduced legislation providing a $10 per barrel fee on imported oil, with consumers receiving rebates through Social Security payroll tax reductions and increases in the low-income energy assistance program. In 1985 and again in low-income energy assistance program. In 1985 and again in 1986, he offered variations of this proposal.

Reagan Middle East Policy

After taking office in 1981, the Reagan Administration was unable to build on the progress started by the Camp David to move toward a comprehensive Middle East peace. It effectively abandoned work on the so-called Reagan Peace Plan of 1982, and committed American troops to Lebanon in 1983—a move Hart opposed.

Once the U.S. Embassy was destroyed by a terrorist's suicide truck bomb, killing over 250 American troops, the US retreated and failed to exercise a role in the region.

After visiting the Middle East in 1986, as leader of a study mission authorized by the Senate Armed Services Committee, Hart unveiled a comprehensive economic proposal—to be complemented by strong, hands-on diplomatic efforts by the Administration, to renew progress in the peace process. The central components of the package are:

Increased aid to Jordan to provide quality of life improvements on the West Bank;

Debt relief for Egypt;

Proposals to increase and improve military cooperation between the United States and Israel.

III.—HART HIGHLIGHTS—99TH CONGRESS

The Senate adopted:

Veterans Judicial Review, S. 367;

Improvements in Department of Labor "job bank";

Interagency study on US-Soviet verification capabilities;

Payments to sugar beet producers;

Investigation of defense contractor fraud; and

6-month day of Interior Department patenting on oil shale claims to prevent land-and resource give-away.

Committees adopted:

Budget Committee approves Hart tax reform amendment to FY1986 Budget resolution;

Environment and Public Works Committee approves Hart citizen suit provisions on Superfund;

Armed Services Committee adopts Hart amendments retaining cap on MX missile production and urging the Administration against undercutting SALT II; and

Environment Committee accepts Hart language increasing nuclear plant liability limits ten-fold.

FLOOR ACTION AND SPONSORSHIPS

Economics and Budget:

Leader of Senate opposition to Gramm-Rudman-Hollings I;

Appointed to chair a Senate Democratic Task Force on Alternatives to the President's budget by Senate Minority Leader Robert Byrd. Hart-authored principles to guide Democratic planning for FY1987 budget adopted unanimously by Senate Democrats;

Introduced legislation, cosponsored by Senator Daniel Patrick Moynihan of New York, to repeal the Gramm-Rudman law. Urges "New Contract of Cooperation," an agreement to restrain defense spending, increase revenues, and finance increased investments in programs critical to the nation's future with measured domestic spending reductions;

Authored a comprehensive budget alternative to the President's 1987 spending plan: urges new investments in education, retraining, economic growth, and new opportunities for employment and self-sufficiency for the nation's poor;

Although the amendment was rejected, a $400 million math and science initiative, a fundamental part of the plan, was adopted by the Congress as part of the final conference agreement on the budget on June 26;

Led the fight against Gramm-Rudman-Hollings II (Senate declined to accept this amendment during debate on the debt ceiling legislation, August 1986;

Recognized as the only Senator, during the debate on tax reform, to have voted against *every* amendment to weaken the bill approved by the Senate Finance Committee;

Testified before the House Commerce Committee on behalf of his *Competitive America Trade Reform Act*, the first comprehensive Democratic proposal to rewrite the nation's trade laws;

Introduced legislation designed to make risk and long-term capital available to new, young and small businesses. [*National Entrepreneurship Act*]

FOREIGN POLICY AND ARMS CONTROL

Won approval by the Republican-controlled Senate Armed Services Committee of the first Congressional statement *supporting SALT II* after the Administration announced its decision to abrogate the Treaty;

Won approval by the Senate Armed Services Committee of language *opposing plans* by the Administration *to expand the production of the MX missile;*

Introduced legislation to prohibit the use of funds for the production of chemical weapons;

Pushed passage by the Senate Armed Services Committee of significant, new legislation to reform the Joint Chiefs of Staff system;

Introduced legislation, following reports of widespread election fraud in the Philippines, to put aid to that country into a "Trust Fund for Philippine Democracy," pending a transition to democratic rule;

Introduced amendment to delete funds for the MX Missile program. Amendment not agreed to by 42-56 vote;

Introduced amendment, agreed to in Senate, to require a study to examine the verification capabilities of the U.S. and the Soviet Union and possible avenues for cooperation;

Introduced amendment, agreed to in Senate, to express the sense of the Senate that the Federal government audit and investigate defense contractor billing practices; and

Introduced legislation praising South Africa's Bishop Tutu for his courageous work on behalf of peace and equality in that country.

ENERGY/ENVIRONMENT

Introduced bill imposing $10/bbl import fee on crude oil and petroleum products. Pushed for Senate votes in 1985 and 1986. Testifies before Senate Finance Committee in support of fee. Hart's alternative FY1987 Budget included fee and gasoline tax in revenue component;

Introduced bill to repeal Price-Anderson Act and force nuclear industry to demonstrate its safety and economic efficiency by obtaining its own insurance against third-party claims;

Environment and Public Works Committee adopted the Hart amendment raising ten-fold the amounts nuclear power plant operators are held liable if an accident occurs;

Introduced bill requiring the DOE to weigh the effects of *transporting highly radioactive Waste* before siting the permanent repository for such waste. Also requires DOE to assess transit routes and pay for safety improvements;

Introduced bill designating an additional 770,000 acres of *wilderness* in Colorado (bill stalled by objections from Armstrong over water diversion rights). Sense of the Senate amendment urging protection of these areas pendng the outcome of the legislative process defeated on a narrow vote in the Senate.

After public disclosure of a move by the Interior Department, conveying resource rich lands to private interests at $2.50 an acre, the Senate adopted a Hart amendment barring approval of such claims by Interior for a six month period. Adoption of the amendment stopped the permit approval in the case leaked to the press.

Co-sponsored bill to give states the standards and founding to fight *groundwater contamination* such as that around Rocky Mountain. Will have hearings and mark-up in '86.

EDUCATION

Introduced legislation, cosponsored by 20 Senators, to provide incentives for elementary and secondary schools to improve math, science and foreign language education. Testified on the bill before the Senate Subcommittee on Education. [*American Defense Education Act*]

Introduced legislation to encourage partnerships among private industry, state government and educational institutions to strengthen science, engineering and technical eduaction. [*High Technology Morrill Act*]

Testified before the House Subcommittee on Elementary and Secondary Education on behalf of legislation to provide assistance to states for encouraging educational excellence and increasing opportunities for underserved populations. [*School Excellence and Reform Act*]

COMMUNITIES AND FAMILIES

Introduced legislation to establish a Select Commission on National Service Opportunities to examine policy questions relating to national service. The Commission would examine how to establish incentives and opportunities for our young people to provide useful service to the nation.

Introduced legislation to provide grants to support family day care providers. [*Family Day Care Provider Act*]

Introduced bill to reduce the deduction for business meals and earmark the savings for school lunch programs.

WORKER RETRAINING AND ADJUSTMENT

Introduced bill to establish a system of retraining accounts funded by voluntary, tax-deductibe contributions by employers and employees. [*National Individual Training Account Act*]

Introduced legislation to provide unemployed workers with opportunities to create their own jobs. Legislation establishes a demonstration project to allow unemployed workers to use their UI benefits for income support while starting their own jobs. [*Self-Employment Opportunity Act*]

Introduced amendments, now signed into public law, to improve the operations of the national interstate job bank system so that workers can be more efficiently matched with available jobs. Legislation requests the Department of Labor to study the costs and methods of computerizing the job bank system.

OTHER SIGNIFICANT ACTIVITIES

Introduced the *National Infrastructure Act* to provide for Federal investment in highways, bridges, transit systems, sewers, and water treatment facilities. Includes unique mechanism to leverage new spending.

Introduced comprehensive veterans' rights legislation (principal provisions: provide access to Federal Courts to appeal adverse benefit decisions and repeal $10 limit on attorneys fees), agreed to in Senate.

Introduced legislation to provide emergency credit relief to financially strapped farmers. Targets small- and medium-sized farmers.

Cosponsored amendment offered by Senator Tom Harkin (D-Iowa) urging speed-up of payments to farmers, enabling them to afford spring planting payments, equipment and mortgage costs.

Endorsed passage of a mandatory supply management program as part of the wheat referendum being conducted by the Department of Agriculture. Enactment of such a program would improve farm income, lower costs to the governments, and aid American agricultural exports.

Introduced legislation to close "the Deaver loophole," to stop former White House officials from lobbying other offices within the Executive Branch and skirting the application of the Ethics in Government Act.

Authored the "Fair Foundations Act," the first legislation introduced in the Congress requiring political leaders with educational foundations to disclose their contributors and expenditures.

TRIBUTE TO SENATOR HART

Mr. STAFFORD. Mr. President, will the Senator yield for an observation with respect to Senator HART?

Mr. DECONCINI. I am glad to without losing my right to the floor.

Mr. STAFFORD. Mr. President, I appreciate the Senator's yielding. I just want to say it has been my privilege to serve with the Senator for almost 16 years now on the Environment and Public Works Committee.

I really consider him a true friend of the environment, a true friend of this Senator. I have enjoyed working with him. I think his contributions on that committee through the years have been outstanding. I frankly wish he were staying on the committee. I wish him well in most of his future aspirations, and I regret the fact he will leave. I wish he were staying with us.

I thank the Senator for yielding.

Mr. DECONCINI. Mr. President, I join my friend from Vermont. Senator HART has contributed a great deal to the State of Arizona and its environment in passing the wilderness legislation and other things.

FAREWELL TO SENATOR RUSSELL LONG

Mr. DECONCINI. Mr. President, as the 99th Congress draws slowly to a close, we are all deeply saddened by

the loss of many of our colleagues who have choosen not to seek reelection to their seats in the Senate. Of all our colleagues who have decided to either retire or pursue new career challenges, perhaps the individual we will miss the most is the esteemed senior Senator from Louisiana, RUSSELL LONG.

Senator LONG comes from a distinguished Louisiana political family which has served the State of Louisiana and the country for as long as I can remember. The name Long is synonymous with Louisiana politics. RUSSELL LONG has served in this body since 1949, having been elected one day prior to his 30th birthday. During his 38 years of distinguised service RUSSELL LONG has earned a reputation as one of our most respected, revered, and beloved colleagues. He is by any standard of measure, a Senator's Senator. He is the model by which each of us can meaure our own effectiveness as legislators. In short, RUSSELL LONG is a leader among leaders—a giant in the annals of the history of the U.S. Senate.

RUSSELL LONG is both a master of Senate rules and procedures and a master of the U.S. Tax Code. Because he has been a student of the rules and of the issues that fell under the jurisdiction of the committees on which he has served, RUSSELL LONG became an accomplished legislator. If our computer systems went back 38 years, I am certain that the printout of RUSSELL LONG's legislative accomplishments would be thicker than for any other Member of this Chamber. Among his monumental legislative achievements are the landmark 1972 and 1976 revenue-sharing laws; the 1975, 1977 and 1978 tax cuts; changes in the Social Security and Medicare benefit systems which have moved most of the Nation's aged, blind, disabled, and truly needy out of poverty and made them eligible for medical care; his successful campaign for employee stock ownership plans; and the dollar checkoff on tax returns for Presidential campaigns.

Because of his extraordinary in-depth knowledge of a myriad of issues, RUSSELL LONG could easily have ignored his colleagues' wishes and ramrodded legislation in which he had a special interest through this body. But that was not RUSSELL LONG's style. He is a student of politics as well as of issues, and he knew better than most that the true art of politics is compromise. RUSSELL LONG always tried his best to accommodate the views of his supporters as well as his opponents in shaping legislation. He very patiently, calmly, and quietly tried to build a consensus and in the process, he treated each Senator with equal kindness, consideration and deference. That is a legacy for all to envy.

From his days as a student body president at Louisiana State University, to his service as a naval officer in World War II to his nearly four decades of service in the Senate, Senator LONG has exhibited leadership and a rare dedication to the tasks he has undertaken. He will be missed by this Senator and by every colleague, past and present, who has had the pleasure of serving with him.

I want to bid RUSSELL LONG a fond farewell and wish him the very best that life has to offer as he returns to his beloved State of Louisiana. I want to thank him for the time and energy he has devoted to this body and to the Nation. Louisiana's gain is our loss. RUSSELL, we will miss your skills as a legislator as we will miss your wit and humor.

God bless.

TRIBUTE TO RETIRING COLLEAGUES

SENATORS BARRY GOLDWATER, PAUL LAXALT, CHARLES MATHIAS, RUSSELL LONG, THOMAS EAGLETON, AND GARY HART

Mr. HATCH. Mr. President, it is always with mixed emotions that we rise to pay tribute to our departing colleagues—with sadness at the loss we feel in losing their company and with gratitude for their contributions to their country and to this body.

That is especially true this year—when the retiring Senators represent such a wealth of experience and achievement.

For example, Mr. President, perhaps once in a generation, or even less often than that, there comes an individual who is so forthright, so courageous in taking a stand, however unpopular it may be, that he is able to sway an entire Nation.

I have had many great honors and blessings during my career—but one of the greatest of them is to be able to say that I served with such a man, our retiring colleague, BARRY GOLDWATER.

In fact, such has been the character of the man that this will be the first and last time that it will ever be said of him that he is "retiring." Retiring Senator GOLDWATER was not.

He was never afraid to speak the truth on an issue—as difficult as that might have been.

His ideas and courage launched a vanguard of young conservatives dedicated to the principles from which he never waivered. It ushered in the career of the greatest conservative politician of this century, the only true conservative to ascend to the Presidency in this century. And it stirred the hearts of citizens everywhere to rethink the direction our country was going—and stirred many to action to reverse that direction.

All the principles Senator GOLDWATER stood for—fiscal responsibility—a defense capability second to none—a resolute stand against communism—and most of all, the freedom of the individual in the face of the unrelenting growth of the modern superstate—have been not only fully vindicated, but adopted by both parties as guiding policies.

And along with these principles, Senator GOLDWATER has rightfully assumed the role of respected elder statesman of his party and this body. And this Senator, for one, will miss not only his sage observations and salty humor, but his guidance on principle as well.

As we bid this great hero a fond adieu, it is fitting to recall the slogan of his 1964 Presidential campaign. It was, as my colleagues may recall, a clever play on his political orientation as well as his outspokenness: "In your heart you know he's right."

Mr. President, we've always known that Senator GOLDWATER was right—and still is right—and today, all America knows and acknowledges it as well. And in our hearts he will always be right—because he, and the principles on which he stood, will always remain in our hearts, long after he has gone home to the rugged West he loves and symbolizes.

Just as in every generation there may rise one who will sway an entire nation, in every body of distinguished men and women, there are some who rise above the crowd—not necessarily because of ringing oratorical skills, although they may possess them, and not because of their actions, however mighty they may be.

This type of individual rises above the masses because he or she possesses one essential, intangible quality: leadership. And no Senator more completely exemplifies this class of individual more than our distinguished colleague from Nevada, PAUL LAXALT.

Outside this body, Senator LAXALT may be known as the President's man. But in this body, we know him to be his own man—a son of Basque immigrants, a son of the West who came to cast his own mastery over this Capital City by the force of his powerful personality.

I remember when I first came to Washington and Senator LAXALT was a member of the Labor and Human Resources Committee—the lone conservative on that committee of free-spending liberals. He called it "purgatory"—and when I got here, he left and consigned me to purgatory.

Yet PAUL LAXALT endured that purgatory—he answered the call as he did whenever duty called him, whether to take on the liberals in the Labor Committee, or to wage the nearly victorious fight on the Panama Canal, or to be the point man for the President's program early in his administration, or to take the helm of his party when we were in the throes of the most serious recession since the Great Depression, or to take on the delicate diplo-

matic task of nudging an aging and stubborn strongman to accept his country's yearning for democracy.

Yes, in each of these circumstances there was a mismatch involved—because there never could be enough liberals or dire enough circumstances to daunt PAUL LAXALT standing alone.

And the reason this is so is because PAUL LAXALT never stood alone, in the Labor Committee or in Manila. He always had his principles and the quiet strength of his character with him—and together, they overcame whatever odds and opposition lay ahead of him.

Now the Senate and his party are saddened at the prospect of losing the quiet leadership of this great Senator—this man who rose above the crowd and above the odds to win at least a moral victory in any fight he took on. But somehow, I don't think we've heard the last of him.

Perhaps we will see Senator LAXALT enter the crowded field vying for his party's Presidential nomination—and if we do, I wouldn't be surprised to see him rise above the crowd once again. Perhaps we will see him take on another great political or diplomatic task for his President or his party—and if he does, we will see him rise above his fellows again.

Mr. President, Senator GOLDWATER and LAXALT are not the only elder statesmen of our party retiring this year. We are also losing a colleague who I believe holds a truly unique place among our leadership.

More than just about any Member of this body, I believe you can sum up the entire distinguished career of our departing colleague from Maryland, Senator MATHIAS, in two words: integrity and intellect.

I will admit that I didn't always agree with the Senator, even though we were Members of the same party. But I can say I always knew where he stood—and that he had gotten there on the basis of well-reasoned and principled considerations.

Our Nation, our body and our party owe the Senator from Maryland a great debt: Our Nation because of his tremendous contributions to civil rights and foregin affairs; this body because of the example he set with his sterling integrity and shining intellect.

And our party owes Senator MATHIAS a great debt because he forced us to examine our positions—to consider all sides in the deliberate manner he did—to defend our positions with the intellectual vigor he brought. I believe that the kind of deliberation and debate Senator MATHIAS brought strengthens a party and its principles. If we didn't have him—we'd have had to invent him.

Fortunately, the people of Maryland lent us Senator MATHIAS for a season—all too short a season. As he returns to them, our loss is undoubtedly their gain. But I comfort myself in the certainty that his close geographic proximity will allow him to return to this body and allow us to share benefits of his wisdom and moral character.

Unfortunately, our party is not alone in losing its elder statesmen in this body. And Mr. President, I want to do my part to correct a developing injustice about one departing elder statesman. I want to help prevent history and conventional wisdom from remembering our friend and colleague, Senator RUSSELL LONG of Louisiana, for one pursuit—and one famous statement.

In keeping with that mission, I am not even going to repeat that statement—although it involved taxes and trees.

But Mr. President, although Senator LONG was known for his mastery of the Tax Code—he represented so much more than that. Senator LONG stood for the Senate as a great deliberative body, civilized not just by a strict set of rules but by a rigorous code of conduct.

And Senator LONG always played by the rules—mostly because he knew the rules better than just about any of us here. He is a master of parliamentary procedure—a student of its nuances—and a great teacher of its principles.

But he also has stood for a standard of courtly behavior—a respect not just for colleagues but for the institution that has led him not only to fight the intrustion of television into our Chamber but to question the abuse of the rules and procedures as well.

I was pleased to see him question, in an interview with the Wall Street Journal, why Members would hold up the business of the Senate except on matters of overarching principles.

I will recall respectfully how on big issues, in times of crisis, or on matters of principles, he played by the old rules and put partisanship aside.

Mr. President, as this Senate remains here almost 2 weeks beyond the time we planned to return home, maybe it's time to honor Senator LONG by heeding his advice and returning to the code of conduct and the principles of bipartisanship he battled to defend.

Perhaps by doing that, we could correct the narrow place in history—as a tax technician—that some seem ready to prepare for him. Instead, we should include among the names of the giants of the Senate in this century—Richard Russell, Everett Dirksen, Jim Allen, John Stennis, Carl Hayden—the name of RUSSELL LONG.

Mr. President, the same kind of respect I hold for Senator LONG I feel for another of my colleagues across the aisle, even though some have said that Senator EAGLETON and I never really agreed on much of anything.

We never agreed on how much to spend on the programs that came through our Labor and Human Resources Committee—except that we both wanted to make sure we spent enough to meet people's real needs.

We never agreed on the degree to which Government should be involved in people's lives—except that we both knew that Government had an obligation to make sure that people had access to good nutrition, to adequate health care, to equal justice and to equal opportunity.

We never agreed on how the people benefiting from these programs should be treated—except that we both wanted them treated with fairness and compassion.

We never agreed on how the Government programs under our jurisdiction should be run and who should run them—except that they should fulfill the mandate given them by Congress to the maximum and that the individuals running them should meet the highest standards of integrity.

The fact is, on the essentials of good Government, TOM EAGLETON and I agreed on everything—and that's why, in the long run, he and I and the other members of the committee were ultimately able to work together to meet the needs of Americans while making our programs leaner and more efficient.

That's why I'm thankful that I was able to serve these years with a Senator of TOM EAGLETON'S moral leadership and compassion. We cared—about the people we served and about each other.

And, Mr. President, as TOM EAGLETON leaves this body, I will continue to care about him—to cherish the times we agreed and disagreed and to wish him the very best as he returns to the "Show-Me" State and his beloved St. Louis Cardinals. Who knows—maybe there's a baseball commissionership out there for him yet.

And maybe there's another executive post waiting for another of our retiring colleagues.

Most Americans associate the name of GARY HART with the 1984 Presidential campaign and his slogan of "new ideas." But to those of us who have known him for more than a decade, the ideas weren't new with that campaign at all. They were the fruits of Senator HART'S relentless pursuit of the truth since he arrived here 12 years ago. In a sense, they are really just another way of pursuing old goals. What sounds like new and different is just his way of searching for something that works.

I don't always agree with the conclusions Senator HART reaches. But I have the greatest respect for the intellectual vigor with which he tackles new concepts and his willingness to cross political boundaries to seek allies for his causes.

Now Senator HART is preparing again to apply the talents and chal-

lenging notions he brought this body to the pursuit of a new goal, the Presidency of the United States. Even those of us who will not support him in achieving that goal can only wish him the best in taking on that challenge—and be grateful that he will bring the spark of a tireless and searching mind to the usually dulling sameness of the campaign trail.

All these colleagues have left their indelible marks on this body and on Government as we know it today. We won't be alone in remembering them as their colleagues—because history will remember them for their contributions, past, present and future, to American politics as well.

THE IMPORTANCE OF HYMNS IN OUR LIVES

Mr. HEFLIN. Mr. President, not long ago, I was asked if I had a favorite hymn. While considering this, I realized that though some may take hymns for granted, they are actually a very important part of our lives.

The hymn is often considered as simply a part of a church service. Yet, in reality, it is so much more. Even as a part of the service, the hymn allows a congregation to join together, united, in their praise of God. It allows people and families to join voices in song of praise and thanksgiving. In this way, friends, families and sometimes strangers are bound together in mutual worship, often accompanied by music which can be both inspiring, as well as pleasing to the ear.

The importance of the hymn outside of church is very often overlooked. In times of difficulty, hardship, solitude or sadness, a hymn that is sung to oneself, or out loud, provides that singer with added strength or fortitude. The tune could bolster a soul against the challenges of the day. The words could provide guidance in times of trouble. Those who are weak or weary can gain hope and encouragement.

Indeed, many people in the history of our Nation have derived such strength from hymns. Teddy Roosevelt often used to sing "Nearer, My God, To Thee." However, an acquaintance of his said that he, "had to laugh because it would be hard to imagine anything further from 'Nearer, My God, To Thee' than the tune Mr. Roosevelt was singing. I have heard him sing that tune scores of times," the acquaintance continued, "but never anything like the real tune, and never the same way twice."

Mr. Roosevelt was not the only President who indicated a favorite hymn. Abraham Lincoln chose "When I Can Read My Title Clear" as his favorite. William McKinnley, like Teddy Roosevelt, favored "Nearer, My God, To Thee." Herbert Hoover's favorite was "Rock of Ages," and Franklin D. Roosevelt's favorite hymn was "Eternal Father, Strong To Save." While Harry Truman chose "Faith of Our Father," Dwight D. Eisenhower was credited as having two favorities, "O God, Our Help in Ages Past," and "Lead Kindly Light."

Recounting the choices of former Presidents brings me back to my friend's question—what was my favorite hymn. I had originally narrowed my choice to "Onward Christian Soldiers," and "How Great Thou Art." Each hymn has a long history, and each is very beautiful to hear, stirring to sing, and heartening upon which to reflect. For example, Winston Churchill asked that "How Great Thou Art" be played at his funeral—no doubt because of the influence of his American mother. "Onward Christian Soldiers," perhaps one of the best known hymns in existence, has been a favorite among countless people for many years. Recently the United Methodist Church attempted to eliminate it from the hymnal because it was too militaristic. However, I was pleased to see that a grassroots movement among Methodists throughout the Nation raised their voices to proclaim their support for "Onward Christian Soldiers." Recently, at the United Methodists' conference in north Alabama, it was decided by an overwhelming vote to recommend the continuation of "Onward Christian Soldiers" in the hymnal. Yet, after much thought and deliberation, I must announce that my favorite hymn is "How Great Thou Art."

In closing, I thought that my colleagues may wish to see the words of both so they may make a judgment of their own. I hope they will, likewise, gain added strength and hope from these hymns.

HOW GREAT THOU ART

O Lord my God! When I in awesome wonder Consider all the worlds thy hands have made, I see the stars, I hear the rolling thunder, thy pow'r throughout the universe displayed,

Then sings my soul, my Savior God to thee; How great thou art, how great thou art! Then sings my soul, my Savior God to thee; How great thou art, how great thou art!

When through the woods and forest glades I wander And hear the birds sing sweetly in the trees; When I look down from lofty mountain grandeur And hear the brook and feel the gentle breeze;

Then sings my soul, my Savior God to thee; How great thou art, how great thou art! Then sings my soul, my Savior God to thee; How great thou art, how great thou art!

And when I think that God, his Son not sparing, Sent him to die, I scarce can take it in; That on the cross, my burden gladly bearing, He bled and died to take away my sin;

Then sings my soul, my Savior God to thee; How great thou art, how great thou art! Then sings my soul, my Savior God to thee; How great thou art, how great thou art!

When Christ shall come with shout of acclamation And take me home, what joy shall fill my heart! Then I shall bow in humble adoration And there proclaim, my God, how great thou art!

Then sings my soul, my Savior God to thee; How great thou art, how great thou art! Then sings my soul, my Savior God to thee; How great thou art, how great thou art!

ONWARD, CHRISTIAN SOLDIERS

Onward, Christian soldiers, Marching as to war, With the cross of Jesus Going on before! Christ, the royal Master, Leads against the foe; Forward into battle, See His banner go!

Onward, Christian soldiers, Marching as to war, With the cross of Jesus Going on before!

At the sign of triumph Satan's host doth flee; On, then, Christian soldiers, On to victory! Hell's foundations quiver At the shout of praise; Brothers, lift your voices, Loud your anthems raise!

Onward, Christian soldiers, Marching as to war, With the cross of Jesus Going on before!

Like a mighty army Moves the church of God; Brothers, we are treading Where the saints have trod; We are not divided; All one body we, One in hope and doctrine, One in charity.

Onward, Christian soldiers, Marching as to war, With the cross of Jesus Going on before!

Onward, then, ye people, Join our happy throng; Blend with ours your voices In the triumph song; Glory, laud, and honor, Unto Christ the King; This thro' countless ages Men and angels sing.

Onward, Christian soldiers, Marching as to war, With the cross of Jesus Going on before! Amen.

RETIREMENT OF SENATOR BARRY M. GOLDWATER

Mr. MITCHELL. Mr. President, when the 100th Congress convenes next year, it will be lacking one of the most prominent Senators of this century, the senior Senator from Arizona, Senator BARRY GOLDWATER.

Senator GOLDWATER has given 30 years of service to the U.S. Senate. But even 30 years do not adequately reflect the influence he has had on this body, on the Nation, and on his political party.

For more than two decades, Senator GOLDWATER has been a symbol to millions of Americans of what constitutes the "conscience of a conservative."

Senator GOLDWATER's conservatism has contributed to the national political debate by broadening its scope, not channeling it into narrowmindedness. His conservatism challenged those who did not share it to reexamine their premises, not to abandon the debate. His conservatism is of the kind that seeks to preserve the Constitution, not undermine it.

In his Senate duties, Senator GOLDWATER has worked indefatigably for the goals toward which his principles point. He has worked for Armed Forces that are effective and efficient. He has worked to reinstill a spirit of partiotism and duty in the defense sector of the economy. He has always recognized that it is the spirit and morale of our fighting men that is the ultimate defense of our Nation, and he has stood up for them.

Recently Senator GOLDWATER remarked that the Senate's approval of this Defense Reorganization Act was his most important contribution to public policy. I respectfully disagree with him. Senator GOLDWATER's most important contribution to the public life of his country is the example he has set in his own career of dedication to principle, of patriotism, and of unswerving adherence to the constitutional principles on which this Nation is founded.

It has been an honor to serve with him and to learn from him.

RETIREMENT OF SENATOR PAUL LAXALT

Mr. MITCHELL. Mr. President, The retirement of Senator PAUL LAXALT of Nevada signals the end of a unique Senate career.

Senator LAXALT himself says he entered politics "because I wasn't smart enough to be a good sheepherder." But in his service to his President and his Nation last year, Senator LAXALT demonstrated those qualities of patience and good faith that have won him the strong support and affection of Nevadans throughout his political career.

Senator LAXALT's voyage to the Philippines in behalf of the President and the outcome of that voyage, which helped avert what could have been a terrible civil conflict, were not the customary duties of a Senator, but they represent the unique role Senator LAXALT has played as the President's close friend in the Senate.

He visited Manila, he spoke with President Marcos and he brought back from his visit the conviction not only that Marcos was isolated from his people and dangerously so, but he brought back a willingness to face the facts when it became evident the Philippine election outcome was tainted by illegality. Most importantly, he was willing to share that conviction with President Marcos and to stand behind it.

As a leader of the Western Coalition of Senators who seek to represent the problems and needs of the Western States here in the Nation's Capital, Senator LAXALT has worked to ensure that the more sparsely settled States receive the same kind of careful consideration as the populous part of the country.

He has retained his close association with the outdoors, an association growing out of his father's life in the Sierras and one he is passing on to his grandchildren. And throughout his Senate career, he has demonstrated by his commitment of time and effort the strong concern for preserving the American family which is the legacy of this own strong family background.

Senator LAXALT is one of the first-generation Americans who make more than a mark on this country—they help shape the nature of the country and its future. His has been a decisive shaping hand here in the Senate, and we are all regretful to see him leave.

CALL TO CONSCIENCE: THE PLIGHT OF SOVIET JEWS

Mr. MITCHELL. Mr. President, a spirit of cautions optimism exists around the world that the relationship between the superpowers is changing for the better. At this time it is important that we keep firmly in mind the cause of those for whom this development holds great personal meaning. For thousands of Jews in the Soviet Union seeking emigration visas, changes in superpower relations could means the opportunity to reunite with family in Israel and the freedom to practice their religion.

This year I have had the honor to coordinate the Congressional Call to Conscience Program for Soviet Jews. During the 2d session of this 99th Congress more than half of the Members of the Senate carried their concern for human rights in the Soviet Union to the floor and delivered statements outlining many refusenik cases. I would like to thank those of my colleagues who joined me in this effort to highlight the desperate situation of refuseniks. Only by persistantly continuing such efforts can we hope to obtain their freedom.

Participating members were: Hon. JAMES ABDNOR, Hon. BILL ARMSTRONG, Hon. MAX BAUCUS, Hon. DAVID BOREN, Hon. RUDY BOSCHWITZ, Hon. BILL BRADELY, Hon. DALE BUMPERS, Hon. QUENTIN BURDICK, Hon. JOHN CHAFEE, Hon. LAWTON CHILES, Hon. ALAN CRANSTON, Hon. ALFONSE D'AMATO, Hon. JOHN DANFORTH, Hon. DENNIS DECONCINI, Hon. ALAN DIXON, Hon. CHRIS DODD, Hon. ROBERT DOLE, Hon. PETE DOMENICI, Hon. JAMES EXON, Hon. JOHN GLENN, Hon. ALBERT GORE, Hon. SLADE GORTON, Hon. PHIL GRAMM, Hon. CHARLES GRASSLEY, Hon. TOM HARKIN, Hon. GARY HART, Hon. ORRIN HATCH, Hon. MARK HATFIELD, Hon. PAULA HAWKINS, Hon. JOHN HEINZ, Hon. GORDON HUMPHREY, Hon. DANIEL INOUYE, Hon. BENNETT JOHNSTON, Hon. EDWARD KENNEDY, Hon. JOHN KERRY, Hon. FRANK LAUTENBERG, Hon. PAUL LAXALT, Hon. PATRICK LEAHY, Hon. CARL LEVIN, Hon. RUSSELL LONG, Hon. MACK MATTINGLY, Hon. HOWARD METZENBAUM, Hon. DON NICKLES, Hon. LARRY PRESSLER, Hon. DAN QUAYLE, Hon. DON RIEGLE, Hon. JAY ROCKEFELLER, Hon. PAUL SARBANES, Hon. PAUL SIMON, Hon. ARLEN SPECTER, Hon. BOB STAFFORD, Hon. PAUL TRIBLE, Hon. JOHN WARNER, and Hon. PETE WILSON.

In letters from several constituents in Cape Elizabeth, ME, and in a note from an Israeli Knesset member, the cases of two refussenik families were recently brought to my attention. Alec and Galina Abramovich of Bendary and Lev and Inna Elbert of Kiev have been waiting years for permission to emigrate. Both families have suffered terrible hardships during this period and their cases deserve the prompt attention of Soviet authorities. It is my hope that like Yuri Orlov and Natan Scharansky they too will be allowed to reunite with family in Israel.

In an effort to be of assistance to them and the thousands of other Soviet Jews wishing to emigrate I regularly have sent copies of our our Call to Conscience statements to General Secretary Gorbachev, Ambassador Dubinin, and the State Department.

This year 631 Jews have been granted emigration visas. That is not enough. We must redouble our efforts, until the day arrives when emigration visas are granted as a matter of course, rather than as public relations ploys which are, in reality, exceptions to the Soviet Union's iron-fisted rule.

On an August night in Moscow last year I had the opportunity to meet with several refuseniks as a member of the Senate delegation to the Soviet Union. This experience touched me deeply. After listening to their harrowing stories until late into the night we left our newfound friends promising to bring their cases to the attention of General Secretary Gorbachev. They felt strongly that this was one of the most effective ways to improve their situation.

As the delegation finally took its leave, drained and exhausted, I experienced a strange mixture of sadness and relief. In a few days we would be back in America, free; they, however, would be in the Soviet Union, continuing their struggle. As I turned around for a last goodbye, and saw their strong but tear-stained faces, I realized they were thinking the same thing.

In the spirit of that meeting I look forward to continuing my work on behalf of these brave individuals and urge my colleagues to do the same.

TRIBUTE TO SENATOR BARRY GOLDWATER

Mr. HOLLINGS. Mr. President, at the end of this session, we will bid farewell to the senior Senator from Arizona, BARRY GOLDWATER. After countless legislative wars and brilliant

service to his country, the Senate will decommission its premier battleship.

For 36 years, BARRY has been a distinctive voice in this body: blunt spoken, courageous, often unpredictable, ever the maverick. From his service in the Army Air Corps during the Second World War through his distinguished chairmanship of the Armed Services Committee for the last 2 years, his foremost concern has always been the strength and competence of our Nation's military.

Indeed, BARRY has been the best kind of friend and patron to our armed services. He has fought doggedly to win them the best in weapons and resources, yet never hesitates to take them to task for faults or excesses. He is what we call down in South Carolina "a hawk who flies with his eyes open."

In Korea and again in Vietnam, he had a special appreciation for the difficulties of waging war on behalf of a fickle, impatient democracy. It was a Frenchman who said that war is too important to be left to the generals. BARRY GOLDWATER would counter that war is too important to be left to the politicians.

Throughout his career, he has held fast to the traditional conservative convictions: that Government should not interfere with the economy, and that the State should not intrude in citizen's private lives and personal decisions.

BARRY GOLDWATER closes his Senate career a man of many paradox—which is a measure of his intellect and independence. Dismissed as "extreme" in the 1964 Presidential campaign, his ideas on the economy, society, and personal freedom are now in large measure the conventional wisdom. A lifelong champion of military strength, he questions many of the Pentagon's sacred cows. Founder of the modern conservative movement, he takes issue with the "New Right's" penchant for deficit spending and intrusive social legislation.

BARRY has been a valued personal friend. For more than three decades, he has stood out as one of the Senate's most respected leaders. Indeed, he is a man with a loyal following across the length and breadth of our Nation.

We will miss BARRY GOLDWATER here in Washington. We wish him the best. And we trust that his voice will be heard in affairs of State for many years to come.

TRIBUTE TO SENATOR PAUL LAXALT

Mr. HOLLINGS. Mr. President, for 12 years now, Senator PAUL LAXALT has been the indispensable lubricant of an institution whose gears and cogs are notoriously cranky. He has been a bridge between Democrats and Republicans, a committed practitioner of the maxim that political differences should never become personal differences. He is not just the President's best friend on Capitol Hill, he is the dear friend of many of us in this body. His departure from the Senate at the end of this session will be a great loss to all of us.

Perhaps the key to PAUL's success is that his strong ideological convictions have been matched with an equally strong commitment to civility and fellowship. This has allowed him to wear many hats: statesman, Republican Party partisan, diplomat, and honest broker. The President has sent him on sensitive missions abroad. Likewise, the Senate has sent him on sensitive missions to the opposite end of Pennsylvania Avenue. Time and again, he has acquitted himself with skill, tact, and firmness.

PAUL LAXALT's is the quintessential success story. The son of immigrants, he rose to be Governor of his State and then U.S. Senator. I hasten to add that the final chapters in this story have yet to be written, and they may well turn out to be the best of all.

I am sure my colleagues join me in wishing PAUL the very best of luck. The Senate will miss him greatly.

TRIBUTE TO SENATOR RUSSELL B. LONG

Mr. HOLLINGS. Mr. President, at the end of this Congress, we will bid farewell to our colleague, RUSSEL LONG. The political scientists and pundits will note that the Senate is losing a legend, a Senator of historic impact and accomplishment within this body. His colleagues do not argue with that assessment, but forgive us for regretting, above all, the departure from the Senate of one of our best and most beloved friends.

RUSSELL came here in 1948 as a colt of only 30 years, the offspring of a famous sire, but without an extensive track record. In the 38 years since, he has built a formidable reputation in his own right. We will remember him best for his decade and a half at the helm of the Finance Committee. He continued the line of strong chairmen and served as mentor to the current chairman. He was both a master strategist and a fair-minded, skillful manager.

It is possible that another Senator has greater knowledge of Senate rules and parliamentary procedure than RUSSELL, though I doubt it. But, without question, he has no peer in his mastery of the Tax Code.

Tax bills always end up as legislative Christmas trees, and RUSSELL was a natural in the role of Father Christmas. He must have been amused by our efforts, last month, to dress up the tax overhaul bill in the rhetoric of reform and simplification. As he observed on more than one occasion, a loophole is "something that benefits the other guy. If it benefits you, it is tax reform."

Maybe RUSSELL's ultimate achievement is that, after nearly four decades in the Senate, he is leaving here young of heart and spirit. I wish he would stay on to reclaim his finance gavel next January, but we must accept his decision to move on. He has served his State and Nation brilliantly, and in the process he has done great service to the Senate as an institution. We will miss him very much.

STATEMENT OF SENATOR GARY HART—THE CONFUSION OVER ICELAND INCREASES EVERY DAY

Mr. HART. Mr. President, with every passing day, the dimensions of the confusion at Iceland are compounding.

This week, this administration should be devoting its energies to clarifying the state of United States-Soviet relations regarding nuclear weapons. Instead, we have seen an administration engaged in its most bizarre—possibly even cynical—effort to create political reality, out of thin air.

In the vain hope it can avoid a rendered verdict of failure, it is making the preposterous assertion that progess was made in Iceland. Equally ominously, the administration is racing to convert the forthcoming elections into a referendum on SDI. It is elevating politics over national security and debasing serious national debate.

Planning for an adult summit in the United States was the ostensible purpose of the meeting in Iceland. It was further assumed these discussions would yield clear instructions for the arms control negotiators in Geneva. Had President Reagan and General-Secretary Gorbachev reached an agreement on either issue, arms control and the effort to manage this critical relationship would have remained on track.

It is manifestly clear—regardless of the calculus one might apply—that these talks failed. The talk of progress on both sides is nothing more than rhetoric.

First, arms control negotiations in Geneva have been left in a state of total confusion. It is bad enough that no new instructions came from the leaders in Iceland. It is worse that neither side seems clear about what was actually proposed, and discussed.

General-Secretary Gorbachev has determined that no progress can be made in the area of strategic or intermediate range missiles unless the deadlock is broken on SDI. The principal Soviet negotiator in Geneva be-

lieves that progress on INF is still possible.

The President's Chief of Staff reported this week that all nuclear weapons would have been eliminated under the President's offer in Geneva. Yet, the White House press secretary reports the arms control offer in Iceland included only ballistic missiles.

Where do we actually stand? If these basic and vital facts are subject to interpretation—and political manipulation—we are in for a truly perilous period. Basic strategic decisions must still be made before negotiations can proceed.

Second, the talks in Iceland have placed the continued viablity of the ABM Treaty in jeopardy. The negotiators in Geneva must deal with a treaty about which there is now fundamental disagreement over its scope and interpretation.

Less that a year ago, a minor official at the State Department unilaterally produced a new interpretation of the ABM Treaty. This interpretation has been disputed by the U.S. negotiators who crafted this singularly important document. Since that time, this Senator has been joined by leading members of the Senate Armed Services Committee in an effort to gain access to the negotiating record.

For months, we struggled in vain to receive this record from the administration. The administration acted with arrogance and in defiance of the Constitution as it resisted the efforts of the U.S. Senate to review this critical record. By stonewalling the Senate, it became increasingly evident the administration was shielding the record to protect a warped, political reading of the record simply to permit the development and deployment of SDI in defiance of the ABM Treaty.

Upon its return from Iceland, the administration characterized this position as a strengthening of the treaty. In fact, Mr. President, such an interpretation would void ABM. And it enabled the Soviet Union to claim that its position on ABM—ruling out basic research on laser technology, for example—was consistent with the treaty. There is dispute on the Soviet interpretation as well.

Third, Mr. President, the Iceland meeting will have produced a staggering setback for arms control if all agreements are held hostage to the President's program on strategic defenses.

A myriad of theoretical and practical problems must be overcome before we can even begin designing a realistic strategic defense system. Indeed, experts estimate that the spaced based approaches needed to fulfill even a portion of President Reagan's vision could not be developed before the second decade of the next century. Even this distant target date is uncertain.

Progress has not been made at Geneva. Indeed, it is impossible to recorrect a point in the history of superpower arms control negotiations when there was more confusion about who said what to whom, what offers were made, who rejected what, what our Government's present policy is, what—besides SDI research—is or is not negotiable.

In just 25 days, the President will decide whether to violate the SALT II limits. At that time, the 131st B-52 bomber will be equipped with an air-launched cruise missile. Compensating measures can be taken to accommodate that modernization without breaching the limits of SALT II. Should those measures not be taken, arms contol will be—for all intents and purposes—dead.

An amendment I offered in the Armed Services Committee and which was adopted—calling upon the President to respect the SALT II Treaty—has now been approved by the Congress of the United States. This amendment was enacted as a substitute for substantially more restrictive measures called for by the House. The House of Representatives included in its defense bill absolute funding cutoffs for systems which, if put into place, would force the United States out of compliance with SALT II. I supported those stronger provisions. But Members of the House agreed to remove them to untie the President's hands before the Iceland meetings.

If the President is unable to demonstrate a commitment to arms control—by abiding, for example, with the SALT II Treaty limits—he should anticipate new and even more restrictive arms control language from the Congress of the United States.

Mr. President, today, I am sending a letter to the President urging him to honor this congressionally enacted language and refrain from exceeding the limits under SALT II in the fundamental security interest of our Nation.

The President's political advisers apparently believe that politicising arms control, converting the forthcoming elections into a referendum on SDI, will somehow provide him some benefit. It will not. It will enshrine this President in the posture in which he finds himself today as the man who choose as his legacy a technological fantasy called SDI over the possibility of the most sweeping arms control agreement in the nuclear age. That will be not only his tragedy but a burden that all of us will carry.

AMBASSADOR BARNES RETURNS TO CHILE

Mr. HELMS. Mr. President, Ambassador Harry Barnes is scheduled to return to Chile this weekend after an absence of several weeks. Ambassador Barnes left Chile for leave in the United States on September 1, a few days after the discovery of the last of 10 separate arms caches in various parts of the country, and only a week before a group of highly organized assassins attempted to kill President Augusto Pinochet.

Both the arms caches and the assassination attempt have been traced to the Manuel Rodriguez Patriotic Front [FPMR], a terrorist group that constitutes the armed wing of the Communist Party. In addition, the Movement for the Revolutionary Left [MIR]—an Allende group which went underground when Allende's movement collapsed—was also a recipient of the arms. Both cases make clear that the FPMR and the MIR are organized and supported from outside of Chile.

Mr. President, Ambassador Barnes owes an apology to the people of Chile. The FPMR and the MIR were the most prominent of the Marxist and Marxist-Leninist groups which dominated the funeral of Rodrigo Rojas. It was the MRPF to which I referred when I said that Ambassador Barnes had planted the American flag in the middle of a Communist rally. It was widely known that the FPMR had called for the violent overthrow of the constitutional Government of Chile.

But less than a month after Ambassador Barnes had made common cause with the FPMR, the first of the 10 weapons caches was discovered. And 2 months to the day after Ambassador Barnes joined the Stars and Stripes with the hammer and sickle in a broad propaganda effort against the constitutional Government of Chile, his comourners at the funeral were attempting to assassinate the constitutional President.

Mr. President, it was not a mere coincidence that Ambassador Barnes appeared at the funeral of Rodrigo Rojas with the representatives of the extreme and violent left. The 2 day demonstration during which Rojas lost his life had been planned by a coalition which is seeking to overthrow the democratic constitution. The present constitution was approved by a vote of two-thirds of the Chilean people in 1983. The constitution includes the present process under which a democratic system is being reconstructed, with a country-wide vote in 1989. President Pinochet signed into law the system for electoral registration on September 11, and will shortly do the same for law establishing political parties. He told me in July that he would take these steps, and he has kept that promise.

There are those in Chile who are dissatisfied with this process, even though a majority of Chilean voters have approved it. They are arguing for immediate elections, without preparation. They hope to destabilize the democratic process, not strengthen it.

They hope that in the confusion a weakened government will be established that will be a push-over for the Marxist-Leninists. In this case, even the so-called democratic left is not in fact democratic. Recalling Chile's experience with Allende, we should call this part of the political spectrum pre-Marxist, not democratic. It is pre-Marxist because it abrogates the rights of a free society, making the transition to Marxism inevitable.

Ambassador Barnes is apparently willing to work both with the Marxist-Leninists, and with the pre-Marxist left. He is willing to support those who would tear down the democratic system, rather than those who would build it up. Those who want a Castro/Allende style Government in Chile are obviously in the minority, and can't win in a democratic system. By opting to show solidarity with the FPMR and the MIR, Ambassador Barnes is working to overthrow the Chilean Constitution.

Mr. President, I know that most Chileans will find it difficult to believe that Ambassador Barnes could be working toward an outcome in Chile that is either Marxist or pre-Marxist. After all, isn't Chile a staunch friend of the United States? Hasn't Chile been building a strong economy based upon freedom for the productivity of the Chilean people? Isn't Chile strongly opposed to Socialist and Communist designs throughout the world? Hasn't Chile been cooperating with the United States in every area where the United States needed Chile's help?

The answer is that these policies of Chile are the policies of the American people, but they are not the policies of the elite diplomats in the U.S. Department of State. Didn't the U.S. State Department prefer Mao Tse-tung over Chiang Kai-shek? Didn't the U.S. State Department prefer Castro over Batista? Didn't the U.S. State Department prefer Mugabe over Bishop Muzorewa? Didn't the U.S. State Department prefer the Sandinistas over Somoza? Isn't the U.S. State Department working to normalize relations with Communist Mozambique, and repelling the attempts of the Mozambique feedom fighters who now control the majority of the country's territory? Is not the U.S. State Department working to install the Communist-controlled African National Congress as the next legitimate Government of South Africa?

The fact is that the elite planners in the U.S. Department of State, and Ambassador Barnes as their representative, are working to bring about a government in Chile that is either Marxist or pre-Marxist. If pressed, they would say that they would prefer a pre-Marxist government, but they would tolerate a Marxist government so long as it in the Yugoslavian or Czechoslovakian style.

The only government that they will not tolerate is one that is based on free-market principles, open opportunity, and traditional values. Instead of helping Chile to perfect its present system, they prefer to install the system that has failed in every country where it has been tried. In all of Latin America, only Chile has the established basic components that make democracy possible: Respect for private property, a free-market economy, a universal education system, a revitalized agriculture, a diversified export maket, a reduction of external debt. Moreover, the elimination of government corruption, drug trafficking, and pornography make a decent society possible. No other country in Latin America has come near these achievements.

The Chilean people must be very realistic in evaluating United States policy as expressed by the United States State Department. It was no accident that Ambassador Barnes publicly endorsed an event organized by those who would destroy the Chilean Constitution. I have no doubt that Ambassador Barnes' cooperation with these antidemocratic elements extends to a wide extent of subversive contacts. In short, I believe that Ambassador Barnes was engaged in a calculated plan to use the antidemocratic revolutionary elements to destablize the political process in Chile, in cooperation with the international campaign being waged by Communist and socialist movements of the world.

Therefore, I call upon Ambassador Barnes to state explicitly whether he supports the Chilean Constitution as approved by the Chilean people, including the timetable for the reconstruction of the democratic process as put forward in that document and in the recent actions of the Chilean Government. Ambassador Barnes owes it both to the American people and to the Chilean people to put it on public record exactly where he stands. If he does not wish to do this, he should return to Washington as soon as possible.

TRADE DEFICIT INACTION

Mr. BINGAMAN. Mr. President, as we approach the closing hours of the 99th Congress, I would like to point out again to my colleagues that we in the Congress are about to adjourn without acting in any significant way to one of the most acute problems this Nation faces: our very serious trade problem.

There has been much empty rhetoric about our trade problems, but very little real action. Although major reform legislation has been passed by the House, the Senate has failed to bring to the floor the trade modernization legislation that has been ready for months. The President has often talked about the importance of our trade relations, but the reality is that our trade deficit is larger each time we look at it. For the first 7 months of this year the deficit has already reached $82.3 billion and it is expected to top $170 billion for the year.

Virtually no domestic industry escapes harm in this situation. Nearly everyone faces severe foreign competition. And competition has manifested itself in decreased real wages—now below 1963 levels; rising unemployment, decelerating GNP growth, debt growing at a rate six times faster than the GNP, business consumer and Government debts at post 1920's highs, as a nation that is now the world's largest debtor. Investment and productivity are slowing, and even our education achievement compared to other developed nations is near the bottom.

The administration says it is combatting the trade deficit by addressing the exchange rate. However, we find that despite some apparent success in lowering the value of the dollar relative to other currencies, the trade deficit has grown worse. There are a number of explanations for this phenomenon. Perhaps the most plausible is the one described by Lawrence Silk of the New York Times. In an October 8, 1986 column he cites recent indexes prepared by Rinfret Associates that show that the dollar declined only 8.9 percent on the import side and only 4.7 percent on the export side, despite the Federal Reserve's claim of a 32.5 percent drop. Mr. Silk writes that:

> According to this analysis, the United States trade deficit has not improved materially because the dollar has not declined significantly against the currencies of some of the principal countries with which the United States does business, including Canada, Latin America and the newly industrialized countries of East Asia.

Without objection I ask that the entire Silk column be printed in the RECORD following my remarks.

Mr. President, the time has come for our Nation to face up to these challenges, which are already hurting on our standard of living, relative to other nations.

Japan, one of our most fierce competitors, is experiencing growth rather than decline, largely at our expense. The Japanese have a high personal savings rate, and they have raised the percentage of their GNP that is exported. According to Harvard University Prof. Ezra F. Vogel, the Japanese economic success is immense. In a letter to the editor in today's Wall Street Journal, Professor Vogel says that "our standard of living on the average is not yet suffering greatly because we are becoming indebted to Japan. But consider the implications for the future." I also ask unanimous consent that Professor Vogel's letter to the editor from today's Wall Street

Journal be inserted in the RECORD following my remarks.

Mr. President, Professor Vogel's observations are enlightening and troubling. And they are echoed by many others. I hope my colleagues will review these views and take them to heart.

The Senate has had the opportunity to begin to address the trade and competitiveness problems we face, and has instead chosen not to take action on House-passed trade modernization. I am disappointed by this failure to act. I hope next year we will rectify this serious failure. The American people deserve action on this critical issue.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Oct. 8, 1986]

ECONOMIC SCENE—DANGERS OF U.S. TRADE DEFICIT

(By Leonard Silk)

The need to shrink the huge United States trade deficit, now running at about $200 billion a year, is the main reason the Administration has put so much pressure on West Germany and Japan to accelerate their economic growth. But during last week's annual meetings of the International Monetary Fund and World Bank, the Germans and Japanese pointed to a report by I.M.F. economists to support their contention that faster growth by their countries would have little effect on the American trade deficit.

The fund's economists estimated that an increase of one percentage point in the domestic growth rate in Japan and West Germany, maintained over three years and with allowance for induced effects on growth in other countries, would alter the American trade balance by no more than $5 billion to $10 billion. This year the United Stats trade deficit, including the cost of insurance and freight, could hit $200 billion.

The I.M.F. estimate is in line with an analysis for the Joint Economic Committee of Congress, which found that an increase of one percentage point in German and Japanese growth would reduce the United States trade deficit by only $9 billion to $12 billion. The committee's report warns that trade deficits averaging even $100 billion from 1987 to 1989 could push the cumulative American external debt past $1 trillion by the end of this decade and close to $2 trillion in another eight or nine years.

Despite the decline of the dollar against the yen, the mark and many other currencies since February 1985, the American trade deficit has stayed high, holding at 2.9 percent of gross national product in 1986, the same level as in 1985. The I.M.F. forecast that the American trade deficit would narrow only slightly, to 2.7 percent of G.N.P. in 1987. Japan's current-account surplus, which was 3.7 percent of G.N.P. in 1985, is estimated by the I.M.F. to rise to 4.1 percent this year, before declining to 3.3 percent in 1987. West Germany's surplus, 2.1 percent of G.N.P. in 1985, will, according to the I.M.F., reach 3.4 percent this year, before dropping to 1.6 percent in 1987.

Some economists believe the improvement in the American trade position following the dollar's decline has been slower than expected because the dollar has actually come down less than implied by the widely used Federal Reserve trade-weighted dollar index. The Fed's index has the dollar falling 32.5 percent against 10 major currencies from February 1985 to late September 1986.

However, Rinfret Associates, an economic consulting concern, has prepared two separate dollar indexes, one weighted by the main countries the United States exports to and the other weighted by the main countries it imports from. The Rinfret indexes show that the dollar declined only 8.9 percent on the import side and only 4.7 percent on the export side.

According to this analysis, the United States trade deficit has not improved materially because the dollar has not declined significantly against the currencies of some of the principal countries with which the United States does business, including Canada, Latin America and the newly industrializing countries of East Asia. The currencies of many of these important trading partners have been pegged to the dollar or even dropped against it.

Other economists insist that, even if the dollar were to sink much lower, this would not come close to eliminating the trade deficit, because of the great imbalance between savings and investment in this country. For example, Ronald McKinnon, a professor of economics at Stanford University, contends that the huge Federal budget deficit, now estimated at $230 billion for the 1986 fiscal year, creates a shortage of savings in the American economy that is being met by borrowing abroad, thereby making a trade deficit inevitable. Capital inflows and trade deficits are mirror images.

If capital inflows and the trade deficit were both curtailed arbitrarily, Professor McKinnon says, American real interest rates would have to climb sharply because of the shortage of domestic savings. The consequences would probably be a slump in investment and a steep fall in the economy.

And the dollar would probably fall a great deal further. But, Professor McKinnon maintains, "no exchange rate exists that would balance U.S. foreign trade with an ongoing fiscal deficit of $200 billion a year."

Until now the United States has managed to handle its growing foreign debt without a decline in its standard of living; foreigners have financed the trade deficit and made it possible for Americans to consume more than they have been producing.

But if external financing dries up, or even slows down, as foreign investors grow leery of holding so much of their debt in dollars, the United States would have to start financing its foreign debt by generating trade surpluses. As the Joint Economic Committee report points out, this poses two difficult problems: First, United States living standards would suffer and, second, swinging from a $200 billion trade deficit to a surplus of at least $20 or $30 billion would impose a wrenching adjustment on the world trading system. We shall look at those problems in another column.

[From the Wall Street Journal, Oct. 17, 1986]

JAPAN AND THE UNITED STATES: GROWTH AND DECLINE

As the author of "Japan as No. 1" I read your Sept. 2 editorial "The 'Japan as No. 1 Myth" with more than the usual interest.

Your editorial does have kernels of truth. Japanese do have a high savings rate. The percentage of Japanese GNP being exported, while low by European standards, has risen, as has that of most countries. The average size of dwellings is still below that in America although it has been rising at a much more rapid rate. Japanese car ownership lags behind America's although the purchase of new cars has accelerated more rapidly, and the state of repair of cars is far better than ours. Given that Japan's 120 million people live in an area smaller than California, one might argue that car ownership of slightly more than one per household (Japan's rate of 370 cars per 1,000 people has already surpassed the U.K.'s) combined with a public transportation system far superior to ours is not a bad mix.

A fundamental error in your editorial is the view that the Japanese "aren't allowed to enjoy" Japan's economic success. As one who began doing family household investigations in Japan in 1958 and has returned there every year for over 20 years to investigate families, villages, factories, offices, labs and commercial establishments, I can testify that the people have profited immensely from economic growth. In 1958 few Japanese could hope to buy TV sets, they did not have modern kitchens, and few could afford more than charcoal for localized heating. The rate of diffusion of most electric appliances now surpasses that in the U.S., entertainment for weddings and public occasions makes America's pale by comparison, and Japanese travel abroad more in absolute numbers than Americans, with half the population. Japanese housing was devastated by World War II, but for the last 20 years Japan has averaged about 50% more housing starts per household than has the U.S.

Although it is unlikely that your editorial writer will visit enough Japanese homes to get a significant sample, might I suggest that before he writes articles about Japanese consumers' inability to profit from economic growth he interview Japanese about the standard of living they had 30 years ago and the one they enjoy today? I suggest that he visit Japan, starting with 15 or 20 of Tokyo's largest department stores. If he doesn't want to leave New York, might I suggest that as a minimum instead of looking only at savings rates he look at the rates of diffusion of various kinds of material possessions over the last 30 years and that he compare housing starts over the same period. Who, after all, is perpetrating "myths"?

I am concerned that the complacency generated by such editorials among people who know little about Japan endangers the future of our country. To be sure, our standard of living on the average is not yet suffering greatly because we are becoming indebted to Japan. But consider the implications for the future.

Nomura Securities forecasts that Japan by 1995 will have net assets around the world of $1 trillion. In the early 1980s when American net assets around the world peaked, we had net assets of about $250 billion, about one-quarter of what Japan will have nine years from now. We are acquiring additional foreign indebtedness of more than $150 billion a year. The implicit argument of your editorial, that we are better off for being borrowers than the Japanese are for being lenders, ignores development over time by which Japanese standards of living will continue to rise and ours will fall as we try to pay off debts with the few competitive exports we then have left. It is our children, not the Japanese, who will suffer.

EZRA F. VOGEL,
Harvard University.

HALLMARK CARDS CONTINUES ITS TRADITION OF LEADERSHIP

Mr. EAGLETON. Mr. President, Hallmark Cards, Inc., and First Chicago Venture Capital agreed to purchase the Spanish International Communications Corp. [SICC] in July of this year. SICC, a privately held corporation, owns and operates the largest group of Spanish-language format television stations in the United States. Full power, UHF television stations are located in New York [WXTV], Los Angeles [KMEX-TV], Miami [WLTV], San Antonio [KWEX-TV] and Fresno [KFTV]. The metropolitan areas of Denver; Philadelphia; Austin, TX; Hartford, CT; and Bakersfield, CA, are served by low power television stations.

Some questions relating to the sale process had been raised by other parties. Many of these concerns were addressed in a recent order signed by Judge Pfaelzer of the U.S. District Court for the Central District of California. The order is a powerful statement concerning the facts relative to the sale. The judge states that based on the record before the court, there was no disputed issue of material fact relating to the sales process or the disposition of SICC and further "the sales process was fairly and reasonably conducted." Judge Pfaelzer further states that the selection on July 18, 1986, of the proposal to acquire SICC by the Hallmark group was fair and reasonable and that no basis has been shown for contesting that selection. I ask unanimous consent that a copy of the judge's order be printed in the RECORD.

There being no objection, the order was ordered to be printed in the RECORD, as follows:

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Fouce Amusement Enterprises, Inc., and Metropolitan Theatres Corporation, Plaintiffs, v. *Spanish International Communications Corporation, et al.,* Defendants, and related cases.

[No. CV 76 3451 MRP]

Order on motion by TVL Corporation for leave to intervene; on motion by the Hallmark Group for affirmation of July 18, 1986 Order, or in the alternative, for conditional intervention; and on application by defendants for affirmation of July 18, 1986 Order. Hearing: October 6, 1986, Time: 10:00 a.m.

Andrew W. Robertson, Lillick, McHose & Charles, 725 S. Figueroa Street, Los Angeles, California. Attorneys for Defendants, Spanish International Communications Corporation, Reynold V. Anselmo, Emilio Nicolas, Sr., and John Pero

Ronald L. Fein, James H. Berry, Jr., Scott D. Bertzyk, Jones, Day, Reavis & Pogue, 355 South Grand Avenue, Los Angeles, California. Special Counsel for Spanish International Communications Corporation.

On October 6, 1986, the following motions and application came on for hearing before the Court: (1) The motion by TVL Corporation ("TVL") under Federal Rule of Civil Procedure 24 for leave to intervene in this action; (2) The motion by Hallmark Cards, Incorporated and First Capital Corporation of Chicago (collectively, "the Hallmark Group") for affirmation of the Court's July 18, 1986 Order ("the July 18 Order") approving the sale of Spanish International Communications Corporation ("SICC") to the Hallmark Group, or, in the alternative, for conditional intervention in this action; and (3) The application by defendants for affirmation of the July 18 Order.

In connection with the foregoing motions and application, the defendants, Special Counsel for SICC, TVL, and the Hallmark Group have submitted comprehensive memoranda of points and authorities, 36 declarations from participants in the sales process for the disposition of SICC, and other materials concerning the sales process and related proceedings pending before the Federal Communications Commission ("FCC"). In addition, extensive oral argument was presented at the October 6 hearing. After carefully reviewing and considering the written submissions and the additional argument at the hearing, and after consideration of all proceedings had in this action, and being fully advised, the Court finds and concludes as follows:

1. The sale of SICC was conducted pursuant to a private settlement agreement in order to resolve this lengthy stockholders' derivative action and pending FCC proceedings relating to SICC. SICC and its stockholders were not obligated to sell SICC to any particular prospective purchaser.

2. Under the terms of the settlement agreement among the parties to this action and other signatory stockholders, SICC was to be sold to a party selected by a Sales Committee appointed by holders of 94% of SICC's stock upon such terms and conditions as the Sales Committee might establish. In the event that the Sales Committee failed to agree unanimously upon a buyer for SICC, the settlement agreement provided that the Court would select the buyer.

3. Pursuant to the sales process established by the Sales Committee in accordance with the settlement agreement, TVL and the Hallmark Group, among others, submitted offers to acquire SICC on various terms and conditions. The Sales Committee failed to reach unanimous agreement selecting any one offer, and the matter therefore was referred to the Court for decision on July 18, 1986. After having been fully informed by the Sales Committee and its legal and financial advisers, the Court selected by its July 18 Order the proposal of the Hallmark Group for the acquisition of SICC, subject to the delivery of a fairness opinion by the Sales Committee's financial advisers, Bear Stearns & Co., Inc. ("Bear Stearns"), and to the negotiation of an acquisition agreement satisfactory to the Sales Committee.

4. In making its July 18 Order, the Court concluded that the Hallmark Group's proposal should be accepted for several reasons, including:

A. The Hallmark Group had (and has) a net worth more than sufficient to consummate its offer, whether or not it chooses to obtain any financing, whereas TVL was a newly-formed corporation having no substantial assets and had not received firm commitments for the financing on which it was required to rely in connection with its offer to purchase SICC.

B. The offer of the Hallmark Group provided unlimited liability for breach backed by the net worth of the Hallmark Group, which substantially exceeded the proposed purchase price, whereas TVL's offer provided no guarantee of performance by or recourse for breach against a financially responsible party (other than the proposed agreement of Citicorp to sign the TVL acquisition agreement if its liability were limited to $15 million in liquidated damages).

C. By its terms, the Hallmark Group's offer was to expire as of the end of the day of July 18, 1986 and the Court, therefore, could have no assurance that the Hallmark Group offer (or any other offer) would be available in the event that the uncertainties in TVL's offer could not be remedied. In that connection, the Court was aware that in May 1986, a financially responsible offeror had made an offer for SICC higher than that of TVL or the Hallmark Group; that the principal SICC stockholders instead chose to pursue the sales process in the hope of obtaining an even higher offer; and that that offeror thereafter did not make an offer in the sales process. The Court therefore did not deem it appropriate or desirable to subject the SICC stockholders and the settlement of this action to continued uncertainty or to expose the stockholders to the risk of having no buyer and being forced to return again to the marketplace.

5. In accordance with the July 18 Order, a definitive acquisition agreement satisfactory to the Sales Committee was executed by SICC and the Hallmark Group, after delivery of the Bear Stearns fairness opinion, on July 19, 1986.

6. TVL filed an application for leave to intervene in this action on August 12, 1986 for the purpose of filing a complaint seeking an order vacating the proposed sale of SICC to the Hallmark Group and requiring SICC to be sold to TVL.

7. TVL's only interest in this proceeding is that of one of several unsuccessful offerors for SICC and, as such, TVL has no legally protectable interest in acquiring SICC and no stake or other interest in this stockholders' derivative action. Accordingly, TVL may not intervene in this action of right under Federal Rule of Civil Procedure 24(a).

8. Intervention by TVL at this late stage of the proceedings, after settlement of this lengthy and complex derivative action, would not further the interests of justice, would disrupt the orderly resolution of the action, would be adverse to the interests of SICC's stockholders, and would be contrary to the public interest in the settlement of disputes, both in the courts and before the FCC. Accordingly, TVL should not be permitted to intervene in this action under Federal Rule of Civil Procedure 24(b). Moreover, TVL has offered no independent jurisdictional basis for intervention under Rule 24(b).

9. Based on the record before the Court, there is no disputed issue of material fact relating to the sales process for the disposition of SICC. The sales process was fairly and reasonably conducted. The sales process was not biased or tainted so as to prejudice TVL's participation in the process, to hinder TVL's ability to acquire SICC, or to favor unfairly the Hallmark Group. TVL's claims that the sales process was unfair or biased are without legal merit or factual basis.

10. The selection on July 18, 1986, of the proposal to acquire SICC by the Hallmark Group was fair and reasonable. No basis has been shown for contesting that selection. Even if the Court were to accept TVL's allegations as true, the Court still would affirm the July 18 Order for the reasons set forth in paragraph 4 above.

In accordance with the foregoing, the Court ORDERS as follows:

The application by TVL for leave to intervene in this action and the motion by the Hallmark Group for conditional intervention are denied. Although this Court has denied intervention under Rule 24, it has reviewed the declarations and other submissions of TVL and the Hallmark Group and has permitted them to be heard on the merits of TVL's claims and on defendants' application to affirm the July 18 Order, to the extent deemed necessary to assure the Court that its July 18 Order was well-founded. Having done so, the Court, for the reasons set forth above, affirms its July 18 Order in all respects. Court has reviewed TVL's proposed order and has concluded that this order accurately reflects the Court's conclusions

Dated: October 9, 1986.

MARIANA R. PFAELZER,
U.S. District Judge.

Mr. EAGLETON. Mr. President, Hallmark Cards, Inc. is a community and national leader in America. This transaction provides the opportunity for a substantially stronger and more meaningful Spanish television network and, thus, will clearly serve the Hispanic community, as well as the overall public interest.

Furthermore, Hallmark's president and chief executive officer, Irvine O. Hockaday, is publicly committed to continuing SICC's Spanish-language format and the highest quality of programming for the Hispanic community.

Finally, I would like to note that on Friday, October 3, the Federal Communications Commission Review Board also recommended that the full Commission approve the license renewals and permit transfer of the SICC stations.

ELIE WIESEL: A WORTHY RECIPIENT OF THE NOBEL PEACE PRIZE

Mr. PROXMIRE. Mr. President, on Tuesday the Nobel Committee announced its selection of Elie Wiesel as the 1986 recipient of the Nobel Peace Prize. Having nominated Elie Wiesel twice for this honor, I salute the Nobel Committee for their excellent choice.

This is an award which Mr. Wiesel clearly deserves Who else in our time has dedicated his life to peace with the tenacity that Elie Wiesel has? Through his writings, his lectures and his moral example, he has served as a symbol, a living monument, to those who perished in the mindless horror of the Holocaust.

The Nobel Committee in its citation captured the essence of what Elie Wiesel has stood for throughout his life:

Wiesel is a messenger to mankind. His message is one of peace, atonement, and human dignity. His belief that the forces fighting evil can be victorious is a hard-won belief.

Wiesel's commitment, which orginated in the sufferings of the Jewish people, has been widened to embrace all repressed peoples and races.

And what a messenger he has been. An uncomfortable reminder of a painful chapter of history that the world would much rather forget. But he has not let us forget.

He has not permitted us to forget that fateful day in April 1944 when the 10,000 Jewish residents of his hometown of Sighet, Romania, were sent by cattle car to Auschwitz.

Or the months of harsh labor at his father's side in that terrible camp.

Nor the 42-mile death march to Buchenwald. The daily death watch once they arrived.

Time and again, checkpoints were passed. Time and again, the decision recurred with frightening monotony: Who shall live? Who shall die?

Elie would survive the arbitrary choices, the toss of the coin. But millions would not. His own father would die of dysentery just 3 short months before Buchenwald's liberation.

A decade would pass before Elie Wiesel began to speak out. In the ensuing years, his voice gathered strength. Through his 25 books, his countless lectures and interviews, he gave flesh and blood to the ghosts of Auschwitz, Dacchau, Treblinka, and Buchenwald.

Not as a morbid shrine. But to assure that these victims would not have died in vain. As he wrote:

We cannot deny the victims the fulfillment of their last wish: their idee fixe to bear witness. What the merchant from Saloniki, the child from Lodz, the rabbi from Radzimin, the carpenter from Warsaw and the scribe from Vilna had in common was the passion, the compulsion to tell the tale—or to enable someone else to do so. Every ghetto had its historians, every deathcamp its chroniclers. Young and old, learned and unlearned, everybody kept diaries, wrote journals, composed poems and prayers. They wanted to remember and be remembered. They wanted to defeat the enemy's conspiracy of silence, to communicate a spark of the fire that nearly consumed their generation, and, above all, to serve as a warning to future generations.

And Elie Wiesel's life has been dedicated to fulfillment of their wish—not just for remembrance—but as a word of warning of the unspeakable horror of which man is all too capable.

He provided the quiet moral suasion so essential to our efforts to ratify the Genocide Convention.

As the Chairman of the Holocaust Commission, he will oversee the creation of a national museum just a few blocks from here which will serve as a constant reminder to us and our children of the fragile limits of our humanity.

And by serving as the voice of our conscience on the tragedies of Biafra, Cambodia, the Sahel, he has done much to keep his promise to the merchant, the child, the rabbi, and the scribe.

The awarding of the prestigious Nobel Prize is a belated, but meaningful, recognition of the debt that all of humanity owes to him. And I am delighted to join in honoring Elie for the tremendous gift he has shared with all of us.

TRIBUTE TO MRS. JANE KATZ

Mr. HEFLIN. Mr. President, I was deeply saddend by the death of my close friend, Mrs. Jane Katz of Montgomery, AL. Mrs. Katz was an outstanding servant of the State of Alabama who, throughout her life, labored to benefit every citizen of her community, her State, and her Nation by taking an active role in the workings of democracy. Her strong, respected voice is now hushed. It will, however, never be forgotten, She was a truly remarkable woman whose efforts and presence will be remembered by all in the future.

Jane Katz was, perhaps, best known for her work with the League of Women Voters of Alabama. As legislative chairman she provided legislators and officials at every level of government with helpful insight and crucial knowledge. She continually worked with lawmakers to simply improve and reform. She served for many years as a member of the league board of directors, and was instrumental in establishing a league educational fund. Jane also published a newsletter for the League of Women Voters. Thus, her work educated and informed citizens of issues and concerns by which they were directly affected. This is a most unselfish service which greatly benefits democracy and our American way. An informed public is a stronger, more viable democracy.

I will always be deeply appreciative of the essential participation and help which Jane Katz provided in gaining passage of judicial reform legislation for Alabama. She was as instrumental as anyone in the State in this effort. She helped to inform legislators and citizens regarding the substance and effect of the reform package and then worked to enlist vital support and to dissuade opposition.

Mr. President, Jane Katz was regarded by all who knew her as a devoted friend and an invaluable citizen. She provided Alabama with a tremendous service throughout her life. Those efforts are evident in the many different concerns with which she became involved, and which have improved the life of each Alabamian. I am thankful that her work has not passed unnoticed. I recently saw a letter which described her legacy in an almost poetic manner. I would like to share that with my colleagues at this time. It reads, "(Her) activist devotion to democracy and democratic ideals helped to make Alabama government more

open and, therefore, more responsive. As a result, the fruits of her life's labor will not wither at her death." Jane Katz was a delightful, gracious lady and I will miss her in the years to come.

On September 15, 1986, the Alabama Legislature passed a resolution mourning Jane Katz's death, I ask unanimous consent that it be printed in the RECORD.

MOURNING THE DEATH OF JANE L. KATZ

Whereas, in consensus of deep sorrow and regret, the Legislature of Alabama records the untimely death of Jane L. Katz, on August 18, 1986, at the age of just 55 years; and

Whereas, Jane Katz, a native of Montgomery, Alabama, and a graduate of Syracuse University, was legislative chairman and liaison of the League of Women Voters of Alabama, and brought great knowledge and expertise to her position for over eight years; and

Whereas, Ms. Katz diligently followed the legislative process for over twenty years and was a long time member of the League of Women Voters Board of Directors and was instrumental in establishing a League educational fund; and

Whereas, Jane L. Katz researched and published a biweekly newsletter and sessions' analyses; she had an insightful view of governmental affairs and was an ardent worker for the public interest, better educational opportunities, open government and governmental reform, all of which earned her great distinction and the esteem of her colleagues, friends and this body; and

Whereas, Jane Katz contributed immeasurably to her state and community in her challenging positions for the enrichment of all and in her exemplary dedication for better government; and

Whereas, Jane Katz's leadership, ready smile and quick wit, her culinary skills, and keen intelligence delighted those whose paths she crossed; and

Whereas, Jane Katz served several terms on the Board of Directors of Temple Beth or of which she was an active member; and

Whereas, this legislature valued its association with Jane Katz and will greatly miss her leadership, advice, expertise, vast knowledge and keen wit; Now therefore, be it

Resolved by the Legislature of Alabama, both Houses thereof concurring, That even as we do grievously mourn, we do give thanks for the life, labors and friendship of our friend and distinguished public servant, Jane L. Katz.

Resolved further, That in expression of concern we do send copies of this resolution to Jane L. Katz's devoted husband, Warren, and to her beloved children: Teresa Wright of Birmingham, Alabama, and Laura Katz of Charleston, South Carolina, and Daniel Katz of Annapolis, Maryland, and to her brothers, Arthur Lobman of New York and Walter Lobman of Pensacola, Florida.

THE INTERGRAPH CORP. WINNER OF THE 1986 SENATE PRODUCTIVITY AWARD

Mr. HEFLIN. Mr. President, a few years ago, the U.S. Senate passed a resolution establishing the Senate Productivity Award Program. Through this award, a corporation may be recognized and rewarded both for outstanding productivity, as well as the accompanying benefits to its community, State, and to our Nation. With this productivity award, the U.S. Senate is able to congratulate companies which add significantly to our manufacturing capacity and to our competitiveness in trade at the international level.

This year, I am both proud and delighted to announce that the Intergraph Corp., of Huntsville, AL, has been chosen as the 1986 recipient of the Senate Productivity Award. The Intergraph Corp., a billion dollar, multination engineering company, designs, manufacturers, markets, and supports turnkey interactive computer graphics systems for applications in industry, design, engineering, and mapping. Additionally, it has been instrumental in applying computer graphics technology to the areas of aerospace and defense.

James W. Meadlock, who is now the president and chairman of the board of Intergraph, founded the company 17 years ago. Through his extraordinary technical and market intuition and powerful leadership, he has taken this company from its beginning as an aerospace and defense contractor to its current position as the No. 1 supplier of turnkey interactive computer graphics systems to the world marketplace. Since the company went public 5 years ago, Intergraph has achieved an average annual growth rate of nearly 60 percent. Revenues have increased from $91 million to a projected 1986 level in excess of $650 million. The number of employees has risen from under 900 to 5,300. The great productivity of the Intergraph Corp. is clearly evident. Foreign sales now account for more than 30 percent of the company's annual revenues. With the United States' trade deficit constantly rising, Intergraph's overseas success is truly heartening.

Intergraph's hardware and software products have demonstrably improved the quality of its customers' engineering, and as a result, the quality and usefulness of their products. Bridges, buildings, processing plants, aircraft, and automobiles are all being built more efficiently and with greater structural and mechanical integrity as a result of Intergraph's achievements. Civilian and military maps are more accurate, and telephone and other utility services are better and more reliably engineered because of the advances that the company has made. So, not only has Intergraph demonstrated great productivity in its own right, but its achievements have enabled other manufacturers and industries to improve and increase their productivity as well.

A great deal of Intergraph's success must be attributed to the great technical expertise, market intuition, and powerful leadership of James W. Meadlock. Through his guidance, Intergraph's product line is well balanced, diverse and innovative. It is representative of breakthrough advances in applications and technology. His dedication to imaginative product development, along with an attention to technical details and a commitment to professional management has enabled Intergraph to provide the marketplace with computer graphics tools that solve real world problems, and whose solutions are valued by engineering and mapping organizations around the world. Mr. Meadlock's strongest suit is unquestionably the integrity and honesty with which he conducts his company's business.

Once he makes a commitment, he does not waver from it. His sincerity in providing the best solutions to design engineering problems, along with his absolute insistence on product quality is unmatched in the industry. As a result, there is a tremendous amount of trust and confidence placed in him by Intergraph customers and, perhaps more importantly, by Intergraph employees. His undivided dedication to his company is filtered down through all levels of personnel and is evidenced by the fact that Intergraph's founding technical managment team has stayed together since the company's beginning.

Mr. President, the contributions of James Meadlock and of the Intergraph Corp. have helped to establish the city of Huntsville as a center for computer research and technology. I am proud, and I know that the citizens of Huntsville are proud of the Intergraph Corp. It has made great leaps and bounds in the recent past, and I am sure that its productivity will continue. Such industry will truly advance the interests of our Nation. Again, I congratulate the Intergraph Corp., James Meadlock, and all of the employees for their great achievements. Each individual who is involved in the company shares in this productivity award and should feel proud for his accomplishments, and contributions.

Thank you Mr. President.

THE 75TH ANNIVERSARY OF LINCOLN, AL

Mr. HEFLIN. Mr. President, I am delighted to rise today to congratulate the citizens of Lincoln, AL, on their 75th anniversary. Tomorrow, they will join together to celebrate their common heritage. I am certain that it will be a time that each citizen will remember for years to come.

Although the city was not incorporated until 1911, it has a very long and distinguished history. For hundreds of years, the Creek Indians were the only inhabitants of the area. The first actually documented history of Lincoln

was obtained from the records of Hernando DeSoto, the Spanish explorer, who camped at a site on the outskirts of town while on his expedition in search of gold. A bronze marker now identifies the spot where he and his troops pitched camp.

During the early 1800's, the area of Lincoln was the site of the bitter Creek Indian wars. In 1813, General Andrew Jackson and his troops marched from Fort Strother through what is now Lincoln on his way to fight the Creeks at the Battle of Horseshoe Bend. The route which he took is now called Jackson Trace Road, and it runs on the east side of the city. Even after the State of Alabama was founded in 1819, Lincoln was a part of the land which constituted the Creek Nation until 1832. As evidence of this part of their history, all of the property deeds in Lincoln can be traced back as part of the territory of the Creek Nation.

When the area was first settled, it was named Kingsville. However, many of the settlers came from Lincoln County, GA, and Lincoln, NC. They renamed a post office which existed in 1850 after their former home and ultimately decided to change the name of their community to Lincoln. This name was first chosen in order to honor General Benjamin Lincoln who was a revolutionary war hero. During the Revolutionary War, Benjamin Lincoln had been charged with the defense of Charleston, SC. Although he was captured, he had done such a fine job with what few troops he had that his name became a rallying point among patriots throughout the 13 colonies. When he was released by the British in a prisoner trade, which George Washington had arranged, he was made second in command of the Revolutionary armies. His distinction was so great that he was chosen to accept the surrender of the British swords after the Battle of Yorktown.

Most of the inhabitants of Lincoln were farmers until World War II when the Anniston Arms Depot was founded just 9 miles down the road. Still, the city did not experience much growth until the 1960's when Lake Logan Martin was built. Because of the recreational use of the lake, and because of the city's central location to many other industries, Lincoln began to grow rapidly. The number of citizens of Lincoln nearly doubled between 1960 and 1970 and again between 1970 and 1980. In both decades, it experienced 80% growth. This is, no doubt, due to the strong leadership provided to the city, and the concern of its citizens. Last year, the city conducted a special census in anticipation of the 75th anniversary and it was discovered that it now has a population of 2,601.

The city of Lincoln is, indeed, a great place to live and has much to offer. I have described the near proximity of Lake Logan Martin and the surrounding industry. In addition to this, the Alabama Motor Speedway is located in Lincoln. Education has always been of vital importance to the people, and Lincoln was actually the site of the first county high school. Land for the high school, I understand, was given by a developer.

Mr. President, for 75 years as an incorporated city, and for much longer than that as a small special community, the citizens of Lincoln have been working to make both their city and their state a better place. Their anniversary is not merely a birthday celebration. Rather, it offers the citizens, as a group, an opportunity to look into their past and to realize all that they have accomplished. Those successes and rewards which are reaching fruition today were actually initiated by the many great citizens who labored in the past. I believe that special recognition should be given, as well, to the closeness and harmony of the community. People are able to work together to accomplish goals much as a family does, because they know one another so well.

Now is the time for the citizens of Lincoln to think of the future. Many of those who are celebrating this 75th Anniversary will also be attending the centennial celebration. They will be able to see the changes which will occur in just 25 years from now. If they are to be anything like the last 25, the future will be exciting, indeed, for the citizens of Lincoln. I am certain that Lincoln will make even greater advances—that it will offer even more to its citizens, its State, and its nation. I am delighted to congratulate Lincoln on its anniversary. Indeed, I am very proud to represent the citizens of Lincoln and am pleased to serve them in any way I can.

Thank you Mr. President.

SMALL BUSINESS DESERVES AN ADMINISTRATOR

Mr. BUMPERS. Mr. President, as the 99th Congress grinds toward adjournment, I rise to express my deep disappointment with the White House and the President for having allowed this session of Congress to pass without submitting to the Senate a nominee to be Administrator of the Small Business Administration. In April of this year, Jim Sanders left the Office of Administrator, a position in which he had served capably and with distinction since 1982. Frankly, both Republicans and Democrats could not reasonably ask for a better Administrator than Jim Sanders.

But, both Democrats and Republicans can ask that the constitutional process be followed and that someone be named as Administrator. Since Jim Sanders' departure, the office has been filled on a temporary basis by a Mr. Charles Heatherly. This gentleman has never been considered by the Senate Small Business Committee, although he has appeared before our committee as a witness in an oversight hearing on implementation of the SBA authorization, Public Law 99-272, which President Reagan signed on April 7, 1986. His testimony was to the effect that he was not very interested in the authorization for the agency.

Mr. Heatherly made clear in his public statements and in his testimony not only that he had little respect for Members of Congress, but also that he intended to carry out the plan to dismantle SBA, even though the ink was barely dry on the President's signature on the authorization bill. In fairness to Mr. Heatherly, he has since been quoted as saying that the administration has backed away from its plan to eliminate SBA. I do not know if Mr. Heatherly would be favorably reported by our committee, or if the Senate would confirm him. In fact, I do not know if he is even the person who would be selected by the President as a nominee.

Mr. President, it is not as though there has been no concern expressed about this issue. Senator SASSER was the first to introduce a resolution expressing the sense of the Senate that the President should send us a nominee. Subsequently, the Small Business Committee met and reported a resolution calling on President Reagan to submit a nomination for the Small Business Administration. That measure now appears on the Senate Calendar as Order 702, Senate Resolution 434.

Many of us had high hopes that the White House Conference on Small Business, held here in August, would finally prompt the White House to move. The writing press has been filled with speculation about who might or might not be named. Well, no one has been named, and it is now painfully apparent that no one will be named before Congress adjourns, or at least too late for the Senate to act on the nomination. The delegates to the White House Conference, incidentally, made clear their feelings about SBA. They adopted two resolutions on the subject, the combined total of which received more votes than any other issue, and both of which urged the retention of SBA as an independent agency.

There are 15 million small businesses in America, according to the President's latest report on the state of small business. They have but one independent voice in the executive branch of the Federal Government, and that is the Small Business Administration. We may have legitimate differences of opinion as to how well SBA is doing its job, or even what SBA's job should be. But there seems to be a

broad consensus that the agency for small business, which has been working on behalf of consideration of the concerns of small enterprises in national policy since 1953, should not be thrown overboard. The reauthorization bill for SBA, which Senator WEICKER and I wrote, passed this body by 94 to 3 on July 16, 1985.

The 15 million small businesses and their owners and employees are the leaders in economic growth, producing over 80 percent of all new jobs. They are the leaders in innovation and technology. They are not big businesses that failed, as some in this administration seem to think. They deserve to have a permanent, credible spokesman in the Federal Government, and they will not have one until the President submits a nomination which is confirmed by the Senate. That is not going to happen any time soon.

It now appears that we will have a recess appointment by the President, so that the person named will be in office until the next Congress convenes. Recess appointments were contemplated by the Founding Fathers to allow the President to fill positions in true emergencies, when the shortness of time did now allow the job to go vacant until the Congress returned. That is hardly the situation here, since the job has been vacant since April.

There is nothing I can do at this point except to lament this deplorable situation. But I would be remiss in my duties as ranking member of the Senate Small Business Committee if I allowed this Congress to leave town without calling attention to this very important omission.

Mr. President, I yield the floor.

TRIBUTE TO SENATOR PAUL LAXALT

Mr. BUMPERS. Mr. President, one of the more melancholy aspects of the end of a session of Congress is the retirement of some of the able Senators who have served this institution. This year we are losing a group of Senators—GARY HART, TOM EAGLETON, MAC MATHIAS, BARRY GOLDWATER, RUSSELL LONG—who have had a dramatic impact on both the Senate and the country. PAUL LAXALT certainly has to be counted as one of these outstanding Senators, and I'm truly sorry to see my friend from Nevada depart. We came to the Senate together in 1975 and have been steadfast friends ever since.

PAUL LAXALT has had a remarkable career as a public servant, and served with honor and distinction. Just this past year PAUL showed his strength, resolve, and courage, when he went to the Philippines at the request of President Reagan, and was instrumental in persuading Ferdinand Marcos to relinquish control of the Philippines. This allowed for the peaceful transition of power, thus saving an important ally from the turmoil that could have resulted from a bloody revolution.

He has always conducted himself with perfect aplomb in the Senate, and served his constituency well. The strong traditions of the American West are clearly evident in PAUL LAXALT. He is independent and loyal. He always treats his colleagues with courtesy and respect. He has been a friend to and assisted Republicans and Democrats alike. Walter Lippmann once said, "The final test of a leader is that he leaves behind him in others the conviction and will to carry on." I know PAUL LAXALT has met that test of leadership, and I wish him Godspeed.

TRIBUTE TO SENATOR GARY HART

Mr. BUMPERS. Mr. President, Senator GARY HART has served Colorado, the Senate, and the American people with strength of character, soundness of thought, and eloquence of voice. We will miss him in the Senate.

GARY HART and I were both elected to the Senate in 1974. He has been my seatmate on the Senate floor, and one of my closest friends and companions all of the 12 years of service we have shared. I deeply lament his departure from our ranks, and I will be daily conscious of his absence.

GARY HART can be proud of his record in the Senate. He is a true environmentalist and is a recognized expert on defense issues. His accomplishments are many. He has added a voice firmly grounded in conviction, and has often found himself as a lonely dissenting voice. We were 2 of the 11 Senators that voted in 1981 against the massive tax cuts that have led this Nation into the largest deficit in our history. His foresight and strength of conviction are the mark of a truly great leader.

But it is not only that GARY HART has served as the compassionate conscience of this body, but he has always sought to supplement his dissent with providing constructive, alternative proposals. Every Senator knows that it is easy to oppose, to complain, about legislation that is rarely if ever perfect. It is quite another thing to stand firmly for what one believes is right.

Just 1 year ago, we stood in this Chamber debating what has become one of the celebrated pieces of legislation enacted in the 99th Congress—Gramm-Rudman. GARY HART led the opposition to that measure, but he has consistently offered alternative approaches.

GARY is a man of great vision and creativity. He has one of the best minds in the Senate, and we will miss his intellect.

His accomplishments in the Senate are many, and his mark on the history of this Nation will be well noted by generations to come. But I know that his mark on history will not be limited to his Senate career. He gained the confidence of the American people in almost becoming the Democratic nominee for President in 1984. GARY HART is not through serving his country. I know that he will continue to work to move our Nation forward.

So, Mr. President, I offer a farewell salute to Senator GARY HART. I am saddened by his departure from the Senate. I wish him and his lovely wife, Lee, every possible success and happiness. They will always be my friends.

TRIBUTE TO SENATOR TOM EAGLETON

Mr. BUMPERS. Mr. President, I will miss my dear friend TOM EAGLETON when he retires from the Senate. I will miss his compasssion, his fierce defense of our great Constitution, his mastery of Government programs, and his knowledge of foreign affairs. We are losing a man of great intellect and wit.

TOM has served the State of Missouri with distinction for 18 years. Before that, after graduating from Amherst College and Harvard Law School, he served as prosecuting attorney in St. Louis and attorney general of Missouri. He has been an outstanding public servant in each capacity. His word is his bond, and he always deals with others in a manner that is refreshingly frank and forthright.

Senator EAGLETON'S legislative accomplishments are many and varied, but the one that stands out in my mind is the enactment of the War Powers Resolution. He worked long and hard to make this law a reality. The legislation underscores the constitutional axiom that it is Congress, not the President, that has the power to declare and make war, and it is an important statement of the cooperative relationship the President and Congress must have in conducting a sound foreign policy.

Mr. President, I will miss TOM EAGLETON'S dry wit the most. Each of us has received one of his handwritten notes making some poignant but humorous comment. TOM never lets us off the hook when we put politics or expediency above principle, and he constantly reminds us that we are here not to stroke our own egos but to serve the country and our constituents to the best of our abilities.

TOM EAGLETON will be an exceptional teacher in his next career. Washington University's gain is our loss, and we will sorely miss him.

TRIBUTE TO SENATOR MATHIAS

Mr. BUMPERS. Mr. President, with a sense of reverence and of loss I note that our colleague SENATOR MAC MATHIAS is leaving the Senate at the conclusion of the 99th Congress. Although, as a Member of the loyal opposition, I may benefit from the likely election of a member of my party as his replacement, I deeply regret Senator MATHIAS' leave taking. The Senate will be a much lesser body without the senior Senator from Maryland.

It is often said that none of us is irreplaceable. But MAC MATHIAS reminds us that each of us is also unique and, while a new Senator may bring his or her own new contributions to the Senate and the Nation, no one can fill the space left by MAC MATHIAS.

He is, without a doubt, the best scholar of the Constitution now serving in the Senate. He is one of the best orators to have served in the Senate during the 12 years I have been here. Senator MATHIAS has, time and again, been the voice of conscience and reason on issues of war and peace and justice for all Americans.

Perhaps Senator MATHIAS is best described by his election to Congress in 1958, as a Republican, and his reelection every time he has stood for election since then—including three times elected to the Senate—in a largely Democratic State. The people of Maryland would, no doubt, happily return MAC MATHIAS to the Senate if he chose to run again. Alas, he has not.

I do not believe the last few years have been easy for Senator MATHIAS, as he has often found himself in opposition to a President of his own party. In this opposition, he has shown his true character, and it is this strength of character which makes Marylanders respect and love MAC MATHIAS. They are right to do so, for I have followed him closely and I can assure Marylanders that he has never foresaken his principles, or theirs, for political expediency. Now, Senator MATHIAS says he has had enough of the fun and folly of the Senate, and that is his prerogative.

MAC MATHIAS leaves with many friends, much respect and tremendous gratitude for what he has given our country. I wish him well.

TRIBUTE TO SENATOR BARRY GOLDWATER

Mr. BUMPERS. Mr. President, when the 100th Congress convenes early next year, there will be a gaping hole in the fabric of this august body. Our beloved senior Senator from Arizona, BARRY GOLDWATER, will not be here, giving this body, and the country, the benefit of his wisdom, his intellect, and his spirit. But BARRY will leave behind a legacy that few who have served in this body have ever achieved.

Senator GOLDWATER's was always a clear and consistent voice, speaking out with a clarity and directness on the issues, that is too seldom heard around here. This was especially true in the field of national security. He made no bones about his views on any number of issues in this area, and we are a stronger and better country because of it. He was without peer in his consistent call for a strong defense posture, but this did not mean that he followed a blank check approach to dealing with the Defense Department. Far from it. For example, both yesterday and today he has been here on the floor, making clear his opposition to a new aircraft program, just as strongly as he would defend a weapon that he felt was important for our defense.

This has been one of BARRY GOLDWATER's special gifts that he brought to the Senate's deliberations. He never shrank from speaking what he believed, no matter what political oxen might be gored. I think almost everyone here has been on the receiving end of those comments at one point or another, but it was invigorating for the institution, and we are all better off for it. I well remember last year, when he was upset at the mining of the harbors in Nicaragua, he spoke out, even though he supported aiding the Contras. He spoke out because he has a special reverence for the truth, for "telling it like it is."

Nowhere was his devotion to the truth, and his devotion to building the security of our country more in evidence than in the Department of Defense Reorganization Act of 1986, which we so fittingly named after him. The simple truth is that without Senator GOLDWATER's tireless pursuit of this landmark piece of legislation, it would never have made it. This important legislation certainly had its adversaries in the Pentagon. Despite this will BARRY's dogged devotion to the cause of defense reorganization, the Senate passed his bill by the amazing vote of 95 to 0. This legislation will be a lasting tribute to him for it will enhance our military strength while it streamlines our defense management from top to bottom. BARRY's gift to the country is best described by Armed Forces Journal, which calls it "the greatest contribution to America's security we'll see in our lifetimes." I can tell you, not much legislation passed around here gets an accolade like that.

In a world of mushy language, Senator GOLDWATER went to the heart of issues especially in the area of defense. I remember earlier this year, when I had just finished speaking in support of the reorganization bill, Senator GOLDWATER put his finger right on one of our biggest defense problems when he said to me:

> We are buying a lot of equipment, I hate to tell you, that we do not need. We just need a lot more of fundamental, down-to-earth weapons to go out and fight a war. We do not need all this fancy stuff.

This was typical plain talk from BARRY, the kind of plain talk we all need to hear much more often in this body. Sadly, with his retirement, that kind of plain talk will be a much scarcer commodity around here. But I hope we will continue to hear BARRY's voice from Arizona, or wherever he happens to be, speaking out on the great security and other issues of the day in his own special style. Best wishes to you, Senator GOLDWATER. You leave with the affection, and gratitude, of both the Senate and the country.

SENATOR RUSSELL LONG

Mr. BUMPERS. Mr. President, so many have made statements here about Senator LONG's retirement from the Congress that I find it hard to say anything original on the subject. But, I want to join those who are emphasizing that Senator LONG's retirement represents the passage of an era in the Senate and that this body will miss him in many ways.

We've seen many changes in the Senate just in the last 12 years that I have been here. I am sure that Senator LONG has seen even more since he first came here in December of 1948. The longer I am here the more I see the importance of having elder statesmen in the Senate. We need people like Senator LONG who respect the institution, who understand its procedure, and who treat today's adversary as tomorrow's ally. The issues we debate here often are contentious and we need Members with the dignity and stature of Senator LONG to help us conduct the Nation's business.

We need Senator LONG's sense of humor. The issues we debate here are serious issues, but having a sense of humor lets us concentrate on the issues rather than taking them personally. Indeed, Senator LONG seems just as young at heart today as when I first got to know him. He's got such enthusiasm for the legislative process and he enjoys the process of working here almost as much as the substance.

We will miss his intellect, both on matters within the jurisdiction of the Finance Committee and on many other issues. He is truly a master of our tax laws. He has a long-range view of where this institution has been and where it is going on tax and trade matters. He respects the right of free debate as much as any Member of this body and he knows as much about parliamentary strategy and tactics as anyone I have worked with here.

There is no question in my mind that Senator LONG is one of the persons I will remember most from my time in the Senate. He is a man of stature and quality and I know that it

will be less fun and harder to work here without him. I wish him Godspeed.

TRIBUTE TO SENATOR RUSSELL B. LONG

Mr. DODD. Mr. President, at the end of the 99th Congress, the Senate will bid farewell to one of its most esteemed Members, and I will say goodbye to a man who has been not only a teacher, but a close friend of my family. I am speaking of RUSSELL B. LONG, the "chairman." After a "brief" 39 year stint in the U.S. Senate, RUSSELL has decided to return to Louisiana.

RUSSELL LONG will leave the Senate having served longer than all but three past and present Members. That in and of itself is a formidable achievement but more important than its duration is the name of his tenure in this body. His terms here have been marked by faithful service to his State and the Nation; remarkable parliamentary and political maneuvers that have dazed less adept opponents; and a boyish charm and affability that even those same opponents find hard to resist.

As a member of the Finance Committee since 1953 and as its chairman for 15 years, his mastery of the Federal Tax Code is legendary, his influence far-reaching. During his 15 years as chairman, RUSSELL was known for his consensus building and his dedication to his constituents. His personal achievements include the establishment of the voluntary dollar checkoff for financing Presidential campaigns, the earned income tax credit, and the tax credit program for companies that offer employee ownership plans. These initiatives were significant additions to our Nation's tax structure. In the Republican-controlled Senate, RUSSELL LONG has remained a powerful force on the Finance Committee and his expertise and advise on tax matters will be sorely missed.

The departure of Senator RUSSELL LONG from this body will leave a large void that may never be filled. He has, for a very long time, brightened this Chamber with his down-home stories and winning smile. As a senior Member of the Senate, he has served in leadership roles and provided his colleagues with parliamentary and political advice. He has been a force for stability and calm in the increasingly divisive policy battles of the last several years and for that, we are all grateful.

Senator RUSSELL LONG has been a good colleague and a good legislator; he has been a consummate Senator. It has been a great privilege for me to serve in this body with him, as my father did, and I will sorely miss him. I wish him well in his new life outside the Senate. I know his retirement will be more active than most men's careers.

THE END OF AN ERA FOR THE JEWELRY INDUSTRY

Mr. PELL. Mr. President, as the 99th Congress draws to a close, I wish to call attention to the end of an era for the American jewelry industry. On October 31 of this year, the highly respected executive secretary of the Manufacturing Jewelers & Silversmiths of America, George R. "Dick" Frankovich steps down after 40 years of service to the industry.

The record of Dick Frankovich's service over that period is one of remarkable stewardship during a period of growth, change and innovation for this unique industry which is so important to the economy of Rhode Island.

When he came to the association in 1948 as a 28-year-old Army veteran with a degree in industrial engineering, he found an industry that had been largely converted to wartime production of military insignia, buttons, and buckles as well as bombsights and shell casings. His first task was to help the industry revert to peacetime production.

The industry trade association was still regional in scope—in fact it was called the New England Manufacturing Jewelers & Silversmiths Association—and it was small. It had about 250 members and a budget of $33,000. Under Dick's tenure the association has become truly national in scope, although still based in Providence, and its membership has increased tenfold to some 2,500 members.

The association's growth has undoubtedly been stimulated by the adversity its members have faced during the past 40 years. Dick Frankovich has witnessed the rise of foreign competition which now accounts for one out of every three pieces of jewelry sold in the United States. And he has seen his industry reel under the impact of gold prices that rocketed from $35 to $850 in the 1970's.

In coping with these and other problems, the industry relied on its association for help for the simple reason that it is an industry of small businesses whose individual members are not equipped to deal with problems of national scope.

Dick Frankovich understood this need and planned his programs accordingly. He placed special importance on the association's presence in Washington, and many of us know him as an able and effective spokesman for his industry.

His tenure will be especially remembered for vigorous marketing efforts, notably the establishment of the Providence Trade Show, now known as Expo/Providence, which has become the world's largest jewelery and supply show. Other trade shows have been organized in New York and California, and the association has also become a vigorous presence in European trade shows as well.

Other Frankovich innovations include the establishment of group pension and insurance programs for small companies and establishment of the Jewelers Shipping Association to fill the void created by the fact that common carriers want to transport jewlery products. Most recently it has included the beginnings of a project to use the facilities of the industry to meet the subcontracting requirements of high technology industries.

Looking back, Dick Frankovich in a recent interview summed up his feelings about the frequently tumultuous times he served as "an exciting, busy, frustrating, exhilarating, infuriating, productive and fascinating 40 years."

I can only add that his tenure at the helm of the Manufacturing Jewelers & Silversmiths has been one of enormous benefit to the State of Rhode Island. I know that I speak for many others in public life when I say that Dick has our respect and admiration for his accomplishments. I wish him well.

AGRICULTURAL POLICY

Mr. BRADLEY. Mr. President, it is well known that many of our farmers are facing extreme and trying circumstances. Farmers—especially family farmers—have a special and honored role in American society. They are up before dawn, they work long hours for an uncertain return. Too frequently the farmer's tale is one of adversity, and the seering drought in the Southeast was a recent example of this.

Mr. President, the Members of the Senate have always been quick to repond to the real and perceived needs of the family farmers. Last fall, Congress enacted the most costly farm bill in our history. It is estimated that the Federal Government will spend over $25 billion on farm programs this fiscal year. And still the farm problems persist. A solid case can be made that it is not the neediest farmers who benefit from these programs.

In addition to the direct cost to the Federal Government, there is an even larger cost to consumers, who are saddled with commodity prices far in excess of world market prices. Sugar and dairy products, for example, are priced in U.S. domestic markets at levels which are more than double world prices.

Mr. President, as with many attempts to fool consumers and thwart market economics, these policies have backfired. One industry's boom is another industry's bust. The agricultural State Senators are quick to hail the virtues of the family farm, as rightly

they should. But I feel compelled to tell any colleagues of another institution which deserves recognition and honor: The family run business. Let my colleagues take notice, as the following example makes clear, that farmers aren't the only families with a stake in U.S. agricultural policy.

Van Leer Chocolate is a family owned and operated firm which produces bulk, high-quality chocolate for the confectionary, dairy, and baking industry of northern New Jersey. This business has been nurtured by three generations of Van Leers and now employs 75 people. The Van Leer's have continually reinvested money back in their company and today have a very efficient and modern plant. But this family firm and the jobs it creates are now endangered and U.S. agricultural policy is to blame.

What are the components of bulk chocolate? They're not many: cocoa butter, chocolate liquor, sugar and dairy products. Unfortunately, for Van Leer, sugar and milk products make up two-thirds of the ingredients by weight. This is unfortunate, because Van Leer must purchase these components in the United States at artificially high prices, while their principal competitors—which are foreign based—buy at world market prices. This U.S.-world price differential costs Van Leer almost 20 cents per pound or 14 to 18 percent of the total price per pound of their product.

I note that the administration recently approved subsidized sugar sales to China. This new action, which dropped the world price an additional 10 percent, is quite in line with our other misguided agricultural policies. It distorts market signals to farmers, and undermines the competitive position of our own indigenous industry.

The pressure on Van Leer either to relocate outside the United States or to close up shop is increasing. Fortunately, the Van Leers are committed to a U.S. operation and to New Jersey. I have no misgivings, however. The Van Leers must attend to the bottom line just like any viable entrepreneur must do. If we continue to undermine their competitive position, the outcome is as sad as it is inexorable.

Mr. President, I ask my colleagues what can be done to support the Van Leers and allow their talent and industry to be justly rewarded? Unforunately, the obvious option is a tariff on foreign chocolate producers who have the unfair advantage of access to world sugar and dairy markets. This option is unacceptable: It's a Band-Aid approach to a major economic problem. A tariff would only isolate the U.S. producers and further undermine their competitiveness on world markets.

Mr. President, the only options that promise real improvement are ones that increase the competitive strength of all U.S. industry and agriculture. Our agricultural policies neither help the most hard-hit farmer nor foster competitive industry. We must move our perspective from short-term expediency to a longer term view. Earlier this year, I suggested that we explore a policy whereby struggling farmers could receive special debt relief in return for agreement to forego future subsidies. This type of policy—which focuses on the transition from protected to competitive markets—is the only effective medicine for our national economic problems. Let's not sacrifice our Nation's family firms in a misguided effort to save our family farms.

DESIGNATING MAURICE, MANANTICO, AND MANUMUSKIN RIVERS AS WILD AND SCENIC RIVERS

Mr. BRADLEY. Mr. President, I would like to engage in a colloquy with the Senator of Wyoming, Mr. MALCOLM WALLOP, who chairs the Energy Committee's Subcommittee on Public Lands, Reserved Water and Resource Conservation. On September 24, my colleague from New Jersey, Senator LAUTENBERG, and I introduced S. 2871 to begin the process of designating the Maurice, Manantico, and Manumuskin Rivers in southern New Jersey as wild and scenic rivers. These are beautiful rivers. They are pristine and deserve the wild and scenic river status. Unfortunately, with the busy calendar of the Senate and the Energy Committee, we were not able to schedule hearings in the Senate on this important bill. However, a companion bill, H.R. 5343, has passed the House. The bill is being held at the desk, and I would ask my colleague if he would object to the bill's immediate consideration?

Mr. WALLOP. Mr. President, I must acknowledge that I would be forced to object to the bill's consideration. I am very aware of the Senator from New Jersey's great interest and enthusiasm for this bill. I know he is working hard to have the bill adopted and is considering a number of alternative legislative vehicles. However, no hearings on the Senate measure have been held and, without these hearings, I am now and will remain unable to consent to Senate consideration.

Mr. BRADLEY. Mr. President, I point out for the chairman of this important subcommittee that hearings have been held in the House. This bill enjoys the unanimous support of the New Jersey congressional delegation, local officials, and the local communities. It is unlikely that a Senate hearing will produce additional perspectives or opinions.

Mr. WALLOP. Senator BRADLEY is correct that a Senate hearing would likely have many of the same witnesses as appeared before the House committee. Nevertheless, I note that there is some controversy here, that while communities are in favor, the National Park Service has officially opposed the bill. As chairman of the subcommittee with jurisdiction over public lands and park issues, I am responsible for balanced and appropriate legislation. Without hearings, I am simply unable to assure myself and my colleagues that this legislation is in the national interest.

Mr. BRADLEY. Since the Senator from Wyoming will not consent to this bill's consideration, as is his right, I would like to pose some questions. Will he assist me in scheduling hearings at the earliest possible time in the next legislative session? Will he permit this bill to come before the committee at the first opportunity? And, if approved by the committee, will he help me to bring the measure before the full Senate as soon as is possible?

Mr. WALLOP. I will give my friend, Mr. BRADLEY, my promise of such assistance, should he reintroduce this bill next session.

Mr. BRADLEY. Mr. President, I thank the distinguished Senator from Wyoming for his answer and his commitment. Let me reassure him that I will introduce this bill as soon as possible next session and that I intend to see it through to its final passage by the Senate.

SENATE REFORM: ARE WE CONDEMNED TO IMPOTENCE

Mr. QUAYLE. Mr. President, we have again reached the time of year when we all complain about our broken-down legislative processes; I will go no further in documenting that proposition than to refer to Wednesday's debate on the DOD authorization bill. The Senators from Arizona and Georgia, the chairman and ranking minority members of the Armed Services Committee, made eloquent, cogent and valid statements on the need to reform the way we do business. It is no derogation of the merits of those arguments to say that they are not new—the same arguments were made to the Temporary Select Committee to study the Senate committee system, which I chaired 2 years ago, and have been made many times before and since.

It would be easy to document statements from an overwhelming majority of Senators on the need for reform—unfortunately, it is just as easy to document the fact that what we do is talk and refuse to act. The Temporary Select Committee made some very modest proposals for reform and it made them unanimously but not a single provision of the resolution we reported passed the Senate. The only caveat is that the Senate did make a modest reduction in the number of committee assignments.

As further documentation of our inability to act, I would note that one provision—to establish a Select Committee to study a 2-year budget—did pass the Senate by unanimous consent. However, that consent was vitiated. I later offered the same provision as an amendment to the fiscal year 1986 legislative branch Appropriation Act, but agreed to withdrew it on the assurance of the chairmen of the Budget and Governmental Affairs Committees that they would hold joint hearings on the issue during 1985. No such hearings have been held—and we still bemoan the process without doing anything to change it.

The philosophy of the temporary select committee was to recommend incremental reforms—reforms that would make a meaningful contribution to improving the Senate process but were limited enough to have a chance of adoption. That philosophy has shattered on the rock of experience. If we cannot adopt minor reforms—perhaps we should at least start a process whereby we can consider major ones.

Reflecting on the experience of the defense authorization bill, it seems to me that we have two major problems that require attention: first, is the proliferation of special interest conferees appointed by the House of Representatives and, second, is the duplication and intertwining of the budget, appropriations, and authorization processes.

SPECIAL INTEREST CONFEREES

A brief look at the calendar will show that the practice of appointing special interest conferees has got out of hand. The conference on the defense authorization bill is merely an extreme example of a trend that has spread to bills of every kind and description. On the defense bill, we had six sets of exclusive conferees as well as six sets of additional conferees adding an unconscionable degree of complexity and inflexibility to a conference that had sufficient substantive policy issues to resolve. I strongly believe that the Senate cannot just accept this unilateral change in the conference process on the part of the other body—we must equip ourselves so that conferences can work as they are supposed to work. The essence of that process is that there be managers on the part of the House and Senate who can resolve differences between the bodies. The practice of exclusive and additional conferees is destructive of that process and inconsistent with tradition. Let me just quote from Cleaves' Manual of the Law and Practice in Regard to Conferences and Conference Reports—prepared in 1900—"A conference committee is practically two distinct committees, each of which acts by a majority." For those who might cavil that Cleaves is only a Senate source, let me add that Hinds Precedents—the authoritative source for traditional House procedure—is to the identical effect.

The appointment of exclusive and additional conferees violates this fundamental principle of majority rule, because, in effect, it requires supermajorities of House conferees while the Senate remains committed to a straight majority vote. The playing field is not level.

I intend to explore, during the adjournment, possible courses of action to remedy this situation. It seems to me to be worth examining whether we should revert to the earlier practice of number amendments rather than the current practice of striking all after the enactment clause. In that way, at least, an entire conference will not be hung up on failure to resolve a particular issue—especially if it is not relevant to the central topic of the bill. It also seems to me that it is again time to examine the merits of splitting the defense authorization bill into separate parts, again to avoid blocking an entire conference because of the insistence of exclusive conferees on a particular provision unacceptable to the committee conferees. I hope to explore these and other thoughts with my colleagues on the Armed Services Committee because I firmly believe that we cannot just acquiesce in a development that undermines a fair conference process.

DUPLICATION OF FISCAL PROCESSES

Experience has shown that the three-layer cake is undigestible. The Congress cannot deal every year with budget, authorization, and appropriations processes before providing funding for the Government. We must look at solutions to this problem—rather than bewailing its inevitable result, the omnibus continuing resolution passed during the adjournments frenzy.

I have long been an advocate of the 2-year budget and I am pleased that we have taken a significant stride in that direction in the defense authorization bill. The provision for milestone authorization is also a major step in the right direction. However, the problem is not limited to defense and I urge the chairmen of the Budget and Governmental Affairs Committees to carry out the promises that they have made regarding hearings on the issue.

A 2-year budget will be helpful—but we must go even further. In the fiscal process, we must make two basic decisions; the macro and the micro. What is the total budget going to be, both Government-wide and for the major functions, and how does that translate into funding for individual programs. These two functions are now carried out by three institutions—the Budget Committee for the macro and the Authorization and Appropriations Committees for the micro.

Historically, we moved all appropriations functions into the Appropriations Committee in the post-World War I era so that that committee could perform the macro function. The unification of the appropriations process was a logical congressional counterpart to the unification of the executive budget function mandated by the Budget and Accounting Act of 1921. However, that function has slipped from the committee in two ways—first, through the growth of entitlement and other "back-door" funding mechanisms which eroded that committee's jurisdiction over spending and then through the creation of the Budget Committee in the 1974 act. As a result we now have two committees whose original function was to divide up the pie; but now the Budget Committee divides up the entire pie and the Appropriations Committee only about half of it.

Historically, the functions of the authorizing and Appropriations Committee were distinct but they have become ever more redundant through the growth of 1-year authorizations and the proliferation of detail in those authorizations. From a superficial reading, it is sometimes difficult to distinguish which is the defense authorization and which is the defense appropriations bill as both of them contain both detailed funding provisions and changes in substantive law.

There are many theoretical solutions to this blurring and duplication of the macro and micro fiscal functions. But theoretical solutions will not solve our problems, which are all too practical. We need a practical solution—one that recognizes that any change in the functions of these committees will alter the basic power relationships in the Senate. We, therefor, need a process for dealing with this issue that both involves those that will be most directly affected but which also guarantees that the result of the process will not be total inaction, In other words, it seems to me, that we must express the will of the Senate that the fiscal process must be streamlined and then we must establish a mechanism to ensure that this will of the Senate is carried out. I propose to work on such a measure during the adjournment and invite the cooperation of any of my colleagues who feel that we have talked too long and acted too little.

SENATOR GARY HART

Mr. RIEGLE. Mr. President, GARY HART has been a forceful and thought-provoking Member of this body for the last 12 years. He has also been a national leader with vision and courage. I greaty value his friendship and example. I join my colleagues in wishing him well and every success in the future.

In his years here in the Senate, he has shown leadership in many areas. Following are just a few:

Served on the Senate Select Committee To Investigate the Intelligence Community (1975). Formed under the chairmanship of the late Senator Frank Church to investigate abuses by the intelligence community, report and recommend reforms and played a key role in the investigation and drafting of the committee findings.

Elected chairman, National Commission on Air Quality (1978). The panel was created by Congress with the passage of the 1977 Clean Air Act amendments to study the implementation of the new statute and to recommend ways to improve environmental regulation.

The Commission had 13 representatives of the environmental, scientific, and business communities, Republican and Democratic Members of Congress, State government and Indian tribes.

After 2½ years of study, the Commission published a comprehensive report, "To Breathe Clean Air," that contained 433 findings and 109 specific recommendations.

Appointed advisor to SALT II arms control talks in Geneva. Urged approval of the Treaty during Senate reelection campaign in spite of intense, conservative opposition to the Treaty.

Chairman, Senate Investigation of the Three Mile Island nuclear reactor accident (1979). As chairman of the Senate Environment and Public Works Subcommittee on Nuclear Regulation, Senator HART led an extensive and difficult inquiry into the accident at Three Mile Island. At the conclusion of study, HART convinced the Senate to approve a series of significant reform measures to:

First. Require each State with a nuclear powerplant to have an evacuation plan approved by the Nuclear Regulatory Commission;

Second. Accelerate the assignment of NRC inspectors at each nuclear powerplant and increasing the number of such inspectors being trained;

Third. Improve the training, retraining and licensing of nuclear plant operators;

Fourth. Require the NRC to propose a plan to respond to emergencies; and

Fifth. Require the President to develop a national contingency plan to ensure a coordinated Federal response to future emergencies.

Coauthor, with Senator BARRY GOLDWATER, of 1980 Senate Armed Services Committee report on Command, Control, and Communications strategic warning system. In addition to recommending ways to modernize the NORAD facility, the inquiry revealed that during an 18-month period, the warning system had registered 151 false alarms—one of which lasted a full 6 minutes, half the time it would take a Soviet, submarine launched ballistic missile to reach its target in the United States.

HART authors comprehensive proposal—[Strategic Talks on Prevention]—to prevent the triggering of a nuclear conflict by miscalculation:

Creation of jointly staffed United States-Soviet crisis prevention centers;

Steps to prevent nuclear proliferation;

Reductions of nuclear war-heads and missiles, particularly MIRV's.

Chairman, appointed by then-Senator Edmund Muskie, of Senate Budget Committee Task Force on Synthetic Fuels (1980):

Played the decisive role in scaling back the Carter-proposed $88 billion synthetic fuels program to a more reasonable, two-phased $20 billion effort;

Fought suspension of enviromental standards and won adoption of amendment requiring congressional approval if there were attempts to spend more than $20 billion on the program.

Proposed alternative tax credit for production approach to massive price support subsidy;

Founder, Congressional Military Reform Caucus (1981):

With Republican Congressman WILLIAM WHITEHURST of Virginia, founded caucus dedicated to promotion of military reform;

Caucus now boasts membership of 130 Members of Congress from both sides of the aisle. Caucus has led the fight to:

Terminate the DIVAD air defense weapon;

Win congressional approval of an independent testing office for weapons under development in the Pentagon.

Authored, with William S. Lind, "America Can Win," a book to educate the American public on the principles of military reform.

Cochairman, with Senator LAWTON CHILES, Democratic Task Force on Alternative Budget (1985–1986, appointed by Minority Leader ROBERT BYRD):

Led floor fight against enactment of Gramm-Rudman-Hollings "I";

Coauthored, with Senator CHILES, "budget principles," adopted unanimously by Democratic Conference in January 1986;

Coauthored, with Senator CHILES, alternative budget to fiscal year 1987 budget resolution (final Conference Ageement on budget resolution included $400 million from Hart-Chiles amendment to improve math and science education).

Led successful effort to prevent enactment of Gramm-Rudman-Hollings "II" in the wake of Supreme Court decision striking down automatic budget cutting procedure in Gramm-Rudman-Hollings I.

These are just a few of the areas in which GARY HART has played a significant and leading role here in the Senate. I will miss his advice and counsel. He has meant much to our work here in the Senate. I fully expect GARY to continue to play an important national leadership role for many years to come.

Lori and I extend to Lee and GARY our best wishes for the future.

SENATOR RUSSELL LONG

Mr. RIEGLE. Mr. President, it is the end of an era in the Senate. For most of this century, we have benefited from the wisdom, dedication, and leadership of the Long family. This year, after 38 years in the Senate, RUSSELL LONG is retiring. It won't be the same without him.

One thing that we all agree upon, and there are so few, is that RUSSELL LONG is one of our most distinguished and charming Members. Since he first came to the Senate in 1948, he has made valuable contributions in a number of areas. He is most highly regarded for his expertise on the subject of taxes, where, as chairman of the Senate Finance Committee for 15 years and its current ranking minority member, he has done more than perhaps any other legislator to shape our Tax Code. During the seemingly endless drafts and debates on this year's tax bill, the last one that will have his positive, indelible imprint, RUSSELL was an invaluable resource to Members on both sides of the aisle and an ally for working, middle class taxpayers. He has fought for provisions that benefit the average American, such as the earned income tax credit and employee stock ownership plans.

I've also had the pleasure of working with RUSSELL on the Commerce Committee, and benefited enormously from his friendship, experience, and wise counsel. We've also cooperated on some of the less widely heralded legislation of his career. I look back fondly on the many hours we spent toiling over the Cajun Music Month Resolutions.

RUSSELL LONG has a rare knowledge of political history and a great sense of humor, both will be sorely missed when he leaves the Senate. His institutional memory is one of the Senates most valuable assets. During his nearly 38 years in this body, he has earned the affection and respect of every colleague. That is a rare achievement. I am sure that I speak for all Senators in wishing RUSSELL and Carolyn LONG much happiness and good health in the years ahead.

POSITION ON VOTES

Mr. PELL. Mr. President, I wish to state for the RECORD my position on several votes held in the Senate during its late night session on October 16, 1986, when I was necessarily absent.

On Senate vote No. 351, on a motion to table the House amendment to the

conference report on the continuing resolution relating to "Buy America" provisions, I would have voted "nay."

On Senate vote No. 352, on a motion to table the amendment by Senator METZENBAUM regarding RICO, I would have voted "nay."

On Senate vote No. 353, on a motion to table the amendment by Senator MELCHER regarding the Temporary Emergency Food Assistance Act, I would have voted "nay."

On Senate vote No. 354, on a motion to table the amendment by Senator ABDNOR, which would also have tabled the amendment by Senator GOLDWATER on acquisition of Air Force trainer aircraft, I would have voted "nay."

TRIBUTE TO SENATOR RUSSELL LONG

Mr. KENNEDY. Mr. President, I am proud to join my colleagues in saluting a good friend, a Senator without parallel, a man whose vision of opportunity for all has guided his entire public life.

As we pay tribute to the powerful senior Senator from Louisiana, another question is on our minds as well—"Will there be any power left in Washington after RUSSELL LONG leaves, or will he take it all with him?"

Senator LONG has many admirers in this town—and one of the first qualities that everyone notices is his impressive intellect and extraordinary ability. In fact, it has been said, only partly in jest, that RUSSELL LONG's IQ may be higher than the rest of the Senate combined.

The second and third things some people notice at once about RUSSELL LONG, esxpecially in this Chamber, is that he is a brilliant debater and a brilliant entertainer.

They ought to sell tickets in the Senate gallery on days that RUSSELL LONG is managing a bill on the Senate floor. At the very least, they should bring in busloads of high school classes on the days of those debates—because the young citizens who represent our future will never see a finer example of our democracy in action.

We are all familiar with RUSSELL LONG's legendary reputation as master of the tax laws. We have had 99 Congresses since the beginning of the Republic, but I doubt that the Senate Finance Committee has ever had a better or more effective chairman than RUSSELL LONG.

Some of the best new ideas of the past two decades in our public life have come from Senator LONG. The dollar check-off and public financing of elections have taken Presidential campaigns off the auction block; the earned income tax credit has eased the tax burden on the working poor; and his pioneering advocacy of ESOP's has helped to breathe fresh air into our concepts of the workplace.

His achievements, particularly in these areas, represent an idea about our country that is rooted in the belief that national greatness can only be achieved when every citizen is a beneficiary of the blessings of America. That idea is premised on the understanding that a strong democracy cannot endure with a permanent division between haves and have nots, and that it is the responsibility of Government to advance real opportunity for all.

RUSSELL LONG has pursued this vision with remarkable success throughout his long and remarkable career—a career which surely will not end next January. There is a part of RUSSELL LONG that will never leave public life of public service. Certainly, he is leaving the Senate at the height of his power and his powers—and in the years to come, I hope that any President of either party who has a tough job that needs doing well will be wise enough to turn to to RUSSELL LONG.

I have been honored to serve with RUSSELL LONG for over two decades. For nearly 40 years, he has graced this Chamber with his vision, his intellect, his wit, and his friendship. I commend him for his outstanding service to the people of Louisiana and to all the people of America. He ranks with the greatest Senators who have ever served in this body, and we shall miss him in the years and the debates to come.

TRIBUTE TO SENATOR BARRY GOLDWATER

Mr. KENNEDY. Mr. President, I am proud to join my colleagues in this tribute to a man who for more than three decades has been one of the great institutions of the Senate and the Nation. I am honored to call BARRY GOLDWATER my friend—and I admire his sense of principle, his character and his courage.

We have had our differences on the issues, but as I have come to know him, I have been reminded again of an enduring truth. Friendship does not demand conformity of ideas—and mutual respect does not depend on an identity of ideology.

All of us, Democrats as well as Republicans, know how BARRY GOLDWATER stood his ground—and how the world finally came round to him. The choice he gave the nation has echoed across the years—and its reverberations can clearly be heard today in Ronald Reagan's speeches.

There is another, vital quality that marks him out. While BARRY GOLDWATER takes issues seriously, he never takes himself too seriously. He is not self-important or self-righteous, and woe betide the partisan—of the right or the left—who runs afoul of Senator GOLDWATER by calling legitimate dissent unpatriotic, irreligious, or un-American.

He understands the essential nature of our national life—that the clock turns from the liberal to the conservative hour and back—again and again—and both traditions have something important to contribute. He fights fiercely for his tradition, but I have never heard him say a mean, personal, vindictive word about any one on the other side of the debate.

On the Armed Services Committee, I have disagreed with him on some defense issues. But I have also learned from him—although I do not have to admit, I probably have not learned as much as he would like.

Most of all BARRY GOLDWATER comprehends that love of country transcends any particular policy or specific weapons system—that the values which always unite us as Americans are stronger than the views which sometimes divide us.

Finally, let me say that I speak not only for myself, but for two others who were honored to have him as a friend—John and Robert Kennedy. They swapped stories, teased each other, and vigorously debated everything from labor law reform to the Nuclear Test Ban Treaty. President Kennedy looked forward to Senator GOLDWATER's visits to the Oval Office. Robert Kennedy shared his affection and concern for native Americans—and prized his photographs of the West. I hope this doesn't get him in trouble with his other friends—but we like to think of BARRY GOLDWATER as a Kennedy family friend.

In his final months in the White House in 1963, in a conversation with Ben Bradlee, President Kennedy said of BARRY GOLDWATER:

> I really like him—and if he's the Republican nominee and we're licked, at least it will be on the issues. At least the people will have a clear choice.

Today, two decades later, I can't help but reflect what a great debate it would have been—and what great friends they would have been afterward.

Senator GOLDWATER has set a high standard. His life and service display the true and enduring meaning of "Duty, Honor, Country," and we shall miss him in this Chamber.

TRIBUTE TO SENATOR PAUL LAXALT

Mr. KENNEDY. Mr. President, we shall miss our colleague from Nevada, Senator LAXALT, when he leaves the Senate this year, but all of us have the feeling that he is saying "au revoir" to public life, not "farewell."

Whatever the future may hold for him, it has been a privilege to know him and to serve with him in this Chamber.

PAUL LAXALT may be Ronald Reagan's best friend in the Senate—but it can also be said of PAUL LAXALT that no Senator has more friends on both sides of the aisle in the Senate than he does. And that friendship is based on our high respect for PAUL LAXALT's ability, integrity, loyalty, and leadership.

Unless PAUL writes his memoirs, few of us will probably ever know the true scope of the effective roles he has played so often in the Senate. He is a classic example of the Washington truth that there is no limit to the success that can be achieved if you are willing to give someone else the credit.

I suspect that each of us, at one time or another, has found PAUL's involvement indispensable in finding common ground on issues where passions were rising out of proportion to the merits of the controversy. He has been an effective spokesman for his side of the issues—and an equally effective ambassador to those on the other side.

As we learned in the divisive Senate struggle over the Panama Canal Treaty in the 1970's, a debate in which PAUL LAXALT is involved is a debate that sheds more light than heat.

Perhaps he will be best remembered in these Senate years for the mission he undertook for President Reagan to the Philippines, at a critical moment in the movement for the restoration of Philippine democracy. As I heard last month at the award dinner in New York City honoring President Aquino by the Lawyers Committee for Human Rights, the two worst things that can happen to a dictator are a visit from Senator PAUL LAXALT and a delegation from the lawyers committee.

Obviouusly, we will miss PAUL LAXALT's special touch and special grace in our debates in the years ahead. But I shall also remember him for the many personal kindnesses that he has shown to me and also to my family. He has been a fine Senator and a fine friend, and I wish him well in whatever line of work he chooses next.

TRIBUTE TO SENATOR TOM EAGLETON

Mr. KENNEDY. Mr. President, I would like to take a few moments to pay tribute to our distinguished colleague of many years, Senator TOM EAGLETON. In the next few days, TOM will close out his brillant 18-year career as U.S. Senator. Throughout that time, he has been a loyal and effective Senator for the people of Missouri and for the American people as a whole. Most of all, his eloquent voice and his passionate commitment to the principles of liberty and justice have made him one of the most respected Senators of his generation, a true conscience of the Senate.

We served together on the Senate Labor Committee for many years. In that time, he worked tirelessly to address the Nation's most pressing social problems. His service to the elderly and his authorship of the "Right To Read" program stand out as prime examples of his dedication to the twin and fundamental principles of economic progress and social justice for every citizen. And his successful efforts to rescue the Chrysler Corp., helped save hundreds of thousands of American jobs and prove to the Nation and the world that the United States is prepared to defend American industry and American jobs and lay the groundwork for future growth.

Many of TOM EAGLETON's greatest achievements have come in the areas of foreign policy and the environment. Time and again, he has fought the good fight—and won. In May 1973, he offered the simple, profound, historic one-sentence amendment—"to Halt the Bombing in Cambodia"—that effectively ended U.S. involvement in the war.

Later that same year, TOM EAGLETON was a principal author of the War Powers Resolution, which reestablished the constitutional role of Congress in the power to make war.

Senator EAGLETON has also worked tirelessly to clean up the environment. In the early 1970's, he played an instrumental role in the passage of the Clean Water Act and the Clean Air Act—among the first great pieces of legislation which demonstrated a commitment by the Federal Government to preserve the environment for future generations.

And as a member of the Committee on Governmental Affairs, Senator EAGLETON has made major contributions to the processes by which Government provides services to the people. His efforts to reduce waste and abuse in military spending and his sponsorship of the bill creating inspectors general in 12 major departments and Federal agencies vividly illustrate this commitment.

No Senator in this Chamber has a more intense commitment to the fundamental principles of America; no Senator works harder to advance those principles; no Senator is more indignant when those principles are violated by actions that serve special interests or injure those in need; and no Senator is more eloquent in debate in the passionate defense of America at its best. Time and again, on the Senate floor and in our offices, we have witnessed the phenomenon that when TOM EAGLETON rises for a speech, the Senate Chamber quiets and lesser business stops as we listen to his words.

Now Senator TOM EAGLETON is becoming Prof. TOM EAGLETON. He is taking his enormous energy and talent back to Missouri, where he will share his wisdom and experience with young Americans as professor of political science at Washington University. We shall miss the dedication, insight, integrity, and humor that have graced the Senate for the past 18 years. But most of all we shall miss the friendship of one of the finest Senators who has ever served the Nation.

TRIBUTE TO SENATOR GARY HART

Mr. KENNEDY. Mr. President, it is an honor to pay tribute to our outstanding friend and colleague from Colorado, Senator GARY HART, who is retiring from the Senate to concentrate on other things.

Throughout his 12 years in the Senate, GARY HART has been a strong voice and an effective ally on the issues and causes that we share. He has distinguished himself in many different areas of foreign and domestic policy, but to me he leaves his most lasting mark as a Senator for his comprehensive contributions to the debate on national defense and arms control.

It has been a privilege to serve with him and to learn from him on the Senate Armed Services Committee. He immersed himself in the work of the committee and established himself as a respected national expert on our national defense and national security.

As on so many other issues, GARY HART has had the courage to challenge the conventional wisdom and to buck the prevailing tide. His stands may not always have been popular, but they have been principled and persuasive. As a leader in the fight to defeat the costly, vulnerable and dangerous MX missile, he initiated a Senate filibuster against the missile in 1983 that won the attention of the Nation and focused new attention on the flagrant defects of the missile. Tens of thousands of Americans have demonstrated across the country to stop the MX, and GARY HART's achievement is that he stopped it in the Senate.

In other critical areas of defense as well, he has consistently presented strong and persuasive arguments against the most costly and questionable nuclear and other weapons programs, from star wars, to chemical weapons, to cruise missiles.

In the ongoing debate over the SALT II accords since the 1970's he has played a leading role in analyzing the complex issues and educating the Senate. In all his work on arms control, GARY has continually sought to demonstrate that genuine arms control and a strong national defense are not incompatible. He has stated, consistently and correctly, that while nuclear reductions are important, we must never lose sight of our primary objective, to ensure that nuclear weapons are never used again in anger.

In 1980, he coauthored a report with BARRY GOLDWATER on nuclear false

alerts that provided valuable insights into major flaws in our early warning system, which is designed to provide adequate advance warning of nuclear attack while preventing accidental launch. The Hart-Goldwater study led to a reevaluation of the problems in our command, control and communications network and resulted in new initiatives in that area.

In 1982, he helped initiate the Military Reform Caucus, composed of 54 Members of Congress, military officers and civilian defense experts. The goal of the caucus is to bring our military priorities into line with the goals and objectives of our national defense. The approach, largely conceived by Senator HART, has been to reform the military by first examining its basic building blocks of personnel, tactics and strategy, and hardware.

Earlier this year, GARY authored an impressive new book, "America Can Win," which develops his ideas on personnel, tactics and strategy, weapons procurement, defense reorganization, and arms control. It is a brillant treatise on the problems of America's current military structure and a road map to reform, and its deserves to be read carefully by all of us who deal with these complex and immensely important issues.

In his farewell address to the Senate on October 9, GARY spoke of his "sense of obligation and responsibility to contribute to the public life of his Nation." Anyone who knows GARY HART knows that he takes his obligations and responsibilities to the Nation seriously, as he has throughout his Senate career.

We shall miss him in the Senate. We shall miss his thoughtfulness, his steadiness, his integrity, his grace, and his dedication. And his departure from the Armed Services Committee will be a special loss to all of us on that committee.

Whatever the future holds for GARY HART, he as been a brilliant and effective Senator, and I wish him well in the new and even more important enterprise that he is undertaking.

TRIBUTE TO SENATOR CHARLES McC. MATHIAS, JR.

Mr. KENNEDY. Mr. President, it is an honor to join my colleagues from both sides of the aisle in paying tribute to our friend from Maryland, Senator CHARLES MCC. MATHIAS. For more than a quarter century, MAC MATHIAS has been the foremost champion of civil rights in the U.S. Senate. Throughout his brilliant career in the Senate and in the House of Representatives before that, he has been a tireless and eloquent advocate of the rights of minorities, women, the elderly, and the disabled, and we shall miss his leadership in the years to come.

I have been proud to stand shoulder to shoulder with MAC MATHIAS in the critical civil rights struggles of the past two decades. His leadership on fair housing legislation dates to his freshman year in the Senate and has continued to the present time. He has also been in the forefront on the continuing battle for equal voting rights for all our citizens. In 1982, he was a principal sponsor of the Voting Rights Act extension, which has done so much to advance the peaceful revolution of civil rights in America and to transform our society into one that more nearly meets the ideal of equal justice under law.

In addition, MAC worked tirelessly to assure that Martin Luther King, Jr. received the recognition he so richly deserved. As a leader of the long and successful effort to place a statue of the great civil rights leader in the Capitol, and to designate a national holiday in his honor, MAC, like Martin Luther King, Jr., taught us that with preserverance, we truly can overcome.

MAC's retirement will be felt especially deeply by all of us on both sides of the aisle who worked with him on the Senate Judiciary Committee. For years on that committee, we have looked to MAC for the decisive vote on so many critical issues, not only in the area of civil rights, but on other issues as well. As chairman of the Subcommittee of Patents, Copyrights and Trademarks, he has championed the rights of creative artists, and has initiated innovative and important reforms to bring copyright and patent protections into the 20th century. His efforts to bring the United States into the Berne Convention have highlighted the need for international recognition of creative rights. Throughout his career, in all aspects of our work on the committee, he has been devoted to fairness and justice. All of us who have been privileged to serve with him on that committee have learned from him and admired him, and we shall miss his leadership, his counsel, and his friendship.

In addition, MAC leaves a mark of high distinction in many different areas of foreign policy, especially on nuclear arms control. His skill as a legislator, his thorough understanding of complex issues, and his commitment to arms control have brought us closer to that great and overriding goal of our time. In particular, he has been a tireless advocate for a comprehensive nuclear test ban treaty, and we are closer to that historic goal today because of his thoughtful Senate work.

He has also made a lasting contribution on numerous other critical issues in foreign policy. He was one of the first to warn about the accumulating danger of the Third World debt. He played an indispensable role in developing and strengthening the antiapartheid legislation that has finally put America on the side of justice and a free South Africa.

In these and so many other ways, MAC MATHIAS has graced this Chamber with his presence. I wish him well in the years to come. His retirement is a loss to the Senate, to Maryland, and the country. He will rank as one of the finest Senators that Maryland has ever had, and I hope that Presidents in future years will find ways to use the enormous talent, integrity, and statesmanship that he brings to everything he touches.

TRIBUTE TO SENATOR PAUL LAXALT

Mr. MOYNIHAN. Mr. President, to this Senator, my colleague, PAUL LAXALT, the strong silent Gary Cooper of the U.S. Senate is, to a degree, enigmatic. This trace of mystery is perhaps in keeping with his Basque heritage, a people whose origins are unknown. The Senator from Nevada keeps his distance, maintains perspective, remains objective.

Thucydides, in the "History of the Peloponnesian War" writes:

> the bravest are surely those who have the clearest vision of what is before them, glory and danger alike, and yet notwithstanding go on to meet it.

PAUL has been the President's closest friend and advisor, and has lead the Presidential campaign of his party in the last three elections because his vision is clear, steady, and reliable. Last year, PAUL returned from a private retreat in the hill country of his native Nevada with a decision. He has seen what lies ahead for him and now chooses to go on to meet it.

As he does so, I join my colleagues in congratulating him and wishing him well.

TRIBUTE TO SENATOR CHARLES McC. MATHIAS

Mr. MOYNIHAN. Mr. President, MAC MATHIAS is a friend of mine: A friend who has served in the Congress with unequalled distinction for more than a quarter century.

Much has already been said here on the floor and in the press about his upcoming retirement. The accomplishments of his long career are, of course, familiar to all of us. Yet a listing of those things, I do not believe, cannot begin to convey what MAC means to me and to the rest of his friends and colleagues here.

We respect the senior Senator from Maryland, yes, for the power of his well-known intellect. We respect him for his skill as a legislator. And we admire him for his prudence, wisdom, rock-steady temperament, and ever-present good humor. But even more, MAC MATHIAS has made his mark as a man of conscience. He acts always

from belief and from conviction. The U.S. Senate knows this about their colleague from Maryland. And the people of his great State know it. His constituents have respected him—and re-elected him for it.

But Senator MATHIAS moves on. He will practice law, and some fortunate students at Johns Hopkins University will have the benefit of his teaching. This is his right, or more precisely his due. This Senator would presume only to offer CHARLES MCCURDY MATHIAS every possible good wish, and to thank him for a generation of incomparable service to this State and Nation.

TRIBUTE TO SENATOR THOMAS F. EAGLETON

Mr. MOYNIHAN. Mr. President, it should not surprise us that the State that gave this Nation President Harry S. Truman also produced THOMAS FRANCIS EAGLETON. And now, after three distinguished terms TOM EAGLETON leaves these battles, true to the Spartan mother's admonition, with his shield, not on it.

Mr. President, I will miss our distinguished colleague from Missouri. Without presuming, I would say that he and I have had much in common in this body: our special obligations and burdens as legislators of Irish heritage, our service on the Select Committee on Intelligence, and a bond that perhaps binds us closer than any other; our struggle, while Members of the U.S. Senate, to put thoughts on paper.

As my colleagues are well aware, TOM is a true man of letters. His book, "War and Presidential Power: A Chronicle of Congressional Surrender," 1974, is an insightful legislative history of the War Powers Resolution authored by the Senator from Missouri along with two other giants in the history of this Chamber, the distinguished Senator from Mississippi, JOHN STENNIS, and our former revered colleague from New York, the late Jacob K. Javits.

TOM and I have commiserated on the trials of writing on more than one occasion, marveling at the huge time and effort required to compose even a single coherent page. Well, TOM, those of us you leave behind envy you. We envy the time you will have to devote to your writing and to pursue your teaching and law practice.

Mr. President, before the people of Missouri reclaim their senior Senator, the Senator from New York would like to thank him for his immense contribution here and to offer him fondest farewell.

THE RETIREMENT OF SENATOR RUSSELL B. LONG

Mr. MOYNIHAN. Mr. President, last month, just before the Senate accepted the conference report on the Tax Reform Act of 1986, I noted that it as not only a historic moment but also a poignant one, for we had just heard RUSSELL LONG's last speech on a tax measure on the floor of the U.S. Senate.

He is second in seniority here, and has 38 years of extraordinary service to this body and to the Nation to his credit. This is, to be sure, a record that will not soon be equaled.

Of all his achievements, of which so much has been heard in these last days of the 99th Congress, his long tenure with the Senate Committee on Finance—including 14 years as its chairman—seem to this Senator the most exceptional. I have been privileged to serve on that panel with him for a decade, and can attest that he is more skilled and knowledgeable with respect to the Internal Revenue Code than any member of the committee or indeed any Member of the U.S. Senate.

Senator LONG's imprint on the code ranges from creating employee stock ownership plan [ESOP] to being responsible for the $1 checkoff plan to help finance Presidential elections. But to fully appreciate RUSSELL LONG's contribution, one must know of how he exercised his special talents behind the scenes. It was RUSSELL LONG who, in the critical moments of the tax conference, made the suggestion that the two chairmen negotiate one on one on behalf of their committees. This suggestion, of course, was a masterstroke. It brought, at the very last moment, a breakthrough that led to the landmark tax bill the Congress recently approved.

Mr. President, this body has been fortunate and privileged these 38 years to have RUSSELL B. LONG among its Members. I will miss him, as will every Senator. It will take more than a little getting used to do without him.

RETIREMENT OF SENATOR GARY HART

Mr. MOYNIHAN. Mr. President, the senior Senator from Colorado will be with us in this Chamber only a short while longer. As he does move on, I would like to say a very few words, he is a good friend and valued colleague, and I am sorry to see him go.

Last summer, I was privileged to introduce Senator HART to an audience at Georgetown University, where he gave a series of lectures on the subject of "Enlightened Engagement." These were not the kind of speeches perhaps that students are accustomed to hearing from the usual hired orators on the college lecture circuit. These were the kind of reasoned, scholarly statements the Senate has heard so often from the Senator from Colorado. Senator HART had given his audience a set of major foreign policy addresses; addresses, I might add, that every Member of this body could profit from reading.

Mr. President, of the 24 Senators who voted against the Gramm-Rudman-Hollings legistlation last year, Senator HART was one of the most effective spokesman. In his remarks on the floor and in colloquies with the Senator from New York, Senator HART was consistently one of the strongest and most articulate voices heard in opposition to that legislation, which many of us believe flawed and misguided.

Senator HART has made his mark in this Chamber, Mr. President, as a man of vision, a man of compassion, and a man of intellect. He is a demonstrated leader whose departure leaves a gaping hole here, and though I am sad to see him go, I would wish him every possible success in the coming years.

TRIBUTE OF SENATOR RUSSELL LONG

Mr. DURENBURGER. Mr. President, in 8 years in the U.S. Senate, I have had the privilege to work with some of the most distinguished men and women in the United States. During that time I have had the opportunity to work with a man of deep compassion, broad vision, and true wisdom—Senator RUSSELL LONG.

Senator LONG has served in Congress for 38 years. His imprint lies on every major tax bill that we have adopted in the past 30 years. And his knowledge of the Internal Revenue Code is unparalleled.

As chairman and ranking minority member of the Senate Finance Committee, Senator LONG will be long remembered for having shaped many aspects of the tax policy of the United States. However, I believe that if there is one aspect of tax policy that truly represents the legacy of RUSSELL LONG, it is the provisions of the code that have encouraged the development and growth of Employee Stock Ownership Plans [ESOP's].

I can say without hesitation that had RUSSELL LONG not been in the Congress, there would not be a single ESOP in the United States. He has nurtured this concept for many years and the more than 6,000 ESOP's now in existence owe a supreme debt of gratitude to the senior Senator from Louisiana.

It is not surprising that Senator LONG has fought so long to encourage the development of ESOP's. For the ESOP concept fits in with his vision that every working man and woman should have a voice in how the company he or she works for operates; and that employees should share in the profits of those companies.

As we consider how the American corporation can evolve into a more productive and competitive entity, I believe we will see more and more companies turning to the ESOP format. This evolution will occur because RUSSELL LONG had a vision.

Mr. President, we will all miss Senator LONG'S intellect, humor, and wisdom. The Senate will never be the same without RUSSELL LONG. All Americans owe a debt of gratitude to this true gentleman.

TRIBUTE TO GARY HART

Mr. DURENBERGER. Mr. President, the end of the 99th Congress marks the end of several distinguished Senate careers. The average length of service of a sitting Senator has been falling of late, and will accelerate. While the infusion of new blood has a renewing effect on the Senate, we pay a price for the loss of institutional memory and continuity.

Mr. President, the announcement of GARY HART'S retirement from the body to pursue other opportunities for public service took very few by surprise. He has demonstrated among us and across the country that he has a sense of where this country should go and the ability to communicate it to others. His ability to motivate volunteers to become involved in politics is a great contributon to our political vitality.

I will miss GARY'S contribution to the work of environmental and resource protection in which we cooperated on many occasions in the Senate Environment and Public Works Committee. I also welcome his efforts to stimulate a broader national debate on the long-term consequences of pollution and failure to address resource protection. It is only through a deeper and broader appreciation of the risks and benefits involved that the American people fulfill our obligation to pass on a better America to those who follow us.

I thank him for the seriousness of his commitment to the business of government and wish him well.

TRIBUTE TO PAUL LAXALT

Mr. DURENBERGER. Mr. President, in April 1978, I came to this city to try to make up my mind whether to seek the nomination of my party for Governor or U.S. Senator. PAUL LAXALT took an hour out of his duties as manager of the opposition to the Panama Canal Treaties to talk with me. In that meeting he convinced me that in order to change policy, you had to be involved in the financing of policy. PAUL LAXALT may not have defeated the treaties, but he won me over that day and I have been grateful to him ever since.

I had first met PAUL 12 years earlier, at a conference of Republican Governors at the Broadmore. I can say without hesitation that the qualities for which he is respected and sought after now, were fully evident then. One cannot spend any time with him without being struck with his personal graciousness and confidence. That personal strength has made him an effective Senator and player on the larger political stage.

PAUL LAXALT'S friendship with Ronald Reagan is often cited as great boost to PAUL'S influence and effectiveness. What I believe is shortchanged in the degree to which he has boosted Ronald Reagan through their friendship and made him the leader he is today. In a recent magazing article, Ronald Reagan stated that one of the hallmarks of his success has been that, "I surround myself with the best people I can find." PAUL LAXALT has been one of those people, and he shares the credit for what has been accomplished during the Reagan years.

Grace under pressure and over the long haul is a rare virtue. I have personally seen that quality in PAUL LAXALT and I will miss its quiet and stabilizing influence on this body. I wish him well as he departs this place for the next challenge of his public life.

TRIBUTE TO SENATOR TOM EAGLETON

Mr. DURENBERGER. Mr. President, I rise to say a few words of appreciation and respect for my colleague TOM EAGLETON, as he retires from this body after 18 years of distinguished service.

TOM brought two gifts to this Capitol which have sustained him throughout his service. The first was a keen lawyer's attention to both detail and principle. I had the pleasure, and at times the predicament, of serving with him on the Governmental Affairs Committee, depending whether we were allies or opponents. I must say I preferred him as an ally. His powerful advocacy for the sanctity of human life was a highlight of his career. His second talent was an incredible sense of humor and the ability to use it to frame an issue and win an audience. He was serious when it was appropriate and entertaining when it was necessary.

My experience with TOM on the Intelligence Committee over the last 2 years was particularly rewarding. During a difficult period in the continuing evolution of the intelligence oversight process, Senator EAGLETON helped the committee strike the necessary balance between the need for a strict constitutional separation of powers and for a high level of professionalism within the intelligence community. The American people will never know fully the contribution he made in this important area, but as his chairman, I thank him from my heart.

Mr. President, TOM EAGLETON has relished political life and it has been obvious in everything he has done. Perhaps only the game of baseball held a higher place in his life. Like a wise manager, TOM EAGLETON knew how the game was played. He know all the angles and kept track of all the percentages. And consequently, he won more than his share. And by the way, Mr. President, he was always a great guy to have in the dug-out. That may be what I will miss most.

TRIBUTE TO BARRY GOLDWATER

Mr. DURENBERGER. "What is conservatism?" Abraham Lincoln asked, "Is it not preferring the old and tried against the new and untried?" BARRY GOLDWATER is a true conservative, whose consistency and strength of conviction have made him an important figure in an era, unfortunately, which is not distinguished by either. Just as BARRY GOLDWATER can live up to a century-old definition of conservatism, so generations from now he will be known as the man who made a straight pathway in the American political wilderness for Ronald Reagan and brought conservative thought into the mainstream of our political debate.

One of the things that has distinguished BARRY GOLDWATER'S career was that he always called his own shots. His penetrating insight and frankness has pierced many a colleague and reporter to the quick. Unencumbered by the need to justify his own existence or to impress anyone, BARRY shared his heart and mind liberally, if I can use that word.

I recall one late session when BARRY was the Presiding Officer and a particular Senator was presenting a relatively minor unanimous consent request with a great excess of flourish and formality. To take him down a notch, Senator GOLDWATER put aside the conventional "Without objection, so ordered." and ruled: "It's OK by me."

Mr. President, I was privileged to succeed BARRY GOLDWATER as chairman of the Senate Selection Committee on Intelligence. Because of his leadership and insight, he brought the intelligence oversight process to maturity. He was the critical counterweight to those who wanted to turn oversight into a political process, while maintaining and strengthening the accountability of the intelligence community to the American people. That may be one of his lesser known and understood accomplishments, but something for which he can take great pride in serving his country.

BARRY GOLDWATER further distinguished himself by having the integrity to part company with the direction of his party when he felt it had badly strayed from conservative principle. I remember the devastating impact of his opposition to court-stripping legislation of the early eighties, even though the object of those efforts was a conservative's paradise: elimination of busing, abortion and legal impediments to school prayer. GOLDWATER courageously said that going around the Constitution to achieve those ends was the opposite of conservatism.

Mr. President, the American people are grateful that BARRY GOLDWATER brought something very special to halls of leadership of this nation, at that he didn't hold any of it back. In a city that thinks in herds and seems to live by the xerox machine, BARRY GOLDWATER is an original.

TRIBUTE TO SENATOR CHARLES MATHIAS

Mr. DURENBERGER. Mr. President, I rise today at the conclusion of the 99th Congress to express my deep respect for the Senator from Maryland, Mr. MATHIAS. I will miss his presence and influence in this place, and want to take a moment here to express my gratitude for his service.

Maryland proudly calls itself the Free State. In keeping with that theme, MAC MATHIAS could well be characterized as the Free Senator. He has personified independence and nonpartisanship throughout his service in this body. While that road may have denied him the instant gratification which this job can give, in the long haul it has brought him respect and a solid reputation for integrity and judgment.

MAC MATHIAS is one of the first politicians I heard who had a serious "take-home" message for me. I heard him speak in Minneapolis at an Anti-Defamation League dinner in 1977. I had no idea at the time I'd ever want to be a U.S. Senator. But I said to myself when he finished, "If ever I were, that's the Senator I would be."

I will always hold a personal fondness for MAC because of the unique kind of person he is. MAC has inspired me with his reverence for this institution. They don't hand you a piece of paper after they swear you in that tells you how to be a Senator. You learn that by observing. MAC imparted to me a sense of history and reverence which makes me a better Senator, and this a better institution. And yet for all his pride for the Senate, he maintained a personal humility and simplicity. It is a rare man who can be very serious about his work, but not too serious about himself. To paraphrase Rudyard Kipling, MAC MATHIAS was able to keep his head while all about him were losing theirs.

My thanks go to the people of the State of Maryland and to the Mathias family for sharing his talents with us. And to MAC, wherever the new year finds him, on some distant shore or busy at the honorable profession of gentleman farmer, good fortune and gratitude for who you are and all you've done.

THE DEPARTMENT OF AGRICULTURE ANALYSIS OF MANDATORY PRODUCTION CONTROLS AND ACREAGE REDUCTION PROGRAMS

Mr. WILSON. Mr. President, every Member of the Senate is fully aware of the problems confronting rural America. Indeed, this body spends a great deal of its time discussing measures intended to assist our Nation's farmers.

In just the past few weeks, we have considered disaster relief for farmers who have suffered crop losses due to the drought in Georgia and the floods in Michigan. We have discussed providing economic restitution to cattle ranchers who lost money due to the Federal Dairy Program. We have voted on special tax treatment for farmers to allow them to continue income averaging. We have deliberated about allowing the Rural Electrification Administration to save billions of dollars by prepaying without penalties its loans to the Government. We have debated increasing Federal grain inspection standards, imposing farm program payment caps, lowering interest rates from the Farm Credit System, expanding farm exports and food giveaways to reduce commodity surpluses.

Without commenting upon the merits—or demerits—regarding any of these proposals, they do collectively represent a variety of partial answers to the larger problems plaguing our farmers and rural America. In my view, part of these problems is directly attributable to a component of our current farm policies; specifically, the acreage reduction programs. Similarly, I am convinced that our farm economy will be irreversibly harmed should we move toward mandatory production controls, which some farmers and Senators are advocating. Both of these matters were the focus of recent studies conducted by the Department of Agriculture, the details of which confirm my misgivings about acreage set-asides and production controls.

The acreage reduction programs require that any farmer who wishes to receive commodity loans and deficiency payments must agree to set-aside a fixed percentage of his farmable land. This percentage ranges from a low of 20 percent for wheat farms to a high of 35 percent for rice growers. By way of example, a rice producer who owns 200 acres and wishes to sign-up for the rice program can only plant rice on 130 of his acres and must idle the remaining 70 acres to comply with the 35 percent ARP.

Historically, the justification for taking perfectly good and fertile land out of production is to reduce the overall costs of the Federal support programs. Because the amount of subsidy which a farmer receives is based upon the volume of his production, these acreage reduction programs are intended to limit Government outlays by reducing the number of acres on which Federal payments can be made. In reality, these large ARPS are utilized to off-set the unreasonably high target price levels which Congress has insisted on preserving.

In a congressionally mandated study on the economic effect of acreage reduction programs, the Department of Agriculture documents the costs associated with our reliance upon acreage set-asides. While intended to save taxpayer's money, the imposition of ARPS, according to the USDA study, clearly takes a toll on our country's overall economy. Specifically, the report shows that the 30 million acres removed from production this year resulted in a loss of 260,000 American jobs and $580 million in tax revenues. Moreover, the idling of these 30 million acres cost our Nation's agricultural input industries $3 billion in lost sales.

In my opinion, our continuing reliance on ARPS—which is dictated by the maintenance of high target prices—has reduced our farmers' ability to compete in the world market. By eliminating as much as one-third of a farmer's producing capacity, our Federal policies are reducing his economies of scale, thereby increasing his cost per bushel or pound or hundredweight, as well as encouraging foreign plantings.

According to employment figures provided by the Departments of Labor and Agriculture, nearly a million jobs on farms and other rural businesses have been lost since 1979—a 17-percent drop. During the past 7 years, nearly 250,000 farmers have gone bankrupt, accounting for a loss of 600,000 on-farm jobs. In addition, a number of related industries have been hard hit, including farm machinery makers, fertilizer manufacturers, food processing companies, and shippers.

In an attempt to boost farm income and reverse this downward economic trend, a small number of farmers and certain Members of Congress are beginning to advocate as a solution an expanded use of acreage reduction programs in the form of Government-imposed mandatory production controls. Last year, this concept was considered and rejected by the Senate Agriculture Committee, as well as by the full Congress. And for good reason: I

believe that such an approach would only accelerate the decline, not revitalize the prospects of our Nation's rural economy.

Last month, a Department of Agriculture study documented the adverse effect that mandatory production controls would have upon the American economy, in general, and on our Nation's farmers, in particular. According to the Department's Economic Research Service, a set-aside of 55 percent of our Nation's commodity acreage would:

Eliminate 553,000 jobs in the farm production sector alone—nearly 21 percent of total on-farm employment;

Reduce the farm sector's contribution to the gross national product by $16.2 billion—a 23-percent drop;

Remove 1.2 million jobs in the domestic food processing, marketing, and purchasing system;

Slash $43 billion from the amount which food processors, marketers, and consumers add each year to the GNP;

Reduce agricultural input industry employment by 18 percent or approximately 370,000 jobs; and

Eliminate nearly $12 billion from the input industry's share of GNP.

In summary, the adoption of a production control scheme would dramatically lower the Nation's GNP by $71 billion and eliminate 2.2 million American jobs.

As this study clearly indicates, the practice of idling productive land carriers with its severe consequences—not only for the Nation's 2.7 million farmers and farmworkers, but for the nearly 19 million other Americans whose jobs depend upon agriculture. In my view, under the repeated government practice of setting aside farmland, rural America is systematically shutting down—a casualty of the congressionally imposed acreage reduction programs.

And next year when the Congress revisits the farm bill, these recent USDA studies will present a thorough analysis of any proposal which attempts to increase farm income by expanding acreage set-asides through mandatory production controls. And it is for reasons clearly set forth in these documents that Congress should overwhelmingly reject them as unsound and counterproductive.

Instead, Mr. President, I am convinced that the answer to our Nation's farm problems lie in a movement away from Federal policies which disrupt and distort the agricultural marketplace and toward a national emphasis on regaining and expanding our farmers' export markets.

FURTHER CLARIFICATION OF SUPERFUND PROVISIONS

Mr. STAFFORD. Mr. President, it has been said that the Superfund Amendments and Reauthorization Act of 1986, which has already acquired the affectionate nickname of "SARA" among some Washington lobbyists, is "fuzzy" and not a clear congressional directive.

While this Senator would agree that the bill approved by the Superfund conference, which the Senate passed by a vote of 88 to 8, is not a perfect example of lucidity and precision, he would not go so far as to call it "fuzzy." Admittedly, however, neither the bill nor the statement of managers necessarily provides all of the guidance which might be desired. It is for this reason that Members on both sides, as a matter of routine, explain and elaborate on particular provisions contained in conference reports.

These explanations are offered by Members for the purpose of clarifying ambiguities or filling blank spots. In some cases, attempts are made by special interests groups to create the basis for later legal challenges as part of the administrative or judicial processes, but such attempts at revisionism are the exception.

But in every case, the language of the conferees, as set forth in the statement of managers, is the best and surest expression of the intent of the House and Senate. Whenever the statement or the Member conflicts with either the legislative language or the narrative explanation of the conference report, the statement of the Member must yield.

Having said that, there nonetheless remain ambiguities in virtually any legislation of more than a few pages in length. The original Superfund law of 1980 was no exception, and neither is SARA. Where such ambiguities exist, individual Members can and legitimately do offer guidance. It is to be expected that in some cases where such guidance is offered, there may be differences of opinion between Members.

This Senator is in a somewhat unusual, but by no means unique, position. When the legislation which lead to the enactment of Superfund was introduced in the 95th Congress as S. 2900, he was an original cosponsor, together with its primary author, Senator Muskie of Maine. Together, we helped see that proposal through Senate approval under the number S. 2083, but it died when the other body failed to act.

When the successor to S. 2900 was introduced in the following Congress, it bore the number S. 1480. Again, this Senator was privileged to be a primary cosponsor and to play a large part in the bill's development due to his position as the ranking minority member of both the full committee and the subcommittee.

Late in the 96th Congress when Superfund appeared dead, it was my privilege to collaborate with my good friend, Senator RANDOLPH of West Virginia, in several successive compromise bills. Essentially, these compromises were pared down versions of S. 1480 as reported from the Committee on Environment and Public Works. The changes were worked out in private, closed door meetings with a wide variety of Senators with various concerns. In a sense, these meetings were not unlike the "small group" meetings that characterized the conference of SARA.

Due in large measure to the efforts of Representative FLORIO, the House passed S. 1480 exactly as it had been approved by the Senate. And within days of the time Superfund was signed into law, the Committee on Environment and Public Works began overseeing the law's implementation. Eventually, this lead to the resignation of senior Agency officials and their replacement by new appointees, one of whom was Mr. Lee Thomas.

In April 1984, the Committee on Environment and Public Works began the process of reauthorizing Superfund. It has now stretched over 31 months, consuming tens of thousands of hours.

Mr. President, I belabor this point for a purpose:

First to make it clear that even if this Senator had closed his eyes and ears at every possible opportunity, he still would have acquired a great familiarity with the Superfund law.

Second, to make it clear that this Senator's eyes and ears were not shut. Even had he cared to avoid the Superfund program, it would ahve been impossible to do so and still serve adequately as the ranking minority member and then the chairman of the Committee on Environment and Public Works. But mere duty could never have compelled the attendance at uncounted hours of hearings, markups, closed door negotiations, conference committee meetings, and subgroup meetings. Attendance was because of interest, not obligation.

I sincerely believe, Mr. President, that this Senator's understanding of the Superfund law, the programs it established and the latest set of amendments is as good as any, and better than most. Therefore, if there are errors in what I say, they are honest mistakes. I do not believe there are any such mistakes in this statement or that which I made on October 3, 1986, although I will freely admit that some did not necessarily agree with or like what was said.

Mr. President, for the record, I would like to review some of the areas of the conference report and share my views on them.

The question of timing—usually referred to as "pre-enforcement review"—was one of the central issues throughout the Superfund debate, and apparently the cause of some continu-

ing confusion. The question is when and under what circumstances a Superfund cleanup may be reviewed in court.

The statement of mangers, at page 40, explains that two of the House provisions adopted by the conferees "explicitly provide for circumstances in which judicial review can be obtained prior to implementation of the response action." On page 41, the statement directly explains the conference substitute as follows:

In new section 113 (h)(4) of the substitute, the phrase "removal or remedial action taken" is not intended to preclude judicial review until the total response action is finished if the response action proceeds in distinct and separate stages. Rather an action under section 310 would lie following completion of each distinct and separable phase of the cleanup. For example, a surface cleanup could be challenged as violating the standards or requirements of the Act once all the activities set forth in the Record of Decision for the surface cleanup phase have been completed. This is contemplated even though other separate and distinct phases of the cleanup, such as subsurface cleanup, remain to be undertaken as part of the total response action. Similarly, if a response action is being conducted at a complex site with many areas of contamination, a challenge could lie to a completed excavation or incineration response in one area, as defined in a Record of Decision, while a pumping and treating response activity was being implemented at another area of the facility. It should be the practice of the President to set forth each separate and distinct phase of a response action in a separate Record of Decision document. Any challenge under this provision to a completed stage of response action shall not interfere with those stages of the response action which have not been completed.

New section 113(h) is not intended to affect in any way the rights of persons to bring nuisance actions under State law with respect to releases or threatened releases of hazardous substances, pollutants, or contaminants.

Although known as a "pre-enforcement review" issue, this shorthand is a misnomer. The issue highlighted is more accurately referred to as "pre-implementation review." It is clear that while the Conference Committee sought to extinguish "pre-enforcement review", the opportunities for citizens and responsible parties to seek "pre-implementation review" were not extinguished. This is true under both Superfund and under State nuisance law.

Courts, where it is consistent with the law and the circumstances at a given site, should allow citizen challenges early in the process.

This statement is not inconsistent with either the conference bill or the statement of managers, nor with any agreement that Members would withhold floor statements explaining these provisions.

It has been said that 113(h) covers all lawsuits, under any authority, concerning the response actions that are performed by EPA and other Federal agencies, by State pursuant to a cooperative agreement, and by private parties pursuant to an agreement with the Federal Government. Such a construction would be inconsistent with the evolution of the "preenforcement review" provisions, as well as the explicit language of the bill and report.

As passed by both the House and Senate, section 113(h) began as follows:

"No court shall have jurisdiction to review any challenges * * *"

But as approved by the conferees, the bill now begins as follows:

"No *Federal* court shall have jurisdiction *under Federal law other than under section 1332 of Title 28 of the United States Code (relating to diversity of citizenship jurisdiction) or under State law which is applicable or relevant and appropriate under section 121 (relating to cleanup standards)* to review any challenges . . . .".

As originally drafted, each bill purported to extinguish the jurisdiction of any court to review any challenge. Clearly, the conference bill no longer does this. Rather, it purports to extinguish the juridiction of specified courts to review challenges arising out specified laws. What was a sweeping prohibition in the House and Senate versions has become much more narrow and targeted. An illustration of this change is the differing impacts which the bills would have on challenges based on State laws, such as nuisance (which was discussed at length in my October 3 statement).

Clearly, under either the House or Senate version of H.R. 2005 a complaint based on State nuisance law would fall within the phrase "no court shall have jurisdiction to review any challenge". But equally clearly, such a claim would not be barred by the conference language, which would permit a suit to lie in either Federal court (where jurisdiction could be based on diversity of citizenship) or in State court. This construction is confirmed by the statement of managers explanation that—

New section 113(h) is not intended to affect in any way the rights of persons to bring nuisance actions under State law with respect to releases or threatened releases of hazardous substances, pollutants or contaminants.

Whether or not a challenge to a cleanup will lie under nuisance law is determined by that body of law, not section 113, because section 113 of CERCLA governs only claims arising under the act.

Section 113 (a) and (b) are drawn directly from S. 1480 of the 96th Congress, which I mentioned earlier in this statement. They are identical to sections 9 (a) and (b) of S. 1480, both as it was introduced and as it was reported. The committee report accompanying S. 1480 stated that the subsections "provide for jurisdiction and venue of actions brought under this act." The report noted that the Federal district courts would have "exclusive original jurisdiction over all other causes of action *arising under this act*" (emphasis added). Thus, it is clear that reach of 113 is restricted to suits "brought under" CERCLA or "arising under" it. Similarly, new subsection (h) governs only the suits filed under the circumstances enumerated in paragraphs (1) through (5) for the review of "challenges to removal or remedial action selected under section 104, or to review any order issued under 106(a)." Nowhere in the original law, in the version or H.R. 2005 approved by the conferees or in the statement of managers is there support for the proposition that "any controversy over a response action selected by the President, whether it arises under Federal law or State law, may be heard only in Federal court and only under circumstances provided" in section 113. Such a statement in contrary to the express legislative language and the statement of managers.

Such a construction would also be inconsistent with the provisions of CERCLA and SARA relating to preemption of State laws and displacement of Federal laws.

CERCLA, as enacted in 1980, contained only one arguably preemptive provision, which was section 114(c). SARA has repealed even that provision due to its misconstruction by the U.S. Supreme Court. Thus, the law as amended by SARA will leave unalloyed the statement contained in 114(a) that—

Nothing in this act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the release of hazardous substances within such State.

This policy of leaving State laws undisturbed is also reflected in 302(d) of the original law.

Nothing in this act shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to releases of hazardous substances or other pollutants or contaminants. The provisions of this act shall not be considered, interpreted, or construed in any way as reflecting a determination, in part or whole, of policy regarding the inapplicability of strict liability, or strict liability doctrines, to activities relating to hazardous substances, pollutants, or contaminants or other such activities.

The bill approved by the committee of conference continues and confirms this policy of nonpreemption. It does attempt to establish a process of integrating the requirements of State laws into the decisionmaking process of Superfund. The statement of managers explains that while the cleanup standards contained in section 121 "create circumstances in which State requirements can be avoided, it does not establish a system of preemption."

To state, as some have done, that the cleanup standards provisions of SARA preempt Federal and State

cleanup standards and Federal and State permitting requirements is to suggest that the requirements of section 121 are a nullity. Both in substance and procedure, they were painstakingly developed for the purpose establishing a cleanup system which is required, by law, to accommodate itself to the requirements of Federal and State laws, but allow some of the financial or other burdens to be shifted to States. It is, in effect, a system that allows for the uniform application of stringent standards, but imposes some of the incremental costs on either the responsible parties or the State government, rather than the Superfund. While the system established by section 121 will bring pressure to bear on States to yield when there is conflict between their standards and the cleanup intentions of the Superfund, it does not provide a mechanism that allows them to be unilaterally overridden. Nowhere in section 121 is there authority for the Federal Government to preempt, for good reasons or bad, applicable and appropriate State laws.

Section 121(d)(2)(C)(i) allows the application of clause (ii). Since clause (ii) provides for the nonapplicability of a "State standard * * * which could effectively result in the statewide prohibition of land disposal of hazardous substances, pollutants or contaminants * * *," it appears to provide for preemption of such State laws. It does not. Instead it establishes an admittedly complex, and very probably confusing, mechanism which allows for the preservation of these laws and prevents unilateral action to override them.

Clause (i) never becomes available until the requirements of 121(b)(1) have been satisfied with respect to the site or release in question. Section 121(b)(1) requires, in turn, that the President determine that a remedial action which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances, pollutants or contaminants cannot be undertaken at the site or release in question. Such determinations are to be made on a case-by-case, site specific basis, and are described in more detail in the paragraph's third, fourth, fifth, sixth and seventh sentences.

Specifically, the President must conduct an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies. The technologies must include any which would, in whole or part, result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant. And, in making the assessment, the President must at a minimum take into account certain factors, listed as (A) through (G). Finally, the President must select a remedial action which protects human health and the environment. In no circumstance, whether with respect to cleanups to which clause (ii) might apply or to any other, may the President select a remedial action which fails to protect human health and the environment. Of those solutions which are protective of human health and the environment, the President must select one which is cost effective and utilizes permanent solutions and alternative treatment technologies to the maximum degree possible.

It will be burdensome for the President to comply with these requirements on a case-by-case basis. Nevertheless, the burden imposed on the President is justified because of the serious consequences of proposing land disposal as the remedial action, when such action would be in violation of State law.

When the President has exhausted all alternatives and the only remaining option is land disposal within a State where that would, in fact, be contrary to State law, then and only then does clause (ii) becomes applicable. Although clause (ii) appears to state unequivocally that such a State requirement would be inapplicable, it is followed immediately by clause (iii) which provides for the continued application of such requirements.

If such a State standard, requirement, criteria, or limitation meets the conditions contained in (I), (II), and (III), it remains applicable and must be complied with by the President. Conditions (I) and (II) are attempts to describe, for lack of a better term, State statutes which are "Not In My Back Yard" laws and which have no legitimate reason for their enactment. In some areas of all States, and in all areas of some States, prohibitions on the land disposal of hazardous wastes are not only defensible, but the soundest possible public policy. Indeed, the Congress itself adopted in the Hazardous and Solid Waste Amendments of 1984 a band on the land disposal of liquid hazardous wastes to apply throughout the United States.

State laws which satisfy condition (II) would include those establishing comprehensive land use programs, even when in the opinion of some they merely protect "esthetics." Such laws, many of them statutes, exist in many States for the purpose of protecting natural resources ranging from fragile ecosystems to unblemished views and vistas. Indeed, the Clean Air Act protects such values. The judgment of whether a law was adopted by the legislature or courts of a State for reasons unrelated to protection of human health or the environment is to be made from the perspective of the State and its interests, for it is its citizens and officials who are best situated to define what is appropriate environmental protection within such State's borders.

Finally, a State must arrange for the disposition of the materials, both financially and otherwise, elsewhere. But while the State is left to its own resources in making nonfinancial arrangements, it may recover the incremental costs through use of CERCLA, State laws, or other Federal laws—for example, the Clean Water Act, the Safe Drinking Water Act and the Resource Conservation and Recovery Act. Section 107 expressly authorizes the recovery of such response costs by State and local governments, unless they are inconsistent with the national contingency plan [NCP]. Costs incurred in compliance with State laws described in condition (II) are consistent with SARA and are, therefore, consistent with the NCP, absent some independent and unrelated reason for disqualifying them.

Mr. President, such a system—designed to encourage an accommodation between two systems, not the capitulation of one of them—can scarcely be described as preemption. Ultimately, State laws and standards remain in full force and effect. If such laws yield when they could be applied, it is because State officials made that choice.

Mr. President, there are several other areas regarding the Superfund reauthorization which require a very brief further explanation. They are as follows:

THE SUPERFUND LIABILITY STANDARD

While CERCLA does not explicitly state that the liability is strict, joint, and several, it does incorporate in the definition of "liable," the standard of liability under section 311 of the Clean Water Act. Both section 311 and CERCLA have been held to impose strict, joint and several liability, which was the outcome that was expected by myself and others in 1980.

LIABILITY FOR UNDERGROUND TANKS

SARA establishes a new program for response to releases from underground tanks. To the extent that response costs exceed the mandated financial responsibility requirements, the Administrator may take that into account in deciding whether the equities demand the recovery of costs exceeding the insurance or other financial responsibility instrument. But compliance with the financial responsibility requirement is not determinative of the equities.

HEALTH ASSESSMENTS

While the language in SARA does not contain the phrase "medical testing," health assessments are to include morbidity and mortality data. To accumulate such data may require some medical testing, if the Administrator of the Agency for Toxic Substances and Disease Registry considers it necessary.

Neither the health assessment nor the health study provisions were included for the purpose of providing litigants with information to be used in law suits. However, the information collected would be admissible, or not, into evidence or otherwise used in a court as it would without respect to the provisions of SARA or CERCLA. Neither of the laws affects whether or not the information may be used.

USE OF MCLG'S

Section 121 provides a mechanism for compliance with State and Federal laws and standards. This mechanism applies to sources of water, surface as well as subsurface, whether or not the water is now, is projected to be, or is capable of consumption by human beings. Potability is only one of several considerations to be taken into account and the fact that water either is not presently used, or is not projected to be used, as a drinking water supply does not automatically determine whether MCLG's are to be considered. If it is appropriate, MCLG's should be taken into account; if it is not, they should not be.

SELECTION OF PERMANENT REMEDIES

SARA establishes, among those remedies which are protective of human health and the environment, a preference for those which permanently and significantly reduce the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants. In some cases, this requirement may very well constrain the President's flexibility in the selection of remedies, but as to choosing one of several which satisfy the preference, the President's flexibility is retained.

RESPONSE ACTION CONTRACTORS

The statement of managers accompanying SARA states that "the conferees urge States to take note of the Federal standards and review their own standards of liability." According to the "Random House College Dictionary," a review is "a second or repeated view of something." According to "Webster's Third New International Dictionary," to review is to "to examine again: make a second or additional inspection of: study anew." Also according to Webster's a review—the noun—is "a looking over or examination with a view to amendment or improvement."

Mr. President, if the word "review" suggest a change, it does not suggest one in any particular direction or the other, nor in favor of one particular interest group or the other. The sentences immediately preceding that which I quoted refer not just to the liability standard for contractors, but to the "existing standard of liability for responsible parties under CERCLA" as well.

Without belaboring this point, Mr. President, it is the view of this Senator that the statement of managers does not urge States to necessarily change their own standards of liability, with respect to responsible parties or any other group, or to change them in any particular direction. Of course, these are the views of just this Senator—as I made clear at the outset of these remarks—but I made them known at the time of the conference to the other body. If there is some disagreement, this Senator regrets it. But the language of the conferees, as set forth in the statement of managers, is the best and surest expression of the intent of the House and the Senate on this and all other matters.

THE NATIONAL NUTRITION MONITORING AND RELATED RESEARCH ACT OF 1986

Mr. BINGAMAN. Mr. President, I believe the majority leader is well aware of my interest in legislation I have pushed in the 99th Congress which would establish a national nutrition monitoring system. Last year I introduced S. 1569, which was cosponsored by my colleagues Senators MATSUNAGA, CHILES, HOLLINGS, GORE, MITCHELL, BOSCHWITZ, SIMON, LEVIN, STENNIS, RIEGLE, GLENN, DURENBERGER, and DIXON. I introduced similar legislation late in the last Congress.

I deeply regret that this legislation was not considered this Congress since it has wide support from over 70 organizations representing food producers, consumers, members of religious organizations, senior citizens, health and nutrition professionals, scientists, education officials, advocates for children and low-income people, public officials, and minorities. I will ask unanimous consent that a list of these organizations be included at the conclusion of my remarks.

This August, the Governmental Affairs Committee reported out the House companion, H.R. 2436 without amendments. I supported this for two reasons: first, because of the attention given in the House and revisions made to garner the support of over 70 organizations; and, second, because of expediency. Both my bill and the House version reach the same objectives and I strongly believe that some action is necessary before we adjourn.

The House overwhelmingly passed this legislation by a vote of 305 to 85 on June 26 of this year. The vote culminates nearly a decade of exhaustive oversight by both the House Science and Technology Committee and the House Agriculture Committee.

H.R. 2436 and S. 1569 merely provides a structural framework to improve our Federal nutrition surveillance program and to account for Federal dollars in this area. The information gathered from ongoing surveys and research are an invaluable tool that provides needed data to health professionals and scientists as well as public policymakers. The major criticism of our current efforts point to a lack of a comprehensive program. The embarrassing result is we simply do not know the current nutritional status of our citizens. Coordination among agencies and timeliness are two major deficiencies.

Over nine agencies of the Federal Government engage in nutrition research and training at a cost of well over $200 million. The Department of Agriculture, the Department of Health and Human Services, and the Department of Commerce each collect data and conduct research through 19 different surveys. Given the disparate data collection, analysis, and reporting it's no wonder that we need an integrated approach. This conclusion was reached in 1985 in a report to the President and Congress by the National Agricultural Research and Extension Users Advisory Board wherein it stated that as a result of poor coordination among the appropriate Federal agencies, each agency ignored opportunities to coordinate with other agencies "to economize and perhaps make the results more conclusive." Even the Hunger task force, appointed by President Reagan recommended that the USDA and the HHS coordinate their two surveys on a continuous and prompt basis.

A second deficiency of our nutrition monitoring is the lack of timely data. This issue becomes more critical as we continue to vote for or against health care, food assistance, food and environmental safety, agriculture production, and biomedical research. How can we make informed decisions when there is not current baseline data on the nutritional status of the U.S. population? We do not even know whether our current policies are having the intended effect or whether with better information we could make changes. The decisions we make today are based on data collected in the 1970's. Yet, a more complete understanding between diet, nutrition, and health would pay off in terms of our knowledge and fiscal expenditures.

Briefly, nutrition monitoring legislation streamlines the administrative functions of nutrition monitoring and consolidates the authority within an Interagency Board to assist the Secretaries of Health and Human Services and the Department of Agriculture in the development, management, and implementation of a coordinated program and a comprehensive 10-year plan. An Advisory Council would be appointed by the President and Congress to give scientific and technical advice on the development and implementation of the national nutrition monitoring program.

This program ensures the effective use of Federal and State dollars by promoting the following: State and

local monitoring initiatives development of improved monitoring methods and standards; stimulate academic, industry, governmental partnerships, and improve methods to foster recovery and cost-sharing techniques.

It is my hope that next Congress the chairman of the Committee on Agriculture and the Committee on Labor and Human Resources will join me in pushing for this much needed legislation. In conclusion Mr. President, I express my commitment to further educate the Senate and ask unanimous consent that a letter I sent to the majority and minority leader be printed in the RECORD, along with a list of organizations to which I referred earlier.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington DC, October 3, 1986.

Hon. ROBERT DOLE,
Senate Majority Leader,
U.S. Senate, Washington, DC.
Hon. ROBERT C. BYRD,
Senate Minority Leader
U.S. Senate, Washington, DC.

DEAR SENATORS DOLE AND BYRD: We are writing to urge you to bring before the Senate H.R. 2436, the National Nutrition Monitoring and Related Research Act of 1986. The Senate Governmental Affairs Committee favorably reported out this bill without amendments. A report has been filed. The House of Representatives overwhelmingly voted for its passage June 26, 1986 by a vote of 305 to 85. Given the serious need and the bipartisan support for this measure, we ask that you schedule time for consideration and final passage of this legislation before we adjourn.

We believe it is essental to bring accountability to our current efforts in national nutrition monitoring. This issue has been the subject of over a half-dozen Congressional hearings and two General Accounting Office reports over the past several years. The Senate companion bill was introduced by Senator Bingaman and is cosponsored by Senators Matsunaga, Chiles, Hollings, Gore, Mitchell, Boschwitz, Simon, Levin, Stennis, Riegle and Glenn.

The federal government currently conducts the National Health and Nutrition Examination survey and the Nationwide Food Consumption Survey. Both are intended to provide an accurate and timely assessment of what Americans are eating. With this data, the nutritional, dietary, and health status of the population can be established; the quality and safety of the food supply can be inspected; nutrition research priorities can be pinpointed; the relationship between diet and disease can be explored; American food consumption patterns can be analyzed; and public and private health care costs could be reduced if Americans had proper nutritional information.

Despite the value of this information, deficiencies plague our program: stale data; lack of accurate statistics for high risk groups and geographic regions; and lack of federal agency coordination on the issue. Consequently, we know little about the nutrition and dietary needs of our country.

H.R. 2436 would streamline the administrative functions of nutrition monitoring and consolidate the authority within an Interagency Board to assist the Secretaries of Health and Human Services and the Department of Agriculture in the development, management, and implementation of a coordinated program and a comprehensive ten-year plan. An Advisory Council would be appointed by the President and Congress to give scientific and technical advise on the development and implementation of the national nutrition monitoring program.

This program would ensure effective use of federal and state expenditures by promoting state and local monitoring initiatives; development of improved monitoring methods and standards; stimulate academic/industry/governmental partnerships, and improve methods to foster recovery and cost-sharing techniques.

We request your favorable consideration to schedule H.R. 2436. It enjoyed bipartisan support in the House and over seventy organizations have gone on record in support. It presents the Senate with an opportunity to make much needed improvements to a valuable federal resource—nutrition research data.

Sincerely,

JEFF BINGAMAN.
JOHN GLENN.
RUDY BOSCHWITZ.
SAM NUNN.
DAVE DURENBERGER.
ALBERT GORE, Jr.
BILL COHEN.
TOM EAGLETON.
LAWTON CHILES.
CARL LEVIN.

ORGANIZATIONAL ENDORSERS OF H.R. 2436

American Academy of Pediatrics, Committee on Nutrition, American Association of Retired Persons, American Association of University Women, American Baptist Churches, American College of Preventive Medicine, American Dietetic Association, American Federation of State, County, and Municipal Employees, American Heart Association, American Home Economics Association, and American Meat Institute.

American Nurses Association, American Public Health Association, American Public Welfare Association, American School Food Service Association, Association of Faculties of Graduate Programs in Public Health Nutrition, Association of Maternal and Child Health and Crippled Childrens Directors, Association of Schools of Public Health, Association of State and Territorial Health Officials, Association of State and Territorial Public Health Nutrition Directors, and Bread of the World.

California Conference of Local Health Department Nutritionists, Center for Science in the Public Interest, Center on Budget and Policy Priorities, Child Welfare League of America, Children's Defense Fund, Clergy and Laity Concerned, Coalition for Public Health Nutrition, Coalition on Block Grants and Human Needs, Community Nutrition Institute, and Consumer Federation of America.

Federation of Jewish Philanthropies (New York), Rood Research and Action Center, Friends Committee on National Legislation, Health Officers Association of California, Institute of Food Technologists, Interfaith Action for Economic Justice, Joint Public Affairs Committee of the American Institute of Nutrition and the American Society for Clinical Nutrition, League of United Latin American Citizens, Lutheran Council, USA, and Mennonite Central Committee.

National Association of Counties,, National Association of County Health Officials, National Association of WIC Directors, National Black Child Development Institute, National Cattlemen's Association, National Consumers League, National Council of La Raza, National Council of Senior Citizens, National Farmers Union, National Grange.

National League for Nursing, National Milk Producers Federation, National Perinatal Association, National Rural Nursing Coalition, National School Boards Association, New York State Department of Education, Older Women's League, Public Voice for Food and Health Policy, Rural Coalition, Service Employees Interantional Union, Society for Nutrition Education, and Southern Health Association.

Subcommittee on Human Nutrition of the Experiment Station Committee on Policy of the Land Grant Colleges, Teachers of Preventive Medicine, The Children's Foundation, The National PTA, U.S. Conference of Local Health Officers, U.S. Conference of Mayors, United Church of Christ, United Egg Producers, University of North Carolina/Child Health Outcomes Project, World Hunger Education Service, and World Hunger Year.

RONNI KARPEN MOFFITT—SUPERGIRL

Mr. HARKIN. Mr. President, 10 years ago, on September 21, 1976, Orlando Letelier and Ronni Karpen Moffitt were murdered at Sheridan Circle, here in the Nation's Capital. The Letelier car was exploded by assassins sent to this country to murder him, Ms. Moffitt was riding with him, and was also killed. The circumstances of that tragedy are well known and I do not wish to dwell on the details at this time. Rather, I prefer to sound a happier note, one emphasizing life over death, if you will. I want to insert into the RECORD the words spoken in tribute to his sister by Michael Karpen, at the annual commemoration of the murder at Sheridan Circle, this last September 21. I believe my colleagues will be as moved as I have been by the eloquent statement by Michael Karpen, in memory of the sister who died 10 years ago, at age 25.

I ask unanimous consent that the words of Micheal Karpen be entered into the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

REMARKS OF MICHAEL KARPEN

On behalf of my family, I would like to thank you for coming here today to take a few minutes out of your schedule to remember the events that took place here 10 years ago, and to reflect upon the lives of two people whose loss leaves a void that time seems unable to fill.

I have been asked to say a few words about my sister, Ronni, whom my memory of and love for, can not be diminished by the years. If you don't mind, I would like to take the opportunity to share a few personal memories and thoughts with you.

I know that many of you knew and respected Ronni and some loved her. Some of you knew her as a friend, some as a coworker and others as a political compatriot. But I knew, respected and loved her, as no one else could. I knew her and loved her as my big sister.

It has been 10 years since I touched my sister's hand, kissed her cheek, laughed at her dumb jokes. And I miss these and I am angered and saddened that they were taken away from me, but I am also angered and saddened that they were taken away from you, also, and that those of you who never knew Ronni will never have the opportunity to do so. But, although I can never physically touch Ronni again, not one day passes that I don't think about her, and speak with her; that I don't ask for, and receive, her guidance. She is, as she always has been my moral, ethical and political mentor, as well as my personal guidance counselor on life. You see, she is my big sister.

Ronni was 6 years older than I, and as a result was often given the job of taking care of me.

When we were growing up, she was my "protector". I remember when I was 5 or 6, my brother, who is a few years older than I, would pick a fight with me, and invariably end up on top of me. All I had to do was shout Ronni's name. No matter what she was doing, she would drop it, and in a matter of seconds, there she would be, coming to my rescue, yelling "Supergirl" and throw my brother off of me. He never had a chance.

She was my Saturday morning partner. I remember waking her up early on Saturday mornings to watch cartoons in our pajamas, eating marshmallow cookies together.

She was my friend. When I was 12 years old and didn't make the little league, she was there to soothe my bruised ego, and more importantly, to take me out to eat.

She was my confidante. When I was a teenager and gave a party, Ronni was given the chore of acting as my chaperone. She never complained and never, never squealed.

She was my chauffeur on my first date, having to wait outside in the car, as I and my date ate ice cream inside the local ice cream store.

Because both my parents worked, she at times was my cook, making lunch for me after school.

When my parents went on vacations, she was a surrogate parent. I remember one time when my parents were away, I decided to sleep at a friend's house without calling to tell her. The next day when I came home, I received a scolding from her that was so loud, and so extensive that to this day, I never even walk around the block without telling someone where I am going.

In school, she helped me with my homework and prepared posters when I ran for school office. She helped teach me what clothes to wear, and how to wear my hair. She taught me about girls, about music, about drugs.

Ronni was more than a child of the 60's for whom political activity was merely something to do between classes. She began college at the University of Maryland, being the subject of panty raids. She ended it participating in political protests, some of which were the subject of police raids. As her mind expanded and she was made aware of certain inequalities and injustices that existed in our society, she was moved to try to change society. She was moved not out of a sort of intellectual curiosity that change could come about by merely reading political theory or by shouting slogans, or even through violent means. She was not a violent person. It was said of my sister that when the revolution came, she would most certainly be a part of it; maybe not on the front lines, but she would be there giving support and guidance to those who needed it, and probably serving chicken soup to the injured and the ill. Ronni was moved by the simple fact that she was a good and kind human being.

Ronnie knew that the only way inequality could become equality, the only way injustice could become justice was by reaching out to those who needed help or assistance, and together determining what their needs were, and working together to fill those needs. Although she was a brilliant student, my sister was not a theorist, she was a doer, someone willing to wear overalls and build solid change, brick by brick.

As I matured, I began to appreciate what a truly exquisite and talented human being Ronni was. She was an accomplished musician and artist. My and my parents' homes are adorned with her work. In Passaic, our home town, she had been a counselor for underprivileged children. She loved children, and believing that any lasting change must begin with education, she became a teacher in a public school in Maryland. In Washington she helped create the "Music Carry-Out", teaching music to those who could not afford it and providing a place where musicians of all types of music, from classical, to jazz, to rock, to Latin, to African could go and practice and share their joy of music, and through that sharing begin to understand that all people, like all music, share certain undeniable bonds and qualities. And I am, as she was, most proud of her work at I.P.S. of which I know many of you are familiar.

There are many more things that I would love to say about my sister. But time will not allow it. She was a wife, daughter, friend, co-worker, musician, artist, political activist, protector, cartoon watcher, confidante, chaperone, chauffeur, cook, teacher and big sister. If that seems like a lot to do in 25 years of life, it is because every moment of my sister's life was filled with the joy of living.

I hope that I have given you a bit of a look at the human being Ronni was and what she has done. And I guess that is time for me to take a look at myself and look at the type of human being I am and ask what have I done and what else can I do?

It has now been 10 years since Ronni's death, and I hope I have become the type of person of whom she would be proud. I miss her now as much as I ever have. But I know, that when I need her, when those around me who are bigger and stronger decide to pick a fight with me and end up on top, all I have to do is yell for Ronni and she will drop whatever it is she is doing and in a matter of seconds, in the background will be heard her voice yelling, "Supergirl" and I know there will be no need to worry.

KATHLEEN LAWRENCE NOMINATION

Mr. HARKIN. Mr. President, during these closing hours of the 99th Congress, I wish to state for the RECORD my opposition to the nomination of Kathleen Lawrence to be Under Secretary of Agriculture for Small Community and Rural Development. I do so because I fear that the President may make a recess appointment for Mrs. Lawrence because it would now appear that the Senate will not confirm her nomination prior to adjournment. Because of the importance of this position to rural America, and for reasons which I will outline below, I would encourage the President to look elsewhere in filling this post.

My opposition to this appointment does not stem from any personal animosity that I have for Mrs. Lawrence. It is, however, the result of the strong feelings I have about the qualifications of any person who would hold this post, and the clear absence of those qualifications in the case of Mrs. Lawrence.

The Under Secretary of Agriculture for Small Community and Rural Development has responsibility for several major farm and rural development programs, including the Farmers Home Administration, the Rural Electrification Administration, and the Federal Crop Insurance Corporation. The position must be held by a person who has a deep understanding of rural America, has experienced rural life either through living or working in a small town or on a farm, or has through previous work experience or academic training demonstrated a sincere interest in advancing the needs and concerns of rural Americans. Furthermore, the incumbent must have the skills and desire to be an advocate for rural America within the administration.

When judged by this modest standard, how does Mrs. Lawrence rate? Not very well I regret to say.

First, has she ever worked or lived in rural America? Answer: No. The only places she has lived in her lifetime are suburban New York City and Alexandria, VA.

Second, what work experience has she had in any way related to agriculture or rural development prior to joining the U.S. Department of Agriculture? Answer: None.

Third, what academic training has she had relating to agriculture or rural development? Answer: None.

Parenthetically, I would add that I believe she somewhat misled the committee in the representation of her educational credentials. In a background paper provided to the committee prior to her confirmation hearing she listed the following four institutions under the heading "Education:"

Harvard University, John F. Kennedy School of Government, University of Virginia, Northern Virginia Community College, Queens College.

After her confirmation hearing, I requested additional information regarding dates of attendance, hours earned, and degrees received. She responded to this request with the following information.

Queens College, 1960; 3 credits in history, University of Virginia, 1978; 3 credits in business law; Northern Virginia Community College, 1977 and 1980; 18 credits: 6 in economics, 6 in management and 6 in marketing.

John F. Kennedy School of Government, 1985; non-credit certificate course for Senior

Managers in Government consisting of 120 hours of case studies and lectures in management, personal management and the budget process.

Upon receiving this information, I requested of Mrs. Lawrence that she provide copies of transcripts for the institutions involved which she agreed to do. However, to date I have not received her transcript from Queens College. The transcript from the Northern Virginia Community College revealed the course work taken was designed to assist real estate sales agents.

During her confirmation hearing, I asked Mrs. Lawrence what academic training she had that would be related to agriculture. She responded, "My academic training is in economics and management." In view of her sparse academic record, I found this response to be quite misleading.

Finally, Mr. President, during the course of her confirmation hearing, I found absolutely no evidence that she intended in any way to be an advocate for rural America. When questioned about her views on the President's budget request zeroing out virtually every important rural development program which would be under her jurisdiction if confirmed, she expressed nothing but unqualified support for the President's position. While this may be understandable for a Presidential appointee, I also detected virtually no interest on her part in fighting for these programs within the administration in the future.

In conclusion, I believe that Mrs. Lawrence is totally unqualified for this post. Rural America deserves a better qualified individual.

DEMOCRACY IN CHILE

Mr. HARKIN. Mr. President, as one who has long followed the struggle for democracy in Chile with sympathy and admiration, I invite the attention of my colleagues to a very significant letter sent to the U.S. Embassy in Santiago on October 7 by Ricardo Nunez, the General Secretary of the Chilean Socialist Party.

Mr. Nunez is the leader of those democratic socialists who have decided to cooperate with the other democratic parties in Chile in seeking a prompt and peaceful return to democracy in that country. As members of the Democratic Alliance and the National Accord for a Transition on a Democracy, the Chilean Socialist Party rejects the violence of both the extreme left and the extreme right. The Socialists of Nunez have chosen instead the path of a peaceful transition to democracy.

It is in this context that the Nunez letter to our Embassy in Santiago is particularly significant. In the letter of October 7, Nunez thanks our Embassy for its efforts on behalf of Ricardo Lagos, a Socialist leader recently jailed by the Pinochet regime and since released. Nunez also takes the occasion to stress once again his party's support for a political solution in Chile that reflects the best interests of the country and the wishes of the immense majority of Chileans. Furthermore, according to Lagos, "those who support a logic of confrontation and war are extreme sectors, on opposite sides, and are an obvious minority."

I urge all friends of Chilean democracy to applaud this clear stand by the Nunez Socialists, and I congratulate Ambassador Barnes for his efforts in support of a transition to democracy in Chile. In the current circumstances prevailing in Chile, more than ever it becomes necessary to support full compliance with human rights and a rapid democratic transition. Otherwise, the Chilean crisis will end in tragedy.

Mr. President, I ask that the entire text of the Nunez letter be printed in the RECORD.

The letter follows:

MR. CHARGE D'AFFAIRES: In the name of the Socialist Party of Chile and in that of those who sign below, we dutifully express our greatest thanks for your active concern and solidarity over the unjust incarceration of one of the leaders of our organization, Ricardo Lagos. The measures taken by the Government of the United States and your embassy were of great importance in obtaining his freedom.

The ample and diverse support we received, as much here as internationally, are the best testament to the understanding that exists for our efforts to find a political solution to the grave national crisis, as this represents the only option that reflects the best interests of the country and the wishes of the immense majority of Chileans. Those who support a logic of confrontation and war are extreme sectors, on opposite sides, and are an obvious minority. Their attitude can only compromise the future of the Chilean Nation.

Allow us, Mr. Charge, to ask that you pass on to your government and to the different American personalities and organizations the highest regards and thanks of all the Socialist leaders and militants for the solidarity they expressed to us during the recent occurrances. This commits us to intensify our efforts to obtain democracy and liberty in this country.

We take advantage of this opportunity to express to you our highest esteem.

Sincerely,

RICARDO NUNEZ,
General Secretary.
ARMANDO ARANCIBA,
Chief of International Relations.

BLANCA ROSAL: A MATTER OF LIFE AND DEATH

Mr. HARKIN. Mr. President, Blanca Rosal, a Guatemalan refugee seeking political asylum in this country, recently heard the State Department's recommendation on her case. The answer was no. The advice, if adopted by the Immigration and Naturalization Service, could kill her.

Blanca Rosal is the mother of two small children. She is the only parent they know; their father, Jorge, disappeared after his abduction by paramilitary squads on August 4, 1983. Though Blanca herself was repeatedly threatened and kept under close surveillance by Army intelligence agents following her husband's kidnapping, she had the courage to meet and comfort other bereaved relatives of the disappeared in Guatemala.

Together they formed the Grupo de Apoyo Mutuo [GAM], a mutual support group which is determined to learn the fate of the missing family members in a country where more than 38,000 Guatemalans have disappeared in the past 30 years.

Since 1985 more than 700 wives, brothers, sisters, and parents of the disappeared have joined GAM. Despite the fact that the families have scrupulously avoided all political groups and movements, on March 14, then President Oscar Mejia Victores publicly denounced the GAM as subversive and warned them against "overextending the authorities' patience."

A week later, Hector Gomez, a leading member of GAM, was abducted, mutilated and killed. Within another week, a second GAM leader, Rosario Godoy, along with her 2-year-old baby, were assassinated. To this date, not a single member of the Guatemalan Armed Forces or police have been investigated, prosecuted, or punished for these or any—I repeat, any—of the tens of thousands of killings and disappearances they have committed in the past three decades.

Following the murder of her colleagues and explicit threats against her own life, Blanca fled to the United States with her children. From her home in Arlington, VA, she has resumed her campaign to find her husband.

Blanca should be an ideal candidate for political asylum. According to the 1980 Refugee Act, political asylum is available to any who have a "well-founded fear of persecution" because of their race, religion, nationality, membership in a particular social group, or political opinion.

The State Department, in an opinion released this July, advised that the Immigration Service reject her asylum request. The Department even accused her husband of having belonged to an armed guerrilla group. In Guatemala, where families of those accused of leftist ties have been targeted by security forces, the State's charge almost insures Blanca's death if she were returned home.

Blanca is not the first Guatemalan to be refused asylum. In 1985, when Guatemala was ruled by the last of its military strongmen, only 1 percent of

Guatemalan applicants were granted asylum. The coming to power of a civilian President in January of this year has reduced their chances even further.

To this administration the mere election of Vinicio Cerezo solves Guatemala's 30-year nightmare of disappearances, killings, and torture. No matter how well intentioned President Cerezo may be—and I consider him a sincere, well meaning and courageous democrat—he has not displaced from power the same military establishment responsible for the disappearance of Blanca's husband and thousands like him.

Furthermore, the Guatemalan military has thwarted the new President's human rights efforts at every turn. Despite Cerezo's earlier pledge to appoint a commission to investigate the fate of the disappeared, army pressure forced him to shelve the commission. Judicial prosecution of military personnel for abuses is out of the question, because the military has granted themselves an amnesty which protects them from prosecution for past crimes.

Not surprisingly, human rights violations continue and Guatemalan newspapers report dozens of disappearances and killings every week.

Sending Blanca Rosal and her children back to Guatemala is equivalent to signing their death warrants. If they are returned and harmed, the blood of Blanca and her two children will be on the hands of our State Department and their deaths will haunt us for years to come. The family must be permitted to stay.

THE HASENFUS FLIGHT RECORDS

Mr. HARKIN. Mr. President, yesterday I introduced a proposal to require a full and complete accounting by the President of U.S. Government involvement in the Hasenfus flight and other Contra military support operations conducted by private American citizens.

By a narrow margin, this body rejected that resolution. Fifty Senators decided in essence, to close their eyes to possible involvement by this administration in military operations of the Contras. I am saddened by that. However, the fact that 47 Senators, some of whom have consistently supported the President's Nicaragua policy, voted for my resolution demonstrates the depth of concern in this body that the Congress and the American public are not being fully informed by the White House about this incident.

I can assure my colleague that I will not allow this issue to die; and I am confident that, as more and more reports of government association with Hasenfus and other Contra support operations come out, the American people will demand that the covers be removed, that the administration's stonewall be broken, and that the truth be told.

Toward that end, today, in the sixth of a series of speeches on the Hasenfus mission, I intend to focus on the questions raised by the flight records found in the C-123 cargo plane downed over Nicaragua.

The documents, including flight logs, personal notes, and business cards carried by the three Americans on board, reveal the nuts and bolts of a contract air resupply operation.

Its operations, run out of Illopango Air Base in San Salvador, are led by two Cuban-Americans. One of them, Max Gomez, an ex-CIA agent, was introduced to the Salvadoran Air Force by Vice President Bush's National Security Advisers. By the Vice President's own admission, Gomez met Mr. Bush on several occasions to discuss his activities in El Salvador.

Its an operation manned by individuals who worked in the past on and off, on contract or directly for the U.S. Government. Most of those people had close ties with the CIA, dating back to the 1961 Bay of Pigs invasion and the war in Southeast Asia.

Furthermore, the C-123 logs now document a series of missions flown from military bases in the United States and run out of air strips in Honduras built and repaired with U.S. funds.

A log entry for February 6, according to today's New York Times, lists airport codes that appear to show that a rebel plane flew from Richmond, VA, to Mercury, NV, and then to Las Vegas. According to the log, the plane went from Las Vegas to McClellan Air Base in Sacramento, CA.

Use of a U.S. air base by a rebel plane would indicate a greater level of Government involvement in Contra supply flights than the administration has so far conceded.

Other documents show that a rebel supply plane had been stored in a U.S. air base in 1983 before being approved for cargo flight operations.

The copilot for the Hasenfus mission, Wallace B. Sawyer, apparently flew at least 15 flights between March and August to make drops over Nicaragua. Many originated at the Honduran military's Aguacate Air Base in Central America.

Some stopped off at a dirt strip in Mocoron in the eastern part of Honduras.

Both strips have benefited from U.S. military construction funds spent during U.S. military exercises conducted in 1984 and this year. In 1984, nearly $200,000 was spent by U.S. Army engineer units to harden and smooth the Aquacate air field. In 1986, the U.S. Government admits to spending $255,000 to upgrade the Mocoron airfield. That same airstrip in eastern Honduras, according to Sawyer's flight records, was used by planes flying weapons to the Contras.

Yet, according to a spokesman for the U.S. Embassy in Honduras, "The only purpose of building those strips was as part of the [military] exercise."

The use of air bases built with U.S. funds to support Contra military operations would be illegal. Current law prohibits any support, both direct and indirect, by the U.S. Defense Department and CIA for Contra operations.

Mr. President, this secret war in Nicaragua smacks of mischief and intrigue. This private war, which some claim is run out of the inner recesses of the White House, appears to be waged without regard for the law and in violation of the intent of Congress which wrote those laws.

Unfortunately, despite the assurances of my colleagues, Congress and all its investigatory committees have helped very little in disclosing this murky tale of spies, secret flights, and Contra support operations. Sadly, the White House has devoted itself to hiding, not revealing the truth.

The American people deserve more. They deserve to know all the facts, they deserve to know if the laws of this land have been broken, and they deserve to know if the credibility of our Nation has been tarnished.

Let us not allow it be said that Congress slept while its laws were broken and its will flaunted by this mischievous operation.

RETIREMENT OF SENATOR RUSSELL LONG

Mr. BRADLEY. Mr. President, this week brings to a close the Senate career of a legend in this body and someone I consider a friend and mentor—the senior Senator from Louisiana, RUSSELL LONG.

When I was first elected to the Senate, I sought to become a member of the Senate Finance Committee. In addition to my interest in the committee's large area of jurisdiction, I wanted to observe and learn from its distinguished chairman, Senator LONG. His reputation as a master of Senate procedure and the legislative process was legendary. He has forgotten more about the Senate than most Senators will learn in a career. I was fortunate to become a member of the Finance Committee and, as its least senior member, I found that RUSSELL LONG was a very kind and helpful chairman and teacher. He always added insight to the moment of the Senate and he did so with good spirit and generosity.

Senator LONG has left his mark on the Senate and on some of the most important laws that govern this country, including Medicare, Medicaid, Social Security, the Childrens' Health Assurance Program, the Womens, In-

fants, and Children's Feeding Program, Employee Stock Option Plans. It can truly be said of the senior Senator from Louisiana that this one man has certainly made a difference—in this body and in the country.

We will all miss Senator LONG and his lovely wife, Carolyn. However, I hope that Senator LONG's departure from the Senate will not end his distinguished career in public service. He has been an outstanding spokesman for the people of Louisiana here in Washington and I hope that we can look forward to his continued service to his State when he retires from the Senate.

RETIREMENT OF SENATOR THOMAS EAGLETON

Mr. BRADLEY. Mr. President, I do not know of a single Member of the Senate who is accorded greater personal respect and admiration by his colleagues than the senior Senator from Missouri, THOMAS EAGLETON.

Senator EAGLETON's judicious demeanor and thoughtful approach to all legislative issues has made him an important influence in the Senate. As someone who has known TOM EAGLETON for many years, I will personally miss his counsel and his reasoned approach to the tough legislative problems which continue to confront Congress.

For 30 years Senator EAGLETON has served the people of Missouri with distinction—first, as circuit attorney in St. Louis, then as Lieutenant Governor, and for the last 18 years as U.S. Senator.

Among some of the legislative accomplishments in which Senator EAGLETON can take justifiable pride are the adoption of an amendment in May 1973 to halt the bombing of Cambodia, adoption of the War Powers Resolution in July 1973, creation of independent offices of Inspector General in 12 major Federal departments and agencies, enactment of loan guarantees to save the Chrysler Corp. from bankruptcy, and passage of the Clean Air and the Clean Water Acts. An additional matter on which I have worked particularly closely with Senator EAGLETON is opposition to subsidies for tobacco.

Senator EAGLETON has not only been deeply involved in some of the most important legislative issues the country has faced, he has shown a passionate concern for the institution of the Senate itself. He has focused our attention on the rules of the body and the high ethical standards which should guide us. His voice, his conscience, and his sense of purpose will all be missed.

RETIREMENT OF SENATOR GARY HART

Mr. BRADLEY. Mr. President, 12 years ago, the people of Colorado elected GARY HART to the U.S. Senate. During that period of time, Senator HART has provided leadership to Colorado and to the country. He has been candid, principled, and dedicated to the long term public interest.

Senator HART has spearheaded the effort to reform the military, he led the Senate's inquiry into the Three Mile Island accident, he chaired the National Commission on Air Quality.

I am pleased to have had Senator HART's early and consistant support for my efforts to reform our Tax Code. He was an original cosponsor of the Bradley-Gephardt fair tax bill. And he was a consistent supporter of the Senate's tax reform efforts when this legislation faced many amendments which would have doomed the tax reform effort.

Senator HART's contributions will be missed in the Senate but I am sure that he will continue to shape public policy for many years to come.

SENATOR TOM EAGLETON

Mr. RIEGLE. Mr. President, I rise to say a very fond farewell to my dear friend and colleague from Missouri, TOM EAGLETON.

I shall miss him very much as will my colleagues.

TOM EAGLETON is extraordinary in many ways. To my mind he is the best lawyer in the Senate.

His knowledge and sense of history, and political history in particular, is truly exceptional.

Of all his talents, his sense of humor may be the best of all. The loss of his laughter and wit is painful to contemplate.

I had the rare good fortune to have an office adjoining TOM's in the Dirksen Building, and so have had the luxury of frequent contact where we could kibitz about the baseball scores, the windbags in the caucus, and the ups and downs of life in general.

America has been fortunate to have TOM EAGLETON's service at the highest level of our Government. His integrity, courage, independence, convictions, and powerful intellect have been part of the real strength of the U.S. Senate during his service here.

Knowing him now as I do, I feel the country was the loser when he left the Democratic national ticket in 1972. He and his wife Barbara would have brought wonderful qualities to the office of Vice President.

When special individuals leave the House or Senate, the institutions endure, but they are never the same again. TOM EAGLETON made the U.S. Senate stronger and better during his service here—and we will feel his absence—I will especially so.

Yet it is exciting to think of TOM in a classroom at Washington University in St. Louis, where he will be teaching next year. I envy his students. He has a true gift for teaching as I have witnessed, and I know he and his students will greatly enjoy their time together.

So as we finish this final day of the 99th Congress, my wife, Lori, and I want to wish TOM and Barbara the very best in the days and years ahead. TOM and Barbara, you will be in our thoughts and our prayers for the future. Thank you again for your friendship and your magnificent service to our country and its people.

GLOUCESTER COUNTY, NJ TERCENTENARY 1686–1986

Mr. BRADLEY. Mr. President, the recent summit in Reykjavik is a fitting backdrop to celebrate the 300th anniversary of a county in New Jersey that hosted another summit nearly 20 years ago. I would like to ask my colleagues to join Senator LAUTENBERG and me in commemorating the 300th anniversary of the founding of Gloucester County, NJ.

My colleagues will recall the 1967 summit between President Johnson and Premier Kosygin which was held at Glassboro State College which is located in Gloucester County. Gloucester County's place in modern world history always will be appropriately marked by that important 3 day meeting. During the 300th anniversary of its founding, Gloucester County's role in the annals of the birth of our emerging Nation should be remembered as well. The history of this area of New Jersey serves as a reminder of the democratic ideals that this Nation rests upon.

Despite its English name, Gloucester was originally settled by the Swedes and the Dutch who had crossed over the Delaware from Fort Christina, now Wilmington, DE, during the middle 1600's. These groups were responsible for tranforming the southwestern section of New Jersey into small farms. Gloucester County's farming tradition continues to this very day. The South Jersey Chamber of Commerce reports that more than 700 fruit and vegetable farms in the county produce nearly $40 million worth of apples, peaches, tomatoes, asparagus, melons, and hogs annually. Once referred to as the "garden patch of Philadelphia," Gloucester County's agricultural prominence is widely recognized today.

In the 1660's, the first English colonists began to arrive in the area. At that time, the focal point of west New Jersey was in Burlington, a location quite far from the farmers living in southwestern New Jersey. In May of 1686, the Swedes and the Quakers met at Arwames, now Gloucester City, to

organize their own government. It is this historic meeting that Gloucester celebrates this year.

Gloucester's proximity to Philadelphia and the Delaware River also placed it in the center of our fight for independence from the British. Forts were built at Billingsport and high on the bluff overlooking the Delaware at Red Bank. In October 1777, fiercely fought battles at Billingsport and then at Fort Mercer helped earn New Jersey its title of "Pathway of the Revolution." Four hundred American soldiers were outmanned by 2,200 Hessian troops. A monument now marks the site of the historic battle at Fort Mercer.

From its melting pot beginnings and historic steps toward self-government, to the nurturing of progressive education provided by the Quakers during the late 1700's and its participation in the industrial revolution, Gloucester County's history has exemplified the ideals that we, as Americans, cherish. Gloucester County, its people, and its history are truly symbols of American progress. I am pleased to recognize its proud history of accomplishment and I look forward to its bright future.

REYKJAVIK AND THE FUTURE OF ARMS CONTROL

Mr. ROCKEFELLER. Mr. President, given the horrendous destructive potential of the United States and Soviet nuclear arsenals, it is not surprising that the drama of the Iceland summit has captured the world's attention—and imagination.

President Reagan went to Reykjavik last weekend apparently hoping to achieve agreement on the framework for a Euromissile accord and a date certain for a summit meeting in the United States. But Mr. Gorbachev had his own agenda—sweeping nuclear disarmament proposals tied to strict limitations on strategic defense research. Superpower agreement evidently foundered in the end over star wars, but not until President Reagan had agreed to eliminate nuclear missiles from Europe and phase out all strategic ballistic missiles—or maybe all nuclear weapons—within a decade.

Much attention has been given in the media to whether Mr. Gorbachev trapped President Reagan by upping the ante for agreement at the 11th hour. There is uncertainty over what in fact was put on the table at Hofdi House. The administration has been engaged all week in putting the best possible face on the outcome. Pollsters are avidly engaged in asking the American people who won. But as the flurry of activity surrounding the Reykjavik meeting subsides, the meaning of the extraordinary events in Iceland last weekend merits—and will receive—serious reflection.

In my view, the Reyhjavik meeting suggests cause of concern about the future of nuclear arms control on two counts. First, the dubious promise of theoretical missile defense plan was considered more important than concrete nuclear arms control agreements. Second, the President was apparently prepared to embrace certain dramatic—yet potentially dangerous—disarmament proposals. The irony of Reykjavik is that the President's commitment to star wars—troubling in itself—may have been all that stood in the way of some very unsound potential arms control agreements.

In order to appreciate fully the meaning of Reykjavik, it is necessary first to revisit the first 3 years of the Reagan administration's nuclear policy.

The Reagan administration came to office as avowed opponents of arms control and committed critics of the SALT process conducted under the previous four administrations. Arms control was downplayed by the new Reagan team as a dangerous soporific which threatened to dull public support for the Reagan military build-up. But the bellicose rhetoric of the early Reagan White House soon generated a wave of nuclear anxiety among Americans and West Europeans. The "nuclear freeze" movement swept America, and the "peace movement" took to the streets in every West European capital. By late 1981, the administration felt the need for a public relations effort to appease an increasingly concerned public. Accordingly, negotiating efforts were begun on two fronts: strategic arms and intermediate-range nuclear forces [INF].

The administration embraced initial proposals in both strategic and INF negotiations which envisioned very deep cuts, including the so-called "zero option" calling for complete elimination of all Euromissiles. Having opposed SALT II because it did not go far enough in reducing nuclear arsenals—and being pressed into the public diplomacy of arms control—administration officials inevitably maintained that they would only be satisfied with deep cuts. But such proposals, while dramatic, had the virtue to an administration skeptical of arms control of being virtually nonnegotiable. Whatever their short-term value in convincing the public that efforts to curb the arms race were underway, the administration's proposals were neither serious arms control nor good security policy.

The President's March 1983 speech outlining his vision of strategic defenses compounded the confusion of an already muddled strategic policy. The strategic defense inititative was motivated in large measure by a Presidential desire to take the "high ground" in the nuclear debate by providing a vision of a nuclear-free world. Having exacerbated nuclear fears through hard-line rhetoric, the administration sought to quiet those fears through rhetorical claims that nuclear weapons could and should be "rendered impotent and obsolete."

Under the President's concept of missile defenses, the mutual threat of nuclear retaliation would no longer serve as the basis for Western security. The deterrent policy which had served to guide American strategic planning for 3½ decades—and which has prevented major conflict—was suddenly rejected in favor of a Presidential vision that technology could render the threat of nuclear weapons meaningless.

Unfortunately, reality must intrude. Referring to President Reagan's strategic defense initiative, former Secretary of Defense James Schlesinger stated in 1984 that:

> It would be irresponsible for us to base our defense posture on rhetoric that may sell well on the political scene, but (which has) little relationship to the underlying technological, budgetary and strategic realities.

And the underlying technological reality is that star wars is not going to put the nuclear genie back in the bottle. The underlying strategic reality is that to do so—without concommitant reductions in conventional forces—would undermine our security and that of our allies.

It is profoundly regrettable to all of us, but nuclear weapons are a fact of the post-war world. They have also become a key component of Western security. They serve to offset the huge Warsaw Pact conventional superiority in Europe; and they compensate for a geopolitical fact: the Soviet Union is a Eurasian power, while our efforts to defend allies must rely on "extended deterrence."

The real challenge before us is to fashion a framework for the control of these awesome weapons so that nuclear forces guarantee—rather than threaten—our security.

My concern about star wars is this: it represents both an obstacle to arms control and an impediment to strategic stability. The ability of one side to render itself invulnerable to nuclear attack—while at the same time retaining the capacity to destroy one's adversary—would be vastly destabilizing, a virtual invitation to engage in nuclear brinkmanship. And common sense and logic dictate that an attempt on our part to build such defenses would likely lead to an offsetting increase in Soviet offensive missiles in order to overcome that defense.

Experience suggests that offensive arms limits are possible only with limitations on defensive systems. We should recognize the fact of this linkage and avoid another qualitative spiral in arms competition with the

Soviet Union. When the Soviets first began work on defensive systems, the United States contemplated adding multiple warheads to our strategic missiles in order to overcome those defenses. Critics warned that MIRV'ing would be a grievous mistake, pointing out that it would likely result in a new and destabilizing cycle of the arms race. The critics were ignored, we MIRV'd, and now our fixed-silo ICBM's are threatened by Soviet MIRV'd SS-18's. We should not repeat that mistake.

The proper role of arms control should be to stabilize the "nuclear stand-off" and provide an element of predictability in the superpower nuclear balance. The actual number of weapons deployed by both sides is not in itself the most threatening aspect of the nuclear equation. The real threat is the likelihood that those weapons may be used. Our goal should be to structure secure retaliatory forces on both sides at the lowest possible level of weapons. Arms reductions are desirable, but they must contribute to stable deterrence.

That is why the survivability of U.S. land-based missiles should be addressed in the arms talks and in our own strategic planning. MIRV'd ICBM's in fixed silos—the administration's plan for the MX—exacerbate rather than help the problem of ICBM survivability. Mobile systems, such as the single-warhead Midgetman, contribute to an assured retaliatory force and thereby enhance strategic stability. We should not propound arms proposals which do not address this critical requirement of sound strategic policy. Deep cuts are not an end in themselves.

Nor should we seek to eliminate a whole category of weapons simply for the sake of arms control. As Senator NUNN pointed out on the Senate floor earlier today, the President's suggestion in Reykjavik that we abolish all strategic ballistic missiles within a decade may have very negative consequences for the United States. Soviet superiority in air defense would yield a very unfavorable strategic balance in a world dominated by bombers and cruise missiles.

When NATO decided in 1979 to deploy Pershing II and ground-launched cruise missiles in European countries, it did so in order to bolster America's "nuclear umbrella" over Western Europe. The "zero option" proposal to wipe out all nuclear missiles in Europe may be superficially appealing, but would effectively decouple the United States from Western European defense, a long-time objective of the Kremlin. Arms control at the expense of the strategic coherence of the Atlantic Alliance is bad arms control.

The troubling message of Reykjavik is that dramatic antinuclear posturing—deep cuts, missile defense—has taken the place of serious, security-enhancing arms control. Arms control as public relations has taken over at center stage, while star wars works to preclude progress on real limitations. Mr. Gorbachev—no novice at the game of nuclear public relations—took advantage of this in Iceland by drawing President Reagan into supporting zero missiles in Europe and the elimination of all ballistic missiles, only to hold the agreement hostage to strict limits on SDI. The message to the world: all is possible if only Reagan gives up his dream of star wars.

To test the possibilities, the United States should be prepared to make concessions on star wars, especially in light of its dubious continued usefulness as a bargaining chip. As former Defense Secretary Harold Brown has noted, the President's vision of a ballistic missile astrodome is "surely infeasible in my lifetime, our children's and probably our grandchildren's." At the same time, we should avoid showy proposals for dramatic arms cuts which have immediate popular appeal, but which are antithetical to Western security interests.

The hard truth is this: the future of arms control lies in admitting that we will continue to live with the threat of nuclear war. We should get on with the task of managing stable nuclear deterrence at the lowest possible level of weapons. Our security, and that of our children and grandchildren, will continue to rest on it.

RETIREMENT OF SENATOR RUSSELL LONG

Mr. ROCKEFELLER. Mr. President, I have only been in the Senate a short time. But I feel particularly privileged that my introduction to this Chamber occurred in the 99th Congress, so that I had the opportunity to serve 2 years with RUSSELL LONG.

My colleagues have spoken with great admiration and eloquence about the extraordinary career of RUSSELL LONG. His accomplishments, over a period of 38 years, are legendary. Winning a special election before he turned 30 was just the first of many successes that distinguished his Senate service. His skill as a strategist, his depth of knowledge of the Tax Code and so many areas of public policy, his sense of humor, and tireless efforts on behalf of his constituents will be deeply missed by the people of Louisiana—and by all of us.

Over the course of six Senate terms, including 15 years as chairman of the Finance Committee, RUSSELL LONG has had many important legislative initiatives. But the one that stands out to me as his single greatest contribution has been his effort to encourage employment ownership of American industry. His advocacy of employee stock ownership plans [ESOP's] has enormously heightened public awareness of their value to workers and companies alike. His benefits in employee ownership are guided by a vision that more cooperative labor-management relations can substantially improve our economic performance. It is a vision that I share—and one that I hope both labor and management will find increasingly attractive in years to come.

RUSSELL LONG was among the first to recognize the motivational value of ESOP's. He observed how financially troubled companies became profitable again under employee ownership, in part because the workers had a strong stake in the success of the enterprise. And he saw how ESOP's could foster a participatory style of management, involving workers in decisionmaking from the shop floor to the boardroom.

Employee-owned firms have had some stunning successes. Weirton Steel in my State of West Virginia, which was on the verge of closing down when workers and community residents bought the plant 4 years ago, is now one of the only profitable steel companies in the country. An ESOP was the key to saving this mill, and averting a catastrophic loss of jobs. It was also the cornerstone of a far-reaching cooperative effort by labor and management at Weirton, that stressed innovation and commitment to quality. In an industry reeling from cutbacks in production and employment, Weirton's profitability is truly remarkable.

Currently, close to 7,000 companies in this country have ESOP's, covering more than 10 million workers. Some, like Weirton, were saved from shutting down; many more were healthy companies transferred to the employees when the original owners retired. Perhaps the single greatest tribute to RUSSELL LONG's leadership is the growing interest in employee ownership that this experience displays. All of us who share his vision will miss his counsel, as we work to encourage cooperative industrial relations in the years ahead.

REAGAN'S REMARKS IN NORTH DAKOTA

Mr. BYRD. Mr. President, this morning I spoke in this Chamber that it was my wish that President Reagan would tone down his partisan remarks about SDI and keep the discussion of arms control reductions on a high plane of seriousness where it belongs. It was my hope that the President would come back to Earth, and stop all this "beam me up, Scotty" talk as if SDI will solve all of America's strategic problems. I am a supporter of SDI as I said this morning. A very strong supporter. I want, as every American

wants, the President of the United States to protect America's vital national security interests when he negotiates with his Soviet counterparts. But as my distinguished colleague from Georgia, Senator NUNN, pointed out this morning we need to sift the wheat from the chaff of just what was proposed and discussed in Iceland. America's vital nuclear strategic interests, interests that we here in the Senate have deliberated on for decades, can not be resolved in a rushed weekend of negotiations.

So I say to the President that I am his supporter when it comes to going forward with SDI as an insurance policy for our Nation's security. It is an insurance policy to be sure. But we do not know its terms, we do not know what the premium will be, and we do not know whether the insurance company, to use the President's metaphor, will pay the American people when they file a claim. We are a long way off from even signing the policy.

So I urge the President to slow down, make a midcourse direction, reenter the atmosphere, and come back down to Earth. In the long term, and we need to think of SDI as long term, all this rushed "beam me up, Scotty" talk about space beams and lasers has little to do with the immediate reality of how we protect America's current strategic interests.

Just as importantly, it seems important to again remind the President that most of our Nation's problems are back here on Earth. Back here on Earth the problems of North Dakota's farmers will not be solved by laser beams from space. Back here on Earth the farmers of North Dakota are losing their farms because of the President's misguided farm policies. Back here on Earth, the trade deficit is making American workers unemployed. Back here on Earth, the national deficit is the Nation's No. 1 problem.

So, I urge the President to come back down to Earth, restrain his political advisers, and reenter the dialog about arms control and SDI in a responsible, nonpartisan manner. It is in America's interests.

ENDING UNITED STATES UNILATERAL SALT II COMPLIANCE BOLSTERS NUCLEAR DETERRENCE, ARMS NEGOTIATIONS, AND WORLD PEACE

Mr. McCLURE. Mr. President, ever since 1976, when Governor Reagan first became a candidate for President of the United States, and ever since January 1981, when Ronald Reagan became President, he has repeatedly warned the Soviets to stop their ever expanding pattern of violations of strategic arms limitation talks [SALT] treaties.

The Soviets, however, have totally ignored Ronald Reagan's warnings. President Reagan's repeated warnings, juxtaposed against the ever expanding pattern of Soviet SALT violations, show that the credibility of American diplomacy must be restored.

Proportionate responses to the 22 Soviet violations of SALT II alone, which President Reagan has confirmed to Congress, have long been overwhelmingly approved by the Congress. And according to a reliable poll conducted in July, 70 percent of the American people support President Reagan's May 27, 1986, decision to abandon U.S. unilateral compliance with the SALT II Treaty. The most important proportionate response to the 22 confirmed Soviet SALT II violations is to abandon U.S. unilateral SALT II Compliance on November 11, 1986, when President Reagan plans to complete the conversion of the 131st B-52 bomber to carry air launched cruise missiles.

President Reagan stated in June 1986, in regard to his strategic modernization programs and the importance of his May 27 decision to end U.S. unilateral compliance with SALT II by mid-November, that:

> We come to one of those unique crossroads of history when nations decide their fate . . . our choices are clear.

American diplomatic credibility must be restored in order to regain the integrity of the arms control negotiating process, and in order to bolster deterrence of nuclear war. This is true, Mr. President, because it is a fact of life in the nuclear age that deterrence of nuclear war rests upon our demonstrated political will. Soviet leaders continuously test and gauge American political will, and they respect American actions, not rhetoric, as expressions of our political will.

I believe that the political will to respond proportionately to the Soviet SALT II violations would be clearly demonstrated to the Soviets by abandoning United States unilateral compliance with SALT II on November 11, 1986. Indeed, Mr. President, this action is crucial to preserving nuclear deterrence. Therefore, abandoning U.S. unilateral SALT II compliance serves to strengthen world peace and international security.

Moreover, if arms control is ever to provide America with security, the Soviets must be taught by our actions that they must strictly comply with each of their obligations under every provision of each arms treaty. Otherwise, United States unilateral compliance with arms control treaties that the Soviets are allowed to violate with impunity becomes American unilateral disarmament.

The Western democracies tried unilateral compliance with arms control treaties repeatedly violated by Hitler in the 1930's. Increasingly, as the armed strength of the Nazis grew out of these arms control treaty violations, the Western policy of unilateral compliance became unilateral disarmament and appeasement. Appeasement did not stop World War II; it caused it. As the moral hero of the interwar period, Winston Churchill, tried to do, we must seek to restore the political will he sought to call forth when he tried to explain to the British Parliament the tragedy that was overtaking the free world in 1938:

> The whole equilibrium has been deranged, and the terrible words have . . . been pronounced against the Western democracies—"Thou art weighed in the balance and found wanting." And do not suppose that this is the end. This is only the beginning of the reckoning. This is only the first sip, the first foretaste of a bitter cup which will be proffered to us year by year unless by a supreme recovery of moral health and martial vigor, we arise again and take our stand for freedom as in the olden time . . . Owing to the neglect of our defenses . . . we seem to be very near the bleak choice between War and Shame. My feeling is that we shall choose Shame, and then have War thrown in a little later, on even more adverse terms than the present.

Neville Chamberlain learned and the Western democracies learned the hard way in August 1939. As Chamberlain belatedly confessed:

> Our past experience has shown us only too clearly that weakness in armed strength means weakness in diplomacy.

The political will expressed by the careful, deliberate acts of a democracy is what must inform our opponents of our intention and capabilities to keep the peace. Only by showing our will to respond proportionately to Soviet breaches of arms control treaties can we try to restore the integrity of the arms control process, preserve the credibility of American diplomacy, and bolster nuclear deterrence.

Moreover, if the United States does not demonstrate firmness by responding to repeated Soviet violations of existing arms control treaties, then the United States negotiating posture in Geneva will have no credibility—the Soviets can agree to any terms, if they think they can violate any new treaty with impunity. The integrity of the entire arms control process must be restored, and United States proportionate responses to the Soviet violations are required to try to enforce Soviet compliance with existing treaties.

Mr. President, our distinguished colleague the late Senator Henry Jackson accused former President Carter of "appeasement" of the Soviet Union for even signing the SALT II Treaty of June 18, 1979, believing it to be unequal.

I strongly agree with Governor Reagan's statement of January 1980, that:

> The Soviets only see weakness in a President who clings to unilateral observance of the fatally flawed SALT II Treaty.

As recently as December 1985, President Reagan said in regard to SALT II that:

> There's no way that we could be so one-sided as to be destroying missiles and things of that kind to stay within a limit that they are violating.

Mr. President, there are 22 Soviet violations of SALT II alone that have been confirmed to the Congress by President Reagan. The most strategically important of these Soviet SALT II violations are:

The Soviet deployment of many more intercontinental missile launchers and bombers than they had when the SALT II Treaty was signed in June 1979, in violation of the three central numerical limits of SALT II;

The Soviet deployment of over 70 SS-25 mobile ICBM's, a second new type ICBM banned by SALT II, in violation of the most important qualitative limit of SALT II;

The Soviet deployment of more warheads than SALT II allows on the SS-18 super heavy MIRV'd ICBM, in violation of another central sublimit on missile fractionation.

I agree with President Reagan's statement on June 10, 1985, that:

> We can not impose upon ourselves a double standard that amounts to unilateral Treaty compliance, and, in effect, unilateral disarmament.

As Governor Reagan correctly stated in May, 1980:

> I believe the SALT II Treaty should be withdrawn, and I especially believe the US should not abide by its terms prior to ratification. To abide by the terms of the proposed agreement would violate Article 33 of the Arms Control and Disarmament Act of 1961.

And candidate Reagan added correctly just before the 1980 election that:

> SALT II is illegal, because the law of the land, passed by Congress, says we can not accept a treaty in which we are not equal, and we're not equal in this treaty.

During the 1980 Presidential campaign, candidate Reagan repeatedly described the SALT II Treaty correctly as "fatally flawed, unequal, and illegal." Candidate Reagan declared that he would withdraw the SALT II Treaty from the Senate. Former President Carter stated that the 1980 election was a national referendum on his proposed SALT II Treaty. But SALT II lost when Ronald Reagan won in 1980.

There are good reasons why a "blocking one-third" of the Senate has always been against prolonged U.S. unilateral compliance with the SALT II Treaty.

First, it was unequal because the Soviets were allowed a monopoly of 820 heavy, counterforce, MIRV'd ICBM's—the most dangerous weapons in the world. The United States was allowed zero heavy ICBM's.

Second, the Soviets did not have to count in the SALT II limits their 270 intercontinental Backfire bombers, possessing greater range than both Soviet and United States intercontinental bombers which did count—even though equality is mandated by United States law.

Third, SALT II allowed the Soviets to add well over 4,000 mostly counterforce, hard target capable, nuclear warheads.

Fourth, SALT II failed to limit thousands of Soviet stockpiled missiles capable of rapid reload, refire, and covert soft launch.

Largely for these and many other reasons, the Senate Committee on Armed Services voted without dissent in December 1979, that the proposed SALT II Treaty was unequal, unbalanced, destabilizing, and "not in the national security interest of the United States."

This judgment has been proven to be correct. Since 1979, the Soviet strategic nuclear arsenal has increased to an even higher level than the Joint Chiefs of Staff estimated in 1979 that the Soviets would deploy by 1985, even if no SALT II had ever been signed. Thus SALT II failed to constrain the Soviet threat, and failed thereby to serve American national security interests.

As we recall, former President Carter deferred the Senate's debate on the proposed SALT II Treaty in January 1980, because of the Soviet aggression against Afghanistan, the first use of Soviet armed forces outside the Soviet Bloc since World War II. At that time, our distinguished colleague, Senator MOYNIHAN, conceded that the two-thirds majority needed for Senate advice and consent for the President to ratify SALT II, was never there. Even before the shock of the Soviet aggression against Afghanistan, the United States had detected the Soviet combat brigade in Cuba.

But now in late 1986, the Soviets are ahead of the worst case strategic threat estimate made by our Joint Chiefs of Staff in 1979; the Soviets have engaged in the genocidal use of chemical and bacteriological weapons in their still ongoing wars of aggression against innocent and defenseless civilians in Southeast and Southwest Asia, which is banned by international law; and the potential Soviet nuclear delivery threat from Cuba is twice what it was in 1962 at the time of the Cuban missile crisis.

Former President Carter's stated purpose for deferring the SALT II debate in the Senate was to reassess Soviet intentions in the wake of Afghanistan. Perhaps the reported Soviet flight tests since April 1986, of new super heavy, sixth generation ICBM's in further multiple violation of SALT II best summarizes Soviet global intentions.

In a vote in November 1983, 37 percent of the Senators present voted against the SALT II Treaty. In June 1983 and again in March and April 1986, 34 Senators wrote to President Reagan affirming that the expanding pattern of Soviet SALT violations made the United States disavowal of SALT II necessary. In September 1983, the Senate voted 93 to 0 to require President Reagan to make the first of four required reports to Congress and to the American people on Soviet SALT violations. The first Presidential report of January 1984, charged seven Soviet SALT violations. The most recent Presidential report contains well over 22, so there is indeed an expanding pattern of Soviet SALT violations. In June 1984, the Senate voted 99 to 0 that the United States should not comply with an arms control treaty, such as SALT II, which the Soviets have been detected, verified, and confirmed to be violating. Finally, by a vote of 90 to 5 in June 1985, the Senate even forbade United States unilateral compliance with SALT II, and authorized President Reagan to take proportionate responses to Soviet SALT II violations.

In sum, Mr. President, President Reagan already has the overwhelming support of the Senate and the American people to end U.S. unilateral compliance with the SALT II Treaty. As Defense Secretary Weinberger stated in December 1984:

> We now confront precisely the situation that the SALT process was intended to prevent.

Both the fiscal year 1987 defense authorization bill and the fiscal year 1987 continuing resolution now contain "sense of the Congress" language which fortunately is not binding on President Reagan and would not commit the United States to continued unilateral compliance with the SALT II Treaty. This is fortunate for our constitutional principles, because the House of Representatives has no role in treaty ratification, and can not constitutionally legislate compliance with an unratified treaty. And as I have pointed out, United States unilateral disarmament is a dangerous policy which the history of the 1930's clearly demonstrates destabilizes world peace. This language reads as follows:

> It is the sense of the Congress that it is in the national security interests of the United States to continue voluntary compliance with the central numerical sublimits of the SALT II Treaty as long as the Soviet Union complies with such sublimits . . . [New Section] In accordance with international law, the United States shall have no obligation to comply with any bilateral arms control agreement with the Soviet Union that the Soviet Union is violating.

Mr. President, let me comment on this bill language, before I disclose some newly declassified verification

judgments which bear upon this language.

The initial section seeming to support SALT II is not binding in law, and therefore President Reagan can ignore it in exercising his constitutional duties as Commander in Chief.

The focus of the initial section is upon the sublimits of SALT II, not upon the overall ceilings or limits. This is because SALT II proponents realize that the Soviets are clearly violating the three overall limits. But indeed, it is clear that the Soviets have already violated a "central numerical sublimit" of SALT II by exceeding the 10 warhead limit on the SS-18 ICBM. The SS-25 is a second new type ICBM which is a violation of the main qualitative limit of SALT II.

The operative impact of the language in both sections is clearly triggered by Soviet SALT II violations. President Reagan is thus provided with two options—either to declare that the Soviet violations of the limits allow the United States to stop its unilateral SALT II compliance; or, to declare that the 22 Soviet SALT II violations themselves, irrespective of the clear Soviet violations of the three overall limits, the main qualitative limit, and the SS-18 warhead sublimit and probably the MIRV ICBM launcher sublimit, allow the United States to cease its SALT II compliance. And in either case, the President can also argue that U.S. SALT II compliance is not in the U.S. national security interest.

Let me detail the proof that the Soviets are violating all three of the overall limits to SALT II, and are probably also now violating the most important sublimit of SALT II.

The Soviets have long been confirmed by President Reagan to be above the overall number of strategic nuclear delivery vehicles they had in June 1979, when the SALT II Treaty was signed—2,504. The Soviets are also well above the interim SALT II overall limit on strategic nuclear delivery vehicles—2,400—and the overall SALT II ceiling on stategic nuclear delivery vehicles—2,250.

But now it is confirmed that the Soviets are increasing their margin of violation of all three limits.

I would now like to reveal a new verification judgment just declassified and released by the Arms Control and Disarmament Agency and the CIA on October 10, 1986:

Prior to the sinking of the Soviet Yankee Class SSBN on October 6, 1986, the number of Soviet Strategic Nuclear Delivery Vehicles that are SALT II-accountable was larger than it was when the President, in 1984 and 1985, found the Soviets to be in violation of their obligation to abide by the numerical limits of SALT II. It was also larger than it was on May 27, 1986, when the President announced his new policy abandoning US unilateral compliance with SALT II, and larger than it was on August 5, 1986, when Senator McClure argued on the Senate floor against US unilateral SALT II compliance. Even when the 16 SLBMs carried on the Yankee Class submarine that recently sank are removed from the number of SALT II-accountable Soviet Strategic Nuclear Delivery Vehicles, the number remains greater than the 2,504 SNDVs recognized as permitted by SALT II.

Mr. President, what is the number of Soviet SALT II-accountable SNDV's? The precise answer is classified, and surrounded by some uncertainty, as I shall point out. But much can be said to answer this question at the unclassified level in open session on the Senate floor, using only unclassified, official, authoritative sources, together with some reasonable unclassified analysis, and my own unclassified estimates.

Mr. President, here is the unclassified total of Soviet strategic nuclear delivery vehicles, as of April 1986 and October 5, 1986, according to the Defense Department's unclassified report entitled "Soviet Military Power" dated April 1986: 2,520.

From this total, we should subtract the 16 SLBM's on the *Yankee* class SSBN which sank on October 6, 1986. The new total would then seem to be 2,504 Soviet SNDV's, the same number the Soviets had when SALT II was signed.

But ACDA and the CIA have just revealed that even after the *Yankee* class sank, the current Soviet SNDV number is greater than 2,504. What are the additional Soviet SNDV's, which ACDA and CIA say are deployed and SALT II accountable?

Mr. President, there are in fact many more Soviet strategic nuclear delivery vehicles that are SALT II accountable. In a Senate floor speech on March 18, 1986, my distinguished colleague, Senator JESSE HELMS, the ranking Republican member of the Senate Foreign Relations Committee, stated that:

A new different ICBM is now being deployed at Plesetsk in place of the mobile SS-16—reportedly the mobile SS-25 ICBM, which is covertly MIRV-capable.

This statement was based upon President Reagan's unclassified "Fourth Report to Congress on Soviet SALT Violations," dated December 1985. And according further to an unclassified attachment to an unclassified letter to President Reagan on May 6, 1986, sent by my distinguished colleagues Senators HATCH, HOLLINGS, QUAYLE, HELMS, and the late, distinguished Senator East, there was—

Confirmed deployment of 50 to 200 SS-16 mobile ICBM launchers at the Plesetsk test range, now being replaced by also banned SS-25 mobile launchers.

Based upon these two unclassified sources, I have in turn estimated that there are now at least 20 mobile SS-25 ICBM launchers deployed at the Plesetsk test range, and these are therefore also SALT II accountable. I would emphasize that this estimate is unclassified, and I believe it to be a midrange estimate. There may be many more.

Moreover, the 50 to 200 SS-16 mobile ICBM launchers which are reportedly being replaced by a similar number of SS-25's at Plesetsk, have, according to the President's unclassified report, apparently simply disappeared. They are simply unlocated.

But just as we must still count "36" SS-20 mobile IRBM launchers which the Joint Chiefs of Staff have publicly declared are similarly, "unlocated," we must also count the disappeared 50 to 200 SS-16's in the Soviet total of strategic nuclear delivery vehicles accountable under SALT II. These mobile SS-16's are probably covertly deployed, just like the 36 unlocated SS-20's.

Thus, Mr. President, according entirely to unclassified sources and to reasonable. unclassified, midrange estimates, we must add to the 2,504 SNDV's that the Soviets had when SALT II was signed in June 1979, the following additional intercontinental missiles and bombers: 20 SS-25 mobile ICBM's estimated now to be deployed at Plesetsk; 5 Blackjack bombers which are SALT II accountable, according to Soviet Military Power; 50 to 200 S-16 mobile ICBM launchers "unlocated" and estimated to be covertly deployed.

So now the total of Soviet SALT II accountable strategic nuclear delivery vehicles is in the range of 2,579 to 2,729. This estimate explains why ACDA and the CIA have just revealed that the number of Soviet SNDV's "remains greater than the 2,504 SNDV's recognized as permitted by SALT II." The precise number is difficult to determine, due to several Soviet actions, which deliberately impede United States SALT verification by national technical means, also in violation of SALT II.

Thus the Soviets are at least 75 to 225 Strategic intercontinental missiles and bombers over the number they had when SALT II was signed 8 years ago. And there are probably more than three S-24 rail-mobile MIRV'd ICBM launchers already deployed and SALT II accountable, as I will point out later.

And further, this estimated Soviet SNDV level does not even take account of what appears to have been the Soviet cessation of the dismantling of SS-11 ICBM silos and Bison tankers in only partial compensation for ongoing deployments. This reported cessation appears to have occurred since the July 1986 special United States-Soviet SALT Standing Consultative Commission session in Geneva. This reported cessation could add in the near term 20 to 30 or more SALT II accountable Soviet SNDV's, because the relentlessly ongoing Soviet SS-25,

SS-24, Delta IV, Typhoon, Bear H, Backfire, and Blackjack deployments are now probably occurring without any Soviet attempt at compensation at all.

In sum, the Soviets keep creeping upward and creeping further upward in intercontinental missiles and bombers and warheads.

No wonder that the Reagan administration, ACDA, and the CIA state that the Soviets are over the SALT II "limits," in the plural.

The Soviets are indeed clearly over the three SALT II overall limits or ceilings on intercontinental missile launchers and bombers of: 2,250; 2,400; as well as over the de facto SALT II ceiling of 2,504, the number of SNDV's they had when SALT II was signed in June 1979. Moreover, the change of one or two United States intelligence judgments to reflect the actual evidence of Soviet activity would even put the Soviets immediately over all the SALT II sublimits.

As I shall point out in detail in a moment, the Soviets are probably already over the most important SALT II sublimit, and they will surely be over the second sublimit by early next year, and they could already be over the third SALT II sublimit. A slight change of one or two unclassified CIA intelligence assessments of the range of a Soviet air-launched cruise missile, and the definition of what constitutes a heavy bomber, would immediately force this conclusion!

According to one of these unclassified CIA assessments, 100 TU-95 A, B, and C attack bombers carrying the AS-3 Kangaroo air-launched cruise missile do not count against the Soviet SALT II sublimit of 1,320 MIRV'd missiles and ALCM-equipped bombers, because the SALT II definition of a long-range ALCM is one with a range less than 600 kilometers. CIA believes that the AS-3 Kangaroo's range is less than 600 kilometers. Yet in the first edition of "Soviet Military Power," the Defense Department and the Defense Intelligence Agency stated that the range of the AS-3 Kangaroo was "650" kilometers. Strong evidence supports the DIA range estimate.

Thus if the DIA AS-3 range estimate was accepted, the Soviets would be over the 1,320 sublimit even sooner than early next year.

More significantly, the AS-3 Kangaroo ALCM, with at least 650 kilometers range, and the AS-15 ALCM, with 3,000 kilometers range, are both compatible with the intercontinental Backfire bomber. The Arms Control and Disarmament Agency and the CIA believe that without any flight-test or modifications, both long range ALCM's could probably be covertly fitted onto the Backfire. Using the supersonic-capable Backfire to carry these subsonic long-range ALCM's ought to, however, somewhat degrade the flight characteristics and flight profile of the Backfire. But ACDA and CIA believe that such deployment of long-range ALCM's on the Backfire could be attractive to the Soviets in a SALT II break out scenario. Soviet adoption of this option could be difficult to detect. Therefore, if the Soviets have decided to break out of SALT II, they could have the capability of using Backfire bombers covertly as long-range ALCM carriers. The key question is whether or not the Soviets have broken out of SALT II. I believe that the 22 confirmed Soviet violations of SALT II are evidence that Soviet SALT II break out may have occurred. United States Intelligence cannot rule out the possibility of Backfires carrying long-range ALCMs, and therefore I believe that the United States should consider that the Soviets have adopted this option. I believe that the United States should realistically count 270 Backfires as long-range ALCM carriers. I believe further that the Soviets may already be over the 1,320 SALT II sublimit.

Thus, Mr. President, the Soviets have far exceeded the SALT II overall ceilings of 2,250 and 2,400 stategic nuclear delivery vehicles. But, more importantly, the Soviets are increasingly over the number of strategic nuclear delivery vehicles that they had when SALT II was signed in June 1979—2,504. This is a clearcut, conclusive verification judgment supported by strong intelligence evidence whose interpretation is not disputed.

The Soviet violation of the overall SALT II ceiling is increasing as the Soviets continue to deploy TU-95 Bear H heavy bombers equipped with long-range, cruise missiles, new Blackjack heavy bombers equipped with ALCM's, Delta IV and Typhoon SLBM submarines, and SS-25 road mobile ICBM's, and without any compensation in dismantling.

The fact that the Soviets are increasing their violation of the overall ceilings of SALT II is agreed to by almost everyone involved in the SALT issue. The facts in this case are clear. The facts of this Soviet SALT II violation are probably the reason that the proponents of SALT II have deliberately ignored the overall ceilings of SALT II in their bill language, and have instead focused only upon the SALT II sublimits. But by ignoring the Soviet violations of the three overall limits, the proponents of United States unilateral SALT II compliance are allowing the Soviets to choose to selectively violate the provisions of SALT II.

Mr. President, let's turn now in more detail to the SALT II sublimits. These are: 820 MIRV'd ICBM's for each side; 1,200 MIRV'd ICBM's and MIRV'd SLBM's for each side; 1,320 MIRV'd ICBM's, MIRV'd SLBM's, and heavy bombers equipped with long-range air-launched cruise missiles on each side.

The most important of these SALT II sublimits is the 820 sublimit on MIRV'd ICBM's. This is because it attempts to constrain the most letal weapons in the world—MIRV'd ICBM's—which are capable of first strike, counterforce attacks upon U.S. ICBM silos and other hardened targets. According to official, authoritative, unclassified information, the Soviets now have 818 MIRV'd ICBM's.

Thus only three more Soviet MIRV'd ICBM launchers deployed will put the Soviets over this sublimit.

It is important to consider the following new verification judgment made by ACDA on August 4, 1986, and cleared then for declassification:

> We can not exclude the possibility, in the context of the SALT II Treaty, that *several launchers* for the SS-X-24, a rail mobile *MIRV'd ICBM*, have left their place of final assembly and may therefore be accountable under SALT II.

These two new ACDA verification judgments mean that in addition to being increasingly above the three overall SALT II ceilings, the Soviets may now also be over the most important sublimit of SALT II, the sublimit of 820 MIRV'd ICBM's.

"Several launchers" for the MIRV'd SS-X-24 railmobile ICBM is, according to Webster's Dictionary, "more than two." More than two is three. If three or more SS-24's are SALT II accountable, then the Soviets are over the sublimit of 820, because they already have 818.

The burden of proof that the Soviets are not already violating the most important sublimit is on the proponents of United States SALT II compliance.

Given the long track record of United States intelligence continuously underestimating Soviet strategic forces, I believe that three or more SS-24 railmobile MIRV'd ICBM launchers already exist. I believe further that three or more SS-24's are in fact already SALT II accountable. Perhaps this is why the Soviets are trying to continuously camouflage and conceal their SS-24 railmobile launchers.

In sum, the Soviets are probably already over the main sublimit of SALT II, as well as the three overall ceilings. Indeed, further supporting this conclusion is the following statement from the Defense Department's authoritative unclassified book "Soviet Military Power" published in April 1986:

> The SS-X-24 deployment in a railmobile mode could begin as early as late 1986 . . . Early preparations for the deployment of the SS-X-24 are already underway.

This same document also stated that railmobile SS-24 deployment was expected "soon." These Defense Department statements are consistent with the recent ACDA and CIA verification

judgment that the SS-24 may already be deployed.

Mr. President, it is already late 1986 as the fiscal year 1987 defense authorization bill and fiscal year 1987 continuing resolution are going to be signed by the President into law, and SS-24 deployment is probably already underway. Also by late 1986, an additional Soviet Typhoon SLBM submarine and an additional Delta IV class SLBM submarine will probably begin sea trials, thus becoming SALT II accountable. When this happens, the Soviets will be above the SALT II sublimit of 1,200 MIRV'd ICBM's and SLBM's. These submarines are about to be launched, so it is clear that the Soviets already intend to exceed two of the three SALT II sublimits. And as I have pointed out, realistically counting 100 TU-95 Bear A, B, C's and 270 Backfire bombers as long-range ALCM carriers would put the Soviets over the 1,320 sublimit.

I hope that the proponents of continued United States unilateral compliance with the SALT II Treaty will realize the danger and futility of continued United States compliance in light of these new ACDA and CIA verification judgments on Soviet violations of the three overall ceilings and the most important sublimits of SALT II.

Defense Secretary Weinberger made an important and correct statement in his article in the spring 1986 edition of "Foreign Affairs":

> Even with the SALT II restraints, the Soviet Union has built more warheads capable of destroying our missile silos than we had initially predicted they would build without any SALT agreement.

I strongly agree with the tragic accuracy of this conclusion, as well as with Secretary Weinberger's famous statement that we are facing precisely the situation that the SALT process was supposed to prevent.

We must not continue with this folly of continued U.S. unilateral SALT compliance. This is simply unilateral disarmament and appeasement. It did not work to preserve peace against Hitler's arms control treaty violations of the 1930's, and it will not work against Gorbachev's arms control treaty violations of the 1980's.

As Winston Churchill stated early in World War II, in words that all American political leaders should consider carefully as we confront the inevitable comparisons of the 1930's to the 1970's and 1980's:

> We must regard as deeply blameworthy before history the conduct . . . of all democratic leaders, both in and out of office, during this fatal period. Delight in smooth-sounding platitudes, refusal to face unpleasant facts, desire for popularity and electoral success irrespective of the vital interests of the State, genuine love of peace and pathetic belief that love alone can be its sole foundation, obvious lack of intellectual vigour . . . all of these constituted a picture of British fatuity and fecklessness which, though devoid of guile, was not devoid of guilt, and, though free from wickedness or evil design, played a definite part in the unleashing upon the world the horrors and miseries, which, even so far as they have unfolded, are beyond comparison in human experience.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Emery, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting a nomination, which was referred to the appropriate committees.

(The nomination received today is printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

At 1:05 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 197. An act for the relief of Elga Bouilliant-Linet;

S. 475. An act to amend section 408 of the Motor Vehicle Information and Cost Savings Act to strengthen, for the protection of consumers, the provisions respecting disclosure of motor vehicle mileage when motor vehicles are transferred;

S. 1082. An act granting the consent of Congress to the Arkansas-Mississippi Great River Bridge Construction Compact;

S. 1352. An act to enhance the carrying out of fish and wildlife conservation and natural resource management programs on military reservations, and for other purposes;

S. 1562. An act to amend title 31, United States Code, with respect to the fraudulent use of public property or money;

S. 2129. An act to amend the Product Liability Risk Retention Act of 1981 to include coverage of other lines of liability insurance, and for other purposes;

S. 2320. An act to amend an act to add certain lands on the Island of Hawaii to Hawaii Volcanoes National Park, and for other purposes;

S. 2370. An act to authorize the Francis Scott Key Park Foundation, Inc., to erect a memorial in the District of Columbia;

S. 2914. An act to extend through fiscal year 1988 SBA Pilot Programs under section 8 of the Small Business Act;

H.R. 1390. An act to authorize additional long-term leases in the El Portal administrative site adjacent to Yosemite National Park, California, and for other purposes;

H.R. 2826. An act to amend the Wild and Scenic Rivers Act by designating a segment of the Horsepasture River in the State of North Carolina as a component of the National Wild and Scenic Rivers System;

H.R. 3614. An act to restrict the use of government vehicles for transportation of officers and employees of the Federal Government between their residences and places of employment, and for other purposes;

H.R. 5056. An act to permit registered public utility holding companies to own certain interests in qualifying cogeneration facilities;

H.R. 5496. An act to designate certain National Forest Systems lands in the State of Georgia to the National Wilderness Preservation System, and for other purposes;

S.J. Res. 339. Joint resolution to designate the week of November 30, 1986, through December 6, 1986, as "National Home Care Week";

S.J. Res. 352. Joint resolution to designate the week beginning October 19, 1986, as "Gaucher's Disease Awareness Week";

S.J. Res. 407. Joint resolution designating November 12, 1986, as "Salute to School Volunteers Day"; and

S.J. Res. 422. Joint resolution commemorating the 100th anniversary of the birth of the first Prime Minister of the State of Israel, David Ben-Gurion.

The enrolled bills and joint resolutions were subsequently signed by the President pro tempore [Mr. THURMOND].

At 2:25 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its clerks, announced that the House agrees to the amendment of the Senate to the amendment of the House to the amendment of the Senate to the bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes, with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House agrees to the amendment of the Senate to the following bills:

H.R. 2574. An act for the relief of the survivors of Christopher Eney;

H.R. 4037. An act relating to the Indiana Dunes National Lakeshore, and for other purposes; and

H.R. 4154. An act to amend the Age Discrimination on Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such Act, and for other purposes.

The message further announced that the House agrees to the amendments of the Senate to the following bill and joint resolution:

H.R. 1010. An act for the relief of Audrey O. Lewis and Emerson B. Vereen; and

H.J. Res. 36. Joint resolution authorizing establishment of a memorial to honor

women who have served in or with the Armed Forces of the United States.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 415. Concurrent resolution to make corrections in the enrollment of the bill H.R. 5484.

At 5:29 p.m., a message from the House of Representatives, delivered by Mr. Guthrie, one of its clerks, announced that the House has passed the following bills, without amendment:

S. 1230. An act to amend the patent laws implementing the Patent Cooperation Treaty; and

S. 2852. An act to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the Peninsula Airport Commission, Virginia, for airport purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987.

The message further announced that the House agrees to the amendments of the Senate to the joint resolution authorizing establishment of a memorial to honor the estimated five thousand courageous slaves and free black persons who served as soldiers and sailors or provided civilian assistance during the American Revolution and to honor the countless black men, women, and children who ran away from slavery or filed petitions with courts and legislatures seeking their freedom.

The message also announced that the House has passed the bill (S. 1236) to amend title 18 of the United States Code and other laws to make minor or technical amendments to provisions enacted by the Comprehensive Crime Control Act of 1984, and for other purposes; with an amendment, in which it requests the concurrence of the Senate.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 5363) to amend the interest provisions of the Declaration of Taking Act; with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5682. An act to authorize the Secretary of the Navy to make a certain conveyance of real property.

ENROLLED BILLS SIGNED

At 7:38 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 4873. An act to authorize certain transfers affecting the Pueblo of Santa Ana in New Mexico, and for other purposes; and

H.R. 5598. An act to provide for the transfer of the Coast Guard cutter "*Taney*" to the city of Baltimore, Maryland, for use as a maritime museum and display.

The enrolled bills were subsequently signed by the President pro tempore [Mr. THURMOND].

At 9:09 p.m., a message from the House of Representatives delivered by Ms. Goetz, one of its reading clerks, announced that the House recedes from its amendments to the amendments of the Senate numbered 19 and 117 to joint resolution (H.J. Res. 738) making continuing appropriations for the fiscal year 1987, and for other purposes, and agrees thereto; and that the House agrees to the amendment of the Senate to the amendment of the House to the amendment of the Senate numbered 59 to the joint resolution.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6) to provide for the conservation and development of water and related resources and the improvement and rehabilitation of the Nation's water resources infrastructure.

The message further announced that the House has passed the bill (S. 2091) to amend the provisions of the Federal Land Policy and Management Act of 1976 relating to the acquisition of public lands; with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House agrees to the amendments of the Senate to the concurrent resolution (H. Con. Res. 395) to correct technical errors in the enrollment of the bill H.R. 3838; with amendments, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the following joint resolutions, in which it requests the concurrence of the Senate:

H.J. Res. 645. Joint resolution to designate 1988 as the "National Year of Friendship with Finland";

H.J. Res. 754. Joint resolution providing for furloughed employees compensation; and

H.J. Res. 755. Joint resolution providing for the convening of the first session of the One hundredth Congress.

The message also announced that the House has passed the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 417. A concurrent resolution.

ENROLLED BILL SIGNED

The message further announced that the Speaker has signed the following enrolled bill:

H.R. 3578. An act to provide permanent authority for hearing commissioners in the District of Columbia courts, to modify certain procedures of the District of Columbia Judicial Nomination Commission and the District of Columbia on Judicial Disabilities and Tenure, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore [Mr. THURMOND].

ENROLLED JOINT RESOLUTION SIGNED

At 9:46 p.m., a message from the House of Representatives delivered by Mr. Romanello, one of its clerks, announced that the Speaker has signed the following enrolled joint resolution.

H.J. Res. 738. Joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes.

The enrolled joint resolution was subsequently signed by the President pro tempore [Mr. THURMOND].

At 10:35 p.m., a message from the House of Representatives, delivered by Mr. Allen, one of its clerks, announced that the House has passed the following bills and joint resolutions, each with an amendment, in which it requests the concurrence of the Senate:

S. 1744. An act to require States to develop, establish, and implement State comprehensive mental health plans;

S. 2921. An act to amend the Public Law 99-396 exception to the Balanced Budget and Emergency Deficit Control Act of 1985, and for other purposes; and

S.J. 336. Joint resolution to express the sense of Congress on recognitions of the contributions of the seven Challenger astronauts by supporting establishment of a Children's Challenge Center for Space Science.

The message also announced that the House has passed the bill (S. 2890) to designate the United States Courthouse for the Eastern District of Virginia in Alexandria, Virginia, as the "Albert V. Bryan United States Courthouse"; with amendments, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 1790. An act to withdraw certain public lands for military purposes, and for other purposes;

H.R. 5730. An act to provide for a land exchange in the State of Alaska; and

H.J. Res. 756. Joint resolution to make corrections in the Comprehensive Anti-Apartheid Act of 1986.

The message further announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 416. Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 5300; and

H. Con. Res. 418. Concurrent resolution to direct the Secretary of the Senate to make technical corrections in the enrollment of the bill S. 2638.

ENROLLED BILLS AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, October 17, 1986, she had presented to the President of the United States the following enrolled bills and joint resolutions:

S. 197. An act for the relief of Elga Bouilliant-Linet;

S. 475. An act to amend section 408 of the Motor Vehicle Information and Cost Savings Act to strengthen, for the protection of consumers, the provisions respecting disclosure of motor vehicle mileage when motor vehicles are transferred:

S. 1082. An act granting the consent of Congress to the Arkansas-Mississippi Great River Bridge Construction Compact;

S. 1352. An act to enhance the carrying out of fish and wildlife conservation and natural resource management programs on military reservations, and for other purposes;

S. 1562. An act to amend title 31, United States Code, with respect to the fraudulent use of public property or money;

S. 2129. An act to amend the Product Liability Risk Retention Act of 1981 to include coverage of other lines of liability insurance, and for other purposes;

S. 2320. An act to amend an act to add certain lands on the Island of Hawaii to Hawaii Volcanoes National Park, and for other purposes;

S. 2370. An act to authorize the Francis Scott Key Park Foundation, Inc. to erect a memorial in the District of Columbia;

S. 2914. An act to extend through fiscal year 1988 SBA Pilot Programs under section 8 of the Small Business Act;

S.J. Res. 339. Joint resolution to designate the week of November 30, 1986, through December 6, 1986, as "National Home Care Week";

S.J. Res. 352. Joint resolution to designate the week beginning October 19, 1986, as "Gaucher's Disease Awareness Week";

S.J. Res. 407. Joint resolution designating November 12, 1986, as "Salute to School Volunteers Day"; and

S.J. Res. 422. Joint resolution commemorating the 100th anniversary of the birth of the first Prime Minister of the State of Israel, David Ben-Gurion.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3858. A communication from the Deputy Assistant Secretary of the Air Force (Logistics and Communication), transmitting, pursuant to law, a report on the conversion of various functions at certain installations to performance by contract; to the Committee on Armed Services.

EC-3859. A communication from the Assistant Secretary of the Army (Installations and Logistics), transmitting, pursuant to law, notice of the recent discovery and emergency disposal of suspected chemical munitions at Dugway Proving Ground, Utah; to the Committee on Armed Services.

EC-3860. A communication from the General Counsel of the Department of Energy, transmitting, pursuant to law, notice of a meeting related to the International Energy Program; to the Committee on Energy and Natural Resources.

EC-3861. A communication from the Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, a report on abnormal occurrences at licensed nuclear facilities for the first calendar quarter of 1986; to the Committee on Environment and Public Works.

EC-3862. A communication from the Deputy Secretary of Transportation, transmitting a draft of proposed legislation to authorize the use of currently apportioned Highway Trust Funds for various highway projects; to the Committee on Environment and Public Works.

EC-3863. A communication from the Assistant Secretary of State (Legislative and Intergovernmental Affairs), transmitting, pursuant to law, a report on the emigration and human rights policies of the Government of Haiti and its cooperation with United States development assistance programs in Haiti; to the Committee on Foreign Relations.

EC-3864. A communication from the Director of the National Science Foundation, transmitting, pursuant to law, the first report on the research facilities needs of U.S. universities; to the Committee on Labor and Human Resources.

EC-3865. A communication from the Chairman of the Federal Home Loan Bank Board, transmitting, pursuant to law, the annual report of the Board for calendar year 1985; to the Committee on Banking, Housing, and Urban Affairs.

EC-3866. A communication from the Secretary of State, transmitting, pursuant to law, the semi-annual reports for the period October 1985-March 1986 listing Voluntary Contributions made by the U.S. Government to International Organizations; to the Committee on Foreign Relations.

EC-3867. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a copy of the response to a request by the Chairman of the House District of Columbia Committee regarding District law relating to demonstrations near diplomatic facilities; to the Committee on Governmental Affairs.

EC-3868. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-208, adopted by the Council on September 23, 1986; to the Committee on Governmental Affairs.

EC-3869. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-212, adopted by the Council on September 23, 1986; to the Committee on Governmental Affairs.

EC-3870. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-210, adopted by the Council on September 23, 1986; to the Committee on Governmental Affairs.

EC-3871. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-209, adopted by the Council on September 23, 1986; to the Committee on Governmental Affairs.

EC-3872. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-216, adopted by the Council on October 7, 1986; to the Committee on Governmental Affairs.

EC-3873. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-211, adopted by the Council on September 23, 1986; to the Committee on Governmental Affairs.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-894. A resolution adopted by the City Council of Berea, Ohio favoring amendments to the Bankruptcy Law to protect retirees benefits; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. THURMOND, from the Committee on the Judiciary:

Report to accompany the bill (S. 2575) to amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes (Rept. No. 99-541).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. GORE:

S. 2940. A bill to provide for partial public financing of general elections for candidates in campaigns for the U.S. Senate, and other purposes; to the Committee on Rules and Administration.

By Mr. DURENBERGER:

S. 2941. A bill to require the Director of the Office of Personnel Management to conduct demonstration projects under the Federal employees' health benefits program for the purpose of determining the feasibility and effectiveness of providing voluntry contractual alternatives to the prevailing tort basis for compensating persons for injuries or illness incurred or aggravated as a result of the health care receive as patients under employees' health benefits plans; to the Committee opn Governmental Affairs.

By Mr. BRADLEY (for himself, Mr. LAUTENBERG, Mr. MOYNIHAN, and Mr. D'AMATO):

S. 2942. A bill to authorize and direct the Secretary of Interior to retain the American Museum of Immigration at the base of the Statute of Liberty National Monument; to the Committee on Energy and Natural Resources.

By Mr. HEINZ:

S. 2943. A bill to restrict certain U.S. contributions to international organizations until certain actions to investigate abuses of the United Nations system are undertaken by the United Nations Secretary General; to the Committee on Foreign Relations.

By Mr. HATCH (for himself and Mr. LEAHY):

S. 2944. A bill to modify the application of the antitrust laws to encourage the licensing and other use of certain intellectual property; to the Committee on the Judiciary.

By Mr. LAUTENBERG (for himself, Mr. SIMON, Mr. CRANSTON, Mr. MOY-

NIHAN, Mr. DODD, Mr. BRADLEY, Mr. METZENBAUM, and Mr. KERRY):

S. 2945. A bill to provide for rehiring certain former air traffic controllers; to the Committee on Commerce, Science, and Transportation.

By Mr. GLENN:

S. 2946. A bill to permit national banks to buy and sell platinum; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. MURKOWSKI:

S. 2947. A bill to provide domestic observers on U.S. fishing vessels; to the Committee on Commerce, Science, and Transportation.

By Mr. MATSUNAGA (for himself and Mr. INOUYE):

S. 2948. A bill to authorize the President to promote posthumously the late Lieutenant Colonel Ellison S. Onizuka to the grade of Colonel; considered and passed.

By Mr. GLENN:

S. 2949. A bill to authorize the Secretary of Health and Human Services to make grants to States to support family caregivers information and education demonstration programs; to the Committee on Labor and Human Resources.

By Mr. HATCH (for himself, Mr. WEICKER, Mr. DOLE, Mr. STAFFORD, Mr. KERRY, Mrs. HAWKINS, Mr. NICKLES, Mr. MATSUNAGA, Mr. QUAYLE, Mr. HOLLINGS, Mr. ABDNOR, Mr. ANDREWS, Mr. ROCKEFELLER, and Mr. GARN):

S.J. Res. 431. Joint resolution to designate the period January 1, 1988, through December 31, 1988, as the "Year of Workers With Disabilities"; to the Committee on the Judiciary.

By Mr. WILSON:

S.J. Res. 432. Joint resolution to designate the period commencing February 9, 1987, and ending February 15, 1987, as "National Burn Awareness Week"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MURKOWSKI:

S. Res. 513. Resolution to encourage the development of domestic sources of strategic and critical materials in order to protect our national security; to the Committee on Armed Services.

By Mr. ARMSTRONG (for himself, Mr. MOYNIHAN, Mr. HATCH, Mr. HECHT, Mr. DECONCINI, Mr. JOHNSTON, and Mr. DANFORTH):

S. Res. 514. Resolution calling for hearings in the Committee on the Judiciary on procedures for protecting citizens against improper investigative and prosecutorial practices; considered and passed.

STATMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATCH (for himself, Mr. WEICKER, Mr. DOLE, Mr. STAFFORD, Mr. KERRY, Mrs. HAWKINS, Mr. NICKLES, Mr. MATSUNAGA, Mr. QUAYLE, Mr. HOLLINGS, Mr. ABDNOR, Mr. ANDREWS, Mr. ROCKEFELLER, and Mr. GARN):

S.J. Res. 431. Joint resolution to designate the period January 1, 1988, through December 31, 1988, as the "Year of Workers With Disabilities"; to the Committee on the Judiciary.

YEAR OF WORKERS WITH DISABILITIES

Mr. HATCH. Mr. President, today, we are introducing a joint resolution to designate 1988 as the "Year of Workers with Disabilities." Our purpose is to highlight the employment accomplishments in businesses and Government of 36 million Americans with disabilities.

During 1987, we intend to heighten public awareness of the capabilities, aspirations, and availability for employment of Americans with disabilities as well as their needs, problems, and existing disincentives. We also want to promote the career advancement of Americans with disabilities and encourage the retention of working Americans who become disabled.

Commemoration of the "Year of Workers with Disabilities" will allow us the opportunity to showcase the valuable service that individuals, groups and associations, volunteer organizations, business and industry, organized labor and Government agencies provide in the education, training, placement, and employment of Americans with disabilities.

Several years ago, Congress passed a joint resolution declaring 1983-92 as the "Decade of Disabled Persons." The United Nations drafted a 10-point agenda to commemorate the achievements of persons with disabilities with the "expansion of education, training, and job opportunities for persons with disabilities" being a major objective. Now that we are at the midpoint of the decade, it is very timely that we highlight the employment accomplishments of persons with disabilities and outline ways to improve their job opportunities.

I am already joined by 13 other Senators in introducing this joint resolution. I urge my other colleagues to support this joint resolution in order to make the commemoration of 1988 as the "Year of Workers with Disabilities" a reality.

By Mr. WILSON:

S.J. Res. 432. Joint resolution to designate the period commencing February 9, 1987, and ending February 15, 1987, as "National Burn Awareness Week"; to the Committee on the Judiciary.

NATIONAL BURN AWARENESS WEEK

Mr. WILSON. Mr. President, I rise this morning to speak of a problem little noticed in America—except by those who are its victims. For them, it is literally life-shattering in its implications. I rise to introduce a Senate joint resolution designating the week of February 9, 1987 as "National Burn Awareness Week." And in so doing, I would suggest that this is but the first small step on a journey of many miles, a journey which must be taken by all of us who live in a country with the worst burn problem of any industrialized nation in the world.

Burns exact a tremendous toll of human life, suffering, disability and financial loss. Burn injuries continue to be one of the leading causes of death in the United States. Of the 2 million people who are victims of burn injury each year, 70,000 are hospitalized and another 12,000 suffer death as a result of their burns. An even more tragic statistic of this problem is the fact that children, elderly, and the disabled represent a majority of burn victims, with a death rate of five times that of any other group. Finally, the severe psychological impact of burn rehabilitation for the victim cannot be measured in simple economic terms.

Each year millions of dollars are spent trying to remedy the effects of burns and burn-related incidents. Recent studies conclude, however, that approximately 75 percent of all burns could be prevented by proper education of children and adults. For this reason, the resolution provides for a public awareness program designed to familiarize the public with methods of burn prevention.

I ask my colleagues support in this resolution by cosponsoring the establishment of "National Burn Awareness Week."

Mr. President, I ask unanimous consent that the text of the resolution be printed at this point in the RECORD.

There being no objection, the Joint Resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 432

Whereas the burn problem in the United States is the worst of any industrialized nation in the world;

Whereas burn injuries are one of the leading causes of accidental death in the United States;

Whereas every year approximately two million people are victims of burn injury in the United States;

Whereas of these injuries, seventy thousand are hospitalized and account for nine million disability days annually;

Whereas approximately twelve thousand people die from burn injuries;

Whereas deaths resulting from burn injuries increased in 1985;

Whereas the rehabilitative and psychological impact of burns are devastating;

Whereas children, the elderly, and the disabled are most likely to suffer serious burns;

Whereas it is estimated that approximately 75 percent of all burns could be prevented by proper education of children and adults; and

Whereas there is a need for an effective national program that deals with all aspects of burn prevention: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the period commencing February 9, 1987, and ending February 15, 1987, is designated as "National Burn Awareness Week" and the President is authorized and requested to issue a proclamation calling upon the people of the United States and all Federal, State, and local government officials to observe such

week with appropriate programs and activities.

By Mr. GORE:

S. 2940. A bill to provide for partial public financing of general elections for candidates in campaigns for the U.S. Senate, and for other purposes; to the Committee on Rules and Administration.

CAMPAIGN LIMITATION AND PUBLIC FINANCING ACT

● Mr. GORE. Mr. President, today I am introducing a modest proposal to limit spending in senatorial elections. I hope that this can stir discussion of comprehensive campaign financing reform measures in the 100th Congress.

I am a cosponsor and supporter of the Mathias-Simon public financing bill—S. 1787, but some of my colleagues believe that that proposal moves too quickly. I am offering a compromise that is simple, certain, and cheap.

My chief concern in this debate is the exorbitant costs of campaigns. If we are to reform the present system, such proposals must address the question of cost before moving on to the underlying issues of how campaigns are financed. The Mathias-Simon bill is a realistic effort to minimize costs and the influence of "special interests." But the current political climate seems ill-inclined to support a comprehensive bill.

My bill establishes voluntary expenditure limits based on the average costs of Senate elections in the last three cycles. These limits should serve as an incentive to curb campaign expenditures, putting public pressure on candidates to agree to realistic expenditure limits.

This proposal is very simple. At the time an additional files as a candidate under State law, all candidates would be required to file with the FEC a statement of their intention to abide by these limitations.

If two candidates agree to abide by the expenditure limitations, then each would be required to do so. The FEC would be required to inform the Senate Ethics Committee at any time that a candidate has exceeded such limitations.

If those two candidates do not agree to abide by the limitations, neither is required to do so and no new regulatory scheme is set up.

However, if the first candidate agrees and the second candidate does not agree to abide by the expenditures limits, then on the day after the primary, the first candidate is awarded a grant equal to the expenditure limit. At this point the second candidate would not be subject to any expenditure limitations. The candidate receiving the grant would be required to limit his or her spending to an amount equal to 150 percent of the grant.

Independent candidates and other minor party candidates may also qualify under this bill if they meet certain criteria.

At the end of my statement, I will include a listing of States and the applicable expenditure limitations. These were determined by reviewing historic spending patterns and are based on a multiplier of the voting age population of each State.

The expenditure limitations contained in this bill are realistic and provide more than enough money to run robust campaign. I would expect that most candidates would agree to abide by these limitations. However, if candidates do not feel they can live within these limits, they are free to exceed them. But in refusing to abide by reasonable expenditure limitations, they could confer a substantial grant to their opponent. I would expect that only such candidates who have access to unlimited sources of funds would be confident enough to refuse to abide by these limitations. Thus, the overall cost to the Treasury should be minimal. It is impossible to predict at this point how much this measure would cost, but it is clear that public pressure would keep costs to a minimum.

Even in these times of budgetary constraints, this would seem a small price to pay for the broader goal of limiting overall campaign expenditures. No candidate is required to abide by any limitation, nor does this bill present the vexing questions associated with other bills. It does not set up any new regulatory mechanism, but rather relies on current FEC responsibilities. In fact, violations of the act would be reviewed by the Senate Ethics Committee and not the FEC. It would be my hope that the committee would act forcefully and decisively against violators using the range of sanctions available to them.

The bill is easy to administer, simple in execution, and inexpensive to the Treasury. It addresses a political problem through political means—by appealing to public pressure and basic competitive instincts.

As I said at the outset, this is only a first step toward limiting the overall cost of campaigns. If enacted I would hope that experience would bring new initiatives and new methods to "rachet" down the costs of campaigns.

Mr. President, I ask unanimous consent that the bill and applicable expenditure limits be printed in the RECORD.

There being no objection, the bill and list were ordered to be printed in the RECORD, as follows:

S. 2940

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Campaign Limitation and Public Financing Act".

SEC. 2. The Federal Election Campaign Act of 1971 is amended by adding at the end thereof the following new title:

"TITLE V—PUBLIC FINANCING OF SENATE GENERAL ELECTION CAMPAINGS

"DEFINITIONS

"SEC. 501. For purposes of this title—

"(1) the definitions set forth in section 301 of this Act apply to this title;

"(2) 'general election' means any regularly scheduled or special election held for the purpose of electing a candidate to the United States Senate;

"(3) 'eligible candidate' means a candidate who is eligible, under section 502, to receive payments under this title; and

"(4) 'authorized committee' means, with respect to any candidate for election to the United States Senate, any political committee which is authorized in writing by such candidate to accept contributions or to make expenditures on behalf of such candidate to further the election of such candidate.

"ELIGIBILITY FOR PAYMENTS

"SEC. 502. (a) To be eligible to receive payments under this title, with respect to an election—

"(1) a candidate in an election shall certify to the Commission that—

"(A) such candidate is the nominee, of one of the major political parties, for election to the United States Senate;

"(B) such candidate or the party of such candidate received, in either of the two most recent general elections for the United States Senate in the same State in which he is a candidate, at least 25 percent of the total vote cast in the election for such office; or

"(C) such candidate and the authorized committees of such candidate have received contributions from individuals in a total amount of not less than 20 percent of the overall limitation on expenditures, as determined under section 315(j), by the date of the primary election, with respect to that campaign.

"(2) a candidate shall certify that such candidate is seeking election to the United States Senate;

"(3) a candidate shall certify to the Commission his intention to comply with applicable provisions of law with respect to any payment received;

"(4) a candidate shall certify, in the declaration filed pursuant to section 504, that he will abide by the limitations on expenditures provided in section 315(j) unless such limitation is increased for such candidate pursuant to section 506.

"(5) a candidate who has qualified for a payment under this title shall, within 20 days after qualifying, agree that such candidate and the authorized committees of such candidate—

"(A) will obtain and furnish to the Commission any evidence such Commission may request about the campaign expenditures and contributions of such candidate; and

"(B) will keep and furnish to the Commission any records, books, and other information it may request;

"(6) a candidate shall apply to the Commission for the payment referred to in section 503; and

"(7) the Commission shall determine that—

"(A) an opposing candidate in such election has not agreed that he will not exceed the limitation on expenditures set forth in

section 315(j) or has filed a certification pursuant to section 505, stating that such candidate does not intend to comply with the limitations on expenditures; and

"(B) at least two candidates have qualified for the election ballot for election to the same seat under the law of the State involved.

"(b) Agreements, certifications, and declarations under this section shall be filed with the Commission at the time and in such manner as the Commission requires.

"ENTITLEMENT TO PAYMENTS

"SEC. 503. (a)(1) A candidate who meets the eligibility requirements in section 502(a) is entitled to a payment for use in such candidate's general election campaign in an amount that is equal to the expenditure limit provided for such State pursuant to section 315(j)(1).

"(2) Pursuant to the provisions of section 506, a candidate receiving a payment pursuant to paragraph (1) shall be subject to the limitation on expenditures provided in section 315(j)(2).

"(b) All payments received by a candidate or the authorized committees of such candidate under this title shall be deposited at a national or State bank in a separate checking account which shall contain only funds so received. No expenditures of funds received under this section shall be made except by checks drawn on such account.

"DECLARATION BY CANDIDATES

"SEC. 504. (a)(1) Not later than the date on which a candidate qualifies for election under the law of the appropriate State, or ninety days before the date of any general election, whichever is earlier, each candidate for election shall file with the Commission a declaration of whether or not such candidate intends to make expenditures in excess of the limitations on expenditures provided under section 315(j).

"(2) Any declaration of election filed pursuant to paragraph (1) may be amended or changed at any time within ten days after the filing of such declaration. Such amended declaration may not be amended or changed further.

"(b) Each candidate for election shall notify the Commission and each other candidate for the same election within forty-eight hours after such candidate, or any of the authorized committees of such candidate makes any expenditure, or incurs any obligation to make an expenditure, in excess of the limitation on expenditures contained in section 315(j).

"CERTIFICATIONS BY COMMISSION

"SEC. 505. (a) No later than forty-eight hours after a candidate files a request with the Commission to receive a payment under section 507, the Commission shall certify the eligibility of such candidate to the Secretary of the Treasury for payment in full of the amount to which such candidate is entitled. Such request shall contain such information and shall be made in accordance with such procedures as the Commission may provide by regulation.

"(b) Initial certifications by the Commission under subsection (a), and all determinations made by such Commission under this title, shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission and judicial review under the provisions of this Act.

"INCREASED EXPENDITURE LIMITS

"SEC. 506. A candidate who is eligible to receive a payment pursuant to the provisions of this title, and receives such payment based, in part, on the fact that an opposing candidate in such election did not agree to abide by the limitations on expenditures, shall have such limitation increased pursuant to this Act. Such limitation shall include expenditures made from the payment received pursuant to section 503, and from contributions received by such candidate and shall be increased to equal an amount not in excess of the limitation provided in section 315(j)(3).

"PAYMENTS TO ELIGIBLE CANDIDATES

"SEC. 507. (a) The Secretary of the Treasury shall maintain in the Presidential Election Campaign Fund established by section 9006(a) of the Internal Revenue Code of 1954, in addition to any other accounts he maintains under such section, a separate account to be known as the 'Senate General Election Campaign Account' (hereafter in this title referred to as the 'Account'). The Secretary shall deposit into the Account, for use by candidates eligible for payments under this title, the amount available after the Secretary determines that amounts in the fund necessary for payments under subtitle H of the Internal Revenue Code of 1954 are adequate. The moneys in the Account shall remain available without fiscal year limitation.

"(b) Upon receipt of a certification from the Commission under section 505, the Secretary shall pay the amount certified by such Commission to the candidate to whom the certification relates.

"(c) Payments received under this section shall be used only to defray election campaign expenses incurred with respect to the period beginning on the day after the date on which the candidate qualifies for the election ballot under the law of the State involved, and ending on the date ninety days after the date of the election, or the date ninety days after the date on which the candidate withdraws from the campaign or otherwise ceases actively to seek election, whichever occurs first. Such payments shall not be used (1) to repay any loan to any individual, or (2) to make any payments, directly or indirectly, to such candidate individually or to any member of the immediate family of such candidate.

"EXAMINATION AND AUDITS: REPAYMENTS

"SEC. 508. (a) After each general or special election, the Commission may conduct an examination and audit of the campaign accounts of the eligibile candidates, as designated by the Commission, in order to determine whether the expenditures complied with the provisions of this title.

"(b) If the Commission determines that any payment or any portion of any payment made to an eligible candidate under section 507 was in excess of the aggregate amount of the payments to which such candidate was entitled, the Commission shall notify such candidate, and such candidate shall pay to the Secretary of the Treasury an amount equal to the excess amount.

"(c) Any amount received by an eligible candidate may be retained for a period not exceeding ninety days after the date of the election for the liquidation of all obligations to pay election campaign expenses incurred during the period specified in section 507(c). At the end of such ninety-day period 50 percent of that portion of any unexpended balance remaining in the accounts of the candidate's authorized committees shall be promptly repaid to the Secretary. In making such determination, all amounts received as contributions shall be considered as having been expended before any amounts received under this title are expended.

"(d) No notification shall be made by the Commission under subsection (b) with respect to a campaign more than twenty-four months after the day of the election to which the campaign related.

"(e) All payments received by the Secretary under subsection (b) shall be deposited by him in the appropriate account.

"REPORTS TO CONGRESS

"SEC. 509. (a) The Commission shall, as soon as practicable after the close of each calendar year, submit a full report to the Committee on Ethics of the United States Senate setting forth—

"(1) the expenditures incurred by each qualified candidate, and the authorized committees of such candidates, specifying which candidates have exceeded the expenditure limits;

"(2) the amounts certified under section 505 for payment to each such candidate; and

"(3) the expenditures made by candidates who did not agree to, or did not comply with the limitations on expenditures set forth in section 315(j).

"(b) In addition to the reports filed pursuant to subsection (a), the Commission shall, at any time a candidate in a campaign exceeds the expenditure limits for such campaign, submit a report to such Committee on Ethics setting forth—

"(1) the expenditures incurred by such candidate and the authorized committees of such candidate; and

"(2) the amounts certified under section 505 for payment to each such candidate.

"(c) Each report submitted pursuant to this section shall be printed as a Senate document.".

LIMITATIONS ON EXPENDITURES IN GENERAL ELECTION CAMPAIGNS

SEC. 3. (a) Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) is amended by adding at the end thereof the following:

"(i) For purposes of this section, expenditures made on behalf of any candidate (as determined under section 315(b)(2)(B)) for the office of Senator of the United States shall be considered to be expenditures made by such candidate.

"(j)(1) Except as otherwise provided in this Act, a candidate who receives payments for use in his general election campaign for the office of Senator of the United States, pursuant to section 507 of this Act may not make expenditures in such campaign in excess of—

"(A) $.50 multiplied by the voting age population plus $1,500,000 in States with a voting age population of 5 million or less;

"(B) $.50 multiplied by the voting age population plus $1,000,000 in States with a voting age population of more than 5 million but less than 10 million; or

"(C) $.50 multiplied by the voting age population plus $500,000 in States with a voting age population of 10 million or more.

"(2) For purposes of this subsection, the voting age population of a State shall be the population certified under subsection (e) for such State.".

"(3) A candidate, pursuant to the provisions of section 506, may make expenditures limit which otherwise applies to such candidate pursuant to paragraph (1).".

(b) Section 315(c) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(c)) is amended by adding at the end thereof the following:

"(3)(A) The limitation established in subsection (j) shall be increased by the percent

difference certified in paragraph (1) minus 2 percent if such difference is 2 percent or more. If such difference is less than 2 percent, such limitation shall be increased by an amount equal to the amount of such differences.

"(b) For purposes of this paragraph, the base period is the calendar year of 1986.".

STUDY AND REPORT BY COMMISSION

SEC. 4. The Federal Election Commission shall, for one year, study and monitor the efficacy of the programs resulting from amendments made by this Act. The Commission shall begin such study one year after the date of the first election in which the amendments made by this Act apply and shall report to Congress no later than April 1 of the year following the completion of such period of studying and monitoring.

EFFECTIVE DATE

SEC. 5. The amendments made by this Act apply to any campaign for election to the United States Senate for which the election is held more than one year after the date of enactment of this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 6. There are authorized to be appropriated, in addition to the amounts available pursuant to section 507 of the Federal Election Campaign Act of 1971, as added by this Act, such additional sums as may be necessary to carry out the provisions of this Act.

State	Voting age population	Expenditure limitation
Alabama	2,893,000	$2,946,500
Alaska	348,000	1,674,000
Arizona	2,257,000	2,628,500
Arkansas	1,705,000	2,352,500
California	19,094,000	10,047,000
Colorado	2,347,000	2,673,500
Connecticut	2,408,000	2,704,000
Delaware	458,000	1,729,000
Florida	8,631,000	5,315,500
Georgia	4,228,000	3,614,000
Hawaii	758,000	1,879,000
Idaho	689,000	1,844,500
Illinois	8,436,000	5,218,000
Indiana	3,998,000	3,499,000
Iowa	2,121,000	2,560,500
Kansas	1,791,000	2,395,500
Kentucky	2,696,000	2,848,000
Louisiana	3,124,000	3,062,000
Maine	856,000	1,928,000
Maryland	3,259,000	3,129,500
Massachusetts	4,459,000	3,729,500
Michigan	6,591,000	4,295,500
Minnesota	3,048,000	3,024,000
Mississippi	1,804,000	2,402,000
Missouri	3,697,000	3,348,500
Montana	588,000	1,794,000
Nebraska	1,169,000	2,084,500
Nevada	686,000	1,843,000
New Hampshire	734,000	1,867,000
New Jersey	5,709,000	3,854,500
New Mexico	995,000	1,997,500
New York	13,362,000	7,181,000
North Carolina	4,600,000	3,800,000
North Dakota	491,000	1,745,500
Ohio	7,857,000	4,928,500
Oklahoma	2,401,000	2,700,500
Oregon	1,990,000	2,495,000
Pennsylvania	8,996,000	5,498,000
Rhode Island	738,000	1,869,000
South Carolina	2,389,000	2,694,500
South Dakota	504,000	1,752,000
Tennessee	3,490,000	3,245,000
Texas	11,410,000	6,205,000
Utah	1,204,000	2,012,000
Vermont	392,000	1,696,000
Virginia	4,241,000	3,620,500
Washington	3,228,000	3,114,000
West Virginia	1,432,000	2,216,000
Wisconsin	3,479,000	3,239,500
Wyoming	354,000	1,677,000

By Mr. DURENBERGER:

S. 2941. A bill to require the Director of the Office of Personnel Management to conduct demonstration projects under the Federal employees' health benefits program for the purpose of determining the feasibility and effectiveness of providing voluntary contractual alternatives to the prevailing tort basis for compensating persons for injuries or illness incurred or aggravated as a result of the health care received as patients under employees' health benefits plans; to the Committee on Governmental Affairs.

MALPRACTICE DISPUTE RESOLUTION ACT

● Mr. DURENBERGER. Mr. President, I rise today to introduce the Malpractice Dispute Resolution Act. This legislation would authorize demonstrations within the Federal Employees Health Benefits Program [FEHBP] to test out the feasibility and desirability of voluntary alternative mechanisms for compensation for injuries incurred by patients in the course of medical treatment.

Mr. President, national concern about medical malpractice litigation has again reached a fevered pitch and its effects on access to medical care may soon reach crisis proportions. Legislative measures being offered by State legislatures and Congress do not reflect a consensus on who is at fault or what the ultimate solutions may be.

Many believe that the tort system, as a mechanism for dealing with medical malpractice injuries, may be an important part of the problem. They argue:

First, it is expensive to administer. Less than 40 percent of provider-paid insurance premiums paid for liability coverage of doctors and hospitals go to compensate injured patients. The remainder is consumed by the malpractice resolution system itself, that is by attorneys and insurance companies.

Second, it fails to fairly compensate injured persons. While a few plaintiffs win large awards, they commonly experience a long, drawn out litigation process. And most patients with injuries never even pursue their claims because of the prospects of a protracted legal fight with no assurance of a positive outcome.

Third. It is unreliable as a quality assurance mechanism. It fails to police or penalize poor medical practice. At the same time, the threat of malpractice fosters the practice of wasteful, even potentially dangerous, defensive medicine.

In response to the crises, virtually every State has considered and many have enacted legislation to reform their tort law.

As you recall, Mr. President, when this country experienced an earlier malpractice crisis in the mid 1970's broad tort reforms were instituted. Yet here we are again with skyrocketing insurance premiums, a backlog of cases pending in State courts, and a frightening number of physicians, particularly those in the highest-risk specialties such as obstetrics, who are "going bare" and practicing without malpractice insurance coverage. And some family physicians with obstetric practices have even decided to quit delivering babies altogether. This may severely limit access to necessary health care, especially in rural America.

State tort reform has alleviated some of the immediate problems in the malpractice resolution system. However, it has not given us long term solutions. Alternative approaches to resolving questions of medical liability should be considered as a means to developing longer term answers to our problems. It is important that we begin to examine these approaches now.

In the mid-1970's, fee-for-service health care dominated, and this "cottage industry" type of care, centered on the sole practitioner, allowed for a more generic method of resolving questions of medical liability—the tort system.

But today, new relationships are forming between patients, hospitals, doctors, and health coverage plans. Health Maintenance Organizations and other alternative delivery and financing health care systems are particularly well-suited to testing alternative resolution systems for medical liability because subscribers of health plans arrange with a defined group of doctors and hospitals, in advance of the actual need for care.

The terms and conditions of the provider-patient relationship are thus specified in advance as are the financial requirements of the members. This gives health plans and subscribers an opportunity to make an informed judgment about more than premium costs. It offers a chance to experiment with new arrangements for resolving questions of medical liability. And that is why I have developed S. 2941.

S. 2941 would authorize up to three demonstrations of alternative mechanisms for resolving disputes over medical liability in the Federal Employees Health Benefits Program [FEHBP]. This legislation contemplates two approaches:

First. Voluntary contractual modifications of patients' rights under the existing tort law system.

Second. Compensation systems that replace the tort system entirely (at least for specified injuries) and condition payment to the injured parties on criteria other than provider fault or negligence.

In the summary of S. 2941 which accompanies my statement, examples are given of potential contractual modifications of tort rights as well as an explanation of "no-fault" concepts that the Office of Personnel Management could approve as part of the FEHBP demonstrations authorized by this bill.

Mr. President, the FEHBP is the ideal laboratory for testing the feasibility and desirability of alternative malpractice resolution systems. The Federal Government, as employer, can provide the States with alternative models of malpractice resolutions systems. The bill I am introducing today would do just that. It is an approach that is respectful of States' prerogatives but is also potentially valuable in promoting fundamental change in the approach taken by society to the resolution of medical liability questions.

The FEHBP represents the best of the past and the potential of the future. Since 1960, the FEHBP has been the model for the consumer's role in the financing and delivery of quality medical services. It gave the country the model as well as the experience it needed to move all health plans to consumer choice.

In the future, an alternative method of dealing with occurrences of malpractice could become an integral and important part of a health plan marketed to employees. It is an appropriated step for the Federal Government as an employer to take on the medical liability issue for its workers, those people with whom it shares the cost of health coverage. And it also can allow the Federal Government to demonstrate to the Nation the possibilities for alternative systems to resolve the medical malpractice crisis.

Mr. President, the potential offered by this legislation is great, and I am committed to its debate and passage in the 100th Congress. As is my practice, I introduce it today to allow time for a general discussion of its utility and to seek futher guidance in its development.

I want to acknowledge the assistance I have received on developing this legislative proposal from my staff, especially my former legislative assistant, Chip Kahn, and from Clark Havighurst, of the Duke University Law School, and Arnold Rosoff, associate professor in the Wharton School of the University of Pennsylvania. Their contributions have been invaluable and I look forward to continuing to work with them as this legislation is perfected in the months to come.

I also look forward to hearing from others who are interested in this problem and receiving their comments and suggestions.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD, followed by the bill summary I referred to earlier.

There being no objection, the bill and summary were ordered to be printed in the RECORD, as follows:

S. 2941

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Malpractice Dispute Resolution Act of 1986".

SEC. 2. The purposes of this Act are—

(1) to provide a basis for determining the feasibility and effectiveness of providing, under voluntary contractual arrangements, alternatives to the tort liability system of compensating persons for injuries or illness incurred or aggravated as a result of the health care received as patients under employee health benefits plans;

(2) to provide a basis for determining the practicability of voluntarily implementing alternative substantive rules or procedures for providing compensation for such injuries or illness under health benefits plans offered by carriers participating in the Federal employees' health benefits program;

(3) to provide a basis for comparing the costs and benefits of the tort liability system of providing compensation for such injuries or illness with the costs and benefits of providing compensation for such injuries or illness on a no-fault basis, including a comparison of—

(A) the economic and other costs to society, insurers, health care providers, premium payers, and injured patients;

(B) the effects on the quality of health care; and

(C) the speed and fairness in compensating claimants for such injuries or illness; and

(4) to develop experience and information that are useful to the Federal Government, State governments, private health insurers, malpractice insurers, alternative health care delivery systems, purchasers of employee health benefits, and health care providers in developing and implementing alternative substantive rules or procedures for providing compensation for such injuries or illness.

SEC. 3. (a) In order to accomplish the purposes of this Act, the Director shall, during the 4-year period beginning on January 1, 1988, conduct not less than 1 and not more than 3 demonstration projects under the Federal employees' health benefits program.

(b) Each demonstration project under subsection (a) shall be conducted by a single carrier or a group of carriers, shall be designed to test the feasibility and benefits of one or more innovative systems for providing compensation for injuries or illness described in section 2(1), and shall be subject to the approval of the Director.

SEC. 4. (a) Each person enrolled in a health benefits plan that is contracted for or approved under chapter 89 of title 5, United States Code, and is involved in a demonstration project approved by the Director pursuant to this Act may voluntarily agree, for himself and each other beneficiary covered by his enrollment, that entitlement to receive compensation for injuries or illness incurred or aggravated as a result of health care furnished under the plan shall be determined exclusively under the alternative substantive rules or procedures provided under the demonstration project.

(b) The legal rights of a person subject to an agreement under subsection (a) may not be modified by a health benefits plan involved in a demonstration project under this Act unless the person making such agreement has first been informed of the nature of the alternative substantive rules or procedures to be provided under the project and the rights to be modified. Information on such rules, procedures, and rights shall be given in the manner prescribed by the Director in connection with the approval of the demonstration project.

(c) The rights and obligations under agreements made under subsection (a) are enforceable in any State court that has jurisdiction of the parties and jurisdiction to adjudicate tort or contract claims.

SEC. 5. (a) The Director shall solicit from each carrier offering a health benefits plan contracted for or approved under chapter 89 of title 5, United States Code, proposals for demonstration projects to carry out the purposes of this Act.

(b) Demonstration projects proposed and approved under this Act may include—

(1) binding arbitration or other alternative dispute resolution procedures;

(2) contractual modifications of existing substantive rules governing tort claims, including (A) limitations on recoverable damages, (B) compensation offsets for any accounts received from collateral sources, (C) periodic payment of awards, (D) alterations of the legal standards for determining liability, and (E) specifications of the types of proof or expert testimony admissible to establish negligence; or

(3) compensation for specified injuries or illness on a no-fault basis.

(c) Before approving a demonstration project for providing compensation for injuries or illness on a no-fault basis, the Director shall consider whether the project—

(1) provides compensation for designated events on such basis;

(2) preserves the right of participants in such project to commence civil tort actions for injuries or illness caused by an event other than a designated compensable event;

(3) preserves reasonable direct or indirect incentives for maintaining the quality of care and preventing the occurrence of designated compensable events; and

(4) generally provides financial protection for consumers of health care that is at least comparable, on an actuarial basis, to the protection otherwise provided by the right to pursue civil tort actions for injuries or illness incurred or aggravated as a result of the negligence of a health care provider.

(d) The Director shall require—

(1) that demonstration projects include such provisions as the Director considers necessary to carry out the purposes of this Act and to protect the persons covered by the demonstration projects and the interests of the Federal Government; and

(2) that participating carriers and health care providers furnish the Comptroller General of the United States such information as the Comptroller General considers necessary to evaluate the demonstration projects under section 6 of this Act.

SEC. 6. (a) Not later than December 31, 1991, the Comptroller General of the United States shall submit to Congress, in writing, a report containing the Comptroller General's analysis of the experience under the demonstration projects conducted under this Act.

(b)(1) Except as provided in paragraph (2), the report under subsection (a) shall include any recommendations the Comptroller General considers appropriate, including recommendations on whether—

(A) health benefits plan carriers should be required or permitted under the Federal employees' health benefits program (or any other Federal government health care program) to adopt any of the alternative substantive rules or procedures tested in the demonstration projects;

(B) other public or private health benefits plans should consider incorporating any

such alternative substantive rules or procedures;

(C) any of the alternative substantive rules or procedures should be modified before being made a part of any health benefits plan; and

(D) there should be any additional testing or study of alternative substantive rules or procedures before they are made a part of any health benefits plan.

(2) If the Comptroller General finds that the experience under any demonstration project is inconclusive with respect to any matter described in clauses (A) through (D) of paragraph (1) or is generally inconclusive, the Comptroller General shall state in the report such finding and the reasons for such finding. The Comptroller General is not required to include in the report a recommendation on any matter to which such a finding relates.

(c) The Director shall furnish the Comptroller General any information the Comptroller General considers necessary to carry out this section.

(d) The Comptroller General may not disclose, in the report or otherwise, any information which identifies a claimant under a demonstration project conducted pursuant to this Act.

SEC. 7. (a) There are authorized to be appropriated to the Office of Personnel Management for each of fiscal years 1988, 1989, 1990, 1991, and 1992, such sums as may be necessary to carry out sections 2 through 5 of this Act.

(b) Funds appropriated under the authorization in subsection (a) may be used to meet the expenses of designing, implementing, marketing, and evaluating the alternative rules and procedures demonstrated in a demonstration project under this Act and, in the case of a demonstration of a program providing compensation for injuries or illness on a no-fault basis, may be used to pay any additional insurance premiums necessitated by the demostration project.

SEC. 8. As used in this Act:

(1) The term "Director" means the Director of the Office of Personnel Management.

(2) The term "no-fault" means without regard to negligence.

THE MALPRACTICE DISPUTE RESOLUTION ACT OF 1986

(A Bill to Support Demonstrations of Innovative Medical Injury Compensation and Quality-Assurance Systems)

BACKGROUND

The negligence-oriented tort system has severe shortcomings as a mechanism for dealing with medical injuries:

It is expensive to administer. (Less than 40% of provider-paid insurance premiums ends up in victims' hands, the rest going to insurers and lawyers.)

It fails as a system for fairly compensating injured persons. (Most patients suffering treatment-related injuries receiving nothing, while a few receive much more than their economic loss.)

It is unreliable as a quality-assurance mechanism. (It fails to police much poor medical practice and may foster wasteful defensive medicine rather than reasonable care.)

State tort reforms may help to alleviate these problems, but different, more fundamental approaches may be desirable and should be examined.

Although many in the federal government have felt a need to address the malpractice problem, there has been an understandable reluctance to take action at the federal level. This bill represents an approach that is respectful of the states' prerogatives but potentially valuable in promoting responsible change. It is also in keeping with a federal policy of facilitating and encouraging private initiatives to lower cost and improve quality.

THE CONCEPT

This bill's purpose is to encourage demonstrations of voluntary alternative mechanisms for compensating injuries incurred by patients in the course of medical treatment. Two approaches are contemplated:

Voluntary contractual modifications of patients' rights under the existing tort system;

Compensation systems that displace the tort system entirely (at least for specified injuries) and condition payment on criteria other than provider negligence or fault.

The policy objectives of this federal initiative are to establish the feasibility and desirability of voluntary reforms of tort rights in competing private health plans and to determine the efficacy of no-fault approaches. The initiative should yield experience and data helpful to both the states and the private sector in seeking long-term alternatives to the costly tort system.

The vehicle chosen for the proposed demonstrations is the Federal Employees Health Benefits Program (FEP). The FEP was selected because it gives the federal government two things:

A legitimate purchaser's interest in the malpractice problem;

An ideal laboratory in which to explore possible alternatives.

The FEP is preferable to the Medicare program as a place in which to experiment with tort reforms because, unlike Medicare, it covers a population similar to that affected by the alleged malpractice "crisis." Moreover, Medicare is likely to move further in the direction of offering beneficiaries a menu of competing plans along the lines of the FEP consumer-choice model. Thus, work on improving this model has potential long-term benefits for Medicare and other federal health programs.

SPECIFICS

The bill instructs the Office of Personnel Management (OPM) to conduct up to three demonstrations by FEP-participating plans of innovative approaches to compensation for medical injuries. Because these demonstrations entail modifications of patients' malpractice rights, the bill provides that federal employees will be bound only if they elect the alternative arrangement and if basic standards of disclosure and fairness are met.

Possible contractual modifications of tort rights that might be proposed as demonstrations by FEP plans and approved by OPM under this bill include—

Provision for binding arbitration or some other alternative method of dispute resolution;

Limitation of the amount of tort damages recoverable (e.g., a cap on compensation for noneconomic losses, such as pain and suffering)

Provision for offsetting against awards any amounts received from collateral sources, such as health or disability insurance;

Provision for periodic payment of awards;

A change in the legal standards for determining liability (e.g., a change in the rule requiring adherence to possibly inefficient local custom);

A specification of the types of proof or expert testimony admissible to establish negligence.

That such modifications of consumers' existing tort rights are not necessarily unconscionable is revealed in State legislation imposing one or more such modifications on all consumers as a matter of law. Under the bill, any surrender of tort rights would be voluntary, not compulsory. Moreover, it would almost certainly be accompanied by compensating benefits or price concessions to plan subscribers accepting modifications of their legal rights. The bill declares that contractual waivers of existing rights in any demonstration approved by OPM should be enforceable in state courts.

The bill also authorizes demonstration of no-fault concepts. These demonstrations would also be implemented by private contracts approved by OPM. The bill anticipates that no-fault schemes will take the following form:

The plan agrees (or individual providers agree) to compensate patients fairly (through casualty insurance) for "designated compensable events" without regard to provider negligence or fault.

The consumer waives all other legal rights with respect to such injuries.

The plan remains (or individual providers remain) at risk for poor claims experience so that financial incentives for avoiding compensable outcomes are strengthened, making it reasonable to expect that the quality of outcomes will be improved.

The bill contemplates that a no-fault alternative compensation system, as compared to the tort system, would not be actuarially unfair to the consumer of health services. Thus, the class of injuries to be compensated should be significantly larger than the class of negligently caused injuries currently compensable under the tort system.

EVALUATION

In order to receive a demonstration grant, a private FEP plan would have to undertake to share its experience with the General Accounting Office in order to permit an evaluation of the demonstration. At the end of a demonstration, the GAO will publish, without revealing actual injury and compensation experience, the details of the program and its conclusions concerning whether the program should be—

Considered for mandatory adoption by the states or in any federal program;

Considered for voluntary adoption by private health plans;

Modified in certain ways before adoption;

Studied further;

Classified a failure.

FUNDS

The bill authorizes such appropriations as necessary for four years, to be used for designing, implementing, marketing, and evaluating alternative compensation systems and for supplemental insurance premiums necessitated by a no-fault compensation system.●

By Mr. BRADLEY (for himself, Mr. LAUTENBERG, Mr. MOYNIHAN, and Mr. D'AMATO):

S. 2942. A bill to authorize and direct the Secretary of the Interior to retain the American Museum of Immigration at the base of the Statue of Liberty National Monument; to the Committee on Energy and Natural Resources.

AMERICAN MUSEUM OF IMMIGRATION

Mr. BRADLEY. Mr. President, on October 28, the United States will celebrate the centennial anniversary of the dedication of the Statue of Liberty. It was 100 years ago that the statue was unveiled before President Grover Cleveland at the original dedication ceremony. A gift from our French neighbors, the statue has come to represent the worldwide recognition of our quest for freedom and the hopes of immigrants, past and future.

At the base of the statue stands a small museum, the American Museum of Immigration. The museum documents and celebrates the immigrant's experience in America. This museum has been supported by thousands of private donors, who understand the value and need to commemorate our immigrant heritage. Our Government, by situating the museum at the base of the statue, has also signaled its convictions and implicit understanding of the special status of immigrants in the American social fabric.

The museum has been located at the base of the Statue of Liberty since its inception in 1956. At one time, the National Park Service considered relocating the museum, but concluded that the current site is an appropriate one for the museum. In an agreement signed with museum representatives on September 5, 1985, the Park Service pledged to maintain the museum at the current site and to improve its facilities.

This bill has a simple purpose: To ratify that signed agreement and to ensure the continued maintenance of the American Museum of Immigration at the base of the Statue of Liberty. I am pleased to be joined by Senators LAUTENBERG, MOYNIHAN, and D'AMATO in introducing this legislation. I ask for unanimous consent that a copy of the agreement between the Park Service and the museum representative be printed in the RECORD. I also ask for unanimous consent that the bill be printed in the RECORD.

There is only a little time left in this Congress. As a result, it is unlikely that any action will be taken this year on this bill. However, my colleagues and I are committed to reintroduce this legislation next session and to see it through to its final passage.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2942

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds that—

(1) in 1986 the United States celebrates the centennial anniversary of the Statue of Liberty National Monument;

(2) the Joint Resolution of August 3, 1956, (70 Stat. 956; Public Law 936) declares that the presence of the American Museum of Immigration at the base of the Statue of Liberty National Monument enhances the significance of such monument;

(3) a substantial amount of the funding used for the American Museum of Immigration was contributed by private donors, many of whom object to proposals to move the museum to another site;

(4) from both an historic and symbolic standpoint, the Statue of Liberty National Monument remains the most appropriate location for the American Museum of Immigration;

(5) an agreement, signed on September 5, 1985, by official representatives from the Department of the Interior and the American Museum of Immigration, affirms a commitment to maintain the American Museum of Immigration at the base of the Statue of Liberty;

(6) additional space for the American Museum of Immigration, should it be needed, should be located on Ellis Island which is under renovation; and

(7) the American Museum of Immigration at the Statue of Liberty should be rehabilitated and should be maintained.

SEC. 2. The Secretary of the Interior is authorized and directed to retain the American Museum of Immigration at the base of the Statue of Liberty National Monument.

U.S. DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
Boston, MA, September 5, 1985.

The AMERICAN MUSEUM OF IMMIGRATION,
New York, NY.

The following terms for a new American Museum of Immigration exhibit in the Statue of Liberty are agreed upon:

that an agreement on a new exhibit shall be in keeping with the existing charter of the American Museum of Immigration (AMI) and the existing agreement between AMI, Inc. and the United States Department of the Interior;

that consistent with the charter and agreement, the predominant theme of the new exhibit on level 2P will be the history of the immigrant experience and how that experience and the immigrants themselves contributed to and became part of the fabric of America, and, the new exhibit will also deal, within the context of that immigrant experience, with the symbolism of the Statue of Liberty;

that the existing AMI exhibit will be replaced with a new AMI exhibit on the 2P level of the Statue of Liberty's base at a cost not to exceed $3.5 million including interpretive and architectural design and modifications;

that the new Statue museum on level 1P will be part of the AMI and that the structural flow and the basic concept for the American Museum of Immigration on both levels 1P and 2P will be complementary;

that the exhibits on 1P and 2P will be known as the American Museum of Immigration;

that the Liberty/Ellis Island Collaborative (LEIC), the National Park Service's consultants, and AMI Inc. will discuss concepts, exchange ideas, and give consideration to each other's views regarding the new exhibit on level 2P during the initial phase of basic concept development.

that LEIC's design and plans for the fabrication and the installation will be reviewed with AMI Inc. through participation in the review process required by the NPS work orders for each subsequent stage of the project;

that the final responsibility for the planning, design, fabrication and installation of the new exhibit will be delegated to LEIC under the direction of the parties to this agreement;

that the aforementioned efforts will be funded by The Statue of Liberty/Ellis Island Foundation, Inc. (SOLEIF, Inc.), which has allocated $3.5 million for this purpose, and that the Foundation will fund each work directive as requested by the NPS;

that the schedule for constructing the new American Museum of Immigration will begin on August 1, 1986 and will be completed on or before the following schedule:

August 1, 1986—LEIC begins preparation of basic concept.

May 1, 1987 (or before)—Basic concept completed. Architectural work on level 2P begins.

November 1, 1987 (or before)—Installation of new exhibit begins.

March 1, 1988 (or before)—Opening of AMI on level 2P. Construction on the new AMI will begin May 1, 1987 or when Kodak is moved to Ellis Island, whichever is sooner.

Review session based upon the above schedule will be agreed to by the NPS, SOLEIF, Inc. and AMI, Inc. within 30 days after LEIC submits designs and plans.

that a special three-member review panel will be established to consider and resolve differences of opinion in the event of disagreement at the review sessions and that the panel will meet within three days of each of the review sessions;

that resolution will be by unanimous consent at the time of the panel meetings, and each party agrees that it will not unreasonably withhold its consent;

that the members of this panel will be Herbert S. Cables, Jr., Regional Director, North Atlantic Region, National Park Service or its designee; Robert F. Cahill, Executive Vice President, The Statue of Liberty/Ellis Island Foundation, Inc. or its designee; and an AMI, Inc. representative, and that members of the panel will be empowered by their respective organizations to finally resolve any differences at these meetings;

that the present AMI on level 2P will remain open from July 1986 until physical work on 2P begins and that it will be repainted and recarpeted in time for the July 1986 celebration. The cost of refurbishing will be paid by SOLEIF, Inc.

Agreed to:

For The National Park Service
HERBERT S. CABLES, JR.,
Director, North Atlantic Region.

For The Statue of Liberty/Ellis Island Foundation
ROBERT F. CAHILL,
Executive Vice President.

For the American Museum of Immigration, Inc.
ALFRED H. HOROWITZ,
Chairman, Executive Committee.

● Mr. LAUTENBERG. Mr. President, I am pleased to join my colleague from New Jersey, Senator BRADLEY, and Senators MOYNIHAN and D'AMATO from New York in introducing this bill.

This legislation addresses the renovation of the American Museum of Immigration and the continued location of the museum at its present site. The American Museum of Immigration commemorates the thousands of new immigrants who passed through Ellis Island on their way to begin new

lives in a new land. Since its incorporation in 1972, over 800,000 people have visited the museum each year.

It is fitting that the museum is located in the base of the Statue of Liberty, our greatest symbol of the freedom and opportunity of America. Significant restoration of the museum's exhibit area has enhanced its display capabilities. Among the exhibits is a continuing display on the symbolism of the Statue of Liberty throughout the world. This is but one example of how the museum serves to preserve the rich heritage of the immigrants who arrived on Ellis Island. There has been some discussion of moving the museum to another site. I do not support this position. From an historic and symbolic viewpoint, it is appropriate that the museum remain in the base of the statue. This bill upholds this position.

Both of my parents came to this country through Ellis Island. Serving as a trustee of the American Museum of Immigration has deep personal meaning to me. I am pleased to join my colleagues in sponsoring legislation that will maintain and enhance the museum at its current location.●

● Mr. MOYNIHAN. Mr. President, I rise to join my distinguished colleague from New Jersey in urging the Senate to express its desire that the American Museum of Immigration be kept in its current location at the base of the Statue of Liberty.

This year marks the centennial anniversary of the Statue of Liberty National Monument. On July 4 we celebrated this happy event with great fanfare. An important part of the statue's significance, indeed a place for the keeping of tangible records of the history that the statue itself is a symbol of, is the American Museum of Immigration.

In the past several years the future of the museum has been in some doubt. The National Park Service has on several occasions expressed a desire to move the museum to Ellis Island, away from its symbolic proximity to Lady Liberty.

To remove any doubts as to the proper location of the museum, this piece of legislation expresses the sense of the Senate that the Department of the Interior should maintain the museum in its current site at the base of the statue, and should rehabilitate the museum as necessary to keep it as an important and vital part of the national monument's surroundings.

On August 3, 1956 the Congress acted to declare that the museum, in its site at the base of the Statue of Liberty, enhance the significance of the statue. Much of the funding for the museum is privately contributed, and many of the museum's financial supporters object to any plans to move it to any other site. The Senate can act today to reaffirm a longstanding congressional position and to recognize the concerns of the museum's supporters, by stating clearly that it wants the museum to be kept in its present location.

I urge my colleagues to join my friend from New Jersey and me in support of this measure and to express with us the desire of the Senate that the symbolic and historic legacies of the immigrations story be kept together now and in the future.●

By Mr. HATCH (for himself and Mr. LEAHY):

S. 2944. A bill to modify the application of the antitrust laws to encourage the licensing and other use of certain intellectual property; to the Committee on the Judiciary.

INTELLECTUAL PROPERTY ANTITRUST PROTECTION ACT

● Mr. HATCH. Mr. President, I am pleased today to join with Senator LEAHY in introducing legislation which will improve U.S. competitiveness and benefit U.S. consumers by promoting technological innovation. This legislation is a necessary element of our efforts to provide U.S. companies the environment they need to stay competitive in world markets and is a key part of the administration's intellectual property initiatives. Companion legislation has already been introduced in the House of Representatives by Representative FISH, ranking member of the House Judiciary Committee.

The proposed legislation would extend the positive step taken 2 years ago in the National Cooperative Research Act by applying the licensing provisions contained in that act to all agreements to convey intellectual property rights, whether or not the property is created in a joint research effort. The legislation would require that such agreements be evaluated for antitrust purposes upon consideration of all relevant economic factors, including their procompetitive benefits. Treble damage recoveries would also be eliminated. The legislation would allow all intellectual property, not just jointly created property, to be developed and marketed in an efficient and procompetitive manner.

The requirement that agreements to convey intellectual property rights be evaluated on the basis of their reasonableness is a key part of the administration's intellectual property initiatives, proposed earlier this year. We have already considered as part of the trade package the portion of these proposals protecting intellectual property, including process patents, from unfair import competition. These trade-related intellectual property proposals enjoyed bipartisan support, and will likely be included in the trade package when final action on it takes place in the next Congress. The legislation I am introducing today would move forward with the key remaining element of the administration's package.

It is important that we move forward quickly to remove unnecessary impediments to the development and marketing of new technologies. Some recent judicial decisions have created uncertainty in the high-technology community by invalidating licensing practices which do not have anticompetitive consequences. By not considering all competitive effects of agreements involving intellectual property rights, such decisions subject U.S. companies to possible treble damage liability for normal competitive practices which do not harm competition. Such decisions have the effect of discouraging technological innovation at the very time it is of great importance to U.S. competitiveness that it be promoted. The proposed legislation would send a reliable signal to the courts and the business community that would encourage, rather than discourage, technological innovation.

Mr. President, we need to continue the task of insuring that the antitrust laws and intellectual property laws do not work at cross-purposes, harming U.S. competitiveness. The legislation we are introducing today would lessen this tension by continuing to ban practices shown to be anticompetitive under an analysis of all competitive conditions. But importantly, this legislation would prevent courts from invalidating practices which do not have anticompetitive consequences, and which in fact are procompetitive and encourage the development of intellectual property. This clarification of our antitrust laws will help American high-technology companies to compete effectively in the highly competitive international marketplace. I am therefore pleased to be offering this important legislation with Senator LEAHY today and hope that its introduction will lead to its early consideration in the 100th Congress.●

● Mr. LEAHY. Mr. President, American brainpower has always been one of our most important resources. In the world of ideas, it is our most important resource.

Today I am joining Senator HATCH to introduce the Intellectual Property Antitrust Protection Act of 1986. The purpose of this legislation is to promote competition in the international market of ideas. The purpose of introducing it today is to encourage our best legal minds and experts in the fields of antitrust and intellectual property to think about this legislation and ways in which it can be improved. That way, we can open the 100th Congress with this legislation at the top of our legislative agenda.

Under this proposal, a rule of reason standard would be applied to agreements to convey rights to use, practice or sublicense patented inventions,

rights to use or sublicense trade secrets, or rights in a copyrighted work or mask work. Such agreements to convey intellectual property rights would not be deemed illegal per se under the antitrust laws. Instead, under this rule of reason standard, courts would be required to analyze such agreements on the basis of their actual effects on competition, considering all competitive factors relevant to the licensing, including its procompetitive benefits. This proposal also eliminates treble damage recoveries in actions involving such licensing agreements.

It is designated to strengthen the ability of U.S. companies to compete in international trade, to boost manufacturing capabilities, and to allow our American companies to develop efficient marketing strategies while assuring the quality and reliability of their products for the American consumer. At the same time, it preserves antitrust remedies for those agreements which actually harm competition.

Mr. President, I believe in strong antitrust enforcement. A key part of maintaining strong antitrust enforcement in this country is recognizing that when our antitrust laws begin to operate against competition we need to modify them to produce good economic and social results and ultimately to promote U.S. competition in world markets.

This proposal represents one more step in our effort to establish and implement policies which help American companies in international competition. In order to improve the economic competitiveness of American companies in world markets, we must ensure that any of our laws which unnecessarily discourage research and development and innovation in high technology are modified. As we move into the 21st century, we in Congress have a duty to enhance incentives for the creation of new technologies and new innovations.

This proposal does that by applying provisions similar to those contained in the National Cooperative Research Act to the licensing of all intellectual property. Providing more freedom to license will be particularly helpful to small companies, individual inventors and small, specialized research operations. Those small operation are at the heart of our future development in the high-technology field, but they do not always have the resources to develop and market inventions on their own. This legislation will enhance the ability of those companies to enter into arrangements which preserve their right to a full return on their investment in developing their ideas. It will also promote efficient distribution of those products.

Mr. President, Congress must meet the challenge to respond to the growing need to support American technology in international markets. We need to do so without abrogating the fundamental principles of our antitrust laws.

I believe this proposal does that, and I want to get it on the table now so that all interested parties can study it. We can then open the 100th Congress with this effort to improve competition well underway.

One specific question on which I welcome comments is: Should this legislation set out qualifications or limitations before its detrebling provisions apply, I hope we can begin to develop answers to this and other questions before hearings are held early in the 100th Congress. I intend to continue to work toward that end with Senator HATCH and Congressman FISH who has introduced similar legislation in the House.●

By Mr. HEINZ:

S. 2943. A bill to restrict certain U.S. contributions to international organizations until certain actions to investigate abuses of the United Nations system are undertaken by the United Nations Secretary General; to the Committee on Foreign Relations.

UNITED NATIONS LEGISLATION

Mr. HEINZ. Mr. President, the United Nations, to the dismay of U.N. supporters like myself, has lost credibility in the United States for several reasons. First, the United States and the West are almost always outvoted by a Third World majority that lines up with the Soviet bloc on many issues. That may be improving, but in any case there is little we can do to change it.

There is another, crucial reason for the erosion of American support for the United Nations. That is the neglect and abuse of the organization itself. Waste, fiscal irresponsibility, and worst of all espionage. The perversion of the U.N. organization by the Soviet bloc, which uses it for espionage against the United States and the West, is intolerable. And we can do something about that.

Congress has already proven that we can get the United Nations to reform itself. Senator KASSEBAUM'S amendment of last year which reduced U.S. contributions to the United Nations until budgetary reform was underway, is in effect this year. And already there is a package of proposals, drawn up by the so-called Group of 18, before the General Assembly for approval.

The aim of my bill is simple—to restore the credibility of the United Nations. To start the cleanup to remove the abuses that have destroyed American support for the organization we helped create. The legislation would withhold 50 percent of our assessed contribution to the U.N. budget until the U.N. Secretary General investigates the abuses of the U.N. Charter that have made a mockery of the Secretariat's independence.

My bill also gives the President something we all know he needs in dealing with the Soviets—a big stick. The Soviets are the worst offenders of the abuses I cite in my amendment, abuses that underlie their use of the United Nations Secretariat for espionage against the United States. The Soviets also have the political clout to block a cleanup at the United Nations. Giving the United States Government something to wield in our talks with the Soviets, in the form of real pressure to cleanup the United Nations, is the best kind of support the Congress can provide.

During debate on the continuing resolution, I offered an amendment similiar to this legislation. That amendment would have restricted our U.N. contribution until the Secretary General undertook his investigation of abuses in the Secretariat. The substance of my earlier amendment never was voted because of procedural considerations. But I think this crucial issue must be addressed.

Some may question the legal basis for withholding our U.N. contributions. But there is no question about our right to withhold, including our right to condition our assessed contributions on specific U.N. actions.

The United States has regularly bailed out the United Nations when it was in financial trouble. We have no binding obligation to bail them out when others withhold without penalty, and when they use some of our contribution to spy against us.

Others may say we have no jurisdiction over the employees of the United Nations—Soviet or otherwise. That is irrelevant to my bill. We do have jurisdiction over U.S. Government expenditures, and we do have the power to tell the U.N. Secretary General that he has to enforce his own rules if he wants the United States to continue supporting the United Nations.

The question before the Senate is not a legal one. It is whether to send the Soviets the strongest possible signal that the American taxpayer will no longer help pay for Soviet espionage, that we will no longer tolerate the wholesale Soviet bloc assault on the integrity of the United Nations. The question is whether to send the Secretary General a clear signal of American seriousness about cleaning up the United Nations, whether to continue financing the relentless Soviet war of espionage against the United States. That's a clear choice for me. I urge my colleagues to make the clear choice and support my bill.

Mr. President, I ask unanimous consent that the full text of my bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2943

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That fifty percent of the funds made available for the Fiscal Year 1987 by any provision of law to meet the obligations of the United States for assessed contributions to the United Nations and its specialized agencies may not be obligated until the President certifies to the Congress that the Secretary General of the United Nations has undertaken an investigation examining—

(1) the use of salary remission arrangements whereunder the nationals of member states serving as employees of the United Nations Secretariat or any of its specialized agencies are required to turn over their salaries to their national governments and retain only a portion of the salary paid to them by the United Nations;

(2) the excessive use of secondment by member states whereunder nationals of the member states serving as employees of the United Nations Secretariat or the specialized agencies are seconded to such employment on fixed-term contracts and not allowed to become regular career employees of the United Nations, with a view to implementing the recommendations of the Group of 18 with respect to limits on the use of secondment; and

(3) the blatant control of nationals of member states serving as employees of the United Nations Secretariat or the specialized agencies through regular supervision, consultation, and evaluation of such nationals of member states by their permanent missions to the United Nations or to the specialized agencies of the United Nations.

By Mr. LAUTENBERG (for himself, Mr. SIMON) Mr. CRANSTON, Mr. MOYNIHAN, Mr. DODD, Mr. BRADLEY, Mr. METZENBAUM, and Mr. KERRY):

S. 2945. A bill to provide for rehiring certain former air traffic controllers; to the Committee on Commerce, Science, and Transportation.

REHIRING OF CERTAIN AIR TRAFFIC CONTROLLERS

● Mr. LAUTENBERG. Mr. President, today I am introducing legislation which would allow for the rehiring of air traffic controllers fired in 1981. I have long supported the selective rehiring of some of those released in 1981 in the interest of enhancing aviation safety and reducing flight delays which are plaguing the major airports of our country. Newark International Airport in New Jersey, unfortunately, holds the national record for flight delays.

The House and Senate conferees from the respective Subcommittee on Transportation Appropriations, meeting on the continuing resolution, agreed to include in the conference report a provision allowing for selective rehiring. Earlier this year, the House narrowly defeated an amendment to the transportation appropriations bill to require rehiring. Clearly, the notion that experienced air traffic controllers be brought back into the air traffic control system as rapidly as possible has gained considerable support over the last year.

Mr. President, the controller rehiring provision was not included in the final conference report on the continuing resolution. The full conference defeated the provision after the White House indicated that, should the provision be included, the President would veto the continuing resolution. I would note that the White House made that indication even though the provision was permissive and not mandatory.

Mr. President, the time for controller rehiring will come. I see no other way for the FAA to meet its own goals to increase experience levels in the controller work force. The President and the Secretary of Transportation might not want this authority to rehire former controllers this year. They might well conclude that they need it next year.

In the continuing resolution, the conferees have included a provision setting minimum progress levels for full performance level controllers at towers and centers around the country. The FAA has been put on notice. Either it meets these targets or it will face the rehiring issue again.

Mr. President, I am dismayed at the position on controller rehiring taken by the administration. It is time for all of us in the Congress, at DOT and the FAA, and at the White House, to face facts. We do not have sufficient experienced air traffic controllers. We are not making sufficient progress toward getting more experienced controllers. Changes in Federal tax and retirement policy will make that task harder. The status quo is not working and it is time for a change.

I want to be sure that controller rehiring is on the congressional agenda when the 100th Congress convenes in January. Therefore, I am today introducing legislation, which I will reintroduce in January, to allow for the selective rehiring of former controllers on a case-by-case basis. The legislation simply removes the bar against rehiring former controllers and specifies that the Office of Personnel Management will rule on the suitability of former controllers for Federal employment.

This bill will make clear to the administration that it must relinquish its adamant, short-sighted opposition to one option that can ensure that our skies are kept safe and our airlines are allowed to fly without excessive delays and inconvenience to the traveling public.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2945

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That air traffic controllers whose appointments were terminated on account of the strike of air traffic controllers which began on or about August 3, 1981, shall not, as a class, be considered unsuitable for appointment or reinstatement in the Federal Aviation Administration. Determinations of suitability for appointment or reinstatement to any such position shall be made on a case-by-case basis by the Office of Personnel Management in acordance with part 731 of title 5 of the Code of Federal Regulations (as in effect on June 1, 1986).●

By Mr. GLENN:

S. 2946. A bill to permit national banks to buy and sell platinum; to the Committee on Banking, Housing, and Urban Affairs.

PLATINUM TRADING LEGISLATION

● Mr. GLENN. Mr. President, my bill would insert the word "platinum" in the section in the National Bank Act that allows banks to trade in bullion. Quite simply, this would allow American banks to trade in platinum as well as gold and silver.

Under current law, American banks are locked out of the platinum market because the National Bank Act of 1863 allows banks to trade in bullion—which refers only to gold and silver. When the language was written over 100 hundred years ago, the word "bullion" in the act fairly represented the extent of trade in precious metals. Then, the platinum group metals had few of their modern uses and were rarely traded. Today, however, the term "bullion" is needlessly restrictive.

I believe in the value of free competition, and that alone is reason enough to adopt this amendment. No reason exists to deny banks this opportunity. The bank industry today is far more sophisticated than it was in 1863 when the current law was written, and banks are now capable of developing top-flight trading departments, if they have not done so already. If banks have the expertise and the interest and a market exists, then our laws should reflect the realities to today's banking industry and trading market.

The market for platinum certainly exists and could well afford more competition among brokers. Trading in platinum has increased dramatically. Industrial users here in the United States consume about 1 million ounces a year. And recently, the New York Times reported that investment demand has doubled, if not tripled, as individual investors have discovered platinum as an alternative investment to gold and silver. Today's financial market is rapidly changing with banks and other institutions finding themselves competing for the same customers over the same services. The Congress should recognize this reality and change its laws accordingly.

One significant benefit then of allowing American banks to trade in the platinum group is improved market efficiency. The increased competition among traders would result in better services, lower commissions and more innovative ways to provide financing for platinum customers.

In addition, the entry of American banks will help to make the metals considerably more accessible to all American customers. For example, domestic demand for platinum far exceeds domestic production. Yet, the prospects for increased domestic production are good: while the only known source of platinum in the Western Hemisphere is in Montana, the geological formation that produces Russia's output of platinum runs across the Bering Sea, raising the possibility that platinum may be discovered in Alaska. There might also be deposits in the waters off Hawaii and Florida. Banks may help develop the domestic market by offering production-cycle financing, purchase and resale of production as well as forward hedging and platinum-based loans. Moreover, banks will also be able to engage in platinum recycling and become major distributors of its products.

I am aware that some concerns exist over the risks involved in permitting banks to trade in precious metals, but I believe that those risks have been exaggerated. First, I think it deserves repeating that banks today are sophisticated institutions. Yet, we must also not forget that banks have been trading in gold and silver in this country for over 100 years. This activity has always carried with it its own inherent risks, and if history is any measure, the banks have successfully met the challenge and prudently engaged in bullion trading. I should also point out that platinum is not completely new to banks. Some banks already offer platinum leases to certain customers and lend against platinum collateral. Also, some banks are approved platinum depositories for various future exchanges trading in platinum. And overseas, banks such as Credit Suisse, Swiss Bank, and Deutsche Bank have long been active traders in the platinum market. American banks should be treated no differently.

Mr. President, it is time to put a stop to this historical and legal bias against banks and rid this anachronism from our laws.●

By Mr. MURKOWSKI:

S. 2947. A bill to provide domestic observers on U.S. fishing vessels; to the Committee on Commerce, Science, and Transportation.

DOMESTIC OBSERVERS ON U.S. FISHING VESSELS

● Mr. MURKOWSKI. Mr. President, I rise today to introduce a bill which will facilitate the placing of observers on domestic fishing vessels for the collection of information necessary for the conservation and management of our Nation's fishery resources. Since passage of the Magnuson Fishery Conservation and Management Act [MFCMA] in 1976, observers have been placed on foreign fishing operations within our country's 200-mile exclusive economic zone [EEZ]. Statistics gathered from the monitoring of foreign fleets have been critical to fishery managers as they set appropriate harvest levels. However, as directed foreign fishing decreases, information on the condition of some fish stocks has become more difficult to come by.

I have long supported the development of our domestic fishing industry and the full Americanization of the fishery resources within our EEZ. Representatives of the fishing industry in Alaska have expressed to me the need for observer coverage of a portion of our domestic fleet to assure the availability of data of U.S. fishery resources. The MFCMA currently provides authority for scientific observers to be placed on domestic vessels. In fact, the Gulf of Alaska fishery management plan adopted pursuant to the MFCMA provides authority for observers on domestic vessels. However, there is some questions as to how an observer program can be funded because the MFCMA prohibits the imposition of fees for fishing permits above the administrative cost incurred in issuing the permits.

Before a successful observer program can be implemented, the issue of funding must be resolved. The legislation I am offering today would amend the MFCMA to clarify that fees may be charged to fund an observer program. The fees could be collected and used only for the observer program.

The continued availability of accurate data on our fishery resources is vital for sound conservation and management. I offer this legislation today in an effort to help clarify the observer issue and assure that fishery managers have the information necessary to make wise resource decisions.

Mr. President, I ask unanimous consent that a copy of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2947

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, Amend § 303(b), 16 U.S.C. § 1853(b), by renumbering paragraphs (7) and (8) as paragraphs (8) and (9), and by adding a new paragraph (7), to read as follows:

"(7) establish programs for the collection of information necessary for the conservation and management of any fishery, including requirements that observers be placed on fishing vessels that are engaged in a fishery, with the costs of such programs to be borne equitably by participants in the fishery;"●

By Mr. GLENN:

S. 2949. A bill to authorize the Secretary of Health and Human Services to make grants to States to support family caregivers information and education demonstration programs; to the Committee on Labor and Human Resources.

FAMILY CAREGIVERS ADVOCACY RESOURCE AND EDUCATION DEMONSTRATION PROGRAM ACT OF 1986

● Mr. GLENN. Mr. President, this legislation, the State Family Caregivers Advocacy, Resource, and Education [Family CARE] Demonstration Act of 1986, would establish a 3-year national demonstration program, with five to eight Statewide sites, to provide a central source of information regarding services and programs available to assist those providing care to their frail elderly and disabled family members. While the services and information provided by Family CARE would be aimed primarily at those caring for the elderly, efforts to benefit those caring for younger, chronically disabled family members would be encouraged.

BACKGROUND

It is estimated that some 80 percent of all personal care for the frail elderly is provided by family members, not by the Government or other programs. The person providing this care is usually a woman—a wife, daughter, or daughter-in-law—and is frequently older herself. She is the "woman in the middle," caring for the frail family member as well as her own household, often while holding a full-time job. These multiple responsibilities—usually without respite or other outside support—create an extremely stressful situation that leaves the caregiver emotionally and physically exhausted.

There are a variety of services available that support and assist family caregivers. However, many family caregivers do not utilize them, either because they lack information as to what services are available, or they are reluctant to ask for assistance. This may lead to the premature use of nursing homes, and in turn, unnecessary Medicaid expenditures. Often a caregiver places a loved one in a nursing home because the caregiver is too exhausted to continue, not because of a decline in the patient's condition.

There is a documented need for support for caregivers. At an Aging Committee hearing last November in Cincinnati, Mrs. Bernadette Tatman testified that as the person solely responsible for caring for her frail 88-year-old mother and retarded brother, there was a 6- to 8-month period of time when she was not able to leave her house.

PROVISIONS

Establishes Family CARE, a central source—clearinghouse—of information

and referral for family caregivers, which would:

Emphasize coordination of services, community education, and outreach and support for caregivers; have a toll-free telephone number and a written resource directory available at a nominal fee to provide information on respite care, adult day care, home medical services, family support and advocacy groups, education and training, elder abuse hotlines, and so forth; build public awareness of the efforts of family caregivers through community education efforts, such as public service announcements and workshops.

Requires careful evaluation of the various demonstrations to provide a new source of information and to help focus future efforts to assist family caregivers. The evaluation would address such issues as:

The success of Family CARE in linking caregivers with key services and the impact on relieving caregivers' stress; the prevention of premature or unnecessary institutionalization; the impact on development or expansion of key services, including in private sector services.

COST

The total cost of this project would be approximately $5 million over a 3-year period, and it would be administered by the Department of Health and Human Services. The funds would be awarded competitively, with special priority given to those States with varying population characteristics—for example, one State with a predominately rural population, one with predominately urban population, another with a large ethnic population, et cetera.

OVERVIEW

This bill is consistent with previous efforts to recognize and support the efforts of family caregivers. It is also consistent with the administration's emphasis on highlighting and strengthening the family, and encouraging private sector initiatives to combat social problems. I anticipate broad-based support from senior citizen and family support groups. I invite my colleagues to join me in supporting this bill.●

ADDITIONAL SPONSORS

S. 2101

At the request of Mr. HEINZ, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 2101, a bill to recognize the organization known as "Veterans of the Vietnam War, Inc."

S. 2115

At the request of Mr. THURMOND, the name of the Senator from Louisiana [Mr. LONG] was added as a cosponsor of S. 2115, a bill to recognize the organization known as the 82d Airborne Division Association, Inc.

S. 2588

At the request of Mr. DOMENICI, the name of the Senator from Maine [Mr. MITCHELL] was added as a cosponsor of S. 2588, a bill to provide permanent authorization for White House Conferences on Small Business.

S. 2651

At the request of Mr. DECONCINI, the names of the Senator from Louisiana [Mr. LONG], the Senator from Iowa [Mr. HARKIN], and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors of S. 2651, a bill to reduce Federal libility for the relocation of certain Navajo Indians through the exchange of certain lands between the Hope and Navajo Indian Tribes, and for other purposes.

S. 2734

At the request of Mr. MATHIAS, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 2734, a bill to amend chapter 83 of title 5, United States Code, to provide civil service retirement credit for service performed under the Railroad Retirement Act, and for other purposes.

S. 2808

At the request of Mr. GORE, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of S. 2808, a bill to amend title XI of the Social Security Act to require hospitals participating in the medicare and medicaid programs to establish protocols for organ procurement, to establish standards for organ procurement agencies, and for other purposes.

S. 2861

At the request of Mr. GRASSLEY, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 2861, a bill to provide for research, education, and information dissemination concerning Alzheimer's disease and related dementias.

S. 2902

At the request of Mr. WALLOP, the name of the Senator from Colorado [Mr. ARMSTRONG] was added as a cosponsor of S. 2902, a bill entitled the "Federal Land Exchange Facilitation Act of 1986."

S. 2912

At the request of Mr. GLENN, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 2912, a bill to amend the Older Americans Act of 1965 to strengthen and improve the provisions relating to State long-term care ombudsman programs, and for other purposes.

S. 2916

At the request of Mr. BOSCHWITZ, the name of the Senator from Nevada [Mr. HECHT] was added as a cosponsor of S. 2916, a bill to amend the Internal Revenue Code of 1986 to retain a capital gains tax differential, and for other purposes.

SENATE JOINT RESOLUTION 112

At the request of Mr. PELL, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of Senate Joint Resolution 112, a joint resolution to authorize and request the President to call a White House Conference on Library and Information Services to be held not later than 1989, and for other purposes.

SENATE JOINT RESOLUTION 403

At the request of Mr. ROTH, the names of the Senator from Rhode Island [Mr. CHAFEE] the Senator from Virginia [Mr. WARNER], the Senator from New Jersey [Mr. BRADLEY], the Senator from Virginia [Mr. TRIBLE], and the Senator from Florida [Mr. CHILES] were added as cosponsors of Senate Joint Resolution 403, a joint resolution to designate 1988 as the "National Year of Friendship With Finland."

SENATE JOINT RESOLUTION 423

At the request of Mr. KERRY, the names of the Senator from Idaho [Mr. MCCLURE], the Senator from Utah [Mr. HATCH], the Senator from Maine [Mr. MITCHELL], the Senator from Missouri [Mr. EAGLETON], the Senator from Idaho [Mr. SYMMS], the Senator from Florida [Mrs. HAWKINS], and the Senator from Georgia [Mr. MATTINGLY] were added as cosponsors of Senate Joint Resolution 423, a joint resolution to designate the week beginning January 19, 1987 as "Shays' Rebellion Week" and Sunday, January 25, 1987, as "Shays Rebellion Day."

SENATE CONCURRENT RESOLUTION 147

At the request of Mr. CRANSTON, the name of the Senator from New Jersey [Mr. BRADLEY] was added as a cosponsor of Senate Concurrent Resolution 147, a concurrent resolution to express the sense of the Congress that the monkeys known as the Silver Spring Monkeys should be transferred from the National Institutes of Health to the custody of Primarily Primates, Inc., animal sanctuary in San Antonio, TX.

SENATE CONCURRENT RESOLUTION 167

At the request of Mr. KERRY, the names of the Senator from Michigan [Mr. RIEGLE], and the Senator from Michigan [Mr. LEVIN] were added as cosponsors of Senate Concurrent Resolution 167, a concurrent resolution to express the sense of Congress regarding efficient and compassionate management of the Social Security Disability Insurance [SSDI] Program.

SENATE RESOLUTION 513—ENCOURAGING THE DEVELOPMENT OF DOMESTIC SOURCES OF STRATEGIC AND CRITICAL MATERIALS

Mr. MURKOWSKI submitted the following resolution; which was re-

ferred to the Committee on Armed Services:

S. RES. 513

Whereas the Comprehensive Anti-Apartheid Act of 1986 sent a clear signal that the Congress is ready to prohibit the importation of strategic minerals from South Africa should the apartheid situation not improve in the next year;

Whereas the United States imports from South Africa a significant percentage of at least six minerals critical to U.S. security;

Whereas the United States continues to increase its dependence upon foreign sources of strategic minerals;

Whereas the United States imports over fifty percent of its commerical supplies for over two dozen highly important strategic minerals;

Whereas an increasing amount of strategic minerals is imported in its processed form, thus driving the U.S. commerical processing industry toward technological obsolescence;

Whereas the National Critical Materials Act of 1984 sets up the National Critical Materials Council to establish a national Federal program for advanced materials research and technology;

Whereas the Strategic and Critical Materials Stock Piling Revision Act of 1979 directs that the purposes of the National Defense Stockpile is to serve the interest of national defense only and the National Defense Stockpile is not to be used for economic or budgegtary purposes;

Whereas the Strategic and Critical Materials Stock Piling Revision Act further directs that the quantities of materials stockpiled should be sufficient to sustain the United States for a period of not less than three years in the event of a national emergency;

Whereas prior to the passage of the Anti-Apartheid Act of 1986 the National Security Council proposed to substantially reduce stockpile goals and to sell quantities of stockpiled materials; and

Whereas the Strategic and Critical Materials Stock Piling Revision Act directs the President to encourage the development of sources of strategic and critical materials within the United States to decrease our dependence upon foreign sources of such materials in times of national emergency:

Now, therefore, be it

Resolved, That the policies enunciated by the Senate in the Strategic and Critical Materials Stock Piling Act again are hereby strongly endorsed by the Senate to encourage our independence of foreign sources of strategic minerals and to protect our national interest in the development of domestic sources of strategic minerals. The Senate urges the President to make our domestic strategic minerals policy a high priority and to report to the Congress by June 1, 1987, a plan to stimulate innovation and technology utilization in materials industries. The purpose of this plan is to ensure that the United States is not put in a position where it can be held hostage to any foreign country for our strategic and critical materials needs.

SENATE RESOLUTION 514—RESOLUTION RELATING TO PROCEDURES FOR PROTECTING CITIZENS AGAINST IMPROPER INVESTIGATIVE AND PROSECUTORIAL PRACTICES

Mr. ARMSTRONG (for himself, Mr. MOYNIHAN, Mr. HATCH, Mr. HECHT, Mr. DECONCINI, Mr. LAXALT, Mr. BINGAMAN, Mr. PRYOR, Mr. GORE, Mr. HUMPHREY, Mr. JOHNSTON, and Mr. DANFORTH) submitted the following resolution; which was considered and agreed to:

S. RES. 514

Whereas our system of justice requires both firm defense of individual liberties and vigorous enforcement of the law, and

Whereas it is the responsibility of Congress to assure that the zeal of the Executive Branch in enforcing the law is always balanced against the rights of citizens under the Constitution, and

Whereas it is in the interest of justice for procedures to exist within the government to assure that the rights of citizens are protected against improper investigative and prosecutorial practices, now therefore be it

Resolved, That the Committee on the Judiciary, appropriately finds, shall hold hearings, exercising full Committee powers as necessary, on procedures for protecting citizens against improper investigative and prosecutorial practices and report its findings and recommendations to the Senate on or before September 1, 1987.

AMENDMENTS SUBMITTED

CUYAHOGA VALLEY NATIONAL RECREATION AREA

McCLURE AMENDMENT NO. 3489

Mr. McCLURE proposed an amendment to the bill (H.R. 4645) to modify the boundaries of the Cuyahoga Valley National Recreation Area, as follows:

TITLE I—CUYAHOGA VALLEY NATIONAL RECREATION AREA

SECTION 101. BOUNDARY ADJUSTMENT.

Section 2 of the Act entitled "An Act to provide for the establishment of the Cuyahoga Valley National Recreation Area", approved December 27, 1974 (16 U.S.C. 460ff et seq.), is amended as follows:

(1) In subsection (a), strike "numbered 655-90,001-A and dated May 1978" and insert "numbered 644-80,054 and dated July 1986".

(2) At the end of subsection (a), insert the following:

"The recreation area shall also comprise any lands designated as 'City of Akron Lands' on the map referred to in the first sentence which are offered as donations to the Department of the Interior or which become privately owned. The Secretary shall revise such map to depict such lands as part of the recreation area.".

(3) In subsection (b), after the first sentence, insert the following:

"The Secretary may not acquire fee title to any lands included within the recreation area in 1986 which are designated on the map referred to in subsection (a) as 'Scenic Easement Acquisition Areas'. The Secretary may acquire only scenic easements in such designated lands. Unless consented to by the owner from which the easement is acquired, any such scenic easement may not prohibit any activity, the subdivision of any land, or the construction of any building or other facility if such activity, subdivision, or construction would have been permitted under laws and ordinances of the unit of local government in which such land was located on April 1, 1986, as such laws and ordinances were in effect on such date.".

TITLE II—NATIONAL PARK SYSTEM FEES

SEC. 201. Subsection 12(b) of the Act of August 18, 1970, as amended (16 U.S.C. 1a-7(b)), relating to the preparation of general management plans for units of the National Park System, is amended by striking out "(b)" and inserting in lieu thereof "(b)(1)" and inserting the following new paragraphs at the end thereof:

"(2) As a component of each general management plan, a resources management plan shall be prepared by the Director of the National Park Service. The resources management plan shall identify the natural and cultural resources of the unit and set forth methods and actions by which such resources shall be preserved, protected, and managed in accordance with the laws applicable to such unit. Resources management plans and actions in support thereof shall be developed and conducted in accordance with appropriate scientific information applicable to the resources of the unit and their use by visitors. The Director shall assure that unit managers are appropriately trained and have access to needed information and research in developing and implementing resources management plans.

"(3) From funds available for operation of the National Park System, the sum of $2,000,000 annually shall be available to the Director of the National Park Service for matching grants to educational institutions, public or private agencies or organizations, or persons for the conduct of research, monitoring, and study of natural and cultural resources within the National Park System and for the development of appropriate methods of management and interpretation of such resources. Such grants shall be matched by an equal amount of funds from the grantee or by services equal in value, in the judgment of the Director, to the funds granted.".

SEC. 202. (a) Section 4(a) of the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 4601-6a(a)), if further amended as follows:

(1) Paragraph (1) is amended by striking out "$10" and inserting in lieu thereof "$25" in the first sentence.

(2) Paragraph (1) is further amended by striking out "(1)" and inserting in lieu thereof "(1)(A)" and adding the following new subparagraph:

"(B) For admission into a specific designated unit of the National Park System, or into several specific units located in a particular geographic area, the Director of the National Park Service is authorized to make available an annual admission permit for a reasonable fee but not to exceed $15 for any such permit regardless as to whether it is for admission to one or more units. The permit shall convey the privileges of, and shall be subject to the same terms and conditions as, the Golden Eagle Passport, except that it shall be valid only for admission into the specific unit or units of the Na-

tional Park System indicated at the time of purchase.".

(3) Paragraph (2) is amended by adding the following sentences at the end thereof: "No fee for a single visit may exceed $3 for a single visit permit as defined in section 71.7(b)(2) of title 36 of the Code of Federal Regulations or $7.50 for a single visit permit as defined in section 71.7(b)(1) of title 36 of the Code of Federal Regulations. For the purpose of this paragraph any reference to section 71.7(b)(1) or 71.7(b)(2) of title 36 of the Code of Federal Regulations shall be deemed to be a reference to those regulations which were in effect on September 1, 1986.".

(4) Paragraph (4) is amended by striking out "without charge" and inserting in lieu thereof "for a fee $10" in the second sentence, and by striking out "other" in the third sentence.

(5) Paragraph (3) is amended by adding the following new sentence at the end thereof:

"Notwithstanding any other provision of this Act, no admission fee may be charged at any unit of the National Park System which provides significant outdoor recreation opportunities in an urban environment and to which access is publicly available at multiple locations.".

(6) By adding the following new paragraph (6):

"(6)(A) No later than 60 days after the date of enactment of this paragraph, the Secretary of the Interior shall submit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives, a list of units of the National Park System and the entrance fee proposed to be charged at each unit (hereinafter in this paragraph referred to as 'the list').

"(B) Following submittal of the list to the respective Committees, any proposed changes to the list, including the addition or deletion of park units or the increase or decrease of fee levels at park units shall not take effect until 60 days after the proposed change has been submitted to the Committees.".

(b) Section 4 of the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 4601-6a), is further amended as follows:

(1) Subsection (e) is amended by adding the following after the final period: "When authorized by the head of the collecting agency, volunteers may sell permits and collect fees authorized or established pursuant to this section, and funds appropriated or otherwise available to the collecting agency shall be available to cover the cost of any surety bond as may be required of any such volunteer in performing such authorized services under this subsection.".

(2) Subsection (f) is amended by striking out "(f) Except" and inserting in lieu thereof "(f)(1) Except as provided in paragraph (2) and except"; and by adding the following new paragraph:

"(2) Notwithstanding any other provision of law, for the period beginning on the date of enactment of this paragraph until September 30, 1981, all receipts collected from fees or permits for admission or entrance to the National Park System, all fees collected under subsections (a), (b) and (c) of this section with respect to the National Park System, shall be available until expended, without further appropriation, for expenditure as determined by the Director of the National Park Service, first, to defray the cost of collection, second for resource protection, research, interpretation, and maintenance activities related thereto at the collecting unit; and third, for resource protection, research, interpretation, and maintenance activities related to all units of the National Park System: *Provided*, That the Director shall insure that non-collecting units receive for fair and reasonable portion of the revenue made available pursuant to this paragraph. Except for receipts necessary to defray the cost of collection, receipts available for expenditure in accordance with this paragraph may be used to make grants for the purposes authorized in section 12(b)(3) of the Act of August 18, 1940, as amended, and without regard to where the receipts were collected. Beginning October 1, 1991, and for each fiscal year thereafter, all fees collected under subsections (a), (b) and (c) of this section with respect to the National Park System shall be credited to the Land and Water Conservation Fund.".

(c) Section 402 of the Act of October 12, 1979 (93 Stat. 664), is hereby repealed.

(d) The Secretary of the Interior shall not charge any entrance or admission fee at the U.S.S. Arizona Memorial in the State of Hawaii.

TITLE III—FEDERAL ONSHORE COMPETITIVE OIL AND GAS LEASING ACT OF 1986

SECTION 301.—This title may be cited as the "Federal Onshore Competitive Oil and Gas Leasing Act of 1986".

SEC. 302.—(a) Section 17(b)(1) of the Act of February 25, 1920 (30 U.S.C. 226(b)(1)), is amended to read as follows:

"(b)(1) All lands to be leased which are not subject to leasing under paragraph (2) of this subsection shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than two thousand five hundred and sixty acres, except in Alaska, where units shall be not more than five thousand one hundred and twenty acres, which shall be as nearly compact as possible. Lease sales shall be conducted by oral bidding. Lease sales shall be held for each State where eligible lands are available at least every two months, and more frequently if the Secretary determines such sales are necessary. A lease shall be conditioned upon the payment of a royalty of 12.5 per centum in amount or value of the production removed or sold from the lease. The Secretary shall establish by regulation a minimum acceptable price which shall be the same for all leases and which is at least $20 per acre. The Secretary shall accept the highest bid from a responsible qualified bidder which is equal to or greater than the minimum acceptable price, without evaluation of the value of the lands proposed for lease. Leases shall be issued within sixty days following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year. All bids for less than the minimum acceptable price shall be rejected. Lands for which no bids are received or for which the highest bid is less than the minimum acceptable price shall promptly be offered for leasing under subsection (c) of this section and shall remain available for leasing for a period set by the Secretary not to exceed three years after the competitive lease sale.".

(b) The first sentence of section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)), is amended to read as follows: "(1) If the lands to be leased are not leased under subsection (b)(1) of this section or are not subject to competitive leasing under subsection (b)(2) of this section, the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding. Lands be be leased under this subsection shall be made available at least every two months. Leases shall be issued within sixty days of the date on which the Secretary identifies the first qualified applicant."

(c) Section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)), is amended by adding the following at the end thereof:

"(2)(A) Lands (i) which were posted for sale under subsection (b)(1) of this section but for which no bids were received or for which the highest bid was less than the minimum acceptable price established by the Secretary and (ii) for which, at the end of the period prescribed by the Secretary under subsection (b)(1) of this section no lease has been issued and no lease application is pending under paragraph (1) of this subsection, shall again be available for leasing only in accordance with subsection (b)(1) of this section.

"(B) The land in any lease which is issued under paragraph (1) of this subsection or under subsection (b)(1) of this section which lease terminates, expires, is canceled or is relinquished shall again be available for leasing only in accordance with subsection (b)(1) of this section.".

(d) The third sentence of section 17(d) of the Act of February 25, 1920 (30 U.S.C. 226(d)), is amended to read as follows: "A minimum royalty of not less than $1 per acre in lieu of rental shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased, except that no minimum royalty shall exceed the rental rate that would have applied before discovery.".

(e) Section 17(e) of the Act of February 25, 1920 (30 U.S.C. 226(e)), amended by designating the existing provision as subparagraph (1) and by adding the following at the end thereof:

"(2) In addition to the authority granted to the Secretary under Section 39 of this Act (30 U.S.C. 209), where a lessee is denied access for operations involving exploration, drilling or production on a valid lease due to prolonged environmental or other analyses, unresolved litigation, or other delays which are beyond the control of the lessee and which continue beyond 90 days after receipt by the Secretary of a written request by the lessee for access to the leasehold for such purposes, the Secretary is authorized to suspend the lease, and the term of such lease shall be extended by adding any such suspension period thereto.".

SEC. 303. The third sentence of section 30a of the Act of February 25, 1920 (30 U.S.C. 187a) is amended to read as follows: "The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: *Provided, however,* That the Secretary may, in his discretion, disapprove an assignment—(1) of a separate zone or deposit under any lease, (2) of a part of a legal subdivision, or (3) of less than six hundred and forty acres outside Alaska or of less than two thousand five hundred and sixty acres within Alaska, unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas. Requests for approval of assignment of sublease shall be processed prompt-

ly by the Secretary. Except where the assignment or sublease is not in accordance with applicable law, the approval shall be given within sixty days of the date of receipt by the Secretary of a request for such approval.".

SEC. 304. The first sentence of section 31(b) of the Act of February 25, 1920 (30 U.S.C. 188(b)) is amended to read as follows:

"(b) Any lease issued after August 21, 1935, under the provisions of section 17 of this Act shall be subject to cancellation by the Secretary of the Interior after thirty days notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the leasehold contains a well capable of production of oil or gas paying quantities, or the lease is committed to an approved cooperative or unit plan or communitization agreement under section 17(j) of this Act which contains a well capable of production of unitized substances in paying quantities.".

SEC. 305. The Act of February 25, 1920 (30 U.S.C. 181 *et seq.*) is amended by adding at the end thereof the following new section:

"SEC. 43. Actions taken by the Secretary of the Interior to develop regulations and procedures for a competitive oil and gas leasing program or to hold particular lease sales shall not be subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969. Except as otherwise provided in this section, nothing in this Act shall be considered as affecting the application of section 102 of the National Evironmental Policy Act of 1969.".

SEC. 306. Section 1008 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148) is amended as follows:

(1) Subsection (c) and (e) (16 U.S.C. 3148(c) and (e)) are deleted in their entirely.

(2) The second sentence of section 1008(d) (16 U.S.C. 3148(d)) is deleted.

(3) Subsection (d) and (f) through (i) (16 U.S.C. 3148 (d) and (f) through (i)) are renumbered subsections (c) through (g) respectively.

SEC. 307 (a) (1) Lands to be leased which were available for noncompetitive oil and gas leasing pursuant to section 17(c) of the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*) on the day prior to the enactment of this title but which were not covered by an oil and gas lease on January 1, 1986, and for which no lease application or offer was pending on the date of enactment of this title, shall be leased to the person first making application for the lease who is otherwise qualified to hold a lease under the Act of February 25, 1920 without competitive bidding. The authority to issue leases as provided in this paragraph shall expire fifty months from the date of enactment to this Title: *Provided;* that applications for leases filed pursuant to this paragraph which are pending on such expiration date shall be processed and leases issued under the authority of this paragraph except where the issuance of any such leases would not be lawful under Sec. 17(c) of the Act of February 25, 1920 as in effect on the day prior to enactment of this title or under other applicable law.

(a)(2). No land may be leased under paragraph (a)(1) of this section if it is within the State of Arkansas or if, on the date of enactment of this title, it: (i) is under study for inclusion in a known geological structure of a producing oil or gas field or in a favorable petroleum geological province; (ii) was referred to a surface managing agency (other than the Bureau of Land Management) for a recommendation or consent regarding leasing and no lease application, offer or bid is pending; or (iii) is within the Overthrust Belt area of Wyoming as defined by the Director, Bureau of Land Management, by memorandum dated February 24, 1986. Lands to be leased which are covered by this paragraph shall be leased in accordance with subsection 302(a) of this title. The Secretary of the Interior shall publish in the *Federal Register* within 90 days from the date of enactment of this title a list of lands covered by this paragraph.

(b) Notwithstanding any other provision of this title and except as provided in paragraph (e) of this section, all noncompetitive oil and gas lease applications filed pursuant to regulations governing the simultaneous oil and gas leasing system (43 CFR subpart 3112) and pending on the date of enactment of this title shall be processed, and leases shall be issued within sixty days following the date of enactment of this title under the provisions of the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), as in effect before its amendment by this title, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If the date of enactment of this title occurs during a simultaneous filing period prescribed by the regulations of the Department of the Interior, all applications filed during that period shall be considered filed prior to the date of enactment.

(c) Notwithstanding any other provision of this title and except as provided in paragraph (e) of this section, all noncompetitive oil and gas lease offers filed pursuant to regulations governing the over-the-counter leasing system (43 CFR subpart 3111) prior to October 1, 1986, shall be processed, and leases shall be issued within sixty days following the date of enactment of this title under the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), as in effect before its amendment by this title, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If the Secretary posts tracts for competitive sale containing lands in an over-the-counter noncompetitive lease offer filed between October 1, 1986, and the date of enactment of this title, and if any such tracts do not receive bids greater than or equal to the minimum acceptable price established by the Secretary at the sale, the Secretary shall reinstate the noncompetitive lease offers for these tracts and shall issue leases in accordance with section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)).

(d) Notwithstanding any other provision of this title, all competitive oil and gas lease bids filed pursuant to applicable regulations (43 CFR subpart 3120) pending on the date of enactment of this title shall be processed, the high bid for each tract shall be accepted without further evaluation of the value of the tract, and leases shall be issued within sixty days following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year, under the Act of February 20, 1920 (30 U.S.C. 181 *et seq.*), as in effect before its amendment by this title, except where the issuance of any such lease would not be lawful under such provisions or other applicable law.

(e) No noncompetitive lease applications or offers pending on the date of enactment of this title for lands within the Shawnee National Forest, Illinois, the Ouachita National Forest, Arkansas, Fort Chaffee, Arkansas, or Eglin Air Force Base, Florida, shall be processed until these lands are posted for competitive bidding in accordance with section 302 of this title. If any such tract receives no bid greater than or equal to the minimum acceptable price established by the Secretary then the noncompetitive applications or offers pending for such a tract shall be reinstated and noncompetivie leases issued, under the Act of February 20, 1920 (30 U.S.C. 181 *et seq.*), as in effect before its amendment by this Act, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If competitive leases are issued for any such tract, then the pending noncompetitive application or offer shall be rejected.

SEC. 308. (a) Except as provided in section 307 of this title, all oil and gas leasing pursuant to the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), after the date of enactment of this title shall be conducted in accordance with the provisions of this title.

(b) The Secretary shall issue final regulations within one hundred and eighty days after the date of enactment of this title. The regulations shall be effective when published in the Federal Register. The environmental and economic impacts of this title having been fully considered by the Congress, the Secretary shall not prepare any environmental, economic, or small business impact analyses, which may otherwise be required by law of Executive Order, when he prepares proposed regulations or adopts final regulations implementing this title.

(c)(1) Prior to issuing regulations implementing this title, the Secretary shall hold at least one competitive lease sale pursuant to Section 302 of this title. Sale procedures shall be established in the notice of sale. This sale shall include tracts which, but for the enactment of this title, would have been posted for the filing of simultaneous oil and gas lease applications pursuant to applicable regulations (43 CFR Subpart 3112). The Secretary may also include in the sale tracts which would otherwise have been posted for competitive sale pursuant to applicable regulations (43 CFR subpart 3120) and tracts which received over-the-counter noncompetitive oil and gas lease offers pursuant to applicable regulations (43 CFR subpart 3111) between October 1, 1986, and the date of enactment of this title. The Secretary may hold additional sales if he considers it necessary prior to the issuance of final regulations pursuant to subsection (b) of this section.

(2) If tracts which would, but for the enactment of this title have been posted for the filing of simultaneous applications do not receive bids of greater than or equal to the minimum acceptable price established by the Secretary at a competitive sale held under this section, they shall subsequently be posted for the filing of simultaneous applications provided the Secretary has not yet issued regulations under subsection (b) of this section.

(3) If no competitive or noncompetitive leases are issued for lands posted for sale as provided in paragraph (c) of this section, the Secretary shall lease such tracts in accordance with the regulations issued pursuant to paragraph (b) of this section.

SEC. 309. The Act of February 25, 1920 (30 U.S.C. 181 *et seq.*) is amended by inserting after section 40 the following new section:

"SEC. 41. (a) Any person shall be liable under the standards set forth in subsection (c) and (d) of this section if that person misrepresents to the public, by any means of communication, the following:

"(1) the value or potential value of any lease or portion thereof issued under this Act;

"(2) the value or potential value of any lease or portion thereof to be issued under this Act;

"(3) the value or potential value of any land available for leasing under this Act;

"(4) the availability of any land for leasing under this Act;

"(5) the ability of the person to obtain leases under this Act on his or her own behalf or on behalf of any other person; and

"(6) the provisions of this Act and its implementing regulations.

"(b) Any person who organizes, or participates in, any scheme, arrangement, plan, or agreement to circumvent the provisions of this Act or its implementing regulations shall be liable under the provisions of this section.

"(c) The Attorney General shall institute against any person who, given the nature of the intended recipient of the communication, knew or should have known he or she was violating subsection (a) or (b) of this section, a civil action, in the district court of the United States for the judicial district in which the defendant resides or in which the violation occurred in which the lease or land involved is located, for a temporary restraining order, injunction, civil penalty of not more than $100,000 for each violation, or other appropriate remedy, including but not limited to, a prohibition from participation in exploration, leasing, or development of any federal mineral, or both.

"(d) Any person who knowingly and willfully violates the provisions of this section shall, upon conviction, be punished by a fine of not more than $500,000 for each violation or by imprisonment for not more than five years, or both.

"(e)(1) Whenever a corporation or other entity is subject to civil or criminal action under this section, any officer, employee, or agent of such corporation or entity who authorized, ordered, or carried out the proscribed activity shall be subject to the same action.

"(2) Whenever any officer, employee, or agent of a corporation or other entity is subject to civil or criminal action under this section for activity conducted on behalf of the corporation or other entity, the corporation or other entity shall be subject to the same action, unless it is shown that the officer, employee, or agent was acting without the knowledge or consent of the corporation or other entity.

"(f) The remedies, penalties, fines, and imprisonment prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies, penalties, fines, and imprisonment prescribed in this section shall be in addition to any other remedies, penalties, fines and imprisonment afforded by any other law or regulation.

"(g)(1) A state may commence a civil action under subsection (c) of this section against any person conducting activity within the state in violation of this section. Civil actions brought by a state shall only be brought in the United States district court for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order appropriate remedies and penalties as described in subsection (c) or this section.

"(2) The state shall notify the Attorney General of the United States of any civil action filed by the state under this subsection within thirty days of filing of the action.

"(3) Any civil penalties recovered by a state under this subsection shall be retained by the state and may be expended in such manner and for such purposes as the state deems appropriate. If a civil action is jointly brought by the Attorney General and a state, by more than one state or by the Attorney General and more than one state, any civil penalties recovered as a result of the joint action shall be shared by the parties bringing the action in accordance with a written agreement entered into prior to the filing of the action.

"(4) Nothing in this section shall deprive a state of jurisdiction to enforce its own civil and criminal laws against any person who may also be subject to civil and criminal action under this section.".

SEC. 310. Section 35 of the Act of February 25, 1920 (30 U.S.C. 191) is amended by adding the following at the end of the section:

"In determining the amount of payments to states under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States.".

SEC. 311. The Secretary shall submit annually to the Congress a report containing appropriate information to facilitate Congressional monitoring of this title. Such report shall include, but not be limited to:

(a) the number of acres leased, and the number of leases issued, competitively and noncompetitively;

(b) the amount of revenue received from bonus bids, filing fees, rentals and royalties;

(c) the amount of production from competitive and noncompetitive leases; and

(d) such other data and information as will facilitate—(i) an assessment of the onshore oil and gas leasing system, and (ii) a comparison of the system as revised by this title with the system in operation prior to the enactment of this title.

TITLE V—AMERICAN CONSERVATION CORPS ACT OF 1986

SECTION 101. SHORT TITLE.

This title may be cited as the "American Conservation Corps Act of 1986".

SEC. 102. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) conserving or developing natural and cultural resources and enhancing and maintaining environmentally important lands and water through the use of the Nation's young men and women is beneficial not only to the youth of the Nation by providing them with education and work opportunities but also for the Nation's economy and its environment; and

(2) through this work experience opportunity, the Nation's youth will further their understanding and appreciation of the natural and cultural resources in addition to learning basic and fundamental work ethics including discipline, cooperation, understanding to live and work with others, and learning the value of day's work for day's wages.

(b) PURPOSE.—It is the purpose of this title to—

(1)(A) enhance and maintain conservation, rehabilitation, and improvement work on public lands and Indian lands,

(B) improve and restore public lands and Indian lands, resources, and facilities,

(C) conserve energy, and

(D) restore and maintain community lands, resources, and facilities;

(2) establish an American Conservation Corps to carry out a program to improve, restore, maintain, and conserve these lands and resources in the most cost-effective manner;

(3) assist State and local governments and Indian tribes in carrying out needed public land and resource conservation, rehabilitation, and improvement projects;

(4) provide for implementation of the program in such manner as will foster conservation and the wise use of natural and cultural resources through the establishment of working relationships among the Federal, State, and local governments, Indian tribes, and other public and private organizations; and

(5) increase (by training and other means) employment opportunities for young men and women including, but not limited to, those who are economically, socially, physically, or educationally disadvantaged and who may not otherwise be productively employed.

SEC. 103. DEFINITIONS.

For purposes of this title:

(1) The term "public lands" means any lands or waters (or interest therein) owned or administered by the United States or by any agency or instrumentality of a State or local government.

(2) The term "program" means all activities carried out under the American Conservation Corps established by this Act.

(3) The term "program agency" means any agency designated by the Governor to manage the program in that State, and the governing body of any Indian tribe.

(4) The term "Indian tribe" means any Indian tribe, band, nation, or other group which is recognized as an Indian tribe by the Secretary of the Interior. Such term also includes any Native village corporation, regional corporation, and Native group established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1701 et seq.).

(5) The term "Indian" means a person who is a member of an Indian tribe.

(6) The term "Indian lands" means any real property owned by an Indian tribe, any real property held in trust by the United States for Indian tribes, and any real property held by Indian tribes which is subject to restrictions on alienation imposed by the United States.

(7) The term "employment security service" means the agency in each of the several States with responsibility for the administration of unemployment and employment programs, and the oversight of local labor conditions.

(8) The term "chief administrator" means the head of any program agency as that term is defined in paragraph (3).

(9) The term "enrollee" means any individual enrolled in the American Conservation Corps in accordance with section 5.

(10) The term "crew leader" means an enrollee appointed under authority of this title for the purpose of supervising other enrollees engaged in work projects pursuant to this title.

(11) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(12) The term "economically disadvantaged" with respect to youths has the same

meaning given such term in section 4(8) of the Job Training Partnership Act.

SEC. 404. AMERICAN CONSERVATION CORPS PROGRAM.

(a) ESTABLISHMENT OF AMERICAN CONSERVATION CORPS.—There is hereby established an American Conservation Corps.

(b) REGULATIONS AND ASSISTANCE.—Not later than 120 days after the date of enactment of this title, the Secretary of the Interior and the Secretary of Agriculture, after consultation with the Secretary of Labor, shall jointly promulgate the regulations necessary to implement the American Conservation Corps established by this title. Within 30 days after the enactment of this title, the Secretary of the Interior and the Secretary of Agriculture shall establish procedures to give program agencies and other interested parties, including the public, adequate notice and opportunity to comment upon and participate in the formulation of such regulations. The regulations shall include provisions to assure uniform reporting on the activities and accomplishments of American Conservation Corps programs, demographic characteristics of enrollees in the American Conservation Corps, and such other information as may be necessary to prepare the annual report under section 410.

(c) PROJECTS INCLUDED.—The American Conservation Corps established under this section may carry out such projects as—

(1) conservation, rehabilitation, and improvement of wildlife habitat, rangelands, parks, and recreational areas;

(2) urban revitalization and historical and cultural site preservation;

(3) fish culture and habitat maintenance and improvement and other fishery assistance;

(4) road and trail maintenance and improvement;

(5)(A) erosion, flood, drought, and storm damage assistance and controls,

(B) stream, lake, and waterfront harbor and port improvement, and

(C) wetlands protection and pollution control;

(6) insect, disease, rodent, and fire prevention and control;

(7) improvement of abandoned railroad bed and right-of-way;

(8) energy conservation projects; renewable resource enhancement, and recovery of biomass;

(9) reclamation and improvement of strip-mined land; and

(10) forestry, nursery, and silvicultural operations.

(d) PREFERENCE FOR CERTAIN PROJECTS.—The program shall provide a preference for those projects which—

(1) will provide long-term benefits to the public;

(2) will instill in the enrollee involved a work ethnic and a sense of public service;

(3) will be labor intensive; and

(4) can be planned and initiated promptly.

(e) LIMITATION TO PUBLIC LANDS.—Projects to be carried out by the American Conservation Corps shall be limited to projects on public lands or Indian lands except where a project involving other lands will provide a documented public benefit as determined by the Secretary of the Interior or the Secretary of Agriculture. The regulations promulgated under subsection (b) shall establish the criteria necessary to make such determinations.

(f) CONSISTENCY.—All projects carried out under this Act for conservation, rehabilitation, or improvement of any public lands or Indian lands shall be consistent with the provisions of law and policies relating to the management and administration of such lands, with all other applicable provisions of law, and with all management, operational, and other plans and documents which govern the administration of the area.

(g) APPLICATION PROCEDURES.—(1) Each program agency may apply for approval to participate in the American Conservation Corps under this title.

(2) Applications for participation in the American Conservation Corps on Federal public lands shall be submitted to the Secretary of the Interior or the Secretary of Agriculture in such manner as is provided for by the regulations promulgated under subsection (b). Applications for participation in the American Conservation Corps on non-Federal public lands or Indian lands shall be submitted to the Secretary of the Interior. Applications for participation in the American Conservation Corps on projects on lands described in subsection (e) shall be submitted to the Secretary of Agriculture or the Secretary of the Interior as the case may be. No application may be submitted to the Secretary of the Interior or the Secretary of Agriculture before the 30-day period for review and comment by the appropriate State Job Training Coordinating Council (established under the Job Training Partnership Act), if any, which shall consult with the appropriate Private Industry Council, or Councils, in the area in which a project is carried out. Comments of the State Job Training Coordinating Council and Private Industry Council shall be forwarded to the Secretary at the time the grant application is submitted.

(3) Each application under this section must be approved by the Secretary of the Interior or the Secretary of Agriculture, as the case may be, and shall contain—

(A) a comprehensive description of the objectives and performance goals for the program, a plan for managing and funding the program, and a description of the types of projects to be carried out, including a description of the types and duration of training and work experience to be provided;

(B) a plan to make arrangements for certification of the training skills acquired by enrollees and award of academic credit to enrollees for competencies developed from training programs or work experience obtained under this title;

(C) an estimate of the number of enrollees and crew leaders necessary for the proposed projects, the length of time for which the services of such personnel will be required, and the services which will be required for their support;

(D) a description of the location and types of facilities and equipment to be used in carrying out the programs; and

(E) such other information as the Secretary of the Interior and the Secretary of Agriculture shall prescribe.

(4) In approving the location and type of any facility to be used in carrying out the program, the Secretary of the Interior and the Secretary of Agriculture shall give due consideration to—

(A) the proximity of any such facility to the work to be done;

(B) the cost and means of transportation available between any such facility and the homes of the enrollees who may be assigned to that facility;

(C) the participation of economically, socially, physically, or educationally disadvantaged youths; and

(D) the cost of establishing, maintaining, and staffing the facility.

Every effort shall be made to assign youths to facilities as near to their homes as practicable.

(5)(A) Every program shall have sufficient supervisory staff appointed by the chief administrator which may include enrollees who have displayed exceptional leadership qualities.

(B) No project shall be undertaken without the on-site presence of knowledgeable and competent supervision, and all projects undertaken shall be documented in advance in an approved written project plan.

(h) LOCAL PARTICIPATION.—Any State carrying out a program under this title shall provide a mechanism under which local governments and nonprofit organizations within the State may be approved by the State to participate in the American Conservation Corps.

(i) AGREEMENTS.—Program agencies may enter into contracts and other appropriate arrangements with local government agencies and nonprofit organizations for the operation or management of any projects or facilities under the program.

(j) JOINT PROJECTS.—

(1) DEPARTMENT OF LABOR.—The Secretary of the Interior and the Secretary of Agriculture are authorized to develop jointly with the Secretary of Labor regulations designed to allow, where appropriate, joint projects in which activities supported by funds authorized under this title are coordinated with activities supported by funds authorized under employment and training statutes administered by the Department of Labor (including the Job Training Partnership Act). Such regulations shall provide standards for approval of joint projects which meet both the purposes of this title and the purposes of such employment and training statutes under which funds are available to support the activities proposed for approval. Such regulations shall also establish a single mechanism for approval of joint projects developed at the State or local level.

(2) DEPARTMENT OF DEFENSE.—The Secretary of the Interior, the Secretary of Agriculture, and program agencies may enter into agreements, jointly or separately, with the Secretary of Defense to assist the military by carrying out projects under this title. Such projects may be carried out on a reimbursable basis or otherwise.

SEC. 405. ENROLLMENT, FUNDING, AND MANAGEMENT.

(a) ENROLLMENT IN PROGRAM.—(1)(A) Enrollment in the American Conservation Corps shall be limited to individuals who, at the time of enrollment, are—

(i) unemployed;

(ii) not less than 16 years of age or more than 25 years of age (except that programs limited to the months of June, July, and August may include individuals not less than 15 years and not more than 21 years of age at the time of their enrollment); and

(iii) citizens or nationals of the United States (including those citizens of the Northern Mariana Islands as defined in Public Law 98-213 (97 Stat. 1459)) or lawful permanent residents of the United States.

(B) Special efforts shall be made to recruit and enroll individuals who, at the time of enrollment, are economically disadvantaged.

(C) In addition to recruitment enrollment efforts required in subparagraph (B), the Secretary of the Interior and the Secretary of Agriculture shall make special efforts to

recruit enrollees who are socially, physically, and educationally disadvantaged youths.

(D) Notwithstanding subparagraph (A), a limited number of special corps members may be enrolled without regard to their age so that the corps may draw upon their special skills which may contribute to the attainment of the purposes of the title.

(2) Except in the case of a program limited to the months of June, July, and August, individuals who at the time of applying for enrollment have attained 16 years of age but not attained 19 years of age, and who are no longer enrolled in any secondary school shall not be enrolled unless they give adequate written assurances, under criteria to be established by the Secretary of the Interior and the Secretary of Agriculture, that they did not leave school for the express purpose of enrolling. The regulations promulgated under section 404(b) shall provide such criteria.

(3) The selection of enrollees to serve in the American Conservation Corps shall be the responsibility of the chief administrator of the program agency. Enrollees shall be selected from those qualified persons who have applied to, or been recruited by, the program agency, a State employment security service, a local school district with an employment referral service, an administrative entity under the Job Training Partnership Act, a community or community-based nonprofit organization, the sponsor of an Indian program, or the sponsor of a migrant or seasonal farmworker program.

(4)(A) Except for a program limited to the months of June, July, and August, any qualified individual selected for enrollment may be enrolled for a period not to exceed 24 months. When the term of enrollment does not consist of one continuous 24-month term, the total of shorter terms may not exceed 24 months.

(B) No individual may remain enrolled in the American Conservation Corps after that individual has attained the age of 26 years, except as provided in subsection (a)(1)(D) of this section.

(5) Within the American Conservation Corps the directors of programs shall establish and stringently enforce standards of conduct to promote proper moral and disciplinary conditions. Enrollees who violate these standards shall be transferred to other locations, or dismissed, if it is determined that their retention in that particular program, or in the Corps, will jeopardize the enforcement of such standards or diminish the opportunities of other enrollees. Such disciplinary measures will be subject to expeditious appeal to the appropriate Secretary.

(b) SERVICES, FACILITIES, SUPPLIES.—The program agency shall provide facilities, quarters, and board (in the case of residential facilities), limited and emergency medical care, transportation from administrative facilities to work sites, and other appropriate services, supplies, and equipment. The Secretary of the Interior and the Secretary of Agriculture may provide services, facilities, supplies, and equipment to any program agency carrying out projects under this title. Whenever possible, the Secretary of the Interior and the Secretary of Agriculture shall make arrangements with the Secretary of Defense to have logistical support provided by a military installation near the work site, including the provision of temporary tent centers where needed, and other supplies and equipment. Basic standards of work requirements, health, nutrition, sanitation, and safety for all projects shall be established and enforced.

(c) REQUIREMENT OF PAYMENT FOR CERTAIN SERVICES.—Enrollees shall be required to pay a reasonable portion of the cost of room and board provided at residential facilities into rollover funds administered by the appropriate program agency. Such payments and rates are to be established after evaluation of costs of providing the services. The rollover funds established pursuant to this section shall be used solely to defray the costs of room and board for enrollees. The Secretary of the Interior and the Secretary of Agriculture and the Secretary of Defense are authorized to make available to program agencies surplus food and equipment as may be available from Federal programs.

SEC. 406. FEDERAL AND STATE EMPLOYEE STATUS.

Enrollees, crew leaders, and volunteers are deemed as being responsible to, or the responsibility of, the program agency administering the project on which they work. Except as otherwise specifically provided in the following paragraphs, enrollees and crew leaders in projects for which funds have been authorized pursuant to section 413 shall not be deemed Federal employees and shall not be subject to the provisions of law relating to Federal employment:

(1) For purposes of subchapter I of chapter 81 of title 5, United States Code, relating to the compensation of Federal employees for work injuries, enrollees and crew leaders serving American Conservation Corps program agencies shall be deemed employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provision of that subchapter shall apply, except—

(A) the term "performance of duty" shall not include any act of an enrollee or crew leader while absent from his or her assigned post of duty, except while participating in an activity authorized by or under the direction and supervision of a program agency (including an activity while on pass or during travel to or from such post of duty); and

(B) compensation for disability shall not begin to accrue until the day following the date on which the injured enrollee's or crew leader's employment is terminated.

(2) For purposes of chapter 171 of title 28, United States Code, relating to tort claims procedure, enrollees and crew leaders on American Conservation Corps projects shall be deemed employees of the United States within the meaning of the term "employee of the Government" as defined in section 2671 of title 28, United States Code.

(3) For purposes of section 5911 of title 5, United States Code, relating to allowances for quarters, enrollees and crew leaders shall be deemed employees of the United States within the meaning of the term "employee" as defined in that section.

SEC. 407. USE OF VOLUNTEERS.

Where any program agency has authority to use volunteer services in carrying out functions of the agency, such agency may use volunteer services for purposes of assisting projects carried out under this title and may expend funds made available for those purposes to the agency, including funds made available under this title to provide for services or costs incidental to the utilization of such volunteers, including transportation, supplies, lodging, subsistence, recruiting, training, and supervision. The use of volunteer services permitted by this section shall be subject to the condition that such use does not result in the displacement of any enrollee.

SEC. 408. TENNESSEE VALLEY AUTHORITY.

The Board of Directors of the Tennessee Valley Authority may accept the services of volunteers and provide for their incidental expenses to carry out any activity of the Tennessee Valley Authority except policymaking or law or regulatory enforcement. Such volunteers shall not be deemed employees of the United States Government except for the purposes of chapter 81 of title 5 of the United States Code, relating to compensation for work injuries, and shall not be deemed employees of the Tennessee Valley Authority except for the purposes of tort claims to the same extent as a regular employee of the Tennessee Valley Authority would be under identical circumstances.

SEC. 409. SPECIAL RESPONSIBILITIES.

(a) PAY.—(1) The rate of pay for enrollees shall be the equivalent of 95 percent of the pay rate for members of the Armed Forces in the enlisted grade E-1 who have served for four months or more on active duty, from which a reasonable charge for enrollee room and board shall be deducted by the program agency.

(2) Enrollees shall receive $50 cash incentive stipends for every three months of enrollment in the program.

(3) The rate of pay for crew leaders shall be at a wage comparable to the compensation in effect for grades GS-3 to GS-7.

(b) COORDINATION.—The Secretary of the Interior and the Secretary of Agriculture and the chief administrators of program agencies carrying out programs under this title shall coordinate the programs with related Federal, State, local, and private activities.

(c) CERTIFICATION AND ACADEMIC CREDIT.—Pursuant to the provisions of paragraphs (B) and (C) of section 404(g)(3), the Secretary of the Interior and the Secretary of Agriculture shall provide guidance and assistance to program agencies in securing certification of training skills or academic credit for competencies developed under this title.

(d) RESEARCH AND EVALUATION.—The Secretary of the Interior shall provide for research and evaluation to—

(1) determine costs and benefits, tangible and otherwise, or work performed under this title and of training and employable skills and other benefits gained by enrollees, and

(2) identify options for improving program productivity and youth benefits, which may include alternatives for—

(A) organization, subjects, sponsorship, and funding of work projects;

(B) recruitment and personnel policies;

(C) siting and functions of facilities;

(D) work and training regimes for youth of various origins and needs; and

(E) cooperative arrangements with programs, persons, and institutions not covered under the title.

(e) CCC SITES.—The Secretary of the Interior, after consultation with the Secretary of Agriculture, shall study sites at which Civilian Conservation Corps activities were undertaken for purposes of determining a suitable location and means to commemorate the Civilian Conservation Corps. Not later than one year after the date of the enactment of this Act, the Secretary of the Interior shall submit a report to the Congress containing the results of the study carried out under this section. The report shall include cost estimates and recommendations for any legislative action.

(f) STUDY.—(1) Program agencies shall not use more than 10 percent of the funds avail-

able to them to provide training and educational materials and services for enrollees and may enter into arrangements with academic institutions or education providers, including local education agencies, community colleges, four-year colleges, area vocational-technical schools and community based organizations, for academic study by enrollees during nonworking hours to upgrade literacy skills, obtain a high school diploma or its equivalency, or college degrees, or enhance employable skills. Enrollees who have not obtained a high school diploma or its equivalency shall have priority to receive services under this subsection. Whenever possible, an enrollee seeking study or training not provided at his or her assigned facility shall be offered assignment to a facility providing such study or training.

(2) Standards and procedures with respect to the awarding of academic credit and certifying educational attainment in programs conducted under paragraph (1) shall be consistent with the requirement of applicable State and local law and regulations.

(g) GUIDANCE AND PLACEMENT.—Program agencies shall provide such job guidance and placement information and assistance for enrollees as may be necessary. Such assistance shall be provided in coordination with appropriate State, local, and private agencies and organizations.

SEC. 410. ANNUAL REPORT.

The Secretary of the Interior and the Secretary of Agriculture shall prepare and submit to the President and to the Congress at least once each year a report detailing the activities carried out under this title in the preceding fiscal year. Such report shall be submitted not later than December 31 of each year following the date of enactment of this title.

SEC. 411. LABOR MARKET INFORMATION.

The Secretary of Labor shall make available to the Secretary of the Interior and the Secretary of Agriculture and to any program agency under this title such labor market information as is appropriate for use in carrying out the purposes of this title.

SEC. 412. EMPLOYEE APPEAL RIGHTS.

(a) FEDERAL EMPLOYEES.—In the case of—

(1) The displacement of a Federal employee (including any partial displacement through reduction of nonovertime hours, wages, or employment benefits) or the failure to reemploy an employee in a layoff status, contrary to a certification under section 413(c) (1) or (2), or

(2) the displacement of such a Federal employee by reason of the use of one or more volunteers under section 407 of this title,

such employee is entitled to appeal such action to the Merit Systems Protection Board under section 7701 of title 5, United States Code.

(b) OTHER INDIVIDUALS.—In the case of—

(1) the displacement of any other individual employed (either directly or under contract with any private contractor) by a program agency or grantee, or the failure to reemploy an employee in layoff status, contrary to a certification under section 413(c) (1) or (2), or

(2) the displacement of such individual by reason of the use of one or more volunteers under section 407 of this title,

the requirements contained in section 144 of the Job Training Partnership Act (Public Law 97-300) shall apply, and such individual shall be deemed an interested person for purposes of the application of such requirements.

(c) DEFINITION.—For purposess of this section, the term "displacement" includes, but is not limited to, any partial displacement through reduction of nonovertime hours, wages, or employment benefits.

SEC. 413 AUTHORIZATIONS OF APPROPRIATIONS.

(a) DISTRIBUTION OF FUNDS.—Of the sums appropriated pursuant to subsection (g) to carry out this title for any fiscal year—

(1) not less than 50 percent shall be made available to the Secretary of the Interior for expenditure by State program agencies which have been approved by the Secretary of the Interior for participation in the American Conservation Corps;

(2) not less than 15 percent shall be made available to the Secretary of Agriculture for expenditure by agencies within the Department of Agriculture, subject to the provisions of subsection (e);

(3) not less than 5 percent shall be made available to the Secretary of Agriculture, under such terms as are provided for in regulations promulgated under section 4(b), for expenditure by other Federal agencies;

(4) not less than 25 percent shall be made available to the Secretary of the Interior for expenditure by agencies within the Department of the Interior, subject to the provisions of subsection (e), and for demonstration projects or projects of special merit carried out by any program agency or by any nonprofit organization or local government which is undertaking or proposing to undertake projects consistent with the purposes of this title;

(5) not less than 5 percent shall be made available to the Secretary of the Interior for expenditure by the governing bodies of participating Indian tribes.

(b) AWARD OF GRANTS.—Within 60 days after enactment of appropriations legislation pursuant to subsection (g), any program agency may apply to the Secretary of the Interior for funds under this title. In determining the allocation of funds among the program agencies, the Secretary shall consider each of the following factors:

(1) The proportion of the unemployed youth population of the State.

(2) The conservation, rehabilitation, and improvement needs on public lands within the State.

(3) The amount of other support for the program and the extent to which the size and effectiveness of a program will be enhanced by the use of the Federal funds.

Any State receiving funds for the operation of any program under this Act shall be required to provide not less than 50 percent of the cost of such program.

(c) NON-DISPLACEMENT.—The Secretary of the Interior and the Secretary of Agriculture shall not fund any program or enter into any agreement with any program agency for the funding of any program under this title unless the Secretary concerned or such agency certifies that projects carried out by the program will not—

(1) result in the displacement of individuals currently employed (either directly or under contract with any private contractor) by the program agency concerned (including partial displacement through reduction of nonovertime hours, wages, or employment benefits);

(2) result in the employment of any individual when any other person is in a layoff status from the same or substantially equivalent job within the jurisdiction of the program agency concerned;

(3) impair existing contracts for services; or

(4) result in the inability of persons who normally contract with the agency for carrying out projects involving forestry, nursery, or silvicultural operations on commercial forest land to continue to obtain contracts to carry out such projects.

For purposes of paragraph (4), the term "commercial forest land" means land in the National Forest System or land administered by the Secretary of the Interior through the Bureau of Land Management which is producing, or is capable of producing, 50 cubic feet per acre per year of industrial wood and which is not withdrawn from timber utilization by statute or administrative decision.

(d) STATE SHARE TO LOCAL GOVERNMENTS.—If, at the commencement of any fiscal year, any State does not have a program agency designated by the Governor to manage the program in that State, then during such fiscal year any local government within such State may establish a program agency to carry out the program within the political subdivision which is under the jurisdiction of such local government. Such local government program agency shall be in all respects subject to the same requirements as a State program agency. Where more than one local government within a State has established a program agency under this subsection, the Secretary of the Interior shall allocate funds between such agencies in such manner as he deems equitable.

(e) PROGRAMS ON FEDERAL LANDS.—Funds provided under this section to any Federal agency shall be used to carry out projects on Federal lands and to provide for the Federal administrative costs of implementing this title. In utilizing such funds, the Federal agencies may enter into contracts or other agreements with program agencies and with local governments and nonprofit organizations approved under section 404(h).

(f) PAYMENT TERMS.—Payments under grants under this section may be made in advance or by way of reimbursement and at such intervals and on such conditions as the Secretary of the Interior or the Secretary of Agriculture, as appropriate, finds necessary.

(g) USE OF FUNDS.—Contract authority under this title shall be subject to the availability of appropriations. Funds provided under this title shall only be used for activities which are in addition to those which would otherwise be carried out in the area in the absence of such funds. Not more than 10 percent of the funds made available to any program agency for projects during each fiscal year may be used for the purchase of major capital equipment.

(h) ADMINISTRATIVE EXPENSES.—The regulations under section 4(b) shall establish appropriate limitations on the administrative expenses of Federal agencies and program agencies carrying out programs under this title. Such limitations shall insure that administrative expenses of such programs shall be minimized to the extent practicable taking into consideration the purposes of this title and the nature of the programs carried out under this title.

(i) APPROPRIATION LEVELS.—There is authorized to be appropriated for the purposes of carrying out this title $75,000,000 for each of the fiscal years 1987 through 1989. Funds appropriated under this title shall remain available until exended.

MULTIPLE APPEALS FILED WITH RESPECT TO THE SAME AGENCY ORDER

HATCH AMENDMENT NO. 3490

Mr. DURENBERGER (for Mr. HATCH) proposed an amendment to the bill (H.R. 439) to amend title 28, United States Code, to provide for the selection of the court of appeals to decide multiple appeals filed with respect to the same agency order, as follows:

At the appropriate place insert the following:

SEC. . Section 172 of title 28, United States Code, is amended to read as follows:

§ 172. Tenure and salaries of judges.

"(a) Each judge of the United States Claims Court shall be appointed for a term of 15 years. Any such judge so appointed may be reappointed and shall continue in office until his successor takes office.

"(b) Each such judge shall be compensated at the rate equal to the rate received by judges of the United States Tax Court.".

DOLE AMENDMENT NO. 3491

Mr. DURENBERGER (for Mr. DOLE) proposed an amendment to the bill H.R. 439, supra, as follows:

At the end of the bill, add the following new section:

Section 140 of Public Law No. 97-92, 95 Stat. 1183, 1200, is hereby repealed.

LEVIN AMENDMENT NOS. 3492 AND 3493

Mr. MATSUNAGA (for Mr. LEVIN) proposed two amendments to the bill H.R. 439, supra, as follows:

AMENDMENT No. 3492

Is amended by adding at the appropriate place the following new section:

"In the administration of the Immigration and Nationality Act, the provisions of section 204(c) of that Act shall be inapplicable in the case of Nabil Yaldo."

AMENDMENT No. 3493

Is amended by adding at the appropriate place the following new section:

"Notwithstanding the provisions of section 212(a)(23) of the Immigration and Nationaliy Act, Hyong Cha Kim Kay may be issued a visa and admitted to the United States for permanent residence if she is found to be otherwise admissible under the provisions of that Act.

"This exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice had knowledge prior to the date of the enactment of this Act."

CORRECTING TECHNICAL ERRORS IN THE ENROLLMENT OF THE BILL H.R. 3838

PACKWOOD AMENDMENT NOS. 3494 THROUGH 3497

Mr. PACKWOOD proposed four amendments to the amendments of the House to the amendments of the Senate to the concurrent resolution (H. Con. Res. 395) to correct technical errors in the enrollment of the bill H.R. 3838, as follows:

AMENDMENT No. 3494

On page 5(D), in lieu of the matter proposed, insert the following:

On page 62, beginning with line 21, strike through page 63, line 6.

AMENDMENT No. 3495

In lieu of the matter proposed, insert the following:

On page 71, strike lines 4 through 7 and insert:

"(243) On page 76, in paragraph 11 (relating to certain aircraft)—

(A) strike "Kansas, Florida, Georgia, or Texas" in subparagraph (A) and insert "the United States";

(B) strike ", the date of conference committee action)" in subparagraph (B); and

(C) strike subparagraph (C) and insert:

(C) The aircraft is—

(i) purchased on or after August 16, 1986, and before January 1, 1987, or

(ii) is subject to a binding contract which was in effect on August 16, 1986, or entered into on or after August 16, 1986, and before January 1, 1987, and

is delivered and placed in service pursuant to such purchase or contract before July 1, 1987.

Any airplane which is one of 7 airplanes with respect to which an airline signed an airplane purchase agreement on January 20, 1986 (with respect to which the financing contingency was removed no later than February 7, 1986), the estimated cost of which is $2,900,000, and which was delivered before May 23, 1986, and placed in service by May 27, 1986, shall be treated as described in this paragraph

AMENDMENT No. 3496

In lieu of the matter proposed, insert the following:

Strike out the proposed paragraphs (297) and (305).

AMENDMENT No. 3497

In lieu of the matter proposed to be inserted by the House amendment (4) the following:

( ) On page 315, in paragraph (3) (relating to transitional rules) add the following new subparagraphs:

(W) South Carolina Family Farm Development Authority with respect to obligations the aggregate amount of which shall not exceed $10,000,000 issued on or before December 31, 1989.

(X) Clemson University Continuing Education and the Component Housing Project.

( ) On page 617, insert between the 5th and 4th lines from the bottom of the page, the following flush language:

"The provisions of this paragraph shall not apply to any bond issued after December 31, 1990.".

( ) On page 73 of the House Concurrent Resolution, strike "a 150,000 square foot office building which is projected to cost" and insert "the Eastman Place project and office building in Rochester, New York, which is projected to cost up to".

MOYNIHAN AMENDMENT NO. 3498

Mr. MOYNIHAN proposed an amendment to amendment No. 3497 proposed by Mr. PACKWOOD to the amendments of the House to the amendments of the Senate to the concurrent resolution (H. Con. Res. 395) to correct technical errors in the enrollment of the bill H.R. 3838; supra, as follows:

At the end of the amendment, insert the following new section:

Sec. . (a) Section 408 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1378) is amended by adding at the end the following new subsection:

"FAIR TREATMENT OF EMPLOYEES

"(g) In any case in which the Secretary determines that the transaction which is the subject of the application would tend to cause reduction in employment, or to adversely affect the wages and working conditions including the seniority of any air carrier employees, labor protective provisions calculated to mitigate such adverse consequences, including procedures culminating in binding arbitration, if necessary, shall be imposed by the Secretary as a condition of approval, unless, the Secretary finds that the projected costs of protection would exceed the anticipated financial benefits of the transaction. The proponents of the transaction shall bear the burden of proving there will be no adverse employment consequences or that projected costs of protection would be excessive.".

(b) That protion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 408. Consolidation, merger, and acquisition of control."

is amended by adding at the end the following:

"(g) Fair treatment of employees.".

ADDITIONAL STATEMENTS

PRESIDENT'S COUNCIL ON HEALTH PROMOTION AND DISEASE PREVENTION—S. 2057

● Mr. LUGAR. Mr. President, I am pleased, along with my colleagues Senators HATCH and KENNEDY, to be an original cosponsor of this bill to establish the President's Council on Health Promotion and Disease Prevention.

Since I first came to the U.S. Senate, I have been interested in issues surrounding health and fitness. In recent years such topics have come to the forefront of discussion because of the public's growing awareness of the tremendous impact which lifestyle decisions have on disease prevention, health promotion, and fitness. Disease prevention and health promotion, including the importance of physical fitness, have become a national policy issue, and we all have become more conscious than ever before that it is an area with serious economic consequences.

Lifestyles and fitness decisions have consequences in terms of health care expenditures which must be paid not only by the individual but also by society. The Council which this legislation

proposes to establish will contribute a great deal toward elevating public awareness of how important these choices are for a nation that spends some $438 billion each year for health care, much of it for the treatment of preventable diseases.

The fact is, health care costs are escalating at a rate well beyond inflation. In 1960, the Nation spent less than $26 billion on health care. In 1985, Americans spent $438 billion, an increase of nearly 17 times over a period of only 25 years. This increase in health care costs has placed a heavy financial burden not only on individuals but also on business and Government. A major part of the Federal budget is directly linked to these costs. Health care and other social welfare programs now make up almost half of the Nation's budget.

Given the impact of escalating health care costs, it is important to emphasize that changes in nutrition and lifestyle have tremendous influence on an individual's personal health and productivity. For example, it is estimated that an employee who smokes costs employers between $624 and $4,611 more per year in medical costs, lowered productivity, absenteeism, and other expenses than a nonsmoking employee. Alcoholism is thought to account for $19 billion in lost work productivity annually. However, the results of a recent medical study published in the New England Journal of Medicine indicated that the risk of heart attack in male cigarette smokers decreases within a few years of quitting to a level similar to that of men who have never smoked.

Most Fortune 500 companies as well as thousands of smaller firms are taking an active interest in the physical condition of their employees. The establishment of physical fitness and nutrition programs within a company results in lower health and insurance costs, less absenteeism and turnover, and increases productivity within the work force.

In the past several years, there have been major political debates in Congress over the question of food additives that cause cancer in laboratory animals. Yet the study by the National Cancer Institute found that food additives cause less than an estimated 1 percent of the cancer in the Nation. More than a third of all cancers are directly linked to diet. In short, the leading causes of cancer are factors that individuals can control.

Given these facts, the need to elevate public awareness of the issues involved with health promotion and disease prevention is clear. The President's Council on Health Promotion and Disease Prevention would take various steps to educate citizens of the health impact of nutrition, physical exercise, and lifestyle choices. The Council would encourage State and local governments, and private entities to develop research programs and activities related to health promotion and disease prevention. The Council will examine the most effective means of informing all segments of society, particularly the poor and least educated of our citizens. They have suffered the most from preventable diseases but have been traditionally under informed above the health consequences of nutrition and lifestyle choices.

I am particularly pleased to be a part of this legislation as I have had a longstanding personal interest in health promotion and disease prevention. I am a runner and have sponsored a fitness festival in my home State of Indiana for the past 7 years. The greater questions in our national health are critical to our ability to compete in the world. If we are to be competitive as a nation, we must be prepared for the challenges mentally and physically, factors which greatly supplement the foundations of strong character and leadership ability. We must care for our own sakes, but even more importantly we must prepare our children with good lifelong habits of health and fitness. The Council will be a national vanguard of this endeavor.●

REA PRIVATIZATION DEMONSTRATION PROGRAM

● Mr. MURKOWSKI. Mr. President, I join my colleague from Alaska and others in supporting the privatization demonstration program to allow Rural Electrification Act [REA] cooperatives, at their option, to prepay all their REA-related loans and transition from the Federal program to the private sector.

This provision in the Continuing Resolution before us provides a valuable incentive for REA Cooperatives with the federally guaranteed debt to pursue the private capital markets as an alternative to their historic reliance on the REA Program. Consumers of a cooperative choosing to participate in the demonstration program stand to gain through the savings associated with prepayment of their REA loans. Under the program, which initially will be offered in Alaska, prepayment premiums will be waived on guaranteed loans and discounted buy-back rates will be established for direct or insured loans.

I would have preferred that the privatization demonstration program be available to any REA cooperative, as was the case in the continuing resolution language before it was amended last night on the House floor. However, the pilot program's initial operation in Alaska should provide us with very useful information within the next year to see if it should be offered to REA borrowers elsewhere. I am personally aware of at least one Alaska cooperative, Chugach Electric Association of Anchorage, with serious interest in the demonstration effort.

I appreciate the involvement of the administration with the Alaska delegation and other members to develop this important privatization option that I believe will be of increasing significance to consumers and to the Federal Government. Mr. President, I strongly support the REA demonstration program provision, and I particularly thank Senator STEVENS for his fine work on this amendment.●

PREVENTING AND TREATING CHILD SEXUAL ABUSE: NEW PROBLEMS AND POSSIBLE SOLUTIONS

● Mr. DODD. Mr. President, on May 16, 1986, in New Orleans, LA, the Senate Children's Caucus sponsored its second policy forum on the disturbing topic of child sexual abuse. Once again, this forum was held as part of the Biennial Conference on Childhood Sexual Victimization sponsored by Children's Hospital National Medical Center.

Three distinguished panels of witnesses testified before the Senate Children's Caucus on May 16, 1986. The first panel focused on prevention efforts in schools and communities. Our younger witnesses included two students at George Mason Junior-Senior High School in Falls Church, VA. They were Edward Friend, age 16, and Frank Grimberg, age 17. A third student, Dionne Julien, a 21-year-old student at the Southern University of New Orleans, also testified. All three students stressed the importance of instituting sexual abuse prevention and awareness programs in schools for teenagers and younger children.

Father Mark-David Janus, a constituent of mine from the University of Connecticut, spoke most eloquently of the plight of runaway youth, at risk of sexual exploitation on the streets. He emphasized the need to prevent the sexual and physical abuse at home which leads young people to run away in the first place. Helen Swan, a consultant to the Kansas Chapter and the National Committee for the Prevention of Child Abuse, outlined the history and recent activities of the Kansas Children's Trust Fund and its support for community-based prevention programs.

Our second distinguished panel of experts focused on the recent backlash in some communities which has accompanied press reports of child sexual abuse. Lucy Berliner, founder of the Sexual Assault Center at the Harborview Medical Center in Seattle, focused on the issue of false reporting and its relationship. Dr. Roland Summit of the Harbor-UCLA Medical Center in Los Angeles attempted to put recent highly publicized cases of

sexual abuse and their relationship to backlash into perspective. And Dr. Robert Casse of the Louisiana State Office of Human Development described his State's comprehensive report on child abuse as one means of combating backlash.

The third panel of distinguished witnesses focused their remarks on intervention and treatment. Dr. Jon Conte, professor of social service administration at the University of Chicago, outlined the ways in which child abuse victims are further neglected when intervention fails to result in treatment. Sandra Baker of the child sexual abuse trauma treatment program in Sacramento reviewed new methods for treating both victims and offenders. Dr. Carl Rogers, assistant director of the division of child protection at Children's Hospital National Medical Center spoke of gaps in hospital-based crisis intervention and treatment services. Last but not least, Sheryl Brisett-Chapman of the child welfare league recommended changes in Federal policy to improve intervention and treatment services across the country.

In closing, Mr. President, I commend all the distinguished witnesses who spoke in New Orleans for their excellent and compelling testimony. I would also like to express my gratitude to Representative LINDY BOGGS from Louisiana who attended the forum and contributed the expertise she has gained as chair of the Crisis Intervention task force on the House Select Committee on Children, Youth, and Families.

I submit for the RECORD my opening statement. The transcript of the forum and the written testimony of all the witnesses is available in my office. I urge my colleagues and their staffs to contact Marsha Renwanz of my staff if they wish to review this important record.

The statement follows:

OPENING STATEMENT OF SENATOR CHRISTOPHER J. DODD, SENATE CHILDREN'S CAUCUS, POLICY FORUM: "PREVENTING AND TREATING CHILD SEXUAL ABUSE: NEW PROBLEMS AND POSSIBLE SOLUTIONS"

I am pleased to call to order this policy forum, the second sponsored by the Senate Children's Caucus on the disturbing topic of child sexual abuse. We are grateful to Children's Hospital National Medical Center for again inviting us to hold the forum here at their conference.

Two years ago, I opened our forum by observing that indictments in a Los Angeles preschool had brought this issue to the forefront of public attention. Legal pronouncements earlier this year in that same case have again aroused controversy. There are some who now want to shoot the messengers: namely, those dedicated therapists who help young children find the signs and words to disclose their victimization. Others protest against politicians, alleging that we have capitalized on an issue that is more fiction than fact. Still others maintain that there has been a huge surge in false reports, evaluating efforts to protect children as irrelevant or irreparably injurious to families.

Backlash and backward thinking may try to cover up child sexual abuse, but they won't make it disappear. I said it 2 years ago and I'll say it again today: by even the most conservative estimates, a child is sexually abused someplace in this country every 2 minutes. And although some of our distinguished witnesses here this morning may differ with me in estimating incidence, none would disagree with the contention that our systems of intervening, treating, and preventing such abuse have not kept pace with the dramatic increase in reported cases. The Child Welfare League has pointed out that despite a 59 percent increase in sexual abuse reports in some 20 States, budget squeezes and staff cutbacks have left many with the draconian choice of investigating only if the child is "too young to run."

We know that children from all age, class, and ethnic groups can be at risk of sexual victimization. Boys are not exempt from such abuse. Neither are infants, given reported cases involving 2 and 3 month-olds. And close to half of all victims under age 18 will be the targets of repeated sexual abuse.

We also know that child sexual abuse can trigger many other serious problems, some of them long-lasting. As one witness will testify today, in some instances teenage pregnancy is the direct result of such abuse. In others, the connection is indirect: the result of sexual acting out by teens who were victimized as young children. Child sexual abuse has likewise been linked to alcohol and drug abuse, juvenile delinquency, serious depression, and youth suicide attempts.

In the midst of this bleak scenario, it is important to remember that we have made some progress. With the help of colleagues from both sides of the aisle, I was able to restore the Federal funding for sexual abuse prevention and treatment eliminated in 1981. Legislation I introduced to provide Federal challenge grants for States that setup children's trust funds is now public law. And legislation encouraging reforms to reduce the court-room traumatization of child victims has passed the Senate.

As our expert witnesses this morning will remind us, however, much more needs to be done if we are to continue to make any headway. As the recent Louisiana study so aptly demonstrates, failure to insure proper training for staff and strict standards for investigation and treatment seriously impedes efforts to protect sexually abused children. Emphasizing the investigative process at the expense of treatment services may leave child victims in an untenable position, blaming themselves for the disruption that inevitably accompanies the reporting of abuse without any hope of improvement. And, failure to make treatment a priority for both victims and offenders will only perpetuate the cycle of abuse. As a result, I would like to work on legislation using different funding mechanisms to expand or establish treatment programs in a wide range of settings, from schools and community clinics to hospitals and prisons.

In closing, failure to put the media's almost exclusive focus on dramatic cases into perspective may lead to the neglect of less sensational but equally compelling, intrafamilial cases of sexual abuse. And failure to combat backlash and backward thinking may jeopardize decade-long progress in passing and funding a variety of Federal and State prevention and treatment programs. In this respect, I am anxious to hear the reactions of our witnesses to administration proposals to abolish the national center on child abuse and neglect and fold all child abuse and family violence programs into one block grant.

But before I call on our first distinguished panel of witnesses, let me see if my colleagues wish to make any opening remarks.●

SOVIET POLITICAL PRISONERS DAY

● Mr. RIEGLE. Mr. President, from its very inception, the Soviet Union has practiced a policy of political suppression which it has spread to its illegally seized nations, as well as its satellite nations. The people of 36 distinct nationalities are imprisoned in labor camps, prisons, and pychiatric hospitals. To honor the brave people who have fought against this oppression, October 30 has been declared Soviet Political Prisoners Day.

During the early 1930's, the Soviet Union tried to destroy the last vestige of Ukrainian nationalism. Stalin imposed a widespread famine to force the collectivization of Ukrainian farms. Although Stalin's plan failed, his actions led to the deaths of 7 million Ukrainian people. The Soviet Government continues this oppression today on an individual level.

Iosif Begun had just finished a 2-year term of internal exile for parasitism in 1980. In 1982 he was arrested again and charged with "anti-Soviet agitation and propaganda." Begun was sentenced to 7 years in a labor camp and 2 years internal exile.

Leonid Volvovsky was arrested and charged with "defaming the Soviet state." He was sentenced to 3 years in a labor camp.

Zakhar Zunshain was arrested and charged with "circulation of fabrications known to be false which defame the Soviet state and social system." He was sentenced to 3 years in a prison.

Igor Ogurtsov, a Russian activist, was tried and found guilty of treason for his religious and political activities. Now in failing health, Ogurtsov is completing the final months of a 20-year sentence in prison and in exile.

When the Soviet Union signed the Helsinki Final Act of 1975, outrages like the ones committed against Begun, Volvovsky, Zunshain, and Ogurtsov were supposed to end. Over 100 Soviet citizens openly joined watch groups to monitor Soviet compliance. As of August 1985, the Soviet Union had imprisoned 51 members, imprisoned and released 20 others, and forced another 18 members to emigrate. As a result, the Moscow Helsinki Group announced, in September 1982, that it had to discontinue its activity.

One member of the Moscow group is Elena Bonner, wife of Andrei Sakharov. Sakharov was exiled to Gorky without trial or sentence, and on August 17, 1984, Bonner was also

exiled there. She described exile as being unable to talk to anyone except Sakharov, having her apartment searched so often that she left the key in the door when she left, and opening mail to find dozens of cockroaches scurrying out of the envelope. This mental torment is unjustifiable punishment for acts which are protected under the Helsinki accords.

In many cases, sentences to labor camps and psychiatric hospitals are used in conjunction with internal exile. Dr. Anatoly Koryagin, a member of the Commission on Psychiatric Abuse, wrote:

> All the people I examined had joined the ranks of the mentally ill because they did or said things which are considered "anti-Soviet."

Dr. Koryagin was sentenced to 7 years in strict regimen labor camp and 5 years internal exile for making that statement. While at the labor camp, Dr. Koryagin has been brutally beaten, forced to work for 14 hours a day, is malnourished, and must live in unsanitary conditions.

Now the Soviet Union has devised a method to prevent some prisoners from ever being released. Article 188-3 of the Soviet Criminal Code, enacted in October 1983, makes infractions of prison camp rules subject to criminal penalties. Under this law, a prisoner's sentence can be extended indefinitely.

As deplorable as the conditions are in the prisons and in the labor camps, even more disturbing is the ease with which the Soviet Government imprisons its citizens. Public outcry is the only hope for these brave Soviet citizens. Soviet Political Prisoners Day was established for just this reason. We, who are free, must be the voice for those who are not permitted to speak for themselves.●

GERRY WYRSCH

● Mr. HECHT. Mr. President, for Gerry Wyrsch, sine die adjournment of the 99th Congress brings to a close over 9 years of dedicated and skillful service to the United States Senate. As his career on the Hill ends, Gerry departs with a finely developed knowledge of, and respect for, this institution, all of which I am sure makes it difficult indeed for him to say goodbye to Washington.

While he has served other Members of this body, Mr. President, Gerry has been a valued part of my office since I was elected in 1982. In fact, Gerry was the first legislative staff person I hired, and he has served me with dedication and distinction ever since. Most recently, Gerry has been my special assistant on the Subcommittee on Housing and Urban Affairs. And, as always, he has provided me with excellent counsel and advice.

Mr. President, Gerry now heads home to the West with his lovely wife Martha. My staff and I thank Gerry for his excellent work and example and the many fine contributions he made to the great State of Nevada. We all wish Gerry and Martha the very best in their new home and for the future.●

HESTER AND WINNIE FRANKS

● Mr. PRYOR. Mr. President, next month, Hester and Winnie Franks of Dumas, AR, will celebrate their 50th wedding anniversary. This beloved couple and long-time friends of mine are an institution in their community.

Hester Franks, a retired employee of the Crow-Burlingame Co., has been an active participant in the Dumas business community. In fact, he served as president of the Dumas Chamber of Commerce and its Industrial Foundation. Active in the local Lions Club, Hester was also a mover and a shaker in the drive to establish the Southeast Arkansas Medical Center in Dumas.

A strong proponent of providing activities for the area's young people, Hester has been long active in Dumas' athletic programs.

His wife, Winnie, a very talented artist, dedicated for many years her energies to the First United Methodist Church.

They now enjoy a well-deserved retirement in the community they so dearly love and I join their many friends and relatives in paying tribute to their golden anniversary. I wish them continued good health and happiness.●

NANCY STEHLE

● Mr. HECHT. Mr. President, I want to take time today to pay tribute to a recently departed member of my staff, Ms. Nancy Stehle. While her tenure was short, her impact was great and she is sorely missed.

Mr. President, in March of this year, Nancy temporarily joined by staff as a congressional fellow upon taking a leave of absence from her official role as a civilian within the Department of the Navy. Ms. Stehle holds the position of Deputy Director of Environmental Programs, within the Office of the Assistant Secretary of the Navy, Shipbuilding and Logistics. In that capacity, Nancy is responsible for overseeing environmental program development for the Navy.

In her short but fruitful stay, Mr. President, Nancy has had the opportunity to witness, first hand, the inner workings of Congress and how Capitol Hill affects our daily lives, While she has been enlightened, from my perspective, Mr. President, Nancy's technical expertise, enthusiasm and motivation have been invaluable to me and my entire staff. Her loss is felt.

Nancy is unique to us, Mr. President, and she remains our friend. As she departs the Senate, my staff and I thank her for her hard work and inspiration and wish her all the very best for the future.●

NATIONAL DAY FOR WOMEN IN SPORTS

● Mr. DOMENICI. Mr. President, I am proud to be a cosponsor for Senate Joint Resolution 418 which designates February 4, 1987 as a "National Day for Women in Sports". The House has passed a similar measure, House Joint Resolution 740, and the bill is awaiting the President's signature. I think it is very important to recognize the positive effect which participation in sports has on the young people in our country, and the opportunity it provides, particularly for women.

Sports develops skills which serve the athlete not only on the playing fields but in all of life's pursuits. Many of our leaders obtained their first taste of leadership through participation in sports. Leadership requires a fine balance between concern for others and a self-confident drive to win. Nowhere can women obtain these skills better than in sports.

I am very proud of our outstanding program in New Mexico because it provides a well-rounded health and physical education curriculum. As a former professional baseball player, I know the value of this kind of experience.

Both the University of New Mexico in Albuquerque and New Mexico State University in Las Cruces have outstanding women's golf programs. The New Mexico State team won the High Country Athletic Conference championship last year. It is a tribute to the State's fine women's golf programs that both of these New Mexico universities have been chosen for the honor of hosting the National Collegiate Athletic Association Women's Golf Championship, one in 1987 and the other in 1988.

New Mexico schools also have a fine women's basketball program. The girls' team from Kirtland Central High School in Fruitland, NM, has been State champion in basketball six straight times. One more win will set a national record. The Southwest International Sports Federation from Albuquerque is sponsoring a basketball competition between a group of outstanding New Mexico high school girls and teams in Finland and the Soviet Union in April 1987.

In my field of human endeavor, there are at least a few people who serve as examples of excellence. In these individuals, we are able to find a measure of our own possibilities instead of a reminder of our own limitations. The State of New Mexico claims several outstanding women athletes.

Nancy Lopez is one of those examples of excellence. By the time she was seven, she was following her parents around the Roswell, NM, public course. When she was 8, her dad gave her a sawed-off four wood. Within a year she was playing rounds with him, and by age 11 she was beating him. At 12 she won the first of three State women's tournaments. At Godard High School in Roswell, she ranked No. 1 on an otherwise all-boy golf team, and led the team to a State championship. From the beginning of her professional career, she was a record-setter both for the size of her purses and the number of consecutive tournaments she won. She was noted as a tough competitor with a warm personality, gracious under pressure and a favorite with the gallery.

Kathy Whitworth, who grew up in Jal, NM, is another noted woman golfer with an impressive record of wins and earnings. In the early 1970's she was instrumental in getting the number of events and women's purses increased, attracting many firms to sponsor women's tournaments. She said, "This is a game where you learn a lot about yourself. You learn your own capabilities and how you react under pressure."

Other noted women golfers from New Mexico include LPGA members Rosey Jones, Alexandra Reinhardt, and Kris Monaghan.

Claudia Schleyer received All-American honors, both as a basketball player and for academic performance, three times while she was attending Eldorado High School in Albuquerque. She went on to graduate this year from Abilene Christian University with a 3.9 grade average in pre-med. She is the Nation's leading scorer and holds the record in Division II college basketball. She also received the Southland Corp. Award this year, given to the top 10 amateur athletes in the United States.

Cathy Carr was an Olympic champion in 1972 while attending Highland High School in Albuquerque. She set two world records, claiming gold medals for both the 100-meter breast stroke and the 400-meter medley relay.

Darlene Anaya of Albuquerque won a first in Judo in the 1983 Pan Am Games.

Laurel Brassey, a volleyball champion, came in sixth in the 1975 Pan Am Games, fourth in the 1979 Pan Am Games, and was selected as a member of the American Olympic Swim Team in 1980.

These and the many other fine women athletes from New Mexico and every other State deserve to be honored by the country as a whole. I urge the President to sign this measure and provide suitable recognition to our sports heroines on February 4, 1987.●

MANITOWOC'S WCUB WINS PRESTIGIOUS FORUM AWARD

● Mr. KASTEN. Mr. President, a local radio station in Manitowoc recently gained a national award that reflects well, not only on the station itself, but also on the State of Wisconsin.

WCUB, a 5,000-watt AM radio station that serves the 33,000-resident lakeshore community of Manitowoc, as well as 17 counties across east, northeast, and central Wisconsin, has won the prestigious "Forum Award," sponsored by the Atomic Industrial Forum.

What makes this accomplishment particularly noteworthy is that past winners of the Forum Award, which was established in 1969 to recognize both print and electronic media coverage of nuclear energy issues, have included BBC Radio Science Unit, the Associated Press Radio Network, National Geographic, New Yorker, and United Press International, to name a few.

That a local radio station in Wisconsin has been added to this prestigious list is a great honor, indeed.

WCUB news editor Ruth Ann Schmidt and news director Mike Kinzel produced a six-part series on the Point Beach Nuclear Powerplant in Two Rivers, WI. Their series focused safety precautions needed for nuclear energy, the economic benefits of nuclear energy and how local residents react to having a nuclear powerplant in their community.

According to the Atomic Industrial Forum, the WCUB series put a "really good picture across, even though it was a radio report."

I would especially like to recognize Ruth Ann and Mike for their professionalism and the quality of their work. These two individuals constitute the entire news department at WCUB.

Ruth Ann, 25, is a native of Two Rivers, WI, and a graduate of the TransAmerican School of Broadcasters in Wausau, WI. She has been with WCUB for 4 years, and is the daughter of Gerald and Helen Schmidt.

Mike Kinzel, 40, has been with the station for 15 years. He is a native of Manitowoc and a graduate of the University of Wisconsin in Madison with a degree in journalism.

WCUB's "Nuclear Neighborhood," ironically, ran the week of the Chernobyl incident, April 29 through May 3. The industry of these two professional radio news reporters was, thus, timely as well as informational.

Mr. President, Ruth Ann and Mike will be in Washington to receive their award on November 18. I wish both of them the best for continued success in their journalistic careers and, on behalf of the people of Wisconsin, congratulate them on this significant achievement for themselves, for their station, and for the State of Wisconsin.●

REPORT ON TRIP TO PEOPLE'S REPUBLIC OF CHINA

● Mr. HEINZ. Mr. President, on May 23, 1986, I was privileged to lead a delegation of our distinguished colleagues, including Senators from New Jersey [Mr. BRADLEY], Virginia [Mr. TRIBLE], and Maryland [Mr. SARBANES] to the People's Republic of China.

Our goal in visiting the People's Republic of China was to investigate a number of important issues affecting future relations between the United States and the People's Republic of China through discussion and debate with our Chinese hosts. Our first objective was to gauge the convergence of economic and strategic interests between the United States and China as a basis for long-term cooperation. This included discussion of shared strategic objectives with regard to the Soviet Union and expanding bilateral trade and investment.

A second area of inquiry that we had a deep interest in investigating was China's ambitious economic modernization program. Beyond the basic outlines of the program, our discussions focused on the prospects for its realization given the physical and policy limitations facing the country and the uncertainty of a sustained political commitment to open economic policies.

We undertook extensive meetings with managers of production facilities, Chinese officials, and United States businessmen to gain a better understanding of the impact of economic modernization on the Chinese economy and the level of political commitment to reform among Chinese decisionmakers. These discussions also provided us with firsthand accounts of the growth and development constraints resulting from shortages of trained manpower and managers, the weakness of the current technological base, and limited access to foreign exchange.

Beyond what might be termed physical constraints, we delved into the institutional and policy constraints that the Chinese continue to inflict on themselves. We challenged the Chinese to remove the structural limitations imposed by Chinese Government policies. We had extensive discussions of the problems of currency inconvertibility, limited labor mobility, an all-encompassing social welfare system counted as an overhead cost of production for each workplace, and limitations placed on access to essential goods, services, and credit by Government planners and bureaucrats. We also explored flaws in basic macroeconomic policies including monetary policy, capital market development, tax policy, and general market pricing. Chinese policymakers indicated that they understood very well many of the criticisms we presented, but offered

few assurances that meaningful reform was imminent.

The third key area of our investigations was the United States role in supporting Chinese modernization and the climate for United States trade and investment in China. To put the issue in context, we gathered data and sought Chinese insights on the role United States goods and technology have been playing in improving China's civilian and military industrial base and the impact of United States and COCOM export regulations on the flow of technology to China. To assess the future of United States involvement in China, we explored Chinese development priorities and potential for free access by United States firms to the Chinese domestic market, a major sticking point with the Chinese but essential to attainment of their investment goals.

In investigating the United States role in China, we focused considerable attention on the strengths and constraints cited by the Chinese and Americans as facing United States investors in China. The greatest strength that we found was the clear preference, repeatedly cited by the Chinese, for dealing with United States firms, especially compared to the Japanese. The Chinese cited United States firms' willingness to commit investment dollars and technology to China. The Japanese, on the other hand, were criticized for being salesmen, unwilling to undertake direct investment or provide technology.

Unfortunately, we also found almost overwhelming constraints facing United States firms interested in investing in China. The problem most often cited is the requirement that prescribed levels of foreign exchange earnings—or import substitution goals—be attained before profits can be repatriated. A second problem in sealing a deal in China is limited and uncertain legal protections. Third, businessmen cited poor quality and overpriced land, labor, and other inputs to production. We made repeated efforts to explain these problems to the Chinese and to bring the full dimension of the problem home to them in our discussions. Despite some very lively debate on these issues, however, the Chinese remained unwillingfully to accept our assessment of the situation or to commit themselves to effective steps to resolve them.

The final area we discussed with the Chinese was the potential for friction in Sino-American relations arising from problems in the trade area. We had a frank discussion of rapidly increasing levels of Chinese textile exports to the United States. We stated in the clearest possible terms that, while the Chinese may view the United States economy as huge and easily able to absorb their textiles, the loss of jobs in the United States due to surging textile imports is simply unacceptable. We noted that the U.S. economy is the most open in the world and that we are glad to share its growth with others, but we will not see it swamped by imports to the detriment of U.S. industries.

A second, but less immediate, issue raised concerned China's long-term trade strategy. The Chinese stressed their need to expand and upgrade the value of their exports in order to finance essential imports and indicated that they are focusing on consumer products such as computer peripherals for the markets on the Pacific rim. We noted that, over time, this could result in China joining other Asian economies producing such goods, displacing United States goods in Pacific rim markets, and eventually increasing competition in a few product lines in the United States market. We stressed that the Chinese will have to take care to avoid a mercantilist approach that only creates new stresses in the international trading system.

As you can ascertain from my remarks, my colleagues and I had a very lively and exhaustive set of discussions with our Chinese hosts on a broad range of issues. We found many issues in agreement between our own countries but also identified many areas of disagreement that should keep our diplomats busy for years to come. While our trip did not resolve our bilateral problems, it was a tremendous learning experience for me and for the other Senators and, I believe, for our hosts as well.

I would like to offer special thanks to all of our Chinese hosts for their hospitality and for the frankness and openness with which they approached our discussions. I would also like to pay tribute to Senators BRADLEY, TRIBLE, and SARBANES for their hard work, probing questions, and the vigor they sustained throughout a journey of many thousands of miles and many days. We all learned a great deal and, I hope, made a small contribution to putting Sino-American relations on a firmer footing for the future.

I would like to include in the RECORD a report of our trip. It includes an overview of our visit, a discussion of the issues I summarized in my remarks, and our findings and conclusions on issues facing the United States and China in the coming decades. I ask that our report be printed immediately following these remarks.

The report follows:

SENATE BANKING COMMITTEE REPORT

VISIT OF CODEL HEINZ TO CHINA

Overview of Delegation Visit

A Senate delegation led by Senator John Heinz, Chairman of the Banking Committee's Subcommittee on International Finance and Monetary Policy, visited the People's Republic of China from May 23 to June 1, 1986. The delegation included Senators Bill Bradley, Paul Sarbanes, and Paul Trible and sought to investigate the following issues.

The convergence of economic and strategic interests between the United States and China, including shared strategic objectives with regard to the Soviet Union and expanding trade and investment.

China's ambitious economic modernization program, physical and policy constraints facing the country, and the likelihood of a sustained political commitment to open economic policies.

The U.S. role in supporting modernization and the climate for U.S. trade and investment in China.

Potential sources of friction in Sino-American trade and economic relations.

The delegation's visit was hosted by the Chinese People's Institute for Foreign Affairs (CPIFA).

In order to gain exposure to the widest range of opinion on these issues in the time available, the delegation travelled to seven cities in north, central and southern China, and met with Central government policymakers, local officials, and line managers of production facilities.

The delegation arrived in Beijing on May 23 and received a formal welcome to China from His Excellency Han Nianlong, President of CPIFA, and Madame Zhu Man Li, Deputy Secretary General of the Institute. An introductory briefing on the full range of U.S. political, military, and commercial relations with China was provided by U.S. Embassy staff at the home of Charge d'Affaires Peter Tomsen.

On Saturday, May 24, the delegation met with Mr. Bu Ming, Chairman of the Board of the Bank of China, who provided a financial overview of the Chinese economy along with his views on economic modernization and policy reform. In the afternoon, Xu Xin, Deputy Chief of the General Staff of the People's Liberation Army discussed the Soviet threat in Asia, current Chinese military policy, and areas of disagreement in strategic policy between China and the United States.

On Monday, May 26, the delegation met with Mr. Jia Shi, President of the China Council for Promotion of International Trade (CCPIT), for a discussion of Sino-American commercial relations including problems in the investment regime and bilateral trade issues. This was followed by a meeting in the Great Hall of the People with Vice Premier Li Peng, the most senior Chinese official on the itinerary, during which he provided a broad overview of China's foreign policy including points of convergence and divergence between the United States and China. Next the delegation met with Vice Minister of Foreign Affairs Zhu Qizhen, the official responsible for Sino-American relations, and examined prospects for closer bilateral relations. Finally, discussion returned to bilateral trade and investment issues in a dinner meeting with Mr. Lin Hanxiong, Minister of the State Administration of the Building Materials Industry, and Qian Qichen, Vice Minister of Foreign Affairs.

On Tuesday, May 27, the delegation left Beijing and flew to Inner Mongolia. The day was spent touring the tank production facilities at the Inner Mongolia Number One Machinery Plant in Baotou and meeting with municipal officials. At the factory, the Director, Mr. Zhang Jun Ju, explained the plant's operations and conducted a tour of tank and rail car production lines. The delegation then met with Baotou Deputy Mayor

Zhang Zhiyu for a discussion of economic development and the modernization program in Baotou before departing for Xian, the old imperail capital in central China.

On Wednesday, May 28, the delegation visited the Lishan Microelectronics Company, a major high technology research and production facility. Mr. Yang Li Qan, President, and Mr. Huang Chang, Chief Engineer, provided an overview of Lishan's training and research programs; then Mr. Huang, a U.S. trained scientist, led a tour of the semiconductor manufacturing facility and discussed the impact of Western export controls on Chinese technological development.

On Thursday, May 29, the delegation departed Xian and flew to Shanghai. U.S. Consul General Thomas Brooks and his staff provided an overview of the Shanghai economy and U.S. business involvement there and a tour of the commercial district.

On Friday, May 30, the delegation had a full day of meetings beginning with a visit to the Xin Zhonghua Machinery Factory, producer of orbital rocket launchers and of refrigerators for the mass market. A briefing was provided by the Director, Mr. Zhang Wen Zhang, assisted by Madame Huang Zhong Qi of the Shanghai Bureau of Astronautics. In the afternoon, the delegation divided into two groups, with part visiting the Hudong Shipyard for a briefing and tour by the shipyard's Director, Mr. Li Qing Ke, and the others meeting with Mr. Jin Zhuqing, Director of the Shanghai Municipal Science and Technology Commission, who provided insights on development plans and government investment goals in Shanghai. A reception at the U.S. Consulate provided an opportunity to discuss the investment climate with members of the American business community in Shanghai. Finally, the delegation met with Vice Mayor Li Zhaoji of the Shanghai Municipal People's Government and Mr. Sun Gengduo, Vice Chairman of the Finance and Economy Committee of the Shangahi Municipal People's Congress to discuss local development issues.

On Saturday, May 31, the delegation travelled by train to Hangzhou where meetings were held with Mr. Wang Hongyi, Vice Secretary General of the Zhejiang Provincial People's Government, and His Excellency Xin Qichao, Vice Governor of Hangzhou, on investment and economic policy issues in the region and the city. The night was spent in Guangzhou and on Sunday, June 1, the delegation departed by train for the Shen Zhen Special Economic Zone bordering Hong Kong.

Mr. Jin Xipei, Vice Mayor of Shen Zhen, provided a briefing on developments in the Special Economic Zone and a tour of the city, following which the delegation crossed the border into Hong Kong. In Hong Kong, Mr. Burton Levin, U.S. Consul General, hosted a reception at which the delegation was briefed by Consulate staff and the U.S. business community on China trade. The delegation departed Hong Kong late in the evening and arrived back at Andrews Air Force Base on June 2.

The trip was flawlessly managed by the delegation's Chinese hosts, U.S. diplomatic personnel in China, military personnel accompanying the delegation and at refueling stops in Alaska and Japan, administrative staff of the Senate. The journey provided a wealth of insights on Sino-American relations to the participants which are summarized below.

Convergence of U.S. and Chinese Interests

The U.S. Government characterizes Sino-American relations as between friendly, non-allied states, in recognition of China's independent foreign policy that avoids alignment with either super power. The delegation's discussions confirmed that there are many issues on which the two countries share a common viewpoint but also that the Chinese differ with U.S. policy in certain areas. The Chinese tended to emphasize to their American audience the threat of Soviet expansionism and the need for both the United States and China to closely monitor Soviet actions in Asia and stand ready to counter aggression. On international issues concerning Central America, the Middle East, and terrorism, the Chinese championed the interests of developing countries by arguing that the United States, like the Soviet Union, should not interfere in the affairs of sovereign states.

Despite these differences and the previous estrangement between the Beijing government and the United States, current friendly relations are supported by a considerable reservior of good will between the peoples of the two countries. U.S.-educated Chinese and the large overseas Chinese population in the United States provide natural links. In addition, the United States was credited with only a limited role in the unequal economic relationships forced on China by Western colonial powers during the nineteenth and early twentieth centuries.

The PRC officials expressed the strong interest of the Chinese government in maintaining good policital relations and expanding economic ties. The Chinese repeatedly stated that they look to Western technology as an essential ingredient of their ambitious modernization plans. American computer technology was clearly favored by the industrial managers with whom the delegation spoke, and English is the favored foreign language in the Chinese education system by a wide margin.

Particularly noteworthy was the fact that the Taiwan issue was raised only once during the visit. While described as a major stumbling block for future Sino-American relations in the delegation's opening meeting, the failure of senior military or civilian officials to even mention the issue appears to indicate that the Chinese will not let U.S.-Taiwan relations stand in the way of expanded PRC access to U.S. trade and investment.

The delegation echoed the sentiments of the Chinese government on the desirability of closer Sino-American relations, but pressed the Chinese for evidence with which to reassure skeptical Americans on the likelihood of long-term convergence of political and economic interests between the People's Republic of China and the United States. The discussions focused most often on the political posture of China vis a vis the Soviet Union and the United States and the state of economic relations with the U.S.

Soviet Union

Considerable attention was focused on the state of Sino-Soviet relations. The Senators questioned PRC officials on the significance of recent signs of easing of tensions between the Chinese and Soviets including the signing of a new trade agreement and expanded cultural ties. The Chinese were asked how relations could be improved in the face of clear Soviet expansionism threatening to China's interests in Afghanistan, Vietnam, Mongolia, and North Korea.

As a starting point, Chinese officials argued that close ties with the Soviets following the Revolution were driven primarily by Chinese isolation imposed by the West rather than a special affinity for the Soviets. PRC officials pointed to a long history of mistrust between China and Russia dating from the czarist period, and claimed that fundamental interests rather than social systems are the most important underpinnings of relations between states. They reassured the delegation that China knew very well the things of which the Soviets were capable from first hand experience and China was not likely to ally herself with the Soviet Union.

Their argument in support of improved Sino-Soviet relations was simply that world peace was best served by relaxation of tensions among states. While the Chinese continue to distrust the Soviets, the two countries share a 7000 mile border and must work to ease tensions in the interest of peace.

They argued that the principal goal of expanded economic ties with the Soviet Union is modernization of the more than 130 industrial plants built by the Soviets during the 1950s and now in desperate need of technical upgrading. In any case, expanded trade along those lines would only reduce the current PRC trade surplus with the Soviet bloc (with no effect on foreign exchange because of the clearing account system used) and would little alter the heavy concentration of Chinese trade in Western markets (East bloc trade is 10 percent of China's total). In addition, China's greatest need is advanced technology for which it looks almost exclusively to the West; the Soviets clearly had little credibility in this area.

Trade and Investment

The Chinese welcome the expansion of U.S. trade and investment in China and point to it as the clearest sign of expanding ties between our countries. The United States is China's third largest trading partner and second source of direct investment after Hong Kong. Total trade has grown rapidly, rising more than 40 percent over the last four years to $8.1 billion in 1985. Total U.S. investment in China stands at roughly $1 billion.

The Chinese are anxious for closer economic ties but attempt to place the burden for more vigorous efforts on the American government and business community. Their arguments are laced with claims about the disproportionate advantages enjoyed by the United States in bilateral relations, supported by misleading and incomplete bilateral trade statistics that exclude all exports to the U.S. through Hong Kong and thereby turn a slight surplus for China into an annual deficit of roughly $1 billion.

The Chinese take the view that Western businessmen are missing a great opportunity by not investing in China. They constantly downplay the difficulties of operating a business there. In the trade area, supported by their claims about a bilateral deficit for China, the Chinese argue that the only problems are on the side of Chinese exports (principally textiles) which are tightly controlled by the U.S. Only if Chinese exports grow can their imports grow, expanding Western opportunities to export to China. The key to expanded trade, in their analysis, is removal of U.S. trade restrictions.

The particular strength of the U.S. position in China is the willingness of U.S. companies to undertake joint ventures despite considerable difficulties in establishing themselves and high start-up cost. The Chinese attitude toward the United States was in sharp contrast to their view of Japan which was characterized as wanting only to

sell, never to share production capabilities or transfer technology or skills. Over the long run, the willingness of U.S. firms to bear these start-up costs in China and persevere in working with the Chinese offers promise of strong economic ties between the two countries.

The Drive for Economic Modernization

The long-term prospects for Sino-American economic ties depends much more on the Chinese than on the United States. Despite an attitude expressed by many senior Chinese officials that U.S. firms were missing a great opportunity if they did not invest in China, Chinese economic policies, the level of development in the country, and limitations of infrastructure and manpower represent daunting obstacles to an expanded U.S. role in the Chinese economy.

Deng Xiao Ping has set the economic goal of roughly tripling China's real GNP to $1 trillion by the year 2000. China must improve on its average 6-7 percent growth over the last 10 years if it is to reach this goal and the country faces a range of political and economic problems that make that outcome problematic. To address these constraints, the PRC government launched an ambitious economic policy reform program.

The Modernization Program

The Chinese have set out a program of Four Modernizations to guide future economic policy. The order of priority assigned to economic modernization places agriculture first, followed by industry, science and technology, and finally defense. Officials noted a number of indicators of the changes that have occurred.

Central planning has been reduced from specific production targets to only general guidelines. Enterprises are increasingly permitted to go into production of new types of goods to meet market demand at the discretion of enterprise managers, resulting in shifts of production from planned output of military or heavy industrial goods into civilian and consumer products: tanks to railway cars in Baotou, rockets to refrigerators at Xin Zhonghua.

Concepts like self-management and retention of profits are being introduced into enterprise management. Instead of turning over all production and profits to the state, managers are now called upon to meet demand and to turn over part of profits in the form of taxes, using new profits for reinvestment.

The commercial sector is no longer the exclusive province of the state. Private entrepreneurs are permitted to start businesses and a state production plan has been replaced by a system based on supply and demand.

Many new, young managers with at least secondary-level technical training have been put in place, replacing party cadres with little training. Since the reforms began in the heavy industrial city of Baotou, for instance, the average age of managers has dropped from 50 to 45 and the prevalence of managers with secondary level technical training or above has increased from 10 percent to 60 percent.

A system of reward and punishment for workers has been introduced providing monetary incentives for good workers and demotions and "lay offs" for poor performers.

As to the ultimate success of economic reform, the Chinese officials repeatedly pointed with pride to the success of the rural reforms already undertaken. They noted that China feeds 20 percent of the world's population with only 7 percent of total arable land. They pointed to expanded availability of fresh fruits and vegetables, the growth of free markets in rural areas, and the success of incentives in spurring production.

The delegation's visit to the Shen Zhen Economic Zone also provided physical evidence of the steps being taken to promote a more modern economy. An impressive high rise city has sprung up in 6 years under an "open door policy" toward foreign capital and technology. The Chinese measured the Zone's success in the 4,000 contracts signed with enterprises from 15 countries totalling more than $3 billion of investment.

However, Shen Zhen officials admitted that effort has been concentrated in completing basic infrastructure. Now the task is turning to improving the investment climate, dealing with the different management styles of China and the West, limited trade and commerical law in China, and ubiquitous shortages of trained manpower. The problems of reform in the urban setting are only now being put into place throughout the country, and the general tone of comments was that this was likely to be a more protracted and difficult process than the rural reforms.

All officials and managers with whom we spoke stressed their commitment to economic reform, referring to it as absolutely essential to attainment of overall economic goals. No one appeared to believe that consistent high growth was possible under the present system of economic organization or at levels of technology and training available within China. The delegation pressed very hard in the area in an attempt to determine the depth of commitment of senior officials to reform.

The delegation noted past examples of dramatic shifts in policy, from liberal, progrowth policies to ideological purification. There was much discussion of the Cultural Revolution, the massive social unheavel sparked by Chairman Mao to renew the Communist revolution, and its value as a guide to the future. The Chinese tendency toward xenophobia was also discussed, a trait exhibited last year in spontaneous attacks on foreign spectators after a loss by the Chinese national soccer team to Hong Kong.

All Chinese officals we met professed a deep commitment to the new policy reforms and the opening to the outside world, a commitment based at least in part on their revulsion at the excesses of the Cultural Revolution. Two basic arguments were put forward as indications of the commitment of the Chinese people and government to change.

Every conversation on the Cultural Revolution was dotted with personal accounts of the impact of the tremendous social dislocation and economic losses of that period. The delegation's hosts argued that these events so deeply affected the national psyche that the Chinese would not let such a thing happen again; the Cultural Revolution represented a major turning point in the history of post-revolutionary China away from ideology to pragmatism.

The current leadership was taking steps to institutionalize the new order. China is assuming the responsibilities of membership in international organizations such as the IMF, World Bank, and Asian Development Bank, and has applied for membership in the GATT. Bilaterally the Chinese are signing investment treaties and trade agreements binding them to standards of performance in international dealings. Domestically, criminal and civil legal codes are being written to clarify individual rights and ensure due process.

While the evidence does argue for continued reform, it was clear from the delegation's observations and discussions that the Chinese have a very long way to go.

Physical and Institutional Constraints

China is a poor country. The World Bank places its GNP per capita at just over $300, in the same category with countries such as India, Haiti, Somalia, and Sudan. At the same time, China stands in marked contrast to other countries at similar levels of development in terms of personal welfare—higher life expectancy, lower infant mortality, and better nutrition—and economic and financial conditions—consistent higher growth, lower inflation, greater indutrialization, a current account surplus, significant investment inflows, large foreign exchange reserves, and less reliance on concessional foreign aid.

Despite these strengths of the Chinese economy, the country shares many of the problems of low income developing countries: a relatively small base of skilled manpower and managers, weak technological base, limited basic infra-structure, and relatively limited access to foreign exchange. All of these problems are compounded by the sheer size of China, which is the third largest country in the world after the Soviet Union and Canada and with 1 billion people, only 20 percent of which are in urban areas (compared to 75 percent and 66 percent for the Soviet Union and Canada).

Trained manpower: World Bank statistics indicate that only 35 percent of China's secondary school age group is enrolled in school and only 1 percent of the 20-24 age group is enrolled in higher education. The Chinese repeatedly emphasized their shortcomings in this area and the importance of higher education opportunities for Chinese students in the U.S. (the State Department reports about 15,000 students currently in the U.S.). In addition to engineers and scientists, it was clear that trained managers are badly needed as few enterprise managers seemed to have even rudimentary understanding of finance, cost accounting, or productivity analysis.

Technological base: Much Chinese heavy industry dates from the 1950s when the Soviets helped the Chinese build more than 130 factories; the delegation saw a clear illustration in the Baotou tank factory. The Chinese are now looking to the Soviets to update some of these facilities, although they have already undertaken improvements through addition of Western machinery and computer technology in some cases. On the other hand, such outdated Soviet-designed production facilities contrasted sharply with more modern, Western-equipped plants in Xian and Shanghia where production of advanced electronics and rocket boosters demonstrated Chinese capability to carry off modern and relatively sophisticated production, albeit on a small scale.

Infrastructure: The limitations facing China are fairly evident and often cited by the Chinese in discussion. For example, it was noted that China is physically slightly larger than the United States but has a rail network only one-sixth as large. The delegation travelled on the single track connecting the key port city of Guangzhou and the gateway to Hong Kong at the Shen Zhen Special Economic Zone.

Foreign exchange: China's ability to earn foreign exchange is limited by the heavy concentration of exports in textiles, petroleum and petroleum products, and other primary commodities (the top three categories of exports to the U.S.). Expanded export of textiles is limited by quotas under the Multi-Fiber Arrangement (at least until recently a major exception in general being the United States) and prices of petroleum and primary commodities generally are falling. Chinese financial policies would permit more borrowing since debt service is currently 7-8 percent of exports and Chinese policy is to limit the debt service ratio to 15 percent. However, the Chairman of the Bank of China made clear that while China has floated bonds and CDs in Japanese and European markets, the government is wary of taking on substantial foreign exchange risk and is likely to be cautious in increasing its exposure.

Policy Constraints

Despite the strides being made by the Chinese government to reform the economy, government financial and social policies remain at least as great a constaint on development as the physical limitations facing the country. Two key problem areas are foreign exchange management and the labor and social welfare systems.

Limits on convertibility of Chinese currency have been the subject of extensive discussions between U.S. and Chinese officials. Chinese policy on foreign exchange is that foreign currencies are a scarce resource that must be used first to meet the needs of the state. To that end, the Bank of China maintains control over exchange flows, including routine conversion of currencies and repatriation of profits, although the degree of control varies with the policy climate and the prevailing level of foreign exchange reserves in the country. The Bank's Chairman cited the rapid loss of foreign exchange that occurred when central controls were loosened in 1984-85. China ran a record $14.9 billion trade deficit and reserves fell dramatically. The World Bank estimate of external reserves as of 1984 was $22 billion, and Chairman Bu indicated reserves now stood at $12 billion.

The arrangements for repatriation of profits are the subject of an individual deal made with each venture. In terms of general guidance, the Bank of China has recently promulgated rules linking repatriation of a profits to foreign exchange earnings.

Enterprises that earn sufficient foreign exchange from exporting to cover their profits can repatriate those profits—the key is maintaining a positive foreign exchange balance in overall operations. Sale of manufactures abroad and a 1.8 megawatt nuclear plant with planned energy sales to Hong Kong (now under construction) were cited as examples.

Ventures producing for the domestic market but which substitute directly for hard currency imports can also repatriate profits. Armand Hammer's coal mining venture in Shanxi Province was cited as an example by the Chinese.

Producers for the local market that do not earn foreign exchange cannot repatriate earnings directly but can invest their profits in other ventures that do earn foreign exchange and repatriate earnings in that way.

Many U.S. executives indicated that the policy was not all that elaborate really. A venture can only repatriate profits if it earns enough foreign exchange to cover them—period.

Perhaps the most difficult constraints confronting Chinese society are limited labor mobility and the social welfare system. Workers are assigned to work units or enterprises (know as *danwei*) where they have permanent employment assured—the so-called "iron rice bowl." The link to the danwei is not only based on employment, but on housing, education, pensions, health care, and other key services provided only through the work unit. Chinese managers indicated that roughly two-thirds of the workers in their enterprises were involved not directly in production, but in these other ancillary services of the enterprise.

The delegation strongly suggested that breaking the all-encompassing link between worker and danwei would both promote labor mobility to optimize use of available human talent and remove a heavy burden of overhead from enterprises. In our opinion, however, this is likely to require a profound change in the way services are provided in Chinese society. The government will have to develop national systems, or a market for these services will have to develop (with attendant shake-out of enterprises and dislocations while market prices are established). There seems little evidence that progress will soon be made in either area.

Capacity of the Chinese economy for change

Despite all the pledges of commitment by Chinese officials to reform and interest in Western economic models, we generally concluded that the capacity of the system for profound change and the likelihood of change along Western lines remain questionmarks. There was ample evidence of an entrenched "central planning mindset" even among those dedicating themselves to change. Bank of China Chairman Bu argued that when market signals are used, all enterprises produce or import the same goods, so planning is still needed. A number of officials argued that China's development represents a course no one else has tried and that the Chinese must "learn their own way" rather than simply adopt existing models. The Chinese also remain focused of the long-term goal of self-sufficiency in everything.

There was also a sense that others should adapt to China rather than the other way around. Despite all the evidence presented of the efforts still needed to attract foreign investment, the Chinese at times seem mermerized by the great opportunities available in the Chinese market to the point of shortsighted discouraging every western investment they believe they need.

PRC officials remain unreceptive to negotiation of meaningful investor protections in a bilateral investment treaty arguing that U.S. investors already get better treatment than Chinese enterprises (15-30 percent taxation versus 50 percent) and should be satisfied, and that some Europeans have signed BITs on China's terms, so the problem must be the United States.

Even relatively minor requests run into a stone wall at times. Efforts by American businessmen to have the Chamber of Commerce accredited to Beijing and representing their interests have thus far been rebuffed. The Chinese argue that the business community should be satisfied because many have representative offices and the U.S. Council for United States-China Trade is accredited. And? So?

Institutions like the Chinese bureaucracy, with its 5,000 year history, was cited a major hurdle by U.S. officials and businessmen. Fragmented authority spread over a multiplicity of agencies is a major reason things simply do not happen.

The administered Chinese pricing system is another key constraint on the economy. Many if not most prices are set administratively and do not reflect production costs or economic scarcity. This applies to the exchange rate as well as to prices of production inputs like labor, land, utilities, etc. There has been some recent, limited experimentation with prices based on the balance of supply and demand rather than central planning, with resulting inflation of 8.8 percent in 1985. It is most interesting that the Chinese stated that they have set the same rate of inflation as a level they would like to duplicate in 1986.

A particularly damaging element of pricing policy is the practice of grossly overcharging investors for labor, land and other inputs to production. The profitability and therefore the attractiveness of investment in China are reduced by this policy in which labor charges of up to 5 times the local going wage are cited as common, apparently pegged to prevailing average rates elsewhere in Asia (without taking account of differences in infrastructure, education, etc.). Similar overcharging applies to the staging of trade shows and seminars. The government relies on this process to generate foreign exchange since the government lays claim to the foreign exchange and to the difference between prices charged and prevailing local wages and rents. PRC officials noted that all of these prices are subject to adjustment in the negotiated agreements between the investor and the government.

Both to American enterprises investing in China and to the PRC generally the lack of some key institutions is another important constraint. The private sector is very limited in size and restricted to small commercial and service enterprises. There is no private credit system of any kind, and the official credit system is very limited. The legal system is in the early stages of definition and their are few guideposts of legal precedent to go by. These concerns were underlined by "representative" horror stories from U.S. executives.

One businessman seeking a copy of local regulations under which his business was to operate was informed that the regulations were not published but that the local government officials could answer his questions and would inform him of any infractions or problems.

Businessmen also noted a Chinese penchant for unilaterally changing contracts negotiated with foreign investors if they appear more favorable to the investor than originally intended.

In sum, it was clear to all members of the delegation that the Chinese often inflicted needless and counter productive barriers, ranging from miner to major in nature. Until the various—and frequently conflicting—Chinese government bureaucracies realize the extent of this problem, it was our judgment that western businessmen would be greatly discouraged from attempting direct investment.

The U.S. Economic Role in China

The clearest message received by the delegation was that the Chinese welcome the expanding economic ties between the United States and China. They admire American technology and education and want to take advantage of as much of it as they possible can. The Chinese welcome the various sectoral cooperation agreements that have been signed (telecommunications,

science and technology, machine building) and the recently approved tax treaty as indications of a deepening bilateral relationship.

Key Sectors

Chinese officials cited energy, transportation, communications, and electronics as key sectors for cooperation with the United States. These are areas in which the Chinese want to spur development and to which they would like to see U.S. technology applied. Several officials cited major Chinese purchases in these sectors: eight Boeing aircraft and more than 20 planes from McDonnell-Douglas; large General Electric locomotives; a great variety of computers.

There was only passing mention of Chinese use of U.S. military technology, and that reference was to recently approved sale of avionics for China's F-8 fighter. People's Liberation Army (PLA) officials cited the small ($5.2 billion) Chinese military budget as the driving force behind efforts like the F-8 upgrade to work with friendly countries to modernize China's army. In Baotou, the delegation also saw evidence of U.S. computer technology being applied to computer aided design of Chinese tanks. China argued that her army was a defensive force only, that its principle role was to fend off the Soviets and their allies, and that a strong Chinese army was a force for peace and in the U.S. interest.

At the center of Chinese interests in expansion of the Sino-American economic relationship is technology transfer. The Chinese want every U.S. export, every joint venture, to embody a major transfer of advanced technology. Aside from the (false) complaint about running a trade deficit with the United States, the only complaint heard from the Chinese on the economic relationship was that U.S. hi-tech products had been bought (especially computers) but that only limited transfer of technology had accompanied the sales.

Export Controls

Developments in U.S. export control policy with respect to China have mirrored broader developments in Sino-American political relations. In particular over the last several years, controls on technology and equipment, especially for items in widespread commercial use, have been gradually liberalized. In June 1983, President Reagan recognized China's status as a "friendly, non-allied country" in announcing his decision to shift China into export control "Country Group V." China joined most friendly countries of Europe, Africa and Asia in that grouping, although China remained subject to control by the Coordinating Committee (COCOM) in Paris, comprised of Japan and all the NATO countries except Iceland.

Revised U.S. export control regulations were issued in November 1983 establishing detailed technical guidelines ("green lines") for a range of products in seven categories (computers, microcircuits, semiconductor production equipment, computerized and electronic instruments, recording equipment, and oscilloscopes) which would routinely be approved for export to satisfactory end-users in China. Within the U.S. Government, license applications falling within the "green lines" required only Commerce Department (rather than interagency) review. However, these exports continued to be subject to review by COCOM.

In early 1985, the members of COCOM began discussion of steps to streamline approval of China cases that had become routine. A new policy was devised whereby as of December 15, 1986 products falling within guidelines drawn up in 27 product categories (somewhat broader than the seven categories under the 1983 U.S. policy) would no longer require COCOM review. New Commerce Department regulations were issued in late December. Even with this further liberalization, high technology exports to China remain subject to U.S. national security and COCOM controls, reflecting Chinese strategic capabilities unique among friendly countries in Group V.

The progressive relaxation of U.S. and COCOM controls has resulted in an expanding volume and higher level of American technology exported to China. Between 1982 and 1985, license approvals rose from 2,020 to 8,637 while dollar value of approvals increased 1000 percent from $500 million to $5.5 billion. U.S. exports of computers and scientific instruments to China increased by two-thirds from $280 million to $470 million between 1984 and 1985.

The delegation focused considerable attention on the impact of U.S. and COCOM export control regulations on the flow of technology to China. Several Chinese officials brought up the issue of U.S. controls and cited continued controls over technology flows to China, especially continued strict controls on high tech items, as imcompatible with the friendly relations existing between our two countries. At the same time, the Chinese seemed generally aware that export control policies as applied to China had recently been further relaxed and expressed appreciation for this change.

Despite this general awareness of U.S. export control policy by senior officials, Chinese engineers and enterprise managers with whom the delegation met seemed considerably less informed. Even Chinese scientists and engineers in high technology enterprises were short on specifics when asked about their priority requirements for advanced U.S. technologies and were unclear on their availability under current export control regulations.

Discussions with government officials, including the Director of the Shanghai Municipal Science and Technology Commission, produced no evidence that export controls were impeding Sino-American trade and economic relations outside of specialized high tech areas.

At the low technology plants the delegation visited (Baotou tank factory and Hudong shipyard), the only evidence of U.S. technology was several computers for computer aided design and one large automatic boring machine. When asked if any U.S. high technology was needed and unavailable, the response was generally that if they needed American technology, it was accessible (relatively small computers). It seemed clear that these views applied only to nonmilitary hardware and electronics.

Even at the high tech sites visited (Lishan Microelectronics and Xin Zhonghua Machinery Factory) where very advanced computer, semiconductor, and rocket technologies would have been useful, it is not clear that there were U.S. technologies being actively sought by the enterprises that were blocked by controls. It was not clear that the managers fully understood what was and was not available under the new U.S. export rules or were exploring the issue.

At Xin Zhonghau, the Long March 3 rocket, China's orbital launch vehicle, is produced. It is a three-stage rocket capable of placing a satellite in geo-stationary orbit. Given U.S. experience in rocketry, this is clearly an area in which U.S. technology would have been a leader. However, there is *no* cooperation between the United States and China in space technology, and the Chinese engineers reported that no U.S. technology was part of the system. In fact, they had given so little thought to the concept of purchasing U.S. technology that they were hard pressed to name a single item of U.S. rocket technology they would like to buy, although they promised to think about it and send a list.

At Lishan Microelectronics, the chief engineer was American educated and formerly employed in the United States, and had a clear if dated understanding of U.S. export control policy. His factory was capable of producing elements for advanced microchip production (chromium blanks with tolerances below 2 microns) in small quantities and of producing radiation-hardened chips, with a small amount of overall output sold to the military. However, production quality and volume is limited by quality control and non-automated production line.

The main output of the factory is small microchips (8 and 16 bit) and color TV integrated circuits (80,000 pieces annually) and small quantities of computer peripherals, especially floppy disk drives. The factory is principally pursuing expanded production of peripherals and color TV ICs in hopes of capturing the 200 million IC Chinese market from Japan, in addition to exporting to other Asian countries. However, the chief engineer also had interests in further developing the higher end of the technology scale.

He looked to the United States for advanced mask making, sputtering and coating equipment, but did not appear to believe it would really be made available. A review of the new China regulations with Commerce Department staff indicated that while these are clearly areas in which COCOM review is required, it is not necessarily the case that his requests would be denied as he anticipated. The more interesting feature of his comments was the allegations he made about export of COCOM-controlled technologies to China without a license by Japan and several European countries. He pointed out an integrated circuit assembly line purchased in 1980 from Japan which he claimed was sold in contravention of COCOM, and indicated that Japan was willing to sell an advanced electron beam generator this year again against COCOM rules. He also pointed out a sputtering machine bought from the Swiss in 1978 and a microvapor deposition unit bought from the Dutch sister-firm of a U.S. company in Phoenix; again, both COCOM controlled machines.

His argument was that Chinese access to U.S. goods should be relaxed since China already has access to Western advanced technology despite COCOM controls. The limited descriptions of the equipment in question brought back from the China trip and discussed with the Commerce Department indicated at least the possibility that controlled items were sold to the PRC without license.

Opportunities and Problems of U.S. Joint Ventures in China

As mentioned earlier in the report, the Chinese appear to have a strong preference for dealing with Americans over the Japanese. This is because even though Japan puts a lot of time, effort, and manpower into their sales effort over a long period of

time, they do not set up joint ventures and they do not share technology. China is hungry for technology and American firms have been scoring points with the Chinese by putting their money and know-how into the country. It may well be that the willingness of American firms to stay the course of building a joint venture will give the U.S. a firmer footing in China than all of Japan's massive sales effort.

The costs of this strategy for U.S. firms is not inconsequential. As mentioned in the discussion of China's policy and development problems above, joint venture partners face stringent requirements to earn foreign exchange in order to repartiate profits, limited legal protections, overpricing of inputs to production, a limited base of infrastructure, etc. In addition to all these problems, they are faced with little hope of significantly tapping the Chinese market. Many of the businessmen meeting with the delegation reported that their operations were marginal in terms of profitability.

At the same time that China presents some daunting problems, American business appeared to be creating some problems for itself by failing to study and understand the Chinese decisionmaking process. Cases were cited of Americans relying too heavily on their joint venture partners to deal with the system rather than asserting the American leadership necessary to successfully manage and plan their joint venture in China. This practice results in underemployment of American management skills that are an essential ingredient for success and for technology transfer to China.

The sectors and technologies China is trying to develop are those in which there is heavy involvement by small and medium-sized U.S. high technology firms. However, the Chinese are concentrating on attracting larger firms and larger projects and are therefore missing key opportunities for production of software, computer peripherals, etc. that smaller firms produce. China would do well to focus some of its investment promotion efforts on such firms, as would the U.S. Government.

Potential sources of friction

Despite the clear evidence of progress being made in Sino-American relations, there is considerable scope for improvement before the relationship truly represents ties typical between friendly, non-allied countries. The delegation received small reminders of the mistrust that is still to be overcome by the Chinese in their decisions to forbid photos at the Baotou tank factory (with its 1930s production technology) and the Xin Zhonghua factory (where the delegation viewed a disassembled engineering model of two-thirds of a rocket). While these decisions were only minor irritants, they are clearly incompatible with good relations between countries that are now routinely sharing military and advanced civilian technology and exploring areas for further cooperation.

The political relationship has been characterized as solidly based on common interests with regard to the Soviet Union. However, a decision by the Chinese to vigorously oppose U.S. interests in other areas of the world or to emphasize problems over Taiwan could set back the relationship.

In the economic sphere, the trade relationship is the key potential trouble spot in Sino-American relations that will have to be managed carefully in the years ahead. Foremost among the issues in this area is the rising level of Chinese textile exports to the United States. However, over the longer haul the Chinese drive to produce consumer manufactured goods, in many cases through U.S. joint ventures, could begin to affect U.S. overseas markets and the U.S. market as well.

Textiles

There were several discussions of bilateral trade balances that touched upon the delicate issue of rapidly increasing textile exports to the United States. The Chinese argue that the U.S. market should be fully open to them since their exports to the United States are just over one percent of U.S. exports and totally inconsequential. The delegation members rebutted these arguments by pointing out that Chinese experts are very concentrated in textiles and apparel which is both labor intensive and heavily impacted by imports. Chairman HEINZ emphasized that when a U.S. plant fails due to an import surge, people in small towns wind up unemployed with few alternatives available.

The delegation repeatedly pointed out that the U.S. economy is one of the most open in the world, and that the U.S. is happy to share the growth of its market with others. However, China's first quarter 1986 exports of textiles are nearly double the level of first quarter 1985, and China has moved from fourth exporter of textiles to the United States to first. The delegation noted that, as in the area of inter-national relations, this is an issue on which the United States looks to cooperation from the Chinese as a measure of the extent to which they value the bilateral relationship.

Policy Conclusions

The general conclusion of the delegation's trip was that China is pursuing a relatively friendly, non-aligned policy line with regard to the United States, and that there is a convergence of political interests between the two countries with regard to the Soviet Union's actions in Asia.

To support the positive elements in the Sino-American relationship, the United States should maintain a military presence in the Western Pacific to support regional stability, and take steps to support the economic reform and liberalization of Chinese society in order to encourage China to align itself more closely with the West. These steps would include:

Continued official bilateral efforts to negotiate an investment treaty and to fully involve the PRC in international agencies like the GATT.

An increased U.S. business presence to expand the bilateral trade and investment relationship and to promote Chinese acquisition of Western management concepts with a commensurate and necessary deemphasis of control by government bureaucracy.

Ranking U.S. officials and members of Congress should make greater efforts to assist U.S. businessmen in establishing joint ventures in the PRC.

Greater exchanges of mid-level civilian and military personnel as well as educational exchanges of both students and faculty.

The U.S. should support Chinese access to Western technology, but should:

Ensure the COCOM controls are enforced by making special efforts to carefully policy Japanese sales to China to prevent circumvention of controls; and

Make clear to the Chinese that further relaxation of the current limits on technology transfer depends on:

a. Greater Chinese understanding of and support for U.S. efforts to contain Soviet expansionism in the Middle East, Africa and Latin America;

b. Peaceful resolution of differences with Taiwan; and

c. A substantial improvement in the climate for U.S. business investment.

U.S. business interests should be generally more aggressive in pursuit of business opportunities in China. They should not rely on joint venture partners but should learn the Chinese system and take control of their destiny. They should also be more aggressive in seeking help from government officials and members of Congress in opening doors, etc.

The Chinese correctly attach great importance to the role of foreign investment in promoting the more rapid growth to which they aspire. However, they appear intent on pursuing policies designed to thwart a closer relationship to the West and to turn off the flow of Western capital and technology to China. Their growth plans are doomed to failure unless the Chinese government shifts its policies in two key areas.

First, with respect to investment, Chinese leaders must stop deluding themselves that investing in China is too good an opportunity for Western firms to pass up. China is a difficult place to do business at best, and prospects for earning a reasonable rate of return on investment there will remain poor unless the Chinese choose to make potential investments more attractive.

The first step is recognition by the Chinese that U.S. investment is primarily in China's interest and that, under present circumstances, U.S. investors require incentives to attract them to China.

Within the sectors to which the government attaches priority for investment, the Chinese should *recruit* U.S. businesses that have the technology they want, including small business.

Business conditions, market access, pricing of inputs to production, access to the labor market, and policies on repatriation of profits must all be improved. In this regard, more experimentation with special economic zones and other such innovations would be a mechanism for creating a conducive investment climate.

The Chinese must provide reassurance wherever possible that theirs is a long-term commitment to economic reform and foreign investment, acknowledging that this course will inevitably liberalize and profoundly change the political and economic climate in the country.

The second and related area where change is needed is China's present cavalier attitude toward U.S. foreign policy interests. China cannot expect support and cooperation from the United States on matters important to her economic development while the Chinese government polishes its Third World credentials by lambasting the United States on issues important to U.S. foreign policy interests. China appears to view her criticism of U.S. actions to stop Soviet expansionism in Central America or Soviet support for terrorism in the Middle East as China's private business, divorced from the overall Sino-American relationship. This is clearly wrong, and China must realize that an expanding bilateral relationship requires Chinese cooperation with and understanding of U.S. interests on a broad policy front, not just on matters of interest to China.●

THE CRISIS IN HOUSING AND THE NEED FOR A NATIONAL HOUSING POLICY

● Mr. KERRY. Mr. President, over the past 6 years there are few areas of national policy that have suffered more than our national housing policy. After more than four decades of national commitment to a developing decent and affordable housing for all Americans—rich and poor alike—the 1980's have seen a sudden reversal of that goal. Housing has become the forgotten stepchild of both Congress and the administration, and a crisis in housing is already the result.

The housing crisis is, ironically, felt most acutely in those few areas of the country that are currently experiencing healthy economic growth—growth that is directly threatened by the labor shortages that follow from the lack of affordable housing.

This linkage—between the supply of affordable housing and the capacity of continued economic growth—is a linkage that is not well understood by those in Congress and the administration who support the rentrenchment of the Federal role in housing.

Therefore, I would like to call attention to a speech delivered this week by David O. Maxwell, the chairman of the Federal National Mortgage Association, and the national expert on this matter. As noted in today's Washington Post, Mr. Maxwell's speech provides a "vivid account of the Nation's housing dilemma and its implications for local economies."

Mr. President, I ask that the article in today's Washington Post and Mr. Maxwell's speech appear in the RECORD.

The material follows:

HOUSING SHORTAGE CREATING A LABOR ONE

(By Rudolph A. Pyatt Jr.)

Twice during recent conversations, an official from a Washington suburb expressed deep concern about two potentially troublesome elements in her county's economy. A scarcity of housing for low-income families and an apparent labor shortage, the official noted, have been largely ignored as the county's economy continues to expand.

The American Automobile Association's recent disclosure that it is moving its headquarters and 650 jobs from Fairfax County to another part of the country reinforced the official's concerns. One of AAA's reasons for moving, according to AAA officials, is a shortage of workers.

A local television station highlighted another concern of the suburban official when it recently reported the plight of a young couple from West Virginia. Unable to find affordable housing after finding jobs in Northern Virginia, the couple took up residence in a camper.

The concerns of the suburban official are the antitheses, nonetheless, of the public statements of several local officials in the public and private sectors. AAA's decision and the West Virginia couple's plight are mere blips on the big screen of a booming economy in metropolitan Washington.

Unemployment is an incredibly low 3 percent or less in most suburban areas. Housing starts remain strong. Commercial construction continues to soar. Personal income is at record levels. Wealth abounds. All's well in River City, land of prosperity, home of the affluent. To hell with AAA and the homeless, boosterism's leading voices seem to be saying.

In the meantime, the concerned suburban official appears to be part of a minority that worries about growing labor shortages. There is, she says, a direct correlation between a shortage of low- and moderate-income housing near employment centers and the labor shortage in suburban communities. The time has come, she implied, for local officials to consider new housing policies.

The evidence suggests that housing policies deserve added attention in the private sector as well. Indeed, transportation problems, which currently occupy the attention of local business leaders, could be alleviated through more enlightened housing policies.

Why should business leaders care about housing policies? David O. Maxwell, the chairman and chief executive officer of the Federal National Mortgage Association, spelled out several reasons in a strongly persuasive argument this week. In remarks at a Greater Washington Research Center luncheon Wednesday, Maxwell called for a strong national housing policy.

But it was Maxwell's vivid account of the nation's housing dilemma and its implications for local economies that suggested why business should care.

Housing prices are rising again, apartments are in short supply and jobs are moving to places where housing costs even more. Maxwell was describing a national dilemma but executives who heard his remarks must have recognized a very accurate description of housing problems in metropolitan Washington.

Whether they were intended to or not, Maxwell's remarks had the effect of raising the level of sensitivity among local business leaders.

"Our own metropolitan area exemplifies this trend," he declared. "First-time buyers can find little affordable housing near these jobs. They live so far away that transportation becomes an expensive and time-consuming proposition.

"This movement of jobs creates even bigger obstacles for the working poor. New suburban offices need cleaning; parking lots need attendants; junk-food emporiums need servers. How common it is these days, as an article in The Atlantic Monthly recently observed, to see affluent suburban executives motor off to their nearby homes, while their staffs wait for the first of several buses they will have to board on their long journeys home."

Moreover, Maxwell reminded the audience, "The pernicious persistence of racial discrimination continues to reinforce the barriers to accessible housing."

In dozens of U.S. cities, including Washington, Maxwell continued, waiting lists for public housing grow longer and longer. In the Greater Washington area, he said, the number is 34,000 families. "That's more than 100,000 people! At any reasonable rate of construction, it would take 13 years to build housing for those families. And there is no housing being built."

Working families on those waiting lists and others who can't afford housing near their jobs are the ones who clean those shiny new office buildings, park cars, flip hamburgers and, indeed, type letters and stock shelves. But they've having difficulty getting from here—wherever that might be—to there.

Maxwell's remarks were a timely reminder to local business leaders that their support for more enlightened housing policies can enhance employment opportunities and the growth of their businesses.

AMERICAN HOUSING: A VICTORY TO BE CELEBRATED . . . OR STILL TO BE WON?

(Remarks prepared for delivery by David O. Maxwell)

When the Research Center began twenty-five years ago, the American mood was one of exuberant confidence that social problems would yield to the efforts of community-mined organizations like yours. That was a time of high idealism. It's no surprise, then, that the Center was founded during that period.

What is surprising is that you survived through the 70's, when the national mood darkened, and emerged even stronger into the 80's. Yours is no fair-weather idealism.

I'm convinced that the major factor distinguishing you from other public policy organizations that have either succumbed to exhaustion, or trimmed their views to fit current fashions, has been your insistence on research. Research is at the center of your name and your mission.

Your strength has been your recognition that ideals without data are empty, and data without ideals are blind. Your success has come because you have combined both. As a citizen of Washington, I am grateful for your efforts. As a businessman, I depend on them.

I've recently had a first-hand reminder of how rigorous you are in searching out information. I received from Atlee Shidler a list of suggested questions I might answer in my remarks today. The list runs for a couple of pages and covers at least fifteen highly challenging issues. Most of the questions have three parts—some have five or six.

Indeed, if I were to try to deal adequately with Atlee's questions, we'd be here through the Spring semester.

But one of these questions in particular caught my eye. It's a threshold question. If we don't have a good answer for this question, then the other questions become moot. The question is, "Why should the audience care about housing policy?"

Why indeed?

Of course, as individual Americans, we certainly care about our own homes. Poll after poll shows we put home ownership at the top of the list of what constitutes "the good life". This American trait struck a recent distinguished visitor here with special force. After only a few weeks in America, Soviet dissident Yelena Bonner wrote a moving article for *The Washington Post*, with this title: "Americans don't want war. Americans want a house."

But our own personal concerns aside, why should we care about housing policy? After all, American housing has by and large been a notable success:

The proportion of Americans who own their own homes was only about two in five at the time of the Great Depression. Today, two out of three Americans own their own homes.

In 1960, one dwelling in eight lacked plumbing facilities, by 1980, that ratio was down to one in forty.

In 1950, the average dwelling had 1.5 rooms per person; today, the average dwelling has two rooms per person, and the rooms are larger.

There is ample housing for the growing segment of the population who are considered to be affluent—although they, too, have their housing problems. Just the other day, the Post reported the lawsuit in the suburbs by a couple who felt the design for their Hampton Court look-alike had been used by their builder for someone else's house.

Indeed, we Americans believe, perhaps a trifle chauvinistically, that we are the best housed nation in the world.

And so the question: Why should we care about housing policy? Shouldn't we instead simply declare victory and turn our attention to other matters?

Whether stated explicitly or not, that seems a fair description of our present policy. I'm personally struck by the contrast between today's attitude, and the view when I served in the early '70's as General Counsel for HUD. In 1972, there were a record 2.2 million new housing starts in America, many with federal support for low-income families. At that time, housing was one of the top three or four priorities of the Congress.

Today, by contrast, housing seems to have fallen off the national agenda altogether. This year, despite unprecedented declines in mortgage rates, we'll start about 1.8 million new units—a good year but hardly a great one. Since 1981, the HUD budget has been slashed by 65 percent. In short, it is clear that there has been no "safety net" for low-income housing programs. And there's been no national housing bill for six years.

This lack of attention has been spurred by our experience in the 1970's. We all recall those heady days when inflation made a joyride of the housing bandwagon. Low downpayments made it possible for additional millions to climb aboard that bandwagon. Sky-rocketing housing prices bailed everyone out of their mistakes—buyers, lenders, insurers, investors.

For people of low income, the Section 8 program provided incentives for builders to build housing and subsidies for their rents. It was an expensive program, but cost less than the suspended interest-rate subsidy programs of the late '60's and early '70's.

It is not surprising that the early '80's brought a reaction to the housing explosion of the '70's. The new Administration and Congress embraced a new set of priorities: massive defense spending, sharp cut-backs in discretionary domestic spending (but not entitlements such as Social Security), and lower taxes. And, as I have said, housing felt the axe more than any other domestic program.

At the same time, some theoreticians were advancing a new agenda for housing of moderate- and middle-income Americans. They complained that too much credit goes to housing. And they said it was especially unnecessary because the housing job was done. They said it was time to celebrate the victory. They said it was time to dismantle or drastically curb the supports for moderate- and middle-income housing erected over 50 years under presidents and congresses of both parties. They said it was time to let home buyers compete on their own for mortgage money with all other users of capital, large and small.

To test the validity of this line of argument, let's take a brief look at these federally created sources of support for moderate- and middle-income housing; then ask ourselves whether they are needed today.

In the front rank of financial institutions supporting housing were federally chartered savings and loans and savings banks. Through deposit insurance, access to below-market loans from the Federal Home Loan Banks, and tax incentives, savings institutions were encouraged to concentrate their business on housing. Indeed, until 1980, when legislation began the process of removing interest-rate ceilings on deposits, savings institutions had only limited authority to make home loans over $75,000. In effect, savers subsidized home buyers. Today that is no longer the case.

In 1934, the federal government created the FHA to insure long-term, low-downpayment loans for Americans of modest means. After World War II, the VA insurance program teamed with FHA to produce the greatest burst of housing in our history, as GI Joe realized his dream of home ownership in Levittowns across the land.

The Roosevelt Administration realized early that secondary market facilities were needed to replenish the capital of primary lenders by buying the FHA mortgages they made. And so they created Fannie Mae in 1938. Since then, Fannie Mae has evolved into a purely private corporation whose 73 million shares of stock are owned by more than 30,000 shareholders and listed on the New York Stock Exchange. The corporation borrows in the private capital markets. Yet the mission of my company remains basically the same: to buy residential loans from lenders so they have the funds to make more loans. Since 1970, Fannie Mae has been joined in the secondary market by its siblings, Ginnie Mae, a part of HUD which finances FHA and VA loans, and Freddie Mac, which operates much like Fannie Mae.

No one can deny that this network of agencies and companies constitutes a major federal commitment to housing for the middle class in this country. And, of course, I haven't mentioned the most important support of all: the deduction for mortgage interest and property taxes, just now preserved in the new tax bill.

In the current political climate, where "privatization" is in vogue, how important is it for us to fight to preserve this system of supports?

I submit that it is vital. Why?

Not a week passes these days without an article on the decline of the middle class. In all candor, some of the rhetoric on this subject strikes me as contrary to the anecdotal evidence of life around us. So many people, young and old, seem to be able to afford what they really want. Indeed, consumer spending has fueled what little recovery the economy has enjoyed in the last few years. Undoubtedly, a good deal of this consumer spending is made possible by easy credit, which may come back to haunt us. But that's a subject for a different speech.

What we can confirm without contradiction is the decline in housing opportunity, particularly for first-time home buyers. In constant dollars, family incomes remained flat from 1973 to 1984. But during that same period housing prices rose so swiftly that the median-priced house came to absorb more than twice as much proportion of the median family income. You don't have to be Einstein to put those two facts together and come up with an affordability gap.

Why do I single out first-time home buyers? For three reasons. First, because those people who already own their homes have undoubtedly built up equity as housing prices have escalated over the past decade. In fact, that equity build-up may have financed some of the consumer spending spree of recent years. But a big share of it remains, and gives those homeowners the ability to make the downpayments needed to move to another house. Obviously, the first-time buyer does not enjoy this source of funds.

Moreover, downpayments are increasing, a second reason for the affordability gap. In response to massive foreclosures, particularly in the energy and farm belts, lenders have tightened underwriting standards. The 5 percent downpayment loan without FHA and VA insurance has practically disappeared.

Third, jobs are moving to the suburbs where housing is more expensive. We see new urban centers surrounding core cities from coast to coast. Our own metropolitan area exemplifies this trend. First-time home buyers can find a little affordable housing near these jobs; they need to live so far away that transportation becomes an expensive and time-consuming proposition.

This movement of jobs creates even bigger obstacles for the working poor. New suburban offices need cleaning, parking lots need attendants, junk-food emporiums need servers. How common it is these days, as an article in the *Atlantic* recently observed, to see the affluent suburban executives motor off to their nearby homes, while their staffs wait for the first of several buses they will have to board on their long journeys home.

Moreover, the pernicious persistence of racial discrimination continues to reinforce the barriers to accessible housing.

Unfortunately, rental housing currently provides no answer to these problems. Vacancy rates in prospering areas of the nation have settled at new lows. Here in Washington, the vacancy rate is just 1.6 percent. And, of course, that makes rents rise.

Nationwide, median rent-to-income ratios rose from 20 percent in 1974 to 29 percent in 1983, according to the Harvard-MIT Joint Center for Housing. For households in the lowest income quartile, the median rent burden jumped from 35 to 46 percent in the same period. And more than one-fourth of low-income renters paid more than 75 percent of their income in rent. Can you imagine living on 25 percent of your income?

I regret having to say that the shortage of affordable rental property is bound to get worse under the new tax law. The revised code cuts back drastically on several provisions of the Internal Revenue Code that had the effect of spurring the construction of rental housing. At the same time, the favorable treatment afforded home ownership has been fully preserved. This disparity will lead to even more conversions of apartments to condominiums.

So the dilemma of the first-time buyer and the working poor is very real. Housing prices are starting to rise again, fueled by costs of land, infrastructure, and financing. Apartments are in very short supply. Jobs are moving to places where housing costs even more. What is to be done?

The problem does not lend itself to facile answers. We need to put the best brains in the industry to work on it. In this connection, I want to say that developers of housing are among the most creative people I know. They know how to make things work. They need to be challenged by our communities to propose realistic solutions to the affordability gap. Lenders and secondary market companies and agencies need to become involved.

We may need state and local—and, yes, federal—programs to furnish seed money for moderate-income housing. Suburban communities should require construction of

such housing and set-asides for lower-income workers as part of every approved commercial development. Land owned by states and localities can be allocated to private development. The cost of financing can be reduced by taxable and tax-exempt bond issues. The merits of rent control must be re-evaluated. For my part, I think rent control is often self-defeating because it is a disincentive to construction of rental housing.

Above all, we must reject the counsels of those who would destroy the federal system of support for moderate-income housing. On the contrary, we have seldom needed it more. In particular, the FHA should be strengthened and expanded, particularly to insure low-downpayment loans for first-time home buyers and the working poor.

I haven't painted a terribly bright picture of the housing scene here today. And, sadly, before I conclude, I must deal with a much darker side of our condition.

In the midst of plenty, we seem to tolerate the most dismal poverty. Indeed, it pains me to say that many of us simply avert our eyes from what is occurring around us. We seem increasingly prone to the attitude reflected in that old British saying: "Pull up the ladder, Jack, I'm OK."

The most visible manifestation of poverty in the midst of plenty are our homeless fellow citizens. I'm not going to inject myself into the argument about their numbers. We all know there are more homeless than there used to be because we see them. And I, for one, think it's highly appropriate for these reminders of persistent poverty to rest their cold and weary bones where we least like to see them—Lafayette Park or Fifth Avenue, for example. Perhaps this proximity will help us understand their bitter lot, so poignantly expressed by Wordsworth in his lines:

And homeless near a thousand homes I stood
And near a thousand tables pined and wanted food.

From where do all these homeless persons come? Clearly, some come through early release programs from mental institutions, which we also seem to believe we cannot afford to fund adequately. Others have been destituted by drink or drugs. But many, many of them come because there is no housing for them.

In dozens of American cities, including Washington, waiting lists for public housing grow longer and longer. In the Greater Washington Metropolitan Area, the number is 34,000 families—that's more than 100,000 people! At any reasonable rate of construction, it would take 13 years to build housing for those families. And there is no housing being built.

The people on those lists here, and elsewhere across America, are not statistics. They differ one from another. They include poor pregnant women who are participating in your own "Better Babies" project. They include families like Dennis and Suzanne Powell and their five daughters who, as reported by The *New York Times*, lived in their car for seven months because they could not find housing to replace the damaged apartment for which they had been paying $270 a month in rent. They even include, as reported in The *Los Angeles Times*, dozens of working families in that synonym for American enterprise capitalism in the '80's, the Silicon Valley.

No, these people on the housing lists are not all the same. What they share with each other—and with us—is their common humanity, and the fact that they live in the richest nation on earth.

What can be done for the poor who lacks adequate shelter? Certainly, the many private initiatives, abetted by local governments, including the District of Columbia, are important and helpful. One very recent promising example is the concept of linking "incentive zoning" for commercial developers to contributions to low-income housing.

But these efforts alone will not solve the problem.

Housing for the poor cannot be built and maintained without money—lots of it. And the only real source of the kind of money needed is the federal government. We must step up federal support for low-income housing. There is no other answer, and the sooner we recognize that, the sooner we can get to work.

Now, I recognize the federal deficit for the threat its growth poses to our long-term economic health. Any increase in federal appropriations for low-income housing must be "pay-as-we go." Where we get the revenue—whether from fewer or less expensive weapons systems, or higher taxes on the affluent, or perhaps caps on the mortgage interest and property tax deductions—whatever the source of the funds, I am confident we can find them if we become committed to doing so.

And let's not be put off by the failures of the past. Sure, the Pruitt-Igoe public housing project in St. Louis was a famous fiasco that had to be torn down. Sure, some local housing authorities haven't performed as well as we'd like them to. Sure, we don't want to build a new federal housing bureaucracy.

But we can do the job right, using targeted housing block grants to states and localities and, again, by tapping the extraordinary creativity of our housing industry.

In the Housing Act of 1949, our nation dedicated itself to the goal of "a decent home in a suitable living environment" for all Americans. That goal has been repeated in subsequent housing acts. As a statement of policy, we have never retreated from it. In actual fact, we are well on our way to abandoning it.

We must ask ourselves: Are we willing to abandon our housing goals? Do we care whether our children and future generations have the same housing opportunities that we have had? Does it make any difference to us that our poorest fellow citizens find fewer and fewer decent places to live?

If we do care, then housing policy matters to all of us. And you can help to move it back onto our national agenda. You can add your voice to those who reject the conclusion that the housing job is done. You can accept the challenge that our current housing problems pose for us. You can keep alive the American dream of home ownership.

As you join me in this effort, we should all remember that the American home is not only—it is not primarily—just a shelter, a source of capital, or a piece of property. The American home is a locus of values; it represents not just where we live, but who we are.

Let me give Yelena Bonner the last word. In that same article I quoted earlier, she writes: "The American feeling about his house expresses the main traits of Americans—the desire for privacy and independence. . ." She adds that "there is no aggression or parochialism in that attitude. It is open and kind and caring both toward the house and toward everything that it stands for, the soil in the flower boxes and the lovingly-tended lawn, even if it's only three square yards. Americans do not want war. They want a house."●

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS

● Mr. RUDMAN. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The Select Committee has received a request for a determination under rule 35, for Mr. Dennis A. Parobek, a member of the staff of Senator CHIC HECHT, to participate in a program in Chile, sponsored by the Universidad de Chile, Instituto de Ciencia Politica—Institute of Political Science of the University of Chile—from November 9-15, 1986.

The committee has determined that participation by Mr. Parobek in the program in Chile, at the expense of the Universidad de Chile, Instituto de Ciencia Politica, is in the interest of the Senate and the United States.

The Select Committee has received a request for a determination under rule 35, for Mr. Robert M. Guttman, a member of the staff of Senator DAN QUAYLE, to participate in a program in the Federal Republic of Germany, Sweden, and the United Kingdom, sponsored by the German Marshall Fund, from November 1-13, 1986.

The committee has determined that participation by Mr. Guttman in the program in the Federal Republic of Germany, Sweden, and the United Kingdom, at the expense of the German Marshall Fund, is in the interest of the Senate and the United States.

MOONLIGHTING FOR JAPAN

● Mr. MURKOWSKI. Mr. President, last month, Japan's largest selling newspaper published an amazing article. The article described a $200,000 plan to have Americans in sensitive positions moonlight as information gathers and public relations [PR] agents for Japan.

Briefly, Mr. President, according to the article provided by the U.S. Embassy Tokyo, the Japanese Government has targeted 10 States, including Missouri, Oregon, and Michigan as places with "deep-rooted criticism of Japan." The Japanese plan to use $200,000 worth of Japanese Government cash to hire American "enterprise managers, executive officials of local chambers of commerce and industry, lawyers and newspaper editori-

al staff members in local areas" to do part-time work.

The work expected of the Americans is twofold. First, they are "to collect information for the purpose of helping Japanese enterprises advance into the United States." Second, they are "to conduct PR on Japan's market-opening measures." The idea is that American "faces" would be more likely to deflect suspicions than if the same enterprise was attempted by Japanese.

Mr. President, it is not clear from the article whether this program would be permitted under U.S. law. At the very least, I would think that American participants would have to register with the Department of Justice as foreign agents. They may also have to indicate that their output, if distributed to Americans, is "propaganda" within the meaning of the Foreign Agents Act. If they are to act as lobbyists, then they would also have to register with the Congress, as well.

Quite frankly, I would hope the Japanese Government would reflect on this and reconsider such a program. Foreign influence on the media is a very sensitive subject in the United States. We have very stringent laws on who may and may not own radio stations, TV stations, and newspapers. The Australian-born newspaper publisher Rupert Murdoch became an American citizen at least in part so that he could take control of the New York Post.

Finally, Mr. President, I feel that the program as proposed by the Ministry of International Trade and Industry could be easily misinterpreted by the American people and lead to the very kind of closed markets it is designed to avoid. I feel certain that the Japanese people would not approve of a similar program aimed at their enterprises and opinion makers.

I ask that the article be made a part of the RECORD.

The article follows:

"FRICTION REPORTERS" TO BE ASSIGNED TO US; MITI PLANNING "LOCAL HIRE" IN 10 STATES WITH STRONG CRITICISM AGAINST JAPAN

MITI will consolidate a "grass-roots information network" in the US to cope with the intensifying economic friction. It is a local-reporter system, which MITI will carry out through the Japan External Trade Organization (JETRO) as a new project from the next fiscal year, and MITI will conclude contracts directly with US local economic-world persons and will take up live voices closely connected with local communities. In the initial year, MITI plans to establish it in ten states, including states which have deep-rooted criticism against Japan. In this connection, MITI has submitted a budget estimate of 30 million yen.

MITI and JETRO are both entertaining a sense of crisis, because Japan's trade surplus with the US this year is likely to break the level of 70 billion dollars. Also, there is self-reflection upon the fact that the Japanese side was driven into difficult negotiations, due to its lack of US local information, on such occasions as the inter-governmental semi-conductor consultations since last year, and partly because of this, MITI and JETRO decided to set about hiring foreign reporters for the first time.

As reporters, MITI and JETRO have already prepared a listing of enterprise managers, executive officials of local chambers of commerce and industry, lawyers, and newspaper editorial staff members in local areas. MITI and JETRO are planning to have one reporter in each of ten states, including Missouri, Oregon, and Michigan, in which JETRO has no branch office.

Making a contract with Japan is a side-job for reporters, but the Japanese side is aiming at collecting information about local enterprises while making use of their "faces." MITI and JETRO are attaching expectations on them, while thinking that it will be possible to probe the background of the US Congressional bill for retaliation against Japan and it will also be possible to collect information for the purpose of helping Japanese enterprises advance into the US. Also, MITI and JETRO will try to persuade American citizens who are angry at the expanding of the trade imbalance, by asking these reporters to conduct PR on Japan's market-opening measures.●

MAJ. CHERRY L. GAFFNEY AWARDED FOR OUTSTANDING ACHIEVEMENT

● Mr. HOLLINGS. Mr. President, it is with great pleasure that I rise today to pay tribute to Maj. Cherry L. Gaffney of the U.S. Army, whose outstanding service to the Armed Forces has earned her the prestigious Legion of Merit Award.

Currently a staff pathologist at Walter Reed Army Medical Center, Maj. Cherry L. Gaffney received her award for outstanding meritorious achievement for the critical role she played in the identification of the remains from the tragic mishap in Gander, Newfoundland, which claimed the lives of 248 members of the 101st Airborne Division and 8 crew members who were returning from their role as Middle-East peacekeepers in the Sinai. Major Gaffney's exemplary performance of duty as a member of the joint task force at Dover Air Force Base in Delaware reflects great credit on her and the Department of Defense. The Gander accident was one of the biggest noncombat disasters in military aviation history.

Major Gaffney began active duty in the U.S. Army as a captain in April 1980 and presently holds the rank of major, Medical Corps/Flight Surgeon. She is a graduate of the College of Charleston, with a bachelor of science, and received her medical degree from the Medical University of South Carolina in 1979. One of her ancestors was the founder of the great town of Gaffney, SC. Major Gaffney continues to uphold her family's honorable reputation by receiving such a coveted award.

Mr. President, on behalf of the people of South Carolina I salute Major Gaffney for her accomplishments and wish her the very best in the future.

I request that the text of this award be printed in the RECORD.

The material follows:

THE UNITED STATES OF AMERICA

To all who shall see these presents, greeting: This is to certify that the President of the United States of America authorized by act of Congress 20 July 1942 has awarded

THE LEGION OF MERIT

TO

MAJOR CHERRY L. GAFFNEY, UNITED STATES ARMY

for outstanding meritorious achievement during the period 12 December 1985 to 25 February 1986. Her participation as a member of a Joint Task Force organized at Dover Air Force Base, Delaware was critical in the identification of remains from the aircraft mishap in Gander, Newfoundland which claimed the lives of 248 members of the 101st Airborne Division and 8 crew members. Major Gaffney's exemplary performance of duty reflects great credit on her and the Department of Defense.●

CHILDREN IN COMMUNITIES: OBSTACLES AND OPPORTUNITIES

● Mr. DODD. Mr. President, on May 1, 1986, the Senate Children's Caucus held its second forum honoring "Save the Children Day." Save the Children is a private, nonprofit organization I am proud to say is based in my State of Connecticut. Save the Children has had a most distinguished career assisting children and families both in the United States and abroad.

The Senate caucus heard from two panels of younger witnesses from across the country, representing community projects sponsored by Save the Children. All these young people spoke on the basic theme of building a future for ourselves, our communities, and the children we might have someday. They raised concerns about the issues of alcohol and drug abuse, teenage pregnancy, high school dropouts, unemployment, and poverty.

The younger witnesses were introduced by Marjory C. Benton, distinguished honorary chair of the board of directors of Save the Children. The first panel included Okia Cooper, age 11 of Brooklyn; Lisa Ann Brewer, age 16 of Annville, KY; Robinette Lewis, age 17 of St. Francis County, AR; Susan Toineeta, age 16 of Paint Town, NC; and James Poitra, age 11 of Dunseith, ND. The second panel literally turned the tables on the Senators. We sat in the witness seats and they sat in ours and asked us some very tough questions. These future political leaders included Johanna Martin, age 14 of Bridgeport in my home State of Connecticut; Russel (Beaver) James, age 12 of Woodford, CA; Tiffany Hardrick, age 10 of St. Francis County, AR; Tara Parker, age 11 of St. Helena

Island, SC; and Mark Thompson, age 14 of Sacaton, AZ.

Mr. President, I would like to commend David Guyer, president of Save the Children, for his expert leadership in building an organization that Connecticut and the country can be extremely proud of. I would also like express my appreciation to those Save the Children staffers from the Washington DC, Westport, and regional offices who helped make it possible for the younger witnesses to testify on May 1.

I ask that the witness list and my statement of May 1, 1986, be printed in the RECORD. The complete transcript of the forum and written testimony of the witnesses are available in my office. I urge my colleagues and their staffs to contact Marsha Renwanz of my staff if they wish to review this important forum Record.

The material follows:

SENATE CHILDREN'S CAUCUS

WITNESS LIST—POLICY FORUM ON "CHILDREN IN COMMUNITIES: OBSTACLES AND OPPORTUNITIES"

(Thursday, May 1, 1986; 628 Dirksen Senate Office Building; 9:30 a.m.)

Panel 1

Marjory C. Benton, Honorary Chair, Board of Directors; Save the Children; Westport, Connecticut.

Okia Cooper, age 11; Brooklyn, New York.

Lisa Ann Brewer, age 16; Annville, Kentucky.

Robinette Lewis, age 17; St. Francis County, Arkansas.

Susan Toineeta, age 16; Paint Town, North Carolina.

James Poitra, age 11; Dunseith, North Dakota.

Panel 2

Johanna Martin, age 14; Bridgeport, Connecticut.

Russell (Beaver) James, age 12; Woodford, California.

Tiffany Hardrick, age 10; St. Francis County, Arkansas.

Tara Parker, age 11; St. Helena Island, South Carolina.

Mark Thompson, age 14; Sacaton, Arizona.

OTHER SAVE THE CHILDREN DELEGATES

(Representing Arkansas, Arizona, California, Connecticut, Kentucky, Mississippi, New Mexico, New York, North Carolina, North Dakota, South Carolina)

Gail Benson (age 14), David Byron (age 16), Bernelle Capitan (age 15), Elenore Giron (age 14), Connie Hacker (age 16), Gracelyn Hill (age 12), Ann Jeff (age 16), Harlan Mermejo (age 13), Randy Morales (age 14), Christina Morris (age 15), Matthew Pacheco (age 14), Vaughn Salabye (age 12), Latavish Ulmer (age 11), and Ruby Valdez (age 15).

STATEMENT OF SENATOR CHRISTOPHER J. DODD, SENATE CHILDREN'S CAUSUS—POLICY FORUM: "CHILDREN IN COMMUNITIES: OBSTACLES AND OPPORTUNITIES"

I am delighted to open this Senate Children's Caucus Policy Forum, honoring Save the Children Day. Each year on May 1, it has become a tradition for young people from my State of Connecticut to California to come to Washington, D.C., to tell those of us in the Senate about the issues of greatest concern to them. These younger Americans also represent the concerns of Save the Children, a nonprofit organization based in my State of Connecticut assisting children in families and communities both in this country and abroad.

I would like to tell our younger witnesses here today that five years ago, children very much like them who were testifying on behalf of Save the Children inspired me to work on setting up this caucus. Senator Specter and I established the caucus about three years ago and thirty-two of our colleagues on both sides of the aisle have now joined us in focusing on children's issues. I am pleased to report to our witnesses today that the Senate Children's Caucus has young people testify before us at all of our forums.

Last year, the children who testified on May 1 focused on the plight of their needier peers in Africa, suffering from the ravages of hunger and disease caused by drought. This year, we will focus on problems of critical concern here at home, including unemployment and childhood poverty, alcohol and drug abuse, teenage parenthood, illiteracy and school dropouts. We will hear firsthand from twenty-four Save the Children delegates about such problems in their own communities, from New York to North Dakota.

This morning, however, the Save the Children delegates are going to turn the tables on us. The first panel of witnesses will present their testimony and allow us to question them in the traditional manner. But the second panel will take on the task of serving as Senators by asking us the tough questions about poverty, teen parenthood, and the problems of alcohol and drug abuse. The second panel will quite literally be sitting in our seats and we in theirs. So, the young people will have us in the hot seats and I think the learning experience will be invaluable for all.

I am proud that two of the distinguished delegates who will be testifying and asking us questions this morning come from Bridgeport in my State of Connecticut. The plight of far too many young people in Bridgeport is not an easy one. The biggest risk facing most is poverty. One in every three children under the age of 18 in Bridgeport live in families with incomes below the poverty line and close to fifty percent live in families considered seriously disadvantaged economically.

The picture nationwide is not much better than that found in Bridgeport. One out of every four children under the age of six in this country lives in a family whose income falls below the poverty line. For minority preschoolers, that figure is even higher: Every other black child and close to every other Hispanic child will celebrate their sixth birthdays in poverty. And poverty does not afflict only our very youngest citizens. Children of all ages now constitute the poorest age-group in America.

The risks posed by childhood poverty are numerous and serious. Poverty results in a greater chance of poor health, injury, abuse and neglect. For example, it is not surprising that the infant mortality rate in Bridgeport, closely linked to malnutrition and inadequate health care, is the third highest in my State. One in forty Bridgeport children is reported a victim of neglect or abuse each year.

Children who grow up in poverty face a greater risk of becoming teen parents, dropping out of school and ending up unemployed. One out every of three young people in Bridgeport will leave school before graduating. In cities like New York and Chicago, that figure is close to fifty percent. And, as some of the delegates will testify this morning, in some places in this country, the drop out rate is a staggering 75 percent.

From Bridgeport, Connecticut, to Bishop, California, the primary reason girls give for leaving school is teen parenthood. It should alarm us all that the United States has the highest rate of teenage pregnancy and parenthood in the industrialized world. Likewise, the high unemployment rates linked to teen parenthood give us all cause for concern. Every year, some $16 billion in public assistance payments go to households where the mother was a teenager when her first child was born.

Youth unemployment, alcohol and drug abuse, and involvement in the juvenile justice system can all too often go hand-in-hand. In my State alone, one out of every four drivers responsible for a drunk-driving fatality is a teenager. One out of every three Connecticut students in grades ten to twelve have moderate to heavy drinking problems. And, between 1983-84, the number of children in treatment for cocaine addiction in my State increased 100 percent.

So, I look forward to hearing from our delegates this morning how these difficult problems affect them, their families, their peers, and their communities. And, just as importantly, I look forward to some very tough questions from them. Before I call on our first panel of witnesses, let me see if any of my colleagues would like to make opening remarks.●

INTERNATIONAL COMPETITIVENESS AND THE HOLLOW CORPORATION

● Mr. GLENN. Mr. President, for over 40 years, the American economy was the envy of the world. Out of ravages of the Great Depression and World War II, it produced the greatest and longest period of prosperity in history, creating jobs, wealth, and opportunity for all Americans. Yet, right at this moment, the engine of that strength and prosperity—our manufacturing base—is being dismantled and exported overseas in search of lower costs. This is often called the hollowing of the American corporation.

Recently, Business Week magazine examined this phenomena in an article called "The Hollow Corporation," and in it, the authors painted a grim picture indeed. After reading the piece, I sought the advice of my Advisory Panel on Manufacturing Technology. On it sit some of Ohio's best businessmen, scientists, and professors.

What I heard from them did nothing to lessen my concern. To my dismay, not one of them challenged the findings of the Business Week article. In fact, their letters reflected a grave concern that the United States was losing its competitive edge by moving its production capacity overseas. Listen to what several of them had to say:

I strongly agree with [your] concern about "the hollow corporation." If U.S. industry is to provide jobs for American labor, tax dollars to support government programs and after-tax profits to pay back investors, they must find ways to add substantial value to the products they are selling. (Richard L. Kegg of Cincinnati Milacron)

I found the article * * * to be faithful to my understanding of current trends in U.S. manufacturing. I have always believed that if we lose our industrial base we can't have a prosperous service economy. Nevertheless, since the late 1970s America has had to adjust to an intensifying global interdependence. U.S. manufacturing firms have been extending their value chain to many parts of the world, especially the Far East. In many cases the consequence has been to concede to foreign manufacturers the production of high value-added products upsteam from final assembly, packaging, and distribution. (Arden L. Bement, Jr., Vice President Technical Resources of TRW Inc., Cleveland)

The article expounds in great detail the dangerous state of affairs in manufacturing that the United States is in. The plight of the machine tool industry, which is the backbone of manufacturing, exemplifies more than any other industry this deplorable state. As you know, more than 75 percent of the metal cutting machining centers and turning centers used in U.S. industry are now imported, mostly from Japan. (Dr. Michael Field of Cincinnati)

If their comments fail to register, let me read to you what the founder and chairman of Sony Corp., said:

American companies have either shifted output to low-wage countries or come to buy parts and assembled products from countries like Japan that can make quality products at low prices. The result is a hollowing of American industry. The U.S. is abandoning its status as an industrial power.

To be sure, the hollow corporation is a natural consequence of changing economic conditions worldwide. In the face of stiff foreign competition, American manufacturers are looking for ways to cut their costs, the result being that they have focused their attention on the labor component of their products. So, manufacturers shut down factories and outsource—that is, they buy parts or even whole products from foreign companies which pay their workers pennies a day under substandard working conditions.

We see evidence of the hollow corporation everywhere we look. According to Business Week, virtually all of General Electric's consumer electronics goods are now made overseas. Caterpillar Tractor Co, buys lift trucks from a Korean company, paints them yellow, and sells them. Around 20 percent of the parts in American-made automobiles are imported. Not one video cassette recorder is made in the United States, even though it was invented here. Only very recently, the New York Times reported that the American textile industry cautioned its manufacturers that they "must change its emphasis to rely more on service than manufacturing" and should be prepared to become middlemen between overseas producers and domestic retailers.

Some economists will tell you that this is evidence of a mature industrial economy adapting to international competitiveness. In my opinion, such talk hides the harsh reality—that the continued hollowing of American companies will contribute to a downward trend in our standard of living.

For example, some have suggested that the hollowing process is part of the transition to a service-based economy. I must disagree with those who think the United States can remain prosperous as a service economy. To me, this is a matter of common sense. A service economy has to have something to service. If this argument does not persuade you, consider some others.

Service jobs generally pay lower wages than manufacturing jobs. We have all read about the starting salaries for lawyers and bankers on Wall Street, but for every one of them there are several who are selling hamburgers and sweeping floors. Yesterday's auto workers were able to buy cars, trips, televisions and homes for their families and send their kids to college, getting them out of the factory and into the board rooms. Their spending fueled nearly 30 years of unprecedented economic growth and made our society the most fluid and democratic in the world. This is perhaps the Democratic Party's greatest legacy. But will tomorrow's middle class have the same buying power? Will their children get a taste of the American dream?

Finally, just as our steel, semiconductor and auto firms face foreign competition, so will America's insurance, banking and telecommunications industries. Not only do trade barriers exist, but more and more foreign firms are opening to service their local manufacturing base.

Furthermore, the hollowing process may mean more than the loss of jobs. America's position as the leading innovator in the world may be at stake. For example, in the semiconductor industry, Japan has replaced the United States as the top producer of memory chips—at the cost of 65,000 jobs here in this country. This transfer of production capacity threatens growth in other sectors. As economist Robert B. Reich of Harvard recently wrote:

The design and manufacture of memory chips is so challenging and sophisticated—and intimately linked to so many other electronic advances—that experience in producing chips is essential to continued innovation in a vast array of high-tech products. These include everything from telecommunication devices to strategic defense shields in outer space. Once we get off the track there may be no getting back on. (N.Y. Times, October 12, 1986)

Clearly, Mr. President, this country must strengthen its manufacturing base. I believe that the solution can be found right here in this country. We do not have to look overseas to regain our competitiveness. My Ohio advisers and many experts agree that the key to regaining international competitiveness is a two-pronged strategy: the judicious application of advanced manufacturing technologies, and the organizational and attitudinal changes within business and Government that will make these new technologies work.

PROMOTING A MODERN INDUSTRIAL BASE

It should be a priority of this Congress and the U.S. Government to promote the application of advanced computer technology to the manufacturing process. This is a task that will require concerted efforts on several fronts: research, education, technology transfer, and even the encouragement of the risky but essential steps forward to modern methods of manufacturing. In the race to build and manage the factory of the future, America must finish first.

We have already seen American industry experiment and master islands of automation. This has often been achieved through processes such as computer-aided design and computer-aided manufacturing. However, the factory of the future will combine this and other technologies to achieve the ultimate in manufacturing technology—computer integrated manufacturing or CIM for short.

CIM uses the marvels of computer technology to accomplish the total integration of all parts of the manufacturing process—from marketing and sales, through design, engineering, production, and materials handling. Business Week explained it this way:

[B]y totally automating and linking all of the functions of the factory and the corporate headquarters, a manufacturer would be able to turn out essentially perfect, one-of-a-kind products—at the lowest possible cost and almost overnight. A company could:

Conceive new products on a computer-aided design (CAD) system that would allow designers to optimize their ideas.

Pass the CAD data electronically to a computer-aided engineering (CAE) system to verify that the design will do the job intended and can be made economically.

Extract from the CAE data the information needed to make the product. The information would be sent to a computer-aided manufacturing (CAM) system. The CAM system would send electronic instructions for making the product to computer-controlled machine tools, robotic assembly stations, and other automated equipment on the shop floor.

Mr. President, listen to what my friends in Ohio say about CIM:

Full or partial automation of manufacturing is imperative for the survival of the manufacturing base in the U.S. (Dr. Michael Field)

CIM [is] a solution to halt the growing erosion of manufacturing in the U.S. * * * CIM, in addition to enabling domestic manufacturers to achieve competitive cost parity with foreign production sources

(which are either labor intensive or rigid, dedicated mass productions systems), provides them with the flexibility to manufacture a range of products. (Professor N. Mohan Reddy of Cleveland)

The heart of the solution to this country's problem presented in [The Hollow Corporation] does lie in advanced manufacturing in the form of computer-integrated manufacturing * * * (M. Eugene Merchant, Director Advanced Manufacturing Research, Metcut Research Associates Inc., Cincinnati)

The benefits of CIM are enormous. When a company discovers that market conditions are changing, it will be able to respond quickly, tailoring products for buyers and introducing new products to meet new demand. CIM lets us do this because new products or even product lines can be introduced with lower changeover costs. Moreover, the cost of producing the first unit will be only slightly more than producing the thousandth. The need for long runs of the same product will diminish. This substantially reduces the advantages of economies of scale and allows American firms to benefit from the economies of scope.

I do not profess to be an expert in manufacturing engineering, but I know a good idea when I see one. We can develop the factory of the future right here at home and be at the cutting edge while getting the competitive edge. The question is not whether CIM is the future; it is who will get there first. Although CIM's benefits seem obvious, American industry has moved slowly in its direction. Several reasons explain why:

One, implementing CIM is very expensive and time consuming, especially for small businesses. It may overwhelm a firm's capital budget and take several years.

Two, there is no constituency for CIM. Historical yardsticks of return on investment do not measure the benefits of CIM—they ignore the benefits of intangibles such as flexibility, better quality and shorter lead times.

Three, lack of management commitment. One Ohioan said "manufacturing seems to defy the quick fix and that is what many businessmen are looking for." Many managers with their eye on the short-term bottomline are afraid of taking "unprecedented technical risks."

Four, there simply aren't enough engineers with the technical knowledge required to develop and install CIM.

ORGANIZATIONAL AND ATTITUDINAL CHANGES

This brings us to the second major prong of a national competitiveness strategy: bringing about the changes in Government policy, in business attitudes, and in educational infrastructure that will support new rules of the game in manufacturing.

Mr. President, the U.S. Congress has a role to play in promoting what some believe will be a new era in the Industrial Revolution. Nothing is more important to the long-term prosperity of this country than the international competitiveness of American industry. And nothing is more important to the competitiveness of American industry than having a strong manufacturing base. Of course, we could sit back, wait for CIM to happen on a widespread scale—and I guarantee you that will happen—and then wave to the Japanese as they pass us by. This would be disastrous.

Free market economics teaches us that the most efficient way to allocate production is to let the market decide who will produce what. Indeed, this is usually the best way of satisfying consumer needs at the lowest cost. But the invisible hand of the free market does not guarantee that the producers will be Americans. In this fast-moving world producers could be, and increasingly are, in other countries, giving jobs to other people.

The Federal Government must take the lead in encouraging companies to take the unprecedented risk involved with implementing modern production methods. As Dr. Michael Field of Ohio said:

[T]he small manufacturing shops, which account for 75 percent of the manufacturing products in the U.S., have not as yet begun the planning and implementation of CIM. CIM is expensive and time consuming and most small companies do not have the required technical manpower and management acumen to get into CIM. * * * The small manufacturing shops need to be shown the advantages of CIM or they may find themselves falling into the wayside in the near future. They must be convinced that CIM and advanced manufacturing technology are not only desirable but will be necessary for their survival.

Another Ohioan, M. Eugene Merchant of Metcut Research Associates Inc., noted that the development of CIM will require a more collaborative effort by Government and industry:

To reap the benefits of CIM technology, both a long-term commitment and a cooperative national approach to development and implementation of such technology are required, since CIM can only be realized through a systems approach to manufacturing. American companies have great difficulty dealing with either of these two requirements under our present national environment. The governments of the other leading industrialized countries, realizing these facts about CIM technology, have organized national approaches to assist their manufacturing industries to undertake long-term commitments and to develop a cooperative national approach. We need to create the same environment in this country!

The Federal Government currently has several programs that so far have had limited, yet very successful results. Richard L. Kegg of Cincinnati Milacron describes them:

In the field of CIM the Mantech programs of the DOD and the small AMRF program of the Bureau of Standards are both positive contributions in this direction. These programs provide funding which attracts talented engineers into the manufacturing field. They also support programs which underwrite the risks associated with major thrusts in manufacturing technology. More funding for these programs and additional programs of this type would be helpful.

And Dr. Michael Field of Cincinnati had this to say about Mantech:

The Manufacturing Technology Division (Mantech) at Wright-Patterson Air Force Base has taken a positive step toward helping two small companies install a computer integrated manufacturing system into their shops. Mantech has set up a contract through Dravo Corp. entitled MIAS—Machining Initiatives for Aerospace Subcontractors. In this program the two small companies named Mayday Manufacturing Company and Castle Precision Industries are installing a flexible manufacturing cell for manufacture of their products. The Air Force is funding the implementation of manufacturing technolgy only. The two companies are purchasing the equipment themselves. The MIAS project will serve as an example of how CIM can be developed and implemented into small shops.

Mr. President, Mantech works. In the 100th Congress, I will introduce legislation that will broaden Mantech's mandate beyond the defense procurement area. I will work to establish a Mantech program for civilian agencies such as the General Services Administration so that the incentives for CIM will be available to nondefense manufacturers.

Mantech is but one step toward a comprehensive Federal CIM policy. Greater efforts must also be taken to encourage America's young people to enter scientific and engineering fields and attract them to careers in manufacturing. American schools are graduating engineers at dangerously low levels, thus threatening long-term, growth of our manufacturing industries.

Federal Government support for research and development in advanced manufacturing technology must be increased. I am ashamed to say that our investment in civilian R&D trails that of our top trade rivals as a share of national output. We should also work toward reducing the cost of capital formation, which is a major factor in determining the size of private R&D investment. This means cutting the Federal deficit and real interest rates.

Before I finish, one other issue deserves our attention. CIM raises serious questions regarding the role of blue collar workers in the factory of the future. Such factories will employ fewer workers, but the workers employed will be more skilled and possibly better paid. Automation, like foreign imports, will produce an adjustment that simply must be addressed. After all, whether its cause is CIM or foreign imports, unemployment is still unemployment. However, I would submit that traditionally rigid views of labor-management relations will cause more unemployment than a flexible view where the labor force will be given more flexibility and more re-

sponsibility in the manufacturing process. The factory floor in a factory of the future will require different skills than what we expect on the factory floor today. I would support job training programs that would give unskilled and semi-skilled workers the chance to learn the skills necessary to work in the factory of the future and elsewhere. This, of course, is only the beginning. The fate of America's rank and file will not be forgotten.

Mr. President, I conclude by pledging my strong support for congressional initiatives designed to strengthen America's manufacturing base and improve its international competitiveness. I have today accepted the invitation of my colleagues, Senator BAUCUS and Senator CHAFEE, to join the Congressional Coalition on Competitiveness. This group is a bipartisan, bicameral organization which is being formed to address the problem of U.S. international competitiveness. It will work in tandem with the Council on Competitiveness—a business-labor-university group led by John Young of Hewlett Packard and Chairman of the President's Commission on Industrial Competitiveness—and the Congressional Economic Leadership Institute, a nonporofit, private group backed by TRW, Inc., of Ohio and other corporations, unions, and organizations.

Given the state of America's trade picture, this is an idea whose time has come. I am only happy to be a part of the coalition at the very beginning so that we can move quickly to examine the cause of America's decline and recommend responsible, comprehensive solutions.●

HOME SATELLITE DISHES

● Mr. GORE. Mr. President, 2 weeks ago, the Senate had an opportunity, for the first time, to go on record in favor of fair treatment for the millions of home satellite dish owners throughout the country. It was a simple proposal that addressed the fundamental issues facing home dish owners. While we had hoped to get a clear vote on the merits of the issues in the amendment, the issue was presented as a procedural vote on the continuing resolution. Yet, despite that encumbrance, the amendment won 44 of our colleagues' votes in support of fair viewing rights for home dish owners. That is substantial progress and should carry over into next year's session.

I believe it is extemely important that our colleagues understand that this ongoing debate is not a fight between home dish owners and local cable companies. There is no logical reason why cable interests should oppose such a measure—unless, of course, they are under instructions by parent companies which also control program sources.

What the continuing scrambling debate is all about is free-market competition for a product which is new to our economy, a product which has produced a whole new industry, a new technology in mass communications. Satellite television programming and the home dish which it spawned are fast becoming a fixture for the American family, especially in rural towns, on farms, and for families not served by cable.

Those of us who have worked so hard to advance fair viewing rights for home dish owners have done so not to disadvantage local cable operations. In fact, we have very good relationships with our cable operators in our States. For my part, Tennessee cable operators have been particularly helpful in expanding public information efforts, in helping me produce a statewide cable-delivered open meeting, in finding ways to promote C-SPAN broadcasts of House and Senate proceedings. Our cable operators are business managers, good community citizens interested in serving their cable customers.

I had an opportunity to meet with a group of Tennessee cable operators the week before the Senate considered our amendment, and, while we did not totally agree on every point related to the TVRO issue, we did agree that the terms of the amendment we proposed does not fundamentally affect local cable operations. Once they understood that we had no intention to handicap local cable systems, there was a willingness to consider a common ground. I cannot say that the Tennessee cable operators supported the amendment—they simply did not want any legislation this year. But it became clear to me that we were not as far apart as some have tried to describe the TVRO-cable issues.

So, Mr. President, it is vital to our colleagues that we understand that this debate is not cable versus home dish owners.

Many of our colleagues have received hundreds, even thousands, of complaints by beleaguered owners of home dishes who believe they have been unfairly treated. The vast majority of home dish owners live in rural areas that are not served by cable. Yet these rural families are being forced to accept pricing terms for scrambled programs that are clearly anticompetitive.

The home dish is almost unique in that this technology came first to rural America. That is where the home dish has thrived and that is where its future promise will continue to be, but only if programming is to be made available in an open, competitive marketplace.

During the debate, we heard a great deal about whether or not the marketplace can solve the obvious distortions that now exist. The facts are clear:

Prices for programming are fixed at an inordinately high level for the home dish market.

Price fixing is occurring because there is virtually no competition.

There is no competition because the control over the programming we are talking about is tightly held by a very few corporations with a long history of trying to shut out families who own home dishes. There are, to use the phrase of NTIA Administrator Alfred Sykes, during a recent Senate hearing, "perverse incentives" for anticompetitive behavior in the marketing of satellite television programming.

It should come as no surprise that, as of today—almost 1 full year after scrambling plans were announced—there is still not a single package of programming available to home dish families from a noncable distributor.

So it should be clear to our colleagues that there is a problem, that the marketplace is not working to correct the problem.

Mr. President, the home dish market is quite different from the cable marketplace. There are certain economies within local cable systems, and there are other economies in distributing services to home dish families. If the marketplace were truly working in a competitive manner, these economies would be reflected in the prices and terms home TVRO owners must pay for programming.

During the debate earlier this month, I offered an analogy:

If you want to watch a movie, you can go to the theater and pay $4 or $5 per person, or you can rent a videotape of the same movie for $2 or $3 for the entire family. The experience is different—I happen to prefer the theater—but you have the choice, and that choice includes a price that reflects the difference between the two markets—the theater goer and the videotape viewer.

But what if the movie studios owned almost all of the theaters, and decreed that the cost of renting that videotape must be as high as the price of a movie ticket? Would that be fair, or even legal? Of course not.

But that is exactly what is happening in the programming, cable, and home dish markets. Programmers are owned by the same companies which own a major share of cable operations, which in turn exploit the—using this administration's term—"perverse incentives" to monopolize programming services to the competitive disadvantage of home dish owners.

It is open competition that gives us the competitive, marketplace choice as to whether we rent a tape or go to a movie. That is all we are asking for families who own home dishes—a choice among truly competitive services. That choice is already vastly restricted for those who are not served

by cable. The amendment we proposed would have simply given them a modest dose of fairness.

Mr. President, over the weeks before the floor debate, there has been a great deal of misinformation about what the amendment did and did not do. For instance, the decoder standards provision was erroneously—even maliciously—branded as a "backdoor moratorium." That was not our intent. However, in order that this accusation was completely put to rest, we eliminated the comprehensive decoder language and substituted the following simple, two-sentence statement:

Within seven days of the enactment of this Act, the Federal Communications Commission shall initiate a notice of proposed rulemaking to address issues to ensure, to the greatest extent possible, that earth station owners shall need only one device to decrypt programming. Nothing in this section shall be construed to alter or affect any encryption which was in effect or announced on the date of enactment of this Act.

We would challenge anyone to interpret this language as offering any potential for a moratorium of any kind.

To prevent any other misrepresentations, let me reiterate what the amendment did not do. The amendment was neither Federal rate regulation nor a moratorium on scrambling.

The ability to move forward with scrambling has long been the fundamental objective of programmers and cable interests. The amendment did not restrict scrambling of programming services or network signals.

Cable interests have expressed concern about any legislation which reregulates their business. The measure we proposed in no way involved the Federal Government in setting rates charged by either cable operators or programmers. There was no Federal regulation of program rates in this measure.

In addition to the simple new decoder provision, it proposed a modest "fair marketing" provision.

First, the amendment stated that, if scrambled programming is sold to cable customers, it should also be sold to home dish owners. This is little more than a restatement of the intent of the 1984 Cable Act provisions dealing with satellite television.

Next, the amendment allowed programmers to choose to sell to home dish owners only through its own systems. However, if programmers choose to market services through other distributors, they cannot discriminate among distributors.

There was no forced, third-party distribution here. Only a statement that all distributors must be treated equally.

The logic behind this provision is simple: Until there is open competition among providers of satellite television programming, the forces who monopolize this industry will continue to be able to distort the marketplace with artificial prices and terms. This fair marketing provision simply did what programmers, cable interests, dish owners, and everyone else has claimed to want from the beginning—a marketplace that is open and competitive.

The amendment also set tough new penalties for those who interfere with communications satellites, such as the notorious "Captain Midnight" incident earlier this year.

There were no radical Federal intervention proposed in our amendment. The amendment was in no way hostile to cable companies. It was the absolute least we could have done for the millions of dish owners, most of whom live in rural America, the vast majority of whom are not served by cable television.

Mr. President, I want to take a moment to address some of the principal criticisms of our measure.

It has been more than a year since programmers began announcing that they would scramble signals. Yet, today, there is still not a single package of programming available to all home dish owners. TCI, a cable company, has proposed a package, but only to dish owners within its franchise areas, and that only covers about 5 percent of the country."

And, even though some programmers have proposed potential packages, not a single programmer has agreed to offer services through noncable distributors. HBO and Showtime, the two heavyweights that drive this industry, have even declared that they have no intention of dealing with distributors other than cable.

And those programmers have set prices that are pegged to local cable prices, ignoring the obvious economies of serving the home dish market. The HBO and Showtime rebate—or kickback—arrangements reflected that distortion. And even though both have dropped those outrageous practices, HBO has openly stated that dropping the rebate will still not result in lower prices to dish owners.

The result has been price-fixing, and a distorted, anticompetitive marketplace for what even those few proposed packages that are being considered.

Mr. President, let me illustrate the problem we create if we do not ensure the viewing rights of home dish owners. Let's take the example of NFL football games. NFL games are now shown entirely on broadcast television, available to anyone with a simple television set, wherever they live, on or off cable systems.

I note for my colleagues that an article appeared in a communications trade journal recently, titled "Operators back ESPN football plan." The story notes that major cable operators are helping ESPN, a major cable programmer, to obtain exclusive rights to Monday night NFL football games and that ESPN also intends to obtain rights to regular NFL games. And more recently, USA Network, another cable progammer, announced that it has developed a plan to purchase exclusive rights to NFL games.

Mr. President, I am not suggesting that cable not be allowed to compete for the right to air those games. In fact, the more competition the better.

But if those games, which are now available to everyone, are moved to cable, we are effectively shutting off NFL football from any family who does not subscribe to ESPN or USA Network over cable—and only about half of the country even has simple access to cable.

This is only one example of the potential for clear discrimination against dish owners which could result from our unwillingness to ensure basic viewing rights for families in rural areas with no option but the home dish.

Mr. President, it has been said that "the marketplace is working, that we do not need to intervene." I would agree that the marketplace should solve its own problems, but as we've stated earlier, that simply isn't happening.

And I want to point out an ironic precedent for Government intervention in this industry. When cable systems decided that the best way to wire customers was by tying onto local telephone or electric poles, they claimed that some utilities were charging exorbitant rates for that privilege.

Now the cable industry did not simply ask that they be allowed to use those poles. The cable industry insisted that the Federal Government step in and even regulate the prices they should pay to utilities, so that those cable companies could keep their capital costs to a minimum.

So, when some in the cable industry claim that we are somehow seeking to grant an unfair advantage to dish owners by simply granting them the modest right to pay for services—not setting the prices but simply suggesting that they be able to buy services—then cable should be reminded of the major pole attachment regulation and intervention they have demanded.

Two of the country's most respected institutional voices for rural America enthusiastically supported our amendment. The National Rural Electric Cooperative Association [NRECA] and the National Telephone Cooperative Association [NTCA] represent the interests of millions who live in small communities and on farms in prctically every State.

Mr. President, I want to include the text of the NRECA and NTCA supporting letters to be placed in the RECORD at this point, in order that my colleagues with large rural constituencies fully understand the depth of

feeling in these areas about fair viewing rights for home dish owners.

Mr. President, these two organizations serve most of the 1.7 million home dish owners. And I should note that practically every one of these 1.7 million families has no other means to receive the televised proceedings of the Senate as we debated these issues. For whatever reasons, only a relative handful of the 1,500 cable systems—3 percent by C-SPAN's numbers—are carrying the Senate proceedings. Every home dish owner can be a part of this democratic process, because they have made the investment out of their own pockets to join the telecommunications revolution. Ensuring fair satellite television viewing rights is the least we, in the Senate, can do to back them up.

Mr. President, we lost that vote by a remarkably close margin, 44-54. We believe that, if we had had a standalone vote on fair viewing rights for home dish owners, we would have won. Now it is up to the market forces to interpret this vote, to follow through on claims that TVRO owners will be served fairly and in a competitive environment.

But, Mr. President, if the marketplace remains distorted by monopoly forces when we reconvene in the 100th Congress, I can assure my colleagues that we will be back with an appropriate measure of relief, to ensure that the discrimination against home dish owners will cease, and that this exciting new technology will again be allowed to thrive.●

GLOUCESTER COUNTY, NEW JERSEY, TERCENTENARY 1686-1986

● Mr. LAUTENBERG. Mr. President, I am pleased to join my colleague from New Jersey, Senator BRADLEY, in commemorating the 300th anniversary of the founding of Gloucester County, NJ.

Gloucester County has played an important role in the founding and the modern history of this Nation. Originally settled by the Dutch and Swedes, Gloucester County became home to English and Quaker settlers in the 1660's. In May 1686, the Swedes and the Quakers met to form their own government at Arwames, which is now Gloucester County. Three hundred years later, we join Gloucester County in celebrating this historic meeting.

Gloucester County was strategic in our Nation's fight for independence. Historic battles were fought at Billings-port and Fort Mercer. A monument marks the spot where courageous American soldiers battled an overwhelming Hessian attack.

In more recent times, Gloucester County was the site of the historic 1967 summit between President Johnson and Premier Kosygin at Glassboro State College. It is fitting that Gloucester County, with its roots in many cultures and its history of self-determination, should be the meeting place of the world's most powerful leaders.

Mr. President, I salute the people of Gloucester County. I am proud to recognize their achievements and share their dreams for a bright future for their country.●

THE 350TH ANNIVERSARY OF THE NATIONAL GUARD

● Mr. GLENN. Mr. President, on March 20 of this year, I introduced a resolution recognizing the 350th anniversary of the National Guard, and honoring the Army and Air National Guard for services rendered to their communities, their States, and to our Nation. Senate Joint Resolution 300 passed the Senate by voice vote on April 11. An identical resolution, House Joint Resolution 574, was introduced in the House of Representatives, but regrettably has not passed the House to date. Therefore, I would like to reiterate my pride in the Guard.

Three hundred and fifty years ago, the first settlers of the Massachusetts Bay Colony organized militia units to defend their property and lives, establishing the tradition of the citizen-soldier in the United States. They reinforced the Continental Army, and helped to win our independence during the Revolutionary War, serving under Gen. George Washington, himself a Virginia militia officer. The citizen-soldiers evolved into the National Guard and have answered the call to duty in virtually every conflict in which the United States has been involved. In peacetime the National Guard has always been ready to serve by saving lives and property when disaster strikes.

On the 350th anniversary of the National Guard, it is important for us to acknowledge the enormous contributions of the Guard to our Nation. I have attached a copy of the text of the resolution as passed by the Senate.

S.J. RES. 300

Whereas three hundred and fifty years ago, the first settlers organized militia units to defend their property and lives, establishing the tradition of the citizen-soldier in the United States;

Whereas citizen-soldiers evolved into the National Guard and have answered the call to duty in virtually every conflict in which the United States has been involved; and

Whereas the National Guard has always been ready to serve by saving lives and property when disaster has struck in peacetime: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress recognizes the National Guard for three hundred and fifty years of service, and honors the Army and Air National Guard for services rendered to communities, to States, and to our Nation.●

ELIE WIESEL, RECIPIENT OF 1986 NOBEL PEACE PRIZE

● Mr. DODD. Mr. President, it gives me great joy that my good friend Elie Wiesel has been honored this week with the Nobel Peace Prize. This is, Mr. President, a rare moment. It is a moment of understanding, of acceptance, of comprehension. It is a moment of vision. It is a moment of epiphany when humankind grows.

This week, human awareness inched closer to truth. In honoring the work of Elie Wiesel, we have taken a responsible step toward a fuller understanding of our world. Wiesel's writing, teaching, and personal testimony have born witness to an era in modern history few even spoke of for decades after its passing. It was a time when the fields where children played were transformed into a stage where evil reigned and all life was horror. A time when suffering poured into the Earth, death suffused fetid air, and the desperate cry of an entire people rang unheard into the tumult of a world at war.

Elie Wiesel bears witness to this evil. His contribution is monumental. Apart from his own work, his eloquence and his pleas have encouraged thousands of survivors of Hitler's final solution to tell their story and make known to the world the reality of the concentration camps. When none would speak, either because their mind refused to conjure what their eyes had seen, or because the horror was impossible to articulate, or because no one, they felt would believe them, Elie Wiesel could not remain silent, and he inspired the kind of testimony the world may no longer ignore.

Dr. Wiesel might well have been honored with a prize for literature. His books and essays, starting with his first on the concentration camp experience, "Night," comprise a diverse body of writings that deal not only with the destruction of the Jewish people, but of the repression of Soviet Jews, the plight of the Palestinian people, and modern politics in Germany. Realizing that suffering, genocide, and other products of human insanity are not locked away in a historical moment but thrive in all corners of the globe, he has often seen and written of Cambodians and the Miskito Indians in Central America, of Lebanon and Northern Ireland, and of Biafra and Vietnam.

Yet still his most compelling work is that which relates to his days as a prisoner of the German death machine. In testimony before the Foreign Relations Committee last year, not an eye in the room blinked as he transfixed us with his words. "Mr. Chairman," he said,

I have seen the flames. I have seen the flames rising to nocturnal heavens; I have seen parents and children, teachers and their disciples, dreamers and their dreams, and woe unto me. I have seen children thrown alive in flames. I have seen all of them vanish in the night as part of a plan, of a program conceived and executed by criminal minds that have corrupted the law and poisoned the hearts in their own land and the lands that they had criminally occupied.

Mr. President, it has been asked: why must we revisit this event with such intensity? Why must we affirm our effort to understand and acknowledge it with such fervor? Perhaps, it may even be asked, why honor the life and work of Elie Wiesel?

It is because even today, when the gas chambers and ovens stand as monuments, and the tales of survivors are read in scores of languages, there are still those disturbed and spiteful minds who dare to claim that the destruction of the Jewish people was not undertaken, that 6 million did not die in gas chambers.

That such individuals are fewer and fewer is, Mr. President, Elie Wiesel's great triumph. It is, in large part, on account of his work that the sound of names like Dachau, Treblinka, Buchenwald, Bergen Belsen, and Auschwitz shake our souls like a death-knell tolling for humanity. Elie remembers, and we remember.

We must remember, because his story is a story which transcends time and place and individuals. His responsibility is a responsibility not only to the 6 million murdered Jews, but to all forgetful men who will be condemned to relive a history they do not know. And it is a responsibility to the yet unborn. "The fear of forgetting," Wiesel has written, "remains the main obsession of all those who have passed through the universe of the damned." He understands more deeply than anyone that that fear ought be the fear of all men, in all places.

Of his imprisoned comrades he writes:

We had all taken an oath. "If by some miracle, I emerge alive, I will devote my life to testifying on behalf of those whose shadow will fall on mine forever and ever."

This is the burden Elie Wiesel has taken on for all humanity. He deserves our most solemn honor and profound gratitude. His award enriches the tradition of the Nobel Peace Prize.●

ESTABLISH AN INFORMATION AGE COMMISSION

● Mr. LAUTENBERG. Mr. President, I rise to urge the House of Representatives to act on S. 786, the Information Age Commission Act of 1986. This bill, which I joined my colleague from Georgia [Mr. NUNN] in introducing, was passed by the Senate on October 9. The bill awaits action in the House of Representatives. In the race to adjourn, I fear the proposal will fail to receive the attention it deserves.

This legislation would establish a commission, to be drawn from academia, industry, labor, and government, to help us understand more clearly the complex issues and choices presented by the advent of the "informative age." Similar legislation, introduced by Representatives SWINDALL, BARNARD, and BROWN, is pending in the House of Representatives.

Mr. President, our economy and our society have been transformed. More than 60 percent of our Nation's work force is employed in the creation, storage, processing, or distribution of information, compared to just 17 percent in 1950. We were once an agrarian society. Then, we became an industrial society. Now, we are an information age society. Leading this transformation are the communications and computer industries.

Computer and telecommunications advances have affected the way we work, the way we play, and the way we learn. With a terminal and a data link, people can and are working from their homes, tapped into a firm's headquarters miles away. Children fortunate enough to have access to computers are learning in ways we never imagined. Computer technology is revolutionizing the factory floor, assisting in the design and manufacture of products. Computer technology raises a host of questions about preserving individual privacy. From the broadest perspective changes are occurring that will have a profound affect on our society and our place in the world economy.

Mr. President, we can ride the wave of this technological change. Or, we can be swamped by it. The information age brings great benefits—increased productivity, enhanced communications, accelerating advances in science and technology. But, it poses great challenges. There are challenges to our privacy, challenges to our industrial competitiveness, challenges to our ability to educate our youth, and challenges to our ability to maintain an active and self-fulfilled work force.

We need to commence a comprehensive review of the challenges we face. The Information Age Commission would contribute to the task of conducting such a review. It would provide a forum for the public discussion of these important issues. It would synthesize work and thinking that has already been done. It would present the Congress and the Nation with its analysis of the critical choices we face.

The commission would be asked to complete its work within 2 years. While our original proposal authorized a $3 million appropriation, that authorization was deleted in committee. The commission would depend upon the contributions of private industry.

Mr. President, without the commitment of Senator NUNN to this legislation, the proposal for an Information Age Commission would not have come as far as it has. I want to applaud him for his efforts. I also want to recognize the assistance of Senator ROTH, the chairman of the Government Affairs Committee, in moving the proposal. It would be unfortunate if this proposal were to die from inaction by the House.

Mr. President, technological change is proceeding at an accelerating rate. Policymakers, individuals, workers, companies, and society as a whole has less and less time to understand the impact of those changes, and to adjust. The Information Age Commission is intended to contribute to our knowledge, our understanding, and our ability to make the change wrought by the information age changes for the better. I urge the House to pass this measure.●

ROBERT A. BECK

● Mr. LAUTENBERG. Mr. President, I rise to pay tribute to Robert A. Beck, who has announced his retirement as chairman and chief executive officer of the Prudential Insurance Co. of America. Bob Beck has led his company through a period of great growth. But, he deserves our recognition, at this pivotal stage in his career, for his exemplarly service to the public interest. He deserves our recognition for his ability to combine a demanding private career with a commitment to the improvement of our State and the Nation.

Perhaps his most significant contribution to public policy was his service on the President's Commission on Social Security. Mr. President, that was one Commission which did not produce reports that just sat on a shelf. The Commission made recommendations that served as the basis for the landmark Social Security legislation in 1983. As a result, the Social Security System is now on sound fiscal ground, and all of our citizens can be assured that it is here to stay.

We are all deeply indebted to Bob Beck and the other members of the commission for providing the basis for solving this important national problem.

Despite the enormous challenges posed by his responsibilities at Prudential, Bob Beck also led the Business Roundtable's efforts to address our No. 1 economic challenge—the Federal deficit. He served as chairman of the United Way of America and as a member of the executive committee of President Reagan's private sector survey on cost control. He has been active on the President's Commission on Executive Exchange and the Council on Physical Fitness and Sports.

Bob Beck has served as an important voice within his own industry on issues of public policy. He has served as chairman of the American Council of Life Insurance. I recall when legislation was pending in the Senate to make insurance rates sex-neutral. Bob Beck, as head of the ACLI, advocated a progressive and forward-thinking position. It was a position that earned my deep respect.

During his tenure as chairman of the Prudential, the company has made important investments in the revitalization of the city of Newark. Prudential has been a major mover in the development of The Gateway complex, which has served as an important hub for new business growth.

Bob Beck's activities reach beyond the boundaries of our home State of New Jersey. Mr. Beck has devoted his energy to cultural and sports development as vice chairman of the Kennedy Center Corporate Fund Board and chairman of the U.S. Golf Association's Capital Campaign. He also is a member of the Business Committee for the Arts and chairman and a past president of the New Jersey Historical Society.

Robert Beck is a business leader who underscored the value of education by serving as a trustee of several colleges and by inspiring his company and the Prudential Foundation to contribute financially toward helping students and scholars achieve their goals.

Mr. President, over the years, I have come to know Bob Beck personally. We have met frequently on issues pertaining to the financial services industry and broader national policy questions. He has gathered together for me on several occasions a group of New Jersey business leaders for the exchange of ideas about broad public policy questions. It has been of great value to me to have the advice and counsel of these concerned leaders.

Mr. President, while Bob Beck will soon retire from the Prudential, I know he will not retire from his active contributions to the public good. I hope to call on him in the future for his advice and counsel.●

AGE DISCRIMINATION IN EMPLOYMENT AMENDMENTS OF 1986, H.R. 4154

● Mr. QUAYLE. I want to speak in support of H.R. 4154, the Age Discriminated in Employment Amendments of 1986, as recently passed and amended by the Senate. Most importantly, H.R. 4154 eliminates the upper age cap of 70, thereby extending the protections against age discrimination in employment to all older workers. The bill also contains an exemption for State and local firefighters and police and an exemption for tenured faculty. These exemptions are for 7 years. In the meantime, studies will be carried out to explore the potential impact of the expiration of the exemptions.

The provisions of H.R. 4154, eliminating the cap, exempting State and local public safety officers, and exempting tenured faculty, are three of the four provisions contained in S. 1240, a bill I introduced at the beginning of this Congress to amend the Age Discrimination in Employment Act [ADEA]. Although some of the specifics of the provisions contained in H.R. 4154 are not exactly what I wanted and the bill does not make procedural reforms for enforcement, I think it is a good compromise between the many competing interests involved. Concessions have been made on all sides in order to reach an acceptable agreement.

The most important provision in H.R. 4154 is the elimination of the upper age cap. This a victory for all Americans, not only for those who are now over 70. I am proud to have been part of this effort to lift the cap.

In closing, I would like to take a moment to comment on one of the studies that is required by H.R. 4154. We are directing the Equal Employment Opportunity Commission to conduct a study through the National Academy of Sciences on the potential impact of the expiration of the tenured faculty exemption. The language in H.R. 4154 is fairly broadly worded in directing the study to examine the "potential consequences of the elimination of mandatory retirement on institutions of higher education."

I would like to elaborate on the purpose of the study. It would be beneficial to those of us who have supported the tenured faculty exemption to have the study include an examination of the following:

A comparative analysis of tenure systems or alternative retirement systems in a cross section of colleges and universities;

A review of State laws governing retirement policies of universities and colleges;

An assessment of the potential impact of eliminating mandatory retirement on the long term demographic trends of colleges and universities, including an analysis of trends in student-teacher ratios, hiring of new teachers, and the potential impact on retirement patterns;

An analysis of the potential impact of eliminating mandatory retirement on existing retirement systems; and

An analysis of the relationship between academic freedom and retirement systems, including consideration of the extent to which academic freedom is protected by tenure or alternative retirement systems.

I enjoyed working with my colleagues to reach a Senate agreement on amendments to the ADEA. I commend everyone involved for their patience and perservance in reaching an agreement on this very important piece of legislation during the closing weeks of this session.●

WHCT—SHOWCASE EXAMPLE

● Mr. DODD. Mr. President, I want to bring to the attention of my colleagues the successful application of the Federal Communications Commission's minority distress sale policy in Hartford, CT. This policy was adopted in 1978 and permits broadcasters designated for revocation or nonrenewal hearings to sell their licenses to minority buyers without a comparative hearing. This assists in expanding minority ownership of broadcast licenses and addresses the deplorable situation where less than 2 percent of the broadcast properties in the United States are held by minorities. But it also has a number of other benefits. The licenses of sellers in these cases are usually in jeopardy because of fraudulent advertising or some other transgression. They are permitted under this policy to recover some cost of the licenses. A protracted and costly administratve hearing is also avoided. The public is benefited because programming is diversified, broadcasting operations are usually continued without interruption, and competition is enhanced.

Some 31 sales have occurred under this policy and we are particularly aware of its benefits in Hartford, CT, where WHCT, channel 18, is a showcase example of positive results. Astroline Communications purchased WHCT-TV from its previous owner whose license was under challenge from the FCC. During the 4 years of the dispute with the FCC, the previous owner let the station's facilities become outdated, completely closed the station's studio and fired many of its employees.

Since buying the station and acquiring its license, Astroline has invested $15 million in the Hartford economy by totally rebuilding the station's studio and facilities. As a result, 40 jobs were created. One third of its managerial positions have been filled by minorities. Under the new management, the station has acquired the broadcast rights for the Hartford Whalers and other programming advances have been made. Competition in the Hartford market has been enhanced. Based on this experience, it is my strong belief that this distress sale policy should be continued.

A couple of weeks ago, channel 18 commemorated its first anniversary, and the people of Hartford applauded this milestone. Tom Condon of the Hartford Courant recently wrote about the outstanding results. I would like to bring this column to the atten-

tion of the Senate, and I ask that it be printed in the RECORD.

The column follows:

RAMIREZ IS THE STAR AT CHANNEL 18

Richard P. Ramirez, part owner and general manager of WHCT Channel 18, doesn't look like he was ever a victim of discrimination.

The 32-year-old-ex-football player is tall, good-looking and well-spoken. He could easily play himself if "WHCT in Hartford" were to become a TV series.

But he is a minority, and when he gets past Arbitron ratings and syndicated programming, he remembers the old neighborhood.

A year ago today, Ramirez flipped a switch in a building on Garden Street and put WHCT on the air. He was able to buy the station because of a federal policy giving preference to minorities.

He feels he's kept faith with that policy by hiring minorities for a third of his management positions. "I hope we become known as a station that develops first-rate talent from the minority communities," he said.

At this time last year, some said the station wouldn't make it to Halloween. So along with his hiring record, Ramirez is proud that he's about to reach Halloween II. But just like living in "Fort Apache," it hasn't been easy.

Ramirez grew up in New York City's South Bronx, the son of a Cuban father and Puerto Rican mother. He got whacked around for being Hispanic in a predominatly Irish Catholic school near home. Then he got whacked again back on his block for being fair-skinned.

"Thank God for my parents," he said. "They kept the influences of the street out of the home."

Ramirez won a football scholarship to Boston College, played linebacker, graduated and went into radio and TV marketing.

Two years ago, he began a push to get his own television station.

Channel 18, you may recall, was owned in recent years by Faith Center Inc. of Glendale, Calif., which presented hour after hour of the Rev. W. Eugene Scott wearing different hats and wailing away at government, his ex-wife and other major problems.

Scott's organization was in constant trouble with the Federal Communications Commission, and took advantage of an FCC provision allowing sale of the station to a minority-controlled group rather than risk outright loss of its license.

The buyer, for $3.1 million, was Astroline Communications, a Boston-area limited partnership set up by Ramirez.

Ramirez was immediately sued by a Rocky Hill computer consultant, Alan Shurberg, who had been trying to gain control of the station since 1983. The case is still pending.

Just before Ramirez bought the station, the FCC dropped its "must carry" rule, which forced cable operators to carry all local stations. This meant that instead of a guaranteed 660,000 cable households in the central part of the state, Ramirez had to start with 150,000. He is back up to 520,000, and growing.

He also ran into opposition from the town of Avon when he tried to build a new transmitting tower on Avon Mountain. This, too, is the subject of a pending legal challenge, but Ramirez said he has the necessary permits and expects to break ground in a matter of weeks.

On top of that, the FCC may change its rule about minority preference, which might affect WHCT.

"I can't imagine starting an independent television station under such adverse conditions, but it's growing," he said.

Ramirez's team has won a few. It landed the contract for 24 Whaler games this season, and is televising 11 University of Hartford basketball games. WHCT started with reruns and old movies, but has been able to add some public service programs along with the sports.

"They and Channel 61 [WTIC] have both done the right thing, trying to come up with programs that differentiate them from other stations," said Michael Dorfsman, executive director of the Connecticut Cable Television Association Inc.

"We're another voice, and another option for advertisers," Ramirez said. He said competition by independents has brought more Celtics and Whalers games to area viewers this year and such competition improves programming.

WHCT brought my favorite show, "Rocky and Friends," back to Hartford. The station also has brought 46 full-time jobs to the city.

Ramirez said the year has been a roller coaster of highs and lows. "It's much more of an emotional challenge than I thought. My social life has taken a distant back seat. But when I turn on the television, I can see how far we've come."●

ABORTION AND INFORMED CONSENT: MONTANA

Mr. HUMPHREY. Mr. President, all Carrie wants is for women contemplating abortions to receive more information. She is particularly concerned about the lack of information given regarding the development of the unborn child. Each day we discover more about what is actually occurring in the womb when a child is growing within. It is predictable that women who have an abortion will later, through the media or elsewhere, be informed about the true nature of the fetus, and may be distressed as a result.

I hope my colleagues will read Carrie's letter from Montana and agree that women are not currently receiving sufficient information to make an informed decision about abortion. By cosponsoring S. 2791, they can ensure that informed consent will be required prior to an abortion.

The letter follows:

To whom it may concern: My story begins in April 1977, when I met a wonderful guy who is now my husband. I became pregnant. I was 18 and scared. I knew people would think of me as a cheap tramp. My parents would be destroyed and would never forgive me.

I was so mixed-up and scared. All I wanted to do was run, but what good would that have done, I would still have been pregnant. Abortion, that's it! "That's the answer to my problem," *I thought.*

In June of '77 I went to a woman's clinic. I had a pregnancy test and, sure enough, I was 12 weeks along. I didn't know my baby was already twelve inches long. I didn't know that at 18 days its heart had started beating, by 21 days it was pumping through a closed circulatory system and it had a blood type differing from its mother's. All the organs in my baby's systems were functioning. At this point the baby breathes (fluid), swallows, digests, urinates, has tiny liquid bowel movements, sleeps, wakes, tastes, hears, feels pain and can be taught things. I had no idea my baby was as much a human being as you and I are.

When I went to have my abortion, the counselor who talked to me never led me to think that the baby inside me was a baby. She was very, very kind to me and helped me think that what I was about to do was for the best.

Why couldn't she have told me my baby wanted to live and let me know that the mental grief I would go through afterwards would be awful. I remember her smiling face as she held my hand while the doctor killed my baby by tearing it apart and sucking it into a jar.

This is something I have to live with for the rest of my life. Every time I see my three beautiful children (Alisha, Zachary and Bethany) laughing, giggling, running and playing, I remember that I took away the chance for my first baby ever to experience these things.

I cannot express enough how it hurts to know that I let my first baby be killed like this, and all because I didn't want to go through some public embarrassment.

Love and God bless all,

CARRIE REICHERT,
Billings, MT.●

THE AFRICANS

● Mr. KERRY. Mr. President, public television station WGBH in Boston, an important media influence all over the country, has been airing the nine-part series, "The Africans: A Commentary by Ali A. Mazrui," to its Boston viewers since the beginning of October. It is a series that has sparked a great deal of discussion and controversy. While I cannot endorse all of the conclusions made by the participants in the film, its showing has provided a revealing look into the history of the continent of Africa, and has provided the American people with an all-too-rare look at Africa from an African's perspective.

I ask that an analysis and commentary on the series which appeared in another Boston-based institution, the Christian Science Monitor, be included in the RECORD.

The material follows:

[From the Christian Science Monitor, Oct. 6, 1986]

AFRICAN SCHOLAR'S INTERPRETATION OF AFRICA RAISES HACKLES

(By Arthur Unger)

The Africans: A commentary by Ali A. Mazrui. PBS, Tuesday, 9-10 p.m. for nine weeks, check local listings. Writer and presenter: Ali A. Mazrui. Producers: Peter Bate and Timothy Copestake. A coproduction of WETA/Washington, D.C., and the BBC.

"The West arrived in Africa with a bang; our soil is still recoiling with a whimper," says Ali A. Mazrui in Part IV of "The Africans."

But neither in the controversial series nor in person is there any sign of whimpering

on the part of this Kenya-born professor of political science. Instead there is fury, protest, poetic but pointed analysis, defiance—and predictions of a better, black-dominated world to come.

Even before the series begins airing in America (it has already been in England), there is bitter controversy: Why such kind and gentle treatment of Libya's Col. Muammar Qaddafi, critics ask. Why such harsh treatment of the Western influences on Africa? Why a condemnation of the West for taking slaves when there is barely any criticism of the Arab world for similar practices? Why concentrate on the problems of the new Africa instead of focusing more on the glories of the continent's pre-colonial past?

The criticism comes from all sides. Lynne Cheney, who chairs the National Endowment for the Humanities, which provided $600,000 of the program's $3.5 million budget, calls the series an "anti-Western diatribe." Accuracy in Media and the National Conservative Foundation label the show "an insidious attack on the Western democracies." From the opposite end of the spectrum, the Coalition Against black exploitation in Los Angeles charges that the series will fuel latent racism in America by probing too deeply into Africa's problems.

PBS, for its part, insists that the series clearly represents one man's viewpoint and the he should be free to state what he believes.

After previewing four episodes of the series, I tend to agree somewhat with each of those criticisms.

Dr. Mazrui [interviewed next page] explores the three legacies of Africa, what he calls "the triple heritage"—African, Western, Islamic. Perhaps his own Islamic background (his father was chief Islamic judge of appeal in Kenya) explains his tendency to view many influences as "contributed" by Islam but "imposed" by the West. The Arab slave trade, from Mazrui's perspective, was mainly a pretext for Western intervention in Africa. Ironically, Mazrui complains that often the West generalizes about Africa, as he goes about generalizing about the West.

Starting with the powerful influence of Africa's ecology in Part I, the series goes on to investigate the role of the family in the continent's lifestyle; the Africanization of Christianity and Islam; exploitation during the colonial period; current political, social, and economic conflicts in African nations; successful and unsuccessful independent African nations; problems of technology and corruption; the clash of cultures, and the continent in today's world context. There seems to be an honest attempt to cover all aspects of emerging Africa.

It is in the final episode, "The Global World," that some of Mazrui's opinions have antagonized previewers. "America tried to teach black Americans to be ashamed of Africa," he states boldly. Blacks, unlike other hyphenated Americans, by dint of being brought to America as slaves, were "denied the right to nostalgia" about their place of origin, he says. "There were Irish-Americans, Jewish-Americans, Polish-Americans—and there were Negroes," he says. But then he adds inconsistently, "Forget you are African; remember you are black."

"The Africans" does just what it sets out to do; present Africa through the eyes of one outspoken African scholar. It is sometimes irritating and argumentative, sometimes biased and opinionated. But it is always bold and provocative. You may find yourself challenging many of Dr. Mazrui's interpretations of history, but the series will undoubtedly challenge your own thinking about Africa, race, and Western democracy.

PBS attempted to defuse controversy over the show by changing its title from "The Africans" to "The Africans: A Commentary by Ali A. Mazrui."

Suzanne Weil, PBS's senior vice-president, for programming, told the Monitor: "Our first concern is respect for the audience, to see that the subject matter is handled as fairly as possible. And in cases where it may not be fair, to see to it that it is clearly labeled where it is coming from. We want the person responsible to have the proper qualifications.

"We do not set out to stir people up, but we do accept the fact that people are not harmed by listening to concepts with which they may disagree. I would hope there will be other views of Africa on PBS as time goes on. As long as we are being criticized from all sides, I feel we must be doing something right."

MAZRUI: "MY LIFE IS ONE LONG DEBATE"

No dashiki for Dr. Ali A. Mazrui.

The scholar many African nationalists consider to be the proud spokesman for the "new Africa" arrives for an interview at PBS's New York headquarters dressed strictly Ivy League style—dark suit, white button-down shirt, etc. A professor of political science at the University of Michigan, he has also taught in Nigeria and Uganda.

How does he feel about the controversy still swirling about this TV series "The Africans"?

"It was almost to be expected. The whole purpose of PBS going out of its way to get a person with a non-Western point of view was not to repeat what they could have gotten from any competent Western reporter. I raise issues from inside Africa. It is not the African point of view. It would be arrogant to claim that, because there are so many."

What would he like the series to accomplish?

"I would like the series to be accepted as a medium of education. I hope it will set a precedent for the West, calling upon members of other societies to discuss their own society for Western audiences. Considering the West's power over the rest of the world, the West should be ready to hear something about what the rest of the world thinks about itself. One of my major fears now is that the series will become so controversial that never again will America call upon the third world to explain its own society to Americans. That would be very sad.

"People should have a context when they hear about riots in South Africa or a military coup in Nigeria or drought in Ethiopia. The series is partly an effort to provide a human context for the things Americans hear about on television news every night."

Dr. Mazrui believes that two African countries will make a strong bid for the leadership of Africa in the next century: "Black-ruled South Africa and Nigeria. South Africa, when it is ruled by blacks, will help us find additional sense of direction; Nigeria because of its human resources. Hopefully it will have found a better sense of organization than it has at the moment."

As we parted, I told Dr. Mazrui that, although I disagreed with many of his opinions, I found the ideas challenging.

Dr. Mazrui smiled. "Good," he said, with just the hint of a sigh. "Many people disagree with me. My life is one long debate."—A.U.●

THE ANC

● Mr. BOSCHWITZ. Mr. President, I wish to submit to the RECORD an article written recently by John Silber, president of Boston University. I was most impressed with Dr. Silber's testimony this past summer on South Africa before the Senate Foreign Relations Committee. It was both wise and insightful.

The article I now commend to my colleagues' attention concerns the African National Council [the ANC]. Dr. Silber points out that we would all do well to look at the organization dispassionately. We ought not confuse it with Martin Luther King's Southern Christian Leadership Conference that led our own civil rights struggle in the 1960's. Rather, we ought to listen to what the leaders of the ANC say about their view of the struggle, what they are prepared to do, and what their vision of a future South Africa looks like. It is a chilling article that Dr. Silber has written, but one all of us ought to read.

The article follows:

A LOOK AT THE AFRICAN NATIONAL CONGRESS

(By John Silber)

If we are to find a means of ending *apartheid* without massive bloodshed along with economic deprivation and political oppression for all South Africans, we must face squarely the nature of an organization widely regarded as the sole voice of black South African protest: the African National Congress.

The widespread view of the ANC as the South African equivalent of Dr. King's Southern Christian Leadership Conference is a tragic mistake. In recent decades, the ANC has become dominated by a strident Leninism, an ideology it has sought to implement by terrorism and murder—so far, largely against blacks. If anyone doubts the accuracy of this description, they should spend some time reading statements of various ANC leaders.

A little over a month ago, "Radio Freedom," the ANC's Ethiopia-based broadcasting station, carried a statement from Joe Modise, commander of Umkhonto we Sizwe, the military wing of the ANC, which makes quite clear the terrorist orientation of his organization. Black South Africans, he said should "organise themselves into groups, and policemen should be ambushed and their weapons taken; bombs and petrol bombs should be made from locally available materials." The people should "identify collaborators and enemy agents and deal with them."

We should remember that the policemen being talked about here are mostly blacks, as are, by definition, the "collaborators," blacks who do not agree with the ANC's program. The ANC's method of "dealing with" such people is simplicity itself. A rubber tire is soaked in gasoline, placed over the head of a "collaborator," and set alight. The device is known as a "necklace."

Lest we think that such tactics are approved only by extremists within the military wing of the ANC, we should heed the words of Winnie Mandela, spoken at Munsieville on April 13, 1986, and reported by Agence France-Presse:

Together, hand in hand with our boxes of matches and our necklaces, we shall liberate this country."

Mrs. Mandela is sometimes compared with Coretta Scott King. Her Munsieville statement demonstrates the monstrous inaccuracy of the comparison.

The ruthlessness of the ANC is perhaps best demonstrated by Johnny Makatini, the ANC representative at the United Nations, who recently speculated that "if there were only 4 million of us left after the revolution, that would be better than the present situation." He alludes here with indifference to the deaths of 17 million South African blacks. One cannot imagine such indifference on the part of Martin Luther King. Makatini regards the extermination of 80% of South African blacks as preferable to any peaceful program for the gradual ending of apartheid. He regards a death toll three times that of the Holocaust as a reasonable price to pay for immediate access to political power. Makatini is prepared to destroy black South Africa in order to save it.

These statements suggest the sort of regime the ANC would install once in power. They who strive to rule through terror usually rule by terror.

Moses Mabhida, a member of the ANC executive, has put the ANC on record as suporting the most brutal tactics: "We express our full solidarity with the Afghanistan Peoples' Democratic Party—we fully understand and support the timely assistance of the Soviet Union." This is not casual ANC support for the Soviet Union: the ANC has been perfectly frank about the sort of economic and political model it would adopt on coming to power. Mrs. Mandela told Pravda, "The Soviet Union is the torchbearer for all our hopes and aspirations. In Soviet Russia, genuine power of the people has been transformed from dreams into reality."

The best that can be said about this statement is that it reflects a terribly dangerous naivete. The worst is that Mrs. Mandela wishes to impose on her fellow South Africans a dictatorship as despicable as that imposed by the Soviet Union on the Ethiopians and the Afghans.

A Soviet style dictatorship would deny basic human rights to South Africans of all colors and reduce what is now the most dynamic economy in Africa to one like those that keep the rest of Africa in desperate poverty and encourage millions of blacks to seek work in South Africa.

When Americans demand that the South African government share power with the African National Congress, they demand power-sharing with an organization committed to terror, oppression, and poverty. The blacks of South Africa will not find a better life under an ANC dictatorship. We would be better advised to support the claims of proven democratic opponents of *apartheid* such as Chief Buthelezi, leader of six million Zulus, and Bishop Mokoena, leader of millions of blacks in Reformed Independent Church Association. In this direction alone lies hope.●

FUNDING FOR THE NATIONAL ENDOWMENT FOR DEMOCRACY

● Mr. LEVIN. Mr. President, I am pleased that the continuing resolution contains funding for the National Endowment for Democracy. This is a relatively small program that is promoting democracy around the world. It represents a small investment in a foreign policy initiative that is already beginning to pay dividends.

Those who have been critical of the Endowment since its inception 3 years ago have focused on a few controversial, and perhaps ill-conceived, programs. But they overlook the more than 260 projects that have provided practical assistance to democratic forces all over the world. A balanced review of the Endowment's accomplishments will demonstrate its contribution to the development of democracy overseas.

I have been particularly impressed by the work of the National Democratic Institute for International Affairs [NDI] which has undertaken a number of innovative projects to provide concrete support for political institutions abroad, institutions critical to the maintenance of democracy in many Third World countries.

Together with its Republican counterpart—the National Republican Institute—NDI organized the international observer delegation to the Philippine election which was credited with first exposing electoral fraud by Marcos and his supporters. NDI received bipartisan acclaim for its professional work, and for attempting to bring credibility to the electoral process.

In Chile, NDI sponsored a major international conference with the leaders of the 11 democratic parties who signed the recent "National accord." United States officials and the Chilean party leaders hailed the conference for providing a setting that enabled Chile's coalition of diverse democratic parties to reaffirm its commitment to the peaceful transition to democracy. The timing was crucial because extremist pressures on both sides had threatened to break apart the fragile National accord. NDI's conference helped keep it together.

Most recently, NDI sponsored an intensive series of workshops on electoral codes and party building with prominent Haitian political leaders. The workshops were described as an "historic event" by the Haitian participants since it was the first time these party leaders had ever assembled. One participant referred to the conference as "the most significant development toward democracy in Haiti" since President Duvalier's departure. The conference not only helped plant the first seeds of cooperation among the democratic parties of Haiti, but also resulted in practical proposals, such as formation of an elections commission, and techniques for coalition building, which will be critical to a successful transition to full democrary.

These are only a few of the many creative and productive programs the NED is implementing to help build democracy abroad.

It is ironic that West Germany, where the United States played such a pivotal role in implanting democracy, has for nearly a quarter of a century been exporting its own democratic experience. Four political party institutes now receive more than $200 million annually from the Bundestag, the West German Parliament. The result of these efforts has been seen most recently in Spain and Portugal, where the West German parties and other components in Europe's democracies helped to guide the Iberian nations into the democratic camp.

U.S. involvement in this work is long overdue. I firmly believe that the American experience is immediately relevant to many emerging democracies. The National Endowment for Democracy allows us to share our experience and thereby encourage stability and freedom.

NED is a symbol of America's commitment to democratic practices. More important, it's working. Those struggling for freedom and justice throughout the world can attest to its success. I'm pleased that the Congress has again provided the NED with the opportunity to carry on this work.●

THE RESIGNATION OF TRADE COMMISSIONER PAULA STERN

● Mr. GORE. Mr. President, I would like to pay tribute to Dr. Paula Stern, who yesterday announced her intention to resign from the U.S. International Trade Commission in January.

Over the past 8 years, Commissioner Stern has taken part in the most important trade decisions of our time. She has fought to secure fair terms for American goods abroad, and prodded American business to become more competitive at home. In June, she completed an active 2-year term as Chairwoman of the Commission.

I am proud to count Paula Stern as a friend and fellow Tennessean. She has written widely on trade and foreign policy. Many of my colleagues will remember her work as an aide to Senator Gaylord Nelson.

Dr. Stern will become a senior associate at the Carnegie Endowment for International Peace, where she will no doubt continue to make a tremendous contribution to America's trade policy.

As this country charts its economic future, we should keep in mind Dr. Stern's reflections upon leaving the Commission. She says:

> The most important thing I've learned in my experience here, is that important relief is no substitute for long-term economic strategies to become and to stay competitive.

Trade policy, she concludes, is like personal health care:

> Good habits in the private sector and domestic economic policies which take trade effect into account are worth a ton of import relief.

I know my colleagues join me in commending Commissioner Stern for her distinguished service, and wish her well in her new pursuit.●

TITLE X: THE CONGRESS' UNFINISHED BUSINESS

● Mr. HUMPHREY. Mr. President, title X of the Public Health Service Act remains one of the most controversial programs of the Federal Government. It is only one of several family planning programs, for similar activities are conducted through the Maternal and Child Health Services Block Grant under title V of the Social Security Act, Medicaid under title XIX of the Social Security Act, and the Social Services block grant under title XX of the Social Security Act. All this is in addition, let us remember, to private spending for family planning, both by individuals and by foundations, insurance companies, and various health care providers.

But title X is different from these other activities, public or private. It is the source of bitter rancor. It outrages parents, disrupts neighborhoods, and threatens to invade schools. And it remains one of the most protected and shielded government programs.

Since its enactment in 1970, title X has not been the subject of a single direct vote in the U.S. Senate.

Title X may be unique in that regard. For 16 years, it has been kept in business without recorded Senate votes. In recent years, it has been funded by appropriations bill, in the absence of any authorizing legislation. And in the process, it has been totally transformed, without the mandate of Congress and, in fact, without the knowledge of the American people.

Title X was created to provide publicly subsidized family planning services for poor people. That meant low-income, married adults. It did not mean unmarried teenagers. It did not mean impressionable kids of 13 and 14 years of age. It did not mean promiscuous children of affluent families. But that's what title X has come to mean.

Back in 1970, family planning meant contraception. It meant spacing births, and it also meant helping couples who had difficulty in conceiving a child. It most emphatically did not mean abortion; for abortion was illegal, to one extent or another, in every State. But abortion is an important part of what title X has come to mean.

Despite the clearly expressed intent of the Congress in creating title X in 1970, abortion haunts the program. Despite the annual insistence by the Congress, through various forms of the Hyde amendment, that public funds can in no way advance abortion, abortion counseling and referral are bureaucratically mandated for title X. Despite the best efforts of Members in both House and Senate to allow their colleagues to debate and to vote upon this situation, the abortion component of title X has been kept off limits to Congress. The program's proponents have gone to great lengths to avoid even dicussing this mounting scandal.

That's the main reason why title X has thus far not been reauthorized by the 99th Congress. Let's review the calendar:

May 25, 1984. The Senate passes a 3-year reauthorization of the Adolescent Family Life Program (S. 2616), with no mention of title X.

June 11, 1984. The House passes a 3-year reauthorization of title X. However, the program was combined in a single legislative package (H.R. 5600) with many others: the Adolescent Family Life Program and the Preventive Health Services Block Grant, which covers rat control, fluoridation, hypertension screening and treatment, rape crisis services, home health agencies, emergency medical services, and so on. The whole package was then brought up for a single vote, under suspension of the rules, so that no amendments were allowed. In other words, Members of the House had to accept or reject the entire laundry list. It was a clever way to force through a reauthorization of title X without giving representatives a chance to correct abuses.

August 10, 1984. In the last hours of the last day before adjournment for the August recess, the House managers of H.R. 5600 pulled off a remarkable piece of legislative legerdemain. Without any debate, S. 2616, the Senate-passed bill extending the Adolescent Family Life Program was amended with the entire text of H.R. 5600, the grab-bag containing a 3-year extension of title X. This "amended" version of S. 2616 was passed with no discussion, no vote, no prior notice, no chance for amendment or objection. Moments later, the House was adjourned until September 5.

September–October, 1984. Title X advocates now had what they wanted: a legislative vehicle that had passed both House and Senate. Even though the Senate had not included title X in its version of S. 2616, it could be put into one omnibus conference report; and if any Senators objected, they could be accused of holding up this vital legislative package at the end of the session.

October 9, 1984. Fortunately, there were Senators who were not intimidated by this tactic. Because of their resistance, title X advocates settled for a straight one-year reauthorization of both that program and the Adolescent Family Life Program.

June 18, 1985. Using the same tactic of the year before, title X advocates brought a new reauthorization to the House floor, again under suspension of the rules. Again no amendments were in order. If Members voted against the bill, they could be accused of opposing family planning altogether.

But Congressman BILL DANNEMEYER of California spoke about "how family planning has degenerated from a tool for married couples to a means whereby teenagers are able to obtain advice (and, he might have added, prescriptive drugs and devices) without the knowledge of their parents." The bill failed to pass under suspension, and rather than permit Members to amend title X, the program's advocates would let the program go unauthorized, relying on the appropriations bill alone.

May 13, 1986. A 4-year reauthorization of title X (S. 881) is reported by the Senate Labor and Human Resources Committee.

October 2, 1986. An amendment is offered to House Joint Resolution 738, the continuing resolution, by Senator JESSE HELMS. It provides that no funds appropriated under the CR, which included all the money to be spent by HHS, could be used to provide contraceptive drugs or devices to unemancipated minors without the written consent of their parents or guardians. By a vote of 34 to 65, the amendment was ruled nongermane.

Meanwhile, in response to a request from myself and four Congressmen—Representatives CHRIS SMITH, JACK KEMP, HENRY HYDE and VIN WEBER—Health and Human Services Secretary Otis Bowen announce that he would undertake administrative reform of one of the most offensive aspects of title X: the requirement that title X grantees counsel and refer for abortion.

The change is long overdue. We hope that Secretary Bowen's promised revision of the title X guidelines is but one step toward the ultimate return of the title X program that no title X recipient receive funds if it involves itself with programs involving, or related to, abortion.

I will later ask unanimous consent that a report be printed which details the original intent of Congress in this matter. But I believe that the current intent of Congress, as demonstrated by the comprehensive approach the Congress has taken, over many years, to the subject of abortion, also bears witness to the need for reform of the current title X guidelines and regulations.

In 1970, those who created title X made clear that there would be a wall of separation between the program and abortion. Since that time, in the wake of Roe versus Wade and other court decisions, the Congress and President Reagan have done all in their collective power to extend that wall of separation between abortion and government. We will not be associated with it in the Peace Corps, in De-

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partment of Defense health care, in Federal health insurance programs, in international family planning programs, in Legal Services Corporation programs, in special refugee assistance programs. When given the chance, we have enacted conscience clauses to protect the rights of those who refuse to be a party to abortion, and we have served notice on the Nation's health professions schools that they may not deny admission or benefits to anyone on the grounds of opposition to abortion.

And most significantly, we will not be associated with it in the Medicaid Program, not to mention every other program funded by the Labor, Health, Human Services, Education Appropriations bill—all of which programs are covered by the HYDE amendment's annual restriction on funds that might be used for the performance of abortion.

In that context, one cannot contend that the Congress wants HHS to require title X grantees to tell women where to get abortions. One cannot believe that the Congress, which has gone to great lengths to separate itself from the evil of abortion, intends to make title X grantees procurers of abortion.

But more importantly, section 1008 of title X, applies today as it did when first enacted in 1970: "None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning." Clearly, no title X money can be used in any program where abortion is used as a method of family planning. That's the law—today as it has been for 16 years.

It is absurd for HHS to require title X grantees to refer family planning clients for abortions when not a cent of title X money can legally be used in any program of which abortion is a part. HHS is requiring its grantees to disregard section 1008, just as HHS is disregarding it.

If reform of title X is to be undertaken by the Department, let it begin here, with section 1008 of the law. Let the Department consider the intent of Congress in that section, as expressed by Congressman Paul G. Rogers, who was Chairman of the Subcommittee with jurisdiction over title X. Speaking of section 1008, Rogers insisted, "This provision would not merely prohibit the use of such funds for the performance of abortions but would prohibit the support of any program in which abortion counseling or abortion referral services are offered."

It is clear that the very activity which HHS now requires for title X was actually intended to be a disqualifying factor for participating in the program. Again, section 1008 is still law. It still prohibits grantees from doing the abortion counseling and referral which HHS requires them to do by guideline.

A few years ago, the Department somewhat half-heartedly attempted a regulatory reform of title X. It would be a tragedy if the failure of that effort became the pattern for another faulty attempt to deal with the program avoiding or misconstruing the fundamental issues involved. To avoid that mistake, and to focus departmental attention where it belongs, I recommend an extensive legal memorandum prepared in 1981 by the Christian Action Council. Today, 5 years later, it is no less relevant to any attempt to reform title X. I ask that it be printed in the CONGRESSIONAL RECORD so that we may all better understand the origins of the title X controversy and the way in which it can best be resolved.

The material follows:

LEGAL ANALYSIS OF TITLE X

(Prepared by Christian Action Council, 1981)

BACKGROUND

In 1959, President Dwight D. Eisenhower said he "could not imagine anything more emphatically a subject that is not a proper political or governmental activity or function or responsibility" than family planning.[1] Just ten years later, Richard Nixon, in the first Presidential message in history devoted exclusively to the population issue, called for a new federal initiative to provide "adequate family planning services within the next five years to all those who want them but cannot afford them."[2]

This marked change in public policy regarding the role of the federal government in population control was the culmination of a subtle change which had been taking place throughout the 1960's. In the early part of that decade, the development of contraceptives was seen to be squarely within the domain of the private sector. The oral contraceptive and the intra-uterine device, introduced in 1960 and 1962 respectively and still viewed as the most effective birth control methods, were developed and marketed by private pharmaceutical concerns. Procurement of these was limited to those who could obtain them through private physicians or clinics.

In the mid-sixties this situation was altered somewhat with passage of the Economic Opportunity Act of 1964, which provided some family planning services to the poor. Maternal and child health formula grants and maternal infant care project grants, authorized under Title V of the Social Security Act, also gave the indigent some access to birth control.

But it was not until the Ninetieth Congress enacted the Social Security Amendments of 1967 (PL 90-248) that government involvement in population control began in earnest. This legislation was the first to make project grants specifically for family planning. It also specified that not less than six percent of the monies appropriated under Title V for maternal child health be earmarked for birth control services. In 1968 Congress amended the Economic Opportunity Act to establish family planning as a special emphasis program of the Office of Economic Opportunity. The Presidential Advisory Committee on Population and Family Planning that same year recommended increased federal involvement in population control. The Center for Population Research, funded under the general authority of section 301 of the Public Health Service Act, was also established in 1968. The Center coordinated federal activities in population-related matters by sponsoring research in contraceptive development, medical effects of contraceptives, human reproduction, and changing demographic patterns.

In October, 1969, the National Center for Family Planning Services was established in HEW's Health Services and Mental Health Administration. The NCFPS, funded under Title V of the Social Security Act, was concerned with the direct provision of family planning services to those who did not have access to them due to low income or other circumstances.

Thus, by the end of the Sixties both contraceptive research and the provision of family planning services had begun to be eased into the public sector. There was, however, no centralized authority to oversee these government programs. In September, 1967, Oscar Harkavy of the Ford Foundation collaborated with Frederick S. Jaffe of Planned Parenthood-World Population and Dr. Samuel M. Wishik of Columbia University to produce a study which was to become critical in the framing of the Tydings Act (Title X of the Public health Service Act). The Harkavy Report asserted that, despite increased federal spending in the area of population control, "it is clear that none of the DHEW Regional Offices or operating agencies presently places high priority on family planning, or is certain what precise functions it is expected to carry out in this field. If the DHEW effort is to be commensurate with the need and with the Secretary's expressed intent it must greatly increase the funds and professional staff manpower devoted to this field."[3]

To alleviate what he saw as a DHEW deficiency in this area, Dr. Harkavy called for the appointment of a Deputy Assistant Secretary for Population and Family Planning to "provide centralized direction to the total DHEW effort and service as a single 'window' for DHEW to assist applicants for federal support of family planning."[4] To accomplish this, the Deputy Assistant Secretary would be provided with "an adequate staff to assist in policy formulation, program planning and evaluation, relations with professional groups, stimulation and coordination of family planning activities within DHEW, and liaison with other government agencies and private family planning organizations."[5]

The Harkavy Report went on to call for an increase in federal spending in order to provide the disadvantaged with family planning services.

"There must be a manifold expansion of funds for family planning if DHEW is to make a real impact on unmet needs. It is estimated that some $100 million a year ($20 a year for 5 million women) is necessary to provide family planning service to women in the poor and near poor categories. This goal should be achieved in five years."[6]

It was this report that provided the basis for Nixon's Presidential Message on population control, delivered July 18, 1969. Asserting that "many of our present social problems may be related to the fact that we have had only fifty years in which to accommodate the second hundred million Americans," the former President called for the implementation of many of Dr. Harkavy's recommendations.[7] For example, as noted above, he advocated Harkavy's five-year goal.

"It is my view that no American woman should be denied access to family planning assistance because of her economic condition. I believe, therefore, that we should establish as a national goal the provision of adequate family planning services within the next five years to all those who want them but cannot afford them. This we have the capacity to do."[8]

Final impetus for Congressional action in the area of contraceptive services and research came in early 1970 when Senator Gaylord Nelson held hearings on the safety of the "pill." Evidence submitted at the hearings indicated that the risk of death from blood clotting disorders increased tenfold with use of the oral contraceptive.[9] The fallout from the hearings was immediate and significant. A Gallup poll taken during the course of the hearings indicated that some 46% of American women considered the pill unsafe, compared with just 22% three years earlier.[10] One witness charged that 100,000 "Nelson babies" would be born in 1970 as a result of the hearings.[11] The upshot of this was a Committee recommendaton for increased federal outlays for contraceptive research and development in order to find a safe alternative to the "pill." The stage was set for passage of the Tydings Bill.

A. TYDINGS ACT OF 1970 (PL 91-572)

Two pieces of legislation were introduced to provide a new federal initiative in the area of population control. The first, S. 2108, sponsored by Senator Joseph D. Tydings of Maryland, consolidated all the HEW family planning programs into a single Center for Population and Family Planning. Under provisions of the legislation, the Center would have two general purposes: (1) to encourage voluntary use of contraceptive techniques available; and (2) to subsidize development of new contraceptive techniques. To accomplish these objectives, S. 2108, which would create a new Title X of the Public Health Service Act and set authorization levels for each of the ensuing five years, beginning with FY71.

The Administration bill, S. 3219, was similar to Senator Tydings' legislation, but did not contain new authorizations for biomedical, behavioral or contraceptive research. The Nixon proposal also, in contrast to S. 2108, left authorizations open-ended.

1. Senate Hearings

Senator Thomas F. Eagleton presided over hearings in the Senate in late 1969 and early 1970. While most of the witnesses expressed strong support for S. 2108, there were few comments on the abortion issue or on whether funds appropriated under the Act would be used to pay for abortions. This was so in part because the purpose of the legislation was clearly limited to the development and dissemination of contraceptive devices, and in part because at the time of the hearings nearly every state had legally proscribed abortion except under the most extreme circumstances.

Nevertheless, a number of witnesses used the hearings as a forum to call for liberalization of anti-abortion legislation. Chief among them was Congresswoman Shirley Chisholm who, in the course of her testimony which centered on expressing her perference for S. 2108 over the Administration's bill, made an impassioned plea for Congress to move toward eliminating all statutory restrictions of abortion.[12] National Welfare Rights Organization representative Mrs. Bobby McMahon, in requesting similar action, declared, "If the woman is pregnant and wants an abortion, we think she is entitled to have one. The moral issue lies with her."[13] Statements submitted by the Population Problems Department of the United Methodist Church and by Zero Population Growth also called for legalization of abortion.

But testimony in favor of liberalized abortion laws was the exception rather than the rule. Indeed, one of the strongest arguments put forth in favor of S. 2108 was that it would reduce the number of abortions by preventing problem pregnancies in the first place. Dr. Alan Guttmacher of Planned Parenthood repeatedly argued that the Tydings Act would reduce the number of abortions—legal and illegal—being performed throughout the country.[14] Carl Flemister, appearng in behalf of both the Citizens Committee for Children and Planned Parenthood-New York City, argued that by failing to provide contraceptive services to low-income women, we were forcing "women who know that they cannot cope with another child to have illegal abortions by butchers in the neighborhood."[15] Enactment of S. 2108 would ease this situation by preventing unwanted pregnancy in the first place.

Thus, the small body of testimony devoted to the matter of abortion did not at all suggest that Title X funds would ever be used to pay either directly for them or for referral services. S. 2108 was seen as the best means of reducing the number of abortions performed by promoting the use of contraception.

2. Committee Report (S. Rept. 91-1004)

The Senate Labor and Public Welfare Committee reported favorably on the Tydings Act on July 7, 1970. The report made no mention at all of the abortion issue, apparently because the committee felt it to be irrelevant to the matter of pregnancy prevention to which funds allocated under the Act were to go.

3. Senate Floor Action

S. 2108 was considered by the full Senate on July 14. It was passed by a lopsided margin after a minimum of debate. After passage, Sen Robert Packwood, who had voted in favor of the bill, criticized it for what he perceived to by two shortcomings.

"The family planning bill that we passed earlier today is a good bill. It is not adequate, but it is a good bill. It does provide for some research, some extension of health care and planning services, and makes reasonable advances in the field of contraceptive information and distribution.

There are, however, two things lacking in the bill, which I hope the Senate will be willing to face up to in the not-too-distant future. One involves the subject of legalized abortion, and the other involves limiting tax deductions for children to two."[16]

Senator Packwood, then, was of the opinion that Title X funds could not be used for abortions or for services related to abortions, but only for "contraceptive information and distribution." This is significant since at the time of Packwood's remarks the Dingell amendment, which became section 1008 of the PHSA, had not yet been appended to the legislation.

4. House Hearings

The hearings before the Subcommittee on Health and the Environment of the House Interstate and Foreign Commerce Committee, in contrast to the Senate hearings, were marked by several exchanges between witnesses and Members on whether H.R. 19318 (the House version of the Tydings Bill) would provide for abortion.

Responding to allegations by Msgr. Alphonse S. Popek that the pending legislation would lead to abortion, infanticide, euthanasia and genocide, Congressman Tim Lee Carter said,

"I do not feel and I do not support any portion of this bill which would provide for abortions throughout this country. I am opposed to that. Naturally, I am opposed to any idea of genocide or infanticide or euthanasia. We are against these things and we will not support legislation—it is not the intent to support legislation which would permit these things."[17]

Later in his testimony, Msgr. Popek and Rep. Richardson Preyer discussed whether funds appropriated under the Tydings Act could be used to fund abortion counseling.

Msgr. POPEK. When we talk about counseling, what is there to prevent a social worker to move quickly from contraception to abortion? Is there anything—a factual human way—you can say that this will not be done by the social worker, a group of social workers, a certain agency?

Mr. PREYER. Well, we cannot prevent people from abusing any kind of law . . . The only relation of this bill to abortions, then, is that you think some social workers might abuse their position. There is nothing in this bill specifically—[18]

It was thus the position of the Subcommittee that H.R. 19318 proscribed funding, not only of abortion, but of abortion counseling as well. Such counseling, according to Rep. Preyer, amounted to an abuse of the law.

But a number of witnesses still were not satisfied that Title X funds would be used solely for pregnancy prevention. Father James T. McHugh, for example, of the U.S. Catholic Conference, urged the Committee to write into the legislation a specific prohibition of abortion.

"In the absence of any specific reference to abortion as a method of contraception, there would be some who would consider it such and would expect that the funding that this bill carries with it would be made accessible for abortion as well as for other methods of contraception.

"I feel it is the responsibility of this committee to clearly write into the legislation a prohibition of abortion as a method of contraception."[19]

And Dr. John F. Hillabrand, a private physician and proponent of the legislation, also fearing potential abuse, asked that the bill be amended to contain a proscription of abortion.

"I support the principle of this legislation but I plead with you that with the wisdom attributed to Solomon you write into these bills those safeguards which will guarantee absolute freedom of choice and insure the intrinsic values of human life. Do not permit loopholes which may generate overtones permitting even by interpretation the excesses of potential genocide, infanticide, abortion or euthanasia."[20]

In every exchange where witnesses expressed the concern that Title X funds would be used to pay for abortions or to counsel women with regard to procuring abortions, Committee members adamantly maintained that the concerns of the witnesses were unfounded. In the minds of these legislators, it was clear that the Tydings Bill dealt solely with pregnancy prevention.

Nevertheless, when the Committee reported H.R. 19318, it contained the following amendment, authored by Congressman John Dingell:

"Prohibition of Abortion.—None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning."

5. House Floor Action

The full House took up the Tydings Act as amended on November 16. The legislation passed by a 298-32 margin. Because of the differences between the House and Senate versions, the House substituted the provisions of H.R. 19318 for those of S. 2108 and passed S. 2108 in lieu by voice. This set up the necessity of a conference.

The most significant aspect of the November 16 proceedings for this legislative history, however, are the remarks of Rep. Dingell on his "prohibition of abortion" amendment. In explaining the purpose of this amendment, he said:

"During the course of House hearings on H.R. 19318 there was some confusion regarding the nature of the family planning programs envisioned, whether or not they extended to include abortion as a method of family planning. With the 'prohibition of abortion' amendment—Title X, section 1008—the committee members clearly intend that abortion is not to be encouraged or promoted in any way through this legislation. Programs which include abortion as a method of family planning are not eligible for funds allocated through this act.

"Several considerations prompt this action.

"There is a fundamental difference between the prevention of conception and the destruction of developing human life. Responsible parenthood requires different attitudes toward human life once conceived than toward the employment of preventive contraceptive devices or methods. What is unplanned contraceptively does not necessarily become unwanted humanly. Whether a conceived child is loved or unloved is dependent on factors that, at best, can only be marginally related to family planning.

"If there is any direct relationship between family planning and abortion, it would be this, that properly operated family planning programs should reduce the incidence of abortion. Dr. Joseph Beasley indicated in his testimony that the decrease in criminal abortions should be considered a major benefit of his new model program.

"Furthermore, there is evidence that the prevalence of abortion as a substitute or a back-up for contraceptive methods can reduce the effectiveness of family planning programs." [21]

Despite this rather clear explication of the intent of his amendment and strong support for that amendment by both Congressman Staggers (chairman of the full committee) and by Rev. Tim Lee Carter (ranking minority of the subcommittee), Congressman Rarick still felt that Title X monies might be misused.[22] While conceding that the legislation clearly intended to exclude from funding "abortion education" as well as the abortion procedure, Rep. Rarick feared abuses by non-governmental recipients.

"I acknowledge that this bill purports to exclude tax dollars under this act from abortion education. But we all know this exclusion is not a prohibition to the non-profit organization taken in partnership nor to the overzealous family teachers and trainees with their reverse guilt neuroses" (sic).[23]

Nevertheless, the vast majority of Members believed that they had made their intentions clear on the matter and, as mentioned above, they overwhelmingly passed the legislation.

7. Report of the Committee of Conference (H. Rept. 91-1667)

In adopting Rep. Dingell's amendment to Title X, the conferees made it clear that all money appropriated under the act was to go for pregnancy prevention. Abortion, therefore, as well as abortion counseling and referral were to be excluded.

"It is, and has been, the intent of both Houses that funds authorized under this legislation be used only to support preventive family planning services, population research, infertility services, and other related medical, information, and educational activities. The conferees have adopted the language contained in section 1008, which prohibits the use of such funds for abortion, in order to make clear this intent."

The House and Senate adopted the Conference report on December eight and tenth respectively, and President Nixon signed it into law on December 24 (PL 91-572).[24]

Tentative Conclusions

A number of conclusions about the legislative intent of the Tydings Act may be drawn from the above material.

(1) *Congress intended to establish a wall of separation between pregnancy prevention and pregnancy termination.*—Congressman Dingell stated in his remarks that there is a "fundamental difference" between contraception and aboration, and that while Title X appropriations are clearly to go to support the former, they are just as clearly not to go to fund the later. Indeed, the Congressman argued that the use of abortion as a back-up to contraceptive failure has a deletorious effect on family planning programs.

(2) *This wall of separation excludes abortion counseling and referral as well as the actual performance of abortion from public funding.*—Rep. Richardson Preyer argued that aborion counseling done in the context of a Title X family planning program would be an "abuse" of the law.

(3) *Programs in which abortion plays a prominent role are also ineligible for Title X funds.*—The wording of section 1008 does not merely prohibit the use of federal monies for the abortion procedure, but the funding of programs which include abortion as well.

(4) *Organizations which encourage or promote abortion in any way thereby disqualify themselves from Title X grants.*—Congressman Dingell, in stating the intent of section 1008, remarked that "the committee members clearly intend that abortion is not to be encouraged or promoted in any way through this legislation." This statement would seem to be broard enough to exclude from funding groups which disseminate materials which present abortion as an acceptable means of fertility limitation.

B. OMNIBUS HEALTH PROGRAM EXTENSION OF 1973 (PL 93-45)

Authorizations for family planning services under Title X, due to expire on June 30, 1973, were extended through the end of FY74 along with a dozen other health programs. S. 1136, introduced by Sen. Edward M. Kennedy on March 8, 1973, had a relatively easy time, passing the Senate by a 72-19 vote on March 27, and clearing the House on May 31 with only Philip Crane voting in opposition. In an effort to avoid an anticipated veto, the Senate agreed to the lower House level of authorizations on each item, rather than haggling for a figure somewhere between the two. The strategy apparently worked, as President Nixon signed the bill into law on June 18, 1973.

The issue of the funding of abortion and of abortion counseling under Title X did not come up at any point in the consideration of authorization extensions. This is significant because it indicates that no one in Congress felt it necessary to amend section 1008 despite the Roe and Doe rulings.[25]

The only matter of concern in this legislative history is that groups lobbying in favor of Title X extensions used as one of their chief arguments the contention that all Title X funds were earmarked for pregnancy prevention, and that, as a result, they would reduce the number of abortions performed. Russell H. Richardson, Director of the Georgia Governor's Special Council on Family Planning, testified that Title X monies "would have a great impact on removing the tragic need for abortion and eventually reducing the overall costs of family planning programs." [26] And Frederick S. Jaffe, Vice President of Planned Parenthood Federation of America, in urging an increase in authorizations for Title X programs, argued, "If family planning services are not made available, the predictable consequence is an increase in unwanted births and abortions among those who could not be served by them." [27]

Once more, then, the only connection established between Tydings Act funds and abortion presented to Congress was that Title X grants reduced the incidence of abortion.

C.S. 1708

The extension of authorizations of a number of health programs for one fiscal year was seen by Congress as a stopgap measure. It was apparent that detailed hearings would have to be held on each of the programs to determine at what level they should be funded and whether, more fundamentally, they should be continued at all. Thus it was that Sen. Cranston's Special Subcommittee on Human Resources held hearings in the Spring of 1973 on S. 1708, a bill which would provide increased levels of authorizations for Title X programs through FY76.

During the course of these hearings, several witnesses made themselves heard on the matter of abortion. Proponents of extension of family planning programs argued once again that increased federal spending on contraceptive services and research would lessen the "need" for abortion. Dr. Thomas L. Hall of the American Public Health Association stated, "Certainly one of the strongest points of the family planning program has been that it is the best alternative to abortion, and even the proponents of abortion on demand are in agreement with the rest of the population that abortion is not a preferred method of fertility limitation. Only by strengthening family planning services can abortion incidence be reduced." [28]

Dr. Louise B. Tyrer of the American College of Obstetricians and Gynecologists echoed the same sentiment when she said, "There remains no doubt in our minds that the delivery of adequate family planning services can and does create a meaningful reduction in the number of women who turn to abortion as their alternative to lack of contraception." [29]

Mrs. Grace Olivarez of the Citizens Committee on Population and the American Future, who expressed personal opposition to the Roe and Doe rulings, called for increased levels of funding for Title X projects as an alternative to a Human Life Amendment.

"In January the U.S. Supreme Court acted to wipe most abortion laws off the books. I disagree with that ruling. Since January, efforts have been mounted to amend the Constitution to overturn the Court's ruling. I oppose those efforts . . . A Constitutional Amendment won't stop them (abortions) from occurring. The Congress can demonstrate the sincerity of opposition to abortion by investing more effort and more money in contraceptive research." [30]

Much testimony centered on the meaning of section 1008's prohibition of abortion. One area of controversy was whether the restriction imposed by the section was sufficiently broad to include proscription of abortion counseling as well. Violet Malinski of the National Organization for Women said her organization could not support Title X if it did not finance abortion counseling.

"I would like to say that if this section (1008) excludes the use of funds for pregnancy testing and counseling since these are vital to us, I would oppose this section. If a woman comes to a birth control clinic for services, and is found to be pregnant, I do not think she should be thrown out into the streets without being advised of the alternatives that are possible for her, including abortion or residential homes for unwed mothers. If section 1008 would proscribe the use of funds for pregnancy testing and counseling of this nature, then I would also have to oppose it on NOW national policy grounds. I would ask instead that you specifically add pregnancy testing and counseling to the list of services available under this act." [31]

The Committee did not give Ms. Malinski a clarification of section 1008 with regard to abortion counseling. Neither did they propose specifically adding abortion counseling to the list of Title X services as she had requested. However, in light of the material presented thus far in this report, it is hard to see how one would not understand that section 1008 forbade abortion counseling and referral.

But citing the fact that a number of witnesses called for an amendment to section 1008 to "prohibit abortion referral and counseling," Sen. Alan Cranston wrote the American Law Division of the Library of Congress' Congressional Research Service for an opinion on the constitutionality of such an amendment."[32] John D. Sargent, a legislative attorney, responded to Sen. Cranston for the American Law Division, drawing on the Roe v. Wade decision of January, 1973, Sargent wrote,

"Inasmuch as a woman now enjoys a right of privacy which 'is broad enough to encompass the decision whether or not to terminate her pregnancy,' it may be argued that to deny her access to abortion referral and counseling limits that right and abridges the contitutionally protected decision 'whether to bear an unwanted child.' " [33]

Later in the correspondence, however, he argued the merits of the other position.

"In light of the fact that Congress, by the amendment, does not appear to be overtly and directly limiting the abortion decision and the fact that it does not appear that a woman, as yet, has an unqualified constitutional right to an abortion, and, presumably, abortion referral services, therefore it may very well be that the proposed amendment is not unconstitutional, but merely a legitimate condition to the receipt of federal funds." [34]

Sargent concluded his analysis by saying that the courts themselves would have to render the ultimate verdict. What is significant is the fact that, at least for Sen. Cranston, section 1008 did not by itself proscribe abortion counseling and referral. Apparently his feeling was that, while Title X did not permit the use of federal funds to pay for an abortion procedure, a further amendment would be necessary to prevent Title X monies from being allocated for abortion referral services. Moreover, the Senator apparently had some reservations about the constitutionality of such an amendment. Unfortunately, because S. 1708 never got beyond the Committee level, there was no further discussion of the implications of section 1008 for abortion counseling.

There were, however, a number of witnesses who asked that section 1008's prohibition of abortion be stricken from the law entirely. Dr. Alan Sweezy, then chairman of Planned Parenthood Federation of America, told the Senators;

"As to section 1008, some modification might perhaps be considered. Our emphasis, of course, is on family planning to prevent unwanted pregnancies. They, however, still do occur, and until we have perfected our program and our means of birth prevention, probably will continue to occur, and where unwanted pregancies occur, tragic results often follow."

* * * * *

In a letter addressed to the Subcommittee Dr. John Middleton, Vice-Chairman of the New York State Right to Life organization, also called for more restrictive Title X language when he wrote: "If the bill intends to reject abortion, it should so state much more explicitly and convincingly than it does now." [38]

What these witnesses were arguing was that section 1008 allowed organizations who received Title X funds to perform and to promote abortions so long as those monies were not used directly to finance abortion procedures. That this process has been going on is clear from the voluminous evidence submitted by Mrs. Randy Engel of the U.S. Coalition for Life to Sen. Cranston's Subcommittee.[39] But the relevant question is whether it was the intent of the prohibition of abortion to allow for such activity. On this the Senators did not comment. Sen. Cranston did write DHEW and request a written response to Mrs. Engel's charges. However, since S. 1708 did not come to the floor for full debate and consideration by the Congress, it is impossible to say whether the bill would have been amended to end what several witnesses considered to be abuses of the spirit if not of the letter, of Title X. Tentative Conclusions

In light of the Subcommittee's activity on S. 1708, we may now re-evaluate the four conclusions which we drew from the 1970 proceedings on the Tydings Act.

(1) *Congress intended to establish a wall of separation between pregnancy prevention and pregnancy termination.*—Sen. Kyros' determination to "not turn this into an abortion bill" shows clearly that Title X's purpose was to keep contraception and abortion in watertight compartments.

(2) *This wall of separation excludes abortion counseling and referral as well as the actual performance of abortion from public funding.*—This is by no means evident from the 1973 proceedings given the fact that, in response to the request of several witnesses that section 1008 be amended to explicitly proscribe such activity, Sen. Cranston sought an opinion from the American Law Division on the constitutionality of such a restriction. This would indicate that he considered that the current language did permit abortion counseling and referral. Yet, since the Committee never filed a report on S. 1708, we cannot say for sure that the Senators believed that the bill as it stood did allow for these activities.

(3) *Programs in which abortion plays a prominent role are also ineligibile for Title X funds.*—No relevant testimony was taken on this point.

(4) *Organizations which encourage or promote abortion in any way thereby disqualify themselves from Title X grants.*—The Subcommittee was silent on this issue, although it did receive testimony that some Title X beneficiaries were also performing and promoting abortion.

D. OMNIBUS HEALTH PROGRAM EXTENSION OF 1974 (H.R. 14214)

While Congress had argued that the authorization extensions through the end of FY74 were necessary to "buy time" for oversight and revision of major health programs, the Watergate scandal produced a governmental paralysis which precluded such extensive activity. So it was that once again in 1974 Congress found itself with a number of expiring health authorities. The solution again pursued was to push for passage of an omnibus extension, though this time for two years, through the end of FY76. The attempt, however, was to be ill-fated as, after months of debate on funding levels culminating in adoption of the conference report in mid-December, President Ford pocket-vetoed H.R. 14214.

Given the sweeping nature of the House bill and of its Senate counterpart (S. 3280), there was little discussion of family planning in general or of abortion in particular. However, in hearings before the House Subcommittee on Public Health and the Environment, former Senator Joseph Tydings, author of the original Title X legislation, testified that, so far from funding abortions, his legislation had actually reduced the incidence of abortion.

"There are many citizens in this country who do not believe in abortions, who do not want abortions, but last year we had 700,000 legally reported abortions. Now if there is any possible clearer testimony that we need better contraception or we need our national family planning programs to work, I don't know what better documentation than these abortions. I think no one wants abortions. But at least 700,000 women were sufficiently desperate when they didn't have access to contraceptives or the contraceptives failed, to take that step." [40]

The Subcommittee also once more heard the testimony of Dr. McKinnon White of the United Methodist Church. In his statement, Dr. White roughly outlined the reasons why he felt that organizations which performed, promoted or encouraged abortion ought not to be denied Title X funds when he said:

"For sometime the United Methodist Church has held that medically safe and legal abortions should be made available. We have not, however, considered abortion as a means of family planning, but rather as an extreme measure, to be weighed with other options thoughtfully and prayerfully in those situations where the life or health of the pregnant woman, or of her children, or of the rest of her family, is threatened by the birth of a child." [41]

Dr. White's position echoed the statement of Violet Malinsky of NOW, who in 1973 had told Sen. Cranston's Subcommittee that she did "not believe that abortion is a

method of family planning; I do not know of any woman's organization which sees abortion as a substitute for contraception."[42]

The implication of both Dr. White and of Ms. Malinsky is that since no organization views abortion as a method of family planning, on organization includes abortion as part of its family planning program. While groups who operate family planning programs might also promote, encourage or perform abortions as a "back-up to contraceptive failure," such activity does not disqualify them from receiving Title X monies, since their abortion involvement is kept separate from their family planning program.

It is beyond the scope of the present report to weigh the legal merits of this line of argument, but in passing it should be noted that the legislative history as presented thus far would seem to indicate that such an approach to section 1008 does, in effect, frustrate the intent of Congress, particularly as that intent was expounded by Mr. Dingell in his floor remarks.

E. OMNIBUS HEALTH PROGRAM EXTENSION OF 1975 (PL 95-63)

Programs which were denied authorization for FY75 were funded at FY74 levels under a continuing resolution. Shortly after convening, the new Congress proposed a two-year extension of health service programs through the end of FY77. President Ford once again vetoed the bill, complaining of excessive authorization levels, but Congress easily overrode him by a 67-15 margin in the Senate and a 384-43 vote in the House.

Again, the provisions of Title X did not receive extensive consideration either at the committee level or on the floor of either house of Congress. Legislators on both sides of the aisle seemed anxious for swift passage of S. 66, which contained many popular programs. Thus, when Congressman Rogers held hearings on the House version of the bill (H.R. 2954 and H.R. 2955), the only witness called was the Secretary of HEW, Caspar Weinberger. In a letter to Rep. Rogers, Mrs. Randy Engel, Executive Director of the U.S. Coalition for Life, questioned whether the Dingell Amendment prohibited abortion counseling and referral. Rogers' written response, part of the permanent Committee record, is critical to the legislative history of section 1008.

"The Coalition should be aware that the law is very clear as to the design and content of programs funded under Title X of the Public Health Service Act. None of the funds appropriated under Title X may be used in programs where abortion is a method of family planning. This provision would not merely prohibit the use of such funds for the performance of abortions but would prohibit the support of any program in which abortion counseling or abortion referral services are offered." [43]

The significance of this statement should not be missed. Congressman Rogers presided over the Subcommittee hearings on Title X until his retirement at the conclusion of the 95th Congress in 1978. Clearly his opinion on the intent of section 1008 with regard to abortion counseling and referral must be seen as an important one, if not as the definitive one. Given the categorical nature of Rogers' position and the remarks of Rep. Dingell on the purpose of his amendment in 1970, it seems safe to conclude that Title X moneys cannot be allocated to programs which include abortion counseling and referral.

The issue of abortion was also addressed on the Senate floor, though not in conjunction with Title X. Senator Dewey Bartlett led an unsuccessful drive to prohibit Medicaid funds from being used to pay for abortions. In the House, however, the question of what sorts of research are appropriate under Title X, a matter of a least tangential interest to the present legislative history, was taken up when Rep. Robert E. Bauman introduced an amendment which would prohibit the use of Title X funds to finance research and development of new abortion procedures. Citing section 1008 in his floor remarks, Congressman Bauman said:

"I think the intent of this (i.e., section 1008) is clear: the intent is to enforce a wall of separation between family planning and abortion, between contraception and the taking of life, between the prevention of pregnancy and termination of pregnancy. . . ."

It is still the intent of Congress that a program of providing family planning services to all women who want them but cannot afford them should be a program that is free and independent of the abortion argument. We do not want family planning to be entangled in the heated and emotional fight over the fundamental right to life.[44]

One of Bauman's chief complaints was a series of four NIH grants made to researchers employed by the Upjohn Company between 1969 and 1972 for the development of prostin F2 alpha, a prostaglandin compound whose "explicit purpose and principal effect," Bauman noted, is second trimester abortion.[45] But after assurances from Congressman Rogers that such research was already proscribed by section 1008, Rep. Bauman withdrew his amendment.

Tentative Conclusions

Congressional action on extension of expiring Title X authorities in 1975, both at the Committee level and on the floor, buttress two of the conclusions drawn earlier in this report.

(1) *Congress intended to establish a wall of separation between pregnancy prevention and pregnancy termination.*—Rep. Bauman made this point almost verbatim in his challenge of abortion research under Title X.

(2) *This wall of separation excludes abortion counseling and referral as well as the actual performance of abortion from public funding.*—Mr. Rogers' written response to Randy Engel unquestionably establishes this.

F. OMNIBUS HEALTH PROGRAM EXTENSION OF 1977 (PL 95-83)

Once again in 1977 the House and Senate put together a variety of health programs into one package and passed legislation authorizing blanket appropriations for one fiscal year. The Carter White House, however, did not share the reservations of the previous two administrations about authorization levels, so that the legislation moved smoothly and was signed into law on August 1.

Discussion and debate of Title X as it related to the abortion issue was virtually non-existent in 1977. However, the House Subcommittee on Health and the Environment heard the testimony of Henrietta Marshall, Chairperson of the Planned Parenthood Federation of America. Ms. Marshall's written statement is of some interest since she is speaking in behalf of a private organization which receives a great deal of Title X monies for its population control programs.

"Title X deals positively with the problem of unwanted fertility by *preventing* unwanted pregnancies. Indeed the law makes it clear, by excluding abortion from the services authorized under Title X, that all of the funds are to be used for prevention." [46] (Italics in original.)

This statement takes on added interest since, up until the time of this testimony, the leadership of PPFA had adamantly maintained that all Title X funds did not have to be used for pregnancy prevention. Planned Parenthood had long contended that some of them could be used for the promotion and encouragement of abortion, as well as for abortion counseling and referral. Jeannie Rosoff, for example, Vice President of the Alan Guttmacher Institute and also Vice President of PPFA, wrote in an article which appeared in *Family Planning Perspectives:*

"There is no basis for believing that the prohibition of Title X funds for 'abortion as a method of family planning' was intended to prohibit the use of such funds for abortion counseling and referral or even promotion or encouragement of abortion." [47]

The present report suggests that Ms. Rosoff may never have studied the legislative history of section 1008 with any care. But what is of at least passing interest here is that Planned Parenthood executives were on the one hand advising their affiliates to employ Title X moneys for abortion counseling and promotion, while at the same time testifying before Congress that their understanding of the law was that it required them to spend all of that money on pregnancy prevention. It is apparent that abortion referral and promotion cannot be considered pregnancy prevention, in that, by their very nature, they can only take place in cases where pregnancy has already commenced.

G. HEALTH SERVICES AMENDMENTS OF 1978 (PL 95-613)

The year 1978 was a landmark one for federal subsidy of family planning services. Not since Title X was originally enacted in 1970 had population control advocates scored such a major triumph. The authorization figures alone were impressive: $1.07 billion to be spread over three years (FY79-81), with $308.8 million authorized for FY79—an increase of more than $100 million over FY78.[48] Aside from increasing allocations for every existing program under Title X, the legislation created a new initiative: that of reaching "sexually active young adults" (ages 15-19) with family planning services.

The House version of the family planning extensions (H.R. 12370) was, as in previous years, lumped together with extensions of other health services programs. The Senate, on the other hand, initially considered the Title X authorizations as a separate piece of legislation, but the Committee on Human Resources later combined it with the Sudden Infant Death Syndrome bill before reporting it to the floor to form S. 2522.

1. Senate Action

As indicated above, one of the major thrusts of the Title X extensions was to meet the problems of adolescent pregnancy. The theory under which Congress operated was that wide dissemination of contraceptive devices and information would significantly reduce the number of teenage pregnancies. Only one witness at the Senate hearings, Frances Frech of the U.S. Coalition for Life, challenged this approach. Arguing that girls in their early teens could not avail themselves of the two most popular birth control forms (the "pill" and the IUD) because of long-term health risks, she charged that teenage pregnancies "have not been prevented; they [pregnant adoles-

cents] have simply turned to abortion to keep the child from being born."[49] She asked that, instead of forging ahead with new large-scale programs, Congress begin an investigation to determine whether Title X had been the unqualified success that proponents claimed it to be.

The Committee, however, heard much testimony on the achievements of family planning programs and on the need for increased outlays for future projects. It reported favorably on S. 2522, a bill designed: "to place new emphasis on the provision of family planning services to sexually active adolescents and to members of both sexes who want to avoid unwanted pregnancy, to ensure appropriate consideration of the needs of rural and urban area, to provide infertility services to persons seeking those services, to stress the needs of persons with limited English-language capacity, and to respond to criticisms of the program by stressing natural family planning methods in each of the programs, by ensuring that no services project employee is compelled to act regarding abortion or sterilization in a way that violates personal conscience, and by encouraging projects to urge minors to consult with their parents regarding the use of contraceptives."[50]

When the legislation came to the floor of the Senate on June 7, it was considered to be non-controversial. Only Sen. Cranston, who presided over the hearings, spoke on the bill. It passed the Senate without serious challenge.

2. House Committee Action

In contrast to the Senate Subcommittee, whose staff had arrayed a number of witnesses who spoke in favor of S. 2522, only a few individuals addressed themselves to the family planning portion of H.R. 12370 at the hearings held before the House Subcommittee on Health and the Environment. One more, the only link drawn between Title X and abortion was that increased authorizations for contraceptive research and distribution would lessen the "need" for abortion. Rep. Anthony C. Beilenson took this line when he said:

"There is no better way to stop the constantly rising numbers of abortions than by eliminating the need for abortion by providing family planning services to the millions of low-income women in our country who are not currently served due to lack of funds and to lack of effective outreach programs. We should place more emphasis on helping men and women—especially teenagers—prevent unwanted and unplanned pregnancies, rather than forcing them to choose between seeing such pregnancies through to term, or ending them.[51]

3. House Floor Action

a Suspension of Rules (September 25, 1978).—The House Committee on Interstate and Foreign Commerce reported favorably on H.R. 12370 to the whole House on May 15, 1978. But over four months later the Rules Committee still had not brought the bill to the floor. For this reason, Subcommittee chairman Paul Rogers, along with ranking minority member Tim Lee Carter called up the bill under suspension of rules. Given the fact that the programs included in the Health Service Amendments package were largely non-controversial (e.g., funds for rodent control, immunization programs, blood separation centers) and that the family planning portion had passed the Senate with ease, Rogers' hopes of passage seemed justified.

There were, however, two complicating factors. The first was that the total authorization for all programs lumped together under H.R. 12370 was over $2.3 billion. Passage under suspension of rules would mean that none of these figures could be challenged or amended. Since the Congressmen were all involved in re-election campaigns in a time when the political mood of the electorate was preceived as decidedly austere, many thought it unwise to act on the bill without extensive debate. The second factor was that pro-life legislators had heard allegations that Title X monies were being employed to help fund abortion clinics and abortion counseling and referral services.

In his opening statement, Paul Rogers set out immediately to allay the fears of prolifers by arguing that section 1008 prohibited the use of Title X funds for anything except pregnancy prevention.

"I am also aware that there are those who seek to convince my colleagues that the simple extension of the voluntary family planning program constitutes a pro-abortion vote. Nothing could be further from the truth. In fact, a vote for this bill is a vote against abortion. Title X is the only national program which will actually prevent the condition which could lead to a request for abortion."[52]

In a similar vein, Congressman Whalen of Ohio asserted that Title X was a most effective piece of anit-abortion legislation.

"Some who oppose abortion have expressed opposition to the family planning provisions of this measure. I, too, am opposed to abortion. I have always believed that life begins at conception, and that the taking of life by any means—by abortion, euthanasia, or any other method—is wrong. Because I oppose abortions, I believe that it is imperative that alternatives to abortion be offered to young women. We cannot decry abortions and at the same time fail to provide counseling and other services which will prevent unwanted pregnancies. Thus, we who oppose abortion bear an even greater obligation to support these programs which prevent the pregnancies which cause women to seek abortions.[53]

But Rep. Robert K. Dornan, speaking in behalf of pro-life Congressmen, was not satisfied that Title X funds were used soley for pregnancy prevention. Citing evidence that abortion clinics and hospitals performing abortions in 33 states and the District of Columbia were recipients of Title X monies, Dornan announced that he was prepared to introduce floor amendments to end such abuse—floor amendments which could not be tacked on to legislation being considered under suspension of rules.

When the vote was taken, those who wished to pass the legislation under suspension could garner only 193 votes, far short of the two-thirds required for passage. H.R. 12370 would have to face a full floor fight to be enacted.

b. Floor Debate (October 11 and 13, 1978).—When the legislation was opened for amendment, Rep. Tim Lee Carter introduced a stipulation requiring that educational materials be reviewed to determine whether "they will be suitable for the purposes of this title and for the population or community to which they are to be made available."[54] This was in response to the discovery that several Planned Parenthood affiliates, recipients of Title X appropriations, were publishing, promoting and distributing violently anti-Catholic materials. Carter's amendments passed the House easily.

Congressman Dornan then offered a series of amendments germane to the present legislative history. One of them would make eligible for Title X funding "projects which provide counseling respecting the alternatives to abortion."[55] But Subcommittee Chairman Rogers objected to the amendment on the grounds that all Title X moneys were required to be spent on pregnancy prevention, and that, consequently, none of them could be used for pregnancy counseling of any kind (including abortion counseling and referral).

"To adopt this amendment would simply change the whole concept of family planning. Family planning occurs before pregnancy. If the gentleman wants to set up a special program of counseling after pregnancy in some other program, I would see nothing wrong with it. But the need is too great for family planning before pregnancy . . . [We can] not wait until they get pregnant and then say, "Well, we will counsel you a little bit." Then it is too late. Spend the money where it will do the most good and prevent that welfare bill from going up to $4 or $5 billion."[56]

Dornan then proposed a further amendment, this time to proscribe funding for any "entity which directly or indirectly provides abortion, abortion counseling, or an abortion referral service."[57] Dornan had explained the purpose of this amendment on the floor of the House on October 11 when he said:

"The amendment prohibiting any money from going to grantees that perform, refer, or counsel for abortion is no more than an explicit restatement of what we in Congress thought was the law. Family planning is not abortion or abortion referral, or abortion counseling. The government should not be in the business of promoting abortion. Nowhere will anyone find that Congress has authorized abortion or its promotion. Those here who wish to destroy reputable family planning services need only link abortion or its promotion with the provision of family planning services."[58]

Rep. Rogers, in arguing against the amendment, agreed with Dornan that it was a "restatement" of the law, and asserted that for that very reason it was unnecessary.

"This is an unneeded amendment. We have a specific prohibition in the law that says no funds—none—in Title X may be used for abortion as a method of family planning. That means none. Absolutely no funds could be used. Abortion is not a method of family planning. Abortion comes after pregnancy—after pregnancy. And the gentleman misses the point of what we are doing in Title X. It is before—before. It is to let people know how to avoid pregnancy. We cannot use any funds for abortion. The amendment is not needed. I urge its defeat."[56]

In essence, Rogers' contention was that the amendment prohibiting abortion referral advocated by Dornan was unnecessary because it already was the law, and had been the law since the passage of the Tydings Act in 1970. Rogers' understanding of Title X—and as floor manager of the bill his recorded remarks are critical with respect to legislative intent—was that all moneys had to go for pregnancy prevention. Any other use of Title X funds—whether for advising a pregnant woman of her alternative to abortion or advising her of her option to have an abortion or referring her to an abortion clinic—would be an abuse of these funds.

In response to a question from Congressman Harold Volkmer, Rogers also expressed the opinion that hospitals which receive Title X allocations for family planning pro-

grams do not disqualify themselves for those funds by the performance of abortions.

Mr. VOLKMER. Do any of these people that come to the family planning clinics, do the records show that any of them when they come there are pregnant?

Mr. ROGERS. Oh, sure, some are indeed pregnant. Also you may have a hospital that may be running a family planning section in one wing and maybe they do an abortion in that hospital to save the life of the mother. It is a legal procedure. If the doctors there do not want to do it they do not have to do it . . . But you mean to say, here is a good institution and they cannot run a family planning clinic because somewhere down the hallway—somewhere in an operating room—they might have at some time or other performed an abortion, or they might perform an abortion?[60]

It is apparent from these remarks that the performance of abortions by a hospital which receives Title X funds for a family planning program must be wholly unrelated to that program. That is to say, the staff at the family planning clinic could not retain its Title X eligibility if as matter of routine it referred pregnant patients for abortions in the hospital's own surgical facilities (or in anyone else's abortion facilities). Rogers' statement assumes that the relationship between the Title X recipient and the abortion provider is not a close one. Thus, an abortion clinic which employed Title X funds to provide salaries for clerical staff could not very well claim on the basis of Rogers' response that they were legally entitled to those funds.[61]

The House rejected all of Dornan's amendments and went on to pass H.R. 12370 by a 343-27 vote. They then acted favorably on H. Res. 1408 which passed the family planning and Sudden Infant Death Syndrome portions of H.R. 12370 in lieu of S. 2522. The Senate, fearing an extended conference fight and possible floor battles with pro-life legislators, adopted the House version of S. 2522 on October 15 by voice vote.

CONCLUSIONS

(1) *Congress intended to establish a wall of separation between pregnancy prevention and pregnancy termination.*—Congressman Rogers' adamance that all family planning monies must be spent on programs which reach women before they become pregnant underscores this point.

(2) *This wall of separation excludes abortion counseling and referral as well as the actual performance of abortion from public funding.*—Dornan's proposed amendment to explicitly proscribe abortion counseling and referral went down to defeat on the basis of Rogers' argument that such a stipulation was "not needed" since section 1008 already accomplished that purpose.

(3) *Programs in which abortion plays a prominent role are also ineligible for Title X funds.*—In answer to Congressman Volkmer's query, Rogers stated his opinion that hospitals which operated a family planning clinic could receive Title X funds for the operation of that clinic, so long as its abortion facilities were kept separate from its family planning program.

(4) *Organizations which encourage or promote abortion in any way thereby disqualify themselves from Title X grants.*—The Congress did not address itself to this matter in 1978.

Title X of the Public Health Service Act was specifically designed to provide contraceptive services to women in the poor and near-poor categories and to subsidize research into the development of new contraceptive techniques. Its sole aim is to give every woman the ability to prevent pregnancy, not to end a pregnancy that has already begun. Congress, though time and again beseeched both by pro-lifers and by pro-abortionists for authority to use Title X funds for counseling after the onset of pregnancy, has adamantly maintained that Title X monies were to be used exclusively for pregnancy prevention. The legislative history could not be more clear: Title X monies can be used to subsidize neither abortion procedures nor abortion referral and counseling nor any function of an abortion clinic.

FOOTNOTES

[1] *Congressional Quarterly Almanac* (1970), p. 570.
[2] Richard M. Nixon, "Message from the President of the United States Relative to Population Growth," (H. Doc. 91-139), July 18, 1969, p. 8.
[3] Oscar Harkavy, et al., "Implementing DHEW Policy on Family Planning and Population," excerpted from hearings on S. 2108, Senate Labor and Public Welfare Committee, 91st Congress, p. 334.
[4] Harkavy, "Implementing . . .," p. 334.
[5] Harkavy, "Implementing . . .," p. 334.
[6] Harkavy, "Implementing . . .," p. 335.
[7] Nixon, "Message," p. 4.
[8] Nixon, "Message," p. 8.
[9] *Congressional Quarterly Almanac* (1970), p. 571.
[10] *Congressional Quarterly Almanac* (1970), p. 571.
[11] *Congressional Quarterly Almanac* (1970), p. 571.
[12] Hearings on S. 2108, Senate Labor and Public Welfare Committee, pp. 191-201.
[13] Hearings on S. 2108, p. 277.
[14] Hearings on S. 2108, pp. 65, 68, 78.
[15] Hearings on S. 2108, p. 99.
[16] *Congressional Record*, 91st Congress, 2d Session, Vol 116, part 18.
[17] Hearings on Family Planning Services, House Committee on Interstate and Foreign Commerce, p. 317.
[18] Hearings on Family Planning Services (House), pp. 321-22.
[19] Hearings on Family Planning Services (House), p. 359.
[20] Hearings on Family Planning Services (House), p. 382.
[21] *Congressional Record*, 91st Congress, 2d Session, p. 37375. The full text of Mr. Dingell's remarks is contained in Appendix A.
[22] Mr. Staggers stated that "this legislation does not provide for abortions, contrary to some of the rumors apparently circulating concerning it." (*Congressional Record*, 91st Congress, 2d Session, p. 37367.)
Rep. Carter said for the record that: "Section 1008 provides that none of the funds appropriated under this title shall be used in programs where abortion is a method of family planning. I am pleased with this provision, for I am unalterably opposed to abortion except in cases of rape, incest, or to preserve the life of the mother." (*Congressional Record*, 91st Congress, 2d Session, p. 37368.)
[23] *Congressional Record*, 91st Congress, 2d Session, p. 37390.
[24] A full text of Title X appears in Appendix B.
[25] The Congress did not, however, avoid the abortion controversy completely. Sen. Frank Church offered floor amendments which would protect medical personnel from being obligated to perform abortion and sterilization procedures if it was against their religious or moral beliefs to do so.
The text of the amendment, which dealt specifically with authorizations under the Hill-Burton Act, is as follows: "Receipt of financial assistance under any of the aforementioned acts does not constitute legal basis for a judicial or administrative order requiring an individual to aid in performing a sterilization or abortion, if such activity is contrary to the individual's religious or moral beliefs. Nor does receipt of financial assistance provide legal authority for a judicial or administrative order requiring the provision of personnel or facilities by any entity for the performance of sterilization or abortion, if such activity is contrary to the religious or moral beliefs of the personnel or prohibited by the entity for religious or moral reasons." The amendment passed both the House and the Senate.
[26] Hearings on Omnibus Health Program Extension, House Interstate and Foreign Commerce Committee, p. 119.
[27] Hearings on Omnibus Health Program Extension (House), p. 174.
[28] Hearings on S. 1708, Senate Labor and Public Welfare Committee, p. 142.
[29] Hearings on S. 1708, p. 172.
[30] Hearings on S. 1708, p. 179.
[31] Hearings on S. 1708, p. 254.
[32] The text of Sen. Cranston's letter and of Mr. Sargent's response can be found in Appendix C.
[33] Hearings on S. 1708, p. 542.
[34] Hearings on S. 1708, p. 546.
[35] Hearings on S. 1708, p. 59.
[36] Hearings on S. 1708, p. 990.
[37] Hearings on S. 1708, p. 203.
[38] Hearings on S. 1708, p. 612.
[39] A complete text of Mrs. Engel's allegations of Title X abuses (as made part of the Committee record) and of HEW's response is contained in Appendix D.
[40] Hearings on H.R. 14214, House Interstate and Foreign Commerce Committee, p. 832.
[41] Hearings on H.R. 14214, p. 989.
[42] Hearings on S. 1708, p. 254.
[43] Hearings on H.R. 2954 and 2955, House Interstate and Foreign Commerce Committee, p. 260. The complete text of Rep. Rogers' comments appears in Appendix E.
[44] *Congressional Record*, 94th Congress, 1st Session, p. 17218.
[45] *Congressional Record*, 94th Congress, 1st Session, p. 17219.
[46] Hearings on Omnibus Health Program Extension, House Interstate and Foreign Commerce Subcommittee, p. 152.
[47] Jeannie I. Rosoff, "Pregnancy Counseling and Abortion Referral for Patients in Federally Funded Family Planning Programs," *Family Planning Perspectives*, VIII, January/February, 1976, p. 43.
[48] A complete table of Title X authorizations through FY78 may be found in Appendix F.
[49] Hearings on S. 2522, Senate Committee on Human Resources, p. 529.
[50] Report of the Committee on Human Resources to accompany S. 2522 (S. Rept. 95-822), p. 14.
[51] Hearings on Health Services Amendments of 1978, House Interstate and Foreign Commerce Committee, p. 51.
[52] *Congressional Record*, 95th Congress, 2d Session, P. H10601.
[53] *Congressional Record*, 95th Congress, 2d Session, P. H10611.
[54] *Congressional Record*, 95th Congress, 2d Session, P. H13287.
[55] *Congressional Record*, 95th Congress, 2d Session, P. H13288.
[56] *Congressional Record*, 95th Congress, 2d Session, P. H13288.
[57] *Congressional Record*, 95th Congress, 2d Session, P. H13289.
[58] *Congressional Record*, 95th Congress, 2d Session, P. H12244.
[59] *Congressional Record*, 95th Congress, 2d Session, P. H13289.
[60] *Congressional Record*, 95th Congress, 2d Session, P. H13290.
[61] An opinion by Elsie Sullivan, Assistant for Information and Education, Office of Family Planning, Public Health Service, DHEW, contained in a letter addressed to Congressman Dornan, is relevant here. Ms. Sullivan, quoting from an opinion by HEW's Office of General Counsel, wrote: "A mere technical allocation of funds, attributing federal dollars to non-abortion activities and other dollars to abortion actitities, in what is otherwise a discrete project for providing abortion services, would not, in our opinion, be a legally supportable avoidance of the section 1008 prohibition." Appendix G contains a complete text of the letter.●

HOUSE REPORT HIGHLIGHTS INADEQUACIES OF PRESIDENT'S STEEL PROGRAM

● Mr. HEINZ. Mr. President, I would like to take a moment to compliment my colleagues on the House Government Operations Committee on their report titled, "Adequacy of Federal Enforcement of Steel Import Program." This is the first full-scale congressional review of the administration's program since its inception over

2 years ago, and it decisively reaffirms the criticisms of the program I have been making for some time.

My primary criticism of the report is its title. It ought to read "Inadequacy of Federal Enforcement of Steel Import Program." The report states quite clearly that the American steel industry is in crisis, and that while the President's program has reduced the overall level of imports somewhat, it has by no means been effective in bringing the foreign share of the U.S. steel market into line with the administration's targets. Those targets are 18.5 percent for finish products, or a total of 20.2 percent if semifinished products are included. Despite that goal, however, actual imports for 1986 through August were 23.3 percent of our market.

Unfortunately, the very nature of the program has encouraged the difficulties we are now encountering. First, not all countries are included. Major suppliers have either been deliberately excluded, like Canada, or simply have not yet agreed to a voluntary restraint, like Taiwan, Sweden, and Argentina. Indeed, as a result of the July imports, which were sharply higher, the U.S. Trade Representative has called for consultations with the first three of those countries, and I have introduced legislation, S. 2830, to provide for quotas in those three cases if voluntary restraints are not successfully negotiated in 90 days.

The second problem is circumvention—both through fraud like mislabeling weight or country of origin, and through shipment of partially finished products to non-VRA countries for further treatment and, hopefully, a change in the official country of origin for the product when it enters the United States. The Customs Service, to its credit, has rejected a number of these requests to evade the intent of the President's program, but has not disapproved all of them.

Third, the process of negotiating agreements one at a time has had the effect of encouraging new entrants into the market, which then can rapidly increase their imports before negotiations can be concluded. As a result, countries which could not compete here under normal circumstances are making significant dents in our market because more competitive producers have been capped by the VRA's.

All these problems have reduced any benefits the program might provide the industry, and the overall situation has continued to deteriorate. In the last 4 years the industry has lost nearly $7 billion. Since 1974, 15 companies have gone out of business. Thirty plants have been closed and 560 productions units in other plants have been terminated. Thirty million tons of capacity has been eliminated, and employment has declined by over 50 percent.

I suppose that can be called adjustment, but it is adjustment with a terrible waste of human and physical resources, and it is by no means adjustment to more competitive producers, since it is the dumping and subsidization of our competitors that allow many of them into our market, not their relative efficiency.

Mr. President, there is a Turkish proverb that tell us to "Measure a thousand times, and cut once." Clearly, we have measured, analyzed, and debated this issue endlessly. This report is the culmination of that process. Now it is time to cut, and it is imports—as well as excess capacity—that need to be cut. I hope we will be able to act decisively on this when Congress reconvenes.●

THE CREATION OF AN AMERICAN CONSERVATION CORPS

● Mr. MOYNIHAN. Mr. President, I rise today in support of Senator MCCLURE's amendment to H.R. 4645. In particular, I would like to address title IV, an amended version of legislation I introduced on the first day of the 99th Congress—S. 27—to establish the American Conservation Corps.

The ACC is a program that will employ thousands of youth to perform much-needed conservation and rehabilitation work on Federal, State, local, and Indian lands. Patterned after the highly successful Civilian Conservation Corps [CCC] of the New Deal era, the ACC would provide year-round and summer employment opportunities for disadvantaged youths between ages 16 and 25. The ACC is a program replete with merit and an arduous legislative history.

As we are all painfully aware, two elements of the Great Depression still linger: youth unemployment and deterioration of our natural resources. In my own State of New York, 90,000 youths aged 16 to 19 were unemployed in the first 6 months of 1986. More than 20 percent of New York's unemployed are teenagers. And this reflects a pattern of youth unemployment that plagues the country. Nationwide, last month 18.7 percent of Americans 16-19 were unemployed; 38.3 percent of black teenagers were unemployed. Of the 8.3 million unemployed Americans last month, 38.6 percent were under the age of 25.

The legislation we have in front of us authorizes $75 million annually for fiscal years 1987-89. Eighty percent of the funds are administered by the Department of Interior—Park Service lands, 25 percent; Indian lands, 5 percent; and State grants, 50 percent—and 20 percent by the Department of Agriculture—Forest Service lands, 15 percent; and other Federal agencies, 5 percent. Fifty percent of the funds would be awarded to States and localities in the form of competitive grants. Awards would be based on: the size of the State's unemployed youth population; the conservation, rehabilitation, and improvement needs of the State's public lands; and local support for the program. States would be required to match the Federal funds, dollar to dollar.

Mr. President, I earlier referred to the ACC's torturous legislative history. Permit me to explain. The measure was first introduced as the Public Lands Rehabilitation, Conservation, and Improvement Act of 1981—H.R. 4861. This bill was passed by the House on June 9, 1982, by a vote of 291 to 102. The House voted again, in December 1982, to approve the ACC, but the Senate did not act. Nor did the Senate act on S. 2061, a companion bill that Senator MAHTIAS and I had introduced on February 3, 1982.

Thereafter, on the first day of the 98th Congress, Senator MATHIAS and I reintroduced the ACC legislation as S. 27. Our measure attracted bipartisan support from 22 cosponsors. The House overwhelmingly approved a companion bill on March 1, 1983, by a vote of 301 to 87. On May 13, 1983, the Senate Energy and Natural Resources Committee voted 18 to 1 to report H.R. 999 as a shell authorization bill, and Senator MATHIAS and I set about working with committee members to craft a compromise agreement to be offered as a substitute. Negotiations on the amendment, which was to delineate program details, required more than 1 year.

On October 3, 1984, the amendment was agreed to in the Senate by unanimous consent; 6 days later the Senate amendment was concurred to, and H.R. 999, as amended, was passed by the House by vote of 296 to 75 vote. Yet despite such persistent support, President Reagan pocket vetoed the measure.

On January 3, 1985, this bill was again introduced in the House—H.R. 99—and was passed by a vote of 193-191 on July 11, 1985. Now Mr. President, the Senate will again pass this measure; this time, I am confident it will be enacted into law.

We have estimated that the ACC would provide jobs for approximately 28,000 youths annually. The legislation specifically directs the Secretaries of Interior and Agriculture to make special efforts in recruiting and employing economically, socially, eduationally, and physically disadvantaged youths at an hourly salary just below minimum wage.

The array of available work includes wildlife habitat and conservation, rehabilitation, and improvement; urban revitalization; recreational area development and maintenance; road and trail maintenance and improvement; erosion, flood, drought, and storm damage control; insect, disease, rodent,

and fire prevention and control; and improvement of abandoned railroad beds and rights of way; and energy conservation projects.

Mr. President, it is not often we have the ability to enact legislation that will unequivocally produce successful results. The Young Adult Conservation Corps returned $1.20 in appraised conservation work for each $1 expended. The YCC returned $1.04. State programs have done even better. The budget deficit looms, yes, but so does the future of the youth of this country. Which will be with us longer? I urge my colleagues to choose the latter.●

THE 99TH CONGRESS: ACCOMPLISHMENTS AND FAILURES

● Mr. KASTEN. Mr. President, we finally have come to the end of the 99th Congress. I say finally because once again we have worked at breakneck speed, during long days and even longer nights, to complete action on a year's worth of work in just a few hectic days.

We have succeeded in completing work of which this body can be proud: The Tax Reform Act is law; the budget process, which in recent years has eluded any rational attempts at control, is now subject to Gramm-Rudman-Hollings constraints—constraints that will enable the Congress over the next few years to eliminate the huge deficits that continue to hamper strong economic growth. We have passed the Clean Water Act, Superfund, an immigration bill, important soil and wetland conservation measures.

All of these are important legislation, and it is good that we have acted in a bipartisan partnership to ensure their completed consideration.

But there are areas in which I believe that we, as a body of lawmakers, have failed: We did not successfully confront the explosive trade deficit that threatens not only jobs but also our economic recovery. We failed to continue to give our local governments a dependable financial shoulder to lean on through general revenue sharing. We failed to protect consumers from everincreasing costs by not addressing the product liability crisis.

Mr. President, I would like to take a few minutes to address our successes, and our failures, and put the work of the 99th Congress into perspective.

We can take great pride in our successes, because our legislative accomplishments will serve the best interests of all Americans for years to come.

The tax reform bill, difficult as it has been to achieve an acceptable compromise, is a landmark in our efforts to fashion fair and equitable law. I was one of the early proponents of tax reform. The evolutionary process can be traced through Kemp-Kasten and Bradley-Gephardt to Treasury 1 and Treasury 2 and finally to the Tax Reform Act of 1986.

The tax bill is fair. It will remove 6 million of the working poor from the tax rolls, giving these productive Americans pocket money to invest in their own futures. The tax bill is profamily. By dramatically lowering the personal tax rates and increasing personal exemptions, families will find more of their hard-earned wages left for their own use. And by closing tax loopholes and adding a minimum corporate tax, the bill shifts the tax burden from the working men and women of America to the huge corporations as well.

Gramm-Rudman-Hollings is probably the most dramatic piece of legislation to pass this body in a long while. It is the task-master that will ensure we act with fiscal responsibility. The day of the open checkbook is gone. The day of congressional credit-card spending is past. We now must look at every program—defense and domestic—with an eye toward reducing the growth of Government spending, with an eye toward achieving meaningful savings by cutting waste.

I believe that over the next 5 years we will witness a dramatic difference in Federal spending and that the added incentive of Gramm-Rudman-Hollings will, in fact, force us to deal effectively with the deficit.

The Soil and Water Conservation provisions of the 1985 farm bill will go a long way toward protecting fragile soils and wetlands. And by so doing, not only will we enhance the environment, we also will take out of the production many thousands of acres of farmland, with the benefit of reduced production and reduced agricultural surpluses.

The Clean Water Act, passed just this week, contains provisions for the comprehensive environmental management of the Great Lakes for which I have worked for many years.

Right now, management responsibilities for this great fresh water resource are divided among at least a dozen Federal agencies, eight States, and the Canadian Federal and provincial governments, obviously an ineffective and cumbersome management system.

The Great Lakes management provisions places overall responsibility in the hands of the Great Lakes National Program Office of the Environmental Protection Agency. This section of the Clean Water Act establishes a basinwide surveillance and monitoring program for the Great Lakes and requires a regular State of the Lakes report to be submitted to Congress.

The Great Lakes are essential to the commerce and industry in inland States such as Wisconsin and the provisions of this measure will enhance the productivity of the region while protecting its environmental integrity.

And, Mr. President, let me briefly applaud passage of the Superfund Act. It is time we get on with the task of cleaning up toxic wastes. By ensuring that polluters assume their fair share of this cleanup process we can protect not only the environment, but, more importantly, the health and safety of the people who live near toxic-waste producing industries.

Mr. President, it is my fervent hope that in the 100th Congress we will attend to three issues I regard as critically important: A comprehensive trade bill, a renewal of the General Revenue Sharing Program, and product liability reform.

America is suffering through a horrendous trade imbalance, and, frankly, the administration has done little to deal with this crisis. The most productive agricultural machine in the world, we now import more agricultural products than we export. This is unacceptable; it is unbelievable.

Our shoe and textiles industries are collapsing under the weight of cheap foreign imports. Our steel and automotive industry has been crippled by unfair foreign competition.

Competition really isn't the right term. Tade warfare is closer to the truth.

Our farmers and our workers can compete against farmers and workers anywhere on Earth. They can't compete against foreign governments. And yet, that is exactly what current trade practices force them to do.

We must begin trade negotiations anew, from ground zero. We are being outgunned, outmaneuvered, and outnegotiated at every turn in so-called trade talks. And we are losing jobs. Jobs in Wisconsin, in California, in Iowa, in Maine, everywhere. In Wisconsin, we have lost thousands of jobs in the shoe and textile industry alone.

It is time to be firm, time to insist on fair trade as well as free trade. Time to tell our trading partners that if they don't open their markets to us, they will find our markets closed to them.

I am bitterly disappointed in the veto of the textile bill, deeply disappointed that the Senate never had the chance to vote to override that veto. And I call on my colleagues to put trade at the top of their list for effective and comprehensive legislation action in the next session.

Actions taken by the House of Representatives precluded general revenue sharing from continuing for the foreseeable future by keeping GRS provisions off the continuing resolution. Many of us in the Senate were counting on the House to come through with language to keep the program alive. But the House failed, and the Senate did not move to correct that failure. And now local governments

are faced with the burden of reducing public services while having to raise local property taxes.

Since the inception of GRS in 1972, the program has greatly reduced the budgetary constraints put on 39,000 counties, municipalities, and towns throughout America by the Federal Government's imposition of mandated requirements. Mr. President, less than 2 percent of GRS funds go to the actual administrative costs of the program, which means GRS has provided local governments with direct and immediate relief. GRS is one of the most efficient and effective programs ever put in place by the Federal Government, and our failure to continue this program will hurt local governments for years to come.

Let me offer my own State of Wisconsin as an example of how effective GRS has been.

During the last fiscal year, Wisconsin received approximately $92.1 million in GRS funds. For 60 of Wisconsin's 72 counties, revenue sharing provided funds equivalent to more than 10 percent of county tax revenues. For 312 of those counties, it equaled 15 percent, and for 3 counties more than 20 percent of county tax revenues.

One such county, Forest, is among the most economically depressed in Wisconsin. GRS funding for Forest County equaled 26.1 percent of county tax revenues. To make up for the loss of these funds, the county will have to have to increase an already high property tax by 16 percent. The unemployment rate in Forest County already approaches 14 percent and it is highly unlikely taxpayers can absorb such an increase.

And what will be the result? Less police protection. Less fire protection. Poorer road maintenance. The list goes on.

We must reconsider general revenue sharing in the next Congress. If we don't, I fear for the long-term health of our local governments.

Finally, Mr. President, while I am disappointed that we ran out of time to consider product liability reform legislation, I am encouraged by the strong vote of support—with 83 of my colleagues joining me in a test vote—for liability reform.

I have been fighting this battle since I came to the Senate 6 years ago. I believe we are close to winning that battle.

Consumers and small business operators have the most to gain from comprehensive product liability reform. It is time to take liability out of the current lottery system and put into a system of fair and responsible checks and balances. We must have a national standard that protects the rights of those who have suffered from dangerous and unsafe products as well as the rights of the responsible manufacturers and sellers of products.

That is what product liability reform is all about—the protection of rights. We are close to a historic compromise, a compromise that has strong bipartisan support, that will achieve fairness and the protection of rights for consumers and manufacturers, and I hope product liability reform will be addressed early in the 100th Congress.

I would add, in closing, the significant accomplishments of the 99th Congress that will benefit Wisconsin. And I would list provisions in the tax bill that will prohibit foreign farm interests in America from receiving tax subsidies; protecting and adding as many as 1,200 defense-related jobs for Wisconsin workers through the Defense Department appropriations included in the continuing resolution; the Great Lakes Management Act; legislation authorizing the inclusion of Long Island, a fragile and environmentally significant sand spit, into the Apostle Islands National Lakeshore; and the passage of the Risk Retention Amendments Act of 1986, which will allow municipalities, professionals, hospitals, and others to form self-insurance groups for general liability coverage.

I take great pride in these legislative accomplishments because I helped to author all of them, and all of them will benefit the people of Wisconsin, whom I have had the honor to represent in this Congress.●

REMARKS OF DR. JAMES C. MANCUSO

● Mr. MOYNIHAN. Mr. President, Dr. James C. Mancuso, assistant dean of the College of Social and Behavioral Sciences at the State University of New York at Albany, was recently honored as Alumnus of the Year at the Milton Hershey School in Hershey, PA.

Dr. Mancuso, a distinguished and long-time professor of psychology at Albany, grew up in Hershey and, as he describes in two speeches given there this year, spent his formative years at the Milton Hershey School.

Mr. President, Dr. Mancuso's story is a unique and inspiring one, and in commending it to the attention of the Senate, I ask that the two speeches be printed in the RECORD.

The speeches follow:

AN APPRECIATION OF MILTON S. AND CATHERINE S. HERSHEY

(By James C. Mancuso)

(Comments offered upon acceptance of Alumnus of the Year Award; Milton Hershey School Graduation Day, June 1, 1986.)

Mr. Aichele, Mr. Fisher, Members of the Board and of the Staff, Dr. Mortel, Graduates, Parents and Guests—Can the receiver of an honor amply show appreciation when his accomplishments were made possible by those who make the award? Shouldn't there be some way that I can reward the great humanitarian achievement which gave me the superb base from which to accomplish those things for which you bestow on me the Milton Hershey School Alumnus of the Year Award—an honor I will treasure above all honors I can ever receive, because it signifies that I have kept faith with all that Mr. and Mrs. Milton Hershey had hoped for "their boys."

You all know that my presence here was guaranteed by the cycle of life which included my mother, Dolores,; my father, Vincenzo; my wife, Susan, my children—Renee, Michele, and Martin—my uncles and aunts, and the thousands of other persons who supported me as the wheel has moved toward our gathering here this evening.

And, or course, all of you know the place of Mr. Milton Hershey and Mrs. Catherine Hershey in that cycle. Nevertheless, please share some of my observations about the place of Mr. and Mrs. Hershey in our lives. Let me address my comments especially to those of you who are leaving Milton Hershey School to begin a career that, I hope, will allow each of you to become candidates for whatever honors our society can bestow on you.

Let me go back to 1939, when I first came to Hershey. I was eleven years old—a boy whose father and grandfather had been Italian immigrant coal-miners, both of whom came to the United States to work hard and to make a better place for the families they had started—and both of whom had died to leave behind their vigorous and growing families. My mother Dolores, who deserves totally to share my pleasure at being here this evening, had made the decision that my brother, Anthony, and I would profit from being enrolled in Milton Hershey School.

We arrived at "old" Brookside, as children of an Italian immigrant culture entering into the great traditions of Pennsylvania Dutch culture. Nevertheless, this school and this town welcomed us into a kindness and a warmth that anyone can still see in the faces of the portraits of the man and wife who made possible the building of this beautiful environment in this attractive Pennsylvania landscape. Behind the warmth of people like Mr. and Mrs. Harry Bomberger and the firm, wise guidance of Mr. and Mrs. Harry Stuber—our houseparents at Brookside—was the warmth of our school's founders—Mr. and Mrs. Hershey. In those days we didn't speak about our feelings toward each other as freely as you young people may speak today—but we know that the feeling of love was there, whether we spoke of it or not.

Let me invite you, the MHS class of 86, to join me in considering the values of our founders, who were the hub of that love. Consider those values as you design the models from which you will build your own lives—as you attempt to define the self that you must become.

Consider the man—Milton S. Hershey. I have seen no record of his sayings about how to live a good life. But we should agree that he would accept the maxim, "By their works shall you know them." By his every act he showed his dedication to a solid set of values—values which we all can incorporate into our personal system of values. His dedication to honest, hard work cannot be refuted. Honor your parents and their contribution to what you have become. That is a value which surely guided the life of Mr. Hershey. Love your neighbor as yourself. This whole town shows that value.

His commitment to the well-being of each individual around him cannot be denied. To focus your thinking, consider the many

ways in which a person could have accumulated a fortune when Mr. and Mrs. Hershey planned this model town and factory. Mr. Hershey chose to manufacture products which people could enjoy healthfully and beneficially. He chose—as did another great philanthropist from whose works I personally profited—to make his products easily and inexpensively available to everyone in the world. I must mention that other great philanthropist—George Eastman, who financed the main campus of the University of Rochester, at which I studied for my doctorate. I did not search the records for evidence that Mr. Hershey and Mr. Eastman knew each other, but I want to believe that these men, both of whom have had a influence on my life, knew each other and loved each other. Their lives could be compared on dozens of details. As I noted, both showed their great humanism simply by the products which they chose to manufacture. Mr. Eastman gave the world inexpensive, premium photographic film. Mr. Hershey gave the world an inexpensive, premium confection.

These great values stand out as some of those which are reflected obviously in the life and work of Mr. and Mrs. Hershey. As I look back over my experience at Milton Hershey School I, perhaps more than other people, see their lives as an expression of another great value I noted that I came to Hershey from a culture which differed markedly from the culture which dominated this part of Pennsylvania. Nevertheless, I found here an atmosphere of loving *tolerance* which I have never experienced in any other of my life situations.

Again, by their works shall we know them. Mr. and Mrs. Hershey's tolerance is evident in many, many of their deeds. The immigrant Italians who came into this community were shown open appreciation for their commitment to family life and to hard work. When Mr. Hershey made his contribution to the churches in this community, in 1935, he extended his generously to every religious group, not only to the church of his own preference.

Perhaps, above all, acceptance of and tolerance for the diverse ways in which people may lead honorable lives was best shown by the marriage of Catherine Sweeney—the daughter of an Irish ironworker—and Milton Hershey—an heir to the solid values of the Pennsylvania Dutch world. Despite their different backgrounds, Catherine Sweeney became "my Kit," to Milton Hershey. However they had become the persons they were, they shared the ideals of a vivacity, graciousness, tolerance, and love—the love and tolerance which I found all around me when I was a student at their school.

Fortunately, I frequently saw that love and tolerance in person—each time that Mr. Hershey came in to the candy shop, which was located in the same building as was the shop where we learned our baking trade. I vividly remember him arriving, accompanied, unfortunately, by his nurse, smiling in a way that always revived my childhood image of Santa Claus, saying, "Okay, boys, let's make some jellies this morning."

I was in the last graduating class to have spent all of our years at Hershey in the presence of that great, tolerant man. He was ill and he was not present when we received our diplomas in June 1945. He died the following October.

Even if Mr. Hershey's death took place many years before the birth of you young people in the Class of '86, I know that tomorrow many of you will feel in a particular way the depth of your personal connection to Catherine and Milton Hershey, to the town they built, and to our home/school. Tomorrow, as you reminisce about this glorious day and all your rich days at Milton Hershey School, you will surprise your audience, as, on the day after my Graduation Day, my mother was surprised when her big, 17-year old high school graduate began to cry—terribly "homesick" for the second time in my life.

Milton Hershey school not only was the home, it was home. My buddies Bryan Smith and Bob Newcomb—two great bakers—were deeply loved brothers.

As I close I will frevently hope that the presence of Mr. and Mrs. Hershey—which is all around us here—will speak to me, "I am proud of you, my son. We take joy from your having been named Milton Hershey School Alumnus of the Year. You have lived according to the value we had hoped our boys would chose."

Thank you, Mr. and Mrs. Hershey, and all of you who have contributed to and have shared my rich life.

THE LASTING EXPERIENCE OF GROUP LIVING

(By James C. Mancuso)

(A talk presented to the Hershey Rotary Club, at which the guest speaker was asked to speak in conjunction with his presence in Hershey to receive the Alumnus of the Year Award at Milton Hershey School.)

Mr. Hatt, Members of the Rotary Club, Guests—It gives me great pleasure to be here today, particularly under these circumstances.

Much of my pleasure comes from being in this beautiful countryside in the height of the growing season. It's splendid. I always recall these hills and farms with nostalgia—The Pennsylvania Dutch landscape—it's marvelous. They knew how to build farms.

I think of the story of Amos Zinn. He bought the old Hunsicker farm—which they had been renting out for five or six years, and then had lain empty for a year. He moved in the old house, and worked diligently for five or six years—and there it was, it looked like all the other well kept farms in the area. The house and barn were repainted—sparkling white. The fields were covered with thick crops of oats, corn, and soy beans. One evening the minister came out for dinner. Amos took him around. The Reverend Hauser looked at the healthy herd of Holsteins and raised his praise to the Lord. (In Pennsylvania Dutch accents.) "Isn't it wonderful, what the Lord can do?" He saw the corn, thick and green. "Praise to the Lord for his goodness." And on and on, praising the Lord for the beauty and the bounty of the farm. Finally Amos was becoming a bit impatient. They were looking over the family vegetable garden, and again the Reverend Hauser praised the Lord. Amos couldn't hold back—"Well, Reverend, the Lord deserves His praise, but you should have seen this place five years ago. He wasn't doing too well when He had it alone!"

Amos wanted some of the credit—and he deserved it. Look at the countryside out there. Magnificent. I love it.

It seems hard to believe that 41 years have passed since Milton Hershey School, class of 1945, were gathering in town for our graduating ceremonies. I came over here from Harrisburg, where I had been working as a pastry chef in the old Penn-Harris Hotel.

That job was my first paying job. I worked with Bill Bothe, who was an outstanding pastry chef—trained in the German apprentice system right after World War I. He was everything that one would expect a German-trained pastry chef to be—intolerant of error, meticulous to the finest detail, very highly skilled.

I was a very naive and untutored kid—I had just turned 17—and I had no idea of the tremendous variety of working persons who inhabited the work force. I stepped into that job believing that everyone came to work with precisely the same kinds of self role definitions I had acquired at MHS. I didn't realize that Bill Bothe was known as a terror who had driven away—on average—two assistants per year for the twelve years previous to my joining him. I simply took it for granted that any criticism he made of my work—if I were to be a first rate pastry chef—meant that I needed to correct whatever I was doing.

That kind of naivitee continued until I went into the Navy, after a year at the Penn-Harris. I had no idea of personnel selection, how it worked and what personnel officers tried to accomplish.

I went into the Navy, fully expecting to continue my career as a pastry chef. Instead, thanks to six years of very stimulating life at MHS and to my wide reading background, I was selected for training as a journalist's mate.

My experiences in the Navy and my association with the public information officers with whom I had worked, led me to make up my mind about what I was going to do with my life.

I figured that there must have been something wonderful about those personnel tests. It was those tests, after all, which had prompted them to pick out a baker boy who *should* become a journalist's mate. I had discovered that those tests were made up by psychologists. I had decided that I would go in to college and prepare myself to develop those wonder-working psychological tests.

I came back to Harrisburg, enrolled at Dickinson College, and started to work on my major in psychology. During my second course—a course in developmental psychology—I ran into an interesting topic. At that time psychologists admired Freud's theory. Psychologists and social workers who worked with Freud's theory were often called in to consult at children's homes, which were then called "dependency institutions." In an era which didn't have programs like social security surviviors' benefits, various religious groups and other philanthropic agencies were supporting children whose parents were unable to offer them adequate family care.

Under the influence of Freudian theory, many developmental psychologists and social workers were advocating against placing children into such institutions. It was clear that many of the institutions were doing a particularly bad job. A child reared in a typical dependency institution stood a poor chance of developing into a person who would be valued by the society.

The Freudian psychologists claimed that a child who was reared in a situation in which there were no clear cut parent figures could not pass through the stages of its development in proper order, and would end up with poor psychological development.

When I ran into this story, I could contrast my own experience to such claims. I just couldn't conclude that the 2,000, more or less, boys I had known MHS could be taken as psychological misfits.

I studied the literature on the subject very closely, and I even did my doctoral dis-

sertation on the topic. Being something of a political and professional maverick I came to two conclusions about the use of Freudian theory to explain the negative effects of institutional rearing. First, I concluded, the psychologists who were making the case against dependency institutions were really making the case against spending the money that was required to do a good job of rearing dependent children. If they could use psychological theory to argue against dependency institutions, they could help justify less expensive solutions—like foster care—which was usually the alternative recommendation.

My second conclusion was that Freudian theory just couldn't explain the child rearing process.

I have spent the last twenty-five years of my professional life trying to help to build a theory of personality development which would allow us to explain what happens during the parenting process.

I would like, at this point, to give three ideas which are at the base of the kind of theory we use, and I want then to relate them to MHS 1939-1945.

First of all, we take it that one of the most important aspects of child rearing centers around successfully getting across to a child that it must constantly take into account the ways in which other people see the world.

To illustrate this, let me simply refer to the idea of rules. Take the common rule: "Don't take something which you haven't been authorized to own." When an average child reaches about age 12, he will begin to show the ability to question the methods by which people can reach the goals which are the goals of the rule. Suppose that he begins to question the idea of ownership and distribution of property. He might decide that the rules about ownership could be changed and more equitable ownership—by his standards—could be put into effect.

If a child has developed to this point without having developed a full appreciation of the need to take into account—under all circumstances—the ways in which other people see the world, he will, very clearly, get into one social mess.

The second principle which I would like to point out relates to the first principle. In fact, it can be taken as its social opposite, so to speak. The second principle would go something like this: A child must receive a constant dose of stimulation which feeds into its way of seeing the world. On a simple level, for example, we wouldn't try to teach a young person to work with Robert's rules of order if he or she hadn't had experience with and learned something of the value of working in a group which attempts to achieve common goals. If we observe parents we will see immense differences in the ways in which they gauge their children's views of the world. Watch, for example, the notable differences in parents as they try to teach very young children not to take things from supermarket shelves. Some parents obviously take into account the ways in which their children see things, while another parent acts as if his child were an expert in jurisprudence. "Don't you know that you're not to take things that don't belong to you?" What could "belong to you" mean to a three-year-old.

The third principle—the most comprehensive principle—says that all of us try to have other people agree with the ways in which we see ourselves. A person always seeks to have a reasonable group who will say, "I know who you are. I know how you are living your life. I know what you want me to believe about you. I agree that you are a worthwhile person, who does worthwhile things." That is the central motive of our lives—I would argue. We want to be validated by a reasonable group of peers.

"Let me repeat those three principles of child development. (1) First, a child must develop the ability to take into account, at all times, the ways in which others see the world. (2) Second, sound child development is best guaranteed by parenting practices which provides a high level of stimulation which constantly takes into account the ways in which the child sees the world. (3) Third, we all seek to present ourselves in ways which will allow a meaningful group of other persons to tell us that we are real individuals—we always seek validation."

Now, let's go back to the argument about institution rearing and our experience at MHS—39 to 45.

First of all, let me point out again, that we can't look at MHS as the typical child rearing institution of those years. My comparison, Mr. Hershey saw to it that MHS was very, very well financed, and very well managed.

On top of this, when I look back over it, I can make the claim that we led a life that practically guaranteed the implementation of three important principles of child rearing which I outlined above.

We certainly had plenty of solid stimulation. Further, that stimulation was constantly graded to our level, and it came in very concrete and very goal-oriented forms. Not only in school, but particularly on the farm homes and in the homes for the younger children. We always had each other, and we always had important and meaningful things to do which would be geared to what we were about to do.

At this point, I must mention the idea of *work* as we know it at MHS. I have always looked back at our view of work with some amazement, particularly at those times when I needed to deal with my own children on the topic.

It seems strange to think of it; but we simply did not see work as an unpleasant affair. In the world of a Pennsylvania Dutch farm in which we were soaked at that time, work was something everyone did, and everyone simply did his job well. Work was always aimed at an important goal which we could see very clearly. Meticulously clean calving pens meant healthy calves. A cornfield free of weeks meant rich, thick ears of corn.

I could quote a whole string of neat little sayings which were commonplace expressions in a world guided by people like Mr. Stuber and Mr. Bomberger. "A job worth doing is a job worth doing well," and so on. They all added up to the idea that we were supposed to do our jobs well, because something clearly positive would result.

At any rate, that whole idea of work fitted into giving us stimulation which would fit in with our ways of seeing things. We were never asked to do things we couldn't do, but we always were asked to do the things we could do. As little guys we swept the aisles and washed the cows tails—that's a strange task, isn't it? My friends are always amused when I describe that one. Curry the cows and learn to milk when we were a little older—and so on—always expected to become skillful and competent at important tasks, according to our level of development.

Living and working on a farm with 22 other boys and four houseparents in that highly stimulating environment certainly gave us the skills by which we could always take into account the ways in which other people saw things. If you were being taught how to teach a calf to drink from a pail, you didn't try to invent a new technique, you tried to figure out why Mr. Stuber did it that way.

And lastly, we always had a group around us who would tell us exactly who we were—and one way which we definitely could get their approval was by showing competence at work. We always could name the best milker on the farm. To be chosen to handle a team of mules was a high honor. Anyone who could go the whole day of the threshing season was a real winner. That barley had to get in while the sun was shining or you'd have a bin full of mold rather than a bin full of golden grain. And in addition to all this, everyone in the bake shop knew that Smitty was the best cake decorator and that Bob Newcomb was the best baker—and on and on. And all of this was almost (??) as important as being a real winner with the town girls or being the star on the football team. Everybody at MHS could find a way to show his competence, and everyone could depend on the group to recognize and respect his competence.

In all, then, the Milton Hershey School that we experienced in those years was one very superior child-rearing environment. I'm not sure that Mr. and Mrs. Stuber sat around and said (in Pennsylvania Dutch accents), "Let's see, how can we give James stimulation which fits into his level of development," but they did arrange to give us very fine stimulation simply by keeping us doing the things that needed to be done on the farm. It taught us to take into account the ways in which other people see things. And, it gave us a very meaningful set of self definitions.

Sometimes my friends call me a "workaholic. I find it very hard to convince them that I just can't think of myself as someone who would not be involved in pursuing competence and skill. MHS simply filled my head that way—and I wouldn't have it any other way.

I enjoy that self-identity.

The nice thing about it has been that our society rewards us for following a self identity like the one we acquired here at MHS.

Indeed, here I am in the strange position. Milton Hershey School is going to give me special recognition for living out an identity which was given to me by my experiences at Milton Hershey School.

I almost feel guilty accepting it—but I'm going to accept it anyhow.

I am certainly grateful. And, I am happy that you have given me the attention you have given me here.

Thank you.●

THE ACHIEVEMENTS OF A YOUNG NEW YORK ARCHITECT

● Mr. MOYNIHAN. Mr. President, the architecture firm of Skidmore, Owings & Merrill is well-known here, in New York, and indeed around the world. Each year, this firm sponsors the Skidmore, Owings & Merrill Traveling Fellowships to encourage promising students of architecture. After winning first place in the 1985 SOM Masters Program—$12,000—an accomplished young architect and constituent of mine, Mr. Adam Yarinsky of Princeton University, has recently re-

turned from a year of travel and study in the United States and Europe.

Mr. Yarinsky's honor was detailed in Progressive Architecture magazine, and, as part of the tribute I mean to pay this fine young New York architect today, I ask that the article, "SOM Travels," be printed in the RECORD.

The article follows:

[From the Progressive Architecture, August 1985]

SOM TRAVELS

Now in its fifth year, the Skidmore, Owings & Merrill Traveling Fellowships have become something of an academic institution, one emulated by other major firms that seek to support and recognize outstanding architectural students and their schools. This year the program was expanded to include a fellowship for undergraduate architecture students. The seven-member jury composed of five SOM partners and two visitors—Henry Cobb of I.M. Pei & Partners and Ronald Krueck of Krueck and Olsen, Chicago—selected a total of eight finalists on the basis of portfolio submissions (each dean may nominate up to three candidates). After interviews, they awarded first place ($12,000) in the Masters Program to Adam Yarinsky of Princeton University, second place ($10,000) to David Hotson of Yale University, and third ($8,000) to Madeleine Sanchez, also of Yale. Pamela Butz of Cornell and Frank Michielli of U. Va. were cited for Honorable Mention.

In the Bachelors Program, the jury divided the first prize between Kit Krankel of University of Texas at Austin and Guy Perry of Rice, each of whom received $4,000. Robert Carpenter of the University of Cincinnati was cited for Honorable Mention.

An awards ceremony in New York City honored both winning students and their schools. According to partner David Childs, the Foundation may expand the program yet again to reward teachers with travel stipends as they now do students.—Daralice D. Boles.●

DOUBLE TAXATION

● Mr. KASTEN. Mr. President, during the Senate's consideration of tax reform, we adopted a strong minimum tax program. I support this program.

A potential unintended consequence has been brought to my attention—double taxation. It is my belief that the Treasury and Internal Revenue Service are aware of this potential problem. It is my expectation that in writing regulations, this uncertainty will be resolved so as to prevent double taxation.

During debate on the tax bill, Senator PACKWOOD and I conducted a colloquy on this potential problem. As part of that June 24 colloquy, Senator PACKWOOD acknowledged that when a corporation purchases "Tax and Loss Bonds," double taxation should not occur.

There appears to be some ambiguity in this provision as finally adopted. I hope in writing the implementing regulations the Treasury and IRS will prevent the possibility of double taxation.●

THE ARTS IN NEW JERSEY

● Mr. LAUTENBERG. Mr. President, I would like to bring to the attention of my colleagues an excellent series of articles that appeared in the October issue of Horizon, a magazine dedicated to the arts. Horizon has paid a fine tribute to the arts in New Jersey, and to the people who have made them thrive.

New Jersey is home to some of the worlds greatest artists, writers, musicians, and actors. According to Horizon, approximately 37,000 artists reside in the State. They include such people as Donald Delue, the most prolific modern sculptor; Dizzie Gillespie, the great jazz artist; and Joyce Carol Oates, one of the most gifted American writers. We have such talented performers as Bruce Springsteen and Whitney Huston, Celeste Holm, and Jerome Hines. These artists share a love for the State and a strong dedication to their work.

The arts in New Jersey are undergoing a major explosion of talent, and New Jersey residents are responding with overwhelming support. The New Jersey Symphony Orchestra, the Paper Mill Playhouse, the New Jersey Chamber and Music Society, and the Garden State Ballet produce some of the State's best artists, and draw outstanding performers from around the world. Renowned poets, novelists, musicians, and dancers appear frequently throughout the State.

These artists could not have come to the State without the dedication and love for the arts of local arts councils. Cultural and heritage commissions and arts councils make it possible for New Jersey residents to enrich their lives—to enjoy live theater and music in their own towns.

Mr. President, New Jersey has a great patron of the arts in its Archbishop of Newark, Theodore McCarrick. As assistant to then-Archbishop of New York Terrence Cardinal Cooke, Archbishop McCarrick helped establish the Friends of Vatican Art in the United States, of which Cooke was president. He is also actively involved in creating art. The Archbishop plans to help celebrate the 200th anniversary of the establishment of the church in the United States by organizing a special mass, one which he hopes will be "just as beautiful" as the 1789 mass.

The Archbishop's admiration for the arts can perhaps be best expressed by his personal view of art: "All great art lies in the mystery of the presence of God. All true art is, in some sense, an attempt to represent this mystery. Faith makes the distinction between the descriptive essay and the poem; between the photo snapshot and the truly great painting; between the sound and the song."

REVITALIZATION OF CAMDEN

Mr. President, just as a great painting, work of literature, or piece of music can be admired as art, so can a beautiful city. And the work that goes into making a great city is achieved by people dedicated to its growth and development.

Horizon has focused on the revival of downtown Camden, NJ, as a city worthy of this description. Plans for Camden's $150 million revitalization include a newly landscaped Ulysses S. Wiggins Waterfront Park, an amphitheater, a marina and dry dock, the New Jersey State Aquarium complex, a festival market, and a 250-room hotel conference facility. This project will bring jobs, entertainment, and a unique recreational experience for Camden's residents and visitors.

As many who have visited the city know, Camden contains some of the most beautiful remnants of the Victorian era of architecture. Camden was the home of the poet Walt Whitman during the final days of his life. Whitman's vision of Camden as a city for poets lives on. Today, Camden has a strong cultural community and serves as the location for the Walt Whitman Center for the Arts and Humanities.

The city is committed to restoring the Cooper Grant Historic District—a four-block square enclave of Italianate and Second Empire row and semidetached houses. Through the initiative of Mayor Primas and the city council, Rutgers University, the Campbell Soup Company, RCA, and many other supporters, Camden is drawing the investment dollars and the talent needed to make the city thrive.

Mr. President, I am proud of New Jersey's contribution to the arts. I am proud that we have individuals dedicated to the cultural, spiritual, and aesthetic enrichment of our lives.●

EXPORTS: BE PATIENT OR PANIC?

● Mr. HELMS. Mr. President, the Food Security Act of 1985—the formal name of the 1985 farm bill—substantially improved our agricultural policy by authorizing signficant reductions in price support levels for wheat and feed grains. These reductions have sharply improved the competitiveness of U.S. grain in international markets.

Information to date on the 1986 crops, the first for which these reduced-price supports have gone into effect, indicates that the price-support cuts have contributed to increased export volume for wheat and feed grains. Wheat export inspections for the current marketing year, for example, are about 29 percent ahead of last year's pace. For the week ending October 2, 1986, corn export inspections were more than 50 percent higher than the same week a year ago.

While these figures indicate a substantial turnaround in our agricultural export picture, some have expressed dissappointment that the improvement has not been more dramatic. Indeed, some have suggested that because the reduced price supports have not brought prosperity to the American Farm Belt overnight, a radical change in the opposite direction—toward higher price supports and massive acreage reductions—is necessary.

In the September 1986 issue of Farm Journal magazine, economist John Marten gave an interesting commentary on whether the Nation should act in panic—or with patience—with regard to agricultural exports. Mr. Marten argues strongly in favor of patience; in his closing statement, he asks, " * * * why not give the new policy at least 18 months to work?"

I ask that the article be printed in the RECORD in its entirety and commend it to the consideration of Members of the Senate.

The article follows:

EXPORTS: BE PATIENT OR PANIC?

(By John Marten)

"It won't happen." That's what one depressed farm magazine editor recently concluded. The question: Will lowering the loan—and market price—lead to an increase in corn exports? My answer is the opposite. Unless the laws of economics have been repealed, 1986-crop exports will rise rapidly!

"Farm policy panic" is the latest farmbelt disease. Those afflicted lose their ability to think clearly, their memory fails, their conclusions aren't logical. Here are some typical symptoms.

"Year skipping" is common once the panic grips you. You claim that the new farm bill hasn't helped corn exports and that it's producing bigger surpluses. Odd—since the policy doesn't even start until Sept. 1 for corn.

Perhaps reviewing these corn facts will reduce the fever: (1) The old-crop corn loan was held at its maximum $2.55 by John Block; (2) The U.S. dollar peaked in 1984/85, leaving exports weak in 1985/86, assuming a typical one-year lag (see chart); (3) Competing exporters are pushing sales to beat our coming shift to lower prices; and (4) Buyers typically don't buy on the day before a well-advertised sale.

"Supplyitis" is the second key panic indicator. At its feverish peak, the panic renders you unable to either spell or pronounce the word DEMAND! Key words you use are surplus, stockpiles, bulging bins, world supplies, etc. All you can think about is that every farmer everywhere in the world is growing too much—and that this will be a permanent condition!

The best treatment for this malady might be to remember the mid-'70s—when yields had plateaued, food demand was outgrowing supply, shortages and starvation were imminent. Why do those forecasts all look silly today?

Because price changes, the economic climate and farm policy solved that crisis. Higher prices cured the shortage—there is no shortage of $3 corn! It was $1 corn that was in short supply.

My point: We have a surplus of $2.80 corn in the mid-'80s. But will we have a surplus of $1.80 corn in 1990? Maybe not. Demand may increase sharply this fall and push exports up each year—the normal result of lower prices. Usage will grow and acreage will stabilize, then drop in competing countries.

"Mystery math": If a politician's pitch favoring a "reasonable" corn loan at $3.25 (and wheat at $5) is starting to sound good—head for the hospital! Your case is critical! What these "friends" aren't telling you is that: (1) We export the production of 40 percent of U.S. acreage now—up from just 4 percent in 1940! (2) You'd have to idle 40 percent of your corn base (60 percent for wheat) to hold those prices until about 1990; (3) Exports would cease and imports start pouring in by 1995.

But there's no mystery to our farm growth math since 1940. It's as simple as 1, 2, 3. Namely: 1 percent annual growth in the domestic market: 2 percent annual productivity (yield) gains; and 3 percent annual export market growth!

Now isn't it obvious what our choices are? If we follow the "no exports" approach, agriculture will need to shrink 1 percent each year!

"Patience, please" should have been the final section of the 1985 farm bill—attacked in July as a "collossal failure" in a Des Moines Register editorial. Prudence suggests we wait to see if it works. (Usually folks get married before filing for divorce!)

Why the panic? Maybe it's just politics. The 1985 farm bill contains a near-perfect set of politics to get agriculture on the road to recovery. Like:

(1) lower loan supports to boost demand and whack production overseas and on noncomplying U.S. farms. Cotton acreage already dropped worldwide, and all major-crop export orders are up sharply for '86;

(2) target prices to protect family incomes while we make the transition to lower prices. Net farm income looks solid near $30 billion for 1986;

(3) export promotion via blended credit, PL-480, BICEP (or EEP) and matching funds for commodity developed projects; and

(4) supply-control options like ARPs, paid diversion, PIK bids with an extra $20,000 limit, etc. Secretary Lyng has the tools to cut production and use no cash!

The falling-dollar bonus will speed up the export demand improvement I expect. As the chart shows, without exception, exports move in the opposite direction of the dollar, after a year passes. This suggests a major export rebound, especially once lower prices go into effect.

So Sept. 1 marks the dawn of a new farm-policy era—lower prices, bigger government checks, lots of PIK, lower costs, level farm incomes and huge increases in demand. Believe it! Even if you don't agree, why not give the new policy at least 18 months to work? Tell those suffering from farm policy panic disease to stand back and give you a chance to compete!●

TELECOMMUNICATIONS TRADE WITH EUROPE

● Mr. DANFORTH. Mr. President, I would like to bring to the attention of my Senate colleagues some recent developments in Europe involving telecommunications trade. Last year, France's state-owned Cie. Generale d'Electricite [CGE] and a joint venture of AT&T and N.V. Philips of the Netherlands reached an important memorandum of understanding. As a result of that accord, AT&T-Phillips would obtain improved access to the French telecommunications market through acquisition of the digital switch market currently held by the state-owned Cie. Generale des Constructions Telephoniques [CGCT].

Many of us had looked on this accord as a positive market-opening step by the French. Unfortunately, recent developments in Europe suggest that this accord is very much in jeopardy. In this regard, we now learn that the West German Government wants Siemens A.G.—not AT&T-Philips—to get the share of the French digital switch market currently held by CGCT. Apparently, the German Government has threatened to undercut the pending CGE acquisition of ITT's telecommunications operations in Europe by withdrawing German Government business from ITT's German subsidiary, Standard Elektrik Lorenz A.G., if Siemens does not get the share of the market held by CGCT.

I look upon these developments with great concern. This appears to be nothing less than an attempt to bring about the cartelization of the European telecommunications market at the expense of U.S. companies.

Mr. President, the international situation with respect to telecommunications trade is unique. The United States is virtually the only country in the world with a private telecommunications system. Practically all other industrialized countries have monopolistic telecommunications entities that are controlled by—if not owned and operated by—their governments.

The world over PTT's—post, telegraph, and telephone entities—are protected, nurtured, and supported by their governments. Equipment procurement is confined to the extent possible to domestic manufacturers, who in turn use government financial support to develop new equipment and to promote their export drives. And export they must—because in this day of highly sophisticated, R&D-intensive telecommunications equipment, economies of scale dictate that few home markets are big enough to provide adequate returns on investment.

The comparative advantage that American producers currently enjoy in the telecommunications sector would lead us to expect the United States to run a substantial trade surplus in the telecommunications area. In stark contrast to the logic of the marketplace, however, is the large and growing trade deficit of the United States in this sector—reaching close to $2 billion in 1986. There can be no question that U.S. telecommunications exports are only a small fraction of what they would be under open market conditions.

Notwithstanding any other factors affecting U.S. trade in telecommunications, one finds throughout the world that virtually all major telecommunications markets are closed. Many of my colleagues familiar with market access problems faced by American producers in Japan might be surprised to learn that the situation in Europe is as bad, if not potentially worse, then that in Japan.

The European Common Market may be an EC-wide market for many products but that is certainly not the case with telecommunications. In Europe, almost every country has its own system and each government inures the protection of its home market producers. These telecommunications monopolies remain largely unwilling to procure substantial amounts of foreign equipment and will purchase a domestic product even when better and less expensive American equipment is available. Moreover, it has become evident that attempts to open the EC market for telecommunications are increasingly threatened by efforts on the part of certain European governments to systematically exclude all non-European entrants.

In this regard, I find it ironic that Germany—often America's most important ally in liberal trade endeavors—is probably more protectionist in the area of telecommunications than any other major industrialized nation.

Mr. President, in the closing hours of the 99th Congress, I am sorry to note that we have missed a unique opportunity this year to enact into law telecommunications trade legislation that would have given the administration a useful tool in dealing with problems such as that we are encountering in Europe. The Telecommunications Trade Act, (S. 942), enjoys widespread support among industry and labor groups concerned with trade in this sector. It was approved unanimously by the Senate Finance Committee in September of 1985 and awaits action on the Senate floor. A similar measure was passed by the House of Representatives earlier this year.

Although the administration has been less than enthusiastic about this measure, I would hope that administration officials will reconsider their position next year—when I fully intend to move forward this legislation and see it enacted into law.●

AMERICAN LEAGUE CHAMPION BOSTON RED SOX

● Mr. KERRY. Mr. President, it was the ninth inning of the fifth game of the American League Championship Series. The California Angels were leading the Boston Red Sox 5-4. There were two outs and two strikes on Red Sox reserve outfielder David Henderson. Angels' star reliever Donnie Moore was on the mound, and was one strike from eliminating the Red Sox and capturing the American League Penant. Anaheim Stadium was set to explode as the California fans pushed toward the field in anticipation of their seemingly inevitable championship. Angels' bat boys were already uncorking the champagne in the locker room.

Yet, the Red Sox still had one more swing—one more glimmer of hope to salvage this magical summer season in Boston. In one of the most unforgettable moments in baseball history, David Henderson smashed a two-run home run to silence the fans and breathe life into a team considered all but dead by friends and foe alike. To the disbelief of California and Boston fans, the Red Sox survived this near extinction, and brought the series back to Boston for two final games. With ease, the Red Sox won these two critical games at Fenway, capturing the American League flag for only the fourth time in 67 years.

Mr. President, I rise today to express the incredible excitement and anticipation now felt by my home city of Boston, my home State of Massachusetts, and the entire New England region. While there have been many teams in the annals of sports that have suffered ignominious defeats, no team has endured the frustration of failed potential more than the Boston Red Sox. This week, the 1986 version of the Olde Towne Team atoned for the past, partially erasing the memory of some of the horrific ghosts of 1946, 1967, 1975, and 1978. If patience is a virtue, and Yogi Berra confirmed that it is with his famed statement that "it ain't over 'til it's over," then Boston's patient Fenway faithful have upheld their virtue once again, and can celebrate.

But one more task lies ahead. With four more wins against the New York Mets, Boston can finally claim a baseball champion.●

A TRIBUTE TO SIMON WIESENTHAL

● Mr. D'AMATO. Mr. President, I rise today to pay tribute to Simon Wiesenthal, a remarkable man who, for nearly 40 years, has devoted his energies to the pursuit of some of the most brutal murderers in the history of mankind. Through his tireless efforts, Wiesenthal has been responsible for the capture of more than 1,100 Nazis. A victim of Hitler's camps himself, Simon Wiesenthal has never forgotten those who perished as part of the "Final Solution."

He was born in Lvov, Austria, just after the turn of the century, and received his training in architectural engineering at the University of Prague. His family was exposed to brutality shortly after the outbreak of the Second World War when his stepfather was arrested by the Soviet secret police and imprisoned. He was never to be heard of again—another victim of the gulag.

Shortly after the Soviets were displaced by the Germans in 1941, Simon Wiesenthal and his wife, Cylia, were sent off to a concentration camp and eventually imprisoned in a forced labor camp. By the end of 1942, nearly 100 of their family members had perished. Wiesenthal was successful in spiriting his wife out of the camp. She made her way to Warsaw with the assistance of the Polish underground and lived there for 2 years. In October 1943, Simon Wiesenthal escaped from camp but was recaptured in June 1944. As the Third Reich began to crumble he found himself caught between the Nazis and the advancing Soviets. Wiesenthal was only 1 of 34 camp prisoners still alive when the Americans liberated Mauthausen on May 5, 1945. Nearly 150,000 were murdered by the Nazis in this camp alone. Simon Wiesenthal and his beloved Cylia were reunited at the end of 1945, following months of uncertainty as to whether the other had survived.

Shortly after he was freed, Wiesenthal began his work documenting Nazi atrocities. He worked closely with the war crimes section of the U.S. Army and the Office of Strategic Services. He was selected to head the Jewish Central Committee in the American zone of Austria. Wiesenthal opened the Jewish Historical Documentation Center in Lenz to serve as a clearinghouse for information on the Holocaust. Through his efforts, the elusive Nazi architect of Hitler's "Final Solution," Adolph Eichmann, was brought to justice. Simon Wiesenthal has been instrumental in the capture of more than 1,100 Nazis. He played an integral role in the investigation sourrounding Dr. Joseph Mengele, the infamous "Angel of Death" of the Auschwitz concentration camp. Through our combined tireless efforts, Wiesenthal and I were successful in forcing the United Nations to open its extensive war crimes archives containing information on an estimated 30,000 Nazis.

Mr. President, I commend Simon Wiesenthal for his dedicated service in the cause of justice, human decency, and international law.●

FATHER JERZY POPIELUSZKO MEMORIAL SQUARE

● Mr. MOYNIHAN. Mr. President, this Sunday, October 19, marks 2 years since the abduction and murder of the Reverend Jerzy Popieluszko of Warsaw, Poland. It is only appropriate that on this day, the city of New York will dedicate a square in the Green Point section of Brooklyn in his memory. It will guarantee that Father

Jerzy, and the cause of freedom he died protecting, will not be soon forgotten.

A beloved Roman Catholic priest, Father Jerzy boldly spoke out against the Polish Government's efforts to abolish solidarity, Poland's first free and self-governing trade union. For these public expressions of protest, Father Jerzy was beaten and murdered by three officers of the Interior Ministry. This was not just an act against the ideals of Solidarity, but an attack on the Catholic Church, the freedom to practice religion and on freedom itself.

The cause of Solidarity remains close to the heart of Poles and Americans alike. Father Jerzy was defending the Polish people from the abridgement of basic human rights and civil liberties. The very thought a man's life would be taken for defending such fundamental human rights is repulsive.

So, in remembering Father Popieluszko, the dedication scheduled for 1:15 p.m. will be preceded by an 11:15 a.m. "Mass for the Homeland" at St. Stanislaus Kosta Church. Worshippers will then march in solemn procession to the Father Jerzy Popieluszko Memorial Square. I want to especially recognize the efforts of the Downstate New York Division of the Polish American Congress in organizing this most proper ceremony.

Mr. President, 14 days after the brutal death of Father Jerzy, 200,000 Polish citizens stood together in the streets of Warsaw to hear Solidarity's founder eulogize: "We bid you farewell, servant of God, pledging that we shall never bow to oppression." Upon hearing this, the throngs interrupted and chanted, "we pledge, we pledge." Two years later, through both great and simple deeds, and through the prayers in our hearts, we join in honoring that pledge.●

VICTIMS OF COMMUNISM

● Mr. D'AMATO. Mr. President, as Americans, we are proud of the many freedoms and liberties we share. From the conception of our Republic, our Nation has been based upon the principle that our Government exists to serve the people and protect our individual rights to life liberty, and the pursuit of happiness. Thomas Jefferson once wrote, "The freedom and happiness of man are the sole objectives of all legitimate government." Unfortunately, many of us take these precious freedoms for granted.

Today, more than 1.3 billion individuals live under Communist domination. These people are deprived of even the most basic human rights. The spread of communism poses a direct threat to all freedom-loving people. Ruthless dictators and their cronies have been responsible for the slaughter, deportation, exile, and imprisonment of millions of innocent men, women, and children throughout Eastern Europe, Asia, Africa, and the Americas. In addition, these totalitarian despots pursue policies designed to eliminate every vestige of native culture and national identity in the lands they have conquered. The result has been the elimination of centuries-old languages, religions, literature, art, and music in a score of captive nations. The policy of russification has resulted in the destruction of thousands of priceless works of art, particularly those of a religious nature. The people of the captive nations have been the victims of decades of Soviet-inspired and sometimes directed repression.

Communist leaders in Eastern Europe have relied upon brute force to oppress their fellow countrymen. When they have been unable to maintain total control, the Soviets have been quick to intervene, replacing one puppet with another. The human rights and the right to self-determination of the people of Russia, Ukraine, Armenia, Azerbaijan, Byelorussia, Cossika, Georgia, Idel-Ural. North Caucasia, Turkestan, Mongolia, Estonia, Latvia, Lithuania, Albania, Bulgaria, Czechoslovakia, East Germany, Hungary, Poland, Romania, Yugoslavia, and Afghanistan have been flagrantly violated by Communist totalitarians. These regimes have deprived their citizens of fundamental human rights—the right to life, the right to property, the right to follow one's religious beliefs, the right to choose one's job, freedom of the press and of assembly, and the right to freely choose one's leaders.

As Chairman of the Commission on Security and Cooperation in Europe, I am painfuly aware of the plight of those living under communism. I urge my colleagues to join me in speaking out in support of the victims of communism. We have a moral responsibility to demonstrate our solidarity with the brave men and women who valiantly struggle to break the chains of Soviet domination.●

SIGNING OF H.R. 2005, SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986

● Mr. MITCHELL. Mr. President, I want to express my strong approval of the President's acton today in signing the Superfund Amendments and Reauthorization Act of 1986, H.R. 2005. I and many colleagues in the Senate and House spent long hours over many months in developing this legislation, and its enactment is vital to the protection of the health of Americans in many parts of the Nation. With the signing of this legislation, containing the programmatic changes and the taxing authorities necessary to support an expanded program, and action today on the fiscal year 1987 appropriation for this program, progress on cleanups may resume at an accelerated pace. I want to express my appreciation to my colleagues who have joined me in efforts to persuade the President to sign this critically important legislation.

I would also like to take this opportunity to clarify some of my earlier remarks regarding the Superfund conference report.

Cleanup standards have been a major issue of concern to me, which is why I devoted so much of my time during the conference developing a satisfactory provision. My primary interest in this provision has been to assure what every American wants at Superfund sites: adequate protection of the public health. Public health protection is the essence of Superfund and of all of our environmental laws. Any provision that dilutes or diminishes this goal would be unacceptable to me.

Section 121, the standards provision, permits limited use of a regulatory process for setting alternate concentration levels [ACL's]. As I stated at the subconference meetings, I do not believe the ACL process is sound policy under subtitle C of the Solid Waste Disposal Act [RCRA] nor do I believe that it is authorized by law. RCRA does not mention nor envision a mechanism such as ACL's, which are used to diminish the amount of protection we are providing to the public. I cannot conceive that congressional silence on a concept developed by EPA after enactment of the Solid Waste Disposal Act can constitute approval of such a process.

I am willing to authorize use of the ACL process in setting Superfund cleanup standards, but only when other standards are not applicable. Since the ACL process is used to provide less protection to public health, any other outcome would be to admit that we cannot protect the public around Superfund sites as well as we protect other citizens. It has and continues to be my opinion that all citizens deserve equal protection under the law. Children drinking water that originates from a Superfund site should not be exposed to higher concentrations of contaminants than other children. The reason is fairly simple: The adverse effect on human health remains the same and we cannot in good conscience knowingly endanger the public health.

Some of my colleagues in the House appear to argue that the mention of the ACL process opens up the standards provision to a free for all that is controlled by cost. I cannot disagree more strongly with this position. Superfund is not a cost-saving mechanism; it is a health protection mecha-

nism. We have not spent so much time and so much debate on this bill to finally conclude that we will protect people only so long as such protection is cheap.

One of my colleagues stated that, "The most important standards in section 121 requires the Administrator to select cost-effective remedies that protect the public health. * * * The Administrator must select the most cost-effective remedy that achieves this level of protection."

This is not a program that is intended to be a bargain-hunter's paradise for the simple reason that cleaning up contaminated ground water that people drink is not cheap. Removing contaminated soil is not cheap. These are expensive activities that we as a society have decided must be undertaken to protect people from toxic substances. This is the primary purpose of Superfund, and the only reason that justifies the tremendous scope and funding level of the Superfund Program.

Similarly, there are some who argue that the selection of a remedial action can be made by considering costs only. It is disappointing to hear some of my colleagues, with whom this issue was discussed during the conference, revisit this issue and direct EPA to consider cost first and protection of public health second. I was reluctant to include any mention of cost effectiveness in this section, in part because compliance with the National Contingency Plan already takes into account cost effectiveness. Repetition of the provision concerned me, but I was assured that protection of the public health clearly was the first priority. It is my belief, and on this basis I support section 121, that EPA must first select a remedial action that protects the public health. Only after that decision has been made may the Agency then determine which is the least costly alternative to implement that remedial action.

Similarly in selection of remedial action, EPA is to select the remedial action that serves the purpose of protecting the public health. Only after the basic need has been determined and a solution selected can EPA choose the most cost-effective alternative. Protection of public health is meaningless if cost overrules all other considerations.

If EPA selects a remedial action, what happens to the hazardous substances that are to be removed from the Superfund site? Clearly it is no improvement if they are transported to another site that is environmentally unsound. In order to prevent this outcome, we included in section 121(d) a provision that incorporates and strengthens EPA's offsite policy. Hazardous substances from a Superfund site can only be transferred to a facility operating in compliance with sections 3004 and 3005 of the Solid Waste Disposal Act, for example. The unit receiving the substances, as my colleagues in both Chambers agree, cannot be leaking substances into the ground or surface water or soil. Similarly, all releases from other units must be controlled by a corrective action program. Clearly the intent of this provision is to assure that only the most secure facilities receive the hazardous substances from a Superfund site, or we have just compounded our problem by creating more Superfund sites.

As I stated earlier, "such facilities can ordinarily only meet the second requirement if the corrective action has already been performed." One of my House colleagues appeared startled by my observation that in the ordinary course of things such an approach would be applied. I did not state this as a mimimal requirement in the offsite policy, but included it as a practical and, in my view, obvious result of this requirement.

Do we want to suggest to EPA that it is good policy to transfer hazardous substances to a facility that is in the process of controlling releases, but has not quite managed to do so? I do not believe this is the kind of public health protection we were elected to provide. They expect that hazardous substances taken from a Superfund site should be transferred to a facility that all agree will not leach contaiminants into ground water or the soil. Anything less exacerbates an already serious national problem.

There also seems to be some confusion about EPA's obligation to meet the section 121 standards provision in the 30 days after enactment. As I stated earlier, there is a nondiscretionary duty on the Administrator to apply the requirements of section 121 in selecting remedial actions during the 30-day period following enactment. This was a difficult issue to resolve and I agreed to the compromise based on the understanding that this was a nondiscretionary duty: EPA must apply the section 121 standards in the 30 days after enactment and must certify in writing that such requirements have been complied with to the maximum extent practicable. One of my House colleagues suggests that the language "to the maximum extent practicable" makes this duty discretionary. I disagree with this view and would note that elsewhere in the bill where we have imposed a nondiscretionary duty, it has been clearly stated. The provision states clearly that the Administrator "must" certify in writing, not "may" or "should".

One last issue strikes very close to home, and this is the issue of preemption. Two of my House colleagues argued that Superfund is a preemptive law. Nothing could be farther from the truth. In fact, one of the motivations for reauthorization was the opportunity to correct the Supreme Court ruling in Exxon versus Hunt, in which the Court held that New Jersey's Superfund was preempted. H.R. 2005 corrects that misinterpretation and section 114(c) so that discussion need not be repeated here. The sole reason offered for concluding that preemption was part of the Superfund scheme is that "[it] could not be otherwise given the structure of the statute." I strongly disagree, as do a clear majority of conferees. None of our other environmental statutes, with a limited exception in the Clean Air Act, are preemptive. This is an issue of great importance to many of us, and we have stated repeatedly in this bill that there is no preemption. Any other conclusion is wholly without foundation.

These House Members suggested that section 113(h) covers all lawsuits under the authority of any law, State or Federal, concerning the response actions that are performed by EPA and other Federal agencies, by States pursuant to cooperative agreements, and by private parties pursuant to an agreement with the Federal Government. Under this suggestion, section 113 would become preemptive in a way never contemplated or intended by the Congress, in any case in which the executive branch took or endorsed response action. Such a construction would be inconsistent with the evolution of the "preenforcement review" provisions, as well as the explicit language of the bill and Statement of Managers and of sections 114(a) and 320(d) of existing law.

As passed by both the House and Senate, section 113(h) began as follows:

> No court shall have jurisdiction to review any challenges. * * *

Because of a concern about the very result urged by my two House colleagues, the language was changed to read as follows:

> No Federal court shall have jurisdiction under Federal law other than under section 1332 of title 28 of the United States Code (relating to diversity of citizenship jurisdiction) or under State law which is applicable or relevant and appropriate under section 121 (relating to cleanup standards) to review any challenges. * * *

An interpretation of the original text may have been to extinguish the jurisdiction of any court to review any challenge. Clearly, the conference substitute no longer does this. It limits the jurisdiction of specified courts to review challenges arising out of specified laws. The final language has become much more narrow and targeted. Clearly preserved, for example, are challenges to the selection or adequacy of remedies based on State nuisance law, or actions to abate the hazardous

substance release itself, independent of Federal response action.

The conference language would permit a suit to lie in either Federal court—where jurisdiction could be based on diversity of citizenship—or in State court, where based on nuisance law. This construction is confirmed by the statement of managers explanation that "New section 113(h) is not intended to affect in any way the rights of persons to bring nuisance actions under State law with respect to releases or threatened releases of hazardous substances, pollutants or contaminants."

Section 113 of CERCLA governs only claims arising under the act. Whether or not a challenge to a cleanup will lie under nuisance law is determined by that body of law, not section 113. New subsection (h) governs only the suits filed under the circumstances enumerated in paragraphs (1) through (5) for the review of "challenges to removal or remedial action selected under section 104, or to review any order issued under 106(a)". There is no support whatsoever in the original CERCLA law, in H.R. 2005 as now signed by the President, or in the statement of managers for the proposition that "any controversy over a response action selected by the President, whether it arises under Federal law or State law, may be heard only in Federal court and only under circumstances provided" in section 113. That statement is contrary to the express legislative language and the statement of managers.

The view of the courts on this reauthorization will not be known for some time. Some try to discount the views that have been expressed in floor statements to the extent the floor statements do not coincide with their view. I do not believe that courts will go wrong if the purpose of Superfund is kept clearly in mind: protection of public health and the environment. I have repeatedly stated the public health concern since that is the most salient issue.

Superfund can ony work if the sites are cleaned up enough that people need not live in fear of the sites any longer and if the environment is no longer threatened. Our ability tc overcome the threat posed by hazardous substances that are found at Superfund sites are limited, as amply demonstrated by the all-too familiar stories of children with leukemia and other diseases. A program that does not recognize this delicate balance is a failure for which we and generations to come will have to pay. Such an outcome is unacceptable and is the main reason why I have fought so hard for a strong Superfund program.●

MANUFACTURING CLAUSE OF THE COPYRIGHT LAW

● Mr. D'AMATO. Mr. President, the amendment to the manufacturing clause offered by the distinguished chairman of the Senate Judiciary Committee would prevent the loss of tens of thousands of American jobs and the crippling of America's sixth largest industry. It is the product of months of deliberation and negotiations, and has been structured so that it is fully consistent with both our country's international trade obligations and the administration's recent initiatives to establish stronger fair trade policies.

Although we have the largest economy in the world, there is a growing realization that we must do more to ensure that foreign countries do not take advantage of our open trade policies by flooding our markets with their products while they continue to block us from selling our goods and marketing our services in their countries. If we allow the manufacturing clause to expire, we will soon be flooded with printed materials from cheap-labor countries. I therefore am pleased to join with my colleagues who believe that we should encourage the economies of developing countries, but not if they pirate works copyrighted by U.S. citizens; not if they erect trade barriers to our printed materials; and not if they fail to respect the most basic of international worker rights.

That is the strength of the Thurmond compromise amendment. It opens out market to imports of printed materials to those countries which engage in fair trade practices. And it does this in a manner which is carefully designed to abide by our commitments to GATT and to meet our other international trade obligations.

Let us not forget that those who will lose their jobs if we do not act on the Thurmond amendment are the ones who will be least able to recover. In book manufacturing, for example, 60 percent of the workers are either semiskilled or unskilled. As of the last quarter, the United States became a net importer of books for the first time in its history.

Three-fourths of the 1.3 million workers in our domestic printing industry work in firms that employ 20 or fewer workers. In New York alone, more than 5,000 printing plants employ 165,000 workers, with a total payroll of $3.5 billion.

A portion of the work done by almost every one of the several thousand printing firms in this country is covered by the manufacturing clause. If that work is lost to foreign countries, it will deal a crippling blow to our printing industry. Perhaps one or two of the largest printing companies will choose to move offshore to cheap labor countries in order to compete. But that option is not available to most domestic printing companies—nor should we encourage it as an option.

Allowing the manufacturing clause to expire is a unilateral trade concession which will actually serve to undermine the administration's efforts to develop a fair trade policy. For 95 years, the manufacturing clause has been the only trade policy for our printing industry. Allowing it to expire would place the U.S. printing industry at a significant competitive disadvantage when compared to the tariff and nontariff barriers erected by our trading partners.

Mr. President, the Thurmond compromise is supported by both labor and industry. It is a commonsense approach to an issue which will affect the very survival of a major U.S. industry. I urge my colleagues to give it their wholehearted support.●

TRANSFORMATION IN AMERICAN POLITICS AND THEIR IMPLICATIONS FOR FEDERALISM

● Mr. DURENBERGER. Mr. President, last month the Advisory Commission on Intergovernmental Relations published a major study of great interest to every member of this Chamber entitled "The Transformation in American Federalism: Implications for Federalism." This sweeping study summarizes nearly 200 years of political history in our republic, traces the evolution from corporate to entrepreneurial politics, identifies problems stemming from this evolution, and makes practical recommendations to redress these problems. Specifically, it traces the historic role played by political parties in our system of Government; it describes the dramatic changes in the relationship between national, State, and local party committees; it analyzes the political transformations wrought by the mass media and modern interest groups; and it examines the dramatic effects of campaign finance laws on political parties and elections.

Above all, this study demonstrates that if we are to deal responsibly with the difficult issues confronting Congress today, we must reform our electoral process in ways that place the collective interests of society above the growing multitude of narrow, special interest claimants. For however worthy each individual cause may be, this Nation can no longer afford a political process that separates complex problems into tiny fragments, blindly hoping that the cumulative will somehow total the general public interest.

Mr. President, our electoral system historically has relied upon our political parties to perform this important representative function of combining disparate interests into broad coalitions, each representing a distinct

public philosoply about the proper role of Government in society. Our political parties have never been rigid and disciplined collections of single-minded ideologues—they allowed ample room for expressing indiviudal interests and opinions. But the parties were by far the most important organizations in our electoral system, providing a framework of shared ideals within which different points of view could be debated. And because our parties were decentralized, they provided avenues for representing regional and local values within the Federal Government as well as social and economic concerns.

In recent years, the broadly based system of representation provided by the parties has been eroded. Though still important, the parties' role in Government and elections has been diminished by the rise of new forms of campaign finance, heightened reliance on narrow interest organizations, and new modes of political communication. According to the ACIR report:

America's political system has changed substantially since 1960. Patterns of politics based upon lasting commitments to party and place—community, state, and region—have eroded significantly. They are being replaced an increasingly national political marketplace in which competing candidates, interest groups, and parties vie for media attention and rely upon modern marketing techniques to win support from an even more volatile and skeptical public. The past 25 year have witnessed the final withering away of once powerful political "machines"; the development of a new process for nominating Presidents, characterized by the proliferation and heightened influence of presidential primaries and by the declining role of state and local party leaders at national conventions; and the rise of television as possibly the most important single force in modern politics. As strong party loyalties have waned, the role of independent politicians, voters, and issue-oriented activists has expanded in contemporary elections. There has been an explosion of organized interst groups, "single issue" politics, and new group-related sources of campaign finance.

These are important and in some respects disturbing trends, with important implications for how Congress operates, for the messages we have, an for the kinds of laws we enact. Most disturbing of all is evidence that Federal election laws have contributed to party decline, limiting party involvement in elections which favoring other forms of political activity. Thus, in 1972, 2 years before Congress established the current system of campaign contribution and expenditure limits, political parties provided approximately 17 percent of the contributions to candidates for the House of Representatives. Just 10 years after the landmark amendments to FECA in 1974, and despite historic fundraising efforts by both political parties, political party contributions to House condidates have fallen to less than 3 percent of total contributions, and the situation in the Senate was even worse.

Part of this decline was caused by the unrealistically low limits which FECA placed on party contributions to congressional candidates—limits which have not been raised since they were first passed in 1974. State and local political parties have been particularly constrained by Federal election laws.

During the same period that the party role in campaign finance has been declining, the number of non-party political action committees increased from 608 to 3,525, and the value of PAC contributions to congressional campaigns increased from $11.2 million in 1974—16 percent of total contributions—to $102 million in 1984—29 percent of all contributions. This does not mean, as we so often hear, that PAC's are corrupting our electoral system or brazenly undermining the integrity of the legislative process. So long as we require adequate disclosure—which we do—PAC's are a legitimate an constitutionally protected form of public involvement in the political arena. The problem with PAC's and other expressions of the current interest group explosion is that they encourage citizens and Congress alike to deal with complex issues on a parochial, ad hoc basis. They encourage us to look at every problem in simple terms of "what's in it for me, right here, right now." They make it easy to avoid, if only temporarily, the tough but unavoidable decisions we all must make to reconcile our competing goals with the resources available and to consider how our individual interests fit within a framework of the broader interest of society at large.

This problem cannot be solved by simple patchwork solutions like the Boren amendment, which futilely attempt to lower the limits on PAC contributions. To address such issues, the parties must be actively involved. They begin the process of building coalitions, of identifying areas or consensus, of focusing attention on priorities. Far from limiting the role of parties in our electoral process, as we have done in recent years, we should be raising and removing limitations on party contributions in campaigns.

I want to emphasize that this is not a matter of partisan advantage or debate. Although many Democrats believe they have some catching up to do in terms of fundraising, leaders of both parties are in agreement on the basic goal of easing limitations on effective party competition. As former DNC director Eugene Eidenberg expressed it:

The political process should be regulated by government only to the degree necessary to insure the integrity and legitimacy of its results. I support the principle of political parties being free to make unlimited expenditures in behalf of their candidates.

Or, in the words of RNC Chairman Frank Fahrenkopf:

There is a legal limit on what each party can contribute to its candidates. As the cost of campaigns continues to grow, the percentage of funding from non-party sources must and will continue to grow. If the concern is really on the amount of money going to candidates from PAC's, a simple logical solution is readily apparent. There should be no limit on the amount political parties can spend or contribute to candidates for public office.

The important point is that enhancing the electoral roles of our political parties provides the surest way of improving communications between citizens and their elected officials, of promoting greater public confidence in our electoral system, and of protecting the performance and integrity of the legislative process. That case is convincingly made in the accompanying report.

Mr. President, I ask that the introductory chapter from this report, entitled "Federalism and American Politics: New Relationships in a Changing System," be printed in the RECORD.

The material follows:

CHAPTER 1

FEDERALISM AND AMERICAN POLITICS: NEW RELATIONSHIPS IN A CHANGING SYSTEM

American political institutions have undergone enormous changes in recent years, changes of such magnitude that prominent scholars now speak regularly of a "new" American political system, the "changing" American voter, the evolution of a of a "new Congress," "transformations" of the American party system, the rise of a "new federalism," and the "nationalization" of state government.[1] If one attempted to distill a single message from such works, it might be that government—especially at the national level—is doing more, yet people seem to be enjoying it less. Power is more widely and, in some ways, more democratically dispersed, yet public confidence in governmental institutions is down, participation in elections has declined, and people's sense of political efficacy has diminished.

One area in whcih these trends of change and underlying discontent are particularly evident is that of federalism and intergovernmental relations. Changes in intergovernmental relations have been so substantial that some respected scholars now believe the United States no longer has a truly federal form of government but has become instead a decentralized unitary state.[2] Al-

[1] See "The New American Political System," Anthony King, ed. (Washington: American Enterprise Institute, 1978); Norman Nie, Sidney Verba, and John Petrocik, "The Changing American Voter" (Cambridge, MA: Harvard University Press, 1976); "The New Congress," Thomas Mann and Norman Ornstein, eds. (Washington: American Enterprise Institute, 1981); Everett C. Ladd, Jr. and Charles Hadley, "Transformations of the American Party System" (New York: W.W. Norton, 1975); Michael Reagan, "The New Federalism" (New York: Oxford University Press, 1972); and "The Nationalization of State Government," Jerome Hanus, ed. (Lexington, MA: D.C. Heath, 1981).

[2] See for example, Theodore J. Lowi, "Europeanization of America? From United States to United State," in Theodore J. Lowi an Alan Stone, eds., "Nationalizing Government: Public Policies in America" (Beverly Hills, CA: Sage Publications, 1978); and Stephen L. Schechter, "The State of American Federalism in the 1980s," in Robert B. Hawkins, Jr., ed., "American Federalism: A New Partnership for the Republic" (San Francisco: Institute for Contemporary Studies, 1982).

though this diagnosis may be premature, both structural and political centralization have occurred in the federal system. Most attention to date has focused on the former: structural changes in the scope, methods, financing, and degree of intergovernmental sharing of public services. Developments in this area have been studied and documented extensively by this Commission, among others, in its treatments of The Intergovernmental Grant System; The Federal Role in the Federal System: The Dynamics of Growth; and Regulatory Federalism: Policy, Process, Impact, and Reform.[3] In depicting the evolution of intergovernmental relations beteen 1960 and 1980, such studies have traced, among other things:

The expansion of federal involvement into virtually all existing fields of governmental activity—including many of the most traditionally local ones—and the stimulation of new public functions;

The relative shift in the locus of policy initiation and decision making to the national level;

The growing number and expenditures of federal grants to state and local governments;

Increased state and local financial dependence on federal aid;

The growing tendency of federal aid to bypass states and go directly to a multiplicity of local governments;

The creation and rapid expansion of new and increasingly intrusive forms of federal regulation of state and local governments; and

The expanded caseload, reach, and nationalizing thrust of the federal judiciary.

These developments have strengthened the role of the federal government vis-a-vis state and local governments. At the same time, such studies have also documented a number of countervailing tendencies that indicate areas of continued state and local vitality and opportunities for independent decision making:

Increased federal assistance has been accompanied by, and has helped to stimulate concomitant growth in state and local spending and employment.

State and local governments have greatly expanded hearing involvement in certain federally inspired activities like public employment, job training, and many aspects of environmental regulation.

State and local administrators continue to dominate the actual delivery of most domestic services.

Dramatic extensions of civil rights protections and the reapportionment of state legislatures have made state governments far more representative of their citizens.

State and local governments have substantially expanded national lobbying efforts using public interest groups.

The cumulative impact of multiple grants to individual state and local governments sometimes produces greater fiscal flexibility and discretion.

The consolidation of many narrow categorical grants into broader and more flexibile block grants has helped mitigate some of the negative effects of the federal aid system in certain areas.

Nevertheless, most observers agree that the net effect of recent developments in intergovernmental relations has been strongly centralizing in character, and the relative extent of state-local autonomy in the federal system has diminished.

Alongside such structural developments has been a set of complementary changes in the political process that has not yet been studied extensively. The dimension of political change involves far-reaching alterations in the conduct of the American political system that has permitted and propelled structural changes and centralization. Such political changes focus, above all, on the diminishing influence and role of political parties and on the rise of competing, often national, political groupings, institutions, and processes.

Because America never had ideologically coherent, mass membership parties on the European model, political scientists generally think American parties are relatively weak and loosely organized bodies. Yet, the party system traditionally has been the single most important political institution in American politics. This central role was most clearly illustrated by the large urban machines, but the importance of political parties extended well beyond the cities.

In the late 19th century, political parties mobilized the electorate so fully and effectively that they were compared to "armies drawn up for combat."[4] At that time, parties dominated the popular press, controlled large numbers of government positions, and—through parades, clubs, and gatherings—provided a major source of popular entertainment. More important, until the mid-20th century, American parties retained a paramount role in the most basic electoral functions of representative democracy: recruiting and nominating candidates for office, structuring debate on public issues, organizing and mobilizing the electorate, financing politics, and informing citizens about candidates and government policies. Consequently, it is not surprising that some of the earliest research in political behavior underscored the influence of parties at both ends of the representational process—in elections and in government. A citizen's identification with one or the other political party was found to be the single most important factor in predicting how an individual would vote,[5] while in Washington, a representative's party affiliation was found to be the best indicator of what his position would be on majority of roll call votes.[6]

Most important for this study, the structure of traditional American parties was intimately linked to the maintenance and operation of the federal system. American parties were traditionally organized in a highly decentralized manner. Indeed, less than 30 years ago a major authority on parties declared that:

There is perhaps no point on which writers on American politics are so . . . agreed as that our state and local party organizations, taken collectively, are far more powerful than our national party organizations. As Professor Macmahon put it, "Considered nationally, political parties in the United States may be described as loose alliances [. . . of state and local party organizations] to win the stakes of power embodied in the Presidency."[7]

Under this system, politicians in the national government owed their election to state and local party organizations and were closely attuned to the vagaries of local politics. "In the United States," wrote Edward Banfield and James Q. Wilson, "the connection between local and national politics is peculiarly close. . . . Congressmen and Senators are essentially *local* politicians, and those of them who forget it soon cease to be politicians at all."[8]

Accordingly, the party system provided broad channels for representing the interests of state and local officials in national policy making and strong mechanisms for protecting those interests in the political arena. As Morton Grodzins expressed it:

The parties . . . disperse power in favor of state and local governments. . . . States and localities, working through the parties, can assume that they will have an important role in many national programs. . . . [They] are more influential in federal affairs than the federal government is in theirs.[9]

In addition to enhancing state and local influence on federal policy, the absence of coherent parties on the national level was viewed as a critical obstacle to federal legislation and activism in many program areas. Thus, the decentralization of American parties was credited by Grodzins and other prominent scholars with shaping and preserving the federal system itself:

The nature of American political parties accounts in largest part for the nature of the American governmental system. The specific point is that the parties are responsible for both the existence and form of the considerable measure of decentralization that exists in the United States.[10]

Current treatments of American parties and politics depict a very different political system operating today. Though still important among voters, partisan identification has become increasingly attenuated. The number of citizens calling themselves "independents" has doubled over the past 30 years, and the incidence of voters crossing party lines to support candidates[11] of another party has risen precipitously. Party affiliation has eroded to the point that when citizens in a recent poll were asked to choose whether organized interest groups or the major political parties best represented their political interests today, 45 percent of the public chose organized groups and only 34 percent chose either of the two major parties.[12]

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[3] Advisory Commission on Intergovernmental Relations (ACIR), "The Intergovernmental Grant System," 14 vols. (Washington: U.S. Government Printing Office, 1977-1978); ACIR, "The Federal Role in the Federal System: The Dynamics of Growth," 11 vols. (Washington: U.S. Government Printing Office, 1980-81); ACIR, "Regulatory Federalism: Policy, Process, Impact, and Reform," A-95 (Washington: U.S. Government Printing Office, 1984).

[4] Walter Dean Burnham, "Critical Elections and the Mainsprings of American Politics" (New York: W.W. Norton, 1970), p. 72.

[5] Angus Campbell, et al., "The American Voter," abridged edition (New York: John Wiley and Sons, 1964).

[6] Julius Turner, "Party and Constituency: Pressures on Congress" (Baltimore: Johns Hopkins Press, 1951).

[7] Austin Ranney and Willmoore Kendall, "Democracy and the American Party System" (New York: Harcourt, Brace, & World, 1956), pp. 160, 161.

[8] Edward Banfield and James Q. Wilson, "City of Politics" (New York: Vintage Books, 1963), p. 2. Added emphasis.

[9] Morton Grodzins, "Centralization and Decentralization in American Federal System," in "A Nation of States," ed. Robert Goldwin (Chicago: Rand McNally, 1968), pp. 7, 9.

[10] Morton Grodzins, "The American System," ed. Daniel Elazar (Chicago, IL: Rand McNally, 1966), p. 254.

[11] Everett Carill Ladd, "Where Have All The Voters Gone?" (New York: W.W. Norton, 1982), p. 78.

[12] ACIR, "Changing Public Attitudes on Government and Taxes, 1983," S-12 (Washington, DC: U.S. Government Printing Office, 1983), p. 3.

Moreover, party organizations have lost major elements of their traditional functions to other, often national, political institutions:

Party control over nominations for elective office has been sharply eroded by the growth of primaries.

Voter contact is now dominated by independent mass media and by new techniques like direct mail solicitations.

Expert assistance in conducting campaigns is increasingly provided by independent consultants.

Campaign finance is now frequently provided by nonparty sources; government, interest groups, political action committees, and by wealthy candidates themselves.

The already tenuous party role in Congress has been further strained by procedural reforms and by exploding numbers and new types of interest groups and associations seeking to affect policy in Washington.

Because political parties are generally viewed as important instruments of effective government and as crucial vehicles of citizen participation and representation in modern, large-scale democracies, these developments have raised many concerns about the future of democracy in a period of party decline. Moreover, to the extent that an active and decentralized party system has helped maintain intergovernmental balance in the federal system, the erosion of political party influence has eliminated important avenues of influence for state and local officials in the political process and undermined their traditional leverage over national policy making. Not only have established channels of influence been foreclosed, but competing political institutions like the mass media and new forms of interest groups appear to be more heavily national in orientation. The relative degree of political decentralization has been further undermined as the national government and the federal courts have become more active in financing and regulating politics. Finally, where parties have successfully modernized and reversed their organizational decline, reforms often have been led by the national party organizations. Especially in the Democratic Party, this appears to have reduced the relative degree of decentralization in the party itself.[13]

Among proponents of federalism, therefore, the fear has been expressed that state and local officials may be losing the ability to influence decision making in Congress effectively. Such a loss would undermine a key component in the Constitutional design of checks and balances. As Dr. Robert Hawkins has suggested:

* * * the influence of state and local political leaders within both parties has waned. * * * Congressmen and Senators no longer feel the need to work within state party systems. This weakening of state and local influence has also been seen in Washington, where our elected representatives do not feel the real need to consult local party leaders on the development of policy and legislation.[14]

If this diagnosis is correct, then diminished state and local party influence in Congress comes at an ironic moment for the system. In 1985, the Supreme Court overturned an earlier decision establishing constitutional limitations on Congress' ability to regulate the states.[15] In *Garcia* v. *San Antonio Metropolitan Transit Authority*, it ruled that states are not constitutionally protected from intrusive national legislation by the Tenth Amendment, but rather by the "structure of the federal government" and by the corresponding political process which "insures that laws which unduly burden the states will not be promulgated." [16] In so ruling, the Court removed itself as an arbiter of future controversies pitting the Congressional power to regulate interstate commerce against state sovereignty claims. Paradoxically, then, states and localities have been abandoned to the political fray at the moment when their ability to effectively represent themselves in that arena may have reached an historic low.

These concerns about the scope and ultimate ramifications of political change and centralization form the subject of this study on Transformations in American Politics and Their Implications for Federalism. This volume will examine the historic role played by parties in our governmental system and track its evolution over time, focusing especially on those developments affecting state and local party organizations and their relative position vis-a-vis national party structures. It will trace the rise of competing political institutions that have assumed traditional party functions and explore the growth of new forms of political and electoral behavior—from new sources of campaign finance to new means of organizing and conducting campaigns. It will examine the effects of these developments on the relationships between elected officials and their constituents and between national and state-local politicians, seeking insights into the effects of these changes for intergovernmental policy making.

Ultimately, the study seeks to assess the implications of these developments for the maintenance of federalism and for public participation and influence in politics and policy making generally. As the influence of state and local political institutions wanes, important avenues of public participation may wither. Indeed, to the extent that local governmental and political bodies constitute "training schools of democracy," as de Tocqueville put it, the civic foundations of democratic government may be adversely affected by these political developments. The erosion of federalism's role in the political system—providing a territorial dimension to representation that is distinct from the functionalism of interest group pluralism—may also rob governing bodies of a useful and important perspective in the making of public policy.[17] Thus, the stakes in the evolution of American politics extend beyond issues of distributing power and influence among the different levels of government, ultimately addressing the wellsprings and vitality of democracy itself.●

[13] See, for example, Leon Epstein, "Party Confederations and Political Nationalization," Publius 12 (Fall 1982).

[14] Robert B. Hawkins, Jr., "Conclusion: Administrative versus Political Reform," in Hawkins, ed., *American Federalism: A New Partnership for the Republic*, p. 249.

[15] *National League of Cities* v. *Usery*.

[16] *Garcia* v. *San Antonio Metropolitan Transit Authority*, 53 LW 4135 (1985).

[17] Samuel H. Beer, "Federalism, Nationalism, and Democracy in America," American Political Science Review 72 (1978).

CHEMICALS IN THE OZONE LAYER

● Mr. STAFFORD. Mr. President, in about 6 weeks, negotiations will begin in Geneva, Switzerland, on an international agreement which could decide the future of a family of chemicals with a virtually unpronounceable and forbidding name: chlorofluorocarbons, commonly called CFC's.

These chemicals destroy the ozone layer. There is so little scientific disagreement on this fact that even the DuPont Corp., the leading U.S. manufacturer of CFC's, has conceded the fact.

CFC's also are a greenhouse gas. By that I mean that they rise into the upper atmosphere where they act like panes of greenhouse glass, trapping warmth. The Earth's temperature has already increased by as much as 1 degree and is predicted to rise much further, depending on whether mankind takes some action.

CFC's are valuable to humanity. They are widely used for air conditioning, refrigeration, the manufacture of foam insulation and cushions, and a wide variety of other items.

But for all of their good uses, there are others about which one could raise some questions, such as flash-freezing corn on the cob.

But good or bad, CFC's destroy the ozone layer and increase the Earth's temperature. It may be that these effects are not much of a problem. On the other hand, it may turn out that they are a problem of monstrous proportions. We do not know. We cannot know. The level of the risk which humanity is running as long as it continues along the path of inaction toward CFC's and the other compound which contribute to ozone depletion and global warming is immeasurable.

When negotiations begin in Geneva, several proposals will be on the table. There may be one to limit production to present levels. Another to limit it to peak-year levels. Others may propose limits on the rate of increase of production and use, rather than absolute ceilings.

But one proposal is not on the table, and I must ask why. That proposal would be to eliminate the production of CFC's altogether by a date certain.

This would be a difficult task. But it would not be impossible. This is, after all, a chemical which existed not at all 50 years ago. It appears nowhere in nature, and used wholly by man, exclusively for the purposes of the human race.

And some of those uses are important. Refrigeration makes it possible to avoid the loss of billions of dollars in spoilage, and undoubtedly saves thousands and thousands of lives. But, Mr. President, the body of evidence implicating CFC's in damages of global magnitude is growing in both bulk and persuasiveness.

Some of this evidence includes the following:

Every spring, a depletion "hole" opens in the ozone layer over the Antarctic. The ozone hole has been growing steadily, and is roughly the size of

the North American continent. It cannot be explained by any currently established scientific theory, nor is it consistent with the model predictions. But it is real, because it has been measured by ground instruments and confirmed by satelite observations.

Recently, another hole, similar to, but smaller than that at the opposite pole, appears to be opening over the Arctic.

Other studies indicate that a small, but significant, decrease in ozone levels may have occurred over the past several years over the entire globe.

Measurements indicate that the Earth's temperature has probably increased about 1 degree in the last century due to humanity's activities. Nearly all of such an increase would be attributable to trace gases other than CFC's, but scientists have recently concluded that they would account for up to one-third of the future increases.

Most of the CFC's have an atmospheric residence time of between 75 and 125 years.

After bottoming in 1975 due to concern over their use in spray cans as aerosols, worldwide production and use of CFC's has steadily increased and has now returned to peak levels.

Scientists cannot predict with precision the consequences of either a worldwide warming trend or a decrease in the thickness of the ozone layer. But they can characterize the potential consequences generally. They could include increases in a variety of skin diseases such as melanomas and nonmalignant cancers; increased mortality of the shellfish larvae and other aquatic organisms; and crop damage.

If the global warming trend were to continue unabated, "supercomputer" models have predicted that the breadbaskets of the world located in North America, Europe, and the Soviet Union would experience dustbowl conditions similar to those of the 1930's in the Southwest. What else might happen, we can only speculate. Oceans might rise due to thermal expansion or glacial melting, flooding lowland agricultural areas and wiping out entire ecosystems.

Mr. President, relatively little has been accomplished in the United States in terms of concrete progress toward solving any of these problems. But however little this country may have done, it is vastly more than the rest of the world. The United States has, at least, banned the nonessential use of CFC aerosol propellants. And what may in the long term prove to be more important, this country has maintained an active and reasonably well-funded research program.

But this is as it should be. The United States is the country that gave CFC's to the world. We have benefited enormously from them, in terms of both money and well-being. From that perspective, it would seem to some that perhaps the United States has a special obligation.

Frankly, Mr. President, it is politically difficult to suggest that consideration should be given to phasing out the manufacture of CFC's. But hard questions are the ones which deserve to be asked.

Perhaps it is beyond the capacity of this world and this society to eliminate CFC's. Perhaps it is not necessary to do so. But we will never know the answer to either of those questions, or hundreds of others, unless the basic question confronting the world's policymakers is put squarely to them.

Mr. President, during the period from the end of this Congress and the beginning of the next, I will be seeking my own answers to these questions. But in the interim, I believe it would be helpful to this country, and the world, if the question were also put to the international community as well. The time and place for that to happen is in Geneva 6 weeks from now.●

NAUM AND INNA MEIMAN: LET THEM GO

● Mr. SIMON. Mr. President, as this session of Congress comes to an end, I am saddened that the case of Naum and Inna Meiman has not been resolved. Every day, since March 6, 1986, I have made a statement on behalf of the Meimans in the hope that the Soviets would release this couple. Although I will not be able to make statements on the floor of the Senate while we are out of session, I will be doing all that I can to work on this case.

Inna is critically ill and may not be alive when the Senate convenes in January. For humanitarian reasons, I implore the Soviets to allow Inna and Naum to emigrate to Israel so that Inna may obtain treatment for her cancer.

In recent days, we have seen gestures of humanitarianism from the Soviets. We are pleased to see the release of David Goldfarb, Tanya and Benjamin Bogolmolny, and Inessa Frelov, who will be able to either receive or give medical treatment. The case of Inna Meiman is similar.

I strongly encourage the Soviets to allow Inna and Naum Meiman permission to emigrate to their homeland, Israel.●

FARM BANKRUPTCY TECHNICAL CORRECTION

● Mr. GRASSLEY. Mr. President, the conference report on the Bankruptcy Judges, U.S. Trustees, and Family Farmer Bankruptcy Act of 1986, H.R. 5316, is awaiting the President's signature. I sincerely urge him to sign it into law because it is urgently needed by our family farmers.

But in reviewing the conference report, I have noticed a technical, typographical error in the farm bankruptcy section, that merits at least a mention now, and a technical correction amendment next year.

The error is in section 1228, the "discharge" section. In this section, there are three references to section "1228(b)(10)." This should instead read "1228(b)(9)." Mr. President, this is simply a transcribing error, not found in earlier drafts worked on by the conferees.

I have raised the fact of this typographical error with Representative SYNAR, the chief House sponsor, and he agrees that this is an inadvertent mistake.

Mr. President, while this could be a significant problem if left uncorrected, I would point out that this typographical error would have no practical impact for at least 3 to 5 years, since no eligible farm debtor will go through a discharge before that time. Long before the discharge section is at issue in a chapter 12 case, we will make the appropriate technical correction.●

ADOPTION EXPENSES DEDUCTION

● Mr. HUMPHREY. Mr. President, one of the great accomplishments of the 99th Congress is the tax reform bill which will soon be sent to the White House for President Reagan's signature. I supported tax reform, but I have serious concerns about the immediate effect one of the provisions will have on adoptive parents.

Current law provides an itemized deduction for up to $1,500 of expenses incurred by an individual in the legal adoption of a child with special needs. Deductible expenses include reasonable and necessary adoption fees, court costs, and attorney fees. The criteria in the adoption assistance program authorized under title IV-E of the Social Security Act are used to define "a child with special needs." Generally, these are older children, those in sibling groups, children who are mentally, physically or emotionally disabled, or children who belong to minority groups.

The current deduction was authorized under the Reconciliation Act in 1981, when Congress recognized the need to remove the barriers to adoption of the large numbers of children in foster care in this country. The limited deduction was intended to encourage, and reduce the financial burdens in connection with, the adoption of children who have special needs.

Because of limitations in available data, we do not know exactly how many adoptive parents have utilized

the adoption expenses deduction. But we do know the number of special needs adoptions has risen in recent years, and the number of children in foster care has dropped. Undoubtedly many factors have contributed to this progress in special needs adoptions, but clearly the tax deduction helps reduce one important barrier to adoption, the cost.

The Senate tax reform bill retained the current adoption expenses deduction, but the conference agreement followed the House bill in repealing the deduction. In place of the deduction, the agreement amends the adoption assistance program in title IV-E of the Social Security Act to provide matching funds as an administrative expense to reimburse adoptive parents for their one-time adoption expenses when they adopt, in accordance with State and local law, a child with special needs.

The repeal of the deduction takes effect for taxable years beginning with 1987 and the direct payment substituted for the deduction is to be effective for adoption expenditures made after December 31, 1986.

My concern is that although adoptive parents will lose the tax deduction immediately, the new system under which States will directly reimburse parents for adoption expenses is a long way from being in place. The Federal Government, State title IV-E adoption assistance agencies, and private adoption agencies will all be involved in working out procedures to guarantee reimbursement to eligible adoptive parents. Arrangements and agreements to establish these procedures have yet to begin and according to adoption experts, the Department of Health and Human Services will have to issue regulations under the title IV-E adoption assistance program. I have no doubt that those involved have the best of intentions, but the wheels of bureaucracy may not be able to move fast enough to ensure that those entitled to reimbursements will receive it in a timely fashion.

Financial considerations are a necessary concern for parents who adopt any child. The adoptive parents entitled to this reimbursement are the individuals and couples who give a permanent home to children who need it most. They are people who are willing to take on large responsibilities in order to build a family and bring joy to a child who needs a home. We recognize that we need to remove the financial barriers which keep these children, especially those in need of medical and psychiatric care, from permanent adoptive homes. The new reimbursement plan could go a long way toward removing this barrier for some of these families and children. Unwittingly because of the necessary delay before the plan can be implemented, we may be leaving these families and children out in the cold with no help financially.

The current adoption expenses deduction was straight forward and simple and procedures and forms were well established under the Tax Code. It is my understanding that the new system of direct reimbursement is anything but simple. It had been my hope that the final tax agreement would provide a transition period during which the deduction was retained until procedures for direct reimbursement were established. This would have guaranteed that adoptive parents would not suffer a delay while administrators struggle to develop a reimbursement system. There is no transition period in the tax bill.

As a cochairman of the congressional coalition on adoption, I simply want to raise these concerns and urge those who are responsible for working out the new reimbursement system to move quickly, to ensure that adoptive parents do not have to endure a costly wait. I look forward to learning of their progress during the coming months, and pledge my cooperation if I may be of assistance in any way in their efforts.●

ORDER OF PROCEDURE

Mr. STEVENS. Mr. President, has my good friend from Hawaii anything further or any business he wishes to conduct?

Mr. MATSUNAGA. No.

ORDERS FOR SATURDAY

RECESS UNTIL 11 A.M.

Mr. STEVENS. Mr. President, if there be no further business to come before the Senate, I ask unanimous consent that once the Senate completes its business today, it stand in recess until the hour of 11:00 a.m., on Saturday, October 18, 1986.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. STEVENS. Mr. President, following the recognition of the two leaders under the standing order, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond the hour of 11:30 a.m., with Senators permitted to speak therein for not more than 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. STEVENS. Mr. President, at 11:30 a.m., the Senate will turn to the consideration of any legislative or executive calendar items cleared for action. A number of items have been cleared and will pass by unanimous consent. Rollcall votes will not occur, and the Senate is not likely to be in session late on Saturday afternoon.

I am informed that the Senate will adjourn sine die mid- or late-afternoon on tomorrow, which will be good news for all of us.

Mr. MATSUNAGA. Speaking for those on this side, certainly it is good news.

RECESS UNTIL 11 A.M. TODAY, SATURDAY, OCTOBER 18, 1986

Mr. STEVENS. Mr. President, if there be no further business to come before the Senate, I ask unanimous consent that the Senate stand in recess in accordance with this order we have just entered.

There being no objection, at 12:48 a.m., the Senate recessed until today, Saturday, October 18, 1986, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate October 17, 1986:

FEDERAL HOME LOAN BANK BOARD

Lawrence J. White, of New York, to be a member of the Federal Home Loan Bank Board for the term of 4 years expiring June 30, 1990, vice Mary A. Grigsby, resigned.

EXTENSIONS OF REMARKS

DAUGHTERS OF JACOB GERIATRIC CENTER—A CENTER FOR LIFE: 90 YEARS OF HUMANITARIAN SERVICE

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. BIAGGI. Mr. Speaker, it is my pleasure to rise before you today to pay special tribute to a very special organization in my congressional district of the Bronx, NY. On November 10, the Daughters of Jacob Geriatric Center will celebrate their 90th anniversary. This special occasion will be observed in grand style, but I would like to take this opportunity to share with my colleagues how very special I think the center is to the people of the Bronx.

In my capacity as chairman of the House Select Committee on Aging's Subcommittee on Human Services, I have had the opportunity to witness firsthand the many different facilities available for care of the elderly, especially the frail elderly. Daughters of Jacob, which is recognized as one of the finest geriatric centers in this Nation and rates in the top ten in New York, is a very unique institution. Daughters of Jacob, a nonprofit, voluntary nursing home, offers a positive alternative for elderly people; it offers high quality, compassionate medical care, a beautiful and secure environment, and a stimulating life with people of common interests.

Caring for the elderly has been a tradition of the people of Israel since Biblical days. It was the motivation, as well, of Mrs. Bertha Dworsky in 1896 when she founded the home. At that time her objective was to provide a haven for the elderly from homelessness, loneliness, and hunger. A house at 40 Gouverneur Street on the Lower East Side of Manhattan was the first establishment and housed 19 residents. As the reputation of the home spread, new quarters were opened at East Broadway. As New York City's Jewish population grew, it became apparent that larger quarters were a necessity. A plot of ground was purchased in the Bronx in 1913 and plans for a new home were made.

The new facility was opened in 1920 at a cost of $1,250,000. In 1938 a floor was added and the home and hospital of the Daughters of Jacob was prepared to serve 600 patients and residents. The present Daughters of Jacob nursing home was opened in 1973. It consists of a modern, 13-story, 515-bed structure, 305 skilled nursing beds and 210 health related beds. The facilities also include the Weintstein-Ratner Pavilion and Findlay Plaza, a senior citizen apartment complex designed for the independent elderly over 65 years of age.

A dedicated staff of more than 500, including physicians, nurses, therapists, and aides, provides the highest standard of care. Some of the special services available within the center include audiology, dentistry, dietary, electrocardiography, occupational therapy, optometry, pharmacy, physical therapy, podiatry, pyschiatry, social work services, speech therapy, and leisure time and recreation activities. However, in addition to the staff, I would like to pay special attention to the volunteers at Daughters of Jacob who bring an additional human dimension to the lives of the patients and residents of the center. Among the volunteer services performed by volunteers are feeding patients, transporting them to clinics and special events, assisting staff with nursing occupational therapy, reading aloud, writing letters and managing a gift shop. The volunteers come from varied backgrounds and range in age from 14 to 80. Their participation in the daily life of the center enhances its entire atmosphere. Of special note is the guild and the mother's day group. These organizations raise funds to provide gifts and such amenities as art work to brighten the lives of our elderly patients and residents.

There is no doubt whatsoever that Daughters of Jacob fulfills a special need in our community today. Its expert staff, services, and facilities and most importantly, its atmosphere of caring combine to make it a real home for its patients and residents. At the center, it is possible for aging men and women to regain their abilities and maintain activity—in short, to continue life as independently as possible, with the greatest dignity and to enjoy themselves in the process. I salute the Daughters of Jacob Geriatric Center, its staff, its president, Ms. Claire Vogelman under whose leadership the center has flourished, its volunteers, and its residents and patients. For 90 years, the frail elderly have been sustained and enriched by the creative, meaningful, and innovative work of this long-term care institution and for 90 years the center has helped lead the effort to ensure quality of care and continuing opportunity for an ever-increasing population of older men and women. May I take this opportunity to wish them many more years of success and humanitarian service.

HONORING A PRO-LIFE INDIVIDUAL

HON. JOE KOLTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. KOLTER. Mr. Speaker, I am pleased and proud to stand before the full U.S. House of Representatives and honor an outstanding individual from the 4th Congressional District of Pennsylvania who has toiled long and hard to promote the cause of the Pro-Life movement and the Catholic Church.

Mr. Ross Cosentino of Beaver County, an Italian immigrant, has traveled to Washington, DC, many times over the past 15 years to help protect the life of the innocent. Ross, who is now 87 years old, is a fervent spokesman for the unborn and has coordinated over 15 bus trips to this city to bring thousands of individuals here to support this worthy movement.

In the last 10 years, Ross Cosentino has formed one of the strongest Pro-Life organizations in Pennsylvania, distributing over 40,000 Pro-Life bumper stickers and selling more than 20,000 "Red Rose" Pro-Life appliques. His group has sponsored more than 250 Right-To-Life billboards and supplied every Catholic Church in the Beaver Valley area with a "Respect-for-Life" bulletin board.

Mr. Speaker, all of this and more has been accomplished through the strength, energy and selfless dedication of Ross Cosentino, who deeply cares for the unborn.

That, sir, is why I am pround to stand here today and honor this outstanding individual who has committed a lifetime to promoting the Pro-Life cause. His efforts should not go unnoticed because of the numerous innocent lives he has protected.

IN HONOR OF REPRESENTATIVE JOHN SEIBERLING

HON. J.J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 8, 1986

Mr. PICKLE. Mr. Speaker, every now and then someone comes along who won't be deterred, kept quite, or pushed aside when he is in pursuit of a good cause. JOHN SEIBERLING is such a man. No amount of pressure, coercion, intimidation ever deterred JOHN SEIBERLING from saying his piece.

JOHN SEIBERLING does not go around picking fights or causing trouble. He always speaks from principle, with a high sense of integrity. His legal training and other high qualities made him the perfect "watch dog" of human dignity.

Whether the subject was a constitutional question or about human rights, JOHN SEIBERLING could instantly and eloquently challenge any statement of prejudice or bigotry.

As chairman of the Subcommittee on Public Lands, he has presided over the preservation of more Federal lands and the creation of more Federal parks and recreation areas than anyone in this body—with the possible exception of Phil Burton.

Indeed, I remember a story JOHN SEIBERLING passed along to me about a conversation he had with Phil Burton. The question was raised, why stay as chairman of the Subcommittee on Public Lands. To which, Burton replied, "When you look back over your years of

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

service, you can see Federal lands that you have preserved or parks and recreation areas that you have established that will last forever for future generations, and how better can you be remembered? If you can preserve your environment and the right of future generations to enjoy your environment, you will have no more lasting affect on your times."

Both JOHN SEIBERLING and Phil Burton believed that, and they were both right.

Mr. Speaker, it's been Beryl's and my pleasure to travel with JOHN and Betty SEIBERLING as we participated in Interparliamentary Union meetings. JOHN SEIBERLING was always a standout in our discussions. He knew our country's positions on the various issues and how to negotiate. Morever, JOHN also is an indefatigable photographer, and I'm glad he was able to record many of our trips and gatherings.

JOHN and Betty are classy people, and we extend our love and appreciation to this couple as they leave the Congress.

A TRIBUTE TO THOMAS EAGLETON

HON. RICHARD A. GEPHARDT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. GEPHARDT. Mr. Speaker, I rise today to pay tribute to a statesman in every respect, THOMAS EAGLETON. He has been a strong leader of the Missouri delegation and it has been my privilege to have served with him. TOM has served as an example to me during my public service. His knowledge and compassion have served as an inspiration.

Although he leaves the Senate, his legacy will live on forever. He has served his country well under peaceful, prosperous times and under turbulent times that tested the will of our people. Throughout, TOM stood ready to accept the challenge, to create public policy that has contributed to the well-being of our Nation. And it is with sadness that I, the people of Missouri, the citizens of our country, and all of TOM's colleagues bid him farewell.

TOM's unique qualities—his great sense of humor and his strong desire for justice—have allowed him to carve a very special place for himself in the Senate. Republicans and Democrats, liberals and conservatives, admire him. The nature of politics is confrontational. Often harsh, emotional words are exchanged. But TOM always chose his words carefully. Yet he always had the courage to speak his mind whether he was condemning our involvement in Vietnam or criticizing judicial appointees. At the end of a debate, he could walk away still having earned his colleagues' respect and admiration.

Washington University in St. Louis, TOM's next step, is extremely fortunate. He will bring a thorough understanding of Congress and politics to hundreds of students. By touching their intellectual souls. TOM will begin where he leaves off in the Senate. I trust TOM's enthusiasm, his love for our country, his wit and political insights will rub off on all he comes in contact with at Washington University.

TOM once said, "A nation's greatness is not found in the accumulation of dollars, of material wealth, or of armaments. A nation's greatness is found in the character of its people." Yes, this is certainly true. All we have to do is take a look at TOM to realize why our Nation is the greatest in the world.

TOM's friends and colleagues wish him great luck and success in his new endeavor. And I hope we, as a Nation, can continue the quest he began many, many years ago and spoke of in 1968. "Our country must redirect its attention to concern over the character and spirit of the people. Our quest cannot be simply for temporal luxuries, but for the eternal values of truth, peace, brotherhood, and social justice."

We are a few steps closer to this goal because of THOMAS EAGLETON.

ELIE WIESEL: A MAN OF PRINCIPLE

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. RANGEL. Mr. Speaker, I am very pleased to rise to commend Elie Wiesel, the 1986 Nobel Prize laureate.

If anyone deserves this prestigious award, it is Elie Wiesel. He has been a champion of human rights and freedom since his release from the Nazi death camp at Buchenwald. His life's work has been "to bear witness to testify" on behalf of those who died during the Holocaust, and in support of those who suffer under modern repression. Elie Wiesel is indeed a man of strong ideals and honorable convictions.

Mr. Wiesel is a professor of humanities at Boston University, and is the recipient of 25 honorary degrees. He is president of the International Remembrance Award committee and chairs the U.S. President's Commission of the Holocaust. Survivors of the Holocaust have looked to him as a moral symbol of courage and strength.

Mr. Speaker, I was pleased to join my colleagues over the years in calling for Mr. Wiesel's nomination. We wrote letters to the Nobel Committee, and I would like to think that we spread the word about his outstanding work. I have been proud to play a small part in the Nobel Committee's decision, and truly believe that they chose the best person for this honor.

I congratulate Elie Wiesel. All Americans rejoice in this very appropriate decision.

THE CUBA NEWS: "FAITH IN GOD AND COUNTRY, HOPE FOR OUR FUTURE AND CHARITY TO ALL"

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. RICHARDSON. Mr. Speaker, I want to take this opportunity to share with my colleagues an article that appeared in the October 20, 1986 edition of Time magazine entitled, "In New Mexico: A Very Local Point of View." The article highlights the hard work and dedication of the Cuba news staff, who, for the past 22 years have been bringing the local community news to the people of Cuba, NM.

Mr. Speaker, when the first issue came out on April 6, 1964, a front-page dedication to "faith in God and country, hope for our future and charity to all," has been a motto that Cuba News staffers have published in each succeeding issue. On behalf of the people of the great State of New Mexico, I want to say thank you to the past and present Cuba News staffers who are bringing news and information to Cuba area residents. I hope my colleagues will take the opportunity to read this thoughtful piece:

[From Time, Oct. 20, 1986]

AMERICAN SCENE—IN NEW MEXICO: A VERY LOCAL POINT OF VIEW

(By Gregory Jaynes)

This was some time back, Betty Jane Curry was explaining, "back in the hippie days." A long-haired transient blew through town—the little town of Cuba in the mountains of northwestern New Mexico—and made the fatal mistake of sexually assaulting one of Cuba's young women. Betty Jane and her colleagues on the local paper, the Cuba *News*, thought this worthy of note, especially after a knot of vengeful Cubans had their way with the vagrant. Trouble followed publication. As Betty Jane put it: "The local fellows didn't like it at all that we printed their names."

It was one of the few times in the 22 years and six months since the first issue of the *News* was birthed that it found itself at the center of controversy. "They gave Marrietta a hard time over that one," Betty Jane said. Betty Jane is the monthly publication's typist.

"I guess from the very beginning we decided we didn't want to get in any trouble," said Editor Marrietta Standridge.

"In a town this size you can't afford to lose half your business," said Peggy Ohler, who is the paper's artist and Betty Jane's daughter.

"So that's always been our policy," said Marrietta.

"But there was the time some guys broke into the forest service office, and we printed their names, and everybody got incensed," Betty Jane said.

"Right," said Marrietta.

"Then some guy jumped off a bridge, and his parents were outraged that we printed it. He was strange when he jumped off, and he didn't get any better."

"We like to be definite in what we think," said Harriet Hernandez, assistant editor, "but we don't always print it."

"We can sit in here and mutter about it though," said Peggy, whose five-month-old, Jason, rode his mother's hip as easy as any other good Western lad ever sat a pinto. Jason is the only male connected with the paper, which draws its management and work pool from the 24-member Penistaja Homemaker's Extension Club. It was called the Penistaja Woman's Club when the first issue came out on April 6, 1964, with a front-page dedication to "faith in God and country, hope for our future and charity to all," an admirable aim that has appeared in each succeeding issue. Somewhere along the line, "Woman's" inexplicably got changed to "Homemaker's." No one seems to remember why the switch, but, in any event, small po-

tatoes; the newspaper has always been very much a homemade affair. It has been known to get put together on various kitchen tables.

Cuba is one of those low-slung New Mexican adobe towns, a wide spot in the road, really, up on the Colorado Plateau, in sight of the Jemez and the Nacimiento ranges of the Rockies. This time of year the country is golden with rabbit weed and chamiza (when the Spaniards first crossed these parts, they called it *tierra amarilla*, or yellow land), and the deep blue sky above it has no ceiling. In the first issue of the Cuba *News*—"the first edition of the first newspaper ever printed in this area"—an editorial declared that "we believe by letting the outside world know what is in 'them thar hill' that interest in this corner of God's Country will be born." Today the paper goes to 650 subscribers, including, according to Homemaking Editor Marie Stohr, "a woman that lives in Canada someplace, the sister of the lady that works at the café."

Autumn generally visits Cuba early, and Harriet had lighted a fire against the chill by the time the women arrived at her place to nail down September's issue. From 1915 until it closed four years ago, Harriet's place was called Young's Hotel. Built by her father John Young, it is hand-hewn pine and stucco, rough planks, notched banisters. Navajo plankets and deer heads on the walls—a set for any movie that goes by the name of *Stagecoach*. It had 16 rooms to let upstairs above the dusty front desk, rooms you let yourself into. "Our guests just went in the rooms and paid the next day," Harriet said. "Well, those days of leaving your door unlocked are gone." And so are the days of the hotel. Now it serves as a Trailways Bus stop (not a station; Harriet does not want the bother). A GO BIG RED sign out front announces the 7:15 a.m. to Albuquerque, the 8 a.m. to Farmington, the 8 p.m. to Albuquerque and the 11:55 p.m. to Farmington, with connections to Salt Lake City. On the third Tuesday night of each month, the Cuba *News* pages are put on the 11:55 bus and transported to Cortez, Colo., where the printer picks them up. Harriet will not stay up to meet the 11:55 bus anymore, so the women take the pages to a clerk at a local convenience store who gives them to the bus driver.

"Harriet was the second editor of the *News*," Marrietta, the present editor, said proudly as they settled into Young's Hotel to get the latest paper out.

"Now I don't even speak to them," Harriet said. She looked tickled with this biteless bark.

"Now, now," said Marrietta. "She helps in many ways."

Harriet: "Oh, I have a box here, and when people bring news in, I put it in the box."

The big news on this day, however, did not come from the box. A light plane that left Cuba for Taos a week before had disappeared. Also, Cuba had just voted, 84 to 68, to approve Sunday liquor sales. "Somebody was saying that you used to be able to buy enough on Saturday to carry you through," said Betty Jane, "and he doesn't see why they still can't do it that way." She added, "But the most exciting thing in the paper will be that if you won a blue ribbon at the county fair, your name will be in it."

Marie came in and announced that she had baked a German apple pie cake this morning, and it tasted good enough to publish the recipe. She remembered that her first recipe, in 1964, was a guide to making your own bath salts. Since then, she frets, she has used up all the recipes she can create as well as plagiarize. Nonetheless, she said, "I would hate to give this newspaper up. I had a birthday Saturday. I was 79. I've had two open-heart surgeries. I'm not about to stop doing anything I like to do."

On that last statement, so say all the other newspaper hands, all of them unpaid. It costs about $300 a month to publish the Cuba *News*. Any moneys above that go into the community, band uniforms for the high school and whatnot. With the exception of a rough period about three years ago, Cuba's merchants, whose immediate market numbers but a scant 1,500 citizens, have kept the *News* in the black with their advertising (full page, $50; half, $25; quarter, $12.50; want ad, $2). And even during that lean spot, when word got around that the paper might go under, advertisers who could ill afford it simply dug deeper and set things right.

Just as they should have. Remote, satellite dish-dotted America deserves its local news. Save for the gender of its staff (and undue attention to that nowadays is ground for flogging), not much distinguishes the Cuba paper from countless little presses in the land. It does its job. Its audience is grateful. People everywhere, with the possible exception of felons, like to be recognized: "Brett and Tammie Schultz Kelly are the proud parents of a baby daughter, and her name is Amber Marie. Congratulations!" Month after month it tells who visited whom, who was hospitalized, who died, who was born, who won the blue ribbons, the football game or election to the honor society.

The paper is not without philosophy: "Sin has many tools, but a lie is the handle that fits them all"; reminiscences: "In the old days when things got rough, what we did was without"; or advice: "Did you know that parsley, mint or orange peeling when chewed after eating raw garlic helps eliminate the odor? This is offered to those who eat raw garlic for its medicinal value." Nor does it shirk its responsibility to give the local government decisions, dates of meetings, subjects to be discussed—all the prosaic duties of journalism that are intended to make for an informed public.

More than anything, though, the Cuba News is a companion, unvarnished as a buckboard but just as sweet as certain aunts. It is also, however forgivably, a hair short on controversy.

AN OUTSTANDING SOLDIER

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. STARK. Mr. Speaker, I would like to congratulate Sfc. Dale Conner upon his becoming the Second U.S. Army Soldier of the Year. It is an important honor.

Every year the U.S. Army Forces Command sponsors a Soldier of the Year competition. Subordinate commands convene selection boards which the Second U.S. Army did March 13–14, 1986, in Atlanta, GA.

The winner, Sergeant Conner, was working with the Georgia Army National Guard when he received the award. Sergeant Conner graduated from Livermore High School, Livermore, CA, before joining the Army in 1972. He has served his country for over 14 years both in the United States and abroad.

As a result of this honor, Sergeant Conner will receive a trophy from the 48th Infantry Brigade and from U.S. Army Forces Command. He will also receive the Army Commendation Medal with 2d oakleaf cluster, for the third time.

Again, congratulations to the Second U.S. Army Soldier of the Year, Sfc. Dale Conner.

INTRODUCTION OF A BILL TO AMEND THE JONES ACT

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. BIAGGI. Mr. Speaker, I introduce today an important amendment to update the scope and clarify the application of the cabotage laws of the United States.

The traditional scope of the cabotage laws—as defined in the Merchant Marine Act, 1920—has been limited to transportation of merchandise originating and terminating between points within U.S. territory. For all practical purposes, this interpretation has been limited to activities occurring within the U.S. territorial sea. Certain activities defined in the Outer Continental Shelf Lands Act of 1953—occurring on the high seas on the Outer Continental Shelf—are deemed to be subject to domestic law. All other activities—occurring beyond the limits of the territorial sea—have been determined to be beyond the application of the cabotage laws as currently interpreted and applied. As ocean-based activities expand, the reach of domestic maritime law becomes unclear. This breach must be addressed and closed.

As a general principle, the law follows in the wake of technology. The interplay between the law and the national trend toward increased dependence on the exploitation of the ocean for its economic resource value is no exception. National policy, enunciated in President Reagan's proclamation of a 200-mile exclusive economic zone on March 10, 1983, has promoted the responsible use and development of ocean resources. More recently, the Environmental Protection Agency has adopted a multimedia impact perspective to the disposal of waste. In this context, it has permitted ocean disposal of sewage sludge, and ocean incineration of some hazardous materials, as environmentally preferable, long-term disposal options.

As yet, national policy has not focused in any comprehensive way on whether the transportation, and vessel and platform construction elements, of these ocean-use activities should be subject to domestic trading restrictions. From the founding of the Republic, national policy has favored—and, since 1817, has restricted—the transportation of merchandise between points in the United States to vessels built in the United States. A series of recent events and administrative rulings by the U.S. Customs Service have called into question the validity and vitality of the cabotage laws with reference to the emerging spectrum of ocean-use activities. Specifically,

Customs has ruled that disposal of municipal sludge beyond the territorial sea is not subject to domestic building requirements.

Recently, the city of New York entered into a contract for the foreign construction on four sewage sludge disposal barges for ocean disposal activities. I introduce this legislation at this time to put all parties involved in the New York sewage sludge barge construction and towing service contract controversy on notice concerning my intention to visit this issue early in the new Congress. I intend that any legislative relief granted or other reconciliation of this matter would be effective as of the date of introduction of this legislation, and all parties are so advised.

HONORING A COMMUNITY COMMITMENT

HON. JOE KOLTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. KOLTER. Mr. Speaker, I rise to acknowledge a commitment to the community of the Fourth District of Pennsylvania by a local health care facility.

On October 24, 1986, the medical center of Beaver County will break ground on the expansion and renovation of its onsite cancer treatment center.

The project, slated for completion in October 1987, will cost approximately $3 million.

This undertaking supports the medical center's commitment to be a regional cancer referral center by assuring the availability of state-of-the-art facilities and equipment.

The project involves new construction of about 7,000 square feet with renovation of 6,000 square feet in the existing facility. On the technological side, radiation therapy services will be greatly increased, along with chemotherapy treatment, private facilities for patients and additional examination rooms.

The medical center began a formal program of cancer care in 1971, while the cancer treatment center opened in 1980.

As a local treatment center, this facility offers convenience, reduced discomfort and less delays, and offers topnotch treatment for cancer patients, all the more important now that cancer is the second leading cause of death in both Beaver County and all of southwestern Pennsylvania.

I rise today, Mr. Speaker, to pay tribute and to honor this modern facility and the noble work it does in the tradition of American medicine.

SALUTE TO REPRESENTATIVE DON FUQUA

HON. J.J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. PICKLE. Mr. Speaker, when a new Member first comes to Congress, the people you are closest to are your fellow colleagues who arrive at the same time. Over 23 years ago DON FUQUA and I came to Congress as part of the 88th Congress, and we've been close friends from the beginning and have remained close friends ever since.

For a time, we served on Science and Technology and sat side by side and helped chart the course of the Space Shuttle Program. DON FUQUA was a leader on the committee and because of his dedication and commitment, he has become chairman of the committee. It is pleasing to know that he has rendered great service to the Nation and takes his place alongside of GEORGE MILLER and Olin "Tiger" Teague. In this capacity, he has contributed much to our Nation and it is an effort that every future generation will benefit from.

Some of my fondest memories of DON and his lovely wife, Nancy, are events related to the 88th Congress. For over 22 years, the members of the 88th Club have assembled on St. Patrick's Day to celebrate our group's advent into the congressional family. I believe DON FUQUA has made nearly every session in 22 years, and I hereby challenge him to be back next year. George Koch and the members of the 88th Club will have it no other way.

Mr. Speaker, so much has come out of the space program and all of this can be attributed to DON FUQUA and his committee. It makes those of us who have had the honor to serve and work with him extremely proud. DON FUQUA is one of the very best men who ever served in the Congress. The people of his district house exercised good judgment—and DON FUQUA has rendered them great service. The country is better off because of the life of DON FUQUA.

MEANINGFUL ACTION ON THE TRADE DEFICIT

HON. RICHARD A. GEPHARDT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. GEPHARDT. Mr. Speaker, there is little hope that H.R. 4800, the comprehensive trade bill overwhelmingly passed by the House in May, will become law during the 99th Congress. That is a tragedy since it would have forced action on the trade deficit and quite possibly led to a rebirth of free and fair trade throughout the world.

The need for meaningful action on the trade crisis has never been more apparent. To date, the 1986 trade deficit stands at $102 billion. That includes a July deficit of $16.5 billion, the largest monthly deficit in our Nation's history. While August figures showed a drop in the deficit to $13 billion, the drop was not so much due to rising levels of exports as it was from falling levels of imports. As a result of the deficits, 1.7 million manufacturing jobs have been lost since President Reagan first entered office.

While the administration continues to insist the deficits will vanish with a drop in the value of the dollar, that has simply not been the case. In the last year the value of the dollar has dropped 34 percent against the Japanese yen, yet we continue to experience huge trade deficits with that country.

Congress should be working toward a policy of free trade. But free trade must also mean fair trade. When other countries erect barriers that prevent U.S. goods from competing fairly with foreign products and the administration drags its feet on the issue, Congress should and must act.

That is why the House passed H.R. 4800, a comprehensive trade bill that would pry open world markets to give American products a chance to compete freely and fairly. It should be understood that this bill does not attempt to give U.S. products an unfair advantage over foreign products, but rather offers all countries a chance to trade unhindered by tariff and nontariff barriers.

In the area of farm imports and exports, I recently introduced legislation (H.R. 5588) that could lead to a resurgence in sagging farm prices and usher in a new era of prosperity for American farmers. H.R. 5588 would allow farmers to vote on strict production quotas in an effort to boost farm prices. It would also provide a program of debt restructuring for farmers hurt by the current fall in farm exports.

Aside from these initiatives, I remain hopeful that the new round of multilateral trade negotiations within the framework of the General Agreement on Tariffs and Trade [GATT] will lead to substantial new agreements on opening foreign markets to American products. I don't agree with the argument that H.R. 4800 would hinder attempts to reach a new trade agreement, but rather it would provide an impetus for negotiators to address the issue in a timely and meaningful fashion.

We have reached a watershed on the trade issue. We have a President who refuses to act comprehensively against countries that impose protectionist measures against American products. And while we are moving ahead with a new round of GATT negotiations, agreement is a long way off. Congress has been willing to seriously address the problem by offering several insightful bills, but as I said at the onset, it is unlikely any will reach fruition this year. Let's hope that next year Congress and the administration can reach a compromise that addresses the trade deficit and in doing so puts millions of Americans back to work.

THE DAM IN YOSEMITE NATIONAL PARK

HON. RICHARD H. LEHMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. LEHMAN of California. Mr. Speaker, as the author of legislation to require new congressional approval prior to using any Federal lands in Yosemite National Park for the expansion of O'Shaughnessy Dam, I am very concerned that the Senate has chosen not to act on H.R. 4089 which passed the House unanimously on September 16, 1986. Whether or not to raise O'Shaughnessy Dam in Yosemite National Park raises a fundamental question about our national values. If we do not answer that question in the 99th Congress, I

certainly intend to pursue it in the 100th Congress.

In order to share the colorful history of the dam in Yosemite National Park with my colleagues, I am inserting in the RECORD a recent article from This World, the Sunday magazine published by the San Francisco Examiner-Chronicle.

[From the San Francisco Examiner-Chronicle, Oct. 5, 1986]

"FOR SHAME, SAN FRANCISCO"—MAYOR FEINSTEIN PLAYS THE WATER GAME, LOS ANGELES-STYLE

(By K. Patrick Conner)

In the spring, the crystalline waters behind O'Shaughnessey Dam mirror the high turquoise sky and the sheer walls of granite that loom above Hetch Hetchy Reservoir, and it is almost impossible to recall what this valley looked like before it was dammed to slake the thirst of the city of San Francisco, some 150 miles by aqueduct to the west.

But now, in the fall, when the reservoir has been drawn down, the shelves of bleached, fractured rock at the base of the walls and the truncated tree stumps standing in a plain of lifeless silt, bared by the receding waters, are a wrenching reminder of what San Francisco once did to one of the most beautiful valleys in the world.

The flooding of Hetch Hetchy Valley, one of the darkest chapters in California history, ended an impassioned battle between engineers and politicians who conceived the bold plan to bring the waters of the Tuolumne River to San Francisco, and conservationists who fought to save the sparkling river that hustled across the valley floor.

"Dam Hetch Hetchy?" raged John Muir, founder of the Sierra Club. "As well dam for water tanks the people's cathedrals and churches, for no holier temples has ever been consecrated to the hearts of man."

Ultimately the conservationists' battle to save Hetch Hetchy was lost in December of 1913, when Congress passed and President Woodrow Wilson signed into law the Raker Act, which granted the valley to San Francisco. For Muir, the loss of the valley was a shattering personal defeat. Almost exactly one year later, he was dead some say of broken heart.

Now, some 50 years after the first water from the Tuolumne surged into San Francisco, the city dreams of someday flooding even more of Muir's beloved Heath Hetchy Valley.

The plan is to raise O'Shaughessey Dam by as much as 160 feet, thereby expanding the Hetch Hetchy Reservoir. The idea first surfaced five years ago as part of a report commissioned by the city's Public Utilites Commission and was immediately engulfed by controversy.

The expansion of the reservior, which the 1981 report said could cost as much as $471 million, would also divet more water from the Tuolumne, expand the Kirkwood power station and dam the South Fork of the river. If would also permanently scar the walls of Hetch Hetchy Valley, flood and additional 500 acres of Yosemite National Park and virtually eliminate any recreational use of the Tuolumne, now an officially designated Wild and Scenic River.

But San Francisco wouldn't receive a single watt of the hydreolectric power generated by the project, and not a single pail of water. Rather, the power would be fed directly into the state's power grid; the water would be sold to other Bay Area communities.

The reason the city is considering raising O'Shaughnessy Dam in the future is unequivocably simple: money. The PUC report estimated that the sale of water and power from an expanded Hetch Hetchy system would generate for the city annual revenues approaching $25 million.

When San Francisco first began casting about for a new municipal water supply at the tail end of the last century, there was no dispute that the city needed the water. From the time of the first settlements on the peninsula, securing a source of water was a major problem, destined to grow more severe as the population of the area grew.

Before the Gold Rush, the city's residents relied in large part upon several springs—the largest near what is now the intersection of Powell and Washington streets—or on water brought by barge from springs near Richardson Bay and sold at the dock for as much as $1 a bucket.

The private Spring Valley Water Commany set up business in San Francisco in 1858, and for the rest of the century San Francisco suffered under its monopolistic grip. For years the city attempted to purchase the water company, but failed to work out a deal. As early as 1876, the city was contemplating several distant sources of water, including Lake Tahoe, Clear Lake and the Mokelumne River. But it wasn't until 1899, when Major James Phelan received a report commissioned by the U.S. Geological Survey, that the city was inspired to turn its eyes to Hetch Hetchy.

That report must have made a city's engineer's mouth water, for, ironically, the extraordinary natural beauty of the valley also made it an ideal site for a dam. The three-mile-long valley floor was almost level; the granite walls were stable and empermeable; the mouth of the valley was narrow and high. The only problem was that the valley lay withing the boundaries of Yosemite National Park.

That didn't faze the hard-charging Mayor Phelan, who instructed his city engineer to file for water rights to the Tuolumne River in the Stockton Land Office. He also quietly commissioned J.B. Lippincott to conduct his own survey of Hetch Hetchy. Lippincott was the duplicitous hydrologic engineer who as both an engineer for the U.S. Reclamation Service and a private consultant for the city of Los Angeles, would play a key role in that city's surreptitious aquisition of the Owens Valley.

At the same time, Represenatative Marion De Vries of Stockton, in whose district the valley lay, introduced a bill in Congress that would give the secretary of the interior the sole authority to grant rights of way through national parks for water conduits such as ditches, canals, pipelines and tunnels. Without so much as a whisper of protest, the Right of Way Act was passed in 1901.

With the passage of that act, the battle to save Hetch Hetchy may have been lost before it began. Even as opposition to the dam began to coalesce, the by-then ex-mayor Phelan had managed to convince President Theodore Roosevelt and Gifford Pinchot, the head of the U.S. Forest Service who would later take part in Los Angeles' takeover of the Owens Valley, that San Francisco desperately needed the water.

Phelan's argument was made even more convincing in April of 1906, when San Francisco was ravaged first by the earthquake and then by fire.

The final blow was delivered when President Woodrow Wilson took office in March of 1913 and appointed as his new secretary of the interior Franklin K. Lane, who had served as San Francisco's city attorney when Mayor Phelan initially filed for water rights to Hetch Hetchy.

Despite the passionate opposition led by Muir and the Sierra Club, Congress finally passed the Raker Act in 1913. By then the exhausted Muir, who had been characterized as a fanatic by many of his opponents, had fallen into ill health. He died on Christmas Eve the following year.

Work began in 1914. The project was and remains an engineering marvel. From the O'Shaughnessey Dam, the water journeys 156 miles, dropping from 3800 feet in elevation to below sea level when it crosses beneath the southern arm of the Bay. After spinning the turbines at a series of hydroelectric plants in the Sierra foothills, the water travels across the San Joaquin Valley in an underground conduit, then passes beneath the Coast Range through a 25-mile long tunnel and is stored in several reservoirs on the peninsula, from which it is delivered to San Francisco and other communities.

The Dam was completed in 1923, but it wasn't until 1934, fully 20 years after work began on the project, that the first water reached San Francisco. (Construction was halted during World War I.) Now revenues from the water and power range between $70 million and $100 million per year.

When the city's Public Utilities Commission held the first public hearings on its report recommending raising the 312-foot-high O'Shaughnessey Dam between 50 and 160 feet, the outcry was swift and vociferous. Leading the charge was Gerald Meral of the state Department of Water Resources, who declared the Tuolumne was already providing "virtually the maximum benefit output." Raising O'Shaughnessey Dam, he said, would be "outrageous."

Public reaction to the idea of raising the dam was not unlike the reception given to the PUC's Clavey-Ward's Ferry proposal in 1979. That project called for a series of dams below Hetch Hetchy that would have destroyed 27 miles of wild river. Public response was so virulent that the PUC quickly shelved the project.

For five years it seemed as if the PUC had done the same with its proposal to expand the Hetch Hetchy Reservior. Then, this summer, Representative Richard Lehman of Sanger, worried about the implications of the installation of a new generator below O'Shaughnessey Dam, introduced a bill in Congress that required congressional approval for construction of new dams in all national parks (there are currently 108 dams in 18 of the nation's 48 parks) and specifically blocked the expansion of the Hetch Hetchy system.

Although representatives Sala Burton of San Francisco and Barbara Boxer of Greenbrae both support the bill, Mayor Dianne Feinstein has opposed it. "I think the legislation is unnecessary and in the long run may be very damaging," Feinstein said through her press secretary, Tom Eastham. "It certainly doesn't make sense to tie Northern California's hands." In a letter to Congress, Feinstein wrote that expanding Hetch Hetchy is the only economically feasible source of water to meet the city's future water needs. "The present arrangements have served the national interest and the people of the Bay Area well for half a century," she wrote, "and there is no reason to drastically change them now."

In what can only be described as a supreme irony, Feinstein's letter drew harsh criticism from the Los Angeles Times, the paper that has been California's leading advocate of water projects in the 20th century and whose founders, Harrison Gray Otis and Harry Chandler, personally made millions of dollars from the city's rapacious destruction of the Ownes Valley.

"Dam Hetch Hetchy even higher?" the Times opined in a recent editorial. "For shame, San Francisco."

And even though the House swiftly passed Representative Lehman's bill and sent it on to the Senate, the door is still open for the city to raise the dam in the future. Dean W. Cofffey, general manager of the Hetch Hetchy system, would rather not have to contend with the strictures of the Lehman bill. "It would just be less paperwork and less bureaucracy if we didn't have to amend the law," Coffey said.

SALUTE TO GARDEN STATE PAPER CO.

HON. ROBERT G. TORRICELLI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. TORRICELLI. Mr. Speaker, it is my pleasure to honor the Garden State Paper Co., the world's largest recycler of used newspaper to fresh newsprint, on the occasion of their 25th anniversary. As part of the celebration, Garden State Paper is planning a "salute to paper recycling in New Jersey" on Wednesday, October 15, at their Garfield, NJ, mill.

Honored at the event for their special contribution to paper recycling in New Jersey will be two communities, Montclair Recycling, Montclair, Holiday City, Toms River; three Scout groups, Ramsey's Boy Scout Troops 31 and 32 and Cub Scout Pack 306; and six area paper stock dealers: V. Ponte & Sons, Camden; City Mills, Jersey City; Dan Parisi & Son, Delair; C & R Waste Materials Co., Trenton; Bruno & D'Elia, Hackensack; and Recycled Fibers of New Jersey, Newark.

All award recipients were named by 10 of New Jersey's 13 paper recycling mills.

The paper recycling mills in the state are: ChinAm, Inc., Paterson; Conwed Corp., Riverside; the Davy Co., Jersey City; Garden State Paper, Garfield; Garwood Paper, Garwood and Georgia-Pacific Corp., Delair. Homasote Co., West Trenton; Lincoln Paper Co., Ridgefield Park; Lowe Paper Co., Ridgefield; Marcal Paper Mills, Inc., Elmwood Park; the Newark Group, Newark; U.S. Gypsum Co., Camden and Clark. Each of the 13 mills are scheduled to receive awards.

Paper recycling in New Jersey has not only contributed to our State's economy, but has conserved landfill space and reduced solid waste. Last year alone, over 1 million tons of paper were collected in New Jersey which earned recyclers well over $40 million and saved 3.5 million cubic yards of landfill space.

Since operations in the New Jersey mills began, approximately 29 million tons of paper has been recycled. Converting that number into cubic yards of landfill space saved—equal more than 101 cubic yards.

I am pleased to join in this salute to paper recycling in New Jersey and commend these companies, communities, and individuals for their commitment to the recycling effort in our State.

ON AGRICULTURE'S FUTURE

HON. WES WATKINS

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. WATKINS. Mr. Speaker, it was my privilege and honor to have as a guest with my office staff during the summer months Dr. James White, a resident of Stillwater, OK, which is in my district. Dr. White is also a professor at Oklahoma State University, a land grant institution, and serves additionally as government liaison officer for the National Alumni Association of the Future Farmers of America. I am, too, in part a product of that organization, having served as State president of FFA in my younger days.

Dr. White, during the summer, did a great deal of research and study, arriving at some significant conclusions. I would like to share those conclusions with you. Dr. White's findings follow:

AGRICULTURE AND EDUCATION IN TRANSITION

Today both agriculture and education are in a period of great transition. Agriculture is in the greatest depression in modern times and educators are searching for direction and stability. However, one bright spot emerges, the success and vitality of the 430,000 Future Farmers of America across this great country enrolled in over 8,200 high school vocational agriculture programs who have the opportunity to train for more than 200 careers in production and agribusiness education.

Our present agricultural economy might lead many to think that since we have such an abundance of cheap food and fiber that this trend would continue over the long term and that training in agricultural occupations and the agricultural sciences doesn't merit increased attention. However, the present state of confusion in the agricultural sector does not lend itself to the establishment of stability and continuity in our nation's largest industry. Even though agriculture has assets valued at over one trillion dollars, contributes over $20 billions of dollars in agriculture exports annually to our balance of payments, employs 22.1 percent of our work force either directly or indirectly in some phase of agriculture and our citizens enjoy the highest standard of living in the world, spending only 14.4 percent of their disposable income for food, agriculturists still have to persuade state and national leaders of the importance of agriculture. It seems that Winston Churchill's quote may be more applicable today than any time in our recent history, "Never have so many owed so much to so few." To the 2.3 percent of our population that produce enough food for 80 other people and themselves, we salute and commend them for doing an outstanding job. They have performed in an admirable manner in spite of low commodity prices, drought, competition from other exporting countries, the threat of foreclosure, and exorbitant cost of agricultural inputs. In spite of all these constraints the American farmer still prevails as the production genius of food and fiber around the world. His tenacity and resilience are an inspiration to all of us.

Vocational education at the same time is in need of leadership and positive direction at the federal level. The status of the Assistant Secretary for Vocational Education has been an acting position for the last eleven months. This does not provide an environment conducive to enhancing or improving training programs and strengthen expectations for program performance. A literate well trained work force is essential for our nation's economic development. The progress and stability of this aspect of our economy is dependent upon educated and skilled individuals to meet the challenges of future change and global competition.

INSTRUCTIONAL PROGRAMS IN VOCATIONAL AGRICULTURE/FFA

Vocational Agriculture/FFA is a nationwide instructional program conducted at the secondary level for young men and women preparing to enter or who have already entered production or agribusiness careers. Student involvement consists of participation in all three components of the total vocational agriculture program: classroom and laboratory instruction, supervised occupational experience and leadership development through the student organization Future Farmers of America. The components of a total program concept offers students the opportunity to acquire job related skills, the ability to utilize technical information and development of positive attitudes and self-esteen necessary to pursue successful careers.

CLASSROOM INSTRUCTION

The total program is centered around the teaching concept, "Learning By Doing." Students receive instruction in agricultural science and technology with the opportunity to put their skills to work in adopting "space age" techniques to practical agricultural situations. Relevant production and agribusiness training in computer operations, the reproduction of plants through tissue culture and hydroponics, artificial insemination, soil and water conservation, assembling and calibration of agricultural equipment, parliamentary law public speaking are a part of the modern vocational agriculture curriculum. Programs are designed to complement the student's interest and career goals. As a result students have a better understanding and positive attitudes toward the value of entreprenuerial and occupational training.

SUPERVISED OCCUPATIONAL EXPERIENCE

Supervised Occupational Experience (SOE) programs are in the broad sense that aspect of the total vocational agriculture program which includes both entrepreneurial and occupational experiences based on the student's career objective and are conducted outside the classroom. Furthermore, it is that component of the program, as a result of classroom instruction, from which practical application is carried out under the supervision of a certified vocational agriculture instructor. The purpose of Supervised Occupation Experience (SOE) is to assist the student to become established in his/her chosen occupational field. In addition, students should be cognizant of the following objectives: (1) To understand the requirements of the occupations, (2) To apply what is being learned in the classroom, (3) To allow the student to grow into an occupation, (4) To allow the student the opportunity to call something his/her own,

and (5) To allow students to informally evaluate the strengths of their SOE programs through participation in FFA activities.

LEADERSHIP DEVELOPMENT

Personal development, leadership and human relations are important aspects of Future Farmers of America activities. Development of a healthy self esteem, public speaking and parliamentary law skills and cooperation will have a positive impact on the lives of students regardless of their chosen careers. The exposure, contracts and experiences students receive as a result of being a member of a progressive high school vocational agriculture/FFA chapter affords them a distinct advantage over other high school graduates.

The Future Farmers of America (FFA) enjoys unique and enthusiastic support from agriculture, education, business and industry. In 1985, over 2.35 million dollars were contributed by individuals, business and industry, who were convinced of the value and positive influence that vocational agriculture and the Future Farmers of America (FFA) has on the young people of this nation.

NEED FOR FEDERAL SUPPORT

Vocational Agriculture/FFA is an important aspect of the total educational process in the United States. The evidence is overwhelming! Among the members of this body and their staff members there are hundreds who testify that vocational agriculture/FAA made a positive difference in their lives and careers. The need for an educated and informed citizenry is imperative for economic development and the general welfare of society. To attain the goals of a skilled and competitive work force as well as a literate society, local, state and federal cooperation and support are of significant importance.

There is a definite need for concern and support at the national level. Bi-partisan congressional leadership and action in cooperation with the private sector are desperately needed to develop practical policies for both agriculture and education.

An innovative Federal Trade Policy to expand agricultural exports, increased utilization of domestic agricultaure products, and the incentive for producers to limit production are attainable and realistic expectations for a viable agriculture policy. At the same time vocational education needs leadership which is willing to take a risk in providing positive direction and establishment of standards for program quality. If excellence is to be achieved, students, professionals and federal officials alike must assume the responsibility of providing progressive leadership.

We ask your assistance in supporting the development of exemplary vocational agriculture educational programs. Quality programs make a positive difference and contribution toward economic and human development. "Quality is not something you get as the result of inspection but at every phase of production."

I welcome your leadership, suggestions, input and assistance for improving vocational educational and agricultural policy. The National Vocational Agriculture Study presently being conducted by the National Science Foundation will be beneficial in assisting all of us to better determine needs and priorities. Personally, I would like to see this request for input, suggestions and/or alternatives widely distributed.

These responses will be compiled for use in further discussion.

TRIBUTE TO EUGENE REAGAN BRITT

HON. ROBERT LINDSAY THOMAS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. THOMAS of Georgia. Mr. Speaker, our great country will celebrate the 200th anniversary of the U.S. Constitution in 1987. The celebration will once again remind us of the United States' long tradition of democracy and equality under the law.

But democracy is not a form of government that works because of a piece of paper. It works because people make it work. Democracy in America depends on the involvement, the knowledge, and the hard work of the men and women of our Nation.

I am fortunate in that many people in my district are the kind of citizens who generously give of their time and talents to their country and to their community. One person in particular stands out in my mind—someone who has dedicated many years of his life to helping the citizens of Bulloch County.

Mr. Eugene Reagan Britt was the founding father of the Pineland Telephone Cooperative and was with this organization for close to 20 years. Mr. Britt served as the first president of the National Rural Telephone Association in 1954 and was a member of the committee that organized this national association. He later went on to work several years with the Statesboro Telephone Co. During his time with both telephone associations, Mr. Britt not only devoted many long hours to his job, he also spent his free time working with the First Baptist Church, the Statesboro Lions Club, and a number of other projects.

But after his retirement, Mr. Britt was not content to relax and enjoy his free time. I was fortunate to have Mr. Britt come to work for me in my Statesboro district office. He has served the citizens of Statesboro and the surrounding area for close to 2½ years in my office. There are many people in Georgia who can attest to the fact that Mr. Britt has taken on his responsibilities with the energy of a recent college graduate.

Whether it is a question about a lost Social Security check, or a request for help with a Farmers Home Administration loan, or assistance needed in applying for a visa—no matter what the probjem, Mr. Britt has been there to listen and help or to direct people to the right channels.

Not only has Mr. Britt remained active with his job, he has unselfishly continued to dedicate many hours to helping out in the community. He has volunteered approximately 1,000 hours working at the Bulloch Memorial Hospital's ICU unit and also helped with physical therapy on patients.

Mr. Britt has been involved with the Statesboro Lions Club for many years, serving as chairman for the sight committee and also being chosen as "Lion of the Year" in 1985. And he has devoted countless hours sitting with people in their homes and in the hospital, taking flowers to those who are shut-ins. We could fill this Chamber a dozen times over with people whose lives have been touched by Mr. Britt.

In short, Mr. Britt is the kind of staff assistant who has been the essential link between me as a Congressman and the people who I have the privilege to serve. My tribute to him is from my heart, but he can have no greater tribute than the honorable record of service he has given to the Congress and his fellow citizens.

On behalf of all of the citizens of the First Congressional District, I want to formally express our heartfelt gratitude to Eugene Reagan Britt. He is a man whose life could serve as a symbol for what it means to be an American because he is a man who has given more to his country than he has taken, and who always has time to give others a helping hand. Mr. Britt, we thank you.

HOUSE JOINT RESOLUTION 714, NATIONAL PORT WEEK, OCTOBER 5-11, 1986

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. BIAGGI. Mr. Speaker, October 5–11, 1986, was National Port Week; it was marked by ceremonies around the country.

A strong National Port System is the backbone of this great Nation's economic viability. Our ports are this Nation's gateway for importers, exporters, manufacturers, and farmers alike. They help support a strong national defense and provide friendly waters for U.S. vessels. This past summer, in the Port of New York, we had the opportunity to celebrate our symbol of liberty and enjoy the beautifully restored statue along with some of the world's finest sailing ships. Ports, for many, were the first image of America as they immigrated to this new land.

Our Nation's ports are responsible for generating well over $60 billion in benefits to the local community. Port facilities also generate over 1 million jobs and $12 billion in tax revenue. For many Americans, work at our Nation's ports is a way of life. The men and women in all the Nation's ports are dedicated to seeing that our goods safely reach their destination. They are dedicated to seeing that our American vessels find safe harbors and secure moorings.

National Port Week gives us the opportunity to show the people of our coasts, Great Lakes, and inland river ports that we are supportive of their efforts to keep America moving. National Port Week was celebrated in virtually all of our Nation's port cities, and I am pleased to have this opportunity to pay tribute to this industry.

MARTIN F. STEIN PENS A POWERFUL VIEW OF REFUSNIKS' PLIGHT

HON. JIM MOODY
OF WISCONSIN
IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. MOODY. Mr. Speaker, over the past several weeks, the continuing plight of Jews in the Soviet Union has been brought into sharper focus for the entire world.

The release of Yuri Orlov in the aftermath of the Daniloff-Zakharov affair reminded us that Orlov's "crime" was primarily his activities monitoring Soviet noncompliance with the Helsinki accords on human rights. The specific issue of Jewish emigration and the treatment of refusniks was raised further by dramatic appeals from relatives during last weekend's Iceland summit between President Reagan and Soviet General Secretary Gorbachev.

Yesterday, the Nobel Peace Prize was unanimously awarded to Elie Wiesel, the distinguished historian and Holocaust survivor. For sheer eloquence, few are Mr. Wiesel's peer and few are as deserving of the recognition and prestige that have accrued to this righteous man. His moving call for freedom for Soviet Jewry again reminded us of the oppression being systematically visited on Jews and other minorities in Russia.

This week also saw publication of another eloquent plea on behalf of those refusniks in the Soviet Union whose only crimes are that they are Jews and wish to leave. Martin F. Stein—a respected businessman from Milwaukee, WI, and a national leader in the American Jewish community—has published a personal plea in the October 14 edition of the Milwaukee Journal that is based on his experiences visitng refusnik families in the Soviet Union. His article stirred many strong memories in me based on my own visits with Jewish families in Moscow and Leningrad.

Mr. Speaker and my colleagues, I commend Martin Stein's article to you as a powerful reminder that what we are talking about here are not numbers on paper, or abstract words in treaties, but very real people in very real danger. As Marty Stein reminds us, "Much is at stake and time is running out."

[From the Milwaukee Journal, Oct. 14, 1986]

REFUSNIKS STILL KEEP THE FAITH

(By Martin F. Stein)

Having just returned from my first trip to the Soviet Union undertaken to visit Jewish refuseniks who have had their applications to emigrate denied, I am compelled to express my horror, frustration and sense of urgency.

I had, of course, been familiar with the stories of these refuseniks, but I was not ready for the emotional impact of coming face to face with the bizarre and cruel conditions of their lives. One cannot but be moved by their immense courage and absolute determination. They have been waiting years to leave and still have no idea when, if ever, they will be granted permission to do so.

In the course of six days in Moscow and Leningrad, I met with 28 adults and 9 children, all part of an amazing community brought together by a common plight and fervent support for each other. Over countless cups of tea in small apartments, their overriding message was: "Do not believe the Soviet government's statements concerning Jewish emigration. It is simply not true that all those who wished to leave have already done so. Do not be lulled into believing that the release of a few famous individuals signals an improvement for the remaining Jews. The situation is desperate and getting worse. Do not forget us."

Masha and Vladimir Slepak have been waiting for permission to leave for Israel for almost 20 years. She is a radiologist and he is a professional radio/television engineer. They originally had hopes of using their skill and talent in Israel. Now, after numerous beatings, house arrests, confiscations of personal letters and photos, telephone disconnections, short terms in prisons and five years in internal exile in Siberia, they are discouraged and depressed but not without hope. To lose hope, the Slepaks say, "is to completely surrender."

As we parted in a subway station, this warm, intelligent, activist couple, respected and visited by numerous foreign dignitaries and journalists, hugged me, squeezed my hand and uttered an ancient Jewish prayer, "Next Year in Jerusalem."

Another long-time activist and one of the leading Hebrew teachers in Moscow is Yuli Kosharovsky. He and his wife Inna have acquired Israel citizenship by proxy and as we entered their apartment I was moved by overhearing Yull address his two young sons in fluent Hebrew.

Yuli speaks of his obligation as a Jew to participate in the miraculous renaissance of the Jewish state after 2,000 years. He cannot conceive of not being a part of it. For this desire he has been labeled a traitor, thrown out of his job, put under house arrest and imprisoned on charges of "hooliganism" and "disturbing public order." His apartment has been raided, his Hebrew classes disbanded, and his life threatened.

The Kosharovskys are denied the right to emigrate because of so-called insufficient kinship outside the USSR to warrant family reunification. (The Slepaks have two sons and grandchildren out of the country, so the official reason denying them the right to leave is "access to state secrecy.")

Anya Lifshitz's husband Vladimir was arrested Jan. 8 on charges of "anti-Soviet agitation"—for sending a letter to friends overseas in which he described their lives as refuseniks. She quotes the Soviet constitution because in theory it protects her and her husband (e.g., seizure of private mail is illegal) and guarantees them the freedom they seek. She reads us a translation of her letter to Soviet leader Mikhall Gorbachev in which she implies that local bureaucrats are undermining the national Soviet law. I was amazed by her trust in the law, for she had just given us a vivid description of the prison beatings that caused Vlandimir a concussion and broken nose.

She told the story of his horrible two-month trek across the USSR to his prison in Kamchatka, Siberia. He suffers from high blood pressure and fainting spells, yet is compelled to perform heavy labor with prisoners half his age. She fears that at any moment he will collapse. One wonders why she expects any semblance of rational application of laws in a country that treats human beings with such barbarity. She is currently petitioning the medical department of the milita for a physical examination of her husband and an adjustment of work assignment based on health and professional background, as "guaranteed by Russian law."

These are but three families out of the 400,000 Jews who have indicated a desire to leave the USSR. They made it very clear that only the United States has any leverage with the Soviet government. The administration must understand its responsibility for these refuseniks' lives.

Much is at stake and time is running out.

A TRIBUTE TO A COMMUNITY LEADER: EDNA FRAZIER-CROMWELL

HON. WALTER E. FAUNTROY
OF THE DISTRICT OF COLUMBIA
IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. FAUNTROY. Mr. Speaker, courageous and outstanding are indeed the marks of a leader and appropriate words for a Washington citizen who dedicated herself to improving the quality of life for Washington, DC residents. Edna Frazier-Cromwell, who passed away this spring is the extraordinary dedicated public servant and lovely woman of whom I speak.

Her contributions included election to the D.C. School Board in 1983 as the ward 1 representative, and a diligent supporter of the Shaw neighborhood revitalization. As an honor to her longtime reputation as a pominent community activist, a $2.5 million shopping center named the Edna Frazier-Cromwell Shopping Center is scheduled for construction soon near the community where she lived.

Indeed, her husband, Oliver Cromwell, her son, Michael Cromwell, now a student at the University of Virginia, and her mother, Velma Frazier share the pride of all Washingtonians in Edna's too short life.

Described as a lady of charm, grace, and elegance, Edna Frazier-Cromwell was also known for her perseverance, dedication, and wisdom. Perhaps her contributions to the community are best understood in a poem which reflected her personal philosophy about life:

To laugh often and much:
To win the respect of intelligent people
And the affection of children;
To earn the appreciation of honest
Critics and endure the betrayal
Of false friends;
To appreciate beauty
To find the best in others;
To leave the world a bit better, whether
By a healty child, a garden patch or
A redeemed social condition;
To know even one life has breathed
Easier because you have lived.
This is to have succeeded.

—Anonymous

LEGISLATIVE INTENT CLARIFIED

HON. RON MARLENEE

OF MONTANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. MARLENEE. Mr. Speaker, 2 years ago Congress passed a bill I introduced called the REA Right-of-Way bill (Public Law 98-300). The intent of this bill was clear—to exempt Rural Electrification Administration [REA] borrowers from paying right-of-way fees to the Federal Government.

I wrote the bill, so I know full well what the intent of the bill was. The bill exempts co-ops, period. The bill was introduced and passed to benefit co-op consumers, and should be interpreted by all to mean exactly that.

Administrative branches of the Bureau of Land Management, though, have placed a narrow new interpretation on the bill. This new BLM interpretation is wrong.

The BLM maintains it was the intent of Congress to only exempt REA financed "lines" from right-of-way fees across Federal lands. Nothing could be further from the truth. It was my intent, as author of the bill, to exempt all types of REA communications or power "lines" from fees, whether those "lines" be microwave, fiber optics or standard telephone or power lines. It was the intent of Congress to benefit REA consumers, not to draw a narrow bill precluding REA's from expanding, improving or upgrading service. Nor was it the intent of Congress to preclude REA from adding new technologies to better perform its valuable services to rural consumers.

As Senator GARN from Utah pointed out in the CONGRESSIONAL RECORD on October 3, 1986:

> The plain wording of Public Law 98-300 makes it clear that Congress intended that all facilities financed under the Rural Electrification Act of 1936, as amended, and any extensions thereto are exempt from the (right-of-way) rental fees.

Again, as author of the bill, I want to emphatically state that all REA facilities should be exempt from right-of-way fees.

And I would like to join the Senator from Utah in reminding the BLM that administrative funds are not available to process REA rental fees. The BLM will hear from me more directly on this issue, but I want to make sure the record shows the intent of Congress on Public Law 98-300 was to exempt all REA facilities.

ELIE WIESEL: NOBEL PRIZE WINNER AND A MAN FOR ALL GENERATIONS

HON. THOMAS J. MANTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. MANTON. Mr. Speaker, I am pleased to rise today to congratulate the man who recently described himself as a writer and a teacher. Elie Wiesel, recipient of the 1986 Nobel Peace Prize, is perhaps the most significant writer and teacher of our time. As the Nobel Committee accurately described him, Elie Wiesel is one of the world's "most important spiritual leaders and guides."

Elie Wiesel, who has also been awarded a Congressional Gold Medal, and is the author of over 25 novels, has devoted his life to ensuring that the world will never forget the dark days of the Holocaust. Elie Wiesel survived the Holocaust and has used his talents and his energies to ensure that the 6 million who perished will never be forgotten. He has also devoted his life to urging humanity to question and ponder how such a gross evil could have existed and flourished in the fervent hope that it will never be repeated. While Elie Wiesel claims not to be the conscience for a generation, by his example, he encourages people of all generations to develop their own consciences for the betterment of humanity.

Mr. Speaker, Elie Wiesel is a most appropriate recipient of the Nobel Peace Prize. One of the cornerstones of peace is a basic respect for human life and dignity. It is to that which Elie Wiesel has dedicated himself. I know my colleagues join me in congratulating Elie Wiesel on his award. We know that no one is more deserving.

TRIBUTE TO REBA McENTIRE

HON. WES WATKINS

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. WATKINS. Mr. Speaker, I would like to bring to the attention of my colleagues the recent accomplishments of one of my constituents: Miss Reba McEntire of Stringtown, OK.

Last night during the 20th annual Country Music Awards, Miss McEntire walked away with not only her third straight Female Vocalist of the Year award, but was also named the Entertainer of the Year.

Miss McEntire, a former rodeo barrel racer, began her career singing the "Star-Spangled Banner" at the national finals rodeo. Miss McEntire, who grew up listening to traditional country music, has remained true to that style, while bringing entertainment to a new generation of country music fans. She rebuked those who said it couldn't be done her way and plowed on with that tough Oklahoma spirit to prove the critics wrong. Now she has reached the top, a place where she has strived long and hard to reach and a place where she deserves to be.

I am proud to call Reba—my friend—and I join citizens from throughout America congratulating Miss McEntire on this tremendous achievement. I wish her continued success and say "Right on Reba!"

FASTING FOR PEACE

HON. MICHAEL D. BARNES

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. BARNES. Mr. Speaker, I would like to submit for the RECORD a letter that was sent by the Sisters of Mercy of the Union to the four men who have been fasting on behalf of those who suffer in Central America. This letter is a powerful appeal to Duncan Murphy, Charles Liteky, Brian Wilson, and George Mizo to end their fast in order to undertake other efforts to promote peace in Central America. I join the Sisters of Mercy in this important plea.

The letter follows:

SISTERS OF MERCY OF THE UNION,
October 13, 1986.

VETERANS FAST FOR LIFE.
Temple Heights Station,
Washington, DC.

DEAR DUNCAN MURPHY, CHARLES LITEKY, BRIAN WILSON, and GEORGE MIZO, we, the members of the Mercy Administrative Team of the Sisters of Mercy of the Union, write to you mindful that you are in the 45th day of your fast on behalf of the suffering people of Central America. We appreciate the deep concern that moves this radical attempt to bring attention to the violence occurring in Central America, particularly Nicaragua, as a result of United States military intervention. We join you in your prayer for peace in Central America and in your deep concern for the people of this area. Our profound belief, however, is that too many have died already and we pray that you may reconsider your decision to fast unto death.

The Sisters of Mercy of the Union are also committed to life-affirming actions on behalf of the people of Central America. Over the years our sisters have participated in Witness for Peace, visited Central American refugee camps, lobbied congressional leaders, demonstrated in prayer vigils, committed civil disobedience, and fasted and prayed for peace in this troubled land. We have worked for an end to violence in Central America and for a conversion of heart for the U.S. While this activity has not yet turned the tide of the U.S. War in Central America, we continue to struggle, with others, toward that end. Today, this letter is being delivered to our Congressional representatives to be read into the CONGRESSIONAL RECORD.

In the next few days you will be receiving telegrams from Sisters of Mercy throughout the United States requesting that you terminate your fast and continue with them and others in this struggle for life in Central America. We urge you, in your own prayer at this moment, to choose life . . . that others may live.

HELEN MARIE BURNS, RSM,
CAMILLA VERRET, RSM,
PATRICIA WOLF,
On behalf of the Mercy Administrative Team.

SPECIAL ACCESS PROGRAMS

HON. RON WYDEN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. WYDEN. Mr. Speaker, special access, or black, military programs represent the Nation's most guarded national security operations. As such, security at these programs must be air-tight. Unfortunately, Congress recently learned that more than 1,400 top secret documents, files, tapes, blueprints and other materials are missing from one of the super-

secret black programs designed and built by Lockheed's Burbank facility.

Shortly after the Oversight and Investigations Subcommittee of the Energy and Commerce Committee learned of these missing documents, I had the opportunity to ask the Pentagon's Undersecretary for Research and Engineering, Mr. Donald Hicks, whether other defense contractors had similar security problems to Lockheed. Mr. Hicks indicated that he felt the Lockheed situation was an aberration, though in a response to my question he indicated that he had not surveyed the security practices of other defense contractors after he had learned about the Lockheed situation.

In my opinion, such a review is greatly needed. Under the DOD authorization legislation we consider today, the Director of the Defense Investigative Service is directed "To conduct a review of the security administration of Department of Defense special access programs at all Department of Defense contractors involved in such programs." An unclassified report detailing any security shortcomings at these programs and recommendations for improvement in these programs is to be filed by May 1, 1987.

In addition, the bill stipulates that the Director of the Defense Investigative Service, after consulting with the Secretary of Defense, may conduct appropriate security inspections of special access programs unless otherwise directed by the Secretary of Defense. The General Accounting Office several years ago recommended that the Defense Investigative Service play a more vigorous role in overseeing black programs—and these provisions permit that.

Mr. Speaker, if the Lockheed case is representative of the way black programs are managed, then there may be more protection for our defense secrets at the white, or unclassified programs, than there are for those in the black world.

The provisions in this bill are just the first step of rethinking black program management. In the future, for example, we must make changes that permit Members of Congress who must vote on these top secret programs to have access to information needed when they cast those votes.

The chairman of the Armed Services Committee, the gentleman from Wisconsin [Mr. ASPIN] has been very gracious with his time and that of his staff in beginning the effort to rethink our policies, and I thank him for his help.

TRIBUTE TO HELEN G. MILBERGER

HON. JOSEPH M. McDADE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. McDADE. Mr. Speaker, the Nation lost one of its most prominent citizens with the death Tuesday of Helen G. Milberger of Scranton, PA. I have known Helen for a good number of years, and regarded her as a trusted friend. I had a great respect for her achievements in the labor movement, her involvement in civic activities and her keen insight on national issues.

Mrs. Milberger was the first woman ever elected vice president and international representative of the American Federation of Labor's Cigar Makers Union. She as the first and only union official to be honored by the AFL-CIO as "Good Citizen of the Year" in 1977.

At a testimonial dinner in her honor 5 years ago, she was appropriately described by William Cockerill, president of the Scranton Central Labor Union, as having "the most outstanding record in the history of labor in the United States." Those of us who knew her can attest to the validity of that statement.

Helen began her union involvement over four decades ago at a time when many union members encountered strong resistance. She was fired from her job after attending a union meeting in 1944. She was reinstated shortly afterward, but continued to work for the union movement. She helped the local union win a bargaining election in 1945 with a 95-percent majority. Mrs. Milberger went on to serve in several important union posts, including secretary-treasurer of Local 295, Cigar Makers Union, and secretary of the Scranton Central Labor Union.

Helen's commitment and enthusiasm were not limited to the labor movement. She donated her time and talents as president of the Scranton Chapter of the American Red Cross, a member of the Eastern Area Advisory Council of the Red Cross, and commissioner and chairman of the Lackawanna County Housing Authority. She earned her way into the "Who's Who of American Women."

I came to know Helen best through her work as president of the Lackawanna County Committee on Political Education. She looked at issues rather than political parties, and worked diligently with elected officials on issues she cared about.

Mr. Speaker, Helen Milberger will be missed. Her life was devoted to improvments in the labor movement, the betterment of her community and a deep concern for the future of this country.

FURTHER COMMENT ON COLLOQUES RELATING TO H.R. 3838, THE TAX REFORM ACT OF 1986

HON. DAN ROSTENKOWSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. ROSTENKOWSKI. Mr. Speaker, in my statement of October 2, 1986, in further attempting to clarify the meaning of the conference report on H.R. 3838, the Tax Reform Act of 1986, I indicated my understanding and the understanding of the House conferees relative to various colloques which had taken place on the House and Senate floors with respect to provisions contained in the conference report. My remarks were not intended to refer to colloques which had taken place in either House at the time H.R. 3838 was originally debated in the two separate bodies.

TRIBUTE TO MR. DON F. WALZ

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. SKELTON. Mr. Speaker, I would like to to take this opportunity to honor and congratulate one of my constituents, Don Walz of Jefferson City, who was recently selected to serve as president of the National Retail Hardware Association [NRHA] for 1987. NRHA is the national association of the do-it-yourself [DIY] industry and acts to keep its more than 10,000 members apprised of new developments in the marketplace as well as promoting the interests of the DIY industry.

Mr. Walz is manager of the hardware division of Milo H. Walz, Inc., and is the company's corporate secretary/treasurer. Don and his five brothers and one sister own and operate this family business which consists of six stores in four Missouri cities. The roots of this business can be traced back to 1922 when Don's father, Milo H. Walz, Sr., opened a used furniture store in Jefferson City.

Don's career in the hardware industry began at age 14 when he went to work for his father on a part-time basis. Eventually, Don obtained a bachelor degree in marketing from the University of Missouri and then proceeded to serve 2 years in the U.S. Army. Upon his discharge in 1954, he rejoined the family business.

Milo Walz, Sr., was very active in the hardware industry and its associations, as evidenced by his term as president of the Missouri Retail Hardware Association in 1947. Don has followed in his father's footsteps by contributing his time and skills to his fellow retailers. In 1963, Don was selected to serve as a director of the Western Retail Implement and Hardware Association and became president of the regional association in 1972. In 1976 he was elected to the board of directors of NRHA and moved through its ranks to become vice president last year.

Over the years, Don has also been active in Jefferson City community organizations. In the past, he was president of the local Jaycees' chapter, chairman of the Cole County Fair, vice president of the Chamber of Commerce and a member of the board of governors of the local hospital.

Mr. Walz's advancement to the presidency of NRHA puts him at the helm of an organization with more than 10,000 members. The leadership abilities which Don has displayed in building his family business and his involvement in the community will surely be an asset to him in his new position.

Don's wife, Norma, and their four children can justly be proud of Don's mulitiple career achievements. Considering all that he has done for his community and industry, I am proud to honor this fine Missourian and I wish him the best of luck in his future endeavors.

THREE CHEERS FOR REGULATORY BALKANIZATION

HON. MICHAEL G. OXLEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. OXLEY. Mr. Speaker, we may have to change our telecommunications policy motto around here from "we support competition and universal service at affordable rates" to "we support inconsistency, unfairness and Balkanization whenever we can."

I'm speaking, of course, about the recent announcements by two large independent telephone companies, Contel and Centel, concerning their recent merger and acquisition activities and the inconsistencies these moves raise with respect to our own domestic telecommunications policies.

Let me say at the outset that I have no problems with these particular combinations themselves.

Contel merged with Comsat to the tune of $2.47 billion. Contel is heavily involved in providing local exchange telephone service and now will be the major player in international long distance.

Centel acquired M/A-COM Information Systems and Perry Cable for $225 million.

Both Contel and Centel are among the largest independent telephone companies in the United States. And both are enjoying the regulatory freedom to pursue business ventures that they believe will benefit their stockholders. That's fair.

But why should our telecommunications policy allow some telephone companies to engage in these activities, but prohibit other telephone companies, the regional Bell companies—from doing so?

Those opposed to relaxing the line-of-business restrictions say they are motivated by protecting the public interest; motivated by concerns that the Bell telephone companies would use their monopoly control over essential facilities to disadvantage competitors or ripoff the ratepayer through cross-subsidizing unregulated ventures from regulated services.

These same arguments, however, could potentially apply to any telephone company—large or small. It's not a question of size. It's a question of fairness.

And I think it's an unfair policy, Mr. Speaker, that allows many of the non-Bell telephone companies to engage in businesses in which the Bell companies cannot participate.

Again, I don't have any problem with these particular mergers. But I do have concerns about a policy that makes it more difficult, or even impossible, for some companies to diversify and offer new products and services compared to others.

In fact, I find very little justification for maintaining a policy that Balkanizes the telecommunications industry in this country, so that some companies can offer new and innovative products and services to their customers and others cannot.

The FCC will be examining the proposed Comsat/Contel merger under a broad public interest standard. I also assume the FTC and/or the Justice Department Anti-Trust Division will evaluate the antitrust implications of these combinations. But the non-Bell companies don't have to jump through yet another set of hoops—the MFJ restrictions and ambiguous or contradictory rulings by a Federal judge.

If the mergers are good for consumers, good for competition, and good for the American economy they should go forward. But examining where the public interest lies is taboo where future BOC activities are concerned. The consumers do not benefit from the congressional and regulatory blinders currently in place.

Mr. Speaker, I have called upon the FCC and the NTIA to comment and report back to Congress on the public interest effects of allowing some local telephone companies to expand into new lines of business, while making it more difficult, if not impossible, for others to do so. I believe such an analysis will be useful to the Congress as it considers if the MFJ restrictions should be relaxed next year.

SECTION 1605(c) OF THE TAX REFORM ACT OF 1986

HON. STEWART B. McKINNEY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. McKINNEY. Mr. Speaker, today I would like to call the attention of the House to a particular provision of the Tax Reform Act of 1986—section 1605(c)—which clearly has no place in our Tax Code. My opposition to this provision centers on its merits, the procedural way in which it was obtained and its anticompetitive effect on small business.

It is my understanding that section 1605(c) is special interest legislation intended to exempt Research Corp., which is incorporated in New York and has its principal place of business in Arizona, from certain private foundation penalty taxes. Research Corp. is a tax-exempt technology transfer organization which is in direct competition with tax-paying small businesses.

I oppose this provision on its merits as a matter of tax policy. Section 1605(c) would permit Research Corp., to fund a new technology transfer organization by transferring a substantial portion of its assets to that entity in exchange for debt, without the imposition of private foundation penalty excise taxes that otherwise would apply. Such a transaction would generally be taxed as either an act of self-dealing, as an excess business holding, as an investment which jeopardizes charitable purpose, or as a taxable expenditure, depending on the precise nature of the proposed transfer. It also might constitute a termination of private foundation status requiring the payback of past tax benefits from exempt status.

The private foundation excise taxes were adopted by Congress in 1969 to curb abuses by private foundations and were intended to subject a private foundation such as Research Corp., to either the termination tax or other penalty taxes if it transferred its assets out of charitable solution. There is no information in the public record that would warrant a relaxation of the rules to make a special exception for Research Corp.

I also object to the procedure by which this provision was obtained. The provision was neither in the House bill nor the Senate bill. Accordingly, under customary rules, it should have been "nonconferenceable." However, this provision appeared for the first time when the conference agreement was printed. There were no hearings on the provision; there was no discussion in the committee. In effect, the House, as well as the public, was not given an opportunity to examine this provision and debate its merits. It is particularly important in areas involving regulatory control of private foundations that any exception to the general rules be subject to careful public scrutiny to ensure that the exception is warranted.

Finally, I oppose this provision because of its adverse impact on small business. An important recommendation of the recent White House Conference on Small Business is that Government should "prohibit unfair competition in which nonprofit tax-exempt organizations use their tax-exempt status and other advantages in selling products and services also offered by small business." To the extent the private foundation taxes are waived by section 1605(c), the formation and subsidization of a new company by Research Corp. with tax-exempt assets will provide an unfair competition advantage over technology transfer organizations that have never benefitted from a tax subsidy.

In summary, Mr. Speaker, section 1605(c) of the Tax Reform Act of 1986 is bad tax policy and should be reexamined by the 100th Congress. This is a matter which I feel strongly about and will pursue in the next Congress.

Thank you, Mr. Speaker.

REMEMBERING LILLIE HAMILTON CARTER

HON. BUTLER DERRICK

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. DERRICK. Mr. Speaker, I join countless others in Washington and in South Carolina in mourning the passing of a dedicated employee of the U.S. House of Representatives and a friend to all in the Publications Distribution Service.

Mrs. Lillie Hamilton Carter, a native of Greenwood County in my district, died earlier this month.

Mrs. Carter worked in the "Folding Room" for over 20 years, most recently as an assistant unit foreman.

She was a loving wife of Ben Carter, a wonderful mother to sons Ervin and Benjamin Carter.

All who worked with her or knew her knew no finer person.

As we remember Lillie, I want to share with my colleagues an especially appropriate phrase from a poem which appeared in the program for her eulogistic service in Greenwood on October 10:

"God broke our hearts to prove to us
He only takes the best."

ELIE WIESEL A MAN OF PEACE

HON. BILL GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. GREEN. Mr. Speaker, I rise today to congratulate my friend and constituent, Elie Wiesel, on his being awarded the Nobel Peace Prize.

As a survivor of the Holocaust, he has made it his life's work to "bear witness" so that the lessons of the Holocaust are not forgotten. His activities are geared to reminding the world that evil still exists and that it is within all of us to ensure that it does not triumph.

Elie Wiesel has brought attention to the suffering of the people of Cambodia, Vietnam, Biafra, Northern Ireland, Lebanon, and the Meskito Indians of Central America.

A central theme of his life and writing is that aparthy toward evil is man's greatest sin. Despite his personal suffering, he has resisted the temptation to be vengeful.

Elie Wiesel has been a man of peace in his life and in his work. I have known Elie Wiesel for many years and have been privileged to work with him in my capacity as one of the House's representatives on the U.S. Holocaust Memorial Council. I can think of no person more deserving of the Nobel Peace Prize than he is.

NEW HEADQUARTERS BUILDING FOR NEW YORK STATE'S DIVISION OF MILITARY AND NAVAL AFFAIRS AND THE RECENT APPOINTMENT OF MAJ. GEN. LAWRENCE P. FLYNN AS CHIEF OF STAFF TO THE GOVERNOR

HON. SAMUEL S. STRATTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. STRATTON. Mr. Speaker, I am proud to bring to the attention of my colleagues that the headquarters of the New York State's Division of Military and Naval Affairs has a new building which will be dedicated on November 1 in Latham, NY in my district; and the division also has a new commander, Maj. Gen. Lawrence P. Flynn as chief of staff to the Governor of New York, Governor Mario M. Cuomo.

The Division of Military and Naval Affairs is headquarters for the State's Organized Militia, the State Emergency Management Office and the Radiological Emergency Preparedness group. This vital State and Federal agency recently relocated to its new headquarters in Latham, NY, and on November 1, 1986, a formal dedication ceremony is to be held.

The organized militia has grown to 34,902 personnel and consists of the New York Army and Air National Guard, the New York Naval Militia and the New York State Guard. The Army and Air National Guard have a dual mission. The Federal mission requires that they maintain units readily available to augment the active Army and Air Force in time of war or national emergency. The Army and Air Guard's State mission is to provide units that are organized, equipped and trained to function efficiently for the protection of life and property and to preserve peace, order, and public safety when required by order of the Governor. To support this mission, DMNA developed a Long Range Force Structure Master Plan which addresses current and future force structure requirements from the 1980's through the 1990's. The expansion of the State's Army and Air National Guard in the past 4 years has provided more than $164 million Federal dollars to support new facility construction as well as significant increases in support personnel and equipment. This has, and will be in the future, a significant addition to the ability of the militia to respond to State and national emergencies with better trained troops located in the right places and equipped with the latest military hardware. Current examples of the application of this long range plan include the designation of the 27th Brigade, NYARNG, to round out the new 10th Mountain Division (Light Infantry) and the equipping of the 105th Military Airlift group with C–5A Aircraft. This fully staffed, equipped, trained and readily deployable force is part of the Total Force Policy which fully integrates the Active and Reserve Forces in the national military strategy for deterring war.

The Organized Militia of New York State is prepared to assist in the area of public protection when so directed by the Governor. A responsive, pro-active well trained and disciplined force is ready and has responded. In 1986 for instance, it furnished assistance in transporting and loading hay for drought-stricken areas in the Southeastern States; in 1985 it assisted local authorities on Long Island in the aftermath of Hurricane Gloria; in 1985 it responded to the need for emergency snow removal in Buffalo; in 1983 it provided engineer troop assistance following an explosion in downtown Buffalo.

In the past 4 years the Division of Military and Naval Affairs has made available State armories in New York City to provide temporary shelters for homeless individuals. State armories are currently housing over 3,300 homeless men and women per day. DMNA provides more than 40 percent of the New York City shelter space for single homeless males and females.

The statewide Emergency Management Office [SEMO] has developed an extensive statewide emergency management awareness, education and training program, involving both the public and private sectors, to include school, State agency, volunteer, local government, and business and industry representatives. Since 1983, these efforts have resulted in the delivery of more than 850 courses in emergency management related topics for an audience of 27,000 people. In May 1986, the Governor's Huricane Conference, the first of its kind, was held on Long Island. More than 200 public and private sector representatives participated. A winter awareness program, conducted last year, provided public safety protective measures for all counties within the State.

SEMO has initiated and/or participated in the development of statewide emergency management hazard mitigation program in coordination with various State agencies and local government officials. Activities include mitigation of natural hazards, National Weather Service for an Integrated Flood Observing and Warning System, creation of an Earthquake Technical Advisory Committee, participation on Terrorism task forces and development of a Hazardous Materials Planning Guide. SEMO, developed a "pro-active" statewide emergency response system to be used during an imminent threat or actual disaster as well as a State Disaster Administration Program.

The Radiological Emergency Preparedness Group is responsible for the offsite emergency plans for seven counties surrounding and located within 10 miles of each nuclear plant and to include 50 miles. The agency develops, implements, tests and revises the radiological emergency plans to be prepared to handle any radiological emergencies that may occur within the State.

All of these activities are now under the able leadership of Maj. Gen. Lawrence P. Flynn, Chief of Staff to the Governor, and the Commander of Army National Guard Forces in New York State.

Mr. Speaker, we are proud of the expansion of our National Guard and the progress that has been made by General Flynn as well by his predecessor, General Casteleno.

On April 28, 1986, General Flynn was appointed Chief of Staff to the Governor, and Commander, New York Army National Guard.

7-PERCENT UNEMPLOYMENT RATE IS NOT ACCEPTABLE

HON. AUGUSTUS F. HAWKINS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. HAWKINS. Mr. Speaker, it is now almost 4 full years since the current so-called recovery period began. Even though this period has officially been designated a recovery, it is in name only, not in substance. In reality, even though some individuals and sectors of the economy have indeed gained handsome economic rewards, the term recovery is a cruel insult to the millions of Americans bypassed by growth and prosperity.

The average national jobless rate was 8.3 percent 1981–85, and now we have been stuck around the unsupportable and morally unconscionable 7-percent unemployment mark far too long. To the over 8 million people the Bureau of Labor Statistics counts as unemployed; to the over 5.5 million who are working part time because they cannot find full-time work; and to the over 1.1 million so discouraged that they have dropped out of the labor force, being stuck at 7 percent is brutally unacceptable.

Even worse, is the economic plight of black and Hispanic workers, who have been particularly hard hit by unemployment. Recent statistics show 1 in 7 blacks and 1 in 9 Hispanics are jobless compared with 1 in 17 whites. Additionally, almost 40 percent of all black teenagers are jobless.

This is clearly an intolerable situation to the individuals affected, and should be equally un-

acceptable to those of us in the Congress whose job it is to determine policy and whose actions can change current circumstances.

The opportunity to work at fair rates of pay is fundamental to leading a normal life in our society. Work enables people to remain economically self-sufficient and contributes to an individual's sense of self-worth.

Unemployment, on the other hand, exposes individuals and families to economic, social, psychological and physiological costs that result in the disruption and disintegration of family life as the majority of Americans know it. Joblessness causes the loss of individual dignity and self-respect. In economic terms, it increases the Federal budget deficit, due to a shortfall of tax revenues and increases in the cost of unemployment compensation, public assistance and services related to criminal justice, physical and mental health, alcoholism, drug abuse, and other responses often related to unemployment.

A very well balanced, informative review of the problem of continuing high unemployment appeared in the New York Times on Tuesday, October 14, 1986, entitled, "High, but Stable, U.S. Unemployment Is Gaining Acceptance". While I disagree with the point of view alluded to in the title, it is not surprising that an observer would come to that conclusion, given governmental inaction on this national tragedy. In any case, I encourage my colleagues to read this article. I believe you will agree that we must not continue to ignore the plight of over 14.5 million unemployed and underemployed Americans and hope you will join with me and other members of the Education and Labor Committee as we work to develop and implement strategies to achieve full employment for all individuals able and willing to work.

A copy of the article follows:

[From the New York Times, Oct. 14, 1986]

HIGH, BUT STABLE, U.S. UNEMPLOYMENT IS GAINING ACCEPTANCE

(By Robert D. Hershey, Jr.)

WASHINGTON.—For more than two years the nation's unemployment rate has hovered around 7 percent, a level long considered intolerably high and far above the 4 percent target set by Federal law.

Few analysts, moreover, expect the rate to decline appreciably in the near future, even if the current economic expansion, which is now approaching its fourth anniversary, continues.

Yet for all the lost production and individual distress associated with having 8.33 million Americans jobless—more than the population of New York City—a 7 percent unemployment rate seems to have become acceptable to the public, some experts say. This comes after unemployment rates in the double digits from September 1982 through May 1983, reaching a peak of 0.7 percent in December 1982.

A SENSE OF WELL-BEING

The drop in unemployment along with the dramatic decline in inflation, also from the double digits in 1979 and 1980, has done much to restore a sense of economic well-being. Most experts believe that jobs, except where employment has fallen because of highly visible foreign competition, will not be a major campaign issue this year.

For many years 4 percent unemployment was considered more or less normal, and this figure was designated a national goal as recently as 1978 when the Full Employment and Balanced Growth Act was enacted. The higher "normal" level of joblessness, a phenomenon many years in the making, is a consequence of profound changes that are social as well as economic.

The overeaching fact, observes Dr. Janet L. Norwood, Commissioner of Labor Statistics, is that "absolutely phenomenal" growth in the number of jobs in recent years has been matched or exceeded by the swelling ranks of those who want jobs. "The labor force," she notes, "keeps increasing."

The participation rate—the percentage of the population aged 16 or over with jobs or looking for them—reached a record 65.4 percent this summer. Much of this demand for jobs reflects the huge, and widely noted, increase in the ranks of working women and the coming of age of the babyboom generation born in the 15 years or so that followed World War II.

SLOW GROWTH OF ECONOMY

Slower economic growth, barely above 2 percent so far this year, is tied fairly closely to job growth. The best-known formulation of this relationship was that of Arthur M. Okun, chairman of President Johnson's Council of Economic Advisers.

Okun's Law states that it takes growth in gross national product three percentage points higher than the economy's long-term growth potential to cut the jobless rate by one percentage point. At present, the economy is not even reaching the 3 percent growth considered by many as its long-term potential.

At the same time, the labor pool has become more fluid, with more people experiencing spells of unemployment in a given period but fewer suffering the long-term hardship. Last month 15.5 percent of the jobless had been out of work for more than six months, down from 19.1 percent in 1984 and 23.9 percent in post-recession 1983.

Increasing demand for jobs has coincided with acceleration of a trend by the economy to demand more service workers and fewer production workers, a development that has helped provide the jobs many women seek.

Some analysts maintain that the quality of jobs has declined, with low-paid service jobs replacing high-paid manufacturing jobs, thereby shrinking the nation's middle class. But many service jobs, such as computer programming, are relatively well paid and evidence of a major social trend is not conclusive.

MARRIED MEN WITHOUT JOBS

Another element in holding the jobless rate up, according to a Harvard economics professor, Lawrence H. Summers, has been a substantial rise in unemployment among married men, particularly those who have lost high-paid industrial jobs.

Such men as a group, he says, have become "picky"—refusing to accept jobs with lower pay and status, an attitude that he says has been growing since about 1970 but that has become especially pronounced in the past three years.

Professor Summers suspects that the shift among these men, typically union members in urban areas, relates at least in part to a greater number having working wives. He also suggests the families may be drawing down savings, observing, "It's a lot easier to borrow against your house than it once was."

Other evidence, mostly anecdotal, shows that many of these workers have moved heavily into the underground economy where earnings can be hidden from tax collectors.

The reluctance to take regular jobs, however, is not the result of any expansion in the social safety net. The figures, in fact, show a startling drop in the ranks of those collecting unemployment-insurance payments over the past decade. According to the Labor Department, 28.5 percent of all jobless workers collected such benefits last month, compared with 67.2 percent in May 1975.

Dr. Norwood says "we really don't know" the reasons for this decline, but she guesses that it primarily relates to actions to tighten eligibility requirements, most of them by individual states, in the Carter and Reagan years.

It is clear, however, that the economy simply is not generating as many jobs as it did since the initial rebound from the 1981-1982 recession.

"The economy is not growing nearly as strongly as it had been," asserted John E. Bregger, head of the Labor Department's division of employment and unemployment analysis.

The shift to a service-based economy itself also tends to limit growth. "You don't get the multiplier effect to make the economy grow faster" that would result from using more machinery rather than more people, observed Joel Popkin, a former Labor Department official who is now a consultant.

Still other factors cited for "sticky" unemployment are recent legislation barring forced retirements at 65 and the nation's record deficit in trade with other countries.

Although employment effects of the trade deficit are often overstated—politicians tend to focus on the jobs lost in their districts when plants close because of foreign competition and to ignore the jobs gained elsewhere for dock workers or distributors—there is undoubtedly some overall loss.

"You're importing and selling, but you're not producing," says John M. Albertine, chief economist at Farley Industries, a Chicago-based manufacturer.

HIGHER RATES AROUND WORLD

Despite all the forces tending to keep the jobless rate high, the nation is doing far better than most of Western Europe. The rate in Britain and France remains well above 10 percent and even that of West Germany—7.3 percent when adjusted for comparability by the Labor Department—is higher than that of the United States.

But organized labor and other groups insist, in fact, that the real jobless rate for Americans is far higher than the one officially reported. This is mainly because the Government does not include the 1.17 million workers so discouraged about job prospects that they have dropped out of the labor force and because of an increase in the number of people working part time who want to work full time.

The number of people working part-time for economic reasons rose 60 percent from 1979 to 1985, according to the Full Employment Action Council, a coalition of activist groups.

Robert N. Mottice, economist for the Senate Republican Policy Committee, insists that today's very low inflation rate has done much to make 7 percent unemployment tolerable. He asserts that by his calculation the "misery index"—the sum of the jobless and inflation rates which is another creation of Mr. Okun—has fallen in every state since 1981.

"That combination should be sufficient to prevent unemployment from being a point

of contention" in the election campaigns, Mr. Mottice says.

While the prospects of a big decline in joblessness are not bright, many economists believe the rate can be cut at least a point or so in coming years.

Robert Eisner, a professor of economics at Northwestern University and a liberal, disagrees with Mr. Mottice and contends the Democrats will get more electoral mileage from the jobs issue, as well as the distress in agriculture, manufacturing and energy, than many people expect. But he also suggests that remedies to high joblessness are at hand. In particular, he urges the Federal Reserve to expand the money supply faster to drive down interest rates.

"I've long felt we're insufficiently aggressive in our effort to combat unemployment," he declared. "To settle at 7 percent, with inflation virtually zero, shows the wrong set of values."

RELIGIOUS INTOLERANCE IN AMERICAN POLITICS

HON. RONALD D. COLEMAN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. COLEMAN of Texas. Mr. Speaker, the continued rise of religious intolerance in American politics threatens our sense of decency, of fair play, and indeed, our very way of life. The nonpartisan organization, People for the American Way, has investigated a number of these incidents, including some in my home State of Texas, and I want to bring these examples to the attention of my colleagues in the hope that we can work together to prevent future outbreaks.

The case-by-case examples follow:

FLORIDA

Bob Plimpton, Freedom Council coordinator for South Florida, distributed the following flyer at Palm Beach County churches: "Wanted Qualified Christian Candidates for Palm Beach County School Board. . . . if you are willing to pray about becoming a candidate, please call Bob Plimpton. . . . fear not, we can train you and get you elected with God's help."

GEORGIA

In the Seventh District, Democrat BUDDY DARDEN is being challenged by the Reverend Joe Morecraft, pastor of the fundamentalist Chalcedon Presbyterian Church and minister of the late Representative Larry McDonald, a John Bircher who held the seat until his death in 1983. Two fund-raisers who supported Representative Pat Swindall in his defeat of incumbent Elliott Levitas in 1984, James Zauderer and Nancy Schaefer, have sent out a fund-raising letter for Morecraft in which they refer to Swindall and say "God has provided another man who is willing to serve our Lord in the Halls of Congress." In another fund-raising letter, two Morecraft backers, David and Marlene Goodrum, said "Imagine what kind of nation the United States would be if the Senate, the House of Representatives and the Supreme Court had the commitment to Christ and the knowledge and dedication to God's Word that Joe Morecraft has."

INDIANA

Three Religious Right candidates who have come to be known as "The God Squad" upset party regulars in primaries for three House seats.

In the First District, State Senator William Costas "said that a message from God was the reason he entered the race in the heavily Democratic 1st Congressional District," according to the *Gary Post-Tribune*. The paper quoted Costas: "I said Lord, you have to show me. I was waiting for bright lights and a voice out of the sky, but that didn't happen. So I said Lord, show my wife. And one day, when she was driving home from Indianapolis, she had the thought that God was telling her that 'This thing with your husband is of me and you should encourage him to run.' That was the important step."

In the Second District, Donald Lynch, associate minister of the Beech Grove Nazarene Church, upset Jay Wickliff. Lynch had help from Greg Dixon, head of the Indiana Moral Majority.

In the Fifth District, State Senator and lay preacher James Butcher defeated State Treasurer Julian Ridlen. Butcher received help from Pat Robertson, who raised $30,000 for him at a fund-raiser. In the State Senate, Butcher worked successfully for legislation barring all state regulation of church schools, including state attempts to mandate safety standards such as the presence of fire extinguishers.

IOWA

Fundamentalists organized by Steve Sheffler, a Freedom Council worker, dominated Republican Party caucuses in four counties, including the area of Des Moines. They tried to purge party regulars: Mary Louise Smith, former director of the Republican National Committee, was only elected a delegate after five ballots when she convinced fundamentalists that her experience would be valuable.

While party regulars retained control, they made major concessions to the fundamentalists on the platform. Resolutions adopted June 21 include a call for the teaching of creationism in public schools and the following declaration:

"We affirm the words 'separation of church and state' do not appear anywhere in the U.S. Constitution, and Supreme Court Justice William Rehnquist has termed the phrase a 'misleading metaphor' that should be abandoned, we sincerely desire that the First Amendment of the U.S. Constitution be interpreted and applied according to the intent of the framers, which provided for religion rather than freedom from religion. This phrase 'separation of church and state' which appears in the Constitution of the Soviet Union has regularly been used to exclude Godly principles and activity from the public sector, and we believe this violates the heritage of this nation and the spirit upon which it was founded."

NEBRASKA

At the Douglas and Lincoln Republican county convention, which include Omaha and Lincoln, the Religious Right made major gains in electing delegates to the state convention. Freedom Council State Coordinator Bob Garrett successfully controlled delegate selection in Douglas County.

Unsuccessful GOP gubernatorial candidate Everett Sileven sent a fundraising letter asking for donations by saying ". . . I have God. I know I can count on God. Can I count on you?" He closed the same letter with "I thank you and God thanks you."

Sileven, an active fundamentalist minister, gained national attention when Jerry Falwell, Tim Dixon and others rallied to his cause because he was jailed for refusing to hire state-certified teachers at his Louisville Faith Baptist church school.

NORTH CAROLINA

In a primary marked by considerable activity by the Religious Right, Representative JAMES BROYHILL defeated David Funderburk for the Republican Senatorial nomination.

For Jesse Helms' Congressional Club and its senatorial candidate, David Funderburk, it was not enough to have a 100 percent rating from the conservative Citizens for Constitutional Action and a 67 percent rating from Christian Voice, as does BROYHILL, an establishment Republican. Funderburk and other Religious Right activities said BROYHILL was too liberal because he had once voted for the Equal Rights Amendment and had voted to make Martin Luther King's birthday a national holiday.

Funderburk actively courted fundamentalist groups. Among other efforts, he responded to a questionnaire prepared by a group called Students for Better Government which included these questions: "Can you honestly say that you have a personal relationship with Jesus Christ? How well do you know him?" and "If you answered yes . . . would you, if elected, seek God's guidance for your decisions? If no, how would you determine your answers and solutions?" Funderburk's answers included: "I think that only by a strong belief in the Lord can we restore the foundation values of the value of human life, the family, home & church (& a fixed right & wrong) as central to our country's survival . . . I stand for conservative beliefs and traditional values to keep this nation free and one Blessed by God . . . I believe in Jesus Christ as my Lord and Savior, relying on his guidance first."

OREGON

Joe Jutz, a 35-year-old fundamentalist Baptist minister, won a surprising 43 percent of the vote against Senator BOB PACKWOOD in the Republican primary. Lutz spent less than $40,000, while PACKWOOD spent $2 million on TV ads and phone banks. Lutz received organizational and other help from the Freedom Council, the American Coalition for Traditional Values and Concerned Women for America and claimed to have 5,000 church-based volunteers. Lutz' positions included calling for dismantling the Federal Reserve Board and the Social Security system, withdrawing from the United Nations, lifting all sanctions against South Africa, selling off federal lands and phasing out property and income taxes.

SOUTH CAROLINA

The Religious Right has been active at a number of levels in the state, and there have been fights among different factions in the movement.

The Religious Rights mounted a strong challenge to Dr. George Graham, the party chairman, who was re-elected only after promising to give the chairmanship to the fundamentalists after this year's election.

Representative Thomas Hartnett, who has strong ties to the Religious Right, is the Republican nominee for Lieutenant Governor.

Pat Robertson and local Religious Right activites backed Henry Jordan, who lost the Republican nomination to challenge Senator ERNEST HOLLINGS.

In the primary for an open seat in the Fourth Congressional District, three of four

candidates had ties to different Religious Right constituencies. The establishment candidate was Greenville Mayor William III. Tom Marchant III ran with the endorsement of fundamentalist leader Bob Jones; Richard Rigdon, had backing from religious activists in the district; pilot Ted Adams had support from fundamendalists. Workman fell only 132 votes short of 50 percent needed to win the primary and faced a run-off with the second-place finisher, Marchant, who had 22.5 percent of the vote. But Marchant dropped out of the run-off, and Adams, who had 20.3 percent of the vote, will face Workman in the Run-off. Rigdon has endorsed Workman. (This primary introduced a new issue into Republican politics: according to the Washington Post, Jack Buttram, a former aide to Senator STROM THURMOND and a leader in the Greenville Fundamentalist Forum said he could not support Rigdon because "He's involved now with a radio station in Greenville that plays 'contemporary Christian music,' and it's not a good influence on our youth.").

SOUTH DAKOTA

Dale Bell, a Religious Right activist who has worked for NCPAC and the Conservative Caucus, won the Republican primary to run for the House seat being vacated by THOMAS DASCHLE, who is running for the Senate. Bell has been endorsed by Pat Robertson and has received funds from Robertson's Committee for Freedom PAC.

TENNESSEE

In the third District, Robertson endorsed Jim Golden in the Republican primary against John Davis, who has held Democrat MARILYN LLOYD to 52 percent of the vote in 1984. (LLOYD's victory in 1984 was described by some as a Religious Right victory at the time because she was pro-life). Golden won the primary. He has dissociated himself from Ed McAteer's Roundtable, but he has also called for federal laws to ban Playboy.

TEXAS

Religious Right groups were split in the gubernatorial race, with some backing Representative TOM LOEFFLER and some, including Robertson, backing former Representative Kent Hance, but former Gov. William Clements, a moderate, won the nomination. David Davidson, a Religious Right activist, won the nomination for Lieutenant Governor.

Religious Right activists tried to remove George Strake as state party chairman, but were unsuccessful.

The state platform adopted a number of planks reflecting the Believers' Decree of Agreement, including a ban on the regulation of private schools, equal time for Creationism in the classroom, an attack on "Secular Humanism" in the schools, a call for a quarantine of AIDS victims, a proposed Constitutional Amendment to elect federal judges every six years and a proposal to force Supreme Court justices to retire at 80. Lt. Governor nominee Davidson's organization contributed to "the Texas Grassroots Coalition," which distributed the "Decree of Agreement."

But even while adopting many of the positions advanced in the Believers' Decree, the Texas GOP platform said "The Republican Party of Texas does not require the endorsement of any particular 'Solemn Oath and Covenant' to participate in our party."

IV. CONCLUSION.

As the first stage of political activity in 1986 draws to a close, it is clear that religous intolerance remains a part of the American political landscape which all too often fails to generate the outrage it deserves simply because people have gotten used to seeing it. Indeed, the first six months of 1986 have seen more instances of religious intolerance than take place throughout most election years. The stage is also clearly set for an upsurge in religious intolerance in the general election, when partisan Republican Religious Right activity has always been the greatest.

Events this year have proved again that those who have no respect for the American political system are strongest in caucuses, conventions and primaries where public participation is lowest. On a practical level, this fact has potentially long-term implications for the Republican Party and the American political system; the Religious Right has become institutionalized as a special interest group within the party.

While the Religious Right certainly has the right to participate in the political process, it does not have the right to threaten the integrity of the process—or threaten the rights of others to participate—by using such tactics as deliberate deception, death prayers, theo-political inquisitions, or claims of divine endorsement for individual candidacies.

For Americans in 1986, the threat of political extremism and religious intolerance was illustrated in its starkest form by the victory of the LaRouche candidates in the Illinois Democratic primary. Following the primary election, many Illinoisans admitted they had voted for the LaRouche candidates because "Nobody told us who they were or what they stood for." These responses underscored the obligation of responsible citizens of every religious faith and political viewpoint: to oppose—and expose—extremism in all its forms, so that, in the future, none of our fellow citizens will be able to say: "Nobody told us who they were or what they stood for."

It is in this spirit that People For the American Way offers this report on religious intolerance in political campaigning in the first six months of 1986. The instances of religious intolerance and deceptive tactics that have already occurred in 1986, should serve as a warning that—unless these tactics are challenged—American society may be further polarized, our liberties threatened, and our political system distorted, not only for the remainder of this campaign season, but for years to come.

DR. HAROLD G. BARKER MEMORIAL CHAPEL

HON. ED JONES

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. JONES of Tennessee. Mr. Speaker, I would like to bring to the attention of my colleagues a recent newspaper article from a publication in my district regarding a family of special importance to their community—the Harold Grey Barkers of Humboldt, TN.

Dr. Harold G. Barker, who is deceased, was recently honored with the dedication of a memorial chapel at the HCA Humboldt Cedar Crest Hospital on September 18, 1986. Dr. Barker was a dearly loved Christian man who tended to the sick of the Humboldt area for many years prior to his death. He is the father of one son who is a doctor and another son, deceased, who was a pharmacist. His brother, Edward Barker of Humboldt, is also a doctor and two nephews practice medicine, too.

It is obvious to see that the Barker family has for many years given of themselves to their respective communities and to their fellow citizens in an effort to make life better for all.

I respectfully request that the article which appeared in the October 1 edition of the Humboldt Courier Chronicle be entered into the RECORD.

[From the Humboldt (TN) Courier Chronicle, Oct. 1, 1986]

DR. HAROLD G. BARKER MEMORIAL CHAPEL DEDICATED AT CEDAR CREST

The dedication of the Dr. Harold G. Barker Memorial Chapel was held on September 28, 1986 at 2:00 p.m. in the hospital classroom at HCA Humboldt Cedar Crest Hospital.

Mayor Marlon Hawks made the opening comments followed by Rev. Charles Yancey of the First United Methodist Church giving the invocation. Rodney Smith, hospital administrator, accepted the chapel as part of the hospital in conjunction with the Ministerial Alliance.

The chapel was made possible through the efforts of all of those who donated their time and gifts. A special thank you to all of those who made memorials directly to the Dr. Harold G. Barker Memorial Fund at Merchants State Bank or the hospital.

The coordination of all these efforts were handled by the hospital chapel committee. The committee members include LaDonna Ford, Lynda Stella, Brenda Parrish, David Walters, David Finch, Ken Anderson, and Billie Hazelwood. The committee would like to thank Mrs. Norma Barker Mitchell, who worked with them to ensure the chapel will help meet the spiritual needs of the patients and their families.

THE STATUS OF CUBA'S JEWS

HON. JIM COURTER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. COURTER. Mr. Speaker, I was extremely interested in a report on the Jews of Cuba which appeared recently in the Jewish Star, a New Jersey newspaper. I wish to place it before my colleagues in the Congress because it is a good survey of the status of a minority which usually fares ill in Marxist-Leninist countries. We have seen a number of such reports on the difficulties of the small Jewish community in Nicaragua, most of which has now emigrated, but the story of Cuba is rarely if ever told.

[From the Jewish Star, Sept. 26, 1986]

CUBA'S JEWS FACE APATHY AND ASSIMILATION

(By Larry Yudelson)

(JSPS).—The Cuban Jewish community is threatened by apathy and assimilation, according to Moises Asis, one of the community's leaders. Asis was in the U.S. recently to attend the Conference for Alternatives in Jewish Education.

For Jewish children in Cuba, Asis is the only Jewish educational alternative. He teaches Sunday School for 10 children, ranging in age from 4 (his daughter) to 11.

His curriculum includes hebrew, Jewish traditions, and history.

By training, Asis is an information scientist, preparing abstracts and writing reports for the Ministry of Agriculture. But he decided to devote his one free day each week to the next—he hopes not the last—generation of Cuban Jews because "it is necessary."

Asis has been involved with the Jewish community for 16 years. He picked up his knowledge of Hebrew from a teacher at the Zionist Union of Cuba, before it was closed in 1978.

Historically, Cuba has had better relations with Israel than have most Communist countries. Unlike the Soviet Union and most of its satellites which broke relations in 1967, Cuba waited until 1973. Asis explained, somewhat apologetically, that many anti-Israel moves were dictated by pressure from other countries.

Even today, says Asis, "Cuba is only against the policies of the Israeli government. The Cuban press never questions the existence of the State of Israel." Articles denouncing Zionism occasionally appear, "but not often."

In his classes, Asis discusses Israel both as the site of Jewish history and as the location of a major Jewish community, neither trying to erase the traditional Jewish connection to the land of Israel nor to preach Zionism.

"We don't talk about politics in the Jewish community," he says, referring to both Zionism and Communism.

Asis says there are currently 1,000 Jews identified with the community (others estimate it at 800) down from an estimated 15,000 Jews before Fidel Castro took power in 1959. Almost all of the Jews live in Havana, where the five synagogues are located. Not all of the synagogues are functioning; and in those that are, only receive about 35 people on a typical Shabbat morning. For a Passover Seder last year, 120 people turned out.

Not many young people are involved in Jewish activties, but Asis hopes that the trend of younger attendance at church may spread to the synagogue. One disincentive is that Communist Party members must be atheists—and only Party members can hold top government and diplomatic posts. Nonetheless, Asis pointed out only a small minority of Cubans are Party members, and that Jews hold top positions in various scientific societies.

At the beginning of last year the Cuban government opened an Office of Religious Affairs. That, says Asis, has been good for the Jews, citing the office's approving his present trip to the U.S. and a similar one last year.

Last year, for the first time, the community was able to import a rabbi for Passover. Although the government will not allow them to hire a permanent rabbi from outside the country, Asis said they would allow a Cuban to study at a rabbinic seminary abroad.

Besides the synagogues and Asis' Hebrew school, the community has a kosher butcher, a hevra kadisha (burial society), a 22-member B'nai B'rith chapter, a women's organization, and a society to care for the sick. The Cuban community is poor by American standards; the Communist economy doesn't leave them the extra funds to support a communal network. Hebrew school attendance presents a problem, with interested children scattered throughout Havana and transportation expensive.

Intermarriage is a major problem in so small a community. "There is no other option," says Asis in a resigned tone. "It is much easier to find a partner outside the community than inside."

NORTHAMPTON CHOSEN FOR CONSTITUTION CELEBRATION

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. CONTE. Mr. Speaker, I rise today to pay tribute to Northampton, as it has been chosen as one of the first cities in Massachusetts to officially participate in the bicentennial celebration of the U.S. Constitution. Northampton is one of a select number of cities, towns, and counties nationwide that have been bestowed the honor of "Designated Bicentennial Communities."

A committee is being formed by the city to develop and provide educational programs on the Constitution. Some major events the committee is planning include a debate on whether or not the Constitution should be revised, and a program on Caleb Strong, a Northampton native, who helped write the Constitution. Also there will be a program on Daniel Shays. Needless to say, as sponsor of Shays' Rebellion Week, I am pleased that this subject will be given the attention it deserves.

Northampton should indeed be proud of its accomplishment of being selected a "Designated Bicentennial Community." The selection of Northampton as one of the participating cities is of great importance, for Northampton is a fine example of the bicentennial spirit surrounding the country. Chief Justice Warren Burger, Chairman of the Commission on the Bicentennial of The Constitution, said upon declaring Northampton's designation:

The active involvement and participation of our Nation's local governments will be key to the success of the bicentennial.

Mr. Speaker, it is my pleasure to congratulate and salute the people of Northampton, and I wish them well as they undertake to celebrate the bicentennial of our Nation's Constitution.

A TIME FOR REFLECTION

HON. NEIL ABERCROMBIE

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. ABERCROMBIE. Thank you for this opportunity to offer my perspective as the Representative from the district which includes Pearl Harbor on this occasion in which we take note of the approaching 45th anniversary of the December 7, 1941, attack on Pearl Harbor. That tragic event not only plunged the United States into World War II, but it posed an agonizing challenge for Hawaii's Americans of Japanese ancestry.

In the wake of the attack, Americans of Japanese ancestry came under unjustified suspicion as spies, saboteurs and fifth columnists. Americans of Japanese ancestry in Hawaii barely escaped the fate of the 110,000 Americans of Japanese descent who were interned on the U.S. mainland. The hostility and suspicion which prompted those policies were, I repeat, unjustified.

In those dark days, Hawaii's Americans of Japanese ancestry stood firm in their devotion to the United States. When the Hawaiian Islands faced the threat of imminent invasion in December 1941 and early 1942, theirs was an important presence in units charged with defending the Territory of Hawaii; the Hawaii Territorial Guard, the 298th and 299th Infantry Regiments; and even the University of Hawaii Reserve Officers Training Corps. They served, too, in the Varsity Victory Volunteers, organized to assist the Army in building facilities needed for the war effort.

Starting in mid-1942, many of those same Americans of Japanese ancestry met the supreme test of loyalty with the formation of the 100th Infantry Battalion and the 442d Regimental Combat Team. Those units, composed of Japanese-Americans, served in France and Italy, where they saw some of the bitterest fighting of World War II. So high was their casualty rate that the 100th was known as the "Purple Heart Battalion." The 442d was one of the most, if not the most, decorated units of its size in the entire U.S. Army. To that roll must be added those Americans of Japanese descent who served in the Military Intelligence Service and the Office of Strategic Services.

Their record put to rest the doubt and suspicion which had fallen unfairly on Americans of Japanese ancestry. It was also a major proof positive to the Nation that the people of Hawaii were firmly committed to American ideals and principles, a proof which demonstrated that Hawaii was ready for statehood.

And I might note that two of these veterans continue to serve our Nation. Senator DANIEL INOUYE and Senator SPARK MATSUNAGA served first in this body, and serve now in the other body. The record they and their comrades established is an enduring legacy. It testifies to their faith and courage, to the folly of prejudice, and to the power of America's promise of equality.

THE FEDERALISM ACT OF 1986

HON. THOMAS J. DOWNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. DOWNEY of New York. Mr. Speaker, there are moments in history when we—the elected representatives of more than 220 million Americans—are called upon to take decisive actions on great policy matters. Lincoln's leadership in the Civil War, FDR's New Deal, and LBJ's Great Society are just three examples of democracy at its best. In today's America we face similar challenges. Are we up to the task?

A radical sorting out of Federal, State and local responsibilities is necessary. After 6 years of draconian cuts in lifeline programs, we must step back and take a look at the intergovernmental system. Historical imperatives—such as the growth in State maturity, the Federal deficit, and States willingness to

use their taxing powers—compel us to action, not reaction.

That is why I introduced the "Federalism Act of 1986" yesterday. This legislation, a direct descendent of the work of the bipartisan Committee on Federalism and National Purpose, will put welfare recipients to work, improve the health care of millions of senior citizens and indigents, establish more national uniformity in benefits to the needy, and devolve to States and localities those economic development, infrastructure and social service functions that they can manage as well as, or better than the Federal Government.

Why should Congress put this large plate on its table?

A sorting out of the intergovernmental system keeps faith with the American experiment. And the 100th Congress and the 200th anniversary of the Constitution provide us with an unequaled opportunity to return to first principles. Our State and local governments have filled the vacuum left by Federal inaction in the past 6 years. It is time to acknowledge this and act in a rational way to restructure priorities.

Federal welfare policy cries out for reform. We must be fair. A poor person in Arkansas is no less needy than a poor person in New York, and yet their benefits are greatly disparate. This legislation establishes greater national uniformity in basic income support programs. It demeans an individual to be treated as a word of the State. This legislation will help us train welfare recipients and place them in productive jobs.

The burden on our States and localities in terms of Medicaid is great and growing. How will our State and local governments continue to care for the needy and those requiring long-term health care? This legislation will dramatically increase the Federal role in Medicaid funding and give States the ability to innovate in long-term-care policy.

If these arguments remain unconvincing, then a look at the alternatives is in order. We can continue along the same path of cutting vital programs by 2, 5, or 10 percent each year. We can adopt the rumored Reagan proposal, a vast cashing out of basic income support programs without regard to national uniformity, or we can enact something along the lines of the Committee on the Federal Social Role's recommendations. The latter alternative is the most bipartisan, most comprehensive, and most systematic restructuring of the intergovernmental system.

The Committee on the Federal Social Role, cochaired by Washington Senator DANIEL EVANS and former Virginia Gov. Chuck Robb, worked diligently for 2 years to arrive at a consensus among its conservative, moderate, and liberal members. This legislation, and its companion in the other body, is that committee's legacy. We should make it the legacy of the 100th Congress.

THE 100TH ANNIVERSARY OF ST. FRANCIS XAVIER CHURCH

HON. CHARLES E. SCHUMER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. SCHUMER. Mr. Speaker, I would like to take this opportunity today to recognize the St. Francis Xavier Church and its pastor, the Rev. John H. O'Brien. The church, located on 6th Avenue between President and Carroll Streets in Brooklyn, is celebrating its 100th anniversary this year. Throughout that century, St. Francis Xavier has played a vital role in the spiritual life of the community. The church is affiliated with the St. Augustine-St. Francis Xavier Inter-Parochial School under the fine direction of Sister Kathleen Sullivan. The school has shown consistent excellence in the education of our young people.

The church will be holding a gala dinner dance on November 8 in celebration of this anniversary. I am sure that this event will be marked by the same joy and sense of family that the church has shared throughout its century in the service of God and community. I offer my best wishes for the continuation of their success and my thanks to them for all their good work.

TRIBUTE TO PHOTOGRAPHER EVERETT A. TATREAU

HON. BRIAN J. DONNELLY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. DONNELLY. Mr. Speaker, for a generation, residents of Quincy, MA, and the South Shore have seen the joy and the sorrow, the hope and the anguish of their communities through the probling eyes of Everett A. Tatreau.

Since 1954, Everett Tatreau has been a news photographer for the Patriot Ledger of Quincy, MA, the largest evening newspaper in the State. The glimpses of life he has recorded with his camera have regularly brought him honors from news organizations and his fellow photojournalists. In 1974, his images of the start of school busing in Boston earned him a nomination for the Pulitizer Prize.

For 17 of his 32 years with the Patriot Ledger, he was the paper's chief photographer. When he retires this month, puts the lens cap on his Nikon and shuts off the police scanner, he leaves behind him an unmatched chronicle of Massachusetts life in the last third of a century, a cadre of photographers who have learned from his guidance and example, and thousands of newspaper readers who have been moved and enlightened by his vision.

As Mr. Tatreau begins his retirement, I am pleased to take this opportunity to pay tribute to his accomplishments as a photojournalist and join his colleagues and the readers of the Patriot Ledger in thanking him and offering best wishes to him and his wife, Ruth.

FISCAL SOUNDNESS OF SOCIAL SECURITY

HON. JOE BARTON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. BARTON of Texas. Mr. Speaker, I rise in support of legislation to eliminate the requirement that there be a 3-percent rise in the Consumer Price Index before a cost-of-living adjustment is awarded to Social Security recipients.

The rate of inflation over the last year has been less than 3 percent, and consequently all Americans have found themselves with potentially more purchasing power. Under current law, the 36 million people who receive Social Security benefits will be denied a COLA. This paradox unjustly negates the positive effects of low inflation for the individuals who oftentimes need it the most. Legislation to correct this problem would guarantee the elderly and disabled the benefits necessary to maintain a standard of living to which they are entitled.

I will support legislation that will award the COLA as long as it does not exceed the rate of inflation, and does not raise the current Social Security taxes to pay for maintaining the adjustment. As the largest and most important domestic program, we must act in a rational manner to ensure the longevity and fiscal soundness of Social Security for generations to come without punishing current recipients.

I urge my colleagues to support a fair and equitable measure to maintain the Social Security cost-of-living adjustment.

IRANIAN PERSECUTION OF BAHA'IS CONTINUES

HON. JIM LEACH

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. LEACH of Iowa. Mr. Speaker, recently, I received information from Firuz Kazemzadeh, vice chairman of the National Spiritual Assembly of the Baha'is of the United States, relating to another example of man's inhumanity to man.

Less than 2 weeks ago, a 16-year-old Baha'i boy, Bijan Talebi, was killed by a group of Muslim religious fanatics in the village of Vardavard on the outskirts of the town of Karaj, near Tehran.

The boy's body, showing marks of a brutal beating, was found in a garden. The murderers had hanged the body to suggest that Bijan had committed suicide. However, the local police who arrived on the scene found that death had been caused by injuries in the beating, and that the hanging was an attempt to mislead the police.

Reportedly, Mrs. Talebi, Bijan's mother, complained to the authorities, but they refused to apprehend the criminals, whose identity was known because they had on several occasions abused members of the Talebi family

and other Baha'is. Instead, the authorities arrested Mrs. Talebi, another son and a cousin, all of whom are now being held in solitary confinement in Iran.

In a world in crisis over nuclear weapons, we must remind ourselves that it is individuals who build and shoulder weapons and have fingers on red buttons. As long as intolerance, particularly of a religious nature, permeates the Earth, the future is in doubt. Philosophical differences can be wondrously positive when they reflect convictions that are deeply rooted in respect and tolerance. But when fanaticism rears its head and passion overwhelms compassion, civilization is robbed of the very dignity which is its wellspring.

This example of what has happened to a young boy and his family in a distant part of the globe is an unfortunate barometer of our times. If mankind is to be awakened from the stupor of intolerance, civilized people must object. The Talebi family must not be allowed to perish in silence.

HONORING FATHER COLEMAN COSTELLO OF QUEENS

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. ACKERMAN. Mr. Speaker, I rise today in tribute to Father Coleman Costello of Elmhurst, NY, who will be given the Flushing Boys Club Community Service Award on November 3, 1986.

Father Costello will receive this honor for his extraordinary commitment to the children of Queens. His service is to those in the deepest of troubles: a crippling dependence on drugs or alcohol. Long before the fight against drug abuse was popular in these Halls, Father Costello opened the Queens Outreach project as a small storefront that could help a few people in need. Now, he is the executive director of a movement that serves people in five different locations, including a residential treatment center for teens who need extra help. The Outreach project now directly aids over 3,000 youngsters a year, with an annual budget of $1.8 million.

Coleman Costello intended to toil in far-off lands as a missionary. But upon the death of his father, he decided that he was needed at home, in Elmhurst, to be near his mother. So Father Costello devised a new form of missionary work, preaching the universal values of self-dignity and confidence to those who need these messages the most.

Mr. Speaker, the Flushing Boys Club is aptly focusing on commitment in its yearly dinner. It is only appropriate, then, that it should honor Father Costello for his uncompromising dedication to the young people of Queens.

Mr. Speaker, I call on all of my colleagues in the U.S. House of Representatives to join me in congratulating Father Coleman Costello as he is given the Flushing Boys Club Community Service Award, and in promising our continuing support in the common fight against the dangers of drug and alcohol abuse.

PUBLIC SUPPORT FOR THE U.S. SPACE PROGRAM

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. BROWN of California. Mr. Speaker, on September 25, 1986, the House adopted the fiscal year 1987 NASA authorization bill by an overwhelming vote of 407 to 8. That vote reflects, I believe, the broad, bipartisan support our Nation's space program enjoys in the Congress. It is also a demonstration of support that is shared by the American people.

The results of a national opinion poll conducted by Market Opinion Research in early August—following the Rogers Commission report and prior to the President's decision on behalf of a replacement orbiter—show exactly how strong that public support really is. Some highlights drawn from the poll include: 89 percent want to resume shuttle flights, despite the risk they recognize will always be associated with manned space flight; 76 percent want to send not only astronauts but key civilians into space; 73 percent recognize that NASA is on the cutting edge in using technology; and, 60 percent agree that the Government should spend whatever is necessary to maintain our country's leadership in space.

In the wake of a difficult period of questioning, self-examination, and challenge for our space agency, it is reassuring to find that there remains national resolve to commit the resources necessary to promote America's leadership in space exploration. In fact, the findings identified in the poll showed an actual increase across-the-board in public support for the Nation's space endeavors, including manned spaceflight, as compared to an earlier survey conducted in January, before the *Challenger* accident.

My colleagues on the Science and Technology Committee and its Space Science and Application Subcommittee circulated a "dear colleague" earlier this month to draw attention to this important reading of public attitudes. I would now like to complement that effort by having a copy of the poll's executive summary and an article on the subject by Jack Anderson printed in the RECORD.

SUMMARY OF MARKET OPINION RESEARCH SURVEY OF AMERICAN ATTITUDES TOWARD THE SPACE PROGRAM

In August, 1986 Market Opinion Research conducted a telephone survey of 1200 adult Americans to investigate their attitudes toward the space program and related issues. This brief summary presents the key findings from the August survey. The findings are also compared with the results of an earlier study of American attitudes toward space conducted in January, 1986.

These two surveys—one conducted prior to the Shuttle Challenger accident and the other conducted prior to President Reagan's announcement of his decision to build a replacement shuttle—represent a unique perspective of American attitudes toward the space program.

OVERALL, THE U.S. PUBLIC STRONGLY SUPPORTS THE AMERICAN SPACE PROGRAM AND WANTS IT TO MOVE AHEAD

The public was given a number of different opportunities to register approval for the program—by stating whether they approved (agreement—70%) of the civilian space program, whether the civilian space program should be continued (76%) and whether it should be expanded (57%). Now that the Rogers Commission has finished its work, the public was asked, can the space program proceed? Nearly three quarters of the public want the program to proceed. Americans believe that manned flight should be resumed (89%), since experts state that there will always be some risks associated with space shuttle flights. Eighty five percent (85%) of the American people believe there should be a replacement shuttle and astronauts and certain key civilians should travel on the shuttle (76% agree).

These findings are consistent with the results of polls conducted by the television networks and the national news organizations that have also confirmed an increase in public support for the space program (from 63% before the accident to 70% today). The initial, post-accident wave of emotional support appears to have receded to today's level of a 7%+ increase in support over early January.

THE U.S. PUBLIC VIEWS THE SPACE SHUTTLE AS A KEY ELEMENT IN ACHIEVING PAYOFFS FROM THE SPACE PROGRAM

Americans overwhelmingly agree with the statement that obtaining benefits for medicine, industry and science requires a replacement shuttle for the Challenger (79%). They also agree with the statements that a replacement shuttle is needed to avoid abandoning the benefits that are attainable from the investment in the space program to date (73%); and that we should avoid wasting money in the long run by saving money now and limiting the program with three shuttles (67%). The public agrees that without the replacement shuttle, U.S. space capabilities would be crippled (63%); and without a replacement, the U.S. will "fall further behind the Soviet Union" (58%). A plurality of the public believes in a balanced program.

THE AMERICAN PUBLIC FAVORS THE SPACE STATION AS A LONG TERM U.S. SPACE GOAL

The American public supports a number of different long term goals for the space program. A majority of the public agrees that a U.S. mission to Mars should be a goal for the civilian space program (56%), and a majority agree that a joint U.S.-Soviet Union manned mission to Mars should be a goal of the space program (58%). An even stronger majority (78%) believe that a manned earth orbiting space station and unmanned exploration of the planets should be a goal of the U.S. space program.

SUPPORT FOR NASA'S NEW SPACE STATION PROGRAM HAS INCREASED SINCE JANUARY 1986

Americans favor NASA's new space station program by a margin of sixty-nine percent (69%) to fifteen percent (15%) today as compared with fifty-eight percent (58%) before the Challenger accident. Three out of four men (76%) approve of the space station. Two out of three women (63%) approve of the government's plans. Support from men has increased eleven percent (11%) and from women by fifteen percent (15%). At the same time a larger number of men than women state that they are aware of other countries that are planning or currently operating a manned space station. Twice as many men as women state that they are aware of such foreign activity.

AMERICANS SUPPORT INCREASING FUNDING FOR NASA'S CIVILIAN SPACE PROGRAM

Far more Americans disagree (52%) than agree (34%) with the statement that expenditures for America's civilian space program should be cut back. A solid majority (60%) believes that the U.S. government should spend "whatever is necessary to maintain U.S. leadership in space".

When asked whether NASA's spending on the space program should be increased from seven-tenths of one percent of the annual federal budget to about one percent of the total federal government's budget to maintain U.S. leadership in space following the Challenger accident, a strong majority (59%) outnumbers those who disagree by more than two to one. When the cost of this small percentage increase is explained to be about two billion dollars a year more in the current and next several years, a strong majority still outnumbers those who disagree by a significant margin (50% to 30%).

(The Market Opinion Research August survey of American Attitudes toward the Civilian Space Program was commissioned by Rockwell International as was the earlier survey on the same subject conducted in January, 1986.)

[From the Washington Post, September 11, 1986]

U.S. SPACE PROGRAM DUE FOR A PUSH

(By Jack Anderson and Joseph Spear)

While the politicians dawdle and NASA anguishes, the overwhelming majority of Americans would like to put the Challenger tragedy behind them and push ahead with the space program.

Vox populi is welling up across America. The people seem to understand better than the politicians that space exploration is the key to the future. The nation that is first in space will lead in developing the technologies of tomorrow, and the nation with the best technologies will dominate the 21st century.

In town halls and across bar stools, consternation over our space failures and delays is being synthesized into a terse message: Let's get back into space!

This is the clear finding of Market Opinion Research, which conducted a nationwide poll last month. The results, not yet released, were astonishing:

89 percent want to resume shuttle flights, despite the risk they recognize will always be associated with manned space flight.

85 percent want to build a new shuttle to replace Challenger.

76 percent want to send not only astronauts but key civilians into space.

73 percent recognize that NASA is "on the cutting edge in using technology."

71 percent want the United States to "stay ahead" of the Soviet Union in space exploration.

60 percent agree that the government should spend "whatever necessary" to maintain leadership in space.

The poll coincides with a warning from the National Aeronautics and Space Administration's Advisory Council "as to whether NASA can any longer meet the mandate for national preeminence."

From the beginning, NASA's engineers faced problems they had not dreamed of. Still, they overcame obstacles to land the first explorers on the moon.

But since the Challenger accident, which had the effect of a bucketful of sand on a humming machine, NASA has been paralyzed by a pervasive anxiety. The same engineers are now plagued with doubts about their performance of tasks and trusts they once thought they could do better than anyone.

Meanwhile, the backlog of satellites to be launched is building, with little relief in sight before 1989 at the earliest. By 1993, three-fourths of the communications satellites in orbit will need to be replaced.

"The nation has allowed its space technology base to erode," the NASA Advisory Council declared, "leaving it with little technological capability to move out in new directions should the need arise."

Yet NASA's problems are inherently solvable. The critical question has more to do with the turn of the clock, with the capacity of the American political process not only to do the right thing, but to do it within a time frame that exhibits some sense of priority, order, purpose and cohesion.

Our political leaders must face the reality that space, like every other frontier, cannot be explored without risk.

COMMENDING CHAIRMAN FORD

HON. JOHN BRYANT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. BRYANT. Mr. Speaker, I would like to take this opportunity to commend our colleague, Mr. WILLIAM FORD, chairman of the Post Office and Civil Service Committee, for his leadership earlier today in gaining House approval of an amendment in the nature of a substitute for S. 2452.

In doing so, Chairman FORD responded positively and responsibly to the frustration I and other Members of the House have experienced with regard to legislation passed by this body and derailed in the other body.

My legislation, H.R. 3331, unanimously approved by the House, would honor a great American—Juanita Jewel Craft, a national, State, and local leader of the movement for equality and justice for more than half a century before her death in August 1985, at the age of 83.

It would be an especially fitting tribute to this great lady and to the community and the people she so ably served as a private citizen, as a civil rights leader, and as a member of the Dallas City Council to name the South Dallas Post Office in her honor.

This House chose to help me do so some months ago. But only because of Chairman FORD's action today in attaching my bill and those of other Members of the House to the Senate measure is the designation of the "Juanita Craft Post Office of South Dallas" likely to become a reality in this Congress.

I commend my able and distinguished colleague, Chairman FORD, for his action in support of this body and its Members—an action that is also in support of the memory of a great lady and the people of the Fifth Congressional District of Texas.

HONORING DENNIS AND NANCY DONNELLY OF QUEENS COUNTY, NY

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. ACKERMAN. Mr. Speaker, I rise today in tribute to Dennis and Nancy Donnelly of New York, who will be honored as "Couple of the Year" by the Flushing Boys Club on November 3, 1986.

Mr. Speaker, no history of Queens County in the 1980's could ever be written without recognizing the contributions of Dennis Donnelly. His list of affiliations and activities with civic, philanthropic, community, and professional organizations in Queens is much too voluminous to reprint at this time, but it certainly encompasses virtually every important grouping. Dennis is an officer or a board member of countless organizations, from chairman of the Queens Festival Committee to president of the Queens Rotary Club. And he is no mere joiner—each item on his distinguished résumé marks a true commitment to a part of the community that he loves.

Dennis and Nancy met at the Garden City office of New York Telephone Co., where they both worked. Professionally, Dennis has now risen to the post of community relations director. His accomplishments include supervising communications at the 1980 Winter Olympics at Lake Placid and at the 1980 Democratic Convention at Madison Square Garden.

Mr. Speaker, the Flushing Boys Club is aptly focusing on commitment in its yearly dinner. It is only appropriate, then, that it should honor Dennis and Nancy Donnelly, who have shown such dedication to the daily life of the men and women of Queens. Whether it is fighting drug abuse with the Queens Outreach project, preserving the past with the Astoria Historical Society, or working for the future with the Boys Club, Queens counts on the Donnellys, and they have always come though.

Mr. Speaker, I now ask all of my colleagues in the U.S. House of Representatives to join me in congratulating Dennis and Nancy Donnelly as they are named the Flushing Boys Club "Couple of the Year," and in wishing them every success in their continued commitment to their community.

LIMON FAMILY REUNION DAYS

HON. J.J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. PICKLE. Mr. Speaker, on Saturday, October 11, Congress Avenue in Austin was renamed Limon Avenue to honor the descendants of the Limon family, which was gathering in Austin for one of their family reunions. This was a grand event, where some 300 members of the Limon family gathered on Congress Avenue to show their pride, and it is worthy of being recorded in the CONGRESSIONAL RECORD.

The Limon family's roots are deep in Austin. Jose Limon moved to the United States from Luis Potosi, Mexico in 1889. Jose and his wife Bernabe were married in Creedmoor; TX. They had 11 children. Today, their descendants number 1,534—at least—in the Austin and central Texas area. They are among the most prominent citizens in our community. They are merchants and businessmen, and one of them, John Trevino, Jr., is the mayor pro tem of Austin.

The senior members of the Limon family, Mr. and Mrs. Francisco Limon, Mr. Manuel Limon, Mr. and Mrs. Frank Limon, Sr., and Mrs. Concepcion Limon came to the gathering in grand style as they drove to the foot of Congress Avenue in two long limousines. Although there were a few rain drops in the air, the celebration proceeded in grand fashion. There were several barrels of yellow lemons on hand signifying the similarity with the Limon family name.

Every participant wore a yellow Limon family shirt produced for the Limon Family Reunion Day. A huge van backed up at the end of the street and released a thousand yellow and white ballons which majestically floated out over the Austin skyline and overshadowed the State capitol. A small band of mariachis played music in the background. Later this inspired group then retired to Precinct County 1 Park where approximately 1,300 Limons ate lunch and exchanged greetings. It was a happy day for everyone in Austin and an especially proud day for the Limon family.

Mayor pro tem John Trevino spoke to the group and proclaimed Congress Avenue to be named Limon Avenue for 2 days. Cheers of pride, joy, and excitement could be heard all the way down the Congress Avenue. I was privileged to address this unique family gathering, and I take great pride in the growth and development of this family. I have visited in their home, walked the neighborhoods in quest of their support, and enjoyed their food with family and neighbors around their swimming pool.

Mr. Speaker, we are all extremely proud of the Limon family and their accomplishments. They are truly a living treasure of our community and lasting part of its heritage.

PRESIDENT REAGAN CAN'T HAVE IT BOTH WAYS

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. DINGELL. Mr. Speaker, President Reagan now faces a critical decision with regard to the Superfund Conference Report. He can veto it, and destroy a major environmental cleanup program, or, he can ignore the naysayers who equate the Superfund financing mechanism with the imposition of a new tax and sign the bill into law.

As the spectre of Gramm-Rudman haunts our legislative process, requiring budgetary constraints, forcing program cuts, it is inevitable that Congress will be required to turn to innovative funding mechanisms to help preserve the most important of programs. Superfund is a prime example.

President Reagan must realize this inevitability in assessing the merits of legislation vital to our health, our environment, and our econmy. But in this case, the President cannot have it both ways. In this case, the reasons for signing this vital legislation into law far outweigh the arguments for ignoring the health and safety of the American people.

On this point, I direct my colleagues' attention to the following editorial entitled "Swallow the toxic Smorgasbord" which was published in the October 13 edition of the New York Times.

[From the New York Times, Oct. 13, 1986]

SWALLOW THE TOXIC SMORGASBORD

The President's advisers are at sixes and sevens on whether he should sign the $9 billion Superfund bill for cleaning up dumps of poisonous chemical waste. James Miller, the budget director, derides the bill as a "smorgasbord of new taxes." But the Senate passed it, 88 to 8. Even the Chemical Manufacturers Association supports it, though the bill will add $1 billion to its members' taxes. However hard it may be for him to swallow, the bill also deserves the President's approval.

The first five-year Superfund program expired last year, having barely scratched the surface of the toxic waste problem. One reason was its initial mismanagement by the Environmental Protection Agency. Another was the immensity of the task.

There are at least 10,000 abandoned toxic waste dumps. Most are leaking, and their poisons contaminate air, streams and groundwater. Millions of people are likely to be exposed to minute amounts of the toxins over much of their lives, with unknown effects on public health. Cleaning up the mess, according to the Office of Technology Assessment, could take 50 years and $100 billion.

In February 1985, the Administration proposed to renew the Superfund, tripling its budget to $5.3 billion over five years. But the funding mechanisms it proposed were unrealistic. Environmental groups, lobbying for maximum effort and thoroughness of cleanup, paid little attention to how the extra funds would be raised. The Senate's version of the Superfund rose to $7.5 billion, the House's to $10 billion.

Finding these vast sums provoked intense conflict. The House proposed to tax the oil and chemical industries on the theory that their products were the original source of the poisons in the dumps. The Senate said all manufacturers should pay, since they all produce the waste. Lobbyists for both groups fought each other to a standstill, which Congress has now resolved in a $9 billion bill that raises taxes of both kinds.

But Congress's handiwork comes at a price. During the two years of debate, drawn out by intercommittee disputes on the House side, Superfund has languished. Its money ran out last October, and stopgap funding has not let the agency take on new sites.

If the President doesn't like the idea of new taxes, let him call them user fees in the spirit of those the Administration itself proposed for financing the Superfund. To veto the Superfund bill on grounds of narrow principle would overlook the broader need: moving forward once more against the festering waste dumps that pock the country from coast to coast.

TRIBUTE TO REV. RICHARD H. LUTZ

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. ACKERMAN. Mr. Speaker, I rise today in honor of Rev. Richard H. Lutz, the rector at St. Matthew's Church of Woodhaven, NY, on the occasion of the 25th anniversary of his ordination to the priesthood, which will be celebrated on October 25, 1986.

Father Lutz is one of the most respected and admired religious leaders in the New York City area. He has served at St. Matthew's for a successful and prosperous quarter-century. As a prominent clergyman, Father Lutz is a member of the Standing Committee of the Diocese of Long Island. He is the president of the Episcopal Family Consultation Service, and he serves on the Board of Trustees of St. John's Episcopal Hospital in Brooklyn.

Father Lutz and his congregation have been active in a wide range of charitable and community-service programs that have made an impressive impact in Queens. Through the Episcopal Family Consultation Service, Father Lutz has spearheaded drives to help the homeless, to counsel drug abusers, and to aid anyone who needs a helping hand or a sympathetic ear. In each of these programs, it is his guiding spirit that has inspired countless volunteers to contribute their own small efforts.

Mr. Speaker, it is the blessing of America that leaders such as Father Lutz come forward in our communities. In our Nation, we count on these men and women to hold our society together, to give it cohesiveness, warmth, and structure. Mr. Speaker, I call now on all of my colleagues in the U.S. House of Representatives to join me in congratulating the Rev. Richard Lutz on this joyous occasion, and in sending our best wishes to him and his congregation for the future.

A CONGRESSIONAL SALUTE TO WILMINGTON LIQUID BULK TERMINALS

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. ANDERSON. Mr. Speaker, today I rise to pay tribute to Wilmington Liquid Bulk Terminals, Inc. which is located in my congressional district. On November 14 of this year, Mr. Donald Kurtz, president of Wilmington Liquid Bulk Terminals [WLBT], and Mr. Dick Haney, the general manager, will be honored by the Harbor Association of Industry & Commerce of Los Angeles for their fine service to the Los Angeles-Long Beach port community.

WLBT's parent company, Keystone Shipping, was founded in 1929 by Charles Kurz and is to this day a leader in the American-flag tanker trade. Although Keystone is based in Philadelphia, it entered the southern California bulk liquid terminal storage market in 1972

with an interest in diversifying its operations. As the new affiliate, WLBT purchased a 9-acre facility in Wilmington at the hub of the harbor area. In the beginning WLBT was intended only to complement Keystone's west coast chemical services. Careful planning and aggressive capital investment, however, allowed WLBT to expand and establish itself in its own right. Since then, WLBT has consistently followed forward-looking growth policies, investing in extensive new equipment and pursuing innovation handling techniques. This commitment to growth and dedication has allowed WLBT to become the most modern efficient public terminal in the Los Angeles-Long Beach Harbor area.

Presently WLBT leases two tracts of land. The marine terminal, on approximately 15 acres, handles up to 690,000 barrels of storage for chemicals, fuel oil, lube oil, and vegetable oil. In 1985 WLBT completed a triple pipeline system which allows connections to virtually all local refineries in the Harbor, and WLBT is actively pursuing more pipeline projects. A 32-acre tract further inland is being prepared for 3½ million barrels of tankage for petroleum products. This new facility will utilize an advanced computer system which tracks the flow of oil throughout the pipeline system, monitors valves, checks tank and inventory levels, and oversees traffic control. At the end of the last year WLBT secured a $25 million financing package for facilities at its new storage area.

During its 13-year existence, WLBT has committed in excess of $30 million to capital investment in my district. This commitment underscores WLBT's confidence in the Harbor's future and their own commitment to be an important part of that future.

My wife, Lee, joins me in commending Don and Dick and the fine crew at WLBT for a job well done. We congratulate them on this honor bestowed by the Harbor Association of Industry & Commerce, and wish them well in their future projects that help to keep our port thriving.

JOINT CENTER FOR POLITICAL STUDIES

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. DYMALLY. Mr. Speaker, at the conclusion of my statement you will find information which was released by the Joint Center for Political Studies on Tuesday, October 14, 1986, during a press conference at the National Press Club in Washington, D.C.

The attachments—press release and tables—contain the results of a poll conducted by the Gallup Organization under contract with the joint center.

The poll explored black and white views on a range of political and quality of life issues—the 1986 midterm elections; President Reagan's performance; the 1988 Presidential election; domestic and foreign policy questions; and the state of the Nation.

The data permit comparisons among blacks and whites, as well as between blacks and whites, according to gender, income, education, occupation, and region.

As a member of the board of governors of the Joint Center for Political Studies, I am particularly pleased to share this information with you. If you would like additional copies of this material or have any questions, please call the joint center at (202) 626-3500.

NATIONAL POLL RESULTS

The results of a national poll conducted for the Joint Center by The Gallup Organization have major implications for the upcoming 1986 mid-term elections and perhaps for the Presidential elections in 1988 as well. The poll surveyed 868 blacks and 916 whites during the week of August 8th. Among the principal findings of the survey are: convergence between blacks and whites on what are the major problems confronting the country, continuing divergence on how these problems should be handled, significant softening of Democratic party identification among blacks, continuing support for Democratic party candidates at the congressional level among blacks, a substantial increase in black approval of President Reagan's job performance, and a striking lack of recognition of or support for most of the individuals being mentioned as likely presidential candidates. In reviewing these results, we compare them with the findings of a similar CPS/Gallup survey conducted in July 1984.

BLACK-WHITE CONVERGENCE ON MAJOR ISSUES

In our 1984 survey blacks and whites had sharply differing views about what were the primary problems facing the country. The 1986 survey shows suprising agreement on that subject.

For both populations, unemployment, drug abuse, and the high cost of living were the three most important issues. Unemployment was by far the most important issue for blacks (ranked first by 56.1 percent), followed by the high cost of living (35 percent) and drug abuse (32 percent), followed by unemployment (29.3 percent) and the high cost of living (28.4 percent).

Issues on which the two groups differed sharply were the budget deficit (4th for whites, 12th for blacks), civil rights (6th for blacks, 19th for whites), and government programs to help the poor (5th for blacks, 15th for whites).

Both populations ranked crime, health care, and the quality of public education in the top ten, and ranked U.S. involvement in Central America very low.

WHAT GOVERNMENT SHOULD DO

Blacks prefer a strong affirmative role for government in resolving the nation's economic and social woes, while whites are much more likely to say every individual should get ahead on his or her own.

Nearly two-thirds (65 percent) of blacks and only 24 percent of whites said the federal government should ensure that every person has a job and a good standard of living. But 55 percent of whites and 80 percent of blacks want more government spending on social programs to help the poor.

80 percent of blacks, but only 24 percent of whites, said government should make every effort to improve the social and economic position of blacks and other minorities.

BLACK DEMOCRATIC IDENTIFICATION SOFTENS

The survey revealed virtually no evidence of party realignment among blacks, but a significant weakening in party loyalty among black Democrats.

The overwhelming majority of blacks (78 percent) still identify themselves as Democrats, while only 6 percent identify themselves as Republicans. Whites are more evenly split, with 37.1 percent identifying themselves as Republicans and 33.4 percent as Democrats.

But the softening of party identification is evident in the fact that only 49 percent of blacks identified themselves as strong Democrats in 1986, while 55 percent did so in 1984.

Fewer blacks under 30 identify themselves as strong Democrats (37 percent), compared to blacks over 30 (50 percent).

Blacks are every bit as likely to vote for Democratic candidates in 1986 as they were in 1984: by a margin of 83 percent to 6 percent, they prefer the Democratic candidate to the Republican candidate in their congressional districts. Whites, too, prefer the Democratic candidates, but by a smaller margin: 42 percent to 37 percent.

PRESIDENTIAL APPROVAL

President Reagan's overall approval rating by blacks has tripled since 1984—going from 8 percent to 24.6 percent. But blacks and whites remain mirror images in their views of the President's job performance: two out of every three whites approve of the President's handling of his job, and more than two out of every three blacks disapprove.

Black men are twice as likely as black women to approve of the President's job performance—34 percent to 17 percent.

Thirty-one percent of blacks under 30, but only 23 percent of blacks aged 30-49 and 20 percent of blacks over 50, approved of the President's job performance.

On domestic policy issues like unemployment, civil rights, the budget deficit, and the farm crisis, the President's approval rating among blacks was extremely low—no more than 14 percent. On his handling of the situation of the poor, his rating was even lower—5.2 percent.

Blacks gave President Reagan much higher ratings on foreign affairs—22.1 percent approved his foreign policy performance and 27.9 percent approved his conduct of relations with the Soviet Union. A notable exception is Reagan's South Africa policy, which only 8.6 percent approved.

PERSPECTIVES ON THE 1988 PRESIDENTIAL ELECTIONS

Many potential presidential contenders are virtually unknown to both black and white voters. Among both Democrats and Republicans, whites preferred "none of the above" to any of the named presidential aspirants.

Jesse Jackson is the best known presidential aspirant, recognized by 97 percent of blacks and 90 percent of whites. Roughly the same number as in 1984 also want Jackson to run again for president in 1988: 68 percent of blacks and 22 percent of whites.

When asked which party's nominee they would support in 1988, 80 percent of blacks and 37 percent of whites sided with the Democrats, and 7 percent of blacks and 41 percent of whites would support the Republicans.

Blacks' second choice for the Democratic nominee was Gary Hart, while whites' first and second preferences were Hart and Lee Iacocca, respectively. For the Republican nomination, blacks and whites both chose George Bush, followed by Howard Baker.

TOP 10 CHOICES FOR DEMOCRATIC PRESIDENTIAL NOMINEE IN 1988

[In percent]

	Blacks	Whites
Jesse Jackson	63	6
Gary Hart	18	32
Shirley Chisholm	17	3
Tom Bradley	15	6
Mario Cuomo	12	19
Lee Iacocca	9	25
Bill Bradley	6	6
William Gray	4	1
Charles Robb	3	2
Dale Bumpers	3	2
None of these/don't know	16	36

Source: 1986 JCPS/Gallup survey.

TOP TEN CHOICES FOR REPUBLICAN PRESIDENTIAL NOMINEE IN 1988

[In percent]

George Bush	30	40
Howard Baker	14	17
Robert Dole	8	16
Alexander Haig	8	8
Pat Robertson	6	6
Jack Kemp	5	7
James Thompson	3	2
James Baker	3	2
Jeanne Kirkpatrick	3	6
Tom Kean	2	2
None of these/don't know	46	32

Source: 1986 JCPS/Gallup survey.

THREE MOST IMPORTANT ISSUES, BY RACE

		Blacks	Whites	
[1] 1	Unemployment	56.1	29.3	[2] 2
2	High cost of living	33.0	28.4	3
3	Drug abuse	32.0	35.4	1
4	Crime	27.0	22.0	5
5	Government programs to help the poor	24.3	8.5	15
6	Civil rights of minority groups	16.2	2.3	19
7	Protecting American jobs	12.9	21.0	6
8	Teenage pregnancy	12.6	5.2	17
9	Quality of public education	11.1	17.9	7
10	Health care	10.2	12.9	10
11	Relations with South Africa	7.6	1.3	20
12	Federal budget deficit	7.3	23.4	4
13	Abortion	6.7	13.1	9
14	U.S. nuclear weapons	6.5	16.0	8
15	School prayer	5.5	6.4	16
16	Defense spending	4.9	10.7	12
16	Tax reform	4.9	9.8	13
17	Relations with Soviet Union	3.5	11.3	11
18	Cleaning up the environment	2.0	9.5	14
19	U.S. role in Central America	1.8	4.3	18
20	Other	.3	.9	21

[1] Ranking for blacks.
[2] Ranking for whites.
Source: 1986 JCPS/Gallup survey.

HONORING THE YM-YWHA OF GREATER FLUSHING

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. ACKERMAN. Mr. Speaker, I rise today in tribute to the YM-YMHA of Greater Flushing, which will celebrate its 30th anniversary with a gala dinner dance on November 12, 1986.

Organizations such as Young Men's-Young Women's Hebrew Association are the lifeblood of our society, pulling together different groups of people and helping them to work together. Affiliated with the YMHA of Greater New York, and receiving support from UJA/Federation, the YM-YMHA of Greater Flushing has become one of the most important institutions of the Queens Jewish community.

Over 5,000 members and thousands of other New Yorkers have benefited from the programs and services of this outstanding organization, which provides social, recreational, educational, and cultural activities for men, women, and children of all ages. A recent addition, special programming for mothers and infants, joins an already-full schedule at the Dora and Abraham Felt Building and the Phyllis Brownstein Health Center. Now, everyone from toddlers to our older citizens has a wide variety of possibilities at the Y.

Mr. Speaker, whether it is taking care of children after school, tutoring students for SAT's, or arranging day trips for senior citizens, the Flushing YM-YWHA is there. Particularly impressive is an entire range of physical fitness opportunities: The facilities include a gym, two exercise rooms, and a pool. I would like to make particular mention of the excellent officers of this exemplary Y: Herbert Rogovin, president; Anita Blank, Morimer Goodman, Robert I. Smith, and Judge Joseph Stone, vice-presidents; George Stein, treasurer and financial secretary; and Bernice Elkin, recording secretary.

Mr. Speaker, I call now on all of my colleagues in the U.S. House of Representatives to join me in congratulating the YM-YWHA of Greater Flushing on the joyous occasion of its 30th anniversary, and in wishing all of the people who make the Y such a tremendous force in the Queens community the best of luck as it enters its fourth decade.

A SALUTE TO JOHN RENSHAW ON THE VALUE OF CHARITY

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. ANDERSON. Mr. Speaker, recently, a constituent of mine, John Renshaw of San Pedro, contacted me concerning the importance and value of charity. I would like to share a few of Mr. Renshaw's thoughts on this important topic with our colleagues.

According to Mr. Renshaw, "charity is defined as the benevolent good will toward or love of humanity; charity is constructive and should be practiced in the daily lives of all people in the unique ways offered by each person, whether in goods or services rendered or in thoughts expressed in words and deeds toward people in every context of living throughout the world far and near beginning but never ending in the individual household; the practice of charity by all persons assists in the reparation of the human situation everywhere that need, despair and discord are to be found; the practice of charity makes good sense in all places of work, all places of leisure and in all civil institutions, public and private; the practice of charity brings to people everywhere tangible and intangible benefits; and, the thinking, living and practice of charity by each and every human being in every context will hasten the coming of world peace, beginning in and spreading outward from the minds and hearts of individuals toward the larger community, the Nation and the world."

Mr. Speaker, across the Nation volunteers are donating their services to charity. And I am certain that this spirit of voluntarism will grow in the years ahead. I commend John Renshaw for promoting the importance of charitable voluntarism and urge everyone to become involved in their community.

TELEVISION NONSENSE

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. CRANE. Mr. Speaker, this past weekend witnessed a meeting between President Reagan and Soviet leader Gorbachev in Iceland. No one expected this hastily arranged and brief meeting to result in a sweeping arms limitation agreement; however, that is the way the electronic medium we know as television decided to frame it. Perhaps even more outrageous than network presumption was the manner in which they chose to present their idea of news. Infuriating is the only way to describe the way CBS and NBC chose to dramatize announcement of the Iceland meeting's nonevent outcome. Suddenly, millions of devoted TV-viewing football fans lost sight of their games without the benefit of instant replay. Mike Royko, a Chicago Tribune columnist, succinctly portrays viewer opinion, particularly of CBS actions, in his October 13, 1986, column, printed below.

Some of my constituents, with whom I was watching one of the interrupted games, voiced outrage similar to that Royko portrays. Why did CBS interrupt the game? Why did CBS have to make the announcement that way? Why couldn't they have printed a message across the bottom of the screen and say that details would follow the game? Why, indeed?

To understand this, you must understand that in television, ratings are everything. Especially if you are trying to establish your image as Cronkite-like "grandfatherly," hey, Dan. Remember that CBS is in the business of making money, not, as they like to imply, in providing a public service. That alone should at least call into question their "holier-than-thou" attitude. But on they charge. Dan Rather even provided instant analysis for those stunned viewers incapable of understanding that the meeting, only intended to set the groundwork for a later summit, had ended without some momentous conclusion. Dan, rather biased, inferred that the quest for peace in our time had been dealt an irreversible and severe blow. Rubbish. And to think that the football games were interrupted for this nonsense.

President Reagan is to be lauded. He acted splendidly. Gorbachev laid a trap, sprung it, but will be hard pressed to claim any victory. The President was and is correct to insist on preserving the Strategic Defense Initiative, or SDI. It possesses more promise than all the antiquated systems built and preserved by previous benighted administrations. His insistence on developing and deploying SDI will ensure that future generations will have some degree of protection from the incessant subversion, threats, and bullying of the Soviet evil

empire. It isn't the complete solution, but it is a good, logical start.

As a footnote, it is clear that the Soviets had a well-planned agenda for the meeting. The New York Times reported—Tuesday, October 14, 1986—in an article by Philip Taubman, that senior Soviet officials related that, "In the process * * * Mr. Gorbachev may help to sway the outcome of some critical races for the Senate next month, possibly helping to restore Democratic control during the last 2 years of Mr. Reagan's term. * * *" Although they went on to explain how they would encourage NATO allies to withdraw support for SDI, it is clear that Mr. Gorbachev was only out to create mischief, and not, as reported, to gain world peace. Thank heaven there are some people out there, and a few of us here who still don't trust the Soviets.

Remember: Mr. Gorbachev was an understudy of Yuri Andropov former KGB master and leader of the country for a brief period. The KGB—the Soviet secret service—is known for its vicious tactics and actions. It was he who crafted the strategy of wooing the West by using Western dress, and seducing the press. As we can plainly see, Gorbachev is succeeding. The press continues its lovefest with Soviet propaganda masters—except when grabbing a journalist is involved—while treating the United States as the obstacle on the road to world peace. Sheer balderdash. Will we ever learn before it is too late?

NOT NECESSARILY THE NEWS TO FANS

One minute after George Shultz's dour face filled the TV screen, my phone rang and my friend Tony began bellowing.

"Can you believe this?" he said, "Are those politicians crazy? Or are they trying to drive me crazy?"

Tony was talking, of course, about the decision by CBS and NBC to bust in on Sunday's football games for lengthy reports on the diplomatic doings in Iceland.

"I work hard all week," Tony blustered. "I bust my tail to earn a living. I pay my taxes on time. So is it too much to ask that on my day off, I can sit down and forget my problems and watch the Bears?"

Tony, you must understand that football is a mere game, a form of mass entertainment.

"So what? I like entertainment. It makes me happy. What am I supposed to do for laughs on my day off—go to the morgue and look at corpses?"

But you must understand that what has occurred in Iceland is of historic significance, with potential impact on unborn generations.

"So, big deal. So what occurred?"

The heads of the two most powerful nations on earth met to see if they could reach some tentative agreements on whether they can get together later and reach further agreements on controlling the arms race.

"Yeah, I read the papers, I know what it's all about. And did anybody, except the dummies who write about this stuff in Washington, expect them to agree on anything important?"

Well, not really

"So, after all that talking, did they agree on anything important?"

It doesn't appear so.

"So nothing much happened, right?"

I guess you could put it that way.

"Then why couldn't they wait until the football game was over before they tell us that nothing much happened? Hey, I could wait a few hours for that kind of hot news. Or they could just break in during a timeout and say: "We have an important announcement to make. It looks like nothing much went down in Iceland. Stay tuned for the dull details later.'"

Tony, the assumption the networks and the politicians make is that because they are in Iceland, it is now the center of the universe, and the rest of us have been holding our breath waiting for news of the Iceland conference.

"I'm just holding my breath waiting for Shultz to stop talking."

The point is, Tony, that even a failure to reach any agreement is news.

"I get it. Before this meeting started, the Russians didn't trust us and we didn't trust the Russians, right?"

Right.

"So Reagan and Gorbachev have this meeting. And when it was over, the Russians still don't trust us and we don't trust them, right?"

I suppose so.

"I mean, if Reagan and Gorbachev push the buttons tonight, then the whole world goes boom, just like it's been all along."

Depressingly true.

"Then why can't I just enjoy watching 'the Fridge' fall on somebody and they can tell me about it later on the 10 o'clock news? Why do I have to look at George Shultz and Dan Rather? I wish the Fridge would fall on both of them."

It's a matter of journalistic responsibilities. The setting of priorities.

"What does that mean?"

It means that the network news executives decided that they would be failing in their journalistic responsibilities if they didn't interrupt the football games to bring us the news from Iceland.

"Even if nothing much happened."

That's right.

"I don't suppose that they figured that they spent a lot of money sending all those producers and directors and cameramen over there, so they want to have something to show for it, even if it's nothing."

I suppose that might be a consideration.

"And it couldn't be that they want to be sure to get Dan Rather's face on the tube even though he really didn't have anything to say that was worth hearing."

Well, he is a star.

"I'll tell you one thing. The next time somebody punches Rather out on the street, I know what they're going to say to him."

What is that?

"They'll say, 'What was the score of Sunday's game, Kenneth?' "

PROVOCATIVE LOOK AT "AFRICANS"

HON. JIM MOODY

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. MOODY. Mr. Speaker, public television station WGBH in Boston has been airing the nine-part series "The Africans: A Commentary by Ali A. Mazrui" to its Boston audience since the beginning of October. The series has sparked considerable discussion on the history of the African Continent and its people, and has provided the American people with an unusual opportunity to see Africa from the view of an African scholar.

The following analysis and commentary on the series was presented in the Tuesday, October 14, edition of the Boston Globe, and I urge my colleagues to read the article and enjoy the fascinating and provocative series on their local public television station.

[From the Boston Globe, Oct. 14, 1986]

PROVOCATIVE LOOK AT "AFRICANS"

(By Jack Thomas)

The American establishment is furious over a nine-hour documentary called "The Africans," now being shown on public television.

Four years in the making at a cost of $3.5 million, "The Africans" is a survey of African culture, history and politics as seen through the eyes of one black man, the writer and host. Ali A. Mazrui, a Kenyan with a doctorate from Oxford, is professor of political science at the University of Michigan. The second episode, which discusses the influence of Islam and the West on Africa, will be shown tonight in Boston on WGBH-TV, Channel 2, at 9 p.m.

"The Africans" is a lot of things.

It's magnificently photographed, and written with a poet's pen. It's blunt, biased, irritating, argumentative and occasionally misleading. But it's bold and exciting, too, one of the most provocative documentaries ever seen on public television, and certain to challenge perceptions about history, race relations, Africa and even democracy itself.

Why, then, the hullabaloo?

The Philadelphia Inquirer is shocked. "Never before has PBS aired such a slick, extensive and expensive piece of propaganda," the Inquirer's critic said.

"A pretentious fraud," sniffed the New York Times.

Conservatives are horrified. Lynne Cheney, President Reagan's choice to head the National Endowment for the Humanities, which contributed $600,000 to "The Africans," described it as "anti-Western diatribe." Accuracy in Media and the National Conservative Foundation call it "an insidious attack on the Western democracies."

"Nine straight hours of hatred and racism," said Citizens for Reagan, a political group in Washington. Fifty-three Republican congressmen and three senators are so alarmed they want an investigation of PBS programming.

Wow!

Who would have guessed democracy was so fragile, that the United States was so vulnerable, that Western civilization might be endangered if you and I were exposed to one black man's interpretation of history?

What has frightened the conservatives is Mazrui's contention that most of Africa's problems can be traced to Western interlopers, from 18th-century slave traders and missionaries, to 19th-century colonialism, to 20th-century plundering of Africa's resources in exchange for a technology that Mazrui say, has bequeathed more harm than good.

Mazrui describes a triple heritage—African, Islamic and Western—and traces the clashes that have created today's contradictions in Africa, where rhythms of African drums blend with rhythms of computers.

To make the point that Africans have developed Western tastes, but not Western skills Mazrui visits a hotel in West Africa, where the rooms are equipped with air-conditioning, radio, television, hot and cold running water, and a telephone. But the air-conditioning doesn't work and neither does the radio or television. The hot water pipe

never was connected, and when Mazrui sees a cordial invitation to telephone the front desk with complaints, he discovers that the telephone doesn't work, either.

Cheney is angered most by the fourth and ninth episodes.

Part four, "Tools of Exploitation," examines the exploitation of Africa's human and natural resources by the West. Part nine, "Global Africa," discusses Africa's position in world affairs, its future and the role of its leaders in global politics.

Most of the objections focus on a 2½ minute segment about Col. Muammar el Khadafy of Libya. Cheney complains that its glories Khadafy and compares his terrorist activities with the US retaliatory bombing raid.

Although the reference to Khadafy hardly extols his virtues, as Cheney says, Mazrui does appear to be naive about the Libyan leader. Further, it is dishonest of him to include film of Libyan victims of US bombing without showing victims of Libyan terrorism.

Although each episode is labeled commentary, there are many points of contention.

It's ridiculous, for example, for Mazrui to blame the West for having exported a culture of violence to Africa by means of the guns brought by slave traders, an argument that suggests Africa had previously been free of violence.

Some viewers will be surprised to hear Mazrui describe Anwar Sadat as a collaborator for his peacemaking role with Israel.

PBS compares "The Africans" to works such as Abba Eban's "Civilization and the Jews" and argues that viewers are capable of absorbing information contrary to their own established views without becoming seduced or offended. Well, apparently, we are offended.

Mazrui's problem is that he doesn't understand white supremacy. He could have saved himself a heap of criticism from conservatives if he had been humble enough to acknowledge all the contributions the West has made to Africa.

What about our willingness to buy its natural resources cheap, such as gold, diamonds and rubber?

What about our struggle to colonize Africa?

What about all the effort we exerted to convert Africans to our religions? Why. Mazrui has the audacity to ask, "If God wanted to communicate with black Africans, why would he send white missionaries?"

And never once in nine hours does he have the decency to express the gratitude of Africa for the transportation we provided blacks so they could come to America and enjoy the fulfillment of slavery.

No thanks.

We already know everything we need to know about Africa, and we're not interested in anyone else's perspective. Besides, what could we possibly learn from a black scholar?

FAMILY MEMBER EMPLOYMENT FROM GOVERNMENT QUARTERS

HON. PATRICIA SCHROEDER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mrs. SCHROEDER. Mr. Speaker in March 1985 I introduced the Military Family Act of 1985 which was incorporated into the 1986 Defense authorization bill and was signed into law by President Reagan in September 1985. The Military Family Act was a comprehensive bill that was to improve the quality of life for the soldier and his family.

One of the provisions in the Military Family Act was to allow for limited commercial activities by members of military families residing in family housing. This would enable the spouse to increase financial opportunities without having to leave the house.

Let's face facts. A recent U.S. Bureau of Labor Statistics report states, "Women seem driven more than ever before into the marketplace to provide or supplement family income." According to the most current data, 40 percent of married working women have husbands who earn less than $15,000 per year. This disparity is now made up by working wives and mothers. In 1985, it took both parents working to maintain the standard of living their parents could have enjoyed in the 1950's on one income.

Knowing how long it takes to get Government directives out I am pleased to announce that the Department of Defense has come out with broad guidelines that will allow family members living in Government quarters to participate in most home business ventures.

Mr. Speaker I would like to insert for the RECORD a copy of the guidelines for family member employment from Government quarters.

ASSISTANT SECRETARY OF DEFENSE,
Washington, DC, June 13, 1986.

Memorandum for Assistant Secretary of the Army (I&L), Assistant Secretary of the Army (M&RA), Assistant Secretary of the Navy (M&RA), Assistant Secretary of the Navy (S&L), Assistant Secretary of the Air Force (MRA&I).

Subject: Family Member Employment from Government Quarters.

The House Armed Services Committee Report on the FY86 Department of Defense Authorization Act directs the Department of Defense to provide guidance to the Military Departments regarding the conduct of limited commercial activities by members of military families residing in family housing. Rather than promulgate a formal directive, we have developed the following guidance in coordination with your representatives. This guidance complies with the congressional request.

We recognize that certain limited commercial activities, such as handicrafts, child care, and sale of products, are currently being conducted in and from military family quarters by their occupants. Management and command leadership in each Military Department should foster and encourage this practice.

Requests for permission to conduct a home enterprise in military family housing should be made in writing to the installation commander or designee who should ensure that each request is expeditiously answered in writing. Such issues as local government licensing requirements, potential government liability, overseas Status of Forces Agreements, host country business practices, and prospective advertising practices should be taken into account as each request is considered. In no case will activities be authorized or continued at the expense of military community tranquility or safety.

When practicable and feasible, commanders should allow occupants to make minor modifications to housing units at the occupant's personal expense. Any request to perform minor modifications, and any actual modification approved, should be processed in accordance with existing regulations which govern self-help projects in family housing. Utility costs associated with home enterprises should be recouped when such collections are cost effective.

The provisions of DOD Directive 5500.7 (Standards of Conduct) concerning solicited sales to personnel junior in rank or grade apply. Authorization of family member employment in government quarters should be conditioned upon agreement by the family member to comply with the provisions of DODD 5500.7 and Service regulations prohibiting solicited sales to subordinates. Sales of merchandise not available to exchange patrons through the military exchanges should not be construed to be competing with an installation's officially sanctioned commerce.

In order to provide follow-up information for submission to Congress, please submit a copy of your implementing guidance to the OSD Family Policy Office by 15 December 1986.

Thank you for your personal support and continuing interest in this important military family issue.

CHAPMAN B. COX.

HONORING DR. CLYDE McCULLY

HON. CHARLES PASHAYAN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. PASHAYAN. Mr. Speaker, I join with my two colleagues from the San Joaquin Valley, Congressman RICK LEHMAN and Congressman TONY COELHO, in honoring Dr. Clyde McCully for his 20 years as President of the Fresno City College. Dr. McCully has been instrumental in the growing respect granted Fresno City College throughout the community and entire State. Dr. McCully's retirement is an educational loss for the people of California's Central Valley.

Dr. McCully has pursued excellence as head of curriculum accreditation teams and study groups responsible for the development of accreditation standards among community colleges. Under the direction of Dr. McCully, City College has greatly expanded and now offers over 100 associate degrees in arts and science programs at the 103-acre campus in Fresno.

Dr. McCully is widely known among fellow administrators in the Western United States. His long association in accreditation and leadership positions was under the sponsorship of the Commission for Community and Junior Colleges, Western Association of Schools and Colleges.

In addition to his role as president of City College, he has long been involved in volunteer community work. Dr. McCully has served as chairman of the Board of Valley Children's Hospital, vice chairman of the Board of Overseers, California School of Professional Psychology, past president, North Fresno Rotary Club, and zone chairman of the Bank of America Scholastic Awards.

It has been our pleasure to have been able, to work with such a competent, able, member of academia. Dr. McCully has always provided a real and sustained attention to the intellectual and moral well-being of City College students. We wish Dr. McCully great success in his future endeavors.

The entire Fresno metropolitan community owes a great debt to Dr. McCully, which we unfortunately cannot begin to repay. He will be sorely missed.

EXPLORER POST 1 FROM LITTLETON, MA

HON. CHESTER G. ATKINS

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. ATKINS. Mr. Speaker, I rise today to recognize the community service and dedication of the national award-winning Explorer Post 1 from Littleton, MA.

As recipients of the first-ever Fire Chiefs Explorer Post Award, the Littleton Explorers have been properly honored for their outstanding contribution to fire and emergency services in the community.

During the 5 years that the post has been active under the leadership of Earl and Ellen Banks, the Littleton Explorers have served when called on by the fire chief, police chief, or civil defense director for special services during hurricanes, snowstorms, search and rescue operations, and educational seminars.

In July 1983, they were there in the early morning hours to aid firefighters in bringing a tragic horse barn fire under control. After the fire was tamed, the Explorers relieved the beleaguered firefighters in the wet-down and overhaul operations.

In September 1985, when Hurricane Gloria threatened our State, the Explorers stood by all day and into the night to assist in the emergency planning. They relocated citizens from a nearby trailer park and the housing for the elderly. They prepared and served food to the citizens, firefighters, highway crews, and electric light and water crews. They also operated two-way radios at the emergency shelters. After the storm, they assisted the highway crews in picking up the debris left by the high winds.

When not serving in emergency situations, the Explorers have contributed to the community in many other ways. In the winter, they've cleared snow from around fire hydrants to allow a quick response to fires. In the spring, they help pump out flooded cellars after extensive rains. Year round they strive to educate others in fire prevention and emergency preparation. And finally, they continually train to improve their own firefighting skills.

On October 19, 1986, the Littleton Explorer Post will open their doors to the community to share their expertise and their success. Their national recognition as the best Explorer post in the United States is certainly deserved, as they have lived up to the Explorer's code by recognizing the dignity and worth of their fellowman and using fair play and goodwill in dealing with them.

BICENTENNIAL CELEBRATION

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. DYSON. Mr. Speaker, I rise today to announce that on September 11–14, 1986, the State of Maryland inaugurated the bicentennial observance of our Nation's Constitution. Two hundred years ago, delegates from five States—Virginia, Pennsylvania, New York, New Jersey, and Delaware—met in Annapolis, MD, and called for a Federal convention to amend the Articles of Confederation.

The original call for the convention proposed a meeting to discuss a unifying system of trade and commerce. Nine States appointed delegates. However, only 12 delegates from the five States arrived by the time the meeting had begun. Because Maryland did not appoint delegates to the Annapolis convention, no State buildings could be used. The delegates had to hold the meetings at George Mann's Tavern in Annapolis. These meetings resulted in the call for the constitutional convention.

The initial bicentennial kickoff in Annapolis was not the only Maryland celebration. The Calvert County Heritage Committee scheduled a lecture on the first elected Governor of Maryland, Thomas Johnson. In addition, the Calvert County Heritage Committee is providing a living legendary character, Benjamin Franklin, to meet with elementary schoolchildren; a field trip for intermediate school students to the State archives and the statehouse in Annapolis; and distributing reproductions of a 1786 Maryland newspaper, prepared by high school students.

Maryland is proud of the part in history that she played in helping to establish this great Republic from the first settlers of St. Mary's County who were escaping religious persecution, to the men and women of the great military installations of Aberdeen Proving Grounds, Indian Head Naval Ordnance Facility, and the Patuxent River Naval Air Station.

The State of Maryland and the First Congressional District is the natural place to begin this great celebration.

HUSTON-TILLOTSON COLLEGE CELEBRATES 110TH CHARTER DAY

HON. J.J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. PICKLE. Mr. Speaker, on October 24, 1986, Huston-Tillotson College in Austin, TX, will celebrate its 110th anniversary of the signing of its official charter. I think it is entirely appropriate that this occasion be recorded in the CONGRESSIONAL RECORD.

Huston-Tillotson is one of the premier predominately black colleges in the country. Over the years there have been many changes at Huston-Tillotson, but one thing has remained constant for these 110 years. It has been a source of education and opportunity for men and women who have high potential, but who may have been educationally, economically, or socially disadvantaged.

Much of Huston-Tillotson's success over the years can be attributed to the leadership of John Q. Taylor King, the president of Huston-Tillotson. Dr. King began his career as a math teacher at Huston-Tillotson in 1947 and was appointed president in 1965. He has had a long distinguished career at Huston-Tillotson, and we owe a great debt of gratitude for his service. Without his leadership and the help of the good Lord, this school's doors might not be open today.

But the struggle to keep Huston-Tillotson alive goes on as it does with many of our smaller institutions. I am proud of the will power and determination of this brave little school which has managed to persevere all these years. I am confident that Huston-Tillotson is going to continue to grow and prosper. As Huston-Tillotson celebrates its 110th anniversary, I'm convinced it has a bright future in Austin. It has a good curriculum, enrollment is growing, and it will continue to play a vital role in our community well into the 21st century. I wish Huston-Tillotson my heartiest congratulations on its 110th anniversary. To commemorate this milestone in Huston-Tillotson's history, I intend to have a flag flown over the Capitol in recognition of Huston-Tillotson's achievement.

IN SUPPORT OF H.R. 281

HON. RICHARD A. GEPHARDT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. GEPHARDT. Mr. Speaker, I rise in support of H.R. 281, the Construction Industry Labor Law Amendments of 1985. Recognizing that this bill protects important principles of labor relations and rights of unionized workers, this body passed H.R. 281 earlier this session, by the substantial margin of 379 to 38. Today we have the opportunity and, I believe, the obligation to reaffirm that commitment.

The issue, as I see it, is simply one of fair play. Both the prehire and the double-breasting provisions of the bill simply reassert the basic principle that when a union and an employer enter into a voluntary agreement both should be bound to honor that agreement. The bill makes no new labor law; rather, it reasserts the original intent of Congress with regard to prehire and collective-bargaining agreements. Because of recent National Labor Relations Board and court decisions, it has become too easy for employers to walk away from these agreements, leaving unions with difficult burdens of proof for their legal recourse.

Our labor laws have long recognized both the right of workers to collective-bargaining agreements and the special characteristics of the construction industry. Because of the diffuse, transitory nature of projects in the construction industry, Congress has recognized that special measures are necessary to ensure a degree of stability that will enable

both union and employer to function most effectively.

The needs for fairness and stability dictate that prehire agreements, which allow unions to provide skilled workers for jobs as they become needed in a project, must be binding on the employer unless the union is decertified. Similarly, collective-bargaining agreements must be applicable to all businesses operated by a single employer within the geographical area covered by the agreement.

It is, of course, important that employers have the ability to complete their projects profitably, at competitive prices. It is the responsibility of both the employer and the unions to ensure that these conditions are met, before prehire and collective-bargaining agreements are finalized.

Once these voluntary agreements are entered into, however, it is only fair and right that they remain binding on both sides. H.R. 281 reasserts the commitment of Congress to this principle of fairness in our labor laws. I strongly support this bill and I urge my colleagues to vote for it.

TRIBUTE TO BOB CARGILL, SR.

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. HALL of Texas. Mr. Speaker, I rise today, here on the floor of Congress, in our Nation's Capitol, midst statues of great Americans of the past, and in sight of Arlington National Cemetery, the last resting place of those who formed the bedrock of our Nation. I do so to commend to this body the memory of a modern day trailblazer, Mr. Bob Cargill, Sr., lovingly known as Mr. Longview and Mr. East Texas.

Friends and family turned out in unbelievable numbers on Tuesday, September 23, to pay their last respects, and to numbly recite acts of kindness and genorosity extended to so many of them individually by Mr. Bob. He was the moving force behind so many local, State, and national projects that time does not permit a full coverage, nor could words do justice to his many accomplishments. Presidents and Congressmen of post World War II were quick to point out that victory was attributed, in great part, to a pipeline that took the oil and gas from east Texas and put it in what was called the Big Inch pipeline to the east coast where it was shipped to Europe in lend-lease tankers. Those who knew the whole story knew that Bob Cargill, and a small handful of other great Texans, were the ones responsible for filling those long pipelines and meeting the emergencies of that dreadful day and time. Mr. Bob was always willing to enlighten legislative and congressional bodies on the vicissitudes of the energy thrust and gave of his time and information. I have known personally the pride of introducing this great man to my colleagues here in Congress, and to hear him make his many experiences live again for Members not coversant with the oil patch.

Bob Cargill found time for his neighbors and was a constant booster and contributor to the city of Longview and the surrounding area. He devoted his adult life to the improvement of the city and the establishment of industrial complexes which brought thousands of jobs and employment to the citizens of that section of east Texas. He was a self-employed industrialist true to the traditions of the great entreprenuers of our Nation.

Among the many contributions which this great Texan made was to serve as the president of the Longview Chamber of Commerce, and create the Longview Industrial District, which was formed as a nonprofit body dedicated to securing new industries for the city and the surrounding area. He served as the chairman of the Longview Chamber of Commerce's Industrial Committee for many years and was the developer of fine rural subdivisions in the Longview area. In addition, he found time to serve as president of the Cherokee Water Co. and the Dallas-Caddo Hunting and Fishing Club. In other capacities, such as president of the Longview Savings & Loan Association and a director of that institution since 1964; the chairman of the Board of Texas Bank of Tatum, TX; chairman of the board of Gillespie Coating Co. and of the Sabine River Development Association, it is quite evident that this man had immeasurable skills and wisdom to offer to the city and the community.

I would like also to pay tribute to Bob Cargill for his outstanding work and contributions to the Salvation Army and the Boy Scouts of America. His dedication to the Salvation Army in heading a $1 million drive for the construction of that organization's headquarters in Longview was instrumental in this achievement. One of the most dedicated men in American to the Boy Scouts of America, Bob Cargill served in a variety of positions in that organization including service as national council representative for east Texas, a member of the board of South Central Region of Boy Scouts and president of the East Texas Area Council Boy Scout Foundation. Over the years, in recognition of his active participation in the Boy Scout program, he received a number of Boy Scout honors, including the organization's Silver Beaver award in 1950 and the Silver Antelope award in 1967. He was one of only two people in the area to receive these prestigious Boy Scout awards.

As if this great civic leader had time to do more, he served as president of the Longview Independent School District, the Longview United Way, the Longview Lions Club, on the boards of the East Texas Chamber of Commerce, Shepherds Medical Center and the Texas Hospital Association. Also, he was a member of the boards of the Southwestern Diabetic Foundation, the East Texas Baptist College, the Texas Law Enforcement Foundation and the Texas Good Roads Association, and was a Scottish Rite Mason and a member of the Sharon Temple Shrine of North America.

Surely, no person of my acquaintance devoted more of his time unselfishly for the benefit of his city, county, State, and Nation, and it is fitting and proper that we Members of this House of Representatives in session honor the past accomplishments of this great man and his contributions to the betterment of the lives of his fellow men. I have lost a great personal friend, and the community in which he devoted his life will have lost a tireless servant in the betterment of our society.

In conclusion, Mr. Speaker, I would also like to pay my respects to his wife, Pauline Wood Cargill; his son, Dr. Robert Cargill, Jr. and Katherine; to his daughter, Mrs. Paula Kaplan; his brother Oscar; his two sisters, Mrs. Ann See of Coleman, TX, and Mrs. Bess Fraser of Mansfield, LA, and his eight grandchildren, all of whom survive this kind, devoted, dedicated and giving man.

As we adjourn Congress today, I ask that we do so in honor of, and in remembrance of Mr. Bob Cargill, a man who gave too much to so many for so long.

NEW YORK METS

HON. JAMES H. SCHEUER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. SCHEUER. Mr. Speaker, I rise with tremendous pride to commend a group of fine young men who just last night—in a game charged with drama and emotion—won the National League Pennant, the New York Mets. As the Mets—who play in New York's Eighth Congressional District, which I am proud to represent—enter the World Series against the Boston Red Sox, I would like to congratulate them on their fine season, wish them luck in the World Series, and take special note of their team's fine tradition.

As the play which ran at the Source Theater here in Washington just as this summer entitled "N.Y. Mets" indicates, this team has taken on connotations considerably beyond the baseball diamond. Throughout their 25-year history, the Mets have been the epitome of the hapless—yet lovable—losers who throws off the shroud of defeat to attain the highest pinnacles of success against all odds.

Their World Championship season of 1969 ranks among the most remarkable achievements in the history of sport, winning over 100 games after losing 100 just the previous year. Similarly, in 1973 when the Mets were in fourth place with just 5 weeks left in the season, winning the National League pennant and nearly the World Championship again served to heighten the mythology of the 'Mazing Mets.

Yet, despite year after year of last place finishes, New York has maintained a truly remarkable love affair with this team, which drew as many loyal fans during their record-breaking failures as did the Yankees just across town during their championship years. Through thick and thin, Mets followers have given new and deeper meaning to the word "fan".

It was precisely this underlying love for the Mets, commensurate during defeat as well as during victory, that has inspired not only ball players, but also writers such as P.J. Edwards, who authored "N.Y. Mets."

The Mets are winners once again and today—more so than ever before—this amazing group of young men continue to symbolize the city in which they play, just as New York's endless devotion to the team characterizes that ball club.

The cunning and skill of Manager Davey Johnson, Jesse Orosco and perennial all stars Keith Hernandez and Gary Carter, the scrappy, do-anything-it-takes-to-win play of Mookie Wilson, Wally Backman, and Lenny Dykstra, combined with the untold potential for the future of youngsters Dwight Gooden, Darryl Strawberry, and Ron Darling all serve to remind us of New York City's finest qualities—the outstanding abilities of its citizenry, its determination when the chips are down, and the fine, shining future of our fair city.

Thus, I rise with millions of other New Yorkers who proudly cry the team's traditional cheer—"Let's Go Mets."

TRIBUTE TO THE HON. G. WILLIAM WHITEHURST

HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 14, 1986

Mr. RODINO. Mr. Speaker, I rise to join my colleagues in tribute to a man of the highest moral character and integrity who will be retiring at the end of the 99th Congress.

BILL WHITEHURST came to Congress in 1969, not as a politician, but as a respected member of the academic community. During his years as a professor and dean of students at Old Dominion University, BILL WHITEHURST was one of the most admired and beloved members of that facility.

He brought to Washington the insight of a historian, and he could always be counted to bring his learned perspective to any debate.

As neighbors in the Rayburn Building, I have come to know BILL and his wife, Janie, as warm and personable people who treat everyone with the highest of respect.

And I can tell you that BILL is a man of principle. Earlier this year when this body considered firearms reform legislation, BILL was a strong consistent voice who stood up to the powerful lobbies trying to weaken our laws.

BILL was one of the first to call for tougher laws to protect our police officers and our citizens, and not once did he stray from this conviction.

I know, too, of BILL'S tireless works on behalf of his Virginia constituents, and of his deep commitment to protect the environment.

In every way he epitomizes the heritage of Jefferson as a true Virginia gentleman whose independence and intellect helped better the country we live in.

After 18 years in Congress, BILL has chosen to return to his first love, academia. He will be missed here, and I wish him nothing but happiness and good health. What is our loss, will become Norfolk's gain.

And I'm sure that he will continue to enlighten the minds of all those who come in contact with him.

CAMDEN DEVELOPS AS ARTS FLOURISH

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. FLORIO. Mr. Speaker, the arts have traditionally played a very important role in the history and culture of my own State of New Jersey. In recent years, however, there has been renewed growth and vigor within the arts community of New Jersey due largely to the firm Federal and State support for arts programs.

The artistic revitalization taking place in New Jersey has grasped the interest of a number of organizations and it has not only received support from arts-oriented groups and individuals but also from corporate sponsors such as Campbell Soup and RCA. Some 37,000 artists reside in the New Jersey and play an active role in furthering New Jersey talent and culture.

I am especially proud of the attention given to the city of Camden, which I represent, and the transformation Camden is undergoing in terms of historical preservation and a proliferation of art. In addition, I was proud to see the attention given to Camden's Artistic Design Program which seeks to elevate community pride by placing murals on graffiti-covered walls. I commend the efforts of Kimberly Camp, the visual-arts coordinator for the city of Camden, in this area. As a member of the Congressional Arts Caucus, I had the opportunity of working with Kimberly as she helped coordinate the 1985 First Congressional Arts Caucus competition and was impressed by both her commitment to the arts and her multifaceted talent.

The two articles on Camden's revitilization and on the Artistic Design Program follow:

[From the Horizon, October 1986]

A CULTURAL MOVEMENT

(By Julia Lichtblau)

A grass-roots arts movement has taken hold in Camden, New Jersey, and is growing vigorously in the city's new climate of pride and determination. Professional artists and the community both are eagerly participating. There are outdoor performances throughout the summer. The Camden County Cultural and Heritage Commission sponsors performances, school programs, a statewide Teen Arts Festival, and an annual juried exhibition featuring the works of over two hundred local artists. The Artistic Design Program employs professional artists to plan murals for the city's graffiti-covered walls, and the city's teenagers help to execute them. Original research in music is going on at the Rutgers-Camden campus, while the visual-arts department has a computer-graphics program that is attracting students from throughout the region. And in Walt Whitman's chosen city, it is only appropriate to have an award-winning poetry magazine—the Mickle Street Review—published on the campus; as well as the Walt Whitman Center for the Arts and Humanities. (The area code for all Camden locations is 609.)

ART AND HISTORY MUSEUMS

Last year, some ten thousand viewers made their way to the Stedman Art Gallery (Fourth and Linden Streets, Fine-Arts Center of Rutgers, the State University of New Jersey, Camden Campus, 757-6245). The only art museum in southern New Jersey, it has been exhibiting, educating the public, striving for a more national profile, and nurturing the local arts community since 1975. "We try for an experimental focus," says gallery director Virginia Steel. "As a university gallery, we can afford to take chances and we should." The Stedman is nationally known for its biennial works-on-paper competition, established in 1975 to encourage contemporary American artists using paper in both traditional and experimental ways. The last competition drew twenty-seven hundred entries, of which eighty-six were selected. The gallery holds eight changing exhibits a year, including an interdisciplinary one that focuses on an art or craft of a different culture. Such exhibits are often touring to several galleries around the country and make their only New York/Philadelphia-area appearances at the Stedman.

The National Endowment for the Arts-funded Visiting-Artist Lecture Series yearly brings six nationally known artists from different disciplines to the gallery to discuss their work. Past lectures have included Philip Glass and Laurie Anderson.

The fall 1986 season opens with a joint show of rare works by André Kertész and Lucien Aigner, on loan from the Polaroid Corporation. The Kertész prints are his first color series, begun at the age of eighty-four. Aigner's works are from a collection of fifty thousand negatives of prewar Paris, found in an old suitcase in 1970.

Camden is the international headquarters of the Campbell Soup Company which maintains the Campbell Museum (Campbell Place, 342-6440). The plush, red-velvet interior cradles what museum president Ralph Collier describes as "the world's most unique collection of soup tureens"—which includes life-size swans, rabbits, chickens, boars' and cows' heads, cauliflowers, and melons in silver, pewter, porcelain, and earthenware. The tureens, which date mostly from the early-eighteenth and nineteenth centuries, come from two dozen European countries and China. Of particular note is a gilt-and-painted tureen bearing images of early-nineteenth-century Berlin—part of a 350-piece set for the marriage of Prince Frederick of the Netherlands and Princess Louise of Prussia in 1825. A film, "Artistry in Tureens," can be shown by appointment to groups of up to fifty people. Not limited to soup-related objects, the Campbell Museum has small changing exhibits of prints, photographs, and decorative-art objects.

History buffs will find a rich assortment of historic sites in the Camden area, dating from its origins as a Quaker settlement in the early-eighteenth century through the Industrial Revolution. Pomona Hall (Park Boulevard and Euclid Avenue, 964-3333), home of the Camden County Historical Society, is an eighteenth-century Georgian mansion built by the Coopers—Camden's founding family and restored for use as a museum during the Bicentennial. Eighteenth-century furniture, quilts, farm implements, and even clothing—including William Cooper's vest, which dates to the early-eighteenth century—are on exhibit. Upstairs, you'll find craft shops for candlemaking, weaving, and shoemaking.

The museum also contains objects of particular significance to Camden—such as locally made glass, Campbell Soup artifacts,

and a collection of Victrolas, records, photos of recording artists, and other RCA memorabilia. Pomona Hall has free tours and Sunday events (films, lectures, and open-hearth cooking demonstrations), as well as a school program. The historical society's library contains nineteen thousand books and pamphlets—as well as maps, deeds, slides, newspapers (1800-1947), and an excellent collection of regional genealogical material.

Walt Whitman, Camden's best-known historic figure, lived the last eight years of his life at 330 Mickle Street, near the waterfront. The two-story, frame town house is now the Walt Whitman Museum (964-5282), run by the Walt Whitman Association, which has its headquarters next door. The poet's house contains the Gimbel Collection of "Whitmania" and sponsors readings, lectures, and changing exhibits. The association's archives of Whitman's papers and other materials attract Whitman scholars from around the nation.

OTHER HISTORIC SITES

To experience Camden County's Quaker heritage, you'll have to leave Camden and venture into the surrounding areas. Barclay Farmstead. (Barclay Lane, Cherry Hill, 795-6225)—a thirty-two-acre Quaker farm first established in 1624—preserves a slice of Camden County's agrarian past in the midst of suburban Cherry Hill, a few minutes from Camden. Built in 1824, the three-story, eleven-room, Federal-style, brick farmhouse sits among herb and flower gardens, an apple orchard, a blacksmith shop, a corncrib, and a Victorian springhouse. The house is an "active" museum. Upstairs is a collection of working looms used to repair and re-create some of the farm's historic textiles. As part of an ongoing restoration program, the curatorial staff preserves historic fabric from area structures that are about to be demolished or are otherwise beyond repair. Recently, stenciling from a similar farmhouse of the same period was documented and re-created in authentic colors in the parlor.

The Haddonfield Historic District (Kings Highway, Haddonfield) is on the National Register of Historic Places. Lovers of American architecture will find themselves in their element here. The main street is largely Federal in style. You can stroll past the Indian King tavern, briefly the headquarters of the state assembly during the American Revolution. The side streets are Victorian, with fine examples of all major styles of the period.

Haddonfield was founded by Elizabeth Haddon, the daughter of a Quaker landowner and a woman of uncommon independence for her time. At the age of seventeen, she came by herself to America from England to oversee her father's properties. The town became a strong Quaker community, and its Friends' meeting house is still in use. The Friends' School was founded in 1786. Haddonfield also has the second-oldest fire company in the country, with a small museum of old fire-fighting equipment.

Another community of historical and architectural interest in the Camden area is Fairview, the third-oldest planned community in the country, now on the National Register of Historic Places. Originally called Yorkship, it was built in 1917 to remedy a chronic shortage of housing for workers at the New York Shipbuilding Company. The community consists of attached and semidetached, brick, colonial-style houses along curving, tree-lined streets. In imitation of New England towns, it is broken up by several "village greens" surrounded by shops. Its self-contained appearance is now attracting a new generation of young professionals.

THE PERFORMING ARTS

The Rutgers-Camden campus is probably the only one is the country to have a professional orchestra in residence. The eighteen-member Mozart Orchestra is devoted almost exclusively to works by Mozart and performs regularly on campus for college and high-school students and also the general public. The University Theatre Department produces several plays annually—both classical and contemporary—and performs for the general public and hundreds of Camden schoolchildren. Each spring, the campus hosts the statewide Teen Arts Festival, which attracts teenagers from all over the state for three days of workshops, demonstrations, and performances.

Not surprisingly, the best place to see shows in Camden is the Fine Arts Theatre (Fine Arts Building, Fourth and Penn streets, 757-6176 on the Rutgers-Camden campus.) The seven-hundred-seat theater is acoustically perfect, has excellent sight lines, and is well suited to both music and theater. Last year, Camden audiences saw Philadenco, a Philadelphia-based modern-dance group; Metropolitan Opera singer Osceola Davis; singer Tom Chapin; the Mozart Orchestra; and over thirty other top-notch shows there.

Just a few blocks away, in the Cooper Grant Historic District, is Camden's other cultural nucleus, the Walt Whitman Center for the Arts and Humanities (Second and Cooper streets, 757-7276), which sponsors a constant stream of musical performances, poetry readings, coffee klatches, plays, children's programs, and exhibits. The Walt Whitman Center is perhaps best known for its annual Notable Poets Series, which has brought such luminaries as Lawrence Ferlinghetti, Allen Ginsberg and Gwendolyn Brooks for readings and discussions.

Housed in a former Carnegie Free Public Library building, the center is a gift of Eldridge R. Johnson, a president of the former Victor Talking Machine Company (now RCA). The beaux art structure is one of the city's finest. Its columned portico bears a seventy-foot, allegorical mosaic made of over one hundred thousand glass pieces, entitled "America Receiving the Gifts of the Nation."

Camden County is blessed with a second orchestra, the Haddonfield Symphony, which has been performing in the area for some thirty years. Its focus is also somewhat specialized—it tends toward American and innovative composers. Described as a "teaching orchestra," it sponsors a young soloists' competition, and a number of its seats are held by students from Philadelphia's Curtis Institute.

Area residents also enjoy performances by the Wind Symphony of Southern New Jersey and the Camerata Opera Company. On Friday evenings in summer, Haddonfield closes down Kings Highway at Centre Street and holds band concerts right on the pavement.

OUT AND ABOUT

Most of Camden's downtown attractions are within six blocks of each other. Right off the Rutgers campus is the Cooper Grant Historic District, a neighborhood of nineteenth-century town houses, many of which are now being renovated. From there, you can see such landmarks as the Benjamin Franklin Bridge and the RCA tower, with its famous logo of the dog harkening to "his master's voice" in stained glass. Stop for a minute to enjoy the park surrounding the Walt Whitman Center—in particular the statues of Peter Pan and various animals installed for children.

Camden's future will be in its spectacular waterfront project, now under way at the foot of Mickle Street. The first section, the Ulysses S. Wiggins Waterfront Park, opened recently. Its entrace, which faces Philadelphia's Penn's Landing, is a circular driveway on the crest of a hill, ringed by seventy-foot flagpoles framing the Philadelphia skyline. A grassy, outdoor amphitheater seats over five thousand and hosts a full schedule of events, which this year included a concert by jazz trumpeter Wynton Marsalis. The next part of the park to open will be the marina. The city is planning to make the park the site of concerts, ethnic fairs, boat shows, "super Sundays," and other crowd pleasers. A $30-million aquarium promises to be a major attraction when it opens in 1989. In the meantime, go for the view and the outdoor events, sponsored by the Camden County Park Commission (Whitman Avenue, Cherry Hill, 795-PARK).

The city's landscaped Harleigh Cemetery is full of impressive funerary architecture, including scale models of the Parthenon. While you're there, make a pilgrimage to Walt Whitman's tomb—a mossy, granite grotto designed by the poet himself. The Cooper Plaza Historic District is just around the corner from the cemetery and worth a short detour for preservation aficionados.

TRANSPORTATION

Camden is located a short drive from Philadelphia's Center City, just over the Benjamin Franklin Bridge. The PATCO high-speed rail line links the city and county. The Philadelphia International Airport is only twenty minutes from the Camden area. A $17-million Transportation Terminal—a major interchange for car, commuter-rail, and bus traffic—will open this fall, making Camden even more accessible.

[From the Horizon, October 1986]

THE WRITING ON THE WALL

(By Jennifer W. Graham)

A couple of years ago, the city of Camden saw the writing on the wall—literally. In the summer of 1984, then-director of Housing and Community Development, Patricia Darden, initiated an anti-graffiti program, taking the urge to write on walls and turning it into an artistically creative impulse. The Artistic Design Program was born—with a goal of turning graffiti-covered walls into works of art.

Patterned after similar programs in other cities, particularly the Anti-Graffiti Network in Philadelphia, Camden's Artistic Design Program seeks to elevate pride in the community, discouraging defacement of property and fostering an aesthetic appreciation for the murals. And the project provides a solution to frustrated business owners in Camden, who repeatedly have to paint their walls to cover graffiti.

The benefits of the program are numerous, going beyond the beautification of Camden. It furnishes exposure for artists in the area, who submit sketches for potential mural projects—as well as paying an honorarium of up to $750. The Artistic Design Program also provides summer jobs through a federal program (the Job Partnership Training Act) for young people fourteen through twenty-one. Some of these teens are the very same vandals who used their

spare time to deface property with graffiti. Some are artistically inclined, others not, but all make important contributions to the mural project. To assist the artists, some teens are sketch artists others fill-in artists, some supplies-maintenance captains, or crew leaders who will relate to the kids so that the artists are not put in a baby-sitting position. This past summer, one worker—a student in painting at the Pratt Institute—got a lot of experience working on a large scale. Kimberly Camp, visual-arts coordinator for the City of Camden under Housing and Community Development, says: "It's a real team effort. If an artist is scaling up a drawing that's going on a 150-foot-long wall and he's on scaffolding twelve feet off the ground, he needs somebody across the street to tell him what he's doing looks right."

According to Camp, the Artistic Design Program has a success rate of 70 percent—as opposed to similar projects in other cities, which have an 11-to-15-percent success rate. "Success is measured," Camp says, "based on the number of murals we do and the number of ones that get written back over. The majority of murals that go up are never touched. The next-largest group are those that go up and are written on over the Fourth of July. Then we have two sites that are what I call 'regular maintenance' sites. If we touch them up on a Friday and we need something to do on a Monday, we can always go back and touch them up again, because I know they've been written on."

The project gets about twenty requests a year from area businesses to paint murals on their walls, and that is done on a first-come, first-serve basis. The $50,000 annual budget is funded through the New Jersey State Council on the Arts (previously through the Community Development Block Grant). This year, money came directly from the mayor's office. And then there in-kind donations. Camp says, "All of the site owners are asked to donate lunches to the kids, and it's no easy task feeding ten teenagers for three- and four-week periods." Business owners are not asked for any other donations.

Camps who has painted two of the murals herself, stresses the aesthetic sensibilities of Camden with all artists working on the project. Camden is 63-percent black and 34-percent Puerto Rican/Latino; 40 percent of the total population is under twenty-one. Camp's own murals depict black women holding up the sky and black men with dreadlocked hair. A mural by Ethel Wilson depicts people running away from a nuclear-power plant as reactors spew fumes into the sky. Yet another shows breakdancers on a street corner.

In working with the program, Camp has learned a lot about the subculture of wall writers, who have such names as Disco Funk and Seven Deadly Sins. She says that the clubs "war with each other through wall writing." Camp even found herself at one wall writers' meeting in a school yard at midnight. She has been successful in getting most of the wall writers not to vandalize.

The response to the murals has been 99-percent positive, according to Camp. "People walk by on the street and want to be a part of it. They talk to the artist, they talk to the kids that work there. People that see us will call and say, 'I really like that program and want to be involved.' This week alone, I've gotten three additional requests for murals and there are people who have been waiting since last year. The volunteerism is also very high; we get a high level of support in donations." Donations could be a couch for the center or paints.

As an artist, Camp (who also works closely with the City of Camden Art Exhibition) has a personal commitment to the city arts programs. "I hope that our next involvement will go toward doing public art projects that are of a more permanent nature," she says. "Our staff had a meeting last week with the city architectural department out of Housing and Community Development and the Percent for Art coordinator from the state arts council to talk about a park-redevelopment project in north Camden. We sat down to find out how the artists could be involved, what areas could be painted, what areas would require artists with specific skills, and so on. The program and staff are capable of taking things in that direction."

But whatever direction the project goes, for now a once-negative phenomenon has resulted in the beautification of the city—at the same time giving exposure to artists and jobs for young people. And, given the low incidence of graffiti on the murals themselves, the wall writers must agree.

TURKEY: A UNIQUE HISTORY

HON. JOSEPH J. DioGUARDI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. DioGUARDI. Mr. Speaker, Turkey is unique in the history of European nations and, indeed, in the history of most of the states of the world, in that she is mentioned nowhere in the thick book of anti-Semitism as an oppressor. To the amazing contrary, Turkey, both as Ottoman Empire center and as a Republic, has a record in which there is not a single instance of government culpability in the loss of an innocent Jewish life, not an instance of yellow armbands, enforced ghettoes, charges of well-poisonings, charges of child-sacrifice, forced conversions, and all the other infamous imputations and calumnies that are so familiar in the history of the West. Researchers have established that Jews who were expelled from Hungary in 1376 made their way to the regions under Ottoman rule. Jews expelled from France in 1394 are known to have settled in Edirne, a principal Ottoman city. And even before the major Iberian expulsions began in 1492, the oppressive milieu of Spain combined with the tolerant policies in the East attracted Jews to the Ottoman regions in 1394.

The list of instances of Turkish generosity of heart and attitude toward victims of religious oppression is a lengthy one. The following are only a few of the outstanding dates besides those mentioned above.

From the records of Bursa, an important city in the Ottoman Empire in the 16th century, a letter from the Turkish Chief Rabbi Sarfati to the Jews of Europe reads, "Ottoman land is a country where nothing is lacking. Every man could spend his life unmolested under his fig tree and vine." Sarfati urged his readers to leave "the great torture chamber."

In the same vein, a letter sent by the sultan to the Pope in the 16th century in which the Grand Turk registers his indignation with the persecution of the Jews of Ancona and describes the persecution as follows, "Being carried out remorselessly * * * 24 men and 1 woman having already been burned alive." And, it was from Ottoman lands that a boycott was organized against the persecutions taking place in Ancona, reminiscent of the recent actions against South Africa. In his book, "The Ottoman Jewish Communities," historian Mark Epstein states, "With each expulsion or persecution in Christian lands it is recorded that Jews fled to Ottoman territory."

One of the most famous instances of Ottoman humanity occurred at the time of the Spanish Inquisition and expulsions of the 1490's. It is estimated that 90,000 Jews alone made their way, with Ottoman assistance, to key Turkish centers like Istanbul, Edirne, and Salonica. In Salonica, it should be emphasized, there grew a chief Jewish city of the Ottoman Empire. This city flourished for centuries and, in fact, was only brought to an end as a Jewish center by the Nazi occupation forces in 1943.

Elsewhere, Jews who went to Turkey established similarly great communities, rose to high positions and even now prepare to celebrate their 500th anniversary as people received by the Turkish sultans during a period when few doors opened to religious refugees.

The chief rabbi of Turkey, David Asseo, recently told Dr. Martin Abend, a prominent United States scholar and newscaster, of the gratitude and comfort of being a Jew in Turkey and of his pleasure to be able to tell the world the little-known fact of Turkish tolerance and humanity at a time when the name of Turkey and Turk is so regularly impugned.

It is also important to note that Turkey was among the very first to recognize the State of Israel. However, I would like to emphasize that the Turkish record of treatment of Jewish refugees is only part of the story. Turks are also noted in history for their reception of Poles fleeing czarist oppression, among other humanitarian acts.

In conclusion, the current perception of Turkish character should be reevaluated. I urge my colleagues and the American public to turn to the objective facts of history and do honor to a country which in the history of world holocausts is an example of what many countries should have been, but were not. In particular, I encourage everyone to review the reception provided by the Turkish Republic to Jews fleeing Nazi Germany, where today, in Turkey, Jews hold high posts and represent a prestigious segment of Turkish society.

A JOLLY EVENT

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. FORD of Michigan. Mr. Speaker, many of my colleagues know the former counsel to my Subcommittee on Postsecondary Education, Tom Jolly, who is now with the firm O'Connor & Hannan. He's become a highly respected lobbyist, fundraiser, and friend of many in this body.

To those friends, I am pleased to announce that on Wednesday evening, October 15, his life was changed by a Jolly event, the birth of Bethany Meaghan. Meaghan, Tom and Beth's first child, weighed in at Columbia Hospital for

Women at 6 pounds, 15 ounces, and I am delighted to report that mother, daughter, and father are all doing fine.

I know my colleagues and Tom's friends join me in sending Tom and Beth our best wishes and congratulations.

MS. EVA BROWN—A MASTER TEACHER

HON. CHARLES A. HAYES

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. HAYES. Mr. Speaker, I wish to bring to the attention of the House some of the achievements of Ms. Eva Brown, an outstanding teacher at Kenwood Academy, one of the high schools in the First Congressional District of Illinois. As a dedicated and creative instructor, Ms. Brown has for many years designed special programs to pique her students' natural curiosity and enrich their learning environment.

One project which she recently completed is of special concern to me because it established a dialog between aged and young residents of the district. Seeing that many of her teenaged students had little contact with senior citizens, Ms. Brown developed a proposal to address this need, obtained special funding and carried out the project during the last school year. Her community civics classes had an opportunity to walk and talk with older Americans in order to draw parallels between their own life experiences and those of their elders.

Ms. Brown involved many community groups, individuals, and public and private agencies in her efforts. The teens and seniors were enthusiastic about the experience, and a number of rewarding relationships were established.

Certainly, Ms. Brown works above even the high standards set for the teachers of Kenwood Academy, one of the top rated public schools in the city of Chicago. Kenwood Academy and its principal, Ms. Elizabeth M. Jochner, are to be commended for encouraging such excellence.

Through her innovative approach to education, her enthusiasm for teaching and her firm belief in the dignity and worth of her students and their ability to learn, Ms. Brown instills in them a sense of pride and confidence and inspires them to develop to their highest potential.

This summer Ms. Brown received a National Endowment for the Humanities fellowship to study American urban and social history at Dartmouth University. She has received numerous citations for excellence in teaching including the Kate Maremont Dedicated Teacher Award, and she has been honored as a Governor's master teacher.

We see in our newspapers many articles about what is wrong with public education today. It is a pleasure to be able to share with my distinguished colleagues this example of what is right. This outstanding teacher shows how one committed individual can make a difference.

GIRL, 3, AIDED MOM

HON. TONY COELHO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. COELHO. Mr. Speaker, I would like to share with my colleagues a story printed in the Modesto Bee recently about a bright and brave little girl from the San Joaquin Valley which I represent. According to her mother, Mrs. Beverly Seaton, who has just recently been diagnosed as having epilepsy, she had instructed her 3-year-old daughter, Victoria, what to do in case she had a seizure. Thus when little Victoria saw that her mother had blacked out, she didn't panic; instead she simply dialed 911 and was able to get the necessary help for her mother.

As one who has epilepsy, I was particularly touched by this story and would like to take this opportunity to commend Victoria Seaton as a very special young girl.

The following is the text of the article as printed in the Modesto Bee.

SHERIFF COMMENDS LITTLE HERO—GIRL, 3, AIDED MOM WITH 911

(By Bryce White)

TRACY.—Three-year-old Veronica Seaton didn't panic when her mother collapsed. She simply dialed 911.

The quick-thinking tot's call for help has earned her a hero's commendation from the San Joaquin County Sheriff's Department.

Veronica's mother, Beverly Seaton, couldn't be more proud of her little girl.

"What she did could have saved my life," said Mrs. Seaton.

It was just a week ago that the mother of four suffered an epileptic seizure and collapsed unconscious on the living room floor.

Veronica—who answers questions with a nod or shake of her head, loves her dolls and smiles incessantly—seems unfazed by all the attention.

She just nodded when her mom asked: "You did just what I showed you to do if I had an epileptic seizure, didn't you?"

Sheriff John Zunino's office has sent the girl a letter of commendation and a 20-minute tape recording of her call for help.

"You are an example to all the young people across the country, and for this I want to thank you because you helped us do our job of helping others better," sheriff's Lt. Dennis Dearmin said in a letter to the girl.

Continental Telephone Co., in the midst of a campaign to teach children in kindergarten through third grade when and when not to call 911, couldn't find a better example of "how to do it" than Veronica.

"How amazing it is for a 3-year-old to be able to realize what an emergency is," said Bill Hendershot, a Contel spokesman. "Not all 3-year-olds would do that."

The stage for Veronica's heroic moment was set about three months ago, when doctors told Mrs. Seaton that she had epilepsy and began prescribing medicine.

Doctors told her that it would take a while to adjust the dosage of the medicine she now is required to take, and said blackouts—like the one she experienced last week—were a possibility.

"It was about 1:10 p.m.," Mrs. Seaton said. "I remember I was putting the baby to sleep, and the next thing I knew I woke up when firemen were pounding on the front door."

She was unconscious, as near as she can estimate, about a half-hour, based on the 20-minute tape recording made by officers at the communications center in Stockton after Veronica called 911 first, then hung up.

The 911 automatic locating system immediately gave the communications center the Seaton's West 11th Street address and telephone number.

Help was dispatched immediately, but the center called the Seaton phone number and talked to the girl until firefighters arrived.

The Sheriff's Department is planning to roll out the red carpet for Veronica when she visits the county's 911 communications center in the Stockton courthouse. No date has yet been set for the visit which will include a ride in a sheriff's patrol car to and from her rural Tracy home.

FAMILY PLANNING MISTAKE

HON. HOWARD WOLPE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. WOLPE. Mr. Speaker, as many of our colleagues are aware, the administration decided last month to terminate American funding for the largest multilateral provider of family planning assistance, the U.N. Fund for Population Activities. I believe this decision was a serious mistake. In the administration zeal to pacify a vocal minority of American antifamily planning activists, the real victims, in this debate have been tragically overlooked.

What is the issue at stake in this debate? Here the very first point that must be made is that what is not at issue is if the United States should be in the business of supporting abortion overseas. That debate was settled over 10 years ago. Current U.S. law explicitly prohibits any of our foreign aid dollars from paying for or promoting abortions. Furthermore, in 1973, Congress passed legislation requiring that all U.S.-backed family planning programs be noncoercive and strictly voluntary. So let us say loudly and clearly that the insinuation that U.S. dollars are going to pay for forced abortions in foreign countries is, quite simply absolute nonsense. U.S. law forbids U.S. dollars from supporting any abortion activities overseas, forced or voluntary.

The real issue at stake in the U.S. decision to cutoff funding for the U.N. Fund for Population Activities is that in the effort to address concerns about allegations of forced abortion and forced sterilization in the People's Republic of China, American support for family assistance to millions to women in the over 120 countries served by UNFPA has suddenly come to a halt.

And what can we assume will be the impact of this decision? In my mind it is perhaps the ultimate and utterly tragic irony that in their zeal to prevent all abortions in any country, the proponents of the UNFPA funding cutoff have only succeeded in blocking access to the most effective option people have for making abortion unnecessary in the first instance. If we are truly serious in our commitment to reducing the incidence of unwanted pregnancies and abortions worldwide, the very

last thing we should do is deny aid for vital family planning services.

I am deeply disappointed by the administration's decision and I urge my colleagues to consider carefully the impact of this cutoff in U.S. assistance to UNFPA. I recommend the following editorial which appeared in the Detroit Free Press:

CUTOFF: THE UNITED STATES BACKS OUT OF A NEEDED UN POPULATION PROGRAM

The Reagan administration has gone ahead with the ill-conceived plan to withdraw U.S. money from the United Nations Fund for population Activities.

The decision to withhold the United States' $25 million contribution—a fourth of the agency's budget—was the result of lobbying by anti-abortion activists who allege that the Chinese government's population program, one of the 130 such national programs receiving aid from the group, has a policy of forced abortions and sterilizations. The Chinese have denied the charge.

An official of the U.S. Agency for International Development told the New York Times that assistance could be resumed next year if circumstances change. The UN group, anticipating the U.S. fund cutoff, has been able to raise nearly $20 million from other donors.

Nevertheless, it is absurd that the administration has gone along with the attempts of a vocal minority of Americans to cripple the multi-national agency, which provides assistance to poor countries trying to control their burgeoning populations. As Rep. Jim Moody, D-Wis., has pointed out, "Bangladesh, Haiti and other similar countries will be the ones to suffer." Allowing that to happen is neither humane nor good foreign policy.

WORLD FOOD DAY

HON. E. de la GARZA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. DE LA GARZA. Mr. Speaker, one of the great ironies of our time is the fact that Americans are organizing and promoting a war against world hunger.

There is nothing ironic in the war against hunger itself. For many years, Americans have traditionally contributed their full share—and more—to campaigns against famine and malnutrition in many parts of the world. We have all supported those efforts, and we will continue to support them.

For this reason, Americans have joined this week in the celebration of World Food Day. As my colleagues know, the observance has been marked here in Washington by the presentation yesterday of the fourth annual Presidential end hunger awards.

I said there is a great irony in this celebration. That lies in the fact that we are waging war on world hunger at a time when this country and many others are swamped by agricultural surpluses.

The war against hunger is going well. The aid that flowed from this country and others to the famine areas of Africa has made a difference. The help we gave, as a government and through private sources, has saved hundreds of thousands of lives. And in many other areas, efforts like our Food for Peace Program have moved us further toward the goal of a world in which no man, woman, or child is forced to go without an adequate diet.

But if the war is going well, it has not yet been won. We have not yet reached our goal. There are still children who go to bed hungry. At the same time, the men and women who produce our food are suffering through one of the most serious economic crises in the past half century.

This is what I find ironic, Mr. Speaker. On one hand, there are hungry people. On the other hand, we have food producers who cannot make a living.

I fully realize that I have oversimplified the contradiction that we face—a contradiction that has existed for many decades. But I do not apologize for trying to bring this dilemma down to its basic roots. We have to somehow find the wisdom to solve this contradiction—the wisdom to match the productive genius of agriculture with the needs of both commercial and other markets.

This is one of the key lessons we should be learning from World Food Day. I want to salute the organizers and sponsors of this observance, and I want to join in saluting the men and women who will share in this year's Presidential end hunger awards.

TRIBUTE TO E. VIRGIL CONWAY

HON. JOSEPH J. DioGUARDI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. DIOGUARDI. Mr. Speaker, I rise today to pay tribute to E. Virgil Conway who will be receiving the 1986 Gold Medal Award from the 100 Year Association of New York, on the 23rd of October.

The 100 Year Association of New York, was founded in 1927 to preserve and protect the traditions passed down through the years. Its membership consists of those companies and individuals which have been doing business in New York City for over 100 years. Not only have these businesses and individuals been dedicated to preserving the commerce of New York City, but they have also demonstrated great generosity toward civil servants. There is an award given yearly to the civil servant who performs above and beyond the call of duty. In addition, they annually award scholarship funds to children of civil servants.

The Gold Medal Award has been given yearly since 1930 to the corporation or individual who has made great contributions and efforts in the advancement of New York City. some significant recipients in the past have been David Rockefeller, former Mayor Fiorello H. LaGuardia, Dr. Howard A. Rusk, Alfred P. Sloan, Jr., and J. Peter Grace.

This year's winner, E. Virgil Conway, is currently the chairman and president of the Seamen's Bank for Savings. He served as the president of the association between 1977 and 1978, and is presently a member of its board of governors. In addition, Virgil has made many contributions to other civic and charitable organizations. He is a member of the Audit Committee of the city of New York and served during the city's fiscal crisis as a member of the mayor's management advisory board. Virgil also is a director and secretary-treasurer of the New York City Partnership and the New York Chamber of Commerce and Industry.

Virgil is an outstanding member of the community and the business world. He has served his city on numerous accounts and has volunteered his services to many worthy institutions. I am sure that his wife, Elaine, and children, Allison and Sarah, are proud of Virgil's accomplishments. New York City certainly is proud. I am particularly privileged because Virgil is a resident of Bronxville, a town which I represent. I would like to take this time to congratulate Virgil on his receiving the Gold Medal Award and to pay tribute to him for his continued dedication toward helping others.

PITMAN STUDENTS RALLY FOR SUPERFUND

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. FLORIO. Mr. Speaker, last week the Congress overwhelmingly approved a reauthorization of the Superfund Program to clean up our Nation's toxic waste dumps. Having authored the original Superfund Program and having worked actively in the last two Congresses to craft a Superfund reauthorization that would include strict cleanup standards and deadlines, I am pleased that the Congress has taken the decisive action of providing both the means and the impetus to rid our Nation of dangerous toxic waste dumps. I would like to urge the President to sign this vital piece of legislation.

The need for reauthorizing Superfund this year can be seen in our communities and among our constituents. For a number of years, I have worked with the residents of Pitman, NJ, to ensure that Lipari landfill, the No. 1 site on the Superfund National Priority List is cleaned up and that the natural resources of this community are restored. Lipari is one of many toxic waste dumps where work would be halted if the Superfund reauthorization bill were vetoed.

In order to emphasize to the President the urgency of the need for this legislation, students from the fifth grade class of Mrs. Pat Lindsay at Pitman Middle School wrote to the President urging him to sign this legislation. I would like to commend their teacher who, with her husband Harry, has been active in the fight to clean up Lipari, as well as Tom Agnew and Fran Manbeck, the principal and vice principal of Pitman Middle School, and Dr. Horton, the Superintendent of Schools for their efforts.

Most especially, I would like to draw the attention of my colleagues to the students that participated in this effort: Jennifer Miller, Carl Winter, Dave Hutton, Amy Hancock, Tricia Healy, Courtney Olson, Jessica Murray, Billy Datz, Laura Michelle Kennedy, Ryan Campbell, Amber Tunstall, Allyson Sturgeon, Dayna Drinkwater, Aaron Geserick, Jessica Marcone, Dara Montgomery, Becky Watt, Shawn O'Brien, Alandrea Lee, and Joseph Pinto. All of these students took the time and effort to

voice their concern about something that is directly affecting their lives, the lives of their parents and the lives of future generations. I would like to commend their initiative and join them in urging approval of the Superfund reauthorization legislation.

IN PRAISE OF RAUL "ROY" CALDERON

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. GARCIA. Mr. Speaker, this past August, Raul "Roy" Calderon who has been with my New York office for well over a decade, left to take a job with the New York State Corrections Agency.

I'll miss Roy because of his willingness to work hard and because of his quick wit. He was a treasured asset to the community, as well as my office. Roy was born and raised in the Bronx and decided to serve it as a dedicated public servant, never failing to lend a helping hand whenever he was needed.

Roy's story is unique. We knew each other as kids, and while I went on to the Army, school, and public life, Roy's life took a turn for the worse. He ran into some problems with drugs and the law and ended up serving time in jail.

It was in prison that I met up with Roy again in the early seventies. My work as a State Senator led me to become involved with prison reform programs. I came across Roy while visiting a correctional facility in New York State. He told me he had learned a lot and thought a lot about his life, and that he wanted to make a fresh start. I was impressed by his sincerity, and to make a long story short, I hired him upon his release. As I said, that was in the early seventies, Roy stayed with me until this past August.

The State of New York got a good deal when they hired Roy. He is living proof that a person can be rehabilitated and lift themselves up from the depths, turn their lives around, and become a productive member of society. Of course, Roy had some help from his wonderful wife Louise.

In many ways, Roy is truly a gifted man. He has seen life from all perspectives, and he made a choice to embrace it in all of its fullness. I will miss my friend Roy Calderon.

HONORING WILLIAM SAMPLE, THE FOUNDER OF THE SUNSHINE FOUNDATION, ON ITS 10TH ANNIVERSARY

HON. ROBERT A. BORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. BORSKI. Mr. Speaker, I rise to recognize William Sample who is the founder and chief administrator of the Sunshine Foundation in Philadelphia. The foundation will celebrate its 10th anniversary on November 18, 1986.

True to its name, the Sunshine Foundation was established to fulfill the dreams of chronically and terminally ill children. Assigned to Philadelphia's Children's Hospital while serving as a city policeman, Bill Sample encountered dozens of critically and terminally ill children during his daily rounds. He was moved by the plight of these children but anguished over his inability to help them. For many of them, the consequent draining of family resources compounded by their illness made the outlook grim.

But Bill's contagious optimism led him to a brainstorm which would allow children all over the United States the opportunity to fulfill their wildest dreams. Filling the first request with a personal check, Bill began working with volunteers to establish fundraising efforts to provide some hope and encouragement to both families and youngsters. Unlike many charities, the Sunshine Foundation is supported by small, private contributions from everyday people like Bill himself. To this date, no wish has ever been denied.

Since its inception in 1976, the Sunshine Foundation has grown with local chapters all over the east coast. By 1985, the first, regional office was opened in Atlanta, GA. Furthermore, the organization is committed to maintaining funds to provide for the purposes for which they were contributed. Thus 85 percent of the moneys expended are used expressly to fulfill the wishes to special children.

Mr. Speaker, I would like to commend Bill Sample for his outstanding initiative to reach outside of himself and provide some hope and happiness to so many children. I ask my colleagues to join me as I salute his efforts to make the lives of these children a little brighter. Furthermore, I would like to commend both Bill Sample and the foundation volunteers on their 10th anniversary and wish them much future success in these endeavors.

EUROPEAN ADVICE—TOO EASY

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. BEREUTER. Mr. Speaker, it is far too often that we get sanctimonious advice from some the Socialist parties of our European allies about our foreign policies and actions. Indeed, at the British Labor Party's recent meeting, much furor abounded over U.S. policies in various corners of the planet. Recently, Mr. Speaker, the Reverend Jesse Jackson testified before a congressional committee on the economic and military needs of the front line states in southern Africa. These nations are feeling the impact or threat of South Africa's military and economic might.

If the Reverend Jackson's suggestions of the need for military assistance are valid, this Member believes that Europeans—which were the African colonial powers—bear a special responsibility for conditions in Africa, and, accordingly, should pay the bills, and make the provisions for any appropriate military assistance to the countries which are neighbors to South Africa. Then, Europeans may know what it's like to hear Americans and some of their own citizens lean back and sanctimoniously complain that Europeans are militarizing southern Africa.

I would like to insert an editorial from the Omaha World-Herald which offers criticism of the attitudes and policies of some of the European Socialist parties. I think my colleagues will be interested in examining this point of view from this newspaper located in the heartland of America.

[From the Omaha World-Herald, Oct. 6, 1986]

STILL MORE MORAL BLINDNESS IN EUROPE'S LEFTIST CIRCLES

European Socialists sometimes act like the schoolyard children who fear the bully so much that they help him attack his victims. During the long period of the Cold War, the Socialist, social democratic and labor parties of Western Europe have tended to look the other way as the Soviet Union swallowed countries, brutalized populations, arrested and killed dissidents and accumulated massive stockpiles of nuclear and conventional arms.

An example of the selective morality practiced by the European left is its reaction to the Soviet invasion of Afghanistan. There is seldom a protest to be heard from the political left regarding a horrible war that has driven one-third of the Afghan population from their homes and caused hundreds of thousands of casualties.

But the European left organized giant rallies and endless protests against American participation in the Vietnam War. Similarly, the dramatic buildup of Soviet missiles received a bland reception from the Socialists, while the deployment of a much smaller number of American missiles inspired hysteria and public protests.

Now the British Labor Party is in a fit over U.S. support of the small contra effort against the collectivist government of Nicaragua. Shrill as always, Labor Party chief Neil Kinnock has accused the United States of financing murder in Nicaragua.

His recent denunciation of the United States drew "thunderous applause" from members of his audience, who apparently never thought to contrast the very minor American effort in Nicaragua with the considerable land and air offensive the Soviets wage in Afghanistan.

It would be well for today's European Socialists to acknowledge their long association with European parliaments and the traditions of free speech and assembly and to declare plainly that the fascistic system Lenin established in Russia is the ultimate enemy not only of democracy but of labor unions.

The British and West German Socialists have been among the worst offenders in viewing the Soviets through rose-colored glasses while harshly condeming the United States at every opportunity. Either of these parties could come to power within the next few years. Unless they matured rapidly, this would be a disturbing prospect.

A NATIONAL LOTTERY

HON. JOSEPH M. McDADE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. McDADE. Mr. Speaker, the problems our Nation is encountering in reducing the

Federal deficit gives us plenty of reason to look at new alternatives for bringing in revenue. We really have to look no farther than the States to find a proven and accepted way of adding new dollars to the public treasury. I am, or course, referring to the success of State lotteries.

Last year, 22 States and the District of Columbia sold a combined total of $10.2 billion worth of lottery tickets. A significant share of those revenues were used either in the general fund of the States or designed for specific purposes like education and economic development. In my own State of Pennsylvania, the lottery brought in over half a billion dollars last year for senior citizens programs.

I am introducing legislation today to establish a national lottery which would be used to reduce the Federal deficit. Anywhere from $5 billion to $30 billion a year that otherwise would not be raised at the Federal level could be brought into the Treasury for deficit reduction.

There are several reasons for enacting a national lottery at this time. Given the need to raise revenues without increasing taxes, a national lottery is a voluntary device with willing participants. Public acceptance is also high. Voters have routinely been approving State lotteries, and a 1984 national opinion poll found a 62-percent approval rate for lotteries, with only 26-percent disapproval. Other forms of gambling, such as bingo and racing, are widely accepted.

Lotteries also have a proven track record. They have been successfully used, without scandal or corruption, to bring in State revenue for the past 20 years, and over 60 countries operate lotteries. A national lottery could draw money away from illegal gambling and reduce revenues for organized crime.

My legislation would require the Secretary of the Treasury to establish and operate a national lottery. Not less than 50 percent of receipts from the sale of lottery chances would be deposited into the general fund of the Treasury for the purpose of reducing the Federal deficit. Not more than 35 percent of the receipts would be used to pay prizes to winners of the national lottery and not more than 10 percent shall be used for operating the lottery.

States that do not want to participate in the lottery could opt out by enacting legislation to prohibit the sale of lottery chances in their State. The bill also provides a form of insurance to States with lotteries that they will not see their own lottery revenues drop as a result of competition with the Federal lottery. I should point out, however, that States with lotteries are not likely to see their revenues decline as a result of my legislation. State lotteries stand to benefit from the advertising and increased interest generated by a national lottery.

The "insurance" provisions for States set aside 5 percent of the national lottery receipts to compensate States where lottery sales drop after enactment of a national lottery. The bill includes protections to insure that other factors attributing to decline in State lottery revenues are taken into account when deciding Federal compensation.

Mr. Speaker, everyone in Congress shares my desire to bring the deficit under control. The citizens of this country expect us to succeed in this objective. I don't believe we have the luxury to pass over creative approaches for bringing in new revenues. A national lottery, such as the one I am proposing, would provide a feasible and lucrative source of new revenues to make a significant dent in the deficit on a long-term basis.

I urge my colleagues to give this legislation their serious consideration. I intend to introduce this bill again next year, and I look forward to hearings on the establishment of a national lottery.

NOW, THE "NEW" PLO

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. PORTER. Mr. Speaker, what is the background of the PLO's recent desecration and murder at the Wailing Wall in Jerusalem? A response to some new Israeli action? No, Mr. Speaker, they killed one person and injured 60 others because of a cynical power struggle within the PLO.

After years of sponsoring the PLO's war against the West, the Soviets have decided to remove the current leader, Yasser Arafat. Over the last few years, they funded even more radical elements to attack Arafat, and now are leading an effort to help take direct control of his organization.

Led by the director of the Soviet Foreign Ministry's Middle East and North Africa Department, Vladimir Polyakov, they are moving to put their man, the leader of the Democratic Front of the PLO, Naif Hawatmeh, into daily control.

Why attack the Wailing Wall? Arafat wants to prove to his bloodthirsty paymasters that he can order the deaths of lots of people, just like Naif. Yes, Mr. Arafat, we knew you had it in you.

SPECIAL THANKS TO CAROLINE GABEL

HON. ARLAN STANGELAND

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. STANGELAND. Mr. Speaker, yesterday the House passed S. 1128, the Water Quality Act of 1986, by an overwhelming and unanimous vote of 408 to zero. This strong vote of approval is a tribute to the many Members and staff who have dedicated countless hours, and in some cases, over 40 years of hard work toward passage of clean water legislation. In thanking specific staff persons, I unintentionally omitted one person who contributed significantly to the final passage of S. 1148. This person is Caroline Gabel of the House Public Works and Transportation Committee.

Caroline Gable, working closely with my committee colleague JIM OBERSTAR, played a large role in crafting a number of provisions in the conference report, particularly the nonpoint source pollution provisions. As you know, Mr. Speaker, the new program to manage and control pollution from agricultural, industrial municipal and other nonpoint sources is among the act's most important new initiatives. For some States, such nonpoint sources contribute up to 50 percent of the water pollution. Caroline is one of the staff who contributed most significantly to development of the final conference report provisions on nonpoint sources. For this reason, I want to give her a special note of thanks for her invaluable assistance and guidance.

FIFTH ANNUAL EPILEPSY BENEFIT HONORING JOSEPH FISHER

HON. ROBERT A. BORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. BORSKI. Mr. Speaker, I rise to call attention to the outstanding accomplishments of Mr. Joseph Fisher, an international vice president of the International Ladies' Garment Workers Union. Joseph will be honored at the Fifth Annual Epilepsy Benefit on November 8, 1986. I would like to join the members of the Epilepsy Benefit in recognizing and commending Joe for his contributions to the Philadelphia community.

Joe Fisher's active involvement in community affairs provides an excellent example of devoted public service. He has served loyally as a cochairperson and board member of the Philadelphia Apparel Task Force, Jewish Labor Committee and Histadrut, the Urban Coalition, the United Way, the Philadelphia Development Insurance Corp., Pennsylvania Apparel Loan Fund, Council for Labor and Industry, Children's Village, Fellowship Commission, National Conference of Christians and Jews, the Variety Club and the Epilepsy Foundation.

I would like to commend Joe for his record of accomplishment, his constant commitment to improving the lives of both children and adults who suffer from chronic illnesses. I salute his efforts and I ask my colleagues join me in honoring Joe Fisher's dedicated service.

CONTINUUM OF CARE IN NEW HAVEN, CT CELEBRATES 20TH ANNIVERSARY

HON. BRUCE A. MORRISON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. MORRISON of Connecticut. Mr. Speaker, I rise today to honor Continuum of Care, Inc.'s New Haven Halfway House, which is celebrating its 20th anniversary this year. The New Haven Halfway House, one program of New Haven-based Continuum of Care, Inc., is the oldest program of its kind in the State of Connecticut.

In 1965, more than 600 people were released from Connecticut Valley Hospital—the State facility which serves those people in my

district who suffer from emotional problems—and returned to New Haven and nearby towns, despite the fact that no transitional living programs were available for them.

In 1966, 20 years ago, three Yale undergraduate students who volunteered at Connecticut Valley Hospital decided they were going to do something about the lack of housing and transitional programming in New Haven. And they did.

They raised the money to buy a 13-bed house at 599 Howard Avenue in New Haven to house and provide psychosocial rehabilitation services for 13 returning patients. They moved in and also staffed the New Haven Halfway House while still undergraduates. In 1967, they hired a mental health residential program director; however, Yale students are still the principal counseling staff at New Haven Halfway House. Service to New Haven Halfway House and the other housing programs of Continuum of Care, Inc., has become a tradition at Yale University.

Other programs operated by Continuum of Care, Inc., include an eight-bed Supervised Apartment Program at 324 Howard Avenue in New Haven and another 13-bed Structured Apartment Program soon to open its doors on Frank Street in New Haven.

As the plight of the homeless in our cities becomes an increasing problem, Continuum of Care, Inc. and its programs are expanding to provide increasing service to the one significant identified group among the homeless: former State hospital patients who, because of congressional direction to deinstitutionalize and major cutbacks in funding, are being released to the streets without adequate support.

I know my colleagues will join me in saluting the vision of three Yale undergraduates and all the Yale students and other mental health professionals who have made Continuum of Care and its flagship, New Haven Halfway House, a model for other cities in Connecticut and throughout the Nation.9

SALUTE TO THE HONORABLE LOUIS CIALLELLA OF NEW JERSEY

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. ROE. Mr. Speaker, statistics indicate that one in nine Americans is an older American. It is estimated that by the year 2000, the ratio will be 1 in 6 and by the year 2020, 1 in 4. Later years of life can most assuredly be years of independence, creativity and enjoyment—and what a wealth of wisdom and experience these statistics represent.

Today, I ask you and our colleagues here in the Congress to join with me in applauding the volunteer efforts of a distinguished citizen and good friend—the Honorable Louis Ciallella of Wanaque, NJ—whose standards of excellence in his golden years has enabled him to achieve the highly coveted award of the National Association of Area Agencies on Aging—the U.S. Senior Citizen of the Year.

As you know, the National Association of Area Agencies on Aging works for an effective national policy on aging; provides training and technical assistance to local agencies on aging; provides information on aging; monitors legislation and regulations affecting older Americans. These are truly noble goals and objectives and to be the recipient of the highly meritorious citation of this most prestigious organization is indeed a great honor.

Mr. Speaker, throughout his lifetime Lou Ciallella has extended the richness of his wisdom and experience—always giving willingly and unselfishly of his time—in helping others. Upon reaching what we call our retirement years, it would be so easy for many of us to sit back and say my job is finished but Lou Ciallella reached out. Upon his retirement in May 1973 he applied the ingenuity of his expertise in life's fulfillment and purpose in seeking to improve the quality of life and way of life for people—and particularly our seniors.

There is much that can be said of Lou Ciallella and his record of achievements in service to people. He was born, January 22, 1912, and at the young age of 61 years retired from his 42-year-old professional career as a union official and management employee for Ford Motor Co. During the course of his career pursuits he earned the highest respect and esteem of his fellow workers.

His personal commitment to people and to the economic, social and cultural enhancement of the community has been a way of life for him. He joined the Golden Agers, Inc.—Wanaque's senior citizen club—and for 7 years served on a variety of the club's committees. In 1980 in recognition of his leadership qualities the members elected Lou Ciallella president of the club, a post he continues to hold with the fullest support and confidence of its members.

His leisure time in retirement also provided an opportunity for him to become active in the political arena and civic affairs. He does not commit himself to a political party, although he is a member of one, but instead he seeks candidates who are interested in people and of course the well being of the senior citizens.

He is a member of both the Planning Board and Board of Adjustment of the Borough of Wanaque, NJ. As the senior citizen liaison for his town, he voluntarily serves as an information and referral arm of the Passaic County Office on Aging. He is publicity chairman and a member of the Passaic County Office on Aging Advisory Council.

Our honoree Louis has been named "Outstanding Senior Citizen" by the Wanaque Junior Chamber of Commerce, and Senior Citizen of the Year by the Wanaque Knights of Columbus. He is the proud recipient of the New Jersey Governor's Outstanding Senior Citizen Award.

Mr. Speaker, upon receiving the national award of U.S. Senior Citizen of the Year, Louis Ciallella was cited for 41,200 hours of volunteer work accumulated from May 1973 to June 1986 and especially for his herculean leadership efforts in getting the whole community behind the construction of a $400,000 Golden Age Club recreation center for the senior citizens of Wanaque, NJ.

Initially a local church in Wanaque allowed the Golden Agers, Inc. the use of facilities for their weekly meetings. During his first year as president of the club, Louis Ciallella commenced to promote and encourage his idea and dream for his club—its own building for meetings and recreational programs for its members. His enthusiasm and aspirations for his unique ownership concept took root and in 1981, the entire organization, under his direction, actively sought ways and means to have their own building.

All of the service and social clubs in Wanaque joined in Mr. Ciallella's dream and assisted to help the dream become a project. It was a time that the old and young, rich and poor, worked together to get the necessary funds and/or technical assistance required for this project. Many State and local organizations as well as private industry contributed to the building fund. Four and one-half years later, the dream was realized—the Golden Agers moved into their own building with no mortgage. It is owned by them free and clear.

Currently the building is open 5 days a week with an array of programs. They have classes in dance, drawing and ceramics—and a host of other events. There is no paid staff. The senior citizens themselves voluntarily teach the classes and direct the many activities that are conducted at the Wanaque senior citizens center. Twenty-five percent of Wanaque's elderly are members of the Golden Agers and more are joining every month.

Louis Ciallella is still not retired, he is looking around to see what other projects he can establish to make life meaningful for the senior citizens of his town and at the same time spark a total community commitment to the well being of all of its citizens.

Mr. Speaker, it is indeed appropriate that we reflect on the deeds and achievements of our people who have contributed to the quality and way of life here in America. The friendship and goodwill that he has so willingly and abundantly given over these many years have truly enriched our community, State, and Nation. In tribute to the quality of his leadership and sincerity of purpose dedicated to service-to-people, we do indeed salute the U.S. Senior Citizen of the Year of the National Association of Area Agencies on Aging—the Honorable Louis Ciallella of New Jersey.

IN HONOR OF REPRESENTATIVE DAVID MONSON

SPEECH OF

HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. WOLF. Mr. Speaker, I am very pleased to join my colleagues today to pay tribute to our colleague from Utah, DAVE MONSON, who will be retiring from the House at the end of the 99th Congress.

It has been a pleasure to serve in this House for the past 2 years with DAVE MONSON and especially to work with him on the Select Committee on Children, Youth, and Families. DAVE is deeply committed to promoting the importance of the family in our society and his committee work has reflected that concern.

I salute DAVE MONSON for his work in Congress and 12 years of public service prior to coming to the House. He is a devoted public servant and I wish him continued success in his future endeavors.

HONORING DONA J. O'DONNELL, STATE OF CALIFORNIA, VETERANS OF FOREIGN WARS LADIES AUXILIARY PRESIDENT

HON. ESTEBAN EDWARD TORRES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. TORRES. Mr. Speaker, I ask my colleagues to join with me today in saluting Dona J. O'Donnell, State of California Veterans of Foreign Wars Ladies Auxiliary President for the 1986–87 year.

On Saturday, October 4, 1986, VFW Post Ladies Auxiliary No. 7138 honored one of their own, Dona J. O'Donnell, at a homecoming banquet.

Mrs. O'Donnell first joined the Veterans of Foreign Wars Ladies Auxiliary in 1946 in Carlyle, IL and has been an active member ever since.

In 1960, the O'Donnells moved to California. Mrs. O'Donnell transferred her VFW Ladies Auxiliary membership to the Maywood Auxiliary No. 2830. During the time she spent in Auxiliary 2830, she served as president in 1964 and became fourth district president (1970–71). In 1974, Mrs. O'Donnell transferred her membership to the Glenn Wood Auxiliary No. 7138 in Norwalk, CA, where she currently resides. Mrs. O'Donnell has served in many capacities including president, department guard all the way up through to department president.

Mrs. O'Donnell has also been active in her community. She was the first woman to be elected president of the Norwalk/Santa Fe Springs Youth Football League. In addition, the city council of Norwalk appointed her to serve on the American Heritage Commission, where she served 1 year as chairwoman. Mrs. O'Donnell is currently serving on the "Norwalk Now" newsletter board of directors.

Mr. Speaker, again, I ask my colleagues to join me in congratulating Dona J. O'Donnell for her tireless contributions to the Veterans of Foreign Wars Ladies Auxiliary.

CONGRESSIONAL SALUTE TO THE HONORABLE LEO MAZZA OF NEW JERSEY, ESTEEMED POSTMASTER, COMMUNITY LEADER AND GREAT AMERICAN

HON. ROBERT A. ROE

OF NEW JERSEY

HON ROBERT G. TORRICELLI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. ROE. Mr. Speaker, we are pleased to join with the people of the city of Garfield and State of New Jersey in testimony to a distinguished citizen, outstanding community leader and good friend—Hon Leo Mazza of New Jersey, who announced his retirement from his high office of public trust as postmaster of the city of Garfield, NJ, effective September 1, 1986. We know that you and our colleagues here in the Congress will want to join with us in deep appreciation of all of his good works and share great pride in the success of his achievements with his good wife Violet; daughters: Camille and Yolanda; son-in-law, Raymond; and grandchildren, Yolanda Lea and Raelene as they celebrate this milestone of achievement in their family endeavors.

In deep appreciation of his lifetime of good deeds in service to people, a testimonial dinner in honor of Postmaster Mazza is being held on Friday, October 17. As we gather together in tribute to his standards of excellence and outstanding public service during the past three decades plus in the vanguard of our Nation's postal operations, there is much that can be said about Leo Mazza and his exemplary record of performance in providing postal services responsive to the needs of our people, dedicated to swift and reliable distribution and delivery of mail—a highy significant link in our national and international communications network.

Mr. Speaker, the U.S. Postal Service has over 700,000 employees and handles more than 131 billion pieces of mail annually. In addition to the national headquarters, there are regional, district and sectional center offices supervising almost 40,000 post office branches, stations, and community-based offices throughout the United States.

In 1953—33 years ago—Leo Mazza was appointed postmaster of the city of Garfield by President Eisenhower with the advice and consent of the U.S. Senate. Throughout his postal career, Postmaster Mazza has forged ahead with dedication, devotion and sincerity of purpose in achieving efficient mail handling systems for the people of our community. We applaud his knowledge, training, hard work and personal commitment that has enabled him to achieve the fullest confidence and strongest support of the people of our area. He has always applied the most sophisticated and advanced techniques of his profession.

Mr. Speaker, Postmaster Leo Mazza has been a staunch supporter and active participant in many civic and charitable endeavors. We especially applaud his public safety endeavors in seeking optimum protection of the property and physical well being of Garfield residents from the perils of fire as a firefighter in the community. For more than 50 years he was a member of the Garfield Volunteer Fire Department. He is also a long standing member of his parish church and has served for many years as an usher at Our Lady of Mt. Virgin R.C. Church.

Mr. Speaker, in reflecting upon the history of our great country and the good deeds of our people who have made our representative democracy second to none among all nations throughout the world, we appreciate the opportunity to call your attention to this distinguished gentleman and seek this national recognition of all of his good works. Leo Mazza's leadership and sincerity of purpose in service to people have truly contributed to the quality of life and way of life here in America. As we commemorate his retirement as postmaster of the city of Garfield, we do indeed salute an esteemed Postmaster and great American—Hon. Leo Mazza of New Jersey.

IN HONOR OF STAN LUNDINE

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. RANGEL. Mr. Speaker, I rise to honor our colleague, STAN LUNDINE, who has decided to vacate his congressional seat in order to campaign for the seat of Lieutenant Governor of New York. I would also like to commend the dean of the New York delegation, Congressman SAM STRATTON, for calling this very timely tribute.

STAN LUNDINE is one of the finest Representatives in Congress. He has repeatedly proven that he has the capacity to deal effectively on issues which most impact on his constituency. At the same time, he has been an excellent chairman of the Banking Committee's Subcommittee on International Development Institutions and Finance. In the committee and on the floor, STAN has proven himself to be a standout Member of Congress.

Because of his fine record and outgoing nature, the New York delegation will miss his presence. However, New York State will gain a most able Lieutenant Governor when STAN wins. Thus, although the New York delegation will feel a loss, the people of New York will still be represented by this able public servant.

I would like to wish STAN LUNDINE good luck and Godspeed in his new campaign.

IN TRIBUTE TO A FELLOW NEW YORKER, REPRESENTATIVE STAN LUNDINE

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. GILMAN. Mr. Speaker, I thank my colleague, the dean of our New York congressional delegation, Mr. STRATTON, for calling this special order for our departing New York colleague, STAN LUNDINE. As a fellow member of the New York congressional delegation, I can attest to the good work that STAN has done in this Congress since his election in 1976.

STAN has developed an expertise on the economy during his tenure here on Capitol Hill, and has been an influential member of the House Committee on Banking, Housing and Urban Affairs. I have often sought his advice on housing issues, which is a matter of great concern to myself and the constituents of our 22d Congressional District. Throughout his service, STAN has proven himself thoughtful and studious, and is adept at getting to the heart of an issue.

He has also represented the southern tier of New York most ably, even though it ranges from Lake Erie all the way to Elmira. STAN's

district contains some of New York's most beautiful countryside and farmlands, and also includes such industrial cities like Corning. STAN has been able to appreciate the myriad interests of his district, and even though his district had been a bastion for the Republican Party, the voters of the 34th District have consistently demonstrated their appreciation for STAN by continually reelecting him.

I am certain that virtually all of the Members of this Chamber will miss STAN, his dedication, and his expertise. I join with my colleagues in wishing STAN success and happiness in all of his future endeavors.

TURKS MUST WITHDRAW TO FREE CYPRUS

HON. GUS YATRON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. YATRON. Mr. Speaker, in response to a Wall Street Journal editorial of October 22, 1986, regarding Cyprus, the Press Counselor of the Embassy of Cyprus, Mr. Marios L. Evriviades, wrote an important and informative letter to the editor published in the Journal of October 14. Mr. Evriviades eloquently points out that Turkey's illegal occupation forces must withdraw from Cyprus "if the U.N.-sponsored peacemaking process is to succeed."

I commend this letter to the attention of my colleagues.

[The information follows:]

TURKS MUST WITHDRAW TO "FREE" CYPRUS

Your polemical editorial on Cyprus (Sept. 22) may give you satisfaction for the animus you hold against the democratically elected prime minister of Greece, but it does not bring the resoluton for the Cyprus conflict any closer. Nor will it allow "Cyprus to be Cyprus," as you seem to advocate.

Cyprus must and should be left alone. If you therefore truly care about the country and its people, you should put your money where your mouth is and call for the immediate withdrawal from Cyprus of the thousands of Turkish occupation troops. These troops have forcibly evicted one third of Cypriots from their homes and properties, and under the threat of force refuse to allow them to return. The Turkish army's continued occupation of 40% of Cyprus runs contrary to the U.N. Charter and the most basic tenets of international law, and has been repeately condemned internationally. The withdrawal of the Turkish troops and settlers is absolutely necessary if the U.N.-sponsored peacemaking process is to succeed. Your admonitions therefore should be addressed to Gen. Evren and those who control the Turkish army.

You also call for the recognition by the U.S. of faits accomplis by the use of force against a nonaligned country, a member of the United Nations, and a country with whom the U.S. maintains, as you grudgingly admitted, friendly relations. Such a call betrays your ignorance of the American political process and undermines the moral underpinnings of American foreign policy.

MARIOS L. EVRIVIADES,
Press counselor.
Embassy of the Republic of Cyprus.
WASHINGTON.

PEGGY SULLIVAN HONORED IN FALL RIVER, MA

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. FRANK. Mr. Speaker, the Providence Journal recently ran a first-rate article about an extraordinary member of an extraordinary family, the Sullivans of Fall River. Peggy Sullivan, the subject of the article, is a talented, loving woman who has been brightening the lives of her fellow citizens for longer than most of them can remember. Her late husband was a major force in Fall River political and labor affairs, and is still vividly remembered years after his death. And her son Mark, executive director of the Community Action Agency Citizens for Citizens is a creative, vigorous, and colorful advocate for the poor, who remains faithful—and effectively so—to the ideals which led to the establishment of the poverty program.

I have been priviledged to be a friend of Peggy Sullivan and her son Mark, and to have benefited in numerous ways from their friendship and compassion for others. I ask that the article from the Providence Journal be printed here, as an example of the kind of positive difference an individual can make in the life of a community.

[From the Providence Journal-Bulletin]

PEGGY SULLIVAN NAMED MUSICIAN OF THE YEAR

(By John Connors)

Corky Row Mush have been quite a place to live 60 years ago. Neighbors would gather around the piano at the Corky Row club and sing together, quartets sang on street corners, and almost everyone had a piano. Not a stereo or a television set—a piano.

The flavor of the neighborhood was Irish, but it was probably no different than thousands of other neighborhoods in hundreds of other cities. People sang and played for their own enjoyment.

This is what Peggy Sullivan remembers. She took dancing lessons as many children did. She learned to play piano not by taking lessons, but by listening to her mother and brother play. Making music wasn't some unusual talent, it was a necessary part of life.

BECAME A DANCE TEACHER

Peggy stayed with her dancing lessons, became a dance teacher in Fall River, and has played the piano for thousands of dance shows. And now the Fall River Federation of Musicians has selected her Musician of the Year.

"When I was a kid, I was in some of Peggy's shows," Dave Nadien, secretary-treasurer of the muscians union, said, "Shows were more common then."

When a church group or civic organization wanted to raise money or celebrate an event, they put on a show. The kids in the neighborhood would dance, someone would sing a tenor solo, and Peggy would accompany them on the piano.

"I always remember her accompanying dancing school reviews," Nadien said. "She would tell the musicians, 'All you have to do is gather around the piano and follow me.'" He remembered that Peggy knew what the key and the tempo for every song and singer.

"Corky Row was a beautiful neighborhood," Peggy remembered. The neighborhood has now fallen on bad times and is struggling to come back. So is the music.

But Peggy hasn't given up on either. She is one of only ten families that remain from the old days. She still teaches dance steps to others and accompanies them on the piano, but she doesn't coach children now, she coaches her contemporaries.

CHOREOGRAPHS NUMBER

As part of the "Sweethearts on Parade," Peggy choreographs numbers for about 16 performers aged 65 and over. The group puts on a 1½-hour show at nursing homes and hospitals in the Fall River area.

As part of the show, Oscar and Louise Carpentier do a skit to "School Days," with Oscar wearing knickers. Frank O'Neil is the Irish tenor, Arthur Ferrance is the commedian, and newcomer Jean Nadeau sings "Roll-a-Bowl-a-Ball-a-Penny-a-Pitch." Anita Raposa, the group's director, does a Broadway showtune act, and Irene Duclos relives the flapper era as a "jazz baby."

As for being chosen by the union as musician of the year, Sullivan said she was surprised.

"I was elated when the musicians chose me. I have been playing with these (Fall River) musicians for over 50 years, or at least with some of them. It's been fantastic. I think they (musicians) are a rare breed—fun loving."

TRIBUTE TO STAN LUNDINE

HON. FRANK HORTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. HORTON. Mr. Speaker, in the final, hectic days of this 99th Congress, we become so preoccupied with the tremendous influx of legislation and with the burdens of reelection, that we often fail to realize just how many of our colleagues will not be returning. One such colleague is my good friend from New York State, STAN LUNDINE.

I have served in these chambers for nearly a quarter of a century. STAN, who also represents parts of upstate New York, has been by my side for the past decade. As many of you know, STAN will be leaving for a run for New York's Lieutenant Governor on a ticket shared by Mario Cuomo. This office holds particular significance in 1986 because many politicos are speculating that Governor Cuomo will elect to run for President in 1988, which means that STAN would automatically ascend to Governor should the Cuomo/Lundine ticket win this November.

To stand before this body and name the legislative accomplishments of the gentleman from Jamestown would take far too long. For many years he has been at the forefront of the myriad complex and controversial issues facing our industries in general, and the banking industry specifically. From his post as the Committee on Banking, Finance, and Urban Affairs Committee's Subcommittee on International Development Institutions and Finance, STAN has taken the unenviable position of working toward reasonable solutions for our tremendous international banking problems.

Perhaps his most effective and rewarding work has been in the area of productivity. Long before we were dealing with nearly $200 billion annual trade deficits, STAN was speaking, often to only a few, about the perils of losing our competitive edge through declining productivity.

The 2 short years following his arrival, STAN masterfully guided through the committee and subsequently the full House and Congress an idea known as the Human Resources Development Act, which provides Federal aid to labor-management coordinating bodies. For a small price tag, this aid program has turned into an excellent investment for the Federal Government.

Prior to his tenure in the House, STAN served for 6 years as the mayor of Jamestown, one of the largest cities in his district. His reputation as a diligent worker willing to put in the extra hours to ensure a collective and reasonable approach appealed to the voters of that city, and eventually to the voters of the 34th Congressional District of New York.

Mr. Speaker, I will always consider STAN a true friend of New York and a true friend of mine. Nancy and I wish STAN and his wife Sara the absolute best in everything they do.

IN HONOR OF CONGRESSMAN JIM WEAVER

SPEECH OF

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 14, 1986

Mr. RANGEL. Mr. Speaker, I rise to honor our colleague from Oregon, JIM WEAVER, who will retire at the end of the 99th Congress. I would also like to commend my good friend, JOHN SEIBERLING, for calling this timely tribute.

JIM WEAVER has always impressed me as a man who cares deeply about the welfare of his constituents. His commitment to preserving the environment, promoting conservation, and supporting agriculture is indicative of his dedication to the people back home. He is an expert in these areas, and the people of the 4th Congressional District in Oregon should be proud to have had a representative of JIM's calibre.

JIM WEAVER has a reputation among his colleagues as a fighter for what is right. His style has been to go after an issue he believes in with a passion. He is a defender of the family farm, a foe of nuclear power, and a champion of environmental conservation. If anything, JIM WEAVER has let us know where he stands, and that it would take an earthquake to shake him.

Mr. Speaker, we will miss JIM's presence. Let us learn from his example and preserve his legacy. I for one would like to wish JIM WEAVER the best of luck in the future.

TRIBUTE TO STAN LUNDINE

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. BIAGGI. Mr. Speaker, I rise today to pay tribute to a good friend and colleague from our New York congressional delegation the gentleman from Jamestown and Elmira, STAN LUNDINE. STAN will be leaving this body at the end of this session and is running for the office of lieutenant governor of the State of New York.

STAN LUNDINE has served with special effectiveness as the Representative from the 34th Congressional District in New York. It is the last district in the State of terms of number but one of the most diverse and important in the entire State. STAN was elected to the House in 1976 after a successful tenure as mayor of Jamestown. In that capacity, he served as a catalyst for progress in that southern tier city through innovative economic development programs.

In the House STAN has served most visibly on the House Banking Committee as chairman of the Subcommittee on International Development Institutions and Finance. STAN LUNDINE is the author of one of the most progressive of all proposals that has been advanced in Congress over the past decade. I refer to his idea for the establishment of a national industrial development board as well as a Federal productivity council. STAN LUNDINE has been advocating for the establishment of a comprehensive and coordinate national industrial development of a policy which could do so much to help our short- and long-term development as a nation. I suspect that history will remember STAN LUNDINE as the originator of this important idea.

STAN LUNDINE also served on the House Select Committee on Aging for several years. STAN was a true champion of senior citizens not only in his district but throughout New York State. He worked especially hard on the very serious problem of housing for the elderly and was able to take the expertise he would acquire in the select committee and convert to the authorizing committee where key legislation would be considered.

The House will miss STAN LUNDINE as will our New York congressional delegation. He is one of the most dedicated members of this House. I can attest to this since we are neighbors in the Rayburn Building and I see firsthand how long and hard he works.

STAN LUNDINE has been cited on numerous occasions for his mild-mannered, low-key style. It can and does serve in contrast with others in the House and in our delegation. Yet STAN LUNDINE in his unique style is as effective a Member as there is in the House and has accomplished so much without changing his greatest tribute, that of being a kind and sensitive human being.

I wish my friend STAN LUNDINE all the best as he moves on from the House. While the election he is involved with is several weeks off, I am confident of the outcome. I know that STAN LUNDINE, whatever capacity he may serve our State of New York, will be a success. Yet on this occasion I want to pay tribute to STAN LUNDINE, our colleague, who has served in this House so effectively this past decade. This institution benefited from his contributions and will be cognizant of his departure. As a colleague and as a friend, I wish STAN as well as his wife Sara, success and happiness in the future.

THE VILLAIN CRACK

HON. TOM LEWIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. LEWIS of Florida. Mr. Speaker, a majority of the Members of this House have talked a lot about the evils of drugs, so I though you and our colleagues here would appreciate the creative approach a high school senior in my 12th District in Florida took in communicating the message to her classmates.

Catrena Gunsby of LaBelle High School knows the dangers of crack cocaine, as evidenced by her poem, "The Villain Crack." She knows that anyone who offers it to her is not a friend and she obviously knows how to say "No." I'd like to commend her courage by reprinting in this record her poem, which was published in her hometown paper, the Caloosa Belle, on September 24.

THE VILLAIN CRACK

Haven't you heard?
Crack's bad news.
Pass the word: it'll give you the blues.
It's easy to start, but hard to quit.
It cripples your will and dulls your wit.
Crack don't care if you're white or black.
The rock's guaranteed to stab you in the back.
It can't discriminate rich from poor,
In cities and suburbs, crack is knockin' on the door.
You can cop a nickel, you can buy a dime,
Don't seem like much for a fast "good time,"
But that three-minute high will drain your pockets dry.
It will make you laugh while life passes you by.
Crack'll make you think you're really on a roll, When you're on the brink losin' control.
It'll make you steal from your father and your mother,
It'll make you deal to get from one day to another.
Smokin' on that pipe you may think you're bad.
Crack will drag you down 'til it drives you mad.
It's so easy to start but so hard to quit,
It'll make you beg for one more hit.
Stronger than coke, more vicious than smack,
Don't play around with that villain—Crack!

OMNIBUS JOB TRAINING AND RETRAINING ACT OF 1986

HON. SANDER M. LEVIN

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. LEVIN of Michigan. Mr. Speaker, we are introducing today the Omnibus Job Traning and Retraining Act of 1986.

This legislation is drawn from our efforts as members of the Democratic Caucus Task Force on Job Training, whose report was published by the caucus in its "Choices for Change" series under the title "Skills for Self Reliance." The bill incorporates a number of new ideas. It provides a framework, constructed after more than a year of discussion and debate, for an initiative to give our Nation a well-trained workforce, better able to compare in world markets.

This legislation provides:

(1) support and retraining for dislocated workers to help get them back into the workforce as quickly as possible.

(2) an effective linkage between welfare, work and training that will enable those on public assistance to become self-supporting.

(3) a youth initiative to help train tomorrow's workforce.

(4) a literacy program to help those lacking basic skills.

(5) a series of initiatives to help today's workforce prepare for the increasingly likely event of future job dislocation.

(6) a cabinet level council to help develop a national partnership of business, labor and government at all levels for a well trained and flexible workforce.

We hope that this legislation will stimulate discussion for a quick start on this vital issue in the 100th Congress. This is only a working document, for discussion, debate, modification and improvement. As a starting point for an omnibus bill, each of us actively supports its overall direction, but not necessarily each and every provision in its present form. It is our intention to work on this proposal over the recess for reintroduction early next year.

SANDER LEVIN, M.C.
RICHARD GEPHARDT, M.C.
JOHN MURTHA, M.C.
BARBARA KENNELLY, M.C.
BUDDY MACKAY, M.C.
JOHN SPRATT, M.C.
JAMES OBERSTAR, M.C.
RICHARD DURBIN, M.C.
MARCY KAPTUR, M.C.
CHESTER ATKINS, M.C.
JOHN SEIBERLING, M.C.

JANE BOECKMANN RECEIVES FERNANDO AWARD

HON. BOBBI FIEDLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Ms. FIEDLER. Mr. Speaker, as I finish my service in the House of Representatives it is with great pride that one of my final times in the well is to pay tribute to Mrs. Jane Boeckmann who has not only been a long-time supporter but a good friend as well.

The Fernando Award is the highest award given to any citizen of the San Fernando Valley for their contributions to the community. Over its long history the finest in the valley have received it but they have, until now, all been men. This year the ladies have broken yet another barrier.

If I were to tell the House of all of Jane's achievements it would take longer than my allotted time and cover a number of pages in the CONGRESSIONAL RECORD. But, I would like to take a few minutes to share with the Members some of the highlights of her service to our community.

Jane and her husband Bert can truly be called activists. When they see a problem, they set about solving it and more often than not they succeed. One problem Jane saw was the lack of news of the San Fernando Valley which, if it were a city, would be the fifth largest in the country. So, in typical Jane Boeckmann style, she started Valley magazine.

If there's a hospital or church in the valley that she hasn't helped at one time or another, I don't know about it. If there's a board of directors for some community group she hasn't served on, I don't know about it. If there's an honor that's been given that she hasn't received, I don't kow about it. If there's a chamber of commerce that she's not a member of, I don't know about it. If there's a cultural activity or youth activity that she hasn't been actively involved in, I don't know about it.

In short, Mr. Speaker, Jane needs 48 hours in every day just to keep up with her community work and that doesn't leave any time for her successful business career.

But, other than the Fernando Award, I'm sure the one she cherishes most is having been named California's Mother of the Year in 1982. Because it is Jane's family that comes first. It's from her desire for a better life for her children that she got involved in the first place.

Next month when she receives the award, it will be her family receiving it as well because of the support they have given her in her various endeavors.

If the Fernando Award is the highest award that any valley resident can receive, I can think of no more deserving recipient than Jane Boeckmann.

LIVING LEGACY

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. CRANE. Mr. Speaker, and fellow colleagues, traditionally our Founding Fathers have promoted and enjoyed the planting of gardens. Both George Washington and Thomas Jefferson planted extensive gardens on the grounds of their estates. It is in keeping with that tradition that I would like to call your attention to the Commission on the Bicentennial of the U.S. Constitution's project "Living Legacy." The "Living Legacy" project is for communities across America to develop an area in the form of a park, garden, or other landscape to the U.S. Constitution. This area should include trees, flowers, and other plants. Each local project developed in the next year will be dedicated on September 17, 1987, on the 200th anniversary of the signing of the Constitution in Philadelphia. Even a new specimen of tree has been developed for the anniversary named "The Constitution."

Mr. Speaker and fellow Members, I hope that you will join me in promoting and developing "Living Legacy" gardens in your districts. It is important for the traditions of our forefathers to live on and this is a beautiful way to remember the 200th anniversary of the signing of the Constitution.

CITIZENSHIP DAY AND CONSTITUTION WEEK, 1986

(By the President of the United States of America)

A PROCLAMATION

In this coming year, as we celebrate the 200th anniversary of the signing of the Constitution of the United States, all Americans should reflect upon the precious heritage of liberty under law passed on to us by our Founding Fathers. This heritage finds its most comprehensive expression in our Constitution.

The framing of the Constituion was an arduous task accomplished in the spirit of cooperation and with dedication to the ideals of republican self-government and unalienable God-given human rights that gave transcendent meaning and inspiration to the American Revolution. After extensive debate and public participation, the Constitution was ratified by the several States. The wisdom and foresight of the architects of the Constitution are manifest in the fact that it remains a powerful governing tool to the present day. Indeed, a great British statesman has called it "the most wonderful work ever struck off at a given time by the brain and purpose of man."

For 200 years, people from other lands have come to the United States to participate in the great adventure in self-government begun in Philadelphia in 1787. It is no surprise that knowledge of the Constitution is one of the primary requirements for new citizens. In this bicentennial year, all citizens should reread and study this great document and rededicate themselves to the ideals it enshrines.

In recognition of the fundamental importance of our Constitution to our way of life and the role of our citizens in shaping government policies at all levels, the Congress, by joint resolution of February 29, 1952 (36 U.S.C. 153), has designated September 17 of each year as Citizenship Day and authorized the President to issue annually a proclamation calling upon officials of the government to display the flag on all government buildings on that day. The Congress also, by joint resolution of August 2, 1956 (36 U.S.C. 159), requested the President to proclaim the week beginning September 17 and ending September 23 of each year as Constitution Week.

Now, Therefore, I, Ronald Reagan, President of the United States of America, call upon appropriate government officials to display the flag of the United States on all government buildings on Citizenship Day, September 17, 1986, I urge Federal, State, and local officials, as well as leaders of civic, educational, and religious organizations to conduct ceremonies and programs that day to commemorate the occasion.

I proclaim the week beginning September 17 and ending September 23, 1986, as Constitution Week, and I urge all Americans to

observe that week with appropriate ceremonies and activities in their schools, churches, and other suitable places.

Furthermore, I proclaim that effective September 17, 1986, the area designated as Constitution Gardens, a part of West Potomac Park in our Nation's Capital, to be henceforth a "Living Legacy" dedicated to the commemoration of the United States Constitution.

In witness whereof, I have hereunto set my hand this seventeenth day of September, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

RONALD REAGAN.

SALUTE TO THE SANTA PAULA DAILY CHRONICLE

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. LAGOMARSINO. Mr. Speaker, on October 22 the Santa Paula Daily Chronicle will be celebrating the beginning of its 100th year of publication.

The Chronicle is currently owned by Scripps League, its publisher being Donald L. Johnson and its editor Robert O. Vincent.

The Chronicle was first published on October 1, 1887, as a weekly by F.P. McDivitt and after passing through a number of different owners it became a daily under the leadership of Horace McPhee.

Santa Paula was the first town in Ventura County, except for the county seat, to boast a newspaper according to E.M. Sheridan's history of the newspaper industry in Ventura County. During the years since its inception, the Chronicle has covered local and world news for its Santa Clara Valley readers. In doing so, it has played a vital role in the life of the community.

Today, approaching its 100th anniversary, the staff remains devoted to fulfiling the responsibility the Chronicle assumed so many years ago.

I know my colleagues join me in congratulating the Chronicle and wishing the newspaper and its employees the best in future years.

TRIBUTE TO DR. EDWIN H. WEGMAN

HON. RAYMOND J. McGRATH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. McGRATH. Mr. Speaker, I would like to take this opportunity to recognize the outstanding public service rendered by a constituent of mine, Dr. Edwin H. Wegman. This week, Mr. Wegman will be honored by his colleagues for 18 years as a member and 11 as president of the board of directors of South Nassau Communities Hospital. The 429-bed facility serves thousands of residents of the district I represent. I have had the honor and pleasure of working with Ed over many of those years as a member of the board.

Dealing with the changes in health care since the 1960's has been a tremendous undertaking. To oversee the operation of a modern hospital, one must possess a rare combination of business, medical, and public relations skills. Ed Wegman has added to those qualities a tremendous commitment of personal energy, diligence, and enthusiasm. He has been a driving force in establishing South Nassau as one of the most respected institutions in the New York metropolitan area.

State and Federal Government regulations, chronic labor shortages, purchases of advanced equipment, and major construction projects, are only a few of the day to day challenges that Ed has faced in his tenure. He led a vital mission to provide better family health care and to fill the gaps left by declining numbers of general practitioners. He helped create several specialized units and orchestrated a $50 million expansion project to increase the physical plant and improve a variety of needed ancillary services.

The citizens of southwestern Nassau County owe a great debt to Ed Wegman for his dedication and concern for their well-being. At a time when not-for-profit hospitals have great financial strains and seemingly endless difficulties, Dr. Wegman has made South Nassau a dynamic and steadily growing community health care center. His tireless efforts are an example of the highest and best tradition of human service. I want to congratulate him and wish him well in his future endeavors.

THE AMERICAN JEWISH CONGRESS

HON. WILLIAM CARNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. CARNEY. Mr. Speaker, I rise to commend the American Jewish Congress division in Suffolk County, NY on the induction of its new board of directors for 1986 and 1987. I have the privilege of representing several members of the American Jewish Congress Suffolk Board, and I have always enjoyed working with them.

The American Jewish Congress and I may not agree on every issue, but I do respect the organization and its local leadership for vigorously pursuing such an ambitious agenda. The American Jewish Congress has spearheaded many efforts to improve the Jewish life and culture in my district, from sponsoring seminars on the appropriate responses to anti-Semitism to organizing Suffolk County's only Jewish public interest legal group.

This organization has reached out to public officials on Long Island in a responsible, vigilant way. Indeed, we've come to rely on the American Jewish Congress' advice on the broad range of important issues confronting Long Island's Jewish community. It has always been a pleasure to meet with their officials, to attend their programs, and to work on issues of mutual concern.

I'm particularly delighted, Mr. Speaker, to commend the new Suffolk President of the American Jewish Congress, Elaine Viders. I know that under Ms. Viders' leadership, the American Jewish Congress will continue to succeed in its vital work. I ask my colleagues in the House of Representatives to join me in wishing Ms. Viders and her colleagues on the American Jewish Congress Suffolk Board of Directors the very best of luck as they rise to the challenges the months ahead will bring.

THE FEDERAL EMPLOYEES LONG TERM CARE ACT OF 1986

HON. MARY ROSE OAKAR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Ms. OAKAR. Mr. Speaker, today I am introducing legislation with my colleague, Congressman GERRY SIKORSKI, to address Federal employees' and retirees' long-term care needs. "The Federal Employees Long Term Care Act of 1986" would establish demonstration programs that offer long-term care services under the Federal Employees Health Benefits Program [FEHBP].

This summer, the Subcommittee on Compensation and Employee Benefits, which I chair, and the Subcommittee on Investigations, chaired by Mr. SIKORSKI, held a joint hearing on the long-term care needs of Federal employees and annuitants. We learned from this hearing that FEHBP enrollees face the same problems as other Americans. That is, their Health Insurance Program does not offer coverage for nursing home care or for nursing home alternatives, such as adult day care, respite care, and other community-based services. Federal employees and retirees need insurance coverage for this type of care. Without it, the onset of frailty or a chronic illness or disability can mean financial disaster.

During the hearings this summer, we also learned that some insurers are beginning to develop affordable, comprehensive protection against long-term care costs. In particular, we heard testimony on the Social HMO [SHMO] projects which are operating on an experimental basis under Medicare. These SHMO's cover community based care and nursing home care. The long-term care services are coordinated in such a way that community care is substituted for institutional care whenever possible. In addition, the care is paid for prospectively, on a capitation basis. As a result, the SHMO experiments are showing that Medicare can save money on expensive hospital and nursing home care. Furthermore, the people served by these programs enjoy better health and a greater degree of independence under this plan of comprehensive services.

As the largest employer-sponsored health insurance program in the Nation, the FEHBP should lead the Nation in developing such coverage for our own employees and retirees. The bill we are introducing today would establish long-term care demonstration projects, similar to the SHMO experiment, under the FEHBP.

Our legislation would authorize the two prepaid FEHBP plans which are currently participating in the Medicare SHMO experiment to offer a similar experimental benefit to FEHBP

enrollees for 3 years. The demonstration would include FEHBP members, aged 21 and over, who would be randomly selected. In addition to their regular FEHBP coverage, these individuals would be eligible for an expanded package of long-term care services that would include, at a minimum, the following: home nursing care; physical, speech, and occupational therapy; foot care; homemaker services; personal care; durable medical equipment; medical transportation; adult day care; respite care; and nursing home care.

Coverage for the long-term care services would be limited to $18,000 per year, and a 25-percent copayment would be required of patients using these services. FEHBP plans in the demonstration would be reimbursed prospectively for the long-term care services. This reimbursement would be financed by a separate appropriation of not more than $3 million annually. An independent contractor would be hired to evaluate the demonstration and to work in conjunction with the OPM and the health plans over the course of the experiment.

Mr. Speaker, I am convinced that this experimental approach will give us the information and experience we need to begin meeting the long-term care needs of Federal employees and retirees. I am most appreciative to my colleague, Congressman SIKORSKI, for his partnership in addressing this issue and developing this legislation. I look forward to enactment of this worthwhile proposal.

LIFE FLIGHT'S 10TH ANNIVERSARY

HON. JACK FIELDS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. FIELDS. Mr. Speaker, on August 23, 1986, President Reagan signed House Joint Resolution 529, a resolution declaring the week of September 21–27, 1986, as "Emergency Medical Services Week." I was a cosponsor of that resolution.

In Houston, TX, there is an exceptional emergency medical service resource called Life Flight which is operated by Hermann Hospital, a not-for-profit teaching hospital. Life Flight will celebrate its 10th year of service to southeast Texas and western Louisiana on November 2, 1986.

Mr. Speaker, Hermann Hospital inaugurated Life Flight 10 years ago as the first civilian emergency air ambulance service in the State of Texas. The event is of national historical importance, because since then more than 50 medical centers throughout the United States have emulated the Life Flight Program.

Today Life Flight is the Nation's largest hospital-based airborne emergency medical service. During its first decade of community service, Life Flight has flown more than 27,000 missions to the scenes of accidents and tragedies in its service area.

This vital service has provided the quick and decisive emergency treatment required to save lives, thereby sparing patients and their families from needless suffering. Life Flight has improved the chances of survival for victims of serious injuries and illnesses.

Houston is a sprawling city with miles and miles of freeways that at times are impassable by emergency ground transportation. On a daily basis, airborne Life Flight makes the difference between life and death for individuals injured in traffic or other types of accidents. Additionally, Life Flight serves numerous outlying rural communities when there is a need for the specialized medical and surgical services located in the Texas Medical Center in Houston.

Hermann Hospital's Life Flight Program staffs its helicopters with registered nurse/paramedics and University of Texas Medical School physicians. These health care professionals are competent and compassionate in their delivery of medical services for any who require them, on the ground or in the air.

On behalf of the citizens of the Eighth District of Texas who are served by Life Flight, I extend our appreciation to Hermann Hospital's Life Flight Program, its creators and professional staff for their dedication and commitment. I congratulate the Life Flight Program on the occasion of its 10th anniversary and wish its staff many years of continued success in service to the Houston community.

THE 50TH ANNIVERSARY OF BIG Y FOODS IN AGAWAM, MA

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. CONTE. Mr. Speaker, 50 years ago, the D'Amour brothers decided to stop dreaming about going into business for themselves and take action. They started out, as most small businesses do, on a shoestring budget and a prayer, but they had something more than most. They had a couple of qualities that western Massachusetts residents know very well—undying spirit and a die hard work ethic.

Since 1936, they have transformed a small family grocery business into a $250 million a year company comprised of 2,000 hard working and dedicated employees. Like most of America's successful businesses, Big Y Foods has thrived not just on sweat and elbow grease but on unity.

Everyone I've talked to at Big Y Foods seems to feel a sense of family, and that is a relationship that doesn't come easily. It is a relationship built on years of mutual respect and a common goal of being the very best.

The D'Amour family's dream has spread to all its employees and that is a unity that will continue to thrive here and lead them to even greater successes in the future. Pride is a very powerful force—and pride in the quality of their work, the quality of their products and the quality of their reputation has made Big Y an outstanding success.

I rise today not just to celebrate 50 years, a half century, of success but to thank all who have made that success possible. I want to thank the D'Amours for their dream, to thank the produce clerks, check-out clerks, grocery baggers and all employees for their efforts. And I want to encourage them to look to the future as an exciting time of growth and further success.

Western Massachusetts is proud of Big Y Foods and all those who patronize their stores keep coming back week after week because they appreciate good service, quality products and a 50-year tradition of fairness.

Thank you all at Big Y Foods for your efforts and good luck with the future.

TRIBUTE TO MS. LENA RUGGIERO

HON. JOHN G. ROWLAND

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. ROWLAND of Connecticut. Mr. Speaker, I rise today to pay tribute to Ms. Lena Ruggiero, a constituent of mine who resides in the Fifth Congressional District in the city of Waterbury.

Lena has a longstanding record of service to the community, going back as far as the 1920's. She has been an active participant in the political process and has served on the Waterbury Republican Town Committee consecutively since 1930. As such, Lena has served under fifteen separate GOP town chairmen.

Lena also has been a candidate for State representative and has served on the board of aldermen in Waterbury.

Lena will be moving away from Waterbury and her many friends will certainly miss her. So Mr. Speaker, I do want to take note of Lena's many contributions to the city of Waterbury as well as wish her the best of luck in her future endeavors.

TRIBUTE TO PARREN J. MITCHELL

SPEECH OF

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 14, 1986

Mr. BIAGGI. Mr. Speaker, I am honored today to take this occasion to pay tribute to an esteemed colleague, a good friend, and a genuine inspiration, PARREN J. MITCHELL, the distinguished gentleman from Maryland. PARREN MITCHELL may be leaving this body in one sense, but the contributions he has made to this institution will ensure that he will be a part of us for years to come.

Members distinguish themselves for any number of reasons in this House. Some are noted for their legislative prowess, others for their records on constituent service. It stems from the dual nature of these positions. We are legislators and we are Representatives. Yet there are some in this House who reach still another level—those who serve as the consciences for all. PARREN MITCHELL is one such figure in this House. PARREN MITCHELL, from the day he entered this House until the day we reach sine die in the 99th Congress, has served as a conscience in the House of Representatives. He was not merely an advocate for causes—he was often the champion, the leader. The old expression seems apt:

PARREN did not just march in parades, he started them. Think of all the times when PARREN MITCHELL would go to the well of the House to address his colleagues. Think of all the times his message stayed with us long after the words were spoken. That is the real measure of this great man. He was a man of words—often eloquent and compelling words, yet he was also a man who backed those words with actions.

PARREN MITCHELL comes from one of Baltimore's most prominent families and his contributions during his 16 years in the House have served to enhance the family's name and reputation.

PARREN MITCHELL has served with national effectiveness as chairman of the Small Business Committee. He has been a strong champion for the millions of small business men and women who represent a vital fiber in our Nation's economic life. PARREN has been an especially strong spokesman for the rights of our Nation's minority-owned businesses. His authorship of the Minority Enterprise Act is perhaps his most enduring legislative achievement. It served to provide minority businesses with a far more equitable opportunity to compete for Government contracts.

PARREN MITCHELL has lent his name and influence to hosts of important policy areas during his tenure in the House. He has been a leader in the effort to reform wasteful procurement policies, to impose sanctions on South Africa, to oppose savage cuts in domestic social programs, and to find peace in Northern Ireland. PARREN MITCHELL has been involved with all these issues and his involvement has been important to say the least.

PARREN MITCHELL has earned a special place in all of our minds. We have been captivated and motivated by him. This institution will be a lesser place without him, but his departure is merely a geographic shift. He will make his presence felt wherever he goes to from this place.

I am proud to be a friend of PARREN MITCHELL. I have known him for his entire 16 years in this House. That is my good fortune. It is my hope that we will go forward on some of the paths which PARREN MITCHELL paved for us over the years. Let us remember his values—his principles. Let us realize that public service is more than a profession—it is a calling. It demands a great deal but the returns are there as well. Few have put as much commitment and compassion into public service as has PARREN MITCHELL. He has led by example. Let us proceed by his example.

THE 30TH ANNIVERSARY OF WSBS RADIO IN GREAT BARRINGTON, MA

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. CONTE. Mr. Speaker, I rise today to pay tribute to a milestone in radio broadcasting in my home State of Massachusetts. WSBS radio in Great Barringtion, MA this year marks its 30th anniversary of broadcasting in southern Berkshire Country. That is a great accomplishment and a milestone in its own right, but WSBS this year also marks an increase in power to extend it broadcasting range nearly tenfold.

WSBS radio this year will boost its broadcasting power from 250 watts to 2200 watts and reach out to a vastly increased listening audience with its unique blend of news, music, features and other programming. Thousands more listerners will now have the opportunity to enjoy this station, and the future looks particulary bright.

The date of WSBS' "switch-on" to 2200 watts is October 29. That will be a proud day for the hard working and dedicated cast at WSBS, an the culmination of three decades of outstanding effort. This radio station has come a long way since the early days but still services an appreciative and growing public.

I have listened to and enjoyed WSBS' entertainment for the past three decades and have always been proud to know that western Massachusetts can boast of such outstanding professionals. Thank you WSBS for 30 years of outstanding service and good luck with your new audience as your mark a stride into the future with a switch to 2200 watts.

THE U.S. TRADE DEFICIT

HON. DONALD J. PEASE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. PEASE. Mr. Speaker, the 99th Congress is ending and no action has been taken on one of the most serious problems confronting this Nation and the world—the U.S. trade deficit.

In May, the House passed sound, constructive legislation to deal with the causes and symptons of the trade deficit. The Senate has taken no action on H.R. 4800. Its majority leadership apparently hopes the trade deficit will go away. It won't. The trade deficit and new House legislation similar to H.R. 4800 will be waiting for the Senate when it returns next year.

Mr. Speaker, I am introducing today for discussion purposes a bill to extend upon the effort in H.R. 4800 to improve the implementation and enforcement of the President's steel program.

A full 2 years into the program, the U.S. market share of imported steel is still well above the President's target of approximately 20 percent. The legislation I am introducing is aimed at moving as close to this target as possible within the framework of our existing international obligations.

First, the bill picks up language already in H.R. 4800 to eliminate circumvention of existing voluntary restraint arrangements (VRA).

Second, the bill requires the United States Trade Representative to enter into consultations with the three largest foreign suppliers of steel to the U.S. market which are not presently covered by VRA's. These countries, Canada, Sweden, and Taiwan, have each enlarged their share of the U.S. market at the same time that 17 other countries and the European community have formally agreed to restrain their steel exports. If Canada, Sweden, and Taiwan do not agree to refrain from offsetting progress made thus far in the President's program, the USTR is directed to act unilaterally to restrict their exports to levels that approximate their share of the U.S. market before the Steel Import Stabilization Act was passed.

Third, the bill would institute administrative procedures in the Departments of Commerce and Treasury to ensure that VRA's are strictly adhered to. The United States presently relies upon the diligence of foreign authorities in making certain that VRA limits are not exceeded. If, for example, annual shipments in a given product category exceed a country's quota, U.S. authorities may not learn of the problem until approximately 2 months after the fact.

This bill establishes an absolute threshold on "bunching" or front end loading of quota shipments. If more than 65 percent of a quota in a given product category is shipped in the first 6 months of the year, entry by entry monitoring of steel shipments by the Customs Service for the duration of the year will be triggered to ensure that annual quota limits are not breached. The bill also establishes a series of penalties for exceeding an annual quota under the terms of a VRA. The combined effect of these administrative requirements will be to put pressure on foreign administrative authorities to strictly abide by the terms of the VRA their government has signed.

Mr. Speaker, the steel industry in this country is beleaguered by global excess capacity, slow growth in domestic demand, and foreign unfair trade practices. The least the U.S. Government can do to help is to ensure that the President's steel program is fully implemented and enforced.

THE HASENFUS CAPER

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. LAGOMARSINO. Mr. Speaker, I commend to the attention of my colleagues the following Wall Street Journal, October 16, 1986, editorial entitled "The Hasenfus Caper." It makes a lot of sense.

[From the Wall Street Journal, Oct. 16, 1986]

THE HASENFUS CAPER

A small political firestorm has kicked up around the capture by Nicaraguan forces of Eugene Hasenfus, an American who was engaged in a contra supply operation when the C-123 cargo plane he was aboard was shot down over Nicaragua. The limited nature of the debate suggests that Managua's stock is falling fast in the U.S. But innuendoes aimed at Vice President Bush, the CIA, the National Security Agency and groups sympathetic to the contras deserve comment.

First, aid to the contras now is U.S. policy. President Reagan fought for it and won. Congressional approval is two months old. Military supplies would be flowing to the contras right now had Congress not tied

itself up in knots over other parts of its massive appropriations bill.

Second, the goal of rolling back communism in Central America is not nearly as partisan as its opponents suggest. It was tacitly adopted late in the Carter administration, when it began to be evident that Castro-backed members of the Sandinista Directorate were seizing the fruits of a broad-based anti-Somoza revolution in Nicaragua and were seeking a similar coup in El Salvador as well. Jimmy Carter pushed a land reform in El Salvador as a counterstroke. The Reagan administration followed up with sponsorship of free elections, supplies and training for the Salvadoran army and joint maneuvers with the Honduran military.

The third point is that CIA efforts on behalf of the contras, while officially secret and up until recently heavily circumscribed, have been duly reported, as required by law, to the select intelligence committees of Congress. Given the leaky nature of those committees some have not remained secret very long. Professions of surprise and outrage by a few congressmen when some new activity comes to light are mostly hypocrisy.

If there is any complaint to be made, it is that U.S. efforts on behalf of the contras come very late. Indeed, they continue to be delayed. Some $27 million in U.S. assistance for such items as clothing, food, medical supplies and transportation ran out last March 31. Mr. Reagan asked Congress in February for $100 million, including $50 million for arms and ammunition, $20 million for training and $30 million for supplies. The House approved the package in June.

On Aug. 13, the Senate passed the same measure by a 53-to-47 vote as an amendment to the military-construction appropriations bill. It defeated several Democratic attempts to limit the aid and for continued CIA prohibitions. But the House-Senate approved bill has yet to get to the president's desk. That's because it's stuck in the budget process.

Helping defeat a communist buildup in Nicaragua has had to await election-year hassles over such things as the toxic waste Superfund, the Small Business Administration, sewage-treatment programs, Legal Services Corp.—all with budgets well in excess of the administration's spending requests. As of this writing, the continuing resolution may or may not have been passed last night by the Senate and House. But when it does reach the president's desk, he may yet be forced to veto it.

With official anti-communist efforts still stalled, losers in the contra debate are whipping up the Hasenfus case to try for some last-ditch sabotage. Aid opponents won a victory of sort earlier this month in conference committee, where both sides agreed to bar the CIA from using its "discretionary" funds to supplement the assistance to the Nicaraguan rebels.

There is no certainty that when the $100 million starts flowing it will be enough to overcome the big military advantage the communists have achieved in their seven years in power. Each time there is a new reverse, such as the loss of the C-123 and apparently all of its crew save Mr. Hasenfus, there will be new complaints from the left. But we suspect that American politics have left Managua's friends behind. It only has been taking a lot longer than it should have.

TRIBUTE TO LEO MAZZA

HON. ROBERT G. TORRICELLI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. TORRICELLI. Mr. Speaker, I rise in honor of Leo Mazza. Mr. Mazza retired as postmaster of Garfield after serving 33 years. He was appointed by former President Dwight D. Eisenhower. A most dedicated official in the history of the Postal Service, he accumulated 3,400 hours of sick leave, being absent only 4 hours for an ear infection years ago.

One of the most popular postmasters in the country, he became a legend, serving on numerous committees regionally and in the State. A workaholic, he often worked from 6 a.m. until 7:30 p.m.

Mr. Mazza played an integral part of community life. He has been a volunteer fireman in his beloved city of Garfield for over 50 years. Among other services he has been an usher at Our Lady of Mount Virgin Roman Catholic Church.

Mr. Mazza has been a dedicated official in our Postal Service. All who have served with him have the deepest admiration, respect, and affection for him. Leo Mazzo has set a high example for all of us to follow, and is truly deserving of recognition from our Nation.

PROJECT STAR

HON. ALAN WHEAT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. WHEAT. Mr. Speaker, everyone is well aware of the high incidence of drug abuse among our children. Fortunately, Congress and the American public have increased support for programs that combat the spread of substance abuse. One program has been initiated in Kansas City, MO, which is part of my congressional district. Project STAR is privately funded by Mr. and Mrs. Ewing Kauffman and Marion Laboratories, Inc. and is designed to instill in young people the dangers of substance abuse and the importance of saying "no".

Each year more than 16,000 students enter junior high school in the Kansas City metropolitan area. Junior high students are especially sensitive to the opinions of their peers. Available research demonstrates that drug abuse results primarily from the inability of children to resist the subtle pressures from friends and the community rather than the lack of knowledge about the hazards of drug abuse. For this reason, Project STAR focuses on young people ages 11 through 14.

Project STAR's curriculum follows a social skills model developed and proven successful by a team of social psychologists at the University of Southern California. It involves examining in a classroom setting the impact of substance abuse and peer pressures. Most importantly, it encourages participants to commit themselves to remain drug and alcohol free. This training is conducted in ten 50–60 minute class periods.

In addition to working with students, Project Star has provided drug awareness and resistance training to more than 300 teachers, school nurses, counselors, and principals at no cost. Still, substance abuse prevention must occur in environments other than our schools to be effective. Project STAR has begun to provide training to parents and is working with the media to achieve community-wide support of the program.

Mr. Speaker, the United States has the highest rate of teenage drug use of any industrialized nation. Sixty-one percent of high school seniors have used drugs. One in six 13-year-olds has used marijuana. These are the statistics that Project STAR intends to change. More importantly, these are the children that Project STAR is helping.

COMMEMORATING WORLD FOOD DAY

HON. MARGE ROUKEMA

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mrs. ROUKEMA. Mr. Speaker, as always, it is a pleasure for me to commemorate world food day. As the ranking Republican on the Select Committee on Hunger, I have come to appreciate the significance that this day has in drawing attention to the very severe problems of hunger and malnutrition that millions in the world still face every day. World Food Day is an occasion for us to reflect on the abundance that we have, and it affords us an opportunity to discuss how best to share that abundance with others. America is still the breadbasket of the world. We have the ability and the know-how to feed everyone on this Earth. But just producing food is not enough to fill hungry mouths.

Last week, the Washington Post ran an editorial entitled "Full Bins, Empty Bellies." It described what I have called the paradox of hunger. In a world where literally millions face starvation, the U.S. Government has huge stocks of surplus grain that it cannot sell and never will sell. But the paradox goes even further. In many cases we cannot even give the food away to those who are most in need. By flooding foreign countries with free grain we not only depress the prices our own farmers receive, but we also ruin the market for farmers in recipient countries. These are the very producers who show the greatest promise for boosting food self-sufficiency in lesser developed countries and ending the vicious cycle of hunger and poverty in the Third World.

That is not to say that our food assistance does not play a vitally important role for millions of people. The African famine of 1984 and 1985 is a perfect example of how our food aid can be put to life-saving use. The United States led all donor nations in providing over 3 million metric tons of food to the African nations in need. This amounted to over $1 billion in famine assistance. While those numbers are truly impressive, more meaningful is the fact that we helped save millions of lives.

Now our efforts are focused on meeting the longer term needs on Africa's burgeoning

population. Africa's unprecedented 3 percent annual population growth rate cannot continue at the same time that its per capita food production declines. If present trends continue, only four African countries would be exporters of food by the year 2010. To meet the projected need, the United States has several strategies to assist agricultural production in Africa, including technical assistance programs, training courses and research on new and disease-resistant crops. Through these efforts, we hope to bring the benefits of a new green revolution to Africa.

But lack of food production is not the only obstacle to feeding people. The United Nations recently reported that civil strife was now the leading cause of starvation in Africa. Worsening conflicts in Angola, Mozambique, Ethiopia, and Sudan have threatened millions with starvation. Where once these populations had only to worry about drought or pestilence in their struggle for survival, now they must fear the deprivation of food being used against them as a weapon of war.

The southern region of Sudan is currently torn by a conflict between the Khartoum government and a rebel movement seeking a greater say in that country's affairs. Thousands of people in the southern cities have been cut off from regular food shipments because the Government and rebels cannot agree on a food truce or a system of sending food to innocent civilians. Despite our best efforts and those of the international donor community, this situation is still far from resolved. Sudan has the capacity to feed all its people, but civil war disrupts both the planting season and the transportation routes to distribute the food.

President Reagan and the Congress have embraced as a national policy the principle that a starving child knows no politics. We applied this principle energetically during the African famine and we must continue to press for its application throughout the world. Producing enough food and seeing that it reaches all who need it is a complex task. This will take perseverance, but we have the resources to see that the needy are fed. Let us renew our commitment to solve the paradox of hunger, to assure food supplies to populations at risk of starvation, and to plant the seeds of a green revolution for self-sufficiency in Africa.

JONATHAN MOORE, U.S. COORDINATOR FOR REFUGEE AFFAIRS AND AMBASSADOR-AT-LARGE

HON. HAMILTON FISH, JR.

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. FISH. Mr. Speaker, I rise today to commend President Reagan and Secretary of State Shultz for their choice of Jonathan Moore as U.S. Coordinator for Refugee Affairs and Ambassador-at-Large. I have known Ambassador Moore for many years, both personally and in my capacity as ranking Republican member of the Committee on the Judiciary and member of the Subcommittee on Refugees, Immigration and International Law. Ambassador Moore brings a wealth of knowledge and firsthand experience to the post, and I am delighted that his wisdom, compassion, and political skill will be applied directly to our policy toward refugees throughout the world.

I would like to enter for the RECORD the remarks of Secretary of State George P. Shultz and Ambassador Jonathan Moore, made during the Ambassador's swearing in ceremony at the Department of State on September 12, 1986. These statements attest to both men's commitment to our basic humanitarian ideals.

SWEARING IN OF JONATHAN MOORE AS U.S. COORDINATOR FOR REFUGEE AFFAIRS AND AMBASSADOR-AT-LARGE

THE SECRETARY OF STATE

As some of you have heard me say on other occasions, I think there is something very special about taking this oath of office, and there is a real meaning about the obligations and responsibilities and opportunities of public service. I sense that especially on this occasion because Jonathan has been here before and he knows what Government is like, and when he says he takes this obligation freely he knows what that means.

We have a job of work to do here in refugee affairs that is one of the most difficult in many respects—it is something that the United States has done and continues to do of which we can be extraordinarily proud. Of course, it fits us as a country because we come from all over, and so it shouldn't be any surprise that we are especially tuned in to refugee problems and ready to work on them. Jonathan is familiar with them; among other things he served on our special panel which brought us new ideas on Indochinese refugees, so he'll have the job of seeing what he really makes of those ideas and what to do with them.

As an operating matter he's been all around, particularly through Southeast Asia, but very familiar with what it is he's undertaking. He is familiar with it not only in terms of the subject matter and the international agencies that he will be working with and the nature of the problems, but also as an experienced government hand, both from the standpoint of studying it and pontificating about it from Harvard and from the standpoint of being a person who has been here in the State Department, in the Defense Department, in the Justice Department, and in HHS.

So he has seen the span of work and recognizes that to get something accomplished in the government in a field like this where there are so many other agencies involved, you have to be able to work with them and you have to get some idea where the buttons are that get pushed and how to push them and, of course, not only in the Executive Branch, but with the Congress. I think we'll be testifying together next week. We are not waiting very long to get going on that on just this question. So he brings these really very special talents in addition to his own natural and inherent talents as an extraordinarily gifted person.

I ran into him last Friday a week ago at Harvard with Derek Bok, the President of Harvard, and he said this was his last day on the job at Harvard and on Monday he would be reporting in to work at the State Department, and I said, "Well, what are you taking such a long vacation for?" He is now here and we are all especially pleased that he is going to be working with us in the Department and in the Government. It's a great privilege to have you back with us, Jonathan, and we look forward very much to working with you and helping and working along under the leadership on this subject of such very special and often tremendously poignant importance to us all.

JONATHAN MOORE

Thank you. As many of you know, I have felt for some time the desire to return to government service, particularly in the field of foreign policy and particularly about concerns of the third world. So I am especially grateful to President Reagan and to Secretary Shultz for the opportunity of taking on this extraordinarily challenging assignment. There are others who were helpful, also, in bringing me back; some of them are here in this room. They are not too numerous but perhaps they are too notorious to mention by name.

The job of Ambassador at Large and Coordinator for Refugee Affairs carries extraordinary opportunity as well as obligation in it. There are various aspects of it which combine to make it especially compelling to me: policy, politics, bureaucracy, diplomacy. It strikes me that the job can't be done without combining all of that and more. So the diversity and the richness of this assignment beckon me.

Already, in trying to read myself in and get introduced and learn about refugee matters—going up to the Hill, traveling to Southeast Asia as Secretary Shultz has said with the Ray Panel, visiting some of the voluntary agencies, getting briefed here at the Department of State—I have encountered the remarkable number of experienced and energetic and dedicated people who work with and for refugees. It is extraordinary. It is not just here at the Department of State, which I would mention first, but it is in the House and the Senate; the Justice Department, in HHS and the White House and other areas of the Executive Branch; it is with the voluntary agencies without which we could not begin to do the job; it is with the States and communities throughout this nation; it is with the international agencies, expecially the UNHCR; and it is with the foreign governments and foreign peoples which are also involved and help. The expertise and the commitment of these people is extraordinary. They are ubiquitous, they will not leave you alone. They come in through the doors and the windows and up from the cellar and they grab you on airplanes and they run across train stations to greet you. They are marvelous. This is very encouraging and also offers a real sense of enjoyment and pleasure in the job. They give greater confidence to me as I embark on it.

Finally, there is the moral thrust and the spiritual potential of this job, the idealism which is inherent in it to which the Secretary has already addressed himself. President Reagan has said that America's concern for the homeless and America's efforts to help people who have fled persecution from foreign lands enriches the basic humanitarian ideals which undergird this society. In our most basic and familiar religious texts we are taught that the most exalted acts involve the pursuit of respect for the dignity of every human being, the pursuit of justice for all; blessing the persecuted, clothing the naked, feeding the hungry, taking in and caring for the strangers and the homeless.

I think that this area, this endeavor, that all of us are involved in—I've only got a small piece of it—can fulfill this idealism in three ways. One is by the attention—the

concerted, efficient attention—which we give to the urgent, immediate needs of the refugees themselves. A second is the degree to which those refugees which come to join us in this society enrich it. And the third is, to the extent that we gain insight from our work with refugees and to the extent that we commit ourselves with intensity to their plight, I believe that our overall foreign policy becomes enriched and enlightened.

I want to thank my colleagues at Harvard, and my friends and my family, for their forbearance during this time of transition and for the encouragement they have given me on my way. Thank you, Mr. Secretary. Thank you all very much for coming here today.

HEROES AND ZEROES

HON. GENE SNYDER

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. SNYDER. Mr. Speaker, the October 27 issue of the New Republic carries an article which makes the observation that our colleague, the Honorable GLENN ANDERSON, is the most highly rated Member of the U.S. Congress.

It says that GLENN is "The National Legislator Who Pleased More People in More Places More Often than Anyone Else," based on a survey of the ratings compiled by some 70 different and quite varied interest groups.

I have had the pleasure of working closely and for many years with GLENN ANDERSON on both the Public Works and Transportation and Merchant Marine and Fisheries Committees, and it really comes as no surprise to me that he would receive such high ratings for the work he does as a Member of this body. I do, however, consider it quite an achievement to manage to please so many organizations with such diverse interests.

Knowing that my colleagues will be interested in reading this article, and even more interested in emulating GLENN'S success, I am enclosing it for that purpose.

HEROES AND ZEROES

(By Thomas O. Melia and Sueanne Peifferling)

Who is the most highly rated member of the U.S. Congress? Bob Dole, you say? No way. Rosty? Wright? Rangel? No, No, and No. Kennedy or Kemp or Packwood or Nunn? Guess again. Gramm or Rudman? Gephardt or Gingrich? Sorry, none of the above. In the last Congress, for which the books are now closed and scorecards completed, the national legislator who pleased more people in more places more often then anyone else was none other than Representative Glenn M. Anderson, an old-fashioned New Deal Democrat from California, now in his ninth term representing the working-class neighborhoods around the ports of Los Angeles and Long Beach. So say the ratings.

The ratings are assessment of who voted "correctly" on critical roll calls in the Congress, compiled by about 70 different organizations reflecting virtually every political inclination or interest of consequence in this country: labor, business, environmentalists, arms controllers, defense promoters, church groups, advocates of children and the elderly, women and veterans, farmers, civil libertarians, and ideologues of various stripes. Some groups, of course, do not produce ratings (the National Rifle Association comes to mind) but most of the powerful groups do. Some are organized strictly and unabashedly in the interests of their members, while others style themselves as "public interest" lobbies. Some are clearly special interests; others less so. Although the analyses of congressional voting records are as different in substance and style as are the groups themselves, there are elements common to all of them.

Each group generally selects five or ten or 20 "key" votes to make up its litmus test. (During the 98th Congress, the Senate conducted 673 roll call votes, the House 988.) Although these reviews are prepared at the end of each year, or at the conclusion of a two-year sitting of Congress, the votes selected are seldom surprises; they frequently address those topics on which the group lobbied or testified during the year. In order to inform their members and like-minded financial contributors (and also to remind the media) which votes matter most to a particular interest, the organizations prepare tally sheets on selected floor votes, which are variously described as "reviews," "summaries," "reports," "analyses," or "scorecards."

The ratings all begin with the premise that votes cast on the floor of the Senate or House of Representatives are among the most important of the professional activities of a senator or representative. Indeed, casting floor votes is about the only part of the job that members of Congress these days must actually perform themselves. There are no proxies allowed for floor votes. Under no circumstance—not the gravest illness or the most important official business elsewhere—is a member of Congress permitted to vote when absent from the actual chamber to which he or she has been elected.

From the selected votes, most groups derive an overall rating that signifies the degree to which Congressman X or Senator Z voted as the group would have preferred. Thus the NAACP determines that a representative who voted consistent with their views four out of nine times earned a "GPA" of 44 percent, while other, friendlier legislators earned grades of 78 percent or 100 percent. Similary, the National Taxpayers Union assigns "Congressional Spending Scores," Americans for Democratic Action determines members' "Liberal Quotient," and the Communications Workers and the Consumer Federation of America each designate their respective congressional "Heroes" and "Zeroes." On the other hand, some groups don't believe that all votes count equally. They won't give you a 90 percent approval rating if you voted wrong on the one issue most important to them.

In the weeks before November's congressional elections, a number of the groups will issue their ratings on votes cast in the current 99th Congress. Campaign staffs are usually quick to trumpet the fact that the National Association of Worthy Citizens or whoever has accorded their candidate a rating of "100" or "Hero" or "friend of the working class." But one's opponent may also loudly proclaim that the incumbent is a zero in the eyes of women, or businessmen, or civil libertarians. In that case, there is frequently a countervailing interest, or a rival for the same interest, that has given the member a better review.

Different unions or rival senior citizens groups, for example, will have different rosters of heroes for two reasons. They may have taken opposite sides of the same role call vote. This occurred, for instance, during the 1983 debate on Social Security reform. The National Alliance of Senior Citizens supported an amendment raising the retirement age to 67; the National Council of Senior Citizens, however, favored keeping the age at 65. But just as frequently rival groups will have focused on different votes altogether. The American Federation of Teachers and the National Education Association had only two of the same votes in their 98th scorecards.

The congressional rating game can make a big difference. Representative Tony Coelho, chairman of the Democratic Congressional Campaign Committee, has estimated that an endorsement from the U.S. Chamber of Commerce, which is largely determined by an incumbent's annual Chamber voting rating, can mean as much as $100,000 in campaign contributions from businessmen and corporate PACs. In 1979 several Republican senators complained so vehemently about the low scores they received that the Chamber revised its ratings. Five more votes were added. The complainers, who had voted the Chamber's position on all five, won the coveted endorsement, and presumably the accompanying prize money.

How did Glenn Anderson come to be so highly rated by so many? He began with a base on the left, but voted according to a broader sensibility. The NEA, the National Women's Political Caucus, the Leadership Conference on Civil Rights, and the National Abortion Rights Action League all gave him perfect scores. The NAACP gave him a grade of 90. The Consumer Federation of America: 92 in 1983 and 100 in 1984. By the lights of the League of Women Voters, he voted correctly eight out of nine times.

Crucial to Anderson's overall success in the eyes of interest groups overall, however, were votes he cast in favor of several big-ticket defense programs, like the MX missile and the B-1 bomber. These votes raised Anderson's stock among conservative evaluators: the American Security Council gave him a 40, Free Congress PAC a 39. Moreover, a handful of pro-business votes during the 1984 immigration reform debate won Anderson a healthy 63 percent approval rating in 1984 from the Chamber of Commerce (70 usually earns a member an automatic endorsement for re-election). Remarkably, Anderson voted with the Chamber on ten of 16 votes, and improved his score 53 points from the previous year, at the same time that he was voting with the AFL-CIO on 12 of 13 votes affecting "the interests of workers."

Anderson was able to do this mainly because labor and business—for all one might expect them to be on opposite sides of the same issues—were concerned with completely different issues. Only three of labor's 13 key votes appeared on the Chamber's list of 16—and on two of those roll calls they shared the same position: against final passage of the immigration reform bill (albeit for different reasons) and support for the National Endowment for Democracy. Only once in 1984 did the AFL-CIO and the Chamber pick opposite sides of the same vote: on an amendment that would have allowed federal suits against companies for injuries caused by exposure to hazardous wastes.

Anderson's experience illustrates the possibilities for popularity for an alert member of Congress who is familiar with the legislative priorities of numerous organizations. He or she can vote with interest groups on the amendments that matter most to them

without having the vote count against you in soneone else's ratings. The same issues, and near-identical amendments, recur year after year. Yet there are always new circumstances to be cited—the president's speech yesterday, the new tax bill or budget projections, the Soviets' latest outrage—to explain away any seeming inconsistencies.

Perhaps unsurprisingly, therefore, the most ideologically committed senators and representatives tend to rack up both perfect scores and complete zeroes. Sure, Ted Kennedy and Howard Metzenbaum are well regarded by the Consumer Federation of America, the unions, and the ACLU. But they get rousing zeroes from the right-wing American Conservative Union and Americans for Constitutional Action. Similarly, Jesse Helms scores high with the ACU and ACA, but is a complete nothing as far as the League of Women Voters and the National Association of Social Workers are concerned. If they want more friends and fewer enemies, they could emulate the highly rated yet still somehow underrated Glenn Anderson.

SLOWDOWN IN SERVICE SECTOR JOBS GROWTH MAY MEAN A COLLAPSE OF THE ADMINISTRATION'S ECONOMIC HOUSE OF CARDS

HON. AUGUSTUS F. HAWKINS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. HAWKINS. Mr. Speaker, economic recovery has been a central goal of this administration since it took office in January 1981. In its efforts to decrease the level of inflation and simultaneously create sufficient levels of investment in the economy, the administration has depended heavily on the creation of service jobs to sustain economic growth. Almost 2 million manufacturing jobs have been lost since 1979 in the United States. These jobs have been replaced by low-skill jobs in the service sector of the economy.

Unfortunately, Bureau of Labor Statistics Commissioner Janet Norwood, in her monthly comments to the Joint Economic Committee noted that unemployment data collected in September indicate that "the job growth in the service sector, which has helped to prop up the economy and prevented the unemployment rate from rising much above 7 percent, appeared to be ebbing."

Commissioner Norwood's comments further indicate the slippery slope that this Nation's economy has been treading on for some months. This recent news of a decline in service jobs is gravely serious. With the growth in service sector jobs, the administration has been able to flaunt a statistically weak economic recovery. However, the totality of economic data, which includes not just unemployment statistics, but also productivity rates, the annual growth in the gross national product, and the Nation's trade deficit, all sound alarm bells that register a desperately weak and ailing economy.

Productivity is weak. Productivity growth since the 1980–81 recession has been the lowest of any postwar recovery period. Productivity growth is essential to long-term improvements in wages and living standards. Yearly real growth of the gross national product since 1981 was only 2.3 percent compared with 2.8 percent in the 1970's and 3.8 percent in the 1960's. Moreover, the Nation's trade deficit, based on figures for the first 8 months of the year, will be at a record $175 billion in 1986.

On the employment front, fewer Americans are employed in gainful jobs. In fact, the average national jobless rate was 8.3 percent in 1981 through 1985. Unemployment is considerably higher than the 6.2 percent experienced in the 1970's and 4.8 percent in the 1960's. Between 1980 and 1985, 7.8 million jobs were created, but that was 5.7 million fewer than the 13.5 million created in the 5 years from 1975 to 1980.

Recently, a reporter for the Washington Post wrote an article on the apparent slow growth in jobs within the service sector that accurately spotlights the seriousness of this recent change in economic circumstances. I commend this article entitled "Slowdown in Growth of Service Jobs Sounds an Alarm," to my colleagues for their reading. A copy of the article follows:

[From the Washington Post, Oct. 12, 1986]

SLOWDOWN IN GROWTH OF SERVICE JOBS SOUNDS AN ALARM

(By Jane Seaberry)

Ten days ago the head of the Bureau of Labor Statistics, Janet L. Norwood, gave Congress her monthly report on the nation's unemployment statistics, reciting a familiar list of ills in manufacturing and oil industries.

But this time she administered another dose of ominous news: The job growth in the service sector, which has helped to prop up the economy and prevented the unemployment rate from rising much above 7 percent, appeared to be ebbing.

In fact, the growth in services has been slowing for many months while manufacturers have yet to regain half of the jobs lost during the last recession.

During the current economic recovery the biggest job gains have been posted in finance, insurance and real estate, wholesale and retail trade, and other areas such as health and business services, household services, automotive repair, and motion pictures, according to Data Resources Inc. Those service areas account for 50 percent of total employment in 1982 and contributed 8.1 million of the 10.3 million new jobs added since then, DRI said.

But DRI said growth in employment for wholesale and retail trade will drop from a recent peak of 5.8 percent rate in 1984 to 2.5 percent in 1988; finance, insurance and real estate will drop from a 6 percent rate this year to 3.6 percent in 1988.

Growth in other services will decline from a peak of 5.7 percent last year to 3.5 percent in 1988, DRI said.

Manufacturing employment has dropped almost steadily since the middle of 1984. Only 44 percent of the factory jobs lost during the 1981–82 recession have been regained and 200,000 have disappeared just since the beginning of this year.

DRI said that after declining 0.7 percent this year, factory jobs will start growing by 0.2 percent next year and 0.8 percent in 1988.

The problem some economists see is that unless manufacturing revives, the service sector will face an even harder time and the economy will be even more sluggish.

For example, David Hale, an economist with Kemper Financial Services, wrote recently that a recovery in manufacturing is essential "because the economy is running out of locomotives in the service and construction sectors powerful enough to offset the recessionary effects of the trade deficit on total output."

"My conclusion is that service employment has fallen off this year primarily because of the slowdown in economic growth," said Jerry Jasinowski, chief economist for the National Association of Manufacturers.

"You can certainly make an argument that the slowdown in the economy caused by manufacturing, economy and agriculture has certainly depressed service employment growth."

Economists said they don't expect growth in the services sector to stop, only to slow down. Some economists said the extended slowdown in manufacturing had to spill over into services eventually.

Norwood noted in her report to the Joint Economic Committee that services employment grew at a decidedly slower pace in August and September.

"Job gains continued in the service-producing sector although, as was the case in August, the increases were not so strong as in earlier months," Norwood told the committee last week.

Hale also said the decline in manufacturing "is spilling over in multiple effects throughout the economy. If you lose the benefits of spending to import penetration, then gradually the whole system slows down."

According to Labor Department economists, growth in employment in retail trade, which was strong last year, has slowed recently. Business and health services had been adding about 100,000 jobs a month earlier this year and that pace has slowed to about half that in the last two months.

Service-producing industries, consisting of transportation and public utilities, wholesale trade, retail trade, finance, insurance and real estate and business and health services, had been growing by more than 200,000 jobs a month. They grew by 139,000 in August and by 150,000 in September.

According to the National Association of Manufacturers, service employment growth was 4.3 percent 3.2 percent for the first six months of this year.

However, many economists also note that the unemployment figures are lagging indicators—they don't predict the future but reflect what has happened in the past. "If it was a slowdown, it already occurred," said Commerce Undersecretary Robert Ortner. "We don't know on the basis what's really happening in the services sector."

"I would doubt that the decline is very significant since the overall thrust of employment over the year has been in an upward direction," said Bill Dunkelberg, economist for the National Federation of Independent Business. "Most of those gains have been in the services sectors, which have been somewhat insulated from the problems we have in the balance of trade."

Some economists have said for many months that the trade problem which had plagued manufacturing for years would finally trickle down to services. They said that the loss of high-paying manufacturing jobs would result in lower income and less demand for services, and subsequently a slowdown in services employment.

Economists said they were skeptical that manufacturing could make a swift turnaround soon, largely because the trade problems—despite the decline in the value of the dollar—will probably place a drag on manufacturers for some time.

Last month, economists thought that factory employment might have finally turned around when the Labor Department reported a 19,000 increase in factory jobs in August after months of declines. However, 10 days ago that figure was revised downward to an increase of only 1,000 jobs, and the hemorrhage resumed in September with the elimination of 38,000 manufacturing jobs, Labor said.

"For quite a time the service sector has had a life of its own," Hale said, "We have a risk now of the whole thing stalling at a relatively low level of growth. That's why improvement of the trade deficit and manufacturing is so important."

THE SOVIET SSK PROGRAM

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. DORNAN of California. Mr. Speaker, 3½ years ago, on March 23, 1983, President Reagan announced the strategic defense initiative or SDI. The liberal press promptly dubbed it "Star Wars" after the popular futuristic movie series that broke box office records. But the press, rather than put it in the positive light—that SDI was a defense against "evil empire"—chose to portray the President as the dark prince, Darth Vader—the Star Wars embodiment of evil. I would have preferred to name SDI "Star Peace," or "Star Shield." For when strategic defense becomes a reality, it offers us the best chance of eliminating nuclear weapons and the fear of nuclear holocaust forever.

But, as the President has stated time and again, the United States is not alone in developing such strategic defenses for their citizens. The Soviet Union has been working fervishly on its own strategic defense, spending half of its entire military budget on strategic defense programs for more than 25 years.

The Soviet Union is the only nation in the world today that has an active, deployed ballistic missile defense. Their strategic defense network includes a battle management radar, mobile radars, a hundred fixed antiballistic missile sites with reload capability. There is strong indication that the Soviet Union has developed surface-to-air missiles that have dual capabilities against aircraft and certain types of ballistic missiles.

President Reagan has reported to Congress that the Soviet development and testing of SAM–10 and SAM–12 surface-to-air missiles in an antiballistic missile role and the deployment of the ABM battle management radar at Krasnoyarsk indicates the probable Soviet breakout of the ABM Treaty with deployment of a nationwide ABM system.

These facts are little known to most Americans because the press ignores Soviet programs. Up to now, there has not been any catchy phrase or acronym to describe the Soviet strategic defense programs. That is why I want my colleagues to remember SSK—Sary Shagan/Krasnoyarsk. All Americans should know the names of these Soviet sites. Sary Shagan is the Soviet strategic defense research center. Krasnoyarsk is the site of the large ABM radar that has been found in violation of the ABM Treaty. No expression sums up the Soviet violations of the ABM Treaty, or their strategic defense program, better than Sary Shagan/Krasnoyarsk—SSK.

Mr. Speaker, I would like to urge my colleagues to read the following articles which expand on the issue of anonymity of Soviet strategic defense programs. The New York Times article tells how the Soviet program may be ahead of our best efforts in a number of key areas. The remaining articles detail the efforts of Mr. Jim Guirard to "win the war of words" with the Soviet Union and name the Soviet strategic defense program.

[From the New York Times, Oct. 15, 1986]

EXPERTS SAY SOVIET HAS CONDUCTED SPACE TESTS ON ANTIMISSILE WEAPONS

(By William J. Broad)

Experts on Soviet technology said yesterday that the Soviet Union had apparently conducted weapon tests in space of the type that would be restricted by the 10-year ban on "Star Wars" testing proposed by the Russians in Iceland.

The American experts said a laser being developed as an antimissile weapon has been fired from a research station at Sary Shagan in Kazakhstan at a manned Soviet spacecraft, with Soviet astronauts wearing special goggles to protect them from the beam.

The overall Soviet program, however, is seen as crude compared to the American "Star Wars" program, known officially as the Strategic Defense Initiative.

This relative backwardness, experts say, is a primary reason why the Soviet Union wants a ban on further testing outside of laboratories. The Soviet Union although about even with the United States in basic antimissile research, lags badly behind America in advanced technologies needed to turn lasers, particle beams and other devices into effective weapons. The key deficiencies include less powerful computers and a huge lag in the miniaturization of arms.

PENTAGON VIEW OF SOVIET EFFORT

This view is sharply at odds with that of the Pentagon, which has maintained that antimissile systems the Russians already have in place represent a real threat to the West.

The issue arose last weekend when Soviet officials proposed at the Iceland summit talks that all but laboratory research, testing and development of antimissile systems be halted for 10 years.

Dr. Simon Kassel, a senior scientist with the Rand Corporation who has written several reports for the Pentagon on Soviet beam weaponry, said yesterday that in Iceland, the Russians were basically trying to buy time to catch up with the West.

"It's one thing to do basic research, and have a lot of different concepts going, and another to translate it into weapons," he said in an interview. "In that they face considerable difficulties."

He continued: "Their technology base is not as rich as ours. People don't realize how bad it is. We tend to put them in the same class with us. They're not. The only reason we talk to them is that they have nuclear weapons."

CHANGES IN STRATEGIC DOCTRINE

Dr. Kassel said the Russians were frightened by the sweeping changes in strategic doctrine that lie at the heart of President Reagan's antimissile plan. "What was suggested in Iceland is that we shift the competition from building nuclear weapons, which they have mastered, to a competition in exotic technologies," he said. "They're playing for time. So far, the technological lag has been tolerable for them because it was confined to traditional technologies that they have mastered."

He added that an example of a key technology in which the Soviet Union lags is computers, which are considered critical for a "Star Wars" system. "Their situation in the computer field is very bad," Dr. Kassel said.

In contrast to such views, the Pentagon says Russian antimissile work has a very long history and is very aggressive and threatening. "Soviet efforts in most phases of strategic defense have long been far more extensive than those of the United States," according to "Soviet Strategic Defense Programs," a publication of the Defense Department. It said the Soviet Union is conducting advanced work in lasers, particle beams and kinetic-energy weapons.

At Sary Shagan in Kazakhstan, it said, the Soviet Union has set up a large ground-based laser that today can fire at satellites and in the future could "possibly" play a role in an antimissile system. It also noted that Moscow has the world's only operational antisatellite weapon.

"BEYOND TECHNICAL RESEARCH"

"Unlike the U.S.," it said, "the U.S.S.R. had now progressed in some cases beyond technical research. It already has ground-based lasers that could be used to interfere with U.S. satellites, and could have prototype space-based antisatellite laser weapons by the end of the decade."

Some experts outside the Government said the Soviet Union has already apparently conducted weapon tests in space.

"In 1982 Soviet cosmonauts were asked if they had their goggles on as they went over Sary Shagan," said James E. Oberg, an expert on the Soviet space program who is author of "Red Star in Orbit." "The implication is that their spacecraft was a target for a ground-based laser."

Dr. Gerold Yonas, former chief scientist of the Pentagon's Strategic Defense Initiative program and now vice president of Titan Corporation in La Jolla, Calif., said that Moscow made up for backwardness in some areas of antimissile technology by sheer pragmatism.

"They get their equipment out in the field and learn by doing," he said. "In some cases they are able to deploy devices even before we do, even though we had the technology first." An example in the area of antimissile systems, he said, was the Soviet rocket-interceptor system that rings Moscow. "I don't think you can over-emphasize the importance of a warm production line in terms of operaticnal experience," he said.

Dr. Roy D. Woodruff, a senior scientist at the Lawrence Livermore National Laboratory in California who has studied Soviet antimissile work, said the Russians had gone far beyond "laboratory" testing, as defined in Iceland.

"Sary Shagan is an enormous facility," Dr. Woodruff said. "You have to ask questions about what they're doing there. Before any agreement is signed, they're going to have to be much more open about

this stuff. It's a closed society. Even with all the classified information, we still don't have a very good idea of what's going on. We don't know what the quality is. My guess is that it isn't very good. But who knows?"

Jeffrey T. Richelson, a aerospace expert at American University in Washington, DC, said the Pentagon had a tendency to make overly bold assertions about Soviet antimissile advances. An example, he said, was the repeated Pentagon assertion that 10,000 Soviet scientists are working on antimissile weaponry. "Their estimates are often more confident than they should be" and sometimes based on "dubious methodology," he said. "Uncertain estimates are all too often taken as literal truth."

[SDI Monitor Interim Report, Aug. 25, 1986—Vol. 1, No. 14]

WASHINGTON INSIDER

"Namelessness is a ticket to anonymity", says Jim Guirard, Washington defense consultant specialist on semantics, propaganda and foreign affairs. He suggests as an appropriate term for the Soviet version of SDI, the SSK Program, after Sary Shagan, the location of the Soviet directed energy research effort, and Krasnayarsk, the site of the huge phased array radar. SSK also fits in with the nomenclature of the Soviet missiles (SS-18, -23, etc.).

"Our going to the second summit not knowing what to call the Soviet program of strategic defense is about equivalent to going to the second trade summit with the Japanese not knowing what to call the automobile, in a context which permits the Japanese to claim: 1. that they don't manufacture automobiles; and 2. that they do not export these nonexistent items to the United States. That's about where we are. As a result of this, our program is known across the world as Star Wars, while their is known as Star Peace. That puts our efforts not just at the bottom, but beneath the bottom of the public diplomacy barrel."

[From the Washington Times, Nov. 6, 1985]

SKEWING WORDS TO POLITICAL ADVANTAGE

(Jim Guirard)

For many decades—particularly since the advent of Soviet communism in 1917—geopolitical perceptions have been much distorted by the language by which we speak, write, and think about world leaders and their regimes.

Vicious dictatorships are called "people's democracies."

Imperialism and colonialism are called "liberation movements."

Brutal repression is dubbed "social justice."

Tyrants of the worst sort parade about as "progressive leaders."

The insidious effects of distorted language are nothing new. Even Confucius, in the fourth century B.C., considered the problem a crucial one. Asked what he would do if he were put in charge of the national government, the Chinese wise man responded:

"It would certainly be to correct language. If language is not correct, then what is said is not what is meant. If what is said is not what is meant, then what ought to be done remains undone. If this remains undone, then morals and acts deteriorate. If morals and acts deteriorate, justice will go astray. If justice goes astray, the people will stand about in helpless confusion. Hence, there must be no arbitrariness in what is said. This matters above everything."

In more recent times, the horrors of semantic distortion were vividly depicted by George Orwell in his great novel "1984." There, the totalitarian state created a deceptive new language—"Newspeak"—as a mechanism for removing from the people's vocabulary the truthful words by which they might construct negative thoughts about the dictatorship. Now, true to Orwell's predictions, the problem of euphemistic labeling has become so severe that it is (belatedly) becoming recognized as a most dangerous form of disinformation, or as "semanic infiltration."

In a 1978 Senate speech, Sen. Daniel Patrick Moynihan defined the latter term as follows: "Simply put, semantic infiltration is the process whereby we come to adopt the language of our adversaries in describing political reality. The most brutal totalitarian regimes in the world call themselves 'liberation movements.' It is perfectly predictable that they should misuse words to conceal their nature. But must we aid them in that affort by repeating those words? Worse, do we begin to influence our own perceptions by using them?"

Mr. Moynihan's warnings against the perils of warped semantics—and the warped minds it produces—attracted only modest attention at the time. While a smattering of Op-Ed articles agreed in principle that the problem is a real one, nothing concrete was undertaken by either the government, the media, or the intellectual community to find appropriate solutions.

Finally, however, in its 1984 Report to Congress, the U.S. Advisory Commission on Public Diplomacy came to grips with the ongoing perversion of political language: "We believe the times require a conscious effort to improve accuracy and political impact of words and terms used by our leaders in speaking to the world. By so doing, they can help disclose the hypocrisy and distortions of hostile propaganda. This is not a problem that will go away, and we must be prepared to deal with it on a systematic and continuing basis."

To redress the problem, this presidential commission (chaired by Edwin Feulner of The Heritage Foundation) formally recommended—and in February 1985 repeated its recommendation—that the National Security Council and the U.S. Information Agency "assess the problems of semantic corruption and institutionalize ways to counter misleading terminology and increase the accuracy of words and concepts in international political discourse."

In response to these urgings of the diplomacy commission, the NSC has recently assigned the truth-in-labeling project to a prestigious interagency task force known as the International Information Committee. The IIC is composed of about 40 information and intelligence experts from the White House (NSC), the United States Information Agency, and the Departments of State and Defense.

Since several senior NSC staffers who are members of the group have themselves been deeply concerned about the pitfalls of warped political language, the subject is unlikely to be put on the IIC's back burner.

Currently, in fact, various members of the IIC are carefully searching for an appropriate semantic label to put on the now-nameless (!) Soviet equivalent of our Strategic Defense Initiative. If these experts are clever enough to design a name for the Soviet SDI which is both truthful (i.e., drawn from one of the names the Soviets themselves have used) and which looks and sounds appropriate to the situation, they will have helped make it immeasurably more difficult for Mr. Gorbachev to continue pretending that his own gigantic antimissile and anti-satellite programs do not exist.

Though the label they devise will probably not translate "Starsky Warsky," almost anything will be better from the American point of view than the "Star Peace" label by which the Soviets are promoting the lie that they have no SDI equivalent.

As time goes on, the big losers of a successful NSC/ICC project will, of course, be the Soviets and their collaborators—Castro, Qadhafi, the Vietnamese, the Sandinistas. They stand to lose the semantic masks behind which they hide their true characters and intentions. They will have a high political price to pay:

When their "satellites" finally become known as the colonies they really are:

When their so-called "people's guerrillas" and "patriotic fronts" are finally understood to be the leftwing death squads they really are;

When their "democratic socialism" is finally recognized as nothing but a clone of Hitler's socialism—Nazism;

When "liberation" once again signifies the deliverance of a people into a condition of personal liberty. rather than into a condition of Gestapo-left dictatorship;

When "world peace" denotes a condition in which free men and free nations no longer have cause to war against each other—rather than a condition in which forced tranquility, founded in fear, prompts oppressed peoples and colonized nations to abandon all resistance to Soviet imperial domination.

First the diplomacy commission and then the White House have come to recognize the urgent need for what Confucius said "matters above everything"—a high standard of truth-in-labeling in the language without which ". . . the people will stand about in helpless confusion."

Now, the responsibility for developing solutions has been passed to the International Information Committee, which must somehow become as dedicated and as skillful in correcting the language of politics as the Soviets have been in corrupting it. Though the task will not easily be done, a serious effort has at least begun.

THE HEIFER PROJECT

HON. VIN WEBER

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. WEBER. Mr. Speaker, I am very pleased that the Heifer Project International Organization in Kandiyohi County in Minnesota is actively involved in promoting the worthy goal of their organization. The idea of making it possible for people of other countries to provide improved diets for themselves and their neighbors through the personal, direct actions by our people is an exemplary continuation of a long-time tradition of this country.

I wholeheartedly endorse and support the Heifer Project International and I urge my colleagues in Congress to do so as well.

[From the Minneapolis (MN) Star & Tribune]

WILLMAR GROUP SEEKS DAIRY CATTLE FOR MEXICO

(By Susan F. Peterson)

A charitable group based in Willmar, Minn., is trying to raise $40,000 to buy dairy cattle that otherwise would be slaughtered as part of the federal government's dairy-herd buyout program.

"We're trying to feed hungry people in the world by giving gifts of animals that produce food," said Elmo Chapin, vice president of Willmar Electric Service, Inc., and a southwestern Minnesota representative of Heifer Project International.

The International organization, started in the 1940s by a Quaker named Dan West, supplies animals to help poor people in many countries, including the United States, become self-sufficient in feeding themselves.

Part of the group's plan is to ship cattle to Third World countries to help them develop dairy industries. In addition to the philanthropy involved, the group believes that such a step eventually could lead to greater demand for U.S. grain exports if the Third World countries develop dairy and cattle industries.

"Our goal is to raise about $40,000 and buy a semiload of heifers, pay for veterinary services and transportation to ship the animals to needy families in Mexico," Chapin said. He said the group hopes to buy about 40 to 45 cows and ship them in November.

Chapin said the Willmar group has raised about $7,000, mostly from small donations, since it started in mid-August. "One party donated $1,000, and churches have donated $1,200 and $1,300," he said.

The group also is looking for "gift cows" that are scheduled to be slaughtered under the government's buyout program but whose owners would give them to the project and use the donation as a tax deduction, he said.

Chapin said the group was planning to visit the dairy farm of Dennis Rupp near New London, Minn., today to arrange to buy several heifers. Rupp said the group hasn't negotiated a price yet, but estimated that the slaughter value of a 1,000-pound heifer would be about $550 to $560.

Chapin said the organization works with Peace Corps workers and missionaries to choose and train the families who will receive the animals. "They train the recipients in feeding, sheltering, disease control and appropriate breeding methods", he said. In return, "The recipient must promise to give away the first female offspring to another person in need of food and must train him in the care of the animal."

The group also is careful to match the animals to areas where they will thrive, "We won't send cows to a place without pastureland, or if a recipient doesn't have enough land, he may get a goat rather than a cow, Chapin said.

He said Holstein heifers usually are sent to areas in Mexico at higher elevations while Brown Swiss and Jerseys are sent to lower altitudes because that is where the breeds have proved to do best.

Although the international group donate all kinds of animals from pigs and sheep to rabbits and bees, the Willmar group is focusing on cows because of the federal dairy herd buyout program that was established by the 1985 farm law. The program pays dairy farmers to slaughter or export their herds and stay out of dairy farming for at least five years.

[From the Willmar (MN) West Central Tribune]

To The Editor.

The question is often posed, why are so many people in the world starving, when American farm products glut the market. There is a surplus of corn, milk and it's products, soybeans, wheat, beef and pork. Distribution of these products to people in need, has been the stumbling block. Political red-tape often prevents the establishment of good trade agreements.

An effort is underway in Kandiyohi County to purchase 30-40 young dairy heifers that are destined for slaughter through the farm program dairy buy-out. These heifers will be transported to Mexico to be placed with needy families at the rate of one heifer per family. In a few months, the family will have wholesome milk to supplement an otherwise meager diet. The family's obligation is to give-away the first female off-spring to another family. A modest beginning, yes, but it is a beginning to distribute some of our agricultural products. At the same time, we may build a friendly relationship with the Mexican people, a relationship that lately, has become strained. There's a possibility, too, that this could create markets for some of our grain or for more cows and sires.

A great way for concerned citizens in this area to help with this "people helping people help themselves" program is to send a contribution to Heifer Project International, Box 934, Willmar MN 56201. It will be greatly appreciated by Heifer Project and by the Mexican families who receive the animals.

Sincerely, Marian M. Pladsen, Rt. 1, Kandiyohi, MN.

[From the Spicer (MN) Free Press]

NICE TO SEE HEIFERS GO SOMEPLACE OTHER THAN SLAUGHTER

(By Bev Ahlquist)

"It's nice to see my heifers going someplace other than slaughter," said Dennis Rupp, a farmer in New London Township who is selling several of his Dairy Termination Buyout heifers to Heifer Project International (HPI), a worldwide, self-help organization that provides livestock, poultry, training and related agricultural services to people in developing countries.

"Someone will make use of their milk products," he said, adding "I like to see these heifers go someplace where someone will make use of them."

Rupp and his dairy herd were the center of attraction last week when Bill Beck, director of HPI's regional office, along with local HPI committee members and about seven media representatives (among them two television stations), bombarded the Rupp pasture site.

The press coverage was overwhelming, said Rupp, who had expected one or two people to show up. He really didn't mind having his farm invaded though, and neither did his dairy cattle. Some of the cows were curious enough to walk right up to the camera and stare into the lens. They wanted to see firsthand what that strange contraption was doing in their pasture.

Rupp had 29 head of dairy cattle and about 50 head of young stock. He said he isn't really going to be sorry to see them all go, but he was feeling a little bad about having to ship his good producers for slaughter. Now, however, with the HPI program those good producers will be able to keep on producing.

It's a little late in the game to be looking for Dairy Termination Cattle though, Rupp said, since most of them in this area have already gone to market. Rupp said he knew there was a program to ship the dairy cattle to Mexico when he signed up for the Dairy Termination program, but he didn't take advantage of it because it was cost prohibitive. Now, with the organization taking care of the costs, it's suddenly become more practical.

His son was a little worried about what would happen to the heifers that were going to be shipped to Mexico, Rupp said. His concern was the warm climate and how they would adapt. Rupp said he reassured him they would be taken care of and that they would get used to the climate and eventually adapt to the different country. "After that he kind of forgot about it."

Beck has been to several countries where HPI ships their livestock and can testify to how precious these animals are to the people there. The recipients of the animals get "direct in the barn education," according to Beck. They're trained in how to take care of the animal before they ever get the animal and then receive extension training after they've received the animal.

The Mission Extention people working in these countries and other leadership type groups within the village keep tabs on how the project is coming along. They work with the village people in deciding what is needed in that particular village. There is also the project holders, a group in the village directly responsible, which HPI works with rather than the village.

It's set up in this fashion, according to Beck, so there will be local control of the project. Each project is supervised, and a lot of peer pressure is put on by the villagers in seeing that the recipient is taking care of his charge and that he does pass along to another needy family an offspring that is healthy. Beck said in one village the villagers found that one man wasn't taking care of the offspring and was intending to give an emancipated animal away to a needy family. The local village Council took it upon themselves to see that he kept the emancipated animal, and gave the original cow to the other needy family. "There's a lot of peer pressure," he said.

The Willmar area committee asks that anyone in the Dairy Termination program who is willing to donate or sell an animal should contact the Willmar office. He said they've sent letters to all dairymen in the Minnesota portion of the buyout program. "We're hoping we can take what has become a real trial for dairymen and use it to help people," he said, adding, "I think what's being viewed as a real burden to a dairy economy can be a blessing to poor families in other countries. And the dreams the dairymen have had can in a sense live on as their animals are received and used by these families."

HPI has nine regions across the country, with local committees in each region. Beck pointed out that 25 percent of HPI's work is done right in the United States. They've been shipping 25 animals for 42 years, he said, long before the Buyout program came into being.

The worry that shipping cattle overseas could end up bringing about a problem as far as surplus was concerned, was nothing to be concerned about, Rupp said. "There's not much potential problem with what HPI is doing," he said, pointing out that milk isn't a product that can be shipped long distances like cheese or dried milk. "That's why I

don't think there is a potential problem with affecting the milk price in Minnesota," he concluded.

Rupp said he's not really going to miss having a barn full of noisy cattle, like some of the farmers in the Dairy Termination program do. He said he's had many of them tell him what a lonely, quiet place the barn is without all those cattle. "But it will also be nice not to be tied down morning and night seven days a week." Rupp, who has been milking for 11½ years, said he's shipped a few cows that he's missed, but only until another replaced him.

[From the Willmar (MN) West Central Tribune]

HEIFER PROJECT KICKS OFF FUND DRIVE

(By David Little)

NEW LONDON.—Dairy farmer Dennis Rupp says it would be "real nice" if poor families in Mexico get a few of his Holstein heifers for milk. It's better than having the animals go to slaughter for hamburger he says.

Rupp, whose 29 cows and 50 head of young stock will be bought next year by the federal government's dairy buyout program, has agreed to sell several of his animals to a charitable committee headquartered in Willmar that hopes to raise enough money to buy and ship a semi-truckload of dairy cattle to Mexico late this year:

The committee, working with Heifer Project International of Little Rock, Ark., met Wednesday afternoon at Rupp's farm, located about three miles west of New London on County Road 40, to make arrangements to buy several of Rupp's cattle and to kickoff the group's fund-raising effort in southwestern Minnesota.

Rupp, who bought his father's farm 11½ years ago, said he is glad to see that some dairy cattle will be given to poor families. "There are a lot of good heifers going to market." Rupp said during an informal news conference with reporters in his pasture.

The committee's efforts were praised by Bill Beck, director of regional offices for the international organization. He said Heifer Project is glad to have a "local presence" in Minnesota.

"This is really a grassroots thing," said Beck. "Heifer Project is excited to see the committee operating here in Willmar."

The international organization started in 1946 by a Quaker named Dan West, supplies animals to help poor people in many counries, including the United States, become self-sufficient in feeding themselves.

Committee member Elmo Chapin of Willmar said the group hopes to raise about $40,000 to buy about 40 cows and pay for veterinary services and transportation. Chapin hopes to make the shipment by the end of November.

Beck said the animals will be shipped to northern Mexico, an area that Heifer Project began serving this July, where volunteers will train the families in care and feeding of the animals.

Chapin said slightly more than $7,000 has been donated, mostly from individuals and churches, since the committee formed in August. The group is also looking for "gift cows" that are scheduled to be slaughtered under the buyout program but whose owners would give them to the project and use the donation as a tax deduction.

Representatives of several churches were present, including Don Caine from the Missions Committee of First Presbyterian Church of Willmar which donated enough money for two Cows and the Rev. Tony Plathe of St. Mary's Catholic Church of Willmar.

Chapin said the project received the endorsement of 2nd District Rep. Vin Weber. In a letter to Chapin, Weber said he will "do all he can to make other members of Congress aware" of Heifer Project's activities.

[From the Spicer (MN) Free Press]

DAIRY CATTLE TO PROVIDE MILK FOR THE HUNGRY

(By Bev Ahlquist)

The scope of the program is worldwide—and it's originating right here in our own backyard.

It's going to allow for some of the cows in the Dairy Termination program to avoid the fate of being sent to the slaughter house; and it's going to mean that starving children and families in other countries will have milk to drink.

In this immediate area, a semi-load of these cows will be shipped to Mexico and given to needy families through Heifer Project International (HPI), a volunteer organization dedicated to wiping out world hunger by helping one farmer at a time. They enable families in developing areas to produce food and income to support themselves by training them to tend and use farm animals, and have been doing so since their organization in 1944.

"This is a good way to go with the buyout cattle, get them to some people in other countries that are in need," said Milt Eckstrom of Montevideo, a local Committee member. "I don't know what it would be like to be raised without the opportunity of having milk," said Elmo Chapin of Willmar, another committee member. "I've had milk and ice cream all my life."

Both Chapin and Eckstorm are excited about working on a people-to-people project such as this and want to get as many people in as many communities as possible involved. The idea to use the dairy termination cattle in this manner originated because people were distressed about seeing one million quality diary cattle going to the slaughter house when there were so many hungry people in the world.

The first step taken was to check with the USDA (United States Department of Agriculture) to see if the dairy cattle could be used in this manner and what the proper steps would be. They were referred to HPI, with committee member Sally Stuart of Willmar, making the initial contact since she was familiar with the HPI program. The next step was to send Elmo Chapin and his son, John, to HPI headquarters in Little Rock, Arkansas to see firsthand just what this program entailed.

They discovered that HPI was involved in much more than the Dairy Termination program, that they had been feeding hungry people in the world since 1944 by sending them gifts in the form of animals that produce food, from hens, mules, bees, ducks, geese, pigs, and rabbits to a special bread of sheep they helped produced.

When the Chapins returned, it didn't take the committee long to decide they wanted to jump in with both feet. "We developed the idea that we would accept a challenge of buying a semi-load of heifers to be shipped to Mexico," Chapin said, adding, "our goal was to reach $40,000 so we could buy the heifers, and pay for the shipping and veterinarian costs." They're looking to reach their goal and have the animals on the way to Mexico by late November or early December.

Fund rasing efforts have included sending letters to churches, nursing homes, farm groups and associations, service organizations, businesses and newspapers. Chapin said they're also eager to speak to small groups such as women's organizations and church and community organizations concerning this project.

The contact to nursing home residents, he said, was because people in nursing homes seems to get left out of everything. "They're interested in projects that help people," he said, "especially people in need of food."

He continued, "We feel most donations will come from individuals in the form of $5, $10, & 15, and $20. That way, people will have a feeling they have a part in helping someone else in need of food."

The committee is pleased with the response so far. To date they've received over $7,000. They predict this amount will double over the next few weeks.

"I personally feel this is the way to go with the buyout cattle," Eckstrom said, going on to say he would like to see more communities involved—involved to a point where each community would have a person or persons that would take a personal interest in the heifer project and see that it was an ongoing program. "It's well worthwhile to be involved," he said.

The recipients of the animals that are given away to do have to meet certain requirements which include being trained in the care, feeding and sheltering of the animal, and learning disease control methods and breeding methods appropriate for that particular part of the world. The recipient also has to agree to give away the first female offspring to a needy family and to train that recipient in the same manner they were trained.

"They teach the recipient to be responsible because they feel this will give them more of an incentive to take better care of the food supply," Chapin said. He pointed out that the recipient isn't just left on his own after being given the animal, that there are people such as Peace Corp volunteers or Christian missonaires who help in any way they can. The selection of who gets the animals is made by a small committee in the country, Chapin said.

In the case of the animals being shipped from the Willmar area to Mexico, the selection will be made by HPI, who already has facilities set up in that country. Chapin pointed out that the recipient is always an individual, never a business or corporation. "The need is for that individual and his family," he said.

Currently HPI is working in a 32-county area in southwestern Minnesota and is seeking donations of heifers from the dairy buyout program that would qualify for export. There are certain requirements that have to be met. Chapin said interested individuals or organizations can contact the Willmar office. Other committee members working on this project include Dave Little, Lynn Ketelsen, Mike Cullen, Dick Falk, Jim Buissman, Miles Quale and Mary Wittinger of Willmar, Marian Pladsen of Kandiyohi, and Ann Bosch of Atwater.

[From the Willmar (MN) West Central Tribune]

HEIFER PROJECT AIMS TO HELP FEED POOR

(By David Little)

WILLMAR.—A local committee hopes to raise about $40,000 by Oct. 15 to buy a semi-load of dairy cattle and send them to poor families in Mexico.

The committee is cooperating with Heifer Project International, a non-profit, interfaith agency headquartered near Perryville, Ark., about 45 miles northwest of Little Rock.

For 44 years, Heifer Project has provided food-producing livestock to needy families around the world and taught people how to care for the animals. Heifer Project prepares animals for shipment and operates a training center at the agency's 1,200-acre ranch at Perryville.

Committee members are appealing for donations from individuals, churches, businesses, civic groups, fraternal organizations and other sources in a 32-county area of southwestern Minnesota.

The money will be turned over to Heifer Project, which will find buyers to select 30 to 40 cows that would otherwise go to slaughter under the federal government's dairy herd buy-out program to reduce milk production.

Nationally, Heifer Project hopes to raise $3,286,500 to buy 4,000 of the 1 million cows that are being sent to market.

Committee members have undertaken this ambitious effort out of a spirit of caring and concern for others.

"I look at it from a Christian basis," says Marian Pladsen, who farms near Kandiyohi. "If there is a brother in need, you help him."

"Christ told us we should help one another," adds committee member Elmo Chapin of Willmar, "From that standpoint, I see the urgency."

Many churches have raised funds for Heifer Project. Sponsoring denominations have included the Roman Catholic Church, United Methodists and Presbyterians.

Civic groups, such as Kiwanis International, have also sponsored Heifer Project.

Chapin and Pladsen say Heifer Project will provide technicians to teach families how to care for the heifers and how to use good management practices.

"Animals are placed only where there is sufficient feed to support a cow," Pladsen points out.

As part of the donation, each family that receives a heifer will agree to pass on the animal's first female offspring to another family.

Although some people have argued the program will lead to a flood of Mexican dairy products in the United States, Pladsen says one animal per family can hardly put the Mexicans in a position to compete with American farmers.

"However, once they acquire a taste for milk and its by-products, they may want to buy our grain for feed or buy more of our milk products," she said. "Possibly they may even want to buy more cows or sires."

The project will also benefit livestock producers by reducing the number of cattle that will be heading for market during the buy-out periods and could create a market for U.S. feed grain, according to Chapin and Pladsen.

Heifer Project estimates the average cost of each animal at $822. The price includes purchase, shipment, health tests and vaccinations to be sure the animals meet export standards.

Needed are Holstein heifers from dams producing at least 16,000 pounds of milk a year and brown Swiss and Jersey heifers from dams giving at least 11,000 pounds of milk a year.

The animals should be either 8 to 14 months of age and not bred, or up to 20 months of age and 3 to 6 months pregnant at the time of shipment. Shipments are scheduled for October 1986 and August 1987.

Chapin and Pladsen hope the "people to people" project will create good will between Mexico and the U.S. "A gift of a dairy heifer could be the beginning of a warm friendship between our nations," says Pladsen.

Other committee members are Sally Stuart, Mike Cullen, Lynn Ketelsen, Dick Falk, Ann Bosch, Jim Bulsman, Dr. Richard Olson and Miles Quale.

HOME CARE QUALITY ASSURANCE ACT OF 1986 AND ADMINISTRATION'S VIEWS ON HOME CARE QUALITY

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. ROYBAL. Mr. Speaker, I rise today, as chairman of the House Select Committee on Aging, to commend the Department of Health and Human Services for recognizing the importance and yet the inadequacy of our current system of quality assurance for ensuring the quality of care provided to persons in their homes.

Last Thursday, I came before you to introduce H.R. 5680, the Home Care Quality Assurance Act of 1986 [HCQA]. H.R. 5680 is an important first step for the Congress in ensuring the quality of care received by all persons in their homes whether it is provided under Medicare, Medicaid, the Social Security block grant, or the Older Americans Act.

Just hours before introducing H.R. 5680, I received testimony from the Department of Health and Human Services on the issue of home care quality. This was sent in response to my request that the Department comment on the findings of the American Bar Association's [ABA] report, "The Black Box of Home Care Quality," which was released at a recent committee hearing. In their testimony, the Department recognizes the growing need to review and develop new strategies for assuring the quality of more care services. And, they go further to call for strategies that go beyond revising standards to also included staff training, supervision, industry accreditation, professional certification, consumer—including family—advisory bodies, and third-party oversight bodies.

The Home Care Quality Assurance Act, for which I ask your support again today, addresses the concerns raised by the administration as well as other deficiencies of our current home care quality assurance system cited in the ABA report. The act covers all home care services provided under Medicare, Medicaid, the Social Security block grant, and the Older Americans Act and includes the following provisions: Establishes a home care consumer bill of rights; sets home care quality standards; creates quality assurance monitoring mechanisms through PRO's and the States; expands the State Ombudsman Program to include home care services; calls for a strong consumer role in monitoring activities; requires that agencies have plan of care and care coordination policies; requires that sanctions and penalties be available to ensure compliance; provides for training and certification of all home care providers; and calls for research and demonstration projects and the collection of data on the use and quality of home care services.

While home care services generally enjoy a good reputation, we are deeply concerned by the potential for quality problems in light of the rapid growth in home care services in recent years, the increased financial pressures on home care providers under cost containment, the absence of adequate Federal and State quality assurance systems for home care, the lack of training for home care personnel, and, most importantly, the vulnerability of the elderly and disabled home care consumer.

It is out of this concern that I urge your support of H.R. 5680 now, and when I return to you in the 100th Congress to raise this issue again. The fact that H.R. 5680 enjoys bipartisan support and is consistent with the administration's statement of concern presents a unique opportunity for action. With this broad-based attention, we have the means to move quickly in demonstrating to the American public that Congressional concern for quality care does not stop at the hospital or nursing home door—but extends to what is potentially the most vulnerable care environment of all, the home.

I request, Mr. Speaker, that the attached summary of the administration's testimony and the Home Care Quality Assurance Act of 1986 be inserted for the RECORD.

DEPARTMENT OF HEALTH

AND HUMAN SERVICES,

Washington, DC, October 8, 1986.

Hon. EDWARD R. ROYBAL,

Chairman, Select Committee on Aging, Washington, DC.

DEAR CHAIRMAN ROYBAL: As Secretary Bowen indicated to you in his letter of September 26, enclosed is a statement for the record of the July 29 Select Committee on Aging hearing on home health care quality. The statement addresses the questions outlined in your August 1 correspondence.

The Department certainly appreciates the opportunity to respond to your questions on this important issue.

Sincerely,

PATRICIA KNIGHT,

Deputy Assistant Secretary for Legislation (Health).

THE SECRETARY OF HEALTH

AND HUMAN SERVICES,

Washington, DC, September 26, 1986.

Hon. EDWARD ROYBAL,

Chairman, Select Committee on Aging, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your letter with respect to your hearing on the issue of home health care quality.

I appreciated your report on the hearing, for as I have stated before, I agree that this is an important issue.

We are working on a statement for the record, as you requested, and that will be forwarded to you in the near future.

If your staff has any questions in the meantime, please have them call Ms. Patricia Knight, Deputy Assistant Secretary for Legislation (Health) at 245-7450.

Again, I appreciated your letter and apologize for the delay in responding.

Sincerely,

OTIS R. BOWEN, M.D.,
Secretary.

STATEMENT OF ROBERT B. HELMS, PH.D., ASSISTANT SECRETARY FOR PLANNING AND EVALUATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

HOME CARE QUALITY

Overview

The Department of Health and Human Services (HHS) is responsible for administering serveral laws which provide reimbursement for health and social services to persons residing in their own homes or nonmedical group living facilities. Expect for Medicare, these programs usually allocate funds to States for distribution according to broad Federal guidelines. The major programs providing vulnerable persons with home health care are Medicare and Medicaid. In-home social and supportive services, including nutrition, are provided through the Social Services Block Grant, the Older Americans Act, and under two provision of the Medicaid program: the home and community-based waiver and the personal care services option.

In addition, the Indian Health Service of the Public Health Service provides home care to American Indian and Alaska Native communities. The Health Resources and Services Administration of the Department of Health and Human Services administers a number of programs which finance training to impart and improve the personnel skills needed in the delivery of high quality home health care. When appropriate, the HHS Inspector General conducts inspections of various aspects of home care which is financed in whole or in part by this Department.

In general, the quality of home care is addressed through two different approaches: on the one hand, home health services are governed by specific regualtions covering provider participation, the amount, scope and duration of allowable services and patient eligibility. This is because Medicare is the dominant source of payment for home health services; it is administered by one government body, namely, the Federal government; and it is intended primarily to provide skilled home health services under the supervision of a physician as part of the continuum of care in an acute medical episode.

The context of quality assurance for in-home social and supportive services is quite different. States are usually expected to add State funds to their Federal grants and, in return, are provided considerable flexibility in determining which services are to be made available, how service delivery should be organized, to whom services should be provided and how quality should be maintained. Given the wide range of social services . . . from home-delivered meals to assistance with bathing to grief counseling . . . and the variation among States and communities in the availability, organization and delivery of services, State and local entities are the most appropriate locus for setting standards and monitoring provider performance.

The tremendous growth in the population receiving formal home care services as well as the increasing amount of Federal and State tax dollars spent on these programs have resulted in renewed efforts by HHS, many States, professional associations and others to review and update information on the quality of care and to develop new strategies for assuring quality in home care services to vulnerable persons.

However, the development of new strategies should not be limited to a review and revision of Federal and State standards. There are several other elements which influence the "quality" of formal home care services. These include: staff training, supervision, industry accreditation, professional certification, consumer (including family) advisory bodies and third-party oversight bodies. The American bar Association (ABA), in its study on "The 'Black Box' of Home Care Quality", outlines a number of legal controls which transcend the formal regulatory framework. This ABA undertaking was funded in part by the Administration on Aging (AoA) and also serves as a good example of partnership between the Federal government and the private sector in seeking to improve the quality of home care.

Any discussion of home care services must also recognize the important role of the non-agency "individual contractor". The National Long-Term Care Channeling Demonstration, a landmark ten-State experiment sponsored by HHS over a five-year period beginning in 1981, confirmed the high quality of personal care services that can be given by persons carefully recruited by family members through newspaper ads, neighborhood contacts and friends. Volunteers in one of the several ACTION programs, such as Senior Companions, and many community-sponsored programs also have an important role in providing services to vulnerable persons in their homes.

The remainder of this statement describes the major Federal home care programs administered by the Department of Health and Human Serivces and recent efforts by HHS to improve the quality of home care services.

THE HOME CARE QUALITY ASSURANCE ACT OF 1986 [HCQA] H.R. 5680

A bill to Establish a Quality Assurance System For Home Care Services

PURPOSE

H.R. 5680, "The Homecare Quality Assurance Act of 1986" (HCQA), is designed to promote the health, safety and well-being of individuals receiving health and social services in their homes under Medicare, Medicaid, the Social Services Block Grant and the Older Americans Act by establishing: a federal bill of rights for home care consumers; home care quality assurance standards; monitoring and sanctioning mechanisms for home care; quality assurance research and demonstration projects; and data gathering requirements.

BILL SUMMARY

Section 1: Scope and definition

A. The quality assurance provisions of this Act shall apply to all home care agencies, programs, and services that receive funding through Medicare, Medicaid, the Social Services Block Grant and the Older Americans Act.

B. For purposes of this Act, quality assurance includes: a bill of rights; conditions of participation; monitoring mechanisms; sanctioning mechanisms; training and certification; research and demonstration projects; and reporting mechanisms.

C. Home care services included under the provisions of this Act are: 1) those services delivered in a place of residence used as the beneficiary's home; and 2) services funded by Medicare, Medicaid, the Social Services Block Grant Program and the Older Americans Act.

D. For purposes of this Act, home care services mean "home health services" and "home help services."

1. "Home health services" are as defined as under Medicare and Medicaid.

2. "Home help services" are homemaker, personal care attendant, chore, companion sitter, household maintenance, and other services determined by the Secretary provided to beneficiaries in their place of residence and funded under the Medicaid Home and Community Based Waiver Program, the Social Services Block Grant and the Older Americans Act.

Section II: Implementation of quality assurance system

A. The implementation of quality assurance standards for home care shall be the joint responsibility of federal and state governments in accord with the administrative responsibilities outlined in Medicare, Medicaid, the Social Services Block Grant, and the Older Americans Act as well as in state statutes, and as amended by this Act.

B. The Secretary shall implement all provisions of this Act in consultation with a standing policy council comprised of persons having expertise in geriatrics, gerontology, rehabilitative practice and supportive services representing home care providers, third party payors, physicians, nurses, social workers, discharge planners, Area Agency on Aging personnel, Veterans Administration representatives, state ombudsmen, PROs, consumers and representatives of organizations representing beneficiaries.

C. In implementing the provisions of this Act, the Secretary shall make every effort to minimize any additional, unnecessary administrative and related financial burden on states and providers.

Section III: Consumer protection

A. Bill of Rights:

1. There shall be established a federal bill of rights for home care consumers that shall include the following provisions:

a. To be treated with courtesy, respect and with full recognition of one's dignity, individuality and right to control one's own household and life-style.

b. To be fully and promptly informed orally and in writing of:

1) Services to be provided and any limits to services available from the agency;

2) Whether services are covered by health insurance, medical assistance or other sources, and whether uncompensated care is available;

3) Charges for services and billing procedures and an itemized copy of each bill provided;

4) Changes in services or charges, in which case reasonable advanced notice is required;

5) The procedures to follow if rights are violated or services are not satisfactory, including the right to a hearing.

c. To receive treatment, care, and services consistent with the agency agreement and the plan of care.

d. To take an active part in creating and changing the written plan of care.

e. To take an active part in evaluating the treatment, care and services.

f. To be served by individuals who are properly trained and competent to perform their duties.

g. To be fully informed of the providers' assessment of his or her condition upon request, unless contraindicated by documenta-

tion by the professional practitioner in the client record.

h. To refuse all or part of any treatment, care or service, and to be informed of the likely consequences of such refusal.

i. To receive treatment, care and services in compliance with all state and local laws and regulations without discrimination in the provision of or quality of services based on race, religion, gender, age, creed, handicap, sexual perference national origin, or source of payment for services.

j. To be free from mental and physical abuse, neglect, and exploitation, and to be free from chemical and physical restraints except as authorized in writing by a physician for a specified period of time.

k. To receive respect and privacy in his or her treatment, care, and services in caring for personal needs, in communications, and in all daily activities.

l. To be assured respect for one's property rights.

m. To be assured confidential treatment of personal financial and medical records and to approve or refuse their release to any individuals outside the agency except as otherwise required by law or third-party payment contract.

n. To voice grievances and recommend changes in policies and services to staff and/or outside representatives of his or her choice and to be assisted in doing so when assistance is needed, from free restraint, interference, coercion, discrimination, or reprisal by the agency.

o. To be free to fully exercise his or her civil rights and to be assisted in doing so when assistance is needed.

p. To be promptly notified of acceptance or denial of services.

q. To receive reasonable written notice if treatment, care or services are to be reduced or terminated, and assistance to assure a smooth transition in services consistent with the welfare to the client.

Section IV: Conditions of participation

A. All Home Care Providers:

I. Rights and Grievance Procedures:

a. The Medicare conditions of participation for home health agencies shall apply to all agencies defined as home care under this Act, except as noted under Section IV CI below.

b. The following additional Conditions of Participation shall apply to all agencies, programs or services defined as *home care* under this Act, unless otherwise noted.

1) Beneficiary Bill of Rights:

a) Providers shall comply with the federal bill of rights as described in Section III of this Act. Provisions shall also be made to make the bill of rights available to all beneficiaries or their designated representatives.

b) Each agency, program and service identified under this Act shall have written client grievance procedures.

2. Assessment and Plan of Care:

a. All agencies, programs and services identified in this Act shall have in writing the services to be provided and the schedule for providing these services to the beneficiary.

b. All agencies, programs and services identified under this Act shall have the means to identify any additional service needs of beneficiaries beyond those they provide; make referrals; and coordinate with other agencies, programs and services providing services to the beneficiary.

3. Training and Evaluation:

a. All persons providing services as identified under the provisions of this Act shall be trained.

I) The Secretary shall determine the amount and content of the training.

2) Agencies, program and services providing home care services as identified under the provisions of this Act shall disclose to beneficiaries the amount of training and/or level of certification achieved by the individual worker.

b. Supervision, as determined by the Secretary, shall be provided for all workers providing services as identified under this Act.

c. The annual evaluation of the home care agency, program and service shall provide for and document consumer involvement.

B. Home Health Providers:

1. Home health services as identified under this Act, excluding agencies that are exclusively durable medical equipment agencies, programs or services, shall have client care processes (provided directly or under contract) which include the following.

a. A mechanism for identifying beneficiaries for which a comprehensive service assessment is indicated;

b. Client assessment appropriate to the service provided to identify and monitor needs;

c. A plan of care which states reasonable and measurable client objectives and services to be provided to meet the objectives;

d. A plan of care that employs outcome measures care insofar as they are appropriate and available for each client served;

e. A method for periodic review of client needs and the plan of care; and a statement of criteria and procedures for discharge and/or transfer to another agency, program or service.

2. If the agency, program or service uses durable medical equipment in the provision of service, written procedures for the use of equipment in the provision of home health services shall be available, including: provisions for client, family and staff instruction in the correct and safe use of equipment; and provisions for an emergency plan appropriate to the service provided.

C. Home Help Providers:

1. Agencies, programs or services identified as "home help" under this Act shall comply with 42 USCS 1395x(m) and (o)(4)(5)(6)(7) regarding state licensing, agency plans and budgets and shall be exempted from 42 USCS 1395x(m) and (o)(1)(2)(3) regarding home health practices, physician supervision and patient records.

2. Agencies, programs or services identified as "home help" under this Act shall have in place:

a. Written agency policies covering the description of services provided, the conditions for admission, continuing services of clients, and discharge.

b. Records maintained of services provided to each client.

D. Modification of Conditions:

1. The Secretary shall have the discretion to modify the Conditions of Participation to meet the circumstances of providers operating on an individual and independent basis except that compliance will be required with the training and the bill of rights provisions on this Act.

E. Deemed Status:

1. The Secretary shall develop policies and procedures to permit "deemed status" for home care providers who are licensed or certified by states or by accrediting bodies whose standards are at least equivalent to the conditions for participation under this Act.

Section V: Quality assurance systems

A. The Secretary shall ensure that states use the administrative authority granted them under Medicaid, the Social Services Block Grant Program and the Older Americans Act to ensure compliance with the conditions of participation established in this Act and to ensure the quality of services provided.

B. Monitoring Activities:

1. Home Health Agencies, Programs and Services:

a. DHHS and its contract Peer Review Organizations (PROs) shall provide quality assurance monitoring of all home health agencies, programs and services receiving reimbursement through Medicare and Medicaid. This monitoring activity is to be implemented no later than one year after the enactment of this Act.

b. The administration and evaluation of home health quality assurance monitoring shall be the responsibility of the Health Care Financing Administration.

c. DHHS shall award, administer and evaluate its PRO contract under the stipulation that at least one-half of the PRO's level of effort is for the purpose of quality assurance.

d. DHHS shall take into consideration information on PRO performance contained in reports issued by the Consumer Advisory Boards (Section VB3) in the renewal of PRO contracts.

e. DHHS shall be required to make available to PROs such data as is necessary to carry out its role.

2. Home Help Agencies, Programs and Services:

a. The Secretary shall require that each state, as a condition of participation, shall have in place a system by which home help agences, programs and services identified under this Act are monitored for compliance with the quality assurance standards set forth in this Act (hereafter referred to as home help "monitoring agents").

b. The federal administration and evaluation of the home help quality assurance monitoring system shall be the responsibility of the Secretary.

c. The state shall take into consideration information on the performance of monitoring agents contained in reports issued by the Consumer Advisory Boards (Section VB3) in the renewal of monitoring agent contracts.

d. Such data shall be made available to the monitoring agent(s) as is necessary to carry out this role.

3. Consumer Advisory Boards:

a. Each state or jurisdiction shall be required to have a Consumer Advisory Board (CAB) within one year of enactment of this Act. If a state fails to act, the Secretary shall establish the CAB.

b. The CAB shall oversee the quality assurance review activities of the PROs and the state designated agents for the review of home help quality by provding input into the awarding of monitoring contracts, evaluating the contracts of the PROs and the mechanisms established to monitor home help agencies, programs and services.

c. The CAB is to consist of 5-7 volunteer members representative of organizations representing beneficiaries appointed by the chief executive officer of each state or jurisdiction covered by the provisions of this Act. Limited staff support for the CAB shall be provided by the PRO and the home help monitoring agent as is necessary to carry out its functions.

d. The CAB is not to be involved in the day-to-day operations of the PRO or the home help monitoring agent. It shall not have access to the PROs or home help monitoring agent's review information on either individual beneficiaries or individual health care providers.

e. The CAB is required to prepare an annual report on October 1 of each year on the performance of the PRO and the home help monitoring agent to be submitted to the chief executive officer of the state or jurisdiction and the Secretary. The information is required to be used in decisions to award and renew PRO and home help quality monitoring agent contracts.

4. Monitoring of All Home Care Agencies:

a. The Secretary shall encourage the development of coordinated quality assurance monitoring mechanisms for home care agencies that provide both home health and home help services.

b. Quality assurance monitoring of the agencies, programs and services identified in this Act shall include face-to-face contact which a sample of beneficiaries or their representatives served by the agency, as determined by the Secretary. The sample shall include both active and closed cases.

c. The Secretary shall develop quality assurance methods for monitoring episodes of client illness and care within and across care settings.

d. The Secretary shall develop client outcome criteria for use in determining quality assurance in home care.

e. PROs and home help monitoring agents shall assist in the resolution of quality related problems.

f. The Secretary shall encourage states and local jurisdictions to develop ombudsman programs comparable to the provisions of Section XIII of this Act for non-elderly beneficiaries under federal, state and local assistance programs as well as those under private pay.

5. Hot-lines:

a. PROs and home help monitoring agents shall each have and make available statewide toll free hot-lines for receiving questions and complaints from consumers, providers and interested parties concerning home care quality issues.

b. The State Nursing Home Facilities and Home Care Ombudsman shall also operate statewide toll free hot-lines as provided under Section XIII A4.

c. The CAB shall have access to the information received from the hot-lines as long as it does not identify individual beneficiaries or individual home care providers.

6. Consumer Education:

a. The CAB, PROs and home help monitoring agents shall be responsible for educating home care beneficiaries on quality assurance and on the availability of assistance to respond to quality issue.

Section VI: Sanctions

A. The Secretary shall have or establish policies and procedures, as a condition of funding under Medicare, by which sanctions, including intermediate sanctions, can be imposed on agencies, programs and services out of compliance with provisions of this Act.

1. The sanctions available shall be both administrative and judicial and shall include civil and criminal penalties.

2. The policies and procedures shall provide for public disclosure of major quality violations and the sanctions imposed.

B. The Secretary, as a condition of funding under Medicaid, the Social Services Block Grant and the Older Americans Act, shall ensure that states and local jurisdictions have sanctions, including intermediate sanctions, that are available and adequate to address quality violations.

1. The sanctions shall be both administrative and judicial, and shall include civil and criminal penalties.

2. Provisions shall be made for public disclosure of major quality violations and the sanctions imposed.

Section VII: Development of licensing and certification policies

A. The Secretary shall encourage states to develop policies and procedures for the licensure and certification of home care agencies, programs and services.

1. The Secretary shall gather and publish state licensure and certification activities for home care agencies programs and services within two years of enactment of this Act. This report shall be updated on a biannual basis.

Section VIII: Homecare quality assurance council

A. The Secretary shall implement all provisions of this Act in consultation with a standing policy council comprised of persons having expertise in geriatrics, gerontology, rehabilitative practice and supportive services representing home care providers, third party payors, physicians, nurses, social workers, discharge planners, State and Area Agencies on Aging, Veterans Administration representatives, state ombudsmen, PROs consumers, and representatives of organizations representing beneficiaries.

Section IX: Training and certification grants

A. The Secretary shall provide for training programs for home care personnel and caregivers.

1. Special consideration shall be given to:

a. The training of paraprofessionals, including homemakers, home health aides, personal care attendants and family caregivers;

b. The training of minority and ethnic group home care personnel;

c. Training programs for high technology services provided in the home and for programs that assist paraprofessionals adapt their services to high technology therapies provided to home care beneficiaries;

d. The Training of home care personnel to work with minority and ethnic beneficiaries.

2. Training materials shall be made available to states and home care agencies, programs and services.

3. The Secretary shall encourage states to work with educational institutions, especially those with a demonstrated expertise in gerontology and geriatrics, to provide training for home care personnel.

Section X: Research and demonstrations

A. The Secretary shall establish guidelines and fund studies on quality assurance measures for home care. These studies shall include the following.

1. Methodologies which develop and evaluate outcome standards in the provision of home care services.

2. Mechanisms for ensuring and monitoring quality by episodes of care.

3. Mechanisms for ensuring and monitoring the quality of care provided by small agencies and independent contractors, including waivers of any programs covered under Medicare, Medicaid, the Social Services Block Grant, and the Older Americans Act.

4. Role and importance of case management for ensuring quality in provision of home care services.

5. Evaluation of the differing approaches to and responsibility for the development of a plan of care.

6. Effectiveness and efficiency of the use of "deemed status" to determine and monitor home care quality assurance standards.

7. Determination of home care agencies, programs and/or services that should meet federal and/or state conditions of participation and which should be exempt from some or all of the conditions.

8. Evaluation of quality assurance provisions in contract biding processes at the state and local levels.

B. The Secretary shall establish guidelines and fund demonstration projects focusing on home care. These projects shall include the following.

1. The Secretary shall explore the feasibility of developing certification requirements for homemakers, home health aides and personal care attendants providing services under Medicaid, the Social Services Block Grant Program and the Older Americans Act.

2. State models for monitoring home care quality including:

a. Expansion of PRO's composition and responsibility to include home help services;

b. Development and implementation of "social PRO" mechanism focusing on home help;

c. Use of alternative mechanisms to perform quality assurance activities, including Area Agencies on Aging and public health and/or social service departments.

Section XI: Reports

A. The Secretary shall provide a report by January 1 of each year to Congress which addresses the performance and nature of the home care quality assurance system during the previous fiscal year. This report shall include the following.

1. The number of individuals served by the home care agencies, programs and services outlined in this Act.

2. The federal funds expended for home care services under Medicare, Medicaid, the Social Services Block Grant Program and the Older Americans Act.

3. Noncompliance with the home health quality assurance provisions under Medicare and Medicaid and the sanctions imposed.

4. The home help monitoring agents used in each state or jurisdiction, their findings of non-compliance with the quality assurance standards of this Act, and the availability and use of sanctions.

5. The economic impact on home care agencies, programs and services of requiring them to comply with quality assurance standards.

6. Impact of quality assurance standards on availability of home care services in rural areas.

7. The concerns and recommendations of CAB.

8. The status in the home care training and certification grants under Section IX of this Act and the research and demonstration projects under Section X in progress or completed within the fiscal year.

B. Medicare, Medicaid, the Social Services Block Grant and the Older Americans Act are to be amended to require states with authority under these titles and acts to prepare and forward to the Secretary by October 1 of each year annual reports providing the following information and any other information the Secretary may require.

1. The number of individuals served by the home care agencies, programs and services outlined in this Act.

2. The amount of state and federal funds expended for home care services under Medicare, Medicaid, the Social Services Block Grant Program and the Older Americans Act.

3. The home help monitoring agents used in each state or jurisdiction, their findings of non-compliance with the quality assurance standards of this Act, and the availability and use of sanctions.

4. The economic impact on home care agencies, programs and services of requiring them to comply with quality assurance standards.

5. Impact of quality assurance standards on availability of home care services in rural areas.

6. The concerns and recommendations of the CAB.

C. The Secretary shall examine and report on January 1, of each year to the Congress on the availability, adequacy and use of sanctions to correct home care quality violations within the previous fiscal year.

D. The Secretary shall evaluate and report on the effectiveness of research and demonstration projects under Section X of this Act within three years of enactment of this Act.

Section XII: Minimization of burden on States and providers

A. In implementing the provisions of this Act, the Secretary shall make every effort to minimize any additional, unnecessary administrative and related financial burden on states and providers.

Section XIII: Long term care facilities and home care ombudsman program

A. The Older Americans Act shall be amended to include a home care ombudsman function.

1. The existing provisions of the Long Term Care Facilities Ombudsman Program shall be continued and amended to include home care recipients.

2. The Program shall be amended to require that policies and procedures be developed for coordinating ombudsman activities with those of PROs and home help monitoring agents.

3. The Program shall be amended to require that an annual report of the ombudsman activities be provided to the chief executive officer of each state and the Secretary.

4. The Program shall have a statewide toll free hot-line for receiving complaints by or on behalf of older individuals concerning nursing home and home care quality issues.

B. The Secretary shall direct that a Nursing Home Facilities and Home Care Ombudsman Program be present in each state receiving federal funds under Medicaid, the Social Services Block Grant and the Older Americans Act.

Section XIV: Funding

A. Funding for PRO review of home health agencies is drawn form the Federal Hospital Insurance Trust and Federal Supplementary Medical Insurance Trust Funds and from the federal Medicaid program in proportion to home health expenditures for each program. The funding amounts are as follows:

1. An additional 3% of hospital payment amounts (for PRO review) in the first fiscal year;

2. An additional 6% in the second fiscal year; and

3. An additional 10% in subsequent years.

B. The Secretary shall develop a formula for the distribution of funds to states for the monitoring of home help services based on the proportion of expenditures by each state on such services under Medicaid, the Social Services Block Grant and the Older Americans Act. The formula shall ensure that by the third year of enactment, no state shall have less than 1% of the total available funds. Funding is authorized as follows:

1. A total of five million in start-up costs is to appropriate to the states in the first year;

2. A total of ten million is to be distributed in the second year; and

3. A total of 20 million is to be distributed in subsequent years.

C. Funding for the Nursing Home Facilities and Home Care Ombudsman program shall be made through the Older Americans Act as follows:

1. The amount of Title IIIb funds allotted for the Ombudsman Program is increased from one percent to two percent or $20,000, whichever is greater.

2. The total authorization level for Title IIIb funds in FY1987 is increased from $361,500,000 to $371,500,000.

D. An additional $500,000 are provided to the Secretary for Training and Certification Grants in the first year and one million in subsequent years.

E. An additional three million are provided to the Secretary for Research and Demonstrations in the first year, two million in the second year, and three million in subsequent years.

H.R. 2482—FIFRA

HON. LEON E. PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. PANETTA. Mr. Speaker, I rise in support of H.R. 2482, which reforms the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA] and urge adoption of these important reforms. The goals of this bill are to strengthen the protection of public health and the environment and ensure that farmers and other pesticide users have a reliable supply of safe, effective, and affordable pesticides.

Reform of this country's archaic pesticide laws is long overdue. Prior to the 1970's, pesticides were not tested for their long-term effects on humans, such as cancer and birth defects, or for the environmental impact on soil and water, or concentration in the food chain. These older chemicals should have been reassessed following a 1972 rewrite of FIFRA, which required that EPA bring all older pesticides up to current standards. The number of pesticides involved is staggering—more than 90 percent of the 50,000 pesticides in use today have not been reassessed.

Despite requirements under current law, the General Accounting Office recently concluded that EPA has failed to reassess most, if not all, of the thousands of older chemicals. If Congress fails to act this time to toughen the FIFRA law, current conditions will prolong consumers' exposure to hazardous chemicals. The time has come to enact responsible pesticide reforms that will protect American consumers and all sectors of our economy.

The bill before us today has been carefully crafted to balance the varied concerns of environmentalists, chemical companies, the EPA, consumers, and labor organizations. It is based on agreements reached after extended negotiations among organizations that have been on opposite sides of the fence in the past. While the compromise bill is not perfect, it is what could be accomplished within the art of the possible to bring the many divergent interests on this important issue to a middle ground.

When the FIFRA bill was brought before the full House last month, I expressed my deep concern over the Roberts' Uniform Tolerance amendment. I offered a compromise amendment which I felt met the concerns of farmers and food processors about the need to prevent barriers to interstate commerce and those of consumers and individual States regarding the need to ensure public health and safety. This amendment was not adopted. However, the Senate went considerably further than the position I was advocating by rejecting entirely any Uniform Tolerance provisions in its FIFRA bill.

Since then, a compromise has been crafted which includes a number of the key provisions of the amendment I offered in the House. The compromise is included in the bill before us today. Although I have some reservations about this provision, I believe the compromise fairly balances the needs of interstate commerce, consumer protection, and a State's ability to protect its citizens.

Current Federal law requires EPA to set limits—or tolerances—for pesticide residues that food products can legally contain. Under this law, States have the right to set stricter tolerance levels than the Federal Government. While States have generally followed EPA's lead, they have occasionally set tougher standards. For example, in response to the alarming discovery of ethylene dibromide [EDB] in flour, cake mixes, and other food products, a handful of States set stricter tolerances for EDB in the early 1980's. EPA later took action to ban the use of this chemical.

The problem is that interstate movement of farm products can be seriously disrupted when States enact different standards. This creates a hardship for farmers, food processors, and retailers who cannot market their products in States that set tougher standards.

The compromise provision, while authorizing uniform standards for pesticides determined by EPA to be safe, gives States a role in developing any uniform standards. Under this provision, States would have an opportunity to comment on proposed uniform tolerances through existing rulemaking procedures. Before a tolerance could become uniform, the EPA would be required to determine that the residue level was adequate to protect human health, including the health of identifiable population groups with special food consumption patterns. This regular procedure guarantees States due process and the right to be heard.

Under this provision, uniform tolerances could be set only for pesticides that have been brought up to current standards. This would include those pesticides that are registered or reregistered after the enactment of this legislation on the basis of health and safety data that meet the EPA regulatory requirements of April 15, 1985.

A new provision has been added to protect businesses who in good faith have distributed

food products that met pesticide regulations at the time of application, but were later restricted by more stringent State standards. States would be allowed to set tougher standards for such foods in the pipeline only where the State determines that such a limit is necessary to prevent an unreasonable risk to human health. Unless the State finds that such residue level would pose an unreasonable risk to human health, States would be prohibited from setting tougher limits.

The compromise also provides States with an opportunity to petition the Federal Government to establish a separate standard for individual pesticides after a uniform standard has been set. In doing so, States could point to new scientific studies not considered by EPA but demonstrating a public health concern.

This compromise is an effort to balance the competing interests of States' rights, protection of public health, and the need for stability in our nationwide food marketing system. The time has come to enact responsible pesticide reforms. Without tough action, we are literally endangering the lives of American consumers. I urge your support for the tough provisions in this FIFRA bill.

GENEVA ARMS CONTROL TALKS UPDATE

HON. DANTE B. FASCELL

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. FASCELL. Mr. Speaker, in an attempt to provide the Congress with up to date information on the United States-Soviet Geneva Arms Control Talks, I am inserting in the CONGRESSIONAL RECORD at this time a chart comparing the arms control proposals tabled at Geneva as of October 1986. This represents a follow-on to my RECORD insert of September 10, 1986 found on page E3035 of the CONGRESSIONAL RECORD.

The current chart was prepared prior to the Reykjavik meetings between President Reagan and Soviet General Secretary Gorbachev and is based on the best available unclassified sources.

Changes from past proposals tabled at Geneva include the following:

STRATEGIC

The United States has agreed to include their previously proposed separete ceiling of 350 bombers in the overall category and strategic nuclear delivery vehicles along with ICBM's and SLBM's, bringing total ICBM's, SLBM's and bombers to 1,600. This matches the Soviet proposal of 1,600 ICBM's, SLBM's and bombers.

The United States proposed a ceiling of 7,500 on strategic missile warheads including air-launched cruise missiles [ALCM's] with no more than 5,500 on ballistic missiles and no more than 3,300 on ICBM's. Of the 3,300 warheads on ICBM's, no more than half could be on heavy ICBM's, ICBM's with more than 6 warheads and mobile missiles. (The previous U.S. proposal called for a ceiling of 4,500 on strategic missile warheads with no more than 3,000 on ICBM's.)

Included in the overall ceiling of 7,500 would be a ceiling of 2,000 on ALCM's. (The previous U.S. proposal called for a ceiling of 1,500 on ALCM's.) The 2,000 ceiling on ALCM's could be increased if the number of ballistic warheads is equivalently decreased.

The Soviet Union maintains a total of 8,000 on nulcear charges on strategic nuclear delivery vehicles, including warheads, gravity bombs, short-range attack missiles and long-range cruise missiles, with no more than 4,800 on any type of system (ICBM's, SLBM's, or bombers).

In the area of mobile missiles, it has been reported that the United States has proposed to conditionally ban mobile missiles. In other words, if satisfactory verification procedures can be reached, mobile ICBM's would be permitted.

INF

The United States proposed an interim INF agreement which called for a global limit of 200 on all long range INF warheads for each side, with 100 in Europe. The United States maintains its support for the global elimination of all INF warheads as a goal.

The Soviet Union also agreed to reduce warheads in Europe to 100 on each side, with no Pershing II's. The Soviets also support zero warheads as a goal.

The Soviets seem to have changed their position from previous rounds by appearing to agree that British and French INF systems would not be constrained in an interim agreement. The Soviets have not yet proposed to limit short range INF missiles in an interim agreement.

In Asia, the United States proposed a ceiling of 100 long range INF warheads, with U.S. deployment of 100 warheads in the United States. The Soviets would probably accept some restriction on its missiles in Asia, but this remains unclear.

On the issue of the duration of an INF agreement, the United States favors an agreement of a specified period with a commitment to negotiate the elimination of weapons while the Soviet Union favors an agreement for a designated period with no specific follow-on commitment.

SPACE AND DEFENSE

The United States proposed that both sides take three steps: First, agree to confine themselves through 1991 "to research, development, and testing, which is permitted by the 1972 ABM Treaty," to determine whether strategic defense is technical feasible; second, agree to a treaty "now" that, if a side decides to "deploy" a strategic defense, that side would be obliged to offer a plan for both sharing the benefits of such a system and eliminating both sides' offensive ballistic missiles; and third, after 2 years of negotiations, if the two sides cannot agree, each side would be free to deploy a strategic defense, with 6 months notice.

The Soviets maintain their proposal for both sides not to limit withdrawal from the ABM Treaty for up to 16 years and to limit their work on SDI-type strategic defenses to laboratory research. The Soviets also agree to stop work on the Krasnoyarsk radar if the United States stops work on two radars in England and Greenland.

The above description of the United States and Soviet proposals tabled at the Geneva Arms Control Talks, I'd like to repeat, reflects United States and Soviet positions prior to the Reykjavik meetings.

The Foreign Affairs Committee and the Subcommittee on Arms Control, International Security and Science will continue to provide Members with comparisons and analyses of United States and Soviet positions on arms control tabled in Geneva and in the aftermath of the Reykjavik meetings.

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STATUS OF GENEVA NST NEGOTIATIONS, OCTOBER 1986 *

(By Charles R. Gellner)

I. STRATEGIC

Category	U.S. Proposal[1]	Soviet Proposal[2]
Linkage	Agreement on strategic arms should not be dependent on a resolution of space and strategic defense issue.	Strategic arms reductions are linked to agreement on space and defensive weapons.
Strategic delivery vehicles, including ballistic missile launchers and bombers.	Formerly 1250–1450 ICBM and SLBM launchers and 350 bombers. Now total of 1,600 strategic missiles and bombers with limited freedom to mix.	1,600 ICBM's, SLBM's, and heavy bombers. The June 1986 proposal drops the earlier Soviet insistence that U.S. INF missiles and aircraft be included in the cealing on strategic arms.
Warheads:		
Total strategic missile warheads, including ALCM's.	7,500 with no more than 5,500 on ballistic missiles and no more than 3,300 on ICBM's. Of latter no more than half on heavy ICBM's, ICBM's with more than 6 warheads and mobile missiles.	8,000 "nuclear charges"—that is, warheads, gravity bombs, SRAM's, long-range cruise missiles (those with a range greater than 600 km)—on strategic nuclear delivery vehicles. No more than 4,800 nuclear charges on any one type of system (ICBM's, SLBM's, or bombers).
Weapons other than ALCM's on strategic bombers.	Not limited	
Long-range ALCM's.	2,000 can be increased if number of ballistic warheads is equivalently decreased.	
Long-range SLCM's.	Not limited	Ban on SLCM's on surface ships.

* Based on published sources.

[1] The former U.S. proposal is discussed in Nitze, Paul H., "Negotiations on Nuclear and Space Arms," Remarks Before a Symposium at the Department of State's Foreign Service Institute on March 13, 1986, Department of State Bulletin, v. 86, May 1986, p. 50–53. "U.S. Drafts New Ideas for Geneva Arms Talks," New York Times, Sept. 16, 1986, p. 8. "Reagan is Looking to Arms Progress," Sept. 18, 1986, p. A15. "Gorbachev Yields on '72 ABM Treaty, U.S. Officials Say," New York Times, Sept. 25, 1986, p. 1.

[2] The latest Soviet offer was reportedly put on the table on June 11, 1986. "U.S. Arms Officials Finding Problems in Offer by Soviet," New York Times, June 17, 1986, p. A1, A6. "Reponse to New Soviet Arms Offer Unlikely During Geneva Session," Washington Post, June 18, 1986, p. A30. In a speech before the CPSU Central Committee on June 16, General Secretary Gorbachev acknowledged the new proposal and provided sketchy information that confirmed some of the reports that had appeared in the Western press. The proposal was subsequently discussed in the Soviet press. See, for example, New Times, July 21, 1986, in FBIS Soviet Union Daily Report, July 22, 1986, p. AA3–AA6. On verification see "Moscow Said to Signal Willingness to Work on Arms Pact Verification," New York Times, June 22, 1986, sec. 1, p. 14.

Category	U.S. proposal	Soviet proposal
Throwweight	6 million lbs.	No direct limitation.
New systems	Mobile ICMS's conditionally banned.	Ban on new types of strategic delivery systems, with "new type" reportedly intended to apply to systems not flight tested as of an unspecified date.

Category	U.S. proposal	Soviet proposal
Verification	Mobile ICBM's would not be banned if satisfactory verification procedures can be agreed..	Procedures suggested for verification of mobile missiles, including designating deployment areas, monitoring missiles as they leave the factory, marking railmobile ICBM's to distinguish them from other rail cars.

II. INF [3]

Category	U.S. proposal	Soviet proposal
Europe: United States and Soviet long-range INF (LRINF—ranges over 600 miles).	Interim agreement for global limit of 200 on all LRINF warheads for both sides, with 100 in Europe. Supports global elimination as a goal.	On an interim basis each side reduce warheads in Europe to 100. No Pershing II's. Supports zero warheads as a goal.
British and French INF systems.	No constraints	Evidently would not constrain in an interim agreement.
Shorter-range INF missiles.	Ceiling on missiles with ranges between 300 and 600 miles.	No limit proposed in interim agreement.
Asia: LRILNF missile launchers.	Ceiling of 100 LRINF warheads, with U.S. deployment of 100 warheads in the United States.	Would probably accept some restriction on its missiles in Asia.
Duration	For a specified period with a commitment to negotiate elimination of weapons.	For a designated period.
Verification	Count each side's missiles to set totals from which reductions would be made; designate deployment areas; establish procedures for monitoring production and destruction, possibly involving some on-site inspection.	Expressed willingness to agree to appropriate verification measures, including on-site inspection.

[3] "U.S. Makes Offer on Mid-Range Arms," New York Times, Sept. 22, 1986, p. 1. "Quick Missile Accord Seen Unlikely," Washington Post, Sept. 23, 1986, p. 1. "Soviets See Arms Control Leading Iceland Talks," Washington Post, Oct. 2, 1986, p. 1. "Bonn Plans New Demand on Missiles," Washington Post, Oct. 2, 1986, p. A22. "Major Issues Still Divide U.S., Soviet Arms Negotiators," Baltimore Sun, Oct. 2, 1986, p. 1. "Soviets See Hope for Missile Pact," Washington Post, Oct. 5, 1986, p. 1.

III. SPACE AND DEFENSE

Category	U.S. position [4]	Soviet position [5]
Strategic defense	Both sides would take three steps: first, an agreement to confine themselves through 1991 "to research, development, and testing, which is permitted by the 1972 ABM Treaty," to determine whether strategic defense is technically feasible; second, a treaty "now" that, if a side decides to "deploy" a strategic defense system, it would have to offer a plan "to share the benefits" of strategic defense and to eliminate offensive ballistic missiles; and third, after 2 years of negotiations, if the two sides cannot agree, each side would be free to deploy a strategic defense, with 6 months notice.	Mutual pledge not to withdraw from the ABM Treaty for up to 15 years; limit work on SDI-type strategic defenses to laboratory research. Stop work on Krasnoyarsk radar if United States stops work on two radars in England and Greenland.
Antisatellite weapons (ASAT's).	An ASAT agreement is not in U.S. national security interests at this time.	United States should join the ASAT testing moratorium that the Soviet Union is currently observing.

III. SPACE AND DEFENSE—Continued

Category	U.S. position [4]	Soviet position [5]
Verification	"Open laboratories" arrangement for exchanged briefings on each other's strategic defense programs, and for reciprocal visits to laboratories where the research is being conducted.	Expressed willingness to agree to necessary verification measures.

[4] U.S. position on space and defensive systems was outlined in the President's address to the United Nations, Sept. 22, 1986. New York Times, Sept. 23, 1986.

[5] Speech by General Secretary Gorbachev before the CPSU Central Committee, June 16, 1986. Gorbachev discussed verification in his statement of January 15, 1986, published in Pravda, January 16, 1986, FBIS Soviet Union Daily Report January 16, 1986, p. AA1–AA9. "Soviets See Hope for Missile Pact," Washington Post, Oct. 5, 1986, p. A1, A39.

THE HOUSING SITUATION

HON. HENRY B. GONZALEZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. GONZALEZ. Mr. Speaker, as you know, I am continually speaking out on our Nation's housing needs and I was very pleased to read about the speech David Maxwell, chairman and chief executive officer of the Federal National Mortgage Association, made to the members of the Greater Washington Research Center on Wednesday.

It is heartening to me to have such a distinguished leader of the business community as Mr. Maxwell speak out so forcefully. His speech examines the serious housing situation that confronts our Nation today and I am pleased to include his excellent comments in the RECORD.

AMERICAN HOUSING: A VICTORY TO BE CELEBRATED . . . OR STILL TO BE WON?

When the Research Center began twenty-five years ago, the American mood was one of exuberant confidence that social problems would yield to the efforts of community-minded organizations like yours. That was a time of high idealism. It's no surprise, then, that the Center was founded during that period.

What is surprising is that you survived through the 70's, when the national mood darkened, and emerged even stronger into the 80's. Yours is no fair-weather idealism.

I'm convinced that the major factor distinguishing you from other public policy organizations that have either succumbed to exhaustion, or trimmed their views to fit current fashions, has been your insistence on research. Research is at the center of your name and your mission.

Your strength has been your recognition that ideals without data are empty, and data without ideals are blind. Your success has come because you have combined both. As a citizen of Washington, I am grateful for your efforts. As a businessman, I depend on them.

I've recently had a first-hand reminder of how rigorous you are in searching out information. I received from Atlee Shidler a list of suggested questions I might answer in my remarks today. The list runs for a couple of pages and covers at least fifteen highly challenging issues. Most of the questions have three parts—some have five or six.

Indeed, if I were to try to deal adequately with Atlee's questions, we'd be here through the Spring semester.

But one of these questions in particular caught my eye. It's a threshold question. If we don't have a good answer for this question, then the other questions become moot. That question is, "Why should the audience care about housing policy?"

Why, indeed?

Of course, as individual Americans, we certainly care about our own homes. Poll after poll shows we put home ownership at the top of the list of what constitutes "the good life". This American trait struck a recent distinguished visitor here with special force. After only a few weeks in America, Soviet dissident Yelena Bonner wrote a moving article for The Washington Post, with this title: "Americans don't want war. Americans want a house."

But our own personal concerns aside, why should we care about housing policy? After all, American housing has by and large been a notable success:

The proportion of Americans who own their own homes was only about two in five at the time of the Great Depression. Today, two out of three Americans own their own homes.

In 1960, one dwelling in eight lacked plumbing facilities; by 1980, that ratio was down to one in forty.

In 1950, the average dwelling had 1.5 rooms per person; today, the average dwelling has two rooms per person, and the rooms are larger.

There is ample housing for the growing segment of the population who are considered to be affluent—although they, too, have their housing problems. Just the other day, the Post reported the lawsuit in the suburbs by a couple who felt the design for their Hampton Court look-alike had been used by their builder for a someone else's house.

Indeed, we Americans believe, perhaps a trifle chauvinistically, that we are the best housed nation in the world.

And so the question: Why should we care about housing policy? Shouldn't we instead simply declare victory and turn our attention to other matters?

Whether stated explicitly or not, that seems a fair description of our present policy. I'm personally struck by the contrast between today's attitude, and the view when I served in the early 70's as General Counsel for HUD. In 1972, there were a record 2.2 million new housing starts in America, many with federal support for low-income families. At that time, housing was one of the top three or four priorities of the Congress.

Today, by contrast, housing seems to have fallen off the national agenda altogether. This year, despite unprecedented declines in mortgage rates, we'll start about 1.8 million new units—a good year but hardly a great one. Since 1981, the HUD budget has been slashed by 65 percent. In short, it is clear that there has been no "safety net" for low-income housing programs. And there's been no national housing bill for six years.

This lack of attention has been spurred by our experience in the 1970's. We all recall those heady days when inflation made a joyride of the housing bandwagon. Low downpayments made it possible for additional millions to climb aboard that bandwagon. Sky-rocketing housing prices bailed everyone out of their mistakes—buyers, lenders, insurers, investors.

For people of low income, the Section 8 program provided incentives for builders to build housing and subsidies for their rents. It was an expensive program, but cost less than the suspended interest-rate subsidy programs of the late '60's and early '70's.

It is not surprising that the early '80's brought a reaction to the housing explosion of the '70's. The new Administration and Congress embraced a new set of priorities: massive defense spending, sharp cut-backs in discretionary domestic spending (but not entitlements such as Social Security), and lower taxes. And, as I have said, housing felt the axe more than any other domestic program.

At the same time, some theoreticians were advancing a new agenda for housing of moderate—and middle-income Americans. They complained that too much credit goes to housing. And they said it was especially unnecessary because the housing job was done. They said it was time to celebrate the victory. They said it was time to dismantle or drastically curb the supports for moderate- and middle-income housing erected over 50 years under presidents and congresses of both parties. They said it was time to let home buyers compete on their own for mortgage money will all other users of capital, large and small.

To test the validity of this line of arguments, let's take a brief look at these federally created sources of support for moderate- and middle-income housing; then ask ourselves whether they are needed today.

In the front rank of financial institutions supporting housing were federally chartered savings and loans and savings banks. Through deposit insurance, access to below-market loans from the Federal Home Loan Banks, and tax incentives, savings institutions were encouraged to concentrate their business on housing. Indeed, until 1980, when legislation began the process of removing interest-rate ceilings on deposits, savings institutions had only limited authority to make home loans over $75,000. In effect, savers subsidized home buyers. Today that is no longer the case.

In 1934, the federal government created the FHA to insure long-term low-downpayment loans for Americans of modest means. After World War II, the VA insurance program teamed with FHA to produce the greatest burst of housing in our history, as GI Joe realized his dream of home ownership in Levittowns across the land.

The Roosevelt Administration realized early that secondary market facilities were needed to replenish the capital of primary lenders by buying the FHA mortgages they made. And so they created Fannie Mae in 1938. Since then, Fannie Mae has evolved into a purely private corporation whose 73 million shares of stock are owned by more than 30,000 shareholders and listed on the New York Stock Exchange. The corporation borrows in the private capital markets. Yet the mission of my company remains basically the same: to buy residential loans from lenders so they have the funds to make more loans. Since 1970, Fannie Mae has been joined in the secondary market by its siblings, Ginnie Mae, a part of HUD which finances FHA and VA loans, and Freddie Mac, which operates much like Fannie Mae.

No one can deny that this network of agencies and companies constitutes a major federal commitment to housing for the middle class in this country. And, of course, I haven't mentioned the most important support of all: the deduction for mortgage interest and property taxes, just now preserved in the new tax bill.

In the current political climate, where "privatization" is in vogue, how important is it for us to fight to preserve this system of supports?

I submit that it is vital. Why?

Not a week passes these days without an article on the decline of the middle class. In all candor, some of the rhetoric on this subject strikes me as contrary to the anecdotal evidence of life around us. So many people, young and old, seem to be able to afford what they really want. Indeed, consumer spending has fueled what little recovery the economy has enjoyed in the last few years. Undoubtedly, a good deal of this consumer spending is made possible by easy credit, which may come back to haunt us. But that's a subject for a different speech.

What we can confirm without contradiction is the decline in housing opportunity, particularly for first-time home buyers. In constant dollars, family incomes remained flat from 1973 to 1984. But during that same period housing prices rose so swiftly that the median-priced house came to absorb more than twice as much proportion of the median family income. You don't have to be Einstein to put those two facts together and come up with an affordability gap.

Why do I single out first-time home buyers? For three reasons. First, because those people who already own their homes have undoubtedly built up equity as housing prices have escalated over the past decade. In fact, that equity build-up may have financed some of the consumer spending spree of recent years. But a big share of it remains, and gives those home owners the ability to make the downpayments needed to move to another house. Obviously, the first-time buyer does not enjoy this source of funds.

Moreover, downpayments are increasing, a second reason for the affordability gap. In response to massive foreclosures, particularly in the energy and farm belts, lenders have tightened underwriting standards. The 5 percent downpayment loan without FHA and VA insurance has practically disappeared.

Third, jobs are moving to the suburbs where housing is more expensive. We see new urban centers surrounding core cities from coast to coast. Our own metropolitan area exemplifies this trend. First-time home buyers can find little affordable housing near these jobs; they need to live so far away that transportation becomes an expensive and time-consuming proposition.

This movement of jobs creates even bigger obstacles for the working poor. New suburban offices need cleaning, parking lots need attendants, junk-food emporiums need servers. How common it is these days, as an article in *The Atlantic* recently observed, to see the affluent suburban executives motor off to their nearby homes, while their staffs wait for the first of several buses they will have to board on their long journeys home.

Moreover, the pernicious persistence of racial discrimination continues to reinforce the barriers to accessible housing.

Unfortunately, rental housing currently provides no answer to these problems. Vacancy rates in prospering areas of the nation have settled at new lows. Here in Washington, the vacancy rate is just 1.6 percent. And, of course, that makes rents rise.

Nationwide, median rent-to-income ratios rose from 20 percent in 1974 to 29 percent in 1983, according to the Harvard-MIT Joint Center for Housing. For households in the lowest income quartile, the median rent burden jumped from 35 to 46 percent in the same period. And more than one-fourth of low-income renters paid more than 75 percent of their income in rent. Can you imagine living on 25 percent of your income?

I regret having to say that the shortage of affordable rental property is bound to get worse under the new tax law. The revised code cuts back drastically on several provisions of the Internal Revenue Code that had the effect of spurring the construction of rental housing. At the same time, the favorable treatment afforded home ownership has been fully preserved. This disparity will lead to even more conversions of apartments to condominiums.

So the dilemma of the first-time home buyer and the working poor is very real. Housing prices are starting to rise again, fueled by costs of land, infrastructure, and financing. Apartments are in very short supply. Jobs are moving to places where housing costs even more. What is to be done?

The problem does not lend itself to facile answers. We need to put the best brains in the industry to work on it. In this connection, I want to say that developers of housing are among the most creative people I know. They know how to make things work. They need to be challenged by our communities to propose realistic solutions to the affordability gap. Lenders and secondary market companies and agencies need to become involved.

We may need state and local—and, yes, federal—programs to furnish seed money for moderate-income housing. Suburban communities should require construction of such housing and set-asides for lower-income workers as part of every approved commercial development. Land owned by states and localities can be allocated to private development. The cost of financing can be reduced by taxable and tax-exempt bond issues. The merits of rent control must be re-evaluated. For my part, I think rent control is often self-defeating because it is a disincentive to construction of rental housing.

Above all, we must reject the counsels of those who would destroy the federal system of support for moderate-income housing. On the contrary, we have seldom needed it more. In particular, the FHA should be strengthened and expanded, particularly to insure low-downpayment loans for first-time home buyers and the working poor.

I haven't painted a terribly bright picture of the housing scene here today. And, sadly, before I conclude, I must deal with a much darker side of our condition.

In the midst of plenty, we seem to tolerate the most dismal poverty. Indeed, it pains me to say that many of us simply avert our eyes from what is occurring around us. We seem increasingly prone to the attitude reflected in that old British saying: "Pull up the ladder, Jack, I'm ok."

The most visible manifestation of poverty in the midst of plenty are our homeless fellow citizens. I'm not going to inject myself into the argument about their numbers. We all know there are more homeless than there used to be because we see them. And I, for one, think it's highly appropriate for these reminders of persistent poverty to rest their cold and weary bones where we least like to see them—Lafayette Park or Fifth Avenue, for example. Perhaps this proximity will help us understand their bitter lot, so poignantly expressed by Wordsworth in his lines:

And homeless near a thousand homes I stood

And near a thousand tables pined and wanted food.

From where do all these homelss persons come? Clearly, some come through early release programs from mental institutions, which we also seem to believe we cannot afford to fund adequately. Others have been destituted by drink or drugs. But many, many of them come because there is no housing for them.

In dozens of American cities, including Washington, waiting lists for public housing grow longer and longer. In the Greater Washington Metropolitan Area, the number is 34,000 families—that's more than 100,000 people! At any reasonable rate of construction, it would take 13 years to build housing for those families. And there is no housing being built.

The people on those lists here, and elsewhere across America, are not statistics. They differ one from another. They include poor pregnant women who are participating in your own "Better Babies" project. They include families like Dennis and Suzanne Powell and their five daughters who, as reported by The New York Times, lived in their car for seven months because they could not find housing to replace the damaged apartment for which they had been paying $270 a month in rent. They even include, as reported in The Los Angeles Times, dozens of working families in that synonym for American enterprise capitalism in the '80's, the Silicon Valley.

No, these people on the housing lists are not all the same. What they share with each other—and with us—is their common humanity, and the fact that they live in the richest nation on earth.

What can be done for the poor who lack adequate shelter? Certainly, the many private initiatives, abetted by local governments, including the District of Columbia, are important and helpful. One very recent promising example is the concept of linking "incentive zoning" for commercial developers to contributions to low-income housing.

But these efforts alone will not solve the problem.

Housing for the poor cannot be built and maintained without money—lots of it. And the only real source of the kind of money needed is the federal government. We must step up federal support for low-income housing. There is no other answer, and the sooner we recognize that, the sooner we can get to work.

Now, I recognize the federal deficit for the threat its growth poses to our long-term economic health. Any increase in federal appropriations for low-income housing must be "pay-as-we-go." Where we get the revenue—whether from fewer or less expensive weapons systems, or higher taxes on the affluent, or perhaps caps on the mortgage interest and property tax deductions—whatever the source of funds, I am confident we can find them if we become committed to doing so.

And let's not be put off by the failures of the past. Sure, the Pruitt-Igoe public housing project in St. Louis was a famous fiasco that had to be torn down. Sure, some local housing authorities haven't performed as well as we'd like them to. Sure, we don't want to build a new federal housing bureaucracy.

But we can do the job right, using targeted housing block grants to states and localities and, again, by tapping the extraordinary creativity of our housing industry.

In the Housing Act of 1949, our nation dedicated itself to the goal of "a decent home in a suitable living environment" for all Americans. That goal has been repeated in subsequent housing acts. As a statement of policy, we have never retreated from it. In actual fact, we are well on our way to abandoning it.

We must ask ourselves: Are we willing to abandon our housing goals? Do we care whether our children and future generations have the same housing opportunities that we have had? Does it make any difference to us that our poorest citizens find fewer and fewer decent places to live?

If we do care, then housing policy matters to all of us. And you can help to move it back onto our national agenda. You can add your voice to those who reject the conclusion that the housing job is done. You can except the challenge that our current housing problems pose for us. You can keep alive the American dream of home ownership.

As you join me in this effort, we should all remember that the American home is not only—it is not primarily—just a shelter, a source of capital, or a piece of property. The American home is a locus of values; it represents not just where we live, but who we are.

Let me give Yelena Bonner the last word. In that same article I quoted earlier, she writes: "The American feeling about his house expresses the main traits of Americans—the desire for privacy and independence . . ." She adds that "there is no aggression or parochialism in that attitude. It is open and kind and caring both toward the house and toward everything that it stands for, the soil in the flower boxes and the lovingly-tended lawn, even if it's only three square yards. Americans do not want war. They want a house."

Thank you.

STRATOSPHERIC OZONE AND CLIMATE PROTECTION ACT OF 1986

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. RICHARDSON. Mr. Speaker, human health and the natural environment worldwide are gravely endangered by emissions into the atmosphere of chlorofluorocarbons and other long-lived industrial compounds that contain chlorine and bromine. These gases deplete the stratospheric ozone layer which shields us from dangerous ultraviolet radiation. These compounds also contribute to a serious increase in global temperatures—the "greenhouse effect"—by absorbing infrared radiation reflected back from the Earth's surface. Unless checked, ozone depletion and global climatic warming will cause severe damage to human health and the environment around the world.

To prevent this global disaster, we are introducing the Stratospheric Ozone and Climate Protection Act of 1986. This bill provides for a phase-out of dangerous CFC's and related compounds over 5 years and for their replacement by safe alternative substances, products, and processes.

The health and environmental consequences of not acting surpass virtually all other dangers from toxic substances known to date. Increased ultraviolet radiation from ozone depletion will cause tens of thousands or more extra cases of skin cancer each year in the United States alone. There will be increases in eye damage, including cataracts. Immunological defenses to disease may also be damaged.

Extra ultraviolet radiation will also cause increased ozone smog at ground level. With some 40 major urban areas, containing 80 million people, projected to violate the present ozone smog standard after the 1987 deadline for attainment, we can ill afford an increase in smog from high-level ozone depletion.

Climate change from the chemicals' contribution to the greenhouse effect will also severely harm human health. Summertime heat waves, which cause illness and death especially for older people, will increase in number and intensity. Hurricanes and other severe storms may occur more frequently. Sea level will rise, and flooding may be more common. More storms and floods worldwide will cause thousand of deaths and injuries and huge economic losses from property damage.

Increased ultraviolet radiation and a hotter, altered climate will have grave consequence for crops, forests, and marine ecosystems. Both extra radiation and extra smog reduce crop yields and kill trees. Rainfall patterns may shift by hundreds of miles, destroying the productivity of whole regions. Events like the horrendous drought suffered by farmers in the Southeast this summer may become far more common. Millions of dollars in other property damage will occur each year in the United States alone.

Even the CFC-producing and -using industry seems to be recognizing the danger. In September, the industry's trade association, the Alliance for Responsible CFC Policy, which hitherto has denied any need for action, announced that it now believes prudence requires limits on CFC emissions. Dupont, the leading producer, subsequently announced an even greater willingness to accept controls. Dupont also stated that it can bring substitute compounds to market within 5 years if the right incentives are created. Dupont's recent statement is attached for the record.

We have a chance to avert these health and environmental catastrophes. International negotiations are set to begin in December in Geneva on an agreement to control these compounds. The Environmental Protection Agency is under a court-ordered deadline to develop domestic control measures by May 1987. EPA deserves much credit for gathering together a convincing case on the dangers from these compounds. EPA and the Department of State also deserve credit for their role in the international workshops which have been held this year in preparation for the Geneva negotiations. We are deeply concerned, however, that neither EPA nor the Department of State has yet developed a policy position to take into the negotiations.

We believe a rapid, global phase-out of these compounds is essential. We believe it is preferable to gain this objective through an international agreement in Geneva. However, even in the absense of such an agreement it will be possible for the United States to effect a major emission reduction both here and abroad by domestic unilateral action. That is why we are introducing this bill. If inadequate

progress occurs in the international and domestic regulatory processes, we intend to reintroduce this legislation and press for its enactment promptly in the 100th Congress next year.

The Stratospheric Ozone and Climate Protection Act provides as follows:

Section 1 of the bill declares Congress' purpose to protect against danger to health and environment world-wide from ozone depletion and climate change caused by or contributed to by enumerated CFC's and other compounds. Other purposes include promotion of safe substitutes and further research into the health and environmental consequences of these changes.

Section 2 enunciates a congressional finding that enumerated CFC's, chlorinated solvents, and bromine-containing substances must be phased out of production and use worldwide over no longer than 5 years.

Section 3 provides for listing of ozone depleting and climate changing substances by EPA. An initial list is created by the legislation, containing 11 specific compounds. The list must be updated at least annually by EPA.

Section 4 states that U.S. production of listed compounds must be cut by 50 percent within 2½ years of listing, and phased out entirely within 5 years. Reductions shall be on a pro rata basis unless EPA allocates production and use in another way, or hastens the reductions, through rulemaking. Provision is made for promoting recovery, recycling, and destruction technologies by providing for limited production credits against recovered, recycled, or destroyed products. In particular, EPA is empowered to speed up the phaseout upon demonstrations by any party of the availability of substitutes.

Section 5 is critical to protecting health and environment as well as to protecting domestic industry from unfair competition due to imports from nations which refuse to control their CFC's and related compounds. The bill provides that no one may import listed compounds or products made with them unless EPA has certified, within 1 year of a compound's listing, that the nation from which the imports originate is carrying out a phaseout program equivalent to our own.

Section 6 requires that products containing or derived from listed compounds bear labels that warn consumers of the health and environmental dangers posed by these chemicals.

Section 7 provides for necessary recordkeeping and reporting. Also established is a research fee, on a per-pound-of-production basis, to support further scientific research and R&D on substitutes for current products and processes.

Sections 8–10 establish prohibited acts, governmental and private enforcement rights, and means of obtaining judicial review of EPA regulations.

We fervently hope success in the Geneva negotiations will make it unnecessary to enact this legislation next year. But a phaseout of these compounds is necessary, and the United States must do all it can, even in the absence of an international agreement, to make it occur. We will do all that is necessary to secure the protection of human health and the environment worldwide from the dangers posed by these compounds.

MICHELLE CONNOR WINS WORTH HEDRICK MEMORIAL ESSAY CONTEST

HON. DON BONKER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. BONKER. Mr. Speaker, I would like to make note of the fact that Michelle Connor of Lacey, WA, has won the Worth Hedrick Memorial Essay Contest. Each year a distinguished panel of journalists and writers selects an essay written by a Thurston County high school senior on a topic related to the environment. The contest is held in memory of Worth Hedrick, a noted conservationist and writer from Olympia.

Ms. Connor's excellent essay emphasizes the importance of preserving our natural heritage as a link with the past and to provide continuity for the future. The Nisqually Delta just north of the Washington State Capital of Olympia is home for an abundance of wildlife and a scenic oasis for nearby urban dwellers in search of a natural retreat. The Nisqually Delta provides, as Ms. Connor vividly points out in her essay, a step into the past for present, and hopefully, future generations.

I commend Ms. Connor's essay, "The Future of the Nisqually Delta," to the attention of my colleagues. The essay follows:

THE FUTURE OF THE NISQUALLY DELTA

(By Michelle Connor)

It seems odd to say—being only 18 years old—that I remember the good old days when gasoline was cheap and home computers were pure fiction. The world is changing so rapidly, straining into the future with ever increasing speed, that often, for good or bad, the ideas and dreams of the present melt into the past and are soon forgotten by the wayside. As new technological advancements change the world it will become increasingly important to have a few things which do not change. Things that connect us with our past and give life a certain feeling of continuity.

Even with the concrete evidence which the past often provides, it is difficult to imagine what the world was once like. But when there is little or nothing remaining of that past it becomes unclear and unimagineable—as unbelievable as the myth of the unicorn. It is with delight that we discover and preserve the relics of the past and it is with similar excitement that we preserve our own present in such things as time capsules, hoping to share with those of the future the joys of today. It is for this reason that we should preserve such places as the Nisqually Delta—in a way these places and their inhabitants are living time-capsules, which hopefully can remain unaffected by the world around them.

I have often driven by the Nisqually Delta, and I can call to mind easily that huge expense of marshlands, fields, and woods. It must have been ten years ago, but I also recall a field trip my gradeschool class once took to the Delta. Actually, I don't remember all that much—it was a hot day and there were birds, it seemed, everywhere. We had walked along some trail and looked at a hawk's nest way up in the branches above our heads; I remember the barns and an artesian well into which we stuck our hands and got very wet; there was also the story of Brown's dike and sitting to eat lunch in the sunshine of what now seems such a long-ago day. It gives me a feeling of security and permanence to think that, in spite of all the other changes that will come into my life; 10, 20, even 50 years from now that Delta will be there unchanged—even though the world around it has been dragged into the future.

There was once a time when the world appeared very large and the untouched land of the North American Continent seemed to stretch on interminably. In looking at the present and the future the people of the time saw a need to conquer these wild lands and to make themselves a home. Then as now land was typically valued by what could be done with it and how it might be developed. Once the Delta was valuable as a hunting grounds for the Indians and once there was a farm but as time passed these uses were no longer so important. Some called to turn the Delta into a seaport while others demanded that the land and the animals who made it their home, be left in peace. After a long struggle it finally became clear that there is another means by which to judge land—for its value of being untouched by developer, for the past it still lives and the hope that it will remain unchanged in the future. Now, little remains of this country's natural beauty and that Delta stands—while the world races along on the nearby freeway—as one of the last unmarred river deltas in the western United States.

There will always be conflicting potential futures in this world. Just as people have disagreed about the best use of the Delta in the past. New questions will probably arise in the future. But for those future questions to ever exist we must make sure that the Delta continues to exist now. If we are always concerned with that day-by-day existence of the Delta suddenly what now seems a far away tomorrow will be today. And just as suddenly that "today" will be a mere yesterday—and the Delta will still be here.

As for the questions which will no doubt arise, the value of the Delta must be considered with eyes for both the present and the future. It is easy to consider only immediate and short term needs, but with as valuable and irreplaceable a resource as the Delta we cannot afford to do this. With the ever-shrinking amount of open space such as the Delta provides it will be greatly valued in future years if it is maintained in its present condition. Some might say that there were plenty of wildlife areas remaining in the great expanse of this nation and that such an insignificant place as the Delta would hardly be missed. Yet surely, if all around the nation (and the world) nature, someday there will be none left to preserve. Certainly, for myself and many of my fellow teens, it is easy to leave these, along with other "tedious" responsibilities, in the hands of the adults, and just as certainly, many adults are "too busy for such unimportant stuff." But those views could be easily changed by a walk through such a place as the Delta, or even the nightmarish imaginings of what the world would be like if one day this natural beauty was only a myth of a long-forgotten memory. It is also important to realize that the Delta isn't here today by chance. Personally, I am very grateful to all of the "someones," who took time out of their own busy lives so that one day I might have that very pleasant and memorable walk. In the future there must be other "someones" for certainly, there

will be other little children—possibly even our own—who would love such a day, spent in the sunshine with the animals of the Delta.

Yet, there is even more importance in its preservation than for the delight of little school children. The Nisqually Delta provides a unique habitat for a wide variety of birds and animals. As such habitat is, even now, growing in rarity, many of these animals are or one day will become endangered species. It would be inexcusable, if knowing what we do now, any of these creatures were allowed to become extinct through negligence. These lands are not only a place of natural beauty, but also of scientific and historical significance. Their preservation reflects the ideal that we ought to respect the natural world to which we are so vitally linked.

For myself, I hope that the future of the Nisqually Delta is no different than today or that day, ten years ago, when I visited it. It would be a shame for such a place to be destroyed while we raced too eagerly and thoughtlessly into the future. Unfortunately, all things must change, but at the Delta I hope, those changes will be natural ones—the birth of baby birds in the springtime and the death of an unfortunate worm which will make their breakfast; the falling of limbs and leaves in a wind storm and budding of wildflowers on a hot summer day . . .

THE NEED FOR A NATIONAL FAMILY AND MEDICAL LEAVE POLICY

HON. WILLIAM (BILL) CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. CLAY. Mr. Speaker, as the 99th Congress approaches its end, I would like to reflect on a piece of legislation that has come a long way this year, H.R. 4300, the Family and Medical Leave Act of 1986. Although time was against its consideration by the House this year, H.R. 4300 has been the subject of widespread debate and congressional attention. With 128 cosponsors, H.R. 4300 proved to be a bill with bipartisan support in the House and national support among a broad coalition of civil rights, disability, religious, women's, and worker groups.

During this Congress, parental leave was the subject of three joint subcommittee hearings—on October 17, 1985, April 11 and 22, 1986. Testimony was presented by individuals, public interest organizations, academicians and businesses. Introduced on March 4, 1986, H.R. 4300, was considered and favorably reported out of the Committees on Education and Labor and Post Office and Civil Service this past June.

The increasing number of women in the work force has been one of the most significant changes in our society over the past 20 years. The American vision of the family—where women stayed home and raised the family while their husbands worked, exists for only about 7 percent of all families today. Over 50 percent of all women with children under 3 are employed outside of the home, a percentage that is steadily increasing. In part to make up for the wage increases that men have not received, women have entered the work force to provide the financial means to support the family and to meet the changing needs of businesses.

These changes have placed tremendous stress on families. The changed role of women has increased the family responsibilities undertaken by men as well. Both men and women are trying to balance roles as workers and parents. Sometimes the strain is too much as we have seen through the growing divorce rate and percentage of single parent heads of households. While this revolution in the workplace continues, the United States, alone among industrial societies, has failed to develop social policies to assist in reconciling the competing demands of caring for family members and earning a living.

H.R. 4300 does not do nearly as much as its opponents claim. It only sets a minimum standard in the workplace. Employees are guaranteed the ability to take temporary unpaid leave when family and medical needs—the birth or adoption of a child or the serious illness of the worker or their child or parent, requires their absence from work. The benefit to workers is job protection. Business benefits from the retention of loyal and productive workers. And all of society gains through the continued viability and stengthening of our basic unit of social organization—the family.

Today, when workers are faced with a family or medical crisis, they are often unaware of what their company's policy is for temporary unpaid leave. Many companies don't even know what their policies are. As workers have less ability to bargain and negotiate over their wages and terms and conditions of employment, the importance of minimum Federal standard has become paramount.

Now is the time to act. In 1986, we laid the groundwork. In January, we will start again on family and medical leave legislation. I intend for the Subcommittee on Labor-Management Relations to begin legislative consideration early in the 100th Congress. The time for Congress to take the first step in protecting the growing needs of workers for job security is long overdue.

DOE SHALL NOT HAVE DISCRETION

HON. JAMES V. HANSEN

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. HANSEN. Mr. Speaker, earlier this year, I cosponsored House Joint Resolution 699, which stated that the Secretary of Energy shall not implement the newly proposed uranium enrichment services criteria which were submitted to Congress for 45 days' review on or about July 24, 1986, pursuant to section 161v of the Atomic Energy Act of 1954, as amended. The Senate passed a similar uranium resolution. I believe DOE submitted the new criteria to Congress in these waning moments so we could not address the issues. Both the House and Senate have now done so. I hope DOE does not attempt to use the continuing resolution to finesse the U.S. Court of Appeals.

DOE's new criteria make a feeble attempt to amend the Atomic Energy Act through this simple administrative rulemaking. For example, regarding cost recovery, section 161v states that the Atomic Energy Commission, now DOE, will price its enrichment services so that they " * * * shall be on a basis of recovery of the Government's costs over a reasonable period of time. * * * " DOE's new criteria state that it may, when it feels like, recover what the Department feels may be reasonable future costs.

Also, DOE's criteria attempt to "write off" $4.1 billion of the taxpayers' outstanding investment of $7.5 billion. This the Agency may not do. It is for we, in Congress, to decide what money, if any, DOE can arbitrarily "write off."

Section 161v states that DOE's "* * * prices for services under * * * this subsection shall be established on a nondiscriminatory basis." This means that DOE shall not discriminate in the amount of money charged for enrichment services, because DOE's new criteria discriminates in the amount of money DOE charges those customers who buy 100 percent enrichment from DOE versus those who buy only 70 percent.

Furthermore, section 161v, in mandatory terms, states:

That the Commission (now DOE), to the extent necessary to assure the maintenance of a viable domestic uranium industry, shall not offer such services for source or special nuclear materials of foreign origin intended for use in a utilization facility within or under the jurisdication of the United States.

Mr. Speaker, DOE's rulemaking, in essence, would have Congress believe that "shall not" is discretionary. This is absurd.

The Honorable JOHN SEIBERLING mentioned that the viability problems were solved when Congress empowered DOE to trigger various authorities embodied in the Atomic Energy Act through enactment of the new section 170B viability criteria that amended the Atomic Energy Act. Then, 2 years ago, Mr. SEIBERLING said that DOE came before the Interior Committee to cancel the partially completed gas centrifuge enrichment plant after expending $4.1 billion. At the hearing, it turned out that DOE has been keeping two sets of books to justify any action it so desires.

In closing, Mr. Speaker, the new criteria give DOE unfettered discretion to do whatever it so desires in the future. The program has already squandered over $7.5 billion of taxpayers' money and viciously destroyed our uranium industry. Mr. Speaker, and Members of this body, can we really allow the Department to continue to operate in this fashion given this Nation's annual $200 billion budget deficit.

TRIBUTE TO DAVID S. MONSON

SPEECH OF

HON. RON PACKARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. PACKARD. Mr. Speaker, I rise to pay tribute to my colleague DAVID S. MONSON. DAVE has represented the Second Congressional District in Utah for the past 2 years. I am saddened that he will not have the opportunity to continue to represent that district for many years to come.

Although still a young man, DAVE has already had a remarkable and long political career. At the age of 27, DAVE was elected Utah State auditor. He was the youngest State auditor ever elected as well as the first certified public accountant to hold that office. His innovation and effectiveness in that office propelled him to the position of Utah's Lt. Governor, an office he held for 8 years. Finally, in 1984 he was elected to Congress where he has been an effective voice for his constituents for the past 2 years.

I have had the priviledge of serving with DAVE on both the Science and Technology and Public Works and Transportation Committees. He has been a strong advocate for fiscal restraint and responsibility. He has been a strong voice in Congress on conservative issues. In particular, he has fought for legislation which would strengthen the family and strengthen the moral fiber of this country.

DAVE is a fine family man. He has a wonderful wife and five wonderful children. His service in Congress has been a credit to his family, his political party and to his State. It is with reluctance that I bid goodbye to DAVE as a congressional colleague. We need more conservative voices in Congress, not less.

DAVE, I have enjoyed my association with you in Congress. All of us will miss you. I wish you success in all of your future endeavors. You have been a credit to this body and I thank you for all you have done to improve this great Nation that we all love and cherish.

NO MEDICARE CAPITATION DEMONSTRATIONS WITHOUT CONGRESSIONAL APPROVAL

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. STARK. Mr. Speaker, today I am introducing a bill to prohibit the Secretary of Health and Human Services from conducting any medicare physician and hospital capitation demonstration project involving more than $10 million in waivered funds in any year without congressional approval.

I have introduced this legislation because I have some reservations about the Department conducting large scale demonstrations concerning capitation plans. Although I support the concept of health maintenance organization capitated arrangements, I believe that before the Department begins major new capitation projects, the Congress should first review and approve the plan.

Over the past several years problems have developed with a capitated health plan for Medicare beneficiaries in South Florida. Clearly, HHS exercised inadequate oversight to prevent these problems or manage them adequately once they developed. Until we can be certain HHS can manage capitated programs Congress should not give the Department carte blanche authority which might jeopardize the well-being of medicare beneficiaries.

Demonstrations make a lot of sense and I support demonstrations on Alzheimer's disease and long term care. However, I am concerned about the scope of a capitation demonstration which would cover a whole State or whole industries and thousands of Medicare beneficiaries. If the Department wishes to conduct demonstrations on capitated arrangement, I believe that it should limit them to minimize the likelihood of problems developing.

Congress must not let the Department limit Medicare beneficiaries' access to critical services or alter the basic Medicare Program through demonstrations programs.

THE FEDERAL EMPLOYEES LONG-TERM CARE ACT OF 1986

HON. MARY ROSE OAKAR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Ms. OAKAR. Mr. Speaker, yesterday I introduced legislation with my colleague, Congressman GERRY SIKORSKI, to address Federal employees' and retirees' long-term care needs. "The Federal Employees Long-Term Care Act of 1986" would establish demonstration programs that offer long-term care services under the Federal Employees Health Benefits Program [FEHBP].

This summer, the Subcommittee on Compensation and Employee Benefits, which I chair, and the Subcommittee on Investigations, chaired by Mr. SIKORSKI, held a joint hearing on the long-term care needs of Federal employees and annuitants. We learned from this hearing that FHEPB enrollees face the same problems as other Americans. That is, their Health Insurance Program does not offer coverage for nursing home care or for nursing home alternatives, such as adult day care, respite care, and other community-based services. Federal employees and retirees need insurance coverage for this type of care. Without it, the onset of frailty or a chronic illness or disability can mean financial disaster.

During the hearings this summer, we also learned that some insurers are beginning to develop affordable, comprehensive protection against long-term care costs. In particular, we heard testimony on the social HMO [SHMO] projects which are operating on an experimental basis under Medicare. These SHMO's cover community based care and nursing home care. The long-term care services are coordinated in such a way that community care is substituted for institutional care whenever possible. In addition, the care is paid for prospectively, on a capitation basis. As a result, the SHMO experiments are showing that Medicare can save money on expensive hospital and nursing home care. Furthermore, the people served by these programs enjoy better health and a greater degree of independence under this plan of comprehensive services.

As the largest employer-sponsored health insurance program in the Nation, the FEHBP should lead the Nation in developing such coverage for our own employees and retirees. The bill we are introducing today would establish long-term care demonstration projects, similar to the SHMO experiment, under the FEHBP.

Our legislation would authorize the two prepaid FEHBP plans which are currrently participating in the Medicare SHMO experiment to offer a similar experimental benefit to FEHBP enrollees for 3 years. The demonstration would include FEHBP members, aged 21 and over, who would be randomly selected. In addition to their regular FEHBP coverage, these individuals would be eligible for an expanded package of long-term care services that would include, at a minimum, the following: home nursing care; physical, speech, and occupational therapy; foot care; homemaker services; personal care; durable medical equipment; medical transportation; adult day care; respite care; and nursing home care.

Coverage for the long-term care services would be limited to $18,000 per year, and a 25 percent copayment would be required of patients using these services. FEHBP plans in the demonstration would be reimbursed prospectively for the long-term care services. This reimbursement would be financed by a separate appropriation of not more than $3 million annually. An independent contractor would be hired to evaluate the demonstration and to work in conjunction with the OPM and the health plans over the course of the experiment.

Mr. Speaker, I am convinced that this experimental approach will give us the information and experience we need to begin meeting the long-term care needs of Federal employees and retirees. I am most appreciative to my colleague, Congressman SIKORSKI, for his partnership in addressing this issue and developing this legislation. I look forward to enactment of this worthwhile proposal.

A BANKING AGENDA FOR THE 100TH CONGRESS

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. LAFALCE. Mr. Speaker, I rise to address one of the most crucial and difficult issues that confronts us today—no, that literally screams out at us—and, that will continue to dog us when we return next January for the historic 100th Congress. It is an issue which is much more than a single issue since it permeates the very stuff on which our complex economic system is based. That issue, Mr. Speaker, is the most urgent one of financial institutions law reform. As we approach the end of the 99th Congress, I believe that we must look ahead to the future and ask the hard questions about banking law reform. We must identify the issues now so that we will

have a framework within which to accomplish essential reforms during the 100th Congress.

In these brief remarks, Mr. Speaker, I will share with my colleagues my assessment of the problems we face, the reasons for those problems, as well as my view as to what the agenda should be in the 100th Congress for financial institutions law reform.

TURMOIL IN THE FINANCIAL SERVICES INDUSTRY

It has been said many times that our banking and financial institutions system is in a state of turmoil. The reason it has been said so many times, each time with more conviction, is because it is so true. Countless changes in the way financial institutions deal with each other and with consumers have already taken place. These changes have been nothing short of tumultuous because we have failed to respond to those changes with financial institutions law reform. We still have in place a system of laws and regulations enacted over 50 years ago to regulate a system of banks and financial institutions that in reality no longer exists. Financial institutions and their regulators are forced to operate in a vacuum, as changes occur on the edges and interstices of our laws. As a result, the structure of the U.S. financial system is beng redefined, not by deliberate congressional direction, but in a piecemeal manner by a series of administrative and judicial decisions. As John Heimann, former Comptroller of the Currency and current chairman of Merrill-Lynch Capital Markets, recently stated in an October 10 hearing before the Federal Reserve on the proposed Sumitomo/Goldman Sachs partnership:

> The result is a spiral of inconsistency. The failure to act in a comprehensive, procompetitive and coherent fashion has had, and will continue to have, increasingly detrimental effects on the competitiveness and well-being of our financial system.

In short, the rapid innovations in the services and relationships of our financial institutions have already broken through the outermost limits of our current system of financial insitutions laws and regulations, creating uncertainty and unfairness.

Moreover, because our financial institutions are among the key instruments through which the Federal Reserve conducts monetary policy, upheaval in our system of financial institutions regulations affects the most fundamental of our Nation's economic decisions. It also affects credit availability, consumer savings decisions, business investment, and productivity.

Mr. Speaker, more than anything else, I want to stress my commitment in the 100th Congress to action, as opposed to inaction; to positive solutions to the problems confronting us, as opposed to finger-pointing at one group or another as the cause of the problem. The time to act is now. We simply must wrestle with the difficult issues involved in financial institutions reform. We can no longer put our heads in the sand, sit back, and hope that problems resolve themselves. We are more embroiled in serious problems today than we have perhaps ever been. We are facing the potential collapse of our domestic banking system; the potential collapse of our international banking system; the collapse of America's worldwide competitiveness; and the tragic inability of Americans to house themselves adequately. All these issues are integrally related to our system of financial institutions regulation.

THE NEED FOR ACTION

The Banking Committee has jurisdiction over a multitude of these critical areas. Because of our jurisdictional mandate, we simply must act; we must seize the initiative, we must elucidate the problems; most importantly, we must find a workable and comprehensive solution to financial institutions reform. We can no longer attempt to address the erosion in our outdated system or financial regulation through stop-gap, loophole-closing legislation alone. It is too late for that. We must address financial insitutions legislation, including existing loopholes, in the context of comprehensive reform.

Certainly, it is appropriate for other committees to consider these issues as well—including Energy and Commerce, Foreign Affairs, and Government Operations Committees, to use some examples—but the Banking Committee should not forfeit its own primary jurisdiction in this area.

In addition, the Banking Committee and Congress must rise above the petty squabbles, and the institutional and jurisdictional turf battles that have characterized both the governors and the governed in the financial services field. We must search for the public interest in all of this. And, that public interest must be our moral gyroscope. We must consider our actions in the context of their effect on the economy as a whole, on consumers—particularly the lower-income consumer—on individual financial institutions and their ability to compete, and on efficiency and fairness. We must balance the seemingly inconsistent goals of marketplace efficiency and competition with the essential need for system safety and soundness and public confidence.

THE NEED TO ACCOMMODATE COMPETING INTERESTS

In addition, we must be accommodative to the reasonable, thought often divergent, concerns raised by the various actors in the financial institutions sphere. There is an obvious tension between the banking and securities industries that must be ameliorated through positive congressional action. We must address questions of geography, questions of permissible banking and thrift services, of securities firms entry into banking. And, we must continue to ensure the financial solvency of our depository institution insurance funds.

To do all this, we must work against confrontation, and for accommodation, among the competing interest groups. We cannot ignore any group's legitimate interests or we will run the risk of stalemate and ultimate failure in our efforts at comprehensive financial institutions reform. We all represent unique local constituencies and everyone's constituents deserve zealous representation on the Banking Committee and in Congress. When we enact legislation, however, we must don our national hats and take into account national interests. We have many groups to accommodate, but I believe we can make the necessary accommodations, and that we will be successful.

While we must take into account the concerns of the money center banks, we must give equal consideration to the concerns of the regional banks and their fear of unfair competition from the financial giants. We must pay special heed to the concerns raised by the backbone of the American financial system, our small community banks, who have a fear of being gobbled up by financial giants. In my view, their preservation as a unique American institution is essential. They have served consumers and small businesses well in the towns and hamlets across America; any comprehensive financial institutions reform must take into account their legitimate interests.

The securities industry has its own concerns about unfair competition and partiality if banks are permitted to get further into securities activities; the insurance and real estate industries have similar fears should financial institutions be allowed to delve into their areas of expertise. These concerns must be addressed. Similarly, we must address the understandable vested interests of retailers that own nonbank banks; we must take into account the concerns of the healthy and the sick members of the thrift industry; we need to examine the question of the integration of financial service providers in the context of our country's historic compartmentalization of these institutions. Finally, it is essential that we take into account the interests of consumers in any scheme for financial institutions law reform; we must give consumers the tools they need to make informed decisions about their financial transactions.

Financial institutions reform will be no easy task, but it is one which we simply must undertake. We must wait no longer.

OUR EXISTING SYSTEM OF FINANCIAL INSTITUTION REGULATION

How did we come to this point of turmoil in the financial services industry? What happened to lead us to this point? There are many reasons, some of which were within our control and some which were not. To understand the problem, it is helpful to look, although briefly, at the existing system of laws that is in place and see where the gaps are.

THE STATUTES

Our system of financial institutions regulation was established over 50 years ago when Congress enacted a series of laws designed to accomplish several goals. These goals included the adequate and fair allocation of credit in our society, adequate funds for corporate expansion and innovation, consumer services, and, most significantly, a safe and sound banking system with a system of Federal deposit insurance to protect customers and promote depositor confidence in the banking system.

One of the pillars of this system was the Glass-Steagall Act, which erected a strict and unbridgeable line between banking and securities activities. Another pillar in the financial institutions legal edifice was the Bank Holding Company Act, originally passed in 1956 and amended several times in subsequent years. This act strictly regulated the so-called nonbanking activities of bank holding companies. These business entities, which own banks, were only permitted to engage in nonbanking activities that were considered by the Federal Reserve Board to be "closely related to banking and a proper incident thereto." The National Bank Act also limited the activities of

banks to those within the traditional parameters of commercial lending and demand deposit taking. The flip side of these activity restrictions on banking institutions, of course, was that commercial businesses and securities firms were prohibited from themselves owning banks.

GEOGRAPHIC RESTRICTIONS

Our Federal banking laws also strictly limited the geographic locations from which banks were permitted to undertake their limited activities. The so-called Douglas amendment of the Bank Holding Company Act, and the McFadden Act provisions on interstate branching, limited banks to activities within their own chartering States. In addition, the chartering States themselves could impose further restrictions on bank branch locations and additional acquisitions within the State.

COMPARTMENTALIZATION

Finally, our banking laws made strict distinctions between various kinds of financial institutions. We had a segmented structure for our financial institutions that envisioned a specialized purpose for each type of financial actor. In the compartmentalized scheme of things, the securities industry functioned to channel long-term investment into capital formation; the insurance industry had the specific purpose of assuming risks so that U.S. businesses could operate in a more stable environment; commercial banks were established to provide loans to businesses through the use of short-term deposits; thrift institutions were set up to hold consumer savings which would finance long-term, fixed rate home ownership loans. To guarantee an adequate supply of deposits to fund mortgage loans, Congress gave thrift institutions a small advantage over banks—first, one-half of 1 percent, and later one-fourth of one percent—in the regulated interest rates they were permitted to pay depositors. Finally, credit unions were used to supply consumer loans through consumer deposits, extensions of credit.

There were some advantages to this straightforward, compartmentalized scheme. For one thing, the job of financial institution managers was easier, they could afford to be more specialized and could concentrate their expertise; they could be assured that their competitors would not be delving into new areas that would drive their customers away. Maintaining an interest rate spread was certainly easier when deposit interest rates were strictly limited; there were few subtle judgments needed about consumer preferences, about which investments would pay the most and quickest return, and so on. Also, regulation and examination of separate financial institutions was more cut and dried.

However, there are problems with compartmentalization as well. Upon serious examination, I believe we will find that the potential serious adverse effects of such strict specialization significantly outweigh its benefits. We have witnessed the most egregious of these adverse effects very recently. And, that is the question of what happens when the principal business in which a particular group of financial institutions is engaged becomes unprofitable? This happened in the early 1980's when the value of long-term mortgages fell drastically relative to other assets, and the thrift industry suffered acutely as a result. It has happened again recently due to the slumps in the oil and agriculture sectors of our economy; banks with large loan portfolios concentrated in these areas have suffered greatly under the financial strains. As a result, we have seen a record number of bank failures this year since the Great Depression. Thus, a loan portfolio that is too concentrated—even though in the traditional banking function of commercial lending—can be a severe risk to the financial integrity of depository institutions and their deposit insurance funds. I believe that the questions of compartmentalization and other benchmarks of our traditional system of bank regulation must be carefully examined in the next Congress.

PIECEMEAL EROSION OF THE EXISTING SYSTEM

The problem with our current system of bank regulation is that it is neither the old system of fixed regulation nor a new system of deregulation. It is somewhere in that grey area in between. While grey areas are not always bad places to be, we have drifted passively and unevenly into this morass. We literally "find ourselves" in this predicament, since we have not made affirmative decisions to go in one direction or another in the area of financial institutions policy.

While we have made attempts at closing loopholes in existing laws, we have mistakenly done this in a vacuum. We have not addressed the underlying dismantling of our banking system—the blurring of distinctions between financial institutions and the weakening of the strict line between banking and commerce—that goes beyond the question of closing loopholes. While these loopholes have unquestionably contributed to the erosion of our traditional system of bank regulation and may need to be closed—or, at the least, addressed through appropriate regulation, I believe we should only do so through comprehensive banking law reform.

REASONS FOR THE EROSION

How and why did this erosion of our banking system occur? Why are we in this predicament? There are many reasons, and they go back a number of years.

INFLATION

One of the biggest catalysts for change in our banking laws was the inflationary period we experienced in the 1970's. As inflation pushed interest rates higher throughout our economy, it was only logical in that context for Congress to enact legislation eliminating the longstanding interest rate ceilings on depository institutions.

Moreover, as investments in the stock market plummeted during this period, securities firms looked to another avenue to improve their profits. And, they found it. They began to offer money market mutual funds, and consumers responded zealously. Although these funds were uninsured, they offered consumers for the first time a highly liquid, market rate on their savings. Consumers could realize rates of return as high as 17 percent or more on their funds. At the same time, financial institutions were stuck with regulated interest rates of about 5 percent. The gradual erosion of our traditional system had begun.

In just a few years, money market mutual funds attracted nearly $250 billion in deposits that might otherwise have gone to financial institutions. Financial institutions were understandably concerned, and Congress responded in 1982 by enacting the Depository Institutions Act, which gave financial institutions the authority to offer money market deposit accounts and compete with money market mutual funds.

TECHNOLOGY

Another force that has contributed significantly to the haphazard restructuring of our financial institutions system is the pace of sweeping technological change. Such change has benefitted consumers immeasurably. It has also caused an exponential increase in the speed with which financial transactions can be processed among institutions. As a result of this increased speed, financial institutions have become increasingly active, innovative, efficient, and—above all—interdependent.

Also, technology has enabled financial institutions to link up with other businesses around the world. As a consequence, the financial services market has become increasingly international in scope. American financial institutions are able to engage in a broad range of activities abroad that are impermissible in the United States. These include securities activities, insurance, travel agency, and management consulting activities.

CONGRESS AND THE STATES

Congress itself has contributed to change. It has helped blur traditional distinctions among the banking and thrift industry by enacting legislation authorizing additional powers for thrifts, including the traditional banking activity of commercial lending. And, States have further added to the fading of distinctions by authorizing broad powers of their own for banks, savings banks, or savings and loans, or all three.

Of course, geographic barriers to banking have also fallen significantly, as States have enacted various forms of interstate banking laws and emergency acquisitions have resulted in interstate, and interindustry, acquisitions.

UTILIZATION OF LANGUAGE IN EXISTING LAW

Another significant contribution to the rapid pace of change in our financial services industry is the legal exploitation by banking and nonbanking companies of the existing language in certain of our financial institutions laws.

Banks, for example, have recently applied to take advantage of the wording of the Glass-Steagall Act, which by its terms prohibits banks only from being "principally engaged" in securities activities. Federal Reserve and other regulatory interpretations of this phrase may well permit banks to engage in a broad range of securities activities, although to a limited extent. In addition, nonbanking companies, including retailers and securities firms, have made significant inroads into banking through the acquisition of so-called "nonbank banks." These significant developments have further eroded the traditional lines between banking and commerce, and between banking and securities activities.

EXTENSIVE HEARINGS ARE REQUIRED

The question of exactly how to reform our financial institutions laws is, of course, a most

difficult one. But, it must be done, and I will outline my suggested banking agenda for the 100th Congress. First, I believe the Banking Committee must take the bull by the horns. We must begin a series of in-depth hearings in the early days of the 100th Congress to build an adequate record on which to base a comprehensive restructuring of our financial system. We must address all the complex issues raised by the regulation and deregulation of financial service providers. We should test our ideas for reform through the committee hearing process. Although we will not find all the answers to the policy questions presented by financial institutions reform, we can build a solid base for action, as opposed to reaction.

POWERS FOR FINANCIAL INSTITUTIONS

I believe we should hold hearings in the 100th Congress on the need for additional nonbanking powers for banks, and perhaps for thrifts. The logical areas for these hearings include increased or reduced powers for banks in mortgage-backed securities, mutual fund powers, commercial paper activities, mortgage revenue bond underwriting, insurance, and real estate. While changes in some, all, or none of these powers may be appropriate, they ought to be explored as options. Moreover, we must provide our banks with the ability to compete aggressively with foreign banking institutions, whose flexibility and broad range of activities have whittled away at the American banks' share of the international financial markets.

NONBANK BANKS

With regard to nonbank banks, it is apparent that disaster has not struck the financial system as a result of the creation of these limited purpose institutions. On the contrary, many of them have been used to provide financial services beneficial to consumers. In addition, nonbank banks potentially could provide more funding for various underserved areas in our financial system, including small businesses.

It would be appropriate, however, during the 100th Congress, to address whether the parents of nonbank banks should be federally regulated, and if so, to what extent. Perhaps these commercial enterprises should be required to file reports on their activities; perhaps there should be a more clear corporate separateness required between the nonbank and its corporate parent. Perhaps some Federal supervision, even if limited, is appropriate over these corporate parents since they have access to the Federal Reserve's payments system and to Federal deposit insurance for their nonbanks. Perhaps the existing level of supervision is adequate. These are issues which should be explored.

THE DEPOSITORY INSTITUTION INSURANCE FUNDS

In the 100th Congress, we must examine our depository institutions insurance funds to ensure that they are adequately financed. We should look into a possible system of risk-based deposit insurance premiums, and of the appropriate amount of deposits that should be insured. This question is particularly appropriate now that financial institutions are able to offer market rates of interest on their deposits.

CONSUMER PROTECTION

To the extent the important consumer issues of expedited funds availability, credit card disclosure, and truth in savings, are left unaddressed in the 99th Congress, we must once again act on them in the 100th Congress. Moreover, in any comprehensive reform of our banking laws, we must recognize the consumer interest in such reform; we must ensure that the changes we make do not result in too highly concentrated a financial services industry, and that consumers are protected from tying practices, inadequate services, and excessive fees.

ADEQUATE REGULATORY TOOLS

We also should ensure that our financial institutions regulators have the tools and the personnel they need to conduct thorough examinations of the institutions they supervise. In addition, we should review existing laws to ensure that managers of financial institutions are fully accountable for their actions, particularly where they violate agency rules on insider abuses and where they engage in fraudulent banking practices. It may be appropriate to require more careful evaluation of financial institution managers by Federal regulators before they take over an institution.

APPROPRIATE DEREGULATION

I also believe it would be appropriate for the Banking Committee to explore the possibility of further deregulation of our financial services markets. Gradual and appropriate deregulation could promote more efficiency and cost-effectiveness in the allocation of capital and other financial resources. On the other hand, we must absolutely ensure continued public confidence in our financial system through ensuring the safety and soundness of our depository institutions.

CONCLUSION

Mr. Speaker, today in the last days of 99th Congress, I have asked many questions about the continued regulation of our financial institutions. Not enough time remains in this Congress to find the crucial answers to those difficult questions. The time is ripe for exploration, however, and I firmly believe that we should seize the opportunity during the 100th Congress to address these issues and to fashion a new and dynamic legal framework for our banking laws.

Moreover, the Banking Committee must provide the leadership and the forum to enable Congress to address these many concerns. I am prepared to grapple with these issues and to provide whatever leadership I can as a senior member of the Banking Committee. I would urge my colleagues to learn as much as they possibly can about these complex issues.

We must act to tackle this difficult task. With an innovative and accommodative approach, I am confident that we will succeed ultimately in accomplishing our goal of banking law reform. I earnestly hope that the Banking Committee will assert a much-needed leadership role in this crucial and comprehensive endeavor.

POLLUTERS SHOULD PAY FOR SUPERFUND

HON. CLAUDINE SCHNEIDER

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mrs SCHNEIDER. Mr. Speaker, I am very pleased to learn that the President of the United States has signed the Superfund legislation into law today. I would like to submit for the RECORD some material which summarizes the analyses that identify the responsible parties for the toxic wastes sitting in more than 10,000 sites across the country.

The materials below summarize the analyses that identify the petrochemical industry as responsible for between 70 and 80 percent of the wastes at Superfund sites:

THE CASE AGAINST THE BROAD-BASED TAX

(By Eric Schaeffer, Northeast-Midwest Institute)

Adding a new broad-based tax would clearly undermine the discipline of linking the costs of cleaning up toxic dumps as closely as possible to the activities that give rise to them.—The Washington Post, September 23, 1985.

Since the authorization for Superfund expired September 30, 1985, the Congress has struggled with the difficult problem of how to finance a hazardous waste cleanup expected to total from $7.5 to $10 billion over the next five years. The House has proposed a combination of taxes on oil, and hazardous chemicals and wastes on the basis that these are the materials that gave rise to the cleanup problem. The Senate has opted for a value-added tax on all manufacturers, after considering a variety of other broad-based taxes.

Whether imposed on income or sales volumes, broad-based taxes share one distinguishing feature: they would be imposed on manufacturers irrespective of their contribution to the hazardous waste problem. Broad-based taxes thus violate the "polluter-pay" principle that is a cornerstone of Federal environmental policy. Such a radical departure from current policy would make sense only if:

All manufacturers were, in fact, equally responsible for the Superfund problem, and

It was somehow economically impossible to directly tax the products and wastes found at Superfund sites.

ALL MANUFACTURERS ARE NOT EQUALLY RESPONSIBLE FOR THE SUPERFUND PROBLEM

An industry's contribution to the problem of abandoned dumpsites can be measured by looking at either current waste management practices, or by evaluating a number of factors that point to past involvement with Superfund sites. It is important that any assessment based on industry's past contribution to Superfund sites distinguish the large-volume from the small volume contributor. For example, at the Chem-Dyne Superfund site in Ohio, volume estimates range from the 20,000 barrels deposited by a major chemical company to the 12 barrels attributed to each of several manufacturing firms.

One way to identify large-volume contributors is to consider which industries have been identified by EPA as potentially responsible for large numbers of Superfund sites. Another approach is to evaluate which industries are paying the large share toward

private-party settlements with EPA to undertake cleanup at specific sites. The results are summarized on the attached table:

When measured according to current waste management practices, the petrochemical industry is responsible for at least 70 percent of the Superfund problem; and

When measured according to past contribution to Superfund sites, the petrochemical industry's share reaches as high as 82 percent.

TAXES ON OIL, CHEMICAL PRODUCTS AND HAZARDOUS WASTES ARE FAIR AND CAN BE SUPPORTED BY THE PETROCHEMICAL INDUSTRY

There are four reasons for financing Superfund through a tax on oil and chemical products and hazardous waste. First, such a tax would fall directly on the users and consumers of those products that are now being cleaned up at abandoned hazardous waste sites.

Ronald A. Pearlman, assistant secretary of tax policy for the U.S. Department of Treasury explained why the administration supports this approach in a November 15, 1985, letter to the House Ways and Means Committee:

"By taxing the basic building materials used to make hazardous products and waste, these costs are reflected in the price of products that either are themselves hazardous or result in the production of hazardous waste."

Second, a tax on hazardous wastes can be used to broaden the financing base to include manufacturers outside of the petrochemical industry.

The administration supports a waste-end tax because, "This tax appropriately allocates the environmental costs associated with the production of hazardous wastes to the industries that generate hazardous wastes."

Third, oil and chemical product taxes can be kept low enough so that they can be easily passed on to consumers.

For example, under the Downey-Frenzel proposal approved by the House, the oil excise tax amounts to no more than three tenths of a cent per gallon of gasoline or heating oil, an insignificant amount compared to the much higher severance taxes imposed by oil producing states.

Chemical feedstock taxes would be increased by only small amounts over last year, and would in no case be greater than 2 percent of product price.

The chemical industry has not even attempted to prove that feedstock taxes could not be passed along to its customers. In fact, some chemical companies continued to bill their customers for the feedstock tax long after it expired last year!

Fourth, both the oil and chemical industries are able to bear the relatively minor excise taxes that would be required by the Downey-Frenzel amendment.

The chemical industry is experiencing an economic recovery that has been hastened by falling oil prices, which reduce the cost of fuel and the oil feedstocks needed to make chemical products. For example, shipments of industrial organic chemicals, in constant dollars, rose 15 percent in 1983 and 16 percent in 1984.

A miniscule oil tax of three tenths of a cent per gallon is certainly no threat to major oil companies. Any incidental effects could be eliminated completely by placing the tax on refined products so that it could more easily be passed along to consumers.

TABLE A.—MEASURES OF RESPONSIBILITY FOR THE SUPERFUND PROGRAM

Category	Industry group	Share (percent)
Waste generation [1]	Chemical/petroleum	71
Waste generation	Chemical/petroleum/primary metal.	93
Amount paid under Downey-Frenzel disposal tax [2].	Chemical/petroleum	70
Hazardous substances found at Superfund sites [3].	Chemical feedstocks or derivatives.	75
Parties responsible for six or more Superfund sites [4].	Chemical/petroleum	72
Parties responsible for six or more Superfund sites.	Chemical/plastics/petroleum	83
Share of Superfund settlements [5].	Chemical/petroleum	69–82

[1] Environmental Protection Agency (Westat Survey, April 1984).
[2] Testimony of Mikel Rollyson on behalf of Department of Treasury, before the House Ways and Means Committee, May 9, 1985.
[3] Chemical Manufacturers Association (unpublished data) Fall, 1985.
[4] Environmental Protection Agency (unpublished data) March, 1986.
[5] Environmental Protection Agency (unpublished data); BNA Environment Reporters, 1981–85.

FROM THE ENVIRONMENTAL PROTECTION AGENCY

Potentially responsible parties at CERCLA sites ranking by frequency of occurrence [1]

PRP name:	*Number of occurrences*
Dupont	30
General Electric	26
Monsanto, Dow Chemical/Dow Corning	23
Mobil Corp.	21
Union Carbide, Ashland Chemical/Oil	20
Allied Chemical	18
Rohm & Haas	17
Olin	16
Borden, Inc., General Motors	15
Ford Motor Co., Shell Oil/Shell Chemical	14
American Can Co., American Cyanamid, Gulf Oil	14
Inmont Corp., Rockwell International, Westinghouse, Browning Ferris Industries (BFI)	13
Stauffer Chemical, Owens-Illiniois, Celanse, Exxon, Western electric	12

[1] Some parties appear several times at one site. In cases of multiple occurrances, parties are counted once.

SUPERFUND TAX LIABILITY

A REVIEW OF CLEANUP SETTLEMENTS WITH EPA

(By Eric Schaeffer, Northeast-Midwest Institute)

The Superfund financing scheme, to be fair, should apportion tax liability among industries according to their contribution to the problem of abandoned waste sites. The Chemical Manufacturers Association has implicitly recognized this basic premise by suggesting that the petrochemical industry's tax share should be based on the number of petrochemical industries listed by EPA as "potentially responsible" for Superfund sites, divided by the total number of parties appearing on the EPA list. Previous analyses have pointed out that this approach is fatally flawed for two reasons:

It does not distinguish large volume from small volume contributors.

The list of potentially responsible parties includes many small companies—some of whom are bankrupt—and individuals who will never be part of the Superfund tax base. For example, the value-added tax approved by the Senate is limited to companies with annual earnings of $10 million or more.

Alternative ways to measure the contribution of different industries to the Superfund problem include evaluating waste generation and disposal practices; identifying the products that have been found at abandoned dumpsites; and identifying the companies responsible for six or more Superfund sites. Measured by these criteria, the chemical industry is responsible for 70–83 percent of the Superfund problem.

Settlement data

Still another approach is to consider which companies are making payments toward hazardous waste cleanup as the result of settlements with EPA. A company is not likely to agree to large settlements with EPA unless there is solid evidence linking it to the wastes at a particular site.

The data presented on the attached tables was collected through reviewing announcements of settlements in the BNA Environment Reporter from 1981 to the present, and from information compiled by the Environmental Protection Agency. According to these sources, the total value of settlements thus far comes to $596 million, of which $474 million can be attributed to specific companies. The balance of $122 million generally reflects multi-party settlements for which company specific data is not yet available.

A complete list of the companies that have agreed to settlements with EPA is provided in Attachment 1, which includes information on the total amount of each company's settlement. Table A presents the total value of the settlements for each industrial sector.

Table B shows that when the chemical and manufacturer settlements are combined, the former accounts for 69 percent of the total value. This comparison may exaggerate the manufacturers contribution to the Superfund problem, given the fact that $90 million of the manufacturers' share came from one company (Westinghouse). This distortion can be corrected by comparing the relative share of settlements after excluding the single largest generator from each industry group. When such a comparison is made, the chemical industry's share increases to 82 percent of the combined total.

Finally, Table C lists the companies responsible for the twenty largest settlements. Thirteen of these are petrochemical companies, and two are waste management firms. Only five are manufacturers.

Conclusion

The petrochemical industry's contribution to the Superfund cleanup problem consistently averages between 70 and 83 percent, whether that contribution is measured according to:

The volume of waste generation by industry group;

The volume of waste disposal by industry group;

The type of products found at Superfund sites;

Which companies are responsible for six or more Superfund sites; and

Which companies have made the largest cleanup settlements with EPA.

Table D presents a summary of the petrochemical industry's contribution to the hazardous waste problem as measured by each of these standards.

TABLE A.—VALUE OF SETTLEMENTS BY INDUSTRIAL SECTOR

Industrial sector	Total value of settlements
Chemical/petroleum	$311,651,000
Waste management	15,680,000
Mining	6,600,000
Other manufacturing	139,803,000
Not available [1]	121,615,000
Total	595,349,000

[1] Settlements recorded by EPA without information on individual company contributions.

Sources: Environmental Protection Agency (unpublished data) BNA Environment Reporters, 1981–85.

TABLE B.—COMPARISON OF PETROCHEMICAL AND MANUFACTURER SETTLEMENTS AT SUPERFUND SITES

Industrial sector	Settlement value	Percent share
Chemical/petroleum	311,651	69
Manufacturers	139,803	31
Total	451,454	100
Chemical/petroleum excluding Occidental	224,449	82
Manufacturers, excluding Westinghouse	49,803	18
Total	274,252	100

Sources: Environmental Protection Agency (unpublished data), BNA Environment Reporters (1981–85).

TABLE C.—TOP 20 SUPERFUND SETTLEMENTS

[Dollar amounts in thousands]

Company	Amount	State	Settlement date
Westinghouse	$90,000	IN	5/20/85, 8/28/85
Occidental [1]	87,202	OH, NY, AZ, CA.	1/19/81, 2/6/81 1/10/84, 6/26/84, 11/7/84, 6/13/85
Petro-Processors [1]	50,200	LA	2/5/82, 2/16/84
Velsicol [1]	40,499	MI, OH	11/26/82, 6/13/84
Monsanto [1]	30,900	OH, IN, IL, NJ, MA.	12/11/83, 6/13/85
Olin Corp [1]	24,338	AL, OH	5/15/83, 6/13/85
Diamond Shamrock [1]	16,250	OH, NJ	7/14/83, 3/13/84 6/13/85
Aerojet	14,000	CA	4/22/83
General Motors	8,740	MI, NY	9/4/84, 4/26/85
Boeing	7,300	WA	7/3/84
FMC Corp [1]	6,755	MN, OH	6/8/83, 6/13/85
NEPACCO [1]	6,000	MO	10/7/83
Ciba-Geigy [1]	6,450	NJ, OH	11/15/85, 6/13/85
Allied [1]	4,810	NJ, OH	4/11/84, 11/8/85 6/13/85
Browning Ferris [2]	4,800	MO, NJ	4/5/82, 6/22/82
General Electric	4,072	NY, MA, PA, OH.	5/20/81, 11/21/83 12/22/83, 6/13/85
Stauffer [1]	4,200	MA, DE, OH	5/25/82, 12/18/84 6/13/85
W.R. Grace [1]	3,500	MA	10/21/80
ENSCO [2]	3,000	AR	1/28/81
Solvents recovery service. [1]	3,000	CT	12/14/82
Syntex Agribusiness [1]	3,000	MO	8/6/82

[1] Petrochemical companies.
[2] Waste management companies.

Sources: Environmental Protection Agency (unpublished data); BNA Environment Reporters, 1981–85.

TABLE D.—MEASURES OF RESPONSIBILITY FOR THE SUPERFUND PROGRAM

Category	Industry group	Share (percent)
Waste generation [1]	Chemical/petroleum	71
Waste generation	Chemical/petroleum primary metal.	93
Amount paid under Downey-Frenzel disposal tax [2].	Chemical/petroleum	70
Hazardous substances found at Superfund Sites [3].	Chemical feedstocks or derivatives.	75
Parties responsible for six or more Superfund sites [4].	Chemical/petroleum	72
Parties responsible for six or more Superfund sites.	Chemical/plastics/petroleum	83
Share of Superfund settlements [5].	Chemical/petroleum	69–82

[1] Environmental Protection Agency (Westat Survey, April 1984).
[2] Testimony of Mikel Rollyson on behalf of Department of Treasury, before the House Ways and Means Committee, May 9, 1985.
[3] Chemical Manufacturers Association (unpublished data) Fall, 1985.
[4] Environmental Protection Agency (unpublished data) March, 1986.
[5] Environmental Protection Agency (unpublished data); BNA Environment Reporters, 1981–85.

APPENDIX 1.—SUPERFUND SETTLEMENTS: PETROCHEMICAL INDUSTRY

[Dollar amounts in thousands]

Company	Amount	State	Settlement date
Acme Refining	$500	IL	8/22/80
Air Products, Inc	167	OH	6/13/85
Allied	5,810	NJ, OH	4/11/84, 11/8/85, 6/3/85
American Cynamid	288	OH	6/13/85
Amoco	1,100	MD, UT	10/25/82, 1/3/85
BASF/Wyandotte	1,000	MI	
B.F. Goodrich	280	OH	6/13/85
Borden Chemical	108	OH	6/13/85
Broussard Chemical	120	OH	6/13/85
Chemsampco/Albany	207	OH	6/13/85
Chevron	200	GA	4/8/85
Ciba-Geigy	6,450	NJ, OH	11/15/85, 6/13/85
Diamond Shamrock	16,200	OH, NJ	7/14/83, 3/13/84
Dover Chemical	200	OH	10/23/81
Dow	600	MI	9/28/84, 3/13/85
Dow Corning	1,178	MI	9/21/84, 6/13/85
du Pont	500	OH	6/13/85
Ethyl Corp	275	OH	6/13/85
Exxon	600	RI, MD	2/9/84, 1/3/85
Fike Chemical	900	WV	3/5/82
FMC Corp	6,756	MN, OH	6/8/83, 6/13/85
W.R. Grace	3,500	MA	10/21/80
Goodyear	288	OH	6/13/85
Gulf	145	MD	1/3/85, 6/13/85
Inmont	1,100	ME, CA	9/24/81, 8/5/84
Koppers	1,425	TX, OH	12/28/84, 3/28/86, 7/23/85, 6/13/85
M&T Chemical	360	OH	6/13/85
Merrell Dow	242	OH	6/13/85
Mobay Chemical	247	OH	6/13/85
Mobil	500	RI	2/9/84
Monsanto	30,900	IN, IL, NJ, MA, OH.	12/11/83, 6/13/85
Morton Thiokol	167	OH	6/13/85
NEPACCO	6,000	MO	10/7/83
Occidental	87,202	NY, AZ, CA, OH.	1/19/81, 2/6/81, 1/10/84, 6/25/84, 11/7/84, 6/13/85
Olin Corp (McIntosh)	24,338	AI, OH	5/15/83, 6/13/85
Phillips Chemical	320	NE, OH	8/29/83, 6/13/85
Petro-Processors [1]	50,200	LA	2/5/82, 2/16/84
PPG Industries	252	OH	6/13/85
Riversale Chemicals	103		9/25/84, 2/27/85
Rohm & Haas	850	OH	6/13/85
Rohm & Haas, MN Mining.	600	NJ	2/13/86
Searle Medical Products	560	OH	6/13/85
Shell Oil	400	OH	6/13/85
Solvents Recovery Service.	3,000	CT	12/14/82
S.W.S/Stauffer/Calhio	500	OH	6/13/85
Stauffer	3,700	MA, DE	5/25/82, 12/18/84
Swope Oil Synar Chemical (Bank of Delaware).	875	PA	10/14/83
Syntex Agribusiness	3,000	MO	8/6/82
Texaco	250	NM, TX	9/25/84, 10/11/84
Union Carbide	477	OH	6/13/85
Union Oil	500	WA	8/3/84
Union Pacific	800	WY	11/16/83
Velsicol	40,498	MI	11/26/82, 5/13/85
Vertac	2,500	AR	1/18/82
Vineland Chemical	250	NJ	9/28/84
Miscellaneous [2]	1,643		
Total	311,631		

[1] Represents settlement by several major oil companies.
[2] Represents total value of settlements of less than $100,000 each.

Source: Environmental Protection Agency (unpublished data); BNA Environmental Reporters, 1981–85.

SUPERFUND SETTLEMENTS: MINING INDUSTRY

[Dollar amounts in thousands]

Company	Amount	State	Settlement date
ALCOA	$250	IA	2/22/84
Anaconda Smelter	800	MT	4/12/84
Anaconda Mining	1,800	MT	10/22/84
ASARCO	300	MT	8/31/84
Burlington Northern	300	MT	5/20/85
Gulf Coast Lead	400	FL	4/20/81
Homestake Mining	1,300	NM, SD	8/3/82, 6/24/83
Johns Manville	300	IL	6/15/84
NL Industries	1,150	IL, MN	1/22/85, 3/11/85
Total	6,600		

SUPERFUND SETTLEMENTS: WASTE MANAGEMENT

[Dollar amounts in thousands]

Company	Amount	State	Settlement date
BFI	$4,800	MO, NJ	4/15/82, 6/22/82
Chem/Central	2,000	MI	5/10/82, 3/23/83
ENSCO	3,000	AR	1/28/81
Gautier Oil (Seaboard)	200	MS	4/23/85
Gold Coast Oil	220	FL	3/5/82
Lancaster Metals Science.	100	PA	11/24/81
Laskin Waste Oil/Poplar Oil.	300	OH	1/21/81
MESCO	200	MI	6/11/85
Metal Bank of America	2,000	PA	12/12/83
Petroleum Products Corp.	100	FL	4/1/85
Pristine	60	IN	12/28/83
Scaland	700	DE	12/28/83
Super Refined Oil Co	500	KS	12/6/83
Waste Disposal Engineering.	1,500	MN	3/8/84
Total	15,740		

Source: Environmental Protection Agency (unpublished data). BNA Environment Reporter: 1981–85.

SUPERFUND SETTLEMENTS: GENERAL MANUFACTURING

[Dollar amounts in thousands]

Company	Amount	State	Settlement date
Applied Technology	$280	OH	6/13/85
Aerojet	14,000	CA	4/22/83
Aerovox	300	MA	5/25/82
AERR Corp	150	CO	8/14/81
Alcas Cutlery	100	NY	11/2/84
AMF, Inc	320	OH	6/13/85
Arcanum Iron & Metal	100	OH	8/28/84
Astro Containers	320	OH	6/13/85
ATSF	900	NM	9/1/83
Automated (AIDS)	200	TN	9/9/80
AVX Corp	100	NY	11/2/84
Bell Lumber & Pole	1,000	MN	4/84
Boeing	7,300	WA	7/3/84
Brown Wood Perserving	500	FL	4/20/84
Canadian Forest Products.	318	WA	7/3/84
Collis	100	IA	1/23/83
Cortland Container Corp	250	MO	6/12/84
Crown Zellerbach	167	OH	6/13/85
C.W. Zumblet Co	224	OH	6/13/85
Dart Industries	288	OH	6/13/85
Diamond International	275	OH	6/13/85
Facet Enterprises	200	NY	4/8/83
Findett	100	MO	9/16/82
Ford International	460	NJ	3/16/84
Frit Industries	100	AR	2/3/83
General Electric	4,000	NY, MA, PA	5/20/81, 11/21/83, 12/22/83
General Motors	8,740	MI, NY	9/4/84, 4/26/85
General Switch	200	NY	5/1/84
Georgia Pacific	280	OH	6/13/85
Gould Inc	500	OR	8/26/85
Ludlow Corp	320	OH	6/13/85
McGraw-Edison	250	NY	10/31/83
MKY Corp	200	NJ	4/12/84
Neutron Products	120	OH	6/13/85
Owens Corning Fiberglass.	252	OH	6/13/85
Packaging Corp of America.	500	MI	3/14/85
Procter & Gamble	167	OH	6/13/85
Spectron	700	MD	3/25/82
St. Regis Paper	1,800	MT	10/18/83
Union Electric Co	200	MO	6/30/85
United Creosote	100	TX	12/27/83
Universal Manufacturing	108	OH	6/13/85
U.S. Steel/Swedcast	275	OH	6/13/85
Volkswagen of America	167	OH	6/13/85
Western Pneumatic Tube	380	WA	7/3/84
Westinghouse	90,000	IN	5/20/85, 8/28/85
World Pipe Service	280	OH	6/13/85
Miscellaneous [1]	2,213		
Total	139,803		

[1] Represents total value of settlements of less than $100,000 each.

Source: Environmental Protection Agency (unpublished data). BNA Environment Reporter: 1981–85.

REPORT OF THE COMMISSION ON THE U.S. HOUSE OF REPRESENTATIVES BICENTENARY

HON. LINDY (MRS. HALE) BOGGS

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mrs. BOGGS. Mr. Speaker, earlier this week, I submitted a report on the activities and recommendations of the Commission on the U.S. House of Representatives Bicentenary. The Commission, established pursuant to House Resolution 249, is charged with planning for the commemoration of the 200th anniversary of Congress in 1989.

The bicentennial of the House of Representatives and the Senate will be part of a series of bicentennials beginning with the 200th anniversary of the drafting of the Constitution in 1987, continuing through the 200th anniversaries of the ratification of the Constitution in 1988 and the inauguration of the Federal Government in 1989, and culminating with the bicentennial of the Bill of Rights in 1991. Congress has created a Commission on the Bicentennial of the U.S. Constitution to lead the national celebration of the Constitution. The House of Representatives and the Senate have each created separate commissions to develop appropriate plans for commemorating their bicentennials in 1989.

Planning for the House of Representatives' 200 anniversary began December 17, 1982, with the passage of House Resolution 621 of the 97th Congress which created the Office of the Bicentennial. Directed by the historian, Dr. Raymond W. Smock, this office is preparing publications for the bicentennial and coordinates planning for other types of activities to mark the House's bicentennial. On August 1, 1985, the creation of a Commission on the U.S. House of Representatives Bicentenary provided for a group to oversee the development of the commemoration. The members of the Commission include Representatives NEWT GINGRICH of Georgia, PAUL HENRY of Michigan, PETER RODINO of New Jersey, PHILIP SHARP of Indiana, BUD SHUSTER of Pennsylvania, and former Representatives Richard Bolling of Missouri and John Rhodes of Arizona. Majority Leader JIM WRIGHT of Texas and Minority Leader ROBERT MICHEL of Illinois serve as ex-officio Members. You appointed me to serve as chairman.

The Commission has endorsed a variety of projects to provide both the proper level of ceremony and a permanent legacy that will enhance understanding of the history of the House. The Commission endorsed two major publications, a new edition of the "Biographical Directory of the United States Congress, 1774–1989" and a "Guide to the Research Collections of Former Members of the U.S. House of Representatives," that are being prepared by the Office for the Bicentennial. Following the approval of the Commission, the Office for the Bicentennial is preparing a bicentennial brochure that will be distributed through Members' offices. The Commission has also authorized the Office for the Bicentennial to plan a series of symposia and exhibits on the history of the House. The Office for the Bicentennial continues its work as the House historical office through its reference services, the publication of a quarterly newsletter, History in the House, and its aid to researchers. In order to broaden the reach of bicentennial activities, the Commission has encouraged the Office for the Bicentennial to explore with interested organizations in the private sector support of bicentennial projects.

The Commission has considered the proper form of ceremonies to celebrate the bicentennial. It has received the bipartisan leadership's approval to investigate a proposed trip of the entire Congress to Philadelphia on the 200th anniversary of the Great Compromise—July 16, 1987—in which the Constitutional Convention agreed to the form of Congress. A final decision on this trip must be made by the 100th Congress. A joint meeting or other special ceremony should be held on March 4, 1989, the 200th anniversary of the convening of the First Federal Congress. The House also should develop plans for a ceremony to commemorate the 200th anniversary of its first quorum on April 1, 1989.

The Commission created by House Resolution 249 expires at the end of the 99th Congress. The members of the current Commission recommend that the 100th Congress reappoint a Commission in order to provide continuity in the planning and execution of the bicentenary of the House of Representatives in 1989.

Mr. Speaker, I would hope that Members of the House will review the Commission's report and recommendations and I would encourage any Members with ideas or questions about the Commission's activities to contact the Office of the Bicentennial.

MARK O. HATFIELD LIBRARY DEDICATION

HON. DON BONKER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. BONKER. Mr. Speaker, on September 4, the MARK O. HATFIELD Library was dedicated on the campus of Willamette University in Salem, OR. The library, named for Senator MARK O. HATFIELD of Oregon, will be a splendid addition to Oregon's most distinctive institution of higher education. It is appropriate that the library be named in honor of Oregon's senior Senator, who was a student, professor and dean at the 145-year-old private school.

Although Senator HATFIELD is best known among his colleagues for his chairmanship of the Senate Appropriations Committee, he has been a steadfast friend of education and a student of history.

I was struck by talks given at the dedication, notably by Daniel J. Boorstin who emphasized that political courage and the pursuit of learning "go handsomely" together. This is the MARK HATFIELD legacy which I hope will become a hallmark of future leaders in the State of Oregon and our Nation.

To those who know and appreciate MARK HATFIELD, this is a notable occasion. Because of his distinguished public service the Oregon Senator has emerged as Willamette University's most famous alumnus, but that fame has been coupled with humility and service which has been an inspiration to us all.

The Honorable Daniel J. Boorstin, Librarian of Congress, a noted author, Pulitzer Prize-winning historian, and personal friend of Senator HATFIELD, gave the principal address, which I would like to have included in the RECORD at this time.

REMARKS OF DANIEL J. BOORSTIN, LIBRARIAN OF CONGRESS

There is a special appropriateness to the Librarian of Congress being here today at Willamette University. Four of Oregon's seven-member Congressional delegation are Willamette graduates.

It is a special pleasure too, to be joining in the dedication of a library—the heart of every university—but even more to join in dedicating a library named after your Senator Mark Hatfield, my admired friend, who has championed the cause of libraries from his several roles in the United States Senate. As a member of the Joint Committee on the Library, he has consistently led Congressional support for the Library of Congress in the spirit of our founders, Adams, Jefferson, and Madison. Public and college and university libraries are all beneficiaries of his commitment on the Appropriations Committee to the role of knowledge in the defense of democratic institutions.

As a friend of Mark Hatfield I can speak with confidence of the appropriateness of this dedication. For Mark Hatfield is a scholar, a lover of books and learning, a leader as George Marshall defined a leader—"a person who exerts an influence and makes you want to do better than you thought you could."

This Mark Hatfield Library not only recognizes the central role of the library in a university. It will remind generations of students and faculty and the community that statesmanship remains possible in our time, that political courage and the pursuit of learning sit handsomely together, and will inspire others to follow Mark Hatfield's way in the inseparable pursuit of liberty and learning.

MENTAL ILLNESS AWARENESS WEEK

HON. RON PACKARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. PACKARD. Mr. Speaker, I rise to reiterate my support for House Joint Resolution 552 which designated the week of October 5, 1986 through October 11, 1986 as "Mental Illness Awareness Week." It is my understanding that there were many successful events during this week which heightened public awareness concerning mental illness and I am proud to have been a cosponsor of this legislation.

To further improve public and congressional awareness of the difficulties faced by those suffering from mental illness, particularly those suffering from schizophrenia, I would like to place in the CONGRESSIONAL RECORD a pamphlet which effectively and provactively addresses this issue. The title of this pamphlet is "Schizophrenia Research: A 40-Year Travesty."

This pamphlet documents the history of schizophrenia research, particularly in relation to the National Institute of Mental Health [NIMH]. I commend this pamphlet to my congressional colleagues and ask them to take the time to read it so that they may become more familiar with this issue.

This is a crucial issue that needs to be addressed. We must give adequate resources to fight mental illness in our society. It is an issue we can no longer afford to neglect.

SCHIZOPHRENIA RESEARCH: A 40-YEAR TRAVESTY

(By Thomas H. Hayes, Ph.D., M.D., Thelma I. Hayes, and Les Campbell)

INTRODUCTION

"Schizophrenia Research: A 40-year Travesty" is excerpted from The Truth About Schizophrenia and Other Brain Diseases—a newspaper series currently being published.

Dr. Thomas Hayes is the former director of the Department of Drugs of the American Medical Association. He serves as the representative of the California Alliance for the Mentally Ill on the first research advisory committee to the Department of Mental Health in the state of California.

Thelma I. Hayes chairs the Public Awareness Committee for the California Alliance for the Mentally Ill.

Les Campbell is a member of the committee, and is a founder of the Copper Hill Center for Living and Learning in Vista, California—a residential supported-work program for the chronically mentally ill.

STATEMENT

The year is B.C. 4,000. An endless succession of babies in baskets are floating helplessly on a river above a raging cataract. The down-river tribesmen are plucking them out and caring for them at great cost to their village economy. But no one is going up-river to find out who's putting them in, or why.

For centuries, a succession of brain-diseased people have been cared for by society and the staggering costs continue to mount. Although the name, "schizophrenia" was first coined near the beginning of the 20th century, it is not a modern-day plague.

Only in the last three decades, because of the closing of state mental-hospitals, has the general public become aware of the problem. Shamefully, and almost unbelievably, modern-day efforts to find cause or cure has been the same as for the ancients: Neither have vigorously sought the origin of their burden. And as a result there are about two million innocent, incapacitated victims of schizophrenia this year in the United States alone.

Sharon is one of them. She was graduated from high school with honors last June. Her father, a political science teacher at a nearby university, was looking forward to her being on campus. Sharon's onset was sudden. She began to say things like, "My heart has stopped. I'm growing into a giant. Can't you hear what I'm thinking?" Then, gradually, she became detached from the real world.

Now, almost a year later, when Sharon's parents search her vacant eyes, they wonder if they will ever be able to pick up the pieces of their shattered dreams. Numbed to the pain of their loss, they demand answers to questions they never had before: Why, after all these centuries, has science not found a single cause or cure? What is the cost of schizophrenia to tax-payers? How much is allocated to care and treatment? How much for research? The answers are shocking.

Cost estimates of the disease range from $20 billion annually, as calculated by the National Institute of Mental Health (NIMH), to $48 billion reported by the Institute of Medicine of the National Academy of Sciences. California's projected budget for next fiscal year is just under $1 billion. Guess how much is going up-river for research—less than one tenth of one percent.

"Given the cost of society of mental illness, it's unbelievable how little investment in research there is. And this at a time when the biomedical opportunities are so exciting."—Richard T. Greer, Director of Government Relations, National Alliance for the Mentally Ill.

For each victim of AIDS, more than $10,000 for research are allocated. Only $14 per patient are being spent to unlock the mysteries of schizophrenia. AIDS is a horrible disease, and fatal to its victims in a very short time, but cause and preventive measures have been well documented. Schizophrenia, on the other hand—for most, means 40 to 60 years of fear, anxiety, and isolation without hope of cure. For schizophrenia, there are no preventive measures known to date.

The history of the National Institute of Mental Health suggests failure in the truest sense of the word. Harry S Truman founded NIMH 40 years ago because of the great number rejected for service during WW-II due to psychiatric disorders. It was to be a research institute. But since there were only about 3,000 psychiatrists practicing in the United States in 1946 a training function was added at the last minute.

How have those educated with public funds over the past four decades served the severely mentally ill? The history of NIHM answers the question. "A survey of private psychiatrists in 1975 found that only 11 percent of the patients that psychiatrists see in private practice had schizophrenia."—E. Fuller Torrey, M.D., Surviving Schizophrenia: A Family Manual. Professionals who devote their careers to severe mental illness are rare exceptions.

NIMH money has not provided treatment and care for the seriously and chronically mentally ill. A look at how its budget is allocated tells us why. The last forty years have seen the NIMH yearly budget grow slowly and like a dry sponge absorb everything that can remotely be tied to mental health—the stress of poverty, malnutrition, drug abuse, alcoholism, racism, AIDS, terrorism, and even the effects of earthquakes on the nervous system. This left inadequate funding for research on diseases of the brain. The original purpose for the Institute—research into the cause and cure of schizophrenia and other brain diseases—has been almost forgotten.

Nothing short of declaring war on schizophrenia will turn this around. There must be strong advocates. ". . . for if the trumpet give an uncertain sound, who shall prepare himself to the battle?"

Does Dr. Shervert Frazier, Director of NIMH, want to be the leader? Does he have a war plan to conquer schizophrenia? Does he have the price tag figured out? Has he done sufficient homework to demand of Congress appropriations to finish the job? Does NIMH have the courage to deliver the message to Congress and show that it makes good economic sense?

Why is it important to have forceful leadership? Because two to three million people in this country still suffer from schizophrenia disorders; 100,000 new cases occur each year; 75,000 of them are hospitalized for treatment of the illness on any given day; about twenty-five percent of the nation's street people suffer from schizophrenia; and one student out of every 100 of a high school graduating class will contract schizophrenia before his or her 25th birthday regardless of religion, race, political party, or social standing.

Frank is one of them. Forty years ago, when most of his friends were in college, he tried to kill himself. When he is lucid he wonders why he was rescued. But most of the time he's a street-corner preacher of his delusions. He wanders our city's back alleys and eats left-overs from our garbage cans.

How many more Sharons and Franks will float aimlessly on their down-river course before NIMH seeks the origin of their suffering and this heavy community burden?

As Director, Dr. Shervert Frazier is credited with raising the status of schizophrenia research within NIMH, and with asking for a "Manhattan-Project" effort, similar to the urgency pressed upon scientists for developing the atom bomb and ending World War II. But what has happened to Frazier's call to conquer the enemy that lays waste to the lives of one in every 100 innocent youth?

Frazier recently spoke of the $138 million NIMH research budget. But only $18.4 million were targeted for studies of the schizophrenia. ". . . an inadequate proportion for a disease of this magnitude," he admitted.

Frazier knows that it costs nearly $500 a day for a mental hospital bed, $40 to $65 a day for minimal outpatient care, and that less than 3 cents a day are spent per patient to unlock the mysteries of schizophrenia. What are his plans for correcting this inadequacy which was passed on to him by the immediate past director of NIMH, Dr. Herbert Pardes?

Pardes is now professor and chair of psychiatry at the Columbia University College of Physicians and Surgeons. In his response to the four-part series on schizophrenia (New York Times, March 16-19, '86), Pardes writes, "Federal policy makers must recognize that financial commitment on a national level is vital if the grim and baffling prospects for schizophrenia are going to change."

Why couldn't he, as a "federal policy maker", bring this commitment to his *own* NIMH tenure? What advice can he now offer Frazier to help him lead a crusade against these "grim and baffling prospects" to find cause and cure of major brain diseases—the purpose for which NIMH was organized and funded forty years ago?

Frazier did cite, as an example of progress, Julius Axelrod, NIMH Nobel prize winner, for findings on mechanisms of neurotransmitters. But the role of these has been known since 1920. Theories existed, but tools to test them did not: Now they do.

He lauded NIMH scientists for making "brain imaging" possible. It lead to Positron Emission Tomography and made possible the taking of pictures of the functioning, active brain.

Other brain-scan tools are equally underutilized: Computerized Axial Tomography, Magnetic Resonance Imagery, and Brain Electrical Activity Mapping. Why are they not more vigorously used by scientists to search for structural changes in the brains of schizophrenics? The answer is obvious: Money. And because of scant funding, those with schizophrenia continue to get short shrift.

Dolores is one of them: She became ill a year ago. Her father, like most parents, has gone to the end of his financial resources to

rescue a loved one. Last year, for example, he paid $860 for a single brain scan.

Recently, Dolores' father discussed this inadequacy of research funding with Dr. David Shore of NIMH. Shore tried to sell the father on the idea that a fine balance exists between the availability of higher qualified grant seekers and the present funding level. Five years earlier, Dr. Pardes expressed this same attitude in a letter to the president of California's first state organization of families of the mentally disabled. Dr. Samual Keith, Schizophrenia Research Branch at NIMH, wrote for him that NIMH probably *couldn't* use an extra $50 million because they had no unfunded high-quality research proposals. Nor were there enough qualified researchers interested in mental health.

This attitude did not prevail in the recent campaign to find a cure for AIDS. Research allocations for AIDS were increased to $100 million in 1985-86, suggesting that grant writers are keenly aware of dollars available. They don't waste time on areas insufficiently funded: They go where the money is.

Schizophrenia is a world-wide problem. The cause(s) and the cure(s) must be identified. And, with that same priority, adequate means of caring for those afflicted must be improved. Surely, if we can afford to spend billions on such an ill-conceived idea as the Bradley Army tank (Time Magazine, March 7, '83 and February 27, '64), we can risk a few hundred million to unlock the dungeon that is schizophrenia?

Dolores' father feels that NIMH physicians need to take a long look at the real world. No longer are victims' relatives buying the status quo. They're demanding answers to: What is being done to reduce the terrible side effects of medication? How many schizophrenics have access to brain-scan? How many are classified and tracked by brain imaging? How many facilities study a viral cause to the disease? How many study gene abnormalities that define schizophrenia? How many study schizophrenia brain chemistry?

Is it possible that research of brain disorders might be more appropriately placed in the hands of NIH's National Institute of Neurological and Communicative Disorders and Stroke?

Without intelligent answers, parents see the record and attitude of NIMH as a national disgrace. When other citizens, those not burdened by this horrible disease, realize what it is costing them in tax dollars, they will resent it, too!

SOME THINGS YOU CAN DO TO HELP

Send your Congressman and Senators a copy of this article and ask them to take the lead in the search to find the causes, the cures of these brain diseases and to provide adequate means of caring for those afflicted.

Make copies of this excerpt for friends and other AMI members. Ask them to write their Congressman and Senators stating their own desires for funding of schizophrenia and other brain disorders research.

You can help educate the general public about mental illness by getting the series, The Truth About Schizophrenia and Other Brain Diseases published in your local newspapers. For copies, write to: National Alliance for the Mentally Ill (NAMI), 1901 N. Fort Myers Road, No. 500, Arlington, VA 22209.

TRIBUTE TO DR. FREEMAN H. CARY

HON. CLARENCE E. MILLER

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. MILLER of Ohio. Mr. Speaker, I would like to take this opportunity to join my colleagues in recognizing Adm. Freeman H. Cary, former attending physician at the U.S. Capitol. During the doctor's tenure here on the Hill he did an outstanding job for the Congress. His command of medicine served all of us very well.

As well as being an extremely competent physician, Dr. Cary oversaw the operations of the Capitol Hill medical service in a most proficient manner. For those of us who have benefited from his professional services we will always be grateful and owe a deep debt of gratitude for his constant concern for our well-being. Again, I commend Dr. Cary and wish him well in his retirement. He is truly an officer and a gentleman.

A TRIBUTE TO THE HONORABLE THOMAS N. KINDNESS

HON. DOUGLAS APPLEGATE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. APPLEGATE. Mr. Speaker, I would like to join with my colleagues in bidding farewell to a very special Member of the House, a colleague from Ohio who has contributed immensely to the Congress and who has done much for the people he represents in the Eighth District of the Buckeye State—my very good friend, Representative TOM KINDESS.

TOM has always been a very supportive and cooperative Member of this Chamber and I've enjoyed the opportunity of working with him for the past 10 years in the Congress as well as working with him in the State legislature in Columbus where, with fewer members than the U.S. Congress, it was always much easier to get things done.

TOM has done an outstanding job of working on behalf of American workers and American industry in face of the growing problem of our trade deficit. As a very active member of the Congressional Steel Caucus, TOM has helped in sending a strong message to the administration in calling for corrective actions to the problems of companies that are closing down and workers who face unemployment. While we stand on separate sides of the aisle in this Chamber, TOM Kindness has always understood the need to surmount political differences and to work for the betterment of those people that he represents and for all Americans as well.

Mr. Speaker, I join with my colleagues in expressing the very best wishes to TOM as he departs this August Chamber. I extend to him and his family my best hopes for many years of happiness as he returns to Ohio.

AGENCY BACKING AIDS FARM LOAN SALES

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. BEREUTER. Mr. Speaker, I would like to bring to Members' attention a front page article by Ms. Andrea Bennett in the October 16, 1986, edition of the American Banker describing the national pilot program formulated by the FDIC and FmHA to re-sell and re-structure farm loans from failed banks. It will be tried first in this Member's home State of Nebraska. These loans sold at auction by the FDIC will be under guarantee by the FmHA. The program will benefit those farmers and small business families which lose their credit home when the acquiring bank does not choose to assume their loan from the failed bank's loan portfolio. Under the pilot program the loans are being offered for sale to nearby financial institutions and other interested purchasers. The discounted loan will enable the bank purchasing the loan to reduce interest rates and stretch out the loan repayment period. This program, if implemented successfully in Nebraska, may meet approval for nationwide implementation.

[From the American Banker, Oct. 17, 1986]

FARMERS HOME ADMINISTRATION GUARANTEE USED IN TEST PROGRAM

(By Andrea Bennett)

CHICAGO.—A pilot program under way in Nebraska could make it easier for the Federal Deposit Insurance Corp. to get rid of agricultural loans it acquires when bank fails.

In a test that could serve as a model for nationwide program, the Farmers Home Administration is guaranteeing some of the loans acquired by the FDIC when the Gering National Bank & Trust Co., Gering, Neb. failed in July this year. Under the program, the FDIC will try to sell the loans to nearby lenders, who can then take the loans to the FmHA for a possible guarantee of up to 90% of the loan.

Kirk Jamison, director for the FmHA in Nebraska, said the decision to provide a guarantee will be made on a "loan-to-loan basis." However, he said the agency was "comfortable that the loans being offered fit our criteria for size of loan, et cetera," and said banks acquiring the loans will probably put in a bid for them subject to a guarantee.

Mr. Jamison said the program was developed in Nebraska but was given approval by the heads of the Farmers Home Administration and the FDIC. He hopes the Nebraska test can help establish written procedures that can be used whenever a bank fails.

"Hopefully, it will be implemented nationwide," he said.

The program involves about 160 loans with a book value of about $9 million that were not transferred to the Scottsbluff National Bank & Trust Co., which acquired the Gering National Bank after its failure, a spokesman for the FDIC said. He said the FDIC expects to sell those loans at "less than book value."

The $9 million total represents only a small fraction of agricultural loans the FDIC has acquired from bank failures, he said.

"This is an experiment on our part," the spokesman said. He said the Nebraska program represents a more formalized approach to guarantees but otherwise "is not all that a momentous a change in existing procedure."

He said, though, that the Nebraska test "is an experiment we hope might evolve into a mechanism in which the FmHA would preguarantee loans." A preguarantee by the Farmers Home Administration of loans from a failed bank the FDIC is offering for sale would make it much easier to sell the loans, he said.

Typically, when a bank fails, the bank that purchases the failed bank takes only the higher quality loans, said Mr. Jamison at the FmHA. The FDIC takes control of the remaining loans, some of which have to be liquidated but some of which can be sold to other lenders, he said.

"Previously [after a bank failure], the farmer was left to negotiate with a new lender and then negotiate a compromise with the FDIC," Mr. Jamison said. "What this agreement does is bring the lender, FDIC, and borrower together."

The FmHA guarantee will take away much of the risk to lenders who acquire the loans. It also gives them incentive to offer the FDIC a price higher than it could get if it were liquidating the loan, he said.

The program also makes it easier for farmers who have loans controlled by the FDIC to return to other commercial lenders, and completes the FDIC's handling of bank failures more quickly, said Mr. Amick.

"It allows these borrowers to get back into a credit home with the assistance of the Farmers Home Administration," he said. "It frees up the FDIC for other things."

Mr. Amick said within the next several weeks the FDIC will be sending out 50 bid packages to lenders within a 100-mile radius of Gering. He said the loan sale is being kept local because most banks lend only to nearby farmers due to loan-servicing needs.

IN HONOR OF THE JOPPA MAGNOLIA VOLUNTEER FIRE COMPANY

HON. HELEN DELICH BENTLEY

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mrs. BENTLEY. Mr. Speaker, today I pay tribute to the celebration of the 35th anniversary of the Joppa Magnolia Volunteer Co. located in my home district, the Second Congressional District of Maryland. It is indeed a privilege to represent citizens who take seriously their call of duty to contribute to the safety of their community by offering talents and time in the service of others.

Countless lives and property have been saved and preserved as a direct result of this association. The Maryland State Ambulance & Rescue Association, which I serve as president, has awarded this volunteer organization as an outstanding establishment deserving of honor for the contributions the fire company has made over the past 35 years.

As the ambulance transportation officer for the MSARA, I commend the fire company for their tireless response to thousands of calls over the years. Their service has not gone unnoticed. In 1973, Joppa Fire Co. became the world champions in the IRECA. Competition at Virginia Beach, VA. Robert Hutson, Charles Morkowsky, Edward Kimmel, Anthony Balcer, William Kimmel, George Hall, and Walter Anthony were all members who successfully placed first in the competition.

And again in 1974, the volunteer fire company was ranked among the world's top winning fourth place in world championship. We in Maryland were very proud, and knew Joppa would come back to first place championship in the future.

Indeed this was the case. In September of 1976, Joppa Magnolia Volunteer Fire Co. took the world championship. Tony Kehringm, "Bunky" Morkosky, George Hall and team coaches, Bill Kimmel, and Bob Hutson won the world competition and were awarded for their achievements.

The people of Joppa have the assurance to feel confident that their property and lives are well protected because the Joppa Volunteer Fire Co. will always be champions in Maryland.

Under the leadership of the present administration, it has been the policy of President Reagan to reduce large domestic Government programs and promote private initiative. In circumstances where Government-owned and operated programs can be replaced with private citizens joining together such as the local volunteer fire company, the Reagan policy is successfully at work.

It is because of contributions of men and women such as members of the Joppa Magnolia Volunteer Fire Co. who have made this country strong. The spirit of volunteerism is alive and well in America. Americans are indeed concerned with the well being of their neighbor.

IN HONOR OF EDMUND HAMILTON SEARS

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. CONTE. Mr. Speaker, I rise today to pay tribute to one of America's great religious writers, Edmund Hamilton Sears. This year marks the 110th anniversary of Sears' death, and I would like to take this opportunity to tell you a little about him.

Edmund Hamilton Sears was born in Sandisfield, MA, on April 6, 1810. Although resources were such that Sears was unable to obtain formal education during his early years, his love for books and learning surpassed this limitation. Early in his youth he began his ventures into poetry and prose. He wrote many poems, sermons, and hymns. Through hard work he received an opportunity to attend Westfield Academy and then in 1831 enter Union College in Schenectady, NY from which he graduate in 1834. At Union College his writing abilities received him an editorial position on the Parthenon, the school paper, and many awards for his literature. Soon after graduation he accepted a teaching job in Brattleboro, VT.

Under the instruction of Rev. Addison Brown, he studied theology and thus entered the Harvard Divinity School, from where he graduated in 1837. After graduation he assumed an appointment as missionary of the American University Association. He was then invited to become minister of the Unitarian Church in Wayland, MA where he was ordained in February 20, 1839 and later installed in the Lancaster Unitarian Church. Sears was invited to join many larger churches yet he refrained because he perferred the small and more secluded churches.

His writings affected a large group and were particularly satisfying to many of that time. His literature, which made a great contribution to Christian literature, was forceful and unique. While his sermons and writings were well known during his lifetime, today he is best remembered for two hymns: "It Came Upon a Midnight Clear" and "Calm on the Listening Ear of Night."

On November 30, 1986 the people of New Boston Congregational Church in Sandisfield, MA will be honoring the life and works of E.H. Sears. Among those in attendance will be Emily Vogellus and her sisters Isabelle and Helen of the Sandisfield area who are descendents of E.H. Sears. Their brother Wallace and other relatives will also be present at the ceremony.

Mr. Speaker, I would like to take this opportunity to join the people of Sandisfield as they pay tribute to a great American hymn writer and religious leader, Edmund Hamilton Sears.

FEDERAL FAMILY PLANNING PROGRAM

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. DORNAN of California. Mr. Speaker, according to press reports, the Department of Health and Human Services is considering revision of the guidelines for title X, the Federal Family Planning Program. I commend Secretary Bowen for undertaking this long overdue initiative, and I would like to suggest that his work will be both much easier—and much more successful over the long run—once he firmly grasps this thistle and brings this program back to basics.

That is to say, it would be a mistake to get tangled up in pointless arguments about one or another sentence in one or another committee report concerning title X over the years. That approach has doomed title X reform efforts within the Department in the past. It is made to order for those who wish to do as little as possible to disturb the status quo within that program.

This is particularly true with the issue of abortion referral and counselling, the nub of current controversy concerning the program's guidelines. Since the Carter administration drew up the mandate that grantees engage in these activities, the guidelines have been a convenient way to exclude from competition for title X funds all organizations, religious or otherwise, which object to abortion. That's discriminatory. It's unfair; and, I suggest, it is illegal as well.

The reason should be obvious: the Hyde amendment. That prohibition against involve-

ment with abortion—except in cases where the mother's life would be endangered by continued pregnancy—applies to the entirety of HHS, not just to the Medicaid Program. It applies to every jot and title of the Department's appropriation. As a restriction on the use of HHS funds, it supersedes any other provision of law. It is the last word, the final say, the bottom line.

The Hyde amendment has always been interpreted to mean much more than a prohibition against handing over money to an abortionist. That is its minimal meaning. As HHS has implemented the Hyde language over the years, it has barred the Department from any activity which abets the performance of an abortion.

Although abortion is legal, the Hyde amendment makes it illegal for HHS to engage in it. Therefore, HHS can do nothing that a private individual could not do if abortion were illegal for anyone. In other words, the Hyde language makes HHS act as if abortion were outlawed.

No department or agency of the Federal Government can require its grantees to perform, as its proxies, activities which Congress has forbidden to be performed with Federal funds. That would make a mockery out of every restriction in every appropriation bill. Consider the consequences if, for example, the Department of Defense were able to require its contractors to contribute to guerrilla movements which the Department was forbidden to support. Can the Department of the Interior require those who lease public lands to engage in activities which are forbidden to Interior? Can the Education Department require schools in receipt of Federal funds to do things which the Congress has ordered the Department itself not to do?

Of course not. I cannot think of a single instance in which any Federal agency presumes to require its grantees to do something which Congress bars the agency from doing, other than abortion counseling and referral in title X.

Congress has made clear, year after year, that there is no money appropriated to the Department of HHS for anyone there to be involved in abortion. There is no money to pay for an abortion; no money to supervise its commission; no money to arrange it, plan It, or abet it in any way. By the same token, there can be no money spent to impose the requirement that others do these things. There is no money available to HHS to write letters or make telephone calls to tell title X grantees they must arrange abortions. There is no money to penalize grantees who refuse to do so.

In this light, the rule-writers at the Department have been like those cartoon characters who run right off a cliff and tread air for a moment, failing to realize they have nothing left to stand on. When their mistake is called to their attention, they plunge suddenly to the ground. So too, those within the Department who order title X grantees to do anything which HHS is forbidden to do are walking in thin air. They are spending money which has not been appropriated.

It is my hope that Secretary Bowen, coming fresh to this subject, will cast new light upon it. The mistakes of the past should not be allowed to burden his tenure at the Government's largest department. It is time for a new look at title X from the ground up, beginning with the Hyde amendment, which Congress has made the foundation of all departmental policies and activities regarding abortion.

TRICENTENNIAL OF SNOW HILL, MD

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. DYSON. Mr. Speaker, I rise today to pay tribute to one of the oldest communities in the United States, Snow Hill, MD, on the 300th anniversary of the issuing of its original charter.

On October 26, 1686, Somerset County granted a charter to the residents of Snow Hill to establish a royal port for the shipping of tobacco, lumber, and produce to England as well as a receiving port for slaves and products manufactured in England.

The first documentation known to exist is the Somerset County rent rolls of the Second Lord Baltimore in 1669. The Snow Hill town then consisted of 500 acres surveyed for William Stevenson, 250 acres possessed by Henry Bushop, and 250 acres by Thomas Peterkin in the right of George Bishop. This document also verifies that Snow Hill had been used as a landing port for several years before the actual rent-rolls survey.

"Each possessor of a lot was to pay .01 Penny Sterling per annum for each Lot so taken up, paid for and built upon to the right Honorable Lord Proprietary and his heirs forever," is a direct quote from Bacons Laws of Maryland in 1742, chapter 11, concerning the property in Snow Hill.

Snow Hill is situated on the Pokamoke River far enough upstream to protect ships from the raging storms which sometimes lash the mouth of the Chesapeake. Today's large oceangoing vessels are not as likely to use such a port. So, this once thriving waterfront community has become a beautiful small town that is rich in tradition and history.

The town courthouse was destroyed by fire in 1894. Unfortunately, most of the early records were lost. The history and records that survived were retained by the early church congregations or passed down through generations. Makemie United Presbyterian Church, the first regularly organized Presbyterian church in America, dates back to 1683, and All Hollows Episcopal Church was founded in 1692.

Today, Snow Hill is the county seat of Worcester County, MD. For over 300 years, Snow Hill has provided Maryland and the Nation with fine leaders and outstanding citizens. As Snow Hill enters her fouth century, the people of Maryland's First Congressional District join in saluting Snow Hill for its outstanding achievements that have contributed so much to Maryland and the country, and wish the residents much continued success.

A SALUTE TO ROSCOE R. NIX

HON. WALTER E. FAUNTROY

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. FAUNTROY. Mr. Speaker, I rise in this noble Chamber to salute the contributions and achievements of a civil rights activist, a community organizer, a committed churchworker, and a dedicated public servant, Mr. Roscoe R. Nix. I am especially honored to offer these words of tribute because on Sunday, October 19, 1986, 18 community groups will sponsor a salute to honor this man, who has given selflessly to the Metropolitan Washington community.

The record of human history makes clear the conclusion, that the litmus test for greatness that endures in the hearts of endless generations, is that quality of servanthood that leaves to the future a world better for our children and their children. By this measure, Roscoe R. Nix is a giant of a man.

His numerous contributions—president of the Montgomery County branch of the NAACP, former elected school board member, former executive director of the Maryland State Human Relations Commission, a founding member of a Presbyterian church, and 19 years as a public servant with the U.S. Department of Justice are all crowns that cap a distinguished career.

Roscoe R. Nix dared to challenge injustice and racism, and courageously fought for justice, equality, and political progress, when it was not popular or safe. It was his untiring work in the 1950's, 1960's, and 1970's, that allows many to enjoy the comforts of the 1980's. His pursuit to improve the quality of life for black Americans can be realized on many levels—political, social, and economic.

Mr. Speaker, this long-distance runner for justice and social change has not completed his course in this life's race, but we thought it fitting to pause and reflect upon the distance traveled thus far. On the occasion of this salute, I join the family and many friends of Roscoe R. Nix, in recognizing his invaluable service to his local community and the entire country.

CATASTROPHIC HEALTH CARE EXAMINED IN NEW JERSEY

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. FLORIO. Mr. Speaker, earlier this year I chaired a field hearing of the Subcommittee on Health and Long-Term Care of the Select Committee on Aging. The hearing was held in Bellmawr, NJ, and the agenda was catastrophic health care coverage for elderly Americans.

Instrumental to that hearing were the efforts of the Southern New Jersey Visiting Nurse Service System in Woodbury, NJ. Their recent newsletter provides a synopsis of the hearing and a dramatic description of the problem

faced by many senior citizens when catastrophic illness strikes.

I am a cosponsor of H.R. 4287, the catastrophic health care bill, introduced by the chairman of that Health Subcommittee, CLAUDE PEPPER. H.R. 4287 would go a long way toward remedying the agony faced by many thousands of our senior citizens. The bill would create a new part C of Medicare which would cover a whole host of illnesses not now covered by Medicare.

I urge my colleagues to review the following article. The problem faced in my district and in New Jersey is faced by elderly Americans everywhere.

The article follows:

SUPPORT CONTINUES FOR AN EXPANDED MEDICARE REIMBURSEMENT POLICY

Visiting Nurse continues its effort to help those elderly residents and their families in South Jersey being harmed by catastrophic health costs that cannot be paid under current Medicare rules and regulations.

At the request of Rep. James J. Florio (NJ-1st Dist.), we contributed both agency staff-and-patient testimony to a public Congressional hearing designed to aid senior citizens overcome by devastating medical bills.

The hearing in Bellmawr, chaired by Florio, the ranking Democrat on the House Select Committee on Aging's subcommittee on health and long-term care, came four months after a similar hearing in Newark called by U.S. Senators Bill Bradley and Frank Lautenberg.

The Florio subcommittee is reviewing a new bill, House Resolution 4287, introduced by the Congressman and Rep. Claude Pepper, of Florida, which seeks to expand Medicare's current reimbursement policy and help defray the devastating cost of long-term health care for older people.

At present, middle-income people over 65 afflicted with long-term cancer, stroke, chronic heart and lung ailments, Alzheimer's disease and other catastrophic illnesses not covered by Medicare, the national health-insurance program for the elderly, often must spend their life savings—and their spouses'—before they qualify for Medicaid, the health-insurance program for "the poor."

Rep. Florio, at the outset of the two-hour hearing in the Bellmawr senior-citizens center, told the 200 attendees, "While Medicare does an adequate job of helping pay for costs associated with illnesses requiring hospitalization, almost no coverage is available under Medicare—or with private insurance for that matter—to help senior citizens when a chronic catastrophic illness strikes."

"The horrible nightmare for many elderly," he went on, "is contracting a drawn-out illness—Alzheimer's disease or many types of cancer, for example—that would mean the end of normal life and the onset of bankruptcy."

Responding to the Congressman's concern, Visiting Nurse's vice president for professional services, Sharon L. Shoff, MSN, BSN, RN, noted that elderly residents now represent the largest segment of the South Jersey population receiving home-health care from our agency.

Ms. Shoff testified that, in 1985, people over 65 years of age made up 76% of our total caseload, of which 61% were 70 years or more.

"Of the elderly people admitted to our home-health services in 1985," she added, "62.5 percent had primary diagnoses that were chronic, debilitating diseases requiring long-term care that was not reimburseable under Medicare regulations. If secondary diagnoses are taken into account, the percentage of affected individuals becomes much higher."

Two of the Medicare-denied older people testifying before the television crews, the newspaper reporters and a crowd of over 200 interested spectators at the hearing were among the cases cited by Ms. Shoff, both persons being escorted to the meeting by nurses from our agency.

One, a widow, Mildred Watson, 66, of Mantua, lost her husband, Ephram, last year to Alzheimer's disease.

Mrs. Watson, testifying in a halting, shaky voice, told the subcommittee, "I would like to let you and others in Congress know of the utter emotional, financial and physical devastation brought upon by the onset of a catastrophic illness such as Alzheimer's."

While caring for her husband, formerly a manager at New York Shipbuilding Co., Camden, after his disease was diagnosed in 1979, Mrs. Watson found the job to be too much for her alone.

She then put Ephram in several nursing homes but, as she testifed, she discovered that nursing-home care "was simply atrocious."

She also discovered how terribly costly nursing homes can be. One nursing home wanted to charge her $33,000 per year to care for Ephram, not including the cost of his medications.

She testified how one nursing-home manager had tried to help her afford such an expense by suggesting she sell their house which, she added, "we worked all our lives for."

Alternatively, he told her she might try to spend all their money ("except $1,500 for burial purposes") so the couple would be sufficiently impoverished to get Ephram's nursing-home charges covered by Medicaid.

"We simply could not afford a nursing home," she concluded, and brought her husband home where he finally died last September.

Mrs. Watson testified she must now sell the house to repay Ephram's remaining $100,000 in medical bills.

Our second witness, 72-year-old Dorothy Downie, of Pedricktown, told of her own daily fight to speak and breathe with chronic, obstructive pulmonary disease.

Mrs. Downie, who lives in a mobile home with her husband David, told the subcommittee how she had been hospitalized four times so far this year, "Three of the four times," she added, "they sent me home too early."

Mrs. Downie also pointed out how much she depends on visits from our agency's nurses and home-health aides for bathing, eating and taking her medications. Recently Medicare regulators wrote to say she could not be considered totally dependent and therefore could no longer be served under this program.

"We thought with Medicare we could at least afford decent health care. Now we are not so sure," she added in a weak, raspy voice, "Visiting Nurse has been absorbing the cost itself," she continued.

But, as Sharon Shoff also testified, "The majority of Medicare waivers and denials received by (Visiting Nurse) have been on the grounds that care is 'no longer reasonable and necessary'—Medicare's terminology for a chronic condition."

"Because we are a non-profit agency," she added, "and therefore limited by resources in the amount of 'free' service we can provide, reality dictates that in a relatively short period of time our patients and their families must assume much more responsibility for the care that is needed.

"Distressingly, in many cases this results in physical, emotional and financial disaster."

CONGRESSMAN GILMAN SALUTES NOVEMBER 1986 AS NATIONAL HOSPICE MONTH

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. GILMAN. Mr. Speaker, earlier this year, both the House and the Senate acted in unanimous agreement, in adopting legislation designating the month of November 1986, as National Hospice Month. I was pleased to cosponsor that legislation and look forward to participating in the many activities which will be held this coming November, in recognition of the invaluable services provided for the terminally ill and their families, by the 1,400 hospices currently operating across this Nation.

I want to take this opportunity to pay special tribute to the hospice organizations currently operating within our 22d Congressional District in New York. I have enjoyed an especially close relationship with the Hospice Planning and Educational Foundation of Orange, Inc., which has been a leader in the field of giving specialized care and attention to the terminally ill for the past 5 years.

Under the stewardship of Sister Ann Daly, Hospice of Orange County had aided over 300 families by offering referral, transportation and other support services. Currently 84 volunteers are working with Hospice of Orange County. This year promises to be an especially gratifying year for the group marking their merger with the Hospice of St. Luke's Hospital in Newburgh, NY. I congratulate the board of directors and the many volunteers, who have worked so hard through Hospice of Orange County to ease the burden of terminal illness on the patients and their families. Your love, kindness, compassion and selflessness have made a tremendous difference in the lives of some 300 families and have contributed immeasurably to the quality of life for those individuals.

The month of November was chosen as National Hospice Month because November 1, 1986, marks the third anniversary that hospice has been a Medicare option. This option provides many elderly people, previously financially incapable of obtaining hospice care, with the ability to do so. At a time when advances in medical technology and therapeutic methodology have experienced unparalleled progression, the role of hospice care tempers traditional notions of patient care for those acutely and terminally ill. The medical profession is to be highly commended for its efforts to preserve and prolong human life.

However, overreliance on sophisticated life support mechanisms and treatment modalities, the efficacy of which is probably not questioned as often as it should be, left many

terminally ill patients down a road where life itself became a prolongation of death. It was these concerns in easing individuals into a relatively painless death in a familial and supportive environment, which led to the creation and increasing recognition and utilization of hospice care. I have and will continue my support for this sensitive, interdisciplinary health care system which not only attends to the psychological needs of the patient, but of family members and friends as well.

The need for increased utilization of hospice care is not only an outgrowth of the vital role that psychological comfort plays during slow deaths, but also bespeaks the fact that the percentage of our population over 65 is steadily increasing. As this percentage increases, there will be a concomitant increase in the number of elderly and terminally ill patients the health care system will have to provide for. Hospice care allows these individuals to psychologically and physically maintain a relatively comfortable existence, while simultaneously creating and providing for a supportive familial network.

The increase in hospices in our Nation to approximately 1,400, reflects a mounting interest in addressing the medical needs of our elderly and terminally ill within an interdisciplinary framework which provides for personally tailored care, and death with dignity and self respect. Perhaps, most importantly, hospice care is compassionate in a world of increasing alienation between patient and health care providers, where specialization has become a double edged sword of protracted longevity, yet unfamiliarity with one's providers.

Designation of November 1986 as National Hospice Month deserves our support, and elicits deep gratitude for all those responsible for bringing understanding and compassion to the terminally ill and their families and friends. Accordingly, I urge my colleagues to participate in the events commemorating November as National Hospice Month.

FEDERAL JUDICIAL SURVIVOR ANNUITY PROGRAM

HON. JAMES M. JEFFORDS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. JEFFORDS. Mr. Speaker, in the 99th Congress we tackled many tough issues and made progress in many areas. One such accomplishment was a complete overhaul of the Federal judicial survivor annuity program. Public Law 99-336 goes a long way in providing adequate support for the surviving spouses and dependents of current members of the Federal bench and other judicial branch officers. Unfortunately, however, the new law does not address the needs of widows and widowers of Federal judges who must continue to live on the very limited incomes provided under the old system.

I think that in the 100th Congress, we should turn our attention to solving this remaining problem. While the number of affected persons is small, the problems they face in making ends meet are often quite large. In spite of strained resources, they work hard to maintain their dignity. I do not think this should be such a struggle.

Today, in the final hours of the 99th Congress, I am introducing legislation that would make the survivor annuity program in Public Law 99-336 retroactive. I realize this action can be no more than a symbolic gesture at this time. I hope, however, that taking this action will draw attention to the problem facing this small group of widows and widowers and that Members, as they return home, will look into this problem in their own districts.

If reelected in November I plan to reintroduce this bill when the House convenes in January and continue my efforts to see this situation corrected in the 100th Congress. In the interim, I hope to gain support for its implementation.

H.R. 5743

A bill to make surviving spouses of judicial officials who died before October 1, 1986, eligible for increased annuities which are effective as of that date

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2(b) of the Judicial Improvements Act of 1985 (28 U.S.C. 376 note) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by striking "The benefits" and inserting "(1) Except as provided in paragraph (2), the benefits"; and

(3) by adding at the end of the subsection the following:

"(2) Any individual who—

"(A) is a widow or widower of a judicial official who died before the effective date of this section, and

"(B) was eligible for an annuity under section 376 of title 28, United States Code, before such effective date,

shall receive an annuity under section 376 of such title, as amended by this section, notwithstanding contributions or deposits made in accordance with applicable law at lower rates. For purposes of this paragraph, the terms 'widow', 'widower', and 'judicial official' have the meanings given those terms in section 376(a) of title 28, United States Code.".

A TRIBUTE TO AN AVIATION PIONEER, THE FOUNDER OF CONTINENTAL AIRLINES: ROBERT F. SIX

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. KEMP. Mr. Speaker, I rise today to pay tribute to an aviation pioneer and the founder of Continental Airlines, Bob Six. Bob's attention to small details and his ability to deliver what the customer wanted helped him build Continental Airlines into a great air carrier, competing with larger airlines.

Bob's success is a tribute in itself to the entrepreneurial spirit of America—that anything is possible with hard work and a desire to succeed. Bob was a pioneer who understood the reality of risk and change, and succeeded in creating jobs and opportunity when he founded Continental. I encourage all Members of Congress to read the following article from the New York Times that details the life and accomplishments of Bob Six. My wife Joanne and I extend our sympathy and prayers to his dear wife, Audrey. We've had the pleasure of meeting Bob and Audrey and we're honored to be called friends.

The article referred to follows:

[From the New York Times, Oct. 7, 1986]

ROBERT SIX, FOUNDER OF CONTINENTAL AIRLINES, DIES

Robert F. Six, the founder of Continental Airlines and a pioneer in commercial aviation who came of age in an era of open cockpits, died in his sleep yesterday at his home in Beverly Hills, Calif. He was 79 years old.

At 6 foot 4 inches tall and over 200 pounds, he was one of the airline industry's most durable and imposing figures. He served as head of Continental Airlines for 46 years until his retirement in 1982.

He was a fastidious executive whose eye could detect the smallest of details. "He was a hands-on manager before they coined the phrase," said C. Edward Acker, chairman of the board of Pan American Airways, who was a friend of Mr. Six for the last 24 years.

Joe Daley, a former executive with the airlines who is a spokesman for the family, said: "You saw him everywhere, in the tire shop, in the hostess division. The Harvard Business never told him how to do anything."

FARE CUT FOR ECONOMY TRAVEL

Mr. Six jolted the industry in 1962 when he won approval for a 20 percent fare cut for economy travel between Los Angeles and Chicago.

His rivals, much larger companies like United, American and Trans World Airlines, opposed the cuts, then matched them, but predicted that all would suffer financial losses.

At the beginning of the next year, however, Mr. Six reported that his airline's first quarter revenue was up 10 percent over the previous year.

When he was asked whether the discount fares would help the industry, he shot back: "They're good for Continental. I'm not running a trade association for the whole industry."

To woo passengers, he served them champagne for breakfast, gave them a choice of meals in coach and delegated a crew member to write tickets and make hotel reservations aboard the planes.

After his retirement in 1982, he watched Continental's fortunes decline. It was eventually bought by Texas Air. He also spoke out against deregulation of the airline industry, predicting, according to Mr. Daley, that "you'll always remember 1977," the year before deregulation, "as the last year of service in the airlines." Even though his prediction never held, he never changed his opinion.

KNOWN OUTSIDE THE INDUSTRY

Mr. Six became known outside the airline business as well, as an outdoorsman who liked to emulate the fastdraw artists of the Old West and as the husband of the singer Ethel Merman, whom he divorced, and the actress Audrey Meadows.

Robert Forman Six was born on June 25, 1907, in Stockton, Calif. His father, Clarence Logan Six, was a plastic surgeon. He dropped out of high school in his sophomore year and got a job in a factory.

Then, in turn, he worked as a merchant seaman and a bill collector for a utility company in San Francisco. It was on this last job that he began to take flying lessons.

He received his pilot's license in 1929 and with some family money, purchased a small two-seater airplane. That was his start in commercial aviation. The plane became the Valley Flying Service, providing tours of the countryside and doing stunts.

In the Depression, his one-plane airline went bankrupt and he sailed for China where he went to work for Chinese National Aviation as a co-pilot.

In 1937, back in the United States, Mr. Six learned of a small airline in the Southwest, the Varney Speed Lines, that was seeking an infusion of capital.

At the time, he was married to Henriette Ruggles, a widow and the daughter of William Erhard, chairman of the board of Charles Pfizer & Company. He borrowed $90,000 from his father-in-law and bought a 40 percent interest in Varney Speed Lines.

GROWTH OF CONTINENTAL AIRLINES

He renamed the company Continental and a year later became its president. The airline grew slowly after World War II. Then in 1955, he won the route between Chicago, Denver, Kansas City and Los Angeles. Through the purchase of another small airline, he also acquired routes to Texas and New Mexico. Then, gambling that he could make good on huge loans, he bought $64 million in airplanes and equipment and challenged the competition.

In 1963, he moved Continental from Denver to Los Angeles and began to gear it for a new role, a coast-to-coast and an international carrier in the Pacific.

He divorced Miss Ruggles in 1952, married Miss Merman in 1953 and separated from her in 1959. Two years later, he married Miss Meadows.

He owned a ranch in Ridgeway, Colo., a small town on the west slope of the Rocky Mountains, and an apartment in Manhattan on Park Avenue near East 85th Street.

He liked to ride horses and rope cattle, the executive turned cowboy. He even organized some of his employees into a quick-draw team, the "Six Guns," as they were called, taking advantage of the double meaning.

As the airline grew and office work demanded more of his time, he must have missed the cockpit for he would usually make his way to the flight deck of his airplanes to spend time with his pilots. He also liked to eat in the company cafeteria and "went down the chow line like anyone else," Mr. Daley said.

When the airline periodically changed its menus, he and four other company managers met to taste everything that was proposed and to rate it.

"He has a sharp marketing sense of what the customer wanted and liked and he delivered it," Mr. Daley said.

A burial service will be held Friday at the Holy Cross Cemetery in Culver City, Calif., at 1 p.m. Mr. Six is survived by Miss Meadows.

THE INJURY CONTROL ACT OF 1986

HON. WILLIAM LEHMAN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. LEHMAN of Florida. Mr. Speaker, it is hard to think of any benefits of waiting around for Congress to adjourn, but there is at least one—floor time can be made available for issues that otherwise might have to wait for the 100th Congress. I want to compliment the gentleman from California [Mr. WAXMAN] for seizing the opportunity to bring up S. 2648, the Injury Prevention Act of 1986, which passed the House last night.

For several years, both as chairman of the Transportation Subcommittee of the Appropriations Committee and as chairman of the prevention strategies task force of the Select Committee on Children, Youth, and Families, I have heard far too often about the tragedy of traumatic injuries. Trauma is the No. 1 killer and maimer of people between the ages of 1 and 44 and is the leading cause of childhood deaths. Every year, trauma kills over 150,000 people, approximately 30,000 of them children and youths. Millions more victims of trauma each year are disabled or require long, arduous, and expensive treatment and rehabilitation to regain their health. Motor vehicle accident-related injuries cause approximately one-third of trauma fatalities.

This is clearly a major public health and transportation safety problem, but in 1983 my Transportation Subcommittee received testimony indicating that, as of 1980, 27 different Government agencies were pursuing trauma-related research. My subcommittee, concerned at the lack of a coordinated Federal approach, directed in the Supplemental Appropriations Act, 1983, that the National Academy of Sciences examine the need for a comprehensive Federal approach to combatting the threat of traumatic injury to the American people.

The result of the subcommittee's directive was "Injury in America," issued in 1985. The Academy's Committee on Trauma Research found injury to be "the principal public health problem in America." Moreover, the Academy noted serious but remediable inadequacies in Federal injury-related research programs, particularly "the lack of a single coordinated focus of activity that would give visibility to this important public health issue and permit an organized program of effective action to address the problems." The Academy called for the establishment of a "center for injury control" within the Centers for Disease Control in Atlanta, to pull together research and zero in on solutions to trauma and injury problems. I think this report was right on the mark.

To implement the Academy's recommendations, my Transportation Subcommittee provided $10 million in fiscal year 1986, through the National Highway Traffic Safety Administration appropriation, to begin a pilot program of trauma research at a new CDC center for injury control. I am pleased to say that this new center is up and running, and I understand that the volume of grant applications it has received has far surpassed expectations. We appropriated an additional $10 million in our fiscal year 1987 bill, which is awaiting final action as part of the continuing resolution. I am delighted that S. 2648 will authorize resources to continue these efforts through 1990.

S. 2648 also provides for a critically needed study of childhood injury that will include recommendations for further actions to control and prevent childhood trauma. The work of my prevention strategies task force has shown time and again how valuable and cost-effective prevention is. I strongly support this study and believe it can give us important insights into protecting our country's most important resource.

Mr. Speaker, I have great hopes for the center for injury control. I believe the results of its work will be far-reaching. With the modest investment proposed in S. 2648, we will better understand how to mitigate or even prevent traumatic injuries and how to save lives and improve recovery. Such progress will yield tremendous benefits in cost savings and better lives, for the American people and for individuals and their families.

THE REALITY BEHIND SOVIET HUMAN RIGHTS WINDOW DRESSING

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. PORTER. Mr. Speaker, today we learn Dr. David Goldfarb has been permitted to emigrate to the West thanks to his close relationship with Nicholas Daniloff and Armand Hammer.

Once again, the release of a Soviet dissident screams across the front of our Nation's newspapers. Americans are left with the impression that a real improvement in human rights is taking place. That Mr. Gorbachev really does want peace, that he is accommodating right down to our demand that Soviet Jews and other dissidents wishing to be permitted to emigrate.

The impression is false. Fewer dissidents have been permitted to emigrate this year than any other year. This is the worst year ever. Without exception. No ifs, ands or buts. Less than 700 of the hundreds of thousands of Soviet Jews that wish to emigrate have been permitted to leave this year.

Mr. Speaker, the false impression of goodwill by the Soviets is dangerous for those whose human rights are being violated and frightening for those who believe in the necessity to protect them.

TRIBUTE TO TOM KINDNESS

HON. RALPH REGULA

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. REGULA. Mr. Speaker, I am pleased to join a special order recognizing the contribu-

tion of my colleague from Ohio, TOM KINDNESS.

During his service on the Judiciary Committee, he has been a legislator's legislator. Those of us who did not serve on this committee knew always that we could count on TOM to present a thoughtful, responsible analysis of pending legislation.

During a walk from the Capitol to the Rayburn Building, one of my colleagues who serves with TOM on Judiciary said it so well. "We will certainly miss TOM KINDNESS on Judiciary. His contributions to the writing of good legislation were always based on an independent understanding of the issues, and he was able to effectively articulate his ideas. He is a very influential member of the committee."

This appraisal by a peer in a casual conversation says it all.

Mary and I wish TOM well in his future endeavors.

THE CUBA NEWS: "FAITH IN GOD AND COUNTRY, HOPE FOR OUR FUTURE AND CHAIRITY TO ALL"

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. RICHARDSON. Mr. Speaker, I want to take this opportunity to share with my colleagues an article that appeared in the October 20, 1986, edition of Time magazine entitled, "In New Mexico: A Very Local Point of View." The article highlights the hard work and dedication of the Cuba News staff, who, for the past 22 years, have been bringing the local community news to the people of Cuba, NM.

Mr. Speaker, when the first issue came out on April 6, 1964, a front-page dedication to "faith in God and country, hope for our future and charity to all," has been a motto that Cuba News staffers have published in each succeeding issue. On behalf of the people of the great State of New Mexico, I want to say thank you to the past and present Cuba News staffers who are bringing news and information to Cuba area residents. I hope my colleagues will take the opportunity to read this thoughtful piece:

The article follows:

[From Time magazine, Oct. 20, 1986]

IN NEW MEXICO: A VERY LOCAL POINT OF VIEW

(By Gregory Jaynes)

This was some time back. Betty Jane Curry was explaining, "back in the hippie days." A long-haired transient blew through town—the little town of Cuba in the mountains of northwestern New Mexico—and made the fatal mistake of sexually assaulting one of Cuba's young women. Betty Jane and her colleagues on the local paper, the Cuba *News*, thought this worthy of note, especially after a knot of vengeful Cubans had their way with the vagrant. Trouble followed publication. As Betty Jane put it: "The local fellows didn't like it at all that we printed their names."

It was one of the few times in the 2 years and six months since the first issue of the *News* was birthed that it found itself at the center of controversy. "They gave Marrietta a hard time over that one." Betty Jane said. Betty Jane is the monthly publication's typist.

"I guess from the very beginning we decided we didn't want to get in any trouble," said Editor Marrietta Standridge.

"In a town this size you can't afford to lose half your business," said Peggy Ohler, who is the paper's artist and Betty Jane's daughter.

"So that's always been our policy," said Marrietta.

"But there was the time some guys broke into the forest service office, and we printed their names, and everybody got incensed," Betty Jane said.

"Right," said Marrietta.

"Then some guy jumped off a bridge and his parents were outraged that we printed it. He was strange when he jumped off, and he didn't get any better."

"We like to be definite in what we think," said Harriet Hernandez, assistant editor, "but we don't always print it."

"We can sit in here and mutter about it though," said Peggy, whose five-month-old, Jason, rode his mother's hip as easy as any other good Western lad ever sat a pinto. Jason is the only male connected with the paper, which draws its management and work pool from the 24-member Penistaja Homemaker's Extension Club. It was called the Penistaja Woman's Club when the first issue came out on April 6, 1964, with a front-line page dedication to "faith in God and country, hope for our future and charity to all," an admirable aim that has appeared in each succeeding issue. Somewhere along the line. "Woman's" inexplicably got changed to "Homemaker's." No one seems to remember why the switch, but, in any event, small potatoes: the newspaper has always been very much a homemade affair. It has been known to get put together on various kitchen tables.

Cuba is one of those low-slung New Mexican adobe towns, a wide spot in the road, really, up on the Colorado Plateau, in sight of the Jemez and the Nacimiento ranges of the Rockies. This time of year the country is golden with rabbit weed and chamiza (when the Spaniards first crossed these parts, they called it tierra amarilla, or yellow land), and the deep blue sky above it has no ceiling. In the first issue of the Cuba *News*—"the first edition of the first newspaper ever printed in this area"—an editorial declared that "we believe by letting the outside world know what is in 'them thar hills' that interest in this corner of God's Country will be born." Today the paper goes to 650 subscribers, including, according to Homemaking Editor Marie Stohr, "a woman that lives in Canada someplace, the sister of the lady that works at the cafe."

Autumn generally visits Cuba early, and Harriet had lighted a fire against the chill by the time the women arrived at her place to nail down September's issue. From 1915 until it closed four years ago, Harriet's place was called Young's Hotel. Built by her father John Young, it is hand-hewn pine and stucco, rough planks, notched banisters Navajo blankets and deer heads on the walls—a set for any movie that goes by the name of Stagecoach. It had 16 rooms to let upstairs above the dusty front desk, rooms you let yourself into. "Our guests just went in the rooms and paid the next day," Harriet said. "Well, those days of leaving your door unlocked are gone." And so are the days of the hotel. Now it serves as a Trailways Bus stop (not a station Harriet does not want the bother). A Go Big Red sign out front announces the 7:15 a.m. to Albuquerque, the 8 a.m. to Farmington, the 8 p.m. to Albuquerque and the 11:55 p.m. to Farmington, with connections to Salt Lake City. On the third Tuesday night of each month, the Cub *News* pages are put on the 11:55 bus and transported to Cortez, Colo., where the printer picks them up. Harriet will not stay up to meet the 11:55 bus anymore, so the women take the pages to a clerk of a local convenience store who gives them to the bus driver.

"Harriet was the second editor of the News," Marrietta, the present editor, said proudly as they settled into Young's Hotel to get the latest paper out.

"Now I don't even speak to them," Harriet said: She looked ticked with this biteless bark.

"Now, now," said Marrietta. "She helps in many ways."

Harriet: "Oh, I have a box here, and when people bring news in, I put it in the box."

The big news on this day, however, did not come from the box. A light plane that left Cuba for Taos a week before had disappeared. Also, Cuba had just voted, 84 to 68, to approve Sunday liquor sales. "Somebody was saying that you used to be able to buy enough on Saturday to carry you through," said Betty Jane, "and he doesn't see why they still can't do it that way." She added, "But the most exciting thing in the paper will be that if you won a blue ribbon at the country fair, your name will be in it."

Marie came in and announced that she had baked a German apple pie cake this morning, and it tasted good enough to publish the recipe. She remembered that her first recipe, in 1964, was a guide to making your own bath salts. Since then, she frets, she has used up all the recipes she can create as well as plagiarize. Nonetheless, she said, "I would hate to give this newspaper up. I had a birthday Saturday. I was 79. I've had two open-heart surgeries. I'm not about to stop doing anything I like to do."

On that last statement, so say all the other newspaper hands, all of them unpaid. It costs about $300 a month to publish the Cuba News. Any moneys above that go into the community, band uniforms for the high school and whatnot. With the exception of a rough period about three years ago, Cuba's merchants, whose immediate market numbers but a scant 1,500 citizens, have kept the News in the black with their advertising (full page, $50; half, $25; quarter, $12.50; want ad, $2). And even during that lean spot, when word got around that the paper might go under, advertisers who could ill afford it simply dug deeper and set things right.

Just as they should have. Remote, satellite dish-dotted America deserves its local news. Save for the gender of its staff (and undue attention to that nowadays is ground for flogging), not much distinguishes the Cuba paper from countless little presses in the land. It does its job. Its audience is grateful. People everywhere, with the possible exception of felons, like to be recognized: "Brett and Tammie Schultz Kelly are the proud parents of a baby daughter, and her name is Amber Marie. Congratulations!" Month after month it tells who visited whom, who was hospitalized, who died, who was born, who won the blue ribbons, the football game or election to the honor society.

The paper is not without philosophy: "Sin has many tools, but a lie is the handle that

fits them all"; reminiscences: "In the old days when things got rough, what we did was without"; or advice: "Did you know that parsley, mint or orange peeling when chewed after eating raw garlic helps eliminate the odor? This is offered to those who eat raw garlic for its medicinal value." Nor does it shirk its responsibility to give the local government decisions, dates of meetings, subjects to be discussed—all the prosaic duties of journalism that are intended to make for an informed public.

More than anything, though, the Cuba News is a companion, unvarnished as a buckboard but just as sweet as certain aunts. It is also, however forgivably, a hair short on controversy.

OBJECTIVITY AND BALANCE IN PUBLIC BROADCASTING

HON. DON RITTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. RITTER. Mr. Speaker, today I am introducing legislation that makes crystal clear the authority and obligation of the Corporation for Public Broadcasting to audit its programming to assess whether controversial programming is objective and balanced.

Freedom from bias, particularly in political programming, is essential to the longevity and stature of public broadcasting. When viewers feel that documentaries and other programs on public broadcasting are not objective and balanced, public confidence, and therefore the value of public broadcasting, suffers.

Section 396(g)(1)(A) of the Communications Act of 1934 sets forth the statutory requirement that there be "strict adherence to objectivity and balance in all programs or series of programs of a controversial nature". The Corporation for Public Broadcasting, and the Congress, share responsibility to see that legal requirement is met. I believe that the legislation I am introducing today goes a long way toward fulfilling that responsibility.

The bill would direct the Corporation for Public Broadcasting to develop and administer an auditing system that analyzes the content of public affairs programs funded by the Corporation. It provides for an ongoing and systematic content analysis, performed under a methodology designed to provide an objective evaluation and subject to peer review. By determining past trends, it would provide an accurate and useful tool for evaluating current practices of both PBS and CPB production funding and programming decisions.

In September, Senator GOLDWATER, Congressman OXLEY and I, together with 53 other Members of the House and Senate, sent letters to the members of the CPB Board of Directors urging the Corporation to undertake such a content analysis. This bill goes the next step and makes explicit what the law already provides—the Corporation has the duty and authority to review programming to assess its compliance with the statutory requirements.

I am introducing it now, not with the intent of passage this Congress, but to indicate that this is a significant item for next year's congressional agenda, particularly if the CPB Board delays action on its own proposals for content analysis.

I invite my colleagues to join me in sponsoring this legislation next year when it is reintroduced in the 100th Congress.

THE MEDICARE MANDATORY ASSIGNMENT ACT OF 1986

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. STARK. Mr. Speaker, today, I am joining with my colleague, Representative BRIAN DONNELLY of Massachusetts, to cosponsor the Medicare Mandatory Assignment Act of 1986.

Under current law, physicians, and other practitioners and suppliers, providing services under Medicare part B are free to refuse assignment and bill the beneficiary extra charges in excess of the Medicare approved payment. Our bill would require that services provided under Medicare part B be reimbursed only on the basis of an assignment agreement which obligates the physician to accept the Medicare approved charge as payment in full.

In 1984, total out-of-pocket costs for the elderly for health care services were equal to $1,526 per person or about 15 percent of income. In 1985, extra charges on unassigned claims totaled $3.6 billion. About 700,000 Medicare beneficiaries are expected to incur extra charges in excess of $1,000 this year.

Extra charges on unassigned claims are a heavy burden on the elderly. Moreover, these extra charges are unjustified. Medicare pays a fair price for physician services. According to Medical Economics magazine, during 1985, the average net income of physicians increased to an all time high of $102,520 after expenses.

Increasingly, private insurance policies and preferred provider arrangements require participating physicians to accept the approved payment as payment in full. Our bill is consistent with this trend.

With the growing supply of physicians, mandatory assignment is an appropriate means of ensuring that Medicare makes effective use of its market share to get a good price for physician services. I look forward to moving ahead with this important reform.

TRIBUTE TO CALIFORNIA COLLEAGUES

HON. RON PACKARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. PACKARD. Mr. Speaker, I rise to pay tribute to three of my California colleagues who will be leaving the Congress at the end of this session, GENE CHAPPIE, BOBBI FIEDLER and ED ZSCHAU. Each has been an effective voice for their constituents and all have left their mark in Congress.

GENE, we will miss your wit and sense of humor. You have helped all of us remember not too take ourselves or this institution too seriously. You have helped us remember that there is life outside of Congress and that there is life after Congress. I wish you the best in our retirement and hope you will invite me to go fishing sometime.

BOBBI, we will miss your tenacity in fighting for a balanced budget and your effectiveness in leading the fight on issues you believe strongly in.

ED, we will miss your vision and leadership on high-technology policy issues. You have been a strong and articulate voice on these issues and it will be hard to replace someone with your breadth of experience on these issues.

We will miss each of you and the strength, intelligence and effectiveness that you have brought to this body. I want you to know how I have appreciated our association here in Congress. I wish each of you the very best in your chosen future endeavors.

THE ONE-MONTH WONDER OF THE HOUSE

HON. MARY ROSE OAKAR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Ms. OAKAR. Mr. Speaker, the 1 month wonder, NEIL ABERCROMBIE has made a deep impression on all of us. He has been an outstanding Member. It is not the quantity of time, but the quality. He is a man of quality.

THE ONE-MONTH WONDER OF THE HOUSE—LOSING AND WINNING ALL IN ONE DAY, UNORTHODOX HAWAIIAN MAKES THE BEST OF A MELANCHOLY SITUATION

(By Ward Sinclair)

From up in the House public galleries they watch and wonder about him, and Neil Abercrombie, the chap with the beard and the hair down to his shoulders, is lapping it up.

In an institution where wonders seem never to cease, Neil Abercrombie is the latest case history of an anomaly in the American electoral system—the guy who lost a primary and won a special election, both on the same day, and became congressman for a week.

Democrat Abercrombie's week in Congress, representing Honolulu, now has stretched into nearly a month and he has settled into enjoying a melancholy experience that has made him a minor center of attraction and curiosity on Capitol Hill.

But then, there seems to be little about Abercrombie's political career that fits the rules of orthodoxy. His uniqueness begins with the first award he lists on his official resume (winner of the Lahaina Whaling Days Beard Contest on Maui in 1962) and continues right through his unusual election last month.

When Rep. Cecil Heftel (D) decided to give up his House seat and run for governor, state Sen. Abercrombie jumped into the Democratic primary for the House opening. Republican crossovers helped defeat him by about 1,100 votes on Sept. 20.

But Hawaiians were at the same time electing a House member from the same slate of candidates to fill the remainder of Heftel's term. Abercrombie—much to his own surprise and dismay—won that election

to represent the First District for the week or so that the House was expected to be in session.

"If anybody wants to know what limbo is like, they can come and talk to me," Abercrombie said yesterday. "My first reaction to the special election was to say, 'Oh, no.' And my wife was very upset. . . . But it was a gift, an act of faith by the voters, and I feel a heavy responsibility.

"Jefferson's remark about political honors being splendid torment is true, but this gift has been given to me . . . and maybe there was a message in it for me—that I am to remain in Hawaii."

As Abercrombie remembers it, he went to bed about 5 a.m. after Election Day, satisfied he had put up a good—albeit losing—fight. Then he was awakened by campaign aides who told him he had won the special election.

"I said, 'Is this real?' I didn't even know if it was accurate, what they were telling me. I resigned from the state senate, got on a plane next day and came to Washington. I was sworn in on Tuesday, the 23rd, by Speaker O'Neill—the last member sworn in by the retiring speaker.

"And then within a few minutes I voted on the asbestos information bill, my first vote. I was in a daze, almost, with little sleep since the previous Friday," Abercrombie said.

Abercrombie is aware that he is something of a curiosity, what with the long hair and the beard and the ubiquitous little attache case that seems always clutched in one hand.

"I was an unusual candidate. My hair is longer than you'll see it around here in Congress, but I've worn it long for 25 years and that is me. I got elected four times because my approach is that I'm known for sticking to my views. The rap on me in the primary was that Congress would never respond to a hard-hitting person like me who stands out in a crowd literally," he said.

Somewhat to his surprise, Abercrombie was swept with alacrity into the fraternal fold of the House. "People here see the human dimension and I've made some friendships that are really collegial," he said.

"One member after another has told me to never forget that I am a member of Congress and I'll always be a member of Congress, a member of a historic Congress. Within a day of coming here I participated in the continuing resolution vote that passed 201 to 200."

After Abercrombie voted with the majority, he said, Rep. Tony Coelho (D-Calif.) came over, put an arm around his shoulder and said, "Don't let anyone tell you this was a special election that didn't count."

Abercrombie still seethes over what he calls "smear tactics" used on him in the final days of his primary campaign—suggestions that he was soft on drug issues because he favored decriminalization legislation.

"They were paraphrasing a 16-year-old profile that suggested I enjoyed using marijuana," he said. "I never said that; I didn't use it. I was a probation officer, didn't smoke or drink, and I was under treatment for a viral condition that wouldn't let me take drugs if I had wanted to.

"We'd never had that kind of campaign in Hawaii before, but the same thing happened to Cecil Heftel. He was accused of everything."

Abercrombie's dream will end when the 99th Congress officially expires in early January.

"At the end of my campaign," he said, "the question was whether I was fit for office. After I came here, I was determined to make sure that everyone would feel I had conducted myself with integrity and character. I think I've done that."

A SALUTE TO DR. FREEMAN CARY

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. STOKES. Mr. Speaker, I want to commend the gentleman from Pennsylvania [Mr. GAYDOS] for reserving this time for us to reflect upon and pay tribute to one of the finest men I've ever known—Dr. Freeman H. Cary, former attending physician to the U.S. Congress.

I met Dr. Cary upon my election to Congress. From the time I met him until his retirement this year, there were many occasions when I sought out his service in terms of my own health. I grew to trust and rely on Dr. Cary and relied on him to advise and treat any ailments or discomforts that I might experience.

What always impressed me most about Dr. Cary was how he viewed himself as the personal physician for all 435 Members of Congress. More than any other person, he recognized the tremendous stress under which Members operate. While he acknowledged that Members had little time to devote to health care, he urged us to take time to check on our health regularly and develop means of reducing stress and tension.

Dr. Cary rarely relegated a Member to a staff physician, preferring to take you himself. He was always patient in the time he spent giving physicals, advice, and consultation. In addition, he demonstrated genuine concern regarding the welfare of a Member. Many times I went to see Dr. Cary with a medical problem, but once it was relieved, I would not go back for a follow-up visit. He would call my office to inquire about the problem brought to him days earlier and to check on my progress. As we all know, that level of concern is rare.

Nor did Dr. Cary hesitate to refer a Member to Bethesda Naval Hospital when it became necessary to consult with a specialist. He was also willing to sit and review test results with Members, offering advice on how to live with newly developed physical constraints.

Often accompanying Members on codels, Dr. Cary was attentive, concerned and dedicated to making good health care available, no matter where in the world we traveled. Even when the medical problems were closer to home, such as when a Member's family member was under the weather, Dr. Cary was always willing to provide the name of a private physician to consult.

Mr. Speaker, I will always remember and have great respect for the man who, more than any doctor I know, devoted himself to upholding the tenets of the Hippocratic Oath. He dedicated himself to providing the best possible medical care to the Members of Congress, and for that, I will always be grateful. Dr. Freeman H. Cary represents a fine example of medical expertise, and his concern, dedication, and conscientious service was deeply appreciated, and shall be sorely missed.

TRIBUTE TO CONGRESSMAN JIM WEAVER

HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 14, 1986

Mr. VENTO. Mr. Speaker, I would like to associate myself with the remarks of our colleagues in recognition of JIM WEAVER's illustrious career.

I have had the privilege to serve with Congressman JIM WEAVER on the House Interior Committee and know of his commitment to the people of Oregon and to our Nation's environment.

Whether it has been nuclear safety, public power for the Northwest, or a sound use of our timber resources, JIM WEAVER has been in the forefront of the fight for responsible Federal policies. His commitment to the wise use of our land and to protecting our resources has been shown time and time again.

JIM WEAVER is a tenacious fighter. Perhaps the most appropriate tribute to our colleague is the legislation that the House has approved this week to create the Columbia Gorge National Scenic Area. This legislation has been declared dead repeatedly by many. However, JIM's perseverance and creativity resurrected this legislation and made possible consideration this past week and enactment into law in the final day of the session. What a wonderful testament to JIM WEAVER's service in this Congress during the past 12 years, working with his colleagues from Oregon and Washington toward a meaningful designation of the Columbia Gorge.

TRIBUTE TO DON FUQUA

HON. G. WILLIAM WHITEHURST

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. WHITEHURST. Mr. Speaker, one of the most gratifying aspects of service in the House of Representatives is the opportunity to build friendships across partisan lines. All of us have found this to be one of the special joys of serving in the Congress.

There are particular Members who invite this relationship because of their generous spirit, their competence, and their bonhomie. DON FUQUA of Florida is such a person. I daresay he has never had an unkind word uttered about him.

As we leave our respective careers in the House behind us, I want to take this opportunity to pay him a special tribute, becaue he epitomizes all of those characteristics we seek in the ideal Member. I will always remember DON FUQUA as a neighbor and a friend, and Janie and I want to wish him and his wife Nancy good health and happiness in the years to come.

A TRIBUTE TO THE HONORABLE JOHN F. SEIBERLING

HON. DOUGLAS APPLEGATE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 8, 1986

Mr. APPLEGATE. Mr. Speaker, I want to join with my colleagues in the House in extending special recognition to one of the truly special Members of this body, a person who has contributed immensely to the U.S. Congress and to his constituents ever since he first came here in 1970 and who, unfortunately, will be leaving us at the end of the 99th Congress—my friend and colleague from Ohio, Representative JOHN F. SEIBERLING.

JOHN SEIBERLING has always stood for what he's considered to be the best for the people of the 14th District of Ohio, never permitting any other interests to get in the way of the wellbeing of the people he represents in the House. It is for his outstanding thoughtfulness and consideration that the people of Akron and the surrounding region are forever indebted to him and will sorely miss his statesmanship and leadership.

As someone who came from a family of wealth, JOHN has always strived to work on behalf of those people of our Nation and of Ohio who are not so well-off; as someone who knows so well the power of corporations in America, JOHN has always been vigorous in pursuing the need for antitrust legislation; as someone who knows about the benefits that corporations extract from our environment, JOHN has always been a strong protector and advocate of our land, water, and air; and, finally, as one who understands so well the special needs and problems of Ohio, JOHN SEIBERLING has always been on the leading edge of that group of Members who are working to find solutions for today and for many years and generations to follow.

I've enjoyed the opportunity of working with JOHN SEIBERLING for the past decade. I've enjoyed working with a colleague from Ohio who understands the special situations facing industry and workers, communities and families, of our great State. While the times have not always been very good for Ohio, I can assure you that, without JOHN SEIBERLING's presence in the House, the condition of Ohio and the livelihoods of all Ohioans would be far worse than what they are today.

Mr. Speaker, as we come close to the conclusion of this Congress, I want to extend to JOHN SEIBERLING and his wife, Betty, my very best wishes and hopes that they have many, many years of happiness.

MOUNT GREYLOCK REGIONAL HIGH SCHOOL'S 25TH ANNIVERSARY

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. CONTE. Mr. Speaker, this year marks the 25th anniversary of the Mount Greylock Regional High School in Williamstown, MA, and I would like to take this opportunity to extend my congratulations to the faculty and student body for carrying on the tradition of academic excellence that has been a trademark of Mount Greylock since its dedication a quarter of a century ago.

Mount Greylock was the first regional school in Massachusetts' First Congressional District, and I am proud to recognize its many outstanding accomplishments on this special occasion. Seventy-five percent of all students who graduate from Mount Greylock are college-bound and two-thirds of those go on to attend 4-year colleges or universities. The school's emphasis on advance placement studies prepares the students for the challenges of our country's top institutions of higher education. The quality of their advance placement course has been highlighted in a Public Broadcasting System film which was made on location in classrooms at Mount Greylock.

Mount Greylock has assembled and maintained a talented and respected faculty throughout the years. Various teachers hold leadership positions in the Massachusetts Teachers Association as well as the National Education Association. The staff is also enhanced by the presence of three Fullbright Exchange Teachers.

The student body is also marked by some very talented individuals who are destined to achieve great heights. Among these bright, young scholars have been 35 Merit finalists and 3 Presidential scholars.

Finally, I would like to recognize the outstanding success that Mount Greylock Regional High School has had with its various special programs. They have instituted the "ABC Program" in which underprivileged urban youth from around the country are invited to the area, housed at the ABC house, and enrolled at Mount Greylock. So far they have graduated 50 students from the ABC Program. They also participate in the American Field Service Program whereby Mount Greylock enrolls one to three foreign students per year representing any of 20 nations. This year they are being visited by students from Greece, Greenland, and Turkey. This program gives the students a chance to get a taste of culture from other lands which result in lasting friendships that extend around the globe. Lastly, Mount Greylock is preparing for the future with its "Future Problem Solving Team" which has caputured the Massachusetts title and has been accepted into national competition.

Western Massachusetts is fourtunate and proud to be the home of Mount Greylock Regional High School and on behalf of the First Congressional District I wish all those affiiated with Mount Greylock a happy Silver Anniversary.

IN HONOR OF CONGRESSMAN STAN LUNDINE

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. BEREUTER. Mr. Speaker, on Wednesday, October 15, the gentleman from New York [Mr. STRATTON] held a special order in honor of the distinguished gentleman from New York [Mr. LUNDINE] who is about to leave this House in his quest for high public office in his home State. Unfortunately, the hour scheduled for the special order was not propitious for the partcipation of the many Members of this House who certainly would have wanted to give special tribute and commendations to our distinguished friend and colleague, the gentleman from New York [Mr. LUNDINE]. Indeed, while the 2 a.m. special order did not permit my participation, this Member would very much like to offer his own, personal words of farewell to the distinguished chairman of the Banking Subcommittee on International Financial Institutions and Finance [Mr. LUNDINE].

Mr. Speaker, the gentleman from New York is chairman of the subcommittee in which I serve in the capacity of ranking minority member. Unfortunately, the gentleman from New York has only served as chairman of our subcommittee for one Congress. In his all-too-short tenure as chairman, he has led the subcommittee with newfound vigor, direction, and purpose. While at times we may not have agreed completely on new directions, the gentleman from New York always fairly consulted with the minority of his subcommittee.

This Member has served on numerous other subcommittees which embody the essence of partisanship and polarization. This Member is pleased that the subcommittee chaired by the gentleman from New York was proof that partisanship in Congress does not have to be rampart. In his capacity as subcommittee chairman, he has been eminently fair and courteous to all its members and staff.

Chairman LUNDINE raised the stature of the Subcommittee on International Development Institutions and Finance in many respects. From Latin American debt to African famine to human rights in Chile, the subcommittee held numerous hearings, demanded the consultations that are in its purview, wrote reports, enacted legislation and became the central focus for many critical policy issues which affect our Nation's relations with the developing world. I salute the distinguished chairman for his work on our subcommittee. His contributions through this body will be sorely missed and this Member will miss the friendly, daily contact that we have enjoyed.

The State of New York has a distinguished and excellent public servant in STAN LUNDINE.

THE AIDS VIRUS

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. DORNAN of California. Mr. Speaker, as the AIDS crisis continues to unfold, America's health care workers are preparing to treat some 270,000 AIDS patients by 1991, including 179,000 fatalities. They will also be faced with the prospect that 1 in 14 hospital patients will be a carrier of the AIDS virus. Obviously, eliminating AIDS and finding a cure is paramount. However, we are faced with the reality

that we are 3–8 years away from a cure, some say much longer than that.

In the mean time, we must look to our pharmaceutical and medical device companies to slow down the spread of AIDS, reduce its fatalities, and protect our health care workers from becoming infected. To that end, I am proud to announce that ICU Medical Inc. an emerging medical device company located in Orange County, CA, is bringing to market a new needle to effectively protect health care workers while giving injections and drawing blood. This innovative high risk needle is to be introduced in January 1987. The needle offeres a new level of protection against accidental transmission of AIDS. So, while we cannot yet eradicate the infectious AIDS disease, we can soon prevent the transmission of AIDS through needles by eliminating accidental needle sticks. To many of our health care workers, the ICU high risk needle will be their first line of defense against the accidental spread of AIDS.

The potential danger of AIDS to the American public warrants total Government support for companies such as ICU Medical, Inc., as they address the challenges of disease as well as the bureaucracy of the medical community. The high risk needle is an exciting and effective development in the battle against AIDS. We must encourage and promote its use because the AIDS epidemic threatens the health of each and every American family.

Mr. Speaker, I am submitting for the RECORD several articles concerning the AIDS virus and accidental needle sticks.

[From RN, December 1985]

HEALTH PERSONNEL MAY HAVE GOTTEN AIDS FROM PATIENTS

A nurse and a lab tech who've denied being in any of the groups at high risk for contracting AIDS have developed serum HTLV-III antibodies. the CDC has reported. They were among 26 of 1,750 healthcare workers who tested positive for the AIDS virus.

The nurse said she sustained two needlestick injuries, four months apart, while treating AIDS patients. The lab tech also suffered two exposures—a cut on the hand and a needlestick—while processing blood.

Although the two will be monitored over the next several years, the CDC claims no more than 20% of those who contract the AIDS virus develop the disease.

Since the CDC study was released, six San Francisco health-care workers have reported died from complications of AIDS. One, a surgeon, was not known to have been in any of the high-risk groups.

The CDC still maintains that the risk of catching AIDS from patients is low.

[From RN, November 1985]

SHOULD NURSES BE TOLD IF A PATIENT HAS AIDS?

An ED nurse at the Humana Hopsital in San Leandro, Calif., has filed a malpractice suit against Jeffrey Silvers, MD, charging he failed to warn her that his patient had AIDS.

Chellie Skinner Sims, RN, claims that Silvers, an infection control specialist, ordered her to give his patient two injections. While Sims was resheating the needle, the patient asked Silvers if the drug would cure his AIDS. Startled by the question, Sims jabbed the needle into her thumb.

Had she known the patient had AIDS, says Sims, she would not have attempted to resheath the needle, but would have disposed of it according to hospital and CDC guidelines.

Sims is seeking recovery for the anguish she will suffer over the next five years—she's been advised by the CDC to have semiannual blood tests for AIDS—and for damage to her relationship with her husband.

HEALTH WORKERS GOT AIDS VIRUS FROM NEEDLES

CHICAGO (UPI)—The first three confirmed cases of U.S. health care workers acquiring the AIDS virus from accidental needle punctures underscores the need for "vigorous" steps to protect hospital employees from the disease, a new study says.

In an editorial accompanying a study in this week's Journal of the American Medical Association, a San Francisco health official also advocated finding and testing the sexual partners of AIDS patients to slow the spread of AIDS.

National Cancer Institute researchers Thursday reported they had confirmed the AIDS virus entered the systems of three hospital workers accidentally pricked by needles used on AIDS patients.

The three workers were not part of high-risk group for AIDS and had not had sexual contact with an infected person.

Two of the workers tested positive for AIDS antibodies but had not yet developed acquired immune deficiency syndrome. A third did not test positive for the virus but apparently transmitted it to her sexual partner.

A positive test for AIDS antibodies does not mean a person will become ill with the disease. But people who test positive for AIDS are capable to passing the virus to others through the exchange of body fluids.

The researchers said, "In light of the occasional (AIDS virus) transmission from such (needle punctures), vigorous implementation of institutional policies to minimize the risks of such exposures appears to be warranted."

[From The Star-Ledger, Oct. 25, 1985]

NURSE PUNCTURED BY AIDS-INFECTED NEEDLE SUES MED SCHOOL—STUDENT CALLED NEGLIGENT IN DISPOSING OF SYRINGE

(By Donna Leusner)

A nurse who punctured her hand on a hypodermic needle used to treat an AIDS patient filed suit against the University of Medicine and Dentistry of New Jersey (UMDNJ) yesterday charging a resident medical student negligently threw the used needles in a garbage bag.

Nurse Marie Boult disposed of the plastic garbage bag as part of her duties as a nurse at the United Hospitals of Newark and is now awaiting test results to determine if she has been exposed to the fatal disease, according to her lawyer, Charles Farley Jr.

"We're fearful that she has been exposed under the circumstances, and to what extent is simply unknown at this point. The problem in this case is the unknown, the uncertainty of where she stands at this point," said Farley.

Although a screening test can determine if the virus believed to cause acquired immune deficiency syndrome has gotten into Boult's system, "as to whether or not she has contracted the disease, there is no test for that at this time," Farley said.

The AIDS patient, who has since died, also had hepatitis, and Boult, who was caring for the male patient in an isolation ward, has contracted "the same type of hepatitis that the patient did," Farley said.

The female resident medical student, who was listed as a defendant but was identified only as "Jane Doe," worked for UMDNJ at the time of the Dec. 27 incident, but had been assigned to United Hospitals as part of her training.

United Hospitals is an affiliate of UMDNJ.

In court papers filed by Farley in Superior Court, Newark, the suit charges the medical student "negligently and carelessly failed to follow the prescribed rules for the disposal of the used hypodermic needles and instead threw them into a plastic garbage bag and left it in the medication room."

The resident medical student had administered several injections to the patient, according to the lawsuit.

"The rules and regulations of United Hospitals specifically address the disposition of used hypodermic needles," according to the court papers.

Safety procedures and regulations to dispose of the needles "were there and they just weren't followed," Farley said.

Jeff Leebaw, manager of university communications for UMDNJ, said as a matter of policy, the university does not comment on cases pending in court.

Farley said Boult, 50 a resident of West Paterson, left United Hospitals in June and has begun doing administrative work for the Nurses Labor Organization in Trenton.

Boult got hepatitis in June, which Farley said is within the normal six-month incubation period for contracting the disease.

Within the past few weeks, Boult had a blood sample taken and sent to the centers for Disease Control in Atlanta, Farley said, Next week, she is expecting to learn the results of a preliminary screening test to determine whether she has been exposed to the deadly disease, Farley said.

"Frankly, I think she is handling it well so far," Farley said of his client. Homosexual men and drug users sharing needles have comprised the majority of AIDS victims, although hemophiliacs and youngsters have also contracted the disease through blood transfusions.

Farley, a Cranford lawyer, said he thinks it is important for the case "to be followed medically because we don't know how many innocent victims of AIDS there are. . . . I think the threat that it could get into the rest of the community is something that has to be studied carefully."

RELIANCE ON FOREIGN SOURCES FOR DEFENSE COMPONENTS WEAKENS OUR NATIONAL SECURITY

HON. HELEN DELICH BENTLEY

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mrs. BENTLEY. Mr. Speaker, on a number of occasions during the past 2 years I have called attention of our colleagues to the dangerous erosion of the U.S. manufacturing capability, the loss of millions of jobs in our basic industries, and the threat posed to our national security by the weakening of our defense industrial base. We are slowly losing the ability to manufacture critical components of weapons systems that are essential for our

Nation to defend itself as our military establishment more and more frequently is relying on foreign suppliers for key defense items.

I would like to place in the RECORD a recent article entitled, "U.S. Dependence on Foreign Military Parts: Should We Be Concerned?" That appeared in the summer, 1986 issue of "Issues in Science and Technology," published by the National Academy of Scientists and Engineers. The article was authored by Jacques S. Gansler, vice president of the Analytic Sciences Corp. and a member of the faculty of the Kennedy School of Government at Harvard University. Mr. Gansler is a former Deputy Assistant Secretary of Defense.

Mr. Speaker, many of the short-sighted procurement policies of the Department of Defense outlined in Mr. Gansler's article are now being addressed by a new organization—The National Council to Preserve the U.S. Defense Industrial Base, headquartered here in Washington. Like many of us here in Congress, organizers of the National Council are concerned over our growing dependence on foreign sources for essential products needed to maintain a strong and independent national defense effort. We share the similar concerns caused by the inability of many U.S. manufacturing concerns to compete with foreign-subsidized products now being intergrated into major U.S. weapons systems. The National Council is a nonprofit, nonpartisan group, founded by former Government officials, retired military officers, business and labor executives, and other concerned citizens. It will serve as a focal point to direct and mobilize public awareness to the need to strengthen the U.S. industrial capability, particularly as related to our national security requirements and the problems of small and mid-sized manufacturing concerns who are defense subcontractors or suppliers.

Mr. Speaker, the text of Mr. Gansler's article follows:

U.S. DEPENDENCE ON FOREIGN MILITARY PARTS: SHOULD WE BE CONCERNED?

(By Jacques S. Gansler)

For reasons of domestic politics and security, nations have historically attempted to be self-sufficient in defense production. Even small and developing nations have made this a high priority. For example, despite serious economic problems, Israel sought to become self-sufficient after France imposed an arms enbargo in 1967.

It is surprising, therefore, that in the last few years the United States has become dependent on offshore producers for many critical military components. U.S. radar systems, fighter aircraft avionics, missile guidance systems, sonobuoys, electronic countermeasures equipment, and military communications systems all rely on numerous components produced solely in foreign countries.

U.S. policymakers have long been concerned about the danger of U.S. dependence on foreign sources for many critical raw materials and have spent billions of dollars stockpiling strategic and critical materials. Only recently, however, have government officials begun to address the potential ramifications of the nation's growing dependence on offshore producers of critical military components. Several national issues are involved. What is the magnitude of this dependence, and what accounts for its growth? Is this dependence acceptable or not? If considered acceptable, what are the best ways to foster a mutually beneficial interdependence between the United States and foreign suppliers? If not, what can be done about it and at what cost?

The trend toward offshore procurement began with changes in the patterns of international trade. Many Americans are now buying foreign automobiles and electronic equipment not because they see them as being cheaper than domestic products but because they see them as being superior in quality and performance. For the Department of Defense (DOD), the issue may be more complex because foreign components are often not only superior but the only ones available. For example, nearly all the precision glass used in U.S. reconnaissance satellites and other military equipment is supplied by West Germany. The long list of sophisticated electronic items produced outside the United States includes computer memory chips; special silicon for fabrication of high-powered electronic switching devices; next-generation, gallium arsenide-based compound semi-conductors for high-speed data processing; liquid crystal and luminous displays for computer terminals and digital readouts; and certain fiberoptic products.

In many cases the shift to offshore procurement has resulted from foreign governments sponsoring advanced technology for both commercial and military markets. This is especially true in the case of the Japanese government. However, an even more significant cause may be the dramatic changes in the worldwide commercial marketplace, particularly in high-technology fields. U.S. firms have been moving their production and assembly operations overseas to reduce their labor costs and gain access to new foreign markets. DOD buying has also shifted offshore. DOD is sometimes forced to procure more advanced components from foreign firms or from U.S. firms operating overseas. For example, U.S. electronic firms give commercial users a much higher priority than defense now that the defense market has shrunk to less than 10 percent of the total U.S. domestic electronics market. Consequently, commercial electronic products are frequently more sophisticated than those used by the military. The President's Blue Ribbon Commission on Defense Management (the Packard Commission) found that microchips used in civilian products tend to be three to five years more technically advanced, one-third to one-tenth less expensive, and at least as reliable as those currently supplied to DOD by the same sources.

Conflicting U.S. government policies have undermined self-sufficiency and often even encouraged purchases of components abroad. U.S. procurement policies require buying the best and cheapest systems, and such systems are frequently those produced offshore. Similarly, U.S. laws and executive branch polices intended to encourage greater industrial cooperation with our allies have resulted in increased joint production of weapons systems, technology sharing, and offset agreements that involve U.S. purchases of foreign components to balance foreign purchases of U.S. weapons.

U.S. efforts to encourage Japan to provide advanced technology for the Strategic Defense Initiative is the most recent example of these policies. In the few cases in which Congress or DOD has addressed the foreign dependency issue directly, only prime contractors and entire weapons systems have been involved. For example, the so-called Buy American Act applies only to prime contracts and by omission encourages (or at least does not discourage) the purchase of foreign components for these same weapons systems. Similarly, because DOD procurement practices tend to ignore component sources, DOD does not keep track of where components are made.

Finally, the United States is the only nation without an industrial strategy aimed at building and maintaining a viable defense industrial base. Competitive market forces are depended upon to generate a rapid response to defense requirements at the lowest possible price. However, the defense market is unique, with only one buyer and usually one or very few suppliers, and thus is not conducive to efficiency, quick response, and innovation. Other countries, recognizing the difficulties presented by such a market structure, have developed national industrial strategies aimed at integrating their commercial and military production and R&D efforts and including suppliers of critical components as well as prime contractors.

Only in the past year have Pentagon officials begun to show serious concern about the growing dependence on foreign components. DOD has commissioned studies of the dependency issue by the National Academy of Sciences, the Defense Science Board, and senior military acquisition officials. Data from these three studies provide preliminary insights into the extent of offshore procurement of critical military components. The studies indicate that unless specific action is taken soon, offshore procurement is likely to become more significant for next generation weapons systems. Most important, the studies demonstrate how little is known about the magnitude and nature of this dependence and how little DOD policy guidance is available. It is essential that DOD promptly identify and quantify critical military components originating overseas, and that it set more explicit procurement policy guidelines and assign organization responsibility to address the problem.

Undoubtedly, heightened awareness of the foreign dependency issue may lead to the real danger of overreaction, especially by a Congress with protectionist tendencies. Total elimination of foreign dependence by requiring domestic production of all critical components would be prohibitively expensive and could jeopardize relations with our allies. Because foreign countries providing components are both allies and economic competitors, U.S. policymakers are faced with a dilemma. There is a need to procure the best quality components at the best price, and there is a need to preserve a strong, U.S. defense industrial base. As with most difficult policy decisions, the right answer may be to regard each situation as a special case involving unique political factors and cost-benefit assessments. In some instances the best DOD policy may be to develop defensive strategies to deal with future supply interruptions; for example, stockpiling critical items or preparing designs that substitute U.S.-built components for foreign components. In other cases the U.S. government may have to fund domestic R&D for next-generation components to lessen dependence on foreign sources. Or it may have to subsidize U.S. production of certain critical components.

Until recently U.S. policymakers have addressed the issue of foreign dependence only in the context of wartime mobilization. Clearly, this is inappropriate. It is a peacetime policy matter but one that could affect

wartime capabilities. Therefore, DOD should assemble the necessary data, assign responsibility to deal with the issue, and perhaps undertake discussions with our allies in light of the military and economic interdependence that exists in today's world. Without such a thoughtful approach, special interest politics may step into action, and DOD could be faced with legislation requiring domestic procurement for all defense items, including components. This would result in much higher defense costs and less effective weapons systems.

POLICY ON NAMING POST OFFICES

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. DYMALLY. Mr. Speaker, I would like to provide an explanation for my vote earlier this week on S. 2452, a bill to name a post office in South Carolina after Solomon Blatt, Sr.

As a Member of the Committee on Post Office and Civil Service, I have seen numerous bills approved which seek to pay tribute to respected and prominent individuals by naming a post office facility in their honor. These bills usually are sponsored by Members representing the areas in which the post offices are located—and understandably so. In each community, the post office is a symbol of America; oftentimes, it is the only Government building in the area. When a particular community wishes to honor an individual who has played a significant role in its history, what better way to pay lasting tribute than to designate a building in his or her name which will stand as a lasting monument to that individual's achievements.

The matter of naming post offices seems relatively simple, and yet, during this past Congress, the Senate has not taken action on the vast majority of such bills. And frankly, as a sponsor of a bill to name a new postal facility in Los Angeles after a distinguished postmaster and community leader, Leslie Shaw, Sr., I am at a loss to understand why there should be any opposition to such legislation after the entire House acknowledges the virtue of these bills by approving them unanimously.

Despite the Senate's lack of action on post office naming bills generally, S. 2452 was approved by the Senate this week and sent back to the House for approval. Frankly, I fail to see any difference between S. 2452 and the many bills, including my own—H.R. 2558—that have passed the House, only to languish in the Senate.

Mr. Speaker, this week, when the House took up S. 2452, it finally found it necessary to send a message to the Senate which reflects the frustration of myself and many of my colleagues. The House amended S. 2452 to include all of the other House-passed bills naming post offices, and sent the comprehensive measure back to the Senate.

It is time for the Senate to decide on a responsible policy for dealing with bills naming post offices. I sincerely hope the Senate will take this opportunity to do so by passing S. 2452, as amended by the House.

OCEAN INCINERATION COULD BE DANGEROUS

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. DYSON. Mr. Speaker, as a strong supporter of the Superfund; we must continue our battle against the toxic wastes that have destroyed our environment and have also resulted in a completely unacceptable amount of human suffering and death.

Mr. Speaker, as we remove toxic chemicals from our landfills, we realize that these landfills were not the quick solution they were touted to be. I wish to point out this very important fact and warn my colleagues that we may be facing similar disposal decisions in the future.

The EPA is pushing ahead with its plan to issue final regulations to permit experimental ocean incineration of liquid hazardous waste in our coastal waters. The EPA says that we are producing too much waste for other accepted forms of disposal. I object to this unacceptable risk to our marine environment and to the public's health.

There is considerable opposition to this form of hazardous waste disposal. The EPA's own Science Advisory Board monitored earlier experimental burns conducted in the Gulf of Mexico. The Board concluded that there were serious technological problems with this process. Even they could not answer all the critical quesions which were multiplied after those early experiments. In a recent report, the Congressional Office of Technology assessment, stated that only 8 percent of liquid hazardous waste is even eligible for incineration at sea. I question the need to issue final regulations for another experiment with so many flaws remaining and experts questioning its ability to help our disposal problem.

European countries have engaged in ocean incineration for years, but they have never attempted to burn the highly toxic waste that the EPA is proposing to use in its experiment. Furthermore, many European countries are no longer engaging in this practice because of the dangers it presents. I suggest that the EPA monitor those burns in European waters before subjecting our fragile marine ecosystem to such a risky experiment.

It is not merely a matter of financial liability, as addressed in this Superfund legislation. It is a matter of grave concerns and serious threat to our coastal waters. Ask any of my colleagues from the gulf area or along the west and mid-Atlantic coasts. Although some of my distinguished colleagues feel that the EPA should finalize their regulations and proceed with experimental incineration of hazardous waste, I agree with many of my colleagues, many scientific authorities, and the thousands of citizens who have packed EPA public hearings in opposition to this extremely controversial subject.

I remind my colleagues and the EPA that we are now cleaning up the mistakes of easy solutions from the past. We must not pass on a permanently contaminated or destroyed marine environment to future generations. We must carefully assess and study the need, the efficiency, and most importantly, the dangers of ocean incineration.

THE CATASTROPHE OF RAIN FOREST DEFORESTATION

HON. WALTER E. FAUNTROY

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. FAUNTROY. Mr. Speaker, the September 29, 1986, edition of the Washington Post featured a front page article about the gravest ecological crisis we have ever faced—a man-made mass extinction of plant and animal species.

A group of eminent biologists calling themselves the Club of the Earth have issued a statement calling the extinction crisis "* * * a threat to civilization second only to the threat of thermonuclear war." Included among the scientists who signed the statement are Harvard entomologist Edward O. Wilson, Ernst Mayr, our leading evolutionary biologist, and Stanford ecologist Paul Erlich.

It is estimated by leading scientists such as Peter Raven of the Missouri Botanical Garden that more than 29,000 square miles of tropical rain forest are cleared every year. This deforestation is conservatively projected as killing off approximately 17,500 species of plants and animals annually—most of them unknown to science.

The effects of this devastation are more than moral and aesthetic. Although they occupy only 7 percent of the world's land mass, the tropical rain forests are home to perhaps half of the world's living species. Thus, this most unique ecosystem plays a vital role in our planet's genetic diversity.

The importance of "biodiversity" can be illustrated by University of Wisconsin scientist Hugh Iltis' recent discovery of a wild tropical grass which is believed to be the wild ancestor of corn. The grass teocinte contains genes which make it naturally resistant to drought and several diseases which attack corn. The agricultural implications of current cross-breeding efforts are clear.

The impact of plant and animal species' mass extinction on humankind would be catastrophic. Tens of thousands of species are disappearing before they can be studied for their medical or food potential. Also, the destruction of the tropical forest ecosystem would deprive us of such vital natural services as the recycling of nutrients, and the maintenance of water, air and soil quality.

The unfolding disaster in the world's tropical regions also has an influence on the ecology of the United States. The tropical forest is the winter home of most of our migrating bird species. These birds are already facing the crisis of loss of habitat.

Clearly, this ecological crisis must also be addressed in the context of the developing world's long-term economic and agricultural growth needs, as well as the debt question. But the deforestation issue must be faced now. Its solution is as vital to our survival as is the solution of nuclear threats to our planet.

FLORIO DECRIES MASSIVE OWENS-CORNING LAY-OFFS

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. FLORIO. Mr. Speaker, I rise again to express my outrage at the decision of Owens-Corning Corp., to lay off one-half of its workforce—almost 14,000 employees from all around the country. In my district, Owens-Corning is stopping its operations in Barrington, NJ with a loss of up to 800 jobs. The effect of these lay-offs on Barrington and on my entire congressional district will be both devastating and disastrous.

The company explains that these massive lay-offs are a result of Owens-Corning's successful effort to thwart a hostile takeover attempt launched against it by the Wickes Co. While the management of Owens-Corning enjoys the fruits of its victory by slashing its work force by one-half, what is the effect to the Wickes Co. of its ignonminous defeat? Wickes Co. has pocketed a quick $30 million.

Mr. Speaker, something is seriously wrong with our economy when the loser of a corporate takeover attempt makes millions of dollars in the battle while the winner must liquidate its work force by 50 percent. This whole process reminds me of the view held by some Americans during the Vietnam war that the only way we could save a village was by liquidating it. That approach never worked militarily and it does not work economically.

I call upon the Congress to hold hold hearings to examine the effects of hostile takeover attempts on our economy. Among the issues these hearings must examine are the number of jobs our economy has lost due to hostile takeovers and the effect of these takeovers on the financial health of banks and other institutions which have provided loans to target corporations. In addition, these hearings should consider how existing Federal laws may encourage corporations to engage in hostile takeovers and, if so, how these statutes should be amended.

I want to note that while Owens-Corning is shutting plants in the United States, the company plans on continuing to operate its profitable facilities in Mexico. One might expect that the Reagan administration would be working to make our economy more competitive in order to stop the export of American jobs to nations such as Mexico. However, I was outraged to learn that the Commerce Department is sponsoring a program whose effect is to export jobs to Mexico. I urge the Commerce Department to stop its funding of this program immediately.

In addition, I call upon Owens-Corning to reverse its decision to slash its workforce. At a minimum, I urge Owens-Corning to provide fair and adequate termination benefits and job retraining programs to its workers, particularly to those employees nearing retirement age. I want to share with my colleagues an article appearing today in the New York Times describing the massive Owens-Corning lay-offs. The article follows:

HUGE CUTBACKS SET AT OWENS-CORNING

(By Elizabeth M. Fowler)

The Owens-Corning Fiberglas Corporation, detailing a major restructuring plan, yesterday announced slashing cutbacks in its hourly employees and in its salaried middle-management employees.

In all, it expects to cut its work force of 28,000 by about 13,000 through layoffs, early retirements and sales of operating units.

At the same time, the company disclosed a plan to borrow $1.5 billion from nine banks led by Citicorp and Credit Suisse to finance the recapitalization plan and to raise $300 million from an underwriting to be handled by Goldman, Sachs & Company.

The plan calls for paying $52 in cash, a new junior subordinated discount debenture with a face amount of $35 and one new common share of the recapitalized company for each share held. Shareholders will be asked also to approve a management incentive plan for 150 key managers.

"Our plan requires fundamental change and will not be painless," but we are confident it will strengthen our profits by reducing costs and focusing on our most successful products," said the company, which makes insulation, shingles and asphalt.

Owens-Corning, which has headquarters in Toledo, Ohio, also said it planned to sell its aerospace unit and other units, which will raise about $595 million in cash after taxes. The company will close some facilities, cut research spending, discontinue products and concentrate on its main business of building materials.

Recently it defended itself from a hostile takeover bid made by the Wickes Companies, a retailing conglomerate in the hardware and furniture area.

The announcement came at a time the company reported sharply decreased third-quarter earnings partly as a result of restructuring.

In the third quarter ended Sept. 30, it took a $71 million charge for severance pay to discharged employees and a $66 million write-down in the value of a subsidiary. As a result, it reported a loss of $58 million, compared with a net of $38.8 million in the quarter a year ago.

A TRIBUTE TO DR. FREEMAN CARY

SPEECH OF

HON. DON FUQUA

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. FUQUA. Mr. Speaker, I especially appreciate the time given to pay tribute to Dr. Freeman Cary. Dr. Cary is an outstanding physician and has performed admirably as attending physician. He is a warm and caring person, the kind of doctor everyone wishes they had.

A good friend of mine is one of the leading cardiologists in Tallahassee, FL, Dr. Laurie Dozier. Laurie was a student of Dr. Cary's at Emory and has related to me on many occasions what a wonderful professor Dr. Cary was and how he inspired Laurie to become a cardiologist.

I do not believe Dr. Cary has received the proper recognition for his devoted service to Congress. I do not believe everyone understands the long and hard hours he and his staff put in and the diligent work they do.

I, for one, am grateful to Dr. Carey for his service to Congress and wish him the best in the years to come.

ELLIOTT ABRAMS ON DOUBLE STANDARDS IN LATIN AMERICA

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. GILMAN. Mr. Speaker, one of the most cogent observers of Latin America is our Assistant Secretary of State for Inter-American Affairs, Elliott Abrams. Mr. Abrams, who has held, among other responsible positions in Government the post of Assistant Secretary of State for Human Rights and Humanitarian Affairs, is ably suited to respond to those who shut their eyes to Cuban and Soviet intervention in Latin America, while raising a hue and cry whenever the United States acts to preserve its interests in that area.

In a speech delivered last April entitled "Intervention in Latin America: Cuba Si, Yanqui No?", Secretary Abrams discusses that all to common double standard. This is not to suggest that our Latin America policy should be above criticism. I have leveled many criticisms myself. But there should be no double standard, and we should be prepared to face the reality of the intervention of Marxist-Leninist states and act accordingly.

Secretary Abrams mentions one instance of intervention which is worth discussion at this point: the support given the M–19 movement in Colombia by Cuba and others. M–19 is one of the most blood-thirsty terrorist movements ever to surface in Latin America. It has literally held a nation hostage, seizing, for example not only diplomats but also the Colombian Supreme Court—not coincidentally, perhaps, a crucial element in Colombia's struggle against drug trafficking. Yet Cuba's support for this murderous faction goes practically without comment in conference rooms and parliaments around the world, so quick to criticize American actions.

Mr. Speaker, I hope that Secretary Abrams' remarks receive the attention of my colleagues. Accordingly, I am submitting them for the RECORD.

[From the National Interest—Summer 1986]

INTERVENTION IN LATIN AMERICA: CUBA SI, YANQUI NO?

(By Elliott Abrams)

The 25th anniversary of the Bay of Pigs, which occurred on April 17 of this year, was widely noted on editorial pages throughout the country. Another anniversary two days later—that marking the beginning of the armed insurgency by the M–19 movement in Colombia 14 years earlier—received virtually no attention. Yet, the M–19 anniversary is at least as salient to our concerns today.

The Bay of Pigs was a tragedy because brave men were left to suffer the consequences of our ineptitude. For a quarter-century, commentaries on the Bay of Pigs have focused mainly on the presumed evils of U.S. intervention, largely overlooking the

fundamentally interventionist nature of the Castro regime, evident as early as the now nearly forgotten effort to overthrow the government of Panama in April 1959. Some of these criticisms have even suggested that, were it not for the United States, Latin America would be free of dictators, exploitation, and conflict. If the United States would only stop intervening, the litany goes, Latin America would be democratic, prosperous, and at peace. This kind of theorizing is the particular specialty of such eminent students of Latin American history as Anthony Lewis and Tom Wicker; and to deviate too far from it is to court immediate suspension from the Latin American Studies Association.

The story of the M-19 demonstrates that the real threats to democracy in the hemisphere do not originate in Washington. In fact, although most Americans have never heard of it, the M-19 is characteristic of the pattern of anti-democratic intervention that has afflicted much of the hemisphere since Fidel Castro came to power in 1959.

The story is instructive because it illustrates how Cuba tries literally to get away with murder while righteously posing as a Third World David facing the U.S. Goliath.

Colombia is one of Latin America's oldest practicing democracies, complete with a distinguished free press and a two-party system tempered by regular competitive elections. The M-19 is a terrorist organization whose record includes holding a U.S. ambassador hostage, the murder of 11 Colombian Supreme Court justices, the protection of illegal narcotics production and trafficking, and the deaths of hundreds, perhaps thousands, of Colombians. The M-19 has consistently received Cuban and more recently Nicaraguan training, support, and arms.

In February 1980, sixteen M-19 guerrillas occupied the embassy of the Dominican Republic in Bogota during a diplomatic reception. They took 80 hostages including the U.S. ambassador and 14 other ambassadors. The siege lasted more than two months before a settlement was negotiated. The guerrillas were flown to Cuba, where they released the remaining hostages and were given asylum. In the months that followed. Cuban intelligence officers arranged meetings of M-19 leaders with the leaders of other Colombian extremist factions, and with Sandinista representatives, on ways to achieve unity of action among guerrilla groups in Latin America.

In November 1980, a second group of M-19 members and recruits went to Cuba to join their comrades who had stayed there since the takeover of the Dominican embassy. The Colombians were given three months of military training by Cuban army instructors. The courses covered the use of explosives, automatic weapons, hand-to-hand combat, military tactics, and communications. Politics and ideology were also taught. In February 1981, one to two hundred M-19 guerrillas infiltrated Colombia from Panama by boat along the Pacific coast. Their mission was to establish a "people's army," but the operation was dismantled by Colombian authorities in a matter of weeks. Among those captured was Rosenberg Pabon Pabon, the M-19 leader who had directed the Dominican Republic embassy takeover and then fled to Cuba. Cuba denied any involvement with the M-19 landings; it did not deny training the guerrillas.

The M-19 persisted. In 1983, the M-19 gave lip service to President Betancur's peace process, but continued to arm and recruit new members. Ten months after signing a cease-fire with the Colombian government, the M-19 launched an all-out offensive in southwest Colombia against government forces, resulting in hundreds of deaths. On November 6, 1985, heavily armed M-19 commandos drove a truck into the basement of the Palace of Justice in Bogota. Ministry of Justice employees were taken hostage: many were killed outright. By the time government forces regained control of the building more than 24 hours later, 100 persons were dead, including 11 Supreme Court justices.

After it was all over, Colombian authorities concluded that the judges the terrorists had sought out and the extradition documents they had burned indicated that, in addition to their political goals, the M-19 assailants were working directly for drug traffickers. The Colombian authorities also discovered that several of the weapons used by the guerrillas had come from Nicaragua. On two of the captured rifles the letters "EEBI" were still visible—indicating that they had once been issued to an elite Nicaraguan National Guard battalion. Three other rifles were individually traced to a Somoza purchase in 1976. Another was identified as having been shipped to Vietnam in 1968: it was probably among the weapons Vietnam intended for Salvadoran guerrillas. Sandinista Interior Minister Tomas Borge attended a special mass in Managua for the M-19 "martyrs" killed in the Palace of Justice takeover.

The M-19 case is not an isolated phenomenon. It is typical. Cuba has been intervening in the hemisphere since 1959, and with steadily increasing sophistication. Since 1979, Nicaragua has been an eager apprentice. Nicaragua and Cuba trained and supplied Honduran guerrillas who attempted to establish bases in the Honduran provinces of Olancho in 1983 and El Paraiso in 1984.

Jose Maria Reyes Mata was a Honduran radical activist who had accompanied Cuba's "Che" Guevara on his ill-fated attempt to stimulate an insurgency in Bolivia in 1967. In April 1980, just when Honduras was holding democratic elections for a constituent assembly, Reyes Mata was arrested in connection with pre-election violence and the kidnapping of a Texaco executive. Freed in a general amnesty later that same year, he moved to Nicaragua. From there, Reyes Mata began an active recruitment campaign in Honduras. Recruits went to Cuba via Managua for military training. By 1982, as democratic civilian government was restored to Honduras, the guerrillas were back in Nicaragua gaining combat experience by fighting with the Sandinista army against the Nicaraguan resistance.

In July 1983, Reyes Mata and a 96-man force armed by the Sandinistas entered the isolated and sparsely populated Department of Olancho in eastern Honduras. The operation was conceived as a vanguard action to prepare the way for a larger insurgency, but it was foiled by Honduran security forces; Reyes Mata was killed. Other guerrrillas captured by the Honduran Army gave detailed descriptions of their training in Nicaragua and Cuba. In July 1984 another attempt was made to infiltrate guerrillas from Nicaragua into Honduras, this time into the El Paraiso Department. As with the Olancho group, the guerrilla cadre received training at Pinar del Rio in Cuba, then moved to Nicaragua where they gained combat experience fighting against Nicaraguans opposed to the Sandinistas. Again the intervention was contained by the Honduran Army.

In April 1985, six months before Honduras's second democratic election, the Sandinistas were again caught trying to provide support for Honduran guerrilla groups. This time, however, the operatives were Nicaraguans. Between April 11-14, seven Nicaraguans were arrested in El Paraiso Department. One of them was a member of the Nicaraguan Directorate of State Security (DGSE) who stated that he had coordinated similar arms infiltrations into Honduras since November 1984.

Cuban and Nicaraguan interventions—and to make the point I have not even needed to detail the better-known case of Nicaraguan support for the Salvadoran FMLN guerrillas—have caused growing concern throughout the hemisphere. But there are still some who miss the point. Some simply deny that these interventions have taken place, just as some, including members of Congress, managed to deny the recent Sandinista military incursion into Honduras until Ortega himself admitted the Nicaraguan action. Others respond that "everyone does it" and suggest that decent people should look the other way, that no one should take it too seriously, or that nothing can be done about it. Still others suggest that because Cuba and Nicaragua are small and poor countries their activities are not "intervention" at all, but justifiable acts of "solidarity" or "internationalism."

These reactions all miss the key strategic point: This pattern of intervention is not a local phenomenon, nor is it a purely Cuban or Nicaraguan phenomenon. It enjoys the full support of the Soviet Union, which is acting through proxies and allies here in the Western hemisphere.

Castro, we know, has long seen Soviet power as the means to "transform the Andes into another Sierra Maestra." During the 1960s, however, the Soviet Union opposed and often restrained Cuba's adventurist tendencies. In 1959, Castro aided armed expeditions against Panama, Nicaragua, the Dominican Republic, and Haiti. During the early and mid-1960s, Guatemala, Colombia, Venezuela, Peru, and Bolivia all faced serious Cuban-backed attempts to develop guerrilla wars. The Soviet Union was suspicious of Cuba's policy of inciting armed violence, preferring to work through established Moscow-line communist parties. Disagreement over this issue was a serious point of friction for several years. Cuba denounced the Soviet policy of "peaceful coexistence" as a fraud, arguing that it implicitly undercut the legitimacy of aiding "national liberation" struggles.

But Cuba's African operations, in Angola and Ethiopia, gave evidence of Cuba's military value to the Soviet Union. In areas of the Third World where the Soviets were under constraints not binding on Cuba, Havana could portray its actions as an outgrowth of its own foreign policy of support for "national liberation movements." Cuba's extensive and costly activities overseas would have been impossible, however, without Soviet aid. The Cuban armed forces, some 225,000 strong, with new sophisticated weaponry from the Soviet Union, became a formidable offensive military machine. And today, Cuban intervention plays a key role in Soviet strategy. Cuba provides the missing link between Soviet power and indigenous conflicts, transferring what previously would have been purely local conflicts into the East-West arena. When Cuban pilots fly Soviet helicopters against Nicaraguan peasants, it is not the United States that is in-

jecting the East-West conflict into Central America. It is the Soviet Union.

Beginning in the late 1970s, Cuban support for violence increased dramatically, particularly in Central America, but in South America and the Caribbean as well. Cuban activities from Nicaragua and El Salvador to Colombia, Guatemala, and Grenada have cost thousands of innocent lives and hampered the struggle to build democratic institutions. At the same time, the United States has played a key role in supporting the hemisphere's democratization and provided critically needed trade and aid benefits. Yet some committed democrats at home and abroad talk and behave as though they cannot see Cuba's interventions, but can spot every imperfection in U.S. cooperation.

How can this glaring double standard be explained? Is there really anyone who is unaware that Cuban subversion in this hemisphere inevitably prepares the way for Soviet power? I doubt it. There is a polite fiction here that no doubt serves its purpose. The Soviets exploit Castro's violent zeal because they know that a direct Soviet role in the hemisphere *would* meet strong opposition, both in the United States and throughout Latin America. The most liberal in the U.S. Congress profess their readiness to send in the marines if the Soviets dare to build a military base in Nicaragua—in addition to the one they already have in Cuba. The Soviets, therefore, have to be somewhat careful; they need to use a little sleight of hand to carry out their objectives in this hemisphere. The Cubans have less to worry about in this regard. They are shielded by the polite fiction that they are an independent Latin actor on the Latin stage.

The fiction that the Soviet Union is not involved in Cuban interventions is necessary for those who, for whatever reason, want to avoid the difficult question of how to confront Soviet intervention in this hemisphere. It is also necessary for those Latin American governments who have no choice other than avoidance, because they simply don't have the means to defend themselves. One Latin leader described the Sandinistas so accurately to me in private conversation that I asked him why his government never said any of it publicly. "Look," he replied, "do you think they cannot switch on student riots, street demonstrations, strikes in a moment?" I asked who "they" were, and the answer was "Cuba." And he was still too polite to note that what "they" can switch on can reach beyond this into M-19 type murders, too. In short, given the time and opportunity, "they" can stimulate what seems to the uninformed an internal war. The notion that democracy guarantees immunity from subversion is disproved by a case like that of Colombia.

Neither Latin America nor the United States can risk failing to see the real danger. But here I turn back to the familiar question of avoidance. Call the effort to consolidate communism in Nicaragua a "local conflict" and you can oppose U.S. "intervention." Call it a "Latin issue" and you can urge a "Latin solution." But what if you call it what it is an effort by the Soviet Union to become the dominant power in the region that lies between the Panama Canal and Mexico? Then, whose responsibility is it to act? Only the United States has the power to deal with the Soviet Union. Once Soviet intervention is acknowledged, do we even have a responsible option of remaining aloof?

The fact is that right now we are partly involved and partly aloof. We do help a great deal through intelligence sharing and military training and assistance, and we did help save Grenada by force of arms. Yet at this moment, thanks to the Democratic leadership in Congress, our humanitarian aid program to the resistance forces in Nicaragua has expired, and for two years we have given them no military aid whatsoever. When we ourselves are unable or unwilling to act, I find it deeply unfair to criticize Latins who refuse to stand up to the communist over the issue of Nicaragua. If we won't stand up to this Soviet intervention, they will not get out in front of us. We are the great power in this hemisphere; like it or not, the responsibility for protecting it from the subversion of an extra-hemispheric great power is in the final analysis ours, not theirs. Let us not excuse our own indecision by hiding behind the uncertainties of our hemispheric neighbors.

Latins, too, know about avoidance. If—whatever our words—we accept a communist, subversive, repressive Nicaragua as our newest neighbor, so will they. Indeed, much Latin diplomatic activity in recent years has sought to define the terms of accommodation. But Latin leaders also know Nicaragua. They know who the Sandinistas are and what they stand for. They know about that attack on Colombia's Palace of Justice; they know what has kept the Salvadoran guerrillas in the field after repeated defeats and loss of popular support; they know all about the repression in Nicaragua; they know Managua is a terrorist base; they know Nicaragua is a pliant Soviet ally in the hemisphere; they even know who is torpedoing the Contador talks.

Many Latin American governments are struggling with two problems: First the tension between traditional fears of U.S. intervention and the realization that U.S. cooperation is vital to resist Soviet intervention; and second, the concern that the firmness needed in Washington to resist effectively may in fact be wanting. The conclusion that our role is essential but missing can produce the same phenomenon of avoidance again; and if the conclusion means disaster, it is only human to avoid it by concluding that perhaps the United States is not needed after all.

If the United States is clearly active—if we are ready, willing, and able to defend our friends and our interests—all calculations change. Soviet and Cuban plans and activities must be reviewed, as they were after Grenada. Latin American views about likely winners and losers, likely patterns of stability and instability, likely rewards and punishments to those who resist and those who subvert, all change. Put less theoretically, it is easier to accept Sandinista aggression as inevitable if you think the U.S. will not oppose it. But it is also easier to conclude, and to say publicly, that Sandinista aggression is intolerable if you think the United States will not in fact tolerate it.

So we return to fundamentals. The Soviets are actively intervening in this hemisphere. Through Cuba and Nicaragua the Soviet Union has become a major actor in a region that extends to our southern border and is clearly vital to our security. This intervention must be admitted and it must be resisted and it must be defeated. If we are weak or indecisive, we will rally no one to our side. In Latin America the now familiar pattern of critizing whatever we do as a half-measure while at the same time steering clear of commenting on Cuban behavior will continue and be repeated again and again. But if we are resolute in identifying and coping with the problem, the very clarity and firmness of our position will influence both the problem and the way it is perceived. It will help to win the support of many among those whose future depends on how the problem is resolved. That includes people inside Nicaragua and right here in the United States as well as in the rest of the Americas.

ON THE RETIREMENT OF THE HONORABLE STAN LUNDINE

HON. WILLIAM J. HUGHES

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. HUGHES. Mr. Speaker, I would like to take this opportunity to pay tribute to our colleague from New York, STAN LUNDINE, who will be retiring at the end of this Congress.

Throughout his 10 years in Congress, STAN has served his district and his country with the highest level of competence and ability, never hesitating to take on the big problems in his efforts to reform our Nation's industrial policy. His years of hard work to increase national productivity and develop a workable industrial strategy have already borne important fruit and will, I am sure, serve us in good stead as we continue to wrestle with these difficult issues.

I will also remember him for his fine work on the Select Committee on Aging, where I had the privilege of serving with him for a number of years.

I will miss working with STAN, and wish him much success and happiness in his future endeavors.

HOUSE RESOLUTION 598 TAX CHANGES

HON. JAMES M. JEFFORDS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. JEFFORDS. Mr. Speaker, I realize House Resolution 598 is being rushed through and we have no possibility to change it. I also understand that there have been changes proposed by the Senate with respect to a concern of mine.

I feel that it would be most appropriate for the recently passed tax bill to be amended with respect to the effective date to alter the deductibility of interest of life insurance loans. Thousands of policyholders purchased loans in the latter part of this year with the expectation that their interest would be deductible. Among other purposes, many families will utilize life insurance loans for the purpose of paying for their children's education. The very limited provisions in the new tax bill for this purpose make it even more desirable to follow the Senate's lead and extend the grandfather clause.

Under the Senate provision the Tax Reform Act's denial of deduction for insurance contracts purchased after June 20, 1986, would be amended to apply only to policies "applied

for" beginning 10 days after the date of enactment. I would encourage you to accept the Senate provision or a similar one which is not retroactive and which adequately takes into account contracts which were negotiated in good faith in reliance on present law.

A TRIBUTE TO THE LEGENDARY OHIO STATE UNIVERSITY FOOTBALL COACH; WAYNE WOODROW "WOODY" HAYES

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. KEMP. Mr. Speaker, I rise today to pay tribute to and recognize the accomplishments of a legendary coach, a dedicated leader, a real patriot and a friend, Woody Hayes. As the coach of Ohio State University's football program, Woody Hayes taught the value of hard work, mental discipline, and teamwork to all his players. The leadership and work ethic he brought to the game of football made Ohio State a perennial gridiron powerhouse. In 28 years as head coach to Ohio State, Woody Hayes won: 205 games; undefeated national championships in 1954 and 1968; 13 Big Ten titles; and college coach of the year in 1957 and 1975.

First and foremost, however, Woody was an educator and instructor. Woody's concern for his players' well-being both on and off the field was of paramount importance to him and they loved him. On the gridiron, he taught his teams to win but never to quit if they lost. His players captured three Heisman Trophies and 58 made the All-American ranks. Off the field, Woody Hayes prepared them for life. Leading by example, he taught them the importance of hard work, dedication, and loyalty. His coaching methods and leadership turned his teams into victors and his players into educated men of character.

Woody is also genuinely respected for his personal integrity and commitment to excellence. He is loved and revered in Ohio for his little publicized but widely felt acts of charity and kindness. I along with his many fans and friends appreciate what Woody has done for the game of football and for this Nation. His long and distinguished career in coaching has touched the lives, not only of the players under his tutelage, but those of us who benefited from the examples and ideas he introduced into the modern game of football. He and his teams have also shown what a unifying force football can be for America. The Hayes formula for victory on the football field was in harmony with the ideas of heartland America: simplicity and stability, dedication and determination. Controversial to be sure, as all great leaders are, Woody would be the first to admit mistakes and that's the kind of guy he is.

Woody believes that winners and heroes are a foundation of our civilization, and for the 33 years he coached college football teams, he gave his own personal contribution to this society—giving us new heroes and old values. Today I would like to call attention to all that he has done for football and our Nation, and I am proud to call this great coach my friend.

MANUFACTURED HOUSING INSTITUTE'S GOLDEN YEAR

HON. RICHARD H. LEHMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. LEHMAN of California. Mr. Speaker, this year marks the Golden Anniversary of the Manufactured Housing Institute [MHI], the voice of the manufactured housing industry in our Nation's Capital. I think this is an appropriate time to outline the significant strides the manufactured housing industry has made in producing a quality, affordable home now enjoyed by over 11 million Americans.

MHI has been a fundamental element in the industry's evolution from the travel trailer of the 1930's to the modern manufactured home of the 1980's. Today, manufactured housing stands as a shining example of how private industry, with virtually no subsidy from the Federal Government, can produce housing for American families who would otherwise be shut out of the American dream.

How has MHI helped direct this evolution? In the early 1970's, MHI led the effort to establish a uniform Federal preemptive safety and construction standard for all manufactured homes. This standard, which is 10 years old this year, ensures consumers that manufactured homes meet publicly adopted standards relating to health, safety, and durability. This standard set in motion a trend that has brought manufactured housing into the mainstream of the American shelter industry.

In the late 1970's MHI led the effort to establish parity for manufactured homes in federally sponsored home financing programs. Today, manufactured housing qualifies for the same Federal loan insurance guarantee programs under the Federal Housing Administration, the Veterans' Administration, the Farmers Home Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation as those enjoyed by the site-built housing industry.

Today, MHI is helping the manufactured housing industry meet the challenge of continuing to produce affordable homes in the face of escalating costs of material and labor. The industry is meeting this challenge by pioneering innovative construction technologies that keep manufactured housing at roughly one-half the construction cost of site-built housing.

I am confident that MHI can meet the challenges of the 1990's and persevere. The winners will be the nearly 300,000 families who, each year, realize the American dream of homeownership through manufactured housing.

A TRIBUTE TO THE SOUTHERN CALIFORNIA AEROSPACE INDUSTRY/EDUCATION COUNCIL

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. LEVINE of California. Mr. Speaker, I rise today to bring to the attention of my colleagues the Southern California Aerospace Industry Education Council, a successful program in southern California which was established to form a partnership between academic and vocational education.

The United States faces a massive shortage of skilled technicians. Because of this shortage, manufacturers have been forced to recruit from one another. This raises labor costs and therefore the price of the product. In addition, many companies are recruiting from out of country. The needs of the aerospace and other high-technology industries are just one example of our Nation's critical need for skilled personnel.

Although our universities are graduating more engineering students than ever before, for the first time more foreign students than American students are graduating with engineering degrees. This situation cannot be allowed to continue.

Industry has not sat idly by. Many partnerships have been formed between business and education groups to address this critical national issue and find a solution to the lack of adequate vocational education.

One successful partnership is the Southern California Aerospace Industry Educational Council. This council was established 2 years ago for the specific purpose of developing joint marketing strategies.

A curriculum guideline was developed with the assistance of State funding and is designed to be heirarchical and articulated among the high schools, community colleges, and degree granting colleges and universities. Thus the students may move sequentially from high school and occupational programs at the community college level, leading directly to technical level employment. Carefully written transfer courses will enable the manufacturing technologists to enhance employment upgrade opportunity by taking additional course work at the degree granting colleges and universities.

What is required today are programs and experiences that bridge the gap between the so-called academic and vocational courses. With the assistance of the industry-education partnerships, more attention is being paid to the problem of lack of vocational education.

The Southern California Aerospace Education Industry Council has had two significant accomplishments this year. First, the development of the curriculum guideline for manufacturing technologist and second, the retraining of instructors through a State internship program.

The role of vocational education can no longer be just creation of service jobs. It has to take a primary role in the recycling of the American work force not solely to provide job skills, but to help keep Americans in the inter-

national marketplace. The manufacturing industry will continue to need production people. The work force is changing with a rush of new technology and increased automation and will continue to do so beyond the 1980's. Foreign competition will require most industries to concentrate on high quality and high productivity. A more competent work force will be critical. The successful worker of tomorrow must have flexibility. Vocational education has a prominent role in developing this work force.

It's a pleasure to share the accomplishments of the Southern California Aerospace Industry Educational Council with my colleagues in the U.S. House of Representatives. There is a critical need for such a program and I wish the council continued success in this important endeavor.

TRIBUTE TO TOM LOEFFLER

HON. RALPH REGULA

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. REGULA. Mr. Speaker, I have had the special privilege of serving with TOM LOEFFLER on the Appropriations Committee and, as part of this committee, to share two subcommittees, Military Construction and Interior.

TOM was a diligent member of both committees. While representing his constituents very effectively in these responsibilities, he never lost sight of the national interest.

We could always count on TOM to have his homework done on difficult issues and to make thoughtful, responsible contributions as we wrestled with legislative challenges.

On a personal note, I cherish TOM's friendship and wish him well in his future endeavors.

PARREN MITCHELL: GOODBYE TO A LEGISLATIVE GIANT

HON. AUGUSTUS F. HAWKINS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 14, 1986

Mr. HAWKINS. Mr. Speaker, I would like to pay tribute to my good friend and legislative colleague, the Honorable PARREN MITCHELL, who will be leaving Congress at the end of this session.

PARREN MITCHELL will truly be missed in the legislative arena. His fiery oratory, his unrelentless spirit, and proud character have elevated him to a special class of public servant. When I think of PARREN MITCHELL's deep sense of commitment, I am reminded of a poem by Merrell C. Dougherty in tribute of another great public servant Hubert H. Humphrey:

HUMANITARIAN

Fate ushered him into this life,
Into a world of want and greed,
Of hate and war and strife,
Of misery, hunger, need.
His heart filled with compassion;
He vowed to raise great hopes anew.
Concern became his only passion—
He knew that good was good to do.
He spoke out for mankind,
For all who had no voice.
He gave his soul and heart and mind;
It was a noble choice.
The aged homeless made him sad;
He knew the jobless were not free.
Hungry children made him mad—
For in this land, they should not be.
He did not choose the easy road;
His pleas oft fell on ears of stone.
He never shunned the heavy load,
But he so often stood alone.
With smiles and grit he bore his pain.
He gave pure love, without alloy.
And never once did he complain—
This was his "politics of joy."
How shall his life be measured?
What shall we call this gentle man?
One noble word, most treasured—
Humanitarian.

Whether it is fighting for minority contract set-asides or serving the constituents of Baltimore's Seventh Congressional District, PARREN MITCHELL has always demonstrated that he is man of the people. In his own words, "Whatever I do will involve people * * * There is simply too much yet to be done."

Mr. Speaker, I want to say to my colleagues today that it was a distinguished honor and privilege to serve with PARREN MITCHELL. He has left a profound mark in the Congress and has lit a candle of hope in the hearts of countless of needy Americans.

TRIBUTE TO JOHN SEIBERLING

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 8, 1986

Mr. EDWARDS of California. Mr. Speaker, when several months ago, JOHN SEIBERLING announced that he would not seek reelection to Congress, I said to Edith B. Wilkie, Executive Director, the Arms Control and Foreign Policy Caucus, "This is terrible news. I won't accept it. JOHN must change his mind. We can't do without him."

Edith Wilkie agreed with me. JOHN had been chairman of that fine organization in the 94th Congress and vice chairman in the 93d, 95th, and 96th Congresses. His work for responsible arms control in the caucus had been applauded both here and abroad. That some nations feel better about the United States role in world affairs can be attributed in major ways to JOHN'S dedicated and skillful efforts.

I was privileged in the early 1970's to have JOHN as a member of the subcommittee I chair, the Judiciary Committee's Subcommittee on Civil and Constitutional Rights.

We were engaged in some challenging battles during that turbulent era. There was the impeachment of President Nixon, handled by the full Judiciary Committee. In that painful experience we relied heavily on JOHN SEIBERLING. His deep legal experience and judgment were invaluable to us in our deliberations. I especially appreciated his insistence that President Nixon's legal counsel, James St. Clair, be a part of all our proceedings and have the right to cross examine all of the witnesses.

That not one word of criticism was ever directed at the House Judiciary Committee as a result of our handling of the Nixon impeachment proceedings can be traced to the wise influence of JOHN SEIBERLING.

In the early 1970's the subcommittee I chair was also engaged in the investigation of Cointel, the FBI's improper behavior in domestic intelligence investigations. JOHN played an especially important part in this work, and today under Director Webster the FBI does not conduct domestic security investigations unless there are indications of criminal behavior. JOHN SEIBERLING's signature is on this major improvement also.

We Californians agree that there should be a monument to JOHN SEIBERLING. We love our outdoors, our mountains, our rivers, and our wilderness. We have these great natural resources protected in many ways because of JOHN SEIBERLING. He has been an absolutely splendid chairman of the Interior Committee's Subcommittee on Public Lands and National Parks.

Last, Mr. Speaker, Edie and I will miss JOHN and Betty personally. They are wonderful friends, interesting, caring, and enthusiastic. While JOHN is as determined a legislator as I have ever seen, I don't think I have ever heard him utter a word in anger. Blessed with a delightful sense of humor, he always seems to have an amusing and learned quote or bit of history to liven a debate or a conversation.

JOHN and Betty go back to their beloved Akron with the affectionate best wishes of us all. Having them as friends and JOHN as a colleague has been a rich experience.

NATIONAL BUREAU OF STANDARDS AND INDUSTRIAL COMPETIVENESS ACT OF 1986

HON. DON RITTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. RITTER. Mr. Speaker, we all recognize that the ability of the United States to effectively compete in a large number of basic industrial and manufacturing areas, both in global and domestic markets, has been se-

verely eroded in the last 10 years. This has been especially evident in our basic materials, manufacturing and high technology industries where we have lost our market leadership in steel, textiles and consumer electronic products. There are a number of actions including recommendations from the President's Commission for Industrial Competitiveness proposed to deal with this national problem. Many of these recommendations are in the form of policy and program support.

Policies and programs in the Federal Government are diffused throughout the system and enjoy low levels of priority. I propose that we cement our Federal commitment to increasing America's industrial competitiveness by establishing a real, physical entity capable of directing and conducting research and development to regain our industrial competitiveness in manufacturing, high technology and basic materials. To this end, I am introducing legislation to expand the role of the National Bureau of Standards to include industrial competitiveness and to redesignate the National Bureau of Standards as the National Bureau of Standards and Industrial Competitiveness [NBSIC].

As part of the Department of Commerce, the Industrial Competitiveness Division of the National Bureau of Standards will help mobilize private sector initiatives to capitalize on advanced technology, identify, select, and transfer, through cooperative efforts between industries, universities and Government laboratories, this Nation's research and development products. In this way, we hope to strenthen America's manufacturing, high technology, and basic materials industries.

The NBSIC would:

First, mobilize private sector initiatives to capitalize on advanced technology unique to the United States and suitable for use by the manufacturing, high technology, and basic industries;

Second, identify Government-sponsored R&D efforts which offer the potential of industrial applications to strengthen America's competitiveness;

Third, select and develop through cooperative efforts between industries, universities, and Government laboratories, the most promising R&D products, which can be optimized for commercial and industrial applications; and

Fourth, promote shared risks, accelerated development and commercialization time, and pooling of skills which will be necessary to strengthen the manufacturing, high technology, and basic materials industries.

In addition, one of the functions of the NBSIC would be to look into the possibility of competitiveness impact statements on regulations or legislation. This provision would help deter those Federal actions which end up hurting the competitive position of U.S. industry worldwide.

To ensure a responsive and effective program, the Industrial Competitiveness effort at the Bureau will be guided by an Advisory Committee composed of three Government representatives and five representatives from the basic materials, high technology, and manufacturing industries. This committee will review and approve programs, budgets, and operations of the Bureau's Industrial Competitiveness Division. It is also the aim of the bill to make optimal use of the private sector parties who are daily engaged in the struggle to enhance U.S. industrial competitiveness.

This legislation will enable the United States to more effectively focus on its industrial competitiveness policies and R&D programs. The Industrial Competitiveness Division is projected to be self supporting in the future from fees and royalties derived from the commercialization of R&D.

I am introducing this bill now to indicate that industrial competitiveness is a significant subject for next year's congressional agenda. I invite my colleagues to join me in sponsoring this legislation next year when it is reintroduced in the 100th Congress.

JACK DUNFEY: ENTERPRISING AMERICAN

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. STARK. Mr. Speaker, the political accomplishments of Irish-Americans are known to all Americans. The names Kennedy and O'Neill and Reagan and Smith—to mention the best known—are household words. Less well known are the names of Irish-Americans who have succeeded in the business world, although these groups are not mutually exclusive—Joe Kennedy made his mark in both business and politics.

Another who has succeeded in business and now makes a very positive political contribution is Jack Dunfey. A moving force for years in the Dunfey Hotel organization which includes the Parker House in Boston and the Berkshire Place in New York City, Jack Dunfey has also made a major contribution to the political dialog in this country through the New England Circle which sponsors seminars on social, political, literary and educational topics, and through his friendship with Senator TED KENNEDY.

Donal O'Donovan has included 25 sketches of Irish-Americans in his book "Dreamers of Dreams." One of those is of Jack Dunfey and O'Donovan gives a fuller description of Dunfey's major accomplishments. Mr. Speaker, I know and admire and like Jack Dunfey. I would like to place in the RECORD part of the chapter on Jack Dunfey from the O'Donovan book.

JACK DUNFEY

The Dunfey saga is remarkable by any yardstick. From the town of Lowell, Massachusetts, came a family of eight boys and four girls, all of them surviving and five of them destined, with their mother, to create a chain of thirty distinctive hotels that now covers two continents.

John Dunfey, known to his friends as Jack, emerged by common consent as the leader of this family enterprise whose origins lie in the variety store operated by Leroy W. Dunfey and his wife, Catherine Manning Dunfey. Leroy Dunfey died in 1952 at the age of 60, but Catherine, who left elementary school at 12 to work in the mill at Lowell, lived until 1982 and encouraged five of their sons—Jack, Jerry, Walter, Bob and Bill—to take the plunge into hotel-keeping in 1954, when they bought Lamie's Tavern, a small country inn, in Hampton, New Hampshire.

Catherine Dunfey, going on 60 at the time, became Chairman of the Board, and Jack was President and Chief Executive Officer. They enlarged Lamie's and gave it what came to be known as the Dunfey touch—early American furniture, big fireplaces, dark oak tables and pictures of ships.

Soon this third-generation Irish family was, in the words of a contemporary reporter, "poking about the New England countryside buying up one hotel after another", and with the acquisition of eleven hotels was grossing $15 million by 1969.

That was the year in which another watershed was reached. The chain up to then was mainly rural, mainly of the motor hotel type. When the family decided to buy the famous but bankrupt Parker House in Boston, they moved into the senior league, acquiring their first large hotel in a large city, a hotel, moreover that is the oldest continuously operated hotel in the United States.

The Dunfey story twists again in 1971, when the need to inject more capital caused the group to merge with Aetna Life and Casualty, the largest financial services company in the U.S. with assets of $47 billion. Although the chain was now 100 percent owned by Aetna, the five brothers, soon to be joined by a sixth, Roy, stayed on as the executive management team.

Four years later, new regulations, compelled insurance companies to divest themselves of non-insurance activities and with Morgan Guaranty Bank acting as brokers, the 14 hotels—plus another seven which were under management contract—were acquired by the Irish national airline, Aer Lingus, as part of its programme of concentric diversification. Negotiations took over a year but on January 1st, 1976, Aer Lingus, under its Chief Executive—Ancillary Activities, Gerald P. Dempsey, took, 100 percent of the equity in Dunfey Hotels at a cost to Aer Lingus of $750,000.

Now an international group, Dunfeys had Gerry Dempsey as Chairman and Jack Dunfey as Chief Executive Officer on a five-year contract. This was later extended to eight as the group developed further under Aer Lingus ownership. On April 1st, 1983, Jon Canas took up the executive role and Jack Dunfey, who had been working since the age of seven and has now turned 60, became Vice-Chairman. His five brothers still remain interested in various areas of the company's activities and though Jon Canas operates out of New York, Jack keeps his headquarters in Lamie's Tavern and cherishes the extra time he can give to his broad range of other interests.

This quite unusual company, linking as it does a family in the United States with a State-owned institution in Ireland, has prospered greatly from the unique diversity of its inputs. Soon after Jack Dunfey's retirement from active executive duties, the company acquired a small but significant business, the Omni International Hotel Corporation. This marriage, initiated by Jack Dunfey, was consummated in January, 1984, and clearly is the harbinger of great things to come.

With the traditional inn-keeping style of the Dunfeys, the support of Aer Lingus and now the new thrust of the Omni name, this company is setting its corporate sights higher than may ever have been dreamed about back in 1954.

Jack Dunfey is also a director, as is his brother Walter, of the Ireland Fund which

is chaired by Tony O'Reilly. In 1974, Jack and his brothers founded the New England Circle to "assemble for the discussion of social, political, literary and educational topics: to exchange ideas and opinions that can lead to constructive change in our lives, in our nation, and throughout the world".

The discussions, more than 40 of them to date, are always held in the Parker House, Boston, which in the heart of a Dunfey must take pride of place as the flagship of the chain although perhaps strictly speaking the Berkshire Place in New York can claim that honour. (Among the discussion leaders are many household names, including Boston's native son, Senator Edward Kennedy; the writer and columnist Jimmy Breslin; Mayor Andrew Young of Atlanta, Georgia; Coretta Scott King, widow of the Rev. Martin Luther King, and herself a human rights activist; Speaker Thomas P. "Tip" O'Neill; the economist J.K. Galbraith; John Hume, leader of Northern Ireland's Social Democratic and Labour Party; New York's Mayor Edward Koch; Ambassador Henry Cabot Lodge; Ralph Nader, the consumer advocate; Jane Fonda, Robert McNamara and Bianca Jagger.)

A memorable dinner to mark Jack Dunfey's retirement was held in the Parker House in October, 1983, a tribute, as the menu card said, "to people, ideas, education, peace and Jack Dunfey". The master of ceremonies was Senator Kennedy; the programme director was Judge David S. Nelson of the United States District Court; grace was said by Monsignor Philip J. Kenny and, after the recipient charities had been acknowledged by Mayor Young, there were some words from Jon Canas, Gerry Dempsey, Coretta Scott King, and Jack himself, a former World War II pilot. The inscription by John Gillespie Magee Jr. speaks for itself: "Sunward I've climbed and joined the tumbling mirth Of sun-split clouds—and done a thousand things."

Another and a major interest of Jack Dunfey's is the establishment of the U.S. Peace Academy. He was appointed in 1979 by the U.S. Senate to be a member of the U.S. Commission on Proposals for the National Academy of Peace and Conflict Resolution to conduct, under its Chairman, Senator Spark Matsunaga of Hawaii, a two-year study which was presented as a final report of President Reagan in October, 1981. One of Jack Dunfey's fondest hopes became a reality in October, 1984 when the Peace Academy was formally established by Congress.

"Half of my travel nowadays is personal", says this far-from-retired campaigner whose work for the famine relief agency Oxfam carried him to Grenada in April, 1984, "to see the results of the invasion", and to Bermuda the following month for a two-day seminar on devising a five-year plan for the Ireland Fund.

The Dunfeys worked for two years for John F. Kennedy before the 1960 victory and was active in Robert F. Kennedy's later campaigns. At their annual Christmas Board meetings in the old days, when the family shared out the proceeds of the business, individual members were docked for the time they had spent on politics during the previous 12 months. "I'm still wounded", Bill is quoted as having said, "from the years I spent with Jack Kennedy".

Only Jack Dunfey concentrated totally on the hotel business. But Edward Kennedy has been a long-time friend and sailing companion and in the past year or so, the two have become closer. In January, 1984, Jack had dinner with the Senator and his mother Rose, in her Palm Beach house. He found the 94-year-old lady "failing physically but mentally amazingly alert. Ted does a great job with her", he says admiringly. It was this firm friendship that resulted in the raising of $150,000 for charity at the Boston dinner in 1983 at which Senator Kennedy acted as master of ceremonies.

That dinner, as well as every New England Circle meeting for the past ten years, was held in the Parker House, which has always acted as host to famous guests, presidents and kings, politicians, actors and above all, perhaps, literary men.

Harvey Parker, like the Dunfey family after him, was born far enough from the patrician preserves of Beacon Hill to confound anyone who might have predicted that his name would one day be a household word in Boston. He was born in 1805 in the village of Temple, Maine (then in the Commonwealth of Massachusetts). He was 20 when he left home for Boston with a few clothes and less than a dollar. Yet by 1832, he had gathered together $432, enough to buy an eating house which he promptly signed "Parker's Restaurant".* * *

Apart from an annex built in 1886, on which rests the hotel's claim to continuous operation, the Parker House was totally rebuilt in 1925 to the elegant designs of the architects Desmond and Lord. It enjoyed a new burst of prosperity between its opening in 1927 and the Wall Street Crash of 1929, but it was another 40 years before the dynamic Dunfeys restored it to its former glory, adding to its comfort and facilities but showing a proper regard for its proud place in the history of Boston.

Like Harvey Parker before him, Jack Dunfey and his brothers worked hard to create their own American dream. All 12 of the children did a stint in Leroy Dunfey's store, two at a time, between 5 a.m., and 2 a.m. each day. They started at the age of seven in an area known as "The Acre", which had been donated by the Church for Irish immigrants to settle in.

Jack's parents were born in the United States. He knows that his maternal grandmother, Mary O'Connor, married James Manning of Ballyferriter, near Dingle, Co. Kerry. His cousin, Denis O'Connor, in Ballyferriter, where Jack's brother Bob now has a holiday home, was a schoolteacher for 30 years and his father before him was master of the school for 40 years. Denis has written several books on the Dingle Peninsula and his sister, Catherine Manning Dunfey, never lost contact with the home place. "Through her", says Jack, "we developed our interest in Ireland and between 1968 and 1980, all 13 of us made several visits as a family. Twice we brought 50 Dunfeys with us".

It is on Leroy Dunfey's side of the family that more work has to be done, though we know that Leroy's father was Nicholas and his grandfather Matthew. Roy Dunfey recalls Eoin ("the Pope") O'Mahony's saying that "we were from Ossory, somewhere in Kilkenny", but "the Pope" O'Mahony, raconteur, wit and genealogist supreme, has left us this many a year.

Jack Dunfey was the third boy, the fifth child. He went to Keith Academy in Lowell, run by the Xavierian Brothers, and now defunct. He and all the others went in turn to the University of New Hampshire, where Jack majored in liberal arts.

Then came World War II and Jack became a pilot in the U.S. Air Force. (Bill and Paul were in the Marines) The end of the war was the beginning of the Dunfey dynasty. The five brothers started a seasonal fried-clam stand at Hampton Beach, a lively resort on the New Hamsphire coast. After four years they had a pizza parlor, a penny arcade, one big restaurant and three little ones.

It was still a big step to the purchase of Lamie's Tavern in 1954; a giant stride to ownership of the Parker House in 1969. Now six of the eight boys are in Dunfey Hotels. A seventh, Richard, is Chief Justice of the New Hampshire Superior Court and Paul still lives in Lowell where it all began. All of the four girls became nuns in the Order of Notre Dame de Namur, and all four have since left the religious life. Two are married, one engaged to be married. "It'was", says Jack, "more a change of career than anything else; all of them have gone on to do other things than teaching. They have begun the second phase of their lives".

Jack himself is divorced and the father of four children. Susan, who spent a year at Hume Dudgeon's famous establishment at Burton Hall, Leopardstown, County Dublin, has a riding establishment in Rye, New Hampshire. She is married. David is an attorney with a Boston law firm. Philip, who got himself married in May, 1984, is an independent mechanical contractor in Portsmouth, New Hampshire, and Stephen has just graduated in Political Science from his father's old university, the University of New Hampshire at Durham. At 19, Stephen was elected a State Representative—a Democrat in a Republican town served two terms and became Assistant Minority Leader at 22.

The last word may safely be left to older brother Roy, who joined the founding five only 15 years ago and looks after employee relations: "I can talk a little bit more objectively", he says. "The one thing that impressed me was the way we all could complement each other and stand in for each other in any given situation. Some 27 years ago, we were 50 to 60 people of whom five happened to be Dunfeys. We want to maintain that kind of relationship in Dunfey Hotels, and you can't do it by lip service".

A SALUTE TO CONGRESSMAN BILL WHITEHURST

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 14, 1986

Mr. STOKES. Mr. Speaker, I would like to commend the gentleman in the well, Mr. DANIEL of Virginia, for taking out this special order.

BILL and I are "classmates"—we came to Capitol Hill in 1969 and met during freshman orientation for the 91st Congress. Early on, as neighbors in the Longworth Building, we became friendly and that friendship has developed over the years.

One of my most pleasant experiences shared with BILL was the opportuntiy he provided me to speak to students he brought to Washington from Old Dominion University, where he taught before his election to Congress. I thoroughly enjoyed speaking to the students who were interested and concerned with major issues facing Congress and the issues of the day.

I also have fond memories of the time that my family and I spent in Norfolk, VA, located

in BILL'S congressional district. My daughter Lori, reigned as 1983 Azalea Queen during the Azalea Festival and during the festivities, we were in the company of BILL and his lovely wife Janie on a number of occassions. The WHITEHURSTS were both gracious and considerate hosts and went out of their way to accommodate us and ensure that we had an enjoyable stay.

I also had the privilege to serve on the Intelligence Committee with BILL. I was impressed with his intellect, hard work and dedication and considered it reflective of his work in Congress. BILL WHITEHURST has always done his homework and is well informed on the issues, which may be a result of his professorial vocation.

Mr. Speaker, I am pleased to have this opportunity to wish BILL well as he returns to the academic environment. The young people at Old Dominion University are extremely fortunate to have such an astute and distinguished person as BILL as a member of the faculty. I hope that they take advantage of his tremendous experience, knowledge and perspective. I am confident that they will benefit from his wisdom.

BILL, best of luck in your future endeavors. Your presence in the House will certainly be missed.

TRIBUTE TO STAN LUNDINE

HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. VENTO. Mr. Speaker, I am pleased to take this opportunity to honor STAN LUNDINE on his retirement from the House of Representatives. Since STAN won a special election in the spring of 1976, the people of his western New York district have been represented by a most capable and effective legislator.

I have been privileged to serve on the Banking, Finance and Urban Affairs Committee with STAN LUNDINE. For 10 years, I have seen his tireless efforts for housing and economic development which benefited his congressional district and the Nation as a whole. As a member of the Housing and Community Development Subcommittee, STAN has made critical contributions to advance the cause of rural housing. One of his most important contributions has been to bring to the attention of our colleagues on the committee the unique housing needs of low- and moderate-income families. Many on the committee were simply unaware of how programs designed to respond to urban and suburban housing needs must be modified to be effective in rural America. His efforts for rural housing and his support for much needed urban housing programs solidified a coalition which successfully enacted a national housing policy.

STAN also placed special emphasis upon improving section 202 housing for the elderly and handicapped. He fought successfully to maintain this essential program in the face of unprecedented pressure by the Reagan administration to eliminate it. STAN also developed an alternative mechanism for financing this housing by nonprofit organizations. This proposal holds great promise for the future and I am confident that even though he will not see it implemented during his tenure in Congress, the people of this Nation will realize the benefits of his work in the years to come.

STAN'S commitment to his New York constituents did not prevent him from playing a major role in international issues. As chairman of the Subcommittee on International Development Institutions and Finance, he developed legislation which promotes economic development for some of the poorest nations of the world. It was an assignment that STAN pursued with dedication even though there was little political responsibilities because there was a tremendous need for leadership in this area. His performance as chairman earned him the respect of his colleagues.

Whether it was finding affordable housing for the people of the Seneca nation, promoting realistic international aid programs, directing Federal research and development in a direction to benefit small business and smaller communities or authoring legislation to promote economic growth in rural America, STAN LUNDINE left a mark on the Nation during these 10 years.

I am going to miss STAN LUNDINE. He is a friend, an ally and a most able legislator. I am certain that these qualities are the qualities which led Governor Cuomo to ask STAN to be his running mate. The people of New York State are going to be well served by his tenure as Lieutenant Governor. I wish him the best of luck and thank him for his service and friendship in this body.

DELAYED IMMIGRATION REFORM BILL NOW A SENATE STEP AWAY

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. BEREUTER. Mr. Speaker, the following excellent editorial in the October 16, 1986, edition of the Lincoln (NE) Journal by Mr. Dick Herman explains why action by the other body to approve the 1986 Immigration Reform Act is so important. It is placed in the RECORD for examination by Members of the Congress, particularly the other body, in the last remaining hours of the 99th Congress.

[From the Lincoln (NE) Journal, Oct. 16, 1986]

DELAYED IMMIGRATION REFORM BILL NOW A SENATE STEP AWAY

It would be unthinkable, unconscionable and against the national interest—but still not impossible—for the Senate now to refuse to take the final step on a comprehensive new immigration control law.

House passage Wednesday, 238 to 173, of the latest compromise advanced the major policy decision to the Senate. President Reagan is understood to be ready to sign the measure, if it gets to his desk. There is no doubt that a Senate majority favors the bill. But given the Senate's rules, allowing a single member to filibuster, and given the immense pressure for Congress to adjourn, immigration reform could become fatally caught in the squeeze.

. . . Without the amnesty concession—which could affect several million people, primarily of Mexican birth—other features of the omnibus package simply could not have been negotiated. It's that simple. . . .

If processed into law, the 1986 immigration reform will not positively give the United States a leakproof control of its own borders—more than 5 million illegal aliens have been apprehended since Congress began the current debate in 1982—but the situation should be significantly improved.

As of Oct. 1, the U.S. Immigration and Naturalization Service (with an average of no more than 500 Border Patrol officers on duty at any hour on the 2,000-mile-long border with Mexico) had caught a record 1.7 million illegals just this year.

For the first time, employers who knowingly employ, and not infrequently exploit, illegal aliens risk both criminal and civil penalties. That's something the nation has needed for some time. Simultaneously, a reasonable scheme would be in place for seasonal agricultural workers to enter the United States—and even apply for permanent resident status.

What this bill does not have is a requirement many had feared and resisted, a mandatory national identity card. For that, thanks is offered.

But if the 1986 reform either fails in the Senate, or even proves inadequate in practice, coping with the effects of chronic overpopulation and economic deprivation in Latin America, an identity card could be in the future of all U.S. citizens.

TRIBUTE TO BISHOP ROBERT F. JOYCE

HON. JAMES M. JEFFORDS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. JEFFORDS. Mr. Speaker, Vermont has had many great leaders. One of them, bishop Robert F. Joyce, bishop of Burlington, the Catholic Diocese of Vermont, is celebrating his 90th birthday today.

The rugged character of Vermont living has produced many national leaders and treasures. Senator George D. Aiken being the latest. Ethan Allen an earlier one.

Yet, other great Vermonters have touched and changed the lives of tens of thousands without national notoriety. Bishop Joyce is one of them.

Through my father, I had the pleasure and opportunity to meet several of our exceptional leaders of a generation ago. One of them was Bishop Joyce. He and my father were close friends and Saturday night bridge partners. The opportunity to observe his incredible personality, kindness, and character made an indelible impression on me, and I hope made me a better person.

Even now when I'm passing through an area wanting to stop and see a friend but feeling I'm too hurried, I'll pause and say to myself, "Bishop Joyce would find the time"—and I do.

He is one of those rare individuals that when he walks into a room, everyone's spirits lift immediately. Not being a Catholic, I did not have the benefit of his Sunday sermons. How-

ever, I do attend the annual Labor Convention.

Each year, for many years, he would give a brief talk, or sermon, at that convention. Moving and humorous, his talk would cause those listening to pledge themselves to a better life. His extraordinary efforts in charitable drives always resulted in success.

He did not slow down upon retirement as bishop in 1972. He continued to serve as a parish priest, summer and winter. He continued to visit with people who needed a little extra attention either because they were not well or were suffering some personal loss. He always stopped by to visit my mother in her later years. He never says no to anyone who asks for his personal attention.

Bishop Joyce was born in Proctor, VT, in 1896 and graduated from the University of Vermont with Phi Beta Kappa honors. He was ordained in 1923 and, with the exception of a leave-of-absence to serve overseas as chaplain in the U.S. Army during World War II, Bishop Joyce spent his entire career in churches and schools in Vermont. He was consecrated bishop of the statewide Roman Catholic Diocese of Burlington in 1957.

He served as bishop of Burlington from 1957 until his retirement in 1972 during which time he attended the four sessions of Vatican Council II in Rome.

During that time Bishop Joyce was a source of inspiration to me and many, many other Vermonters and he continues to assist many of us to this day, both spiritually and as a friend and confidant. He is never at a loss for a kind word or appropriate observation.

Each time I have the opportunity to visit with Bishop Joyce, as I was fortunate enough to do last week, I come away feeling special just to have been able to share a few moments with him. His astute and honest observations of current events are always thought provoking and oftentimes shed a much clearer light on issues of the day.

On the occasion of Bishop Joyce's 90th birthday, I want to wish him well, thank him for his many years of help and guidance and let him know I look forward to many more years of his friendship.

The President has joined in this celebration. Let me read his letter to Bishop Joyce.

The letter follows:

THE WHITE HOUSE,
Washington, October 6, 1986.

The Most Reverend Robert F. Joyce,
243 North Prospect Street,
Burlington, VT.

DEAR BISHOP JOYCE: Nancy and I are delighted to congratulate you on your 90th birthday. We hope that your celebration is filled with every happiness.

As you reflect on a rich life of service to God and your fellowman, you must feel a tremendous sense of fulfillment. You have greatly enriched the lives you have touched and this special occasion gives us a chance to thank you for all the good you have done. May God bless you.

Sincerely,

RONALD REAGAN.

LACK OF DOT SAFETY-RELATED ENFORCEMENT MAY LEAD TO GRAVE RESULTS

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. FLORIO. Mr. Speaker, when a major hazardous materials accident occurs, it becomes front-page news. Typically, thousands of people are forced from their homes, considerable damage results and there likely is a loss of life. Victims of the accident demand both compensation for their losses and action to ensure that similar events will never again occur.

Although the safety record for the transportation of hazardous materials is generally a good one, disastrous accidents, unfortunately, do occur. The transportation of these dangerous cargoes can never be taken lightly, particularly when one considers that 1.5 billion tons of hazardous substances are transported each year in the United States.

When accidents occur, how should we respond to them? Recent congressionally-mandated studies have indicated that the Department of Transportation's [DOT] response to this important safety issue is inconsistent at best, particularly with regard to enforcement.

These reports point out that DOT's enforcement branch has become practically invisible, which, in turn, sends a clear message to disreputable shippers and carriers. Without adequate enforcement, disreputable carriers are rewarded for hiring untrained drivers and workers since they can underbid the reputable firms who spend more on worker training. A system that allows this to occur is not only inefficient, but also is dangerous. Only three companies have been fined by DOT in the last 5 years for insufficiently training their drivers. And not once has DOT ever cited or fined a shipper for inadequately training its workers.

Reputable shippers and carriers demand more in the way of enforcement from DOT. A recent article in the Journal of American Insurance stated that with trucking deregulation and the influx of new truckers, some operators cut back on repair and maintenance and disregarded speed limits, safety laws and rules on the hours they could drive in 1 day. At the same time, there was an abandonment of adquate enforcement of safety laws by the Federal Government. The result was an 18-percent jump in truck accidents for 1983–84. The article points out a direct connection between "deregulation of safety requirements" and "pressure on the insurance system."

Deregulation coupled with reduced enforcement has left us in a situation where serious hazardous materials accidents, like the ones that occurred this summer in Miamisburg, OH, and San Antonio, are simply waiting to happen. An article last week in the New York Times stated that a stunning 60 percent of the trucks inspected in recent months by State inspectors in New York and Connecticut were ordered off the highways as unsafe. The article quoted trucking industry experts who said that the high number of violations stem in part from years of lax Federal enforcement of truck-safety regulations.

I commend to my colleagues the excellent article from the New York Times. It follows:

[From the New York Times, Oct. 8, 1986]

SIXTY PERCENT OF TRUCKS FAIL NEW YORK AREA INSPECTIONS

(By Robert Hanley)

About 60 percent of the trucks inspected in recent months in New York and Connecticut under a new Federal program were ordered off the highways as unsafe. This reflects in part, the authorities say, economic strains and cutbacks in repairs since the deregulation of the industry.

Defective brakes were by far the single biggest problem found in the roadside checks of trailers and smaller commercial rigs along some of the busiest highways in the two states, officials in the two states said.

The number of trucks found with faulty equipment was about double those discovered in less stringent state inspections in recent years. The rise comes at a time of steadily rising truck traffic and increasing numbers of highway accidents involving trucks in the New York region.

In addition, state and local government officials and some members of the tucking industry said the Federal inspection program is understaffed, underfinanced and, as a result, is checking only a small number of the trucks on the roads.

JERSEY TO JOIN PROGRAM

New Jersey, which did not approve legislation to join the Federal program until last spring, will begin making the more rigorous inspections next year. But of about 12,500 trucks inspected since last October under the state's less stringent standards, nearly 33 percent were ordered off the road, according to the state police.

"We're surprised and startled at the out-of-service numbers," said Matthew J. Ryan, head of New York's program. "We thought it would be about 30 percent."

Nationwide last year, 29 percent of the 366,400 trucks examined were put off the road, and the failure rate for this year will probably approach 35 percent, according to James Bremner, head of the Federal program, the Motor Carrier Safety Assistance Program.

The inspections are the most detailed and extensive ever conducted along high-ways. The number of violations being detected stem, in part at least, from years of lax Federal enforcement of truck-safety regulations and the trucking industry's indifference toward the standards, according to experts on the trucking industry.

"The truckers think they can get away with it and they can," said Brian O'Neill, president of the Insurance Industry for Highway Safety, a Washington-based research group of property and casualty insurers. "Their chance of being inspected is pretty remote."

The American Trucking Association, which has branches nationwide, says it strongly supports the inspection system.

"We're more than 100 percent behind it," said William E. Johns, the association's managing director of technical services. "We want them to get the dogs off the roads."

The trucking experts said that Federal deregulation of interstate commercial trucking in 1980 had prompted a sharp growth in fleets, stiffer competition, economic strains, neglect of maintenance and pressure on fleet drivers to hit the roads in unsafe rigs.

SOME DRIVERS CLAIM COERCION

"Some people just try to take their tires and brakes too far," said Mr. Johns. "Carriers with lower profit margins are likely to have defects."

In New York, Mr. Ryan said inspectors report instances of fleet drivers saying they were happy to be stopped because their employers forced them to drive trucks with defects.

"They drive them or get in trouble with the company," he said.

Congress created the Motor Carrier Safety Assistance Program in 1983 to shift safety inspection of interstate trucking from the Federal Bureau of Motor Carrier Safety to the states. The bureau had only about 100 inspectors to monitor about 5 million interstate trucks. Each state assumes the responsibility once it adopts Washington's rules. The Federal Highway Administration said about 10 percent of the trucks in interstate commerce would be inspected once this year.

In 1983, Congress authorized $150 million for the states over five years, through 1988, to finance the program.

New York State joined the program this year and sought $1.8 million to inspect 30,000 trucks. Washington sent about $539,000, and it was five months late, state transportation officials said.

Between mid-May and early September, six-member inspection teams on the Long Island Expressway and on highways near Albany and Buffalo inspected 3,219 trucks, said Mr. Ryan. Fifty-eight percent, or 1,874 failed and were ordered off the road. About 74 percent of the failures were due to bad brakes and 19 percent for bad brake lights, turning signals and tires.

New York is seeking $2 million for 1987 to hire 15 more inspectors and begin inspections around New York City, including Westchester County.

Connecticut, which joined the program in April 1985, got $225,000 from Washington this year for eight inspectors on three busy truck routes, Interstates 95, 84 and 91. Between January and September, 64 percent of the 3,510 trucks they examined were ordered off the road—half of them for bad brakes, 14 percent for bad lights and 13 percent for bad tires, according to William Schaeffer, head of the state's program.

After seven people were killed on Connecticut highways in 20 crashes involving tractor-trailers between early June and mid-August, Governor William A. O'Neill added about $400,000 in state money to the Federal program.

Crashes of the big rigs, meantime, have mounted steadily throughout the metropolitan area.

For example, on the New Jersey Turnpike, the rate of truck crashes this year is ahead of last year's. Through July, commercial trucks accounted for 12.5 percent of all traffic, but were involved in nearly 39 percent of the turnpike's accidents.

THE UNITED STATES-MALTA RELATIONSHIP AND DEMOCRACY IN MALTA: MENACED BY LIBYAN INFLUENCE?

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. GILMAN. Mr. Speaker, in recent months several incidents have occurred which have called into question the relationship between the United States and Malta. Most recently, the revelation that Malta warned—or says it warned—Libya's Colonel Qadhafi in advance of our raid on his terrorist facilities last April gives real cause for alarm. Although there are some aspects of our relationship which appear to have been improving, it is in rocky shape overall.

The question we should be asking today is this: What are the causes of the problems in our relationship and how can they be overcome? I am afraid that the main causes are the relationship of Malta to Libya and the difficulties faced in the island's democratic processes. It is difficult to believe that the Maltese people would allow themselves to be thrust into a close relationship with Libya if their true feelings on the subject were felt. But deficiencies in the democratic process in Malta leave some question as to whether the voice of the people is really being heard.

The links between Malta and Libya have been evidenced in a number of ways. It is true that these ties have ebbed and flowed, and there is even some evidence they may be weakening. But we should remain concerned.

In the exercise of an ongoing program to test unjustified maritime claims, the 6th Fleet conducted maneuvers in international waters off the Libyan coast. We were not surprised that Qadhafi should take offense at this reaffirmation by the United States of the freedom of the high seas, as recognized by international law. We question why Malta, which also recognizes the Gulf of Sidra as international waters, and once a bastion of Western democracy, would give political support to Libya's aggression against American targets at the United Nations and elsewhere.

In January, the Maltese Prime Minister, Carmelo Mifsud Bonnici, pledged Malta's support for Libya and expressed his concern at what he called American threats against Libya. Malta's support was allegedly given under the terms of a treaty of cooperation concluded in November 1984, whereby the two countries agreed to harmonize their viewpoints on security and international issues so as to support one another's viewpoints, especially with regard to developments in the Mediterranean region.

The Malta-Libya treaty of 1984 has serious security implications for the Mediterranean region. Libya has undertook to supply Malta with arms and to train Maltese military personnel. The treaty binds the two countries to engage in "a continuous exchange of information on matters of special interest to the mutual security and defense purposes of the other side." This provision includes information gathered by radar and increases Libya's ability to monitor air traffic over the Mediterranean Sea, especially over the Gulf of Sidra.

The near tragic consequences of this treaty provision were made clear recently. It has been widely reported that Maltese Prime Minister Bonnici gave Libya warning that American planes were approaching Libyan shores on April 15, 1986, just before our raid on Libyan military facilities. This warning could have cost scores of American lives had the Libyans been able to translate it into action. Malta describes itself as an ally of Libya, and, frankly, we will have to consider whether one can be an ally of Libya and a friend of the United States at the same time. Libya's policy of terrorism should be earning it condemnation throughout the world, not alliances.

It is also alarming to note that Qadhafi has been openly recruiting international terrorists through the Maltese press. The Maltese progovernment weekly Weekend Chronicle, February 22, 1986, carried a paid advertisement entitled "A Call for Joining the Libyan Arab Armed Forces" which said:

> We are all being called upon to contribute in establishing this front to re-inforce the struggle of Socialist People's Libyan Arab Jamahiriya against Imperialism, US aggression and the provocations coupled with terrorism aiming at intimidating our struggling people.

For several years now, Malta has had an active office of the Palestine Liberation Organization [PLO]. Late in 1985, the Israeli Embassy in Malta was temporarily closed by Israel. The Israeli charge d'affaires remarked that after being on the island for 3 years she felt like a nonperson because of the almost total lack of official communication with the Maltese authorities.

Mr. Speaker, it seems to me that it is time for the West to take a hard look at the situation on Malta before it is too late.

The countries of Western Europe should face up to their responsibilities because they are Malta's main economic partners. The present Maltese Government has succeeded in delinking the island militarily from the West. It has downgraded its political relations with the NATO partners, while pursuing a policy of pro-Libyan neutrality. Regrettably, Western European countries—unlike Qadhafi—have not insisted on obtaining political advantage in return for their economic aid to Malta.

The administration has been more attentive to the situation in Malta in recent years, especially since appointment of Gary Matthews as United States Ambassador to Malta in 1985. The section on Malta in the State Department's Reports on Human Rights for 1984 and 1985 provide eloquent testimony to the deterioration of civil and political liberties on the island, and underscores the concern of the administration. The administration should speak frankly to the Maltese Government, informing it that its current foreign and domestic policies are under close and continuing scrutiny. It should also do its utmost to encourage democracy on the island.

It is often noted that the Maltese Socialists are in office despite the results of the 1981 election, in which the pro-Western opposition Nationalist Party obtained 51 percent of the popular vote. That the Socialists won a majority of parliamentary seats is widely attributed to

gerrymandering and other irregularities. Elections are now due again in 1986 or early 1987 and public opinion polls suggest that the Nationalist Party could win an even larger popular majority. While respecting the sovereignty of Malta, we should do our utmost to ensure that the coming elections be free from fraud and return a government reflecting the will of the majority of the Maltese people.

Mr. Speaker, I would like to insert at this point in the RECORD the text of two articles from the New York Times on Malta as well as the country report on Malta from the State Department's Human Rights Report for 1985.

[From the New York Times, Aug. 6, 1986]

MALTA SAYS LIBYA GOT A TIP ON RAID—LEADER SAYS HIS CONTROL TOWER WARNED TRIPOLI OF U.S. JETS

(By Judith Miller)

VALLETTA, MALTA.—Prime Minister Karmenu Mifsud Bonnici said today that Malta had given Libya advance notice of the American air attack in April and would do so again if it had similar information.

Mr. Mifsud Bonnici said Maltese air controllers had not been able to identify the planes that were picked up on their radar screens about 30 to 45 minutes before the raid. But he said the air controllers notified their Libyan counter-parts soon after detection that "a number of unidentified planes were going down toward North Africa."

"We've committed ourselves to exchange information with all friendly countries, north and south," Mr. Mifsud Bonnici said. "Any information that might be beneficial to our allies we pass on to them. We do that regularly and systematically and will continue to do so."

NO THREAT INTENDED

"The provision of such information should never be construed as a threat," Mr. Mifsud Bonnici said during a two hour interview in his office at the Auberge of Castille, an elegant palace in Valletta dating from 1744.

"It is the withholding of information that is dangerous," he said. "If we know that any nation is planning an attack against Libya, we will pass it on, just as we would to Italy, or to the United States."

The American military counted heavily on achieving surprise in the attack on Libya. One United States Air Force plane was shot down in the attack with the loss of its two-man crew.

Asked about the Maltese Prime Minister's statements, Robert B. Sims, the chief Pentagon spokesman, said in Washington that the Defense Department stood by its earlier assessment that it had achieved "tactical surprise" in the raid on Libya.

He said the Pentagon had no evidence that Libya had received advance warning of the raid. "The indications are that their knowledge of the attack came from their own systems and not from any warning received from any source." Mr. Sims said.

Mr. Mifsud Bonnici said there was no indication that Libya had acted on the Maltese information. He attributed Libya's failure to mount a stronger defense to "negligence of the Libyan air controllers."

The 52-year-old Prime Minister defended Malta's close political and economic ties to neighboring Libya, from which it gets oil. "It's a closer trip from Tripoli to our airport than from Rome," he said. "This isn't always appreciated by others."

Since November 1984, Malta, a mid-Mediterranean island nation of 330,000 has had a treaty of friendship and cooperation with Libya, which provides for cooperation in all sectors, including defense.

He confirmed that Maltese exports to Libya had fallen from about $14 million two years ago to less than $10 million. But he attributed the decline to lower prices for Libyan oil, and denied reports from Maltese sources and foreign observers here that relations between Valletta and Tripoli had cooled.

"We should not distance ourselves from the Libyan Government," he said. "We've told your Government that time and again, but you cannot persuade those who will not listen," Mr. Mifsud Bonnici said of the Reagan Administration.

The Prime Minister emphasized Malta's willingness to share intelligence with all of its allies. He disclosed, for example, that Malta had recently helped Italy by confirming to Italian authorities that Musbah Werfalli, a Libyan diplomat expelled from Italy in 1985, had maintained a $415,000 bank account at the partially state-owned Bank of Valletta. Mr. Werfalli, 39, is suspected by Italy of involvement in assassination attempts against several diplomats and Libyan exiles in Rome, the Italian press has reported.

Mr. Mifsud Bonnici produced a color photo of Mr. Werfalli, which was taken in Malta, he said. The Libyan diplomat had left the country last April, before Italy had requested information about him, and Mr. Mifsud Bonnici said he did not know where Mr. Werfalli was now. But the Prime Minister said he had provided the photo to Italian intelligence, along with information indicating that another Libyan being sought by Italy, Mohammed Arabi Fituri, and Mr. Werfalli were one and the same.

He said Malta was exchanging information involving suspected terrorists not only with Italy, but with Britain's Scotland Yard and with the F.B.I. in Washington.

He denied reports by Arab and Western diplomats that Libya had long used Malta as a base for terrorist operations elsewhere. "We won't harbor or protect any terrorist," he said.

[From the New York Times, Aug. 10, 1986]

MALTA-LIBYA RELATIONS ARE REPORTED TO COOL

(By Judith Miller)

VALLETTA, MALTA.—Longtime ties between this island nation and Libya have cooled in recent months despite continued statements of support on both sides, according to Maltese officials, business officials and diplomats.

In an interview on Tuesday, Prime Minister Karmenu Mifsud Bonnici denied widespread reports in the region that Malta had become disenchanted with its Arab neighbor.

Because Libya is a "friendly country," he said, Maltese radar operators gave the Government of Col. Muammar el-Qaddafi as much as a 45-minute warning of the American air raid last April and would do so again.

But before the interview, key officials and diplomats here affirmed that relations had weakened. This was primarily because Malta's association with Libya had failed to touch off a widely expected economic boom here.

"Our relations are based on geographic and economic realism," said Leo Brincat, a parliamentary secretary in the Prime Minister's office. "I wouldn't call what you see a cooling, but you could say we now have a more realistic approach."

Alfred Sant, head of the governing Labor Party, said: "The distancing is not political. It is the result of cash. Libya simply doesn't have the cash."

Maltese officials and others cited these examples of how ties with Libya have weakened.

Maltese exports to Libya, which are tied by a barter agreement to Maltese purchases of Libyan oil, have fallen from about $18 million two years ago to less than $10 million today. Oil imports from Libya have dropped to about the same level because Malta has been buying more oil on the spot market and less high-priced Libyan crude, Maltese officials said.

About 40 Libyan nationals still operate a radio station here that was to broadcast Libyan-sponsored programs throughout the Mediterranean, but the station is not functioning and its staff is being reduced, diplomats said.

A Libyan school that was ostensibly training more than 100 Libyan teachers of English, which Colonel Qaddafi banned as the language of "barbarians" after the American raid, is being scaled back, as is Libya's embassy here, according to Maltese officials.

Libya is at least three months behind in payments to Maltese companies, Mr. Sant confirmed. Malta's Minister of Industry visited Libya twice in the last six weeks to try unsuccessfully to obtain payments owed and more investment commitments, Maltese sources said.

Almost none of the 11 companies with Libyan interest in Malta are operating profitably, business officials say. According to published reports, Mr. Sant recently asked the Maltese Government for a loan of about $1.3 million to save Metalfond, a foundry with Libyan interests, from bankruptcy.

Libyan-supported enterprises employ 3,000 Maltese in Malta, Mr. Mifsud Bonnici disclosed. But he also acknowledged that Maltese employment in Libya had dropped from 1,700 before the American raid to under 600 today.

Maltese and foreign sources said political frictions between Valletta and Tripoli had also mounted. Reliable foreign sources said Mr. Mifsud Bonnici had refused a Libyan request to place Libyan military "advisers" with Malta's 1,000-member armed forces.

He was also said to have reversed a long-standing practice of allowing Libyans safe haven in Malta to plan terrorist operations provided no attacks were carried out on the island.

Mr. Mifsud Bonnici denied both reports. But he stressed that Malta would not tolerate terrorism or known terrorist groups here.

Libya has also been irritated by Malta's recent cooperation with the United States and Britain aimed at bolstering airport security, Maltese sources said. And it was distressed by Malta's decision to permit Egyptian troops to storm an Egyptian airliner that was hijacked to the airport here in November.

Several Libyan officials said they viewed the presence of unfriendly Egyptian soldiers on Maltese soil as a potential violation of a 1984 friendship treaty, which provides for cooperation between Malta and Libya in all areas.

MALTA

Malta is a constitutional republic with a parliamentary government elected by universal suffrage. Executive power is vested in a President who appoints as Prime Minister

the leader of the party which gains the most seats in the quinquennial election for the unicameral legislature. The outcome of the December 1981 election, in which the Nationalist Party won 51 percent of the popular vote while the Labor Party in part because of the redrawing of electoral districts, took a majority of parliamentary seats has caused prolonged and persistent domestic political conflict. As a former British colony, Malta is a member of the Commonwealth.

The Maltese economy is dependent on export manufacturing, tourism, and other service industries.

Malta's human rights performance in 1985, as in 1984, was marked by reported instances of police beatings and ill-teatment, political pressure on the judicial system, and strains between the Government and the Roman Catholic Church over operation of church-sponsored schools.

RESPECT FOR HUMAN RIGHTS

Section 1. Respect for the integrity of the person, including freedom from:

a. Political killing

No known incidents of political killing by government personnel or clandestine groups occurred during 1985.

In November, heavy loss of life resulted when terrorists hijacked an Egyptian airliner to Malta and began murdering their hostages.

b. Disappearance

No cases of disappearance are known to have occurred in 1985.

c. Torture and cruel, inhuman, or degrading treatment or punishment

The Maltese Constitution prohibits inhuman or degrading punishment. In several instances during 1985 victims testified in court that the police had inflicted inhuman and degrading treatment on them. The police denied the charges. In one case medical opinion confirmed beatings and cigarette burns during police interrogation. In two court cases defendants testified that they had signed confessions under duress or threat from the police. The judge found the defendants not guilty, but no action was taken against the police.

In 1985 Amnesty International wrote to the Minister of Justice concerning allegations that detainees had been ill-treated at police headquarters between 1977 and 1985.

d. Arbitrary arrest, detention, or exile

Freedom from arbitrary arrest or detention is provided for in the Constitution and generally respected in practice. There are no known political prisoners or persons in political exile.

Persons can be held for 48 hours of "questioning" without being charged. On several occasions during the past few years prominent opposition figures or activists have been held under this provision. There were no such instances reported during 1985.

On September 19, 1985, an Italian citizen, Massimo Gorla, President of the European Union of Young Democrats was arrested by the police and held at police headquarters for approximately 6 hours. Gorla was to have taken part in activities organized by the opposition Nationalist Party. A government statement said: "Gorla did not ask for, and did not get, the permission required by law." The law referred to, the Foreign Interference Act of 1982, requires that all foreigners apply for and receive permission before participating in any foreign activity in Malta, except activities which are purely cultural, educational, philanthropic, religious, or of an entertainment nature. Approval may not be given for activities which constitute an interference in the internal affairs of Malta or the foreign policy pursued by its Government or which would give an advantage to any Maltese political parties. The next day the police deported Gorla from Malta without a court order.

The Constitution also guarantees the right of habeas corpus. However, there is no right to legal assistance during interrogation. In at least one case a foreign citizen was twice detained and claimed to have been harassed by the police without any apparent justification.

The Constitution prohibits the use of any form of forced or compulsory labor, and this prohibition is respected in practice.

e. Denial of fair public trial

The Constitution guarantees a fair public trial before an impartial court. The judicial system, which is constitutionally independent, is nonetheless in practice sometimes subject to political pressure. Some political and constitutional cases which were before the courts in 1984 or earlier years have not been resolved. These include several constitutional cases brought by the Catholic Church and other organizations against the Government during 1984, contesting the Government's suspension of licenses for certain private schools. Although the Government renewed the licenses for these schools to operate until the end of the 1984–85 academic year and again for the 1985–86 academic year, the constitutional issues in the cases remain in dispute.

In November 1984 a judge resigned from one of the church school cases after the Government proposed a motion in Parliament to remove him. Two other judges abstained from the same cases in February 1985. When the Constitutional Court began hearing government appeals, the Government challenged the legality of the composition of the court, but on February 25 the Constitutional Court declared itself validly constituted. Within days both cases were adjourned indefinitely by the First Hall of the Civil Court, which had originally heard the cases. In April and June the Archbishop of Malta and the Federation of Private Parent-Teacher Associations requested the court to continue with the cases by the appointment, if need be, of an acting judge under clause 99 of the Constitution. No action has been taken on these two applications.

In February 1985 the Prime Minister, in a statement to Parliament, said "the Government has never interfered with any court when it was doing its duty." He added that he "expected the court to do its duty but if the court was not doing this, they (the Government) had every right to tell the people this and come to the House to censure the court."

The Court Reform Act of 1981 limits the jurisdiction of the courts in the area of oversight of administrative actions by the Government. Defendants may not use lawyers in cases before the Industrial Tribunal, which has exclusive authority in cases of unfair dismissals of workers employed on indefinite contracts of employment. Thus, a dismissed employee may find himself in the position of having to defend his own case before the Tribunal without aid, even if such person is illiterate or has no knowledge of legal or administrative proceedings. Nor may civil servants be represented by lawyers in cases held before the Public Service Commission.

During 1985 there were several complaints that awards delivered by the Industrial Tribunal were not based on a correct and faithful interpretation of the law.

A government-established Court Commission, charged with ensuring professional and ethical adherence by lawyers, remains unrecognized by the Chamber of Advocates.

Maltese citizens do not have the right of individual petition to the European Court of Human Rights.

f. Arbitrary interference with privacy, family, home, or correspondence

Protection of the privacy of the home is guaranteed in the Constitution and is respected in practice. Most police searches require warrants which are issued only after proper administrative review. However, any police officer of the rank of Inspector or higher may carry out a search without a warrant. The Postmaster General employs several people to ensure that postcards, periodicals, and other publications which might be regarded as pornographic are confiscated and destroyed. In 1985 the Prime Minister denied opposition allegations of telephone tapping.

Section 2. Respect for civil rights, including:

a. Freedom of speech and press

These freedoms are guaranteed by the Constitution and generally respected in practice. Persons contributing to the opposition press may, however, suffer some form of retribution. For example, an opposition youth leader was suspended from work for publishing an article in the opposition press and has not been reinstated. In another instance, a young opposition party political activist sued the Government in 1984 for not issuing his civil architect's warrant after he had successfully graduated from the university. In the protracted court case, during 1985, it was revealed that he had written antigovernment articles in the press. His warrant has still not been issued.

Moreover, several ministers in parliamentary statements have accused individual Maltese citizens of potentially treasonous behavior for criticizing Malta while abroad.

In 1985 the Government lifted a 4-year ban on the sale and distribution of The Times of London. It had imposed the ban after that paper refused to publish its reply to an article deemed detrimental to Malta. The ban was lifted after The Times carried an interview with the Prime Minister.

Television and radio are state-owned. The opposition's request to have its own radio station had been turned down. The Constitution requires that there be an independent broadcasting authority to oversee the impartial operation of the broadcast media. This had not been in existence since 1981. The opposition party and independent trade unions complain frequently that they receive biased television and radio coverage. During 1985 a Parliamentary Select Committee was established to discuss a number of political issues, including radio and television broadcasting. No agreement on broadcasting has been reached.

Government statements issued through the Department of Information are privileged, i.e., the right of reply does not apply to such statements.

b. Freedom of peaceful assembly and association

The right to peaceful assembly is guaranteed by law. Police permits are generally given for political meetings and other public activities of the opposition Nationalist Party. However, three European Christian Democrats—all of whom had previously

criticized the Government—were denied permission to address the Nationalist Party meeting in February, and a fourth, Italian Christian Democrat Massimo Gorla, was arrested after addressing a Nationalist Party rally for violation of the Maltese Foreign Interference Act (see Section 1.d.).

Trade unionists and other interest groups freely exercise the right to set up associations. The largest labor organization, the General Workers Union, has been unified by statute with the Malta Labor Party since 1978. There are also several independent unions which have, since 1982, been excluded from the Maltese delegation to the International Labor Organization (ILO). The independent unions were, nevertheless, separately represented at the annual ILO conference in Geneva in July 1985.

The Constitution guarantees the right to bargain collectively and to strike. Government employees who have exercised the right to strike have, in several instances, been transferred or suspended.

During 1985 one opposition party club was requisitioned, while a court case on the withholding of permits to build another one has been pending for some time. In another case a permit to open an opposition club was issued after a court case.

c. Freedom of religion

The right to practice the religion of one's choice is constitutionally guaranteed. The overwhelmingly dominant religion is Roman Catholicism, and there are small groups of Protestants, Hindus, Muslims, Baha'is, and Jews.

In 1985, for the second consecutive year, strains persisted between the Roman Catholic Church and the Government concerning church-sponsored private schools. Since 1984, secondary schools have not been permitted to charge tuition or to accept direct loans or donations from parents. The Church presented an inventory of its wealth to the Government, and discussions among the Church, the Government, and the Vatican continue over the financing and operation of church schools. The Government, has indicated its interest in concluding a concordat with the Vatican.

In 1983 the Government enacted the Devolution of Certain Church Property Act, which provided a mechanism for the Government to take over a significant portion of the Catholic Church's wealth. The court has ruled, in a case brought by the Church against the Government, that this law is unconstitutional. The Government has appealed this decision.

d. Freedom of movement within the country, foreign travel, emigration, and repatriation

Neither domestic nor foreign travel is circumscribed. Freedom of movement, foreign travel, and emigration are guaranteed and respected in practice. A 1984 restriction on the amount of foreign exchange Maltese travelers to Italy could take abroad was lifted in September 16, 1985.

Section 3. Respect for political rights: The right of citizens to change their government.

Political activity and partisan feelings run high in Malta. In the last parliamentary elections (1981), more than 95 percent of registered voters actually voted.

The opposition has charged that the most fundamental human right, that of citizens to change their government, is threatened because, in the 1981 election, the party which received a majority of the popular vote did not win a majority of parliamentary seats. A Parliamentary Select Committee, formed during 1981, is to address, among other issues, the structure of the voting system so as to avoid a repetition of the results of that election. No progress on this issue has been reported.

During 1985 the Communist Party of Malta and a new political party, the Democratic Party, announced that they intend to put forward candidates for the next parliamentary election.

Section 4. Governmental attitude regarding international and nongovernmental investigation of alleged violations of human rights.

In 1984 Maltese citizens established a human rights group named "Hielsa" (Free). This group, the first of its kind, was active in 1985. Amnesty International's Bulletin reported in 1985 that the organization had written to the Minister of Justice and Parliamentary Affairs concerning allegations that detainees had been ill-treated at police headquarters in Valletta between 1977 and 1985.

Amnesty International's 1985 Report did not mention Malta. Freedom House in its 1985–86 Report did not mention Malta. Freedom House in its 1985–86 report rated Malta "partly free" and described the ruling party as "increasingly antidemocratic."

In May 1985 the Vienna-based International Helsinki Federation for Human Rights issued a report on "Human Rights in Malta" which stated that "the jurisdiction of Maltese courts has been circumscribed and their possibility to disagree with the government has been undermined by verbal and physical attacks . . . violations of human rights have occurred despite the presence of a constitutional court and the very advanced provisions of the Maltese Constitution."

ECONOMIC, SOCIAL, AND CULTURAL SITUATION

Malta, with a population in 1985 of 332,000, had a per capita gross national income in 1984 of $3,318. According to government statistics, unemployment is 8.6 percent.

The Constitution declares that the fundamental aims of government are to make available to all citizens the highest levels of education and social welfare. Both the Government and the opposition support the basic rights of individuals to own property, to work with just conditions and remuneration, to maintain a standard of living adequate for health and well-being, and to receive universal education.

Public economic and social services are extended on a nondiscriminatory basis though there are frequent charges of government partisan favoritism in the allocation of public housing, phone services, and import and export licenses.

General standards of health care in Malta are average. In 1984, life expectancy at birth was 72.54 years, and infant mortality is 11.7 per 1,000 live births. Government programs in health care have concentrated on providing inexpensive health care services to the largest possible proportion of the population. A prolonged 8-year old labor dispute between the Government and the medical association has led many Maltese doctors to leave the country. The Government also withdrew licenses and support for the remaining church-run private hospitals, which were consequently forced to close.

Maltese public education is free and open to all. The literacy rate is nearly 90 percent, and education is compulsory to age 16. The primary school enrollment ratio in 1979 was 96 percent. Enrollment in the only university on the island is dependent on sponsorship. Graduates of state schools have an advantage as regards admission over students coming from private schools.

The minimum age for employment of children is 16. Maltese law guarantees acceptable conditions of work, including minimum wages, maximum hours of work, and provision for occupational safety and health.

Women participate freely in social and political life and continue to expand their economic role, although they are underrepresented in the professions and management. Women constitute only 27 percent of the labor force, but strong private sector demand for female labor has ensured a very low level of unemployment among women. There are legal limitations on women's property rights within marriage, which derive from traditional Maltese social values. The Government, however, is working on legislation to remove a number of limitations, and restrictions on public sector employment of married women were removed in 1981.

RESOLUTION ACKNOWLEDGING THE ARMENIAN GENOCIDE

HON. MERVYN M. DYMALLY

OF CALFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. DYMALLY. Mr. Speaker, before we adjourn today, I would like to remind my colleagues that the 99th Congress failed to adopt House Joint Resolution 192, a resolution seeking to designate April 24, 1986, as a day of remembrance for all victims of genocide, especially 1.5 million victims of the Armenian Genocide perpetrated by the Turkish Ottoman Empire between 1915 and 1923.

The Armenian Genocide is one of the greatest historical crimes committed by one people against another. Our country condemned the perpetrators then; and today the continued recognition of the genocide by our Government should not be forgotten because of political expediency.

We must officially recognize the occurence of the Armenian Genocide, which is adequately and conclusively documented in our National Archives, in order to set up an effective deterrent for future genocides.

Last week, the Latin American Parliamentary Caucus adopted a resolution in Buenos Aires, acknowledging the Armenian Genocide. The action of the Latin American Parliamentary Caucus is commendable. The U.S. Congress must follow suit and maintain its leadership in issues dealing with human rights.

RETIREMENT OF THE HONORABLE JOHN SEIBERLING

HON. WILLIAM J. HUGHES

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 8, 1986

Mr. HUGHES. Mr. Speaker, I would like to take this opportunity to say a few words in tribute to our colleague, JOHN SEIBERLING, who will be retiring at the end of this Congress after 16 years of service to the people of Ohio and the citizens of the United States.

All of us who have had the privilege to work with JOHN know him as one of this body's most able, effective, and hardworking representatives. As a Member of the House Judiciary Committee, I have had the honor and privilege of working with the distinguished gentleman from Ohio on a number of key antitrust, civil rights, immigration, and law enforcement issues. I have always found him to be a gentleman and a statesman.

In addition to his leadership role on the House Judiciary Committee, Congressman SEIBERLING has achieved national recognition as one of Congress' foremost experts on conservation, historic preservation, and environmental issues. Future generations will owe a deep debt of gratitude to his dedication to the preservation of our Nation's precious resources. He will long serve as an example to those of us who share his love for our country's mountains, rivers, forests, and coasts.

There are few among us who can claim a record of accomplishment as rich and as long as JOHN'S. As a member of the Interior and Insular Affairs Committee and chairman of its Subcommitteee on Public Lands, JOHN SEIBERLING has done more than any other Member of Congress to preserve and protect America's natural resources. His hardwork and dedication led to the passage of our most significant public lands bill, the Alaska Lands Act, which doubled the size of the Nation's parks and wildlife refuge system. In addition, JOHN has helped to set-aside dozens of wilderness areas throughout the country while also preserving our architectural heritage through his work on the Historic Preservation Act.

Mr. Speaker, JOHN SEIBERLING represents the best that Congress has to offer. He has left this country a legacy for future generations, while at the same time improving the lives of all Americans. His hardwork and dedication will always be remembered and his leadership in Congress will be sorely missed.

Thank you.

A TRIBUTE TO CALIFORNIA'S NEWEST CITY

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. FAZIO. Mr. Speaker, on June 3, 1986, the voters of four east Yolo County communities—Bryte, Broderick, West Sacramento, and Southport—overwhelmingly approved the merging of their towns to form West Sacramento, CA. West Sacramento, located on the west bank of the Sacramento River, is the 444th city in California to incorporate since San Francisco became California's first city in 1850.

Broderick, the oldest of the four communities, was created when a widow named Margaret McDowell had 160 acres plotted into a township. Due to its location across the river from the thriving city of Sacramento, Broderick established itself as an important political and commercial center for Yolo County. For instance, the first salmon cannery on the Pacific coast was built in Broderick in 1864 on a scow in the Sacramento River.

Bryte was established when Mike Bryte, a pivotal figure in Sacramento business and politics, purchased riverfront property to start a dairy farm. Throughout its history, Bryte has had a strong ethnic community, including large groups of Portugese and Russian immigrants. The Portugese played a vital role in the development of Bryte, establishing a dairy industry there. And today Bryte has one of the largest Russian populations on the west coast. Bryte has a system of levees, pumping stations, and canals which is strong enough to withstand the toughest of floods.

West Sacramento was founded on valuable commercial and industrial land next to the Sacramento River. After the Sacramento-Yolo Deep Water Channel and Port project was completed in 1963, the Sacramento-Yolo Port was opened to deep sea traffic. The port boasts the only inland navigational lock in California and is the only interior port in California with rail facilities to all four compass points. Therefore, international commerce thrives in West Sacramento. Southport is located next to West Sacramento and contains plenty of rich farmland. It is also a booming area for commercial and residential development.

Together, the four communities form a vibrant new city steeped in history and rich in opportunity for all its citizens. Undoubtedly, the new city of West Sacramento will prove to be an important addition to Yolo County and to California. Mr. Speaker, I am proud to represent the new city of West Sacramento, CA. I know my colleagues join me in saluting this recently created community and wishing it good fortune for years to come.

ANTI-DRUG OMBUDSCAST

HON. JIM BATES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. BATES. Mr. Speaker, I rise today to bring to the Nation's awareness a unique method of addressing our Nation's drug problem. One of my constituents has suggested the possibility of a nationwide broadcast to increase awareness of the drug problem, which has reached epidemic proportions, and to enlist the help of all Americans in working together to eliminate it.

This broadcast, known as an ombudscast, would offer media access and serve as a showcase for new ideas and innovative techniques for fighting the drug problem. I am privileged to represent a congressional district in metropolitan San Diego, CA, where a pilot ombudscast is being developed. I believe this event would prove to be a popular concept throughout the United States, and I call on my colleagues to consider organizing a future ombudscast.

Mr. Speaker, by passing the omnibus anti-drug legislation, we have taken an excellent step in confronting our drug problem. Let us continue this positive momentum and help keep the attention of our fellow Americans directed toward making our Nation drug free.

H.R. 5021, THE EQUITY IN INTERSTATE COMPETITION ACT OF 1986

HON. MICHAEL A. ANDREWS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. ANDREWS. Mr. Speaker, my esteemed Texas colleague JACK BROOKS recently introduced H.R. 5021, The Equity in Interstate Competition Act of 1986. This bill would permit the collection of sales tax owed on goods purchased from out-of-State businesses through the mail. H.R. 5021 is necessary because the Supreme Court has held that, under the commerce clause of the Constitution, Congress must specifically grant States the authority to collect such a tax.

If enacted, this legislation would have a positive impact on many States. Presently, local businesses, which must add sales taxes to purchase prices, are at a competitive disadvantage with mail order firms whose prices do not include sales taxes. By placing local businesses on equal footing with mail order firms, H.R. 5021 would increase competition as well as employment. At the same time, State governments would realize needed revenues which now go uncollected. For example, my State of Texas would gain approximately $100 million annually, a significant sum in this time of budget austerity.

On September 18, 1986, Governor Mark White signed Senate Concurrent Resolution 12 passed by the Texas State Legislature. The resolution persuasively calls for the enactment of H.R. 5021. On behalf of the sponsor of this thoughtfully drawn legislation, JACK BROOKS, who cannot be here today, I submit the concurrent resolution for the RECORD.

SENATE CONCURRENT RESOLUTION

Whereas, Local businessmen pay property taxes to support local schools and city and county governments; and

Whereas, Local businesses employ thousands of Texans who in turn pay local property taxes; and

Whereas, Local businesses are required by state law to collect and remit the state sales tax to the State of Texas; and

Whereas, Large national, out-of-state mail order companies who sell products to Texas residents in direct competition with local businesses are not required to collect and remit the Texas sales tax; and

Whereas, These large out-of-state mail order companies take more than $3 billion out of the Texas economy each year and in return give nothing toward the support of Texas' local and state institutions or toward the Texas economy; and

Whereas, The fact that these out-of-state firms do not collect and remit the state sales tax gives them an automatic, competitive advantage over Texas businesses, allowing them to charge less for the same goods sold by local Texas businesses; and

Whereas, This unfair advantage results in lost sales by Texas businesses and, in turn, in lost jobs among their workers; and

Whereas, The State of Texas will lose more than $100 million per year in potential sales tax revenue as long as these out-of-state businesses remain exempt from having to collect and remit the state sales tax; and

Whereas, The unfair competitive advantage out-of-state mail order firms have over local Texas businesses is solely the result of a 1967 ruling by the United States Supreme Court; and

Whereas, The Supreme Court has acknowledged that the Congress of the United States has the full power to overturn this ruling and require these firms to collect and remit the state sales tax; and

Whereas, Overturning this ruling would restore the competitive balance between Texas businesses and out-of-state firms; and

Whereas, The passage of the necessary law by the Congress would greatly aid the State of Texas in meeting its current fiscal needs; and

Whereas, Actions by the Congress have reduced federal aid to the State of Texas, creating additional fiscal pressure upon the state; and

Whereas, United States Representative Jack Brooks of Texas has introduced H.R. 5021 which would overturn the 19-year-old court ruling and thereby restore the competitive balance between out-of-state and Texas businesses; and

Whereas, The passage of this legislation would not reduce federal revenues by a single penny but might partially offset some of the effects of reduced federal aid to the state; now, therefore, be it

Resolved, That the 69th Legislature of the State of Texas, 2nd Called Session, request that the Congress of the United States enact H.R. 5021 by Brooks during the current session of the Congress; and be it further

Resolved, That the 69th Legislature of the State of Texas, 2nd Called Session, call upon all members of the Congress from Texas to actively support and work for the prompt passage of this legislation; and, be it further

Resolved, That the secretary of state forward official copies of this resolution to the President of the United States, to the Speaker of the House of Representatives and the President of the Senate of the United States, and to all members of the Texas delegation to the Congress, with the request that it be entered in the Congressional Record as a memorial to the Congress of the United States.

CONTINUING RESOLUTION

HON. DANIEL K. AKAKA

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. AKAKA. Mr. Speaker and my colleagues, I want to take this opportunity to address an issue which is of great importance to the people of Hawaii. I am speaking about the future of Fort DeRussy.

There are two legislative provisions in the continuing resolution for fiscal year 1987 which relate to Fort DeRussy. Before I discuss these provisions, I want to make some preliminary observations about this issue.

Land is a scarce and precious commodity in Hawaii. The Federal Government owns or controls approximately 600,000 of the 4 million acres of land in our State. This is a substantial amount for an island State with mountainous terrain that precludes much of the land from being used for housing or agriculture.

Because of Hawaii's limited land area, I have always believed that we must take advantage of every opportunity to return Federal lands to the control of our State and county governments where they can benefit all our citizens. Fort DeRussy is a good example of land which should rightfully be under the control of local government.

Due to its strategic location, Fort DeRussy represents a unique resource to the people of Oahu. While the debate about what is the most appropriate use for this land will always be a spirited one, I have long believed that land-use decisions are inherently local matters which should rightfully be decided at the local, and not the national level. The existing building-height limitation in the current zoning ordinance which governs Fort DeRussy and the ballot question concerning the proposed convention center are good examples of local decisionmaking which will determine what is the most appropriate use of this property. It is obvious to me that this process should safeguard Fort DeRussy from the kind of high-intensity development that surrounds it.

Although I support the passage of this continuing resolution in order to prevent the Federal Government from grinding to a halt, I am troubled by the provision of the conference agreement which allows the sale of Fort DeRussy after August 1, 1987. As much as anyone, I recognize that this agreement represents a true compromise in which both sides were forced to make sacrifices and neither side is completely satisfied with the outcome. Unfortunately the compromise contained in the Department of Defense section of the continuing resolution is flawed because it fails to contain essential safeguards which are necessary to protect the interests of the State of Hawaii and the city and county of Honolulu in the event that a sale of this land is allowed to go forward.

One need only compare the provision in section 9134 of the Department of Defense appropriations bill with section 509 of the Treasury-Postal Service appropriations bill to appreciate the inadequacies of the defense provision. While there are a number of similarities between these two provisions which I will discuss at the end of my statement, I would first like to point out a number of serious omissions in the Department of Defense appropriations bill.

First, whereas section 509 of the Treasury bill allows the land to be sold only to the State of Hawaii or the city and county of Honolulu, section 9134 of the DOD bill is silent on this matter. As I have already mentioned, I consider the State and the county to be the only appropriate purchasers of this land. Since 1982, when Fort DeRussy first appeared on OMB Director David Stockman's "hit list" of Federal properties which must be sold, I have fought all attempts to sell this land to the "highest bidder." The only appropriate way to transfer this land is through a controlled sale in which only our State and county governments can participate.

Second, the Treasury section further provides that should DeRussy be sold, title to the land must be retained by the city or the State. This is designed to ensure that the objective of a controlled sale is not circumvented by a subsequent conveyance to a third party of all or part of the land. This will also assure that the local government will always have a direct hand in controlling the destiny of Fort DeRussy. Unfortunately, the Department of Defense bill contains no limitation on any conveyance after a sale by the Federal Government.

Finally, the legislative history to accompany section 509 of the Treasury appropriations bill makes clear that the Federal Government's authority to sell this land is contingent upon the outcome of the proposed voter initiative relating to Fort DeRussy. Out of fairness to the voters of Oahu, this requirement was included by the Treasury conferees. Our agreement preserves the opportunity of the people of Hawaii to speak their mind on this issue.

There is, however, an important similarity between the Treasury and Defense provisions. Both preserve the 26 beachfront acres lying southwest of Kalia Road from any sale. This parcel contains the Hale Koa Hotel, the Armed Forces Recreation Center, and the beachfront area. This acreage is essential to support the recreational activities of enlisted personnel and the general public. Only the remaining acreage, the 45 acres lying northeast of Kalia Road, could be transferred under the terms and limitations provided by law.

As I have said, I am not entirely pleased with the outcome of this legislation. My longstanding objective has always been to preserve the 26 beachfront acres as it now stands, and allow the 45 acres at the rear of the property to be sold to the city of Honolulu or the State of Hawaii, where it will be retained for the benefit of the people of Hawaii. Since all of these objectives have not been achieved, I plan to continue to work toward these goals which I believe are in the best interests of my constituents.

TRIBUTE TO GERALD E. ALBERT

HON. BARBARA BOXER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mrs. BOXER. Mr. Speaker, I would like to pay tribute to an outstanding public servant and constituent, Gerald E. Albert, an employee of the Veterans Administration regional office in San Francisco.

Mr. Albert has been named this year's recipient of the Olin E. Teague Award. This award is one of the highest honors the Veterans Administration bestows, and it serves to recognize extraordinary achievement in the rehabilitation of war-injured veterans.

The award also serves to honor the late Mr. Olin E. Teague whose leadership and support as a former Member of Congress and chairman of the House Committee on Veterans' Affairs were invaluable in supporting the work and the mission of the Veterans Administration.

Albert serves as a Vocational Rehabilitation and Counseling Officer in the San Francisco VA office. He is the first individual from the Department of Veterans Benefits nonmedical side of VA to receive the Teague Award. All former recipients were from the Department of Medicine and Surgery.

He is considered instrumental in bringing about new opportunities for employment to qualified disabled veterans in San Francisco. He was instrumental in the development and passage of a city charter amendment by initiative. This provided for separate, non-competitive consideration of qualified persons with disabilities for positions in the city government similar to that of the Federal schedule hiring authority.

Albert noted that war-injured veterans and other persons with severe disabilities found employment difficult to obtain in San Francisco. The city and county employs 27,000 people, making it the largest single employer in the area. Furthermore, some 8 percent of San Francisco's 670,000 residents are disabled. Mr. Albert recommended that since the Federal Government and some private employers offer special hiring options for qualified disabled veterans, San Francisco should do the same.

Faced with the reality that this change could only be achieved through a ballot initiative, Mr. Albert and fellow members of the Mayor's Committee for Employment of the Handicapped set out to gain public support for the measure. After a vigorous public education campaign to which Albert devoted much time and effort, the initiative passed by a greater than 2-to-1 margin.

Once the measure was passed, Mr. Albert committed himself to insuring its effective implementation: coordinating efforts between the California Department of Rehabilitation and the VA, and helping municipal officials develop program guidelines and procedures.

When the San Francisco Civil Service Commission needed know-how in order to properly implement the program, Albert met with Affirmative Action representatives to advise them on establishing definitions and setting qualifying criteria. And when it appeared that the California Department of Rehabilitation might have the sole authority for certifying employee candidates, Albert also secured certifying authority for the VA with respect to veterans.

The amendment to the city charter sought by Albert provides the necessary mechanism for the increase employment of persons with disabilities, including war-injured veterans and the mentally-restored.

Providing opportunities for the employment of our injured military personnel is a moral obligation. Gerald Albert's efforts in this area of public service are truly praiseworthy, and I take great pleasure in paying tribute to him here today.

THE DEDICATION OF A NEW HOLOCAUST MEMORIAL IN NEW YORK

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. ACKERMAN. Mr. Speaker, I rise today to mark a very meaningful and important event to be held in Queens County, NY. On Sunday, November 2, 1986, the Marathon Jewish Community Center will dedicate a memorial to the 6 million Jews who were murdered in the Holocaust, and to all those who suffered the horrors of Nazism.

This new memorial was the inspiration of Adam Mandelblatt, a member of the congregation and a Holocaust survivor. The Nazi slaughter of millions of innocent men, women, and children was truly one of the darkest episodes in human history. Those who survived the nightmares of the death camps witnessed unspeakable horror. They have returned from the edge of the grave with only one message: We must never forget.

The project has been ably directed from the start by a committee headed by Irwin Tobin. Artist and educator Alfred Van Loen has created a sculpture which will stand in front of the synagogue as a constant reminder of the events that took place in the 1930's and 1940's.

Mr. Speaker, I call now on all of my colleagues in the U.S. House of Representatives to join me in congratulating the Marathon Jewish Community Center, Irwin Tobin, and his entire committee on their efforts in creating this memorial.

TRIBUTE TO JAMES BALUKEVICH

HON. SOLOMON P. ORTIZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. ORTIZ. Mr. Speaker, I rise today to pay tribute to James Balukevich who has been chosen for induction into the Washington, DC, Boxing Hall of Fame. Jim has been an avid boxing fan and participant. This award is a symbol of his great dedication to the sport and his past accomplishments. He can feel confident that he has been an inspiration to those who are presently training, and is a role model for young boxers.

Jim will be inducted into the Washington, DC, Boxing Hall of Fame at the annual banquet, held on November 14, 1986, at the Washington Touchdown Club. I extend my congratulations to him, and I know that he will continue to attend boxing matches across the country as he has in the past. For it was once said, "A boxer may retire from the ring, but he never retires his love of the sport."

SAMUEL H. SMITH, JR., ELECTED CHAIRMAN OF NATIONAL PLASTICS SOCIETY

HON. EDWARD F. FEIGHAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. FEIGHAN. Mr. Speaker, the Society of the Plastics Industry, Inc., represents more than 1,800 members throughout the plastics industry of the United States. The societies operating units and committees are composed of resin manufacturers, distributors, machinery manufacturers, plastic processors, moldmakers, and other industry related catagories. Since 1937, the Society of the Plastics Industry has served as the voice of the plastics industry and has led to a greater national understanding of the work and contributions made by the men and women of America's plastics industry.

I'm happy to inform the House that Samuel H. Smith, Jr., president of the Van Dorn Plastic Machinery Co., a division of Van Dorn Co., has been elected chairman of the society. Van Dorn Co. is located in Strongsville, OH, and is one of many thriving companies in the 19th District.

Mr. Smith joined Van Dorn Co. in 1957, and was appointed general manager of Van Dorn Plastic Machinery Co. in 1961. He became president 4 years later, and in 1969 was named vice president of Van Dorn Co. In 1973, he joined their board of directors.

Mr. Smith, a U.S. Army veteran, attended Carnegie Institute of Technology and Cleveland College, a division of Western Reserve University. Mr. Smith and his wife, Helen, are residents of Bay Village in Ohio, and I know that the House will join me in wishing them both well as Mr. Smith takes over the chairmanship of one of our Nation's fastest growing employers—the plastics industry.

COMMITMENT TO EDUCATIONAL EXCELLENCE

HON. RICHARD J. DURBIN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. DURBIN. Mr. Speaker, over the last several years our Nation has experienced a renewed commitment to educational excellence. There is increasing concern that a "rising tide of educational mediocrity" threatens our Nation's future. The quality of our Nation's educational system is particularly important to disadvantaged and minority students. Despite recent efforts to meet these needs, much needs to be done.

For example, the high school dropout rate in 1983–84 in Decatur was 26 percent. A recent study by the Illinois Board of Higher Education found that representation of Black and Hispanic students decreases at each successive level of education. Black students represent approximately 15 percent of the public high school graduating class but only 6 percent of the bachelor's and master's degrees.

The reauthorization of the Higher Education Act and the priority given to education by Congress in the appropriations process will help address these needs. The success of these programs, however, depends on the commitment of local education leaders and the dedication of teachers.

The efforts of Jeanelle Norman, a faculty member at Richland Community College in Decatur, IL, demonstrate the importance of this commitment. She has obtained a $65,000 grant from the Illinois Board of Higher Education to help 42 minority students in Decatur overcome the obstacles they have to face in attending college.

This program is designed to strengthen the basic skills these students need to continue their education, and more important to inspire them to believe that they can successfully attend college. The students will meet after

school and on weekends for instruction in reading, writing, and math. The program will also provide in-service training to high school teachers, and provide the students with an opportunity to develop successful role models.

I want to compliment the Board of Education in Illinois for their leadership on this important issue. I particularly want to commend the efforts of Jeanelle Norman and the other faculty and staff at Richland Community College for their efforts to enhance the educational opportunities available to minority and disadvantaged youth in central Illinois. Their efforts represent the best in our Nation's commitment to providing each individual with an opportunity to fulfill their aspirations.

UNFORTUNATELY, THE PRESIDENT'S LIBYAN SANCTIONS AREN'T WORKING

HON. JOHN BRYANT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. BRYANT. Mr. Speaker, the President's Executive order prohibiting the conduct of business with Libya is not working. A major United States-based multinational corporation has publicly admitted continuing business as usual with the Libyan Government, thereby assisting Libya's economy and its ability to finance international terrorism.

The President has aptly described Libya's terrorist activities as "an unusual and extraordinary threat to the national security of the United States" and a "national emergency." So seriously has he regarded this threat—and justifiably so—that he sent our armed forces on a military strike against that country. As he told the American people, the purpose of the Libyan sanctions program is to cut off, to the greatest extent possible, economic support for the Qadaffi government and its terrorist agenda.

Yet Schlumberger, the world's largest oil field service company, has actually defended its continued multimillion-dollar business ties to Qadaffi's Libya while its competitors and other companies have abandoned assets and income there in accordance with the President's directive. Schlumberger supplies Libya with sophisticated wireline technology, which is absolutely critical to efficient development of oil and gas reserves.

Without this technology—available from only three other companies in the world—Libya's ability to develop new oil and gas resources and finance terrorism could be stopped dead in its tracks. There is also evidence that Schlumberger may well have violated Federal criminal law, enacted in our national security interests, prohibiting participation in the Arab League boycott of our ally Israel.

When I brought this matter to the attention of the Treasury Department, which is charged with enforcing the Libyan sanctions program, I was shocked at the cavalier response I received: the Executive order does not apply to Schlumberger, simply because it chose to file its corporate charter in the Netherland Antilles, a Caribbean tax haven.

Schlumberger is one of the most tightly managed corporations in the world, controlled in minute detail from its international corporate headquarters in New York. Its stock is traded on the New York Stock Exchange, and its principal corporate officers and directors live in the United States. Its principal operations and manufacturing facilities are in Texas and its high technology research and development operations—including, according to its annual 10–K filing with the SEC, the research and development for wireline logging—are in Connecticut.

It is reputedly vying through a subsidiary for sensitive strategic defense initiative contract. In other words, Schlumberger enjoys the full privileges of doing business in the United States and bidding on major defense contracts, while it undercuts with impunity the national security purpose of the Libyan sanctions program.

I was further shocked when Assistant Treasury Secretary J. Michael Hudson wrote me:

With respect to the jurisdictional limits of the Executive Order and Regulations—banning business with Libya—I can assure you that this approach to economic sanctions was a carefully considered decision taken by this Administration prior to imposition of the Libyan sanctions * * *.

I find it incredible—and, if true, intolerable—that the President intended such a massive loophole in the Libyan sanctions program that Schlumberger, the largest company of its kind in the world, could slip through.

I cite Schlumberger because its business ties with the Libyan Government is now a matter of public record. But there may well be many other corporations enjoying the advantages of major United States operations while continuing to do business with Libya.

I call this matter to the attention of my colleagues and the American people, because I strongly believe that, in a matter this serious, we should demonstrate that we really mean business. What we are talking about here is not just semantics or subtleties of the law, but the national security interest of the United States.

If you share my outrage at the ineffective administration and enforcement of the Libyan sanctions program, I urge you to express it, as I have mine, to the Secretary of the Treasury and the President.

THOMAS HENRY CANDON

HON. JAMES M. JEFFORDS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. JEFFORDS. Mr. Speaker, I rise tonight to commemorate a member of the Vermont House of Representatives who is retiring after an exceptional legislative career. I have rarely done this in the 12 years that I have been here, but there are those such as Thomas Henry Candon who deserves recognition here in this great body.

A couple of weeks ago I attended a testimonial for Tom. I wish I had recorded that evening. Over 400 people from all over the State—former Governors, speakers of the Vermont House and Senate, other leaders and many friends poured out their admiration and affection for this most respected man.

Mr. Speaker, Tom Candon has served the people of Vermont and his home district of Rutland City with rare distinction. For more than 20 years, he has been a legislative stalwart at the State House in Montpelier, Vermont's capital. He has been both House minority leader and majority leader during those years, as well as vice-chairman of the House Ways and Means Committee, of the House Rules Committee, and both vice-chairman and chairman of the Joint Fiscal Committee.

Tom is a Democrat who has enjoyed the respect of all his legislative colleagues, regardless of political persuasion. And their confidence in him is easily understood, since Tom has amassed a legislative record over the years that any one of us here would be honored to have.

I would like to review that record based on the information provided to me by the Clerk of the Vermont Legislature, Robert Piche. Tom Candon sponsored or cosponsored 224 bills and resolutions, 149 of these were enacted into law, for an average of 67 percent. Only five were defeated. Think of it—over two-thirds of the legislation bearing his name were adopted. On bills reported out of his committees, his average was even better. Thirty-four out of 44 of these measures became law, for a 77-percent success rate. Only on two occasions did he see a bill or resolution, worked on by his committee, killed. It gets even more astonishing when you look at this conference record. Tom served on committees of conference for 24 bills and resolutions. Out of that total, 22 were enacted into law. That is a 92-percent average.

In the legislature, he placed in nomination or seconded the nomination of 13 individuals. Only twice was he on the losing side. And finally, in his two decades of dedicated service, he made 597 motions, of which 577 won approval, for a very respectable average of 96.6 percent.

In addition to the above, he found time to be a devoted husband to Margaret and a loving father to his three children. He also, to name but a few of his accomplishments outside the State House, fought to protect his country during times of war, served as an extraordinary civil service employee, and was a trustee for the University of Vermont.

Before I conclude, I wish to remove any concern that Tom's advice will no longer be available. I assure you that Tom will continue his morning visits to Pete Louras' store, and in country store fashion, he will not only provide answers to Vermont problems, but I assure you he will handle those of the Nation and the world with great dexterity and expertise.

Tom Candon is a classic Vermonter. Full of Yankee ingenuity, resourcefulness, a sense of fair play and a true competitive nature—Tom is always willing to take a chance. This willingness is clearly found in his legislative record that has no equal. But, Tom does not always win. Every day he purchases a Vermont lottery and he has yet to win.

TRIBUTE TO ELDON RUDD

SPEECH OF

HON. RALPH REGULA

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 8, 1986

Mr. REGULA. Mr. Speaker, we are going to miss ELDON RUDD as a colleague. I especially will miss him as a member of the Appropriations Committee.

ELDON has been one we can count on when the going gets tough on legislative challenges to stay true to his ideals.

He has always been a diligent fighter for his constituents in the Fourth District of Arizona while at the same time never forgetting the national interest.

ELDON leaves this body highly respected by his colleagues and with the goodwill of many friends.

Mary joins me in wishing ELDON and Ann good health and a challenging, new life. We both cherish their friendship.

TRIBUTE TO WALTER F. TIMILTY

HON. BRIAN J. DONNELLY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. DONNELLY. Mr. Speaker, I rise to offer my sincere appreciation to my good friend, Walter F. Timilty, a member of the Milton, MA Board of Selectmen.

For 11 years, Walter has served the residents of Milton, not only at regularly scheduled board meetings, but with countless personal time spent to insure that the people of Milton received the best service possible from their local government. Walter resigned his seat on the Board of Selectmen due to a contract clause which prevents him from holding elected office while performing his duties as executive assistant to the clerk magistrate of the Norfolk County superior court.

Walter comes from a proud tradition of public service. He is the grandson of a former State senator the nephew of former Boston police commissioner, Joseph Timilty, and his brother, Joe, is a former State senator and Boston mayoral candidate. Walter is the last of his family to hold public office. Milton will miss his tireless devotion to the Board of Selectmen.

Walter Timilty is my friend and I will always value his wise counsel. I wish him the very best with his future endeavors.

ON-BOARD RECOVERY SYSTEMS IN VEHICLES

HON. BOB CARR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. CARR. Mr. Speaker, the Environmental Protection Agency is presently considering the best technology for controlling gasoline vapors. "Onboard recovery systems in vehicles and trapping the vapors at the gasoline pump are two proposed technologies.

The onboard recovery system has two major detractors: the exorbitant cost and the safety problem which could arise from adopting the system.

The Insurance Institute for Highway Safety has notified the EPA of its concerns over the safety of the onboard system. The Institute does not believe the onboard system is a viable alternative. In their recent letter to EPA they state, "Why choose an alternative that would have the horrible consequence of burning people in crashes?" Reasonable methods exist to improve air quality, the trapping of gas vapors at the pump is practical and would not be detrimental to public safety.

Mr. Speaker, the complete text of the Institute for Highway Safety's letter follows:

IINSURANCE INSTITUTE
FOR HIGHWAY SAFETY,
September 23, 1986.

Mr. LEE M. THOMAS,
Administrator, Environmental Protection Agency, Washington, DC.

DEAR MR. THOMAS: The Environmental Protection Agency (EPA) currently is considering two alternatives to reduce the atmospheric ozone produced by escaping gasoline vapors. One alternative involves capturing the vapors with recovery systems on board each motor vehicle. The other calls for trapping vapors at the gasoline pump. Either way, the purpose is to improve air quality by reducing ozone, a major agent in smog formation that has been blamed for respiratory ailments.

The Insurance Institute for Highway Safety, a research and communications organization supported by the nation's property and casualty insurers, strongly opposes the on-board approach, because it would increase the risk of fire in motor vehicle crashes. Such an environmental policy, which might improve air quality but only by burning people in highway crashes, cannot be justified on any rational basis.

The on-board system would require complex additional valves including a nozzle-actuated tank vent valve assembly, a vapor-liquid separator, a vent/rollover valve, plus a large canister (three times the volume of the existing one) to store captured vapors. There would be a ⅝ to ¾-inch refueling vapor line with a very thin wall, compared to the current ⅛-inch fuel tank evaporation line. Thus, small lines would be replaced by bigger lines that would be more susceptible to rupture. The result: an increase in the likelihood of people being burned, even fatally burned, in post-crash fires when the line rupture or when other parts of the complex fuel recovery system fail.

EPA should not rely on Federal Motor Vehicle Safety Standard 301 (Fuel System Integrity) to make sure fires do not increase because of the added vapor recovery equipment. The standard does not—nor could any standard—completely eliminate fuel spillage. It successfully reduces the likelihood of such spillage by specifying requirements in test crashes. But real crashes include a wide range of configurations and speeds—more than any standard could possibly address—and the addition of complex fuel vapor recovery systems would increase the likelihood of failure.

There is a viable alternative. Trapping gas vapors at the pump would allow EPA to improve air quality without additional loss of life in post-crash automobile fires. (There's a bonus, too, of simpler enforcement procedures.) Trapping devices could be added to existing gas pumps and designed into new ones. In California, this technology has been used successfully for 10 years. According to Sierra Research of California, "If the implementation of [such] systems proceeds only half as fast in the rest of the country as it did in California, refueling emissions can be controlled by 80 percent within four years of the adoption of regulations by EPA, and 92 percent control could be achieved within six years."

A regulation requiring automobile fuel systems to become more complex doesn't make sense. Why choose an alternative that would have the horrible consequence of burning people in crashes? There's no justification for doing so, especially when a practical alternative exists to improve air quality by trapping gas vapors at the pump.

Sincerely,

BRIAN O'NEILL,
President.

MIDDLETOWN CELEBRATES TERCENTENARY

HON. BOB EDGAR

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. EDGAR. Mr. Speaker, I would like to bring to the attention of my colleagues a special celebration that is being held in the town where I live, Middletown, Delaware County, PA. It is no ordinary event.

The residents of Middletown are celebrating their tercentenary year in 1986 to mark the incorporation of the municipality on December 3, 1986, when it was cut from the wilderness of what was then Chester County.

Middletown Township was originally settled by farmers who lived quiet lives. Today, Middletown Township is a vibrant residential community as well as a center for education, culture, and commerce.

The township traces its roots to 1682 when William Penn arrived in Chester, Delaware County, to establish a new concept for living based upon freedom and democracy. Within 5 years after Penn's arrival, Middletown became a municipality. On December 3, 1986, 300 years after its founding, residents and friends will gather for a dinner-dance commemorating the actual birth date.

An official history of the township was published during the tercentenary year. Written by Henry S. Pearson, a township resident, "Middletown Township, Delaware County" had a limited edition of 2,000 copies—Library of Congress Catalog No. 85–61504.

Mr. Pearson writes that the first settlers—"Dutch, Swedes, and English, found an indigenous people occupying the lands they so freely commandeered. These were the Lenni Lenape who later came to be called the Delaware Indians, part of the social and language group known as the Algonkians."

In mid-1985 Dr. John Laskas, Jr., president of the Middletown Township Council, appointed resident John D. Vairo, to cochair with Dr. Pamela Emory, director of the township's recreation department, the Tricentennial Events Committee. Planning started immedi-

ately and 91 residents were named to the Tricentennial Planning Committee.

There were celebrations every month of the year with the major event taking place on Sunday, September 28, 1986, upon Penn State University's Delaware County campus. Thousands of local and area residents enjoyed a 2-hour parade and festival, followed by a glorious fireworks display.

The success of the tricentennial year are directly attributable to the generosity of the Middletown Township Council, its Recreation Department, the township employees, and the support and encouragement of the Middletown Township Historical Society, the neighborhood civic groups, and the general public.

A "historical vault" will be filled with memorabilia supplied by township residents and buried in early 1987, to be opened again 50 years from now or in 2036.

BATTLE OF PILOT KNOB, MO, REENACTED

HON. BILL EMERSON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. EMERSON. Mr. Speaker, I have in my district a National Historic Site, Fort Davidson, at Pilot Knob, MO.

Fort Davidson, defended by Union General Thomas Ewing, was the site of a trememdous and bloody battle on September 27, 1864, just 122 years ago. The attacking forces under the command of Confederate Gen. Sterling Price suffered over 1,000 casualties in 20 minutes. Saturday, the 27th of September, was the anniversary date of this important Civil War battle.

Some 25,000 people were on hand to see a tremendous and moving reenactment of the battle which began in Ironton, the county seat, was fought hard for 3 miles, and culminated in three final assaults upon the beleagured fort.

I was at this reenactment. I want to congratulate the committee that planned this tremendous affair, and I want to congratulate each and every member of the reenactment team—both Union and Confederate, both officer and enlisted, who participated in this battle. The infantry, the cavalry, the artillery, the medics—all were there and authentic to the last detail.

It was a reliving of some of our Nation's and my district's history. The dedication with which the reenactors played their roles was mindful of the valor, dedication, and determination of the troops engaged there so long ago. I contratulate every person who had a part in again bringing this battle and spirit of dedication to our attention.

Also, on the battle site I made an additional interesting discovery. There were on hand for this reenactment six members of a junior shooting club in the Potosi area of my district who are direct-line descendants of Maj. Gen. Sterling Price. Of these young rifle shooters, three are boys and three are girls; and all hold qualification ratings of marksman, marksmanship first class, and sharpshooter. Their club, the Potosi Gun Club, is active in the Civilian Marksmanship Training Program as promulgated by the Director of Civilian Marksmanship, Department of the Army.

The six rated young shooters and descendants of General Price are: Laverna Price, Sterling Eugene Price, Marion Andy Price, Michael Kelley, Michelle Kelley, and Rebecca Kelley. I congratulate each of these young shooters not only as descendants of Congressman, Governor, and Gen. Sterling Price, but for their prowess with the rifle as well.

SALUTE TO A GREAT AMERICAN

HON. ANDY IRELAND

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. IRELAND. Mr. Speaker, today I would like to bring to this House's attention the efforts of a truly distinguished American, the Honorable A. Everette MacIntyre. Recently, this Congress passed modifications to the Federal False Claims Act. In essence, what we did was to replace in the law key sections that were removed during the Second World War. The removal of these sections had severely weakened what was known as the "Abraham Lincoln Law." This law for over 120 years has been our main tool to combat contractor fraud upon the Federal Government.

Several years ago Representative BERKLEY BEDELL and I began the fight to rewrite the False Claims Act. Over the last few years Senator CHARLES GRASSLEY, and Representatives DAN GLICKMAN and HOWARD BERMAN joined the battle and through their key legislative assignments the law was amended. They are to be commended by all citizens. However, I would not be able to recite this brief history to you today were it not for one citizen—A. Everette MacIntyre.

Mr. MacIntyre—"Mac" to his friends—has worked and lived in the Washington, DC, area for more than 60 years. He began service as a trial attorney with the Federal Trade Commission. Later he served as general counsel to the House Small Business Committee and in 1961 was appointed a Commissioner at the Federal Trade Commission by the late President John F. Kennedy. Mr. MacIntyre remains active today in his own law firm and is nationally recognized as one of our important antitrust experts.

As a young FTC attorney Mac became embroiled in the fight against contract fraud in the years preceding World War II. He was on the scene as a fraud case in Pittsburgh wound up before the Supreme Court. The Supreme Court in Marcus versus Hess upheld the suit with the later result that vigorous lobbying by the defense community got Congress to rewrite and weaken the law under which the Pittsburgh suit had been brought. Most people then forgot this episode but not Everette MacIntyre. In 1982 he came to BERK BEDELL and myself and laid out the whole history for us and then explained why he believed it was now time to correct the wrong that had been done. Today, we have toughened the law and opened new avenues to hunt down the perpetrators of fraud thanks to the vigilance and efforts of one citizen. Yes, one person can make a difference.

Mr. Speaker, A. Everette MacIntyre is no stranger to the American historical scene. The next time one wants to read about the difficult times we faced earlier in this century, I suggest they pick up Studs Terkel's "Hard Times." Please turn to chapter 2 which vividly describes the World War I Veterans' Bonus March on Washington. I would point out that the eyewitness account as noted by the author is none other than our vigilant citizen—"Mr. Mac."

INDIA TRADE PRACTICE UNFAIR

HON. JOE BARTON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. BARTON of Texas. Mr. Speaker, the Oil and Natural Gas Commission [ONGC] is a semiautonomous agency of the Indian Government that reports to the Minister of Petroleum. The ONGC makes government procurements for India's publicly held petroleum firm.

The Department of Commerce has received several complaints recently that the ONGC is not following its own or the Indian Government's procurement procedures. Despite a 35-percent preference factor given to domestic suppliers, several U.S. firms have come in with low bids in recent tender offers only to have their price undercut by domestic producers after the close of the bid period. The U.S. suppliers in these cases are experienced in the Indian market, having previously won and successfully serviced contracts with ONGC.

While it is understandable that given the current situation in the world market for petroleum exploration equipment and maintenance contracts, India may desire to make adjustments in its procurement policies, India should not act in a discriminatory manner with respect to foreign suppliers.

At my request, the U.S. Representative Mr. Yeutter has written to the Indian Ambassador to express his grave concern over this situation. This letter has in turn been cabled to officials in India, including the Minister of Petroleum. Following is a copy of that letter. I plan to aggressively pursue this matter to a satisfactory conclusion.

U.S. Embassy personnel in India will also be discussing this matter with Indian officials in New Delhi during the upcoming round of bilateral trade talks.

We should urge the U.S. Trade Representative to continue his diligent pursuit of this issue and appreciate the steps that have been taken thus far.

The letter follows:

THE U.S. TRADE REPRESENTATIVE,
Washington, DC, October 15, 1986.

HON. P. SHIV SHANKAR,
Minister of Commerce, Government of India, New Delhi, India.

DEAR MR. MINISTER: It appears that one of our U.S. producers is having some difficulty in conducting its business in India. Having heard his story, I wonder if I might prevail upon you to look into the matter. Because this matter concerns a decision which is to be made on October 16 or shortly thereafter, there is a degree of urgency involved.

Approximately one year and a half ago, Branham Industries, Inc. submitted a bid for a procurement valued at several million dollars which is being conducted by India's Oil and Natural Gas Commission (ONGC) for the purchase of three oil rigs. Mr. Branham reports that the initial costs of preparing the bid and the postponement of the award date several times have resulted in quite a heavy investment of him. You can imagine that he was somewhat disturbed to learn suddenly last week that the contract has now been offered to two Indian companies on the condition that they meet Mr. Branham's price. Mr. Branham had understood that his bid was not only the lowest, but also well below the 35 percent preference margin allotted to Indian firms. Mr. Branham has urgently appealed to the U.S. government to investigate this matter, given the October 16th deadline which has been given the two Indian companies to respond.

The United States has long opposed the use of buy national policies. In our experience we have found that these policies work against us rather than for us, because they take away a firm's incentive to be competitive. I recognize that we may not always agree on this principle. However, I want to leave that general issue aside for the moment and appeal to you on the basis of fairness; if ONGC had never intended to award this contract to a non-Indian firm, it should never have asked Branham Industries to submit a bid. If procurement policies change in the middle of a procurement, they should be applicable only to new procurements. Mr. Branham reports that he has spent a considerable sum and a considerable amount of resources which might have gone into other opportunities—only to find out that his bid was merely used to provide leverage for ONGC to force his Indian competitors down to reasonable prices. No one has disputed the right of any sovereign nation to determine its own policies, but Mr. Branham feels that where there is no intention to award contracts to foreigners, that policy should be stated in advance of soliciting bids. I agree with him.

In addition, I see some significant disadvantages for India in even an occasional application of this policy. Mr. Branham believes that such policies will deter other U.S. suppliers from bidding or providing the necessary engineering support in India. This kind of interruption in what seems to have been a rather productive relationship with India—Mr. Branham has 31 other rigs already in operation in India from past endeavors—can only damage India's own national growth. It certainly would not attract new suppliers or investors to India.

If the facts of this story bear out, I believe it would be in our mutual interest to look at it more closely before the contract is actually awarded. Otherwise, this case would convey quite a negative precedent to other U.S. producers.

Therefore, I hope that you will use your considerable influence to seek postponement of the award past the scheduled October 16th deadline until such time as all the facts can be fully investigated.

Thank you in advance for your attention to this case. I look forward to hearing from you soon.

Sincerely,

CLAYTON YEUTTER.

TRIBUTE TO DEPARTING COLLEAGUES

HON. ALFRED A. (AL) McCANDLESS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. McCANDLESS. Mr. Speaker, I want to thank the gentleman from California for taking this time for special orders, to express our thoughts and feelings on the fact that three of our colleagues from California will be leaving us next year.

In considering the three members who are departing, the following lines written by Alexander Pope in the early 18th century seem to apply to each one:

"Statesman, yet friend to truth! of soul sincere,
In action faithful, and in honor clear;
Who broke no promise, served no private end,
Who gained no title, and who lost no friend."

GENE CHAPPIE has served in this body since 1981. We will miss his counsel and sound wisdom.

BOBBI FIEDLER has also served admirably since 1981, and will be remembered for her intelligence and independence—qualities that will stand her in good stead in the future, I'm sure.

ED ZSCHAU, who has served two terms in this body, is seeking to stay on in Washington, but on the other side of the Capitol. His contributions to the House of Representatives are many, and his shoes will be hard to fill.

Mr. Speaker, I wish all three of our departing colleagues the best of times in the future. They will all be greatly missed in this Chamber.

EL SALVADOR'S COURAGE

HON. JIM COURTER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. COURTER. Mr. Speaker, 37 years ago the son of a Salvadoran tailor graduated from our University of Notre Dame. His name was Jose Napoleon Duarte. In May of last year he returned to campus as the duly elected President of El Salvador, and gave the commencement address to the class of 1985.

The Provost of Notre Dame introduced Duarte as "the first elected civilian President of his country in half a century."

"His power has come not from the barrels of guns but from the plebiscites of the people, who three times in the past 4 years have voted courageously against the fatal terror of the past and for the healing promise of the future."

Duarte is a fitting symbol of the transformation of El Salvador. Robbed of a 1972 electoral victory by the military, imprisoned, tortured, and exiled for 7 years, he came to power at last—democratically. We all recall the agonies of that country only a few years ago. The guerrillas seemed to have paralyzed the army, and the ruling Christian Democratic Party was relentessly accused of "fascism." The 1982 elections brought right wing parties to power.

But the Salvadoran electorate returned to the political center in 1984, and Duarte's victory has given the nation the hope of long-term stability. The guerrillas who 2 years ago were openly bragging of a coming "final offensive" had become demoralized a few months later.

The United States has played a key part in this success story. Years of economic aid, lesser but constant supplies of military assistance, and patient diplomatic efforts have all had their effect. Today the Salvadorans are strong, their democratic institutions are steady, and their confidence is increasing. The entire psychological and political atmosphere of Central America has been changed as a result.

The recent and disastrous earthquake is a new setback, but it too will surely be overcome. I am gratified to see that this year's continuing resolution contains an emergency aid package of $50 million for the Salvadorans.

Today's Washington Times includes a Georgie Anne Geyer feature on El Salvador which I find worthy of the notice of my colleagues. That country's problems are not over yet, but they are being faced with courage.

The article follows:

[From the Washington Times, Oct. 17, 1986]

EL SALVADOR'S COURAGE

(By Georgie Anne Geyer)

Tragic events like the earthquake that ravaged El Salvador wrench the soul. On top of the horrible civil war, it seems that God has picked out that long-suffering little country for the endless trials of Job.

But it is hopeful that, beneath the wretched surface, good things are happening in El Salvador. The fact that, until the earthquake, you were no longer reading about El Salvador in the papers is one key. It's not "interesting," because the government is basically working there and so is American policy.

You could see the contours of the new age recently when El Salvador's remarkable Christian Democrat president, Jose Napoleon Duarte, went out to a small town deep in Communist guerrilla territory, stood on the church steps and called dramatically for the guerrillas to come out and negotiate. They didn't, and the event shows where the momentum now is. It is with Mr. Duarte.

Because of American aid and pressures, the reformist military gradually has taken over from the killer military of the old right. Reforms of everything from agriculture to taxes, from unionizing to banking now are becoming institutionalized. President Duarte and his Christian Democrats, with the courage that extraordinary times occasionally call forth, have slowly given the country a modern political system. And on the guerrilas' side, the Marxist guerrillas have announced they will unite in a single Communist Party. This is extremely important because, in effect, it removes any fig leaf of an idea that they are not confirmed extremists, and it divides them definitively from the democratic left.

The dramatic changes were outlined by three leading American specialists on El Salvador at a recent meeting of the Carnegie Endowment for International Peace:

Mr. Duarte has created "political space in which political rules are being enforced," observed Luigi Einaudi, one of the finest thinkers on Latin American affairs in the State Department. "Socially, I find tiredness in El Salvador. But the intellectual theme has changed. It is now peace. It went from revolution through childishness in the '70s to some sort of peace with order today."

Why is it taking so long? "Because it is harder to build than to destroy."

"Politically, I am more optimistic about the creation of the state," argued Professor Jose Garcia, a specialist on the El Salvadoran military, at New Mexico State University. "The Duarte regime has lots going for it—its relation with the armed forces, for instance. It is slowly but steadily gaining the capacity to act. It is able to raise taxes against the coffee growers, for instance. That is part of the way to create a center."

Mr. Garcia further noted, as did others, that the inner conflict of El Salvador was "shifting from the battleground back to the labor movement—and that's hopeful because that's where the civil war began in 1977 when the unionists in the coffee fields began demanding higher shares of the coffee revenues."

The third specialist, Professor Enrique Baloyra, associate dean at the University of Miami, further pointed out that the drama of El Salvador lies in the fact that the original 1979 junta, which Mr. Duarte headed in those dangerous times, "inherited a state that did not exist at that time and tried to rein in a military that was above the state."

Today, he said, addressing critics who say that not enough has been done: "There is no military stalemate in El Salvador. What there is is one hell of a mess. But you look at the government, and you're asking it to do wonders with two hands tied behind its back."

The real wonder, then, is that a modern El Salvadoran democratic state is actually being formed where only 10 or 15 years ago there existed, in effect, a feudal economic and political system. The civil war in El Salvador began when economic changes in the '60s and '70s moved rapidly, but without any political opening to drain off those newly awakened impulses.

The changes today are due foremost to the courageous El Salvadorans themselves, who chose, politically and militarily, the excruciatingly difficult devotion to the democratic center. It is also due to an amalgam of thinkers in the American government, to the AFL-CIO "tradition" of U.S. aid to the El Salvadoran democratic unionists, and to the closing off of the Nicaraguan sanctuary for the El Salvadoran guerrillas, which may well stand historically as the major accomplishment of the "contras."

Given the horrors this government inherited, it is surprising not that it has moved so slowly, but that it has moved as rapidly as it has.

GETTING THE URANIUM INDUSTRY BACK ON ITS FEET

HON. DICK CHENEY

OF WYOMING

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. CHENEY. Mr. Speaker, I want to take this opportunity to address my colleagues on one of the provisions of the continuing resolution relating to the Department of Energy's operation of the Uranium Enrichment Program.

First, I want to note that the continuing resolution maintains the statutory integrity of section 161v. of the Atomic Energy Act, which requires the Federal Government to conduct itself in such a way as to maintain a viable domestic uranium industry.

Anyone who is familiar with the history of the mining and minerals industry knows that it is, by nature, cyclical. There have been good times, followed by bad times, followed by good times once again. Right now, things are not good, and the industry looks forward to the time when conditions will improve.

But with respect to the uranium industry, Congress has recognized many times in a variety of ways that because of its strategic importance to our energy and national security needs, the policy of government should be to do what is reasonable and sensible to maintain a viable domestic uranium industry.

It is because the Department of Energy has lost sight of that mandate that we have had to spend a great deal of time in recent weeks discussing the uranium enrichment issue and other issues related to the survival of a domestic industry.

Contrary to the clear instructions of Congress, DOE's new enrichment criteria take the approach that the agency may, if it so desires, restrict enrichment of foreign uranium, despite the fact that section 161v. mandates import restrictions if necessary to maintain domestic viability.

Section 161v. also says: ". . . that (i) prices for services under paragraph (A) of this subsection shall be established on a nondiscriminatory basis; (ii) prices for services under paragraph (B) of this subsection shall be no less than prices under paragraph (A) of this subsection; and (iii) any prices established under this subsection shall be on a basis of recovery of the government's costs over a reasonable period of time . . ."

Yet, DOE's new criteria state that it may recover future costs it deems reasonable. Also, DOE's criteria simply "write off" $4.1 billion of taxpayers' investment with a stroke of a pen.

What DOE seems to be saying via this new enrichment policy is, "We will obey the terms of the law if we feel like it, and if we don't feel like it, we won't."

It is time the Congress informed the Department, Mr. Speaker, that it expects the law to be carried out. The Department should be on notice that although funding will be provided for the enrichment program for the next few months, this action in no way endorses DOE's enrichment criteria, or condones the Department's conduct in flouting the specific requirements of section 161v., or impacts one way or the other pending litigation on this issue.

Mr. Speaker, there was a time just a few months ago when my State of Wyoming was second in the Nation in uranium production, and several thousand people earned their living in jobs associated with this industry. Now, all but a handful of those people have lost their jobs, and all of the uranium operations are shut down except one. Under such circumstances, there is no way the Department of Energy can persuade me that it has complied with its mandate to maintain a "viable" domestic industry.

TRIBUTE TO G. WILLIAM WHITEHURST

HON. RALPH REGULA

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 14, 1986

Mr. REGULA. Mr. Speaker, I am pleased to join a special order for my colleague and friend from Virginia, BILL WHITEHURST. BILL has been a first-class Member of this body.

His thoughful, responsible leadership has served his constituents well while always recognizing the national interest.

Each of us, through experience, counsel with certain colleagues because we have a special faith in their judgments and look to them for leadership. BILL WHITEHURST has been a Member that fills that role for me.

BILL leaves this body with the respect of his colleagues and with the goodwill of many friends.

Mary joins me in wishing BILL and Jane good health and a life with new challenges.

REAGAN MAKING SDI A PARTISAN ISSUE

HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. VENTO. Mr. Speaker, there has been much thought and reflection by the American people over the past several days since President Reagan returned from his weekend talks with Soviet leader Mikhail Gorbachev. The apparent breakdown of these talks over the issue of the strategic defense initiative [SDI] is a cause for deep concern especially in light of the fact that the two leaders of the superpowers were apparently within reach of an agreement of unprecedented scope which could have led to sharp reductions in the numbers of strategic missiles and which could have led to a safer world. As the public attempts to absorb and understand just what went on last weekend in Reykjavik, there has been a restrained and thoughtful reaction to the failure of the two leaders to reach agreements which might have been within reach.

President Reagan has consistently argued for a bipartisan approach to foreign policy and national security issues. But unfortunately, once again, the President's recent actions speak louder than his words. It is President Reagan who has now launched a blatantly partisan attack against those of us who question the wisdom of his strategic defense initiative [SDI]. The President's remarks in Baltimore Wednesday, October 15 show quite clearly that he is not interested in a full and thorough examination of SDI. Rather, he chooses to attack the loyalty or motives of those who have questions or who disagree with his conception of SDI.

The President says SDI is "a modern-day Fort McHenry." It might be described more aptly as a modern-day "Maginot Line." You may recall that the French invented the Maginot Line in World War I thinking that it would

be an impenetrable barrier against the German Army. As the French soon learned, the Germans found their way around the Maginot Line. The supposed security of the Maginot Line turned out to be a myth.

Mr. Speaker, the President has chosen to exchange possible sharp reductions in existing offensive missiles for a system which exists in theory only and which may prove to be a nuclear umbrella with many big holes in it. If there was ever a time for a thorough examination of our defense policy, this is it. It is not just liberals in Congress who question the wisdom of racing into SDI. Thousands of scientists whose personal political beliefs range across the political spectrum from liberal to conservative have expressed their doubts about the viability of SDI and many have said that a fail-proof system simply could never be deployed. Shouldn't we listen to what knowledgable scientists and engineers say about SDI? Spending up to a trillion dollars or more on such an uncertain system would imperil our entire military capability by starving other conventional and strategic programs and pulling down our economy while distorting our national defense priorities.

Members of this body should not be deterred from fully examining SDI with the most critical scrutiny. The security of the United States and the peace of the world will depend upon the policy path that we follow; a policy hopefully for peace in the real world and not reliance on a magical weapon system of fantasy.

RAILROADS—99TH CONGRESS

HON. EDWARD R. MADIGAN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. MADIGAN. Mr. Speaker, as the 99th Congress draws to a close, I want to take a few minutes to discuss the state of the railroad industry. In the mid-seventies and early eighties Congress was faced with one railroad crisis after another. When I first became a Member of this body nearly a quarter of the rail industry was in bankruptcy. In the late seventies two additional railroads important to the Midwest and my State fell into bankruptcy. The Rock Island was liquidated although some of its lines were sold to other railroads and continue operation. The Milwaukee was restructured under the trusteeship of former Illinois Gov. Richard Ogilvie with assistance of legislation in the 96th Congress.

The financial condition of all railroads improved as a result of the 4–R Act in 1976 and the Staggers Rail Act of 1980. The 4–R Act encouraged the restructuring of the national railroad system and made it easier for major railroads to merge. The Staggers Act deregulated railroad rates and made possible greater competition between railroads, trucks and barges.

Today we can see the fruits of our labor. On the positive side these are the facts since the Staggers Act was enacted.

Since the Staggers Rail Act of 1980 was enacted—

More than 31,000 contract rates have been filed with the Interstate Commerce Commission. About 62 percent of the coal carried by rail and 57 percent of rail-hauled grain moves under contract rates.

Railroad grain rates have dropped more than 26 percent.

Deregulated in 1981, intermodal traffic—trailers and containers on flatcars—has grown dramatically—jumping 46 percent between 1981 and 1985.

Taking inflation into account, rail rates for all commodities have risen less than 1 percent and coal rates have risen just 2 percent.

In current dollars, railroad coal rates increased just 4.9 percent on an annual average from October 1, 1980 through September 30, 1985, compared to an annual average increase of 11.2 percent in a similar period preceding Staggers.

Rail car shortages are a thing of the past. Streamlined operations have resulted in improved car utilization and more efficient service.

A good rail safety record has continued to improve. Train accidents have dropped by almost 60 percent since 1980; accidents per million train miles have declined 49 percent; and injury and fatality rates have dropped.

Eighty-seven percent of shippers polled in a recent shipper survey approved of railroad deregulation.

Productivity has improved. Freight revenue ton-miles per car loaded have increased 12 percent since 1980.

Rail carriers and railroad labor organizations made little progress during this Congress in improving their cooperative efforts to make railroads more competitive. Perhaps the railroad labor laws stand in the way but somehow those parties should be able to work together to attract a greater share of the intercity freight business for railroads. Unfortunately there appears to be a drifting apart of rail labor and rail management. Once again this Congress has had to become involved in a dispute between the parties in the Guilford strike. Rail service is important to this country. Labor and management must find ways to work together to make it the most efficient, least costly transportation system in the world if America is to regain its leadership in world markets for food, fiber, coal, raw materials and finished products.

I worry that some rail carriers may sell valuable rail lines to smaller carriers simply to lower labor costs. As you know, Mr. Speaker, I was perhaps the first to promote the development of feeder lines or short-line railroads. There are a number of situations in which a small railroad can be economically viable even though a large railroad loses money on the same operation. Lower labor costs, less overhead, greater flexibility and more individualized services account for the difference.

The number of line sales, some of which approach a thousand miles, has caused concern. The next Congress must be watchful that a program designed to preserve rail service is not converted into one to disrupt or avoid labor contracts. It must also monitor the development of short-line systems to make certain that new carriers have the financial resources necessary to assure proper railroad maintenance and service.

The most significant railroad issue handled by this Congress was the sale of Conrail. Following the mandate of the Northeast Rail Services Act of 1981, Secretary of Transportation Elizabeth Dole succeeded in getting the necessary legislation to sell Conrail. Her task was not an easy one. In February, 1985, she selected Norfolk Southern Corp. to buy Conrail. The Justice Department objected to the sale unless a divestiture of lines could be worked out to avoid a lessening of competition in the small area where Conrail and Norfolk Southern now overlap. That divestiture was hard to work out and by the time the Justice Department agreed that it solved the problem, considerable opposition to the sale had arisen. While the Senate passed legislation approving the sale, the chairman of the Energy and Commerce Committee made it known he could not support the sale.

Fortunately we were able to work out legislation to permit a public offering on Conrail stock. That legislation compensates Conrail employees for the sacrifices they made in making Conrail profitable. Within the next few months Conrail may become a private company.

The public offering of Conrail stock represents the only possible way Conrail could have been sold this year. I am convinced it can become a strong private company. The legislation makes certain the Northeast will have good rail service by leaving Conrail in a good financial position.

Mr. Speaker, the 99th Congress may have succeeded in getting the Federal Government out of the freight railroad business. We have also not undone those actions in the past which have permitted the entire railroad industry to restructure and gain financial health by providing most of their services with marketplace freedoms rather than under a regulatory straitjacket.

The goals of our national railroad policy will not be attained if the next Congress recreates an environment requiring major cutbacks or deferred maintenance like that which existed in the 1960's and 1970's.

CARING PHYSICIANS

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. HALL of Texas. Mr. Speaker, last Monday evening I had the pleasure of visiting with Doctor and Mrs. Roberto Olivares in Sherman, TX. During our conversation, we discussed the closing of the Burlington Industries plant in Sherman, TX, and the disastrous effect such would have on the benefits of employees and dependents pursuant to the closing.

I was pleased to learn that 19 Grayson County doctors reacted in a manner that made me feel privileged to have them as friends and to represent them in Congress.

I would appreciate it Mr. Speaker if we could place in the record a letter setting out this generosity directed to the magazine Texas Medicine and signed by Donald M. Hayes, MD, who is the director for health and hygiene for Burlington Industries Inc. The letter is self-explanatory and reflects an act on

the part of caring physicians, an act that so often goes unnoticed by the general public. The letter reads as follows:

SHERMAN DOCTORS' COMPASSION, GENEROUS RESPONSE PRAISED

In these days of acrimonious discussion concerning medical care cost containment, increasing tort liability, and accusations of professional acquisitiveness, I thought it might be refreshing to pass on a positive note to your readers concerning physicians. As the medical director for Burlington Industries, I often am distressed to have to witness the effects on a community when a textile plant is closed. We recently announced the closing of our plant in Sherman, Texas, which was to take effect at the end of April 1986. The plant manager was pleasantly surprised to receive a letter stating, "In recognition of Burlington employees' (community) participation and now unfortunate set of circumstances, the following physicians wish to offer their assistance during this transition."

There followed a set of specifications which these physicians were willing to offer our employees, the most prominent of which was that discharged employees and their dependents would be offered medical and surgical care at half price or their insurance benefits, whichever was greater. There were additional helpful embellishments, but the general tone was one of a wish to offer positive assistance. The note closed by saying: "We are not trying to establish a free clinic but would like to assist Burlington employees during this difficult period." The note was signed by 19 practicing physicians from the community of Sherman representing a full spectrum of medical specialties.

This spontaneous expression of compassion and generosity on the part of this group of community physicians was so impressive to us that we wished to share it with you and the other physicians in the state. It seems that there are still physicians imbued with the compassion and nobility of character to which Robert Louis Stevenson alluded many years ago. We are pleased to have the opportunity to work in the same communities with such physicians and wish to acknowledge their generosity and thoughtfulness.

In closing, I certainly submit my appreciation to these men and women who do so much for so many.

EDUCATION REFORM

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, October 22, 1986, into the CONGRESSIONAL RECORD:

EDUCATION REFORM

A major push for education reform is underway in the U.S., fueled by the concern that Americans are being outstripped by overseas competition because of deficiencies in education. We cannot expect to restore sagging U.S. industries, stem the flood of imports, and prevent the erosion of jobs if 20% of our workforce cannot read above the 6th grade level, if, by one rough estimate, 80 million American adults may be less than functionally proficient, and if our high school students rank near the bottom of industrialized countries in math skills. We face competition from not only highly industrialized countries, but also countries with large pools of cheap labor. The choice facing the U.S. is either to accept a declining standard of living or to upgrade the education and skill of our workforce. To keep America competitive in the future, public schools must not simply restore old standards, but reach new standards they have never had before.

The concern about the quality of American education is the strongest since the Sputnik-inspired reforms 25 years ago. More than a dozen reports issued since 1980 have cited major problems with our elementary and secondary schools, including an apparent decline in the qualifications of new teachers, math and science teacher shortages, expanded school bureaucracy, poor discipline, reduced coursework in the "basics", student drug and alcohol abuse, and, especially, the drop in student achievement levels.

The states have taken the primary lead in the education reforms, to a large extent because they now provide some 48% of the funding for elementary and secondary schools, compared to 45% by localities and 7% by the federal government. The states and localities share responsibility for broad questions of school curriculum and testing. The federal role has traditionally been to provide information on the condition of education to prompt reforms (the role emphasized by the Reagan Administration), assist disadvantaged and handicapped students, and work to meet emergency national need, such as the shortage of math and science teachers. The largest federal program for elementary and secondary education is for compensatory education of disadvantaged students. Congress this session approved additional adult literacy efforts, and the House (but not the Senate) approved programs for gifted and talented students, technology education, and drop-out prevention. Even so, the federal efforts are modest compared to those of the states.

Indiana and several other states have raised high school graduation requirements (especially in math and science), increased instructional time, expanded achievement testing, reduced class size, and added new professional development programs for teachers and principals. Various states have instituted "no pass, no play" rules for after school activities, exit tests for graduation, and honors diplomas. Some governors are proposing that students be allowed to attend any public school in the state—at state expense—to boost competition among the schools. A few states are experimenting with 12-month school schedules. Five states have instituted academic bankruptcy policies; If a school fails to fulfill its obligations, the state will take over and reorganize the school.

More important than these changes in school structure is the ability to attract and retain good teachers. Without able and willing teachers, the reform effort will fail. Yet interest in teaching has sharply declined in recent years, especially among our brightest college students. Moreover, for each new math teacher entering school, several leave for private industry. In response, states have recently raised average teaching salaries by 22 percent in three years, but more changes are needed. Some states are adopting merit pay and "master teacher" programs, and others are trying to make it easier to fire poor teachers, an idea supported by 9 out of 10 teachers themselves. Enhancing the professional stature of teachers is being considered, by setting up a national teacher certification program, increasing the number of classroom aides, requiring future teachers to major in an academic subject rather than obtain an education degree, and giving teachers more say in the management of the school, along the model of a college faculty.

Besides these expanded state, local, and federal efforts, an even broader involvement is needed. The most important factor would be greater concern by parents and students themselves. In a recent poll, teachers said that the two things that would help their teaching the most would be improved student attitudes toward learning and more parental involvement with their children's education. A large number of the items on the Department of Education's recent list of proven ways to improve student performance were aimed at parents. Another positive factor is greater involvement of business in public schools—ranging from "adopt-a-school" programs to programs in which business and the state share the costs of advanced education degrees for exceptional math and science majors. Corporate efforts may be an important supplement to public efforts in the next round of school reform.

I am encouraged by the new education reform efforts. Various studies indicate that they are having a positive effect. Compared to 1982, public school test scores were up in 35 states, and the dropout rate fell in 39. Education Secretary Bennett, in his report card last month on elementary education, pronounced it "overall, in pretty good shape". Yet we must be cautious in thinking that all the problems are behind us. Other findings indicate that we still have a long way to go. For example, in a recent mathematics competition with Japanese and Europeans, U.S. 18-year olds came in last. Moreover, while some aspects of American education may have improved compared to past yardsticks, newer measures are needed to gauge whether our schools are teaching the skills needed for the modern-day world.

Reforming our schools will take a concerted effort on many levels, and it could be costly—in both time and money. Yet not making the effort will be far more costly to our nation in the long run. Education represents our future. If we fail the fundamental responsibility of educating our children well, we endanger America's future.

"THE AFRICANS" CONTROVERSY

HON. NEWT GINGRICH

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. GINGRICH. Mr. Speaker, I recently came upon an editorial in the Washington Post by Lynne Cheney, chairman of the National Endowment for the Humanities, entitled " 'The Africans' Controversy." I found the article so enlightening that I would like to take this opportunity to share her views regarding the PBS series controversy with my colleagues.

The article follows:

[From the Washington Post, Oct. 14, 1986]

"THE AFRICANS" CONTROVERSY

(By Lynne Cheney)

Given the current controversy over the PBS series "The Africans," it is something of a surprise to note that those on both sides of the debate agree on one important point: the series is unbalanced. I called it that when, as chairman of the National Endowment for the Humanities, a federal agency that put more than $600,000 into the film, I asked that NEH credits be removed from it. Ward Chamberlin, president of WETA, the public television station that co-produced the film, called it that at a recent press conference in Washington. "It wasn't intended to be a balanced series," he said.

Chamberlin's statement raised eyebrows at NEH since the endowment has guidelines demanding balance and since WETA had promised when applying for funds to provide it. The station had said it would work to "prevent the series from becoming the idiosyncratic view of one person," to "ensure that a wide spectrum of opinions and outlooks is represented." On-camera interviews with people of diverse perspectives were promised.

None of this happened. The completed film is entirely the opinion of one person, Prof. Ali Mazrui, and his point of view is decidedly idiosyncratic. Practically every problem that has ever occurred in Africa, from poaching, through political instability, to violence of African against African, is blamed on the West.

Defenders of "The Africans" have implied that NEH should be grateful its guidelines were violated, for if WETA had abided by them, as it promised, the result would have been dull and boring, "namby-pamby," to use the work chosen by PBS Vice President Barry Chase, "If they want sanitized television," said WETA's Chamberlin, ". . . it will be sanitized all right. And it will be of no interest to anybody."

The argument that balanced television is dull television has been heard before and will doubtless be heard again, though it is not supported by the facts. NEH has funded many fine films that follow our guidelines admirably. At the same time I was writing Ward Chamberlin to object to "The Africans," I was also writing to producer Ken Burns to congratulate him on his film about the controversial Huey Long. Burns's film, which airs on PBS Oct. 15 and which was underwritten with $200,000 from NEH, shows people who loved Long and people who despised him, all in combination with rare archival footage of the man himself. "Huey Long" makes perfectly the point that a balanced presentation can be a compelling one—far more compelling, in this case, than "The Africans," which becomes boringly predictable in its tendentiousness.

A more serious response to NEH's defense of its guidelines has been the suggestion that the endowment's actions are a threat to freedom of expression. Nobody has pushed this idea harder than Prof. Mazrui, who, as he has moved across the United States promoting "The Africans" and his book based on the series, has talked about attempts to "silence" him. He has compared himself to Nicholas Daniloff and the endowment to the Soviet Union.

The professor, whose anti-Western film and book are likely to earn him several hundered thousand Western dollars, is perhaps being disingenuous. Still, given the gravity of his charge, it seems necessary to point out that the endowment's action in defending its guidelines is the very opposite of a threat to the First Amendment. Far from being aimed at "silencing" Prof. Mazrui, NEH's insistence on balance is aimed at helping maintain freedom of expression, at being sure this remains a society in which all views can be expressed. This includes one-sided polemics—though not with the taxpayer doing the underwriting.

That last is the crucial point. "Anybody in this country can, of course, produce any film with any bias he or she pleases," I wrote to Ward Chamberlin when requesting the removal of NEH credits. "But when you seek funding from NEH . . . then standards of balance and objectivity are demanded." Not because NEH wishes to be arbitrary, not because we wish tame television, but because the government, unlike individuals or corporations, can call upon virtually unlimited resources. Given that situation, it is hard to imagine a greater threat to the First Amendment than allowing government agencies to underwrite propaganda of any kind of American television.

There are good reasons why the United States Information Agency is prohibited from showing its films in this country. There are good reasons why the National Endowment for the Humanities has guidelines requiring balance—and why we take action when they are violated.

LT. CHARLES B. GATEWOOD UNSUNG AMERICAN HERO

HON. JIM KOLBE

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. KOLBE. Mr. Speaker, I rise today to call to the attention of my colleagues the story of a U.S. military hero who has heretofore been denied the credit and admiration he richly deserves. The centennial of one of the most intrepid acts of the Apache wars in Arizona, New Mexico, and Northern Mexico, was observed this past September, and few people outside historians know the whole story behind the surrender of Geronimo to the U.S. Army. History books often give credit to Brig. Gen. Nelson A. Miles, while it was the courage, hard work, and perseverance of 1st Lt. Charles Baehr Gatewood that led to Geronimo's bloodless surrender.

Mr. Daniel Thrapp, a respected Arizona historian and author of numerous books on Southwestern and Indian history recently wrote me about this unsung American hero, Lt. Charles B. Gatewood.

Lieutenant Gatewood, in poor health after 9 years of the most arduous duty and valuable field service, was directed by Brig. Gen. Nelson A. Miles in the summer of 1886 to take two Apache scouts, to endeavor to find Geronimo, and talk him into surrendering. Gatewood never gave a thought to declining this service, although for health reasons he would surely have been justified in doing so. Instead, after an exhausting search he did locate Geronimo, though 5,000 troops under Miles had failed to do so. With his two scouts and an interpreter, he entered the hostile camp of the feared Apache. Over a period of a few days the surrender was effected, accomplishing through negotiation what 5,000 men failed to do by force.

Many other soldiers received Medals of Honor for their parts in the several Apache wars. Lieutenant Gatewood was denied, due largely, in the words of one expert, to "Army jealousies and the pettiness and vanity that marred the really great soldierly qualities of Miles." Rather he was tucked away on Miles' staff in Los Angeles where he could be reached by neither media nor public.

The following excerpt is from Mr. Thrapp's definitive "Encyclopedia of Frontier Biography":

Gatewood, Charles Baehr, army officer (April 6, 1853–May 20, 1896). B. near Woodstock, Va., of a Secessionist family, he attended West Point. Upon graduation he was assigned in 1877 to the 6th Cavalry and embarked upon a singular career in the Apache country as commander of Indian scouts. His experience in the numerous Apache outbreaks was perhaps more extensive and more indispensable than that of any other officer. Gatewood took part in many actions of the Victorio War of 1879–80, including the hard pursuit of the hostiles into Chihuahua in 1879; the heavy action in the San Andres Mountains of New Mexico in 1880, and several fights in the Black Range. He accompanied Crook's great expedition into the Sierra Madre in 1883 after the hostiles, afterward being assigned to manage some of the returned Indians on the Fort Apache Reservation. Gatewood had an important role in the Geronimo campaign of 1885–86; it was he who was selected by Miles to enter Mexico, locate the enemy and persuade him to surrender, and Gatewood performed this duty to the letter, although in poor physical health at the time. His intrepid entry into Geronimo's camp and arguing that Indian to finally give himself up is perhaps the highlight of the last southwestern Indian war, although Gatewood never received any particular recognition for his intrepidity and devotion to duty on the part of Miles or other officers of the Miles faction. This is not only to Miles' eternal discredit, but also to that of his country. Gatewood served as an aide to Miles in Southern California; in 1889 he rejoined his regiment at Fort Wingate, N.M. He went with the 6th Cavalry to the Dakotas for the 1890–91 Sioux trouble, was on leave for some months because of poor health, rejoined his regiment at Fort McKinney, Wyo., where he was injured severely in a dynamite explosion coincident to the so-called Johnson County War. He was forced to retire permanently from active duty and died, probably at Denver. "His reward for services that have often been described as unusual, was like that of many another soldier who has given his all that his country might grow and prosper: for himself a free plot of ground in Arlington Cemetery, and to his widow a tardy seventeen dollars a month."

BEST WISHES TO GREEKS ON SPECIAL HOLIDAY

HON. JOHN HILER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. HILER. Mr. Speaker, October 28 will be the 47th anniversary of an important date in Greek history. On October 28, 1940, the Greek nation said it will not tolerate hostile

foreign assaults against its people and its freedom and united to defend against Mussolini and his fascist troops.

On this date Mussolini sent a cable to the Greek Government demanding that it give up its weapons and surrender to Italian domination. Greece said "no," or "ochi" in Greek, and then proceeded to defeat the Italian attack. The Greek people paid heavily in loss of life during this battle, but succeeded in giving the free world its first victory during WWII, and a strong message of hope to those throughout Europe and Northern Africa who were also suffering under the tragedy and hardship of war.

The war had only begun for Greece, however. That brave country was later invaded and occupied by Hitler's troops. Because Greek will power and resistance was so strong, the German Army found this invasion extremely costly as far as time and manpower, and found itself involved in such a fierce struggle with these determined people that a significant number of its divisions were diverted from other fronts. This allowed the allies a valuable opportunity to regroup, organize, and later win the war.

The free peoples of the world have a right to say no to foreign domination. They have a right to say no to regimes that deprive the people of their basic human rights and freedoms, and to defend against the evils that extremism can perpetrate. Greece's refusal to capitulate to the evil that spread across Europe during those troubled years is more than commendable. This act of self-sacrifice was, and is, an inspiration to the free people of the world to fight for their freedoms and keep them.

I would like to extend my very best wishes to the Greek people, and our own Greek-Americans on this special holiday and thank them for the strength they displayed on behalf of freedom. It will not be forgotten.

STATEN ISLAND HOSPITAL CELEBRATES 125TH ANNIVERSARY

HON. GUY V. MOLINARI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. MOLINARI. Mr. Speaker, I rise to pay tribute to the Staten Island Hospital on the occasion of its 125th anniversary which will be celebrated on November 19, 1986.

The hospital is truly a landmark in my community and is one of the oldest institutions in the area. It is a vital and growing part of our community in every sense. The hospital has been in the forefront of Staten Island community health care since its beginnings as a one-room infirmary in 1861. The hospital opened Staten Island's first dental clinic in 1870, and its first operating room in 1895. More recently, the hospital's achievements include the country's first mobile coronary unit in 1969 and the community's first pediatric intensive care unit in 1970.

Mr. Speaker, as a result of its high standards, the Staten Island Hospital has attracted a staff of physicians, nurses, and others who hold the highest credentials. That fact, combined with the hospital being equipped with the latest technology, makes it a center for excellence offering the community the finest care in a full range of ambulatory and inpatient services. Many members of the hospital's staff also play an active role in various hospital affiliated groups in the community.

Those who work and volunteer at the Staten Island Hospital have made helping people an important part of their daily lives. Mr. Speaker, it is with great pride that I ask my distinguished colleagues to join me in congratulating the Staten Island Hospital.

IS REGULATION OF COMMERCIAL NUCLEAR POWER REALLY A STATE'S RIGHTS ISSUE?

HON. CARLOS J. MOORHEAD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. MOORHEAD. Mr. Speaker, recently it has become more popular to advocate State regulation of commercial nuclear power. Under such an approach each State would be allowed to set its own safety standards and to regulate the operation of nuclear powerplants. This would be a mistake.

Mr. Speaker, I am firmly supportive of States' rights—but not when it would come at the cost of weakening the regulation of nuclear power, or would preclude the development and use of standardized nuclear powerplant designs. This Congress the Energy and Commerce Committee Subcommittee on Energy Conservation and Power conducted a detailed inquiry into the problems associated with nuclear power and the types of reforms we need to legislatively pursue. There was virtually unanimous agreement that standardized nuclear powerplants would enhance safety. Yet the development and use of standardized designs would undoubtedly be frustrated by the enactment of 50 different sets of regulatory requirements.

On Wednesday, October 15, 1986, the following letter to the editor appeared in the Wall Street Journal. It outlines the untenable situation that would be created by allowing each State to supplement Federal Safety Regulation of Commercial Nuclear Power. I commend it to my colleagues' attention.

[From the Wall Street Journal]

NUCLEAR-PLANT ISSUE POLITICAL FALLOUT

(By Morton I. Goldman)

Your Sept. 19 article describing the interest expressed by governors in participating in the assessment of nuclear-plant safety and in setting safety standards presents a ludicrous scenario to those of us who have been involved (as I have been for the past 25 years) in nuclear-plant safety and licensing proceedings.

States have had the right for years to participate as full parties during the federal licensing process for these plants, raising issues, presenting evidence, cross-examining NRC and utility witnesses, etc., on any safety or environmental issue relevant to the plant being licensed. Few, if any, states have participated fully in these proceedings, apparently preferring to carp at the process and its results from the outside.

It is difficult to understand how the states can be expected to provide a significant contribution to the safety management of a high-technology nuclear industry when, for the most part, they have been demonstrably incapable of managing the "low-technology" challenges of providing effective municipal sewage treatment, to say nothing of controlling more sophisticated chemical and other industrial plant safety and wastes for which they have long had regulatory responsibilities.

It is particularly interesting to note the tie-in of these issues with elections. With the Chernobyl accident fresh in everyone's mind, the fact that no member of the general public has died from radiation exposure (despite the near-absence of evacuation plans and long delays in evacuations) has not stopped politicians from using the accident as a basis for claiming the inadequacy of U.S. nuclear-plant emergency-evacuation plans. There is a saying that politicians react more to the public's unjustifiable fears than to real threats to safety, since scared people vote but dead people rarely do.

Given the failure (for the most part) of state governments to use fully or effectively their present rights to participate in the federal nuclear-licensing process, their almost universal lack of expertise in nuclear-safety matters, and their apparent willingness to subvert technical credibility to political responses, I for one see no merit in enhancing their ability to curry votes by increasing their regulatory authority in this arena.

DR. FREEMAN H. CARY

HON. JOE MOAKLEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. MOAKLEY. Mr. Speaker, I commend my friend from Pennsylvania for affording Members an opportunity, at the close of this session, to pay tribute to Adm. Freeman Hamilton Cary, M.D., U.S.N. (Ret.), who has retired after many years of service as the attending physician.

During my congressional service, I have consulted Dr. Cary frequently on minor illnesses and once on a fairly major illness. I have always found him concerned, sympathetic, and highly professional. I think he has provided the highest quality medical care, and he is owed a deep debt of gratitude for the interest he has taken in the Members.

I always found him eager to be of help. His advice on medicine and general health was always sound, and always useful. His personal advice was equally useful and warmly appreciated.

The attending physician's office was always a comfortable place to visit, and I was consistently impressed by the high level of professionalism that he instilled in the entire staff there. The doctors, nurses, technicians and the able young men who staff the front office have always been friendly and concerned. Under Dr. Cary's direction the office operated like what it really is, a tight but caring ship.

Dr. Cary brought to his post his skill as a physician, and particularly as a highly regarded cardiologist, developed through his educa-

tion at Emory University, his training at Grady Hospital and his long medical and naval career.

I will always deeply value Dr. Cary's friendship. I miss him and wish him and Sara all the best in retirement.

HONORING LYNN WILLIAMS

HON. JOHN P. MURTHA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. MURTHA. Mr. Speaker, it will be my pleasure to join on Saturday, October 25, in honoring United Steelworkers President Lynn Williams.

It has been my pleasure as chairman of the House Steel Caucus to work closely with Lynn over the past few years on problems affecting our steelworkers and steel communities. Lynn has made an outstanding contributon to working people throughout the United States, and deserves the respect of all of us who care about the future of America's working people.

Lynn has led the union during a difficult time. But he has led it with foresight, with imagination, with dedication, and with commitment.

The steelworkers of America have set our tradition for a Nation that cares about its fellow, less fortunate human-beings; that provides full effort on the job; that stands for the best of America; and that is dedicated to a strong, growing American economy. The great progress of America since WWII can be traced to the great progress of the working men and women in the United States and the United States steelworkers have always set that pace. Lynn Williams continues in that great tradition of leadership to the union, to the working people, and to the Nation.

It's a pleasure to join in honoring Lynn Williams, to thank him for his dedication to America, and to look forward to continuing to work with him for a brighter, stronger future for America and its workers.

GREAT BASIN NATIONAL PARK

HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. VENTO. Mr. Speaker, on October 6, 1986, the House passed S. 2506 with an amendment, to establish the Great Basin National Park and returned it to the other body. The change to that bill by the House was a significant increase in the acreage of the park.

During my discussions with various people involved with our decision on this bill the issue of the bill language regarding reserved water rights was raised.

It was my sense of the issue that the Federal reserved water right, which accrues from the Humboldt National Forest and Lehman Caves National Monument reservations, which is permitted by the bill, would be sufficient to meet the foreseeable water needs of this park. The unique combination of geological, physical, and jurisdictional factors inherent in the Great Basin National Park area provides a singular situation that does not allow one to claim precedent for any such future action at some other location.

First, the Congress has directed that this new unit of the National Park System is to be managed in accordance with the National Park System Organic Act of 1916, and in accordance with the specific language in the authorizing statute which requires the NPS to "* * * conserve and protect the scenery, the natural, geologic, historic, and archaeological resources of the park, including fish and wildlife * * *." I believe the NPS has both the mandate from Congress and the necessary authority to prohibit or limit any future proposals for diversion of water from the park.

Second, Great Basin National Park includes Wheeler Peak and other surrounding mountains. The park is the headwaters for outflowing mountains. With no upstream lands under private control or under the jurisdiction of other Federal or State agencies, and with no inholdings within the park, the park is, under the mandate of the National Park Organic Act, self-protecting with respect to its water resource.

Third, section 3(h) provides for the water rights associated with the lands from which the park will be created to be carried forward. Since the new park headquarters will be situated at the site of the existing Lehman Caves headquarters the existing water supply was considered adequate for any foreseeable expansion of that headquarters. And, since the Humboldt Forest has a right sufficient for its purposes, it was determined this would meet water needs for campgrounds, fish and wildlife protection, or other purposes within the park.

Fourth, there are no anticipated conflicts with existing water right uses affecting the park. The only significant water rights within the boundary of the park are held by grazing permittees. Section 3(g) permits these permittees to maintain "existing water-related range improvements inside the part * * *." This section protects the existing interests of permittees and provides protection for park values by limiting uses to maintenance of existing improvements.

In conclusion, it is clear that this bill provides sufficient water supplies to protect park interests, preserve Park Service authority to deny inconsistent development within the park, and conveys enough water under existing reservations to meet park purposes so that establishment of the park does not require the conveyance of any additional water supplies.

ELIZABETH ROHN: WORKING PARTNER FOR THE HOMELESS

HON. TOM LOEFFLER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. LOEFFLER. Mr. Speaker, the plight of America's homeless has been well-chronicled in our Nation's news media. While the television networks have been recording the media-conscious efforts of many activists who seek to blame the Reagan administration for the problems of the homeless, the people who truly care about those without food and shelter are working quietly and tirelessly to help the homeless.

Elizabeth Rohn, a former constituent of mine from Kerrville, TX, is one of those people. Mrs. Rohn has operated a pilot program for the homeless funded by the Department of Health and Human Services which locates surplus Government supplies and places them in the hands of those who need these items. As director of region six for the Federal Task Force on the Homeless, Mrs. Rohn placed more than $5 million in excess Government property in the Texas and Southwest area during 1985.

By linking up DOD commissaries with local food banks, Mrs. Rohn ensured that instead of going to waste, surplus food items were fed to the hungry. Other DOD surplus items ranging from beds, blankets, and furniture to a hospital bus were directed to homeless shelters, thus saving precious local dollars that would otherwise have to be spent and making more efficient use of Federal taxpayer dollars that otherwise would be wasted. To transport and distribute these items, Mrs. Rohn obtained commitments from the Defense Logistics Agency and the National Guard, who in turn worked with the Teamsters Union and Southwest Airlines in a working partnership between the public and private sector.

Just as important, Mrs. Rohn showed local groups how to look to their own resources and to enlist greater help from their own communities to form working partnerships using public and private sectors. Mrs. Rohn's regional efforts for the homeless in Texas, Louisiana and other States proved so successful that her project is now being adopted as a permanent program by the Federal Emergency Management Agency.

Mr. Speaker, those who have been helping the homeless for many years know that the current administration did not create this problem, but their many letters of thanks to the task force express the belief that the efforts of people like Elizabeth Rohn are helping the administration to ease the plight of the homeless.

KIDNAPING OF FRANK HERBERT REED

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. MARKEY. Mr. Speaker, on September 9, 1986, Frank Herbert Reed was kidnaped in Beirut, Lebanon, and is presently being held hostage in that nation. Mr. Reed is being singled out and punished for no reason other than his American citizenship.

The citizens of the Seventh District of Massachusetts, home to Mr. Reed, are very concerned. On September 23, 1986, the Malden City Council unanimously endorsed a resolution calling upon the President and the Congress to do all in their power to secure the release of Mr. Reed, as well as all other hostages in Lebanon who are being subjected to inhuman and immoral captivity.

It is our hope that President Reagan will make every effort and use all means available to him to secure the release of these hostages. I am inserting into the CONGRESSIONAL RECORD a copy of the Malden City Council resolution and call it to the attention of my colleagues.

MALDEN CITY COUNCIL RESOLUTION

Whereas Frank Herbert Reed, a native of the City of Malden, has been forcibly kidnaped from his family and home in Beirut, Lebanon; and

Whereas said abduction of Frank Herbert Reed is abhorred by the citizens of the City of Malden and all other freedom loving peoples; and

Whereas said acts of wanton terrorism, deny the rights and dignity of every human being and are an affront to the democratic form of government: Therefore, be it

Resolved, That the citizens of the City of Malden and their government thereof do hereby call upon the President of the United States, and the Congress thereof, to do all in their power to secure the safe release and return of Frank Herbert Reed, as well as all other citizens of the United States, so subjected to such inhumane and immoral captivity: Be it further

Resolved, That the citizens of the City of Malden and their government thereof do hereby decry all such acts of terrorism perpetrated upon innocent members of the world community: Be it also further

Resolved, That the City Clerk shall prepare and transmit official copies of said resolution to the family of Frank Herbert Reed, to the President of the United States, Ronald Reagan, to the Secretary of State, George P. Shultz, to Senator Edward M. Kennedy, to Senator John F. Kerry and to Congressman Edward J. Markey.

H.R. 4208, COAST GUARD AUTHORIZATION FOR FISCAL YEAR 1987

HON. BARBARA A. MIKULSKI

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Ms. MIKULSKI. Mr. Speaker, I rise in reluctant support of H.R. 4208, the Coast Guard Authorization Act for fiscal year 1987.

The measure before us reflects the text of the bill which was passed by the other body, but which does not contain a number of key provisions approved earlier this year by the House.

Unfortunately, the delays by the other body in moving this bill until late in this session have forced us to forgo a formal conference committee. As a result, we are faced with a choice between having no Coast Guard authorization and the bill before us today.

This legislation provides a minimum guarantee that the Coast Guard will have the resources it needs in fiscal year 1987 to carry out its basic mission: to assist in our defense readiness, rid our coastal waters of illegal drugs, guarantee marine safety and enforce our maritime laws.

The Coast Guard is the frontline of America's protection and defense of its coastal waters.

In Maryland, the Coast Guard provides port security, marine safety, and drug enforcement at the Port of Baltimore and throughout the Chesapeake Bay. In addition, it offers search and rescue protection for thousands of recreational boaters in our State.

H.R. 4208, as passed by the Senate, while not allocating as much money as I would like, should provide the Coast Guard with enough funds to continue their work at a level which the public expects and the national interest demands.

I am pleased that the bill contains a provision which prevents the Coast Guard from contracting out its core logistic essential functions to the private sector.

I am very disappointed, however, that the other body deleted a provision in this section, included by the House as an amendment I offered, which specifically includes the industrial activities at the Coast Guard yard in this core logistic base.

I am proud to have had the honor to represent Coast Guard yard, located in Curtis Bay, MD, for five terms in the House. The employees of the yard proudly display through their work and productivity of the yard's motto, "A History of Service to the Fleet".

The yard is the Coast Guard's largest industrial facility and is the cornerstone in maintaining the Coast Guard fleet. Since 1899, the yard has performed valuable ship construction and repair for our Armed Forces in every major armed conflict since World War I. The yard is also called upon to perform highly technical repair work on the Coast Guard fleet in a very short period of time.

Any efforts to contract out the industrial activities at the yard would only weaken our national defense and needlessly increase Federal spending.

Since 1981, we have lost 25 shipyards in the United States. The Navy has 16 of these yards which were essential for national defense. To weaken the Coast Guard yard is to further erode our shipyard mobilization base, which in turn will only harm our already depleted sealift capability.

In addition, contracting out of industrial work at the yard has already been tried and proved to be a waste of the taxpayer's money. Crane maintenance at the yard was contracted out from 1982–85 at an hourly costs to the Coast Guard of $255, a price 36 percent higher than when it was done by the Coast Guard civilian workforce.

At a time when we find the Coast Guard pressured to do its work under enormous fiscal restraints, it makes no sense to reduce the efficiency of one of its most cost-effective facilities.

It is my understanding that the Coast Guard has no plans to contract out, or study the possibility of contracting out, and industrial activities at the yard. I would be far more confident if there were specific statutory language protecting the yard.

For now, though, I join the chairman of the Coast Guard Subcommittee, Representative GERRY STUDDS, in repeating that the House's clear intention is to prevent contracting out of any industrial work at the yard. Should there be any change in the Coast Guard's current "no contracting out" policy at the yard by the Department of Transportation, however, I want to assure my colleagues and the Department of my intention to revisit this issue immediately.

I am also disturbed that the other body deleted a provision prohibiting the Coast Guard from building any vessels in a foreign shipyard. This section was strongly supported by the House and parallels a requirement already made of the Navy.

The build-American provision was designed to protect both American shipyards and our national security and it is my hope that the Congress return to this issue next year.

Mr. Speaker, it is unfortunate that no time remains in this session with which we could go to conference with the other body and achieve a stronger bill.

Nevertheless, this bill is better than no bill at all, and I urge my colleagues to support it.

CCC-STOKES TELECOMMUNICATIONS CENTER, A LANDMARK ACHIEVEMENT IN TECHNOLOGY

HON. MICKEY LELAND

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. LELAND. Mr. Speaker, on Tuesday, October 7, the city of Cleveland and the State of Ohio reached a benchmark in the history of commitment of State and local leadership to educational advancement and joint responsibility for the future of our youth. On that day, the Unified Technologies Center of Cuyahoga Community College [CCC] unveiled plans for the Stokes Telecommunications Center and an artistic rendering of our distinguished colleague and member of the Congressional Black Caucus, the Honorable LOUIS STOKES. The Unified Technologies Center is a 96,000 square foot facility which will house advanced manufacturing technology training and demonstration space—an extraordinary example of public and private sector partnership.

Within this multifaceted structure, the Stokes Center will serve as a 5,000 sq. foot resource for audio, visual and data communications, offering state-of-the-art telecommunications, teleconferencing, and data information exchange. It is education for the year 2000. Dr. Nolen M. Ellision, President of Cuyahoga Community College—one of the largest and most diversified educational institutions in the country—announced the naming of the center for Congressman STOKES in recognition of his long dedication to the college. The culmination of the dedication program was marked with the presentation of a bronze bust and plaque which reads:

The Board of Trustees of Cuyahoga Community College district dedicates the Louis Stokes Teleconference Center in the Unified Technologies Center Building as a lasting symbol of Congressman Stokes' dedication to education, science, technology, and communications.

The Unified Technologies Center, with the Stokes facility, are a symbol of business, education, and Government working together. They are a symbol of hope for the future and the new spirit which is so much a part of today's Cleveland.

The center will serve as an avenue through which research, development, and training can be transferred to the workplace regardless of geographical location. To that end, CCC along with five other Ohio 2-year colleges have already received funding to plan and implement the Ohio Manufacturing Training Group which will operate the Ohio Educational Exchange Network from the Stokes Center as an interchange of information among community and colleges within Ohio.

Included will be a fully interactive teleconference room, a master control studio, video and computer distribution to all teaching modules, closed circuit television, interactive class and meeting room presentation capabilities and a multimedia receiving capability in each room. The Stokes Telecommunications Center will have satellite downlink and uplink capabilities that will permit the UTC to receive and broadcast programming.

Mr. Speaker, each of us as Members of the House of Representatives seeks to serve our constituents with vigor and dedication. Few have distinguished themselves as has my colleague LOU STOKES. This is most clearly evidenced by words spoken at the dedication of this center in his honor by a Cleveland institution in her own right, a community activist and leader, Rubie McCullough. Speaking as a member of the board of trustees, Mrs. McCullough has paid to LOU STOKES the ultimate tribute given to an elected official—the respect, and faith, and trust of the people as she said:

I have known the Congressman and his family since 1945. Over the years many things have changed and so have people as they have grown and learned from their experiences . . . Lou Stokes knows what we need and he lets us know what's happening in Washington so there are no surprises . . . His achievements in Washington have focused on bringing resources to enhance the living conditions for the residents of Cleveland and his Congressional district, the State, and the Nation. He hasn't limited his resources locally, he's used them to help all who are in need.

He's been accessible to all of us. If the little man on the corner has a need, the Congressman has used his influence to help him, just as he has used his influence to have an impact on the country. He has demonstrated clearly his commitment to enhance as many people's lives as possible, in every way possible, and as often as possible. He is a humble man. He is a sincere man. He has a high sense of integrity. He is not a black Congressman, he is a Congressman who serves all of the people with sincerity, with conviction, and with a commitment to a better country. His humbleness is illuminated by the people he helps.

He is interested in education and has demonstrated that interest by supporting all the disciplines because he understands the connection between a good education and a better life. This evening is truly one of the highlights of my life as we, his friends, family, and colleagues gather to honor him.

CHANGES IN LAW CONCERNING HOMEWORK

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. LAGOMARSINO. Mr. Speaker, in an editorial entitled "Why Can't They Work at Home?" The Ventura Star Free Press makes a compelling argument for the changes in the law concerning homework proposed by Labor Secretary William Brock.

[From the Ventura (CA) Star Free Press, Oct. 10, 1986]

WHY CAN'T THEY WORK AT HOME?

This newspaper's reporters occasionally carry portable computers with them when covering stories. Sometimes at night after a long meeting many miles from the office they will write the story at home on the computer and transmit it by phone to the newspaper's main computer. When editors arrive at work early the next morning, the story's waiting for them.

For an hour or so, these reporters have become part of a work force of millions in the United States who labor exclusively in the home for an outside employer.

The benefits of working at home are many. It allows parents to earn money while caring for their children or an elderly parent. Many who work at home can dictate their own working conditions, set their own hours and provide for the interruptions that home life brings.

Strange as it may seem, under the law, not everybody can work at home. Something called the Homework Rule of 1938 Fair Labor Standards Act places restrictions on the sale of women's apparel, jewelry, gloves and mittens, knitted outerwear, buttons and buckles, handerchiefs and embroidery made in the home.

As a result, many people, particularly those in rural areas with sewing, knitting and other skills, have been forbidden to supplement sometimes meager incomes in this manner. In fact, they are being denied what would seem to be a basic right, the opportunity to work at home and sell their handiwork.

Unions, particularly the International Ladies Garment Workers, have been fighting tooth and nail any lifting of the restrictions placed in the law nearly a half century ago. Under the slogan, "Let's not bring back the industrial dark ages," its leaders argue that legalization of home work would lead to sweatshops and abuse of workers.

Perhaps, but it would seem to us that in the 1980s, we ought to be able to develop proper safeguards to protect people who work in their homes. Changes in law sought by Labor Secretary William Brock would require employers to register with the Labor Department if they want to use home workers, and to comply with certain regulations protecting them.

A decision on dropping the 1938 rule is expected this month. We find union arguments that home workers might be exploited by employers to be self-serving; we suspect the real fear of the unions is that some people they represent might lose their jobs were the work to become competitive.

Yet, partially because of union inflexibility in the textile trades, thousands of U.S. workers have already lost their jobs to foreign competition.

If jobs must be lost, far better they be lost to American workers.

A TRIBUTE TO HARRY KUHNER

HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. McEWEN. Mr. Speaker, later this year, citizens of Portsmouth, OH, will pay tribute to a man whose efforts epitomize the words "community spirit."

Harry Kuhner has been a model citizen in southern Ohio and an active participant in civic affairs. He is retiring after 46 years with Bank One in Portsmouth. Mr. Kuhner is the only person to have ever received all three awards presented by the Portsmouth Chamber: Young Man of the Year, Distinguished Citizen of the Year and Boss of the Year.

Mr. Kuhner was one of the founders of our now popular and successful Portsmouth River Days Festival. He was the very first inductee into the South Webster High School Hall of Fame. Harry has been recognized for his efforts by both the Ohio House and Ohio Senate.

Finally, Mr. Speaker, as the saying goes, "Behind every good man, there stands a good woman." This year, Harry and Janet Kuhner are celebrating their 40th wedding anniversary.

Following is a partial list of Mr. Kuhner's community service over the past five decades:

Board member and president, American Cancer Society.

Board member and treasurer, Scioto County TB and Health Association.

Board member, treasurer and president, Portsmouth YMCA.

Board member and president, Portsmouth Area Chamber of Commerce.

Life member and president, Portsmouth Junior Chamber.

Vice President, Ohio Junior Chamber.

Board of Directors, Ohio Chamber of Commerce.

Board member and president, Greater Portsmouth Area Growth Corporation.

General chairman, Portsmouth Sequestenial.

Member, Ohio Student Loan Commission.

Member, Ohio Development Financing Committee.

Director, Southern Ohio Museum.

Council member, Ohio Department of Rehabilitation and Correction.

Life member, Southeastern Ohio Basketball Officials Association.

Member and officer, Ohio and American Bankers Association.

Member, Franklin Avenue Methodist Church.

Harry Kuhner has been a friend to Portsmouth and to all of southern Ohio.

I join his many friends, and admirers in asking my colleagues to salute a great American, father, husband and community leader, Harry Kuhner.

IN HONOR OF OUR YOUNG ATHLETES

HON. CLARENCE E. MILLER

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. MILLER of Ohio. Mr. Speaker, on September 28, 1986, the Leo Yassenoff Jewish Center in Columbus, OH, sponsored their fifth annual Children's Run, an event in which 200 children from throughout the region participated.

I commend the center for sponsoring and coordinating this event which allowed children ages 5 to 12 to demonstrate their athletic prowess in various running races held for different age groups. I rise today to make particular mention of the accomplishments of six young runners from Fairfield County, OH, who successfully competed in this event. I would like to make specific mention of the achievements of Chris Landenmayer from Pickerington, OH, who won a gold medal for the 7- and 8-year-old boys' half-mile run. This third grader from Fairfield Elementary School in Ohio's 10th Congressional District raced to a 2:29 finish, making the third consecutive year he has won a gold medal for his age group.

Not to be outdone, five other children from Pickerington also competed very successfully in their respective races. Brian Dunlap and Kimberly VanKannel won gold medals from the 9- to 12-year-old boys' and girls' 1-mile run with times of 5:12 and 5:14, respectively. Frank Lesser won third place in the 5- and 6-year-old boys' quarter-mile run with a time of 1:07; Zack Johnson took second place in the 7- and 8-year-old boys' half-mile run at 2:39, and Jason Rexing placed third in the boys' 1-mile race with a time of 5:18. I salute these young athletes for a job well done. May the competitive spirit they displayed in these races continue to serve them well in the years ahead.

RETIREMENT OF GARNER JAMES CLINE

HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. RODINO. Mr. Speaker, I would not want the 99th Congress to adjourn without bringing to the attention of the House the recent retirement of Garner J. Cline, longtime staff director of the Committee on the Judiciary.

Garner Cline, "Jim" as he is known to his many friends and colleages on the Hill, has been one of my longest and closest staff collaborators. He retired from his position as staff director of the committee on June 29, 1986.

Jim came to the House under the sponsorship of his Congressman from Pennsylvania, the Honorable Francis E. Walter, then chairman of the Subcommittee on Immigration. Jim was born in Easton, PA, and pursued his studies at Lafayette College where he received his BA, and Georgetown Law School where he received his JD.

Jim served the normal apprenticeship in those days as an elevator operator in the House buildings while attending law school part time in the evening. Following law school graduation, Jim became chief clerk of the Democratic Personnel Committee. In 1957, Jim began work with the Subcommittee on Immigration, Citizenship, and International Law. In 1971, when I became subcommittee chairman, it was my privilege to appoint Jim as counsel of that subcommittee. In 1973, upon assuming chairmanship of the full Judiciary Committee, I named Jim as staff director of the committee. It is from this position that he has retired after 32 years of honorable, dedicated, active, and extremely effective service.

In serving, first as counsel of the subcommittee and then as staff director of the full committee, Jim brought outstanding qualities of loyalty and dedication together with an expertise which greatly assisted me in contending with the myriad of responsibilities of my chairmanship.

Jim Cline has been a recognized authority on U.S. immigration law and a well-versed expert on refugee matters. Much of his vast experience was acquired through firsthand observations at numerous international meetings and conferences, as well as visits to refugee asylum countries and camps around the world.

A limited statement of this kind will never do justice to Jim's many and varied activities and accomplishments during his service with my committee.

He has truly earned his battle stars for valiant service to the Judiciary Committee and the Congress. He put "his stamp" on many significant legislative achievements. The most noteworthy are: The 1965 Immigration and Nationality Act Amendments; the Nixon impeachment proceedings; the numerous ad hoc refugee admissions programs, such as the Hungarian uprising, the Czechoslovakian crisis, the Indo-Chinese 1975 Vietnamese Emergency Refugee Program and more recently, the Mariel freedom flotilla.

In 1971 and 1972 my Immigration Subcommittee, with Jim Cline's assistance and counsel, embarked on a series of hearings throughout the United States to address the problem of undocumented aliens. These hearings were the precursors of our recent legislative efforts to remedy this serious national problem. All of this contributed greatly to the development of the final revision of the historic Immigration Reform Act of 1986.

Jim Cline preserved a low public profile and a modest demeanor throughout his service, preferring to work on behalf of his principals. He maintained a high standard of ethics and justice, expecting no more from his colleague than he was willing to undertake himself.

Although he has retired officially from the committee, I will be the first to remember his association, his friendship, and his actions as a fine public servant. I, the Committee on the Judiciary and his many friends on the Hill will miss his ready wit, daily friendly contacts and above, all, his fair minded direction of a diverse staff of his peers, mainly attorneys.

I know that his many friends join me in extending to him sincerest and heartfelt wishes for a long, prosperous, healthy, and rewarding retirement. It is my hope that we may often have occasion to meet and exchange happy memories and experiences over a plate of pasta. Jim, I say a simple thank you for your many kindnesses and services during our official relationship.

TRIBUTE TO MARVIN ORLEANS

HON. PETER H. KOSTMAYER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. KOSTMAYER. Mr. Speaker, I rise today in remembrance of a respected Pennsylvanian, Marvin Orleans, who passed away on September 29 of this year.

Mr. Orleans served both his country and his community with diligence and fortitude for all of his life. Having attended Drexel University in Philadelphia, he served in World War II with the 851st Bomb Squadron of the 490th Bomb group stationed in England. Marvin Orleans attained the rank of captain, flying more than 30 combat missions over Germany as a bomber pilot for the United States Air Force. He was decorated for his illustrious military service with "The Distinguished Flying Cross" and the "Air" Medal to name a few.

For over 40 years Mr. Orleans was a leader in the business community of the Delaware Valley as a builder and developer. During the course of his career, he and his family built and developed more than 40,000 homes and apartments. He also undertook a number of commercial developments including several shopping centers.

In the 1960's Mr. Orleans assumed leadership of the Florida Pal-Aire Corp. Subsequently, he created "The World of Palme-Aire," an early and successful condominium complex in southern Florida. In that complex alone he developed more than 6,000 housing units surrounded by 5 golf courses, 36 tennis courts, club houses, and restaurants.

Eventually, the operations of the Florida Pal-Aire Corp. expanded to other areas of Florida including Pompano Beach, Delray Beach, Boca Raton, and Sarasota. In addition, as a principle partner of Orleans Builders and Developers, Marvin Orleans involved himself with a great many development projects in the Delaware Valley.

Not only was Marvin Orleans a leader in the real estate field, he also sat on the board and executive committee of the Industrial Valley Bank for more than a quarter of a century.

Mr. Speaker, I ask my colleagues to join me in offering our deepest condolences for the loss of Marvin Orleans. He will be missed by his loved ones and the community and country he served so well.

DR. ROCCO ORLANDO RETIRES AFTER DISTINGUISHED 37-YEAR CAREER IN PUBLIC EDUCATION

HON. BRUCE A. MORRISON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. MORRISON of Connecticut. Mr. Speaker, on September 27, I joined many friends

and associates in New Haven to honor Dr. Rocco Orlando, who is retiring after 37 dedicated and productive years in public education.

Dr. Orlando has served as dean of the School of Education at Southern Connecticut State university since 1983. During this period he shepherded the graduate programs in education through major changes, while continuing to teach his graduate course in school law in the Department of Administration and Supervision and playing a leadership role in many university-wide projects and Connecticut public service and professional activities.

Dr. Orlando has served as president of the Connecticut Professors of Educational Administration and chairman of the Connecticut Association of Colleges and Universities in Teacher Education. He has been on the visiting team to evaluate many colleges for reaccreditation of certification programs. He has chaired the Connecticut Reading Conference, has served on a Subcommittee on the Permanent Commission on the Status of Women, and was appointed to New Haven's task force on education. He is a member of the Connecticut Joint Council on Economic Education. He has served on Connecticut's panel of arbitrators and as a strike intervenor. He is one of the editors of Modern Approaches to School Organization. He has been named on several occasions as "Distinguished Educator" and "Distinguished Educator" by the Southern Connecticut Chapter of Phi Delta Kappa.

Mr. Speaker, I will stop reciting the list of Dr. Orlando's accomplishments. But the list doesn't stop—it goes on and on. Dr. Orlando's dedication, hard work, and contribution to education in Connecticut have been truly outstanding.

Rocco Orlando attended public schools in New Haven and went on to teach in several Connecticut public school systems. After 1 year as assistant principal of Amity Junior-Senior High School, he became principal of Amity Junior High School in 1959. There he initiated an open-space, team-teaching unified arts program which was the first of its kind in the Nation. In 1963, he was appointed principal of Amity Regional High School, where he implemented many innovative and widely replicated programs. In the following years he rose rapidly in rank and administrative responsibility until in 1970 he was snapped up by Southern Connecticut State College, where he served in many capacities.

Mr. Speaker, I am a firm believer in preserving quality public education, and I am especially proud to share with my colleagues the accomplishments of Dr. Rocco Orlando, who has given and accomplished so much toward that goal. I know that all of my colleagues will join me in honoring him.

TRIBUTE TO H.R. CONRAD

HON. HARRY REID

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. REID. Mr. Speaker, my State's most treasured possession is her people. Nevada has a long and proud history of hard-working, dynamic, and independent citizens. From Mark Twain, to Key Pittman, from Mike O'Callaghan to Francis Newlands, we have been blessed with those who came to our State to build and to create.

Perhaps the greatest pleasure I have had in my service, both in this House, and in government generally, has been the pleasure of meeting Nevadans. Among those experiences I treasure the most is the opportunity I had to meet H.R. Conrad.

Mr. Conrad is going to be 93 years of age next month.

One would think that at an age when most are feeling their age or enjoying retirement, he would at least be slowing down. Not in the case of H.R. Conrad.

Mr. Conrad is the president of the Nevada Prospectors' Association. He signs his mail, "Chairman of the Board and General Hell raiser." That he is.

There isn't an area of interest to his Nation, his State or his well-served profession, with which Mr. Conrad is not conversant and about which he is not extremely well-informed. He lets me know what he thinks by correspondence, in conversations, and by testimony at public hearings.

If everyone in this Nation cared as much, and worked as hard as H.R. Conrad, we wouldn't have some of the problems we face today.

I would like to salute him today, because he is a patriot, because he has served and continues to serve his State so well, and most of all, I am proud to say, because he is my friend.

Happy birthday Mr. Conrad.

APPLAUD CONGRESS' ACTION TO "CAP" MEDICARE HOSPITAL DEDUCTIBLE RISE BUT CONCERNED OVER $520 LEVEL AND "MEDICARE ADMISSION COST INDEX"

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. ROYBAL. Mr. Speaker, today I rise to applaud Congress' action to cap future increases in the Medicare hospital deductible and nursing home coinsurance. Congress' action will hold next year's projected deductible of $572 to a somewhat more tolerable $520. In future years, the hospital deductible and nursing home coinsurance can rise no faster than a "Medicare admission cost index." Unfortunately, this index will still likely produce a faster rise than the rise in the elderly's Social Security COLA.

Congress deserves great praise for reducing the outrageous and inadvertent increases in Medicare's hospital 1987 deductible to $520 and reducing Medicare beneficiaries' excessive burden by $520 million in 1987. Without congressional action, the deductible, and nursing home coinsurance increase would have cost Medicare beneficiaries an unwarranted $800 million in 1987.

The Aging Committee's 1986 out-of-pocket health care cost study provides further documentation of what would have happened if Congress would not have acted. Without congressional action on future hospital deductible increases, the elderly would have spent $2,633 for health care by 1991—about 18.5 percent of their already limited incomes. This would have been significantly higher than the 15 percent they were spending when Medicare and Medicaid began 20 years ago. Even with Congressional action, out-of-pocket costs will still continue to rise faster than the elderly's income.

America's elderly also applaud Congress' action to limit future increases as well. However, I am concerned that the "Medicare admission cost index" to be used is still not the fairest index, that is, an index tied to increases in the Social Security COLA.

For 4 years, the deductible has risen at the unbearable average annual rate of 17.4 percent while the Social Security COLA has risen at a paltry rate of only 4.4 percent annually. Even so, I am pleased that Medicare beneficiaries will be spared future arbitrary and excessive hospital deductible increases.

For some time now, the House Select Committee on Aging has been pressing Congress to constrain Medicare hospital deductible and nursing home coinsurance increases so that they would not exceed increases in beneficiary's ability to pay. For that reason, we have been pushing my "Medicare Fair Hospital Deductible Act"—H.R. 4620 and 3630—which would limit future deductible and coinsurance increases to increases in the Social Security COLA. In the 100th Congress, I can assure you that we will continue our battle to limit Medicare hospital deductible and nursing home coinsurance increases to no more than increases in the Social Security COLA.

DRUG ESSAY CONTEST

HON. THOMAS J. RIDGE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. RIDGE. Mr. Speaker, today, I am pleased to share with you the winning remarks written by the children who participated in the congressional "Healthy Mind—Healthy Body—No Drugs" contest from my congressional district. It is encouraging to see young men and women sensitive to the need to combat drugs and drug abuse. Our Nation should be proud of our children who are not afraid to say "no" to drugs and instead say "yes" to a vibrant and exciting future. Therefore, I am honored to present their names and thoughts to you and the other distinguished Members of this body in recognition of the children's talents, their values, and their strong antidrug beliefs.

DRUG ESSAY CONTEST

What would I do if offered drugs? By Rachel Ann Klink, Jamestown, Pennsylvania: Why do I need drugs? Why do you need drugs? Drugs ruin your body and kill your mind. What would your heart, lungs, and brain say? Your body needs help to fight other problems. Here you are bringing killers to ruin the good guys. So you see, I would say "NO"!! Would you like to be a member of the good guys? Would you like

these killers in your body? Your body is like a community. A community of organs working together. I would not let drugs ruin my community. Let's each help one another keep our community clean.

What would I do if offered drugs? By Anita Sundean, Edinboro, Pennsylvania: If I were offered drugs, I would just simply say no. If I were tempted to take the drugs, I would force myself to think twice. I would think of how it would effect my life, family, and friends. Then, I would make the wise choice—no!

What would I do if offered drugs? By Sarah Hamme, Erie, Pennsylvania: If I were offered drugs, I would not accept them, because they only mess up your career, future, and the ones you really love. They are nothing but poisons. You are not only hurting yourself, but your friends, too.

What would I do if offered drugs? By Jason Westerman, Jamestown, Pennsylvania: If I were offered drugs I would say no. I do not want to die from them. I do not want to go insane. I do not want to go to jail. I would go tell someone. I would try to help so that they do not give them to anyone else.

What would I do if offered drugs? By Sadie Kerr, Cambridge Springs, Pennsylvania: If someone were to approach me asking if I wanted drugs, I would probably think about it, because I would want to be "in" and would want people to like me. I would then think about all the harm it all does and for what? To feel a little happy? I can do that without drugs!! I would let people know what harm drugs really do to you. Once you get addicted its really hard to stop. Also, I'd tell them you can have as much fun without being high, like the people on *Fame* say, "You can't fly, if you are high!"

A TRIBUTE TO DR. CLYDE McCULLY

HON. CHARLES PASHAYAN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. PASHAYAN. Mr. Speaker, I join with my two colleagues from the San Joaquin Valley, Congressman RICK LEHMAN and Congressman TONY COELHO, in honoring Dr. Clyde McCully for his 20 years as president of the Fresno City College. Dr. McCully has been instrumental in the growing respect granted Fresno City College by the community and entire State. Dr. McCully's retirement is a loss in education for the people of California's Central Valley.

Dr. McCully has pursued excellence as head of curriculum accreditation teams and study groups responsible for the development of accreditation standards among community colleges. Under the direction of Dr. McCully, city college has greatly expanded and now offers over 100 associate degrees in arts and science programs at the 103-acre campus in Fresno.

Dr. McCully is widely known among fellow administrators in the Western United States. His long association in accreditation and leadership positions was under the sponsorship of the Commission for Community and Junior Colleges, Western Association of Schools and Colleges.

In addition to his role as president of city college, he has long been involved in volunteer community work. Dr. McCully has served as chairman of the Board of Valley Children's Hospital, vice chairman of the Board of Overseers, California School of Professional Psychology, past president North Fresno Rotary Club, and zone chairman of the Bank of America Scholastic Awards.

It has been our pleasure to be able to work with such a competent, able, member of academia. Dr. McCully has always provided a real and sustained attention to the intellectual and moral well-being of city college students. I wish Dr. McCully great success in his future endeavors.

The entire Fresno metropolitan community owes a great debt to Dr. McCully, which we unfortunately cannot begin to repay. He will be sorely missed.

A SALUTE TO H.W. DELANO

HON. DOUG WALGREN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. WALGREN. Mr. Speaker, I know my colleagues from steel communities throughout America will join me in saluting Hubert W. Delano, one of our outstanding steel industry leaders who this year is retiring after many decades of service.

"Bert" Delano, as vice president/public relations for the Cyclops Corp. and, for many years, chairman of the Public Relations Committee of the U.S. Specialty Steel Industry, is well known to Members of Congress for his energetic, vigorous but always pleasant, convincing advocacy on behalf of specialty steel. Few individuals have been so highly respected and well liked—both in industry and labor and in the Congress. I know, Mr. Speaker, that my colleagues join in saluting Bert for his spirit and work over the years that has created better understanding of the strengths and problems of specialty steel.

I have known Bert Delano, not only as an advocate for his industry, but as a friend and citizen from my hometown of Mt. Lebanon. Whether it be preparing and rolling steel-like coils of petitions into the White House or arranging critical testimony before the U.S. International Trade Commission, Bert can always be counted on to give sound and accurate help and advice. He's one of the few people who obviously have such honest goodwill toward others that he can even offer criticism without it being taken as anything but "constructive."

Although Bert now "officially" retires after nearly three decades of service to the Cyclops Corp., I doubt very much that he will disappear from either strategy sessions of his industry or the Halls of Congress. His counsel is too valuable and his dedication to specialty steel too genuine for us to lose the advantage of his assistance.

Mr. Speaker, we in the House of Representatives who have worked with Bert Delano congratulate him on his "retirement" from one stage of his career to a new one. We wish him all the best in all that he does in the years ahead.

NOMINEES FOR HISPANIC FAMILY OF THE YEAR

HON. MORRIS K. UDALL

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. UDALL. Mr. Speaker, I would like to take this opportunity to congratulate the Arizona nominees for Hispanic Family of the Year. These families exemplify qualities that all of us highly value and prize. Their commendable service in the community, their individual growth and family unity, provide guidance to us all.

In view of their many contributions to society, I want to congratulate these 11 families by name who have been nominated for this great honor. They are as follows: Richard and Romelia Carbajal of Phoenix, Felix and Soledad Corona of Phoenix, Mrs. Terry Cruz of Phoenix, Guillermo and Maria Incarnacion De Leon of Tempe, Eddie and Petra Falcon of Phoenix, Alfredo and Nettie Gamez of Tolleson, Efrain and Aurora Huerta of Glendale, Gloria Hurtado of Phoenix, Raul and Mary Lopez of Yuma, Daniel and Elvira Ortega, Sr., of Laveen, and Jacobo and Arcelia Rodriguez of Glendale.

TRIBUTE TO DR. FREEMAN H. CARY

HON. BARBARA F. VUCANOVICH

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. VUCANOVICH. Mr. Speaker, I'd like to thank the gentleman from Pennsylvania [Mr. GAYDOS] for taking this special order to recognize Dr. Freeman Cary, the former attending physician for Members of Congress.

Dr. Cary will be remembered by me and my family for a long time. At Dr. Cary's insistent urging when I first came to Congress, I had a routine check-up done in his office. At that time, a small lump was discovered in my breast which turned out to be malignant. As a result of his care, I had surgery done and am now fully recovered.

Since that initial visit, Dr. Cary has continued to supervise my care and well being in a competent, caring and professional manner.

I am pleased to publically thank Dr. Cary for his good care. I wish him well and want him to know how grateful I am.

Thank you, Mr. Speaker.

HON. MARK SILJANDER

HON. BILL SCHUETTE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. SCHUETTE. Mr. Speaker, I would just like to take this opportunity to honor a very special friend, MARK SILJANDER. When I first came to the House last year, MARK was a tremendous source of advice and counsel, and he remains so to this day. Throughout his

congressional career, MARK has demonstrated time and time again his commitment to principle and honor that transcends politics. We can all learn from MARK SILJANDER'S example of selflessness and dedication to the cause of limited constitutional government, and I am proud to have served with him.

TRAINING FOR THE HANDICAPPED

HON. HOWARD WOLPE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. WOLPE. Mr. Speaker, I want to call the attention of the Members of the House to a very special program that is underway in my district as the result of a unique cooperative effort between two outstanding organizations located in my district.

Recently, the W.K. Kellogg Foundation awarded a 1-year grant of $235,975 to E.B.I. Breakthru, Inc., to provide specialized training to handicapped individuals and help them gain employment in the private sector. The E.B.I. Breakthru staff has developed an electrostatic paint finishing training program for 50 handicapped citizens, after which, a dozen or more of the participants are expected to actively join the workforce.

In the past, W.K. Kellogg and E.B.I. Breakthru worked together to provide quality job training and job placements for many handicapped persons in the micrographic services field. I want to commend the W.K. Kellogg Foundation and E.B.I., Inc., for their innovative thinking and their humanitarian spirit to help those less fortunate in our community help themselves.

Mr. Speaker, for over 50 years, the W.K. Kellogg Foundation has provided important leadership and generous funding for programs around the world that are geared toward helping people help themselves. The W.K. Kellogg Foundation has donated over three-quarters of a billion dollars to support projects like the E.B.I. Breakthru, Inc., training program—a level of generosity that has earned the W.K. Kellogg Foundation the reputation of being one of the largest and most respected philanthropic organizations in the world.

Mr. Speaker, it is an honor and a privilege to represent two such exceptional organizations as the W.K. Kellogg Foundation and E.B.I., Inc., who have contributed so much, and have worked so hard to improve the quality of life in our community.

FEDERAL CREDIT SYSTEM EXPERIENCING RECORD NUMBERS OF NONPERFORMING LOANS

HON. ROBERT LINDSAY THOMAS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. THOMAS of Georgia. Mr. Speaker, due to prevailing market prices coupled with severe adverse growing conditions such as drought and floods, the Federal Credit System is experiencing record numbers of nonperforming loans. Land bank loans classified as nonaccrual increased from $54.8 million to $476 million in the past year alone.

At the same time, the Federal Credit System has been required by its regulator, the Federal Credit Administration, to maintain noncompetitively high interest rates, resulting in the System suffering from significantly decreased loan volumes. A recent review indicated that 48 percent of the PCA loans and 78 percent of the Federal land bank loans that were paid out this year were because of noncompetitive interest rates.

This year in Georgia, land bank loans that were paid off early to refinance with other commercial institutions offering more competitive rates amounted to over $132 million. Quite simply, the land bank is losing its best customers at a time when it needs those customers more than ever.

The pending legislation would allow the board of directors of the farm credit banks to set interest rates for borrowers in their districts. I would point out that all other financial institutions have this fundamental ability to set interest rates. However, current law requires the System's regulator to pre-approve any changes in its rates. Quite frankly, I do not believe this to be the proper function of an arm's-length regulator.

Under this new legislation the Federal Credit Administration will still be able to ensure the System is following sound financial practices. But the FCA will be expected to exercise this authority in a manner which is consistent with the regulations and practices of other Federal agencies regulating financial institutions.

This means that the FCA will monitor interest rates and loan terms to ensure that System institutions are following appropriate asset and liability management practices. It will ensure they are not charging interest rates that are below those offered on similar loans by other commercial lenders.

This legislation will also minimize the need for direct Federal assistance through the use of FCA approved accounting treatments. Part of the System's problem is that it is noncompetitive due to the high cost of its bonds that were sold in the early 1980's. This bill would allow the System to capitalize the "excess" portion of its cost of borrowings which exceed prevailing market rates and write that off over a period not to exceed 20 years.

This would help the System in adjusting its rates to more competitive levels and would be of direct benefit to farmers. This will also assist the System in retaining its best borrowers, many of whom otherwise would seek financing from lower-rate competitors, leaving the System banks in a weakened condition.

In addition, the legislation would also allow the System, for the period of July 1, 1986, through December 31, 1988, to capitalize the "excess" portion of its allowance for loan losses—that is, losses that exceed one-half of 1 percent of loans outstanding. Those excess amounts could be capitalized and written off over a period up to 20 years.

This provision of the bill needs to be applied retroactively for the 1986 calendar year to July 1, 1986, so that it may be implemented at the earliest possible date. In this regard, it is intended that the level of loans outstanding as of June 30, 1986, be used for purposes of this provision for calendar 1986.

Any provision for loan losses accrued during the first half of 1986 are intended to be included for purposes of calculating when the trigger for capitalization of loan losses has been reached for the current calendar year.

Further, this provision must be available for use in the System's monthly or quarterly financial statements. Otherwise, for example, if the provision were applied only to the System's 1986 year-end financial statements, the relief afforded would not be realized until sometime into 1987.

This departure from generally accepted accounting procedures is justified because the net effort of these provisions would be to allow the System to absorb its losses over a longer period of time, thus postponing or even preventing the need for Federal assistance. It would also reduce the amount of capital to be transferred between the Farm Credit districts by improving the capital position of those banks experiencing the most serious financial stress.

For those reasons, I urge my colleagues to support this legislation.

TRIBUTE TO PHILIP MAUSKOPF AND THE NORTH CAROLINA SCHOOL OF SCIENCE AND MATHEMATICS

HON. TIM VALENTINE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. VALENTINE. Mr. Speaker, in a month of baseball playoffs and football rivalries, the strong and the quick are quite often exalted, but at this time I would like to pay special tribute to a young man who has made a significant achievement in another, more cerebral area.

Sixteen-year-old Philip Daniel Mauskopf, a recent graduate of the North Carolina School of Science and Mathematics in Durham, came home from the International Physics Olympiad in London, England, with a bronze medal.

He may not have received the acclaim that the 1984 Los Angeles Olympions did, but Philip Mauskopf, and the 19 other American high school students, represented their country with as much pride and honor as their more famous counterparts.

Two other Americans received bronze medals during the grueling 2-day event that pitted 200 of the world's brightest young scientists against each other. What makes this even more impressive is that this was the first American team ever to enter the event. Philip Mauskopf distinguished himself from other competitors by answering a theoretical question in 20 pages—a record length in this year's event.

Mr. Mauskopf, who is also an accomplished violinist, is an example of a young man with a fine mind that has been developed by a superior education. As the Representative of the Second District of North Carolina, I am grateful to the School of Science and Mathematics in Durham for challenging talented young stu-

dents to use their gifts to their fullest potential. Schools like this one nurture intelligence, and I am confident that future generations will benefit from their contributions.

In our quest for excellence, we should applaud both those who have strong and quick intellects and the institutions that develop them. For this reason, I am proud to recognize Philip Daniel Mauskopf and the North Carolina School of Science and Mathematics for their outstanding accomplishments.

CONGRATULATIONS TO LEON JOZWIAK AND DONALD GREENBERG

HON. H. JAMES SAXTON

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. SAXTON. Mr. Speaker, as Congress grapples with the deficit problem, I would like to acknowledge two gentlemen who have made real strides in saving the Government money.

Leon Jozwiak and Donald Greenberg were finalists in the Philadelphia Federal Executive Board 1986 Awards Program, Economy in Government category.

By successfully extending the shelf life of a military unique drug, Defense Personnel Support Center pharmacists Jozwiak and Greenberg initiated a testing program which saved the Government $17 million, which is a savings record. As part of mobilization reserve medical stocks, the Army had a large supply of pralidoxime chloride which was due to expire in 1985. The Army asked DPSC to determine if the shelf life could be extended. Messrs. Jozwiak and Greenberg developed the testing parameters for the stability research project and selected field samples from various worldwide climatic conditions. They also coordinated the efforts of the Army Surgeon General's Office, the U.S. Army Medical Material Agency, the drug manufacturer and the Food and Drug Administration. Through the efforts of these men, the shelf life was extended from 3 to 5 years, thereby saving the Government millions of dollars in replacement costs while enhancing military readiness.

I congratulate these men and all others who make our Government more effective and efficient.

HOUSE OF REPRESENTATIVES—*Saturday, October 18, 1986*

The House met at 12 noon and was called to order by the Speaker pro tempore (Mr. FOLEY).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
October 17, 1986.

I hereby designate the Honorable Thomas S. Foley to act as Speaker pro tempore on Saturday, October 18, 1986.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Let as pray in the words of the 100th Psalm.

Make a joyful noise to the Lord, all the lands! Serve the Lord with gladness! Come into His presence with singing!

Know that the Lord is God! It is He that made us, and we are His; we are His people, and the Sheep of His pasture.

Enter His gates with thanksgiving, and His courts with praise! Give thanks to Him, bless His name!

For the Lord is good; His steadfast love endures for ever, and His faithfulness to all generations.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. SENSENBRENNER. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER pro tempore. The question is on the Chair's approval of the Journal.

The question was taken; and on a division (demanded by Mr. SENSENBRENNER) there were—yeas 10, nays 3.

So the Journal was approved.

AUTHORIZING THE SPEAKER TO ACCEPT RESIGNATIONS AND TO APPOINT COMMISSIONS, BOARDS, AND COMMITTEES, NOTWITHSTANDING SINE DIE ADJOURNMENT

Mr. MURTHA. Mr. Speaker, I ask unanimous consent that notwithstanding the sine die adjournment of the 2d session of the 99th Congress, the Speaker be authorized to accept resignations, and to appoint commissions, boards, and committees authorized by law or by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

AUTHORIZING RECESSES AT ANY TIME ON TODAY AND AUTHORIZING RECEIPT OF MESSAGES FROM THE SENATE DURING RECESSES

Mr. CHENEY. Mr. Speaker, I ask unanimous consent that it may be in order for the Speaker to declare recesses at any time today subject to the call of the Chair and that the Clerk be authorized to receive messages from the Senate during the recesses.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wyoming?

Mr. BARTLETT. Mr. Speaker, reserving the right to object, I shall not object, but under my reservation, I would inquire of the Speaker or the gentleman who made the motion, if there were a Member or a committee chairman who sought to bring up legislation that would be finally passed by the other body with regard to emergencies in the financial marketplace, and if that were generally agreed to, what would be the procedure for bringing that up?

The SPEAKER pro tempore. The procedure would be to obtain clearance from the leadership on both sides of the aisle and to make unanimous-consent requests for the consideration of the bill in the House.

Mr. BARTLETT. Mr. Speaker, further reserving the right to object, would that occur when the Speaker calls us back in from recess under the gentleman's unanimous-consent request?

The SPEAKER pro tempore. If a recess were ordered by the Chair, the Members would be given reasonable time, at least one-half hour, before the Chair would resume the sitting of the House.

Mr. BARTLETT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wyoming?

There was no objection.

DELAYED FUNDS AVAILABILITY LEGISLATION

(Mr. ST GERMAIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ST GERMAIN. Mr. Speaker, we have reached a very preposterous point here in the House. The House of Representatives sent to the other body in January of this year by an overwhelming vote legislation to give relief to the consumers of this Nation whose funds are not available to them once they have deposited them in financial institutions, known as the delayed funds availability legislation.

Subsequently, in June of this year, this House, after working its will, sent to the other body a housing bill.

Mind you, Mr. Speaker, both of these measures passed the House with bipartisan support; not partisan legislation, but rather bipartisan legislation. The House worked its will on both issues.

Well, nothing happened, nothing happened, nothing happened. Lo and behold, we came closer and closer to the end.

The administration and the regulatory agency told us that we enact the regulators legislation or regulators bills, as well as FSLIC recapitalization.

Being a responsible committee, being a responsible body, we came to the floor. We brought those two bills to the floor and packaged with them the previously adopted housing bill and the previously adopted delayed funds availability legislation. It came again before this House in a bipartisan fashion under suspension of the rules. Debate was had. The legislation was adopted unanimously by voice vote. And we now have been waiting and waiting and waiting.

So what is happening now? The other body feels that, boy, they now have the House where they want it.

Ladies and gentlemen of the House, we have acted responsibly. And I now serve notice on the other body.

The SPEAKER pro tempore. The gentleman in the well will refrain from any derogatory comments regarding the other body.

Mr. ST GERMAIN. Mr. Speaker, the House is acting and has acted responsibly. I want to make it clear, however, that we have done our duty. We are not going to accept or have shoved down our throats at the last minute of this session anything that we do not agree to.

So I assure my colleague from Texas and my fellow members of the Banking Committee that we are not going to accept just anything at all that comes down the pike. We are going to be heard from. We will discuss it. And nothing is going to be railroaded through this House.

FINANCIAL CRISIS AVOIDANCE LEGISLATION

(Mr. BARTLETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARTLETT. Mr. Speaker, I want to say that I concur with the characterization of the circumstances of the last 2 years of the chairman of the Banking Committee, the distinguished gentleman from Rhode Island.

This body in a bipartisan way has acted very responsibly in passing responsible bipartisan legislation on these matters. Two of the matters relate to emergency legislation regarding the expansion and extension of Garn-St Germain and the recapitalization of FSLIC.

The other body has acted as the gentleman has described.

It seems to me this body has gone the second mile and the third mile. Sometime this morning perhaps we will have the opportunity to again act far more responsibly than others and go the fourth mile. If we were to get some sort of a short term, sunsetted crisis avoidance legislation to defer these decisions into the next session, I look forward to working with the chairman and the other members of the Banking Committee to see if we can come to some conclusion where we can continue to act responsibly and go the fourth mile in this situation and obtain the kind of relief and avoidance of a crisis that I think this country needs, regardless of who is to blame or who is at fault.

Mr. BARNARD. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. I yield to the gentleman from Georgia.

Mr. BARNARD. Mr. Speaker, I certainly concur with what the gentleman has said, and certainly that of the chairman of the House Banking Committee. But I would hope that the Congress would take the leadership or take the word of the leadership in this regard.

We continue to have extraneous new provisions added to the legislation from the other side. These are matters that we have not addressed in the Banking Committee or any other committee of this House in hearings, and it is unfair for them to impose these matters on us.

I just think that the request that has been made of us is reasonable. I was one Member served notice that the extraneous stuff that has been added to the House-passed legislation will be certainly subject to an objection, as far as this Member is concerned.

Mr. BARTLETT. Mr. Speaker, I thank the gentleman, and I concur that the only possibility of proceeding is some sort of very brief, short crisis avoidance legislation that contains no extraneous legislation.

Mr. Speaker, I yield to the gentleman from Rhode Island.

Mr. ST GERMAIN. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I take this opportunity to inform the leadership of the House that the Banking Committee, particularly in the person of its chairman, wants to be kept informed and alerted to anything that comes over from the other body within the jurisdiction of our committee, because this is a very important matter and a very sensitive matter, and my committee wants to be kept fully informed. We are waiting word from the other body. We are available to talk.

□ 1010

Mr. BARTLETT. I thank the gentleman. The chairman of the committee is acting appropriately and correctly and I look forward to working with him.

CRISIS AVOIDANCE

(Mr. GONZALEZ asked and was given permission to address the House for 1 minute.)

Mr. GONZALEZ. Mr. Speaker, I rise because we hear this phrase "crisis avoidance" bandied about. I think what the gentleman, my colleague from Texas, means about "crisis avoidance" is crisis avoidance for those who have had all the privileges and continue to have them.

The big financial interests and complexes of this country are what I refer to. I want to advise the Members of this House and those who want to know generally that we continue in a deep crisis with respect to providing shelter for the overwhelming preponderant majority of those who are poor or moderate-income people in our country.

I think that the insensitivity to that crisis would mandate that we be equally insensitive to that which would continue the privileges that these Members are talking about crisis for that privileged group.

WE NEED TO EXTEND GARN-ST GERMAIN IN ORDER TO AVOID A CRISIS

(Mr. WYLIE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WYLIE. Mr. Speaker, I have listened to the discussion here with reference to the need for a FSLIC recapitalization bill and a regulator's bill. Certainly there is a critical, underlying need for those two bills and I am deeply disappointed that we have not been able to address those underlying needs.

I think the chairman, Mr. ST GERMAIN, has characterized the situation properly as the gentleman from Texas has said. Both of these bills, FSLIC recap and the regulator's bills, are legislation which the chairman of the full committee characterized as being absolutely essential.

In the face of the problem that we have with the Members of the other body, and I would like to go with the chairman momentarily to see them, if we are incapable of acting on a FSLIC recap bill and a regulator's bill, then I would like to respectfully suggest to the chairman that we extend Garn-St Germain in accordance with HR. 5711 so that we do not leave today with this crisis situation on our hands and that at a minimum we try to do that.

LET US NOT SEND ULTIMATUMS TO THE OTHER BODY ON BANKING ISSUES

(Mr. VENTO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VENTO. Mr. Speaker, indeed it is disappointing to note the inaction in the other body concerning these banking and housing matters. Unfortunately, I think the characterization of this as a crisis should not be the basis on which we take precipitous action on these measures. The fact of the matter is that we acted responsibly and passed this legislation, I might say, in quite an expedited manner ourselves with regard to the FSLIC and with regards to the regulator's bill.

While I think these powers may be needed, I certainly do not think that it is a crisis. I think that there are other tools available to the regulators that can be used and to the Federal Reserve Board.

However, I do feel that too often we are evaluating these things in a modified version and we do not know what, indeed, would be the consequence. I am very concerned about that and I think that the Members here should be. So I think it precludes any likelihood that we will be able to consider forms of that legislation.

We had hoped that we could deal responsibly in terms of dealing with the Garn-St Germain extension, but first of all we need agreement on this. This unanimous-consent process which we so often deal with is based on mutual trust and comity in terms of the Members of this body and the other body. So I think it ill behooves any of us to begin sending ultimatums to the other body or for them to send such to us. I hope we can avoid that and act within the responsibilities and duties we have, Mr. Speaker.

OUR PRESENCE TODAY VALIDATES MR. BUCHANAN'S WORK

(Mr. ARMEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ARMEY. Mr. Speaker, I think it is the most curious sort of irony that as we are still in session dealing with these kinds of emergencies, wondering if Gramm-Rudman is alive or dead, that in the world at large Mr. Buchanan has been given the Nobel Prize in economics. Our very presence here dealing with the problems with which we deal validates Mr. Buchanan's work.

The fact is, we have a problem. Another Nobel laureate, Paul Samuelson, wrote in his Ph.D. dissertation at the tender age of 18 at Harvard University that, "The essence of rational choice in economic decisionmaking was the search for constrained extrema."

Mr. Buchanan has demonstrated that without the constraints you only get the extrema.

I might also add, Mr. Speaker, that the work of Mr. Buchanan and his colleague, Mr. Tollock and others right here in Washington at George Mason University, is fraught with lessons that we could learn. I would hope that our body and the other body as well might take advantage of this expertise and have these folks here to consult some seminars regarding how we can make a change in our institutional structure that will allow us to avoid this dilemma in future Congresses.

A CORNER IN PLATINUM?

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, the term "corner" refers to an act of conspiracy by speculators, who buy up or otherwise impound the existing supply, in order to exact ruinous prices from the public later. Textbooks on economics add that all attempts at a corner have failed in the past, and that all attempts are bound to fail in the future, because corners have a built-in mechanism to self-destruct. Suppliers scramble to cash in on the price advance and thereby, willy-nilly, break the corner. The recent experience of the collapsing oil price is widely quoted as a proof that corners can never succeed.

Or can they? Mr. Speaker, the textbooks are wrong. There have been several memorable instances of a successful corner in history. Save that they go by another name: the name of currency debasement, and that they apply to a very special group of commodities: the precious metals, which makes textbook authors peevish to talk about them. Each of the proper names: American Continental, French Assignat and Mandat, Mexican Infalsificable, German Reichsmark, Hungarian Pengoe, conjures up a successful corner in silver or gold—as well as a sea of misery for the unfortunate people whose governments allowed this great misfortune to befall upon them. We should be wise enough to admit that our own people are still very much vulnerable. If the dollar has not yet joined the continentals, the assignats and the infalsificables on the garbage dump of history, this may be due more to our luck than to our wisdom. There are signs that a corner is developing in platinum, with ominous consequences to the health of the dollar.

Corners of this type prey upon irredeemable paper currencies, and have a 100 percent fatality rate. But they also cause untold anguish and misery among the people, because currency depreciation wipes out the savings of individuals and families.

There is one, and only one, way to prevent this scourge from running its full course, and to prevent the unnecessary suffering which such corners inflict upon the masses of trusting and helpless people. The Government has to fix the gold content of the dollar by statute.

THE NONBANK ISSUE WAS HELD UP BY THE RULES COMMITTEE FOR MONTHS AND MONTHS

(Mr. McCOLLUM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McCOLLUM. Mr. Speaker, we had, for a while, I thought, been a Congress that was going to be famous for passing one bill and that was the tax bill. But I am pleased to see, as I am sure many of my colleagues are, that in the last few days this Congress has redeemed itself. We have passed several major pieces of legislation that we should be justly proud of having done. The immigration bill, the omnibus drug package, and the Superfund bill to name three significant pieces of legislation.

But there are remaining issues which this Congress will not address. I am confident that we will have to come back next year and face those issues on fiscal policy that we have ducked. There is no question that the efforts we made at reconciliation and budget issues and determinations this Congress have not been satisfactory. We have had smokescreens, as some have called them, we are going to have to face the really issues next time of whether we are going to raise taxes, which I certainly pray we do not, or whether we are going to deeply cut spending in order to get the budget in balance.

We also are going to have to face, if we do not do it here in the closing hours, this little crisis over banking. I have been on the Banking Committee for some time and I agree with what much of my colleagues have said this morning. We have got to face that issue. I would like to remind my colleagues we would not be at this point if it had not been for the fact that the nonbank bank issue, which should have been on this floor a long time ago, had been held up by the Rules Committee for months and months and months. This body has not been given and never will be given, apparently, this Congress, the opportunity to vote on whether to close that loophole that would allow fairness and equity for everyone.

□ 1020

That alone has been a significant factor in bringing us to the point today where FSLIC recapitalization and the regulators bill are being held captive.

I urge my colleagues not to proceed in that fashion in the next Congress.

AMERICAN HOSTAGES IN LEBANON

(Mr. DORNAN of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORNAN of California. Mr. Speaker, I want to take this final opportunity during 1-minute speeches to publicly commend my colleague from the other side of the aisle, the gentleman from Ohio [Mr. DON PEASE] for helping me secure 80 more signatures this week to the Government of Syria encouraging them to continue their intensified efforts to secure the release of our five hostages in Beirut.

Those of us who watched the news last night saw a parachuting Israeli fighter pilot machine-gunned to death while he was hanging helplessly in his parachute harness descending to Earth. Lebanon is now a mean and violent part of the world and our hostages are in great peril. Although analogies cannot be drawn perfectly between the Soviet Union holding Mr. Daniloff and the kidnapers holding

five Americans in Beirut it nevertheless is exceedingly painful for the hostage family members to see Daniloff home so quickly. There are only about 70 of us now who have not signed the letter to Assad of Syria. Between DON PEASE and myself we have about 110 names to add to the 251 that I took over to President Assad on June 30.

And now we have a breakthrough. We now know the faces and the names of the kidnapers who hold at least three of our five American hostages. There, of course, are six if they did not torture Bill Buckley to death as has been reported.

I commend Newsweek magazine for ferreting out the pictures of the terrorists and giving their names. It appears that it is the family called Musawi, also sometimes called the Mugniyahs. They are led by Hussein Musawi from the Bekaa Valley. He also goes by the Christian name of Elias Fuad. They want their bombmaker cousin, Mustafa Yousef, released from prison in Kuwait. We cannot lean on the Kuwait Government to release a murderer but maybe some form of negotiation can find an answer. This second letter to Syria signed by almost every Member of Congress will help if it is God's will, during our 3-month break, to bring back our suffering American hostages. Pray dear God they join their families by your Son's birthday.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. FOLEY). The Chair desires to announce that pursuant to clause 4 of rule I, the Speaker signed the following enrolled joint resolution on Friday, October 17, 1986:

H.J. Res. 738. Joint resolution making further continuing appropriations for fiscal year 1987, and for other purposes.

APPOINTMENT AS MEMBERS FROM PRIVATE LIFE TO CONGRESSIONAL AWARD BOARD

Mr. CHENEY. Mr. Speaker, on behalf of the minority leader, pursuant to section 4(a) of Public Law 96-114, as amended, I have today appointed as members of the Congressional Award Board the following from private life:

Mr. Merlin E. Dewing, of New York, NY, and Adm. Elmo R. Zumwalt, Jr., of Arlington, VA.

REPORT OF COMMITTEE TO NOTIFY THE PRESIDENT

The SPEAKER pro tempore (Mr. HOYER). The Chair will receive a report from the committee to notify the President.

Mr. FOLEY. Mr. Speaker, in accordance with the appointment of the Speaker last evening of the gentleman from Illinois [Mr. MICHEL], the distinguished Republican leader, and myself to call upon the President of the United States and report to him as the Committee of the House that the House was nearing adjournment and request of the President whether he had any further communications to deliver to the House, the gentleman from Illinois [Mr. MICHEL] and I, by telephone, spoke to the President. He said he had no further communications or messages to deliver to the House, other than to thank the House for its cooperation and to wish it a pleasant recess.

RECESS

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that the House stand in recess.

The SPEAKER pro tempore (Mr. HOYER). Without objection, the request is agreed to.

Mr. WALKER. Mr. Speaker, reserving the right to object, could we have some idea as to how long we might be in recess? Can we get some idea from the membership on this. Are we going to do this to a time certain or are we just going to hang around here indefinitely?

Mr. FOLEY. Mr. Speaker, I will amend the request and suggest that the chair order the House into recess until 12 noon.

Mr. WALKER. To 12 noon. That would be most helpful.

Mr. FOLEY. Mr. Speaker, I request that the Chair declare a recess until 12 noon.

The SPEAKER pro tempore. Pursuant to the order of the House earlier today, the Chair now declares the House in recess until 12 noon.

Accordingly (at 10 o'clock and 22 minutes a.m.), the House stood in recess until 12 noon.)

□ 1200

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. HOYER) at 12 noon.

RECESS

The SPEAKER pro tempore. There being no further business to come before the House at this time, the Chair declares the House in recess subject to the call of the Chair. There will be at least one-half hour notice given.

Accordingly (at 12 o'clock and 1 minute p.m.), the House stood in recess, subject to the call of the Chair.

□ 1300

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. HOYER) at 1 p.m.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, DC,
October 18, 1986.

Hon. THOMAS P. O'NEILL, Jr.,
The Speaker, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted by the U.S. House of Representatives on October 18, 1986, the Clerk received the following message from the Secretary of the Senate: That the Senate passed S. 2948; passed, without amendment, H. Con Res. 412, H. Con Res. 414, H.J. Res. 754, and H.R. 5705; passed, with amendment, H.R. 4645; passed, with amendments, H.R. 439; agreed to the House amendment to S. 1374; agreed to the House amendments to S.J. Res. 43; agreed to the conference report to H.R. 5300 and S. 1200; agreed to the House amendments to the Senate amendments with amendments to H. Con. Res. 395; and agreed to the House amendment to the Senate amendment to the House amendment to the Senate amendment to H.R. 5484.

With kind regards, I am

Sincerely,

BENJAMIN J. GUTHRIE,
Clerk, U.S. House of Representatives

AUTHORIZING THE PRESIDENT TO PROMOTE POSTHUMOUSLY THE LATE LT. COL. ELLISON S. ONIZUKA TO GRADE OF COLONEL

Mr. NELSON of Florida. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2948) to authorize the President to promote posthumously the late Lt. Col. Ellison S. Onizuka to the grade of colonel, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request for the gentleman from Florida?

Mr. SENSENBRENNER. Mr. Speaker, reserving the right to object, I reserve the right to object to ask the distinguished gentleman from Florida to explain this legislation.

Mr. Speaker, under my reservation of objection, I yield to the gentleman from Florida [Mr. NELSON].

Mr. NELSON of Florida. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, this is an act to authorize the President of the United States to promote posthumously the late Lt.

Col. Ellison S. Onizuka to the grade of full colonel.

As the Members of this body know, El Onizuka, a member of the *Challenger* crew, an active duty Air Force officer, a marvelous human being, a brave American who, along with the *Challenger* crew, participated in that mission that led to this national tragedy that we have all participated in.

This is one of the things we can do. I bring this resolution on behalf of the Armed Services Committee today.

Let me say just personally that, having had the experience I did in training with the crews at the Johnson Space Center and at the Kennedy Space Center, El Onizuka had gone out of this way to make me feel welcome and to help me along. For that I am eternally grateful. It is an honor for me on behalf of the Armed Services Committee to bring forth this Senate bill today promoting El Onizuka posthumously to the rank of full colonel.

Mr. SENSENBRENNER. Mr. Speaker, further reserving the right to object, I yield to the distinguished gentleman from Hawaii [Mr. ABERCROMBIE].

Mr. ABERCROMBIE. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I wish to rise and speak in favor of this measure. Ellison Onizuka was one of Hawaii's most distinguished native sons. Born and raised on the Kona Coast of the Island of Hawaii, he graduated from Konawaena High School.

All of the people of Hawaii, particularly the people of the Kona Coast of Hawaii, are proud of his career and accomplishments as an astronaut. His life was the embodiment of the American dream of opportunity for everyone.

I had the honor of meeting Colonel Onizuka when he appeared on the floor of the Hawaii State Senate to accept a resolution which we passed in his honor.

His death was a great tragedy for the American people, and a special loss to the people of Hawaii. His promotion to full colonel is well deserved. I ask that all my colleagues vote "aye" on the measure.

I am particularly pleased to have the opportunity, Mr. Speaker, through the good offices of the Members, having arrived here so recently in the Congress and given the opportunity to be on the Armed Services Committee, to be able to make this presentation and request today. I feel this is a special fulfillment of the duty and responsibility of my membership in this 99th Congress. I am sad that it is an occasion with respect to Colonel Onizuka and his accomplishments, but on the other hand, it will stand as a beacon, not only for the young people in the State of Hawaii, but young people who wish to seize such an opportunity themselves throughout the Nation in the years to come.

With those remarks, and thanking the gentleman for yielding to me, and most especially to the members of the Armed Services Committee and all the people in the Congress who have made this possible, I ask for its passage.

Mr. SENSENBRENNER. Mr. Speaker, further reserving the right to object, I believe that this is a richly deserved honor to one of our premier outstanding astronauts who gave his live for his country. The minority enthusiastically supports this legislation.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2948

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized to promote posthumously to the grade of colonel the late Lieutenant Colonel Ellison S. Onizuka, United States Air Force, who died on January 29, 1986, while serving as a crew member on the space shuttle *Challenger.*

SEC. 2. No increase in compensation or benefits based on the military service of the late Lieutenant Colonel Ellison S. Onizuka shall result from a posthumous promotion authorized under the first section of this Act.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

RECESS

The SPEAKER pro tempore. Pursuant to the authority granted to the Speaker earlier today, the House will be in recess until the hour of 2 p.m.

Accordingly (at 1 o'clock and 7 minutes p.m.) the House stood in recess until 2 p.m.

□ 1410

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. HOYER) at 2 o'clock and 10 minutes p.m.

SECURING THE SINE DIE ADJOURNMENT

(Mr. SENSENBRENNER asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. SENSENBRENNER. Mr. Speaker, we are now approaching the silly season of the final hours of this Congress, which is something that can be very dangerous for the public interest.

Most of the Members of both sides have already left town, anticipating a sine die adjournment, and the notice was given to the membership that there would be nothing of substance that would come up today; but nothing of substance becomes many things of substance the longer this House stays in session and does not adjourn sine die.

I would implore everyone who is present to see what can be done to get the sine die adjournment resolution over here so that we can adjourn sine die and the public can rest easy until January 6.

I am reminded of the decision of the New York State Court of Appeals in the mid-1800's, that no man's life, liberty or property is safe while the legislature is in session.

What is going on here today shows that those justices were very wise, and nothing has changed.

CORRECTING MISTAKES IN THE TAX REFORM PACKAGE

(Mr. ANTHONY asked and was given permission to address the House for 1 minute.)

Mr. ANTHONY. Mr. Speaker, I would like to address some comments to my colleague from Wisconsin. I could not agree more with the frustration of trying to close out a session; but to take the opportunity to let that frustration stop the 99th Congress in putting together some very needed and necessary technical corrections to the massive tax reform bill that we have passed and sent to the President, I think would be going against the grain of trying to provide for good Government.

I have been working for the last hour with some people on your side of the aisle. We have been over in the Senate; we have got problems because as you well know, some people are out of town. We are very, very close to having a final conclusion of a technical corrections bill put together.

There were some mistakes made in the tax reform package when it was drafted. Practically every major piece of legislation that is drafted does have changes that are necessary.

I would implore the gentleman from Wisconsin [Mr. SENSENBRENNER] to understand the problems that we have, but to agree to take a look at the list and to allow us to bring that to the floor through the previous agreements that we have made, knowing that it needs to correct a very major piece of legislation.

Mr. SENSENBRENNER. Mr. Speaker, will the gentleman yield?

Mr. ANTHONY. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Speaker, I appreciate the comments of the gentleman from Arkansas [Mr. ANTHO-

NY]. However, I distinctly recall yesterday when the technical correction bill came up that we were told that this would solve all the problems; that it was the perfect bill, and the bill passed this House on a voice vote.

In less than 24 hours, we find that mistakes were still made. Now what I object specifically to is the fact that this bill is not going through the normal committee process; it is not being printed as a normal bill; if it is passed, it will merely change the enrollment of the tax bill that has been agreed upon by both Houses, and we will not be able to see what hookers are in that bill and what the financial impact of those hookers will be.

Now I think that it is fundamentally wrong to pass something that might have a major impact on the tax code, with 30 or 40 Members of the House in town, and that is my objection.

CORRECTING HONEST MISTAKES IN THE TAX BILL

(Mr. GIBBONS asked and was given permission to address the House for 1 minute.)

Mr. GIBBONS. Mr. Speaker, I address my remarks of course to the distinguished gentleman from Wisconsin [Mr. SENSENBRENNER].

I feel like the gentleman does. I want to tell you, on my word of honor, I do not have an interest in anything that is in this technical corrections bill. Nothing affects Florida directly or indirectly that does not affect the Nation.

The only reason I am here is to try to correct some things that are honest mistakes; and I hate to put myself in the position that I am just standing here for good Government, but believe me, that is all I am doing.

I was not a member of the conference, for various reasons, and, you know, I have been trying to work out some problems that exist in the thing. I can assure the gentleman that the Nation as a whole will be better off if this bill is adopted, this joint resolution, than if it is not.

□ 1415

There are some serious mistakes in the tax bill as passed and the implementation of the tax laws will be very difficult to administer unless we are able to pass this. We have spent endless hours today trying to work back and forth, back and forth, in a very tedious manner trying to get everybody's unanimous consent. It is our belief that we are close enough to an agreement now with the other body that they will accept this when it comes over there, although I cannot guarantee it. If they do not, nothing is going to happen. But I want to assure the gentleman and I want to assure the House that based upon my 20 years on the Committee on Ways and Means and my 24 years in the Congress that the only thing I am interested in right now is to try to correct some mistakes that have been made. I have no axe to grind, nothing in here affects me one way or another. But I do think the changes need to be made.

LEADERSHIP NEGOTIATIONS RE SINE DIE RESOLUTION

(Mr. CHENEY asked and was given permission to address the House for 1 minute.)

Mr. CHENEY. Mr. Speaker, let me point out for the benefit of the gentleman from Florida [Mr. GIBBONS] that perhaps if we pursue the Chair's intention of recessing until 4 p.m., it might be possible for there to be further discussion with Members on this side. At present, there is no question but what if a unanimous consent request is made to amend the package that has been sent to us from the other body, it will be objected to on this side of the aisle.

Mr. GIBBONS. I understand that.

Mr. CHENEY. And I would propose that we would proceed to recess until 4 p.m. and perhaps something can be worked out in the meantime.

Mr. SOLOMON. Mr. Speaker, will the gentleman yield?

Mr. CHENEY. I yield to the gentleman from New York.

Mr. SOLOMON. I thank the gentleman for yielding.

Mr. Speaker, with all due respect, even if we were to come to some agreement on this, I just have strong feelings against voting for letting anything go through, since we have no idea what is in the bill, what are in these amendments; but I also think those of us who are still here are entitled to know what else is coming before this body. If some of these Members were to get on a plane a half hour from now, what are they going to miss? Can anybody enlighten the membership that is here as to what is going on?

Mr. CHENEY. Mr. Speaker, if I may reclaim my time, it would be this gentleman's intention, as soon as we have achieved the Chair's desire to recess until 4 p.m., to visit the other body to make it abundantly clear that the likelihood of getting anything else passed through the House is remote at best, and we would like to receive from them the adjournment sine die resolution so that we can all get out of town.

The SPEAKER pro tempore. The Chair would like to take this opportunity to inform the House the reason the House cannot know the answer to that question is because the House is awaiting a list from the other body as to messages which it intends to send over here. The Chair understands the other body is in the process of sending us a list, and hopefully during the interim of the recess, the Chair will inform the body he intends to call, at the time of the recess until 4 p.m., in the interim there could be further discussion about whatever legislation is pending and we will have also an opportunity to have both sides review the legislation which the other body intends to send to us.

PARLIAMENTARY INQUIRY

Mr. SOLOMON. Mr. Speaker, I have a parliamentary inquiry?

The SPEAKER pro tempore. The Chair recognizes the gentleman from New York [Mr. SOLOMON].

Mr. SOLOMON. Would it be the intention of the acting minority leadership and the acting majority leadership, as soon as they have the list, to come to the floor and let those Members here know so that we do not have to wait until 4, then to have it presented to us, so we can know within a half hour and both sides can know within a half hour?

The SPEAKER pro tempore. The Chair, in response, would say that although the Chair does not intend to convene the House until formal messages are received, the acting minority leader and myself will be notifying both Cloakrooms and the Cloakrooms can inform the Members as to what is pending.

Is there any further business to come before the House at this time?

EXPLANATION OF TECHNICAL AMENDMENTS TO THE TAX BILL

(Mr. NELSON of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. NELSON of Florida. Mr. Speaker, I yield to my friend from Arkansas [Mr. ANTHONY].

Mr. ANTHONY. I thank the gentleman for yielding.

Mr. Speaker, there was a comment made on the floor by my good friend from Wisconsin [Mr. SENSENBRENNER] about some clinkers being in the bill. We have a copy of the 13 so-called clinkers. I would be happy during the recess to sit down and go through each one of them and explain them to him in detail. But to try and give you a broad example of what we are trying to do: At present there is a provision in the conference that gives benefits in one particular industry to only 15 companies. There is a provision in here that would broaden that out and make it generic without any additional cost. Now, one of the reasons that we went into tax reform to begin with was to try to take out special tax provisions for the select few. If there is an objection to this, then there will be signed into law a special tax break for a select few in a particular industry.

I do not think that is right, I do not think that is fair. That is exactly the reason we spent 2 years trying to

straighten up the Tax Code to broaden it. These are the types of things contained in the technical corrections. I do not consider them to be clinkers. I think this is an opportunity for us to clean up some things that were done. I do not like the procedure any more than the gentleman from Wisconsin [Mr. SENSENBRENNER] does. What I would promise you is that I would work with you in the next Congress, to work with the new leadership to assure that we are not here at the end of a session on a Saturday and going through things. Personally, I think it is an embarrassment to the way we run our business. But we are here and we ought to do our dead-level best to make sure the legislative process works. If this does not work I can go home and tell my taxpayers that we did not complete the job on tax reform because there are still some inequities that were allowed in the code. We have an opportunity to finish our work on tax reform and I would love to work with the gentleman on the other side during the recess to make sure that those things are made adequately clear to you if in case we come back and bring it to the floor to ask for a unanimous consent.

The SPEAKER pro tempore. If there is no further business to come before the House at this time, pursuant to the order of the House of earlier today, the Chair declares a recess until 4 p.m.

Accordingly (at 2 o'clock and 21 minutes p.m.) the House stood in recess until 4 p.m.

□ 1600

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. HOYER) at 4 p.m.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair would notify the House that the Senate is starting to move some legislation, none of which has been received in the House.

It is the intention of the House to recess once again until 5 p.m., at which time we hope everything will be here, the paperwork will be done, and we will be able to move everything.

It is the Chair's hope and expectation that that will be the last time we will need to come back, though we cannot make that promise until we see what comes from the Senate.

PARLIAMENTARY INQUIRY

Mr. WALKER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. WALKER. Mr. Speaker, do we know yet whether they have passed the sine die resolution over there?

The SPEAKER pro tempore. We do know that, and the answer is they have not passed it yet.

RECESS

The SPEAKER pro tempore. Pursuant to the authority granted to the Speaker earlier today, the House will be in recess until the hour of 5 p.m.

Accordingly (at 4 o'clock and 2 minutes p.m.) the House stood in recess until 5 p.m.

□ 1655

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. HOYER) at 5 p.m.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair would like to announce to the Members that the other body has still not sent us all of the requisite legislation. We have communicated with them and we are still waiting upon them.

Until that time, we intend to take no further action and we will recess subject to the call of the Chair. There will be a half hour notice through the cloakrooms and the bells will, of course, ring 15 minutes prior to reconvening.

RECESS

The SPEAKER pro tempore. There being no further business to come before the House at this time, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 5 o'clock and 2 minutes p.m.) the House stood in recess subject to the call of the Chair.

□ 1947

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. HOYER) at 7 o'clock and 47 minutes p.m.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, DC, *October 18, 1986.*

Hon. THOMAS P. O'NEILL, Jr.,
The Speaker, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted by the U.S. House of Representatives on October 18, 1986, the Clerk received the following message from the Secretary of the Senate: That the Senate passed S. Con. Res. 173 and S. Con. Res. 174; passed, with amendments, H.R. 3214; agreed to the House amendment with an amendment to S. 2245; agreed to the House amendment to the Senate amendment with amendments to H.R. 5495; and agreed to the House amendments to the Senate amendment with amendments to H.R. 1426.

With kind regards, I am

Sincerely,

BENJAMIN J. GUTHRIE,
Clerk, U.S. House of Representatives.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, DC, *October 18, 1986.*

Hon. THOMAS P. O'NEILL, Jr.,
The Speaker, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted by the U.S. House of Representatives on October 18, 1986, the Clerk received the following message from the Secretary of the Senate: That the Senate passed S. 985, S. 1828, S 2005, S. 2125, S. 2412, S. 2747, S. 2911, S. 2950, S. 2951, S. Con. Res. 175 and H. Con. Res. 417; passed, with amendments, H.R. 1452, H.R. 2663, H.R. 2868, H.R. 2946 and H.R. 4731; and passed with amendment, H.R. 3363 and H.R. 4444.

With kind regards, I am

Sincerely,

BENJAMIN J. GUTHRIE, *Clerk,*
U.S. House of Representatives.

PARLIAMENTARY INQUIRY

Mr. DINGELL. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. DINGELL. Mr. Speaker, are copies of the legislation just referred to available to the membership of the House?

The SPEAKER pro tempore. There are copies at the desk if the gentleman would like one.

Mr. DINGELL. Mr. Speaker, can the Chair inform the membership how the Chair proposes to proceed on the several bills that have been returned to the House?

The SPEAKER pro tempore. The Chair informs the House that there has been a discussion of the various bills that have come from the Senate to the House. The agreement between the leadership on the minority side and the Speaker and the majority leader was that nothing would be brought to the floor that was not consented to by the leadership on both sides.

At this point in time the Chair is in possession of a list of approximately eight or nine bills on which leadership consent has been accomplished on both sides.

The Chair has so notified Members, but would not necessarily be recognizing them in the order listed. The Chair has a list that he would be pleased to provide to the gentleman.

Mr. DINGELL. Mr. Speaker, I have the list. My question would relate more to the contents of these bills at the appropriate time, and also to what amendments and changes have been made to the House version or to the original version of the Senate bill.

The SPEAKER pro tempore. The Chair is of the opinion that that will be explained by the Member asking unanimous consent to concur in Senate amendments to the bill; he will be able to explain the bill and the amendments at that time.

REQUEST FOR CONSIDERATION OF H.R. 5495, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT, 1987

Mr. NELSON of Florida. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5495) to authorize appropriations to the National Aeronautics and Space Administration, and for other purposes, with a Senate amendment to the House amendment to the Senate amendment thereto, and concur in the Senate amendment to the House amendment to the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment to the House amendment to the Senate amendment, as follows:

Page 14, lines 18 and 19, strike out "The Administrator is authorized and encouraged" and insert: "If the Administrator, with the concurrence of the United States Trade Representative and the Secretaries of State and Commerce, determines that the public interest so requires, the Administrator is authorized".

Page 15, line 2 after "percent" insert: "In determining under this subsection whether the public interest so requires, the Administrator shall take into account United States international obligations and trade relations.".

Page 15, strike out lines 4 to 9.

Page 15, line 10, strike out "(c)" and insert: "(b)".

Page 15, line 16, strike out "(d)" and insert: "(c)".

Page 15, after line 20, insert:

SEC. 112. (a) There is hereby established, in the Executive Office of the President, the National Space Council (hereafter in this section referred to as the 'Council'), which shall be composed of—

(1) the Vice President, who shall be Chairman of the Council;

(2) the Secretary of State;

(3) the Secretary of Defense;

(4) the Secretary of Commerce;

(5) the Secretary of Transportation;

(6) the Administrator, who shall be the Vice Chairman of the Council; and

(7) such other members as the President may appoint.

(b) In the absence of the Vice President, the Administrator shall preside over meetings of the Council.

(c) Each member of the Council may designate an officer of their department or agency to serve on the Council as their alternative in their unavoidable absence.

(d) It shall be the function of the Council to advise the President, as the President may request, with respect to the following functions:

(1) survey of ongoing civilian space activities;

(2) review of long-range goals for civilian space activities;

(3) coordination of civilian space activities among civilian agencies and with agencies involved in national security space activities; and

(4) interagency cooperation in civilian space activities.

(e) The Council may employ a staff to be headed by a civilian executive secretary who shall be appointed by the President. The executive secretary, subject to the direction of the Council, is authorized to appoint and fix the compensation of such personnel, including not more than seven persons, as may be necessary to perform such duties as may be prescribed by the Council in connection with the performance of its functions. Each appointment under this subsection shall be subject to the same security requirements as those established for personnel of the National Aeronautics and Space Administration appointed under section 203(c)(2) of the National Aeronautics and Space Act of 1958. Other provisions of law or regulations relating to Government employment shall apply to employees of the Council reporting directly to the Chairman to the extent that such provisions are applicable to employees in the Office of the Vice President.

"(f)(1) The Council shall establish a Users' Advisory Group composed of nine non-Federal representatives of industries and other persons involved in space activities.

(2) The Vice President shall name a Chairman of the Users' Advisory Group.

(3) The Council shall from time to time, but not less often than once a year, meet with the Users' Advisory Group.

(4) The function of the Users' Advisory Group is to ensure that the interests of non-Federal entities involved in space activities, including in particular commercial entities, are adequately represented in the Council.

Page 22, strike out lines 3 to 10.

Page 22, line 11, strike out "308" and insert "307".

Page 27, after line 24, insert:

"SEC. 602. PUBLIC WARNING AND FORECAST SERVICES.

"(a) There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its public warning and forecast service duties under law, $330,598,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to public warning and forecast specified by the Act entitled 'An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture', approved October 1, 1980 (15 U.S.C. 311 et seq.), the Act entitled 'An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes', approved August 6, 1947 (33 U.S.C. 883a et seq.), and by any other law involving such duties. Such duties include meteorological, hydrological, and oceanographic public warnings and forecasts.

"(b) Of the amount authorized to be appropriated by subsection (a) of this section, $45,500,000 is authorized to be appropriated only for activities related to the Next Generation Weather Radar Program. Such activities may include site surveys, preparation for production radars, limited radar production, initial operational test and evaluation of radars, training of personnel, release of long lead items for full production, award of the production contract, and land acquisition for radar sites.

"(c) It is the sense of the Congress that procurement and deployment of essential weather technologies, and the resultant modernization of the National Weather Service, should continue on schedule in order to improve the protection of the public and to increase the productivity of the Nation's economy. Such technologies shall include, but not be limited to, the Next Generation Weather Radar Program (NEXRAD), the Advanced Weather Interactive Processing System (AWIPS), the Automated Surface Observing System (ASOS), and the Profiler System.

"(d) At the time of submission of the fiscal year 1988 budget, the National Oceanic and Atmospheric Administration shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives a comprehensive long-range plan on how the National Weather Service shall utilize planned weather technologies to provide effective weather services to meet national needs. This plan shall address, among other things, National Weather Service office structure and organization, its staffing and budgetary profiles, its role in providing weather services to the public, and a phased plan for deployment of weather-related technology and equipment.

"SEC. 603. ATMOSPHERIC AND HYDROLOGICAL RESEARCH.

"There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its atmospheric and hydrological research duties under law, $68,044,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to atmospheric and hydrological research specified by the Act entitled 'An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfe the Weather Service to the Department of Agriculture', approved October 1, 1890 (15 U.S.C. 311 et seq.,), and by any other law involving such duties. Such duties include research for developing improved prediction capabilities for atmospheric and hydrological processes.

"SEC. 604. SATELLITE SERVICES.

"There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its satellite services duties under law, $72,606,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to satellite services specified by the Act entitled 'An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture', approved October 1, 1890 (15 U.S.C. 311 et seq.), the National Aeronautics and Space Administration Authorization Act, 1985, approved July 16, 1984 (Public Law 98-361; 98 Stat. 422), and

by any other law involving such duties. Such duties include satellite maintenance and operations and satellite data analysis.

"SEC. 605. SATELLITE SYSTEMS.

"There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its satellite systems duties under law, $168,139,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used by the National Oceanic and Atmospheric Administration to continue operating two polar-orbiting meteorological satellites in fiscal year 1987 and to continue procurement of polar-orbiting meteorological satellites (NOAA I-M) in fiscal year 1987. In addition, such moneys shall be used to fund those duties relating to satellite systems specified by the Act entitled 'An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture', approved October 1, 1890 (15 U.S.C. 311 et seq.), the National Aeronautics and Space Administration Authorization Act, 1985, approved July 16, 1984 (Public Law 98-361; 98 Stat. 422), and by any other law involving such duties. Such duties include spacecraft procurement, launch, and associated ground station system changes involving polar-orbiting and geostationary environmental satellites.

"SEC. 606. DATA AND INFORMATION SERVICES.

"There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its data and information services duties under law, $22,734,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to data and information services specified by the Act entitled 'An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture', approved October 1, 1980 (15 U.S.C. 311 et seq.), and by any other law involving such duties. Such duties include environmental data and information products and services in the atmospheric, marine, solid earth, and solar-terrestrial sciences.".

Mr. CHENEY (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wyoming?

There was no objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

Mr. CHENEY. Reserving the right to object, Mr. Speaker, it is not my intention to object, but I make my reservation so that the gentleman from Florida may have an opportunity to explain his request.

Mr. NELSON of Florida. Mr. Speaker, will the gentleman yield?

Mr. CHENEY. I yield to the gentleman from Florida.

Mr. NELSON of Florida. I thank the gentleman for yielding.

Mr. Speaker, this is the NASA authorization bill that we have worked out very carefully over the course of the last several months. It has had the concurrence of both sides of the aisle in this body, as well as the other body. It should have been through the legislative process long before this, but as the gentleman knows, there were a number of items that were noncontroversial that were held up in the logjam down in the other body. That is why we come at this late hour.

This has the authorization for the funding for NASA for fiscal year 1987. It includes the authorization for the replacement orbiter. It includes the authorization for NASA to proceed to acquire launch services for certain expendable launch vehicles that they may need to work off the tremendous backlog of Government satellites that we now have to get launched to proceed with the Nation's space program. It in essence reflects in large part, with a few minor adjustments that we worked out with the other body, the vote of some 407 to 8 by which the NASA authorization bill passed this House about 3 weeks ago.

□ 1955

I will be happy to go into much greater detail if the gentleman would so desire.

Mr. CHENEY. Mr. Speaker, I thank the gentleman for his explanation.

Mr. DAUB. Mr. Speaker, will the gentleman yield?

Mr. CHENEY. Under my reservation of objection, I yield to the gentleman from Nebraska.

Mr. DAUB. Mr. Speaker, I thank the gentleman for yielding under his reservation for the purposes, if I might, of entering into a colloquy with the distinguished gentleman from Florida [Mr. NELSON] who has just finished explaining this piece of legislation that is before the House by unanimous-consent request.

Mr. CHENEY. Under my reservation of objection, I yield to the gentleman from Nebraska for that purpose.

Mr. DAUB. Mr. Speaker, I would ask the gentleman from Florida [Mr. NELSON], were any substantive changes made in this legislation in the other body pending its being sent here to us to consider tonight by unanimous consent?

Mr. NELSON of Florida. Mr. Speaker, will the gentleman yield?

Mr. CHENEY. I yield to the gentleman from Florida.

Mr. NELSON of Florida. Mr. Speaker, with regard to the Space Policy Council, there were just a few minor changes that I do not think you could consider substantive that were made.

The only substantive thing that I can think of is that the other body wanted the position of having the NOAA authorization added to the NASA authorization bill. It is included. That was agreed to by all sides of the aisle in both bodies, and it is a noncontroversial item and includes an item concerning the National Weather Service plan that is of significant interest to the gentleman from Nebraska.

Mr. DAUB. Indeed, the gentleman is right, and I thank him for his explanation. We are pleased, as a matter of fact, that in the other body, although the matters were not joined in that manner in the first place, that to our bill they have added the NOAA provisions, of particular interest to this individual, to this Member from Nebraska for its long range weather satellite forecasting research that will be done; that could be of great benefit to the Midwest and to agriculture especially.

I am glad for that additional substantive change to the NASA bill, a bill that I know the gentleman has worked very hard on and is bringing to the floor on this day after most of our other work has been concluded, the day after most of our leadership has gone home, when we find that indeed all of those in leadership and all of those ranking and minority members of the subcommittee and full committee on which the gentleman serves have agreed because they are the experts on this particular set of legislation before us.

They have attended the hearings, they have studied the problems, and I know that most of us in this body do rely in fact upon the expertise and the knowledge and the skill that is possessed by those who serve on the committees of jurisdiction before any particular piece of legislation is brought to this body, particularly under the more difficult circumstances of a unanimous-consent request, where indeed any one Member could obstruct the process and hold a bill like this, with all of its value for many Members on both sides of the aisle, and on both sides of the Congress, both sides of this building, from becoming the law and being sent to the President for his signature.

And I do think that we all recognize that particularly at this late hour any one Member then in the House could exercise the same kind of a prerogative that a Member of the other body could do, remembering, of course, that the pay is the same, but at this late hour, without a quorum in either the House or the Senate, any one Member here tonight could object and, by doing so, effectively kill any piece of legislation that might be brought to the floor of the House for unanimous-consent request.

It is a very difficult process for me to stand and watch a series of bills that includes boat safety, District of Columbia jury system, the Cadet Nurse Corps, NASA reauthorization, which we are talking about right now, a bill concerning the Export Administration, a bill concerning technical corrections in reconciliation with respect

to Medicare, a bill that deals with refugee assistance, and another one that deals with amendments to the Immigration Act that could, indeed, be held up by one Member who would for any good reason desire to enter an objection to the unanimous-consent request.

I notice that absent from this particular list of bills, which have evidently been agreed to by the majority and by the minority and by the ranking and the majority and the Republican ranking members of the committees affected, are the Technical Corrections Act to the tax bill, the enrolling concurrent resolution to the tax bill. They do not appear on this particular list subject to an agreement on both sides. And before I would allow this particular piece of legislation to move forward, without interposing my objection to the bill, I would like to ask some further questions of my leadership, if I might.

Would my leader, the gentleman from Wyoming, continue to yield to me under his reservation of objection?

Mr. CHENEY. Mr. Speaker, under my reservation of objection I continue to yield to the gentleman from Nebraska.

Mr. DAUB. Would the gentleman explain to me why the enrolling resolution to the concurrent resolution for the Tax Reform Act of 1986 does not appear on this list of evidently agreed to unanimous-consent requests?

Mr. CHENEY. This list was compiled in accordance with the wishes of the Speaker, the majority leader, and the minority leader in a meeting held late last night, and at that time it was agreed that measures would be taken up today, prior to adjournment sine die, on which there was no disagreement between the two parties. If there was a bill which we anticipated would be objected to, then it would not appear on the list, it would not be brought up, and there would be no unanimous-consent requests made for its passage. That is why this particular list was put together.

Obviously we could not be certain when we put the list together that every single one of these measures will fly. Any Member on the floor is free to object to any of the items on the list, but the reason the specific issue the gentleman is interested in was not put on the list was because it was very clear from our conversation with a number of Members that, in fact, it would be objected to.

Mr. DAUB. I thank the gentleman for his answer. Would the gentleman continue to yield?

Mr. CHENEY. Certainly, under my reservation of objection I yield to the gentleman from Nebraska.

Mr. DAUB. I would like to inquire, Mr. Speaker, as to whether or not at the hour of agreement on this particular list, although I am advised there were many more items on the list at the time as well, that there was an agreement that nothing be put on here that had any changes made in the Senate, intervening the agreement last night; that is to say, for example, with reference to the bill we are just talking about, was it the knowledge of the leadership at the time that the agreement would be made in the Senate to put on the additional information to the authorization bill for NASA?

Mr. CHENEY. No; there was no such agreement made. The agreement was as I stated it, and the gentleman is correct, there were a number of items, not only the concurrent resolution for the technical amendments to the Tax Act, but a number of other items as well on which disagreement was anticipated and, therefore, they do not appear on the list. And it is not expected that they would be brought up under unanimous-consent requests tonight.

Mr. DAUB. Mr. Speaker, at the appropriate time, I would have to inquire of the Chair, if the gentleman will continue to yield under his reservation of objection, and I would like to speak to what I think are the important points of the concurrent resolution on the tax bill to be sure that in this record we have an elaboration of the reasons why I believe that bill, too, should be taken up tonight, passed in some form and sent back to the other body who awaits that particular measure.

Until such time as it would be advisable, I would object to any further consideration of any of the unanimous-consent requests that might be brought to the House until I know whether I would have a chance to speak on the tax bill and enter into several colloquys with some of my colleagues who are also here interested in that matter as well. For it seems to me that if there are going to be objections to that being brought up, then indeed we who are interested in that piece of legislation ought to have our opportunity to discuss the matter before we agree to legislation at this late hour procedurally that other Members are here interested in having passed at this time.

Mr. CHENEY. If I may reclaim my time. I would be happy at this point, under my reservation, to continue to yield to the gentleman.

The SPEAKER pro tempore. The Chair would be glad to respond to the question.

It would be the Chair's intention, after agreeing to such unanimous-consent requests as can be agreed to, to then recognize Members for the purposes of discussing items which they may want to address. The gentleman from Texas, of course, is now expressing his own intention to do that.

So the Chair will assure the gentleman that there will be that opportunity during the course of the evening before the House adjourns.

Mr. DAUB. Will the gentleman continue to yield under his reservation of objection?

Mr. CHENEY. I continue to yield to the gentleman from Nebraska.

Mr. DAUB. Mr. Speaker, I thank the gentleman from Wyoming for allowing the Chair to give this Member that explanation.

I wish to say to all of the Members here present that it is my intention to object presently until such time as I can get a further clarification with respect to the reason why the tax bill is not on this list, and give other Members a chance to enjoy the benefit of the thinking of other Members who are in the Chamber with respect to that very important piece of legislation that is so near to final passage.

If, in fact, under the reservation of the gentleman from Wyoming I might be permitted the indulgence of the House and the gentleman from Wyoming to express my views on the tax bill that is not a part of this list at the present time, and if in fact that might, I would suggest, expedite the matters of the House in moving to the other items on this list, then that might be the appropriate decision.

□ 2005

Mr. Speaker, I was on my feet as was the gentleman from Wyoming at the time he was recognized for his reservation. When he no longer has a reservation, than I shall reimpose my request to the Chair for a reservation and at the time object unless I have had the opportunity to talk about the tax bill, before any requests are granted.

Mr. CHENEY. Mr. Speaker, I withdraw my reservation of objection.

Mr. NELSON of Florida. Mr. Speaker, since there are different agendas being expressed here, I would ask unanimous consent that we withdraw consideration of this particular bill at this time.

The SPEAKER pro tempore. The Chair will state to the gentleman that he does not need unanimous consent at this time to withdraw the request.

Mr. NELSON of Florida. Then, Mr. Speaker, I withdraw it.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate has passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 2443. An act to limit the number of days a depository institution may restrict the availability of funds which are deposited in any account.

EXPRESSION OF LEGISLATIVE CONCERN

Mr. DAUB. Mr. Speaker, I ask unanimous consent to address the House for 5 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

Mr. DAUB. Mr. Speaker, I want to say to my colleagues that this is not a very easy, and indeed not a very pleasant circumstance to be in, and I do not relish the obligation that I feel that I do have to speak at this point on the matter which I talked about a moment ago when I expressed my concern for the absence from the list of agreed unanimous-consent requests that the concurrent and enrolling resolution to the Tax Reform Act of 1986 be included at this late hour in the final business of the Congress.

The vast majority of the provisions in the concurrent resolution have had a good deal of sunlight brought to bear upon them. The concurrent resolution following its passage was enrolled and printed, House Concurrent Resolution 395, for every Member of the House of Representatives. Now, that is since the 25th of September, for every Member to have had the opportunity to examine. In fact, it is a print. It is a print; it is a passed, enrolled concurrent resolution.

So there can be no Member rise on this floor at this hour to say that they did not know what was essentially in, and/or was 90 percent of, the content of that resolution.

In both cases with respect to the additional perfections, as we move the concurrent resolution on the date of the final passage of the Tax Reform Act from the House to the other body, wherein they added to it certain amendments and sent it back and in turn we added some amendments to it, struck some of theirs and sent it back, where last night very late after we had adjourned the other body added some other amendments, struck some of ours, and sent it back and it now lies at the desk, awaiting an opportunity to be brought up as well under unanimous consent, for the opportunity for it to be considered here, passed and/or with an amendment, sent back to the other body that does at this very hour await our disposition of this matter.

In both cases, the House sent these technical and perfecting corrections to the Senate without objection. The bill tonight that I would like to see us put on this list contains only a handful of minor technical corrections resulting from Senate action on the same bill, and such changes have been cleared with both the minority and the majority members available and the chairman of the Ways and Means Committee.

There is no substantive tax policy provision in this legislation which has not been the subject of consideration by the House on two prior, separate occasions. In fact, there are a series of technical corrections that have been agreed to at this point affecting a great number of Members and a great number of States.

In many cases, the provisions of this bill are not provisions which can wait for the next Congress. The bill contains many technical corrections required before the tax reform bill may be effectively administered. Without this corrections bill, there will be nonsensical provisions and areas where taxpayers will not have any idea of the intent of the tax bill when the next calendar year begins, or how they personally will be affected.

In some cases, there are important elections which must be made by taxpayers in 1986 which are contingent upon whether the provisions of this corrections bill are enacted. Absent this corrections bill, the taxpayer will be faced with current elections for which there are no determinations as to the eventual tax consequences.

There are literally thousands of American taxpayers who cannot be made whole next year if this bill is not passed this evening and sent back to the other body.

Were this bill a new starter, which would be an attempt to circumvent the normal process of this body, I, too, could not support it. Instead, however, this legislation, in a very similar form passed immediately after the passage of the tax bill weeks ago. Since then, the provisions and disputes associated with this bill have been subject to scrutiny and are well known to all the Members and the staff.

I have in my possession at the desk for any Member here who would like to examine it, a list of items contained in the concurrent resolution; some 60-plus Members' names appear on the list; in fact, it affects over 240 Members of the House. The majority of those affected happen to be Republican Members of the House, not Democrat Members of the House; the majority of special interests, if you will, contained in the bill in the 60-some Members' names who are on this list are in fact Republican and not Democrat.

The States affected number 31. I have a list here in front of me of not only the States affected but the particular geography of the States affected by the subject of House Concurrent Resolution 395 as could be before us, as currently at the desk here in the House—if it does not pass would not be a part of the tax bill which will go to the President shortly, and in fact would anticipate to be signed on Wednesday or Thursday of this coming week.

It seems to me if any Member, too, were interested in objecting, that they could come and look at the final 13 items that have remained after 2 long years of work by hundreds of Members of the Congress on both sides of the aisle on both sides of the building to look at the final 13 items at this agreeable hour of the evening which may turn into a set of hours not so agreeable, that have now been resolved by the majority and by the minority on the tax committees; and it seems to me that if there are any questions and concerns about the substance of those changes that could be a part of that concurrent resolution should it be subject to the opportunity to receive a unanimous-consent request, that in fact those objections can be satisfied by Members, Democrat or Republican, here from the Committee on Ways and Means and/or our respective staffs who are here as well.

(By unanimous consent, Mr. DAUB was allowed to proceed for an additional 5 minutes.)

Mr. ANTHONY. Mr. Speaker, will the gentleman yield?

Mr. DAUB. I yield to the gentleman from Arkansas.

Mr. ANTHONY. Mr. Speaker, I thank the gentleman for yielding. Mr. Speaker, I think he makes an excellent point and in fact, on this floor in an earlier colloquy with another Member of Congress from Wisconsin who thought there may be some clinkers in this bill, I told him that I would provide him with that list; I would sit down with him and go through those, item by item, and discuss with him the terms of the negotiations that have gone on between the Democrats and the Republicans in this Chamber also with Members of the other body, and all of the great efforts that have been made to make sure that there are no clinkers in this bill; but it is a matter of trying to correct some mistakes that were made.

That gentleman has now withdrawn his objection; he has caught a plane and he has gone back to his State, I assume to start doing some politicking for the general election.

I would just like for this body to know, and I would like the RECORD to note, some of the types of things we are trying to do. If there is an objection heard to a request to bring this technical corrections bill up, what will happen: Four States will benefit under an aviation amendment that was put in the bill originally. This concurrent resolution will make it generic. If we are not able to make it generic, then what we will have, again, is a continued Tax Code that will favor four States to the detriment of others.

We spent 2 years in this Chamber, we spent 2 years in this body, trying to take out these special provisions and these special breaks. We may be denied the opportunity to once again clarify it and make it generic. If we cannot make it generic, then we can

point with pride to the fact that we have got some special tax breaks in here for four States.

I do not think it is fair. I think this body ought to use its legislative will and might at the last moment, to make sure that the bill is fair and generic.

Take another area: We have an area of insurance companies that get some special breaks. Take a look on the map where those insurance companies are located; they number about 15; they are all up in the Northeast. There are insurance companies all the United States that get benefit from this rule. They were not around when those deals were made, but we have hammered out and fashioned a compromise that will make it generic so that all insurance companies will be treated accordingly and equally.

□ 2015

That is what good tax policy is all about. I do not think this body and this country should be denied the opportunity to correct some legislation mistakes that were made during the course of tax reform. There are no clinkers in here. If anybody in this Chamber thinks there is a clinker in here, we have had all afternoon to sit down and work and visit with them about it.

As Mr. GIBBONS said on this floor earlier, the only reason we are here is to try to provide the very best we can in the closing moments of the 99th Congress as far as good tax policy is concerned.

The gentleman from Nebraska has made many good points. I would ask that if any Member in this Chamber still has in his heart a desire to want to object if this is brought up later tonight, to sit down and talk with us, go back through the list and see if we cannot resolve our differences on that. If it only becomes a matter of a disagreement over procedure, I would agree that the procedure is flawed, there is nothing I can do about that. I bought into a game that was flawed. What I would like to do is to make the best policy that I can under a bad circumstance; pledge with everybody on this floor that we will try to do a better job of legislation in the next Congress to make sure that we are not here at 8:15 on a Saturday night the last night of a Congress.

So I will close by saying that I think the gentleman has made some very strong points. I would urge any other colleagues in this body that have still not yet made a full commitment to withdraw some objections that they may have said they would interpose earlier, I know the gentleman and I can sit down and talk with them and hopefully agree upon an agreed course of action.

Mr. DAUB. I thank my good friend from Arkansas, BERYL ANTHONY.

Mr. Speaker, no Member, I must say to my colleagues, has worked harder than the gentleman from Arkansas to try to perfect this legislation and resolve the hurdles and roadblocks that have come apart as during the last couple of weeks. As we take, as the gentleman said, 2 years of work by a very large number of Members of the Congress, very bipartisan effort to provide the American public, to business and individuals, historic and sweeping tax reform to make that Tax Code fairer. The particular concurrent resolution that could be brought up tonight by unanimous consent has in it a perfecting of that fairness issue, on insurance companies, on effective dates, and on aircraft and airplanes as the gentleman indicated on a number of other items that has skinnied down, sorted down, narrowed down, political compromises have been worked and the will of the House has been worked up to this point, where every single Member interested and involved has sat down and in the spirit of comity and accord, understanding—there is no quorum present—understanding the difficulty of using other kinds of tactics on parliamentary maneuvers to get record votes on things that would satisfy them otherwise, have been unable to do so because of the circumstances.

We cannot get to the end of this long 2-year effort, and we are going to cloud this effort substantially by failing to get to the end of the process that could be resolved tonight with spirit, comity and the willingness to sit down and work out the differences that may still exist, if any do, as result of the discussions, I say to the gentleman from Arkansas, that we are having right now.

The SPEAKER pro tempore (Mr. HOYER). The time of the gentleman from Nebraska [Mr. DAUB] has expired.

(By unanimous consent, Mr. DAUB was allowed to proceed for 5 additional minutes.)

Mr. DAUB. Mr. Speaker, as I came to the floor of the House with the last bells that rang, I thought what I might say to any individual Member of the House that I might personally know who I would consider my friend who would have for some reason an inclination, willingness to object to the consideration of the concurrent resolution and enrolling resolution of the bill, what could I say to that individual Member of this great body to persuade that objections should not be interposed just as it would be my hope that no Member would find excuse or reason to object to any other Member's request that has been worked out up to his point tonight.

I really did not have very many other thoughts in my mind except the idea of what the spirit of compromise has to be all about, what the idea of comity has to be all about, what the idea of process has to be all about. None of us like being here right now. All of us wish we could have disposed of these matters prior to this moment. But the fact of the matter is we now have received an adjournment resolution from the other body, a Member who might be inclined to object because they think that the matters are going to go on and on and on because there is no certainty to the conclusion of this conduct under the onerous process, that we all agree is an onerous process, can now be satisfied that because the resolution has arrived from the other body we are going to quit. We are just about done, this is not going to go on and on and on into the wee hours of this morning or tomorrow or the next day with all sorts of other dogs, cats, and kitchen sinks that Members might be afraid, for substance or lack of substance, might be brought up.

It seems to me that would be my appeal to any other Member who might be inclined to object. We have worked very hard, a number of us, and we have political as well as tax policy reasons why we would like to see for the President of the United States, particularly for the President of the United States, for the Republican Party, for the Democratic Party, for the individuals and businesses that are going to have to try to sort their way through this historic tax reform that many of those who might be inclined to object tonight in fact voted for when the bill was before the body and have had plenty of opportunities before tonight to object to the concurrent resolution. I do not think that is a low blow or an unfair comment to make because indeed that is true. There have been plenty of other opportunities to let one's expression of concern be voiced in objection to the process and to the content of very important enrolling resolutions to the tax bill.

We will deliver to the American public historic tax reform that will be intelligible and intelligent and maybe not simplified, but streamlined, and with which individuals and businesses can cope and plan with this concurrent resolution being passed. Depreciation schedules for every kind of business you can imagine, the way in which the Tax Codes treat the elections for individual taxpayers, all will be perfected by the ability of the Treasury Department to issue regulations and implement five rates next year for individuals and then by 1988 the two rates we promised in this bill. Without this effort on our part tonight, there will be a substantial hindrance to that being done, at least in some a timely fashion that there will not be screams of retroactivity and special treatment and all manner of

other difficulties that we will have before us as a result.

So at this point in time may I say to my colleagues that I will be watching each and every unanimous consent request that is being brought to the floor tonight very carefully and without indicating to my colleagues whether or not this Member will interpose an objection that may at some further point in the hour or in the evening not be an objection or not will depend upon whether or not those that I suspect may have an intention to object to the concurrent resolution in fact fail to object to any of the other resolutions that will be brought before the body tonight.

I do urge all the Members of this body to try to work together and if we are going to help some Members out and some constituents out and some parts of the country out with the unanimous consent requests that we are going to grant on this list, then surely it cannot be considered any more or less fair or unfair than to allow the concurrent and enrolling resolution to perfect and deliver to the American public the promise of tax reform and the best effort this body can make tonight to be delivered tonight without a procedural objection to a set of procedures no one likes which may in turn suggest to some that the very procedure of objecting is as onerous as the procedure to plaintively whine and plead that the process is so bad that "I am going to let every bill go through tonight except for the one that I am opposed to." I hope there is no one in the Chamber who has that kind of motivation, who will be interested in scuttling only one of all of the other unfortunate unanimous consent requests that find themselves impaled upon a process at this late hour that no one likes.

I yield back the balance of my time.

CREDITING TIME SPENT IN CADET NURSE CORPS DURING WORLD WAR II FOR CIVIL SERVICE RETIREMENT

Mr. UDALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2663) to amend title 5, United States Code, to credit time spent in the Cadet Nurse Corps during World War II as creditable for civil service retirement, with Senate amendments thereto and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 3, after line 20, insert:

SEC. . RETIREMENT CREDIT FOR CERTAIN FORMER EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES.

(a) SHORT TITLE.—This section may be cited as the "Nonappropriated Fund Instrumentalities Employees' Retirement Credit Act of 1986".

(b) IN GENERAL.—(1) Section 2105(c)(1) of title 5, United States Code, is amended by inserting "of this title, subchapter III of chapter 83 of this title to the extent provided in section 8332(b)(16) of this title," after "chapter 53".

(2) Subsection (b) of section 8332 of such title is amended—

(A) by striking out "and" at the end of paragraph (14);

(B) by striking out the period at the end of paragraph (15) and inserting in lieu thereof "; and";

(C) by inserting after paragraph (15) the following new paragraph:

"(16) service performed by any individual as an employee described in section 2105(c) of this title after June 18, 1952, and before January 1, 1966, if (A) such service involved conducting an arts and crafts, drama, music, library, service club, youth activities, sports, or recreation program (including any outdoor recreation program) for personnel of the armed forces, and (B) such individual is an employee subject to this subchapter on the day before the date of the enactment of the Nonappropriated Fund Instrumentalities Employees' Retirement Credit Act of 1986."; and

(D) by adding at the end thereof the following: "The Office of Personnel Management shall accept, for the purposes of this subchapter, the certification of the head of a nonappropriated fund instrumentality of the United States concerning service of the type described in paragraph (16) of this subsection which was performed for such nonappropriated fund instrumentality.".

(c) EFFECTIVE DATE.—Notwithstanding any other provision of this Act which specifies an effective date for amendments made by this Act, the amendments made by this section shall take effect on the date of the enactment of this Act.

Amend the title so as to read: "An Act to amend title 5, United States Code, to credit time spent in the Cadet Nurse Corps during World War II as creditable service for civil service retirement, and to provide civil service retirement credit for certain employees and former employees of nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces.".

Mr. UDALL (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The SPEAKER pro tempore. The Chair wishes to state to the Members that it will be the Chair's intention to recognize the acting minority leader for a reservation of objection and he will then recognize another Member to make a reservation of objection subsequent thereto.

Is there objection to the initial request of the gentleman from Arizona?

Mr. CHENEY. Mr. Speaker, reserving the right to object, I yield to the gentleman from Arizona.

Mr. UDALL I thank the gentleman for yielding.

Mr. Speaker, this is a modest bill which came out of the Committee on Post Office and Civil Service providing retirement benefits for some 20 cadet women who served during World War II.

The other body added another similar group with similar qualifications to receive the same kind of benefit.

Mr. CHENEY. I thank the gentleman for his explanation.

Mr. Speaker, further reserving the right to object, I yield to the gentleman from Michigan.

Mr. DINGELL. I thank the gentleman from Wyoming [Mr. CHENEY].

My concern is what are the Senate amendments?

Mr. CHENEY. Under my reservation, I yield further to the gentleman from Arizona.

Mr. UDALL. The Senate amendment added approximately 150 to 200 additional women who have had the same or similar qualifications. The House bill dealt with women who had served in World War II.

Mr. DINGELL. If the gentleman will yield further, are there any other amendments relating to any other matter other than women who served as nurses or have qualifications along those lines.

Mr. UDALL. No, no other, nothing.

Mr. DINGELL. Nothing, no other matter, nothing that relates to any other matter that might be in the jurisdiction of another committee?

Mr. UDALL. No, no clinkers or hookers or anything of that sort.

Mr. DINGELL. I thank the gentleman.

Mr. CHENEY. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Arizona?

There was no objection.

A motion to reconsider was laid on the table.

REQUEST FOR CONSIDERATION OF H.R. 5495 NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT, 1987

Mr. NELSON of Florida. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5495) to authorize appropriations to the National Aeronautics and Space Administration, and for other purposes, with a Senate amendment to the House amendment to the Senate amendment thereto, and concur in the Senate amendment to the House amendment to the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment to the House amendment to the Senate amendment.

(For the text of the Senate amendment to the House amendment to the Senate amendment, see prior pages of the RECORD of today.)

Mr. NELSON of Florida (during the reading). Mr. Speaker, I ask unani-

mous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. NELSON of Florida. I thank the gentleman for yielding and with a great degree of sensitivity, recognizing the delicacy of the process that is going on here, it is, as we have described previously, the NASA authorization bill of which the Senate amendment made minor modifications in the National Space Council which was a part of the bill as it passed the House some several weeks ago by the whopping margin of something like 410 to 8, and the remainder of the Senate amendment authorizes the atmospheric and satellite activities of the National Oceanic and Atmospheric Administration.

Mr. CHENEY. I thank the gentleman for his explanation.

Under my reservation, I yield to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. I thank the distinguished gentleman and appreciate his yielding to me.

I have several questions about this legislation which has been discussed briefly earlier.

The question is are there any other amendments relating to any other matters in this legislation?

Mr. NELSON of Florida. No, sir.

Mr. DINGELL. And no authorization amendments, they relate solely to the matters described and not to any further or other matters?

Mr. NELSON of Florida. Staff has advised me here. Let me talk about minor portions that were changed in the agreement that was reached by both sides of the aisle between both bodies of the Congress. For example, there is a section that was called the "Buy American" section that was passed in the House bill. There was minor modification to that language in the Senate amendment. For example, the language as passed here in the House said "the Administrator is authorized and encouraged to award to a domestic firm a contract," and so forth, and it went on to describe where they would look to a domestic firm as having preference. A minor modification of the language was changed to "if the Administrator with the concurrence of the United States Trade Representative and Secretaries of State and Commerce determines that the public interest requires, then the Administrator is authorized to award to a domestic firm," and goes on with the same language. It is those kinds of minor modifications.

□ 2030

Mr. DINGELL. There are no changes relating to any other matters than the two questions, the NASA and the NOAA authorization.

Mr. NELSON of Florida. Mr. Speaker, if the gentleman from Wyoming will yield, that is correct. The gentleman is concerned about jurisdiction of the committees, and I know of no jurisdiction that would go beyond the bounds of the Science and Technology Committee.

Mr. CHENEY. Mr. Speaker, under my reservation of objection, I yield to the gentleman from Nebraska [Mr. DAUB].

Mr. DAUB. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I am still constrained to enter an objection at this point in the evening, although I cannot say with any degree of certainty at this point that I would continue to object for the remainder of the evening. But I must let my leader know and all of the Members of the House, the Speaker as well, that when the appropriate time comes, whether it is under the gentleman's reservation or under mine since I was on my feet, at the present time to object.

Mr. CHENEY. Mr. Speaker, further reserving the right to object, I want to state at this time that the gentleman is well within his rights and prerogatives as a Member of the House.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Florida?

Mr. DAUB. Mr. Speaker, reserving the right to object, I yield to the gentleman from Florida [Mr. NELSON].

Mr. NELSON of Florida. Mr. Speaker, recognizing that the gentleman from Nebraska has some real concerns about additional legislation, that the milieu has to continue and conversations have to go on about items on the agenda, recognizing the gentleman's concerns, I withdraw my unanimous consent request.

PARLIAMENTARY INQUIRY

Mr. SEIBERLING. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. SEIBERLING. Mr. Speaker, there are two bills I was going to bring up but before I do—and these are on the approved list—I would like to ask the gentleman from Nebraska what the status is now of his intentions. Is the gentleman going to object to every bill that is on the approved list?

The SPEAKER pro tempore. The Chair will state that the gentleman is essentially out of order at this point in time entering into a conversation with the gentleman. The gentleman may ask unanimous consent to address the House for 1 minute.

CLARIFICATION OF PROCEDURE ON FURTHER LEGISLATION

(Mr. SEIBERLING asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DAUB. Mr. Speaker, will the gentleman yield?

Mr. SEIBERLING. I yield to the gentleman from Nebraska.

Mr. DAUB. Mr. Speaker, it is my intention to deliberately proceed in the most expeditious way possible with the business of the House and to find our way shortly to a point where we may proceed even more expeditiously with the movement of unanimous-consent requests with those that are now on the list, as we are calling it, and some that may not be on the list, if it be the pleasure of any Member of the House. We are not too far from that point, I say to the gentleman.

I know that the hour is late. In fact, I have had to reschedule and cancel my airplanes all day today for the purposes we are here now gathered to dispose.

I am, unfortunately, at this point inclined to say yes to the gentleman, but do not expect it may be necessary for me to continue to be in that position for very much longer.

Mr. SEIBERLING. Does the gentleman say yes, he will object?

Mr. DAUB. At this point; but I want to explain, if the gentleman will continue to yield, that I may not be so inclined in a few more moments as time goes by.

Mr. SEIBERLING. Mr. Speaker, I would like to ask the gentleman from Wyoming, the list of bills that has been sent over from the Senate that have not been cleared for taking up on the floor are based on the fact, as I understand it, that someone has registered an objection to each one of those bills; is that correct?

Mr. CHENEY. Mr. Speaker, if the gentleman will yield, the agreement, again, worked out last night by the majority and minority leadership consisted specifically of an understanding that any bill which either side knew might be objected to would not be brought up or included on this list.

Mr. SEIBERLING. I understood that was the understanding.

My question is: Are any of the bills that were on the list that were not to be taken up so held because there is a belief that I am going to be one of the objectors?

Mr. CHENEY. If the gentleman will yield, I have no specific knowledge of what the gentleman's intentions are. Certainly in representing the minority in the process of compiling this list, I did not take into account the gentle-

man's expected objections to any of the legislation.

Mr. SEIBERLING. I just want to state for the record I have not registered an objection to any of the bills that have come over from the Senate, and it is not my present intention to do that.

That does not mean that if I discover something in one of them that I did not believe was there, that I might not do it, but I have no present intention to objecting to any of them. I just want to make that clear in case someone is holding a bill because they think I might object.

Mr. CHENEY. Mr. Speaker, if the gentleman will yield, perhaps if we could get that pledge from all of the Members in the Chamber, we might complete our business and be able to adjourn sooner than otherwise anticipated.

Mr. SEIBERLING. Lots of luck on that.

Mr. DAUB. Mr. Speaker, will the gentleman yield?

Mr. SEIBERLING. I yield to the gentleman from Nebraska.

Mr. DAUB. Mr. Speaker, the interest the gentleman has in expediting legislation that has been worked on very hard by the gentleman and his close associates is commendable, and I would not be the one to stand in the way of that.

I would say to all of the Members of the body here present, and those who may be listening, that the other body, while we have been deciding over here what we were going to do, moved every one of the bills we sent over to them, and expedited the business of closing this place down, and did not play the game of objecting because we were objecting or because someone was objecting for whatever parochial reason. They acted as they should on our bills; we have yet to act on theirs as we should.

Mr. SEIBERLING. Mr. Speaker, let me say that that is not quite correct. The other body passed a bill which I am the author of, and which had passed this House twice, and after they had passed it and a motion to reconsider was laid on the table, one of the staff rushed up and said, oh, one of the Members has a hold on this who was not even present.

The SPEAKER pro tempore. The gentleman is out of order. Under the rules we are not allowed to go into specifics of Senate actions.

Mr. SEIBERLING. Mr. Speaker, the two bills which I have been asked to handle from the other body are both bills which make certain corrections in Judiciary Committee originated legislation dealing with immigration. They are technical amendments as far as I can see.

I have no interest in or any particular knowledge of the background of these bills, but being the only member of the Judiciary Committee on this side who is present tonight, that is why I stated that I was prepared to bring them up.

Let me simply say, Mr. Speaker and my colleagues, I am leaving this body. This will probably be my last day in this body. I have no axes to grind. I have no bills I am trying to leverage in the Senate. I have no bills before us that I have any particular interest in. I am merely trying to do a service that I thought we were elected to do here, which is to do the public's business and do it in the best way we know how, and not allow arbitrary considerations to enter into it.

Mr. Speaker, I appreciate very much what the gentleman from Nebraska said, and I join him in that. I hope that, in that spirit, we will go ahead and try to complete the business of this Congress so that it may gracefully adjourn, and I might say decently adjourn.

RECREATIONAL BOATING SAFETY ACT OF 1986

Mr. DYSON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4731) to enhance boating safety by requiring a report relating to the display on gasoline pumps of the type of alcohol, the percentage of each type of alcohol, and the percentage of cosolvents, if any, contained in the gasoline; to amend chapter 131 of title 46, United States Code, relating to recreational boating safety, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 6, line 22, strike out 12110(b)(2) and insert: "13110(b)(2)".

Page 7, strike out lines 13 and 14.

Page 11, after line 19, insert:

SEC. 6. The authority of the Secretary of Commerce to make loans under paragraph (1) of subsection (d) of section 308 of the Coastal Zone Management Act of 1972 (Public Law 92-583, 16 U.S.C. 1451, *et. seq.*) as amended, shall extend to September 30, 1989, for loans made to eligible states or units pursuant to and in accord with agreements entered into between the Secretary and any state prior to September 30, 1986, that provided for a total sum of loans to be made to that state or its units, but such loan authorities shall be limited to $7,000,000.

Page 11, after line 19, insert:

SEC. 7. AMENDMENT TO THE COASTAL ZONE MANAGEMENT ACT OF 1972.

Section 318 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1464) is amended by adding at the end thereof the following:

"(d) The amount of any grant, or portion of a grant, made to a State under any section of this Act which is not obligated by such State during the fiscal year, or during the second fiscal year after the fiscal year, for which it was first authorized to be obligated by such State shall revert to the Secretary. The Secretary shall add such reverted amount to those funds available for grants under the section for which such reverted amount was originally made available.".

Mr. DYSON (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

□ 2040

Mr. DINGELL. Mr. Speaker, reserving the right to object, I would ask of my dear friend the same questions I have been dealing with with regard to the other legislation.

Can the gentleman tell us what is in the bill?

Mr. DYSON. If the gentleman will yield, the bill as passed by the House requires the Coast Guard to compile information on alcohol blended fuel. It also restructures the National Boating Safety Advisory Council and it makes technical changes in the shipping laws and clarifies an agreement between the Coast Guard and an Alaskan Native corporation.

The Senate amendment provides for a limited extension of loan authority under the Coastal Energy Impact Program, and provides for reallocation of unused grants previously funded under the Coastal Zone Management Act.

Mr. DINGELL. Mr. Speaker, further reserving the right to object, I believe a similar piece of legislation was referred to the Committee on Energy and Commerce?

Mr. DYSON. A similar bill was offered but under a different number, not this one.

Mr. DINGELL. I am curious; was this bill referred to the Committee on Energy and Commerce?

Mr. DYSON. No. It is my information that it was strictly referred to our Committee on Merchant Marine and Fisheries.

Mr. DINGELL. I believe the gentleman indicated to me that this has nothing to do with the Alcohol Blended Fuels Program?

Mr. DYSON. If the gentleman will yield, this is in fact a study on the use of those fuels in recreational boating.

Mr. DINGELL. But not going beyond that?

Mr. DYSON. No; just a study.

Mr. DINGELL. Does the legislation have any other changes by the other body in it and does it refer to any matters in the Senate amendment not alluded to by my dear friend from Maryland?

Mr. DYSON. Again, I am informed that that is the case; there are no changes other than what I read to you.

Mr. DINGELL. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

Mr. CHENEY. Mr. Speaker, reserving the right to object, I would be happy at this point to yield to the gentleman from Maryland if he has anything he would like to add to his previous discussion of the legislation.

Mr. DYSON. It is my understanding that, of course, this is on the so-called approved list, and it has obviously been cleared to be on that list. I think I have said just about all that needs to be said on the issue.

Mr. DAVIS. Mr. Speaker, this bill is substantially the same as that which passed the House on October 6, 1986, with the addition of noncontroversial amendments regarding coastal zone management program adjustments.

As amended in the other body, the bill would require the Coast Guard to compile information on alcohol-blended fuels used in recreational vessels, reauthorize and restructure the National Boating Safety Council, make technical and clarifying amendments to the shipping laws, particularly requiring the publishing of titling guidelines for recreational boats. It clarifies the implementation of an agreement between the Coast Guard and an Alaskan Native corporation.

The amendments added by the other body include a limited extension of loan authority under the Coastal Energy Impact Program so that transactions substantially completed prior to the expiration of this authority may be concluded without further administrative delay and a reallocation authority for grants previously funded under CZMA.

Mr. Speaker, the purpose of the CZMA fund reallocation amendment is twofold. First, it would allow a State 2 years to expend grant funds; second, amounts unused after that 2-year period would revert to the Secretary of Commerce for addition to future allocations under the grant program. In short, this would inject some flexibility into the CZMA program with the result that these grant funds would be fully used for their intended purpose. I understand that reallocation provisions such as these are normally included as part of the administration of other Government grant programs. Therefore, it is appropriate that we include them in the CZMA program.

I would just point out that the State of Michigan has one of the foremost CZM programs in the country. Nearly every community in my district has benefited from this program through recreational, economic, waterfront, and port and harbor activities and studies. In particular, these grant funds are used to staff the State assistance program to property owners who have suffered damage as a result of high water levels on the Great Lakes. Given the current predictions for the water level on the lakes there will be a continuing need to come up with the means to help communities to address this problem. These funds could be used for special studies and technical assistance to these victimized property owners. It is my hope that we can take up further action on this issue immediately when the 100th Congress convenes next year.

Mr. Speaker, the bill advances boating safety and addresses problems faced by coastal States. Therefore, I urge its adoption by my colleagues and withdraw my reservation.

Mr. YOUNG of Alaska. Mr. Speaker, the purpose of section 5 of this bill is to clarify certain ambiguous terms and conditions in a 1977 agreement with the Coast Guard to transfer certain tracts of Coast Guard property of Koniag, Inc., pursuant to Public Law 92–203. First, it clarifies that welding activities at a proposed ship repair facility that do not produce harmful electromagnetic interference with Coast Guard communications facilities are permitted. Second, it confirms title in Koniag for the wharf known as the old shipyard on Women's Bay near Kodiak, AK. Third, it confirms an easement over certain Coast Guard property to guarantee access to certain land-locked tracts of land conveyed to Koniag under the agreement. Finally, it guarantees the Coast Guard review of the construction of, and access to, a barge landing facility to ensure it is available for Coast Guard use.

This section is merely intended to carry out the purpose of the 1977 agreement and the intention of the parties to the agreement. If not clarified, the issues addressed in this amendment would be left to the courts to decide. That legal process would take years and Koniag, Inc., the regional Native corporation taking title to these lands under the agreement, may be denied the full use and benefit of those lands as intended by Public Law 92–203.

It does not add any cost to the authorization and will not convey additional lands to the corporation unintended by the original agreement. The Coast Guard contracted out a study in 1983 when the repair facility project was proposed to determine welding interference with their communications. The study concluded that, if properly installed, this equipment would not produce harmful interference.

Mr. Speaker, I urge my colleagues to support this bill to clarify this agreement with the Coast Guard.

Mr. CHENEY. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Maryland?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DYSON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just adopted.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

REFUGEE ASSISTANCE EXTENSION ACT OF 1985

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1452) to amend the Immigration and Nationality Act to extend for 2 years the authorization of appropriations for refugee assistance, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 1, line 5, strike out "1985" and insert: "1986".

Page 2, line 11, strike out "1986 and 1987" and insert: "1987 and 1988".

Page 2, line 20, strike out "1986 $74,783,000 and for fiscal year 1987" and insert: "1987 $74,783,000 and for fiscal year 1988".

Page 2, line 24, strike out "$8,761,000 and for fiscal year 1987" and insert: "1987 $8,761,000 and for fiscal year 1988".

Page 3, line 4, strike out "paragraphs" and insert: "paragraph".

Page 3, strike out lines 5 to 8.

Page 3, line 10, strike out "1986 $5,215,000 and for fiscal year 1987" and insert: "1987 $5,215,000 and for fiscal year 1988".

Page 3, strike out lines 17, 18, and 19.

Page 3, line 20, strike out "(b)" and insert: "(a)".

Page 3, line 24, strike out "(c)" and insert: "(b)".

Page 5, line 23, strike out "1985" and insert: "1986".

Page 5, line 24, strike out "1986" and insert: "1987".

Page 11, line 16, strike out "1986 and 1987" and insert: "1987 and 1988".

Page 11, lines 22 and 23, strike out "by the Department of State Authorization Act, Fiscal Years" and insert: "for fiscal years".

Page 12, lines 17 and 18, strike out "after March 31, 1975," and insert: "not more than 36 months before the beginning of such fiscal year".

Page 13, line 11, strike out "1986" and insert: "1987".

Page 15, line 2, strike out "entity, and" and insert: "entity.".

Page 15, strike out lines 3 and 4.

Page 16, strike out lines 9 to 20.

Page 16, line 21, strike out "(c)" and insert: "(b)".

Page 17, line 5, strike out "(d)" and insert: "(c)".

Page 17, line 6, strike out sections "(a) and (b)" and insert: "section (a)".

Mr. SEIBERLING (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. CHENEY. Mr. Speaker, reserving the right to object, I do so to yield to the gentleman from Ohio for the purpose of explaining the legislation.

Mr. SEIBERLING. I thank the gentleman.

Mr. Speaker, these amendments, as far as I can determine, are entirely technical amendments changing the years applicable from 1986 to 1987

without changing the amounts involved and changing the subparagraph references appropriately and inserting certain language that clarifies that it is dealing with fiscal years and not calendar years.

Mr. CHENEY. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. I thank the gentleman.

Mr. Speaker, I would like the gentleman from Ohio, my dear friend, to inform us if there are any other changes in the House bill or if the bill amends any other laws or deals with any other subject matter.

Mr. SEIBERLING. If the gentleman will yield, as far as I can determine, this deals only with the Immigration and Nationality Act and it so states and contains no amendments that are non-germane.

Unfortunately, the staff is not here tonight, so there has not been a staff analysis, but it is a very simple bill and the gentleman is welcome to look at it. As far as I can see, it deals strictly with this act and nothing else.

Mr. DINGELL. I thank the gentleman from Ohio for his response.

Mr. CHENEY. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. DAUB. Mr. Speaker, reserving the right to object, may I inquire of my good friend, whose esteemed service and long service and quality service to this body has been noted by many more eloquent than I before this evening, may I ask him to let the body know whether there is any substantive change, once again, between what left here the first time and what has come back.

Mr. SEIBERLING. If the gentleman will yield, the change in the fiscal year references from fiscal year 1986 to 1987 is obviously a substantive change. But as far as I can determine, this has no other change. It does not change the amounts of money, and it merely appears to be a conforming amendment which relates to the bill to the calendar year that we are in.

Mr. DAUB. Mr. Speaker, further reserving the right to object, when, in point of time, yesterday or today, did that substantive date change occur? Was it done this morning or this afternoon?

Mr. SEIBERLING. If the gentleman will yield, the bill states that it is October 18 which means that it was done today and I personally recall watching it done on the television of the other body's action earlier this afternoon.

Mr. DAUB. So it was not done yesterday or late last night; it was done in the daylight of the other body today?

Mr. SEIBERLING. Correct.

Mr. UDALL. Mr. Speaker, I had intended to call up and agree to the Senate amendments to—

H.R. 1426—The Indian Health Bill;

H.R. 3214—The Cow Creek Band Judgment Distribution Bill; and

H.R. 2868—The Wampanoag Indian Land Settlement Bill.

Unfortunately, I am advised that there will be an objection to this request from the other side of the aisle so I will not attempt to bring them up.

I do, however, want the House to know that each of these bills have gone the full length of the legislative process. Hearings were held, the committee process was complete, the bills passed the House by large margins, the Senate acted and now after all that effort and bi-partisan participation these measures will die.

Mr. DAUB. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Ohio?

There was no objection.

A motion to reconsider was laid upon the table.

IMMIGRATION AND NATIONALITY ACT AMENDMENTS OF 1986

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4444) to amend the Immigration and Nationality Act, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 10, after line 14, insert:

SEC. 22. ISSUANCE OF CERTIFICATES OF CITIZENSHIP FOR CHILDREN ADOPTED BY UNITED STATES CITIZENS.

Section 341 of the Immigration and Nationality Act (8 U.S.C. 1452) is amended—

(1) by inserting "(a)" after "341.", and

(2) by adding at the end the following new subsection:

"(b)(1) The adoptive citizen parent or parents of a child described in paragraph (2) may apply to the Attorney General for a certificate of citizenship for the child. Upon proof to the satisfaction of the Attorney General that the applicant and spouse, if married, are citizens of the United States, whether by birth or by naturalization, and that the child is described in paragraph (2), the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship, but only if the child is at the time within the United States.

"(2) A child described in this paragraph is a child born outside of the United States who—

"(A) is under the age of 18 years,

"(B) is adopted before the child reached the age of 16 years by a parent who is a citizen of the United States, either by birth or naturalization, and

"(C) is residing in the United States in the custody of the adopting citizen parent, pursuant to a lawful admission for permanent residence.".

Mr. SEIBERLING (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. CHENEY. Mr. Speaker, reserving the right to object, I do not plan to object, but would yield to the gentleman from Ohio for the purpose of an explanation of the legislation.

Mr. SEIBERLING. I thank the gentleman for yielding, I will endeavor to explain this as best I can.

The Immigration and Nationality Act Amendments provided for the issuance of certificates of citizenship for children that were adopted by United States citizens. When it went over to the Senate, they made some amendments to that provision, which, frankly, I am unable to determine exactly what the effect of the amendments that they made is.

□ 2050

As far as I can see, it does not result in any substantive change to the original intent of the bill.

The apparent difference, as far as I can determine, is that the other body added an amendment that the provisions with respect to citizenship for adopted children would apply only if the child is, at the time, within the United States. That was not in the House bill.

There may be some other minor changes, but as far as I can determine, that is the only one, and there is nothing in here that is not germane to the bill or that relates to any other subject matter.

Mr. GONZALEZ. Mr. Speaker, will the gentleman yield?

Mr. CHENEY. I yield to the gentleman from Texas.

Mr. GONZALEZ. Mr. Speaker, I rise to further request an explanation here. The gentleman said he did not fully understand the amendments of the other body, but can the gentleman tell me what the existing law is with respect to this registration?

Mr. SEIBERLING. Mr. Speaker, this bill was an addition to the existing law. The existing law did not adequately cover the question of the issuance of certificates of citizenship for children adopted by U.S. citizens, and this was an effort to correct that provision.

This amendment requires that upon proof of satisfaction by the Attorney General that the applicant and spouse are citizens of the United States, either by birth or by naturalization, and that then the child become a citizen of the United States and can receive a certificate of citizenship if the

child is at the time within the United States. That is the addition that the other body put on.

It has to, also, under the provision of this amendment, be a child who was born outside of the United States, who is under the age of 18, who was adopted before the child reached the age of 16 by a parent who is a citizen of the United States and who is residing in the United States in the custody of the adopting parent and was lawfully admitted to the United States.

So it seems to me that it is extremely hedged, that it would be very difficult to use it for any other purpose. The purpose is clear on its face.

Mr. GONZALEZ. Mr. Speaker, did I hear the gentleman correctly that both adopting parents must be citizens of the United States?

Mr. SEIBERLING. That is correct, at the time of the adoption.

Mr. GONZALEZ. Mr. Speaker, I thank the gentleman.

Mr. DINGELL. Mr. Speaker, will the gentleman yield?

Mr. CHENEY. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Speaker, are there any amendments in this legislation which have been put in by the other body which would violate the rules of germaneness in the House if offered here?

Mr. SEIBERLING. There are not, as far as I can determine, and I would be glad to submit the copy to the gentleman. I think he would agree with me that this is entirely within the subject matter of the original legislation.

Mr. DINGELL. There is nothing in the bill other than that to which the gentleman alluded in his earlier remarks?

Mr. SEIBERLING. There is nothing nongermane in this bill.

Mr. DINGELL. Nothing relating to any other subject?

Mr. SEIBERLING. Nothing relating to any other subject other than the subject matter that I have just described.

Mr. CHENEY. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. is there objection to the request of the gentleman from Ohio?

Mr. DAUB. Mr. Speaker, reserving the right to object, may I ask my good friend, the gentleman from Ohio [Mr. SEIBERLING], who has worked so hard on this particular piece of legislation to once again, for the record, indicate to me what changes may have been made and when they were made in point of time?

Mr. SEIBERLING. Mr. Speaker, will the gentleman yield?

Mr. DAUB. I yield to the gentleman from Ohio.

Mr. SEIBERLING. Mr. Speaker, the changes, I think, I have already described. This bill is also dated October 18, and again, I recall watching the other body when it made the changes, so it is quite clear to me that it was done today, in fact, this afternoon.

Mr. DAUB. So, the light of day did shine in on the changes as they were made, the gentleman so attests, and that, in fact, everybody knew what was going on. But people last night who made their deal on this list did not know those changes were going to be made today, did they?

Mr. SEIBERLING. That is correct.

Mr. DAUB. Mr. Speaker, I thank the gentleman.

Mr. Speaker, I withdraw my reservations of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Ohio?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 1452 and H.R. 4444, the two bills just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

EXPORT ADMINISTRATION ACT AUTHORIZATION

Mr. NELSON of Florida. Mr. Speaker, on behalf of the gentleman from Washington [Mr. BONKER] and the Committee on Foreign Affairs, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2245) to authorize appropriations to carry out the Export Administration Act of 1979 and export promotion activities, with a Senate amendment to the House amendment thereto, and concur in the Senate amendment to the House amendment.

The Clerk read the title of the Senate bill.

The Clerk read the Senate amendment to the House amendment, as follows:

Page 2 line 2, strike out (a) IN GENERAL.—Page 2, strike out lines 19 to 25.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

Mr. CHENEY. Mr. Speaker, reserving the right to object, I yield to the gentleman from Florida [Mr. NELSON] for the purposes of explaining this legislation.

Mr. NELSON of Florida. Mr. Speaker, will the gentleman yield?

Mr. CHENEY. I yield to the gentleman from Florida.

Mr. NELSON of Florida. Mr. Speaker, the present bill before us contains a minor amendment from the other body which we are prepared to accept. That was basically this: that the House bill contained a $14 million cap for export enforcement activities. That was what the White House had requested.

The other body removed the cap so that there is no cap on export enforcement activities.

Mr. DINGELL. Mr. Speaker, will the gentleman yield?

Mr. CHENEY. I yield to the gentleman from Michigan under my reservation.

Mr. DINGELL. Mr. Speaker, I ask the distinguished gentleman from Florida [Mr. NELSON] if there are any other amendments to this legislation, and especially if there are any which, if offered in the House, would have been nongermane?

Mr. NELSON of Florida. I am not aware of any.

Mr. DINGELL. Are there any which deal with any matter other than the subject of Export Administration?

Mr. NELSON of Florida. Mr. Speaker, I am not aware of any.

Mr. DAUB. Mr. Speaker, will the gentleman yield?

Mr. CHENEY. I will yield to the gentleman from Nebraska under my reservation.

Mr. DAUB. Mr. Speaker, I thank the acting minority leader for his indulgence again, and may I inquire of my good friend, the gentleman from Florida [Mr. NELSON], of the substantive changes that have been made in the amending process, when did they occur, if the gentleman knows?

Did they occur yesterday or did they occur today?

Mr. NELSON of Florida. They occured today.

Mr. DAUB. So the changes that were made could not possibly have been estimated by those who made their deal to come up with the list of satisfactory unanimous consent requests. Is that a correct assessment of the circumstances?

Mr. NELSON of Florida. Mr. Speaker, on the occasion of this agreement, so that this bill could move forward, that is correct.

Mr. DAUB. If the gentleman will yield further to me under his reservation of objection, my point of all this is to make sure that those in the Chamber who might be so inclined to object to the concurrent resolution on the tax bill understand that every singly one, so far, of the bills that we have taken up under unanimous consent, to which no Member has finally objected, in fact, have had substantive changes made to them today.

So, in fact, the changes made could not have been made within the knowledge of the leadership last night that

met to decide on a long list or a short list of substantive legislation that this body ought to take up and dispose of today for the good of the country.

I thank the gentleman from Florida [Mr. NELSON] for his explanation and my friend, the gentleman from Wyoming [Mr. CHENEY] for yielding.

Mr. CHENEY. Mr. Speaker, further reserving the right to object, I think it is incumbent upon me to make it clear to the House that the arrangement under which we are operating was worked out last night, but the agreement with respect to the legislation to be considered was a matter that was discussed between myself and the acting Speaker, the gentleman from Maryland [Mr. HOYER].

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. KILDEE). Is there objection to the request of the gentleman from Florida?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. NELSON of Florida. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

DISTRICT OF COLUMBIA JURY SYSTEM ACT

Mr. HOYER. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2946) to establish an independent jury system for the Superior Court of the District of Columbia, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 6, lines 6 and 7, strike out "individuals who submit their names to the Court for inclusion on the master juror list,".

Page 6, strike out lines 18 to 24.

Mr. HOYER (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. KILDEE). Is there objection to the request of the gentleman from Maryland?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Maryland?

Mr. CHENEY. Reserving the right to object, Mr. Speaker, I do not intend to object, but I have taken this reservation to yield to the gentleman from Maryland so he may explain the legislation.

Mr. HOYER. Mr. Speaker, I thank the acting minority leader for yielding.

This bill is out of the Post Office and Civil Service Committee, H.R. 2946, and establishes, Mr. Speaker, an independent jury system for the Superior Court of the District of Columbia.

Originally in 1970 when the Superior Court system was established, the jury system was in league with the U.S. District Court system. This bill seeks to establish 2 jury panels, one for the Federal Court and one in effect for the State Court as it is done throughout the United States.

There are 2 amendments to that bill. Essentially what the amendments do, and the only thing that the Senate amendments do, is to limit the jury panel to the list. Originally as the House bill passed, individuals could submit their names to the court for inclusion on the jury panel. The Senate amendment strikes the ability in effect to offer oneself for jury service.

Mr. CHENEY. Mr. Speaker, I thank the gentleman.

I am happy to yield to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Speaker, I thank the gentleman for yielding.

My purpose in rising is simply to make the same inquiry.

First, are there any other amendments; and second, are there any amendments which would be nongermane if they had been offered in the House?

Mr. HOYER. Mr. Speaker, will the gentleman from Wyoming yield?

Mr. CHENEY. Mr. Speaker, I am happy to yield to the gentleman from Maryland.

Mr. HOYER. Mr. Speaker, I thank the gentleman.

The amendments deal solely with the issue in the bill and are in my opinion totally germane to the bill and deal only with the one subject I have discussed and that is a limitation on the jury panel.

Mr. DINGELL. And there are no other amendments?

Mr. HOYER. There are no other amendments.

Mr. CHENEY. Further under my reservation of objection, Mr. Speaker, I am happy to yield to the gentleman from Nebraska [Mr. DAUB].

Mr. DAUB. Mr. Speaker, the Acting Speaker understands the reasons for my inquiries, at least up to this point. The hour grows late, but on the particular piece of legislation before the body, would the gentleman answer my recurring question; that is to say, were any changes made, and if so when in point of time were the changes made between the bill leaving the House, arriving at the other end of the building, and returning for our consideration tonight?

Mr. HOYER. I think, but did not observe as did the gentleman from Ohio this procedure occurring, therefore this is not an eyewitness report; but I believe that the answer that was given to the gentleman previously is the same and that the amendments were added to the bill on the floor of the Senate this day.

Mr. DAUB. So if the gentleman from Wyoming will continue to yield.

Mr. CHENEY. Mr. Speaker, I continue to yield to the gentleman, under my reservation.

Mr. DAUB. I say to my friend from Maryland, Mr. Speaker, that the bill itself was in fact changed to the degree, beauty being in the eyes of the beholder, that there was a major or substantive change, which may be debated or argued, the fact of the matter is that the bill was in substance form changed enough so that it had to come back here to get a unanimous-consent request to perfect the work of all the Members in the committees of jurisdiction on both sides of this building and in both political parties before it could go to the President to become the law of this land.

Mr. HOYER. Mr. Speaker, the gentleman is correct.

Mr. DAUB. So I am correct in that assessment?

Mr. HOYER. The gentleman is correct.

Mr. DAUB. So it was not that this business could have been perfected last night, but for an opportunity today to perfect it to bring it to this point in the legislative process.

Mr. HOYER. The gentleman continues to be correct.

Mr. DAUB. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, at this point in time I have no intention of objecting to this particular piece of legislation being made the law of the land.

Mr. CHENEY. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Maryland?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HOYER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just adopted.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

AUTHORIZING INSERTION IN ENROLLMENT OF H.R. 5300, OMNIBUS BUDGET RECONCILIATION ACT OF 1986

Mr. ANTHONY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate concurrent resolution (S. Con. Res. 174) to make an insertion at the end of section 8081 of H.R. 5300 in the enrollment of the bill, and ask for its immediate consideration.

The Clerk read the title of the Senate concurrent resolution.

The SPEAKER pro tempore. (Mr. HOYER). Is there objection to the request of the gentleman from Arkansas?

Mr. CHENEY. Reserving the right to object, Mr. Speaker, I yield to the gentleman from Arkansas [Mr. ANTHONY] for the purpose of explaining this legislation.

Mr. ANTHONY. Mr. Speaker, I thank the gentleman for yielding under his reservation.

Senate Concurrent Resolution 174 responds to a question that has been raised regarding the possible effect of a coordinated provision of title VIII. The correction makes certain that the changes made in title IX of the bill which relate to Medicare and Social Security are not inadvertently voided by title VIII.

Mr. CHENEY. Mr. Speaker, I thank the gentleman for his explanation.

Mr. Speaker, I am happy to yield to the gentleman from Nebraska [Mr. DAUB], under my reservation.

Mr. DAUB. Mr. Speaker, I thank the gentleman for yielding some time to me under this reservation.

This particular piece of legislation, to which I may object, and I would like to ask the gentleman to elaborate on the changes again and the fact of the point in time when those changes were made.

Mr. ANTHONY. Mr. Speaker, will the gentleman from Wyoming yield?

Mr. CHENEY. I am happy to yield to the gentleman from Arkansas under my reservation.

Mr. ANTHONY. Mr. Speaker, as I understand the legislation, we have prohibited certain expenditures out of the Medicare trust funds. There was some language in one title that made it appear that it would have voided the language that was in a preceding title, so for clarification purposes, the prohibition would only pertain to trust funds that pertained to that title.

Mr. DAUB. When were the changes made that required the bill to be sent here to be considered under unanimous consent tonight?

Mr. ANTHONY. The bill was passed by unanimous consent this week. We discovered the error that was contained within that bill that was passed out of this Chamber by unanimous consent, so we are therefore trying to correct the mistake that we made in this Chamber.

Mr. DAUB. Mr. Speaker, will the gentleman continue to yield under his reservation?

Mr. CHENEY. Further reserving the right to object, Mr. Speaker, I am happy to yield to the gentleman from Nebraska.

Mr. DAUB. Mr. Speaker, I do indeed thank the gentleman.

Does the gentleman mean to tell me that for the sake of technically correcting a very important change in the Medicare laws of this country that affect so many of our elderly and poor that we are going to take time at this late hour, under the most onerous procedures ever devised by man, to legislate substantive changes on such an important piece of legislation and all the gentleman really is asking to consider is making a technical correction?

Mr. ANTHONY. Mr. Speaker, will the gentleman from Wyoming yield under this reservation?

Mr. CHENEY. Under my reservation, Mr. Speaker, I am happy to yield to the gentleman from Arkansas.

Mr. ANTHONY. Mr. Speaker, the gentleman is absolutely correct. The language in one title appears to be broad enough that it could cancel out some language in another title that would extend the authority going into those trust funds. We felt that corrective language would be necessary to clarify the intent of Congress. That was the reason I asked for this unanimous-consent request.

Mr. DAUB. Mr. Speaker, will the gentleman from Wyoming continue to yield?

Mr. CHENEY. Mr. Speaker, further reserving the right to object, I am happy to yield to the gentleman from Nebraska.

Mr. DAUB. Mr. Speaker, I would ask my good friend, the gentleman from Arkansas [Mr. ANTHONY], if in fact then it does not appear logically consistent that these technical changes are very much like, if the gentleman has any actual knowledge now of this fact, very much like the technical corrections we are seeking to make in the concurrent resolution to the tax bill?

Mr. ANTHONY. I think that analogy could be made.

Mr. DAUB. Mr. Speaker, I thank the gentleman for yielding.

I have no intention of objecting further to this particular piece of legislation.

Mr. Speaker, I thank my good friend, the acting minority leader, the gentleman from Wyoming, for yielding.

Mr. CHENEY. Further reserving the right to object, Mr. Speaker, I am happy to yield to the distinguished chairman of the Energy and Commerce Committee, the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Speaker, I thank my good friend from Wyoming for yielding.

Mr. Speaker, I would like to direct to the distinguished gentleman from Arkansas the question, are there any other amendments to this legislation?

Mr. ANTHONY. Mr. Speaker, will the gentleman from Wyoming yield?

Mr. CHENEY. Under my reservation, Mr. Speaker, I am happy to yield to the gentleman from Arkansas.

Mr. ANTHONY. Mr. Speaker, the answer is no. There are no other amendments.

Mr. DINGELL. I would ask further if there are any nongermane amendments, amendments which will be nongermane under the rules of the House.

Mr. ANTHONY. The answer is no.

Mr. DINGELL. Mr. Speaker, I thank the gentleman.

Mr. CHENEY. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 174

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987, the Clerk of the House of Representatives shall insert at the end of section 8081 of the bill the following: Paragraph (3) shall not apply to any authorization made by title IX of this Act.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

CORRECTING TECHNICAL ERRORS IN ENROLLMENT OF H.R. 3838, TAX REFORM ACT OF 1985

Mr. ANTHONY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the concurrent resolution (H. Con. Res. 395) to correct technical errors in the enrollment of the bill, H.R. 3838, with Senate amendments to the House amendments to the Senate amendments, and disagree to the Senate amendments to the House amendments to the Senate amendments.

The Clerk read the title of the concurrent resolution.

The Clerk read the Senate amendments to the House amendments to the Senate amendments, as follows:

Page 4, of the House amendments to the Senate amendments, strike out lines 9 to 20, inclusive.

Page 5, of the House amendments to the Senate amendments, strike out lines 3 to 8, inclusive.

Page 5, of the House amendments to the Senate amendments, strike out lines 9 and 10, and insert:

(D) On page 5, line 5, of the Senate amendments strike out "25" and insert: 6

Page 5, of the House amendments to the Senate amendments, strike out lines 11 and 12, and insert:

(E) On page 5 of the Senate amendments strike out all including line 8 over to and including line 12 on page 6, and insert:

On page 71, strike lines 4 through 7 and insert:

"(243) On page 76, in paragraph (11) (relating to certain aircraft)—

(A) strike "Kansas, Florida, Georgia, or Texas" in subparagrph (A) and insert "the United States";

(B) strike ", the date of conference committee action)" in subparagraph (B); and

(C) strike subparagraph (C) and insert:

(C) The aircraft is—

(i) purchased on or after August 16, 1986, and before January 1, 1987, or

(ii) is subject to a binding contract which was in effect on August 16, 1986, or entered into on or after August 16, 1986, and before January 1, 1987, and

is delivered and placed in service pursuant to such purchase or contract before July 1, 1987.

Any airplane which is one of 7 airplanes with respect to which an airline signed an airplane purchase agreement on January 20, 1986 (with respect to which the financing contingency was removed no later February 7, 1986), the estimated cost of which is $2,900,000, and which was delivered before May 23, 1986, and placed in service by May 27, 1986, shall be treated as described in this paragraph.

Page 1, of the House amendments to the Senate amendments, strike out lines 5, 6, and 7, and insert:

(2) On page 10 of the Senate amendments strike out lines 16 to 24 and on page 12 of the Senate amendments strike out all after line 9 over to and including line 2 on page 13, and renumber accordingly.

On page 4 of the House amendments to the Senate amendments, after line 8, insert:

On page 23 of the Senate amendments, after line 15, insert:

(369) On page 315, in paragraph (3) (relating to transitional rules) add the following new subparagraphs:

(W) South Carolina Family Farm Development Authority with respect to obligations the aggregate amount of which shall not exceed $10,000,000 issued on or before December 31, 1989.

(X) Clemson University Continuing Education and the Component Housing Project.

(370) On page 617, insert between the 5th and 4th lines from the bottom of the page, the following flush language.

"The provisions of this paragraph shall not apply to any bond issued after December 31, 1990."

(371) On page 73 of the House Concurrent Resolution, strike "a 150,000 square foot office building which is projected to cost" and insert "the Eastman Place project and office building in Rochester, New York, which is projected to cost up to".

Mr. ANTHONY (during the reading). Mr. Speaker, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Arkansas?

Mr. CHENEY. Reserving the right to object, Mr. Speaker, under my reservation I am happy to yield to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, do I understand what we are doing here is sending back to the Senate the tax technical corrections bill that we passed in this House yesterday so that they can take further action, if warranted, on that particular piece of legislation?

I want to be assured that what we are doing here is nothing more than the House has already done by action of the House, that we are not bringing before the House any new legislation that may have been written on this matter today.

Mr. CHENEY. Further reserving the right to object, Mr. Speaker, I am happy to yield to the gentleman from Arkansas [Mr. ANTHONY].

Mr. ANTHONY. Mr. Speaker, I thank the gentleman for yielding.

The answer to that question is, We are not doing anything new. There are no new provisions. This will be the identical piece of legislation that passed this body yesterday under unanimous consent. It will then allow the other body to work its will.

Mr. WALKER. Mr. Speaker, will the gentleman from Wyoming yield further?

Mr. CHENEY. Further reserving the right to object, Mr. Speaker, I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, I thank the gentleman.

I am not wildly enthusiastic about the bill that the House passed yesterday. In fact, had we had a vote on it yesterday, I was prepared to vote no; however, given the circumstances that we find ourselves in and given the fact that there are people who seem to be emotionally committed to having some kind of a bill out here on the floor that deals with this subject, it seems to me that at the very least the taxpayers are protected by having a bill that was acted on by the entire House, rather than acted on by a handful of Members that may or may not know what was in the bill; so for me it is a compromise to suggest that we ought to go ahead and move this subject matter but at the very least the subject matter we are moving is something that was approved by the entire House and is not something which will be a product of a rump session of the House of Representatives; so therefore, I would not be prepared to object to this particular unanimous-consent request.

Mr. CHENEY. Further reserving the right to object, Mr. Speaker, I am happy to yield to the gentleman from Nebraska [Mr. DAUB].

Mr. DAUB. Mr. Speaker, may I have the opportunity under the gentleman yielding to me under his reservation to engage the gentleman from Pennsylvania who just spoke in a colloquy?

The SPEAKER pro tempore. If the gentleman from Wyoming will yield.

Mr. CHENEY. Mr. Speaker, I am happy to yield to the gentleman from Nebraska for that purpose.

Mr. DAUB. Would it be my understanding, Mr. Speaker, that the gentleman from Pennsylvania because he did vote, if I recall correctly, for the tax bill, is interested in seeing the matter as sent from the House, but not as amended by the other body intervening, be the piece of legislation that we do send back for the consideration of the Senate tonight?

Mr. WALKER. Let me say to the gentleman that I did vote for the tax bill. I assumed when I voted for it that it was a product that had some careful drafting and that we knew what was in it.

I am rather shocked by the admissions that were made both on the floor yesterday and what I am hearing tonight that it was such a poorly done piece of work and that in fact it is full of errors that have to be corrected by this kind of last minute activity.

So I would say to the gentleman that what I want as an assurance is the fact that we are at least acting on something that the whole House has acted on. It is my understanding that as of yesterday we did in fact have something that went through here with the House, and at least by voice vote, approved it. That was the whole House with a quorum present acting and it seems to me that that is a far better protection for the taxpayers than, as I have described it, a rump session of the Congress, acting on something that was written by an ad hoc group this afternoon.

Mr. CHENEY. Further reserving the right to object, Mr. Speaker, it would be my intention under my reservation to yield to the gentleman from Nebraska, but I think in the spirit of comity and harmony that has been established here this evening, perhaps we could shortly wrap up this colloquy.

With that understanding, Mr. Speaker, I yield to the gentleman from Nebraska.

Mr. DAUB. Mr. Speaker, I am interested in speaking on my own at this point with respect to what I do consider to be a generous yielding on the part of the gentleman from Pennsylvania to at least have the opportunity to keep the matter alive and to see to it that the will of the House at least is considered one more time by the other body.

□ 2115

I would like the record to show that it is my opinion of the effort that we had been making up until this point that the amendments that we were seeking to attach to return to the other body for consideration, as had been stated earlier by the gentleman from Arkansas [Mr. ANTHONY], made what we did yesterday eminently more fair; that indeed the effort that we had made in a constructive way with all of the players that should be involved in making sure that this kind of legislation is the best product of the House and of the other body worked very hard all day long to be sure that in fact whatever mistakes that we may have made—and all of us have seen mistakes made in bills that we have drafted and have come out of our own subcommittee's or committee's work—that we indeed had perfected to generic terms a number of those issues that had not been as carefully presented in tax legislation as all of us would have liked, and this, if you will, would have been our second chance to do an even better job than we think we had done before.

With the spirit of comity and with the appreciation for all of those who have worked so hard to move us to this point in time, and with particular affection for the acting minority leader and his helpers who have tried to persuade me that this is a compromise in the best interests of the people of the United States, I will not object to the consideration of this legislation, and ask for all of the Members of this institution here present to refrain from objecting as well, and let the matter be sent to the other body for conclusion.

Mr. CHENEY. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Arkansas?

There was no objection.

A motion to reconsider was laid on the table.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT, 1987

Mr. NELSON of Florida. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5495) to authorize appropriations to the National Aeronautics and Space Administration, and for other purposes, with the Senate amendment to the House amendment to the Senate amendment, thereto, and concur in the Senate amendment to the House amendment to the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment to the House amendment to the Senate amendment.

[For text of the Senate amendment to the House amendment to the Senate amendment, see prior proceedings of the House of today.]

Mr. NELSON of Florida (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is these objection to the request of the gentleman from Florida?

Mr. CHENEY. Reserving the right to object, Mr. Speaker, I do not plan to object. It is my intention under my reservation to yield to the gentleman from Florida [Mr. NELSON] if he has anything to add at this point.

Mr. DAUB. Mr. Speaker, will the gentleman yield?

Mr. CHENEY. I yield to the gentleman from Nebraska.

Mr. DAUB. Mr. Speaker, I just want to inform the body, and particularly with great affection for my good friend from Florida for his patience this evening, that I am delighted to see this particular piece of legislation come before the House tonight for conclusion. It will be a great day for Nebraska, my State, as well as for all of the country to know that in addition to the NASA authorization, that in fact added to it is a piece of legislation that we refer to by its acronym, NOAA, that will cause satellite weather information to become available for our farmers and for those landlocked up in the Midwest as time goes by. We do appreciate all the diligent work that he has done.

I am reminded of a story that was told by Everett Dirksen about the first NASA space appropriations bill. In the final hours of the lame-duck sine die adjournment, Everett Dirksen rose to make his final plea for the Senate to vote down the NASA authorization bill. He did so asking his colleagues to consider the logic of a little story.

He said, "When I was a schoolboy back in Illinois, what we are about to do here reminds me of this story, we were gathered in the winter months, cold as it was outside around a pot-bellied stove, and the schoolmarm, she was teaching math. And during the math time, we were all cold and shivering and gathered around the pot-bellied stove, the teacher proposed this problem. She said that there was a cat, and the cat fell into a well. For every foot of progress that the cat made to get up out of the well, it fell backward 2 feet. She asked if anyone could tell her how long it would take the cat to get out of the well."

Fifteen minutes went by and the schoolmarm said, "Does anybody have the answer?"

Everett raised his hand, and you recall him, all of us do, gravely voice and hair falling over his forehead on the floor of the Senate in the 11th hour, and said, "Schoolmarm, if you give me one more slateboard, and one more slate pencil, and about 5 more minutes, I think I can land that cat in hell."

Mr. Speaker, I will not object to the gentleman's request.

Mr. BARTLETT. Mr. Speaker, will the gentleman yield?

Mr. CHENEY. Further reserving the right to object, Mr. Speaker, I yield to the gentleman from Texas.

Mr. BARTLETT. I thank the gentleman for yielding.

Mr. Speaker, I ask the gentleman to yield not on the subject of the NASA reauthorization, although I was prepared to reserve the right to object, though not finally to object, but in order to be certain that this House had the opportunity to discuss two items of an enormous emergency nature that has been testified to throughout the country and throughout the Congress—two items that are not being brought up tonight—and determine if there is some way to discuss those items on the House floor to see that they would be brought up.

Those items are, first, S. 2747, a simple extension of the Garn-St Germain Act to provide for emergency acquisitions of failed banks, plus a bridge banks, a 1984 version of an expedited funds act—an expedited funds act was passed by this House earlier—and H.R. 2443, providing for the recapitalization of FSLIC, a $3 billion recapitalization for an emergency fund of an insurance fund that is essentially depleted, combined with a regulator's recommended emergency piece of legislation—recommended in March 1986 as a crisis and an emergency to provide for new tools to provide for failing bank holding companies, and if now would be the time for a parliamentary inquiry, I rise not out of a sense of trying to attach blame, but a sense of shared responsibility.

Mr. Speaker, under the rules that had been agreed to, it was my understanding that no one would identify who objected, but it is my understanding—and the Speaker could correct me if I am incorrect, that no one has objected to these two items, but they are not being brought forward, even thought they have been passed by the other body, and in large part have been passed by this body.

Mr. CHENEY. Mr. Speaker, reclaiming my time under my reservation of objection, I feel constrained to inform the gentleman from Texas once again that the understanding that was agreed to last night by the majority and the minority in the persons of the minority leader and the Speaker was that we would meet today, we would consider those items that had been passed to the Senate, and look at what was possibly by way of bringing those to the floor. Those items where we anticipated objections or problems or controversy did not go on the list. They were not brought up. And that is

an agreement that both the majority and minority up to this point have abided by.

Mr. BARTLETT. Mr. Speaker, if the gentleman would yield further—and I am trying to understand the rule and I respect the rule, and will respect the rule—but I suppose that my concern is, these pieces of legislation have been worked on for some time, and rather diligently for the last week, to break an impasse, to bring them to the House floor. We have two bills that could break the impasse if they were brought to the House floor tonight if no one objected, which I assume that no one has.

PARLIAMENTARY INQUIRY

Mr. BARTLETT. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. BARTLETT. Mr. Speaker, what would be the procedure, to take them from the Speaker's table? And who would be entitled to make such a unanimous-consent request?

The SPEAKER pro tempore (Mr. HOYER). The Chair informs the gentleman that consistent with the agreement between the leadership of our side and the leadership on his side, represented as the acting minority leader has indicated, the Chair would not be in a position nor feel authorized to recognize any Member of either side for the purposes of such a motion. That would not be consistent with the agreement which the leadership reached yesterday for the purposes of allowing us to move forward today.

Mr. BARTLETT. Mr. Speaker, will the gentleman yield.

Mr. CHENEY. Further reserving the right to object, I yield to the gentleman from Texas.

Mr. BARTLETT. Mr. Speaker, I think that many Members of this body and most in the financial institution marketplace understand the potential urgency, the potential emergencies that could occur between now and the time this Congress reconvenes. It is not necessarily that those emergencies will happen, but it is necessarily so that we are being warned and told by those in charge of the safety and soundness of the system—and I notice that there are members of the Banking Committee here who I think would attest to that.

I read into the RECORD, for example, some descriptions, and the situation is by no means limited to these descriptions, and I would comment that the descriptions that I am going to read are probably some of the mildest descriptions of the consequences of the Congress' and the Banking Committees' of both bodies failure to act tonight.

On October 7 the chairmen of the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, and the Federal Reserve Board had this to say about this needed legislation in a letter. They said:

"We want to express our urgent concern for final action on S. 2752"—which is included in these pieces of legislation—"with its provisions providing for recapitalization of the FSLIC, emergency acquisition of commercial banks across State lines, and 'bridge bank' authority for the FDIC. In our view"—on October 7— "it is of utmost importance that this legislation be enacted by the 99th Congress."

In particular with regard to the FSLIC recapitalization, they said:

"Further delay in supplementing the resources of the FSLIC can only add to the ultimate cost to the industry and the economy of resolving these problems and would run the clear risk"—implied in the letter between now and December 31—"of entirely depleting the primary reserves with most serious consequences."

□ 2125

Mr. VENTO. Mr. Speaker, will the gentleman from Wyoming yield?

Mr. CHENEY. Further reserving the right to object, I am happy to yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Speaker, I thank the gentleman for yielding and appreciate the concern of the gentleman from Texas over the failure of this Congress, this body and the other body, to act on the measures that he feels are of urgent concern.

I note the letters the gentleman was quoting from were written now some 11 days ago. I note that we had not received from the other body, in spite of the fact that we have sent to them these measures some time ago, and there had been not the necessary negotiations I think that would have achieved the type of agreement that would make possible action this evening on a concensus basis. I think we all regret that that has occurred.

We hope that the events of the next months before we meet, those of us that are fortunate enough to be reelected in the miracle of democracy that is to take place on the first Tuesday of November, and it has been spoken that these problems will wait for that type of action, and certainly we will give the support necessary to the regulatory agencies and others that have at least acted in a good faith effort. It is too bad that this happens. Frequently measures are considered in the last weeks of a session, but it was clear to me, and I think to others, that there was not the necessary rapport established and dialog that would have resulted in a conclusion to these important issues.

I appreciate the gentleman yielding.

Mr. CHENEY. Mr. Speaker, further reserving the right to object, and it is not my intention to object, but I will say on behalf of the minority and on behalf of the leadership on both sides of the aisle who entered into a good faith agreement last night, they correctly foresaw I believe the possibility that in the closing moments of the session on controversial measures we might, in fact, get into the kind of extended partisan debate that sometimes occurs in this body, and that in an effort to avoid that, in an effort to avoid the kinds of discussions that sometimes slow the process toward adjournment we did arrive at an agreement that in effect took controversial measures and kept them off the floor.

I will say on behalf of the minority that the majority has indeed honored that commitment tonight. It has been more than generous and gracious and fair in the proceedings, and it would be my hope that we could shortly bring this colloquy to an end so that we can move to the last piece of legislation pending and to adjourn sine die.

Mr. BARTLETT. Mr. Speaker, will the gentleman yield?

Mr. CHENEY. Further reserving the right to object, I yield to the gentleman from Texas.

Mr. BARTLETT. Mr. Speaker, I thank the gentleman for yielding.

With regard to the blame or to the responsibility, there is plenty of blame to go around. Tonight is the night for all of us to take some responsibility.

I do share with the gentleman from Minnesota that I do think up until the last few hours or few days perhaps most of the blame was to be laid at the feet of the other body. But that does not help those hundreds of thousands, perhaps millions of depositors that could be harmed by our failure to now take up legislation that had been previously agreed to by this body, that is good legislation, that everyone agrees is good legislation. It just omits some other legislation that is unrelated to it, and much legislation that I had supported. So it is not a matter of trying to place the blame. I think, in fact, that is the last thing that we should do.

The fact is that on this legislation the House has acted on it once, twice, and it is legislation that, in fact, we could act on tonight.

I would read a bit more into the RECORD. In a similar vein, the Treasury Under Secretary, George Gould, commented on this legislation that, "This Congress now faces its last opportunity to" act.

On October 7 the chairman of the House Committee on Banking, Finance and Urban Affairs, the gentleman from Rhode Island, Mr. ST GERMAIN, pointed out that, "If the Congress fails to enact H.R. 5576, it invites chaos among the Nation's system of depository institutions, a loss of confidence across a wide spectrum of the American public, and potentially heavy drains on Federal insurance funds and the ultimate prospect of

direct appropriations to replenish these funds."

These are serious charges, serious matters. The fact is that there are two bills before us that the House previously generally acted on. They are items that are well-thought-out legislation that have been before us since last March and could be enacted.

Other members of the Committee on Banking, Finance and Urban Affairs are here tonight, and I see some of them on the floor. We are all frustrated, we all wanted more. We all wanted different things and we all sent other items to the body, worked hard at it, and the other body did not adopt them.

But the fact of the matter is there could be an emergency before us but this House, through a series of regrettable impasses that we could not break tonight by bringing these bills from the table, has chosen to walk away from and ignore. I hope that the warning signs are only that, they are only warning signs, and I do hope that we have time to act as it well could be after the next session of Congress. I hope that is correct, and I thank the gentleman for yielding.

Mr. CHENEY. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. (Mr. HOYER). Is there objection to the request of the gentleman from Florida.

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Florida?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. NELSON of Florida. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair would again thank the gentleman from Florida [Mr. NELSON] who was certainly faithful to his duty, but clearly a gentleman around whom great controversies swirled.

Mr. NELSON of Florida. Mr. Speaker, I want to express my eternal gratitude to the Members for their patience and all of the successful conclusion of the legislative agendas that have occurred this evening.

The SPEAKER pro tempore. The Chair also feels constrained to qualify once again, just briefly, that the agreement between the leadership on how bills got on the list was not only that the leadership had to be in agreement, but all Members had to be in agreement. I make that statement as the Chair so that there is no confusion.

It so happens that the leadership was in agreement on many of the items which perhaps are not on this list, and so it was not in certain instances the leadership in the person of the minority leader and the Acting Speaker and the representatives of the leadership who might have disagreed. The agreement was that if any Member disagreed it would not make the list.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. GILMAN, and to include extraneous material, notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost $1,476.

ENROLLED JOINT RESOLUTION

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a joint resolution of the House of the following title, which was thereupon signed by the Speaker:

H.J. Res. 738. Joint Resolution making continuing appropriations for the fiscal year 1987, and for other purposes.

SINE DIE ADJOURNMENT

Mr. ANTHONY. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to.

The SPEAKER pro tempore. In accordance with the provisions of House Concurrent Resolution 417, the Chair declares the second session of the 99th Congress adjourned sine die.

Thereupon (at 9 o'clock and 34 minutes p.m.) pursuant to House Concurrent Resolution 417, the House adjourned.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

[Omitted from the Record of October 17, 1986]

Mr. DE LA GARZA: Committee on Agriculture. Report on allocation of budget totals for fiscal year 1987 (Rept. 99-1014). Referred to the Committee of the Whole House on the State of the Union.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

[Submitted October 18, 1986]

Mr. MONTGOMERY: Committee on Veterans' Affairs. H.R. 3747. A bill to amend chapter 30 of title 38, United States Code, to provide for educational assistance for apprenticeship or other on-job training under the All-Volunteer Force Educational Assistance Program; with amendments; referred to the Committee on Armed Services for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(c), rule X (Rept. 99-1015, Pt. 1). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. YOUNG of Missouri (for himself and Mr. HOWARD):

H.R. 5743. A bill to require the Secretary of Transportation to amend certain regulations to provide that all persons who, by reason of handicap, physical or nonphysical, are unable to use bus service for the general public shall be eligible for special service or on-call accessible bus service; to the Committee on Public Works and Transportation.

By Mr. HAYES:

H. Con. Res. 419. Concurrent resolution expressing the sense of the Congress that the continued unemployment of more than 8 million Americans is inhumane and is a dilemma that must be treated as a national priority; to the Committee on Education and Labor.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 4088: Mr. CHAPMAN, Mr. AUCOIN, and Mr. FISH.

H.R. 5537: Mr. SLATTERY.

SENATE BILLS, JOINT RESOLUTION, AND CONCURRENT RESOLUTION REFERRED

Bills, a joint resolution, and a concurrent resolution of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 985. An act to protect the rights of victims of child abuse; to the Committee on the Judiciary.

S. 1620. An act to establish a National Council on Access to Health Care; to the Committees on Energy and Commerce and Ways and Means.

S. 1828. An act to implement the Inter-American Convention on International Commercial Arbitration; to the Committee on the Judiciary.

S. 2125. An act to amend title 23 of the United States Code to increase the limitation on the amount of obligations from $30,000,000 to $100,000,000 for emergency relief projects in any State resulting from any single natural disaster or catastrophic failure occurring in calendar year 1986; to the Committee on Public Works and Transportation.

S. 2243. An act to improve the health status of Native Hawaiians, and for other purposes; to the Committee on Energy and Commerce.

S. 2412. An act to withdraw and reserve certain public lands; to the Committees on Interior and Insular Affairs and Armed Services.

S. 2479. An act to amend chapter 39 of title 31, United States Code, to require the Federal Government to pay interest on overdue payments, and for other purposes; to the Committee on Government Operations.

S. 2690. An act to prohibit certain companies who have filed for bankruptcy from discontinuing medical and life insurance benefits to retirees; to the Committee on the Judiciary.

S. 2747. An act to extend the emergency acquisition and net worth guarantee provision of the Garn-St Germain Depository Institutions Act of 1982; to the Committee on Banking, Finance and Urban Affairs.

S. 2900. An act to provide a temporary extension of the Interstate Transfer deadline for the H-3 Highway; to the Committee on Public Works and Transportation.

S. 2950. An act to designate September 17, 1987, the bicentennial of the signing of the Constitution of the United States, as "Constitution Day," and to make such day a legal public holiday; to the Committee on Post Office and Civil Service.

S. 2951. An act to authorize the use of currently apportioned highway trust funds for various highway projects; to the Committee on Post Office and Civil Service.

S.J. Res. 428. Joint resolution granting the consent and approval of Congress for the State of Maryland, the Commonwealth of Virginia, and the District of Columbia to amend the Washington Metropolitan Area Transit Regulation Compact; to the Committee on the Judiciary.

S. Con. Res. 172. Concurrent resolution to convene the Congress in Philadelphia PA, on July 16, 1987, in order to commemorate the 200th anniversary of the Great Compromises creating the basis of representation between the Senate and the House of Representatives; to the Committee on the Judiciary.

APPOINTMENT AS MEMBERS FROM PRIVATE LIFE TO COMMISSION ON CENTRAL AMERICAN NEGOTIATIONS AFTER SINE DIE ADJOURNMENT

Pursuant to section 101(k) of Public Law 99-500, and the order of the House of October 18, 1986, the Speaker did on October 27, 1986, appoint Mr. L. Kirk O'Donnell of Washington, DC, and the minority leader did on October 31, 1986, appoint Dr. Ira Gallaway of Peoria, IL, as members of the Commission on Central American Negotiations.

APPOINTMENT AS MEMBER FROM PRIVATE LIFE TO COMMISSION ON EDUCATION OF THE DEAF AFTER SINE DIE ADJOURNMENT

Pursuant to section 301 of Public Law 99-371, the Speaker of the House and the President pro tempore of the Senate did on November 4, 1986, appoint Mr. Frank Bowe of Lawrence, NY, as Chairperson of the Commission on Education of the Deaf.

BILLS AND JOINT RESOLUTIONS PRESENTED TO THE PRESIDENT AFTER SINE DIE ADJOURNMENT

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee did on the following dates present to the President, for his approval, bills and joint resolutions of the House of the following titles:

On October 17, 1986:

H.R. 3614. An act to restrict the use of government vehicles for transportation of officers and employees of the Federal Government between their residences and places of employment, and for other purposes;

H.R. 5056. An act to permit registered public utilities holding companies to own certain interests in qualifying cogeneration facilities;

H.R. 2826. An act to amend the Wild and Scenic Rivers Act by designating a segment of the Horsepasture River in the State of North Carolina as a component of the National Wild and Scenic Rivers System;

H.R. 5496. An act to designate certain National Forest System lands in the State of Georgia to the National Wilderness Preservation System, and for other purposes;

H.R. 1390. An act to authorize additional long-term leases in the El Portal administrative site adjacent to Yosemite National Park, CA, and for other purposes; and

H.J. Res. 738. An act making continuing appropriations for the fiscal year 1987, and for other purposes.

On October 20, 1986:

H.R. 3578. An act to provide permanent authority for hearing commissioners in the District of Columbia courts, to modify certain procedures of the District of Columbia Judicial Nomination Commission and the District of Columbia Commission on Judicial Disabilities and Tenure, and for other purposes;

H.R. 4873. An act to authorize certain transfers affecting the Pueblo of Santa Ana in New Mexico, and for other purposes;

H.R. 5598. An act to provide for the transfer of the Coast Guard cutter *Taney* to the city of Baltimore, MD, for use as a maritime museum and display; and

H.R. 3838. An act to reform the internal revenue laws of the United States.

On October 21, 1986:

H.R. 1010. An act for the relief of Audrey O. Lewis and Emerson B. Vereen;

H.R. 3415. An act to authorize the minting of coins in commemoration of the bicentennial of the U.S. Constitution;

H.R. 5465. An act to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances;

H.R. 5300. An act to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987; and

H.J. Res. 142. Joint resolution to authorize the erection of a memorial on Federal land in the District of Columbia and its environs to honor the estimated 5,000 courageous slaves and free black persons who served as soldiers and sailors or provided civilian assistance during the American Revolution and to honor the countless black men, women, and children who ran away from slavery or filed petitions with courts and legislatures seeking their freedom.

On October 23, 1986:

H.R. 2484. An act to amend title 28, United States Code, relating to quiet title actions against the United States, with respect to actions brought by States;

H.R. 2574. An act for the relief of the survivors of Christopher Eney;

H.R. 2776. An act to amend the District of Columbia Stadium Act of 1957 to direct the Secretary of the Interior to convey title to the Robert F. Kennedy Memorial Stadium to the District of Columbia;

H.R. 4037. An act relating to the Indiana Dunes National Lakeshore, and for other purposes;

H.R. 4154. An act to amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such Act, and for other purposes;

H.R. 4576. An act to designate the U.S. Attorney's Building for the Southern District of New York as the "Silvio James Mollo Federal Building";

H.R. 4685. An act to adjust the boundaries of areas of the National Wilderness Preservation System in the State of Texas;

H.R. 4961. An act to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1987, 1988, 1989, and for other purposes;

H.R. 5181. An act to designate the U.S. Courthouse at 68 Court Street, Buffalo, NY, as the "Michael J. Dillon Memorial United States Courthouse";

H.R. 5215. An act to authorize the construction by the Secretary of Agriculture of the salinity laboratory at Riverside, CA;

H.R. 5218. An act to amend title 5, United States Code, to provide that certain individuals be accorded competitive status for purposes of transferring to the competitive service;

H.R. 5459. An act to direct the release, on behalf of the United States, of certain conditions and reservations contained in a conveyance of land to the State of Utah, and for other purposes;

H.R. 5470. An act to designate the United States Courthouse for the Eastern District of Virginia in Alexandria, as the "Albert V. Bryan United States Courthouse";

H.R. 5679. An act to extend the exclusion from Federal unemployment tax of wages paid to certain alien farmworkers;

H.R. 5682. An act to authorize the Secretary of the Navy to make a certain conveyance of real property;

H.J. Res. 620. Joint resolution designating the week beginning January 4, 1987, as "National Bowling Week"; and

H.J. Res. 754. Joint resolution providing for furloughed employees compensation.

On October 27, 1986:

H.R. 897. An act to recognize the Army and Navy Union of the United States of America.

H.R. 1452. An act to amend the Immigration and Nationality Act to extend for 2 years the authorization of appropriations

for refugee assistance, and for other purposes;

H.R. 2434. An act to authorize appropriations for the Patent and Trademark Office in the Department of Commerce, and for other purposes;

H.R. 4118. An act to designate the building commonly known as the Old Post Office in Worcester, MA, as the "Harold D. Donohue Federal Building";

H.R. 4244. An act to authorize funds to preserve the official papers of Joseph W. Martin, Jr.;

H.R. 4350. An act to amend the Wild and Scenic Rivers Act and for other purposes;

H.R. 5167. An act to declare that the United States holds certain public domain lands in trust for the Pueblo of Zia;

H.R. 5484. An act to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes;

H.R. 5554. An act to transfer the Community Development Credit Union Revolving Loan Fund to the National Credit Union Administration and to authorize the National Credit Union Administration Board to administer the fund;

H.R. 5564. An act to amend the National Housing Act to provide for the eligibility of certain property for single family mortgage insurance;

H.J. Res. 645. Joint resolution to designate 1988 as the "National Year of Friendship With Finland"; and

H.J. Res. 755. Joint resolution providing for the convening of the 1st session of the 100th Congress.

On October 30, 1986:

H.R. 1790. An act to withdraw certain public lands for military purposes, and for other purposes;

H.R. 2663. An act to amend title 5, United States Code, to credit time spent in the Cadet Nurse Corps during World War II as creditable service for civil service retirement; and to provide civil service retirement credit for certain employees and former employees of nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces;

H.R. 3737. An act to amend the Immigration and Nationality Act to deter immigration related marriage fraud and other immigration fraud;

H.R. 4208. An act to authorize appropriations for the Coast Guard for fiscal year 1987, and for other purposes;

H.R. 4302. An act to establish a commission for the purposes of encouraging and providing for the commemoration of the centennial of the birth of President Dwight David Eisenhower;

H.R. 4531. An act to improve the operation of certain fish and wildlife programs.

H.R. 4613. An act to reauthorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements to that act;

H.R. 4731. An act to enhance boating safety by requiring a report relating to the display on gasoline pumps of the type of alcohol, the percentage of each type of alcohol, and the percentage of cosolvents, if any, contained in the gasoline; to amend chapter 131 of title 46, United States Code, relating to recreational boating safety; and for other purposes;

H.R. 5420. An act to amend section 3725 of title 31, United States Code, relating to payment for transportation, to permit prepayment audits for selected transportation bills, to permanently authorize payment of transportation audit contractors from carrier overpayments collected, to authorize net overpayments collected to be transferred to the Treasury, and for other purposes;

H.R. 5560. An act to amend title 18 of the United States Code to ban the production and use of advertisements for child pornography or solicitations for child pornography, and for other purposes;

H.R. 5595. An act to make and improve the provisions of section 1619 of the Social Security Act, and for other purposes;

H.J. Res. 36. Joint resolution to authorize the establishment of a memorial on Federal land in the District of Columbia and its environs to honor women who have served in the Armed Forces of the United States;

H.J. Res. 67. Joint resolution calling for a wildlife sanctuary for humpback whales in the West Indies;

H.J. Res. 594. Joint resolution to designate the week beginning May 3, 1987, as "National Correctional Officers Week";

H.J. Res. 684. Joint resolution calling for recognition of United Way's 100th anniversary; and

H.J. Res. 756. Joint resolution to make corrections in the Comprehensive Anti-Apartheid Act of 1986.

On November 5, 1986:

H.R. 6. An act to provide for the conservation and development of water and related resources and the improvement and rehabilitation of the Nation's water resources infrastructure;

H.R. 2946. An act to establish an independent jury system for the Superior Court of the District of Columbia;

H.R. 3004. An act to section 3006A of title 18, United States Code, to improve the delivery of legal services in the criminal justice system in those persons financially unable to obtain adequate representation, and for other purposes;

H.R. 4378. An act to provide standards for placement of commemorative works on certain Federal lands in the District of Columbia and its environs, and for other purposes;

H.R. 4444. An act to amend the Immigration and Nationality Act, and for other purposes.

H.R. 4745. An act to amend title 18, United States Code, with respect to sexual abuse.

H.R. 5028. An act to entitled the "Lower Colorado Water Supply Act";

H.R. 5180. An act to designate the Federal Building at 111 W. Huron Street, Buffalo, NY, as the "Thaddeus J. Dulski Federal Building";

H.R. 5363. An act to amend the interest provisons of the Declaration of Taking Act;

H.R. 5495. An act to authorize appropriations to the National Aeronautics and Space Administration and for other purposes;

H.R. 5674. An act to amend title 28, United States Code, with respect to the composition of, and places of holding court in, certain judicial districts;

H.R. 5705. An act to protect and provide for the enhancement of the resources of the Columbia River Gorge, and for other purposes;

H.R. 5730. An act to provide for a land exchange in the State of Alaska;

H.J. Res. 10. Joint resolution to designate the week beginning January 19, 1987, as "Shays' Rebellion Week" and Sunday, January 25, 1987, as "Shays' Rebellion Day".

H.J. Res. 626. Joint resolution to approve the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED AFTER SINE DIE ADJOURNMENT

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills and joint resolutions of the House of the following titles, which were thereupon signed by the Speaker, on the following dates:

On October 20, 1986:

H.R. 1010. An act for the relief of Audrey O. Lewis and Emerson B. Vereen;

H.R. 2574. An act for the relief of the survivors of Christopher Eney;

H.R. 2776. An act to amend the District of Columbia Stadium Act of 1957 to direct the Secretary of the Interior to convey title to the Robert F. Kennedy Memorial Stadium to the District of Columbia;

H.R. 3415. An act to authorize the minting of coins in commemoration of the bicentennial of the U.S. Constitution;

H.R. 3838. An act to reform the internal revenue laws of the United States;

H.R. 4685. An act to adjust the boundaries of areas of the National Wilderness Preservation System in the State of Texas;

H.R. 5218. An act to amend title 5, United States Code, to provide that certain individuals be accorded competitive status for purposes of transferring to the competitive service;

H.R. 5300. An act to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987;

H.R. 5465. An act to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances; and

H.J. Res. 142. Joint resolution to authorize the erection of a memorial on Federal land in the District of Columbia and its environs to honor the estimated 5,000 courageous and free black persons who served as soldiers and sailors or provided civilian assistance during the American Revolution and to honor the countless black men, women, and children who ran away from slavery or filed petitions with courts and legislatures seeking their freedom.

On October 21, 1986:

H.R. 2484. An act to amend title 28, United States Code, relating to quiet title actions against the United States, with respect to actions brought by States;

H.R. 4037. An act relating to the Indiana Dunes National Lakeshore, and for other purposes;

H.R. 4154. An act to amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such act, and for other purposes;

H.R. 4567. An act to designate the U.S. Attorney's Building for the southern district of New York as the "Silvio James Mollo Federal Building";

H.R. 4961. An act to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1987, 1988, 1989, and for other purposes;

H.R. 5181. An act to designate the U.S. Courthouse at 68 Court Street, Buffalo, NY,

as the "Michael J. Dillon Memorial United States Courthouse";

H.R. 5215. An act to authorize the construction by the Secretary of Agriculture of a salinity laboratory at Riverside, CA;

H.R. 5459. An act to direct the release, on behalf of the United States, of certain conditions and preservations contained in a conveyance of lands to the State of Utah, and for other purposes.

H.R. 5470. An act to designate the U.S. Courthouse for the eastern district of Virginia in Alexandria, VA, as the "Albert V. Bryan United States Courthouse";

H.R. 5679. An act to extend the exclusion from Federal unemployment tax of wages paid to certain alien farmworkers;

H.R. 5682. An act to authorize the Secretary of the Navy to make a certain conveyance of real property;

H.J. Res. 620. Joint resolution designating the week beginning January 4, 1987, as "National Bowling Week."

On October 23, 1986:

H.R. 4118. An act to designate the building commonly known as the Old Post Office in Worcester, MA, as the "Harold D. Donohue Federal Building";

H.R. 4244. An act to authorize funds to preserve the official papers of Joseph W. Martin, Jr.;

H.R. 5554. An act to transfer the Community Development Credit Union Revolving Loan Fund to the National Credit Union Administration and to authorize the National Credit Union Administration Board to administer the fund;

H.J. Res. 645. Joint resolution to designate 1988 as the "National Year of Friendship With Finland";

H.J. Res. 754. Joint resolution providing for furloughed employees compensation.

On October 24, 1986:

H.R. 897. An act to recognize the Army and Navy Union of the United States of America.

H.R. 1452. An act to amend the Immigration and Nationality Act to extend for 2 years the authorization of appropriations for refugee assistance, and for other purposes;

H.R. 2434. An act to authorize appropriations for the Patent and Trademark Office in the Department of Commerce, and for other purposes;

H.R. 4350. An act to amend the Wild and Scenic Rivers Act, and for other purposes;

H.R. 5167. An act to declare that the United States holds certain public domain lands in trust for the Pueblo of Zia;

H.R. 5484. An act to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to extend Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes;

H.R. 5564. An act to amend the National Housing Act to provide for the eligibility of certain property for single family mortgage insurance; and

H.J. Res. 755. Joint resolution providing for the convening of the first session of the 100th Congress.

On October 29, 1986:

H.R. 1790. An act to withdraw certain public lands for military purposes, and for other purposes;

H.R. 2663. An act to amend title 5, United States Code, to credit time spent in the Cadet Corps during World War II as creditable service for civil service retirement; and to provide civil service retirement credit for certain employees and former employees of nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces;

H.R. 2946. An act to establish an independent jury system for the Supreme Court of the District of Columbia;

H.R. 3004. An act to amend section 3006A of title 18, United States Code, to improve the delivery of legal services in the criminal justice system to those persons financially unable to obtain adequate representation, and for other purposes;

H.R. 3737. An act to amend the Immigration and Nationality Act to deter immigration-related marriage fraud and other immigration fraud;

HR. 4208. An act to authorize appropriations for the Coast Guard for fiscal year 1987, and for other purposes;

H.R. 4302. An act to establish a commission for the purposes of encouraging and providing for the commemoration of the centennial of the birth of President Dwight David Eisenhower;

H.R. 4378. An act to provide standards for placement of commemorative works on certain Federal lands in the District of Columbia and its environs, and for other purposes;

H.R. 4444. An act to amend the Immigration and Nationality Act, and for other purposes;

H.R. 4531. An act to improve the operation of certain fish and wildlife programs;

H.R. 4613. An act to reauthorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements to that act;

H.R. 4731. An act to enhance boating safety by requiring a report relating to the display on gasoline pumps of the type of alcohol, the percentage of each type of alcohol, and the precentage of cosolvents, if any, contained in the gasoline; to amend chapter 131 of title 46, United States Code, relating to recreational boating safety; and for other purposes;

H.R. 4745. An act to amend title 18, United States Code, with respect to sexual abuse;

H.R. 5028. An act entitled the "Lower Colorado Water Supply Act";

H.R. 5180. An act to designate the Federal Building at 111 W. Huron Street, Buffalo, New York, as the "Thaddeus J. Dulski Federal Building";

H.R. 5363. An act to amend the interest provisions of the Declaration of Taking Act;

H.R. 5420. An act to amend section 3726 of title 31, United States Code, relating to payment for transportation, to permit prepayment audits for selected transportation bills, to permanently authorize payment of transportation audit contractors from carrier overpayments collected, to authorize net overpayments collected to be transferred to the Treasury, and for other purposes;

H.R. 5495. An act to authorize appropriations to the National Aeronautics and Space Administration, and for other purposes;

H.R. 5560. An act to amend title 18 of the United States Code to ban the production and use of advertisements for child pornography or solicitations for child pornography, and for other purposes;

H.R. 5595. An act to make permanent and improve the provisions of section 1619 of the Social Security Act, and for other purposes;

H.R. 5674. An act to amend title 28, United States Code, with respect to the composition of, and places of holding court, certain judicial districts;

H.R. 5730. An act to provide for a land exchange in the State of Alaska;

H.J. Res. 10. Joint resolution to designate the week beginning January 19, 1987, as "Shays' Rebellion Week" and Sunday, January 25, 1987, as "Shays' Rebellion Day";

H.J. Res. 36. Joint resolution to authorize the establishment of a memorial on Federal land in the District of Columbia and its environs to honor women who have served in the Armed Forces of the United States;

H.J. Res. 67. Joint resolution calling for a wildlife sanctuary for humpback whales in the West Indies;

H.J. Res. 594. Joint resolution to designate the week beginning May 3, 1987, as "National Correctional Officers Week";

H.J. Res. 626. Joint resolution to approve the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes;

H.J. Res. 684. Joint resolution calling for recognition of United Way's 100th anniversary; and

H.J. Res. 756. Joint resolution to make corrections in the Comprehensive Anti-Apartheid Act of 1986.

On October 30, 1986:

H.R. 6. An act to provide for the conservation and development of water and related resources and the improvement and rehabilitation of the Nation's water resources infrastructure; and

H.R. 5705. An act to protect and provide for the enhancement of the resources of the Columbia River Gorge, and for other purposes.

SENATE ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED AFTER SINE DIE ADJOURNMENT

The SPEAKER announced on the following dates his signature to enrolled bills and joint resolutions of the Senate of the following titles:

On October 23, 1986:

S. 1128. An act to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes;

S. 2057. An act to establish the President's Council on Health Promotion and Disease Prevention; and

S.J. Res. 367. Joint resolution to designate October 23, 1986, as "National Kidney Program Day."

On October 29, 1986:

S. 332. An act for the relief of Ramzi Sallomy and Marie Sallomy;

S. 386. An act to confirm a conveyance of certain real property by the Southern Pacific Transportation Co. to Ernest Pritchett and his wife, Dianna Pritchett, and for other purposes;

S. 485. An act to amend the Alaska National Interest Lands Conservation Act of 1980 to clarify the treatment of submerged lands and ownership by the Alaskan Native Corporation;

S. 511. An act to change the name of the Loxahatchee National Wildlife Refuge, FL, to the Arthur R. Marshall Loxahatchee National Wildlife Refuge;

S. 565. An act to provide for the transfer of certain lands in the State of Arizona, and for other purposes;

S. 740. An act to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands by the ac-

quisition of wetlands and other essential habitat, and for other purposes;

S. 1200. An act to amend the Immigration and Nationality Act to revise and reform the immigration laws, and for other purposes;

S. 1230. An act to amend the patent laws implementing the Patent Cooperation Treaty;

S. 1236. An act to amend title 18 of the United States Code and other laws to make minor or technical amendments to provisions enacted by the Comprehensive Crime Control Act of 1984, and for other purposes;

S. 1311. An act to authorize the Board of Regents of the Smithsonian Institution to construct the Charles McC. Mathias, Jr., Laboratory for Environmental Research in Edgewater, MD, and to designate the U.S. Courthouse and Customhouse in Louisville, KY, as the "Gene Snyder United States Courthouse and Customhouse";

S. 1374. An act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island;

S. 2000. An act to clarify the exemptive authority of the Securities and Exchange Commission;

S. 2245. An act to authorize appropriations to carry out the Export Administration Act of 1979, and export promotion activities;

S. 2250. An act to strengthen the prohibition of kickbacks relating to subcontracts under Federal Government contracts;

S. 2351. An act to revise the boundaries of Olympic National Park and Olympic National Forest in the State of Washington, and for other purposes;

S. 2452. An act to provide for the naming or renaming of certain buildings of the U.S. Postal Service;

S. 2534. An act to authorize the acquisition and development of a mainland tour boat facility for the Fort Sumter National Monument, SC, and for other purposes;

S. 2648. An act to improve the public health through the prevention of injuries;

S. 2852. An act to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the Peninsula Airport Commission, VA, for airport purposes;

S. 2864. An act to provide for a Deputy Secretary of Labor, an Assistant Secretary of Labor for Administration and Management, and three additional Assistant Secretaries of Labor, and for other purposes;

S. 2948. An act to authorize the President to promote posthumously the late Lt. Col. Ellison S. Onizuka to the grade of colonel;

S.J. Res. 43. Joint resolution authorizing establishment of a memorial to honor the American Armored Force;

S.J. Res. 268. Joint resolution providing for reappointment of Murray Gell-Mann as a citizen regent of the Board of Regents of the Smithsonian Institution;

S.J. Res. 336. Joint resolution to express the sense of Congress on recognition of the contributions of the seven *Challenger* astronauts by supporting establishment of a Children's Challenge Center for Space Science; and

S.J. Res. 427. Joint resolution reaffirming our friendship and sympathy with the people of El Salvador following the devastating earthquake of October 10, 1986.

On October 31, 1986:

S. 991. An act to amend certain provisions of the law regarding the fisheries of the United States, and for other purposes;

S. 1744. An act to require States to develop, establish and implement State comprehensive mental health plans; and

S. 2638. An act to authorize appropriations for fiscal year 1987 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, to improve the defense acquisition process, and for other purposes.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calender, as follows:

[Pursuant to the order of the House on Oct. 15, 1986, the following report was filed on Oct. 29, 1986]

Mr. FUQUA: Committee on Science and Technology. Report on the investigation of the *Challenger* accident (Rept. 99-1016). Referred to the Committee of the Whole House on the State of the Union.

SENATE—*Saturday, October 18, 1986*

(Legislative day of Tuesday, October 14, 1986)

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

Father in Heaven, as our Parliamentarian, Bob Dove, celebrates his birthday on the last day of the 99th Congress, we thank You for him, his associates, and all who serve in the support staffs.

As the Senate adjourns and the Members disperse, we commend to Your loving care every Senator, his family, his staff, and their families. Enable those Senators who face reelection to wrap up their campaigns with maximum effectiveness and results. Be with all who travel. Protect them in their journeys and bring them safely home. Grant rest, relaxation, recreation, and renewal to all who labor here. May these next 3 months be a period of physical, emotional, and spiritual restoration * * *

The Lord bless you and keep you
The Lord make His face to shine upon you and be gracious unto you.
The Lord lift up His countenance upon you
And give you His peace. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able and distinguished majority leader, Senator ROBERT DOLE, of Kansas, is now recognized.

Mr. DOLE. I thank the distinguished Presiding Officer, the President pro tempore, Senator THURMOND, from South Carolina.

SCHEDULE

Mr. DOLE. Mr. President, under the order, the leaders have 10 minutes each, to be followed by routine morning business not to extend beyond the hour of 11:30 a.m. with Senators permitted to speak therein for not more than 5 minutes each.

At 11:30 a.m., the Senate will begin consideration of any legislative or executive items that have been cleared for unanimous consent. Rollcall votes will not occur during the day, and the Senate is expected to adjourn sine die sometime either mid or late afternoon.

Mr. President, I think, without any question, this will be the last day of the 99th Congress. The House, I believe, came in at 10. They are now in recess, but they are prepared, based on a visit the distinguished minority leader and I had with the Speaker and the Republican leader yesterday, to accept measures from the Senate where there is no, I guess, controversy. But if anything has any question, I assume it will not be acted on by the House. If there are measures where there is no objection on the House side, they will be received and considered.

I understand a lot of the matters were taken care of last night—the Senate adjourned about 12:40 a.m.—so there is not all that much left to be done. But I do believe that we can hopefully complete our work by 1 or 2 o'clock.

Mr. President, I am going to reserve my time because I have some statements I would like to make a bit later.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The able and distinguished leader, Senator ROBERT BYRD of West Virginia, is now recognized.

Mr. BYRD. Mr. President, I thank the Chair.

THOMAS P. "TIP" O'NEILL

Mr. BYRD. Mr. President, with the closing of the 99th Congress, one of this Nation's most famous and important political figures departs from center stage. But it does seem just and appropriate that in the year of THOMAS "TIP" O'NEILL's retirement from the House of Representatives his beloved Boston Red Sox are in the World Series.

We are saying goodbye to the man who succeeded John Kennedy as the congressional Representative from the Eighth District of Massachusetts and has served as the Speaker of the House of Representatives since 1977.

Mr. O'NEILL and I came to Congress together. It was the 83d Congress and we were elected, both of us, to the House of Representatives in November of 1952. From that time to the present, Mr. O'NEILL has always displayed a deep and unswerving commitment to the principle of a Federal Government working in behalf of the American people, for "peoples' programs," and for the good of the Nation as he saw it.

There were those who may not have always agreed with TIP, but they could always admire and respect him for the strength of his convictions.

His dedication to his principles was even more visible during the past 6 years as the causes in which he believed came under heavy assault, and he never faltered in his beliefs or in his pursuit of those beliefs.

Even at the most difficult times of his political life, when there was so much change in the House of Representatives, when he became the victim of sometimes extreme and often unfair political assaults, within and outside the House, Speaker O'NEILL towered above it all—both physically and politically. He continued the work of a true public servant, fighting for his cherished "peoples' programs," and to help make our Government run smoothly and democratically. In so doing, Speaker O'NEILL has shown that the system can work fairly and efficiently.

For nearly a decade, Speaker O'NEILL has been at the height of power in the United States; he has walked with and fought with the giants of our Nation. But as a true public servant, he has never lost touch with the folks back home. His famous "ethnic walks" through the Eighth District of Massachusetts are well known. As Speaker O'NEILL has pointed out, "My strength has always been the workmen in the back street."

□ 1110

Mr. President, may I point out that one of the strengths of America has been selfless, committed public servants such as THOMAS P. "TIP" O'NEILL.

A powerful and important—and human—political figure now leaves us. His departure from his leadership postion leaves an important void in America political life. But while this void will be difficult to fill, we must respect his decision. We know that, as he goes, he has the satisfaction of knowing how much and how often he was able to provide real help to real people, and of knowing that he has contributed mightily to the strength of our Union.

Mr wife, Erma, and I extend to Speaker O'NEILL and his wife, Millie, our best wishes as they enter the next stage of their lives.

May God's blessings continue to be on them in their future years.

Mr. President, I yield the floor.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

ROUTINE MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business for not to extend beyond the hour of 11:30 a.m. with statements permitted herein for not more than 5 minutes each.

RECOGNITION OF SENATOR PROXMIRE

The PRESIDENT pro tempore. The distinguished Senator from Wisconsin is recognized.

Mr. PROXMIRE. Thank you, Mr. President.

NUCLEAR WEAPONS ARE HERE TO STAY

Mr. PROXMIRE. Mr. President, it is time some one takes on the myth that we can eliminate nuclear weapons from the face of the Earth. Who says we can? President Reagan has contended that SDI or Star Wars will make nuclear weapons impotent and obsolete. He contends that with Star Wars we can live in a world without nuclear weapons. Secretary General Gorbachev more recently showed his flair for public relations when he contended that the super powers could negotiate away nuclear weapons not some time in the dim and distant future but by the year 2000. Both super power leaders have predicted not simply that their two countries could and would abolish nuclear weapons but that our two countries could somehow free the entire world of this terrible threat.

Mr. President, is this possible? Politically it is not easy to deny this fond wish that so many human beings all over the Earth share so fervently. Why can we not go back to that world as it was before Hiroshima? That trip back-in-time has to be an especially happy dream for Americans. Here we Americans snuggly sit behind two vast oceans with the world's mightiest Navy patrolling and protecting us. On our north we have a relatively small, friendly free and democratic Canada. On our south we have a relatively small, friendly, free and democratic Mexico. If we could escape the terrible threat of a nuclear attack, we could live in the warm assurance that any war we fought could be kept from our shores. Our soldiers, sailors and airmen might die in the struggle for freedom abroad. But Americans could live in the perpetual serenity of peace at home.

But no more. Nuclear weapons destroyed all that. With nuclear weapons and the intercontinental missiles that can transport them in a few minutes from Russia or China to the United States we could lose all of our major cities and most of our people within a single day.

So the most entrancing dream any American leader can hold out is a dream that we can somehow, if we spend enough money, if we pour enough of our marvelous scientific technology into it, protect ourselves forever. We can go back to that blissful period before the dawn of the nuclear weapon age when America was impregnable— an island of peace and freedom.

Why is this not possible? It is not possible because we cannot escape from reality. Nuclear weapons are a fact of life. They are a fact of life because with American research, our country developed and actually used them in war. They are a fact of life because literally thousands of scientists living all over the world now know precisely how to design, fabricate and assemble them. The raw materials, the plutonium and uranium that provide the vital energy for these terrible weapons are present in abundance in many parts of the world.

There is another grim fact of life that few of us are willing to face. It is the fact that the super power peace of the past forty years has been maintained for one surpassing reason: Why? Because both super powers have had in their possession the nuclear weapons to devastate, totally devastate, the adversary in retaliation for a nuclear attack. This so called Mutual Assured Destruction or MAD is a grim fulfillment of Churchill's insight that in this nuclear world "Safety is the twin child of terror."

Let us assume the very best outcome for the objective expressed by Secretary Gorbachev and President Reagan—that we can eradicate nuclear weapons from the face of the Earth. Assume that we do exactly that. What then? In a nuclear free world isn't a superpower conventional world war not of the kind that has taken place so regularly between the world's great powers throughout history much more likely? The certainty of total double defeat and the swift and sure end of civilization would be gone. And if conventional war began what shape would that take in the 21st century?

In the past 40 years the devastating effect of conventional weapons has enormously increased. And keep in mind that at the end of World War II the fire bombing of Dresden and Hamburg in a strictly conventional weapon attack left fatalities and devastation as terrible as the nuclear attacks on Hiroshima and Nagasaki. Since 1945 conventional weapons have become far more destructive.

It is worse. In a conventional war, both sides would be tempted to use the ultimate nuclear weapons— abolished by agreement between the warring parties, but capable of being quickly fabricated, deployed, and ignited within a matter of days. Would nuclear weapons come back? What do you think?

Mr. President, a few years ago a group of brilliant scholars at Harvard University—the Harvard Nuclear Study Group wrote a book entitled "Living With Nuclear Weapons." These scholars concluded: "Any form of atomic escapism is a dead end. Living with nuclear weapons is our only hope. It requires that we persevere in reducing the likelihood of war even though we cannot remove the possibility altogether." To which this Senator says—Amen.

MYTH OF THE DAY—BUDGET REFORMS HAVE STREAMLINED THE CONGRESSIONAL WORKLOAD

Mr. PROXMIRE. Mr. President, the myth of the day is the perception that budget reforms over the past 12 years have streamlined the congressional workload. Even though this was the expectation of the Budget Impoundment and Control Act of 1974, the events of the past several days provide ample evidence that these expectations have gone unfulfilled.

What is this evidence? We need look no further than to what has happened to the massive continuing resolution. Continuing resolutions historically were short in length and time period. They were often only a few lines long or at most a few pages. Now they are hundreds of pages long—filled with extraneous material and even complete authorization bills.

Combining all the unenacted appropriations bills into one large CR causes numerous problems—not the least being the constriction of the congressional schedule into a short time period at the very end of the session. Due to the atmosphere at the time of the end of session CR's, there is little opportunity to debate the issues in the depth necessary to make informed judgments. There is pressure not to offer amendments in order to recess. Vital issues go unexplored.

In the past 26 years the Congress has enacted 90 CR's—1960 through 1985. The number of pages in CR's has increased dramatically. And with the increase in pages has come the expected increase in complexity. No longer is the CR a simple document to continue the operations of the Government for a limited time period. Now the CR is the vehicle for passing just about every type of legislation before the Congress.

And all of this has come at the expense of the congressional timetable which has been expanded, overlooked, dismissed, disregarded, and forgotten. The promised reforms—to begin our deliberations earlier and finish earlier—have faded into obscurity, perhaps never to be seen again. They held

great promise but in practice they became a myth.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. STEVENS). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1140

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE TRADE BILL THAT NEVER WAS

Mr. BYRD. Mr. President, we are now staring into the face of a trade shortfall for 1986 that could exceed $170 billion. We have had 3 straight months in which our agricultural trade was in deficit. In July, imports were at twice the level of exports as we recorded an alltime 1-month record trade deficit of $18 billion. The August trade data showed little improvement and overall exports declined again. Rising oil prices threaten to add to the red ink in the final months of this year.

Mr. President, I want to share with my colleagues some of the basic facts that now confront us. When the administration came to office in 1980, U.S.-manufactured goods were $20 billion in surplus. For the first 7 months this year manufactured exports were in deficit at an annual rate of $139 billion. Let me say that again. In 1980, U.S.-manufactured goods were $20 billion in surplus. That was the last year before this administration took office. For the first 7 months of this year manufactured exports were in deficit at an annual rate of $139 billion. Manufactured imports have shot up 103 percent since 1980, while the real value of our exports has declined by 18 percent.

Agricultural goods have suffered a similar fate. In 1980, the United States—the breadbasket of the world—exported agricultural products worth $41 billion. By 1985, the administration had presided over a 26-percent decline in agricultural exports, while imports increased by 22 percent, in nominal terms. The months of May, June, and July saw actual deficits in our agricultural trade for the first time in more than a decade. Every one of us has heard—since we were schoolchildren—that the United States is the world's greatest food-producing nation. We have the most productive farmers in the world. That old verity is still true, but 6 years of administration neglect can be read in the fact that some 500,000 farms have gone bankrupt in that time, while we have become a net food importer.

What have these export declines and the surge in imports meant for American workers? The Commerce Department estimates that reduced sales of American goods overseas caused export-related employment to decline by over 1.1 million jobs just in the period between 1981 and 1983. The jury is still out for the record trade shortfalls since then, but there is no question that the job loss has accelerated; and imports have taken their toll as well. Economist Lester Thurow estimates that, between 1980 and 1985, the rise in imports depressed the wages of 300,000 workers below $12,500 a year.

So how did we get to the point that we now face a trade crisis?

The PRESIDING OFFICER. The Senate will be in order. The Democratic leader has the floor.

Mr. BYRD. Mr. President, I thank the Chair, my good friend, the Presiding Officer at this moment, Senator STEVENS, of Alaska.

Several factors contributed to the current crisis, but they all point to one inescapable fact: Government cannot be indifferent to the world economy and America's place in that economy. American jobs and economic security depend upon growth and success in the international markets, and Government has a role in encouraging that success. If we follow the administration's philosophy and allow the Government to stand on the sidelines with its hands in its pockets, American workers and industries are at a tremendous disadvantage.

Our people no longer compete against foreign companies, but against foreign countries. Senator LLOYD BENTSEN and the members of his Democratic working group on trade policy aptly characterized this as the "new mercantilism," where foreign Governments take an active role in aiding their export industries, while enforcing policies that keep unwanted imports out of their own markets. Government has an obligation to take an activist approach to opening world markets and promoting growth in trade. This administration has a do-nothing policy that abdicates this responsibility.

I am not talking about some outmoded resort to protectionism, but Government must advocate open markets and an open and fair world trade system in which the American people have faith, in which American industries have a chance at competing, and in which American jobs will stop being shipped overseas.

If we want to see the real dangers of protectionism, just stand back—as this administration has—and let the American people lose out and come to the conclusion that an open and growing world trade system is not in their interests. That result will do more to undermine world trade than all the so-called protectionist legislation in the Congress.

Likewise, Government cannot walk away from the problems of uncertain and destabilizing exchange rates. We do not need to consult Paul Volcker. Ask any West Virginia coal miner whether the dollar is fairly valued and whether this administration has shown leadership in stablizing exchange rates to make American products competitive in the world market. Coal, chemicals, agricultural products, and other very competitive American exports are suffering because the administration has refused to make exchange rates a priority.

The exchange rate problem is related to another major problem—our status as a debtor nation. This administration has done what two World Wars, a global depression, and an oil crisis could not—it has taken the United States from the status of world's largest creditor to world's largest debtor. The Washington Post of October 13, 1986, notes in an editorial that the United States external debt now exceeds the debt of Mexico and Brazil combined.

House Democrats made serious efforts to deal with the major features of the trade crisis. In May, the House passed the Trade and International Economic Policy Reform Act (H.R. 4800). This broad-ranging legislation did what the administration has shown—by 6 years of inaction—that it is unwilling to do. House Democrats offered a strategic approach to American trade policy that was motivated by a concern for America's future.

Of course, the administration decried the House bill as "protectionism." That, by the way, is the magic word to those who oppose efforts to make fair trade and free trade a two-way street. If one is unsure about a piece of legislation, just dismiss it—dismiss it as protectionism. Accuse the author of inviting a trade war, of inviting retaliation. Well, the administration has already issued that invitation to a trade crisis, and the crisis is no happy party for American workers and industries.

The executive vice president of the American Express Co., Mr. Harry Freeman, wrote in the Journal of Commerce of September 19, 1986,

> H.R. 4800 has been getting a bum rap. This is comprehensive trade legislation. It recognizes trade issues and manifestations of complex, deep-rooted global problems, requiring comprehensive solutions.

Mr. Freeman is a leader of one of the most free-trade oriented companies in the Nation. American Express is a worldwide success—a service industry that competes and wins in the world market. But he knows what the administration does not know. He knows that we have no trade policy,

and that the resulting drift is undermining our domestic economy.

Mr. Freeman's remarks are echoed time and again by leading voices in the business community. I spoke to a group of IBM executives recently. They were shocked to learn that since 1980, imports of computers and office machines jumped more than 400 percent, while exports of these very competitive American products rose by less than 70 percent. Trade is not a steel problem, or a textile problem, or a shoe problem. The new economic environment challenges all of American industry. I will not say that H.R. 4800 is a magic solution to every aspect of that challenge, but it is an important point of departure.

In the Senate, we have yet to make such a start. A majority of the members of the Finance Committee decided not to give H.R. 4800 a hearing. I testified before that committee on August 6, 1986, to urge support for my National Security Trade Act. There was no shortage of meritorious proposals for improving our trade law and policy in the Senate. That committee did not produce a comprehensive trade bill.

We all appreciate the fact that the Finance Committee has been very busy—and properly so—with the effort to simplify and reform the tax structure. But the House faced the same challenge, and produced a trade bill and a tax bill. Yet we do not have trade legislation in the Senate this year because the White House said "No." That is where the problem is. The White House did not want Congress to legislate a tough, realistic trade policy this year—or any year.

We did have several important trade votes, nonetheless. Senator FORD offered an amendment to the Export-Import Bank authorization which would have restored some part of the farm price supports cut by Gramm-Rudman. He thought that American farmers needed the help more than foreign buyers of U.S. goods, but his amendment failed on a largely party-line vote. Senator JOHNSTON's amendment to provide adjustment assistance training to oil workers who have lost their jobs as the result of record imports and depressed oil prices was defeated on a party-line vote. My own amendment to the Defense Department authorization to require a time certain for action in cases where imports may be threatening the national security also fell on a party-line vote. One hundred percent of the Senate Republicans voting opposed my amendment.

That was an amendment to speed up the processes whereby American industries petition for relief against imports that threaten our national security. That was an amendment in the interests of our national industries that manufacture products important to our national security. That was an amendment that was supposed to cut out the redtape and shorten the length of time in which the Secretary of Commerce would report to the President when an American industry that produces goods in the interests of national security petitions for relief against imports that threaten the national security.

My amendment provided that the Secretary of Defense also participate in that process; and that process, which now provides that the Secretary of Commerce may have 1 year in which to respond and to report to the President, would be cut to 6 months. My amendment would have cut the time in half.

□ 1200

And within that 6 months, my amendment would have provided that the Secretary of Defense also have a voice in determining whether or not imports of foreign goods are threatening to impair our national security. My amendment would have provided that the Secretary of Defense have 3 months within that same 6 months to likewise submit a report to the President on the position of the Defense Department in the matter.

And whereas under present law the President may take 90 days, he may take a year, he may take 2 years, he may take 3 years, he may take 4 years, or he may take forever in responding to the petition, responding to the need for action—he does not ever have to take any action—under my amendment he would have been required to act then within 90 days after the Secretary of Commerce and the Secretary of Defense had submitted their report.

Within 90 days, he could decide to begin negotiations with the country or countries whose imports into our own country threaten to impair our national security.

We saw in the case of the machine tools industry, we saw in the ferroalloy industry, where these industries were petitioning for relief against foreign imports that threaten our own national security, time went on and on and on like Tennyson's brook, months became years and in the final analysis the answer was no, no to our own American industries. So, we have seen our ferroalloy industry wither because of foreign imports.

But what happened? Every Republican Member of this Senate voted to table my amendment and the cry was, "Let the committee process have its way, let the Finance Committee have a hearing."

Well, I said then, Who is kidding whom around here? Who believes that the committee will report a bill and that such bill will be acted on in this Congress with the few remaining weeks that there were at that time, who believes that this Senate will produce a bill, a trade bill in these few remaining weeks when the committee had had months and months within which to do such, and who believes that the President will sign that bill even if it were put on his desk?

Everybody knew that the President would veto a trade bill because his administration is against trade legislation.

His administration goes around and boasts how many new jobs are being produced in this country by the service industry.

Donald Regan said to the steelworkers a few years ago, in essence, "You have had it, boys, just forget it. McDonald's and K-Mart, they are the wave of the future."

Well, that is not the spirit that made this a great country. De Tocqueville came to this country, that great Frenchman, a century and a half ago, and he said "The incredible American believes that if something has not yet been accomplished, it is because he", that incredible American, "has not yet attempted it."

That is the spirit that built this country.

I was a welder in World War II; worked in the shipyards in Baltimore, MD, and Tampa, FL; built the Victory ships and the Liberty ships; welded out there in the snow and in the cold wind blowing off the bay.

I will not have to weld in the next war because we will not have the steel. Some of our steel companies have gone under, bankrupt. The furnaces have gone cold. Steel plants have closed their doors. Thousands of steelworkers, men and women, the best in the world, have been thrown out of their jobs.

So I cannot be a welder the next time. I can work in a hot dog stand. I can work at McDonald's. I can go to McDonald's in the next war and get myself a job selling hamburgers.

I am glad to see our services industries grow. We want that. But while they have grown, we have seen manufacturing jobs lost. Our manufacturing and industrial base has eorded, and those jobs have gone overseas.

So what are we going to do in the next war—depend upon McDonald's to build the ships. Are we going to have plastic guns, submarines, battleships, cannon, and aircraft carriers?

When steel hurts, coal hurts. Our mines have closed down, mining camps have become ghost towns.

What is happening to America? The President goes out to North Dakota and he talks about SDI. "Judge them on the basis of whether or not they are for SDI," he says.

I am for SDI. I come as a charter member of the SDI club. I have full credibility because I have voted with the President on SDI. I have supported the President on SDI, yes, the so-

called star wars. I have supported him. I support him still today.

I supported him when he went to Iceland. I stood right here at this desk and I said, "Mr. President, when you look across that table into the eyes of Mikhail Gorbachev, just know that the spirit of 100 Senators, Republican and Democrat—there is no separating aisle between us—know that the 100 Senators are there. You can feel as though they are there holding up your hand. Yes, your counterpart will be tough. But just know that there are 100 Senators, there is no dividing line, Democrats and Republicans are there in a bipartisan spirit holding up your hand for the United States of America."

I made that speech right here. The President said he wanted bipartisanship, bipartisan support. Well, he got it from us.

Now, he goes out to the States and he attacks Democrats. He attacks Democrats. He is not bipartisan out there on the campaign hustings. One would think that only Republicans supported SDI when the President campaigns. He wants bipartisanship when he goes to Reykjavik and he got it, and if he went back tomorrow he would get it again. We Democrats support the President when it comes to our national security interests. The President has no monopoly on patriotism. Democrats are just as patriotic.

But let us get back down to Earth, Mr. President. Come down out of the stratosphere, come down out of orbit. Let us talk about the pink slips that the jobless steelworkers were given. Those who have jobs are wondering when they, too, may get pink slips.

Talk to the glassworker. Talk to the chemical worker. They are patriotic, too. Talk to those who want to own a home. Housing starts declined 7.6 percent from August figures.

Talk to the farmers who have lost their farms and who have mortgaged their homes. Talk to the young people of this country who want an education, who have seen their funding programs cut.

Come down out of orbit, come back to Earth, and when you go to North Dakota and other States, talk not about star wars; talk about the pocketbook issues, talk about how this administration has failed the working people of this country, has failed the farmers of this country, has failed the young people of this country; yes, and has tried and tried again to fail the elderly people of this country.

But for the Democrats in this Senate and a few Republicans, the administration was thwarted in its attempts to cut Social Security payments.

Talk about these things, Mr. President, and remember that there are Democrats here who hold up your hand on SDI.

Tell the farmers how the administration has failed, tell the steelworkers how the administration has failed to insist on a two-way street in trade matters. The administration has talked, but promises are cheap. Talk has not opened up the markets in Japan. Today's headline in the Washington Post says, "U.S. Sales in Japan Decline Despite Talks."

Come down out of orbit and back on the ground.

So the line was drawn on my amendment. One hundred percent of the Republican members of this body voted to table my amendment. And we have not yet seen trade legislation. Just as I said when I offered my trade amendment: "This is your chance. If you don't vote for it now, we are not going to have another chance. We are not going to pass a bill, and even if we do, the President will veto it." And what I said has come true. There has been no trade legislation in this body.

What kind of message did that vote send to our trading partners? What kind of message did it send to American workers? What kind of message does an administration policy of inaction and indifference send to the American workers—the steelworkers, the farmers, the coal miners, the glassworkers, the chemical workers, the shoe workers, the leather goods workers, the textile workers?

The President vetoed a bill that had been championed by Senator THURMOND and Senator HOLLINGS of South Carolina and had been passed by both Houses to help the textile workers and the workers in the shoe industry. The President vetoed it.

Come back down out of orbit. Tell those voters out there on the campaign trail about your veto of the textile bill, Mr. President.

Worst of all, the administration has abandoned the need of the future by acquiescing in a do-nothing approach. Senator JEFF BINGAMAN and the members of the Democratic Working Group on Competitiveness have called for an action agenda to assure the quality of life in America by keeping our country competitive. This administration has turned its back on the future. Fair trade is not a priority item for the administration.

But fair trade is a priority for Senate Democrats—not just an election year fad or slogan but a genuine priority. We know that American jobs and American leadership are at stake. We know that our children and our grandchildren will live in a world where economic competition is global. We know that our economic strength is, in its way, as important as our military might, and that the two are interrelated.

I came to the Senate because I care profoundly about the quality of life of the people of West Virginia. That quality of life is coming to depend upon, more and more, our ability to produce world class goods and compete with anyone, anywhere.

The American working men and working women of this country can compete with working men and women anywhere, but they cannot compete with foreign governments. Only the American Government can deal with foreign governments. That is our message to the White House and to the voters.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. STAFFORD). What is the pleasure of the Senate?

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

Let me indicate before I do that, we hope now that we can do a lot of the so-called wrap-up if there is no objection from either side so we can send everything we have to the House.

The PRESIDING OFFICER. The majority leader has suggested the absence of a quorum. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1240

Mr. GORE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORE. Mr. President, I ask unanimous consent that I may be allowed to speak as though in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

QUESTIONS FROM THE MEETING AT REYKJAVIK

Mr. GORE. Mr. President, I have noticed in the morning's papers and on television last evening that the administration is going to some lengths in an effort to respond to the questions raised on the floor of this Chamber yesterday morning by my colleague, the senior Senator from Georgia (Mr. NUNN). On Wednesday of last week, in a colloquy with him and with the junior Senator from California (Mr. WILSON), I raised the question of what exactly was included in the tentative agreement on strategic weapons reductions during the second 5-year period during the President's meetings in Iceland with General Secretary Gorbachev. The explanations given by Secretary of State Shultz, by the President himself, by Assistant Defense Secretary Perle, by Mr. Speakes at the White House, and by others, have not resolved the confusion.

The current statements coming out of the White House are to the effect that our side never formally offered to reduce all strategic nuclear weapons down to zero, and never formally

agreed to do so. However, the word "formally" seems to be put into use in a way that places great weight on it. In the immediate aftermath of the meeting in Reykjavik, President Reagan, his Chief of Staff, Don Regan, and Secretary Shultz all clearly said that we had reached a tentative agreement to eliminate all nuclear weapons, but that that tentative agreement was never formalized because of a subsequent difference of opinion, to say the least, on how to deal with SDI.

There are some facts that are not in dispute, Mr. President. Fact No. 1: During the fourth and final negotiating session in Reykjavik, President Reagan made a formal offer to reduce all offensive strategic nuclear weapons by 50 percent over a 5-year period, and then to continue those reductions down to zero in a subsequent 5-year period for ballistic missiles only. That fact is not dispute.

There is, however, a great difference between an offer and an acceptance. There is a difference between an offer and an agreement. But fact No. 1 is not in dispute. We made that offer.

Fact No. 2 is not in dispute. Fact No. 2 is that General Secretary Gorbachev rejected our offer and made a counteroffer of his own. His counteroffer was to continue a symmetry between the first 5-year period and the second 5-year period, and to continue the reduction process during the second 5-year period down to zero for all strategic offensive nuclear weapons.

□ 1250

Fact No. 3 also is not in dispute. Fact No. 3 is that the two sides had a discussion of General Secretary Gorbachev's counteroffer.

This point in dispute is what occurred next. And the dispute arises partly because of contradictory statements by the President and by others in his administration. The President himself, in the White House, responded to a question on this point by nodding affirmatively to indicate that, yes, he had tentatively agreed to eliminate all offensive nuclear weapons down to zero. The spokesman for the White House, Mr. Larry Speakes, when questioned about this communication from the President, as reported by our colleague, Senator NUNN, said the President misspoke.

Shortly afterward, Mr. Speakes said that he, himself, misspoke, explaining that he misspoke about the President misspeaking. In his new version Mr. Speakes indicated that perhaps the President did not misspeak, perhaps he was merely misunderstood.

If the President was merely misunderstood, then Secretary Shultz was also misunderstood because immediately upon the conclusion of that negotiating session, Secretary Shultz faced the television cameras of the world and said, and I quote, "During this 10-year period, in effect, all offensive strategic arms and ballistic missiles would be eliminated."

Mr. President, that language is fairly clear. It sounds as if the President's original offer, not in dispute, and General Gorbachev's counteroffer, not in dispute, were combined for purposes of the discussion which followed. This language, "All offensive strategic arms," from the Gorbachev counteroffer, and "ballistic missiles," from President Reagan's initial offer, are joined by the conjunction "and." The effect, of course—because ballistic missiles constitute a subset of all offensive strategic arms—the effect, of course, is to tentatively agree to General Secretary Gorbachev's counteroffer. Secretary Shultz said that in effect.

Now, the President's Chief of Staff, Donald Regan, was also questioned about this point. He was questioned on the Today Show on Tuesday, October 14. He says:

> As a result, we feel that by the time we get down to zero on our offensive weapons, we should have the defensive weapon ready to go. And that's exactly the trade we offered to the Soviet Union.

Mr. Regan made an even more explicit statement on this point while he was still in Iceland. He explicitly enumerated all of the categories of offensive nuclear weapons and affirmed, yes, they are all included.

Now, however, we see the Secretary of State and others point to the President's initial offer as if it served as conclusive proof that we did not tentatively agree to the formulation as stated by the Secretary and as stated by the President, thus pretend or implying that that offer is all that occurred there. The facts demonstrate otherwise.

Mr. President, this kind of confusion about a point as basic as the resulting balance of power between the United States and the Soviet Union, in the aftermath of such an agreement, is very, very troubling.

Mr. President, I wish to raise an additional question about the tentative agreements announced in Reykjavik. We were told that there was a tentative agreement on INF systems to reduce the number of intermediate-range nuclear warheads down to 100 on each side, with zero on each side in Europe and with the Soviet Union's 100 INF warheads to be deployed atop 33 SS-20 missiles stationed in Asia, and with our 100 INF warheads to be deployed on our intermediate-range systems, ground-launched cruise missiles and Pershing II's, to be located in the United States, either in North Carolina or Alaska or whatever, but not in Europe.

Now, one of the questions raised by our allies in Europe has to do with the role of shorter range intermediate nuclear forces.

□ 1300

This question is extremely significant, because the Soviet Union has been in the process of upgrading the accuracy and destructive force of their SS-22's and SS-23's. In addition, the West Germans are quite concerned about the SS-21 missiles, as well. They have a shorter range, and we have sought to treat them somewhat differently from the SS-22's and SS-23's. But here is the point: The West Europeans say that an INF bargain calling for zero missiles on either side would be a terrible mistake if we did not deal with the Soviet Union's short-range INF systems, many of which have been upgraded to the point where they can serve some of the purposes formerly served by the SS-20's.

My understanding of the dialog which took place in Reykjavik is that there was a discussion with the Soviets about several issues related to verification, where apparently the Soviets readily agreed to a United States proposal to approve and assure verification. This forthcoming move by the Soviets was pleasing to us, as it should have been.

There was also a discussion of the role of the SS-20's in Asia, a discussion which bore fruit, as I noted earlier.

Third, there was a discussion of the duration of such an agreement, and apparently we received something close to satisfaction from the Soviets on this score, with them seeming to agree that the INF bargain would last for an indefinite duration, to be supplanted only by a follow-on agreement of some kind, but not for a limited duration.

The fourth area that has caused some confusion, is this area having to do with short-range INF systems. Apparently, the Soviets proposed a freeze of their short-range INF systems at their currently deployed levels, if—and only if—we would accept a freeze at their currently deployed levels.

There ensued a discussion about that Soviet position. But it is unclear, Mr. President, whether or not the so-called tentative agreement on INF, which was trumpeted as a great bargain, spoiled only by the subsequent hangup on SDI—there is some confusion about whether this tentative agreement included the freeze at currently deployed levels on both sides for short-range INF systems.

Why might that be a cause for concern? Well, very obviously, because we do not have short-range INF systems currently deployed that have the characteristics and capabilities of the SS-22's and SS-23's—and SS-21's for that matter. We have extremely short-range Lance missiles, and we have the artillery shells, but we do not have sys-

tems comparable to the SS-22's and SS-23's.

So I think another question needs to be answered by the administration. What was the tentative agreement on INF? How, specifically, did it treat the short-range INF systems about which our NATO allies are so concerned? Did we agree to freeze the Soviet short-range systems at their current levels and leave ourselves with zero? Did we get a titular right to build up to the Soviet level with systems that we do not have? What exactly was the agreement? If that agreement is now to serve as the basis for follow-on negotiations and discussions in Geneva, we need to know whether or not the short-range systems are included.

Mr. President, many of us are quite curious about how this discussion developed in Reykjavik. I am curious, also, about the level of study given by the administration to the kind of balance of military power that would come in the aftermath of the strategic weapons agreement they may well have tentatively entered into.

Mr. Speakes made one other statement yesterday. He said that the Joint Chiefs of Staff had been directed to conduct a study of the feasibility of eliminating all nuclear weapons in advance of the needed improvements in conventional forces, as well as a study of what would be required if only ballistic missiles were reduced down to zero.

Mr. President, after the summit is not the optimum time for a study of that kind to occur. Before the summit might have been preferable, so that we could have prepared our position, so that we could have at least analyzed the effect on our Nation's national security. But, no, the administration waited until after they reached the tentative agreement before they even asked our military leaders to assess the effect of the tentative agreement on our national security—a rather unusual sequence in the timing of such propositions.

There also has been some comment about the timing of the summit, and I wish to add one element to this discussion.

Some speculated that the Soviets chose to propose this discussion for mid-October in order to maximize the leverage they might have on President Reagan, and to increase the odds that he would be tempted to accept some bargain that he would not otherwise accept because of the proximity to the fall elections.

□ 1310

Mr. President, I have not seen reference to the fact that the Soviets first proposed a mid-October date last spring. After the Libyan raid, the Shultz-Shevardnadze meeting in the spring which was supposed to serve as the forum for planning a Washington summit was canceled. Mr. Shevardnadze told Secretary Shultz he would not have such a meeting in the aftermath of the Libyan bombing.

At that point, the discussions about a summit took on a more tentative nature. On our side we encountered new uncertainty about whether the Soviets would honor their agreement made at the end of last year in Geneva to come to Washington. And so a dialog began between our country and the Soviet Union about possible dates for a summit meeting in Washington. In the spring, the Soviets suggested mid-October.

Acting on sound native instincts President Reagan rejected the Soviet proposal, saying to them it will have to come either before Labor Day or at least 3 weeks after the election, because in our country we do not like to mix up partisan elections and summit meetings because the chemistry is too volatile.

That judgment by President Reagan in the spring was sound. However, these tentative discussions about when a summit might be held dragged on and dragged on, and it began to appear that there would not be a meeting this year between President Reagan and General Secretary Gorbachev. Then in the aftermath of, or during, the discussions held to resolve the Daniloff affair, General Secretary Gorbachev suddenly sprang upon President Reagan a surprise proposal to have a hurry-up meeting in Iceland. When? Mid-October.

With the elections approaching and for whatever reason—surely including a desire to further dialog between the two superpowers—President Reagan decided to abandon his earlier sound judgment about having a discussion of this character in the hot-house political environment which occurs just before our biennial elections. He decided, instead, to go and participate, unprepared, having no idea apparently of what the agenda would be for the meetings, expecting discussions on INF to be certain and expecting the prospect of a so-called framework agreement on INF, and perhaps some agreement on nuclear testing as well, but seemingly, unprepared in any way for the sweeping negotiations which then occurred in Reykjavik.

Because of that lack of preparation, we now find in the aftermath of the discussions, the kind of utter confusion on what was agreed to tentatively and what was not agreed to tentatively.

Obviously, Mr. President, the analyses of this extraordinary event will go on for quite some time. We are now in the midst of a massive public relations offensive with every asset of the administration being brought to bear in a determined effort to convince the American people that this summit meeting was a tremendous success, handled extremely well, and reflecting very well on our country.

Only time will tell whether or not these discussions at Reykjavik did indeed plow new ground in a way that makes subsequent agreements more likely. I hope that turns out to be the case, and I might say I am encouraged at some Soviet statements that they, like us, will view those discussions as the basis for further negotiations in Geneva.

But I am concerned, Mr. President, along with some of my colleagues, that we develop a clear understanding of what actually was agreed to at Reykjavik, tentatively or otherwise, if we are going to use those agreements as the basis for further negotiations.

I yield the floor, Mr. President.

The PRESIDING OFFICER. Who seeks recognition?

Mr. GORE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HEFLIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Chair recognizes the Senator from Alabama

TRIBUTE TO JUDGE JOHN C. GODBOLD

Mr. HEFLIN. Mr. President, it is my great honor to rise before my colleagues, today, to pay tribute to Judge John C. Godbold, of Montgomery AL. Judge Godbold recently stepped down as chief judge of the Eleventh U.S. Circuit Court of Appeals. I am happy to note, however, that he will still serve as active judge in the circuit.

For 20 years, since his appointment to the fifth circuit by President Johnson in 1966, Judge Godbold has been instrumental in providing legal, and administrative guidance to the Federal judiciary, as well as providing a leadership role in regards to the development of the jurisprudence of the fifth circuit and the eleventh circuit with particular attention relative to matters dealing with civil rights. Indeed, he is the only man in the history of our Nation to have served as the chief judge of two circuits, having presided over both the fifth and the eleventh circuits.

Throughout his service on the bench, Judge Godbold has displayed a tremendous legal knowledge, a scholarly approach, and a superior understanding of any question or issue. He is known in all legal circles for his fairness and impartiality. He is highly respected by his colleagues, and by legal academicians. The comments of lawyers who try cases before him are

equally approving. They have described him as "highly respected, very fair"; "superb judge. A good administrator"; "good judge in all categories"; and "excellent judge"; to cite just a few.

John Godbold was born in Coy, AL, which is located in the southwestern part of the State. He attended the Selma City schools, and then graduated from Auburn University. After serving in the Army during World War II, where he attained the rank of major, he attended Harvard University Law School and received his law degree in 1948. His law practice was with a great firm—Rives, Godbold, and Hobbs. All three senior partners served on the Federal bench. Judge Richard Rives and Judge John Godbold were appointed to the fifth circuit, and Judge Truman Hobbs was appointed as a U.S. district judge.

While sitting as a member of the fifth circuit, Judge Godbold demonstrated a remarkable leadership. For the fifth circuit, he authored 1,531 opinions and and wrote or participated in 162 dissents. Additionally, he devoted himself to the improvement of different aspects of litigation throughout the circuit both at the district and at the appellate levels. Beginning around 1970, he joined other judges in the fifth circuit in an effort to improve advocacy and brief writing by discussing these subjects in law reviews or speeches, and by furnishing materials that State and local bars could include in local manuals. One article that Judge Godbold wrote which appeared in the Southwestern Law Journal has been used repeatedly as a guide to all attorneys for effective advocacy. Not surprisingly, the article is entitled, "Twenty Pages and Twenty Minutes—Effective Advocacy on Appeal." It is a masterpiece which provides instruction in all aspects of the appeals process—from the filing process through the oral argument to the brief writing. Judge Godbold included excerpts from a writing manual in an effort to frustrate the use of cumbersome legal jargon which muddles any argument. He presents a strong case for a forthright, clear, and concise writing style among advocates.

At the time that Judge Godbold was appointed to the fifth circuit, the south was a battleground over many civil rights issues. Judge Godbold's decisions on many highly controversial issues placed him in the forefront of those judges who deeply believed in the Constitution and felt that there should be no barrier to equal justice for all individuals regardless of race, color, gender, or creed. In his opinions, historians will find persuasive arguments which directed the elimination of injustices. He will be recognized as a leader of this effort to end all vestiges of discrimination and prejudice.

Judge Godbold's tenure on the fifth circuit spanned a time when that circuit became one of the busiest in the Nation. When he was first appointed, there were only 12 active judges. Because of the huge geographic area which comprised the court, and because of an explosion in litigation, the number of cases pending before the court multiplied, and it was forced to petition Congress for more judges. At one time there were 36 judges, including the senior judges, and there was still a case backlog of nearly 2 years. With so many judges, even routine matters became troublesome tasks.

In order to expedite and facilitate the judicial process, Congress authorized the court to divide into separate administrative units, with both judges and cases divided geographically. Additionally, each unit had its own en banc court. At roughly the same time that Congress provided for this division in the fifth circuit, the active judges of the fifth unanimously petitioned Congress to divide the court into two separate, free-standing circuits. Thus, the preliminary groundwork for the circuit's split had taken place. I was delighted that the judges of the fifth circuit asked me to assume this leadership role in splitting this circuit. Congress promptly responded to the request.

At the time of the split in October 1981, Judge Godbold had been serving as chief judge of the fifth circuit for 8 months. His efforts were instrumental in its planning and execution. The split was, by all accounts, a massive undertaking. The only possible precedent for such an undertaking dated back to 1929 when the old eighth circuit split into the new eighth and the new tenth circuits. Indeed, there was hardly any example or very little direction of any kind which would provide clues for the circuit regarding actual steps which would be necessary, or procedures which should be taken. Details which had to be considered included obtaining new quarters for the court and library, obtaining a library, transferring and acquiring personnel, buying furniture and equipment, and establishing filing procedures. Perhaps the primary question was deciding what cases and law the court would adopt. A transition committee consisting of judges and senior administrative personnel was appointed which would anticipate needs and plan for the division, but Judge Godbold's role in the split was, without question, crucial to its success. Many of his actions will provide those involved in possible future splits, or in the creation of new courts, with guidance and precedent. Considering that all cases in both the new fifth and the new eleventh circuits are now current, Judge Godbold's contribution must, indeed, be praised.

As the chief judge of the eleventh circuit, Judge Godbold has signed a total of 266 opinions. His leadership has been apparent at the national level. Through action, articles, and speeches, he has examined the role of the judiciary and has offered solutions to many of the problems which it now faces. His extensive use of senior and visiting judges has been one of the most immediate and obvious ways of eliminating a burdensome caseload. In order to decrease the amount of time spent on each case, he has also advocated that oral argument be somewhat limited, and that the court limit the use of written opinion to the cases which actually require it. Judge Godbold has also presented an article entitled "Fact Finding by Appellate Courts—an Available and Appropriate Power" in which he justifies limited factfinding during the appeals process.

Mr. President, I am convinced that Judge John C. Godbold will be the subject of much academic study and review for both the tremendous service he has provided as chief judge of two Federal circuits, and for the outstanding manner in which he guided the successful split of the fifth circuit, as well as his leadership role in the judiciary in implementing civil rights. I believe that the experience and opinion of Judge Godbold and other members of the old fifth will be crucial in the future as the size of the courts of appeals grows and questions are raised regarding the relation between the size of the court and the instability of the law.

The goal of every judge is to rule in a fair, impartial manner, to provide leadership to the legal profession as a whole, and to improve the court on which he sits. John Godbold has fulfilled each of these goals in every way. He has truly left his mark on the judiciary of the United States.

Mr. President, I suggest the absence of a quorum.

□ 1320

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1400

Mr. DOLE. Mr. President, I ask unanimous consent that further proceedings under the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, let me indicate to some of my colleagues who may be wondering when we are going to complete action—which should have been completed by now—we have one disagreement involving two Senators who each feel strongly about

their position, which is holding up about 100 other pieces of legislation, all of which has been agreed to. We now believe that the differences between the two Senators on one piece of legislation may be near reconciliation—may be near reconciliation. I have urged these two colleagues to try to work it out, because we are advised that Members of the House have been in since 10 o'clock with really not much to do, and they are not going to stick around much longer.

□ 1410

I know that there are a number of bills which need to go back to the House, which have been cleared, and I hope that at least those measures could be taken care of. I think there are 14—some involving Republicans, some involving Democrats, some bipartisan. We would like to dispose of those in the next few minutes. In the event the House does go out at 3 o'clock, they will need to have these items rather quickly.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1420

Mr. SASSER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

□ 1430

THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Mr. SASSER. Mr. President, we are facing the final days of the 99th Congress. Tragically, we have not yet passed legislation providing critical resources to the Federal Savings and Loan Insurance Corporation. With each passing day we lose an opportunity to act on this much-needed legislation. The hour is late and the time for action is now.

The Federal Savings and Loan Insurance Corporation is the insurer for the hundreds of thousands of depositors at our Nation's thrift institutions. I want to say at the outset that these depositors' insured funds are safe. There is no cause for alarm among individual insured depositors, and that should be made absolutely clear.

But the pressure on the Federal Savings and Loan Insurance Corporation is mounting. It was reported last week that the fund may be $26 billion short of the amount needed to protect, on its own, depositors of over 250 savings and loans expected to fail in the next 15 months. Since January, the fund has dropped by $1.3 billion. According to the Chairman of the Federal Home Loan Bank Board, which oversees the fund, the Bank Board is trying to manage closures or sales of 130 thrifts, with assets of $47.6 billion. Another 122 savings and loans, representing assets of $47.3 billion, may require such transactions in 1987. The cost to the Federal Savings and Loan Insurance Corporation is a portion of the total assets of the savings and loans based on the ultimate disposition of the assets; that is, whether they are acquired or liquidated, and at what price.

The Bank Board's estimate is that it must spend between 15 and 20 cents for every $1 in assets it acquires from ailing savings and loans. Considering the current and anticipated totals through 1987, that represents a cost to the fund of between $14 billion and $19 billion.

Mr. President, the Federal Savings and Loan Insurance Corporation can meet that cost if we act now. Both the House and Senate Banking Committees have reported legislation to permit the recapitalization of the insurance fund to cover these contingencies. It would be the height of irresponsibility to adjourn without enacting this important legislation.

I fully appreciate the fact that some of my colleagues have reservations about this measure. The bill contains some new approaches to problems facing financial institutions. A Financing Corporation will be established to receive contributions from the retained earnings of the 12 district banks, and industry assessments, providing the basis for the issuance of debt securities. The Financing Corporation will use its receipts to purchase zero-coupon bonds. These bonds will in turn be used to issue long-term debt securities. Proceeds will go to the Federal Savings and Loan Insurance Corporation for the resolution of problem cases.

Safety and soundness are the watchwords here: The existence of the Financing Corporation protects the Federal Savings and Loan Insurance Corporation from direct exposure to the securities transactions.

The bill also establishes an advisory committee to oversee Federal Savings and Loan Insurance Corporation spending. We require the corporation to report regularly on income, spending, and activities.

I want to emphasize very strongly that this advisory committee, and the bank board itself, will need to exercise special care in allocating the resources made available under this bill. It is of the utmost importance that funds of the Federal Savings and Loan Insurance Corporation be expended in a prudent and judicious manner. A key priority will be the advoidance of firesale prices in liquidating assets. There are some areas of the country, for example, where real estate prices are in an unnaturally depressed condition; in such cases, unusual care is required in merger and liquidation proceedings. In these areas and in these cases a little patience can go a long way. The reports required under the bill will ensure that we can monitor these developments closely.

Also included is a 6-year phase-down of the special assessment which the Federal Savings and Loan Insurance Corporation has levied against insured thrifts since last year.

Mr. President, this is admittedly a complicated solution. But the problem is equally complicated. We are still feeling the aftermath of the devastating impact that sky-high interest rates had on the Nation's thrifts during the recession of the early 1980's. During that period, over a fourth of the savings and loan industry was wiped out. Those that remained have made truly extraordinary efforts to survive and prosper and to protect their deposits.

As I noted earlier, however, there are still 252 thrifts under active consideration for closure and merger before the end of next year. It is well within the capacity of the Federal Savings and Loan Insurance Corporation to handle these transactions if the resources are available. The Bank Board is prepared to put the recapitalization plan into effect, to minimize any disruption or inconvenience in guiding these institutions through the transitions that will be required. We need only pass the necessary legislation.

Further delay is not only dangerous, it is expensive. Troubled savings and loans can become more deeply mired in debt with each passing day. If an inevitable merger or liquidation can be accomplished sooner rather than later, many times costs to the Federal Savings and Loan Insurance Corporation will be minimized.

We must act, and act promptly, to provide the Bank Board the authority it needs to maintain safety and soundness in our Nation's savings and loans industry.

Mr. MATSUNAGA. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER (Mr. COHEN). We are in morning business.

□ 1440

RUSSELL LONG: EVOLUTIONARY

Mr. MATSUNAGA. Mr. President, I rise, in the language of my homeland, to bid a fond aloha to a colleague for whom I harbor great affection and respect and whom I will sorely miss in the 100th Congress—RUSSELL B. LONG.

My friendship with the senior Senator from Louisiana goes back a long ways—long before I even began my political career, to my days as a law student at Harvard. In 1950 Hawaii's Delegate to Congress, the late Joe Far-

rington, had asked me to drop my law studies temporarily in order to come to Washington and lobby for statehood. He thought that I, as a World War II veteran of the 100th Infantry Battalion/442d Regimental Combat Team, might be helpful in such a role and he specifically wanted me to approach Senator LONG. I did so without an appointment and he graciously received me. After I had presented what I thought was a most convincing case for Hawaiian statehood, he gave me some advice I have always remembered: "Young man," he said (and I am older than he is) "You all must remember that a U.S. Senator is primarily interested in two things: First, to be elected, and second, to be reelected. So, don't come to me; go to my constituents. If my constituents tell me that I should support Hawaiian statehood, I will."

So I took his advice and enlisted the support of one of his staunchest supporters, a prominent businessman and civic leader of New Orleans, George Lelightner. Eventually we were successful in convincing RUSSELL LONG to visit Hawaii. He did so and became a statehood champion and his conversion to the cause was instrumental in Hawaii's achievement of statehood in 1959. His future biographers should note this accomplishment. The people of Hawaii have shown their gratitude by presenting RUSSELL LONG with its highest award, "The Order of the (King Kamehameha's) Splintered Paddle."

When I first came to the Senate and joined the Finance Committee, RUSSELL LONG, as chairman of the committee, became my mentor and I could not have had a better one. We share a belief in the use of the Tax Code as an instrument of social policy as well as of raising revenue for the operation of Government.

RUSSELL is unfailingly gracious and helpful to his colleagues, as he was to a young nonconstituent law student years ago early in his Senate career. Even those who oppose his policies find it impossible to dislike him, for his humor and anecdotes are irrepressibly disarming—and play a large part in his effectiveness. His legislative know-how and parliamentary skills are legendary, as are his political instincts. He has said that his father was a revolutionary while he has been an evolutionary. Instead of redistributing the Nation's wealth, he has worked to make that wealth a larger pie—and we are a better country today for his wisdom and his work.

As the father of ESOP (employee stock ownership plan) he has put into motion a rapidly spreading management-employee program, which has raised the productivity level to unprecedented heights through joint ownership of businesses. More than 8,000 large- and medium-sized businesses have already adopted ESOP's, and the number is rapidly increasing among small and big business firms. ESOP's will stand as a living memorial to RUSSELL LONG, as will a large part of our Tax Code.

When RUSSELL LONG voluntarily surrenders his membership in this exclusive club of 100, he will leave a vast empty space too difficult to fill. That emptiness will be felt by many, including this Senator from Hawaii, who will sorely miss him, along with his most charming wife, Carolyn.

SENATOR EAGLETON: SAGE LAWMAKER

Mr. MATSUNAGA. Mr. President, I rise to say farewell to a sage colleague, firm friend, and staunch ally of long standing: the retiring senior Senator from Missouri, THOMAS F. EAGLETON.

When I joined the Labor and Human Resources Committee, Senator EAGLETON and I formed a legislative partnership in behalf of an aging America. I am proud to have been his cosponsor in achieving the establishment of the National Institute on Aging and in expanding services to the elderly under the Older Americans Act. He has been a champion in winning much of the significant social legislation of the last 15 years, Mr. President, and we are a better country for his efforts.

TOM EAGLETON has convincingly demonstrated to the citizens of his State that they continue to send to Washington, as they did with Harry Truman in the 1940's, not show horses but workhorses—who can pull a lot of weight in the public interest. All Americans are in their debt as a consequence. TOM EAGLETON has been a solid, diligent producer of legislation which has expanded the educational and health opportunities for young and old. By his candor and personal courage he has enlarged public understanding of mental health and broadened the horizons of those who have been afflicted in this regard. We as a body have benefited from his candid leadership. He is a man of few words on this floor—but those few words have had profound influence in many critical debates.

From time to time, TOM EAGLETON has been known to change his mind on a few issues. He recognizes the truth that "foolish consistency is the hobgoblin of small minds." As I have observed earlier, Mr. President, he is a workhorse, strong as a Missouri mule in his convictions that the welfare of the people must always reign supreme in all legislative endeavors. As one who has the highest respect and greatest admiration for TOM EAGLETON, I bid him and his wife, Barbara, a fond aloha.

GARY HART: CREATIVE SOLON

Mr. MATSUNAGA. Mr. President, I rise to bid farewell and best wishes to the retiring senior Senator from Colorado, GARY HART. He has established himself as a creative lawmaker across a wide range of national issues, a cerebral force to be reckoned with especially in matters of defense policy, energy, high technology, and environmental regulation.

No Member of this body has applied himself more to the mastery of naval strategy, arms control issues, and military tactics in the assessment of defense outlays than has the senior Senator from Colorado. He has brought to such deliberations an incisive ability to influence the margins of defense policy and to introduce entirely new considerations into the judgments of this body. He has demonstrated vision in economic affairs which will be sorely missed when he is gone. Indeed, in my view, he has upheld the reputation of this Chamber as a great deliberative body in a manner few of us have been able to match by virtue of the intellect, imagination, and knowledge that he has fused with convincing effect during the course of his remarks on this floor.

GARY HART's legislative innovations in the course of two terms have been many and varied. His inspiration has been equal to his perspiration in hammering out his varied proposals. He now has elected to take his leave and perhaps return to the national political arena at some future time with a cohesive vision with which to bind the prodigious legislative initiatives of his time with us. GARY HART leaves the Senate with this Senator's profound respect and high regard.

□ 1450

SENATOR MATHIAS: CONSCIENCE OF THE SENATE

Mr. MATSUNAGA. Mr. President, I rise to bid farewell to a colleague who is retiring from the Senate with the adjournment of the 99th Congress: the senior Senator from Maryland, CHARLES MCC. MATHIAS, JR.

In a unique sense, MAC MATHIAS has been my leader in all my 24 years in Congress, for during our service together, both in the House and Senate, he has always been one step ahead of me, alphabetically in all rollcalls. I number him among my earliest friends on the Hill.

As "the conscience of the Senate," his wisdom, camaraderie, and most of all, his example, will be remembered and treasured for years to come. His graciousness to me was only exceeded by his graciousness to my luncheon constituents, to whom I would frequently introduce him, so that they might return to their homes and tell

their neighbors and children, "SPARKY introduced me to one of the giants of the Senate, CHARLES MATHIAS of Maryland."

His accomplishments in securing civil rights and civil liberties legislation, his work to bring peace and prosperity to Central America, his efforts in regard to arms control: all have gained for him national recognition and gratitude. In his home State his worth is widely known; in his last election campaign he carried every county of Maryland and the city of Baltimore as well. We refer to him as a "conscience" for this body but he has served in this role for those beyond this chamber, Mr. President.

He is retiring now to his farm, a loss to this city not unlike Thomas Jefferson's final return to Monticello. His departure brings to mind the lines from the poem "Nobility" by Alice Cary: "True worth is in being, not seeming—in doing, each day that goes by * * * There's nothing so kingly as kindness, and nothing so royal as truth."

A noble giant leaves our midst, Mr. President, in the departure of Maryland's senior Senator. I join my colleagues in wishing CHARLES MCC. MATHIAS, Jr. Godspeed.

SENATOR GOLDWATER: A TRIBUTE

Mr. MATSUNAGA. Mr. President, I also rise to salute another great conscience of the Senate who is retiring with the adjournment sine die of the 99th Congress: the senior Senator from Arizona, Mr. BARRY GOLDWATER.

In three decades of service in this Chamber he has cast a long shadow across the pillars of time. The force of his character, intellect and devotion to this great country of ours has left an indelible mark on public policy over the years and the Nation is the stronger for his great work.

We know BARRY GOLDWATER to be the founder of the modern conservative movement in America by virtue of his unsuccessful Presidential election campaign of 1964 during a watershed period in national politics. It was then that he set in motion a vigorous trend in political thinking which continues to the present day, outlasting the lifetime of any single White House administration. From his vantage point, he has on occasion been an incisive critic of the excesses of this movement he first led in a manner not unlike that of President Eisenhower before leaving office. He has served our country long and well and his sharp tongue and warm heart will be missed by all of us from both sides of the aisle. Mr. President, I salute BARRY GOLDWATER and wish him well in the years ahead.

SENATOR LAXALT: BRIDGE LEADER

Mr. MATSUNAGA. Mr. President, among those of our number retiring this year at the conclusion of the 99th Congress is a Senator from the West, the senior Senator from Nevada, PAUL LAXALT, who has ridden high in the saddle in this body but for all that, may not be fading into the sunset by virtue of his decision to leave us.

PAUL LAXALT has been known in this town as the President's closest personal friend in the Congress. As such he has served as a "bridge" between both ends of Pennsylvania Avenue, explaining Capitol Hill concerns to the White House and administration concerns here. In the process, he has been no mere conduit but an effective mediator and an influential national leader in his own right. His oval office entree has been made available, on occasion, to Members on this side of the aisle as well as his own and his national duties for his party have not prevented him from working for bipartisan approaches to such issues as crime control and cost-effective Government administration. Nor has he allowed partisanship to stand in the way of personal friendship.

Like many of his colleagues on both sides of the aisle, I have enjoyed PAUL LAXALT's warm friendship. In the light of rumors that he may seek to succeed his best friend as a tenant in that House at the other end of Pennsylvania Avenue, however, it is with some partisan reservation that I wish him well in his future endeavors. While he will be missed here in the 100th Congress, his contributions to the forging of national policy may be expected to continue and for this all of us on both sides of the aisle will remain indebted to PAUL LAXALT. In all sincerity, I join his many friends on the hill to wish him success and happiness in his future undertakings.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1500

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

CONSTITUTION DAY

Mr. STEVENS. Mr. President, I send a bill (S. 2950) to the desk on behalf of myself, the distinguished President pro tempore, Senator KENNEDY, Senator HATCH, and Senator STENNIS. I ask unanimous consent that it be read the first time and held at the desk for further disposition today.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. STEVENS). Without objection, it is so ordered.

INDIAN HEALTH CARE IMPROVEMENT ACT AMENDMENTS

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 1426.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 1426) entitled "An Act to authorize and amend the Indian Health Care Improvement Act, and for other purposes", with the following amendments:

(1) Page 93, strike out lines 7 through 22, inclusive.

(2) Page 93, strike out "715.", and insert: *714.*

Mr. BYRD. Mr. President, I move that the Senate concur in the House amendments with two further Senate amendments, which I send to the desk on behalf of Senator MELCHER. I ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. MELCHER, proposes an amendment numbered 3499.

Mr. BYRD. I ask unanimous consent that further reading be dispensed with.

Mr. COHEN. Mr. President, I object. I would prefer to have it read.

The assistant legislative clerk read as follows:

After Section 713, insert the following new Section 714 and renumber the succeeding section accordingly:

"PROVISION OF SERVICE IN MONTANA

SEC. 714. (a) The Secretary of Health and Human Services, through the Indian Health Service, shall provide services and benefits for Indians in Montana in a manner consistent with the current policy as allowed by the stay during the pending litigation in *McNabb* v. *Bowen*, 628 F. Supp. 544 (D. Mont.) (1986).

(b) The provisions of this section shall not be considered to be an expression of the sense of the Congress on the merits of the District Court decision."

The Secretary in the consideration of any proposed contract for operation of the Flat-

head Indian Irrigation Project Electric Power System under Public Law 93-638 shall consult with local government bodies and the Joint Board of Control of the Flathead Indian Irrigation Project taking into consideration the interests if the electric power consumers.

Any such proposed contract shall be submitted by the Secretary to the appropriate committees of Congress by March 15 and such proposed contract shall not be approved by the Secretary prior to May 1, 1987, after the Secretary has consulted with said Committees.

□ 1510

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. COHEN. Mr. President, if I could take a few minutes, I would like to address a few comments to the Senate to perhaps give a bit of the background about where we are at this particular time on Saturday afternoon.

My concern about this bill goes beyond certainly my own State. You might well ask why should I be concerned about what happens to the Flathead Indian Tribe which is located in the State of the Senator from Montana. One reason is that I had the privilege of serving in the past as chairman of the Indian Affairs Committee. Even if I had not served in that capacity, I would still feel compelled to speak today because of what I believe to be the blatant injustice that would have been inflicted upon the Flathead Tribe had the original amendment as submitted been approved.

I know that the membership of this body has been deeply concerned about the kind of brutality that we have witnessed in South Africa, and we spoke out about that very clearly a few weeks ago. We can be no less concerned about our own sad and squalid treatment of the American Indian. I think it is very clear what has happened historically: we took their land; we stripped them of their dignity; we herded them like cattle onto reservations; we blackjacked their spirits until they were broken, and then we ridiculed them when they turned to alcohol to kill the pain.

In essence, Mr. President, we locked them into a prison without walls and then we dared them to escape. They could stay in the center of that reservation or that cell and live their lives out in quiet despair or they could go over that imaginary wall. I suggest to you it is an imaginary wall that is as solid as concrete. They could escape and run into the mainstream of modern life where they would emerge a naked and vulnerable anachronism, ill-prepared to cope with a society that held them with ridicule and contempt.

Well, we attempted to break the invisible walls of that prison that we have placed them in by adopting the Indian Self-Determination Act of 1975—to encourage Indian tribes to assume more responsibility for their welfare, to help them along the long road to restoring a sense of self-worth and dignity and self-reliance. That is why we passed the Indian Self-Determination Act of 1975, which of course brings us to where we are today because this particular legislation, the Indian Health Care Improvement Act, is a piece of legislation that has taken 4 years to get to this point, and indeed until this hour it was in great jeopardy.

It was in great jeopardy because of a problem that lies within the State of Montana. The Department of the Interior, the Bureau of Indian Affairs was about to contract with the Flathead Tribe to allow the tribe to take over the management of a local utility. This is consistent entirely with the Indian Self-Determination Act of 1975. We wanted to encourage them to assume more responsibility for their own welfare, to exercise local control where it was appropriate and feasible to do so.

The Department of the Interior conducted a three-volume study on this particular project, and it came to the conclusion it was appropriate for the tribe to take over, not own—it is still owned by the Federal Government, still controlled by the Interior Department, BIA as a trust asset—to take over the management of that particular utility.

Well, there are some local people who are fundamentally and, I must say, emotionally opposed to any such proposal. As a result, they sought to delay the implementation of such a contract and that is why we are here today, because what this amendment does, is to cut entirely against the grain of the Indian Self-Determination Act of 1975.

I felt compelled, to raise a voice of objection. It is almost tantamount to a home rule situation. We pass home rule to say that the residents of the District of Columbia ought to have the ability to conduct their own affairs. We have had statements, indeed, from the President of the United States talking about the need to return government to local control, and that would include a measure of control by Indian tribes in this country. Yet, the first time there is an attempt to provide those Indian tribes a degree of control, along comes the political pressure to say, "No, we can't do that; take the home rule back; that the Indian Self-Determination Act and tear it up."

That is the reason all of these other pending bills have been held hostage as such, until we could formulate some sort of a resolution.

We have arrived at a compromise, a compromise will include neither side is entirely happy. I know the Senator from Montana would like to go much further that the compromise. I would like to see perhaps no compromise at all in terms of what I believe is happening to the Indian Self-Determination Act.

In essence, what is being done, Mr. President, is that the Secretary of the Interior has agreed that he, through his Department, would attempt to consult with the local interests, the local entities to take their concerns into account between now and March 15, 1987, and at that time he would, in taking into account the concerns of the local communities, prepare a contract with the tribe.

That proposed contract would lie before the Congress for a period of roughly 45 days. We would not, in essence, execute the contract prior to May 1, 1987. During that period of time the contract was before the Congress, we certainly would have an opportunity to look at it, to review it. But I might point out, to make sure the legislative history is quite clear, no action, indeed, is required by Congress, no action can be taken by Congress unless it is an affirmative attempt by legislation to nullify the contract itself or to have an amendment to the Indian Self-Determination Act of 1975, (P.L. 93-638).

So what we have is a temporary delay in the execution of a contract, a commitment by the Secretary of the Interior to in fact consult with the local communities to see if the Department cannot somehow abate the fears and apprehensions that have been generated over this issue, but nonetheless to proceed with the preparation of a contract with the Flathead Tribe and to submit that contract to the next Congress, whereby for a period of roughly 45 days we would have a chance to examine and review it.

That is essentially the compromise that has been arrived at and with that compromise I have agreed not to delay any further consideration of the Indian Health Care Amendments of 1986.

I might point out that the health issue is indeed of great importance to this country. Health care provided to the Indian tribes—as a good friend of mine, Congressman Udall pointed out—is roughly a generation behind that that is extended to most non-Indians in this country. It is a tragic situation that we are trying to correct.

This legislation has been pending for at least 4 years now, and it would be a tragedy to see this act defeated over a parochial issue. For that reason we have tried to reach an accommodation with the Senator from Montana, and I therefore withdraw any objection to proceeding to adopt the Health Care Amendments which I strongly support.

□ 1520

Mr. MELCHER. Mr. President, the Senator from Maine has properly described the modifying amendment. It is vitally needed for Lake County, MT.

In the previous amendment, we had asked for a 1-year delay. This modified amendment is approximately a 6-month delay. The reason for the delay is pretty obvious to anyone who visits the Flathead Reservation, Lake County, MT.

Eighty-eight percent of the residents of the Flathead Indian Reservation are non-Indians and, of course, nontribal members. About 88 percent, maybe 90 percent, of the reservation—the land and everything on it—is owned by non-Indians. They do have a grave concern when a proposed contract, that affects them directly and which they really never had an opportunity to have any input, was seemingly working its way through the Department of the Interior, with unusually rapid actions.

This amendment will provide a time for the Secretary of the Interior or his designee to consult with the folks out there, who, after all, are 88 percent of the people who use the electricity, which they have been getting for 24 years, run through the present operation of the Department of the Interior. If there is going to be a change, the people there want to be part of that change. It is a very reasonable request.

I think the year's time we requested would have made it easier for everybody, but this modified 6 months seems to be what would satisfy the Senator from Maine, so that is what we have agreed to do.

The city councils and their mayors—one town of about 2,000 Ronan and one of about 7,000 Polson—and the county officials, acting on behalf of the people there, have not been part of this consultation on whatever would be done in this proposed contract.

This amendment simply says to the Secretary: "You shall make the people a part of your consultations and considerations before you draw up a contract."

They have a power distribution system which is run by the BIA—that is the Bureau of Indian Affairs of the Department of the Interior—ever since it started, 62 years ago. If the Department is going to make a change, those consumers would like to know what that change would be. This amendment does that. It has been difficult to get the attention of the Department of the Interior. The concerns of the people should be heard and considered.

Our Government, as big as it is, should listen to citizens. Cooperation between the tribe comprising 12 percent of the population and the non-Indian residents comprising 88 percent of the people cannot be dictated from Washington, DC, from the Office of the Secretary of Interior.

That has only resulted in resentment. The Department of the Interior can take the time to consult with the people.

Mr. ANDREWS. Mr. President, the Senate is acting on H.R. 1426, a bill to amend the Indian Health Care Improvement Act. As a condition to moving this legislation at this late date in the Congress, it was necessary to accept a nongermane amendment relating to the operation of the Flathead Indian Irrigation Project Electric Power System. This amendment will prevent the Secretary of the Interior from entering into a contract with the Indians of the Flathead Reservation the operation of the Electric Power System for a period of 1 year unless a bill approving such contract is sooner enacted by the Congress.

Mr. President, this amendment is opposed by the Salish and Kootenai Tribes of the reservation. The amendment has never been the subject of hearings in the Congress and the proposal lacks the support of the administration. Were it not for the fact that the Congress is in its final days of this Congress, and were it not for the fact that this amendment does no more than impose a 1-year moratorium on entering into the contract for operation of this system, I would be unable to accept this amendment.

The amendments to the Indian Health Care Improvement Act that are encompassed in H.R. 1426 have been the subject of nearly 4 years of legislative struggle. A predecessor bill was the subject of a veto in the 98th Congress, and it has taken the entirety of this Congress to achieve the necessary support to assure enactment of this legislation this year. This legislation is of vital importance to the Indian people and I believe must go forward in this Congress.

Mr. President, I would like to note that the Bureau of Reclamation and the Bureau of Indian Affairs conducted a lengthy study of the flathead Indian irrigation project and recommended that the power component of this project be contracted to the tribe. Certain property rights of the tribes are involved in the operation of this project which must be taken into consideration when Congress addresses this issue in the next Congress.

Mr. ABDNOR. Mr. President, after far too long a wait, I am pleased that the Senate is moving toward passage of the reauthorization of our Federal Indian Health Program. As an original cosponsor of this legislation, I remain committed to improving the health status of native Americans in South Dakota and across the Nation.

I want to commend the distinguished chairman of the Senate Select Committee on Indian Affairs, Senator ANDREWS, for his continued dedication in obtaining passage of this long-delayed Indian health care measure. It has not been an easy task and not without cost.

My pleasure at the passage of this bill is diminished, however, by the inclusion of several amendments which I believe have no place on this bill.

It is regrettable that in order to gain passage of this legislation the Senate is forced to accept two amendments within the bill which, in my opinion, are counterproductive to the best interests of native Americans. I refer specifically to the amendment dealing with "Provision of Service in Montana" and another relating to the Flathead Indian Irrigation Project Electric Power System. I am greatly troubled by the inclusion of both these provisions in this bill.

However, because I am committed to improving the health status of native Americans I will not stand in the way of the passage of this vital bill. It is my hope that the Senate Select Committee on Indian Affairs of which I am a member, will revisit both these issues in the next Congress in a manner more consistent and more equitable than attaching it to vital legislation such as this bill.

Mr. ANDREWS. Mr. President, I rise today in support of Senate passage of H.R. 1426, a bill to reauthorize the Indian Health Care Improvement Act. As Senators know, H.R. 1426 was passed by the Senate on October 8, 1986, with an amendment in the nature of a substitute. The House of Representatives concurred in the Senate amendment on October 10, 1986, with a further amendment that struck a provision to which the administration expressed its opposition in an October 9 letter from Health and Human Services Secretary Bowen to Congressmen UDALL, WAXMAN, and MCCAIN.

The legislation that we have before us today is the result of ongoing discussions with representatives of the Department of Health and Human Services that were undertaken in an effort to achieve consensus of an Indian health care bill which the Department could recommend that the President sign. We believe that we have realized that objective, and that the bill we have before us today is one that is acceptable to the administration. We hope to act promptly in order that the President may sign this critical and important legislation into law, and so that the health care of Indian people will not be jeopardized by lapsing authorizations.

Because this legislation has undergone significant changes since it was first introduced in the 99th Congress, I would like to explain the provisions of the bill. Title I of the bill authorizes programs for the development of Indian health care professionals. The

bill continues authority for a health professions recruitment program for young Indian students who have demonstrated an aptitude for sciences and subjects related to pursuit of a health profession. The bill also continues the health professions preparatory scholarship program, which provides scholarship assistance to Indian students preparing to enter a health professions training program at the college level. The bill provides funding for those students who serve in an external capacity with the Indian Health Service during nonacademic periods as part of their training in the health professions. Further, the bill continues authority for the provision of scholarship assistance to Indian students who are enrolled full time in schools of medicine, osteopathy, podiatry, psychology, dentistry, veterinary medicine, nursing, optometry, public health, and allied health professions. The bill now places authority for this program directly in the Indian Health Care Improvement Act, and repeals section 338G of the Public Health Service Act, the previous authority for this program's funding and operation.

H.R. 1426 also authorizes funds for the purpose of providing continuing education opportunities to health professionals serving in the Indian Health Service. This program is an important part of the initiative which is aimed at recruiting and retaining qualified health professionals in the Indian Health Service. A new provision of title I authorizes additional appropriations for the National Health Service Corps Scholarship Program, so that to the extent additional appropriations are made available and earmarked for that purpose, National Health Service Corps scholarship assistance can be extended to native Hawaiians, provided that the native Hawaiian students are otherwise eligible for scholarship assistance under the provisions of the Public Health Service Act. This is a program that is not administered by the Indian Health Service, and it is not anticipated that funding for the Native Hawaiian Scholarship Program would be appropriated to the Indian Health Service. Rather, to the extent appropriations are made available for this purpose, funding would be within the public health service account.

H.R. 1426 also expresses the intent of the Congress that the Indian Health Service's community health representative program be funded under the authority of the Snyder Act of 1921. The bill authorizes paraprofessional health training for Indian people that wish to serve as community health representatives, and authorizes the Secretary to develop a system which will have the capability of identifying the needs of community health representatives for continuing education in health care, health promotion, and disease prevention, and to develop programs that will meet those continuing education needs, as well as systems that will provide for the supervision and evaluation of the work of community health representatives.

For those of you who may not be familiar with the manner in which health care is delivered in rural areas, I want to assure you that Indian community health representatives do much more than their name might suggest. These are the people that are out on the frontlines of delivering health care—they are often the first ones that can get to the scene of an accident in a rural area or to the home of a heart attack victim on a remote Indian reservation. They monitor the health of elderly people who may have no means to access a direct health care facility on a regular basis, administering medication to tribal elders who are shut in, and teaching members of the community what they can do in the way of diet, exercise, and food preparation to reduce the risk of diabetes, hypertension, and heart diseases—health problems that plague Indian people at much higher rates than other groups in the American population. Community health representatives—CHR's as they are called—instruct pregnant women on those things that they can do to assure a normal delivery and a healthy baby. In some areas, CHR's are responsible for assuring that the water supply on a reservation is maintained in good quality. These are the people, without whom, a comprehensive system of health care delivery would fail. In remote, rural areas where it might take a doctor or nurse many hours to reach the patient—it is the CHR's who often make the difference between life and death for the Indian people they serve.

Title II of H.R. 1426 continues authority to enable the Indian Health Service to address health care needs that are currently not being met, to eliminate backlogs in the provision of health care services to Indian patients, and to enable the Indian Health Service to realize the act's objective of raising the health status of Indian people to the highest possible level. In the effort to reduce health resources deficiencies, the bill provides that appropriated funds are to be used to raise the levels of deficiency of those tribes with the greatest deficiency before applying funds to tribes with a lesser deficiency. Funds are to be allocated to the service units of the Indian Health Service in a manner that reflects the needs—the deficiency levels of each tribe within a particular service unit, so that within a service unit, funds would go first to those tribes having the greatest level of deficiency in health resources. In determining such deficiency levels, the Indian Health Service is directed to consult with tribes, and the Secretary is further directed to establish a procedure that will allow any Indian tribe to petition the Secretary for a review of any determination of the health resources deficiency level of the respective tribe.

Title II also establishes a catastrophic health emergency fund, out of which payments for extraordinary medical costs associated with the treatment of victims of disasters or catastrophic illnesses who are within the responsibility of the Indian Health Service are to be made; $10 million is authorized for this purpose in fiscal year 1987, and for each succeeding fiscal year, that amount that would be necessary to restore the fund to the $10 million level. Title II of the bill also authorizes a new health promotion and disease prevention program, that reflects the policy of the Department of Health and Human Services, and the initiatives undertaken by Dr. Otis Bowen, HHS Secretary, to assure that health promotion and disease prevention objectives are achieved throughout the Nation.

Recognizing that the Indian Health Service is already providing extensive health promotion and disease prevention services, title II seeks to supplement and support the continuation and expansion of such services within the Indian Health Service. A health promotion and disease prevention demonstration project is authorized within the Indian Health Service in order that the Secretary may determine the most effective and cost-efficient means of providing health promotion and disease prevention services to Indian people, and realizing other health promotion and disease prevention goals. For purposes of extending this important initiative to address the recently documented unmet health care needs of native Hawaiians, a demonstration program is authorized to be established within the Public Health Service through contract with a native Hawaiian organization to undertake health promotion and disease prevention activities within the native Hawaiian community over a 3-year period. The Native Hawaiian Demonstration Program is to serve only native Hawaiian residents of the State of Hawaii. Title II also provides authority for the United States to recover reasonable expenses incurred by the Secretary in providing health services to Indian people from third party insurers. The intent of the section is to nullify the effect of exclusionary clauses currently contained in most standard insurance contracts which exempt the insurer from any liability for the costs of care provided in Federal facilities or for which the patient is not primarily financially liable. We believe that this is an important source of revenue for the Federal Government, and that tribal employees who are insured under a policy purchased by a tribal

government employer, should receive the same bargained-for benefits that other employees receive and not be penalized on the basis of the facility in which health care is provided to them.

Title III of the bill addresses Indian health care facilities, and directs the Secretary to provide a report to the Congress on those facilities which have been approved for construction. While title III affirms that the Indian Health Service has the primary responsibility for the provision of water and sanitation to Indian housing, title II specifically does not address nor direct to which Federal agency funds are to be appropriated for the provision of water and sanitation services.

Title IV of the bill amends the Federal Medicaid and Medicare laws to reflect those types of Indian Health Service facilities that are currently accredited as Medicaid- and Medicare-eligible providers. Title IV also authorizes a direct billing demonstration program for Medicaid- and Medicare-eligible providers.

Title V continues the authority for the Urban Indian Health Care Program, but expresses the intent of the Congress that the Urban Indian Health Care Program is to be funded under the authority of the Snyder Act.

Title VI authorizes management improvements in the Indian Health Service, expressing the intent of the Congress that an automated management information system currently being established within the Indian Health Service should be a high priority of the Department. Title VI also makes clear that the privacy of patient information should be a primary concern in the establishment and refinement of the information system. A provision that would have authorized the elevation of the Indian Health Service within the Public Health Service has been deleted from this legislation, with the understanding that the Department will make every effort to assure that issue of Indian health receive the highest priority at the highest levels within the Department. It is my understanding that Secretary Bowen has indicated to tribal leaders in a meeting that took place on September 15, 1986, tha the would give serious consideration to appointing a liaison in his office to work directly with the Indian Health Service. I am hopeful that Secretary Bowen will proceed with that appointment, and that he will also give careful consideration to delegating certain authorities, such as the authority for contracting and personnel, to the Indian Health Service. My colleagues on the Indian Affairs Committee join me in expressing the concern that the important progress that has been realized under Secretary Bowen's tenure as Secretary be carried on, by institutionalizing structural relationships within the Department that will guide future interactions with the Indian Health Service within the Department.

Title VII of the bill contains miscellaneous provisions but should not be construed as a statement on the importance of the programs authorized therein. In a section addressing secretarial leasing of facilities, the bill provides that when a facility is wholly owned by a tribe or tribal organization, and no Federal funds have been used for the construction of the facility, the Secretary must pay all those enumerated costs that are attributable to the maintenance and operation of the facility, including depreciation, that would be paid to any private lessor.

Title VII also authorizes a comprehensive health education initiative, whereby Indian Health Service employees would be made available to schools operated by the Bureau of Indian Affairs or under self-determination contracts with tribes or tribal organizations for purposes of creating and implementing a health education curriculum in such schools, with a strong emphasis on health promotion and disease prevention. This section also recognizes the role that tribally-controlled community colleges and other professional schools can plan in fostering education for Indian students and their parents.

Title VII further provides for a definition of those Indian people in the State of California that are eligible for the services provided by the Indian Health Service. This definition is intended to conform with current Indian Health Service practice in the State of California, and is not intended, and should not be construed to expand the eligibility of California Indians for Indian Health Service programs beyond that which currently exists. Title VII also provides that for programs operated under contract with the Indian Health Service under the authority of the Indian Self-Determination and Education Assistance Act are to receive as allowable costs associated with the operation of the contract, funds for the maintenance and repair of clinics that are owned or leased by tribe or tribal oranizations, employee training, cost-of-living increases for employees, and other expenses related to the provision of health services on the same basis as such funds are provided to programs and facilities operated directly by the Indian Health Service.

Title VII provides for notice to tribal contractors of the proposed removal of National Health Service Corps personnel from a tribally operated program, and authorizes the provision of health care services to persons who are otherwise ineligible to receive care in Indian Health Service facilities. Upon resolution of affected tribes, non-Indian patients who are not naturally or adoptively related to eligible Indian patients could receive care in Indian Health Service facilities on a fee-for-service basis. Hospital privileges in Indian Health Service facilities would also be authorized for non-Indian Health Service personnel, provided that nonservice health practitioners would not be covered by the provisions of section 1346(b) and chapter 171 of title 28 of the United States Code when treating a fee-for-services non-Indian patient who is not otherwise eligible for Indian Health Service programs.

Title VII authorizes a study of infant and maternal mortality rates in the Indian Health Service patient population and directs the Secretary to develop a plan to reduce infant and maternal mortality rates. Title VII also authorizes the designation of six counties, three in North Dakota, and three in the State of Montana, as a contract health service delivery area for purposes of providing contract health care services to members of the Turtle Mountain Band of Chippewa Indians residing in such counties. The provision is intented to conform with current Indian Health Service practice and is not intended to expand the existing service population. To assure that the use of scarce Federal resources are maximized, title VII authorizes the Secretary to examine the feasibility of entering into an arrangement for the sharing of medical facilities and services between the Indian Health Service and the Veterans' Administration and to prepare a report to the Congress on the feasibility of such an arrangement.

Title VIII of H.R. 1426 authorizes a program for the prevention and control of diabetes in the native American population, and the establishment of additional model diabetes program sites.

This legislation, which I commend to my colleagues and ask for their expeditious consideration of its provisions, represents a 4-year effort to assure that the health status of this Nation's first Americans is raised to the highest possible level. Our native people secured to all of us a land where the pursuit of life and liberty is a freedom with which we all are blessed. In recognition of their significant contribution to the quality of life we Americans enjoy, we must assure that the native people of this great Nation have as promising and productive a future as they have secured for us. We can do this by assuring that resources, programs, and services are dedicated to improving the health of native Americans. I ask for the Senate's commitment and dedication to this effort, through Senate passage of H.R. 1426.

● Mr. GORTON. Mr. President, I strongly support H.R. 1426, reauthorization of the Indian Health Care Im-

provement Act. I was an original cosponsor of S. 277, which was amended and offered as a substitute to the House-passed bill, H.R. 1426. The bill is the result of 4 years effort to improve the Indian Health Care Improvement Act of 1976. I am pleased that the Senate is acting on what I believe is the most important legislation affecting Indians before the 99th Congress.

The primary goal of this legislation is to elevate the health status of American Indians and Alaska Natives to the highest possible level. The act seeks to achieve this objective as follows: First, eliminating existing backlogs in health service responsibilities of the Indian Health Service [IHS]; second, initiating a 5-year effort to raise the health resources deficiency levels of all tribes to within 20 percent to zero percent of unmet health care needs; third, undertaking a 10-year program to address deficiencies in tribal water and sanitation systems; fourth, improving the IHS facilities construction program; fifth, encouraging eligible Indian participation in the Federal Medicaid and Medicare Programs; sixth, increasing the resources available to the IHS by making more facilities eligible for reimbursement from the Medicaid and Medicare Programs; seventh, continuing authority for the urban Indian health care programs; and eighth, proposing organizational refinements for the Indian Health Service.

H.R. 1426 also stabilizes the legal status of two important programs. Title I clarifies the permanent status of the Community Health Representative [CHR] Program of the Indian Health Service, and makes it clear that authority for CHR appropriations lies in the Snyder Act of 1921. Many tribes in the State of Washington depend on the CHR Program. The program provides for the training of Indians as health paraprofessionals, and allows these people to serve in Indian communities. The program also provides for instruction and practical experience in health care, health promotion, and disease prevention activities that are consistent with the traditional health care practices and cultural values of the Indian tribes served by the program.

Title V clarifies the permanent status of the Urban Indian Health Care Program within the Indian Health Service. The bill also makes it explicit that the authority for this program's appropriations lies in the Snyder Act of 1921. Urban Indian health centers are a critical component of the health care delivery system for Indians. Two major urban areas in my State, Seattle and Spokane, have programs that serve 36,000 Indians each year. Indians suffer disproportionately from a number of serious health problems such as alcoholism and diabetes, and often are served poorly by other health providers. Both the Seattle and Spokane clinics provide services in a more congenial and culturally appropriate environment, and thus are able to reach a number of patients who might otherwise not be served.

Mr. President, I believe this bill deserves the full support of the Senate. The bill, as it currently exists, will be signed by the President. Again, I am pleased to be a cosponsor of this significant legislation.●

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. The question is on the motion. Is that correct?

The PRESIDING OFFICER. That is correct.

The question is on agreeing to the motion.

The motion was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

WITHDRAWAL AND RESERVATION OF CERTAIN PUBLIC LANDS

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate proceed with the consideration of Calendar No. 1092, H.R. 3214.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3214) to provide for the use and distribution of funds awarded to the Cow Creek Band of Umpqua Indians in U.S. Claims Court docket numbered 53-81L, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Indian Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

That this Act may be cited as the "Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1986".

SEC. 2. DEFINITIONS.

For the purposes of this Act—

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "Assistant Secretary" means the Assistant Secretary of the Interior for Indian Affairs.

(3) The term "Tribe" means the Cow Creek Band of Umpqua Tribe of Indians, which was extended Federal recognition by the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712, et seq.).

(4)(A) The term "Tribal member" means (except for purposes of section 7) any individual who—

(i) is a member of the Cow Creek Band of Umpqua Tribe of Indians (within the meaning of section 5 of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712c), as amended by section 5 of this Act, and

(ii) has been certified by the Secretary under section 7 of this Act.

(B) Notwithstanding subparagraph (A), the term "Tribal member" does not, for purposes of subsections (b), (c), and (d) of section 4, include any individual who shared in the distribution of funds under the Act of August 13, 1954 (68 Stat. 718; 25 U.S.C. 564, et seq.) or the Act of August 13, 1954 (68 Stat. 724; 25 U.S.C. 691, et seq.).

(5) The term "tribe's governing body" means the governing body as determined by the Tribe's governing documents.

(6) The term "Tribal Council" means the general membership of the Cow Creek Band of Umpqua Tribe of Indians convened in a meeting open to all Tribal members.

(7) The term "Tribal elder" means any Tribal member who reaches 50 years of age on or before December 31, 1985.

(8) The term "Office of Hearings and Appeals" means the Office of Hearings and Appeals of the Department of the Interior, or any successor of such Office.

SEC. 3. JUDGMENT DISTRIBUTION PLAN.

Notwithstanding Public Law 93-134 (25 U.S.C. 1401, et seq.), or any plan prepared or promulgated by the Secretary pursuant to such Act, the judgment funds awarded in United States Claims Court docket number 53-81L shall be distributed and used in the manner provided in this Act.

SEC. 4. DISTRIBUTION AND USE OF FUNDS.

(a) PRINCIPAL PRESERVED; NO PER CAPITA PAYMENTS.—The total judgment fund of $1,500,000, and the interest and income earned on such fund before the date of enactment of this Act, less attorney's fees and loan with the Bureau of Indian Affairs for expert witness testimony during the land claims case, shall be set aside as the principal from which programs under this Act will be funded and will be maintained by the Secretary in trust for the Tribe. Only the interest earned on this principal may be used to fund such programs. There will be no per capita distribution of any funds, other than as specified in this Act.

(b) ELDERLY ASSISTANCE PROGRAM.—

(1) From the principal, the sum of $500,000 will be set aside for an Elderly Assistance Program. A one-time-only payment of $5,000 will be made to each Tribal elder as soon after January 1, 1986, as the following conditions have been met:

(A) A mechanism exists whereby the Tribe can request the release of funds from the Secretary in order to begin payments.

(B) A list of all Tribal members who are 50 years of age or older has been compiled and reviewed for accuracy by the Tribe's governing body and a financial distribution system has been established.

(2) Payments to Tribal elders shall be made according to the following formula:

(A) Payments of $5,000 will be made to the Tribal elders by age in descending order, beginning with the oldest Tribal elder, until the interest accumulated for one year on the $500,000 has been depleted below the sum of $5,000. Any interest remaining shall carry over to the following year for distribution hereunder in the next $5,000 payment.

(B) On or before January 1 of succeeding years payments of $5,000 will continue to be made to Tribal elders in descending order by age until the interest earned in such year on

the $500,000 has been depleted below the sum of $5,000. Any interest remaining shall carry over to the following year for distribution hereunder in the next $5,000 payment.

(C) The distribution process will continue each year until every individual eligible for payment under this subsection have received a one-time-only payment of $5,000. When all payments have been completed, the principal sum of $500,000 and any remaining interest will be distributed to other Tribal programs as provided in this Act.

(3) If any Tribal member eligible for an elderly assistance payment should die before receiving such payment, the money which would have been paid to that individual will be returned to the Elderly Assistance Program fund for distribution in accordance with this section.

(4) Any individual who feels he has been unfairly denied the right to take part in this program, and who has reached 50 years of age on or before December 31, 1985, may appeal to the Secretary.

(c) HIGHER EDUCATION AND VOCATIONAL TRAINING PROGRAM.—

(1) From the principal, the sum of $100,000 will be set aside. Interest earned on such sum will be utilized to provide scholarships to Tribal members pursuing college, university, or professional education or training. Tribal members seeking vocational training also will be funded from this program, although Adult Vocational Training funding available through a contract with the Bureau of Indian Affairs will be utilized first if an individual is eligible and there is sufficient funding in such program.

(2) When the Elderly Assistance Program under subsection (b) has been completed, the principal funding for the higher education and vocational training program shall be increased to $250,000.

(d) HOUSING ASSISTANCE PROGRAM.—

(1) From the principal, the sum of $100,000 will be set aside for a Housing Assistance Program for Tribal members. Such funding may be added to any existing tribal Housing Improvement Programs to supplement them or it may be used in a separate Housing Assistance Program to be established by the Tribe's governing body. Such funding may be used for any of the following purposes—

(A) rehabilitation of existing homes;

(B) emergency repairs to existing homes;

(C) down payments on new or previously occupied homes; or

(D) purchase or construction of new homes.

If sufficient funding is not available in a given year for purchase or construction of a new home, the governing body may direct the funding to any of the other authorized purposes.

(2) When the Elderly Assistance Program under subsection (b) has been completed, the principal funding for the housing assistance program shall be increased to $250,000.

(e) ECONOMIC DEVELOPMENT AND TRIBAL CENTER.—

(1) From the principal, the sum of $250,000 will be set aside for Economic Development and, if other funding is not available or not adequate, for the construction and maintenance of a Tribal center. Economic development funds under this subsection may be used for the following purposes:

(A) Land acquisition for business or other activities which would benefit the Tribe economically or provide employment for Tribal members. At least 50 per centum of all individuals employed in a Tribally operated business acquired or operated under this subsection shall be Tribal members or the spouses of Tribal members as available and qualified. As new positions open or existing ones are vacated, preference will be given to Tribal members or their spouses. If insufficient numbers of qualified Tribal members or their spouses are available to fill at least 50 per centum of the positions offered, non-Tribal members may be considered for employment.

(B) Business development for the Tribe, including collateralization of loans for the purchase or operation of businesses, matching funds for economic development grants, joint venture partnerships, and other similar ventures which can be expected to produce profits for the Tribe or to employ Tribal members.

(C) Reservation activities, including forest management, wildlife management and enhancement of wildlife habitats, stream enhancement, and development of recreational areas. The Tribe's governing body shall determine what reservation activities will be funded from economic development funds under this subparagraph.

(D) Construction, support, or maintenance of a Tribal center.

(2) When the Elderly Assistance Program under subsection (b) has been completed, the principal funding available for economic development and a Tribal center shall be increased to $400,000.

(f) MISCELLANEOUS TRIBAL ACTIVITIES.—

(1) From the principal, the sum of $50,000 will be set aside for miscellaneous tribal activities as determined by the Tribe's governing body. Such funds shall be used to finance the following activities:

(A) Operating costs of the Tribe's governing body, including travel, telephone, and other expenses incurred in the conduct of the Tribe's affairs.

(B) Legal fees incurred in the conduct of tribal affairs, tribal businesses or other tribal activities, recommended by the Tribe's governing body and approved by the Tribal Council.

(2) Interest from the sum set aside under paragraph (1) may, as determined by the Tribe's governing body, be used to repay to the Secretary any funds provided by the Secretary under Bureau of Indian Affairs Contract No. POOC14207638.

(3) When the Elderly Assistance Program under subsection (b) has been completed, the principal funding for miscellaneous tribal activities shall be increased to $100,000.

(g) EVERGREEN PROPERTY; COLLATERALIZATION OF LOAN WITH BUREAU OF INDIAN AFFAIRS.—

(1) From the principal the sum of $315,000 shall be set aside as collateral on the property known as Evergreen. The interest from such amount shall be utilized for payments on the loan property. If the Tribe's governing body determines that the interest and income together are sufficient to pay off the loan more quickly, it may commit the full interest from the $315,000 to repayment of the loan until such time as loan payments are completed or the income from the property is sufficient to complete the loan payments.

(2) When the loan has been paid or the income from the property is sufficient to pay the loan, the principal amount of $315,000 shall be redistributed to the Housing Assistance Program, Higher Education and Vocational Training Program, and Economic Development and Tribal Center Program established under this section in such proportions as the Tribe's governing body determines to be appropriate.

(h) GENERAL CONDITIONS.—The following conditions will apply to the management and use of the judgment funds:

(1) The principal shall not be used. Only the interest from the funds will be used to finance tribal programs.

(2) The judgment funds will be maintained by the Secretary in interest-bearing accounts in trust for the Tribe.

(3) No amount greater than 10 per centum of the interest earned on the principal may be used for the administrative costs of any of the above programs, except as provided in paragraph (5).

(4) No Service Area is implied or imposed under any program under this Act. If the costs of administering any program under this Act for the benefit of a tribal member living outside the Tribe's Indian Health Service Area are greater than 10 per centum of the interest earned thereon, the Tribe's governing body may authorize the expenditure of such funds for that program, but in carrying out the program shall give priority to individuals within the Tribe's Indian Health Service Area.

(5) The Tribe's governing body may at any time after enactment of this Act declare a dividend to Tribal members from the profits from any business enterprise of the Tribe. Prior to declaring or distributing dividends, however, the Tribe's governing body must first take into consideration the effect of such declaration or distribution of dividends on future operating costs and proposed business expansions. Profits from business enterprises may also be distributed back into any of the programs established under this section provided that future operating costs and proposed expansion costs are first set aside. Any such distribution back into the programs under this Act shall be proportional to the percentage of principal then being allocated hereunder.

(6) Notwithstanding any other provision of this Act—

(A) no payments may be made under any tribal program described in subsection (c) or (d) before January 1, 1988, and

(B) payments may be made before January 1, 1988, under the tribal program described in subsection (b) only to those Tribal elders who—

(i) have attained 70 years of age, and

(ii) have been certified by the Secretary under section 7 of this Act.

(i)(1) Any portion of the principal set aside under subsection (a) which remains after the allocations of the principal required under subsections (b), (c), (d), (e), and (f) have been made shall be allocated among the Housing Assistance Program, the Higher Education and Vocational Training Program, and the Economic Development and Tribal Center Program established under this section in such proportions as the Tribe's governing body determines to be appropriate.

(2) If the total amount of the principal set aside under subsection (a) after amounts sufficient to pay attorney's fees and the loan described in subsection (a) have been deducted is insufficient to make all of the allocations of the principal required under subsections (b), (c), (d), (e), and (f), the portion of the principal which is required to be allocated to the purposes provided in subsections (c), (d), (e), and (f) shall be reduced in such proportions as the Tribe's governing body determines to be appropriate.

SEC. 5. TRIBAL MEMBERSHIP.

(a) IN GENERAL.—Section 5 of the Cow Creek Band of Umpqua Tribe of Indians

Recognition Act (25 U.S.C. 712c) is amended to read as follows:

"Sec. 5. (a) The membership of the Cow Creek Band of Umpqua Tribe of Indians shall consist of—

"(1) every individual who—

"(A) is listed in the response of the tribe to the United States Interrogatory number 14 in the United States Claims Court docket numbered 53-81L and continuously maintains membership in the tribe after the date of enactment of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1986, and

"(B) is of Indian ancestry,

"(2) every individual who—

"(A) is a descendant of any individual considered to be a member of the Cow Creek Band of Umpqua Tribe of Indians for purposes of the treaty entered into between such Band and the United States on September 19, 1853 (10 Stat. 1027), as ratified by the Senate on April 12, 1854, and

"(B) is a member of the tribe on the date of enactment of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1986,

"(3) the descendants of any individual who meets the requirements of paragraph (1) or (2), and

"(4) every individual who—

"(A) is a descendant of any individual considered to be a member of the Cow Creek Band of Umpqua Tribe of Indians for purposes of the treaty entered into between such Band and the United States on September 19, 1853 (10 Stat. 1027), as ratified by the Senate on April 12, 1854, and

"(B) meets such other requirements as may be provided in the constitution, bylaws, or membership ordinances of the tribe.

"(b) Any individual may appeal to the Secretary any determination of the tribe regarding the issue of whether such individual meets the requirements of subsection (a)(4)(A). The determination of the Secretary regarding such issue shall be final and shall be determinative of such issue for purposes of obtaining membership in the tribe.

"(c) Membership in the tribe pursuant to subsection (a) shall not entitle an individual who shared in the distribution of funds under the Act of August 13, 1954 (68 Stat. 718; 25 U.S.C. 564 et seq.) or the Act of August 13, 1954 (68 Stat. 724; 25 U.S.C. 691 et seq.) to participate in any distribution of funds pursuant to a judgment under the Act approved May 26, 1980 (94 Stat. 372).

"(d) TECHNICAL CORRECTION.—The Cow Creek Band of Umpqua Tribe of Indians Recognition Act is amended by striking out "Umpqua Tribe of Oregon" each place it appears and inserting in lieu thereof "Umpqua Tribe of Indians".

SEC. 6. ELIGIBILITY OF NON-TRIBAL MEMBERS.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, any individual who is not a tribal member shall be eligible to participate in the programs established under subsections (b), (c), and (d) of section 4 of this Act if such individual—

(1) submits to the Tribe, by no later than the date that is 180 days after the date of enactment of this Act, an application for participation in such programs which is accompanied by evidence establishing that such individual is within the group of persons described in section 4(a) of Public Law 96-251, and

(2) is certified by the Secretary as being within such group.

(b) Basis of Certifications.—In making certifications under subsection (a)(2), the Secretary may use—

(1) records collected pursuant to Bureau of Indian Affairs Contract No. POOC14207638 that are made available to the Secretary by the Tribe, and

(2) any other documents, records, or other evidence that the Secretary determines to be satisfactory.

SEC. 7. CERTIFICATION OF MEMBERS FOR PURPOSES OF THIS ACT.

(a) In General.—The Assistant Secretary shall make a determination with respect to each individual who is an enrolled member of the Tribe of whether such individual meets the requirements of paragraph (1), (2), (3), or (4)(A) of section 5(a) of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712c(a)). The Secretary shall certify for purposes of this Act each of such individuals who meet the requirements of any of such paragraphs.

(b) Basis of Determinations.—In making determinations under subsection (a), the Assistant Secretary may use—

(1) records collected pursuant to Bureau of Indian Affairs Contract No. POOC14207638 that are made available to the Secretary by the Tribe, and

(2) any other documents, records, or other evidence that the Assistant Secretary determines to be satisfactory.

(c) Appeals.—

(1) Any determination made by the Assistant Secretary under subsection (a) with respect to any individual may be appealed by such individual to the Office of Hearings and Appeals.

(2) Any determination made by the Assistant Secretary that is appealed to the Office of Hearings and Appeals under paragraph (1) shall be subject to de novo review by such Office and the determination of such Office shall be final, unless the determination of such Office is appealed to the Secretary.

(d) Completion of Certain Determinations.—

(1) The Assistant Secretary shall make determinations, and the Secretary shall, if appropriate, make certifications, under this section with respect to each individual who—

(A) has reached 70 years of age before the date of enactment of this Act, and

(B) is an enrolled member of the Tribe on the day before the date of enactment of this Act,

by no later than the date that is 180 days after the date of enactment of this Act.

(2) The Assistant Secretary shall make determinations, and the Secretary shall, if appropriate, make certifications, under this section with respect to each individual who—

(A) has not reached 70 years of age before the date of enactment of this Act, and

(B) is an enrolled member of the Tribe on the day before the date of enactment of this Act,

by no later than December 31, 1987.

● Mr. HATFIELD. Mr. President, today we are asked to consider H.R. 3214 as amended by the Senate Select Committee on Indian Affairs. This legislation provides a road map for the distribution of $1.5 million awarded by the U.S. Claims Court to the Cow Creek Band of Umpqua Indians in my home State of Oregon.

The Cow Creek Indians are an admirable group of individuals who have been fighting for justice in the wake of broken promises which occurred between the tribe and the Government during the past 128 years.

On September 19, 1853, the Cow Creek Indians signed a treaty with the United States Government which guaranteed compensation for 800 square miles of tribal land ceded to the Federal Government the following year. The outbreak of hostilities between early settlers of the Oregon Territory and a number of small Indian groups separated the tribe and brought an end to those payments that were legally due.

Efforts by the tribe to lay claim to this settlement resumed in the early 1930's during the Hoover administration. Unfortunately, legislation passed by the Congress in 1932 that would have enabled the Cow Creeks to file a claim against the United States was vetoed by President Hoover on the grounds that the United States could not afford to pay successful calimants. Not deterred, the tribe continued in its fight to extract compensation from the Federal Government. It was not until 1980, however, that the Congress passed Public Law 96-251, which enabled the Cow Creek Indians to pursue their claim with the U.S. Claims Court.

In 1984, the court awarded $1.5 million to the tribe in accordance with a settlement reached between the tribe and the Government. This amount is to be allotted subsequent to the approval of a distribution plan by Congress or the Secretary of the Interior. The plan is to be crafted in such a way as to protect the long-term interests of the aggrieved tribe and its members.

Mr. President, the bill before us today reflects the careful planning and hard work of the members of the Cow Creek Tribe, the House of Representatives, and the Senate Select Committee on Indian Affairs. It follows both the spirit and intent of the Federal guidelines for the distribution of judgment funds. The tribe has chosen a path that takes into consideration the failures of previous per capita distributions. These one-time per capita payments were designed to compensate individuals for the abrogation of commitments made by the Federal Government to their ancestors.

The unfortunate fact, Mr. President, is that in many cases these funds have not helped solve any of the problems incurred because of lost tribal assets. The Cow Creek Indians observed this sad fact as they saw other tribes receive funds on a per capita basis. They watched as this money evaporated, sometimes within hours, as it was used not for the long-term well-being of the tribe and its members, but rather for the short-term interests of the individuals. Years down the road these tribes are still struggling with financial and social problems that a more thoughtful distribution plan might have helped to alleviate.

Mr. President, Congress has also witnessed the sad record of these payments. I commend the Cow Creek Tribe for not submitting a per capita distribution plan. The tribe has submitted to Congress a distribution scheme which, I believe, will be an investment in the quality of life for all tribal members and Cow Creek descendants, both now and far into the future.

The plan uses the $1.5 million award as the capital whose interest will yield benefits in four program categories: elderly assistance, higher and vocational education, housing, and economic development. These programs will do much to ensure that future tribal members will continue to benefit from the funds that we are distributing today. Such a distribution scheme will prove especially important to the tribe during the next few years as fiscal restraints limit the amount of Federal benefits that Congress will be able to provide to Indian tribes in this area. In addition, this program will assist the tribe in competing successfully in the struggling economy in my home State.

An important aspect of the plan is that it takes into consideration the best interests not only of the enrolled tribal members, but also those lineal descendants of the original Cow Creek band of 1853 who, for one reason or another, are not currently enrolled members of the tribe. These persons, who rightfully deserve to be included in this token gesture of belated justice, are not forgotten. Under this legislation, persons who can show descendancy from the original Cow Creek band will be eligible to participate in each individual aspect of the program.

On July 28, 1986, Senator PACKWOOD and I sent a letter to Mr. Joseph E. Ross, director of the Congressional Research Service, requesting a legal analysis of H.R. 3214 in light of the scope of congressional authority with respect to the distribution of judgment funds. The Congressional Research Service responded on September 29, 1986, with a brief examining the legislation in light of the Supreme Court's decision of Delaware Tribal Business Committee versus Weeks. Mr. President, I ask unanimous consent that both the letter to the Director of the Congressional Research Service and the Service's response be printed in the RECORD following my remarks.

The Cow Creek are a people whose pride and devotion to an improved quality of life are unequaled. Their proposal takes aim at securing both long- and short-term benefits for the tribe and its members. This important piece of legislation is long overdue, and I urge my colleagues to support it.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, September 29, 1986.

To: Hon. BOB PACKWOOD.
(Attention: Randall Edwards)
From: American Law Division.
Subject: Brief Examination of Proposed Cow Creek Distribution In Light of *Delaware Tribal Business Committee* v. *Weeks.*

You have asked that we briefly address the scope of congressional authority with respect to distribution of judgment funds under the standard articulated in *Delaware Tribal Business Committee* v. *Weeks,* 430 U.S. 73 (1977), and consider the proposed distribution of a $1,500,000 fund to the Cow Creek Band of Umpqua Indians under H.R. 3214 in light of this standard. You have noted that the proposed distribution would be in the form of funding for four programs for the benefit of the tribe. You have also noted that two of the four programs are anticipated to be open, not only to enrolled members of the tribe, but also to others, not enrolled in the tribe, who are lineal descendants of the Cow Creek Band of Umpqua Indians with whom the United States treated in 1853.[1] Our examination of this matter will be limited, of necessity, by your tight time constraints.

The pertinent sequence of events in the Cow Creek dispute begins with the 1853 treaty which provided for cession of certain lands by the Cow Creek band in return for $12,000 in goods, provisions, and money, to be paid over a specified time period, temporary occupation of a small reserve on the ceded land until permanent lands were selected, and construction of two dwelling houses. Because of the outbreak of the Rogue River War, compliance with the treaty provisions was forestalled, and the tribe became divided between those sent to the Grand Ronde reservation and those who remained in the Cow Creek area.

Congressional authorization for the filing of a suit in the United States Claims Court was enacted in the Act of May 26, 1980, P.L. 96-251, 94 Stat. 372. The Cow Creek Band of the Umpqua Tribe of Indians was defined for purposes of this act in Sec. 4 (a), as—

The group of persons descended from persons considered members of such band for purposes of the treaty entered into between such band and the United States on September 19, 1853 (10 Stat. 1027), as ratified by the Senate on April 12, 1854, except that such group shall not include any person, or the descendent of any person, who shared in the distribution of funds under the Act entitled "An Act to provide for the termination of Federal supervision over the property of the Klamath Tribe of Indians located in the State of Oregon and the individual members thereof, and for other purposes", approved August 13, 1954 (25 U.S.C. 564 et seq.), or under the Act entitled 'An Act to provide for the termination of Federal supervision over the property of certain tribes and bands of Indians located in western Oregon and the individual members thereof, and for other purposes', approved August 13, 1954 (25 U.S.C. 691 et seq.).

A claim was filed pursuant to this section, and you have advised us that the fund to be distributed resulted from disposition of that claim in an out of court settlement on June 12, 1984.[2]

On December 29, 1982, the Cow Creek Band of Umpqua Tribe of Oregon became a federally recognized tribe. P.L. 97-391, 96 Stat. 1960, 25 U.S.C. §§ 704-712d. Membership in the tribe under that Act was determined under 25 U.S.C. § 712c as follows:

(a) In general—

Membership in the tribe shall consist of every individual—

(1) whose name appears on the tribal roll in effect on December 29, 1982; or

(2) who is a descendant of any individual described in paragraph (1).

(b) Limitation

Membership in the tribe pursuant to subsection (a) of this section shall not entitle an individual, who is not otherwise entitled, to participate in any distribution of funds pursuant to a judgment under the Act approved May 26, 1980 (94 Stat. 372).

Under the proposed distribution plan in H.R. 3214, a "Tribal member" is defined in Sec. 2(3) to mean

Any individual named in the Tribal roll that was published in the Tribe's answer to the United States' Interrogatory numbered 14 in United States' Claims Court docket numbered 53-81L, and descendants of any individual named in such roll after determination of enrollment elegibility by the Tribe.

Sec. 5 of this measure would also amend the definition of tribal membership under P.L. 97-391 so as to define tribal membership to consist of

Every individual named in the Tribal roll that was published in the Tribe's answer to the United States Interrogatory numbered 14 in the United States Claims Court docket numbered 53-81L, as supplemented through December 29, 1982, and descendants of any individuals named in such roll born on or before the date of enactment of this Act. Thereafter, membership in the Tribe shall be determined as provided in the Tribal Constitution, By-laws, and Membership ordinance.

With this background in mind, we turn now to a brief examination of congressional authority over distribution funds as addressed by the Supreme Court in *Delaware Tribal Business Committee* v. *Weeks,* 430 U.S. 73 (1977). In *Weeks,* the Court quoted its decision in *United States* v. *Alcea Band of Tillamooks,* 329 U.S. 40, 54 (1946) (plurality opinion), "'The power of Congress over Indian affairs may be of a plenary nature; but it is not absolute.'" 430 U.S. at 84. The *Weeks* Court summarized earlier caselaw with respect to the scope of judicial review of congressional decisions regarding tribal funds "in light of the broad congressional power to prescribe the distribution of property of Indian tribes." Id.

The general rule emerging from our decisions ordinarily requires the judiciary to defer to congressional determination of what is the best or most efficient use for which tribal funds should be employed. *Sizemore* v. *Brady,* 235 U.S. 441, 449 (1914). Thus, Congress may choose to differentiate among groups of Indians in the same tribe in making a distribution, *Simmons* v. *Seelatsee,* 384 U.S. 209 (1966), aff'g 244 F. Supp. 808 (ED Wash. 1965), or on the other hand to expand a class of tribal beneficiaries entitled to share in royalties from tribal lands, *United States* v. *Jim,* [409 U.S. 80 (1972)], or to devote to tribal use mineral

[1] Treaty with the Umpqua—Cow Creek Band, 1853, 10 Stat. 1027 (Sept. 19, 1853), ratified April 12, 1854.

[2] As we have no copy of any settlement agreement or judgment disposing of this claim, we do not have any information as to whether such agreement or judgment may, by its terms, specify a means or formula for distribution.

rights under allotments that otherwise would have gone to individual allottees, *Northern Cheyenne Tribe* v. *Hollowbreast*, 425 U.S. 649 (1976). The standard of review most recently expressed is that the legislative judgment should not be disturbed "[a]s long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians . . . ." *Morton* v. *Mancari*, [417 U.S. 535], at 555 [(1974)].

Weeks relied upon the *Morton* v. *Mancari* standard in concluding that the decision by Congress to omit the Kansas Delawares from the statutory formulation for distribution of a judgment fund arising out of treaty obligations to the Delaware Tribe was "'tied rationally to the fulfillment of Congress' unique obligation toward the Indians,'" 430 U.S. at 85, and that it did not offend the Due Process Clause of the Fifth Amendment. Id., at 90. In reaching this conclusion, the Court looked to the fact that the Kansas Delawares were not a recognized tribe, that their ancestors had severed their relations with the tribe and elected to become United States citizens in 1866 at which time they took their proportionate share of the tribal property, that the appropriated funds to be distributed were tribal property subject to Congress' broad traditional authority with respect to management and distribution of the property held by recognized tribes, that the Congress had excluded the Kansas Delawares from participating in another fund arising out of an unrelated breach of the 1854 treaty with the Delaware Tribe, and that omission of the Kansas Delawares would avoid confusion and delay in distribution of the fund. While upholding the constitutional sufficiency of the distribution scheme, the Court noted that Congress had the power, should it so choose, to revise its distribution plan to include the Kansas Delawares, as the distribution had not yet occurred, and the Congress possessed the power to revise its original allocation. 430 U.S. at 90.

You have asked three specific questions with respect to congressional authority over the Cow Creek judgment fund distribution:

(1) Does the previous action by Congress and the Court strictly limit eligibility to lineal descendants?

(2) In light of the previous actions by Congress and the U.S. Court of Claims, does Congress have the authority to limit the participants in the Tribal Distribution Plan to currently enrolled members of the Cow Creek Tribe?

(3) Does Congress have the authority to allow lineal descendants, who are not currently enrolled members of the Tribe, to participate in only a portion of the Tribal Distribution Plan?

As a general matter, it is clear that an earlier Congress cannot bind a later Congress by its actions. Nor do the earlier actions of Congress as outlined above suggest that tribal membership be limited wholly to lineal descendants. As to the actions of "the Court" (presumably the U.S. Claims Court, as the U.S. Supreme Court has not acted with respect to this distribution)[3] we have nothing before us with respect to the U.S. Claims Court's judgment or any settlement language. Therefore we will not speculate upon what effect, if any, such language might have upon the questions before us. Suffice it to say that so long as the distribution is to the tribe of a tribal asset, the *Weeks* analysis would seem likely to pertain.

Weeks, and the cases upon which it relies, suggest that, so long as the Congress' distribution scheme can be rationally tied to the fulfillment of its unique obligation to Indians, the Congress has broad authority with respect to the manner of distribution and the participants in the distribution of a tribal judgment fund. If this rational tie can be demonstrated, the courts appear unlikely to second guess Congress' determinations. *Weeks* suggests some of the factors which a court, examining the Cow Creek distribution scheme, might consider. While we cannot say with absolute certainty how a court, upon the evidence presented to it, might answer your second and third questions, the *Weeks* decision would seem to suggest that a court would only overturn the Congress' distribution plan if no rational tie to Congress' obligation to the tribe could be found.

We hope that this will be of assistance to you.

ELIZABETH B. BAZAN,
Legislative Attorney.●

● Mr. PACKWOOD. Mr. Chairman, I am pleased that the bill before us has reached the Senate floor. It has taken over 130 years for the Cow Creek Band of the Umpqua Tribe of Indians to receive their just compensation for land they ceded to the U.S. Government. This bill will end their years of waiting.

My colleagues may ask why it has taken so long for this tribe to be awarded compensated. Let me briefly explain its history.

The Cow Creek Band of the Umpqua Tribe of Indians was an aboriginal tribe in southwestern Oregon, in what is now Douglas County. With the rush of settlers into the Oregon Territory and the discovery of gold in the Umpqua Valley, the Government and the tribe signed a treaty in 1853 whereby the Cow Creeks agreed to cede their land in exchange for goods, other land, services, and annuities. This agreement was ratified by the U.S. Senate on April 12, 1854.

However, the Cow Creeks were destined to never receive that compensation. In 1855, war broke out in the region between the natives and the settlers. Caught up in the conflict, many of the Cow Creeks fled into the neighboring hills. However, the tribe was not completely wiped out by this conflict and those who remained in the area continued to consider themselves Cow Creeks.

Not until 1980 did the Cow Creeks see hope of receiving compensation. Congress passed legislation allowing the tribe to file a claim with the U.S. Court of Claims. It took 4 years before an agreement was reached, and on June 12, 1984, the tribe was awarded $1.5 million.

The bill before the Senate, H.R. 3214, is a distribution plan for this money. Mr. President, it is a good plan supported by the tribe. The principle will be placed in a trust fund, with the interest from it being used to pay for various tribal programs and expenses. These programs include: elderly assistance, higher education and vocational training, housing assistance, and economic development.

Mr. President, I believe that the bill before this body will be of long-term benefit to the tribe, and I hope my colleagues will join me in supporting it. The House has passed a bill. It is now time that the Senate act to finalize our obligation to the Cow Creek Band of Umpqua Indians and end their long wait.●

AMENDMENT NO. 3500

(Purpose: To declare the homeland of the tribes on the Fort Peck Indian Reservation)

Mr. BYRD. Mr. President, I submit an amendment on behalf of Mr. MELCHER.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. MELCHER, proposes an amendment numbered 3500.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following:

"FORT PECK RESERVATION

SEC. 8. The Fort Peck Indian Reservation, Montana, as defined in the Act of May 1, 1888, C. 212, 25 Stat. 113, is hereby declared the permanent homeland of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation."

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3500) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the committee substitute.

The committee substitute was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read a third time, and passed.

[3] It is worthy of note that the U.S. District Court for the District of Oregon in *Buschmann* v. *Cow Creek Band of Umpqua Tribe of Indians, Inc.*, Civil No. 85-6137-E, slip op. (D. Or. July 28, 1986), held, in pertinent part, that the Cow Creek Band of Umpqua Tribe of Indians, Inc., did properly adopt an official corporate membership roll in 1980, but that this role did not constitute an official tribal roll, as it was compiled and approved by the corporation over two years before federal recognition of the tribe. The court held further that, on the record before it, there was no evidence that the recognized tribe had ever compiled an official roll. It is unclear what the effect of this decision might be upon an interpretation of the statutory definitions of tribal membership discussed above. This matter is unsettled.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The title was amended so as to read "An Act to provide for the use and distribution of funds awarded to the Cow Creek Band of Umpqua Tribe of Indians in the United States Claims Court docket number 53-81L, and for other purposes".

RELIEF OF HAMILTON JORDAN

Mr. THURMOND. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 3363, which is being held at the desk. This is a bill for the relief of Hamilton Jordan.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3363) for the relief of Hamilton Jordan.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3501

Mr. THURMOND. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. THURMOND] proposes an amendment numbered 3501.

Mr. THURMOND. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike everything after the title and enacting clause and insert:

"That (a) the provisions of section 593(g) of title 28, United States Code, shall apply to an application filed pursuant to section 3 of this Act by Hamilton Jordan of Lawrenceville, Georgia, for reimbursement of legal fees incurred from an investigation conducted by independent counsel pursuant to chapter 39 of such title during the period of November 29, 1979, through May 28, 1980.

(b)(1) Hamilton Jordan may include in an application filed pursuant to section 3 of this Act a request for reimbursement of legal fees incurred during the period of August 24, 1979, through November 19, 1979, which, for purposes of this Act, shall be deemed legal fees incurred from an investigation conducted by independent counsel pursuant to chapter 39 of title 28, United States Code.

(2) Four purposes of this Act, 2 percent of such fees described in paragraph (1) shall be deemed to be fees incurred from a preliminary investigation conducted by the Attorney General of the United States pursuant to the provisions of section 591 of title 28, United States Code, and, as such, are not reimbursable.

SEC. 2. The United States Court of Appeals for the District of Columbia may, in its discretion, award reimbursement for all or part of the legal fees requested pursuant to subsections (a) and (b) of the first section, except that no reimbursement shall be awarded for the legal fees described in paragraph (2) of subsection (b) of the first section that are deemed to be fees incurred from a preliminary investigation.

SEC. 3. Hamilton Jordan may file an application for the reimbursement of legal fees incurred as a result of the investigations described pursuant to the first section in the United States Court of Appeals for the District of Columbia within sixty days after the date of enactment of this Act.

Mr. THURMOND. Mr. President, I rise today in support of the substitute amendment to H.R. 3363, a bill for the relief of Hamilton Jordan. The purpose of this legislation is to allow Mr. Jordan to apply to the U.S. Court of Appeals for reimbursement of attorneys' fees he incurred in connection with an investigation pursuant to the Ethics in Government Act of 1978 (the "Ethics Act"). Under this amendment, Mr. Jordan would be eligible for all but 2 percent of his legal expenses incurred during this investigation.

The Ethics Act, as it existed when Mr. Jordan was investigated and as it currently stands, provides for two phases: first, the Attorney General conducts a preliminary investigation when certain allegations are made; second, if certain conditions are met, the Attorney General turns over the investigation and prosecution to an Independent Counsel (previously called the special prosecutor). Under current law, those investigated under the Ethics Act are eligible for reimbursement of only the fees incurred during the independent counsel investigation and not those incurred during the preliminary investigation. This is because the fee provision is intended to allow subjects of investigations to recover fees which they have incurred as a result of the Ethics Act, but not for preliminary investigations which are conducted routinely by the Justice Department on any number of allegations.

This amendment simply puts Mr. Jordan in the same position that others under the current Ethics Act would be if investigated under these circumstances. Under the current provisions of the Ethics Act, he would have incurred only minimal attorneys' fees because his case would have been concluded after the preliminary investigation, without appointment of an independent counsel. This is because of the Department of Justice policy not to pursue allegations such as were made in Mr. Jordan's case. However, prior to amendment of the Ethics Act, the Attorney General could not take prosecutorial policies into account to close investigations. As a result, Mr. Jordan was subjected to a lengthy preliminary investigation which led to no indictment.

Congress amended the Ethics Act in 1982, at least in part, to minimize the expense that public figures would incur defending charges that are later found to be frivolous or nonindictable. I believe it sets an important precedent to establish in this instance that some portion should not be reimbursed, in this instance 2 percent of the total attorneys' fees, because it represents reasonably incurred expenses during a preliminary investigation. I urge my colleagues to support this legislation.

Mr. NUNN. Mr. President, I support the substitute amendment offered by the chairman of the Judiciary Committee, Mr. THURMOND to H.R. 3363, a House-passed private relief bill for Hamilton Jordan. Before I discuss the amendment, I would like to thank my good friend and colleague Senator THURMOND for his efforts in helping to get this matter before the Senate. I would also like to thank my good friend Senator COHEN who introduced a companion measure, S. 1475. Finally, I would like to recognize the staffs of the Senate Judiciary Committee and the Subcommittee on Oversight of Government Management, Governmental Affairs Committee, for their work and extend effort. Together, this group has crafted a piece of legislation which rectifies an injustice in a manner which carefully protects other legitimate Government interests.

Mr. President, this bill corrects an inequity which has existed for some time now. The bill would permit Hamilton Jordan, former Chief of Staff to President Carter, to seek in Federal court reimbursement for legal fees which he incurred in 1979 and 1980 when he was the subject of an investigation conducted pursuant to the then-existing Ethics in Government Act of 1978. The act contained standards which applied criminal law to public officials in a much harsher fashion than to ordinary citizens.

In mid-1979 defense attorneys, in an attempt to convince Federal prosecutors to drop tax evasion and obstruction of justice charges against their clients, raised certain allegations against Mr. Jordan. The standard in the Ethics in Government Act required the Attorney General to conduct a preliminary investigation even on receipt of plea-bargain allegations of questionable credibility. Although the Attorney General concluded that the allegations were "so insubstantial that prosecution is not warranted," he felt compelled to appoint a special prosecutor because of the strict standards applicable to such appointment decisions. After a 6-month investigation by the Special Prosecutor, he concluded that there was insufficient evidence to bring criminal charges. Addi-

tionally, a grand jury empaneled in the Southern District of New York to assist in the investigation concluded that there was insufficient evidence to indict. As a result of the allegations, Mr. Jordan endured a lengthy, expensive investigation which ultimately resulted in no charges being brought against him. There were no provisions in the law for reimbursement of his expenses.

Because of the inequities of the act as illustrated by the investigations of Mr. Jordan, the Ethics in Government Act was amended in 1983. The amended act sets standards which treat Government officials the same as other citizens of the United States. Under the current law, there probably would have been no investigation, no appointment of a special prosecutor and no legal fees incurred. In addition, the new act allows subjects of these investigations which do not result in indictment to seek reimbursement of legal fees incurred during the investigations. Mr. Jordan's sole application for reimbursement of legal fees was denied because the amended Ethics in Government Act had no retroactive effect.

Mr. President, this legislation simply allows Mr. Jordan the same opportunity afforded any current Government official to apply to the Federal court for reimbursement of legal fees incurred during investigations which did not result in indictment. House Bill 3363, which passed the House 347 to 40, sought to allow Mr. Jordan this opportunity. This effort has received strong support from the Department of Justice. Further, three newspaper articles, two from the Washington Post dated October 18, 1984, and June 11, 1985, and one in the New York Times dated January 24, 1985, have called for the correction of this injustice. I ask unanimous consent to have printed in the RECORD these articles and the executive comment from the Justice Department.

Mr. President, based on the facts of this case and the support this action has received from the House, the administration, and the media, I urge my colleagues to remove this unfair price of Government services which Hamilton Jordan has had to pay.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Jan. 24, 1985]

PAY THE MEESE, AND JORDAN, BILLS

Lawyers for Edwin Meese, President Reagan's nominee for Attorney General, are asking a Washington court to award more than $700,000 in fees for work to clear him of criminal wrongdoing. That creates a problem for the Justice Department, which almost reflexively resists high fee awards. It has asked the court for more time to give its views. If the department wants to advance the aims of the Ethics in Government Act, it won't oppose a generous award.

The department has been arguing routinely that successful civil rights plaintiffs deserve no more than $75 an hour in legal reimbursements, an amount Washington attorneys consider meager. Mr. Meese's lawyers are said to ask $250 an hour, close to the going rate in Washington.

Their accomplishments for Mr. Meese certainly deserve the going rate. They represented him over the course of a six-month inquiry by a special counsel, Jacob Stein. They succeeded in persuading Mr. Stein that there was no evil motive, and thus no criminal intent, in a pattern of favors for Mr. Meese by persons who later got good government jobs.

Two years ago, Congress sensibly amended the 1978 Ethics in Government Act to pay the legal costs of persons who successfully defend themselves when investigated by a special counsel. The idea is that they cannot be credibly cleared by the Attorney General, their colleague. Congress considered it only fair to reimburse officials who are cleared and who probably wouldn't have been so carefully investigated at all but for their high office.

The issue arose in part because of Hamilton Jordan, chief of staff in the Carter White House, who was completely cleared of drug charges but was saddled with a big lawyers' bill. Unfortunately, Congress forgot to include Mr. Jordan in its 1983 amendments and a court recently denied him compensation. Another amendment to the law is in order to benefit him.

As for Mr. Meese, the independent counsel's report does nothing to qualify him for the job of Attorney General, but it does entitle him to reasonable compensation for the cost of defending himself.

[From the Washington Post, June 11, 1985]

THE TAXPAYERS' LEGAL BILLS

Unless you practice law in this town you might be surprised to learn how much corporations pay attorneys here and what kinds of services that money buys. Fees in excess of $200 an hour are not uncommon, and lawyers routinely bill clients not only for preparing documents and appearing in court, but for taking a Hill staffer to lunch, testifying before a congressional committee, discussing an international trade problem with an ambassador and even dealing with the media. Lawyers are expensive agents for much of this work, but if a wealthy individual or a corporation wants to spend money this way, it's a private matter.

When the government is paying legal bills, though, it's a different situation. In these cases government officials have a duty to keep costs down and to reimburse only for necessary legal work. And the taxpayers pick up a lot of legal bills these days. The large majority of criminal defendants are represented by publicly paid attorneys. Successful plaintiffs in a wide range of civil rights cases win attorney's fees, as do successful defendants in certain small-business cases brought by the government. Public officials who are the subject of an investigation by an independent counsel—formerly known as a special prosecutor—are also entitled to have reasonable legal fees paid if that investigation does not result in an indictment. This brings us to the case of Attorney General Edwin Meese and his lawyers.

Representing Mr. Meese during the investigation that preceded his Senate confirmation was a difficult and time-consuming task for which he chose skilled and high-priced counsel. At the investigation's conclusion, Mr. Meese's lawyers submitted a bill for every hour they spent on the case, asking their customary hourly fees. This was perfectly proper under the law as it is now written. But just as courts scrutinize bills submitted by criminal counsel and civil rights lawyers and routinely disallow some time and reduce some hourly rates, they have done so in the Meese case. His lawyers will be paid only about two-thirds of the amount requested, and no reimbursement will be made for time spent dealing with the media. It is a fair solution.

While public attention is focused on this issue, however, two more steps should be taken. Congress should enact legislation setting a cap on hourly fee reimbursements in all cases where the government pays private attorneys. The Justice Department has repeatedly requested this change, suggesting a limit of $75 an hour. Second, Congress should pass a private bill to reimburse Hamilton Jordan, President Carter's chief of staff, for legal fees he incurred during an independent prosecutor's investigation in 1979 and '80. The Jordan case was concluded, without indictment, before the law was changed to provide for attorney's fees. It is only just, while paying Mr. Meese's lawyers, to treat Mr. Jordan in the same manner.

[From the Washington Post, Oct. 18, 1984]

INJUSTICE TO MR. JORDAN

Edwin Meese III does not have the same problem. He will, according to his lawyer, seek reimbursement from the government for the legal expenses he incurred while he was the subject of investigation by an independent counsel. Mr. Meese is entitled to that reimbursement, both under the specific terms of a 1982 law and under general principles of fairness. He was subjected to this lengthy process because of charges raised when he held high federal office; he defended himself and was vindicated when the independent counsel found no reason to bring any action against him.

In all these respects Mr. Meese's case is similar to that of Hamilton Jordan, who was the subject of such an investigation in 1979 and 1980. But Mr. Jordan has not been and seems unlikely to be reimbursed, as he would be under the law as it was rewritten in 1982. That's ironic, because the law was rewritten in very large part because a bipartisan majority of legislators became convinced it worked unfairly in cases such as Mr. Jordan's.

So they changed the name of the investigating authority from special prosecutor to independent counsel. They made it clear that the appointment of such a counsel was not required automatically by the publication of unsubstantiated allegations against an official, but could be made only after the attorney general considered the specificity of the charges and the credibility of the source of information. And they provided for reimbursement of legal fees when the independent counsel finds no basis for bringing a criminal case in the charges.

All these changes operated in Mr. Meese's favor. It was not even clear in his case that appointment of an independent counsel was required by law (that was done at Mr. Meese's own request), and now he's eligible for reimbursement of legal fees. But Mr. Jordan, who was subjected to an investigation that surely would not have been required under the 1982 law, is not eligible for any reimbursement, according to a court ruling this week. The ruling probably won't be reversed on appeal. But it can and should

be reversed by an act of Congress. Outgoing Attorney General William French Smith might make it one order of business to support and seek bipartisan support for a measure to right this wrong.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND
INTERGOVERNMENTAL AFFAIRS,
Washington, DC.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This letter presents the views of the Department of Justice on S. 1475 and H.R. 3363, bills for the relief of Hamilton Jordan. These bills, if enacted, would permit Mr. Jordan to seek reimbursement for legal fees he incurred in 1979 and 1980, when pursuant to the Ethics in Government Act (the Act), Mr. Jordan was the subject of investigation, first by the Attorney General, and then by a special prosecutor. This legislation would allow Mr. Jordan to claim reimbursement for fees incurred during both investigations. [1] Under the bills, Mr. Jordan would be required to file an application for reimbursement within sixty days in the Independent Counsel Division of the United States Court of Appeals for the District of Columbia.

As you know, the Ethics in Government Act was amended in 1983 to allow subjects of independent counsel investigations that do not result in indictment to seek reimbursement of the legal fees they incur during such investigations. 28 U.S.C. § 593(g). Mr. Jordan's case was the prime example cited by Congress of a public servant forced to incur attorney fees to defend himself against what proved to be groundless accusations.

Ironically, however, because Congress chose not to make the law retroactive, Mr. Jordan himself has been unable to benefit by an enactment which was, in large measure, prompted by his situation. *See, In Re Hamilton Jordan,* 745 F.2d 1574 (D.C. Cir., Independent Counsel Div., 1984). Legislation permitting him to recover the attorney fees which he incurred in the 1979-1980 special prosecutor proceeding would ameliorate his situation.

Therefore, the Department of Justice will support the enactment of S. 1475 and H.R. 3363.

Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

PHILLIP D. BRADY,
Acting Assistant Attorney General.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3501) was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

WITHDRAWAL AND RESERVATION OF CERTAIN PUBLIC LANDS

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1041, S. 2412.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2412) to withdraw and reserve certain public lands.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italics.)

S. 2412

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to valid existing rights, the following lands are hereby withdrawn from all forms of appropriation under the public land [laws—] *laws, except as otherwise provided for in this Act—*

(a) approximately 21,576.40 acres of public land in Churchill County, Nevada, as generally depicted on a map entitled "Bravo-20 Bombing Range Withdrawal—Proposed" dated January 1985, and all other lands within the boundaries of the Bravo-20 Bombing Range that are now or may hereafter become subject to the operation of the public land laws for use of the Department of the Navy as a testing and training area for aerial bombing, missile firing, tactical maneuvering and air support, and for other defense related uses consistent therewith: *Provided,* That this Act does not affect the withdrawals of July 2, 1902, August 26, 1902, and August 4, 1904, under which the Bureau of Reclamation utilizes for flooding, overflow, and seepage purposes approximately 14,750 acres of the lands withdrawn reserved by this Act;

(b) approximately 2,945,000 acres of land in Clark, Nye, and Lincoln Counties, Nevada, as generally depicted on a map entitled "Nellis Air Force Range Withdrawal—Proposed" dated January 1985, are hereby withdrawn from all forms of appropriation under the public land laws for use of the Department of the Air Force as an armament and high hazard testing area, a training area for aerial gunnery, rocketry, electronic warfare, tactical maneuvering and air support, and for other defense related uses consistent therewith: *Provided,* That except to the extent rendered necessary by national defense, this Act does not affect (1) the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 929, as amended; 16 U.S.C. 668dd et seq.) as it applies to the Desert National Wildlife Range; (2) any Executive order or public land order in effect on the date of enactment of this Act that affects the Desert National Wildlife Range; or (3) any memorandum of understanding between the Department of the Interior and the Department of the Air Force, regarding the administration and joint use of a portion of the Desert National Wildlife Range;

(c) approximately 2,664,423 acres of land in Maricopa, Pima, and Yuma Counties, Arizona, as generally depicted on a map entitled "Luke Air Force Range Withdrawal—Proposed" dated January 1985, for use of the Department of the Air Force as an armament and high hazard testing area, a training area for aerial gunnery, rocketry, electronic warfare, tactical maneuvering and air support, and for other defense related uses consistent therewith: *Provided,* That except to the extent rendered necessary by national defense, this Act does not affect (1) the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 929, as amended; 16 U.S.C. 668dd et seq.) as it applies to the Cabeza Prieta National Wildlife Refuge; (2) any Executive order or public land order in effect on the date of enactment of this Act that affects the Cabeza Prieta National Wildlife Refuge; or (3) any memorandum of understanding between the Department of the Interior, the Department of the Air Force, and the Department of the Navy regarding the administration and joint use of a portion of the Cabeza Prieta National Wildlife Refuge;

(d) approximately 608,384.87 acres of public land in Otero County, New Mexico, as generally depicted on a map entitled, "McGregor Range Withdrawal—Proposed" dated January 1985, for use by the Department of the Army as a training and weapons testing area, and for other defense related uses consistent therewith;

(e) approximately 571,995 acres of public land in the Big Delta area, Alaska, as generally depicted on a map entitled "Fort Greely Maneuver Area Withdrawal—Proposed" dated January 1985, and approximately 51,590 acres of public land in the Granite Creek area, Alaska, as generally depicted on a map entitled "Fort Greely Air Drop Zone Withdrawal—Proposed" dated January 1985, for use of the Department of the Army for military maneuvers, training, equipment development and testing, and other defense related uses consistent therewith;

(f) approximately 247,951.67 acres of public land in the Fourth Judicial District, Alaska, as generally depicted on a map entitled "Fort Wainwright Maneuver Area Withdrawal—Proposed" dated January 1985, for use of the Department of the Army as a military maneuver area, a training area for artillery firing, aerial gunnery, infantry tactics, and other defense related uses consistent therewith;

(g) approximately 132,928 acres of public land in Imperial County, California, as generally depicted on a map entitled "Choco-

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[1] We note, however, that the Ethics in Government Act permits recovery of only those attorney fees associated with an investigation conducted by an independent counsel, but not by the Attorney General. Therefore, this legislation would authorize Mr. Jordan to seek recovery of fees in excess of those to which he would be entitled to recover under the Act.

late Mountain Aerial Gunnery Range Withdrawal—Proposed" dated January 1985, and all other lands within the boundaries of the Chocolate Mountain Aerial Gunnery Range that are now or may become subject to the operation of the public land laws, for use of the Department of the Navy as a testing and training area for aerial bombing, missile firing, tactical maneuvering and air support, and for other defense related uses consistent therewith; and

(h) the Federal lands located within the boundaries of the Naval Weapons Center, within Inyo, Kern, and San Bernardino Counties, California, comprising approximately 1,100,000 acres, as generally depicted on a map entitled "China Lake Naval Weapons Center Withdrawal—Proposed" dated January 1985, for use of the Department of the Navy as a research, development, test and evaluation laboratory, and range for air warfare weapon and weapon systems, a high hazard training area for aerial gunnery, rocketry, electronic warfare and countermeasures, tactical maneuvering and air support, and for other defense related uses consistent therewith.

SEC. 2. (a) As soon as practicable after the date of enactment of this Act, the Secretary of the Interior shall—

(1) publish in the Federal Register a notice containing the legal description of the lands withdrawn and reserved by this Act; and

(2) file maps and the legal description of the lands withdrawn and reserved by this Act with the Committee on Energy and Natural Resources of the United States Senate and with the Committee on Interior and Insular Affairs of the United States House of Representatives.

(b) Such maps and legal descriptions shall have the same force and effect as if they were included in this Act: *Provided*, That the Secretary of the Interior may correct clerical and typographical errors in such maps and legal descriptions.

(c) Copies of the maps and legal descriptions that are filed with the committees shall be available for public inspection in the office of the Director, Bureau of Land Management, Washington, District of Columbia, and, as appropriate, in the office of the director, Nevada State office of the Bureau of Land Management, Reno, Nevada; the office of the commander, Bravo-20 Bombing Range; the office of the Director, Fish and Wildlife Service, Washington, District of Columbia, the office of the Regional Director, Fish and Wildlife Service, Portland, Oregon; the office of the commander, Nellis Air Force Base; the office of the director, Arizona State office of the Bureau of Land Management, Phoenix, Arizona; the office of the Director, Fish and Wildlife Service, Washington, District of Columbia, the office of the Regional Director, Fish and Wildlife Service, Albuquerque, New Mexico; the office of the commander, Luke Air Force Base; the office of the director, New Mexico State office of the Bureau of Land Management, Santa Fe, New Mexico; the office of the commander, McGregor Range; the office of the director, Alaska State office of the Bureau of Land Management, Anchorage, Alaska; the office of the installation commander, Fort Richardson, Alaska; the office of the director, California State office of the Bureau of Land Management, Sacramento, California; the office of the commander, Marine Corps Air Station, Yuma, Arizona; and the office of the commander, Naval Weapons Center, China Lake, California.

SEC. 3. The responsibilities of the Secretary of the Interior for management of the lands withdrawn and reserved by this Act are established as follows:

(a) The Secretary of the Interior shall manage the lands and their resources, to the extent possible in accordance with the provisions of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743, as amended; 43 U.S.C. 1701 et seq.), and for other applicable laws, for uses which may include, but are not limited to, grazing, management of wildlife habitat, control of predatory animals, and the prevention and suppression of brush and range fires resulting from nonmilitary activities. Except as set forth in section 4(a) of this Act, the Secretary of the Interior shall also be responsible for the issuance of all easements and rights-of-way over the lands withdrawn and reserved by this Act. All such uses, and the issuance of all easements and rights-of-way, shall be secondary to the military use of the lands and shall be authorized only with the concurrence of, as appropriate, the Secretary of the Navy, the Secretary of the Army, or the Secretary of the Air Force.

(b)(1) Within five years after the date of the enactment of this Act, the Secretary of the Interior and the Secretary of the Navy, Army, or Air Force, as appropriate, shall develop a land use plan and management program for the use and management of the lands withdrawn and reserved by this Act.

(2) The lands within the Desert National Wildlife Range shall be managed by the Secretary of the Interior in accordance with the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 929, as amended; 16 U.S.C. 668dd et seq.), except to the extent that other uses are required for purposes of national defense.

(3) The lands within the Cabeza Prieta National Wildlife Refuge shall be managed by the Secretary of the Interior in accordance with the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 929, as amended; 16 U.S.C. 668dd et seq.), except to the extent that other uses are required for purposes of national defense.

(4) Consistent with the provisions of the Act of September 15, 1960 (74 Stat. 1052, as amended; 16 U.S.C. 670a-670f), the Secretary of the Interior, the Secretary of the Army, and the State of Alaska shall develop, within one year after the date of enactment of this Act, an agreement for the management, conservation, and enhancement of fish and wildlife resources on the lands withdrawn and reserved by this Act within the State of Alaska.

(5) In developing the management plan under subsection (b) for the lands withdrawn under section 1(e) and 1(f), the Secretary of the Interior shall consult with other Federal agencies and the State of Alaska. Such plan shall include a fire management plan which considers habitat improvement and other resource values.

SEC. 4. The responsibilities of the Secretary of the Navy, Army, or Air Force, as appropriate (hereinafter referred to as the Secretary) for management of the lands withdrawn and reserved by this Act are established as follows:

(a) The Secretary shall have the authority to control the military use of the lands and may authorize use of the lands by the other military departments and agencies of the Department of Defense and the Department of Energy, as appropriate or by the public for recreation, hunting, fishing, and trapping to the extent the Secretary [determines.] *determines: Provided, That the Secretary shall allow public access to and use of the lands withdrawn under section 1(e) and 1(f) for purposes of recreation, hunting, fishing, and trapping to the fullest extent compatible with the essential military requirements relating to such lands as determined by the Secretary.*

(b) When military operations, public safety or national security, as determined by the Secretary, require the closure of roads and trails commonly in public use, the Secretary is authorized to take such action: *Provided*, That such closures shall be limited to the minimum areas and periods required for the purposes specified in this subsection. Appropriate warning notices shall be kept posted during closures.

(c) The Secretary shall take necessary precautions to prevent and suppress brush and range fires occurring within and outside the lands as a result of military activities and may seek assistance from the Bureau of Land Management in the suppression of such fires. The memorandum of understanding required by section 5 of this Act shall provide for Bureau of Land Management assistance in the suppression of such fires, and for a transfer of funds from the Department of the Navy, Army, or Air Force, as appropriate, to the Bureau of Land Management as compensation for such assistance.

(d) The Secretary of the Navy shall have responsibility for the management of the wild horses and burros on the lands withdrawn under subsection 1(h) and is authorized to utilize helicopters and motorized vehicles for the management and control of such animals.

(e) The Secretary of the Navy may utilize sand, gravel or similar mineral or mineral material resources when the use of such resources is required for construction needs of the Naval Weapons Center, China Lake.

SEC. 5. The Secretary of the Interior and the appropriate Secretary shall enter into a memorandum of understanding to implement the program developed in accordance with section 3(b) of this Act, and shall continue in effort (1) any memorandum of understanding between the Department of the Interior and the Department of the Air Force covering the administration and joint use of a portion of the Desert National Wildlife Range, and (2) any memorandum of understanding between the Department of the Interior, the Department of the Air Force, and the Department of the Navy covering the administration and joint use of a portion of the Cabeza Prieta National Wildlife Refuge. The term of the memorandums of understanding shall be the same as the term of the withdrawal established by this Act; however, the provisions of the memorandum of understanding may be amended upon mutual consent of the Secretaries.

SEC. 6. (a) Except as provided otherwise in this section, the withdrawal and reservation established by this Act shall terminate twenty-five years from the effective date of this Act.

(b) At least three years prior to the termination of the withdrawal and reservation established by this Act, the appropriate Secretary shall advise the Secretary of the Interior as to whether or not the Department of the Navy, Army, or Air Force, as appropriate, will have a continuing military need for any of the lands after the termination date—

(1) if the Secretary concludes that there will be a continuing military need for any of the lands after the termination date, he shall file an application for extension of the

withdrawal and reservation of such lands in accordance with the regulations and procedures of the Department of the Interior applicable to the extension of withdrawals. Upon the filing of an application for extension, the withdrawal and reservation established by this Act shall remain in full force and effect pending processing of the application and a decision and action on the proposed withdrawal and reservation by the Secretary of the Interior, and, if the application for extension is subject to the requirement of section 2 of the Act of February 28, 1958 (72 Stat. 27; 43 U.S.C. 156), by the Congress;

(2) if the Secretary concludes that, after the termination date established by subsection (a) of this section, there will be no military need for all or any of the lands withdrawn and reserved by this Act, or if, during the period of withdrawal and reservation, the Secretary decides to relinquish all or any of the lands withdrawn and reserved by this Act, the Secretary shall file a notice of intention to relinquish with the Secretary of the Interior; and

(3) prior to the filing of a notice of intention to relinquish pursuant to paragraph (2) of this section, the Secretary shall prepare a written determination as to whether and to what extent the lands are contaminated with explosive, toxic or other hazardous materials. A copy of the determination made by the Secretary shall be supplied with the notice of intention to relinquish.

Copies of both the notice of intention to relinquish and the determination concerning the contaminated state of the lands shall be published in the Federal Register by the Secretary of the Interior—

(A) if the lands are contaminated, and the Secretary, in coordination with the Secretary of the Interior, determines that decontamination is practicable and economically feasible, taking into consideration the potential future use and value of the lands, and that upon decontamination the lands could be opened to operation of the public land laws, including the mining laws, the Secretary shall decontaminate the lands, unless Congress declines to appropriate funds for the project;

(B) if the Secretary and the Secretary of the Interior conclude either that decontamination of any or all of the lands proposed for relinquishment is not practicable or economically feasible, or that the lands cannot be decontaminated sufficiently to allow them to be opened to operation of the public land laws, or if Congress declines to appropriate funds for the decontamination of the lands, the Secretary of the Interior shall not be required to accept the lands proposed for relinquishment.

(c) If, because of their contaminated state, the Secretary of the Interior declines to accept jurisdiction over the lands proposed for relinquishment, the withdrawal and reservation established by this Act shall continue indefinitely and the lands shall be retained and managed in accordance with the provisions of this Act. In such case, beginning with the fifth anniversary of the termination date of the withdrawal and reservation established by this Act, and every five years thereafter, the Secretary, in coordination with the Secretary of the Interior, shall determine whether decontamination of any or all of the lands is both practicable and economically feasible. If the Secretaries conclude the decontamination is both practicable and economically feasible, taking into consideration the potential future use and value of the lands, and that upon decontamination the lands could be opened to operation of the public land laws, including the mining laws, the Secretary shall decontaminate the lands, unless Congress declines to appropriate funds for the project. Following decontamination and upon certification by the Secretary that the lands are safe for all nonmilitary uses, the Secretary of the Interior shall reconsider accepting jurisdiction over the lands.

(d) Notwithstanding any other provisions of law, the Secretary of the Interior, upon deciding that it is in the public interest to accept jurisdiction over the lands proposed for relinquishment, is authorized to revoke the withdrawal and reservation established by this Act, as it applies to the lands proposed for relinquishment. Should the decision be made to revoke the withdrawal, the Secretary of the Interior shall publish in the Federal Register an appropriate order which shall terminate the withdrawal and reservation; constitute official acceptance of full jurisdiction over the lands by the Secretary of the Interior; and state the date upon which the lands will be opened to the operation of the public lands laws, including the mining laws.

SEC. 7. (a) The functions of the Secretary under this Act may be delegated.

(b) The functions of the Secretary of the Interior under this Act may be delegated, except that the order referred to in section 6(d) of this Act, may be approved and signed only by the Secretary of the Interior, the Under Secretary of the Interior, or an Assistant Secretary of the Department of the Interior.

SEC. 8. The following public land orders, as amended, are hereby revoked: Public Land Order 673, of October 6, 1950; Public Land Order 3450, of September 23, 1964; and Public Land Order 431, of December 19, 1947.

SEC. 9. Nothing in this Act shall be construed to establish a reservation to the United States with respect to any water or water right on the lands described in section 1 of this Act. Nor shall any provision of this Act be construed as authorizing the appropriation of water on lands described in section 1 of this Act by the United States except in accordance with the established law of the States in which the lands described in section 1 are located.

SEC. 10. All hunting, fishing, and trapping on the lands withdrawn by this Act shall be conducted in accordance with the provisions of section 2671 of title 10, United States Code, except that hunting, fishing, and trapping within the Desert National Wildlife Range and the Cabeza Prieta National Wildlife Refuge shall be conducted in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.).

SEC. 11. Nothing in this Act shall be construed to prohibit the Secretary of the Interior from exercising his authority under Public Law 91-581 (30 U.S.C. 1002), to issue leases for the development and utilization of geothermal steam and associated geothermal resources on Federal lands in the China Lake Naval Weapons Center as described in section 1(h) of this Act.

SEC. 12. Nothing in this Act shall affect the geothermal exploration and development authorities granted to the Secretary of the Navy by section 6(c)(1) of the Act of July 12, 1982 (10 U.S.C. 2689), except that the Secretary of the Navy is required to obtain the concurrence of the Secretary of the Interior prior to taking action under that section with regard to Federal lands of the Naval Weapons Center as described in section 1.(h) of this Act.

SEC. 13. (a) As soon as possible after the enactment of this Act and at least every 5 years thereafter, the Secretary of the Interior (hereinafter referred to as "the Secretary") is hereby authorized and directed to determine, with the concurrence of the Secretary of the military departments concerned, which public and acquired lands in the military withdrawals described in subsections (a), (b), (d), (e), (f), (g), and (h), of section 1 of this Act he considers suitable for opening to the operation of the Mining Law of 1872, the Mineral Lands Leasing Act of 1920, as amended, the Mineral Leasing Act for Acquired Lands of 1947, and the Geothermal Steam Act of 1970. He shall publish a notice in the *Federal Register* listing those lands and specifying the opening date: *Provided, however,* That lands contained within the Desert National Wildlife Range in Nevada shall not be determined to be suitable for operation of the aforementioned mining or mineral leasing laws.

(b) On the day specified by the Secretary in the notice published in the *Federal Register,* the land shall automatically be open to the operation of the laws specified in subsection (a) of this section without the necessity for further action by either the Secretary or the Congress.

(c) No deposit of minerals or materials of the types identified by section 3 of the Act of July 23, 1955 (69 Stat. 367), whether or not included in the term "common varieties" in that Act, shall be subject to location under the Mining Law of 1872 on lands covered by this Act.

(d) All minerals subject to location under the Mining Law of 1872 are hereafter referred to in this Act as "locatable minerals".

SEC. 14. The Secretary, with the advice and concurrence of the Secretary of the concerned military department or departments, as appropriate, shall promulgate such regulations, pursuant to this Act, as he deems necessary to assure safe, uninterrupted, and unimpeded use of the lands for military purposes. The regulations shall also contain guidelines to assist mining claimants in determining how much of the surface may be used for purposes incident to mining.

SEC. 15. In the event of a national emergency or for purposes of national defense or security, the Secretary, at the request of the Secretary of the concerned military installation, shall close any lands that have been opened to mining or to mineral or geothermal leasing in accordance with this Act.

SEC. 16. (a) Except as otherwise provided in this Act, mining claims located pursuant to this Act shall be subject to the provisions of the mining laws. In the event of a conflict between those laws and this Act, this Act shall prevail.

(b) All mining claims located under the terms of this Act shall be subject to the provisions of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743).

SEC. 17. (a) Patents issued pursuant to this Act for locatable minerals shall convey title to locatable minerals only, together with the right to use so much of the surface as may be necessary for purposes incident to mining under the guidelines for such use established by the Secretary by regulation.

(b) All such patents shall contain a reservation to the United States of the surface of all lands patented and of all non-locatable minerals on those lands.

SEC. 18. The United States and all departments or agencies thereof shall be held

harmless and shall not be liable for any injuries or damages to persons or property suffered in the course of any mining or mineral or geothermal leasing activity conducted pursuant to this act.

The PRESIDING OFFICER. The question is on agreeing to the committee amendments.

The committee amendments were agreed to.

AMENDMENT NO. 3502

Mr. DOLE. Mr. President, I send an amendment to the desk on behalf of Senator McCLURE, in the nature of a substitute.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], from Mr. McCLURE, proposes an amendment numbered 3502.

Mr. DOLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment appears later in today's proceedings under "Amendments Submitted.")

● Mr. METZENBAUM. Mr. President, I would like to ask the distinguished chairman of the Energy Committee a few questions about the amendment which is offered as a substitute to S. 2412 as reported by the committee.

Provisions of the amendment call upon the military agencies to maintain an ongoing program of decontamination on the withdrawal lands and to report annually on their progress in that regard. It was not our intent to require specified levels of decontamination or to seek decontamination efforts that are unwise or go beyond a reasonable effort. In some cases, such as at the Luke Air Force range in Arizona, the decontamination work done in the past and called for under present policies of the commanding officer would fully meet the intent of the bill's provisions. However, in other cases, the past and present efforts have not been adequate and would need to be improved to meet the intent of the amendment. Fundamentally there should be a reasonable, annual effort to remove or disarm unexploded ordinance and to properly dispose of toxic or hazardous wastes produced as a result of military operations on these lands. It should be a reasonable level of effort and should result in a reasonable degree of safety for governmental personnel and for the public that may enter these areas.

This is my understanding of what the substitute intends and requires. Is this also the understanding of the committee chairman?

● Mr. McCLURE. The Senator from Ohio is correct. We are not mandating total decontamination nor are we intending to require unwise programs of decontamination. This provision is intended to ensure that the military agencies do an adequate job of decontamination on a continuing basis. Some of the agencies are already doing a good job, as the Senator has said. Luke Air Force range and the south range of Nellis Air Force range are examples of adequate programs. This is a matter which will be annually reviewed and addressed in the appropriations process. I think the annual reports will provide the Appropriation Committees with the information needed to fund a proper program. To the extent that the reports indicate that improvements are necessary, we will have the information to ensure that those improvements are accomplished.

● Mr. METZENBAUM. I thank the chairman.

Mr. President, the amendment, which is offered as a substitute to S. 2412 as reported by the Energy Committee, is the product of a great deal of negotiations and hard work by members and staffs of several House and Senate committees. It establishes a sound framework for current and future military withdrawals.

I had expressed the concern that the committee bill was deficient in several critical areas. They related to decontamination, comprehensive environmental impact statements, adequate protection for the portions of the two national wildlife refuges included in the withdrawal and the length of the withdrawals.

The substitute is a significant improvement and resolves many of the problems I noted.

It ensures adequate protection for those portions of the Desert National Wildlife Range in Nevada and the Cabeza Prieta National Wildlife Refuge in Arizona which are included in the withdrawal areas.

It clearly states that all laws and executive orders governing the uses and establishing the purposes of those refuges will remain in effect and will not be weakened or amended in any way by the withdrawal legislation. The memoranda of understanding which are currently in effect, and specifically delineate the military activities allowed on the refuges, are also maintained. Those memoranda can only be changed through careful consultation with, and concurrence of, the Secretary of the Interior. Additionally, any proposed changes to the memoranda of understanding must be presented to Congress 90 days before taking effect.

These provisions adequately balance the needs of the military as they have described them in their testimony to the Congress, and the public's interests in the valuable resources contained in the refuges. They also ensure that any future changes in the military's use of the refuge areas will be carefully negotiated and scrutinized and will not conflict with, or change, existing laws or executive orders.

I am satisfied that these provisions are in the best interest of the public and the important natural resources protected by these refuges, including endangered and threatened species.

The substitute also provides direction to the military units regarding the important task of maintaining an ongoing decontamination program during the withdrawal period.

It is the intent of the substitute that the military make a reasonable effort to maintain safe and productive conditions on the withdrawn lands. Since military activities on these properties often involve the use of hazardous, toxic and explosive material, it is essential that the defense agencies conduct an ongoing decontamination effort. Otherwise, the lands may be so contaminated as to preclude their return to the public domain, and create an unacceptable danger to individuals who might enter them.

For these reasons, the amendment specifically requires an ongoing decontamination effort in each withdrawal area. Hazardous, toxic, and explosive residues from military activities will receive a reasonable level of attention each year, throughout the withdrawal period. The appropriate military agency is required to maintain a decontamination program on each withdrawal area which is at least equal to the decontamination effort conducted in the area in fiscal year 1986. I want to stress that this represents the minimum level of decontamination activity required annually on each withdrawal area. The purpose of the substitute is to ensure that there will be an adequate level of cleanup. While the military will be able to meet that standard in some withdrawal areas by performing at the fiscal year 1986 level, it is recognized that the decontamination programs on other areas have not been adequate to date and the programs will have to be improved above the fiscal year 1986 levels in order to be adequate.

In order to enable Congress to keep track of the military's decontamination efforts, and to identify the areas where cleanup programs must be improved, the amendment requires an annual, detailed report on the status of decontamination efforts on each withdrawal area.

This provision is simply good sense and will maintain a reasonable degree of safety for governmental personnel and the general public that may enter these lands. It will ensure that the quality of the land is maintained, ensure that it will be available for public use in the future and will spread the costs of decontamination over the life of the withdrawal rather than artificially creating a prohibitive-

ly large, one-time expense at the conclusion of the withdrawal period.

The substitute also provides clear guidance regarding military compliance with the National Environmental Policy Act of 1969 [NEPA] and its provisions for obtaining public input on proposed withdrawals. The substitute requires the military agencies to complete a draft environmental impact statement 3 years prior to a request to renew the withdrawal or any portion of the withdrawal, and to conduct a public hearing in the affected State or States so that citizens can comment on the alternatives outlined in the impact statement.

Mr. President, this provision is significant. It indicates that Congress expects the military to fully comply with the requirements of NEPA in preparing its draft environmental impact statements for the withdrawal areas. This ensures that the impact statements will include, where appropriate, impacts which may result from the continued use of the withdrawals, as well as impacts which may result from the use of the lands in conjunction with adjacent and related lands and air spaces.

The requirement is critical. To date, the military's environmental analyses of withdrawal proposals have not provided a comprehensive view of the impacts of planned activities. They often have failed to consider how each area will be used in conjunction with adjacent and related areas. This makes it difficult, if not impossible, for State agencies and the public to obtain an accurate estimate of the cumulative impacts of a withdrawal, and to fully participate in the decision process relating to withdrawals and any required mitigation planning.

This approach will facilitiate needed communications between the military and the public, and will ensure that local citizens and public officials will be able to identify, plan for, and mitigate adverse impacts to their environment and communities. This provision also will provide the Congress with needed information on the impacts of the withdrawals.

Finally, the amendment establishes a 15-year time period for the withdrawals. I must admit, I would have preferred a slightly shorter withdrawal period of 10 years. It would have ensured better public oversight and planning. However, the 15 year period is within the planning capabilities of the agencies, and will facilitate reasonably frequent congressional oversight, which is so strongly underscored in both the Engle Act and the Federal Land Policy and Management Act.

Mr. President, I believe the substitute sets standards which ensure responsible use and maintenance of the withdrawal areas. It creates a framework which I hope will serve as a model for future withdrawals, and will fairly balance the needs of the military with the interests of the public.●

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3502) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2412

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. WITHDRAWALS.

(a) BRAVO-20 BOMBING RANGE.—(1) Subject to valid existing rights and except as otherwise provided in this Act, the lands referred to in paragraph (2) of this subsection, and all other areas within the boundary of such lands as depicted on the map specified in such paragraph which may become subject to the operation of the public land laws, are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws and the mineral leasing and the geothermal leasing laws). Such lands are reserved for use by the Secretary of the Navy for—

(A) testing and training for a aerial bombing, missile firing, and tactical maneuvering and air support; and

(B) subject to the requirements of section 3(f), other defense-related purposes consistent with the purposes specified in this paragraph.

(2) The lands referred to in paragraph (1) of this subsection are the public lands comprising approximately 21,576.40 acres in Churchill County, Nevada, as generally depicted on the map entitled "Bravo-20 Bombing Range Withdrawal—Proposed", dated April 1986, and filed in accordance with section 2.

(3) This section does not affect the withdrawals on July 2, 1902, August 26, 1902, and August 4, 1904, under which the Bureau of Reclamation utilizes for flooding, overflow, and seepage purposes approximately 14,750 acres of the lands withdrawn and reserved by this subsection.

(b) NELLIS AIR FORCE RANGE.—(1) Subject to valid existing rights and except as otherwise provided in this Act, the public lands described in paragraph (2) of this subsection are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws and the mineral leasing and the geothermal leasing laws). Such lands are reserved for use by the Secretary of the Air Force—

(A) as an armament and high-hazard testing area;

(B) for training for aerial gunnery, rocketry, electronic warfare, and tactical maneuvering and air support; and

(C) subject to the requirements of section 3(f), for other defense-related purposes consistent with the purposes specified in this paragraph.

(2) The lands referred to in paragraph (1) of this subsection are the lands comprising approximately 2,945,000 acres of land in Clark, Nye, and Lincoln Counties, Nevada, as generally depicted on the map entitled "Nellis Air Force Range Withdrawal—Proposed", dated January 1985, and filed in accordance with section 2.

(c) BARRY M. GOLDWATER AIR FORCE RANGE.—(1) Subject to valid existing rights and except as otherwise provided in this Act, the lands described in paragraph (2) of this subsection are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws and the mineral leasing and the geothermal leasing laws). Such lands are reserved for use by the Secretary of the Air Force for—

(A) an armament and high-hazard testing area;

(B) training for aerial gunnery, rocketry, electronic warfare, and tactical maneuvering and air support; and

(C) subject to the requirements of section 3(f), other defense-related purposes consistent with the purposes specified in this paragraph.

(2) The lands referred to in paragraph (1) of this subsection are the lands comprising approximately 2,664,423 acres in Maricopa, Pima, and Yuma Counties, Arizona, as generally depicted on the map entitled "Luke Air Force Range Withdrawal—Proposed", dated January 1985, and filed in accordance with section 2.

(d) MCGREGOR RANGE.—(1) Subject to valid existing rights and except as otherwise provided in this Act, the public lands described in paragraph (2) of this subsection are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws and the mineral leasing and the geothermal leasing laws). Such lands are reserved for use by the Secretary of the Army—

(A) for training and weapons testing; and

(B) subject to the requirements of section 3(f), for other defense-related purposes consistent with the purposes specified in this paragraph.

(2) The lands referred to in paragraph (1) of this subsection are the lands comprising approximately 608,384.87 acres in Otero County, New Mexico, as generally depicted on the map entitled "McGregor Range Withdrawal—Proposed", dated January 1985, and filed in accordance with section 2.

(3) Any of the public lands withdrawn under paragraph (1) of this subsection which, as of the date of enactment of this Act, are managed pursuant to section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782) shall continue to be managed under that section until Congress determines otherwise.

(e) FORT GREELY MANEUVER AREA AND FORT GREELY AIR DROP ZONE.—(1) Subject to valid existing rights and except as otherwise provided in this Act, the lands described in paragraph (2) of this subsection are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws and the mineral leasing and the geothermal leasing laws), under an Act entitled "An Act to provide for the admission of the State of Alaska into the Union", approved July 7, 1958 (48 U.S.C. note prec. 21), and under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.). Such lands are reserved for use by the Secretary of the Army for—

(A) military maneuvering, training, and equipment development and testing; and

(B) subject to the requirements of section 3(f), other defense-related purposes consistent with the purposes specified in this paragraph.

(2) The lands referred to in paragraph (1) of this subsection are—

(A) the lands comprising approximately 571,995 acres in the Big Delta Area, Alaska, as generally depicted on the map entitled

"Fort Greely Maneuver Area Withdrawal—Proposed", dated January 1985, and filed in accordance with section 2: and

(B) the lands comprising approximately 51,590 acres in the Granite Creek Area, Alaska, as generally depicted on the map entitled "Fort Greely, Air Drop Zone Withdrawal—Proposed", dated January 1985, and filed in accordance with section 2.

(f) FORT WAINWRIGHT MANEUVER AREA.—(1) Subject to valid existing rights and except as otherwise provided in this Act, the public lands described in paragraph (2) of this subsection are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws and the mineral leasing and the geothermal leasing laws), under an Act entitled "An Act to provide for the admission of the State of Alaska into the Union", approved July 7, 1958 (48 U.S.C. note prec. 21), and under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.). Such lands are reserved for use by the Secretary of the Army for—

(A) military maneuvering;

(B) training for artillery firing, aerial gunnery, and infantry tactics; and

(C) subject to the requirements of section 3(f), other defense-related purposes consistent with the purposes specified in this paragraph.

(2) The lands referred to in paragraph (1) of this subsection are the lands comprising approximately 247,951.67 acres of land in the Fourth Judicial District, Alaska, as generally depicted on the map entitled "Fort Wainwright Maneuver Area Withdrawal—Proposed", dated January 1985, and filed in accordance with section 2.

SEC. 2. MAPS AND LEGAL DESCRIPTIONS.

(a) PUBLICATION AND FILING REQUIREMENT.—As soon as practicable after the date of enactment of this Act, the Secretary of the Interior shall—

(1) publish in the Federal Register a notice containing the legal description of the lands withdrawn and reserved by this Act; and

(2) file maps and the legal description of the lands withdrawn and reserved by this Act with the Committee on Energy and Natural Resources of the United States Senate and with the Committee on Interior and Insular Affairs of the United States House of Representatives.

(b) TECHNICAL CORRECTIONS.—Such maps and legal descriptions shall have the same force and effect as if they were included in this Act except that the Secretary of the Interior may correct clerical and typographical errors in such maps and legal descriptions.

(c) AVAILABILITY FOR PUBLIC INSPECTION.—Copies of such maps and legal descriptions shall be available for public inspection in the offices of the Director and appropriate State Directors of the Bureau of Land Management; the office of the commander, Bravo-20 Bombing Range; the offices of the Director and appropriate Regional Directors of the United States Fish and Wildlife Service; the office of the commander, Nellis Air Force Base; the office of the commander, Barry M. Goldwater Air Force Base; the office of the commander, McGregor Range; the office of the installation commander, Fort Richardson, Alaska; the office of the commander, Marine Corps Air Station, Yuma, Arizona; and the office of the Secretary of Defense.

(d) REIMBURSEMENT.—The Secretary of Defense shall reimburse the Secretary of the Interior for the cost of implementing this section.

SEC. 3. MANAGEMENT OF WITHDRAWN LANDS.

(a) MANAGEMENT BY THE SECRETARY OF THE INTERIOR.—(1) During the period of the withdrawal, the Secretary of the Interior shall manage the lands withdrawn under section 1 (except those lands within a unit of the National Wildlife Refuge System) pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 701 et seq.), and other applicable law, including the Recreation Use of Wildlife Areas Act of 1962 (16 U.S.C. 460k et seq.), and this Act. Lands within the Desert National Wildlife Range and the Cabeza Prieta National Wildlife Refuge shall be managed pursuant to the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.) and other applicable law. No provision of this Act, except sections 4, 11, and 12, shall apply to the management of the Desert National Wildlife Range or the Cabeza Prieta National Wildlife Refuge.

(2) To the extent consistent with applicable law and Executive orders, the lands withdrawn under section 1 may be managed in a manner permitting—

(A) the continuation of grazing pursuant to applicable law and Executive orders where permitted on the date of enactment of this Act;

(B) protection of wildlife and wildlife habitat;

(C) control of predatory and other animals;

(D) recreation; and

(E) the prevention and appropriate suppression of brush and range fires resulting from nonmilitary activities.

(3)(A) All nonmilitary use of such lands, other than the uses described in paragraph (2), shall be subject to such conditions and restrictions as may be necessary to permit the military use of such lands for the purposes specified in or authorized pursuant to this Act.

(B) The Secretary of the Interior may issue any lease, easement, right-of-way, or other authorization with respect to the nonmilitary use of such land only with the concurrence of the Secretary of the military department concerned.

(b) CLOSURE TO PUBLIC.—(1) If the Secretary of the military department concerned determines that military operations, public safety, or national security require the closure to public use of any road, trail, or other portion of the lands withdrawn by this Act, the Secretary may take such action as the Secretary determines necessary or desirable to effect and maintain such closure.

(2) Any such closure shall be limited to the minimum areas and periods which the Secretary of the military department concerned determines are required to carry out this subsection.

(3) Before and during any closure under this subsection, the Secretary of the military department concerned shall—

(A) keep appropriate warning notices posted; and

(B) take appropriate steps to notify the public concerning such closures.

(c) MANAGEMENT PLAN.—The Secretary of the Interior (after consultation with the Secretary of the military department concerned) shall develop a plan for the management of each area withdrawn under section 1 during for period of such withdrawal. Each plan shall—

(1) be consistent with applicable law;

(2) be subject to conditions and restrictions specified in subsection (a)(3) of this section;

(3) include such provisions as may be necessary for proper management and protection of the resources and values of such areas; and

(4) be developed not later than three years after the date of enactment of this Act.

(d) BRUSH AND RANGE FIRES.—The Secretary of the military department concerned shall take necessary precautions to prevent and suppress brush and range fires occurring within and outside the lands withdrawn under section 1 as a result of military activities and may seek assistance from the Bureau of Land Management in the suppression of such fires, and for a transfer of funds from the Department of the Navy, Army, or Air Force, as appropriate, to the Bureau of Land Management as compensation for such assistance.

(e) MEMORANDUM OF UNDERSTANDING.—(1) The Secretary of the Interior and the Secretary of the military department concerned shall (with respect to each land withdrawal under section 1) enter into a memorandum of understanding to implement the management plan developed under subsection (c). Any such memorandum of understanding shall provide that the Director of the Bureau of Land Management shall provide assistance in the suppression of fires resulting from the military use of lands withdrawn under section 1 if requested by the Secretary of the military department concerned.

(2) The duration of any such memorandum shall be the same as the period of the withdrawal of the lands under section 1.

(f) ADDITIONAL MILITARY USES.—(1) Lands withdrawn by section 1 (except those within the Desert National Wildlife Range or within the Cabeza Prieta National Wildlife Refuge) may be used for defense-related uses other than those specified in such section. The Secretary of Defense shall promptly notify the Secretary of the Interior in the event that the lands withdrawn by this Act will be used for defense-related purposes other than those specified in section 1. Such notification shall indicate the additional use or uses involved, the proposed duration of such uses, and the extent to which such additional military uses of the withdrawn lands will require that additional or more stringent conditions or restrictions be imposed on otherwise-permitted nonmilitary uses of the withdrawn land or portions thereof.

SEC. 4. SPECIAL WILDLIFE RULES.

(a) NELLIS AIR FORCE RANGE.—(1) Neither the withdrawal under section 1(b) nor any other provision of this Act shall be construed to amend—

(A) the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.) or any other law related to management of the National Wildlife Refuge System; or

(B) any Executive order or public land order in effect on the date of enactment of this Act with respect to the Desert National Wildlife Refuge.

(2) Neither the withdrawal under section 1(b) nor any other provision of this Act shall be construed to amend any memorandum of understanding between the Secretary of the Interior and the Secretary of the Air Force regarding the administration and joint use of a portion of the Desert National Wildlife Range. The provisions of the memorandum of understanding between the Secretary of the Interior and the Department of the Air Force regarding Air Force operations on the Desert National Range in effect on March 15, 1986, shall not be

amended sooner than 90 days after the Secretary of the Interior has notified the Committee on Interior and Insular Affairs of the House of Representatives, the Committee on Energy and Natural Resources of the Senate, the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Merchant Marine and Fisheries of the House of Representatives, and the Committee on Environment and Public Works of the Senate of any proposed amendments to such provisions.

(b) BARRY M. GOLDWATER AIR FORCE RANGE.—(1) Neither the withdrawal under section 1(c) nor any other provision of this Act shall be construed to amend—

(A) the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.) or any other law related to management of the National Wildlife Refuge System; or

(B) any Executive order or public land order in effect on the date of enactment of this Act with respect to the Cabeza Prieta National Wildlife Refuge.

(2) Neither the withdrawal under section 1(c) nor any other provision of this Act shall be construed to amend any memorandum of understanding between the Secretary of the Interior and the Secretary of the Air Force regarding the administration and joint use of a portion of the Cabeza Prieta National Wildlife Refuge. The provisions of the memorandum of understanding between the Secretary of the Interior and the Department of the Air Force regarding Air Force operations of the Cabeza Prieta National Wildlife Refuge in effect on March 24, 1975, shall not be amended sooner than 90 days after the Secretary of the Interior has notified the Committee on Interior and Insular Affairs of the House of Representatives, the Committee on Energy and Natural Resources of the Senate, the Committee on Armed Services of the Senate and the House of Representatives, the Committee on Merchant Marine and Fisheries of the House of Representatives, and the Committee on Environment and Public Works of the Senate of any proposed amendments to such provisions.

SEC. 5. DURATION OF WITHDRAWALS.

(a) DURATION.—The withdrawal and reservation established by this Act shall terminate 15 years after the date of enactment of this Act.

(b) DRAFT ENVIRONMENTAL IMPACT STATEMENT.—(1) No later than 12 years after the date of enactment of this Act, the Secretary of the military department concerned shall publish a draft environmental impact statement concerning continued or renewed withdrawal of any portion of the lands withdrawn by this Act for which that Secretary intends to seek such continued or renewed withdrawal. Such draft environmental impact statement shall be consistent with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) applicable to such a draft environmental impact statement. Prior to the termination date specified in subsection (a), the Secretary of the military department concerned shall hold a public hearing on any draft environmental impact statement published pursuant to this subsection. Such hearing shall be held in the affected State or States in order to receive public comments on the alternatives and other matters included in such draft environmental impact statement.

(2)(A) For purposes of such draft environmental impact statement published by the Secretary of the Navy, the term "lands withdrawn by this Act" shall be deemed to include lands withdrawn by public land orders 275, 788, 898, and 2635 and lands proposed for withdrawal as specified in the draft environmental impact statement for the proposed master land withdrawal, Naval Air Station, Fallon, Nevada.

(B) For purposes of this subsection, lands withdrawn by section 1(b) shall be deemed to include lands withdrawn by Public Law 98-485.

(c) EXTENSIONS OR RENEWALS.—The withdrawals established by this Act may not be extended or renewed except by an Act or joint resolution.

SEC. 6. NEVADA REPORT.

(a) SPECIAL NEVADA REPORT.—No later than five years after the date of enactment of this Act, the Secretary of the Air Force, the Secretary of the Navy, and the Secretary of the Interior shall submit to Congress a joint report. In addition to the other matters required by this section, the report shall include an analysis and an evaluation of the effects on public health and safety throughout Nevada of—

(1) the operation of aircraft at subsonic and supersonic speeds;

(2) the use of aerial and other gunnery, rockets, and missiles; and

(3) the uses specified in section 1.

(b) EVALUATION OF CUMULATIVE EFFECTS OF CONTINUED OR RENEWED WITHDRAWAL.—Each of the military departments concerned and the Secretary of the Interior shall, in the report required by this section, evaluate the cumulative effects of continued or renewed withdrawal for military purposes of the military department concerned of some or all of the lands withdrawn by sections 1(a) and 1(b) on the environment and population of Nevada. In performing this evaluation, there shall be considered—

(1) the actual and proposed withdrawal for military and related purposes of other lands in Nevada, including (but not limited to)—

(A) lands withdrawn by sections 1(a) and 1(b) of this Act and by Public Law 98-485 (98 Stat. 2261);

(B) lands withdrawn by Public Land Orders 275, 788, 898, and 2635;

(C) lands proposed for withdrawal as specified in the draft environmental impact statement for the proposed master land withdrawal, Naval Air Station, Fallon, Nevada; and

(D) lands withdrawn or being considered for withdrawal for use by the Department of Energy; and

(2) the cumulative impacts on public and private property in Nevada and on the fish and wildlife, cultural, historic, scientific, recreational, wilderness, and other values of the public lands of Nevada resulting from military and defense related uses of the lands withdrawn be sections 1(a) and 1(b) and the other lands described in paragraph (1) of this subsection.

(c) MITIGATION MEASURES.—The report required by this subsection shall include an analysis and an evaluation of possible measures to mitigate the cumulative effect of the withdrawal of public lands in Nevada for military and defense-related purposes, and of use of the airspaces over public lands in Nevada for such purposes, on people and property in Nevada and the fish and wildlife, cultural, historic, scientific, wilderness, and other resources and values of the public lands in Nevada (including recreation, mineral development, and agriculture).

SEC. 7. ONGOING DECONTAMINATION.

(a) PROGRAM.—Throughout the duration of the withdrawals made by this Act, the Secretary of the military department concerned, to the extent funds are made available, shall maintain a program of decontamination of lands withdrawn by this Act at least at the level of cleanup achieved on such lands in fiscal year 1986.

(b) REPORTS.—At the same time as the President transmits to the Congress the President's proposed budget for the first fiscal year beginning after the date of enactment of this Act and for each subsequent fiscal year, each such Secretary shall transmit to the Committee on Appropriations, Armed Services, and Energy and Natural Resources of the Senate and to the Committees on Appropriations, Armed Services, and Interior and Insular Affairs of the House of Representatives a description of the decontamination efforts undertaken during the previous fiscal year on such lands and the decontamination activities proposed for such lands during the next fiscal year including:

(1) amounts appropriated and obligated or expended for decontamination of such lands;

(2) the methods used to decontaminate such lands;

(3) amount and types of contaminants removed from such lands;

(4) estimated types and amounts of residual contamination on such lands; and

(5) an estimate of the costs for full decontamination of such lands and the estimate of the time to complete such decontamination.

SEC. 8. REQUIREMENTS FOR RENEWAL.

(a) NOTICE AND FILING.—(1) No later than three years prior to the termination of the withdrawal and reservation established by this Act, the Secretary of the military department concerned shall advise the Secretary of the Interior as to whether or not the Secretary of the military department concerned will have a continuing military need for any of the lands withdrawn under section 1 after the termination date of such withdrawal and reservation.

(2) If the Secretary of the military department concerned concludes that there will be a continuing military need for any of such lands after the termination date, that Secretary shall file an application for extension of the withdrawal and reservation of such needed lands in accordance with the regulations and procedures of the Department of the Interior applicable to the extension of withdrawals of lands for military uses.

(3) If, during the period of withdrawal and reservation, the Secretary of the military department concerned decides to relinquish all or any of the lands withdrawn and reserved by this Act, such Secretary shall file a notice of intention to relinquish with the Secretary of the Interior.

(b) CONTAMINATION.—(1) Before transmitting a notice of intention to relinquish pursuant to subsection (a), the Secretary of Defense, acting through the military department concerned, shall prepare a written determination concerning whether and to what extent the lands that are to be relinquished are contaminated with explosive, toxic, or other hazardous materials.

(2) A copy of such determination shall be transmitted with the notice of intention to relinquish.

(3) Copies of both the notice of intention to relinquish and the determination concerning the contaminated state of the lands shall be published in the Federal Register by the Secretary of the Interior.

(c) DECONTAMINATION.—If any land which is the subject of a notice of intention to relinquish pursuant to subsection (a) is contaminated, and the Secretary of the Interior, in consultation with the Secretary of the military department concerned, determines that decontamination is practicable and economically feasible (taking into consideration the potential future use and value of the land) and that upon decontamination, the land could be opened to operation of some or all of the public land laws, including the mining laws, the Secretary of the military department concerned shall decontaminate the land to the extent that funds are appropriated for such purpose.

(d) ALTERNATIVES.—If the Secretary of the Interior, after consultation with the Secretary of the military department concerned, concludes that decontamination of any land which is the subject of a notice of intention to relinquish pursuant to subsection (a) is not practicable or economically feasible, or that the land cannot be decontaminated sufficiently to be opened to operation of some or all of the public land laws, or if Congress does not appropriate a sufficient amount of funds for the decontamination of such land, the Secretary of the Interior shall not be required to accept the land proposed for relinquishment.

(e) STATUS OF CONTAMINATED LANDS.—If, because of their contaminated state, the Secretary of the Interior declines to accept jurisdiction over lands withdrawn by this Act which have been proposed for relinquishment, or if at the expiration of the withdrawal made by this Act the Secretary of the Interior determines that some of the lands withdrawn by this Act are contaminated to an extent which prevents opening such contaminated lands to operation of the public land laws—

(1) the Secretary of the military department concerned shall take appropriate steps to warn the public of the contaminated state of such lands and any risks associated with entry onto such lands;

(2) after the expiration of the withdrawal, the Secretary of the military department concerned shall undertake no activities on such lands except in connection with decontamination of such lands; and

(3) the Secretary of the military department concerned shall report to the Secretary of the Interior and to the Congress concerning the status of such lands and all actions taken in furtherance of this subsection.

(f) REVOCATION AUTHORITY.—Notwithstanding any other provisions of law, the Secretary of the Interior, upon deciding that it is in the public interest to accept jurisdiction over lands proposed for relinquishment pursuant to subsection (a), is authorized to revoke the withdrawal and reservation established by this Act as it applies to such lands. Should the decision be made to revoke the withdrawal and reservation, the Secretary of the Interior shall publish in the Federal Register an appropriate order which shall—

(1) terminate the withdrawal and reservation;

(2) constitute official acceptance of full jurisdiction over the lands by the Secretary of the Interior; and

(3) state the date upon which the lands will be opened to the operation of some or all of the public lands laws, including the mining laws.

SEC. 9. DELEGABILITY.

(a) DEFENSE.—The functions of the Secretary of Defense or of a military department under this title may be delegated.

(b) INTERIOR.—The functions of the Secretary of the Interior under this title may be delegated, except that an order described in section 7(f) may be approved and signed only by the Secretary of the Interior, the Under Secretary of the Interior, or an Assistant Secretary of the Department of the Interior.

SEC. 10. WATER RIGHTS.

Nothing in this Act shall be construed to establish a reservation to the United States with respect to any water or water rights on the lands described in section 1 of this Act. No provision of this Act shall be construed as authorizing the appropriation of water on land described in section 1 of this Act by the United States after the date of enactment of this Act except in accordance with the law of the relevant State in which lands described in section 1 are located. This section shall not be construed to affect water rights acquired by the United States before the date of enactment of this Act.

SEC. 11. HUNTING, FISHING, AND TRAPPING.

All hunting, fishing, and trapping on the lands withdrawn by this Act shall be conducted in accordance with the provisions of section 2671 of title 10, United States Code, except that hunting, fishing, and trapping within the Desert National Wildlife Range and the Cabeza Prieta National Wildlife Refuge shall be conducted in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.), the Recreation Use of Wildlife Areas Act of 1962 (16 U.S.C. 460k et seq.), and other laws applicable to the National Wildlife Refuge System.

SEC. 12. MINING AND MINERAL LEASING.

(a) DETERMINATION OF LANDS SUITABLE FOR OPENING.—As soon as possible after the enactment of this Act and at least every five years thereafter, the Secretary of the Interior shall determine, with the concurrence of the Secretary of the military department concerned, which public and acquired lands (except as provided in this subsection) described in subsections (a), (b), (d), (e), and (f) of section 1 of this Act of the Secretary of the Interior considers suitable for opening to the operation of the Mining Law of 1872, the Mineral Lands Leasing Act of 1920, as amended, the Mineral Leasing Act for Acquired Lands of 1947, the Geothermal Steam Act of 1970, or any one or more of such Acts. The Secretary of the Interior shall publish a notice in the Federal Register listing the lands determined suitable pursuant to this section and specifying the opening date, except that lands contained within the Desert National Wildlife Range in Nevada or within the Cabeza Prieta National Wildlife Refuge in Arizona shall not be determined to be suitable for opening pursuant to this section.

(b) OPENING LANDS.—On the day specified by the Secretary of the Interior in a notice published in the Federal Register pursuant to subsection (a), the lands identified under subsection (a) as suitable for opening to the operation of one or more of the laws specified in subsection (a) shall automatically be open to the operation of such laws without the necessity for further action by either the Secretary or the Congress.

(c) EXCEPTION FOR COMMON VARIETIES.—No deposit of minerals or materials of the types identified by section 3 of the Act of July 23, 1955 (69 Stat. 367), whether or not included in the term "common varieties" in that Act, shall be subject to location under the Mining Law of 1872 of lands described in section 1.

(d) REGULATIONS.—The Secretary of the Interior, with the advice and concurrence of the Secretary of the military department concerned shall promulgate such regulations to implement this section as may be necessary to assure safe, uninterrupted, and unimpeded use of the lands described in section 1 for military purposes. Such regulations shall also contain guidelines to assist mining claimants in determining how much, if any, of the surface of any lands opened pursuant to this section may be used for purposes incident to mining.

(e) CLOSURE OF MINING LANDS.—In the event of a national emergency or for purposes of national defense or security, the Secretary of the Interior, at the request of the Secretary of the military department concerned, shall close any lands that have been opened to mining or to mineral or geothermal leasing pursuant to this section.

(f) LAWS GOVERNING MINING ON LANDS WITHDRAWN UNDER THIS ACT.—(1) Except as otherwise provided in this Act, mining claims located pursuant to this Act shall be subject to the provisions of the mining laws. In the event of a conflict between those laws and this Act, this Act shall prevail.

(2) All mining claims located under the terms of this Act shall be subject to the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(g) PATENTS.—(1) Patents issued pursuant to this Act for locatable minerals shall convey title to locatable minerals only, together with the right to use so much of the surface as may be necessary for purposes incident to mining under the guidelines for such use established by the Secretary of the Interior by regulation.

(2) All such patents shall contain a reservation to the United States of the surface of all lands patented and of all nonlocatable minerals on those lands.

(3) For the purposes of this section, all minerals subject to location under the Mining Law of 1872 are referred to as "locatable minerals".

(h) REVOCATION.—Notwithstanding any other provision of law, the Secretary of the Interior, if the Secretary determines it necessary and appropriate for the purpose of consummating an exchange of lands or interests therein under applicable law, is hereby authorized and directed to revoke the Small Tract Act Classification S.T.049794 in Clark County, Nevada.

SEC. 13. IMMUNITY OF UNITED STATES.

The United States and all departments or agencies thereof shall be held harmless and shall not be liable for any injuries or damages to persons or property suffered in the course of any mining or mineral or geothermal leasing activity conducted on lands described in section 1 of this Act.

SEC. 14. SHORT TITLE.

Sections 1 through 15 of this Act may be cited as the "Military Lands Withdrawal Act of 1986".

SEC. 15. REDESIGNATION.

The Luke Air Force Range in Arizona is hereby redesignated as the "Barry M. Goldwater Air Force Range". Any reference in any law, regulation, document, record, map, or other paper of the United States to the Luke Air Force Range shall be deemed to be a reference to the "Barry M. Goldwater Air Force Range".

TITLE II—CUYAHOGA VALLEY NATIONAL RECREATION AREA

SECTION 201. BOUNDARY ADJUSTMENT.

Section 2 of the Act entitled "An Act to provide for the establishment of the Cuyahoga Valley National Recreation Area", approved December 27, 1974 (16 U.S.C. 460ff et seq.), is amended as follows:

(1) In subsection (a), strike "numbered 655-90,001-A and dated May 1978" and insert "numbered 644-80,054 and dated July 1986".

(2) At the end of subsection (a), insert the following:

"The recreation area shall also comprise any lands designated as 'City of Akron Lands' on the map referred to in the first sentence which are offered as donations to the Department of the Interior or which become privately owned. The Secretary shall revise such map to depict such lands as part of the recreation area.".

(3) In subsection (b), after the first sentence, insert the following:

"The Secretary may not acquire fee title to any lands included within the recreation area in 1986 which are designated on the map referred to in subsection (a) as 'Scenic Easement Acquisition Areas'. The Secretary may acquire only scenic easements in such designated lands. Unless consented to by the owner from which the easement is acquired, any such scenic easement may not prohibit any activity, the subdivision of any land, or the construction of any building or other facility if such activity, subdivision, or construction would have been permitted under laws and ordinances of the unit of local government in which such land was located on April 1, 1986, as such laws and ordinances were in effect on such date.".

TITLE III—FEDERAL ONSHORE COMPETITIVE OIL AND GAS LEASING ACT OF 1986

SEC. 301. This title may be cited as the "Federal Onshore Competitive Oil and Gas Leasing Act of 1986."

SEC. 302. (a) Section 17(b)(1) of the Act of February 25, 1920 (30 U.S.C. 226(b)(1)), is amended to read as follows:

"(b)(1) All lands to be leased which are not subject to leasing under paragraph (2) of this subsection shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than two thousand five hundred and sixty acres, except in Alaska, where units shall be not more than five thousand one hundred and twenty acres, which shall be as nearly compact as possible. Lease sales shall be conducted by oral bidding. Lease sales shall be held for each State where eligible lands are available at least every two months, and more frequently if the Secretary determines such sales are necessary. A lease shall be conditioned upon the payment of a royalty of 12.5 per centum in amount or value of the production removed or sold from the lease. The Secretary shall establish by regulation a minimum acceptable price which shall be the same for all leases and which is at least $20 per acre. The Secretary shall accept the highest bid from a responsible qualified bidder which is equal to or greater than the minimum acceptable price, without evaluation of the value of the lands proposed for lease. Leases shall be issued within sixty days following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year. All bids for less than the minimum acceptable price shall be rejected. Lands for which no bids are received or for which the highest bid is less than the minimum acceptable price shall promptly be offered for leasing under subsection (c) of this section and shall remain available for leasing for a period set by the Secretary not to exceed three years after the competitive lease sale.".

(b) The first sentence of section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)), is amended to read as follows: "(1) If the lands to be leased are not leased under subsection (b)(1) of this section or are not subject to competitive leasing under subsection (b)(2) of this section, the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding. Lands to be leased under this subsection shall be made available at least every two months. Leases shall be issued within sixty days of the date on which the Secretary identifies the first qualified applicant."

(c) Section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)), is amended by adding the following at the end thereof:

"(2)(A) Lands (i) which were posted for sale under subsection (b)(1) of this section but for which no bids were received or for which the highest bid was less than the minimum acceptable price established by the Secretary and (ii) for which, at the end of the period prescribed by the Secretary under subsection (b)(1) of this section no lease has been issued and no lease application is pending under paragraph (1) of this subsection, shall again be available for leasing only in accordance with subsection (b)(1) of this section.

"(B) The land in any lease which is issued under paragraph (1) of this subsection or under subsection (b)(1) of this section which lease terminates, expires, is canceled or is relinquished shall again be available for leasing only in accordance with subsection (b)(1) of this section.".

(d) The third sentence of section 17(d) of the Act of February 25, 1920 (30 U.S.C. 226(d)), is amended to read as follows: "A minimum royalty of not less than $1 per acre in lieu of rental shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased, except that no minimum royalty shall exceed the rental rate that would have applied before discovery.".

(e) Section 17(e) of the Act of February 25, 1920 (30 U.S.C. 226(e)), is amended by * * * adding the following at the end thereof:

"(2) In addition to the authority granted to the Secretary under Section 39 of this Act (30 U.S.C. 209), where a lessee is denied access for operations involving exploration, drilling or production on a valid lease due to prolonged environmental or other analyses, unresolved litigation, or other delays which are beyond the control of the lessee and which continue beyond 90 days after receipt by the Secretary of a written request by the lessee for access to the leasehold for such purposes, the Secretary is authorized to suspend the lease, and the term of such lease shall be extended by adding any such suspension period thereto.".

SEC. 303. The third sentence of section 30a of the Act of February 25, 1920 (30 U.S.C. 187a) is amended to read as follows: "The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: *Provided, however,* That the Secretary may, in his discretion, disapprove an assignment—(1) of a separate zone or deposit under any lease, (2) of a part of a legal subdivision, or (3) of less than six hundred and forty acres outside Alaska or of less than two thousand five hundred and sixty acres within Alaska, unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas. Requests for approval of assignment or sublease shall be processed promptly by the Secretary. Except where the assignment or sublease is not in accordance with applicable law, the approval shall be given within sixty days of the date of receipt by the Secretary of a request for such approval.".

SEC. 304. The first sentence of section 31(b) of the Act of February 25, 1920 (30 U.S.C. 188(b)) is amended to read as follows:

"(b) Any lease issued after August 21, 1935, under the provisions of section 17 of this Act shall be subject to cancellation by the Secretary of the Interior after thirty days notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the leasehold contains a well capable of production of oil or gas in paying quantities, or the lease is committed to an approved cooperative or until plan or communitization agreement under section 17(j) of this Act which contains a well capable of production of unitized substances in paying quantities.".

SEC. 305. The Act of February 25, 1920 (30 U.S.C. 181 *et seq.*) is amended by adding at the end thereof the following new section:

"Sec. 43. Actions taken by the Secretary of the Interior to develop regulations and procedures for a competitive oil and gas leasing program or to hold particular lease sales shall not be subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969. Except as otherwise provided in this section, nothing in this Act shall be considered as affecting the application of section 102 of the National Environmental Policy Act of 1969.".

SEC. 306. Section 1008 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148) is amended as follows:

(1) Subsections (c) and (e) (16 U.S.C. 3148 (c) and (e)) are deleted in their entirety.

(2) The second sentence of section 1008(d) (16 U.S.C. 3148(d)) is deleted.

(3) Subsections (d) and (f) through (i) (16 U.S.C. 3148 (d) and (f) through (i)) are renumbered subsections (c) through (g) respectively.

SEC. 307. (a)(1) Lands to be leased which were available for noncompetitive oil and gas leasing pursuant to section 17(c) of the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*) on the day prior to the enactment of this title but which were not covered by an oil and gas lease on January 1, 1986, and for which no lease application or offer was pending on the date of enactment of this title, shall be leased to the person first making application for the lease who is otherwise qualified to hold a lease under the Act of February 25, 1920 without competitive bidding. The authority to issue leases as provided in this paragraph shall expire fifty months from the date of enactment of this Title: *Provided;* that applications for leases filed pursuant to this paragraph which are pending on such expiration date shall be processed and leases issued under the authority of this paragraph except where the issuance of any such leases would not be lawful under Sec. 17(c) of the Act of February 25, 1920 as in effect on the day prior to

enactment of this title or under other applicable law.

(a)(2) No land may be leased under paragraph (a)(1) of this section if it is within the State of Arkansas or if, on the date of enactment of this title, it: (i) is under study for inclusion in a known geological structure of a producing oil or gas field or in a favorable petroleum geological province; (ii) was referred to a surface managing agency (other than the Bureau of Land Management) for a recommendation or consent regarding leasing and no lease application, offer or bid is pending; or (iii) is within the Overthrust Belt area of Wyoming as defined by the Director, Bureau of Land Management, by memorandum dated February 24, 1986. Lands to be leased which are covered by this paragraph shall be leased in accordance with subsection 302(a) of this title. The Secretary of the Interior shall publish in the Federal Register within 90 days from the date of enactment of this title a list of lands covered by this paragraph.

(b) Notwithstanding any other provision of this title and except as provided in paragraph (e) of this section, all noncompetitive oil and gas lease applications filed pursuant to regulations governing the simultaneous oil and gas leasing system (43 CFR subpart 3112) and pending on the date of enactment of this title shall be processed, and leases shall be issued within sixty days following the date of enactment of this title under the provisions of the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), as in effect before its amendment by this title, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If the date of enactment of this title occurs during a simultaneous filing period prescribed by the regulations of the Department of the Interior, all applications filed during that period shall be considered filed prior to the date of enactment.

(c) Notwithstanding any other provision of this title and except as provided in paragraph (e) of this section, all noncompetitive oil and gas lease offers filed pursuant to regulations governing the over-the-counter leasing system (43 CFR subpart 3111) prior to October 1, 1986, shall be processed, and leases shall be issued within sixty days following the date of enactment of this title under the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), as in effect before its amendment by this title, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If the Secretary posts tracts for competitive sale containing lands in an over-the-counter noncompetitive lease offer filed between October 1, 1986, and the date of enactment of this title, and if any such tracts do not receive bids greater than or equal to the minimum acceptable price established by the Secretary at the sale, the Secretary shall reinstate the noncompetitive lease offers for these tracts and shall issue leases in accordance with section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)).

(d) Notwithstanding any other provision of this title, all competitive oil and gas lease bids filed pursuant to applicable regulations (43 CFR subpart 3210) pending on the date of enactment of this title shall be processed, the high bid for each tract shall be accepted without further evaluation of the value of the tract, and leases shall be issued within sixty days following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year, under the Act of February 20, 1920 (30 U.S.C. 181 *et seq.*), as in effect before its amendment by this title, except where the issuance of any such lease would not be lawful under such provisions or other applicable law.

(e) No noncompetitive lease applications or offers pending on the date of enactment of this title for lands within the Shawnee National Forest, Illinois, the Ouachita National Forest, Arkansas, Fort Chaffee, Arkansas, or Eglin Air Force Base, Florida, shall be processed until these lands are posted for competitive bidding in accordance with section 302 of this title. If any such tract receives no bid greater than or equal to the minimum acceptable price established by the Secretary then the noncompetitive applications or offers pending for such a tract shall be reinstated and noncompetitive leases issued, under the Act of February 20, 1920 (30 U.S.C. 181 *et seq.*), as in effect before its amendment by this Act, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If competitive leases are issued for any such tract, then the pending noncompetitive application or offer shall be rejected.

SEC. 308. (a) Except as provided in Section 307 of this title, all oil and gas leasing pursuant to the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), after the date of enactment of this title shall be conducted in accordance with the provisions of this title.

(b) The Secretary shall issue final regulations within one hundred and eighty days after the date of enactment of this title. The regulations shall be effective when published in the Federal Register. The environmental and economic impacts of this title having been fully considered by the Congress, the Secretary shall not prepare any environmental, economic, or small business impact analyses, which may otherwise be required by law or Executive Order, when he prepares proposed regulations or adopts final regulations implementing this title.

(c)(1) Prior to issuing regulations implementing this title, the Secretary shall hold at least one competitive lease sale pursuant to Section 302 of this title. Sale procedures shall be established in the notice of sale. This sale shall include tracts which, but for the enactment of this title, would have been posted for the filing of simultaneous oil and gas lease applications pursuant to applicable regulations (43 CFR subpart 3112). The Secretary may also include in the sale tracts which would otherwise have been posted for competitive sale pursuant to applicable regulations (43 CFR subpart 3120) and tracts which received over-the-counter noncompetitive oil and gas lease offers pursuant to applicable regulations (43 CFR subpart 3111) between October 1, 1986, and the date of enactment of this title. The Secretary may hold additional sales if he considers it necessary prior to the issuance of final regulations pursuant to subsection (b) of this section.

(2) If tracts which would, but for the enactment of this title have been posted for the filing of simultaneous applications do not receive bids of greater than or equal to the minimum acceptable price established by the Secretary at a competitive sale held under this section, they shall subsequently be posted for the filing of simultaneous applications provided the Secretary has not yet issued regulations under subsection (b) of this section.

(3) If no competitive or noncompetitive leases are issued for lands posted for sale as provided in paragraph (c) of this section, the Secretary shall lease such tracts in accordance with the regulations issued pursuant to paragraph (b) of this section

SEC. 309. The Act of February 25, 1920 (30 U.S.C. 181 *et seq.*) is amended by inserting after section 40 the following new section:

"SEC. 41 (a) Any person shall be liable under the standards set forth in subsections (c) and (d) of this section if that person misrepresents to the public, by any means of communication, the following:

"(1) The value or potential value of any lease or portion thereof issued under this Act;

"(2) the value or potential value of any lease or portion thereof to be issued under this Act;

"(3) the value or potential value of any land available for leasing under this Act;

"(4) the availability of any land for leasing under this Act;

"(5) the ability of the person to obtain leases under this Act on his or her own behalf or on behalf of any other person;

"(6) the provisions of this Act and its implementing regulations.

"(b) Any person who organizes, or participates in, any scheme, arrangement, plan, or agreement to circumvent the provisions of this Act or its implementing regulations shall be liable under the provisions of this section.

"(c) The Attorney General shall institute against any person who, given the nature of the intended recipient of the communication, knew or should have known he or she was violating subsection (a) or (b) of this section, a civil action, in the district court of the United States for the judicial district which the defendant resides or in which the violation occurred in which the lease or land involved is located, for a temporary restraining order, injunction, civil penalty of not more than $100,000 for each violation, or other appropriate remedy, including but not limited to, a prohibition from participation in exploration, leasing, or development of any federal mineral, or both.

"(d) Any person who knowingly and willfully violates the provisions of this section shall, upon conviction, be punished by a fine of not more than $500,000 for each violation or by imprisonment for not more than five years, or both.

"(e)(1) Whenever a corporation or other entity is subject to civil or criminal action under this section, any officer, employee, or agent of such corporation or entity who authorized, ordered, or carried out the proscribed activity shall be subject to the same action.

"(2) Whenever any officer, employee, or agent of a corporation or other entity is subject to civil or criminal action under this section for activity conducted on behalf of the corporation or other entity, the corporation or other entity shall be subject to the same action, unless it is shown that the officer, employee, or agent was acting without the knowledge or consent of the corporation or other entity.

"(f) The remedies, penalties, fines, and imprisonment prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies, penalties, fines, and imprisonment prescribed in this section shall be in addition to any other remedies, penalties, fines and imprisonment afforded by any other law or regulation.

"(g)(1) A state may commence a civil action under subsection (c) of this section against any person conducting activity within the state in violation of this section. Civil actions brought by a state shall only

be brought in the United States district court for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order appropriate remedies and penalties as described in subsection (c) of this section.

"(2) The state shall notify the Attorney General of the United States of any civil action filed by the State under this subsection within thrity days of filing of the action.

"(3) Any civil penalties recovered by a state under this subsection shall be retained by the state and may be expended in such manner and for such purposes as the state deems appropriate. If a civil action is jointly brought by the Attorney General and a state, by more than one state or by the Attorney General and more than one state, any civil penalties recovered as a result of the joint action shall be shared by the parties bringing the action in accordance with a written agreement entered into prior to the filing of the action.

"(4) Nothing in this section shall deprive a state of jurisdiction to enforce its own civil and criminal laws against any person who may also be subject to civil and criminal action under this section.".

SEC. 310. Section 35 of the Act of February 25, 1920 (30 U.S.C. 191) is amended by adding the following at the end of the section:

"In determining the amount of payments to states under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States.".

SEC. 311. The Secretary shall submit annually to the Congress a report containing appropriate information to facilitate Congressional monitoring of this title. Such report shall include, but not be limited to:

(a) the number of acres leased, and the number of leases issued, competitively and noncompetitively;

(b) the amount of revenue received from bonus bids, filing fees, rentals and royalties;

(c) the amount of production from competitive and noncompetitive leases; and

(d) such other data and information as will facilitate—(i) an assessment of the onshore oil and gas leasing system, and (ii) a comparison of the system as revised by this title with the system in operation prior to the enactment of this title.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1530

GAY HEAD, MA INDIAN LAND CLAIMS SETTLEMENT ACT

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 1093, H.R. 2868, the Gay Head, MA Indian Land Claims Settlement Act.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2868) to settle Indian land claims in the town of Gay Head, Massachusetts, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3503

Mr. DOLE. Mr. President, I send to the desk an amendment on behalf of Senator ANDREWS and ask for its immedate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE), for Mr. ANDREWS, proposes an amendment numbered 3503.

on page 15, line 14, strike all through line 2, on page 22.

on page 22, line 3, strike out "Title III", and insert in lieu thereof: "Title II.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3503) was agreed to.

● Mr. KENNEDY. Mr. President, I rise in support of H.R. 2868, the Gay Head Wampanoag Indian Claims Settlement Act of 1985.

This bill, introduced by Congressman STUDDS, is virtually identical to the legislation that I introduced in July 1985, to implement the terms of a settlement agreement between the Wampanoag Tribal Council, the town of Gay Head, the Gay Head Taxpayer's Association and the Commonwealth of Massachusetts.

The bill establishes a $3 million "Gay Head Indian Claims Settlement Fund" to purchase 175 acres of settlement lands, as well as improve other lands involved in a settlement agreement. The legislation achieves a special dual responsibility between the Commonwealth of Massachusetts and the Federal Government in resolving the Gay Head Indian claim. Massachusetts will contribute $1.5 million toward the $3 million settlement claim.

The final obstacle in achieving a successful settlement in this matter will be the determination by the Department of the Interior concerning recognition of the Gay Head Wampanoag Indian tribe. The Department of the Interior should give serious consideration to the appeal of the Wampanoag Tribal Council and resolve this question expeditiously.

This legislation is the culmination of years of complex negotiations among the parties, all of whom are attempting to avoid costly, time-consuming litigation, alleviating the burden of clouded property title on Gay Head and recognize the claim of the Wampanoag Gay Head Indians.

I urge the Senate to pass this bill which will be an important step to resolving the controversies and uncertainties that have beset the residents of this Massachusetts community.●

● Mr. KERRY. Mr. President, I rise in strong support of H.R. 2868, the House companion to S. 1452, a bill which Senator KENNEDY and I introduced, which would settle claims of the Wampanoag Indians in Gay Head, MA.

The legislation that we today consider will go a long way toward a final settlement of what has been a very difficult period for all of the residents of this small community in Massachusetts. This version takes effect only if the Wampanoags are granted tribal recognition by the Federal Government. The sponsors on both sides of the Capitol are hopeful that recognition will occur soon so that a final settlement might be made.

I commend my senior colleague for his diligent work on this issue and I also thank our House colleague, Mr. STUDDS, for his leadership in pushing for this legislation. I also want to acknowledge the contribution of the Commonwealth of Massachusetts, who when asked to appropriate an additional contribution, agreed readily. I urge that the Senate pass this important bill.●

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 2868) was passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I now ask unanimous consent that the Senate turn to the consideration of Calendar No. 1084, S. 1452, the Senate companion bill and I ask unanimous consent that it be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

FEDERAL RECREATIONAL BOATING SAFETY PROGRAMS

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 1096, H.R. 4731, dealing with boat safety.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4731) to amend chapter 131 of title 46, United States Code, relating to the

Federal recreational boating safety programs, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3504

Mr. DOLE. Mr. President, I send an amendment to the desk on behalf of the distinguished Presiding Officer, Senator STEVENS.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] for Mr. STEVENS proposes an amendment numbered 3504.

H.R. 4731 is amended—

(a) in section 2(b) by striking out "section 12110(b)(2)" and inserting in lieu thereof "section 13110(b)(2)";

(b) by striking paragraph 3(a)(2); and

(c) by inserting at the end thereof the following new section:

"SEC. 6. The authority of the Secretary of Commerce to make loans under paragraph (1) of subsection (d) of section 308 of the Coastal Zone Management Act of 1972 (Public Law 92-583, 16 U.S.C. 1451, *et. seq.*) as amended, shall extend beyond September 30, 1986, for loans made to eligible states or units pursuant to and in accord with agreements entered into between the Secretary and any state prior to September 30, 1986, that provided for a total sum of loans to be made to that state or its units, where and to the extent loans had not been made in that total amount by September 30, 1986."

AMENDMENT NO. 3505

Mr. BYRD. Mr. President, I send to the desk an amendment by Mr. METZENBAUM to the amendment by Mr. STEVENS.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] for Mr. METZENBAUM proposes an amendment numbered 3505 to amendment numbered 3504.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Amendment number 3504 to H.R. 4731 is amended by—

(a) striking out "beyond September 30, 1986" and inserting in lieu thereof "to September 30, 1987"; and

(b) striking out "where and to the extent loans had not been made in that total amount by September 30, 1986." and inserting in lieu thereof "but such loan authority shall be limited to $7,000,000."

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3505) was agreed to.

Mr. STEVENS. Mr. President, I am offering an amendment in three parts to H.R. 4731, the bill before us today. The first two are of a technical nature. The third corrects an agency oversight.

The amendment to section 2 corrects an error in the citation to representation on the National Boating Safety Advisory Council. Striking paragraph 3(a)(2) removes an effective date which is no longer necessary.

The new section 6 provides a limited extension of loan authority under the Coastal Energy Impact Program. This extension is requested on behalf of the administration in order to complete certain transactions which were not completed prior to expiration of this authority on September 30 of this year. The difficulty developed out of an agreement made in June 1978. This agreement was understood by the parties involved to be a loan. However, a review conducted by NOAA after the loan authority expired indicated that it was not a loan. An extension of the loan authority will allow the parties to this agreement to correct their misunderstanding.

Mr. METZENBAUM. Mr. President, I appreciate the intention of the Senator from Alaska. However, I am offering an amendment to reduce the discretion established by the Senator's amendment.

Mr. STEVENS. Mr. President, I am willing to accept the Senator from Ohio's amendment. With this amendment we will still carry out the intention of my amendment.

Mr. METZENBAUM. My amendment would reduce the extension of authority in the Senator from Alaska's amendment by $8 million. Does the Senator from Alaska agree with me that these funds, when deobligated, will be returned to the Treasury?

Mr. STEVENS. The Senator from Ohio is correct. According to an opinion of the Comptroller General delivered in 1972, which is found at 52 Comp. Gen. 179, funds deobligated after the expiration of the original period of obligation availability revert to the Treasury.

Mr. METZENBAUM. I thank the Senator from Alaska for joining me in clarifying that point.

The PRESIDING OFFICER. The question is on agreeing to the amendment as amended.

The amendment (No. 3504) as amended was agreed to.

AMENDMENT NO. 3506

(Purpose: To amend section 318 of the Coastal Zone Management Act of 1972)

Mr. BYRD. Mr. President, I send to the desk an amendment by Mr. HOLLINGS.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] for Mr. HOLLINGS proposes an amendment numbered 3506.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment is as follows:

At the end of the bill, add the following:

SEC. 6. AMENDMENT TO THE COASTAL ZONE MANAGEMENT ACT OF 1972.

Section 318 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1464) is amended by adding at the end thereof the following:

"(d) The amount of any grant, or portion of a grant, made to a State under any section of this Act which is not obligated by such State during the fiscal year, or during the second fiscal year after the fiscal year, for which it was first authorized to be obligated by such State shall revert to the Secretary. The Secretary shall add such reverted amount to those funds available for grants under the section for which such reverted amount was originally made available.".

● Mr. HOLLINGS. Mr. President, today I offer an amendment to H.R. 4731, the Recreational Boating Safety Act of 1986, that will clarify a funding question in the Coastal Zone Management Program. This amendment simply requires that funds appropriated for Coastal Zone Management be spent for coastal management only. Under current law, funds that Congress appropriates for this use sometimes end up being spent for other purposes.

Mr. President, in this time of large budget deficits and Gramm-Rudman-Hollings, it is vital that we continue to fund important programs like Coastal Zone Management at reasonable levels. Through my work on the Appropriations Committee, I have attempted to ensure adequate funding for this program.

We who live near and enjoy the coasts of our Nation realize the value of coastal management. By the end of this decade, an estimated 75 percent of our Nation's population will live within 50 miles of the the Ocean. I know that in South Carolina, the population of our eight coastal counties is expected to double within 15 years. In addition, tourism is constantly on the increase. Each year sees a 10-percent rise in the number of tourists visiting the South Carolina coast. Coastal Zone Management provides the only comprehensive planning tool we have to cope with this growth.

Our overall choice is a simple one. We can have haphazard planning and ill-conceived development with little regard given to our future coastal resources. Or we can ensure that the future of our coast is one in which sound planning decisions will lead to our coastal resources being used for the purpose that will best meet the needs of the Nation. The decision is ours, Mr. President. I urge my colleagues to join with me and support this amendment.●

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3506) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 4731) was passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INSPECTOR GENERAL ACT AMENDMENTS

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 753 (S. 2005), dealing with the Inspector General Act of 1978.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2005) to amend the Inspector General Act of 1978.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Governmental Affairs, with an amendment to strike out all after the enacting clause, and insert the following.

That this Act may be cited as the "Small Agency Audit Improvement Act of 1986".

CONFORMATION OF AUTHORITIES OF INSPECTORS GENERAL

SEC. 2. (a) Section 2(1) of the Inspector General Act of 1978 is amended—

(1) by striking out ", and the Department of State";

(2) by inserting "and" before "the Veterans' Administration";

(3) by inserting "the Department of Energy, the Department of Health and Human Services," after "the Department of Education,";

(4) by inserting "the Department of State," after "the Department of Labor,"; and

(5) by striking out "the Community Services Administration,".

(b) Section 9(a)(1) of such Act is amended—

(1) by striking out subparagraph (I);

(2) by redesignating subparagraphs (J) through (N) as subparagraphs (K) through (O), respectively;

(3) by redesignating subparagraphs (E) through (H) as subparagraphs (G) through (J), respectively; and

(4) by inserting after subparagraph (D) the following new subparagraphs:

"(E) of the Department of Energy, the Office of Inspector General (as established by section 208 of the Department of Energy Organization Act);

"(F) of the Department of Health and Human Services, the Office of Inspector General (as established by title II of Public Law 94-505);".

(c) Section 11 of such Act is amended—

(1) by inserting "Energy, Health and Human Services," after "Education," each place it appears in paragraphs (1) and (2);

(2) by striking out "Community Services," in paragraph (1); and

(3) by striking out "the Community Services Administration," in paragraph (2).

(d)(1)(A) Section 208 of the Department of Energy Organization Act is repealed.

(B) The table of contents in the first section of such Act is amended by striking out the item relating to section 208.

(2) Title II of Public Law 94-505 is repealed.

UNIFORM SALARIES FOR INSPECTORS GENERAL

SEC. 3. (a) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraphs:

"Inspector General, Department of Commerce.

"Inspector General, Department of the Interior.

"Inspector General, Department of State.

"Inspector General, Agency for International Development.

"Inspector General, Environmental Protection Agency.

"Inspector General, General Services Administration.

"Inspector General, National Aeronautics and Space Administration.

"Inspector General, Small Business Administration.".

(b) Section 5316 of such title is amended by striking out the paragraphs relating to—

(1) the Inspector General of the Department of Commerce;

(2) the Inspector General of the Department of the Interior;

(3) the Inspector General of the Agency for International Development;

(4) the Inspector General of the Community Services Administration;

(5) the Inspector General of the Environmental Protection Agency;

(6) the Inspector General of the General Services Administration;

(7) the Inspector General of the National Aeronautics and Space Administration; and

(8) the Inspector General of the Small Business Administration.

OATH ADMINISTRATION AUTHORITY

SEC. 4. Section 6(a) of the Inspector General Act of 1978 is amended—

(1) by redesignating paragraphs (5) through (8) as paragraphs (6) through (9), respectively; and

(2) by inserting after paragraph (4) the following new paragraph:

"(5) to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions assigned by this Act, which oath, affirmation, or affidavit when administered or taken by or before an investigator or such other employee of an office of Inspector General designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal;".

REQUIREMENTS FOR INTERNAL AUDIT UNITS IN CERTAIN AGENCIES

SEC. 5. The Inspector General Act of 1978 is amended by inserting after section 8A the following new sections:

"REQUIREMENTS FOR CERTAIN INTERNAL AUDIT UNITS

"SEC. 8B. (a) An internal audit unit established in a Federal entity shall be responsible for the conduct of audits or investigations of the programs and operations of such entity in accordance with the requirements of this section.

"(b) On or after the effective date of the Small Agency Audit Improvement Act of 1986, any appointment to the position of internal audit unit head of a Federal entity shall be made by the entity head of such entity in accordance with the laws and regulations governing appointments in the civil service.

"(c) Within 180 days after the effective date of the Small Agency Audit Improvement Act of 1986, the entity head of each Federal entity in which more than one internal audit unit has been established shall consolidate such units into a single internal audit unit.

"(d)(1) Except as provided in paragraph (2), the entity head of a Federal entity may transfer to an internal audit unit of such entity other units or components of such entity, or functions, powers, or duties of such units or components, if such entity head determines that—

"(A) such units, components, functions, powers, or duties are properly related to the functions of such internal audit unit; and

"(B) such transfer would further the purposes of this section.

"(2) An entity head may not transfer to an internal audit unit any program operating responsibilities.

"(e) Each internal audit unit head of a Federal entity shall report to and be under the general supervision of the entity head of such entity or, to the extent such authority is delegated, the officer next in rank below such entity head, but shall not report to, or be subject to supervision by, any other officer of such entity. Neither the entity head of such entity nor the officer next in rank below such entity head shall prevent or prohibit the internal audit unit head from initiating, carrying out, or completing any audit or investigation.

"(f) If an internal audit unit head is removed from office or involuntarily transferred to another position or location, the entity head concerned shall promptly communicate the reasons for any such removal or involuntary transfer to both Houses of Congress.

"(g)(1) The provisions of subsections (a)(1), (a)(4), (a)(5), (b), (c), and (d) of section 4 shall apply to the internal audit unit head of a Federal entity in the same manner as such provisions apply to an Inspector General of an establishment.

"(2) The provisions of section 5 shall apply to the internal audit unit head of a Federal entity and the entity head of a Federal entity in the same manner as such provisions apply to an Inspector General of an establishment and the head of an establishment, respectively, except that for purposes of this paragraph, the reports required by such section shall only be made annually, on October 31 of each year, with respect to activities of the internal audit unit during the immediately preceding twelve-month period ending September 30.

"(3) The provisions of subsections (a)(1), (a)(2), (a)(3), (a)(6), (a)(9), (b), and (c) of section 6 shall apply to the internal audit unit head of a Federal entity and the entity head of a Federal entity in the same manner as such provisions apply to an Inspector General of an establishment and the head of an establishment, respectively.

"(4)(A) The provisions of section 7 shall apply to an internal audit unit head of a Federal entity in the same manner as such

provisions apply to an Inspector General of an establishment.

"(B) The provisions of section 7 shall apply to any employee of a Federal entity in the same manner as such provisions apply to an employee of an establishment.

"(5) Notwithstanding subsection (h)(2), for purposes of this subsection, the term 'Federal entity' means ACTION, Amtrak, the Equal Employment Opportunity Commission, the Federal Deposit Insurance Corporation, the Federal Emergency Management Agency, the Federal Home Loan Bank Board, the National Archives and Records Administration, the National Science Foundation, the Nuclear Regulatory Commission, the Panama Canal Commission, the Peace Corps, the Office of Personnel Management, and the United States Information Agency.

"(h) For purposes of this section:

"(1) The term 'entity head' means the director, administrator, president, chairman, or other chief officer of a Federal entity.

"(2) The term 'Federal entity' has the same meaning as is given to the term 'agency' in section 552(e) of title 5, United States Code, except that such term shall not include—

"(A) an establishment (as defined in section 11(2) of this Act);

"(B) the Executive Office of the President;

"(C) the Department of Justice;

"(D) the Department of the Treasury;

"(E) the Central Intelligence Agency;

"(F) the United States Postal Service;

"(G) the General Accounting Office; or

"(H) any entity in the judicial or legislative branches of the Government (including the Administrative Office of the United States Courts and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol).

"(3) The term 'internal audit unit' means an office, unit, or other component of a Federal entity which carries out audits, or audits and investigations, for the purpose of reviewing the programs and operations of such entity, but does not include an office, unit, or other component of such entity which carries out audits or investigations as an integral part of the programs or operations of such entity.

"(4) The term 'internal audit unit head' means the director or other chief officer of an internal audit unit.".

STUDY REQUIRED

SEC. 6. (a) The President's Council on Integrity and Efficiency shall conduct a study with respect to—

(1) the extent and effectiveness of internal audit and investigative activities at Federal entities, particularly Federal entities in which internal audit units have not been established in accordance with section 8B of the Inspector General Act of 1978 (as added by section 5 of this Act);

(2) the most appropriate and efficient methods of assuring effective audits and investigations at Federal entities; and

(3) the extent to which the authorities, duties, and responsibilities specified in sections 4 through 7 of the Inspector General Act of 1978 should be provided to the internal audit units and the internal audit unit heads of Federal entities (as such term is defined in section 8B(h) of such Act) (as added by section 5 of this Act) to which such authorities, duties, and responsibilities are not provided by section 8B(g) of such Act (as added by section 5 of this Act).

(b) Within one year after the date of enactment of this section, the President's Council on Integrity and Efficiency shall prepare and transmit to the President and the Congress a report describing the findings of the study conducted under subsection (a) and containing such recommendations as the Council considers appropriate.

EFFECTIVE DATE

SEC. 7. (a) Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on January 1, 1987.

(b) Section 6 shall take effect on the date of enactment of this Act.

AMENDMENT NO. 3507

(Purpose: To make technical corrections)

Mr. DOLE. Mr. President, I send an amendment to the desk on behalf of Senator ROTH to the committee substitute.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] for Mr. ROTH proposes an amendment numbered 3507.

Mr. DOLE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 15, strike out line 24 and insert in lieu thereof "service, or with regard to the Tennessee Valley Authority, the laws and regulations governing appointments of officers and employees in that entity."

On page 178, strike out lines 18 and 19 and insert in lieu thereof "Peace Corps, and the Office of Personnel Management."

S. 2005, THE SMALL AGENCY AUDIT IMPROVEMENT ACT OF 1986

● Mr. ROTH. Mr. President, in order to consolidate and further strengthen internal audit and investigative efforts in the Federal Goverment, S. 2005, as reported by my Committee on Governmental Affairs, would make certain technical amendments to the Inspector General Act of 1978 (IG Act) and extend significant statutory protections and requirements to audit and investigative units in about 40 Federal agencies, boards, commissions, and corporations that are not currently subject to the IG Act.

In April 1985, the administration forwarded to the Congress a series of technical amendments to the IG Act which would establish uniform salary levels for all IG's, place the IG's in the Departments of Energy and Health and Human Services under the provisions of the IG Act and provide authority to the IG's to administer oaths. This proposal provided a vehicle for making other needed changes to the IG Act.

S. 2005 makes the technical amendments to the IG Act requested by the administration. It also extends statutory IG protections and requirements to audit and investigative units in Federal agencies, boards, commissions, and corporations that are not currently subject to the IG Act.

All Federal entities having audit, or audit and investigative units, except those entities specifically excluded, would be required by statute to:

Consolidate their internal audit and investigative units; insulate the internal audit unit from program oprating responsibilities; have the internal audit unit head report directly to the agency head or deputy; and notify the Congress of the reasons for removal or involuntary transfer of the audit unit head.

In addition, the heads of internal audit units in certain Federal entities with larger audit or investigative staffs (generally 10 persons or more) would be granted most of the specific statutory authority and responsibility provided to statutory inspectors general under sections 4 through 7 of the IG Act.

S. 2005 would further require that the President's Council on Integrity and Efficiency [PCIE] conduct a study concerning (1) the extent and effectiveness of audit and investigative activities at Federal entities, particularly those at which internal audit units have not been established, (2) the most appropriate and efficient methods of assuring effective audits and investigations at such entities, and (3) an assessment of the extent to which the authorities, duties, and responsibilities provided under sections 4–7 of the IG Act should be extended to additional audit offices. The PCIE would be required to report its findings and recommendations to the President and the Congress within 1 year.

A May 1984 GAO report commented on the internal audit capabilities of 99 Federal entities without statutory inspections general as follows:

. . . some agencies are not complying with OMB Circulars A-50 and A-73, which address audits of federal operations and programs and audit follow-up; and with GAO's "standards for Audit of Governmental Organizations, Programs, Activities, and Functions." Some agencies have no audit coverage; at others the internal auditor does not report to the head or deputy head of the agency; and at several agencies that have more than one audit or investigative unit, there are no procedures for coordination.

The GAO report was based on 99 responses received to questionnaire surveys sent to 105 Federal organizations, and the deficiencies cited were essentially those acknowledged by the entities responding.

A recent follow-on review by GAO of those agencies with audit and/or investigative groups ". . . uncovered many of the same problems that prompted Congress to establish statutory Inspectors General in other agencies including:

"A lack of audit independence at many agencies because auditors were under the supervision of officials directly responsible for activities subject to audit; inadequate audit coverage of

important and vulnerable agency operations; lack of evaluation of significant fraud problems by internal audit/investigative staffs; and audit resolution and follow-up systems that did not meet governmental requirements."

Eleven cabinet departments and six major agencies now have statutory inspectors general. The IG's have overall responsibility for coordination and leadership of internal auditing and investigative activities in these agencies and are required to report periodically to their agency heads and the Congress concerning significant problems, abuses or deficiencies and the progress of corrective action. The statutes creating these offices contain a number of specific provisions designed to insure that IG's have the independence and authority necessary to carry out their responsibilities.

The success of the statutory inspectors general has been possible because of several fundamental improvements mandated by the legislation creating their offices. Under the IG statutes, responsibility for internal audits and investigations was placed in a single central unit in each agency headed by an inspector general. Before, uncoordinated audit and investigative units were often scattered throughout an agency. There are specific statutory provisions designed to insure a high degree of independence and to provide the IG with sufficient authority to carry out his or her responsibilites. By law, the IG has direct access to the agency head and significant findings are required to be reported to both the agency head and the Congress.

Strong internal audit is especially needed at smaller agencies because their operations usually are not closely watched by the Congress, the press, or the public. In the absence of an independent internal audit unit, there is greater risk that serious problems and deficiencies will not be reported to the agency head, and there is no assurance such problems will become known outside the agency.

S. 2005 would significantly improve internal audits and investigations in small Federal agencies without requiring additional expenditures or personnel. Additional authority and responsibility are given to audit units at these entities, but the committee anticipates that no staff increases would be required, at least initially, to carry them out. Consolidation of audit operations could improve operational efficiency and free resources to respond to any additional workload resulting from this legislation.

The bill represents another important step in improving management and reducing fraud and abuse in Federal programs and activities, and the committee has therefore reported it favorably. I strongly urge its adoption by the Senate.

Mr. President, I have offered certain technical amendments to the bill as reported. The first adds a provision permitting the Tennessee Valley Authority to appoint its internal audit unit head according to the laws and regulations governing appointments of officers and employees in the TVA, rather than the provisions of the Civil Service laws as required by the bill for other agencies. The term "civil service" is commonly understood to be the OPM-administered Federal personnel system. Without this amendment, TVA's inspector general could become the only TVA employee subject to that system.

The second amendment deletes the U.S. Information Agency from section 8B of the bill. Public Law 99-399, the Diplomatic Security and Anti-Terrorism Act, separately established an inspector general at USIA, making this provision in S. 2005 no longer necessary. I urge adoption of these amendments.

Unlike H.R. 3077, the counterpart bill recently enacted by the other body, S. 2005 does not establish inspectors general at the Department of Justice and Treasury. I support the eventual establishment of inspectors general or their equivalents at all Cabinet departments, including these two. However, if we included these offices in this legislation, objection would be heard in the Senate, and we would not be able to move forward on the highly valuable amendments to the 1978 act embodied in S. 2005, including the strengthening of about 40 audit offices in the smaller agencies. Therefore, when this legislation is returned to the other body, I must insist that we forestall inclusion of provisions establishing IG's at Justice and Treasury.●

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3507) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2005

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Small Agency Audit Improvement Act of 1986".

CONFORMATION OF AUTHORITIES OF INSPECTORS GENERAL

SEC. 2. (a) Section 2(1) of the Inspector General Act of 1978 is amended—

(1) by striking out ", and the Department of State";

(2) by inserting "and" before "the Veterans' Administration";

(3) by inserting "the Department of Energy, the Department of Health and Human Services," after "the Department of Education,";

(4) by inserting "the Department of State," after "the Department of Labor,"; and

(5) by striking out "the Community Services Administration,".

(b) Section 9(a)(1) of such Act is amended—

(1) by striking out subparagraph (I);

(2) by redesignating subparagraphs (J) through (N) as subparagraphs (K) through (O), respectively;

(3) by redesignating subparagraphs (E) through (H) as subparagraphs (G) through (J), respectively; and

(4) by inserting after subparagraph (D) the following new subparagraphs:

"(E) of the Department of Energy, the Office of Inspector General (as established by section 208 of the Department of Energy Organization Act);

"(F) of the Department of Health and Human Services, the Office of Inspector General (as established by title II of Public Law 94-505);".

(c) Section 11 of such Act is amended—

(1) by inserting "Energy, Health and Human Services," after "Education," each place it appears in paragraphs (1) and (2);

(2) by striking out "Community Services," in paragraph (1); and

(3) by striking out "the Community Services Administration," in paragraph (2).

(d)(1)(A) Section 208 of the Department of Energy Organization Act is repealed.

(B) The table of contents in the first section of such Act is amended by striking out the item relating to section 208.

(2) Title II of Public Law 94-505 is repealed.

UNIFORM SALARIES FOR INSPECTORS GENERAL

SEC. 3. (a) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraphs:

"Inspector General, Department of Commerce.

"Inspector General, Department of the Interior.

"Inspector General, Department of State.

"Inspector General, Agency for International Development.

"Inspector General, Environmental Protection Agency.

"Inspector General, General Services Administration.

"Inspector General, National Aeronautics and Space Administration.

"Inspector General, Small Business Administration.".

(b) Section 5316 of such title is amended by striking out the paragraphs relating to—

(1) the Inspector General of the Department of Commerce;

(2) the Inspector General of the Department of the Interior;

(3) the Inspector General of the Agency for International Development;

(4) the Inspector General of the Community Services Administration;

(5) the Inspector General of the Environmental Protection Agency;

(6) the Inspector General of the General Services Administration;

(7) the Inspector General of the National Aeronautics and Space Administration; and

(8) the Inspector General of the Small Business Administration.

OATH ADMINISTRATION AUTHORITY

SEC. 4. Section 6(a) of the Inspector General Act of 1978 is amended—

(1) by redesignating paragraphs (5) through (8) as paragraphs (6) through (9), respectively; and

(2) by inserting after paragraph (4) the following new paragraph:

"(5) to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions assigned by this Act, which oath, affirmation, or affidavit when administered or taken by or before an investigator or such other employee of an office of Inspector General designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal;".

REQUIREMENTS FOR INTERNAL AUDIT UNITS IN CERTAIN AGENCIES

SEC. 5. The Inspector General Act of 1978 is amended by inserting after section 8A the following new sections:

"REQUIREMENTS FOR CERTAIN INTERNAL AUDIT UNITS

"SEC. 8B. (a) An internal audit unit established in a Federal entity shall be responsible for the conduct of audits or investigations of the programs and operations of such entity in accordance with the requirements of this section.

"(b) On or after the effective date of the Small Agency Audit Improvement Act of 1986, any appointment to the position of internal audit unit head of a Federal entity shall be made by the entity head of such entity in accordance with the laws and regulations governing appointments in the civil service, or with regard to the Tennessee Valley Authority, the laws and regulations governing appointments of officers and employees in that entity.

"(c) Within 180 days after the effective date of the Small Agency Audit Improvement Act of 1986, the entity head of each Federal entity in which more than one internal audit unit has been established shall consolidate such units into a single internal audit unit.

"(d)(1) Except as provided in paragraph (2), the entity head of a Federal entity may transfer to an internal audit unit of such entity other units or components of such entity, or functions, powers, or duties of such units or components, if such entity head determines that—

"(A) such units, components, functions, powers, or duties are properly related to the functions of such internal audit unit; and

"(B) such transfer would further the purposes of this section.

"(2) An entity head may not transfer to an internal audit unit any program operating responsibilities.

"(e) Each internal audit unit head of a Federal entity shall report to and be under the general supervision of the entity head of such entity or, to the extent such authority is delegated, the officer next in rank below such entity head, but shall not report to, or be subject to supervision by, any other officer of such entity. Neither the entity head of such entity nor the officer next in rank below such entity head shall prevent or prohibit the internal audit unit head from initiating, carrying out, or completing any audit or investigation.

"(f) If an internal audit unit head is removed from office or involuntarily transferred to another position or location, the entity head concerned shall promptly communicate the reasons for any such removal or involuntary transfer to both Houses of Congress.

"(g)(1) The provisions of subsections (a)(1), (a)(4), (a)(5), (b), (c), and (d) of section 4 shall apply to the internal audit unit head of a Federal entity in the same manner as such provisions apply to an Inspector General of an establishment.

"(2) The provisions of section 5 shall apply to the internal audit unit head of a Federal entity and the entity head of a Federal entity in the same manner as such provisions apply to an Inspector General of an establishment and the head of an establishment, respectively, except that for purposes of this paragraph, the reports required by such section shall only be made annually, on October 31 of each year, with respect to activities of the internal audit unit during the immediately preceding twelve-month period ending September 30.

"(3) The provisions of subsections (a)(1), (a)(2), (a)(3), (a)(6), (a)(9), (b), and (c) of section 6 shall apply to the internal audit unit head of a Federal entity and the entity head of a Federal entity in the same manner as such provisions apply to an Inspector General of an establishment and the head of an establishment, respectively.

"(4)(A) The provisions of section 7 shall apply to an internal audit unit head of a Federal entity in the same manner as such provisions apply to an Inspector General of an establishment.

"(B) The provisions of section 7 shall apply to any employee of a Federal entity in the same manner as such provisions apply to an employee of an establishment.

"(5) Notwithstanding subsection (h)(2), for purposes of this subsection, the term 'Federal entity' means ACTION, Amtrak, the Equal Employment Opportunity Commission, the Federal Deposit Insurance Corporation, the Federal Emergency Management Agency, the Federal Home Loan Bank Board, the National Archives and Records Administration, the National Science Foundation, the Nuclear Regulatory Commission, the Panama Canal Commission, the Peace Corps, and the Office of Personnel Management.

"(h) For purposes of this section:

"(1) The term 'entity head' means the director, administrator, president, chairman, or other chief officer of a Federal entity.

"(2) The term 'Federal entity' has the same meaning as is given to the term 'agency' in section 552(e) of title 5, United States Code, except that such term shall not include—

"(A) an establishment (as defined in section 11(2) of this Act);

"(B) the Executive Office of the President;

"(C) the Department of Justice;

"(D) the Department of the Treasury;

"(E) the Central Intelligence Agency;

"(F) the United States Postal Service;

"(G) the General Accounting Office; or

"(H) any entity in the judicial or legislative branches of the Government (including the Administrative Office of the United States Courts and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol).

"(3) The term 'internal audit unit' means an office, unit, or other component of a Federal entity which carries out audits, or audits and investigations, for the purpose of reviewing the programs and operations of such entity, but does not include an office, unit, or other component of such entity which carries out audits or investigations as an integral part of the programs or operations of such entity.

"(4) The term 'internal audit unit head' means the director or other chief officer of an internal audit unit.".

STUDY REQUIRED

SEC. 6. (a) The President's Council on Integrity and Efficiency shall conduct a study with respect to—

(1) the extent and effectiveness of internal audit and investigative activities at Federal entities, particularly Federal entities in which internal audit units have not been established in accordance with section 8B of the Inspector General Act of 1978 (as added by section 5 of this Act);

(2) the most appropriate and efficient methods of assuring effective audits and investigations at Federal entities; and

(3) the extent to which the authorities, duties, and responsibilities specified in sections 4 through 7 of the Inspector General Act of 1978 should be provided to the internal audit units and the internal audit unit heads of Federal entities (as such term is defined in section 8B(h) of such Act) (as added by section 5 of this Act) to which such authorities, duties, and responsibilities are not provided by section 8B(g) of such Act (as added by section 5 of this Act).

(b) Within one year after the date of enactment of this section, the President's Council on Integrity and Efficiency shall prepare and transmit to the President and the Congress a report describing the findings of the study conducted under subsection (a) and containing such recommendations as the Council considers appropriate.

EFFECTIVE DATE

SEC. 7. (a) Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on January 1, 1987.

(b) Section 6 shall take effect on the date of enactment of this Act.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 1065, S. 1828 to implement the Inter-American Convention.

The PRESIDING OFFICER. The bill will be stated.

The assistant legislative clerk read as follows:

A bill (S. 1828) to implement the Inter-American Convention on International Commercial Arbitration.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Commit-

tee on Foreign Relations, with an amendment:

On page 5, after line 6, insert the following:

SEC. 4. Section 207 of title 9, United States Code, is amended by adding at the end thereof the following: "An agreement to arbitrate shall be deemed to constitute consent to proceedings to recognize, confirm, or enforce by levy, attachment, or otherwise any arbitral award made pursuant to such agreement and referred to in this section, and neither the Federal act of State doctrine nor the doctrine of sovereign immunity shall constitute grounds or be the basis for refusal or deferral of recognition, confirmation, or enforcement of any such arbitral award against a foreign state or an agency or an instrumentality of a foreign state.".

So as to make the bill read:

S. 1828

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 9, United States Code, is amended by adding:

"CHAPTER 3. INTER-AMERICAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION

"Sec.
"301. Enforcement of Convention.
"302. Incorporation by reference.
"303. Order to compel arbitration; appointment of arbitrators; locale.
"304. Recognition and enforcement of foreign arbitral decisions and awards; reciprocity.
"305. Relationship between the Inter-American Convention and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958.
"306. Applicable rules of Inter-American Commercial Arbitration Commission.
"307. Chapter 1; residual application.

"§ 301. Enforcement of Convention

"The Inter-American Convention on International Commercial Arbitration of January 30, 1975, shall be enforced in United States courts in accordance with this chapter.

"§ 302. Incorporation by reference

"The provisions of chapter 2, sections 202, 203, 204, 205, and 207 shall apply to this chapter as if specifically set forth herein, except that for the purposes of this chapter "the Convention" shall mean the Inter-American Convention.

"§ 303. Order to compel arbitration; appointment of arbitrators; locale

"A court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. The court may also appoint arbitrators in accordance with the provisions of the agreement.

"In the event the agreement does not make provision for the place of arbitration or the appointment of arbitrators, the court shall direct that the arbitration shall be held and the arbitrators be appointed in accordance with article 3 of the Inter-America Convention.

"§ 304. Recognition and enforcement of foreign arbitral decisions and awards; reciprocity

"Arbitral decisions or awards made in the territory of a foreign State shall, on the basis of reciprocity, be recognized and enforced under this chapter only if the State has ratified or acceded to the Inter-America Convention.

"§ 305. Relationship between the Inter-America Convention and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958

"When the requirements for application of both the Inter-America Convention and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, are met, determination as to which Convention applies shall, unless otherwise expressly agreed, be made as follows:

"(1) If a majority of the parties to the arbitration agreement are citizens of a State of States that have ratified or acceded the Inter-American Convention and are member States of the Organization of American States, the Inter-America Convention shall apply.

"(2) In all other cases the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall apply.

"§ 306. Applicable rules of Inter-American Commercial Arbitration Commission

"(a) For the purposes of this chapter the rules of procedure of the Inter-American Commercial Arbitration Commission referred to in article 3 of the Inter-American Convention shall, subject to subsection (b) of this section, be those rules as promulgated by the Commission on January 1, 1978.

"(b) In the event the rules of procedure of the Inter-American Commercial Arbitration Commission are modified or amended in accordance with the procedures for amendment of the rules of the said Commission, the Secretary of State, by regulation in accordance with section 553 of title 5, United States Code, consistent with the aims and purposes of this Convention, may prescribe that such modifications or amendments shall be effective for purposes of this chapter.

"§ 307. Chapter 1; residual application

"Chapter 1 applies to actions and proceedings brought under this chapter to the extent chapter 1 is not in conflict with this chapter or the Inter-American Convention as ratified by the United States.".

SEC. 2. Title 9, United States Code, is further amended by adding to the table of chapters at the beginning a new subheading as follows:

"3. Inter-American Convention on International Commercial Arbitration ..... 301"

SEC. 3. This Act shall be effective upon the entry into force of the Inter-American Convention on International Commercial Arbitration of January 30, 1975, with respect to the United States.

SEC. 4. Section 207 of title 9, United States Code, is amended by adding at the end thereof the following: "An agreement to arbitrate shall be deemed to constitute consent to proceedings to recognize, confirm, or enforce by levy, attachment, or otherwise any arbitral award made pursuant to such agreement and referred to in this section, and neither the Federal act of State doctrine nor the doctrine of sovereign immunity shall constitute grounds or be the basis for refusal or deferral of recognition, confirmation, or enforcement of any such arbitral award against a foreign state or an agency or an instrumentality of a foreign state.".

AMENDMENT NO. 3508

(Purpose: To amend the provisions regarding arbitral award)

Mr. DOLE. Mr. President, I send an amendment to the desk on behalf of Senator LUGAR.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] for Mr. LUGAR proposes an amendment numbered 3508.

Mr. DOLE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out section 4 of the bill and insert in lieu thereof the following:

SEC. 4. (a) Chapter 1 of title 9, United States Code, is amended by adding at the end thereof the following new section:

"§ 15. Inapplicability of the Act of State doctrine

"Enforcement of arbitral agreements, confirmation of arbitral awards, and execution upon judgments based on orders confirming such awards shall not be refused on the basis of the Act of State doctrine.".

(b) Section 1605(a) of title 28, United States Code, is amended by—

(1) striking out "or" at the end of paragraph (4);

(2) striking out the period at the end of paragraph (5) and inserting in lieu thereof ", or "; and

(3) adding at the end thereof the following:

"(6) in which the action is brought either to enforce an agreement made by the foreign State with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607, or (D) paragraph (1) of this subsection is otherwise applicable."

(c) Section 1610(a) of title 28, United States Code, is amended by—

(1) striking out the period at the end of paragraph (5) and inserting in lieu thereof ", or"; and

(2) adding at the end thereof the following:

"(6) the judgment is based on an order confirming an arbitral award rendered against the foreign State, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement.".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3508) was agreed to.

S. 1828, THE INTER-AMERICAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION

● Mr. MATHIAS. Mr. President, I applaud the Senate's passage of S. 1828, the implementing legislation for the Inter-American Convention on International Commercial Arbitration. By approving this legislation, we enhance arbitration as a means of settling international disputes. It is an important step forward in the broader effort to facilitate transnational commercial and legal transactions.

The procedure of submitting disputes to an impartial arbitrator extends back to the earliest days of international law. Today, as our economy becomes more and more a part of the global marketplace, businesses increasingly rely on arbitration as a mechanism for resolving international disputes. S. 1828 will strengthen the viability of arbitration in two ways. First, it will increase the number of countries with which we have a treaty basis for our courts to enforce arbitral agreements. Second, by virtue of an amendment I offered in committee, it will improve the ability of our courts to enforce arbitral awards.

The Inter-American Convention is modeled on the 1958 New York Convention on Recognition and Enforcements of Arbitral Awards, and as such, does not represent a new departure.

Rather, it extends the relationship we have with the over 65 members of the New York convention to numerous other countries around the world. Earlier this year, I conducted a hearing in the Foreign Relations Committee on the ratification of this and five other private law treaties. The administration, the American Bar Association and the American Arbitration Association strongly recommended that the Senate give its advice and consent to the Inter-American Convention. In addition, the convention enjoys the support of the American Foreign Law Association, a number of State and local bar associations, the U.S. Chamber of Commerce, and the Association of American Chambers of Commerce of Latin America.

In August, during committee consideration of S. 1828, I offered an amendment—which was adopted—to strengthen the enforcement of arbitral awards. The amendment stipulates that U.S. courts cannot invoke the act of state doctrine or foreign sovereign immunity as a basis for refusing an otherwise valid arbitral award. Thus, a court could only examine the procedural issues—whether or not the terms of the arbitration clause were followed, and whether or not the arbitrator's decision was in accord with the norms of international law. This amendment will reassure Americans engaged in international business that the arbitration mechanism works. By preventing a foreign government from invoking the sovereign immunity defense to escape enforcement of an arbitral award, it will help to secure the safety of U.S. companies' interests abroad.

My amendment incorporated provisions that were contained in two bills I introduced earlier this Congress, S. 1395 and S. 1071. S. 1395 addressed the enforcement of arbitral awards. S. 1071 amended the Foreign Sovereign Immunities Act [FSIA] to perfect the jurisdiction of U.S. courts and provide for better enforcement and execution of judgments once they are rendered by our courts. My amendment begins the process of filling the gaps in the FSIA by invalidating the sovereign immunity defense in the enforcement of arbitral awards. More work needs to be done, however, and I would commend the task to future Congresses.

Our adherence to the Inter-American Convention is the culmination of many years of hard work in the public and private sector. I would like to commend the Foreign Relations Committee for its part in these efforts. S. 1828 is important not only because it strengthens the arbitration mechanism, but because it promotes our larger goal of establishing the rule of law. In a world grown more divisive, the rule of law is our best hope for making orderly the transnational transactions that have become a vital part of our economy. S. 1828 is one step closer to that goal, and I urge the House to give its prompt approval to this measure.●

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1828

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 9, United States Code, is amended by adding:

"CHAPTER 3. INTER-AMERICAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION

"Sec.

"301. Enforcement of Convention.

"302. Incorporation by reference.

"303. Order to compel arbitration; appointment of arbitrators; locale.

"304. Recognition and enforcement of foreign arbitral decisions and awards; reciprocity.

"305. Relationship between the Inter-American Convention and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958.

"306. Applicable rules of Inter-American Commercial Arbitration Commission.

"307. Chapter 1; residual application.

§ 301. Enforcement of Convention

"The Inter-American Convention on International Commercial Arbitration of January 30, 1975, shall be enforced in United States courts in accordance with this chapter.

§ 302. Incorporation by reference

"The provisions of chapter 2, sections 202, 203, 204, 205, and 207 shall apply to this chapter as if specifically set forth herein, except that for the purposes of this chapter "the Convention" shall mean the Inter-American Convention.

"§ 303. Order to compel arbitration; appointment of arbitrators; locale

"A court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. The court may also appoint arbitrators in accordance with the provisions of the agreement.

"In the event the agreement does not make provision for the place of arbitration or the appointment of arbitrators, the court shall direct that the arbitration shall be held and the arbitrators be appointed in accordance with article 3 of the Inter-American Convention.

"§ 304. Recognition and enforcement of foreign arbitral decisions and awards; reciprocity

"Arbitral decisions or awards made in the territory of a foreign State shall, on the basis of reciprocity, be recognized and enforced under this chapter only if that State has ratified or acceded to the Inter-American Convention.

"§ 305. Relationship between the Inter-American Convention and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958

"When the requirements for application of both the Inter-American Convention and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, are met, determination as to which Convention applies shall, unless otherwise expressly agreed, be made as follows:

"(1) If a majority of the parties to the arbitration agreement are citizens of a State or States that have ratified or acceded to the Inter-American Convention and are member States of the Organization of American States, the Inter-American Convention shall apply.

"(2) In all other cases the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall apply.

"§ 306. Applicable rules of Inter-American Commercial Arbitration Commission

"(a) For the purposes of this chapter the rules of procedure of the Inter-American Commercial Arbitration Commission referred to in article 3 of the Inter-American Convention shall, subject to subsection (b) of this section, be those rules as promulgated by the Commission on January 1, 1978.

"(b) In the event the rules of procedure of the Inter-American Commercial Arbitration Commission are modified or amended in accordance with the procedures for amendment of the rules of the said Commission, the Secretary of State, by regulation in accordance with section 553 of title 5, United States Code, consistent with the aims and purposes of this Convention, may prescribe that such modifications or amendments shall be effective for purposes of this chapter.

"§ 307. Chapter 1; residual application

"Chapter 1 applies to actions and proceedings brought under this chapter to the extent chapter 1 is not in conflict with this chapter or the Inter-American Convention as ratified by the United States.".

SEC. 2. Title 9, United States Code, is further amended by adding to the table of chapters at the beginning a new subheading as follows:

"3. Inter-American Convention on International Commercial Arbitration ..... 301".

SEC. 3. This Act shall be effective upon the entry into force of the Inter-American Convention on International Commercial Arbitration of January 30, 1975, with respect to the United States.

SEC. 4. (a) Chapter 1 of title 9, United States Code, is amended by adding at the end thereof the following new section:

"§ 15. Inapplicability of the Act of State doctrine

"Enforcement of arbitral agreements, confirmation of arbitral awards, and execution upon judgments based on orders confirming such awards shall not be refused on the basis of the Act of State doctrine.".

(b) Section 1605(a) of title 28, United States Code, is amended by—

(1) striking out "or" at the end of paragraph (4);

(2) striking out the period at the end of paragraph (5) and inserting in lieu thereof "; or"; and

(3) adding at the end thereof the following:

"(6) in which the action is brought either to enforce an agreement made by the foreign State with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607, or (D) paragraph (1) of this subsection is otherwise applicable."

(c) Section 1610(a) of title 28, United States Code, is amended by—

(1) striking out the period at the end of paragraph (5) and inserting in lieu thereof ", or"; and

(2) adding at the end thereof the following:

"(6) the judgment is based on an order confirming an arbitral award rendered against the foreign State, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement.".

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 5495.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 5495) entitled "An Act to authorize appropriations to the National Aeronautics and Space Administration and for other purposes", with the following amendment:

In lieu of the matter inserted by said amendment, insert:

That this Act may be cited as the "National Aeronautics and Space Administration Authorization Act, 1987".

TITLE I—NASA AUTHORIZATION

SEC. 101. There is hereby authorized to be appropriated to the National Aeronautics and Space Administration, to become available October 1, 1986:

(a) For "Research and development", for the following programs:

(1) Permanently manned space station, $410,000,000.

(2) Space transportation capability development, $515,500,000.

(3) Physics and astronomy, $529,400,000.

(4) Life sciences, $74,300,000.

(5) Planetary exploration, $374,300,000.

(6) Solid earth observations, $74,100,000.

(7) Environmental observations, $313,900,000.

(8) Materials processing in space, $43,900,000.

(9) Communications, $99,500,000.

(10) Information systems, $21,200,000.

(11) Technology utilization, $13,300,000.

(12) Commercial use of space, $27,000,000.

(13) Aeronautical research and technology, $376,000,000.

(14) Transatmospheric research and technology, $40,000,000.

(15) Space research and technology, $183,200,000.

(16) Tracking and data advanced systems, $17,100,000.

(b) For "Space flight, control and data communication", for the following programs:

(1) Space shuttle production and operational capability, $783,800,000.

(2) Space transportation operations, $1,350,700,000.

(3) Space and ground networks, communication, and data systems, $860,900,000.

(c) For "Construction of facilities", including land acquisition, as follows:

(1) Construction of Central Computing Facility, Johnson Space Center, $9,000,000.

(2) Facilities for a permanently manned space station as follows:

(A) Construction of addition to the Systems Integration and Mockup Laboratory, Johnson Space Center, $5,000,000.

(B) Construction of Power Systems Facility, Lewis Research Center, $5,800,000.

(C) Modifications to Test Stand 300 for Space Station Hydrogen/Oxygen Propulsion Systems Development, George C. Marshall Space Flight Center, $2,100,000.

(3) Construction of addition to Orbiter Processing Facility Annex, John F. Kennedy Space Center, $3,400,000.

(4) Construction of Spacecraft Systems Development and Integration Facility, Goddard Space Flight Center, $8,000,000.

(5) Construction of Engineering Support Building, Jet Propulsion Laboratory, $9,800,000.

(6) Modification of Uninterruptible Power System in Space Flight Operations Facility, Jet Propulsion Laboratory, $2,600,000.

(7) Construction of Human Performance Research Laboratory, Ames Research Center, $9,400,000.

(8) Construction of Integrated Test Facility, Dryden Flight Research Facility, $17,500,000.

(9) Modifications to 8-Foot High Temperature Tunnel, Langley Research Center, $9,700,000.

(10) Construction of addition for Non-Destructive Evaluation Research Laboratory, Langley Research Center, $2,000,000.

(11) Construction of the Second Tracking and Data Relay Satellite System Ground Terminal Facility, New Mexico, $22,000,000.

(12) Repair of facilities at various locations, not in excess of $750,000 per project, $24,000,000.

(13) Rehabilitation and modification of facilities at various locations, not in excess of $750,000 per project, $30,000,000.

(14) Minor construction of new facilities and additions to existing facilities at various locations, not in excess of $500,000 per project, $7,000,000.

(15) Facility planning and design not otherwise provided for, $14,000,000.

In no case shall the total amount appropriated under paragraphs (1) through (15) exceed $161,300,000.

(d) For "Research and program management", $1,425,000,000.

(e) Notwithstanding the provisions of subsection (h), appropriations hereby authorized for "Research and development" and "Space flight, control and data communications" may be used (1) for any items of a capital nature (other than acquisition of land) which may be required at locations other than installations of the Administration for the performance of research and development contracts, and (2) for grants to nonprofit institutions of higher education, or to nonprofit organizations whose primary purpose is the conduct of scientific research, for purchase or construction of additional research facilities; and title to such facilities shall be vested in the United States unless the Administrator of the National Aeronautics and Space Administration (hereinafter in this Act referred to as the "Administrator") determines that the national program of aeronautical and space activities will best be served by vesting title

in any such grantee institution or organization. Each such grant shall be made under such conditions as the Administrator shall determine to be required to ensure that the United States will receive therefrom benefit adequate to justify the making of that grant. None of the funds appropriated for "Research and development" and "Space flight, control and data communications" pursuant to this Act may be used in accordance with this subsection for the construction of any major facility, the estimated cost of which, including collateral equipment, exceeds $500,000, unless the Administrator or the Administrator's designee has notified the President of the Senate and the Speaker of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives of the nature, location, and estimated cost of such facility.

(f) When so specified and to the extent provided in an appropriation Act, (1) any amount appropriated for "Research and development", for "Space flight, control and data communications", or for "Construction of facilities" may remain available without fiscal year limitation, and (2) maintenance and operation of facilities and support services contracts may be entered into under the "Research and program management" appropriation for periods not in excess of twelve months beginning at any time during the fiscal year.

(g) Appropriations made pursuant to subsection (d) may be used, but not to exceed $35,000, for scientific consultations or extraordinary expenses upon the approval or authority of the Administrator, and the Administrator's determination shall be final and conclusive upon the accounting officers of the Government.

(h) Of the funds appropriated pursuant to subsections (a), (b), and (d), not in excess of $100,000 for each project, including collateral equipment, may be used for construction of new facilities and additions to existing facilities, and for repair, rehabilitation, or modification of facilities. Of the funds appropriated pursuant to subsection (a) or (b), not in excess of $500,000 for each project, including collateral equipment, may be used for any of the foregoing for unforeseen programmatic needs.

(i)(1) The Administrator shall submit by November 15, 1986, to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the reassignment of technical work responsibilities for a permanently manned Space Station.

(2) The report referred to in paragraph (1) shall include a full justification in terms of—

(A) anticipated costs and benefits;

(B) management factors; and

(C) impacts on facility and personnel resources;

of any such proposed reassignment.

SEC. 102. Authorization is hereby granted whereby any of the amounts prescribed in paragraphs (1) through (14), inclusive, of section 101(c)—

(1) in the discretion of the Administrator or his designee, may be varied upward 10 percent, or

(2) following a report by the Administrator or his designee to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, on the circumstances of such action, may be varied upward 25 percent,

to meet unusual cost variations, but the total cost of all work authorized under such paragraphs shall not exceed the total of the amounts specified in such paragraphs.

SEC. 103. Not to exceed one-half of 1 percent of the funds appropriated pursuant to section 101(a) or 101(b) may be transferred to and merged with the "Construction of facilities" appropriation, and, when so transferred, together with $10,000,000 of funds appropriated pursuant to subsection (c) of section 101 (other than funds appropriated pursuant to paragraph (15) of such subsection) shall be available for expenditure to construct, expand, and modify laboratories and other installations at any location (including locations specified in section 101(c)), if (1) the Administrator determines such action to be necessary because of changes in the national program of aeronautical and space activities or new scientific or engineering developments, and (2) he determines that deferral of such action until the enactment of the next authorization Act would be inconsistent with the interest of the Nation in aeronautical and space activities. The funds so made available may be expended to acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment. No portion of such sums may be obligated for expenditure or expended to construct, expand, or modify laboratories and other installations unless a period of 30 days has passed after the Administrator or the Administrator's designee has transmitted to the President of the Senate and to the Speaker of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives a written report containing a full and complete statement concerning (A) the nature of such construction, expansion, or modification, (B) the cost thereof including the cost of any real estate action pertaining thereto, and (C) the reason why such construction, expansion, or modification is necessary in the national interest.

SEC. 104. Notwithstanding any other provision of this Act, no amount appropriated pursuant to this Act may be used for any program—

(1) deleted by the Congress from requests as originally made to either the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Science and Technology of the House of Representatives;

(2) in excess of the amount actually authorized for that particular program by sections 101(a), 101(b), and 101(d); and

(3) which has not been presented to either such committee,

unless a period of 30 days has passed after the receipt by the President of the Senate and the Speaker of the House of Representatives and each such committee of notice given by the Administrator or the Administrator's designee containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action.

SEC. 105. The President shall, on the date of the submittal to the Congress of a budget for the National Aeronautics and Space Administration for fiscal year 1988, submit to the Congress budget estimates for the recommended level of program activity and subactivity funding for fiscal years 1989 and 1990 of a permanently manned space station.

SEC. 106. It is the sense of the Congress that it is in the national interest that consideration be given to geographical distribution of Federal research funds whenever feasible, and that the National Aeronautics and Space Administration should explore ways and means of distributing its research and development funds whenever feasible.

SEC. 107. No civil space station authorized under section 101(a)(1) of this Act may be used to carry or place in orbit any nuclear weapon or any other weapon of mass destruction, to install any such weapon on any celestial body, or to station any such weapon in space in any other manner. Any civil space station may be used only for peaceful purposes.

SEC. 108. (a) The Administrator of the National Aeronautics and Space Administration shall prepare and submit to the Congress, not later than March 31, 1987, a comprehensive acquisition strategy and plan for the continued procurement of space shuttle solid rocket motors. Such strategy and plan shall specifically address (1) the decisions made by the Administrator regarding the motor design or designs, (2) alternatives for establishing and maintaining competition in future procurements, and (3) costs and benefits of each such alternative.

(b) Upon completion of the solid rocket motor redesign and the upgraded motor evaluation efforts, and the determination of a safe and reasonable flight rate, but before signing or extending any production contract for follow-on solid rocket motors beyond those currently under contract, the Administrator shall either (1) issue a request for proposal for a second source for a redesigned motor, or (2) issue a request for proposal for an upgraded motor.

(c) The Administrator shall determine whether a request to the Congress for second source qualification funding is necessary or desirable in order to permit the second source to compete with the incumbent on a fair and effective basis, consistent with the Competition in Contracting Act of 1984 and the amendments made by that Act (Public Law 98-369; 98 Stat. 1175).

(d) The Administrator shall consider the competitive advantages of the nozzle and solid rocket motor separately. No determination of the advantages of the second source of either the solid rocket motor or the nozzle shall preclude a judgment on the advantages of the other. In evaluating proposals received in response to the request for proposal issued pursuant to subsection (b) of this section, the Administrator shall consider costs and cost savings in accordance with applicable law.

(e) The comprehensive acquisition strategy and plan prepared under subsection (a) of this section and proposals for a second source for a redesigned motor under subsection (b) of this section shall apply to all modifications of the solid rocket motor that are intended for production.

(f) In addition to the requirements of subsection (b) of this section, the Administrator, before signing or extending any production contract for follow-on solid rocket motors beyond those currently under contract, shall notify the Congress of the number of additional solid rocket motors required in order to allow the space shuttle transportation system to continue to operate if a new contractor, selected pursuant to subsection (b)(1) or (2) of this section, is not able to provide any of such additional solid rocket motors. The Administrator shall not sign or extend any such contract until a period of 30 calendar days during which

either House of Congress is in session has passed after the date of such notification.

(g) Nothing in this section shall be construed to direct the Administrator to select and qualify a second source of production for solid rocket motors if the proposals received pursuant to subsection (b)(1) of this section are inconsistent with the requirements of section 2304(b)(1) of title 10, United States Code, or if the request for proposals issued pursuant to subsection (b)(2) of this section is consistent with the requirements of section 2304(a)(1) of title 10, United States Code.

SEC. 109. (a) Congress finds that the National Aeronautics and Space Administration should take every action available to it to restore, to its previous standards of excellence, its commitment to safety, reliability, and quality assurance.

(b) The Administrator shall identify as a separate item in the budget submitted by the President under section 1105 of title 31, United States Code, for any fiscal year, the number of individuals per NASA facility whose functions relate to safety, reliability, and quality assurance.

SEC. 110. The Administrator shall—

(1) review the findings and recommendations of the National Commission on Space (established pursuant to the National Aeronautics and Space Administration Authorization Act, 1985 (Public Law 98-361)); and

(2) submit to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate by February 15, 1987, a long-range plan for implementing the findings and recommendations referred to in paragraph (1), including a specific agenda for the five-year period beginning on the date of enactment of this Act.

SEC. 111. (a) The Administrator is authorized and encouraged to award to a domestic firm a contract that, under the use of competitive procedures, would be awarded to a foreign firm, if—

(1) the final product of the domestic firm will be completely assembled in the United States;

(2) when completely assembled, not less than 50 percent of the final product of the domestic firm will be domestically produced; and

(3) the difference between the bids submitted by the foreign and domestic firms is not more than 5 percent.

(b) This section shall not apply to the extent to which the Administrator determines that—

(1) such applicability will not be in the public interest; or

(2) compelling national security considerations require otherwise.

(c) For purposes of this section—

(1) the term "domestic firm" means a business entity that is incorporated in the United States and that conducts business operations in the United States; and

(2) the term "foreign firm" means a business entity not described in paragraph (1).

(d) This section shall apply only to contracts for which—

(1) amounts are made available by this Act; and

(2) solicitations for bids are issued after the date of the enactment of this Act.

TITLE II—OFFICE OF COMMERCIAL SPACE TRANSPORTATION

SEC. 201. Section 24 of the Commercial Space Launch Act (49 U.S.C. Appl. 2623) is amended by adding at the end the following: "There is authorized to be appropriated to the Secretary to carry out this Act $1,120,000 for fiscal year 1987.".

TITLE III—SPACE TRANSPORTATION RECOVERY

SEC. 301. RETURNING THE SPACE SHUTTLE FLEET TO FLIGHT STATUS.

(a) It is the sense of the Congress that the United States must promptly restore its space transportation capabilities and such restoration must be accomplished without deemphasizing other space programs.

(b) The Administrator is directed to take the necessary steps to safely return the space shuttle fleet to flight status.

(c) There are authorized to be appropriated for fiscal year 1987 $100,600,000 to carry out this section.

SEC. 302. CONSTRUCTION OF A REPLACEMENT ORBITER.

(a)(1) The Administrator shall promptly take such steps as may be necessary to construct a fourth space shuttle orbiter as a replacement for the space shuttle orbiter Challenger.

(2) There are authorized to be appropriated for fiscal year 1987 such sums as may be necessary to begin the construction required by paragraph (1).

(b) The Administrator shall explore the availability of private funding for construction of the replacement orbiter authorized by subsection (a). The Administrator shall accept private funding for such construction—

(1) if the Administrator finds such private funding is available; and

(2) if the Administrator finds that such funding—

(A) is in the best interest of the United States; and

(B) results in no additional net costs to the Federal Government.

Private funding accepted under this subsection shall replace appropriated funding obligated or expended for such a replacement orbiter.

(c) Title II of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.) is amended by adding at the end the following:

"DONATIONS FOR SPACE SHUTTLE ORBITER

"SEC. 208. (a) The Administrator may accept gifts and donations of services, money, and real, personal, tangible, and intangible property, and use such gifts and donations for the construction of a space shuttle orbiter.

"(b)(1) The authority of the Administrator to accept gifts or donations pursuant to subsection (a) shall terminate five years after the date of the enactment of this section.

"(2) All gifts and donations accepted by the Administrator pursuant to subsection (a) which are not needed for construction of a space shuttle orbiter shall be used by the Administrator for an appropriate purpose—

"(A) in tribute to the dedicated crew of the space shuttle Challenger, and

"(B) in furtherance of the exploration of space.

"(c) The name of a space shuttle orbiter constructed in whole or in part with gifts or donations whose acceptance and use are authorized by subsection (a) shall be selected by the Administrator of the National Aeronautics and Space Administration from among suggestions submitted by students in elementary and secondary schools.".

SEC. 303. SPACE SHUTTLE LAUNCH PRIORITIES.

(a) The space shuttle shall be the primary United States launch system for manned missions and missions needing its unique capabilities. The space shuttle shall also be available for other missions, including the launch of non-shuttle-unique foreign and commercial payloads, pursuant to the priorities specified in subsection (b)(2).

(b) The Administrator shall make best efforts to develop a space shuttle launch manifest that—

(1) ensures that commitments of the National Aeronautics and Space Administration to its customers in effect in January 1986, including launch service agreements, are met within the priority constraints contained in subsection (b)(2); and

(2) reflects the following priorities (in descending order):

(A) Payloads deemed critical to the national security.

(B) Significant civil government missions, including those having limited launch opportunities.

(C) Government payloads other than those referred to in subparagraphs (A) and (B).

(D) Payloads other than those referred to in subparagraphs (A) through (C), including foreign and commercial payloads.

(c) The Administrator shall submit the Administrator's current flight manifest to the Congress reflecting the priorities contained in this section no later than December 1, 1986. The Administrator shall keep the Congress fully and currently informed of the status of the flight manifest.

SEC. 304. SHUTTLE PRICING POLICY.

(a) It is the sense of the Congress that the Shuttle pricing policy established in title II of Public Law 99-170 remains valid and should be implemented so as to assure reliable access to space for all United States space users.

(b) In the report required by title II of Public Law 99-170 submitted with his budget request for fiscal year 1988 the Administrator shall include a description of how his implementation of the pricing policy will accomplish the objectives of this title.

SEC. 305. USE OF EXPENDABLE LAUNCH VEHICLES.

(a) It is the sense of the Congress that in order to ensure reliable access to space, in order to meet national security, scientific, and commercial objectives of the United States space program, and in order to ensure that the United States does not concede the commercial launch vehicle business to foreign competition, the United States should utilize the capability of expendable launch vehicles as well as the space shuttle for placing government payloads into orbit.

(b) In order to meet the requirements of subsection (a), the Administrator of the National Aeronautics and Space Administration shall develop a plan for the purchase, through competitive procurement, of expendable launch vehicle services for the purpose of launching government payloads, as aggregated by the Administrator. The services purchased under this subsection shall be provided on a reimbursable basis.

(c) The Administrator shall report to Congress on how he will carry out this section no later than February 15, 1987. Such report shall include—

(1) an estimate of expendable launch vehicle requirements for the five years following the date of enactment of this Act;

(2) an explanation of how the National Aeronautics and Space Administration intends to utilize expendable launch vehicle (ELV) launches for future civil launch requirements, including but not limited to the availability of a commercial ELV capability, a NASA ELV capability, and a Department of Defense ELV capability;

(3) an explanation of how such utilization of ELV's can be carried out in a manner

which fosters the development of a competitive expendable launch vehicle industry;

(4) a proposed procurement plan for commercial expendable launch vehicle services for the five years following the date of enactment of this Act; and

(5) an estimate of the authorizations of appropriations that are necessary to procure launch services for United States Government satellites by expendable launch vehicles for fiscal year 1988 and the four succeeding fiscal years.

SEC. 306. REIMBURSEMENT POLICY.

(a) The Administrator, in cooperation with the Secretary of Defense, and before July 1, 1987, shall submit to the Congress a five year plan, to be updated annually and presented to Congress along with the President's annual budget request, setting forth—

(1) a schedule for planned reimbursements from the Department of Defense for space shuttle services; and

(2) a schedule for the provision of such services.

(b) There is authorized to be appropriated for fiscal year 1987 such sums as may be necessary as payment for reimbursable services provided by the National Aeronautics and Space Administration to the Department of Defense.

SEC. 307. USE OF GOVERNMENT LAUNCH FACILITIES.

Section 15(b) of the Commercial Space Launch Act is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) For purposes of paragraph (1), direct costs shall not include costs associated with meeting the space transportation needs of the United States.".

SEC. 308. RESPONSIBILITIES UNDER COMMERCIAL SPACE LAUNCH ACT.

Section 5(a)(1) of the Commercial Space Launch Act is amended to read as follows:

"(1) pursuant to authorization and subject to the availability of appropriations, encourage and facilitate commercial space launches by the private sector, in consonance with the space policies of the United States as established in public law; and".

TITLE IV—DRUG TESTING

SEC. 401. DRUG TESTING.

The Administrator of the National Aeronautics and Space Administration shall submit a report to the Congress by January 30, 1987, detailing the Administrator's actions to comply with Executive Order 12564.

TITLE V—LAND REMOTE-SENSING COMMERCIALIZATION

SECTION 501. SHORT TITLE

This title may be cited as the "Land Remote-Sensing Commercialization Act Amendments of 1986".

SEC. 502. FINDINGS.

The Congress finds and declares that—

(1) the implementation of the Land Remote-Sensing Commercialization Act of 1984 has begun and some of the major milestones contained in that Act have been met;

(2) Congress remains strongly committed to the guiding principles set forth in that Act;

(3) notwithstanding the accomplishments thus far, the relationships among the involved Federal agencies and the private sector have not yet been adequately defined; and

(4) inasmuch as the technical development and commercial applications of future land remote-sensing systems cannot now be predicted with certainty, it is in the national interest of the United States that the involved Federal agencies and the private sector remain flexible in carrying out their respective responsibilities under this title.

SEC. 503. PURPOSES.

It is therefore the purpose of this title to set forth amendments to the Land Remote-Sensing Commercialization Act of 1984 to ensure that—

(1) the original intent of that Act is carried out in the most effective manner consistent with the guiding principles expressed therein;

(2) specific mechanisms for carrying out the original intent of that Act are provided in those cases where none have materialized thus far; and

(3) the working relationships among involved Federal agencies and private sector parties for the purpose of carrying out this title are fully developed and mutually understood.

SEC. 504. CONTRACTOR EXEMPTION FROM FEDERAL FULL REIMBURSEMENT PROVISION IN THE CASE OF RESEARCH AND DEVELOPMENT AGREEMENTS.

Section 202(a)(4) of the Act is amended by inserting before the semicolon at the end thereof the following: ", except in the case of research and development activities conducted in accordance with section 504".

SEC. 505. DISPOSITION OF ASSETS FOLLOWING THE TERMINATION OF THE SECRETARY'S AUTHORITY.

Title III of the Act is amended by adding at the end thereof the following new section:

"DISPOSITION OF GOVERNMENT ASSETS

"SEC. 308. Following the completion of a contract made pursuant to this title, the Secretary may, upon 30 days advance notice to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate, dispose of assets (other than real property) under the control of the Secretary in a manner which best ensures the continuation of the contractor's commercial activity.".

SEC. 506. CLARIFICATION OF THE USE OF EXPERIMENTAL DATA FROM FEDERAL RESEARCH AND DEVELOPMENT PROGRAMS.

Section 502 of the Act is amended to read as follows:

"RESEARCH AND DEVELOPMENT ACTIVITIES OF FEDERAL AGENCIES

"SEC. 502. Each Federal agency is authorized and encouraged to provide data gathered in experimental remote-sensing space programs to related research and development programs funded by the Federal Government (including application programs) and to cooperative research programs if the Federal agency involved determines that the data will not be used—

"(1) for any commercial purpose, or

"(2) in substantial competition with data available from a licensee under this Act,

except pursuant to section 503.".

SEC. 507. CLARIFICATION OF THE USE OF NON-FEDERAL DATA FOR RESEARCH AND DEVELOPMENT PROGRAMS.

Title V of the Act is amended by adding at the end thereof the following new section:

"RESEARCH AND DEVELOPMENT ACTIVITIES OF SYSTEM OPERATORS

"SEC. 504. Notwithstanding section 601, any system operator under title II, III, or IV of this Act, or any marketing entity under section 503 of this Act, may provide data for any research and development programs if—

"(1) a complete and timely disclosure of the results of such research and development is made in the open technical literature or is otherwise made publicly available.

"(2) the system operator or marketing entity provides to the Secretary an annual report of all research and development data transactions including the nature of any cooperative agreements and the prices charged for data; and

"(3) the data are not used for commercial purposes or in substantial competition with data available from a licensee under this Act.".

SEC. 508. CLARIFICATION OF OPERATOR RIGHTS TO IMPOSE LIMITATION ON REPRODUCTION, DISSEMINATION, AND OTHER ACTIVITIES ON A NONDISCRIMINATORY BASIS.

Section 603 of the Act is amended to read as follows:

"NONREPRODUCTION

"SEC. 603. In addition to such other terms and conditions as the system operator may set forth in compliance with section 601 of this Act, the system operator may require that unenhanced data not be reproduced or disseminated by any foreign or domestic purchaser.".

TITLE VI—NOAA AUTHORITY

SEC. 601. ORGANIZATION OF NOAA.

(a) Section 2(d) of Reorganization Plan No. 4 of 1970 (5 U.S.C. App. 1) is amended to read as follows:

"(d) There shall be in the Administration a Chief Scientist of the National Oceanic and Atmospheric Administration who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level V of the Executive Schedule (5 U.S.C. 5316). The Chief Scientist shall be the principal scientific adviser to the Administrator, and shall perform such other duties as the Administrator may direct. The Chief Scientist shall be an individual who is, by reason of scientific education and experience, knowledgeable in the principles of oceanic, atmospheric, or other scientific disciplines important to the work of the Administration.".

(b) Section 5315 of title 5, United States Code, is amended by striking "Associate Administrator, National Oceanic and Atmospheric Administration.".

(c) Section 5316 of title 5, United States Code, is amended by inserting at the end thereof the following:

"Chief Scientist, National Oceanic and Atmospheric Administration.".

● Mr. DANFORTH. Mr. President, I rise in support of the four perfecting amendments to H.R. 5495, the fiscal year 1987 NASA authorization bill. These perfecting amendments have been carefully coordinated with the House managers of the NASA authorization bill and make minor adjustments to the NASA authorization bill which the Senate passed on October 10. These amendments are not inconsistent with the funding and policies of the Senate-passed bill and ensure a more immediate passage by the House.

This bill, with its perfecting amendments, authorizes $7.795 billion for NASA in fiscal year 1987 and, consistent with the Senate-passed bill, authorizes the construction of a replacement shuttle. Furthermore, this bill authorizes the funds necessary to improve the shuttle's solid rocket motors and other aspects of the shuttle system that, in the aftermath of the

Challenger accident, have been identified as requiring attention before we resume shuttle operations.

Mr. President, the amendment concerning the costs associated with the use of NASA's launch facilities by commercial launch operators has been fully described by the chairman of the Subcommittee on Science, Technology, and Space, Senator GORTON, so I will not address it. This amendment is technical in nature and does not materially affect any policies in the Senate-passed bill.

I would, however, like to comment on the amendment that addresses the House "Buy America" provision. As chairman of the Subcommittee on International Trade, I recognize fully the effect of such provisions and, in many instances, their inherent conflict with provisions of the General Agreement on Tariffs and Trade (GATT). And while I also recognize the difficult problems associated with our trade imbalance, I do not believe that "Buy America" provisions are the answer to these problems. In many cases, such provisions can exacerbate our trade imbalance.

In the spirit of compromise, however, I do accept the amendment which requires the concurrence of the NASA Administrator, the U.S. Trade Representative, and the Secretaries of Commerce and State that any "Buy America" action by NASA must be in the public interest and must take into account U.S. international obligations and trade relations. This amendment to the House "Buy America" provision introduces an element of responsibility that was previously missing and ensures that such provisions are consistent with the broadest interests of our Nation.

Also, in the spirit of compromise I accept the amendment which narrows the scope and focus of a space policy council within the Executive Office of the President. The charter of this council, as amended, would be limited to civilian space issues, whereas the concept of such a council, as previously passed by the Senate, would have included civilian and national security aeronautical and space issues. I would like to reiterate what the chairman of the Subcommittee on Science, Technology, and Space, Senator GORTON, stated about the narrowing of the scope of the council to a National Space Council from a National Aeronautics and Space Council. This action is not taken to indicate any lessening of support for our Nation's aeronautical activities.

The purpose, however, of restricting the scope of the council to just civilian space policy issues is to provide for a more effective and responsive policymaking council for issues affecting our Nation's civilian space program. It goes without saving that the space policy issues that have arisen this year are much greater in number and in magnitude than we have ever faced before. A streamlined policymaking council, such as the National Space Council, should be better equipped to assist in the resolution of these and other pressing civilian space issues.

Mr. President, this amendment establishing a National Space Council also differs from that passed earlier by the Senate in that it does not specifiy the Director of Central Intelligence [DCI] as a member of the council. The President, however, is authorized to appoint other members to the council, as he sees fit. I believe that the Director of Central Intelligence should be appointed by the President to this council. By virtue of his responsibility for the space programs of the Central Intelligence Agency and the National Security Council, the DCI is responsible for the third largest Space Program in the country, behind that of the Department of Defense and NASA. As our Nation's Civilian and National Security Space Programs have closer and more frequent interaction, it becomes more difficult to separate space policy issues into purely civilian or national security space policy issues. Therefore, any National Space Council without the representation of the DCI would not best represent the interests of our Nation's Space Program.

Also, the chairman of the Subcommittee on Science, Technology, and Space has discussed, one of these perfecting amendments provides for the authorization of the National Oceanic and Atmospheric Administration's [NOAA] Satellite and Atmospheric Programs. The Commerce Committee approved an authorization bill (S. 2708) for these programs, and I am pleased to support the inclusion of the NOAA authorization in the amended bill.

Mr. President, in light of the NASA authorization bill that the Senate has already passed, these perfecting amendments are, for the most part, technical in nature. These amendments do however, enhance immeasurably the passage of this bill in the House. I join the other Senate managers of the NASA authorization bill in urging our colleagues to accept these amendments and thereby complete our responsibilities of developing a fiscal year 1987 NASA authorization bill which best serves the interests of our Nation and our Nation's Space Program.●

● Mr. RIEGLE. Mr. President, I rise in support of H.R. 5495, the fiscal year 1987 authorization bill, the perfecting amendments being offered, and ask my colleagues to support this measure.

Mr. President, fiscal year 1986 has been the worst year in the history of the Nation's Space Program. The shuttle *Challenger* disaster shook the Nation and dealt a severe blow to NASA and the Civilian Space Program.

In the aftermath of the accident, many lessons were learned and not all were favorable. The challenges to the Space Program in 1986 were more severe than those in 1958. But unlike 1958, there was no National Space Council. No policymaking apparatus that could quickly, efficiently, and effectively resolve disputes and formulate policy existed. What did exist, the Senior Interagency Group on Space [SIG Space] was bogged down with bureaucratic infighting. SIG Space, the same group that took 18 months to formulate a shuttle pricing policy, was now being asked to reevaluate, reassess, and reformulate the Nation's space policy. Clearly, the scope of the task exceeded the capabilities of the group.

At this point, I, along with the distinguished ranking member of the Senate Commerce Committee introduced S. 2473, a bill to reestablish the National Aeronautics and Space Council in the White House—an idea whose time had come again. The purpose of the bill was simple—eliminate a glaring deficiency in the existing space policymaking apparatus and replace it with a mechanism that would safeguard our national and economic security and our public safety.

As the session moved along, more Members realized that a council was required. Not surprisingly, the original House- and Senate-passed fiscal year 1987 NASA authorization bills included language that would have reestablished the National Aeronautics and Space Council, and both bills assigned it the same functions as contained in the original 1958 National Aeronautics and Space Act.

On October 15, however, something went wrong. The House substitute for the Senate-passed NASA authorization bill deleted the council. Some House Members argued the deletion was the result of a veto threat from the Office of Management and Budget. Others said it was deleted because the Department of Defense objected. Whatever, the House and Senate met and finally agreed upon the space council text contained in one of the perfecting amendments being considered by the Senate. While the compromise text is not perfect and the functions of the council have been somewhat diluted, this council is a step in the right direction and should be a significant improvement over SIG Space. As now proposed, the council would be chaired by the Vice President, who I personally think will take this responsibility seriously. It also will include the Secretaries of Defense, State, Transportation, and Commerce, the Administrator of NASA, and such other members as the President may appoint. More importantly,

the council would try and coordinate space activities between the various Government agencies and advise the President as to the proper course and direction of the Nation's Space Program.

Mr. President, there is hardly a person or Government agency that does not benefit directly or indirectly from the Nation's Space Program. Establishment of this council in the White House would be an acknowledgment of the importance of the Space Program to our economic and national security and an indication of a valuable lesson learned from the disaster of January 28, 1986.

Next, Mr. President, I would like to address the level of funding included in H.R. 5495, as amended, for the procurement of a new orbiter and to cover anticipated Department of Defense reimbursables.

Mr. President, I have been arguing for months that the authorizing committee had an obligation to identify the exact dollar requirements of NASA for fiscal year 1987. I also have argued that a new orbiter must be approved in fiscal year 1987 and that NASA, in one way or another, must recieve the full $531 million reimbursement payment anticipated from DOD.

I am disappointed, therefore, that the proposed NASA authorization before the Senate today contains such sums as may be necessary for these two items and not a specific dollar authorization. I find the resistance of the House to an exact dollar authorization more puzzling since the House-passed continuing resolution contains $2.1 billion for a new orbiter and $531 million for reimbursements in the HUD-Independent Agencies title of the bill.

I am pleased to say, that despite the reluctance of the House to agree on a dollar amount for a new orbiter, there was a clear consensus in our informal conference as to the intent of the language directing the "Administrator of NASA to promptly take such steps as may be necessary to construct a fourth shuttle orbiter * * *" That intent was that the Administrator move posthaste on this activity and that a minimum of $272 million, the President's budget request, be available to initiate procurement of a new orbiter.

Finally, let me say, I am pleased that the final bill does include a "Buy America" provision. With a merchandise trade deficit of approximately $170 million in 1986, this Nation and NASA should make every effort to "Buy America" and to maintain our manufacturing base.

Mr. President, I support the fiscal year 1987 NASA authorization bill, H.R. 5495, and the Nation's Space Program. I ask my colleagues to support this measure and to continue to support NASA and the Space Program as we start the arduous restoration of this critical national asset.

● Mr. HOLLINGS. Mr. President, I rise in support of H.R. 5495, as amended.

Mr. President, this has been a most difficult year for NASA and the Space Program, and I am pleased the Senate Commerce Committee and the House Science and Technology Committee could come to an agreement on the fiscal year 1987 NASA authorization bill. I must admit that passage of an authorization bill did not appear likely last week. This is one bill that has benefited from the extension of the current session.

As for the bill and its final provisions, this bill is but a small step in restoring the Space Program to its former stature. The shuttle disaster of January has had a devastating impact on the Space Program, and it will take some time before the Rehabilitation Program is complete. The fiscal year 1987 NASA authorization bill, therefore, is not a panacea. It is but the first step in a long and difficult Rehabilitation Program.

Despite my support for this bill, I must indicate that one thing bothers me about the NASA authorization bill—that is the fact that the House and Senate could not get an agreement to include specific dollar authorizations for a new orbiter or for the DOD reimbursables. As the members on the committee know, I feel strongly that an authorizing committee is responsible for identifying the resource requirements of an agency and for formulating the necessary policies to implement the programs of that agency. In August, Senators RIEGLE, GORE, ROCKEFELLER, and myself argued strongly at the committee's fiscal year 1987 NASA markup that funds should be provided for a new orbiter and to cover lost reimbursables. We did not prevail. However, in the following month, the logic of this argument seemed to gain support, and the Senate-passed version of the fiscal year 1987 NASA authorization, a bill that this body passed just last Friday, included $272 million for a new orbiter and $531 million for reimbursables. Today, I stand before you with language that says "such sums as may be necessary" and deletes these dollar amounts.

Mr. President, NASA and the Space Program deserve better than that, and this body deserves better than that. Why we should pass a fiscal year 1987 NASA authorization that authorizes $7.795 billion when the continuing resolution for NASA contains $10.433 billion is beyond me.

Mr. President, on a more positive note, I am most pleased to see a National Space Council included in the final NASA authorization.

This is a concept that Senator RIEGLE and I introduced in the Senate, and I am pleased that the final version of the NASA bill includes language to establish a council. If there is one thing that became quite apparent to me and to most people in the space community industry in the aftermath of the shuttle tragedy, it was that this Nation's space policymaking apparatus was not up to the task at hand. The creation of the council is intended to put in place a policymaking apparatus that can quickly, efficiently, and effectively formulate civilian space policy. The Nation needs such an apparatus if we are to maintain our world and technological leadership in space.

I know that over the course of the last few weeks the Department of Defense was concerned that the council would take over operation of the Space Command. That was not the intent of the original language, and it should be clear in the new language that is not now the case. The purposes of the council today are the same as they were in 1958 when the original National Aeronautics and Space Council was established:

First, to resolve differences among the various agencies involved in the U.S. Space Program.

Second, to develop a comprehensive Space Program and fix responsibility so there will be a clear understanding by each agency as to where its authority begins and ends, and also how the sum of the agency programs adds up to a total U.S. Space Program.

Finally, as regards the council, let me indicate that the Director of Central Intelligence was not added to the council. I support the inclusion of the Director and want it to be perfectly clear that I would support the addition of the Director to the council pursuant to the discretionary authority granted the President in this provision.

The final provision in the amended bill that I would like to address is section 108 which concerns solid rocket motors.

Mr. President, both the House-passed and the Senate-passed bills included language that required NASA to do one of two things, either issue a request for proposal for a second source for a redesigned motor or issue a request for proposal for a competitive procurement of a new upgraded solid rocket motor. I am pleased, therefore, the final version maintains these requirements. While the final bill is silent on whether or not there should be a request for proposal for a second source for the upgraded motor, I would like the legislative history to be perfectly clear. The only reason this language was not included was that such a decision could not be made for 4 to 5 years. I am supportive of the concept of second sourcing, regardless of whether it is for a redesigned or for an upgraded solid rocket motor. How-

ever, if the Administrator of NASA goes with an upgrade, it would take 4 to 5 years to complete the upgrade, test it, and qualify it. At the point these activities have been completed, I would again support second sourcing if there were benefits to the Nation.

I would like to indicate that NASA played an important role in formulating this solid rocket motor language and that NASA, the House and the Senate all support section 108 and its intent.

Mr. President, I support this legislation, and I hope that my colleagues will do the same. It is important that authorizing committees fulfill their responsibilities, set priorities, establish policies, and provide sufficient resources. While I have some reservations with the final legislation, I feel H.R. 5495 is a good bill and a first step in the rehabilitation of NASA and the Nation's Space Program.●

AMENDMENT NO. 3509

Mr. DOLE. Mr. President, I move that the Senate concur in the House amendment with a further Senate amendment which I send to the desk on behalf of Senator Gorton.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. GORTON, proposes an amendment numbered 3509 to the amendment of the House to the Senate amendment.

Mr. DOLE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In section 111(a)—

(1) strike "The Administrator is authorized and encouraged" and insert in lieu thereof "If the Administrator, with the concurrence of the United States Trade Representative and the Secretaries of State and Commerce, determines that the public interest so requires, the Administrator is authorized"; and

(2) insert the following at the end:

"In determining under this subsection whether the public interest so requires, the Administrator shall take into account United States international obligations and trade relations.".

Strike subsection (b) of section 111, and redesignate subsections (c) and (d) as subsections (b) and (c), respectively.

At the end of title I, insert the following:

"SEC. 112. (a) There is hereby established, in the Executive Office of the President, the National Space Council (hereafter in this section referred to as the 'Council'), which shall be composed of—

"(1) the Vice President, who shall be Chairman of the Council;

"(2) the Secretary of State;

"(3) the Secretary of Defense;

"(4) the Secretary of Commerce;

"(5) the Secretary of Transportation;

"(6) the Administrator, who shall be the Vice Chairman of the Council; and

"(7) such other members as the President may appoint.

"(b) In the absence of the Vice President, the Administrator shall preside over meetings of the Council.

"(c) Each member of the Council may designate an officer of their department or agency to serve on the Council as their alternative in their unavoidable absence.

"(d) It shall be the function of the Council to advise the President, as the President may request, with respect to the following functions:

"(1) survey of ongoing civilian space activities;

"(2) review of long-range goals for civilian space activities;

"(3) coordination of civilian space activities among civilian agencies and with agencies involved in national security space activities; and

"(4) interagency cooperation in civilian space activities.

"(e) The Council may employ a staff to be headed by a civilian executive secretary who shall be appointed by the President. The executive secretary, subject to the direction of the Council, is authorized to appoint and fix the compensation of such personnel, including not more than seven persons, as may be necessary to perform such duties as may be prescribed by the Council in connection with the performance of its functions. Each appointment under this subsection shall be subject to the same security requirements as those established for personnel of the National Aeronautics and Space Administration appointed under section 203(c)(2) of the National Aeronautics and Space Act of 1958. Other provisions of law or regulations relating to Government employment shall apply to employees of the Council reporting directly to the Chairman to the extent that such provisions are applicable to employees in the Office of the Vice President.

"(f)(1) The Council shall establish a Users' Advisory Group composed of nine non-Federal representatives of industries and other persons involved in space activities.

"(2) The Vice President shall name a Chairman of the Users' Advisory Group.

"(3) The Council shall from time to time, but not less often than once a year, meet with the Users' Advisory Group.

"(4) The function of the Users' Advisory Group is to ensure that the interests of non-Federal entities involved in space activities, including in particular commercial entities, are adequately represented in the Council.".

Strike section 307, and redesignate section 308 as section 307.

At the end, add the following:

"SEC. 602. PUBLIC WARNING AND FORECAST SERVICES.

"(a) There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its public warning and forecast service duties under law, $330,598,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to public warning and forecast specified by the Act entitled 'An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture', approved October 1, 1890 (15 U.S.C. 311 et seq.), the Act entitled 'An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes', approved August 6, 1947 (33 U.S.C. 883a et seq.), and by any other law involving such duties. Such duties include meteorological, hydrological, and oceanographic public warnings and forecasts.

"(b) Of the amount authorized to be appropriated by subsection (a) of this section, $45,500,000 is authorized to be appropriated only for activities related to the Next Generation Weather Radar Program. Such activities may include site surveys, preparation for production radars, limited radar production, initial operational test and evaluation of radars, training of personnel, release of long lead items for full production, award of the production contract, and land acquisition for radar sites.

"(c) It is the sense of the Congress that procurement and deployment of essential weather technologies, and the resultant modernization of the National Weather Service, should continue on schedule in order to improve the protection of the public and to increase the productivity of the Nation's economy. Such technologies shall include, but not be limited to, the Next Generation Weather Radar Program (NEXRAD), the Advanced Weather Interactive Processing System (AWIPS), the Automated Surface Observing System (ASOS), and the Profiler System.

"(d) At the time of submission of the fiscal year 1988 budget, the National Oceanic and Atmospheric Administration shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives a comprehensive long-range plan on how the National Weather Service shall utilize planned weather technologies to provide effective weather services to meet national needs. This plan shall address, among other things, National Weather Service office structure and organization, its staffing and budgetary profiles, its role in providing weather services to the public, and a phased plan for deployment of weather-related technology and equipment.

"SEC. 603. ATMOSPHERIC AND HYDROLOGICAL RESEARCH.

"There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its atmospheric and hydrological research duties under law, $68,044,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to atmospheric and hydrological research specified by the Act entitled 'An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture', approved October 1, 1890 (15 U.S.C. 311 et seq.), and by any other law involving such duties. Such duties include research for developing improved prediction capabilities for atmospheric and hydrological processes.

"SEC. 604. SATELLITE SERVICES.

"There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its satellite services duties under law, $72,606,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to satellite services specified by the Act entitled 'An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture', approved October 1, 1890 (15 U.S.C. 311 et seq.), the National Aeronautics and Space Administration Au-

thorization Act, 1985, approved July 16, 1984 (Public Law 98-361; 98 Stat. 422), and by any other law involving such duties. Such duties include satellite maintenance and operations and satellite data analysis.

"SEC. 605. SATELLITE SYSTEMS.

"There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its satellite systems duties under law, $168,139,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used by the National Oceanic and Atmospheric Administration to continue operating two polar-orbiting meteorological satellites in fiscal year 1987 and to continue procurement of polar-orbiting meteorological satellites (NOAA I-M) in fiscal year 1987. In addition, such moneys shall be used to fund those duties relating to satellite systems specified by the Act entitled 'An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture', approved October 1, 1890 (15 U.S.C. 311 et seq.), The National Aeronautics and Space Administration Authorization Act, 1985, approved July 16, 1984 (Public Law 98-361; 98 Stat. 422), and by any other law involving such duties. Such duties include spacecraft procurement, launch, and associated ground station system changes involving polar-orbiting and geostationary environmental satellites.

"SEC. 606. DATA AND INFORMATION SERVICES.

"There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its data and information services duties under law, $22,734,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to data and information services specified by the Act entitled 'An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture', approved October 1, 1890 (15 U.S.C. 311 et seq.), and by any other law involving such duties. Such duties include environmental data and information products and services in the atmospheric, marine, solid earth, and solar-terrestrial sciences.".

● Mr. GORTON. Mr. President, I along with the Chairman of the Committee on Commerce, Science, and Transportation, Senator DANFORTH; the ranking member of the Commerce Committee, Senator HOLLINGS; and the ranking member of the Subcommittee on Science, Technology, and Space, Senator RIEGLE, offer for consideration four perfecting amendments to H.R. 5495, the fiscal year 1987 NASA authorization bill that the House passed on October 15.

Mr. President, it is worth mentioning briefly the chronology of congressional action on the fiscal year 1987 NASA authorization bill. On October 10, the Senate passed by unanimous consent H.R. 5495, the fiscal year 1987 NASA authorization bill which had been developed, by and large, in cooperation with the House managers of the NASA authorization bill. On October 15, the House passed its fiscal year 1987 NASA authorization bill, which was quite simialr to that which the Senate had passed, with a few exceptions. And just today, the Senate managers of the NASA authorization bill met with the House managers to reach agreement on the few remaining issues in dispute.

I am please that the perfecting amendments that I am offering today reflect the agreements that were reached with the House managers. The amendments "close the loop" on developing a NASA authorization bill which funds adequately NASA's ongoing programs and the activities necessary to recover from the Challenger accident. These amendments also refine certain policy issues to which the Senate has previously agreed and which are required to steer our space program back to its previous position of leadership.

Mr. President, I will briefly describe the four perfecting amendments, some of which are simply technical in nature.

The first amendment concerns a "Buy America" provision which the House has included in its bill but which the Senate did not include in its bill. The House amendment allowed the NASA Administrator to award to a domestic firm a contract that, under the use of competitive procedures, would overwise be awarded to a foreign firm, if certain conditions pertaining to domestic content, location of final assembly, and bid are met. This perfecting amendment requires the concurrence of the NASA Administrator, the U.S. Trade Representative, and the Secretaries of Commerce and State that the award of a qualified contract to a domestic firm is in the public interest. This amendment also requires that U.S. international obligations and trade relations must be taken into account in making this procurement decision. This perfecting amendment makes this "Buy America" language more responsive to our overall trade responsibilities and to the needs of NASA.

The second amendment deletes language from the House bill that directs NASA to charge 'additive" rather than "full" costs for the use of its launch facilities by a commercial launch operator. It has been determined that this language could present problems for commercial firms that are attempting to provide commercial launch services that NASA is currently providing and from which NASA is attempting to withdraw. With the deletion of this language, companies involved in commercial space launch activities will not have to compete against the Federal Government, which, in this particular case, would hold a distinct economic advantage. This amendment assists the infant industry of space commercialization and still permits both the government and industry to provide the critical services and facilities necessary to support our civilian space program.

The third amendment establishes a National Space Council in lieu of a National Aeronautics and Space Council, to which the Senate had previously agreed. This amendment narrows the scope of a National Aeronautics and Space Council in response to the magnitude of space policy issues that our nation has been forced to address this year. This amendment is in no way intended to diminish the priority of national aeronautical issues that could arise in the future. Nevertheless, it is the belief of the managers of the NASA authorization bill that a policy-making body that addresses only space policy issues will be able to resolve more promptly these issues and thereby improve the quality of our space program.

The scope of the Council is also narrowed from the earlier concept to address more specifically civilian space policy issues, rather than civilian and military space policy issues. The resolution of these civilian space policy issues would, however, be coordinated with the agencies that have an interest in national security space policy issues.

As for the membership of this National Space Council, it would include the Vice President as Chairman and the NASA Administrator as the Vice Chairman. Also serving as voting members would be the Secretaries of State, Defense, Commerce, and Transportation. Also, the President would have the authority to appoint other members to the Council. I believe that one such appointed member should be the Director of Central Intelligence, who has responsibility over the space programs of the Central Intelligence Agency [CIA] and the National Security Council [NSC]. The space programs of the CIA and the NSC are so intertwined in the total fabric of our national space program, that their interests cannot be adequately represented by anyone other than the Director of Central Intelligence. Having the Director of Central Intelligence as a member of this Council would provide for a more comprehensive and responsible coordination of our Nation's space activites.

The fourth and last of these perfecting amendments provides the fiscal year 1987 authorization for the atmospheric and satellite programs of the National Oceanic and Atmospheric Administration [NOAA]. These programs include the activities of the National Weather Service and the procurement, launch, and operation of NOAA's weather satellite systems. The amendment is similar to sections 22 through 26 of the bill as passed by the Senate on October 10, 1986, and the authorization levels are consistent with appropriated levels. I remind my colleagues

that full authorization has been provided for the National Climate Program (Public Law 99-272) and commercialization of NOAA's land remote sensing satellite [Landsat] system (Public Law 99-62), and this bill does not address those programs.

Finally, Mr. President, I would like to comment on the cooperation and assistance of the House managers of the NASA authorization bill who were integrally involved in the development of this legislation. The chairman of the Science and Technology Committee, Representive DON FUQUA; the ranking member of the Science Committee, Representative MANUEL LUJAN; the chairman of the Space Science and Applications Subcommittee, Representative BILL NELSON; and the ranking member of the Space Science Subcommittee, Representative BOB WALKER, each played a vital role in crafting this authorization bill and should be commended for their insight into these difficult issues. Also, I would like to compliment the excellent work of several key staff members who contributed significantly to the development of this bill. These staff members are Marty Kress of the Senate Commerce Committee, John Graykowski of Senator RIEGLE's office, and, of the House Science and Technology Committee, Rad Byerly, Harriett Smith, Terry Dawson, Bill Smith, Lillian Trippet, and Dave Clement. Without their efforts, we would have been unable to have come this far in the resolution of these issues.

Mr. President, these amendments do not detract from the essence of the fiscal year 1987 NASA authorization bill that the Senate passed on October 10. In fact, these amendments improve the bill and its chances of immediate passage by Congress in the waning hours of this session. The House managers have indicated that these amendments are not inconsistent with the essence of the bill which the House passed on October 15. Therefore, I urge my colleagues to approve by unanimous consent these four perfecting amendments and thereby provide NASA with the funding and policy guidance necessary for a Space Program that best meets our national needs and requirements.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3509) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the motion to concur.

The motion was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MAKING TIME SPENT IN THE CADET NURSE CORPS CREDITABLE FOR CIVIL SERVICE RETIREMENT

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of H.R. 2663, the cadet nurse corps bill which is being held at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2663) to amend title 5, United States Code, to credit time spent in the Cadet Nurse Corps during World War II as creditable for civil service retirement.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Kansas?

There being no objection, the Senate proceeded to consider the bill.

Mr. DOLE. Mr. President, the U.S. Cadet Nurse Corps was established by Congress in June 1943 as an emergency program to provide an adequate supply of nurses at home and for the military overseas. These cadets used Government facilities, did Government work, were subject to the supervision of the U.S. Public Health Service, and received Government paychecks. Yet they failed to be formally inducted into the Federal civil service. As a result, 3 years of hard work by many dedicated Americans were not credited toward Social Security or civil service retirement. This oversight results from an unfortunate interpretation that these cadets were merely participants in a Federal training program and not employees of the Government. We now have the opportunity to correct this inequity and credit those Nurse Corps cadets who continued to serve our Government.

I believe that it is important that we recognize a distinction between these cadet nurses and a number of other groups seeking civil service retirement credit. These nurses were part of the war effort and were essentially working as part of the Government during the national mobilization at that time. Over the years, Congress has chosen to recognize the almost-Federal nature of a number of these groups by granting them civil service retirement credit. This bill would merely provide equitable treatment for this group.

This is quite different from providing civil service retirement for ongoing groups of individuals for service which is clearly and unarguably non-Federal. Providing retirement benefits for such individuals at the taxpayer's expense is clearly unwarranted.

Mr. President, we should not allow a technicality to stand in the way of fairness. We should allow these cadets to qualify for service they have already earned.

AMENDMENT NO. 3510

(Purpose: To amend title 5, United States Code, to provide civil service retirement credit for certain employees and former employees of nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces)

Mr DOLE. Mr President, on behalf of the distinguished Presiding Officer, Senator STEVENS, I send an amendment to the desk and aks for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], on behalf of Mr. STEVENS, proposes an amendment numbered 3510.

Mr. DOLE. Mr President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

At the appropriate place in the ————, insert the following new section:

SEC. ——. RETIREMENT CREDIT FOR CERTAIN FORMER EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES.

(a) SHORT TITLE.—This section may be cited as the "Nonappropriated Fund Instrumentalities Employees' Retirement Credit Act of 1986".

(b) IN GENERAL.—(1) Section 2105(c)(1) of title 5, United States Code, is amended by inserting "of this title, subchapter III of chapter 83 of this title to the extent provided in section 8332(b)(16) of this title," after "chapter 53".

(2) Subsection (b) of section 8332 of such title is amended—

(A) by striking out "and" at the end of paragraph (14);

(B) by striking out the period at end of paragraph (15) and inserting in lieu thereof "; and";

(C) by inserting after paragraph (15) the following new paragraph:

"(16) service performed by any individual as an employee described in section 2105(c) of this title after June 18, 1952, and before January 1, 1966, if (A) such service involved conducting an arts and crafts, drama, music library, service club, youth activities, sports, or recreation program (including any outdoor recreation program) for personnel of the armed forces, and (B) such individual is an employee subject to this subchapter on the day before the date of the enactment of the Nonappropriated Fund Instrumentalities Employees' Retirement Credit Act of 1986."; and

(D) by adding at the end thereof the following: "The office of Personnel Management shall accept, for the purposes of this subchapter, the certification of the head of a nonappropriated fund instrumentality of the United States concerning service of the type described in paragraph (16) of this subsection which was performed for such nonappropriated fund instrumentality.".

(c) EFFECTIVE DATE.—Notwithstanding any other provision of this Act which specifies an effective date for amendments made by this Act, the amendments made by this section shall take effect on the date of the enactment of this Act.

● Mr. STEVENS. Mr. President, this amendment would provide civil service retirement system credit for certain employees of Department of Defense nonappropriated fund instrumentalities who performed support services for members of the Armed Forces after June 18, 1952, and before January 1, 1966. As chairman of the Civil Service, Post Office, and General Services Subcommittee, I held a hearing on this and similar issues on September 18, 1986. These individuals, mostly women, conducted a variety of special services for the military including arts and crafts, drama, music, library, and recreation programs. The literature which encouraged these employees to consider special services positions could have led them to believe they were joining the civil service, and as such, they had no reason to think they would not be entitled to the retirement benefits enjoyed by other Federal workers, It is expected that approximately 200 individuals would be eligible to make the required deposit and receive retirement credit under this amendment. This group cannot be logically distinguished from the cadet nurses allowed credit under H.R. 3663, and I urge the adoption of this amendment. Similar retirement credit for Federal employees with pre-1969 National Guard technician service was just included in the DOD authorization bill. And, although it would have benefited 72 of my own constituents, I have reluctantly dropped my amendment providing retirement credit for 458 individuals with post-1935 Railroad Retirement Act service who later went to work for the Federal Government as employees of the Department of Transportation, the Interstate Commerce Commission, the National Mediation Board, the National Transportation Safety Board, or the Railroad Retirement Board.●

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No 3510) was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed for a third reading, and the bill to be read a third time.

The bill (H.R. 2663), as amended, was read the third time, and passed.

The title was amended so as to read:

Amend the title so as to read: An Act to amend title 5, United States Code, to credit time spent in the Cadet Nurse Corps during World War II as creditable service for civil service retirement; and to provide civil service retirement credit for certain employees and former employees of nonappropriated fund instrumentalities under the jurisdiction of the Armed forces.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate companion bill (S. 2953) introduced today by myself be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATURAL DISASTER RELIEF

Mr. DOLE. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of S. 2125, dealing with natural disasters, and I ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection? Without objection, the committee is discharged.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2125) to amend title 23 of the United States Code to increase the limitation on the amount of obligations from $30,000,000 to $100,000,000 for emergency relief projects in any State resulting from any single natural disaster or catastrophic failure occurring in calendar year 1986.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Kansas?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3511

Mr. DOLE. Mr. President, I send an amendment to the desk in behalf of Senator STAFFORD and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] on behalf of Mr. STAFFORD proposes an amendment numbered 3511.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

At the end of the bill insert the following:

SEC. 2. Within 90 days from the effective date of this Act, the Secretary of Transportation shall amend the applicable provisions of Part 27 of Title 49 of the Code of Federal Regulations to provide that all persons who by reason of handicap, physical or mental, are unable to use the recipient's bus service for the general public shall be eligible to use the recipient's special service or on-call accessible bus service and to provide that any incremental costs incurred to accommodate the special needs of persons with mental handicaps on fixed route buses shall be eligible to be counted in determining whether the recipient has exceeded its limitation on required expenditures.

SEC. 3. The short title of the Disaster Relief Act of 1974 (Public Law 93-288) is hereby amended by deleting the words "Disaster Relief Act of 1974" and inserting in lieu thereof "Major Disaster Relief and Emergency Assistance Act".

SEC. 4. Section 102(1) of the Disaster Relief Act of 1974 (42 U.S.C. 5122(1)) is amended to read as follows:

"(1) 'Emergency' means any occasion of instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property, public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.".

SEC. 5. Title VIII of the Public Works and Economic Development Act of 1965, as amended (Public Law 89-136; 42 U.S.C. 3231-3236) is hereby repealed, and title V of the Disaster Relief Act of 1974 Public Law 93-288) is hereby amended to read as follows:

"TITLE V—FEDERAL EMERGENCY ASSISTANCE PROGRAMS

"PROCEDURES

"SEC. 501. (a) All requests for a determination by the President that an emergency exists shall be made by the Governor of the affected State. Such request shall be based upon the Governor's finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. The Governor's request will furnish information describing State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required. As a part of this request, and as a prerequisite to emergency assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. Based upon such Governor's request, the President may declare that an emergency exists.

"(b) The President may exercise any authority vested in him by section 502 and section 503 of this Act with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. The President may determine that such an emergency exists only after consultation with the Governor of the affected State, if practicable. The President's determination, however, may be made without regard to the provisions of section 501(a) of this Act.

"FEDERAL ASSISTANCE

"SEC. 502. In any emergency, the President may—

"(a) direct any Federal agency with or without reimbursement to utilize its authorities and the resources granted to it under other Acts, including but not limited to personnel, equipment, supplies, facilities, and managerial, technical and advisory services in support of State and local emergency assistance efforts to save lives and to protect property, public health and safety or to lessen or avert the threat of a catastrophe;

"(b) coordinate all Federal agencies and voluntary relief or disaster assistance orga-

nizations providing emergency assistance, and coordinate emergency assistance with State and local officials; and

"(c) provide technical and advisory assistance to affected State and local governments in the performance of essential community services, warning of risks of hazards, public information and assistance in health and safety measures, management and control, and reduction of immediate threats to public health and safety.

"EMERGENCY ASSISTANCE

"SEC. 503. (a) In an emergency, when the Federal assistance provided pursuant to section 502 of this title is inadequate, the President may provide assistance to save lives and protect property, public health and safety, or to lessen or avert the threat of a catastrophe. When debris removal assistance is appropriate under this section, it shall be provided in accordance with the terms and conditions of section 406 of this Act.

"(b) In any emergency and except as provided by subsection (c) of this section, the costs of providing emergency assistance under this section shall not exceed $5,000,000 of funds apropriated to carry out this Act.

"(c) The limiation of subsection (b) of this section may be exceeded when the President determines that continued emergency assistance is immediately required; that there is a continuing and immediate risk to lives, property, public health or safety; and that necessary assistance will not otherwise be provided on a timely basis. In the event that the limitation of subsection (b) is exceeded, the President shall report to Congress on the nature and extent of the emergency assistance requirements and propose additional legislation if necessary.".

SEC. 6. Secton 102(2) of the Disaster Relief Act of 1974 (42 U.S.C. 5122(2)) is amended to read as follows—

"(2) 'Major disaster' means any natural catastrophe, including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or any fire, flood, or explosion, regardless of cause, in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.".

SEC. 7. Title II of the Disaster Relief Act of 1974 (42 U.S.C. 5131-5132) is amended by—

(1) striking the words "(including the Defense Civil Preparedness Agency)" in section 201(a);

(2) adding the words "including evaluations of natural hazards and development of the programs and actions required to mitigate such hazards," between the words "plans" and "except" in section 201(d); and

(3) striking "$25,000" in section 201(d) and inserting in lieu thereof "50,000".

SEC. 8. Title III of the Disaster Relief Act of 1974 (42 U.S.C. 5141-5158) is amended by—

(1) deleting sections 301, 305, and 306 and renumbering subsequent sections appropriately;

(2) deleting the caption "FEDERAL ASSISTANCE" of section 301, as redesignated by paragraph (1) of this section, and inserting in lieu thereof "RULES AND REGULATIONS";

(3) deleting the first and second sentences of subsection (a) of section 301, as redesignated by paragraph (1) of this section, and amending the final sentence thereof by adding ", with or without reimbursement," immediately before "through"; and

(4) deleting ", or economic status" in the second sentence of section 308(a) as redesignated by paragraph (1) of this section, and adding "or" before "age,".

SEC. 9. Section 302(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5143(a)), as redesignated by section 7(1) of this Act, is amended by adding at the end thereof the following: "The Federal coordinating officer shall represent the President in coordinating the emergency or the major disaster response and recovery effort.".

SEC. 10. Section 311 of the Disaster Relief Act of 1974 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act, is amended by redesignating subsections (a), (b), and (c) as (b), (c), and (d), respectively, and by adding at the beginning thereof a new subsection as follows:

"(a) As a condition of assistance, any public facility and private nonprofit facility which is:

"(1) located in a special flood hazard area as identified by the Director pursuant to the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.);

"(2) damaged or destroyed by flooding; and

"(3) otherwise eligible for assistance under section 405 of this Act, must be covered, of the date of the flood damage, by reasonable and adequate flood insurance. Assistance under section 405 for any such facility not so covered shall be reduced by the maximum amount of benefits which could have been received had reasonable and adequate flood insrance been in force: *Provided, however,* That this reduction of assistance shall not apply to uninsured facilies where such communities have been identified for less than year as having special flood hazard areas. The limitations of assistance required by this subsection shall not apply until final regulations are promulgated by the President. Such regulations shall define reasonable and adequate flood insurance.".

SEC. 11. Section 312 of the Disaster Relief Act of 1974 (42 U.S.C. 5155), as redesignated by section 7(1) of this Act, is amended to read as follows:

"DUPLICATION OF BENEFITS

"SEC. 312. (a) Agencies or other organizations providing Federal assistance for needs or losses resulting from a major disaster or emergency shall assure that no person business concern, or other entity receives any such Federal assistance if said person business concern, or entity receives benefits for the same purpose from insurance or any other Federal or non-Federal source; *Provided,* That nothing in this section shall prohibit the provision of Federal assistance to a person, business concern, or other entity who is or may be entitled to receive benefits for the same purposes from insurance or any Federal or non-Federal source when any such applicant for Federal assistance has not received such other benefits by the time of application for Federal assistance, so long as the applicant for Federal assistance agrees as a condition of receipt of Federal assistance to repay duplicative assistance from insurance or any other Federal or non-Federal source to the agency or other organizations providing the Federal assistance. The President shall establish such procedures as are deemed necessary to insure uniformity in preventing such duplication of benefits. Receipt of partial benefits for a loss or need resulting from a major disaster or emergency does not preclude provision of additional Federal assistance for any part of such loss or need for which benefits have not been provided.

"(b) A person, business concern, or other entity receiving Federal assistance for needs or losses resulting from a major disaster or emergency shall be liable to the United States to the extend that such Federal assistance has duplicated benefits available to the person, business concern, or other entity for the same purpose from insurance or any other Federal or non-Federal sources. The agency or other organization which provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with the Claims Collection Act of 1966, as amended, when in the best interest of the Government. The repayment shall not exceed the amount of Federal assistance received.

"(c) Federal disaster assistance and comparable disaster assistance provided by States, local governments, and disaster assistance organizations to individuals and families shall not be considered as income or a resource when determinirg eligibility or benefit levels for federally funded income assistance or resource tested benefit programs.".

SEC. 12. (a) Title III of the Disaster Relief Act of 1974 (42 U.S.C. 5141-5158) is amended by adding at the end thereof four new sections as follows:

"PROTECTION OF ENVIRONMENT

"SEC. 315. No action taken or assistance provided pursuant to section 402, 403, 406, 502, or 503 of this Act, or any assistance provided pursuant to section 405 of this Act that has the effect of restoring facilities substantially as they existed prior to the disaster, shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852). Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 (83 Stat. 852) to other Federal actions taken under this Act or under any other provisions of law.

"RECOVERY OF FUNDS

"SEC. 316. The Attorney General of the United States is authorized to institute actions in the United States District Court for the district in which an emergency or major disaster occurred, or in such district as otherwise provided by law, against any party whose acts or omissions may in any way have caused or contributed to the damage or hardship for which Federal assistance is provided pursuant to this Act. Upon the showing that an emergency or major disaster or the associated damage or hardship was caused in whole or in part by an act or omission of such party, then such party shall be liable to the United States for the full amount of Federal expenditures made to alleviate the suffering or damage attributable to such act or omission. The authority of this section shall also apply to the recovery of Federal funds expended under the authority of section 419 of this Act for fire supression. This section does not apply to a nuclear incident subject to the Price-Anderson Act, (42 U.S.C. 2014 and 2210).

"AUDITS AND INVESTIGATIONS

"SEC. 317. (a) The President, when deemed necessary to assure compliance with any provision of this Act or related regulations,

shall conduct audits and investigations and in connection therewith may enter such places and inspect such records and accounts and question such persons as deemed necessary to determine the facts relative thereto.

"(b) The President, when deemed necessary to assure compliance with any provision of this Act or related regulations, may require audits by State and local governments in connection with assistance provided under the Act.

"(c) The President and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of investigation, audit, and examination, to any books, documents, papers, and records of any person or entity relating to any activity or program undertaken or funded pursuant to this Act.

"CRIMINAL AND CIVIL PENALTIES

"SEC. 318. (a) Any person, organization, or other entity who knowingly makes a false statement or representation of a material fact, or who knowingly fails to disclose a material fact, in any application or other document in connection with a request for assistance under this Act, or who knowingly falsifies or withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such request for assistance is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

"(b) Any person, organization, or other entity who knowingly makes a false statement or representation of a material fact, or who knowingly fails to disclose a material fact, in any bill, invoice, claim, or other document requesting reimbursement for work or services performed in connection with assistance provided under this Act, or who knowingly falsifies or withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such request for reimbursement is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

"(c) Any person, organization, or other entity who knowingly misapplies the proceeds of a loan or other cash benefit obtained under any section of this Act shall be subject to a fine in an amount equal to one and one-half times the misapplied amount of the loan or cash benefit.

"(d) Whenever it appears that any person, organization, or other entity has violated or is about to violate any provision of this Act, including rules and regulations issued and civil penalties imposed, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in the district court of the United States having jurisdiction where the violation occurred or, at the option of the parties, in the United States District Court for the District of Columbia.

"(e) The President, or the duly authorized representative of the President, shall expeditiously refer to the Attorney General of the United States for appropriate action such evidence developed in the performance of functions under this Act as may be found to warrant consideration for criminal prosecution under the provisions of this Act of other Federal law.".

(b) Title III of the Disaster Relief Act of 1974 is amended by deleting subsections (a) and (c) of section 314 (42 U.S.C. 5157), as redesignated by section 7(1) of this Act, and by renumbering "(b)" from the remaining subsection of section 314 as subsection "(f)" of section 318 as added by section 11(a) of this Act.

(c) Title IV of the Disaster Relief Act of 1974 is amended by deleting section 405 (42 U.S.C. 5175) and by renumbering subsequent sections appropriately.

(d) Section 315 of the Disaster Relief Act of 1974 (42 U.S.C. 5158), as designated by section 7(1) of this Act, is further redesignated as section 314.

SEC. 13. Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5171-5189) is amended by adding three new sections as follows and by renumbering subsequent sections appropriately:

"PROCEDURES

"SEC. 401. (a) All requests for a declaration by President that a major disaster exists shall be made by the Governor of the affected State. Such Governor's request shall be based upon a finding that the disaster in of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and the Federal assistance is necessary. As a part of this request, and as a prerequisite to major disaster assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. He shall furnish information on the extent and nature of State resources which have been or will be used to alleviate the conditions of the disaster, and shall certify that for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will constitute the expenditure of a reasonable amount of the funds of such State and local governments for alleviating the damage, loss, hardship, or suffering resulting from such disaster, including, but not limited to, the cost-sharing provisions pursuant to sections 405, 406, 407, and 410 of this Act. Based upon such Governor's request, the President may declare that a major disaster exists.

"(b) In any case where an eligible applicant (or the State) is unable to assume its financial responsibility under the cost-sharing provisions of sections 405, 406, and 407 of this Act, the President is authorized to lend or advance to the State such 25 per centum share. For the purposes of section 405, such loan or advance shall be authorized only after the occurrence of concurrent, multiple major disasters in a given jurisdiction, or the extraordinary costs of a particular major disaster, and when the damages caused by such major disasters are so overwhelming and severe that it is not possible for the applicant or the State to assume their financial responsibility under this Act immediately. Except as provided by subsection (c) of this section, any such loan or advance is to be repaid to the United States; there shall be no deferral of the repayment of loans or advances authorized by this subsection or of accrued interest. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance.

"(c) The President may cancel all or any part of such loan or advance made regarding section 405 or section 406 for concurrent, multiple major disasters or a single catastrophic major disaster if a determination is made that following the three full fiscal years after the loan or advance is made, the applicant demonstrates substantial and continuing inability to repay all or part of the loan or advance.

"(d) The President shall issue regulations describing the terms and conditions under which any loans or advances authorized by this section may be made or canceled.

"FEDERAL ASSISTANCE

"SEC. 402. In any major disaster, the President may—

"(a) direct any Federal agency with or without reimbursement to utilize its authorities and the resources granted to it under other Acts including, but not limited to, personnel, equipment, supplies, facilities, and managerial, technical, and advisory services in support of State and local assistance efforts;

"(b) coordinate all Federal agencies and voluntary relief or disaster assistance organizations providing disaster assistance, and coordinate disaster assistance with State and local officials; and

"(c) provide technical and advisory assistance to affected State and local governments in the performance of essential community services, warning of risks and hazards, public information and assistance in health and safety measures, management and control, and reduction of immediate threats to public health and safety.

"COOPERATION OF FEDERAL AGENCIES IN RENDERING DISASTER ASSISTANCE

"SEC. 403. (a) In any major disaster, Federal agencies are hereby authorized, on the direction of the President, to provide assistance by—

"(1) utilizing or leading, with or without compensation therefore, to States and local governments, their equipment, supplies, facilities, personnel, and other resources, other than the extension of credit under the authority of any Act;

"(2) distributing or rendering, through the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations, or otherwise, medicine, food, and other consumable supplies, other services to disaster victims, or emergency assistance;

"(3) donating or leading equipment and supplies, including that determined in accordance with applicable laws to be surplus to the needs and responsibilities of the Federal Government, to State and local governments for use of distribution by them for the purposes of this Act; and

"(4) performing on public or private lands or waters any emergency work or services essential to save lives and to protect and preserve property, public health and safety, including, but not limited to: Search and rescue, emergency medical care, emergency mass care, emergency shelter, and provisions of food, water, medicine, and other essential needs, including movement of supplies or persons; construction of temporary bridges necessary to the performance of emergency tasks and essential community services; provision of temporary facilities for schools and other essential community services; warning of further risks and hazards; public information and assistance on health and safety measures; technical advice to State and local governments on disaster management and control; reduction of immediate threats to life, property, and public health and safety; and making contributions to State or local governments for the purpose of carrying out the provisions of this paragraph. Such contributions for emergency work under this section and section 402 of this Act shall not exceed 100 per centum

of the net eligible cost, or for small projects 100 per centum of the Federal estimate of the net eligible cost, of such emergency work or services performed by State and local governments: *Provided*, That where debris removal assistance is appropriate under this section or section 402 of this Act it shall be provided in accordance with the terms and conditions of section 406 of this Act."

"SEC. 14. (a) Section 405 of the Disaster Relief Act of 1974 (42 U.S.C. 5172), as redesignated by section 12 of this Act, is amended to read as follows:

"(a) The President is authorized to make contributions to State or local governments, to help repair, restore, reconstruct, or replace public facilities belonging to such State or local government which were damaged or destroyed by a major disaster. Notwithstanding any other provision of law, such contribution shall be limited to 75 per centum of the net eligible cost, or for small projects 75 per centum of the Federal estimate of the net eligible cost, of repairing, restoring, reconstructing, or replacing any such facility estimated on the basis of the design of such facility as it existed immediately prior to such major disaster and in conformity with current applicable codes, specifications, and standards. For the purposes of this section, 'public facility' includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility, any non-Federal-aid street, road, or highway, any other public building, structure, or system including those used for educational or recreational purposes, and any park.

"(b) The President is authorized to make contributions to help repair, restore, reconstruct, or replace eligible private nonprofit facilities which were damaged or destroyed by a major disaster. Notwithstanding any other provision of law, such contributions shall be 75 per centum of the net eligible cost, or for small projects 75 per centum of the Federal estimate of the net eligible cost, of repairing, restoring, reconstructing, or replacing any such facility estimated on the basis of the design of such facility as it existed immediately prior to such major disaster and in conformity with current applicable codes, specifications, and standards. For the purposes of this section, 'eligible private nonprofit facility' means private nonprofit educational, utility, emergency, medical, and custodial care facilities, including those for the aged and disabled, and such private nonprofit facilities on Indian reservations, which were damaged or destroyed by a major disaster.

"(c) No authority under this section shall be exercised unless the affected State, local government, or eligible private nonprofit organization first agrees that such facility shall be repaired, restored, reconstructed, or replaced in compliance with flood plain management and hazard mitigation criteria required by the President, with the provisions of the Coastal Barrier Resources Act and other applicable Federal statutes, and in conformity with other applicable codes, specifications, and standards, except as otherwise provided in section 315 of this Act.

"(d) For those facilities eligible under this section which were in the process of construction when damaged or destroyed by a major disaster, the contribution shall be 75 per centum of the net eligible costs of restoring such facilities substantially to their predisaster condition: *Provided*, That the term 'net eligible costs' shall not include cost which, under a contract, are the responsibility of a contractor.

"(e) In those cases, except for small projects, where a State or local government determines that public welfare would not be best served by repairing, restoring, reconstructing, or replacing particular public facilities owned or controlled by that State or that local government and which have been damaged or destroyed in a major disaster, it may elect to receive, in lieu of the contribution described in subsection (a) of this section, a contribution that shall be a 50 per centum of the Federal estimate of the net eligible cost of repairing, restoring, reconstructing, or replacing such damaged facilities owned by it within its jurisdiction. The cost of repairing, restoring, reconstructing, or replacing damaged or destroyed public facilities shall be estimated on the basis of the design of each facility as it existed immediately prior to such disaster and in conformity with current applicable codes, specifications, and standards. Funds contributed under this subsection may be expended either to repair or restore certain selected damaged public facilities or to construct new public facilities which the State or local government determines to be necessary to meet its needs for governmental services and functions in the disaster-affected area.".

(b) The Disaster Relief Act of 1974 is amended by selecting section 421 (42 U.S.C. 5189), as redesignated by sections 11(c) and 12 of this Act, and by striking "or 419" each place that this phrase appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act.

(c) Section 406 of the Disaster Relief Act of 1974 (42 U.S.C. 5173), as redesignated by section 12 of this Act, is amended by adding at the end thereof the following:

"(c) Notwithstanding any other provision of law, whether carried out directly through Federal departments, agencies, or instrumentalities or through grants to State or local governments, Federal assistance provided under authority of this section shall be 75 per centum of the net eligible costs, or for small projects 75 per centum of the Federal estimate of the net eligible costs, of debris removal.".

SEC. 15. Section 407(a) of the Disaster Relief Act of 1974, as redesignated by section 12 of this Act, is amended to read as follows:

"(a) The President is authorized to provide, either by purchase or lease, temporary housing including, but not limited to, unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings for those who, as a result of a major disaster, require temporary housing. Whenever he determines it to be in the public interest, the President is authorized to provide temporary housing assistance by using Federal departments, agencies, or instrumentalities. In addition, the President is authorized to provide temporary housing assistance by contributing not to exceed 100 per centum (or 75 per centum for group site development pursuant to paragraph (2) of this subsection) of the costs of temporary housing assistance to a State or local government which provides such assistance to those who require it as a result of a major disaster declaration by the President, unless he determines that due to extraordinary circumstances it would be in the public interest to extend the eighteen month period.

"(1) Temporary housing assistance pursuant to this subsection shall be provided only when adequate alternative housing is available, unless there is compelling need to do so because of extreme hardship.

"(2) Any mobile home or other readily fabricated dwelling supplied pursuant to this subsection shall be placed on a site complete with utilities provided either by the State or local government, or by the owner or occupant of the site who was displaced by the major disaster. When the President determines such action to be in the public interest, he may authorize installation of essential utilities at Federal expense and he may elect to provide other more economical or accessible sites. However, in the event the President authorizes the development of a group site, that is, a site for two or more households, the Federal share shall be 75 per centum of the development costs, and the remainder shall be met by funds provided by the State or local government.".

SEC. 16. Section 408 of the Disaster Relief Act of 1974 (42 U.S.C. 5176), as redesignated by sections 11(c) and 12 of this Act, is amended by adding "(a)" after "408." and by adding a new subsection "(b)" as follows:

"(b) The President is authorized to contribute up to 50 per centum of the cost of implementing hazard mitigation projects which he has determined would be cost effective and would substantially reduce the risk of future damage, hardship, loss, or suffering in the area affected by a major disaster. Such projects shall be identified following the evaluation of natural hazards provided for in subsection (a) of this section and shall be subject to approval by the President. The total of the contributions made under this subsection shall not exceed 10 percent of the Federal estimate of grants made under the authority of section 405 of this Act for each major disaster.".

SEC. 17. Section 409(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5177), as redesignated by sections 11(c) and 12 of this Act, is amended to read as follows: "The President is authorized to provide such disaster unemployment assistance as he deems appropriate to individuals who are unemployed as a result of a major disaster. Disaster unemployment assistance authorized by this section shall be available to an eligible individual for a period not to exceed fifty-two weeks after the week in which an eligible individual became unemployed as a result of a major disaster, and such period shall be regarded as the disaster assistance period for that individual for the purposes of this section. Disaster unemployment assistance shall not be payable with respect to any week for which an individual is entitled to unemployment compensation (as defined in section 85(c) of the Internal Revenue Code of 1954, as amended) or waiting week credit. The maximum amount of disaster unemployment assistance payable to any individual with respect to a major disaster shall not exceed twenty-six times the maximum weekly amount for which the individual establishes eligibility minus the amount of any unemployment compensation paid to the individual during the fifty-two week benefit period established pursuant to this section. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred, and the amount of assistance under this section for a week of unemployment shall be reduced by any amount of private income protection insurance compensation available to such individual for such week of unemployment.

The payment of unemployment compensation to an individual with respect to any week subsequent to the exhaustion of eligibility of such individual for disaster unemployment assistance and within the fifty-two week benefit period established pursuant to this section shall not be regarded as duplication of benefits under section 312 of this Act. The President is directed to provide disaster unemployment assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.".

SEC. 18. (a) Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 11(c) and 12 of this Act, is amended by adding a period after the word "share" in the second sentence of that subsection and by deleting the following phrase from the second sentence of section 410(b): "and any such advance is to be repaid to the United States when such State is able to do so."

(b) Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 11(c) and 12 of this Act, is further amended by adding the following sentence between the second and third sentences of this subsection: "Such advances shall bear interest from the date of the advance at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance. Repayment of such advances and of interest which accrues on the advances may be deferred for no longer than two years from the date of the major disaster declaration.".

SEC. 19. Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 156(c) and 157 of this Act, is amended by striking "$5,000" in the last sentence and inserting in lieu thereof "$7,500".

SEC. 20. Section 415 of the Disaster Relief Act of 1974 (42 U.S.C. 5183), as redesignated by sections 11(c) and 12 of this Act, is amended by striking "(through the National Institute of Mental Health)".

SEC. 21. Section 420(d) of the Disaster Relief Act of 1974 (42 U.S.C. 5188), as redesignated by sections 11(c) and 12 of this Act, is deleted.

SEC. 22. The Disaster Relief Act of 1974 (42 U.S.C. 5121-5202) is amended by—

(1) striking paragraph (7) of section 101(b) (42 U.S.C. 5121), striking "; and" from paragraph (6) and adding in lieu thereof a period, and adding "and" at the end of paragraph (5);

(2) striking "the Canal Zone," in paragraph (3) and (4) of section 102 (42 U.S.C. 5122);

(3) striking "DISASTER" in the caption of title III (42 U.S.C. 5141-5158) and inserting in lieu thereof "MAJOR DISASTER RELIEF AND EMERGENCY";

(4) striking "section 402 or 404 of" in section 308(b) (42 U.S.C. 5151), as redesignated by section 7(1) of this Act;

(5) adding "emergency or" before the word "major" each of two places that word appears in section 307 (42 U.S.C. 5150), as redesignated by section 7(1) of this Act;

(6) striking in section 310(b) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, everything after the word "areas" and inserting in lieu thereof a period;

(7) striking "or section 803 of the Public Works and Economic Development Act of 1956," each place the phrase appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act;

(8) striking "402" each place that number appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act, and inserting in lieu thereof "405";

(9) adding "emergency and major" before the word "disaster" in section 313 (42 U.S.C. 5156), as redesignated by section 7(1) of this Act;

(10) adding the word "MAJOR" between the words "FEDERAL" and "DISASTER" in the caption to title IV (42 U.S.C. 5171-5189);

(11) striking "in emergencies or in major disasters" in the third sentence of paragraph (2) of section 407(d) (42 U.S.C. 5174), as redesignated by section 12 of this Act;

(12) striking "311" in section 407(d)(2) (42 U.S.C. 5174), as redesignated by section 12 of this Act, and inserting in lieu thereof "308";

(13) striking "an emergency or" in section 417 (42 U.S.C. 5185), as redesignated by sections 11(c) and 12 of this Act, and inserting in lieu thereof "a";

(14) striking "408" in section 605 (42 U.S.C. 5121) and inserting in lieu thereof "401";

(15) striking "301" in subtitle C of title I of the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512; 86 Stat. 919) and inserting in lieu thereof "401";

(16) striking "President" each place that word appears in section 309(a), as redesignated by section 7(1) of ths Act, and inserting in lieu thereof "Federal coordinating officer".

(17) striking "rent" in section 310(a)(2) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, and inserting in lieu thereof "income"; and

(18) striking paragraph (1) of section 310(a) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, and renumbering subsequent paragraphs appropriately.

SEC. 23. (a) Section 6(a)(6)(E) of the Coastal Barrier Resource Act, 16 U.S.C. 3505(a)(6)(E), is amended by striking out "pursuant to sections 305 and 306 of the Disaster Relief Act of 1974" and inserting in lieu thereof "pursuant to sections 402, 403, 502, and 503 of the Major Disaster Relief and Emergency Assistance Act".

(b) Whenever any reference is made in any provision of law (other than this Act), regulation, rule, record, or document of the United States to provisions of the Disaster Relief Act of 1974 repealed by this Act or renumbered by this Act, such reference shall be deemed to be a reference to the appropriate provisions of the Major Disaster Relief and Emergency Assistance Act.

SEC. 24. (a) Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect ninety days after the date of enactment of this Act or on the date on which the President, after consultation with State and local governments, publishes final rules and regulations relating to the definition of costs for which State and local governments may be reimbursed under the Disaster Relief Act of 1974 (as amended by this Act), whichever is later.

(b)(1) This Act and the amendments made by this Act shall not affect the administration of any assistance provided under the authority of the Disaster Relief Act of 1974, for any major disaster or emergency declared by the President prior to the effective date of this Act.

(2) Except with regard to section 409(a) of the Disaster Relief Act of 1974, as redesignated by section 11(c) and 12 of this Act (relating to disaster unemployment assistance)—

(A) rules and regulations issued under statutory provisions which are repealed, modified, or amended by this Act shall continue in effect as though issued under the authority of this Act until they are expressly abrogated, modified, or amended by the President; and

(B) provision of disaster assistance authorized by statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder, or proceedings involving violations of statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder which are in process prior to the effective date of this Act, may be continued to conclusion as though the applicable statutory provisions had not been repealed, modified, or amended.

(3) Violations of statutory provisions or rules and regulations issued under the authority of statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder which are committed prior to the effective date of this Act may be proceeded against under the law in effect at the time of the specific violation.

(c) Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5171-5189) is amended by adding at the end thereof a new section as follows:

"SEC. 421. No State shall be ruled ineligible to receive assistance under this Act solely by virtue of an arithmetic formula based on income or population."

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3511) was agreed to.

Mr. BYRD. Mr. President, on November 4 and 5, 1985, West Virginia was devastated by floods. On November 6, I traveled to West Virginia and I took officials from the Federal Emergency Management Agency, the Corps of Engineers, and the Soil Conservation Service with me, to view firsthand the devastation. Of West Virginia's 55 counties, 29 were declared disaster areas.

After that devastation, many wondered if those towns and small communities would ever recover. Many towns were cutoff from their neighboring communities by roads, bridges, and rail lines which had been destroyed by the flood. More than 60 bridges were washed out, and roadways were severed in innumerable places, leaving communities and businesses isolated. Families, in a matter of hours, lost their homes, their jobs, and in some cases, their loved ones.

The legislation before us today reauthorizes the Disaster Relief Act. It provides the Federal Emergency Management Agency with the authority to respond immediately to disaster situations and allows that Agency to task other Federal agencies to perform emergency work. While the Federal Government cannot work miracles, it does have a vital role in helping its citizens during times of disaster. West

Virginia has come a long, long way on the road to recovery—a recovery which would not have been possible without the help of Federal disaster assistance programs. I support this authorization.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment and the third reading of the bill.

The bill (S. 2125) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2125

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 125(b) of title 23, United States Code, is amended by inserting after "$30,000,000" the following: "(or $100,000,000 with respect to natural disasters and catastrophic failures occurring in calendar year 1986)".

SEC. 2. Within 90 days from the effective date of this Act, the Secretary of Transportation shall amend the applicable provisions of Part 27 of Title 49 of the Code of Federal Regulations to provide that all persons who by reason of handicap, physical or mental, are unable to use the recipient's bus service for the general public shall be eligible to use the recipient's special service or on-call accessible bus service and to provide that any incremental costs incurred to accommodate the special needs of persons with mental handicaps on fixed route buses shall be eligible to be counted in determining whether the recipient has exceeded its limitation or required expenditures.

SEC. 3. The short title of the Disaster Relief Act of 1974 (Public Law 93-288) is hereby amended by deleting the words "Disaster Relief Act of 1974" and inserting in lieu thereof "Major Disaster Relief and Emergency Assistance Act;".

SEC. 4. Section 102(1) of the Disaster Relief Act of 1974 (42 U.S.C. 5122(1)) is amended to read as follows:

"(1) 'Emergency' means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property, public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.".

SEC. 5. Title VIII of the Public Works and Economic Development Act of 1965, as amended (Public Law 89-136; 42 U.S.C. 3231-3236) is hereby repealed, and title V of the Disaster Relief Act of 1974 (Public Law 93-288) is hereby amended to read as follows:

"TITLE V—FEDERAL EMERGENCY ASSISTANCE PROGRAMS

"PROCEDURES

"SEC. 501. (a) All requests for a determination by the President that an emergency exists shall be made by the Governor of the affected State. Such request shall be based upon the Governor's finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. The Governor's request will furnish information describing State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required. As a part of this request, and as a prerequisite to emergency assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. Based upon such Governor's request, the President may declare that an emergency exists.

"(b) The President may exercise any authority vested in him by section 502 and section 503 of this Act with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. The President may determine that such an emergency exists only after consultation with the Governor of the affected State, if practicable. The President's determination, however, may be made without regard to the provisions of section 501(a) of this Act.

"FEDERAL ASSISTANCE

"SEC. 502. In any emergency, the President may—

"(a) direct any Federal agency with or without reimbursement to utilize its authorities and the resources granted to it under other Acts, including but not limited to personnel, equipment, supplies, facilities, and managerial, technical and advisory services in support of State and local emergency assistance efforts to save lives and to protect property, public health and safety or to lessen or avert the threat of a catastrophe;

"(b) coordinate all Federal agencies and voluntary relief or disaster assistance organizations providing emergency assistance, and coordinate emergency assistance with State and local officials; and

"(c) provide technical and advisory assistance to affected State and local governments in the performance of essential community services, warning of risks of hazards, public information and assistance in health and safety measures, management and control, and reduction of immediate threats to public health and safety.

"EMERGENCY ASSISTANCE

"SEC. 503. (a) In an emergency, when the Federal assistance provided pursuant to section 502 of this title is inadequate, the President may provide assistance to save lives and protect property, public health and safety, or to lessen or avert the threat of a catastrophe. When debris removal assistance is appropriate under this section, it shall be provided in accordance with the terms and conditions of section 406 of this Act.

"(b) In any emergency and except as provided by subsection (c) of this section, the costs of providing emergency assistance under this section shall not exceed $5,000,000 of funds appropriated to carry out this Act.

"(c) The limitation of subsection (b) of this section may be exceeded when the president determines that continued emergency assistance is immediately required; that there is a continuing and immediate risk to lives, property, public health or safety; and that necessary assistance will not otherwise be provided on a timely basis. In the event that the limitation of subsection (b) is exceeded, the President shall report to Congress on the nature and extent of the emergency assistance requirements and propose additional legislation if necessary.".

SEC. 6. Section 102(2) of the Disaster Relief Act of 1974 (42 U.S.C. 5122(2)) is amended to read as follows—

"(2) 'Major disaster' means any natural catastrophe, including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or any fire, flood, or explosion, regardless of cause, in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.".

SEC. 7. Title II of the Disaster Relief Act of 1974 (42 U.S.C. 5131-5132) is amended by—

(1) striking the words "(including the Defense Civil Preparedness Agency)" in section 201(a);

(2) adding the words "including evaluations of natural hazards and development of the programs and actions required to mitigate such hazards," between the words "plans" and "except" in section 201(d); and

(3) striking "$25,000" in section 201(d) and inserting in lieu thereof "$50,000".

SEC. 8. Title III of the Disaster Relief Act of 1974 (42 U.S.C. 5141-5158) is amended by—

(1) deleting sections 301, 305, and 306 and renumbering subsequent sections appropriately;

(2) deleting the caption "FEDERAL ASSISTANCE" of section 301, as redesignated by paragraph (1) of this section, and inserting in lieu thereof "RULES AND REGULATIONS";

(3) deleting the first and second sentences of subsection (a) of section 301, as redesignated by paragraph (1) of this section, and amending the final sentence thereof by adding ", with or without reimbursement," immediately before "through"; and

(4) deleting ", or economic status" in the second sentence of section 308(a) as redesignated by paragraph (1) of this section, and adding "or" before "age,".

SEC. 9. Section 302(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5143(a)), as redesignated by section 7(1) of this Act, is amended by adding at the end thereof the following: "The Federal coordinating officer shall represent the President in coordinating the emergency or the major disaster response and recovery effort.".

SEC. 10. Section 311 of the Disaster Relief Act of 1974 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act, is amended by redesignating subsections (a), (b), and (c) as (b), (c), and (d), respectively, and by adding at the beginning thereof a new subsection as follows:

"(a) As a condition of assistance, any public facility and private nonprofit facility which is:

"(1) located in a special flood hazard area as identified by the Director pursuant to the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.);

"(2) damaged or destroyed by flooding; and

"(3) otherwise eligible for assistance under section 405 of this Act, must be covered, on the date of the flood damage, by reasonable and adequate flood insurance. Assistance under section 405 for any such facility not so covered shall be reduced by the maximum amount of benefits which could have been received had reasonable and adequate flood insurance been in force; *Provided, however,* That this reduction of assistance shall not apply to uninsured facilities where such communities have been identified for

less than one year as having special flood hazard areas. The limitations of assistance required by this subsection shall not apply until final regulations are promulgated by the President. Such regulations shall define reasonable and adequate flood insurance.".

SEC. 11. Section 312 of the Disaster Relief Act of 1974 (42 U.S.C. 5155), as redesignated by section 7(1) of this Act, is amended to read as follows:

"DUPLICATION OF BENEFITS

"SEC. 312. (a) Agencies or other organizations providing Federal assistance for needs or losses resulting from a major disaster or emergency shall assure that no person, business concern, or other entity receives any such Federal assistance if said person, business concern, or entity receives or is entitled to receive benefits for the same purposes from insurance or any other Federal or non-Federal source: *Provided*, That nothing in this section shall prohibit the provision of Federal assistance to a person, business concern, or other entity who is or may be entitled to receive benefits for the same purposes from insurance or any other Federal or non-Federal source when any such applicant for Federal assistance has not received such other benefits by the time of application for Federal assistance, so long as the applicant for Federal assistance agrees as a condition of receipt of Federal assistance to repay duplicative assistance from insurance or any other Federal or non-Federal source to the agency or other organizations providing the Federal assistance. The President shall establish such procedures as are deemed necessary to insure uniformity in preventing such duplication of benefits. Receipt of partial benefits for a loss or need resulting from a major disaster or emergency does not preclude provision of additional Federal assistance for any part of such loss or need for which benefits have not been provided.

"(b) A person, business concern, or other entity receiving Federal assistance for needs or losses resulting from a major disaster or emergency shall be liable to the United States to the extent that such Federal assistance has duplicated benefits available to the person, business concern, or other entity for the same purpose from insurance or any other Federal or non-Federal sources. The agency or other organization which provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with the Claims Collection Act of 1966, as amended, when in the best interest of the Government. The repayment shall not exceed the amount of Federal assistance received.

"(c) Federal disaster assistance and comparable disaster assistance provided by States, local governments, and disaster assistance organizations to individuals and families shall not be considered as income or a resource when determining eligibility or benefit levels for federally funded income assistance or resource tested benefit programs.".

SEC. 12. (a) Title III of the Disaster Relief Act of 1974 (42 U.S.C. 5141-5158) is amended by adding at the end thereof four new sections as follows:

"PROTECTION OF ENVIRONMENT

"SEC. 315. No action taken or assistance provided pursuant to section 402, 403, 406, 502, or 503 of this Act, or any assistance provided pursuant to section 405 of this Act that has the effect of restoring facilities substantially as they existed prior to the disaster, shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852). Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 (83 Stat. 852) to other Federal actions taken under this Act or under any other provisions of law.

"RECOVERY OF FUNDS

"SEC. 316. The Attorney General of the United States is authorized to institute actions in the United States District Court for the district in which an emergency or major disaster occurred, or in such district as otherwise provided by law, against any party whose acts or omissions may in any way have caused or contributed to the damage or hardship for which Federal assistance is provided pursuant to this Act. Upon the showing that an emergency or major disaster or the associated damage or hardship was caused in whole or in part by an act or omission of such party, then such party shall be liable to the United States for the full amount of Federal expenditures made to alleviate the suffering or damage attributable to such act or omission. The authority of this section shall also apply to the recovery of Federal funds expended under the authority of section 419 of this Act for fire suppression. This section does not apply to a nuclear incident subject to the Price-Anderson Act (42 U.S.C. 2014 and 2210).

"AUDITS AND INVESTIGATIONS

"SEC. 317. (a) The President, when deemed necessary to assure compliance with any provision of this Act or related regulations, shall conduct audits and investigations and in connection therewith may enter such places and inspect such records and accounts and question such person as deemed necessary to determine the facts relative thereto.

"(b) The President, when deemed necessary to assure compliance with any provision of this Act or related regulations, may require audits by State and local governments in connection with assistance provided under the Act.

"(c) The President and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of investigation, audit, and examination, to any books, documents, papers, and records of any person or entity relating to any activity or program undertaken or funded pursuant to this Act.

"CRIMINAL AND CIVIL PENALTIES

"SEC. 318. (a) Any person, organization, or other entity who knowingly makes a false statement or representation of a material fact, or who knowingly fails to disclose a material fact, in any application or other document in connection with a request for assistance under this Act, or who knowingly falsifies or withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such requests for assistance is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

"(b) Any person, organization, or other entity who knowingly makes a false statement or representation of a material fact, or who knowingly fails to disclose a material fact, in any bill, invoice, claim, or other document requesting reimbursement for work or services performed in connection with assistance provided under this Act, or who knowingly falsifies or withholds, conceals, or destroys any documents, books, records, reports, or statements upon such request for reimbursement is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

"(c) Any person, organization, or other entity who knowingly misapplies the proceeds of a loan or other cash benefit obtained under any section of this Act shall be subject to a fine in an amount equal to one and one-half times the misapplied amount of the loan or cash benefit.

"(d) Whenever it appears that any person, organization, or other entity has violated or is about to violate any provision of this Act, including rules and regulations issued and civil penalties imposed, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in the district court of the United States having jurisdiction where the violation occurred or, at the option of the parties, in the United States District Court for the District of Columbia.

"(e) The President, or the duly authorized representative of the President, shall expediously refer to the Attorney General of the United States for appropriate action such evidence developed in the performance of functions under this Act as may be found to warrant consideration for criminal prosecution under the provisions of this Act or other Federal law.".

(b) Title III of the Disaster Relief Act of 1974 is amended by deleting subsections (a) and (c) of section 314 (42 U.S.C. 5157), as redesignated by section 7(1) of this Act, and by renumbering "(b)" from the remaining subsection of section 314 as subsection "(f)" of section 318 as added by section 11(a) of this Act.

(c) Title IV of the Disaster Relief Act of 1974 is amended by deleting section 405 (42 U.S.C. 5175) and by renumbering subsequent sections appropriately.

(d) Section 315 of the Disaster Relief Act of 1974 (42 U.S.C. 5158), as redesignated by section 7(1) of this Act, is further redesignated as section 314.

SEC. 13. Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5171-5189) is amended by adding three new sections as follows and by renumbering subsequent sections appropriately:

PROCEDURES

"SEC. 401. (a) All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such Governor's request shall be based upon a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of this request, and as a prerequisite to major disaster assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. He shall furnish information on the extent and nature of State resources which have been or will be used to alleviate the conditions of the disaster, and shall certify that for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will constitute the expenditure of a reasonable amount of the funds of such State and local governments for alleviating the damage, loss, hardship, or suffering resulting from such disaster, including, but not limited to, the cost-sharing provisions pursuant to sections 405, 406, 407, and 410 of this Act. Based upon such Governor's re-

quest, the President may declare that a major disaster exists.

"(b) In any case where an eligible applicant (or the State) is unable to assume its financial responsibility under the cost-sharing provisions of sections 405, 406, and 407 of this Act, the President is authorized to lend or advance to the State such 25 per centum share. For the purposes of section 405, such loan or advance shall be authorized only after the occurrence of concurrent, multiple major disasters in a given jurisdiction, or the extraordinary costs of a particular major disaster, and when the damages caused by such major disasters are so overwhelming and severe that it is not possible for the applicant or the State to assume their financial responsibility under this Act immediately. Except as provided by subsection (c) of this section, any such loan or advance is to be repaid to the United States; there shall be no deferral of the repayment of loans or advances authorized by this subsection or of accrued interest. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance.

"(c) The President may cancel all or any part of such loan or advance made regarding section 405 or section 406 for concurrent, multiple major disasters or a single catastrophic major disaster if a determination is made that following the three full fiscal years after the loan or advance is made, the applicant demonstrates substantial and continuing inability to repay all or part of the loan or advance.

"(d) The President shall issue regulations describing the terms and conditions under which any loans or advances authorized by this section may be made or canceled.

FEDERAL ASSISTANCE

"SEC. 402. In any major disaster, the President may—

"(a) direct any Federal agency with or without reimbursement to utilize its authorities and the resources granted to it under other Acts including, but not limited to, personnel, equipment, supplies, facilities, and managerial, technical, and advisory services in support of State and local assistance efforts;

"(b) coordinate all Federal agencies and voluntary relief or disaster assistance organizations providing disaster assistance, and coordinate disaster assistance with State and local officials; and

"(c) provide technical and advisory assistance to affected State and local governments in the performance of essential community services, warning of risks and hazards, public information and assistance in health and safety measures, management and control, and reduction of immediate threats to public health and safety.

COOPERATION OF FEDERAL AGENCIES IN RENDERING DISASTER ASSISTANCE

"SEC. 403. (a) In any major disaster, Federal agencies are hereby authorized, on the direction of the President, to provide assistance by—

"(1) utilizing or lending, with or without compensation therefore, to States and local governments, their equipment, supplies, facilities personnel, and other resources, other than the extension of credit under the authority of any Act;

"(2) distributing or rendering, through the American National Red Cross, the Salvation Army, the Menonite Disaster Service, and other relief and disaster assistance organizations, or otherwise, medicine, food, and other consumable supplies, other services to disaster victims, or emergency assistance;

"(3) donating or lending equipment and supplies, including that determined in accordance with applicable laws to be surplus to the needs and responsibilities of the Federal Government, to State and local governments for use or distribution by them for the purposes of this Act; and

"(4) performing on public or private lands or waters any emergency work or services essential to save lives and to protect and preserve property, public health and safety, including, but not limited to: Search and rescue, emergency medical care, emergency mass care, emergency shelter, and provisions of food, water, medicine, and other essential needs, including movement of supplies or persons; construction of temporary bridges necessary to the performance of emergency tasks and essential community services; provision of temporary facilities for schools and other essential community services; warning of further risks and hazards; public information and assistance on health and safety measures; technical advice to State and local governments on disaster management and control; reduction of immediate threats to life, property, and public health and safety; and making contributions to State or local governments for the purpose of carrying out the provisions of this paragraph. Such contributions for emergency work under this section and section 402 of this Act shall not exceed 100 per centum of the net eligible cost, or for small projects 100 per centum of the Federal estimate of the net eligible cost, of such emergency work or services performed by State and local governments: *Provided*, That where debris removal assistance is appropriate under this section or section 402 of this Act it shall be provided in accordance with the terms and conditions of section 406 of this Act.".

SEC. 14. (a) Section 405 of the Disaster Relief Act of 1974 (42 U.S.C. 5172), as redesignated by section 12 of this Act, is amended to read as follows:

"(a) The President is authorized to make contributions to State or local governments, to help repair, restore, reconstruct, or replace public facilities belonging to such State or local government which were damaged or destroyed by a major disaster. Notwithstanding any other provision of law, such contribution shall be limited to 75 per centum of the net eligible cost, or for small projects 75 per centum of the Federal estimate of the net eligible cost, of repairing, restoring, reconstructing, or replacing any such facility estimated on the basis of the design of such facility as it existed immediately prior to such major disaster and in conformity with current applicable codes, specifications, and standards. For the purposes of this section, 'public facility' includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility, any non-Federal-aid street, road, or highway, any other public building, structure, or system including those used for educational or recreational purposes, and any park.

"(b) The President is authorized to make contributions to help repair, restore, reconstruct, or replace eligible private nonprofit facilities which were damaged or destroyed by a major disaster. Notwithstanding any other provision of law, such contributions shall be 75 per centum of the net eligible cost, or for small projects 75 per centum of the Federal estimate of the net eligible cost, of repairing, restoring, reconstructing, or replacing any such facility estimated on the basis of the design of such facility as it existed immediately prior to such major disaster and in conformity with current applicable codes, specifications, and standards. For the purposes of this section, 'eligible private nonprofit facility' means private nonprofit educational, utility, emergency, medical, and custodial care facilities, including those for the aged and disabled, and such private nonprofit facilities on Indian reservations, which were damaged or destroyed by a major disaster.

"(c) No authority under this section shall be exercised unless the affected State, local government, or eligible private nonprofit organization first agrees that such facility shall be repaired, restored, reconstructed, or replaced in compliance with flood plain management and hazard mitigation criteria required by the President, with the provisions of the Coastal Barrier Resources Act and other applicable Federal statutes, and in conformity with other applicable codes, specifications and standards, except as otherwise provided in section 315 of this Act.

"(d) For those facilities eligible under this section which were in the process of construction when damaged or destroyed by a major disaster, the contribution shall be 75 per centum of the net eligible costs of restoring such facilities substantially to their predisaster condition: *Provided*, That the term 'net eligible costs' shall not include cost which, under a contract, are the responsibility of a contractor.

"(e) In those cases, except for small projects, where a State or local government determines that public welfare would not be best served by repairing, restoring, reconstructing, or replacing particular public facilities owned or controlled by that State or that local government and which have been damaged or destroyed in a major disaster, it may elect to receive, in lieu of the contribution described in subsection (a) of this section, a contribution that shall be 50 per centum of the Federal estimate of the net eligible cost of repairing, restoring, reconstructing, or replacing such damaged facilities owned by it within its jurisdiction. The cost of repairing, restoring, reconstructing, or replacing damaged or destroyed public facilities shall be estimated on the basis of the design of each facility as it existed immediately prior to such disaster and in conformity with current applicable codes, specifications, and standards. Funds contributed under this subsection may be expended either to repair or restore certain selected damaged public facilities or to construct new public facilities which the State or local government determines to be necessary to meet its needs for governmental services and functions in the disaster-affected area.".

(b) The Disaster Relief Act of 1974 is amended by deleting section 421 (42 U.S.C. 5189), as redesignated by section 11(c) and 12 of this Act, and by striking "or 419" each place that this phrase appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act.

(c) Section 406 of the Disaster Relief Act of 1974 (42 U.S.C. 5173), as redesignated by section 12 of this Act, is amended by adding at the end thereof the following:

"(c) Notwithstanding any other provision of law, whether carried out directly through

Federal departments, agencies, or instrumentalities or through grants to State or local governments, Federal assistance provided under authority of this section shall be 75 per centum of the net eligible costs, or for small projects 75 per centum of the Federal estimate of the net eligible costs, of debris removal".

SEC. 15. Section 407(a) of the Disaster Relief Act of 1974, as redesignated by section 12 of this Act, is amended to read as follows:

"(a) The President is authorized to provide, either by purchase or lease, temporary housing including, but not limited to, unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings for those who, as a result of a major disaster, require temporary housing. Whenever he determines it to be in the public interest, the President is authorized to provide temporary housing assistance by using Federal departments, agencies, or instrumentalities. In addition, the President is authorized to provide temporary housing assistance by contributing not to exceed 100 per centum (or 75 per centum for group site development pursuant to paragraph (2) of this subsection) of the costs of temporary housing assistance to a State or local government which provides such assistance to those who require it as a result of a major disaster. Federal financial and operational responsibilities for temporary housing assistance shall not exceed eighteen months from the date of the major disaster declaration by the President, unless he determines that due to extraordinary circumstances it would be in the public interest to extend the eighteen month period.

"(1) Temporary housing assistance pursuant to this subsection shall be provided only when adequate alternative housing is unavailable, unless there is compelling need to do so because of extreme hardship.

"(2) Any mobile home or other readily fabricated dwelling supplied pursuant to this subsection shall be placed on a site complete with utilities provided either by the State or local government, or by the owner or occupant of the site who was displaced by the major disaster. When the President determines such action to be in the public interest, he may authorize installation of essential utilities at Federal expense and he may elect to provide other more economical or accessible sites. However, in the event the President authorizes the development of a group site, that is, a site for two or more households, the Federal share shall be 75 per centum of the development costs, and the remainder shall be met by funds provided by the State or local government.".

SEC. 16. Section 408 of the Disaster Relief Act of 1974 (42 U.S.C. 5176), as redesignated by sections 11(c) and 12 of this Act, is amended by adding "(a)" after "408." and by adding a new subsection "(b)" as follows:

"(b) The President is authorized to contribute up to 50 per centum of the cost of implementing hazard mitigation projects which he has determined would be cost effective and would substantially reduce the risk of future damage, hardship, loss, or suffering in the area affected by a major disaster. Such projects shall be identified following the evaluation of natural hazards provided for in subsection (a) of this section and shall be subject to approval by the President. The total of the contributions made under this subsection shall not exceed 10 per centum of the Federal estimate of grants made under the authority of section 405 of this Act for each major disaster.".

SEC. 17. Section 409(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5177), as redesignated by sections 11(c) and 12 of this Act, is amended to read as follows: "The President is authorized to provide such disaster unemployment assistance as he deems appropriate to individuals who are unemployed as a result of a major disaster. Disaster unemployment assistance authorized by this section shall be available to an eligible individual for a period not to exceed fifty-two weeks after the week in which an eligible individual became unemployed as a result of a major disaster, and such period shall be regarded as the disaster assistance period for that individual for the purposes of this section. Disaster unemployment assistance shall not be payable with respect to any week for which an individual is entitled to unemployment compensation (as defined in section 85(c) of the Internal Revenue Code of 1954, as amended) or waiting week credit. The maximum amount of disaster unemployment assistance payable to any individual with respect to a major disaster shall not exceed twenty-six times the maximum weekly amount for which the individual establishes eligibility minus the amount of any unemployment compensation paid to the individual during the fifty-two week benefit period established pursuant to this section. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred, and the amount of assistance under this section for a week of unemployment shall be reduced by any amount of private income protection insurance compensation available to such individual for such week of unemployment. The payment of unemployment compensation to an individual with respect to any week subsequent to the exhaustion of eligibility of such individual for disaster unemployment assistance and within the fifty-two week benefit period established pursuant to this section shall not be regarded as duplication of benefits under section 312 of this Act. The President is directed to provide disaster unemployment assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.".

SEC. 18. (a) Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 11(c) and 12 of this Act, is amended by adding a period after the word "share" in the second sentence of that subsection and by deleting the following phrase from the second sentence of section 410(b): "and any such advance is to be repaid to the United States when such State is able to do so.".

(b) Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 11(c) and 12 of this Act, is further amended by adding the following sentences between the second and third sentences of this subsection: "Such advances shall bear interest from the date of the advance at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance. Repayment of such advances and of interest which accrues on the advances may be deferred for no longer than two years from the date of the major disaster declaration.".

SEC. 19. Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 156(c) and 157 of this Act, is amended by striking "$5,000" in the last sentence and inserting in lieu thereof "$7,500".

SEC. 20. Section 415 of the Disaster Relief Act of 1974 (42 U.S.C. 5183), as redesignated by sections 11(c) and 12 of this Act, is amended by striking "(through the National Institute of Mental Health)".

SEC. 21. Section 420(d) of the Disaster Relief Act of 1974 (42 U.S.C. 5188), as redesignated by sections 11(c) and 12 of this Act, is deleted.

SEC. 22. The Disaster Relief Act of 1974 (42 U.S.C. 5121-5202) is amended by—

(1) striking paragraph (7) of section 101(b) (42 U.S.C. 5121), striking "; and" from paragraph (6) and adding in lieu thereof a period, and adding "and" at the end of paragraph (5);

(2) striking "the Canal Zone," in paragraphs (3) and (4) of section 102 (42 U.S.C. 5122);

(3) striking "DISASTER" in the caption of title III (42 U.S.C. 5141-5158) and inserting in lieu thereof "MAJOR DISASTER RELIEF AND EMERGENCY";

(4) striking "section 402 or 404 of" in section 308(b) (42 U.S.C. 5151), as redesignated by section 7(1) of this Act;

(5) adding "emergency or" before the word "major each of two places that word appears in section 307 (42 U.S.C. 5150), as redesiganted by section 7(1) of this Act;

(6) striking in section 310(b) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, everything after the word "areas" and inserting in lieu thereof a period;

(7) striking "or section 803 of the Public Works and Economic Development Act of 1965," each place the phrase appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act;

(8) striking "402" each place that number appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act, and inserting in lieu thereof "405";

(9) adding "emergency and major" before the word "disaster" in section 313 (42 U.S.C. 5156), as redesignated by section 7(1) of this Act;

(10) adding the word "MAJOR" between the words "FEDERAL" and "DISASTER" in the caption to title IV (42 U.S.C. 5171-5189);

(11) striking "in emergencies or in major disasters" in the third sentence of paragraph (2) of section 407(d) (42 U.S.C. 5174), as redesignated by section 12 of this Act;

(12) striking "311" in section 407(d)(2) (42 U.S.C. 5174), as redesignated by section 12 of this Act, and inserting in lieu thereof "308";

(13) striking "an emergency or" in section 417 (42 U.S.C. 5185), as redesignated by sections 11(c) and 12 of this Act, and inserting in lieu thereof "a";

(14) striking "408" in section 605 (42 U.S.C. 5121) and inserting in lieu thereof "410";

(15) striking "301" in subtitle C of title I of the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512; 86 Stat. 919) and inserting in lieu thereof "401";

(16) striking "President" each place that word appears in section 309(a), as redesignated by section 7(1) of this Act, and inserting in lieu thereof "Federal coordinating officer".

(17) striking "rent" in section 310(a)(2) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, and inserting in lieu thereof "income"; and

(18) striking paragraph (1) of section 310(a) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, and renumbering subsequent paragraphs appropriately.

SEC. 23. (a) Section 6(a)(6)(E) of the Coastal Barrier Resource Act, 16 U.S.C. 3505(a)(6)(E), is amended by striking out "pursuant to sections 305 and 306 of the Disaster Relief Act of 1974" and inserting in lieu thereof "pursuant to sections 402, 403, 502, and 503 of the Major Disaster Relief and Emergency Assistance Act".

(b) Whenever any reference is made in any provision of law (other than this Act), regulation, rule, record, or document of the United States to provisions of the Disaster Relief Act of 1974 repealed by this Act or renumbered by this Act, such reference shall be deemed to be a reference to the appropriate provisions of the Major Disaster Relief and Emergency Assistance Act.

SEC. 24. (a) Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect ninety days after the date of enactment of this Act or on the date on which the President, after consultation with State and local governments, publishes final rules and regulations relating to the definition of costs for which State and local governments may be reimbursed under the Disaster Relief Act of 1974 (as amended by this Act), whichever is later.

(b)(1) This Act and the amendments made by this Act shall not affect the administration of any assistance provided under the authority of the Disaster Relief Act of 1974, for any major disaster or emergency declared by the President prior to the effective date of this Act.

(2) Except with regard to section 409(a) of the Disaster Relief Act of 1974, as redesignated by section 11(c) and 12 of this Act (relating to disaster unemployment assistance)—

(A) rules and regulations issued under statutory provisions which are repealed, modified, or amended by this Act shall continue in effect as though issued under the authority of this Act until they are expressly abrogated, modified, or amended by the President; and

(B) provision of disaster assistance authorized by statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder, or proceedings involving violations of statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder which are in process prior to the effective date of this Act, may be continued to conclusion as though the applicable statutory provisions has not been repealed, modified, or amended.

(3) Violations of statutory provisions or rules and regulations issued under the authority of statutory provisions repealed, modified, or amended by this Act or rules or regulations issued thereunder which are committed prior to the effective date of this Act may be proceeded against under the law in effect at the time of the specific violation.

(c) Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5171-5189) is amended by adding at the end thereof a new section as follows:

"SEC. 421. No State shall be ruled ineligible to receive assistance under this Act solely by virtue of an arithmetic formula based on income or population."

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EMERGENCY HIGHWAY FUNDING FLEXIBILITY ACT OF 1986

Mr. DOLE. Mr. President, I send a bill to the desk on behalf of Senator STAFFORD and ask for its immediate consideration. It is a highway funding flexibility bill.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2951) to authorize the use of currently apportioned Highway Trust Funds for various highway projects.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Kansas?

There being no objection, the Senate proceeded to consider the bill.

● Mr. STAFFORD. Mr. President, I am deeply disappointed that we have been unable to resolve the major differences between the House and Senate on the Federal-Aid Highway Act of 1986.

It is my hope and my intention that the Environment and Public Works Committee will begin consideration of the highway bill passed by the Senate as S. 2405 immediately upon the return of the 100th Congress in January. I believe that it is extremely important that States receive their Federal-aid highway funds as soon as possible. There will be disruption to the program because we were not able to release highway funds on October 1. In order to minimize this disruption, action must be taken immediately next year.

States are carrying over approximately $6 billion in highway apportionments from previous years that they may obligate in fiscal year 1987 without further legislative action. However, for many States these funds are contained in categories which are not the State's most pressing need or are in amounts too small to move a project forward. In order to give the States the maximum benefit of the $6 billion they can spend at this time, I have introduced legislation which would give the States total flexibility in obligating these funds in any category they choose.

This bill would allow a State to use funds made available to it by formula for one Federal-aid category—such as the interstate, primary, secondary, or urban system or bridges—on projects on any other Federal-aid category. The Federal matching share would be determined by the system or type of project constructed. The normal project requirements would be applied, based on the type of project constructed.

The Department of Transportation has requested that this legislation be passed.

Again, Mr. President, I very much regret that the multiyear highway bill was not agreed to this year. It is unfortunate that the House committee was unwilling to go to conference immediately without preconditions and make the best use of the time available to work out our major differences. I will continue to make every effort to complete this legislation early next year. In the meantime, I believe we owe the States whatever help we can give them in making the most efficient use of the money they do have available.●

● Mr. BURDICK. Mr. President, I regret that the House and Senate have been unable to reach an agreement on reauthorization of the Federal-Aid Highway Program. I am comfortable with the fact that the Senate conferees did their very best in trying to reach an accommodation with the House that best reflected the needs of the entire Nation.

I am fully aware of the fact that many States will face a short-term budgeting problem and may have to shelf some projects until a major bill can be passed. I encourage the Senate and House to adopt this measure before adjournment. It provides States program flexibility to spend down their $6.3 billion in remaining unobligated balances.

During the interim, I would encourage States and highway contractors to talk to their Members on the importance of passing legislation during the opening days of the 100th Congress. States and Members should also reevaluate their support for highway demonstration projects. The sad truth is that there are very few winners in that game. It hurts every State by reducing the limited dollars available under the present budget constraints for the regular program.

Under the current emphasis placed on such projects by the House and generous offer made by the Senate conferees in order to obtain a full bill, I am concerned that others will jump on the bandwagon for such projects next year. I can understand the logic that every State will now want a demonstration project to avoid loosing highway dollars. However, a better solution is to be fair to all States and not provide special treatment to just a few.

In closing, I would like to thank Chairman ROBERT STAFFORD and Transportation Subcommittee Chairman STEVE SYMMS for their support and efforts in trying to pass a major highway bill.

I would also like to recognize the hard work and long hours by the majority and minority highway staff who worked for nearly 2 years on reauthorizing the highway program.

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I am especially grateful to my friend and colleague from the State of Texas. The full Senate Environment and Public Works Committee will sincerely miss LLOYD BENTSEN's leadership and expertise on the many difficult issues under its jurisdiction.

Regarding highways, LLOYD BENTSEN, has been very fair and a proven statesman. The committee supports his efforts to provide an equitable 85 percent return to the donor States, which for years have been contributing more to the highway trust fund than they have received back in program funding. Last year he graciously deferred the 85-percent minimum issue so that States could receive their delayed interstate construction funds.

Yesterday he indicated his willingness to make another concession to the House in order to get a bill. I think that his willingness to place the national highway program as whole above his own State's interest speaks very highly of his caliber as U.S. Senator and individual.

I can assure my colleagues that the next Senate highway bill will contain the full Bentsen amendment, as well as other provisions of importance to Senate Members—one-half of 1 percent of the interstate allocation for States that have completed or nearly completed their interstates and retention of existing law in distributing the 4R formula.●

THE EMERGENCY HIGHWAY FUNDING FLEXIBILITY ACT OF 1986

● Mr. CHAFEE. Mr. President, I join today with Senator STAFFORD, the chairman of the Committee on Environment and Public Works, and my other distinguished colleagues on the committee in introducing the Emergency Highway Funding Flexibility Act of the 1986.

During the past several weeks, the members of our committee have been working diligently to reach an agreement with the House of Representatives on comprehensive multiyear legislation to reauthorize the Federal-aid highway programs. The Senate conferees have endeavored to reach a compromise with the House on a number of important issues, Although some progress has been made, it is evident that not enough time remains in the 99th Congress to completely resolve the differences between the House and Senate bills. It is extremely important for use to take some short-term action to assist the States in meeting their highway construction needs until a long-term highway bill can be adopted, hopefully soon after Congress reconvenes in January.

The purpose of the legislation we are introducing today is to provide flexibility to the States in the use of the road construction funds which have already been apportioned to them in fiscal year 1986 and in previous years. This will allow States to pool their unobligated categorical funds and target those funds to their highest priority Federal-aid projects. Funds attributable by formula for one category could be shifted into other categories, permitting high priority projects to move forward and not be interrupted due to the delay of multiyear legislation.

The Rhode Island Department of Transportation has indicated that this type of legislation is important in order for the State's highway construction program not to be disrupted during the next several months. It is undoubtedly important to a number of other States to have this flexibility between now and the time Congress passes long-term legislation. I hope this measure can be adopted quickly and then approved by the House of Representatives.●

The PRESIDING OFFICER. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2951

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Highway Funding Flexibility Act of 1986".

SEC. 2. Any unobligated funds apportioned to a State for highway construction projects under Chapter 1 of title 23, United States Code, or under the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424) prior to October 1, 1986, may be obligated by the State prior to April 30, 1987, for any highway construction project eligible to receive such funds under any apportionment. The Federal share payable shall be determined by the system or type of Federal-aid highway project to be constructed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

IMMIGRATION AND NATIONALITY ACT

Mr. DOLE. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 1452, dealing with refugee assistance, and I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1452) to amend the Immigration and Nationality Act to extend for two years authorization for appropriation for refugee assistance.

There being no objection, the Senate proceeded to consider the bill.

● Mr. SIMPSON. Mr. President, I shall propose an amendment to H.R. 1452, the House-passed version of the refugee reauthorization bill.

The purpose of this legislation is to reauthorize, for 2 years, the domestic resettlement programs for refugees that we admit from abroad.

The legislation passed the House over a year ago, and despite inclusion of funding for these programs on the continuing resolution, I feel we should dispose of this bill.

The administration has objected to certain portions of the House passed bill, and the Senate Judiciary Committee bill is somewhat different, so my amendment would alter somewhat the house bill, while retaining its overall character.

The amendment would first, preserve line items for social services and medical screening, but delete the line item for targeted assistance, second, delete the requirement that refugees be given presumptive Medicaid eligibility for 1 year, and third, delete a provision that moves the Office of Refugee Resettlement into the Office of the Secretary of Health and Human Services.

Mr. President, I believe my amendment can be supported by a majority on both sides of the aisle, and I would ask for its inclusion.●

AMENDMENT NO. 3512

(Purpose: To amend the House-passed refugee assistance reauthorization Act to conform it more closely to the version reported by the Senate Judiciary Committee)

Mr. DOLE. Mr. President, I send an amendment to the desk on behalf of Senator SIMPSON, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. SIMPSON, proposes an amendment numbered 3512.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1, line 5, strike out "1985" and insert in lieu thereof "1986".

On page 2, line 11, strike out "1986 and 1987" and insert in lieu thereof "1987 and 1988".

On page 2, line 20, strike out "1986 $74,783,000 and for fiscal year 1987" and insert in lieu thereof "1987 $74,783,000 and for fiscal year 1988".

On page 2, line 24, strike out "1986 $8,761,000 and for fiscal year 1987" and insert in lieu thereof "1987 $8,761,000 and for fiscal year 1988".

On page 3, line 2, strike out "paragraphs" and insert in lieu thereof "paragraph".

On page 3, strike out lines 3 through 6.

On page 3, line 7, strike out "(5)" and insert in lieu thereof "(4)".

On page 3, line 8, strike out "1986 $5,215,000 and for fiscal year 1987" and insert in lieu thereof "1987 $5,215,000 and for fiscal year 1988".

On page 3, strike out lines 15 through 17.

On page 3, line 18, strike out "(b)" and insert in lieu thereof "(a)".

On page 3, line 22, strike out "(c)" and insert in lieu thereof "(b)".

On page 5, lines 23 and 24, strike out "1985 and for fiscal year 1986" and insert in lieu thereof "1986 and for fiscal year 1987".

On page 11, line 16, strike out "1986 and 1987" and insert in lieu thereof "1986 and for fiscal year 1987".

On page 11, lines 22 and 23, strike out "by the Department of State Authorization Act, Fiscal Years" and insert in lieu thereof "for fiscal years".

On page 12, lines 17 and 18, strike out "after March 31, 1975," and insert in lieu thereof "not more than 36 months before the beginning of such fiscal year".

On page 13, line 11, strike out "1986" and insert in lieu thereof "1987".

On page 14, line 22, insert "and" after "self-sufficiency,".

On page 15, line 2, strike out "entity, and" and insert in lieu thereof "entity.'.".

On page 15, strike out lines 3 through 4.

On page 16, strike out lines 9 through 20.

On page 16, line 21, strike out "(c)" and insert in lieu thereof "(b)".

On page 17, line 5, strike out "(d)" and insert in lieu thereof "(c)".

On page 17, line 6, strike out "sections (a) and (b)" and insert in lieu thereof "section (a)".

● Mr. SIMPSON. Mr. President, I am pleased to support the passage of legislation that would reauthorize, for 2 years, the programs that assist in the domestic resettlement of the many refugees that we admit from abroad each year.

The bill would reauthorize, for 2 years, the domestic resettlement programs, grant a "such sums" authorization for cash and medical assistance, provide specific line items for social services and medical screening, impose new requirements on the voluntary agencies that help resettle these refugees, provide for the reimbursement of certain State and local incarceration costs with respect to Mariel felons, and make other necessary adjustments in our U.S. Refugee Program.

This bill was passed by the House over 1 year ago. While the Senate Judiciary Committee reported its legislation in June 1985, the legislation was not brought to the floor because of difficulties in resolving some of the particular provisions of the bill. I therefore feel it better to move the House legislation, despite the precedence of the continuing resolution, than to wait until next year before starting the process again.

Mr. President, I commend the legislation to my colleagues.●

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Wyoming.

The amendment (No. 3512) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment, and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 1452), as amended, was passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONSULAR EFFICIENCY BILL

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of H.R. 4444, the consular efficiency bill now being held at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4444) to amend the Immigration and Nationality Act, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3513

(Purpose: To provide for the issuance of certificates of citizenship for children adopted by United States citizens)

Mr. BYRD. Mr. President, I send an amendment to the desk on behalf of Mr. BRADLEY, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. BRADLEY, proposes an amendment numbered 3513.

Mr. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following:

SEC. 7. ISSUANCE OF CERTIFICATES OF CITIZENSHIP FOR CHILDREN ADOPTED BY UNITED STATES CITIZENS.

Section 341 of the Immigration and Nationality Act (8 U.S.C. 1452) is amended—

(1) by inserting "(a)" after "341", and

(2) by adding at the end the following new subsection:

"(b)(1) The adoptive citizen parent or parents of a child described in paragraph (2) may apply to the Attorney General for a certificate of citizenship for the child. Upon proof to the satisfaction of the Attorney General that the applicant and spouse, if married, are citizens of the United States, whether by birth or by naturalization, and that the child is described in paragraph (2), the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship, but only if the child is at the time within the United States.

"(2) A child described in this paragraph is a child born outside of the United States who—

"(A) in under the age of 18 years,

"(B) is adopted before the child reached the age of 16 years by a parent who is a citizen of the United States, either by birth or naturalization, and

"(C) is residing in the United States in the custody of the adopting citizen parent, pursuant to a lawful admission for permant residence.".

● Mr. BRADLEY. Mr. President, the amendment I am offering would change the process of naturalizing foreign-born children being adopted by U.S. citizens from a judicial proceeding to an administrative one. Streamlining this process will accomplish at least two important goals: first, it will allow the Immigration and Naturalization Service to operate more efficiently; and, second, it will spare parents and children the anguish of having to go through the current lengthy court proceedings.

Mr. President, this problem was brought to my attention by a number of New Jersey parents, who told me of delayed, anguishing proceedings they had faced when trying to adopt minor children. One such constituent received her baby in December 1981. She filed Application to File a Petition for Naturalization on Behalf of a Child (Form N402) in February 1983, had a preliminary hearing on April 18, 1984. She is still waiting for the final hearing to determine whether their infants are of good moral character. In other words, her child has been in the United States for more than 4 years and is still not a citizen. Others have waited even longer. All describe the difficulties of commuting with their small children to distant locations.

Mr. President, it is beyond me what we hope to get from putting children and their parents through this process. It is clearly not to determine if an infant or a minor child is of good moral character or adheres to the principles of the Constitution. Frequently these children are not even old enough to talk—at least when the process starts.

Mr. President, in May I introduced legislation to amend the Immigration and Naturalization Act in order to prevent the traditional practice of the Immigration and Naturalization Service of holding preliminary hearings or examinations for alien children whose parents are U.S. citizens. The amendment now before us I believe is even

stronger than my original bill, because it streamlines this process still further.

Mr. President, many Americans want to adopt a child. And an increasing number of couples, anxious to experience the pleasures of raising a child, are choosing to adopt a child born in a foreign country.

Once these children are adopted, they are due all the rights and privileges of an American-born child. But because they were born in a foreign country, these adopted children must be naturalized as U.S. citizens.

The naturalization process for minor children, Mr. President, should be a formality. Under current law, adopted children are eligible for naturalization immediately following their adoption and lawful admission to the United States without any period of residence. The current naturalization requires preliminary hearings or examinations to determine whether any applicant for citizenship is of good moral character, attached to the principles of the Constitution, and well disposed to the good order and happiness of the United States.

Imagine the hardship these hearings cause both parents and children: the parents, who only want to accept these new children into their homes and make them feel welcome; the children, strangers in a new country and a new family, who only want to be accepted in both.

Mr. President, it makes no sense to me to require adopted children to go through this lengthy judicial process at all. I believe this process causes undue hardship to parents and children alike, and the agonizing delays aggravate what is surely a very traumatic period of adjustment. The amendment which I am introducing today will eliminate any involvement with the judicial process for all children who are under the age of 18 and have been adopted before the age of 16 by a citizen of the United States. If a child meets these criteria, then he or she will be granted a certificate of citizenship; through a simple administrative mechanism.

In summary, Mr. President, my bill amends the Immigration and Naturalization Act in order to correct a quirk in the naturalization process. It will benefit many Americans by facilitating the adoption of foreign children, and it will hurt no one. I urge my colleagues to join me in this worthwhile effort.

Mr. SIMPSON. Mr. President, I commend to my colleagues for their favorable consideration the consular efficiency bill, H.R. 4444. It would make certain changes in the immigration laws which are noncontroversial and meant only to increase the efficiency and reduce the paperwork burden of U.S. consular officers when they administer our immigration laws abroad.

The bill was introduced by request for the administration, it passed the House by a voice vote, and it deserves our approval.●

● Mr. KENNEDY. Mr. President, I am pleased to join with our chairman of the Immigration and Refugee Policy Subcommittee, Mr. SIMPSON, in moving expeditiously on the bill passed by the House of Representatives to being some long-needed efficiencies to certain consular procedures required of the Department of State.

This bill will save taxpayer money by eliminating unnecessary paperwork and streamline the processing of several consular functions.

I support this legislation, and I join my colleague in urging favorable action on the House bill so that we can send it to the President's desk before the forthcoming recess.●

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from New Jersey.

The amendment (No. 3513) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 4444), as amended, was passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TECHNICAL CORRECTION IN THE ENROLLMENT OF S. 2638

Mr. DOLE. Mr. President, I send a concurrent resolution to the desk on behalf of Senator WARNER making technical corrections in the enrollment of S. 2638, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 173) to direct the Secretary of the Senate to make a technical correction in the enrollment of S. 2638.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

● Mr. NUNN. Mr. President, I rise, along with Senator WARNER, to introduce a concurrent resolution to correct an important technical oversight in the fiscal year 1987 defense authorization conference report which was just passed earlier this week.

My colleagues will recall that, earlier this month, the Senate confirmed Dr. Robert Barker to be the Chairman of the Military Liaison Committee. In addition to this position, Dr. Barker also serves as the assistant to the Secretary of Defense for Atomic Energy, a position that does not currently require Senate confirmation.

Now, a provision which Senator WARNER and I introduced when the Armed Services Committee marked up the authorization bill sets in motion the implementation of the major recommendations of the President's Blue Ribbon Task Group on Nuclear Weapons Program Management. As a part of this legislative package, the Military Liaison Committee is abolished. During his confirmation hearing, I had indicated to Dr. Barker that we would retain his status as a Presidential appointee in his other position, assistant to the Secretary of Defense for Atomic Energy.

Unfortunately, in the last minute rush to reach agreement in our conference on a number of outstanding issues including this provision, get the agreement down in writing, and get the conference results filed in both Chambers, the provision to continue Dr. Barker's status in the ATSD/AE position was omitted from the bill as filed.

Senator WARNER and I very much regret this technical oversight, since this change had been agreed to by the other body all along. Therefore, we are introducing this concurrent resolution to amend the relevant sections of the law forthwith. I urge prompt passage of this resolution so that we might speedily rectify this unfortunate situation.●

Mr. BYRD. Mr. President, inadvertently, the conference report on the final version of the fiscal 1987 Defense Department Authorization Act, S. 2638, contains several inaccuracies.

To correct those inaccuracies, and to make it absolutely, crystal clear what is the will and decision of Congress on the matters affected by these inaccuracies, I am sending technical corrections to the desk on behalf of Senator WARNER and Senator NUNN, acting for the Armed Services Committee, and myself.

I want to thank the distinguished Senator from Virginia [Mr. WARNER] for his assistance on behalf of the majority of the committee. He is a more-than-able chairman of the committee's Strategic Subcommittee. I also want to thank the distinguished Senator from Georgia [Mr. NUNN] as the respected

ranking minority member of the committee.

Mr. President, these technical corrections deal with section 1003 of the conference report, my amendment to the bill which requires the Joint Chiefs of Staff to report to the Congress about the military impacts on the United States of a policy to abandon American compliance with strategic offensive arms agreements and of Soviet violations.

These corrections also address the position of the assistant to the Secretary of Defense for Atomic Energy.

I will briefly discuss the former set of corrections, while my colleague, Senator NUNN, has some prepared remarks addressing the latter correction.

Both sets of corrections, Mr. President, seek to implement agreements reached in the conference on these matters, but, which were, as I said, inaccurately outlined, through inadvertence, in the conference report.

The set of technical corrections to the section dealing with the Joint Chiefs of Staff Military Assessment of a United States no-SALT policy includes a correction, as the conferees intended, to the due date of the required report to ensure that Congress receives the needed information, and any followup information, in the most timely manner, and without any delays.

These corrections also include a clarification to ensure that the military assessment addresses the possible Soviet military responses to a United States no-SALT policy, and not the likely Soviet responses. The original floor debate on my amendment, which was passed 97 to 1, clearly established that the will of the Senate was that the military assessment address the capabilities of the Soviet Union to respond militarily to the United States policy, not to address Soviet intentions to respond.

Our Nation's highest military officers repeatedly have indicated to Congress that it is far more prudent to judge Soviet capabilities, not Soviet intentions, when assessing the Soviet threat. Our top military leaders usually have stated that predicting Soviet intentions is much less certain than measuring Soviet military capabilities.

The intention of my amendment—an intention overwhelmingly supported by the full Senate—was to provide Congress with a detailed military assessment of the no-SALT policy based on Soviet capabilities, not Soviet intentions. These technical corrections remove any confusion in this regard.

The other technical corrections to section 1003 are intended to reflect, more accurately, the original language, and intent of my amendment, as adopted by the Senate and agreed to in the conference.

The PRESIDING OFFICER. The question is on the concurrent resolution.

The concurrent resolution was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE WARREN E. BURGER FEDERAL BUILDING AND U.S. COURTHOUSE

Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be discharged from further consideration of S. 2911, designating a building in St. Paul, MN, as the Warren E. Burger Federal Building and U.S. Courthouse, and I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S.2911) to designate the Federal building of the United States Courthouse at 316 North Robert Street, St. Paul, Minnesota, as the Warren E. Burger Federal Building and United States Courthouse.

There being no objections, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed as follows:

S. 2911

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Building and United States Courthouse located at 316 North Robert Street, Saint Paul, Minnesota, shall be known and designated as the "Warren E. Burger Federal Building and United States Courthouse". Each reference to such building in a law, map, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the "Warren E. Burger Federal Building and United States Courthouse".

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CORRECTION TO TECHNICAL ERRORS IN ENROLLMENT OF H.R. 5300

Mr. DOLE. Mr. President, I send a concurrent resolution to the desk on behalf of Senator PACKWOOD, and ask for its immediate consideration. It is technical corrections to the reconciliation bill.

THE PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 174) to correct technical errors in the enrollment of the bill H.R. 5300.

THE PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

THE PRESIDING OFFICER. The concurrent resolution is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the concurrent resolution.

THE PRESIDING OFFICER. The question is on the concurrent resolution.

The concurrent resolution was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONSTITUTION DAY

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate turn to the consideration of S. 2950, Constitution Day.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2950) to designate September 17, 1987, the bicentennial of the signing of the Constitution of the United States, as Constitution Day and to make such a day a legal public holiday.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. STEVENS. Mr. President, to me there is no day more worthy of celebration than the day the U.S. Constitution was signed. I am, therefore, pleased to be the sponsor of this legislation making September 17, 1987, a one-time national holiday—Constitution Day.

Even more than the signing of the Declaration of Independence, the signing of the Constitution by the Constitutional Convention marked the beginning of our Nation. That Convention, representing a loose confederation of former British colonies, and empowered to redraft the Articles of Confed-

eration, went beyond their charge and instead drew up the blueprint of the most successful government in history. When the framers of our Constitution sent their new document out to what would become the States for it to be ratified our country's life began.

There have been amendments to our Constitution but the basic form of our Government has remained unchanged. The balance between our three branches has not only proved successful in our country; it has set a standard by which other countries have measured their own governments.

It is only appropriate that we celebrate the 200th anniversary of our Constitution with all the energy we can muster. This is more than just another day for parades and parties: it is an opportunity to reflect on the history of our Nation, and the great concepts which have made us what we are today. However, while it is important that we think about the wisdom embodied in the Constitution, it is just as important that we do have parades to celebrate the bicentennial. This national celebration is the best way to convince Americans to think of ways to commemorate the founding of our Government.

The Original proposal embodied in this bill—a one-time national holiday—has been improved by Senator HATCH's amendment to make a permanent day of observance for our Constitution. If there is any day which deserves special recognition in this country, it is the anniversary of the signing of our Constitution.

Mr. THURMOND. Mr. President, I strongly support the pending legislation, establishing September 17, 1987, as "Constitution Day" and proclaiming that day as a one-time national holiday commemorating the Bicentennial of the United States Constitution.

Over the years, our Government has chosen to observe, through annual national holidays, a number of great leaders and great events in our Nation's history. I cannot imagine an occasion of greater historical significance to the people of the United States than the 200th birthday of its unique and unparalleled Constitution.

Mr. President, the bicentennial provides an opportunity for our citizens to gain a new appreciation of the vital role which the Constitution has played in making the United States the greatest country in the world. Establishment of a one-time holiday, by underscoring the significance of the Constitution, should stimulate many of our citizens to study and analyze its origin and meaning.

I am honored to be a member of the Commission on the Bicentennial of the United States Constitution. The Commission, under the leadership of its chairman, Chief Justice Warren Burger, is working with Federal entities, with the States and local communities, and with numerous nonpublic entities, to ensure that our observance of the bicentennial is meaningful. The Commission has strongly endorsed the one-time holiday proposed by this legislation, and believes that it will greatly enhance our bicentennial celebration.

Mr. President, I am hopeful that my colleagues in the Senate will support this important initiative. A one-time holiday would be an excellent way to observe 200 years of democracy under a document which, in my view, is the greatest that modern man has ever penned for the governing of a people. ● Mr. THURMOND. Mr. President, in section 3 of this legislation, it is stated that September 17, 1987, shall be treated as if it were a legal public holiday under section 6103(a) of title 5, United States Code, for purposes of any law. There apparently have been some who have questioned, in other contexts, whether the Federal Rules of Civil Procedure are laws.

I want to make clear that it is the understanding of this Senator that under S. 2216, the terms "any other law" as used in section 3 is intended to include the Federal Rules of Civil Procedure.

I ask the distinguished sponsor of the bill (Mr. STEVENS) if his understanding of this language is the same as mine.

Mr. STEVENS. Mr. President, I agree fully with my colleague that the terms "any other law" are intended in this instance to include the Federal Rules of Civil Procedure.

Mr. THURMOND. Mr. President, I thank the Senator for his response.●

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2950

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONSTITUTION DAY.

(a) FINDINGS.—The Congress finds that—

(1) the United States Constitution is the cornerstone of our system of Government under law;

(2) September 17, 1987, commemorates the bicentennial of the signing of the United States Constitution;

(3) the bicentennial of the signing of the United States Constitution serves as a reminder and a celebration of the rights, privileges, and responsibilities of citizenship;

(4) the United States Constitution signifies the importance of the rule of law and affirms our dedication to freedom and justice; and

(5) the United States Constitution provides the framework for our law, our spirit, and our beliefs as a Nation.

(b) DESIGNATION.—September 17, 1987, is designated as "Constitution Day".

(c) TREATMENT AS A LEGAL PUBLIC HOLIDAY.—September 17, 1987, shall be treated as if it were a legal public holiday under section 6103(a) of title 5, United States Code, for purposes of—

(1) any statute relating to pay or leave of employees (as defined by section 2105 of title 5, United States Code);

(2) section 2(d) of the joint resolution entitled "Joint resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America", approved June 22, 1942 (36 U.S.C. 174(d));

(3) section 15(a) of the Federal Contested Election Act (2 U.S.C. 394(a)); and

(4) any other law.

(d) AMENDMENT TO TITLE 5, UNITED STATES CODE, SECTION 6103.—Section 6103 of title 5, United States Code, is amended—

(1) by inserting in subsection (a) immediately after the item relating to Labor Day, the following new item:

"Constitution Day, September 17.";

(2) by striking out "For" in subsection (b) and inserting in lieu thereof "Except as provided for in subsection (d), for"; and

(3) by adding at the end thereof the following new subsection:

"(d) For purposes of statutes relating to pay and leave of employees, Constitution Day shall not be observed as a legal public holiday in calendar years beginning after December 31, 1987.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after December 31, 1986.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXTENSION OF CERTAIN EMERGENCY ACQUISITION AND NET WORTH GUARANTEE PROVISIONS

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 832, S. 2747, dealing with the Garn-St Germain Depository Institutions Act of 1982.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2747) to extend the emergency acquisition and net worth guarantee provisions of the Garn-St Germain Depository Institutions Act of 1982.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3514

(Purpose: To extend the emergency acquisition and net worth guarantee provisions of the Garn-St Germain Depository Institutions Act of 1982)

Mr. DOLE. Mr. President, I send an amendment to the desk on behalf of Senator GARN in the nature of a sub-

stitute and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. GARN, proposes an amendment in the nature of a substitute numbered 3514.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

TITLE I

SEC. 101. (a) section 141(a) of the Garn-St Germain Depository Institutions Act of 1982 is amended by striking out "October 13, 1986" and inserting in lieu thereof "June 30, 1987".

(b) No amendment made by section 141(a) of the Garn-St Germain Depository Institutions Act of 1982, as in effect on the day before the date of the enactment of this Act, to any other provision of law shall be deemed to have taken effect before such date of enactment and any such provision of law shall be in effect as if no such amendment had taken effect before such date of enactment.

TITLE II—FAIR DEPOSIT AVAILABILITY

SHORT TITLE

SEC. 201. This title may be cited as the "Fair Deposit Availability Act of 1986".

DEFINITIONS

SEC. 202. As used in this title—

(1) the term "depository institution" means—

(A) any insured bank or domestic branch as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act, other than a foreign bank having an insured or uninsured branch;

(B) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act;

(C) any savings bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act;

(D) any insured credit union as defined in section 101 of the Federal Credit Union Act or any credit union which is eligible to make application to become an insured credit union pursuant to section 201 of such Act;

(E) any member as defined in section 2 of the Federal Home Loan Bank Act; and

(F) any insured institution as defined in section 401 of the National Housing Act or any institution which is eligible to make application to become an insured institution under section 403 of such Act;

(2) the term "deposit account" means an account in a depository institution on which the account holder is permitted to make withdrawals by negotiable or transferable instruments, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others. Such term includes demand deposit accounts, negotiable order of withdrawal accounts, share draft accounts, savings deposits, and share accounts. Such term does not include time deposits;

(3) the term "Board" means the Board of Governors of the Federal Reserve System; and

(4) the term "check or similar instrument" means a check, negotiable order of withdrawal, share draft, money order, or similar instrument, but does not include noncash items.

DISCLOSURE OF FUND AVAILABILITY POLICIES

SEC. 203. (a) Before opening a deposit account, a depository institution shall provide a written disclosure to the potential customer of its general policy with respect to when a customer may withdraw funds deposited by check or similar instrument into the customer's deposit account. In the case of a deposit account which was opened prior to the effective date of this section, the depository institution shall include such disclosure with the first regularly scheduled mailing pertaining to the account which occurs after such effective date (but not later than 90 days after such effective date) unless the depository institution has provided a disclosure which meets the requirements of this section prior to such effective date.

(b) Each depository institution shall—

(1) post at each location where its employees receive deposits a clear and conspicuous notice setting forth its general policy with respect to when a customer may withdraw funds deposited by check or similar instrument; and

(2) mail at least annually a brief reminder with respect to an account that deposits by check or similar instrument may not be available for immediate withdrawal.

(c) Each owner of an automatic or electronic terminal shall provide at each terminal location where deposits may be made a brief reminder that deposits by check or similar instrument may not be available for immediate withdrawal.

(d) Any change to a depository institution's general policy with respect to when a customer may withdraw funds deposited by check or similar instrument into the customer's deposit account, other than a change which expedites the availability of such funds, may take effect only after the depository institution has provided notice of such changes to the customer.

(e) Each depository institution shall provide disclosure, consistent with the disclosures required under subsection (a), by telephone of its general policy with respect to when a customer may withdraw funds deposited by check or similar instrument into a customer's account upon the telephone request of any person.

(f) The Board shall prescribe regulations to carry out this section. These regulations may contain such definitions, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as the Board determines are necessary to effectuate the purposes of this section, to prevent circumvention or evasion of this section, or to facilitate compliance with this section. The regulations of the Board shall require all disclosures, statements, and notices provided to be clear and conspicuous and in language that can be readily understood.

(g) A depository institution that does not begin to compute interest or dividends on funds deposited by check or similar instrument to an interest bearing deposit account or a time deposit on or before the date on which that depository institution receives provisional credit for the deposit (or if provisional credit is given on a nonbusiness day, the next business day) shall provide a written disclosure, within the time periods required under subsection (a), with respect to when the institution begins to compute interest on such funds.

(h) The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this section and to aid customers by utilizing readily understandable language. Nothing in this Act requires the use of any such model form or clause prescribed by the Board under this section. A depository institution shall be deemed to be in compliance with the provisions of this section if it (1) uses any appropriate model form or clause as published by the Board, or (2) uses any such model form or clause and changes it by (A) deleting any information which is not required by this Act, or (B) rearranging the format.

(i) Model disclosure forms and clauses shall be adopted by the Board after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

INTEREST ON DEPOSITS

SEC. 204. For the purpose of computing the amount of interest or dividends payable with respect to an interest bearing deposit account or a time deposit, a depository institution may not delay beginning to compute interest on funds deposited by check or similar instrument to such an account beyond the date on which that depository institution receives provisional credit for the check or similar instrument (or if provisional credit is given on a nonbusiness day, on the next business day) unless the computation of interest begins at a later date for all deposits, including cash deposits, made to the account or deposit. Nothing in this section requires the payment of interest with respect to funds deposited by check or similar instrument which is returned unpaid.

IMPROVED CLEARING PROCEDURES

SEC. 205. (a) Not later than 18 months after the date of enactment of this Act, the Board shall publish for comment a regulation for the purpose of improving the check clearing system used by depository institutions by expediting the process for returning checks or other means in order to achieve the goal of—

(1) making deposits of funds by check or similar instrument drawn on local depository institutions available for withdrawal upon the expiration of one business day after deposit, and

(2) making deposits of funds by check or similar instrument drawn on other depository institutions available for withdrawal upon the expiration of three business days after deposit.

This subsection does not apply to any check or similar instrument which poses a serious risk of loss to a depository institution.

(b) In prescribing the regulation under subsection (a), the Board shall consider—

(1) adopting a uniform endorsement standard;

(2) providing for direct notification of returning checks and similar instruments to the depository institution of first deposit;

(3) providing for direct return of checks and similar instruments to the depository institution of first deposit;

(4) providing for return of all checks and similar instruments through the Federal Reserve System's clearinghouse;
(5) extending limits for returns;
(6) establishing schedules for the availability of funds deposited by checks and similar instruments;
(7) prescribing the availability of funds deposited by checks and similar instruments based on the nature of the account to which the deposit was made or the nature of the account holder;
(8) the use of electronic means of collecting and returning checks;
(9) providing for check truncation;
(10) the establishment of an automated return system;
(11) charging a depository institution based upon notification that a check or similar instrument will be presented for payment;
(12) creating incentives for depository institutions to return unpaid items promptly to the depository institution of first deposit; and
(13) keeping the costs of any improvements to be implemented to a minimum.
(c) The regulation prescribed under subsection (a) shall become effective not later than 36 months after the date of enactment of this section. Each depository institution shall comply with the provisions of such regulation.
(d) The Board shall establish an Expedited Funds Availability Council (hereinafter referred to as the "Council") to advise and consult with the Board in the exercise of its functions under this section. The Council shall consist of—
(1) the Comptroller of the Currency or his delegate;
(2) the Chairman of the Federal Deposit Insurance Corporation or his delegate;
(3) the Chairman of the Federal Home Loan Bank Board or his delegate;
(4) the Chairman of the National Credit Union Administration Board or his delegate;
(5) two members of the Consumer Advisory Council designated by the Board;
(6) one representative from the users of payment systems services; and
(7) one representative from the providers of payment systems services in competition with the services offered by the Federal Reserve System.
The Council shall meet from time to time at the call of the Board.

AVAILABILITY OF CERTAIN FUNDS

SEC. 206. The Secretary of the Treasury shall by regulation require that funds deposited by a check drawn on the Treasury of the United States, which is first endorsed for deposit by a customer who has an established relationship, as defined by the Board, with the depository institution shall be available for withdrawal by that customer not later than the date when the depository institution is given provisional credit for that check or, if provisional credit is given on a nonbusiness day, on the next business day.

ADMINISTRATIVE ENFORCEMENT

SEC. 207. (a) Compliance with the requirements imposed under this title shall be enforced under—
(1) section 8 of the Federal Deposit Insurance Act in the case of—
(A) national banks, by the Comptroller of the Currency;
(B) member banks of the Federal Reserve System (other than national banks), by the Board; and
(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System and Federal savings banks), by the Board of Directors of the Federal Deposit Insurance Corporation;
(2) section 5(d) of the Home Owner's Loan Act of 1933, section 407 of the National Housing Act, and section 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions; and
(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union or insured credit union.
(b) For the purpose of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.
(c) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a) of this section, the appropriate State regulatory authority shall enforce such requirements.
(d) The authority of the Board to issue regulations under this title does not impair the authority of any other authority designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this title.

CIVIL LIABILITY

SEC. 208. (a) Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed under section 1003 (other than subsection (e)), 1004, or 1006 with respect to any person is liable to such person in an amount equal to the sum of—
(1) any actual damage sustained by such person as a result of the failure;
(2)(A) in the case of an individual action such additional amount as the court may allow, except that the liability under this subparagraph shall not be less than $50 nor greater than $500; or
(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same depository institution shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the depository institution; and
(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.
In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance, the resources of the depository institution, the number of persons adversely affected, and the extent to which the failure of compliance was intentional.
(b) A depository institution may not be held liable in any action brought under this section for a violation of section 1003, 1004, or 1006 if the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a person's obligations under this Act is not a bona fide error.
(c) Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.
(d) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

EFFECT ON CHECK ACCEPTANCE POLICIES AND OTHER LAWS

SEC. 209. (a) Nothing in this title—
(1) prevents a depository institution, in accordance with the policy of such depository institution, from making funds available for withdrawal in a shorter period of time than is provided in this title or in regulations adopted by the Board; or
(2) affects a depository institution's right—
(A) to accept or reject a check for deposit; or
(B) if a check is accepted for deposit and the depository institution has made provisional settlement with the depositor, pursuant to law to—
(i) revoke the provisional settlement given by the depository institution;
(ii) charge back the depositor's account; or
(iii) claim a refund of such provisional credit.
(b) Except as provided in subsection (a), the provisions of this title or the regulations of the Board prescribed under this Act shall supersede the provisions of any State law which the Board determines to be inconsistent with the provisions of this title or such regulation, but only to the extent of the inconsistency.

IMPROVING PAYMENT MECHANISMS

SEC. 210. Not later than one year after the implementation of any regulations under section 1005 of this title, the Board shall prepare a study and submit its findings to the Congress on the effect of improvements and changes in the payments system, including—
(1) the effect of the changes made by section 805 of this title, and the advisability and feasibility of further changes;
(2) an assessment of improvements that can be made in the check collection system, including improved procedures for the return of unpaid items, reduction of costs, reduction in the number of returned checks, greater speed and efficiency in the check collection and return system, utilization of more efficient technology, and parity of treatment of depository institutions; and

(3) an assessment of the use of electronics in payments and of the need for improvements in the way the payments system provides services so as to insure efficient and affordable services, including the possible development of additional electronic services.

EFFECTIVE DATE

SEC. 211. Except as provided in section 1005, this title takes effect upon the expiration of 12 months following its enactment.

TITLE III: BRIDGE BANKS

SEC. 301. (a) Section 3(i) of the Federal Deposit Insurance Act (12 U.S.C. 1813(i)) is amended to read as follows:

"(i)(1) The term 'new bank' means a new national banking association, other than a bridge bank, organized by the Corporation to assume the insured deposits of an insured bank closed on account of inability to meet the demands of its depositors and otherwise to perform temporarily the functions prescribed in subsection (h) of section 11.

"(2) The term 'bridge bank' means a new national banking association organized by the Corporation pursuant to subsection (i) of section 11.".

(b) Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended—

(1) by inserting "(1)" after "(h)"; and

(2) by redesignating subsection (i), (j), (k), and (l) as paragraphs (2), (3), (4), and (5), respectively, of subsection (h).

(c) Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by adding at the end thereof the following:

"(i)(1) If the Board of Directors determines with regard to one or more closed insured banks—

"(A) that the amount which is reasonably necessary to organize and operate a bridge bank will not exceed the amount which is reasonably necessary to save the cost of liquidating, including paying the insured accounts of, the closed bank or banks;

"(B) that the continued operation of such insured bank or banks is essential to provide adequate banking services in its community; or

"(C) that the continued operation of such insured bank or banks is in the interest of the depositors of the closed bank or banks and the public,

the Corporation in its discretion may organize a bridge bank to assume the deposits of the closed bank or banks, and to assume such other liabilities of the closed bank or banks as the Corporation in its discretion may deem advisable, and to purchase such assets of the closed bank or banks as the Corporation in its discretion may deem advisable, and to perform temporarily the functions hereinafter provided for. Upon the organization of a bridge bank, the receiver of the closed insured bank or banks may, subject to approval of a court of competent jurisdiction, transfer assets and liabilities of the closed insured bank or banks to the bridge bank.

"(2) The articles of association and the organization certificate of the bridge bank shall be executed by representatives designated by the Corporation. The bridge bank shall be a national bank and shall be insured from the time of its organization. No capital stock need be paid in by the Corporation. The bridge bank shall have a five-member board of directors who shall be selected by the Board of Directors.

"(3) The bridge bank shall have all corporate powers of a national bank, except that—

"(A) the Corporation shall have sole authority to appoint and remove the directors of the bridge bank, to fix their compensation, and to waive any requirements pertaining to their qualifications as provided in sections 5145 through 5149 of the Revised Statutes (12 U.S.C. 71 through 75) and section 31 of the Act of June 16, 1933 (12 U.S.C. 71a);

"(B) the Corporation shall have authority to indemnify the directors of the bridge bank on such terms as the Corporation deems proper;

"(C) any requirements for capital in the bridge bank as provided in section 5138 of the Revised Statutes (12 U.S.C. 51) or any other provision of law are waived;

"(D) the Comptroller of the Currency shall have authority to determine the maximum limit of indebtedness of any person to the bridge bank without regard for the amount of the bank's capital or surplus;

"(E) the Board of directors of the bridge bank shall elect a chairman who shall also serve in the position of Chief Executive Officer;

"(F) the bridge bank shall be a national member bank, but shall not be required to purchase stock of any Federal Reserve bank;

"(G) the Comptroller of the Currency shall have authority to waive any requirement for a fidelity bond; and

"(H) upon the merger of a bridge bank with another bank that is not a bridge bank, or upon the sale of all or substantially all of the stock of a bridge bank (other than a sale to the Corporation or to another bridge bank), or upon the assumption of all or substantially all of the deposits of a bridge bank by another bank that is not a bridge bank, the surviving bank shall cease to have the status of a bridge bank.

"(4) Upon the organization of a bridge bank, and thereafter as the Board of Directors may in its discretion deem necessary or advisable, the Corporation shall promptly make available to the bridge bank, upon such terms and conditions and in such form and amounts as the Board of Directors may prescribe, sufficient funds for the bridge bank to operate. The bridge bank shall not be deemed to be an agency or establishment or instrumentality of the United States Government, nor shall the directors or officers or employees or agents of the bridge bank be deemed to be employees or agents of the United States Government, for any purpose whatever.

"(5)(A) Whenever in the judgment of the Board of Directors it is desirable to do so, the Corporation shall cause capital stock of the bridge bank to be issued and offered for sale on such terms and conditions as the Corporation deems advisable in an amount sufficient, in the sole discretion of the Corporation, to make possible the conduct of the business of the bridge bank on a sound basis. If the bridge bank has assumed the insured deposits of a closed bank with total assets of $250,000,000 or more (as determined from the closed bank's most recent report of condition), the bridge bank shall be eligible to be acquired by or to merge with an insured depository institution located in the State where the closed bank was chartered but established by an out-of-State bank or holding company, or to be acquired by an out-of-State bank or holding company, in accordance with the procedures established by subsection (f) of section 13.

"(B) Unless the capital stock of the bridge bank is sold or its assets are taken over and its deposits assumed by another insured bank within two years from the date of its organization, the Corporation shall wind up the affairs of such bank by voluntary dissolution or by the appointment of a receiver, except that if the Board of Directors finds, after consultation with the Comptroller of the Currency that an extension of time for winding up the affairs of the bank is in the best interest of the depositors of the closed bank or banks and the public, the Corporation may extend such time for a period not exceeding one year.

"(6) In order to facilitate the sale or merger of the bridge bank with another insured depository institution the Corporation is authorized, in its sole discretion, and upon such terms and conditions as the Board of Directors may prescribe—

"(A) to make loans or contributions to, or deposits in, or purchase assets or securities other than voting or common stock of, or to assume the liabilities of, such bridge bank or the company which will acquire control of such bank;

"(B) to guarantee the bridge bank or the company which will acquire control of the bridge bank against loss by reason of such sale or merger; or

"(C) to take any combination of the actions referred to in subparagraphs (A) and (B).

"(7) Nothing in this subsection shall be construed to limit the powers of the Corporation under section 13 to assist a transaction under this subsection.".

● Mr. GARN. Mr. President, today we are attempting to pass legislation dealing with emergency measures designed to provide regulators with tools they need to deal with insolvent depository institutions. While the distinguished Senator from Wisconsin has agreed that these items are indeed emergency measures, Senator PROXMIRE would extend that categorization to so-called nonbank banks.

The issue of nonbank banks is not a new one. It has been characterized by some as emergency legislation but, as I have said on many previous occasions, the nonbank bank issue cannot be addressed by itself. That issue is the "Siamese twin" of the issue of additional products and services for banks. While I would have hoped to deal with those issues in comprehensive legislation—which I introduced earlier this year—it became evident that the limited time remaining would not permit this to occur.

I am encouraged, however that as a result of this process many of the competing industries members have begun discussions regarding the broader issues of financial services reform. I attach as part of the RECORD a letter dated August 12 from many financial service providers which indicates a commitment to move forward with those broader issues in the 100th Congress.

In addition, the administration through the Treasury Department strongly endorses a comprehensive approach to dealing with reform of the financial service industry and opposes a narrow loophole closing approach. I submit as part of the RECORD a letter

from Treasury Under Secretary Gould which states that position.

I want to thank my distinguished colleague from Wisconsin for making the emergency legislation possible and setting aside for next year the broader issues.

This bill deals only with issues that it is essential for us to address before the 99th Congress adjourns to assure the safety and soundness of our depository institutions. Broader issues such as the nonbank bank and expanding products and services for depository institutions are not in the bill and cannot be added in any conference. These are important issues, however, and they merit attention early in the 100th Congress.

Mr. President, I ask unanimous consent that the letters to which I earlier referred be printed in the RECORD at this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

AUGUST 12, 1986.

Hon. JAKE GARN,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Discussions over the past several weeks focusing on S. 2592, the Deposit Insurance Reform and Competitive Enhancement Act, are beginning to unite a diverse and significant group of financial service firms behind a common goal—equal market access for all financial service intermediaries. While the undersigned have specific reservations with certain aspects of S. 2592, we share your goal of a more competitive marketplace and pledge to work with you toward that end. Only by allowing increased competition can these institutions continue to meet consumer and business needs and perform their vital role in our economy.

It is through your efforts, Mr. Chairman, that the seemingly impossible task of publicly uniting major segments of the financial industry is indeed becoming a reality. As demonstrated by this letter, your leadership has brought about the beginnings of a broad-based coalition in support of the concepts which you advocate.

It is imperative that any comprehensive financial services legislation be pro-competitive. It must fundamentally revise existing laws that restrict competition among providers of banking, finance, securities and insurance products and services so as to afford all financial service companies equal opportunity to serve the credit and financial needs of the marketplace. Fundamental changes are particularly important in light of the continuing internationalization of the financial services market. Such legislation must be balanced and fair to all segments of the industry. At a minimum, it should allow all depository institutions and diversified companies flexibility to offer a full range of financial products and services. It should also modernize federal thrift statutes in order to attract new capital into the industry. Just as important, such legislation must *not*, in the interest of expedient compromise, impair any industry's existing ability to conduct or expand its business or to compete.

Comprehensive legislation must advance these procompetitive elements simultaneously or the progress you have made in uniting us behind a common goal will be undermined. Attempts to address the nonbank bank issue in isolation, even through a moratorium, will only serve to perpetuate and reinforce existing anti-competitive barriers, thwarting your efforts for the foreseeable future. The maintenance of the legal status quo, however imperfect, would certainly be preferable.

Through discussions with your colleagues, you can best determine the optimal timing for this major legislative initiative. Obviously, with your recent announcement, you have decided to forego comprehensive legislation until early next year. We pledge to you our concerted effort to work with the Committee to develop specific legislation achieving our common goals and our determination to expand this cross-industry coalition.

On this basis, we can continue to pursue our common goals, and look forward to working with you to that end.

Sincerely,

American Financial Services Association, Washington, D.C.; American Retail Federation, Washington, D.C.; Association of Thrift Holding Cos., Washington, D.C.; Consumer Bankers Association, Washington, D.C.; National Council of Savings Institutions, Washington, D.C.; National Retail Merchants Association, Washington, D.C.; The Acacia Group, Washington, D.C.; American Express Company, New York, New York; Associates Corp. of NA/Gulf+Western Industries, Dallas, Texas/New York, New York.

AVCO Financial Services/Textron, Irvine, California/Providence, Rhode Island; Bankers Trust N.Y. Corporation, New York, New York; Beneficial Corporation, Peapack, New Jersey; CalFed, Inc., Los Angeles, California; California Assoc. of Thrift & Loans, Sacramento, California; Capital Holding Corporation, Louisville, Kentucky; Central PA Savings & Loan Assoc., Shamokin, Pennsylvania; Chase Manhattan Bank, New York, New York; Chemical Bank, New York, New York.

Chrysler Financial Corporation, Troy, Michigan; Citicorp, New York, New York; Colonial Penn Group, Philadelphia, Pennsylvania; Control Data Corporation/Commerical Credit Corporation, Minneapolis, Minnesota/Baltimore, Maryland; CREDITHRIFT Financial, Inc., Evansville, Indiana; First Franklin Financial Corporation Toccoa, Georgia; First Tennessee Bank N.A., Memphis, Tennessee; First Texas Savings and Loan, Dallas, Texas; F.P.L. Group, Inc., Miami, Florida.

Ford Motor Credit Company, Dearborn, Michigan; Household International, Prospect Heights, Illinois; JC Penney, New York, New York; John Hancock Financial Services; Boston, Massachusetts; J.P. Morgan & Co. Incorporated, New York, New York; Lincoln Savings & Loan Association, Irvine, California; Merrill Lynch & Co., Inc., New York, New York; North Carolina National Bank, Charlotte, North Carolina; Sears Roebuck & Company, Chicago, Illinois; Security Pacific Corporation, Los Angeles, California.

DEPARTMENT OF THE TREASURY,
Washington, October 7, 1986.

Hon. JAKE GARN,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This Congress now faces its last opportunity to enact the FSLIC Recapitalization and the Regulators' Emergency Acquisition amendments. We urge you and your colleagues to act promptly to protect the nation's depositors and the savings and loan industry.

Some people still threaten to add non-emergency, controversial issues to this critical legislation—even during the final hours of this Congress. These divisive proposals have spurred deeply felt opposition and contentious counterproposals. All this wrangling obscures what is really at stake for the public.

In a recent letter to members of the House Banking Committee, Chairman Gray of the Federal Home Loan Bank Board stated that FSLIC's primary reserves have dropped to $2.5 billion. FSLIC has about $800 million more in a secondary reserve carried as an asset on the books of savings and loans. These reserves back more than $800 billion of insured deposits in over 3200 savings and loans.

Chairman Gray pointed out that in coming months FSLIC will have to use its reserves to handle 130 severely troubled thrifts with over $47 billion in assets. Moreover, he projected another 122 thrifts will be added to the FSLIC caseload in the next 12 months—with yet another $47 billion of assets. As the GAO reported recently, delay only compounds the financial problem. The accompanying confidence problem is inestimable.

This state of affairs is threatening to many banks. Bankers have complained, justifiably, about the cost of competing for deposits with hundreds, of insolvent thrifts. But if FSLIC is not recapitalized, there will be a growing temptation to merge deposit insurance funds in order to ensure the protection of the public's savings.

The Regulators' amendments also meet a most pressing need. The limited emergency authority provided under the Garn-St Germain Act expires October 16. Actions by some states have mitigated, but certainly have not resolved, the myriad problems faced by the FDIC. The banking regulators need these modest changes so that they can maintain banking services to the public with minimum disruption at the least cost. In a rapidly changing and often unpredictable environment, the regulators must be able to act expeditiously and flexibly to protect depositors.

I recognize that some opponents of nonbank banks appear disposed to stop at nothing to halt new competition for consumers' business. Rather than debate them at this critical time, I will restate our willingness to help set aside that issue: As I wrote you earlier, on the slim chance the district court will resolve *IBAA, et al.* v. *Conover* favorably to the Comptroller of the Currency this year, Bob Clarke and I assure you that Congress will not return in 1987 to face nonbank banks newly chartered by the Comptroller.

There simply is not time to debate disruptive issues that run the risk of holding up or preventing the enactment of these vital safety and soundness proposals. Someone must overcome the special interests so that the public's interest can be served. I hope you can again exert that leadership role. We

will continue to work closely with you on this urgent effort to safeguard our financial system and the millions of Americans who rely on it.

Sincerely,

GEORGE D. GOULD,
Under Secretary.

● Mr. GORTON. Mr. President, as we all know, legislation is invariably a compromise between House and Senate proposals. Rarely does either Chambers' version of a major bill pass intact. For the past several weeks I have been working to try to develop a proposal on the check holds issue that would represent a reasonable compromise between the original Senate and House bills, anticipating that the end of the session rush might leave us in a position where a formal conference report would be impossible. I believe that such a compromise is possible, and together with Senator DODD have arrived at a position that I believe deserves the consideration of my colleagues in both this and the other body as a final proposal. I recognize, however, that there may be some reluctance to considering this new proposal tonight in the Senate. I support sending the House our original check holds bill, though I will also be interested in seeing a final measure that incorporates the provisions that I have worked on with representatives of various interested parties over the past several weeks.

Mr. PROXMIRE addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I am disappointed that this bill does not have the Federal Savings and Loan Insurance Corporation package or the nonbank bank legislation in it. I serve notice on the leaders that I am going to speak for approximately 5 or 6 minutes on this matter.

Mr. President, the nonbank bank loophole represents a cancer on our banking system. Unless it is closed, it will slowly but surely erode the foundations of our financial system. The Senate voted overwhelmingly in 1984 to close the nonbank bank loophole, and I believe there is still a broad consensus in this body that the loophole should be closed. Unfortunately, the leadership was unwilling to schedule the banking bill for floor action if votes on any controversial matters were required. Thus the views of a recalcitrant minority have been able to control the banking agenda for the 99th Congress.

What is wrong with nonbank banks?

First, nonbank banks magnify competitive inequities in our financial system. The nonbank bank loophole allows any company into the business of banking while banks are still tightly limited as to what activities they can engage in by our banking laws.

Second, nonbank banks erode the principle of separating banking from commerce, a principle that that has been the keystone of our banking laws for over three centuries. There is a good reason for that separation. We want banks to be independent so that they can allocate credit based on economic merit and not on the basis of their affiliation with a corporate parent.

Third, the nonbank bank loophole is a threat to effective bank supervision. There is no way to separate the fortunes of a bank from the fortunes of its corporate parent. If the parent gets into trouble, the bank is in trouble regardless of how soundly managed it may be. This means the FED and the FDIC must be concerned not only about the safety of the bank, but the safety of the nonbank parent. There is no way the regulators can carry out that responsibility.

Four, the nonbank bank loophole erodes the rights of the States to control their own banking structure. Given the recent decision in the U.S. Trust case, a New York money center bank can establish a nonbank bank in any State regardless of State law.

Mr. President, there is another reason why the Congress should have acted on the nonbank bank issue. The failure to close the loophole would undermine any FSLIC recapitalization measure whenever we pass it, and the emergency authority for interstate bank acquisition. Who will want to buy an ailing bank or thrift if they can enter the same market more cheaply by establishing a nonbank bank? Failing to deal this year on the nonbank bank issue will inevitably be costly both to the FDIC and the FSLIC.

I believe the Bank Board's direct investment regulation is vitally important to any FSLIC recapitalization. It will ensure that the savings and loan industry will remain sound over the next several years as the FSLIC resolves its problem cases. Without the direct investment regulation, the FSLIC is put in extreme jeopardy.

The House Committee on Government Operations said late last year that the direct investment regulation "is an appropriate and necessary restriction" as long as the FSLIC fund remains impaired. Studies by the Bank Board indicate that direct investments by failed institutions increase FSLIC costs between 60 to 85 cents for each additinal dollar of direct investment.

If we are to provide for a massive recapitalization of the FSLIC which will ultimately cost the savings and loan industry over $30 billion in principal and interest, we need to ensure that the limited funds of the FSLIC are not put into jeopardy by a small percentage of high fliers in the savings and loan industry. To do otherwise would be clearly irresponsible and an abdication of congressional oversight.

Without the direct investment regulation, the FSLIC is in extreme jeopardy. Anybody who doubts that should read a recent letter written by the Chairman of the Home Loan Bank Board which made that clear and documented cases which demonstrated this beyond a peradventure of a doubt.

Mr. President, yesterday, I thought I had reached an acceptable compromise with Chairman GARN. We had worked on this on the FSLIC recapitalization. Unfortunately, there apparently has been some objection to that compromise. In any event, regardless of which party controls the Senate next year, I am sure that Congress will give first priority to FSLIC and nonbank bank issues early next year.

So, Mr. President, in conclusion, I am very disappointed in this bill. I do understand that the Federal Savings and Loan Insurance Corporation does urgently need assistance but this is the best we could do under the circumstances. I am sorry that it is.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Are there further amendments to the bill? There is an amendment pending.

The majority leader.

Mr. DOLE. Mr. President, the Garn amendment is pending.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the amendment in the nature of a substitute.

The amendment (No. 3514) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXPORT ADMINISTRATION ACT AUTHORIZATION

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2245.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2245) entitled "An Act to authorize appropriations to carry out the Export Administration Act of 1979 and export promotion activities", do pass with the following amendment:

Strike out all after the enacting clause, and insert:

SECTION 1. EXPORT ADMINISTRATION ACT.

(a) IN GENERAL.—Section 18(b) of the Export Administration Act of 1979 (50

U.S.C. App. 2417(b)) is amended to read as follows:

"(b) AUTHORIZATION.—There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—

"(1) $35,935,000 for each of the fiscal years 1987 and 1988, of which $12,746,000 shall be available for each such year only for enforcement, $2,000,000 shall be available for each such year only for foreign availability assessments under subsections (f) and (h)(6) of section 5, and $21,189,000 shall be available for each such year for all other activities under this Act; and

"(2) such additional amounts for each of the fiscal years 1987 and 1988 as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.".

(b) ENFORCEMENT ACTIVITIES OF THE CUSTOMS SERVICE.—Section 12(a)(6) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(a)(6)) is amended by striking "$12,000,000 in the fiscal year 1985 and not more than $14,000,000 in the fiscal year 1986" and inserting "$14,000,000 in the fiscal year 1987 and not more than $14,000,000 in the fiscal year 1988".

SEC. 2. EXPORT PROMOTION.

Section 202 of the Export Administration Amendments Act of 1985 (15 U.S.C. 4052) is amended by striking "$113,273,000 for each of the fiscal years 1985 and 1986" and inserting "$123,922,000 for each of the fiscal years 1987 and 1988".

Mr. DOLE. I move that the Senate concur in the House amendment with a further Senate amendment which I send to the desk in behalf of Senator GARN and others.

AMENDMENT NO. 3515

(Purpose: To strike out the customs enforcement provision)

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. GARN, Mr. HEINZ, and Mr. PROXMIRE, proposes an amendment numbered 3515.

Strike out "(a) In GENERAL.—".

Strike out all of subsection (b) beginning with "(b) Enforcement Activities of the Customs Service.—".

● Mr. GARN. Mr. President, I ask my Senate colleagues to amend and return to the House of Representatives S. 2245, a bill to authorize funds for export administration and export promotion activities of the Commerce Department. S. 2245 was passed by the Senate on July 21 without objection. It is a straightforward authorization of funding levels requested by the administration: $35.9 million for export administration and $123.9 million for export promotion activities.

The House of Representatives took up the bill on Monday and passed it with two amendments. The first amendment requires that $2 million of funds for export administration shall be available only for foreign availability assessments. This is roughly the amount that commerce plans to spend for these assessments which were an important element of the Export Administration Act Amendments of 1985. The administration has no problem with this requirement.

The second House amendment adds a new section that would place a dollar limitation on the export administration enforcement activities of the Customs Service. While the $14 million annual limit set for 1987 and 1988 is roughly the level of activity planned by the Customs Service in fiscal year 1987, the cap limits the agency's flexibility to respond to changing national priorities or to a significant future increase in Soviet high-technology acquisition efforts. This would be one of the only such restrictions on Customs' law enforcement jurisdiction and is opposed by the administration. I believe it would be a great mistake to so constrain this crucial element of our system of export controls.

I am proposing an amendment along with Senators HEINZ and PROXMIRE that would strike the limitation on Customs' enforcement activities and return S. 2245 to the House. I urge immediate action on this bill.●

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3515) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the motion to concur in the amendment of the House with a Senate amendment.

The motion was agreed to.

Mr. DOLE. I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. DOLE. Mr. President. I am advised that we can take all the action we can on bills which are going back to the House. I have heard a rumor, which I shall not repeat, that they will kill them all—that is the rumor—with some few exceptions. We have left any number of measures we can act upon that will go directly to the President. I am not sure how some of those may affect the House Members. So we will have a brief period of time until we are able to gauge the House response to the measure we have just sent over before we act on other measures that might have an impact. We can pass those rather quickly.

SENATORIAL TRIBUTES

Mr. DOLE. Mr. President, I ask unanimous consent that all Senators have 15 calendar days to insert statements in the RECORD paying tribute to the six retiring Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. I further ask unanimous consent that the statements appear in the permanent RECORD as if given in succession on the day in which the tributes were filed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. I ask unanimous consent that the tributes to Senators leaving the Senate each be printed as a Senate document.

The PRESIDING OFFICER. Without objection, it is so ordered.

END OF YEAR REPORTS

Mr. DOLE. I ask unanimous consent that the end of the year report, to be presented at a later date by the majority leader, be printed as a Senate document.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I make the same request on behalf of the minority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE 99TH CONGRESS

Mr. DOLE. Mr. President, we will have a few additional legislative matters. I think we can efficiently use this time, although many of our colleagues wish to depart. I must say, as I have indicated in the last couple of days, there have been a few times when I thought we might never reach this point. I recall Howard Baker's description of trying to get the Senate moving was like "trying to push a wet noodle." But here we are virtually at the end of the 99th Congress.

With a certain degree of humility, I think it is fair to say that we leave behind us a record of accomplishment, I think a fairly productive record—as I indicated to the press this morning, for the most part a bipartisan record. This Senate is evenly divided, 53 Republicans, 47 Democrats. By the very nature of the Senate and the numbers, nearly every significant piece of legislation has been bipartisan and probably would have been to a certain degree regardless of the majority on either side of the aisle. I would guess when we return in the 100th Congress, the Senate will still be closely divided. At this point, no one is certain how the division will break, whether the Republicans will control or the Democrats, under the leadership and control of the distinguished Senator from West Virginia.

We are about to conclude the 99th Congress and it has not been easy all the time. We all understand each other. We have our partisan differences from time to time. We have great respect for all of our colleagues, but at the same time we know there is an election coming up and as much as

we respect our colleagues each side would like to increase its numbers. There is nothing surprising about that. It is a competitive arena.

But I am suggesting that under any circumstances we have addressed a number of difficult issues—the Federal deficit, the farm crisis, apartheid, Nicaragua, the defense budget, Superfund, immigration, drug legislation, just to mention a few.

We passed a massive overhaul of the Tax Code, a measure with far-reaching consequences for every segment of society and business, nearly every American, and I might say it will probably have an impact on many foreign countries.

I would guess you could say that in most cases we sort of hugged the middle ground. I think that has been true over the years in the Senate. For the most part we have addressed the concerns that would satisfy the majority views of most Americans, whether they be Republicans, Democrats, independents, or they might live in the Midwest, the South, the Northeast, the West, wherever. Not every policy dilemma was resolved and some of our answers are less than complete but just running down the list of legislation Congress has passed over the past few years shows that we have accomplished quite a bit.

We agreed to self-imposed budgetary discipline with the Gramm-Rudman-Hollings law. In both last year and this we enacted basic reforms and spending programs under reconciliation, reforms that will reduce real spending for years to come. We have approached a very expensive omnibus farm bill and farm credit legislation which, though perhaps imperfect, did go a good way toward much-needed reorganization of the Nation's Federal farm programs.

□ 1600

I would say in this area that I am not certain how long Congress will continue, or can continue, to spend $25 billion to $30 billion a year for price support programs. That is the cost of the farm program this year. That program has escalated in cost in the last 6 to 7 years almost sevenfold.

I have read and heard of some concern among urban Members about the great deal of cost of farm programs and that that money could be better used in programs of the big urban areas. But I would only say—not in defense of the cost, because I believe it is very expensive and we will have to take a look at how we reduce the cost of our Federal farm programs and still protect the rights and opportunities of small farmers—but I would say that it is going to be very costly over the next 2 or 3 years, until we can have some stability in the dollar, hopefully with a lower dollar, and interest rates are much better than they were a few years ago. Until we can find markets for the American farmer, it is going to be very difficult to have any radical reduction in the cost of the program.

In the foreign affairs area, we agreed to provide aid to the Contra freedom fighters. We have debated and debated that issue in this Congress, and with the passage of the continuing resolution by the House—which I assume has now been passed by the President—at last we will be saying to people who are willing to die for freedom: "We are willing to help you. No more Band-Aids—not only Band Aids and blankets—but we are helping you in real ways that you have at least a fighting chance to gain freedom."

The Senate has imposed economic sanctions on South Africa. The President's veto was overridden when he did not sign the last sanctions bill passed by Congress, and that in effect was a Senate-passed bill. It went to the House and they accepted it and sent it to the President.

After 37 years, we ratified the Genocide Treaty—very controversial from the standpoint of politics and some very conservative groups who thought the sky would fall in if we ratified that treaty. Nothing has happened, that I know of.

There was also a bipartisan bill to reorganize the Pentagon.

We sold Conrail, finally, and transferred National Airport to local control. Both matters are of great interest to the Secretary of Transportation, as I have heard from time to time.

We passed landmark environmental legislation. I mentioned Superfund. We also passed clean water and water resources last night. We have not passed such a bill for 10 years, and a water resources bill was passed this year.

Long overdue immigration reform was finally agreed to; gun control; scores of nominations, two on the Supreme Court, dozens of other judicial nominees, as well as Ambassadors and other key Government appointments.

We even found time, or made time, for the impeachment trial of Judge Claiborne.

We completed action—again, totally bipartisan action—on a measure to attack the national nightmare of drug abuse. With Democratic staff, Republican staff, Republican Senators and Democratic Senators working together, it was passed in the Senate yesterday in 30 seconds by a voice vote, after weeks and weeks of work and after a lot of votes earlier on.

I have just hit what I have characterized as some of the highlights. Others might think they were not very high at all. But there were many, many other bills passed. Others were introduced and not passed.

We have had hundreds of hours of hearings in nearly every committee in the Senate. From time to time, when people come to my office, they say: "There is nobody on the Senate floor. How can you do anything? There is no one there."

My advice is not to worry when no Members are there. It is when there are a lot there that the American taxpayers should be concerned; because when there are a lot here, we probably are doing something. But even with a few here today, we have passed dozens of pieces of legislation that had been agreed to on both sides, by Democrats and Republicans. So, much of the work is done without the necessity of Members being present. Members have committee hearings, constituent responsibilities, hearings before agencies, meeting with Cabinet Officers and constituent groups.

When necessary, the Members are here.

During the last 2 years we have been here, some say, too often and too late. Almost all night, for a few times. But as I suppose has been said many times, legislation is not always a pretty sight. It is a little like making sausage.

However, I hope we can all leave Washington with some sense of pride in what we have done. We have done it, for the most part, with the cooperation of the administration, President Reagan. He has been a powerful force and a powerful voice in Congress. Although we have had our differences dealing with a lot of controversial measures, I certainly believe that, generally, we have had many more agreements than disagreements. I am talking about Congress as a whole, not Republicans or Democrats. I am talking about Congress. I know that sometimes the focus is on the differences, but, again, I would suggest that most things that happen are not particularly partisan, do not involve a fight between Democrats and Republicans or between Congress and the Executive, whether the President may be a Republican or a Democrat.

There are a lot of people to thank for all these achievements, and I am afraid that if I started down the list, someone would be missed. Obviously, I want to mention a few members of the Republican leadership, just as I know that the distinguished minority leader may have already mentioned, or will mention, members of the Democratic leadership.

I have had a great deal of help from Senator ALAN SIMPSON, the assistant majority leader.

□ 1610

In addition to the landmark immigration bill which I believe never would have passed without his tenacity, he has been very helpful to me in contacting Members and doing a lot of things that one person could not do.

The distinguished President pro tempore, Senator THURMOND, is here today as he is here every day. I was asked yesterday morning—we had been in session I guess until 3 or 3:30, that same day, I do not remember what day it is. The first three to report for duty after 3 or 4 hours' sleep was Senator THURMOND, Senator GOLDWATER, and Senator STENNIS, which says a lot for their condition and notwithstanding the fact that they are a bit older than some of us, they were here ready to go to work. I do not believe Senator THURMOND has missed over what four or five times opening the Senate, STROM, for the past year—he is here every morning along with all the other duties he has as chairman of the Judiciary Committee and work with Armed Services and going back to South Carolina as often as he can, and it is remarkable the energy this man has and the legislative success he has been able to achieve because of his ability to work with Members on each side.

JOHN CHAFEE is the chairman of the Republican conference and he has done a lot of new things, innovative efforts to help those of us on this side of the aisle and has been very helpful on the Senate floor.

Senator ARMSTRONG, from Colorado, the chairman of the Policy Committee, also has tried a number of new approaches to problems not in a partisan way but in an effort to furnish information to Senators that we need on issues and constituent services.

THAD COCHRAN, the secretary of the conference, likewise has done the very same thing. About every other week he will have some ideas on how we can better serve our constituents, how we can contact our constituents, what might be happening in the Social Security Administration or some other agency so that we will be able to better serve our constituents.

JOHN HEINZ, the chairman of the Senatorial Committee, we will not give him a final grade until after the election. If we are still in the majority he gets an A plus. If we are tied he gets an A. But in any event, he works hard. Whatever happens it will not be the fault of JOHN HEINZ who has done a masterful job in that area.

And all have been of enormous assistance to this Congress.

I would also add, and I was pleased I did not make a comment last night, the distinguished Presiding Officer, Senator STEVENS who is probably about the presider in the Senate—I think the distinguished minority leader will agree—keeping things rolling, and I appreciate very much his kind comments about my work as the majority leader. I think everyone knows that the distinguished Presiding Officer and I had very close contest for this position that I was fortunate enough to achieve. But as chairman, along with Senator NUNN of our observers group, I do not know how many trips Senator STEVENS has made to Geneva in an effort to keep all of us informed on the arms negotiation because that is where the nitty-gritty is done.

Mr. Gorbachev and the President can make the big plays but when you put it all together, when you really want to know what is happening at that level, the technical level, it is in Geneva where Mr. Kampelman and Mr. Karpov, and others, are meeting at this very time and will be meeting for the next couple of weeks and I assume that Senator STEVENS will be there even though that gets to be a trying thing going back and forth to Geneva. That, by the way, was an idea of the distinguished minority leader which I think has served the Senate well. So that is a big plus as far as this Senator views it.

I also thank Senator STEVENS for all of his personal help in legislative matters, and I really believe someone asked me what I thought was probably the most difficult job and I think it is in the area of defense appropriations, and that has been the burden carried by Senator STEVENS, notwithstanding the many cuts and many efforts for additional reductions in defense budget, I think he has done an outstanding job.

I will just say to all my colleagues, the record should reflect that I do not think with maybe one or two exceptions we have ever had any flareups on the Senate floor and those came after rather grueling days and nights. But I do not know of anyone in this Senate who has not conducted himself or herself as they should over the past 2 years and I certainly want to extend my thanks to every Member of the Senate, Republican and Democrat, for their assistance and their cooperation, sometimes it may be hard to identify it as cooperation, but it generally works out that way because without it I think, as the distinguished senior Senator from Mississippi said one day in a meeting of all Senators, the leaders are powerless around here unless the Members cooperate, which is true. We cannot do anything. If one Member stands up and says we are not going to vote on this today, that is it. They have that right.

So I think overall most people have been able to meet their appointments and still complete the work.

I would also say that in addition to Senators, this place would not run without staff. If 100 Senators showed up without any staff, inside this Chamber and outside this Chamber support staff, we would not accomplish a great deal.

So I want to express my appreciation for the tireless efforts of the many, many staff members who have labored long and hard to make our jobs a little easier. It is far too often we at least we think we are so busy but we really are not, we think we are so busy that we fail to recognize the unsung heroes, the people many of us have not even seen, or met, or cannot recall their names who provide us with assistance, in the daily work of the Senate and the work when we are in recess and the work that will start for them or continue for them when we leave.

This is not a vacation when we leave. They still have work to do every day.

Certainly we should start with the Chaplain, who on a daily basis gives us good news, starts us in the right direction. He exhorts us to look for miracles, break the logjam. I think that little prayer yesterday morning as I said was short but we broke the logjam. So he has been very successful. His voting record in 100, 100 percent. He had not missed a single vote. And right every time, and we appreciate that.

Jo-Anne Coe, with whom I have been associated for nearly 20 years, and who is now the Secretary of the Senate, the first woman to hold that position, and her assistant, Lynda Nersesian, are to be commended for maintaining such a high quality of professionalism and dedication demonstrated by those working in the Secretary's office.

Particularly, I would like to say a special word of thanks to a job well done to the following people who have been working behind the scenes. They are often here working many hours after the Senate has gone home for the night and they are here long before the Senate convenes in the morning.

We are all familiar with Bill Farmer and Scott Bates, the legislative clerks, who not only call the roll for quorums and record votes, but also read all the bills, resolutions, amendments, conference reports, Presidential messages, and so forth, before the Senate. But we may not be aware that they also have the responsibility of preparing the Senate business calendar, maintaining official copies of pending bills and resolutions, and receiving, numbering, and processing bills, resolutions, and printed reports from committees. Their attention to accuracy and detail is critical to the Senate's daily operation.

Working hand in hand with the legislative clerks is the bill clerk, Vince Del Balzo, and his assistants Jennifer Smith, Kathie Alvarez, as well as journal clerks, Jim Thorndike and Bill Lackey.

Perhaps no one is more responsible for getting us out of trouble than the Senate Parliamentarian Bob Dove, and his assistants, Alan Frumin and Gail Cowper. Bob Dove does an outstanding job, and their knowledge of

Senate parliamentary procedures, precedents, and practices is an invaluable service not only to the Presiding Officer whom they must advise on all aspects of Senate activity but is an absolutely essential service provided to Senators seeking answers to questions regarding procedural aspects of the Senate.

□ 1620

I can think of no one who suffers more under the burden of long, long hours and loads of paperwork, other than Brian Hallen and his assistant, Maxine Snowden, the enrolling clerks. In fact, I understand that they had about 3 hours sleep for the last 2 nights combined. The proofreading and preparation for printing of all Senate-passed legislation before transmittal to the House or White House is a time-consuming process. I have to think it must be somewhat embarrassing at times to deliver a Senate-passed measure to the House and be "booed" by House Members because of its sheer volume. I think the continuing resolution weighed about 18 pounds. But such has been the life of our enrolling clerk this week. In fact, I learned that firsthand.

It should be unnecessary to say how much we appreciate the capable services of Russ Walker and his official reporters and transcribers. But a word of thanks is certainly the order of the day, for they too must be accurate in preparing their verbatim report of Senate proceedings for publication in the CONGRESSIONAL RECORD, ensure its timely delivery to the Government Printing Office, for publication in the RECORD, edit written material submitted by Senators, and his morning business editor, Mark Lacovara, who prepares a description of the morning business conducted by the Senate.

Barry Wolk and his printing services staff have done an excellent job, frequently under extreme pressures of time, in coordinating and scheduling the printing of all bills, resolutions, reports, amendments, Senate documents, committee calendars, and other miscellaneous publications.

And Jeanie Bowles and her document room staff have performed admirably in providing Senate documents and legislative publications for distribution to the Senate Chamber and Senate offices, as well as the general public.

From the executive clerk, Gerry Hackett, to the Daily Digest Editor, Jim Timberlake, to Al Lehn, Director of National Classified Security, we have consistently received high quality performance. But I would like to make special mention of Mac McPhail and his able clerks and special assistants in office services. You may never see them, but they are here early every morning and late every night, delivering newspapers and magazines to the marble room and leadership staffs, performing photocopying and messenger services, delivering bills and messages to the White House and executive agencies. They are truly the unsung and unseen heroes.

And so you see, hardly a day goes by that our lives are not in some way touched by the Secretary of the Senate and the Sergeant at Arms, and their offices.

The Sergeant at Arms, Ernie Garcia, and his deputy, Trudi Morrison, have done an outstanding job under sometimes difficult circumstances, in insuring the office was staffed with individuals dedicated, as they are, to this institution. Specific Individuals and functions within the Sergeant at Arms operation, which I believe merit a word of thanks include:

The service department personnel, guided by Ron Ledlow, often work through the night—particularly during the closing of the 99th Congress—to make copies of massive conference reports awaiting us each morning at our desks.

The doorkeepers, and Arthur Curran, their supervisor, stay with us and with the public each hour we are in session—and must be on duty even before the Senate convenes.

Chief Carvino and the U.S. Capitol Police are due a special word of thanks for their endeavors in meeting the daily challenge of providing protection for our institution, while never losing sight of the rights of the people to petition their government.

Vic Ferreros, Director of the Senate Computer Center, has done an excellent job with his department; Bruce Holmberg, director of Facilities and Financial Management for the Sergeant at Arms, has, among others under his jurisdiction, the staff of custodians and housekeepers who maintain this magnificent building. We often fail to recognize the critical services provided by Bob McCormick, director of telecommunications, who has done a truly outstanding job.

And those who run the computers, the telephones, the studios, the television cameras that permit us to communicate with each other and the Nation, who maintain our Senate library, curator and historian's offices—Mr. President, all these individuals are the folks who make this place work, and I am grateful for their efficiency and dedication.

And who among us has not on many occasions failed to adequately thank, "Mr. Kay", Vividell Holmes, and others in the Senate restaurant for the efficient service and nutritious meals they provide us—again, Frequently working long in the night to insure our needs are met.

And, of course, Alan Porter of the photographic studio and his staff.

I certainly should not forget the outstanding pages who come and go. Sometimes we never really know where they come from and where they go when they leave. I assume they go back to where they came from, hopefully. But they are outstanding young men and women who grace the Senate and do a lot of things, again, that we may not be aware of to keep this place operating. We certainly extend our thanks and gratitude to them.

We could not run the Senate floor, we could not operate here, if we were all totally Republican or totally Democrat. And the staffs are not that way, either.

I would like to say a special word of thanks for the spirit of cooperation and professional dedicated performance exhibited by the secretary for the minority, David Pratt, Charles Kinney, Abby Saffold, Marty Paone, and the Democratic Cloakroom staff and all the others who work for the distinguished minority leader. I can just say, from my own working with them on the floor every day, it has been a pleasure. We've never had a misunderstanding that I know of. They are here for a purpose—to protect Senators on that side, just as we have ours on our side to protect Senators on this side and make certain no one's rights are given away.

During my years in the Senate, I grew to respect and admire our able secretary for the majority. But in the last 2 years, working even closer with Howard Greene, that respect and admiration has grown enormously. He, too, often is required to perform under duress and pressure, but somehow maintains his sense of humor—at least most of the time. You cannot have everything. All of us owe him a special debt of gratitude—and the same word of thanks should go to our legislative scheduler, Elizabeth Greene, and their staffs. To John Doney—"J.D."—and all of the Republican cloakroom staff, I can only say you all have become like a family to all of us, and I am most appreciative of all your good work.

And I would be remiss if I did not finally express my deep appreciation to my personal staff, who have been very helpful whenever needed. Sometimes—I am not certain the distinguished minority leader has ever had this problem—but when you have an office in the Capitol, sometimes it is difficult to be in both places. And I sort of detect that sometimes the personal staff think they may want to file a suit for abandonment when they do not see their Senators as often as they would like.

But I am appreciative, certainly, of the outstanding job that Sheila Burke has done, my staff director, and the highly professional and dedicated staff who have supported me in every legislative endeavor. Jim "Whit" Whittinghill is a new member of my staff who came from the House and is doing

an outstanding job, our newest addition as deputy chief of staff. He brought a great deal of knowledge and experience. And I would be lost without the capable and dedicated staff in my press section—Walt Riker, Dale Tate, and Margi Mannix. And Rich Belas, George Pieler, Tom Carter, Marie Michnich—all have earned my gratitude for their dedicated and able assistance.

Those outstanding men and women are on my majority leader staff, and are here. As I said earlier, those on my personal staff have an office in the Hart Building, have also been most helpful. Those on my personal staff and those in my Kansas offices have enabled me to concentrate on what sometimes is a rather heavy responsibility of the leadership, and at the same time make every effort to ensure that my constitutents are always being well served: Mike Pettit, Chris Bolton, Betty Meyer, Brent Bahler and others on my personal Kansas staff—who have enabled me to concentrate on the heavy responsibilities of leadership and insure that my constituents were always being well-served.

Finally—but certainly not the least important—I would like to say thanks for a job well-done to Joyce McCluney, Pat Wade, Dean Burridge, Judy Green, Marilyn Sayler, Susan Deavor, David Taylor, and others on my support staff. Without them, and without the countless other secretaries and clerks who staff our many offices, there is no doubt the important work of the Senate could not be done. I am certainly proud of every one of them and look foward to working with them in the coming years.

Again, My sincere thanks to all. I look forward to working with you again next year.

I would just say finally that no one is certain who will be the majority leader in the next Congress. I would say this: I have certainly had a great experience in the 2 years that I have been majority leader. It also has been an education. It also has been a time of testing, in the sense that you need to be patient I have discovered from time to time—either that or you get lost. You cannot be found from time to time.

But I think I have been rather fortunate because I have been the majority leader, and I can look across the aisle at someone who has been a legend in this Senate, Senator BYRD. He has given me, as I said last night, in an abbreviated way, advice, counsel, and direction. And I must say I have asked his flat out "What do I do now?" He knows the rules as well as anyone I know, and I assume probably even next to the Parliamentarian, and he has been both very helpful to me, and many times rather intimidating. But certainly he was doing the right thing. I aways felt the Parliamentarian at least ought to know quite a bit about the rules. I rely on the Parliamentarian. There is no doubt about that.

But the love of the Senate by the distinguished minority leader has rubbed off on all of us. We will all be grateful. Maybe not all of us realize it now. But in the days and years to come the history he is making of the Senate will be valuable to many of us. I think of how fortunate we are to be here as individuals, men and women, not as Republicans or Democrats. Senator ROBERT BYRD has been an example for 33 years.

He certainly has served the State of West Virginia with distinction. He has continued through election and reelection.

He has been the majority leader and the minority leader and has been tireless in the work for his party. And I can attest to that fact. He is a pro in the right sense of the word. He is a master of the rules and procedures. And he is one tough customer when it comes to the legislative battles on the Senate floor.

I think above all, I can say without exception, we have tried to be very candid with each other around here. ROBERT BYRD is always a gentleman. He understands the essence of the Senate is cooperation. There is such a thing as a decency index in this body. And I think that is something, too, that Senator BYRD has mastered.

Many things happen around here not because of totally the merit of the legislation, but sometimes it happens because of the merit of the person who may be offering the legislation. And the character of that person.

I know Senator BYRD understands, probably as well as any of us that today's foe could be tomorrow's ally. You do not burn your bridges in this place because the very person you may cut off at the knees is the person that you may want and you may not be able to find him if you have done that. You may want that person on your side in the next battle. That is bipartisan. You may want that Republican or that Democrat.

I am asked from time to time "Why don't the Republicans always vote with the President?" Well, I said, we are all different. Normally most Republicans do. They come from different parts of the country. They have different constituencies, and different opinions, and different philosophies. That is true with the Democrats as well. We have to have our differences. That is the way it is supposed to be.

We are not all alike in this body. If we all agreed on everything, there would not be any reason to have political parties.

We believe that we have a better philosophy. They may believe they have a better philosophy. Sometimes the voters are not certain of either.

We will continue to try to improve, and our friends on the other side will continue in the same way. So by definition we have our differences. But our friendship and our respect for each other, I think remains a constant. Differences generally go away. And I certainly know that both of us—myself and the minority leader—have had adjustments to make during the past 2 years. I did not have all of the experience that Senator BYRD had.

I know it is great coming from minority to the majority, but it is difficult going the other way. That is why we are so hopeful. But in any event, I think the Senator from West Virginia probably started from way back in the back of the room—maybe not. And after a lot of years we are not at the front row. I am not certain what that means.

But I would say that my friend from West Virginia certainly handled this challenge very well over the years. It has been a challenge. If you know BOB BYRD and his history and what he has done for himself and for others and how he did it, it is a story that many people do not know. Maybe some day they will fully understand.

I know his efforts—not only his efforts—but his contribution. But I say I have had a lot of good on-the-job training.

So I want to thank the distinguished Senator from West Virginia, the Democratic leader, for all of his help; as I said, for his guidance and his wisdom. Whatever happens, we are going to be working together in the future. The important thing around here is not—maybe it is our health, I guess. That is one thing we overlook from time to time, and our families, and our respect for one another.

So I just suggest that as we near the end of this session it has been an experience that I never dreamed of having as a product of a small town of 6,000 people—to be standing in the U.S. Senate; as a visitor would have been enough for me.

But to be the leader of the Senate for 2 years has been an experience that I do not think can be excelled.

So I thank all of my colleagues. And as I started, I thank all of those who have helped us make the Senate run. I thank all of those who come to visit us. I thank those in the media who cover us. Sometimes they cover us up. But they have their jobs to do.

I thank all of those for listening to this rather lengthy presentation.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The distinguished Democratic leader is recognized.

□ 1640

THE 99TH CONGRESS

Mr. BYRD. Mr. President, I have listened with rapt attention to the distinguished majority leader as he has stated quite accurately the record of performance of the 99th Congress. I have listened with admiration to his introspection. I have listened as he has thanked those about us who help us and who work with us, who make the Senate the institution that it is, the institution of service that it is, people who make it possible for us to carry out our responsibilities as best we can to the people whom we serve.

It has been a Congress of considerable importance with respect to the legislative product that we see now as we look back upon the record.

There are three or four especially important items of legislation that I would like to just briefly comment on. There is no need for me to repeat the very careful and thorough statement by the majority leader as to the accomplishments of this Congress. But I would say that the tax reform legislation is a landmark piece of legislation. It took down the tax shelters and closed up the loopholes. It removed 6 million low-income taxpayers from the rolls. It shifted more of the burden away from the middle class and to the profitable corporations and to the very high-income individuals in this country. It provided for a minimum tax on those major profitable corporations and those wealthy individuals.

It is not a piece of perfect legislation, but no legislation is ever perfect. As we go down the path of experience, we may see areas that have to be adjusted.

I do not know what the impact will be on the smokestack industries of this country; on the capital-intensive industries, the manufacturing industries. But I think that we have to feel proud of this accomplishment because it does constitute, in reality, tax reform.

Second, I would say that the drug legislation that has been passed just in recent hours, as the majority leader has stated, is an outstanding piece of legislation, and all those who participated in the creation of that product should be proud.

I especially thank LAWTON CHILES, JOE BIDEN, and CARL LEVIN and all the others on this side of the aisle who were in the drug task force which I appointed. I also salute the leadership of Mr. DOLE as he painstakingly, laboriously, and tenaciously showed his determination to get a piece of legislation that would deal with this drug epidemic that has taken so many lives, wasting the properties, the visions, the talents, and the futures of people, many of them young; others not so young.

I would also classify as one of the historic actions taken by this Senate, the impeachment trial of Judge Claiborne. It has been more than half a century since the last impeachment trial in this Senate. Of course, being one who loves the Senate, I believe as Blackstone did when he referred to the Senate as "that remarkable body, the most remarkable of all the inventions of modern politics"—he was Prime Minister of Great Britain four times. I believe as he did in this "remarkable body."

I have given it the best years of my life and it has given me the best that is in my own life.

I was proud of this institution in that trial and I will have to say that the majority leader is entitled to commendation for the manner in which this body went about its work.

I compliment those on both sides of the aisle who served on the special committee, those who were appointed by the majority leader and by me to serve on that committee.

They did their work thoroughly and they did it well. Those Members of the Senate 50 years from today can look back upon this impeachment trial as one that gave Judge Claiborne his just dues, one which gave him his "day in court," one which acted with compassion but with firmness, and always with the best interests of the great American people clearly in view as the Senate removed him from office.

Mr. President, I would add one other piece of legislation which I consider to be prominent, the reorganization of the Defense Department. That was a landmark piece of legislation. It was the first time that the Defense Department has been reorganized in a quarter of a century. The craftsmen of that legislation were master craftsmen in the field of national defense, Senator GOLDWATER and Senator NUNN.

It is to their great credit that the Senate virtually unanimously supported it. I do not recall exactly the vote. It was a consensus which those two men, and others on the Armed Services Committee on both sides of the aisle, were able to put together, a consensus, and it was an idea whose time had come, as Victor Hugo said. Those two Senators made the idea become a reality.

I feel very proud of this Senate for the work that they did.

I will not go further now into the legislative products of the 99th Congress. BOB DOLE has talked about his apprenticeship and about his 2 years before the mast. BOB DOLE has performed well, and the record of this 99th Congress is not one that is to be decried or in any way apologized for. There have been major accomplishments.

Now, Mr. President, briefly, let me move for a moment to those whom we should thank. I will not go over the list which Mr. DOLE has quite adequately covered, and appropriately.

I should, however, thank our floor staff.

I begin by expressing my appreciation to the Senate democratic floor staff, Abby Saffold, Charles Kinney, and Marty Paone, who are well known to every Member of this body. Theirs is one of the most demanding and difficult jobs in the Senate. Yet it is a job they discharge with unfailing courtesy, patience, and good humor.

I also thank Elizabeth Greene, who directs scheduling for the majority party. She, likewise, is extremely competent and understands the needs of the Members on her side of the aisle. She treats the Members on our side with equal courtesy.

I compliment David Pratt, the secretary to the minority. David performs his many duties with distinction and ability. I am sure that all of my colleagues join me in expressing our thanks to him for the many services he has rendered to the democratic conference and to the Senate.

The pages are fine young people and they do everything they can do to assist Members in the operation and actions of the Senate. We appreciate their services.

I compliment and thank Ms. Jo-Anne Coe, the Secretary of the Senate, and her staff. Hers is a demanding job, but she carries it out ably.

I commend the work of Howard Greene, secretary to the majority.

I thank Dr. Halverson, the Senate Chaplain, for his unfailing support, kindness, and good spirit.

Ernest Garcia, Sergeant at Arms, Jeanine Drysdale-Lowe, executive assistant to the Sergeant at Arms, who represents the minority in that office, and the staff of the Sergeant's office so ably assist us all, and provide the security which, regrettably, is a modern-day necessity.

I reserve a special word of commendation and appreciation for the excellent work of my very capable executive director and chief of staff, Mrs. Barbara Videnieks. She works closely with the policy staff, and with my State office staff every day and has demonstrated exceptional ability.

I express my appreciation for the work of Scott Bunton, the very able staff director of the Democratic Policy Committee in the Senate.

I thank Dick D'Amato, Deputy Director of the Policy Committee.

Linda Peek is the very capable director of communications on the policy staff. Linda's daily assistance to me and other Democratic Senators in conducting our relations with the news media is deeply appreciated, as are the efforts of her fine staff.

I compliment the work of the official reporters of debates. Mr. Russell

Walker, the editor in chief, and Mr. Scott Sanborn, the assistant editor, and their fine staff. Their highly specialized work helps keep the Senate running. They work late into the night, long after the Senate has gone home, preparing the CONGRESSIONAL RECORD for printing.

I must also thank the many hundreds of other people who help make the Senate run, and whose efforts all too often go unsung: There is our capitol physician, Dr. William Narva, and his staff; Mr. "Tinker" St. Clair and all the doormen; the Capitol Police; the restaurant workers; the maintenance staff; the staff of the Senate reception room; the Democratic Cloakroom; and all the many, many others who contribute to the work of the Senate.

I also thank those in the Senate press galleries who follow our efforts and help to keep us accountable to our constituents.

I thank all of these fine people for their tireless efforts in our behalf and in behalf of the Nation.

Mr. President, I know that I cannot mention every person by name. But in closing, I express the hope that all who have a part in this great forum and its operation will have an opportunity for rest, recreation, and family, as well as for preparation for the coming year, when the 100th Congress convenes—a year which undoubtedly will be as strenuous for Members and staff alike as this one has been.

Before I close by thanking the majority leader, I want to state that we do have, indeed, a very trying Congress ahead of us, the 100th Congress. I think it is somewhat of a distinction that our Maker has provided for those of us who will be serving, God willing, in the next Congress. As one who likes to think of those early forebears whose inventive genius created this institution, and as one who likes to read the Journal of Senator Maclay of Pennsylvania, that irascible, difficult individual who thought every other Senator was full of faults and perhaps he, himself, had few or none—as one who thinks of him and thanks him for practically the only history of the first 2 years of the Senate, I feel very fortunate indeed not only to have served in the 99th, but also to look forward to serving, God willing, in the 100th Congress and to be approaching the bicentennial of the U.S. Senate.

It is going to be a tough session next year. Whether we on this side are in the majority or whether we on this side are in the minority, we want to work with the other side of the aisle in dealing with some of the terribly grave and difficult problems that are going to confront the new Congress. We just have to do something about the awful budget deficits. We have to do something about the terrible trade deficits. We have to do something, also, about this institution itself.

In many ways, we are living with rules that go back to the Continental Congress and to the American Colonies before them and even, in their roots, to the British House of Commons before that. Our budget reform process in some ways, although not nearly so ancient but of much more recent vintage, is terribly awkward and I think it certainly needs fixing.

There has to be something done about the situations that we so often find ourselves in here, having debt limit bills come over here and continuing resolutions which attract all kinds of amendments and keep the Senate in session into the wee hours of the morning and impose upon the time and health of Members, of Senate and staff, and of families.

Perhaps it is well that there be an omnibus appropriations bill. It was tried some years ago but failed. Several years ago, there was the idea that there ought to be one major appropriations bill. The idea did not work very well, but we may, by force of circumstances, be coming to a situation in which there will be one omnibus appropriations bill.

Sometimes I think perhaps, that may not be too bad, if as we have seen here, the Senate Appropriations Committee takes up the bills one by one, the subcommittees act on them, the full committee acts on them, and we have committee action on each bill. I am not going to rule out the possibility of an omnibus appropriations bill as being the way we ought to go. My mind is open to persuasion on that. I am not saying that we should go in that direction or that we should not. But there has to be a better way.

Another thing we are witnessing is that when the continuing appropriations bill comes along, as I said a moment ago, it is a target for all kinds of amendments, authorizing legislation, and so on.

And in some instances, when a piece of authorizing legislation is attached to that bill, then when the chairman of the Senate Appropriations Committee goes to the conference with the House, the House brings in a new team of conferees from the legislative committee which has jurisdiction over those nongermane amendments. So it becomes more and more a nightmare.

The authorizing committees of the Senate need to meet more. It may be that Senators are deprived of the opportunity to get legislation that they see a need for out of authorizing committees and they, therefore, resort to the only instrument that is left. That is to try to tack those pieces of legislation on to the continuing appropriations bill.

In any event, I hope that the distinguished majority leader and I—regardless of which party is the majority and which is the minority party next year—can work together to improve the operation of the Senate in these respects.

□ 1700

Something has to be done because the situation just gets worse and worse. In all of this we have to have the cooperation of the other body, because this body cannot deal with the continuing resolution until it comes over from the other body, where customarily it originates. This body cannot deal with tax legislation until it comes over from the other body, where constitutionally it must originate. This body does not originate the debt limit. These measures usually come over here so late that the majority leader is put into a very difficult situation. All Senators have to stay beyond what reasonably should be the case if things were just done better. I hope in the next Congress we can work with both parties in the House and attempt to develop a system and a schedule and the kind of cooperation that will help us all to get our work done better and more in keeping with a schedule that does not drive human beings to the edge of desperation—perhaps, as the majority leader has indicated, to the impariment of their health. So we have our work cut out for us.

I also hope that in the next Congress we can do something about campaign financing. This awful money chase that Senate and House Members have to engage in practically all the time as campaigning becomes more and more expensive is undermining the credibility of the institution, creating more and more distrust in the minds of the people and taking Senators and House Members away from their families and their work.

So I hope we shall apply our minds and put our talents to work in developing legislation which will get us away from this money chase, so that Senators do not have to resort to taking contributions from political action committees. They are playing by the rules. This is all legal. There is nothing unlawful about it. But it seems to me it is in the interest of the people and the interest of this institution, because more and more people are getting the impression that this institution is guided by, and that Senators are beholden to, what are looked upon as special interests. In many instances the so-called special interest groups represent what the majority of the American people want, I do not denigrate special interest groups, per se, but the American people more and more see these small groups, political action groups and so on, wielding influence far beyond what they should, and the American people feel that the people's interests are being left out; in

other words, a great body of the electorate is not represented.

It seems to me that this is the underbelly, the Achilles heel of the legislative branch, and we are just going to have to do something about it.

So many times I go to the majority leader and I say, "Let's not have any votes before 4 o'clock on Monday, or 5 or 6." And he has the same problem on his side. We have such-and-such Senators who are out in their States or they are out having to raise campaign moneys for the rest of our colleagues who are running for office. What does it do to the schedule? The majority leader has to hold up legislation. We are kidding ourselves if we think legislation can be brought up and dealt with normally if rollcalls are going to be put off to the next day; Senators are busy, and as a consequence we do not get action on the legislation. So it becomes a Tuesday, Wednesday, Thursday thing. And that is not good. There is such a thing as a "quality of life," as Senator DECONCINI mentions from time to time. We are all slaves to the circumstances. As the majority leader said a while ago, he is the majority leader. Well, in some ways he has more power than any other Senator. In some ways, however, he is the slave of all, the slave of all. As one who has been majority leader, I can make this thing work, I can make this Senate work, if I could only have my way. The Senator from Kansas he could do the same. But there is the catch; we cannot have our way. It is indeed, an experience sui generis. It would be a good thing if every Senator in this body had to sit in that chair and be majority leader or be minority leader for 2 weeks when the Senate is at the very center of the storm. It would be a leveling influence and an eye-opener; Senators would have a better understanding of just what it is all about when one has to sit in the leaders' chairs. Of course we asked for it. But that is why Senators are all here, they too, asked for it. We are all here because we want to serve.

Mr. President, we will all work on those problems next year and try to tackle them together.

Finally, let me close by saying it has been fortunate for me, indeed, to have had ALAN CRANSTON and DANNY INOUYE in the elected leadership team on my side of the aisle. ALAN CRANSTON is, I believe, the best nose counter in the Senate. He is assiduous in his tasks and his work. He works hard. He has always been most cooperative with me. In my several years of work with ALAN CRANSTON at my side, when I was majority leader and later as the minority leader, there has never been any friction whatsoever. He has always been most cooperative, and, coming from the very large State that he represents, he is a marvelous individual indeed. He looks after his constituent; at the same time he looks after his duties here in the leadership. I have been fortunate to have ALAN CRANSTON as my assistant.

DANNY INOUYE is like a rock; He is always there, and I have benefited from his counsel and his advice and his unfailing support always. I feel that it is good to have a DANNY INOUYE working as Secretary of the Democratic Conference, working in the leadership, a dependable individual who is wise, who does not say a lot, who does, however, think a lot, and who, when he speaks people listen.

On the other side of the aisle, I said it last night I think best when I spoke of the attributes of ALAN SIMPSON. It is always a pleasure to work with ALAN SIMPSON. If these two party leadership teams did not work together, it is the people who would suffer; because unless Democrats and Republicans work together here, there will not be any work product, the people will be ill-served rather than well-served, and the Nation will be worse off, rather than better off.

As the majority leader has said, we are partisan, yes.

I ran on the Democratic ticket in West Virginia. The first vote I ever cast was for Franklin D. Roosevelt, and I have been a Democrat ever since. I will always be a Democrat. I get more Republican votes in West Virginia than any Democrat who runs there statewide. I try to serve all the people there. I am partisan, expected to be partisan, but at the same time I try to remember that there is something more important than party, in the final analysis, and that is the Republic.

We get a little carried away sometimes with our partisanship here. There have been some moments which have been tense between the majority leader and the minority leader. Who would expect it to be otherwise? Whether it is BOB DOLE and ROBERT BYRD, there are always going to be those tense moments that come and go. I am always glad when they go. I do not like to see them come. But it is part of being in public life as U.S. Senator and as an elected leader of the party. But when we go out of this Chamber—and before we go out of it—the feeling has gone.

There will come a time when we will look back, BOB DOLE and I, maybe we will be alone in a room somewhere, and there will be needles in our arms and tubes in our mouths and somebody feeling our pulse. For the first week or so, we will be very popular. There will be flowers and postcards and letters and telephone calls. Then, the days go by and the weeks roll on, and before we know it, a month has gone; and the postcards begin to slow down, and there will be fewer and fewer letters, fewer and fewer phone calls and telegrams, and flowers. After awhile, about the only people who will be there will be our close family, daughters and grandchildren, a few friends.

It reminds me of a rich man who died and left a will, and he directed that his funeral be conducted at 3 o'clock in the morning over on a very high mountain. It so happened that he died in the wintertime, and his funeral was conducted, in accordance with his wishes, on the high mountain at 3 o'clock in the morning.

In his will, he provided that his fortune be left to those who attended his funeral. He was able in that way to leave his fortune to his truest friends, because only they, a half-dozen, went out there in the snow on that mountain.

So that is the way it will be. The buses will continue to roll and the airplanes will continue in and out of Dulles and National Airports. The bridges will be congested in the mornings and in the evenings. The climate will change, the seasons will come and go. The Moon will come up; it will be full, and there will be a crescent Moon, and the stars will continue to shine. Thunderstorms in summer will come and the leaves will fall before the snows of winter come. Senators will be here speaking. There will be messages from the other body, messages from the President of the United Sates, and Senators will still go up to the television galleries.

After a while, the end will come, and the Governor will appoint somebody else to fill our shoes. In about 10 days, they will forget about ROBERT BYRD, and things will go on just as they always went on. The world will continue to turn on its axis; and life will go on as ever.

Sometimes I look at the majority leader and think he is a pretty good man. He is able to poke fun at himself. He does not take himself too seriously, and that is about the way we ought to look at things here—give of our best, serve to the fullest, give it all we have. But remember that, in the final analysis, there is something beyond this life, and we ought to be preparing for it, because it is sure to come.

The roses red upon my neighbor's vine
Are owned by him, but they are also mine.
His was the cost, and his the labor, too,
But mine as well as his the joy, their loveliness to view.

They bloom for me and are for me as fair
As for the man who gives them all his care.
Thus I am rich, because a good man grew
A rose-clad vine for all his neighbors' view.
I know from this that other plant for me,
And what they own, my joy may also be.
So why be selfish, when so much that's fine
Is grown for me, upon my neighbor's vine.

So, today may I say to BOB DOLE, as Tenneyson said, I am a part of all that I have met, and I have learned a lot from you—if I may break the rules for a moment and address my colleague in

the second person. I have learned a lot from you: it is that tenacity and courage and stick-to-itiveness, and yet that good humor and joviality that help to brighten our day. It is a pleasure to serve with you.

I think you have done a good job. I hope that whatever faults are mine that have surfaced from time to time can be accepted as those human frailties that I guess are found in some people.

□ 1720

And if I have at any moment acted in a way that I could have acted better, I hope the distinguished majority leader will forgive me and know that I am going to be working with him in the next year and will enjoy it as I have in the last year.

I salute him and count him as my friend.

Mr. DOLE. Mr. President, let me just thank the minority leader and let me also make the same statement. I know there are a couple of times things were fairly tense around here and I certainly apologize for any misunderstanding.

CALENDAR

Mr. DOLE. Mr. President, I know other Members wish to speak. I wonder if we might be able to take up quickly the four items the House is waiting for and then I know the Senator from South Carolina has a statement and the Senator from Nebraska has a statement.

Would there be any objection to doing these in about 1 minute?

Mr. THURMOND. No objection.

Mr. DOLE. They have been cleared.

CHILD ABUSE VICTIMS RIGHTS ACT

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 872, S. 985, the Victims of Child Abuse.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 985) to protect the rights of victims of child abuse.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike out all after the enacting clause, and insert the following:

That this Act may be cited as the "Child Abuse Victims' Rights Act of 1986".

FINDINGS

SEC. 2. The Congress finds that—

(1) child exploitation has become a multimillion dollar industry, infiltrated and operated by elements of organized crime, and by a nationwide network of individuals openly advertising their desire to exploit children;

(2) Congress has recognized the physiological, psychological, and emotional harm caused by the production, distribution, and display of child pornography by strengthening laws prescribing such activity;

(3) the Federal Government lacks sufficient enforcement tools to combat concerted efforts to exploit children prescribed by Federal law, and exploitation victims lack effective remedies under Federal law; and

(4) current rules of evidence, criminal procedure, and civil procedure and other courtroom and investigative procedures inhibit the participation of child victims as witnesses and damage their credibility when they do testify, impairing the prosecution of child exploitation offenses.

INCLUSION OF SEXUAL EXPLOITATION OF CHILDREN UNDER RICO

SEC. 3. Section 1961(1)(B) of title 18, United States Code, is amended by inserting after "section 1955 (relating to the prohibition of illegal gambling businesses)," the following: "sections 2251 and 2252 (relating to sexual exploitation of children),".

CIVIL REMEDY FOR PERSONAL INJURY

SEC. 4. (a) Chapter 110 of part I of title 18, United States Code, is amended by redesignating section 2255 as section 2256, and by inserting after section 2254 the following:

§ 2255. Civil remedy for personal injuries

"(a) Any minor who is a victim of a violation of Section 2251 or 2252 of this title may use in any appropriate United States district court and shall recover threefold the damages such minor sustains and the cost of the suit, including a reasonable attorney's fee. Any minor as described in the preceding sentence shall be deemed to have sustained damages of no less than $50,000 in value".

(b) Any action commenced under this section shall be barred unless the complaint if filed within six years after the right of action first accrues or in the case of a person under a legal disability, not later that three years after the disability.".

(b) The table of sections for chapter 110 of part I of title 18, United States Code, is amended by striking out the item relating to section 2255 and inserting in lieu thereof the following:

"2255. Civil remedy for personal injuries.
"2256. Definitions for chapter.".

MINIMUM SENTENCE FOR REPEAT OFFENDERS

SEC. 5. (a) Section 2251(c) of title 18, United States Code, is amended by striking out "or imprisoned not less than two years" and inserting in lieu thereof "or imprisoned not less than five years".

(b) Section 2252(b) of title 18, United States Code, is amended by striking out "or imprisoned not less than two years" and inserting in lieu thereof "or imprisoned not less than five years".

ATTORNEY GENERAL REPORT

SEC. 6. (a) Within one year after the date of enactment of this Act, the Attorney General shall submit a report to Congress detailing possible changes in the Federal Rules of Evidence, the Federal Rules of Criminal Procedure, the Federal Rules of Civil Procedure, and other Federal courtroom, prosecutorial, and investigative procedures which would facilitate the participation of child witnesses in cases involving child abuse and sexual exploitation.

(b) In preparing the report, the Attorney General shall consider, but not be limited to, such changes as—

(1) use of closed-circuit cameras, two-way mirrors, and other out-of-court statements;

(2) judicial discretion to circumscribe use of harassing, overly complex, and confusing questions against child witnesses;

(3) use of videotape in investigations to reduce repetitions of interviews;

(4) streamlining investigative procedures; and

(5) improved training of prosecutorial and investigative staff in special problems of child witnesses, including handicapped children.

CHILD EXPLOITATION

● Mr. GRASSLEY. Mr. President, today, I urge my colleagues to support S. 985, the "Child Abuse Victims' Rights Act," as amended in the Judiciary Committee. This legislation will greatly improve our ability to stop the ongoing and ever growing problem of child exploitation. S. 985, as amended, has been passed unanimously by the Senate Judiciary Committee.

Essentially, the bill will do the following:

First, make child pornography a "racketeering" offense under the Racketeer Influenced and Corrupt Organizations Act (RICO);

Second, create a civil remedy for victims of child pornography that will provide for victim compensation, as well as further deterrence for these crimes;

Third, provide for an Attorney General report issuing model recommendations for ways to improve courtroom procedures involving child-victim witnesses; and

Fourth, increase penalties for repeat child pornographers.

Mr. President, Congress has already concluded that child pornography and prostitution are highly organized, multimillion dollar industries that operate on a nationwide scale. It has been estimated that each year 50,000 children disappear and more than 1.5 million are sexually molested, filmed, or photographed for the use of pornography.

In the past, Congress has had success in attacking the problem of child exploitation. Because of the Child Protection Act of 1984, which removed the "obscenity and engaged for profit" requirements, there has been an increase in child pornography prosecutions and convictions. Nevertheless, most exploiters escape prosecution. So there remains much to be done by the Congress.

Under current law, only the producers or distributors of child pornography can be prosecuted. My bill will authorize the prosecution of "masterminds" and behind the scenes financiers who control and bankroll these criminal activities. Child pornography will never effectively be dealt with until the people calling the shots are effectively dealt with.

In addition, victims of these criminals will have the authority to sue their victimizers for treble damages, court costs and attorney fees under a

new remedy created under chapter 110 of title 18.

Mr. President, we all want to put a stop to child pornography. S. 985 is a great step forward toward accomplishing this goal.

Therefore, I urge my colleagues to help protect our children from unscrupulous criminals by voting for this bill.

Our children are not for sale.●

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 985) was passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SEXUAL ABUSE

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar call No. 1082, H.R. 4745, with respect to sexual abuse.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4745) to amend title 18, United States Code, with respect to sexual abuse.

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 4745) was ordered to a third reading, was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CHILD PORNOGRAPHY

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to H.R. 5560, the child pornography bill now being held at the desk.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5560) To amend title 18 of the United States Code to ban the production and use of advertisements for child pornography or solicitions for child pornography, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

● Mr. ROTH. Mr. President, I rise in support of H.R. 5560, the Child Sexual Abuse and Pornography Act of 1986, which is the House counterpart to my bill, S. 2398. The bill would outlaw the advertising of child pornography and tighten child abuse laws by eliminating all references to gender in the statute prohibiting the interstate transportation of minors for prohibited sexual conduct, popularly known as the Mann Act. There is clearly a direct link between child pornography and the sexual abuse and exploitation of our Nation's children. After a yearlong investigation by the Permanent Subcommittee on Investigations, which I chair, as well as public hearings by both my subcommittee, the Subcommittee on Juvenile Justice, and the House Judiciary Subcommittee on Crime, it is established beyond any doubt that pedophiles—emotionally disturbed individuals who are sexually attracted to children—make extensive use of child pornography to stimulate and justify their ugly behavior and to entice and blackmail their helpless young victims. For the sake of our children, we must do more to restrict the availability of child pornography to these individuals. For this reason, I introduced the Child Sexual Abuse and Pornography Act of 1986, S. 2398.

As I indicated when I introduced S. 2398, my subcommittee's investigation disclosed the existence of a seamy underground network of child molesters—adults who seek out children for sexual gratification—and it showed that the very lifeblood of this loosely organized underground society is child pornography. Virtually every expert on the subject who testified before the subcommittee or discussed child abuse with subcommittee investigators, including several convicted child molesters, confirmed the central role of child pornography in the life of the pedophile.

The production and distribution of child pornography is, of course, illegal; and action taken by Congress in 1984 to strengthen the laws against child pornography has resulted in a dramatic and encouraging increase in child pornography indictments and convictions. Despite increased vigilance on the part of the U.S. Customs Service and other Federal authorities, however, commercial and noncommercial child pornography continues to be widely sold and traded by pedophiles in this country.

One reason that the trade in child pornography continues to flourish, Mr. President, is that this salacious and clearly illegal material—photos, films and videotapes depicting nude young children and children engaged in explicit sexual behavior—is being openly advertised, traded and sold in pedophile newsletters and other publications within the United States. Even more shocking, these publications sometimes contain thinly disguised advertisements and solicitations for child prostitution, including such things as child sex tours to foreign countries where pedophiles can obtain children for purposes of sexual molestation. While the goods and services offered in these ads are illegal, Mr. President, the advertisements themselves are not.

H.R. 5560, like S. 2398, would close this and other loopholes in our laws against child abuse. For the first time, it would be illegal to produce and publish advertisements for child pornography as well as solicitations for child pornography and sex with children. Violations would be punishable by prison terms of up to 10 years, and up to 15 years for a second conviction. This bill would enable Federal authorities to intervene at a critical juncture—they could prosecute those who would molest children or solicit child molestation before the innocent child is irreparably harmed.

This bill also would amend the portions of title 18 of the United States Code known as the Mann Act, which prohibits the interstate transportation of females for the purpose of prostitution and other immoral purposes. Our investigation revealed that children of both sexes are victimized by pedophiles, who sometimes trade their young victims by transporting them back and forth across State lines. H.R. 5560, like S. 2398, will make this law sex neutral, so that it will protect males as well as females and it will apply whether or not the defendants seek to obtain any financial advantage. In addition, the bill will expand the Mann Act's scope. Now, in order to prosecute someone for transporting a minor for purposes of prohibited sexual conduct, that conduct must be shown to be commercially exploited. The subcommittee's investigation showed that minors and recordings of minors engaged in prohibited sexual conduct are often traded by pedophiles strictly for purposes of sexual gratification, with no money changing hands. H.R. 5560 will place these individuals within the reach of the Mann Act.

Mr. President, those who advertise in order to receive or deal in child pornography and child prostitution are as guilty of child abuse as the actual child molester—in fact, in many cases it is the same person. It is important to recall that every piece of child pornography represents the depiction of a terrible crime—the sexual exploitation

of a child. Child sexual abuse can literally destroy a childhood, turning one of life's most precious times into a psychic nightmare of guilt and shame. This legislation would make it so costly to advertise any sexually explicit material involving children that the risk of prosecution will outweigh any possible incentive to engage in this activity. I hope the Senate will act quickly to close the loopholes which we have identified in our child abuse and child pornography laws. Nothing less than the well-being of our Nation's children is at stake.

Mr. President, I wish to thank my distinguished colleague from Alabama, Senator DENTON, for his outstanding assistance in bringing this legislation to fruition. Senator DENTON has been an advocate in the fight against child pornography, and I wish to commend him for his support.●

● Mr. DENTON. Mr. President, I rise in support of H.R. 5560, the Child Sexual Abuse and Pornography Act of 1986, a bill to outlaw the advertising of child pornography and to strengthen the Mann Act's protection against the sexual exploitation of minors. I commend my distinguished colleague from Delaware [Mr. ROTH] for his leadership in the fight against pornography and for sponsoring S. 2398 the Senate companion measure.

Mr. President, pornography attacks human dignity itself at its very core. It is an epidemic that devastates the personal and social well-being of contemporary society. We must remain alert to its effects and take countermeasures to prevent its spread. Pornography encourages the sexual exploitation and abuse of men, women, and children, with tragic consequences.

Testimony received in the Senate Judiciary Subcommittee on Juvenile Justice indicated beyond a doubt that the effects of pornography are devastating, both to the individual and to society. The sex industry abuses and exploits not only those who engage in making pornography, and those who are exposed to it, but also those who are victimized by its effects on other people. It uses every means of social communication: books, magazines, tabloids, films, video cassettes, subscription television, video games, coin-operated machines, computers, and erotic telephone messages.

Pornography is an offense against the rights of all people. It is a problem which victimizes everyone. In order to deal effectively with the problem we must recognize that pornography victimizes all members of society, regardless of sex, age, race, religion, or social station. Pornography is particulary egregious when children become unwilling participants or when children are sexually abused or exploited as a result of the pornography.

Mr. President, hearings conducted by the Senate Judiciary Subcommittees on Juvenile Justice, Criminal Law, and the Subcommittee on Security and Terrorism, which I chair, have demonstrated beyond doubt that there is a direct link between child pornography and the sexual abuse and exploitation of our Nation's children. In fact, at the Subcommittee on Security and Terrorism hearing, testimony was presented by the FBI that pedophiles make extensive use of child pornography to stimulate and justify their behavior, to lower the child's inhibitions and reluctance, to blackmail the child victim and to establish a medium by which they can communicate with other like-minded criminals.

Mr. President, the Congress must work to eliminate the production of child pornography and the sexual exploitation and abuse of our children. It is only through hard work and cooperation that, we can find a way to solve the problem of child sexual exploitation which, because of past errors, has been allowed to flourish unabated. The production of child pornography degrades and exploits children in a fundamental, inhumane, uncivilized way, and harms all of society in the process.

Mr. President, the Child Sexual Abuse and Pornography Act of 1986, provides a useful tool in our fight against child pornography. The bill creates a criminal penalty for advertising or soliciting child pornography and child sexual abuse, revises the Mann Act so that it will apply to males as well as females and outlaws the "trading" of young children by pedophiles across State lines, regardless of whether the activity is done for "commerical" purposes.

Mr. President, I urge my colleagues to support this important piece of legislation.●

The PRESIDING OFFICER. The bill is before the Senate and open to amendment.

If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 5560) was ordered to a third reading, was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TECHNICAL CHANGES IN ENROLLMENT OF H.R. 3614

Mr. DOLE. Mr. President, I send a concurrent resolution to the desk on behalf of Senator DENTON and ask for its immediate consideration.

It makes technical changes in the enrollment of H.R. 3614.

The PRESIDING OFFICER. The concurrent resolution will be stated by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 175) correcting the enrollment of H.R. 3614.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 175) was agreed to as follows:

S. CON. RES. 175

Resolved by the Senate (the House of Representatives concurring. That, in the enrollment of the bill (H.R. 3614) to restrict the use of government vehicles for transportation of officers and employees of the Federal Government between their residences and places of employment, and for other purposes, the Clerk of the House of Representatives shall make the following corrections:

In section 1344 of title 31, United States Code (as amended by subsection (a) of the first section of the bill)—

(1) strike out paragraph (3) of subsection (b) of such section 1344 and insert in lieu thereof the following:

"'(3) the Postmaster General of the United States;";

(2) strike out paragraph (7) of such subsection and insert in lieu thereof the following:

"'(7) the Comptroller General of the United States;";

(3) strike out the period at the end of paragraph (8) of such subsection and insert in lieu thereof a semicolon and "and";

(4) immediately after such paragraph (8) insert the following new paragraph:

"'(9) principal diplomatic and consular officials abroad, and the United States Ambassador to the United Nations."; and

(5) in the first sentence of subsection (d)(2) of such section 1344, strike out "a period of not more than 90 additional calender days" and insert in lieu thereof "one or more periods, each not in excess of 90 additional calendar days".

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INDEPENDENT JURY SYSTEM FOR THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 964, H.R. 2946, dealing with the D.C. court system.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2946) to establish an independent jury system for the Superior Court of the District of Columbia.

There being no objection, the Senate proceeded to consider the bill, which has been reported from the Committee on Governmental Affairs, with an amendment to strike out all after the enacting clause, and insert the following:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "District of Columbia Jury System Act".

SEC. 2. ESTABLISHMENT OF DISTRICT OF COLUMBIA JURY SYSTEM.

Chapter 19 of title 11 of the District of Columbia Code is amended to read as follows:

"CHAPTER 19. JURIES AND JURORS

Sec.
"11-1901. Declaration of policy.
"11-1902. Definitions.
"11-1903. Prohibition of discrimination.
"11-1904. Jury system plan.
"11-1905. Master juror list.
"11-1906. Qualification of jurors.
"11-1907. Summoning of prospective jurors.
"11-1908. Exclusion from jury service.
"11-1909. Deferral from jury service.
"11-1910. Challenging compliance with selection procedures.
"11-1911. Length of service.
"11-1912. Juror fees.
"11-1913. Protection of employment of jurors.
"11-1914. Preservation of records.
"11-1915. Fraud in the selection process.
"11-1916. Grand jury; additional grand jury.
"11-1917. Coordination and cooperation of courts.
"11-1918. Effect of invalidity.

"CHAPTER 19. JURIES AND JURORS

"§11-1901. Declaration of policy.

"A jury selection system is hereby established for the Superior Court of the District of Columbia. All litigants entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the residents of the District of Columbia. In accordance with the provisions of this chapter, all qualified individuals shall have the opportunity to be considered for service on grand and petit juries in the District of Columbia and shall be obligated to serve as jurors when summoned for that purpose.

"§11-1902. Definitions.

"For purposes of this chapter, the following terms have the following meanings:

"(1) The term 'Board of Judges' means the chief judge and the associate judges of the Superior Court of the District of Columbia.

"(2) The term 'chief judge' means the chief judge of the Superior Court of the District of Columbia.

"(3) The term 'clerk' means the clerk of the Superior Court of the District of Columbia or any deputy clerk.

"(4) The term 'Court' means the Superior Court of the District of Columbia and may include any judge of the Court acting in an official capacity.

"(5) The term 'juror' means (A) any individual summoned to Superior Court for the purpose of serving on a jury; (B) any individual who is on call and available to report to Court to serve on a jury upon request; and (C) any individual whose service on a jury is temporarily deferred.

"(6) The term 'jury' includes a grand or petit jury.

"(7) The term 'jury system plan' means the plan adopted by the Board of Judges of the Court, consistent with the provisions of this chapter, to govern the administration of the jury system.

"(8) The term 'master juror list' means the consolidated list or lists compiled and maintained by the Board of Judges of the District of Columbia Courts which contains the names of prospective jurors for service in the Superior Court of the District of Columbia.

"(9) The term 'random selection' means the selection of names of prospective jurors in a manner immune from the purposeful or inadvertent introduction of subjective bias, so that no recognizable class of the individuals on the list or lists from which the names are being selected can be purposefully or inadvertently included or excluded.

"(10) The term 'resident of the District of Columbia' means an individual who has resided or has been domiciled in the District of Columbia for not less than six months.

"§11-1903. Prohibition of discrimination.

"A citizen of the District of Columbia may not be excluded or disqualified from jury service as a grand or petit juror in the District of Columbia on account of race, color, religion, sex, national origin, ancestry, economic status, marital status, age, or (except as provided in this chapter) physical handicap.

"§11-1904. Jury System Plan.

"(a) The Board of Judges shall adopt, implement, and as necessary modify, a written jury system plan for the random selection and service of grand and petit jurors in the Superior Court consistent with the provisions of this chapter. The adopted plan and any modifications shall be subject to a 30-day period of review by Congress in the manner provided for an act of the Council under section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act. The plan shall include—

"(1) detailed procedures to be followed by the clerk of the Court in the random selection of names from the master juror list;

"(2) provisions for a master jury wheel (or other device of like purpose and function) which shall be emptied and refilled at specified intervals, not to exceed 24 months;

"(3) provisions for the disclosure to the parties and the public of the names of individuals selected for jury service, except in cases in which the chief judge determines that confidentiality is required in the interest of justice; and

"(4) procedures to be followed by the clerk of the Court in assigning individuals to grand and petit juries.

"(b) The jury system plan shall be administered by the clerk of the Court under the supervision of the Board of Judges.

"§11-1905. Master juror list.

"(a) The jury system plan shall provide for the compilation and maintenance by the Board of Judges of a master juror list from which names of prospective jurors shall be drawn. Such master juror list shall consist of the list of District of Columbia voters, [individuals who submit their names to the Court for inclusion on the master juror list] and names from such other appropriate sources and lists as may be provided in the jury system plan.

"(b) Notwithstanding any other provision of law, upon request of the Board of Judges any person having custody, possession, or control of any list required under subsection (a) shall provide such list to the Court, at cost, at all reasonable times. Each list shall contain the names and addresses of individuals on the list. Any list obtained by the Court under the provisions of this chapter may be used by the Court only for the selection of jurors pursuant to this chapter.

[("(c) Not less than once each year, the Board of Judges shall give public notice to the citizens of the District of Columbia that individuals may be included on the master juror list by submission of their names and addresses to the clerk of the Court. Such public notice shall be given through such means as will reasonably assure as broad a dissemination as possible.]

"§11-1906. Qualification of Jurors.

"(a) The jury system plan shall provide for procedures for the random selection and qualification of grand and petit jurors from the master juror list. Such plan may provide for separate or joint qualification and summoning processes.

"(b)(1) An individual shall be qualified to serve as a juror if that individual—

"(A) is a resident of the District of Columbia;

"(B) is a citizen of the United States;

"(C) has attained the age of 18 years; and

"(D) is able to read, speak, and understand the English language.

"(2) An individual shall not be qualified to serve as a juror—

"(A) if determined to be incapable by reason of physical or mental infirmity of rendering satisfactory jury service; or

"(B) if that individual has been convicted of a felony or has a pending felony or misdemeanor charge, except that an individual disqualified for jury service by reason of a felony conviction may qualify for jury service not less than one year after the completion of the term of incarceration, probation, or parole following appropriate certification under procedures set out in the jury system plan.

"(3) Any determination regarding qualification for jury service shall be made on the basis of information provided in the juror qualification form and any other competent evidence.

"(c)(1) The jury system plan shall provide that a juror qualification form be mailed to each prospective juror. The form and content of such juror qualification form shall be determined under the plan. Notarization of the juror qualification form shall not be required.

"(2) An individual who fails to return a completed juror qualification form as instructed may be ordered by the Court to appear before the clerk to fill out such form, to appear before the Court and show cause why he or she should not be held in contempt for failure to submit the qualification form, or both. An individual who fails to show good cause for such failure, or who without good cause fails to appear pursuant to a Court order, may be punished by a fine of not more than $300, by imprisonment for not more than seven days, or both.

"(d) An individual who intentionally misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror may be punished by a fine of not more than $300, by imprisonment for not more than 90 days, or both.

"§11-1907. Summoning of Prospective Jurors.

"(a) At such times as are determined under the jury system plan, the Court shall summon or cause to be summoned from among qualified individuals under section 11-1906 sufficient prospective jurors to fulfill requirements for petit and grand jurors

for the Court. A summons shall require a prospective juror to report for possible jury service at a specified time and place unless advised otherwise by the Court. Service of prospective jurors may be made personally or by first-class, registered, or certified mail as determined under the plan.

"(b) A prospective juror who fails to appear for jury duty may be ordered by the Court to appear and show cause why he or she should not be held in contempt for such failure to appear. A prospective juror who fails to show good cause for such failure, or who without good cause fails to appear pursuant to a Court order, may be punished by a fine of not more than $300, by imprisonment for not more than seven days, or both.

"§11-1908. Exclusion from jury service.

"(a) Subject to the provisions of this section and of sections 11-1903, 11-1906, and 11-1909, no individual or class of individuals may be disqualified, excluded, excused, or exempt from service as a juror.

"(b) An individual summoned for jury service may be: (1) excluded by the Court on the ground that that individual may be unable to render impartial jury service or that his or her service as a juror would be likely to disrupt the proceedings; (2) excluded upon peremptory challenge as provided by law; (3) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown; or (4) excluded upon determination by the Court that his or her service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations. No person shall be excluded under clause (4) of this subsection unless the judge, in open Court, determines that such exclusion is warranted and that exclusion of that individual will not be inconsistent with sections 11-1901 and 11-1903 of this chapter.

"(c) An individual excluded from a jury shall be eligible to sit on another jury if the basis for the initial exclusion would not be relevant to his or her ability to serve on such other jury. The procedures for challenges to and review of exclusions from jury service shall be set forth in the jury system plan.

"§11-1909. Deferral from jury service.

"A qualified prospective juror may be deferred from jury service only upon a showing of undue hardship, extreme inconvenience, public necessity, or temporary physical or mental disability which would affect service as a juror. The procedure for requesting a deferral from jury service and the procedure and basis for granting a deferral shall be set forth in the master jury plan.

"§11-1910. Challenging compliance with selection procedures.

"(a) A party may challenge the composition of a jury by a motion for appropriate relief. A challenge shall be brought and decided before any individual juror is examined, unless the Court orders otherwise. The motion shall be in writing, supported by affidavit, and shall specify the facts constituting the grounds for the challenge. If the Court so determines, the motion may be decided on the basis of the affidavits filed with the challenge. If the Court orders trial of the challenge, witnesses may be examined on oath by the Court and may be so examined by either party.

"(b) If the Court determines that in selecting a grand or petit jury there has been a substantial failure to comply with this chapter, the Court shall stay the proceedings pending the selection of a jury in conformity with this chapter, quash the indictment, or grant other appropriate relief.

"(c) The procedures prescribed by this section are the exclusive means by which a person accused of a crime, the District of Columbia, the United States, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with this chapter. Nothing in this section shall preclude any person from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin, economic status, marital status, age, or physical handicap in the selection of individuals for service on grand or petit juries.

"§11-1911. Length of service.

"The length of service for grand and petit jurors shall be determined by the master jury plan. In any twenty-four month period an individual shall not be required to serve more than once as a grand or petit juror except as may be necessary by reason of the insufficiency of the master juror list or as ordered by the Court.

"§11-1912. Juror fees.

"(a) Notwithstanding section 602(a) of the District of Columbia Self-Government and Governmental Reorganization Act, grand and petit jurors serving in the Superior Court shall receive fees and expenses at rates established by the Council of the District of Columbia, except that such fees and expenses may not exceed the respective rates paid to such jurors in the federal system.

"(b) A petit or grand juror receiving benefits under the laws of employment security of the District of Columbia shall not lose such benefits on account of performance of juror service.

"(c) Employees of the United States or of any State or local government who serve as grand or petit jurors and who continue to receive regular compensation during the period of jury service shall not be compensated for jury service. Amounts representing reimbursement of expenses incurred in connection with jury service may be paid to such employees to the extent provided in the jury system plan.

"§11-1913. Protection of employment of jurors.

"(a) An employer shall not deprive an employee of employment, threaten, or otherwise coerce an employee with respect to employment because the employee receives a summons, responds to a summons, serves as a juror, or attends Court for prospective jury service.

"(b) An employer who violates subsection (a) is guilty of criminal contempt. Upon a finding of criminal contempt an employer may be fined not more than $300, imprisoned for not more than 30 days, or both, for a first offense, and may be fined not more than $5,000, imprisoned for not more than 180 days, or both, for any subsequent offense.

"(c) If an employer discharges an employee in violation of subsection (a), the employee within 9 months of such discharge may bring a civil action for recovery of wages lost as a result of the violation, for an order of reinstatement of employment, and for damages. If an employee prevails in an action under this subsection, that employee shall be entitled to reasonable attorney fees fixed by the court.

"§11-1914. Preservation of records.

"(a) All records and lists compiled and maintained in connection with the selection and service of jurors shall be preserved for the length of time specified in the jury system plan.

"(b) The contents of any records or lists used in connection with the selection process shall not be disclosed, except in connection with the preparation or presentation of a motion under §11-1910, or until all individuals selected to serve as grand or petit jurors from such lists have been discharged.

"§11-1915. Fraud in the selection process.

"An individual who commits fraud in the processing or selection of jurors or prospective jurors, either by causing any name to be inserted into any list maliciously or by causing any name to be deleted from any list maliciously (including malicious data entry or the altering of any data processing machine or any set of instructions or programs which control data processing equipment for such malicious purpose), is guilty of the crime of jury tampering, and, upon conviction, may be punished by a fine of not more than $10,000, imprisonment for not more than two years, or both. This section shall not limit any other provisions of law concerning the crime of jury tampering.

"§11-1916. Grand jury; additional grand jury.

"(a) A grand jury serving in the District of Columbia may take cognizance of all matters brought before it regardless of whether an indictment is returnable in the Federal or District of Columbia courts.

"(b) If the United States Attorney for the District of Columbia certifies in writing to the chief judge that an additional grand jury is required, the judge may in his or her discretion order an additional grand jury summoned which shall be drawn at such time as he or she designates. Unless discharged by order of the judge, the additional grand jury shall serve until the end of the term for which it is drawn.

"§11-1917. Coordination and Cooperation of Courts.

"To the extent feasible, the Superior Court and the United States District Court shall consider the respective needs of each court in the qualification, selection, and service of jurors. Nothing in this chapter shall be construed to prevent such courts from entering into any agreement for sharing resources and facilities (including automated data processing hardware and software, forms, postage, and other resources).

"§11-1018. Effect of Invalidity.

"If any provision of this Act or the application of that provision is held invalid, such invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application.".

SEC. 3. TECHNICAL AND CONFORMING AMENDMENTS.

Section 1869(f) of title 28, United States Code, is amended by striking out "except that for purposes of sections 1861, 1862, 1866(c), 1866(d), and 1867 of this chapter such terms shall include the Superior Court of the District of Columbia".

SEC. 4. EFFECTIVE DATE.

(a) Except as provided in subsection (b), the provisions of this Act shall take effect 180 days after the date of enactment of this Act.

(b) Upon enactment of this Act, the Board of Judges shall have authority to promulgate and adopt a jury system plan in accord-

ance with this Act and the Court and the clerk of the Court shall have authority to take all necessary actions preliminary to the assumption of the administration of an independent jury system under this Act.

● Mr. MATHIAS. Mr. President, I am pleased to bring before the Senate H.R. 2946, the District of Columbia Jury System Act. This legislation takes the important step of allowing the Superior Court of the District of Columbia to establish an independent jury system for that local trial court. Under current law, the Federal District Court for the District of Columbia is charged with running a single jury selection system for both the local and the Federal courts. The bill would cut the tie that binds the local court to the Federal court, and would allow the superior court to implement a 1 day/one trial system which it successfully tested recently. The bill has the strong support of the local courts, the local bar, and the administration.

Mr. President, H.R. 2946 is an important and vital piece of legislation which, when taken together with the Judicial Efficiency and Improvements Act passed by the Senate last week, will greatly enhance the operations of the superior court and the court of appeals in the District of Columbia. I urge my colleagues to join me in support of this legislation.●

The PRESIDING OFFICER. If there be no further amendment to be proposed the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall it pass?

So the bill (H.R. 2946) was passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ADJOURNMENT OF THE TWO HOUSES OF CONGRESS

Mr. DOLE. Mr. President, is the adjournment resolution there?

The PRESIDING OFFICER. That is House Concurrent Resolution 417. It is at the desk.

Mr. DOLE. I ask for its consideration.

The PRESIDING OFFICER. The resolution will be stated.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 417) providing for the sine die adjournment of the Ninety-ninth Congress.

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on Friday, October 17, 1986 or on Saturday, October 18, 1986, pursuant to a motion made by the majority leader or his designee, and that when the Senate adjourns on Friday, October 17, 1986 or on Saturday, October 18, 1986, pursuant to a motion made by the majority leader or his designee, they stand adjourned sine die.

Mr. DOLE. Mr. President, I just indicate we have had indication from the House they will not act on any of the measures we sent over there until they have the adjournment resolution.

We still have a little work to do in the Senate, not much. I hope to conclude in an hour.

The PRESIDING OFFICER. The question is on the concurrent resolution. Is there debate on the concurrent resolution?

Mr. EXON. Reserving the right to object, and I ask a question of the majority leader.

Mr. DOLE. Yes.

Mr. EXON. Do I understand the majority leader to say that the House has indicated they will not take any action on the measures we have sent back until they have this concurrent resolution on their desk; is that correct?

Mr. DOLE. That is my understanding, yes.

Mr. EXON. Let me ask the further question.

In approving this then, what we are simply agreeing to is that if they dod not wish to take any of the action on any of the measure that we have sent over to them that they have not acted upon, those measures will automatically die; is that correct?

Mr. DOLE. This is correct. We have a few of theirs over here.

Mr. EXON. So, in passing this over to the House, we are not making any firm judgment on what time we will adjourn sine die; is that correct?

Mr. DOLE. That is correct.

But I just say by passing this we are not totally defenseless.

Mr. EXON. That answers my question.

I thank the majority leader.

The PRESIDING OFFICER. The Chair was in error. The concurrent resolution is not debatable.

The question is on the concurrent resolution.

Without objection, the concurrent resolution is agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The President pro tempore is recognized.

LEGISLATIVE ACCOMPLISHMENTS

Mr. THURMOND. Mr. President, I will not take over 8 or 10 minutes. The hour is late.

I rise to express my deep appreciation to Senator ROBERT DOLE for his outstanding leadership in the last 2 years as majority leader.

In my 32 years in the Senate, I do not believe any one session has accomplished more or been more productive than this year.

Three months ago it looked as if we were not going to get very much done. All of a sudden, tables have turned and this has been a very fine session.

I just want to say with regard to the foreign affairs field, that I was extremely pleased that we were able to get $100 million for the Contra aid, $200 million for the Philippines, assistance for Afghanistan freedom fighters, and also for the United States Forces opposing the Angolan regime.

□ 1730

I was pleased that we were able to make the sale to Saudi Arabia and very pleased that the antiterrorist bill was passed where the Federal Government can now use its authority to prosecute anyone who kills an American abroad in a terrorist act. I am very pleased with the action of the President in handling the Libya situation and showing retaliatory action against Qadhafi for the Libyan state-supported terrorism that was carried out.

I am very pleased, too, that we were able to get a nuclear cooperation agreement with China and glad to see that the Senate has continued to pressure the Soviet Union and other countries to improve their policies and practices on human rights.

In the matter of economic affairs, we have a very impressive record. The reconciliation bill was passed, which will save $18 billion over the next 3 years. The fiscal 1987 budget resolution met its responsibilities to meet the $144 billion 1987 deficit target under Gramm-Rudman-Hollings.

The tax bill we passed this year is one of the finest tax bills that has ever been passed in the history of the country. It lowers the rates now to 15 and 28 percent. We are, indeed, proud for what has been done there to help the middle class and to be of benefit to so many people in our country, especially poor people.

The debt-ceiling bill not only extended the debt ceiling but it will remedy problems with the Gramm-Rudman-Hollings balanced budget law, provides drought aid to the farmers, and repeals the windfall-profit tax and some other matters.

The balanced budget amendment action was probably the one that disappointed me most this year. We passed it 3 years ago and sent it to the

House. The leaders in the House got up and killed it. This year, we failed to pass it by one vote.

In my opinion, it is going to take a mandatory situation to keep this budget balanced once it is balanced. That is the best hope of keeping the budget balanced once it is balanced, and also I think the single-item veto that the President should have.

Next year we will introduce this bill again. The American people have approved of it by a large percentage in the polls taken. We must pass it.

On the appropriations bills, we have provided funds for the various programs, ranging from tax return processing at the IRS to price support payments for farmers. The continuing resolution we passed will operate the Government, all the Federal agencies' programs, and reflects the lowest rate of increase in Federal spending in many years.

All of this did not just happen, Mr. President. This was the result of outstanding leadership, as I will speak on more in just a minute.

We are very pleased that a water projects bill approving $12 billion was passed. It will be of great benefit to the public. The Superfund bill, $8.5 billion to protect the public and clean up the Nation's worst toxic dumps; and the clean water bill, $18 billion authorization, will assure the people of this country of clean water.

We have done more than that. In the field of commerce and trade, the distinguished and able Secretary of Transportation has diligently worked to dispose of Conrail, to get the Government out of business and bring money into the Treasury. I am very pleased that the Senate has approved the public sale of Conrail.

Then we have disposed of the two airports, Washington National Airport and the Dulles Airport will be handled by a regional authority.

The Export-Import Bank bill has been approved and that will be of benefit.

In the matter of defense, Mr. President, the President asked for $320 billion. We were able to approve $295 billion. It is not all we need, but we feel that this is a great benefit to this country and will protect us.

The Senate has taken a leader role in arms control and has supported the basic elements of the administration on key positions, such as SALT II, ASAT testing, MX missile production, nuclear weapons testing, and production of chemical weapons. I am glad the Senate has backed the administration on these points. We had a fight with the House on some of these points. I am glad the Senate's positions have prevailed on most.

With regard to the SDI, this is the most promising weapon. We feel that the President was wise in not giving into to Mr. Gorbachev on this particular item. What Mr. Gorbachev is afraid of is that with our high technology we will be able to develop SDI first and can knock down his missiles and he cannot knock down ours. We must adhere and go forward with this important program.

I am very pleased that this year we have a sweeping reorganization of the military establishment. We are very proud of this. It will beef up the role of the chairman of the Joint Chiefs of Staff and create a post of vice chairman, which is important.

We have done many other things—the intelligence authorization measure was adopted this year; the Vietnam Veterans Charter was approved, and that puts them on the basis with some of the other veterans organizations.

In the matter of education, the higher education authorization bill was passed providing students with grants and loans for higher education, as well as aid to colleges.

In human services authorization, we passed legislation including Head Start, community services block grants, and low-income energy assistance.

We also provided legislation to clean up the school abestos situation.

We provided legislation for a 5-year vocational rehabilitation bill that will reauthorize vocational rehabilitation programs for the handicapped and others.

In the matter of agriculture, we have done much more than has been recited, I think, by many people for the farmers. I realize that this segment of our population is probably hit worse than any other.

We are very pleased that the Farm Credit Amendment Act of 1986 was passed, that the debt restructuring was enacted, and tax reform which will also be important to the farmers.

We are also pleased that legislation mandating advancing final deficiency payments was passed. We are pleased that disaster relief was passed. Advance deficiency payments for 1987 crops for wheat growers and feedgrains was passed.

We are pleased with the farm bill corrections. We fashioned two technical corrections that went through and straightened some matters out. The Grain Quality Act was enacted. That will be of help.

We are very pleased, Mr. President, that we were able to get through, after a hard fight, a new Chief Justice of the Supreme Court, and another Justice was also approved for the Supreme Court, and many other judiciary appointments were confirmed.

I am very pleased with a few miscellaneous matters. For instance, the immigration bill. That is the bill that came out of the Judiciary Committee. We had passed it twice before in the Senate. The House would not let it go through. We are glad this time we finally got a bill. It has some defects. It is not everything I wanted and Senator SIMPSON wanted, but we think it is a great advance and will serve our country well.

We are very pleased also that the drug bill went through. The majority leader took an outstanding leadership role in this. It would not have gone through without him. This bipartisan bill provides $1.7 billion to assist in this matter which is important to the American people.

We are very pleased that the Senate now has TV and radio coverage. We think the people will approve of that. And additional rules changes, including a 30-hour limit on postcloture filibusters was approved.

We are very pleased that we handled the Judge Claiborne impeachment matter in a very efficiency manner, in a very intelligent manner, and we think a manner satisfactory to the public and meets the requirements of the Constitution.

Mr. President, I have just cited a few things here to show the great outstanding leadership that BOB DOLE has exercised here in this particular year. I do not recall in the 32 years that I have been in the Senate that as much has been accomplished in 1 year as this year, and we have got to give the credit to BOB DOLE, our able and efficient majority leader, for what he has done here in leading the Senate.

We knew he was a man of character, a man of ability and capacity. And he has shown here also that he is a man who can work with the Senate, lead the Senate, and who has shown compassion and has also shown to be courteous to everyone.

He does not lose his cool. He remains calm and collected, and he has made many admirers by the way he has handled his job as majority leader.

I just want to say it has been a pleasure for me to work with him. I thank him for what he has done for the country, I thank him for the job he has done leading the Senate. And I am honored to work here with him as President pro tempore.

I realize all of these things could not have been done without the help of the different Senators, and especially the Democratic leader, Senator BYRD, who has cooperated on so many matters. I want to thank him for what he has done to work with Senator DOLE.

I also thank the Presiding Officer in the Senate at this time, Senator STEVENS, who is one of the best orators in the Senate, and one of the ablest men in the Senate, who has cooperated and helped Senator DOLE so much. I congratulate him, and I congratulate all the others who have brought to fruition this year the finest session since I have been here in the Senate, and I think one of the finest and most pro-

ductive sessions in the entire history of the Senate.

Senator DOLE is responsible mostly for this, and again I thank him.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I will just take a minute. I truly appreciate the Senator, the distinguished Senator from South Carolina, Senator THURMOND, who has been here, and has seen a lot of people come and go. I appreciate it very much. I may not deserve it, but I am going to send a copy of this speech to my constituents. [Laughter.]

The PRESIDING OFFICER. The Senator from Nebraska.

THE 99TH CONGRESS

Mr. EXON. Mr. President, I have been listening with great interest to the excellent talks—call them deliberations, call them exposing some of their souls—and thoughts by the distinguished majority leader and the distinguished minority leader. I am not going to take a lot of time. But I just want to tell both the majority leader, and the minority leader, and the President pro tempore of the Senate, the distinguished occupant of the chair, the Senator from Alaska, my great colleague and fellow farmworker from Montana, my fairly new and an impressive colleague from Tennessee who just came on the floor—I believe that is all of us who are here at the present time. It has been a real thrill for the last 2 years for me to work with each and every one of them.

Particularly I want to thank the majority leader and the minority leader. I think far too often we are played up as partisan Democrats or partisan Republicans here, but never once have I as one U.S. Senator been treated unfairly in any way, shape or form by any of the Members that I have mentioned. That is true of all of my colleagues on both sides of the aisle.

We have our differences. We speak out forcefully. I think that is what our constituents expect us to do. I suspect also that was envisioned by the framers of the Constitution, that this most deliberative body in the world should deliberate while at times it might also not be able to deliberate in total understanding of the views of each other.

So I thank the majority leader, the Senator from Kansas, ROBERT DOLE, and the minority leader, the Senator from West Virginia, ROBERT BYRD, for all of the courtesies that they have given to this Senator, and I suspect I speak for all of my colleagues as well.

From time to time I wonder how they do their job. I do not know that there is anybody that can do the job better then those two. I have thought from time to time though if we had to replace them temporarily we might try a dynamic duo of Abby and Elizabeth who work very hard down there in the well with their counterparts because from time to time I have seen them do an extraordinary job in getting us out of some difficulties even when the majority and minority leaders seem thwarted from time to time.

I have some more comments to make.

Does the majority leader have something to say?

Mr. DOLE. I want to thank him very much. Again I appreciate it coming from a friend, and a neighbor, a neighboring State of Nebraska. We have a lot of common interests, as he knows, in agriculture. Of course, we do not have the common interests in football. You seem to prevail there far too often. We are working on it.

But again, we have a lot of good independent people in both parties. And I do not think they expect us to be totally partisan. We do not last long around here in that business. You may last for a week or two. But you will burn yourself out.

But I do thank the Senator from Nebraska. We have had an opportunity to work on a number of things together. Most every time we are on the same side. Now and then we were not. But I appreciate his comments.

Mr. EXON. While the majority leader is on the floor, can I ask him a question? One of the main reasons I am still here is because I would like to be elsewhere also and have canceled some very, very important engagements which I, like a lot of us, had to do because of the extended session.

TECHNICAL CORRECTIONS TO THE TAX BILL

One of the reasons I am here, of course, is to see whether or not we can through some arrangement pass the so-called technical corrections to the tax bill. I know that is back on the House side. I have been advised that there are still some problems over there, and that they do not have a quorum. So they are in a situation not unlike the situation here where one individual Member in this case has the same power generally reserved to all Members of the Senate. A Member of the House can take the unusual procedure of blocking anything that might happen.

Could the majority leader tell me without losing my right to the floor what if anything is being done on that important piece of legislation, not only for Nebraskans, but a lot of other technical corrections that were very necessary it seems to me to be passed?

Mr. DOLE. I have not had the latest briefing. I will get it here in a moment. I know we are happy to have the honor of David Brockway, Director of the Joint Tax Committee, here today. I will focus on him in a minute.

But in any event, I think the Senator is right. I think it is sort of snarled up on the House side. I met with a number of members of the Ways and Means Committee. They were trying to work out a compromise. Unfortunately, Senator PACKWOOD was not available. We could not get together. He was on an airplane. There was no way to reach him on the flight from here to Oregon. I would hope we could resolve or salvage something because there are a number of important measures. In fact, I think there are provisions in that little package that affect 30 States—30 or 31.

So when I leave here, I am going to chat with Mr. Brockway and see if there is any chance of achieving that. I will get back with the Senator from Nebraska.

Mr. EXON. I really thank the majority leader for that. I will be here and will be of any help I can. If I can assist him as I have in the past, let me know, whether that is to offer some conciliating words or hit somebody over the head, I will be glad to do that if it would be helpful.

I would like to continue my remarks.

TRIBUTE TO THE CHAPLAIN

Mr. EXON. Mr. President, there is one person we do not honor as much as we should I guess, and that is the Chaplain of the U.S. Senate. I have known the Chaplain of the U.S. Senate for a number of years. If there is one person that gives us the strength and the spirit somehow to work our ways out of difficulties when it seems there is no possible way of doing it, at least we have the voice, the influence, and the wonderful words of the Chaplain, not only each morning when he stands up and gives us an opening prayer, but the presence he plays in the U.S. Senate, and in looking around I see there he sits once again.

I cannot thank my friend enough for all of the help that he has been to me personally over the years as we go through our trials and tribulations in this body.

Mr. President, there have been some interesting points raised in the talks by the majority and minority leaders. One of the things that I hope we can attack as we move forward into the 100th Congress is to improve the quality of the life of this place that I think can best be described as not what it should be. Suggestions that I would have is that as one Senator I am willing to give up some of my individual rights that a Senator has if all of my other 99 colleagues are willing to go along on the same basis.

□ 1750

One of the things that I would be willing to give up is my right to call for a rollcall vote on the whim of this one individual Senator. I think we have entirely too many rollcall votes. I am especially annoyed when we have rollcall votes of 99 to nothing or 100 to

nothing which, it seems to me, is just a total waste of time.

I am also ready to give up, Mr. President, the right that I have to put a hold on a bill without exposing who it is that is putting on the hold.

I have not used the hold on bills very much during my 8 years in the Senate, and I do not intend to use it in the future. But I do know that placing holds on other people's bills have been used, in my opinion, in a very insidious way and a very unfair way to maybe bring pressure to bear on that individual Senator to do one thing or another.

I would simply say that I think one way we could improve the U.S. Senate in addition to eliminating some of the rollcall votes is to have a more formal procedure for putting holds on bills than just having the majority leader or the minority leader get up and say, "Well, we have a hold on that bill and it cannot be considered at this time."

I would think if the Senator from Nebraska wants to place a hold on a bill, he should have the courage to stand up and say he is placing a hold on some other Senator's bill. It should be published and everybody should know about it. I may not have to state my reasons, but at least we should know who is placing holds on bills.

If we can find out who is placing a hold, we might be able to go to that individual and ask what can be done to release the hold.

Just one other minor matter, to get away from the night sessions and get away from the increasing attitude that I sense of pushing everything off until the end of each week, until the end of each session before a recess, and especially toward the end or sine die adjournment, as evidenced by the fact today that we do not have a quorum in the Senate and they do not have a quorum in the House of Representatives, which means basically that we are almost immobilized from doing anything except unanimous consent items.

This session has not been without some accomplishments.

I would say, Mr. President, one of the keenest disappointments to this Senator is the fact that we are leaving here today without a highway bill at all.

Mr. President, could we have order in the Senate?

The PRESIDING OFFICER. The Senator is entitled to order. Will those wishing to converse please retire to the Cloakrooms?

The Senator from Nebraska.

Mr. EXON. I thank the Chair.

We have no highway bill and that is a step in the wrong direction.

We have no banking bill, another step in the wrong direction.

I am particularly concerned we do not have a banking bill because I am a firm believer in the fact that we must do something about the continuing spread of nonbank banks. Nonbank banks, essentially, are nothing more than very large institutions coming into a community almost at will, with little if any regulation, sopping up funds, and transferring those funds elsewhere.

In a State like Nebraska where we are having a depression in agriculture today, and all the financial difficulties that are attendant with that, we do not need any nonbank banks.

They are still moving into the agricultural sector and all sectors of our society, not, in my opinion, for the good of the people who live in those areas so affected.

We look forward, Mr. President, to the 100th Congress. It is going to be a most difficult one. I firmly believe that we have ourselves in a financial mess with the budget—with the high deficit, with the skyrocketing national debt—and that we are not able to get out of it unless we face the fact that we are going to have further reductions in spending, and face the fact that we are going to have to have some kind of additional revenues from some sources.

We continue to kid ourselves. Basically, I voted against the budget package given us yesterday because every person in this body knows that it was put together with smoke and mirrors and bookkeeping tricks to do little, if anything, about the deficit that continues to threaten not only the domestic economy of the United States, but also continues to rob us of the profit motives that we should have from international trade.

One of the greatest challenges for the next Congress will be not only the budget, the continuing deficits and the skyrocketing national debt, but also, I suggest, finding some mechanism through trade restrictions, if those become necessary, to stop the drain on the American economy that is extremely serious today and which is not going to go away, in my opinion, unless we have the courage to do it here.

Mr. President, one of the next and real challenges of the 100th Congress upcoming, it seems to me, will be national defense and the difficulties that we face around the world with the important obligations that we have with the advise and consent procedures with regard to international decisions.

In that regard, as a member of the Armed Services Committee, I want to thank the occupant of the chair, Senator STEVENS, for the consideration he has given our authorizing committee from time to time. He has tried to be helpful. There have been times when I thought the Appropriations Committee was not as helpful as they should have been, and I suggest that that problem may arise in the future.

I only speak of national defense first because I am very much afraid—and I have written this in the form of a letter to the Secretary of Defense, Secretary Weinberger—I am very fearful that our total defense plans and programs essentially are in disarray. I believe if anyone would understand what we have on the drawing boards and what we have in the black box programs upcoming, what we have in all of the missiles, all of the bombers, all of the strategic defense initiatives, and other programs, there is no way that the next President of the United States, who will come into office in a couple of years, is going to be facing anything other than what I think will be a disaster with regard to how in the world do we pay for all of these things that we have going and still maintain the basic defense structure that we have today.

I think it is going to be a major problem and one that we are going to have to address. We made an important stride in that, I would suggest, with the enactment of the defense reorganization bill, which is a start in the direction of correcting this difficulty that I see with regard to not only planning for national defense, but having a workable plan that can be adequately financed to carry out the important national defense objectives and responsibilities of the United States of America, the leader of the free world.

In closing, let me say that I am somewhat concerned about the fact that it seems to me there is a movement today by the President of the United States to make the strategic defense initiative or star wars as it is sometimes referred to, a key part in the political campaign for control of the U.S. Senate.

I think that is a mistake for several reasons, not the least of which this is one Senator who is a Democrat, who has fundamentally believed that when we go beyond our shores, our national security interests and our foreign policy decisions should be truly bipartisan. I think the record will clearly show that this Senator, on this side of the aisle, supported the President on numerous occasions when he needed support, even times when he did not have the support of the people on that side of the aisle, who supported some of his veto overrides.

I am not perfect. I have disagreed with the President on several occasions and I do not always vote with him on foreign policy decisions. But on many of those key foreign policy decisions, it has been this Senator and others on this side of the aisle who have recognized the need for a nonpartisan approach to national defense and a nonpartisan approach particularly with regard to the foreign policy of the United States of America.

I think it is wrong, Mr. President, terribly wrong. I hope that the Senators on that side of the aisle, regardless of how much they want to win reelection, would caution against what seems to be the final drive by the President to help assure the control of this body by the Senators from his party making an all-out effort to talk about star wars and how he needs a Republican majority to maintain star wars, which he seems to believe—I think mistakenly—to be the only really important matter we have with regard to our national defense.

I say that, Mr. President, as an early backer of the strategic defense initiative. I think we need to continue research and development of that and testing where we can. But for any President of the United States who preaches time and time again that we must be bipartisan in our approach when it comes to our national defense, for the same President of the United States who preaches time and time again that it is tremendously important in foreign policy that we be bipartisan—I wish that President of the United States would practice what he preaches when he gets involved in the heat of a political campaign. Because if the President of the United States will not provide the leadership and the balance that is necessary when it comes to the decisions that we make beyond the shores of the United States of America, then whom can we expect to do it?

So, Mr. President, I simply hope that, regardless of the outcome of this important election next month, I hope, I predict that we will, regardless of the activities of the President of the United States, and regardless of who wins the key battle for control of the U.S. Senate, that most of us will be back here working as we have in the past, working together as best we can and make our judgments based on what we know of and what we believe will happen in the future. I simply predict that we will be back here again making the right decisions at the right time as best we can. I hope that the President of the United States would recognize that he has a role to play in a bipartisan approach to defense policy and foreign policy as well.

GOOD LUCK TO RETIRING SENATORS

Mr. EXON. Mr. President, as we leave this body, as I hope we will leave in the near future, I want to say good luck to the retiring Senators on both sides of the aisle. I have given previous talks about this, so I will not do it in detail again, but I think one of the hardest parts of these days approaching sine die is to realize and recognize that you have some excellent people, that you loved to serve with, leaving you and that you will not serve with them again in this body that we all love and cherish so much.

With that, Mr. President, I yield the floor.

ORDER OF PROCEDURE

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The President pro tempore of the Senate is recognized.

Mr. THURMOND. Mr. President, I ask unanimous consent that the Senate now turn to consideration of S. 1236, which is being held at the desk.

I suggest the absence of a quorum.

The legislative clerk proceeded to call the roll.

Mr. MELCHER. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TWO FAILURES OF A NATION

Mr. MELCHER. Mr. President, there are two failures of a nation that can be corrected. I believe it is the job of Congress and the administration to correct these failures. The first one that I want to speak about has to do with dignity and respect for fellow human beings. I was rather startled when I was advised that the Smithsonian was storing in the attic—I should put that in the plural—attics and in the crooks and crannies of unused space of this fine institution, some boxes of bones—bones of human beings who were cataloged, not completely but sufficient to realize where they came from. They came from bones of Indians, native Americans, and they have been accumulated over a period of time and stored as objects of interest.

They do have a great deal of interest to a lot of people who are native Americans and who are seeking to reclaim and properly bury their dead. Some of the families that are involved or the tribes would like to be able to see what they can identify rightly as the final remains of some of their ancestors.

In addition to that, there are numerous artifacts, some of a sacred nature to various families, clans, bands, and tribes of native Americans.

Mr. President, it is an unusual procedure and probably looks like it is too late to do anything, but for the past 2 or 3 months I have been preparing a bill that should be introduced now, even on this last day of this Congress. The bill is an attempt to lend some dignity and respect to these native Americans by setting up a mechanism, a procedure, where these bones and skeletons, last remains of deceased native Americans, if properly identified, can be returned to their own people for final resting place that they deem desirable to provide.

□ 1810

Particularly those that are sacred, which legitimately can be claimed by various tribes, I believe should be returned to them.

The reason to introduce the bill on this last day of the Congress is simply this, Mr. President: It is to allow for its printing in the RECORD and its availability for dissemination across the country so that the various native Americans and the museums—because it is not just the Smithsonian. There are museums in various parts of the country and even some abroad where the final remains of the native Americans can be found and also these artifacts, many of which, as I earlier stated, are sacred in nature to various tribes and bands of Indians.

The bill also addresses the question of native Hawaiians because they, like native Americans here on the continent, also find that they, in some instances, would like to have what is theirs returned to them with due respect and dignity.

NATIVE AMERICAN CULTURAL PRESERVATION ACT

The bill I am introducing sets up a procedure for doing just that. It is not a simple task and I do not look at it as a simple task. I look at it as a task that must be done and it is our responsibility in Congress to take up this matter. I hope it can be taken up in the next Congress.

I would like to have comments from various people involved, whether they be native Americans, native Hawaiians or people who operate museums or institutions.

So for that reason, I shall be introducing this bill today.

The text of the bill is as follows:

S. 2952

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Native American Cultural Preservation Act".

FINDINGS

SEC. 2. The Congress finds that—

(1) numerous museums, universities, and government agencies have considerable Native American collections that include artifacts of a sacred nature and human skeletal remains that morally should be returned to the families, bands, and tribes;

(2) these artifacts and remains are extremely important to Native Americans;

(3) controversy exists between museums, universities, government agencies, and Indian tribes or Native Hawaiian organizations regarding the title to, preservation of, and contemporary disposition of, human skeletal remains and sacred artifacts;

(4) there is a need to promote the development of museums archives, and historical preservation efforts within the Native American community through the provision of appropriate technical assistance.

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) The term "deaccession" means the formal and official process of removal of a human skeletal specimen or sacred artifact from the collection of a museum.

(2) The term "repatriation" means the formal and official process of returning a sacred artifact or human skeletal speciman to the people from whom it originated.

(3) The term "Native American" means any individual who is—

(A) an Indian, or

(B) a Native Hawaiian.

(4) The term "Indian" means any individual who is an enrolled member of an Indian tribe.

(5) The term "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which—

(A) is recognized by the Federal Government or a State as eligible for special programs and services provided to Indians because of their status as Indians, or

(B) was terminated by Federal law after 1940.

(6) The term "Native Hawaiian" means any descendent of a person who, prior to 1778, was a native of the islands that constitute the State of Hawaii.

(7) The term "Native Hawaiian organization" means any organization which is recognized by the Governor of the State of Hawaii as an organization that primarily serves, and represents the interests of, Native Hawaiians.

(8) The term "traditional cultural authority" means any individual who is recognized by the members of an Indian tribe, in accordance with traditional religious and cultural practices, to be an authority in the traditional cultural affairs of the Indian.

(9) The term "museum" means any museum, university, government agency, or other institution which possesses, or has any control over, any—

(A) skeletal remains of any Native American, or

(B) sacred artifacts.

(10) The term "sacred artifact" means any material which is devoted to, or dedicated to, a deity or some Native American religious purpose and utilized for the conduct and observance of Native American religion by an Indian tribe or by any individual who is a Native American.

NATIVE AMERICAN MUSEUM ADVISORY BOARD

SEC. 4. (a) There is hereby established the Native American Museum Advisory Board (hereafter in this section referred to as the "Board").

(b)(1) The Board shall consist of the following 17 members:

(A) 6 Indians providing appropriate regional and cultural representation who are appointed by the President from among a list of names of elders, spiritual leaders, and traditional cultural authorities submitted by the governing bodies of Indian tribes, 1 Native Hawaiian appointed by the President from among a list of elders and spiritual leaders submitted by the Governor of Hawaii,

(B) 2 members of the House of Representatives and 2 members of the Senate,

(C) 2 individuals appointed by the President who represent the sciences of archeology and anthropology,

(D) 2 individuals appointed by the President who are significantly interested and experienced in the matters which the Board is likely to consider and who provide representation for museums and universities,

(E) an individual appointed by the President who represents the Institute for American Indian Arts,

(F) the Secretary of the Smithsonian Institution or a designated representative of such Secretary,

(G) the Secretary of the Interior or a designated representative of such Secretary,

(H) the Secretary of Agriculture or a designated representative of such Secretary, and

(I) the Executive Director of the Advisory Council on Historic Preservation or a designated representative of such Executive Director.

(2)(A) Except as otherwise provided in subparagraph (B), the term of office for each member of the Board appointed under subparagraph (A), (B), (C), or (D) of paragraph (1) shall be 3 years.

(B) The terms of appointment shall be for four years with the initial term of one-half of the initial appointments being for two years. The President shall designate the term of office of such initial members of the Board at the time of their appointment.

(3) Each individual appointed by the President under paragraph (1) shall be significantly interested and experienced in the matters that the Board is likely to consider. Such appointments shall be made without regard to the political affiliations of such individual.

(4) The members of the Board described in subparagraphs (E), (F), (G), (H), and (I) of paragraph (1) shall not be eligible to vote on any matter considered by the Board; but such members shall be entitled to attend any meetings of the Board and to provide advice to the Board on any matter.

(5) The Board shall elect a chairman and vice chairman from among the members of the Board appointed under subparagraph (A), (B), (C), or (D) of paragraph (1). Such officers shall serve as chairman and vice chairman for a term of 1 year.

(6) Any individual appointed to fill a vacancy on the Board shall serve for the remainder of the unexpired term of the member who caused such vacancy. A vacancy on the Board shall not affect the powers of the Board.

(7) The presence of a majority of the members of the Board who are eligible to vote shall constitute a quorum for the purpose of conducting the business of the Board.

(8) The Board shall meet at least once during each quarter of each calendar year.

(c) The functions of the Board shall be—

(1) the resolution of disputes under the provisions of section 5,

(2) the provision of advice to the Native American Center of the Smithsonian Institution, and

(3) the provision of advice to the Advisory Council on Historic Preservation on matters relating to Native American cultural and historical preservation.

(d) Each member of the Board who is not otherwise employed by the Federal Government shall receive compensation at a rate equal to the daily rate for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day, including traveltime, such member is engaged in the actual performance of duties as a member of the Board. A member of the Board who is otherwise an officer or employee of the Federal Government shall serve without additional compensation; but all members of the Board shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Board.

(e)(1) The Board is authorized to appoint and fix the compensation, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, of an Executive Director and a General Counsel. The annual rate of compensation of the Executive Director and the General Counsel shall not exceed an annual rate equal to the annual rate provided for level V of the Executive Schedule under section 5316 of such title.

(2) The Executive Director appointed under paragraph (1) is authorized to appoint such employees as are necessary to enable the Board to carry out the functions of the Board.

(3) Notwithstanding any other provision of Federal or State law, the Board, and the Executive Director appointed under paragraph (1), shall extend a preference to Native Americans in employment by the Board.

(4) The General Counsel appointed under paragraph (1) is authorized to—

(A) appoint such other attorneys as may be necessary to assist the General Counsel,

(B) represent the Board in courts of law whenever appropriate, and

(C) perform such other legal duties and functions as the Board may direct.

(f) The Board is authorized to enter into agreements with the General Services Administration and any other agency of the Federal Government for the procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds appropriated for the Board.

(g) The provisions of section 14 and subsections (e) and (f) of section 10 of the Federal Advisory Committee Act (5 U.S.C. Appendix 2) shall not apply with respect to the Board.

(h) There are authorized to be appropriated for each fiscal year such sums as may be necessary to enable to the Native American Museum Advisory Board to carry out its functions for such fiscal year.

RESOLUTION OF DISPUTES

SEC. 5. (a)(1) The governing body of any Indian tribe or Native Hawaiian organization or the administrator of any museum may file with the Native American Museum Advisory Board a petition requesting the mediation of any dispute between a museum and an Indian tribe or Native Hawaiian organization relating to—

(A) the skeletal remains of any Native American who was—

(i) a member, or ancestor of a member, of such Indian tribe, or

(ii) a Native Hawaiian, or

(B) any sacred artifacts of such Indian tribe, of any member of such Indian tribe, or of any Native Hawaiian.

(2) A petition may be filed under paragraph (1) with respect to a dispute between a museum and an Indian tribe or Native Hawaiian organization only after the earlier of—

(A) the date that is 1 year after the date on which the petitioner submitted written notice to the other party to the dispute of the objections or demands of the petitioner,

(B) the date on which the other party to the dispute submitted written notice to the petitioner expressing a refusal to negotiate

with the petitioner on the matter in dispute, or

(C) if the other party to the dispute does not acknowledge the written notice of the petitioner described in subparagraph (A), the date that is 90 days after the date on which the petitioner submitted such notice to such other party.

(b)(1) Upon receipt of a petition under subsection (a), the Native American Museum Advisory Board shall initiate an investigation to determine whether—

(A) any skeletal remains involved in the dispute identified in the petition—

(i) are of a Native American who was—

(I) a member, or ancestor of a member, of the Indian tribe that is a party to the dispute, or

(II) a Native Hawaiian, or

(ii) were found on lands historically occupied by such Indian tribe or by Native Hawaiians, and

(B) any artifacts involved in the dispute are sacred artifacts of such Indian tribe, of any member of such tribe, or of Native Hawaiians.

(2) If any of the determinations made under paragraph (1) with respect to a petition are affirmative, the Native American Museum Advisory Board shall mediate negotiations between the parties to the dispute identified in the petition for the purpose of obtaining an agreement between the parties that resolves those matters involved in such dispute.

(3) If all determinations made under paragraph (1) with respect to a petition are negative, the Native American Museum Advisory Board shall dismiss the petition.

(c)(1) If the Native American Museum Advisory Board determines that efforts to mediate a dispute under subsection (b)(2) have not been successful in resolving the dispute, the Native American Museum Advisory Board shall formulate a compromise settlement of that portion of the dispute that involves any matter which was the subject of an affirmative determination made under subparagraph (A) or (B) of subsection (b)(1).

(2) Any compromise settlement formulated by the Native American Museum Advisory Board under paragraph (1) shall—

(A) seek to accommodate—

(i) the interests of the Indian tribe or Native Hawaiian organization in—

(I) repatriation and reburial of any skeletal remains of any member, or ancestor of a member, of the Indian tribe or of any Native Hawaiian,

(II) repatriation and preservation of sacred artifacts of the Indian tribe, of a member of the Indian tribe, or of a Native Hawaiian, and

(ii) the interest of the museum in—

(I) access to such remains and artifacts for purposes of further study and research, and

(II) preservation of such remains and artifacts,

(B) In the event such compromise settlement provides for repatriation to the Indian Tribe or Native Hawaiian group, the settlement shall provide to the maximum extent possible for museum access to such remains or artifacts for research, study or exhibition provided that—

(i) the Indian tribe or Native Hawaiian organization approves of such research or study, and

(ii) the museum agrees to share with the Indian tribe or Native Hawaiian organization any information obtained from such research or study before such information is published.

(3) Upon completing the formulation of a compromise settlement of a dispute under paragraph (1), the Native American Museum Advisory Board shall—

(A) submit a copy of such settlement to each party to the dispute,

(B) publish a summary of such settlement in the Federal Register, and

(C) monitor the actions of each party to the dispute to determine whether such settlement is being fully carried out within a reasonable period of time.

(d)(1) Notwithstanding any other provision of law, if, as a result of the monitoring conducted under subsection (c)(3)(C), the Native American Museum Advisory Board determines that—

(A) the compromise settlement formulated under subsection (c)(1) is not being carried out, and

(B) the museum which is a party to the dispute is primarily responsible for the failure of such settlement to be carried out,

such museum shall, during the 2-year period beginning on the date on which notice of such determination is published in the Federal Register, cease to be eligible to receive any Federal funds and to receive benefits under any Federal program or any program funded (in whole or in part) with Federal funds.

(2) Notwithstanding any other provision of law, if, as a result of the monitoring conducted under subsection (c)(3)(C), the Native American Museum Advisory Board determines that—

(A) the compromise settlement formulated under subsection (c)(1) is not being carried out, and

(B) the Indian tribe or Native Hawaiian organization which is a party to the dispute is primarily responsible for the failure of such agreement to be carried out,

the Indian tribe or Native Hawaiian organization shall, during the 2-year period beginning on the date on which notice of such determination is published in the Federal Register, cease to be eligible for any Federal funds or benefits provided for historic preservation.

(3) The Native American Museum Advisory Board shall publish in the Federal Register notice of any determination made under paragraph (1) or (2) and shall provide direct written notice of such determination to the head of each Federal agency or department which such Board has reason to believe may be providing Federal funds to—

(A) the museum, Indian tribe, or Native Hawaiian organization that is the subject of such determination, or

(B) any program which provides benefits to such museum, Indian tribe, or Native Hawaiian organization.

(e) Any determination made by the Native American Museum Advisory Board under this section shall be final and shall not be reviewable in any court.

NATIVE AMERICAN CENTER

SEC. 6. (a) There is hereby established within the Library of Congress a bureau which shall be known as the "Native American Center".

(b) The functions of the Native American Center shall be—

(1) the preparation, and coordination with museums, of a provenance (to the fullest extent possible) of all—

(A) skeletal remains of Native Americans,

(B) sacred artifacts, and

(C) other artifacts and collections relating to Native American history or culture,

that have been acquired or collected with the assistance of the Federal Government or by use of Federal funds,

(2) the preparation, for distribution or sale to Indian tribes, Indian tribal organizations, Native American educational institutions, and other educational institutions, of educational materials in the collections of the Smithsonian Institution that relate to Native American history or culture,

(3) the continual provision of advice, support, and technical assistance to Indian tribes and Native Hawaiian organizations in—

(A) the establishment of model museums and archives, and

(B) historical preservation, including preservation through cultural photography, and archeological and anthropological activities,

(4) the promotion of cooperation and coordination of activities between Indian tribes and museums located in the United States,

(5) the promotion of cooperation, dialogue, and sharing of artifacts, materials, and information between Indian tribes, Native Hawaiian organizations, and museums located in foreign countries which have collections that contain—

(A) skeletal remains of Native Americans,

(B) sacred artifacts, or

(C) other artifacts relating to Native American history or culture,

(6) the provision of seminars on Native American history and culture,

(7) the publishing of academic papers and articles on Native American history and culture, but only after consulting with—

(A) the Indian tribes that are the subject of such papers or articles, or

(B) Native Hawaiian organizations if Native Hawaiians are the subject of such papers or articles,

(8) the provision of advice and assistance to museums on the proper care and preservation of—

(A) skeletal remains of Native Americans,

(B) sacred artifacts, and

(C) other artifacts relating to Native American history or culture,

in a manner that is consistent with, and sensitive to, the culture of Native Americans, and

(9) the provision of advice, financial assistance, and technical assistance for—

(A) the identification, deaccession, and disposition of any skeletal remains of Native Americans, and

(B) the repatriation of sacred artifacts and any other artifacts relating to Native American history or culture.

(c)(1) The Native American Center shall be administered by the Regents of the Smithsonian Institution through the Director of the Native American Center, in consultation with the Native American Museum Advisory Board. The Director of the Native American Center shall be appointed by the Regents of the Smithsonian Institution, in consultation with the Native American Museum Advisory Board, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code. The annual rate of compensation for the Director of the Native American Center shall not exceed an annual rate equal to the annual rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) The Director of the Native American Center, in consultation with the Native

American Museum Advisory Board, shall appoint and determine the compensation of—

(A) an individual who has at least a master's degree in archeology,

(B) an individual who has at least a master's degree in cultural anthropology,

(C) an individual who has at least a master's degree in history, and

(D) other support staff,

without regard to the provisions of title 5, United States Code, regarding appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, but the annual rate of compensation for such employees shall not exceed an annual rate equal to the annual rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(3) Notwithstanding any other provision of Federal or State law, the Director of the Native American Center shall extend a preference to Native Americans in—

(A) admissions to, and enrollment in, programs conducted by the Native American Center,

(B) employment by the Native American Center, and

(C) assistance provided by the Native American Center.

(d) In order to assist the Native American Center in carrying out the requirements of subsection (b)(1), each museum that has received Federal funds, or has participated in any programs funded (in whole or in part) with Federal funds shall prepare a provenance of all—

(1) skeletal remains of Native Americans,

(2) sacred artifacts, and

(3) other artifacts and collections relating to Native American history or culture,

that are under the control of such museum.

(e)(1) The President shall include with the budget submitted under section 1105 of title 31, United States Code, for each fiscal year beginning after the date of enactment of this Act, a separate statement which specifies the amount of funds requested by the President for the Native American Center for such fiscal year.

(2) There are authorized to be appropriated for each fiscal year such sums as are necessary to enable the Native American Center to carry out its functions.

CONFORMING AMENDMENTS TO THE ARCHEOLOGICAL RESOURCES PROTECTION ACT OF 1979

SEC. 7. (a) Section 3 of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb) is amended—

(1) by striking out the period at the end of paragraph (4) and inserting in lieu thereof "or Native Hawaiian community or organization", and

(2) by adding at the end thereof the following new paragraphs:

"(8) The term 'Native Hawaiian' means any descendant of a person who, prior to 1778, was a native of the islands that constitute the State of Hawaii.

"(9) the term 'Native Hawaiian community or organization' means any community of Native Hawaiians or any organization which primarily serves and represents Native Hawaiians.

"(10) The term 'religious or cultural site' means any location or land area deemed by an Indian tribe to have value in the traditional culture or religion of such tribe, including, but not limited to, areas where religious practices are or were in the past carried out, areas where visions are or were sought, areas figuring in tradition, and areas known or thought to contain graves or human skeletal material.

"(11) The term 'sacred artifact' means any material which is dedicated to a deity or some religious purpose of an Indian tribe or of any member of an Indian tribe and utilized for the conduct and observance of the religion of an Indian tribe or of any member of an Indian tribe.

"(12) The term 'traditional cultural authority' means any individual recognized by the members of an Indian tribe, in accordance with their traditional religious and cultural practices, to be an authority in the traditional cultural affairs of the Indian tribe.".

(b) Subsection (b) of section 4 of such Act (16 U.S.C. 470cc(b)) is amended—

(1) by inserting "except as provided in subsection (k)," before "the archaeological resources" in paragraph (3),

(2) by striking out "and" at the end of paragraph (3),

(3) by striking out the period at the end of paragraph (4) and inserting in lieu thereof ", and", and

(4) by adding at the end thereof the following new paragraph:

"(5) the applicant will comply with the provisions of subsection (k).".

(c) Subsection (c) of section 4 of such Act (16 U.S.C. 470cc(c)) is amended by inserting "and shall consult with such Indian tribe as to whether, and under what terms and conditions, the permit should be issued" after "cultural importance".

(d) Section 4 of such Act (16 U.S.C. 470cc) is amended by adding at the end thereof the following new subsection:

"(k) If graves, human skeletal materials, or sacred artifacts are excavated, or may be excavated under permits issued under this section, or otherwise exhumed on public lands or Indian lands, the Federal land manager shall consult with appropriate archeological and physical anthropological authorities and—

"(1) with the Indian tribe having cultural affiliations with the deceased individuals represented by such graves or skeletal material, or with the users of such sacred artifacts, or

"(2) if the deceased individuals or users were not members, or ancestors of members, of an Indian tribe, with representatives of any other community or group having such affiliations,

to determine the disposition of such graves, skeletal material, or sacred artifacts. In the event agreement cannot be reached with such authorities, the Federal land manager shall seek mediation by the Native American Museum Advisory Board if an Indian tribe is involved. Until an agreement is reached or mediation had been completed, the graves, human skeletal material, or sacred objects in question shall be maintained either in place or in storage (for no longer than 18 months) in a secure and respectful manner and shall be subjected to only such study as the Indian tribal government or other representatives consulted under this subsection may permit.".

(e) Section 11 of such Act (16 U.S.C. 470jj) is amended—

(1) by inserting ", Indian tribes," after "Indian lands" in paragraph (2), and

(2) by inserting ", Indian tribes," after "referred to in paragraph (1)".

Mr. MELCHER. The second failure that I would like to note—and it, too, can be corrected, and I hope we do so promptly—is the question of the poor in this country and whether or not they have access to the commodities that we have in such abundance, food commodities that are brought into Federal ownership through the various parts of the Farm Program and are now sitting in storage where we pay the storage costs out of the Treasury. The best thing that we can do with that is to provide for our own people some opportunity to share in America's abundance.

To me it seems very, very heartless that we see in various parts of the country, including my own State of Montana, surplus wheat stored on the ground while in the community action program distribution of commodities to poor families we unfortunately find a shortage of flour.

Where is the bottleneck? I inquired of the Department of Agriculture and they told me that they run out of money for processing. That is milling the wheat into flour. It costs 3½ cents to mill 1⅓ pounds of wheat into flour. The value in nutrition of 1 pound of flour is quite a bit. So, for the cost of 3½ cents in milling and the cost of less than 4 cents for a pound of wheat instead of 1⅓ pounds of wheat to get 1 pound of flour, we are talking about a nickel's worth of wheat, 3½ cents to have it milled into flour that does a whole lot of good for poor families who really need access to assistance if they are going to have a decent level of nutrition.

One of the programs that we have is the so-called TEFAP, which is Temporary Food Assistance Program. That type of food assistance is in the form of commodities. It can be flour, it can be cornmeal, it can be cheese, or it can be dry powdered milk. Right now in Federal storage there is a considerable amount of honey—so it can also be honey.

In my own State of Montana, as I checked this fall, I was very much alarmed to find out in the community action programs the distribution to needy families once a month, and in some cases once every other month, consisted of 5 pounds of cheese and a choice, mind you, a choice of either 5 pounds of flour, about 4 pounds of rice, about a quarter jar of honey, or a box of about 2 pounds, 2½ pounds of dry powdered milk.

Now, in the land of plenty, a land that really has a staggering amount of food abundance, where through our farm programs we have purchased and put into Federal storage this surplus, it seems very unwise, imprudent, and uncharitable not to provide more surplus commodities to needy families.

I was advised by people in Montana who distribute this on behalf of the State after receiving it from the Federal Government, from our Department of Agriculture, they are saying, "Yes, we have the cheese but you cannot have both rice and flour." Flour is in a 5-pound bag, by the way.

"You have to take one or the other because we are running out of flour." In some parts of the country, cornmeal is provided. And I am advised in other areas in other States they have also run out of cornmeal.

Well, along with the wheat that is now stored on the ground, there is going to be such an abundance of corn from the current crop that it, too, is likely to be stored anywhere there can be found space.

Indeed, the Department of Agriculture for the last 4 months has been very busy leasing up available space that will permit the storage of surplus corn, even to the extent of leasing barges on our rivers or ships that are not being used on the Great Lakes.

Mr. President, we had a vote just 2 or 3 days ago to add an additional $50 million for the distribution costs of these commodities across the country in all the 50 States, to be distributed to the community action programs, to church food banks, to the Salvation Army, or other charitable groups, and I am sad to say that we lost on that proposal by a vote of 48 to 44.

I suppose we lost because it was coming on late. It was one of the last steps we took on a bill that was available for amendment, and I readily understand the reluctance of my colleagues to get into additonal expenditures that late in the game. But, nevertheless, let me tell you that, by adding that amount for the distribution of the surplus commodities, there are three benefits: One, there is better nutrition for needy families. That is the main goal. No. 2, it provides the opportunity for communities themselves to be looking very closely at whether their level of nutrition is adequate, because the volunteer work that is done by the Salvation Army and other similar organizations, the volunteer work that is done through the community action program, and the volunteer work that is done through church food banks for senior citizen programs is indeed the best part of all.

When we look out for our neighbors through the charity of our own hearts and volunteer to do something for them, we are not just helping them; we are helping ourselves and we are making ourselves a greater nation.

I have also just begun the process of looking at what the situation is in other States. I thought perhaps our State was either unique or just one of a few. I cannot tell yet, because I have not looked at a sufficient number of our States.

However, let me read what the situation is in Kentucky, provided by my colleague Senator FORD. This brief memo states:

The Kentucky Cabinet for Human Resources has notified me that community action agencies across the commonwealth are encountering significant shortages of cheese and cornmeal for distribution to needy households. Cheese is particularly scarce. The problem is that there simply is not enough of these commodities allocated to Kentucky to meet existing needs. The area redevelopment districts report the same.

Mr. President, I said that there are three reasons why we would have been wise to have invested another $50 million to pay for the cost of the distribution of these commodities. One of the reasons is—and this is the third reason, in my view—that we would spend $50 million, but, by doing so, we would reduce the cost of Federal storage for having to take care of the commodities that Uncle Sam owns as part of the requirements of the Farm Act to buy up the surplus commodities.

As we conclude this 99th Congress, in this final day of this Congress, I would like to say that we can do it much better. This is a kind of failure I find very disheartening. Our Government is not too big to take note of what the needs of the people are. When we have the mechanism in place in various laws we have for a nutrition program, with commodity programs in the Department of Agriculture, it seems to me that we should utilize them in a little better and wiser way.

So, my hope for the 100th Congress is that we will address this particular failure and take care of it—Congress working with the administration, checking on our own States to find out that the situation can work and will work, and I hope we do that.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1830

Mr. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The President pro tempore is recognized.

COMPREHENSIVE CRIME CONTROL ACT AMENDMENTS

Mr. THURMOND. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1236.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 1236) to amend title 18 of the United States Code to make minor or technical amendments to provisions enacted by the Comprehensive Crime Control Act of 1984, and for other purposes.

(The amendment of the House is printed in the RECORD of October 17, 1986).

Mr. THURMOND. Mr. President, this has been cleared on both sides Mr. President, I rise in support of S. 1236, which makes minor and technical corrections to the Comprehensive Crime Control Act of 1984.

I introduced S. 1236 along with my colleagues Senator BIDEN, ranking minority member of the Judiciary Committee, Senator LAXALT and Senator KENNEDY. The Judiciary Committee approved a compromise version last December and the Senate passed this measure on April 17, 1986.

The bill before us tonight contains most of the provisions approved by the Senate as well as some new provisions passed by the House. The Department of Justice strongly supports this bill.

One of the provisions contained in the Senate-passed version that was not accepted by the House pertains to the standard of review for cases in which the sentencing guidelines are used. As most of you know, the sentencing guidelines will not go into effect until November 1, 1987. Therefore, this provision is not needed immediately. I am confident, however, that this issue will be satisfactorily resolved in the next Congress.

I strongly urge each one of my colleagues to support this bill.

Mr. THURMOND. Mr. President, I now move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from South Carolina.

The motion was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. THURMOND. Mr. President, I suggest the absence of a quorum.

Mr. DOLE. If the Senator will withhold, I think we can continue our work here.

TRIBUTE TO HOUSE MINORITY LEADER ROBERT H. MICHEL

Mr. DOLE. Mr. President, while we are waiting, let me extend one other thank you to my good friend the Republican leader in the House, BOB MICHEL.

Before adjourning, I would be remiss if I failed to mention a man who has helped me enormously over the past 2 years—House Republican Leader BOB MICHEL.

I have had a little experience with being a member of the minority. But holding the position of Republican leader in the House, with the overwhelming Democratic majority, is a daunting job—one that requires a person of the utmost patience and wisdom. BOB MICHEL has lots of both.

A House Member since 1957, and Republican leader starting in the 97th Congress, BOB has used his breadth and depth of experience to navigate the President's program through often hostile waters. Through skillful use of the rules, and an uncanny sensitivity for the wants and needs of the Members on both sides of the aisle, BOB has played a major role in implementing the Reagan agenda.

This year alone, on issues like aid to the Contra freedom fighters and passage of the drug bill, BOB MICHEL'S leadership made the difference between success and failure.

BOB was a good friend long before I became majority leader. I value both his friendship, and his wise counsel. And I look forward to working together with him in the coming Congress, as we work to make sure the last 2 years of the Reagan adminstration are as productive and successful as the first 6.

THE 99TH CONGRESS DEMOCRATIC ACCOMPLISHMENTS

Mr. BYRD. Mr. President, the 2 years of the 99th Congress have been years of considerable accomplishment for Senate Democrats. It has been a privilege to have served as the leader of a group of Senators who, although in the minority, have accomplished so much for the American people. The record of this Congress shows that Senate Democrats have pulled together on many critical occasions to seek to strengthen our Nation.

We have supported the President when we could, and have opposed him when we felt the country's best interests necessitated a different path. And when we took the latter course, we did so in meaningful, constructive ways.

Likewise, we have worked in cooperation with our colleagues on the other side of the aisle in a common effort for the common good when that was possible. When principle dictated otherwise, and when we felt the national interest demanded, we opposed them. Time and again, we Democrats have successfully resisted initiatives from the administration or the other side of the aisle which we concluded would be damaging to the best interests of this Nation or its citizens. Many times we Democrats have successfully offered amendments to improve legislation developed by the committees under control of the majority. And a number of important initiatives have been proposed by Senate Democrats the merits of which were so compelling that they were supported by a sufficient number of Senate Republicans to achieve passage.

While we have been the minority party in the Senate during this Congress, Mr. President, we have been an active and a vocal minority. We deliberately chose not to sit back and watch the legislative process unfold in resignation. Nor did we play the role of obstructionist or demolitionist. Rather, we consistently have been actively involved in the legislative process—and the work of the Senate reflects our involvement in many important ways.

Our legislative activity and initiatives have spread across the entire breadth of the legislative arena. We have offered budget alternatives that placed a priority on promoting economic growth and competitiveness, investment in our Nation's and our people's future, a strong defense without waste of precious resources, and real and effective—but fair—progress toward a balanced budget.

We have proposed numerous initiatives to respond to the growing economic catastrophe resulting from the policy vacuum left by the Reagan administration's abandonment of effective action to assure that our relationship with our trading partners is fair.

We have offered many proposals designed to provide real and timely assistance to the thousands of family farmers in our Nation who are suffering through the worst farm economy since the Great Depression.

We have blocked attempts by the administration to make drastic cuts in Federal assistance for education and to college students, while also seeking to strengthen the Federal commitment to fundamental principles of a sound educational system, such as teacher training.

We fought for simplification of our tax laws and for tax relief for the middle class in the context of tax reform—a battle that was launched originally by Senator BILL BRADLEY.

We successfully resisted administration efforts to cut veterans programs, and we sought to protect programs that are crucial to the well-being of cities and vital transportation systems.

We were deeply involved in the development of the massive and critical extension of the Superfund to clean up toxic wastes and in legislation to improve the Clean Water and Safe Drinking Water Acts.

We fought for and succeeded in obtaining improvements in child health and nutrition programs and protection of the bulwark Social Security and Medicare programs that are essential to the continued well-being of the elderly citizens of this Nation.

We vigorously sought to protect Federal laws ensuring the health, safety, and living standards of American workers.

We led the way to enactment of sweeping legislation to combat the scourge of drug and substance abuse.

We have prodded the administration to move effectively toward arms control and reduction of the threat of nuclear war while simultaneously insisting on a strong national defense that is based on the best American technology and competent, properly equipped troops, rather than on expenditure of the greatest conceivable sums of tax dollars. We sought to establish as national objectives for defense policy, reforming the Pentagon's wasteful procurement process, strengthening our conventional forces, and maintaining our nuclear deterrent in a manner contributing to nuclear stability and arms control.

We have continuously advocated a foreign policy worthy of the nation that leads the free world, a policy which makes clear our resistance to Communist expansionism and adventurism but which seeks to resolve conflicts through diplomacy before resorting to military intervention. We have pushed for application of such a foreign policy in the Philippines, Central America, Southern Asia, and the Middle East. We provided leadership that resulted in this Nation sending an unmistakable signal to the Government of South Africa that that nation's oppressive system must be changed.

Mr. President, in the 100th Congress, we anticipate building on the work and the record of the 2 years just completed—to help fashion policies and programs that address the needs and responsibilities of this Nation effectively.

Senate Democrats will be ready—as we have been ready during the 99th Congress.

Mr. President, I ask unanimous consent that materials relating to the record of Senate Democrats and concerning the general work of the Senate during the 99th Congress appear in the RECORD at the conclusion of my remarks and that my remarks plus these materials be printed as a Senate document.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE 99TH CONGRESS: DEMOCRATIC ACCOMPLISHMENTS

A REPORT FROM SENATOR ROBERT C. BYRD, SENATE DEMOCRATIC LEADER

As the 99th Congress draws to a close and we look forward to the centennial Congress, I wish to review the contributions that Senate Democrats have made to the national debate on the great issues facing the United States and the world.

It has been a privilege to have served as the leader of a group of Senators, who, although in the minority, have accomplished so much for the American people. The record of the 99th Congress shows that Senate Democrats have pulled together on many critical occasions to seek to strengthen our nation and its democratic processes.

THE BUDGET

The record-breaking Federal deficits of the past five years are one of the most critical issues facing this country. When this Administration took office in January, 1981, the Federal debt was less than $1 trillion. Time and again, President Reagan declared

that the Federal debt was too high, and that his Administration's economic policies would produce a balanced budget by 1983, if not by 1982 and then by 1984, then by 1985.

Six years later, we know that the Reagan-Republican economic program has, among other things, doubled the Federal debt. What was a $1 trillion debt five years ago is now more than $2.1 trillion, and growing. The Reagan Administration has done in five short years what it took the previous 39 Administrations 191 years—the entire history of the republic—to do: to increase the Federal debt by a trillion dollars. And the cost of financing that debt next year will be $139 billion—more than $380 million per day! That amounts to 36 cents of every dollar paid in individual income taxes.

During the first session of the 99th Congress, Senate Democrats sought to reverse this trend of fiscal irresponsibility and to put this Nation back onto the track of budgetary sanity. We offered two major budget alternatives, both of which reduced the deficit more than the budget proposed by the Republican leadership.

Furthermore, both Democratic proposals sought to reorder the Reagan-Republican spending priorities. By requiring corporations and high income individuals to pay their fair share of taxes, our budgets promoted economic growth, provided for increased funding for national defense, and added funds to programs that insure continuing investment in America's future—such as education, scientific research, and infrastructure programs. The Republican majority could not accept this balanced approach to deficit reduction; it defeated both Democratic alternatives.

In the second session of the 99th Congress, Senate Democrats continued the effort to reorder the misguided fiscal priorities that have marked this Administration's budgets. Building on a statement of budget principles compiled in January by a Democratic working group on the budget, the Senate Democratic Conference endorsed an amendment to the budget resolution to put a higher priority on promoting economic growth and competitiveness. This amendment included additional funds for education, job training, scientific research and development, and natural resource management, while providing the resources to pay for these enhancements. Democrats also offered amendments to restore funds for such important programs as revenue sharing, child immunization, and Superfund toxic waste cleanup.

During the last months of the first session, a crisis of confidence in the Administration's fiscal policy, and the failure of presidential leadership in reducing budget deficits prompted Congress to pass the Gramm-Rudman-Hollings Amendment. This measure was a frank admission that the Reagan-Republican economic and fiscal policies were neither producing economic growth, nor reducing—or likely to reduce—the disastrous Federal defivits.

Senate Democrats proposed amendments that would have begun the deficit reduction process immediately, rather than allowing it to be put off for a few more years as permitted under the Gramm-Rudman-Hollings proposal. The Republican majority failed to live up to its rhetorical concerns about the deficit and rejected the Democratic measures.

TRADE

This Administration's unsound and unhealthy economic policies are producing other disastrous consequences. American farmers and industrial workers are struggling to regain lost ground and improve their standard of living. By some accounts, the economies of more than half of our states have fallen to recessionary levels.

The economic disasters that many states and many sectors of our economy are encountering can be considerably attributed to America's intolerable trade deficits. Each of the past four years has produced a record-breaking, job-destroying trade deficit. This year, the trade deficit could exceed $180 billion. This is a national catastrophe, as well as a national embarassment.

Largely as a result of the trade imbalance, for the first time since 1914, The United States became a debtor nation just last year. In six years, the Administration has accomplished what two world wars, a global depression, and an oil crisis could not—it has reduced the United States from the position of the world's largest creditor to the status of the world's largest debtor nation.

At the current rate, the net U.S. debt to foreigners will have risen to $250 billion by the end of this year. That exceeds the foreign debt of all of Latin America combined, measured on a comparable basis.

The Administration's grim trade record is evidence of its failure to maintain America's global economic leadership. This failure is destroying America's industrial base. Since 1981, the U.S. has experienced a decline of 1.7 million manufacturing jobs. Meanwhile, the Administration has been unable or unwilling to meet the challenge of international competition.

On the other hand, Senate Democrats have responded to this challenge. We have proposed numerous initiatives to deal with this economic catastrophe.

One Democratic working group examined current trade policy alternatives and recommended actions. In its report, "The New Global Economy: First Steps in a United States Trade Strategy," the working group called for a strategic approach to trade and presented the case for an aggressive, realistic response to the trade crisis. Senate Democrats followed up the report by introducing the "Trade Policy Act of 1985." This legislation offered a framework for a tough, comprehensive approach to the challenge of global competition.

The Working Group also proposed the "Unfair Trade Concessions Requirements Act" which would force foreign governments to end practices which require American companies to invest abroad as a condition of trade—a practice which costs American jobs.

Senate Democrats have also led the drive to restore America's competitive edge in the world. The Competitiveness Working Group prepared a landmark report that offers a blueprint for action to assure a world-class American economy in the decades to come.

In the first session, through the persistent efforts of many, Congress approved remedial legislation for the domestic textile and shoe industries. Without offering anything but more promises to these industries that are being wiped out by foreign competition, President Reagan vetoed the measure.

Senate Democrats have pressed the Administration for coordinated action to assure that world currency values are realigned in order to reduce the staggering trade imbalances. Democratic initiatives forced the Administration to take some action on this front. But the currencies of some of our major partners, including Canada and Mexico, have continued to decline because the Administration has failed to achieve coordination on this important issue.

In the second session, Democrats supported legislation that provided adjustment assistance to help retain American petroleum industry workers who have lost their jobs to imports.

On August 9, 1986, Democrats endorsed an amendment to the Department of Defense authorization that required the President to act within a specified time to let defense-essential industries and workers know whether or not imports threaten the national security. Despite the fact that this amendment merely required the President to make timely decisions in cases where the national security could be undermined by imports, 100 percent of Senate Republicans voting opposed it. Even when national security could be undermined by imports Senate Republicans refused to support or strengthen our trade laws.

AGRICULTURE

American farmers are suffering the worst economic distress they have encountered since the 1930's. But they have constantly found support from Senate Democrats. During the first session of the 99th Congress, Senate Democrats rushed to the aid of American farmers with a proposal for emergency credit assistance. Only by threatening to hold up the nomination of Ed Meese for Attorney General could we even secure an agreement from the Republican leadership to consider this needed measure. Congress eventually approved the legislation, but President Reagan vetoed it. Democratic pressure on this issue, however, did force the Administration to expand credit assistance to farmers.

During the consideration of the 1985 farm bill, in the Agriculture Committee and on the Senate floor, Democrats fought against any retreat from the four-year price freeze contained in the committee-reported bill. While Senate Republicans pushed for a one-year freeze, Democrats maintained that farmers needed the stability of multiyear target prices to overcome their financial burdens.

In the 99th Congress, Senate Democrats fought for the survival of family farms—a way of life now on the verge of extinction. Senate Democrats proposed a number of amendments, including one to give more control over local farm credit banks to local shareholders, and to require the labeling of all foreign meat products. This latter amendment would have enabled consumers to avoid purchasing meat from countries that still use dangerous pesticides or chemicals and helped them to buy more American meat. We also successfully proposed an amendment that provided assistance to farmers having difficulty obtaining credit elsewhere so they could begin spring planting.

This year, as the agricultural recession worsened, Senate Democrats led a successful move to pass legislation requiring the Secretary of Agriculture to make advance deficiency payments for the 1987 crops of wheat, cotton, rice, and feed grains. The amendment passed the Senate overwhelmingly and was incorporated into the budget reconciliation bill.

Senate Democrats also successfully offered an amendment expressing the sense of the Senate that the Secretary of Agriculture should institute an advance recourse loan program for 1986 crops.

And as the severity of damage from this summer's drought, especially in the south-

east, became known, Democrats added a provision to the debt limit bill to provide emergency assistance to farmers and ranchers hard hit by this natural disaster.

EDUCATION

Senate Democrats have acted with vision, not only in attempting to resolve current economic difficulties, but also in promoting economic policies that invest in America's future. Part of that future is our children, and a better future for our children depends upon a good education.

In the 99th Congress, Democrats helped block the Reagan Administration's push for a 26% cut in Federal assistance to higher education, and for changes in the Guaranteed Student loan program that would have eliminated over one million students from eligibility.

Democrats also took positive steps to improve the quality of American education, for example, the proposal to strengthen the Federal commitment to training teachers.

TAX REFORM

The fight for tax relief for the middle class—and for assuring that all Americans and American firms pay their fair share of taxes—originated as a Democratic fight, and we were, in many ways, successful. The Finance Committee's tax bill contained major reforms long championed by Senate Democrats. This tax bill gave better breaks to middle income taxpayers than to high income people. It closed the most abusive tax shelters and imposed tough minimum taxes on wealthy individuals and highly profitable corporations. It raised both the standard deduction and personal exemption, thus providing tax relief to moderate income people, and it removed 6 million poor people from the tax rolls.

On the Senate floor, Democrats fought to maintain the Individual Retirement Account program for the middle class. Although we narrowly lost that fight, our efforts were not in vain. The Senate-House conference fashioned an IRA program to preserve full deductibility for virtually the entire middle class.

A number of Senate Democrats, especially those on the Finance Committee, played key roles in developing the legislation adopted by the Finance Committee and helped steer that bill through the Senate and ultimately to enactment.

VETERANS BENEFITS

While the Reagan Administration has attempted to cut veterans programs, Democrats have continued our commitment to keep America's promise to those who have fought for our country. Democrats opposed budget cuts that would have reduced health care programs by more than $2 billion over three years (1986-88), thus eliminating incare patient care for more than a quarter-million veterans and closing many existing VA facilities. Senate Democrats also opposed Administration cuts in cost-of-living adjustments for veterans compensation and pension benefits, and Administration efforts to double the fee charged veterans using a VA home loan guarantee. Furthermore, 87 percent of Senate Democrats voted to exempt VA service-connected compensation from Gramm-Rudman cuts.

TRANSPORTATION AND COMMUNITY DEVELOPMENT

In the 99th Congress, Senate Democrats promoted community development programs that are essential for the economic survival of many areas and represent the government/private sector cooperation that this Administration professes to support. With the support of some Republicans, Senate Democrats blocked the Administration's efforts to eliminate Federal funding for Amtrak—the rail transportation system that provides service to 20 million passengers each year.

In 1985, again with some Republican support, Senate Democrats blocked Administration efforts to wipe out several successful, job-creating programs that are also vital to the economic security of so much of America, including the Appalachian Regional Commission (ARC), the Urban Development Action Grant Program (UDAG), the Economic Development Administration (EDA), and the Community Development Block Grant program.

ENERGY AND ENVIRONMENT

Senate Democrats have continued our fight for an energy-secure America. During the 99th Congress, we proposed taking advantage of low oil prices and urged accelerating the filling of the Strategic Petroleum Reserve. Congress appropriated $400 million for the Clean Coal Technology program, a major initiative to facilitate the commercial use of our most abundant fossil energy resource—coal—in an environmentally acceptable manner.

And Senate Democrats have struggled to protect the health and safety of the American people as we have struggled to protect the nation's environment. In the first session, several Democratic Senators played leadership roles in committee and on the Senate floor in reauthorizing the Superfund law. The expansion of this program recognizes the dangers of toxic waste and the threat it poses to public health and welfare. And Democrats strongly supported legislation improving the Clean Water Act and the Safe Drinking Water Act—both of which passed the Senate in 1985.

HUMAN SERVICES

During the second session of the 99th Congress, Senate Democrats sought to improve several child health programs, such as those providing supplemental food for women, infants, and children, health block grants to States; childhood immunizations; and community health centers.

SOCIAL SECURITY

In the 99th Congress, yet again, Senate Democrats were forced to fight for the preservation of Social Security benefits as the Administration tried again to reduce Federal deficits on the backs of the elderly.

In the FY 1986 budget resolution, Senate Democrats fought the Senate Republican effort to cut Social Security COLAs. Democrats also supported instructing the Treasury to restore to the Social Security trust funds lost during the time funds were disinvested to provide operating cash for the government. In addition, Democratic support for protecting Social Security resulted in the exclusion of Social Security from automatic budget cuts under the Gramm-Rudman process.

Democrats also successfully deleted from the Republican leadership budget many of the most onerous proposals that would have devastated the Medicare program and would have increased out-of-pocket health care costs for the elderly and disabled.

LABOR

During the 99th Congress, Senate Democrats waged vigorous efforts to protect Federal laws ensuring the health, safety, and living standards of American workers. And, in a bipartisan effort, the Senate approved the most important and comprehensive restructuring of Civil Service Retirement in recent decades.

DRUGS AND LAW ENFORCEMENT

In the second session of the 99th Congress, Senate Democrats successfully worked with the Republican majority to secure the passage of a bipartisan drug control package. The Democratic Working Group on Drug Abuse played a major and fundamental role in putting together this urgently needed measure that provides concrete, comprehensive, and effective actions against drug abuse and the illegal drug industry.

Democrats are also proud of the Senate's passage of the bill to ban cop-killer bullets. The bill makes it illegal to willfully sell, manufacture, or import this ammunition, which is designed solely to pierce the body vests or armor used by law enforcement officers.

NATIONAL DEFENSE

During the 99th Congress, Senate Democrats promoted a strong national defense based on the best possible American technology, not the greatest possible amounts of American money. We established that our priorities in national security are reforming the Pentagon's wasteful procurement process, strengthening our conventional forces, and maintaining our nuclear deterrent in a manner contributing to nuclear stability and arms control.

On the first day of the 99th Congress, the Majority Leader and I joined in common effort to create a bipartisan Senate Arms Control Observer Group to monitor the Geneva arms control negotiations. As a result of the group's contacts with both American and Soviet arms control officials, the full Senate will be better able to fulfill its responsibilities should a treaty be presented to the Senate for ratification.

Arms control remained a Democratic priority in the 99th Congress. Under the leadership of Senate Democrats, the Senate emphatically urged the President to continue in 1986 to refrain from policies that would undercut the SALT II accords as long as the Soviets show similar restraint in adhering to central numerical sublimits.

Senate Democrats recognized that restructuring military spending would help force the Pentagon to improve management and eliminate waste. We proposed a fiscally responsible defense spending program that would improve combat readiness and sustain progress in research, that would provide an adequate pay raise for military personnel, but that would force the Pentagon to "clean up its management act."

We proposed major improvements to the currently wasteful defense procurement process, such as urging the creation of the new position of Under Secretary of Defense for Acquisition to streamline defense procurement policy-making.

During the 99th Congress, Senate Democrats led the way in strengthening our nuclear deterrent by ensuring that high priority programs receive full funding. The Senate endorsed Democratic proposals to secure full funding for the Stealth bomber and advanced cruise missile, to cap the B-1B bomber, and to promote the fastest possible development of the survivable Midgetman, the small mobile intercontinental ballistic missile.

Senate Democrats also won Senate approval to deploy no more than 50 MX missiles in vulnerable basing modes and to shift the Administration's land-based missile pri-

orities toward more survivable and effective deterrent forces, such as the Midgetman.

We supported a continued, vigorous funding of the Strategic Defense Initiative to investigate the feasibility and potential of such technologies. But we opposed the Reagan-Republican "blank check" for SDI funding.

Senate Democrats supported strengthening our conventional forces, including increases in our combat readiness accounts for aircraft flying hours, ship steaming days, unit field experience, depot maintenance, and real property maintenance. And we led the Senate effort to pressure our NATO allies and Japan to pay a larger and fairer share of our mutual defense burden.

In 1985, Democrats sought to increase the survivability of our military satellites by supporting negotiations for mutual, verifiable arms control limits on anti-satellite (ASAT) threats and a carefully-paced ASAT weapons research program.

Through the efforts of several Senate Democrats took the lead in reorganizing the basic Pentagon management structure to improve the quality of military advice given to the President by the Joint Chiefs of Staff, strengthening the role of senior field commanders in the budget process, and eliminating congressional micromanagement and duplicative Pentagon senior management levels. The overall bill was a tremendous bipartisan effort which provided the most comprehensive Pentagon management reform in 25 years, and I am proud to say that Senate Democrats had a major role in its development and passage.

The Pentagon independent Inspector General's office, drafted by Senate Democrats in the 98th Congress and enacted over the opposition of the Administration, undoubtedly helped inspire many of these reforms. It was during the 99th Congress that this office uncovered contracting fraud, abuse of the Defense Department's procurement system, and the payment of outrageous prices for common household items, including $44 for a light bulb and $436 for a hammer. The revelations by the office led to the enactment of legislation to improve weapons procurement systems, restrict the "revolving door" opportunities for military and civilian procurement officials, increase penalties for intentional false contract claims, and increase competition in defense procurement.

FOREIGN POLICY

Senate Democrats led the drive for a coherent and consistent foreign policy worthy of the Nation that leads the free world. We proposed alternative policies in an effort to develop a foreign policy behind which the American people can unite, and which will inspire our Allies to join us in common endeavors.

During 1985, Senate Democrats were in the forefront of initiatives to address the security and foreign policy challenges America faces in all parts of the world.

Our efforts in the 99th Congress built upon our actions in the closing days of the 98th Congress when the lack of a coherent Administration policy in the Middle East collapsed completely in the rubble of the Marine barracks in Beirut. From the Middle East to South Africa, Central America and East Asia, Democrats attempted to fashion programs and policies based on the effective use of the full range of America's economic, political, military, and diplomatic tools and resources. The emphasis in all cases was on diplomacy, and only in the most extreme circumstances, when diplomacy had clearly failed, such as in the case of Libya, was the use of force endorsed as a needed last resort.

Several months before the election in the Philippines last year, the Senate adopted a resolution calling for political reforms in that nation and urging that any election there be free and fair. While the Executive Branch was sending muddled signals to the Filipino people to the effect that there had been election fraud on both sides, Senate Democrats took the lead in passing a resolution declaring that widespread election fraud had denied the Marcos government a popular mandate. The resolution's strong language helped galvanize the democratic forces to take a stand against the country's dictatorship and helped President Aquino peacefully assume power.

Senate Democrats also were in the forefront of promoting the search for peace in the troubled Middle East, and for a fair resolution to the region's complex problems. We did so by encouraging negotiations between the Arab states and Israel, urging increased American involvement in the peace process, and successfully opposing the Administration's excessive reliance on arms sales to arab nations.

As the situation in Central America grows more dangerous, Senate Democrats have consistently tried to prevent the Administration' policies from entangling U.S. military forces in an armed conflict in that troubled region. During the second session, the Republican majority approved $100 million in funding for the war in Nicaragua. These votes endorsed the Reagan Administration's policy that is undermining the democratic governments of countries surrounding Nicaragua and is putting the U.S. on a one-way road to war. Through a series of amendments, Senate Democrats showed that another road exists, a road more worthy of the American tradition—a road where diplomatic measures are attempted *first*—where the efforts of other nations in the region are utilized to gain a suitable resolution—*before* the United States turns to violent intervention. The Democratic proposals stressed diplomatic solutions to the region's complex problems, increased accountability of the funds being sent to the Contras, protection of civilians from the military conflict, promotion of a free press, and opposition to a secret escalation of the Administration's commitment to combat in Central America.

To further the effort to build a more constructive relationship with the Soviet Union, in September 1985, I led a bipartisan group of Senators to meet with the new Soviet leader, General Secretary Mikhail Gorbachev. It was our goal to help lay the groundwork for President Reagan' first summit meeting with Secretary Gorbachev, to assess the viewpoints of the new Soviet leader, and to bring to his attention viewpoints strongly held in the Senate. The trip was a success on all accounts.

This past February, under heavy pressure from the U.S. Congress, the Soviet government released human rights activist Anatoly Scharansky from incarceration and permitted him to leave the USSR. Through the efforts of Senate Democrats, Scharansky and his wife, Avital, were awarded Congressional Gold Medals in recognition of their human rights campaign and as a tribute to their courage in the face of Soviet repression.

In that same month, the Senate ratified the Genocide Treaty, an achievement supported overwhelmingly by Senate Democrats.

During the 99th Congress, the eyes of the world were focused on the abuse of basic human rights in South Africa. Democrats have led the way in determining the direction and strength of the message that our government is sending to that nation's oppressive government. Last year, congressional pressure forced the Administration to take its first tentative steps in the direction of sanctions as the President signed an Executive Order which included elements of legislation before Congress at the time.

During the second session, conditions in that country deteriorated drastically. Under pressure by Senate Democrats, the Republican leadership finally agreed to take up the issue. Despite efforts to weaken or kill the measure, we prevailed in putting the United States in line with the international community on this human rights issue—a point dramatically made only days ago when the Senate, joining the House, overrode the President's veto by a vote of 78-21.

CONCLUSION

In the past two years, Senate Democrats have performed courageously and responsibly as the loyal opposition to serve our great Nation.

We supported the President when we could and opposed him when we felt the country's best interests necessitated a different path. And when we took the latter path, we did so in meaningful, constructive ways.

Likewise, we have worked in cooperation with our colleagues on the other side of the aisle in a common effort for the common good when that was possible. When principle dictated otherwise, and when we felt the national interest demanded, we opposed them. Throughout the two years of the 99th Congress, Senate Democrats left a strong and important mark on public policy.

In the 100th Congress, to which we expect to return to as the majority, we anticipate building on the work and the record of the two years just completed—to help fashion policies and programs that address the needs and responsibilities of this Nation effectively, on a timely basis, in a responsible manner.

Senate Democrats will be ready—as we have been ready during the 99th Congress.

Attached to this Special Report is an analysis of the major legislation passed by the Senate over the last decade which arrives convincingly at the conclusion that this body functioned more productively under Democratic leadership, and would benefit from the return of Democratic control next year.

MAJOR LEGISLATION PASSED BY THE SENATE

(Excludes Routine Appropriations Bills)

Date	Bill No. and title	Passage vote
	1977 (TOTAL ITEMS 57)	
Jan. 31	S. 474: Natural Gas Emergency	91–2
Feb. 4	S. Res. 4: Senate Committee Reorganization	89–1
Feb. 22	S. Con. Res. 10: Third Budget Resolution, 1977	72–20
Mar. 3	S. 626: Presidential Reorganization Authority	94–0
Mar. 10	S. 964: Federal Salary Increase Denial	93–1
Mar. 10	H.R. 11: Public Works Employment	74–11
Mar. 15	H.R. 1746: Rhodesian Chrome Import Sanctions	72–22
Mar. 30	H.R. 4800: Emergency Unemployment Compensation	84–11
Apr. 1	S. Res. 110: Senate Ethics Code	86–9
Apr. 1	H.R. 4877: Supplemental Appropriations	69–15
Apr. 29	H.R. 3477: Tax Reduction and Simplification	73–7
May 2	H.R. 6889: Economic Stimulus Appropriations	63–15
May 4	S. Con. Res. 19: First Budget Resolution, 1978	56–31
May 5	H.R. 5840: Export Administration—Arab Boycott	90–1
May 17	H.R. 5970: Military Procurement Authorization	90–3
May 18	S. 826: Department of Energy Establishment	74–10
May 20	H.R. 2: Strip Mining	58–8
May 24	S. 275: Omnibus Farm Bill	69–18
May 26	H.R. 6138: Youth Employment and Training	80–3

MAJOR LEGISLATION PASSED BY THE SENATE—Continued

(Excludes Routine Appropriations Bills)

Date	Bill No. and title	Passage vote
June 7	H.R. 6655: Housing and Community Development	79–7
June 10	H.R. 6161: Clean Air	73–7
June 15	H.R. 6714: International Development Assistance—Food for Peace.	59–32
June 15	H.R. 6884: International Security Assistance—Arms Export Control.	67–18
June 15	H.R. 6689: State Department Authorization	64–21
June 21	S. 717: Federal Mine Safety	78–18
June 22	H.R. 5885: Rivers and Harbors—Waterway Users Fee.	81–9
June 27	S. 555: Ethics in Government	74–5
June 30	H.R. 1139: Child Nutrition Programs	96–0
July 12	S. 1811: ERDA Nuclear Authorization	VV
July 15	S. 9: Outer Continental Shelf	60–18
Aug. 3	S. 926: Campaign Financing Act Amendments	88–1
Aug. 4	H.R. 3199: Water Pollution Control Act	96–0
Sept. 8	H.R. 5146 (S. 977): Coal Utilization/Conversion	74–8
Sept. 9	H. Con. Res. 341: Second Budget Resolution, 1978	63–21
Sept. 13	H.R. 5037 (S. 2057): Energy Conservation Policy	VV
Sept. 14	S. 1360: Timber Sales	VV
Sept. 15	S. 1750: Saccharin Sales Continuance	87–7
Sept. 16	S. 995: Sex Discrimination—Pregnancy	75–11
Sept. 16	S. 274: Military Unionization Prohibition	72–3
Sept. 20	H.R. 4544: Black Lung Benefits	VV
Sept. 30	H.R. 9290: Public Debt Limit	58–30
Oct. 4	H.R. 5289 (S. 2104): Natural Gas Pricing/Deregulation.	VV
Oct. 6	H.R. 4018 (S. 2114): Public Utility Rates	86–7
Oct. 7	H.R. 3744: Minimum Wage	63–24
Oct. 10	S 1585: Child Pornography	85–1
Oct. 12	H.R. 6666: Legal Services Corporation	77–15
Oct. 12	S. Con. Res. 31: Auto Airbag Disapproval (tabled)	65–31
Oct. 17	H.R. 3387: Child Care Program	80–0
Oct. 19	H.R. 5383: Age Discrimination in Employment	88–7
Oct. 19	H.R. 8701: Veterans Education Benefits	91–0
Oct. 19	S. Con. Res. 56: SALT II Talks	VV
Oct. 20	H.R. 3454: Endangered Wilderness Areas	89–3
Oct. 20	H.R. 3816: Federal Trade Commission Reform	90–0
Oct. 31	H.R. 5263: Energy Taxation	52–35
Nov. 2	H.J. Res. 621: Alcon Pipeline System Approval	87–2
Nov. 4	H.R. 9346: Social Security Financing	42–25
Dec. 15	H.R. 5322: Black Lung Trust	VV

1978 (TOTAL ITEMS 57)

Jan. 30	S. 1437: Criminal Code Reform	72–15
Jan. 31	S. 1976: Redwood National Park	74–20
Feb. 7	H.R. 8638: Nuclear Nonproliferation	88–3
Mar. 16	Ex. N, 95–1: Panama Canal Neutrality Treaty	68–32
Mar. 21	H.R. 6782: Emergency Agriculture Act	67–26
Apr. 18	Ex. N, 95–1: Panama Canal Treaty	68–32
Apr. 19	S. 2493: Airline Deregulation	83–9
Apr. 20	S. 1566: Foreign Intelligence Surveillance	95–1
Apr. 26	S. Con. Res. 80: First Budget Resolution, 1979	65–26
May 2	H.R. 11504: Farm Credit Improvement	92–0
May 4	H.R. 8309: Water Resources Projects—User Fees	80–13
May 9	H.R. 130: Petroleum Franchiser Dealers' Day in Court.	95–0
May 15	S. Con. Res. 86: Mid-East Arms Sales Disapproval	44–54
June 26	H.R. 12222: International Development Assistance	49–30
June 26	S. 2579: President's Commission on Biomedical Research.	68–10
June 27	S. 419: Oil Shale Development	61–23
June 28	H.R. 12598: State Department Authorization	64–17
June 29	H.R. 12426: New York City Loan Guarantee	53–27
July 13	H.R. 2777: National Consumer Cooperative Bank	60–33
July 19	S. 2899: Endangered Species	94–3
July 20	S. 3084: Housing & Community Development	81–3
July 21	S. 3085: Child Nutrition—Permanent Authority	68–0
July 24	H.R. 12255: Older Americans	85–2
July 26	S. 3075: International Security Assistance	73–13
July 28	S. 2820: Dam Safety	77–1
July 31	H.R. 9214: IMF Wittenveen Facility (Bretton Woods).	69–16
July 31	H.R. 10173: Veterans Pensions	85–0
Aug. 2	H.R. 11445: SBA Programs (Pocket Vetoed)	VV
Aug. 2	H.R. 13385: Public Debt Limit	62–31
Aug. 8	S. 2466: Health Services Research	74–19
Aug. 15	H.R. 12050: Tuition Tax Credit	65–27
Aug. 16	S. 2539: College Opportunity Grants	68–28
Aug. 22	H.J. Res. 554: D.C. Statehood Constitutional Amendment.	67–32
Aug. 23	H.R. 112: Energy Tax Credit—Residential Conservation.	VV
Aug. 24	H.R. 15: Elementary and Secondary Education	86–7
Aug. 24	S. 2640: Civil Service Reform	87–1
Aug. 25	S. 2570: CETA	66–10
Sept. 6	H. Con. Res. 683: Second Budget Resolution, 1979	56–18
Sept. 7	H.R. 8200: Bankruptcy Law Reform	VV
Sept. 7	S. 1423: Judicial Tenure	43–32
Sept. 8	S. 3447: Agricultural Exports	65–1
Sept. 11	H.R. 7010: Victims of Crime	VV
Sept. 19	H.R. 12605: Corporation for Public Broadcasting	VV
Sept. 20	H.J. Res. 1088: New York City Appropriation	51–28
Sept. 21	H.R. 12467: Vocational Rehabilitation	81–1
Sept. 23	H.R. 2852: Countercyclical Revenue Sharing	44–8
Sept. 26	S. 3486: Military Procurement	89–3
Sept. 28	S. 991: Department of Education Establishment	72–11
Sept. 30	H.R. 10587: Public Grazing Lands	59–7
Sept. 30	H.R. 11686: Department of Energy Authorization/Military.	68–1
Oct. 3	H.R. 11733: Federal Aid Highway Program	VV

MAJOR LEGISLATION PASSED BY THE SENATE—Continued

(Excludes Routine Appropriations Bills)

Date	Bill No. and title	Passage vote
Oct. 6	H.J. Res. 638: Equal Rights Constitutional Amendment Extension.	60–36
Oct. 10	H.R. 13511: Omnibus Tax Act, 1978	86–4
Oct. 11	S. 2: Sunset Review	87–1
Oct. 12	H.R. 5285: Hospital Cost Containment	64–22
Oct. 12	H.R. 13750: Sugar Stabilization	50–22
Oct. 13	H.R. 50: Humphrey-Hawkins Full Employment	70–19

1979 (TOTAL ITEMS 59)

Feb. 22	S. Res. 61: Post Cloture Rule Changes	78–16
Mar. 13	H.R. 2479: Taiwan-U.S. Relations	90–6
Mar. 26	H. Con. Res. 107: First Budget Resolution, 1980; Third Budget Resolution, 1979.	64–20
Mar. 27	H.R. 2534: Balanced Budget/Public Debt	62–33
Mar. 28	S. Res. 115: Honoraria Limit	44–54
Mar. 30	S. 210: Department of Education Creation	72–21
Apr. 2	H.R. 2283: Council on Wage and Price Stability	62–22
May 1	S. 413: Aviation Safety and Noise Abatement	78–15
May 2	S. Res. 122: Emergency Building Temperature Restrictions.	89–3
May 3	S. 429: Military Procurement Supplemental	77–12
May 9	S. Res. 120: Gasoline Rationing	58–39
May 14	S. 1007: Middle East Special Assistance	73–11
May 15	H.R. 3363: State Department Authorization	84–10
May 21	S. 241: LEAA Authorization	67–8
May 22	H.R. 3173: International Security Assistance—Arms Exports.	69–21
June 4	S. 7: Veterans Health Care	VV
June 4	S. 1157: Department of Justice Authorization	77–2
June 5	S. 1030: Emergency Energy Conservation	77–13
June 7	S. 721: Civil Rights Commission Authorization	91–5
June 13	S. 428: Military Procurement Authorization	89–7
June 13	S. 1143: Endangered Species	91–5
June 14	S. 892: Rural Development—Pilot Energy Projects	VV
June 18	H.R. 3892: Veterans Benefits	VV
June 19	H.R. 3324: International Development Assistance	70–25
June 20	S. 239: VISTA (ACTION)	75–16
June 20	S. 932: Energy Security—Synfuels	VV
June 26	H.R. 4289: Supplemental Appropriations, 1979	86–8
July 9	S. Res. 140: Reorganization Plan on Foreign Aid	45–51
July 13	H.R. 3875: Housing and Community Development	82–0
July 17	S. 562: Nuclear Regulatory Commission Authorization.	97–1
July 21	S. 737: Export Control	74–3
July 23	H.R. 4537: Multilateral Trade Negotiations	90–4
July 23	H.R. 4057: Food Stamp Program	VV
July 26	H.R. 111: Panama Canal Implementing Legislation	63–32
July 31	S. 265: Attorney Fees	94–3
Aug. 1	S. 914: Economic Development Programs	83–17
Aug. 2	H.R. 3996: Amtrak Authorization	VV
Aug. 3	S. 566: Antirecession and Targeted Fiscal Assistance.	69–23
Aug. 3	S. Res. 220: Senate Financial Disclosure Rule	50–29
Sept. 6	S. 643: Refugee Assistance and Admission	85–0
Sept. 10	S. 1125: Federal Crop Insurance	64–27
Sept. 14	S. 14: Reclamation Reform	47–23
Sept. 19	S. Con. Res. 36: Second Budget Resolution, 1980	62–36
Sept. 28	H.R. 5369: Public Debt Limit	49–29
Sept. 28	S. 1398: Industrial Equipment Energy Efficiency	43–39
Oct. 4	S. 1308: Energy Mobilization Board	68–25
Oct. 12	S.J. Res. 113: Pay Raise Disapproval for Members of Congress.	72–12
Oct. 24	H.R. 2440: Surface Transportation/Uranium Mill Tailings.	VV
Oct. 29	H.R. 3434: Social Services/Child Welfare Assistance	VV
Oct. 30	S. 1873: Judicial Conduct and Disability	56–33
Nov. 1	H.R. 4986: Banking Deregulation/NOW Accounts	76–9
Nov. 14	S. Res. 274: Senate Rules Codification	97–0
Nov. 20	S. 2009: Idaho Wilderness	69–18
Nov. 30	S. 1918: Defense Officer Personnel	87–0
Dec. 6	S. 2076: Zimbabwe-Rhodesia Sanctions	90–0
Dec. 17	H.R. 3919: Windfall Profit Tax	74–24
Dec. 19	H.R. 5860: Chrysler Loan Guarantees	53–44
Dec. 20	H.R. 3951: D.C. Metro Construction	66–23
Dec. 21	H.J. Res. 467: Chrysler Corporation Appropriations	41–35

1980 (TOTAL ITEMS 60)

Jan. 24	H.R. 5288: GI Bill (Education) Amendments	82–4
Jan. 24	H. Con. Res. 204: China Trade	74–8
Jan. 29	H. Con. Res. 249: Summer Olympics, 1980 (USSR/Afghanistan).	88–4
Jan. 29	S. 2012: Nicaragua and Honduras Economic Assistance.	55–34
Jan. 31	H.R 3236: Social Security Disability Insurance	87–1
Feb. 4	H.R. 5168: Armed Services Personnel Pay Increase	VV
Feb. 5	S. 1648: Airport and Airway Development	VV
Feb. 7	H.R. 2313: FTC Authorization and Rulemaking Authority.	77–13
Feb. 20	S. 1390: Truck Safety	69–16
Feb. 28	H.R. 10: Civil Rights of Institutionalized Persons	55–36
Feb. 28	S. 1725: Low Income Energy Assistance	75–5
Mar. 4	H.R. 4612: Disabled Children/Unemployment Compensation.	89–3
Mar. 25	S. Res. 380: Roth Balanced Budget Resolution, FY 1981.	56–41
Apr. 1	S. 1946: Railroad Deregulation	91–4
Apr 15	S. 2245: Trucking Deregulation	70–20
Apr. 22	S. 2177: Home Purchase Assistance	89–5
Apr. 23	S. 414: Patent Procedure	91–4

MAJOR LEGISLATION PASSED BY THE SENATE—Continued

(Excludes Routine Appropriations Bills)

Date	Bill No. and title	Passage vote
May 12	H. Con. Res. 307: First Budget Resolution, 1981; Rev. 2d Budget Resolution, 1980.	68–28
May 14	H.J. Res. 545: Urgent Food Stamp Appropriation	70–18
May 15	S. 598: Soft Drink Interbrand	89–3
May 19	H.R. 6081: Nicaragua and Honduras Economic Assistance.	44–35
May 28	S. 2998: Small Business Administration Programs	83–2
May 30	H.R. 7471: Public Debt Limit Increase	47–10
June 2	S. 2352: Council on Wage and Price Stability/Inflation.	72–11
June 3	S. 2284: Intelligence Oversight	89–1
June 3	H.J. Res. 554: FTC Appropriation	78–16
June 4	H.R. 7428: Oil Import Fee Disapproval—Public Debt.	67–20
June 12	H.J. Res. 521: Military Registration	58–34
June 13	S. 2337: Legal Services Corporation	55–14
June 16	S. 2727: State Department Supplemental	69–10
June 16	S. 2271: International Monetary Fund (Bretton Woods).	55–25
June 17	H.R. 6942: Internat'l Development & Security Assistance.	58–32
June 18	S. 988: Health Sciences Research	82–0
June 19	S. 2377: Justice Department Authorization	86–3
June 20	S. 2080: Public Buildings Policy	71–8
June 21	S. 2719: Housing & Community Development	63–4
June 24	H.R. 5192: Higher Education Program	92–4
June 24	S. 2470: Coal Conversion of Powerplants	86–7
June 25	S. 2720: Urban Mass Transportation	79–15
June 25	S. 2725: Clean Water	93–0
June 26	H.J. Res. 569: Public Debt Limit	54–39
June 28	H.R. 7542: Omnibus Supplemental Appropriations, 1980.	53–22
June 30	S. 2885: Reconciliation—Spending	89–0
July 2	H.R. 6974: Military Procurement	84–3
July 24	S. 1177: Mental Health Systems	93–3
July 25	H.R. 7664: Child Nutrition Programs	VV
July 29	H.R. 3904: Employee Retirement Income Security (ERISA).	85–1
July 30	S. 2189: Nuclear Waste Policy	88–7
July 31	S. 2332: Department of Energy—Civilian	78–14
Aug 19	H.R. 39: Alaska Lands	78–14
Aug. 22	H.R. 1197: Strip Mining Amendments	VV
Sept. 3	S. 2718: Export Trading Companies	77–0
Sept. 4	S. 1188: Veterans' Vocational Rehabilitation	86–0
Sept. 4	H.R. 2977: Domestic Violence Prevention	46–41
Sept. 15	H.R. 6790: Foreign Service Reform	VV
Sept. 16	H.R. 7301: Military Construction Authorization (Nerve Gas).	89–3
Sept. 24	H. Con. Res. 432: Nuclear Fuel Shipments to India Disapproval.	46–48
Nov. 19	H. Con. Res. 448: Second Budget Resolution, 1981	48–46
Nov. 24	H.R. 7020: Superfund for Environmental Cleanup	VV
Dec. 9	H.R. 7112: Revenue Sharing	80–3

1981 (TOTAL ITEMS 33)

Feb. 6	H.R. 1553: Public Debt Limit Increase	73–18
Mar. 12	S. Res. 89–92: Pay Raise Disapprovals (Members of Congress, Cabinet, Judges).	93–0
Mar. 25	S. 509: Milk Price Supports	88–5
Apr. 2	S. Con. Res. 9: Budget Reconciliation Instructions	88–10
Apr. 7	S. 694: Defense Supplemental Authorization	VV
Apr. 8	S. 734: Export Trading Companies	93–0
Apr. 29	S. 786: International Development Association	58–32
May 6	S. 533: Public Buildings	93–0
May 12	H. Con. Res. 115: First Budget Resolution, 1982; Reconciliation.	78–20
May 14	S. 815: Military Procurement Authorization	92–1
May 21	H.R. 3512: Supplemental Appropriations, 1981	95–0
June 3	S. 1197: Housing and Community Development	65–24
June 10	S. 1007: Food Stamps and Commodity Distribution	77–17
June 16	H.R. 3499: Veterans Health Care	99–0
June 18	S. 1193: State Department Authorization 1982–83	88–4
June 25	H.R. 3982: Budget Reconciliation, 1981	80–15
July 14	S. Res. 87: Social Security Benefits Taxation	98–0
July 29	H.R. 4242: Tax Cut	89–11
Sept. 11	S. 1181: Military Pay Increase	81–0
Sept. 18	S. 884: Farm Bill	49–32
Sept. 29	H.J. Res. 265: Public Debt Limit Increase	64–34
Oct. 7	S. 898: Telecommunications Competition/Deregulation.	90–4
Oct. 15	H.R. 4331: Social Security Minimum Benefits	95–0
Oct. 22	S. 1196: International Security—Economic and Military.	40–33
Oct. 28	H. Con. Res. 194: Saudi AWACS Sale Disapproval	48–52
Oct. 29	S. 1503: Standby Petroleum Allocation	85–7
Nov. 2	S. 1086: Older Americans—Social Security Taxation Disapproval.	75–0
Nov. 12	H.R. 3567: Export Administration Authorization	VV
Dec. 7	S. Res. 236: Home Mortgage Interest Deductibility	83–0
Dec. 8	S. 881: Small Business Research/Federal Reserve Appointee.	90–0
Dec. 8	S. 1700: Federal Courts Improvement	83–6
Dec. 9	S. Con. Res. 50: Second Budget Resolution, 1982	49–48
Dec. 16	H.R. 5159: Black Lung Benefits/Trust Fund	63–30

1982 (TOTAL ITEMS 39)

Feb. 10	H.J. Res. 389: CCC Urgent Supplemental Appropriations, 1982.	VV
Feb. 10	H.J. Res. 391: Unemployment Compensation Supplemental Appropriations, 1982.	95–0

MAJOR LEGISLATION PASSED BY THE SENATE—Continued

(Excludes Routine Appropriations Bills)

Date	Bill No. and title	Passage vote
Mar. 2	S. 951: Department of Justice Authorization	57–37
Mar. 18	H.R. 4: Agent Identities Disclosure	90–6
Mar. 24	S. 1080: Regulatory Reform	94–0
Mar. 30	H.R. 2330: NRC Authorization, 1982–83	97–0
Apr. 21	S. Res. 20: Radio-TV Floor Coverage of Senate Proceedings.	VV
Apr. 27	S. 854: Foreign Missions Act	VV
Apr. 29	H.R. 3809: National Nuclear Waste Storage Policy	69–9
May 13	S. 2248: Military Procurement Authorization, FY 1983.	84–8
May 18	S. Con. Res. 60: FTC Used Car Rule Disapproval	69–27
May 21	S. Con. Res. 92: First Budget Resolution, FY 1983	49–43
May 26	S. 2332: Energy Emergency Preparedness	88–7
June 18	H.R. 3112: Voting Rights Act Extension	85–8
June 23	H.J. Res. 519: Public Limit Increase	49–41
June 29	H.R. 6685: Urgent Supplemental Appropriations, FY 1982.	VV
June 30	S. 2240: Federal Flexitime	93–2
June 30	H.R. 3663: Bus Deregulation	85–10
June 30	S. 2586: Military Construction Authorization (Honduran Airfields).	93–1
July 1	S. 2036: Jobs Training	95–0
July 13	H.R. 6198: Copyright Manufacturing Clause	84–9
July 14	H.R. 6590: Tobacco Price Supports	77–17
July 16	H.R. 5539: Reclamation Reform	49–13
July 22	H.R. 4961: Tax Increase—Medicare/ Medicaid Cut	50–47
July 27	H.J. Res. 494: El Salvador Aid—Presidential Certification.	95–2
Aug. 4	S.J. Res. 58: Balanced Budget—Tax Limitation Constitutional Amendment.	63–31
Aug. 5	H.R. 6955: Omnibus Reconciliation, FY 1982—Spending.	72–24
Aug. 11	H.R. 6863: Supplemental Appropriations, 1982	VV
Aug. 17	S. 2222: Immigration Reform and Control	80–19
Sept. 21	S.J. Res. 250: Railway Labor-Management Dispute (Rail Strike).	VV
Sept. 23	H.J. Res. 520: Public Debt Limit Increase	50–41
Sept. 24	H.R. 6267: Depository Institutions	67–11
Sept. 28	H.R. 4613: Federal Debt Collection	96–2
Sept. 30	S. 1688: Armed Career Criminals	93–1
Sept. 30	H.R. 3963: Violent Crime and Drug Enforcement	95–1
Oct. 1	H.R. 5447: Commodity Futures Trading	VV
Dec. 2	H.R. 7093: Social Security Disability Benefits—Virgin Islands Tax Rates.	70–4
Dec. 14	S. Res. 512: Honoraria Cap	54–38
Dec. 21	H.R. 6211: Gas Tax—Highways—Jobs Program	56–34

1983 (TOTAL ITEMS 26)

Mar. 1	S. 47: Shipping Antitrust	64–33
Mar. 17	H.R. 1718: Jobs/Supplemental Appropriations, 1983	82–16
Mar. 23	H.R. 1900: Social Security Reform	88–9
May 18	S. 529: Immigration Reform	76–18
May 19	H. Con. Res. 91: First Budget Resolution, 1984	50–49
May 25	S. Con. Res. 26: MX Basing Approval	59–39
May 25	H.R. 2990: Public Debt Limit Increase	51–41
June 14	S. 66: Cable Telecommunications	87–9
June 16	H.R. 3069: Supplemental Appropriations, 1983	64–33
June 16	H.R. 2973: Repeal of Withholding on Interest and Dividends.	86–4
June 20	S. 336: Labor Management Racketeering	75–0
June 28	S.J. Res. 3: Abortion—Constitutional Amendment (Rejected).	49–50
July 26	S. 675: Defense Authorization	83–15
Aug. 2	H.R. 1646: Railroad Retirement Solvency	95–2
Sept. 13	S. 602: Radio Marti	VV
Sept. 21	H.R. 2780: Revenue Sharing	87–6
Sept. 29	S.J. Res. 159: Lebanon Multinational Forces—War Powers.	54–46
Sept. 30	H.R. 3929: Unemployment Compensation (FSC)	89–0
Oct. 7	H.R. 3385: Dairy/Tobacco Price Supports	VV
Oct. 19	H.R. 3706: Martin Luther King, Jr.. Holiday	78–22
Oct. 20	H.R. 2915: State Department Authorization	VV
Oct. 25	H.R. 3103: Surface Transportation Act	91–2
Nov. 14	H.R. 2230: Civil Rights Commission	78–3
Nov. 16	H.J. Res. 308: Permanent Public Debt Limit Increase.	58–40
Nov. 17	H.R. 3959: Supplemental Appropriations, FY 1984	VV
Nov. 18	H.R. 3391: Social Security Disability Insurance	80–0

1984 (TOTAL ITEMS 33)

Jan. 26	S. 2221: Congressional Pay Reduction	66–19
Feb. 2	S. 1762: Comprehensive Crime Control	91–1
Feb. 6	S. 1763: Habeas Corpus	67–9
Feb. 7	S. 1764: Exclusionary Rule	63–24
Feb. 22	S. 1765: Death Penalty	63–32
Feb. 28	S. 2335: Credit Card Surcharges	84–0
Mar. 1	S. 979: Export Administration Act Amendments	VV
Mar. 20	S.J. Res. 73: School Prayer—Constitutional Amendment (Rejected).	56–44
Mar. 22	H.R. 4072: Wheat and Other Price Supports	78–10
Apr. 5	H.J. Res. 492: Supplemental Appropriatons, 1984	76–19
Apr. 5	H.R. 4169: Budget Reconciliation Act	67–26
Apr. 25	H.R. 4325: Child Support Enforcement	94–0
May 17	H.R. 4170: Deficit Reduction Tax Act of 1984	74–23
May 18	H. Con. Res. 280: First Budget Resolution	41–34
May 18	H.R. 4616: Drunk Driving—Highway Act	VV
May 22	H.R. 1961: Veterans—Agent Orange	VV
May 22	H.R. 3755: Disability Insurance	96–0
June 19	H.R. 5174: Bankruptcy Court Jurisdiction—Federal Judgeships.	VV

MAJOR LEGISLATION PASSED BY THE SENATE—Continued

(Excludes Routine Appropriations Bills)

Date	Bill No. and title	Passage vote
June 21	H.R. 5167: Defense Authorization, FY 1985	82–6
June 27	H.R. 1310: Math-Science Education—Equal Access	VV
June 29	H.R. 5953: Public Debt Limit	VV
July 25	S. 757: Hazardous Waste Disposal Amendments	93–0
July 25	S. 1668: Federal Debt Collection	96–1
July 26	H.R. 1904: Child Abuse Prevention, Treatment, and Adoption Reform.	89–0
July 26	H.R. 1428: Social Security Cost of Living Adjustments.	VV
July 31	S. 1841: R & D Antitrust	97–0
Aug. 7	H.R. 4209: Small Business R&D	94–0
Aug 8	H.R. 6040: Second Supplemental Appropriations, 1984.	62–32
Sept 13	S. 2851: Banking Deregulation	89–5
Sept. 20	H.R. 3398: Trade and Tariff Matters	96–0
Sept. 26	H.R. 2838: Timber Contracts	94–2
Oct. 4	S. 3024: Federal Aid Highways	VV
Oct. 12	H.J. Res. 654: Public Debt Limit Increase	37–30

1985 (TOTAL ITEMS 30)

Feb. 23	S. 391: Interstate Highway Funding	94–0
Feb. 27	H.R. 1096: African Relief and Farm Credit Assistance.	62–35
Mar. 19	S.J. Res. 71: MX Authorization	55–45
Mar. 20	H.J. Res. 181: MX Missile Appropriations	55–45
Mar. 20	H.R. 1239: African Famine Relief Appropriations	98–1
Apr. 3	H.R. 1869: Auto Recordkeeping	92–1
Apr. 3	H.R. 1866: Federal Unemployment Compensation Phase-Out.	94–0
Apr. 23	S.J. Res. 106: Nicaraguan Contra Assistance Approval.	53–46
May 9	S. Con. Res. 32: First Congressional Budget Resolution, FY 1986; Revised 2d Budget Resolution, FY 1985.	VV
May 15	S. 960: Foreign Aid Authorization, FY 1986	75–19
June 5	S. 1160: DOD Authorization, FY 1986	91–4
June 11	H.R. 2068: State Department Authorization, FY 1986–87.	80–17
June 13	S. 1128: Clean Water Amendments, FY 1986–87	94–0
June 20	H.R. 2577: Supplemental Appropriations, 1985	VV
June 26	H.R. 2475: Imputed Interest Rates	VV
July 9	S. 49: McClure-Volkmer Gun Bill	79–15
July 11	H.R. 1460: South African Anti-Apartheid	80–12
July 16	S. 408: Small Business Administration Authorization	94–3
July 24	H.R. 2378: Equal Access to Justice	95–2
July 25	H.R. 2796: Air Traveler Protection	96–0
July 26	S. 1078: Federal Trade Commission Authorization	84–5
Sept. 19	S. 1200: Immigration Reform	69–30
Sept. 26	H.R. 2005: Superfund Improvement	86–13
Oct. 10	H.J. Res. 372: Balanced Budget (Gramm-Rudman-Hollings)/Public Debt Limit Increase.	51–37
Oct. 24	S.J. Res. 228: Jordan Arms Sale Disapproval	97–1
Nov. 7	H.R. 2672: Federal Retirement Reform	96–1
Nov. 13	H.R. 1562: Textile and Apparel Trade Act	60–39
Nov. 14	H.R. 3128: Budget Reconciliation	93–6
Nov. 23	H.R. 2100: Farm Bill	61–28
Dec. 3	S. 1884: Farm Credit	57–34

1986—Through October 16 (TOTAL ITEMS 30)

Feb. 4	S. 638: Conrail Sale	54–39
Feb. 19	Ex. O, 81–1: Genocide Treaty	83–11
Feb. 19	S. 1429: Terrorist Prosecution	92–0
Feb. 27	S. Res. 28: TV Broadcast Coverage of Senate Proceedings.	67–21
Mar. 6	H.R. 3132: Armor-piercing Ammunition	97–1
Mar. 27	S.J. Res. 283: Nicaragua Contra Aid	VV
Apr. 11	S. 1017: National and Dulles Airports Transfer	62–28
Apr. 17	S. 426: Hydroelectric Power Licensing	83–14
May 2	S. Con. Res. 120: First Congressional Budget Resolution FY 1987.	70–25
May 7	H.R. 3362: DOD Reorganization (Joint Chiefs of Staff).	95–0
May 14	S. 1848: Drug Exports	91–7
May 15	H.R. 4420: Military Retirement Reform	92–1
May 20	S. 2180: Dayight Savings Time	VV
June 3	S. 1965: Higher Education Authorization	93–1
June 5	S.J. Res. 316: Saudi Arms Sale Disapproval—Veto Override.	66–34
June 6	H.R. 4515: Supplemental Appropriations, FY 1986	71–8
June 24	H.R. 3838: Tax Reform	97–3
June 25	H.R. 4151: Diplomatic Security and Antiterrorism	VV
July 17	S. 2129: Risk Retention/Liability	96–1
July 17	Treaty Doc. 99–8: U.K.-U.S. Supplemental Extradition Treaty.	87–10
Aug. 9	S. 2638: DOD Authorization, 1987	86–3
Aug. 9	H.J. Res. 668: Public Debt Limit—Gramm-Rudman-Hollings II.	47–40
Aug. 13	H.R. 5052: Nicaragua Contra Aid/Military Construction Appropriations.	59–41
Aug. 15	H.R. 4868: South African Sanctions	84–14
Sept. 19	S. 2706: Budget Reconciliation	88–7
Sept. 24	S. 2405: Federal-aid highway	99–0
Sept. 30	H.R. 5484: Anti-Drug Abuse	97–2
Oct. 3	H.J. Res. 738: Continuing Resolution	82–13
Oct. 3	H.R. 4613: Commodities Futures Trading	83–1
Oct. 6	H.R. 2482: FIFRA	W

LEGISLATIVE BUSINESS

Mr. DOLE. Mr. President, I think we can probably just about wrap up our business here quite soon.

CHILDRENS CHALLENGE CENTER FOR SPACE SCIENCE

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on Senate Joint Resolution 336.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the resolution from the Senate (S.J. Res. 336) entitled "Joint resolution to express the sense of Congress on recognition of the contributions of the seven *Challenger* astronauts by supporting establishment of a Children's Challenge Center for Space Science", do pass with the following amendment:

Page 2, lines 5 and 6, strike out [NASA at the Johnson Space Center], and insert: the Smithsonian Institution.

Mr. DOLE. I move the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PRESIDENT'S COUNCIL ON HEALTH PROMOTION AND DISEASE PREVENTION

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2057.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2057) entitled "An Act to establish the President's Council on Health Promotion and Disease Prevention", do pass with the following amendment:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "President's Council on Health Promotion and Disease Prevention Act of 1986".

SEC. 2. ESTABLISHMENT AND DUTIES OF COUNCIL.

(a) ESTABLISHMENT.—There is established the President's Council on Health Promotion and Disease Prevention (hereafter in this Act referred to as the "Council").

(b) DUTIES.—

(1) The Council shall study and report to the President and the Congress on appropriate steps individuals can take to—

(A) reduce the risk of cancer and heart disease,

(B) use properly and obtain the benefits of exercise with attention to the benefits and possible risks of exercise,

(C) Obtain adequate nutrition in the diet and understand the relationship between proper nutrition and the prevention of desease, and

(D) promote proper dental hygiene and reduce the incidence of oral disease.

(2) In carrying out paragraph (1), the Council shall—

(A) review current Federal health promotion and disease prevention recommendations,

(B) review the effects of Federal, State, local, and private health promotion and disease prevention programs on the public,

(C) prepare an inventory of successful and unsuccessful Federal, State, local, and private health promotion and disease prevention programs and activities,

(D) assess which of available Federal health promotion and disease prevention resources are not being fully used, how such resources may be better targeted to those at greatest risk, and the best means of informing the public about successful health promotion and disease prevention techniques and programs.

SEC. 3. COMPOSITION OF COUNCIL.

(a) IN GENERAL.—The Council shall be composed of 15 members appointed by the President, of which—

(1) 5 shall be State and local health officers and employees who have expertise and experience in the health promotion or disease prevention activities of the Council,

(2) 4 shall be representatives of academic institutions who have expertise and experience in the health promotion or disease prevention activities of the Council, and

(3) 6 shall be representatives of public and private voluntary organizations who have expertise and experience in the health promotion or disease prevention activities of the Council.

The President may also appoint nonvoting, ex officio members from Federal agencies with expertise in the health promotion or disease prevention activities of the Council, including the Centers for Disease Control, the National Cancer Institute, the National Heart, Lung, and Blood Institute, the National Institute of Dental Research, the Public Health Service, the Food and Drug Administration, the Consumer Product Safety Commission, the National Highway Traffic Safety Administration.

(b) TERMS.—Members shall be appointed for the life of the Council. A vacancy in the Council shall be filled in the same manner as the original appointment was made.

(c) COMPENSATION.—Each member of the Council shall serve without compensation. While away from their homes or regular places of business in the performance of services for the Council, all members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under section 5703 of title 5, United States Code.

SEC. 4. ADMINISTRATIVE MATTERS.

(a) CHAIRMAN.—The President shall designate a member of the Council as Chairman.

(b) MEETINGS.—The Council shall meet at the call of the Chairman.

(c) QUORUM.—8 members of the Council shall constitute a quorum, but a lesser number may hold hearings. A vacancy in the Council shall not affect its powers.

(d) PERSONNEL.—

(1) The Secretary of Health and Human Services shall appoint and fix the compensation of an Executive Director for the Council. The Executive Director shall be an individual who has expertise and experience in the health promotion or disease prevention activities of the Council. The Secretary shall provide the Council with such additional personnel, and with such additional support services and facilities, as the Secretary considers necessary to enable the Council to carry out its functions.

(2) Any Federal employee may be detailed to the Council without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) AUTHORITIES.—

(1) The Council may, for the purpose of carrying out section 2, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Council considers appropriate.

(2) The Council may secure directly from any department or agency of the United States information necessary to enable the Council to carry out section 2. Upon request of the Chairman of the Council, the head of such department or agency shall furnish such information to the Council.

(3) The Council may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

SEC. 5. REPORT.

Within 18 months after the date all the members of the Council are appointed, the Council shall prepare and transmit to the President and the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report which describes the activities of the Council under section 2 and the results of the study conducted under such section.

SEC. 6. TERMINATION.

The Council shall terminate at the earlier of—

(1) 24 months after the date of enactment of this Act,

(2) 18 months after the date on which all the members have been appointed to the Council, or

(3) 30 days after the date on which the President and the Congress receive the report of the Council pursuant to section 5.

Mr. HATCH. Mr. President, I am proud to be here today to support S. 2057, the President's Council on Health Promotion and Disease Prevention Act of 1986.

This legislation will change the focus of our Federal health efforts. Historically we have focused on treating diseases after they have developed. The result of this approach is ever increasing health care expenditures. Today we are spending more than $1.2 billion per day, and as far back as I can remember, health care expenditures have increased faster than the rate of inflation.

It's time we take a new approach. It's time we focus on preventing disease instead of treating it. Not only is it cheaper to prevent disease than treat it, but we could even save a few bucks.

By a few bucks Mr. President, I mean one-half trillion dollars. That's Trillion with a t. The Labor and Human Resources Committee report identified almost one-half trillion dollars in lost productivity and health care costs that could be saved by individuals making a few simple changes in their lifestyle.

Mr. President, these changes are truly simple. Smoke and drink less, exercise more, watch what we eat and how much we eat, and wearing seat belts. None of these changes cost money and all of them save lives.

Speaking of saving lives, I would like to make one additional point. I think it is time we change our focus from preventing death to preventing premature death. Unfortunately, every one of us is going to die some day, and I'm not sure its very productive to try to change that. However, none of us have to die prematurely. When we start talking about causes of premature death our priorities change. Accidents, alcohol abuse, drug abuse, and tobacco use move to the top of the list. It also forces us to pay more attention to screening for cancer and vaccinating our children.

This legislation will help start this change in our priorities. It creates a President's Council to evaluate our current efforts on Health Promotion and Disease Prevention and recommend appropriate changes. I'm sure all of my colleagues will agree with me that the $50,000 that it will cost to create this Council for 18 months is a cheap investment and the money is already included in the CR.

I originally introduced this legislation on February 6 of this year and it currently has 17 Senate cosponsors from the full range of the political spectrum. It passed the Senate Labor and Human Resources Committee, which I chair, unanimously on March 19; passed the Senate by voice vote on June 16; and yesterday it unanimously passed the full House after being amended.

Before we proceed to passage of this legislation, I would like to express special thanks to one of the cosponsors, the Senator from Florida [Mrs. HAWKINS]. Without her support and work for this legislation, we would probably not be sending this to the President today for his signature.

Mr. DOLE. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Kansas.

The motion was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ACQUISITION OF PUBLIC LANDS

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2091.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2091) entitled "An Act to amend the provisions of the Federal Land Policy and Management Act of 1976 relating to the acquisition of public lands", do pass the following amendment:

Strike out all after the enacting clause, and insert:

TITLE I—AMENDMENTS TO FEDERAL LAND POLICY AND MANAGEMENT ACT.

SECTION 101. ACQUISITION OF PUBLIC LANDS.

Section 205 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1976 (43 U.S.C. 1715(c)) is amended—

(1) in the first sentence of subsection (c) by striking out "Lands and interests" and inserting in lieu thereof "Except as provided in subsection (e), lands and interests"; and

(2) by adding at the end thereof the following new subsection:

"(e) Lands acquired by the Secretary pursuant to this section or section 206 in exchange for lands which were revested in the United States pursuant to the provisions of the Act of June 9, 1916 (39 Stat. 218) or reconveyed to the United States pursuant to the provisions of the Act of February 26, 1919 (40 Stat. 1179), shall be considered for all purposes to have the same status as, and shall be administered in accordance with the same provisions of law applicable to, the revested or reconveyed lands exchanged for the lands acquired by the Secretary.".

TITLE II—OLMSTED HERITAGE LANDSCAPES

SEC. 201. CONGRESSIONAL FINDINGS.

The Congress finds and declares that—

(1) Frederick Law Olmsted, Senior, the premier American landscape architect during the nineteenth century, is considered the father of landscape architecture in the United States;

(2) Olmsted's philosophy and designs influenced the development of landscapes through the Nation, including National, State, and local parks, forests, parkways, scenic reservations, college campuses, cities and planned communities, and publicly and privately owned estates, institutions, cemeteries, and recreation areas.

(3) Through the partnership formed by Frederick Law Olmsted, Sr., Olmsted's sons, and their associates carried out his philosophy and designs well into the twentieth century and, coupled with the achievements of Olmsted himself, have left a tremendous legacy of historic landscapes and a philosophy that continues to benefit the American people and people throughout the world.

(4) Olmsted's social responsibility, ecological sensitivity, and landscape design creativity have inspired the development of large urban parks for public benefit in urban areas through the United States, creating a legacy of parks which today constitute a singular feature of the urban experience.

(5) Age, overuse, deteriorating infrastructure, inadequate maintenance, and inappropriate developments threaten many of these historic landscapes.

(6) Although voluntary, private efforts have been initiated to identify, commemorate, restore, and preserve the Olmsted legacy, the size and complexity of the task place the Federal Government, by virtue of its expertise relating to parks and historic preservation, in an especially appropriate position to assist in public and private efforts to identify and record the Olmsted legacy.

SEC. 202. DEFINITIONS.

As used in this title—

(1) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(2) STATE OUTDOOR RECREATION LIAISON OFFICER.—The term "State outdoor recreation liasion officer" means the State officer designated as much under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4—4601-11).

(3) OLMSTED HERITAGE LANDSCAPE.—The term "Olmsted heritage landscape" means any landscape, park, forest, parkway, scenic reservation, college campus, planned community, estate, institution, cemetery, or recreation area designed by Frederick Law Olmsted, Senior, his sons and partners, and his associates Calvert Vaux, Charles Eliot, Warren Manning, Jacob Weidenmann, Horace W. S. Cleveland, William Hammond Hall, and George Kessler.

(4) HISTORIC DESIGNED LANDSCAPE.—The term "historic designed landscape" means any designed landscape included in or eligible for inclusion in the National Register of Historic Places.

(5) INVENTORY.—The term "inventory" means the inventory of Olmsted heritage landscapes prepared pursuant to this title.

(6) DOCUMENTATION.—The term "documentation" includes drawings, blueprints, photographs, and other available records.

As used in this title, the terms "preservation", "State historic preservation officer", "State", and "local government" have the same meaning as when used in the National Historic Preservation Act (16 U.S.C. 470-470t).

SEC. 203. HISTORIC DESIGNED LANDSCAPE POLICY.

The Secretary shall, through the utilization of existing procedures and programs, encourage the identification, preservation, and commemoration of historic designed landscapes.

SEC. 204. OLMSTED INVENTORY.

(a) PREPARATION.—The Secretary, acting through the Director of the National Park Service, and with the participation of other appropriate Federal agencies, State historic preservation officers, State outdoor recreation liaison officers, organizations representing local elected officials and local governments, concerned public and private organizations, academic institutions, professional associations, and interested individuals, shall direct that an inventory of Olmsted heritage landscapes be prepared. In the preparation and evaluation of the inventory, existing data and procedures shall be used to the maximum extent possible.

(b) AVAILABILITY.—The inventory shall be compiled on a State-by-State basis. Appropriate access to the inventory shall be provided at the Library of Congress, the Frederick Law Olmsted National Historic Site, Brookline, Massachusetts; the National Park Service regional headquarters, and at appropriate State offices.

(c) ELEMENTS OF INVENTORY.—

(1) TWO ELEMENTS.—The inventory shall consist of the following two elements—

(A) LISTING.—A listing of all Olmsted heritage landscapes, which shall contain a description of the landscape, its location, its principal designer or designers, and its present status, to be completed within three years after the date of the enactment of this Act. The listing of a landscape under this subparagraph is for purposes only of documenting the existence of such landscape. Such listing shall not be construed to define the historical value of the listed landscape in the absence of a determination under the National Historic Preservation Act that such landscape is eligible for inclusion on the National Register of Historic Places.

(B) EVALUATION.—A technical evaluation of all publicly owned Olmsted heritage landscapes, and of all Olmsted heritage landscapes on or eligible for inclusion on the National Register of Historic Places, to be substantially completed within ten years after the date of the enactment of this Act. Such evaluation shall be carried out with the consultation and participation referred to in subsection (a).

Notwithstanding any other provision of this Title, no provision of this Title shall apply to the approximately 230 acres of property owned by the Society of the New York Hospital on Bloomingdale Road in White Plains, New York.

(2) EVALUATION PORTION.—The technical evaluation portion under paragraph (1)(B) shall include at least the following—

(A) documentation on the design intention of the landscape, including its philosophical base, purpose, and social and physical aspects;

(B) documentation on the means by which the design intention was carried out, including horticulture, mechanical aspects (such as topographical alterations, roads, drainage, sewage systems, and structures), and other means;

(C) evaluation of the landscape's philosophical or physical influence on other sites and landscape design;

(D) evaluation of the landscape's historical significance; and

(E) assessment of the historic integrity of the landscape at the time of its evaluation.

The inventory shall be updated as necessary. It shall be reviewed periodically (but not less frequently than every ten years) with the consultation and participation referred to in subsection (a).

SEC. 205. FEDERAL ASSISTANCE.

(a) DUTIES OF SECRETARY OF THE INTERIOR.—The Secretary of the Interior shall—

(1) in consultation with the Advisory Council on Historic Preservation, promulgate, as soon as practicable after the enactment of this Act, guidelines for applying the Secretary's Standards for Historic Preservation Projects to historic designed landscapes;

(2) provide technical assistance to other Federal agencies, State and local governments, private organizations and interested individuals, on the identification, commemoration, and preservation of historic designed landscapes;

(3) conduct and submit to the Congress, within five years after the enactment of this Act, a thematic study of historic designed landscapes to identify landscapes (including Olmsted heritage landscapes) which would qualify as national historic landmarks and to make findings and recommendations regarding their status and any maintenance or capital investment needs; and

(4) encourage a compatible program for the use of the Frederick Law Olmsted National Historic Site, Brookline, Massachusetts, as a center for research, fellowships, and related activities.

The above activities shall be conducted with the consultation and participation of those entities referred to in section 204(a).

(b) COORDINATION OF GRANT APPLICATIONS.—The Secretary shall take such steps

as may be necessary to provide for and encourage the coordination of applications for grants from the Historic Preservation Fund, from the Land and Water Conservation Fund, and under the Urban Park and Recreation Recovery Program—

(1) which will assist the preservation of historic designed landscapes (including Olmsted heritage landscapes), and

(2) which are consistent with the criteria and standards developed under this title.

Nothing in this subsection shall be construed to alter or affect the requirements applicable to the making of grants from the Historic Preservation Fund, from the Land and Water Conservation Fund, or under the Urban Park and Recreation Recovery Program.

SEC. 206. PUBLIC AND PRIVATE COOPERATION.

The Secretary (and State and local governments participating in programs under this title) shall encourage maximum public participation in all aspects of the program established under this title.

SEC. 207. COMMEMORATION.

In order to commemorate the Olmsted achievements and influence on American life, the Secretary of the Smithsonian Institution, and the Chairman of the Advisory Council on Historic Preservation, and with the participation of government agencies, concerned public and private organizations, academic institutions, professional associations, and interested individuals, shall coordinate appropriate activities during the decade of 1986 to 1995.

SEC. 208. TECHNICAL COMMITTEE.

(a) ESTABLISHMENT.—There is hereby established the Technical Committee on Olmsted Heritage Landscapes (hereinafter referred to as "the Committee"). The Committee shall advise the Secretary with respect to his duties and responsibilities under this Act and provide assistance as may be appropriate concerning Olmsted heritage landscapes, including but not limited to—

(1) recommending inventory priorities and standards for the identification, commemoration, and preservation of Olmsted heritage landscapes;

(2) assisting the Secretary in evaluating undertakings that may affect Olmsted heritage landscapes and other historic designed landscapes; and

(3) making other recommendations concerning the implementation of this Act.

(b) COMPOSITION.—The Committee shall be composed of 13 members, to be appointed by the Secretary, as follows—

(1) 2 members to be appointed from recommendations submitted by national organizations concerned with Olmsted parks and heritage landscapes, Olmsted papers, and other Olmsted memorabilia;

(2) 2 members to be appointed from recommendations submitted by national organizations concerned with landscape architecture, historic architecture, architectural history, and historic preservation;

(3) 2 members to be appointed from recommendations submitted by national organizations concerned with parks, conservation, and recreation.

(4) 1 member to be appointed from recommendations submitted by statewide organizations concerned with Olmsted heritage landscapes or historic designed landscapes;

(5) 4 members who represent owners of privately-owned Olmsted heritage landscapes, at least two of which shall be Olmsted heritage landscapes owned by educational or charitable institutions; and

(6) 2 members who represent owners of publicly-owned Olmsted heritage landscapes.

The Chairman of the Committee shall be designated by the Secretary from among the members of the Committee and shall coordinate the activities of the Committee with those of the Advisory Council. Each member of the Committee shall serve for a term of four years from the expiration of his predecessor's term; except that the members first appointed shall serve terms of one to four years, as designated by the Secretary at the time of appointment, in such manner as to ensure that the terms of not more than two members will expire in any one year. A member may not serve more than two terms. A member whose term has expired shall serve until that member's successor has been appointed. The Secretary shall fill vacancies in the same manner as original appointments are made.

(c) COMPENSATION.—Members of the Committee shall serve without compensation as such, but may receive reimbursement for necessary travel and subsistence expenses reasonably incurred in carrying out their responsibilities under this Act.

(d) CONSULTATION.—The Secretary (or his designee) shall from time to time, but at least semiannually, meet and consult with the Committee on matters relating to the evaluation, commemoration, and preservation of Olmsted heritage landscapes, and shall seek the recommendation of the Committee during any consultation process required by the National Historic Preservation Act when that process concerns an Olmsted heritage landscape. Upon the request of the Committee, the Secretary shall provide such staff support as necessary.

(e) TERMINATION.—The Committee shall terminate on December 31, 1995, but may be extended by the Secretary for not longer than 5 additional years unless otherwise determined by the Congress.

Mr. DOLE. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Kansas.

The motion was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The following proceedings occurred subsequently:

Mr. DOLE. Mr. President, I ask unanimous consent that the action just taken by the Senate on S. 20991 be vitiated and that the bill remain at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

RELATING TO CERTAIN JUDICIAL DISTRICTS

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of H.R. 5674 dealing with judicial housekeeping, which is at the desk.

The PRESIDING OFFICER. The Clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5674) to amend title 28, United States Code, with respect to the composition of, and places of holding court in, certain judicial districts.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Kansas?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. If there be no amendment to be proposed, the question is on third reading and passage of the bill.

The bill (H.R. 5674) was ordered to a third reading, was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DETERRING IMMIGRATION FRAUD

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar Order No. 1015, H.R. 3737, dealing with immigration-related marriage fraud.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3737) to amend the Immigration and Nationality Act to deter immigration-related marriage fraud and other immigration fraud.

The PRESIDING OFFICER. Is the objection to the request of the Senator from Kansas?

There being no objection, the Senate proceeded to consider the bill.

Mr. SIMPSON. Mr. President, I am pleased today to present to my colleagues for their approval H.R. 3737, the Immigration Marriage Fraud Amendments of 1986. This legislation is the product of work done by Congressman BILL MCCOLLUM of Florida, a member of the House Subcommittee on Immigration, Refugees, and International Law, and my fine colleague from Illinois, Senator PAUL SIMON, a member of the Subcommittee on Immigration and Refugee Policy.

The legislation we consider today attempts to deter a growing problem with immigrant status derived from marriage to a U.S. citizen: marriage fraud. Present U.S. law grants immediate permanent resident alien status to any alien who marries a U.S. citizen. For the many people who wish to enter our country by any means possible, the convenience and generosity of this immigration status has become a frequent target for fraud. A sample study conducted by the INS recently

determined that up to 30 percent of applications for adjustment of status based on an alien's marriage to a U.S. citizen were actually submitted in order to evade U.S. immigration laws. Clearly, legislative correction is needed to detect and deter this abuse of our laws.

The legislation proposed today would do so by placing all recipients of permanent residence through marriage to a U.S. citizen in a 2-year conditional status. That status shall be removed at the end of the 2-year period after the couple proves to the INS that the marriage is still valid. The legislation would also tighten other areas of our immigration law with regard to fiance visas and the granting of immigration status to any alien who has previously failed to maintain a valid marriage to a U.S. citizen for 2 years.

The Subcommittee on Immigration held the first hearing ever on this subject in July 1985, and Senator SIMON introduced legislation in this body, of which I was a cosponsor, in April 1986. The bill was passed by the Immigration Subcommittee on July 17, 1986, and the Committee on the Judiciary favorably reported the bill on August 7, 1986. I am pleased to present this legislation for action by the entire body, and I am confident that the full and proper procedures have been followed in the processing of this legislation.

The PRESIDING OFFICER. If there is no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 3737) was ordered to a third reading, was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I ask unanimous consent that Calendar Order No. 1002, S. 2270, the Senate companion bill, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

DESIGNATING THE ALBERT V. BRYAN UNITED STATES COURTHOUSE

Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on Environment be discharged from further consideration of H.R. 5470, the Albert V. Bryan Federal Courthouse, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5470) to designate the United States Courthouse for the Eastern District of Virginia in Alexandria, Virginia, as the "Albert V. Bryan Courthouse".

The PRESIDING OFFICER. Is there objection to the request of the Senator from Kansas?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 5470) was ordered to a third reading, was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DWIGHT DAVID EISENHOWER CENTENNIAL COMMISSION ACT

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate turn to consideration of H.R. 4302, the Dwight David Eisenhower Centennial Commission Act, which is being held at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4302) to establish a commission for the purpose of encouraging and providing for the commemoration of the centennial of the birth of President Dwight David Eisenhower.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Kansas?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 4302) was ordered to a third reading, was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SOLOMON BLATT, SR., POST OFFICE BUILDING

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2452.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2452) entitled "An Act to designate the United States Post Office to be constructed in Barnwell, South Carolina, as the 'Solomon Blatt, Sr., Post Office Building'", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. SOLOMON BLATT, SR., POST OFFICE BUILDING.

The United States Post Office to be constructed on Main Street in Barnwell, South Carolina, shall be known and designated as the "Solomon Blatt, Sr., Post Office Building". Any reference in any law, regulation, document, record, map, or other paper of the United States to such building shall be deemed to be a reference to the Solomon Blatt, Sr., Post Office Building.

SEC. 2. FREDERICK N. WEATHERS STATION OF THE UNITED STATES POSTAL SERVICE.

The building located at 3415 North Kings Highway, St. Louis, Missouri, known as the Charles Nagel Station of the United States Postal Service, shall hereafter be known and designated as the "Frederick N. Weathers Station of the United States Postal Service". Any reference in law, map, regulation, document, record, or other paper of the United States to such building shall be deemed to be a reference to the Frederick N. Weathers Station of the United States Postal Service.

SEC. 3. BENJAMIN S. ROSENTHAL POST OFFICE BUILDING.

(a) IN GENERAL.—The United States Post Office Building located at 41-65 Main Street, Flushing, New York, shall hereafter be known and designated as the "Benjamin S. Rosenthal Post Office Building". Any reference in any law, map, regulation, document, record, or other paper of the United States to such building shall be deemed to be a reference to the Benjamin S. Rosenthal Post Office Building.

(b) INSTALLATION OF A PLAQUE.—As soon as practicable after the date of enactment of this Act, the Postmaster General shall install in such post office, in a place in open view to the public, an appropriate plaque indicating the designation of such post office as the Benjamin S. Rosenthal Post Office Building".

SEC. 4. LESLIE NELSON SHAW, SR., GENERAL MAIL FACILITY OF THE UNITED STATES POSTAL SERVICE.

The United States Post Office Building to be constructed on the property on the northwest corner of the intersection of Florence Avenue and Central Avenue in Los Angeles, California, shall be known and designated as the "Leslie Nelson Shaw, Sr., General Mail Facility of the United States Postal Service". And reference in any law, map, regulation, document, record, or other paper of the United States to such building shall be deemed to be a reference to the Leslie Nelson Shaw, Sr., General Mail Facility of the United States Postal Service.

SEC. 5. DEBRA SUE SCHATZ POST OFFICE BUILDING.

The United States Post Office Building located at 2909 Rogerdale, Houston, Texas, shall hereafter be known and designated as the "Debra Sue Schatz Post Office Building". Any reference in any law, map, regulation, document, record, or other paper of the United States to such building shall be deemed to be a reference to the Debra Sue Schatz Post Office Building.

SEC. 6. EDWIN B. FORSYTHE POST OFFICE BUILDING.

The United States Post Office Building at East Second Street and Chester Avenue in Moorestown, New Jersey, shall hereafter be known and designated as the "Edwin B. For-

sythe Post Office Building". Any reference in any law, regulation, map, document, record, or other paper of the United States to such building shall be deemed to be a reference to the Edwin B. Forsythe Post Office Building.

SEC. 7. JUANITA CRAFT POST OFFICE OF SOUTH DALLAS.

The United States Post Office Building located at 2120 South Ervay, Dallas, Texas, shall hereafter be known and designated as the "Juanita Craft Post Office of South Dallas". Any reference in any law, map, regulation, document, record, or other paper of the United States to such building shall be deemed to be a reference to the Juanita Craft Post Office of South Dallas.

SEC. 8. GILLIS W. LONG POST OFFICE BUILDING.

The United States Post Office Building being constructed at 1300 Belle Terre Boulevard in La Place, Louisiana, shall be known and designated as the "Gillis W. Long Post Office Building". Any reference in any law, map, regulation, document, record, or other paper of the United States to such building shall be deemed to be a reference to the Gillis W. Long Post Office Building.

Amend the title so as to read: "An Act to provide for the naming or renaming of certain buildings of the United States Postal Service.".

Mr. MOYNIHAN. Mr. President, Ben Rosenthal, a good friend and distinguished colleague, represented the old Eighth Congressional District in Queens, NY, from 1962 till his death in January 1983. During that time, Ben served on the House Government Operations Committee and the Foreign Affairs Committee, where he chaired the Subcommittee on Europe and the Middle East.

As a man and a legislator, Ben proved to be an individual of great courage and deep compassion for others. For 10 years, in service to his constituents in Queens, and to the entire Nation, Ben proved himself a strong and principled leader. I feel privileged to have served in Congress with him.

His successsor, GARY ACKERMAN, sought to honor him by naming the Flushing Post Office in his memory. It is a simple gesture, yet a fitting one. For it was in that same post office that Ben directly served his constitutents, as this building was the site of his district office.

I am pleased that this legislation, which honors as fine a public servant as Ben Rosenthal, will at last be approved.

Mr. DOLE. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MAKING CORRECTIONS IN THE COMPREHENSIVE ANTI-APARTHEID ACT OF 1986

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate turn to the consideration of House Joint Resolution 756, making technical corrections to the South Africa bill, which was just received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 756) to make corrections in the Comprehensive Anti-Apartheid Act of 1986.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Kansas?

There being no objection, the Senate proceeded to consider the bill.

Mr. KENNEDY. Mr. President, I support this legislation and I urge its passage. In large measure, it is necessary to enact this measure because of the unusual circumstances in which H.R. 4868, the Comprehensive Anti-Apartheid Act of 1986, was enacted into law.

In order to expedite presentation of the bill to the President in time to avoid a possible veto, the Senate-passed bill was adopted without change by the House of Representatives and sent directly to the President. In hindsight, the delay in the date of the sine die adjournment of this Congress means that a conference on the differing House and Senate bills could have been held, and the various so-called technical issues could have been addressed as part of the conference.

But for obvious reasons, that was not the course the Congress took. This legislation was too important to risk a pocket veto. As a result, the Senate bill is now a public law of the United States, Public Law 99-440, enacted over the veto of the President.

As a consequence of that procedure, however, there was no opportunity after the Senate passed the bill on August 15 to make technical or any other changes in the bill. The legislation now before the Senate reflects the outcome of several weeks of jockeying about the interpretation of a handful of key provisions in the public law. In the nature of the legislative process in the final hours of a Congress, it is virtually impossible to enact any measure without unanimous consent. Any Senator can block any measure he or she doesn't like. This measure, therefore, is "lowest common denominator" legislation—it has to pass muster with all 100 Senators to pass the Senate.

Although H.R. 4868 passed the Senate by an overwhelming vote, and the President's veto was overridden by nearly as large a margin, the small band of Senators who opposed the original legislation were able to block changes they didn't like in the technical correction bill now before the Senate, even though such changes would have reflected the overwhelming intent of the Senate when the bill was passed on August 15.

Presumably, now that the legislative process is coming to rest, the next step in interpreting the intent of Congress will be the decisions that the administration makes to implement the law. Although the President vetoed the bill, it is now a law, and all of us expect that the executive branch will meet its responsibility to faithfully execute that law. Inevitably, however, some controversies may have to be settled by the courts.

One such controversy involves the issue of preemption. In my view, as the original Senate sponsor of antiapartheid legislation, H.R. 4868 has no effect on State and local antiapartheid laws, and I believe there is persuasive legislative history in support of that position. But the chairman of the Foreign Relations Committee, Senator LUGAR, who was the manager of the committee bill on which the Senate acted, disagrees. So that issue may well be settled in the courts.

Another controversy involves the ban on agricultural imports and the effect of section 319 on section 303. In the form in which it came to the Senate floor, as reported by the Senate Foreign Relations Committee on August 6, section 303 placed an immediate ban on agricultural and all other imports "grown, produced, or manufactured" by South African parastatals, except for certain strategic minerals. An amendment offered on the Senate floor by Senator DODD originally proposed to strengthen the ban on imports from parastatals by also covering articles "marketed or otherwise exported" by such parastatals.

Senator DOLE raised an objection to the Dodd amendment during the floor debate, because of the impact of the amendment on agricultural products marketed by parastatals. The key issue in the debate on the Dodd amendment was whether the Senate, by adding the marketing language, would be, in effect, banning all agricultural imports from South Africa, since a large number of private producers relied on the marketing services of parastatals.

Senator DODD then agreed to modify his amendment to provide a 12-month grace period before the ban on agricultural imports would take effect, and the amendment as modified was adopted by voice vote.

A few hours later the same day, August 14, I offered an amendment to strengthen the committee bill in several areas, in order to bring the bill into line with the sanctions being consid-

ered or already imposed by the European Community and the Commonwealth of Nations. One section of the amendment placed an immediate ban on all agricultural imports from South Africa, whether from parastatals or from totally private producers. The amendment was narrowly defeated on a tabling motion, by a vote of 51 to 48. The agricultural provision, however, was not a significant issue in the floor debate; the principle objections were raised to the provisions banning United States trade credits for South Africa and new United States investment in South Africa.

The next day, August 15, I offered a fallback amendment, deleting the provisions on trade credits and new investment, but retaining the other provisions, including the immediate ban on all agricultural imports.

My amendment was acceptable by the Senate on a voice vote after the Senate failed to table the amendment by a recorded vote of 44 to 55. The portion of the amendment imposing an immediate ban on agricultural imports became section 319 of the final bill.

There is ample legislative history in the floor debate on that amendment, plus the principle of statutory construction that later actions supersedes earlier action, to make clear that section 319's immediate ban on all agricultural imports from South Africa from any source supersedes section 303(a)'s exemption of 12 months before the import ban on agricultural products of South African parastatal organizations takes effect. But Senator HELMS, the principal opponent of the bill, disagrees. It was not possible to resolve that issue finally in this technical corrections legislation, which makes no changes in section 303(a) or section 319, but I urge the administration to recognize the obvious—that section 319 governs, that there is no 12-month grace period for parastatal agricultural imports, and that all South African agricultural imports, parastatal or otherwise, are banned after the date of enactment of H.R. 4868—October 2, 1986.

I would like to mention one other issue in this category of congressional intent. When the Senate considered the bill in August, an amemdment was offered by the majority leader on behalf of the Senator from Kentucky, Mr. MCCONNELL, to delete the ban on uranium imports in Section 309. In debate on the amendment, Senator MCCONNELL and his colleague from Kentucky, Senator FORD, noted that jobs could be lost at a uranium enrichment plant in their State if imports from South Africa were prohibited. As Senator SARBANES made clear, however, the ban was in the bill when the Foreign Relations Committee approved it by a 15-to-2 vote, no effort was made to take it out in the committee, and there are abundant supplies of uranium available not only in the United States but also elsewhere for reprocessing. The McConnell amendment was tabled by the Senate by a 56-to-40 vote.

Since then, however, it has come to my attention that the August 15 debate on this amendment may be "expanded" in the permanent CONGRESSIONAL RECORD by a colloquy between Senators MCCONNELL, FORD, and LUGAR. This colloquy, which apparently will surface in the context of Senator McConnell's floor statement, has never appeared in any daily CONGRESSIONAL RECORD and is still not publicly available. However, a galley proof of that version seems to be in the hands of the Department of Energy, the State Department, and a number of lobbyists who represent uranium importers.

In this unusual colloquy, the three Senators, all of whom voted for the McConnell amendment, seek to undermine the uranium import ban by attempting to define the term "import" to exclude uranium and other materials which are imported for processing and then exported.

I want to make clear that I would have strongly rejected any such interpretation if the issue had actually been raised on the Senate floor, and I am certain that the Senate would have done so too. Imports are imports, and all imports covered by section 309 are banned, whether temporary or permanent, whether intended for consumption in the United States or reexport to other nations. Indeed, the entire debate on the McConnell amendment, as it actually took place on the Senate floor, was based on the view of the sponsors of the amendment that South African uranium imports would be unavailable to the Kentucky plant unless the amendment were adopted. And the amendment was not adopted—it was rejected by the Senate.

The point of sections such as 309 is to cut off all imports of the items specified, no "ands, ifs, or buts," and no loopholes either. There is not a whiff of valid legislative history to the contrary, and I urge the administration to reject the revision suggested by the colloquy.

In the case of preemption, the House of Representatives felt strongly enough about the issue to adopt a special resolution stating its view against preemption. In all likelihood, if the section 309 uranium colloquy had come to light before the House acted, the House would have nailed this far-out loophole shut, too. It is a colloquy that never happened, and it should be categorically rejected by the administration and the courts.

The PRESIDING OFFICER. If there be no amendment to be proposed, the question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 756) was ordered to a third reading, was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ARMY-NAVY UNION OF THE UNITED STATES OF AMERICA

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to Calendar Order No. 1060, H.R. 897, recognizing the Army and Navy Union of the United States of America.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 897) to recognize the Army and Navy Union of the United States of America.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Kansas?

There being no objection, the Senate proceeded to consider the bill.

Mr. LAUTENBERG. Mr. President, I rise in support of H.R. 897, legislation to grant a Federal charter to the Army and Navy Union. I sponsored the companion legislation, S. 1456, in the Senate.

The Army and Navy Union, founded in 1886, is the oldest veterans' organization of its type in the United States. It is the only veterans' organization in which membership is not limited to any specific form, date, branch, place, or nature of the military service performed.

The Army and Navy Union is dedicated to the preservation of a free and independent United States, and to the provision of assistance to veterans and their dependents. Since its earliest days, the Army and Navy Union has worked for the enactment of equitable laws to provide pensions, medical care, and other benefits to veterans.

The Army and Navy Union is headed by a national commander and his staff. The national corps is administered by officers elected at an annual convention. Any member in good standing is eligible to hold any office in the Army and Navy Union. Each member State has its own State department, which administers the operations of the local posts, known as garrisons. Each State department has an annual encampment. Garrisons meet once a month, and garrison members elect their own officers and delegates to the national encampment and the departmental encampment.

The Army and Navy Union currently has about 8,400 members with posts in 10 States including New Jersey, Ohio, New York, and the District of Columbia.

Members of the Army and Navy Union work on a volunteer basis performing services for veterans and their families. Members of the union serve as burial escorts and ceremonial honor guards at veterans' funerals, and they perform charitable work at Veterans' Administration hospitals. Members also assist the families of deceased veterans in adjusting to their loss by, for example, escorting widows to social security or VA offices and assisting them in obtaining any benefits to which they may be entitled.

The Army and Navy Union has a long and illustrious record of service to veterans and their dependents. Forty-one recipients of the Congressional Medal of Honor, including Eddie Rickenbacker and Douglas MacArthur, have held membership in the Army and Navy Union. Other members include President William McKinley, Supreme Court Justice Harold Burton, Senator Charles Dick of Ohio, and Nobel Peace Prize Laureate Dr. Ralph J. Bunche.

Mr. President, the Army and Navy Union has served our Nation's veterans long and well, and deserves recognition from the Congress. A Federal charter for the Army and Navy Union will provide this worthy organization with that well-deserved recognition, and has already been approved by the House of Representatives. I hope that this body will quickly approve this bill.

The PRESIDING OFFICER. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 897) was ordered to a third reading, was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL AIR AND SPACE MUSEUM

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1311.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1311) entitled "An Act to authorize the Smithsonian Institution to plan, design, and construct facilities for the National Air and Space Museum", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. CONSTRUCTION OF CHARLES McC. MATHIAS, JR. LABORATORY FOR ENVIRONMENTAL RESEARCH.

(a) CONSTRUCTION AUTHORIZATION.—The Board of Regents of the Smithsonian Institution is authorized to construct the Charles McC. Mathias, Jr. Laboratory for Environmental Research.

(b) LOCATION.—The Charles McC. Mathias, Jr. Laboratory for Environmental Research shall be located at the Smithsonian Environmental Research Center, a bureau of the Smithsonian Institution, located at Edgewater, Maryland.

(c) AUTHORIZATION OF APPROPRIATIONS.—Effective October 1, 1986, there is authorized to be appropriated to the Board of Regents of the Smithsonian Institution $1,000,000 to carry out the purposes of this section.

(d) TRANSFER OF FUNDS.—Any portion of the sums appropriated to carry out the purposes of this section may be transferred to the General Services Administration which, in consultation with the Smithsonian Institution, is authorized to enter into contracts and take such other action, to the extent of the sums so transferred to it, as may be necessary to carry out such purposes.

SEC. 2. NAMING OF GENE SNYDER UNITED STATES COURTHOUSE AND CUSTOMHOUSE.

(a) DESIGNATION OF BUILDING.—The United States Courthouse and Customhouse at 601 West Broadway, Louisville, Kentucky, shall be known and designated as the "Gene Snyder United States Courthouse and Customhouse".

(b) LEGAL REFERENCES.—Each reference in a law, map, regulation, document, record, or other paper of the United States to such building shall be deemed to be a reference to the "Gene Snyder United States Courthouse and Customhouse".

(c) EFFECTIVE DATE.—Subsections (a) and (b) of this section shall take effect on January 4, 1987.

Amend the title so as to read: "An Act to authorize the Board of Regents of the Smithsonian Institution to construct the Charles McC. Mathias, Jr. Laboratory for Environmental Research in Edgewater, Maryland, and to designate the United States Courthouse and Customhouse in Louisville, Kentucky, as the 'Gene Snyder United States Courthouse and Customhouse'.".

Mr. DOLE. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXTENSION OF WETLANDS LOAN ACT

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 4531.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 4531) entitled "An Act to extend the Wetlands Loan Act, and for other purposes", with the following amendments:

On page 2, after line 5 of the Senate hand-engrossed amendment, insert:

Strike out all after line 2 on page 1 of the House bill, over to and including line 8 on page 2, and insert:

SECTION 1. TRANSLOCATION OF CALIFORNIA SEA OTTERS.

(a) DEFINITIONS.—For purposes of this section—

(1) The term "Act" means the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(2) The term "agency action" has the meaning given that term in section 7(a)(2) of the Act.

(3) The term "experimental population" means the population of sea otters provided for under a plan developed under subsection (b).

(4) The phrase "parent population" means the population of sea otters existing in California on the date on which proposed regulations setting forth a proposed plan under subsection (b) are issued.

(5) The phrase "prospective action" refers to any prospective agency action that—

(A) may affect either the experimental population or the parent population; and

(B) has evolved to the point where meaningful consultation under section 7(a) (2) or (3) of the Act can take place.

(6) The term "Secretary" means the Secretary of the Interior.

(7) The term "Service" means the United States Fish and Wildlife Service.

(b) PLAN SPECIFICATIONS.—The Secretary may develop and implement, in accordance with this section, plan for the relocation and management of a population of California sea otters from the existing range of the parent population to another location. The plan, which must be developed by regulation and administered by the Service in cooperation with the appropriate State agency, shall include the following:

(1) The number, age, and sex of sea otters proposed to be relocated.

(2) The manner in which the sea otters will be captured, translocated, released, monitored, and protected.

(3) The specification of a zone (hereinafter referred to as the "translocation zone") to which the experimental population will be relocated. The zone must have appropriate characteristics for furthering the conservation of the species.

(4) The specification of a zone (hereinafter referred to as the "management zone") that—

(A) surrounds the translocation zone; and

(B) does not include the existing range of the parent population or adjacent range where expansion is necessary for the recovery of the species.

The purpose of the management zone is to (i) facilitate the management of sea otters and the containment of the experimental population within the translocation zone, and (ii) to prevent, to the maximum extent feasible, conflict with other fishery resources within the management zone by the experimental population. Any sea otter found within the management zone shall be treated as a member of the experimental population. The Service shall use all feasible non-lethal means and measures to capture any sea otter found within the management zone and return it to either the trans-

location zone or to the range of the parent population.

(5) Measures, including an adequate funding mechanism, to isolate and contain the experimental population.

(6) A description of the relationship of the implementation of the plan to the status of the species under the Act and to determinations of the Secretary under section 7 of the Act.

(c) STATUS OF MEMBERS OF THE EXPERIMENTAL POPULATION.—(1) Any member of the experimental population shall be treated while within the translocation zone as a threatened species for purposes of the Act, except that—

(A) section 7 of the Act shall only apply to agency actions that—

(i) are undertaken within the translocation zone,

(ii) are not defense-related agency actions, and

(iii) are initiated after the date of the enactment of this section; and

(B) with respect to defense-related actions within the translocation zone, members of the experimental population shall be treated as members of a species that is proposed to be listed under section 4 of the Act.

For purposes of this paragraph, the term "defense-related agency action" means an agency action proposed to be carried out directly by a military department.

(2) For purposes of section 7 of the Act, any member of the experimental population shall be treated while within the management zone as a member of a species that is proposed to be listed under section 4 of the Act. Section 9 of the Act applies to members of the experimental population; except that any incidental taking of such a member during the course of an otherwise lawful activity within the management zone, may not be treated as a violation of the Act or the Marine Mammal Protection Act of 1972.

(d) IMPLEMENTATION OF PLAN.—The Secretary shall implement the plan developed under subsection (b)—

(1) after the Secretary provides an opinion under section 7(b) of the Act regarding each prospective action for which consultation was initiated by a Federal agency or requested by a prospective permit or license applicant before April 1, 1986; or

(2) if no consultation under section 7(a)(2) or (3) regarding any prospective action is initiated or requested by April 1, 1986, at any time after that date.

(e) CONSULTATION AND EFFECT OF OPINION.—A Federal agency shall promptly consult with the Secretary, under section 7(a)(3) of the Act, at the request of, and in cooperation with, any permit or license applicant regarding any prospective action. The time limitations applicable to consultations under section 7(a)(2) of the Act apply to consultations under the preceding sentence. In applying section 7(b)(3)(B) with respect to an opinion on a prospective action that is provided after consultation under section 7(a)(3), that opinion shall be treated as the opinion issued after consultation under section 7(a)(2) unless the Secretary finds, after notice and opportunity for comment in accordance with section 553 of title 5, United States Code, that a significant change has been made with respect to the action or that a significant change has occurred regarding the information used during the initial consultation. The interested party may petition the Secretary to make a finding under the preceding sentence. The Secretary may implement any reasonable and prudent alternatives specified in any opinion referred to in this subsection through appropriate agreements with any such Federal agency, prospective permit or license applicant, or other interested party.

(f) CONSTRUCTION.—For purposes of implementing the plan, no act by the Service, an authorized State agency, or an authorized agent of the Service or such an agency with respect to a sea otter that is necessary to effect the relocation or management of any sea otter under the plan may be treated as a violation of any provision of the Act or the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.).

Amend the title so as to read: "An Act to improve the operation of certain fish and wildlife programs.".

Mr. CHAFEE. Mr. President, the House of Representatives has added a provision to H.R. 4531 that I support because it will help ensure the continued existence of the threatened California sea otter.

The sea otter once was found throughout much of the northern Pacific Ocean. This marine mammal ranged from the northern Japanese archipelago to Punta Abreojos, Mexico. However, the species' numbers were greatly reduced by the unrestricted harvests of commercial hunters during the 19th century. By the turn of the century only remnant sea otter populations existed in Russia, Alaska, British Columbia, and California. Since the International Fur Seal Treaty of 1911, sea otter numbers have increased in Alaska to the point where the species now occupies most of its former range.

The California sea otter assisted by this legislation expanded from approximately 50 animals near Point Sur in 1938 to an estimated 1,800 animals by the mid-1970's. The sea otter has been protected under State law in California since 1913 and under the Federal Marine Mammal Protection Act and Endangered Species since 1972 and 1977, respectively. The listing of the California sea otter in 1977 as a threatened species under the Endangered Species Act and as a depleted species under the Marine Mammal Protection Act was based, in part, on the species' restricted range and the risk posed to it by a catastrophic oil spill. In addition, we now know that gill netting is a more immediate threat to the sea otters' continued existence.

Unfortunately, the California sea otter population has declined in size since the mid-1970's despite improved Federal protection under the Endangered Species Act and Marine Mammal Protection Act. Consequently, there is a pressing need to take additional action to improve the prospects of protecting this highly vulnerable wildlife species in perpetuity.

A key component in our efforts to ensure that sea otters will survive threats from oil and gas activities and gill netting is the establishment of at least one additional population outside their current range off the California coast. People have been talking for years about the translocation of California sea otters and the related management of that population. Little progress has been made toward that objective, however, because of intense conflicts among the various interests and government agencies.

Mr. President, H.R. 4531, as amended by the House, provides a framework that appears likely to resolve the conflicts among the parties affected by translocation of sea otters sufficiently to allow establishment of a second otter population with little further delay. Most of the interests concerned were involved in drafting this legislation framework. As a result, the sea otter provision in the House bill represents a consensus approach for proceeding with the proposed translocation.

The California sea otter provision of H.R. 4531 is a freestanding provision based on concepts similar to the Endangered Species Act. The impetus for this provision stems partly from a possible conflict between the goals of section 10(j) of the Endangered Species Act and the prohibitions on taking of the Marine Mammal Protection Act. Section 10(j) provides for the establishment of "experimental populations" to enhance the prospects of recovering threatened and endangered species. However, the takings of otters that would be necessary to translocate these animals and to contain otters within the translocation zone, might be prohibited under Marine Mammal Protection Act.

That act allows taking of depleted species such as the California sea otter only for purposes of scientific research. The legislation before us today specifies that the Marine Mammal Protection Act's prohibitions on taking are not to apply to those actions that are necessary to translocate, contain or protect those otters that are part of the experimental population. The House has made it clear that this provision is not intended to establish precedents for either species-specific amendments or for how other experimental populations should be achieved, and I agree with this narrow statement of intent.

The bill contains a number of other key elements. First, this legislation also sets forth a procedure whereby the Secretary of the Interior is authorized to develop a plan for the relocation, protection and management of a second population of California sea otters.

Second, the legislation requires designation of two concentric zones. An inner "translocation zone" must provide the habitat necessary for furthering the conservation of the sea otter and a buffer zone to protect the population from activities occurring elsewhere. An outer "management zone"

would be established to minimize the potential conflicts between fisheries and other resource uses and the translocated population. Otters are to be kept out of the management zone by means of nonlethal taking.

Third, the bill addresses the status of the experimental sea otter population under the Endangered Species Act. The applicability of the consultation and taking requirements of this act as well as the prohibitions on taking under the Marine Mammal Protection Act differ with respect to the two zones. Within the inner translocation zone, nondefense-related Federal agency actions are subject to the full requirements of section 7 of the Endangered Species Act. Defense-related agency actions—that is, those proposed to be carried out directly by a military department—which occur within the translocation zone, as well as all agency actions which occur within the management zone, are subject to the informal conferral procedure of section 7(a)(4).

Sections 4(d) and (9) of the Endangered Species Act and the ban on taking under the Marine Mammal Protection Act apply to all agency actions within the translocation zone, except those activities that are related to defense. Within the management zone, the taking prohibitions of the two acts apply only to intentional, directed takings and not to otherwise lawful activities which result incidentally in takings of members of the experimental sea otter population. As a freestanding provision, the framework established for the protection and management of the translocated sea otter population would continue in effect even if the species recovers to the point where it can be taken off the Endangered Species Act list.

Fourth, the sea otter legislation allows those interests affected by the sea otter translocation to obtain early consultation on the consequences of their activities under procedures similar to those of section 7(a)(3) of the Endangered Species Act. Requests to initiate such consultation must be made before March 1, 1987. This deadline is intended to ensure that consultation requests, which are found to contain sufficient information by the Fish and Wildlife Service, will be completed prior to translocation of the otters. The early consultation procedure should provide increased certainty for all parties involved in the translocation.

Mr. President, the circumstances surrounding the California sea otter are unique. Establishment of a second population of these marine mammals is critical to the species' continued existence. The translocation effort currently is jeoardized by potential conflicts between the provisions of the Endangered Species Act and the Marine Mammal Protection Act. And there is a long and complicated history of conflicts among the interests affected by a translocation of California sea otters. Because of these special circumstances, I believe we must go forward with this legislation. We owe it to the California sea otter. Translocation of the California sea otter, as provided by H.R. 4531, also is an important step toward the protection and restoration of the Southern sea otter within its historic range. What we do here today, hopefully, will show the way for additional efforts on behalf of the southern sea otter in the years ahead.

TRANSLOCATION OF SEA OTTERS

Mr. CRANSTON. Mr. President, H.R. 4531, the wetlands loan extension bill, contains provisions concerning the California sea otter that are of great interest in my State. For this and other reasons, I support its passage.

Almost 10 years ago, the U.S. Fish and Wildlife Service listed the California sea otter, Ehydria lutris nereis, as a threatened species under the Endangered Species Act. The decision to list it as threatened was based upon concerns over the population's small size and limited geographic distribution, and the risk of a major oil spill from tanker traffic in the vicinity of its range.

But the status of the sea otter has not improved since its listing in 1977. In fact, due to additional threats such as the incidental take of otters in coastal gillnet fisheries and the oil spill risk associated with offshore oil and gas exploration and development, the California sea otter is more vulnerable than it was in 1977. Prior to commercial exploitation in the 19th century, an estimated 18,000 otters were found in California. By 1914, the population had been reduced to about 50. This small remnant population was given protection under State and Federal law and was estimated to number 1,800 animals by the mid-1970's. Recent estimates put the population closer to between 1,300 and 1,400 adults. Clearly, there is need to act now to protect this important, but highly vulnerable, species.

The legislation that we have before us would facilitate the effort to bring about the recovery of this threatened species. As indicated in the Endangered Species Act recovery plan for the California sea otter, one of the goals that must be achieved to bring about the restoration of this population is the establishment of one or more sea otter colonies at sufficient distance from the existing range to ensure that only a small proportion of the population could be adversely impacted by any environmental catastrophe. The importance of this step is highlighted by recent near-misses in the vicinity of the sea otter range.

In April 1984, the tanker *Sealift Pacific*, carrying over 6 million gallons of diesel fuel—twice the estimated volume released during the 1969 Santa Barbara oil platform blowout—lost power and drifted to within only 1½ miles of shore in the midst of the California Sea Otter Refuge. Had her anchor not held, she would have broken up on the rocks. No Coast Guard vessel or commercial tug could have reached her in time to prevent disaster. In November 1984, the tanker *Puerto Rico*, crippled by three explosions, broke in two, spilling over 1 million gallons of oil into the ocean off San Francisco. Oil spill trajectory projections were 180° off; spilled oil moved 20 miles overnight and washed ashore as much as 140 miles north of the spill site. Had the oil gone as far south—as originally prdicted—as it went north, it would have soiled the northern portion of the sea otter range. In February 1986, oil from the leaking tanker barge *Apex Houston*—en route from San Francisco to Los Angeles—killed thousands of seabirds from Marin to San Luis Obispo counties—but, fortunately, in this case, remained far out to sea, thus sparing the otters' near shore habitat.

The provisions of this legislation would clarify the legal authorities that apply to translocations. It would enable the Fish and Wildlife Service to establish a procedure that would address the concerns of organizations and agencies interested in and affected by sea otter recovery efforts. In fact, most of the concerned interest groups have had a hand in drafting this language. It represents a consensus approach for proceeding with the proposed translocation.

The bill contains several key elements. First, it requires the Fish and Wildlife Service to develop a plan for the establishment of the translocated population. The purpose of this plan is to provide both a blueprint for carrying out the translocation and a description of the protections that will apply to the population. In addition, the plan is to discuss, in general terms, the factors that would be taken into account in determining the relationship between a successful translocation and the status of the California sea otter under the Endangered Species Act, including how the establishment of a successful colony would be considered in future biological opinions under section 7(a)(2) of the act. In this regard, the translocation plan is viewed as a planning device for the translocation itself. Specifications with respect to long-term management of the overall California sea otter population, including recovery goals and the need for future translocations, are to be addressed in the Endangered Species Act recovery plan.

Second, through the translocation plan, the Service would be required to establish two zones in the vicinity of the translocation population. The translocation zone is the area within which the otters would be relocated. It must include those habitat features that are essential to the conservation of the sea otter and a buffer zone to protect the population from activities occurring elsewhere. In assessing these factors, the Fish and Wildlife Service must accommodate, among other important biological needs, the feeding behavior of the sea otter. As recent drownings in gillnets along the parent population range indicate, sea otters forage in depths up to at least 20 fathoms. In order to protect sea otters during foraging activities, the State of California has found it necessary to establish a 20-fathom closure in portions of the sea otter range.

A management zone also would have to be designated. The purpose of this zone would be to minimize the potential for conflict between fisheries and other resource uses and the translocated population. It is to be managed, by means of nonlethal taking, as an otter-free zone. In order to carry out this directive, the Service is expected to conduct research to refine the most effective and humane methods for containing sea otters.

Third, the bill provides an opportunity for affected parties to seek early consultation under section 7(a)(3) of the Endangered Species Act. Early consultation requests must be initiated by the action agency by a date certain in order to assure that, should they be deemed to contain sufficient information by the Fish and Wildlife Service, the consultation would be completed prior to the date otters are to be translocated. It is anticipated that this opportunity would be used to inject as much certainty into the translocation decisionmaking process as possible.

Fourth, the bill defines the applicability of certain provisions of the Endangered Species Act and Marine Mammal Protection Act to the translocated population. The full protections of section 7 of the Endangered Species Act apply within the translocated zone to nondefense-related agency action. Defense-related activities that occur within the translocated zone, as well as agency actions that take place within the management zone that could affect the translocated colony, would be subject to the informal conferral procedure of section 7(a)(4).

With respect to the taking of sea otters, section 4(d) and (9) of the Endangered Species Act and related taking prohibitions of the Marine Mammal Protection Act would apply to activities occurring within the translocation zone. Within the management zone, the taking prohibitions of the two acts would apply only to international takes and not to incidental takes resulting from otherwise lawful activities.

The sea otter management/protection directives set forth in H.R. 4531 would have continued applicability should the species recover to the point where it can be delisted.

In August of this year, the Fish and Wildlife Service published a draft environmental impact statement for the translocation of California sea otters. This action was, in part, in response to the Senate's direction to the Fish and Wildlife Service to, in fact, proceed with the preparation of the environmental impact statement. The proposed action calls for translocating otters to San Nicolas Island offshore southern California and considers several alternative locations. In addition, alternative legal authorities for conducting the translocation are set forth, including an approach that meets the basic requirements of this legislation.

The Fish and Wildlife Service should be able to proceed through the final steps of the decisionmaking process pursuant to the requirements of the bill that we have before us.

Finally, the significance of this translocation for future resource management decisions in California needs to be emphasized. As recommended by the Marine Mammal Commission in 1980 and adopted by the Fish and Wildlife Service in the recovery plan, an ultimate management objective for the California sea otter is to establish a "zonal management" scheme. This approach would involve the restoration and protection of the southern sea otter to additional sites within its historic range and the designation of areas where otters would not be allowed.

The translocation that the Fish and Wildlife Service has proposed is an important step in this direction. In addition to establishing zones where otters would and would not be maintained, the proposed action calls for important research to be conducted on the relationship between sea otters and nearshore ecosystems. This information is likely to be crucial to eventual determinations under the Marine Mammal Protection Act of the optimum sustainable population level for the California sea otter. This determination should, in turn, make it possible for the Service, in cooperation with other interested parties, to chart a course for sea otter protection and management that will satisfy the goals of the Endangered Species Act and the Marine Mammal Protection Act while reducing the potential for conflict between sea otter protection actions and other resource uses.

In the interest of protecting the California sea otter and making progress toward balancing the utilization of the resources of the California coast, I urge adoption of this legislation.

Mr. DOLE. Mr. President, I move that the Senate concur in the House amendments.

The motion was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motions was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONVEYANCE OF CERTAIN REAL PROPERTY

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 386.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 386) entitled "An Act to confirm a conveyance to certain real property by the Southern Pacific Transportation Company to Ernest Pritchett and his wife, Diana Pritchett", do pass with the following amendments:

Page 4, after line 14, insert:

FINDINGS

SEC. 4. The Congress finds that—

(1) the Southern Pacific Transportation Company is the successor grantee of the real property desscribed in section 6;

(2) pursuant to a petition of the Southern Pacific Transportation Company, the Interstate Commerce Commission has exempted the abandonment of the real property described in section 6 from the provisions of 49 U.S.C. 10903 (relating to abandonment and discontinuance of railroad lines and rail transportation);

(3) the Southern Pacific Transportation Company has abandoned all right, title, and interest in and to the real property described in section 6.

DECLARATION OF ABANDONMENT

SEC. 5. For the purposes of the Act entitled "An Act to provide for the disposition of abandoned portions of rights of way granted to railroad companies", approved March 8, 1922 (43 U.S.C. 912), the Congress hereby declares that the Southern Pacific Transportation Company has abandoned the real property described in section 6.

LAND DESCRIPTION

SEC. 6. The real property referred to in sections 4 and 5 is certain real property situated in the City of Coalinga, California, which forms part of the right-of-way granted by the United States to the Atlantic and Pacific Railroad Company by the Act entitled "An Act granting Lands to aid in the Construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast", approved July 27, 1866 (16 Stat. 292), and more particularly described as that portion of the right-of-way extending from the section line of Sections 33 and 34 of Township 20 South, Range 15 East, Mount Diablo Base & Meridian to the south city limits of the City of Coalinga.

Amend the title so as to read: "An Act to confirm a conveyance of certain

real property by the Southern Pacific Transportation Company to Ernest Pritchett and his wife, Diana Pritchett, and for other purposes.".

Mr. DOLE. Mr. President, I move that the Senate concur in the House amendments.

The motion was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PATENT AND TRADEMARK OFFICE AUTHORIZATION

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 2434.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendments of the Senate numbered 1, 4, 5, 8, 9, 10, and 11 to the bill (H.R. 2434) entitled "An Act to authorize appropriations for the Patent and Trademark Office in the Department of Commerce, and for other purposes.".

Resolved, That the House agree to the amendment of the Senate numbered 2 to the aforesaid bill, with an amendment as follows:

In lieu of the amendment of the Senate numbered 2, insert:

(2)(a) Page 2, line 5, after "Fees.—", insert: *(1)*

(b) Page 2, line 7, after "paid", insert: on or after October 1, 1985,

(c) Page 2, line 9, strike out [(1)], and insert: *(A)*

(d) Page 2, line 12, strike out [(2)], and insert: *(B)*

(e) Page 2, after line 13, insert:

(2) Section 41 of title 35, United States Code, is amended by adding at the end the following new subsection:

"(h)(1) Fees charged under subsection (a) or (b) shall be reduced by 50 percent with respect to their application to any small business concern as defined under section 3 of the Small Business Act, and to any independent inventor or nonprofit organization as defined in regulations issued by the Commissioner of Patents and Trademarks.

"(2) With respect to its application to any entity described in paragraph (1), any surcharge or fee charged under subsection (c) or (d) shall not be higher than the surcharge of fee required of any other entity under the same or substantially similar circumstances.".

Resolved, That the House agree to the amendment of the Senate numbered 3 to the aforesaid bill, with an amendment as follows:

In lieu of the amendment of the Senate numbered 3, insert:

(3) Page 2, line 19, strike out [INCREASES OF], and insert: *OVERSIGHT OF AND LIMITATIONS ON*

Resolved, That the House agree to the amendment of the Senate numbered 6 to the aforesaid bill, with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

(C) REPORT OF CONGRESS.—The Secretary of Commerce shall, on the day which the President submits the annual budget to the Congress, provide to the Committees on the Judiciary of the Senate and the House of Representatives—

(1) a list of patent and trademark fee collections by the Patent and Trademark Office during the preceding fiscal year;

(2) a list of activities of the Patent and Trademark Office during the preceding fiscal year which were supported by patent fee expenditures, trademark fee expenditures, and appropriations;

(3) budget plans for significant programs, projects, and activities of the Office, including out-year funding estimates;

(4) any proposed disposition of surplus fees by the Office; and

(5) such other information as the committees consider necessary.

Resolved, That the House agree to the amendment of the Senate numbered 7 to the aforesaid bill with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

SEC. 5. CONGRESSIONAL OVERSIGHT AND LIMITATIONS ON THE USE OF FEE REVENUES FOR PROPOSED PURCHASE OF AUTOMATED DATA PROCESSING SYSTEMS.

(a) FUNDING OF AUTOMATED DATA PROCESSING RESOURCES.—

(1) ALLOCATIONS.—Of amounts available to the Patent and Trademark Office for automatic data processing resources for fiscal years 1987 and 1988, not more than 30 percent of such amounts in each such fiscal year may be from fees collected under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113) and section 41 of title 35, United States Code. The Commissioner of Patents and Trademarks shall notify the Committees on the Judiciary of the Senate and the House of Representatives of any proposed reprogrammings which would increase or decrease the amount of appropriations expended for automatic data processing resources.

(2) USE OF REVENUES BY PATENT AND TRADEMARK OFFICE.—Except as otherwise specifically provided in this Act and section 42(c) of title 35, United States Code, the Patent and Trademark Office is authorized to use appropriated or apportioned fee revenues for any of its operations or activities.

(b) REPORT BY COMMISSIONER ON IMPLEMENTING AUTOMATION PLAN.—At least 90 calendar days before the date of implementation of each key deployment decision provided for in the revised master automation plan that was approved by the Secretary of Commerce and the Director of the Office of Management and Budget and that was submitted, in February 1986, to the Committees on the Judiciary of the Senate and the House of Representatives, the Commissioner of Patents and Trademarks shall report the proposed implementation to those committees. Each key deployment decision shall be approved by the designated Senior Official for Information Resources Management of the Department of Commerce before the report on the decision is made under the preceding sentence. Each such report on a key deployment decision shall include the cost and method of financing the deployment decision, including, where appropriate, a comparison with the cost benefit analysis contained in the revised automation master plan, as well as such other information as the committees consider necessary.

(c) PROHIBITION ON NEW OBLIGATIONS.—The Patent and Trademark Office may not enter into any new contract, or obligate any funds, to implement a key deployment decision described in subsection (b) until the expiration of 90 calendar days after the report with respect to such deployment decision is submitted under such subsection.

(d) EFFECTIVE DATE.—Subsections (b) and (c) take effect on January 1, 1987.

Mr. WEICKER. Mr. President, I rise today to urge my colleagues to support H.R. 2434, the Patent and Trademark Office authorization. I would like to commend the members of the Judiciary Committee for extending and making permanent a provision of law which is of vital concern to small business, independent inventors, and nonprofit entities in this Nation.

Public Law 97-247 established the Patent and Trademark Office in the Department of Commerce a two-tiered fee schedule to allow small businesses, independent inventors, and nonprofit entities to pay 50 percent, rather than 100 percent, of the cost of patent user fees. Under that laws, small firms pay $400 in filing and issuance fees and $1,200 in maintenance fees. The maintenance fees are paid 3½, 7½, and 11½ years into the life of the patent, thereby representing costs to the patent holder of $200, $400, and $600, respectively. This fee schedule is set forth by statute and requires one consumer price indexing adjustment every 3 years. Congress enacted the legislation in 1980 to ensure that the costs associated with the actual processing of patent applications would not preclude small businesses, independent inventors, and nonprofit organizations from applying for U.S. patents. This provision expired on September 30, 1986.

H.R. 2434 would make the small inventor subsidy a permanent part of the statute on patents, section 41 of title 35, United States Code, rather than relying on the vagaries of annual authorization bills. Specifically, the legislation provides that patent user fees shall be reduced by 50 percent with respect to their application to any small business concern as defined under section 3 of the Small Business Act, and to any independent inventor or nonprofit organization as defined in regulations issued by the Commissioner of Patents and Trademarks.

Mr. President, the record is clear that small firms and independent inventors are the most innovative sector of the business community. It is also clear that these entities cannot afford to pay the full costs of patent user fees without this subsidized fee schedule. The successful passage of this legislation will mark a great achievement for small businesses, independent inventors, and nonprofit organizations, and will make a vital contribution to the Nation's technological base by encouraging these entities to apply for U.S. patents. Therefore, I strongly

urge my colleagues to support passage of H.R. 2434.

Mr. MATHIAS. Mr. President, the authorization for the Patent and Trademark Office [PTO], H.R. 2434, is now ready for favorable consideration by the full Senate. The measure before us embodies an agreement worked out between the Senate and the House, and approved by the other body on October 6.

Apart from some technical changes, the compromise bill before us makes three amendments to the bill as passed by the Senate on June 6. First, the compromise bill ensures that filing and other user fee subsidies for small businesses, independent inventors, and nonprofit organizations are continued as a permanent part of patent law. These subsidies were previously carried on through the triennial authorization of the PTO. This change ensures that user fees will not discourage innovation and use of the patent system by small entities.

Second, the compromise agreement on section 3(c) of H.R. 2434 regarding fee policy preserves the intent of the Senate passed bill while clarifying the purpose. Both the House and the Senate recognize the need to increase congressional oversight and authority over PTO expenditures. It is a fundamental aspect of congressional authority that the legislature retain control over the "power of the purse." As Madison wrote in Federalist 48, "The legislative department alone has access to the pockets of the people." Indeed, H.R. 2434 in its current form, and as originally passed by both Houses, relects that intent in sections 2, 3, 4, and 6. These sections along with the House and Senate Reports—House Report No. 99-104 and Senate Report No. 99-305—make important steps toward developing a PTO user fee policy responsive to congressional concerns.

Some funding questions remain unresolved, and section 3(c) is intended to provide Congress with more information to help in resolving them. Of particular concern is PTO's retention of user fees. Office retention of fee collections provides greater spending flexibility. However, both Houses agree that this spending flexibility should not be purchased at the price of diminished congressional authority or reduced public accountability.

Congress needs to examine not the concept of charging fees for certain activities, but whether user fees should be retained by the Patent Office and, if so, how they may be spent. This problem is particularly vexing because of the Office's ever-increasing reliance on user fees.

Further, both Houses of Congress agree that the Patent Office needs a clearer user fee policy. More information is needed to ensure that user fee decisions are made in the public interest. Although all fee increases are subject to the maximum limitations provided by this bill and current law, a clearer link needs to be forged between the fee policy and the justifications for fee increases, even if these increases are within statutorily specified limitations—see Senate report No. 99-305, pages 6-8 and 15-16.

Another issue with respect to retention and use of fees concerns the appropriateness of funding certain Patent Office activities with user fees. Some have questioned the use of fees to offset the costs of activities that benefit the general public. However, the Senate believes that all activities funded by the Office—whether supported by appropriations or fees—should provide a public benefit. In the Senate's view, the existence of a general public benefit is not dispositive of the appropriate funding source for a particular type of activity. Rather, the extent of private benefits determines whether it is appropriate to charge a fee for that activity. It is important to note that if fees were not retained by the Office, this entire issue would be moot.

The third and final amendment to the Senate passed bill is found in section 5. In addition to the increased oversight established over user fees, section 5 of the bill provides more effective congressional review of the Office's automation plan. Both Houses agree on the need to maintain the ambitious automation project and to increase the oversight of the Patent Office's automation efforts. But the means to that end differed in the legislation originally passed by each House. This bill represents a hybrid of the two positions and as in the user fee compromise, come questions remain unresolved.

Initially, the House of Representatives sought to increase oversight by requiring that all automation spending for both patents and trademarks come solely from appropriated funds. The Senate, on the other hand, did not specify what type of funds—tax-funded appropriations or user fees—could be used to pay for automation. Instead, the Senate based its position on the principle that the type of funding used to underwrite automation should not determine the level of congressional oversight.

In practice, the Senate did not want excess fees to accumulate that could not be reprogrammed into other areas of the budget. Automation is a major expense of the Office's budget and user fees are the major funding source. If user fees could not pay for any part of automation, the automation program would either have to be sharply reduced or public support dramatically increased. The former alternative was unacceptable and the latter unlikely. In any case, both alternatives would leave excess fees that could not be used.

The Senate provided for enhanced oversight through periodic review of the automation program by the Department of Commerce and OMB as well as Congress. In addition, the Senate required the PTO to submit a report 90 days prior to implementing each of the key automation stages—outlined in the Senate report No. 99-305.

The agreement before us harmonizes the House and Senate positions. The compromise requires that only 30 percent of the entire automation project may be paid for by user fees in fiscal years 1987 and 1988. As Representatives KASTENMEIER and MOORHEAD made clear in their statements before the House when it adopted this amendment on October 6, this agreement does not set a precedent for future authorizations. Congress is not suggesting that this particular mix of fees and appropriations is appropriate for future authorizations. It may be that either less or more user fee revenue will be used to fund automation in the future. However, any restrictions on fee spending must take into account the reality that user fees are and will continue to be the major source of PTO funds. As previously mentioned, Congress needs to reexamine the funding issue. If the reliance on retained user fees reduces congressional oversight or office accountability of automation or any activity, then Congress should not allow the PTO to keep this authority.

Mr. President, with this explanation in mind, the Senate should act favorably on H.R. 2434 as passed by the House on October 6, 1986.

The compromise before us is workable and fair, and reflects the best efforts of the most active parties—Representatives KASTENMEIER, MOORHEAD, and BROOKS on the House side, and Senator LEAHY and myself on the Senate side—to reach an agreement on this needed legislation. I urge the Senate to concur in the House amendment, and to send the bill on to the President for his signature.

Mr. DOLE. Mr. President, I move that the Senate concur in the House amendments.

The motion was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LOWER COLORADO WATER SUPPLY ACT

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a mes-

sage from the House of Representatives on H.R. 5028.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendments of the Senate numbered 1-4, and 6-11 to the bill (H.R. 5028) entitled "An Act entitled the 'Lower Colorado Water Supply Act'.".

Resolved, That the House disagree to the amendment of the Senate numbered 5 to the aforesaid bill.

Mr. McCLURE. Mr. President, I recommend to my collegues the adoption of H.R. 5028, the Lower Colorado Water Supply Act, as amended by the House of Representatives.

For the benefit of my colleagues I will describe the Senate language that was deleted from the act by the House amendment and why this change should be acceptable to the Senate.

As my colleagues will recall, H.R. 5028 was reported by the Committee on Energy and Natural Resources on September 27, 1986, with seven amendments. The fifth amendment to H.R. 5028 referenced section 9(c) of the Reclamation Project Act of 1939. Reference to the 1939 act was incorporated into H.R. 5028 by the Energy and Natural Resources Committee at the suggestion of the administration in order to provide guidelines for contracting. The amendment, which was adopted by the Senate, could best be described as "helpful" rather than "essential" for purposes of the act.

The House has chosen to delete the reference to the 1939 Act. I am not certain as to the exact motivation on the part of the House in doing so, but since such action does not compromise the purposes of the Act or jeopardize the ability of the Secretary to carry out the will of Congress, the House action is acceptable.

Therefore, I urge approval of H.R. 5028 by my colleagues.

Mr. DOLE. Mr. President, I move that the Senate recede from House amendment No. 5.

The motion was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENTS TO TITLE XVI OF THE SOCIAL SECURITY ACT

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 5595.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the title of the bill (H.R. 5595) entitled "An Act to amend title XVI of the Social Security Act to make necessary improvements in the SSI program with the objective of assuring that such program (including the work incentive provisions in section 1619 of such Act) will more realistically and more equitably reflect the needs and circumstances of applicants and recipients thereunder.".

Resolved, That the House agree to the amendment of the Senate to the text of the aforesaid bill with amendments as follows: (1) Page 26 of the Senate hand-engrossed amendments, after line 19, insert:

SEC. 8. PAYMENT OF BENEFITS DUE DECEASED RECIPIENTS.

(a) IN GENERAL.—Section 1631(b)(1) of the Social Security Act is amended—

(1) by inserting "(A)" after "(1)";

(2) by striking out "by recovery from" where it first appears in the first sentence and all that follows down through "The Secretary (A) shall make" and inserting in lieu thereof the following:

"by recovery from such individual or his eligible spouse (or from the estate of either) or by payment to such individual or his eligible spouse, or, if such individual is deceased, by payment—

"(i) to any surviving spouse of such individual, whether or not the individual's eligible spouse, if (within the meaning of the first sentence of section 202(i)) such surviving husband or wife was living in the same household with the individual at the time of his death or within the 6 months immediately preceding the month of such death, or

"(ii) is such individual was a disabled or blind child who was living with his parent or parents at the time of his death or within the 6 months immediately preceding the month of such death, to such parent or parents.

"(B) The Secretary (i) shall make";

(3) by striking out "and (B) shall in any event" and inserting in lieu thereof "and (ii) shall in any event";

(4) by striking out "(i) the amount" and "(ii) an amount" and inserting in lieu thereof "(I) the amount" and "(II) an amount", respectively; and

(5) by striking out "clause (B)" and "clause (A)" in the last sentence and inserting in lieu thereof "clause (ii)" and "clause (i)", respectively.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to benefits payable for months after May 1986.

SEC. 9. TREATMENT OF CERTAIN COUPLES IN MEDICAL INSTITUTIONS.

(a) IN GENERAL.—Section 1611(e) of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(5) Notwithstanding anything to the contrary in the criteria being used by the Secretary in determining when a husband and wife are to be considered two eligible individuals for purposes of this title and when they are to be considered an eligible individual with an eligible spouse, the State agency administering or supervising the administration of a State plan under any other program under this Act (in the administration of such plan) treat a husband and wife sharing a room of comparable accommodation in a hospital, home, or facility described in paragraph (1)(B) as though they were an eligible individual with his or her eligible spouse for purposes of this title (rather than two eligible individuals), after they have continuously shared such a room or accommodation for 6 months, if treating such husband and wife as two eligible individuals would prevent either of them from receiving benefits or assistance under such plan or reduce the amount thereof.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) Page 26, line 20, strike out [SEC. 8.], and insert: SEC. 10.

Mr. DOLE. Mr. President, I move that the Senate concur in the House amendments.

The motion was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL BOWLING WEEK

Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of House Joint Resolution 620, National Bowling Week, and I ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 620) designating the week beginning January 4, 1987, as National Bowling Week.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. The joint resolution is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 620) was ordered to a third reading, was read the third time, and passed.

The preamble was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL YEAR OF FRIENDSHIP WITH FINLAND

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate turn to House Joint Resolution 645, National Year of Friendship With Finland, just received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 645) to designate 1988 as the National Year Of Friendship With Finland.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. The joint resolution is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 645) was ordered to a third reading, was read the third time, and passed.

The preamble was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DESIGNATING SHAYS' REBELLION WEEK AND SHAYS' REBELLION DAY

Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of House Joint Resolution 10, Shays' Rebellion Week and Shays' Rebellion Day.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 10) to designate the week beginning January 19, 1987, as Shays' Rebellion Week and Sunday, January 25, 1987, as Shays' Rebellion Day.

Mr. KERRY. Mr. President, today the Senate is considering a resolution commemorating the bicentennial of a historic event in American history—Shays' Rebellion.

Shays' Rebellion was the result of citizens' discontent with the Government and the economy following the Revolutionary War. Unrest occurred in almost every State, but revolt took place in Massachusetts where the war had devastated its major industries. Exports fell, resulting in massive public indebtedness. The only accepted tender for a long while was cash, and its continuous fluctuation made meeting costs close to impossible. Debts were high and punishments were severe. Overall, a general distrust of the Government persisted because public grievances were not being addressed.

By 1786, feelings of unrest had spread across the Massachusetts Commonwealth. Daniel Shays and a group of farmers obstructed court proceedings, demanding that the court be attentive to their concerns. The unrest culminated on January 25, 1787, when Shays and 1,100 of his followers stormed an arsenal in Springfield. The uprising brought national attention to Shays and his followers. People in all States were alarmed by the revolutionary disorder and the underlying social and economic problems that had caused such a reaction.

Plagued by a weak and disorganized economy, and an unresponsive government, the rebels in Massachusetts had voiced their dissatisfaction with the postwar crisis. The rebellion hastened special reforms in taxation and judicial procedure. In addition, it confirmed the fears of many American leaders that the Government under the Articles of Confederation could not maintain political and economic order, and served as a major impetus for the drafting of our Constitution.

The influence of Shays' Rebellion in the formation of our present Government deserves recognition by Congress and the people of the United States. House Joint Resolution 10 would recognize this event by designating January 19 through January 25, 1987, as Shays' Rebellion Week and Sunday, January 25, as Shays' Rebellion Day. I want to thank my colleagues on both sides of the aisle who have cosponsored this resolution, as well as Congressman SILVIO CONTE, Republican, Massachusetts, who worked so hard to pass this commemorative in the House.

Mr. President, Shays' Rebellion was more than just an uprising by a group of western Massachusetts farmers; it represents the spirit of the American way and the struggle of a people to persevere and combat injustice. We who have reaped the benefits of the seeds Daniel Shays and his rebels sowed owe them enthusiastic recognition. I believe this commemorative resolution is a step in that direction.

The PRESIDING OFFICER. The joint resolution is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 10) was ordered to a third reading, was read the third time, and passed.

The preamble was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DESIGNATING THE U.S. ATTORNEY'S BUILDING FOR THE SOUTHERN DISTRICT OF NEW YORK AS THE SILVIO JAMES MOLLO FEDERAL BUILDING

Mr. DOLE. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of H.R. 4576, designating the Silvio James Mollo Building in New York, and I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4576) to designate the United States Attorneys Building for the Southern District of New York as the Silvio James Mollo Federal Building

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 4576) was ordered to a third reading, was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DESIGNATING THE MICHAEL J. DILLON MEMORIAL UNITED STATES COURTHOUSE

Mr. DOLE. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of H.R. 5181, and I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 5181) to designate the United States Courthouse at 68 Court Street, Buffalo, New York, as the Michael J. Dillion Memorial United States Courthouse.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 5181) was ordered to a third reading, was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORIZING THE CONSTRUCTION OF A SALINITY LABORATORY AT RIVERSIDE, CA

Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be discharged from further consideration of H.R. 5215 dealing with the Salinity Laboratory at Riverside, CA, and I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 5215) to authorize the construction by the Secretary of Agriculture of a Salinity Laboratory at Riverside, California.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. WILSON. Mr. President, today I rise to urge the adoption of H.R. 5215, along with my colleague from California, Senator CRANSTON, which, if enacted, would authorize the planning and construction of a new U.S. salinity laboratory at Riverside, CA. As I have stated before, this new research facility is needed to replace the existing U.S. salinity laboratory facility which has become obsolete and is highly undesirable for remodeling.

The success of Western Agriculture is directly linked to our ability to control salinity accumulation in our irrigation systems and on our lands in General. Currently, we do not possess the technology or methodology to accomplish this task in an effective manner. Even more disturbing is that the total acreage affected by salinity problems continues to rise to alarming levels.

In the State of California alone, of the 55.6 million acres of Non-Federal land, it is estimated that salinity affects over 4 million acres. More importantly, of the 10.1 million acres of irrigated farmland, salinity affects approximately 3 million acres—a figure expected to increase by nearly 600,000 acres before the year 2000.

Mr. President, allow me to dwell briefly upon the costs associated with these acreage figures, because I believe that it would be beneficial for this body to understand the magnitude of this problem. For example, in the San Joaquin Valley, where the majority of our Nation's fruit and vegetable crops are grown, surplus salinity reduced crop yields on 400,000 acres of land last year at a cost to producers of $31 million. Should this salinity buildup be left unchecked, at the end of this century, the resulting loss would be $321 million.

And, I would stress that this problem is not unique to California. Saline problems are now developing in all Western States, North and South Dakota and several Canadian provinces. Over 400,000 acres are affected in the northern U.S. plains alone and this total, including Canada and parts of Texas and Oklahoma, could reach 2 million acres.

Quite simply, we face salinity problems of threatening proportions in this country. As our dependence on irrigation grows, so will our need to find a solution. The U.S. Department of Agriculture recognizes the urgency of this problem, but is limited in its ability to request new research facilities. For this reason, I believe that it is Congress' responsibility to obtain funding for a new U.S. salinity laboratory.

Given the inadequacy of the facility at which our present research efforts are being conducted, we must act to ensure that future research efforts are given every opportunity to succeed. Clearly, this action must begin with providing modern equipment and an appropriate research environment. The present antiquated facility lacks both.

Built in 1937 in Riverside, CA, the existing research facility was established as the U.S. Regional Salinity Laboratory to develop technologies and practices to prevent or solve salinity problems in agriculture production. Currently, the facility is in dire need of either renovation or replacement. At my request and that of several other Members, USDA conducted a feasibility study to determine whether or not to renovate the existing laboratory or to build a new facility.

The study pointed out many benefits to constructing a new and updated facility—benefits which I believe justify a new laboratory. For example, the existing site was found to be limited and undesirable for remodeling due to topography. In fact, the best building at this site was constructed in 1938—a good indication of the generally poor condition of the laboratory's present location.

One of the options currently being studied is the construction of a new salinity laboratory on the University of California at Riverside campus. The advantages to this move are many. Not only would our salinity research efforts benefit from the vast agricultural resource materials and state of the art equipment at UCR, Federal costs could be significantly reduced through joint faculty appointments and cooperative building maintenance agreements. Moreover, UCR is already the site for the California Center for Environmental Toxicology and has an excellent research base in agriculture and in related disciplines.

Mr. President, earlier this year both the House and the Senate committees on agricultural appropriations included $1 million in its fiscal year 1987 spending measure for the planning and development of a new salinity research facility. Absent an authorization, the Secretary of Agriculture will be unable to begin this much-needed process. For this reason, my colleague from California and I are supporting H.R. 5215 as passed by the House and urge its immediate adoption.

Mr. CRANSTON. Mr. President, I rise in support of H.R. 5215, a bill to authorize the Agricultural Research Service to construct a salinity laboratory in Riverside, CA.

Less than 2 weeks ago, on October 6, my colleague from California [Mr. WILSON] and I offered an amendment to the Federal Insecticide, Fungicide, and Rodenticide Act Amendments, H.R. 2482, to authorize planning and construction of a much needed salinity research laboratory in our State. The amendment was agreed to by the Senate.

The same day the House Agricultural Committee reported this bill. On October 7 the House passed H.R. 5215 by an overwhelming margin of 326 to 85.

As final action on the FIFRA bill is uncertain, I urge my colleagues once again to approve authorization of a new U.S. salinity laboratory in Riverside.

As I've previously indicated, this new facility is needed to replace the existing Agricultural Research Service laboratory which has become obsolete and is undesirable for renovation. Relocation of the facility to the campus of the University of California at Riverside as proposed by the university and supported by the Riverside community offers an attractive solution to the problem. Relocation would facilities interaction among scientists and consolidate and strengthen research efforts. Without question, salinity research is vital to the continued viability of irrigated agriculture not only in California but throughout the Western United States.

Mr. President, both the House and Senate Appropriations Committees have already recognized the need for a new ARS salinity lab in Riverside and provided an appropriation of $1 million for planning in fiscal year 1987. This bill will provide the necessary authorization for the project.

I urge passage of H.R. 5215.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 5215) was ordered to a third reading, was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1850

HAROLD D. DONOHUE FEDERAL BUILDING

Mr. DOLE. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of H.R. 4118, Harold D. Donohue Federal Building in Massachusetts, and I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the committee will be so discharged. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4118) to designate the building commonly known as the Old Post Office in Worcester, Massachusetts, as the "Harold D. Donohue Federal Building".

The PRESIDING OFFICER. The bill is considered as having been read the first and second times.

The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill (H.R. 4118) was ordered to a third reading, read the third time, and passed.

Mr. DOLE. I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DESIGNATION OF NATIONAL CORRECTIONAL OFFICERS WEEK

Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of House Joint Resolution 594, dealing with National Correctional Officers Week, and I ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will state the joint resolution.

The bill clerk read as follows:

Joint resolution (H.J. Res. 594) to designate the week beginning May 3, 1987, as "National Correctional Officers Week".

The PRESIDING OFFICER. The joint resolution will be considered as having been read the second time by title.

The joint resolution (H.J. Res. 594) was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the joint resolution passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TRANSFER OF COMMUNITY DEVELOPMENT CREDIT UNION DEVELOPMENT FUND

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to consideration of H.R. 5554, to transfer the Community Development Credit Union Revolving Loan Fund to the National Credit Union Administration and to authorize the National Credit Union Administration Board to administer the Fund, now being held at the desk.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5554) to transfer the Community Development Credit Union Revolving Loan Fund to the National Credit Union Administration and to authorize the National Credit Union Administration Board to administer the Fund.

The PRESIDING OFFICER. Without objection, the bill is considered as having been read the first and second time.

● Mr. D'AMATO. Mr. President, I am pleased to support H.R. 5554, legislation to promote the growth and well-being of community credit unions. I have introduced an identical bill in the Senate, S. 2653. Credit unions play a major role in the growth and development of low-income communities around the country. I am pleased that my colleagues in the House of Representatives have recognized the importance of these vital entities.

Credit unions have proven to be focal points for community development in some of the most economically depressed communities in the country. This legislation encourages and enhances the vital role that credit unions play in low-income areas.

The community development credit union revolving loan fund makes available $6 million to community development credit unions each year. Each credit union receives between $100,000 and $200,000 for a period of 5 years. This small deposit provides a capital base for credit unions that are just getting started. The funds provide stability and security for communities that are trying to solidify their economic and social bases.

Currently, the community development credit union revolving loan fund is administered by the Department of Health and Human Services. Unfortunately, HHS has not made administration of the fund a priority. About $3 million which has been appropriated by Congress for CDCURLF activities has been withheld from use. This is a clear violation of the intent of Congress.

I am not pleased that Congress has been ignored in this situation. These funds were intended to be seed money for community development activities. Local community credit unions provide security for some of the most impoverished communities in the country. Congress appropriated these funds in order to provide an economic base for growth in these communities. Clearly, some sort of change is needed to insure that these funds are administered as intended by Congress.

This legislation transfers the community development credit union revolving loan fund from the Department of Health and Human Services to the National Credit Union Administration [NCUA]. This transfer will assure Congress that the funds will be used to foster community development. The transfer from HHS to the NCUA will place the program under more appropriate auspices.

The transfer of these funds is budget neutral. Furthermore, the National Credit Union Administration fully supports the transfer of authority.

As inner-city problems continue to rise, a concerted effort must be made to instill growth and stability in low-income communities. I ask my colleagues for their commitment and support as we work toward this goal.

Finally, Mr. President, I want to thank my distinguished colleague, Representative GARCIA, for all the help he has been in bringing this very important legislation to fruition.●

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill was ordered to a third reading, read the third time, and passed.

Mr. DOLE. I move to reconsider the vote by which the bill passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL HOUSING ACT AMENDMENTS

Mr. DOLE. I ask unanimous consent that the Senate now turn to the consideration of H.R. 5564, dealing with National Housing Act, now being held at the desk.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5564) to amend the National Housing Act to provide for the eligibility of certain property for single family mortgage insurance.

The PRESIDING OFFICER. Without objection, the bill is considered to

have been read the first and second times.

● Mr. D'AMATO. Mr. President, as we proceed to final passage of H.R. 5564, I want to thank my colleagues for supporting this legislation to provide desperately needed FHA insurance of residential mortgages to the residents of the city of Salamanca.

While I recognize that this action will not resolve the current economic hardship that Salamanca is enduring, it is a glimmer of hope that these residents have been seeking for a long time—assistance from the Federal Government. To date negotiations to extend, renew or otherwise resolve the lease problems associated with having 85 percent of the city located on the Allegany Reservation have been fruitless. However, the poor results are not because of a lack of effort.

What we have achieved here today is to send a clear message to the residents of Salamanca, NY, that we will not abandon them. That the Federal Government understands their unfortunate dilemma and has come forward with some assistance.

Mr. President, once again I thank my colleagues for acting on this legislation so promptly.●

● Mr. MOYNIHAN. Mr. President, approximately 85 percent of the city of Salamanca, NY, and portions of the towns of Kill Buck, Carrollton, and Vandalia, are located on land owned by the Seneca Nation of Indians. Under the act of February 19, 1875, and the act of September 30, 1890, the land is leased to the city's residents under 99-year leases. Negotiations are underway on the current lease, which is due to expire in 1991.

The strain of the negotiations, and the uncertainty of the renewed lease, have had a disastrous effect on the real estate market particularly in the city of Salamanca. Mayor John Gould tells me that in the past 6 years there have only been three housing starts in Salamanca.

The housing crisis is largely responsible for the economic hardships facing these communities in Allegany County. The lack of financing for industrial, commercial, and residential mortgages has virtually crippled the economy of these communities.

I believe that a solution, albeit a temporary one, is to allow the Federal Housing Administration to insure mortgages on property located on land within the Allegany Reservation of the Seneca Nation of New York Indians. Therefore, I urge passage of H.R. 5564, which was sponsored by my good friend and colleague, STAN LUNDINE. In fact, it was STAN who first brought this problem to my attention last April when he first asked for my help.

I urge my colleagues to join me in supporting this legislation.●

The PRESIDING OFFICER. If there be no amendments to be offered, the question is on the third reading and passage of the bill.

The bill was ordered to a third reading, read the third time, and passed.

Mr. DOLE. I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THADDEUS J. DULSKI FEDERAL BUILDING

Mr. DOLE. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of H.R. 5180, Thaddeus J. Dulski Federal Building in New York, and I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 5180) to designate the Federal Building at 111 W. Huron Street, Buffalo, New York, as the "Thaddeus J. Dulski Federal Building".

The PRESIDING OFFICER. Without objection, the bill is considered as having been read the first and second times.

If there be no amendment to be offered, the question is on the third reading of the bill.

The bill (H.R. 5180) was read the third time, and passed.

Mr. DOLE. I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORIZATION OF APPROPRIATIONS FOR CERTAIN FISHERIES ACTIVITIES

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 991.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the amendment of the House to the title of the bill (S. 991) entitled "An Act to provide authorization of appropriations for certain fisheries activities.".

Resolved, That the House agree to the amendment of the Senate to the amendment of the House to the test of the aforesaid bill, with the following amendments:

(1) Page 15, line 18, strike out "National Marine Fisheries Service personnel", and insert: "Federal employees".

(2) Page 31, strike out lines 3 through 8, and insert:

"(E) two members-at-large with demonstrated expertise in fresh-water and inland commercial fisheries and who are not residents of the states of the Alaska, Pacific, Southeast, or Northeast regions; and

"(F) one member-at-large who is either a person professionally engaged in the dissemination of information pertaining to the nutritional benefits and preparation of fish and fish products or a person who is a member of an organized labor union and has expertise in the United States fisheries."

(3) Page 33, line 23, after "products.", insert: In addition, the National Council may not promote the consumption or purchase of a single or group of similar fish species (such as members of the same genera); except that the Council may use illustrations of a single or group of similar fish species in the course of promoting the generic consumption of fish and fish products.

(4) Page 36, line 4, after "available", insert: ", to the extent provided for in appropriation Acts,".

(5) Page 36, strike out lines 9 through 13, and insert:

(1) the moneys transferred to the Fund under section 2(b)(2) of the Act of August 11, 1939 (commonly known as the Saltonstall-Kennedy Act; 15 U.S.C. 713c-3(b));

(6) Page 37, strike out lines 6 through 19, and insert:

(e) AMENDMENTS TO THE SALTONSTALL-KENNEDY ACT.—Subsection (b) of section 2 of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)), is amended—

(1) by inserting "(1)" before "The Secretary of Agriculture";

(2) by striking out "separate fund" and all that follows thereafter and inserting in lieu thereof the following: "separate fund only for—

"(A) use by the Secretary—

"(i) to provide financial assistance for the purpose of carrying out fisheries research and development projects approved under subsection (c), and

"(ii) to implement the national fisheries research and development program provided for under subsection (d); and

"(B) the provision of moneys, subject to paragraph (2), to carry out the purposes of the Fisheries Promotion Fund established under section 208(a) of the Fish and Seafood Promotion Act of 1986."; and

(3) by adding at the end thereof the following new paragraph:

"(2) There are transferred from the fund established under paragraph (1) to the Fisheries Promotion Fund referred to in paragraph (1)(B) $750,000 in fiscal year 1987, $3,000,000 in each of fiscal years 1988 and 1989, and $2,000,000 in fiscal year 1990.".

(7) Page 63, line 24, strike out "SEC. 302", and insert: "SEC. 303.".

(8) Page 67, strike out lines 17 and 18, and insert:

"(D) has entered into an interstate cooperative fishery management agreement and has in effect an interstate fisheries management or interstate fisheries research program."

(9) Page 67, line 19, strike out "(3)", and insert: "4".

(10) Page 68, line 1, strike out "(4)", and insert: "5".

(11) Page 95, line 26, strike out "SEC. 511.", and insert: "SEC. 411.".

(12) Page 98, strike out line 5, and all that follows through line 1, page 100.

● Mr. DANFORTH. Mr. President, on Wednesday, October 15 of this year, the Senate passed S. 991, an act to amend certain provisions of the laws relating to the fisheries of the United States. On Thursday, the House of

Representatives passed the bill with the following modifications:

Title I, relating to the Magnuson Fishery Conservation and Management Act, is modified to provide authority for the Secretary of Commerce to disclose confidential fishery statistics to all Federal employees, rather than only to National Marine Fisheries Service employees, who are responsible for the development and monitoring of fishery management plans.

Title II, the Fish and Seafood Promotion Act, is modified to clarify that the National Council members representing freshwater and inland commercial fisheries shall not be residents of the Northeast, Southeast, Pacific, or Alaskan regions. In addition, there is to be one member-at-large on the National Council who either represents an organized labor union, or is professionally engaged in the dissemination of information pertaining to the nutritional benefits and preparation of fish and fish products. Furthermore, the House amendment clarifies that the National Council is authorized to promote the generic consumption of fish products and is prohibited from advertising the consumption of individual species of fish or fish products, except as incidental to generic promotional activities. Finally, the House amendment provides that funding for the National Council will come from the Saltonstall-Kennedy promotional fund, subject to appropriations by Congress.

Title III, the Interjurisdictional Fisheries Act, is amended to clarify that any State which has entered into an interstate cooperative fishery management agreement and has in effect an interstate fisheries management or Interstate Fisheries Research Program, will qualify for funds under the act.

Title IV, which includes miscellaneous provisions, is amended by striking section 412, relating to vessel documentation; section 13, relating to Coast Guard contracts; and section 414, relating to amendments to title 46, United States Code. These three sections are included within H.R. 4208, the Coast Guard reauthorization bill, which as recently been passed by Congress.

In addition, the House amendment makes technical corrections to S. 991 by redesignating two sections of the bill.

Mr. President, I believe the Senate can accept these modifications and I urge my colleagues to join me in supporting passage of this legislation.●

● Mr. GRAMM. Mr. President, I am pleased to have this opportunity to express my support for S. 991, the Magnuson Fishery Conservation and Management Act. The reauthorization of the Magnuson Act includes some minor modifications to the appointment criteria for membership on fishery management councils. These new considerations are designed to provide for increased participation in the fishery management process by citizens of the States within the jurisdiction of the council. These changes are not intended to preclude membership by any sector, be it recreational, commerical, or environmental. Each of these sectors has been included in Council appointments in the past and should continue to be, in order to allow for a balanced approach to the conservation and management of this nations fishery resources.

In determining the balance of the interest on the Council, the Secretary should take a number of factors into account including the existing makeup of the Council and the resources to be managed. Fair apportionment does not mean that the Secretary cannot reappoint individuals who have already served well on the Council, nor does it require the elimination of any sector simply because that sector has already been represented. The Secretary can continue the existing balance on a Council where it makes sense to do so. Lastly, it is intended that the term "livelihood" is used in its broadest sense, including, but not limited to, both the commercial and recreational industries.●

Mr. DOLE. I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. DOLE. I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORIZATION OF SECRETARY OF THE NAVY TO CERTAIN ACTION

Mr. DOLE. I ask unanimous consent that the Senate turn to the consideration of H.R. 5682, to authorize the Secretary of the Navy to make certain conveyance of real property, just received from the House.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5682) to authorize the Secretary of the Navy to make a certain conveyance of real property.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill was read the third time, and passed.

Mr. DOLE. I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORIZATION TO PRINT SENATE DOCUMENT

Mr. DOLE. Mr. President, I ask unanimous consent that the document I send to the desk entitled "Report on the Visit to China of the Senate Delegation Led by Senator JOHN HEINZ" be printed as a Senate document.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXCLUSION FROM FEDERAL UNEMPLOYMENT TAXES

Mr. DOLE. Mr. President, I ask unanimous consent the Committee on Finance be discharged from further consideration of H.R. 5679, to extend the exclusion from Federal unemployment tax of wages paid to certain alien farm workers and I ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 5679) to extend the exclusion from Federal unemployment tax of wages paid to certain alien farm workers.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 5679) was ordered to a third reading, was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

EXECUTIVE CALENDAR

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the following nominations on the Executive Calendar: Calendar No. 1093, Calendar No. 1131.

Mr. BYRD. Mr. President, those two nominations have been cleared on this side by all Members and we are ready to proceed.

Mr. DOLE. I thank the distinguished minority leader.

EXECUTIVE SESSION

Mr. DOLE. I ask unanimous consent that the nominations just identified be considered en bloc and confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are considered en bloc and confirmed en bloc.

The nominations confirmed en bloc are as follows:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Thomas T. Demery, of Michigan, to be an Assistant Secretary of Housing and Urban Development.

UNITED NATIONS

Noel Gross, of New Jersey, to be an Alternate Representative of the United States of America to the Forty-first Session of the General Assembly of the United Nations.

Mr. DOLE. I move to reconsider the vote.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

Mr. DOLE. I ask unanimous consent the President immediately be notified the Senate has given its consent to these nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I ask unanimous consent as in executive session that the Commerce Committee be discharged from further consideration of the following nominations and I ask for their immediate consideration en bloc:

Rear Adm. Wesley V. Hull to be the grade of rear admiral, while serving as the Director of Charting and Geodetic Services.

Routine nominations of officers of the National Oceanic and Atmospheric Administration:

Subject to qualifications provided by law, the following for permanent appointment to the grades indicated in the National Oceanic and Atmospheric Administration:

To be lieutenants

Richard B. Koehler — Joanne F. Flanders

To be lieutenants (junior grade)

Jon E. Rix	Thomas K. Porta
John E. Lowell, Jr.	Morgan S. Lynn
Thomas W. Hurst	Stephen G. Brezinski
David M. Mattens	Suzanne D. LaReau
Mark W. Hulsbeck	John W. Lovell
Kenneth Kramer	

To be ensigns

Michael P. Lynch	James Vicedomine
Robert W. Poston	Raymond C. Slagle
Wade J. Blake	DeWayne J. Nodine
Timothy C. O'Mara	Bruce A. Stoneback
Brian K. Taggart	Mary J. Murphy
Richard A. Fletcher	William A. Hartzell
E. Allen Rice	Robert D. Fellows
David S. Savage	Daniel W. Cheng
Brenda L. Whynot	Richard Borden
John M. Steger	Brent M. Bernard
Kevin M. MacKay	Tina Bertucci
Patricia D. Grant	Christopher S. Moore
Alison J. Veishlow	Carl D. Hoffman
Michele G. Bullock	Edward R. Cassano
Scott J. Brown	

Routine nominations of Regular and Reserve officers of the U.S. Coast Guard:

The following regular officers of the U.S. Coast Guard for promotion to the grade of captain:

James A. Sanial, Jr.	John R. Felton
Gerald M. Zanolli	Edward J. Barrett
Roger G. Love	Henry D. Jacoby
Charles G. Hill, Jr.	James T. Robertson
Stanley E. Burgess	David F. Withee
Gerard Barton	Donald F. Murphy
Joseph J. McClelland, Jr.	Ronald J. Marafioti
John E. Williams	Richard P. Oswitt
Richard R. Cottingham	Gerald L. Underwood
Ronald L. Blake	David A. Jones
Robert A. Melvin III	Jeffrey J. Hamilton
John C. Maxham	Richard W. Wright
John F. Milbrand	Philip J. Cardaci
Dennis J. Shaw	Paul E. Busick
Michael C. Grace	Kenneth C. Hollemon
Richard E. Peyser	Imants J. Leskinovitch
Joseph R. Hoosty	John L. Parker
Robert S. Duncan, Jr.	Robert J. O'Pezio
John C. Carney, Jr.	Kevin J. Barry
Harry H. Dudley	Richard B. Franks III
Jerald H. Heinz	Charles B. Newlin
Donnie D. Polk	William Y. Clark II
Jonathon Collom	Francis X. Owens
Harry W. Tiffany	Robert C. North
Kenneth J. Allington	William E. Wade, Jr.
John G. Busavage	Henry J. Dresch
Anthony C. Alejandro	Terry W. Sinclair
Joseph D. Bernard	Brian C. Sonner
Stanley Winslow	Robert F. Powers
Eric J. Staut	Fred L. Ames
	James M. MacDonald

The following reserve officers of the U.S. Coast Guard to be permanent commissioned officers in the grades indicated:

To be lieutenant commander

Don M. Wrye

To be lieutenant

George M. Flood — Laroy E. Cadiz
Donald L. Gaskill

To be chief warrant officer

John N. Herlong — Raymond J. Leyko

The following-named officer to be a permanent commissioned officer in the Coast Guard having been found fit for duty while on the temporary disability retired list in the grade of lieutenant commander:

William A. Danner

Kenneth R. Towery to be a member of the Board of Directors of the Corporation for Public Broadcasting;

Daniel L. Brenner, to be a member of the Board of Directors of the Corporation for Public Broadcasting.

Mr. BYRD. Mr. President, reserving the right to object, I do not expect to object, does the distinguished majority leader know of any nomination that the White House would like to attempt to make a recess appointment thereon?

Mr. DOLE. I understood earlier today there might be one but that has not been verified, but only one.

Mr. BYRD. May I ask the distinguished majority leader if he would care to identify that one?

Mr. DOLE. It would be Larry White to be a member of the Federal Home Loan Bank Board, and this recess appointment has been approved by Senators GARN and PROXMIRE. As I understand, as far as I know that is the only one. Senator PROXMIRE is here.

Mr. PROXMIRE. Mr. White is extraordinarily well qualified and I am delighted to support him.

Mr. BYRD. Is there any reason why the nomination could not be cleared and acted upon by the Senate prior to its adjournment sine die?

Mr. PROXMIRE. Well, the big reason for that, of course, is we need membership on that Board. It has not been submitted. We have not had a chance to consider it, but he has a remarkably fine background and he is obviously well qualified.

Mr. DOLE. As I understand, as of last evening there was only one member of the Board. They need one additional member on the Board to do business.

Mr. PROXMIRE. That is exactly right.

Mr. BYRD. That sounds to me like a sufficient explanation. I remove my reservation to the right to object to the nominees previously identified.

Mr. DOLE. I thank the Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. I therefore ask unanimous consent that the nominees just identified be considered and confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominees are considered and confirmed en bloc.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the nominations were confirmed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. I ask unanimous consent that the President be immediately notified that the Senate has given its consent to these nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I ask unanimous consent that the Armed Services Committee be discharged from further consideration of the following nominations, and I ask unanimous consent that they be considered and confirmed en bloc:

The following-named persons to be members of the Commission on Merchant Marine and Defense (new positions):

Edward Elmer Carlson, of Washington.
William E. Haggett, of Maine.
James L. Holloway III, of Maryland.
Joseph Sewall, of Maine.
Shannon J. Wall, of New Jersey.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. There is no objection to these nominations.

Mr. DOLE. Mr. President, I ask unanimous consent that the nominations be considered and confirmed en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to these nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I ask unanimous consent that the Labor Committee be discharged from further consideration of the following nominations, and I ask unanimous consent for their consideration en bloc:

F. Albert Cotton.
Mary Lowe Good.
John C. Hancock.
James B. Holderman.
James L. Powell.
Mary Cracraft.
Shirley Dennis.
David Alan Heslop.
Kenneth Y. Tomlinson.
Robert B. Stevens.
Robert Hollander.

Mr. BYRD. Mr. President, reserving the right to object, may I have an explanation as to why these nominations have not been previously acted upon by the Labor Committee and why the Senate is being asked at this time to discharge the Labor Committee from further consideration of the nominations?

Mr. DOLE. I am advised that they were unable to get a quorum because of all the conferences going on in the past couple of weeks.

Mr. BYRD. I ask the Senator to withhold that, and we will try to check with a couple of our Senators.

LEGISLATIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate return to legislative session.

There being no objection, the Senate resumed the consideration of legislative business.

WITHDRAWAL OF CERTAIN PUBLIC LANDS FOR MILITARY PURPOSES

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 1790, to withdraw certain public lands for military purposes, which is being held at the desk.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 1790) to withdraw certain public lands for military purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. METZENBAUM. Mr. President, the bill as passed by the House is the product of a great deal of negotiations and hard work by members and staffs of several House and Senate committees. It establishes a sound framework for current and future military withdrawals.

I had expressed the concern that the committee bill was deficient in several critical areas. They related to decontamination, comprehensive environmental impact statements, adequate protection for the portions of the two national wildlife refuges included in the withdrawals and the length of the withdrawals.

The House bill is a significant improvement and resolves many of the problems I noted.

It ensures adequate protection for those portions of the Desert National Wildlife Range in Nevada and the Cabeza Prieta National Wildlife Refuge in Arizona which are included in the withdrawal areas.

It clearly states that all laws and executive orders governing the uses and establishing the purposes of those refuges will remain in effect and will not be weakened or amended in any way by the withdrawal legislation. The memorandum of understanding [MOU] which are currently in effect, and specifically delineate the military activities allowed on the refuges, are also maintained. Those memorandums can only be changed through careful consultation with, and concurrence of, the Secretary of the Interior. Additionally, any proposed changes to the MOU must be presented to Congress 90 days before taking effect.

These provisions adequately balance the needs of the military as they have described them in their testimony to the Congress, and the public's interests in the valuable resources contained in the refuges. They also ensure that any future changes in the military's use of the refuge areas will be carefully negotiated and scrutinized and will not conflict with, or change, existing laws or Executive orders.

I am satisfied that these provisions are in the best interest of the public and the important natural resources protected by these refuges, including endangered and threatened species.

The bill also provides direction to the military units regarding the important task of maintaining an ongoing decontamination program during the withdrawal period.

It is the intent of the bill that the military make a reasonable effort to maintain safe and productive conditions on the withdrawn lands. Since military activities on these properties often involve the use of hazardous, toxic, and explosive material, it is essential that the defense agencies conduct an ongoing decontamination effort. Otherwise, the lands may be so contaminated as to preclude their return to the public domain, and create an unacceptable danger to individuals who might enter them.

For these reasons, the bill specifically requires an ongoing decontamination effort in each withdrawal area. Hazardous, toxic, and explosive residues from military activities will receive a reasonable level of attention each year, throughout the withdrawal period. The appropriate military agency is required to maintain a decontamination program on each withdrawal area which is at least equal to the decontamination effort conducted in the area in fiscal year 1986. I want to stress that this represents the minimum level of decontamination activity required annually on each withdrawal area. The purpose of the bill is to ensure that there will be an adequate level of cleanup. While the military will be able to meet that standard in some withdrawal areas by performing at the fiscal year 1986 level, it is recognized that the decontamination programs on other areas have not been adequate to date and the programs will have to be improved above the fiscal year 1986 levels in order to be adequate.

In order to enable Congress to keep track of the military's decontamination efforts, and to identify the areas where cleanup programs must be improved, the bill requires an annual, detailed report on the status of decontamination efforts on each withdrawal area.

This provision is simple good sense and will maintain a reasonable degree of safety for governmental personnel and the general public that may enter these lands. It will ensure that the quality of the land is maintained, ensure that it will be available for public use in the future and will spread the costs of decontamination over the life of the withdrawal rather than artificially creating a prohibitively large, one time expense at the conclusion of the withdrawal period.

The bill also provides clear guidance regarding military compliance with the National Environmental Policy Act of 1969 [NEPA] and its provisions for obtaining public input on proposed withdrawals. The bill requires the military agencies to complete a draft environmental impact statement 3 years prior to a request to renew the withdrawal or any portion of the withdrawal, and to conduct a public hearing in the affected State or States so that citizens can comment on the alternatives outlined in the impact statement.

Mr. President, this provision is significant. It indicates that Congress expects the military to fully comply with the requirements of NEPA in preparing its draft environmental impact statements for the withdrawal areas. This ensures that the impact statements will include, where appropriate, impacts which may result from the continued use of the withdrawals, as well as impacts which may result from the use of the lands in conjunction

with adjacent and related lands and air spaces.

This requirement is critical. To date, the military's environmental analyses of withdrawal proposals have not provided a comprehensive view of the impacts of planned activities. They often have failed to consider how each area will be used in conjunction with adjacent and related areas. This makes it difficult, if not impossible, for State agencies and the public to obtain an accurate estimate of the cumulative impacts of a withdrawal, and to fully participate in the decision process relating to withdrawals and any required mitigation planning.

This approach will facilitate needed communications between the military and the public, and will ensure that local citizens and public officials will be able to identify, plan for, and mitigate adverse impacts to their environment and communities. This provision also will provide the Congress with needed information on the impacts of the withdrawals.

Finally, the bill establishes a 15-year time period for the withdrawals. I must admit, I would have preferred a slightly shorter withdrawal period of 10 years. It would have ensured better public oversight and planning. However, the 15-year period is within the planning capabilities of the agencies, and will facilitate reasonably frequent congressional oversight, which is so strongly underscored in both the Engle Act and the Federal Land Policy and Management Act.

Mr. President, I believe the bill sets standards which ensure responsible use and maintenance of the withdrawal areas. It creates a framework which I hope will serve as a model for future withdrawals, and will fairly balance the needs of the military with the interests of the public.

The PRESIDING OFFICER. The question is on the third reading of the bill.

The bill was ordered to be read the third time, was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that we go back into executive session.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, the distinguished chairman of the Labor Committee is here.

The minority leader had asked earlier why it was necessary to discharge the Labor Committee with reference to nominations.

Does the Senator have it?

Mr. HATCH. Yes; I have.

Mr. President, I say to the majority leader and minority leader that these, all of these names, Albert Cotton, Mary Good, John Hancock, James Holderman, and James Powell, are appointed to the National Science Board; Mary Cracraft is to be appointed to the National Labor Relations Board and Shirley Dennis at the Labor Department, and a number of others to the Humanities Council. All have been approved by every member of our committee. I am quite sure of this to the best of my knowledge.

In fact I have counsel here who says all have been approved and run by every member of the committee and frankly it is in the end of the session where we had to do it that way.

Mr. BYRD. Were these polled out of the committee?

Mr. HATCH. No. We asked for discharge on these. So they were discharged out of the committee with the consent of every member to my knowledge.

Mr. BYRD. That did not answer my question. Were a majority of members present at the time the nominees were reported out?

Mr. HATCH. We have never had a markup on it. We have not had a poll out. We are asking that they be discharged from the committee and approved and I believe every member of our committee has approved them.

Mr. BYRD. The distinguished majority leader is asking the committee be discharged.

Mr. DOLE. That is correct.

Mr. BYRD. Very well.

Mr. HATCH. I thank my colleagues.

Mr. BYRD. Mr. President, we have cleared these nominations on this side of the aisle and I find no objection to proceeding with the confirmations.

The PRESIDING OFFICER. The committee is so discharged.

Mr. DOLE. I ask unanimous consent that the nominations earlier identified be considered en bloc and confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are considered en bloc and confirmed en bloc.

The nominations considered en bloc and confirmed en bloc are as follows:

DEPARTMENT OF LABOR

Shirley Dennis, of Pennsylvania, to be Director of the Women's Bureau, Department of Labor.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Kenneth Y. Tomlinson, of New York, to be a member of the National Commission on Libraries and Information Science for a term expiring July 19, 1991.

NATIONAL COUNCIL ON EDUCATIONAL RESEARCH

David Alan Heslop, of California, to be a member of the National Council on Educational Research for a term expiring September 30, 1989.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Robert Hollander, of New Jersey, to be a member of the National Council on the Humanities for a term expiring January 26, 1992.

Robert B. Stevens, of Pennsylvania, to be a member of the National Council on the Humanities for a term expiring January 26, 1992.

NATIONAL LABOR RELATIONS BOARD

Mary Cracraft, of Kansas, to be a member of the National Labor Relations Board for the term of 5 years expiring August 27, 1991.

NATIONAL SCIENCE FOUNDATION

F. Albert Cotton, of Texas, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 1992.

Mary Lowe Good, of Illinois, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 1992.

John C. Hancock, of Missouri, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 1992.

James B. Holderman, of South Carolina, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 1992.

James L. Powell, of Pennsylvania, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 1992.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the nominations were confirmed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered.

PAYMENT OF TRANSPORTATION AND RELATED EXPENSES

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 1098, H.R. 5420, GSA permits, prepayment audits for selected transportation bills.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 5420) to amend section 3726 of title 31, United States Code, relating to payment for transportation, to permit prepayment audits for selected transportation bills, to permanently authorize payment of transportation audit contractors from carrier overpayments collected, to authorize net overpayments collected to be transferred to the Treasury, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. ROTH. Mr. President, I ask unanimous consent for the consideration of H.R. 5420, which amends section 3726 of title 31 of the United States Code, relating to payment for transportation, to permit repayment audits for selected transportation bills, to permanently authorized payment of transportation audit contractors from overpayments collected and to authorize net overpayments collected to be transferred to the Treasury.

The exact Senate companion to this bill, S. 2630, as amended, was unanimously reported by my Committee on Governmental Affairs on October 2, 1986.

S. 2630 was initially drafted over a year ago in response to a recommendation of the President's Private Sector Survey on Cost Control, otherwise known as the Grace Commission. The Grace Commission's study of the General Services Administration's system for transportation audits discovered that GSA had backlogs in its audits of transportation and travel charges that stretched back some 22 months. The result of these delays was that many improper charges to the Government—amounting to millions of dollars each year—were unlikely ever to be recovered. These findings were later confirmed by the General Accounting Office.

Since some 80 percent of the total transportation expense to the Government is incurred by the Department of Defense, the Grace Commission and GAO recommended that the transportation audit operation for Defense be transferred to DOD with provision for contracting out the bulk of transferred audit operations. Generally I would be opposed to having the same agency that spends in charge of an audit of that spending. But the problem had gotten so large, that the Grace Commission/GAO proposal began to look reasonable. GAO reported, for example, that transfer of the Defense Department audit responsibility with contracting-out provisions would save $90 million over 3 years.

Since preparation of S. 2630, however, I am pleased to report that aggressive new leadership in the General Services Administration has responded positively to the Grace Commission's findings and has turned around a bad situation. About a year ago the Supplemental Appropriations Act for 1985 approved the financing of transportation audit contracts from overcharges collected by GSA. This change, along with certain management improvements in the program have resulted in a dramatic turn-around in both the auditing backlogs and the amounts of overcharges collected.

Even with its present limited use of audit contractors, GSA has increased its net collections for transportation overcharges from $5.9 million in fiscal year 1985 to an estimated $15.4 million for fiscal year 1986. With increased use of contractors for fiscal year 1987, net collections are estimated to increase to $23.1 million this year, climbing to $28 million in fiscal year 1988, and to $32.2 million in fiscal year 1989 as the audit backlog continues to drop. The Congressional Budget Office estimates net savings in outlays during the next 3 fiscal years (1987, 1988, 1989) of $15 million; $17 million; and $17 million respectively.

Now GSA proposes, and OMB agrees, that the authority of GSA to contract out for transportation audits should be expanded. However, payments to contractors in any 1 fiscal year should not exceed 40 percent, and payment for any one contract audit should not exceed 50 percent of the overpayment identified. Net collections are to be transferred to miscellaneous receipts of the Treasury. Further, GSA proposes that they be given limited preaudit authority, subject to the provisions of the Prompt Payment Act. This will make protection of the Government possible where transportation firms are teetering on the brink of bankruptcy.

All of these GSA-proposed measures are contained in the measure passed by the House, H.R. 5420, just as they were in S. 2630, as reported by the Senate Committee on Governmental Affairs.

In addition, this bill provides for a GSA-Defense Department-other agency task force to explore the development of an integrated, automated system for the management of transportation services for the Federal Government. The technology for such a system is in hand but the means of employing that technology have yet to be devised.

Finally, H.R. 5420 has a section which will repeal an antiquated procedure required for the disposal of excess Federal property overseas. The Departments of Agriculture and Commerce have estimated that this provision will eliminate unnecessary regulatory and paperwork burdens on businesses dealing in surplus merchandise and reduce the Commerce and Agriculture workloads.

Mr. President, I am pleased to report that the Grace Commission, now represented by Citizens Against Government Waste, and the Senate Grace Caucus as represented by the initial cosponsors of S. 2630, Senators HUMPHREY, DECONCINI, PROXMIRE, BRADLEY, ZORINSKY, CHILES, and HATCH, join the Senator from Delaware in support for H.R. 5420.

Mr. President, I urge the adoption of H.R. 5420.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 5420) was ordered to a third reading, was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I ask unanimous consent that Calendar No. 1072, the Senate companion bill, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONVENING OF THE FIRST SESSION OF THE 100TH CONGRESS

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate turn to the consideration of House Joint Resolution 755 dealing with the convening of the 100th Congress.

The PRESIDING OFFICER. The joint resolution will be stated by title.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 755) providing for the convening of the first session of the 100th Congress.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the first regular session of the One Hundredth Congress shall begin at 12 o'clock meridian on Tuesday, January 6, 1987.

The PRESIDING OFFICER. Is there objection to the present consideration of the joint resolution?

There being no objection, the joint resolution (H.J. Res. 755) was considered, ordered to a third reading, read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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THANKING THE VICE PRESIDENT

Mr. DOLE. Mr. President, I send a resolution to the desk on behalf of myself and the distinguished minority leader, Senator BYRD, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 515) tendering the thanks of the Senate to the Vice President for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Kansas?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 515) was agreed to, as follows:

S. RES. 515

Resolved, That the thanks of the Senate are hereby tendered to the Honorable George H.W. Bush, Vice President of the United States and President of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the second session of the Ninety-ninth Congress.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THANKING THE PRESIDENT PRO TEMPORE

Mr. BYRD. Mr. President, I send to the desk a resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 516) tendering the thanks of the Senate to the President pro tempore for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia.

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 516) was agreed to, as follows:

S. RES. 516

Resolved. That the thanks of the Senate are hereby tendered to the Honorable Strom Thurmond, President pro tempore of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the second session of the Ninety-ninth Congress.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COMMENDING THE EXEMPLARY CONDUCT OF THE DISTINGUISHED MAJORITY LEADER

Mr. THURMOND. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 517) to commend the exemplary conduct of the distinguished majority leader.

The PRESIDING OFFICER. Is there objection to the request of the Senator from South Carolina?

There being on objection, the Senate proceeded to consider the resolution.

Mr. BYRD. Mr. President, I would like to join as a cosponsor of that resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the resolution.

The resolution (S. 517) was agreed to, as follows:

S. RES. 517

Resolved, That the exemplary conduct of the distiguished Majority Leader, the Senator from Kansas, the Honorable Robert Dole, is deserving of the highest commendation of the Senate. The fair and just and able manner in which Senate business has been scheduled and managed is a source of pride to the Senate as a whole and the thanks of the Senate are hereby tendered to the Honorable Robert Dole, Majority Leader, United States Senate.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COMMENDING THE EXTRAORDINARILY COOPERATIVE CONDUCT OF THE DISTINGUISHED MINORITY LEADER

Mr. THURMOND. Mr. President, on behalf of myself and Senator DOLE, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 518) to commend the extraordinarily cooperative conduct of the distinguished Minority Leader.

The PRESIDING OFFICER. Is there objection to the request of the Senator from South Carolina?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 518) was agreed to, as follows:

S. RES. 518

Resolved, That the Senate extends its thanks to the distinguished Minority Leader, the Senator from West Virginia, the Honorable Robert C. Byrd. The extremely cooperative and able manner in which the Minority Leader has approached his duties as protector of the rights of the minority has been duly noted and the Senate commends the Minority Leader for his understanding, his devotion to the rules of the Senate, and for his outstanding leadership.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I wish to thank the distinguished President pro tempore, Mr. THURMOND, and the distinguished majority leader, Mr. DOLE.

THANKING THE SENATE STAFF

Mr. THURMOND. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 519) tendering the thanks of the Senate to the Senate Staff for the courteous, dignified, and impartial manner in which they have assisted the deliberations of the Senate.

The PRESIDING OFFICER. Is there objection to the request of the Senator from South Carolina?

There being no objection, the Senate proceeded to consider the resolution.

Mr. THURMOND. Mr. President, I ask unanimous consent that Senator DOLE and Senator BYRD be added as cosponsors of this resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the resolution.

The resolution (S. Res. 519) was agreed to, as follows:

S. RES. 519

Resolved, That the thanks of the Senate are hereby tendered to the Senate Sergeant at Arms, the Secretary of the Senate, the Secretary for the Majority, the Secretary for the Minority, and the floor staff of the two parties for the courteous, dignified, and impartial manner in which they have assisted the deliberations of the Senate during the second session of the Ninety-ninth Congress.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

APPOINTMENT OF CONGRESSIONAL AWARD BOARD MEMBERS

Mr. DOLE. Pursuant to section 4(a) of Public Law 96-114, as amended by Public Laws 98-33 and 99-161, I appoint the following individuals to be members to the Congressional Award Board:

Mrs. Janice L. Schar, of Virginia, Mr. James J. Coleman, Sr., of Louisiana, and Mr. Arthur E. Imperatore, of New Jersey.

The PRESIDING OFFICER. The appointments will be noted in the RECORD.

100TH ANNIVERSARY OF SEARS, ROEBUCK & CO.

Mr. BYRD. Mr. President, 100 years ago, an agent for the Minneapolis and St. Louis railroad in the small town of North Redwood, MN, found himself stuck with a case of pocketwatches that had been refused by a merchant. The agent, an enterprising fellow, made arrangements with the watchmaker to sell the watches on consignment. Pocketwatches were very popular along the railroads in those days, and the young agent quickly sold the consignment. That agent's name was Richard Sears.

A century later, Sears, Roebuck & Co. is a merchandising giant with revenues of over $40 billion per year. The company is the second-largest private employer in the United States with more than 450,000 employees. Three out of every four households in America have done business with Sears. There are some 800 Sears retail stores nationwide, and about 10,000 suppliers for the company.

Sears has moved forward into other businesses as well—financial services, insurance, and real estate. That expansion occurred under the direction of former chairman of the board, Edward R. Telling, who recently retired in favor of Edward Brennan.

It is the leadership of these men, and the skill and enthusiasm of Sears employees, that has made the company an American institution. In my own State of West Virginia, as in most other States, Sears has been a cornerstone of the consumer economy for decades. Centralized catalog purchasing has been a feature of merchandizing in America to the innovations of Sears.

I extend my very best wishes to Sears, Roebuck & Co. as it enters its second century.

LEGISLATIVE HISTORY OF THE IRON OR STEEL BAN—SOUTH AFRICA SANCTIONS LEGISLATION

Mr. BYRD. Mr. President, with respect to the recent Senate action on the South Africa sanctions legislation (H.R. 4868), there has been some residual confusion about the scope of certain provisions, relating to the ban on iron or steel imports. Let me clear up any remaining doubt.

Senator KENNEDY introduced this language in his successful amendment of August 15, 1986. The plain language of the statute bans importation of South African iron or steel. There should be no confusion as to what the intent of Congress was in this regard. The tariff schedule of the United States in schedule 6, part 2, subpart B defines iron or steel products as including ferroalloys. Indeed, in our multilateral trade negotiations, we have grouped these products together and have negotiated their tariff treatment as a group.

In adopting the Kennedy amendment, Congress accepted that ferroalloy products from South Africa would be banned, along with iron, steel, and the many other excluded goods. To answer the question of the impact of these exclusions on our defense industrial base, section 504 of the legislation calls for a Presidential study of United States dependence on raw strategic minerals such as chromium and manganese, and ferroalloys. Processed ferroalloys were included separately, recognizing that our dependence upon the ore and dependence upon the processed product are very different issues.

We have the domestic capacity to produce ferroalloys, though that industry is in jeopardy. The Department of Defense, as a result of my amendment of 1985, completed a study describing the danger of a loss of our domestic ferroalloy production capacity to the defense industrial base. The Kennedy amendment provides a way of helping to assure that we will have the ability to process the raw ores.

The Secretary of the Treasury, Mr. Baker, has examined this issue, and correctly interpreted the wishes of the Congress by ruling that the term "iron or steel" within the meaning of section 320 does include ferroalloys. Mr. Baker's understanding is correct, and Senator KENNEDY and I concur in his interpretation.

TRIBUTE TO SHEILA BURKE

Mr. BYRD. Mr. President, a few minutes ago, in speaking to the Senate, commending and thanking officers and staff, I inadvertently overlooked the extraordinary good work of Sheila Burke.

Sheila is the staff director of the distinguished majority leader. She is an exceedingly capable individual. She renders important service to all Senators, especially to the majority leader. She is always courteous with my staff and me. I wanted to express my heartfelt gratitude to her, and again to commend her.

TV AND RADIO BROADCAST OF SENATE PROCEEDINGS

Mr. BYRD. Also, Mr. President, in making reference to some of the important legislation that has passed this Congress earlier, I inadvertently overlooked what to me is a very historic piece of legislation. That legislation had to do with television and radio coverage of the Senate debates and deliberations.

As the author of the resolution, I feel that the Senate took one of the truly historic actions over the decades that occurred when it adopted this resolution. Today the deliberations and debates of the Senate are being broadcast. The people of America are being better informed. The debates are, I think, much better debates than they have been heretofore. Speeches of the Senators generally are more probative and more substantive.

I think that this is a great step forward for the Senate as an institution, and that it is a step forward for our representative democracy. I would not want this Senate to adjourn sine die without public reference to that very historic legislation. I am exceedingly proud of the legislation, and I am exceedingly proud of the Senate as it has conducted itself following the beginning of television and radio coverage.

As the years come and go I predict that this will be looked upon as one of the signal actions of the U.S. Senate, and that its bearing upon the future of this representative democracy and the future of this Senate will continue to be observed. And may I say I think it is a tribute to all Members of the Senate that they have been able to respond to the needs of the era in which we live, an era of telecommunications, and an era in which the Senate caught up with the 20th century and prepared itself to move into the 21st century.

Mr. THURMOND. Mr. President, will the distinguished Senator yield?

Mr. BYRD. I yield the floor.

TRIBUTE TO SHEILA BURKE

Mr. THURMOND. Mr. President, I would like to be associated with the remarks of the able Democratic leader in reference to Sheila Burke. I think she is one of the most capable and dedicated staff members on the Hill. It has been a pleasure to work with her. She has been most efficient. I just wanted to join in those remarks.

TRIBUTE TO HOWARD GREENE AND ELIZABETH GREENE

Mr. THURMOND. Mr. President, also I would like to say that we have a husband-wife team in the Senate. That is Mr. and Mrs. Greene, Howard Greene and his wife, Elizabeth. They prove to be as dedicated as any people I have ever seen. They are very capable, they tend to the work well, they are very efficient, and the Senate is fortunate to have people like this on the staff.

The PRESIDING OFFICER. Who seek recognition?

DETAILED DISCUSSION OF SENATOR NUNN'S CRITICISM OF PRESIDENT'S PROPOSAL

Mr. DOLE. The distinguished Senator from Georgia, Senator NUNN, raised some questions about the President's Reykjavik arms control proposals.

The Senator from Georgia is one of the Senate's foremost experts on these questions, and all of us—the President included—respect his views and give them the most serious consideration.

On this matter, though, I want to cast my vote with the President. I think the proposals he put forward in Reykjavik are, first of all, clear. On one particular point, I believe it is beyond doubt that the President's proposal covering 1991-96 involved offensive ballistic missiles only, not all strategic nuclear forces.

That is exactly what the President said in his speech to the Nation; exactly what Secretary Shultz told us in his detailed briefing in S. 207; and exactly what the actual record of talks in Reykjavik shows.

Let me make that last point again, since Senator NUNN and others seem in doubt about it. The Reykjavik record is clear. The President offered offensive ballistic missiles only. Gorbachev responded with an offer to expand that to all nuclear forces. But the President rejected that—and he rejected it in writing.

So I would suggest that those who weren't there; who have been assured by the White House what was said; who heard, the President make his speech to the Nation, in which he reaffirmed what he said—I would suggest, in light of the record, that those people put this question to bed. I cannot see that it serves anyone's interest—certainly not the country's—to belabor this point that is already clear. It only serves to confuse the issue and give the Soviets something else to try to exploit in their propaganda.

The President's proposals were very comprehensive and creative. They reflect the President's longstanding, strong determination to see real nuclear arms reductions, culminating eventually—not in 1996, but eventually—in the total elimination of nuclear weapons.

And, to get to Senator NUNN's other main point, those proposals are also fully consistent with our national security and our commitments to our allies. If the proposals were implemented as the President envisioned them—and if the Congress meets its responsibilities by funding the President's defense requests, especially in areas to compensate for force reductions under the proposal—they would leave us with credible strategic deterrents, both in Europe and around the globe; with our relations with NATO strengthened; with an improved posture in terms of conventional forces; and, as long as we stick with the President on SDI, with a way to defend ourselves against third-country nuclear forces.

I do not want to take up a great deal more of the Senate's time in debating this issue now—we are all anxious to wrap up our business and go home. But I do ask that a detailed statement of my views be put in the RECORD.

I know that we will be taking up this debate, and discussions of many related questions, in the 100th Congress. I know that the Senator from Georgia will be an active and important participant in our debate, and that his contribution, as always, will be constructive.

THE PRESIDENT'S REYKJAVIK PROPOSAL

RESPONSE TO NUNN'S COMMENTS

Mr. DOLE. Mr. President, yesterday, the distinguished Senator from Georgia, Senator NUNN, expressed some concern about the proposals the President put forward in Reykjavik. There are certainly some conflicting accounts about the details of some of the exchanges. But that is inevitable when you are often dealing with second, third, and fourth hand sources. What is important is what really happened in Reykjavik—what the President proposed and what his proposals mean for U.S. security.

I'm convinced—from my talks directly with the President, with Secretary Shultz and others, and from the whole range of other information I have about Reykjavik—that the President handled his exchanges with Gorbachev in exactly the right way.

I might also note, as I did earlier this week, that the polls clearly indicate that the American people are convinced that the President was right on target, too.

THE REAL STORY OF REYKJAVIK

In any case, let me talk a bit about what really happened in Reykjavik. You have to start at the beginning. Reykjavik was not a summit. It was never intended to be a summit. It didn't turn out to be a summit.

It was hoped, though, that Reykjavik could be an opportunity to explore a wide range of issues, including arms control issues; find out where subsequent agreement would be possible; and then, in effect, line up the ducks so that they could be mowed down at a real summit.

The President did not go to Reykjavik to throw on the table detailed, every "t" crossed, every "i" dotted proposals. He went to offer ideas, concepts, game plans—and to hear the same from Gorbachev. The goal throughout was that the Iceland talks would not see the signing of any treaties or agreements but would give new momentum, and more clearcut guidelines, to the negotiators in Geneva, so that they could pin down the final details.

I might note here that there was a lot of pressure—and my recollection is that some of it came from the other side of the aisle—to actually strike some kind of final deals in Reykjavik. The people I recall as being most cautious—the ones before Reykjavik who were telling the President to go slow—were some of my conservative colleagues on this side of the aisle.

So the President went to Reykjavik hoping to probe, to make progress, to see what Gorbachev really wanted and was prepared to do.

What he found out, in the first 1½ days of the talks, was that Gorbachev seemed prepared to reach some important accords covering the outlines of deals on some arms control issues. And there may have been, at that point, some surprise on the American side that Gorbachev appeared ready to deal so positively with so many issues.

THE PRESIDENT'S INTENTIONS AND CONGRESSIONAL PRESSURE

But to put this in context, for 6 years the President has asserted, again and again, that he wants real arms reductions; that he wants dramatic arms reductions; that he wants, ultimately, to see a world free of nuclear weapons; and that he was prepared to consider any reasonable offer aimed at those goals, whether from the Soviets or from anybody else.

And for 6 years, the President's credibility on that has been challenged, by Democrats, by the media, again and again. For 6 years, they've pressured, urged and even legislated the President in the direction of unilateral concessions to the Soviets on arms control.

So now he goes to Reykjavik with the intention he has been saying he had all along—to seek deep, equitable and verifiable reductions of nuclear weapons. And he finds that Gorbachev seems to want to deal. And so the President does what he said all along he would do; what most of us, Democrats and Republicans alike, would hope he would do; what, as President, he should do. He engages Gorbachev in serious, comprehensive, goal-oriented talks.

And what does he get for that? For having explored the opportunities Gorbachev seemed to present? For having left no stone unturned in an honest attempt to find out if progress were possible on real arms reductions? He gets accused, implicitly at least, of recklessness. He gets accused of being willing to give away vital components of the U.S. defense.

And, of course, all of those charges are nonsense. That's not what happened in Reykjavik.

What did happen? When it became clear that Gorbachev was so hung up on SDI that no other agreement would be possible absent some accord on strategic defenses, the President tried to respond to Gorbachev's concerns. He did so in a way that was comprehensive, even bold—but in a way that is fully consistent with our national security, now and into the future.

TWO-PART PROPOSAL

The President offered a two-part proposal. The proposal he outlined, specifically and authoritatively, in his speech to the Nation. The proposal which, in my mind at least, is consistent with the President's briefing to us—myself, Senator NUNN and others—at the White House and is exactly the same as outlined in Secretary Shultz's briefing of the Senate in S. 207 earlier this week.

Here's that proposal. The first part covers the next 5 years, 1986–91. During that period there would be a 50-percent reduction in all strategic nuclear forces. No specific sublimits were set—no limits on, say, missiles, or anything else. Setting those sublimits was clearly understood to be the work of follow-on negotiations in Geneva.

But the key point is that this first 5 year scenario involved the 50-percent reduction of all strategic nuclear forces. I don't think there is any dispute about that. Nor is there, as far as I am aware, any dispute that such a reduction, if properly arranged through subsequent Geneva talks, would be in our national interest. So I think everyone, including the Senator from Georgia, is reasonably comfortable with the part of the proposal covering the first 5-year period.

But the Senator from Georgia has raised questions about the proposal for the second 5-year period, 1991–96. Now let me outline that part of the proposal, too. The President proposed that, during the period 1991–96, both the United States and the Soviet Union steadily reduce their numbers of offensive ballistic missiles, until—at the end of the period, in 1996—both sides would have eliminated all of those missiles.

Now let me stress this, because it is one of the main points of concern to the Senator from Georgia. In the first 5-year period, the 50-percent reduction proposed would be of all strategic offensive nuclear forces—ICBM's, submarine launched ballistic missiles, bombers.

But in the second 5-year period, the forces that we and the Soviets would be reducing—reducing ultimately to zero—would be only the offensive ballistic missiles. Not the bombers and not any other weapons which can provide substantial deterrence. Only missiles.

Now I think the Senator from Georgia has raised two real questions about this. First, is what I just outlined, in fact, what the President really proposed? And, second, if that is what was proposed, is it a wise proposal?

PRESIDENT'S PROPOSAL CLEAR

Let me deal with both those questions. On the first one, I am convinced—and, in my view at least, the authoritative record is absolutely clear—that the President's proposal is just as I outlined it. That is exactly what the President said in his speech to the Nation. That is exactly what Secretary Shultz told us in S–207. And that is totally supported by the negotiating record in Reykjavik.

I am not at liberty to discuss this point in great detail, but I can say that Gorbachev—having heard this exact proposal from the President—offered a counterproposal which would have broadened the deal covering the second 5 years to include all offensive strategic forces. Gorbachev was including bombers and other things not covered in the President's proposal. But the United States side—the President—responded in writing and specifically rejected that. And, in rejecting it, reaffirmed the original, more limited, U.S. proposal.

So it seems to me this point is clear. The President's 1991–96 proposal was limited to missiles, period. And there is not much utility in trying to build a case on third hand accounts, or second hand recollections of off-the-cuff remarks. There is hard, clearcut proof—the President's on the record speech; the Secretary's specific briefing, which Senators will recall included actually reading the proposal as it was developed in Reykjavik; and the negotiating record in Reykjavik.

THE PRESIDENT'S PROPOSAL MAKES SENSE

Now the other question raised by Senator NUNN is this: Was the President's proposal a good one? Does it make sense from the standpoint of our national security?

Let me start by saying that Senator NUNN is one of our acknowledged experts on arms control questions. All of us take very seriously what he says, and I think I can safely include the President in that observation, too.

But on this issue, I am firmly convinced that the President's bold, imaginative proposal was the right one, at the right time, for the right purpose. I want to outline why.

PRESIDENT OFFERED BLUEPRINT, CONGRESS MUST SUPPORT IT

Let me start out by restressing a point I made at the outset, because it is very, very relevant here. The President's proposal was a broad outline, not a draft treaty. It was intended to lay out goals and guidelines, not resolve every detail or settle every small point. So the President's proposal is the beginning—the critical beginning, to be sure, but still just the beginning—to a complex negotiating road. It makes no sense to criticize it as a finished product and expect that it will already encompass every detail and provide a ready answer to every specific question raised against it.

And I also want to say that all of my comments that follow are conditioned on an important assumption, which is implicit in the President's proposal, too. The assumption is that the Congress will meet its future responsibilities as effectively as the President is meeting his. The proposal doesn't hold together if Congress doesn't do what it will have to, under the proposal, to adequately fund the Nation's defense; increase spending in areas where we need to compensate for force reductions which would be included in the proposal; and follow through on crucial programs like SDI.

Too often in the past Congress has tried to have its cake and eat it, too. We ask the President to do something; we direct him as to how he is supposed to do it; and then, when it comes to putting our wallet where our mouth is, we're nowhere to be found. The President's proposal makes great sense, but only if the Congress is prepared to do what is necessary, what is prudent in terms of our Nation's defense.

Now as to the points raised by the Senator from Georgia:

IMPACT ON STRATEGIC BALANCE

First, he asked, where would we stand in the strategic balance in 1996 if the proposal were to be implemented; if there were no offensive ballistic missiles on either side?

He raised concerns about the fate of our bombers against Soviet air defenses. That is clearly something to be seriously considered. But in my view he has failed to take any, or sufficient, account of three factors. First, the President's proposal did not involve the nuclear forces of our allies, France or Great Britain.

Second, the Senator seems to give full credit to potential advances in Soviet air defense capabilities—as he should; I applaud him for citing that point and emphasizing it, because it is critically important that we keep it in mind, not only for this discussion but when we get around in Congress to reconsidering SDI. But the Senator seems to give less weight to the benefits we are already deriving, and will derive in much greater measure over the years, from Stealth technology. The fact is, the ability of bombers to penetrate air defenses is liable to improve dramatically over the next 10 years.

Finally, on this particular point, I would just note that under the President's proposal we could also continue to have cruise missiles as a significant deterrent force. And all of these weapons, of course, would complement the theater forces which Senator NUNN acknowledged we would still have.

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So I am convinced that, overall, this would not necessarily be a bad deal in terms of its impact on the strategic balance. Had the overall, conceptual deal been reached, we might have found in more specific follow-on talks that we might have to shape some of the components of the accord. That is what the follow-on talks would be about. The Soviets could have found themselves in that position, too. But on balance, and considering there is much more to be fleshed out in this proposal, I do not find the cause for concern the Senator from Georgia does in the proposal, as the outline for future, more detailed talks.

COMMITMENT TO EUROPE'S DEFENSE

The second point raised was whether the elimination of U.S. offensive ballistic missiles from Europe would lead our NATO allies to doubt the strength of the U.S. strategic commitment to Western Europe. Would the Europeans, in short, believe we were abandoning them?

There is always the chance, of course, that the Europeans could misinterpret our intentions. I think many Europeans misinterpreted the meaning of Senator NUNN's now-famous amendment on NATO burden sharing and defense spending. I suspect he's spent more hours than he would care to recall explaining that his amendment was not aimed at reducing America's commitment to Europe's defense.

But that kind of psychology is a worry, and one which we should be prepared to reckon with. We would have to be clear cut in our diplomacy and, far more important, be steadfast in our support of NATO. We would still have many thousands of troops committed to defend Europe. We would still have major forces—airplanes, cruise missiles, theater forces, including many nuclear armed. So I am convinced that, if we were prudent and wise, our continuing commitment would be real, would be manifest and would be credible.

MUST INSURE ADEQUATE CONVENTIONAL FORCES

A third concern raised is whether Soviet superiority in conventional weaponry wouldn't become even more decisive after 1996, if the President's proposal were implemented. And let me acknowledge—if we did absolutely nothing between now and then about our conventional forces, yes, Soviet conventional capabilities would be relatively even more important and dangerous.

But that is not a realistic scenario. At least, I hope it is not. No strategic or nuclear arms reduction proposal can be totally separated from the question of the conventional arms balance. And we cannot proceed on any such strategic or nuclear arms reduction regime without adequate consideration and planning for making whatever adjustments would be necessary in our conventional posture.

As we reduce strategic and nuclear forces in Europe and around the world, we have to do one of two things simultaneously. Either we have to have companion agreements reducing conventional armaments—and, in practice, reducing the Soviet conventional forces much more than ours—or we have to build up our own conventional forces, to more nearly match the Soviets. I am confident that any U.S. President would understand and be prepared for those adjustments. And, I should add, that the vast resources saved from the elimination of many strategic and nuclear weapons should certainly free resources to make the build-up option easier and more politically palatable that it is now.

I am also sure that our allies around the world—who want real, equitable, and verifiable strategic and nuclear arms reductions as badly as we do—would also understand this equation and be prepared to do what is necessary. As Secretary Shultz pointed out forcefully over in S-207, we and our allies have in aggregate more people, more resources, better technology and more conventional force potential than the Soviet Union. What we have to do is find the political will to make the necessary commitments. If Senator NUNN's point is that we ought to be prepared to muster that will in the interest of dramatic nuclear arms reductions, then I agree fully with him.

Furthermore, the elimination of all ballistic missiles would redress one of the most serious threats posed to our allies' conventional and chemically armed intermediate and shorter range ballistic missiles. In these areas, the Soviet Union enjoys a virtual monopoly. These Soviet forces are especially threatening to the conventional balance because they hold at risk vital allied supply and air base facilities.

THIRD COUNTRIES' NUCLEAR FORCES

And Senator NUNN raised one final point, and it gets back to an issue I've already raised. What about those British or French or Chinese strategic nuclear forces that might still exist in 1996? Well, that is a fair question. I certainly hope those strategic forces would be reduced as 1996 approaches. Politically, it is hard to concoct any scenario under which that wouldn't happen, since all countries have rationalized their need for such weapons totally on the large United States and Soviet forces. And certainly I would think that both we and the Soviets might be pushing them hard to make reductions.

The part of the President's proposal which I haven't discussed here, and which Senator NUNN didn't discuss in great detail, either, figures mighty here, too—that is, SDI and its reasons for being. One of the main reasons the President is insisting that we retain SDI in this kind of dramatic arms reduction scenario is just to handle the kind of potential nuclear threat which might be posed by third countries—realistically, not so much the forces of countries like the United Kingdom or France, but other countries whose political inclinations are less clear or whose leadership is less responsible.

Just as SDI seems to be acting as leverage to induce Soviet reductions, it would also discourage other nations from building, maintaining or using nuclear weapons. There were many things discussed in Reykjavik, some of them—from our standpoint—standing alone and some as parts of a broader package. Certainly strengthening our own defensive potential would be essential as part of a package which would leave any country, anywhere, in possession of nuclear weapons which could strike the United States.

CONCLUSION

I have already gone on at some length, and I don't want to tie up the Senate any further on this now. We all want to go home soon. So let me just conclude with two thoughts.

First, I congratulate the Senator from Georgia from raising these kinds of issues. He has done so on many previous occasions, and he has done so forcefully again today. And, on every occasion, he makes a valuable contribution.

But let me also say that, in this case, I'm casting a vote of confidence in the President. He went to Reykjavik with some sound, far-reaching proposals. He responded to Gorbachev's own proposals with creativity, boldness but also full and prudent regard for our national security and our commitments to our allies. And, as he always has in the past, he has done a marvelous job representing our Nation, our Nation's interests and the cause of peace around the world.

EXPEDITED FUNDS AVAILABILITY ACT

Mr. DOLE. Mr. President, I ask unanimous consent that the Banking Committee be discharged from further consideration of H.R. 2443, the Expedited Funds Availability Act, and I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2443) to limit the number of days a depository institution may restrict the availability of funds which are deposited in any account.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3516

Purpose: To make technical and other amendments advancing the sunset dates, and for other purposes

Mr. DOLE. Mr. President, on behalf of Senator GARN, I send an amendment in the nature of a substitute to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. GARN, proposes an amendment in the nature of a substitute numbered 3516.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading for the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(The text of the amendment is printed in today's RECORD under amendments submitted.)

Mr. BYRD. Mr. President, if I might inquire for the Record, I ask the distinguished Senator from Wisconsin does this bill consist of more than his FSLIC recapitalization plan regulators and does it contain any language limiting direct investment by thrifts?

Mr. PROXMIRE. It contains the bridge bank but no limitation on the direct investment. I wish it did, but it does not. We took that out at the request of a number of Senators.

Mr. BYRD. Mr. President, if the distinguished majority leader would suggest the absence of a quorum, please.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, at the request of the minority leader, I want to make very clear what this includes and does not include. It consists only of an FSLIC recapitalization. That is the Federal Savings and Loan Insurance Corporation recapitalization and the regulators bill, including a bridge bank proposal. It eliminates the net worth certificate, which was a problem. And there is nothing here limiting direct investment by thrifts. So I think it complies with all the objections we have here and I have been watching this bill closely all day.

By BYRD. Mr. President, I thank the distinguished Senator from Wisconsin. I am duty bound to ask these questions and to elicit the statement from the distinguished Senator from Wisconsin, who is the ranking member of the Banking Committee. I did this as part of my responsibility to certain other Senators who could not be here at this point. So I have no problem.

I thank the Senator.

● Mr. GARN. Mr. President, I have asked the majority leader to introduce an amended version of S. 2752, the Federal Savings and Loan Insurance Corporation and Financial Regulations Act. This bill takes the absolute minimum steps necessary to preserve the safety and soundness of the banking system until Congress convenes next year. The principal parts of the bill are first, the recapitalization of the Federal Savings and Loan Insurance Corporation; second, the emergency acquisition provisions—the so-called regulators' bill; third, FDIC bridge bank authority; and fourth, enhanced conservatorship authority for the National Credit Union Administration.

Mr. President, before I set forth the details of these provisions, let me summarize the tortuous path that has resulted in this compromise among Banking Committee Senators and the full Senate as to what banking legislation absolutely must be done before Congress adjourns.

No one in the Senate or the House wants comprehensive banking legislation more than I do. No one has worked harder to achieve such legislation than I. In 1984, the Senate passed such a comprehensive bill by a vote of 89 to 5—only to have the House fail to act. Earlier this year, I introduced new comprehensive legislation and was prepared to proceed to pass it this year.

However, from discussions with my counterparts in the House I was convinced there was no way that such comprehensive legislation could be enacted into law in the 99th Congress—even though extremely necessary.

As a consequence, I decided to pare back my earlier bill to include only emergency safety and soundness items. In good conscience, I could neither waste the Senate's time on a bill that would never become law, nor jeopardize this legislation. It is not simply advisable, it is not simply necessary. It is urgent.

Let me now discuss in detail the provisions of this bill.

1. FSLIC RECAPITALIZATION

This part of the bill will infuse up to $3 billion into FSLIC over the next year, with funds coming entirely from the thrift industry, using no tax dollars and no Federal guarantee. It also establishes the mechanisms to raise a total of $25 billion over 5 years, although borrowing authority will sunset at the end of 1987 unless renewed by Congress.

Mr. President, FSLIC recapitalization is urgently needed. FSLIC primary reserves have dropped to $2.5 billion, and the ratio of these reserves to insured deposits has deteriorated steadily in recent years. At the same time, FSLIC's caseload includes 125 severely troubled thrifts with $42 billion in assets, and will include another 96 troubled thrifts with $35 billion assets in the next 12 months. The cost of resolving the current caseload—without the expected additions—is $7 to $10 billion. This is three to four times the primary reserves now available to the insurance fund.

The result is that FSLIC must now keep insolvent thrifts open because it does not have the funds to close them. This risks far larger losses to the fund in the future and unfairly permits insolvent institutions to compete for deposits with healthy thrifts and banks. GAO estimates that the minimum cost of delaying case resolution will be $1.4 billion over the next 2 years—if interest rates remain the same. If they rise, the costs will be far, far greater. Furthermore, these estimates do not take into account credit risk, deteriorating asset quality, or deposit losses of competing institutions, all of which could make the overall losses even worse.

There is no question in anyone's mind—including all the financial regulators—that FSLIC recap is necessary. The real question is whether it's necessary this month, next month, or in 6 months, and the answer is that we should not tempt the hand of fate by doing nothing now. The consequences of that kind of inaction are bleak: potentially devastating losses to the FSLIC fund, the possibility of a merger of the FSLIC fund with the FDIC fund, and even the possibility of direct Federal appropriations.

2. EMERGENCY ACQUISITION PROVISIONS

This part of the bill extends and moderately strengthens the regulators' authority to arrange the interstate acquisition of failed and failing banks and bank holding companies by out-of-State banks. This new authority will sunset on August 1, 1987, unless renewed, giving Congress the opportunity to review the effectiveness of the legislation at an early opportunity. These provisions will result in far less cost to the FDIC insurance fund and far less disruption to both State and national banking systems. They are urgently needed to resolve banking problems in the Southwest and Midwest, where depressed economies have hit banks hard. Furthermore, they will be just as urgently needed in the future where other regional economic problems occur and where problems arise from changed banking structures. In short, the financial regulators need this flexibility to save money for all parties concerned: the problem banks, the insurance funds, and ultimately the American consumer.

3. FDIC BRIDGE BANK AUTHORITY

This part of the bill authorizes the FDIC to establish bridge banks that would take over failing banks for a limited time until buyers could be found from the private sector. This

will give the FDIC more time than it now has to arrange purchases of failing banks, particularly large banks. Such purchases are far less expensive to the insurance funds than closing the banks and paying off depositors, and far less disruptive to local communities' banking services. Furthermore, the additional time would permit buyers to better assess assets in the troubled bank, making it more likely that more assets would be acquired in any purchase, leaving the FDIC stuck with fewer assets to liquidate. Finally, bridge banks will minimize disruption of banking services to the failing bank's community and keep funds flowing to borrowers until a more permanent solution can be arranged.

4. ENHANCED NCUA AUTHORITY

This part of the bill strengthens and makes permanent the conservatorship authority of the National Credit Union Administration. NCUA needs this authority to conserve the assets of failing thrifts, which already has saved the credit union insurance funds tens of millions of dollars.

5. OTHER PROVISIONS

While this legislation extends until June 30, 1987, the sunset date of title I of the Garn-St Germain Act of 1982—the merger and conservatorship authority—it does not extend the sunset date of title II of that legislation, which is the so-called Net Worth Certificate Program. The bill also authorizes the Bureau of the Mint to mint gold medals commemorating the three men whose efforts made the Vietnam Veterans Memorial possible: Jan Scruggs, Roubert Doubek, and Jack Wheeler.●

Mr. PROXMIRE. Mr. President, I support with reluctance the amendment to H.R. 2443 dealing with the recapitalization of the FSLIC and the interstate acquisition of failing banks. While these provisions have varying degrees of merit, they leave unresolved a number of important banking issues. The most important of these issues is the closing of the nonbank bank loophole.

Mr. President, the nonbank bank loophole represents a cancer on our banking system. Unless it is closed, it will slowly but surely erode the foundations of our financial system. The Senate voted overwhelmingly in 1984 to close the nonbank bank loophole, and I believe there is still a broad consensus in this body that the loophole should be closed. Unfortunately, the majority leader was unwilling to schedule the banking bill for floor action if votes on any controversial matters were required. Thus the views of a recalcitrant minority have been able to control the banking agenda for the 99th Congress.

What is wrong with nonbank banks? First, nonbank banks magnify competitive inequities in our financial system. The nonbank bank loophole allows any company into the business of banking while banks are still tightly limited as to what activities they can engage in by our banking laws.

Second, nonbank banks erode the principle of separating banking from commerce, a principle that that has been the keystone of our banking laws for over three centuries. There is a good reason for that separation. We want banks to be independent so that they can allocate credit based on economic merit and not on the basis of their affiliation with a corporate parent.

Third, the nonbank bank loophole is a threat to effective bank supervision. There is no way to separate the fortunes of a bank from the fortunes of its corporate parent. If the parent gets into trouble, the bank is in trouble regardless of how soundly managed it may be. This means the FED and the FDIC must be concerned not only about the safety of the bank, but the safety of the nonbank parent. There is no way the regulators can carry out that responsibility.

Fourth, the nonbank bank loophole erodes the rights of the States to control their own banking structure. Given the recent decision in the U.S. trust case, a New York money center bank can establish a nonbank bank in any State regardless of State law.

Mr. President, there is another reason why the Congress should have acted on the nonbank bank issue as a part of this legislation. The failure to close the loophole will undermine both the FSLIC recapitalization measure and the emergency authority for interstate bank acquisition. Who will want to buy an ailing bank or thrift if they can enter the same market more cheaply by establishing a nonbank bank? Failing to deal this year on the nonbank bank issue will inevitably be costly both to the FDIC and the FSLIC.

Despite these reservation, Mr. President, I have reluctantly agreed to support this package. The chairman of the committee has assured me he will address the nonbank bank issue and bank powers issue early next year if the Republicans retain control of the Senate. That would certainly be my intention as well should I become chairman again next year.

Moreover, Mr. President, the legislation before us has been amended to assure that the Congress will have to address the unresolved banking issues next year. The authority for the interstate merger of failed or failing banks will expire on July 31 of next year. The borrowing authority of the FSLIC funding corporation has been limited to $3 billion, which is the amount planned for the first year. Thus both measures will have to be renewed next year.

● Mr. RIEGLE. Mr. President, over the past 2 years the Senate Banking Committee has considered numerous banking bills as well as a comprehensive proposal submitted by Chairman GARN. For any number of different reasons the committee has been unable to reach a consensus on any given approach other than the stripped-down legislation we passed in committee, August 13, 1986. That bill contained essentially two provisions deemed necessary for preserving the safety and soundness of depository institutions and the financial system. These provisions include recapitalizing the ailing Federal Savings and Loan Insurance Corporation, and giving the Federal bank regulators expanded authority to arrange interstate acquisitions of failing banks.

Time has virtually run out on this session of Congress, but I think we would be delinquent in our responsibilities if we did not address these two issues before we recess.

The recapitalization of the Federal Savings and Loan Insurance Corporation [FSLIC] is important because despite the fact that interest rates have declined dramatically over the past year and the thrift industry as a whole is moving toward record profits for the second consecutive year, some stark realities have to be addressed.

Earlier this year, in testimony before the Banking Committee, we heard that at year-end 1985, the FSLIC's net worth, or total insurance reserves, was just over $6 billion. On the other hand, best estimates at the time, were that the fund faced possible losses of between $10 and $25 billion for the liquidation of between 200 and 461 insolvent thrift institutions that have been allowed to remain open but might have to be closed. According to these estimates, the Federal insurance fund for the savings and loan industry would be deeply in the red from anywhere between $4 and $19 billion.

Treasury Under Secretary for Finiance George Gould has testified twice before the Senate Banking Committee on these problems. Speaking for the administration he has said:

> If we do not strengthen FSLIC now, we may place the S&L industry at considerable risk in the future should interest rates rise significantly.

In addition, in a report issued by the General Accounting Office last month, the GAO estimated that the cost of delaying resolution of the cases now in the FSLIC-insured insolvent caseload will approximate $1.4 billion over the next 2 years, if interest rates remain at current levels. This GAO study only took into account the costs of delay based on current interest rate levels. The GAO study made no effort to include the efects of credit risk or to put a price tag on the cost of delay relative to deteriorating asset quality at these institutions.

More recently, Federal Home Loan Bank Board Chairman Edwin Gray has indicated that the primary reserves of the FSLIC have dropped further to $2.5 billion and the ratio of these reserves to deposits held by FSLIC-insured thrifts has deteriorated steadily.

According to Chairman Gray:

Further delay in supplementing the resources of the FSLIC can only add to the ultimate cost to the industry and economy of resolving these problems and would run the clear risk of entirely depleting the primary reserves, with most serious consequences.

I agree with Treasury Under Secretary Gould and FHLBB Chairman Gray and am hopeful that we might adopt a FSLIC recapitalization program similar to the one passed earlier by the Senate Banking Committee. While the plan is complicated, the key element basically involves the 12 Federal Home Loan Banks contributing $3 billion to the Federal Home Loan Bank Board and its fund. The Bank Board in turn uses this $3 billion to borrow between $10 to $15 billion in the capital markets to be paid back over a 15- to 30-year time span.

Reasonable people may differ over various parts of this proposal but I have heard no one make the case that this issue should not be addressed.

On a separate matter, each of the three bank regulators—Federal Reserve Board Chairman Paul Volcker, FDIC Chairman William Seidman, and Comptroller of the Currency Robert Clarke—have testified in favor of legislation expanding their authority to arrange interstate acquisitions of failing banks.

In a letter to the committee dated April 8, 1986 they jointly noted, without referring to any banks specifically, that—

It seems unavoidable that over the foreseeable future, there will continue to be situations in which banks will have problems so severe that they will be unable to continue to operate without an infusion of additional capital and fresh management.

Specifically they recommended that the provisions of the Garn-St Germain Act, passed in 1982, which permits acquisition across State lines of failed banks having assets of $500 million or more—be changed and augmented to give the bank regulators additional authority.

The Financial Institutions Emergency Acquisition Act, more commonly known as the regulators' bill, which we passed in the Banking Committee, provides that an interstate rescue be permitted when a bank is failing—in danger of closing—rather than actually closed. More specifically, the regulators' bill changes existing law in four important areas. First, it permits qualified stock institutions, as well as mutual savings banks, to be acquired by out-of-State holding companies before they fail. Second, it lowers the threshold measurement for eligibility for both closed and failing banks from $500 million to $250 million. Third, it permits a holding company to be sold, in whole or in part, to an out-of-State holding company if the in-State holding company has a bank subsidiary or subsidiaries with aggregate banking assets of $250 million or more in danger of closing and such bank or banks represent 33 percent or more of the holding company's banking assets. And finally, it allows an acquiring out-of-State bank holding company the same intrastate expansion rights as an in-State bank holding company after 2 years.

Since the limited authority to deal with failed banks provided by the Garn-St Germain Act expired on October 13, 1986. It is important that some new grant of authority be given the Federal bank regulators before we adjourn. And it is their view that this legislation "will enable Federal bank supervisors to resolve emergency situations involving severely troubled banks with far less cost and less disturbance to the State and to the national banking systems than is possible today."

While the bill before us narrows the FSLIC Recapitalization Program and the regulators' bill passed earlier by the Senate Banking Committee, the basic elements are the same. The differences primarily related to sunset and timing provisions which require us to take another look at these issues next year rather than at a later date.

The bill before us makes two other changes which I believe are significant and which were included in legislation passed by the Senate Banking Committee. It creates a new vehicle, called a "bridge bank" for dealing with bank failures, and it exempts the bank regulatory agencies from the apportionment provisions of the Anti-Deficiency Act.

A "bridge bank" is a new national bank established by the FDIC to take over the assets and liabilities of a failed bank and to carry on its business for a limited period of time. The conditions under which the FDIC may establish such a bank are carefully defined.

The arguments in favor of granting the FDIC this authority is the fact that oftentimes achieving a satisfactory solution for a failing bank in a short period is not always possible, and this is particularly true for very large banks. The regulators argue that—

In such situations a bridge bank would help the FDIC arrange an orderly return of the bank to the private sector. With more time, potential buyers would have an opportunity to assess their risks and would encourage them to acquire more of a failed bank's assets. This would minimize disruption of banking services to the bank's community and keep funds flowing to borrowers until a more permanent solution can be arranged. Creditors, the affected community, the insurance fund and the banking industry would all benefit.

This line of reasoning of the regulators appears sound and I believe the FDIC should be granted this authority.

Finally, I want to point out that the bank regulatory agencies are self-funding organizations which pay for themselves through assessments on the banks, savings institutions, credit unions and financial organizations which they regulate. They are directly accountable to the Congress. As such there is no reason for them to be subject to the apportionment authority of the Office of Management and Budget. The legislation before us therefore properly and legitimately exempts the funds of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration from the apportionment provisions of the Antideficiency Act.

In conclusion, Mr. President, since time has essentially run out this session, I hope that we would pass legislation very similar to that we adopted in the Senate Banking Committee so that we might see some banking legislation enacted and signed into law this Congress.●

● Mr. D'AMATO. Would the distinguished gentleman from Utah explain to me the relationship between the bill's subsequent acquisition authority and the sunset for the bill. Specifically, because of the 2-year moratorium on subsequent acquisitions would an out-of-State bank holding company which acquires a failed or failing bank prior to the sunset of the bill even be able to avail itself of the subsequent acquisition authority or would such authority terminate upon the sunset of this bill.

Mr. GARN. I thank the distinguished gentleman for the opportunity to respond to his concern. Section 102(c) of the bill specifically states that the repeal or termination of the emergency acquisition authority contained in the legislation we are considering today, shall have no effect on any action taken or authorized while such provision was in effect. The term "or authorized" is intended to protect situations such as you have posed. In other words, the authority to make subsequent acquisitions to the same extent as in-State bank holding companies attaches at the time of the emergency acquisition and is not lost by the sunset of this act.

Mr. D'AMATO. Additionally Senator, it is my understanding that section 103(a)(6) of the bill is intended to make certain failing banks more attractive to out-of-State bidders and thereby reduce the amount of assist-

ance that the FDIC will be required to provide to the successful bidder. Is that correct?

Mr. GARN. Precisely.

Mr. D'AMATO. Then I am correct in my reading that the language should not be interpreted to restrict in any way the authority granted by Congress in 1982 which would permit an acquiring institution to branch immediately to the same extent as a national bank located in that State, whether de novo or by merger.

Mr. GARN. The Senator is correct. The expanded authority granted by section 103(a)(6) is not intended to restrict existing branching or merger authority in any way.●

● Mr. MATTINGLY. May I ask the Senator a question concerning the amendments to section 408 of the National Housing Act and section 18 of the Federal Deposit Insurance Act concerning the role of the Federal Deposit Insurance Corporation in the conversion of an FDIC-insured bank to insurance by the Federal Savings and Loan Insurance Corporation? My understanding is that these amendments clarify present law to make plain that the FSLIC alone has a role in passing on the conversion of an FDIC-insured bank to an FSLIC-insured institution, and that when we revised these conversion provisions in 1982, Congress did not intend the FDIC to have authority to impose conditions on FDIC-insured banks converting to FSLIC insurance.

Mr. GARN. The Senator's understanding is correct, and I would add the following. Section 212 of amended H.R. 2443, to which you refer, is intended to clarify present law, including the provisions of the Depository Institutions Act of 1982, the Garn-St Germain bill, and does not change the substance of present law. In authorizing conversions of State-chartered savings banks or other FDIC-insured banks to Federal savings banks, Congress has always intended to facilitate such conversions. It was never intended that any bank regulator approve, or attach conditions to a change from FDIC to FSLIC insurance. Although with respect to savings bank conversions at one time FDIC agreement regarding indemnification for losses was required, the 1982 act had the purpose of removing that requirement. We have also never considered institutions insured by the FSLIC to be noninsured banks or institutions for purposes of the separate and essentially unrelated requirement of section 18(i) that the FDIC approve conversions of insured banks to noninsured institutions. Section 212 clarifies the ability of FDIC-insured banks to lawfully convert to institutions eligible for FSLIC insurance, and when approved for FSLIC insurance, to change deposit insurers without additional regulatory review. These amendments would further stipulate that in the case of a merger, purchase of liabilities, or other transaction resulting in increased exposure to the FSLIC—but no additional liability to the FDIC, where the FSLIC judges the risk to be acceptable, the FSLIC alone would have the power of approval or disapproval. As long as Congress sanctions a separately regulated thrift industry with its own Federal deposit insurer, only the FSLIC should determine when it will undertake to insure an institution and whether the institution is to be subject to conditions, even if it would be FDIC-insured until such time as the FSLIC insurance is effective.●

● Mr. MATTINGLY. It is my understanding that amended H.R. 2443 amends section 404 of the National Housing Act to restore the FSLIC secondary reserve to its previous status so that it could only be used to cover FSLIC losses only to the extent that other funds were unavailable. Is this correct?

Mr. GARN. The Senator is correct. Given the circumstances in 1982 the earlier changes were justified. However, as part of FSLIC recapitalization, it is important to restore the secondary reserve to its previous status as prepaid insurance premiums which are intended to be refunded over time. The secondary reserve shall be treated as equity of the FSLIC until such time as any portion of the principal and any accrued interest are repaid to the insured institutions.

Mr. MATTINGLY. I agree with the Senator from Utah. I simply felt it important that our intent be made part of the RECORD.●

● Mr. DIXON. Mr. President, section 103(a) of the bill amends section 13(f)(3) of the Federal Deposit Insurance Act to make it easier to achieve emergency interstate acquisition of failing banks, holding companies, and affiliated banks.

Am I correct in understanding that under this bill if a bank or bank holding company is eligible to be acquired by an out-of-State bank or holding company at the time the FDIC provided financial assistance, the bank would or holding company would remain eligible for interstate acquisition to the same extent it could have been when assistance was given, so long as the assistance remains outstanding?

Mr. GARN. That is correct.

Mr. DIXON. Is it correct that this provision is not intended to apply to banks or bank holding companies that received financial assistance before the date of enactment that remains outstanding?

Mr. GARN. That is correct. It would not apply to cases where the FDIC's financial assistance was provided before the date of enactment.

Mr. DIXON. I appreciate the clarification. That is my intention as well.

Mr. GARN. Mr. President, let me state my agreement. This provision would only apply where the assistance was granted after October 1986.●

● Mr. MELCHER. The majority leader, I understand, has spoken with the Senator from Utah, the chairman of the Senate Banking Committee, and I would ask the majority leader if it is correct that there have been many, many rumors flying around here concerning banking bills, to the effect that the House may try to add housing-related provisions to this bill or some bill if the Senate passes it—provisions which are controversial and some of which have not been considered by the Senate. As indicated, there are a wide variety of items in H.R. 1, including spending items outside the budget, a Fair Housing Initiatives Program without guidelines, new programs and other problems too complex and difficult to be finalized at this late hour, particularly since they differ from even the Senate Banking Committee's version of a housing bill.

I would ask the majority leader, if a housing bill in any form is attached to this bill to recapitalize the FSLIC, or to a so-called "check-hold" bill which I believe this body will shortly be asked to consider, or to any other bill, will the majority leader assure me that there will be objections to its further consideration by the Senate?

Unless I receive such assurances, I do not intend to remove my objections.

Mr. DOLE. I assure the Senator that if the House sends us any bill that contains such housing provisions, that I will object on behalf of a number of Senators to its consideration by the Senate.●

The PRESIDING OFFICER. If there are no other amendments, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read the third time.

The bill was read the third time and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RECESS UNTIL 7:45 P.M.

Mr. DOLE. Mr. President, we are awaiting just one word from the House on the tax bill. I think the distinguished Senator from Utah [Mr. HATCH] is still working on a vaccine bill. He is now talking with the Attorney General. I wonder if we might have a brief recess, about 10 minutes.

Mr. BYRD. I hope it is flu vaccine.

I move that we stand in recess until 7:45.

The motion was agreed to and, at 7:29, the Senate recessed until 7:45; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. STEVENS).

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATE COMPREHENSIVE MENTAL HEALTH PLANS

Mr. HATCH. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1744.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 1744) to require States to develop, established, and implement State comprehensive mental health plans.

(The amendment of the House is printed in the RECORD of October 17, 1986.

Mr. HATCH. Mr. President, this bill has a number of titles that are very important. Title I is the Drug Export Amendments Act of 1986, an extremely important bill that will help to resolve a flaw in current legislation which forces American jobs and investment overseas and threatens to erode our lead in recombinant DNA technology.

In response to these problems I first introduced legislation in the 98th Congress to permit the export of certain drugs not yet approved by the Food and Drug Administration. Unfortunately there was not time for the Labor and Human Resources Committee to direct full attention to that legislation.

Then, in the 99th Congress I worked with Senator KENNEDY and others on the committee to further refine this legislation with the result that we introduced S. 1848 last year. This was a very good bill, which contained numerous safeguards to ensure that only responsible drugs would be exported from the United States to countries able to regulate them. That bill passed out of committee in May of this year and was passed by the Senate.

As amended on the floor, however, it contained provisions which by their controversy clouded the prospects for House passage. Subsequently Senator KENNEDY and I sought to resolve those issues—chiefly that of infant formula regulation—and in the last month or so we began discussions with Representatives HENRY WAXMAN and EDWARD MADIGAN, chairman and ranking minority member of the House Subcommittee on Health and the Environment. Responding to concerns raised in those discussions we altered the Senate bill in some important ways, preserving however, its essential features and benefits. That compromise version was packaged yesterday, in last minute negotiations, together with other bills forming titles of this bill, and passed by the House as an amendment to S. 1744, a bill previously passed by the Senate.

Exhaustive negotiations today with the administration have permitted us to pass the package in the Senate as well, and I am very, very happy that both Houses have now agreed to the same drug export legislation.

Briefly, this measure permits the export of certain not-yet-approved drugs to a restricted set of developed countries set forth in a list in the bill, as long as they are legal in those countries. Thus, this will permit U.S. companies with drugs to build their production facilities here and start manufacturing for the foreign market while awaiting FDA approval. Currently such manufacturers have no choice but to locate their plants overseas, where they may produce for any market.

The bill will also permit the export, and thus encourage the development of tropical disease drugs not approved here, and will correct a provision of law which now forbids the export of certain intermediates, though they are not intended for or practical for use in humans in their exported state.

Again, this is a good bill. It represents a recognition that our current ban on the export of unapproved drugs—a policy shared by no other country in the world—is unrealistic, unproductive, and does not even keep these unapproved drugs off foreign markets. The landmark legislation we pass today is a giant step forward in our national policy for pharmaceuticals.

● Mr. HATCH. Mr. President, I would like to enter into a colloquy with my friend Mr. KENNEDY on the drug export title of this bill. I would say to my colleague from Massachusetts, it is my understanding that the export portion of this bill applies only to the export of unapproved drugs—other than antibiotics—for commerical sale. Is that correct?

Mr. KENNEDY. Yes.

Mr. HATCH. This bill does not affect the ability to export unapproved drugs—other than antibiotics—for investigational uses under existing FDA regulations. Is that correct?

Mr. KENNEDY. Yes. Section 802(a)(2) provides that this bill does not apply to the export of unapproved drugs which are exempt because they are exported for investigational use under the FDA regulations cited by my colleague.●

TITLE I—S. 1744

Mr. QUAYLE. Let me inquire of the Chairman on the matter of whether the drug export provisions of this legislation deal with the subject of shipping of intermediate animal drugs.

Mr. HATCH. I thank the distinguished Senator for his inquiry on the subject of animal drug intermediates.

Mr. QUAYLE. It is my understanding that intermediates of human drugs are permissably exported from the United States without restriction. It is further my understanding that precisely the same situation has attended the export of animal drug intermediates. Notwithstanding my view, which I know the Chairman shares, on the permissibility of such intermediate export, I am informed that the Food and Drug Administration has recently indicated that it may rule otherwise.

Mr. HATCH. I share fully the Senator's legal interpretation that the Food, Drug, and Cosmetic Act presently permits the unrestricted export of animal drug intermediates. Let me observe that such exports involve unfinished materials which will be used in the ultimate formulation of animal drugs. For legal purposes, such intermediates, like human drug intermediates are treated as fine chemicals, not drugs. Accordingly, they are not subject to restrictions on export of drugs found in the Food, Drug, and Cosmetic Act.

Mr. QUAYLE. Is it the Chairman's view that this body ought to clarify this matter for the benefit of the FDA? Or does he concur with my view that such a statement in the form of an amendment is unncessary because of the plain meaning of existing law on the subject?

Mr. HATCH. Because the law is so clear on this point, I believe that a clarifying amendment is completely unnecessary.

Mr. QUAYLE. I thank the distinguished Chairman for his views on the subject, and I concur.

●Mr. HATCH. Mr. President, to return to the package before us, title II is the National Commission To Prevent Infant Mortality. Title III is the National Childhood Vaccine Injury Act of 1986. Title IV is the Health Care Quality Improvement Act of 1986.

Let me say a word about the Health Care Quality Improvement Act of 1986. I have long shared the concerns of the House and Senate sponsors of this legislation that a key step in reducing the incidence and terrible cost of medical malpractice is to protect physicians and health care institutions from abuse of the antitrust and other civil laws by those they are trying to discipline or remove from practice for incompetence. Being sued for libel or

restraint of trade for simply trying to protect the public from an incompetent has traumatized many well-meaning physicians and credentialling committees and is a major factor in the abysmally low rate of physician discipline in this country.

For that reason, and with the support of the American Medical Association, I introduced S. 1804, which among other things exempted those involved in the disciplinary process from Federal civil liability. The exemptions in title IV of this bill are broader, preempting State laws as well. But my reluctance to exercise the preemption authority resulted in discussions leading to the inclusion in the bill of a State opt-out provision, allowing States not wishing to have their laws preempted to make such an election through a State legislation declaration. I extend my appreciation to Representative WAXMAN, in particular, for accommodating me on this point.

In addition I note that the Secretary has the discretion to set up a clearinghouse on disciplinary and other information either in-house or through an outside organization. It is certainly my expectation that the Secretary would seek to capitalize on existing outside networks and systems before setting up another Government bureaucracy to this function.

While this title is more prescriptive than I would have liked, I understand that it was negotiated with the input and assent of the medical community and I will support it.

Title V is the State Comprehensive Mental Health Services Plan Act of 1986. Title VI is geriatric training. Title VII is health planning repeal. Title VIII is the Health Maintenance Organization Amendments of 1986. And title IX is the Alzheimer's Disease Research Act.

This list of titles demonstrated that this is a very, very important bill. We have struggled for this bill quite a while right up to this very minute, and there are some aspects of the bill about which the White House is very upset, in particular the National Childhood Vaccine Injury Act of 1986. They are concerned that this particular part of the legislation will be costly, that its cost may far exceed the estimated $250 million, that it may open the floodgates to similar other coverage of types of injuries under a no-fault system. And I must say here that while I share that concern and feel that a clear finding of fault is essential for legal liability, the childhood vaccine situation is one of special, unusual circumstances. They have raised constitutional questions regarding separation of powers. They feel that the bill removes an entitlement program of the administration from the executive branch and places it in the judiciary. And some of them have questioned whether the tort liability limitations will really be effective in controlling the number and cost of claims. Thus they question whether they will actually address the problem of skyrocketing vaccine prices, driven by the potential for legal claims.

Having said that, we have to move forward in the vaccine area because of the tremendous difficulties existing in our country at this time. Literally, we have one of the best vaccination systems in the world, but the major companies in the vaccine manufacturing industry are going to get out of the business without this bill or without some similar legislation. I feel that that part of the bill could have been written much better. I feel that the White House and the Justice Department are correct in some of their criticisms. On the other hand, this is an imperfect place and we have to work out these problems. We in the House and Senate have tried to work them out between our two bodies.

I wish to compliment the distinguished Senator from Massachusetts [Mr. KENNEDY], who has been tireless in his vigorous efforts to prevent the expert bill from expiring, Congressman WAXMAN, Senators QUAYLE and HAWKINS, who have worked very hard on this whole bill, Senator HAWKINS in particular on the vaccine compensation issue, and with a great deal of fondness and affection Congressman MADIGAN, the ranking minority member in the House subcommittee. And I want to thank members of the staff very much for all the work that has been done here. Having said that, let me return to this landmark legislation. It has a lot of good in it. It should not be held up just because of misgivings concerning one particular part of the bill.

Mr. President, the statement on the geriatrics bill which was omitted from the legislative history of the RECORD follows. I ask unanimous consent that these materials be printed in the RECORD.

GERIATRIC PHYSICIAN TRAINING

Mr. HATCH. Mr. President, I rise in reluctant support of title VI of S. 1744. On October 22, 1985, Public Law 99-129, which I introduced, was signed by the President. That legislation provided $24 million over 3 years for curriculum development and faculty training, with $8 million of that earmarked for geriatrics. This amendment adds authorization for an additional $4 million in the last year, with $1 million of that earmarked for geriatrics.

Before I vote for this title as part of the overall legislation, I would like to express a word of caution. While we in Congress have supported efforts aimed at improving the ability of all physicians and dentists to treat our senior citizens, we in Congress do not support the establishment of a new medical specialty or subspecialty in geriatrics. Any such specialty or subspecialty would increase the cost of health care for the elderly, would decrease competition, and most importantly, would not have a beneficial effect on quality. Improved quality health care will come through improved education of all physicians and dentists, not through letting a few physicians and dentists call themselves specialists.

This money is not intended to be used to assist in the establishment of a new medical specialty or subspecialty. It is to be used to improve the knowledge and skills of current and future medical and dental school faculty so they can better teach all physicians and dentists how to care for our Nation's elderly.

I would like to clarify a few points since there will not be a committee report to accompany this legislation. First, while the Graduate Medical Education Program that must be completed by a fellow is required to be certified, there is no such certification requirement for the fellowship programs or faculty training programs because Congress does not intend for these to be certified medical specialties or subspecialties.

Second, this legislation supports future dental school faculty who spend a year or two in a family medicine or internal medicine fellowship and current dental school faculty who spend 1 year at medical schools to improve their knowledge in the area of geriatrics. We expect these programs to work closely with dental schools and dental programs in training dentists.

Third, this legislation provides for training of a broad range of specialists through family medicine and internal medicine fellowships. It is our intent that those programs which provide training to individuals from a broad range of graduate medical education and dental programs should be given priority in funding.

Last, new section 788(d)(1)(D), which excludes schools of medicine and osteopathy and new section 788(e), which replaces 788(d)(1)(D) for schools of medicine and osteopathy, are intended to take effect at the same time.

Having expressed my reservations about what could happen with this program, I would like to again express my support for this program as intended by the original legislation which I introduced and as authorized by Congress. It should continue to improve a broad range of physicians' and dentists' ability to care for our Nation's elderly.●

● Mr. KENNEDY. Mr. President, this legislation will make an important contribution to the health of the American people and the competitiveness of American industry in the international market. It represents a strong

statement that there should be no higher national priority than assuring access to essential health care for all Americans, and it firmly asserts the commitment of the American Government to the highest moral standards for our international trade in pharmaceutical products.

I believe that the passage of this package represents one of the major accomplishments of the 99th Congress.

The essential pieces of legislation wrapped up in this omnibus bill include: the Pharmaceutical Export Amendments of 1985; the National Childhood Vaccine Injury Act of 1986; the State Comprehensive Mental Health Services Act of 1985; the Geriatric Physicians Medical Improvement Act of 1986; and the Health Care Quality Improvement Act of 1986.

PHARMACEUTICAL EXPORT AMENDMENTS

The Pharmaceutical Export Amendments of 1985 was initially passed overwhelmingly by the Senate on May 14, 1986, and is now, in modified form, included in this bill. The legislation removes the arbitrary restrictions in current law that prevent people in other lands from obtaining access to lifesaving pharmaceuticals produced in the United States, forces American pharmaceutical companies to export jobs overseas, and cripples our emerging biotechnology companies in the struggle for international markets. At the same time, the bill creates a strict new system of controls and penalties for drug exports that violate the purpose of the act.

This bill has endangered substantial controversy because of the fundamental changes it makes in the longstanding American regulatory practice which forbid export of any drugs that are not yet approved by the FDA for use in the United States. The current standard is far too restrictive and imposes limits not applicable to drugs produced in any other nation; it unfairly handicaps American manufacturers and may result in lives being needlessly lost to disease in other nations.

We have worked long and hard to guarantee that any exports of U.S. drugs will be governed by the overriding need to protect public health. We do not propose to recreate the U.S. regulatory system overseas. Rather, our approach has been to create a safer overall environment for the international distribution of needed pharmaceuticals.

This legislation allows U.S. companies to export drugs that have not yet been approved in the United States to other countries that have their own well-developed pharmaceutical approval process and regard these pharmaceuticals as safe, effective and useful for health needs in their own countries. There are strong safeguards against reexport to other countries that may not have adequate pharmaceutical programs. And there are significant provisions to encourage U.S. companies to respond to serious health needs of Third World countries, whose populations suffer from tropical diseases and other health conditions rarely found in the United States.

In sum, this legislation achieves a long overdue reform of America's drug export laws.

VACCINE COMPENSATION BILL

Childhood vaccines are essential to maintain the health of our society. They have been invaluable weapons against the dread diseases that used to kill or injure hundreds of thousands of children every year: polio, measles, pertussis, diphtheria, tetanus, rubella, mumps, and smallpox. But while these vaccines have brought the gift of life and health to millions, there are a very small number of children every year who are injured by unpredictable side effects of the vaccines through no fault of their own or the vaccine manufacturers.

When these tragic injuries occur, the children who have been harmed have sought to recover the costs of expensive medical treatment and—in some particularly heart-rending cases—the costs of a lifetime of disability through the court system. But this approach is fundmentally flawed. Most children never receive any compensation because no fault on the part of the manufacturer or physician can be proved. Even where compensation is provided, legal costs can eat up huge amounts of dollars that could be better used to provide relief for the victims. And because a few huge awards have been made, the resulting uncertainties of future liability have sent insurance costs through the roof, caused massive increases in vaccine prices, and raised the very real possibility that no manufacturer would be willing to supply these vital products.

This legislation addresses these problems in a constructive and compassionate way. It puts most vaccine injuries into a no-fault system that guarantees prompt and adequate awards for most children who are injured. It leaves the possibility of a resort to the legal system open for those children who have been injured by genuine negligence. By reducing the number of injured children who will go to court and placing some limits on the damages that can be awarded, it will reduce the uncertainty about potential future liability and the cost of insurance—thus assuring that manufacturers will continue to produce these essential products. And finally, this bill renews our national commitment to find the safest possible childhood vaccines.

COMPREHENSIVE MENTAL HEALTH SERVICE ACT

This legislation is a revised version of S. 1744, which I introduced in 1985 and which passed the Senate unanimously earlier this year.

Enactment of the Comprehensive Mental Health Service Act will provide new hope and more humane treatment for one of the most abused groups in our society, the chronically mentally ill.

The last three decades have witnessed both great hope and cruel disappointment for the chronically mentally ill. Beginning in the early fifties, the development of psychotropic drugs produced a true revolution in the treatment of this population. For the first time, medicine could significantly improve the ability of the chronically mentally ill to function in society and could reduce the pain, anguish, and delusions produced by psychoses.

With these new developments, there was widespread awareness that long-term confinement of the mentally ill in large institutions should be replaced by a system of community care. Hospitalization should, by and large, be restricted to acute episodes of illness. As President Kennedy stated in his 1963 state of the Union message, "The abandonment of the mentally ill to the grim mercy of custodial institutions too often inflicts on them a needless cruelty which this Nation should not endure."

The advancements in psychotropic medications did lead to a remarkable decline in the number of mental patients confined to mental hospitals. Between 1955 and today, the number of patients resident in public mental institutions declined from over a half a million to 120,000.

But the removal of patients from mental hospitals was not matched by the growth of the community-based system of care President Kennedy envisioned in his 1963 address. Instead, the deinstitutionalized mentally ill too often faced a future of isolation, abandonment, and despair. Many of the chronically mentally ill live in single room occupancy hotels or board and care homes. With no services, no treatment, and no integration into the larger society, they spend their days staring at walls or wandering the streets.

And they are not the most unfortunate members of this population. On an average day in this great country of ours, there are between 125,000 and 250,000 chronically mentally ill individuals without any home at all. It is a sad commentary on our society that one can walk a block from the White House and find confused, hallucinating, mentally ill people, talking to themselves, dressed in rags, and sleeping on grates on the coldest days of Washington's winters.

This situation would be heartrending if it were unavoidable. But the sad state of so many chronically ill Ameri-

cans is not unavoidable: it is disgraceful.

We know how to care for the mentally ill in the community. We know how to assure that each mentally ill individual can live in humane conditions. We know how to provide the care and treatment that will allow each mentally ill individual to come closer to his or her full potential.

But far too many States and communities have failed to provide the care for the chronically mentally ill that constitutes simple justice. And the Federal Government has not only failed to provide the leadership that is its responsibility; key Federal policies have actually contributed to the mistreatment of chronically mentally ill Americans.

The key features of an effective, community-based program for the chronically mentally ill include:

Case management, so that someone is responsible for the care and support services he needs;

A program of habilitation and rehabilitation, which would provide services to the chronically mentally ill appropriate for their level of functioning and responsive to their individual needs. Needed activities can range from regular social contact to assist with reintegration in the community to vocational training, supervised work, or assistance in obtaining and keeping competitive employment;

Medical treatment, which would provide treatment ranging in intensity from day hospitalization to a periodic appointment with a psychiatrist to check on and adjust medication;

Assistance to families, who often provide the front-line care for the mentally ill in the community and have too often been left to cope with the severe strains of mental illness without any assistance from the society at large; and

Housing services, ranging from halfway houses with staff in residence providing continuous supervision to largely independent living.

A program of this type is not particularly costly—especially when compared with the expenditures for the expensive institutionalization that it would largely replace. The Community Support Program demonstrations funded on a modest scale by the Federal Government and other activities at the State level have shown how effective and humane this approach can be.

Indeed, evaluations of the Community Support Program have shown that it can reduce days of hospitalization among the chronically mentally ill by 50 percent. States like Colorado and Wisconsin, that have well-developed community-based programs have also been able to reduce the number of days of hospital care per capita as much as 50-percent below the national average.

But despite the progress that has been made by individual States and communities, the gap between good practice and typical practice still remains shamefully wide. Some States and communities have simply failed to live up to their responsibilities to this population, and Federal policies have too often been inadequate or even counterproductive.

I believe that this legislation will produce a major improvement in this shameful record. The legislation requires States to develop and implement comprehensive programs to meet the full range of needs faced by the chronically mentally ill in the community. It requires them to develop these programs with the participation and advice of the mental health community and all the varied agencies in the State that are in charge of programs that are potentially important to the chronically mentally ill. And it requires the Secretary of HHS to work with the States to develop these humane and cost-effective programs.

GERIATRIC MEDICAL IMPROVEMENTS BILL

There are serious inadequacies in our Nation's supply of academic geriatricians. The result of these inadequacies is that the primary care physicians we are training have not had a solid grounding in the medical needs of our senior citizens, despite the fact that the changing national demographic profile will mean an ever-increasing need for high quality medical services to this part of our population. The modest investment in training provided by this legislation will produce a dramatic increase in the number of medical schoolteachers grounded in geriatrics, and it will generate a rich reward in better medical care for the Nation's elderly.

HEALTH CARE QUALITY IMPROVEMENT ACT

A very tiny proportion of our Nation's physicians are responsible for most of the medical malpractice that has caused such turmoil in our society and has inflicted some our citizens with unnecessary illness, disability, and death. The medical profession is increasingly aware of the necessity of policing itself and assuring that the high competence and dedication of most of its members is not marred by the failings of the few.

But while the profession as a whole wants to do much better in policing its membership, an outdated and inappropriate application of the antitrust laws threatens those doctors who try to identify their poorly performing colleagues to the proper authorities with an expensive and draining ordeal by litigation. This legislation will provide much-needed relief, and will help assure physicians that the performance of public obligations will not result in unfair legal punishment.

CONCLUSION

The legislation I hope we will pass tonight is truly of landmark importance to our Nation's citizens. It represents the culmination of 2-year's of bipartisan effort. I urge my colleagues to support and pass this legislation, and I hope the administration will show the same commitment to the national welfare by signing this legislation promptly into law if it is passed.●

● Mr. METZENBAUM. Mr. President, I am pleased that the legislation before us contains a provision authored along with Mr. GRASSLEY, the Senator from Iowa, which expands the efforts to eliminate Alzheimer's disease and care for its current victims.

I have long urged legislation to strengthen and make more coherent our national response to this rapidly growing public health problem. Earlier in this 99th Congress, I introduced two bills—S. 1835 and S. 2183—to alleviate the suffering of victims and their families.

An estimated 2.5 million to 3 million Americans suffer today from Alzheimer's disease, and their families suffer with them, physically, emotionally, psychologically, financially. The cost to the Nation is some $40 billion annually for this devastating disease, a killer which turns the "golden years" into nightmare years.

When we relate the statistics for Alzheimer's disease with those for projected life expectancy, the nightmare threatens to overwhelm us along with our health care institutions. It has been estimated that more than 1 of every 10 Americans—some 13 percent of us—will be over 65 by the year 2000, with the number of victims of severe dementia increasing by 60 percent. The prospect of millions of demented adults requiring long-term care, costing many billions of dollars in a real and frightening possibility. And I am not now speaking of the personal individual tragedies underlying those statistics.

Medical science has extended the lifespan; but, I believe, given the necessary resources, medical science, and health services research can eliminate the tragedy of Alzheimer's disease, improve the quality of life in our later years, and reduce the tremendous financial burden on caregivers and the health care system.

The provisions Senator GRASSLEY and I have drafted today underscore the critical need for expansion of both biomedical and health services research through the National Institute of Aging, the National Institute of Mental Health, and the National Center for Health Services Research.

Among the provisions of this legislation are:

Grants for outstanding biomedical researchers who can investigate the

epidemiology, the risk factors, the causes, of Alzheimer's diseasse;

Grants for health services research to determine what kinds of supportive services work best, are most needed and most cost effective;

Collection and analysis of data, and information dissemination for the professional and lay communities; and

Educational activities for a wide range of personnel involved with Alzheimer's disease victims and their families, from Social Security disability examiners and safety and transportation personnel to nursing home administrators and aides to physicians, nurses, social workers, occupational and physical therapists, and psychologists.

To guide these efforts, the legislation establishes in the Health and Human Services Department an Interagency Council on Alzheimer's Disease and Related Dementias. The Council would serve as a catalyst for agency programs and activities, and would report to the President and the Congress.

The legislation also establishes an advisory panel to be composed of representatives from the research and medical communities, health care providers, health financing experts, voluntary organizations and other groups concerned with Alzheimer's disease, family caregivers and Interagency Council representatives. The primary purpose of the panel is to assist the Secretary and the Council in identifying future priorities and emerging issues with respect to Alzheimer's disease and related dementias, and priorities and issues in the care of victims.

The intent of this legislation is to promote a coordinated, comprehensive and compassionate approach to a public health concern that threatens to overwhelm our Nation's health care system. There is an urgent need to expand our efforts now. Senator GRASSLEY and I welcome the support of our colleagues.●

● Mr. BRADLEY. Mr. President, I rise today in support of this legislation to compensate children and their parents for vaccine-related injury or death and to insure the future availability of these vaccines for all children.

Mr. President, immunization has been an extremely important tool in preventing millions of children from dying or being permanently disabled by preventable diseases. Earlier in this year, the Congress overwhelmingly endorsed my effort to insure universal access to childhood immunization. Childhood immunization programs in this country have led to a virtual eradication of many childhood diseases. For example, in my own State, New Jersey, there have been no reported deaths due to pertussis since 1977.

While these vaccines have avoided literally millions of cases of childhood diseases, they are not as yet completely safe. The proportion of children who suffer serious side effects is miniscule relative to those children who are spared serious illness or death as a result of these vaccines. Nevertheless, there are some children who have suffered, and will continue to suffer, from the adverse side effects of these vaccinations. And expensive litigation by children who have had adverse reactions is causing many vaccine manufacturers to cease production of vaccines. If this trend is not reversed, it is conceivable that the production of DPT vaccines could cease altogether.

Mr. President, no one questions the need to adequately compensate the victims of vaccine reactions. And I do not believe anyone wants to see drug manufacturers cease production of vaccines and eliminate the important protections that are now available to the public. But that requires some means of limiting the liability of vaccine manufacturers when they are not at fault. While the passage of this bill cannot hope to make up for the suffering endured by the children and their parents who have fallen victim to the adverse effects of vaccines, it will pay their medical, rehabilitation and education costs. Equally important, this bill will ensure that in the future children will have access to vaccines which in the vast majority of cases save more lives than they harm.

Mr. HATCH. I move at this time that the Senate concur in the House amendment.

The PRESIDING OFFICER. Is there an objection?

Mr. GORE. Reserving the right to object, Mr. President—and I shall not object—I wish to take just a brief moment to laud the work of the Senator from Utah, Senator HATCH, and I do so in as sincere way as I possibly can because I have watched him put this package together for many, many months and over the last few days and particularly the last 10 hours, I have seen a real tiger fighting to preserve some remarkable achievements on behalf of the American people, and I really mean that. I think the American people should know that this bill is an extremely significant one. The fact that there are no objections to it attests to the excellent work of the Senator from Utah and the ranking member of the senior Senator from Massachusetts as well. I am pleased that one part of this omnibus package, the Health Care Quality Improvement Act of 1986, is a measure which I introduced earlier this year. I had the privilege of testifying before the Senator from Utah. We had a very interesting and useful dialog on it, but I will put lengthy remarks in the RECORD.

Mr. President, this is not just a routine statement to say a colleague has done an excellent job. Our colleague from Utah has really done an outstanding job on this bill and our colleague, the Senator from Massachusetts, Senator KENNEDY, has done an outstanding job as well. I want to say that an awful lot of people should know of the work that he has done and the fight he has made for this bill.

Mr. HATCH. I thank my colleague for his kind remarks. They mean a great deal to me.

I would also like to thank him and a number of other people as well on his side of the floor for the work that they have done, especially in the areas of health. He certainly has been a leader and I respect him for the work he has done and the really kind and decent attitude he has shown toward me through these very difficult intricate negotiations and battles we have had on the floor and between the Houses.

Also, I would like to thank the distinguished majority leader. I know that he has been very anguished over this bill. He sees some of the defects I mentioned that the White House sees, but he is also fully cognizant and understanding that in an imperfect world, you do the best you can. This bill does so much good that some of the imperfections, I am sure, just have to be ignored.

I thank my distinguished colleague and friend from Tennessee. It meant a lot to me for him to make those remarks, after what has been a very difficult time getting to this particular point.

Mr. President, I move that the Senate concur in the House amendment.

The PRESIDENT pro tempore. The question is on agreeing to the motion.

The motion was agreed to.

Mr. DOLE. Mr. President, I commend the distinguished Senator from Utah, because, as the Senator from Tennessee just indicated, he had been literally climbing the wall today to get this done. A few of us are bruised and battered. But he succeeded and I think that is an indication of his determination.

I want the record to reflect—I think he has been very fair about it—that there are a number of people in the administration who may have a problem with one part of the bill. I think there is concern about launching into a new immunization area. Who knows what next will happen and what the cost will be and how it will be paid for? There are a few other questions that I think will be a matter of genuine concern.

So I want the record to reflect that, for the most part, this is landmark legislation. This is not just a little routine piece of legislation we are slipping through the Senate as the last act of the Senate. We have been waiting for about an hour just to take this up, so

it is an indication that it is a matter of great significance,

It is hoped that the concerns there may be at the White House level and the OMB level and other levels, I assume, when they learn tomorrow morning that it has been passed, will be addressed. I know that the Senator from Utah and the Senator from Tennessee and others will be doing their best to encourage the President to sign the measure.

I do know that the distinguished Senator from Utah had a number of conversations today with the Attorney General, with the Chief of Staff at the White House, and I do not know how many other people. But it is a tribute to his doggedness and determination.

Mr. HATCH. Mr. President, I thank the distinguished majority leader, who I think deserves a tribute from all of us for the tremendous ordeal he has been through over the last number of weeks and certainly the last number of days, and I certainly added to his pains. There is no question about that. I apologize to him for that.

The fact is that he is a great majority leader.

I thank our minority leader as well. Between the two of them, they have worked extremely well in the last days of this session, and I think both of them have proved themselves to be tremendous leaders in the U.S. Senate, and I respect both of them.

Mr. BYRD. Mr. President, I thank the distinguished Senator.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. GORE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, I would like to thank everybody involved on the drug bill that we passed. I particularly would like to express gratitude to my staff members who have worked really long and hard—they have really done a terrific job for us.

I extend my appreciation and congratulations to Doug Campbell our committee's majority health staff director and health counsel; Bill Ryan, our committee chief counsel; Hayden Bryan, our committee staff director; Nancy Taylor, our Human Services staff director; Drs. Win Froelick and Charles Helms, and Chris Lord. Also Ron Docksai, Steve Grossman, and David Sundwall, now senior officials at the Department of Health and Human Services who, as majority staff director and health staff directors, respectively in years past gave much good work on these issues. And I appreciate the faithful supporting service of Muffie Walsh and Myra Cook.

Other Senator's staffs played important roles as well, among them Robin Rushton for Senator HAWKINS on the vaccine legislation, Peter Kinzler for Senator DODD. Mike Francis for Senator STAFFORD, and Mary McGrane for Senator QUAYLE. None were more important, however, than Senator KENNEDY's able staff: Tom Rollins, minority staff director, David Nexon and, Dr. Mona Sarfaty.

Indeed, in the closing moments of the 99th Congress let me extend my heartfelt thanks and appreciation to all of the committee staff, whatever their area of jurisdiction. These professionals gave their best under often trying and thankless conditions, not only for the members of our Labor and Human Resources Committee, but in service to all of us, to assist in bringing forth good public policy that enriches and strengthens our Nation. That is their legacy, and for my own part I salute them. They are true public servants, and it has been my privilege to work with them during my years on the committee.

I also want to express gratitude to the staff of Representatives WAXMAN and MADIGAN for the long, hard, effective work that they did. They are very tough people and I have to admit they did a very good job from their point of view on this particular bill.

I also want to thank many people who have worked hard on the outside to see that we got a reasonable bill with these tremendous provisions, especially on the drug export part of the bill. There are a great number of people that I would list, but I will close my remarks here. They know who they are and I will just say I appreciate their help and support.

The PRESIDENT pro tempore. I am going to suggest the absence of a quorum if no one else does.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MONEY LAUNDERING SUBTITLE OF THE ANTI-DRUG ABUSE ACT

Mr. D'AMATO. Mr. President, I am seeking clarification as to the impact of the money laundering subtitle of the recently passed drug bill, H.R. 5484, particularly with regard to the extraterritorial jurisdiction issue and section 1352 of subtitle H of the drug bill, which is about to be signed by the President. I understand that the Justice Department has written the Swiss regarding our Government's policy on the issue of extraterritorial jurisdiction as it applies to the treaty currently in existence with the Swiss Government.

Mr. President, I ask unanimous consent that the Justice Department letter be included at this time in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF JUSTICE,
CRIMINAL DIVISION,
Washington, DC, September 12, 1986.

MR. DAIVD DE PURYE,
Charge' d'Affaires of Switzerland, Embassy of Switzerland, Washington, DC.

DEAR MR. DE PURYE: This is in further response to questions raised during our July 24, 1986, meeting concerning money laundering proposals favored by this Adminstration and how such proposals may affect the Treaty on Mutual Assistance in Criminal Matters between our countries. The Department is gratified that, as noted in your aide-memoire concerning this matter, Switzerland is fully prepared to cooperate with the United States in combatting money laundering on the basis of the Treaty. I can assure you that if the money laundering legislation supported by the Administration or something close to it is enacted into law, it will in no way cause us to abrogate our responsibilities under the Treaty.

Initially, as you are aware, the bills prepared by the Administration, S. 1335 and H.R. 2785 and 2786, do provide for some measure of extraterritorial jurisdiction over the proposed new money laundering offense. However, such jurisdiction would apply only to knowing and deliberate acts of money laundering in furtherance of a limited class of offenses. Even more important, extraterritorial jurisdiction with respect to non-United States persons—for example, Swiss banks and their employees—would exist only if part of the money laundering transaction occurred in the United States. Where, in connection with the criminal investigation or prosecution of such as offense, inquiries with residents of Switzerland were required, the United States would attempt to secure assistance through the Treaty to the extent that the Treaty is applicable. At the present time, it appears unlikely that S. 1335, H.R. 2785, or H.R. 2786 will be enacted. However, we are optimistic that a money laundering bill will be enacted with the same sort of limitations on extraterritorial offenses as are in those bills. In any event, where the Treaty does apply, we do not intend to depart from its provisions in investigating and prosecuting any new money laundering offense that is enacted.

Secondly, I would like to elaborate on the scope of the proposed power to summons records contained in the Administration's money laundering bill. The bill's provisions concerning this authority are separate and apart from its provisions setting out the new crime of money laundering. The summons provisions are amendments to our Bank Secrecy Act, 31 United States Code section 5310, et seq., and do not pertain to the new money laundering offense which will be in Title 18. The Bank Secrecy Act requires a "domestic financial institution" to follow certain record keeping and reporting requirements with respect to transactions that take place in the United States. A branch or office of a Swiss bank located and doing business in the United States normally would be considered a "domestic financial institution." Even so, the summons authority could only be used to require such a branch or office to produce books and records relating to its activities in the United States which are already regulated by the Act, and only when relevant to a record keeping or reporting violation. Such an exercise of jurisdiction is not extraterri-

torial. Moreover, the summons provision in the Administration's bill, by its express terms, would apply only in civil enforcement of the Bank Secrecy Act. Since the summons authority would be available only in civil inquiries, the Treaty would not appear to be applicable.

Finally, the Treaty provides for compulsory measures to be used in the requested State with respect to execution of a request for assistance either where the offense being investigated or prosecuted is a crime in both countries and the offense is on the schedule of offenses included within the Treaty, or where the Treaty's special provisions concerning organized crime are applicable. We realize that money laundering per se is not a violation of Swiss law. Nevertheless, as noted in your aide-memoire, the Swiss law which prohibits the financing of the drug trade may provide a basis for the dual criminality required by the Treaty. Moreover, money laundering, particularly that on a scale necessary to "wash" the proceeds of narcotics offenses, should be considered an important activity of an organized criminal group as defined by the Treaty.

I hope the foregoing clarifications have allayed your concerns regarding the compatibility of the Administration's money laundering proposal and Treaty. If you wish additional information or clarification, you should feel free to contact Mr. Charles Saphos, Chief, Narcotic and Dangerous Drug Section, Criminal Division, United States Department of Justice, Washington, D.C. 20530, telephone number (202) 724-7045.

Sincerely yours,

JAMES I.K. KNAPP,
Deputy Assistant Attorney General.

I would like to ask the chairman of the Judiciary Committee, if he has any additional information on this matter from the Justice Department, and whether this letter continues to express the Government's and the Justice Department's policy?

Mr. THURMOND. I have reviewed this letter and discussed it with the Justice Department. I believe the policy expressed in the September 12 letter is compatible with congressional intent in the drug bill, and I understand this letter continues to represent the Department's policy as it applies to the treaty with the Swiss Government.

Mr. D'AMATO. I thank the distinguished chairman.

SENATORS RUSSELL B. LONG, GARY HART, PAUL LAXALT, BARRY GOLDWATER

Mr. BIDEN. Mr. President, I wish to take this opportunity to recognize and speak for a moment about several of my colleagues who are leaving the Senate this year, much to the regret of all of us.

RUSSELL LONG is the "master" legislator of the U.S. Senate, perhaps the most knowledgeable legislator of this century. More than any of us, he understands the art and craft of compromise—and he always gets results. But RUSSELL LONG's heritage is also one of great compassion and concern for the "little guy." In all his years in the Senate, in all those years as the most powerful chairman in Congress, he never neglected the people of his State of Louisiana, the working people and the poor, and he never gave up championing their causes. The people of Louisiana will miss him, and the Senate will miss him—especially the humor and candor which carried him through his 38-year Senate career.

GARY HART is a Democrat who, in 1984, had the courage to run for the nomination of his party while making the case that the party had to change. Many others knew that this was so, but they were not willing to say so at that time, and GARY's foresight and outspokenness are commendable. As a U.S. Senator and candidate for President, GARY has stood for all of the best that the Democratic Party represents—civil rights, a clean environment, and especially, a sound policy for national defense. The Senate will miss his presence, but I am sure his contribution to national policy debates will continue.

I will personally miss PAUL LAXALT. He is an honorable and gentlemanly legislator who understands that compromise is necessary in the legislative process. Although his views are conservative, I have always found him ready and willing to listen to others. He should be especially recognized and commended for his role in bringing about change in the Philippines, and representing the President in that difficult situation. I thank PAUL for the productive and cooperative relationship we enjoyed, particularly as colleagues on the Judiciary Committee, and I wish him the very best in whatever he decides to do next.

I have spoken several times this year about my friend BARRY GOLDWATER, and of my admiration and respect for him and his accomplishments. I merely want to add my best wishes for his continued good health and happiness for many years to come.

SENATOR THOMAS EAGLETON

Mr. BIDEN. Mr. President, I think even those among us in the Senate who are standing for election this year, despite their understandable desire to get home and face their opponents, would acknowledge that they have at least one reason to welcome the protracted conclusion of the 99th Congress of the United States—while it lasts, we can still claim TOM EAGLETON as our much-admired colleague and friend.

During his three terms of service in the Senate, we have all learned to value TOM EAGLETON as a man passionately committed to his convictions, but also a compassionate man of keen and tempered intellect who always treats the convictions of others with deep respect. That generous attitude, combined with an equally generous sense of humor, has endeared him to us in the Senate and more than once rescued some of us less temperate than he from the occasional excesses of overheated, overserious partisan debate.

But, make no mistake about it, despite his habitual civility and courtesy, TOM EAGLETON's persistence and persuasiveness in pursuit of his legislative goals have made him an extraordinarily effective U.S. Senator. As the "Almanac of American Politics" put it, "He has an original mind, and the capacity to take what others regard as an unorthodox view and make it the policy of the Senate." Few men in the history of the Senate have achieved his consistent success in persuading this body to think things it never thought and to do things it never dreamed of, and those of us who serve in this often stubborn house know just how rarely it can be moved to such truly creative thoughts and deeds. More often than any other Senator I can think of, he has left us both surprised at and satisfied with what we have done.

One reason we can so often feel that sense of satisfaction with the decisions TOM EAGLETON has led us to make is the scholarship he invariably displays in preparing any issue. He has endowed with both substance and subtlety a broad range of some of the most significant measures the Senate has passed over the past two decades, including the War Powers Act, the Clean Air and Water Acts, legislation to curb the excesses of administrative busing, the Older Americans Act, the Chrysler loan guarantees, and inspector general legislation. He has been a Senators' Senator in the very best sense of the word.

But for most of us, and for me especially, TOM EAGLETON has been a valued friend in the best or the worst of times. When I arrived here 14 years ago under the most painful possible personal circumstances, TOM EAGLETON was among the first to share his feelings and his strength with me, and I know that many of my colleagues have experienced at first hand that same steadfast loyalty and generosity of spirit that makes him a friend without peer.

I admire TOM EAGLETON for all of these reasons, but I admire him most of all for his inborn inability to hide his idealism behind the convenient cloak of cynicism, for his love of justice, and for his hatred of hypocrisy and cruelty, for the breadth of his vision and for the depth of his feeling.

His departure from the Senate can not but leave us with a real sense of loss, yet we bid him godspeed with no real sense of sadness. He has built his monument in the hearts of his colleagues and he has assured his contin-

ued impact on our national life by the solid legislative edifice he has erected during three terms as a U.S. Senator. He leaves us with all his flags flying.

And he leaves us, besides, with a demonstration that there is life and challenge and achievement beyond the U.S. Senate. We are losing a respected colleague, but Missouri is regaining an attorney of distinction and gaining a professor whose distinction will soon be apparent. TOM EAGLETON, above all people, will never be content to simply entertain his students with anecdote from inside the Beltway. He's going to surprise them with what they learn from him, and he's going to startle and stimulate them even more with what he reveals to them of themselves.

I've watched him do that to his colleagues in the U.S. Senate for the past 14 years, and he's certainly not going to stop now.

SENATOR CHARLES McC. MATHIAS

Mr. BIDEN. Mr. President, it is with great regret that I bid a formal farewell to my colleague and my friend, Senator CHARLES "MAC" MATHIAS. In 18 years in this body, he has built a record that few legislators will ever match, serving in a pivotal way on three different and important Committees: the Foreign Relations Committee, the Rules Committee, and most recently on the Judiciary Committee.

In the years we have served together in the Senate, MAC has been a leader for the best interests of America, at home and abroad—helping to bring both the Vietnam war and Watergate to a conclusion, and moving civil rights to the forefront of our national agenda. I believe that MAC will be most remembered, and rightly so, for that last contribution—leading the fight, often against the leadership of his own party, to maintain a strong Civil Rights Commission, to extend the Voting Rights Act, to ensure fair housing for all.

MAC will be remembered for his candor, and for his quick dry wit—a wit for which I was a willing target on more than one occasion. He will also be remembered for his compassion and for his integrity, qualities that were not left behind even as MAC moved to the highest levels of public life in this country. When asked recently what advice he had for his successor, MAC very characteristically remarked: "Don't let your desire to get reelected get in the way of your judgment." It never did with MAC, and he still managed to pull in a greater percentage of the vote on each successive election.

Those kind of results demonstrate a remarkable and consistent faith in the judgment of the people of Maryland. They knew an honest man and a natural leader when they saw one like MAC MATHIAS. MAC will be missed by the people of Maryland, I am sure. He will also be missed by his friends in both parties who had the distinct pleasure and honor to serve with him in this Chamber.

I know that MAC's counsel will be much sought after even when he leaves this body to concentrate, as he puts it, on pulling long overdue weeds at his farm in Frederick. I am confident that MAC will continue his work for the kind of world that President Kennedy described around the time that MAC first entered politics—a world in which "the strong are just, the weak secure, and the peace preserved."

There is an Irish expression that a guy with a nickname like MAC can surely appreciate. It is Dia Dhuit, and it means literally "God be with you." It is their way of wishing someone "all the best" on their journey. Dia Dhuit to you, friend and colleague, Senator MATHIAS.

MINIMUM QUANTITIES UNDER THE NEW SECTION 416 PROVISION

Mr. MELCHER. Mr. President, in the Food Security Act of 1985—the 1985 farm bill—Congress established minimum quantities for section 416 donations in each of the fiscal years 1986 through 1990. The minimum quantities were specified to be 500,000 metric tons from the Commodity Credit Corporation's uncommitted stock, or an amount equal to 10 percent of surplus grains and oilseeds, whichever is less, and 10 percent of the Corporation's uncommitted stocks of dairy products, but not less than 150,000 metric tons.

The provision in the conference report on the continuing resolution makes available additional quantities of the commodities under section 416 authority. The provision is a modification of the amendment I sponsored during the Senate's debate on the continuing resolution, and I want to be certain I understand the conference report provision.

It is my understanding that the quantities specified in the conference report are in addition to minimum quantities specified in the Food Security Act of 1985. Further, quantities specified in the new provision shall not be considered committed until an agreement between the Government of the United States and the recipient private voluntary organization, cooperative, or Government is completed, with the agreement providing for specific quantities of donations. If my understanding is correct, the new section 416 provision will in no way interfere with the donation of surplus commodities to meet the 650,000 metric tons minimum donation required under the Food Security Act of 1985.

Mr. COCHRAN. The Senator from Montana's understanding is correct.

Mr. MELCHER. Mr. President, I ask unanimous consent that the attached excerpt relating to this matter be printed in the RECORD.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

"(B) The minimum quantity of eligible commodities that shall be made available for disposition under this subsection in each fiscal year shall be—

"(i) 500,000 metric tons of grains and oilseeds from the Corporation's uncommitted stocks, or an amount equal to 10 percent of the Corporation's uncommitted stocks of grains and oilseeds as of the end of such fiscal year (as estimated by the Secretary), whichever is less; and

"(ii) 10 percent of the Corporation's uncommitted stocks of dairy products, but not less than 150,000 metric tons of such products to the extent that uncommitted stocks are available.

The Secretary shall make such estimation of expected year-end levels of the Corporation's uncommitted stocks prior to the beginning of the fiscal year. The Secretary's determination as to the amount of the Corporation's stocks that shall be made available for disposition under this subsection for such fiscal year shall be published in the Federal Register, along with a breakdown by kind of commodity and the quantity of each kind of commodity that shall be made available, before the beginning of such fiscal year.

"(C) Of the aggregate amounts made available each fiscal year pursuant to both clauses (i) and (ii) of subparagraph (B), not less than 75,000 metric tons shall be made available to carry out the Food for Progress Act of 1985.

"(D)(i) The Secretary—

"(I) may waive the minimum quantity requirements of subparagraphs (A) and (B) for a fiscal year to the extent that the Secretary determines and reports to Congress that there are not sufficient requests for eligible commodities under this subsection for such fiscal year, except that the waiver authority of this subclause may not be used to waive the minimum quantity requirement of subparagraph (C);

"(II) may waive the minimum quantity requirement of subparagraph (C) in accordance with subsection (f)(2) of the Food for Progress Act of 1985; and

"(III) may waive the minimum quantity requirements of subparagraphs (A), (B), and (C) for a fiscal year, if the Secretary determines that the restrictions on the furnishing of commodities under paragraph (3) prevent the making available of commodities in such quantities.

"(ii) For any fiscal year in which the minimum levels of uncommitted Commodity Credit Corporation stocks specified in subparagraph (B) are not made available and during which any requests for commodities under this subsection are rejected, the Secretary shall provide a detailed, written explanation to Congress, at the end of such fiscal year, of the reasons for the rejections of such requests.

MHD FUNDING FOR 1987

Mr. MELCHER. Mr. President, the continuing resolution contains only $26.5 million for the national MHD program in fiscal year 1987. I understand that the committee believes this will cover all the costs of the program, including the four procurements which are being advertised to complete the research and design component. On the other hand, industry insists that the House appropriation of $30 million was the required amount to maintain program schedules and avoid costly delay in completing the research and development program.

After months of delay by OMB and the Department of Energy, all four major procurement packages required to implement DOE's program plan for MHD are finally being advertised for competitive procurement. I have been advised by the Department that the total cost of the procurements, including a major one for design retrofit concept, cannot be accurately determined until the bids are submitted. I am concerned that the bids may exceed appropriations and cause a budget shortfall.

Therefore, I would like the Department of Energy to provide both appropriations committees and myself with the actual costs of the procurements and the base line program operation for fiscal year 1987 as soon as this data is available. If the data demonstrates that more than $26.5 million is necessary, I believe we should increase the MHD fiscal year 1987 funding in order to avoid further delays in the MHD program plan. This could be done either through reprogramming from available DOE funds or in the next supplemental appropriations bill. If the figures warrant an increase, I will bring this to the committee's attention at the first opportunity next year. I believe this will be necessary if we are to keep the national MHD program on target.

AMBASSADOR MARGARET HECKLER—ENCHANTING THE IRISH

Mr. KENNEDY. Mr. President, a year ago, our former colleague in the Congress and the former Secretary of Health and Human Services, Margaret Mary O'Shaughnessy Heckler, left for Dublin to assume the distinguished post of U.S. Ambassador to Ireland. I would like to call the attention of my colleagues to a recent article in the New York Times highlighting Ambassador Heckler's success in tackling the complex issues facing Ireland.

With the same warmth and dedication she displayed so often here in Washington, Ambassador Heckler has brought a renewed vigor and prestige to her office. She has traveled throughout Ireland, met with an extraordinarily wide cross-section of individuals and placed the United States firmly behind the historic Anglo-Irish accord.

I commend Ambassador Heckler for her successful first year in Dublin and I urge my colleagues to read this insightful article. I ask unanimous consent that the text of the article, entitled "U.S. Envoy Displays the Gift, Enchanting the Irish," may be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 1, 1986]

U.S. ENVOY DISPLAYS THE GIFT, ENCHANTING THE IRISH

(By Francis X. Clines)

DUBLIN, Sept. 25—Last January, Margaret M. Heckler set down on these shores in political steerage, unceremoniously dislodged from her post as Secretary of Health and Human Services in the Reagan Administration and packed off to be Ambassador to Ireland, a title she did not covet.

The Irish like to think they taught the United States the art of politics, and if they did, then there is docent's pride lately that Margaret the Yank, as some now fondly call her, has done the Irish thing and kept the winds of Washington at her back in facing her ancestral land and making a go of her new post.

"She has acquitted herself very well and come across as a credible, knowledgable person," said Peter Prendergast, Government spokesman and political adviser to Prime Minister Garret FitzGerald. "She has shown the gift of talking directly with the people."

This is a considerable compliment in a nation that long felt slighted by the Reagan Administration, which had let the post go unfilled much of the time or used it as a kind of pied-a-terre. When she arrived in January, political commentators were complaining that the Heckler appointment, which they felt was so clumsily handled by President Reagan, betrayed a view of Ireland as a "potato republic" and occasional photo backdrop for mythical patronizing of vague Reagan roots.

PREVAILS IN TOUGH LAND

By midsummer, however, the former Margaret Mary O'Shaughnessy had bounded up from steerage. She was credited with prevailing in a tough land by traveling and studying it hungrily and with little fear of its political bogs, particularly in actively sympathizing with the new British-Irish attempt to deal with the sufferings of the Catholic minority in Northern Ireland.

In that, she senses the two traditional audiences of the Irish troubles here and in America, and she candidly argues that some among the older waves of Irish-Americans have a lot of recent history to learn about the new young Irish generation's appetite for reasonable compromise. She has even complimented the north's Royal Ulster Constabulary for improved professionalism, which hardly endears her to some Republican partisans.

Even more, the Ambassador has not renounced the instinct for the larger picture that got her into conflict with Reagan staffers who contended too much spotlight made her garrulous and meddlesome. In Dublin, Mrs. Heckler has quickly recognized Ireland's changing role as a new member of the European Community and she is openly warning the Administration and Americans that they need to "learn much more about a Europe that is drawing together politically, congealing in a way I could not have foreseen."

"It is a critical economic entity that must be dealt with," she says, clearly exhilarated by the global political aspect she thinks her post offers.

HER FIRST GATHERING

When she first arrived here, the Irish press jumped on her initial gaffe in addressing a gathering of Irish business leaders and including a cheerleading passage for President Reagan, spelling out a virtue for each initial as the Irishmen looked bewildered. She unapologetically still praises him but has dropped the pom-pom-girl touch and seems, as one politician said, to have "finally gotten the right tone for us."

Irish politicians gnarled from the gamelike way she limped back from privately having viewed the assignment as a "dumping ground" post to arriving at the airport and pronouncing Ireland "a little slice of heaven." Divorced, with her daughter, Belinda, busy back home, she lives alone in the elaborate ambassador's mansion in Phoenix Park, where her Irish wolfhound, Jackson O'Toole, romps around like a proconsul.

Privately she savors the renewed family ties with the Sheehy and McKeon clans of rural Ireland, recently serving at a Christening as a godmother, while publicly she has opened up the mansion considerably to sought-after social gatherings of the city's diplomatic, business and cultural principals.

"We sympathized with what happened to her, that sort of cutting thing at the White House is what we taught you, after all," said a Dublin official.

"She landed on her feet," said another. "Especially in going on the Gay Byrne show and handling all the questions nicely." The Byrne show is the Republic's main television talk show, with a host not unlike Johnny Carson, where guests can be genially grilled to an ember if they are not careful.

GUINNESS AND COUSINS

If Mrs. Heckler's confidence needed a lift after Washington, there was praise eventually here for exhibiting a deft touch in downing a glass of Guinness with her cousins in the pubs of Leitrim, or mapping what has been called the diplomatic social event of the season, a grand dinner for Mr. FitzGerald at the beginning of the summer. She has made a practice of courting the younger musical artists of Dublin and inviting them to perform at the Ambassador's home, happily exploiting the Irish fascination with the Irish.

"Indirection does not come easy to me," said the Ambassador, describing the challenge of having to put some diplomatic polish onto the working politician's soul that has powered her through a busy, sometimes brazen career as a Boston Republican Congresswoman and executive for a White House that her defenders rate as impossibly male-dominated and inimical to women of unservile ambitions. "It would have been the greatest mistake of my career to miss this opportunity to work on the world scene," she said, quickly passing over an invitation to discuss the past.

Outwardly, she betrays no resentment. She has been avid in defending Mr. Reagan from Irish critics alarmed at his opposition to sanctions against South Africa, his attempt to undermine the Government of Nicaragua and the bombing of Libya.

Although she obviously loves playing the colleen at the embassy, she says it has limits. "I am an American and my first rule is to support American policy," she said, chauvinistically sipping some Ballygowan, the Irish sparkling water recently purchased by an American company.

Outside the embassy, she has installed a touch of home in the form of a thicket of huge concrete planters designed, like the ones outside the White House, to thwart all terrorist marauders. Some Dubliners are amused at this as a gross symbol of American paranoia. But Mrs. Heckler does not want to be remembered as an Ambassador who got caught short. Her style is to install new electronic security equipment in time for a big embassy party, but then have a Dixieland band entertain the lines of guests waiting to be screened.

"I'm enjoying watching a political process and not being a part of it," said Mrs. Heckler. Undoubtedly the friends she left behind will rate that remark as charming blarney from a brave Dublin newcomer, but it should be noted that the Ambassador offered it without flinching, smiling far from home.

TRIBUTE TO SPEAKER TIP O'NEILL

Mr. STEVENS. Mr. President, while I have never been a Member of the other body, during my years in the Senate I have worked closely with many Members of the House. One who I have come to respect, and to consider as a friend, is the retiring Speaker, TIP O'NEILL.

The House had a ceremony last night to pay tribute to TIP. I am sorry that our business here kept me from witnessing that occasion. TIP O'NEILL has been an institution in the House. The House of Representatives will be a different body without him.

Many times TIP was able to give a helping hand on matters important to me and to my home State. An example which comes to mind is the transfer of the Alaska Railroad to the State of Alaska. With TIP's help we accomplished that transfer in the last 10 minutes of the 98th Congress. His graciousness to me, on that occasion, which was very early in the wee hours of the morning, is a memory I shall carry with me forever.

TIP O'NEILL has been more than a respected colleague. As an important member of the leadership of our Nation; a leader of his party, and of the House, TIP O'NEILL is a Member of Congress who has earned a prominent place in our history.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

S. 2840. A bill entitled the "Superfund Amendments and Reauthorization Act of 1986"; to the Committee on Environment and Public Works.

The following bills and joint resolutions, previously received from the House of Representatives, were read the first and second times by unanimous consent, and referred as indicated:

H.R. 1981. An act for the relief of Lawrence K. Lunt; to the Committee on the Judiciary.

H.R. 2127. An act to establish a United States Boxing Commission, and for other purposes; to the Committee on Commerce, Service, and Transportation.

H.R. 3355. An act to develop a national methanol energy policy and to coordinate efforts to implement such policy; to the Committee on Governmental Affairs.

H.R. 4033. An act to mend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes; to the Committee on Governmental Affairs.

H.R. 5277. An act to transfer certain public lands in Nevada to the Toiyabe, Humboldt, and Inyo National Forests; to the Committee on Energy and Natural Resources.

H.R. 5492. An act to direct the Secretary of Agriculture to release a reversionary interest of the United States in certain land located in Putnam County, FL, and to direct the Secretary of the Interior to convey certain mineral interests of the United States in such land to the State of Florida; to the Committee on Energy and Natural Resources.

H.R. 5540. An act to encourage good faith professional review activities of health care entities, to require collection and dissemination to hospitals and other health care providers of information concerning certain payments in medical malpractice claims and certain adverse decisions, and for other purposes; to the Committee on Labor and Human Resources.

H.R. 5546. An act to amend the Public Health Service Act to establish a National Vaccine Program for the development of new vaccines and the improvement of existing vaccines and a program to compensate the victims of vaccine-related injuries and deaths, and for other purposes; to the Committee on Labor and Human Resources.

H.R. 5576. An act to provide for the stability of the domestic banking and thrift systems, to improve housing, to protect the American consumer of financial services, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 5635. An act to amend the Farm Credit Act of 1971 regarding interest rates charged by Farm Credit System institutions and financial operations of such institutions, to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 5686. An act relating to certain tariff and customs matters; to the Committee on Finance.

H.J. Res. 727. Joint resolution making repayable advances to the Hazardous Substance Response Trust Fund; To the Committee on Appropriations.

The following concurrent resolutions, previously received from the House of Representatives, were read, and referred as indicated:

H. Con. Res. 415. Concurrent resolution to make corrections in the enrollment of the bill H.R. 5484.

H. Con. Res. 416. Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 5300; to the Committee on the Budget.

H. Con. Res. 418. Concurrent resolution to direct the Secretary of the Senate to make technical corrections in the enrollment of the bill S. 2638; to the Committee on Armed Services.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. STEVENS (for himself, Mr. THURMOND, Mr. KENNEDY, Mr. HATCH and Mr. STENNIS):

S. 2950. A bill to designate September 17, 1987, the bicentennial of the signing of the Constitution of the United States, as "Contitutional Day," and to make such day a legal public holiday; considered and passed.

By Mr. DOLE (for Mr. STAFFORD (for himself, Mr. CHAFEE, Mr. BURDICK, Mr. SYMMS and Mr. BENTSEN)):

S. 2951. A bill to authorize the use of currently appartioned Highway Trust Funds for various highway projects; considered and passed.

By Mr. MELCHER:

S. 2952. A bill to provide for the protection of Native American rights for the remains of their dead and sacred artifacts, and for the creation of Native American cultural museums; to the Select Committee on Indian Affairs.

By Mr. DOLE (for himself, Mr. BROYHILL, Mr. GORTON, Mrs. HAWKINS and Mr. NICKLES):

S. 2953. A bill to provide credit under the Civil Service Retirement and Disability System for training in the Cadet Nurse Corps during World War II; read the first time.

By Mr. BUMPERS (for himself, Mr. PRYOR, and Mr. ROTH:

S. 2954. A bill to amend the Tax Reform Act of 1986 by repealing a certain transition rule; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. ARMSTRONG (for himself, Mr. MOYNIHAN, Mr. HATCH, Mr. HECHT, Mr. DECONCINI, Mr. LAXALT, Mr. BINGAMAN, Mr. PRYOR, Mr. GORE, Mr. HUMPHREY, Mr. JOHNSTON, and Mr. DANFORTH):

S. Res. 514. Resolution calling for hearings in the Committee on the Judiciary on procedures for protecting citizens against improper investigative and prosecutorial practices; considered and agreed to.

By Mr. DOLE (for himself and Mr. BYRD):

S. Res. 515. Resolution tendering the thanks of the Senate to the Vice President for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate; considered and agreed to.

By Mr. BYRD (for himself and Mr. DOLE):

S. Res. 516. Resolution tendering the thanks of the Senate to the President pro tempore for the courteous, dignified, and impartial manner in which he has presided

over the deliberations of the Senate; considered and agreed to.

By Mr. THURMOND (for himself and Mr. BYRD):

S. Res. 517. Resolution to commend the exemplary conduct of the distinguished majority leader; considered and agreed to.

By Mr. THURMOND (for himself and Mr. DOLE):

S. Res. 518. A resolution to commend the extraordinarily cooperative conduct of the distinguished minority leader; considered and agreed to.

By Mr. THURMOND (for himself, Mr. DOLE and Mr. BYRD):

S. Res. 519. Resolution tendering the thanks of the Senate to the Senate staff for the courteous, dignified, and impartial manner in which they have assisted the deliberations; considered and agreed to.

By Mr. DOLE (for Mr. WARNER (for himself and Mr. BYRD)):

S. Con. Res. 173. Concurrent resolution to direct the Secretary of the Senate to make a technical correction in the enrollment of S. 2638; considered and agreed to.

By Mr. DOLE (for Mr. PACKWOOD):

S. Con. Res. 174. Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 5300; considered and agreed to.

By Mr. DOLE (for Mr. ROTH):

S. Con. Res. 175. Concurrent resolution correcting the enrollment of H.R. 3614; considered and agreed to.

STATEMENT ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BUMPERS (for himself, Mr. PRYOR, and Mr. ROTH):

S. 2954. A bill to amend the Tax Reform Act of 1986 by repealing a certain transition rule; to the Committee on Finance.

REPEAL OF CERTAIN TRANSITION RULE

● Mr. BUMPERS. Mr. President, today I am introducing legislation to amend the recently adopted tax reform act. Specifically, this legislation would repeal a special transition rule which was slipped into the tax reform act at the last minute. This rule provides valuable tax benefits to certain aircraft manufacturers and puts all other aircraft manufacturers at a severe competitive disadvantage. By repealing this transition rule we can avoid an injustice to all of the United States and foreign-owned companies which do not receive special treatment under the transition rule. The legislation I am introducing would repeal this transition rule retroactively to the effective date of the rule, December 31, 1985.

I am fully aware that the Senate will not be able to consider this legislation in the limited time we have available before we adjourn. But I will reintroduce this bill in January and I intend to pursue it vigorously until this injustice is undone.

By introducing this legislation now and emphasizing that it is retroactive to the first of this year, I intend to give notice to all those who believe that they will receive the full benefits of this transition rule that they may not, in fact, receive these benefits. Those taxpayers who proceed to rely on this transition rule in the tax reform act are taking a risk and they are acting at their peril. I am giving them more notice than was given to the aircraft manufacturers not covered by this unfair and ill-advised transition rule.

The rule which this legislation repeals can be found in section 204(a)(11) of the Tax Reform Act. A copy of this provision is included in the RECORD at the conclusion of this statement and it can be found at page I-76 of the conference report on the tax reform legislation. This transition rule would provide special tax treatment to purchasers of aircraft manufactured in four States explicitly enumerated in the provision, Kansas, Florida, Georgia, and Texas.

As we all know, the tax reform act repeals the investment tax credit effective for property placed in service after December 31, 1985. But under this transition rule, the ITC would not be repealed for the purchase of certain aircraft identified in the provision. The aircraft to which the ITC repeal is not effective are aircraft which are "in inventory or in the planned production schedule of the final assembly manufacturer, with orders placed for the engine(s) on or before August 16, 1986." To be included in this rule, the aircraft must be subject to a sale contract binding "on or before December 31, 1986," and must be "delivered and placed in service by the purchaser, before July 1, 1987."

This transition rule on the ITC repeal is not unusual except in that it applies only to aircraft manufactured in the four States I have just mentioned. This is the feature of the rule which is strange and creates the need for the legislation I introduce today.

The chairman of the Finance Committee said during the Senate debate on the tax reform conference report on Saturday that "he was under the impression—this provision—covered all the domestic plane manufacturers in the United States." September 27, 1986, RECORD at S13891. As I will explain, this impression is based on a misconception about the structure and location of the aircraft manufacturing industry in the United States. As a result of this misconception, the effect of this transition rule is devastating to other aircraft manufacturing and their suppliers in many of the 46 States not covered by the rule.

For example, Arkansas—a State not covered by this transition rule—has two manufacturers of general aviation aircraft, Falcon jet, a French owned company, and the Arkansas Modification Center, which manufactures aircraft for British Aerospace. While neither of these companies is United States owned, both companies manufacture planes which have over 50 percent valued added in Arkansas or from U.S suppliers and the point of final assembly for these planes is in the United States. For example, the Falcon jet uses engines manufactured by Garrett Turbine Engine Co. of Arizona and avionics manufactured by Collins Avionics of Iowa. The British Aerospace also uses Garrett engines. Both companies have major facilities in Arkansas, which much of the work on these planes is done. Clearly, both of these companies are domestic in the key sense—they employ U.S. workers, directly and through U.S. suppliers, and the final assembly of the planes is in the United States.

Both of these companies manufacture aircraft which meet the intent of the rule except for the fact that they are manufactured in Arkansas. According to the provision, a plane is "manufactured" at the "point of its final assembly." In the case of both Falcon Jets and British Aerospace planes, the companies fabricate and install the cockpit and cabin furnishings, prepare and install the avionics equipment and radar and paint the planes in Arkansas. These efforts include installation of any customer selected optional equipment.

Both of these companies have suppliers in other States. Ironically, four of the suppliers for Falcon Jets are in Florida, four are in Texas and two are in Georgia, all States which otherwise benefit from the transition rule. Falcon Jet also has suppliers in California, 22 suppliers; New York, 5; Illinois, 5; New Jersey, 5; Ohio, 3; Pennsylvania, 3; Massachusetts, 2; Minnesota, 2; Michigan, 2; and 1 each in Maryland, New Hampshire, Connecticut, and Mississippi. The suppliers of British Aerospace are similarly dispersed. It has 41 U.S. suppliers for one of its planes and 49 for another.

Let me emphasize, the only respect in which the aircraft manufactured by these two companies do not meet the standards set in section 204(a)(11) is that they are not manufactured in one of the four explicitly mentioned States. If this provision had been drafted to apply to all 50 States, both of these companies would have had aircraft which qualified for the transition relief. If it had been drafted to apply to planes which contained 50 percent or more U.S.-valued added, planes of both companies would have been covered. The peculiar drafting of the transition rule alone bars its application to these two companies.

It should be obvious that I was not involved in the drafting of the transition rule in the tax reform bill. I do not support the retroactive repeal of the investment tax credit and have received many complaints from companies in Arkansas about this issue. I would support extending the ITC through 1986 for all taxpayers. If the ITC is repealed for all taxpayers, how-

ever, I would find it hard to justify any exception to that repeal. I would find it particularly hard to justify an exception that had the impact of the transition rule with which this legislation deals.

While I have not argued that the U.S. aircraft manufacturing industry needs or deserves any special transition rule, it is quite clear to me that, if any sectors of this industry do receive benefits from some special transition rule, all sectors should benefit. This transition rule, however, directly and perhaps intentionally gives one sector of this industry a direct and valuable competitive advantage over another sector of this industry. This is anticompetitive. It is unfair. It is an abuse of the transition rule process.

Over the last 3 weeks, I have worked to prevent the injustice which this transition rule would cause. On September 22, I wrote to the chairman of the Senate Finance Committee explaining the injustice of section 204(b)(11). Unfortunately, no corrective action was proposed in the technical corrections resolution, House Concurrent Resolution 395, which the House adopted on September 25.

I then worked closely with the chairman of the Senate Finance Committee to secure an amendment to the House-passed resolution to remedy this injustice. Throughout these discussions, I made it clear that I would support either a repeal of the transition rule or extension of it to all U.S.-based manufacturers.

I made it clear that I would prefer that the rule be repealed for everyone. When it became clear that the original sponsors of the rule would not agree to this, however, I sought to apply the rule generically to all U.S.-based manufacturers. In pressing to include Arkansas and other States to the list of States, I sought to prevent an injustice. If the rule was not to be repealed, the only way to avoid the injustice was to add other States.

In pressing to include Arkansas, I was not attempting to secure special treatment for an Arkansas company or for the business aircraft industry. Rather, I was trying to secure equal treatment for the business aircraft manufacturers in Arkansas. Neither these manufacturers nor I started this dispute. Had certain manufacturers not sought to obtain a competitive advantage over other U.S.-based companies, I would not now be introducing this legislation.

The Senate took up the House-passed concurrent resolution on October 16 and adopted an amendment to the House text. This amendment included an amendment to the aviation transition rule. I supported the amendment and said so in a floor statement during the debate. The amendment extended the reach of the provision to all 50 States and prevented it from providing a retroactive windfall to purchasers of aircraft between January and August 16 of this year. The Senate adopted the concurrent resolution with this amendment.

Unfortunately, the House refused to agree to the Senate amendments. I do not know whether the House considered each of the Senate amendments to House Concurrent Resolution 395 on the merits or not, but the entire concurrent resolution has now died due to the impasse between the House and Senate. This means that the Senate action to remedy the error in the tax reform bill has not been adopted, leaving the original error in the tax bill intact. What I am saying is that we tried to fix the problem without having to resort to introducing this legislation, but the House would not let us. We have no alternative now but to introduce this bill.

With the legislation, I am pressing to repeal the transition rule altogether, the solution I have always thought was the best one available. It is no longer appropriate to pursure the option of extending the rule to other States. Now it is simply an up-or-down matter of whether this rule should survive for the benefit of any purchasers of aircraft.

As I have said, we would not have had this problem if the transition rule had been drafted like most transition rules as a generic rule, rather than one which necessarily gives certain companies a competitive advantage over others. There may be other transition rules in the tax reform bill which have this anticompetitive effect, but most of them simply provide relief to one company. By benefiting one company, it can be said that these transition rules may help that company compete with other companies, but these rules are not drafted specifically to have that effect, as was the case here. This transition rule is predatory.

The impact of the original provision in the tax reform bill on foreign-owned aircraft companies with substantial operations in the United States already has led to a major international dispute. This dispute probably will become quite nasty and it will have a damaging impact on international trade in civil aircraft.

The United States has, for example, argued strenuously that the European Airbus consortium should not do precisely what this original provision would have done, discriminate against foreign companies and suppliers. Were this amendment to remain in effect, the Airbus governments might be justified in providing launch aid for the A330/340 next March.

After the GATT conference in Uruguay last month, it would have been quite unwise for the United States to have enacted a provision designed specifically to benefit United States manufacturers and to give them a competitive advantage over their foreign competitors. Do you think for 1 minute that the Governments of France and Britain would stand by and permit the United States to provide special tax incentives only to United States companies and which benefits are specifically denied to French and British owned companies even though these companies have substantial manufacturing facilities in the United States?

In fact, the United States and France have signed an Agreement on Trade in Civil Aircraft, dated April 12, 1979, which includes an agreement "to avoid attaching inducements of any kind to the sale or purchase of civil aircraft from any particular source which would create discrimination against suppliers from any signatory." Article 4.4. The transition rule in the tax reform bill would seem clearly to violate this agreement.

In 1985 the U.S. general aviation industry exported some 28 business jets and 54 small turbine powered commuter airlines. Many of these come from the States covered in this transition rule. Sales of at least 20 aircraft by manufacturers in these states are currently pending with European customers. It will be interesting to see how this transition rule affects sales of these and other aircraft.

I had doubts about the wisdom of inc uding other States in the list of those covered by the transition rule. While the provision would be fairer if it covered all aircraft manufactured there would still have been repercussions from our trading partners. Even as amended it would have provided special tax benefits to U.S. taxpayers who purchase aircraft manufacturered in the United States and would not provide these benefits to any U.S. taxpayers if the plane is not manufactured in the United States. This has the effect of an explicit "buy American" requirement. Even were the provision to include planes manufactured by foreign-owned companies in the United States, it would still not include planes which were manufactured abroad, either by U.S.-owned or foreign-owned companies.

One of the strangest features of this transition rule is that it is retroactive to purchases which already have occurred. The House tax reform bill—adopted by the House on December 17, 1985—repealed the investment tax credit for property placed in service after December 31, 1985. The Finance Committee reported its version of the tax reform bill on May 29 and this bill repealed the investment tax credit effective on the same date as did the House bill. Persons who purchased aircraft after the House passed the tax reform bill last December have been on notice since then that they might not receive the benefits of the investment tax credit. Certainly, they have

been on notice of this possibility since May 29 of this year when the Senate Finance Committee agreed to repeal the investment tax credit retroactively. When the tax reform conference report was adopted on August 16, 1986, and was made public on September 18, 1986, the industry and potential purchasers of general aviation aircraft became aware of the transition rule on aircraft purchases.

It doesn't make much sense to me to provide a windfall to taxpayers who purchased aircraft after December 17, 1985, and before August 16 or September 18, 1986. It makes no sense at all to provide a windfall to taxpayers who purchased aircraft after May 29, 1986, and before August 16 or September 18, 1986. They had no legitimate expectation that they would receive the benefits of the investment tax credit for those purchases. Now, they will receive a windfall with this transition rule.

During discussions on this transition rule this issue has been raised by my staff as a way to reduce the revenue impact of this provision, which is estimated to be $27 million, and to finance extension of this provision to all U.S.-based manufacturers. A redraft of this provision to avoid this windfall was included in the Senate amendment to the concurrent resolution. By repealing this provision altogether, we can avoid the windfall which will result should the provision remain in effect and save $27 million for the Treasury.

By introducing this legislation at this time and announcing my intention to reintroduce it at the beginning of the next Congress, I am providing full notice to all those who are in the market for buying aircraft that they cannot rely on this rule. In calculating the cost to them of any such purchase, they would be wise not to take this transition rule into account. I am well aware that introduction of this legislation may create some uncertainly in the civil aviation and that is precisely what I intend to do.

I regret having to take this step. I regret that we were unable to remedy this problem with the concurrent resolution. I regret the uncertainty that introduction of this legislation will cause.

But I have been left no choice. The transition rule is unjust. It hurts companies in Arkansas. It hurts them unfairly. It hurts competition. It will cost jobs in Arkansas.

I have attempted to persuade the sponsors of this rule to repeal it or to make it apply to all U.S.-based manufacturers. The sponsors of the rule agreed to this in the Senate amendments to the concurrent resolution. They tried to remedy the problem, but their efforts and mine were frustrated by the House rejection of the Senate amendments.

Throughout the discussions I have had with those interested in this issue, I have specifically warned them that if no remedy was possible in the concurrent resolution my only recourse would be to introduce this legislation and to seek to sow as much confusion as I could in the civil aircraft market in the United States to minimize the adverse impact of the transition on the Arkansas aircraft manufacturers.

This is not my preferred strategy, but it is the only effective alternative that I have to pursue until the Congress reconvenes next year and can take action to repeal this unjust rule.

I am hopeful that the mere introduction of this legislation may do much to alleviate the injustice of the rule in the Tax Reform Act. That provision will only affect contracts entered into between now and the end of the year and for aircraft delivered before next July 1. But, to make sure that the rule in the Tax Reform Act has no effect on the market, I will pursue this matter in January and February and thereafter. I will reintroduce this legislation and I will press for a hearing on it. If I can obtain no hearing, it is relatively easy in the Senate to offer the bill as an amendment on some other bill. I expect to receive widespread support from aircraft manufacturers in the 46 States not covered by this transition rule and by their suppliers in many States.

I do not know whether I will be able to secure final enactment of this bill into law, but I am optimistic that the injustice of this transition rule will lead to remedial action by the Congress. With the introduction of this legislation, no one can come to the Congress next year complaining about the retroactive impact of this legislation. The only issue will be whether it is fair to provide transition relief for certain companies for the purpose of giving them a competitive advantage over their U.S.-based competitors.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REPEAL OF CERTAIN TRANSITION RULE.

(a) IN GENERAL.—Section 204(a) of the Tax Reform Act of 1986 is amended by repealing paragraph (11).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 1985, in taxable years ending after such date.●

SENATE CONCURRENT RESOLUTION 173—TECHNICAL CORECTIONS IN THE ENROLLMENT OF S. 2638

Mr. DOLE (for Mr. WARNER for himself and Mr. BYRD) submitted the following concurrent resolution, which was considered and agreed to:

S. CON. RES. 173

Resolved by the Senate (the House of representatives concurring), That in the enrollment of the bill (S. 2638), to authorize appropriations for fiscal year 1987 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, to improve the defense acquisition process, and for other purposes, the Secretary of the Senate shall make the following corrections:

In section 1003—

(1) strike out "likely" in subsection (a)(2) and insert in lieu thereof "possible";

(2) strike out "likely" in the first sentence of subsection (b) and insert in lieu thereof "possible";

(3) strike out all the words before "the following:" in the second sentence of subsection (b) and insert in lieu thereof "This assessment shall address, among other considerations,";

(4) strike out "December 19, 1986" in subsection (c)(2) and insert in lieu thereof "October 15, 1986";

(5) redesignate subsection (e) as subsection (d); and

(6) strike out "December 20, 1986" in subsection (d) (as redesignated by clause (2)) and insert in lieu thereof "October 16, 1986".

At the end of section 3137, add the following new subsection:

(d) The person who, on the day before the date of the enactment of this Act, was serving in the position of Chairman of the Military Liaison Committee (provided for under section 27 of the Atomic Energy Act of 1954 and repealed by subsection (c) of this section), and who was appointed to such position by the President by and with the advice and consent of the Senate, shall continue to serve, at the pleasure of the President, as the Assistant to the Secretary of Defense for Atomic Energy on and after the date of the enactment of this Act.

SENATE CONCURRENT RESOLUTION 174—CORRECTIONS IN THE ENROLLMENT OF H.R. 5300

Mr. DOLE (for Mr. PACKWOOD) submitted the following concurrent resolution, which was considered and agreed to:

S. CON. RES. 174

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal ye[illegible] 1987, the Clerk of the House of Representatives shall insert at the end of section 8081 of the bill the following: Paragraph (3) shall not apply to any authorization made by title IX of this Act.

SENATE CONCURRENT RESOLUTION 175—CORRECTING THE ENROLLMENT OF H.R. 3614

Mr. DOLE (for Mr. ROTH) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 175

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the bill (H.R. 3614) to restrict

the use of government vehicles for transportation of officers and employees of the Federal Government between their residences and places of employment, and for other purposes, the Clerk of the House of Representatives shall make the following corrections:

In section 1344 of title 31, United States Code (as amended by subsection (a) of the first section of the bill)—

(1) strike out paragraph (3) of subsection (b) of such section 1344 and insert in lieu thereof the following:

"'(3) the Postmaster General of the United States;";

(2) strike out paragraph (7) of such subsection and insert in lieu thereof the following:

"'(7) the Comptroller General of the United States;";

(3) strike out the period at the end of paragraph (8) of such subsection and insert in lieu thereof a semicolon and "and";

(4) immediately after such paragraph (8) insert the following new paragraph:

"'(9) principal diplomatic and consular officials abroad, and the United States Ambassador to the United Nations."; and

(5) in the first sentence of subsection (d)(2) of such section 1344, strike out "a period of not more than 90 additional calendar days" and insert in lieu thereof "one or more periods, each not in excess of 90 additional calendar days".

SENATE RESOLUTION 515—TENDERING THE THANKS OF THE SENATE TO THE VICE PRESIDENT

Mr. DOLE (for himself and Mr. BYRD) submitted the following resolution; which was considered and agreed to:

S. RES. 515

Resolved, That the thanks of the Senate are hereby tendered to the Honorable George H.W. Bush, Vice President of the United States and President of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the second session of the Ninety-ninth Congress.

SENATE RESOLUTION 516—TENDERING THE THANKS OF THE SENATE TO THE PRESIDENT PRO TEMPORE

Mr. BYRD (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 516

Resolved, That the thanks of the Senate are hereby tendered to the Honorable Strom Thurmond, President pro tempore of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the second session of the Ninety-ninth Congress.

SENATE RESOLUTION 517—TENDERING THE THANKS OF THE SENATE TO THE MAJORITY LEADER

Mr. THURMOND (for himself and Mr. BYRD) submitted the following resolution; which was considered and agreed to:

d S. RES. 517

Resolve , That the exemplary conduct of the distinguished Majority Leader, the Senator from Kansas, the Honorable Robert Dole, is deserving of the highest commendation of the Senate. The fair and just and able manner in which Senate business has been scheduled and managed is a source of pride to the Senate as a whole and the thanks of the Senate are hereby tendered to the Honorable Robert Dole, Majority Leader, United States Senate.

SENATE RESOLUTION 518—TENDERING THE THANKS OF THE SENATE TO THE MINORITY LEADER

Mr. THURMOND (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 518

Resolved, That the Senate extends its thanks to the distinguished Minority Leader, the Senator from West Virginia, the Honorable Robert C. Byrd. The extremely cooperative and able manner in which the Minority Leader has approached his duties as protector of the rights of the minority has been duly noted and the Senate commends the Minority Leader for his understanding, his devotion to the rules of the Senate, and for his outstanding leadership.

SENATE RESOLUTION 519—TENDERING THE THANKS OF THE SENATE TO THE SENATE STAFF

Mr. THURMOND (for himself, Mr. DOLE, and Mr. BYRD) submitted the following resolution; which was considered and agreed to:

S. RES. 519

Resolved, That the thanks of the Senate are hereby tendered to the Senate Sergeants at Arms, the Secretary of the Senate, the Secretary for the Majority, the Secretary for the Minority, and the floor staff of the two parties for the courteous, dignified, and impartial manner in which they have assisted the deliberations of the Senate during the second session of the Ninety-ninth Congress.

AMENDMENTS SUBMITTED

INDIAN HEALTH CARE IMPROVEMENT ACT AMENDMENTS

MELCHER AMENDMENT NO. 3499

Mr. BYRD (for Mr. MELCHER) proposed an amendment to the amendments of the House to the amendments of the Senate to the bill (H.R. 1426) to authorize and amend the Indian Health Care Improvement Act, and for other purposes, as follows:

After Section 713, insert the following new Section 714 and renumber the succeeding section accordingly:

"PROVISION OF SERVICE IN MONTANA

"SEC. 714. (a) The Secretary of Health and Human Services, through the Indian Health Service, shall provide services and benefits for Indians in Montana in a manner consistent with the current policy as allowed by the stay during the pending litigation in *McNabb* v. *Bowen*, 628 F. Supp. 544 (D. Mont.) (1986).

"(b) The provisions of this section shall not be considered to be an expression of the sense of the Congress on the merits of the District Court decision."

The Secretary in the consideration of any proposed contract for operation of the Flathead Indian Irrigation Project Electric Power System under P.L. 93-638 shall consult with local government bodies and the Joint Board of Control of the Flathead Indian Irrigation Project taking into consideration the interests of the electric power consumers.

Any such proposed contract shall not be submitted by the Secretary to the appropriate committees of Congress by March 15, and such proposed contract shall not be approved by the Secretary prior to May 1, 1987, and after the Secretary has consulted with said committees.

USE AND DISTRIBUTION OF CERTAIN INDIAN JUDGMENT FUNDS

MELCHER AMENDMENT NO. 3500

Mr. BYRD (for Mr. MELCHER) proposed an amendment to the bill (H.R. 3214, an act to provide for the use and distribution of funds awarded to the Cow Creek Band of Umpqua Indians in United States Claims Court Docket numbered 53-81L, and for other purposes, as follows:

At the end of the bill, add the following:

"FORT PECK RESERVATION

"SEC. 8. The Fort Peck Indian Reservation, Montana, as defined in the Act of May 1, 1888, C. 212, 25 Stat. 113, is hereby declared the permanent homeland of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation."

RELIEF OF HAMILTON JORDAN

THURMOND AMENDMENT NO. 3501

Mr. THURMOND proposed an amendment to the bill (H.R. 3363) for the relief of Hamilton Jordan, as follows:

Strike everything after the title and enacting clause and insert:

"That (a) the provisions of section 593(g) of title 28, United States Code, shall ap- ply to an application filed pursuant to section 3 of this Act by Hamilton Jordan of Lawrenceville, Georgia, for reimbursement of legal fees incurred from an investigation conducted by independent counsel pursuant to chapter 39 of such title during the period of November 29, 1979, through May 28, 1980.

(b)(1) Hamilton Jordan may include in an application filed pursuant to section 3 of this Act a request for reimbursement of

legal fees incurred during the period of August 24, 1979, through November 19, 1979, which, for purposes of this Act, shall be deemed legal fees incurred from an investigation conducted by independent counsel pursuant to chapter 39 of title 28, United States Code.

(2) For purposes of this Act, 2 percent of such fees described in paragraph (1) shall be deemed to be fees incurred from a preliminary investigation conducted by the Attorney General of the United States pursuant to the provisions of section 591 of title 28, United States Code, and, as such, are not reimbursable.

SEC. 2. The United States Court of Appeals for the District of Columbia may, in its discretion, award reimbursement for all or part of the legal fees requested pursuant to subsections (a) and (b) of the first section, except that no reimbursement shall be awarded for the legal fees described in paragraph (2) of subsection (b) of the first section that are deemed to be fees incurred from a preliminary investigation.

SEC. 3. Hamilton Jordan may file an application for the reimbursement of legal fees incurred as a result of the investigations described pursuant to the first section in the United States Court of Appeals for the District of Columbia within sixty days after the date of enactment of this Act.

WITHDRAWAL AND RESERVATION OF CERTAIN PUBLIC LANDS

McCLURE AMENDMENT NO. 3502

Mr. DOLE (for Mr. McCLURE) proposed an amendment to the bill (S. 2412) to withdraw and reserve certain public lands; as follows:

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO S. 2412

Strike all after the enacting clause and insert in lieu thereof the following:

TITLE I—MILITARY WITHDRAWALS

SECTION 1. WITHDRAWALS.

(a) BRAVO-20 BOMBING RANGE.—(1) Subject to valid existing rights and except as otherwise provided in this Act, the lands referred to in paragraph (2) of this subsection, and all other areas within the boundary of such lands as depicted on the map specified in such paragraph which may become subject to the operation of the public land laws, are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws and the mineral leasing and the geothermal leasing laws). Such lands are reserved for use by the Secretary of the Navy for—

(A) testing and training for aerial bombing, missile firing, and tactical maneuvering and air support; and

(B) subject to the requirements of section 3(f), other defense-related purposes consistent with the purposes specified in this paragraph.

(2) The lands referred to in paragraph (1) of this subsection are the public lands comprising approximately 21,576.40 acres in Churchill County, Nevada, as generally depicted on the map entitled "Bravo-20 Bombing Range Withdrawal—Proposed", dated April 1986, and filed in accordance with section 2.

(3) This section does not affect the withdrawals of July 2, 1902, August 26, 1902, and August 4, 1904, under which the Bureau of Reclamation utilizes for flooding, overflow, and seepage purposes approximately 14,750 acres of the lands withdrawn and reserved by this subsection.

(b) NELLIS AIR FORCE RANGE.—(1) Subject to valid existing rights and except as otherwise provided in this Act, the public lands described in paragraph (2) of this subsection are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws and the mineral leasing and the geothermal leasing laws). Such lands are reserved for use by the Secretary of the Air Force—

(A) as an armament and high-hazard testing area;

(B) for training for aerial gunnery, rocketry, electronic warfare, and tactical maneuvering and air support; and

(C) subject to the requirements of section 3(f), for other defense-related purposes consistent with the purposes specified in this paragraph.

(2) The lands referred to in paragraph (1) of this subsection are the lands comprising approximately 2,945,000 acres of land in Clark, Nye, and Lincoln Counties, Nevada, as generally depicted on the map entitled "Nellis Air Force Range Withdrawal—Proposed", dated January 1985, and filed in accordance with section 2.

(c) BARRY M. GOLDWATER AIR FORCE RANGE.—(1) Subject to valid existing rights and except as otherwise provided in this Act, the lands described in paragraph (2) of this subsection are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws and the mineral leasing and the geothermal leasing laws). Such lands are reserved for use by the Secretary of the Air Force for—

(A) an armament and high-hazard testing area;

(B) training for aerial gunnery, rocketry, electronic warfare, and tactical maneuvering and air support; and

(C) subject to the requirements of section 3(f), other defense-related purposes consistent with the purposes specified in this paragraph.

(2) The lands referred to in paragraph (1) of this subsection are the lands comprising approximately 2,664,423 acres in Maricopa, Pima, and Yuma Counties, Arizona, as generally depicted on the map entitled "Luke Air Force Range Withdrawal—Proposed", dated January 1985, and filed in accordance with section 2.

(d) McGREGOR RANGE.—(1) Subject to valid existing rights and except as otherwise provided in this Act, the public lands described in paragraph (2) of this subsection are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws and the mineral leasing and the geothermal leasing laws). Such lands are reserved for use by the Secretary of the Army—

(A) for training and weapons testing; and

(B) subject to the requirements of section 3(f), for other defense-related purposes consistent with the purposes specified in this paragraph.

(2) The lands referred to in paragraph (1) of this subsection are the lands comprising approximately 608,384.87 acres in Otero County, New Mexico, as generally depicted on the map entitled "McGregor Range Withdrawal—Proposed", dated January 1985, and filed in accordance with section 2.

(3) Any of the public lands withdrawn under paragraph (1) of this subsection which, as of the date of enactment of this Act, are managed pursuant to section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782) shall continue to be managed under that section until Congress determines otherwise.

(e) FORT GREELY MANEUVER AREA AND FORT GREELY AIR DROP ZONE.—(1) Subject to valid existing rights and except as otherwise provided in this Act, the lands described in paragraph (2) of this subsection are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws and the mineral leasing and the geothermal leasing laws), under an Act entitled "An Act to provide for the admission of the State of Alaska into the Union", approved July 7, 1958 (48 U.S.C. note prec. 21), and under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.). Such lands are reserved for use by the Secretary of the Army for—

(A) military maneuvering, training, and equipment development and testing; and

(B) subject to the requirements of section 3(f), other defense-related purposes consistent with the purposes specified in this paragraph.

(2) The lands referred to in paragraph (1) of this subsection are—

(A) the lands comprising approximately 571,995 acres in the Big Delta Area, Alaska, as generally depicted on the map entitled "Fort Greely Maneuver Area Withdrawal—Proposed", dated January 1985, and filed in accordance with section 2; and

(B) the lands comprising approximately 51,590 acres in the Granite Creek Area, Alaska, as generally depicted on the map entitled "Fort Greely, Air Drop Zone Withdrawal—Proposed", dated January 1985, and filed in accordance with section 2.

(f) FORT WAINWRIGHT MANEUVER AREA.—(1) Subject to valid existing rights and except as otherwise provided in this Act, the public lands described in paragraph (2) of this subsection are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws and the mineral leasing and the geothermal leasing laws), under an Act entitled "An Act to provide for the admission of the State of Alaska into the Union", approved July 7, 1958 (48 U.S.C. note prec. 21), and under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.). Such lands are reserved for use by the Secretary of the Army for—

(A) military maneuvering;

(B) training for artillery firing, aerial gunnery, and infantry tactics; and

(C) subject to the requirements of section 3(f), other defense-related purposes consistent with the purposes specified in this paragraph.

(2) The lands referred to in paragraph (1) of this subsection are the lands comprising approximately 247,951.67 acres of land in the Fourth Judicial District, Alaska, as generally depicted on the map entitled "Fort Wainwright Maneuver Area Withdrawal—Proposed", dated January 1985, and filed in accordance with section 2.

SEC. 2. MAPS AND LEGAL DESCRIPTIONS.

(a) PUBLICATION AND FILING REQUIREMENT.—As soon as practicable after the date of enactment of this Act, the Secretary of the Interior shall—

(1) publish in the Federal Register a notice containing the legal description of the lands withdrawn and reserved by this Act; and

(2) file maps and the legal description of the lands withdrawn and reserved by this Act with the Committee on Energy and Natural Resources of the United States Senate

and with the Committee on Interior and Insular Affairs of the United States House of Representatives.

(b) TECHNICAL CORRECTIONS.—Such maps and legal descriptions shall have the same force and effect as if they were included in this Act except that the Secretary of the Interior may correct clerical and typographical errors in such maps and legal descriptions.

(c) AVAILABILITY FOR PUBLIC INSPECTION.—Copies of such maps and legal descriptions shall be available for public inspection in the offices of the Director and appropriate State Directors of the Bureau of Land Management; the office of the commander, Bravo-20 Bombing Range; the offices of the Director and appropriate Regional Directors of the United States Fish and Wildlife Service; the office of the commander, Nellis Air Force Base; the office of the commander, Barry M. Goldwater Air Force Base; the office of the commander, McGregor Range; the office of the installation commander, Fort Richardson, Alaska; the office of the commander, Marine Corps Air Station, Yuma, Arizona; and the office of the Secretary of Defense.

(d) REIMBURSEMENT.—The Secretary of Defense shall reimburse the Secretary of the Interior for the cost of implementing this section.

SEC. 3. MANAGEMENT OF WITHDRAWN LANDS.

(a) MANAGEMENT BY THE SECRETARY OF THE INTERIOR.—(1) During the period of the withdrawal, the Secretary of the Interior shall manage the lands withdrawn under section 1 (except those lands within a unit of the National Wildlife Refuge System) pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and other applicable law, including the Recreation Use of Wildlife Areas Act of 1962 (16 U.S.C. 460k et seq.), and this Act. Lands within the Desert National Wildlife Range and the Cabeza Prieta National Wildlife Refuge shall be managed pursuant to the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.) and other applicable law. No provision of this Act, except sections 4, 11, and 12, shall apply to the management of the Desert National Wildlife Range or the Cabeza Prieta National Wildlife Refuge.

(2) To the extent consistent with applicable law and Executive orders, the lands withdrawn under section 1 may be managed in a manner permitting—

(A) the continuation of grazing pursuant to applicable law and Executive orders where permitted on the date of enactment of this Act;

(B) protection of wildlife and wildlife habitat;

(C) control of predatory and other animals;

(D) recreation; and

(E) the prevention and appropriate suppression of brush and range fires resulting from nonmilitary activities.

(3)(A) All nonmilitary use of such lands, other than the uses described in paragraph (2), shall be subject to such conditions and restrictions as may be necessary to permit the military use of such lands for the purposes specified in or authorized pursuant to this Act.

(B) The Secretary of the Interior may issue any lease, easement, right-of-way, or other authorization with respect to the nonmilitary use of such land only with the concurrence of the Secretary of the military department concerned.

(b) CLOSURE TO PUBLIC.—(1) If the Secretary of the military department concerned determines that military operations, public safety, or national security require the closure to public use of any road, trail, or other portion of the lands withdrawn by this Act, the Secretary may take such action as the Secretary determines necessary or desirable to effect and maintain such closure.

(2) Any such closure shall be limited to the minimum areas and periods which the Secretary of the military department concerned determines are required to carry out this subsection.

(3) Before and during any closure under this subsection, the Secretary of the military department concerned shall—

(A) keep appropriate warning notices posted; and

(B) take appropriate steps to notify the public concerning such closures.

(c) MANAGEMENT PLAN.—The Secretary of the Interior (after consultation with the Secretary of the military department concerned) shall develop a plan for the management of each area withdrawn under section 1 during the period of such withdrawal. Each plan shall—

(1) be consistent with applicable law;

(2) be subject to conditions and restrictions specified in subsection (a)(3) of this section;

(3) include such provisions as may be necessary for proper management and protection of the resources and values of such areas; and

(4) be developed not later than three years after the date of enactment of this Act.

(d) BRUSH AND RANGE FIRES.—The Secretary of the military department concerned shall take necessary precautions to prevent and suppress brush and range fires occurring within and outside the lands withdrawn under section 1 as a result of military activities and may seek assistance from the Bureau of Land Management in the suppression of such fires. The memorandum of understanding required by subsection (e) shall provide for Bureau of Land Management assistance in the suppression of such fires, and for a transfer of funds from the Department of the Navy, Army, or Air Force, as appropriate, to the Bureau of Land Management as compensation for such assistance.

(e) MEMORANDUM OF UNDERSTANDING.—(1) The Secretary of the Interior and the Secretary of the military department concerned shall (with respect to each land withdrawal under section 1) enter into a memorandum of understanding to implement the management plan developed under subsection (c). Any such memorandum of understanding shall provide that the Director of the Bureau of Land Management shall provide assistance in the suppression of fires resulting from the military use of lands withdrawn under section 1 if requested by the Secretary of the military department concerned.

(2) The duration of any such memorandum shall be the same as the period of the withdrawal of the lands under section 1.

(f) ADDITIONAL MILITARY USES.—(1) Lands withdrawn by section 1 (except those within the Desert National Wildlife Range or within the Cabeza Prieta National Wildlife Refuge) may be used for defense-related uses other than those specified in such section. The Secretary of Defense shall promptly notify the Secretary of the Interior in the event that the lands withdrawn by this Act will be used for defense-related purposes other than those specified in section 1. Such notification shall indicate the additional use or uses involved, the proposed duration of such uses, and the extent to which such additional military uses of the withdrawn lands will require that additional or more stringent conditions or restrictions be imposed on otherwise-permitted nonmilitary uses of the withdrawn land or portions thereof.

SEC. 4. SPECIAL WILDLIFE RULES.

(a) NELLIS AIR FORCE RANGE.—(1) Neither the withdrawal under section 1(b) nor any other provision of this Act shall be construed to amend—

(A) the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.) or any other law related to management of the National Wildlife Refuge System; or

(B) any Executive order or public land order in effect on the date of enactment of this Act with respect to the Desert National Wildlife Refuge.

(2) Neither the withdrawal under section 1(b) nor any other provision of this Act shall be construed to amend any memorandum of understanding between the Secretary of the Interior and the Secretary of the Air Force regarding the administration and joint use of a portion of the Desert National Wildlife Range. The provisions of the memorandum of understanding between the Secretary of the Interior and the Department of the Air Force regarding Air Force operations on the Desert National Wildlife Range in effect on March 15, 1986, shall not be amended sooner than 90 days after the Secretary of the Interior has notified the Committee on Interior and Insular Affairs of the House of Representatives, the Committee on Energy and Natural Resources of the Senate, the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Merchant Marine and Fisheries of the House of Representatives, and the Committee on Environment and Public Works of the Senate of any proposed amendments to such provisions.

(b) BARRY M. GOLDWATER AIR FORCE RANGE.—(1) Neither the withdrawal under section 1(c) nor any other provision of this Act shall be construed to amend—

(A) the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.) or any other law related to management of the National Wildlife Refuge System; or

(B) any Executive order or public land order in effect on the date of enactment of this Act with respect to the Cabeza Prieta National Wildlife Refuge.

(2) Neither the withdrawal under section 1(c) nor any other provision of this Act shall be construed to amend any memorandum of understanding between the Secretary of the Interior and the Secretary of the Air Force regarding the administration and joint use of a portion of the Cabeza Prieta National Wildlife Refuge. The provisions of the memorandum of understanding between the Secretary of the Interior and the Department of the Air Force regarding Air Force operations on the Cabeza Prieta National Wildlife Refuge in effect on March 24, 1975, shall not be amended sooner than 90 days after the Secretary of the Interior has notified the Committee on Interior and Insular Affairs of the House of Representatives, the Committee on Energy and Natural Resources of the Senate, the Committees on Armed Services of the Senate and the

House of Representatives, the Committee on Merchant Marine and Fisheries of the House of Representatives, and the Committee on Environment and Public Works of the Senate of any proposed amendments to such provisions.

SEC. 5. DURATION OF WITHDRAWALS.

(a) DURATION.—The withdrawal and reservation established by this Act shall terminate 15 years after the date of enactment of this Act.

(b) DRAFT ENVIRONMENTAL IMPACT STATEMENT.—(1) No later than 12 years after the date of enactment of this Act, the Secretary of the military department concerned shall publish a draft environmental impact statement concerning continued or renewed withdrawal of any portion of the lands withdrawn by this Act for which that Secretary intends to seek such continued or renewed withdrawal. Such draft environmental impact statement shall be consistent with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) applicable to such a draft environmental impact statement. Prior to the termination date specified in subsection (a), the Secretary of the military department concerned shall hold a public hearing on any draft environmental impact statement published pursuant to this subsection. Such hearing shall be held in the affected State or States in order to receive public comments on the alternatives and other matters included in such draft environmental impact statement.

(2)(A) For purposes of such draft environmental impact statement published by the Secretary of the Navy, the term "lands withdrawn by this Act" shall be deemed to include lands withdrawn by public land orders 275, 788, 898, and 2635 and lands proposed for withdrawal as specified in the draft environmental impact statement for the proposed master land withdrawal, Naval Air Station, Fallon, Nevada.

(B) For purposes of this subsection, lands withdrawn by section 1(b) shall be deemed to include lands withdrawn by Public Law 98-485.

(c) EXTENSIONS OR RENEWALS.—The withdrawals established by this Act may not be extended or renewed except by an Act or joint resolution.

SEC. 6. NEVADA REPORT.

(a) SPECIAL NEVADA REPORT.—No later than five years after the date of enactment of this Act, the Secretary of the Air Force, the Secretary of the Navy, and the Secretary of the Interior shall submit to Congress a joint report. In addition to the other matters required by this section, the report shall include an analysis and an evaluation of the effects on public health and safety throughout Nevada of—

(1) the operation of aircraft at subsonic and supersonic speeds;

(2) the use of aerial and other gunnery, rockets, and missiles; and

(3) the uses specified in section 1.

(b) EVALUATION OF CUMULATIVE EFFECTS OF CONTINUED OR RENEWED WITHDRAWAL.—Each of the military departments concerned and the Secretary of the Interior shall, in the report required by this section, evaluate the cumulative effects of continued or renewed withdrawal for military purposes of the military department concerned of some or all of the lands withdrawn by sections 1(a) and 1(b) on the environment and population of Nevada. In performing this evaluation, there shall be considered—

(1) the actual and proposed withdrawal for military and related purposes of other lands in Nevada, including (but not limited to)—

(A) lands withdrawn by sections 1(a) and 1(b) of this Act and by Public Law 98-485 (98 Stat. 2261);

(B) lands withdrawn by Public Land Orders 275, 788, 898, and 2635;

(C) lands proposed for withdrawal as specified in the draft environmental impact statement for the proposed master land withdrawal, Naval Air Station, Fallon, Nevada; and

(D) lands withdrawn or being considered for withdrawal for use by the Department of Energy; and

(2) the cumulative impacts on public and private property in Nevada and on the fish and wildlife, cultural, historic, scientific, recreational, wilderness, and other values of the public lands of Nevada resulting from military and defense related uses of the lands withdrawn by sections 1(a) and 1(b) and the other lands described in paragraph (1) of this subsection.

(c) MITIGATION MEASURES.—The report required by this subsection shall include an analysis and an evaluation of possible measures to mitigate the cumulative effect of the withdrawal of public lands in Nevada for military and defense-related purposes, and of use of the airspaces over public lands in Nevada for such purposes, on people and property in Nevada and the fish and wildlife, cultural, historic, scientific, wilderness, and other resources and values of the public lands in Nevada (including recreation, mineral development, and agriculture).

SEC. 7. ONGOING DECONTAMINATION.

(a) PROGRAM.—Throughout the duration of the withdrawals made by this Act, the Secretary of the military department concerned, to the extent funds are made available, shall maintain a program of decontamination of lands withdrawn by this Act at least at the level of cleanup achieved on such lands in fiscal year 1986.

(b) REPORTS.—At the same time as the President transmits to the Congress the President's proposed budget for the first fiscal year beginning after the date of enactment of this Act and for each subsequent fiscal year, each such Secretary shall transmit to the Committees on Appropriations, Armed Services, and Energy and Natural Resources of the Senate and to the Committees on Appropriations, Armed Services, and Interior and Insular Affairs of the House of Representatives a description of the decontamination efforts undertaken during the previous fiscal year on such lands and the decontamination activities proposed for such lands during the next fiscal year including:

(1) amounts appropriated and obligated or expended for decontamination of such lands;

(2) the methods used to decontaminate such lands;

(3) amount and types of contaminants removed from such lands;

(4) estimated types and amounts of residual contamination on such lands; and

(5) an estimate of the costs for full decontamination of such lands and the estimate of the time to complete such decontamination.

SEC. 8. REQUIREMENTS FOR RENEWAL.

(a) NOTICE AND FILING.—(1) No later than three years prior to the termination of the withdrawal and reservation established by this Act, the Secretary of the military department concerned shall advise the Secretary of the Interior as to whether or not the Secretary of the military department concerned will have a continuing military need for any of the lands withdrawn under section 1 after the termination date of such withdrawal and reservation.

(2) If the Secretary of the military department concerned concludes that there will be a continuing military need for any of such lands after the termination date, that Secretary shall file an application for extension of the withdrawal and reservation of such needed lands in accordance with the regulations and procedures of the Department of the Interior applicable to the extension of withdrawals of lands for military uses.

(3) If, during the period of withdrawal and reservation, the Secretary of the military department concerned decides to relinquish all or any of the lands withdrawn and reserved by this Act, such Secretary shall file a notice of intention to relinquish with the Secretary of the Interior.

(b) CONTAMINATION.—(1) Before transmitting a notice of intention to relinquish pursuant to subsection (a), the Secretary of Defense, acting through the military department concerned, shall prepare a written determination concerning whether and to what extent the lands that are to be relinquished are contaminated with explosive, toxic, or other hazardous materials.

(2) A copy of such determination shall be transmitted with the notice of intention to relinquish.

(3) Copies of both the notice of intention to relinquish and the determination concerning the contaminated state of the lands shall be published in the Federal Register by the Secretary of the Interior.

(c) DECONTAMINATION.—If any land which is the subject of a notice of intention to relinquish pursuant to subsection (a) is contaminated, and the Secretary of the Interior, in consultation with the Secretary of the military department concerned, determines that decontamination is practicable and economically feasible (taking into consideration the potential future use and value of the land) and that upon decontamination, the land could be opened to operation of some or all of the public land laws, including the mining laws, the Secretary of the military department concerned shall decontaminate the land to the extent that funds are appropriated for such purpose.

(d) ALTERNATIVES.—If the Secretary of the Interior, after consultation with the Secretary of the military department concerned, concludes that decontamination of any land which is the subject of a notice of intention to relinquish pursuant to subsection (a) is not practicable or economically feasible, or that the land cannot be decontaminated sufficiently to be opened to operation of some or all of the public land laws, or if Congress does not appropriate a sufficient amount of funds for the decontamination of such land, the Secretary of the Interior shall not be required to accept the land proposed for relinquishment.

(e) STATUS OF CONTAMINATED LANDS.—If, because of their contaminated state, the Secretary of the Interior declines to accept jurisdiction over lands withdrawn by this Act which have been proposed for relinquishment, or if at the expiration of the withdrawal made by this Act the Secretary of the Interior determines that some of the lands withdrawn by this Act are contaminated to an extent which prevents opening such contaminated lands to operation of the public land laws—

(1) the Secretary of the military department concerned shall take appropriate steps to warn the public of the contaminated

state of such lands and any risks associated with entry onto such lands;

(2) after the expiration of the withdrawal, the Secretary of the military department concerned shall undertake no activities on such lands except in connection with decontamination of such lands; and

(3) the Secretary of the military department concerned shall report to the Secretary of the Interior and to the Congress concerning the status of such lands and all actions taken in furtherance of this subsection.

(f) REVOCATION AUTHORITY.—Notwithstanding any other provisions of law, the Secretary of the Interior, upon deciding that it is in the public interest to accept jurisdiction over lands proposed for relinquishment pursuant to subsection (a), is authorized to revoke the withdrawal and reservation established by this Act as it applies to such lands. Should the decision be made to revoke the withdrawal and reservation, the Secretary of the Interior shall publish in the Federal Register an appropriate order which shall—

(1) terminate the withdrawal and reservation;

(2) constitute official acceptance of full jurisdiction over the lands by the Secretary of the Interior; and

(3) state the date upon which the lands will be opened to the operation of some or all of the public lands laws, including the mining laws.

SEC. 9. DELEGABILITY.

(a) DEFENSE.—The functions of the Secretary of Defense or of a military department under this title may be delegated.

(b) INTERIOR.—The functions of the Secretary of the Interior under this title may be delegated, except that an order described in section 7(f) may be approved and signed only by the Secretary of the Interior, the Under Secretary of the Interior, or an Assistant Secretary of the Department of the Interior.

SEC. 10. WATER RIGHTS.

Nothing in this Act shall be construed to establish a reservation to the United States with respect to any water or water right on the lands described in section 1 of this Act. No provision of this Act shall be construed as authorizing the appropriation of water on lands described in section 1 of this Act by the United States after the date of enactment of this Act except in accordance with the law of the relevant State in which lands described in section 1 are located. This section shall not be construed to affect water rights acquired by the United States before the date of enactment of this Act.

SEC. 11. HUNTING, FISHING, AND TRAPPING.

All hunting, fishing, and trapping on the lands withdrawn by this Act shall be conducted in accordance with the provisions of section 2671 of title 10, United States Code, except that hunting, fishing, and trapping within the Desert National Wildlife Range and the Cabeza Prieta National Wildlife Refuge shall be conducted in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.), the Recreation Use of Wildlife Areas Act of 1962 (16 U.S.C. 460k et seq.), and other laws applicable to the National Wildlife Refuge System.

SEC. 12. MINING AND MINERAL LEASING.

(a) DETERMINATION OF LANDS SUITABLE FOR OPENING.—As soon as possible after the enactment of this Act and at least every five years thereafter, the Secretary of the Interior shall determine, with the concurrence of the Secretary of the military department concerned, which public and acquired lands (except as provided in this subsection) described in subsections (a), (b), (d), (e), and (f) of section 1 of this Act the Secretary of the Interior considers suitable for opening to the operation of the Mining Law of 1872, the Mineral Lands Leasing Act of 1920, as amended, the Mineral Leasing Act for Acquired Lands of 1947, the Geothermal Steam Act of 1970, or any one or more of such Acts. The Secretary of the Interior shall publish a notice in the Federal Register listing the lands determined suitable pursuant to this section and specifying the opening date, except that lands contained within the Desert National Wildlife Range in Nevada or within the Cabeza Prieta National Wildlife Refuge in Arizona shall not be determined to be suitable for opening pursuant to this section.

(b) OPENING LANDS.—On the day specified by the Secretary of the Interior in a notice published in the Federal Register pursuant to subsection (a), the land identified under subsection (a) as suitable for opening to the operation of one or more of the laws specified in subsection (a) shall automatically be open to the operation of such laws without the necessity for further action by either the Secretary or the Congress.

(c) EXCEPTION FOR COMMON VARIETIES.—No deposit of minerals or materials of the types identified by section 3 of the Act of July 23, 1955 (69 Stat. 367), whether or not included in the term "common varieties" in that Act, shall be subject to location under the Mining Law of 1872 on lands described in section 1.

(d) REGULATIONS.—The Secretary of the Interior, with the advice and concurrence of the Secretary of the military department concerned shall promulgate such regulations to implement this section as may be necessary to assure safe, uninterrupted, and unimpeded use of the lands described in section 1 for military purposes. Such regulations shall also contain guidelines to assist mining claimants in determining how much, if any, of the surface of any lands opened pursuant to this section may be used for purposes incident to mining.

(e) CLOSURE OF MINING LANDS.—In the event of a national emergency or for purposes of national defense or security, the Secretary of the Interior, at the request of the Secretary of the military department concerned, shall close any lands that have been opened to mining or to mineral or geothermal leasing pursuant to this section.

(f) LAWS GOVERNING MINING ON LANDS WITHDRAWN UNDER THIS ACT.—(1) Except as otherwise provided in this Act, mining claims located pursuant to this Act shall be subject to the provisions of the mining laws. In the event of a conflict between those laws and this Act, this Act shall prevail.

(2) All mining claims located under the terms of this Act shall be subject to the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(g) PATENTS.—(1) Patents issued pursuant to this Act for locatable minerals shall convey title to locatable minerals only, together with the right to use so much of the surface as may be necessary for purposes incident to mining under the guidelines for such use established by the Secretary of the Interior by regulation.

(2) All such patents shall contain a reservation to the United States of the surface of all lands patented and of all nonlocatable minerals on those lands.

(3) For the purposes of this section, all minerals subject to location under the Mining Law of 1872 are referred to as "locatable minerals".

(h) REVOCATION.—Notwithstanding any other provision of law, the Secretary of the Interior, if the Secretary determines it necessary and appropriate for the purpose of consummating an exchange of lands or interests therein under applicable law, is hereby authorized and directed to revoke the Small Tract Act Classification S.T.049794 in Clark County, Nevada.

SEC. 13. IMMUNITY OF UNITED STATES.

The United States and all departments or agencies thereof shall be held harmless and shall not be liable for any injuries or damages to persons or property suffered in the course of any mining or mineral or geothermal leasing activity conducted on lands described in section 1 of this Act.

SEC. 14. SHORT TITLE.

Sections 1 through 15 of this Act may be cited as the "Military Lands Withdrawal Act of 1986".

SEC. 15. REDESIGNATION.

The Luke Air Force Range in Arizona is hereby redesignated as the "Barry M. Goldwater Air Force Range". Any reference in any law, regulation, document, record, map, or other paper of the United States to the Luke Air Force Range shall be deemed to be a reference to the "Barry M. Goldwater Air Force Range".

TITLE II—CUYAHOGA VALLEY NATIONAL RECREATION AREA

SECTION 201. BOUNDARY ADJUSTMENT.

Section 2 of the Act entitled "An Act to provide for the establishment of the Cuyahoga Valley National Recreation Area", approved December 27, 1974 (16 U.S.C. 460ff et seq.) is amended as follows:

(1) In subsection (a), strike "numbered 655-901,001-A and dated May 1987" and insert "numbered 644-80,054 and dated July 1986".

(2) At the end of subsection (a), insert the following:

"The recreation areas shall also comprise any lands designated as 'City of Akron Lands' on the map referred to in the first sentence which are offered as donations to the Department of the Interior or which become privately owned. The Secretary shall revise such map to depict such lands as part of the recreation area.".

(3) In subsection (b), after the first sentence, insert the following:

"The Secretary may not acquire fee title to any lands included within the recreation area in 1986 which are designated on the map referred to in subsection (a) as 'Scenic Easement Acquisition Areas'. The Secretary may acquire only scenic easements in such designated lands. Unless consented to by the owner from which the easement is acquired, any such scenic easement may not prohibit any activity, the subdivision of any land, or the construction of any building or other facility if such facility, subdivision, or construction would have been permitted under laws and ordinances of the unit of local government in which such land was located on April 1, 1986, as such laws and ordinances were in effect on such date.".

TITLE III—FEDERAL ONSHORE COMPETITIVE OIL AND GAS LEASING ACT OF 1986

SEC. 301. This title may be cited as the "Federal Onshore Competitive Oil and Gas Leasing Act of 1986".

SEC. 302. (a) Section 17(b)(1) of the Act of February 25, 1920 (30 U.S.C. 226(b)(1)), is amended to read as follows:

"(b)(1) All lands to be leased which are not subject to leasing under paragraph (2) of this subsection shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than two thousand five hundred and sixty acres, except in Alaska, where units shall be not more than five thousand one hundred and twenty acres, which shall be as nearly compact as possible. Lease sales shall be conducted by oral bidding. Lease sales shall be held for each State where eligible lands are available at least every two months, and more frequently if the Secretary determines such sales are necessary. A lease shall be conditioned upon the payment of a royalty of 12.5 per centum in amount or value of the production removed or sold from the lease. The Secretary shall establish by regulation a minimum acceptable price which shall be the same for all leases and which is at least $20 per acre. The Secretary shall accept the highest bid from a responsible qualified bidder which is equal to or greater than the minimum acceptable price, without evaluation of the value of the lands proposed for lease. Leases shall be issued within sixty days following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year. All bids for less than the minimum acceptable price shall be rejected. Lands for which no bids are received or for which the highest bid is less than the minimum acceptable price shall promptly be offered for leasing under subsection (c) of this section and shall remain available for leasing for a period set by the Secretary not to exceed three years after the competitive lease sale.".

(b) The first sentence of section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)), is amended to read as follows: "(1) If the lands to be leased are not leased under subsection (b)(1) of this section or are not subject to competitive leasing under subsection (b)(2) of this section, the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding. Lands to be leased under this subsection—shall be made available at least every two months. Leases shall be issued within sixty days of the date on which the Secretary identifies the first qualified applicant."

(c) Section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)), is amended by adding the following at the end thereof:

"(2)(A) Lands (i) which were posted for sale under subsection (b)(1) of this section but for which no bids were received or for which the highest bid was less than the minimum acceptable price established by the Secretary and (ii) for which, at the end of the period prescribed by the Secretary under subsection (b)(1) of this section no lease has been issued and no lease application is pending under paragraph (1) of this subsection, shall again be available for leasing only in accordance with subsection (b)(1) of this section.

"(B) The land in any lease which is issued under paragraph (1) of this subsection or under subsection (b)(1) of this section which lease terminates, expires, is canceled or is relinquished shall again be available for leasing only in accordance with subsection (b)(1) of this section.".

(d) The third sentence of section 17(d) of the Act of February 25, 1920 (30 U.S.C. 226(d)), is amended to read as follows: "A minimum royalty of not less than $1 per acre in lieu of rental shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased, except that no minimum royalty shall exceed the rental rate that would have applied before discovery.".

(e) Section 17(e) of the Act of February 25, 1920 (30 U.S.C. 226(e)), is amended by * * * adding the following at the end thereof:

"(2) In addition to the authority granted to the Secretary under Section 39 of this Act (30 U.S.C. 209), where a lessee is denied access for operations involving exploration, drilling or production on a valid lease due to prolonged environmental or other analyses, unresolved litigation, or other delays which are beyond the control of the lessee and which continue beyond 90 days after receipt by the Secretary of a written request by the lessee for access to the leasehold for such purposes, the Secretary is authorized to suspend the lease, and the term of such lease shall be extended by adding any such suspension period thereto.".

SEC. 303. The third sentence of section 30a of the Act of February 25, 1920 (30 U.S.C 187a) is amended to read as follows: "The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: *Provided, however,* That the Secretary may, in his discretion, disapprove an assignment—(1) of a separate zone or deposit under any lease, (2) of a part of a legal subdivision, or (3) of less than six hundred and forty acres outside Alaska or of less than two thousand five hundred and sixty acres within Alaska, unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas. Requests for approval of assignment or sublease shall be processed promptly by the Secretary. Except where the assignment or sublease is not in accordance with applicable law, the approval shall be given within sixty days of the date of receipt by the Secretary of a request for such approval.".

SEC. 304. The first sentence of section 31(b) of the Act of February 25, 1920 (30 U.S.C. 188(b)) is amended to read as follows:

"(b) Any lease issued after August 21, 1935, under the provisions of section 17 of this Act shall be subject to cancellation by the Secretary of the Interior after thirty days notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the leasehold contains a well capable of production of oil or gas in paying quantities, or the lease is committed to an approved cooperative or unit plan or communitization agreement under section 17(j) of this Act which contains a well capable of production of unitized substances in paying quantities.".

SEC. 305. The Act of February 25, 1920 (30 U.S.C. 181 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 43. Actions taken by the Secretary of the Interior to develop regulations and procedures for a competitive oil and gas leasing program or to hold particular lease sales shall not be subject to the requirements of section 102(2)(c) of the National Environmental Policy Act of 1969. Except as otherwise provided in this section, nothing in this Act shall be considered as affecting the application of section 102 of the National Environmental Policy Act of 1969.".

SEC. 306. Section 1008 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148) is amended as follows:

(1) Subsections (c) and (e) (16 U.S.C. 3148 (c) and (e)) are deleted in their entirety.

(2) The second sentence of section 1008(d) (16 U.S.C. 3148(d)) is deleted.

(3) Subsection (d) and (f) through (i) (16 U.S.C. 3148 (d) and (f) through (i)) are renumbered subsections (c) through (g) respectively.

SEC. 307 (a) (1) Lands to be leased which were available for noncompetitive oil and gas leasing pursuant to section 17(c) of the Act of February 25, 1920 (30 U.S.C. 181 et seq.) on the day prior to the enactment of this title but which were not covered by an oil and gas lease on January 1, 1986, and for which no lease application or offer was pending on the date of enactment of this title, shall be leased to the person first making application for the lease who is otherwise qualified to hold a lease under the Act of February 25, 1920 without competitive bidding. The authority to issue leases as provided in this paragraph shall expire fifty months from the date of enactment of this Title: *Provided;* that applications for leases filed pursuant to this paragraph which are pending on such expiration date shall be processed and leases issued under the authority of this paragraph except where the issuance of any such leases would not be lawful under Sec. 17(c) of the Act of February 25, 1920 as in effect on the day prior to enactment of this title or under other applicable law.

(a)(2). No land may be leased under paragraph (a)(1) of this section if it is within the State of Arkansas or if, on the date of enactment of this title, it: (i) is under study for inclusion in a known geological structure of a producing oil or gas field or in a favorable petroleum geological province; (ii) was referred to a surface managing agency (other than the Bureau of Land Management) for a recommendation or consent regarding leasing and no lease application, offer or bid is pending; or (iii) is within the Overthrust Belt area of Wyoming as defined by the Director, Bureau of Land Management, by memorandum dated February 24, 1986. Lands to be leased which are covered by this paragraph shall be leased in accordance with subsection 302(a) of this title. The Secretary of the Interior shall publish in the Federal Register within 90 days from the date of enactment of this title a list of lands covered by this paragraph.

(b) Notwithstanding any other provision of this title and except as provided in paragraph (e) of this section, all noncompetitive oil and gas lease applications filed pursuant to regulations governing the simultaneous oil and gas leasing system (43 CFR subpart 3112) and pending on the date of enactment of this title shall be processed, and leases shall be issued within sixty days following the date of enactment of this title under the provisions of the Act of February 25, 1920 (30 U.S.C. 181 et seq.), as in effect before its amendment by this title, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If the date of enactment of this title occurs during a simultaneous filing period prescribed by the regulations of the Department of the Interior, all applications filed during that period shall be considered filed prior to the date of enactment.

(c) Notwithstanding any other provision of this title and except as provided in paragraph (e) of this section, all noncompetitive oil and gas lease offers filed pursuant to regulations governing the over-the-counter leasing system (43 CFR subpart 3111) prior to October 1, 1986, shall be processed, and

leases shall be issued within sixty days following the date of enactment of this title under the Act of February 25, 1920 (30 U.S.C. 181 et seq.), as in effect before its amendment by this title, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If the Secretary posts tracts for competitive sale containing lands in an over-the-counter noncompetitive lease offer filed between October 1, 1986, and the date of enactment of this title, and if any such tracts do not receive bids greater than or equal to the minimum acceptable price established by the Secretary at the sale, the Secretary shall reinstate the noncompetitive lease offers for these tracts and shall issue leases in accordance with section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)).

(d) Notwithstanding any other provision of this title, all competitive oil and gas lease bids filed pursuant to applicable regulations (43 CFR subpart 3120) pending on the date of enactment of this title shall be processed, the high bid for each tract shall be accepted without further evaluation of the value of the tract, and leases shall be issued within sixty days following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year, under the Act of February 20, 1920 (30 U.S.C. 181 et seq.), as in effect before its amendment by this title, except where the issuance of any such lease would not be lawful under such provisions or other applicable law.

(e) No noncompetitive lease applications or offers pending on the date of enactment of this title for lands within the Shawnee National Forest, Illinois, the Ouachita National Forest, Arkansas, Fort Chaffee, Arkansas, or Eglin Air Force Base, Florida, shall be processed until these lands are posted for competitive bidding in accordance with section 302 of this title. If any such tract receives no bid greater than or equal to the minimum acceptable price established by the Secretary then the noncompetitive applications or offers pending for such a tract shall be reinstated and noncompetitive leases issued, under the Act of February 20, 1920 (30 U.S.C. 181 *et seq.*), as in effect before its amendment by this Act, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If competitive leases are issued for any such tract, then the pending noncompetitive application or offer shall be rejected.

SEC. 308. (a) Except as provided in Section 307 of this title, all oil and gas leasing pursuant to the Act of February 25, 1920 (30 U.S.C. 181 et seq.), after the date of enactment of this title shall be conducted in accordance with the provisions of this title.

(b) The Secretary shall issue final regulations within one hundred and eighty days after the date of enactment of this title. The regulations shall be effective when published in the Federal Register. The environmental and economic impacts of this title having been fully considered by the Congress, the Secretary shall not prepare any environmental, economic, or small business impact analyses, which may otherwise be required by law or Executive Order, when he prepares proposed regulations or adopts final regulations implementing this title.

(c)(1) Prior to issuing regulations implementing this title, the Secretary shall hold at least one competitive lease sale pursuant to Section 302 of this title. Sale procedures shall be established in the notice of sale. This sale shall include tracts which, but for the enactment of this title, would have been posted for the filing of simultaneous oil and gas lease applications pursuant to applicable regulations (43 CFR Subpart 3112). The Secretary may also include in the sale tracts which would otherwise have been posted for competitive sale pursuant to applicable regulations (43 CFR subpart 3120) and tracts which received over-the-counter noncompetitive oil and gas lease offers pursuant to applicable regulations (43 CFR subpart 3111) between October 1, 1986, and the date of enactment of this title. The Secretary may hold additional sales if he considers it necessary prior to the issuance of final regulations pursuant to subsection (b) of this section.

(2) If tracts which would, but for the enactment of this title have been posted for the filing of simultaneous applications do not receive bids of greater than or equal to the minimum acceptable price established by the Secretary at a competitive sale held under this section, they shall subsequently be posted for the filing of simultaneous applications provided the Secretary has not yet issued regulations under subsection (b) of this section.

(3) If no competitive or noncompetitive leases are issued for lands posted for sale as provided in paragraph (c) of this section, the Secretary shall lease such tracts in accordance with the regulations issued pursuant to paragraph (b) of this section.

SEC. 309. The Act of February 25, 1920 (30 U.S.C. 181 et seq.) is amended by inserting after section 40 the following new section:

"SEC. 41(a) Any person shall be liable under the standards set forth in subsections (c) and (d) of this section if that person misrepresents to the public, by any means of communication, the following:

"(1) The value or potential value of any lease or portion thereof issued under this Act;

"(2) the value or potential value of any lease or portion thereof to be issued under this Act;

"(3) the value or potential value of any land available for leasing under this Act;

"(4) the availability of any land for leasing under this Act;

"(5) the ability of the person to obtain leases under the Act on his or her own behalf or on behalf of any other person;

"(6) the provisions of this Act and its implementing regulations.

"(b) Any person who organizes, or participates in, any scheme, arrangement, plan, or agreement to circumvent the provisions of this Act or its implementing regulations shall be liable under the provisions of this section.

"(c) The Attorney General shall institute against any person who, given the nature of the intended recipient of the communication, knew or should have known he or she was violating subsection (a) or (b) or this section, a civil action, in the district court of the United States for the judicial district which the defendant resides or in which the violation occurred in which the lease or land involved is located, for a temporary restraining order, injunction, civil penalty of not more than $100,000 for each violation, or other appropriate remedy, including but not limited to, a prohibition from participation in exploration, leasing, or development of any federal mineral, or both.

"(d) Any person who knowingly and willfully violates the provisions of this section shall, upon conviction, be punished by a fine of not more than $500,000 for each violation or by imprisonment for not more than five years, or both.

"(e)(1) Whenever a corporation or other entity is subject to civil or criminal action under this section, any officer, employee, or agent of such corporation or entity who authorized, ordered, or carried out the proscribed activity shall be subject to the same action.

"(2) Whenever any officer, employee, or agent of a corporation or other entity is subject to civil or criminal action under this section for activity conducted on behalf of the corporation or other entity, the corporation or other entity shall be subject to the same action, unless it is shown that the officer, employee, or agent was acting without the knowledge or consent of the corporation or other entity.

"(f) The remedies, penalties, fines, and imprisonment prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies, penalties, fines, and imprisonment prescribed in this section shall be in addition to any other remedies, penalties, fines and imprisonment afforded by any other law or regulation.

"(g)(1) A state may commence a civil action under section (c) of this section against any person conducting activity within the state in violation of this section. Civil actions brought by a state shall only be brought in the United States district court for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order appropriate remedies and penalties as described in subsection (c) of this section.

"(2) the state shall notify the Attorney General of the United States of any civil action filed by the State under this subsection within thirty days of filing of the action.

"(3) Any civil penalties recovered by a State under this subsection shall be retained by the state and may be expended in such manner and for such purposes as the state deems appropriate. If a civil action is jointly brought by the Attorney General and a state, by more than one state or by the Attorney General and more than one state, any civil penalties recovered as a result of the joint action shall be shared by the parties bringing the action in accordance with a written agreement entered into prior to the filing of the action.

"(4) Nothing in this section shall deprive a state of jurisdiction to enforce its own civil and criminal laws against any person who may also be subject to civil and criminal action under this section.".

SEC. 310. Section 35 of the act of February 25, 1920 (30 U.S.C. 191) is amended by adding the following at the end of the action:

"In determining the amount of payments to states under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States.".

SEC. 311. The Secretary shall submit annually to the Congress a report containing appropriate information to facilitate congressional monitoring of this title. Such report shall include but not be limited to:

(a) The number of acres leased, and the number of leases issued, competitively and noncompetitively;

(b) the amount of revenue received from bonus bids, filing fees, rentals and royalties;

(c) the amount of production from competitive and noncompetitive leases; and

(d) such other data and information as will facilitate—(i) an assessment of the onshore oil and gas leasing system, and (ii) a comparison of the system as revised by this title with the system in operation prior to the enactment of this title.

SETTLEMENT OF INDIAN LAND CLAIMS IN GAY HEAD, MA

ANDREWS AMENDMENT NO. 3503

Mr. DOLE. (for Mr. ANDREWS) proposed an amendment to the bill (H.R. 2868) to settle Indian land claims in the town of Gay Head, MA, and for other purposes; as follows:

On page 15, line 14, strike all through line 2, on page 22,

On page 22, line 3, strike out "title III", and insert in lieu thereof: "Title II".

FEDERAL RECREATIONAL BOATING SAFETY PROGRAMS

STEVENS AMENDMENT NO. 3504

Mr. DOLE. (for Mr. STEVENS) proposed an amendment to the bill (H.R. 4731) to amend chapter 131 of title 46, United States Code, relating to the Federal recreational boating safety program, and for other purposes, as follows:

H.R. 4731 is amended by—

(a) in section 2(b) by striking out "section 12110(b)(2)" and inserting in lieu thereof "section 13110(b)(2)";

(b) by striking paragraph 3(a)(2); and

(c) by inserting at the end thereof the following new section:

"SEC. 6. The authority of the Secretary of Commerce to make loans under paragraph (1) of subsection (d) of section 308 of the Coastal Zone Management Act of 1972 (Public Law 92-583, 16 U.S.C. 1451, *et. seq.*) as amended, shall extend beyond September 30, 1986, for loans made to eligible states or units pursuant to and in accord with agreements entered into between the Secretary and any state prior to September 30, 1986, that provided for a total sum of loans to be made to that state or its units, where and to the extent loans had not been made in that total amount by September 30, 1986."

METZENBAUM AMENDMENT NO. 3505

Mr. BYRD (for Mr. METZENBAUM) proposed an amendment to amendment No. 3504 proposed by Mr. DOLE. (for Mr. STEVENS) to the bill H.R. 4731, supra, as follows:

Amendment number 3504 to H.R. 4731 is amended by—

(A) striking out "beyond September 30, 1986" and inserting in lieu thereof "to September 30, 1987"; and

(B) striking out "where and to the extent loans had not been made in that total amount by September 30, 1986." and inserting in lieu thereof "but such loan authority shall be limited to $7,000.000."

HOLLINGS AMENDMENT NO. 3506

Mr. BYRD (for Mr. HOLLINGS) proposed an amendment to the bill H.R. 4731, supra, as follows:

At the end of the bill, add the following:

SEC. 6. AMENDMENT TO THE COASTAL ZONE MANAGEMENT ACT OF 1972.

Section 318 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1464) is amended by adding at the end thereof the following:

"(d) The amount of any grant, or portion of a grant, made to a State under any section of this Act which is not obligated by such State during the fiscal year, or during the second fiscal year after the fiscal year, for which it was first authorized to be obligated by such State shall revert to the Secretary. The Secretary shall add such reverted amount to those funds available for grants under the section for which such reverted amount was originally made available.".

INSPECTOR GENERAL ACT AMENDMENTS

ROTH AMENDMENT NO. 3507

Mr. DOLE (for Mr. ROTH) proposed an amendment to the bill (S. 2005) to amend the Inspector General Act of 1978, as follows:

On page 15, strike out line 24 and insert in lieu thereof "service, or with regard to the Tennessee Valley Authority, the laws and regulations governing appointments of officers and employees in that entity."

On page 18, strike out lines 18 and 19 and insert in lieu thereof "Peace Corps, and the Office of Personnel Management."

IMPLEMENTATION OF INTER-AMERICAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION

LUGAR AMENDMENT NO. 3508

Mr. DOLE (for Mr. LUGAR) proposed an amendment to the bill (S. 1828) to implement the Inter-American Convention on International Commercial Arbitration, as follows:

Strike out section 4 of the bill and insert in lieu thereof the following:

SEC. 4. (a) Chapter 1 of title 9, United States Code, is amended by adding at the end thereof the following new section:

"§ 15. Inapplicability of the Act of State doctrine.

"Enforcement of arbitral agreements, confirmation of arbitral awards, and execution upon judgments based on orders confirming such awards shall not be refused on the basis of the Act of State doctrine.".

(b) Section 1605(a) of title 28, United States Code, is amended by—

(1) striking out "or" at the end of paragraph (4);

(2) striking out the period at the end of paragraph (5) and inserting in lieu thereof "; or"; and

(3) adding at the end thereof the following:

"(6) in which the action is brought either to enforce an agreement made by the foreign State with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607, or (D) paragraph (1) of this subsection is otherwise applicable."

(c) Section 1610(a) of title 28, United States Code, is amended by—

(1) striking out the period at the end of paragraph (5) and inserting in lieu thereof ", or"; and

(2) adding at the end thereof the following:

"(6) the judgment is based on an order confirming an arbitral award rendered against the foreign State, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement.".

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION

GORTON AMENDMENT NO. 3509

Mr. DOLE (for Mr. GORTON) proposed an amendment to the amendment of the House to the amendment of the Senate to the bill (H.R. 5495) to authorize appropriations to the National Aeronautics and Space Administration, and for other purposes, as follows:

In the amendment of the House to the Senate amendment to the House bill, H.R. 5495:

In section 111(a)—

(1) strike "The Administrator is authorized and encouraged" and insert in lieu thereof "If the Administrator, with the concurrence of the United States Trade Representative and the Secretaries of State and Commerce, determines that the public interest so requires, the Administrator is authorized"; and

(2) insert the following at the end: "In determining under this subsection whether the public interest so requires, the Administrator shall take into account United States international obligations and trade relations.".

Strike subsection (b) of section 111, and redesignate subsections (c) and (d) as subsections (b) and (c), respectively.

At the end of title I, insert the following:

"SEC. 112. (a) There is hereby established, in the Executive Office of the President, the National Space Council (hereafter in this section referred to as the 'Council'), which shall be composed of—

"(1) the Vice President, who shall be Chairman of the Council;

"(2) the Secretary of State;

"(3) the Secretary of Defense;

"(4) the Secretary of Commerce;

"(5) the Secretary of Transportation;

"(6) the Administrator, who shall be the Vice Chairman of the Council; and

"(7) such other members as the President may appoint.

"(b) In the absence of the Vice President, the Administator shall preside over meetings of the Council.

"(c) Each member of the Council may designate an officer of their department or agency to serve on the Council as their alternative in their unavoidable absence.

"(d) It shall be the function of the Council to advise the President, as the president may request, with respect to the following functions:

"(1) survey of ongoing civilian space activities;

"(2) review of long-range goals for civilian space activities;

"(3) coordination of civilian space activities among civilian agencies and with agencies involved in national security space activities; and

"(4) interagency cooperation in civilian space activities.

"(e) The Council may employ a staff to be headed by a civilian executive secretary who shall be appointed by the President. The executive secretary, subject to the direction of the Council, is authorized to appoint and fix the compensation of such personnel, including not more than seven persons, as may be necessary to perform such duties as may be prescribed by the Council in connection with the performance of its functions. Each appointment under this subsection shall be subject to the same security requirements as those established for personnel of the National Aeronautics and Space Administration appointed under section 203(c)(2) of the National Aeronautics and Space Act of 1958. Other provisions of law or regulations relating to Government employment shall apply to employees of the Council reporting directly to the Chairman to the extent that such provisions are applicable to employees in the Office of the Vice President.

"(f)(1) The Council shall establish a Users' Advisory Group composed of nine non-Federal representatives of industries and other persons involved in space activities.

"(2) The Vice President shall name a Chairman of the Users' Advisory Group.

"(3) The Council shall from time to time, but not less often than once a year, meet with the Users' Advisory Group.

"(4) The function of the Users' Advisory group is to ensure that the interests of non-Federal entities involved in space activities, including in particular commercial entities, are adequately represented in the Council.".

Strike section 307, and redesignate section 308 as section 307.

At the end, add the following:

"SEC. 602. PUBLIC WARNING AND FORECAST SERVICES.

"(a) There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its public warning and forecast service duties under law, $330,598,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to public warning and forecast specified by the Act entitle 'An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture', approved October 1, 1890 (15 U.S.C. 311 et seq.), the Act entitled 'An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes', approved August 6, 1947 (33 U.S.C. 883a et seq.), and by any other law involving such duties. Such duties include meteorological, hydrological, and oceanographic public warnings and forecasts.

"(b) Of the amount authorized to be appropriated by subsection (a) of this section, $45,500,000 is authorized to be appropriated only for activities related to the Next Generation Weather Radar Program. Such activities may include site surveys, preparation for production radars, limited radar production, initial operation test and evaluation of radars, training of personnel, release of long lead items for full production, award of the production contract, and land acquisition for radar sites.

"(c) It is the sense of the Congress that procurement and deployment of essential weather technologies, and the resultant modernization of the National Weather Service, should continue on schedule in order to improve the protection of the public and to increase the productivity of the Nation's economy. Such technologies shall include, but not be limited to, the Next Generation Weather Radar Program (NEXRAD), the Advanced Weather Interactive Processing System (AWIPS), the Automated Surface Observing System (ASOS), and the Profiler System.

"(d) At the time of submission of the fiscal year 1988 budget, the National Oceanic and Atmospheric Administration shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives a comprehensive long-range plan on how the National Weather Service shall utilize planned weather technologies to provide effective weather services to meet national needs. This plan shall address, among other things, National Weather Service office structure and organization, its staffing and budgetary profiles, its role in providing weather services to the public, and a phased plan for deployment of weather-related technology and equipment.

"SEC. 603. ATMOSPHERIC AND HYDROLOGICAL RESEARCH.

"There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its atmospheric and hydrological research duties under law, $68,044,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to atmospheric and hydrological research specified by the Act entitled 'An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture', approved October 1, 1890 (15 U.S.C. 311 et seq.,), and by any other law involving such duties. Such duties include research for developing improved prediction capabilities for atmospheric and hydrological processes.

"SEC. 604. SATELLITE SERVICES.

"There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administation to carry out its satellite services duties under law, $72,606,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to satellite services specified by the Act entitled 'An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture', approved October 1, 1890 (15 U.S.C. 311 et seq.), the National Aeronautics and Space Administration Authorization Act, 1985, approved July 16, 1984 (Public Law 98-361; 98 Stat. 422), and by any other law involving such duties. Such duties include satellite maintenance and operations and satellite data analysis.

"SEC. 605. SATELLITE SYSTEMS.

"There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administation to carry out its satellite systems duties under law, $168,139,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used by the National Oceanic and Atmospheric Administation to continue operating two polar-orbiting meteorological satellites in fiscal year 1987 and to continue procurement of polar-orbiting meteorological satellites (NOAA I-M) in fiscal year 1987. In addition, such moneys shall be used to fund those duties relating to satellite systems specified by the Act entitled 'An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture', approved October 1, 1890 (15 U.S.C. 311 et seq.), the National Aeronautics and Space Administration Authorization Act, 1985, approved July 16, 1984 (Public Law 98-361; 98 Stat. 422), and by any other law involving such duties. Such duties include spacecraft procurement, launch, and associated ground station system changes involving polar-orbiting and geostationary environmental satellites.

"SEC. 606. DATA AND INFORMATION SERVICES.

"There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administation to carry out its data and information services duties under law, $22,734,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to data and information services specified by the Act entitled 'An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture', approved October 1, 1890 (15 U.S.C. 311 et seq.), and by any other law involving such duties. Such duties include environmental data and information products and services in the atmospheric, marine, solid earth, and solar-terrestrial sciences.".

CREDIT FOR SERVICE IN THE NURSE CADET CORPS

DOLE AMENDMENT NO. 3510

Mr. DOLE proposed an amendment to the bill (H.R. 2663) to amend title 5, United States Code, to credit time spent in the Cadet Nurse Corps during World War II as creditable for civil service retirement, as follows:

At the appropriate place insert the following new section:

SEC. . RETIREMENT CREDIT FOR CERTAIN FORMER EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES.

(a) SHORT TITLE.—This section may be cited as the "Nonappropriated Fund Instrumentalities Employees' Retirement Credit Act of 1986".

(b) IN GENERAL.—(1) Section 2105(c)(1) of title 5, United States Code, is amended by

inserting "of this title, subchapter III of chapter 83 of this title to the extent provided in section 8332(b)(16) of this title," after "chapter 53".

(2) Subsection (b) of section 8332 of such title is amended—

(A) by striking out "and" at the end of paragraph (14);

(B) by striking out the period at the end of paragraph (15) and inserting in lieu thereof "; and";

(C) by inserting after paragraph (15) the following new paragraph:

"(16) service performed by any individual as an employee described in section 2105(c) of this title after June 18, 1952, and before January 1, 1966, if (A) such service involved conducting an arts and crafts, drama, music, library, service club, youth activities, sports, or recreation program (including any outdoor recreation program) for personnel of the armed forces, and (B) such individual is an employee subject to this subchapter on the day before the date of the enactment of the Nonappropriated Fund Instrumentalities Employees' Retirement Credit Act of 1966."; and

(D) by adding at the end thereof the following: "The Office of Personnel Management shall accept, for the purposes of this subchapter, the certification of the head of a nonappropriated fund instrumentality of the United States concerning service of the type described in paragraph (16) of this subsection which was performed for such nonappropriated fund instrumentality.".

(c) EFFECTIVE DATE.—Notwithstanding any other provision of this Act which specifies an effective date for amendments made by this Act, the amendments made by this section shall take effect on the date of the enactment of this Act.

Amend the title so as to read: "An Act to amend title 5, United States Code, to credit time spent in the Cadet Nurse Corps during World War II as creditable service for civil service retirement; and to provide civil service retirement credit for certain employees and former employees of nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces.

EMERGENCY RELIEF PROJECTS

STAFFORD AMENDMENT NO. 3511

Mr. DOLE (for Mr. STAFFORD) proposed an amendment to the bill (S. 2125) to amend title 23 of the United States Code to increase the limitation on the amount of obligations from $30 million to $100 million for emergency relief projects in any State resulting from any single natural disaster or catastrophic failure occurring in calendar year 1986; as follows:

At the end of the bill insert the following:

SEC. 2. Within 90 days from the effective date of this Act, the Secretary of Transportation shall amend the applicable provisions of Part 27 of Title 49 of the Code of Federal Regulations to provide that all persons who by reason of handicap, physical or mental, are unable to use the recipient's bus service for the general public shall be eligible to use the recipient's special service or on-call accessible bus service and to provide that any incremental costs incurred to accommodate the special needs of persons with mental handicaps on fixed route buses shall be eligible to be counted in determining whether the recipient has exceeded its limitation on required expenditures.

SEC. 3. The short title of the Disaster Relief Act of 1974 (Public Law 93-288) is hereby amended by deleting the words "Disaster Relief Act of 1974" and inserting in lieu thereof "Major Disaster Relief and Emergency Assistance Act".

SEC. 4. Section 102(1) of the Disaster Relief Act of 1974 (42 U.S.C. 5122(1)) is amended to read as follows:

"(1) 'Emergency' means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property, public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.".

SEC. 5. Title VIII of the Public Works and Economic Development Act of 1965, as amended (Public Law 89-136; 42 U.S.C. 3231-3236) is hereby repealed, and title V of the Disaster Relief Act of 1974 (Public Law 93-288) is hereby amended to read as follows:

"TITLE V—FEDERAL EMERGENCY ASSISTANCE PROGRAMS

"PROCEDURES

SEC. 501. (a) All requests for a determination by the President that an emergency exists shall be made by the Governor of the affected State. Such request shall be based upon the Governor's finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. The Governor's request will furnish information describing State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal air required. As a part of this request, and as a prerequisite to emergency assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. Based upon such Governor's request, the President may declare that an emergency exists.

"(b) The President may exercise any authority vested in him by section 502 and section 503 of this Act with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. The President may determine that such an emergency exists only after consultation with the Governor of the affected State, if practicable. The President's determination, however, may be made without regard to the provisions of section 501(a) of this Act.

"FEDERAL ASSISTANCE

"SEC. 502. In any emergency, the President may—

"(a) direct any Federal agency with or without reimbursement to utilize its authorities and the resources granted to it under other Acts, including but not limited to personnel, equipment, supplies, facilities, and managerial, technical and advisory services in support of State and local emergency assistance efforts to save lives and to protect property, public health and safety or to lessen or avert the threat of a catastrophe;

"(b) coordinate all Federal agencies and voluntary relief or disaster assistance organizations providing emergency assistance, and coordinate emergency assistance with State and local officials; and

"(c) provide technical and advisory assistance to affected State and local governments in the performance of essential community services, warning of risks of hazards, public information and assistance in health and safety measures, management and control, and reduction of immediate threats to public health and safety.

"EMERGENCY ASSISTANCE

SEC. 503. (a) In an emergency, when the Federal assistance provided pursuant to section 502 of this title is inadequate, the President may provide assistance to save lives and protect property, public health and safety, or to lessen or avert the threat of a catastrophe. When debris removal assistance is appropriate under this section, it shall be provided in accordance with the terms and conditions of section 406 of this Act.

"(b) In any emergency and except as provided by subsection (c) of this section, the costs of providing emergency assistance under this section shall not exceed $5,000,000 of funds appropriated to carry out this Act.

"(c) The limitation of subsection (b) of this section may be exceeded when the President determines that continued emergency assistance is immediately required; that there is a continuing and immediate risk to lives, property, public health or safety; and that necessary assistance will not otherwise be provided on a timely basis. In the event that the limitation of subsection (b) is exceeded, the President shall report to Congress on the nature and extent of the emergency assistance requirements and propose additional legislation if necessary.".

SEC. 6. Section 102(2) of the Disaster Relief Act of 1974 (42 U.S.C. 5122(2)) is amended to read as follows—

"(2) Major disaster' means any natural catastrophe, including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or any fire, flood, or explosion, regardless of cause, in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby."

SEC. 7. Title II of the Disaster Relief Act of 1974 (42 U.S.C. 5131-5132) is amended by—

(1) striking the words "(including the Defense Civil Preparedness Agency)" in section 201(a);

(2) adding the words "including evaluations of natural hazards and development of the programs and actions required to mitigate any such hazards," between the words "plans" and "except" in section 201(d); and

(3) striking "$25,000" in section 201(d) and inserting in lieu thereof "$50,000".

SEC. 8. Title II of the Disaster Relief Act of 1974 (42 U.S.C. 5141-5158) is amended by—

(1) deleting sections 301, 305, and 306 and renumbering subsequent sections appropriately;

(2) deleting the caption "FEDERAL ASSISTANCE" of section 301, as redesignated by paragraph (1) of this section, and inserting in lieu thereof "RULES AND REGULATIONS";

(3) deleting the first and second sentences of subsection (a) of section 301, as redesignated by paragraph (1) of this section, and amending the final sentence thereof by adding ", with or without reimbursement," immediately before "through"; and

(4) deleting ", or economic status" in the second sentence of section 308(a) as redesignating by paragraph (1) of this section, and adding "or" before "age,".

SEC. 9. Section 302(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5143(a)), as redesignated by section 7(1) of this Act, is amended by adding at the end thereof the following: "The Federal coordinating officer shall represent the President in coordinating the emergency or the major disaster response and recovery effort.".

SEC. 10. Sections 311 of the Disaster Relief Act of 1974 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act, is amended by redesignating subsections (a), (b), and (c) as (b), (c), and (d), respectively, and by adding at the beginning thereof a new subsection as follows:

"(a) As a condition of assistance, any public facility and private nonprofit facility which is:

"(1) located in a special flood hazard area as identified by the Director pursuant to the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.);

"(2) damaged or destroyed by flooding; and

"(3) otherwise eligible for assistance under section 405 of this Act, must be covered, on the date of the flood damage, by reasonable and adequate flood insurance. Assistance under section 405 for any such facility not so covered shall be reduced by the maximum amount of benefits which could have been received had reasonable and adequate flood insurance been in force: *Provided, however,* That this reduction of assistance shall not apply to uninsured facilities where such communities have been identified for less than one year as having special flood hazard areas. The limitations of assistance required by this subsection shall not apply until final regulations are promulgated by the President. Such regulations shall define reasonable and adequate flood insurance.".

SEC. 11. Section 312 of the Disaster Relief Act of 1974 (42 U.S.C. 5155), as redesignated by section 7(1) of this Act, is amended to read as follows:

"DUPLICATION OF BENEFITS

"SEC. 312. (a) Agencies or other organizations providing Federal assistance for needs or losses resulting from a major disaster or emergency shall assure that no person, business concern, or other entity receives any such Federal assistance if said person, business concern, or entity receives or is entitled to receive benefits for the same purposes from insurance or any other Federal or non-Federal source: *Provided,* That nothing in this section shall prohibit the provision of Federal assistance to a person, business concern, or other entity who is or may be entitled to receive benefits for the same purposes from insurance or any other Federal or non-Federal source when any such applicant for Federal assistance has not received such other benefits by the time of application for Federal assistance, so long as the applicant for Federal assistance agrees as a condition of receipt of Federal assistance to repay duplicative assistance from insurance or any other Federal or non-Federal source to the agency or other organizations providing the Federal assistance. The President shall establish such procedures as are deemed necessary to insure uniformity in preventing such duplication of benefits. Receipt of partial benefits for a loss or need resulting from a major disaster or emergency does not preclude provision of additional Federal assistance for any part of such loss or need for which benefits have not been provided.

"(b) A person, business concern, or other entity receiving Federal assistance for needs or losses resulting from a major disaster or emergency shall be liable to the United States to the extent that such Federal assistance has duplicated benefits available to the person, business concern, or other entity for the same purpose from insurance or any other Federal or non-Federal sources. The agency or other organization which provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with the Claims Collection Act of 1966, as amended, when in the best interest of the Government. The repayment shall not exceed the amount of Federal assistance received.

"(c) Federal disaster assistance and comparable disaster assistance provided by States, local governments, and disaster assistance organizations to individuals and families shall not be considered as income or a resource when determining eligibility or benefit levels for federally funded income assistance or resource tested benefit programs.".

SEC. 12 (a) Title III of the Disaster Relief Act of 1974 (42 U.S.C. 5141-5158) is amended by adding at the end thereof four new sections as follows:

"PROTECTION OF ENVIRONMENT

"SEC. 315. No action taken or assistance provided pursuant to section 402, 403, 406, 502, or 503 of this Act, or any assistance provided pursuant to section 405 of this Act that has the effect of restoring facilities substantially as they existed prior to the disaster, shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852). Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 (83 Stat. 852) to other Federal actions taken under this Act or under any other provisions of law.

"RECOVERY OF FUNDS

"SEC. 316. The Attorney General of the United States is authorized to institute actions in the United States District Court for the district in which an emergency or major disaster occurred, or in such district as otherwise provided by law, against any party whose acts or omissions may in any way have caused or contributed to the damage or hardship for which Federal assistance is provided pursuant to this Act. Upon the showing that an emergency or major disaster or the associated damage or hardship was caused in while or in part by an act or omission of such party, then such party shall be liable to the United States for the full amount of Federal expenditures made to alleviate the suffering or damage attributable to such act or omission. The authority of this section shall also apply to the recovery of Federal funds expended under the authority of section 419 of this Act for fire suppression. This section does not apply to a nuclear incident subject to the Price-Anderson Act, (42 U.S.C. 2014 and 2210).

"AUDITS AND INVESTIGATIONS

"SEC. 317. (a) The President, when deemed necessary to assure compliance with any provision of this Act related regulations, shall conduct audits and investigations and in connection therewith may enter such places and inspect such records and accounts and question such persons as deemed necessary to determine the facts relative thereto.

"(b) The President, when deemed necessary to assure compliance with any provision of this Act or related regulations, may require audits by State and local governments in connection with assistance provided under the Act.

"(c) The President and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of investigation, audit, and examination, to any books, documents, papers, and records of any person or entity relating to any activity or program undertaken or funded pursuant to this Act.

"CRIMINAL AND CIVIL PENALTIES

"SEC. 318. (a) Any person, organization, or other entity who knowingly makes a false statement or representation of a material fact, or who knowingly fails to disclose a material fact, in any application or other document in connection with a request for assistance under this Act, or who knowingly falsifies or withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such request for assistance is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

"(b) Any person, organization, or other entity who knowingly makes a false statement or representation of a material fact, or who knowingly fails to disclose a material fact, in any bill, invoice, claim, or other document requesting reimbursement for work or services performed in connection with assistance provided under this Act, or who knowingly falsifies or withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such request for reimbursement is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

"(c) Any person, organization, or other entity who knowingly misapplies the proceeds of a loan or other cash benefit obtained under any section of this Act shall be subject to a fine in an amount equal to one and one-half times the misapplied amount of the loan or cash benefit.

"(d) Whenever it appears that any person, organization, or other entity has violated or is about to violate any provision of this Act, including rules and regulations issued and civil penalties imposed, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in the district court of the United States having jurisdiction where the violation occurred or, at the option of the parties, in the United States District Court for the District of Columbia.

"(e) The President, or the duly authorized representative of the President, shall expeditiously refer to the Attorney General of the United States for appropriate action such evidence developed in the performance of functions under this Act as may be found to warrant consideration for criminal pros-

ecution under the provisions of this Act or other Federal law.".

(b) Title III of the Disaster Relief Act of 1974 is amended by deleting subsections (a) and (c) of section 314(42 U.S.C. 5157), as redesignated by section 7(1) of this Act, and by renumbering "(b)" from the remaining subsection of section 314 as subsection "(f)" of section 318 as added by section 11(a) of this Act.

(c) Title IV of the Disaster Relief Act of 1974 is amended by deleting section 405 (42 U.S.C. 5175) and by renumbering subsequent sections appropriately.

(d) Section 315 of the Disaster Relief Act of 1974 (42 U.S.C. 5158), as redesignated by section 7(1) of this Act, is further redesignated as section 314.

SEC. 13. Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5171-5189) is amended by adding three new sections as follows and by renumbering subsequent sections appropriately:

"PROCEDURES

SEC. 401. (a) All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such Governor's request shall be based upon a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of this request, and as a prerequisite to major disaster assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. He shall furnish information on the extent and nature of State resources which have been or will be used to alleviate the conditions of the disaster, and shall certify that for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will constitute the expenditure of a reasonable amount of the funds of such State an local governments for alleviating the damage, loss, hardship, or suffering resulting from such disaster, including, but not limited to, the cost-sharing provisions pursuant to sections 405, 406, 407, and 410 of this Act. Based upon such Governor's request, the President may declare that a major disaster exists.

(b) In any case where an eligible applicant (or the State) is unable to assume its financial responsibility under the cost-sharing provisions of sections 405, 406, and 407 of this Act, the President is authorized to lend or advance to the State such 25 per centum share. For the purposes of section 405, such loan or advance shall be authorized only after the occurrence of concurrent, multiple major disasters in a given jurisdiction, or the extraordinary costs of a particular major disaster, and when the damage caused by such major disasters are so overwhelming and severe that it is not possible for the applicant or the State to assume their financial responsibility under this Act immediately. Except as provided by subsection (c) of this section, any such loan or advance is to be repaid to the United States; there shall be no deferral of the repayment of loans or advances authorized by this subsection or of accrued interest. such obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideraion the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance.

"(c) The President may cancel all or any part of such loan or advance made regarding section 405 or section 406 for concurrent, multiple major disasters or a single catastrophic major disaster if a determination is made that following the three full fiscal years after the loan or advance is made, the applicant demonstrates substantial and continuing inability to repay all or part of the loan or advance.

"(d) The President shall issue regulations describing the terms and conditions under which any loans or advances authorized by this section may be made or canceled.

"FEDERAL ASSISTANCE

"SEC. 402. In any major disaster, the President may—

"(a) direct any Federal agency with or without reimbursement to utilize its authorities and the resources granted to it under other Acts including, but not limited to, personnel, equipment, supplies, facilities, and managerial, technical, and advisory services in support of State and local assistance efforts;

"(b) coordinate all Federal agencies and voluntary relief or disaster assistance organizations providing disaster assistance, and coordinate disaster assistance with State and local officials; and

"(c) provide technical and advisory assistance to affected State and local governments in the performance of essential community services, warning of risks and hazards, public information and assistance in health and safety measures, management and control, and reduction of immediate threats to public health and safety.

"COOPERATION OF FEDERAL AGENCIES IN RENDERING DISASTER ASSISTANCE

"SEC. 403. (a) In any major disaster, Federal agencies are hereby authorized, on the direction of the President, to provide assistance by—

"(1) utilizing or lending, with or without compensation therefor, to States and local governments, their equipment, supplies, facilities, personnel, and other resources, other than the extension of credit under the authority of any Act;

"(2) distributing or rendering, through the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations, or otherwise, medicine, food, and other consumable supplies, other services to disaster victims or emergency assistance;

"(3) donating or lending equipment and supplies, including that determined in accordance with applicable laws to be surplus to the needs and responsibilities of the Federal Government, to State and local governments for use or distribution by them for the purposes of this Act; and

"(4) performing on public or private lands or waters any emergency work or services essential to save lives and to protect and preserve property, public health and safety, including, but not limited to: Search and rescue, emergency medical care, emergency mass care, emergency shelter, and provisions of food, water, medicine, and other essential needs, including movement of supplies or persons; construction of temporary bridges necessary to the performance of emergency tasks and essential community services; provision of temporary facilities for schools and other essential community services; warning of further risk and hazards; public information and assistance on health and safety measures; technical advice to State and local government on disaster management and control; reduction of immediate threats to life, property, and public health and safety; and making contributions to State or local governments for the purpose of carrying out the provisions of this paragraph. Such contributions for emergency work under this section and section 402 of this Act shall not exceed 100 per centum of the net eligible cost, or for small projects 100 per centum of the Federal estimate of the net eligible cost, of such emergency work or services performed by State and local governments: *Provided*, That where debris removal assistance is appropriate under this section or section 402 of this Act it shall be provided in accordance with the terms and conditions of section 406 of this Act.".

SEC. 14. (a) Section 405 of the Disaster Relief Act of 1974 (42 U.S.C. 5172), as redesignated by section 12 of this Act, is amended to read as follows:

"(a) The President is authorized to make contributions to State or local governments, to help repair, restore, reconstruct, or replace public facilities belonging to such State or local government which were damaged or destroyed by a major disaster. Notwithstanding any other provision of law, such contribution shall be limited to 75 per centum of the net eligible cost, or for small projects 75 per centum of the Federal estimate of the eligible cost, of repairing, restoring, reconstructing, or replacing any such facility estimated on the basis of the design of such facility as it existed immediately prior to such major disaster and in conformity with current applicable codes, specifications, and standards. For the purposes of this section, 'public facility' includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility, any non-Federal-aid street, road, or highway, any other public building, structure, or system including those used for educational or recreational purposes, and any park.

"(b) The President is authorized to make contributions to help repair, restore, reconstruct, or replace eligible private nonprofit facilities which were damaged or destroyed by a major disaster. Notwithstanding any other provision of law, such contributions shall be 75 per centum of the net eligible cost, or for small projects 75 per centum of the Federal estimate of the net eligible cost, of repairing, restoring, reconstructing, or replacing any such facility estimated on the basis of the design of such facility as it existed immediately prior to such major disaster and in conformity with current applicable codes, specifications, and standards. For the purposes of this section, 'eligible private nonprofit facility' means private nonprofit educational, utility, emergency, medical, and custodial care facilities, including those for the aged and disabled, and such private nonprofit facilities on Indian reservations, which were damaged or destroyed by a major disaster.

"(c) No authority under this section shall be exercised unless the affected State, local government, or eligible private nonprofit organization first agrees that such facility shall be repaired, restored, reconstructed, or replaced in compliance with flood plain management and hazard mitigation criteria required by the President, with the provisions of the Coastal Barrier Resources Act and other applicable Federal statutes, and in conformity with other applicable codes, specifications, and standards, except as otherwise provided in section 315 of this Act.

"(d) For those facilities eligible under this section which were in the process of construction when damaged or destroyed by a major disaster, the contribution shall be 75 per centum of the net eligible costs of restoring such facilities substantially to their predisaster condition: *Provided,* That the term 'net eligible costs' shall not include cost which, under a contract, are the responsibility of a contractor.

"(e) In those cases, except for small projects, where a State or local government determines that public welfare would not be best served by repairing, restoring, reconstructing, or replacing particular public facilities owned or controlled by that State or that local government and which have been damaged or destroyed in a major disaster, it may elect to receive, in lieu of the contribution described in subsection (a) of this section, a contribution that shall be 50 per centum of the Federal estimate of the net eligible cost of repairing, restoring, reconstructing, or replacing such damaged facilities owned by it within its jurisdiction. The cost of repairing, restoring, reconstructing, or replacing damaged or destroyed public facilities shall be estimated on the basis of the design of each facility as it existed immediately prior to such disaster and in conformity with current applicable codes, specifications, and standards. Funds contributed under this subsection may be expended either to repair or restore certain selected damaged public facilities or to construct new public facilities which the State or local government determines to be necessary to meet its needs for governmental services and functions in the disaster-affected area.".

(b) The Disaster Relief Act of 1974 is amended by deleting section 421 (42 U.S.C. 5189), as redesignated by sections 11(c) and 12 of this Act, and by striking "or 419" each place that this phrase appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act.

(c) Section 406 of the Disaster Relief Act of 1974 (42 U.S.C. 5173), as redesignated by section 12 of this Act, is amended by adding at the end thereof the following:

"(c) Notwithstanding any other provision of law, whether carried out directly through Federal departments, agencies, or instrumentalities or through grants to State or local governments, Federal assistance provided under authority of this section shall be 75 per centum of the net eligible costs, or for small projects 75 per centum of the Federal estimate of the net eligible costs, of debris removal.".

SEC. 15. Section 407(a) of the Disaster Relief Act of 1974, as redesignated by section 12 of this Act, is amended to read as follows:

"(a) The President is authorized to provide, either by purchase or lease, temporary housing including, but not limited to, unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings for those who, as a result of a major disaster, require temporary housing. Whenever he determines it to be in the public interest, the President is authorized to provide temporary housing assistance by using Federal departments, agencies, or instrumentalities. In addition, the President is authorized to provide temporary housing assistance by contributing not to exceed 100 per centum (or 75 per centum for group site development pursuant to paragraph (2) of this subsection) of the costs of temporary housing assistance to a State or local government which provides such assistance to those who require it as a result of a major disaster. Federal financial and operational responsibilities for temporary housing assistance shall not exceed eighteen months from the date of the major disaster declaration by the President, unless he determines that due to extraordinary circumstances it would be in the public interest to extend the eighteen month period.

"(1) Temporary housing assistance pursuant to this subsection shall be provided only when adequate alternative housing is unavailable, unless there is compelling need to do so because of extreme hardship.

"(2) Any mobile home or other readily fabricated dwelling supplied pursuant to this subsection shall be placed on a site complete with utilities provided either by the State or local government, or by the owner or occupants of the site who was displaced by the major disaster. When the President determines such action to be in the public interest, he may authorize installation of essential utilities at Federal expense and he may elect to provide other more economical or accessible sites. However, in the event the President authorizes the development of a group site, that is, a site for two or more households, the Federal share shall be 75 per centum of the development costs, and the remainder shall be met by funds provided by the State or local government.".

SEC. 16. Section 408 of the Disaster Relief Act of 1974 (42 U.S.C. 5176), as redesignated by sections 11(c) and 12 of this Act, is amended by adding "(a)" after "408." and by adding a new subsection "(b)" as follows:

"(b) The President is authorized to contribute up to 50 per centum of the cost of implementing hazard mitigation projects which he has determined would be cost effective and would substantially reduce the risk of future damage, hardship, loss, or suffering in the area affected by a major disaster. Such projects shall be identified following the evaluation of natural hazards provided for in subsection (a) of this section and shall be subject to approval by the President. The total of the contributions made under this subsection shall not exceed 10 per centum of the Federal estimate of grants made under the authority of section 405 of this Act for each major disaster.".

SEC. 17. Section 409(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5177), as redesignated by section 11(c) and 12 of this Act, is amended to read as follows: "The President is authorized to provide such disaster unemployment assistance as he deems appropriate to individuals who are unemployed as a result of a major disaster. Disaster unemployment assistance authorized by this section shall be available to an eligible individual for a period not to exceed fifty-two weeks after the week in which an eligible individual became unemployed as a result of a major disaster, and such period shall be regarded as the disaster assistance period for that individual for the purpose of this section. Disaster unemployment assistance shall not be payable with respect to any week for which an individual is entitled to unemployment compensation (as defined in section 85(c) of the Internal Revenue Code of 1954, as amended) or waiting week credt. The maximum amount of disaster unemployment assistance payable to any individual with respect to a major disaster shall not exceed twenty-six times the maximum weekly amount for which the individual establishes minus the amount of any unemployment compensation paid to the individual during the fifty-two week benefit period established pursuant to this section. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred, and the amount of assistance under this section for a week of unemployment shall be reduced by any amount of private income protection insurance compensation available to such individual for such week of unemployment. The payment of unemployment compensation to an individual with respect to any week subsequent to the exhaustion of eligibility of such individual for disaster unemployment assistance and within the fifty-two week benefit period established pursuant to this section shall not be regarded as duplication of benefits under section 312 of this Act. The President is directed to provide disaster unemployment assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.".

SEC. 18. (a) Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 11(c) and 12 of this Act, is amended by adding a period after the word "share" in the second sentence of that subsection and by deleting the following phrase from the second sentence of section 410(b): "and any such advance is to be repaid to the United States when such State is able to do so.".

(b) Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 11(c) and 12 of this Act, is further amended by adding the following sentence between the second and third sentences of this subsection: "Such advances shall bear interest from the date of the advance at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance. Repayment of such advances and of interest which accrues on the advances may be deferred for no longer than two years from the date of the major disaster declaration.".

SEC. 19. Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 156(c) and 157 of this Act, is amended by striking "$5,000" in the last sentence and inserting in lieu thereof "$7,500".

SEC. 20. Section 415 of the Disaster Relief Act of 1974 (42 U.S.C. 5183), as redesignated by sections 11(c) and 12 of this Act, is amended by striking "(through the National Institute of Mental Health)".

SEC. 21. Section 420(d) of the Disaster Relief Act of 1974 (42 U.S.C. 5188), as redesignated by sections 11(c) and 12 of this Act, is deleted.

SEC. 22. The Disaster Relief Act of 1974 (42 U.S.C. 5121-5202) is amended by—

(1) striking paragraph (7) of section 101(b) (42 U.S.C. 5121), striking "; and" from paragraph (6) and adding in lieu thereof a period, and adding "and" at the end of paragraph (5);

(2) striking "the Canal Zone," in paragraphs (3) and (4) of section 102 (42 U.S.C. 5222);

(3) striking "DISASTER" in the caption of title III (42 U.S.C. 5141-5158) and inserting in lieu thereof "MAJOR DISASTER RELIEF AND EMERGENCY";

(4) striking "section 402 or 404 of" in section 308(b) (42 U.S.C. 5151), as redesignated by section 7(1) of this Act;

(5) adding "emergency or" before the word "major" each of two places that word appears in section 307 (42 U.S.C. 5150), as redesignated by section 7(1) of this Act;

(6) striking in section 310(b) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, everything after the word "areas" and inserting in lieu thereof a period;

(7) striking "or section 803 of the Public Works and Economic Development Act of 1965," each place the phrase appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act;

(8) striking "402" each place that number appears in section 311 (42 U.S.C. 5154), as redesignated by section 7(1) of this Act, and inserting in lieu thereof "405";

(9) adding "emergency and major" before the word "disaster" on section 313 (42 U.S.C. 5156), as redesignated by section 7(1) of this Act;

(10) adding the word "MAJOR" between the words "FEDERAL" and "DISASTER" in the caption to title IV (42 U.S.C. 5171-5189);

(11) striking "in emergencies or in major disasters" in the third sentence of paragraph (2) of section 407(d) (42 U.S.C. 5174), as redesignated by section 12 of this Act;

(12) striking "311" in section 407(d)(2) (42 U.S.C. 5174), as redesignated by section 12 of this Act, and inserting in lieu thereof "308";

(13) striking "an emergency or" on section 417 (42 U.S.C. 5185), as redesignated by sections 11(c) and 12 of this Act, and inserting in lieu thereof "a";

(14) striking "408" in section 605 (42 U.S.C. 5121) and inserting in lieu thereof "410";

(15) striking "301" and subtitle C of title I of the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512; 86 Stat. 919) and inserting in lieu thereof "401";

(16) striking "President" each place that word appears in section 309(a), as redesignated by section 7(1) of this Act, and inserting in lieu thereof "Federal coordinating officer".

(17) striking "rent" in section 310(a)(2) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, and inserting in lieu thereof "income"; and

(18) striking paragraph (1) of section 310(a) (42 U.S.C. 5153), as redesignated by section 7(1) of this Act, and renumbering subsequent paragraphs appropriately.

SEC. 23. (a) Section 6(a)(6)(E) of the Coastal Barrier Resource Act, 16 U.S.C. 3505(a)(6)(E), is amended by striking out "pursuant to sections 305 and 306 of the Disaster Relief Act of 1974" and inserting in lieu thereof "pursuant to sections 402, 403, 502, and 503 of the Major Disaster Relief and Emergency Assistance Act".

(b) Whenever any reference is made in any provision of law (other than this Act), regulation, rule, record, or document of the United States to provisions of the Disaster Relief Act of 1974 repealed by this Act or renumbered by this Act, such reference shall be deemed to be a reference to the appropriate provisions of the Major Disaster Relief and Emergency Assistance Act.

SEC. 24. (a) Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect ninety days after the date of enactment of this Act or on the date on which the President, after consultation with State and local governments, publishes final rules and regulations relating to the definition of costs for which State and local governments may be reimbursed under the Disaster Relief Act of 1974 (as amended by this Act), whichever is later.

(b)(1) This Act and the amendments made by this Act shall not affect the administration of any assistance provided under the authority of the Disaster Relief Act of 1974, for any major disaster or emergency declared by the President prior to the effective date of this Act.

(2) Except with regard to section 409(a) of the Disaster Relief Act of 1974, as redesignated by section 11(c) and 12 of this Act (relating to disaster unemployment assistance)—

(A) rules and regulations issued under statutory provisions which are repealed, modified, or amended by this Act shall continue in effect as though issued under the authority of this Act until they are expressly abrogated, modified, or amended by the President; and

(B) provision of disaster assistance authorized by statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder, or proceedings involving violations of statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder which are in process prior to the effective date of this Act, may be continued to conclusion as though the applicable statutory provisions had not been repealed, modified, or amended.

(3) Violations of statutory provisions or rules and regulations issued under the authority of statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder which are committed prior to the effective date of this Act may be proceeded against under the law in effect at the time of the specific violation.

(c) Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5171-5189) is amended by adding at the end thereof a new section as follows:

"SEC. 421. No State shall be ruled ineligible to receive assistance under this Act solely by virtue of an arithmetic formula based on income or population."

REFUGEE ASSISTANCE

SIMPSON AMENDMENT NO. 3512

Mr. DOLE (for Mr. SIMPSON) proposed an amendment to the bill (H.R. 1452) to amend the Immigration and Nationality Act to extend for 2 years the authorization of appropriations for refugee assistance, and for other purposes, as follows:

On page 1, line 5, strike out "1985" and insert in lieu thereof "1986".

On page 2, line 11, strike out "1986 and 1987" and insert in lieu thereof "1987 and 1988".

On page 2, line 20, strike out "1986 $74,783,000 and for fiscal year 1987" and insert in lieu thereof "1987 $74,783,000 and for fiscal year 1988".

On page 2, line 24, strike out "1986 $8,761,000 and for fiscal year 1987" and insert in lieu thereof "1987 $8,761,000 and for fiscal year 1988".

On page 3, line 2, strike out "paragraphs" and insert in lieu thereof "paragraph".

On page 3, strike out lines 3 through 6.

On page 3, line 7, strike out "(5)" and insert in lieu thereof "(4)".

On page 3, line 8, strike out "1986 $5,215,000 and for fiscal year 1987" and insert in lieu thereof "1987 $5,214,000 and for fiscal year 1988".

On page 3, strike out lines 15 through 17.

On page 3, line 18, strike out "(b)" and insert in lieu thereof "(a)".

On page 3, line 22, strike out "(c)" and insert in lieu thereof "(b)".

On page 5, lines 23 and 24, strike out "1985 and for fiscal year 1986" and insert in lieu thereof "1986 and for fiscal year 1987".

On page 11, line 16, strike out "1986 and 1987" and insert in lieu thereof "1987 and 1988".

On page 11, lines 22 and 23, strike out "by the Department of State Authorization Act, Fiscal Years" and insert in lieu thereof "for fiscal years".

On page 12, lines 17 and 18, strike out "after March 31, 1975," and insert in lieu thereof "not more than 36 months before the beginning of such fiscal year".

On page 13, line 11, strike out "1986" and insert in lieu thereof "1987".

On page 14, line 22, insert "and" after "selfsufficiency,".

On page 15, line 2, strike out "entity, and" and insert in lieu thereof "entity.',".

On page 15, strike out lines 3 through 4.

On page 16, strike out lines 9 through 20.

On page 16, line 21, strike out "(c)" and insert in lieu thereof "(b)".

On page 17, line 5, strike out "(d)" and insert in lieu thereof "(c)".

On page 17, line 6, strike out "sections (a) and (b)" and insert in lieu thereof "section (a)".

IMMIGRATION AND NATIONALITY ACT AMENDMENTS

BRADLEY AMENDMENT NO. 3513

Mr. BYRD (for Mr. BRADLEY) proposed an amendment to the bill (H.R. 4444) to amend the Immigration and Nationality Act, and for other purposes, as follows:

At the appropriate place in the bill, insert the following:

SEC. 7. ISSUANCE OF CERTIFICATES OF CITIZENSHIP FOR CHILDREN ADOPTED BY UNITED STATES CITIZENS.

Section 341 of the Immigration and Nationality Act (8 U.S.C. 1452) is amended—

(1) by inserting "(a)" after "341.", and

(2) by adding at the end the following new subsection:

"(b)(1) The adoptive citizen parent or parents of a child described in paragraph (2) may apply to the Attorney General for a certificate of citizenship for the child. Upon proof to the satisfaction of the Attorney General that the applicant and spouse, if married, are citizens of the United States, whether by birth or by naturalization, and that the child is described in paragraph (2), the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship, but only if the child is at the time within the United States.

"(2) A child described in this paragraph is a child born outside of the United States who—

"(A) is under the age of 18 years,

"(B) is adopted before the child reached the age of 16 years by a parent who is a citizen of the United States, either by birth or naturalization, and

"(C) is residing in the United States in the custody of the adopting citizen parent, pursuant to a lawful admission for permanent residence.".

EXTENSION OF EMERGENCY ACQUISITION AND NET WORTH GUARANTEE PROVISION OF GARN-ST GERMAIN DEPOSITORY INSTITUTION ACT OF 1982

GARN AMENDMENT NO. 3514

Mr. DOLE (for Mr. GARN) proposed an amendment to the bill (S. 2747) to extend the emergency acquisition and net worth guarantee provisions of the Garn-St Germain Depository Institution Act of 1982; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

TITLE I

SEC. 101. (a) section 141(a) of the Garn-St Germain Depository Institutions Act of 1982 is amended by striking out "October 13, 1986" and inserting in lieu thereof "June 30, 1987".

(b) No amendment made by section 141(a) of the Garn-St Germain Depository Institutions Act of 1982, as in effect on the day before the date of the enactment of this Act, to any other provision of law shall be deemed to have taken effect before such date of enactment and any such provision of law shall be in effect as if no such amendment had taken effect before such date of enactment.

TITLE II—FAIR DEPOSIT AVAILABILITY

SHORT TITLE

SEC. 201. This title may be cited as the "Fair Deposit Availability Act of 1986".

DEFINITIONS

SEC. 202. As used in this title—

(1) the term "depository institution" means—

(A) any insured bank or domestic branch as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act, other than a foreign bank having an insured or uninsured branch;

(B) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act;

(C) any savings bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act;

(D) any insured credit union as defined in section 101 of the Federal Credit Union Act or any credit union which is eligible to make application to become an insured credit union pursuant to section 201 of such Act;

(E) any member as defined in section 2 of the Federal Home Loan Bank Act; and

(F) any insured institution as defined in section 401 of the National Housing Act or any institution which is eligible to make application to become an insured institution under section 403 of such Act;

(2) the term "deposit account" means an account in a depository institution on which the account holder is permitted to make withdrawals by negotiable or transferable instruments, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others. Such term includes demand deposit accounts, negotiable order of withdrawal accounts, share draft accounts, savings deposits, and share accounts. Such term does not include time deposits;

(3) the term "Board" means the Board of Governors of the Federal Reserve System; and

(4) the term "check or similar instrument" means a check, negotiable order of withdrawal, share draft, money order, or similar instrument, but does not include noncash items.

DISCLOSURE OF FUND AVAILABILITY POLICIES

SEC. 203. (a) Before opening a deposit account, a depository institution shall provide a written disclosure to the potential customer of its general policy with respect to when a customer may withdraw funds deposited by check or similar instrument into the customer's deposit account. In the case of a deposit account which was opened prior to the effective date of this section, the depository institution shall include such disclosure with the first regularly scheduled mailing pertaining to the account which occurs after such effective date (but not later than 90 days after such effective date) unless the depository institution has provided a disclosure which meets the requirements of this section prior to such effective date.

(b) Each depository institution shall—

(1) post at each location where its employees receive deposits a clear and conspicuous notice setting forth its general policy with respect to when a customer may withdraw funds deposited by check or similar instrument; and

(2) mail at least annually a brief reminder with respect to an account that deposits by check or similar instrument may not be available for immediate withdrawal.

(c) Each owner of an automatic or electronic terminal shall provide at each terminal location where deposits may be made a brief reminder that deposits by check or similar instrument may not be available for immediate withdrawal.

(d) Any change to a depository institution's general policy with respect to when a customer may withdraw funds deposited by check or similar instrument into the customer's deposit account, other than a change which expedites the availability of such funds, may take effect only after the depository institution has provided notice of such changes to the customer.

(e) Each depository institution shall provide disclosure, consistent with the disclosures required under subsection (a), by telephone of its general policy with respect to when a customer may withdraw funds deposited by check or similar instrument into a customer's account upon the telephone request of any person.

(f) The Board shall prescribe regulations to carry out this section. These regulations may contain such definitions, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as the Board determines are necessary to effectuate the purposes of this section, to prevent circumvention or evasion of this section, or to facilitate compliance with this section. The regulations of the Board shall require all disclosures, statements, and notices provided to be clear and conspicuous and in language that can be readily understood.

(g) A depository institution that does not begin to compute interest or dividends on funds deposited by check or similar instrument to an interest bearing deposit account or a time deposit on or before the date on which that depository institution receives provisional credit for the deposit (or if provisional credit is given on a nonbusiness day, the next business day) shall provide a written disclosure, within the time periods required under subsection (a), with respect to when the institution begins to compute interest on such funds.

(h) The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this section and to aid customers by utilizing readily understandable language. Nothing in this Act requires the use of any such model form or clause prescribed by the Board under this section. A depository institution shall be deemed to be in compliance with the provisions of this section if it (1) uses any appropriate model form or clause as published by the Board, or (2) uses any such model form or clause and changes it by (A) deleting any information which is not required by this Act, or (B) rearranging the format.

(i) Model disclosure forms and clauses shall be adopted by the Board after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

INTEREST ON DEPOSITS

SEC. 204. For the purpose of computing the amount of interest or dividends payable with respect to an interest bearing deposit account or a time deposit, a depository institution may not delay beginning to compute interest on funds deposited by check or similar instrument to such an account beyond the date on which that depository institution receives provisional credit for the check or similar instrument (or if provisional credit is given on a nonbusiness day, on the next business day) unless the computation of interest begins at a later date for all deposits, including cash deposits, made to the account or deposit. Nothing in this section requires the payment of interest with respect to funds deposited by check or similar instrument which is returned unpaid.

IMPROVED CLEARING PROCEDURES

SEC. 205. (a) Not later than 18 months after the date of enactment of this Act, the Board shall publish for comment a regulation for the purpose of improving the check clearing system used by depository institutions by expediting the process for returning checks or other means in order to achieve the goal of—

(1) making deposits of funds by check or similar instrument drawn on local depository institutions available for withdrawal upon the expiration of one business day after deposit, and

(2) making deposits of funds by check or similar instrument drawn on other depository institutions available for withdrawal upon the expiration of three business days after deposit.

This subsection does not apply to any check or similar instrument which poses a serious risk of loss to a depository institution.

(b) In prescribing the regulation under subsection (a), the Board shall consider—

(1) adopting a uniform endorsement standard;

(2) providing for direct notification of returning checks and similar instruments to the depository institution of first deposit;

(3) providing for direct return of checks and similar instruments to the depository institution of first deposit;

(4) providing for return of all checks and similar instruments through the Federal Reserve System's clearinghouse;

(5) extending limits for returns;

(6) establishing schedules for the availability of funds deposited by checks and similar instruments;

(7) prescribing the availability of funds deposited by checks and similar instruments based on the nature of the account to which the deposit was made or the nature of the account holder;

(8) the use of electronic means of collecting and returning checks;

(9) providing for check truncation;

(10) the establishment of an automated return system;

(11) charging a depository institution based upon notification that a check or similar instrument will be presented for payment;

(12) creating incentives for depository institutions to return unpaid items promptly to the depository institution of first deposit; and

(13) keeping the costs of any improvements to be implemented to a minimum.

(c) The regulation prescribed under subsection (a) shall become effective not later than 36 months after the date of enactment of this section. Each depository institution shall comply with the provisions of such regulation.

(d) The Board shall establish an Expedited Funds Availability Council (hereinafter referred to as the "Council") to advise and consult with the Board in the exercise of its functions under this section. The Council shall consist of—

(1) the Comptroller of the Currency or his delegate;

(2) the Chairman of the Federal Deposit Insurance Corporation or his delegate;

(3) the Chairman of the Federal Home Loan Bank Board or his delegate;

(4) the Chairman of the National Credit Union Administration Board or his delegate;

(5) two members of the Consumer Advisory Council designated by the Board;

(6) one representative from the users of payment systems services; and

(7) one representative from the providers of payment systems services in competition with the services offered by the Federal Reserve System.

The Council shall meet from time to time at the call of the Board.

AVAILABILITY OF CERTAIN FUNDS

SEC. 206. The Secretary of the Treasury shall by regulation require that funds deposited by a check drawn on the Treasury of the United States, which is first endorsed for deposit by a customer who has an established relationship, as defined by the Board, with the depository institution shall be available for withdrawal by that customer not later than the date when the depository institution is given provisional credit for that check or, if provisional credit is given on a nonbusiness day, on the next business day.

ADMINISTRATIVE ENFORCEMENT

SEC. 207. (a) Compliance with the requirements imposed under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System and Federal savings banks), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owner's Loan Act of 1933, section 407 of the National Housing Act, and section 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions; and

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union or insured credit union.

(b) For the purpose of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(c) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a) of this section, the appropriate State regulatory authority shall enforce such requirements.

(d) The authority of the Board to issue regulations under this title does not impair the authority of any other authority designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this title.

CIVIL LIABILITY

SEC. 208. (a) Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed under section 1003 (other than subsection (e)), 1004, or 1006 with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A) in the case of an individual action such additional amount as the court may allow, except that the liability under this subparagraph shall not be less than $50 nor greater than $500; or

(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same depository institution shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the depository institution; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance, the resources of the depository institution, the number of persons adversely affected, and the extent to which the failure of compliance was intentional.

(b) A depository institution may not be held liable in any action brought under this section for a violation of section 1003, 1004, or 1006 if the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a person's obligations under this Act is not a bona fide error.

(c) Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

(d) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

EFFECT ON CHECK ACCEPTANCE POLICIES AND OTHER LAWS

SEC. 209. (a) Nothing in this title—

(1) prevents a depository institution, in accordance with the policy of such depository institution, from making funds available for withdrawal in a shorter period of time than is provided in this title or in regulations adopted by the Board; or

(2) affects a depository institution's right—

(A) to accept or reject a check for deposit; or

(B) if a check is accepted for deposit and the depository institution has made provisional settlement with the depositor, pursuant to law to—

(i) revoke the provisional settlement given by the depository institution;

(ii) charge back the depositor's account; or

(iii) claim a refund of such provisional credit.

(b) Except as provided in subsection (a), the provisions of this title or the regulations of the Board prescribed under this Act shall supersede the provisions of any State law which the Board determines to be inconsistent with the provisions of this title or such regulation, but only to the extent of the inconsistency.

IMPROVING PAYMENT MECHANISMS

SEC. 210. Not later than one year after the implementation of any regulations under section 1005 of this title, the Board shall prepare a study and submit its findings to the Congress on the effect of improvements and changes in the payments system, including—

(1) the effect of the changes made by section 805 of this title, and the advisability and feasibility of further changes;

(2) an assessment of improvements that can be made in the check collection system, including improved procedures for the return of unpaid items, reduction of costs, reduction in the number of returned checks,

greater speed and efficiency in the check collection and return system, utilization of more efficient technology, and parity of treatment of depository institutions; and

(3) an assessment of the use of electronics in payments and of the need for improvements in the way the payments system provides services so as to insure efficient and affordable services, including the possible development of additional electronic services.

EFFECTIVE DATE

SEC. 211. Except as provided in section 1005, this title takes effect upon the expiration of 12 months following its enactment.

TITLE III: BRIDGE BANKS

SEC. 301. (a) Section 3(i) of the Federal Deposit Insurance Act (12 U.S.C. 1813(i)) is amended to read as follows:

"(i)(1) The term 'new bank' means a new national banking association, other than a bridge bank, organized by the Corporation to assume the insured deposits of an insured bank closed on account of inability to meet the demands of its depositors and otherwise to perform temporarily the functions prescribed in subsection (h) of section 11.

"(2) The term 'bridge bank' means a new national banking association organized by the Corporation pursuant to subsection (i) of section 11.".

(b) Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended—

(1) by inserting "(1)" after "(h)"; and

(2) by redesignating subsection (i), (j), (k), and (l) as paragraphs (2), (3), (4), and (5), respectively, of subsection (h).

(c) Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by adding at the end thereof the following:

"(i)(1) If the Board of Directors determines with regard to one or more closed insured banks—

"(A) that the amount which is reasonably necessary to organize and operate a bridge bank will not exceed the amount which is reasonably necessary to save the cost of liquidation, including paying the insured accounts of, the closed bank or banks;

"(B) that the continued operation of such insured bank or banks is essential to provide adequate banking services in its community; or

"(C) that the continued operation of such insured bank or banks is in the interest of the depositors of the closed bank or banks and the public,

the Corporation in its discretion may organize a bridge bank to assume the deposits of the closed bank or banks, and to assume such other liabilities of the closed bank or banks as the Corporation in its discretion may deem advisable, and to purchase such assets of the closed bank or banks as the Corporation in its discretion may deem advisable, and to perform temporarily the functions hereinafter provided for. Upon the organization of a bridge bank, the receiver of the closed insured bank or banks may, subject to approval of a court of competent jurisdiction, transfer assets and liabilities of the closed insured bank or banks to the bridge bank.

"(2) The articles of association and the organization certificate of the bridge bank shall be executed by representatives designated by the Corporation. The bridge bank shall be a national bank and shall be insured from the time of its organization. No capital stock need be paid in by the Corporation. The bridge bank shall have a five-member board of directors who shall be selected by the Board of Directors.

"(3) The bridge bank shall have all corporate powers of a national bank, except that—

"(A) the Corporation shall have sole authority to appoint and remove the directors of the bridge bank, to fix their compensation, and to waive any requirements pertaining to their qualifications as provided in sections 5145 through 5149 of the Revised Statutes (12 U.S.C. 71 through 75) and section 31 of the Act of June 16, 1933 (12 U.S.C. 71a);

"(B) the Corporation shall have authority to indemnify the directors of the bridge bank on such terms as the Corporation deems proper;

"(C) any requirements for capital in the bridge bank as provided in section 5138 of the Revised Statutes (12 U.S.C. 51) or any other provision of law are waived;

"(D) the Comptroller of the Currency shall have authority to determine the maximum limit of indebtedness of any person to the bridge bank without regard for the amount of the bank's capital or surplus;

"(E) the Board of directors of the bridge bank shall elect a chairman who shall also serve in the position of Chief Executive Officer;

"(F) the bridge bank shall be a national member bank, but shall not be required to purchase stock of any Federal Reserve bank;

"(G) the Comptroller of the Currency shall have authority to waive any requirement for a fidelity bond; and

"(H) upon the merger of a bridge bank with another bank that is not a bridge bank, or upon the sale of all or substantially all of the stock of a bridge bank (other than a sale to the Corporation or to another bridge bank), or upon the assumption of all or substantially all of the deposits of a bridge bank by another bank that is not a bridge bank, the surviving bank shall cease to have the status of a bridge bank.

"(4) Upon the organization of a bridge bank, and thereafter as the Board of Directors may in its discretion deem necessary or advisable, the Corporation shall promptly make available to the bridge bank, upon such terms and conditions and in such form and amounts as the Board of Directors may prescribe, sufficient funds for the bridge bank to operate. The bridge bank shall not be deemed to be an agency or establishment or instrumentality of the United States Government, nor shall the directors or officers or employees or agents of the bridge bank be deemed to be employees or agents of the United States Government, for any purpose whatever.

"(5)(A) Whenever in the judgment of the Board of Directors it is desirable to do so, the Corporation shall cause capital stock of the bridge bank to be issued and offered for sale on such terms and conditions as the Corporation deems advisable in an amount sufficient, in the sole discretion of the Corporation, to make possible the conduct of the business of the bridge bank on a sound basis. If the bridge bank has assumed the insured deposits of a closed bank with total assets of $250,000,000 or more (as determined from the closed bank's most recent report of condition), the bridge bank shall be eligible to be acquired by or to merge with an insured depository institution located in the State where the closed bank was chartered but established by an out-of-State bank or holding company, or to be acquired by an out-of-State bank or holding company, in accordance with the procedures established by subsection (f) of section 13.

"(B) Unless the capital stock of the bridge bank is sold or its assets are taken over and its deposits assumed by another insured bank within two years from the date of its organization, the Corporation shall wind up the affairs of such bank by voluntary dissolution or by the appointment of a receiver, except that if the Board of Directors finds, after consultation with the Comptroller of the Currency that an extension of time for winding up the affairs of the bank is in the best interest of the depositors of the closed bank or banks and the public, the Corporation may extend such time for a period not exceeding one year.

"(6) In order to facilitate the sale or merger of the bridge bank with another insured depository institution the Corporation is authorized, in its sole discretion, and upon such terms and conditions as the Board of Directors may prescribe—

"(A) to make loans or contributions to, or deposits in, or purchase assets or securities other than voting or common stock of, or to assume the liabilities of, such bridge bank or the company which will acquire control of such bank;

"(B) to guarantee the bridge bank or the company which will acquire control of the bridge bank against loss by reason of such sale or merger; or

"(C) to take any combination of the actions referred to in subparagraphs (A) and (B).

"(7) Nothing in this subsection shall be construed to limit the powers of the Corporation under section 13 to assist a transaction under this subsection.".

EXPORT PROMOTION ACTIVITIES

GARN (AND OTHERS) AMENDMENT NO. 3515

Mr. GARN (for himself, Mr. HEINZ, and Mr. PROXMIRE) proposed an amendment of the House to the bill (S. 2245) to authorize appropriations to carry out the Export Administration Act of 1979 and export promotion activities, as follows:

Strike out "(a) IN GENERAL.—".

Strike out all of subsection (b) beginning with "(b) ENFORCEMENT ACTIVITIES OF THE CUSTOMS SERVICE.—".

EXPEDITED FUNDS AVAILABILITY ACT

GARN AMENDMENT NO. 3516

Mr. DOLE (for Mr. GARN) proposed an amendment to the bill (H.R. 2443) to limit the number of days a depository institution may restrict the availability of funds which are deposited in any account as follows:

Strike out all after the enacting clause and insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Savings and Loan Insurance Corporation and Financial Regulations Act".

TITLE I—EMERGENCY ACQUISITIONS

SHORT TITLE

SEC. 101. This title may be cited as the "Financial Institutions Emergency Acquisitions Amendments of 1986".

EXTENSION OF GARN-ST GERMAIN ACT

SEC. 102. (a) The Garn-St Germain Depository Institutions Act of 1982 (Public Law 97-320) is amended as follows:

(1) In section 141(a), by striking out "October 13, 1986" and inserting in lieu thereof "June 30, 1987".

(b) Effective August 1, 1987, the amendments made by section 103 of this title are repealed.

(c) The repeal or termination by this section of any provision of law shall have no effect on any action taken or authorized while such provision was in effect.

(d) Notwithstanding the repeal or termination of any provision of law referred to in section 141(a) or section 206(a) of the Garn-St Germain Depository Institutions Act of 1982 as a result of the date contained in such section, such provision shall be deemed to be reenacted upon the enactment of a law extending such date.

ASSISTED EXTRAORDINARY ACQUISITIONS

SEC. 103. (a) Section 13(f) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) Except as provided in paragraph (9), the provisions of this subsection shall be used exclusively in connection with any acquisition by or merger with an out-of-State bank or holding company with respect to which the Corporation provides assistance under its powers in subsection (c) and shall not be applicable if the Corporation does not provide such assistance. Nothing contained in this subsection shall be construed to limit the Corporation's powers under subsection (c) to assist a transaction.";

(2) by striking out "$500,000,000" in paragraph (2)(A) and inserting in lieu thereof "$250,000,000";

(3) by amending paragraph (3) to read as follows:

"(3)(A)(i) Whenever the appropriate Federal or State chartering authority has certified in writing that an insured bank with total assets of $250,000,000 or more (as determined from its most recent report of condition) is in danger of closing, the insured bank may merge with or its assets may be purchased by and its liabilities assumed by another depository institution, including an insured depository institution located in the State where the insured bank is chartered but established by an out-of-State bank or holding company, or its shares may be acquired by an out-of-State bank or holding company.

"(ii) Whenever the appropriate Federal or State chartering authority has certified in writing that one or more insured bank subsidiaries of a holding company are in danger of closing and such bank or banks hold aggregate assets equal to $250,000,000 or more (as determined from their most recent reports of condition) and such bank or banks represent 33 per centum or more of the total assets of all insured bank subsidiaries (as determined from their most recent reports of condition) of such holding company, an out-of-State bank or holding company may (I) purchase all or part of the shares of or otherwise acquire the holding company that controls such bank or banks and all or part of such holding company's subsidiary banks, or (II) purchase all or part of the shares or otherwise acquire any such bank or banks in danger of closing or establish one or more newly chartered banks located in the State where such banks in danger of closing are chartered for the purpose of merging with or purchasing the assets and assuming the liabilities of such banks, if the aggregate total assets of such banks that are acquired, regardless of the number of purchasers, equal $250,000,000 or more. Any out-of-State bank or holding company which, pursuant to clause (II), purchases shares of, or establishes a newly chartered bank for the purpose of merging with or acquiring the assets and assuming the liabilities of, such bank or banks in danger of closing may purchase the shares of or otherwise acquire any bank which is affiliated with such bank or banks.

"(iii) The Corporation may assist a merger or acquisition permitted under this subparagraph (A) only where the board of directors or trustees of the insured bank has requested in writing that the Corporation assist a merger or a purchase.

"(B) Whenever the Corporation provides assistance, directly or indirectly, under the authority of subsection (c), to an insured bank and such bank was eligible at the time such assistance was given to be acquired by an out-of-State bank or holding company pursuant to subparagraph (A), the bank shall remain eligible to be acquired, to the same extent that it was eligible when assistance was granted, by an out-of-State bank or holding company so long as the Corporation's assistance remains outstanding. If, at the time such assistance was granted to an insured bank or to affiliated insured banks, such bank's or banks' parent holding company or other affiliated banks were eligible also to be acquired by an out-of-State bank or holding company, pursuant to subparagraph (A)(ii), they shall remain eligible for such acquisition, to the same extent as they were when the assistance was granted, so long as such assistance remains outstanding.

"(C) Where otherwise lawfully required, a transaction under this paragraph (3) must be approved by the primary Federal or State supervisor of all parties thereto.

"(D)(i) Before assisting a merger or acquisition permitted under subparagraph (A) or taking final action under subparagraph (B), the Corporation shall consult the State bank supervisor of the State in which the bank in danger of closing is chartered.

"(ii) The State bank supervisor shall be given a reasonable opportunity, and in no event less than 48 hours, to object to the use of the provisions of this paragraph.

"(iii) If the State bank supervisor objects during such period, the Corporation may use the authority of this paragraph only by a unanimous vote of the Board of Directors. The Board of Directors shall provide to the State supervisor, as soon as practicable, a written certification of its determination.";

(4) by redesignating subparagraphs (i) through (iii) of paragraph (4) as subparagraphs (A) through (C), respectively;

(5) by amending redesignated paragraph (4)(A) to read as follows:

"(4)(A) Nothing in section 3(d) of the Bank Holding Company Act of 1956, section 408(e)(3) of the National Housing Act, any provision of State law, or the constitution of any State, shall bar approval, consummation, or retention of an acquisition authorized under paragraph (2) or (3), except that an out-of-State bank may make such an acquisition only if such ownership is otherwise specifically authorized.";

(6) by adding at the end of paragraph (4) the following:

"(D) An out-of-State bank holding company that acquires, directly or indirectly, a bank under paragraph (2) or (3) shall, upon the expiration of two years after the acquisition, have the same rights to make additional acquisitions and to establish branches as an in-State bank holding company.

"(E) A holding company which, directly, or indirectly, acquires control of one or more banks or a holding company under paragraph (2) or (3) shall not, by reason of such acquisition or expansion, be required as the result of the law of any State to divest any other bank or banks or be prevented from acquiring, directly or indirectly, any other banks or holding company.";

(7) by striking out "to permit" in paragraph (5);

(8) by striking out "closed" the second time it appears and "bank" the sixth time it appears in paragraph (6)(A);

(9) by striking out clauses (i) through (iv) of paragraph (6)(B) and inserting in lieu thereof the following:

"(i) First, between depository institutions of the same type within the same State;

"(ii) Second, between depository institutions of the same type in different States which, by reciprocal laws or other arrangements specifically authorize such acquisitions, or in the absence of such laws or other arrangements, in different States which are contiguous;

"(iii) Third, between depository institutions of the same type in different States other than those referred to in clause (ii);

"(iv) Fourth, between depository institutions of different types within the same State;

"(v) Fifth, between depository institutions of different types in different States which, by reciprocal laws or other arrangements specifically authorize such acquisitions, or in the absence of such laws or other arrangements, in different States which are contiguous;

"(vi) Sixth, between depository institutions of different types in different States other than those referred to in clause (v);

(10) by striking out subparagraph (C) and inserting in lieu thereof the following:

"(C) In the case of a minority-controlled bank, the Corporation shall seek an offer from other minority-controlled banks before proceeding with the sequence set forth in the preceding subparagraph.";

(11) by redesignating subparagraphs (B) and (C) of paragraph (8) as subparagraphs (D) and (E), respectively, and by inserting after subparagraph (A) the following:

"(B) a bank is 'in danger of closing' if—

"(i) the bank is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course of business and there is no reasonable prospect for it to do so without Federal assistance;

"(ii) the bank has incurred or is likely to incur losses that will deplete all or substantially all of its capital and there is no reasonable prospect for replenishment of the bank's capital without Federal assistance; or

"(iii) other grounds exist or are likely to exist under applicable State law for closing the bank;

"(C) banks are 'affiliated' if each is a subsidiary (as defined in section 2(d) of the Bank Holding Company Act of 1956) of the same holding company;"; and

(12) by adding at the end thereof the following:

"(9) Nothing in this subsection shall prevent the Corporation, in its sole discretion, from assisting, directly or indirectly, the acquisition of an open or closed insured bank

by an out-of-State bank or holding company where such an acquisition is otherwise authorized under applicable State law.

"(10) In any transaction authorized under this subsection, no assistance by the Corporation shall be provided to a subsidiary of a holding company that is not an insured bank.

"(11)(A) The Corporation shall transmit an annual report regarding the transactions under this subsection during the preceding year to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(B) The report required under subparagraph (A) shall contain the following information:

"(i) The number of transactions under this subsection with respect to which the Corporation provided assistance.

"(ii) A brief description of the transactions and the circumstances under which such transactions occurred.".

(b) Section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)) is amended by adding at the end thereof the following: "In the event an application is filed under this paragraph in connection with an application by a bank holding company to acquire control of a bank in danger of closing or its affiliated banks pursuant to section 13(f) of the Federal Deposit Insurance Act, the Board may dispense with the notice and hearing requirement of this paragraph and the Board may approve or deny the application under this paragraph without notice or hearing. Not more than 7 days after approval of an application described in the preceding sentence, the Board shall publish in the Federal Register the order approving the application and shall identify any nonbanking activities involved in the acquisition.".

(c) Section 3(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(b)) is amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end thereof the following new paragraph:

"(2) If the appropriate Federal or State chartering authority has certified in writing that a bank is in danger of closing pursuant to section 13(f) of the Federal Deposit Insurance Act, the Board may dispense with the notice and hearing requirements of this subsection with respect to any application received to acquire such bank or its affiliated banks and may reduce the post-approval waiting period of section 11 of this Act to 5 days with respect to such bank or its affiliated banks or, if the Board finds that immediate action is necessary to prevent the probable failure of such bank in danger of closing, further reduce or eliminate such period with respect to such bank or its affiliated banks, with the concurrence of the Attorney General of the United States.".

BRIDGE BANKS

SEC. 104. (a) Section 3(i) of the Federal Deposit Insurance Act (12 U.S.C. 1813(i)) is amended to read as follows:

"(i)(1) The term 'new bank' means a new national banking association, other than a bridge bank, organized by the Corporation to assume the insured deposits of an insured bank closed on account of inability to meet the demands of its depositors and otherwise to perform temporarily the functions prescribed in subsection (h) of section 11.

"(2) The term 'bridge bank' means a new national banking association organized by the Corporation pursuant to subsection (i) of section 11.".

(b) Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended—

(1) by inserting "(1)" after "(h)"; and

(2) by redesignating subsections (i), (j), (k), and (l) as paragraphs (2), (3), (4), and (5), respectively, of subsection (h).

(c) Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by adding at the end thereof the following:

"(i)(1) If the Board of Directors determines with regard to one or more closed insured banks—

"(A) that the amount which is reasonably necessary to organize and operate a bridge bank will not exceed the amount which is reasonably necessary to save the cost of liquidating, including paying the insured accounts of, the closed bank or banks;

"(B) that the continued operation of such insured bank or banks is essential to provide adequate banking services in its community; or

"(C) that the continued operation of such insured bank or banks is in the best interest of the depositors of the closed bank or banks and the public,

the Corporation in its discretion may organize a bridge bank to assume the deposits of the closed bank or banks, and to assume such other liabilities of the closed bank or banks as the Corporation in its discretion may deem advisable, and to purchase such assets of the closed bank or banks as the Corporation in its discretion may deem advisable, and to perform temporarily the functions hereinafter provided for. Upon the organization of a bridge bank, the receiver of the closed insured bank or banks may, subject to approval of a court of competent jurisdiction, transfer assets and liabilities of the closed insured bank or banks to the bridge bank.

"(2) The articles of association and the organization certificate of the bridge bank shall be executed by representatives designated by the Corporation. The bridge bank shall be a national bank and shall be insured from the time of its organization. No capital stock need be paid in by the Corporation. The bridge bank shall have a five-member board of directors who shall be selected by the Board of Directors.

"(3) The bridge bank shall have all corporate powers of a national bank, except that—

"(A) the Corporation shall have sole authority to appoint and remove the directors of the bridge bank, to fix their compensation, and to waive any requirements pertaining to their qualifications as provided in sections 5145 through 5149 of the Revised Statutes (12 U.S.C. 71 through 75) and section 31 of the Act of June 16, 1933 (12 U.S.C. 71a);

"(B) the Corporation shall have authority to indemnify the directors of the bridge bank on such terms as the Corporation deems proper;

"(C) any requirements for capital in the bridge bank as provided in section 5138 of the Revised Statutes (12 U.S.C. 51) or any other provision of law are waived;

"(D) the Comptroller of the Currency shall have authority to determine the maximum limit of indebtedness of any person to the bridge bank without regard for the amount of the bank's capital or surplus;

"(E) the board of directors of the bridge bank shall elect a chairman who shall also serve in the position of Chief Executive Officer;

"(F) the bridge bank shall be a national member bank, but shall not be required to purchase stock of any Federal Reserve bank;

"(G) the Comptroller of the Currency shall have authority to waive any requirement for a fidelity bond; and

"(H) upon the merger of a bridge bank with another bank that is not a bridge bank, or upon the sale of all or substantially all of the stock of a bridge bank (other than a sale to the Corporation or to another bridge bank), or upon the assumption of all or substantially all of the deposits of a bridge bank by another bank that is not a bridge bank, the surviving bank shall cease to have the status of a bridge bank.

"(4) Upon the organization of a bridge bank, and thereafter as the Board of Directors may in its discretion deem necessary or advisable, the Corporation shall promptly make available to the bridge bank, upon such terms and conditions and in such form and amounts as the Board of Directors may prescribe, sufficient funds for the bridge bank to operate. The bridge bank shall not be deemed to be an agency or establishment or instrumentality of the United States Government, nor shall the directors or officers or employees or agents of the bridge bank be deemed to be employees or agents of the United States Government, for any purpose whatever.

"(5)(A) Whenever in the judgment of the Board of Directors it is desirable to do so, the Corporation shall cause capital stock of the bridge bank to be issued and offered for sale on such terms and conditions as the Corporation deems advisable in an amount sufficient, in the discretion of the Corporation, to make possible the conduct of the business of the bridge bank on a sound basis. If the bridge bank has assumed the insured deposits of a closed bank with total assets of $250,000,000 or more (as determined from the closed bank's most recent report of condition), the bridge bank shall be eligible to be acquired by or to merge with an insured depository institution located in the State where the closed bank was chartered but established by an out-of-State bank or holding company, or to be acquired by an out-of-State bank or holding company, in accordance with the procedures established by subsection (f) of section 13.

"(B) Unless the capital stock of the bridge bank is sold or its assets are taken over and its deposits assumed by another insured bank within two years from the date of its organization, the Corporation shall wind up the affairs of such bank by voluntary dissolution or by the appointment of a receiver, except that if the Board of Directors finds, after consultation with the Comptroller of the Currency, that an extension of time for winding up the affairs of the bank is in the best interest of the depositors of the closed bank or banks and the public, the Corporation may extend such time for a period not exceeding one year.

"(6) In order to facilitate the sale or merger of the bridge bank with another insured depository institution the Corporation is authorized, in its sole discretion, and upon such terms and conditions as the Board of Directors may prescribe—

"(A) to make loans or contributions to, or deposits in, or to purchase assets or securities other than voting or common stock of, or to assume the liabilities of, such bridge bank or the company which will acquire control of such bank;

"(B) to guarantee the bridge bank or the company which will acquire control of the bridge bank against loss by reason of such sale or merger; or

"(C) to take any combination of the actions referred to in subparagraphs (A) and (B).

"(7) Nothing in this subsection shall be construed to limit the powers of the Corporation under section 13 to assist a transaction under this subsection.".

NATIONAL CREDIT UNION ADMINISTRATION MERGER AND CONSERVATORSHIP AUTHORITY

SEC. 107. (a) Section 141(a) of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 1464 note) is amended—

(1) by inserting "and" at the end of paragraph (6);

(2) by striking out "; and" at the end of paragraph (7) and inserting in lieu thereof a period; and

(3) by striking out paragraph (8).

(b) Section 206(h)(1) of the Federal Credit Union Act (12 U.S.C. 1786(h)(1)) is amended—

(1) by striking out "or" at the end of subparagraph (A);

(2) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following:

"(C) there is a willful violation of a cease-and-desist order which has become final; or

"(D) there is concealment of books, papers, records, or assets of the credit union or refusal to submit books, papers, records, or affairs of the credit union for inspection to any examiner or to any lawful agent of the Board.".

(c) Section 206(h) of the Federal Credit Union Act (12 U.S.C. 1786(h)) is amended—

(1) by redesignating paragraph (8) as paragraph (9); and

(2) by inserting after paragraph (7) the following:

"(8) The conservator shall have all the powers of the members, the directors, the officers, and the committees of the credit union and shall be authorized to operate the credit union in its own name or to conserve its assets in the manner and to the extent authorized by the Board.".

TITLE II—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION RECAPITALIZATION

SHORT TITLE

SEC. 201. This title may be cited as the "Federal Savings and Loan Insurance Corporation Recapitalization Act of 1986".

FINANCING CORPORATION

SEC. 202. The Federal Home Loan Bank Act is amended by inserting after section 20 the following:

"FINANCING CORPORATION

"SEC. 21. (a)(1) Notwithstanding any other provision of law—

"(A) the Board shall charter the Financing Corporation, which shall be under the direction of the Financing Corporation Directorate (hereinafter referred to as the 'Directorate'), and operated by it subject to such rules, regulations, orders, and directions as the Board may prescribe, and the Board shall have the power to define terms as shall be necessary to carry out the provisions of this section;

"(B) each Federal Home Loan Bank shall invest its funds at such times and in such amounts as prescribed by the Board under this subsection in nonvoting capital stock of the Financing Corporation, which stock shall have par value and shall be transferable only among the Federal Home Loan Banks in such manner as the Board prescribes;

"(C) the Directorate shall consist of three members, one of whom shall be the Director of the Office of Finance of the Federal Home Loan Banks or his successor, and two of whom shall be selected by the Chairman of the Federal Home Loan Bank Board from among the presidents of the Federal Home Loan Banks or their successors. Each of the two Federal Home Loan Bank president members of the Directorate shall serve for a term of one year. No president of a Federal Home Loan Bank may be selected to serve an additional term on the Directorate until such time as each of the other Federal Home Loan Bank presidents has served at least as many terms as such president. The Chairman of the Federal Home Loan Bank Board shall select the chairman of the Directorate from among its three members.

"(2) The aggregate amount of funds invested by all Federal Home Loan Banks in nonvoting capital stock of the Financing Corporation shall not exceed $3,000,000,000, except that the cumulative amount of funds so invested by each Federal Home Loan Bank shall not exceed the sum of the reserves that have been and are required to be carried by such Bank pursuant to the first two sentences of section 16(a) of this Act plus the undivided profits of such Bank. For purposes of this Act, the term 'undivided profits' includes retained earnings other than (A) that portion required to be carried pursuant to the first two sentences of section 16(a) of this Act, and (B) the following dollar amounts held by the respective Federal Home Loan Banks in special dividend stabilization reserves as of December 31, 1985:

"Federal Home Loan Bank of Boston.	3.2 million
Federal Home Loan Bank of New York.	7.7 million
Federal Home Loan Bank of Pittsburgh.	5.2 million
Federal Home Loan Bank of Atlanta.	12.3 million
Federal Home Loan Bank of Cincinnati.	5.9 million
Federal Home Loan Bank of Indianapolis.	37.4 million
Federal Home Loan Bank of Chicago.	6.0 million
Federal Home Loan Bank of Des Moines.	32.7 million
Federal Home Loan Bank of Dallas.	45.0 million
Federal Home Loan Bank of Topeka.	13.7 million
Federal Home Loan Bank of San Francisco.	21.9 million
Federal Home Loan Bank of Seattle.	33.6 million

"(3) The Board shall require that the amount of funds to be invested in nonvoting capital stock of the Financing Corporation be prorated to each Federal Home Loan Bank or its successor according to the following:

"(A) For each Federal Home Loan Bank or its successor, the portion of the first $1,000,000,000 of payments for such stock shall be based on the following percentages:

	Percent
"Federal Home Loan Bank of Boston	1.8629
Federal Home Loan Bank of New York	9.1006
Federal Home Loan Bank of Pittsburgh	4.2702
Federal Home Loan Bank of Atlanta	14.4007
Federal Home Loan Bank of Cincinnati	8.2653
Federal Home Loan Bank of Indianapolis	5.2863
Federal Home Loan Bank of Chicago	9.6886
Federal Home Loan Bank of Des Moines	6.9301
Federal Home Loan Bank of Dallas	8.8181
Federal Home Loan Bank of Topeka	5.2706
Federal Home Loan Bank of San Francisco	19.9644
Federal Home Loan Bank of Seattle	6.1422

"(B) For each Federal Home Loan Bank or its successor, the portion of payments for such stock purchased by all such Banks in excess of $1,000,000,000 shall be a fraction (expressed as a percentage) of which the numerator is the total of all assets held by insured institutions, as defined in section 401(a) of the National Housing Act (12 U.S.C. 1724(a)), which are members of such Bank, and the denominator is the aggregate total of all assets held by all insured institutions which are members of all Federal Home Loan Banks, calculated as of December 31 of the immediately preceding year.

"(4) In the event that the cumulative amount of funds required to be invested by any Federal Home Loan Bank pursuant to paragraph (3)(B) of this subsection for purchase of stock in the Financing Corporation exceeds the sum of all the reserves that have been and are required to be carried by such Bank pursuant to the first two sentences of section 16(a) of this Act plus its undivided profits, such excess amount shall not be invested by any such Bank at that time but shall be prorated for investment among the remaining Federal Home Loan Banks based upon their holdings of stock in the Financing Corporation at that time, except that the cumulative amount of funds required to be invested by any of the remaining Banks shall not exceed the sum of the reserves that have been and are required to be carried by any such Bank pursuant to the first two sentences of section 16(a) of this Act plus its undivided profits, and any excess amount shall be prorated for investment among the remaining Federal Home Loan Banks to the extent such investment would not be limited pursuant to this paragraph. Each Federal Home Loan Bank, which pursuant to the provisos of this paragraph, has not made the full investment of funds in the Financing Corporation as required under paragraph (3)(B) of this subsection shall purchase annually from the remaining Federal Home Loan Banks on a pro rata basis at the issuance price stock in the Financing Corporation, and shall continue to make such purchases until the cumulative amount invested by such Bank shall be equal to the amount required to have been invested by such Bank pursuant to said paragraph (3)(B). Until any such Bank shall have purchased a cumulative amount of stock as prescribed in the preceding sentence, no dividends shall be paid by such Bank in excess of one-half of its net earnings, and such funds as are necessary to make such stock purchases shall be placed in a reserve required by the Board and not available for dividends.

"(b) The Financing Corporation shall have power, subject to rules, regulations, orders, and directions prescribed by the Board:

"(1) To issue nonvoting capital stock to the Federal Home Loan Banks.

"(2) To invest in any securities issued by the Federal Savings and Loan Insurance Corporation.

"(3) To borrow and give security therefor and pay interest thereon, to issue debentures, bonds, or other obligations the maturity of which shall not exceed 30 years and the net proceeds of which shall be invested in the Federal Savings and Loan Insurance Corporation under section 402(b) of the National Housing Act or shall be used to refund obligations the net proceeds of which were so invested upon such terms and conditions as the Board may approve.

"(4) To assess semiannually, with the approval of the Board, each insured institution, which shall pay to the Financing Corporation an amount not to exceed one-twelfth of 1 percent per year of the total amount of all accounts of the insured members of such institution, and to further assess semiannually where determined by a vote of all members of the Directorate to be necessary to make interest payments on the obligations of the Financing Corporation because no other sources of income are available, and with the approval of the Board, each insured institution, which shall pay to the Financing Corporation an additional amount not to exceed one-eighth of 1 percent per year of the total amount of all accounts of the insured members of such institution, except that the aggregate amount so assessed by the Financing Corporation shall not exceed the aggregate amount of the Financing Corporation's interest payments and issuance costs on its obligations less any amounts paid pursuant to subsection (e) of this section, on a semiannual basis. As used in this paragraph, the terms 'insured institution' and 'insured members' shall have the meanings prescribed in section 401 of the National Housing Act.

"(5) To adopt, alter, and use a corporate seal.

"(6) To have succession until dissolved as provided herein.

"(7) To make contracts.

"(8) To sue and be sued, complain, and defend, in any court of competent jurisdiction, State or Federal.

"(9) To exercise such incidental powers not inconsistent with the provisions of this Act as are necessary or appropriate to carry out the provisions of this section and are customary and usual in corporations generally.

"(c) The Financing Corporation shall have no paid employees, and the Directorate may, with the approval of the Board, authorize the officers, employees, or agents of the Federal Home Loan Banks or the Board to act on behalf of the Financing Corporation in such manner as necessary to enable the Financing Corporation to fulfill its functions.

"(d)(1) Obligations of the Financing Corporation issued with the approval of the Board under this Act shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. The Federal Reserve banks are authorized to act as depositaries, custodians, or fiscal agents for the Financing Corporation in the general performance of its powers under this Act.

"(2) All persons having the power to invest in, sell, underwrite, purchase for their own account, accept as security, or otherwise deal in obligations of the Federal Home Loan Banks shall also have power to do so in obligations of the Financing Corporation.

"(3) Obligations of the Financing Corporation and interest thereon shall not be obligations of nor guaranteed by the Federal Home Loan Banks, the United States, or the Federal Savings and Loan Insurance Corporation, and shall so plainly state, but shall be treated as Federal Home Loan Bank obligations for purposes of section 13 of this Act. The Financing Corporation shall be treated as a Federal Home Loan Bank for purposes of sections 13 and 23 of this Act, and shall be treated as an 'agency' for purposes of subsection (b) of section 3124 of title 31, United States Code.

"(4) All instruments issued under this section shall, to the same extent as securities which are direct obligations of or are guaranteed as to principal or interest by the United States, be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission.

"(5) No net new borrowings shall be made by the Financing Corporation after December 31, 1987.

"(6) Notwithstanding the provisions of section 9105(a)(1)(B) of title 31, United States Code, audits by the General Accounting Office of the financial transactions of the Financing Corporation shall not be limited to periods during which Government capital has been invested therein. The provisions of sections 9107(c)(2) and 9108(d)(1) of title 31, United States Code, shall not apply to the Financing Corporation.

"(7) Notwithstanding any other provision of this Act, the Financing Corporation may not issue obligations aggregating more than $3,000,000,000.

"(e) Subject to such regulations and limitations as may be prescribed by the Board, assets of the Financing Corporation not invested in the Federal Savings and Loan Insurance Corporation pursuant to subsection (b)(2) of this section may be used to make interest payments on obligations of the Financing Corporation or payments for issuance costs of such obligations or shall be invested in direct obligations of the United States, in obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association, in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act and in such securities as fiduciary and trust funds may be invested in under the laws of any State. The aggregate amount, based upon purchase price, of investments made by the Financing Corporation in non-interest bearing securities purchased at a discount whose face value would approximately equal the principal due on the Financing Corporation's obligations, shall not exceed $2,200,000,000.

"(f) Obligations issued by the Financing Corporation and outstanding shall be issued at such times and in such amounts as are determined by the Board but shall not at any time exceed the greater of—

"(1) five times the amount of the then outstanding nonvoting capital stock of the Financing Corporation; or

"(2) the face amount, as determined by the Board, of obligations invested in by the Financing Corporation pursuant to subsection (e) of this section;

as determined by the Board.

"(g)(1) The Financing Corporation shall be dissolved forthwith upon retirement of all stock purchased by it in the Federal Savings and Loan Insurance Corporation, which shall be no later than December 31, 2026.

"(2) Effective as of the date of the dissolution of the Financing Corporation, any powers thereof deemed necessary by the Board to be preserved will be transferred to the Board on behalf of the Federal Home Loan Banks.

"(h)(1) There is hereby created a Federal Savings and Loan Insurance Corporation Industry Advisory Committee which shall continue to exist until the Financing Corporation (or any successor thereto) created under this section is dissolved, and which shall not be subject to the provisions of the Federal Advisory Committee Act. The Committee shall consist of a Chairman, who shall be appointed annually by the Chairman of the Board, and of one member for each Federal Home Loan Bank district, to be elected annually by those members of the Board of Directors of the Federal Home Loan Bank in such district who are elected by the members of such Bank. The Chairman of the Committee may not be a member of the Board or be employed by the Board, the Federal Savings and Loan Insurance Corporation, or any Federal Home Loan Bank. The Committee shall adopt methods of procedure. The Committee shall meet periodically in Washington, D.C., and shall review, and confer with the Board regarding, the reports and budgets prepared pursuant to section 402(k) of the National Housing Act and any other matters specified by the Board, and after each meeting promptly shall submit to the Board written comments and recommendations pertaining to such reports and budgets, or to such other matters specified by the Board.

"(2) As specified by the Board by regulation, each member of the Committee shall be reimbursed by the Federal Home Loan Banks for his expenses incurred in connection with attending meetings of the Committee.

"(3) The Board shall issue regulations providing for the avoidance of conflicts of interest with respect to the disclosure to and use by members of the Committee of information of the Board, the Federal Savings and Loan Insurance Corporation, the Federal Home Loan Banks, or the Federal Asset Disposition Association.

"(4) The Committee, not later than January 15 of each year, shall submit a report to the Chairman of the Committee on Banking, Finance and Urban Affairs of the House of Representatives and to the Chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate. Such report, without limitation, shall describe for the preceding year the activities of the Committee and its reports and recommendations to the Board and the Federal Savings and Loan Insurance Corporation.".

CONFORMING AMENDMENT

SEC. 203. Section 9101(2) of title 31, United States Code, is amended by adding a new subparagraph as follows:

"(K) The Financing Corporation.".

INVESTMENT IN THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

SEC. 204. Section 402(b) of the National Housing Act (12 U.S.C. 1725(b)) is amended to read as follows:

"(b)(1) Notwithstanding any other provisions of law, the Corporation is authorized to issue (A) nonredeemable capital certificates; and (B) redeemable nonvoting capital stock, the investment in which shall be in an amount equal to the aggregate investment by the Federal Home Loan Banks in capital stock of the Financing Corporation pursuant to section 21 of the Federal Home Loan Bank Act. Such capital certificates and stock issued by the Corporation shall be invested in by the Financing Corporation, shall be included as part of the primary reserve of the Corporation, and shall pay no dividends.

"(2) Upon maturity of all obligations issued by the Financing Corporation, the Corporation is authorized to and shall promptly pay off and retire its capital stock, paying for this retirement solely with its accumulated contributions to its equity return account.

"(3) The Corporation is authorized to establish and maintain until payoff to the Financing Corporation, the equity return account, which shall include annual contributions made by the Corporation, according to the following formulae, at the end of each year beginning in 1997 and ending in the year during which the last of the obligations of the Financing Corporation matures. Such annual contributions shall be made as follows:

"(A) In any year when the reserves of the Corporation are less than .50 percent of the aggregate amount of all accounts of all of its insured members (as of December 31 of the preceding year), there shall be no contribution.

"(B) In any year when the reserves of the Corporation are equal to .50 percent of the aggregate amount of all accounts of all of its insured members or greater (as of December 31 of the previous year), the contribution shall be the amount invested by the Financing Corporation in Corporation capital stock, divided by the number of years from the first year after 1996 that such reserves to accounts ratio reached .50 percent to the year in which the last maturing obligation of the Financing Corporation matures (which year of maturity shall not be after 2026).

"(C) In any year when the reserves of the Corporation are equal to 1.0 percent of the aggregate amount of all accounts of all of its insured members or greater but do not equal or exceed 1.25 percent of all accounts of all of its insured members (as of December 31 of the preceding year), there may be an additional contribution, as determined by the Federal Home Loan Bank Board, of up to but no greater than 6 percent per annum compounded on the amount invested by the Financing Corporation in Corporation capital stock, from the year the investment was made to the year in which the last maturing obligation of the Financing Corporation matures (which year of maturity shall not be after 2026), divided by the number of years from the first year after 1996 that such reserves to accounts ratio reached 1.0 percent to the year in which the last maturing obligation of the Financing Corporation matures.

"(D) In any year when the reserves of the Corporation are equal to 1.25 percent of the aggregate amount of all accounts of all of its insured members or greater but do not equal or exceed 1.75 percent of all accounts of all its insured members (as of December 31 of the preceding year), there may be an additional contribution as determined by the Federal Home Loan Bank Board of up to but no greater than 8 percent per annum compounded on the amount invested by the Financing Corporation capital stock, from the year the investment was made to the year in which the last maturing obligation of the Financing Corporation matures (which maturity shall not be after 2026), less the amounts contributed under subparagraph (C) of this paragraph, divided by the number of years from the first year after 1996 that such reserves to accounts ratio reached 1.25 percent to the year in which the last maturing obligation of the Financing Corporation matures.

"(E) In any year when the reserves of the Corporation are 1.75 percent of the aggregate amount of all accounts of all of its insured members or greater (as of December 31 of the preceding year), there may be an additional contribution as determined by the Federal Home Loan Bank Board of up to but no greater than 10 percent per annum compounded on the amount invested by the Financing Corporation capital stock, from the year the investment was made to the year in which the last maturing obligation of the Financing Corporation matures (which maturity shall not be after 2026), less amounts contributed under subparagraphs (C) and (D) of this paragraph, divided by the number of years from the first year after 1996 that such reserves to accounts ratio reached 1.75 percent to the year in which the last maturing obligation of the Financing Corporation matures.

The contribution amounts made to the equity return account, which shall not be included as reserves of the Corporation, are the sole amounts to be included in that account, and any earnings accruing from the investment of funds held in such account shall be added to the reserves of the Corporation.

"(4) For purposes of this paragraph, the term 'Financing Corporation' means the corporation chartered under section 21 of the Federal Home Loan Bank Act.

"(5) Notwithstanding any other provision of law, as long as shares of the capital stock of the Corporation are outstanding, the following provisions of section 404 of the National Housing Act shall not apply:

"(A) Paragraph (2) of subsection (b).

"(B) Subparagraph (B) of paragraph (1) of subsection (d).

"(C) Subsection (g).".

DIVIDENDS

SEC. 205. Section 16 of the Federal Home Loan Bank Act (12 U.S.C. 1436) is amended by adding at the end thereof the following:

"(c) Notwithstanding subsection (a) of this section, if (1) a Federal Home Loan Bank incurs a charge-off or expense related to such Bank's investment in the stock of the Financing Corporation chartered under section 21 of the Federal Home Loan Bank Act, and (2) the Board determines there is an extraordinary need for such Bank's member institutions to receive dividends, then the Board may authorize such Bank to declare and pay dividends out of undivided profits or the reserves required to be carried by such Bank pursuant to the first two sentences of subsection (a) of this section, but only after such Bank has reduced all other reserves it has established to zero. Notwithstanding such authorization by the Board to a Federal Home Loan Bank to declare and pay dividends out of undivided profits or reserves, the requirements and limitations on such Federal Home Loan Bank's investments in the Financing Corporation, pursuant to section 21(a) of this Act, shall remain the same as if the Bank did not pay any such dividends.".

EXEMPTION FROM STOCK RETIREMENT SCHEDULE

SEC. 206. Section 402(h) of the National Housing Act (12 U.S.C. 1725(h)) is amended by adding a new sentence at the end thereof to read as follows: "Notwithstanding the foregoing, the first three sentences of this subsection shall not apply to stock issued by the Corporation to the Financing Corporation pursuant to section 21 of the Federal Home Loan Bank Act.".

SECONDARY RESERVE

SEC. 207. Section 404 of the National Housing Act (12 U.S.C. 1727) is amended by striking subsection (h).

OFFSET OF PREMIUMS

SEC. 208. Section 404 of the National Housing Act (12 U.S.C. 1727) is amended as follows:

(1) by redesignating subsections (d), (e), (f), and (g) as subsections (e), (f), (g), and (h), respectively; and

(2) by inserting after subsection (c) the following:

"(d) Notwithstanding any other provision of this section—

"(1) the total premiums with respect to each insured institution authorized to be paid to the Corporation pursuant to paragraph (1) of subsection (b) and assessed by the Corporation pursuant to subsection (c) of this section shall be reduced by the amount of any assessments paid to the Financing Corporation during the same period pursuant to subsection (b) of section 21 of the Federal Home Loan Bank Act; and

"(2) the aggregate total annual assessment that may be imposed under this Act on any insured institution by the Corporation and the Financing Corporation may not exceed 5/24 of 1 per centum of the total amount of the accounts of the insured members of such institution.".

FSLIC REPORTS

SEC. 209. Section 402 of the National Housing Act (12 U.S.C. 1725) is amended by adding at the end thereof the following:

"(k)(1) The Corporation, not later than two weeks following the beginning of each quarter, shall complete a detailed, written report and budget specifying and explaining (A) its planned and potential activities, receipts, and expenditures for such quarter, and (B) its activities, receipts, and expenditures for the immediately preceding quarter.

"(2) The Corporation shall, on a semiannual basis, complete such a detailed report and budget with respect to its activities, receipts, and expenditures during the preceding two quarters, and submit a copy of such report to the Chairman of the Committee on Banking, Finance and Urban Affairs of the House of Representatives and to the Chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(3) For the purposes of this subsection, the term 'activities' includes, without limitation, any activities engaged in with respect to insured institutions in financial difficulty. All reports and budgets prepared pursuant to this section shall cover the activities, receipts, and expenditures of the Federal Asset Disposition Association (or any successor thereto).".

FEDERAL HOME LOAN BANKS LIEN PRIORITY AMENDMENT

SEC. 210. Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended by adding at the end thereof the following:

"(e) Notwithstanding any other provision of law, any security interest granted to a Federal Home Loan Bank by any member of any Federal Home Loan Bank or by an affiliate of any such member shall be entitled to priority over the claims and rights of any party, including any receiver, conservator, trustee, or similar party having rights of a lien creditor, other than the claims of secured parties that are secured by actual perfected security interests that would be entitled to priority under otherwise applicable law.".

LIMITATION ON ADDITIONAL PREMIUMS

SEC. 211. Subsection (c) of section 404 of the National Housing Act (12 U.S.C. 1727(c)) is amended by adding at the end thereof the following: "During the following years, however, the Corporation may not assess additional premiums under this subsection against any insured institution in excess of the following amounts unless the Board determines that severe pressures on the Corporation exist necessitating an infusion of additional funds:

Year	Amount
1987.....	5/48 of 1 per centum of the total amount of the accounts of the insured members of such institution
1988.....	1/12 of 1 per centum of the total amount of the accounts of the insured members of such institution
1989.....	1/16 of 1 per centum of the total amount of the accounts of the insured members of such institution
1990.....	1/24 of 1 per centum of the total amount of the accounts of the insured members of such institution
1991.....	1/48 of 1 per centum of the total amount of the accounts of the insured members of such institution.".

CONVERSIONS

SEC. 212. (a) Section 403 of the National Housing Act (12 U.S.C. 1726) is amended by adding at the end thereof the following:

"(e) If, upon application, and pursuant to a plan of conversion to an institution of a type eligible to be an insured institution, the Corporation, in its discretion, determines to grant insurance of accounts to a savings bank that is an insured bank (as the term 'insured bank' is defined in section 3(h) of the Federal Deposit Insurance Act), such insurance shall become effective at such time as the Corporation stipulates, at which time such institution automatically shall lose its status as such an insured bank. No change of deposit insurance agencies from the Federal Deposit Insurance Corporation to the Corporation shall be treated, for the purposes of section 18(i) of the Federal Deposit Insurance Act, as involving a conversion to a noninsured bank or institution, except that the Corporation shall provide the Federal Deposit Insurance Corporation with notification of any application that, if granted, would involve such a change of deposit insurance agencies, shall consult with the Corporation before disposing of the application, and shall provide the Federal Deposit Insurance Corporation with notification of the determination with respect to such application.".

(b)(1) Section 18(c)(12) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(12)) is amended to read as follows:

"(12) The provisions of this subsection shall not apply to any transaction where the acquiring, assuming, or resulting institution is an insured Federal savings bank or an institution insured by the Federal Savings and Loan Insurance Corporation, except that any insured bank involved in the transaction shall notify the Corporation in writing at least 30 days prior to consummation of the transaction and, if any approval by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation is required in connection therewith, such approving authority shall provide the Corporation with notification of the application for approval, shall consult with the Corporation before disposing of the application, and shall provide notification to the Corporation of the determination with respect to said application.".

(2) Section 18(i) of such Act is amended by adding at the end thereof the following:

"(5) Nothing in this subsection shall apply to a conversion of an insured bank to an insured institution pursuant to section 403(e) of the National Housing Act (12 U.S.C. 1727 (e)).".

AUTHORITY OF INDEPENDENT CONTRACTORS, CONSULTANTS, AND COUNSEL

SEC. 213. Section 406(d) of the National Housing Act (12 U.S.C. 1729(d)) is amended by adding at the end thereof the following: "The Corporation shall require that any independent contractor, consultant, or counsel employed by the Corporation in connection with the management or liquidation of an insured institution fully discloses to all parties with which that independent contractor, consultant, or counsel deals, the extent of its authority, and any limitations on its authority, to obligate or legally bind, or to make representations on behalf of, the Corporation.".

TITLE III—MISCELLANEOUS

SPECIAL CONGRESSIONAL GOLD MEDALS

SEC. 301. (a)(1) The President of the United States is authorized to present, on behalf of the Congress, to Jan Scruggs, Robert Doubek, and John Wheeler, one gold medal each of appropriate design in recognition of their tireless efforts to give the Vietnam Veterans Memorial to the Nation. The Vietnam Veterans Memorial symbolizes for the Veterans the concern the American people have for them and the respect they feel for their service and their sacrifice, and for all Americans the Memorial expresses a spirit of reconciliation that preserves us as a Nation.

(2) For the purpose of this section, the Secretary of the Treasury is authorized and directed to cause to be struck three gold medals with suitable emblems, devices, and inscriptions to be determined by the Secretary of the Treasury. There is authorized to be appropriated not to exceed $25,000 to carry out the provisions of this subsection.

(b) The Secretary of the Treasury may cause duplicates in bronze of such medal to be coined and sold under such regulations as he may prescribe, at a price sufficient to cover the cost thereof, including labor, materials, dies, use of machinery, overhead expenses, and the gold medal. The appropriation made to carry out the provisions of subsection (a) shall be reimbursed out of the proceeds of such sales.

CHILDHOOD VACCINATION PROGRAM

GORE AMENDMENT NO. 3517

Mr. HATCH (for Mr. GORE) proposed an amendment to the bill (H.R. 5230) to amend the Public Health Service Act to extend the program of childhood vaccinations and to require the Secretary of Health and Human Services to maintain a 6-month stockpile of vaccines as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That (a) there is established in the Department of Health and Human Services the Food and Drug Administration (hereinafter in this section referred to as the "Administration"). The Administration shall be headed by a commissioner of Food and Drugs (hereinafter in this section referred to as the "Commissioner"). The Commissioner shall be appointed by the President by and with the advice and consent of the Senate and shall serve at the pleasure of the President. The Administration shall be administered under the supervision and direction of the Commissioner. The Commissioner shall, in consultation with the Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") appoint a Deputy Commissioner and such Associate Commissioners and Directors of functional centers, bureaus, and other administrative units as shall be needed for the effective and efficient discharge of the authorities and functions administered by the Commissioner.

(b)(1) Except as otherwise provided in this subsection, there are transferred to, and vested in, the Commissioner all of the authorities and functions delegated to the Commissioner or to the Assistant General Counsel of the Food and Drug Division by section 5.10 of title 21, Code of Federal Regulations, as of the date of enactment of this section, without regard to any reservation precribed by section 5.11 of title 21, Code of Federal Regulations. The office of the Assistant General Counsel of the Food and Drug Division of the Office of General Counsel within the Office of the Secretary is transferred to the Food and Drug Administration and redesignated the Office of Chief Counsel. The Secretary may delegate to the Commissioner such additional authorities and functions as the Secretary deems appropriate.

(2) The Secretary may require the Commissioner to notify the Secretary of any decisions of the Commissioner which—

(A) establish procedural rules applicable to a general class of foods, drugs, cosmetics, medical devices, or other subjects of regulation; or

(B) present highly significant public issues involving the quality, availability, marketability, or cost of one or more foods, drugs, cosmetics, medical devices, or other subjects of regulations.

(c) The provisions of the third sentence of subsection (a) shall apply to any individual appointed to the position of Commissioner of Food and Drugs after the date of enactment of this section.

(d) The Commissioner of Food and Drugs may, without regard to the provisions of

title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, establish such technical and scientific review groups as are needed to carry out the functions of the Administration, including functions under the Federal Food, Drug, and Cosmetic Act, and appoint and pay the members of such groups, except that officers and employees of the United States shall not receive additional compensation for service as members of such groups.

(e)(1) Section 5316 of title 5, United States Code, is amended by striking out the item relating to the Commissioner of Food and Drugs, Department of Health and Human Services.

(2) Section 5315 of such title is amended by adding at the end thereof the following new item:

"Commissioner of Food and Drugs, Department of Health and Human Services".

Amend the title so as to read: "An Act to require that the appointment of the Commissioner of Food and Drugs be subject to Senate confirmation.".

ADDITIONAL STATEMENTS

INDEPENDENT NUCLEAR SAFETY BOARD

● Mr. BIDEN. Mr. President, earlier this year I introduced a bill to establish an independent safety board for the Nuclear Regulatory Commission. Companion legislation was introduced in the House by Representative MORRIS UDALL. While neither body took action on our proposal, it was reviewed and discussed in a hearing by the Senate Nuclear Regulation Subcommittee.

Because I continue to believe that an independent board is needed to ensure safety in the nuclear industry, I will reintroduce my bill in the 100th Congress when it convenes in January. I will also consider attaching it to an appropriate vehicle should it become unnecessarily delayed in the committee review process.

Nuclear energy has nearly ceased to be a plausible source of energy for our Nation's future. Signs of a deep-rooted illness abound. Since 1978, no new nuclear powerplants have been ordered, and 90 have been cancelled. Plants already operating are facing their own troubles. At the beginning of 1986, roughly 10 percent of the Nation's nuclear capacity was shut down, including all of the reactors of the Tennessee Valley Authority. Figures from last year show that 1985 was the worst year on record for the number of near accidents at operating plants.

Some of the reasons for this situation may change—an increase in electrical demand, for example, may lead to a revival of some construction plans. But unless the nuclear industry looks beyond simple demand-supply equations to additional reasons for its decline, no major changes will occur.

One major problem is the ineffectiveness of the Nuclear Regulatory Commission [NRC], which was created in 1974 to regulate the industry and ensure the protection of public health. But the NRC has failed on both counts. This is one area in which both anti and pronuclear forces agree. No one with knowledge of the NRC and its operations would claim that it has discharged its responsibilities effectively.

A consensus is growing that the NRC is simply not structured to handle the nuclear industry's problems as they exist today. The demands of regulation have shifted from bringing new plants on line to ensuring the safe operation of existing plants. We must not leave in place a structure which has been best described as "byzantine" and which is clearly inadequate for its task. It is time to reform the NRC to bring its organization in line with its duties.

The Nuclear Safety Board which Representative UDALL and I have proposed is modeled after the National Transportation Safety Board and its relationship with the Federal Aviation Administration. A number of advantages would result from the application of this structure to the NRC:

First, the Board would lead and coordinate investigations of accidents or events at nuclear powerplants, eliminating overlap and interference of various investigations conducted under the current system.

Second, independent reviews of safety concerns will increase public confidence that all appropriate and necessary steps are being taken to protect public health and safety.

Third, the Safety Board will be a mechanism for more timely resolution of outstanding safety concerns.

Fourth, an independent safety board will be able to conduct investigations that do not overlook possible NRC contribution to an accident or unsafe condition.

I also note that the Safety Board would be deficit neutral because it would reduce the investigatory responsibilities of the NRC, allowing a reduction of its staff and transfer of those resources to the Safety Board. There would be no additional cost to taxpayers.

Establishment of an independent safety board will help restore confidence in the American people that their Government is performing efficiently in its role as watchdog over the nuclear industry. The industry is troubled and public health and safety are in jeopardy. We should act expeditiously in the 100th Congress to put an end to this situation.●

OMNIBUS WATER RESOURCES DEVELOPMENT ACT OF 1986

● Mr. MATTINGLY. Mr. President, I want to congratulate the Congress on passage of House Resolution 6, the Omnibus Water Resources Development Act of 1986. This measure has certainly traversed a tortuous path on its way to enactment, and I want to express my deep sense of satisfaction that we have finally made such a significant step forward in preserving and improving the infrastructure which serves American commerce.

I commend the committee and Senator from South Dakota, Mr. ABDNOR, for his diligence in overseeing this bill to final passage and the adoption of the conference report. I remember clearly that the chairman of the subcommittee and I were once not so clearly unified in our efforts to move this important legislation. In 1982, when I joined with Senators HATFIELD, THURMOND, WARNER, TRIBLE, BYRD, and others in introducing legislation which would provide new impetus for water resources improvements, we encountered significant opposition to the idea of requiring cost-sharing of new projects with local sponsors and the concept of requiring a modest level of user-fee collections from the identifiable beneficiaries of our Nation's deep-draft port facilities in order to provide for necessary operation and maintenance activities.

Mr. President, I will simply say that imitation is the sincerest form of flattery, and I was most happy to note that when the Senate Committee on Environment and Public Works introduced their latest water resources development measure early in the first session of this Congress, it bore a remarkable resemblance to the legislation crafted by the group of Senators I previously named. Let me say I am most gratified to see the progress we have made in this regard, even though the process seemed sometimes endless and the time devoted by both Members and staff mounted into the thousands of hours.

I congratulate all of those who have put so much effort into the formulation and final passage of this vital work, and I heartily encourage the President to approve the bill in an expeditious manner.●

KOREAN AIR LINE FLIGHT 007

● Mr. D'AMATO. Mr. President, I support H.R. 5016, a humanitarian private relief bill the House of Representatives passed on September 15. On September 1, 1983, Korean Air Line flight 007 was shot down by the armed forces of the Soviet Union. Among the 269 passengers and crew who lost their lives that day were the parents and two younger brothers of Sueng Ho Jang and Sueng Il Jang.

The family had come to the United States under the terms of the Treaty/Trade Agreement, and had been issued E-1 visas. They had lived in New York, where the father had been the chief mechanic for Korean Air Lines. Unfortunately, under the terms of the agreement, the surviving brothers' visas became invalid with the death of their father.

The Immigration and Naturalization Service has confirmed that these two young men are financially independent and will certainly not be a burden to society. The older brother, Sueng Ho Jang, is enrolled in a masters degree program in economics at New York University. Sueng Il Jang is a student at the Cooper Union in New York, where he has been accepted on the basis of exceptional artistic ability.

These two young men have now lived in the United States for 7 years, and have come to think of New York as their home. They have known great tragedy in their young lives. I am therefore urging my colleagues, on humanitarian grounds and in the interest of the United States, to pass H.R. 5016.

This measure for two young men whose parents died in the Soviet downing of KAL flight 007 is the least we can do. It is my hope that this legislation can be passed expeditiously and sent to the President for signature.

Finally, Mr. President, I want to thank my colleagues Representative BIAGGI and Chairman THURMOND for all the assistance they have been in bringing this legislation to final passage.●

COMMENTS ON BANKING LEGISLATION

(By request of Mr. DOLE the following statement was ordered to be printed in the RECORD.)

● Mr. GARN. The record must reflect that the failure to enact even the narrowest of banking bills is most troubling. I am appalled at that development. The unyielding attitude of some Members of both sides of the aisle, on both sides of the Hill, is unacceptable. We, of course, will work with the regulations of all depository institutions during the adjournment period and early in the 100th Congress so as to continue to protect the safety and soundness of the Nation's financial institutions. This disappointment is most unfortunate but we all will continue our commitment to solving this conundrum.

The fact that another Congress has just about come to a close and a housing authorization has not been enacted is absolutely frustrating. It is frustrating to members of both committees, to the Department of Housing and Urban Development, and to the many important industry and community groups. We must return to the discussions with a commitment to achieve housing authorization legislation before the August recess.●

BANKING LEGISLATION

● Mr. MELCHER. Mr. President, the majority leader, I understand, has spoken with the Senator from Utah, the chairman of the Senate Banking Committee, and I would ask the majority leader if it is correct that there have been many, many rumors flying around here concerning banking bills, to the effect that the House may try to add housing-related provisions to this bill or some bill if the Senate passes it—provisions which are controversial and some of which have not been considered by the Senate. As indicated, there are a wide variety of items in H.R. 1, including spending items outside the budget, a Fair Housing Initiatives Program without guidelines, new programs and other problems too complex and difficult to be finalized at this late hour, particularly since they differ from even the Senate Banking Committee's version of a housing bill.

I would ask the majority leader, if a housing bill in any form is attached to this bill to recapitalize the FSLIC, or to a so-called check-hold bill which I believe this body will shortly be asked to consider, or to any other bill, will the majority leader assure me that there will be objections to its further consideration by the Senate?

Unless I receive such assurances, I do not intend to remove my objections.

Mr. DOLE. I would assure the Senator that if the House sends us any bill that contains such housing provisions, that I will object on behalf of a number of Senators to its consideration by the Senate.●

THE WORK INCENTIVE [WIN] PROGRAM

● Mr. BIDEN. Mr. President, a few weeks ago, I cosigned a letter to conferees on the Labor, Health and Human Services appropriations bill, asking that they provide $200 million in fiscal year 1987 for the Work Incentive [WIN] Program. While the House version of the bill did provide $200-million, the Senate bill contained no funds for the program. I am pleased that the conferees did retain some funds—$110 million in fiscal year 1987. That amount is contained in the continuing resolution which was sent to the President this week.

I signed that letter and supported continuation of the WIN Program at this time because it is the only Federal program still available which helps recipients of Aid to Families with Dependent Children [AFDC]—welfare benefits—try to achieve self-sufficiency.

We are in the midst of a major national debate over the deficiencies of our welfare system. The central question is whether the system actually encourages beneficiaries to remain dependent on Federal support, rather than seeking employment and becoming self-sufficient.

Within the next few months, the administration will propose major reforms in the welfare system, and those ideas will be considered by the 100th Congress. We will also look at ideas like the Federalism Act, recently introduced by Senators EVANS and DURENBERGER, which would create new work incentives for welfare recipients.

So it seems likely that the current welfare structure will be changed significantly in the next year or two. I for one hope that the reforms we enact will go in the direction of encouraging less dependency on Government. However, in the meantime, I do not think we ought to eliminate the only remaining job-incentive program for welfare beneficiaries. The WIN Program is not the answer; but it can help. And until we have in place a new welfare job system, it should be continued.●

RIGHTS OF SONGWRITERS AND RECORDING ARTISTS DESERVE PROTECTION

● Mr. WILSON. Mr. President, I rise to express regret that we did not have an opportunity to consider before adjournment S. 2842, which would provide protection against the importation of equipment whose very design invites copyright infringement.

Digital audio tape technology, so-called DAT, offers some wonderful benefits, but it is also capable of doing serious damage to the music industry in the United States and throughout the world. Before this new technology is unleashed, Congress must consider whether steps should be taken to protect against its abusive use.

Similar steps are being considered right now by the EEC. Indeed, I understand that the EEC has already informally notified the Japanese Trade Ministry, MITI, that DAT machines are not likely to be permitted in the Common Market unless they contain copy-code scanners—which protect against unauthorized production of perfect copies of coyrighted music.

Wouldn't it be ironic if, by reason of the EEC's strong stand in favor of intellectual property, America were to become the dumping ground for all the new DAT machines, damaging American intellectual property owners even more severely?

Owners of intellectual property rights deserve the same protection as owners of real and personal property

rights. Whenever one considers intangible property, such as that owned by a copyright holder, it may be difficult to appreciate the issues at stake. Yet, if there is no protection afforded by our Government for the rights of authors, filmmakers, songwriters, performing artists, and others, we suffer a great loss, for we cannot expect the efforts of these people to continue.

The arts entertain and enlighten us, but, after all, those who work to bring them to us must be fairly compensated. The bill offered by Senator DANFORTH, S. 2842, of which I am an original cosponsor, is one small but important step that we can take to protect one group of artists who have suffered greatly and unfairly as a result of new technology—specifically, songwriters and recording artists.

As the hasty introduction of DAT machines would precipitate a confrontation that nobody wants, I share the hope of my colleagues that the introduction of these recorders will be postponed until a consensus solution can be developed. After all, it is in the best interest of the electronics manufacturers—who likewise depend on intellectual property protection to preserve the benefits of their own technological creativity—to uphold the values and respect the rights of intellectual property.●

THE MANUFACTURING CLAUSE

(By request of Mr. BYRD the following statement was ordered to be printed in the RECORD:)

● Mr. LEAHY. Mr. President, the manufacturing clause has been critical to the development and the continued vitality of the American printing industry—the seventh largest in our country. Because of the importance of the manufacturing clause to the printing industry, I cosponsored Senator THURMOND's bill, S. 1822 and Senator METZENBAUM's bill, S. 1938.

After the Judiciary Committee favorably reported a compromise version of S. 1822, many in and out of the Senate voiced concerns that an extension of the clause would lead to charges that the United States was in violation of GATT or would lead to threatened retaliation by several European countries.

Senators THURMOND, METZENBAUM, and I then began working with representatives of the administration, the affected industries, and the interested labor unions to come up with a workable compromise which would address those concerns.

We developed just that compromise—an extension of the benefits of the manufacturing clause that kept the United States within the requirements of the GATT. American jobs are at stake, yet we will not take up that compromise before Congress adjourns.

We have let the fears of unwarranted trade retaliation by our competitors defeat job protection for one of the key industries in our own country.

Our failure to act on this important legislation primarily benefits countries which have imposed high tariff and nontariff trade barriers to American printed works, countries which fail to protect American copyrights and permit flagrant pirating of American books, and countries which countenance and even encourage unfair trade practices.

At a time when our trade deficit has reached record proportions, it is discouraging that we have chosen, through inaction, to grant unreciprocating concessions to those countries.

Mr. President, there is no doubt in my mind that we will have to address the extension of the manufacturing clause in the trade context during the 100th Congress. It is a tragedy that by that time, we will be putting a tourniquet on a hemorrhage of American jobs, when preventive medicine is available now.●

COMMENDING SENATOR STEVENS FOR HIS LEADERSHIP OF THE ARMS CONTROL OBSERVER GROUP

Mr. BYRD. Mr. President, on behalf of Senator PELL and myself, I want to commend Senator STEVENS for his leadership of the Arms Control Observer Group. His dedication to this task is known to all of us in the Senate.

COMMENDING DENNIS SHEDD

Mr. BYRD. Mr. President, also on behalf of Senator PELL, I want to commend Dennis Shedd for his service to the President pro tempore, Senator THURMOND, and for his assistance to all of us who traveled to the Soviet Union last year.

REAPPOINTMENT OF MURRAY GELL-MANN AS A CITIZEN REGENT OF THE BOARD OF REGENTS OF THE SMITHSONIAN INSTITUTION

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on Senate Joint Resolution 268.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the resolution from the Senate (S.J. Res. 268) entitled "Joint resolution to provide for the reappointment of Murray Gell-Mann as a citizen regent of the Board of Regents of the Smithsonian Institution", do pass with the following amendments:

Strike out all after the resolving clause, and insert:

That, in accordance with section 5581 of the Revised Statutes of the United States (20 U.S.C. 43), the vacancy on the Board of Regents of the Smithsonian Institution, in the class other than Members of Congress, occurring by reason of the expiration of the term of Murray Gell-Mann of California, is filled by reappointment of the incumbent for a term of six years, effective August 30, 1986.

Amend the title so as to read: "Joint resolution providing for reappointment of Murray Gell-Mann as citizen regent of the Board of Regents of the Smithsonian Institution.".

Mr. DOLE. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, while we are waiting, as I understand it, everything has been done that needs to be done, unless we can work out the problem here on the Gore proposal, Hawkins proposal, and the Helms amendment to the Gore proposal. I am not certain whether we are going to be able to do all of that.

But, as I understand it, there is nothing else to do other than to adjourn, which is not a bad idea. It is now 10 minutes to 9. If anybody told me this morning at 11 o'clock we would be going to be here at 9 o'clock, I would have had them examined. Now I think we ought to have us examined. [Laughter.]

In any event, we are here and hopefully in the next few minutes we could depart.

REPORT OF THE COMMITTEE TO NOTIFY THE PRESIDENT

Mr. DOLE. Mr. President, while we are waiting, I did wish to indicate that we did call the President at 6:15 and told him we just about completed our work. He was pleased with that. And we indicated, both Senator BYRD and myself, that we thought we had a pretty good session. The President agreed that it had been a pretty good year.

Senator BYRD indicated, I think very properly, that whether we are Republicans or Democrats, for the most part, we worked together, and that is the Congress, the legislative branch, with the executive branch. So it was a very nice visit with the President.

He also spoke to the Presiding Officer, Senator THURMOND, the President

pro tempore. And I am not quite certain what he told the distinguished Senator from South Carolina, but we did, as we customarily do, call the President. He was most gracious. We appreciate his cooperation with the Congress in this past session. I look forward to working with him in January, and again I think Senator BYRD indicated no one is certain who will be in charge in January, but whatever happens, we will be working on a number of rather difficult problems next year.

Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be discharged from further consideration of H.R. 5230 dealing with Medicare beneficiaries, and I ask for its immediate consideration.

□ 2110

The PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5230) to amend the Public Health Service Act to extend the program of childhood vaccinations and to require the Secretary of Health and Human Services to maintain a 6 months stockpile of vaccines.

The PRESIDING OFFICER. The bill is considered to be read the first and second times.

AMENDMENT NO. 3517

(Purpose: To establish the Food and Drug Administration by law, and for other purpose)

Mr. HATCH. Mr. President, I send an amendment to the desk on behalf of Senator GORE.

The PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for Mr. GORE, proposes an amendment numbered 3517.

Strike out all after the enacting clause and insert in lieu thereof the following:

That (a) there is established in the Department of Health and Human Services the Food and Drug Administration (hereinafter in this section referred to as the "Administration"). The Administration shall be headed by a Commissioner for Food and Drugs (hereinafter in this section referred to as the "Commissioner"). The Commissioner shall be appointed by the President by and with the advice and consent of the Senate and shall serve at the pleasure of the President. The Administration shall be administered under the supervision and direction of the commissioner. The commissioner shall, in consultation with the Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") appoint a deputy Commissioner and such Associate Commissioners and Directors of functional centers, bureaus, and other administrative units as shall be needed for the effective and efficient discharge of the authorities and functions administered by the Commissioner.

(b)(1) Except as otherwise provided in this subsection, there are transferred to, and vested in, the Commissioner all of the authorities and functions delegated to the Commissioner or to the Assistant General Counsel of the Food and Drug Division by section 5.10 of title 21, Code of Federal Regulations, as of the date of enactment of this section, without regard to any reservation prescribed by section 5.11 of title 21, Code of Federal Regulations. The office of the Assistant General Counsel of the Food and Drug Division of the Office of General Counsel within the Office of the Secretary is transferred to the Food and Drug Administration and redesignated the Office of chief Counsel. The Secretary may delegate to the Commissioner such additional authorities and functions as the Secretary deems appropriate.

(2) The Secretary may require the Commissioner to notify the Secretary of any decisions of the Commissioner which—

(A) estabish procedural rules applicable to a general class of foods, drugs, cosmetics, medical devices, or other subjects of regulation; or

(B) present highly significant public issues involving the quality, availability, marketability, or cost of one or more foods, drugs, cosmetics, medical devices, or other subjects or regulations.

(c) The provisions of the third sentence of subsection (a) shall apply to any individual appointed to the position of Commissioner of Food and Drugs after the date of enactment of this section.

(d) The Commissioner of Food and Drugs may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and without regard to the provision of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, establish such technical and scientific review groups as are needed to carry out the functions of the Administration, including functions under the Federal Food, Drug, and Cosmetic Act, and appoint and pay the members of such groups, except that officers and employees of the United States shall not receive additional compensation for service as members of such groups.

(e)(1) Section 5316 of title 5, United States Code, is amended by striking out the item relating to the Commissioner of Food and Drugs, Department of Health and Human Services.

(2) Section 5315 of such title is amended by adding at the end thereof the following new item:

"Commissioner of Food and Drugs, Department of Health and Human Services".

Amend the title so as to read: "An Act to require that the appointment of the Commissioner of Food and Drugs be subject to Senate confirmation.".

Mr. HATCH. This is an amendment by Senator GORE that actually was in the original drug export package. He fought for it on the floor, he got the amendment in. In final compromise, we did not put it in the drug export package, because it really did not belong there.

But we agreed, or at least I agreed, that I would do my very best to try to pass it on another vehicle before the end of this session. That is what we are doing now. I commend Senator GORE for the efforts he has put forth. I commend him for the gentlemanly way in which he has dealt with me.

I certainly want to support him on the passage of this particular piece of legislation.

Mr. GORE. Mr. President, I wish to express my deep thanks and appreciation to the Senator from Utah for the working relationship that he and I have had. When I was a Member of the other body, we worked closely together. As a freshman Member of this body, my respect and admiration for him and his parliamentary skills and vision, particularly in health policy, has grown considerably.

When I came to the Senate just 2 years ago, I was told how much this institution depends upon personal relationships and honor and integrity. In the short time I have been here, I have come already to love this institution. My colleagues have taught me a great deal about how important it is to stand by one another when negotiations take place. I really do appreciate it a great deal.

Mr. President, it is time we let everyone know that they can count on having FDA around for many years to come. My amendment insures that there will always be an FDA and that its head will be a Commissioner appointed by the President and subject to Senate confirmation. The Commissioner will have the responsibility for carrying out the Nation's food and drug laws.

I hope my colleagues see this amendment for what it is intended to be, a routine measure, long overdue, and I hope my colleagues will be quick to support it.

For more than a century, the Food and Drug Administration has stood for solid protection of our food supply and medicines. All of us here can understand the importance of an independent and dependable FDA.

From the Pure Food and Drugs Act of 1906 to the Infant Formula Act of 1980, Congress has always turned to the FDA to ensure and enhance the public health. Its jurisdiction includes vital areas of public health, ranging from approval of drugs and food additives to inspection of medical devices and consumer complaints. Through the years, the agency has developed a worldwide reputation for professionalism and expertise.

We in Congress should strive to protect and promote that reputation for

excellence. This amendment would give the FDA an independent Commissioner, appointed by the President and subject to congressional approval. An independent Commissioner will answer to Congress and the American people, not to several other agencies in the administration.

The head of every other major Federal health and safety agency is currently subject to Presidential appointment and Senate confirmation with a single exception—FDA. This includes the heads of the Federal Aviation Administration, the Environmental Protection Agency, the Occupational Health and Safety Administration, the National Highway Traffic Safety Administration, the Consumer Product Safety Commission, and the Nuclear Regulatory Commission.

The FDA is larger than the CSPC and the NRC, and more powerful than NHTSA or OSHA. It seems only reasonable to require the FDA Commissioner to account to Congress just as so many other commissioners must do.

Besides making the FDA Commissoner a Presidential appointment, this amendment would clarify the FDA's place in the executive process by giving the Commissioner more authority over FDA matters.

Mr. President, this amendment should enjoy the support of industry and public advocates alike. In the past, the current arrangement has resulted in serious delays in decisionmaking—delays that have endangered the public health and cost industry millions of dollars. I think we will all benefit from an independent and accountable FDA.

We must never allow redtape to stand in the way of progress or public safety. It is time to let the FDA concentrate on the business of safeguarding the health of the American people.

Mr. President, I hope my colleagues will support this small but essential step to bolster the independence of this tremendously important agency.

On this occasion, I shall just express my thanks once again to the Senator from Utah for his cooperation in this matter.

Mr. HATCH. Mr. President, I thank the distinguished Senator for his kind remarks.

I move the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3517) was agreed to.

Mr. HATCH. I urge passage of the bill.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 5230) was passed.

The title was amended.

Mr. HATCH. I move to reconsider the vote by which the bill was passed.

Mr. GORE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FAREWELL

Mr. GOLDWATER. Mr. President, after 30 years, I leave this body and I leave with one wish. Five times I have stood at the President of the Senate's desk, my left hand on the Bible, my right hand raised, and sworn to defend and protect the Constitution of the United States against all enemies, foreign and domestic. My wish is that when my time comes, our Leader up above will say, "Son, you did your best."

ADJOURNMENT SINE DIE

Mr. DOLE. Mr. President, let me indicate to the distinguished minority leader and the distinguished President pro tempore, under the provisions of House Concurrent Resolution 417, I move that the Senate stand in adjournment sine die.

The motion was agreed to and at 9:13 p.m., the Senate adjourned sine die.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 18, 1986:

Department of Housing and Urban Development

Thomas T. Demery, of Michigan, to be an Assistant Secretary of Housing and Urban Development.

United Nations

Noel Gross, of New Jersey, to be an alternate representative of the United States of America to the 41st session of the General Assembly of the United Nations.

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duly constituted committee of the Senate.

Commission on Merchant Marine and Defense

The following-named persons to be Members of the Commission on Merchant Marine and Defense:

Edward Elmer Carlson, of Washington.
William E. Haggett, of Maine.
James L. Holloway III, of Maryland.
Joseph Sewall, of Maine.
Shannon J. Wall, of New Jersey.

Corporation for Public Broadcasting

R. Kenneth Towery, of Texas, to be a member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring March 26, 1991.

Daniel L. Brenner, of the District of Columbia to be a member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring March 26, 1991.

Department of Labor

Shirley Dennis, of Pennsylvania, to be Director of the Women's Bureau, Department of Labor.

National Commission on Libraries and Information Science

Kenneth Y. Tomlinson, of New York, to be a member of the National Commission on Libraries and Information Sciences for a term expiring July 19, 1991.

National Council on Educational Research

David Alan Heslop, of California, to be a member of the National Council on Educational Research for a term expiring September 30, 1989.

National Foundation on the Arts and the Humanities

Robert Hollander, of New Jersey, to be a member of the National Council on the Humanities for a term expiring January 26, 1992.

Robert B. Stevens, of Pennsylvania, to be a member of the National Council on the Humanities for a term expiring January 26, 1992.

National Labor Relations Board

Mary Cracraft, of Kansas, to be a member of the National Labor Relations Board for the term of 5 years expiring August 27, 1991.

National Science Foundation

F. Albert Cotton, of Texas, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 1992.

Mary Lowe Good, of Illinois, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 1992.

John C. Hancock, of Missouri, to be a nember of the National Science Board, National Science Foundation, for a term expiring May 10, 1992.

James B. Holderman, of South Carolina, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 1992.

James L. Powell, of Pennsylvania, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 1992.

National Oceanic and Atmospheric Administration

Rear Adm. Wesley V. Hull, NOAA, to the grade of rear admiral while serving as Director, Charting and Geodetic Services, National Ocean Service, National Oceanic and Atmospheric Administration.

In the Coast Guard

Coast Guard nominations beginning James A. Sanial, Jr., and ending William A. Danner, which nominations were received by the Senate and appeared in the Congressional Record on September 23, 1986.

National Oceanic and Atmospheric Administration

National Oceanic and Atmospheric Administration nominations beginning Richard B. Koehler, and ending Edward R. Cassano, which nominations were received by the Senate and appeared in the Congressional Record on September 24, 1986.

MESSAGES FROM THE HOUSE RECEIVED SUBSEQUENT TO SINE DIE ADJOURNMENT

Under the authority of the order of the Senate of January 3, 1985, the Secretary of the Senate on October 20, 1986, subsequent to the sine die adjournment of the Congress, received a message from the House of Representatives announcing that the House has passed the following bill, without amendment:

S. 2948. An act to authorize the President to promote posthumously the late Lt. Col. Ellison S. Onizuka to the grade of colonel.

The message also announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 174. A concurrent resolution to correct technical errors in the enrollment of the bill H.R. 5300.

The message further announced that the House agrees to the amendment of the Senate to the amendment of the House to the bill (S. 2245) to authorize appropriations to carry out the Export Administration Act of 1979 and export promotion activities.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 4444) to amend the Immigration and Nationality Act, and for other purposes.

The message further announced that the House agrees to the amendments of the Senate to the following bills:

H.R. 1452. An act to amend the Immigration and Nationality Act to extend for 2 years the authorization of appropriations for refugee assistance, and for other purposes;

H.R. 2663. An act to amend title 5, United States Code, to credit time spent in the Cadet Nurse Corps during World War II as creditable for civil service retirement;

H.R. 2946. An act to establish an independent jury system for the Superior Court of the District of Columbia; and

H.R. 4731. An act to enhance boating safety by requiring a report relating to the display on gasoline pumps of the type of alcohol, the percentage of each type of alcohol, and the percentage of cosolvents, if any, contained in the gasoline; to amend chapter 131 of title 46, United States Code, relating to recreational boating safety, and for other purposes.

The message also announced that the House agrees to the amendments of the Senate to the amendment of the House to the amendment of the Senate to the bill (H.R. 5495) to authorize appropriations to the National Aeronautics and Space Administration, and for other purposes.

The message further announced that the House disagrees to the amendments of the Senate to the amendments of the House to the amendments of the Senate to the concurrent resolution (H. Con. Res. 395) to correct technical errors in the enrollment of the bill H.R. 3838.

The message also announced that pursuant to section 4(a) of Public Law 96-114, as amended, the minority leader appoints as members of the Congressional Award Board, the following persons from private life: Mr. Merlin E. Dewing, New York, NY, and Adm. Elmo R. Zumwalt, Jr., Arlington, VA.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The message further announced that the Speaker had signed the following enrolled bills and joint resolution:

H.R. 1010. An act for the relief of Audrey O. Lewis and Emerson B. Vereen;

H.R. 3415. An act to authorize the minting of coins in commemoration of the Bicentennial of the U.S. Constitution;

H.R. 3838. An act to reform the internal revenue laws of the United States;

H.R. 5300. An act to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987;

H.R. 5465. An act to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances; and

H.J. Res. 142. Joint resolution to authorize the erection of a memorial on Federal land in the District of Columbia and its environs to honor the estimated 5,000 courageous slaves and free black persons who served as soldiers and sailors or provided civilian assistance during the American Revolution and to honor the countless black men, women, and children who ran away from slavery or filed petitions with courts and legislatures seeking their freedom.

Under the authority of the order of the Senate of January 3, 1985, the enrolled bills and joint resolution were signed on October 20, 1986, subsequent to the sine die adjournment of the Congress by the President pro tempore [Mr. THURMOND].

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

Under the authority of the order of the Senate of January 3, 1985, the Secretary of the Senate, on October 22, 1986, subsequent to the sine die adjournment of the Congress, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills and joint resolution:

H.R. 2484. An act to amend title 28, United States Code, relating to quiet title actions against the United States, with respect to actions brought by States;

H.R. 2574. An act for the relief of the survivors of Christopher Eney;

H.R. 2776. An act to amend the District of Columbia Stadium Act of 1957 to direct the Secretary of the Interior to convey title to the Robert F. Kennedy Memorial Stadium to the District of Columbia;

H.R. 4037. An act relating to the Indiana Dunes National Lakeshore, and for other purposes;

H.R. 4154. An act to amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such act, and for other purposes;

H.R. 4576. An act to designate the United States Attorney's Building for the Southern District of New York as the "Silvio James Mollo Federal Building";

H.R. 4685. An act to adjust the boundaries of areas of the National Wilderness Preservation System in the State of Texas;

H.R. 4961. An act to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1987, 1988, 1989, and for other purposes;

H.R. 5181. An act to designate the United States Courthouse at 68 Court Street, Buffalo, NY, as the "Michael J. Dillon Memorial United States Courthouse";

H.R. 5215. An act to authorize the construction by the Secretary of Agriculture of a salinity laboratory at Riverside, CA;

H.R. 5218. An act to amend title 5, United States Code, to provide that certain individuals be accorded competitive status for the purposes of transferring to the competitive service;

H.R. 5459. An act to direct the release, on behalf of the United States, of certain conditions and reservations contained in a conveyance of land to the State of Utah, and for others purposes;

H.R. 5470. An act to designate the United States Courthouse for the Eastern District of Virginia in Alexandria, VA, as the "Albert V. Bryan United States Courthouse";

H.R. 5679. An act to extend the exclusion from Federal unemployment tax of wages paid to certain alien farmworkers;

H.R. 5682. An act to authorize the Secretary of the Navy to make a certain conveyance of real property; and

H.J. Res. 620. Joint resolution designating the week beginning January 4, 1987, as "National Bowling Week."

Under the authority of the order of the Senate of January 3, 1985, the enrolled bills and joint resolution were signed on October 22, 1986, subsequent to the sine die adjournment of the Congress, by the President pro tempore [Mr. THURMOND].

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Under the authority of the order of the Senate of January 3, 1985, the Secretary of the Senate, on October 23, 1986, subsequent to the sine die adjournment of the Congress, received a message from the House of Representatives announcing that the Speaker had signed the following enrolled bills and joint resolutions:

S. 1128. An act to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes;

S. 2057. An act to establish the President's Council on Health Promotion and Disease Prevention;

S.J. Res. 367. Joint resolution to designate October 23, 1986, as "National Kidney Program Day"; and

H.J. Res. 754. Joint resolution providing for furloughed employees compensation.

Under the authority of the order of the Senate of January 3, 1985, the enrolled bills and joint resolutions were signed on October 23, 1986, subsequent to the sine die adjournment of the Congress, by the President pro tempore [Mr. THURMOND].

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Under the authority of the order of the Senate of January 3, 1985, the Secretary of the Senate, on October 25, 1986, subsequent to the sine die adjournment of the Congress, received a message from the House of Representatives announcing that the Speaker had signed the following enrolled bills and joint resolutions:

H.R. 897. An act to recognize the Army and Navy Union of the United States of America;

H.R. 1452. An act to amend the Immigration and Nationality Act to extend for 2 years the authorization of appropriations for refugee assistance, and for other purposes;

H.R. 2434. An act to authorize appropriations for the Patent and Trademark Office in the Department of Commerce, and for other purposes;

H.R. 4118. An act to designate the building commonly known as the Old Post Office Building in Worcester, MA, as the "Harold D. Donahue Federal Building";

H.R. 4244. An act to authorize funds to preserve the official papers of Joseph W. Martin, Jr.;

H.R. 4350. An act to amend the Wild and Scenic Rivers Act, and for other purposes;

H.R. 5167. An act to declare that the United States holds certain public domain lands in trust for the Pueblo of Zia;

H.R. 5484. An act to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes;

H.R. 5554. An act to transfer the Community Development Credit Union Revolving Loan Fund to the National Credit Union Administration and to authorize the National Credit Union Administration Board to administer the fund;

H.R. 5564. An act to amend the National Housing Act to provide for the eligibility of certain property for single family mortgage insurance;

H.J. Res. 645. Joint resolution to designate 1988 as the "National Year of Friendship with Finland"; and

H.J. Res. 755. Joint resolution providing for the convening of the 1st session of the 100th Congress.

Under the authority of the order of the Senate of January 3, 1985, the enrolled bills and joint resolutions were signed on October 26, 1986, subsequent to the sine die adjournment of the Congress, by the President pro tempore [Mr. THURMOND].

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Under the authority of the order of the Senate of January 3, 1985, the Secretary of the Senate, on October 29, 1986, subsequent to the sine die adjournment of the Congress, received a message from the House of Representatives, announcing that the Speaker had signed the following enrolled bills and joint resolutions:

S. 332. An act for the relief of Ramzi Sallomy and Marie Sallomy;

S. 386. An act to confirm a conveyance of certain real property by the Southern Pacific Transportation Co. to Ernest Pritchett and his wife, Dianna Pritchett, and for other purposes;

S. 485. An act to amend the Alaska National Interest Lands Conservation Act of 1980 to clarify the treatment of submerged lands and ownership by the Alaskan Native Corporation;

S. 511. An act to change the name of the Loxahatchee National Wildlife Refuge, Florida, to the Arthur R. Marshall Loxahatchee National Wildlife Refuge;

S. 565. An act to provide for the transfer of certain lands in the State of Arizona;

S. 740. An act to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands by the acquisition of wetlands and other essential habitat, and for other purposes;

S. 1200. An act to amend the Immigration and Nationality Act to revise and reform the immigration laws, and for other purposes;

S. 1230. An act to amend the patent laws implementing the Patent Cooperation Treaty;

S. 1236. An act to amend title 18 of the United States Code and other laws to make minor or technical amendments to provisions enacted by the Comprehensive Crime Control Act of 1984, and for other purposes;

S. 1311. An act to authorize the Board of Regents of the Smithsonian Institution to construct the Charles McC. Mathias, Jr. Laboratory for Environmental Research in Edgewater, MD, and to designate the United States Courthouse and Customhouse in Louisville, KY, as the "Gene Snyder United States Courthouse and Customhouse;

S. 1374. An act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island;

S. 2000. An act to clarify the exemptive authority of the Securities and Exchange Commission;

S. 2245. An act to authorize appropriations to carry out the Export Administration Act of 1979 and export promotion activities;

S. 2250. An act to strengthen the prohibition of kickbacks relating to subcontracts under Federal Government contracts;

S. 2351. An act to revise the boundaries of the Olympic National Park and Olympic National Forest in the State of Washington, and for other purposes;

S. 2452. An act to provide for the naming or renaming of certain buildings of the U.S. Postal Service;

S. 2534. An act to authorize the acquisition and development of a mainland tour boat facility for the Fort Sumter National Monument, South Carolina, and for other purposes;

S. 2648. An act to improve the public health through the prevention of injuries;

S. 2852. An act to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the Peninsula Airport Commission, Virginia, for airport purposes;

S. 2864. An act to provide for a Deputy Secretary of Labor, an Assistant Secretary of Labor for Administration and Management, three additional Assistant Secretaries of Labor, and for other purposes;

S. 2948. An act to authorize the President to promote posthumously the late Lt. Col. Ellison S. Onizuka to the grade of colonel;

H.R. 1790. An act to withdraw certain public lands for military purposes, and for other purposes;

H.R. 2663. An act to amend title 5, United States Code, to credit time spent in the Cadet Nurse Corps during World War II as creditable service for civil service retirement; and to provide civil service retirement credit for certain employees and former employees of nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces;

H.R. 3737. An act to amend the Immigration and Nationality Act to deter immigration-related marriage fraud and other immigration fraud;

H.R. 4208. An act to authorize appropriations for the Coast Guard for fiscal year 1987, and for other purposes;

H.R. 4302. An act to establish a commission for the purposes of encouraging and providing for the commemoration of the centennial of the birth of President Dwight David Eisenhower;

H.R. 4531. An act to improve the operation of certain fish and wildlife programs;

H.R. 4613. An act to reauthorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements to that act;

H.R. 4731. An act to enhance boating safety by requiring a report relating to the display on gasoline pumps of the type of alcohol, the percentage of each type of alcohol, and the percentage of cosolvents, if any, contained in the gasoline; to amend chapter 131 of title 46, United States Code, relating to recreational boating safety, and for other purposes;

H.R. 5420. An act to amend section 3726 of title 31, United States Code, relating to payment for transportation, to permit prepayment audits for selected transportation bills, to permanently authorize payment of transportation audit contractors from carrier overpayments collected, to authorize net overpayments collected to be transferred to the Treasury, and for other purposes;

H.R. 5560. An act to amend title 18 of the United States Code, to ban the production and use of advertisements for child pornography or solicitations for child pornography, and for other purposes;

H.R. 5595. An act to make permanent and improve the provisions of section 1619 of the Social Security Act, and for other purposes;

S.J. Res. 43. Joint resolution authorizing the establishment of a memorial to honor the American Armored Force;

S.J. Res. 268. Joint resolution providing for reappointment of Murray Gell-Mann as a citizen regent of the Board of Regents of the Smithsonian Institution;

S.J. Res. 336. Joint resolution to express the sense of Congress on recognition of the contributions of the seven *Challenger* astronauts by supporting establishment of a Children's Challenge Center for Space Science;

S.J. Res. 427. Joint resolution reaffirming our friendship and sympathy with the people of El Salvador following the devastating earthquake of October 10, 1986;

H.J. Res. 36. Joint resolution to authorize the establishment of a memorial on Federal land in the District of Columbia and its environs to honor women who have served in the Armed Forces of the United States;

H.J. Res. 67. Joint resolution calling for a wildlife sanctuary for humpback whales in the West Indies;

H.J. Res. 594. Joint resolution to designate the week beginning May 3, 1987 as "National Correctional Officers Week";

H.J. Res. 684. Joint resolution calling for the recognition of United Way's 100th anniversary; and

H.J. Res. 756. Joint resolution to make corrections in the Anti-Apartheid Act of 1986.

Under the authority of the order of the Senate of January 3, 1985, the enrolled bills and joint resolutions were signed on October 29, 1986, subsequent to the sine die adjournment of the Congress, by the President pro tempore [Mr. THURMOND].

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Under the authority of the order of the Senate of January 3, 1985, the Secretary of the Senate, on November 4, 1986, subsequent to the sine die adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker had signed the following enrolled bills and joint resolutions:

S. 991. An act to amend certain provisions of the law regarding the fisheries of the United States, and for other purposes;

S. 1744. An act to require States to develop, establish, and implement State comprehensive mental health plans;

S. 2638. An act to authorize appropriations for fiscal year 1987 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, to improve the defense acquisition process, and for other purposes;

H.R. 6. An act to provide for the conservation and development of water and related resources and the improvement and rehabilitation of the Nation's water resources infrastructure;

H.R. 2946. An act to establish an independent jury system for the Superior Court of the District of Columbia;

H.R. 3004. An act to amend section 3006A of title 18, United States Code, to improve the delivery of legal services in the criminal justice system in those persons financially unable to obtain adequate representation, and for other purposes;

H.R. 4378. An act to provide standards for placement of commermorative works on certain Federal lands in the District of Columbia and its environs, and for other purposes;

H.R. 4444. An act to amend the Immigration and Nationality Act, and for other purposes;

H.R. 4745. An act to amend title 18, United States Code, with respect to sexual abuse;

H.R. 5028. An act entitled the "Lower Colorado Water Supply Act";

H.R. 5180. An act to designate the Federal Building at 111 W. Huron Street, Buffalo, NY, as the "Thaddeus J. Dulski Federal Building";

H.R. 5363. An act to amend the interest provisions of the Declaration of Taking Act;

H.R. 5495. An act to authorize appropriations to the National Aeronautics and Space Administration, and for other purposes;

H.R. 5674. An act to amend title 28, United States Code, with respect to the composition of, and places of holding court in, certain judicial districts;

H.R. 5705. An act to protect and provide for the enhancement of the resources of the Columbia River Gorge, and for other purposes;

H.R. 5730. An act to provide for a land exchange in the State of Alaska;

H.J. Res. 10. Joint resolution to designate the week beginning January 19, 1987, as "Shays' Rebellion Week" and Sunday, January 25, 1987, as "Shays' Rebellion Day"; and

H.J. Res. 626. Joint resolution to approve the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes.

Under the authority of the order of the Senate of January 3, 1985, the enrolled bills and joint resolutions were signed on November 4, 1986, subsequent to the sine die adjournment of the Congress, by the President pro tempore [Mr. THURMOND].

ENROLLED BILLS AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that she had presented the following enrolled bills and joint resolutions:

On October 24, 1986:

S. 2057. An act to establish the President's Council on Health Promotion and Disease Prevention; and

S.J. Res. 367. Joint resolution to designate October 23, 1986, as "National Kidney Program Day."

On October 25, 1986:

S. 1128. An act to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes.

On October 30, 1986:

S. 332. An act for the relief of Ramzi Sallomy and Marie Sallomy;

S. 386. An act to confirm a conveyance of certain real property by the Southern Pacific Transportation Company to Ernest Pritchett and his wife, Dianna Pritchett, and for other purposes;

S. 485. An act to amend the Alaska National Interest Lands Conservation Act of 1980 to clarify the treatment of submerged lands and ownership by the Alaskan Native Corporation;

S. 511. An act to change the name of the Loxahatchee National Wildlife Refuge, FL, to the Arther R. Marshall Loxahatchee National Wildlife Refuge;

S. 565. An act to provide for the transfer of certain lands in the State of Arizona;

S. 740. An act to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands by the acquisition of wetlands and other essential habitat, and for other purposes;

S. 1200. An act to amend the Immigration and Nationality Act to revise and reform the immigration laws, and for other purposes;

S. 1230. An act to amend the patent laws implementing the Patent Cooperation Treaty;

S. 1236. An act to amend title 18 of the United States Code and other laws to make minor or technical amendments to provisions enacted by the Comprehensive Crime Control Act of 1984, and for other purposes;

S. 1311. An act to authorize the Board of Regents of the Smithsonian Institution to construct the Charles McC. Mathias, Jr. Laboratory for Environmental Research in Edgewater, MD, and to designate the U.S. Courthouse and Customhouse in Louisville, KY, as the "Gene Snyder United States Courthouse and Customhouse";

S. 1374. An act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island;

S. 2000. An act to clarify the exemptive authority of the Securities and Exchange Commission;

S. 2245. An act to authorize appropriations to carry out the Export Administration Act of 1979 and export promotion activities;

S. 2250. An act to strengthen the prohibition of kickbacks relating to subcontracts under Federal Government contracts;

S. 2351. An act to revise the boundaries of the Olympic National Park and Olympic National Forest in the State of Washington, and for other purposes;

S. 2452. An act to provide for the naming or renaming of certain buildings of the U.S. Postal Service;

S. 2534. An act to authorize the acquisition and development of a mainland tour boat facility for the Fort Sumter National Monument, SC, and for other purposes;

S. 2648. An act to improve the public health through the prevention of injuries;

S. 2852. An act to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the Peninsula Airport Commission, Virginia, for airport purposes;

S. 2864. An act provide for a Deputy Secretary of Labor, an Assistant Secretary of Labor for Administration and Management, three additional Assistant Secretaries of Labor, and for other purposes;

S. 2948. An act to authorize the President to promote posthumously the late Lt. Col. Ellison S. Onizuka to the grade of colonel;

S.J. Res. 43. Joint resolution authorizing the establishment of a memorial to honor the American Armored Force;

S.J. Res. 268. Joint resolution providing for reappointment of Murray Gell-Mann as a citizen regent of the Board of Regents of the Smithsonian Institution;

S.J. Res. 336. Joint resolution to express the sense of Congress on recognition of the contributions of the seven *Challenger* astronauts by supporting establishment of a Children's Challenge Center for Space Science; and

S.J. Res. 427. Joint resolution reaffirming our friendship and sympathy with the people of El Salvador following the devastating earthquake of October 10, 1986.

On November 4, 1986:

S. 991. An act to amend certain provisions of the law regarding the fisheries of the United States, and for other purposes;

S. 1744. An act to require States to develop, establish, and implement State comprehensive mental health plans; and

S. 2638. An act to authorize appropriations for fiscal year 1987 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, to improve the defense acquisition process, and for other purposes;

ADDITIONAL STATEMENTS

PAUL LAXALT

● Mr. STEVENS. Mr. President, I believe PAUL LAXALT has played one of the most unique roles in American political history. As a former Governor, he has an enviable record of legislative

successes acting for his native State of Nevada. And, as one of the cofounders of the Western Coalition, PAUL has helped the West to achieve its greatest period of influence in the Senate.

But, Mr. President, his real mark has been made by the amazing manner in which he has maintained his friendship with the most popular President of this century, if not of the entire history of our Nation. PAUL LAXALT—friend, counselor, campaign manager, and troubleshooter for Ronald Reagan—has enabled this administration to avoid or overcome many obstacles. And, when that was not possible, he has been able to say: "Mr. President, what you want to accomplish just cannot be done now."

As the years have gone by since PAUL LAXALT came to the Senate in 1975, I have admired him more and more. He led the "Sagebrush Rebellion"—the West's reaction to the overreaching of the Carter administration. And, PAUL's counsel to the West that we should rally around Ronald Reagan as we attempted to rebuild our party structure in the aftermath of Watergate was good advice.

Now, PAUL and Carol will have a chance to reflect on what they should do with the balance of their lives. It is my hope that PAUL will realize that this unique role I have described provides him with qualifications for leadership that no one else possesses.

PAUL LAXALT has led the effort to organize President Reagan's campaigns. As a Western Governor who served his State during the period President Reagan was Governor of California, he has similar roots. PAUL is known to all who attended the Republican Conventions of 1972, 1976, 1980, and 1984 as a person who supports the same goals as President Reagan and has paid his dues in trying to achieve those goals.

The credibility of our policies at home and abroad will be subject to great tests when President Reagan leaves office. Over the next 2 years, I have the feeling that President Reagan will have many opportunities to call on PAUL LAXALT, as he did in the Philippines crisis, to serve our Nation as the President's personal envoy.

PAUL's talents in that capacity will be needed in our future. And, wherever he and his lovely wife Carol go, he will know that Alaskans know him, respect him, and honor him for his contributions to the West and the whole country. We want to continue to work with PAUL LAXALT, Mr. President, and hope that we will have that opportunity again and again in the future.●

REPORT ON S. 1543, PROCESS PATENT LEGISLATION

● Mr. MATHIAS. Mr. President, in the hectic closing hours of the 99th Congress, it has not been possible for the Judiciary Committee to file its formal report on S. 1543, the Process Patent Amendments Act. However, a draft report has been prepared that may be useful in explaining the provisions of this legislation. This draft, which addresses the process patent legislation as it was approved by the Judiciary Committee on September 19, has been circulated to the interested parties. I ask that the text of the draft report be printed in the RECORD.

The report follows:

I. TEXT OF S. 1543, AS AMENDED

S. 1543

Amendment in the nature of a substitute intended to be proposed by Mr. Mathias:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Process Patent Amendments Act of 1986".

SEC. 2. (a) Section 154 of title 35, United States Code, is amended by inserting after "United States," the following: "and, if the invention is a process, of the right to exclude others, to the extent provided in section 271(a)(2), from using or selling products produced thereby throughout the United States, or importing products produced thereby into the United States,".

(b) Section 271 of title 35, United States Code, is amended by—

(1) inserting "(1)" after "(a)";

(2) adding at the end of subsection (a), the following:

"(2) If the patented invention is a process, whoever without authority uses or sells within, or imports into, the United States during the term of the patent therefor a product produced by such process, infringes the patent. A product will no longer be considered to have been produced by a patented process once it has been materially changed by subsequent steps or processes.".

(c) Section 287 of title 35, United States Code, is amended by—

(1) striking out "Limitation on damages" in the section heading and inserting in lieu thereof "Limitation on damages" in the section heading and inserting in lieu thereof "Limitation on damages and other remedies";

(2) inserting "(a)" before "Patentees,"; and

(3) adding at the end thereof the following new subsection:

"(b)(1) An infringer under section 271(a)(2) shall be subject to all of the provisions relating to damages and injunctions set forth in this title except to the extent that those remedies are limited by this subsection or section 3. The limitations on remedies set forth in this subsection shall not be available to any party who—

"(A) engaged in the actual practice of the patented process;

"(B) is owned or controlled by the party who engaged in the actual practice of the patented process;

"(C) owns or controls the party who engaged in the actual practice of the patented process;

"(D) having made a request for disclosure as provided in subsection (b)(5), fails to notify its supplier of patents identified in response to the request and to instruct its supplier to refrain from infringement of such patents; or

"(E) had knowledge prior to the infringement that a patented process was used to produce the product whose importation, use, or sale constituted the infringement.

"(2) No damages shall be recovered by the patentee unless the infringer had notice of the infringement and continued to infringe thereafter. Damages may be recovered only for infringement that occurred after notice of infringement.

"(3) No remedy may be obtained during the eighteen months after the date of notice for retail sales of a normal volume of products in inventory or on order at the time of notice, obtained from a party in the United States who did not use the patented process, provided the retailer discloses to the patentee, within 30 days from notice, the identity and location of the party from whom the products were purchased. Normal quantity of products in inventory and on order shall be determined by previous business practices, and could include units of a product ordered prior to notice and received within a period not to exceed eighteen months after notice.

"(4) The remedy for the importation, use, or sale of units of the infringing product ordered prior to notice and imported, use, or sold in a manner consistent with the normal business practices of the infringer during the six months after the date of notice shall be limited to a reasonable royalty. The limitation in this subparagraph shall not be available to any party who failed to make a request for disclosure, as defined in subparagraph (5), of the party asserting infringement or its licensee.

"(5)(A) For purposes of this paragraph, a 'request for disclosure' means a written request made to a party then engaged in the manufacture of a product to identify all process patents owned by or licensed to that party as of the time of the request that could reasonably be asserted to be infringed under section 271(a)(2) if that product were imported into, or sold or used in, the United States by an unauthorized party. A request for disclosure is further limited to a request—

"(i) made by a party regularly engaged in the sale of the same type of products as the party to whom the request is directed, or a request which includes facts showing that the requester plans to engage in the sale of such products; and

"(ii) made prior to such party's first use importation, or sale of units of the product produced by an infringing process and prior to notice of infringement.

"(B) In any action where the infringer made a request for disclosure from the party asserting infringement and the infringed patent was not identified within 60 days, the remedy for the importation, use, or sale of units of the infringing product which are imported, used, or sold by the infringer in a manner consistent with the normal business practices of the infringer during the eighteen months after the date of notice shall be limited to a reasonable royalty.

"(C) For the purposes of the limitations on remedies in this subsection—

"(i) no party may make more than one request for disclosure of the same party for the identification of process patents for producing a particular product; and

"(ii) no party who has received the benefit of the limitations of this paragraph or paragraph (4) with respect to the infringement of one process patent shall be entitled to that benefit in the event of a subsequent infringement of any process patent for producing the same product owned by the same

patentholder at the time of the first infringement.

"(6) For the purposes of the remedy limitations in subsection (b), notice of infringement means actual knowledge, or receipt of notification, that a product was produced by a patented process without authorization of the patentee. A notification shall constitute notice of infringement only if it is in writing and sets forth facts which are sufficient to establish that there is a substantial likelihood that the product was made by the infringing process. Filing an action for infringement shall constitute notice of infringement only if the pleadings or other papers filed in the action meet the requirements of a notification.".

(d) The table of sections for chapter 29 of title 35, United States Code, is amended by amending the item relating to section 287 to read as follows:

"287. Limitations on damages and other remedies; marking and notice.".

SEC. 3. (a) This Act and the amendments made by this Act shall apply only to products produced or imported after the date of enactment, and shall not abridge or affect the right of any persons or their successors in business to continue to use, sell or import any specific product already in substantial and continuous sale or use in the United States on July 1, 1986, or for which substantial preparation for such sale or use was made before such date, to the extent equitable for the protection of commercial investments made or business commenced in the United States before such date.

(b) This Act and the amendments made by this Act shall not deprive a patent owner of any other remedies available under section 271 of title 35, United States Code, section 337 of the Tariff Act of 1930, or any other provision of law.

SEC. 4. Beginning on the date one year after the date of enactment of this Act and each year for 4 additional years thereafter, the Department of Commerce shall submit an annual report to the Congress on the effect of this Act and the amendments made by this Act, on the importation of ingredients to be used for manufacturing products in the United States in those domestic industries that submit formal complaints to the Department alleging that their legitimate sources of supply have been adversely affected.

SEC. 5. (a) Chapter 29 of title 35, United States Code, is amended by adding at the end thereof the following:

"§ 295. Presumption: product produced by patented process

"In actions alleging infringement of a process patent based on use, sale, or importation of a product produced by the patented process, if the court finds (1) that a substantial likelihood exists that the product was produced by the patented process and (2) that the claimant has made a reasonable effort to determine the process actually used in the production of the product and was unable so to determine, the product shall be presumed to have been so produced, and the burden of establishing that the product was not produced by the process shall be on the party asserting that it was not so produced.".

(b) The table of sections for chapter 29 of title 35, United States Code, is amended by adding after the item relating to section 294 the following:

"295. Presumption: product produced by patented process.".

II. PURPOSE OF AMENDMENT

As amended, S. 1543 declares that the importation into, or use or sale within, the United States of a product resulting from a process patented in the United States to be an infringement of the patent, and provides process patent owners a forum in the Federal courts for recouping damages due to such infringing activities.

III. HISTORY OF LEGISLATION

Strengthening of process patent protection was recommended in 1966 by President Johnson's Commission on the Patent System, in 1979 by President Carter's Domestic Policy Review on Industrial Innovation, and again in 1985 by President Reagan's Commission on Industrial Competitiveness.

In the 98th Congress, Senator Charles McC. Mathias, Jr. introduced S. 1535, the Patent Law Amendments of 1983, which included a provision to extend patent protection to the product resulting from the process. S. 1535 was referred to the Committee on the Judiciary. The Subcommittee on Patents, Copyrights and Trademarks held hearings on April 3, 1984. On July 31, 1984, the Subcommittee unanimously approved an amendment in the nature of a substitute for S. 1535, offered by Senator Mathias. The substitute did not include the process patent provision. On September 28, 1984, the full Committee on the Judiciary with a quorum present, by voice vote and without objection, ordered S. 1535 favorably reported to the Senate with an amendment in the nature of a substitute offered by Senator Mathias. Among other things, the amendment reincorporated the process patent provision into S. 1535. No further action was taken on S. 1535. The House passed a similar bill, H.R. 6286, but when the Senate considered this bill it removed the process patent provision prior to final passage on October 11, 1984.

In the present Congress, on July 31, 1985, Senator Mathias introduced S. 1543, a bill devoted entirely to process patent reform. S. 1543 was referred to the Committee on the Judiciary, and the Subcommittee on Patents, Copyrights and Trademarks held a hearing on October 23, 1985. On March 11, 1986, the Subcommittee approved an amendment in the nature of a substitute for S. 1543, and the bill as amended was favorably reported back to the full Committee by unanimous consent. On September 19, 1986, the full Committee on the Judiciary with a quorum present, by voice vote and without objection, ordered S. 1543 favorably reported to the Senate with an amendment in the nature of a substitute offered by Senator Thurmond on behalf of Senator Mathias.

IV. STATEMENT

America's leading position in technological innovation throughout the world is credited in large part to the stimulus of its patent system, which stems ultimately from Article I, Section 8, clause 8 of the Constitution.[1] Over the past two decades, however, a significant loophole in our patent laws, as compared with those of our major trading partners, has emerged as a major factor in the dynamics of global innovation and economic competition. In contrast to Japan and nearly all of the Western European nations, the United States does not provide patent protection against the importation, and subsequent use or sale, of products made abroad without authorization using a process patented in the United States. Instead, a limited, non-patent form of protection is afforded under the trade laws (19 USC 1337a) enforced by the International Trade Commission (ITC).

The U.S. patent laws recognize three basic types of inventions for which patents may be obtained: products, methods of use, and methods of manufacture. Patents on the last are also known as process patents, that is, patents on process inventions. A process patent covers a process for making a product, which may or may not be patented itself. Process patents promise to be increasingly important to a number of industries in the coming years, especially in the areas of industrial and pharmaceutical chemicals, optical fibres, and above all in the fields of biotechnology and bioengineering research. Biotechnology companies are often built around a new process for artificial manufacture of a substance that occurs in nature and is therefore itself unpatentable. A well known example is the Genentech Corporation of California, whose principal assets since its founding in 1976 have been process patents on revolutionary new ways of making human insulin and growth hormones.

Under our current patent laws, a patent on a process gives the patentholder the right to exclude others from *using* that process in the United States without authorization from the patentholder. The other two standard aspects of the patent right—the exclusive right to make or sell the invention—are not directly applicable to a patented process. S. 1543 proposes to also cover the importation, use or sale in the United States of the *products* resulting from the process. The bill does not attempt to prevent the use of the process in another country. If the U.S. process patentholder has not obtained a similar patent in the other country, he has and should have no right by virtue of his U.S. patent to prevent anyone from using the process in that country, although if the U.S. patentholder does have a patent in the other country as well, it will be possible to seek remedy in the courts of that country. S. 1543 would protect against the entry into the U.S. marketplace of goods made abroad without authorization from the inventor who has a process patent in this country. The patent is on the process alone, but the entry of the goods made elsewhere by that process clearly encroaches on the rights of the patent owner here.

As noted already, this extension of process of patent protection to the products of the process is the legal norm is many other countries. This principle is also incorporated in the European Patent Convention, the Community Patent Convention, and the World Intellectual Property Organization (W.I.P.O.) Treaty on Harmonization. The following excerpt from a recent memorandum on process patent law prepared by the International Bureau of W.I.P.O. elaborates on the rationale for including products obtained from a patented process in the scope of the protection afforded by the process patent:

"The extension [to the product of the process] seems to be an exception to the principle that the protection conferred by a patent or another title of protection for an invention is defined by the object of the invention. In the case of a process invention, a strict application of the said principle would

[1] "The Congress shall have Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries . . ."

mean that the owner of a process patent could only exclude others from using the patented process. The legal provisions which extend process protection to products obtained by the patented process are based on practical economic considerations. A process which leads to a specific product presents an economic value only through the product. However, it is not always possible to obtain a patent for the product; for example, the product may not be new or may—although new—lack inventive step. The invention of a new and inventive process for the production of such a product which is not patentable constitutes an important technological advance but the reward granted through a process patent is not important because—without an extension to the product—the process patent would be difficult to enforce (since infringement of the process is difficult to prove) and could even be circumvented by use of the process in another country where the process is protected. In order to make patent protection of a process meaningful, it is therefore necessary to consider the patented process and the resulting product as a whole, with the consequence that process protection is automatically extended to the resulting product even if the said product has not been claimed." [2]

Both Senator Mathias and Senator Leahy, at the subcommittee hearing, asked why the United States has historically given different treatment to product and process patents, while so many other industrialized countries give uniform, full protection to both. The Commissioner of Patents and Trademarks, Donald Quigg, suggested that the U.S. patent system is older than many of the European systems and that the ultimate historical origin of the omission of process patent protection may have been simply that in earlier commercial eras processes had not become so significant as they are in the present high-technology milieu. At the same time, adjacent European countries would become aware more quickly of importations of products made outside by processes patented in the receiving country.

Alfred Engelberg, counsel to the Generic Pharmaceutical Industry Association (GPIA), observed that many industrial countries, Japan and Germany for example, only recently adopted *product* patent protection in the pharmaceutical area, having previously confined patent protection on drugs to the processes used to make them, in the interest of promoting wider and easier availability of medicines for their populations. Thus when a new medicine comes on the market, competitors would only have to find a new way to produce it and could go on the market immediately, without waiting for any patent on the medicine itself to expire. Mr. Engelberg went on to suggest that because it was the only form of protection allowed for pharmaceutical products, broader process patent protection was developed in those countries, covering not only domestic use of the process, but also importation, use or sale of the products obtained from the process. On the other hand, when Germany and Japan (in 1968 and 1975 respectively) broadened their laws to cover pharmaceutical product patents, they did not eliminate patent protection of processes and their resulting products.

[2] "Extension of Patent Protection of a Process to the Products Obtained by that Process; Proof of Infringement of a Process Patent," Memorandum by the International Bureau of WIPO, March 12, 1986, pp. 3–4.

Both the Administration and the GPIA testimony and submissions at the hearing also discussed other differences in approaches to process patent protection in various countries. Most countries that provide process patent protection extending to the products have also established a rebuttable presumption shifting the burden of proof to the defendant if the plantiff presents evidence meeting some threshold of reasonable likelihood that the product was made by the patented process (France and Sweden are the only exceptions). However, many of these countries add a limitation that this presumption is only available in the case of processes for making "new" products. By contrast, as discussed further below and in the sectional analysis, S. 1543 allows the rebuttable presumption in any process patent infringement action under the bill, on the theory that every genuinely novel and useful (hence patentable) process invention deserves the full protection of the law, regardless of whether the resulting product is new or not. The example of the biotechnology industry is relevent here, in its efforts to develop recombinant DNA processes to produce already existing natural substances such as growth hormones. Another point of difference, again discussed at length below, is the limitation in the process patent laws of most industrialized nations to products made "directly" from the process; Japan and Sweden are the only exceptions to this rule. S. 1543 introduces a new phrase, "materially changed," to serve the same general purpose of restricting the scope of the bill to exclude ultimate products that, because of intervening manufacturing steps, cease to have a reasonable nexus with the patented process.

An integral part of the debate on strengthening U.S. process patent protection has been the non-patent alternative remedy under the trade laws against importation of products made abroad using a process patented in the United States (Section 337a of the Tariff Act of 1930, 19 U.S.C. § 1337a). Section 337a originated in 1922 as an antidote to a range of unfair methods of competition in import trade. It was not widely used until the 1974 strengthening amendments providing for more timely and effective remedies, the principal change being that the ITC was given full authority to order remedies, subject only to veto by the President for policy reasons. In process patent cases brought before the ITC, the available remedies under section 337a are exclusion of the goods from entry, and, if the goods have already entered, cease and desist orders against particular firms that have received them. In order to obtain these remedies from the ITC, the complainants must show that their patented processes were used in manufacturing the imported products, that an efficiently and economically operated industry in these products exists in the United States, and that the patented process had the effect or tendency of destroying or substantially injuring the domestic industry. After making these findings, the ITC must in addition decide that enjoining the importation of the infringing goods is in the public interest. Only then can the ITC provide relief to the process patentholder; and even then, its decision is subject to a binding Presidential veto.

It is evident that the ITC procedure differs significantly from standard patent protection, both with respect to remedies and the criteria for obtaining them. The ITC, unlike a federal court in a patent infringement suit, can award no damages. Payment of damages to the patentholder has the effect of compensating inventors for the economic injury due to the infringement, and also acts as a deterrent against future infringements. Furthermore, the tests that must be met to win an ITC order excluding the infringing products are more elaborate than in a federal court action where all that is necessary is to show infringement. The requirement in the ITC proceeding to show that the importation of infringing goods is causing substantial injury to an efficiently run domestic industry is the equivalent of a requirement that a patentholder must practice a patented process commerically in the United States before he may enforce it, an approach that has never been a part of our patent system. Instead, our system is based on the conviction that the public is well served by the disclosure of the invention in return for a limited period of exclusivity for the inventor, even if the latter choses not to commercialize the invention during this period.

A hypothetical example illustrates this difference. Suppose an American company has obtained a process patent. The issued patent discloses the details of its new process for all the world to see. But for one reason or another, the American company has not yet been able to begin marketing the product. In that situation, the company is helpless against foreign pirates who use the published process and import the resulting products for sale in this country. The ITC can offer no relief. A similar predicament might beset a university that obtains a process patent but is still involved in negotiations with potential licensees. To be sure, there may be some scope in a Section 337 investigation for treating impairment for prevention of a domestic patentholder's efforts to establish an industry here as substantial injury. But this whole issue simply does not arise in an ordinary infringement suit under the patent laws, where the only question is whether a valid patent has been infringed.

Even where the process patent has engendered an efficiently run domestic industry, the patentholder has the additional burden of showing that the industry has been injured by the entry of infringing articles. This circumstance was illustrated in the recent Corning case against Sumitomo before the ITC (In the Matter of Certain Optical Waveguide Fibers; Investigation No. 337-TA-189). Corning succeeded in establishing that its patents were valid and were being infringed by Sumitomo's imported products. Further, it proved that two ligitimate domestic industries, efficiently and economically operated, had grown under the Corning patents. However, because the ITC found that Sumitomo's infringing imports did not substantially injure either of those domestic industries, they found no violation under Section 337, and Corning was unable to obtain any relief. If our laws afforded process patent protection in this situation, then Sumitomo would undeniably have been forced either to seek a license and pay royalties to Corning, or else to stop sending its product into the United States.

Finally, in the best of circumstances, where the full ITC remedy is obtained, the patentholder is saddled with an expensive and burdensome proceeding, with no prospect of having his injury compensated, only brought to a halt prospectively. By the same token, the ITC remedy has little deterrent value. Foreign manufacturers are not punished for simply infringing U.S. process patents by importing their products into the country until they are enjoined, with no

further penalty. Still, the ITC forum will remain a useful supplement in process patent infringement situations after S. 1543 is enacted. The ITC can provide speedy and comprehensive injunctive relief (covering many ports of entry in a single proceeding) while the patent holder awaits the outcome of the trial in the federal court to obtain damages.

There are in fact measures under consideration in this Congress (including the Administration's trade and intellectual property package, S. 2525) to lower some of the standards that must be met in an ITC process patent infringement investigation, such as eliminating the injury requirement. None of these proposals, however, are conceived by their advocates as being a substitute for closing the loophole in the patent laws themselves that allows infringement by importation of goods made abroad using a patented process. Commissioner Quigg concurred with this view in his statement at the hearing: "Although ITC proceedings are an important adjunct to enforcement of patent rights, they should not be the sole remedy available to process patent holders against competition from offshore manufacturers." [3] In response to a question at the hearing about the possibility of repealing the remedy in the Trade Act if S. 1543 is enacted, Commissioner Quigg answered:

". . . I think that it is important to keep 337, because that is a short-term compact operation which the patent owner can use to prevent the market from slipping away to foreign manufacturers. Patent litigation in the Federal courts is a more prolonged thing. It is not likely that you would be able to get a preliminary injunction during the litigation, and therefore the 337 approach does have a benefit for U.S. patent holders." [4]

It is worth noting that the ITC itself has recommended that a distinction be maintained between the patent-type protection for process inventions that is sought in S. 1543 and the trade-type protection currently afforded by ITC adjudications in process patent proceedings. In testimony before the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice on February 19, 1986, Dr. Paula Stern, Chairman of the ITC, emphasized that the Commission's principal expertise is in micro-economic analysis of industrial competitiveness and the trade situation, factors that would not necessarily have a bearing on the pure issues of patent validity and enforcement considered in straight infringement cases before the federal courts. Although Dr. Stern supports some of the pending proposals for strengthening the section 337 process, she warns against trying to refashion it on the model of patent enforcement in the federal courts:

"I don't want to minimize the experience we have gained in the intellectual property field since 1974. But if the focus of section 337 is only to be validity, enforceability, and enforcement, then perhaps the Commission is not the most appropriate location in the U.S. Government for this jurisdiction." [5]

Opponents of process patent legislation, on the other hand, maintained that the ITC remedy in its current form is adequate and the appropriate way of addressing the problem of infringing importations. They point out that ITC exercises in rem rather than in personam jurisdiction: its orders go only to the goods themselves that are being imported and used or sold here. The critics of S. 1543 contended that this focus on the goods is fair because once they have passed beyond the hands of the original manufacturer, the persons handling them can no longer be assumed to be knowledgeable of the process used to make the goods. Their situation differs from the analogous one involving product patents, because in the latter they actually have in their hands everything necessary to ascertain whether there is infringement of a patent. A comparison of the tangible item with the description and diagrams in the patent itself may well reveal an infringement. In the process patent situation, the persons holding the goods after they have left the manufacturer do not have in their hands the specific infringing element, the process by which the product was made at some point in the past, and it is not always possible to deduce the exact process that was used by an analysis of the product at hand.

In approving S. 1543, the Committee rejects the view that the United States purchaser from an overseas manufacturer who makes goods using a process patented in the United States has no responsibility for the patent infringement involved. On the whole, it should be the burden of business entrepreneurs who purchase goods to check beforehand for possible infringement, whether of product or process patents. They do so now in the case of product patents, and S. 1543 will encourage them to do so with respect to process patents. As Assistant Attorney General (now U.S. Circuit Judge) Douglas H. Ginsburg stated at the hearings:

". . . I think it is reasonable to expect that the more conscientious and legitimate importers would indeed concern themselves to a greater degree with the question of whether the goods they are importing infringe a U.S. patent, if any legislation of this sort is enacted, because they could find themselves otherwise enmeshed in litigation that may be more expensive than the importation is worth to them.

"I think we would have to be concerned, however, also with the phenomenon of firms importing either knowingly or where they have certainly good reason to think that their products are indeed infringing, not putting themselves in the position to determine that, even though they really have the superior opportunity to do so. Our patentee who does bring suit will, as the Commissioner described, typically be unable to obtain jurisdiction over the foreign manufacturer, and yet the importer will have been in privity of contract with that manufacturer and could, if legally obliged to do so, quite readily be expected to determine the character of the goods." [6]

The first target that the U.S. process patentholder will go after will naturally be the overseas manufacturer itself, which is practicing the process and importing the resulting goods here. If that manufacturer is subject to the jurisdiction of the U.S. courts, because of its business contacts with this country, then that would be the preferred defendant in the suit by the U.S. patentholder. But since the manufacturer is in many cases not accessible in this way, S. 1543 also allows the patentholder an action against the persons receiving the goods in this country from the manufacturer, who are also responsible and in the best position apart from the manufacturer to determine how the goods were made. The U.S. purchaser may indemnify itself in a number of ways: by specifying in the contract how the goods are to be made, or by eliciting a contractual commitment from the foreign manufacturer either to come into the U.S. courts itself to defend an infringement suit or to indemnify the purchaser against such a suit. See also Section 2-312(3), Uniform Commercial Code (implied warranty against patent infringement).

At the same time, the Committee is sensitive to the special difficulties that may attend a charge of process patent infringement for persons who import, use or sell the products but do not themselves practice the process. We are also sensitive to the concern that the bill might be abused for aggressive business purposes to harass U.S. competitors whose operations depend on importing goods from overseas. S. 1543 is intended to be a strong disincentive to the importation, use or sale of products that are made by an infringing process, but it should not simply be a weapon for patentholders to use indiscriminately to try to stop all entry of products that compete with products made by their patented process. Only goods made by an authorized use of the patented process should be threatened by the bill. With a view to addressing those concerns about potential abuse by patentholders, and undue burdens on defendants in actions brought under S. 1543, the Committee devised a system of damage limitations for different classes of defendants, incorporated a new procedure encouraging advance communication between process patent owners and purchasers or importers of goods in order to avert infringing activity beforehand, and established a stringent notice requirement to insure that the alleged infringer receives enough information to allow a reasonable assessment of whether the goods are being manufactured by a process patented in the United States.

Under the substitute amendment approved by the Committee, as in earlier versions of the bill, there is no liability for damages for any infringing activities (that is, any importations, uses or sales of the product) prior to the time of notice, defined as either knowledge on the part of the infringer or notification in writing to the infringer. The Committee-approved bill envisions three types of infringer.

(1) The manufacturer who uses the process without authorization is fully liable under the bill if he engages in importing, using or selling the resulting product in the United States.

(2) An innocent (i.e. unknowing) infringing retailer, who is purchasing from a domestic party other than the manufacturer, has no liability whatever for retail sales for eighteen months after notice, as long as he discloses his supplier. During this time, the retailer may sell existing inventory and units ordered at the time of notice. This second category of infringer would encompass many small retailers such as corner drug stores. The disclosure requirement will allow the patentholder to trace the distribution chain to the original manufacturer or a U.S. purchaser with liability for the goods.

[3] "Process Patents," Hearings on S. 1543 before the Senate Judiciary Subcommittee on Patents, Copyrights and Trademarks, 99th Congress, 1st Session, p. 12.

[4] Ibid., p. 43.

[5] Statement of Dr. Paula Stern, Chairwoman, U.S. International Trade Commission, before the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice, February 19, 1986 (Unprinted hearing on "Intellectual Property and Trade").

[6] "Process Patents," Hearing on S. 1543 before the Senate Judiciary Subcommittee on Patents, Copyrights and Trademarks, 99th Congress, 1st Session, p. 43.

(3) All other infringers (the importers, wholesalers and distributors who do not themselves use the process) are entitled to limit their liability by making a "request for disclosure" to a process patentholder (or licensee) before purchasing goods that may have been made without authorization by his patented process. This request asks the patentholder to list all his patented processes that could be used to make a specified product that the potential infringer is considering purchasing. In the normal case, the patentholder will respond to the request with a full list, and the potential infringer will use this information to advise his supplier of what processes to avoid using. If the patentholder then brings a suit and shows that the products were made with his process, the infringer is entitled to a grace period of six months from the time of notice to sell or use pre-notice inventory, subject only to reasonable royalties. If the patentholder does not respond to the request for disclosure, or his response does not include the patent that he subsequently charges is infringed, the grace period is eighteen months, and covers not only inventory but orders made after notice and received within the grace period. In either case, full damages and injunctive relief are available to the patentholder after the grace period elapses.

Full damages in a process patent infringement suit are usually gauged by the court's assessment of the direct and indirect loss of sales to the patentholder, with the possibility of doubling or trebling these damages if there is a finding of willful infringement. Reasonable royalties in particular cases should reflect the amount that reasonably prudent business people would have agreed to in an arm's length transaction at a time prior to the infringement.

Defending against patent infringement charges is a normal burden of doing business in America and around the world in the technologically sophisticated commercial conditions of the 1980's. The limitations on damages in S. 1543, combined with the advance disclosure procedure, should eliminate the possibility of aggressive use of process patent infringement charges to harass innocent purchasers (whether in fact infringing or not). In the case of importers, wholesalers and distributors, if the goods are found to be made with an infringing process, then for the duration of the grace period defendants will have to pay only what they would have been paying all along if the process had been known and they had been able to obtain a license from the patentholder. The remedy limitation here is not to be construed as a compulsory license, nor as a precedent for other areas of patent law or types of patent infringement. The Committee finds the "grace period" policy to be justified only in the context of a bill intended to strengthen process patent protection. It is justified because of the elusive character of process inventions, from the standpoint of infringers who are involved only with the resulting products and not with the use of the process itself. From the beginning of Congressional consideration of process patent reform in 1983 all proponents of the legislation have accepted the restriction of the scope of the bill to exclude infringing activity (other than the actual use of the process) that occurs before the infringer is on notice. The remedy limitations are simply a mechanism for realizing this principle in practice by allowing the unknowing infringers, once notice is established, to sell the inventory accumulated prior to notice for a reasonable period of time with limitations on their exposure to damages.

The phrase "compulsory license" implies an ongoing right of the licensee to do business in perpetuity without permission from the patent owner. Such a right has no place in U.S. patent law, and no such right is contemplated in S. 1543. The temporary grace periods have as their sole purpose to allow the infringer to rid himself of products he had purchased and fulfill business commitments made prior to the time he was made aware of the infringement of a U.S. process patent, and to either close down his business in this line or to find an alternative source of supply that does not infringe the patent. The remedy limitation is only available once for a given product: if the importer, wholesaler or distributor chooses to shift to a different supplier, he will be fully liable from the time of notice should the process patentholder bring another action against him with respect to the same product.

The grace period is extended to 18 months only if the patentholder failed to cooperate with the importer, wholesaler or distributor's advance request for a process patent disclosure that would help in finding legitimate sources of supply and instructing such sources as to what processes should be avoided. On the other hand, if the importer, wholesaler or distributor fails to show good faith by making the advance request, he is ineligible for any grace period. And of course he must be an innocent infringer, i.e. not have knowledge that the products were made by the patented process, to be eligible for the remedy limitation.

Similarly, the treatment of retailers should not be construed as an unlimited compulsory license, but as a temporary reprieve to allow them to move to non-infringing suppliers and liquidate their inventory without disrupting their business. Infringers fall into this category only if they obtain the illicit goods from a party in the United States who does not use the patent. If a retailer has the resources to send agents to other countries to seek suppliers, then he should be able and willing to exercise more vigilance. By using the request for disclosure procedure, he may seek out legitimate manufacturers who do not avail themselves of processes patented in this country to make products intended for export to this country. The rationale of the retailer exemption in S. 1543 is to shelter only purchasers who are remote from the manufacturer and not in the position to protect themselves in contracts with the party who is actually using the process.

A second important condition for eligibility for this exemption is that the retailer disclose his supplier to the patentholder, allowing the latter to trace the chain to the manufacturer or to the party closest to the manufacturer who is subject to jurisdiction in the United States courts. It is, in any case, the natural preference of the patentholder to sue as close to the source as possible. Even before the idea for damage limitations for indirect purchasers was introduced into the debate, the Administration has questioned the danger of harassment or undue burdens on indirect purchasers from S. 1543, as is evident from the following exchange at the hearing between Senator Leahy and Assistant Attorney General (now Judge) Ginsburg:

Senator LEAHY. Last night, I stopped in a drugstore out near where we live to pick up some batteries. And I could not help but wonder, just looking at all the things in there—I am thinking now mostly of the patented medicines that line the shelves—whether it really is realistic to require that a retailer, whoever the retailer might be at that particular drugstore, know what processes all those products are made by. I mean they probably have tens of thousands of products in there. Under the proposed law, it seems like they have got to have all that somewhere in the back of their minds, don't they?

Mr. GINSBURG. Senator, if I may address that, it is currently the state of the law that the retail pharmacist, for instance, could be held accountable for an infringement insofar as he sells infringing goods manufactured wherever.

As a practical matter, however, plaintiffs do not concern themselves with suits against retailers where their concern is with the source of the goods. They would have to sue every retailer separately if they were to take that approach, and it is more efficient for them of course, to go as far up the chain of distribution——

Senator LEAHY. Well, would they have to sue everyone separately? I mean, some of those drugstores are pretty big and have a lot of insurance and a large capital flow, like some of these big shopping center stores. They still may not be national. It may be a local large chain store. If somebody wanted to go after the store for damages, would it not make sense on the theory that the store does not have the resources to fight such a suit? The store might well want to settle or tell the insurance company, "Come on, get them off my back and pay it," don't you think?

Mr. GINSBURG. Senator, I do think that the experience in this field is to the contrary, and that while there may be instances of that sort, the patentee is normally most interested in reaching as far back to the root of the problem as possible in order to stop it.

Of course, large distributors, large retailers of the sort to which you are referring, I think, do take precautions to determine that the goods that they purchase for resale are lawful in every respect, that they conform to safety laws and so on, as well as that there are not patent infringements or that they receive indemnification from the manufacturers in the event that it is held to the contrary.

Senator LEAHY. And of course, that indemnification is good only to the extent that the manufacturer backs it up, is it not? I mean, if a suit is brought against the retailer and the retailer loses, he can then seek indemnification from the manufacturer if the manufacturer is still there and solvent.

Mr. GINSBURG. If there is a doubt about that, I would think that could constitute a disincentive for a large retailer to purchase from that manufacturer, as it is clearly a disincentive to purchase inherently dangerous products from a manufacturer that cannot back them up and make good on the liability claims.

Senator LEAHY. So would I be safe in thinking that you do not feel this bill [i.e. S. 1543 as introduced] goes too far?

Mr. GINSBURG. That is correct, Senator. . . .[7]

The problem is using patents for illegitimate purposes of harassment is neither new nor limited to process patents. One former Commissioner of Patents has labelled it the problem of "Business Aggres-

[7] Ibid., pp. 44–45.

sion under the Patent Sytem."[8] The Committee notes that the courts are not powerless to deal with the problem. For example, the federal judiciary, under Rule II of the revised Federal Rules of Civil Procedures, has lately taken a more stringent attitude toward an attorney's responsibility to investigate the soundness of a complaint before filing it. And the patent law itself allows the court, in an appropriate case, to order a patent power to pay his adversary's attorney's fees and other expenses.

An additional safeguard against abuse of S. 1543 is the strict notice requirement. Notice is in effect from the time the infringer has knowledge that he is infringing, or from the time he receives written notification from the patentholder. In issuing notification, the patentholder must set forth facts that are sufficient to establish a substantial likelihood that his patented process was used in the manufacture of the products. Thus even if the patentholder decides to bring a suit, unless his filing includes this information he will not be deemed to have served notice. Neither a vague unspecified claim of infringement, nor even a lawsuit embodying such a claim, would suffice for notice; only a specific claim articulating the reasons for believing the patented process has been used, would expose the defendant to damage liability. On the other hand, the patentholder is free at any time to 'cure' a deficient notification by issuing a subsequent, more copious installment; if a lawsuit has begun, the patentholder may issue additional notification independently of the court proceeding. In order to meet the "substantial likelihood" test, the patentholder will need to present indirect evidence such as chemical tests tracing the likely process of manufacture, or economic analyses showing that his patented process was probably used. The Committee anticipates that the difficulty of making this kind of showing will tend to discourage use of the new cause of action for the purpose of "business aggression."

Once the recipient of notice knows the exact patent or patents in question, and the reasons indicating that the process they cover was used in manufacturing the goods, he will be able to evaluate the claim, confer with the foreign manufacturer (or other supplier), and decide whether to defend the goods in court or stop acquiring them. The proposed notice requirement goes far beyond the norm for product patent cases (or for that matter process patent infringement cases under existing law), but the higher threshold is justified here, in the Committee's judgment, because of the special difficulties that may arise from the fact that the process was used by a party other than the defendant. The notice provision in S. 1543 is not intended as a precedent for other areas of patent protection. Despite its greater stringency, the Committee expects that the serving of notice will still fulfill its traditional role of avoiding the need for litigation in many situations.

Beside the extended notice requirement and damage limitations, S. 1543 includes two further protections for potential defendants: a grandfather clause exempting ongoing business contracts that were in existence on or before July 1, 1986, and a provision calling on the Department of Commerce to report annually to Congress during the first five years after enactment on the effect of S. 1543 on any domestic industries that submit formal complaints about interruption of legitimate sources of supply.

In reference specifically to the concerns voiced by the generic drug industry about the effects of S. 1543 on their overseas supplies, one potentially valuable resource is the Food and Drug Administration. It is the Committee's understanding that whenever a generic drug company applies for FDA approval of a new generic medicine, the FDA begins a Drug Master File (DMF) collecting among other things information from the supplier about the processes involved in generation the materials sold to and subsequently used by the generic company. The DMF is a confidential file, not available to the public nor even to the generic company for inspection. The DMF is compiled from information supplied directly to the FDA from the manufacturer and from inspections by FDA personal in the factories of the manufacturer. However, if the file can be obtained by the U.S. courts under a protective order without violating any other provisions of law, it could be used to assist the court in resolving whether the patented process was used in making the goods in question. It might alleviate the need to rely on indirect forms of evidence, such as chemical analysis, to trace the process used.

The debate on the presumption clause in Section 5 of the bill goes back to the 98th Congress. At that time the Judiciary Committee reported a process patent measure without including the presumption in the text of the bill, but indicating instead in the report that the Committee expected the courts to apply a presumption where warranted.[9] In the present Congress, the Committee decided to accede to the strong recommendations of the Administration and the industry advocates of the bill to include the presumption in the statute itself.

The presumption would place the burden of proof on the defendant to come forward with evidence that the goods in question were not made by using the plantiff's patented process, *after* the plaintiff has made a reasonable but unsuccessful effort to ascertain the process actually used, and further has established a substantial likelihood that the goods were made by that process. The presumption mechanism stems from the basic principle behind the bill, that the U.S. purchaser of the goods is in the best position to make the arrangements necessary with foreign manufacturers and suppliers to assure that U.S. process patents are not violated. The Committee envisions that the plaintiff would make informal inquiries to the foreign manufacturer of the product (if identifiable), or make reasonable attempts to use the discovery procedures available in the foreign countries. The Commissioner of Patents and Trademarks commented as follows on the balance that the presumption clause attempts to strike:

"We recognize, however, that presumptions should not be casually established. To ensure that an unfair burden is not imposed on importers and distributors of noninfringing products, any provision dealing with this subject should, at a minimum, require the patentee to demonstrate, on the basis of available evidence, that a substantial likelihood exists that the product was produced by the patented process and, further, that a reasonable but unsuccessful effort was made to determine that the process was actually used in the production of the product. To establish a substantial likelihood, for example, a patentee might show that the patented process was the only known method, or the only commercially practical method, for producing the product, or that physical evidence, such as the exact chemical composition of the product, indicates the use of the patented process. A reasonable effort requirement could easily be satisfied in the United States through our discovery procedures. For a foreign manufacturer the patentee would have to take some reasonable step, such as writing to the manufacturer, to determine how the product was made and to have been unsuccessful in this regard. The reasonableness of the effort would depend on the facts of the case but should generally avoid the need for such measures as letters rogatory or suits in a foreign country.[10]

Most of our trading partners that extend process patent protection to the products made by the process do also provide for a rebuttable presumption for shift in the process burden of proof. But many of them also limit the application of the presumption to processes for making "new" products. The drawbacks of this approach may be illustrated by recombinant DNA processes for producing naturally occuring substances, which cannot themselves be patented and which are in no sense "new." Thus, this approach would deprive some of the most important process innovators of the value of the presumption. The Committee rejects this approach because there is no clear justification for discriminating against certain types of process inventions. In order to secure a patent, a new process must be deemed useful, novel and unobvious—the same criteria that are applied to product inventions. If a process invention satisfies these criteria, then it is in the interests of society to have it publicly disclosed in return for a limited period of exclusivity for the inventor, regardless of whether the process leads to a "new" or "old" product. A good example of the latter was presented to the House Judiciary Committee earlier this year by Genentech Corporation: a new, more economical process they have developed in conjunction with Lubrizol Corporation for producing Vitamin C.[11] Enactment of S. 1543 would help Genentech protect itself against an influx of Vitamin C produced abroad by means of their economical new process, and produced all the more cheaply because the foreign manufacturer had no R&D expenses in procuring the process. But under the "new product" approach, Genentech would not benefit from the presumption clause in bringing suits for such infringement of its process.

Most of the foreign patent statutes that extend process protection to the product resulting from the process also include the limitation that the patent must be made "directly" from the process. The significance of this qualification is discussed at length in the section-by-section analyses. The basic point is that if a final product has undergone a material change after being initially produced by the patented process,

[8] David L. Ladd: "Business Aggression under the Patent System" *The University of Chicago Law Review*, Volume 26, Number 3, Spring 1959.

[9] Senate Report 98-663, 98th Congress, 2nd Session, p. 6.

[10] "Process Patents," Hearing on S. 1543 before the Senate Judiciary Subcommittee on Patents, Copyrights and Trademarks, 99th Congress, 1st Session, pp. 14-15.

[11] Statement of Thomas D. Kiley, Esq., Vice President, Corporate Development, Genentech, Inc., before the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice, February 19, 1986 (Unprinted hearing on "Intellectual Property and Trade").

then it should no longer be covered within the scope of protection offered by S. 1543. The Administration strongly urged the Committee to include the word "directly" in the statutory language of the bill, making the U.S. law conform to the norm of industrialized nations and insuring that process patent protection does not become too broad. A number of industry advocates of the bill on the other hand were concerned that including the word "directly" might unduly restrict the scope of the bill if it were interpreted narrowly to exclude products that had been altered in trivial ways after the stage of manufacture where the patented process was used. The Committee concluded that both parties were seeking the same balance, and reached the decision to exclude products that had been "materially changed" after use of the patented process. Inevitably the courts will have to assess the permutations of this issue of proximity to or distance from the process on a case-by-case basis. The section-by-section analysis offers guidance and examples for the interpretation of this provision.

Because of our obligations under the GATT treaty to refrain from trade discrimination, the process patent bill was crafted to apply equally to the use or sale of a product made by a process patented in this country whether the product was made (and the process used) in this country or in a foreign country. As explained earlier, the bill is prompted by the use of patented processes in other countries followed by the importation of the resulting products into this country. The use of the process in this country is already an act of infringement under existing patent law, and such an infringing party would be subject to the jurisdiction of the U.S. courts. Thus the inclusion of domestic process patent infringement in the scope of a bill to extend protection to the products is regarded by the Committee as a formality to conform to the GATT, with little or no practical consequences in patent enforcement. The American Bar Association suggested in a letter to the Committee [12] that an alteration should be made in the presumption clause to make clear that if a suit is brought under the bill against a purchaser of goods made domestically by infringing a process patent, then the presumption is not applicable since there is no obstacle to obtaining discovery to determine the process used to make the goods. The Committee accepts the ABA's reasoning that the presumption should not be operative in this situation, but concludes that no change in the language of the bill is necessary. The presumption would never apply in the situation of domestic process patent infringement because a reasonable effort on the part of the plaintiff would require obtaining discovery against the manufacturer who is actually practicing the process in this country and who is therefore subject to the U.S. courts' jurisdiction, as might not be the case with foreign manufacturers. In any case, the Committee does not expect or intend the bill to be used to sue purchasers of the product, when the infringing manufacturer can be sued instead.

S. 1543 would also have no effect on the issue of grey marketing. If an importer purchases goods from the process patentholder in another country and imports them into our country without authorization, he would nonetheless be immune from action under the bill because of the well established doctrine of exhaustion of patent rights once a patentholder sells his patented product to another party. The new right under S. 1543 would apply only when the manufacturer who uses the patented process is not the owner of the process patent or his licensee.

Concerns were raised, at the Senate hearing and elsewhere, that S. 1543 would undermine the Drug Price Competition and Patent Term Restoration Act, which became law in the last Congress (P.L. 98-417). Generally, this law combines an expedited procedure for FDA approval of generic imitations on brand-name drugs that have come off patent with a program for restoring up to five years of time lost on patents for new brand-name drugs. The generic companies contended that if their supply of raw materials from overseas sources is reduced by process patent infringement suits, then the goals of P.L. 98-417 would be undermined. With the protections built into the substitute approved by the Committee, the generic pharmaceutical industry now supports S. 1543. It should be recognized, in particular, that the grandfather clause gives an exception for the many new generic medicines that have been approved or whose applications have been submitted to the FDA during the period between enactment of P.L. 98-417 (signed into law on September 24, 1984) and July 1, 1986.

Once the patent on a brand-name drug has expired, anyone is free to make, use or sell the product (assuming FDA clearance), but if there is an unexpired patented process for making the durg, then other parties must find a different way to make it. Again, in order to obtain a patent, the process must be novel, useful, and unobvious, an invention whose disclosure would benefit the public as envisioned in the Constitution. To obtain a process patent on a useful, new way to make a medicine is not to prolong or "evergreen" the product patent on the medicine itself, even if the patentholder for the process and original product is the same inventor. No responsible critic of S. 1543 has ever maintained that goods made abroad by a process patented in the United States should be allowed to come into the United States to benefit competitors of the process patent owner. To the extent that this is happening at present, S. 1543 is indeed intended to cut off such lines of supply, and to expose the beneficiaries, after adequate notice, to damage liability for their actions. The only issue has been whether the bill could also be used to cut off other, legitimate supplies from overseas, and in response to this concern the Committee has fashioned an elaborate system of pre-disclosure, safeguards and limitations.

V. SECTION-BY-SECTION ANALYSIS

Section (2)

Section 2 contains three subsections, establishing the new, more comprehensive exclusive right for process patentholders, and setting out limitations on damages for certain classes of infringers along with the notice requirements. Subsections 2(a) and (b) amend 35 U.S.C. sections 154 and 271 to extend the exclusive rights of the holder of a process patent to include products made by the patented process. The amendment to section 154 grants to process patentees the right to exclude others from using, selling or importing such products. Under the complementary amendment to section 271, the use, sale or importation of such products after the effective date (date of enactment) of the bill would constitute infringement. This type of process patent protection is consistent with the treatment accorded process patents in many foreign countries.

Under these amendments, the use or sale in the United States, or importation into the United States, of products made by patented processes will constitute infringement regardless of where such products were made. Since a process patentee can already prevent the use of the patented process by domestic manufacturers, the primary effect will be on foreign-made goods. These amendments will not give extraterritorial effect to U.S. law. U.S. patents will not prevent foreign manufacturers from using abroad the process covered by the U.S. patent, so long as the products they make thereby are sold and used abroad. But the amendments will prevent circumvention of a U.S. process patentee's rights through manufacture abroad and subsequent importation into the United States of products made by the patented process.

An understanding of the statement that "A product will no longer be considered to have been produced by a patented process once it has been materially changed by subsequent steps or processes" is critical to understanding the scope of this legislation. The Committee intends a specific two-phase test to be implemented.

Many foreign patent statutes extending process protection to the product resulting from the process include the limitation that the patented product be made "directly" from the process. They use the word "directly" to exclude as an infringement the importation, use or sale of a product which is materially changed from the product resulting from the patented process by subsequent steps or processes. U.S. Circuit Judge Douglas H. Ginsburg, the Assistant Attorney General of the Antitrust Division of the Justice Department at the time of the hearing on S. 1543, illustrated the problem as follows in testimony before the Committee:

"We are concerned here about a process patent that might be infringed in . . . the extraction of minerals from the earth, those minerals later being used to manufacture materials, which are later embodied in components, which are in turn used in the assembly of the product in question."[13]

The Committee agrees that once a product has been materially changed, then subsequent purchasers, users and sellers should no longer be liable for process patent infringement. However, the Committee decided against including the word "directly" in the statute out of concern that the word "directly" might have been construed too broadly and possibly exempt too many products that have been altered in insignificant ways after manufacture by the patented process. These products ought to be treated as infringing under the bill. The Committee expects the courts to exercise careful judgment in distinguishing those products that are too far removed from the patented process, and those that have been changed only in insignificant ways. The Committee believes that the courts will be in a better position to settle such issues without the standard of "directly" constraining their judgment.

In order to give the courts Congressional guidance in what may be a difficult determination, the Committee notes that the bill

[12] Letter from Jan Jancin, Jr., President, ABA Section of Patent, Trademark and Copyright Law, to Senator Mathias, March 10, 1986. Printed in "Process Patents," Hearing on S. 1543 before the Senate Judiciary Subcommittee on Patents, Copyrights and Trademarks, 99th Congress, 1st Session, pp. 266-8.

[13] Ibid., p. 25.

would establish the following two-phase test:

1. A product will be considered made by the patented process regardless of any subsequent changes if it would not be possible or commercially viable to make that product but for the use of the patented process. In judging commercial viability, the courts shall use a flexible standard which is appropriate to the competitive circumstances.

2. A product will be considered to have been made by a patented process if the additional processing steps which are not covered by the patent do not change the physical or chemical properties of the product in a manner which changes the basic utility of the product produced by the patented process. However, a change in the physical or chemical properties of a product, even though minor, may be "material" if the change relates to a physical or chemical property which is an important feature of the product produced by the patented process. Usually, a change in the physical form of a product (e.g., granules to powder, solid to liquid) or a minor chemical conversion, (e.g., conversion to a salt, base, acid, hydrate, ester, or addition or removal of a protection group) would not be a "material" change.

It is only those who import, use or sell a product after it has been materially changed who may avoid liability for process patent infringement. Even with that general guidance, the courts may frequently find themselves in a quandary on this most important phrase. There will be cases where the product has clearly been materially changed, under the two-phase test, and others where it clearly has not; however, many instances will be less clear. Some examples may help provide additional resources to the courts:

A metal strip with certain unique properties is produced by a U.S. patented process. A foreign competitor makes the strip using the process, then turns the strip into a core, puts the core in a transformer and imports the transformer into the United States. Even if there were other commercially or economically viable non-infringing processes for making the strip, this is still a clearcut case of infringement of the process patent that this Act is intended to prevent because the subsequent changes would not be considered material. Similarly, taking that metal strip and heat treating or annealing it in a magnetic field would not change the product as to avoid infringement.

If the patented process produces chemical X, any person importing, using or selling chemical X is liable for infringement.

If chemical X is changed in an immaterial manner, infringement is not avoided.

If new entity, chemical Y, is produced from chemical X as the result of a material change, the court must also consider the other phase of the test before deciding if Y is infringing or non-infringing:

If the only way to have arrived at Y is to have used the patented process at some step, e.g., producing X as an intermediate, Y is infringing.

If there is more than one way to have arrived at Y but the patented process is the only commercially viable way to have done so, Y is infringing.

If there are commercially viable non-infringing processes to have arrived at X, the connection between the patented process for producing chemical X and the ultimate product, chemical Y, is broken, and Y would be a non-infringing product having satisfied both phases of the test.

In the biotechnology field it is well known that naturally occurring organisms contain within them particular genetic sequences composed of unique structural characteristics. The patented process may be for the process of preparing a DNA molecule comprising a specific genetic sequence. A foreign manufacturer uses the patented process to prepare the DNA molecule which is the product of the patented process. The foreign manufacturer inserts the DNA molecule into a plasmid or other vector and the plasmid or other vector containing the DNA molecule is, in turn, inserted into a host organism; for example, a bacterium. The plasmid-containing host organism still containing the specific genetic sequence undergoes expression to produce the desired polypeptide. Even though a different organism was created by this biotech procedure, if it would not have been possible or commercially viable to make the different organism and product expressed therefrom but for the patented process, the product will be considered to have been made by the patented process.

The Committees shares the Administration's concern with possible overreach. Assistant Attorney General Ginsburg's example of a process patent for extracting minerals from the earth is clearly on point. There is no intent that the minerals, eventually refined, with the product ending up as a component of an automobile which is imported into this country, should subject the importer to an infringement action. However, this must be distinguished from the importation of the mined minerals themselves. Similarly, this must be distinguished from the case wherein the patent covers a process for making a shock absorber. Even if that shock absorber is put into a much larger and more expensive product, e.g. an automobile, the patent owner could still sue the importer of that automobile. Although injunctive relief might not be appropriate under those circumstances, some damage relief would be appropriate, based, for example, on an apportionment of the contribution of the infringing part to the value of the whole product in which it is incorporated. Of course, the importer and wholesaler have other rights under this bill to limit liability, and the retailer may avail himself of other provisions of this bill and have no liability for retail sales. Finally, there is no intent whatsoever for the innocent consumer to even be subject to suit.

Subsection 2(c) amends section 287 of title 35 by adding a new subsection (b) with six subparagraphs setting out limitations on remedies available under the bill and conditions of eligibility for such limitations.

Paragraph (b)(1) lists five conditions for eligibility. The limitations are available only to persons who did not use the patented process (subparagraph A), and are not owned or controlled by the party who uses it (subparagraphs (B) and (C)). Subparagraph (D) provides that the category of infringer for which the request for disclosure procedure (elaborated in paragraph (5)) was designed, i.e. importers, wholesalers and distributors, are eligible for the remedy limitations only if they use the information obtained from such requests to instruct their suppliers as to what processes should be avoided. Finally, subparagraph (E) stipulates that only innocent infringers are eligible, that is, infringers who are not aware before the infringing acts of importing, using and selling that the products were made by the patented process.

Existing section 287 of Title 35 states that damages for patent infringement may be recovered by the patentholder either from the time he marks his patented article with the patent number, or if he fails to mark, from the time he serves notice to the infringer. However, the courts have held that these prerequisites for damages apply only to product patents, and that persons who infringe a process patent by using the process in this country are fully liable from the beginning of the activity without notice from or marking by the patent owner. The Committee intends that this harsher standard apply also with respect to process patent infringers who use the process and engage in importing, using or selling the products in the United States. This would apply in a situation, for example, where a foreign manufacturer who uses a process patented in the United States but not in the country of manufacture, itself imports the products for use or sale here. In that situation, the foreign manufacturer would be liable for damages from the outset of the infringing activity even without receiving notice from the patent owner. Similarly, any party who *knowingly* imports, uses or sells products made without authority by a process patented in this country is fully liable for damages running from the time he begins knowingly engaging in such activity; notification is not necessary in these circumstances. On the other hand, a foreign manufacturer is not liable under the bill if he merely uses the process abroad (again assuming the U.S. inventor has not also patented the process in the foreign country) and sells the product there with no knowledge that the buyer will subsequently import the product here. Paragraph (b)(1) stipulates that infringers other than the original user of the process, provided they satisfy the conditions, are liable for damages only as provided in the remaining paragraphs. The limitations there relate to notice and reduced damages for certain infringers other than the user of the process.

Paragraph b(2) states that damages may be recovered only for infringing activities that occur after notice, as defined in paragraph (6).

Two different types of infringer eligible for remedy limitations are treated in paragraphs 3-5. Under paragraph b(3), retail sales are exempt from any damage liability or injunction for a period of 18 months following notice. The exemption applies to the retailer's existing inventory at the time of notice and to products ordered at that time, as long as they are received and disposed of within the 18 month period. No remedy for such sales is available during the 18 month period in which they occur; however, any sales after the 18 month period ends, even of goods that were in inventory or on order before notice, are fully liable for damages and subject to injunction. The two conditions for receiving this exemption are that the retailer obtain the products from a party not in the United States who did not use the process and that the retailer disclose its suppliers to the patentholder after receiving notification.

The second type of infringer includes importers, wholesalers and distributors. In order to trigger the remedy limitations, potential infringers of this type must direct a "request for disclosure" to the process patentholder (or licensee) prior to importing, using or selling the product. The request for disclosure is explained in subparagraph (5)(A). Basically, it asks for a listing of process patents owned by (or licensed to) the requestee that might be used to make a certain specified product. The requester would

then use the information provided in response to advise his suppliers about what processes should be avoided in manufacturing units of the product intended for importation, use or sale in the United States. In order to make a request that qualifies him for the remedy limitations, the potential infringer must be regularly engaged in selling the type of product he is inquiring about, or must show in his request that he has *bona fide* plans to begin selling such products. At the same time, the request must be made before the requester begins to import, use or sell the product that is the subject of the request. In the normal course of events, a potential infringer who was considering purchasing a volume of products from abroad, which he suspects might have process patent complications, would send requests for disclosure to all manufacturers who are selling this product in the United States. At that point, there are two variations, described in paragraph (4) and subparagraph (5)(B). If the patentholder replies within 60 days of receiving the request with a list of the relevant process patents, then when the importation, use or sale of the product occurs and the patentholder issues notification, the infringer is entitled to a period of six months of normal business activity during which his damages are limited to reasonable royalties for units of the product received or ordered prior to the date of notification. No injunction against sales of such units may take effect during this grace period, unless there is stockpiling or dumping. The phrase "normal business activity" is intended to preclude parties from stockpiling extraordinary quantities of the infringing product prior to notice, and to take advantage of the six month grace period to sell that extraordinary inventory. The amount of sales eligible for the reasonable royalty limitation does not include inventory "dumped" on the market, i.e., sold off at a rate significantly greater than the sales of that product prior to notice.

The same term of limitation applies in a suit brought by a process patentholder who was not manufacturing and marketing the product at the time the infringing activity occurs, because in that case, the potential infringer had no apparent manufacturer/process patentholder to whom to direct a request for disclosure. Thus the last sentence in paragraph (4), "The limitation in this paragraph shall not be available to any party who failed to make a request for disclosure . . ." is operative only if the party was indeed able to make the request; otherwise, the infringer cannot be said to have failed to make a request, and so is entitled to the protections in paragraph (4). On the other hand, failure to send a request to a process patentholder who was manufacturing and marketing the product—even if a request is sent to other manufacturers of the product—has the consequence of disqualifying the infringer from any remedy limitations under (b)(4) in a suit brought later by that patentholder of whom he failed to make the request.

The second variation, treated in subparagraph (5)(B), arises if the patentholder does not respond within 60 days or not at all, or does respond but with a list that does not include the process patent that he subsequently claims is infringed when he issues notification. In that case, the limitation to reasonable royalties and restrictions on injunctions is extended to a period of 18 months following notice. Further, the limitation here applies not only to actual inventory and products ordered at the time of notice, but also to products purchased after notice during the 18 month period within the bounds of the normal business practices of the infringer. The Committee expects the second variation to be the exceptional case, where the patentholder has not cooperated with the potential infringer to help the later avoid infringement. Once the importer, wholesaler or distributor has made the good faith effort to avoid infringing goods through the request for disclosure, and has entered into commercial contracts, a significantly longer period of time is naturally required to make new supply arrangements without disrupting business commitments. Because there was no disclosure or because the disclosure was incomplete, the potential infringer was unable to take effective preventive measures in advance such as directing the supplier not to manufacture the goods by means of the process in question.

A mixed case could arise if a company operates as both a retail merchant in the United States and as an importer that supplies the retail arm by sending agents abroad to purchase goods. This is in fact the character of many larger retailers in this country. In these circumstances, the company would not be eligible for the (b)(3) exemption for retail sales, because it was not purchasing from a party in the United States. The company would have to seek damage limitations as an importer/wholesaler by using the request for disclosure procedure. Further, as emphasized before, a U.S. company that purchases goods directly from a foreign manufacturer, and so is in privity of contract with a party who may be using without authorization a process patented in the United States, is expected to demand that this supplier agree by contract to come into the U.S. courts if a suit is brought and substantiate that the goods were not made by a process patented in the United States, or to idemnify the importer against such a suit. If this precaution causes the cost of supplies to rise marginally for importer/retailers, that price must be accepted as part of the burden of responsible avoidance of patent infringement.

The justification for discriminating between retailers who purchase from a party in the United States and those who send agents abroad to find supplies is that in the latter case the retailer/importer is the party closest to the source of the infringing goods who is also open to suit in the United States. When the retailer is supplied from within the United States, then the patentholder can sue the supplier, whether the latter is a wholesaler or the manufacturer who actually uses the process.

The immense number of patents on methods of manufacture makes it difficult for the importer, wholesaler or distributor of a product to track down all the possibly applicable process patents without some guidance. The request for disclosure should provide that guidance. The request should be narrowly drawn to inquire only about the specific product (or part or ingredient) that potential infringer is considering purchasing: it is incumbent on the potential infringer to strive for specificity in the request. There may be instances where the patentholder who receives a request is uncertain as to how many of his patented processes should be listed in the response; the decision may for example call for a judgment as to the scope of one of the patents. In such cases, there should be no hesitation on the part of the patentholder to err in the direction of excess, i.e., by listing rather than omitting the patents whose relevance is in doubt. The patentholder should list all patents whose relevance is not in reasonable doubt, and he has a strong incentive to do so from the fact that the remedies available to him are more restricted if he later brings a suit on the basis of a process patent he failed to list at the time of the request. The bill instructs the patentholder to list all patents on processes that may reasonably be considered suitable for making the product specified in the request for disclosure. The Committee does not intend that the patentholder be penalized for listing patents judged by others at a later stage not to fit this description. The response to a request for disclosure is an attempt at cooperation and good faith prevention of infringement, not a letter of notice issued as a result of actual ongoing infringing behavior. Consequently, a response that lists more patents than necessary should not be considered harassment.

By the same token, it is in the interest of the patentholder to update his information to a party who in the past has made a request for disclosure about a certain product. The patentholder may do this by subsequent communications informing the requester when he obtains new process patents that could apply to the product. For example, a patentholder may respond initially to a request for disclosure with a list of process patents, then two years later he may develop a new process for making the product specified in the request. In that event the patentholder is entitled—and would have an incentive—to update the response by sending an addendum indicating the new patented process. The wholesaler, distributor or importer who sent the request may be purchasing and dealing in goods that the patentholder believes were made by the latest patented process, the one listed in the update. If the allegedly infringing activity or substantial investment in preparation therefore occurred before the update, then the infringer would be entitled to the 18 month grace period under subparagraph (5)(B) since he did not have the information at the time he started importing, using or selling the goods. If the update was received before such activity or investment occurred, then since he had the information beforehand, and assuming he did not know his supplier was using the process, and that he used the update to direct his supplier away from the process, he would be entitled to the six month grace period established in paragraph (4).

Subparagraph (5)(C) imposes further conditions for eligibility for the limitations for classes of good faith infringers other than retailers. The potential infringer may make only one request to a single patentholder for disclosure of process patents covering a given product, and once an infringer has received the benefit of remedy limitations for a given product, he cannot receive similar benefits again with respect to any process patents (whether the same or a different patent) covering the same product owned by the patentholder at the time of the first infringement. For example, if in connection with one lawsuit the infringer obtains a six month grace period under paragraph (4), he is not eligible for either a six or 18 month grace period if after shifting to a new supplier he receives another notification of infringement with respect to a different patent owned at the time of the initial infringement, or even with respect to the same patent.

Paragraph (6) defines notice of infringement as either actual knowledge by the

user, seller or importer of goods made by patented process that he is infringing, or receipt of notification. Notification is a written communication setting forth facts that establish a substantial likelihood that the product was made by a patented process. The burden of establishing substantial likelihood would be less than that of providing successfully at trial that the product was in fact made by the patented process, but would require more than showing a slight possiblity that the product was so made. Facts to make this showing might include the results of chemical analyses tracing the process of manufacture, or economic considerations that imply the patented process was used. Thus a general claim of infringement, even if made in a complaint in a lawsuit, will not suffice for notice. Of course the patent owner would expect to learn more facts supporting his charge in the course of discovery if a court action is initiated. He is not expected to have exhaustive information and facts on which to base his notification when he first becomes aware of the infringing activity. Serving adequate notification is not a prerequisite for bringing a lawsuit. Evidence of substantial likelihood is not a jurisdictional condition of the pleadings necessary to maintain an action for process patent infringement. If, however, the patent owner issues a notification that is insufficient to meet the substantial likelihood standard, as noted above, he remains at liberty to send a subsequent revised and improved notification at any point. He may, for example, issue notification before initiating a suit against the infringer, obtain more facts about the situation during discovery, and then send a second notification reflecting his further knowledge about how the products were made; if only the second notification is adequate to establish substantial likelihood that the patented process was used in making the product, the damages would run from the date the second notification was received.

The purpose of the unusually stringent notice requirements is to give the respondent sufficient information to evaluate the charge of infringement. The Committee envisions that the evaluation would include consulting the original manufacturer—in the ordinary case a foreign manufacturer. It will be a safeguard against aggressive use of vague or questionable claims by patentholders to intimidate competitors. On the basis of the notice required by the bill, the recipient should be able to decide whether to contest a lawsuit, or, having been satisfied that they are indeed infringing a patent, to stop acquiring the goods. In addition, the steep notice requirements should have the effect of concentrating legal actions under S. 1543 on high technology areas of the marketplace, for which the bill is primarily intended, and of diverting its use away from ordinary consumer commodities.

The higher threshold of notice established in paragraph (6) is intended only for the extension of process patent protection to the products resulting from the process. As noted above, there is no notice requirement in current law for enforcing the process patent with respect to the use of the process itself in this country, nor under S. 1543 for enforcing a process patent against a foreign (or domestic) manufacturer that uses the process and also engages in the importation into, or use or sale in, the United States of the products. Further, the notice requirement in current law in the context of product patent enforcement does not include detailing reasons for believing the patent is infringed. The Committee has no reason to believe that the notice requirements in existing law and practice are not sufficient in the contexts where they apply, or that they are causing hardship to accused infringers in those contexts. However, in the context of protection against unauthorized importation, use or sale of the product of a patented process, the Committee believes that merely citing a process patent number with a bare allegation of infringement is not sufficient to allow the accused infringer to ascertain the nexus between the product in his possession and the patented process. This will be especially true if the product has to some degree been altered after being made by the process or if the product of the process is only a part or component of the product in issue.

Section (3)

Section 3(a) contains a grandfather clause exempting commercial arrangements that have been or were about to be entered into prior to July 1, 1986. The special importance of this provision for the generic pharmaceutical industry was mentioned in the Statement. Since the Drug Price Competition and Patent Term Restoration Act of 1984, over 100 abbreviated new drug applications (ANDA's) for generic medicines have been approved by the FDA. The Committee firmly believes it would be inequitable if process patent legislation were to interfere with the marketing of these newly approved generic drugs, or with other ANDA's that were pending but not yet approved on July 1, 1986, if substantial commercial investments had been made in them prior to that date.

That is, if a generic pharmaceutical company has made substantial commercial investment in preparing and filing an ANDA and is awaiting FDA approval as of July 1, 1986, or if the company has been granted an ANDA approval before that date and starts to market a generic medicine in the United States, the pharmaceutical products that the company imports, uses and sells in connection with the ANDA are protected under the grandfather clause. The generic company may expand or contract its business with these products, shift to different suppliers as necessary, and continue to come under the protection of the grandfather clause.

Apart from this particularly sensitive area, the Committee envisions that the courts will interpret the scope of the grandfather clause in the individual cases brought before them with a view to the qualifying language "to the extent equitable" in the provision. Ordinarily, a party whose business before the grandfather date involved infringing activity should be able to continue to import, use or sell the product as necessary to maintain the same level of business, but not to expand such business by increasing the volume of products that he is using or selling, unless of course he has prospectively committed himself to such increases in a contract made prior to the grandfather date.

An important variation of this restriction could be illustrated as follows. If an importer contracts prior to July 1, 1986, to receive a certain volume of goods ever month for the next five years, and a certain retailer contracts to purchase the goods from him during that period, both of these arrangements fall within the grandfather clause exempting them from the scope of the bill. If the retailer only contracts to purchase the goods for three years, and the importer turns to another retailer afterwards, again the bill should not apply to the second retailer during the remaining two years of the importers contract, even though no contract with the second retailer existed prior to July 1, 1986, because the goods in question were contracted for by the importer before that date. However, if in this situation, the importer expands the volume of the goods he is importing, then the grandfather clause does not exempt him with respect to units beyond what he contracted for before the grandfather date.

The Committee intends to provide the courts with flexibility to achieve an equitable solution in situations where the infringer has made a substantial investment necessary to sell or use the infringing product before this date. In that case, the investment was made during a time when use or sale of the product was not unlawful. The grandfather clause is modeled after 35 U.S.C 252, and section 107(d) of P.L. 98-662 (98 Stat. 3384) which Congress has provided for fundamentally the same purpose.

The Committee intends three other restrictions on the scope of the grandfather clause. The phrase "successors in business" does not include parties to whom the grandfathered infringer may license the goods; the phrase is meant only to allow the infringer who sells his business to pass on also its grandfathered status to the buyer of the business. Secondly, the grandfather clause does not apply to any businesses that are the subject of legal actions regarding the subject patent at the grandfather date, including actions before the International Trade Commission. Thirdly, the grandfather clause applies to products being purchased, imported, used or sold as part of an ongoing business operation before the grandfather date only with respect to the process of manufacture used at that time to make such products. If the manufacturer of the products later shifts to a different process, such as a process developed and patented in the United States well after the grandfather date which the manufacturer in question has not been authorized to use, then units of the product made by this latter process are not protected by the grandfather clause, even if the U.S. wholesaler, importer or distributor had contracted with the manufacturer before the grandfather date for continued supply of the product. In order to keep products under the umbrella of the grandfather clause while fulfilling such a contract, the manufacturer would have to make them by the process contemplated at the time of contracting (or July 1, 1986). This example, incidentally, makes plain that importers, wholesalers and distributors who come under the grandfather clause with respect to some product, still would have a strong incentive to make a request for disclosure to all manufacturers in the United States who are marketing that same product in order to insure their eligibility for the remedy limitations in the event that their supplying manufacturer shifts to a different process at some point in the future and so disengages the protection of the grandfather clause.

Section 3(b) makes clear that the bill does not affect any remedies patent owners have under existing law. The new remedies for process patent owners provided by the bill are subject to general limitations which do not apply in suits under existing law by process patent owners against parties manufacturing in the United States. For example, the bill requires notice of infringement to establish a substantial likelihood that the product was made by the patented process.

The bill limits remedies available with respect to products already in the possession of or in transit to the infringer, or which the infringer already has made a binding commitment to purchase. The bill encourages parties to request disclosure of the identity of certain process patents. There is no intention to impose any of these limitations on owners of product patents or on owners of process patents in suits they are able to bring under existing law. Neither is there any intention to limit in any way the ability of process patent owners to have exclusion orders issued by the U.S. International Trade Commission.

Section (4)

Section 4 instructs the Department of Commerce to report annually to Congress on the effect of the bill on any U.S. industries that submit formal complaints that they have lost legitimate sources of supply. Such reports will assist Congress in the unexpected event that the bill has a drastic adverse effect on some domestic industry, requiring emergency remedial measures.

Section (5)

Section 5 adds a new section 295 to title 35, to establish, in carefuly defined circumstances, a rebuttable presumption that a product that could have been made by use of a patented process was in fact so made. This presumption addresses the great difficulties a patentee may have in proving that the patented process was actually used in the manufacture of the product in question where the manufacturer is not subject to the service of process in the United States. The burden of overcoming this presumption will be on the alleged infringer, regardless of whether the infringement charge is based on use, importation, or subsequent sale of the infringing article. While the defendant may not necessarily have in its possession he means necessary to rebut the presumption, it is likely to be in a far better position than the patentee to obtain them. Importers, for example, because of their relationships with foreign manufacturers, may be able to exert pressure on such manufacturers to produce the necessary information. Users and sellers who purchase possibly infringing articles from importers may be able to exert similar pressure on those importers, who would in turn influence foreign manufacturers. Of course, purchasers would retain whatever rights to indemnification they may have under contract or applicable state law.

Presumptions of manufacture by a patented process, however, should not be casually established. Importers and subsequent purchasers may be unable to obtain the information needed to overcome such presumptions when the products in question were not made by patented processes. At a minimum, the existence of the presumption will require a party who uses, sells, or imports a product that might have been made by a patented process to exercise greater care in business dealings to avoid increased liability. To minimize the risk of aggressive litigation intended to discourage firms from carrying competing products, the presumption will be available under section 295 only when two conditions are satisfied.

First, the patentee must demonstrate on the basis of the evidence that is available that a "substantial likelihood" exists that the product was made by the patented process. Such evidence could include chemical analysis of the product or indications or "marks" on the product itself, as well as expert testimony regarding known methods of production at costs that would justify sale of the product at the prices being charged. Exactly how much evidence will be needed in particular situations to satisfy the "substantial likelihood" condition will depend on the circumstances. As in the substantial likelihood standard in the notice section, the patentee's burden would be less than that of proving successfully at trial that a product in question was in fact made by the patented process but would be more than a slight possibility that the product was so made. Second, the patentee must show that he or she has made a reasonable effort to determine what process was used in the manufacture of the product in question and was unable to do so. The reasonableness of the effort would include the use of discovery procedures under the Federal Rules of Civil Procedure or other good-faith methods, such as requesting the information from the manufacturer, if not subject to U.S. jurisdiction. These limitations on the availability of the presumption should make it available to patent owners who might otherwise be left with no remedy against an infringer, and should also adequately safeguard the rights of competitors.

As noted in the Statement, the Committee does not foresee the use of this presumption if the defendant has used the process in the United States, or has derived the products directly or indirectly from a manufacturer who used the process in the United States. In these circumstances, the discovery provisions of the Federal Rules of Civil Procedure and the equitable powers of federal courts should be sufficient to allow the plaintiff to ascertain what process was employed. In this regard, the Committee trusts the courts to issue protective orders, in appropriate circumstances, to prevent disclosure of the trade secrets and confidential business data of the parties. For example, the Committee expects protective orders to be used in encouraging foreign manufacturers to supply information pertinent to a process patent infringement suit revolving around goods made by such manufacturers. Protective orders might also be appropriate in reviewing certain information requested by the court from United States federal agencies, as in the example of the FDA's Drug Master File discussed in the Statement. If information is obtained under a protective order that definitely determines the process used to make the goods in question, the presumption, would not be applicable.

Once the plaintiff has been found to be entitled to the presumption, the burden of producing evidence to establish that the product was not made by the process shifts to the defendant. Courts will continue to determine which party has the ultimate burden of persuasion and what amount of proof is necessary.

VI. AGENCY VIEWS

The Administration strongly supports legislation to strengthen process patent protection. The Committee received testimony from the Patent and Trademark Office, the Department of Justice, and the Office of the U.S. Trade Representative in support of S. 1543 as introduced. The following remarks are representative. The Commissioner of Patents and Trademarks, the Honorable Donald J. Quigg, said:

"The Administration strongly supports S. 1543, which would significantly improve the patent law affecting process patents . . . Importation, use and sale in the United States of products produced by processes patented in this country severely diminishes the value of such patents. This practice must be effectively countered by changes in the patent laws to protect the legitimate interests of U.S. inventors. Expanding the scope of our laws in this fashion would bring them into conformity with the European Patent Convention and the national laws of many industrialized countries." [14]

U.S. Circuit Judge Douglas H. Ginsburg, then the Assistant Attorney General for Antitrust, stated:

"The present situation . . . with respect to the protection of process patents in the United States, creates an unnecessary and unfortunate disincentive to investment and production in the United States. And it does so at a time where, for several industries that are particularly dependent upon process patent protection, decisions about investment could be substantially affected by the legal regime . . . Biotechnology is not alone in that respect, and I think it is important that no further industries be given incentives to develop offshore, rather than in the United States, when the technological leadership has originated here, and only the legal regime conducive to investment is lacking." [15]

And Harvey E. Bale, Jr., Esq., the Assistant U.S. Trade Representative for Trade Policy and Analysis, remarked:

"The Administration is fully committed to the changes in the law it [S. 1543] embodies. We feel that the thrust of this bill would significantly improve the ability of Americans to protect their rights and the value of their process patents against foreign misappropriation. This bill is important because it addresses a key issue for our future economic well-being, which is how to better protect our innovative and creative capacity." [16]

The Administration sought two amendments in S. 1543 as introduced: a rebuttable presumption shifting the burden of proof to the defendant if the claimant demonstrates a substantial likelihood that the product in question was made by the patented process, and the insertion of the qualifying phrase "directly produced" to restrict the scope of the bill to products that have not been significantly altered since being initially produced by the patented process. The rebuttable presumption was adopted in the Subcommittee mark-up, and alternative language to accomplish the goal of the "directly produced" phrase was incorporated by the substitute amendment adopted by the full Committee.

On the other hand, the Administration, through the Department of Commerce, took exception to some of the protections for innocent infringers incorporated into the bill by the full Committee amendment, contending that the grace periods pursuant to the predisclosure procedure amounted to a compulsory license, contrary to the American patent law tradition. The following letter from the Secretary of Commerce, the Honorable Malcolm Baldrige, was received shortly before the full Committee mark-up of S. 1543:

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[14] Ibid., pp. 11 and 13.
[15] Ibid., pp. 24–25.
[16] Ibid., p. 35.

DEPARTMENT OF COMMERCE,
Washington, DC, September 10, 1986.

Hon. CHARLES MCC. MATHIAS, Jr.,
Chairman, Subcommittee on Patents, Copyrights and Trademarks, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Judiciary Committee will shortly consider S. 1543, a bill to give the holder of a U.S. process patent the right to stop the importation, sale or use in this country of any products made from that process. The Subcommittee on Patents, Copyrights and Trademarks has worked hard on this issue and has reported a bill which makes a number of significant improvements to current law. I am pleased that the version reported by the Subcommittee will apply to existing patents and will also contain a provision which, under certain conditions, will shift to an alleged infringer the burden of establishing that he did not violate the patent owner's rights. The Administration's intellectual property package contained similar features.

I understand that the full Committee will consider amending the bill further at the urging of certain companies. These amendments would add compulsory licensing and burdensome procedural features. They will give retailers a royalty-free license to continue selling an offending product eighteen months after they have received a notice of infringement. They will also give importers, wholesalers and distributors a license to continue importing, selling or using an offending product six months after they have received a notice of infringement if the goods were ordered before notice is received and a reasonable royalty is paid. Notice itself will be ineffective in triggering these delayed or limited damages unless it contains much more information than is now required in patent infringement cases.

The Administration cannot support these provisions as drafted. Compulsory licensing has no place in U.S. patent law. Inclusion of these features will undermine U.S. efforts to persuade other nations not to adopt them in their own laws or to limit their use. It will also undermine our efforts to make certain features of our patent law compatible with the laws of our major trading partners.

For these reasons, the Administration urges the Committee to close a loophole for unfair foreign imports by adopting process patent protection without features that compromise the overriding integrity of intellectual property law worldwide. This is critical to the competitiveness of U.S. industry and I commend your attention to the problem.

The Office of Management and Budget has advised us that there is no objection to the submission of this report from the standpoint of the Administration's program and that these proposals are not in accord with the Administration's policies.

Sincerely,

MALCOLM BALDRIGE,
Secretary of Commerce.●

MAC MATHIAS

● Mr. STEVENS. Mr. President, I was a member of the freshman class of Senators of 1969, but was an appointed Senator, facing an election in 1970 and another in 1972. MAC MATHIAS was in that class, also, but he came to the Senate with 8 years of service in the House behind him. MAC was one of the experienced members of our group, which included several of the current Members of the Senate. BARRY GOLDWATER, returning after a 6-year absence, and BOB DOLE, who also had experience in the House, also were part of that class.

Given the large Federal employee populations in Alaska and Maryland, MAC and I soon found that we were involved in many issues on the Governmental Affairs Committee together. And, along with Jake Javits, Ed Brooke, Jim Pearson, BOB PACKWOOD, and me, MAC was a member of the first Wednesday Group.

A profound thinker, MAC MATHIAS has always been a leader in the Senate. His staunch defense of civil liberties and civil rights will be missed here, but he has inculcated in many of us the passion of his thinking and his dedication to freedom.

My memories of MAC will always include those pleasant occasions when we had time enough to walk from our offices to the Senate floor. I started calling MAC, who was always a courtly gentleman, the "Squire," for if there was anyone in the Senate who epitomized the gracious courtesy of country living, it was MAC MATHIAS.

Tough in debate, gentle in his treatment of those who may not have always lived up to his expectations, MAC MATHIAS has been a contributor—a significant contributor—to the legislative process. And Maryland public servants know—they really know—that MAC MATHIAS has fought to assure they received fair treatment from the Congress.

I shall miss the Squire, and the Senate's quality of life will not be the same with his departure.●

RUSSELL LONG

● Mr. STEVENS. Mr. President, when I first came to Washington as a young law school graduate, RUSSELL LONG was already a well-known Senator. The first day I visited the Senate gallery, I saw RUSSELL on the floor of this Chamber. By the time I came back to Washington as a new Senator in 1968, he had already completed over 20 years of distinguished service as a Member of the Senate.

Yet, Mr. President, despite his seniority and powerful position, RUSSELL was most kind and gracious to me, a junior Member, probably because he had originally come to the Senate to serve out the unexpired term of another Senator as I had. From our many years of joint service on the Commerce Committee, I have learned that RUSSELL LONG is gracious to everyone.

The Senate just will not be the same to me when Senator LONG leaves. I will continue to remember the many times he has quietly given me suggestions or just taken the time to visit with me on the Senate floor and made the day seem more worthwhile.

And, my wife Catherine and I shall miss the infectious smile and air of happiness that accompanies Carolyn Long. She also brings back a flood of memories, for during my first stay in Washington during the 1950's, she was a friend of the "Boggs Belles"—the vivacious young women who worked with Congressman Hale Boggs. Carolyn and I have often discussed those wonderful post-World War II days here in Washington.

RUSSELL, you have left behind a great legacy for future Senators from Louisiana and for all Members of the Senate. Your record of accomplishments in the Finance Committee is known even to those who have just a passing familiarity with the Senate, but to those who really know the Senate, your work in the Commerce Committee and your efforts as assistant majority leader are also significant.

And, as I have often remarked here on the floor of the Senate, Alaskans remember and are indebted to you as one of the true leaders of the fight for Alaska statehood. Your support for our efforts to achieve admission to the Union was critical in the statehood debates. As one who studied the issues, your help was invaluable. In addition, your encouragement of your fellow Louisianan, George Lehleitner, father of the Alaska-Tennessee plan, was an important contribution to our work to make Alaska the 49th State.

It has been a pleasure and an honor to work with you, RUSSELL. Catherine and I and all your colleagues wish you and Carolyn the best possible in your lives after you leave the Senate. We know we will see much of you.●

TOM EAGLETON

● Mr. STEVENS. Mr. President, TOM EAGLETON and I spent many hours together during the first years of our service in the Senate. I remember well our trip to South Vietnam in the early 1970's. Although we did not agree totally on the question of United States involvement in Vietnam, TOM and I studied the situation there and met with leading civilian, military, and press people to find out the facts, as well as we could for ourselves.

And, as we found ourselves living rather close to one another here in Washington, we saw each other socially more than most Members of the Senate.

As members of the Governmental Affairs Committee, we have spent a lot of time together here in the Senate. TOM's patience has been sorely tried a time or two during hearings we have both participated in, for we tend to contradict each other. But, he has pursued his point of view in every in-

stance with courage and with competence.

TOM and Barbara EAGLETON and their children, Terry and Christin, have been most kind and hospitable to the STEVENS clan over the years. We shall miss them here in the Senate but know that in St. Louis, somewhere near Washington University, there will be a warm home that will reflect Barbara's good taste and TOM's insatiable intellectual curiosity.

Mr. President, TOM EAGLETON has paid his dues—his public service to his county, State, and Nation over a 30-year period is a record of integrity and commitment. My wife Catherine and I, and our whole family, wish Senator TOM and Barbara EAGLETON and their clan the very best for the future.●

BARRY GOLDWATER

● Mr. STEVENS. Mr. President, it is not easy to say farewell to BARRY GOLDWATER, particularly during this contentious period in which we are considering the defense bills for fiscal year 1987. In this, his last year in the Senate, BARRY has finally been able to complete legislative action on the long overdue overhaul of the Department of Defense's organization. He has also contributed greatly to unifying those of us in the Senate who support a strong defense effort for our country.

My thoughts go back, before the 1964 election, to the 1962 Senate campaign. Senator GOLDWATER, as chairman of the Republican Senatorial Campaign Committee came to Alaska to lend a hand to me as a candidate for the Senate. I remember his appearance before a large crowd at the Edgewater Hotel near Anchorage—the same night that I presented him with an Alaska oosik. Few people here may know what that is, but suffice it to say that BARRY knew what it was and made a great comment when I gave it to him.

Years later, when I got to the Senate, BARRY became an even greater friend. After my wife, Ann, was killed in an aircraft accident, BARRY was one of those who was more than understanding of the problems I faced. He helped me then and was a mainstay for me during the time when I served as acting Republican leader during the period when Senator Howard Baker was absent for his campaign for the Presidency.

BARRY GOLDWATER's support for my candidacy for Republican leader in 1984 meant more to me than he will ever know.

I believe that in his career in the Senate, BARRY has offered more constructive suggestions to improve our Nation's defense than any living American. And, his philosophical balance as a Western conservative will guide many of us for years to come.

It is not just his conscience as a conservative that sets BARRY GOLDWATER apart—it is the fact that he lives up to the expectations of his own conscience.

One of those who will miss BARRY most is my daughter, Lily. My wife, Catherine, and BARRY have an Alaska-Arizona exchange agreement. Catherine brings BARRY king crab from Alaska and BARRY gives Catherine "BARRY's redhot chili"—he actually calls it something else, Mr. President. Lily is a great chili fan—only she had to ask BARRY to make hers a little less hot.

In the years ahead, I hope we will build upon the historic start BARRY made in revamping our defense structure. Actually, this is not a new goal for BARRY, for it was General GOLDWATER who wrote a most enlightening paper at the War College concerning the unification of our Armed Forces and the need to restructure our Defense Establishment.

BARRY GOLDWATER's departure from the Senate marks the end of an era—an era of independent conservatism. He has served in the Senate 30 years as the articulate spokesman for the changes he sought and secured for our Nation. Our generation owes him a debt we can never fully repay.●

CAPT. GEORGE H. SEYMOUR, USN (RETIRED)

● Mr. GOLDWATER. Mr. President, there are not too many people in our Government who devote 27 years of active duty in our military forces and then an additional 14 years with our Defense Department continuing to provide exceptional public service in dedication to our country.

It is commendable, indeed, to state off the record, that in his 27 years in the Navy, Capt. George H. Seymour, USN retired, was on active duty during World War II, the Korean war, and Vietnam.

The 14 years that Captain Seymour spent in the Department of Defense, he represented the Director of Defense Research and Engineering in providing most effective liaison with the Senate Appropriations Committee, as well as the Senate Armed Services Committee, and the same two committees of the House.

Captain Seymour developed and maintained close, personal working relationships with members of these committees and their staffs, to ensure that they were fully informed on all the details of the annual Defense budget; and that key defense witnesses were thoroughly informed on what was expected of them when they appeared before these committees to explain and justify the Defense budget, and, later to respond effectively to congressional questions and requests for data that usually followed.

Captain Seymour, on numerous occasions, extended himself to ensure that the interests of the Defense Department were well served. He suggested, arranged, and personally participated in important visits by committee members and staff to key military commands, to major defense contractors, and to our NATO allies to provide us with the current knowledge required to fully understand and support the Defense budget.

His insight into congressional matters, his sensitivity to congressional needs, and his experienced knowledge of the broad range of major weapon system developments, enabled him to provide invaluable advice and assistance to the Director of Defense Research and Engineering, and to the Directors of the various Defense agencies, to obtain favorable congressional action over the years, on the Defense budget.

We will miss him and his counsel and assistance in the years ahead, and wish him well in whatever endeavor he should choose to pursue.●

DRUG EXPORTS

● Mr. HATCH. Mr. President, current law permits exportation of biologics in finished dosage form that are licensed under section 351 of the Public Health Service Act for sale in the United States. New section 802 of the Federal Food, Drug, and Cosmetic Act, as added by section 102 of the Drug Export Amendments Act of 1986, permits and regulates export of biologics in finished dosage form that are not yet licensed for sale in the United States. New section 351(h)(1)(A) of the Public Health Service Act, as added by section 105 of the Drug Export Amendments Act of 1986, permits and regulates export of partially processed biological products. Importation of biologics, whether in partially processed or finished dosage form, is permitted and regulated under the provisions of section 351 of the Public Health Service Act which existed for many years.

Under new section 351(h)(1)(A), partially processed biological products in forms not suitable for prevention, treatment, or cure of diseases or injuries of man may be exported to countries listed under new section 802(b)(4) of the Federal Food, Drug, and Cosmetic Act provided they are not intended for sale in the United States and are intended for further processing outside the United States. Once shipped abroad and further processed, a partially processed biological product may be shipped back into the United States either for still further processing or in finished dosage form

under the pre-existing provisions of section 351.

The only provisions in the Drug Export Amendments Act of 1986 which apply to partially processed biological products are in section 105. Section 102 of the new act does not apply to partially processed biological products.

New section 351(h)(1)(A) establishes an approval process that is intended to be simple and expeditious, no more than a few days in duration. Procedurally, an application must be filed with the Secretary containing the following information. First, it must identify the partially processed biological product to be exported. Second, it must list each country to which export is intended. It is envisioned that the applicant will satisfy this requirement by including a sample of the label it proposes to use on the outside of the package in which the partially processed biological product is to be shipped. Thereby, the applicant can demonstrate that the label will contain the following statement: "This product may be sold or offered for sale only in the following countries: ," the blank space being filled with a list of the countries to which permission to export is being sought. Third, it must identify the establishments in which the partially processed biological product is to be manufactured. Fourth, it must include a certification by the applicant that the partially processed biological product will be exported only to countries listed under section 801(b)(4) of the Federal Food, Drug, and Cosmetic Act. Fifth, it must include a certification by the applicant that the final product to be developed from the partially processed biological product may be lawfully sold or tested in the country to which it is to be exported or approval for sale or testing of the final product is being sought in such country. The phrase "approval of the final product is being sought" means that steps necessary to obtain approval are being or have been taken; it does not mean that an application for approval to test or sell must already have been submitted in such country. Congress realizes that some countries require applications for testing or sale to contain data from clinical or preclinical studies conducted within their borders and may impose other procedural requirements prior to the submission of formal applications. No additional information is required in the section 351(h)(1)(A) application.

In reviewing an application for the export of a partially processed biological product, it is intended that the Secretary rely upon the information and certifications supplied by the applicant. In determining whether a partially processed biological product is manufactured, processed, packaged, and held in conformity with current good manufacturing practice, Congress does not intend that the Secretary conduct a new good manufacturing practice inspection whenever a section 351(h)(1)(A) application is submitted. It is sufficient that the Secretary make this determination based upon previous good manufacturing practice inspections of the facilities involved. For example, if the facility failed the most recent FDA inspection for compliance with good manufacturing practice in some aspect that would affect the quality of the particular partially processed biological product, the Secretary should prohibit export until the deficiencies were corrected.

If an application is complete in that it contains the statutorily required information and certifications, then approval by the Secretary is a ministerial act which can and should be performed in a matter of days. The Secretary may prohibit export to a specific country only if one or more of the following situations occurs. First, the section 351(h)(1)(A) application is incomplete. Second, the applicant proposes to export the partially processed biological product to a country not on the list contained in section 802(b)(4) of the Federal Food, Drug, and Cosmetic Act. Third, the partially processed biological product is not manufactured, processed, packaged or held in conformity with current good manufacturing practice. Fourth, the Secretary determines that prohibiting export of a particular partially processed biological product to a specific country to which it is to be exported is necessary for protection of the public health in the United States or the country to which it is to be exported.

In determining whether to prohibit the export of a partially processed biological product for the protection of the importing country, Congress recognizes the enormous difficulty of asking the Secretary to make a decision about the health care system of a foreign nation. For that reason, Congress intends that the Secretary give great deference to the decisions of the health authority of the importing country regarding protection of its population. The Secretary is not required to make a determination that the public health will be enhanced before the application may be approved. In the absence of evidence of harm to the public health, the application must be approved.●

A SOLUTION TO THE DEBT CRISIS

● Mr. KERRY. Mr. President, earlier this year, I introduced the "international development resolution of 1986," expressing the sense of the Senate regarding the establishment of an International Trade and Financing Development Program. This program is designed to provide a comprehensive solution to the debt crisis which affects Latin America and other Third World nations, and which threatens the U.S. economy as well.

This proposal is explained in detail in a background paper accompanying the resolution, which I am placing in the RECORD. Basically, the plan circumvents the failed "case-by-case" approach of the Baker plan, and provides a comprehensive approach to the debt problem, one which is mutually beneficial to both developing nations and to the American economy. This plan would provide incentives to debtor nations to increase their imports of U.S. goods, without affecting their export capacity. It would improve the current U.S. trade deficit, and would provide jobs for the American worker. It would also guarantee to U.S. banks eventual repayment of their outstanding loans to debtor nations, loans which would otherwise have to be written off in all likelihood. This plan would stabilize the international financial system, and would promote economic growth in a process mutually beneficial to both industrial and developing nations.

The present debt crisis is a threat not only to the economies of Latin American and other developing nations. It is also a threat to the forces of democracy which are sweeping throughout Latin America and other Third World nations such as the Philippines. At present, the debt crisis creates an intolerable burden on many Third World countries. With those economic pressures come political pressures, which threaten the fragile democracies of many developing nations. In order for those democracies to flourish, they must have stable economic conditions which allow for economic growth. The present Baker plan for dealing with the debt has failed to provide the conditions for economic growth. In order to encourage the process of democratic change, and create the conditions for economic growth in developing countries, a new approach is needed.

The plan which I have outlined would provide a fresh approach. In simple terms, it would provide for the establishment of a progressive cap to limit the external public debt-service payments of developing nations, based upon their net trade performance, as an inducement for the reduction of developing nation trade surpluses through increased imports. It would also establish an alternative progressive scale for public debt-service payment relief for developing nations, to assure that their import capacity is sustained, and to ensure that external economic adjustment is growth-oriented. And it would establish conditions for the repayment of the external public debt of developing nations, which would assure creditor commercial banks full debt repayment, in

return for eliminating interest spreads or commissions on the rescheduled debt.

This plan would involve the cooperation and participation of both developing and developed nations, and would be beneficial to both. I believe that it is a real and viable alternative to the present administration policy. The Baker plan, on its own terms, has failed. It is time for a new approach, one which is creative, and one which can work. The plan which I am presenting today creates an alternative which represents a realistic solution to the debt crisis. I hope that my colleagues will join in support of this plan. I ask that the text of the background paper be printed in the RECORD.

The text follows:

INTERNATIONAL DEVELOPMENT PROGRAM—A PROPOSAL

BACKGROUND PAPER[1]

(By Eduardo Dutra Aydos legislative fellow)[2]

I. OVERVIEW

The International Development Program—IDP, a framework to resolve the debt crisis, combines two alternatives for debt relief: "a progressive cap" and a "progressive discount" on debt-service payments. The balance in unpaid debt-service is automatically rescheduled.

IDP's funding involved the appropriation of public resources from industrial countries equal to one percent of their imports, a reserve financed by debtor countries and more favorable interest rates on credits issued by the commercial banks.

IDP's objectives are oriented towards improving exports of the participating developed countries; towards supporting increased import capacity of debtor countries; and towards assuring full payment of the rescheduled debt-service.

This proposal brings together, through fairer international economic relations, trade and financial stabilization, while providing a modicum of "breathing room" for growth in developing countries.

Six case-studies demonstrate the simulated implementation of this proposal, under different structural and economic conditions.

II. A FRAMEWORK TO RESOLVE THE DEBT CRISIS

An agreement is proposed between debtor and creditor countries to establish a five year International Development Program which would process information on trade and capital flows among the parties. Based on these statistics, the debtors may apply for relief of service payments (interest plus repayment of principal) on their consolidated public debt as follows:

1. Debtor countries with a maximum 20% of trade surplus to exports' ratio may choose between two alternatives: a 20% of exports' "cap" on public debt-service payments; or a net 20% discount on the amount to be paid.

2. Debtor countries with the largest surpluses may still benefit from a "progressive cap" on public debt service payments, which would be increased by a proportion of the country's trade surplus, as outlined in Table 1.

TABLE 1.—A PROGRESSIVE "CAP" ON DEBT-SERVICE PAYMENT

Countries with a trade surplus to exports' ratio of—	Basic "cap" on service payments as percentage of exports	Plus additional "cap" on service payments as percentage of trade surplus
20 percent or less	20	+ None
20 to 30 percent	20	+20
31 to 40 percent	20	+40
41 to 50 percent	20	+60
51 to 60 percent	20	+80
61 percent or more	20	+100

3. Optionally, debtor countries running a trade deficit larger than −20% may benefit from a "progressive discount" of a 30% or 40% ratio on the amount to be paid, as outlined in Table 2.

TABLE 2.—PROGRESSIVE DISCOUNTS ON DEBT-SERVICE PAYMENTS

Countries with a merchandise trade balance to export's ratio of—	Percentage of service payments automatically rescheduled
Less than −100 percent	40
−20.1 to −100 percent	30
−20 to +20 percent	20

4. Applications for these benefits have to assure a steady or increasing *volume* of imports and exports to facilitate market stabilization and economic growth.[3]

5. Debtor countries should deposit 10% of their effective relief, as reserves for use under the agreement to avoid participating country's technical default.

6. Debt-service payments' relief would be capitalized and automatically rescheduled under the following conditions: (a) a maximum five year grace period, during which full interest would be fully paid by the program;

(b) a maximum ten year maturity period, during which the debtors would repay the principal and service at an annual 3% interest rate—the program would then pay the difference above the fixed interest rate and the floating market rate.

7. Banks would be asked not to charge spreads or commissions on the rescheduled debt.

8. The major commercial banks would be asked to buy the credits of the little banks, thereby providing them timely repayment of external loans.

9. Industrialized countries should provide additional public resources, equal to a five year effective 1% tax on all their imports, as a basic contribution toward financing this program.

10. An International Development Council, comprised of the signatory parties, would decide by equal vote on the program's regulations, would elect members to a Board of Directors, which would include regional representation, and among them select a Secretary-General. The Board of Directors would also include representatives of the IMF, IBRD and GATT.

11. This program would terminate at the end of five years. The remaining financial operations are assumed by the IMF or IBRD.

III. OBJECTIVES

This proposal responds to a comprehensive set of the following objectives:

Fostering the export capacity and with it increased jobs in industrialized countries, thereby avoiding growing protection pressures;

Preventing the deterioration of Third World markets due to continual irresolution of the debt crisis;

Providing the debtors a technical mechanism whereby debt-service obligations could be met while allowing "breathing room" to facilitate a resumption of economic growth through;

Assuring full payment of Third World credits at market interest rates (3% fixed plus the excess floating rate paid by the program);

Assuring that Third World outstanding loan portfolio, in the aggregate, would not increase as a result of debt rescheduling under this program's umbrella;

Requiring the debtors themselves to contribute to a reserve fund, to be used to avoid default under this agreement, which in turn would secure the major banks' purchase of the rescheduled claims of the middle-sized and smaller banks;

Institutionalizing a mechanism for collective negotiation by governments with the commercial banks, which supports their commitment to debt repayment thereby diminishing the potential for individual or collective debt repudiation.

Most important of all, this proposal establishes a *flexible framework for negotiating these objectives* and thereby extending its basic formulation, such as to:

Reconciling demands on alternative ways of sharing the cost of resolving the debt crisis;

Extending Third World governments public warrants on the existing debt;

Mobilizing multilateral financial institutions, such as the IMF and IBRD, to guarantee debt reschedulings; and,

Targeting the resumption of normal commercial lending.

IV. STABILIZING WORLD MERCHANDISE MARKETS

Some advantages to the U.S. are worth examining in the search for some good reasons which would encourage the U.S. taxpayers, labor and manufacturers to backing this program.

[1] Author's note: I wish to thank Senator John Kerry for his support and interest in this project. Richard McCall has contributed with valuable suggestions to the final version of this paper. Bonnie Cronin and Eric Hamburg were important support for this team-work which made possible translating into political action the contents of this proposal. Professor Jose D. Epstein contributed with suggestions and encouragement to this proposal. I would like to express my recognition to the Kerry's staff for the democratic experience of our day-to-day cooperation.

[2] The author was a Legislative Fellow at Senator John Kerry Office sponsored by the National Democratic Institute for Foreign Affairs. He is a Legislative Assistant to the Labor Democratic Party at the State Assembly of Rio Grande do Sul in Brazil and a Professor of Political Science at the Federal University of Rio Grande do Sul.

[3] The word used to specify the conditions to be met by debtor countries on the stabilization of international trade flows was *volume* and not *amount*. This is because such a condition should allow for compensating the impact of the deterioration of terms of trade, such as that a drastic drop in the international prices of commodities would not prevent application for this Program just in the moment an affected country most needs a financing relief. The envisaged normalization of flows of trade through means of statistical factor, is just a matter of international accounting and does not affect the technical feasibility of this proposal.

TABLE 3.—INTERNATIONAL DEVELOPMENT PROGRAM: A COMPARISON OF COSTS AND BENEFITS IN 1983 TERMS

	Program funding: 1 percent import tax	Potential debt-service payments relief	Third World import increase	Developed country export increase	Impact on the GNP of developed countries	Jobs
19 donor countries total (billions)	$59.213	$122.900	$106.027	$68.917	$194.759	1.917.574
U.S. share (billions)	$13.195	(1/3)		$15.345	$43.398	427.313
Gearing ratio of each dollar funding this program (billions)	1.000	2.075	1.790	1.163	3.289	0.0000323
Gearing ratio of each job (thousands)	$30.878	$64.089	$55.290	$35.938	$101.562	1

Source of primary data: The World Bank.

(a) Debtor countries running large trade surpluses would be encouraged to limit these surpluses by increasing imports. Industralized countries would share in the cost proportionally to benefits derived from these enhanced trade relations. Assuming this program would have been in place in 1983, the following simulation (based upon 1983 data) demonstrates the estimated economic impact of this program.[4]

Program Funding was estimated on the basis of a 1% tax on imports by 19 industrialized countries which annually amounted to an $11.842 billion—totaling $59.213 billion over five years. The proportional share of the U.S. in this fundraising would have amounted to a yearly $2.679 billion—totaling $13.195 billion, i.e. 22.6% of program cost.

Potential Debt-Service Payments Relief includes the credits of commercial banks and multilateral financial institutions. The U.S. share represents roughly ⅓ of Third World debt to the commercial banks.

Third World Import Increase was calculated through the simulated adjustment of developing countries' balance of trade to meet the program's conditions for debt relief. The results in Table 3 demonstrate that each dollar invested in the operational costs of this program would have resulted in a $1.79 increase of debtor countries' imports, totaling $106.027 billion.

Developed Country Export Increase was calculated using the 1983 structure of the international trade as a statistical base; roughly 65% of Third World import increase would be supplied by industrialized countries—something around $68.917 billion over five years. Under the same assumptions, the U.S. share of export increase would have amounted to a $3.069 billion or an aggregated $15.345 billion over five years.

Impact on Developed Countries' GNP and Employment was extrapolated from the findings of Economist Gerard Adams of the Wharton Econometrics which showed an accumulated U.S. merchandise deficit with Latin America, from 1981 to 1984 of $23 billion. This resulted in an estimated $65 billion loss to the U.S. GNP in 1985 terms with a commensurate loss of almost 800,000 jobs.[5] A raw estimation of the impact of this program in the GNP of industrialized countries was obtained by simply multiplicating 2.826 (the gearing ratio of exports to GNP decrease in the U.S.) by the expected increase of exports to the industrialized countries. Under these assumptions, this program's trade reciprocities would have generated a $194.759 billion increase in the GNP of participating industrialized countries and a $43.398 billion increase of the U.S. GNP.

Jobs in the industrialized countries, and especially in the U.S. have been affected by the debt crisis. Estimations of this impact range from Mr. Adams 800,000 job loss, to more recent estimates of more than one and a half million jobs lost as a boomerang effect of this crisis.[6] To calculate the job creation impact of this program Mr. Adams figure of $65 billion impact of the debt crisis in the U.S. GNP was reduced to an average annual impact of $16.25 billion and then divided by the 800,000 jobs to get the annual cost of one job to the American GNP—$20.312 thousand. This conservative figure was used as the basis to calculate the annual cost of creating one job in the industrilized countries over the five year duration of this program. The result was an estimated 1,917,674 jobs created, of which 427,313 would be in the United States.

A Final Remark: more adequate statistical tools may refine this analysis to getting more accurate estimations within a dynamic model of the world economy. Given the magnitude of these figures and the overall impact of this program on social and political grounds, however, it is possible to state that marginal improvements in the accuracy of this simulation would not affect its conclusions.

(b) More than 50% of the program's expenditures would be allocated to relieving debt-service payments for the 63 debtor countries which would not be expected to increase imports, but simply would be required to sustain their current levels. Once it is assumed that the increase of Third World imports, as outlined above, would be sufficient a reason to finance this program on a cost-benefit basis, the impact of this program for the entire Third World would provide *an additional benefit at no cost: maintaining the stability of a $200 billion export market.*

Trade-deficit Third World countries which are directly affected by this provision, represent two-thirds of the developing country market which is currently threatened by the deepening of balance of payments' difficulties associated with the debt crisis.

If these countries would have been pressured to accept traditional IMF adjustment programs, which include severe reduction of imports towards balancing current accounts—which has already happened to that major debtors—this would have affected world trade by an additional $65 billion decrease in Third World import capacity in 1983 terms. Such a decrease would have amounted to a $100 billion if the goal of a 20% trade surplus was achieved throughout the Third World.

This proposal would resolve, therefore, some of current imbalances in North-South trade flow, without risking retaliation or contracting world trade as has been the historical fate of protectionsim.

V. LOW COST STABILIZATION OF WORLD FINANCING

Another set of features in this program as they relate to the U.S. financial establishment is worth considering. They focus on its immediate contribution to stabilization of private and public financing; on its cost-effectiveness; and on its support for the resumption of normal international commercial lending.

1. Stabilizing international financial markets

(a) This program's automatic debt rescheduling mechanism would contribute to maintaining debt-service payments at manageable levels. The general and consentual criteria under which resources would be available, would assure the technical conditions under which Third World external debt could be honored.

(b) Under this program, the banks would be required to reschedule debt-service payments according to clear and predictable criteria. They would receive full payment of these credits at market interest rates and would not be required or prevented from supplying new fresh-money lending to the debtor countries.

(c) A negotiable provision of this program would encourage the major banks to mobilize fresh money equal to 20% of the rescheduled debt to purchase the rescheduled credits of the middle-sized and smaller banks, thereby reducing the latter's foreign portfolios.

This fresh money flow would be equal to an annual 2.5% of total (public and private) debt in 1983 terms, the same amount as required of commercial banks by Secretary James Baker. However, it would have a very different purpose than the Baker Plan envisage. Instead of financing additional debt, the resources would be recirculated back into industrialized economies.

In reciprocity for such a slight increase in the exposure of the large commercial banks, debtor countries would contribute 10% of their effective debt relief to accumulate reserves for covering default by any participant in this program.

These provisions would cushion the impact of the crisis on the capillary structure (the middle-sized and small banking institutions) of the financial system, which is a strategic and important contribution to the stability of the overall commercial financial system.

(d) Contrary to the current policy of "involuntary lending" and its derivatives such

[4] Results from this simulation are displayed country by country in the *Appendix I.* This simulation was based on data from The World Bank: *World Development Report 1985* [annual report], Oxford University Press, New York, May 24, 1985, Tables 12 and 13, pages 196/199.

[5] ADAMS, Gerald F.: "Perspectives on the Latin American Debt Crisis—Implications for Latin American Development and for the United States Economy", Prepared Statement delivered at the Hearing before the Joint Economic Committee [paper], U.S. Congress, June 17, 1984.

[6] "In 1985, the United States had 632,000 fewer jobs due to the decline of exports to the Third World since 1980. Additionally, about another 930,000 jobs have been lost which would have been created if the growth trend of the 1970s had continued after 1980. Thus, nearly 1.6 million U.S. jobs have been lost due to the recent recession in Third World." TUCKER, Stuart K., Prepared statement to the Hearing before the Subcommittee on International Development Institutions of the House Committee on Banking, Finance, and Urban Affairs, U.S. Congress [paper], Washington D.C., March 19, 1986.

as the Baker Plan, this program would directly work on the effective amelioration of the developing countries creditworthiness. It would immediately provide for a better ratio of Third World debt-service payments to exports. In the mid range, provided the incentive to growth-oriented imports and the benefit the debtors would earn from real negative interest rates on the rescheduled debt, this program would contribute to reverse the growing ratio of debt to GNP. This goal is unreachable under the present policy of financing existing debt with additional commercial lending.

(e) The institutional importance of this program should not be underestimated. Debtor countries' contribution to the reserve fund is a guarantee against default throughout the life of the program. This program would, therefore, facilitate commitment of debtor countries to the stability of the world financial system, diminishing the possibility of a potential debt repudiation.

2. Cost-effectiveness of the proposed alternative

(a) The maximum amount of debt-service payments, to be automatically rescheduled under this proposal, is estimated at $24.580 billion annually in fixed 1983 terms. This represents 38.7% of Third World external public debt-service payments and around 20.8% of total debt-service payments.

(b) Under this proposal the banks would agree not to charge spreads and commissions on the rescheduled debt-service payments. Assuming an average 10% interest rate and the average additional 10% "spread" charged on Third World debt, the banks would have to absorb an annual decrease of $245 million in interest earnings.

(c) In the absence of this program, the banks would potentially face demands of debt-service payments' relief which range from an immediate $186 billion write-off of Third World loans to an annual $6.2 billion decrease of interest earnings. These proposals have been addressed in general policy statements by debtor countries, such as the Cartagena Consensus, and by experts from debtor and creditor countries as well. They have been recently voiced by Members and documented in the Congressional debate, which demonstrate the growing concern the debt crisis has raised in the U.S. Congress.

Representative Charles E. Schumer, in an article published by *The New York Times* stated: "In the line with the average discount at which banks are currently reselling some of their third world debt, banks could write-off approximately 30 cents on each dollar of their loans as nonperforming. The banks would also stretch out repayment periods and lower interest rates on the remaining debt, thereby allowing debtor nations to adopt more manageable repayment schedules." [7] Disregarding the quantitative impact of lowering interest rates, this proposal would represent an immediate loss of 30% of the $620 billion outstanding debt, that is a $186 billion in 1983 terms.

The idea of a modicum of 7% to 8% pre tax loss (and a correspondent 3% to 4% after tax loss) on international loans which are outstanding so far, has been a recurrent theme among many experts. Frequently this expectation of feasible banking loss has been associated with the proposal of a mechanism to selling bad loans at a discount rate to an international agency which then would assume the risk of default on the principal of these loans. Another alternative discussed is that of transforming these loans into bonds of an international agency to be commercialized at lower interest rates. These alternatives would impose losses to the financial system without assuring the solution for the imbalances in international trade created by the dynamics of the crisis. They would also concentrate bad loans on a large and insolvent public agency, thereby creating an additional problem to be resolved in the future.

A recently published Staff Report of the *Joint Economic Committee—U.S. Congress*, voiced another alternative for debt relief, as follows: "One possible approach would have been to ask the commercial banks to reduce or eliminate their spread—the difference between the interest they charge on loans and the interest rates they pay for loanable funds—on loans to financially troubled debtor nations. Under this approach, banks would have no longer earned profits on their Latin American loans, but they would not have lost money on them either." [8] Extending this proposal to all Third World countries would imply a yearly loss of around $6.2 billion, in 1983 terms.

(d) From the perspective of the banks, therefore, given the alternatives already being discussed to relieve the crisis of Third World debt, this program carries the lower cost by far. Besides it does not carry the risks associated with a case by case approach in which some countries would be accorded debt relief, others may not, thereby politicizing the international financial system.

(e) From the perspective of the public interest, it should be considered that all the alternatives which simply charge the price of resolving this crisis to the banks would also affect detrimentally the industrial nation's public finance [tax deductions of the banking loss is estimated to amount to roughly 50% of total loss].

(f) Contrary to trade reciprocities, financing benefits from this program would not be shared in by the industrialized countries in proportion to their funding responsibilities. The estimated U.S. share of 22.6% contribution to program support, would enable the American financial institutions to include under this financing umbrella the ⅓ share of commercial bank's claims on Third World debt owned by American financial institutions. This represents a unique advantage to the U.S. participation in, and implementation of, this proposal, which showed an added inducement for the U.S. to pursue the establishment of this program.

(g) The examples outlined argue that this program is the most cost-effective alternative potentially devised for debt relief, as demonstrated in Table 4.

TABLE 4.—A COST-EFFECTIVENESS COMPARISON OF 4 ALTERNATIVES FOR RESOLVING THE DEBT CRISIS

[Billions of dollars in 1983 terms]

Alternatives	Elements of cost—			Benefits, gearing ratio of cost to exports	Additional consequences
	After tax losses for the banks	Direct or embedded public cost	Total cost		
Writing off 30 percent of loans, 15 percent loss	$93.0	$93.0	$186.0	1 to ½	Stopped credit flow to default-countries. Operational problems to choose which loans would be written off.
Cutting off of "spreads" (or interest rates), 5 percent loss	36.0	36.0	62.0	1 to ½	Ineffective as a general solution to resolve specific balance of payments difficulties.
This program, 0.1 percent loss	.6	[1] 59.8	60.4	1 to 1.1	Effectively accountable benefits. Trade and financing stabilization resumption of Third World creditworthiness.

[1] Result of $59,200,000,000 of 1 percent import tax plus $600,000,000 tax deductions in interest loss by the banks.

3. Contribution to the resumption of international lending

(a) Relief under this program was designed to cover only *public* debt-service payments, that is service payments on the debt which is owed by or guaranteed by Third World governments. Benefits from this program, therefore, would increase in direct proportion to the amount of debt which had been publicly guaranteed by Third World governments.

(b) This program's automatic debt rescheduling mechanism would provide an orderly framework, by which complementary efforts to guarantee or enter into co-financing arrangements with the existing multilateral financial institutions would be encouraged as a means to secure even further repayment of Third World debt.

(c) It is foreseeable that additional provisions regarding the extension of this program's umbrella toward new project-oriented or structural adjustment external financing—such as the Baker Plan—might lead to promoting target areas for the resumption of normal international commercial lending.

VI. THE BENEFIT FOR THE DEBTORS

(a) This program would provide the debtor countries a five year grace period on the rescheduled debt by which financial liquidity can be re-established throughout Third World. Thereby, this program would allow debtor countries for the resumption of economic growth through their increased import capacity.

(b) Debtor countries would also get the benefit of this program's exceptional financing conditions, a 10 year long repayment of the rescheduled debt at a fixed 3% interest rate which does not fuel the world inflation. Given that interest would not be capitalized during the 5 year grace period, if inflation falls below the fixed interest rate, debtors

[7] Schumer, Charles E.: "Ease Up on Debtor Nations" [article]. *The New York Times* [newspaper], March 10, 1986. New York, NY.

[8] The Impact of the Latin American Debt Crisis: A Staff Study [paper], *Joint Economic Committee*, United States Congress, May 10, 1986.

would still derive the benefit associated with negative real interest rates.

(c) The rescheduled debt would not subject to spread or commission charges. This would contribute to diminishing the inequality of access to international financing, which has handicapped development efforts in the Third World.

(d) Besides, debtor countries would not be plagued by the uncertainties associated with the case-by-case debt renegotiations scheme. They would maintain the control over the nature of their increased importation of goods, thereby assuring that products essential to their individual development needs are effectively supplied.

VII. TOWARD A NEW INTERNATIONAL ECONOMIC ORDER

This program's feasibility, under the estimated limits of contribution by the industrialized countries, is tied to maintaining steady or improving world trade flows and to assuring that there would be minimal fluctuation in the international interest rates. This would commit its collective bargaining power to the international coordination of economic policies.

VII. SELECTED CASE STUDIES

A simulation of this proposal, based on 1983 World Bank data, provided the following classification of 77 developing countries:

(A) Countries which would be encouraged to increase imports for applying to debt relief under the "progressive cap" proposal, such as Mexico;

(B) Countries which would be encouraged to increase imports for applying to debt relief under the "progressive discount" proposal, such as Venezuela;

(C) Countries which would be encouraged to stabilize imports for applying to debt relief under the "progressive cap" proposal, such as Morocco;

(D) Countries which would be encouraged to stabilize imports for applying to debt relief under the "progressive discount" proposal, such as Nigeria.

This text provides a description of selected cases representative of the different groups.

VII. 1. METHODOLOGY

Five steps were conceived to systematically calculate the immediate and potential relief of debt-service payments the participant developing countries would have under this program.

Step 1: would collect and process data about the mutual trade flows among the participant (industrialized and developing) countries in this program. The resulting figures would show the excess of exports or imports which each developing country is running and the proportion of these amounts to each country's export capacity, that is each country's effective trade surplus or deficit. Step 1 would figure the consolidated outstanding public debt which would be covered by this program's financing umbrella, and the related amount of public debt-service payments (interest plus repayment of the principal) which would be considered for the purpose of debt relief.

Step 2: would operationalize the calculation of each developing country "progressive cap" on debt-service payments—that is, 20% of each country's exports additioned, if applied, by the proportion the excess of exports accordingly to the progressive scale on Table 1. Countries which effective public debt-service payments (as calculated in the Step 1) are higher than the limit thereby established would have an immediate debt relief. Those with more than a 20% trade surplus, which "progressive cap" would go above basic 20% of export "cap", would be encouraged to increase imports such as to achieving the maximum debt relief.

Step 3: would calculate the necessary increase of imports to maximize debt relief. This would be obtained through subtracting 20% of exports—that is the maximum limit of trade surplus to applying for the basic "cap" on debt-service payments—from each country's excess of exports.

Step 4: would calculate the potential debt relief under the "progressive cap," once the debtor countries met the condition of a maximum 20% trade surplus. This would be done through subtracting 20% of exports—i.e. the basic "cap" on debt service payments—from each country's effecting debt-service payments due.

Step 5: would calculate the alternative possibility of debt relief—the "progressive discount", equal to 20% of each country's effective debt-service payments due. The best rational option of each debtor country may be simply assumed as that which provides a higher amount of debt relief—"progressive cap" or "progressive discount." Table 5 shows the framework for these calculations. [Results for 77 developing countries are listed in Appendix I].

TABLE 5. A FRAMEWORK TO CALCULATE IDP'S DEBT RELIEF

Step 1. Trade and financial flows

(1a) Exports
(1b) Imports
(1c) Excess of exports [1a-1b]
(1d) Effective trade surplus [1d/1a]
(1e) Public debt interested payments
(1f) Public debt repayments
(1g) Debt-service payments [1e+1f)

Step 2. Calculation of the "progressive cap"

(2a) Basic 20% of export "cap" [20% of 1a]
(2b) Progressive increase of the basic "cap" [100% of 1d]
(2c) Total "progressive cap" [2a+2b]

Step 3. Calculation of the necessary increase of imports to maximize debt relief

(3a) Excess of exports [1c]
(3b) Basic 20% of exports "cap" [2a]
(3c) Necessary increase of imports to meet the program's conditions to applying for the basic "cap" [3a-3b]

Step 4. Calculation of the potential debt relief under the "progressive cap"

(4a) Debt-service payments [1g]
(4b) Basic 20% of exports "cap" [2a]
(4c) Potential debt relief [4a-4b]—conditioned to [3c]

Step 5. Calculation of the optional progressive discount and the best rational choice of debtor countries

(5a) "Progressive discount" [20% of 1g]—conditioned to not having an import or export decrease vis-a-vis last year figures
(5b) Potential debt relief [4c]
(5c) Best rational option to debt relief [signaled by the higher value]

VII. 2. FIRST CASE: MEXICO

In 1983 Mexico exported $21,168 million and imported $8,201 million. It had the largest excess of exports among the 77 developing countries in this study: $12,967 million—that is, a 61.3% trade surplus. And it effectively serviced $6,850 million of interests and a $3,104 million repayment of the principal—a total public debt-service payments of $9,954 million. This was below the "progressive cap" calculated in Step 2.

Given its trade performance, therefore, Mexico would not have had immediate benefit from this program. However, Mexico was a potential candidate to debt relief, because increasing imports, such as to reaching a maximum 20% trade surplus, it could have benefited from the minimum "cap" on debt-service payments.

Mexico would not have chosen the "progressive discount" of Step 5, because its benefit from the "progressive cap" in Step 4 was clearly superior. As a final result, Mexico would have increased by $8,764 million its imports to postpone a $5,720 million of debt service payments.

Considering its total debt-service payments plus the excess of exports, Mexico ran in 1983 a $22,921 million total liquidity in both these external accounts, but it could have used only a 56% ratio of such a net liquidity to funding productive investments. If debt relief under this proposal was effective, Mexico could have directed to growth-supportive imports a $8,764 million outflow, and even so it would have available $9,923 million to fund productive activities. Net liquidity would have risen therefore to roughly 81% of those two external accounts.

If now international development requires some "breathing room" for growth, such as to asssuring developing countries some flexibility toward the handling of their external constraints, this is a good example of how to achieving it on a structured basis. Otherwise, it would always be possible to argument that this program would not be sufficient as a development tool, without implying a "conditionality" to assure that its benefit is effectively used to enhance economic growth and productivity. In this respect, however, the increase of imports which would consume 40% of the estimated Mexican net liquidity in external financing and trade accounts, is a concrete expression of reciprocity. If it still does not assure that Mexicans would productively use their increased liquidity, at least it would save full benefit to the import suppliers of the Mexican economy, which serves to foster development on a world global scale.

VII. 3. SECOND CASE: VENEZUELA

In 1983 Venezuela exported $15,040 million and imported $6,667 million. It had the second largest excess of exports of the 77 developing countries in this study: $8,373 million—that is, a 55.7% trade surplus. And it effectively serviced $1,658 million of interests and a $937 million repayment of the principal—a total public debt-service payments of $2,595 million. This was below the "progressive cap" and even below the minimum "cap" of 20% of export earnings, as demonstrated the negative result on Step 4.

Given its trade performance and service of the debt, therefore, Venezuela would not have had benefit from this program under the "progressive cap" proposal. However, Venezuela was still a potential condidate to debt relief, because increasing imports, such as to reaching a maximum 20% trade surplus, it could have benefited from a net 20% discount on debt-service payments.

Venezuela might have chosen the "progressive discount" option to apply for a $519 million debt relief. There had been necessary, however, to raise their imports by $5,365 million.

VII. 4. THIRD CASE: MOROCCO

In 1983 Morocco exported $2,062 million and imported $3,599 million. It had a $1,537

million excess of imports—that is, a −74.5% trade deficit.

As a trade-deficit country Morocco was immediately a candidate to the minimum "cap" on service payments.

As Morocco effectively serviced $510 million of interests and a $610 million repayment of the principal—total public debt-service payments of $1,120 million; and as this was above the minimum "cap", Morocco would have had an immediate benefit from this program—an automatic rescheduling of a $708 million debt-service payments.

The "progressive discount" would not reach such an amount of debt-service payments relief and therefore would not be a rational choice to Morocco.

VII. 5. FOURTH CASE: NIGERIA

In 1983 Nigeria exported $17,509 million and imported $17,600 million. It had a $91 million excess of imports—that is, a −0.5% trade deficit. As a trade-deficit country Nigeria was a candidate to the minimum "cap" on service payments. As it effectively serviced $974 million of interests and a $1,066 million repayment of the principal—total public debt-service payments of $2,040 million; and as this was below that minimum "cap".

Nigeria would not have had benefit from this program under the "progressive cap" proposal. However, Nigeria was still a potential candidate to debt relief, because assuring the stability of its imports, it could have benefited from a $408 million of net 20% discount on debt-service payments.

As its economic situation deteriorated in consequence of the oil-price war early in 1986, Nigeria has warned that it would not pay a debt-service bill above 30% of its export earnings. Such an advise would be unnecessary under this proposal, which would have assured the stabilization of the important Nigerian market.

APPENDIX I.—SIMULATION: IMPACT OF THE INTERNATIONAL DEVELOPMENT PROGRAM ON DEVELOPING-COUNTRY ECONOMIES AS IF IT WAS ADOPTED IN 1983 SOURCE OF PRIMARY DATA: WORLD DEVELOPMENT REPORT 1985—IBRD

	Step 1. Trade and financial flows						
	1a. Exports of goods	1b. Imports of goods	1c. Excess of exports or (imports)	1d. Trade surplus or deficit (percent)	1e. Public debt interest payments	1f. Public debt repayments of principal	1g. Public debt-service payments
Countries in category (A)	$58,911	$32,657	$26,254	44.6	$13,989	$6,873	$20.862
Countries in category (B)	43,547	28,104	15,443	35.5	3,679	2,705	6,834
Countries in category (C)	49,027	72,890	(28,863)	−48.7	8,131	11,498	19,629
Countries in category (D)	157,122	198,719	(41,597)	−26.5	8,195	8,445	16,640
Total	308,607.0	332,370.0	(28,763.0)		33,994.0	29,521,0	63,965.0

	Step 2. Calculation of the "Progressive Cap"			Step 3. 3c=(1c−2a) Necessary increase of imports	Step 4. 4c=(1g−2a) Progressive cap potential debt relief	Step 5. Best rational option to debt relief	
	2a. Basic 20 percent of export cap	2b. Progressive increase of the basic cap	2c. Total progressive cap			5a. Progressive discount	5c. (4c or 5a) Option of maximum debt relief
Countries in category (A)	$11,782.2	$19,149.4	$30,391.6	$14,471.8	$9,078.8	$4,172.4	$9,079.8
Countries in category (B)	8,709.4	8,469.2	17,178.6	6,733.6	123.8	1,276.8	1,276.8
Countries in category (C)	9,805.4		9,805.4		9,823.6	5,487.5	9,823.6
Countries in category (D)	31,424.4		31,424.4		1,029.8	4,399.9	4,399.9
Total	61,721.4	27,618.6	89,340.0	21,205.4	20,057.0	15,336.6	24,580.1

	Step 1. Trade and financial flows						
	1a. Exports of goods	1b. Imports of goods	1c. Excess of exports or (imports)	1d. Trade surplus or deficit (percent)	1e. Public debt interest payments	1f. Public debt repayments of principal	1g. Public debt-service payments
(A) Countries which would be encouraged to increase imports for applying to debt relief under the "Progressive Cap" proposal:							
Uruguay	$1,008.0	$787.0	$221.0	21.9	$198.0	$94.0	$292.0
Burma	382.0	270.0	112.0	29.3	64.0	86.0	150.0
Bolivia	766.0	424.0	342.0	44.6	165.0	102.0	267.0
Ecuador	2,550.0	1,465.0	1,085.0	42.5	365.0	508.0	873.0
Agrentina	7,910.0	4,666.0	3,244.0	41.0	1,343.0	1,000.0	2,343.0
Brazil	25,127.0	16,844.0	8,283.0	33.0	5,004.0	1,979.0	6,983.0
Mexico	21,168.0	8,201.0	12,967.0	61.3	6,850.0	3,104.0	9,954.0
Subtotal	58,911.0	32,657.0	26,254.0	44.6	13,989.0	6,873.0	20,862.0
(B) Countries which would be encouraged to increase imports for applying to debt relief under the "Progressive Discount" proposal:							
Zambia	866.0	690.0	176.0	20.3	78.0	48.0	126.0
Guinea	390.0	279.0	111.0	28.5	22.0	48.0	70.0
Liberia	841.0	415.0	426.0	50.7	21.0	10.0	31.0
Zaire	1,459.0	953.0	506.0	34.7	87.0	39.0	126.0
Chile	3,806.0	2,754.0	1,052.0	27.6	557.0	328.0	885.0
Indonesia	21,145.0	16,346.0	4,799.0	22.7	1,256.0	1,295.0	2,551.0
Venezuela	15,040.0	6,667.0	8,373.0	55.7	1,658.0	937.0	2,595.0
Subtotal	43,547.0	28,104.0	15,443.0	35.5	3,679.0	2,705.0	6,384.0

	Step 2. Calculation of the "Progressive Cap"			Step 3. 3c=(1c−2a) necessary increase of imports	Step 4. 4c=(1g−2a) progressive cap potential debt relief	Step 5. Best rational option to debt relief	
	2a. Basic 20 percent of export cap	2b. Progressive increase of the basic cap	2c. Total progressive cap			5a. Progressive discount	5c.(4c or 5a) option of maximum debt relief
(A) Countries which would be encouraged to increase imports for applying to debt relief under the "progressive cap" proposal:							
Uruguay	$201.6	$44.2	$245.8	$19.4	$90.4	$58.4	$90.4
Burma	76.4	22.4	98.8	35.6	73.6	30.0	73.6
Bolivia	153.2	205.2	358.4	188.8	113.8	53.4	113.8
Ecuador	510.0	651.0	1,161.0	575.0	363.0	174.6	363.0
Argentina	1,582.0	1,946.4	3,528.4	1,662.0	761.0	468.6	761.0
Brazil	5,025.4	3,313.2	8,338.6	3,257.6	1,957.6	1,396.6	1,957.6

	Step 2. Calculation of the "Progressive Cap"			Step 3. 3c=(1c–2a) necessary increase of imports	Step 4. 4c=(1g–2a) progressive cap potential debt relief	Step 5. Best rational option to debt relief	
	2a. Basic 20 percent of export cap	2b. Progressive increase of the basic cap	2c. Total progressive cap			5a. Progressive discount	5c. (4c or 5a) option of maximum debt relief
Mexico	4,233.6	12,967.0	17,200.6	8,733.4	5,720.4	1,990.8	5,720.4
Subtotal	11,782.2	19,149.4	30,931.6	14,471.8	9,079.8	4,172.4	9,079.8
(B) Countries which would be encouraged to increase imports for applying to debt relief under the "Progressive Discount" proposal:							
Zambia	173.2	35.2	208.4	2.8	.....	25.2	25.2
Guinea	78.0	22.2	100.2	33.0	.....	14.0	14.0
Liberia	168.2	340.8	509.0	257.8	.....	6.2	6.2
Zaire	291.8	202.4	494.2	214.2	.....	25.2	25.2
Chile	761.2	210.4	971.6	290.8	123.8	177.0	177.0
Indonesia	4,229.0	959.8	5,188.8	570.0	.....	510.2	510.2
Venezuela	3,008.0	6,698.4	9,706.4	5,365.0	.....	519.0	519.0
Subtotal	8,709.4	8,469.2	17,178.6	6,733.6	123.8	1,276.8	1,276.8

	Step 1. Trade and financial flows						
	1a. Exports of goods	1b. Imports of goods	1c. Excess of exports or (imports)	1d. Trade surplus or deficit (percent)	1e. Public debt interest payments	1f. Public debt repayments of principal	1g. Public debt-service payments
(C) Countries which would be encouraged to stabilize imports for applying to debt relief under the "Progressive Cap" proposal:							
Subtotal	$49,027	$72,890	($23,863)	−48.7	$8,131	$11,498	$19,629
Of which countries with more than 100 percent trade deficit	5,263	12,192	(6,929)	($4)	868	1,684	2,552
Panama	480	1,412	(932)	−194.2	283	188	471
Egypt, Arab Republic	4,531	10,274	(5,743)	−126.7	540	1,456	1,996
Paraguay	252	506	(254)	−100.8	45	40	85
20 percent to 100 percent trade deficit	27,307	45,321	(18,014)	−66.0	4,952	5,561	10,513
Dominican Republic	648	1,279	(631)	−97.4	110	121	231
Portugal	4,602	8,257	(3,655)	−79.4	843	1,010	1,853
Morocco	2,062	3,599	(1,537)	−74.5	510	610	1,120
Pakistan	3,075	5,341	(2,266)	−73.7	309	759	1,068
Tunisia	1,851	3,117	(1,266)	−68.4	195	403	598
Israel	5,112	8,500	(3,388)	−66.3	1,109	840	1,949
Colombia	3,081	4,967	(1,886)	−61.2	516	388	904
Turkey	5,671	8,548	(2,877)	−50.7	1,169	1,175	2,344
Kenya	876	1,274	(398)	−45.4	127	178	305
Madagascar	329	439	(110)	−33.4	64	77	141
Less than 20 percent trade deficit and no more than 20 percent trade surplus	16,457	15,377	1,080	6.6	2,311	4,253	6,564
Zimbabwe	1,273	1,432	159	−12.5	105	330	435
Costa Rica	1,071	993	78	7.3	504	92	596
Algeria	11,158	10,332	826	7.4	1,212	3,292	4,504
Congo, People's Republic	887	806	81	9.1	77	161	238
Ivory Coast	2,068	1,814	254	12.3	413	378	791

	Step 2. Calculation of the "Progressive Cap"			Step 3. 3c=(1c–2a) necessary increase of imports	Step 4. 4c=(1g–2a) progressive cap potential debt relief	Step 5. Best rational option to debt relief	
	2a. Basic 20 percent of export cap	2b. Progressive increase of the basic cap	2c. Total progressive cap			5a. Progressive discount	5c (4c or 5a) option of maximum debt relief
(C) Countries which would be encouraged stabilize imports for applying to debt relief under the "progressive cap" proposal:							
Subtotal	$9,805.4	$0.0	$9,805.4	$0.0	$9,823.6	$5,487.5	$9,823.6
Of which countries with more than 100 percent trade deficit	1,052.6	0.0	1,052.6	0.0	1,499.4	1,020.8	1,499.4
Panama	96.0	0.0	96.0	0.0	375.0	188.4	375.0
Egypt, Arab Republic	906.2	0.0	906.2	0.0	1,089.8	798.4	1,089.8
Paraguay	50.4	0.0	50.4	0.0	34.6	34.0	34.6
20 percent to 100 percent trade deficit	5,461.4	0.0	5,461.4	0.0	5,051.6	3,153.9	5,051.6
Dominican Republic	129.6	0.0	129.6	0.0	101.4	69.3	101.4
Portugal	920.4	0.0	920.4	0.0	932.6	555.9	932.6
Morocco	412.4	0.0	412.4	0.0	707.6	336.0	707.6
Pakistan	615.0	0.0	615.0	0.0	453.0	320.4	453.0
Tunisia	370.2	0.0	370.2	0.0	227.8	179.4	227.8
Israel	1,022.4	0.0	1,022.4	0.0	926.6	584.7	926.6
Colombia	616.2	0.0	616.2	0.0	287.8	271.2	287.8
Turkey	1,134.2	0.0	1,134.2	0.0	1,209.8	703.2	1,209.8
Kenya	175.2	0.0	175.2	0.0	129.8	91.5	129.8
Madagascar	65.8	0.0	65.8	0.0	75.2	42.3	75.2
Less than 20 percent trade deficit and no more than 20 percent trade surplus	3,291.4	0.0	3,291.4	0.0	3,272.6	1,312.8	3,272.6
Zimbabwe	254.6	0.0	254.6	0.0	180.4	87.0	180.4
Costa Rica	214.2	0.0	214.2	0.0	381.8	119.2	381.8
Algeria	2,231.6	0.0	2,231.6	0.0	2,272.4	900.8	2,272.4
Congo, People's Republic	177.4	0.0	177.4	0.0	60.6	47.6	60.6
Ivory Coast	413.6	0.0	413.6	0.0	377.4	158.2	377.4

	Step 1. Trade and financial flows						
	1a. Exports of goods	1b. Imports of goods	1c. Excess of exports or (imports)	1d. Trade surplus or deficit (percent)	1e. Public debt interest payments	1f. Public debt repayments of principal	1g. Public debt-service payments
(D) Countries which would be encouraged to stabilize imports for applying to debt relief under the "Progressive discount" proposal:							
Subtotal	$157,122	$198,719	($41,597)	−26.5	$8,195	$8,445	$16,648
Of which, countries with more than 100 percent trade deficit	10,634	26,823	(16,189)	−($37)	1,186	1,260	2,446
Nepal	94	464	(370)	−393.6	4	5	9
Rwanda	80	279	(199)	−248.7	2	2	4
Mali	106	344	(238)	−244.5	6	6	12
Burkina	99	288	(189)	−190.9	7	7	14
Somalia	163	422	(259)	−158.9	10	13	23
Burundi	76	194	(118)	−155.3	3	4	7
Tanzania	480	1,134	(654)	−136.3	36	30	66
Yeman, PDR	449	1,010	(561)	−124.9	14	32	46
Syrian Arab Republic	1,875	4,180	(2,305)	−122.9	73	232	305
Sudan	624	1,354	(730)	−117.0	37	54	91
Ethiopia	422	875	(453)	−107.3	24	42	66
Greece	4,412	9,500	(5,088)	−115.3	755	562	1,317
Yemen, Arab Republic	204	1,521	(1,317)	−645.6	13	29	42
Benin	85	523	(438)	−515.3	13	13	26
Jordan	739	3,217	(2,478)	−335.3	88	125	213
Jamaica	726	1,518	(792)	−109.1	101	104	205
20 percent to 100 percent trade deficit	52,995	71,964	(18,969)	−35.8	2,060	2,301	4,361
Bangladesh	789	1,502	(713)	−90.4	63	80	143
Senegal	585	984	(399)	−68.2	31	17	48
Sri Lanka	1,066	1,788	(722)	−67.7	86	81	167
Thailand	6,368	10,279	(3,911)	−61.4	531	419	950
Haiti	412	620	(208)	−50.5	7	8	15
India	9,705	13,562	(3,857)	−39.7	553	770	1,323
Papua New Guinea	822	1,071	(249)	−30.3	63	44	107
Singapore	21,833	28,158	(6,325)	−29.0	116	278	394
Honduras	660	823	(163)	−24.7	83	38	121
Central African Republic	106	132	(26)	−24.5	7	11	18
Yugoslavia	9,914	12,154	(2,240)	−22.6	483	526	1,009
El Salvador	735	891	(156)	−21.2	37	29	66
Less than 20 percent trade deficit and no more than 20 percent trade surplus	93,493	99,932	(6,439)	($2)	4,949	4,884	9,833
Togo	242	284	(42)	−17.4	28	17	45
Trinidad and Tobago	2,353	2,582	(229)	−9.7	101	123	224
Hong Kong	21,951	24,009	(2,058)	−9.4	18	28	46
Korea, Republic of	24,445	26,192	(1,747)	−7.1	1,744	1,999	3,743
Nigeria	17,509	17,600	(91)	−.5	974	1,066	2,040
Malaysia	14,130	13,234	(896)	6.3	669	286	955
Guatemala	1,220	1,126	(94)	7.7	76	65	141
Mauritania	246	227	(19)	7.7	23	14	37
Sierra Leone	202	171	(31)	15.3	3	7	10
Ghana	895	719	(176)	19.7	30	42	72
Nicaragua	411	799	(388)	−94.4	37	46	83
Philippines	4,932	7,980	(3,043)	−61.8	650	602	1,252
Niger	301	443	(142)	−47.2	36	36	72
Malawi	220	312	(92)	−41.8	30	29	59
Cameroon	1,067	1,226	(159)	−14.9	107	112	219
Uganda	354	340	(14)	4.0	17	65	82
Peru	3,015	2,688	(327)	10.8	406	347	753

	Step 2. Calculation of the "Progressive Cap"			Step 3. 3c = (1c−2a) necessary increase of imports	Step 4. 4c = (1q−2a) progressive cap potential debt relief	Step 5. Best rational option to debt relief	
	2a. Basic 20 percent of exports cap	2b. Progressive increase of the basic cap	2c. Total progressive cap			5a. progressive discount	5c (4c or 5a) option of maximum debt relief
(D) Countries which would be encouraged to stabilize imports for applying to debt relief under the "progressive discount" proposal:							
Subtotal	$31,424.4	$0.0	$31,424.4	$0.0	$1,029.8	$4,399.9	$4,399.9
Of which, countries with more than 100 percent trade deficit	2,126.8	0.0	2,126.8	0.0	569.8	978.4	978.4
Nepal	18.8	0.0	18.8	0.0	0.0	3.6	3.6
Rwanda	16.0	0.0	16.0	0.0	0.0	1.6	1.6
Mali	21.2	0.0	21.2	0.0	0.0	4.8	4.8
Burkina	19.8	0.0	19.8	0.0	0.0	5.6	5.6
Somalia	32.6	0.0	32.6	0.0	0.0	9.2	9.2
Burundi	15.2	0.0	15.2	0.0	0.0	2.8	2.8
Tanzania	96.0	0.0	96.0	0.0	0.0	26.4	26.4
Yemen, PDR	89.8	0.0	89.8	0.0	0.0	18.4	18.4
Syrian Arab Republic	375.0	0.0	375.0	0.0	0.0	122.0	122.0
Sudan	124.8	0.0	124.8	0.0	0.0	36.4	36.4
Ethiopia	84.4	0.0	84.4	0.0	0.0	26.4	26.4
Greece	882.4	0.0	882.4	0.0	434.6	526.8	526.8
Yemen, Arab Republic	40.8	0.0	40.8	0.0	1.2	16.8	16.8
Benin	17.0	0.0	17.0	0.0	9.0	10.4	10.4
Jordan	147.8	0.0	147.8	0.0	65.2	85.2	85.2
Jamaica	145.2	0.0	145.2	0.0	59.8	62.0	62.0
20 percent to 100 percent trade deficit	10,599.0	0.0	10,599.0	0.0	0.0	1,308.3	1,308.3
Bangladesh	157.8	0.0	157.8	0.0	0.0	42.9	42.9
Senegal	117.0	0.0	117.0	0.0	0.0	14.4	14.4
Sri Lanka	213.2	0.0	213.2	0.0	0.0	50.1	50.1
Thailand	1,273.6	0.0	1,273.6	0.0	0.0	285.0	285.0
Haiti	82.4	0.0	82.4	0.0	0.0	4.5	4.5
India	1,941.0	0.0	1,941.0	0.0	0.0	396.9	396.9
Papua New Guinea	164.4	0.0	164.4	0.0	0.0	32.1	32.1
Singapore	4,366.6	0.0	4,366.6	0.0	0.0	118.2	118.2
Honduras	132.0	0.0	132.0	0.0	0.0	36.3	36.3

	Step 2. Calculation of the "Progressive Cap"			Step 3. 3c = (1c–2a) necessary increase of imports	Step 4. 4c = (1q–2a) progressive cap potential debt relief	Step 5. Best rational option to debt relief	
	2a. Basic 20 percent of exports cap	2b. Progressive increase of the basic cap	2c. Total progressive cap			5a. progressive discount	5c (4c or 5a) option of maximum debt relief
Central African Republic	21.2	0.0	21.2	0.0	0.0	5.4	5.4
Yusoslavia	1,982.8	0.0	1,982.8	0.0	0.0	302.7	302.7
El Salvador	147.0	0.0	147.0	0.0	0.0	19.8	19.8
Less than 20 percent trade deficit and no more than 20 percent trade surplus	18,698.6	0.0	18,698.6	0.0	460.0	2,113.2	2,113.2
Togo	48.4	0.0	48.4	0.0	0.0	9.0	9.0
Trinidad and Tobago	470.6	0.0	470.6	0.0	0.0	44.8	44.8
Hong Kong	4,390.2	0.0	4,390.2	0.0	0.0	9.2	9.2
Korea, Republic of	4,889.0	0.0	4,889.0	0.0	0.0	748.6	748.6
Nigeria	3,501.8	0.0	3,501.8	0.0	0.0	408.0	408.0
Malaysia	2,826.0	0.0	2,826.0	0.0	0.0	191.0	191.0
Guatemala	244.0	0.0	244.0	0.0	0.0	28.2	28.2
Mauritania	49.2	0.0	49.2	0.0	0.0	7.4	7.4
Sierra Leone	40.4	0.0	40.4	0.0	0.0	2.0	2.0
Ghana	179.0	0.0	179.0	0.0	0.0	14.4	14.4
Nicaragua	82.2	0.0	82.2	0.0	.8	24.9	24.9
Philippines	986.4	0.0	986.4	0.0	265.6	375.6	375.6
Niger	60.2	0.0	60.2	0.0	11.8	21.6	21.6
Malawi	44.0	0.0	44.0	0.0	15.0	17.7	17.7
Cameroon	213.4	0.0	213.4	0.0	5.6	43.8	43.8
Uganda	70.8	0.0	70.8	0.0	11.2	16.4	16.4
Peru	603.0	0.0	603.0	0.0	150.0	150.6	150.6●

BEST WISHES TO TOM COURTWAY

● Mr. PRYOR. Mr. President, when the tax bill passed the Congress and made its way to the White House for signing, many of us felt a sense of relief that such sweeping changes had been made in the Tax Code, and with such apparent ease of handling. Those of us on the Senate Finance Committee, however, knew that this particular piece of legislation was forged out of hard work, plenty of elbow grease, and hours of detailed writing, rewriting, and negotiations. And nobody knew this better than our staff.

One of those, Mr. President, was Tom Courtway, who worked with me for the past 3 years as my tax assistant and legislative director. Tom did a distinguished job of keeping straight those tax matters that affect the country and, at the same time, our legislative program in a wide range of issues and questions.

And just before the Senate completed its work on the bill, Tom returned to Little Rock to enter law practice and establish a home for his family. In fact, he left Washington at the height of our excitement over this legislation. But he felt that the right time had come and, in spite of our encouragements for him to stay, he insisted that his home is in Arkansas and that is the place for him.

Mr. President, I understand Tom's feelings on the subject. Anyone who has lived in Arkansas, and especially anyone who grew up there—as Tom did—knows that we have a special State with wide attractions, with friendly and cooperative people, and with all the advantages of education and culture for raising children. So Tom unquestionably made the right decision.

But we miss him in Washington, and when I note the final passage of this monumental legislation, I invariably think of Tom and the contribution he made. Tom gained the outspoken respect and admiration of his colleagues. He became known as an expert on the Tax Code. And he continues to make a contribution in Arkansas, where he has begun an impressive practice at Wright, Lindsey & Jennings in Little Rock.

Mr. President, I wish to take this opportunity to commend Tom Courtway on the diligence and commitment he brought to his tenure on my staff. He remains a good friend and a fine attorney, and speaking for all of those in my office I want to wish him the very best at his new home in Arkansas.●

CHARLES McC. MATHIAS

● Mr. LEAHY. Mr. President, there are some Members of our body who appear almost to have been born to be a Senator. They feel this way because of their devotion to the traditions of the Senate, to the independence of the Senate and to their own ability to handle the myriad issues of the Senate. No one fits this description better than my dear friend and colleague CHARLES MATHIAS, the senior Senator from Maryland.

Senator MATHIAS, is a man whose consummate good sense, gentle humor, and willing to put the best interests of the Nation above partisan or parochial interests has always seemed a beacon to other Senators and truly to most Americans. He is one person who will leave a void when he retires this year.

It has been my extreme good fortune to have served with Senator MATHIAS as a member of the Appropriations Committee and a member of the Judiciary Committee and a member of the Intelligence Committee. In each of these committees we have faced difficult issues. In every instance his sense of justice, compassion and of eminent good sense has come through time and time again to the benefit all of us, Republicans or Democrats.

Some Senators have been called giants in the Senate. Senator MATHIAS could be called that, but even more appropriately a gentle giant of the Senate.

I value my friendship with him and I wish him the very best in the years to come.●

BARRY GOLDWATER

● Mr. LEAHY. Mr. President, I say goodbye today to six old friends with whom I have shared this very singular experience of serving in the U.S. Senate. I have said many times that the Senate is the conscience of this Nation. There are only 100 of us here, and the men who sit with us today for the last time have always recognized that the conference of power always brings with it the weight of responsibility.

Serving with BARRY GOLDWATER, GARY HART, TOM EAGLETON, RUSSELL LONG, CHARLES MCC. MATHIAS, and PAUL LAXALT has been both a learning experience and an honor and I feel privileged to have known and worked with these men.

Their position in this body and their successes have been well documented by others before me. I know them from the life I have shared with them for the last 12 years—sometimes as foes, sometimes as allies, always as friends.

I love and respect you all—and will never forget the kind assistance you have given me on so many occasions.

But I must confess, here and now, that I possess neither the imagination nor desire to dwell on what this place will be like without BARRY GOLDWATER.

I have served with this able and honest man for 12 years, and have benefited so much from the wise counsel and advice he has given us in this Chamber, in committees, and elsewhere.

I admire him. He is a great American who wears his country, not on his sleeve, but in his heart.

And in his heart, BARRY GOLDWATER will always be right.

That's a small "r." That's a big heart.

I have been privileged to serve on both the Armed Services Committee and the Senate Select Committee on Intelligence with BARRY GOLDWATER. Like all Senators, I have benefited by his honesty, candor, and experience. As a matter of fact, I have been privileged to have BARRY GOLDWATER as a friend. We share a common interest in photography, but I view him as truly the finest photographer the Congress has ever had. He is one who has gone out of his way to show the personal side of the Senate to younger Members such as me.

I can remember so many things about BARRY GOLDWATER but one I will always remember from the time I came to the Senate. I brought my then 10-year-old son to Florida to watch the launching of the Apollo spacecraft. He timidly asked a question of Senator GOLDWATER who then spent nearly half an hour with a 10-year-old boy bringing him around to show and explain to him the intricacies of the Kennedy Space Center. The image I remember is that of one of the best-known men in America's history leading a 10-year-old boy by the hand as that boy listened enthralled to all he was hearing.●

RUSSELL LONG

● Mr. LEAHY. Mr. President, none of the speeches given on the floor of the Senate can begin to reflect what this body owes to the service of RUSSELL LONG. In the future whenever historians write of the U.S. Senate, they will start with the service of RUSSELL LONG as they can encompass only a fraction of what he has done here, what he has seen here, and what he has accomplished here. Then they will truly be able to capture a history of this body.

RUSSELL LONG is a Senator's Senator. A master of the rules, one who cherishes the tradition of the Senate, a brilliant legislator and a cherished friend. It is RUSSELL LONG who has been used over and over by new Senators as an example of one who upholds the Senate tradition of keeping your word, doing your homework, and respecting the opinions of other Senators. These three traits plus a towering intellect has made him the most effective legislator of our time.

On a more personal note, RUSSELL and Carol LONG have been the "godparents" to many of those who have come to the Senate in the last few years. They have countless times given of themselves to help new Members of the Senate and their spouses, all with a charm, a dignity, and a special humor that could never be matched by anyone else.

I join in wishing them both the best and to say how much I will miss them.●

PAUL LAXALT

● Mr. LEAHY. Mr. President, I had the privilege of coming here in 1974 with former Governor of Nevada PAUL LAXALT. While from opposite parts of the country and certainly of different political philosophies, I have been privileged to become a close friend of Senator LAXALT.

PAUL LAXALT is one of the people who makes it not only an honor but a pleasure to serve in the Senate and he is one who makes it a joy to really legislate.

I know of no one who has gained more respect by both Republican and Democratic Senators than PAUL LAXALT. In the times that I have been able to spend with him whether in committee meetings or with my wife Marcelle, his wife Carol, when we have been able to be together socially, I have always been struck by his honesty, his decency, and his commitment to principle.

Throughout my 12 years in the U.S. Senate I have never heard a single person speak ill of PAUL LAXALT, but I have heard so many times, let's see PAUL and see if we can work out the consensus in this legislation. I have also seen PAUL, so many times, set aside ideological partisan differences to form a consensus that was good for the country, good for the Senate, and good for the future.

Like all other Senators, I look forward to time with PAUL in the future and I wish him so very well in his years to come.●

TOM EAGLETON

● Mr. LEAHY. Mr. President, before I came to the Senate I was like most Americans, I knew of Senator TOM EAGLETON. Since coming to the Senate I have been privileged to serve on both the Appropriations Committee and the Senate Select Committee on Intelligence with Senator EAGLETON. I have come to know him as a man of conscience and dedication to public service. His sense of humor and friendly demeanor compliments a razor-keen mind and a prosecutor's ability to ask the questions so often left unanswered in the Senate.

While many of our colleagues have spoken of the myriad attributes of Senator EAGLETON, I would like to take a moment to speak only as the vice chairman of the Intelligence Committee. I have watched TOM EAGLETON's probing, careful and consciencious work in that committee. I have heard him ask questions that are always framed to ask the question "What is best for the United States? What upholds the Constitution and laws of the United States?" In the normal course of events, the closed-door classified proceedings that Senator EAGLETON took place in, will be declassified. Historians and scholars look at the enormous contribution he has made. It is a contribution that he has neither trumpeted or sought acclaim for but a contribution benefiting all America.

The Senate has benefited by service, we have become greater as a body because he has been here and he leaves a mightly void indeed.●

GARY HART

● Mr. LEAHY. Mr. President, I was privileged to come to the U.S. Senate with GARY HART of Colorado. Senator HART and I did not know each other before coming to the Senate, but I consider it an honor to become his friend during the past 12 years.

It has often been said that the U.S. Senate is the conscience of the Nation. If indeed it is, as it should be, all Americans of all parties should be thankful that there has been a man like Senator HART to help shape that conscience. He has spoken out with a clear and strong voice on issues of arms control, defense policy, and social conscience. More and more, I find that people throughout the country listen to what he says.

Many of our colleagues have spoken of his career and the steps that have brought him to the Senate. I wish to speak only as one who will miss a good friend when he leaves the Senate, but who knows that his voice will continue to be heard throughout the Nation. While I have been privileged to have him as a friend, we have all benefited by his service to the country.

He leaves the Senate as one of the major figures in America's political life. Certainly when they look at the U.S. Senate and ask which Members qualified to be President of the United States, GARY HART is one who stands in that very limited and special group.●

MASAU TRAIL AMENDMENT

● Mr. BINGAMAN. Mr. President, I would like to take this opportunity to correct a mistake which appeared in the CONGRESSIONAL RECORD on October 16, 1986. At that time, the distinguished senior Senator from New Mexico introduced an amendment to S. 2932, a bill to establish the Malpais National Monument, the Masau Trail, and the Grants National Conservation

Area in the State of New Mexico, and for other purposes. The amendment deals with water rights for these new reservations.

Although I am a cosponsor of S. 2932, I did not wish to be a cosponsor of the amendment and I was inadvertently added as one. As a result, I wish the RECORD to reflect the fact that I was mistakenly added as a cosponsor and did not wish to be a cosponsor.●

MOUNT BRADY

● Mr. MATHIAS. Mr. President, autumn in Washington is a season to savor and enjoy. This year it has been especially mellow and fruitful with a rich harvest of sculpture on Capitol Hill.

Senators awaiting adjournment have found it fascinating to watch the final assembly of the last great sculpture by Alexander Calder. As the scaffolding has been removed and the fence taken down, this remarkable work has become visible for the first time.

It would be memorable as literally the last thing to which Calder put his hand, if for nothing else. On the day that Calder completed his adjustment of the maquette in the atrium of the Hart Building, he returned to New York and died.

But the sculpture offers much more than finality. It is memorable in every possible way. Its spirit, its concept, and its message are all memorable.

The Senate can take pride in this unusual acquisition, but also must express appreciation for the unusual generosity that made it possible. The efforts of Nicholas Brady, former Senator from New Jersey, to secure contributions for the completion of this work has not only enriched Capitol Hill but saved a noble work from oblivion.

Alexander Calder himself thought of this sculpture as embodying the concept of "From Sea to Shining Sea." The great mountains thrust upward toward the circling clouds, dramatic and compelling.

For me, this great work of art will always be "Mount Brady."●

STILL TIME TO STOP THE KILLER BEE

● Mr. MATHIAS. Mr. President, during consideration of the continuing resolution I offered an amendment that would have earmarked $1 million to be used by the U.S. Department of Agriculture in establishing a biological barrier in Mexico to block the northward migration of Africanized bees.

My amendment, which the Senate passed, was removed in conference at least partly because of some confusion over whether USDA believed the Africanized bee really represented a significant threat to American agriculture and whether the technology necessary to establish such a barrier existed.

I sympathize with the time pressures faced by the conferees, but I think it is important to clarify the situation and to wipe away the confusion. To that end, I would like to add for the RECORD a copy of a memorandum prepared by scientists at the U.S. Animal and Plant Health Inspection Service on this subject. The memorandum summarizes the findings of USDA's technical advisory committee on Africanized bees. It clearly states the danger the so-called killer bee poses to agriculture in this country, and it urges the swift establishment of a barrier in Mexico to head off this potential disaster.

My amendment, which would have provided the funds necessary for this important project, ultimately failed. But that does not mean that it is too late for USDA to heed the advice of its own scientists. I urge Secretary Lyng and my colleagues on the Senate Agriculture and Appropriations Committees to take another look at this proposal. I ask that the USDA memorandum be printed in the RECORD.

The memorandum follows:

BRIEFING PAPER—AFRICANIZED HONEY BEE

Plant Protection and Quarantine (PPQ) programs could be affected by resolutions which were adopted at a meeting of the Technical Committee for African Honey Bee and Parastic Bee Mites. This meeting was held in Hyattsville, Maryland, on September 23, 1986. In attendance were Committee members, news media, and PPQ staff.

The Africanized bee is already in Guatemala, and it will probably enter Mexico some time in 1987. The consensus of the Committee was that the Animal and Plant Health Inspection Service (APHIS) should act quickly to implement an Africanized bee barrier zone in Mexico. The Committee recommended that the barrier plan be in place and fully operational in 12 months or less.

This will be our last chance to retard or prevent Africanized bees from reaching the southern borders of the United States by 1990. Everyone has known this potentially devastating pest was coming, yet little or nothing has been done to prevent its migration to U.S. borders. The Committee feels that if APHIS does not act now, it will have failed in its primary mission of protecting U.S. agriculture.

The consensus of the Committee was that the northward migration of the Africanized bee should be stopped in Mexico. Recent developments in technology now make this possible, and the barrier plan proposed by the Agricultural Research Service (ARS) should be implemented immediately.

Specifically, the following actions were recommended:

1. Due to the rapid advance of the Africanized bee, APHIS should place the highest priority on the establishment of the ARS Africanized bee barrier.

2. APHIS officials should meet as soon as possible with Mexican officials to gain their support for the project.

3. An APHIS project manager should be appointed immediately to begin developing organizational plans and implementing the barrier.

4. APHIS should consider modifying the ARS bee barrier plan to include a monitoring program north of the barrier zone.

5. APHIS should actively promote the ARS bee barrier plan to gain public and private support.

6. APHIS should assist with emphasizing the public health aspects of Africanized bees.

ARS will support the plan by moving its bee research laboratory to the State of Yucatan in Mexico. Canada will support the plan by supplying a limited number of qualified personnel. Mexico will support the plan by establishing a bee research facility in the State of Chiapas.

Mexico has already requested a formal protocol from the USDA to seek outside funding. It only remains for APHIS to obtain funding and implement the Africanized bee barrier plan.●

THE CHESAPEAKE BAY—REPORT OF THE SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY

● Mr. MATHIAS. Mr. President, over the past decade many of us from Maryland, Virginia, Pennsylvania, and the District of Columbia have sailed together on the Chesapeake Bay searching for solutions to its problems. We have explored the rivers that pour their pollutants into its waters; we have examined the impact of shore erosion; we have measured the decrease in aquatic life. We have learned together that the great assault on the Bay's beauty and purity can be checked by a coordinated, determined effort by the Federal, State, local governments, and most importantly by the public at large.

But we have not yet won the battle. In fact we are in the stage in our war against pollution that Winston Churchill described during World War II when he told the British, "This is not the end. Nor is it the beginning of the end. It is the end of the beginning."

I have been asked many times in the last few months to list the highlights of my Senate career. Certainly working to preserve the Chesapeake Bay is at the top of any list of actions that I consider the most important in my years in the Congress. We have made tremendous strides in our effort to clean up the Bay since the early 1970's when wife, Ann, and our sons and I first toured the Bay with Larry Simms, now the president of the Maryland Waterman's Association. At that time, he pointed out to me many of the problems of the Bay and how they were worsening, and time has proved him right.

The Federal and State governments should be commended for their subsequent commitment of manpower and resources to cleaning up the Bay, and for setting the stage for future action. As a result of the 1983 Bay study, an executive council has been established, comprised of Federal and State officials, citizens, and scientists. This

council manages and coordinates the comprehensive Bay cleanup effort.

The 1985 Restoration and Protection Plan, which is a joint effort by, the State governments, the EPA and other Federal agencies, has laid a solid foundation for a successful cleanup program. However, it is only a foundation. We need some specific guidelines to follow.

A hearing this summer by the Governmental Affairs Subcommittee on Governmental Efficiency and the District of Columbia brought to the forefront many significant issues and recommendations on how to ensure an effective cleanup program to the year 2000.

From these excellent suggestions I have formulated my own recommendations which I hope that the Federal Government, the Members of the 100th Congress and the Governors and officials of the States will use as guidelines for the future. Unfortunately, unless we establish guidelines and adhere to them, all the ground we have gained and the successes we have achieved over the past decade could be washed away like so much of the shore of the Chesapeake Bay.

I have made six specific, positive recommendations for the future of the Bay, and I respectfully urge the executive council to consider, adopt, and implement them.

First. Clarification of goals: In order to clarify the goals of the Chesapeake Bay cleanup program, the executive council must develop a new Chesapeake Bay Agreement, along the lines proposed by EPA Administrator Lee Thomas, to set out specific Baywide strategies, water quality standards and loading goals for amounts of nutrients and toxic substances in the Bay.

Second. Nutrients: The executive council should establish interim nutrient loading goals and strategies by the summer of 1987.

On point source pollution: The executive council should clarify the existing nitrogen removal policy. EPA should work with the States to develop a pilot program for nitrogen controls in selected tributaries and consider revising its advanced wastewater treatment policy for funding of nitrogen removal in the Chesapeake in areas of needs.

On nonpoint source pollution: Although existing conservation efforts by Federal and State governments have been effective, officials should improve coordination of their efforts and focus more clearly on agricultural lands causing the greatest problem. In addition, agricultural and conservation practices, such as placing filter strips between farmland and the water and disposal of animal wastes, should be examined and evaluated to determine whether special engineering criteria and modifications are needed.

Third. Sediments control: The executive council should make every effort to ensure that enforcement and inspection of construction site practices should be increased to control sediments.

Fourth. Toxics: the EPA should identify specific areas where existing toxic contamination is a problem and the executive council should develop an action plan for each of the areas of concern, and prepare plans to monitor living resources and develop specific water quality and sediment criteria for toxics.

Fifth. Living resources: Preservation of living resources should be incorporated into the objectives of the Bay cleanup program. The NOAA task force established to address this issue should be better coordinated with the executive council and a living resource subcommittee should be established to ensure their restoration in the cleanup effort.

Sixth. Enforcement: EPA should intensify its review of existing pollution control permits, and, where there are illegal discharges, increase its enforcement actions. In addition greater effort should be made to further limit discharges of nutrients and toxics to the Chesapeake through the NPDES permit process.

These six recommendations if adopted and applied by the council could make the difference between success and failure in our cleanup efforts. One of my regrets at leaving the Senate is that I won't be able to help put them to work. But I am confident that the Senators will continue to watch over the program and work to restore the bay's original beauty and bounty.

Mr. President, I ask that the report of the subcommittee on the program to assure the future of the bay be inserted in the RECORD.

The report follows:

REPORT ON THE FUTURE OF THE CHESAPEAKE BAY CLEANUP PROGRAM

(By Senator Charles McC. Mathias, Jr.)

INTRODUCTION

THE CHESAPEAKE BAY.—Our Nation's largest and most productive estuary—is invaluable. It provides a home for 2,700 species of plants and animals. Its oyster and blue crab production rank among the highest in the United States. The Bay and its shoreline support an extensive recreation industry, including swimming, fishing, hunting and boating. Major U.S. commercial and military ports, including Baltimore, Maryland and Norfolk, Virginia, are situated on the Bay.

But this national treasure has fallen victim to the by-products of civilization—pollution from treated and untreated sewage, industrial waste discharges, and so-called non-point sources of pollution such as fertilizers and soil runoff from nearby agricultural lands. Fortunately, state and federal governments have responded with determination. An aggressive restoration program is underway to make the Chesapeake the high quality resource it was just a couple of decades ago.

The program established to restore the Bay to health is heralded as a model for other estuaries around the country. It is even being used as a case study in other countries. It has been a shining example of good intergovernmental cooperation and effective environmental management. It has fostered a successful rapport between the public sector and the many private businesses, industries and research institutions on the Bay—entities which historically have been in conflict on environmental matters.

But as successful as the clean-up program has been to date, we have only just begun our efforts to stem the tide of the Bay's pollution and restore this great national resource. To borrow Churchill's quotation: "This is not the end. Nor, is it the beginning of the end. It is the end of the beginning." Churchill's quote rings as true today for the Bay's survival as his words did for World War II at its nadir.

We have just completed the first critical phase in the clean-up program. However, it is only the first step in a long journey. We will not see the fruits of our labor for years to come. The Bay's decline is the result of decades of abuse. Restoring this magnificent, yet polluted and depleted resource will take years. But we can be optimistic. The far-reaching actions of public and private sectors so far symbolize the reversal of years of neglect. Despite the careless damage done to it, the magnificent, resilent Bay will—with the help of federal and state governments and its users—once again will be a rich natural resource and a source of national pride. William Ruckelshaus, champion of the Bay and former EPA Administrator, in discussing the challenge before us said: "The tough thing will be to make certain that we are steadfast, year after year, decade after decade."

The need to view the Bay clean-up program from a long-term perspective and to clarify its goals prompted the Senate Subcommittee on Governmental Efficiency and the District of Columbia to hold hearings on the future direction of the program last June 22. This report focuses on the issues identified at the hearings. It includes Subcommittee recommendations on how to achieve our goal of restoring the Bay to health by the year 2000.

PROGRESS TO DATE IN THE CHESAPEAKE BAY CLEAN-UP PROGRAM

Research phase

The $27 million congressionally mandated EPA Chesapeake Bay Study—sponsored by Senator Charles McC. Mathias, Jr., in 1975 and released in 1983—sounded the alarm that the Bay was dying. At the same time, it gave us hope that we could stop the pollution that was killing the Bay. It documented the problems of the Bay and suggested ways to combat them. Among other things, it told us that the unchecked increases of nutrients and toxics to the Bay threatened important aquatic resources.

Of ten problems originally identified by EPA and other specialists in the study, three were determined to be of immediate concern. These were the high levels of toxic chemicals entering the Bay, the excess inputs of nutrients, and the tremendous decline in submerged aquatic vegetation (Bay grasses). Baltimore Harbor, Norfolk and the Elizabeth River ports were found to be saturated with heavy metals and a myriad of organic contaminants. Many tributaries, once rich in fish and wildlife, were choked with nitrogen and phosphorous running off agricultural lands during rainstorms, and caus-

ing severe stress on oxygen levels and survival of submerged aquatic vegetation. Many species of waterfowl, fish and shellfish have declined significantly from the polluted water.

Although the research findings painted a grim picture, they were an important step in the Bay's reversal, for they made us more sure about the specific factors causing the decline of the Bay's water quality and living resources. With that recognition, a clear focus evolved for the Bay clean-up program.

ACTION AS A RESULT OF THE BAY STUDY

States in the Bay watershed—Maryland, Virginia, Pennsylvania and the District of Columbia—and the federal government immediately responded to the recommendations made in the comprehensive Bay study. Under the leadership of Maryland Governor Harry Hughes, the Chesapeake Bay Executive Council, comprised of federal and state officials, citizens and scientists, was established at an historic conference in 1983 to coordinate and manage a comprehensive Bay clean-up effort.

A report by the Inspector General's Office of EPA released in September 1986 revealed that the administrative practices overseeing the Bay program from 1978 through 1984 were deficient. Even if there were severe inadequacies in the administration of grants, however, the Subcommittee feels that the technical basis of the Chesapeake Bay program is sound. Much of the research conducted through the EPA Bay program has been confirmed by independent research conducted by state and private institutions. The Subcommittee is pleased that EPA has begun a three-phase program to correct these administrative practices.

Despite the apparent problem of administration at the EPA, the various states and federal initiatives are impressive. They include measures to control point and non-point source pollution, better manage the land, and protect living resources and habitats.

In 1984, Maryland created 40 new program initiatives, began hiring 174 new employees and appropriated $40 million for point and non-point source controls, resource management and land-use planning. Maryland's initiatives are already reaping benefits. For example, Maryland has established a pioneering effort to control development in sensitive shoreline areas. By 1988, nearly 80 percent of discharges from Maryland's wastewater facilities will receive treatment for phosphorous.

Virginia has appropriated $15 million for initiatives similar to Maryland's and Pennsylvania has moved forward with a comprehensive agricultural non-point source pollution control program in the Susquehanna River Basin. The District of Columbia has made substantial improvements to the Blue Plains Treatment Plant and soon will include phosphate removal and dechlorination. These programs, started in 1984, have become an integral part of the states' overall planning since that time.

Recognizing the Bay as a national treasure, President Reagan singled it out in his 1984 State of the Union Message and committed $40 million over a four year period—$10 million each year—for EPA's involvement in the clean-up program. EPA is funneling about 75 percent of the money—or $7.5 million a year—to the various states in the form of matching grants to be used to implement the recommendations of the Bay study.

The states are effectively using these federal funds to develop long-range, non-point source control programs, particularly cost-sharing programs with agricultural communities for the implementation of Best Management Practices [BMP's]. BMP's are soil and water conservation practices to control or eliminate agricultural or urban non-point source pollutants. The non-point source pollution focus is necessary because the Bay study indicated that non-point source agricultural loads are a significant problem in the Bay.

The remaining 25 percent of the funds—$2.5 million annually—is used to support the Chesapeake Bay liaison office and related activities. The additional activities include efforts to maintain the Chesapeake Bay data base, continue the public participation program, develop a Bay-wide monitoring network to assess trends and environmental progress, and to continue research. The recently enacted Clean Water Act authorizes additional funding for these efforts.

In 1984, Senator Mathias led an effort to better coordinate and expand the federal participation in the clean-up program. That year, at Senator Mathias' urging, five federal agencies—the National Oceanic and Atmospheric Administration [NOAA], Fish and Wildlife Service, Soil Conservation Service, U.S. Geological Survey [U.S.G.S.] and the Army Corps of Engineers—signed Memoranda of Understanding with the Environmental Protection Agency, spelling out their roles in the clean-up program and pledging to commit resources and manpower to this effort. The Department of Defense, through a similar agreement with EPA, promised to step up its pollution abatement measures at its numerous installations in the Bay watershed.

Since the signing of these agreements, Congress has appropriated monies to enable these agencies to actively participate in the clean-up program. For example, NOAA is working to improve fisheries statistics and conduct assessments to stocks of Bay fisheries. USGS is working with EPA to develop the impact of ground water pollution on the Bay. The Fish and Wildlife Service is evaluating the impacts of contaminant discharges and excess nutrients on valuable Bay fauna and flora. The Soil Conservation Service is helping train state and federal agency personnel in the application of Best Management Practices and helping to control non-point source pollution from agricultural lands. The Corps of Engineers is conducting a shore-erosion study and assisting in developing a waste quality model for the Bay, while the Department of Defense is reviewing, at several installations, existing land managment practices and acting to reduce soil erosion and other non-point source pollution.

In 1985, EPA, with the other federal agencies and the Bay states, developed a historic document—the Chesapeake Bay Restoration and Protection Plan—which set forth general goals and qualitative objectives for nutrients, toxics and living resources. The Bay's Restoration plan is yet another important step in this challenging task.

We have made tremendous strides in our effort to clean up the Bay. The federal and state governments involved should be commended for their commitment of manpower and resources and for setting the stage for future action. The 1985 Restoration and Protection Plan has laid a solid foundation for a successful clean-up program.

SUBCOMMITTEE CONSIDERATION OF FUTURE BAY INITIATIVES

The Subcommittee's oversight hearings brought to the forefront many significant issues and recommendations as how to ensure an effective Bay clean-up program to the year 2000. The reasons for holdings these hearings were:

To clarify the long-term clean-up goals for the Bay and to ensure continuity of the federal and state programs to reach those goals.

To assess the need to establish specific interim nutrient reduction goals in the immediate future.

To incorporate into the clean-up program toxics and other harmful substances that cause contamination of surface and ground waters of the Bay area.

To ensure the inclusion of living resources and habitat protection into the objectives of the Bay clean-up program.

To ensure continued and aggressive permitting assessment and activities under the National Pollution Discharge Elimination System [NPDES] that maintain and enhance our environmental progress to date on point source controls.

Overview of subcommittee findings

Ensuring continuity of the Chesapeake Bay clean-up program is a critical issue. Without sustained, long-term commitments, our efforts to restore the Bay to health will be in vain. Long-term commitments would ensure continued public support at a high level. The public needs to be assured that we are making continued progress toward the long-term goals of the program. Without this assurance the public may feel frustration and confusion about the direction of the program.

The Chesapeake Bay will only be clean when we understand its complex workings and know the maximum extent of nutrients and toxics that can be absorbed into the system and still support living resources. Nutrient targets have already been developed for select tributaries such as the Patuxent River. They should be developed for each of the other major tributaries subject to bi-annual review and revision as necessary. While a certain amount of nutrients—phosphorous and nitrogen in particular—is necessary for the Bay's productivity, excessive quantities have led to dramatic increases in algae concentration and reductions in the amount of dissolved oxygen available for the Bay's aquatic resources. Since we are facing the burden of an ever-expanding Bay population, we must set limits to protect living resources. The Subcommittee found that various nutrient reduction programs are in place, but that a long-term, Bay-wide strategy, with goals and standards, has yet to be developed.

The Subcommittee also found that a comprehensive toxics control strategy for the Bay has not been developed. Presently, toxic threats to the Bay seem to be addressed chemical-by-chemical and industry-by-industry. The Subcommittee feels that this ad hoc process should be replaced by a comprehensive, overall strategy if we are to more successfully address the long-term problems associated with toxic contamination of the Bay.

One of the main reasons for restoring the Bay to health is to bring back our living resources such as shad and stripped bass and Bay grasses. When setting nutrients and toxic goals for tributaries, the Executive Council should include the requirements for living resources. Nutrients are not being regulated on what organisms tolerate, but, rather, more on what seems to be an achievable water quality goal under the technology available. We need to develop objectives

to tell us how water quality changes will affect living resources. Only through such goals can we determine if the Bay restoration program is truly successful.

At the hearing, witnesses revealed that enforcement actions against violators of pollution control laws have been increased. However, the Subcommittee is deeply concerned about reports questioning the effectiveness of the National Pollution Discharge Elimination System [NPDES] for point source discharges to the Bay.

The Subcommittee believes that EPA should intensify its review of existing permits, and, where there are illegal discharges, increase its enforcement actions. Moreover, the Subcommittee believes that a greater effort should be made to further limit discharges of nutrients and toxics to the Chesapeake through the NPDES permit process.

SPECIFIC FINDINGS OF THE SUB-COMMITTEE

Clarification of long-term clean-up goals

The Subcommittee believes it is essential to establish long-term goals for the Bay program and look for ways to ensure continuity of the program over the long haul. As an important first step, the EPA, other federal agencies, and the Governors of Maryland, Virginia, and Pennsylvania and the Mayor of the District of Columbia, have developed the Chesapeake Bay Restoration and Protection Plan which established general goals and strategies for the clean-up effort. As a next step, Lee Thomas, Administrator of the Environmental Protection Agency, suggested during the hearings that the Executive Council forge a new Chesapeake Bay Agreement, perhaps using the Great Lakes Water Quality Agreement of 1978 as a model, which would translate general goals into Bay-wide strategies, water quality standards and loading goals for the various tributaries. In particular, it would define the maximum allowable loads of nutrients and toxics that can be absorbed into the Chesapeake Bay system and still support living resources. The Administrator indicated that he is fully committed to devote manpower resources to the program beyond 1988 that would assist this effort.

The Subcommittee concurs with Mr. Thomas and believes that a new Chesapeake Bay agreement is an essential next step in the process. The new water quality agreement would reaffirm the determination of Maryland, Virginia, Pennsylvania and the District of Columbia to restore the Bay to its former health. It would recognize that the clean-up effort cannot be achieved independently and will involve a coordinated approach among states. Long-term commitments from the states and federal government could be secured and problems associated with changing administrations at the Executive Branch level would be minimized. It must be recognized that such a comprehensive agreement would not replace the existing Chesapeake Bay management structure, but would serve to guide the Bay program into the next century.

The Great Lakes Agreement was not established overnight. The Great Lakes Program, begun in 1970, has experienced several phases of implementation. The initial agreement, developed in 1972, established general goals and objectives for long range environmental management of the Great Lakes, providing the focus of a coordinated international effort. The United States and Canada negotiated a second agreement in 1978, which is more comprehensive and includes quantitative goals and standards for both nutrients and toxics.

As with the Great Lakes Program, the Chesapeake Bay clean-up effort is an evolving process. While the Executive Council has not yet established specific Bay-wide strategies for nutrients, toxics and living resources, it has successfully completed the first step in the process—the establishment of general goals and objectives. To meet these goals outlined in the 1985 Bay Restoration Plan, Lee Thomas suggested that this new Bay agreement should do the following:

Set target point and non-point source nutrient load reductions for all tributaries in the Bay.

Develop a Bay-wide nitrogen policy.

Estimate costs associated with meeting the nutrient goals and set schedules.

Assign responsibilities to program participants.

Develop strategies for toxic pollutants.

Identify, target and redirect existing regulatory and permitting programs.

Other witnesses stressed the need for a new Bay agreement to include specific goals and guidelines for the protection of living resources, wetlands, subaqueous lands, and, to the extent feasible, adjacent land uses. The Subcommittee agrees and believes that a new comprehensive agreement in these many issue areas would yield tremendous benefits to the Chesapeake Bay.

Specific Baywide goals for nutrients

Many of the witnesses at the hearing expressed concern that in dealing with the nutrient problem, we are acting on a piecemeal basis rather than developing a Bay-wide nutrient control strategy. The concern was based on the fact that no specific Bay-wide nutrient reduction strategy has been developed. The states have responded to the 1983 Bay study findings by implementing programs aimed at reducing both point and non-point sources of nutrients. However, these nutrient reduction strategies have only been developed for selected tributaries. The Subcommittee believes it must be expanded to include all tributaries.

While there appears to be a consensus on the need to move forward with specific Bay-wide goals and strategies for nutrients, there was a difference of opinion on a realistic time-frame for the establishment of these goals. Some witnesses recommended delaying a decision until the results of the three-dimensional water quality model are released—which could take several years—while others suggested that we move forward almost immediately. Since the hearing, the Executive Council has decided to use the results of an initial two-dimensional water quality modeling effort and establish interim loading goals by the summer of 1987. The Subcommittee concurs with the Executive Committee's decision and believes that the nutrient reduction goals will provide important guidance to the federal, state and local governments.

An integral part of any future nutrient control strategy involves nitrogen. The 1983 Bay study identified excessive nitrogen as a major problem in the Bay. While a policy exists for reduction of phosphorous from point-source pollution, the policy for reducing nitrogen is unclear. The Subcommittee believes it essential that the Executive Council clarify this nitrogen removal strategy in the near future.

The Subcommittee shares the concerns expressed at the hearing that without nitrogen controls, the planned expansion of Blue Plains Treatment Plant in Washington, D.C., may cause harm to the Chesapeake Bay and the Potomac River. There is a proposal to expand the Blue Plains Treatment Plant—the largest treatment plant in the Bay watershed—by 20 percent to accommodate growth in Montgomery County. The expansion could increase discharges by an additional 61 million gallons per day. The Blue Plains example illustrates the need to move forward to control nitrogen in the Bay watershed.

A recent report released by senior Bay scientists stimulated significant interest in a new approach to nitrogen removal from point sources. It suggests that removal of nitrogen may be more effective and less costly than previously thought. In the past, nitrogen removal has not been emphasized of high costs and the unproven nature of the removal technology. Indeed, the only plans to reduce nitrogen flow into the Bay are two Patuxent River projects in Maryland and three pilot projects in Virginia.

It was suggested at the hearing by numerous witnesses that selected tributaries be designated for implementing specific strategies for nitrogen control to improve water quality.

The Subcommittee agrees. Moreover, in recognition of the importance of a nitrogen control strategy, EPA should work with the states to develop a pilot program and consider revising its advanced waste treatment policy to allow funding for nitrogen removal in the Chesapeake in areas of need.

Agriculture is one of the main sources of non-point source pollution in the Chesapeake Bay. Existing conservation efforts by federal and state governments have been effective, but the Subcommittee suggests that federal and state officials better coordinate their efforts and focus more clearly on those agricultural lands causing the greatest problems. The Subcommittee further recommends that certain agricultural and conservation practices such as filter strips and animal wastes be examined and evaluated to determine if special engineering criteria and modifications, tailored to the Bay's needs, are necessary.

Sediment control

Urban non-point source pollution is a growing problem for the Bay. The Bay study indicated that the population of the Bay area has increased by 4.2 million between 1950 and 1980 and is expected to grow an additional 1.9 million to a total of 14.6 million by the year 2000. The steady population growth has major impact on land use. It brings more construction and highway development which cause increased sedimentation in creeks and tributaries of the Bay. While the existing urban sediment erosion control programs appear to be adequate, there have been concerns expressed about the lack of inspection and enforcement at construction sites. The Subcommittee believes that inspection and enforcement of practices at construction sites should be increased to better control sediments entering the Bay's tributaries.

Specific goals for toxics

There are few water quality standards for toxic contaminants and overall loading goals for these pollutants have yet to be developed. Many witnesses at the hearing expressed concern about this void in the clean-up program. The Subcommittee shares the concerns expressed and believes that greater attention to toxic materials and other harmful substances is necessary.

Toxics are hazards to the Bay both in terms of concentration and loadings. The major sources of toxic pollutants are industrial facilities, federal installations, agricul-

tural and urban activity and municipal sewage treatment plants.

The Bay study found that excessive levels of toxic substances in the Bay were one of the contributing factors in the Bay's pollution. In response to the study findings, the states and federal government have stepped up efforts to control toxic discharges and improve enforcement. However, much more needs to be done.

As a way to address the toxic problem, it was suggested during the hearing that the Executive Council should establish a toxics subcommittee to recommend appropriate water quality standards for the most toxic contaminants and to work to establish loading goals on a Bay-wide basin basis. The Subcommittee concurs in this recommendation. As a part of this effort, the Subcommittee feels EPA also should identify specific geographic areas of concern where existing toxic contamination of the sediments is a problem. An action plan should be developed for each of these areas of concern based on EPA's findings, which would include plans for monitoring of living resources and developing specific water quality criteria and sediment criteria for toxics.

As EPA proceeds in implementing its toxic strategy, toxic limits should be incorporated into existing and future permits enforcement, and EPA should step up its oversight activities of the state delegated NPDES program. These limits should be based on the tolerance level of the most sensitive organisms during their most sensitive life stage. Only in this way can we protect the ecosystem and the multitude of organisms which are not being studied.

The Subcommittee sees a need for additional appropriations to enable NOAA and the Fish and Wildlife Service, working with EPA, to expand their research and assessment capabilities to determine the impact of toxics and other harmful substances on living resources. It also believes that EPA should expand efforts to establish water quality standards and sediment criteria in esturine environment for living resources.

Specific goals for living resources

The 1983 Bay study documented a serious decline in the Bay's valuable living resources. Initial efforts of the multi-agency clean-up team focused on ways to improve water quality, but paid little attention to specific habitat requirements of fish, shellfish, and wildlife. Witnesses at the hearing expressed concern that there can be no meaningful Bay restoration without a return of abundant fish and wildlife. Over the past several months, members of the Bay program have recognized this need and have taken deliberate action to incorporate living resource requirements into the overall goal and objectives of the restoration.

Efforts will focus on specific habitat needs and will be useful in setting pollution load reductions. However, the work has just begun and the Subcommittee urges the Executive Committee to pursue this very important element of the program. In that regard, the NOAA task force established to address this problem should be better coordinated with the Executive Committee's work. And the Subcommittee further recommends that the Executive Committee establish a subcommittee to ensure the integration of living resources into the program.

SUMMARY OF SUBCOMMITTEE RECOMMENDATIONS

(1) Clarification of goals: The Subcommittee believes there is a need to clarify the goals of the Chesapeake Bay Clean-up Program to guide it into the next century. In that regard, it endorses the proposal made by Lee Thomas, Administrator of EPA, to develop a new Chesapeake Bay Agreement, which includes specific Bay-wide strategies, water quality standards and loading goals.

(2) Nutrients: The Subcommittee recommends that the Executive Committee establish interim nutrient loading goals and strategies by the summer of 1987.

Point Source: The Executive Council should clarify the existing nitrogen removal policy. The Subcommittee believes that EPA should work with the states to develop a pilot program for nitrogen controls in selected tributaries and consider revising its Advanced Wastewater Treatment policy for funding for nitrogen removal in the Chesapeake in areas of needs.

Non-point Source: Existing conservation efforts by federal and state governments have been effective, but the Subcommittee suggests that federal and state officials should better coordinate their efforts and focus more clearly on those agricultural lands causing the greatest problem. The Subcommittee further recommends that certain agricultural and conservation practices such as filter strips and animal wastes be examined and evaluated to determine if special engineering criteria and modifications, tailored to the Bay's needs, are necessary.

(3) Sediments control: While existing urban sediment erosion control programs appear to be adequate, there have been concerns expressed about the lack of enforcement and inspection at construction sites. The Subcommittee believes that the Executive Council should make every effort to ensure that enforcement and inspection of practices at construction sites be increased to control sediments.

(4) Toxics: In examining the long-range scope of the Bay program, the subcommittee found a major gap in policies and programs designed to address the problems associated with toxic contamination in the Chesapeake. There are few water quality standards on a Bay-wide basis for toxic contaminants and overall loading goals for these polutants have yet to be developed. EPA should identify specific areas where existing toxic contamination is a problem. The Executive Council should develop an action plan for each of these areas of concern based on EPA's findings, which would include plans for monitoring of living resources and for developing specific water quality criteria and sediment criteria for toxics. As EPA proceeds in implementing its toxic strategies, toxic limits should be incorporated into existing and future discharge permits.

(5) Living Resources: Presently, there are no objectives in the Chesapeake Bay Program which could tell us how changes in water quality affect living resources. The Subcommittee believes that living resources should be incorporated into the objectives of the Bay clean-up program. The NOAA Task Force established to address this issue should be better coordinated with the work of the Executive Committee. Moreover, the Executive Committee should consider the creation of a living resource Subcommittee to ensure the restoration of living resources in the clean-up effort.

(6) Enforcement: The Subcommittee recognizes that impressive gains have been made in the area of enforcement against National Pollution discharge Elimination System [NPDES] violations, especially in Maryland. However, it is deeply concerned about reports questioning the effectiveness of the NPDES System for point source discharges into the Bay. The Subcommittee believes EPA should intensify its review of existing permits, and where these are illegal discharges, EPA should increase its enforcement actions. Moreover, the Subcommittee believes that a greater effort should be made to further limit discharges of nutrients and toxics to the Chesapeake through the NPDES permit process.●

NOMINATION OF CHARLES J. PILLIOD, JR., TO BE AMBASSADOR TO MEXICO

● Mr. DIXON. Mr. President, I want to take this opportunity to express my strong approval of the Senate's action on October 15, 1986, to unanimously confirm the nomination of Charles J. Pilliod, Jr., to be our next Ambassador to Mexico.

Charles Pilliod's task will not be an easy one. I can think of few American allies in today's world more important than our neighbor to the south, a neighbor that faces tremendous pressures from a burdensome national debt, a neighbor who continues to rebuild a nation devastated by earthquake. Never has Mexico needed a more sympathetic and understanding ear as it does today.

This is why I believe Charles Pilliod is the man properly suited for such an enormous task. He is a man who has served as the chairman of the board of directors of Goodyear, the world's largest tire and rubber company. He has served in Bolivia, Brazil, Colombia, Chile, Costa Rica, Panama, and Peru. He knows, first hand, the problems and challenges that face our southern neighbor, and more importantly how to deal effectively with a diplomatic hand. He has been twice decorated by Brazil for his outstanding service, including the Order of the Southern Cross, Brazil's highest civilian award to a noncitizen. He has been decorated by Great Britain, Luxembourg, and Belgium. Now his own Nation has properly recognized his 35 years of foreign service by proudly confirming his nomination to be the United States Ambassador to Mexico.

Mr. Pilliod has served his Nation before, as an Air Force Pilot in World War II. We are honored to have his services once again, as U.S. Representative to a nation with great historical and ethnic ties to the United States.

Mr. President, it is with great pride, great confidence, and honor that I applaud the confirmation of Mr. Charles J. Pilliod, Jr., as Ambassador to the Republic of Mexico. There is not a doubt in my mind that he will, with the best of his abilities, serve his Nation once again, with pride, dignity, and professionalism.●

TRIBUTE TO SENATOR MAC MATHIAS

● Mr. HOLLINGS. Mr. President, with the close of the 99th Congress, we say farewell to our beloved colleague from Maryland, MAC MATHIAS. I join his many friends in this body in noting that his departure will be a great loss to the U.S. Senate. For 18 years, he has served this body with his exceptional intelligence and decency. We will miss his calming influence in times of strife. But, by the good graces of geography, we will not be deprived of his continued fellowship and counsel in the years ahead.

Regrettably, the Senate has trouble coping with a truly independent voice. Such voices are more often punished than honored. Yet MAC MATHIAS has insisted on marching to his own drummer. And he has fashioned a distinguished record of legislative accomplishment and independent advocacy.

Perhaps his finest moments have been in the Judiciary Committee, where he has been a steadfast champion of civil rights and civil liberties. In the Foreign Affairs Committee, too, he has played an important role since 1981. Quite frankly, I have disagreed with MAC's foreign policy positions on almost every important issue. But I have always respected his political independence and the intelligence with which he argued his positions.

Perhaps the best measure of MAC's sanity and independence is his decision to walk away from a Senate seat that, in all probability, could have been his for another term. We wish him the very best in the many years ahead.●

TRIBUTE TO GARY HART

● Mr. HOLLINGS. Mr. President. With adjournment of the 99th Congress, the Senate bids farewell to Senator GARY HART, who is stepping down after two distinguished terms in this body. Senator HART is a voice of reason, intelligence, and—yes—new ideas. It will not be replaced easily.

Certainly, GARY and I have had our policy disagreements. But every Senator is indebted to him for the steady stream of proposals he has offered over the years. On subjects as wide ranging as energy, national defense, taxes, and job creation, he has influenced and often changed the way this body thinks. In the 1984 campaign, the challenge was "where's the beef." In the years since, GARY's response has been to serve the Senate as a one-man thundering herd of policy papers and initiatives.

GARY HART has demonstrated a special eye for emerging issues and future-oriented policies. He has advocated a strong nuclear power industry. And he has championed high-technology industries as well as training programs to prepare people for jobs in the high-technology sector.

The Armed Forces have been another focus of GARY's energies and ideas. His commitment to the strengthening of our military is genuine and long-standing. As in other areas, we have had our strong disagreements on national defense issues, but GARY has performed an important service by questioning the conventional wisdom on weapons systems, military strategy, and combat tactics.

In the political arena, few can match GARY HART's consummate skills as an organizer and strategist. I witnessed those skills firsthand in 1984, and they amply evidenced in the 1972 Democratic primaries and again in GARY's 1974 and 1980 Senate bids. We will no doubt see another virtuoso performance in 1988.

To his credit, however, GARY has never fallen into the trap of pursuing strategy and power as ends in themselves. His passion is ideas and how they can change the world for the better. We will miss him in the Senate, and look forward to his continued presence on the larger national stage.●

GROWING UP IN POVERTY: RISKS AND REPERCUSSIONS

● Mr. DODD. Mr. President, several months ago the Senate Children's Caucus held a policy forum on an issue of foremost concern: The rising rates and repercussions of childhood poverty in this country.

The biggest risk to the health, safety, and future well-being of close to 14 million American children is poverty. One out of every four children under the age of 6 now lives in a family whose income falls below the poverty line. For minority preschoolers, that figure is even higher: Every other black child and close to every other Hispanic child will celebrate their sixth birthdays in poverty.

Yet poverty does not afflict only our very youngest citizens. Children of all ages now constitute the poorest age group in America. More than one out of five Americans under the age of 18 is poor. In the city of Bridgeport in my State of Connecticut, that figure is higher with one out of every three children living in poverty. And in cities across the country, adults living in families with children are now three times more likely to be poor than other adults.

Over the past 6 years, childhood poverty rates have skyrocketed. Even by conservative estimates, close to 4 million children have been added to the poverty rolls—the sharpest increase on record. Moreover, the depth of childhood poverty has intensified. Over 40 percent of all poor children live in families whose incomes do not even reach the halfway mark with respect to the poverty level.

The risks posed by childhood poverty are numerous and serious. Poverty results in a greater chance of abuse and neglect, poor health, and even death. Twice as many children die today of poverty-related causes than of cancer and heart disease. The malnutrition and lack of prenatal care which accompany poverty increase the risk that an infant will not live through its first year. An increase in the black infant death rate in 1983 marked the widest gap between white and black infant death rates in this country in 40 years. And the risks remain for older children. A study in Maine showed that poor children are three times as likely to die before reaching the age of 18 as nonpoor children.

Poor children who survive face a greater risk of doing poorly in school and dropping out before graduation. The Department of Education has just released a study showing that over 45 percent of all 16-year-olds who have lived 8 or more years in poverty score below their expected grade level. And teachers from Connecticut to California report that students who come to school hungry cannot concentrate on their lessons.

The future for those who drop out promises extreme difficulties. High school dropouts face a far greater risk of unemployment. Those who find work are more likely to remain trapped in low-skill, low-wage jobs. And those without jobs face the risk of persistent poverty over a decade or more, as do their children. Forty percent of all children in poverty have a mother and father who failed to graduate from high school. And in mother-child families where the mother failed to graduate and get a job, poverty rates average 90 percent.

Although children without working parents are almost certain to be poor, having a working parent is no guarantee against poverty, hunger, and homelessness. The biggest increase in childhood poverty since 1978 has stemmed from a sharp rise in poor, two-parent families. Two out of every three children added to the poverty rolls between 1978–83 came from a two-parent family. And 2½ million children were poor in 1982, even though they had a parent working full time, year round. A decade-long decline in the value of wages, a rise in unemployment, and an increasing tax burden on poor families have all contributed to this continuing crisis in childhood poverty. And budget cuts over the 5 years in housing, nutrition, and income support programs for poor children and their parents have exacerbated an already untenable situation.

We have the dubious distinction of being the only Western, industrialized nation in which children constitute

the poorest age group. The rates of teen parenthood in this country, much higher than those of our European allies, continue to increase. And, if one out of every four Americans continues to drop out of school before graduating, we can hardly expect to compete with other Western nations where the dropout rates are miniscule.

Two panels of witnesses testified before the Children's Caucus on February 6, 1986. The first panel included younger and older journalists who had focused at the problem of childhood poverty. Four young people with "Children's Express" in New York City described their efforts to interview children living in poor communities. They were Rebecca Walkowitz, age 15; Sarah Young, age 13; Chad Peterman, age 11; and Albert Lin, age 12. In addition to reviewing statistics on the problem, all four also gave their feeling at learning of the plight of millions of their peers who go to bed hungry at night.

Adult journalists also reviewed their attempts to report on the crisis of children in poverty. Steven Shames, Staff photographer with the Philadelphia Enquirer, told of the year he spent traveling throughout the country, living with poor families. He showed a number of his photographs and recounted the stories associated with each. Edward Gray, an independent producer with Obenhaus Films, showed a file clip from his documentary on children in poverty in Pittsburgh, PA. He reviewed his reflections upon making the film, and made several recommendations for Government action based on what he saw first hand in Pittsburgh.

The second panel was comprised of State and local government officials. The Honorable Michael N. Castle, Governor of the State of Delaware, described his efforts as chair of the National Governor's Association Committee on Human Resources to launch early childhood, prevention programs. The Honorable Mayor Bucci, mayor of Bridgeport, CT, outlined the problems facing the one out of every three children in his city who are poor and possible short-term and longer-term remedies. Ruth Massinga, Maryland Secretary of Human Resources, represented the National Council of State Human Service Administrators of the American Public Welfare Association. She reviewed the progress of the council's "matter of choice" project designed to improve policies and programs for children and families living in poverty across the country. Dr. Nancy Gordon, Assistant Director for Human Resources at the Congressional Budget Office, described the status of poor families with children and reviewed the current Federal response. Dr. Gordon also outlined possible options for Federal antipoverty efforts.

The third and last panel of witnesses included academic experts and child advocates. Vee Burke of the Education and Public Welfare Division at the Congressional Research Service, testified about her landmark study of Hispanic children in poverty. Dr. Harriette Pipes McAdoo, professor of social work at Howard University, outlined her research findings on black single mothers and the stresses they face. She further examined demographic changes in black American families and the effect of poverty and male unemployment on those families. Last but never least, Judith H. Weitz, director of State and local affairs at the Children's Defense Fund, testified about Federal policy and program changes necessary to remedy the crisis in child poverty in this country.

In closing, Mr. President, I would like to commend all the witnesses who testified at this Senate Children's Caucus Forum for their timely and most insightful remarks. A transcript of the forum and the written testimony of all the witnesses are available in my office. I urge my colleagues and their staffs to contact Marsha Renwanz of my staff if they wish to review this important testimony.●

MEDICAID WAIVER FOR HOME AND COMMUNITY-BASED SERVICES

● Mr. CRANSTON. Mr. President, I am very pleased that the conference report on the Omnibus Budget Reconciliation Act of 1986, H.R. 5300, includes a provision authorizing Medicaid waivers to allow States to offer home and community-based services to low-income individuals who would otherwise continue to need inpatient hospital care.

Mr. President, this is essentially an expansion of legislation I introduced earlier in this Congress, S. 2527, to allow such waivers to be granted for patients with AIDS or with AIDS-related complex [ARC], a condition which comprises a spectrum of symptoms resulting from the HTLV-III infection but which do not meet the Centers for Disease Control definition of AIDS, who would otherwise be hospitalized.

I introduced S. 2527, which is the companion bill to H.R. 4915, sponsored by my good friend and colleague from California, Representative HENRY WAXMAN, because I believe that the Federal Government needs to take steps to encourage the development of home and community-based services for AIDS patients. Most people find it far preferable to remain in the familiar surroundings of their own homes to receive care, but many cannot live at home because of a lack of the resources and assistance they require in order to meet their medical care and daily living needs outside of an institution.

Thus, I fully support the conference committee's recommendation to allow waivers for people with AIDS as well as for other Medicaid patients who would otherwise need inpatient hospital care.

THE CONTINUING AIDS EPIDEMIC

Mr. President, the United States is now in the sixth year of the AIDS epidemic. Nearly 25,000 people have developed AIDS. Over half of them have died. The Public Health Service estimates that if this epidemic continues unchecked, about 270,000 Americans will have developed AIDS by 1991—less than 5 years from now—hundreds of thousands more Americans will have been diagnosed with ARC. In 1991 alone, the PHS predicts that 74,000 people would be given a diagnosis of AIDS and 145,000 individuals would be seeking treatment and care for the disease.

The California Department of Health Services projects that by 1990 a total of about 30,000 AIDS cases will have occurred in California, at a total cumulative cost of $3.5 billion in direct medical care expenditures.

However, the recent news from scientists and researchers is very encouraging and I am hopeful that they will have developed an effective treatment or vaccine by the start of the next decade. In the meantime, we must find the means to provide necessary treatment, care, and support for all persons with AIDS or ARC.

One of the greatest challenges in our fight against AIDS is how to ensure the availability of appropriate and necessary health care and treatment for AIDS patients. Every year that we delay in developing and implementing a comprehensive system of care means many more thousands of AIDS and ARC patients not having access to appropriate services. And, assuming, as is likely, that we will not be able completely to eradicate this disease by 1991, it is critical that we begin now to lay the foundation for coping with the anticipated large numbers of AIDS and ARC patients.

COSTS ASSOCIATED WITH AIDS

The average hospital bill nationwide for an AIDS patient is currently $140,000. In San Francisco, however, the average cost is one-third to one-half less because the city has developed a model network of outpatient services for AIDS patients—including home health care, support services, and hospice care—that has resulted not only in lowered costs, but more compassionate and humane care.

Without the availability of Medicaid coverage for services provided at home or in the community, many AIDS patients will continue to rely on costly hospital services for their medical care.

HOME AND COMMUNITY-BASED SERVICES FOR AIDS PATIENTS

Prior to the enactment of the Consolidated Omnibus Reconciliation Act of 1986 COBRA (Public Law 99-272), home and community-based services waivers—so-called "2176" waivers because they are authorized in section 2176 of the Omnibus Budget Reconciliation Act of 1981—were available for the purchase of home and community-based services for Medicaid-eligible individuals who would otherwise need nursing home care. With the enactment of COBRA, "2176" waivers became available for ventilator-dependent individuals who are at risk of inpatient hospital care.

The provision included in the pending conference agreement would amend the Medicaid waiver authority for "2176" waivers to allow States to offer home and community-based services to all Medicaid-eligible individuals, including AIDS and ARC patients, who would otherwise need inpatient hospital or nursing home care.

A State applying for a waiver would have the option, as under current law, to decide which populations and areas of the State to target and what noninstitutional services to offer to the target population. As is the case with all "2176" waivers under current law, a State would have to show that the costs for these services under the waiver would not exceed costs that would be incurred in the absence of the waiver.

CONCLUSION

Mr. President, there is a great need and there are strong reasons for people with AIDS or ARC, and indeed patients with many other illnesses, to be able to receive health services and assistance outside of the hospital and in lieu of hospital care. This is generally a far more cost-effective approach than hospitalization and can produce a better quality of life for the patients. I congratulate and thank the conferees for their support of this important provision.●

TIP O'NEILL, THE HAPPY WARRIOR DEPARTS

● Mr. MATSUNAGA. Mr. President, sine die adjournment of the 99th Congress would be most welcome had it not been for the unhappy fact that it also means bidding farewell to the departing Members who will not be with us in the 100th Congress. The leader of the other Chamber, House Speaker THOMAS PHILLIP O'NEILL, is one who will be missed by more than any other. In my 24 years in Washington I have met unforgettable Irish-Americans hailing from Boston's environs, who have left their indelible marks in history: President John Kennedy, Speaker of the House John McCormack, and now TIP O'NEILL.

It has long been my belief that " 'tis better to be known as a good man than a great one, for greatness is an assessment of mortals; goodness a gift of God." In the late Speaker McCormack and in Speaker O'NEILL our country has been blessed by two good men, one spare and ascetic and the other of girth and stature—both of whom grew to wear that mantle of mortal esteem we term greatness.

Mr. President, when I came to this Hill as a Member of the House, Speaker McCormack was my mentor and his colleague from Cambridge my compatriot. "TIP" and I sat next to each other on the Rules Committee for a number of years and it was from him that I learned "The Rules of the Road" of poet John Boyle O'Reilly, wisdom-in-rhyme which has served me in good stead. Although from opposite ends of this great country of ours, we recognized ourselves in each other: "work-and-wage Democrats" of immigrant stock who had come up the hard way, gaining our political experience in our respective State and territorial houses.

In the early days of this decade through the medium of television the Speaker was portrayed as a political practitioner of another era and for a while that false image took hold. With time, however, his moral example and staying power convince his fellow countrymen that he is, indeed, a man of all seasons for whom the art of politics does not preclude the corporal works of mercy nor denies that government can be an instrument in their performance.

As with the late Speaker, in whose footsteps he followed, TIP O'NEILL will go down in our history as a good and great man. He was a champion of social justice when such a champion was sorely needed in our national life. In being such, TIP may have exceeded the greatness of his predecessor—as other sons have exceeded the feats of their fathers by virtue of meeting the challenges of their own time.

It is well to ponder the secret of his success in our craft of political leadership, Mr. President. It is apparent that behind the Irish temperament there lies a serene and compassionate soul—a happy warrior at peace with himself and thus in a position to take on the world. He walks with kings and has never lost the common touch—nor the pulse of the common man. He has never forgotten where he came from. Above all he has always been true to himself. "And it must follow, as the night the day," that he has not then been false to any man or woman.

Politics can be clean and a profession to which young Americans can aspire with the likes of TIP O'NEILL's qualities on Capitol Hill. As a personal friend and his deputy when he served as majority leader, I will miss THOMAS P. "TIP" O'NEILL more than I can express in words. I bid him a fond aloha and wish him and his wife, Millie, what they fully deserve: life's best.●

TRIBUTE TO CONGRESSMAN ELWOOD (BUD) HILLIS

● Mr. LUGAR. Mr. President, with the adjournment of the 99th Congress, Congressman BUD HILLIS, who ably served the Fifth District of Indiana for 16 years, retires. BUD will certainly be missed. He built a reputation as one of the most respected public servants to have served in the U.S. Congress, proudly fighting for the causes of his constituents and the State of Indiana. He strongly supported the armed services of this country and became an expert on defense issues.

BUD HILLIS was first elected to the U.S. House of Representatives in 1970 by a large majority, after serving two terms in the Indiana Legislature. U.S. Congressman HILLIS never forgot his Kokomo, IN, roots. He brought to Washington an all too rare commonsense approach to government.

Always an active voice for his constituents, in 1980 he became the cochairman of the Congressional Auto Task Force, a group whose aim is to vitalize the auto industry and its workers. In 1979 when I was fashioning the Chrysler Loan Guarantee Program in the Senate, BUD became one of its most important spokesmen in the House, successively convincing his colleagues of the need for the program.

When I was mayor of Indianapolis he was a valued adviser; and when I was a freshman Senator, he provided me with good counsel. And BUD has always been a loyal friend.

I congratulate BUD on a great record and I wish him and his family all the best in their future achievements.●

NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

● Mr. STEVENS. Mr. President, the North Pacific Fishery Management Council recently celebrated its 10th anniversary. The North Pacific Council is one of eight regional councils which develop management plans and policies for our domestic fisheries.

Attendees at the historic 10th anniversary celebration were treated by the presence of a very special person, Elmer Rasmuson. As the first chairman of the North Pacific Fishery Management Council, Elmer began a tradition of effectiveness and dedication which subsequent chairmen were able to continue. Elmer delivered insightful remarks on his impressions of the first 10 years of the regional fishery management process. His retrospection provides us with valuable suggestions for future improvements.

Mr. President, I request that the following remarks by my good friend

Elmer Rasmuson be submitted for publication in the CONGRESSIONAL RECORD.

The remarks follow:

REMARKS BY ELMER RASMUSON ON THE OCCASION OF THE 10TH ANNIVERSARY OF THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

Dr. Calio, Chairman Campbell, ladies and gentlemen, this is a birthday party and, having just returned from Harvard's 350th, I am very conscious of the occasion. It is a point in time for both a recollection of the past and appraisal of the future.

Now, looking backwards and forwards at the same time is not only hard on the neck but is probably the most difficult task in public service—keeping the right balance.

As we observe this decennial, it is indeed appreciated that a comprehensive review of the council system is taking place to consider needed improvements.

The council system, created under the Magnuson Act, is unique in that for the first time in the history of our nation, the Federal Government entrusted management decisions to a lay body and on a decentralized basis. It did this in response to the needs of the great and growing diversity of fishing interests. Recognizing that the differences were legitimate and complex, there was nevertheless a necessity to provide for some apparatus that would mold them in an agreeable course of action.

Conceptually the council system is ingeniously simple. It funnels through the wants and wisdoms of all the interested parties on a localized basis because this is where the decision impact falls. The necessary coordination with state responsibilities is provided for in council membership and selection. Then to recognize national and international interests and maintain some degree of unity in policy, a review procedure is provided for in Washington.

I doubt many people would want to scrap this arrangement. It is only in the administration of the Act that disagreements and sometimes friction arise. The overall success depends upon the degree of cooperation extended by the participants.

I share the feeling that the early success of the North Pacific Council was due to the training and association so many of us had on the International North Pacific Fisheries Commission. Most of us had worked together. Stability and longevity on a council is not adequately appreciated. We had accepted the biologists' findings as a foundation. We were raised in the principle of extended jurisdiction because that is basically the meaning of the abstention line. We understand the importance of working together as between states and the Federal Government and sovereign nations. In setting up the council, we adopted the advisory committee system that had worked so well under INPFC. In other words, when we organized the North Pacific Council, we hit the decks running.

Certainly the council concept is worth keeping. Because the acceptability of any legislative Act depends upon the men and women who administer it, the composition of the attendant officials in both Washington and the states is extremely important and should not be treated as political plums. Nor in council decisions is there any place for strictly parochial voting.

However, there are certain technical changes that can be helpful in achieving the desired cooperation. A shortening of the review time in Washington would be desirable. This can be achieved in two ways without weaking the benefits of the national overview. The first is by having the fishery and environmental authorities work earlier and more closely in the drafting of the management plans. The second is to have all reviews as concurrent as possible.

A second suggestion is to borrow a concept from our judicial system. That is to regard the council as the sole determinant of the management facts and leave the Washington review to matters of policy and law. This can be done if the recommended early participation in the development of a management plan is adopted.

A statutory distinction between voting and non-voting members on the council has always bothered me. If an individual is qualified for membership, he should actively participate in the deliberations and not just as an observer. If qualified to help shape the dialogue, he should participate in the final decision process which is voting.

I have appeared before your Council as a member of the U.S. Arctic Research Commission. This Commission has no operational or funding authority but was created by the Congress to achieve a cooperation in Arctic research between the various cabinet offices, state and local authorities, indigenous peoples and foreign countries. Because the enabling Act defines the Arctic in such broad terms as to encompass the western coast of Alaska, including the Aleutian Islands, fishery research is of prime concern. As a matter of fact, the first agreed direction for joint research between the state of Alaska and the Commission is in fisheries. This is another vehicle for bridging the gaps between disciplines and line authorities.

My concluding comment is that we live in a shrinking world where separateness has ever decreasing importance. We must respect the integrity of diverse views but nevertheless achieve a working unity. In my experience, this is best accomplished by concentrating on longer range goals for the greatest public benefit but administered with patience and through the use of informed common sense.●

TRADE RELATIONS WITH CHINA

● Mr. DIXON. Mr. President, as we look to bridge the economic and trade relations gap with China, I ask my colleagues to join me in commending the efforts of Madame Doris Wan Cheng. Madame Cheng, a native of China, and now a naturalized United States citizen, has taken the initiative to bring an understanding of American business and economic policies to China, through her unique and exciting television series, "The Global View."

Madame Cheng, who is the chairman of the United States-China Investment & Trade Corp., Chicago, IL, came to this country from Hong Kong in 1967. In the recent 7 years, Madame Cheng has acted as a one-woman liaison between major United States corporations and the leaders of China to promote strong trade and investment relationships. Madame Cheng has also traveled throughout this country and China, lecturing and gathering insights that are becoming increasingly important to the building of economic ties. "The Global View" program is only the latest in her efforts to promote United States and Chinese relations.

Through her belief that understanding is the key to strong economies, Madame Cheng has been able to put together a series of informational television programs that are being aired in China, that share the insight and foresight of some of the most progressive minds at the cutting edge of our strong United States economy. Through her commitment to a dream of building reciprocal trade and economic ties between the United States and China, Madame Cheng has been able to capture on tape the management philosophies of the leaders of such American business institutions as United Airlines, headquartered in my State of Illinois, AT&T, Bank of America, Hewlett Packard, Polaroid, Intel, Ampex, and Data General, the American Electronic Association, the Stanford Research Institute, and Sears, Roebuck & Co.

The importance of bringing this project into the homes of China is that it is a significant step toward a stronger world economy, and improved trade and business relationships between the United States and China. It is an exciting proposition to see U.S. business take the initiative under committed leadership such as that of Madame Cheng. Mr. President, I take extreme pleasure and pride in commending Madame Doris Wan Cheng for her pioneering initiative working to increase two powerful nations, the United States and China, closer to the economic harmony and friendship.●

IN SUPPORT OF H-3

● Mr. BRADLEY. Mr. President, in supporting the exemption of highway H-3 from section 4(f) of the U.S. Department of Transportation Act, I want to make clear my view that this vote does not and should not be seen as setting a precedent for departures in the future from the Nation's environmental laws. My understanding is that exceptional measures have been taken in this case to meet—and in some cases exceed—the requirements of all State and Federal environmental statutes with the exception of this provision of the Transportation Act. The facts surrounding H-3 make this situation unique and in my opinion justify exempting it from the 4(f) requirement.●

REA REFINANCING (RECONCILIATION)

● Mr. CHILES. Mr. President, the 1986 Omnibus Budget Reconciliation Act contains a provision which allows Rural Electrification Administration [REA] borrowers to prepay their long-term debt without prepayment penalty. Prepayments will be limited to $2

billion in 1987 and eligibility will be determined by the Administrator of REA. It is my hope that the Administrator will give a high priority to those borrowers whose interest rates are significantly higher than comparable investor owned utilities. These borrowers will realize a significant benefit from prepayment since it will help them to become more competitive with their neighboring utilities who have already refinanced.●

USE OF CASH ACCOUNTING BY CERTAIN AGRIBUSINESSES

● Mr. ZORINSKY. Mr. President, earlier this year, I brought to the Senate's attention a flagrant tax loophole through which large agricultural corporations take advantage of an accounting technique intended to benefit family farmers.

In the final weeks of the 99th Congress, I considered offering an amendment closing this loophole by denying use of the so-called cash method of accounting to agricultural processors with annual revenues exceeding $100 million.

Cash accounting allows businesses to buy supplies and incur other expenses at the end of one year and immediately deduct those expenses from income. By repeating this practice year after year, an expanding business can defer taxes virtually indefinitely.

Family farmers are permitted to use cash accounting because it is less complicated than the alternative accrual method, under which costs are not deducted until the resulting income is received.

Enactment of an amendment barring agricultural processors with revenues topping $100 million from using cash accounting would save the Treasury an estimated $500 million over 5 years.

Understandably, talk of eliminating this tax break brought loud protests from the affected corporations, chiefly mammoth poultry producers eligible to use cash accounting because three or less families control 50 percent of their stock. This qualifies them as "family farms."

In the end, I chose not to offer my amendment this year. Acting otherwise would have risked tying up the tax reform bill or other key legislation being considered in the session's final days. I felt it was important that these measures move ahead.

I was pleased, however, to see a number of newspaper and magazine articles highlight the inequity in the use of cash accounting by giant agricultural corporations. There is something terribly wrong with allowing processors with hundreds of millions of dollars in sales to qualify for "family farm" benefits.

While it was not possible to close this loophole this year, I firmly believe the time has come to make this change. I look forward to working in the new Congress with all concerned to minimize disruption as we move in this direction.

Mr. President, I ask that 12 news articles concerning the use of cash accounting by large agricultural corporations be printed in the RECORD at ths point.

The articles follow:

[From Forbes, May 5, 1986]

FUN AND GAMES WITH CHICKEN FEED

(By Ruth Simon)

Most reasonable observers would not call Hudson Foods a family farm. Based in Rogers, Ark., Hudson is now the country's 17th-largest poultry producer. In the fiscal year that ended last Sept. 28, Hudson earned $8.5 million on sales of $185 million. It went public in February, rising $21.3 million.

Your basic family farm? The Internal Revenue Service, not always a reasonable observer, thinks so. As a result, Hudson was able to defer $7.6 million, its entire federal tax bill, last year under long-standing IRS rules. This deferral can be rolled over more or less indefinitely.

Hudson is not a fluke. Other agriindustrial complexes, including $1.1 billion (sales) Tyson Foods and privately held Perdue Farms (estimated sales, $740 million), also routinely receive tax breaks originally intended for family farms. How? By qualifying under some rather arcane rules that allow "family farms" to use cash accounting instead of the accrual accounting the IRS requires most companies to use when computing taxable income. The rules date from 1919, when the Treasury concluded farmers weren't sophisticated enough to use accrual accounting and said they could use cash accounting instead. Big farmers didn't abuse the provision, because taxes were low. Besides, there weren't many big farms.

The choice of cash or accrual is especially important for livestock farmers because such production costs as feed are incurred well before the livestock is sold.

Consider a chicken farmer. Accrual accounting would require him to report a portion of his feed inventories at the end of each year, while not permitting him to expense the feed until the bird was actually sold. The theory is that the feed is an integral part of the cost of producing the bird. Accrual accounting says income and expenses should be matched, so feed costs should not be deducted until revenue is received.

Cash accounting, in contrast, allows the farmer to report cash expenses and receipts when they actually occur. That means the farmer can immediately deduct the feed as an expense, but he doesn't have to report the chickens as income until they are sold. Expensing in the current period while deferring income to a later period amounts to a tax-free loan to the farmer from the Treasury. The bigger and more profitable the farm, the larger that tax-free loan tends to be.

In 1976 the Treasury argued that agribusinessmen were equipped for the rigors of accrual accounting. Treasury tried to limit cash accounting to farmers grossing less than $1 million annually. That sent the big livestock producers squawking to their congressmen, who chickened out. Even a farm grossing $1 billion or more could be a "family farm," Congress said, if at least 50% of its stock was controlled by a single family. It also carved out exceptions for individuals, partnerships and Subchapter S corporations and for farm corporations controlled by two or three families.

Hudson Foods Chairman James Hudson played those loopholes with the skill on Stephane Grapelli of jazz violin. Hudson, a former Ralston Purina executive, and two other investors bought the business from Ralston Purina in 1972. Hudson bought out his co-investors in 1984, and took the farm public in February.

But note the key: Hudson Foods has 12 million shares outstanding. James Hudson owns outright 7 million of those shares, 58%, and has the right under a revocable proxy to vote an additional 3 million shares owned by his family and company executives. With Hudson effectively controlling 10 million shares—83% of the common—Hudson farms can do several more public offerings and still qualify as a "family farm."

Hudson cheerfully agrees "it's been a long, long time" since he drove a tractor. But, he says, "Farming, as defined in the tax code, is the production of farm products. It doesn't matter whether you ride a tractor or a horse." In other words, says Hudson, all farmers are created equal and should be treated equally by the IRS.

Springdale, Ark.-based Tyson Foods, the nation's second-largest poultry producer [after ConAgra], is also proving adept at playing by the family farm rules. This $1.1 billion agricompany contracts out chicken production to thousands of small farmers, and it derives more than 60% of its revenues from such "further processed products" as Chicken McNuggets and frozen dinners.

To remain a family farm—but also raise public equity—Tyson recently reincorporated in Delaware, where it can issue two classes of stock. The Tyson family will trade its 55% Class A holding for restricted Class B shares that carry ten votes each. Outside shareholders can keep the Class A shares or swap them for Class B, which pays a lower dividend. If only the Tysons make the switch, they will control 92% of the voting rights—far above the magic 50% minimum. Any new stock issued by Tyson will be of the Class A variety.

Important? It is to Tyson. Tyson earned $35 million in the fiscal year that ended Sept. 28. Cash accounting allowed it to defer about $26 million in taxes. That amounted to 78% of Tyson's 1985 federal tax bill.

"We consider ourselves as an umbrella over about 6,000 farms and farm families," says Chairman Don Tyson defending his use of the family farming rules. "If we didn't have this kind of situation, we couldn't protect those 6,000 farmers."

But do family farmers need such protection? The fact is, cash accounting often works against farmers by making cattle, hogs and certain orchards attractive tax shelters and by encouraging overproduction. "I've seen too many instances where egg producers or others on a cash basis will expand their operation to avoid paying income tax," says Agriculture Secretary Richard Lyng, who was briefly on Hudson Foods' board. "That kind of tax policy has caused family farmers a lot of trouble."

Chuck Hassebrook of the Center for Rural Affairs in Walthill, Neb. agrees. "Cash accounting," he warms, "really distorts supply and demand." And Tyson may soon freeze the amount it defers because tax factors are warping its business decisions.

This seems like just the kind of loophole genuine tax reform should plug. Indeed, the Administration's reform proposals would have limited cash accounting to companies with less than $5 million in gross receipts. But the big farmers and their lobbyists squawked as in 1976, and congressmen again clucked. Reforming farmers' cash accounting was one of the first proposals to be dropped last year by congressional tax writers.

[From the Washington Post, Aug. 8, 1986]

FAMILY FARM TAX BREAK AIDS BIG POULTRY FIRMS

(By Dale Russakoff)

David Mayer, a North Carolina farmer with 150 acres of row crops and four chicken houses, is a typical beneficiary of a tax break created by Congress decades ago to protect and encourage family farms.

But because of a technical wrinkle in the tax code, the family farmer's break also benefits some of the nation's biggest poultry producers, including:

Tyson Foods, the nation's largest poultry producer with more than $1 billion of sales last year. Tyson used the break to defer $26 million, more than three-fourths of its 1985 tax bill.

Hudson Foods Inc., the No. 17 producer, which deferred $4 million.

Perdue Farm Inc., Frank Perdue's Eastern Shore poultry empire. (Perdue, as a private company, is not required to disclose its taxes.)

"I guarantee you if that interpretation was brought forth in the public, it would reflect bad on all these congressmen and senators in these farm states who let it happen," Mayer said in a telephone interview.

As a House-Senate conference committee hammers out a tax bill aimed at closing loopholes and lowering tax rates, an unlikely coalition is pressing the lawmakers to wipe out the family farm break for all farms with gross sales over $100 million. This would raise $500 million over five years, according to congressional estimates.

It is not just small fry who are squawking. The nation's No. 2 and No. 3 poultry producers, ConAgra and Holly Farms, which do not qualify as family farms, are arguing that this break gives their competitors the equivalent of a golden egg.

"The small farmer is the guy the law was intended to protect and to help, and he's the person we want the law to apply to," said Elbert Thomas, financial vice president of the Federal Company, parent of Holly Farms.

"It seems to us that it is a fairness issue," said Martin Colladay, vice president of $6-billion-a-year ConAgra, producer of Country Pride chicken.

Thomas and Colladay estimated that 10 to 20 corporations selling more than $100 million a year of farm products enjoy the "family farm" status. Based on the congressional estimate, this puts the break at $25 million to $50 million per company.

The tax code defines a family farm as one in which three or fewer families control at least half the stock. Since the Hudson and Tyson families control more than half the stock in Hudson and Tyson Foods, they qualify as "family farms."

The benefit lies in the firms' accounting systems. Most big corporations are required to use a sophisticated technique in which no costs are deducted until income is received. This prevents corporations from "sheltering" income at the end of the tax year by increasing inventories or buying supplies and deducting the costs.

Family farms are exempt, on the theory that they lack "skilled accounting assistance," as Congress noted in a 1978 tax law update. They deduct expenses as they occur and declare income when it is received.

It is generally agreed that the system helps the large "family farms" expand, encouraging them to buy large amounts of feed at year's end and build up their inventories of chicks. "In other words, spend it or pay taxes," said Bill Haffert Jr., editor of Broiler Industry Magazine.

Tyson general counsel Jim Blair said the firm's special status is justified because it acts as an umbrella for 6,500 small farmers, with whom it contracts to raise its chickens—providing all supplies from chicks to feed and medical supplies. Without the tax break, Blair said, the firm might not be able to extend as much protection, and many small farmers could be jeopardized.

Spokesmen for ConAgra and Federal said their firms extend almost identical contracts to chicken growers, without the tax benefit.

"It seems to me to be a very unusual loophole," said William Leach, a food-industry analyst for the investment-banking firm of Donaldson, Lufkin and Jenrette. "You have companies like Tyson with more than $1 billion in sales called a family farm and therefore paying very little taxes, while companies like Kellogg and Sara Lee are paying 40 percent."

When the Senate debated the tax bill in June, Sen. Edward Zorinsky (D-Neb.) who hails from the state where ConAgra is based, moved to close the loophole for big companies but ran into opposition led by Sens. David H. Pryor (D-Ark), Dale L. Bumpers (D-Ark.) and William V. Roth Jr, (R-Del.) all from states where Tyson, Perdue and Hudson are prominent.

[From the Memphis Commercial Appeal, Aug. 22, 1986]

CHICKEN FARMS GET TAX-BREAK GRAVY

(By Mary Deibel)

WASHINGTON.—In the tax overhaul package, congressional conferees preserved a 1919 tax break designed to protect family farms, which helps some of the country's biggest poultry producers.

Among those benefiting from the break to date are:

Arkansas-based Tyson Food, the No. 1 poultry processor with $1.1 billion in sales last year. Tyson used its family farm status to defer $26 million in taxes, more than three fourths of its 1985 tax bill.

Hudson Foods Inc. of Rogers, Ark, the No. 17 producer, which had $185 million in sales and deferred $4 million in taxes.

Some of their competitors including the No. 2 and 3 poultry firms, ConAgra in Omaha and Federal Co. of Memphis, which do not qualify as family farms, had hoped to close what they argued was just the sort of loophole that was ripe for tax reform.

With their flight seemingly lost, they say there's no point squawking about not killing the tax break for all farms with gross sales of more than $100 million—a move that would raise $500 million over five years, according to congressional estimates.

"Darn it, the whole bill looks like tax reform to us," says Elbert Thomas, vice president of Federal Co. whose Holly Farms division had $788 million in sales last year.

According to Thomas, Federal's corporate tax rate will fall from 46 percent to 34 percent once the tax overhaul is phased in.

"We're just saying there are still some things out there that ought to be looked at down the road."

What Thomas and others would like Congress to take up later as the provision in current tax law and the proposed overhaul that lets family farms use simple methods to account for their chickens or whatever else they raise.

Most big corporations must use sophisticated "accrual accounting" techniques in which no costs are deducted until the income is received. This keeps companies from "sheltering," income at the end of the tax year by increasing inventories of buying supplies and deducting costs.

Family farms, by contrast, can pay taxes based on so-called "cash accounting," allowing them to deduct expenses as they occur and declare income when it's received. Family farms as defined by the tax code are those in which three or fewer families control half the stock, as is the case with the Tysons and Hudsons.

H.S. McCarty of Magee, Miss., whose privately held McCarty Farms has a 1 percent share of the U.S. poultry market says he's one chicken farmer to whom the accounting difference makes sense.

"The biggest argument that can be made for cash accounting is that the chicken just doesn't have any value until it's sold," said McCarty, who cites heat waves and contaminated feed as a few of the problems that can make his "a risky business."

ConAgra, which owns Banquet Foods and can't use cash accounting, recently faced destroying 200,000 chickens in East Arkansas that had eaten feed contaminated with the chemical chlordane.

"Family-owned operations need the incentive to stick with it, and I for one am not in favor of having poultry dominated by agribusiness conglomerates," McCarty says.

Indeed, some of the corporate giants have chickened out because of risk. Hudson Foods chairman James Hudson was a corporate executive with Ralston Purina in 1972, for instance, when his bosses decided to sell what became Hudson Foods. Even though Hudson Foods itself became a publicly traded company last year, Hudson personally retained control of most of the stock, enough so his firm could stay a family farm.

The same is true for the Tysons, who recently reincorporated in Delaware, where they can retain their family-farm tax standing and control of the firm but can issue public stock to raise outside money.

Tyson officials did not return telephone calls to their Springdale, Ark., headquarters. Forbes magazine has quoted Tyson chairman Don Tyson as saying, "We consider ourselves as an umbrella over about 6,000 farms and farm families," with which Tyson has contracts for chicken production. "If we didn't have this kind of situation, we couldn't protect those 6,000 farmers."

Lobbying for a "level playing field," ConAgra and Federal Co. officials and the small farmers who joined them had argued that they have similar contracts with farmers who also need protection.

Sen. Edward Zorinsky (D-Neb.), who hails from the state where ConAgra is headquartered, hoped to limit the family farm break to farms with sales of $100 million or less when the Senate debated the tax overhaul in June. He didn't try changing the tax bill in the face of opposition to amendments in general and the farm change in particular.

"We will have to come to grips with it one day," Zorinsky told his colleagues in warning them that he will try to attach the re-

striction to some other bill, possibly this year.

Among those credited with saving the tax break is Arkansas Democrat David Pryor of the tax-writing Senate Finance Committee. "All poultry producers can use cash accounting; some just don't choose to when they decide to 'go public,'" says Pryor spokesman Ann Pride.

[From the Arkansas Gazette, Sept. 7, 1986]

TAX BREAK BENEFITING TYSON KEPT

(By Carol Matlack)

WASHINGTON.—Tyson Foods of Springdale, Ark., is sitting on a golden nest egg: A quirk in the federal tax code intended to benefit "family farmers" that has enabled the world's largest poultry producer to pay virtually no income taxes during the last five years.

And, thanks to a fierce behind-the-scenes battle this summer by Senators David Pryor (Dem., Ark.) and Dale Bumpers (Dem., Ark.), the golden egg lives on in the sweeping tax overhaul bill of 1986.

Tyson, along with most of the country's big poultry producers, benefits from an obscure tax law that defines a "family farm," as any agriculture-related firm whose stock is controlled 50 percent or more by three or fewer families.

DEFERS PAYMENT

Unlike most corporations—including an El Dorado, Ark., firm that is one of Tyson's biggest competitors—a "family farm" can defer paying a large share of its taxes if it stocks up on feed and other inventory at the end of each year. Tyson last year deferred $26 million, about three fourths of its tax bill, dropping its effective tax rate to only 6.1 percent.

Country Pride Foods of El Dorado, the country's second-largest poultry producer, does not qualify for the break because it is owned by a conglomerate, ConAgra, Inc. Nor does Holly Farms, Inc., of Wilkesboro, N.C. the third-biggest producer.

In theory, firms that defer their taxes eventually must pay them. But in practice, so long as a company keeps expanding the deferred sum grows larger and larger.

According to Tyson annual reports on file with the Securities and Exchange Commission, the company has averaged a zero effective tax rate during the last five years, with a negative tax liability some years because of credits and deductions. Hudson Foods of Rogers, Ark., another beneficiary of the "family break," deferred $4 million of its 1985 taxes.

"It's a boondoggle," William Leach, a food industry analyst with the New York investment firm of Donaldson, Lufkin, Jenrette, said last week. "It gives companies like Tyson and Hudson an unfair advantage."

According to the National Broiler Council, 21 of the country's 25 biggest poultry firms qualify for the "family farm" break.

SHOCK ABSORBER

James B. Blair of Fayetteville, Tyson's general counsel, defended the tax break in an interview last week, saying it allowed Tyson to serve as a "shock absorber" against fluctuations in the poultry market protecting some 6,500 small farmers who grow poultry under contract for the firm.

But Country Pride and Holly Farms have virtually identical contract-growing arrangements, and do not qualify for the break. "The impact on Holly Farms is that, for the same revenue and the same pre-tax income, we're paying more, said Allen Klein, a Washington lawyer who represented Holly Farms parent Federal Company on tax matters.

LIMIT SOUGHT

During Senate debate on the tax overhaul bill in June, Senator ED ZORINSKY (Dem., Neb.), whose home state includes ConAgra's headquarters, proposed an amendment that would have limited the "family farm" break to companies selling less than $100 million a year of farm products.

But a small group of senators led by Bumpers and Pryor quickly squelched the proposal by threatening a Senate floor fight that would have delayed—and, some felt jeopardized—passage of the entire tax bill.

You've never seen two senators work the Senate as frantically as those two did when word got out," an aide to Zorinsky said last week. "They promised a royal battle, which Senate Finance Chairman Bob Packwood did not want to have." Packwood, an Oregon Republican, had supported the Zorinsky proposal, which would have produced an estimated $500 million in federal revenues over five years. However, he and Zorinsky agreed to withdraw the proposal under pressure from opponents, chiefly Pryor, Bumpers and Senator William V. Roth (Rep., Del), whose home state includes sizable operations by Perdue Chicken, another beneficiary of the break.

WILLING TO GO TO THE MAT

"We were willing to go to the mat on this issue," Pryor said in an interview last week. "I frankly think if it came to a showdown vote on the Senate floor, we would have prevailed."

Pryor said the "family farm" break had been a key factor in the growth of the Arkansas poultry industry and he added, "I don't see anything unfair about it." It's not to get out of paying taxes. It's basically just deferring." If firms like ConAgra and Holly Farms are unhappy, Pryor said they should seek legislation to expand the break to cover them and he would support it.

Bumpers, on the other hand, acknowledged that he "would hate to have to argue there is a reason" for Tyson, with more than $1 billion in annual sales, to qualify for a benefit originally intended for small farmers. "It's admittedly a bit of a tax break for them," he said. However, "I did exactly what any other senator would do" in defending home-state interests.

UNUSUAL TWIST

But there was an unusual twist in this case: One of the most outspoken critics of the tax break, ConAgra, has its poultry operations based in Arkansas. Even Representative Beryl Anthony (Dem., Ark.), whose hometown of El Dorado is the headquarters of Country Pride, supported retention of the "family farm" break during House tax deliberations last year.

Bumpers and Pryor said that while they could understand ConAgra's distress, the vast majority of Arkansas poultry firms qualified for the break. Among them were Peterson Industries of Decatur, Simmons Industries of Siloam Springs and George's, Inc., of Springdale.

Blair, Tyson's general counsel, said that ConAgra was in no position to complain because it had used other tax loopholes. "Almost everybody in the world has some peculiar thing" that allows them to reduce their tax bills, he said. "If it's such an unfair advantage, why did ConAgra pay less taxes than we did?" (However, according to ConAgra's annual report, the firm paid $19.8 million in federal taxes last year, nearly five times what Tyson paid, and its effective tax rate during the last four years was about 19 percent.) ConAgra officials could not be reached for comment last week.

ACCOUNTING SYSTEMS

At the heart of the dispute are the accounting systems that corporations use in figuring their taxes. Most large corporations are required to use a complex technique called "accrual" accounting, which means they cannot deduct expenses incurred until they receive income. For example, a poultry firm using "accrual" accounting could not claim deductions for the cost of corn until the corn is fed to a chicken and the chicken is sold.

But Congress has said that farmers, on the theory that they lack "skilled accounting assistance," can deduct expenses as they occur. A poultry firm using this method can buy large quantities of supplies such as feed and chicks at the end of the tax year, thereby off-setting much of its tax liability. Although the deferred taxes must be paid when the income is earned later, the firm can repeat the procedure the following year, claiming an even larger deferral if it has expanded.

DEFERRAL IS PERMANENT

"The deferral is permanent, so long as investment in inventories of birds and feed remains constant." Klein, the Holly Farms lawyer, said. "So long as your inventories remain constant or grow, you never pay it back."

Klein said the "family farm" break ironically was hurting smaller poultry growers because large year-end purchases by big producers created "a distorted market for the little guy."

Leach, the New York food-industry analyst, said the arrangement encouraged concentration of the poultry industry in the hands of a few large companies. "At the end of the year, the more money they spend, the less taxes they pay," he said.

Arkansas poultry firms using the "family-farm" break have expanded dramatically in recent years, especially Tyson and Hudson, which have both announced acquisitions of smaller firms in the last few months.

Bumpers and Pryor acknowledged that the Arkansas poultry industry was thriving, as did Blair of Tyson, but they said the recent good times had come after years of hard work and adversity. "Nobody has had a harder, longer struggle than this industry has for 30 years," Bumpers said. "For the last two years, here's an industry that's finally doing well, and now they want to take [the tax break] away."

"The industry is healthy, but the federal government could ruin it if they set out to," Blair said. He noted that poultry growers received virtually no government subsidies, unlike most row-crop farmers who qualify for federal price supports.

BUMPERS, PRYOR HELD STOCK; ANTHONY GOT PAID FOR TRAVEL

WASHINGTON.—Within the last year, Democratic Senators Dale Bumpers and David Pryor, both of Arkansas, have had direct financial interest in Tyson Foods, the Springdale, Ark., based poultry firm that is a major beneficiary of a tax break the two senators fought to protect.

Representative Beryl Anthony (Dem. Ark.) who also supported the tax break, accepted free airfare, lodging and food from Tyson last year. The date of the trip, and

the value of the travel expenses, was not disclosed.

In his annual Senate financial disclosure statement last spring, Bumpers reported he held common stock in Tyson worth between $5,000 and $15,000 during 1985.

He said in an interview last week that he sold the stock several months ago and no longer had any financial interest in Tyson. However, he said he would have "no qualms about owning stock in any Arkansas company."

Pryor reported that during 1985 he earned between $1,000 and $2,500 on the sale of Tyson stock he purchased in May 1985 for less than $5,000. The report neither indicated how long Pryor held the stock nor identified the exact purchase or sale price.

Financial disclosure forms filed by other members of the Arkansas delegation indicated no other members owned stock in Tyson last year.

As a member of the House Ways and Means Committee, Anthony supported a "family farm" tax break during deliberations on tax-overhaul legislation last year that benefits Tyson. Bumpers and Pryor fought to protect the same break during Senate deliberations on the measure.

[From the Boston Globe, Sept. 8, 1986]

LARGEST POULTRY PRODUCER REPORTEDLY ESCAPES TAXES

LITTLE ROCK, ARK.—Tyson Foods, the world's largest poultry producer, has paid virtually no income tax in the last five years due mostly to a tax code provision intended to benefit family farmers, a newspaper reported yesterday.

Tyson, and 21 of the country's 25 largest poultry producers, benefit from a provision that allows a large tax deferral for family farms, the Arkansas Gazette reported.

Under the law, a family farm is defined as any agriculture-related firm owned by three or fewer families who control at least 50 percent of the company's stock.

A family farm can defer paying a large share of its taxes if it stocks up on feed and other inventory at the end of the year.

Tyson, based in Springdale, Ark., has annual sales of more than $1 billion. Last year, Tyson deferred $26 million, about 75 percent of its tax bill, dropping its effective tax rate to 6.1 percent, the Gazette said.

Annual reports on file with the Securities and Exchange Commission show Tyson has averaged a zero effective tax rate during the last five years, with a negative tax liability some years because of credits and deductions, the newspaper said.

Hudson Foods of Rogers, Ark., which also qualified under the family farm provision, deferred $4 million of its 1985 taxes.

"It's a boondoggle," said William Leach, a food industry analyst with the New York investment firm of Donaldson, Lufkin, Jenrette, "It gives companies like Tyson and Hudson an unfair advantage."

James B. Blair, Tyson's general counsel, defends the tax break. Blair said it serves as a shock absorber against fluctuations in the poultry market and protects the 6,500 small farmers who grow poultry under contract for Tyson.

"Almost everybody in the world has some peculiar thing" that allows them to reduce their tax bills, Blair said.

Country Pride Foods of El Dorado, Ark., the country's second-largest poultry producer, does not qualify for the break because it is owned by a conglomerate, Con Agra Inc.

Holly Farms, of Wilkesboro, N.C., the third-largest producer, also does not qualify.

"The impact on Holly Farms is that, for the same revenue and the same pre-tax income, we're paying more," said Allen Klein, a Washington lawyer who represented Holly Farms' parent, Federal Co., on tax matters.

In theory, firms that defer their taxes eventually must pay them. But in practice, so long as a company keeps expanding, the deferred sum grows larger.

[From the Washington Post, Sept. 8, 1986]

SENATOR ROTH MAKES HAY WITH FARM TAX BREAK

(By Sonja Hillgren)

In rural Delaware, where chicken houses dot the landscape, Sen. William Roth (R-Del.) is a hero for preserving a tax break for buildings that shelter poultry, hogs, cattle or dairy cows.

In Walthill; Neb., Chuck Hassebrook, a tax policy analyst with the Center for Rural Affairs, views that loophole as one of the most abused tax breaks.

He said maintaining the tax break was a "violation of the trust of family farmers," who supported tax reform through hard times, when no one else backed it, and who won on every vote on the issue.

Roth, a member of the Senate Finance Committee, also helped preserve a loophole that lets giant farms—like Perdue Farms of Salisbury, Md., for which many Delaware farmers raise chickens—defer taxes with an accounting method meant to help family-sized farms.

Those two items are among loopholes preserved in the House-Senate tax revision compromise that faces final House and Senate votes.

An aide to Roth said Delaware poultry farmers who like the tax break for single-purpose farm structures do not produce a commodity in surplus so they have a different point of view than Hassebrook who believes current tax law encourages price-depressing overproduction of livestock.

"Chicken houses in Delaware are perhaps our most common agricultural structure," said Roth's aide. "They [Delaware producers] were very much relieved that this is something that was preserved."

Most Delaware farmers do not begrudge a tax break that helps giant Perdue Farms, The poultry industry has long been controlled by corporations that contract with the farmers who produce birds.

"Perdue is very popular in Delaware," the Roth aide said. "The majority of chicken farmers in Delaware do probably contract with Perdue."

But some of Perdue's corporate competitors believe they face unfair competition when a loophole gives such a big firm an accounting break.

Cash accounting allows farmers to deduct expenses like feed when incurred and to report income when crops or animals are sold. Deferral of income amounts to tax-free loans from the U.S. Treasury, compared to accrual accounting that requires large businesses to delay deduction of cost until revenue is received.

At least a dozen firms like Perdue, with estimated sales of more than $700 million, and Tyson Foods in Arkansas, with $1.1 billion in sales, qualify as family agribusiness firms and use cash accounting under the loophole retained in the law. Roth got support on that issue from Sens. David Pryor and Dale Bumpers, both Arkansas Democrats.

"In the end, the corporate farmers won on that issue, as they did in the single-purpose structure issue," Hassebrook said.

He is especially angry that the lawmakers agreed to rapid depreciation of single-purpose livestock and poultry buildings because the House bill would have extended the write-off period to 13 years and the Senate bill to 10 years. Longer periods are more reflective of the actual useful life of the buildings.

But in the pending tax bill, agricultural buildings would be depreciated over seven years, at a more accelerated rate than current five-year write-offs.

Farm groups were angry the compromise eliminated a break they won in the Senate, letting farmers average incomes to counteract year-to-year volatility.

But Hassebrook said the tax bill still contains provisions helpful to family farmers. If it is enacted, investors would no longer be able to shelter other income by deducting farm losses against it unless they participated in actual farm management.

Eliminating deductions for prepaid feed expenses would take much of the tax-motivated investment out of the cattle-feeding business and make it possible for efficient cattle feeders to make a profit, he said.

Elimination of the investment tax credit and of preferential tax treatment for capital gains would further reduce incentives for tax-loss production of dairy and livestock. Current law turns every breeding and dairy animal into a potential tax shelter by allowing deductions of 100 percent of the cost of production and taxing 40 percent of the sales price.

Hassebrook said wiping out lower taxation of capital gains would reduce incentives for land speculation.

Letting farmers deduct half of their health insurance premiums would give them equity with employes who receive health insurance as a tax-exempt fringe benefit.

The tax bill would eliminate incentives to develop erodible land for crop production.

A ceiling on the amount of farm property that can be financed with tax-exempt bonds would prevent loans to operations such as large dairies that Masstock International, an Irish firm, proposed to build in Georgia.

Other provisions would broaden use of tax-exempt bonds to new farmers buying old equipment, not just new equipment, and to help farmers start over.

[From the Arkansas Democrat, Sept. 8, 1986]

TYSON DEFENDS RETENTION OF TAX BREAKS

A spokesman for Tyson Foods Inc. reacted angrily Sunday to a published report stating that it and another major Arkansas poultry producer would keep tax breaks that have allowed it to pay virtually no taxes for the past five years.

Jim Blair, general counsel for Tyson, said Sunday when asked why the tax breaks had remained in the new federal tax code, "Why shouldn't they be? Our major expense is buying grain—grain that is supported by government subsidy. The ability to buy that grain at the best time of the year and expense it off is important to us."

Blair was referring to a copyrighted story that appeared in Sunday's edition of the *Arkansas Gazette*. The story notes that the new tax bill keeps intact a provision which classifies Tyson and Hudson Foods of Rogers as "family farms," allowing them to defer a large share of annual taxes by stocking upon feed and inventory at year's end.

The current tax provisions define family farms as any agriculture-related firm owned by . . . or fewer families who corner at least

50 percent of the company's stock. Tyson meets that definition, as does Hudson Foods.

As result, Tyson deferred $26 million of its tax bill last year and virtually has a zero tax bill for the last five years, according to the *Gazette* article.

The deferment can continue and go on indefinitely as long as the company meets the provision and keeps expanding. Twenty-two of the nation's 25 top poultry producers meet the family farm provisions.

Tyson, the world's largest poultry producer, has annual sales for more than $1 billion. Hudson Foods deferred $4 million of its taxes last year. The nation's second largest producer, Country Pride Foods of El Dorado, does not qualify for the break because it is owned by ConAgra Inc., a conglomerate.

Sunday, Blair accused ConAgra of manufacturing a controversy on the issue.

"This controversy has been engineered by ConAgra, which is a giant corporation many times larger than Tyson.

ConAgra uses many (tax) shelters," Blair said. "Every ordinary individual gets to charge something off when they pay for it and that's all we're asking for."

Blair also expressed appreciation for support Tyson received from Sen. Dale Bumpers, D-Ark, and Sen. David Pryor, D-Ark. That support proved to be crucial in keeping the provisions in the current tax legislation.

During debates on the tax proposal, Sen. Ed Zorinsky, D-Neb., proposed an amendment limiting the family farm break to companies with less than $100 million of sales annually.

However, Bumpers, and Pryor, along with a few other senators, threatened a floor fight that would have delayed passage of the tax bill. Zorinsky eventually withdrew the proposal.

"I have great admiration for Bumpers and Pryor standing up for the poultry industry," Blair said.

On Sunday, James T. Hudson, chairman of Hudson Foods, declined comment. Bumpers and Pryor could not be reached for comment Sunday.

[From the Omaha World-Herald, Sept. 9, 1986]

ZORINSKY: CONAGRA IS AT DISADVANTAGE WITHOUT TAX BENEFIT

(By Robert Dorr)

Tyson Foods, the world's largest poultry producer with annual sales exceeding $1 billion, receives a multimillion-dollar federal tax benefit annually because it is defined as a family farm, officials of the Springdale, Ark., company acknowledge.

The second-largest poultry producer, ConAgra, Inc. of Omaha, can't meet the family-farm definition, and, thus, doesn't receive any tax break, ConAgra officials say.

"That is blatantly unfair," Sen. Edward Zorinsky, D-Neb., said Tuesday from Washington. "It is a misintent of the original law, and everybody knows it."

Zorinsky, ranking Democrat on the Senate Agriculture Committee, tried but failed to change the tax provision as a part of the overall congressional approval.

SOMETHING WRONG

On the Senate floor, Zorinsky said: "There is something wrong about saying that an individual who sells in excess of $100 million worth annually of chicken is a family farmer."

A small group of senators led by Sens. Dale Bumpers and David Pryor of Arkansas, home of Tyson Foods, squelched Zorinsky's effort by threatening a floor fight that would delay passage of the entire tax overhaul bill, The Associated Press reported.

Bumpers said of the tax provision that benefits both Tyson Foods and another large Arkansas poultry producer, Hudson Foods of Rogers, Ark.: "It's admittedly a bit of a tax break for them. I did exactly what any other senator would do."

Zorinsky proposed establishing a limit of $100 million. Any corporation with revenue over that amount should not be defined as a family farm, he contends.

PECULIAR THING

If the $100-million limit were written into tax law, the federal treasury would receive an extra $500 million over five years, according to congressional mates.

"To us, it's a fairness matter," said ConAgra vice-president Martin Colladay. "Our competitors have an unfair advantage."

Joining ConAgra and Zorinsky in opposing the tax break is the Center for Rural Affairs, an advocate of small family farmers.

"It's ridiculous to say that a giant corporation with income of over a billion dollars a year is a family farm," said Chuck Hassebrook, center tax analyst.

James B. Blair, Tyson's general counsel, defended the tax break. "Almost everybody in the world has some peculiar thing" that allows them to reduce their tax bills, he said, according to AP.

Here's how current tax law affects Tyson Foods and some other large corporations:

Tyson contracts out chicken production to thousands of small farmers. So does ConAgra.

Both companies buy some chickens and process them mostly for sale to retail stores. ConAgra sells chicken under the brand names Country Pride and Banquet Fried Chicken.

Under the law, a family farm is defined as any agricultural firm owned by three or fewer families who control at least 50 percent of the company's stock.

The Arkansas company is controlled by the Tyson family.

The stock in ConAgra is widely divided, with the largest stockholder owning less than 5 percent.

DEFER PAYMENTS

Any poultry farmer or company defined as a family farm can use a method of accounting that allows companies to defer tax payments from one year to the next.

Under the method, called cash accounting, a company can buy supplies toward the end of one tax year and use the money paid for those supplies to offset its pre-tax income for that year.

The following year, the company earns taxable income from the supplies it purchased the previous year. But, by expanding each year, a company can buy larger amounts of supplies at the end of each year and keep putting off tax payments.

Last year, Tyson Foods deferred $26 million, about 75 percent of its tax bill, dropping its effective tax rate to 6.1 percent, the Arkansas Gazette reported.

Annual reports on file with the Securities and Exchange Commission show Tyson has averaged a zero effective tax rate during the past five years, with a negative tax liability some years because of credits and deductions, the newspaper reported.

ORIGINAL INTENT

ConAgra can't use cash accounting and must use another method, called accrual accounting. It requires expenses and the income resulting from those expenses to be reported for tax purposes in the same year.

Even if Tyson Foods eventually can't defer taxes, it still has an edge over ConAgra because the Arkansas company has received interest-free use of millions of dollars to expand, ConAgra's Colladay said.

The original intent of cash accounting was to provide small farmers a simple method of keeping track of their finances, Hassebrook and Zorinsky said.

ConAgra doesn't oppose eliminating cash accounting for small farmers and isn't suggesting that the Omaha company should also qualify for the tax break, Colladay said.

With sales of 1.4 billion broiler chickens a year, ConAgra has income from that source alone of several hundred million dollars a year—well above the dividing line of $100 million suggested by Zorinsky, Colladay said.

PERDUE FARM

Hassebrook said he would prefer that the limit in defining a family farm be much lower, perhaps $1 million or $5 million a year in annual income.

Zorinsky said he sees no hope in changing the measure in the overhaul bill now awaking congressional approval.

In addition to the two Arkansas senators, Sen. William V. Roth Jr., R-Del., supports the cash-accounting tax break, Zorinsky said, Delaware is the home of Perdue Farm Inc., another large poultry company that uses the tax benefit.

[From Forbes, Sept. 22, 1986]

CHICKENING OUT

Under the wing of an arcane tax law meant to benefit small farmers, even agricultural giants like $1.1 billion (sales) Tyson Foods, $740 million (estimated sales) Perdue Farms and $185 million (sales) Hudson Farms are "family farms." The rule applies so long as 60% of a company's stock is held by one family, and it saves those chicken farms millions each year by allowing them to use cash accounting rather than the accrual method, with which the IRS requires most other firms to compute taxable income. Tyson, for example, deferred $26 million—78% of its tax bill—last year (Forbes, May 5).

There has been much squawking on the subject since the spring. Cash accounting often works against farmers by making livestock and some orchards attractive tax shelters and so encouraging overproduction. It also understandably ruffles the feathers of publicly held competitors such as $5.5 billion (sales) ConAgra and $1.3 billion (sales), Federal Co., two chicken farms that, under the tax code, are not family farms and thus do not qualify for the tax benefits that cash accounting bestows. The companies lobbied Congress to limit cash accounting for farmers to those with revenues of less than $100 million. That would raise $500 million over five years, says the Joint Committee on Taxation.

It was not to be. Tyson, Perdue and Hudson formed the Family Farm Associaton and hired a premier tax lobbyist. Three chicken-state senators—William Roth, Jr. (R-Del.), David Pryor (D-Ark.) and Dale Bumpers (D-Ark.)—also helped keep the Senate and conference committee from voting on the issue. "They twisted every

arm that could be twisted," says one congressional aide.

Other proposals were weakened. Congress wanted a much longer depreciation period for chicken coops and hog pens than the five-year write-offs in current law. But the bill provides only a seven-year writeoff. "It maintains an incentive to overproduce in an industry with chronic overproduction, and gives a strong advantage to high-[tax]-bracket producers," says Chuck Hassebrook of the Center for Rural Affairs, in Walthill, Neb.

Agribusiness won't escape the new corporate minimum tax, of course. But what will the Treasury raise from those farms? Chicken feed.

[From the Baltimore Sun, Sept. 28, 1986]

PERDUE CAN DEFER TAXES WHILE CHICKEN RIVALS BOIL

(By Stephen E. Nordlinger)

WASHINGTON.—A multimillion-dollar dispute is flaring among the nation's chicken processors over a tax break that allows Perdue Farms Inc. and many other mammoth chicken producers to defer large tax payments annually by taking advantage of a law designed to benefit family farms.

Perdue, the nation's fifth-largest producer and the dominant operator in the Northeast chicken market, runs up sales of 8750 million a year and processes 21 million pounds of chicken a week.

But in calculating its taxes, the privately held business relies on a longstanding bookkeeping law to put off paying some of its taxes.

As long as its business keeps expanding—which seems likely, given America's growing appetite for chicken—large chunks of taxes may be deferred indefinitely. As the law works, it encourages the mammoth chicken processors to keep expanding their production as a way of deferring taxes.

This, in turn, gives such giant operators a larger and larger share of the market.

Although the new tax-overhaul bill ends use of this bookkeeping method for large businesses, it was kept intact for chicken processors such as Perdue.

Knowledgeable industry sources said 21 of the country's 25 largest poultry firms use the family-farm tax break."

The value of this benefit can be gleaned from a report by the congressional Joint Committee on Taxation. It estimates that abolishing the benefit for large chicken processors would raise $500 million in government revenues over the next five years.

"People are talking about fairness and tax reform, but they [the chicken processors] are getting something that amounts to a tax-free loan from the government," said Sen. Ed Zorinsky, a D-Neb., who is battling to eliminate the tax break for the large processors.

Mr. Zorinsky comes from a state with the nation's second-largest chicken processor, ConAgra Inc., which does not qualify under the law to take advantage of the family-farm tax break.

Companies such as ConAgra are lobbying Congress to eliminate the tax advantage, and they are making headway among Capitol Hill's chief tax-overhaul advocates. Sen. Bill Bradley, D-N.J., said he agreed that the benefit should be dropped for "very large" operations.

The interests of Perdue are being vigorously backed by the two Democratic senators from Arkansas, David Pryor and Dale Bumpers. Arkansas is the home of the nation's chief chicken processor, Tyson Foods, which takes advantage of the family-farm tax break even though it has $1 billion in annual sales.

With Perdue operating a plant in Delaware, Sen. William V. Roth Jr., R-Del., has also joined forces in blocking a change in the law. Maryland's senators, according to lobbyists opposing the law, have not become involved in the issue.

Mr. Zorinsky raised the dispute on the Senate floor during this year's debate on tax overhaul but backed off in view of the Senate leadership's opposition to amending the tax bill.

"Certainly I intend to raise it again next year," said Mr. Zorinsky, who may gain new influence on the issue in Congress should he carry out his present thoughts of switching parties. That would make him chairman of the Senate Agriculture Committee, if the Senate remains in Republican control.

"It will get us at least some revenue to meet the Gramm-Rudman goal" to balance the budget, he said.

The benefit used by Perdue and some other processors dates back to a 1919 law that allowed family farms, which lack access to sophisticated accounting methods, to use the so-called cash method of accounting. That permits them to deduct expenses as they occur, but they don't have to declare income on crops or animals until they are sold.

As expenses pile up for supplies in an expanding business such as chicken processing, the operators using this accounting method can keep gathering tax write-offs that allow them to defer paying taxes on much of their income. Should a downturn occur, when these expenses trail off, then they would have to pay the deferred taxes.

Most large corporations are required to use a sophisticated technique called accrual accounting in which no expenses may be deducted until income is received.

In 1976, Congress insisted that large farming corporations use this accrual method. But an exception was carved into the law that allowed family farms to continue to use cash acounting.

A family farm was defined as any firm with 50 percent or more stock held by three or fewer families. That definition fits such businesses as Tyson in Arkansas and Perdue, with plants in Maryland, Delaware, North Carolina and Virginia.

"It's a loophole in the law," said Allen Klein, a Washington lawyer who represents the parent company of Holly Farms, a large competitor of Perdue that cannot use the family-farm tax break. "Congress wanted to protect the little guy, not the big guys."

Mr. Klein maintained that the tax break puts Holly Farms at a competitive disadvantage against Perdue. "For the same revenue, we are paying more in taxes," he said.

According to filings with the Securities and Exchange Commission, Tyson, by using the tax break, deferred $26 million, more than three-fourths of its 1985 tax bill.

"We pay substantial federal income taxes," said Dick Auletta, a New York-based spokesman for Perdue. But Mr. Auletta noted that Perdue is a private company, and he declined to disclose the amount paid or deferred.

Defending the current tax benefit, James B. Blair, Tyson's general counsel, said that for the 6,500 family farmers of Arkansas who under contract supply his company with chickens, his company is an "umbrella" that protects them from fluctuations in the market.

"We are the shock absorber for these small family farmers," he said. "We don't get any of the federal support programs given to other parts of agriculture."

Chuck Hassebrooke, a tax analyst with the Center for Rural Affairs, an advocacy group for family farmers, said "cash accounting for Perdue is ridiculous."

"It is hard to believe that Congress thinks Perdue is not big enough or sophisticated enough to handle the complexities of accrual accounting," he said.

Mr. Hassebrooke said the family-farm tax break has basically served as an incentive to expand the businesses of the big processors, which he said were in the best position to build up inventories and supplies to take advantage of the law.

This expansion can occur without regard to the market, which he said can weaken the prices for the smaller processors and farmers Congress wanted to protect.

In turn, he said large-scale production has led to dominance in the market by the big processors, which could lead to higher consumer prices.

According to the National Broiler Council, the top eight processors controlled 51 percent of the market in 1984, compared to 30 percent in 1975 and 18 percent in 1960. There are about 60 processors in the country now, compared with 190 in 1974 and 286 in 1960.

Large-scale production reduces prices in the store, Mr. Hassebrooke said, but at the same time, "Consumers are paying higher taxes to make up the loss of revenue from the tax break."

[From the Salisbury [MD] Daily Times, Sept. 29, 1986]

POULTRY PRODUCERS GET EXEMPTIONS

BALTIMORE.—Large chicken producers have been granted an exemption in the new tax bill that will allow them to defer large chunks of their tax bills.

Perdue Farms Inc., and other chicken producers have long been taking advantage of the tax break, which is designed to benefit family farms, according to *The Baltimore Sun*.

Perdue, the nation's fifth-largest poultry producer, processes 21 million pounds of chicken a week. As long as it continues to expand, it can defer portions of its taxes indefinitely. *The Sun* reported Sunday.

As written, the law encourages chicken processors to expand their facilities continually and keep the tax bill down, while picking up larger and larger shares of the poultry market.

To qualify as a family farm, a farm must have 50 percent or more stock owned by three or fewer families. Perdue fits that description.

While the new tax bill ends the use of the deferral bookkeeping method for large businesses, Perdue and other chicken processors will be allowed to continue using it.

Sources told the newspaper that 21 of the nation's top 25 poultry firms use the family farm tax break.

"People are talking about fairness and tax reform, but they (the chicken processors) are getting something that amounts to a tax-free loan from the government," said Sen. Ed Zorinsky, D-Neb., whose state is home of the second-largest chicken processor, Con-Agra Inc., which is ineligible to use the tax break.

Perdue's interests are backed by Sens. David Pryor and Dale Bumpers of Arkansas. That state is home of the No. 1 chicken producer, Tyson Foods, which uses the family farm tax break despite $1 billion in sales.

Sen William V. Roth Jr., R-Del., is blocking a change in the law, since Perdue operates a plant in Delaware. Maryland senators apparently haven't become involved in the issue, according to the newspaper.

The tax break dates to 1919, when family farms could use the cash method of accounting, which permits them to deduct expenses as they occur, but they don't have to declare income on crops or animals until they are sold.

By expanding and increasing their expenses they keep collecting tax writeoffs.

"It's loophole in the law," said Allen Klein, who represent the parent company of Holly Farms, which can't use the family farm tax break.

[From Newsweek, Sept. 29, 1986]

TAX REFORM: CONGRESS HATCHES SOME LOOPHOLES

The architects of tax reform—Rep. Dan Rostenkowski and Sen. Bob Packwood—have lately had a difficult time negotiating the Capitol corridors. Both have been waylaid by scores of lobbyists—and colleague—who stuff a hand or empty coat pocket with sheets of paper. Each sheet was a "transition rule"; a total or partial exemption from tough provisions in the new tax bill. Abandoning the old law abruptly, many lawmakers argue, would be too wrenching for some taxpayers. So by last week, when Bob and Rosty shipped the tax bill to the printers, they also sent along 350 transition rules with $10 billion in tax breaks. "The chairmen provided themselves with several billion dollars worth of grease that they could slather around to make sure they had enough votes to pass the bill." says an aide to Sen. Howard Metzenbaum. Whether it is grease or economic common sense, one thing seems clear without the loopholes the tax bill would not be headed for almost certain passage. The winners:

CHICKEN FARMERS

Under the new tax law, businesses with sales over $1 million must figure their taxes by *accrual* accounting, in which revenues are recorded as they are earned, not *cash* accounting, in which revenues are recorded when actually collected—thus deferring taxes. The change could have hatched a tax increase for poultry conglomerates such as Frank Perdue's in Delaware (1985 sales: about $750 million and Tyson Foods in Arkansas ($1 billion). But on Capitol Hill. Bob and Rosty were anxious to sign up Sens. William Roth of Delware and Dale Bumpers and David Pryor of Arkansas. Those lawmakers got a rule excusing farm corporations *controlled by three or fewer families* from accrual accounting. Nearly all of the top 25 poultry firms happen to be controlled by three or fewer families. In all, the rule will deprive the treasury of $1 billion over five years.●

PUBLIC THANKS TO SENATOR METZENBAUM'S STAFF

Mr. METZENBAUM. Mr. President, I rise to take a couple of minutes to publicly speak about my own staff.

I know everyone around here relies to a great extent on their staff. I particularly do.

I am frank to say that I could not do what I do without them.

Jim Brudney, my labor counsel, made the age discrimination bill possible. It may be of interest to my colleagues to know that the bill was passed last night somewhere around 2:30 in the morning.

I do not think Senator HEINZ or myself, who are coauthors, were on the floor at the time. There is not much doubt about the fact that his dogged pursuit of a compromise actually saved that bill's very existence.

It bears his imprint, as does the sheltered workshop bill, and the senior citizens and blind and disabled of this country will be able to reach their full potential as a result of his efforts in seeing to it that there is no arbitrary provision making people retire merely by reason of their having obtained a particular age.

□ 2400

Another one of my staff, Eddie Corriea, of my judiciary staff, has done an incredible job on RICO, the drug bill, the pesticide law, and the plain fact is there would not be any RICO bill without Eddie's work.

James Wagoner has been a one man strike force against the drug export bill. Few will know how his work has helped literally save thousands of lives in the Third World. Even as late as tonight he was working to bring about a satisfactory conclusion with respect to that matter. As we all know, that matter has not become law and will not become law in this session.

Joel Johnson, a new father, married another one of the members of my staff. He is also father of the infant formula bill which will do so much to improve the health of newborn babies.

Linda Green, who only came onto my staff some months ago, seems to know every civil rights law ever written and every court decision on those laws. She came on my staff some months ago and has made a great contribution by reason of her being with us.

Dick Woodruff, who handles transportation issues, did so much to help identify the deficiencies in the Conrail deal. His work has saved the taxpayers hundreds of millions of dollars.

Evelyn Bonder authored an important bill on Alzheimer's research which is very close to becoming law this year, and if it does not become law this year, I feel certain it will become law next year. The elderly and the hungry have no greater champion.

David Starr, some have described as being on my staff merely to dig out new tax loopholes to which we might object. Some have suggested he is on a bonus arrangement for each loophole that he finds. David has done a superb job. Not only does he know the laws as well as anyone; he is a master of pension law. When LTV retirees receive their health and life insurance benefits, each payment should carry a footnote of thanks to David Starr.

Ellen Bloom may handle more issues than anyone on my staff. When working Americans are in trouble or consumers need some protection, Ellen Bloom is at my office door with an idea to help them out in a hundred different ways.

Bob Roach is my enthusiastic, energetic energy legislative assistant who has boundless energy and enthusiasm on countless complex issues which I am frank to say I would not be able to understand without his help, whether the issue has to do with uranium enrichment or Price Anderson or military lands. He has protected the taxpayers and the environment.

Cheryl Birdsall has been with me a good many years. She handles education issues. She recently helped untangle a thorny problem with the higher education bill. Her work means so much to our children and their future.

Then those who have led my staff: Peter Harris, my administrative assistant, who was willing to work untold hours with a sense of dedication and devotion that is incomparable. Without him I could not do it.

Doug Lowenstein, chief of the legislative staff, who gives a sense of dedication, determination, and devotion to the problems that existed in my office and the legislative responsibilities, and I am everlastingly grateful to both of those.

Finally, Bev Anthony just began handling public land issues. As a quick study, she has already saved the taxpayer money and protected them on environmental issues.

I want to thank all of you. I do not think there is a sharper, more dedicated, greater legislative staff in Congress. I know that the hour is past 12 midnight and tonight like so many other nights you are in the office attending to your responsibilities. I know that you are in early and I know that you stay late. You all have my deep gratitude.

One last special note of appreciation to the Democratic floor staff because the Democratic floor staff, day in the day out, is there to help every Member on this side. They attend to our concerns. They look out for our problems. I am everlastingly grateful to them. Without them it would just be impossible to do.

Mr. President, I thank my colleagues for bearing with me while I took a few moments to express my appreciation for my own staff.

JUDGE CHARLES E. SIMONS, JR.

Mr. THURMOND. Mr. President, I rise today to pay tribute to Judge Charles E. Simons, Jr., who, after 22 years on the Federal bench, has assumed senior status on the U.S. District Court for the District of South Carolina. He is one of South Carolina's finest jurists, who has distin-

guished himself in service to his State and Nation.

A native of my home county of Edgefield, Judge Simons graduated Phi Beta Kappa from the University of South Carolina in 1937 and received his law degree there in 1939.

He practiced law in Aiken, SC, until 1942, when he interrupted his legal career to serve in the Navy on the staff of Adm. Chester Nimitz.

Soon after returning to his Aiken law practice, he was elected to the South Carolina General Assembly where he served from 1947 to 1948, and again from 1960 to 1964. While I was Governor of South Carolina, I appointed Judge Simons to the South Carolina Constitutional Revision Committee.

In 1964, President Johnson, acting on my recommendation, appointed him to be U.S. district judge. He became Chief Judge of the U.S. District Court for the District of South Carolina in 1980.

In addition to his demanding schedule on the Federal bench, Judge Simons has been active in the U.S. Judicial Conference. He has served as the Fourth Circuit District Judge Representative; on the Advisory Committee on the Codes of Judicial Conduct; and as chairman of the Subcommittee on Federal Jurisdiction. Judge Simons has also always found time to devote himself to church, civic, and community service.

Throughout our State, Judge Simons is deeply respected for his legal knowledge, his fairness, and his integrity. He has exercised the duties of his office with character, compassion, and courage, and he is a sound legal scholar and an impartial judge.

When I practiced law with him, I saw first hand his sound understanding of the law and his keen interest in the welfare of his clients. During the course of our long friendship, Judge Simons has always held my highest admiration, for he is a man who stands for what he believes to be right and one who sacrifices personal gain for what he knows to be true.

Judge Simons is an avid outdoorsman as well as a devoted father and husband. He has loved his country and loyally fought for its preservation, both in war and in peace. In his personal life, he has modeled civic duty and responsible citizenship. Judge Simons has been, to me, both friend and adviser, and I treasure the times I have had with him.

To honor this outstanding man, I sponsored legislation, approved in the final hours of the 99th Congress, to name the U.S. courthouse in Aiken, SC, the "Charles E. Simons, Jr., Federal Courthouse." While we cannot adequately thank him for all his contributions, this courthouse will be a token of our gratitude.

Mr. President, I wish Judge Simons, his lovely wife, Jean, and his family, good health and much happiness in the future. I wish to call to the attention of my colleagues his outstanding record and to express deepest appreciation for the dedicated service of this outstanding jurist, loyal patriot, distinguished public servant, and truly great American.

EXTENSIONS OF REMARKS

CONGRESSIONAL SALUTE TO SACRAMENTO COUNTY SUPERVISOR JOSEPH E. "TED" SHEEDY

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. MATSUI. Mr. Speaker, I rise today to honor a fine, dedicated public servant Mr. Joseph E. "Ted" Sheedy, who is retiring next month after 16 years of exemplary service as a Sacremento County supervisor.

On November 12, 1986, his friends, colleagues, constituents, and community leaders will gather to pay tribute to this outstanding elected official for his sacrifice and his contributions to the people of Sacremento County.

Ted's exceptional leadership and devotion of our community and to the region is evident in his long list of accomplishments, including establishment of the first county consumer protection bureau in California, implementation of a comprehensive ordinance to control noise pollution, and an effective Affirmative Action Program is Sacremento County. He is also authored the State's toughest financial disclosure law for local elected officials and fought to maintain adequate flows in the lower American River.

Through his hard work and service as chairman of the County Supervisors' Association's Revenue and Taxation Committee and the Sacremento Regional Area Planning Commission, he has earned the respect and admiration of his friends and colleagues.

Mr. Speaker, there is no way that we could ever repay Ted for his service to the community, but I would like to add my voice to those wishing him a productive future and thanking him for a job well done.

CONGRESSIONAL SALUTE TO NORMAN J. PHILLIPS

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. MATSUI. Mr. Speaker, I rise today to pay tribute to an outstanding citizen of Sacramento, Norman J. Phillips. My close friend Norm is being honored on November 20, 1986 by the Golden Empire Council, Boy Scouts of America, as Scouting's "Man of the Year."

Norm, who is Northern California Vice President for Pacific Bell, has worked tirelessly to promote the ideals of Scouting in our community and his dedication to encouraging young men to become good citizens, combined with his unique sense of humor, has earned him the respect and admiration of friends and colleagues in Scouting and throughout Sacramento.

Norm has taken time out of his busy work schedule to serve our community in countless ways. From his effective participation in the Air Force Association and the American Red Cross to his work with the Crocker Art Museum and the Friends of Light Rail, Norm has demonstrated his concern for Sacramento's present and future. Norm's involvement in the community far exceeds the few examples I present here today, and I can assure my fellow members the Golden Empire Council of the Boy Scouts of America has demonstrated great wisdom in recognizing Norm Phillips; a true leader and exceptional role model to our young men who are active in the enormously successful Scouting program and to citizens of Sacramento.

Mr. Speaker, it is with great pleasure that I congratulate Norm for receiving Scouting's "Man of the Year" award. I thank him for his many years of generous, sacrificial service to the people of Sacramento, and I wish him the best of luck with his future endeavors.

CIVIL RIGHTS IN NORTHERN IRELAND—BACKGROUND AND DEVELOPMENTS

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. GILMAN. Mr. Speaker, I rise to call my colleagues attention to a most interesting essay prepared by the Prof. David Lowry on the human rights situation in Northern Ireland. Professor Lowry, of the Pace University Law School, is legal consultant to the American Irish Political Education Committee of Stony Point, NY. The committee, an independent organization, was founded in 1975, and has been kind enough to bring this essay to my attention.

I believe that reviewing these materials will bring to my colleagues a most interesting perspective—one which is lacking from most discussions of the "Irish question" in the Washington area. Accordingly, I request that the essay to which I have referred be reprinted in full at this point in the RECORD.

CIVIL RIGHTS IN NORTHERN IRELAND—BACKGROUND AND DEVELOPMENT

CIVIL RIGHTS

To understand the current violations of human rights in Ireland it is necessary to sketch briefly the political and legal background since 1969. The civil rights movement in 1969 demanded, inter alia, an end to religious discrimination against Catholics in housing and employment as well as the abolition of the notorious Special Powers Act of 1922. Catholics had been openly and systematically excluded from participation in virtually all but the lowest occupations in both the public and the private sector. Housing was allocated on the old gerrymandered patronage system. Any outbreak of unrest or dissent by Catholics had always been quickly and ruthlessly suppressed under the Special Powers Act which gave the authorities power to hold suspects incommunicado and indefinitely without lawful arrest, charge or trial. Thus, in 1969, the systematized discrimination against Catholics (assumed nationalists) and entrenched Protestant (assumed united empire loyalists) patronage and privilege was enforced by the much feared Royal Ulster Constabulary (RUC), an almost totally Protestant para-military police force, which had a proved capability of operating oppressively with almost unfettered discretion conferred by the Special Powers Act.

The year 1969 was a watershed for Northern Ireland. Hitherto opposition to discrimination had occurred (at least once in every decade since 1920) in the form of Irish Republican Army (IRA) guerrilla campaigns focused largely in the rural border areas. In 1969 middle-class urban Catholics and liberal Protestants took to the streets in protest against discrimination. A rather leftist-liberal Labor government in London was nonplussed by the protests and the traditional and practiced violence with which the RUC sought to stifle the peaceful protests of otherwise law-abiding citizens.

The Northern Irish Prime Minister was summoned to London and ordered to institute the most elementary reforms to alleviate the glaring abuses of power. However, every time a gesture was made in the direction of the Catholic community pressure from Protestant extremists would intensify to counterbalance the London pressure. A messianic Protestant preacher, the Reverend Ian K. Paisley, instigated and capitalized upon this "Protestant-blacklash."

Sadly for the north's Catholics and nationalists a Conservative ("Tory") government was returned to power in London in 1970 and foolishly committed itself to a stance of "law and order First; reform later." After 50 years of intense and complete repression this was hardly likely to assuage the fears of the Catholic minority. One month after the election the Conservatives allowed the British Army and the RUC to "curfew," quite illegally, the Catholic Falls Road ghetto in Belfast for 36 hours while pouring gas and troops into the ghetto.

At this juncture the IRA did not exist as a credible military force or a major political factor in northern Ireland and this is now conceded by all observers. But now that the British Army had turned from its original "peace-keeping" role to one of aggression the resulting escalation of violence was inevitable. Early in 1971, some eight months after the British Army had taken the offensive, the first British soldier was killed. The IRA had (in January 1970) split assunder between marxists ("Officials") and nationalists ("Provisionals"). While weapons were few there was no shortage of recruits. This time many recruits had tried the peaceful route towards reform. They had protested

and been beaten. They had petitioned London and, ultimately, London had turned its troops on them. But in 1971 the IRA was able to draw from a huge reservoir of young, well-educated urbanized youth who were determined not to be pressured into emigration (to Britain and unable, under the new U.S. law, to come to the United States) which had always been the desired goal of the authorities so as to keep the Catholics in a numerical and hence electoral minority.

INTERNMENT

As violence escalated the Northern government inevitably reached for its trusted weapon in repressing dissent—Internment. In August of 1971 several hundred "suspects" were "lifted." The next three months saw 1,400 detained and 900 released after interogation and various periods of internment. Internment as used in Northern Ireland means that any person can be taken into custody although no evidence of suspicion of any crime is required. Such a person could be held incommunicado and detained in prison indefinitely. As the detainee is never charged with any offense, access to court, due process and civil rights are thereby denied.

Internment was rather like adding a lighted match to gasoline. According to the London Sunday Times the internment option was chosen because the authorities did not want to interfere with the commerical life of northern Ireland. Other alternatives such as curfews and block searches were thus summarily rejected. While such a disregard for human freedom and individual liberty is appalling, especially when property rights take precedence, it is interesting to note that this message was not lost on the "Provisional" IRA who, henceforth, set about bombing "economic targets," so called, with renewed zeal.

Internment solidified Catholic resistance. It also brought forward support for the IRA from urban areas. More disturbing, however, were the stories of torture, inhuman and degrading treatment which inflamed the Catholic community. Many internees were quickly released because the police had no idea who were members of the IRA and so they "lifted" people somewhat indiscriminately. The stories told by those released were almost incredible. Incessant beatings, attacks by police dogs, forced to run barefoot over broken bottles, hooded and dropped from helicopters and, most chilling of all, systematic use of "white noise" in carefully controlled conditions. Sensory deprivation, formerly the monopoly of the KGB, the Chinese and the North Koreans, had arrived in Ireland. 1971 saw the first documented, proven and, indeed admitted use of systematic inhuman and degrading treatment. It continues in various forms to this day and there is, as yet, no sign of it abating.

MURDER

Demonstrators peacefully protesting internment were murdered by British Paratroopers in Derry ("Bloody Sunday") in January of 1972. After that event it became clear to all that all avenues of peaceful protest had been closed. Discrimination continued. Indeed Catholics were driven out of "mixed areas" with retaliation in some cases by the IRA. The result was the largest population movement in Europe since World War II as Catholics crowded into the ghettos for protection. While Protestant paramilitaries were moving the population about it is significant that few Catholics relied on the discredited RUC and the British Army for protection. The Special Powers Act and the use of internment and torture totally alienated the regular law enforcement agencies from the Catholic population. At this point very many Catholics turned to the IRA for protection, albeit often with some misgivings.

COUNTER-INSURGENCY

Total police alienation from the community made intelligence gathering even more difficult for the British and the RUC. Consequently, from 1972 to today the authorities adopted a "counter-insurgency" policy. This strategy seeks to break the connection between the population and the guerrilla. Its proponent General Sir Frank Kitson, in his book Low Intensity Operations, describes fully how it operates. Suffice it to say that torture, inhuman and degrading treatment are integral components of such a strategy. As well as suspected terrorists, totally innocent people must be arrested and made to talk to verify data. It's all very sophisticated and detailed. For example, in 1984 the British were able to boast that 50 percent of the population had been fed into their computer—and it should be noted that 95 percent of these live in the Catholic ghettos. No nugget of information is too small; even the color of wallpaper is recorded. The key to understanding this strategy is to understand that the "target population," that is the Catholic ghettos, are alienated and will not willingly inform on a neighbor—especially when such a neighbor would become a potential torture victim.

FAILURE OF BRITISH REFORM

Matters would have proceeded merrily along but for a few factors beyond British control. Firstly, international outrage of internment and torture pressured Britain to change, at least cosmetically, its repressive laws. Secondly, regardless of placebo reforms the IRA just kept bombing on and on. Thirdly, extremist Protestants showed, through a General Strike in 1974, that they were able and willing to frustrate any compromise which would have guaranteed Catholics a share of power or which, more importantly, tended to diminish entrenched Protestant privilege. The British, fearful of fighting on two fronts, wholly capitulated to the extremist Protestant para-military forces. This capitulation showed to all Protestant and Catholics that men like the UDA or Paisley, as de facto leader of the Protestant extremists, could exercise a negative veto on any reform or peace initiative.

This Northern Ireland is at an impasse as the British have foolishly deprived the Protestant majority of any incentive to negotiate an accommodation with moderate Catholics. Moderate Catholic who for years have had nobody to talk to, now have nothing to talk about as Protestant privilege and domination has been guaranteed by the British gift of the negative veto. If, however, the British gave a solemn undertaking to withdraw from Northern Ireland in say one year the Protestants would have an incentive to negotiate and, more importantly, some things to negotiate about. Nothing concentrates the mind quicker than a cold hard dose of reality.

ENGLAND'S ARMY CANNOT WIN

Meanwhile the status quo in the Catholic ghettos remains intolerable. To the British it is the "containment" phase of counter-insurgency whereas to the inhabitants it is dragnet arrests, wrecked homes, tortured confessions and show trials, without due process and long prison terms at the end of it. It is not surprising that a secret British Army intelligence estimate of the IRA (leaked in May of 1979) noted that the IRA could sustain the current level of action through 1983. The report, complied by the Chief of British Army intelligence for London, notes that the British Army cannot win. Indeed, as the army admit, as of 1985 the IRA is even stronger.

What strengthens the resolve of the IRA and the ghetto community is the ongoing cause celebre of the deprivation of human rights to the inmates of H-Block in Long Kesh. If ever war-weariness shows its face, H-Block immmediately counters it. The H-Block tragedy is probably the single most vindictive and barbaric British miscalculation during 16 grizzly years of violence on all sides. The H-Block story reveals in microcosm most that is wrong with British policy in northern Ireland.

HUMAN RIGHT VIOLATIONS

After the debacle of internment in 1972 the British suffered stiffened resistance in Ireland and intense pressure from abroad. The government of the Irish Republic initiates suit against the British in the European Court of Human Rights. British lawyers did all that they could to delay the case and finally admitted inhuman and degrading treatment of internecs. The Court nevertheless continued the hearing after the admission of guilt and found the British guilty in 1978. But delaying tactics had worked to some extent as international opinion and pressure had drifted elsewhere.

COVER-UP

Similarly, the British, responding to pressure, established a plethora of judicial inquires into torture and interrogation techniques. The Report of Sir Edmund Compton was so maladroit in stipulating that (a) sensory deprivation was used to ward off the cold and (b) that suspects couldn't be tortured unless the torturer derived pleasure from inflicting torture, that other Commission of Inquiry had to be impaneled to cover-up the cover-up. Lord Parker's hastily convened inquiry had such narrowly circumscribed terms of reference that some wondered whether it could, in fact, perfect the cover-up. However, Lord Gardiner dissented filing a minority report in which he noted, inter alia, that the RUC torturers had been specially trained by the British six months prior to internment and that the techniques in question had been developed in Aden, Cyprus, Malaya, Kenya and Palestine by the British. But as he pointed out such torturing was an assault (at least) under British law. Nobody has yet been brought to trial in this regard.

Amnesty International has twice investigated (1972 and 1978) and found evidence of ill treatment. The second report of Amnesty prompted the British to establish yet another inquiry under Judge Bennett. It reported in March of 1979, and although its terms of reference were so narrow that it was boycotted by all impartial civil liberties groups, Bennett too found ill-treatment. Amnesty International had called for a full-scale public inquiry but the British evidently thought that a narrow secret inquiry into a few allegations would difuse the issue. They were wrong.

TORTURE DOCUMENTED

Immediately prior to Bennett's publication Dr. Irwin, a Police Surgeon, revealed that 150 suspects whom he had recently examined had various injuries sustained in police custody during interrogation and that the injuries were of a nature that they

could not possibly have been self-inflicted. Other surgeons then spoke out. Lawyers had since 1976, noticed a dramatic increase in injuries to their clients when, that is, lawyers were eventually allowed to consult their clients, which is always after interrogation by the RUC.

There can be no doubt that suspects are tortured or treated in an inhuman or degrading manner—even carefully tailored British inquiries admit this. But what is not so readily apparent is the use and significance of these methods and how they relate to the plight of the inmates of H-Block.

After the international public pressure over internment the British responded by modifying the law. The dreaded Special Powers Act was replaced by the Emergency Provisions Act (EPA) and the Prevention of Terrorism Act (PTA). These statutes presaged a new and more subtle approach. Internees under the Special Powers Act were political prisoners. As such they had traditionally been allowed to wear their own clothes not prison uniforms, not forced to do prison work and have certain other privileges concommitant with political prisoner status. They lived in wire compounds or "cages" electing their own leader or spokesman and enjoyed relatively free association with other prisoners in their cage. Lord Gardiner's Report in 1975 recommended that this system, which had only been granted in 1972 after a hunger strike, be abolished. As a result special H Blocks were built. All political prisoners incarcerated for offenses which occurred after March 1, 1976 were, henceforth, consigned to H Blocks. The status of the other inmates remains unaltered.

Under the old legislation the RUC didn't need to gather evidence. Mere suspicion was enough to detain a person indefinitely. Although this system had worked for 50 years, in the 1970's, it incurred considerable international opprobrium. Under the new EPA, enacted after yet another judicial inquiry headed by Lord Diplock, there would be an arrest, a charge and a trial. However, if the RUC could not arrest the right people under the Special Powers Act with mere suspicion and unfettered powers, how on earth could the new system (which demanded a trial) possibly work?

NEW INTERNMENT

The EPA created a "new internment" in substance while giving the accused a "trial" in form only. New vague and broad offenses were created such as "being concerned with terrorism," which could, conceivably, include within its ambit any thinking human being in northern Ireland. Similarly, the EPA retains the police power to search without a warrant anywhere and take anything as evidence. The new statues do, however, remove the right to silence and it is now an offense to "withhold evidence"—the exact opposite of the American Fifth Amendment protection. Careful scrutiny of these powers of arrest and search and seizure, while having the appearance or form of law, in substance retain all of the old Special Powers Act police powers while adding the "withholding of evidence" offense. However, the EPA and PTA add a public relations gloss by using the imprimatur of law whereas the Special Powers Act was clumsy and passed at a time (1922) of limited international pressure and scrutiny.

When arrested the suspect has no actual rights for up to seven days. Under the EPA and PTA a suspect can be held without charge, incommunicado for up to seven days. During this time the suspect will be interrogated by the specially trained and long experienced torturers of the RUC. Some interrogators are the same people who should according to Lord Gardiner, a British judge, have been prosecuted for assault. The Association for Legal Justice has literally hundreds of sworn statements from victims of RUC interrogation. Many, many more do not complain fearing retribution and harassment from the RUC for both themselves and members of their families.

If the inhuman and degrading interrogation is withstood by the suspect often he or she will be threatened with a "withholding information" charge. Frequently, the RUC, after prolonged softening-up, will simply threaten to "verbal" a suspect. "Verballing" means that an RUC officer will appear in Court alleging that the suspect told him (or verballed him) that he committed the offense. "Verballed" confessions, even from the discredited RUC are enough to convict in northern Ireland. Very many people crack within seven days especially when they believe that they may be framed with a verbal, regardless of the innocence. Fr. Faul and Fr. Murray, Catholic Prison Chaplains have, over the years, cataloged hundreds of cases of suspects pushed beyond endurance into signing confessions or being "verballed." But in Court a confession is good solid evidence and thus unwanted members of society can be sent to H Block with an appearance of law. Again form over substance.

After a suspect is charged under the EPA or PTA he will be remanded in custody for up to two years to await trial. Quite often suspects have been released from custody immediately before trial after spending eighteen months in prison with no real evidence against them. This "internment by remand" is an abuse of legal process but has the appearance of law and does not, prima facie, appear to be internment. In a recent case an untried accused has been held for over four years. Internment still exists.

GUILTY UNTIL PROVEN INNOCENT

When a suspect is eventually brought to trial he can, of course, claim that his "confession" was coerced by RUC torture. But in order to eliminate the "confession" the accused must show, firstly that he was, in fact, tortured and secondly, that torture was intended to induce the confession. It is almost impossible for an accused to shift this reverse onus of proof.

Moreover, how can an accused possibly show the state of mind of his torturer? This remarkable provision of the EPA, which has no analogy in any common law or democratic system of justice, is the key component of the new internment system. It is this that ensures that coerced confessions are accepted by the courts while preserving the appearance of a trial. But at a price, for even the appearance of due process of law is jettisoned.

The trial judge sits alone as the EPA abolished the jury system. Northern Irish judges, most of whom are Protestant and are present or former members of the Orange Order, almost invariably accept coerced confessions produced after seven days incommunicado in the hands of the RUC. In fact the British Bennett Report in March of 1979 noted that over 93 percent of all cases before these special nonjury courts (known as Diplock courts after their creator) end in conviction. An unprecedent conviction rate. Moreover, Bennett did reveal that over 80 percent of all such convictions are based solely on the evidence of confession. In 80 percent of these cases no other evidence of any sort is adduced.

On conviction for EPA and PTA offenses sentences are extremely heavy. After all the judges must protect society from self-confessed criminals. Sentences are then served in the H Blocks of Long Kesh prison. A profile of the average inmate of Long Kesh shows that he is under 20 years of age with no prior convictions and not a hardened criminal or recidivist.

H Block is the end of a conveyor belt—the terminus of the new internment system of law. A system that is in form often unexceptional but which is, in substance, an atrocious and unmitigated mockery of justice.

POLITICAL PRISONERS

When the victims of this system arrive in H Block they meet conditions of indescribable squalor. The prisoners having observed the conveyor belt at close quarters firmly believe that they are political prisoners. They claim that they have not been tired by due process of law and as such they claim to be treated as political prisoners. The British have denied this request for to do so would be to admit that they have merely commenced a more subtle "new internment" process. Such an admission would surely provoke international indignation as did the "old internment."

As a direct consequence of the British refusal to grant political prisoner status the inmates refused to wear prison uniforms for to do so would be symbolically admitting that they are common criminals.

The British response is that they are indeed common criminals, but common criminals do not ride the EPA conveyor belt to H Block. Yet another impasse was reached and a news blackout was imposed by the British on H Block.

PERFIDIOUS ALBION

In the middle of the H Block impasse the British government still found time to sign in 1977 the new Red Cross Protocols to the Geneva Convention. These Protocols would, inter alia, mandate that guerrillas be treated as Prisoners of War. Naturally the British has not extended prisoner of war status to the inmates of H Block but the fact that the Protocols were signed is further evidence of the British sensitivity to international opinion and pressure. Furthermore, some of the H Block inmates may actually be guerrillas or terrorists but we will never know for sure as they have been denied due process of law and mere conviction by coerced confession in a Diplock Court is not convincing evidence of anything in particular.

There are many modern definitions of human rights and some would show that Britain is violating anything up to 16 basic tenets of fundamental freedom and liberty with H Block and the EPA conveyor belt. But legalistic interpretations and quibbling are diversions from the very basic appreciation of the fact that all definitions of human rights acknowledge the transcending importance of the dignity of man. We submit that the British and the RUC inhuman and degrading treatment of Irishmen under the EPA and in H Block is a gross affrontery to any known concept of human dignity. Now that Britannia no longer rules the waves, she waives the rules. Men like Bobby Sands who are overwhelmingly elected are disqualified from holding office by new "laws" rushed through in a few hours. Elected Sinn Fein members of parliament like Gerry Adams are refused permission to go to England.

SUPERGRASSES

After the use of internment without trail and torture and brutality in order to extort 'confessions' had been discredited by the international community, the British authorities resorted in 1982 to the use of what are termed 'supergrasses' or paid perjurers.

In return for promises of immunity and large cash rewards these men, all of whom have extensive criminal records, have chosen to escape lengthy custodial and in some cases, life sentences by 'fingering' those whom the RUC wish to see put away. As a result of the 'evidence' of these so called 'born again criminals' (to use the terminology of Chief Constable Hermon of the RUC) over 500 people have been incarcerated, in some cases for over three years before being brought to 'trial'. In short, internment through lengthy remands.

The Ulster Judiciary have described the 'testimony' of some of these supergrasses as 'bizarre,'' untrustworthy', 'a palpable tissue of lies', 'contradictory and in some cases incredible', yet the Orange judges, sitting in Diplock Courts and with no juries, routinely 'warn' themselves about the unreliability of uncorroborated testimony and proceed to convict over 150 men and women on just testimony which has been elicited after the supergrass has been in police protective custody for up to two years and carefully coached in his story.

The farcial situation has been denounced by every body of international lawyers from Europe and the United States which has attended these 'show trials' in addition to Amnesty International. The most recent American criticism has come not only from Geraldine Ferraro, but also Henry O'Brien, chief Prosecutor for Suffolk County, Peter King, Nassau County Conptroller, Senator Alfonse D'amato and Congressmen Norman Lent, Mario Biaggi and Benjamin Gilman.

Although denounced by the British legal profession and the British Labour and Liberal party as well, and totally discredited by the recantations of many of the supergrasses themselves who have told of how they were offered large sums of money and promised immuity if they would merely sign blank pieces of paper which the RUC would fill in later, the system continues to besmirch the British legal tradition and constitutes what Brigadier Kitson has called 'just another weapon in the Government's arsenal.'

PLASTIC DEATH

Plastic bullets have been adjudged as too dangerous to use in mainland Britain, even in riots when policemen are being killed (Octobr 1985). Yet, since 1970, first rubber and now the even more deadly plastic bullets have been used almost daily in Belfast and Derry against men, women and children in the nationalist ghettos, where, as several reputable international tribunals have found, they are used as an instrument of state terror.

To date over 140,000 have been fired. Twelve children, two women and four men and have been killed and over one hundred seriously injured—blinded, brain damaged and paralyzed—by the indiscriminate punitive use of these weapons by the 'security forces.' No member of the army or the RUC has ever been charged with these murders, even when they occurred in front of the TV cameras, as in the case of John Downes (August, 1984).

Plastic bullets are manufactured in the United States and exported to the UK but they are banned here since they are regarded as lethal weapons.

AMERICAN HELP NEEDED

Perhaps the efforts of the American Irish Political Education Committee (PEC) will not only raise the consciousness of Irish-Americans, but of all who value human rights. Is it too much to suggest that American public opinion and political pressure be mobilized to engender a respect within the British for Irishmen? Is it too much to expect American Catholics to ask American political leaders to try to intervene to break the impasse in northern Ireland? If America cannot talk with and criticize its ally, Britain, then there is very little hope for the advancemet of human rights in northern Ireland.—David R. Lowry and Sean McGuffin, July 1986.

TRIBUTE TO DR. FREEMAN CARY

HON. CLAUDE PEPPER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. PEPPER. Mr. Speaker, I proudly join my colleagues in tribute to a great doctor, a great gentleman, and a great friend, Dr. Freeman Cary. I have consulted from time to time with Dr. Cary during all the time he has been the Capitol Physician. I have always found him outstandingly competent, exceptionally considerate and concerned about his patients. His wise counsel and skilled service has been very helpful to me in the preservation and promotion of my health. I feel that I owe much of the good health I enjoy today to the wise counsel and the helpful treatment I have received from time to time from Dr. Cary. I know of no man who could have performd his important duties more skilfully and more kindly than Dr. Cary.

I consider it a great personal loss and a great loss for the members of Congress for Dr. Cary to be retired. When the Congress returns, I think the appropriate committees of the Senate and the House should conduct a hearing leading to a proper and full appraisal of the quality and the excellence of Dr. Cary's service to the Congress. He deserves the commendation which I believe such a hearing and evaluation of his record would require. We want Dr. Cary to know that we who have known him and have benefited from his service will always be grateful to him and we will remain his admirers and his faithful friends. We hope if he should care to extend his service that Dr. Cary will soon be back with us on the hill.

I thank the gentleman for yielding.

CONGRESSIONAL SALUTE TO RETIRING SACRAMENTO FIRE DEPARTMENT CHIEF WILLIAM R. POWELL

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. MATSUI. Mr. Speaker, I rise today to pay tribute to Sacramento Fire Department Chief William R. Powell upon his retirement after serving as chief for 16 years and protecting Sacramento from fire dangers for a quarter of a century. Bill's hard work and dedication to fire prevention, combined with his sense of humor, has earned him the respect and admiration of friends and colleagues throughout our community.

After serving in the U.S. Navy on Guam and Midway Islands, Bill began his career as a firefighter in Sacramento in 1960. He earned steady promotions and served as fire engineer, fire captain, battalion chief, and fire marshall. In 1973, Bill was named Sacramento's fire chief and he has served faithfully and effectively in that position ever since.

Bill has also served our community by participating actively in various organizations. The State OES Advisory Board, the California Fire Chiefs Associations and the Sacramento Chapter of Red Cross are only a few of the important organization to which Bill has devoted much of his own time and energy, and all the members of these and other organizations owe a great deal of their success to Bill's efforts.

Mr. Speaker, I wish that the cities and towns that my colleagues here in Congress represent could have a fire chief as able and efficient as Sacramento's Bill Powell. If they did they would rest easy with the knowledge that their constituents and districts would be safe and protected from fire dangers. There is no way that our community could ever repay Bill for his service to Sacramento, but I would like to add my voice to those wishing Bill a happy and productive retirement and thanking him for a job well done.

BREAKING THE CYCLE OF POVERTY

HON. RON WYDEN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. WYDEN. Mr. Speaker, all of us have heard the old saying, "an ounce of prevention is worth a pound of cure." In no case is that more true than when it comes to investment in our future: Our children.

Study after study has shown that the first 60 months—5 years—of a child's life is critical to his or her emotional, physical and intellectual development. If children are treated poorly, they will behave poorly. If they are deprived of adequate food, their physical development will lag. And if they do not receive proper intellectual stimulation, they may be doomed to classroom failure before they even cross the doorstep.

In an address to a conference of the National Governors' Association Committee on Human Resources in February of this year, Irving B. Harris offered a call to arms to those of us who believe our children are our Nation's greatest resource. A prominent Illinois businessman who has dedicated more than 20 years to philanthropic pursuits, focusing primarily on children, Mr. Harris says early education is the key to breaking the cycle of poverty and giving all our children—no matter what their background or economic circumstances—a fair shot at the American dream.

Because I believe Mr. Harris' address provides public policymakers everywhere with invaluable food for thought, I submit a copy to be printed for the benefit of those of my colleagues who may not have seen it.

ADDRESS BY IRVING B. HARRIS TO THE NATIONAL GOVERNORS' ASSOCIATION COMMITTEE ON HUMAN RESOURCES CONFERENCE ON "FOCUS ON THE FIRST 60 MONTHS" FEBRUARY 6, 1986

I congratulate the National Governors' Association Committee on Human Resources for calling this conference to focus on the first 60 months. In thinking about the first 60 months, I am reminded of a story that Voltaire recounted about Frederick the Great, who died just 200 years ago in 1786. Apparently, Frederick the Great thought that German children would, if left alone, automatically learn to speak German within a year. To prove his point he ordered that a few children be selected from the court and completely isolated. The children were fed, but otherwise they were left alone and received no nurturing at all. The result was that not only did they never speak German, they all died within a few short months from lack of care and human contact.

We've come a long way in 200 years. Research in child development, helped enormously with videotape techniques, tells us how much a newborn infant can see, hear, taste, and smell. We now know that these days, months and earliest years are critical in shaping, and frequently determining, an individual's lifelong mental, emotional, and physical capabilities. In this country, however, "Education" doesn't begin until the age of six. Almost all of the money we as a nation currently invest in education—$240 billion annually—is devoted to teaching children age six and older. Not much more than $1 billion goes to prepare the child for school. The assumption is that parents have already prepared the child for kindergarten. And, while this is generally true, in many populations, particularly the poorest, children are not prepared for kindergarten.

I've been interested in the problem of America's underclass for more than 20 years. So has Senator Moynihan. Recently quoted in New York magazine, November 1985, he said:

"We never expected that over a mere quarter century we would see an underclass emerge in New York City of a size that not only threatens the character of the city but which seems also to defy any meliorative response. We never thought we would become two cities; we have". This statement is equally true in Chicago, Detroit, Cleveland, and most of our nation's major cites.

When one talks about how to break the cycle of poverty, it is evident that the answer lies in education. If poor people cannot become educated, the likelihood of their getting decent jobs and pulling themselves out of poverty is remote. On the other hand, with a reasonably good education, jobs will be available and poverty becomes something that affected the last generation.

The closest we've come to concerning ourselves in a major way about preparing neglected children for school was the initiation of Head Start some 20 years ago. As we all know, Head Start works. It was a good idea and continues to be a good idea. It was our country's first attempt at preventing the stunted growth and social development that so often plagues the children of poverty. By and large, cognitive gains achieved through Head Start were disappointing. However, longitudinal studies show it has been successful in producing solid behavioral gains: fewer school dropouts, fewer arrests, fewer teen pregnancies, and more employment.

The best research on preschool programs was the Perry Preschool Study done by High/Scope. This study, done in Ypsilanti, Michigan, reveals that many of the experimental group who had preschool experience showed major gains when compared to a control group. Nevertheless, 33 percent of the experimental group did not finish high school, 31 percent had been detained or arrested, and only 61 percent were judged to be functionally competent. What Head Start did is prevent these statistics from being much worse.

Head Start was designed to prevent school failure. One-third of the children would probably succeed in school even without Head Start. Their parents are doing their job. For a second one-third, Head Start is essential—and can make the difference of success or failure in school. But, for the most deprived one-third of the children, Head Start is simply too late. By the time these children are three years old their language skills, social development and symbolic reasoning are so underdeveloped that Head Start alone cannot successfully make up for those deficits. It's too late. That's why we have to start earlier.

The wealth of new research in child development published in the 20 years since Head Start began indicates that the first year of life is the time of greatest neurological growth. A very significant portion of a child's capacity for language is developed before the age of three, before Head Start is available. And, language is a major determinant for later success in school. Too many deprived children are destined for failure in school, and in life, because of the neglect they suffer in the early days and weeks and months of their lives. Normally, an infant learns to trust very early on. He is curious. He wants to touch everything within reach, and, usually, shove it into his mouth. When that curiosity is punished and the child is slapped and slapped again, his motivation to learn is crippled, and his ability to trust is severely damaged.

An infant is programmed by nature to learn a great deal in the first weeks and months of life. Stunted curiosity and a lack of stimulatin actually delay the neurological development. They also delay his social, emotional and cognitive development. And, delays in early development are hard to reverse later on.

Empathy and self-esteem, also required if the child is going to succeed in school and life, are likewise, learned early on. If a child thinks he's "bad", and keeps hearing from his mother and father, or stepfather and grandmother, that he's "no good", he'll learn to believe he's "no good". And, when a poor self-image is later reinforced by teachers and classmates, it's no wonder that the child begins to feel dumb, and "no account". He will stop trying, start to skip school, start to hang out, and then drop out. And, with it all, this child will grow up very angry—frequently masking his anger by looking apathetic, or lazy, or hyperactive, or having a limited attention span. Very often this anger erupts in a way that causes harm, not only for the child but for his victims as well.

As a nation, we have to think through our policy about such deprived children. We could have a policy of investing heavily in preparing these children to succeed in today's America. Or, we can continue our existing policy which pays lip service to "preschool education", defined as three to five years of age, but ignores modern knowledge about early learning.

Any policy has costs. A policy of educational efforts aimed at 0-3 would perhaps cost $10,000 a child. Our present policy of ignoring these children has a much higher cost—more like $300,000 per child. Let me review some of what we know about the prevalence and costs of poverty:

(1) According to President Reagan's Commission on Excellence in Education, some 44 percent of 17 year old blacks are functionally illiterate, with even higher percentages among 17 year old Hispanics. Illiteracy in Japan is less than 1 percent;

(2) In many inter-city schools, dropouts range from 50 percent to 70 percent;

(3) Unemployment and unemployability rates among minority male inner-city residents approximate 50 percent;

(4) The cost to society of crime, homicide, drug and alcohol abuse runs very high;

(5) In Illinois, we have very high costs for child abuse and neglect; the Department of Children and Family Services has a budget of $200,000,000 a year;

(6) In Illinois the budget for public aid exceeds $3 billion;

(7) The costs of births to teenagers, and teenage pregnancy, are very high. Last year in Illinois, more than 23,000 babies were born to teenagers. A Northwestern University study, commissioned by the Executive Service Corps of Chicago, estimates these births cost the people of Illinois $853,000,000 annually, and the figure includes only the first five years of life;

(8) Society's costs for infant mortality and infant morbidity among the poor are staggering;

(9) The percentage of low birth weight babies born to poor mothers runs three or four times the average for non-poor mothers. And these low birth weight babies later contribute disproportionately to handicapping conditions and child abuse.

These are just some of the costs we know about. All of these symptoms of poverty can usually be traced back to the earliest days, weeks, and months of a child's life. Let me read the description of one little boy as portrayed in the *Chicago Tribune* series called "The American Millstone".

[Carra is two years old, and] the tragedy of his household can be seen most vividly in the way the family relates to him. Times when they are patient and loving seem fleeting. His Aunt Carla [age 15], thinks something is troubling him, but she said she does not understand what it could be.

'Sometimes he just walks out the back door and sits on the back porch,' she said. 'He just sits there for a long time, staring off into space.'

Carra, at the age of 2, already calls women 'bitches'. Dorothy [his 37 year old grandmother] laughed one afternoon when asked how he picked up the word. 'He got it from me,' she explained. 'Because that's what I call these girls when they are bad.'

LaWanda [Carra's 18 year old mother, who is unmarried and pregnant with her second child] and Carla play a game to get the boy to say the word.

'Who she?', they say, pointing to LaWanda. 'Ma' is the reply.

'Who she?', they say, pointing to Carla. 'Ca.'

'Who we?'

'Bitches.'

Everyone, including Dorothy, laughs.

The boy has only a few other words in his vocabulary, and when he does speak, his diction is so poor he can barely be understood. He is toilet trained 'some of the time', his mother says. When he makes a mistake, no one bothers to change him, leaving him in wet shorts until they are dry.

His nickname is Fella 'because he is bad', Dorothy says. Much of what this child hears is negative, in voices loud and menacing. One recent afternoon it seemed as though the household was erupting on young Carra. Dorothy was yelling at him because he stepped into her room. LaWanda paddled him because he wouldn't sit still. William [his cousin] chased him through the apartment, hitting him on the back with a cord because he touched a bicycle tire he was told to leave alone. When the boy refused to put on his shirt at the command of [an 18 year old houseguest], the girl grabbed him by the shoulder and pulled him close. Then she hit him with a belt.

Almost any child development specialist would predict that it is very unlikely that Carra will escape the cycle of poverty that has already trapped his grandmother, mother, and cousin. To stop this cycle we have to invest, up front, much more in every child born at high risk. We also have to radically cut the number of births to teenagers, because we simply don't have the financial or the human resources to work with all of the children who are currently born at high risk.

The sad truth is that we do know how to help these children. One major program here in Washington at the Regional Center for Infant and Child Development has, for the past eight years, worked with 40 children born at very high risk to mothers who had failed abysmally with their first child. Without intervention over half of these children wouldn't make it. However, very skilled and intensive work has all 40 of these children on a path toward success in school.

Viewed broadly, the sheer numbers of children born at high risk overwhelms us. We must radically reduce these births—particularly births to teenage mothers—many of which are repeat pregnancies. In the census tract surrounding the DuSable High School in Chicago, 40 percent of the 514 babies born to teenagers in 1984 were second, third, or fourth children.

As many of you know, four years ago in Illinois we organized The Ounce of Prevention Fund in an effort to determine whether it was cost-effective to try to prevent this whole range of problems by addressing the causes. Let me briefly tell you the history of the Ounce:

In 1976, I helped to fund a project called Family Focus. This project was conceived by Bernice Weissbourd, who, after the experience of running an inner-city Head Start program, was distressed by the program's failure to reach the one-third of the children who were most at risk. She felt strongly that in order to prevent poor child development, she had to get to these children much earlier—which meant working with the families from the time the children were born.

Family Focus set up its first family support program in the fall of 1976 in Evanston, a suburb of Chicago. From the beginning the program was very successful. The first year anticipated 50 families but a total of 250 families participated in the program. Our families were principally white and middle class. To attract the black teenage families we started a second drop-in center three years later. Located close to Evanston Township High School, this program is also very successful. It now includes an infant day care center and programs aimed at middle and high school teens.

Funding for family focus was difficult. While some foundation support was obtained early, these grants usually terminated after three years. Just as the need for funds was increasing, the foundation funds decreased, and this obviously created a problem. The possibility of corporate funding was carefully considered. It was thought that a center developed near a factory site, where a corporation's self-interest would warrant a substantial corporate investment, might create a replicable mode. One very logical corporation to conduct such an experiment was the Pittway Corporation, of which I was Chairman of the Board. Located in Aurora, Illinois, Pittway manufactures First Alert smoke detectors. Aurora has a large and poor pocket of Hispanic familes. Many of Pittway's employees are Hispanic. Pittway was willing and eager to help this community, as well as its own interest, by supplying a substantial part of the funds needed to finance a Family Focus drop-in center in Aurora. The plan was for a three year experiment, with the idea of trying to interest other Aurora employers in becoming financial supporters.

As our plans progressed, Bernice and I asked the Department of Children and Family Services (DCFS) for $25,000 a year toward our estimated $100,000 budget. We believed that the Aurora center would be a model primary prevention program and would, therefore, be of interest to the State. Greg Coler, then Director of DCFS, reacted by saying that it was high time that the agency provide significant funding for programs that would broadly test the concept of primary prevention. Thus, rather than give $25,000 to Aurora, he agreed to commit $400,000 if Pittway would match it. The goal was to establish six experimental sites that would really test the concept of prevention. The Pittway board agreed with alacrity to match the grant and The Ounce of Prevention Fund was created.

Without any question, it would have been difficult for Director Coler to establish a radical experiment such as The Ounce of Prevention Fund using State funds alone. He felt that if DCFS could leverage its $400,000 on a matching grant basis he would probably have less difficulty with the legislature in obtaining their approval as time went along, since the confidence being expressed by the Pittway Corporation would undoubtedly have some influence with the legislature. He asked for $400,000 grant from Pittway for one year only. He promised that once under way the project would be funded in its second and third years by the state at $800,000 a year from his department's available funds. And, despite the fact that his was by far the largest grant the Pittway Corporation Charitable Foundation had ever considered, the board believed it was worthwhile, particularly in view of the fact that we were leveraging our $400,000 with $400,000 from the state in the first year, and with an additional $800,000 for two more years. Furthermore, Pittway officers had a strong feeling that the long-term success of the corporation depends upon the economic and social health of the community, not only in Aurora but in all of the communities where Pittway operates a factory. Similarly, the board felt that the issues related to early childhood development are of concern to the nation as a whole and thus, Pittway's effort might have national significance.

In retrospect, it is clear neither DCFS nor Pittway could have been induced to undertake this experiment if it hadn't been for the attraction of matching funds. In this sense, the creation of The Ounce of Prevention Fund was done with mirrors. A public announcement of the new program was made four years ago. We requested proposals. From 115 concept papers we chose six for three year funding. The plan also included funds for evaluation. That evaluation is still going on.

The three year experiment terminated June 30, 1985. We are now in our fourth year with assurance of continued funding. So far, both the State and Pittway are well satisfied with our joint experiment. The first six programs grew to 28 programs in years two and three, and starting July 1, 1985, we added 14 more programs. Pittway, of course, was obligated to contribute $400,000 in year one. We volunteered $250,000 more in year two, $250,000 more in year three, and $250,000 again in year four. The State put in $400,000 in year one, $2,850,000 in year two, $4,500,000 in year three, and $4,500,000 again in year four. We at Pittway are most pleased with our improving programs. As for the State, their appropriations speak louder than words.

There are many additional advantages to a public/private partnership, such as flexible funds, recruitment opportunities, nonbudgeted consultancies, and institutional memory. Let me cite two examples of utilizing flexible funds. In 1984, an innovative program proposal from the Chicago public school system was turned down by the readers prescribed by the State's system for reviewing proposals. With private (flexible) funds we were able to initiate that program in four middle schools. Now in its third year, the program teaches a concentrated course in family life education with peer support. Of the 60 students (15 each in four seventh and eighth grade classes), all of whom were judged to be at high risk of early pregnancy, not one has become pregnant. That program is now State supported and expanding to ten middle schools.

A second application of flexible funds was the production of a one-hour film entitled "Choices: The Mating Game". Dealing with responsible decision-making in a game-show format, "Choices" was broadcast nationally on PBS. Students love it. It commands their attention and pushes them to think about the choices they face or will soon face regarding sexual activity. The film makes the point that they can say no. But, if they do become sexually active, they should know the truth about the risks of pregnancy and sexually transmitted diseases. A powerful seven-minute segment of the film portrays the plight of a couple who become parents while still in school and have to drop out. There is a moving dramatization of what their lives might be like a year or two later. The messages, which are clear, interesting and sometimes humorously couched, say again and again, "You have a choice; don't just let it happen to you without making that choice."

Flexible funds have been important to the Ounce. $400,000 of flexible funds have been provided by the Harris family, and Pittway funds are frequently available for non-budgeted purposes. We are not organizing to develop increased private support for the Ounce. Flexible funds are a very important benefit of our public/private partnership.

When The Ounce of Prevention Fund established its first programs, the goal was to work with poor mothers who had very young babies. Our aim was to teach better parenting skills, which would result in better nurturing and development of the child and an eventual avoidance of the whole roster of problems incurred by high-risk children.

In the first 18 months we tried to keep the young mother in school, which meant, among other things, encouraging her to wait before having another baby. We were aware of the fact that the proverty cycle usually starts all over again with those babies, particularly with second babies. However, practically speaking, we spent most of our effort trying to work with the mothers. Little effort was expended working with the children. We originally budgeted about $1,000 a year per family, enough for the two-thirds of the families not at the highest risk. From the start, we recognized our programs would only marginally help one-third of highest-risk families.

The next stage of our prevention efforts at the Ounce was to try to prevent the first birth. We looked around to find out what programs had been successful in preventing first births. The only successful program we could find was the comprehensive school-based medical clinic model such as the ones in St. Paul, Dallas, Houston, and Kansas City, for example. So, in June 1985, we enabled Provident Hospital to establish a clinic at DuSable High School in Chicago, where, in 1984, with a student population of 1,000 boys and 1,000 girls, 300 babies were born to teen mothers. In addition to family planning services, the clinic is meeting the tremendous need for comprehensive medical care within the high school population: 80% of the visit are medical. In addition, we hope that the clinics will improve the prenatal care for pregnant students and reduce the number of infants born at high risk. Most of all, we hope to radically reduce the recidivism. In St. Paul, their records indicate that while nationally one-third of teenage mothers will have a second baby within 24 months, they have cut the second pregnancies to 1.4% in 24 months.

A second clinic at the Orr High School in Chicago will open in about two months. The funding for these clinics is another public/private partnership—this time with the Department of Public Aid where Greg Coler is currently the Director, and a consortium of foundations including The Robert Wood Johnson Foundation, The Commonwealth fund, The Joyce Foundation and, again, the Pittway Charitable Foundation. Each clinic costs about $250,000 a year.

The final objective we are now beginning to address is the prevention of developmental delays. The Beethoven Project (named for the Beethoven Elementary School on Chicago's south side) targets all the children born in that area, many of whom are indeed at very high risk. We plan to work, from birth, with the whole kindergarten class of 1992. We are really serious about focusing on all of the first 60 months. I believe this project hits at the heart of prevention of the cycle of poverty.

I have talked with inner-city teachers in the Chicago school system. Every fall they see a new crop of children who are not ready for school. Talk to any inner-city kindergarten teacher and ask her this question: "If in the fall you have a child who is 'not ready,' who has an inadequate attention span, is hyperactive, or has speech or hearing problems, for example, how do you handle it?" The teachers I spoke to said the following. "If I have one child in my class who is 'not ready', I am skilled enough so I can handle that child and at the same time handle the rest of the class." My next question was: "What would happen if you had two or three such children in your class?" The answer was that there is no way for any teacher, no matter how skilled, to handle three children in a class of 30 who are 'not ready', without shortchanging the rest of the class. I then asked: "Out of the 30 students in your class in September, how many of them in fact were 'not ready'?" The answer was given to me by four different teachers. The lowest estimate was 6, the highest 15. All four teachers said individually, and together in a group, that they know they are shortchanging all of the children in the class because such a large percentage of the children they are trying to teach are "not ready".

We've always known that for children who are far behind when they are three years old, the likelihood of their making it in school is not great. What we have not focused on are the difficulties which they inflict on all of their classmates, many of whom have been brought up reasonably well by their parents and are ready for school.

In Chicago only 18,000 students graduated in 1983 out of 40,000 freshmen who had entered the high school system four years earlier. And, only 6,000 of the 18,000 seniors could read at the national 12th grade average. 6,000 out of 40,000 who entered high school! That is startling confirmation of the systematic shortchanging of a group of students from the time they are in kindergarten.

We have a lot of work to do to try to stop the cycle of poverty and to reduce hopelessness, poor education, poor health, joblessness, welfare dependency, crime, developmental disabilities, schools that don't work and can't work, and higher and higher taxes. Prevention has to be our emphasis. And preparing our poor children to succeed with their education is the only way that they will ever succeed.

MORE FODDER FOR DEBATE ON FARM POLICY

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. BEREUTER. Mr. Speaker, this Member invites the attention of colleagues to the following article by Mr. Ross Korves in the October 20, 1986 edition of the Farm Bureau News which discusses the "Save the Family Farm Act," introduced by the junior Senator Mr. HARKIN, and the gentleman from Missouri [Mr. GEPHARDT]. Whether or not one can yet decide if the arguments launched by Mr. Korves are all well taken, they certainly do constitute the kind of stimulating criticism that must be addressed if similar legislation is introduced during the 100th Congress.

THE SAVE THE FAMILY FARM BILL WOULD DO OTHERWISE

(By Ross Korves)

Efforts to scuttle the 1985 farm bill have begun even before many of the new law's provisions have had a chance to work.

The most notable example of new farm program legislation has been offered by Sen. Tom Harkin (D-Iowa), which he calls the "Save the Family Farm Act." More appropriately, it should be renamed the "Sink the Family Farm Act."

The bill is full of ambiguities and tricky promises designed to win political allies and farmer support with false claims that prices far above the market price levels and rising annually over a 10-year period could be sustained with sliding scale acreage reduction requirements. The set-aside requirements would be based on farm size, with larger farms retiring a higher percentage of land from production but no farm, according to the bill, would have to idle more than 35 percent of its base acreage.

This percentage set-aside would not sustain the prices established in the bill and the sponsors know it. They chose to start with 71 percent of parity for their price levels, which (based on August 1986) would be 88 cents per pound for cotton, $13.70 per hundredweight for rice, $4.75 per bushel for wheat, $3.46 for corn and $8.45 for soybeans. With acreage cutbacks limited to 35 percent at those prices, stocks would remain high, as they did in the 1950s and '60s.

More realistically, guaranteed prices at those levels would necessitate cutting back cotton acreage by 60 percent, wheat and rice by 50 percent each, and soybeans by 40 percent. The 35 percent cutback may suffice in corn, provided that all producers not just the larger ones, reduced production by 35 percent.

These cutbacks would have to be increased in subsequent years and would spread to other crops as price guarantees increased 1 percent per year for 10 years. U.S. commodities would become too expensive for any consideration in world markets thus restricting U.S. production to the domestic market and some amount of heavily subsidized exports.

The claims that farm income could be improved and government payments reduced fade quickly when one faces the realities of huge production cutbacks, the massive increases in export subsidies needed to maintain any degree of competition for U.S. commodities in world markets, and the army of government bureaucrats that would be required to enforce the acreage retirement provisions and to conduct the numerous referenda farmers would vote in to continue the programs.

Individual producers of each commodity would vote in separate referenda, at four-year intervals, whether to continue the quota programs. Besides the expense, there would be much confusion if programs were maintained for some commodities and allowed to revert to previous programs in others. Farmers also would be switching resources from production of program crops to non-program crops in those cases causing further chaos.

The dependency on acreage allotments and marketing quotas would attain a certain value for each different commodity and would eventually be amortized into land values. The right to produce certain crops would obtain a value of its own. Entry into the production of each individual crop, and even into the business of farming would be restricted. In effect, the right to farm would be rationed by the government.

Farm income comes from production, times price per unit, less cost of production. The so-called "Save the Family Farm Act," which ignores all of those factors except price per unit, would fail to produce prom-

ised increases in farm income. Not only that, but businesses that supply farmers' production input needs would face proportional cutbacks. Many of them would be driven out of business at a cost of many jobs and a devastating loss of income to rural communities.

The bill is equally wrong-headed when it comes to exports. It requires the secretary of agriculture to invoke Section 22 of the Agriculture Adjustment Act to prevent imports from interfering with domestic price support programs. This would require an army of border guards to close our shores to the imports that would pour in because of high U.S. prices.

Proponents of the Harkin bill claim it would save money by eliminating the farm income protection features of the present farm bill, such as acreage diversion and deficiency payments. They overlook the fact that the funds would not be saved but merely shifted to consumer subsidies such as school lunch, food stamps and other government food programs.

One of the trickiest frauds the bill would perpetrate would hit livestock producers. Grains produced outside the program, or in excess of that for which a producer has marketing certificates, must either be used on the farm of the producer, stored and sold in subsequent years, or donated or sold at half-price to the government disaster storage program.

Livestock producers who owned enough land to produce in excess of their marketing certificates would have an advantage over others who had to buy feed at the inflated prices produced by the bill. On the other hand, livestock producers faced with potentially high feed costs are offered an opportunity to buy grain from existing government stocks for an 18-month period beginning 30 days after enactment of the bill. The benefits would be targeted to "family-size" farms or ranches and would be limited to $50,000 per producer. This obvious fire sale is designed to overcome the objections of livestock producers, but this would only work as long as excess government supplies are available.

Those who want to "save the family farm" should look elsewhere. The Harkin bill would create far more problems than it would solve.

CONGRESSIONAL TRIBUTE TO SACRAMENTO UNION COLUMNIST KIRT MacBRIDE—"MR. SACRAMENTO"

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. MATSUI. Mr. Speaker, I would like to extend my heartfelt condolences to the family and friends of Sacramento's most revered newspaper columnist, Kirt MacBride, who passed away last Monday while he was on his way to work.

Kirt will be greatly missed by all Sacramentans. For many, the day could not begin without Kirt's column, which brimmed with his Irish charm. Known to many as "Mr. Sacramento," Kirt began his journalism career in 1927 at the Sacramento Union as a sports writer after graduating from Sacramento High School. He moved on to the San Francisco Examiner and then ran for a seat in the California assembly, but he eventually returned home to Sacramento. In 1961, Kirt began writing his daily column which chronicled the heartbeat of Sacramento for over a quarter of a century.

Kirt will be long remembered by his colleagues. Herb Caen, the renowned San Francisco Chronicle columnist, said, "Kirt was like a father to me," and "he was one of the last of the great old-timers."

Sacramento Union Editor Bruce Winters said of Kirt, "He was the quintessential nice guy. We all feel a loss—a deep personal loss—and distress."

Honors were bestowed on Kirt by many organizations for his service to our community. He was commended by the Sons in Retirement, the American Heart Association, AMVETS, the Los Rios Foundation, the Capitol City Trial Lawyers, the Sacramento County Board of Supervisors, United Cerebral Palsy, Lions International, and many other groups. Our community has certainly lost one of its greatest citizens.

Mr. Speaker, I ask my colleagues to join me in remembering Kirt MacBride as a fine journalist, a community leader, and as an outstanding humanitarian who will be greatly missed by all of Sacramento.

TRIBUTE TO MARK SILJANDER

HON. WILLIAM W. COBEY, JR.

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. COBEY. Mr. Speaker, I rise to acknowledge the departure of a dear colleague, and a special friend, MARK SILJANDER, the gentleman from Michigan.

I sincerely hope that his departure from this Congress is only temporary for he is too valuable an asset to the legislative process of our country. His knowledge and command of the issues is extraordinary, and covers a wide range. As a leader of tax reform MARK's work is one of the main reasons we were able to pass a major tax reform bill. His leadership in the area of foreign affairs is one of the reasons the United States is starting to effectively confront the expansion of communism in our world, and to stand up with a clear effective voice on human rights violations.

MARK deeply cares. He cares about fair taxes, and economic growth that gives integrity to Government and good jobs to Americans. He cares about oppressed people everywhere. He cares about abused children. And, he cares for the innocent unborn.

MARK is a courageous man, a man of deep convictions, a man who loves people, and a man who loves his God and country.

I don't think MARK has ever met a stranger. This characteristic enabled him to develop meaningful friendships with not only his colleagues in the House, but also with the doormen, police, employees in the dining room, and so forth. It's amazing to observe how many people have their spirits lifted by his presence.

Once a week a group of Members including MARK have met for Bible study and prayer. During the 99th Congress the number of Members participating has increased largely due to MARK'S efforts. He has reached out with love and concern to his fellow Members.

Perhaps one of MARK'S finest hours will be the day and days following his defeat in the primary election this year. Although he was disappointed, he exhibited no bitterness, anger or malice toward anyone including his opponent. Rather his attitude reflected an inner strength, a special peace, joy and faith in what's ahead of him. His reaction to defeat will have an enduring influence on all of us.

We will miss MARK very much—his sense of humor, his enthusiasm and his zest for life. He's a special person with many great things to contribute to his fellow man and our country. One of his great contributions is the years he has served in this House. I'm looking forward to seeing even greater contributions in the future.

FAREWELL TO JOHN S. DOYLE

HON. ARLAN STANGELAND

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. STANGELAND. Mr. Speaker, as the work of this Congress draws to a close, I feel I must take a moment to pay special tribute to a person who I consider to be one of the finest individuals on Capitol Hill that I have had the pleasure to be associated with.

He has served the Committee on Public Works and Transportation and indeed all of the Members of this House with extraordinary intelligence, limitless energy, and unbounding good judgment. That person is the minority counsel for the Water Resources Subcommittee of the Committee on Public Works and Transportation—John Doyle.

I know that almost all of the minority Members of this body and indeed many of the majority members, have come to rely on Johns understanding and wisdom with respect to the entire Federal Water Resources Program. I know of no one in the Congress or in the Government with as much of a grasp of the legal and policy issues affecting the water resources programs of the Environmental Protection Agency and the Army Corp of Engineers.

John is leaving the Congress after 8 remarkable years to help run the Corps of Engineers' program as the Deputy Assistant Secretary of the Army for Civil Works. I know that he will bring the same dedication and commitment to this new job that he has displayed so often here on Capitol Hill.

It is fitting that John leaves on a note of remarkable triumph. Last night, the House and Senate, by overwhelming margins, both approved the first comprehensive water resources bill in over a decade. Earlier this week, the House and the Senate unanimously passed a major reauthorization bill for the Clean Water Program. This was perhaps the first time ever that a major environmental statute passed by unanimous vote in both Chambers. Also, yesterday the President signed the Superfund Amendments and Reauthorization

Act of 1986, the third major piece of legislation in this Congress which bears John's undeniable mark. I know that the success which we have been able to achieve on these three bills is due to a remarkable extent to John's persistence and unquestioned ability.

Finally, I cannot conclude without expressing my heartfelt personal thanks not only for John's help on the difficult legislative issues we have faced together but, above all, for his friendship. Through his hard work, he has earned all of our respect. Through his good cheer, he has earned our affection. He will be missed greatly not only by me but by the Congress of the United States.

CONGRESSIONAL SALUTE TO CALIFORNIA MIDDLE SCHOOL

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. MATSUI. Mr. Speaker, on October 28, 1986, the California Middle School of Sacramento will hold a special celebration to honor the Statue of Liberty, one of the most important symbols of our country's heritage and freedom, on her 100th birthday.

Lady Liberty symbolizes the freedom and opportunity this great land provides for all of its citizens. The United States, as has been said so many times before, is truly a melting pot into which peoples and their cultures have been poured for centuries since the first Americans walked across the Bering Strait land bridge and sailed the high seas to reach this great land. But the peoples and the cultures in that pot do not really melt; they retain their shape and substance as they live together in peace and harmony, with a spirit of understanding, compassion, and tolerance unmatched by any other country, past or present. I am proud that the California Middle School recognizes the importance of keeping the spirit of our Lady of Liberty alive by remembering her on the centennial of her birth.

The Statue of Liberty stands today, strong as ever, at the gates to the New World, with her arms open to all who share the dream of living together in peace. For those who have made the journey, the dream has come true.

The California Middle School educates many students for whom English is a second language, and this celebration reinforces the notion that we are a nation of immigrants from all parts of the globe. A United States flag, flown over the Capitol on October 28 as well as flags from Great Britain, Spain, Mexico, and Russia will be donated to the school to be displayed in the school's library, symbolizing the different peoples which resides in our country.

Mr. Speaker, I would like to extend my best wishes to the teachers and students of California Middle School on the occasion of the Statue of Liberty's 100th birthday, along with my hopes that their celebration is exciting and memorable.

TRIBUTE TO THE LATE RICHARD W. YARBOROUGH

HON. HENRY B. GONZALEZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. GONZALEZ. Mr. Speaker, it is a great honor and privilege that I bring to the attention of you and my colleagues a special tribute to the late Richard W. Yarborough, a brilliant attorney from my home State of Texas, who distinguished himself during his lifetime as Chairman of the Foreign Claims Settlement Commission, member of the Indian Claims Commission, U.S. Senate legislative draftsman and counsel, Army intelligence officer, and as a husband, father, son, dedicated servant of the people, and outstanding American.

Richard Yarborough was born to Opal and Ralph W. Yarborough on October 21, 1931, in Austin where he was educated in the public schools, and then received both his bachelor of arts—anthropology—and law degrees from the University of Texas in 1953 and 1955, respectively. At the university he was a member of Kappa Alpha, Phi Delta Phi Honorary Fraternity, and comment editor of the Law Review.

Immediately upon graduation from law school he served 2 years with the U.S. Army. He did his basic military training at forts in the Northwest, was trained in military intelligence at Fort Holabird, MD, and then spent most of his service in Germany.

On March 17, 1956, Army Intelligence Corpsman Yarborough and Ann Graham McJimsey of Arlington, VA, were married, and to them were born two daughters, Claire McJimsey and Elizabeth Warren, and, one son, Jefferson Buchanan.

Upon his return to Austin from military service, he practiced law in 1957 and 1958, and then moved to Washington to work as legislative assistant and committee counsel to his father, U.S. Senator Ralph W. Yarborough, from 1958 to 1967, serving as his father's right-hand man on all his important legislation, and setting a standard of work and ideals which illustrated how valuable professional staff members are to the success of the Congress.

As Attorney Creekmore Fath, said in a memorial service in Austin following Richard Yarborough's death in Arlington on March 5 of this year:

It was Dick who did the legal draftsmanship of the great bills which his father introduced and guided into law in the Congress. The laws creating the Padre Island National Seashore, the Big Thicket Preserve, Guadalupe Mountains National Park, the G.I. Bill—which educated so many underprivileged folks—were all products of Dick Yarborough's legal brilliance and Ralph Yarborough's political know-how.

Charles Johnston, former Yarborough staff attorney and Veterans' Administration counsel, said:

Richard developed into a top quality Legislative attorney. He knew the legislative process well. He could not only frame a legislative proposal to accomplish a given purpose, but he could give you a pretty good idea of what problems you would encounter and where. He spent many hours helping his father fashion the most far-reaching and beneficial programs in the history of the people of the United States—education, health, veterans.

President Lyndon B. Johnson appointed Richard Yarborough in 1967 to the Indian Claims Commission where his 11 years of service proved to be the most fulfilling work of his life.

Harry E. Webb of Arlington, general counsel of the Indian Claims Commission during all the years Dick served on it, said in memorial remarks:

Richard Yarborough brought to the Indian Claims Commission an excellent legal mind, a background in anthropology and an abiding love for the work of the Commission to which he was unalterably committed. He was among those few fortunate individuals who having found their special niche in life and recognizing their good fortune, do their utmost to make recompense through dedicated service. The more intricate, unique, and legally demanding a question, the more he enjoyed the challenge. He delighted in arguing his positions and was seldom proven wrong. His opinions reflected his legal ability in their clear and concise language. His demeanor on the bench was dignified, helpful, and friendly. He was offended at times by inadequate preparation and dilatory tactics of counsel, but always maintained a calm dignity as he tried to get the facts of the case clearly reflected in the record. In short, he represented an extraordinary union between a man, his profession and its application to the work he loved.

Mr. Webb also related:

Richard had conceived the idea for a map showing the areas of land determined by the Commission and the U.S. Courts to have belonged to the various tribes during times of tribal ascendancy and up through the time of the creation of the reservations and which were ceded to the government. In attempting to make the map as authentic as possible, he insisted that all modern symbols be removed from the map. It took a bit of doing, but he finally got the clean map and the task was completed just before the Commission closed. The map was a great success and Richard was extremely and properly proud of the work.

Robert Weinburg and his wife, Wendy, were close neighbors of Dick and Ann Yarborough in Arlington. In a moving tribute to Dick, Bob Weinburg, a member of the Edward Bennett Williams Law Firm, included the following remarks:

I never appeared before him as a judge. I knew nothing about the field in which he was an expert—Indian law. But we used to talk about the law together. And just from talking to him I could tell that he had a fine legal mind and a tremendous grasp of Indian law. He knew not just the legal rules, but he knew and loved the history, which was even more important, for it gave the legal rules reality. And Dick had the other attribute which great lawyers have: along with legal knowledge, he had a dedication to principle. He believed in the principle of doing justice.

Mr. Weinburg continued:

Most lawyers are privileged in their careers to help achieve justice for a relatively few people. But Dick achieved justice for

tens of thousands. For tens of thousands of some of the most deprived among us, our first citizens, American Indians. Because of Dick's scholarship and his dedication to principle, tens of thousands of Indian Americans received a measure of justice that they had never known in the years that our society deprived them of their rights.

When the Indian Claims Commission was disbanded, President Jimmy Carter in 1978 appointed Richard Yarborough as Chairman of the Foreign Claims Settlement Commission, which makes recommendations to the State Department on the recovery of private claims against foreign governments, where he served until 1981.

Totally he served the U.S. Government with honor and distinction for 25 years.

Richard Yarborough was no ordinary man or public servant. Despite many long years of painful and debilitating arthritis, complications from which eventually took his life, Dick Yarborough was always warm, quick-witted, and a stabilizing factor with family, friends, and acquaintances.

Washington businessman and former staff assistant to Senator Yarborough, Charles "Chuck" Caldwell, said:

Most folks of my acquaintance find it difficult to, figuratively, think beyond the fifth move on a chess board. Dick could often see ahead to the 15th, the 20th, or even the 25th move. In Richard Yarborough I'll remember that rare and valuable trait above all others. Progressive of mind and spirit, as was his family tradition, he nevertheless brought a needed talent for caution and solid critical analysis to everything he did. In Senator Yarborough's office, filled as it was with an activist Senator and a like-minded staff, Dick was, therefore the stabilizer—the factor that, hopefully, kept us all from going off half-cocked. He filled this needed role at considerable personal sacrifice. For as a first-class student and an honors graduate of U.T. Law School, he didn't really need a staff position in the U.S. Senate or in the government—rather, it, they, we, and the Senator, needed him.

Alex Dickie, Jr., former 20-year State Department AID official and former administrative assistant to Senator Yarborough, said of his long-time, close friend Dick:

When the Senator's phones were ringing off the wall, consitutents were in every chair, bells ringing a vote on the Senate floor, the Senator was seeking details on the measure to be voted and we were all in a state of confusion, Dick kept his cool and saved the situation by clearly stating the essential facts on the questions to be voted. He had an amazingly clear, organized legal mind that few could match. * * * He was uncomplaining with a dry clever sense of humor that carried him through to the end.

Dick's cousin, Houston attorney Victor Driscoll, related:

To Ann, Claire, Elizabeth, and Jefferson, Richard was the hub around which their life revolved he was the central point of reference for an enduring family unit. At the same time he prepared them for life on their own by instilling in them his own strong sense of resourcefulness and independence. These are some of the many things that will live in our memories of Richard. But perhaps one that will occupy a special place within all of us is best described of their dad by Claire and Elizabeth: "We will always remember his special twinkle."

At the Arlington memorial service, Vic Driscoll, who was then serving as administrative assistant to our distinguished colleague, MICHAEL ANDREWS, also told this delightful story about his cousin as a very young boy:

Richard and his mother, Opal, were very close. Once during the war Opal and young Richard drove across country to visit Ralph, who was stationed at San Luis Obispo, California at the time. On that drive Richard took it upon himself to protect his mother by putting on his father's army jacket and cap. Then by sitting high up on two or three pillows he provided a visible military escort for his mother.

Richard Yarborough was an extraordinary man in every sense of the word, but as a public servant probably his greatest contributions were through the opinions he wrote on issues concerning Indian rights, and the creation in 1978 of the first map ever printed depicting Indian land areas established by U.S. courts.

His service is being remembered through the establishment of the Richard W. Yarborough Native American Indian Scholarship at the University of Texas School of Law Foundation at Austin.

The dean of the School of Law at Southern Illinois University, Rennard Strickland, who is in charge of the Gilcrese Collection at Carbondale, recently wrote in a letter:

I am sure the scholarship will make a significant contribution to the education of American Indian lawyers, but Richard's greatest contribution, and one which will live so long as the rule of law lives in America is his work on the Claims Commission in righting the wrongs of generations of abuses. This American achievement was a significant part of that achievement.

In summation of this tribute to the life of Richard Yarborough, I quote the concluding memorial remarks of Robert Weinburg in respect to his good friend and neighbor:

As a man and a lawyer, Dick Yarborough lived the prophetic ideal. His life fulfilled the injunction of the prophet: "to do justice, to love mercy, and to walk humbly before God." All of us, through knowing Dick, have been privileged to, in a small way, walk with him, to walk behind him in his life. And, as he continues on his journey, we all wish him Godspeed.

TRIBUTE TO THOMAS P. "TIP" O'NEILL—MR. SPEAKER

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. BIAGGI. Mr. Speaker, as we write the final chapters of the 99th Congress, there is still one major contribution that must be made. It is important that each of the Members in their own way take time to pay tribute to our leader from this Congress and the four previous Congresses—the esteemed Speaker of the House, THOMAS P. "TIP" O'NEILL.

"TIP" decided earlier this year to retire at the end of this Congress. It was an entirely personal decision on his part. Yet its impact will be felt by millions of people including, but not limited to, the people of the Eighth Congressional District in Massachusetts. These good people have had TIP O'NEILL looking out for their interests—fighting for their rights—for the past 34 years.

So much will be remembered about TIP O'NEILL, but one historical statistic stands above all others. TIP O'NEILL holds the record for the longest continuous service as Speaker of the House, a full 10 years. This is a remarkable achievement from a personal as well as an institutional standpoint. It is perhaps the most fitting testimonial to TIP O'NEILL's effectiveness as our leader.

Many words and praises have been directed at our beloved Speaker by those of us who have served under him. TIP O'NEILL has been my Speaker for more than half of the years that I have served in this House. TIP O'NEILL has always been a firm but fair Speaker. That is not in dispute nor has it ever been. Yet TIP O'NEILL did far more as Speaker. He raised the stature of the office and in doing so raised the stature of the entire House of Representatives. TIP saw it as his responsibility to agree with Presidents as well as to disagree. When he agreed, he often displayed his inherent statesmanlike nature. When he would disagree it would be on principle, philosophy, and merit. It was not necessary to agree with TIP O'NEILL to capture the essence of the man—that being his commitment to his principles and values.

TIP O'NEILL really has had a political career spanning 50 years. At the age of 23 he was elected to the Massachusetts Legislature. He became its youngest speaker at the age of 37. The 4 years he served in that capacity gave him great training for the job he would later assume in the House.

TIP O'NEILL is a proud native son of Cambridge, MA. He was the son of Thomas P. and Rose Ann O'Neill. He was a graduate of St. John's High School and Boston College. He was an insurance executive before entering politics.

TIP came to the House in 1952 as all students of history now know, he succeeded John F. Kennedy. He rose through the House ranks at a steady if not spectacular pace. He was majority whip in the 92d Congress, majority leader in the 93d and 94th Congress and then Speaker until the end of the 99th Congress. As our colleague and TIP's lifelong friend ED BOLAND said, "His 10 years as Speaker have defined that office certainly for the rest of the decade."

Each one of us who has served under TIP have our own reflections—our own memories of the great man. I have more than a few. Let me cite just a couple.

I together with millions of New Yorkers will always remember TIP O'NEILL for the support he gave for the legislation passed by the House to rescue the city from certain fiscal bankruptcy in 1978. TIP from the outset recognized the grave fiscal crisis that the city was in. He worked diligently to make sure that the legislation got swift and certain action by the House. His commitment to New York was indicative of his deep understanding of the problems of the different regions of this Nation. TIP O'NEILL saw to it that the prob-

lems of New York City were addressed—but he also recognized the needs of the farmer from Iowa, the steelworker from Youngstown, the oil people from Texas and Louisiana, and the high-technology worker from California. If their industry had a problem and a legislative remedy could help—TIP O'NEILL was there and helped.

My second reflection on TIP relates to our mutual efforts on behalf of peace and justice in Northern Ireland. For the past 9 years I have served as chairman of an organization known as the Ad Hoc Congressional Committee for Irish Affairs. In that capacity, I have taken on a number of positions relative to this issue. Some have been controversial. Some have even found me in disagreement with the Speaker. Yet TIP never sought to interfere with my work on this subject. Perhaps it was because he realized that we have the same goal in mind—a return of peace to those troubled six counties in northeast Ireland.

One of my proudest moments in Congress came earlier this year when I followed the Speaker as a witness before the House Foreign Affairs Committee as that panel began its consideration of a historic first time economic aid package for Northern Ireland and Ireland. It was a moment in history on the Irish question. Shortly after that time, Congress gave its final approval to the aid package. In my judgment, this is the most constructive action the U.S. Government has taken to this point on the entire Irish issue. The Speaker's role in this legislation was essential and should be remembered by all involved in this issue.

My last but perhaps fondest TIP O'NEILL story relates to an event which occurred only several months ago. On that occasion a rainy Saturday in early June, the Speaker came to New York and was the guest speaker at my annual luncheon. He was his usual gracious self, regaling the crowd with stories and in his own way bringing some sunshine to an otherwise rainy day. The fact that the Speaker would take time from his schedule to come to New York for this Member of the House is a real reflection on the good and decent and caring man that TIP O'NEILL has always been to his colleagues.

TIP O'NEILL, prominent national leader, strong institutional figure in the House, those are the elements that the Nation and world know about TIP O'NEILL. However, for those of us who have served with TIP and have been his friends, we know there is so much more than makes up the man. We know the TIP O'NEILL who always had time for a hello or a story, or a pat on the back. We know the TIP O'NEILL who always remembered birthdays and other important personal events. That is because TIP viewed the House as a type of extended family. These were not 435 Republicans and Democrats only—this is an institution of human beings, men and women with families. TIP always knew that and it was so evident in his work.

We know the TIP O'NEILL whose devotion as a husband is without parallel. He and his beloved Millie celebrated their 45th wedding anniversary this year. Theirs is a marriage based on genuine love, admiration, and respect. They are partners in the truest sense of the word. They are also proud parents of five wonderful and successful children, Rosemary, Thomas 3d, Susan, Christopher, and Michael Tolan. They are a close and loving family and our loss is clearly their gain.

The New York Times in an editorial on October 19 simply referred to TIP O'NEILL as the "Top Democrat." They acknowledged so much of what makes TIP the great man that he is and has been, they cite his being the Democrat's "national spokesman, doggedly pressing his fractured party's concerns for the underdog." They close with an especially apt observation "above all, he has fought honorably to preserve the caring role of government, to help people who can't help themselves, casting shame on those who would abandon them."

TIP O'NEILL leaves this House but his legacy of service commitment and dedication will endure for years to come and well it should. TIP was an inspiration for many of the Members; any good future Member will aspire to succeed as TIP did.

Mark Twain once wrote, "In Boston they ask—How much does he know? In New York—How much is he worth?" As a New Yorker, I know as do people from all corners of the United States, that our friend the gentleman from Cambridge, MA, knows very much, cares very much, and therefore, is worth so much to New York and the Nation.

I wish to also conclude my statement with the traditional Irish blessing for TIP and with that comes my most fervent wish for a happy and rewarding future and a sincere thanks for being the great friend, leader, and Speaker that TIP O'NEILL has been.

May the road rise to meet you
May the wind always be at your back
May the sun shine warm upon your face
The rains fall soft upon your tables
Until we meet again
May God hold you in the palm of His hand.

I am submitting the full text of the New York Times editorial paying tribute to the Speaker, also a recent editorial from Irish Echo.

THE TOP DEMOCRAT

Thomas P. O'Neill Jr., master politician, is headed home. As the clock finally runs out on the 99th Congress, the Speaker of the House closes out a career that began with the 83d. Tip O'Neill has been more than Speaker; in the Reagan years, he has been the Democrats' national spokesman, doggedly pressing his fractured party's concerns for the underdog. Equally important, he has been in the forefront of the effort to (small-d) democratize the House. Both efforts crown a half-century of public service with distinction.

Mr. O'Neill was born to partisan politics. His father, a bricklayer, sat on the Cambridge, Mass., City Council and picketed Harvard for hiring non-union construction workers. The son mowed the lawns of Harvard Yard for pocket money, savoring the contrast last month when he spoke as an honored guest at the university's 350th anniversary.

Elected to the Massachusetts legislature in 1936 at age 23, he became its youngest Speaker at 37. He succeeded to John F. Kennedy's seat in the U.S. House of Representatives in 1952, and was quickly steered to the leadership ladder by Representative John McCormack of Boston, later Speaker himself.

In the 1960's, Mr. O'Neill was one of the first in Congress to break with his President and longtime colleague, Lyndon Johnson, on Vietnam. In the 1970's he bravely broke with the House establishment on the sensitive issue of personal power, taking a lead in reforms that stripped committee chairmen of their autarchic grip on legislation. Having thus given individual members more say, and the leadership more headaches, he was elected Speaker in 1977 and proceeded to introduce more reforms—an ethics code, outside income limits and television coverage of House proceedings.

When Republicans took the White House and the Senate in 1980, Mr. O'Neill was suddenly the nation's ranking Democrat, chief defender against the new crowd's assault on "big government." Partisan Reaganites were delighted to have him as a stereotypical foil—the bulky old Boston Irish pol who rumbled on cue against their polished and popular President. He still rumbles, but the Republicans are no longer delighted. Mixing sincerity with some good P.R., he has become a formidable foe on stage as well as in the House.

Mr. O'Neill's defenses were devastated at first, when Southern "boll weevil" Democrats joined Republicans to form majorities for President Reagan's defense buildup, tax reduction and cuts in social programs. When the Democrats gained seats in 1982, Mr. O'Neill was able to resist better; but still, as he has observed, "In any other country, the Democrats would be five parties."

Though the Speaker's office carries imposing institutional authority, Mr. O'Neill added personal strength. Up against a strong President, he has adapted to reality and forged unity in moderate opposition. Above all, he has fought honorably to preserve the caring role of Government, to help people who can't help themselves, casting shame on any who would abandon them.

END OF AN ERA

When Thomas P. O'Neill Jr. first took his seat in the House of Representatives, Dwight D. Eisenhower was President of the United States.

Now 34 years later he leaves as Speaker of the House—probably the second most powerful office in the United States. His has been a remarkable career.

Tip O'Neill became one of the most significant political figures in the latter part of the 20th century. His political ability became a thing of constant surprise to friends and foes alike.

Often this newspaper disagreed with his views concerning the continuing travail in Northern Ireland. While his heart was always in the right place, he made the mistake of listening too closely to the views of the governments in Dublin and London.

But this is not the time to talk of that. Tip O'Neill was—and is—one of America's great men. As he ends his congressional career we salute him.

No matter whether you share his political view or not, he served our nation with the highest distinction. As Speaker of the House, O'Neill stood for everything that makes America a special nation.

HOUSE JOINT RESOLUTION 626, THE COMPACT OF FREE ASSOCIATION WITH PALAU (BELAU)

HON. MORRIS K. UDALL
OF ARIZONA
IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. UDALL. Mr. Speaker, the resolution before us, House Joint Resolution 626, would conditionally approve a Compact of Free Association with the Republic of Palau—Belau. It would also supplement Public Law 99-239, which gave approval to similar compacts with the Federated States of Micronesia [FSM] and the Republic of the Marshall Islands—Marshalls.

The three entities in the western Pacific Ocean are parts of the Trust Territory of the Pacific Islands which has been under the jurisdiction of the United States since 1947 when the United Nations established it as a strategic trusteeship following World War II. In acts of self-determination, the people of these island areas have chosen to become independent nations freely associated with the United States thereby permitting the trusteeship to be terminated.

This compact with Belau would provide financial and other assistance to Belau for a period of 15 years while the United States would receive exclusive military rights for 50 years.

As was the case with the FSM and the Marshalls, the effective date of this legislation is contingent upon conditions being met by the executive branch of the U.S. Government and the Government of Belau. Unlike the case of the FSM and the Marshalls, however, final approval of the compact with Belau will also require the enactment of the further legislation by Congress.

The enactment of such legislation will only occur when a fundamental conflict between some provisions of the Belau Constitution and the provisions of the compact are resolved. This conflict has defied several attempts at solution over half a dozen years. I believe that it would be helpful at this point to discuss some history related to this longstanding conflict.

NUCLEAR-FREE ZONE

At issue are the provisions of Belau's Constitution which make the islands and their surrounding waters a "nuclear free zone" and the provisions of the compact which would provide the United States with rights to have nuclear vessels, aircraft, and weapons pass through and stop in Belau. As the appellate division of the Supreme Court of Belau finally concluded in September, as long as the provisions at issue remain unchanged, they are in conflict with one another, unless Belau votes by a 75-percent majority to, in essence, reconcile them.

A vote to approve the compact fell almost 3-percent short of the requisite percentage in February of this year. Thus, the conflict must still be resolved.

Until the Belau Supreme Court finally issued its ruling, the Government of Belau had certified to the U.S. Government that the compact had been properly approved by Belau. The ruling brought to a conclusion the latest in a series of failed efforts to resolve the impasse through plebiscites, and amendments to the compact and the Belau Constitution.

CONSTITUTIONAL CONVENTION

These efforts began even before the compact and the Belau Constitution were completed when United States compact negotiators in 1979 urged Belau's Constitutional Convention not to draft a nuclear-free charter. The convention did draft such a charter anyway and the document was adopted by a 92-percent approval vote.

Because of concern about the impact of the nuclear-free provisions of the compact negotiations, Belau's Government subsequently repealed the enabling legislation for the convention, effectively voiding the constitution. A new commission was established to reconcile the invalidated constitution and the proposed compact.

The new commission revised the constitution to accommodate U.S. nuclear use objectives in Belau. This constitution received only 31-percent support in a Belau vote on it.

The Belau Government then reinstated the nuclear-control provisions of the first constitution. A third version of the constitution was approved by a majority vote of 78-percent vote in favor in 1980.

In spite of the constitution that was finally adopted, a compact permitting U.S. nuclear use was signed in 1982. It received a majority vote of 62 percent in 1983, 13-percent short of the percentage required to override the nuclear ban in the constitution. The Belau Supreme Court later ruled the referendum results invalid because of the failure to obtain 75-percent approval.

REVISED COMPACTS OF 1985 AND 1986 AND COURT ACTION

A revised compact was signed in 1985. The 66-percent vote that it received in favor of the compact in a plebiscite that year also fell short of the required 75 percent.

A further modified compact, the one we are considering now, was signed in 1986. It limited U.S. nuclear use rights to transiting rights versus storage rights. Certain elements of the executive branch of the United States and the Belau Government contended that this modified compact did not violate the Belau Constitution and, consequently, did not require a 75-percent vote to be approved under Belau law.

The modified compact received a majority vote of 72 percent last February. The United States and Belau administrations contended that this vote was an adequate basis for the United States to approve the compact. The Belau judicial branch ruled in September, however, that the compact had not been properly approved because 75 percent of the voters had not approved it.

With this history in mind, the question arises as to whether the Congress should approve a compact with islands that have not agreed to certain compact terms the U.S. administration considers essential, when the compact itself may have to be changed.

CONGRESSIONAL ACTION

There are several reasons why, with all factors considered, the Congress should approve this legislation now. First of all, this legislation would confer only preliminary approval of the compact, with final approval by the Congress to come when the conflict between the compact and Belau's Constitution is resolved.

Further, there is no compelling reason why completion of the approval process of the other party seeking to enter into a free association relationship with the United States should be a precondition to completion of the U.S. approval process. Although we should certainly consider Belau's situation, our judgment should be made on the basis of what we believe is in the best interest of the United States and the best interests of the people of Belau for whom we have a trust responsibility.

This approach leaves the people of Belau in the advantageous position of being able to see what is being offered and then either accepting or rejecting the compact as approved by Congress. If they do not accept it, they have the opportunity to try to work out further changes acceptable to the U.S. executive branch and the Congress.

Secretary of State Shultz urgently requested action before the end of September. The House honored the Secretary's request and passed the compact on September 29. It has been the plan of the Reagan administration, as I understand it, to begin actual termination of the agreement with the United Nations under which the United States has responsibility for the administration of Belau, the FSM, the Marshalls, and the Northern Mariana Islands—which the Congress approved to be a United States Commonwealth a decade ago—very soon.

I am sure that the Secretary of State and the President will take all steps necessary to properly deal with the United Nations regarding formal termination of the trusteeship.

CONDITIONS ON APPROVAL

Because of the conflict between the compact and Belau Constitution, two conditions on approval have been included. The first condition withholds authorization for the President to agree to an effective date for the compact until he can certify that the conflict which would prevent the United States from exercising its nuclear transit objectives in Belau has been resolved. It also makes the effectiveness of the compact contingent upon completion of further bilateral agreements. The second condition requires the enactment of further legislation to make the compact effective.

Additionally, several provisions have been included in this legislation to provide Belau specific assurances and clarifications in light of and out of respect for the recent court ruling.

Paragraph (1) of subsection 104(h) of House Joint Resolution 626 clarifies that the United States will seek minimum necessary land use rights necessary for defense needs. Under this provision, the United States acknowledges the scarcity and cultural importance of land in Belau and agrees to satisfy—where possible—its requirements through use of land already in the public domain in Belau. This provision constitutes a commitment in addition to those in the compact to reduce any burden of United States military land use on Belau.

It also makes it clear that the United States understands that Belau will fulfill its obligation to provide property to the United States for

military purposes by means consistent with its constitution. The Belau court has indicated that the Belau Government is limited to lease, purchase, or other use rights obtained through means other than condemnation in obtaining property for such a purpose because the Belau Constitution prohibits the exercise of eminent domain for the benefit of a foreign nation.

Paragraph (2) clarifies that third country armed forces invited into Belau by the United States will conduct themselves in accordance with the limits of United States authority in Belau. Thus, they will be bound by whatever prohibitions against nuclear use that may apply to the United States under a constitutionally approved compact.

Paragraph (3) clarifies that U.S. activity in "exclusive use" areas available to the United States, as defined in a subsidiary agreement to the compact, are not exempt from restrictions agreed to by the United States. Thus, designation of certain areas as exclusive for U.S. military activities under a subsidiary agreement to the compact would not enable them to be used in unconstitutional nuclear ways.

In the House passed House Joint Resolution 626, an additional provision was included which would have made clear that the United States would not be able to exercise military authorities not agreed to in a constitutionally approved compact or a compact without constitutional approval. This provision was intended to recognize that the compact can only come into effect when constitutionally approved in Belau as well, of course, in the United States.

This provision was not included in the Senate amendment to the House bill. We have accepted its deletion based on an understanding with Senate sponsors and administration officials—who did not oppose the provision—that the policy that the provision would have clarified is already U.S. policy: The United States will not use the compact to undertake unclear activities prohibited by Belau's Constitution unless a constitutionally approved compact in Belau permits them.

This should make absolutely clear that the United States will respect Belau's Constitution. For the United States to have any nuclear rights under a compact with Belau, the compact must be constitutional or constitutionally approved.

COMPACTS WITH THE FSM AND THE MARSHALLS

As I indicated at the outset of this statement, House Joint Resolution 626 also takes necessary followup action to the enacted resolution which approved the Compact of Free Association with the FSM and the Marshalls. One of these makes it clear that the United States reaffirms its interpretation of Public Law 99-239 and rejects any efforts to diminish the effect of provisions of the compact with the FSM and the Marshalls as it was enacted. This is necessary because certain understandings, interpretations, and policy statements contained in the FSM and Marshalls own resolutions approving the compact could be misinterpreted to be reservations on the approval of the compact which we have been told was not the intent.

The statements of these governments in approving the compact as it and the accompanying legislation were passed by Congress raise questions as to whether an agreement has been reached between the FSM and the Marshalls and the United States. Possible concerns about this matter were raised in a paper prepared by Daniel Zafren of the American Law Division of the Congressional Research Service and are part of the official files of this committee on the compact's development.

In this same connection, I ask that a letter from Ambassador Fred Zeder, of the Office for Micronesian Status Negotiations characterizing the effect of the resolutions of the FSM and the Marshalls as not constituting reservations be included in the RECORD at the conclusion of my statement.

A further concern with respect to Public Law 99-239 was whether the additional bilateral agreements with the FSM and the Marshalls met the requirements of the law and should be approved. It is my judgment that while they have not strictly adhered to the spirit of the resolution which approved the earlier compact because they do not include the details Congress intended to have included, they have not violated the statutory requirements concerned.

There are a few other issues which should be noted. One is addressed in this legislation.

It concerns the enormous debt Belau incurred to finance a powerplant which is not in use. The apparent encouragement of Belau by United States officials shared with overseeing the administration of the islands or negotiating the compact was ill-advised.

Belau now has a substantial debt which it apparently cannot meet for unused power facilities which may be beyond its needs. We do not intend that the assistance we are providing the people of Belau under the compact can be used to satisfy this obligation. The legislation includes a provision to prevent compact monies being used for other than compact purposes.

In conclusion, I would like to commend the work on this legislation of several of our colleagues. DANTE FASCELL, STEVE SOLARZ, DON YOUNG, BOB LAGOMARSINO, and JIM LEACH have played key roles in making its approval possible.

I would like to extend special thanks to our colleague JOHN SEIBERLING, who chairs the Subcommittee on Public Lands of the Interior and Insular Affairs Committee. He has guided the development of the compacts with Belau, the FSM and the Marshalls. The gentleman from Ohio has spent an enormous amount of time, and effort, and creativity to see to it that fair and just compacts were developed. We are all indebted to him for this outstanding and historic accomplishment.

I would also like to recognize the assistance of the staff of the Committee on Int...or and Insular Affairs who have done such an outstanding job on the compact legislation. In particular, thanks are due those who have worked behind the scenes and have not been as visible in the legislative process as some of our other staff mentioned when the compact passed the House several weeks ago. These staff members, Gail Mukaihata, Marie Howard, Joan Jaseph, and Linda Stevens, deserve great credit for their fine help and assistance over the past 2 years. Former staff member Tom Dunmire also deserves to share with us the successful passage of these compacts.

We are bringing to close the trusteeship period for Micronesia in the history of the United States. We are beginning a period in which independent nations become freely associated with the United States. This Nation's role will be different, of course, than it was during the trusteeship, but our responsibilities will remain substantial as each of our nations strive to make these new relationships as beneficial as possible for all concerned.

I urge the passage of House Joint Resolution 626.

The letter from Ambassador Zeder:

THE PRESIDENT'S PERSONAL REPRESENTATIVE FOR MICRONESIAN STATUS NEGOTIATIONS,
Washington, DC, September 24, 1986.

Subject: Legal effect of Micronesian enactments ratifying Compact of Free Association, as modified by United States Public Law 99-239.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Subsequent to enactment of Public Law 99-239, the Governments of the Federated States of Micronesia (FSM) and the Marshall Islands accepted the Compact, as modified by the provisions of P.L. 99-239. This was accomplished, in part, through domestic legislative enactments. *See* FSM Congressional Res. No. 4-60, adopted March 26, 1986, and Marshall Islands Nitijela Res. No. 62, adopted February 18, 1986. We understand that your staff is considering the question of whether any of the unilateral policy statements contained in those resolutions possibly condition the acceptance of the Compact by those governments in a manner unacceptable to our government.

We reviewed the Micronesian resolutions when enacted, and it is our view that none of the provisions of those enactments exclude or modify the legal effect of the Compact as approved by P.L. 99-239. Thus, the United States does not recognize the statements of policy and principle contained in the Micronesian resolutions as having a legal import which should render ineffective the acceptance by the governments concerned of the Compact as enacted by P.L. 99-239.

I hope this explantion of the Administration's views is useful to the Committee.

Sincerely,

FRED M. ZEDER II,
Ambassador.

THE HONORABLE THOMAS P. O'NEILL, JR.

HON. WILLIAM H. NATCHER

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. NATCHER. Mr. Speaker, one of the nicest things that has happened to me during my lifetime is the opportunity I have had to serve in the Congress with my friend THOMAS P. O'NEILL, JR.

During my tenure in Congress, I have served with almost 2,000 Members in the House and Senate and none more dedicated

than our Speaker, TIP O'NEILL. He has served as Speaker of the House of Representatives for a period of 10 years and this is the all-time record for continuous service. During the 20th century, no Speaker of the House was confronted with more serious problems than our friend, THOMAS P. O'NEILL.

He has served with eight Presidents. TIP O'NEILL was a giant at the center of national power, but at all times he has remained a modest man. He is a good man who served his country well. He has always remained a man's man and he has kept the common touch. He is a man who can be compared to the giant sturdy oak that grows on the hillsides in many of our States. He is a great family man and this has been evident all down through the years. He has been a fighter for social justice and at all times an outstanding legislator for the common people he knows so well. His concept of public trust is without parallel and never has he hesitated to speak out against any proposal which he felt was not sound and not in the best interests of our people.

In every position he has held, either private or public, he has achieved distinction. His character, his achievements and his faithful service will be an inspiration to generations yet to come.

TIP O'NEILL has been my friend for many years and I know of his great interest in health and education. These two subjects are in the bill that I am chairman of and each year when our appropriation bill is presented to the House of Representatives, it has received the assistance and the support of our Speaker.

TIP O'NEILL will always stand out in my mind as a person of total humility and exacting honesty. These are two of the qualities which won for him the complete respect and admiration of all of us who have been fortunate enough to have served with him in the Congress. He is one of the great examples of Americanism and his record of achievements and fame is an inevitable one.

Mr. Speaker, I want to wish our friend TIP O'NEILL and the members of his family the best of everything in the future and again, I want you to know that it has been a distinct honor and a privilege for me to serve with him in the Congress of the United States.

GOOD YEAR FOR ARMY RECRUITING

HON. G.V. (SONNY) MONTGOMERY

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. MONTGOMERY. Mr. Speaker, in fiscal year 1986 Army recruiters exceeded their enlistment goals while at the same time recruiting the lowest number of category IV service members in history. Without question this remarkable achievement can be credited in large part to congressional action creating the new GI bill. This new educational assistance program, which became available to new recruits on July 1, 1985, was designed to enhance military recruiting during this time of reduced unemployment and a shrinking number of available young people.

In spite of unfavorable demographics and an abundance of alternative employment opportunities, our Nation's high-quality youth are choosing to serve in the Army. As reported in the Army Times, the Army equaled or exceeded its enlistment objective in every recruiting category. The recruitment goal of the active force was exceeded by 290 recruits and the Army Reserve brought in 2,000 recruits over target.

It is particularly impressive that these numbers were achieved without diluting quality standards. Ninety-one percent of active Army recruits were high school graduates and 90 percent of Reserve recruits have high school diplomas. Numerous studies have demonstrated that educational assistance benefits, such as the new GI bill, attract smart young people to military service. These latest Army statistics are a clear confirmation that this new educational assistance program is the powerful recruitment incentive we knew it would be. I commend the following Army Times article regarding Army recruiting to my colleagues.

The article follows:

RECRUITERS EXCEED QUALITY, QUANTITY GOALS IN FISCAL '86

(By Larry Carney)

WASHINGTON.—Army recruiters exceeded their objective in fiscal 1986 on all fronts and enlisted the lowest number of Category IV soldiers in history, personnel officials said.

They said 1986 "was such a good year" that the Army finished with a slight overstrength of 780,980 soldiers. The Army had a fiscal 1986 strength authorization of 780,800 soldiers.

Lt. Col. John E. Cullen, chief of public affairs for Recruiting Command, said the Army equaled or exceeded its enlistment objective in every recruiting category. The 135,540 soldiers who enlisted in the active Army in fiscal 1986 exceeded the objective by 290 recruits; the 68,965 who enlisted in the Army Reserve exceeded the goal by nearly 2,000 Reservists, he said.

In addition to exceeding numerical goals, Cullen said the active Army and Reserve also did "exceedingly well" in recruiting high school diploma graduates and recruits with scores in the upper 50 percent of the Armed Forces Qualification Test.

Of the 135,400 recruits who enlisted in the active Army in fiscal 1986, Cullen said 91 percent were high school graduates, the same percentage as fiscal 1985, while only 3.7 percent were Category IVs. This is the lowest Category IV percentage in history. Eight percent of fiscal 1985's enlistments were Cat IVs, the lowest mental classification accepted by the Army. Soldiers are classified as Cat IVs when they score below 31 on the Armed Forces Qualification Test.

Of the 68,965 Reservists recruited by Recruiting Command in fiscal 1986, Cullen said 90 percent were high school graduates, while only 10 percent were Cat IVs.

"We've come a long way since fiscal 1980 in improving quality" Cullen said. He noted that 57 percent of the recruits who joined the active Army and 48 percent of those who enlisted in the Army Reserve in fiscal 1980 were Cat IVs.

"When you work in a quality market, you get quality recruits. Recruiters don't go chasing recruits on the playground. They spend their time in the halls of our nation's high schools and colleges. Recruiters are in the business to recruit quality," Cullen said.

Of the 780,980 people in the Army on Sept. 30, 666,668 were enlisted soldiers, 109,757 were officers and warrant officers, and 4,555 were cadets attending the U.S. Military Academy at West Point, N.Y.

TRIBUTE TO TOM KINDNESS

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 7, 1986

Mr. BIAGGI. Mr. Speaker, I wish to pay tribute to one of this body's more effective and well liked Members, TOM KINDNESS, who is retiring at the end of the 99th Congress.

Since 1974, TOM KINDNESS has been an important voice and force in the House of Representatives. The people of the 8th District covering Butler County in Ohio have been ably represented by TOM KINDNESS. He came to the House after a career in Ohio politics which included 4 years on the Hamilton City Council, 2 years as mayor and 4 years in the Ohio house.

TOM served with great effectiveness on the House Judiciary Committee. He is respected by his colleagues for his intellect and great capacity to learn issues. He has played important roles in a number of key bills that have emerged from this distinguished committee over the years. He also serves as a ranking member of the Government Operations Committee.

As a person, TOM KINDNESS is a friendly and caring individual. He may be the only resident banjo player in all of the House. I have heard him, and he is excellent.

TOM KINDNESS like others in the House is in pursuit of higher elective office, running for a seat in the other body. TOM KINDNESS has worked hard during his 12 years in the House and has been a success. I have little doubt that success and good fortune will be with TOM wherever he goes and whatever he does in the future.

COMMITMENT TO SPANISH LANGUAGE MEDIA

HON. ALAN WHEAT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. WHEAT. Mr. Speaker, in mid-July, U.S. District Court Judge Mariana Pfaelzer approved the sale of the Spanish International Communications Corp. [SICC] to Hallmark Cards, Inc., and First Chicago Venture Capital. SICC, a privately-held corporation, owns and operates the largest group of Spanish-language format television stations in the United States. Full power, UHF television stations are located in New York [WXTV], Los Angeles [KMEX-TV], Miami [WLTV], San Antonio [KWEX-TV] and Fresno [KFTV]. The metropolitan areas of Denver, CO; Philadelphia, PA; Austin, TX; Hartford, CT; and Bakersfield, CA, are served by low power television stations. Hallmark's president and chief executive officer, Irvine O. Hockaday, has stated publicly

Hallmark's commitment to continuing SICC's Spanish-language format and the highest quality of programming for the Hispanic community.

Mr. Hockaday, in a letter to Mr. Raul Yzaguirre, president of the National Council of La Raza, reiterated Hallmark's commitment to Spanish-language television.

We have a long-term belief in the importance of Spanish language programming. This conviction relates to both international and national news coverage as well as coverage of local community events and public affairs. We will be alert to ways to enhance the quality of programming, including news, directed at the U.S. Hispanic community.

Mr. Hockaday closed his letter to President Yzaguirre of La Raza by stating:

Hallmark will work with the Hispanic leadership to assure that these stations effectively serve the needs of the Hispanic communities; such service is a paramount objective.

Some questions relating to the sale process raised by other parties can best be addressed by the most recent order signed by Judge Pfaelzer on October 9. The Judge wrote that, based on the record before the court, there was no disputed issue of material fact relating to the sales process or the disposition of SICC and futher "the sales process was fairly and reasonably conducted." Judge Pfaelzer further wrote that the selection on July 18, 1986, of the proposal to acquire SICC by the Hallmark group was fair and reasonable and that no basis had been shown for contesting that selection.

Additionally, I would like to note that on Friday, October 3, the Federal Communications Commission Review Board also recommended that the full Commission approve the license renewals and permit transfer of the SICC stations.

Hallmark Cards, Inc., is a community and national leader in America. This transaction provides the opportunity for a substantially stronger and more meaningful Spanish television network and, thus, will clearly serve the Hispanic community, as well as the overall public interest.

The text of Judge Pfaelzer's order follows:

On October 6, 1986, the following motions and application came on for hearing before the Court: (1) The motion by TVL Corporation ("TVL") under Federal Rule of Civil Procedure 24 for leave to intervene in this action; (2) The motion by Hallmark Cards, Incorporated and First Capital Corporation of Chicago (collectively, "the Hallmark Group") for affirmation of the Court's July 18, 1986 Order ("the July 18 Order") approving the sale of Spanish International Communications Corporation ("SICC") to the Hallmark Group, or, in the alternative, for conditional intervention in this action; and (3) The application by defendants for affirmation of the July 18 Order.

In connection with the foregoing motions and application, the defendants, Special Counsel for SICC, TVL, and the Hallmark Group have submitted comprehensive memoranda of points and authorities, 36 declarations from participants in the sales process for the disposition of SICC, and other materials concerning the sales process and related proceedings pending before the Federal Communications Commission ("FCC"). In addition, extensive oral argument was presented at the October 6 hearing. After carefully reviewing and considering the written submissions and the additional argument at the hearing, and after consideration of all proceedings had in this action, and being fully advised, the Court finds and concludes as follows:

1. The sale of SICC was conducted pursuant to a private settlement agreement in order to resolve this lengthy stockholders' derivative action and pending FCC proceedings relating to SICC. SICC and its stockholders were not obligated to sell SICC to any particular prospective purchaser.

2. Under the terms of the settlement agreement among the parties to this action and other signatory stockholders, SICC was to be sold to a party selected by a Sales Committee appointed by holders of 94% of SICC's stock upon such terms and conditions as the Sales Committee might establish. In the event that the Sales Committee failed to agree unanimously upon a buyer for SICC, the settlement agreement provided that the Court would select the buyer.

3. Pursuant to the sales process established by the Sales Committee in accordance with the settlement agreement, TVL and the Hallmark Group, among others, submitted offers to acquire SICC on various terms and conditions. The Sales Committee failed to reach unanimous agreement selecting any one offer, and the matter therefore was referred to the Court for decision on July 18, 1986. After having been fully informed by the Sales Committee and financial advisers, the Court selected by its July 18 Order the proposal of the Hallmark Group for the acquisition of SICC, subject to the delivery of a fairness opinion by the Sales Committee's financial advisers, Bear Stearns & Co., Inc. ("Bear Stearns"), and to the negotiation of an acquisition agreement satisfactory to the Sales Committee.

4. In making its July 18 Order, the Court concluded that the Hallmark Group's proposal should be accepted for several reasons, including:

A. The Hallmark Group had (and has) a net worth more than sufficient to consummate its offer, whether or not it chooses to obtain any financing, whereas TVL was a newly-formed corporation having no substantial assets and had not received firm commitments for the financing on which it was required to rely in connection with its offer to purchase SICC.

B. The offer of the Hallmark Group provided unlimited liability for breach backed by the net worth of the Hallmark Group, which substantially exceeded the proposed purchase price, whereas TVL's offer provided no guarantee of performance by or recourse for breach against a financially responsible party (other than the proposed agreement of Citicorp to sign the TVL acquisition agreement if its liability were limited to $15 million in liquidated damages).

C. By its terms, the Hallmark Group's offer was to expire as of the end of the day on July 18, 1986 and the Court, therefore, could have no assurance that the Hallmark Group offer (or any other offer) would be available in the event that the uncertainties in TVL's offer could not be remedied. In that connection, the Court was aware that in May 1986, a financially responsible offeror had made an offer for SICC higher than that of TVL or the Hallmark Group; that the principal SICC stockholders instead chose to pursue the sales process in the hope of obtaining an even higher offer; and that that offeror thereafter did not make an offer in the sales process. The Court therefore did not deem it appropriate or desirable to subject the SICC stockholders and the settlement of this action to continued uncertainty or to expose the stockholders to the risk of having no buyer and being forced to return again to the marketplace.

5. In accordance with the July 18 Order, a definitive acquisition agreement satisfactory to the Sales Committee was executed by SICC and the Hallmark Group, after delivery of the Bear Stearns fairness opinion, on July 19, 1986.

6. TVL filed an application for leave to intervene in this action on August 12, 1986 for the purpose of filing a complaint seeking an order vacating the proposed sale of SICC to the Hallmark Group and requiring SICC to be sold to TVL.

7. TVL's only interest in this proceeding is that of one of several unsuccessful offerors for SICC and, as such, TVL has no legally protectable interest in acquiring SICC and no stake or other interest in this stockholders' derivative action. Accordingly, TVL may not intervene in this action of right under Federal Rule of Civil Procedure 24(a).

8. Intervention by TVL at this late stage of the proceedings, after settlement of this lengthy and complex derivative action, would not further the interests of justice, would disrupt the orderly resolution of the action, would be adverse to the interests of SICC's stockholders, and would be contrary to the public interest in the settlement of disputes, both in the courts and before the FCC. Accordingly, TVL should not be permitted to intervene in this action under Federal Rule of Civil Procedure 24(b). Moreover, TVL has offered no independent jurisdictional basis for intervention under Rule 24(b).

9. Based on the record before the Court, there is no disputed issue of material fact relating to the sales process for the disposition of SICC. The sales process was fairly and reasonably conducted. The sales process was not biased or tainted so as to prejudice TVL's participation in the process, to hinder TVL's ability to acquire SICC, or to favor unfairly the Hallmark Group. TVL's claims that the sales process was unfair or biased are without legal merit or factual basis.

10. The selection on July 18, 1986, of the proposal to acquire SICC by the Hallmark Group was fair and reasonable. No basis has been shown for contesting that selection. Even if the Court were to accept TVL's allegations as true, the Court still would affirm the July 18 Order for the reasons set forth in paragraph 4 above.

In accordance with the foregoing, the Court ORDERS as follows:

The application by TVL for leave to intervene in this action and the motion by the Hallmark Group for conditional intervention are denied. Although this court has denied intervention under Rule 24, it has reviewed the declarations and other submissions of TVL and the Hallmark Group and has permitted them to be heard on the merits of TVL's claims and on defendants' application to affirm the July 18 Order, to the extent deemed necessary to assure the Court that its July 18 Order was well-founded. Having done so, the Court, for the reasons set forth above, affirms its July 18 Order in all respects. Court has reviewed TVL's proposed order and has concluded that this order accurately reflects the Court's conclusions.

A TRIBUTE TO GENE CHAPPIE

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. LEWIS of California. Mr. Speaker, as a neophyte in the California Assembly in 1969 I could not have had a better mentor. It was my good fortune to draw EUGENE A. CHAPPIE—better known as GINO—as my first seat mate. There was no finer person to show this greenhorn the ropes. He was chairman of the rules committee and trusted advisor to the Republican speaker, Robert Monagan. As controller of the purse strings he was the most powerful member in the assembly next to the speaker himself.

Sitting next to GINO provided the beginning point for lesson after lesson in the art of politics and public affairs. Almost by osmosis I began to absorb and endless flow of lessons that have served me well over the many years we have worked together in government.

"Your word is your bond, son. In politics, if you don't got that you ain't got nothin." "Nothin's more important than loyalty, Jerry. If a man understands that and keeps his word, who needs a bank?" Endless in words of wisdom was GINO.

"Too few guys understand humor. Most importantly, you have got to laugh at yourself—if you spend all your time taking yourself too seriously you're not going to get too much work done and probably have an ulcer to boot, son."

Affectionately, he often referred to me as son and to Arlene as daughter. Imagine my staff scurrying to find me when his gruff voice would demand to know where his son was and have me "picked up off of the floor." Behind that sometimes rough exterior is the most sensitive and caring friend I've had. He was never too busy to stop and help those who might be down and out, while remaining tough and demanding that they give it their best. I know GINO would go to the ends of the Earth when asked by a friend.

Loving, caring, and warm are all the qualities that characterize one of mankind's finest. GINO, the House will never be the same again. You may think you are escaping us, but you have not seen the last of A and me yet. We love you.

WHY THE NATIONAL GOVERNMENT NEEDS A CFO

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. CRANE. Mr. Speaker, most investors would not invest in a major corporation if it lacked a Chief Financial Officer. The CFO is an individual responsible for insuring that the finances of his corporation are in order. Investors know that firm's which have a poor CFO often suffer from financial mismanagement. Yet we require all taxpayers to send their hard earned money, in the form of taxes, to the largest entity in the country and it does not even have a CFO. Is it any wonder, therefore, that the finances of the National Government are in shambles?

In response, Congressman DIOGUARDI, Republican, New York, has introduced H.R. 4495, the Federal Financial Management Improvement Act. This measure calls for the National Government to appoint a Chief Financial Officer to coordinate all national financial management activities. Charles Bowsher, the Comptroller General, also argues that a CFO is needed.

This is a measure deserving of attention. It would create accountability, making one person and one division responsible for insuring that the finances of the National Government are in order. A CFO could start implementing sound business practices used in the private sector. He could coordinate all Federal financial management activities by consolidating them within a single organization.

Most importantly, a CFO could help wean the National Government from the cash basis of accounting. A CFO, recruited from the private sector, would be accustomed to using the most sophisticated accounting methods available to business. The cash basis accounting system, used widely in the National Government, provides an inaccurate financial picture by failing to record such items as accounts receivable and long term costs. He could address this shortcoming by requiring all entities of the National Government to use Generally Accepted Accounting Procedures [GAAP]. GAAP is a sophisticated method of accounting used by large corporations which gives a much more accurate picture of the finances of the National Government. Using GAAP, for instance, the national deficit was actually $148.1 billion higher in 1984 than reported. Only by using an accounting method which provides accurate information can the National Government make sound policy decisions.

I will be introducing legislation, the "Truth in Government Accounting Act of 1986" shortly. This bill will require that the U.S. Government prepare and make public annual consolidated financial statements utilizing the accrual method of accounting. My bill and Congressman DIOGUARDI's measure can be seen as companion bills which will force the National Government to implement professional financial and accounting procedures.

I strongly recommend my colleagues read the following article, "Congressman DioGuardi: The U.S. Government Needs a Chief Financial Officer." It describes the intent of the bill and explains why a Chief Financial Officer of the National Government would benefit us all.

CONGRESSMAN DIOGUARDI: THE U.S. GOVERNMENT NEEDS A CHIEF FINANCIAL OFFICER

(By Kathy Williams)

Will the United States government ever be run like a business—subject to proper accounting systems and procedures, a capital budget, audited financial statements, fiscal responsibility, adequate record keeping, good controls? Congressman Joseph J. DioGuardi (R-N.Y.), a former partner with Arthur Andersen & Co. and one of only four certified public accountants in Congress, is doing his best to make it happen.

Last March the freshman representative from New Rochelle in Westchester County introduced in the House of Representatives Bill H.R. 4495, the Federal Financial Management Improvement Act, calling for a chief financial officer for the federal government. Operating in much the same manner as a controller or CFO of a corporation, the federal CFO would coordinate all federal financial management activities by consolidating them within a single organization. At present these activities are scattered across several areas; the Office of Management and Budget (OMB), Office of Personnel Management (OPM), and the Treasury in the executive branch; the various executive branch agencies; and the General Accounting Office (GAO) in the legislative branch.

"None of these entities has clearcut responsibility for oversight and direction of the federal government's financial management operations and activities," Mr. DioGuardi notes. "In addition, financial management responsibilities have frequently been shifted from one central agency to another, and in each central agency, financial management functions must compete with a number of other assigned responsibilities for their fair share of attention. There is a missing link in the federal government. The linchpin of financial discipline is nowhere to be found. The financial management leadership void must be filled."

Mr. DioGuardi became determined to try to change the government's accounting systems after hearing "horror story after horror story regarding the lack of established businesslike financial management practices" during his first year on the Government Operations Committee and attending hearings on the deficit and government waste. The businessman of 22 years was appalled by the reactive attitude and actions of Congress, "robbing Peter to pay Paul, putting out fires every day, staying one step ahead of the sheriff—that's our budgetary process."

"I thought I was going to Congress to get on the Board of Directors of Government," he exclaims. "Accountability is key to a Board of Directors, but I found we didn't have reliable financial information upon which to make decisions and report back to the public, our shareholders." He also discovered that the U.S. government operates on "a Mickey Mouse, cash basis of accounting and has no strategic planning whatsoever. The government is trained to think only a year ahead. It ask what we spent instead of how we spent it. It builds the home from the fifth floor down instead of the ground floor up. We have conditioned people in government to spend, not save," he admonishes.

He felt the time was right to introduce his legislation because of the current emphasis on reducing the federal deficit and curbing waste. A CFO could pull together previous attempts a coordinating government financial management practices. For example, the GAO for years has been reporting that "Our departments and agencies are a veritable jungle of special purpose, incompatible, antiquated accounting systems producing unreliable, incompatible, and often irrelevant financial information. One of the latest GAO studies, moreover, reports that the federal government now uses 427 separate accounting systems, of which 53% do not conform to GAO accounting principles, standards, and related requirements," the congressman says.

The now-famous Grace Commission declared its "War on Waste" after uncovering in the government an estimated $424 billion

of mismanagement and projecting a $1.96 trillion national deficit by the year 2000. J. Peter Grace, head of the Commission and chairman of W.R. Grace & Co., is, in fact, spending his own money to bring this message before the public via television commercials and print ads. The Citizens Against Government Waste, co-chaired by Mr. Grace and columnist Jack Anderson, is a nonprofit, bipartisan foundation formed to educate the public and Congress about the Grace Commission recommendations. The Grace Caucus, of which Mr. DioGuardi is an avid member, is a group of about 150 senators and representatives proselytizing to "not let the Grace Commission recommendations sit on the shelf."

Other predecessors to Bill H.R. 4495 include the Inspector General Act of 1978; the Federal Managers' Financial Integrity Act of 1982; Debt Collection Act of 1982; President Reagan's Council on Integrity and Efficiency; the President's Council on Management Improvement; a proposal by the Association of Government Accountants to strengthen controllership in the federal government; and various attempts by executive branch departments and agencies to reform their systems. These efforts aren't new—over the past 30-35 years, various systems and controls experts have developed coordinated accounting systems for the military and for other governmental operations, only to have them squelched right before actual implementation or implemented only partially. Even William E. Simon, former secretary of the treasury, 1974-77, tried to institute similar procedures in the Treasury function before he left office, but to no avail, and after he left, the matter dropped. Now Congressman Joe DioGuardi has picked up the gauntlet.

SETTING UP THE ORGANIZATION

The management structure Mr. DioGuardi envisions encompasses the CFO, who would serve in the executive office of the President; an assistant secretary for financial management in each executive department; and a comptroller in each executive agency. All would be appointed by the President, with the advice and consent of the Senate. The CFO would serve a 10-year nonreappointable term, and the assistant secretaries and controllers would serve a four-year, reappointable term. A Federal Finance Council, consisting of the CFO and the assistant secretaries for financial management, also would be established to assist the CFO in formulating plans and objectives, comment on proposed major changes in financial management operations, and prepare recommendations on selected issues.

In general, the federal CFO would provide leadership and direction while monitoring executive agencies in their financial management and reporting activities. He would develop and maintain a five-year strategic plan that would cover "system enhancements, staffing needs, technology improvements, required legislative actions, financial management objectives, information requirements, and budget priorities," Mr. DioGuardi explains. The CFO also would create financial statements for the government, which would be subjected to audits, as well as maintain the government's central accounting and reporting records. He also would ensure that personnel were managing the financial operations properly—even down to the details of making sure cash and checks were deposited as soon as they came in, something that doesn't happen now. "He needs tentacles going into each governmental agency and operation if this thing is to work. Otherwise, he's going to be on Cloud Nine, talking about accounting principles and not knowing what's happening in the trenches," Mr. DioGuardi exclaims.

A natural candidate for the position, he muses, would be "someone from a major company—like ITT, Texaco, IBM—where you have to literally pull together all kinds of pieces of financial information from various divisions and industries and even holding companies. You need someone who has been in the trenches gathering information, managing the financial function—a CFO from the private sector, whether he or she is certified or not."

IS A CFO NECESSARY?

When criticized by other congressmen for concentrating too much on numbers and not enough on compassion, he instantly fires back that he is just as concerned as the next person about humanity, and cites other bills he has introduced—those on drug abuse, child abuse, suicide legislation, and homeless housing assistance. "I'm making qualitative judgments. I know there's a deficit problem, but I'm willing to increase some programs and decrease others based on how they are managed and what their needs are. Cutting right across the board to reduce the deficit is nonsense," he explodes. "We've got to exercise every bit of compassion to identify social needs, programs we need, and allocate resources. Once we allocate those resources, however, we must *manage* that program the way we'd manage any business. Let's make sure we hold people responsible. If they don't do their job, out! If they do their job, give them a bonus."

He reiterates his accounting background and speculates that if more members of Congress were attuned to business, they would better understand long-term ramifications of their decisions. "We've counted 245 attorneys and only four accountants in Congress—at a time when we are trying to balance the books in government, dealing with budget issues, tax issues, economic issues. More than half of what we do relates to analysis, either quantitative or qualitative, that almost requires an accounting or business background . . . budget systems don't tie in with accounting systems. We have a budgetary system, an appropriation system, and continuing resolutions and supplementary budgets. I'm a CPA, and you can't imagine how difficult it is for me to follow what's going on. How other legislators are making these multi-billion dollar decisions, don't ask me. Then waste—waste isn't one big thing. Waste is thousands of small things. It's structural, it's systemic, and it must be approached from the point of view of systems and planning—a CFO's point of view. That's why I have to make this issue my crusade."

Joe DioGuardi isn't alone in his efforts to install a CFO in the federal government. "The idea first began to be proposed seriously in the early part of 1980 by leaders in financial management in both the public and private sectors," he notes. "Roland W. Burris, the comptroller of the state of Illinois, and Joseph E. Connor, chairman of Price Waterhouse & Co., have both assumed a key role in promoting the need for a CFO." Various other individuals, nonprofit organizations, and private-sector groups are continuing this effort.

The General Accounting Office, charged with setting uniform accounting standards and principles for all federal agencies, is the government's independent auditor and a strong proponent for financial management reform. Comptroller General Charles A. Bowsher, head of the GAO, says, "We need better financial reporting at the federal level. It's the key to the whole issue. We have the auditor (the GAO) and we need a strong CFO function in the government—a scorekeeper for the executive branch. OMB is in charge of the budget, and the CFO would keep score of how the budgeted money is spent, so the two would work closely."

In a letter to a member of the Senate Governmental Affairs Committee, the counterpart to the House Governmental Operations Committee, Mr. Bowsher noted that "financial management in the federal government is a major problem facing us today. Poor systems, information inadequacies, and weak controls have frequently resulted in wasteful spending, inefficient management and losses totaling billions of dollars." He added, ". . . . current financial reporting practices of the federal government do not disclose the actual cost of operations; do not disclose the financial condition of the federal government; do not disclose the current and probably future costs of investment or policy decisions; do not permit effective comparison of actual costs or accomplishments to budget plans; and do not provide the timely information required for efficient management of programs. . . . . there is no official with clearly defined authority and responsibility for assuring the effective and efficient operation of the federal government's accounting and other financial management systems. Clearly the original concept of tieing management improvement to the budget just hasn't worked; the time has come to find a more workable solution to these problems. I believe the establishment of an independent Chief Financial Officer is a major element of such an approach."

A COMPANION BILL

In addition, Senator William V. Roth, Jr., (R-Del.), this spring introduced in the Senate a bill that would be a companion effort to Mr. DioGuardi's bill. Covering the same issue—financial management—it expands that scope to include credit management and debt collection, the federal credit system, subsidies, collection procedures, and controls. "We view financial management as one very important function of information management," Bob Gilmour, a spokesman from Mr. Roth's office, said. Because Mr. DioGuardi's bill "splinters out financial management," they consider it weaker than Mr. Roth's bill, he added.

The Roth bill would set up the director of OMB, rather than a separate individual, as the CFO, and the CFO would serve "at the pleasure of the President, with the advice and consent of the Senate." Mr. Roth's bill has had a few Senate hearings already, in May, and was marked up from committee in late June. If it passes the Senate, the House probably would take a look at it, Mr. Gilmour said.

Each group is confident its bill, or a modified version, will be passed, albeit when. It is doubtful, they predict, that legislation will be passed before Congress ends its term in early October, but not impossible. They could be back in session after the elections this November.

Mr. DioGuardi would like Mr. Roth to cosponsor his bill, but Mr. Roth hasn't agreed. Nevertheless, the DioGuardi contingent isn't upset about a divergent effort. "Having the counterpart chairman propose legislation that to the untrained eye looks a great

deal like ours is a very positive development," notes Kieran Mahoney, legislative director in Mr. DioGuardi's Washington office. "If the Senate moves on it, it will force the House to move. We're hopeful the House will take a closer look at the legislation we've put together. Whether it gets passed in the 99th session is an open question, but it is an idea whose time has come."

A YOUNG TURK

How did someone with Joe DioGuardi's conservative numbers-crunching background happen to land in the House of Representatives and try to accomplish so much in his first term? "It's all part of my strategic plan," he grins. He always had "lurking in the back of my mind," the idea of running for Congress, but probably not until he was in his 50s. At 43, however, he saw an opportunity and grabbed it. As a partner with Arthur Andersen & Co., he concentrated his efforts outside the office—within his community instead of inside the firm. As tax partner with firmwide responsibility in the not-for-profit and public sectors of his firm, he became involved both professionally and as a volunteer in a host of charitable, civic, and cultural organizations, bringing to bear his financial, tax, and accounting background.

He had joined the firm in 1962 but quickly decided auditing wasn't his forte. By 1965 he had switched to taxes, "a marriage made in Heaven," he smiles. As a young partner, he was called in to participate in the firm's work on New York City during its fiscal crisis and then worked on the audit of Yonkers, N.Y. "New York City's books were trucked in on dollies," he sighs, remembering. "People trying to run the City weren't getting the financial information they required, and politicians were setting the accounting standards . . . the crisis in the federal government today is similar to the NYC crisis. We took away New York's cash basis of accounting . . . and now we're using the same system."

He next turned to nonprofit groups, working with the Boy Scouts, Phoenix House, American Cancer Society, YMCA, Fordham University, and the Archdiocese of New York. "I say first-hand how social welfare functions were efficiently managed by quasi-public, quasi-private organizations as good bridges between the private and public sectors. I had this interesting combination of experience looking at what happens professionally when you don't manage well, you don't account well, and looking at how public services are rendered better by nongovernmental agencies."

By 1984, he had been a partner for 12 years when the opportunity to run for Congress came along, "a natural extension of what I tried to do in the community, what I tried to do at Arthur Andersen as a professional—to educate municipalities about how to organize themselves better, how to get a meaningful database, how to account better, how to report better professionally, and how to better render services to the public." A conservative Republican in a liberal Democratic county, he won by a slim margin (4,000 votes) an election he was supposed to lose by 25,000 votes. He's up for reelection this November.

THE STORY OF AMERICA

On occasion he still feels the glow of those first few weeks in Congress, before the hard work started, when his parents and other family members and friends were in Washington "to see Joey get sworn in." An Italian immigrant, his father came through Ellis Island in 1929 at age 15, unable to speak English and looking for work. After two years of shinning shoes and other odd jobs, he bought a vegetable stand in Harlem in 1931, then a grocery store in the South Bronx, where his son was later born and raised. He met Joe's mother, the first in her family to be born in America, on 100th street on the east side of New York. She was making ties in a factory and getting paid by the piece. They met, married, had children and moved to Westchester County in 1957. "It's not the story of the DioGuardi family—it's the story of America," Joe DioGuardi smiles.

Although he enrolled in Fordham University in 1958, "I didn't know what I wanted to be when I grew up. When you come out of an immigrant environment, your main concern is 'am I going to make enough money for my family?" After talking with the father of one of his friends, he decided to try accounting, liked it, majored in it, and decided to use it as a basis for later attending law school. In his senior year, however, after being accepted to law school, "Our dean comes up to me and says, 'Joe, we're starting and internship program, and we'd like you to be one of the four to represent us at a Big 8 accounting firm. We've chosen Arthur Andersen for you. You'll get exemptions from your exams, and you'll get $100 a week. 'I said, 'I'll take it.' The next thing I know I'm on a plane to Sylvania Electric Products in Camillas, N.Y., on an audit. I really got to see the inside of accounting. It caused me to delay my plans to go to law school, thinking I'd go at night, but I never did. I joined Arthur Anderson fulltime instead, and went from an intern to partner in 10 years. I worked hard. I took that grocery store upbringing and literally worked seven days a week. I was very proud when I became a partner." In his late 20s he married Carol Asselta. They have two children: Kara, 15, and John, 12.

Now he's charging through Congress in hopes of instituting what he considers necessary reform. He served as a trustee of the Citizens Public Expenditure Survey Foundation, a taxpayer watchdog group, and started the Commonsense Educational Fund, a group formed to educate the public about accountability issues and to help them understand why the legislative process in not responding to the challenge of planning. His main concerns at present are pushing the CFO legislation through and getting reelected. What if he doesn't get reelected and has to revise his strategic plan? "We'll see," he philosophizes. "Legislators *talk* about things, and I'm a *doer*. One of my biggest frustrations is that I want to take many of these ideas on accounting reform and make them work almost immediately. They say, 'hey, that's not your job.' I want to try to make it may job, if not as a congressman, then as a citizen through the foundation. We'll just have to see where it goes."

TRIBUTE TO GENE SNYDER

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. BIAGGI. Mr. Speaker, I am pleased today to pay tribute to a great colleague and good friend GENE SNYDER who has announced his retirement from the House after more than 20 years of outstanding service to the House and to the Nation.

The people of the Fourth District in Kentucky have been served with great effectiveness by GENE SNYDER through more than half of the 1960's and 1980's and all of the 1970's. Throughout this time he has been a strong and determined fighter for his constituents.

GENE and I have had the occasion to work closely over the years on the House Merchant Marine and Fisheries Committee. Specifically, he serves as the ranking minority member on the Merchant Marine Subcommittee which I am proud to chair. During these past several years we have worked closely together on a host of different issues. I am most proud of our efforts on behalf of the port development provisions in H.R. 6 and the Shipping Act of 1984.

GENE has been the ranking minority member on the House Public Works and Transportation Committee. In that capacity he has played a key role in the many important bills which emerged from this committee during the 99th Congress. GENE is a hard working, committed Member of the House and he has made his presence felt during his years in the House.

I wish GENE success and happiness in whatever future endeavors he may undertake. He has been an effective colleague and good friend and he will be missed.

S. 1744

HON. JAMES H. SCHEUER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. SCHEUER. Mr. Speaker, in addition to my general comments in strong support of S. 1744, the omnibus health bill, I want to include the following legislative history on the partially processed biological product section of the export title of the bill.

Current law permits exportation of biologics in finished dosage form that are licensed under section 351 of the Public Health Service Act for sale in the United States. New section 802 of the Federal Food, Drug, and Cosmetic Act, as added by section 102 of the Drug Export Amendments Act of 1986, permits and regulates export of biologics in finished dosage form that are not yet licensed for sale in the United States. New section 351(h)(1)(A) of the Public Health Service Act, as added by section 105 of the Drug Export Amendments Act of 1986, permits and regulates export of partially processed biological products. Importation of biologics, whether in a partially processed or finished dosage form, is permitted and regulated under the provisions of section 351 of the Public Health Service Act which have existed for many years.

Under new section 351(h)(1)(A), partially processed biological products in forms not suitable for prevention, treatment or cure of diseases or injuries of man may be exported to countries listed under new section 802(b)(4) of the Federal Food, Drug, and Cosmetic Act provided they are not intended for sale in the United States and are intended for further

manufacture outside the United States. Once shipped abroad and further processed, a partially processed biological product may be shipped back into the United States either for still further processing or in finished dosage form under the preexisting provisions of section 351.

The only provisions in the Drug Export Amendments Act of 1986 which apply to partially processed biological products are in section 105. Section 102 of the new act does not apply to partially processed biological products. Moreover, once a partially processed biological product is further manufactured outside the United States into final dosage form, the Drug Export Amendments Act does not apply.

New section 351(h)(1)(A) establishes an approval process that is intended to be simple and expeditious, no more than a few days in duration. Procedurally, an application must be filed with the Secretary containing the following information. First, it must identify the partially processed biological product to be exported. Second, it must list each country to which export is intended. It is envisioned that the applicant will satisfy this requirement by including a sample of the label it proposes to use on the outside of the package in which the partially processed biological product is to be shipped. Thereby, the applicant can demonstrate that the label will contain the following statement: "This product may be sold or offered for sale only in the following countries: ," the blank space being filled with a list of the countries to which permission to export is being sought. Third, it must identify the establishments in which the partially processed biological product is to be manufactured. Fourth, it must include a certification by the applicant that the partially processed biological product will be exported only to countries listed under section 802(b)(4) of the Federal Food, Drug, and Cosmetic Act. Fifth, it must include a certification by the applicant that the final product to be developed from the partially processed biological product may be lawfully sold or tested in the country to which it is to be exported or approval for sale or testing of the final product is being sought in such country. The phrase "approval of the final product is being sought" means that steps necessary to obtain approval are being or have been taken; it does not mean that an application for approval to test or sell must already have been submitted in such country. Congress realizes that some countries require applications for testing or sale to contain data from clinical or preclinical studies conducted within their borders and may impose other procedural requirements prior to the submission of formal applications. No additional information is required in the section 351(h)(1)(A) application.

In reviewing an application for the export of a partially processed biological product, it is intended that the Secretary rely upon the information and certifications supplied by the applicant. In determining whether a partially processed biological product is manufactured, processed, packaged, and held in conformity with current good manufacturing practice, Congress does not intend that the Secretary conduct a new good manufacturing practice inspection whenever a section 351(h)(1)(a) application is submitted. It is sufficient that the Secretary make this determination based upon previous good manufacturing practice inspections of the facilities involved. For example, if the facility failed the most recent FDA inspection for compliance with good manufacturing practices in some aspect that would affect the quality of the particular partially processed biological product, the Secretary should prohibit export until the deficiencies were corrected.

If an application is complete in that it contains the statutorily required information and certifications, then approval by the Secretary is a ministerial act which can and should be performed in a matter of days. The Secretary may prohibit export to a specific country only if one or more of the following situations occurs. First, the section 351(h)(1)(A) application is incomplete. Second, the applicant proposes to export the partially processed biological product, as distinct from the final product developed from it, to a country not on the list contained in section 802(b)(4) of the Federal Food, Drug, and Cosmetic Act. Third, the partially processed biological product is not manufactured, processed, packaged or held in conformity with current good manufacturing practice. Fourth, the Secretary determines that prohibiting export of a particular partially processed biological product to a specific country to which it is to be exported is necessary for the protection of the public health in the United States or the country to which it is to be exported.

In determining whether to prohibit the export of a partially processed biological product for the protection of the importing country, Congress recognizes the enormous difficulty of asking the Secretary to make a decision about the health care system of a foreign nation. For that reason, Congress intends that the Secretary give great deference to the decisions of the health authority of the importing country regarding protection of its population. The Secretary is not required to make a determination that the public health will be enhanced before the application may be approved. In the absence of evidence of harm to the public health, the application must be approved.

HOUSE JOINT RESOLUTION 645

HON. WILLIAM J. HUGHES

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. HUGHES. Mr. Speaker, I rise in strong support of House Joint Resolution 645, which seeks to designate 1988 as the "National Year of Friendship With Finland."

This resolution is intended to promote public awareness of the many contributions which the Finns have made to American history and culture since they first settled in the Delaware Valley area in 1638.

At the same time, the measure will draw additional recognition and support to the upcoming national celebration of the 350th anniversary of the landing of the first Scandinavian settlers in the United States. That celebration, to take place in 1988, will feature many activities and special events around the country, including the planned construction of a replica Swedish village in Salem, NJ.

When we look back at America's history, the pages are filled with contributions made by Finnish-Americans. The Finnish craftmanship in building log cabins was critical to early pioneering efforts. They constructed many of the first churches, mills, homes, and roads in the Delaware Valley.

Today, some 700,000 Americans of Finnish descent live in the United States, and our Government continues to enjoy a close and friendly relationship with the Government of Finland. I am confident that this resolution, as well as the upcoming new Sweden celebration, will strengthen these bonds of friendship even further, and give our Finnish-Americans the recognition they so richly deserve.

H.R. 6—THE WATER RESOURCES DEVELOPMENT ACT OF 1986

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. ROE. Mr. Speaker, on October 17 Congress approved the conference report on H.R. 6, the Water Resources Development Act of 1986. Since the passage of that legislation, a matter has come to my attention which requires clarification. Section 916 of the bill establishes an innovative procedure for repayment of the costs of Corps of Engineers water resources development projects. It permits the Secretary of the Army to enter into a contract for recovery of costs with a Federal project repayment district or other political subdivision of a State. This district is to include lands and improvements which receive identifiable benefits from the project. The legislation requires that such a district have the power to collect a portion of the transfer price from any transaction involving the sale of lands within the district boundaries.

A change in this language regarding the collection of a portion of the transfer price had been agreed to which would have modified the language to refer to authority to recover benefits through any cost recovery approach that is consistent with State law and satisfies applicable cost recovery requirements. The reason for this change was that it was not our intent that non-Federal interests be limited as to cost recovery approaches but could use any such approaches consistent with State law. The local government repayment entity would be the decisionmaker as to the cost recovery mechanism appropriate for that particular community. Unfortunately, in the haste of bringing this bill to the floor at the end of the session this change was not reflected in the legislation which passed. We intend to seek to correct this problem so that it reflects the conferees' true intentions. The language which did pass is in no way to be construed as limiting cost recovery approaches to collection of a portion of a transfer price or as favoring such a mechanism and does not confer upon non-Federal interests any authority which they would not otherwise have under State law. Under the language included in the

legislation, non-Federal interests can use any means of cost recovery available to them under State law which satisfies the cost recovery requirement under section (b) of section 916.

TRIBUTE TO BERKLEY BEDELL

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. BIAGGI. Mr. Speaker, I am privileged to join so many others who have paid their individual tributes to one of the finest Members of this House, our friend and colleague from Iowa BERKLEY BEDELL.

We are going to miss BERKLEY for a host of different reasons. We will miss his intensity, his commitment to issues, his desire to make a difference in the world. BERKLEY BEDELL is a man who possesses so many good qualities, it is fortunate not only for his constituents but for the Nation that he directed these qualities into public service.

In his 12-year House career, BERKLEY made important contributions to a number of key legislative items including the 1981 and the most recent farm bill. In addition he helped make important reforms in the Small Business Administration Disaster Loan Program. Here is a program that is so important yet not everyone would put the time and energy into making it better as BERKLEY BEDELL did.

Yet most of us will remember BERKLEY for his "Toolkit" initiative, which produced the major reforms in the military procurement processes that we enacted in this just completed 99th Congress. Who was the Member who exposed the $7 hammer bought by the Navy for $436? Who was the Member who took the basic repair kit that cost the Pentagon more than $10,000 and purchased the 21 identical items from two local hardware stores for $92? BERKLEY BEDELL started this parade and stayed with it unless the necessary legislation to correct this abuse was, in fact, passed.

BERKLEY BEDELL was a fine legislator and solid constituent service oriented Member of Congress. He was a sincere gentleman, always a delight to be with. I wish him all the best in the future.

HISPANICS SPEAK OUT ON TAX POLICY

HON. GENE CHAPPIE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. CHAPPIE. Mr. Speaker, I would like to bring to the attention of my colleagues a recently published brochure concerning the effects of excise taxes on America's Hispanic community. The brochure includes input from several Hispanic-American groups, including the Nation's largest and oldest Hispanic organization, the League of United Latin American Citizens [LULAC].

LULAC endorsed the publication because excise taxes are of particular interest to Hispanic-American consumers and businesses. I share it with this body as an important addition to the public debate on tax policy.

TAX REFORM AND THE FEDERAL DEFICIT

Hispanic interest groups support congressional efforts to reform the federal tax system and reduce the budget deficit. An equitable tax code and prosperous economy would benefit the average Hispanic, who earns only $14,000 per year. It also would benefit the estimated 570,000 Hispanics currently living at or below the poverty level.

The Hispanic community, however, has and will continue to oppose any efforts to broaden the scope of excise taxes as a means to reform the federal tax system or reduce the budget deficit. Excise taxes are "regressive taxes," falling heavily upon consumers and producers who can least afford them—including a majority of Hispanics and Hispanic-owned small businesses.

Hispanics are philosophically opposed to excise taxes for the following reasons:

Excise taxes are inherently regressive.—They fall heaviest on middle- and low-income families. Taxes should be equitably distributed, that is, geared toward one's ability to pay.

Excise taxes are hidden taxes.—It goes against the entire system of American government to perpetuate secret taxes; yet, that is exactly what excise taxes do. American taxpayers are unaware they are paying excise taxes as they are hidden in the price of goods and services they purchase.

Excise taxes are arbitrary and unfair.—They randomly discriminate against consumers and producers of selected goods and services, creating an unbalanced and unfair marketplace.

Excise taxes constitute bad fiscal policy.—They encourage inefficient use of resources and materials. Monies that could be spent on capital investment or employee wages are spent instead on excise taxes.

Excise taxes are economically unwise and unsound.—They reduce consumer spending power, limit capital investment, slow growth of the economy and encourage unemployment.

Excise taxes hurt people, not corporations.—Corporations pass excise taxes onto consumers in the prices they charge for taxed goods. If sales suffer and corporations refuse to absorb the tax, workers receive lower wages or lose jobs, and related businesses lose profits or falter.

Excise taxes are historically controversial.—They are nothing more than modern versions of the British taxes America's founding fathers so abhorred. Excise taxes placed by the British on American colonialists triggered the Boston Tea Party which eventually led to the Revolutionary War.

Hispanics and minority Groups oppose excise taxes.

"Excise taxes are a regressive form of taxation which adversely and disproportionately affect Hispanic communities."—Oscar Moran, National President, League of United Latin American Citizens.

"Excise tax increases provide Hispanic businesses no option but to pass on the added cost of doing business to the consumer. They would adversely affect the development of local Hispanic businesses and the national economy."—Roy Hasso, President, California Hispanic Chamber of Commerce.

"Excise taxes are grossly unfair. Such proposals spell danger to the pocketbooks of every low-income worker."

"The right name for excise taxes is 'reverse Robin Hoodism.' It's taking from the poor and giving to the rich."—Sen. Clarence M. Mitchell, III, National Black Caucus of State Legislators.

"[Excise taxes] . . . disproportionately impose on the well-being of Hispanic communities—isolated and low-to-moderate income communities that we are. It seems [excise tax proponents] have inadvertently singled out Hispanics to carry the federal tax and deficit burden and we resent it."—Al Rodriguez, American GI Forum.

"[Excise taxes] would artificially inflate the cost of local products, adversely affecting business in Hispanic communities throughout the nation just when we are beginning to enjoy the benefits of an improved economy."—Sergio Banuelos, Sr., National Vice President, U.S. Hispanic Chamber of Commerce.

"Our association applauds efforts to curtail the budget deficit. However, we do not believe that this should be accomplished through the use of excise taxes that regressively impact a large percentage of consumers who can least afford them: Hispanics,"—Ruben Diaz, National President, Latino Peace Officers Association.

Conservatives and liberals alike are opposed to excise taxes. Prominent members of both parties have questioned their use:

"Excise taxes are inflationary since they result in price increases without any inherent increase in the value of goods purchased."—Rep. Dick Cheney, U.S. Congress (R-WY).

"The economic reality is that excise taxes are not borne by the corporations that collect excise taxes. . . . Rather, there is clear evidence that they are paid by consumers."—Rep. Richard Gephardt, U.S. Congress (D-MO).

"[I am] very critical of consumption-based taxes because they would hurt the poor and families the most."—Rep. Jack Kemp, U.S. Congress (R-NY).

"Corporate excise taxes end up being paid by consumers. They skew the distribution of the tax burden. . . . They could very well increase the tax burden of the lower- and middle-income classes."—Sen. Bill Bradley, U.S. Senate (D-NJ).

"I think you will not find any economist and you will not find me defending excise taxes as anything other than revenue-raisers. They are regressive. They are industry specific. They are unsound in my judgment from any kind of economic or tax policy basis. I would not seek to defend [them] on any rational basis."—Ronald A. Pearlman, Former Assistant Secretary, Treasury for Tax Policy.

CONCLUSION

Excise taxes are unfair to consumers; they are regressive taxes which have a disproportionately greater effect on families with lower- and middle-incomes. They also are inequitable with respect to business. They arbitrarily discriminate against consumers and producers of selected goods. Indeed they are oppressively burdensome to both labor and industry. Finally, excises are unfair as a matter of fiscal and economic policy. As Robert M. McGlotten Legislative Director of the AFL-CIO, said:

"The increases in excises on alcohol, tobacco, and fuel straight-forwardly add to regressive taxes. . . . They unfairly affect the living standard and jobs of working people."

HON. WILLIAM CARNEY

HON. WILLIAM H. NATCHER

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. NATCHER. Mr. Speaker, It has been a distinct honor and privilege to serve in the House of Representatives with my friend BILL CARNEY.

He has established an outstanding record in the House. Words are inadequate to fully appraise BILL CARNEY's tremendous capacity for loyalty and love of his country. In every position he has held, either private or public, he achieved distinction. His service in all of his assignments has been marked by a high sense of conscience and duty. He will have a high place in the history of our country and in the hearts of his countrymen. His character, his achievements and his faithful service will be an inspiration to generations yet to come.

BILL CARNEY's life exemplifies those virtues that make a great Congressman and those have always been fairness, generosity, a willingness to listen, and unyielding devotion to the principles of his party and to all matters which are for the best interests of our country. He has always been a gentleman and a strong leader.

I want to wish BILL CARNEY the best of everything in the future and I hope that on many occasions he has the opportunity to come back and visit with us.

"SCHOOL OF EXCELLENCE" MARION PARK ELEMENTARY SCHOOL, MERIDIAN

HON. G.V. (SONNY) MONTGOMERY

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. MONTGOMERY. Mr. Speaker, one of the schools in my hometown has received a very prestigious honor and I want to share this news with my colleagues. Marion Park Elementary School in Meridian, MS, was chosen as a "School of Excellence" for 1985-86 by the U.S. Department of Education.

The competition for this award was intense. There were 509 public schools under consideration, along with 293 private schools. Marion Park was one of 210 public schools selected to be honored. The criteria on which the schools were judged included administrative leadership, teacher dedication, student scholarship, participation and community involvement. Marion Park, under the leadership of Principal Dr. Larry Van Dyke, was judged to have all these qualities.

Just last year, Meridian High School was selected as a "School of Excellence." As far as we can determine, this is the only school system in the Nation to be honored at both the high school and elementary school level. R.D. Harris is principal at Meridian High School and he deserves a lot of credit. I certainly want to mention Dr. George Cannon, superintendent of schools in Meridian. His leadership is the guiding force behind the very fine educational program being offered in Meridian's public schools.

Congratulations should also go to the faculty and students in Meridian. They are working together to provide an outstanding example for others to follow throughout the State of Mississippi and the Nation.

TRIBUTE TO GENE CHAPPIE

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. BIAGGI. Mr. Speaker, the 99th Congress bids farewell to more than 35 Members. Yet none will be missed in quite the same way as our friend and resident humorist GENE CHAPPIE from the 2d Congressional District of California, home of the beautiful Napa Valley.

What more can be said about GENE CHAPPIE except that he is a most unique individual. Others have described him as irreverent, Witty, yet all who take the time to describe GENE do so with genuine affection. Few have made as many people feel good in such a relatively short time as GENE CHAPPIE has done in 6 years of service in the House.

I recall one of GENE's colleagues from California paying what I consider to be a most appropriate tribute to GENE when he said that GENE was "dedicated to the people of his congressional district with a dedication that was unmatched by any other Member of the House."

This statement must be accurate because GENE CHAPPIE retires like a good prize fighter—undefeated. In fact, he has captured each and every electoral contest he has entered for some 35 years in his area of northern California. His ingredients for success were simple—hard work and total dedication to serving the people.

GENE distinguished himself in his years in the House with his service on the House Agriculture and Merchant Marine Committees. I had the pleasure of serving with GENE on the Merchant Marine Committee and can attest to his effectiveness as a legislator.

All I can say is GENE, we will miss you. The Italian American congressional delegation will especially miss you. We hope you will not be a stranger to this place and to your many friends in the House. May your new view be as enjoyable as all that has preceded it and may all those you meet in the future be as fortunate as those of us who knew you in the House.

FOREIGN AFFAIRS ACCOMPLISHMENTS IN 99TH CONGRESS

HON. DANTE B. FASCELL

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. FASCELL. Mr. Speaker, as the 99th Congress draws to a close, I would like to point out some of the major accomplishments of the Foreign Affairs Committee and its subcommittees and to thank you and our colleagues in the House for making them possible.

Thanks to the dedication, hard work and bipartisan cooperation of committee members, we have compiled an outstanding record of achievement on a wide range of issues critical to our Nation and to the world. Work begun in the first session bore fruit in the second and we made major advances on such vital concerns as arms control, international terrorism and narcotics trafficking. However, much remains to be done; these are complex, pervasive problems that will continue to challenge us in the next Congress and beyond.

At the close of the first session, we reaffirmed the role of Congress in international affairs by enacting the first foreign aid authorization since 1981, along with authorizations for the State Department, USIA and the Board for International Broadcasting. The committee pressed ahead with its efforts for 2-year spending authorizations to streamline the budget process, establish priorities, provide for better planning and allow more time and energy to be devoted to oversight of administration policies and programs.

However, foreign aid remains unpopular in many quarters, and under the shadow of budget cuts mandated by Gramm-Rudman, much effort this session went into preserving adequate levels of assistance to other countries as a cost-effective means of helping achieve our foreign policy objectives.

The committee and its eight subcommittees met more than 600 times during the past 2 years, for hearings, meetings, markups, briefings and informal gatherings with distinguished visitors from nations around the world. At the close of the Congress, 33 measures referred to the committee had been signed into law and 3 awaited the President's signature. Ninety-six bills and resolutions passed the House this Congress, far more than in any similar period.

In the second session, the International Operations Subcommittee played a key role as we completed work leading to passage of the landmark Omnibus Diplomatic Security and Anti-Terrorism Act of 1986. The measure implements the recommendations of the Inman Advisory Panel on Overseas Security to strengthen security at U.S. embassies and facilities overseas and foreign facilities in this country. In addition, it calls for stringent international maritime safeguards and provides for an assessment of the threat of terrorist acts against U.S. ports and vessels operating from this country. The bill also calls for measures to prevent nulcear material from falling into terrorist hands.

Last year, we were able to substantially increase funding for antiterrorist activities and pass the Foreign Airport Security Cooperation Act; I think we're already beginning to see the results with increased security at international airports around the world. This session, a committee staff team traveled abroad to examine compliance with the act's security requirements; the team reported that U.S. carriers are maintaining higher security standards than are the airlines of virtually all other countries.

A meeting was held with 32 top foreign delegates to the United Nations seeking their support in a coordinated, international assault on terrorism. A similar meeting was held with

the ambassadors from the summits even countries here in Washington to help convince them that terrorism can only be dealt with effectively through multinational cooperation.

Following 3 years of extensive hearings by the International Economic Policy and Trade Subcommittee and negotiations with the Senate, the Export Administration Act was revised last year to ease restrictions and speed up the export licensing process, and to improve enforcement and contract sanctity. This year, the subcommittee's work on trade problems culminated in House passage of the omnibus trade bill to enhance export promotion, ease export controls and revise the Foreign Corrupt Practices Act. The subcommittee's work also led to reauthorization of the Overseas Private Investment Corporation, and hearings were held on the economic summits and the Third World debt crisis.

Throughout the term, the Asian and Pacific Affairs Subcommittee effectively brought to the attention of the Congress and the world the excesses of the Marcos regime in the Philippines; the subcommittee was instrumental in helping restore democracy to this longtime ally. Toward the end of the session, following President Aquino's moving address to a joint session of the Congress, the committee helped secure an additional $200 million for the Philippines during this critical transition period.

We also were able to secure in the House a supplemental appropriation for Haiti following the downfall of the Duvalier regime, and provided specific fiscal year 1987 funding levels and policy direction to encourage Haiti's fledgling democracy.

This year, from the African Subcommittee came the Anti-Apartheid Act which resulted in economic sanctions aimed at moving South Africa to end its repression of that nation's black majority. African famine, agriculture, food and development needs were extensively examined, along with United States assistance and policies aimed at encouraging economic growth in the area.

The Europe and the Middle East Subcommittee examined political, economic and security developments in Europe and the Middle East and United States policy in those areas, arms sales to Jordan and Saudia Arabia, United States support of the Anglo-Irish agreement on Northern Ireland, European participation in SDI research, the Soviet succession and a broad range of critical East-West issues.

The Human Rights and International Organizations Subcommittee probed human rights violations in Haiti, Romania, Chile and Peru, religious persecution in the Soviet Union, political prisoners in Cuba and United States withdrawal from UNESCO and the jurisdiction of the World Court. The subcommittee also addressed important environmental concerns, including biological diversity and tropical deforestation, and protection of whales.

The Western Hemisphere Affairs Subcommittee closely monitored Communist efforts to destabilize our Central American neighbors, the increased Communist stranglehold in Nicaragua, and the United States response to these activities. Nicaragua, El Salvador and Honduras drew the subcommittee's particular attention, as did United States aid to the Contras. The U.S. role in Central America will continue to be a matter of considerable concern in the upcoming Congress.

During the 99th Congress, the committee and the Subcommittee on Arms Control, International Security and Science grappled with a host of complex arms control issues. This led to strong House action on several key issues, including limitations on nuclear testing, continued adherence to SALT, budget limitations on the strategic defense initiative [SDI], preservation of the ban on antisatellite [Asat] weapons testing, and a prohibition on the production of binary weapons.

The subcommittee, in cooperation with the Congressional Research Service, conducted nine informal workshops to inform Members of Congress and the public on key issues of arms control and national security.

Following United States bombing of targets in Libya, we conducted hearings which concluded that the war powers resolution enhances, rather than impedes, administration efforts to combat terrorism and deal with the Qadhafis of the world. Consultation with the Congress prior to sending U.S. military forces into potentially hostile situations is essential, the hearings determined.

The Task Force on International Narcotics Control continued pressing its efforts to cope with the overseas aspects of the insidious drug problem which besets our Nation. A working luncheon was hosted for 30 delegates to the United Nations on the need for an international assault on illicit narcotics. The committee bill, seeking destruction of drug crops, effective interdiction and sanctions against nations failing to cooperate, was incorporated into the Anti-Drug Abuse Act which passed the Congress at the end of the session.

These, of course, are only a few of the highlights of the committee's activities during the past 2 years.

I would particularly like to thank the members of the committee for their tireless work and dedication which made the accomplishments of the 99th Congress possible. I also want to commend the staffs of the full committee and the subcommittees for the outstanding work they have done during this hectic but rewarding term.

ED AND ETHEL STEIN HONORED

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. LEWIS of California. Mr. Speaker, it gives me great pleasure to have this opportunity to recognize two truly outstanding individuals, Ethel and Ed Stein. I am proud to say that Ethel and Ed have been my friends for many years, and so it was with great pleasure that I recently learned of the Arrowhead Chapter of Hadassah's decision to honor them at a tribute dinner in San Bernardino, CA, on November 23, 1986.

Ed and Ethel Stein have devoted their lives to humanitarian causes—both religious and secular. Over the years their accomplishments have been so numerous and generous as to have placed them in the forefront of national and international leadership in Zionist affairs and the welfare of Judaism everywhere.

Special recognition should be made to the fact that the Steins have built a library in the Galilee settlement town of Hatzor. Another generous gift includes endowment of a chair at Tel Aviv University Dental School.

Ethel, a life member of Hadassah, has served as president of Arrowhead Chapter twice and has held almost every other major office as well. For 10 years she has been on the Family Service Agency Crisis Line. Ethel is also active in the American Cancer Society Reach for Recovery Program.

For almost 20 years, Ed has been considered the backbone of the San Bernardino United Jewish Welfare Fund. Other activities include serving on the national cabinet of the United Jewish Appeal, where he currently is the small cities national chairman. He is also very active in the American-Israel Chamber of Commerce and the Israel Bond Organization. He is an associate member of Hadassah and has been an ardent supporter of the organization for many years.

Ed and Ethel are the proud parents of Jana, Gayle, and Josh, and have six grandchildren.

Mr. Speaker, I ask that you join me in saluting Ethel and Ed Stein, two remarkably dedicated citizens. The Arrowhead Chapter of Hadassah is most fortunate to have such outstanding members. It is clearly evident that this tribute to them is well deserved. I salute them both for their achievements in their community and their religion and wish them continued success and happiness for the future.

H.R. 5300

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 17, 1986

Mr. CRANE. Mr. Speaker, I rise in opposition to the fiscal year 1987 budget reconciliation bill, H.R. 5300. As a conferee on the revenue provisions of the conference report now before this body, I support a number of the items in this legislation. Especially, I support the elimination of the Social Security COLA trigger, the decision of the conferees to hold to the House position not to mandatorily cover existing State and local employees in the Medicare Program, the elimination of the health insurance risk pool provision, and the denial of foreign tax credits to companies which do business in countries which support international terrorism. Despite these and other positive provisions in this conference report, I feel that the negative aspects of this bill dwarf the positive portions.

More specifically, I am quite concerned about the trade implications of the decision to implement a customs users fee of the magnitude contained in this piece of legislation. In addition, the legislation contains a number of provisions which relate to the Internal Revenue Service, such as the increases in IRS appropriations and increases in certain tax penalties. These not only are of questionable revenue significance but increase the power of an already forceful agency. I also oppose the

provision raising the public debt limit until May 15, 1987, having never voted for an increase in the debt ceiling since I became a Member of Congress in 1969.

I am quite concerned about the provision which imposes a user fee of 0.22 percent ad valorem in fiscal year 1987 and 0.17 percent in fiscal year 1988 and fiscal year 1989 on all formal entries of imported merchandise for consumption. The fees are based on the appraised customs value of such merchandise, with the exception of articles imported from least developed developing countries, eligible countries under the Caribbean Basin Initiative, or U.S. insular possessions. I would like to point out that the fee would apply to a great number of articles which currently enter this country duty free and a great number of articles which are currently eligible for a tariff preference such as the generalized system of preferences [GSP] or a bilateral free trade arrangement, such as the free trade agreement currently enjoyed between the United States and Israel and that which is currently being negotiated between the United States and Canada.

I think it is clear that our trading partners are poised to follow the example we set in the area of user fees. Most countries do not have the broad base of imports the United States has and quite probably do not have customs agencies as efficiently operated as the U.S. Customs Service. When our trading partners move to set up their own ad valorem customs user fee, in response to U.S. actions, it will more than likely be a higher fee on a smaller base of imports to cover the cost of inefficiently provided customs services. U.S. exports throughout the world could be significantly impacted.

The U.S. Government has labored over the years, generally with success, to remove many trade barriers in the form of customs procedures, taxes, and fees. Few of our major trading partners apply any customs fees beyond that needed to cover overtime services. We have joined in lengthy negotiations to achieve a harmonized system of customs classifications, providing further simplicity and transparency in classification procedures, that is to be implemented beginning next year. All of these achievements which benefit U.S. exporters could be offset by the negative effects of a panoply of new ad valorem customs user fees, such as that we see now before this body.

There has been little discussion either here or in international forums as to what constitutes customs services. The customs user fee provision contained in H.R. 5300 seems to indicate that nearly all costs associated with the Customs Service, or at least with the clearance of merchandise, is a customs service. However, arguments have been made that costs of enforcing laws at the border and protecting the revenue are not services but obligations more legitimately paid by governments and taxpayers.

I would like to point out that, in order to be compatible with the General Agreement on Tariffs and Trade [GATT], any customs user fee must be associated with costs of services provided to process imports. Article VII of the GATT states that:

All fees and charges of whatever character imposed * * * in connection with importation or exportation be limited * * * to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation * * * for fiscal purposes.

I believe we could still see GATT challenges, and possibly retaliation, to even a reduced fee, such as the one in this legislation which is designed to raise approximately $790 million over the next 3 years.

I also object to the facade of a revenue increase created by increased funding of the Internal Revenue Service and the increases in tax penalties for failure to comply with the requirement to periodically deposit various taxes and for substantial understatement of tax liability.

This conference report increases the appropriations for IRS enforcement in what I see as an effort to squeeze more tax dollars out of an already overburdened taxpaying public. I do not mean to imply that those individuals who intentionally cheat on their taxes should not pay a penalty. However, I feel that the current level of appropriations for the Internal Revenue Service is adequate for the necessary enforcement activities of this agency. Moreover, I question the supposed revenue increase from a provision which contains $1.9 billion in outlays in the first year, but is said to raise $2.4 billion in increased tax collection that same year. I suppose the logic here is that the more money one gives to the IRS, the more delinquent taxpayers the IRS will find. Thus, to eliminate the $230 billion deficit entirely, we could appropriate about $150 billion to the IRS. Would that not be simpler than having to go through the pain of a budget reconciliation bill every year?

I would assume the same sort of logic was used to derive the provision which doubles the 5 percent penalty for failure to deposit taxes as well as the provision which increases the underpayment penalty for substantially understating one's income tax liability. The first provision magically raises $750 million in revenues and the second, which probably uses the same smoke and mirror trick, raises $231 million in revenues. I do not believe we should assume that, if one doubles tax penalties, a large number of potentially delinquent taxpayers will decide against cheating Uncle Sam. I would much rather make a real reduction in the deficit by looking more carefully at the spending side of the budget to make an equivalent reduction. For example, should Congress accept a few of the suggestions made by the Grace Commission, which provided well over $450 billion in cost-cutting measures, real reduction in the deficit could certainly be made.

Finally, I adamantly oppose the inclusion of the increase in the statutory debt ceiling in this legislation. This temporary extension of the statutory limit on the public debt until May 15, 1987, was in neither House nor the Senate bills, but was added at the last minute in order to avoid the politically difficult situation of having to consider the number of amendments, such as the Gramm-Rudman-Hollings II amendment, which were affixed to the debt ceiling bill, House Joint Resolution 668, by the other body. I have never voted for a debt limit increase. I feel that Congress should have the political courage to make the necessary spending reduction decisions which would avoid the continuous need to borrow to fund the activities of the Government.

H.R. 5300, the fiscal year budget reconciliation bill, should be rejected by this body. The serious precedent set by the customs user fee provision, the increased funding and power to the Internal Revenue Service, and the inclusion of a debt ceiling must not be ignored. I urge my colleagues to vote no on final passage.

TRIBUTE TO TIM WIRTH

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. BIAGGI. Mr. Speaker, I regret that the adjournment of the 99th Congress also represents the end of a distinguished career in the House, that of our good friend TIM WIRTH of Colorado. As many know, TIM is leaving the House to run for a seat in the other body.

Yet it can be said without any hesitation that TIM WIRTH has been an important and impressive figure in the House for the past 12 years. He has emerged as a leader in our party in that time.

Fully one-third of his time in the House TIM WIRTH spent as chairman of the all important Subcommittee on Telecommunications. This subcommittee routinely considers some of the most complicated but critically important bills in the Congress. Most notable is its work on the overall issue fo deregulation of the telecommunications industry. The actions taken by Congress in this regard have impacted on the lives of all Americans. History will show that TIM WIRTH was a vigilant and forceful protector of the interests of consumers in his role as chairman.

I would also like to acknowledge the critical leadership role TIM WIRTH has taken on a legislative issue of deep concern to me. For several years, I have been advancing legislation to establish an ethnic and minority affairs clearinghouse in the FCC. This is based on a deep concern I have over the depiction of racial and ethnic groups on television and other media.

TIM WIRTH has afforded me the opportunity to pursue this issue. He even went as far as to allow me to participate in one of his subcommittee oversight hearings with the FCC so I might be able to raise the issues in my bill. I was deeply grateful for that opportunity and maintain that this effort and so many others undertaken by TIM WIRTH are a genuine reflection of the leader he is and has been in the House.

TIM WIRTH has also played a significant role in the authorizations of the Clean Water Act, including the recently passed conference report in the 99th Congress.

TIM WIRTH also served with great distinction as a member of the Budget Committee. He worked to ensure that responsible budgets did emerge from the committee, budgets which provided sound fiscal policy with compassion for human needs.

TIM WIRTH has a bright future whether it be in the public or private sector. He has a good mind with an enormous capacity for work. He has been a success in the House that goes without saying. The people of the Second District in Colorado have been fortunate to have a Congressman of the caliber of TIM WIRTH since 1974. I wish him well.

H.R. 6—THE WATER RESOURCES DEVELOPMENT ACT OF 1986

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. ROE. Mr. Speaker, on October 17 Congress approved the conference report on H.R. 6, the Water Resources Development Act of 1986. Since the passage of that legislation a matter has come to my attention which requires clarification.

Section 854 modifies the project for beach erosion control, Sandy Hook to Barnegat Inlet, NJ. For projects in the bill three figures are shown. One is the total cost of the project which under section 902 of the bill establishes the maximum cost of the project. The other two figures shown—the estimated first Federal cost and the estimated first non-Federal cost are informational only, representing presently estimated costs to be incurred during construction of the project, not including repayments over time which may be required to be made to the Federal Government by non-Federal interests. These are only estimates designed to give a general idea of Federal and non-Federal responsibilities and have no legal effect. In the case of section 854, these estimated costs are inaccurate because they do not reflect the specific cost sharing requirement specified in subsection (b). The controlling language in subsection (b) with regard to Federal and non-Federal responsibilities provides that the non-Federal share of the cost of construction and maintenance of the ocean township to Sandy Hook Beach of the project shall consist of amounts expended by non-Federal interests for reconstruction of the seawall at Sea Bright and Monmouth Beach, NJ.

LEGISLATIVE HISTORY OF H.R. 1790, MILITARY LANDS WITHDRAWAL ACT OF 1986

HON. JOHN F. SEIBERLING

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. SEIBERLING. Mr. Speaker, on October 17, 1986, the House passed H.R. 1790, the Military Lands Withdrawal Act of 1986, after adopting my amendment in the nature of a substitute. On October 18, the Senate also passed the bill and cleared it for the President.

H.R. 1790 was originally introduced by Representative BYRON of Maryland on March 28, 1985, and was referred to the Committee on Interior and Insular Affairs. Within the committee, responsibility for initial consideration of the measure was assigned to the Subcommittee on Public Lands, which I chaired.

During 1986, the subcommittee held four hearings on H.R. 1790, at which we carefully reviewed its significance with respect to each of the areas of public lands which the bill proposed for withdrawal. Members and staff also visited all the areas.

Based on the information obtained through the hearing process and inspection visits, the subcommittee and full committee acted separately on two military withdrawal bills. One of those bills was H.R. 4351, which dealt with the two areas in Nevada—the "Bravo 20" Area and the Nellis Air Force Range—included in H.R. 1790. The other was H.R. 5389, which dealt with the areas in Alaska—Fort Wainwright Maneuver Area, Fort Greely Maneuver Area, and Fort Greely Air Drop Zone—included in H.R. 1790. Each of these bills, after being favorably reported by the Committee on Interior and Insular Affairs, passed the House. However, neither was acted on by the Senate.

Finally, through discussions which involved both House and Senate representatives, we were able to arrive at a compromise omnibus proposal dealing with all the areas addressed in H.R. 1790. That compromise was embodied in the amendment in the nature of a substitute which was adopted on the floor of the House after the bill was discarded from further committee consideration.

Because H.R. 1790 as a whole was never the subject of a written committee report, I believe it is important that the record reflect some of the background and the policy considerations which were reflected in the development of the compromise and the final passage of H.R. 1790.

The provisions of H.R. 1790 as passed which relate to areas in Nevada were based in large part on the provisions of H.R. 4351 as earlier passed by the House of Representatives. The background and rationale for those provisions are set out at some length in House Report No. 99-689, part I, presented to the House on July 16, 1986, by Chairman UDALL. In particular, I believe that the history of the "Bravo 20" Area as set forth in that report will be important reading for all those interested in the development of H.R. 1790 as passed by the 99th Congress.

With regard to the Alaska areas dealt with in H.R. 1790, House Report No. 99-920, part I, presented to the House by Chairman UDALL on September 24, 1986, provides important background information and an explanation of the House's position with regard to these areas, a position largely reflected in H.R. 1790 as passed.

House Report No. 99-689, part I, should also be consulted with regard to the provisions of section 4 of H.R. 1790 as passed—relating to the Desert National Wildlife Range and the Cabeza Prieta National Wildlife Refuge. Those provisions were closely modelled on the provisions of section 104(f) of H.R. 4351 as passed by the House of Representatives.

Section 6 of H.R. 1790 as passed "Nevada Report" was based on section 105(c) of H.R. 4351 as passed by the House. Again, the House reports on that bill should be consulted with respect to the considerations lying behind this most important section of the final bill.

The provisions of section 7 and section 8(e) of H.R. 1790 as passed have no direct antecedents in either of the House-passed bills nor in the military withdrawal bill—S. 2412—considered by the Senate. However, the policy considerations which led to inclusion of these provisions in H.R. 1790 as passed are discussed to some extent in the minority views of Senator METZENBAUM included in the report on the Senate bill—Senate Report No. 99-514—dated October 1, 1986. The provisions of section 7 were the subject of a colloquy between Senators METZENBAUM and MCCLURE appearing on page 33728 of the RECORD (October 18, 1986).

The Senate committee's report should also be consulted with respect to sections 10 ("water rights"), 11 ("hunting, fishing, and trapping"), and 12 ("mining and mineral leasing") of H.R. 1790. All the provisions of those sections are generally based on corresponding sections of S. 2412 as favorably reported by the Senate Committee on Energy and Natural Resources, with the exception of section 12(h). That subsection is identical to section 2(b)(1) of H.R. 5151 as passed by the House of Representatives on October 6, 1986, and is discussed in House Report No. 99-946, presented to the House of Representatives by Chairman UDALL on October 1, 1986.

Finally, Mr. Speaker, section 16 of H.R. 1790 as passed embodies the provisions of H.R. 4645, dealing with an adjustment of the boundary of the Cuyahoga Valley National Recreation Area in Ohio. That bill was the subject of House Report No. 99-759, presented to the House of Representatives by Chairman UDALL on July 30, 1986.

SALUTE TO ED DONLEY—AN AMERICAN BUSINESS LEADER

HON. DON RITTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. RITTER. Mr. Speaker, Air Products & Chemicals, Inc., one of the leading businesses in the State of Pennsylvania and the Nation, will soon be losing to retirement its distinguished chairman and chief executive officer, Mr. Edward Donley.

Air Products, which is headquartered in Trexlertown, PA, has risen from $15 million per year in sales in 1957 to nearly $2 billion today, and achieved a Fortune 500 rank of 205 among the Nation's largest industrial companies. Ed Donley has overseen virtually all of this growth, having become president of the company in 1966, chief executive officer in 1973, and chairman in 1978.

Ed Donley, in addition to guiding the fortunes of this innovative and technologically oriented company, has achieved a well-deserved reputation as one of the national business community's most effective and respected spokesmen. This is evidenced by Ed Don-

ley's current position as chairman of the Chamber of Commerce of the United States. In this capacity, Ed has criss-crossed the country and indeed the world speaking to audiences about the need for American business to compete aggressively in today's world markets by using the technological advantages and the human resource excellence that the United States enjoys.

Ed Donley has been with Air Products since 1943, when he was hired as the infant company's 11th employee. A young mechanical engineer fresh out of the Lawrence Institute of Technology, Ed perfected the design for onsite oxygen generation, helping the U.S. Government in World War II meet the needs of our aviators for high altitude flying and the welding requirements for military equipment manufacture and repair. Today, Air Products, under Ed Donley's dynamic leadership, employs in excess of 16,000 men and women throughout the world, including over 6,000 in Pennsylvania alone. Moreover, due to Ed's vision, the company is vigorously prepared for the future with new initiatives in the fields of biotechnology, advanced ceramics, and electronics.

Ed Donley's passion for achieving both business and professional excellence is exhibited by his strong support and commitment to education. As chairman of the Business-Higher Education Forum of the American Council on Education, Ed has worked tirelessly to foster cooperation, understanding and recognition of the respective missions of the nation's institutions of higher learning and of American business. As an active participant in that forum, Ed Donley is one of the Nation's leading spokesmen for enhancing U.S. industrial competitiveness and is likely to retain that leadership role. Ed's deep understanding of the challenge of trade, technology and teamwork are a national treasure when it comes to bringing America to preeminence in the commercialization of advanced technology. Ed is chairman of the board of Members of the Lawrence Institute of Technology, a member of the Board of Overseers of the School of Engineering and Applied Science of the University of Pennsylvania, and a life trustee of the Carnegie-Mellon University.

Mr. Speaker, while Ed Donley's professional and business achievements speak for themselves, another measure of any person is his or her ability to relate well to others, to inspire confidence and trust, and to summon the best attributes of those with whom the person comes into contact. By these measurements, Ed Donley meets and exceeds every test.

I have had the good fortune of knowing Ed Donley for many years and like so many others, have been inspired by that friendship.

Mr. Speaker, on behalf of all the citizens of the Lehigh Valley, I am happy to extend to Ed Donley and his wife, Inez, best wishes for a happy and productive retirement, knowing full well that the people of the Lehigh Valley, the people of Pennsylvania, and Americans throughout the country will continue to benefit from Ed's continued involvement in public policy issues.

TRIBUTE TO G. WILLIAM WHITEHURST

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 14, 1986

Mr. BIAGGI. Mr. Speaker, it is my honor today to pay tribute to our colleague BILL WHITEHURST who has chosen to retire from the House and return to the faculty at Old Dominion University in Norfolk.

It has special meaning for me to pay tribute to one of my classmates. BILL WHITEHURST and I together with 14 others make up the class of 1968. That was the year we entered this institution. BILL WHITEHURST was a leader in our class, and was also an important figure in this House throughout his nine terms.

BILL WHITEHURST served with special effectiveness as a member of the Armed Services Committee. While this was an important committee assignment for the Norfolk, VA area that BILL represents; his interests and activities and contributions to that committee have had enormous national significance.

One example of this was his leadership in the founding of the military reform caucus in the House. This was an entity which focused attention on how best to make the military more efficient. BILL served as the caucus chairman in the 97th Congress, and in many ways his efforts set a path for the important reforms made in procurement policies by the 99th Congress.

BILL WHITEHURST and I were neighbors at one time on the fourth floor of the Rayburn Building. I recall one occasion when we collaborated on an important legislative project aimed at ending the policy of allowing criminals to collect Social Security disability payments while in jail. This issue grew out of the infamous "Son of Sam" murderer in New York who was found to be collecting these payments after being sentenced for a variety of murders. BILL WHITEHURST shepherded the legislation through the process, and was a tireless fighter throughout.

Yet BILL WHITEHURST will also be remembered as one of Congress staunchest protectors of animal rights. Two critical pieces of animal rights legislation are the results of his tireless efforts, the Animal Protection Act, dealing with standards for animals used in research and the Horse Protection Act.

BILL WHITEHURST was also a strong supporter of our Nation's law enforcement community. He stood side by side with me during the years when I sought to outlaw the so-called cop killer bullets. As it developed this effort proved successful and represented one of the most important legislative achievements for law enforcement in the 99th Congress.

BILL WHITEHURST has often been referred to as the gentleman from Virginia. How true that description is. BILL WHITEHURST was a good friend, a man of great intellect and commitment. He provided the people of the Second Congressional District with the highest caliber of service. he will be missed by them and by all of us fortunate enough to have been his friend.

PHYSICIAN INCENTIVE PROGRAMS AND HMO'S

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. STARK. Mr. Speaker, concern has been expressed about a provision in the reconciliation bill (H.R. 5300) which we passed yesterday relating to prohibition on physician incentive arrangements in health maintenance organization [HMO's] after April 1, 1989. I would like to elaborate on the reasons for this amendment.

The chairman of the Rules Committee and I discussed the issue during the debate on the bill, and in that discussion I promised to hold hearings on the issue next year. Senior officials at the Department of Health and Human Services have also promised very quick action on the study called for by the amendment. The study is designed to determine the impact of HMO physician incentive plans on the quality of care of patients. The provision involved is section 9313(c) and can be found on page 32868 of the CONGRESSIONAL RECORD of October 17, 1986. The conference report discussion can be found on page 32918.

Over the last few years there has been a rapid expansion in both the number and the types of models of HMO's that are available to provide care for Medicare beneficiaries. This growth has been encouraged by the Congress, and by myself. HMO's have the potential of providing Medicare beneficiaries with a comprehensive health benefit package with significantly less out of pocket costs than they may experience in the traditional Medicare Program. HMO's have proven to be very popular with Medicare beneficiaries.

In order to provide comprehensive benefits to Medicare beneficiaries, however, the HMO most have the ability to control the cost of providing care. In order to achieve this, new financial arrangements are being forged between the HMO's and contracting hospitals, physicians and other providers. This is where I begin to develop concerns about the incentive arrangements that may be established between HMO's and their contracting physicians.

Some have argued that physician incentive plans are the key to success of many HMO's. I certainly understand that such arrangements can be extremely valuable in controling utilization. However, there is a wide spectrum of plans out there. Plans that share "profits" or "surplus" among a group of physicians, including staff and medical group model HMO's such as Kaiser Permanente, seem to have no demonstrable negative impact on patient care and therefore may be appropriate.

However, some health care providers offer direct individual physician cash bonuses if the physician reduces length of stay or limits services provided to specific beneficiaries. I think that reasonable people could agree that this type of incentive may be detrimental to quality of patient care and may pose an inherent conflict of interest and accordingly has been made illegal by the most recent reconciliation bill. Between these two extremes there is an enormous array of other types of arrange-

ments. What is uncertain is whether these intermediate plans are having an adverse impact on patient care. This is what the HHS study is designed to determine.

The reconciliation bill requires that the Secretary of HHS report to Congress not later than January 1, 1988, on the types of incentive arrangements in common use by HMO's and CMP's and to evaluate their potential to reduce or limit services in a medically inappropriate manner. Furthermore, the Secretary would be required to make recommendations regarding exceptions to the physician incentive plan prohibition that may be used by HMO's and CMP's to encourage efficiency in the utilization of medical and other services, but that do not have a substantial potential for adverse effect on quality. In undertaking the study, I expect that the Secretary will propose exceptions not on a case-by-case basis, but with respect to entire categories of incentive plans that are found appropriate.

With rapid growth in HMO's and with more and more medicare beneficiaries signing up to join HMO's, our attention has to focus on the quality and access to care for our beneficiaries. Inappropriate physician incentive programs have no place in the medicare program. I am committed to resolve this issue and to safeguard quality of, and access to, care for medicare HMO enrollees. We will do this as soon as possible; I hope this will be well before the April 1, 1989, effective date.

CATTLEMEN NEED ADDITIONAL PROCESSING CAPACITY

HON. WILLIAM M. THOMAS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. THOMAS of California. Mr. Speaker, it is unfortunate Congress will adjourn without passing legislation important to cattlemen in the southwestern United States H.R. 4744 would facilitate development of a Maquiladora-type operation on the United States-Mexican border, giving cattlemen access to additional processing capacity. The bill is strongly supported by cattlemen's groups in the Southwest, who believe their industry will continue to suffer unless more processing capacity is established.

Cattlemen view processing sector trends with alarm. The number of plants slaughtering cattle in Arizona and southern California has dropped from 39 to 8 since 1975. There is a good deal of concern about prospects that more processors will go out of business in the near future. As the processors decline, cattlemen and the businesses that support cattle operations will suffer.

This situation calls for thorough consideration of the tariff law changes that would be made by H.R. 4744. The bill would allow United States cattle to be slaughtered in Mexico and returned to the United States as dressed beef.

I will reintroduce H.R. 4744 during the 100th Congress because the Southwest's processing needs have to be discussed and addressed by legislation. I am willing to consider alternative approaches to any legislation and will gladly consider differing points of view. I do, however, want to urge my colleagues on the Trade Subcommittee to act on the bill early in the coming year. Processing is needed to revitalize the southwestern cattle industry and this bill, I believe, presents an acceptable solution for doing so.

MAKING THE HOUSE WORK IN THE 100TH CONGRESS

HON. TRENT LOTT

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. LOTT. Mr. Speaker, the 99th Congress has been "deceptively productive" as one pundit has put it. Why deceptive? Because we managed to accomplish most of what we did in the final, frenetic few weeks of the Congress, and in a most disorderly and nondeliberative fashion.

And maybe, to some, results are all that really count. As Democratic Speaker Champ Clark responded to critics of the undemocratic reign of King Caucus back in 1913:

> The people of the United States want to know what Congress does. They are much more interested in results than in the methods by which those results are worked out.

But, I for one would like to think that democratic and orderly process still count for something in what we like to refer to as the world's greatest deliberative body. I would like to think that individual Members still count for something as representatives of their districts and as legislators in their committees and on the House floor.

Unfortunately, though, the role of individual legislators and of committees is giving way to a system of ad hocery on important issues. Because of the diverse and diffuse nature of this place, the leadership has found it increasingly necessary to bypass the regular legislative process to get things done, forming separate task forces to develop substantive recommendations, and then developing special procedures to expedite their consideration, including limiting debate and amendments. In short, Members are feeling increasingly left out of the process over which the Framers intended they preside.

Mr. Speaker, the approaching bicentennial of our Constitution next year should give us pause to reflect on just how the Framers of that document intended for this House to work. It's not too soon to start thinking about how we would like to see the 100th Congress run differently. To that end, I would like to offer some suggestions. I would urge that our leaders and Members begin talking together now about putting House scheduling back on a sensible track, restoring our decaying authorization system, reforming our budget and appropriations processes, and making our committee and subcommittee system more streamlined, manageable, and productive.

For starters I would suggest that we start thinking about hitting the ground running next year and start reporting authorizations early in the year. To do this, I propose we move to 5-day workweeks, with a district work period every fourth or fifth week.

To assure early actions, I propose that the bipartisan leadership, in consultation with committee chairman and ranking minority members, chart when certain bills should be ready for floor consideration in a particular month.

I would suggest we take a serious look at moving to biennial authorizations and appropriations, taking up just half our appropriations bills each session. I would propose we think seriously about pruning subcommittees and staff so we can see the forest once again. And I would further suggest that we make our committees and subcommittees more representative of the House as a whole so that the bills they report will need less reworking on the floor. This means full-time committees with equitable party ratios, majority quorums and no proxy voting.

Yes, maybe it's unrealistic to hope that the House could operate in a more sensible and responsible manner. But I sense enough Members are fed up on both sides of the aisle with the way things are done now to at least begin considering the alternatives. I urge that we get started on this bipartisan, bicentennial House restoration effort today.

TRIBUTE TO BARBARA MIKULSKI

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 14, 1986

Mr. BIAGGI. Mr. Speaker, for the past 10 years, it has been my distinct privilege to have worked with and known BARBARA MIKULSKI. As the 99th Congress completes its work, mine would not be complete unless I paid tribute to this remarkable colleague and friend.

This is an institution comprised of 435 individuals. Some always stand out above others. BARBARA MIKULSKI was one of those individuals. What she lacks in height, she certainly makes up in stature. BARBARA MIKULSKI has provided quality service and leadership for the people of the Third Congressional District in Baltimore, MD, for these past 10 years.

BARBARA has earned a national reputation as a determined fighter for the people. She stands up to issues and is relentless in her efforts to help the poor and correct injustices where they exist. This was a reputation that she carried into Congress with her after a most distinguished career on the Baltimore City Council.

I have had the pleasure of working with BARBARA on the House Merchant Marine and Fisheries Committee. BARBARA has been a champion of port development. While on the Merchant Marine Subcommittee that I am proud to chair, BARBARA has been an early and effective advocate for legislation to modernize our Nation's ports which are so critical to the economic fortunes of those cities and States where ports are located.

BARBARA MIKULSKI and I have also worked side by side on behalf of another issue—the growing problem of family violence. BARBARA was one of the primary authors of the Family Violence Prevention and Treatment Act of 1984. I worked closely with her on this legisla-

tion especially to insure that the special problems of elder abuse were addressed in the legislation. This was landmark legislation shepherded by BARBARA MIKULSKI and will endure as one of her most important legislative contributions.

BARBARA MIKULSKI is seeking to become the junior Senator from Maryland. I am convinced that should she succeed that she will be a most valuable Member of the other body.

BARBARA MIKULSKI brought a certain dynamism, and character to this institution. She leaves here with much to be proud of in terms of accomplishments. It is an unfinished story of public service whose best chapters may yet follow.

SUPPORT THE COMPACT OF FREE ASSOCIATION

HON. STEPHEN J. SOLARZ

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. SOLARZ. Mr. Speaker, I rise in support of House Joint Resolution 626, to approve the compact of free association with Palau. Just as the Congress approved similar legislation last year for two other Micronesian entities, the Republic of the Marshall Islands and the Federated States of Micronesia, it is my hope that the Congress will approve the essentially similar Palau compact today.

There are three basic reasons why this legislation should be approved.

First, the people of Palau have voted overwhelmingly, by a margin of more than 72 percent in a referendum observed by the United Nations, in favor of the compact. By ratifying the compact today, we are, therefore, taking a significant step forward in implementing the expressed wishes and will of the people of Palau about the type of relationship they want with the United States after the U.N. strategic trusteeship is terminated. With this compact, the people of Palau have chosen a unique relationship, in which they will be completely sovereign over their domestic affairs, and the United States will retain responsibility for their defense.

Second, the compact of free association is in the strategic and political interests of the United States. I note in passing, for example, that the Palau compact gives the United States contingent base rights in a strategically important region of the world for the next 50 years, as well as the right of strategic denial in perpetuity.

Third, unless we pass the compact for Palau, I have been informed by the administration that it will not be possible, for procedural reasons, to terminate the U.N. trusteeship for the Federated States of Micronesia and the Republic of the Marshall Islands without risking a Soviet veto.

If we do not terminate the trusteeship now, because of a delay in approving the Palau compact, the earliest we could do so would be in February of 1987. In the meantime, an interim agreement to use the Kwajalen missle range in the Marshall Islands will have expired, and will have to be renegotiated. During the negotiations, it is quite possible that our missile testing schedule will be interrupted, resulting in millions of dollars of cancellation costs.

In addition, a series of nuclear claims cases resulting from our former nuclear testing program in the Marshall Islands are expected to come to trial in January 1987, unless the compact, which settles the cases at a cost to the United States of $150 million, comes into effect prior to that time. The United States would be potentially liable for billions of dollars in claims if these cases are decided in the courts.

For all of these reasons, it is very much in the interests of the United States to pass the compact of free association for Palau.

To conclude, let me pay tribute to those of my colleagues in both the House and the Senate who have invested a great deal of time and effort in steering the Palau compact through a number of committees and both Houses of the Congress. In particular, this legislation could not have reached this point without the dedicated efforts of my colleagues on the Foreign Affairs Committee, including the gentleman from Florida [Mr. FASCELL], the gentleman from Michigan [Mr. BROOMFIELD], the gentleman from Iowa [Mr. LEACH], the gentleman from California [Mr. LAGOMARSINO], and the gentleman from Nebraska [Mr. BEREUTER]. In addition, the gentleman from Arizona [Mr. UDALL] and the gentleman from Ohio [Mr. SEIBERLING] played an essential role in bringing the compact legislation to this point.

I urge the adoption of House Joint Resolution 626.

TRIBUTE TO LOIS HAIGHT HERRINGTON

HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. RODINO. Mr. Speaker, I want to express my appreciation for the work of Lois Haight Herrington, who recently resigned as Assistant Attorney General in charge of the Office of Justice Programs. I am sorry to see her leave the Justice Department. She has been one of the administration's ablest and most energetic public servants, and she has worked tirelessly on behalf of the innocent victims of crime.

Mrs. Herrington chaired President Reagan's Task Force on Victims of Crime. The task force, as a result of her leadership, recommended that the Federal Government set an example in dealing with the problems of crime victims. From her position as the head of what is now the Office of Justice Programs, she sought to implement that recommendation. In addition, she played an important role in the enactment of two landmark bills, the Victims and Witness Protection Act of 1982 and the Victims of Crime Act of 1984.

Mrs. Herrington helped draft both bills and worked effectively to help secure their enactment. The Victim and Witness Protection Act effectuates several recommendations of the task force she chaired. It requires the inclusion of a victim impact statement in presentence reports, strengthens civil and criminal sanctions for interfering with victims and witnesses, and establishes a presumption that restitution will be a part of a criminal sentence in Federal courts.

Mrs. Herrington also played an important part in the enactment of the Victims of Crime Act, whch makes Federal funds available to help crime victims. The challenge she confronted on that legislation was great. Previous efforts to secure the enactment of such legislation had been unsuccessful. The administration was firmly set on a course of budget-cutting, and she had to convince it to support a new Federal spending program.

Mrs. Herrington tackled this challenge with her usual zest and enthusiasm. She helped win bipartisan support, and final enactment of the Victims of Crime Act of 1984 is due in no small part to her efforts.

Mrs. Herrington's work as Assistant Attorney General in charge of the Office of Justice Programs has earned her high praise from crime victim organizations throughout the country. I am sorry that she decided to resign, but I am pleased to know that she will continue her efforts on behalf of crime victims from the private sector. I join her many friends and admirers in wishing her well in those efforts and in the next challenge she takes on.

TRIBUTE TO LOREN E. DICKINSON

HON. JOHN G. ROWLAND

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. ROWLAND of Connecticut. Mr. Speaker, I rise to pay tribute to Loren E. Dickinson of Berlin, CT.

Loren is a very fine individual, a dedicated public servant, and most of all to me, a good friend. It is with some regret that I note Loren will be leaving public service—although I hope, and am sure, that this will be just temporarily.

Loren has had the honor and privilege of serving the people of Berlin and a portion of Southington in the Connecticut General Assembly the past 4 years. As State representative, Loren Dickinson gained the respect and admiration of his colleagues. He served with distinction during the 1985–86 session as chairman of the powerful committee on general law.

I'd like to add a personal note that we had the pleasure of serving together in the Connecticut House for one term prior to my entering Congress last year.

Loren Dickinson's record of service to the people of Berlin is truly exemplary: Former deputy mayor, past president of the Berlin Jaycees, committeeman of the Kensington Fire District. He continues to be active in church and other numerous civic organizations.

Professionally, Loren is the executive vice president of the Connecticut Credit Union League, located in Wallingford, CT.

If one were to ask Loren what he is most proud of, the answer most assuredly would be

his family: His wife Judy and daughters Amy and Erin.

Many of Loren's friends and neighbors will be together on November 17 in his honor. I am pleased to be a part of this event and my best wishes for the continued success of Loren Dickinson.

TRIBUTE TO JAMES R. JONES

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. BIAGGI. Mr. Speaker, many of our colleagues are leaving the House at the conclusion of the 99th Congress. One of the more important of them is JIM JONES, our friend from Oklahoma. JIM JONES without question has been one of the most influential Members of the House during all of the 1980's, and the House as well as the Nation owes a debt of gratitude to him for his work.

I refer most especially to his difficult two terms as chairman of the House Budget Committee. There are fewer positions in the Congress that require more work and are appreciated less than chairman of the Budget Committee. In that capacity you know all the numbers, you know all the hard decisions that must be made, and you realize that your responsibility is to do the hard job that must be done. JIM JONES, despite the occasional political peril, did the hard job during his 4 years as chairman. He met his responsibilities head on and while the outcomes of some of the budget votes may not have met with his agreement, he saw to it that the budget process was followed.

JIM JONES also deserves a great deal of credit for his leadership on behalf of two key Social Security issues. His bill, H.R. 5050, making the Social Security Administration an independent agency and barring any future tampering with Social Security funds was one of the most important bills to pass the House in the 99th Congress.

JIM JONES also worked to advance the important notch reform legislation that I joined as an original cosponsor. It was Chairman JONES who initiated a GAO study into the entire issue including what legislative changes could be made to resolve the problem. I regret that the study was unable to be completed before sine die adjournment. However I do believe that its outcome will be critical to the final determination on exactly what legislative remedy will prevail.

JIM JONES has been a quiet but effective leader. He has met challenge after challenge in his various positions in the House. He also provided top quality constituent service to the people of the First Congressional District in Oklahoma.

History will show that among the more important names in the House during the 1980's JIM JONES will be a prominent one. We should not wait for history to act before we acknowledge his contributions. I wish JIM JONES well in the future.

SYMBOL FOR AMERICA

HON. CLARENCE E. MILLER

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. MILLER of Ohio. Mr. Speaker, as we mark the end of the 10-year tenure of Mr. THOMAS P. "TIP" O'NEILL as Speaker of the U.S. House of Representatives, I would like to offer my reflections on his long and rewarding career as a Member and Speaker of this body.

Although TIP and I do not share the same political philosophies and have disagreed from time to time on how to best serve the interests of the citizens of our Nation, I must say that TIP gave to his high office and to this body a prominence and an openness seldom evidenced in the history of this Chamber. During his 34 years in Congress and 10 years as Speaker of the House, he helped regain America's confidence in their Government at times when our citizens' faith in their political system appeared to wane. He was and continues to be a symbol of our distinctly unique democratic system of government, a system that is open and responsive to the needs of the people it serves. TIP so deeply believes in the virtues of a "government for the people, by the people and of the people," and it was this belief and concern for his fellow human being that was the hallmark of his long service here in this body.

TIP is a man who stands by his beliefs but yet is open enough to listen and adapt with the changing times and to the will of the people he represents. One cannot overstate his influence, his knowledge, and his ability to work his will to lead the Congress on what he felt was the proper course to take on a particular bill or issue. For such an able, competent, yet humble man, I rise to express my deep appreciation for his many accomplishments and contributions to our grand country, may he always receive the recognition he so richly deserves.

We wish you and your lovely wife Millie the best of everything in your retirement.

IN SUPPORT OF AIRPORTS' TRANSFER

HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 15, 1986

Mr. WOLF. Mr. Speaker, I rise in support of the amendment to the continuing resolution which would provide for the leasing of Washington National and Washington Dulles International airports to an independent regional authority.

We can no longer neglect these two federally owned airports, which have not received any major improvements since Dulles was completed in 1962. The very minimum necessary expenditure for immediate and concurrent construction at the airports within the next 5 years is estimated to be $700 million. In light of the current Gramm-Rudman-Hollings budget climate, there is little hope of getting Federal appropriations to fund these much-needed improvements.

Through the transfer of these airports, the opportunity would be provided to replace old, temporary structures at National with a new, modern facility and the original terminal could be renovated to reduce congestion. At Dulles, a midfield concourse could be constructed and connected to the main terminal by an underground train system. Parking, baggage claim, the international arrivals area, and the main Dulles terminal could be expanded and two new runways added to prevent takeoff delays.

There are other benefits of getting these airports out of the Federal bureaucracy. While airport security has become a No. 1 priority at airports worldwide, substandard security conditions exist right here at the airports serving our Nation's Capital. Security personnel are paid wages which are not competitive with salaries offered for similar jobs with other area police forces, and subsequently the average turnover rate of the airport police force is over 50 percent per year. A local authority would be better able to adequately compensate police officers at the airports. A local airport authority would also be better able to take timely steps to enhance runaway and terminal safety problems.

Finally, it is important that National and Dulles be operated in the same manner as all other airports around the country, where local citizens have a voice in airport decisions that directly affect them. If transferred, the airports would be governed by an independent board appointed as follows: five by the Governor of Virginia, three by the Mayor of the District of Columbia, two by the Governor of Maryland, and one by the President. Members would serve staggered 6-year terms, would have to live in the Metropolitan Washington area—except for the Presidential appointee—could not hold appointive or elective political office, and would not be paid.

I strongly urge you to support this legislation. It represents a sound financial solution to a continuing drain on Federal dollars, and will result in high quality, comfortable, safe, and convenient air travel for everyone who flies to or from the Washington, DC, area. I hope you will support this effort to provide National and Dulles airports with the kind of improved facilities this Nation's Capital deserves.

CONGRESSIONAL SALUTE TO THE LUTHERAN HOME AT TOPTON

HON. GUS YATRON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. YATRON. Mr. Speaker, I rise today to pay tribute to the Lutheran Home at Topton, PA. On December 7, 1986, the Lutheran Home will be celebrating its 90th anniversary with a religious festival of thanksgiving.

The Lutheran Home was originally founded in 1896 as an orphan's home with the expressed purpose of providing orphans with a loving home and a Christian education. From the day it opened its doors under the leader-

ship of Rev. Uriah P. Heilman, the home became a family which grew by leaps and bounds.

As Berks County grew, so did the demand for the services of the home. The home rapidly expanded to meet these needs. In 1907, the home's trademark tower clock and bell were constructed and, in the following years, the expansion included several new wings, a new school building, increased recreational space, and a new chapel. At this time, the home also began one of its most famous traditions—the annual nativity display. Year after year, the display, known as a Putz after the Pennsylvania German word, grew, expanding to its current size of 560 square feet.

Expansion continued and, by the 1940's the home's trustees were able to fulfill their longtime dream of providing care for senior citizens. Services for the aged officially began in 1940 and they have rapidly expanded ever since. Initially caring for 12 senior citizens, the facility now provides services for over 1,000 retirees. These facilities include the Henry Infirmary, and the Luther Haven, Luther Meadows, Tower Crest, and Luther Crest communities which ensure that retirees can receive top-quality care while enjoying the privacy of their home and independent lifestyle.

Under the current leadership of the Reverend Paul L. Buehrle, the Lutheran Home at Topton has continued to expand. The home stands as a ministry of excellence. Its fine reputation is a testament to the dedication and commitment found in all those involved with the home. As the Lutheran Home celebrates its 90th anniversary, it continues this commitment through its three major services: Children's services, family life services, and services to the aging. Since the home's establishment, countless people have been touched by the compassion and caring of this ministry and they can all attest to the appropriateness of the home's motto, "Ninety Years of Caring, Ninety Years of Love." I know that my colleagues will join me in honoring the Lutheran Home at Topton on its 90th anniversary and in wishing all those involved continued success and good fortune in the years to come.

TRIBUTE TO WILLIAM CARNEY

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. BIAGGI. Mr. Speaker, often we hear the correlation between "No. 1" and New York. For the past 8 years, No. 1—New York has meant BILL CARNEY who since 1978 has represented the people of the First Congressional District of Long Island.

BILL CARNEY is retiring from the House. His departure leaves a void which in its own way will never be filled. BILL CARNEY and I are friends. We served together on the House Merchant Marine and Fisheries Committee. BILL always impressed me as a fighter for his constituents. This was best reflected in his leadership that established a coastal resources management fund of great importance to a number of communities on the parts of Long Island that he represented. BILL CARNEY was one of the pioneers in the effort to strengthen EPA efforts to safeguard drinking water.

BILL CARNEY is a proud man. He was proud that he came to the Congress as a working man. He was proud to be able to bring his strong values into the greatest deliberative body in the world and have an impact on people's lives. BILL CARNEY is a man of strong principle. All one has to do is go back to the historic debate in this House on the issue of a nuclear freeze to realize the essence of BILL CARNEY. I, for one, often found myself with a different perspective on an issue than BILL might have. However, I was always impressed with the commitment that BILL felt toward whatever position he was advancing.

I also worked with BILL CARNEY in another policy area Northern Ireland. BILL was one of the earliest and strongest members of the Ad Hoc Congressional Committee for Irish Affairs. He had a deep concern about the problems of discrimination in Northern Ireland and fought hard to advance reforms in this troubled area of the world.

BILL CARNEY is a genuine type of man. He is funny, friendly, warm, compassionate and considerate. He represented the very best of the camaraderie that is so much a part of this work in the House. He will be missed in the House, and I wish him only the very best in whatever future endeavors he may wish to pursue.

HOUSE JOINT RESOLUTION 626

HON. JIM LEACH

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. LEACH of Iowa. Mr. Speaker, I rise in support of House Joint Resolution 626, as amended, which provides for the approval of the Compact of Free Association between the United States and Palau.

Since this legislation passed the House on September 29, 1986, it has been approved by the other body with some additional amendments. In the intervening days since that action, efforts have been made by both sides to come to some agreement on this legislation so as to expedite its enactment during this Congress.

I support the final package and want to take this opportunity to commend the gentleman from Ohio, Mr. SEIBERLING, for his tireless efforts to ensure that in our commitment to terminate the trusteeship and establish a new relationship of free association with the island states of Palau, the Marshalls, and the Federated States of Micronesia, the Congress and the executive branch will not overlook our moral obligations to the welfare of the people of those islands, particularly those who were victims of U.S. nuclear testing several decades ago in the Pacific. His success in improving the legislative package presented to Congress by the administration will be a lasting testament to his personal commitment to these concerns.

I also want to commend the chairman of the Subcommittee on Asian and Pacific Affairs, Mr. SOLARZ, for his leadership on the Foreign Affairs Committee in guiding this legislation through a difficult process and also my distinguished colleague from California, Mr. LAGOMARSINO, whose service on both the Interior Committee and the Foreign Affairs Committee made his contribution to the legislation before us unique and extremely valuable.

I would only add that I believe we should delay no longer in moving House Joint Resolution 626 forward this Congress so that the hopes and dreams of the peoples in Micronesia for self-determination and self-government will not be denied.

I urge my colleagues to join me in giving House Joint Resolution 626 a vote of overwhelming endorsement by the House as a signal of our desire for a warm new relationship with our friends in Palau, the Marshall Islands and the Federated States of Micronesia.

Thank you.

DR. FREEMAN CARY—A TRUSTED PERSONAL PHYSICIAN

HON. RICHARD RAY

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. RAY. Mr. Speaker, several Members of this body have risen to express their support and confidence in Dr. Freeman Cary, the attending physician of the U.S. Capitol for the last 19 years.

I have known Dr. Cary since 1972 and I have numbers of friends in the House and Senate who relied on Dr. Cary's advice, treatment, and referral when necessary, for several years.

He has monitored my health since I was elected to the Congress in 1983, and has provided my personal physician, Dr. David Hein, with ongoing reports and copies of annual examinations and minor hospital visits.

Dr. Cary, in my opinion, was a conscientious diagnostician, and on two occasions, when minor surgery was necessary for me, he called in the appropriate specialist to confirm his own diagnosis.

Positions such as the attending physician of the U.S. Capitol are prestigious positions, and since 1928, when the position was created, only four physicians have held it. Dr. Cary served in this capacity for 19 years, which attests to the confidence that hundreds of Members of the House and the Senate held in him.

If Dr. Cary's early retirement had been voted on by the membership of the House and the Senate, I would speculate that the vote would have been overwhelmingly in favor of him remaining as our attending physician.

TRIBUTE TO DR. FREEMAN H. CARY

HON. AUGUSTUS F. HAWKINS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 16, 1986

Mr. HAWKINS. Mr. Speaker, it is a genuine pleasure that I join with my colleagues in

paying tribute to Dr. Freeman H. Cary whose attendance to the Members of Congress will always be remembered as a service of faithfulness, devotion, and in the highest tradition of his profession.

Personally, I am extremely indebted to his constant advice and patient service during the full range of his tenure. His friendship and medical attention will always be cherished.

TRIBUTE TO JOHN BREAUX

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. BIAGGI. Mr. Speaker, it is my pleasure today to pay tribute to one of my good friends in the House, JOHN BREAUX who leaves the House after 14 years of distinguished service.

JOHN BREAUX came to this House at the young age of 28. He leaves as the Dean of the Louisiana House delegation. In his 14 years in the House, JOHN has been a dedicated and hard working Member; and the people of the Seventh District in Louisiana have been provided with the highest quality service by JOHN BREAUX.

I have had the good fortune to serve with JOHN on the House Merchant Marine and Fisheries Committee. JOHN has served with special effectiveness as chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment. In this capacity, JOHN has done outstanding work on behalf of a wide variety of bills. Especially prominent among his legislative achievements has been his work over the years on the Endangered Species Act. In addition he is to be commended for his authorship and leadership regarding the Deepwater Port Act amendments which were considered this year.

JOHN works to protect the interests of the important fishing industry in his area of Louisiana. I have had the pleasure of traveling to Louisiana on several occasions and each time I have gone to JOHN BREAUX'S district, I am impressed by the tremendous respect and support he enjoys from his constituents.

JOHN BREAUX leaves the House to pursue a campaign to serve in the other body. I have little doubt that should JOHN be elected, he will dedicate himself to the job and emerge as successful as he did in the House.

The House will miss JOHN BREAUX, they will miss his pleasant demeanor, his wit and his stories. Yet we are also losing a conscientous and productive legislator.

JOHN BREAUX started young, and has never really stopped. I have little doubt that JOHN will continue to succeed in whatever he elects to do in his future.

OCEAN COUNTY SPONSORS ORGAN DONOR PROGRAM

HON. JAMES J. HOWARD

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. HOWARD. Mr. Speaker, I am proud to present to you a new program which represents a significant and innovative approach to the shortage of organ donors in this country.

One year ago, the Ocean County Board of Freeholders founded an organ donor education and registration program. It is the first organ donor program sponsored by a county government in the United States, and hopefully a prototype for the Nation.

Initially, the program distributed educational brochures and donor cards. Subsequently, a specialized computer program was added to the county library system whereby an individual could sign up as an organ donor through 14 branches of the library. The library is a natural place to sign up, in light of the fact that the academic environment is a quiet location for such a decision. It is a respository and vanguard of mankind's knowlege. The library is a constantly evolving renaissance of science, so what better place to interface with the wonders of the world, and commit to this singular good deed, offering the gift of life, than a county library?

As the program progressed, more was understood about the needs of the people. In June 1986, a sophisticated computer program was introduced, whereby the registrant was logged onto a portable computer, Compac, and received a printout of information on permanent registration. Thus the first mobile, computerized registration unit was founded and ready for distribution to shopping malls, community service organizations, and to the New Jersey Association of Counties Convention in Atlantic City for introduction to the general public.

The Kiwanis Club of Toms River became the first in the Nation to officially adopt the program and sponsor the effort. The Social Security office in Toms River is the first in the Nation to be a repository of the donor applications and cards in the United States. The Ocean County chiefs of police are considering a new dimension, looking for the card when traumatic circumstances occur. The program is being extended to area hospitals, and local media have been publicizing the network as a public service. Finally, a booklet is being prepared, the "Citadel of Hope," which will act as an educational tool to encourage citizens to join the organ donor network.

I am proud that Ocean County has developed this creative solution to a very difficult problem, and am pleased that Governor Kean has agreed to chair the program. I am confident that with continued cooperation, private individuals, and State and Federal Government officials, can alleviate the current shortage of donors and provide assistance to so many who are suffering, and waiting, for the gift of life.

EDUCATION—OUR SOUNDEST FEDERAL INVESTMENT

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. BIAGGI. Mr. Speaker, on October 1, The Chronicle of Higher Education included a disturbing article entitled " 'Oink, Oink,' Says this Official When Education Interests Say, 'Gimme, Gimme,' " which outlines the policies and beliefs of Bruce M. Carnes, the Education Department's chief budget official.

It is always disturbing when an official in charge of the budget of vital Federal programs is so concerned with reducing the numbers that the merits of the programs are forgotten. Mr. Carnes oversees the Department of Education budget, ensuring that our Federal dollars go into the programs in the manner Congress directs. Therefore I am particularly concerned with the way Mr. Carnes views education funding. He has been quoted as saying that if Congress were to cut education funding the average American wouldn't notice.

This comment smacks of an elitist attitude. According to Mr. Carnes, either the average American is not being served by our education dollars or he or she is unaware of the service. I am confident that average Americans know of the benefits they receive and would notice the reduction of services. I am also confident that the average American receives these benefits. The problem I find is a difference in perception of the average American. In my mind, the average American is a college student who has the intelligence to excel in a prestigous institution but not the finances to attend without some type of assistance. She is the displaced homemaker who, without resources, finds it necessary to obtain some education before she can enter the workforce. He is the displaced farmer or steelworker, who has spent his life mastering a skill, only to find he must go back to school to learn a new one. He or she is the child raised on public assistance who sees postsecondary education as the opportunity for a better future. He or she is blind, deaf, mentally retarded, physically handicapped, or the family member or friend of such a person. He or she is a student or teacher in an inner-city poverty ridden school. He or she is a new American citizen, who must learn a new language. He or she is illiterate or a high-school dropout. He or she is relying on Federal funding to finance their expensive medical, law or other graduate education. He or she is now the present pillar of the community who was able to achieve this position because of the availability of Federal financial aid. He or she is the parent of a college bound, or soon-to-be college bound child, who must rely on guaranteed student loans and other forms of Federal assistance to help tackle their children's ever-increasing cost of education. These average Americans rely on our Federal dollars for their chance at the future. This is the average American that our education dollars are reaching today and must continue to reach.

I would also like to take exception with Mr. Carnes' statement, quoted in the Chronicle article that "the individual who goes to college is the primary beneficiary and, hey, he ought to pay the expense." This reminds us of the thinking of the past, where for too long higher education was a luxury reserved only for the wealthy. We have come far since those elitist times. Today's labor market mandates that higher education be attainable for all.

I agree that the individual who attends the postsecondary institution is the primary beneficiary of the Federal aid, but I object to Mr. Carnes' conclusion that therefore he ought to

fit the bill. In other words, if you can't afford the high cost of education, you can't attend college. What Mr. Carnes fails to consider is that the individual is not the sole beneficiary and that Federal student financial aid is one of the best investments this country can make.

A student who has a postsecondary education, in today's job market, will earn more over the course of his or her life than without postsecondary education. Increased income means increased revenue for the Federal Government. However, if we take the unemployed or someone on public assistance and provide them with a postsecondary education and the chance for a career, not only are we increasing our revenue, we are eliminating our expenses. These are some of the arguments from a strictly budgetary viewpoint. It has been estimated that for every dollar we invest in Federal student aid we get $1.15 cents back. While this rate may not cause all of Wall Street to take over the Student Financial Aid Program, this is an excellent return for our Federal dollar.

However, these are only the budgetary advantages. If we look at education funding from a human interest perspective, no one can argue with the infinite return on our investment. In the words of President Lyndon B. Johnson, speaking of the importance of education:

Nothing matters more to the future of our country: not our military preparedness—for armed might is worthless if we lack the brain power to build a world of peace; not our productive economy—for we cannot sustain growth without trained manpower; not our democratic system of government—for freedom is fragile if citizens are ignorant.

President Johnson captured the importance of education, especially higher education. Without an educated population, our future is dismal. Combining the budgetary and human interest aspects point to only one conclusion: Education is the soundest investment of our Federal dollar—an investment we must continue to make.

I would hope that Mr. Carnes is well aware of the vital significance of our education programs to the future of our Nation. I trust that, while he may not always agree with the congressional intent, he will honor it when managing our Federal education dollars.

THE SPEAKER OF THE HOUSE RETIRES

HON. EDWARD P. BOLAND

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. BOLAND. Mr. Speaker, on the evening of October 1, 1986, at the conclusion of its regular business, the House of Representatives paid special tribute to its Speaker, THOMAS P. O'NEILL, JR., of Massachusetts.

Speaker O'NEILL dislikes being the subject of lengthy and flowery testimonials, but I believe that he enjoyed the proceedings on October 1. I knew that he was deeply touched by the gift that was presented to him on that occasion, the chair from which he presided over the House with such great distinction for 10 years.

When the 100th Congress convenes in January, we will have a new Speaker. But the place of Speaker O'NEILL in the history of the Nation and the House, and in the hearts of those with whom he served, is secure for all time. That sentiment was more fully described in remarks made in the House on October 1.

MR. BOLAND'S TRIBUTE TO SPEAKER TIP O'NEILL

Mr. Speaker, my colleagues, I want you to know how much I appreciate the opportunity to get the last word in at the House's tribute to Speaker O'Neill.

Tip O'Neill and I came to the Congress together nearly thirty-four years ago.

I shared an apartment in Washington with him for twenty-four years, and in the process successfully avoided making a lot of money in real estate.

I nominated him for the position of majority leader twice, and for the office of Speaker fives times. He won each time.

I have even been interviewed by the writer who is helping him with his memoirs.

More than that I cannot do. He'll have to handle retirement by himself.

In thinking about this event, I was struck by a curious symmetry in Tip's tenure as Speaker.

In the fall of 1975, when he was planning his ascension to the post, the Boston Red Sox won a baseball championship.

And this fall, as he prepares to leave office, the Sox are champions again.

Now, Red Sox rooters may not have appreciated the more than a decade wait between winners, but imagine how delighted Cubs fans would be today if only Tip had been from Chicago.

But Tip is a son of Massachusetts, and it is back to Massachusetts that he will soon go.

Tip loves the New England landscape especially those parts that are gently rolling, green, and have eighteen holes.

Ten years as Speaker of the House of Representatives.

When we came to Washington in 1953, I don't think Tip imagined that he would close his career with a decade in that office.

When he took the gavel in January of 1977, he confided to the House that the Speakership was "the highest office I have ever aspired to."

His ten years as Speaker defined that office, certainly for the rest of this century.

He has become one of the most recognizable figures in America, and in the process has given to the office of the Speaker a degree of influence outside of this Chamber that rivaled the influence that past Speakers—Clay, Reed, Cannon, Rayburn, and McCormack—enjoyed within it.

Much has changed in this House in the last decade: the makeup of the membership, the manner in which we debate the issues before us, and our level of exposure to the American people.

But Tip has presided over that change with both a steady hand in the present, and an eye on the future.

In so doing he has strengthened both his office and this institution.

Tip's father taught him to "always remember from whence you came."

It is a lesson he has never forgotten, and it helps explain not only his success, but the genuine affection with which he is regarded in this House.

Tip's personal compass is as true today as it was when he started in public life 50 years ago.

He viewed politics then as a way to insure that those most in need—the poor, the elderly, the sick, the disenfranchised, the unemployed, the handicapped—got whatever help their Government could provide.

He has that same view today, and he has made no apologies for it in the five decades in between.

Tip has no hidden agenda.

He has been, and he continues to be, a tireless champion for the voiceless in our society.

And he continues to assume that if you share his concern you will be with him, and that if you don't you will expect his forceful opposition.

That is politics as the Speaker knows it, and he is a consummate politician; unashamed by the description.

Tip O'Neill loves politics and he loves his party. But he has recognized that a line exists between the Speaker's role as a party leader, and his role as chief officer of the House.

Many in this body have found that they could oppose Tip on political questions while continuing to admire him as a person and count him as a friend.

I doubt that any Speaker has been as accessible and approachable as Tip, to Members of both parties, or more willing to remember the adage that people can disagree without being disagreeable.

I think that when the Members of the House remember Tip in the years to come, they will recall the essential humanity that he brought to his office, and to his profession.

Ten years. For me they have passed as if in an instant.

Now Tip takes his leave of us, and of this House, and returns with his beloved Millie to New England.

He has often commented on the sacrifices that Millie and his children: Tom, Kip, Michael, Rosemary, and Susan have made for him.

All of us know from personal experience how great those sacrifices can be, and all of us therefore hope that the coming years given him ample opportunity to enjoy the companionship of his family.

Mr. Speaker, the title fit you, Tip, and the manner in which you did your job added to its stature.

You leave to your successor an office enriched by the example of a man who loved his country and this House, and who sought to summon each to do great things. And they did!

REMARKS OF BOB MICHEL HONORING SPEAKER O'NEILL

Mr. Speaker, the history of the House of Representatives records that on April 1, 1789, the first day a quorum was present, the House chose Frederick A.C. Muhlenberg, a Representative from Pennsylvania, as its Speaker by majority vote.

I will let history judge whether April Fool's Day was the proper time for such a majestic vote to be cast. But the first House set the precedent.

And the honor roll that followed, Speaker after Speaker, is part of the great American story.

Great men like Henry Clay, Thomas B. Reed, Uncle Joe Cannon, Champ Clark, Nicholas Longworth, John Garner, Sam Rayburn, Joe Martin, John McCormack.

When you hear those names, and when you think of the other Speakers, some famous, some not, you get an idea of the incredible diversity of experience and talent this high position has seen.

When you joined this long, distinguished line of our former colleagues, you achieved not only the highest honor your colleagues can bestow—you also brought your own unique and enviable talents and experience to the high position you hold.

A Massachusetts predecessor of our Speaker, Fisher Ames, a member of the first four Congresses, said this about his colleagues in the First Congress:

"There are few shining geniuses; there are many who have experience, the virtues of the heart and the habits of business. . . . The House is composed of very good men, not shining, but honest and reasonably well-informed, and in time they will be found to improve and not be much inferior in eloquence, science and dignity, to the British Commons."

History will have to judge if succeeding Congresses have indeed progressed in eloquence and dignity since the first Congress.

But I believe we can say that the virtues spoken of by Fisher Ames 200 years ago are still what we House members admire: a good heart, a good head and personal integrity.

Surely Tip O'Neill personifies this combination of legislative virtues as much as anyone who has been here in two centuries.

It is the genius of our system that a good heart and good head in one member can bring him to different political conclusions than another member with the same virtues. That is why we have a middle aisle.

But issues come and go. Bills that enflamed great passions in the hearts of one Congress are the dust of history to a future Congress.

What remains, always, is the absolute necessity that this institution operates within a context of trust, of civility and comity.

And that is where good hearts and good heads are vitally important.

I once heard someone say: What's the use of being an Irishman if the world doesn't break your heart now and then?

Mr. Speaker, I can tell you as someone who has been in the minority for more consecutive years than anyone in the history of this Institution, that in politics you don't have to be Irish to have a broken heart now and then.

But the broken hearts of politics are healed by time. They are healed by civility and friendship, understanding, a word that can be relied on, a commitment to one's own principles—all the things that Tip O'Neill has brought to his job.

Tip, quite frankly, you haven't made it easy for those of us in the minority—but I'd rather fight with someone who stands up for what he believes in than with lukewarm, wishy-washy, so-called "pragmatists", who believe what today's headlines tell them to.

You have always fought hard for your political principles. I don't share them. But I admire your commitment to them and your courage in defending them.

Just a few years ago, in 1981 you faced a task that in my memory no other Speaker has faced.

President Reagan had been overwhelmingly elected. My party had captured the Senate. We had made gains in the House.

You were the Speaker. But you were also your party's national spokesman because there was no one else with the prestige and power—and willingness—to do it.

Tip—your decision to meet that challenge made it rough for those of us in the minority. There was a lot of heat, and little light, generated on both sides. I disagree with a lot that happened on your side of the aisle, just as I know you felt strongly about what happened on our side.

But in retrospect, while we still have differences, I have to say, you never budged an inch from your principles, even when they weren't popular—indeed, especially when they weren't popular.

You have always given as good as you have gotten. When two Irishmen like the President and you have gone head-to-head, we saw some of the most spectacular political fireworks of our time.

But the old battles are over. The words of debate—sometimes eloquent, sometimes stirring, sometimes harsh—are now part of the past. Many of the great voices that you and I knew when we were young Congressmen are silenced, lost to us through death or retirement or defeat. Time, the great equalizer, has smoothed the rough edges of the past and old-timers like us tend to remember the good times.

What you have done here as Speaker remains for history to judge as it will judge us all. I don't know what history will say about the balance of our times. But I do know one thing. History will say that Tip O'Neill had a good heart and a good head and he fought for what he believed in.

Mr. Speaker, that is an enviable legacy.

And finally, Mr. Speaker, on a much more personal note let the record show that with all our differences, we had a special relationship as fellow legislators that had its foundation on trust in each other's word. Its the most important ingredient between leaders and your word has always been as good as gold with me.

I'm going to miss playing with you in those celebrity golf tournaments even though I always played second fiddle to the fact that you were the leader so readily recognized and sought after for autographs.

My only consolation was taking a few bucks from you when the game was over.

As for the official trips, I'm going to miss those hotly contested but most enjoyable gin games.

Mr. Speaker, your leaving brings to an end the O'Neill era in the House. I'm going to enjoy telling my grandchildren about what it was like to know you, to work with you, to respect you and to love you.

Mr. Speaker, God bless you and your beloved Millie and your family as you take your leave from this House.

REMARKS OF HON. SILVIO O. CONTE REGARDING THE RETIREMENT OF HOUSE SPEAKER THOMAS P. "TIP" O'NEILL, JR.

Mr. Speaker, colleagues, friends, Americans: autumn has always been my favorite time of year—the harvest, when thoughts turn to past toils, feasting in plenty and preparation for the long winter ahead. But I'm afraid this fall will be a little different in Massachusetts and in Washington and wherever people know of Tip O'Neill. After 34 years in our august body, and half a century in public office, a legend is moving on to new challenges and we will never be quite the same.

I've had no better friend, met no finer soul than Thomas O'Neill and I've known him for better than 40 years. I first ran into Tip soon after winning a seat in the Massachusetts Senate in 1950. I knew of him long before I met him because all of Massaschusetts politics was afire in the 1950s with talk of this quickwitted bull of an Irishman from the north end of Cambridge.

In the 36 years that I have known him, Tip has done more for the poor, the homeless, the sick and the disadvantaged than most people will ever dream of. And he has used a God given gift of leadership to make this country a better place to live while maintaining that America should symbolize peace, fairness, equality and social justice.

As the leader of his party—and I can think of no greater Speaker in my lifetime—Tip O'Neill has brought a new type of authority to his office. The Speakership is an awesome responsibility that requires the instincts of a prizefighter and Thomas O'Neill has never backed down from a noble fight. He's a product of the old school where party lines form the ties that bind and when broken can inflict some pretty deep wounds but he has always been there with a hand shake and a laugh when the dust has cleared.

Tip has seen dramatic changes in the House over years, leading many himself, and has brought a new air of authority to the Speakership. It is an authority that places more emphasis on individual participation and it has contributed a great deal to our legislative process.

Few people have had a greater impact on my life than my mentor, my friend and my conscience across the aisle—Thomas O'Neill. Over the years, a lot of people have asked how an Irish Democrat from Boston could take such a liking to an Italian Republican from the Berkshires of western Massachusetts. Maybe part of the answer is that we were both children of immigrant parents and grew up through some tough times relying on our families and our neighbors for support. Another part of the answer is that we share a taste for good food, the itch for a good gin game and we both love Massachusetts. And maybe the most important element is that we leave business at the office. Tip is able to separate friendship and politics, leave battles on the battlefield.

We've broken a lot of bread over the years and covered a lot of ground here, back home and throughout the world. There have been the Thursday night bridge games, the barbecues with Corinne and Millie, and the golf games. We have traveled together to Ireland, his ancestral home, and to the Soviet Union as part of the first Congressional Delegation to meet with General Secretary Gorbachev. I'll never forget watching him stand with his arms around a group of Chinese at the Great Wall as he sang his version of "Danny Boy." I won't forget the excitement of the mobs in Ireland who reached out to shake his bear paw of a hand, and I will never forget the courage and statesmanship he showed when meeting Mr. Gorbachev in Moscow.

Tip O'Neill is a natural leader, born to serve his fellow man and I've got to say that wherever we've been, his bigger than life personality has made friends of strangers and made me feel proud to be his colleague and his friend.

Tip has never forgotten for a moment that he is here to serve the family down the street, the kid around the corner and Mrs. Smith over on Maple Street.

He has served the people—all of them—and the people love him for it. America is everything to Tip O'Neill and America will miss him. Thanks Tip, for everything.

TRIBUTE TO MR. DANA JONES

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. DYSON. Mr. Speaker, I rise today to pay tribute to a gentleman from Maryland's First Congressional District who has distinguished himself among his peers nationwide. Mr. Dana Jones of Hughesville, MD, has recently been elected president-elect of the National Community Action Agency Directors Association.

Mr. Jones attended Calvert County Senior High School in Calvert County, MD, and graduated from the University of Maryland Eastern Shore in Princess Anne, MD.

He began his professional career at Shore UP! Inc. in Salisbury, MD, as a counselor for the successful Rent-A-Kid Summer Program. He held several positions at Shore UP! until he resigned to become executive director of the Tri-County Community Action Agency of Hughesville in 1981.

Mr. Jones has eloquently stated his goals and priorities for his administration. He has pledged to strengthen the national organization by emphasizing: Public relations, professional growth, development training and educational opportunities for the membership, and networking, or sharing information and skills across the country.

On behalf of the citizens of the First Congressional District of Maryland, I extend my heartiest congratulations and best wishes for a fruitful and successful term as president of the National Community Action Agency Directors Association.

ST. PETER AND PAUL CATHOLIC SCHOOL WINS EXCELLENCE IN EDUCATION AWARD

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. BIAGGI. Mr. Speaker, It is my privilege and pleasure to have this opportunity to extend my warmest congratulations and heartiest commendations upon Sister Marita Regina Bonner and the other teachers at St. Peter and Paul Catholic School in my congressional district in the South Bronx. They were among 60 other private elementary schools selected nationwide to receive this year's U.S. Department of Education's Excellence in Education Award for elementary private schools.

I would like to present an article which appeared in the New York Daily News, describing the dedication of Sts. Peter and Paul. May they serve as a model to educators everywhere.

THE LITTLE SCHOOL IN THE BIG TIME

(By Dan O'Grady)

Sts. Peter and Paul Catholic School in the South Bronx was recently named by the U.S. Department of Education's Elementary Private School Recognition Program as one of just 60 private schools nationwide judged exemplary in delivering quality education while making full use of often-scarce resources.

What made the accomplishment truly amazing, according to Norman Fountain, principal of Riverdale's exclusive—and expensive—Horace Mann Elementary School, is that Sts. Peter and Paul has accomplished so much on a yearly budget of less than $900 a pupil.

In comparison, the city spent an average of $4,318 an elementary school pupil last year and expects to spend an average of $4,652 a pupil this year.

Fountain was one of two educators who researched Sts. Peter and Paul for the federal awards program. In part he reported, "The effectiveness of the school is all the more extraordinary when it is realized that it is operated at a lower per-pupil cost than most school administrators would consider possible, and that it is situated in the heart of one of the most devastated areas of New York City.

SHORT OF MIRACULOUS

"To exist at all under such conditions is remarkable," added Fountain, who spent 20 years in the city's public school system. "To be able to thrive and succeed in establishing a secure and productive school environment is little short of miraculous."

Sts. Peter and Paul Elementary School is in a five-story building at 838 Brook Ave., off E. 159th St. and Third Ave. The top floor is rented out to another private school.

The Catholic school has 16 teachers, including three Charity nuns, and an enrollment of 400, with desk space for 50 more students.

Tuition is about $90 a month, with special rates for families with more than one child in the school.

The student body is 57% Hispanic and 43% black, and about the same percentages Catholic and non-Catholic, respectively. The parish school has been run for the last 74 years by the New York Sisters of Charity, who are headquartered at Mount St. Vincent College in Riverdale.

In a recent telephone interview, he said of the school's principal, Sister Marita Regina Bronner, "She could run the Defense Department!"

The Department of Education had commissioned the Council of American Private Education to locate private schools deserving of recognition.

The council, in turn, selected Fountain and Sister Theresa Murtha, a guidance counselor at St. John the Baptist School, in Bedford Stuyvesant, Brooklyn, to investigate St. Peter and Paul.

Sister Theresa belongs to the religious order of the Daughters of Wisdom.

Despite the paucity of its educational purse, Sts. Peter and Paul School has made giant educational strides compared with three nearby public schools.

According to results of compulsory basic achievement tests given to parochial and public school students in 1985 (the latest figures available), 65% of the Catholic school's pupils were reading at or above grade level.

Percentages of students reading at least at grade level at the three nearby public schools were: Public School 29, 54.9%; PS 140, 47.6%, and PS 157, 41.1%.

Sister Regina noted that of this year's eighth-graders, about 85% already are at or above grade level in reading and math and she confidently predicted that by June all of the kids would be at grade level or better in both subjects. "The public schools in District 7 have worked very hard on reading and their scores have come up remarkably," Sister Regina said, stressing that she did not want her school to be compared with neighborhood public schools, "I don't want to down anybody by any means."

Both Sister Regina and Fountain heaped praise on Sts. Peter and Paul's teachers.

"The school is a model in that children are spending their time in productive educational task activities," Fountain said in his report, "Certainly all the teachers are to be commended for their devotion to these learning tasks.

"The children participate in their classroom activities with not just attention, but alertness, involvement and enthusiasm. While some teachers exhibit greater skill than others, as one would expect, every teacher deserves commendation for the extraordinary effort that goes into their work."

Sister Regina said, "In this school the faculty is of one mind and one heart. We work closely together. There's no one here because he or she wants to get rich on the salary. They feel called to teach. And they come with the added dimension, not just to teach, as you would in a public school, but (to fulfill) the teaching mission of the church.

"We feel we have the obligation to develop a child spiritually, to help a child grow into the full stature of Christ. We share a common philosophy. When everyone is working for the same goal, it makes it much easier."

Except for two yers teaching at a Westchester school, Sister Regina, 61, has been principal of Sts. Peter and Paul since 1966. Sister Michelle McKeon, 41, is her assitant and her dynamic right arm.

EMPHASIS ON ENGLISH

"We really are dedicated to the fact that the best thing we can do for these children is to give them a good education," Sister Regina said.

Sister Regina was born and raised on Eastchester Road in Holy Rosary Parish. McKeon, who has been at the South Bronx school for 18 years, grew up in Incarnation Parish in Manhattan's Washington Heights.

The two administrators handle teacher training courses and occasionally also give lessons.

For Sts. Peter and Paul students, Sister Regina said, speaking and writing English correctly are the most important parts of the curriculum. Both are stressed even in other subjects, such as social studies and science.

She explained that "language arts is much more difficult to teach here" because of the street language of the students' peers, various dialects and the language barrier faced by many Hispanic children.

But the students are transient, making the teachers' jobs harder, but not impossible, she said: The school loses five or six students out of each class each year, she added, and gets five or six new students who invariably lag far behind the other children.

Before facing retirement, Sister Regina said, "I would love to be able to say that this was a stabilized school and not have all these new admissions each year. But, I think, we have no control over it, very little control"

That and operating a free school—no tuition. "That would be my ideal," she said.

"Discipline plays a very important role at Sts. Peter and Paul. "Without discipline,

there really can't be any learning," the principal said.

There are periods of silence, she said, and teachers are taught not to speak until every child is giving his or her undivided attention.

"We don't consider this as a prison, but we do have discipline," Sister Regina said. "We have order and organization, some rules and regulations to which they all agreed to abide."

A PLEDGE TO OBEY

The parents and students actually sign a contract pledging their commitment to obey those rules and regulatons. Otherwise, the children are not accepted at the school.

"No one makes fun of good students, or students who raise their hands as you have on the outside," she explained.

Although 43% of the student body is non-Catholic, all are taught religion.

Besides a good education, the nun added, "We would hope that in eight years we woud have instilled in them enough moral training to help them to live a life the way we wold like to see a life lived."

PERSONAL EXPLANATION

HON. TED WEISS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. WEISS. Mr. Speaker, on October 6, 1986, I requested a leave of absence from the House of Representatives in order to recuperate from bypass surgery. This statement is intended to provide a record of how I would have voted on the issues that were debated during my 2-week absence.

Had I been present, I would have noted "aye" on rollcall 434, a vote on ordering a second to allow consideration of H.R. 5445, a bill amending the Federal racketeering law. I would also have voted "aye" on rollcall 435, extending the interstate transfer deadline for the H-3 highway in Hawaii; "aye" on rollcall 436, authorizing a salinity research lab; and "aye" on rollcall 437, providing funds for the settlement of Gay Head Wamponoag Indian claims.

Had I been present, I would have voted "no" on rollcall 439, a vote to concur with the Senate amendment to H.R. 5484, the Omnibus Drug Enforcement, Education, and Control Act, with an amendment. Several days later, I would also have voted "no" on rollcall 485, a motion to approve both H.R. 5484, the House drug bill, and House Congressional Resolution 415, a related measure.

I have been a consistent and long-time supporter of antidrug measures, including much more comprehensive drug education and treatment programs. Indeed, I supported H.R. 5484 in its original form, and I supported the Senate version of the drug bill.

But I oppose the death penalty, and both of these votes were votes to insist on including the death penalty in the drug package. we have seen no evidence that invoking society's ultimate sanction will have any effect on the drug trade. Moreover, the death penalty in this case would be invoked against persons who "knowingly caused the death of another person during a continuing criminal enterprise"—a charge that may be equivalent to manslaughter, not first-degree murder. I would therefore have voted "no" in both of these instances to affirm my opposition to the death penalty, in spite of my strong support for other provisions of H.R. 5484.

I am pleased to note that the House and Senate finally sent to the President a fine antidrug bill, stripped of pernicious amendments on the death penalty, the exclusionary rule, and use of the military for domestic drug enforcement. I strongly support the final version of this bill that was signed into law, and had I been able to vote for it, I certainly would have voted in the affirmative.

On rollcalls 440, 441, and 443, on moving the previous question, on the rule, and on final passage of the Superfund conference report, I would have voted "aye."

On rollcall 442, I was able to pair my vote in favor of an extension of the temporary continuing resolution through October 10. I would also have voted "aye" on rollcall 444, dealing with the same issue. This extension was required to avoid disruption of the Government while a final continuing resolution was being developed by the conferees.

On rollcall 446, a motion to adjourn in order to avoid consideration of H.R. 3810, the pending immigration reform legislation, I would have noted "no." I would have voted "aye" on rollcall 447, ordering the previous question on the rule for consideration of H.R. 3810. On rollcall 448, I was able to pair my vote in favor of the rule, which made extended voluntary departure for Salvadorans and Nicaraguans a part of the bill.

On rollcall 450, the first amendment to the immigration bill, I paired my vote in favor of the amendment. On rollcall 456, the amendment to strike the language in the bill providing extended voluntary departure, I paired my vote against the amendment. On other amendments to the immigration bill, I would have voted as follows: on rollcall 451, I would have voted "no"; on rollcall 452, "no"; on rollcall 453, "aye"; on rollcall 454, "aye"; and on rollcall 455, "no."

On final passage of the immigration reform bill—rollcall 457—I would have voted "aye." Two years ago, I voted against the final immigration reform bill adopted by the House of Representatives. However, the version approved by the House in 1986 represents a major improvement over earlier efforts. Unlike prior versions, this bill does not contain any provisions to weaken protections for those seeking asylum and for refugees. Crucial antidiscrimination provisions designed to protect those who otherwise might be harmed by employer sanctions were preserved during floor action. And the House bill called for sanctions to expire after 6½ years, forcing a future assessment of their effect on discrimination.

In addition, the bill maintained a relatively generous program of legalization for illegal immigrants, and its provisions relating to agricultural workers were designed to prevent widespread exploitation. Finally, the inclusion of extended voluntary departure for Salvadorans and Nicaraguans was a major victory for those of us who have been championing this cause.

The bill was not perfectly crafted. In particular, I objected to its provisions for a two-tiered legalization process and to the fact that more of the illegal population was not offered amnesty. Further, it is unfortunate that large concessions to growers were required to advance the remainder of the bill. However, it is doubtful whether the momentum for key elements of the final compromise—including antidiscrimination language, legalization and extended voluntary departure—would have been preserved in later attempts at immigration reform. In my view, the House bill maintained a humane spirit and merited passage. A discussion of the conference report on this measure is provided below.

On rollcall 458, I would have voted "aye"; on rollcall 459, I would have voted "no"; and on rollcall 460, I would have voted "aye." All of the votes involved approval of another extension of the short-term continuing resolution, which was needed to prevent disruption of Government services.

On rollcall 461, the Export Administration Act authorization—S. 2245—I would have voted "aye."

If I had been present, I would have voted "aye" on rollcall 462, establishing Constitution Day as a national holiday in 1987; "aye" on roll call 463, the conference report on California Water Projects legislation; "aye" on rollcall 464, the motion by Congressman MADIGAN to strike a provision on wheat deficiency payments from the conference report on H.R. 4613, the commodity Futures Trading Act; and "aye" on rollcall 465, on the Whitley motion to reject a provision of the conference report on H.R. 4613 conveying Federal land to Nebraska.

On rollcall 466, the rule for consideration of the conference report on the Department of Defense Authorization Act, I would have voted "aye." On final passage of the conference report—roll call 467—I was able to pair my vote against the conference report.

Earlier in the year, I voted for the House version of the Defense authorization bill because of the remarkable progress that was made in adding key arms control amendments to that bill. The House bill imposed a ban on nuclear tests larger than one kiloton; mandated continued compliance with the SALT II arms control treaty; continued the current moratorium on the testing of antisatellite weapons; delayed for 1 year the production of new chemical weapons; and froze funding for the President's star wars missile defense program at last year's level.

However, following the announcement of the Reagan-Gorbachev summit meeting in Iceland, the President demanded that the conferees reject the House arms control provisions in order to free his hand in negotiating with the Soviets. As a result, most of the House arms control amendments were dropped by the conferees.

Under this so-called compromise, the conferees agreed to drop the ban on most nuclear tests and to substitute nonbinding language on continued SALT II compliance for the mandatory provisions of the House bill. In addition, the conferees agreed to begin production of a nerve gas artillery shell and to increase funding for star wars above last year's level. The only arms control provision that was preserved intact from the House bill was a continuation of the current ban on the testing of

antisatellite [ASAT] weapons against targets in space.

The President then flew to Iceland and reportedly achieved considerable progress in negotiations with Soviet leader Gorbachev on the issues of strategic nuclear weapons, intermediate range weapons, and nuclear testing. However, the summit ended in failure because the President was unwilling to compromise on the issue of his proposed star wars missile defense plan.

As a result, we are left in an extremely precarious position. While the arms talks between the two superpowers will continue, both sides have blamed each other for the breakdown of the Reykjavik meeting, and there is little reason to believe that a breakthrough will be forthcoming in the near future. The prospects for an additional summit meeting in the United States appear dim at best.

Moreover, the failure of Congress to include the arms control provisions of the House Defense Authorization bill frees the President to pursue a dangerous course that will further damage the prospects for arms control. The failure to adopt binding language concerning the SALT II arms control treaty means that the President will be free to abrogate the numerical limits of the treaty later this year, as he had previously announced. This would greatly accelerate the nuclear arms race and further complicate the negotiating process.

In addition, the failure to impose a prohibition on nuclear tests means that we are squandering the extraordinary opportunity to join in the Soviet test ban, which has continued for more than a year. And the decision to increase star wars funding by 18 percent places the future of the Antiballistic Missile [ABM] Treaty in jeopardy and threatens to irreparably harm our prospects for a comprehensive arms reduction agreement with the Soviets.

At the summit, the President once again demonstrated that he is unwilling to put the same amount of effort into achieving an arms agreement as he puts into his postsummit public relations maneuvers. In light of the President's failure, I believe that the House arms control amendments should have been restored to the conference report on the Defense Authorization bill. It will be extremely important for the 100th Congress to reopen these issues as soon as it convenes and to insist on real progress in the area of arms control.

On rollcall 468, the rule for consideration of the conference report on S. 1200, the comprehensive immigration reform bill, I would have voted "aye." Further, on rollcall 469, concerning final passage of the conference report on immigration reform, I would have voted "aye."

The final conference report is disappointing in many ways. It does not adequately reimburse States and localities for the costs associated with legalization, and it omits the language providing for extended voluntary departure for Salvadoran and Nicaraguan refugees which was included in the House bill.

Nevertheless, in other respects, it remains humane and balanced. It retains a fairly generous legalization program and a system of redress for those who may experience discrimination. It permits workers in the seasonal agricultural program to build credits toward citizenship, and it provides some legal services to H-2 workers. In the interests of both fairness and lawfulness, it was wise to approve the conference report.

However, it is urgent that Congress address the issue of extended voluntary departure at the beginning of the coming session. All of us concerned about this issue will continue to press every opportunity to give relief to Central American refugees while current conditions in the region continue.

Had I been present, I would have voted "aye" on rollcall 470, to adopt the conference report on H.R. 8, the Clean Water Act.

On rollcall 471, the rule for consideration of the conference report on House Joint Resolution 738, continuing appropriations for fiscal year 1987, I would have voted "aye." Further, I would have voted "aye" on rollcall 472, final passage of the conference report on House Joint Resolution 738.

I would have done so for the same reason that I voted for the House version of the continuing resolution: it is necessary to ensure that the basic functions of the Federal Government continue to operate. The conference report contains fiscal year 1987 funding for all programs normally covered by the 13 regular appropriations bills, and if it was not approved, the regular functions of the Federal Government would have been shut down. Nevertheless, I strenuously disagree with many aspects of the conference report, including the omission of funding for the General Revenue Sharing Program, the failure to include House-passed arms control amendments, and the inclusion of funding for the Contras in Nicaragua.

The General Revenue Sharing Program is vital to the health of 39,000 cities, counties, towns, and townships across America. The failure of the conferees to renew this program will result in tax increases or cutbacks in services in virtually all of the localities now receiving revenue sharing funds.

Law enforcement, firefighting, hospitals, schools, correctional systems, and assistance to the homeless and aged—these are some of the programs and institutions that will suffer as a result of this decision. In many cities, the first line of defense against drugs if funded by revenue sharing. The loss of revenue sharing will set back these efforts as well.

The final continuing resolution also contains money for the Contras in Nicaragua. The administration's policies toward Nicaragua violate international and domestic law and greatly magnify the suffering of the Nicaraguan people. I have therefore consistently opposed aid to the Contras, and I will continue to do so.

The conference report also contains large sums of security assistance to Guatemala, El Salvador, and Honduras. In each of these countries, the military remains the strongest institution, overshadowing the power of elected officials or the judiciary. I strongly oppose such assistance to each of these Governments.

I am also greatly disappointed by the failure to include in the final continuing resolution the extremely important arms control amendments that were included in the House version. These are the same amendments I have already described in relation to the conference report on the Defense Authorization bill.

On rollcall 473, a motion related to the Federal buildings fund of the General Services Administration, I would have voted "aye." On rollcall 474, I would have voted "aye"; and on rollcall 475, I would have voted "no."

I would also have voted "aye" on rollcall 476, a vote on transferring jurisdiction over National and Dulles Airports from the Federal Government to an independent local authority. And on rollcall 477, providing for a 1-day extension of the temporary continuing resolution, I would have voted "aye."

On a series of three votes on H.R. 5705, a bill to protect and provide for the enhancement of the resources of the Columbia River Gorge, I would have voted "aye" on rollcall 479, providing for a rule for consideration of the bill; "no" on rollcall 481, against a substitute amendment offered by Congressman ROBERT SMITH of Oregon; and "aye" on rollcall 482, final passage of the bill.

I would also have voted "aye" on rollcall 483, a rule providing for the consideration of H.R. 2127, to establish a U.S. Boxing Commission; "aye" on rollcall 486, providing a rule for the consideration of the conference report on H.R. 6, the Water Resources Act; and "aye" on rollcall 488, final passage of the conference report on H.R. 6.

On rollcall 487, to approve the conference report on H.R. 5300, the Omnibus Budget Reconciliation Act of 1986, I would have voted "aye." While the conferees dropped important provisions of the House bill relating to housing authorizations and the AFDC Two-Parent Program, the conference report retains significant improvements in health care and elderly policy. Moreover, failure to approve the reconciliation agreement could have resulted in an across-the-board budget cut under the Gramm-Rudman balanced budget law. This would have severely damaged many essential Government programs.

In conclusion, I would like to pay special tribute to the Honorable THOMAS P. O'NEILL, whose keen legislative skills and compassionate spirit have made him an exceptionally capable and effective Speaker. I will sorely miss him, as will all Members who had the privilege to serve under his leadership.

In summary, I would have voted "aye" on rollcalls 434, 435, 436, 437, and 438; "no" on rollcall 439; "aye" on rollcalls 440, 441, 442, 443, 444, and 445; "no" on rollcall 446; "aye" on rollcalls 447, 448, and 450; "no" on rollcalls 451 and 452; "aye" on rollcalls 453 and 454; "no" on rollcalls 455 and 456; "aye" on rollcalls 457 and 458; "no" on rollcall 459; "aye" on rollcalls 460, 461, 462, 463, 464, 465, and 466; "no" on rollcall 467; "aye" on rollcalls 468, 469, 470, 471, 472, 473, and 474; "no" on rollcall 475; "aye" on rollcalls 476, 477, 478, and 479; "no" on rollcall 481; "aye" on rollcalls 482, 483, and 484; "no" on rollcall 485; and "aye" on rollcalls 486, 487, and 488.

H.R. 5484, THE ANTI-DRUG ABUSE ACT

HON. WILLIAM J. HUGHES

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. HUGHES. Mr. Speaker, I want to discuss the money-laundering provisions in the Anti-Drug Abuse Act which passed the House on October 17, 1986 and how they differ from the bill developed by the Subcommittee on Crime which was reported by the Judiciary Committee. The committee's bill created two new sections of title 18, section 1956 a new offense, and section 1957, the forfeiture provisions for violating section 1956. The bill before us divides the offenses that were in section 1956 of H.R. 5217 into two different sections which, given the nature of the offenses, is logical. The new 1956 offense is a pure money-laundering offense. The new 1957 offense is an offense involving transactions in the proceeds of crime and is much broader than money laundering.

The new 1957 offense is to knowingly engage in or attempt to engage in a "monetary transaction" in "criminally derived property" that is derived from a "specified unlawful activity."

A monetary transaction is any deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument by, through, or to a financial institution. Every time a deposit is made at a bank, or a check is written, or travelers' checks are purchased, a "monetary transaction" has occurred.

A person who engages in a monetary transaction using the proceeds of a specified unlawful activity would violate this section if such person knew that the subject of the transaction were the proceeds of any crime. The Subcommittee on Crime, which developed this offense, is aware that every person who does business with a drug trafficker, or any other criminal, does so at some substantial risk if that person knows that they are being paid with the proceeds of a crime and then use that money in a monetary transaction. I want to share with the House the discussion the subcommittee had as it developed this offense. The compelling rationale for this offense was set forth by the gentleman from Florida [Mr. SHAW]. "I am concerned about a broker who might take a quarter million dollars of cash down to Fort Lauderdale taking that as payment. I am concerned about the realtor who is going to make a $50,000 or $100,000 commission on a deal by knowingly doing it. I am sick and tired of watching people sit back and say, 'I am not part of the problem, I am not committing the crime, and, therefore, my hands are clean even though I know the money is dirty I am handling.' The only way we will get at this problem is to let the whole community, the whole population, know they are part of the problem and they could very well be convicted of it if they knowingly take these funds. If we can make the drug dealers' money worthless, then we have really struck a chord, and we have hit him where he bruises, and that is right in the pocketbook * * * you have outstanding business people who are otherwise totally moral who are accepting these funds and profiting greatly from drug trafficking that is going on througout this country, and this will put a stop to it." [1]

The Subcommittee on Crime extensively discussed the implications and critical importance of the state of mind for these offenses at its markup on July 16, 1986, and I want to advise members of the narrow and unusually limited meaning the subcommittee attaches to the term "knowing" in this new offense in section 1957.

The following example, discussed at our markup, illustrates the potential problem that an expansive reading of the state of mind would have in extending the reach of the offense beyond that intended by the committee. The corner grocer in a small community is aware of the reputation of a person who is the local drug trafficker. That person comes to the store and buys 5 pounds of hamburger. The grocer takes the cash and deposits it in his bank account with his order receipts.[2] The monetary transaction is the act of the grocer depositing his day's receipts in his bank account. The question is whether the grocer is guilty of violating this new offense, 18 U.S.C. 1957.

My colleague from Florida, the ranking Republican member of the subcommittee [Mr. MCCOLLUM] observed, "you [the grocer] have to know what he is coming in to buy groceries with is indeed the money derived from the particular designated crimes; and to get to that point, you would have to prove to a jury [that the grocer knew that] the fellow had no other source of income or that [if] he had—the grocer had some more direct knowledge this fellow was just standing outside on that street corner before he came in peddling drugs, like if [the grocer] saw him doing it. [Under those circumstances] I don't have any problem whatsoever holding the grocer accountable if he sees the guy [the trafficker] outside dealing in drugs and takes cash and walk into his store." [3]

The gentlemam from California [Mr. LUNDGREN] stated his understanding of the committee's use of the term "knowingly", "it is a 'knowing' standard. I think it is repetitive of what he [Mr. MCCOLLUM] said, but I think that is extremely important. It is not 'should have known, might have known, a reasonable person would have known', it is 'this person knew the source of the income'." The gentleman from California, in reiterating the importance of this branch of the offense said, "it is time for us to tell the local trafficker and everyone else, 'if you know that person is a trafficker and has this income derived from the offense, you better beware of dealing with that person." [4]

I would like to discuss the resolution of an amendment limiting this offense which the gentleman from Florida [Mr. MCCOLLUM] offered, which was adopted by the subcommittee, which provided that the offense does not apply to monetary transactions involving the bona fide fees an attorney accepts for representing a client in a criminal investigation or any proceeding arising therefrom. In our deliberations to resolve the differences between the House and the other body concerning this bill, this provision omitted because of an agreement that it is unnecessary because the offense could not be applied in these circumstances.

The Subcommittee on Crime adopted the McCollum amendment after long debate because we believed the offense had a potential impact upon the exercise of the sixth amendment right to the effective assistance of counsel in the event this offense were to be applied to bona fide fees received by attorneys. I believe that most members agree that such an application would be an unwarranted application of this offense. What we foresaw was that an attorney representing a person facing criminal investigation or prosecution, in carrying out the professional obligation to fully represent a client, must inquire into many aspects of a client's personal life and financial circumstances and thus may learn that part of the fee with which the attorney has been paid was derived from the specified unlawful activity. The members of the subcommittee felt that the potential for such discovery might have had the effect of inhibiting the attorney's complete investigation of the client's case—in order to avoid learning any information which could have triggered the application of this offense against the attorney—and would thus have interfered with the client's sixth amendment right to effective assistance of counsel.

I think that last night most of us working on this issue recognized that the risk that the Department of Justice would prosecute an attorney in this circumstance was really so very remote that a special statutory exception was really not necessary.

Upon further reflection, it was also our judgment that by singling out only that attorney-client situation, which frankly was the only instance we examined in subcommittee, we might be creating the implication that other situations where certain types of privileged conduct might exist an exception ought to be applied when there are important countervailing considerations. For example, take the case of a physician and hospital which provide an emergency appendectomy to the child of a drug trafficker. Surely if the physician or hospital accepted payment and later realized that the parent was a drug trafficker, this offense should not be applied to them. We don't want to see a situation in which racial or ethnic bigotry based upon invalid stereotyping leads to a situation in which vital services are not provided to certain members of the community. A call for an ambulance should be answered without the dispatcher wondering whether the ambulance company can be charged with unlawful monetary transactions because of who the patient might be. Of course the attorney fee situation is a unique issue because of its constitutional significance, but there are other

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[1] Markup by the Subcommittee on Crime of H.R. 5077, Money Laundering Control Act of 1986, July 16, 1986, Transcript, pp. 22-23.

[2] Markup by the Subcommittee on Crime of H.R. 5077, Money Laundering Control Act of 1986, July 16, 1986, Transcript, p. 11.

[3] Markup by the Subcommittee on Crime of H.R. 5077, Money Laundering Control Act of 1986, July 16, 1986, Transcript, pp. 13-14.

[4] *Ibid.* at p. 17.

circumstances where public policy would suggest an exception is warranted. I believe that this is an area we are likely to examine in the next Congress to see how the offense is being applied.

We did not omit this provision because we have any doubts about the wisdom of the policy it was intended to carry out. There was concern about the narrowness of the exception which the provision created. Given the lateness of the hour and the difficulty of carefully redrafting the provision that would have satisfied all interests concerned, and the unlikelihood that the Justice Department would consider prosecutions of such highly privileged conduct, we concluded to drop the provision.

S. 2948

HON. DANIEL K. AKAKA

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. AKAKA. Mr. Speaker, I would like to express my support for S. 2948, which would authorize the President to promote, posthumously, Lt. Col. Ellison Onizuka to the grade of colonel. I had the great honor of knowing Ellison Onizuka—he was a kind and selfless man who loved the Air Force and its Space Program not as a job, but as the culmination of his life's ambition.

In January 1978, when I was yet a newcomer to Congress, I had gone to the island of Hawaii to inform Ellison's mother that he had been selected as an astronaut candidate by NASA. Her jubilant response to the news reflected the fact that this was the materialization of his greatest dream.

After 7 years of specialized training, Ellison became a member of the *Discovery* mission. On this flight, he was, among other things, responsible for primary payload activities. During *Discovery*'s 48 orbits around the Earth, Ellison logged a total of 74 hours in space, landing at Kennedy Space Center on January 27, 1985. I was fortunate enough to be in attendance at the launching of that exciting voyage, sharing with his family and many other well-wishers that historic moment.

For the people of Hawaii and especially for the children, Ellison became a hero. He was the first Hawaiian astronaut in the history of the Space Program. Ellison was an inspiration to all those he met, generously donating his time to speak of his experiences, often visiting many of our local schools. The children were in awe of this kind and humble man. His life stands as a monument to all those who strive to fulfill their dreams.

Ellison Onizuka was a valiant American whose promotion is well-deserved. I urge my colleagues to join me in supporting S. 2948.

WRAP-UP OF AD HOC CONGRESSIONAL COMMITTEE FOR IRISH AFFAIRS WORK FOR 1986

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 18, 1986

Mr. BIAGGI. Mr. Speaker, I am honored to be completing my ninth year as chairman of the bipartisan Ad Hoc Congressional Committee for Irish Affairs. At the close of the 99th Congress, the membership of the committee stands at 115, and I wish to publicly thank each member for their participation in the work of the committee this past year.

1986 may be recorded as a watershed year for the entire Irish question. We began 1986 fresh from the completion of the signing of the Anglo-Irish Agreement between the Governments of Great Britain and the Republic of Ireland. I referred to the document at that time as a "fragile first step." Congress saw fit to adopt a concurrent resolution of support for the agreement late in 1985 and the accord had the full support of the President as well.

As we approach the first anniversary of the signing of the agreement, one cannot be buoyed by the early stages of implementation. There continues to be strong disagreement to the agreement from all sides of the political spectrum in Northern Ireland. In my mind the greatest flaw in the accord is its failure to make any changes in the political status quo in Northern Ireland, which to me seems a basic prerequisite for any real prospects for a lasting political solution in Northern Ireland.

The Ad Hoc Committee began 1986 with a renewed effort to see movement on certain bills and resolutions related to Northern Ireland. On the very first day of the session, I introduced two measures, House Concurrent Resolution 6 and House Concurrent Resolution 7. The first expressed the opposition of Congress to the indiscriminate use of plastic bullets by the British security forces in Northern Ireland. The second measure called on the President to designate a special envoy for Northern Ireland.

It became obvious that as we approached St. Patrick's Day in 1986 that there was clear and evident interest on the part of various sides on some type of post-Anglo-Irish agreement initiative. The most logical approach would be some degree of first-time, U.S. economic aid. I was proud to have authored, in 1983, the first legislation calling for such aid. In the 99th Congress I had authored a new bill providing $500 million over 5 years in economic aid subject to the British Government declaring their intention to withdraw from the north.

The vaunted St. Patrick's Day initiative was unveiled on March 5 when the administration proposed providing $250 million in aid over 5 years to Ireland and Northern Ireland. That very day I was proud to testify before the Subcommittee on Europe and the Middle East to urge that any U.S. aid proposal contain specific guarantees to ensure that the aid benefits both communities. The administration proposal as originally submitted contained no such conditions.

In my testimony I urged that there be specific linkage between the U.S. aid and the MacBride principles of fair employment and nondiscrimination. I aslo recommended that the aid be provided in full compliance with the human rights provisions in the Foreign Assistance Act.

In what proved to be perhaps the most significant action taken by Congress on the Northern Ireland issue, the House Foreign Affairs Committee under the leadership of Chairman DANTE FASCELL and with the critical assistance of my colleague BEN GILMAN of New York, basically rewrote the legislation.

The revised version, H.R. 4329, which I was proud to cosponsor, passed the House on March 11. The bill maintained the authorization level of $250 million over 5 years but established the following conditions: It guaranteed that the aid would be purely economic.

The bill called on the President to make every effort to ensure that there is U.S. representation on the board of the International Economic Support Fund which will distribute the U.S. aid; it requires the President to certify to Congress each year that U.S. aid is being dispersed "in accordance with the principle of equality and nondiscrimination in employment without regard to religious affiliation." The bill also requires the President to provide an annual report to Congress on the degree to which the United States aid "has increased respect for the human rights and fundamental freedoms of all people in Ireland and Northern Ireland."

The importance of this action cannot be underestimated. The absence of any conditions associated with United States aid would have put us in the position of indirectly subsidizing continued economic discrimination in Northern Ireland.

Ultimately in terms of the authorization bill, the final version provided $120 million over 3 years but did maintain the conditions in the House bill. A separate measure providing $50 million in fiscal year 1986 supplemental appropriations was also adopted by Congress in 1986.

While I evaluate the passage of the economic aid bill with conditions as a positive development, there were other developments in 1986 that were less than positive with respect to Northern Ireland. Central among these had to be the ratification of the supplementary extradition treaty between the United States and the United Kingdom of Great Britain and Northern Ireland.

This supplementary treaty had been proposed in the summer of 1985. It was supposed to be given quick consideration in the other body. Yet there were sufficient enough concerns to have 55 House Members join me in a letter to Chairman Lugar of the Foreign Relations Committee to urge that a full set of hearings be held. This request was in fact granted and a total of four hearings were held on the proposal. I testified at the hearings as did several other members of the ad hoc committee, including Representatives FISH, and HUGHES. Following the hearings, I also authored a resolution calling on the committee to end their consideration of the treaty.

My objections to the treaty were based on the fact that it was unprecedented and served

to eliminate the political offense exception to extradition which is common to more than 90 other treaties we are a party to. In addition, the treaty was made retroactive. I am confident that this issue will be revisited in the future.

The ad hoc committee was active in several other areas during 1986. Together with 15 other Members, we contacted the United States Air Force to terminate their contract with Short Brothers, Ltd., of Northern Ireland because of Short's continued discrimination against the Catholic minority in hiring and recruiting. The Air Force did advise me in an October 16 letter that they have agreed not to "exercise" an option to purchase additional aircraft from Shorts.

The ad hoc committee continues to be deeply concerned about the visa policy of our Department of State relative to political figures from Northern Ireland. This policy has resulted in the absolute exclusion of certain segments of political thought such as Sinn Fein while allowing others such as those of the Reverend Ian Paisley of the Democratic Unionist Party to have carte blanche access to the United States. This is a policy of indirect censorship directed against the Irish-American community which must be terminated.

Finally, one of the original members of the ad hoc committee, my colleague from New York, Mr. FISH, sponsored an important bill calling on American companies doing business in Northern Ireland to adhere to the MacBride principles of fair employment and nondiscrimination. I was proud to join as a cosponsor of this measure.

I wish to express my deep appreciation to all the members of the ad hoc committee for their help and leadership this past year. I wish to especially thank Mr. GILMAN, Mr. FISH, Mr. BORSKI, Mr. DIOGUARDI, Mr. MANTON, Mr. WEISS, Mr. WALGREN, Mr. TRAFICANT, Mr. RUSSO, Mr. STRATTON, Mr. TOWNS, Mr. MCGRATH, Mr. DELLUMS, Mr. EDGAR, Mr. LANTOS, and Mr. LENT for special efforts they exhibited throughout the year. In the other body, I wish to salute the leadership of Senator HATCH, especially with respect to the extradition treaty, and Senator HELMS. In addition Senator D'AMATO of New York displayed a consistent degree of leadership throughout the year on all issues of importance to the committee.

Finally, as I have done at other times during the year, let me also pay tribute to those individuals and organizations in the Irish-American community who have worked so closely with the ad hoc committee during 1986. This includes but is not limited to the Ancient Order of Hibernians, their immediate past national president, Joe Roche, and their new president, Nick Murphy. In addition, the Irish National Caucus, led by Rev. Sean McManus, Rita Mullen, and Peter Burns O'Brien. These two organizations primarily worked throughout the year with the committee on all issues. The committee also wishes to thank the Irish-American Unity Conference and the Irish Northern Aid Committee, the Political Education Committee, and the American Irish Congress for their work. Let me also pay tribute to the Irish Echo newspaper and its executive editor, Jack Thornton, for their efforts throughout the year. Finally, let me pay tribute to an old and dear friend and leader in the Irish-American community, Paul O'Dwyer from New York who continues to lead by example in his efforts on behalf of peace and justice in Ireland.

CURRENT MEMBERS OF THE AD HOC CONGRESSIONAL COMMITTEE FOR IRISH AFFAIRS, JULY 1986

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Ted Weiss (D-NY).
Pat Williams (D-MT).
Howard Wolpe (D-MI).
Gus Yatron (D-PA).
Robert Young (D-MO).
Al Waldon (D-NY).
Total: 115.